

No. \_\_\_\_\_

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**COURT OF APPEALS FOR THE STATE OF  
WASHINGTON DIVISION I**

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IN RE THE PERSONAL RESTRAINT OF

Amber F. Kim,

Petitioner.

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**PERSONAL RESTRAINT PETITION**

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## I. INTRODUCTION

For the first time in Washington’s history, the Washington State Department of Corrections (“DOC”) transferred a transgender woman from a women’s prison to a men’s prison. For over three years, Amber Kim—a transgender woman—served her sentence at the Washington Corrections Center for Women (“WCCW”). However, in June of 2024, DOC transferred Ms. Kim to a men’s prison due to a single, non-violent infraction issued after Ms. Kim was caught having consensual sex with her roommate. While Ms. Kim’s roommate suffered minor consequences—a two month change of security status at WCCW and related loss of privileges—DOC moved Ms. Kim to a men’s prison for the exact same underlying behavior.

DOC is forcing Ms. Kim to live in a single-sex prison that does not align with her gender identity and placing her at imminent risk of violence. DOC’s placement decision has devastating consequences for Ms. Kim. During her prior

placement at men's prisons, Ms. Kim endured physical violence, stalking, harassment, and attempted sexual assaults due to her gender identity and presentation. At WCCW, Ms. Kim was free from this constant barrage of violence and harassment. She attended college, worked as a tutor, and engaged in positive programming. Now, Ms. Kim elects to live in solitary confinement rather than endure the physical and psychological harm that would become her everyday reality if housed in men's general population. And while solitary confinement keeps her physically safe, she experiences the significant emotional harm that comes with isolation.

DOC's punitive transfer and forced placement of Ms. Kim at a men's prison violates the Washington State Constitution's prohibition on cruel punishment enshrined in article I, section 14. The State of Washington must be ordered to immediately remedy the conditions or release Ms. Kim.

## **II. STATEMENT OF ISSUE**

Whether the Washington State Department of Corrections' transfer of Ms. Kim—a transgender woman—from a women's prison to men's prison after a single, non-violent infraction constitutes cruel punishment in violation of article I, section 14 of the Washington State Constitution.

## **III. STATUS OF PETITIONER**

An appellate court must grant appropriate relief for a petitioner through a Personal Restraint Petition (“PRP”) if the petitioner is under unlawful restraint. RAP 16.4(a). Restraint is unlawful when the conditions or manner of the restraint “are in violation of the Constitution of the United States or the Constitution or laws of the State of Washington.” RAP 16.4(c)(6).

Amber Kim is “restrained” because she is held in total confinement by DOC pursuant to a life without the possibility of parole sentence. RAP 16.4(b). Because the conditions of Ms. Kim's current incarceration violate article 1, section 14 of the

Washington Constitution, she is unlawfully restrained, and a PRP is the appropriate vehicle for Ms. Kim’s claim. *See In re Pers. Restraint of Gentry*, 170 Wn.2d 711, 714-15, 245 P.3d 766 (2010); *see also Matter of Pers. Restraint of Williams*, 198 Wn.2d 342, 496 P.3d 289 (2021).

This Court is the appropriate forum for Ms. Kim’s claim because her unlawful restraint is occurring based on her location. RAP 16.8(b). A PRP may be filed based on the location of the petitioner when they are “not being held in custody on the basis of a decision.” RAP 16.8(b). Ms. Kim is currently incarcerated at Monroe Correctional Facility, located in Monroe, Snohomish County, Washington.

#### **IV. STANDARD OF REVIEW**

A petitioner must prove unlawful restraint by a preponderance of evidence. *Williams*, 197 Wn.2d at 352. “[W]here a petitioner raises a claim which there has been no previous opportunity for judicial review, such as constitutional challenges to actions taken by prison officials, a petitioner is not

required to make a threshold showing of prejudice. Rather, the petitioner must show the conditions or manner of restraint violate state law or the constitution.” *Id.* at 353 (citing *Gentry*, 170 Wn.2d at 714-15).

## V. STATEMENT OF THE CASE

Amber Kim is a transgender woman currently serving a life without the possibility of parole sentence. Kim Decl. ¶¶ 2-3. To date, Ms. Kim has served over 18 years—nearly the same amount of time that she lived outside of prison before her arrest and subsequent conviction. *Id.* at ¶¶ 1-2.

