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**SUPREME COURT OF THE
STATE OF WASHINGTON**

In the Matter of the Personal Restraint of:

AMBER F. KIM,

Petitioner.

**SUPPLEMENTAL BRIEF OF RESPONDENT
DEPARTMENT OF CORRECTIONS**

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I. INTRODUCTION

In recent years, the Department of Corrections has transformed its approach regarding transgender people in its custody, implementing policies to ensure they are treated with fairness and dignity. Consistent with best practices suggested by leading transgender rights organizations, DOC does not automatically place transgender individuals in facilities aligned with their gender identity, instead conducting twice-yearly individualized assessments, considering the individual's preferences and any safety and security concerns. Fewer than 20 percent of transgender individuals in DOC custody request gender-affirming housing.

Pursuant to its individualized assessment policy, DOC granted Amber Kim's request to move to a women's prison. But Kim then engaged in multiple sexual relationships with vulnerable women and made statements indicating she would continue to do so. The Department transferred her back to a male facility that safely houses many other transgender women, and

the Court of Appeals denied Kim's personal restraint petition (PRP) challenging the placement.

This Court should affirm. Kim's reliance on generalized statistics does not show objectively unconstitutional conditions at her current facility, where she was previously safely housed and where she continues to receive medical and surgical gender-affirming care. A recent Prison Rape Elimination Act audit determined this facility meets all PREA standards, and all transgender women interviewed by the auditor indicated they felt safe. Further, Kim's transfer was reasonably necessary to manage safety and security risks in the women's prison.

Kim's housing placement is regularly reviewed, with DOC's Gender Responsive Administrator, herself a transgender woman, having ongoing conversations with Kim about her request to return to the women's prison. That decision should be made by experienced correctional officials, based on a full assessment of Kim's circumstances and a careful balancing of the risks involved. Kim's PRP was correctly denied.

II. STATEMENT OF THE ISSUE

Did Kim demonstrate that her housing placement creates significant risk of serious harm, and if so, that it is not reasonably necessary to accomplish a legitimate penological goal?

III. STATEMENT OF THE CASE

A. DOC's Policies For Protecting Transgender Individuals Regardless Of Housing Assignment

Regardless of housing assignment, transgender people in DOC custody are provided individualized and medically appropriate gender-affirming care, including hormone replacement therapy and surgeries. Webb Decl., Attachs. A at 6-9, B at 6-16. They also have access to gender-affirming clothing, makeup, and hair removal products. Rule Decl., Attach. Z at 3; Webb Decl., Attach. A at 10. DOC staff must address incarcerated individuals by their preferred names and pronouns, and deliberate misgendering is subject to discipline. Rule Decl., Attach. W at 3; Leavitt Decl., Ex. A at 2; Franz Decl., Ex. A at 14.

Since 2023, DOC has required that searches of transgender people be conducted by staff of the individual's requested gender, except in emergencies. Rule Decl., Attach. Y at 3-7. DOC also requires that all transgender individuals be allowed to shower and dress separately and out of view from others when requested. *Id.*, Attach. AA at 4-5.

DOC develops PREA monitoring plans for all transgender individuals, given the increased likelihood of victimization. Duncan Decl., Attach. B at 6-7. This includes increased case manager check-ins, monitoring for behavioral changes, and instructing the individual to immediately report any sexually motivated interactions. *Id.* Sexual abuse and harassment, including comments and gestures, are not tolerated, and individuals may report such behavior to staff in addition to making PREA complaints. Webb Decl., Ex. A at 14.

B. DOC's Individualized Housing Assignment Process For Transgender Individuals

DOC complies with PREA's requirement that agencies receiving federal funds make case-by-case decisions about

transgender inmates' housing, giving "serious consideration" to the individual's views on their own safety and considering "whether a placement would ensure the inmate's health and safety, and whether [it] would present management or security problems." 28 C.F.R. § 115.42(c).

