No. 104436-4

THE SUPREME COURT
OF THE STATE OF WASHINGTON

In the Matter of the Personal Restraint of:

AMBER F. KIM,

Petitioner.

BRIEF OF AMICUS CURIAE SEATTLE CHAPTER NATIONAL LAWYERS GUILD

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A. IDENTITY AND INTEREST OF AMICUS CURIAE

As explained in the accompanying motion, the Seattle Chapter of the National Lawyers Guild ("Seattle NLG") is affiliated with the nation's oldest and largest progressive bar association whose mission is to use law for the people by valuing human rights and the rights of ecosystems over property interests. Since its inception in 1937, the NLG has been at the forefront of efforts to apply international law principles to cases in the U.S.

B. ISSUES OF CONCERN TO AMICUS CURIAE

1. When deciding this Personal Restraint Petition should this Court consult international law?

2. What guidance does international law provide for determining whether Amber Kim has met her burden to show a violation of article I, section 14, of the Washington Constitution?

3. Does the State of Washington have an international law obligation to protect Ms. Kim from sexual violence in a men's prison?

4. Does long-term solitary confinement violate international law?

C. STATEMENT OF FACTS

The Seattle NLG joins in the statement of the case put forth by Ms. Kim. *Petitioner's Supplemental Brief* at 3-9. Ms. Kim is a transgender woman confined in Washington's prisons since she was 19 years old. In 2016, Ms. Kim disclosed her identity as a transgender woman, legally changed her name and began hormone replacement therapy. In the years that followed, she sought support for the stress of being a transwoman in a men's prison, reported harassment related to her gender, and expressed fear for her safety. *Id*.

In 2021, after years of requests, the Department of Corrections ("DOC") transferred her to the Washington Corrections Center for Women ("WCCW"). After an infraction involving consensual sex with her cellmate, DOC involuntarily transferred Ms. Kim to a men's prison. When she objected to

exposing herself to the dangers of being in general population, DOC isolated her in long-term solitary confinement.

D. ARGUMENT

1. *Introduction*

Ms. Kim has been placed in an impossible "Hobson's Choice" between two terrifying conditions of imprisonment. On the one hand, she may "choose" to live in general population in a men's facility where she would be in serious danger. On the other, she may "choose" to stay in solitary confinement and suffer the torture of prolonged indefinite isolation and its attendant harms. Neither option comports with minimum standards of human rights.

There is no doubt that as a teenager, Ms. Kim committed a very serious crime. Nonetheless, that Ms. Kim is deprived of her liberty does not mean she is deprived of the right to be treated

with dignity.[1] She should not have to choose between the heightened risk of assault in general population in a men's prison or spending her life in solitary confinement.

For Ms. Kim to show that her treatment in DOC violates article I, section 14, this Court must assess whether the conditions of confinement "create an objectively significant risk of serious harm or otherwise deprive them of the basic necessities of human dignity" and then must determine if "those conditions can be justified only when they are reasonably necessary to accomplish legitimate penological goals." *In re Pers. Restraint of Williams*, 198 Wn.2d 342, 368, 496 P.3d 289 (2021).

The Seattle NLG urges this Court to consult international law when deciding whether Ms. Kim has met her burden of proof.

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[1] Not litigated by the parties is the issue of whether the "504" infraction of having consensual sex is itself constitutional. Yet, when the State incarcerates a teenager for life, it is legitimate to question whether it is unconstitutionally cruel to deny that person the ability ever to have any sexual experiences before they die.

Such a review leads to the conclusion that the State of Washington should protect Ms. Kim from conditions which threaten her personal safety and take special care with regards to her conditions of confinement due to her status as a member of a vulnerable population. Neither her transfer to a men's prison nor the option to be permanently housed in solitary confinement fulfill the State's obligations.