Ms. Kim was arrested when she was 18 years old and a senior in high school. *Id.* at ¶ 12. At the time, Ms. Kim did not openly share her identity as a transgender woman, despite internal knowledge of her gender identity. *Id.* at ¶ 14. After trial court proceedings, Ms. Kim was transferred to DOC custody to serve her sentence. *Id.* at ¶ 13. Life in men’s prison was immediately difficult. *See, e.g., id.* at ¶¶ 15, 17, 20, 22-24. After a week of processing at the Washington Corrections Center in

Shelton, Ms. Kim was assigned to the Washington State Reformatory Unit (“WSR”) at Monroe Correctional Center (“Monroe”). *Id.* at ¶ 13, 16, 18. Although not living openly as a transgender woman, Ms. Kim was small and perceived by others as effeminate. *Id.* at ¶ 14. This quickly made her a target for bullying, harassment, and violence in prison. *See, e.g., id.* at ¶¶ 14-15, 20, 22-24. Immediately, Ms. Kim faced nearly constant verbal harassment from other inmates and corrections officers. *Id.* at ¶ 15. As she described, “I was routinely called anti-gay slurs, most often ‘fag’ and ‘faggot,’ but also ‘bitch’ and ‘punk.’ I was called these slurs so regularly that I cannot estimate the total number of times I was subjected to such abuse.” *Id.* at ¶ 15.

After 10 months at WSR, Ms. Kim was transferred to the Washington State Penitentiary in Walla Walla (“Walla Walla”). *Id.* at ¶ 21. Verbal harassment quickly escalated into physical violence and attempted sexual assaults. *See, e.g., id.* at ¶¶ 22-23, 25. The first time Ms. Kim was physically attacked in prison was on the transport bus between WSR and Walla Walla. *Id.* at ¶ 22.

The abuse continued, due to others' perception of Ms. Kim's sexuality and gender presentation. *Id.* at ¶¶ 23-24. On two separate occasions, a male inmate attempted to sexually assault Ms. Kim. *Id.* at ¶ 24. Ms. Kim remained in close custody at Walla Walla for eight years. *Id.* at ¶ 21.

In 2016, Ms. Kim disclosed to DOC that she is a transgender woman. *Id.* at ¶ 29. This disclosure triggered a series of actions by DOC based upon its policies related to transgender inmates. DOC Policy 490.700; *see also* Leavitt Decl. ¶ 3, Ex. A. Shortly after Ms. Kim's disclosure, she was approved for a transfer out of Walla Walla and back to WSR at Monroe. Kim Decl. at ¶ 32. When Ms. Kim arrived back to WSR, her identity as a transgender woman was known to DOC staff and inmates there. *Id.* at ¶ 36, 38. She legally changed her name to Amber and started hormone replacement therapy ("HRT"). *Id.* at ¶¶ 39-40. This had a profound effect on Ms. Kim: "[s]tarting HRT was a monumental moment in my life, where I started the physical process of living in a body more aligned with my internal

knowledge of myself.” *Id.* at ¶ 39.

Despite living a life congruent with her identity and internal knowledge of herself, life at a men’s prison was still difficult. *Id.* at ¶ 43. She was “heckled, cat-called, hit-on, objectified, sexualized, and stalked by men there.” *Id.* She received “a nearly constant stream of notes from other inmates” propositioning her for sex. *Id.* at ¶ 44. Over the course of a handful of months, she received so many unwanted notes that they filled an entire brown lunch bag. *Id.* at ¶ 45. The notes would routinely end with the writer stating he would be waiting for Ms. Kim in the showers at a specified time. *Id.* at ¶ 44. Terrified of what may happen, Ms. Kim became hyper-vigilant, keeping track of the times specified in the notes and avoiding the showers during those times or when anyone else was around. *Id.* After complaining to a supervisor at her job in the kitchen that a coworker, who was convicted of a sex offense, was aggressively propositioning her for sex, Ms. Kim was fired from that job. *Id.* at ¶ 46.

DOC's records reflect Ms. Kim's ongoing struggle being housed in a men's prison. DOC's "Transgender, Intersex, and/or Non-Binary Individuals" policy ("Transgender Individuals Policy") establishes comprehensive guidelines dictating how DOC must treat transgender, intersex, and non-binary individuals regarding housing assignments, searches, drug/alcohol testing, and more. DOC Policy 490.700; Leavitt Decl. ¶ 3, Ex. A. DOC's Transgender Individuals Policy also requires semi-annual housing reviews conducted by a Multidisciplinary Team ("MDT"), which includes mental health providers, the incarcerated person's case manager, and other DOC officials. *Id.* Pursuant to this policy, first a MDT team within at the incarcerated person's prison reviews a housing decision. *Id.* That MDT team's recommendation is forwarded to DOC Headquarters' MDT ("HQ MDT"), which issues a final decision. *Id.*