Disclosure of transgender identity triggers immediate review of the individual's housing assignment, then twice-yearly assessments going forward, to ensure no threats to the individual's safety. Leavitt Decl., Ex. A at 6-7; *see* 28 C.F.R. § 115.42(d). A transgender person may request transfer to a facility consistent with their gender identity at any time. Leavitt Decl., Ex. A at 7. Housing reviews are conducted through a multi-level process involving senior medical, mental health, and PREA staff, chaired by DOC's Gender Responsive Administrator, herself a transgender woman. Leavitt Decl., Ex. A at 4-8; Franz Decl. ¶¶ 3, 5. When a request is denied, the individual may internally appeal and/or submit another request at the next review. Leavitt Decl., Ex. A at 8-9.

Factors considered include the individual's views about their safety; benefits and risks of transferring or not; where the individual is in their transition process; sexual victimization or predation history; infraction history; and criminal history, including gender and age of victims. Leavitt Decl., Ex. A at 5; Franz Decl. ¶¶ 9-10 & Ex. F. As with any incarcerated person, individuals placed in a gender-affirming facility may be transferred out due to "documented, objective safety and security concerns." Leavitt Decl., Ex. A at 8.

C. Kim's Housing Assignments

1. Housing at the Monroe Correctional Complex

Kim was convicted of murdering her parents and sentenced to life without parole in 2008. Rule Decl., Attach. A. She was primarily housed in the Washington State Penitentiary for eight years, then transferred to the Monroe Correctional Complex (MCC)'s Washington State Reformatory Unit (WSRU) in 2016 and to MCC's Twin Rivers Unit (TRU) in 2019. *Id.*, Attach. B at 6-11. DOC began conducting biannual housing

reviews for Kim in 2016 after she disclosed her transgender status. *Id.*, Attachs. C-P; Leavitt Decl., Exs. D-I. Kim started hormone replacement therapy in 2017. Webb Decl. ¶ 9.

a. Washington State Reformatory Unit (2016 to 2019)

Kim reported she was glad to be at WSRU because “there are other transgender, and gay and lesbian people here” and it was “a safe place to be myself.” Rule Decl., Attach. D at 4. She generally reported feeling safe or “very safe” there. *Id.*, Attachs. D at 4, E at 2, J at 2. Kim reported no instances of sexual assault. *Id.*, Attachs. D at 3, E at 2, F at 2, G at 2, H at 2, I at 2, J at 2, K at 2. Staff also could find no evidence of sexual victimization. *Id.*, Attachs. L at 1-2, M at 1-2. However, Kim said she would not “feel completely safe unless transferred to” the Washington Corrections Center for Women (WCCW). *Id.*, Attach. H at 2; *see* Attachs. F at 2, G at 3, I at 2.

Kim received an infraction for showering with another person in a single stall in July 2019, resulting in a keep-separate order with that person. *Id.*, Attachs. L at 2, R-S. DOC transferred

Kim to TRU to facilitate her needs for shower privacy and on-site mental health services. *Id.*, Attach. L-M. Kim said transferring to TRU would not be a concern. *Id.*, Attach. M at 4.

b. Twin Rivers Unit (2019 to 2021)

Kim was transferred to TRU in October 2019. Rule Decl., Attach. B at 6. In January 2020, Kim reported her cellmate to the PREA hotline, saying she had “many” issues with him, but he was now refusing to leave the cell so she could change and use the bathroom, which was “the first time that he’s starting to do something that falls under PREA.” Duncan Decl., Attach. G at 3. DOC concluded this did not fall within PREA’s scope, but the facility should follow up; facility staff also told Kim they would look into her concerns. *Id.* at 1-2. Kim then told her psychologist she was “terrified” she would “lose control and hurt” her cellmate “just so I can get rid of him”; she said, “It’s too strong. It’s on the edge of where my control is.” Rule Decl., Attach. U. She asked to be placed in restrictive housing “for the safety of

myself and others[.]” *Id.*, Attach. T at 5.¹ After several days in segregation, Kim returned to a different cell in TRU. *Id.*, Attach. B at 6. In February 2020, Kim indicated she felt safe being housed in the general population. *Id.*, Attach. Q.

