

Honorable Robert J. Bryan

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA

CASANDRA BRAWLEY, an individual,

Plaintiff,

v.

STATE OF WASHINGTON; WASHINGTON
STATE DEPARTMENT OF CORRECTIONS;
HAROLD CLARKE, former Secretary,
Washington State Department of Corrections,
in his official capacity; ELDON VAIL,
Secretary, Washington State Department of
Corrections; RUBEN CEDENO, Deputy
Secretary, Department of Corrections, in his
official capacity; ALICE PAYNE, Prisons
Administrator, in her official capacity;
BRYDEE GLASCO, Correctional Officer,
Washington Corrections Center for Women, in
her individual and official capacity, HERBERT
JOY, Correctional Officer, Washington
Corrections Center for Women, in his
individual and official capacity,

Defendants.

NO. C09-5382

PLAINTIFF'S MOTION FOR PARTIAL
SUMMARY JUDGMENT

Note for Motion Calendar:
Friday, April 16, 2010

Oral Argument Requested

1 **I. INTRODUCTION**

2 The Eighth Amendment to the United States Constitution, at its heart, assures the
3 humanity of all by prohibiting the debasement of human beings. Shackling a laboring
4 incarcerated woman – who, no matter her crime, is at that moment engaged in the physical
5 and emotional process of having a baby – is cruel and unusual punishment.

6 In April of 2007, Casandra Brawley was incarcerated at the Washington Corrections
7 Center for Women (“WCCW”). She was also nine months pregnant with her first child, due
8 April 16th. On April 15th, 2007, throughout her labor, and up until the moment of an
9 emergency cesarian section in the early morning of April 16th, WCCW corrections officers
10 shackled Ms. Brawley with metal restraints. Immediately after her son’s birth, Ms. Brawley,
11 who had no violent history, was similarly restrained. Corrections officers shackled Ms.
12 Brawley even though WCCW prohibits the use of restraints on laboring women, and in spite
13 of their awareness that Ms. Brawley was experiencing severe pain, was in the process of
14 labor, and was suffering a medical condition that put her and her baby’s health at risk. They
15 shackled her again immediately after her baby was born, even though she could not move her
16 legs. Because none of these basic facts are seriously in dispute, Plaintiff Casandra Brawley
17 respectfully requests partial summary judgment on her federal Eighth Amendment claim
18 against Officer Brydee Glasco, and her claim for a declaratory judgment that the Washington
19 State Department of Corrections (“DOC”) violated her right to be free of cruel punishment
20 under the Washington State Constitution.

21 **II. FACTUAL HISTORY**¹

22 In late December 2006, Casandra Brawley began serving a 14-month sentence at
23 WCCW. Brawley Decl. 2:2-3. Brawley was six months pregnant when she began her term
24 of incarceration. Brawley Decl. 2:3. She had previously been incarcerated at WCCW in
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26 ¹ All exhibits and deposition excerpts cited are attached to the Declaration of Michael S. Wampold in Support of Plaintiff’s Motion for Partial Summary Judgment (“Wampold Decl.”) unless otherwise indicated.

1 2004 for possession of stolen property. *Id.*, 2:4-5. Although Brawley has been convicted of
 2 seven felonies, she has never been charged with or convicted of a violent crime, and received
 3 no disciplinary infractions during her incarceration. Brawley Dep. 54:21-24, Wampold Decl.
 4 Exh. 1 (hereinafter “Brawley Dep.”); Brawley Decl. 3:1-6. She was released after serving
 5 less than seven months for good time served. Brawley Decl. 3:3-4.

6 From time to time, Brawley was transported from WCCW to an outside medical
 7 clinic near St. Joseph Hospital in Tacoma, for prenatal care that could not be provided at the
 8 prison medical clinic. Brawley Dep. 26:10-16. From the time Brawley was 32 weeks along
 9 in her pregnancy, she had weekly appointments at the outside clinic. Brawley Dep. 25:13-16.
 10 Women who are classified as minimum security are transported to those medical
 11 appointments and allowed to be at those medical appointments without restraints of any kind.
 12 Women who are classified as “medium security” are restrained during transportation and
 13 during the medical appointments. Brawley Decl. 2:10-15. Brawley described the shackles as
 14 being both humiliating and uncomfortable. Brawley Decl. 2:20-22.

15 The determination to classify an incarcerated woman as “medium security” takes
 16 place at the time of her intake into WCCW. According to Alice Payne—who was the Deputy
 17 Director for Division of Prisons for the DOC and had oversight of the WCCW in April of
 18 2007—the determination is based on the woman’s criminal history, age, and other factors.
 19 Payne Dep. 107:21-25, 108:1-11, Wampold Decl. Exh. 2 (hereinafter “Payne Dep.”). In
 20 Brawley’s case, the DOC indicated that they classified her specifically as “medium security”
 21 because of her youth – which, they believe as a general matter, makes a person more likely to
 22 behave impulsively – and because of her two outstanding nonviolent felony warrants in other
 23 Washington State counties. Payne Dep. 108:1-11. Brawley’s DOC Custody Review, dated
 24 March 21, 2007, indicated that Brawley had no “escape history.” DOC Custody Review,
 25 Wampold Decl., Exh. 3.² Thus, she was not classified as “medium security” because of any
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² The Custody Review Process assigned points for five categories of risk factors: current custody

1 violent past, threats of violence, or any specific behavior while incarcerated at WCCW.
 2 Indeed, as noted above, she was released after serving less than half of her sentence in part
 3 because of good time credits and because she had committed no infractions during her term
 4 of incarceration. Brawley Decl. 3:3-4.

5 On April 13, 2007, three days before her due date, Brawley woke at 4:00 a.m.
 6 believing her water had broken. Brawley Decl. 3:6-10. She immediately asked to be taken
 7 to the prison clinic. Instead, a corrections officer allowed her to phone the clinic. Brawley
 8 Decl. 3:11-15. Nurse Vasquez told Brawley to report to “sick call.” WCCW Medical
 9 Records; Wampold Decl. Exh. 4 (hereinafter “WCCW Med. Record”). Because she
 10 continued to leak fluid, Brawley appeared at the clinic that morning. Brawley Decl. 3:16-21.
 11 Nurse Practioner Herdener examined Brawley at 8:00 a.m. and noted the presence of ferning
 12 under the microscope, indicating the leakage of amniotic fluid. WCCW Med. Record; *see*
 13 *also* DOC Consultation Request/Report; Wampold Decl. Exh. 5. Herdener sent Brawley to
 14 St. Joseph Hospital in Tacoma for further evaluation. *Id.* Brawley, who had never had a
 15 baby before, felt anxious, scared and alone. Brawley Decl. 4:2-3. During transport to St.
 16 Joseph, Brawley was shackled with a chain around her waist attached to handcuffs.³ Brawley

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 18 designation, infraction behavior, program behavior, detainers, and escape history. Inmates with more
 19 than 56 points were classified as minimum security; those with 40-55 points were medium security;
 20 those with 0-39 points were close custody or maximum security. Ms. Brawley’s total score was 52
 21 points (4 points below the cutoff for minimum custody). If she had not had two felony detainers, she
 22 would have had an additional 10 points making her minimum custody. She received 15 points for
 23 having no escape history. Ms. Brawley’s 2004 Custody Reviews similarly indicate no escape history,
 24 and found she was minimum security because at that time she had no detainers.