In April of 2020, DOC noted that Ms. Kim requested "support from mental health due to stress of being a transwoman

in a men's facility." *Id.* at ¶ 8, Ex. D. Ms. Kim reported that she "experienced inappropriate sexual comments from both incarcerated people and staff" including "having male [correctional officers] touch [her] breast area during pat [down] searches." *Id.* Ms. Kim reported being "worried about being victimized in the shower in all men's facilities" and that she "do[es] not feel safe" in men's prisons. *Id.*

After over four years living as an out transgender woman inside of men's prisons, DOC approved Ms. Kim's transfer to Washington Corrections Center for Women ("WCCW"), a women's prison. Kim Decl. ¶ 49. For Ms. Kim, "[m]oving to WCCW was a massive improvement in all aspects of my life. At WCCW, I could truly live and be seen as a woman. When I arrived, there were approximately ten other transgender women there. The overwhelming majority of women at WCCW were accepting of the transgender women there and simply treated me like any other woman." *Id.* ¶ 50. At WCCW, Ms. Kim was not harassed, threatened, assaulted, or propositioned for sex. *Id.* at ¶

51. Free of this constant harassment and fear of violence, Ms. Kim flourished. *Id.* at ¶ 52. She continued college classes, earning a 3.98 grade point average. *Id.* at ¶ 53. She worked, first in food service and later as a tutor and classroom assistant. *Id.* at ¶ 54-55.

DOC's own records noted Ms. Kim's immediate improvement upon transferring to WCCW. Leavitt Decl. ¶ 9, Ex. E. Ms. Kim's MDT review from July of 2021 stated, "Ms. Kim works in Food Service. Per Ms. Kim[,] she is not having any issues or concerns and is being treated like one of the other girls which is all she has been asking for. AC Cook Dale stated Ms. Kim is reliable and dependable. Works well in any area she is assigned in the kitchen." Leavitt Decl. ¶ 11, Ex. F.

Regarding her mental health, it was noted that, "Ms. Kim stated she was getting used to the idea of never getting out of prison and just giving up on life. But she no longer feels that way since she has been at WCCW. Ms. Kim stated she now look[s] forward to the future and working on AA Degree as well as being

a tutor for the [General Educational Development test] (GED) in the future.” *Id.* In late March of 2023, Ms. Kim’s counselor wrote “I have no concerns at this time. As the assigned Counselor[,] Kim has been working very well with me . . .” *Id.* at ¶ 12, Ex. G.

On March 14, 2024, Ms. Kim and her cellmate—a cisgender<sup>1</sup> woman—were caught having consensual sexual contact in their cell. Kim Decl. at ¶ 59. As a result, Ms. Kim and her roommate were each found guilty of a “504” infraction<sup>2</sup> after a disciplinary hearing. *Id.* This was Ms. Kim’s first major infraction at WCCW and first 504 infraction during the entirety of her incarceration. *Id.* ¶ 60. Both Ms. Kim and her roommate were subsequently transferred to close custody, a more restrictive

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<sup>1</sup> “Cisgender” is defined as a person whose sex assigned at birth aligns with their gender identity.

<sup>2</sup> WAC 137-25-030 outlines serious violations while incarcerated. A 504 violation is defined as “[e]ngaging in a sex act with another person(s) that is not otherwise included in these rules, except in an approved extended family visit.” 504 violations encompass consensual sex as well as other forms of physical intimacy.

security status that limits the amount of time spent outside of one's cell, at WCCW. *Id.* at ¶¶ 60-61.

On April 2, 2024, DOC conducted a housing review for Ms. Kim pursuant to the Transgender Individuals Policy, after which DOC determined that maintaining Ms. Kim's current placement at WCCW was appropriate. Leavitt Decl. ¶ 14, Ex. H. In this review, both the WCCW MDT and the HQ MDT agreed that Ms. Kim should remain at WCCW. *Id. Id.* Five weeks later, Ms. Kim's housing status was reviewed again. *Id.* Despite no new infractions, no new information, and no change in circumstances, both the WCCW MDT and HQ MDT reversed their positions, determining that Ms. Kim was a safety concern and that she should be transferred out of WCCW. *Id.* at ¶ 15, Ex. I. On May 14, 2024, DOC approved Ms. Kim's transfer to the men's prison. *Id.*

On June 21, 2024, Ms. Kim was removed from her cell, under the guise of being taken to segregation at WCCW. Kim Decl. at ¶ 65. Unbeknownst to Ms. Kim, instead of going to

segregation, she was taken to the intake hallway in preparation for her transfer to a men's prison. *Id.* While walking down the hallway, Ms. Kim asked to see paperwork regarding her move, but the officers transporting her refused. *Id.* As Ms. Kim described: "I became completely panicked. I begged them not to transfer me outside of WCCW. I stopped walking, but I did not physically resist. The officers slammed me onto the ground. I screamed for help. Multiple officers piled on top of me. I felt like my body was being crushed into the floor. I was placed in some kind of strange restraint device, kind of like a seatbelt, which prevented me from moving at all. I was forced into the backseat of an SUV still wearing this device." *Id.* Ms. Kim was taken to Monroe and placed in solitary confinement. *Id.* at ¶ 66, 68.