2. *Domestic Law Regarding Long-Term Solitary Confinement is Not Settled*

DOC itself recognizes the devastating impact of solitary confinement and has made some efforts to limit its use. *See* Washington State Department of Corrections, *Solitary Confinement Transformation Project: Requirements for Sustainable Reduction* (September 2023).[2] DOC concludes "[t]he potential risks of solitary confinement are well-known, with

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[2] Https://doc.wa.gov/sites/default/files/2025-02/100-PL019.pdf (accessed 5/5/26).

particularly pronounced harm to specific vulnerable populations." *Id*. at 17. DOC recognized the "physical damage and the development of health problems, and potential consequences for mental health and general well-being. Solitary confinement is associated with increased risk for self-directed violence and suicide, and social deprivation can lead to slowed brain activity and neurological damage." *Id*. at 17. DOC also notes the disproportionate impact of solitary confinement on BIPOC and LGBTQ+ populations including transgender prisoners. *Id*. at 18.

Washington courts have not extensively addressed the issue of the constitutionality of long-term solitary confinement. In a recent unpublished decision, Division Two assumed for purposes of a CR 12(c) motion that solitary confinement as a punishment for a positive result from an unreliable drug test violated article I, section 14. *In re Pers. Restraint of Bell*, No. 60660-7-II, 2026 Wash. App. LEXIS 620 at *42-*45, 2026 WL 814456 (March 24, 2026) (unpub.) (motion to publish pending).

In *Davison v. State*, 196 Wn.2d 285, 466 P.3d 231 (2020), a class action involving the public defense system in Grays Harbor County, Justice González's concurrence noted "the devastating effects of solitary confinement on children." *Id*. at 306 (González, J., concurring) (citing Laws of 2020, ch. 333, restricting use of solitary confinement on juveniles).

Federal courts have ruled on conditions of solitary confinement with varying results. As far back as 1890, the United States Supreme Court held that, for *ex post facto* purposes, imposition of solitary confinement was a "severe" practice, noting how upon its introduction in the late 18th Century it soon fell out of disfavor because a "considerable number of the prisoners fell, after even a short confinement, into a semi-fatuous condition, from which it was next to impossible to arouse them, and others became violently insane; others, still, committed suicide; while those who stood the ordeal better were not generally reformed, and in most cases did not recover sufficient mental activity to be

of any subsequent service to the community." *In re Medley*, 134 U.S. 160, 168 & 170 (1890). *Compare In re Pers. Restraint of Gentry*, 170 Wn.2d 711, 715-18, 245 P.3d 766 (2010) (placing death row inmate into IMU did not violate *ex post facto*).

Individual members of the Supreme Court continue to recognize the dangers of solitary confinement. *See, e.g., Johnson v. Prentice*, 144 S. Ct. 11, 12 (2023) (Jackson, J., dissenting from denial of certiorari) ("As Members of this Court have recognized, the practice of solitary confinement 'exact[s] a terrible price.'") (quoting *Davis v. Ayala*, 576 U.S. 257, 289 (2015) (Kennedy, J., concurring)).

Lower federal courts have split as to whether long-term solitary confinement can ever violate the Eighth Amendment which has a deliberate indifference standard.[3] *See* Erin Owen, "No Hope in Sight: Rethinking the Constitutionality of Solitary

[3] *See Williams*, 198 Wn.2d at 364.

Confinement With *Hope v. Harris*," 58 *UIC L. Rev*. 747 774-75 (2025). Thus, the Ninth Circuit recently summarily rejected a claim that extended solitary confinement was cruel and unusual punishment. *Mora-Contreras v. Peters*, 851 Fed. Appx. 73, 74 (9th Cir. 2021) (unpub.) (citing*, inter alia*, *Anderson v. Cnty. of Kern*, 45 F.3d 1310, 1316 (9th Cir. 1995) ("[A]dministrative segregation, even in a single cell for twenty-three hours a day, is within the terms of confinement ordinarily contemplated by a sentence.")). Yet, the Seventh Circuit's position is that prolonged confinement in administrative segregation may violate the Eighth Amendment depending on "the duration and nature of the segregation and the existence of feasible alternatives." *Walker v. Shansky*, 28 F.3d 666, 673 (7th Cir. 1994).

3. *This Court Should Consult International Law Sources When Determining Whether Ms. Kim is Being Illegally Restrained*

While the parties have concentrated their arguments on article I, section 14, neither this provision nor the Eighth

Amendment are the exclusive sources of law. Rather, to determine if restraint is illegal under RAP 16.4(b), the Court should also consult international law.