25 ³ A waist chain is a long metal chain that corrections officials place around an incarcerated person’s
 26 waist, which is then secured to handcuffs and/or leg irons. For pregnant inmates, handcuffs are
 usually in the front to lessen the risk of falling, and involve a metal restraint around each wrist,
 keeping the wrists close together. Handcuffs, when not used in conjunction with the waist chain, may
 also attach the wrists together behind the inmate’s back. Waist chains are typical during transport.
 Diggs Dep. 6:3-14; Wampold Decl. Exh. 6, *see also* Brawley Decl.2:16-18. A leg restraint is a metal
 cuff placed around an inmate’s ankle that is attached through a chain several feet in length to a
 stationary object, typically a hospital bed. The ankle restraints are similar to handcuffs for the legs,
 and attach the two ankles together with a chain long enough to allow for the inmate walking by taking
 small steps. A photograph of restraints identical to those checked out to officers who transported Ms.
 Brawley is attached as Exhibit 8 to the Wampold Decl.

1 Dep. 60:12-14.

2 When Brawley arrived at the hospital, a certified nurse midwife asked the corrections
3 officer to remove the waist chain and handcuffs for the examination. Brawley Decl. 4:8-11.
4 The officer agreed to remove the restraints, but chained Brawley to the hospital bed with a
5 metal chain ankle restraint throughout the exam. Brawley Decl. 4:11-12. Failing to
6 recognize that Brawley's amniotic sac had already ruptured, the certified nurse midwife
7 discharged Brawley with instructions to return if her water broke or her contractions were
8 more regular or painful, or if there was vaginal bleeding, abdominal pain, or reduced fetal
9 movement.⁴ St. Joseph Hospital Medical Records Physician Orders April 13, 2007 at p. 17;
10 Wampold Decl. Exh. 7; *see also* St. Joseph Hospital Medical Records April 13, 2007
11 Discharge Instructions; Wampold Decl. Exh. 7. Brawley was again shackled with the waist
12 chain and handcuffs during her transport back to WCCW. Brawley Decl. 4:17.

13 Brawley's amniotic fluid continued to leak, and she returned to the prison clinic later
14 in the day on April 13, 2007. WCCW Med. Record.; Brawley Decl. 4:19-20. Believing she
15 was in labor and in need of medical attention, Brawley requested to stay in the clinic for
16 overnight observation. Brawley Decl. 5:1-2. At 8:30 p.m. on April 13, 2007, Brawley had
17 pink-tinged discharge. WCCW Med. Record. At 3:00 a.m. on April 14, 2007, Brawley
18 began having contractions every eight minutes. *Id.* Prison medical clinic records indicate
19 that Nurse Wiltse told Brawley that they were Braxton-Hicks contractions. *Id.* Brawley was
20 released from the prison clinic seven hours later. *Id.*

21 Brawley continued to experience the leakage of bloody amniotic fluid, as well as
22 contractions every eight minutes or so, until 4:00 p.m. on April 15, 2007, when her
23 contractions intensified. Brawley Decl. 4:16-18. She noted that the contractions came at
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25 _____
26 ⁴ After reviewing Ms. Brawley's medical records, Dr. Thomas Easterling, M.D., testified that it was
his medical opinion that Ms. Brawley was in labor as of April 13, 2007 when she initially reported the
leakage of clear fluid, and that once the rupture of membranes was confirmed she should have been
managed as laboring. Easterling Decl. 6:20-21.

1 five- minute intervals. Brawley Decl. 4:17-18. Concerned that she would again be dismissed
2 as having false labor, she monitored her contractions until 5:30 p.m., when she notified an
3 officer and asked to be taken to the prison clinic. Brawley Decl. 4:18-19.

4 Brawley was seen at the clinic by Nurse Morgan, who monitored Brawley with an
5 electronic fetal monitor. WCCW Med. Record; *see also* Morgan Dep. 21: 2-4, Wampold
6 Decl. Exh. 9 (hereinafter “Morgan Dep.”). After observing three contractions, each three
7 minutes apart and lasting 30 seconds, and determining there was a “good likelihood” that
8 Brawley was in labor, Morgan telephoned Nurse Practioner Herdener, the medical officer on
9 call. WCCW Med. Record; *see also* Morgan Dep. 32:5-12. Believing that Brawley
10 “appeared to be in labor” and was “progressing to active labor,” Herdener ordered that
11 Brawley be evaluated at the Labor and Delivery unit of St. Joseph Hospital.⁵ WCCW Med.
12 Record; *see also* Herdener Dep. 13:6-10, 14:10-11; Wampold Decl. Exh. 10 (hereinafter
13 “Herdener Dep.”). Herdener requested that Brawley be transported by state car. WCCW
14 Med. Record. Herdener noted that, as a medical provider, she becomes concerned that a
15 baby “could come soon” once contractions are less than five minutes apart. Herdener Dep.
16 15:4-11. Herdener wanted Brawley to go to the hospital “quickly,” noting that she was due
17 the next day and that the medical clinic at WCCW did not have the capacity to assist with
18 delivering a baby; however, she did not believe the baby’s arrival was so imminent that
19 Brawley should be taken to the hospital in an ambulance. Herdener Dep. 14:1-25, 15:14-20.

20 Officers Herbert Joy and Brydee Glasco transported Brawley to St. Joseph Hospital at
21 around 6:30 p.m., along with a “transport bag” that included handcuffs, a waist chain, leg
22 restraints (to be attached to a hospital bed) and ankle restraints (to restrain the ankles
23 together). Prior to leaving, Officer Glasco performed a strip search of Brawley, and then had
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25 ⁵ Dr. Easterling stated that it was his medical opinion that Ms. Brawley was in labor when she went to
26 the WCCW clinic complaining that her contractions were five minutes apart on April 15, 2007, and
continued to be in labor until her baby was delivered by cesarean section on April 16, 2007.
Easterling Decl. 6:19-25, 7:1.

1 her put on an orange jumpsuit. Brawley Decl. 6:1; *see also* Glasco Dep. 62:15-20, Wampold
2 Decl. Exh. 11 (hereinafter “Glasco Dep.”); Joy Dep. 6:15-19, Wampold Decl. Exh. 13
3 (hereinafter “Joy Dep.”). Officer Glasco then shackled her with a waist chain and handcuffs.
4 Brawley Dep. 6:4-5. While Officers Glasco and Joy deny putting Brawley in a waist chain,
5 they both agree that one of them handcuffed her hands together in front of her stomach.
6 Glasco Dep 60:21-25; Joy Dep. 6:15-25.

7 An incident report by Lieutenant Kathleen Ahmu, dated April 15, 2007, noted that
8 Brawley was being transferred to St. Joseph Hospital “due to the possibility of active labor”
9 and further noted that Officers Joy and Glasco “have been advised of this situation.”
10 Washington DOC Incident Report dated April 15, 2007; Wampold Decl. Exh. 14. Officer
11 Joy, who was armed with a firearm, drove the car, while Officer Glasco sat in the front
12 passenger seat and Brawley sat in the back seat. Brawley Dep. 11:13-25; 12:1-3. Brawley
13 recalls that Officer Glasco timed her contractions with her watch, which were then about two
14 minutes apart and lasting one minute. Brawley Decl. 6:8-10. Brawley described the car ride
15 as very uncomfortable because she was having intense labor pains. Brawley Dep. 13: 14-16.
16 Officer Glasco acknowledged that Brawley reported not feeling well and being in pain. List
17 of Events from Officer B. Glasco at ¶6; Wampold Decl. Exh. 15.

18 Upon arrival at St. Joseph Hospital, Officers Joy and Brawley helped Brawley out of
19 the state car and into a wheelchair. Brawley Decl. 6:11-12. They then wheeled her into the
20 hospital, still restrained with the waist chain and handcuffs. Brawley Decl. 6:11-13. Once in
21 the examination room, Officers Joy and Glasco removed the waist chain and handcuffs and
22 shackled Brawley to the hospital bed using a metal ankle restraint. Brawley Decl. 6:14-16.
23 Officer Glasco has stated that she did not believe Brawley was a threat. Glasco Dep. 62:14-
24 19. Brawley continued to experience painful, regular contractions. Brawley Decl. 6:17-20.
25 The hospital staff monitored her contractions for the next several hours. St. Joseph Hospital
26 Medical Records, Labor Admission/Triage dated April 15, 2007; Wampold Decl. Exh. 7.

