

No. 25-6813

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IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

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EMALEE R. WAGONER,

*Plaintiff-Appellee,*

*v.*

JENNIFER WINKELMAN,

COMMISSIONER OF DEPARTMENT OF CORRECTIONS,

*Defendant-Appellant.*

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On Appeal from the United States District Court  
for the District of Alaska

Case No. 3:18-cv-00211; Hon. Matthew M. Scoble

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**BRIEF OF *AMICUS CURIAE***  
**INDEPENDENT WOMEN'S LAW CENTER**  
**IN SUPPORT OF APPELLANT AND REVERSAL**

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## CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rules of Appellate Procedure 26.1 and 29(a)(4)(A), I certify that *Amicus* Independent Women's Law Center, a non-governmental entity, has no parent corporation and no publicly held corporation owns 10% or more of its stock.

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### **INTEREST OF *AMICUS CURIAE***

This threat to the safety and wellbeing of incarcerated women is of significant concern to *amicus curiae* Independent Women’s Law Center (IWLC), a project of Independent Women’s Forum (IWF), a nonprofit, non-partisan 501(c)(3) organization founded by women to foster education and debate about legal, social, and economic issues. IWF promotes policies that advance women’s interests by expanding freedom, encouraging personal responsibility, and limiting the reach of government. Independent Women’s Law Center supports this mission by advocating for equal opportunity, individual liberty, and the rights of women and girls. As organizations comprised primarily of women, IWF and IWLC believe that women deserve institutions that recognize biological reality and safeguard their bodily privacy, physical security, and human dignity, which can be achieved only by maintaining sex-separated facilities. For the reasons stated by Appellants, IWLC agrees that the District of Alaska erred in concluding that the Eighth Amendment required the State to facilitate sex-reassignment surgery for a male inmate and effectuate transfer to a female prison. IWLC writes to further explain the concrete and foreseeable harms that such a holding

imposes on incarcerated women; harms that provide ample additional reasons for reversal.

All parties consented to the filing of this brief, and IWLC is therefore permitted to file under Rule 29(a)(2) of the Federal Rules of Appellate Procedure. No party's counsel authored this brief in whole or in part; no party or party's counsel contributed money that was intended to fund preparing or submitting the brief; and no one other than the *amicus curiae* contributed money that was intended to fund preparing or submitting the brief.

### **SUMMARY OF THE ARGUMENT**

Men lack a Constitutional right to sleep with, bathe with, and observe naked women. We would like to end this brief there, as such a proposition is not reasonably debatable. And yet, the decision below compels exactly this result and places the interests of a single male inmate above the safety, privacy, and dignity of every woman housed within a women's correctional facility.

Correctional systems must retain the ability to maintain sex-separated facilities to protect female inmates from the risks, harms, and loss of privacy that arise when male prisoners are introduced into

women's living spaces. Incarcerated women live in conditions where privacy is limited and bodily exposure is unavoidable, including shared sleeping quarters, communal showers, strip searches, and medical examinations. Sex-separated housing has long served as a structural safeguard that preserves privacy, safety, and dignity within custodial settings. *See Dothard v. Rawlinson*, 433 U.S. 321, 335–36 (1977). Indeed, the mere presence of male inmates in women's correctional facilities imposes unique and unavoidable burdens on female inmates.

Fundamentally, policies that require the transfer of men into women's prisons erase the very sex-based protections that female correctional facilities were created to provide.

And the Constitution does not require courts to disregard sex-based realities to the exclusive harm and endangerment of women.

## **ARGUMENT**

### **I. Requiring the Transfer of Men Into Women's Prisons Harms Women**

Women's prisons are not relics of outdated classifications or symbolic distinctions. They are facilities designed to house a uniquely vulnerable population: women, the overwhelming majority of whom have histories of sexual abuse, domestic violence, and trauma inflicted by men.

See Bureau of Just. Stats., U.S. Dep't of Just., NCJ 240655, U.S. Dep't of Justice, *Female Victims of Sexual Violence, 1994–2010* (rev. 2016).

Policies requiring the transfer of men into women's prisons fundamentally alter these conditions of confinement and impose concrete, foreseeable harms exclusively on women.