During her April 2020 housing review, Kim reported feeling unsafe in the prison environment; after further questioning, she did not report any imminent safety concern “but more of an acknowledgment that prison can be unpredictable.” *Id.*, Attach. N at 5. Staff could find no instances of sexual victimization. *Id.* at 2. Some team members supported a transfer to WCCW because “[a]lthough it does not appear that there is a significant safety concern regarding Kim being housed at TRU, Kim has indicated that they would feel better being housed with

¹ Kim’s declaration asserts she received an infraction for “simply explain[ing] to mental health that I was terrified [the cellmate] was going to sexually assault me.” Kim Decl. ¶ 48. However, the transcript of her PREA report does not mention fear of sexual assault, nor does the psychologist’s report or Kim’s response to it. Duncan Decl., Attach. G at 3; Rule Decl., Attachs. T-U. Kim received an infraction for threatening another inmate with bodily harm. Rule Decl., Attach. T.

other females.” *Id.* at 5. However, WCCW did not support the transfer due in part to Kim’s history of sexual contact, including the showering infraction in 2019 and additional instances in 2019 and 2020. *Id.* at 9. WCCW noted it could continue to revisit the request. *Id.*

At Kim’s next housing review, she reported no issues with housing or showering arrangements, but repeated her transfer request. Leavitt Decl., Ex. E at 2-4. Kim’s psychologist believed a women’s facility would be a better fit because it would be a gender-affirming placement. *Id.* at 4. DOC headquarters recommended transfer based on the mental health recommendation, Kim’s request, and her good adjustment in TRU, and WCCW agreed. *Id.* at 5-8.

2. Housing at the Washington Correctional Center for Women (2021 to 2024)

Kim was housed at WCCW between February 2021 and June 2024. Rule Decl., Attach. B at 3-6. During this time, Kim was involved in multiple sexual relationships with women classified as vulnerable. Wofford Decl. ¶¶ 8-10. In 2022, she was

the subject of a PREA investigation based on her sexual relationship with an individual with an S3 code, the highest level of mental health need for which individuals may remain in the general population. *Id.* ¶¶ 7, 8. Although the allegation of explicit coercion (made by another incarcerated person) was deemed unfounded, Kim did have a sexual relationship with the other woman. *Id.* ¶ 8. At that time, bite marks were found on Kim's shoulder and neck and she refused to disclose how she received them. Leavitt Decl., Ex. I at 3. Kim was also found in bed with another incarcerated individual while at WCCW, and witnesses reported they were in a sexual relationship. Wofford Decl. ¶ 9.

In March 2024, Kim was observed by a corrections officer having penetrative sex with a woman who had moved into Kim's cell earlier that day. Wofford Decl. ¶ 10; Rule Decl., Attach. V at 2; Leavitt Decl., Ex. I at 3-4. This woman has an S3 code and is known to have been targeted by others, including people from the community. Wofford Decl. ¶ 10. She spent significant time

in close observation and the treatment and evaluation center before moving into Kim's cell. Leavitt Decl., Ex. I at 4.

Following this incident, Kim received an infraction for engaging in a sex act with another incarcerated person, which is against DOC rules. Rule Decl., Attach. V. Kim denied she was having sex, although she later described the incident as consensual sex on a recorded phone call. *Id.*, Attach. V at 16; Leavitt Decl., Ex. I at 4. Kim said in her infraction defense she did not believe the rule against sexual activity should exist and given the length of her sentence, she should be able to continue to engage in sexual activity. Rule Decl., Attach. V at 2-3, 16-17.

Kim's statements raised concerns that the infraction would not deter her from continuing to pursue sexual relationships. Wofford Decl. ¶¶ 11-12. Although Kim's six-month assessment, which was conducted while her infraction appeal was pending, recommended keeping Kim at WCCW, DOC conducted a holistic housing review after Kim's appeal was denied. Leavitt Decl., Exs. H-I. WCCW recommended transfer due to Kim

continuing to engage in sexual activity, including with vulnerable individuals, raising significant safety concerns. *Id.*, Ex. I at 3-5. DOC approved the transfer and determined TRU would be the most appropriate placement for Kim’s medical and mental health needs. *Id.* at 6-7.

3. Housing at Monroe since June 2024

Kim has been housed at MCC since June 2024. Rule Decl., Attach. B at 1-3. Although she was approved for medium custody, Kim refused to move into the general population at a male facility and was held in the Intensive Management Unit (IMU). *Id.*; Franz Decl. ¶ 14. Kim had tracheal shave surgery in August 2024 and a bilateral orchiectomy, i.e. removal of both testicles, in March 2025. Webb Decl. ¶ 15; Franz Decl. ¶ 16; Kim Suppl. Decl. ¶ 4.²

² Kim went on a hunger strike in protest of the transfer but ended it because otherwise she would not have been medically stable enough to be put under general anesthesia for the tracheal shave. Webb Decl. ¶ 15. Kim now claims this meant DOC “was trying to force [her] to choose between safe housing or a gender affirming surgery.” Kim Decl. ¶ 71.