The Supremacy Clause of the United States Constitution, article VI, ¶ 2, specifically makes "all Treaties made, or which shall be made, under the Authority of the United States" binding on all courts in this country. While not every international obligation of the United States is automatically enforceable in domestic courts,[4] still the U.S. Supreme Court has "referred to the laws of other countries and to international authorities as

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[4] In *Medellin v. Texas*, 552 U.S. 491 (2008), the United States Supreme Court held that judgment of the International Court of Justice in the *Case Concerning Avena and Other Mexican Nationals (Mex. v. U. S.*), 2004 I.C.J. 12, https://www.icj-cij.org/public/files/case-related/128/128-20040331-JUD-01-00-EN.pdf (accessed 5/4/26), was not enforceable in Texas courts to prevent the execution of a Mexican national on Texas' death row despite violations of the Vienna Convention on Consular Relations, 596 U.N.T.S. 261 (1963), https://legal.un.org/ilc/texts/instruments/english/conventions/9_2_1963.pdf (accessed 05/04/26).

instructive for its interpretation of the Eighth Amendment's prohibition of 'cruel and unusual punishments.'" *Roper v. Simmons*, 543 U.S. 551, 575 (2005).[5]

In *Roper*, the Supreme Court struck down the practice of executing people for crimes committed when they were juveniles. In this process, the Court not only referenced the practices of other countries, but also surveyed various international treaties. *Id*. at 575-78 (citing, *inter alia*, Article 37 of the United Nations Convention on the Rights of the Child ("UNCRC")[6]; Article 6(5) of the International Covenant on Civil and Political Rights

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[5] *See also Trop v. Dulles*, 356 U.S. 86, 103 (1958) (plurality) (denationalization as a punishment violates Eighth Amendment in part because "[t]he civilized nations of the world are in virtual unanimity that statelessness is not to be imposed as punishment for crime.").

[6] United Nations Convention on the Rights of the Child, Art. 37, Nov. 20, 1989, 1577 U.N.T.S. 3, 28 I.L.M. 1448, 1468-1470 (entered into force Sept. 2, 1990), https://www.ohchr.org/en/professionalinterest/pages/crc.aspx (accessed 5/4/26).

("ICCPR")[7]; the American Convention on Human Rights: Pact of San Jose, Costa Rica, Art. 4(5), Nov. 22, 1969[8]; the African Charter on the Rights and Welfare of the Child, Art. 5(3)[9]).

This Court too has a history of looking to international law when deciding how to construe our own Constitution. For instance, in *Eggert v. City of Seattle*, 81 Wn.2d 840, 505 P.2d 801 (1973), a case involving residential employment preferences, this Court specifically relied on a provision of the Universal Declaration of Human Rights ("UDHR")[10] that guaranteed

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[7] 999 U.N.T.S. 175, https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx (accessed 5/4/26) (signed and ratified by the United States, 138 Cong. Rec. S4781-01 (daily ed., April 2, 1992), subject to a reservation regarding Article 6(5).

[8] 1144 U.N.T.S. 146 (entered into force July 19, 1978), https://www.oas.org/dil/access_to_information_American_Convention_on_Human_Rights.pdf (accessed 5/4/26).

[9] OAU Doc. CAB/LEG/24.9/49 (1990) (entered into force Nov. 29, 1999), https://hrlibrary.umn.edu/africa/afchild.htm (accessed 5/5/26).

[10] G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948). The (continued...)

freedom of travel. *Eggert*, 81 Wn.2d at 841. Reference to such sources is consistent with article I, section 32, of the Washington Constitution which requires: "A frequent recurrence to fundamental principles is essential to the security of individual right and the perpetuity of free government."

There are multiple sources of international law. These sources include treaties that the United States has signed but not ratified (such as the Convention on the Rights of the Child and the International Covenant on Economic, Social and Cultural Rights ("ICESCR")[11]), or signed and ratified (such as the ICCPR

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[10](...continued)
UDHR is not a treaty, but rather is a declaration "proclaimed by the United Nations General Assembly in Paris on 10 December 1948 (General Assembly Resolution 217 A) as a common standard of achievements for all peoples and all nations." Https://www.un.org/en/universal-declaration-human-rights/ (accessed 5/4/26).