**A. Women in Prison Are a Uniquely Vulnerable Population**

Women in prison represent one of the most trauma-impacted populations in the country. Up to 86% of female inmates have been victims of sexual violence, most at the hands of men. *See 86 Percent of Women in Jail Are Sexual-Violence Survivors*, Nat'l PREA Res. Ctr. (Nov. 11, 2017), <https://tinyurl.com/yz4be7yv>. Sex-separated housing in women's prisons is therefore not a matter of preference but a necessary safeguard for safety, dignity, and trauma mitigation. The realities of incarceration require women to share sleeping quarters, communal showers, and other deeply intimate spaces, including during strip searches and medical examinations. Because incarcerated women cannot avoid these encounters, sex-separated facilities ensure that such exposure occurs only among members of the same sex.

Introducing men into these spaces, particularly those convicted of sexual offenses, forces incarcerated women into intimate exposure with members of the very sex responsible for the overwhelming majority of their prior victimization. For women with histories of abuse, the presence of a male body in showers, sleeping quarters, or custodial searches can activate acute trauma responses, including fear, anxiety, and psychological distress.

Courts have recognized this reality in the prison context, noting that exposure to male personnel during intimate searches can inflict severe psychological harm on female inmates given the high prevalence of prior sexual abuse among incarcerated women. *See Jordan v. Gardner*, 986 F.2d 1521, 1525–26 (9th Cir. 1993) (en banc); *Byrd v. Maricopa Cnty. Sheriff's Dep't*, 629 F.3d 1135, 1141–47 (9th Cir. 2011) (en banc) (recognizing constitutional limits on cross-sex searches due to bodily privacy concerns). For this population, sex-separated housing is a critical protection against re-traumatization within a custodial environment women cannot escape.

## **B. Women Have Well Documented Their Dangers**

Courts have long recognized that sexual assault and abuse are serious and well-documented risks within custodial environments where inmates cannot protect themselves. *See Farmer v. Brennan*, 511 U.S. 825, 833–34 (1994).

Evidence from jurisdictions that have adopted policies allowing men in women’s prisons demonstrates that these risks are real. After California enacted Senate Bill 132 allowing inmates to request housing based on gender identity, there were reports of sexual assaults and even pregnancies involving male inmates transferred into women’s prisons. Cal. Fam. Council, *Female Inmates Trapped with Predators: CA Senators Refuse to Help Them* (May 5, 2025), <https://tinyurl.com/55fwcjkd>; Amie Ichikawa, *‘Incarcerated Women Matter’: The Message I’m Sending to Californians on Billboards Across the State*, IW Features (Feb. 19, 2026), <https://tinyurl.com/4z77zsxt>.

Following implementation of comparable policies in New Jersey, several female prisoners also reported pregnancies and assaults. *See* Sophie Nieto-Munoz, *Lawsuit pins blame for assaults on transgender policy in New Jersey prisons*, N.J. Monitor (Sep. 11, 2024),

<https://tinyurl.com/4y75x8n4>. Moreover, a disproportionately large percentage of male inmates looking to transfer to women's prisons have past sex offenses of their records. *See* May Mailman & Inez Stepman for Independent Women, *Cruel and Unusual Punishment: Stopping the Dangerous Policies Putting Men in Women's Prisons* 14 (2025), <https://tinyurl.com/884rjnyr>. In late 2024, the Bureau of Federal Prisons acknowledged that nearly half of the male prisoners identifying as women have sex convictions, compared to just under 12% of the general male prison population. *Id.*

Beyond physical assault, the presence of men in women's living spaces alters the environment of confinement in ways that impose unique and unavoidable burdens on female inmates. Women have reported avoiding showers, fear of sleeping, avoidance of communal spaces, and heightened anxiety about their personal safety. *See Jordan*, 986 F.2d at 1525. (recognizing severe psychological harm to female inmates with histories of abuse when exposed to male searches); Brenda V. Smith, *Watching You, Watching Me*, 15 *Yale J.L. & Feminism* 225 (2003) (describing anxiety, fear, and behavioral changes among female inmates subjected to cross-sex observation), <https://tinyurl.com/2ket8ycx>.

Additional experiences of incarcerated women, like Alissa Kamholz, further illustrate these harms. See Andrea Mew, *Cruel and Unusual Punishment: A Male Takeover of Female Prisons, Alissa Kamholz's Story*, Independent Women (Apr. 15, 2024), <https://tinyurl.com/ymycj5z4>.

Before her incarceration, Kamholz endured repeated sexual abuse as a child. When she was sentenced, she believed that placement in a women's prison would at least remove her from the presence of men who had harmed her. That expectation changed after California enacted Senate Bill 132, which permits inmates to request sex-specific housing based on self-identification. A male inmate was transferred into the Central California Women's Facility and assigned to Kamholz's housing unit, eventually sharing her room.