Kim submitted a transfer request to WCCW in December 2024, stating she believed the infraction was a “punishment for love,” the prohibition on sexual activity in prison means she will be lonely long-term, and she mainly viewed the issue as having “pissed . . . off” DOC staff. Franz Decl., Ex. C. Kim’s psychologist later noted in their biweekly meetings Kim “talked about her role in the infraction, how she got into that position and the emotional reasons that she became involved with the other participant.” *Id.*, Ex. F at 2. Kim “may have romantic feelings towards others at a women’s facility” but “understand[s] the possibl[e] consequences of any romantic relationships and plans to avoid them.” *Id.* at 3.

Kim had housing reviews in April and September 2025. Franz Decl., Exs. D-G. MCC staff noted in August 2025 they were trying to facilitate Kim’s transition to TRU via the IMU’s transfer pod. *Id.*, Ex. G at 3. The team noted although Kim hoped to return to WCCW, she “understands that the expectation is that she transition through MCC TRU.” *Id.* At that time, Kim seemed

“to be somewhat ready to transition to the MCC IMU transfer pod but MCC staff expect that to be a slow process.” *Id.* DOC concluded Kim’s medical and mental health needs could be met at MCC and her request would be re-evaluated at the next review. *Id.*, Ex. F at 4.

Kim agreed to move to a single cell in the transfer pod in March 2026, which allows her to engage in programming while remaining separate from the general population. Franz Decl. ¶ 14. DOC’s Gender Responsive Administrator has met with Kim to discuss her request and is hopeful Kim will have another chance at transferring to WCCW if the team agrees the move can be accomplished safely. *Id.* ¶¶ 20, 22. Kim’s latest housing review is currently in process. *Id.* ¶ 23.

D. The Denial of Kim’s PRP

The Court of Appeals denied Kim’s PRP, concluding Kim failed to show the transfer to TRU was not reasonably necessary to accomplish a legitimate penological goal. *In re Pers. Restraint of Kim*, 34 Wn. App. 2d 1099, 2025 WL 1874592, at *4-5 (2025).

The court therefore did not decide whether the transfer created an objectively significant risk of serious harm. *Id.* at *4. However, the court noted Kim reported no incidents of abuse or imminent safety concerns at MCC, and her original transfer to WCCW was based not on safety concerns but rather on Kim's request and the recommendation of her mental health provider. *Id.* at *1-2, 5.

IV. ARGUMENT

Under article I, section 14, Kim must show by a preponderance of the evidence that her conditions of confinement create an objectively significant risk of serious harm that is not reasonably necessary to accomplish a legitimate penological goal. Wash. Const. art. I, § 14; *In re Pers. Restraint of Williams*, 198 Wn.2d 342, 352, 368, 496 P.3d 289 (2021). Factual evidence, rather than conclusory allegations, is required. *Id.* at 368. "Speculation, conjecture, and inadmissible hearsay is insufficient to warrant relief." *Id.* at 353. This Court should

affirm the denial of Kim's petition because she has not met her burden under either prong.

A. Kim's Housing At MCC Has Not Created A Significant Risk Of Serious Harm

Kim has not shown her housing at MCC creates a significant risk of serious harm or otherwise deprives her of the basic necessities of human dignity.³ This is an objective inquiry that does not rest on the knowledge or intent of prison officials. *Williams*, 198 Wn.2d at 366-67. Kim's reliance on a generalized fear of assault and nationwide statistics regarding risks to incarcerated transgender women (PRP at 24-29) is not sufficient to make this showing as to MCC, which currently houses 37 transgender women, including 19 in TRU. Franz Decl. ¶ 7. During MCC's most recent PREA audit, the eight transgender, intersex, and non-binary individuals interviewed told the outside

³ Kim's PRP argued only that she was at risk of serious harm. PRP at 24-29. She asserted for the first time in seeking review that living in a men's prison itself "deprives her of the basic necessities of human dignity" regardless of risk of harm. PFR at 20-21.

auditor they “felt safe” in their living assignments. *Id.*, Ex. B at 10, 76. The audit concluded MCC met all PREA standards, including with respect to transgender individuals. *Id.*, Ex. B at 4, 136, 151-52. These are precisely the standards Kim points to as protecting against the risk of harm. PRP at 27-28.