1 Their chart notes indicate that her contractions were consistently two to three minutes apart.
2 *Id.* They also regularly checked her cervix for dilation. *Id.* Brawley did not have a fever
3 when she arrived at the hospital. *Id.* Brawley continued to be restrained and monitored for
4 nearly four hours. Brawley Decl. 6:15-24.

5 Officer Glasco remained in the hospital room throughout this time, seated in a chair
6 in the corner, while Officer Joy sat outside her room. Brawley Dep. 21:20-21; Joy Dep.
7 27:2-8. Officer Joy occasionally entered the hospital room to bring Officer Glasco coffee.
8 Brawley Dep. 28:5-9. At one point, a female nurse became upset that Officer Joy, a male
9 officer, was in the hospital room with “a female [sic] that was apparently in labor.” Joy Dep.
10 25:8-18. Brawley had to use the restroom on several occasions. Brawley Dep. 16:13-15.
11 Officer Glasco removed the ankle restraint long enough to allow Brawley to use the restroom
12 attached to the hospital room, and then immediately shackled her to the bed once she
13 returned. Brawley Dep. 16:15-20.

14 During this time, Brawley’s cervix was two centimeters dilated, and medical staff
15 discussed sending Brawley back to WCCW because her labor was not progressing, although
16 her contractions remained regular and intense. Brawley Decl. 6:24-25. Brawley said she
17 wanted to stay at the hospital, because she believed that she was in labor and “would not
18 make it” if she was sent back. Brawley Decl. 6:24-25, 7:1. Ultimately, the medical staff at
19 St. Joseph did not send Brawley back to WCCW, and instead gave her intravenous fluids.
20 Brawley Decl. 7:1-2. At this point, her contractions intensified – as Brawley describes them,
21 they were the “intense pains of hard labor.” Brawley Decl. 7:2-3. Brawley was admitted to
22 the hospital at 11:05 p.m., and was moved into a birthing room.

23 Once Brawley was admitted to the hospital, Officer Joy left, leaving Officer Glasco to
24 remain on “hospital watch” with Brawley. Joy Dep. 33:14-23, 36:5-7. The admission form
25 noted that Brawley had been having regular contractions two to three minutes apart in the
26 preceding hours. St. Joseph Hospital Medical Records, Admission Interval & Physical dated

1 April 15, 2007; Wampold Decl. Exh. 7. Officer Glasco's log book dated April 15, 2007,
2 indicated that Brawley was being "admitted to deliver baby." Officer Glasco's Log Book
3 dated April 16, 2007 (sic); Wampold Decl. Exh. 16. Dr. Russell Holtz administered a "labor
4 epidural" to Brawley at 11:16 p.m. St. Joseph Hospital Medical Records, Anesthesia Record
5 dated April 15, 2007; Wampold Decl. Exh. 7; *see also* St. Joseph Hospital Medical Records,
6 Operative Report dated April 16, 2007; Wampold Decl. Exh. 7. In order to receive the
7 epidural, which involved injecting anesthesia into her spine, Brawley had to sit up in bed and
8 bend forward. Brawley Decl. 7:11-12. The medical staff had to request that Officer Glasco
9 remove the restraint attached to the hospital bed so Brawley could receive the epidural,
10 which Officer Glasco did; Officer Glasco reattached the restraint to the bed immediately after
11 the procedure was complete. Glasco Dep: 83:12-15; Brawley Decl. 7:10-12. Officer Glasco
12 stated that she knew that Brawley was receiving an epidural to reduce her pain, which she
13 assumed was associated with a vaginal birth. Glasco Dep. 95:1-5.

14 After receiving the epidural, Brawley's temperature spiked to above 100 degrees
15 Fahrenheit. St. Joseph Hospital Medical Records, Progress Record at p. 24; Wampold Decl.
16 Exh. 7. Hospital staff gave Brawley antibiotics, Tylenol, and cold compresses to which she
17 failed to respond, and eventually gave her oxygen. *Id.*; *see also* Brawley Decl. 7:12-16.
18 Brawley recalls that a hospital staff member then attempted to rupture her amniotic sac, and
19 discovered that there was no amniotic fluid remaining. Brawley Decl. 7:17-19. As a result
20 of leaking amniotic fluid for almost three days, Brawley's uterus had become infected, also
21 resulting in the dangerous acceleration of her baby's heartbeat. St. Joseph Hospital Medical
22 Records, Operative Report dated April 16, 2007; Wampold Decl. Exh. 7. Officer Glasco has
23 stated that she was aware that Brawley's water had broken before being brought to the
24 hospital after the nursing staff questioned "why we had waited so long to bring [Brawley] to
25 the hospital." List of Events from Officer B. Glasco at ¶15; Wampold Decl. Exh. 15.
26 According to Officer Glasco, Brawley "did have physical complications with the labor,

1 delivery.” Glasco Dep. 22: 17-18. Officer Glasco, knowing Brawley was scared, nervous,
2 and did not feel well, “talked about labor and delivery [with Brawley] and how, you know,
3 it’s uncomfortable, it doesn’t feel good, but it will be over.” Glasco Dep. 81:10-19. Officer
4 Glasco also wrote in her log book that Brawley was “checked for dilation” at 11:40 p.m. and
5 1:24 a.m., and that she was three centimeters dilated. Officer Glasco’s Log Book dated April
6 16, 2007 (sic); Wampold Decl. Exh. 15. Brawley remained shackled throughout these
7 events.

8 At approximately 1:30 a.m. on April 16, 2007, the medical staff determined that
9 Brawley needed to have an emergency cesarean section because of fetal tachycardia,
10 chorioamnionitis, failure to dilate, and prolonged rupture of membranes. St. Joseph Hospital
11 Medical Records, Operative Report dated April 16, 2007; Wampold Decl. Exh. 7.; *see also*
12 St. Joseph Hospital Medical Records, Progress Record at p. 24; Wampold Decl. Exh. 7
13 Brawley consented to the operation. Brawley Decl. 7:21. Officer Glasco’s log book dated
14 April 16 (sic), 2007 indicates that Lieutenant Simmons contacted Brawley’s mother,
15 Casandra McLane, at approximately 11:00 p.m. and informed McLane that Brawley was
16 having her baby. Officer Glasco’s Log Book dated April 16, 2007 (sic); Wampold Decl.
17 Exh. 16 ; *see also* McLane Dep. 5:16-19; Wampold Decl. Exh. 17 (hereinafter “McLane
18 Dep.”). McLane, who lived an hour and a half from St. Joseph Hospital, arrived shortly
19 before Brawley was taken to have surgery. McLane Dep. 6:1-9; Officer Glasco’s Log Book
20 dated April 16, 2007 (sic); Wampold Decl. Exh. 16. McLane observed that Brawley “looked
21 miserable” and that her leg was shackled to the hospital bed. McLane Dep. 7:6-9. Brawley
22 was taken to the operating room shortly thereafter. McLane joined Brawley and Officer
23 Glasco in the operating room. McLane Dep. 7:17-21, 8:4-7.

24 A hospital staff member insisted that Officer Glasco remove Brawley’s restraints
25 before Dr. Carol Sarnier (the on-call obstetrician/gynecologist) would perform the surgery.
26 Brawley Decl. 7:23-25. Officer Glasco complied. Brawley Decl. 7:23-24. Officer Glasco’s

1 log book dated April 16, 2007 indicates that Brawley arrived in the operating room at 2:09
2 a.m. Officer Glasco's Log Book, April 16, 2007, Wampold Decl. Exh. 16. Dr. Sarner
3 delivered Brawley's baby boy by cesarean section at 2:36 a.m. St. Joseph Hospital Medical
4 Records, Delivery Record at p. 28, Wampold Decl. Exh. 7. Once the operation was
5 completed and Brawley was wheeled back to her room, Officer Glasco shackled Brawley to
6 the hospital bed with the use of a metal chain ankle restraint. Glasco Dep 104:1-10. When
7 Brawley and her mother objected, Glasco explained she had to restrain her because it was
8 "policy." List of Events from Officer B. Glasco at ¶30; Wampold Decl. Exh. 15. At this
9 point, Brawley was under the influence of pain medications and still unable to walk or even
10 move her legs as a result of her epidural and surgery. Brawley Decl. 8:5-8.