For Kamholz, the presence of a male cellmate induced severe psychological distress. She reported worsening nightmares, difficulty sleeping, and fear of using communal showers and bathroom facilities. The situation became even more disturbing when she learned that the inmate was from the same small town where she had been abused as a child and was familiar with the location where that abuse occurred. As

Kamholz later explained, “Our sentence wasn’t to be abused ... we were supposed to be rehabilitated.” *Id.*

Accounts from incarcerated women at Logan Correctional Center in Illinois similarly illustrate the risks created when male inmates are housed in women’s facilities. As one inmate, Leanne Childs, reported to prison authorities, she and another woman were placed in a housing unit with several male inmates identifying as female. During a facility-wide shakedown, the women were strip searched in view of those male inmates, an experience they later described as deeply humiliating and distressing. One of these inmates groped a female prisoner’s breasts while they were working in assigned quarters together.

When the State places men in women’s prisons, the resulting burdens fall entirely on women who have no ability to protect their privacy, safety, or dignity.

## **II. Policies Requiring Male Transfers Into Women’s Prisons Erase Sex-Based Protections for Women.**

The harms described above reflect a broader legal problem: policies that require the transfer of men into women’s prisons erase the very sex-based protections that women’s correctional facilities were created to provide.

Single-sex prisons are legal. *Women Prisoners of the D.C. Dep't of Corr. v. District of Columbia*, 93 F.3d 910, 926 (D.C. Cir. 1996) (“[t]he segregation of inmates by sex is unquestionably constitutional”). Courts have repeatedly acknowledged that separating inmates by sex is a basic safeguard necessary to preserve safety, privacy, and human dignity within custodial institutions. See *Michenfelder v. Sumner*, 860 F.2d 328, 333–34 (9th Cir. 1988) (recognizing that sex-separated spaces serve important privacy interests); *Dothard*, 433 U.S. at 335–36 (sex distinctions in prisons can be justified by safety and privacy concerns); *Fortner v. Thomas*, 983 F.2d 1024, 1030 (11th Cir. 1993) (inmates retain a limited constitutional right to bodily privacy, especially regarding exposure to the opposite sex).

Among the many biological differences between men and women is the propensity and physical ability to commit crimes. Testosterone—“the chemical that activates the parts of the brain that produce aggression”—is present in higher levels in men than women. Mailman & Stepman, *supra*, at 13 (citation omitted). And it is men, not women, who “commit the overwhelming majority of crimes, particularly violent crimes, in the U.S.” *Id.* (citation omitted). Data shows that “men make up 88% of arrests

for murder and manslaughter, and 97% of those arrested for rape.” *Id.* (citation omitted).

Policies that require women’s prisons to admit men dismantle the sex-based protections those institutions were created to provide.

This case ultimately concerns whether women’s prisons must be abolished, for the sake of a man’s feelings. To ask the question is to answer it. Women’s prisons exist because the realities of custodial life make sex separation a commonsense, longstanding safeguard. When those boundaries are removed, the burdens fall entirely on women who cannot leave, relocate, or protect themselves from the conditions the State imposes. Nothing in the Constitution requires correctional systems to abandon fundamental protections, to the exclusive harm of women.

### **CONCLUSION**

The United States Constitution does not demand that women be treated as an idea, such that their privacy must be infringed upon by men asserting femininity. That ultra-modern proposal, with no basis in the Constitution, erases the protections female prisoners depend upon for their safety, privacy, and dignity. The judgment below should be reversed.

Dated: March 25, 2026

Respectfully Submitted,

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## CERTIFICATE OF COMPLIANCE

I certify that this amicus brief complies with the type-volume limitation of Fed. R. App. P. 29(a)(5) and Circuit Rule 32-3(2) because this brief contains 1,926 words, excluding parts of the brief exempted by Fed. R. App. P. 32(f).

I further certify that the brief complies with the typeface and type-style requirements of Fed. R. App. P. 32(a)(5) and 32(a)(6) because it has been prepared in a proportionally spaced typeface using 14-point Century Schoolbook font.

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## CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing brief with the Court via the appellate ACMS system on March 25, 2026. I further certify that all participants in the case are registered ACMS users and that service will be accomplished by the appellate ACMS system.

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