[11] G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force Jan. 3, 1976, https://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.
(continued...)

and the International Convention on the Elimination of All Forms of Racial Discrimination ("ICERD"))[12] without passing enabling legislation, or signed, ratified and adopted enabling legislation (for immigration issues related to the Convention Against Torture ("CAT")).[13]

Some international norms are so fundamental (such as prohibitions on genocide, torture, piracy and slavery) that they must be followed under international customary law (a *jus cogens*

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[11](...continued)
aspx (accessed 5/4/26).

[12] 660 U.N.T.S. 195, entered into force Jan. 4, 1969, https://www.ohchr.org/en/professionalinterest/pages/cerd.aspx (accessed 5/4/26). The U.S. signed and ratified ICERD. 140 Cong. Rec. S7634-02 (daily ed., June 24, 1994).

[13] G.A. res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984), entered into force June 26, 1987, https://www.ohchr.org/en/professionalinterest/pages/cat.aspx (accessed 5/4/26). The enabling legislation for the immigration aspects of the CAT was passed in 1998. Foreign Affairs Reform and Restructuring Act of 1998, Pub. L. No. 105-277, Div. G., tit. XXII, § 2242(b), 112 Stat. 2681-822 (Oct. 21, 1998). *See* 8 CFR § 208.18 ("Implementation of the Convention Against Torture").

norm). *See Siderman de Blake v. Argentina*, 965 F.2d 699, 714 (9th Cir. 1992). "International law is part of our law" and sometimes "resort must be had to the customs and usages of civilized nations" and "as evidence of these, to the works of jurists and commentators." *The Paquete Habana*, 175 U.S. 677, 700 (1900).

These are not empty words. The Executive Branch of the United States Government has (at times[14]) reaffirmed its "deep commitment" to its international human rights obligations and "to championing the human rights enshrined in the Universal Declaration of Human Rights."[15]

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[14] There is no question but that when President Trump has been in office the U.S. Government simply ignores international law.

[15] Letter dated 22 April 2009 from the Permanent Representative of the United States of America to the United Nations addressed to the President of the General Assembly, A/63/831, Annex, p. 1, https://docs.un.org/en/A/63/831 (accessed 5/4/26).

Therefore, how the State of Washington treats Ms. Kim should be judged not just from the perspective of local law but also whether Washington's actions comport with the international law obligations of the United States and its political subdivisions. While the issue is not strictly one of the binding effect of various treaties and customary international law,[16] still, international law should inform this Court as to how to decide issues involving the rights of those people locked up behind the walls of our state's prisons.

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[16] *See Serra v. Lappin*, 600 F.3d 1191, 1197 (9th Cir. 2010) (rejecting international law claims in suit based on low wages for prison work). *But see Sanchez-Llamas v. Oregon*, 548 U.S. 331, 350 (2006) ("A defendant can raise an Article 36 [of the Vienna Convention on Consular Relations] claim as part of a broader challenge to the voluntariness of his statements to police.").

4. *International Law Protects Ms. Kim*

a. **General Principles: The International Covenant on Civil and Political Rights**

The International Covenant on Civil and Political Rights ("ICCPR") has several general provisions that are pertinent to the plight of transgender individuals incarcerated in prisons, specifically those requiring prisoners to be treated with humanity.

Article 10 provides in part:

> 1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. . . .
>
> . . .
>
> 3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation.

Article 7 of the ICCPR provides in part:

> No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. . . .

b. Protection Against Sexual Violence

As is apparent by Ms. Kim's declaration, and the statistical prevalence of sexual violence against transwomen in prison, Ms. Kim is in real danger of being targeted with sexual assault if DOC places her into general population in a men's prison.[17] Ms. Kim has already experienced such harms and threats of harm in the past, even prior to receiving gender affirming care. Now, with further changes to her physical appearance, it will be apparent to everyone that she is not a cisgendered man. *Supplemental Brief of Petitioner* at 4.