11 Officer Glasco's shift ended at 6:00 a.m. on April 16, 2007, and Officer April Diggs
12 took over the hospital watch of Brawley. Officer Glasco's Log Book dated April 16, 2007;
13 Wampold Decl. Exh. 16; *see also* Officer Diggs' Log Book dated April 16, 2007; Wampold
14 Decl. Exh. 18. When Officer Diggs arrived at the hospital, she checked Brawley's metal
15 ankle chain restraint that was attached to her hospital bed. Diggs Dep. 27:1-12; Wampold
16 Decl. Exh. 6 (hereinafter "Diggs Dep."). Brawley had been out of surgery only a few hours
17 when Officer Diggs arrived. Diggs Dep. 28:16-25. Officer Diggs has stated that during her
18 shift, she never felt threatened by Brawley and did not have any concerns that she might try
19 to escape. Diggs Dep. 32:19-21, 33:6-9.

20 Brawley remained in the hospital another three days until April 19, 2007, recovering
21 from her cesarean section and receiving intravenous antibiotics treating her uterine infection.
22 St. Joseph Hospital Medical Records, Care Record Postpartum at p. 91; Wampold Decl. Exh.
23 7. Brawley's baby stayed in the hospital for seven days on intravenous antibiotics to treat his
24 infection. Brawley Dep. 40:10-12. He was in the neonatal intensive care unit for the first
25 day or two, and then remained in Brawley's room with her for the majority of the time.
26 Brawley Decl. 8:12-18. Approximately every four hours, hospital staff took the baby to the

1 NICU to be given antibiotics. Brawley Decl. 8:19.

2 When Brawley went to visit her baby in the neonatal intensive care unit for the first
3 time approximately 24 hours after delivery, Officer Diggs removed her ankle restraint to the
4 bed, and then restrained her ankles together in a wheelchair. Brawley Dep. 37:7-10. Other
5 corrections officers on hospital watch behaved similarly. When Brawley needed to walk
6 around soon after surgery to prevent blood clots, the restraint to the bed was removed and her
7 ankles were shackled together. Brawley Decl. 9:3-8. A nurse told Brawley when she stood
8 up for the first time after surgery that she needed to walk around to prevent blood clots, and
9 had to ask the DOC officer to remove the restraint to the bed to allow Brawley to walk
10 around. Brawley Dep. 36:15-24.

11 On one occasion, Brawley's baby was in her hospital room in his crib, and she heard
12 him make sounds like he was gagging or vomiting. Brawley Decl. 8:21-22. Still chained to
13 her bed and unable to reach her baby, Brawley called repeatedly for help to the officer
14 outside her door and it was several minutes before any medical staff came in to help.
15 Brawley Decl. 8:24-25, 9:1-3. Other than brief periods to use the restroom, and occasional
16 walks, Brawley remained shackled to the bed throughout her stay at the hospital.

17 Brawley has described her experience being shackled during her labor and
18 postpartum recovery as demeaning, humiliating and painful. Brawley Decl. 9-10. She felt as
19 if she was treated as an animal being chained up, rather than a human being giving birth.
20 Brawley Decl. 10:1-3. Brawley also found that being attached with a metal chain to the
21 hospital bed during labor prevented her from moving to alleviate her labor pains. Brawley
22 Decl. 6:20-23. After her son's birth, she felt the shackles interfered with her ability to care
23 for her baby as she could not reach him in his crib without assistance. Brawley Decl. 10:4-7.

24 Brawley was released from WCCW on May 10, 2007. She lives with her son, now
25 almost three-years old, his father, and their daughter born in 2008. Brawley Decl. 1:24-25.

26 The DOC policy in place in April of 2007 stated: "a female offender will not be

1 restrained during labor or delivery of an infant.” Stipulation of Factual Statement, December
2 7, 2009, p. 2 line 6; Wampold Decl. Exh. 19. That prohibition is not limited to women
3 classified as “minimum security,” but is meant to ensure that women at any security level are
4 unrestrained during labor and delivery. Payne acknowledged that the policy existed because
5 the DOC was, in part, concerned about the “safety of the offender.” Payne Dep. 125:2-4.
6 Payne further indicated that if the officers involved in transporting Brawley to the hospital on
7 April 15, 2007 knew she was having contractions three minutes apart and was likely in labor
8 and restrained her anyway, that would have been a violation of WCCW policy. Payne Dep.
9 115:1-17. Payne also conceded that if the information about Brawley’s contractions was not
10 conveyed, “it should have been conveyed,” and if it had been conveyed then Brawley should
11 not have been restrained. Payne Dep. 115:20-25.

12 The American College of Obstetricians and Gynecologists (ACOG), the preeminent
13 national organization of physicians practicing obstetrical care, states: “Physical restraints
14 have interfered with the ability of physicians to safely practice medicine by reducing the
15 ability to assess and evaluate the physical condition of the mother and the fetus, and have
16 similarly made the labor and delivery process more difficult than it needs to be; thus, overall
17 putting the health and lives of the women and unborn children at risk...[t]he practice of
18 shackling an incarcerated woman in labor not only compromises her health care but is
19 demeaning and unnecessary. Most women in correctional facilities are incarcerated for non-
20 violent crimes and are accompanied by guards when they are cared for in medical facilities.
21 Testimonials from incarcerated women who went through labor with shackles confirm the
22 emotional distress and the physical pain caused by restraints. Women describe the inability
23 to move to allay the pains of labor, the bruising caused by chain belts across the abdomen,
24 and the deeply felt loss of dignity.” Letter from Executive Vice President of ACOG, Ralph
25 Hale, M.D., to Malika Saada Saar, Executive Director for The Rebecca Project for Human
26 Rights, dated June 12, 2007, Wampold Decl. Exh. 20. Similarly, the American Public Health

1 Association states that “women must never be shackled during labor and delivery.”

2 AMERICAN PUBLIC HEALTH ASSOCIATION, STANDARDS FOR HEALTH SERVICES IN

3 CORRECTIONAL INSTITUTIONS, 108 (2003), Wampold Decl., Exh. 21

4 Dr. Thomas Easterling, Plaintiff’s expert witness, is a board-certified obstetrician-
5 gynecologist and professor of medicine at the University of Washington with more than 20
6 years of experience. Easterling Decl. 1:23-25, 2:1. It is Dr. Easterling’s professional opinion
7 that the use of restraints on incarcerated pregnant women is medically dangerous. Easterling
8 Decl. 4:14-15. He insists that officers remove restraints for all of his incarcerated pregnant
9 patients, because he believes the presence of restraints is dehumanizing and interferes with
10 the doctor/patient relationship. Easterling Decl. 4:12-14. Before labor, restraining a
11 pregnant woman increases her risk of falling, which can lead to preterm labor and placental
12 abruption. Easterling Decl. 5:1-4. Dr. Easterling also notes that restraining a woman during
13 labor puts her at risk for venocaval occlusion, hypotension and fetal compromise, and does
14 not allow her to be moved quickly if there is an emergency. Easterling Decl. 4:16-20.
15 Restraints restrict a woman’s movement, impairing a woman’s ability to cope with labor
16 pains. Easterling Decl. 6:4-5. It is also necessary for a woman to walk soon after giving
17 birth in order to prevent deep vein thrombosis (blood clots) or pulmonary embolism (a blood
18 clot in the main artery of the lung), as well as hasten normal bowel function and to be able to
19 care for her perineum. Easterling Decl. 4:21-25.

