

No. _____

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

IN RE THE PERSONAL RESTRAINT OF

Amber F. Kim,

Petitioner.

DECLARATION OF AMBER F. KIM

ACLU OF WASHINGTON
FOUNDATION

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I, Amber Fayefox Kim, declare under penalty of perjury under the laws of the State of Washington that the following statements are true and correct to the best of my knowledge and belief.

1. I am 36 years old and competent to testify to the contents of this declaration.

2. I have been incarcerated since I was 18 years old. I am serving a life without the possibility of parole sentence at the Washington State Department of Corrections (“DOC”).

3. I am a transgender woman.

4. I am currently incarcerated at the Monroe Correctional Complex (“Monroe”), a men’s prison facility.

5. At Monroe, I am housed in solitary confinement in the Intensive Management Unit (“IMU”).

A. Gender Identity

6. As a child, I understood myself to be different from the other kids around me. However, I grew up in a household and community that would not have been supportive of a child

questioning their gender identity or otherwise expressing difference.

7. I was a very nerdy child—I still am. I loved reading. Even though most of the books that I had access to were curated by the white Christian conservative church my family was involved with, reading still helped me understand the world beyond my small community.

8. Around second grade, I started to read the encyclopedia—to my surprise, none of the pages were removed by the church.

9. I read the encyclopedia off and on for years. When I reached the letter “T,” I found a word for the secret of me, “transsexual.” I was in middle school.

10. From then on, I understood myself to be something like the concept of “transsexual” that I read about in the encyclopedia. However, I still harbored a lot of confusion, in large part because the only transgender people I knew about were on daytime television shows like Jerry Springer and I did not feel

like they represented how I felt. In hindsight, I see how problematic the mainstream representation of transgender people was then and how much it negatively impacted my sense of self.

11. Throughout middle and high school, I went by the name “Kim.” Although my friends and peers thought they were just calling me “Kim” because it was my last name, I loved being called a female name and it helped me emotionally as I struggled with gender dysphoria.

B. Early Years of Incarceration

12. I was arrested when I was 18 years old and senior in high school.

13. After my initial detainment at the Spokane County Jail, I was transferred to the Washington Corrections Center in Shelton (“Shelton”). At the time, I was 19 years old.

14. Although at that time I was not “out” as a transgender woman, others perceived me as very effeminate. I was also small in stature—I am 5 foot 9 inches tall, and, at the time, weighed approximately 100 pounds. Being young, small,

effeminate, and nerdy made me an easy target of bullying both before and during my incarceration.

15. Once I arrived in prison, I immediately faced verbal harassment from other inmates and corrections officers. 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. In addition to verbal abuse, I was regularly subjected to physical violence.

16. I stayed at Shelton for one week.

17. At Shelton, the showers are setup for two people using a single shower bay at the same time while a corrections officer watched. I desperately did not want to shower in this environment. During this week, I only showered one time because I was deeply embarrassed to shower in front of others and fearful of what could happen to me in a group shower.

18. From Shelton, I was transferred to the Washington State Reformatory Unit (“WSR”) at Monroe. Then, WSR was

designated for vulnerable inmates. I was assigned to WSR because DOC determined that I was at risk of victimization.

19. I stayed at WSR in close custody for ten months.

20. At WSR, I worked in the kitchen. There, another incarcerated person working in the kitchen propositioned me for sex. I said no, but he continued to pressure me while we worked together, causing me stress and anxiety. This was my first experience of the constant sexual harassment that would become my everyday life in men's prison.

21. After ten months, I was transferred from WSR to the Washington State Penitentiary in Walla Walla ("Walla Walla"). I was transferred to Walla Walla after DOC changed WSR from a close custody facility to a medium custody facility. At the time I was still serving my mandatory four years in close custody following my conviction. I remained at Walla Walla in close custody for eight years.

22. The first time I was physically attacked by another inmate was on the chain bus from WSR to Walla Walla. On the

bus, every incarcerated person is shackled via waist and ankle restraints. We sit on bus benches in these restrains as we are taken between the prison facilities. On the bus, I was talking to a friend from WSR—he was also a nerd, and we enjoyed hanging out together and discussing common interests. Out of nowhere, another inmate attacked me. He punched me over and over again, twisted my neck, and grabbed my hair. Although he was restrained via waist restrains, he could still hit me. My restraints prevented me from fully blocking his attack. After about a minute, his friends pulled him off of me and I moved to a different seat for the rest of the ride. I was bruised from the attack. This attack occurred while the bus was stopped because officers were changing drivers. Throughout the attack, the corrections officers did not notice what was going on around them because they were focused on changing bus drivers. No corrections officers intervened in the attack.