While the United States has passed and implemented legislation designed to mitigate the risk of sexual violence in

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[17] Declaration of Amber Kim, *Supplemental Brief of Petitioner*, Attachment A, at 7-14. Transgender people face ten times the likelihood of being sexually assaulted in prison compared to their cisgender counterparts. *See Personal Restraint Petition of Amber Kim* at 24-26 (citing authority).

prisons (Prison Rape Elimination Act or "PREA"[18]), protecting people from sexual assault in prisons is also required under international law. These protections began in the 19th and early 20th Centuries in various protections given to civilians during times of war.[19]

Sexual violence in prisons violates the general protections of human dignity, referred to above in Articles 7 and 10 of the ICCPR, but also, if inflicted by guards (or those at their behest)

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[18] 34 U.S.C. §§ 30301-30309.

[19] *See e.g., Instructions for the Government of Armies of the United States in the Field* (Lieber Code of 1863), April 24, 1863, Section II, ¶ 44 (prohibiting rape), https://vfwwy.org/uploads/Articles/Bells/Sec2ofGO100LieberCode1863.pdf (accessed 5/5/26). Article 4 of the Annex to the 1907 Hague Convention provides a general prohibition of torture and abuses against combatants and non-combatants. Regulations Article 46 of the same Annex prescribes that "[f]amily honour and rights…must be respected," which can be interpreted to cover rape. Convention Respecting the Laws and Hague Convention IV, Customs of War on Land, with annexed Regulations of October 18, 1907, 36 Stat. 2277, T.S. No. 539, entered into force January 26, 1910, https://ihl-databases.icrc.org/en/ihl-treaties/hague-conv-iv-1907 (accessed 5/5/26).

would also constitute torture as defined by Article 1 of the Convention Against Torture ("CAT"):

> For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

Parties to the CAT are also obligated to undertake to prevent "other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article I, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity." CAT, Article 16.

Under Article 19 of the CAT, parties are required to provide regular reports on their compliance with the treaty. The reports are monitored by the "Committee Against Torture," a UN-organized body of 10 independent experts who issue reports about parties' compliance or lack of compliance.

In 2008, the Committee Against Torture issued its General Comment No. 2 regarding the CAT which emphasized the obligation of State parties to protect individuals and groups made vulnerable by discrimination or marginalization, noting that individuals "may be subject to violations of the Convention on the basis of their actual or perceived non-conformity with socially determined gender roles."[20]

The Committee Against Torture has in the past praised the United States' attempts to address sexual violence in prison by

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[20] Committee Against Torture, General Comment No. 2, CAT/C/GC/2 (Jan. 24, 2008), ¶ 22; https://docs.un.org/en/CAT/C/GC/2 (accessed 5/4/26).

enacting PREA, but at the same time detailed numerous concerns in particular with the vulnerability of prisoners of "differing sexual orientation" and the lack of prompt and complete investigation of such incidents.[21]

In 2014, in the Committee's concluding observations on the combined third to fifth periodic reports of the United States, the Committee specifically noted "with concern the disproportionally high rate of sexual violence faced by children in adult facilities, as well as the even higher rate of sexual victimization reported by

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[21] Committee Against Torture, 36th Session, Consideration of Reports Submitted by States Parties under Article 19 of the Convention, CaT/C/USa/CO/2, (July 25, 2006) at ¶¶ 9, 32, https://digitallibrary.un.org/record/580893?v=pdf (accessed 5/4/26). The concerns about sexual violence toward transgender prisoners raised by the Committee against Torture were further detailed in in a "Shadow Report" by NGOs. *See* Stop Prisoner Rape, *In the Shadows: Sexual Violence in U.S. Detention Facilities* (2006), https://justdetention.org/wp-content/uploads/2015/10/In-The-Shadows-Sexual-Violence-in-U.S.-Detention-Facilities.pdf (accessed 5/5/26).

inmates with a history of mental health problems and lesbian, gay, bisexual, transgender and intersex (LGBTI) individuals."[22]

The issue of the U.S.'s compliance with minimizing the risk of sexual violence in its detention facilities has not been resolved and continues to be an issue.[23]

c. Long-Term Solitary Confinement is Not a Lawful Solution

Involuntary placement of a transwoman in general population in a men's prison raises the risk of sexual assault. The State of Washington's "solution" – long-term solitary confinement -- is not a lawful solution under international law.

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[22] Committee Against Torture, Concluding Observations on the Combined Third to Fifth Periodic Reports of the United States of America, CAT/C/USA/CO/3-5 (Dec. 19, 2014), ¶21; https://digitallibrary.un.org/record/790513/?v=pdf (accessed 5/4/26).