20 **III. ARGUMENT**

21 DOC officers shackled Casandra Brawley, an incarcerated pregnant woman,
22 throughout her labor, up until the moment she delivered her baby via an emergency cesarian
23 section, and immediately postpartum. Officer Brydee Glasco restrained Ms. Brawley with
24 deliberate indifference to the medical risks posed by restraints in these circumstances, and to
25 the unnecessary and severe pain they caused, violating Ms. Brawley’s Eighth Amendment
26 right to be free of cruel and unusual punishment. Applying restraints to Ms. Brawley during

1 labor and immediately postpartum similarly violated her right to be free of cruel punishment
2 pursuant to the Washington State Constitution, Article I, Section 14.

3 Because the parties dispute no genuine issue of material fact, Ms. Brawley seeks
4 partial summary judgment on her claims against Officer Brydee Glasco and on her claim for
5 declaratory relief under the state constitution. FED. R. CIV. P. 56; *see Zweig v. Hearst Corp.*,
6 521 F.2d 1129, 1135-36 (9th Cir. 1975). The amount of Ms. Brawley's damages, and her
7 claims for damages against the other defendants, should be reserved for resolution at trial.

8
9 **A. Shackling Ms. Brawley during labor and immediately postpartum violated her
Eighth Amendment right to be free of cruel and unusual punishment.**

10 The Eighth Amendment to the Constitution "embodies 'broad and idealistic concepts
11 of dignity, civilized standards, humanity, and decency...'" *Estelle v. Gamble*, 429 U.S. 97,
12 102 (1976), (quoting *Jackson v. Bishop*, 404 F.2d 572, 579 (CA 1968)). Its meaning is not
13 fixed, but develops in light of "evolving standards of decency that mark the progress of a
14 maturing society." *Estelle* at 102 (quoting *Trop v. Dulles*, 356 U.S. 86, 100 (1958)). The
15 inhumane and unnecessary practice of shackling laboring women stands in direct
16 contravention of the Eighth Amendment's command.

17 The two federal courts that have addressed this question agreed. *Nelson v. Corr.*
18 *Med. Serv.*, 533 F.3d 958 (8th Cir. 2008), *rev'd en banc*, 583 F.3d 522 (8th Cir. 2009)
19 (holding corrections officer not entitled to summary judgment on qualified immunity because
20 shackling a pregnant woman in labor violated clearly established constitutional right);
21 *Women Prisoners of the D.C. Dep't of Corr. v. District of Columbia*, 877 F. Supp. 634, 668
22 (D.D.C. 1994) (*Women Prisoners I*) (finding practice of shackling women in labor and
23 immediately postpartum was cruel and unusual punishment); *Women Prisoners of the D.C.*
24 *Dep't of Corr. v. District of Columbia*, 899 F. Supp. 659, 678 (D.D.C. 1995) (*Women*
25 *Prisoners II*) (entering an order prohibiting the use of restraints on incarcerated women in
26 labor, delivery, or immediately postpartum, and limiting the use of restraints on women in

1 the third trimester of pregnancy), *vacated in part by Women Prisoners of the D.C. Dep't of*
2 *Corr. v. District of Columbia*, 93 F.3d 910, 918 (D.C. Cir. 1997) (noting that defendant
3 corrections officials did not appeal the district court's decision and order restricting the use of
4 restraints on pregnant women). While not binding on this Court, these decisions provide
5 analytical guidance and are indicative of a prevailing understanding that shackling pregnant
6 women does not comport with contemporary standards of decency.

7
8 **1. The Eighth Amendment's proscription of cruel and unusual punishment**
9 **extends to inhumane conditions of confinement, including interference with**
10 **serious medical needs.**

11 The United States Constitution forbids the infliction of cruel and unusual punishment.
12 U.S. CONST. amend. VIII. ("Excessive bail shall not be required, nor excessive fines
13 imposed, nor cruel and unusual punishments inflicted.") This prohibition applies to the states
14 through the Fourteenth Amendment. *Wilson v. Seiter*, 501 U.S. 294, 296-297 (1991). The
15 Amendment's purpose is to protect incarcerated people from acts which amount to torture, or
16 defy commonly understood standards of decency. *See, e.g., Trop v. Dulles*, 356 U.S. 86, 100
17 (1958). Its overarching goal is to ensure that when human beings are incarcerated, for
18 whatever reason, they are accorded basic human dignity. *Hope v. Pelzer*, 536 U.S. 730, 737
19 (2002) (the principle underlying the Eighth Amendment is "nothing less than the dignity of
20 man.") (citing *Trop* at 100.) Thus, the amendment forbids not only excessive punishments,
21 but similarly condemns inhumane conditions of confinement. *Farmer v. Brennan*, 511 U.S.
22 825, 832 (1994) (citing *Helling v. McKinney*, 509 U.S. 25, 31 (1993)). Corrections officials
23 violate the Amendment's precepts when they impose conditions of confinement that deprive
24 incarcerated people of essentials such as food, clothing, shelter, medical care, and protection
25 from violence. *Farmer* at 832-833 (citing *Hudson v. Palmer*, 468 U.S. 517, 526-527(1984)).

26
27 **2. Prison officials violate the Eighth Amendment when they are deliberately**
28 **indifferent to unnecessary pain and suffering or serious medical needs.**

In interpreting the Eighth Amendment's mandate, courts show deference to

1 corrections officials in their admittedly challenging and important role as guardians of both
2 the security of incarcerated people and public safety. *See, e.g., Whitley v. Albers*, 475 U.S.
3 312, 321 (1986) (in the face of prison unrest, prison officials’ decisions should be accorded
4 deference because such decisions are necessarily made “in haste, under pressure, and
5 frequently without the luxury of a second chance.”) Further, actions that create momentary
6 discomfort do not violate the Eighth Amendment. *Farmer* at 832 (citing *Rhodes v.*
7 *Chapman*, 452 U.S. 337, 349 (1981)). Accordingly, the Amendment is only violated when 1)
8 an incarcerated person alleges a deprivation that is sufficiently serious, and 2) when
9 corrections officials have created that deprivation wantonly. *Wilson*, 501 U.S. at 302.

10 The objective part of the test – the seriousness of the conduct alleged – requires an
11 inquiry into the level of risk to which the incarcerated person was subjected, and an
12 assessment of whether exposing any person to that risk violates contemporary standards of
13 decency. *Helling*, 509 U.S. at 36 (1993). Courts also frequently consider, in evaluating
14 whether a risk is “objectively serious,” whether there is any legitimate penological
15 justification for the acts that exposed the incarcerated person to risk. *See, e.g., Hope*, 536
16 U.S. at 737 (2002) (citing *Rhodes*, 452 U.S. at 346); *see also Farmer*, 511 U.S. at 833;
17 *Jordan v. Gardner*, 986 F.2d 1521, 1526-27 (9th Cir. 1993) (finding corrections officials
18 presented no security justification for cross-gender clothed body search policy at the
19 WCCW); *Nelson v. Corr. Med. Serv.*, 583 F.3d at 530-531 (Arkansas corrections officer
20 shackled Shawanna Nelson during labor with no legitimate security purpose).