23. At Walla Walla, I was assigned to a shared cell. My first roommate wanted to fight me—he told me that he fights all

of his new cellmates. Eventually, he forced me to fight him. I did not leave my cell for two days after because I did not want the corrections officers or other inmates to see my bruised face. Thankfully, I changed cells shortly thereafter.

24. At Walla Walla, I was the target of constant bullying due to being effeminate and people perceiving me as gay. I would be called slurs and names. I was threatened with and subjected to violence.

25. I survived two attempted sexual assaults at Walla Walla. Each time, I was able to physically defend myself and ward off the attacks. I know that, had I not fought back, I would have been raped. I feel that I was targeted for these attempted sexual assaults because of my effeminate appearance.

C. Disclosure—“Coming Out” as a Transgender Woman to DOC

26. Despite my internal knowledge of my gender identity, I presented as male for the first ten years of my incarceration because of the level of danger I faced daily.

27. I knew it would not be safe for me to present as a woman at Walla Walla. I was a quiet nerd who struggled to hide my fear when I left my cell. Presenting as a woman, or even just as more feminine, would have placed me in even greater danger.

28. During my time at Walla Walla, there were no out transgender women incarcerated there.

29. For the last four years of my placement at Walla Walla, I petitioned DOC annually for a transfer to a medium custody facility. After DOC rejected my request for a transfer for the fourth year in a row, I wrote a letter to DOC begging to be let out of close custody. This letter contained my first disclosure to DOC that I am a transgender woman.

30. I was terrified that DOC would again reject my request to transfer to medium custody and, at the same time, it would become public that I am a transgender woman.

31. While I waited for DOC's decision, a corrections officer leaked my status as a transgender woman to other inmates. Immediately, other inmates began to threaten me even

more than before. At the time, I worked in the library. The lieutenant overseeing inmate library workers learned that others knew about my disclosure to DOC and I was unassigned from my job at the library for my own safety. At one point, another inmate approached as we walked on the breezeway and asked me if I was transgender. I denied it out of fear for my safety.

32. DOC eventually approved my transfer back to WSR before the leak of my status as a transgender woman reached a crisis level or any threats were carried out.

33. I knew that there would be other transgender women at WSR. During my first placement at WSR, I met a transgender woman for the first time in my life—in hindsight, I must have met other transgender women throughout my life, but this was the first time that I knowingly interacted with a transgender woman. This connection was always important to me and knowing that there were other transgender women at WSR brought me much relief.

34. On my way from Walla Walla to WSR, DOC sent

me to Shelton for a one-week layover. At Shelton, I was supposed to be housed in a medical unit for my own safety because DOC now categorized me as a transgender woman. However, instead of being placed in medical housing, I was placed in general population with communal showers. Out of fear for my safety, I did not shower for five days.

35. Finally, the bus arrived for my transfer from Shelton to WSR.

36. I got on the bus at Shelton as “Twig,” the nickname given to me at Walla Walla because I was so skinny. I got off the bus at WSR as “Amber,” the female name that I chose for myself.

37. I chose the name Amber because it is one of few precious stones that was once part of a living being; it preserves the past within it and yet is electrically alive. I was also drawn to the name Amber because, in Greek mythology, the name Amber is equivalent to the name of the Greek goddess Electra, for which the electron is named. The name Amber reflects my true identity.

D. Return to WSR

38. I was relieved to return to WSR. I felt that at WSR I could more fully be myself as a transgender woman, despite the fact that WSR is still a men's prison.

39. Shortly after arriving at WSR, I started hormone replacement therapy (HRT). Starting 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. About six months after starting HRT, I started the process to request transfer to Washington Corrections Center for Women ("WCCW"), the only women's prison in Washington State.

40. Around this same time, I legally changed my name to Amber Fayefox Kim.

41. I also became involved in a coalition supporting transgender prisoners—the coalition included incarcerated transgender women and advocates on the outside. My name change was used as a template for other incarcerated transgender people who wanted to change their names. This work also helped

push forward legislation to aid incarcerated people obtain legal name changes.

42. The other important result of my transfer to WSR is that I was able to engage in University Behind Bars, a college program that allows incarcerated people to get a college degree. This program was not available at Walla Walla or any other prison. University Behind Bars was also one of the few education programs that allowed lifers to participate—at Walla Walla, I could not participate in higher education programs, or other self-improvement programs, because of my status as a lifer. I relished the opportunity to engage in higher education and work towards my college diploma.