DOC implements PREA monitoring plans and twice-yearly housing assessments for all transgender individuals. Duncan Decl., Attach. B at 6; Leavitt Decl., Ex. A at 7. Because Kim is classified as a potential victim under PREA, staff must screen any potential cellmate and she cannot be housed in a cell with a potential predator. Duncan Decl., Ex. B at 8. The PREA auditor found MCC housing reviews for transgender inmates demonstrated “constant monitoring of available information to ensure the appropriate placement of each offender.” Franz Decl., Ex. B at 76. Kim also sees a psychologist regularly and can raise safety concerns to him or other staff. *Id.*, Ex. F at 2. Through her housing assessments, Kim consistently indicated she did not have a history of sexual assault while incarcerated. Rule Decl.,

Attachs. D at 3, E at 2, F at 2, G at 2, H at 2, I at 2, J at 2, K at 2. Staff could find no evidence she had been sexually victimized at a male facility. *Id.*, Attachs. L at 1-2, M at 1-2, N at 2.

Kim’s reliance on generalized statistics to show risk implies that housing transgender women in male facilities is per se unconstitutional. Yet fewer than 20 percent of transgender individuals in DOC custody have even requested gender-affirming housing. Duncan Decl. ¶ 15. And Kim’s position cannot be reconciled with the PREA requirement of individualized determinations, considering safety and security concerns, which is consistent with the WPATH standards of care⁴ and Kim’s own cited authority.⁵ See 28 C.F.R. § 115.42(c).

⁴ E. Coleman et al., *Standards of Care for the Health of Transgender and Gender Diverse People, Version 8*, 23 Int’l J. of Transgender Health, S1, S108 (2022) <https://www.tandfonline.com/doi/epdf/10.1080/26895269.2022.2100644> (“While placement decisions need to address security concerns, shared decision-making that includes the input of the individual should be made on a case-by-case basis.”).

⁵ Elida Ledesma & Chandra L. Ford, *Health Implications of Housing Assignments for Incarcerated Transgender Women*, 110 Am J. of Pub. Health 5, 650, 652 (2020).

While the National Center for Transgender Equality advocates for automatic gender identity-based access in other settings, it acknowledges in the prison context, “housing determinations should always be made on an individualized basis.”⁶ As an example of the balancing of risks involved, a transgender woman previously housed at WCCW attacked another inmate while she was there, causing extensive facial injuries and negatively impacting WCCW’s culture; DOC is currently the subject of a lawsuit concerning other allegations about the same individual while she was at WCCW. Franz Decl. ¶ 12.

Acknowledging this complexity, courts have consistently held a generalized fear of assault is insufficient to show objectively unconstitutional conditions for a transgender woman at a male facility, including at TRU. *White Eagle v. Wash. Dep’t*

⁶ Nat’l Center for Transgender Equality, *Policies to Increase Safety and Respect for Transgender Prisoners: A Guide for Agencies and Advocates* (Oct. 2018), at 19, 20-21. <https://transequality.org/sites/default/files/docs/resources/PolicytoIncreaseSafetyandRespectforTransgenderPrisoners.pdf> (last visited Apr. 12, 2026).

of Corr., No. 2:24-CV-01388-JCC-BAT, 2025 WL 270555, at *8 (W.D. Wash. Jan. 21, 2025), *r. & r. adopted*, No. C24-1388-JCC-BAT, 2025 WL 660621 (W.D. Wash. Feb. 28, 2025) (analyzing claim from transgender woman at TRU). Rather, “even in light of the ‘ever-present, generalized risk of sexual assault that transgender inmates face’, courts have declined to impose hard-line rules requiring particular prison assignments or cell placements.” *Gordon v. Inslee*, No. 3:21-CV-5802-BJR-DWC, 2023 WL 2874062, at *11 (W.D. Wash. Feb. 6, 2023), *r. & r. adopted*, No. 21-5802-BJR-DWC, 2023 WL 2864187 (W.D. Wash. Apr. 10, 2023) (collecting cases); *Bradley v. Price*, No. 20-CV-48-JDP, 2021 WL 1895062, at *3 (W.D. Wis. May 11, 2021). And there is no constitutional right to placement in a women’s prison. *See Gordon*, 2023 WL 2874062, at *11; *Aliahmed v. Troxler*, 839 F. App’x 675, 677 (3d Cir. 2021); *Guy v. Espinoza*, No. 19-498, 2020 WL 309525, at *5 (E.D. Cal. Jan. 21, 2020).