21 The second part of the test – measuring the subjective intent of the actor – turns on
22 the type of violation alleged. *Wilson*, 501 U.S. at 302. For example, when force is used to
23 maintain order in response to an emergency, or when corrections officials act under similar
24 constraints, an incarcerated person challenging those actions must show that the officials
25 acted “maliciously.” *Id.* (citing *Whitley*, 475 U.S. at 320); *see also Farmer*, 511 U.S. at 835-
26 836 (citing *Hudson v. Palmer*, 503 U.S. at 6). However, when corrections officials subject

1 an incarcerated person to inhumane conditions of confinement, including denial of or
2 interference with medical care, a showing of malicious intent is not required. *Farmer* at
3 835-836. Because prison officials have a unique responsibility for incarcerated people, who
4 are entirely dependent upon corrections officials for their basic needs, an incarcerated person
5 may establish an Eighth Amendment violation by showing that a corrections official acted
6 with deliberate indifference to a serious medical need or inhumane condition of confinement.
7 *Wilson* at 303 (citing *LaFaut v. Smith*, 834 F.2d 389, 391-92 (4th Cir. 1987) (“[A]s retired
8 Justice Powell has concluded: ‘Whether one characterizes the treatment received by [the
9 prisoner] as inhumane conditions of confinement, failure to attend to his medical needs, or a
10 combination of both, it is appropriate to apply the ‘deliberate indifference’ standard”).

11 A prison official is “deliberately indifferent” when she knows of and disregards the
12 incarcerated person’s serious medical need or risk to health and safety, or inflicts
13 unnecessary suffering. *Estelle v. Gamble*, 429 U.S. at 103; *Farmer* at 837; *see also Jordan*,
14 986 F.2d at 1528 (prison officials acted with deliberate indifference in violation of the Eighth
15 Amendment when, despite awareness of the risk posed to incarcerated women, they imposed
16 cross-gender searches of women inmates). The prison “official must both be aware of facts
17 from which the inference could be drawn that a substantial risk of serious harm exists, and
18 [s]he must also draw the inference.” *Farmer* at 837. If the official should have been aware
19 of the risk, but was not, then the person has not violated the Eighth Amendment, no matter
20 how severe the risk. *Gibson v. County of Washoe*, 390 F.3d 1175, 1187-1188 (9th Cir. 2002)
21 (citing *Jeffers v. Gomez*, 267 F.3d 895, 914 (9th Cir. 2001)).

22 While *Gibson* seems to instruct that a showing of ignorance on the part of a
23 corrections official ends the inquiry, the United States Supreme Court subsequently reiterated
24 that a prison official may be found deliberately indifferent if the risk posed by the challenged
25 conduct was obvious. *Hope v. Pelzer*, 536 U.S. at 737-738 (prison officials who restrained
26 prisoner to a hitching post as punishment may be found deliberately indifferent because risks

1 to the prisoner were obvious). Deliberate indifference cannot be proved by a showing of
2 mere negligence, but the requisite culpable state of mind may nonetheless be established
3 when there is sufficient evidence from the surrounding circumstances that a corrections
4 official must have been aware of the risk, but acted or failed to act despite that risk. *Id.*; see
5 *Farmer* at 842 (a corrections official's knowledge of risk may be inferred from
6 circumstantial evidence).

7 **3. Shackling Ms. Brawley during her labor and post-delivery recovery was**
8 **cruel and unusual punishment.**

9 Whether an alleged deprivation is cast as a serious medical need, exposure to a
10 condition of confinement that poses a substantial risk to an inmate's health or safety, or the
11 infliction of unnecessary pain, the test is the same: whether that deprivation is sufficiently
12 serious, and whether corrections officials were deliberately indifferent to that need. *Wilson v.*
13 *Seiter*, 501 U.S. at 303. Ms. Brawley's claim is essentially a hybrid. One aspect of her
14 serious medical need – to deliver her baby – was met by prison officials, who took her to the
15 hospital (eventually) for assistance with childbirth. Yet, in shackling Ms. Brawley
16 throughout labor, corrections officers interfered with her serious medical needs by putting
17 her health and her pregnancy at risk. The presence of the shackles also inflicted both
18 physical and psychological pain. While either serves as an independent basis for finding a
19 sufficiently serious deprivation, their coexistence is significant because that is precisely what
20 renders the shackling of laboring women so obviously inhumane.

21 **a. The deprivation alleged is serious.**

22 The first inquiry, then, in Ms. Brawley's claim is whether corrections officials'
23 actions in shackling her during labor and immediately after a c-section exposed her to a
24 serious risk of harm or unnecessary pain. See, e.g., *Wilson*, 501 U.S. at 298; *Johnson v.*
25 *Lewis*, 217 F.3d 726, 731 (9th Cir. 2000); *Nelson*, 583 F.3d at 529. The seriousness of that
26 exposure is also evaluated by reference to evolving standards of decency, and any legitimate

1 countervailing correctional purpose that may have been served by shackling Ms. Brawley
2 under these circumstances. *See, e.g., Farmer*, 511 U.S. at 833 (“[A]llowing the beating or
3 rape of one prisoner by another serves no ‘legitimate penological objective’ . . . any more
4 than it squares with ‘evolving standards of decency.’”) As the undisputed facts demonstrate,
5 shackling Ms. Brawley while she labored and immediately after recovery was dangerous,
6 inhumane, unnecessary, and disregards contemporary understandings of human decency.

7 **i. Restraining pregnant women during labor is inherently dangerous.**

8 Medical opinion is unequivocal: women in labor should not be restrained. In
9 *Nelson*, Dr. Cynthia Frazier, the plaintiff’s expert witness, testified that shackling is
10 “inherently dangerous to both the mother and the unborn fetus.” *Nelson*, 583 F.3d at 529.
11 *See also Women Prisoners I*, 877 F. Supp. at 668 (using full restraints in the third trimester
12 creates an unacceptable risk of injury to a woman and her baby, and shackling during labor
13 and shortly thereafter is inhumane). The American Public Health Association has declared
14 that “women must never be shackled in labor and delivery.” AMERICAN PUBLIC HEALTH
15 ASSOCIATION, STANDARDS FOR HEALTH SERVICES IN CORRECTIONAL INSTITUTIONS, 108
16 (2003), Wampold Decl., Exhibit 21. The American College of Obstetricians &
17 Gynecologists states that women should never be shackled during labor, delivery, or
18 postpartum. ACOG Today, 13 (November/December 2008), Wampold Decl., Exh. 22.
19 Other medical professionals agree. *See, e.g., Barbara A. Hotelling, Perinatal Needs of*
20 *Pregnant Incarcerated Women*, Journal of Perinatal Education, Vol. 17, No. 2, 37-44 (Spring
21 2008) (reports of shackling of incarcerated laboring women “highlight[] . . . the special
22 needs of incarcerated women and the consequences to society of not meeting their unique
23 needs.”), Wampold Decl., Exh. 23; Ginette Gosselin Ferszt, *Viewpoint: Giving Birth in*
24 *Shackles*, American Journal of Nursing, Vol. 110, No. 2, 11 (February 2010) (urging fellow
25 nurses to speak out against the shackling of pregnant women), Wampold Decl., Exh. 24.

26 The reasons for this opposition are elucidated by Plaintiff’s expert witness, Dr.

1 Thomas Easterling. When a woman is in labor, she must be able to reposition herself to cope
2 with the severe pain of labor, and to avoid risks to her health including hypotension and
3 venocaval occlusion. Easterling Decl. 4:17-21. Shackles also interfere with the ability to
4 respond quickly to medical emergencies. Easterling Decl. 4:20-21; *Nelson* at 529. After
5 childbirth, shackles interfere with a woman's ability to walk to ensure proper healing.
6 Easterling Decl. 4:21-26. Restraints also harm the relationship of trust necessary for
7 appropriate patient care. Easterling Decl. 6:3-7. Shawanna Nelson, the plaintiff in the
8 *Nelson* case, exemplifies some of these risks. According to her medical experts, shackling
9 her to her hospital bed by both ankles as she labored caused permanent injuries that will
10 affect her ability to walk and to have children in the future. *Nelson* at 526.