43. However, life as a transgender woman at WSR was still difficult. I was heckled, cat-called, hit-on, objectified, sexualized, and stalked by men there. The barrage was daily and felt endless.

44. I received a nearly constant stream of notes from other inmates propositioning me for anonymous sex in the

showers. The notes would often end with the author stating that he would be waiting for me in the showers at a specified time. I did not want to engage in this sexual contact. I feared that if I went to the showers, I would be sexually assaulted by an inmate who was there “waiting for me.” I became hyper-vigilant about showering—I would be sure to only shower when no one was else was in the shower area because I was so fearful. I kept track of the times stated in the letters to be sure to avoid the showers at those times. I also became hypervigilant about who I was around. If someone showed any interest in me, I took that to be a threat and avoided them.

45. I tried to tell the corrections staff about the constant onslaught of proposition notes and the distress it was causing me, but DOC did not take any action. At one point, I collected the notes I had received and put them in a brown lunch bag. The notes filled up the entire bag. I took the bag to the Custody Unit Supervisor (“CUS”) to show him the barrage of harassment I experienced. The CUS took no action to help me and the

harassment continued.

46. At WSR, I was assigned a job in the kitchen. I worked in an area with no cameras and no corrections officers. The only other person in the area was an inmate convicted of a sex offense. He kept pressuring me to engage in sexual acts with him. I always said no. He became increasingly insistent, and at times I felt like he was stalking me. Eventually, I went to our supervisor, explained the problem, and asked to be moved to a job in a more visible area of the kitchen. I was ultimately fired from the kitchen for demanding safety.

E. Transfer to TRU

47. After about three and a half years at WSR, I was transferred to Monroe's Twin Rivers Unit ("TRU") after receiving an infraction. I believe that was my first major infraction at WSR. I received the infraction after being caught "out of bounds" in the shower area.

48. When I arrived at TRU, I was placed in a cell with a man who made me feel unsafe. He would stare at me whenever

I used the bathroom or changed my clothes. I complained to the unit staff and shift lieutenant, explaining that his behavior made me feel unsafe and uncomfortable. I was told that they would not do anything to help me. I was falling apart over this situation, afraid of what he might do to me. Desperate, I went to mental health for help. I explained that I was scared—instead of being helped, I received an infraction for “threatening” my roommate. In reality, I simply explained to mental health that I was terrified he was going to sexually assault me.

E. Transfer to Washington Corrections Center for Women

49. In 2021, after approximately one year at TRU and three years after initiating the transfer request, DOC approved my move to the women’s prison.

50. Moving 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.

51. During my time at WCCW, I was not harassed, threatened, assaulted, or propositioned for sex.

52. Without the emotional burden of facing constant harassment and spending my time avoiding physical violence, I was able to focus on my mental health, plan for the future, and engage with positive programming.

53. Through Freedom Education Project Puget Sound (“FEPPS”)—a higher education program available to incarcerated people at WCCW—I took college-level classes. I am 10 credits away from obtaining my Associate’s degree and hold a 3.98 GPA. I was provisionally accepted into the Bachelor’s degree program, pending my completion of my Associate’s degree. In October, I was scheduled to start classes to obtain my Bachelor’s degree—but this was interrupted by my forced transfer back to the men’s prison.

54. When I first arrived at WCCW, I got a job in the

kitchen. I was the main cook for a year and a half. I cooked two meals a day for over 500 people.

55. After completing two years in the kitchen, I got a job as a tutor and a classroom assistant for computer programming classes. I worked four days a week, assisting students learning computer programming.

56. I volunteered with the Women's Village, a program at WCCW focused on creating supportive community for incarcerated people. I was part of the education subcommittee, which focused on helping incarcerated women obtain their GED.

57. I also volunteered as a tutor—this work included helping other inmates working to obtain their GED and those taking college-level classes. I specialized in helping with math, while also tutoring many other subjects.

58. At WCCW, I became eligible for gender affirming medical care beyond HRT. I started receiving electrolysis to remove my facial hair. I also received electrolysis treatment in preparation for bottom surgery—electrolysis is a prerequisite for

undergoing certain types of bottom surgery. After approximately one year of this treatment, DOC generally suspended electrolysis treatment. At WCCW, I was also on the waitlist for a facial feminization surgery. That surgery was completed shortly after my transfer back to the men's prison.

59. Before March of 2024, I had no major infractions during the three years I was incarcerated at WCCW.

F. 504 Infraction & Transfer out of WCCW

60. In March of 2024, I received a "504" infraction after being caught having consensual sexual contact with my cisgender roommate. This was my first "major" infraction while at WCCW and first 504 infraction since my incarceration.