DOC completed a "Use of Force" report after Ms. Kim's transfer, due to the physical force and restraint device used against Ms. Kim by six WCCW staff members. Leavitt Decl. ¶ 17, Ex. J. In its report and subsequent statements to the media, DOC erroneously claimed that Ms. Kim attempted to bite and

assault DOC staff during the transport out of WCCW. *Id.*; *Id.* at ¶ 18. Disability Rights Washington (“DRW”)—a legal services organization that works closely with incarcerated transgender people—reviewed all available video surveillance of the incident. *Id.* at ¶ 19, Ex. K. After confirming that Ms. Kim did not attempt to assault or bite any staff members, DRW contacted DOC to seek retraction of these false and harmful statements. *Id.* DOC agreed to retract the statements and remove these references from the Use of Force Report or any other DOC documentation. *Id.* at ¶ 20, Ex. K, L.

During the three-and-a-half years that Ms. Kim was housed at WCCW, DOC recorded 33 infractions for 504 violations at that facility. Vivian McCall, *Trans Woman Launches Hunger Strike After State Moved Her to a Men’s Prison*, THE STRANGER, Jul. 8, 2024, <https://www.thestranger.com/news/2024/07/08/79594138/trans-woman-launches-hunger-strike-after-state-moved-her-to-mens-prison>; see also Jessica Schulberg, *Washington Moves Trans*

*Woman Back to Men's Prison in Unprecedented Act*; HUFFPOST, Jun. 28, 2024, [https://www.huffpost.com/entry/washington-moves-trans-woman-to-mens-prison\\_n\\_667ef30ee4b0d079dd459357](https://www.huffpost.com/entry/washington-moves-trans-woman-to-mens-prison_n_667ef30ee4b0d079dd459357). However, DOC did not transfer any of those individuals after their infractions other than Ms. Kim. *Id.* After two months in close custody, Ms. Kim's roommate was moved back to medium custody at WCCW—the same custody status and location where she was placed prior to the 504 infraction. Kim Decl. ¶ 62.

Once Ms. Kim arrived at Monroe, she learned that DOC intended to place her back at TRU, a unit that primarily holds sex offenders, former gang members, and a small number of transgender women. *Id.* at ¶ 68. As Ms. Kim explained, “I knew I would not be safe at TRU.” *Id.* at ¶ 69. With no other option, Ms. Kim went on a hunger strike. *Id.* at ¶ 70. She did not eat for 17 days. *Id.* at ¶ 71. Ms. Kim suspended her hunger strike only because of an upcoming gender-affirming surgery. *Id.*

In August of 2024, Ms. Kim was taken to Airway Heights

Correctional Facility for her gender-affirming surgery. *Id.* at ¶ 72. On the trip from Monroe to Airway Heights, Ms. Kim sat in a cage towards the front of the bus, while incarcerated men were seated in rows behind her. *Id.* As Ms. Kim described, “[f]or 10 hours, I heard them yelling sexually suggestive comments and anti-gay slurs at me, and even debating the very existence of transgender people. I felt emotionally exhausted and traumatized. It reinforced my fear of what would happen if I was in prison with men.” *Id.*

When Ms. Kim returned to Monroe, she told DOC that she would not return to men’s general population due to fears for her safety. *Id.* at ¶ 73. Ms. Kim described those fears:

If I am eventually placed in men’s general population, I will live in constant fear. I am afraid of physical assault, sexual assault, and the constant harassment. I will face the ultimate paradox: my continued physical transition helps address my debilitating gender dysphoria<sup>3</sup>, but the more female-

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<sup>3</sup> “Gender dysphoria” is a serious medical condition included in the Diagnostic and Statistical Manual of Mental Disorders, 5th Edition (“DSM-5”). It is characterized by psychological distress

presenting I become in appearance, the more unwanted, nonconsensual attention I will receive from the men in prison. If I do not continue my transition, my gender dysphoria will rear its ugly head, fueling my depression and making my life miserable. But, being victimized by incarcerated men—or spending all of my time hiding from them in IMU—also makes my life as miserable.