[23] Committee Against Torture, *List of issues prior to submission of the sixth periodic report of the United States of America*, CAT/C/USA/QPR/6 (Jan. 26, 2017), ¶¶ 24, 43; https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Download.aspx?symbolno=CAT%2FC%2FUSA%2FQPR%2F6&Lang=en (accessed 5/4/26).

The United Nations first announced its Standard Minimum Rules for the Treatment of Prisoners in 1955.[24] These rules are not treaties, but have played an important role in construing key human rights treaties. Over time, the rules have evolved, particularly as various influential leaders emerged on the world stage who had personal experiences with solitary confinement and torture, such as the late South African President Nelson Mandela or former U.N. High Commissioner for Human Rights Michelle Bachelet.

In 2008, the U.N. Special Rapporteur on Torture issued an interim report expressing an emerging international consensus that, given the evidence that solitary confinement causes serious

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[24] United Nations, Standard Minimum Rules for the Treatment of Prisoners, adopted Aug. 30, 1955, U.N. Doc. A/CONF/611, annex I, E.S.C. res. 663C, 24 U.N. ESCOR Supp. (No. 1) at 11, U.N. Doc. E/3048 (1957), amended E.S.C. res. 2076, 62 U.N. ESCOR Supp. (No. 1) at 35, U.N. Doc. E/5988 (1977) (https://hrlibrary.umn.edu/instree/g1smr.htm) (accessed 5/5/26)

and adverse physical and psychological distress, the practice could violate Article 7 of the ICCPR. The report recommended that "the use of solitary confinement should be kept to a minimum, used in very exceptional cases, for as short a time as possible, and only as a last resort."[25]

In 2011, a new Special Rapporteur, Juan E. Méndez – himself a survivor of torture in Argentina -- issued an additional interim report regarding solitary confinement. In a comprehensive assessment of solitary confinement's shifting legal status over the prior generation, the report concluded that "[g]iven its severe adverse health effects, the use of solitary confinement itself can amount to acts prohibited by Article 7 of the International Covenant on Civil and Political Rights, torture as defined in Article 1 of the Convention against Torture or cruel,

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[25] U.N. Secretary-General, Torture and Other Cruel, Inhuman or Degrading Punishment: Note by the Secretary-General, UN Doc. A/63/175 (July 28, 2008) at ¶ 83 (https://docs.un.org/en/A/63/175) (accessed 5/5/26).

inhuman or degrading punishment as defined in Article 16 of the CAT."[26] The report specifically noted how solitary confinement was often used to "protect" LGBTQ individuals.[27]

The reference to the Convention Against Torture is significant because Article 1 of the CAT must be followed under all circumstances, even during extreme civil unrest and times of war,[28] let alone for penological reasons in a prison. On the other hand, to violate Article 1 of CAT there must be an intent to cause harm – "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person." This intent provision could prevent a finding that placement into

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[26] U.N. Secretary-General, Torture and Other Cruel, Inhuman or Degrading Punishment: Note by the Secretary-General, U.N. Doc. A/66/268 (Aug. 5, 2011) at ¶ 70; https://docs.un.org/en/A/66/268 (accessed 5/4/26).

[27] *Supra*, n.26 at ¶ 69.

[28] CAT, Article 2 provides: "No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture."

solitary confinement in and of itself would violate the CAT, even if there were severe effects on the prisoner. *See* Samuel Fuller, "Torture as a Management Practice: The Convention Against Torture and Non-Disciplinary Solitary Confinement," 19 *Chicago Journal of International Law* 102, 108-09 (2018).

Still, despite the intent requirement, in 2014, when addressing the United States' prior compliance reports, the Committee Against Torture noted its concerns "about reports of extensive use of solitary confinement and other forms of isolation in United States prisons, jails and other detention centres" for indefinite periods of time. The Committee Against Torture recommended that the United States should "[l]imit the use of solitary confinement as a measure of last resort, for as short a time as possible, under strict supervision and with the possibility of judicial review."[29]

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[29] Committee Against Torture, Concluding observations on
(continued...)