Kim's PRP makes a passing reference to specific harms she alleges from before her transfer to WCCW. PRP at 28. First, she references "two attempted sexual assaults." *Id.* Kim's declaration states these took place at the Washington State Penitentiary prior to 2016. Kim Decl. ¶ 25. Based on Kim's own limited account, the incidents took place at a different facility before Kim disclosed her transgender identity and was subject to continuous PREA monitoring and housing reviews, and before DOC implemented most of its current policies on transgender inmates.

Second, the PRP refers to "inappropriate touching by DOC employees," which Kim's declaration does not address. PRP at 28. While at WSRU in 2018, Kim made a PREA complaint that a male officer touched her breast area with an open palm during a search; this was deemed unfounded. Duncan Decl., Attach. E. Moreover, DOC changed its policy in 2023 such that searches of transgender people can only be conducted by officers of the inmate's requested gender, except in

documented emergencies, and Kim has not alleged any violations of this policy. Rule Decl., Attach. Y at 3-7.

Third, Kim asserts she was hypervigilant while showering at male prisons to avoid sexual harassment. PRP at 28. At TRU, transgender women can shower during formal count time, when all other inmates are required to stay in their cells. Bratten Decl. ¶ 6. MCC's PREA audit found the facility enforces this policy. Franz Decl., Ex. B at 152. Kim's declaration references being propositioned for sex in the showers at WSRU prior to 2019. Kim Decl. ¶¶ 44-45. Her housing reviews from WSRU reflect only a concern about peeping toms in the shower, which she reported had improved by 2019. Rule Decl., Attachs. F at 2, H at 2, I at 2, K at 2, L at 3. At TRU, Kim stated "the showers are good and there is no issues." Leavitt Decl., Ex. E at 4.

Finally, Kim references ongoing verbal harassment from male inmates. PRP at 28-29. Although this behavior is unacceptable, Kim has not pointed to any case holding that verbal harassment is sufficient to render conditions of

confinement unconstitutional. Instead, general “complaints of verbal harassment” and “occasional offensive sexual remarks” are not sufficient to reach that standard, including for transgender inmates. *Gordon*, 2023 WL 2874062, at *11; *Austin v. Terhune*, 367 F.3d 1167, 1171 (9th Cir. 2004). Kim’s preference to be housed in WCCW for her own health and wellbeing is unquestionably an important factor in DOC’s ongoing assessment of her placement, and Kim can continue to raise safety concerns. However, Kim has not shown her conditions of confinement are unconstitutionally cruel.

B. Kim’s Transfer Was Reasonably Necessary To Accomplish A Legitimate Penological Goal

As the Court of Appeals determined, Kim’s PRP fails on the additional ground that the transfer was reasonably necessary to accomplish a legitimate penological goal. *See Williams*, 198 Wn.2d at 368-69.⁷ Courts “afford appropriate deference and

⁷ Kim argued in her petition for review that the Court of Appeals erred in only deciding the second prong of the test. However, *Williams* suggests the two prongs operate independently, with the second prong being an objective inquiry

flexibility to state officials trying to manage a volatile environment.” *In re Pers. Restraint of Dyer*, 143 Wn.2d 384, 393, 20 P.3d 907 (2001) (quoting *Sandin v. Conner*, 515 U.S. 472, 482 (1995)). Kim concedes DOC has a legitimate interest in prison security. PRP at 29; *see Williams*, 198 Wn.2d at 367 (“health and safety of the prison population as a whole” is legitimate penological goal).