*Id.* at ¶ 74.

Today, Ms. Kim is in solitary confinement at Monroe’s Intensive Management Unit (“IMU”). *Id.* ¶ 71.

## VI. LEGAL ARGUMENT AND AUTHORITIES

### A. **Washington’s Constitutional Prohibition on Cruel Punishment Is More Protective Than the Federal Constitution’s Eighth Amendment.**

Article I, section 14 of the Washington State Constitution prohibits cruel punishment. Const. art. I, § 14. Washington’s Constitution explicitly provides greater protection than the Eighth Amendment of the United States Constitution regarding conditions of confinement for incarcerated people. *Williams*, 198

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that can result from an incongruence between one’s sex assigned at birth and one’s gender identity.

Wn.2d at 347.

Under Washington's Constitution, conditions of incarceration that "create an objectively significant risk of serious harm or otherwise deprive a person of the basic necessities of human dignity" are unconstitutional unless they are "reasonably necessary to accomplish a legitimate penological goal." *Id.* at 370. "[U]nconstitutionally cruel conditions of confinement can arise from institutional policies and practices just as readily as from the malicious actions of individual prison officials. Whether prison conditions deprive prisoners of basic human dignity intentionally or incidentally, Washington's constitution prohibits such treatment." *Id.* at 367. An incarcerated person challenging conditions of confinement under article I, section 14 may bring a PRP seeking injunctive relief ordering prisons to remedy any unconstitutional conditions. *Id.* at 366.

In *Williams*, the Washington State Supreme Court announced the two-part inquiry for challenges to conditions of

confinement under article I, section 14. An incarcerated petitioner challenging conditions of confinement must show: “(1) those conditions create an objectively significant risk of serious harm or otherwise deprive the petitioner of the basic necessities of human dignity and (2) those conditions are not reasonably necessary to accomplish any legitimate penological goal.” *Id.* at 363. The petitioner bears the burden of proving unlawful restraint by a preponderance of the evidence. *Id.* at 352.

The Washington Supreme Court held that article I, section 14 is more protective than the Eighth Amendment. *Id.* at 346. The Eighth Amendment requires incarcerated petitioners to show that the challenged conditions create “an objectively intolerable risk of harm” and that a particular prison official (or officials) acted with “deliberate indifference” to the risk. *Farmer v. Brennan*, 511 U.S. 825, 837, 114 S. Ct 1970, 128 L. Ed. 2d 811 (1994). “The subjective component [of the deliberate indifference test] requires that an official actually ‘knows of and disregards an excessive risk to inmate health or safety; the

official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference.” *Williams*, 198 Wn.2d at 364 (quoting *Farmer*, 511 U.S. at 837).

*Farmer* illustrates the often-insurmountable burden created by the subjective “deliberate indifference” standard, which fails to protect most incarcerated people from dangerous conditions. Dee Farmer—a Black transgender woman incarcerated in a federal men’s prison—brought an Eighth Amendment claim against prison officials after she was brutally beaten and raped by another inmate in her cell. *Farmer*, 511 U.S. at 825. The assault occurred just weeks after Ms. Farmer was transferred to a higher security prison known for its violence. *Id.* at 830. Ms. Farmer argued that these conditions violated the Eighth Amendment. *Id.* In Ms. Farmer’s case, the United States Supreme Court ruled that, to prevail on a claim of “deliberate indifference,” the petitioner must show that the prison official was subjectively aware of and disregarded an excessive risk to

the health or safety of an incarcerated person. *Id.* at 828.

The Washington Supreme Court explicitly departed from the federal Eighth Amendment inquiry, applying a more protective standard under article I, section 14. *Williams*, 198 Wn.2d at 365-66. In doing so, the Washington Supreme Court recognized the nearly unattainable threshold that “deliberate indifference” created for incarcerated people, which often leaves incarcerated people without legal remedy even in the most severe conditions of confinement. *Id.* The Washington Supreme Court recognized two critical shortcomings of the federal inquiry: “[f]irst, it mistakenly assumes that conditions of confinement can be considered punishment, and therefore subject to constitutional limitations, only if they are subjectively intended as punishment by an identifiable prison official,” and “[s]econd, it fails to recognize that cruel conditions of confinement can result from institutional policies and practices just as readily as from intentional acts by individual prison officials.” *Id.* The Court reasoned that a subjective standard permits unlawful conditions

of confinement—like the conditions that Ms. Farmer was subjected to—to escape constitutional scrutiny because of an artificially limited perception of how cruel conditions of confinement may arise. *Id.*