The following year, in 2015, the United Nations General Assembly adopted the "Mandela Rules" that revised the 1955 Standard Minimum Rules for the Treatment of Prisoners.[30] While the 1955 Rules banned "corporal punishment, punishment by placing in a dark cell, and all cruel, inhuman or degrading punishments,"[31] the Mandela Rules ban indefinite solitary confinement, without an intent requirement.

Rule 43 categorically states:

> 1. In no circumstances may restrictions or disciplinary sanctions amount to torture or other cruel, inhuman or degrading treatment or punishment.

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[29](...continued)
the combined third to fifth periodic reports of the United States of America, *supra* n.22 at ¶ 20.

[30] United Nations Standard Minimum Rules for the Treatment of Prisoners (the "Nelson Mandela Rules"), Resolution adopted by the General Assembly on December 17, 2015 [on the report of the Third Committee (A/70/490)] A/RES/70/175, https://undocs.org/A/RES/70/175 (accessed 5/3/26).

[31] *See supra* n.24 at ¶ 31.

The following practices, in particular, shall be prohibited:

(a) Indefinite solitary confinement;

(b) Prolonged solitary confinement;

(c) Placement of a prisoner in a dark or constantly lit cell. . . .

Rule 44 then provides:

For the purpose of these rules, solitary confinement shall refer to the confinement of prisoners for 22 hours or more a day without meaningful human contact. Prolonged solitary confinement shall refer to solitary confinement for a time period in excess of 15 consecutive days.

Rule 45 states:

1. Solitary confinement shall be used only in exceptional cases as a last resort, for as short a time as possible and subject to independent review, and only pursuant to the authorization by a competent authority. It shall not be imposed by virtue of a prisoner's sentence.

2. The imposition of solitary confinement should be prohibited in the case of prisoners with mental or physical disabilities when their conditions would be exacerbated by such measures. The prohibition of the use of solitary confinement and

> similar measures in cases involving women and children, as referred to in other United Nations standards and norms in crime prevention and criminal justice, [footnote omitted] continues to apply.[32]

Again, while the Mandela Rules are not "binding" on any government, including the State of Washington, courts can look to them for guidance regarding construction of domestic law. For instance, in Canada in 2019, both the Court of Appeal for British Columbia and the Court of Appeal for Ontario[33] cited to these

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[32] The Mandela Rules apply binary categories of "men" and "women" that do not account for transgender prisoners. *See* Rule 11(a) ("Men and women shall so far as possible be detained in separate institutions."). While one can certainly argue about whether this rule protects Ms. Kim or not, Rule 11(a) is not mandatory by its use of the language "so far as possible." This language should be compared to the mandatory prohibitions on prolonged or indefinite solitary confinement in Rule 43.

[33] *British Columbia Civil Liberties Association v. Canada (Attorney General)*, 2019 BCCA 228, https://www.canlii.org/en/bc/bcca/doc/2019/2019bcca228/2019bcca228.pdf (accessed 5/5/26); *Canadian Civil Liberties Assn. v. Canada (Attorney General),* 2019 ONCA 243, https://www.canlii.org/en/on/onca/doc/2019/2019onca243/201

(continued...)

rules to find that indefinite administrative segregation violated the Canadian Charter of Rights and Freedom.[34]

This Court should follow the examples of the Canadian courts.

E. CONCLUSION

Applying principles of international law, this Court should hold that Ms. Kim has met her burden of showing that she is being restrained under conditions that create an objectively significant risk of serious harm or otherwise deprive her of the basic necessities of human dignity and that those conditions are not reasonably necessary to accomplish legitimate penological goals. *Williams*, 198 Wn.2d at 368.

DOC should neither place Ms. Kim into general population in a men's prison nor subject her to indefinite solitary

---

[33](...continued)
9onca243.pdf (accessed 5/5/26).

[34] Https://laws-lois.justice.gc.ca/eng/const/page-12.html (accessed 5/7/26)

confinement. Rather, this Court should order her return to WCCW.

DATED this 7th day of May 2026.

We certify that this PRP contains 4957 words (as calculated with the WordPerfect Word Count function), excluding the categories set out in RAP 18.17.