11 Defendants have not provided any evidence contradicting Dr. Easterling or the
12 medical community. Indeed, the DOC's own policy prohibiting the use of restraints during
13 labor and delivery indicates its understanding that restraining women during labor is unsafe.
14 Stipulation of Factual Statement, Dec. 7, 2009, p. 2, line 6, Wampold Decl. Exh. 19. DOC
15 representative Alice Payne conceded that the policy was created, in part, because of a
16 concern for the safety of pregnant incarcerated women. Payne Dep. 125:3-4.

17 In this case, shackling Brawley increased her risk of medical harm. Like other
18 laboring women, Brawley faced the normal risks inherent in the birthing process. As Dr.
19 Easterling explains, and as the *Nelson* court heeded, shackling laboring women is medically
20 dangerous. But Ms. Brawley's labor was complicated by a medical condition that, in and of
21 itself, placed her and her son at heightened risk. Her membranes had ruptured prematurely,
22 resulting in the loss of amniotic fluid over the course of several days, leading to an attendant
23 infection. St. Joseph Hospital Medical Records, Operative Report, Wampold Decl. Exh.7.
24 She needed an emergency c-section, to preserve both her son's health and her own. Brawley
25 Decl. 7:20. Restraining her to the bed in these circumstances increased the risk that medical
26 personnel could not respond to an emergency in time to help her and her baby. Easterling

1 Decl. 4:19-20. The fact that this did not happen – a fact for which all parties to this litigation
2 are surely grateful – is not dispositive. As the United States Supreme Court stated in *Helling*
3 *v. McKinney*, 509 U.S. 25, 33 (1993), where an incarcerated man alleged that he was
4 constantly exposed to dangerous levels of environmental tobacco smoke in prison, “a remedy
5 for unsafe conditions need not await a tragic event.” It is enough that Ms. Brawley could
6 have suffered serious injury. *Id.* That risk is not merely speculative – it is a risk that has
7 moved leading medical organizations to oppose the practice of shackling laboring
8 incarcerated women. This exposure to medical risk is “sufficiently serious” to establish the
9 objective element of Ms. Brawley’s Eighth Amendment claim.

10 **ii. Shackling Ms. Brawley inflicted pain.**

11 An independent basis for finding an Eighth Amendment violation here is that
12 shackling pregnant women in labor inflicts pain. *See, e.g., Hope*, 536 U.S. at 737
13 (handcuffing man to hitching post caused “unnecessary pain”). Women in labor intuitively
14 change positions to help alleviate the extreme pains of labor and childbirth. *Easterling Dep.*,
15 32:8-10, *Wampold Decl. Exh. 12*, (“The ability to move and change positions is integral to a
16 woman trying to cope with pain...”) Restraining a person in labor subjects her to physical
17 pain, above and beyond that which she must go through to bring her baby into the world.
18 Brawley described the pain of laboring with her ankle chained to her bed, and the difficulty
19 in turning in the bed or moving to alleviate the pain of her contractions. *Brawley Decl.* 6:19-
20 23; 7:5-8. While an epidural she received more than five hours after arriving at the hospital
21 helped relieve labor pains, it also precipitated the ill feelings of fever and nausea that Ms.
22 Brawley suffered while continuing to be restrained by a leg iron. *Brawley Decl.* 7:12-16.

23 Shackling in these circumstances also inflicts psychological pain. Brawley described
24 the humiliation and degradation of coming into the hospital and laboring while in shackles,
25 rendering an experience which, for her, was already fraught with physical pain, fear, worry,
26 and deep concern, unbearably worse. *Brawley Decl.* 6:26; 10:1-9. And as Brawley noted,

1 she could not have and would not have tried to hurt anyone or tried to leave the hospital.
2 Brawley Decl. 10:1-3. The physical and psychological pain Brawley suffered from being
3 restrained is sufficient to establish an objectively serious deprivation. Worse, Brawley was
4 exposed to pain and risk of medical harm for no legitimate reason.

5 **iii. Shackling Ms. Brawley was not justified by any legitimate penological**
6 **concern.**

7 After concluding that shackling pregnant women in labor and immediately
8 postpartum is inhumane in *Women Prisoners I*, 877 F. Supp. at 668, the D.C. District Court
9 ordered the District of Columbia corrections department to abolish the shackling of women
10 during labor, delivery and in postpartum recovery, and restricted the use of restraints during
11 the third trimester to cases where “the woman has a demonstrated history of assaultive
12 behavior or has escaped.” *Women Prisoners II*, 899 F.Supp. 659, 678 (1995) *vacated on*
13 *other grounds in Women Prisoners III*, 93 F.3d 910, 918 (D.C. Cir. 1997). It did so without
14 reference to whether there is any legitimate correctional reason to shackle laboring women.
15 This inquiry was not necessary, because, as the Supreme Court has explained, cases
16 involving deliberate indifference to a prisoner’s health or safety or serious medical need do
17 not typically involve a need to weigh inmate safety against competing concerns. *Whitley v.*
18 *Albers*, 475 U.S. at 320. However, the *Nelson* court considered the issue because it helps
19 elucidate the question of whether the pain suffered by an aggrieved prisoner was unnecessary
20 and wanton. *Nelson* at 530-531, *citing Hope*, 536 U.S. at 738.

21 Human experience and common sense teach that laboring women are likely to be
22 physically unable to flee because of the pain of labor and the involvement of a woman’s
23 entire body and mind in the process of childbirth. *Nelson* at 530. They are unlikely to pose a
24 security risk for the exact same reasons. Dr. Easterling has many years of experience treating
25 incarcerated pregnant women. Easterling Decl. 4:8. He insists that corrections officers
26 remove restraints, and has never felt threatened by an incarcerated laboring woman.

1 Easterling Decl. at 5:12-23. One can infer that the DOC feels similarly, as its policy in place
2 at the time of these events prohibited restraining incarcerated women in labor and delivery.

3 Although this is not that case, it would violate the Eighth Amendment to restrain a
4 laboring woman who had been violent or previously attempted escape, given the risks and
5 the common sense understanding that being in labor objectively diminishes a woman's
6 capacity to do anything at that moment but have a baby. *See, e.g., Women Prisoners II* at
7 678 (ordering the District of Columbia prisons to stop shackling *any* woman during labor and
8 in recovery). That reasoning holds true post-delivery, as well. In this case, Brawley could
9 not have fled in the hours after her c-section because she could not yet walk – indeed, she
10 could not feel her legs when Officer Glasco shackled her to the bed post-surgery. Brawley
11 Decl. at 8:5-8. Officer Glasco admitted in her written statement that the only reason she
12 restrained Brawley at that point, over her and her mother's objection, was her understanding
13 that policy required it. List of Events from Officer B. Glasco; Wampold Decl. Exh. 15.

14 Here, all the corrections officers involved in restraining Brawley testified that they
15 had no basis to believe that she needed to be restrained, other than her security designation.
16 Glasco Dep. 103:21-22; Diggs Dep. 19:15-17; Joy Dep. 5:15-18. Officer Herbert Joy
17 testified that he does not remember her. Joy Dep. 17:8-9. Officer Brydee Glasco testified
18 that she never felt threatened or believed Brawley was a flight risk at any point during her
19 transport or hospital watch. Glasco Dep. 61:18-19. Officer April Diggs, who relieved
20 Officer Glasco of her hospital watch over Brawley at 6:00 a.m. on April 16, 2007, testified
21 that she never felt threatened or believed Brawley was a flight risk at any point during her
22 hospital watch. Diggs Dep. 31:19-21, 33:6-9.

23 Brawley's security designation was not based on any individualized assessment of her
24 threat to herself, others, or risk of escape. She was classified as "medium security" only
25 because the 15 points added to her classification score because of her two non-violent
26 outstanding warrants put her 2 points over the level at which an inmate is classified as

1 “minimum security.” DOC Custody Review, Wampold Decl., Exh. 3.⁶ Brawley, a non-
 2 violent woman sick and in labor posed no threat of any kind, let alone a threat so serious that
 3 she should be shackled as she labored and recovered from a c-section. There was no
 4 legitimate penological justification for shackling Brawley.