Through *Williams*, the Washington Supreme Court both announced a more protective rule and applied it to the cruel punishment claim at issue. Mr. Williams—an incarcerated 77-year-old Black man who suffered from diabetes and hypertension, and who used a wheelchair after a massive stroke immobilized the right side of his body—brought a PRP at the height of the COVID-19 pandemic, challenging the conditions of his confinement. *Id.* at 346-350. Mr. Williams argued that he was subjected to unconstitutionally cruel conditions because he was confined to a “dry” cell without a sink or toilet and faced lengthy wait times for prison staff to unlock his cell and to push his wheelchair to an accessible bathroom. *Id.* at 350. “As a result, he was forced to relieve himself in bottles and was unable to keep himself clean.” *Id.* The Washington Supreme Court held that

“[t]hese conditions are objectively cruel.” *Id.* at 369. The Court found that “DOC’s failure to meet Williams’s basic sanitary needs in light of his physical disabilities does not sufficiently further the goals of deterrence, incapacitation, and rehabilitation.” *Id.*

**B. The Conditions of Ms. Kim’s Confinement Are Unconstitutionally Cruel.**

Ms. Kim’s forcible transfer from a women’s prison to a men’s prison and subsequent confinement at a men’s prison violates article I, section 14 because (1) her conditions of confinement create an objectively significant risk of serious harm and (2) these conditions are not reasonably necessary to accomplish any legitimate penological goal.

**1. There Is an Objectively Significant Risk That Ms. Kim Will Suffer Serious Harm if Forced to Live at a Men’s Prison.**

Transgender women are at dire risk of violence in men’s prisons. In a recent nation-wide study, 37% of incarcerated transgender people reported being assaulted while incarcerated, compared with 3.4% of the non-transgender population. Jody L.

Herman et. al., *Prevalence, characteristics, and sexual victimization of incarcerated transgender people in the United States: Results from the Natation Inmate Survey*, October 2016, <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Trans-Incarceration-Violence-Oct-2016.pdf>.

The study's authors noted that "[t]ransgender people are at increased risk of sexual victimization while incarcerated and additional steps need to be taken to ensure their health and safety while incarcerated, with continual evaluation for effectiveness of interventions." *Id.* In 2015, the U.S. Transgender Survey—the largest survey devoted to the lives and experiences of transgender people in the United States—found that incarcerated transgender individuals are 5 to 6 times more likely than the general incarcerated population to be sexually assaulted by corrections staff, and 9 to 10 times more likely to be sexually assaulted by another inmate. *The Report of the 2015 U.S. Transgender Survey*, NATIONAL CENTER FOR TRANSGENDER EQUITY, 191,

<https://transequality.org/sites/default/files/docs/usts/USTS-Full-Report-Dec17.pdf>.

Not only are transgender people at increased risk of violence and sexual assault in prison, placing transgender people in non-gender affirming housing can gravely impact their mental health. A study of the mental health implications of housing assignments for transgender women explains that “[i]nappropriate housing assignment during incarceration can also exacerbate isolation, psychological distress, risky behavior, and sexual abuse, and it may culminate in suicide.” Elida Ledesma & Chandra L. Ford, *Health Implications of Housing Assignments for Incarcerated Transgender Women*, *AJPH PERSPECTIVES*, May 2020, <https://pmc.ncbi.nlm.nih.gov/articles/PMC7144448/pdf/AJPH.2020.305565.pdf>. Not only do transgender people suffer when housed in non-gender affirming facilities, transgender people are more often subjected to solitary confinement while incarcerated. Herman, *supra*. 28.2% of incarcerated transgender individuals

were subjected to solitary confinement, as compared with 18.2% of the non-transgender population. *Id.* Research overwhelmingly shows that solitary confinement leads to lasting psychological damage, long-lasting health problems, and even premature death. See, e.g., Kayla James & Elena Vanko, *The Impacts of Solitary Confinement*, VERA INSTITUTE, April 2021, <https://www.vera.org/publications/the-impacts-of-solitary-confinement>.

In enacting the Prison Rape Elimination Act (“PREA”), the federal government recognized that transgender people face an acutely heightened risk of physical and sexual violence while incarcerated. Several PREA Standards—which are mandatory requirements in federal and state carceral facilities—contain specific protections for transgender people, including relating to housing placement, screening information, searches, and sexual abuse incident reviews. *See* 28 C.F.R. § 115.42, 115.15, 115.41, 115.86. These standards are aimed at “keeping LGBT and intersex (LGBTI) people safe and respected and give particular

attention to the unique needs of transgender people in confinement.” *Committing to Safety and Respect for LGBTI Youth and Adults in Confinement: Lessons From Two Agencies*, NATIONAL PREA RESOURCE CENTER, <https://www.prearesourcecenter.org/node/2868>.