DOC transferred Kim to MCC not as a punishment, but to manage the risks of continued sexual activity, particularly with vulnerable individuals, at WCCW. Leavitt Decl., Ex. I. WCCW’s population has significantly greater mental health needs than the male population. Wofford Decl. ¶ 6. In 2023, 84 percent of the WCCW population reported having experienced trauma, the majority being sexual trauma, and 48 percent were diagnosed with PTSD. *Id.* DOC uses “S” codes to designate

as to whether the specific condition of confinement itself, not the risk of harm, is reasonably necessary to achieve a legitimate penological goal. *See id.* at 368-69.

mental health needs, ranging from S1 (no serious symptoms) to S5 (severe symptoms). *Id.* ¶ 7. S3 is the highest level of need for which an individual may remain in the general population. *Id.* Approximately 40 percent of the statewide population in DOC custody has a code of S2 or higher, but that rises to approximately 90 percent at WCCW. *Id.*

During her time at WCCW, Kim engaged in at least two sexual relationships with women coded as S3, including having penetrative sex with her cellmate on the first day this woman was moved into Kim's cell. Wofford Decl. ¶¶ 8, 10; Rule Decl., Attach. V at 2; Leavitt Decl., Ex. I at 3-4. Kim's cellmate was particularly vulnerable to victimization; she was previously in a relationship with a man who encouraged her to become pregnant by a transgender woman as part of a scheme to obtain an early release. Franz Decl. ¶ 18. She also sought to marry a man with a history of predation towards vulnerable incarcerated women despite never having met him, with the stated reason that he was "nice" to her. *Id.*

Kim subsequently made clear she believed she had the right to have sex to manage her loneliness. Rule Decl., Attach. V at 2-3, 16-17. Kim's attempt to brush the infraction off as a single "consensual sexual encounter" is not supportable in a prison setting; as Kim's own authority explains, it is "hard to determine if a sexual relationship between people in jail or prison settings is coerced or consensual, because relations in these settings are often based on complicated, protective, and exploitive allegiances formed in an oppressive, confined culture." See Charles Herbert Lea III, et al., *An examination of consensual sex in a men's jail*, 14 Int'l J. Prison Health 56, 57 (2018).

The unique management needs of a women's prison make it particularly difficult to prevent Kim from acting on her stated intention to continue having sexual relationships even if she was moved to a higher custody level. Unlike at men's facilities, DOC can safely allow different custody levels at WCCW to mix, such that close and medium custody individuals attend programming, gym, and church together, giving individuals the opportunity to

engage in sexual activity during these events. Wofford Decl. ¶ 12.

DOC transferred Kim for the legitimate goal of preventing continued, mutually harmful sexual activity with vulnerable people at WCCW—a risk DOC must be able to appropriately manage if Kim is given a second opportunity at the women’s prison. Kim’s placement at a male facility is not permanent, and her request to return to WCCW remains under ongoing review. This Court should deny Kim’s PRP and permit DOC to continue to carefully assess Kim’s placement and balance the important safety interests involved.

C. A Reference Hearing is Unnecessary

Kim’s PRP did not request a reference hearing, nor did she challenge the court’s decision that it would be determined solely on the record. *Kim*, No. 40881-7-III, Order Referring PRP to Panel (Mar. 3, 2025). In her petition for review, Kim asserted a reference hearing is necessary to conduct discovery into still-unspecified DOC records. However, reference hearings are held

“to resolve genuine factual disputes, not to determine whether the petitioner actually has evidence to support [their] allegations.” *In re Pers. Restraint of Rice*, 118 Wn.2d 876, 886, 828 P.2d 1086 (1992). And whether Kim remained fertile in 2024 is not a material fact. *See* PFR at 27. DOC did not make allegations regarding Kim’s fertility; rather, it noted pregnancy as one risk factor among several relating to sexual activity in a women’s prison and noted WPATH’s statement that transgender women “can produce sperm even while on gender-affirming hormones[.]” DOC Resp. at 59; Webb Decl. ¶ 17 & Attach. C at 7. Kim’s 2025 orchiectomy was before the Court of Appeals and is a circumstance DOC considers in its ongoing housing reviews. Franz Decl. ¶ 16.

V. CONCLUSION

This Court should affirm the denial of Kim’s petition.

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RESPECTFULLY SUBMITTED this 13th day of April

2026.

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