NEIL M. FOX
WSBA NO. 15277

/s/ Heather Malcolm
WSBA NO. 63749

/s/ Madeline M. Pfeiffer
WSBA NO. 61308
Attorneys for Seattle NLG

CERTIFICATE OF SERVICE

I, Alex Fast, certify and declare as follows:

On May 7, 2026, I served a copy of the attached brief by filing it with the Appellate Portal which will send a copy to all parties in this matter.

DATED this 7th day of May 2026, at Seattle, Washington.

I certify or declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

s/ Alex Fast
Legal Assistant
Law Office of Neil Fox PLLC

LAW OFFICE OF NEIL FOX PLLC

May 07, 2026 - 11:48 AM

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THE SUPREME COURT
OF THE STATE OF WASHINGTON

In the Matter of the Personal Restraint of:	) No. No. 104436-4
AMBER F. KIM,	) MOTION TO FILE BRIEF OF AMICUS CURIAE
Petitioner.	)

1. IDENTITY OF APPLICANTS

The Seattle Chapter of the National Lawyers Guild ("Seattle NLG"), by attorneys Neil M. Fox, Heather Malcolm and Madeline M. Pfeiffer, moves this Court for permission to file a brief of amicus curiae pursuant to RAP 10.1(e) and RAP 10.6.

2. APPLICANT'S INTEREST

Seattle NLG is one of many chapters around the country of the National Lawyers Guild, a national non-profit voluntary

bar association of lawyers, law students, legal workers and jailhouse lawyers. Since its inception in 1937, the NLG has been at the forefront of efforts to develop and ensure respect for the rule of law and basic rights. Its mandate is to advocate for fundamental principles of social and economic fairness and for human and civil rights.

For decades, NLG members nationally have been involved in efforts to advance international law. NLG members were active in promoting both the Nuremberg Trials and the establishment of the United Nations after the Second World War. They have actively publicized and sought to enforce various multilateral human rights agreements adopted in the years since 1945. They have been involved in litigation in American courts to vindicate victims of war crimes and torture abroad. Through its active International Committee, the NLG is a member of the International Association of

Democratic Lawyers whose first president, René Cassin, was a co-drafter of the Universal Declaration of Human Rights

3. APPLICANT'S FAMILIARITY WITH THE ISSUES

The undersigned counsel are authorized to practice law in the State of Washington. They have reviewed the pleadings of the parties in the Court of Appeals and in this Court. The Seattle NLG has raised issues of international law in other cases in Washington State, including in an amicus brief in *In re Pers. Restraint of Williams*, 198 Wn.2d 342, 496 P.3d 289 (2021).

4. ISSUES THAT AMICUS CURIAE WILL ADDRESS

1. When deciding this Personal Restraint Petition should this Court consult international law?

2. What guidance does international law provide for determining whether Amber Kim has met her burden to show a violation of article I, section 14, of the Washington Constitution?

3. Does the State of Washington have an international law obligation to protect Ms. Kim from sexual violence in a men's prison?

4. Does long-term solitary confinement violate international law?

5. REASON FOR ADDITIONAL BRIEFING

The parties' briefing concentrate on article I, section 14, of the Washington Constitution. The Seattle NLG's brief examines article I, section 14's protections in the broader context of international law. It addresses Washington's obligations both to prevent sexual assault and not to use solitary confinement as a "solution" to the risks of transgendered individuals in prison.

The NLG's briefing outlines recent developments internationally about solitary confinement such as the adoption of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the "Nelson Mandela Rules") and

covers how some courts, such as those in Canada, have looked to international law when restricting long-term solitary confinement.

6. CONCLUSION

For the foregoing reasons, this Court should grant this motion for the Seattle NLG to appear as amicus curiae and to accept its brief.

We certify that this pleading contains 517 words (using the Word Perfect word count feature) excluding those categories listed in RAP 18.17.

DATED this 7th day of May 2026.

Respectfully submitted,

_____

NEIL M. FOX
WSBA NO. 15277

/s/ Heather Malcolm
HEATHER MALCOLM
WSBA NO. 63749

/s/ Madeline M. Pfeiffer
WSBA NO. 61308
Attorneys for Seattle NLG

CERTIFICATE OF SERVICE

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s/ Alex Fast
Legal Assistant
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