For Ms. Kim, the risk of violence, sexual assaults, and harassment is not merely speculative: she has lived the cruel reality warned of in these studies. Prior to her transfer to WCCW, Ms. Kim experienced the exact harms described above—including two attempted sexual assaults, inappropriate touching by DOC employees, and ongoing sexual and verbal harassment by male inmates. At men’s prisons, Ms. Kim became hypervigilant, showering only when she was sure no one was around and avoiding others, especially if they showed interest in her. Ms. Kim experienced this harassment and violence prior to openly identifying as a transgender woman, and the harassment only increased after. Ms. Kim reported her experience of harassment and fears of violence to DOC during the years she

endured placement at men's prisons.

Today, four years have passed since Ms. Kim's last placement at a men's prison. She is further along with her medical transition and appears more outwardly feminine than the last time she was housed at a men's facility. This only heightens the risk of violence and harassment that Ms. Kim will certainly endure at a men's prison. This risk is so profound that Ms. Kim has made the nearly impossible decision to remain in solitary confinement—despite the harms to her mental health inherent in solitary confinement—rather than subject herself to life in men's general population.

**2. Ms. Kim's Placement at a Men's Prison Is Not Reasonably Necessary to Accomplish any Legitimate Penological Goal.**

Subjecting Ms. Kim to incarceration at a men's prison does not relate to the penological goals of retribution, deterrence, incapacitation, and rehabilitation. While DOC may have a legitimate penological goal related to prison security, Ms. Kim's placement at a men's prison is not reasonably related to that goal.

DOC's Transgender Individuals Policy permits DOC to transfer individuals housed in gender-affirming facilities to their original facility if there are "documented, objective safety and security concerns."<sup>4</sup> *Id.* There is no other DOC policy that allows for an incarcerated individual to be moved to a facility that does not align with their gender identity. Implicit in this requirement is an analysis of safety concerns—both for the person at issue and others in the facility—including the degree of the "concern" and what steps can be taken to ameliorate any safety issues at the gender-affirming facility. Here, the "safety concern" at issue is a

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<sup>4</sup> Related to DOC's Transgender Individual Policy are the Prison Rape Elimination Act's ("PREA") standards relating to housing and safety of transgender inmates. PREA Standard 115.42(e), titled "Use of screening information and Placement of residents," states that "[a] transgender or intersex inmate's own views with respect to his or her own safety shall be given serious consideration." The purpose of this standard is to "reduce the risk of inmate-on-inmate sexual abuse and sexual harassment" including by "[p]roviding additional protections for transgender and intersex inmates, based on the unique risks these populations face while incarcerated." National PREA Resource Center, PREA Standards, § 115.42 *Use of screening information and Placement of residents*, <https://www.prearesourcecenter.org/standard/115-42>.

non-violent infraction issued due to Ms. Kim’s engagement in consensual sexual contact with another incarcerated individual. This was Ms. Kim’s first 504 infraction and her first “major” infraction at WCCW.<sup>5</sup> While Ms. Kim’s recent 504 infraction is classified as a “major” infraction by DOC, consensual sexual encounters between incarcerated people is a reality of life in prison.<sup>6</sup> In the over three years that Ms. Kim was housed at WCCW, DOC recorded 33 infractions for 504 violations at that facility. McCall, *supra*; Schulberg, *supra*. Prior to Ms. Kim, none

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<sup>5</sup> Ms. Kim’s prior infraction history is minimal. Before her transfer to WCCW, Ms. Kim’s history included one infraction for being “out of bounds” with another inmate and two prior infractions related to fighting—one occurred approximately 15 years ago and the other 10 years ago, and neither included use of weapons—as well as a small number of infractions that did not involve other incarcerated people. All of these prior infractions were known to DOC when it approved Ms. Kim’s transfer to WCCW.