61. As a result of the infraction, I was immediately moved from medium custody to close custody. I remained in close custody for three months. As punishment, I also received five days cell confinement and approximately ten days loss of yard.

62. My then-roommate received the same 504

infraction as same cell confinement and loss of yard as the result of the infraction. However, she remained in close custody for only two months and then returned to medium custody—her same security status as prior to the 504 infractions. This was her complete sanction for the infraction.

63. For the months I was in close custody after the infraction, I was kept in the dark about what would happen to me next.

64. My counselor eventually told me that DOC's recommendation was to transfer me from WCCW to a men's prison. Friends and allies—inside and outside of the prison—rallied around me. I wrote letters to DOC clearly stating my fears of being sent back to a men's prison.

65. On June 21, 2024, officers came to my cell and told me that they needed to take me to segregation. I didn't think much of this, so I grabbed my glasses and agreed to be handcuffed—standard protocol—to leave my cell. After being walked to another building, I asked to review the paperwork

placing me in segregation. I was told that they did not have any paperwork. They started putting me in waist restraints. At this point, I started to become alarmed—being placed in waist restraints was not typical for transfers within WCCW. They took me to the intake hallway at WCCW, which I suddenly realized was the outtake hallway for me. I stopped walking and demanded to see the paperwork. I was again told that they did not have any paperwork. I asked to speak to my lawyer. I was told no. 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. I wondered if I was being kidnapped.

66. After a long ride, we arrived at Monroe.

67. When I arrived, I was extremely hot and fatigued.

The restraint device was very warm. My body hurt from being beaten and then forced into one position for the entire ride. At first, I couldn't even stand.

68. I learned that DOC originally planned to place me back at TRU, a unit where DOC primarily holds sex offenders, former gang members, and a small group of transgender women. But, because I "refused" transfer, DOC decided to first house me at the Intensive Management Unit ("IMU").

69. Although IMU is solitary confinement, I was relieved to be placed there instead of at TRU. I knew I would not be safe at TRU.

70. I immediately went on a hunger strike. I was terrified of being placed in men's general population. No matter what I said, DOC would not listen to me. I felt like I had no other option.

71. I did not eat for 17 days. On July 8, 2024, I was informed that if I did not end my hunger strike, I would be denied access to my upcoming gender affirming surgery. I had been

fighting for this surgery for years. So, I suspended my hunger strike. I felt that DOC was trying to force me to choose between safe housing or a gender affirming surgery that would allow me to live my life more fully.

72. A few weeks later, I was taken on the chain bus to Airway Heights for the surgery. During the bus ride, I was placed in an isolation cage in the front section of the bus while incarcerated men were seated on benches behind me. I was heckled by the men on the bus the entire ride. For 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. I was relieved that I received direct medical transport back to Monroe after my surgery, rather than suffering through the chain bus ride back.

73. Once back at Monroe, I repeatedly told staff that I did not feel safe going to men's general population. I was placed

back at IMU. However, DOC added a stipulation that I would only be permitted to be at “level one” status at IMU. This means that I cannot gain any privileges for good behavior while I’m at IMU, such as access to television and radio, as well as the ability to purchase snacks from the commissary. At IMU, no matter my “level,” I do not have access to any of my personal items, including religious items that I use to practice my Pagan and Buddhist religions and the many books I have collected over the years of my incarceration.

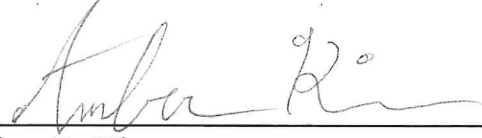
74. If I am eventually placed in men’s general population, I will live in constant fear. I am afraid of physical assault, sexual assault, and the constant harassment. I will face the ultimate paradox: my continued physical transition helps address my debilitating gender dysphoria, but the more female-presenting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

75. If I am sent back to WCCW, I will continue my trajectory toward rehabilitation. I will be able to continue to encourage the people around me to be their best possible selves and be encouraged in turn. I will stay in school, get my Bachelor's degree, continue to tutor people in math, computer programming, English, and history. I will live a life true to myself and congruent with who I know myself to be.

76. As a lifer, I know I will spend multiple decades in prison and die here. If I am forced to spend the rest of my life at the men's prison, my life will be devoid of hope. At the women's prison, I will have hope for myself, my future, and those around me. Prison is supposed to be limited to a loss of liberty. But, prison is not supposed to include the loss of the pursuit of happiness.

14
DATED this 16th day of December, 2024.

By: 
Amber F. Kim

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Filing Personal Restraint Petition

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