<sup>6</sup> Studies analyzing the rate of consensual sex between incarcerated people note that the difficulty of gathering such data because of the fear and stigma surrounding the topic of sex within jails and prisons. See, e.g., Charles Herbert Lea III, et al., *An examination of consensual sex in a men’s jail*, INTERNATIONAL JOURNAL OF PRISON HEALTH, Jul. 16, 2021, <https://pmc.ncbi.nlm.nih.gov/articles/PMC8284600>.

resulted in a transfer to an outside facility. *Id.*

There is no legitimate safety concern resulting from Ms. Kim's 504 infraction that necessitates her transfer to a men's prison. Any legitimate safety or security concern can be adequately addressed by WCCW. WCCW has both close custody and solitary confinement units. In fact, WCCW's housing level structure is more flexible than Monroe's. DOC's treatment of Ms. Kim directly following her 504 infraction shows that WCCW had adequate facilities to address any legitimate safety concerns. Immediately after the infraction, Ms. Kim was moved to close custody and issued a loss of privileges. In Ms. Kim's April 2, 2024, MDT review, the initial MDT review following the 504 infraction, DOC determined that Ms. Kim's placement at WCCW should be maintained. Yet, five weeks later, DOC reversed course without any explanation or articulation of a plausible legitimate penological interest. DOC's sudden, unsupported revocation of Ms. Kim's gender-affirming housing can only be understood as punishment for her 504

infraction.

DOC's sudden reversal of Ms. Kim's housing location between her April 2024 MDT review—that recommended retaining Ms. Kim at WCCW—and her May 2024 MDT review—that recommended Ms. Kim's transfer out of WCCW—was arbitrary, in bad faith, and lacking a legitimate penological purpose. DOC's about-face was not based on any new circumstances. During the weeks between the MDT housing reviews, Ms. Kim did not receive any new infractions, there were no updated mental health or case management notes suggesting a change was warranted, nor were there any other concerning intervening events that would support DOC's abruptly changed decision. DOC offered no legitimate penological reason for Ms. Kim's transfer.

DOC's baseless transfer decision defies its own well-founded reasons for placing Ms. Kim at WCCW nearly four years ago. In 2021, DOC determined that Ms. Kim should transfer to WCCW for her safety and wellness. In reaching this

decision, DOC relied on the recommendation of Ms. Kim's mental health providers. Her providers recognized the toll that men's prison was taking on Ms. Kim's well-being and agreed that gender-affirming housing would mitigate many of her mental health struggles. DOC also recognized Ms. Kim's positive adjustment to general population at TRU in reaching its decision. Due to one non-violent infraction, DOC abandoned its previous justification for Ms. Kim's placement at WCCW. Ms. Kim's transfer out of WCCW is overwhelmingly disproportionate to her behavior underlying the single infraction at issue.

The difference between Ms. Kim's treatment and that of her cisgender roommate is a stark illustration of DOC's cruel treatment of Ms. Kim, exposing her to physical violence and serious mental health consequences. While Ms. Kim's roommate returned to the same custody status as prior to the 504 infraction, Ms. Kim's safety and security was ripped away from her as further punishment. Not only is DOC punishing Ms. Kim for her

status as a transgender woman, there is no legitimate penological goal supporting Ms. Kim's transfer out of WCCW to a non-gender affirming facility.

Ms. Kim's forcible transfer to a men's prison creates an objectively significant risk of serious harm and her transfer is not reasonably necessary to accomplish any legitimate penological goal.

#### **VII. REQUEST FOR RELIEF**

Ms. Kim's transfer from a women's prison to a men's prison is cruel and violates article I, section 14. The State of Washington must be ordered to remedy the conditions immediately by transferring Ms. Kim back to a women's prison, or release Ms. Kim. *See, e.g., Williams*, 198 Wn.2d at 347.

#### **VIII. OATH**

I declare under penalty of perjury under the laws of the State of Washington that I am the attorney for the petitioner, that I have read the petition, know its contents, and I believe the petition is true.

Signed this December 17, 2024 at Seattle, WA.

/s/ Adrien Leavitt

Adrien Leavitt, WSBA #44451

**IX. CERTIFICATE OF COMPLIANCE WITH RAP  
18.17**

This document contains 5,889 words per RAP 18.17(c)(9),  
excluding the parts of the document exempted from the word  
count by RAP 18.17(c).

RESPECTFULLY SUBMITTED December 17, 2024.

ACLU OF WASHINGTON FOUNDATION

By: /s/ Adrien Leavitt

Adrien Leavitt, WSBA #44451

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*Attorneys for Petitioner*

## **CERTIFICATE OF SERVICE**

I certify that on this 17th day of December, 2024, I caused a true and correct copy of this document to be served on all parties by electronically filing this document through the Washington State Appellate Courts Secure Portal.

Signed this 17th day of December, 2024 at Seattle, WA.

/s/ Tracie Wells  
Tracie Wells, Paralegal  
ACLU OF WASHINGTON  
FOUNDATION  
P.O. Box 2728  
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