5 **iv. Shackling a pregnant woman in Ms. Brawley’s circumstances defies**
 6 **prevailing standards of decency.**

7 One hundred years ago, the United States Supreme Court held that the cruel and
 8 unusual punishments clause “is not fastened to the obsolete but may acquire meaning as
 9 public opinion becomes enlightened by humane justice.” *Weems v. United States*, 217 U.S.
 10 349, 373 (1910). The Amendment is not static, but is interpreted in light of “evolving
 11 standards of decency that mark the progress of a maturing society.” *Gregg v. Georgia*, 428
 12 U.S. 153, 173 (1976) (citing *Trop v. Dulles*, 356 U.S. at 100). As the Supreme Court
 13 explained in *Gregg*, courts assess evolving standards by considering public opinion made
 14 plain through legislative enactments, expert opinion, and other indicators. *Id.* This is not to
 15 say that courts defer entirely to public opinion – the challenged action must also be evaluated
 16 to determine whether it comports with basic human dignity, the core meaning of the Eighth
 17 Amendment. *Id.* at 174, note 19; *see also Roper v. Simmons*, 543 U.S. 551, 563 (2005)
 18 (relevant to whether juvenile death penalty violates Eighth Amendment is consideration of
 19 whether evolving standards of decency indicated growing consensus against it.)

20 In 2006, Amnesty International released a report finding that prisons throughout the
 21 United States shackled pregnant women during labor, childbirth, and postpartum. *See*
 22 Gosselin Ferszt article, Wampold Decl., Exh. 24. At the time, only three states had laws

23 _____
 24 ⁶ In their Answers to Plaintiff’s Interrogatories, Defendants claimed for the first time that Ms.
 25 Brawley’s custody level was based on having fallen out of compliance with probation requirements in
 26 2003. It’s hard to know where to begin in listing all that is wrong with this claim. Suffice it to say
 that 1) DOC’s own contemporaneous documents and their 30(b)6 deponent indicated that they
 considered nothing of the sort and 2) if custody level determinations were based on missing
 appointments with a probation officers and failing to show up for drug tests, most of the women
 incarcerated at WCCW would be classified as “medium” security or higher.

1 restricting the use of restraints on incarcerated pregnant women. CAL. PENAL CODE § 3423
2 (West 2006); 55 ILL. COMP. STAT. 52-15003.6 (2000); VT. STAT. ANN. tit. 28, § 801a (2005).
3 Since that report was issued, legislatures in Texas, New Mexico, New York, and now West
4 Virginia and Washington State, have passed laws restricting the use of restraints on laboring
5 women. TEX. GOV'T CODE § 501.066 (Vernon 2009); N.M. STAT. ANN. § 33-1-
6 4.2 (LexisNexis 2009); N.Y. CORRECT. LAW § 611 (Consol. 2010); H.B. 4531, 71st Leg., 2nd
7 Sess. (W.V. 2010) (enacted 2010); E.S.H.B. 2747, 61st Leg., 2010 Reg. Sess. (Wa. 2010)
8 (enacted 2010).⁷ The federal government has also recently limited the use of restraints on
9 pregnant women in federal prisons. Fed. Bureau of Prisons, Program Statement: Escorted
10 Trips, No.5538.05 at § 570.45 (Oct. 6, 2008); U.S. Marshals Serv., Policy 9.1 (Restraining
11 Devices) §§ (D)(3)(e), (h) (as amended in 2008). While the reach of these laws vary by
12 jurisdiction, they generally restrict the use of restraints on pregnant women in labor, delivery,
13 and recovery altogether, or limit their use to extraordinary circumstances in which a
14 pregnant woman poses an actual risk of violence or flight.

15 Although the number of states that expressly restrict the practice is still small, the
16 passage of laws in five states in the last two years demonstrates a trend in public opinion
17 against the practice. *See, e.g., Roper* at 565 (the number of states rejecting the juvenile death
18 penalty was small but the consistency of direction was evidence of a shift in public opinion.)
19 Similarly, as noted above, there are a growing number of medical associations that publicly
20 advocate a ban on shackling pregnant women in labor. These laws, and the responses of the
21 medical community and the DOC, are indicative of a societal consensus that pregnant women
22 in labor should not be shackled.

23 Given the evidence that restraining pregnant incarcerated women violates evolving
24

25 ⁷ Legislatures in other states have or are still considering similar legislation this session. S.B. 1074,
26 Sess. of 2009 (Pa. 2010); H.B. 635, 60th Leg., 2nd Reg. Sess. (Id. 2010). California legislators
introduced a bill that would amend existing law and impose heightened restrictions on the use of
restraints on incarcerated women throughout pregnancy. Assem. B. No. 1900, 2009 Leg., 10 Reg.
Sess. (CA 2010).

1 standards of decency, the lack of a legitimate penological justification for shackling Ms.
2 Brawley, and the seriousness of the risk of medical harm and pain imposed by the use of
3 restraints during labor, Brawley's claim is "objectively serious" within the meaning of the
4 Eighth Amendment.

5 **b. Officer Glasco recognized Ms. Brawley's serious medical need and the risks**
6 **shackling posed to her health and safety, but disregarded those risks.**

7 In an Eighth Amendment case alleging unconstitutional conditions of confinement, a
8 plaintiff does not have to prove that she suffered serious injury, *Hudson v. McMillian*, 503
9 U.S. 1, 9 (1992), or that a corrections official's behavior was egregious. *Farmer v. Brennan*,
10 511 U.S. at 835 (deliberate indifference is "satisfied by something less than acts or omissions
11 for the very purpose of causing harm or with knowledge that harm will result."). In *Nelson*,
12 the court found that a reasonable factfinder could determine that Officer Turensky was aware
13 of the dangers of restraining Ms. Nelson throughout her labor until shortly before her baby
14 was born. *Nelson* at 530. The court noted that a reasonable factfinder could also determine
15 that these risks were obvious. *Id.*, note 5 (citing *Farmer* at 842); *see also Hope v. Pelzer*, 536
16 U.S. at 737 (handcuffing prisoner to a hitching post for several hours in the hot sun, without
17 water, was an "obvious" Eighth Amendment violation); *Byrd v. Maricopa County Sheriff's*
18 *Dep't*, 565 F.3d 1205, 1216 (9th Cir. 2009) (absent evidence of punitive purpose, intent may
19 be inferred if the condition imposed is unrelated to a legitimate goal.)

20 In her deposition, Officer Glasco denied knowing that Ms. Brawley was experiencing
21 contractions, or that she was in labor even after she was given an epidural to alleviate labor
22 pains. Glasco Dep. 69:2-6, 93:1-15, 95:16-21. However, Officer Glasco admitted in her
23 deposition that if Ms. Brawley was in "active" labor, it would have been a violation of DOC
24 policy to restrain her. Glasco Dep. 95: 22-25. The DOC 30(b)(6) deponent also admitted
25 that Brawley should not have been shackled because medical records indicate she was having
26 contractions three minutes apart. Payne Dep. 115:1-25.

1 Officer Glasco claims that she did not know Brawley was in labor to show that she
2 did not act with deliberate indifference to Brawley's serious medical need. However, all the
3 evidence in this case indicates that the risks to Brawley were obvious, and Officer Glasco had
4 enough information to know that restraining Brawley put her at risk. Officer Glasco's
5 express knowledge that Brawley was technically in labor is not necessary to determine that
6 she acted with deliberate indifference to Brawley's serious medical need.

7 Even if Officer Glasco did not know that Brawley was in labor (a claim that strains
8 credulity, but, in a summary judgment motion, must be construed in her favor),⁸ there is no
9 dispute that she did know that Brawley was in the throes of a serious medical condition. The
10 undisputed facts show that Officer Glasco knew the following: Brawley, visibly in the
11 advanced stages of pregnancy, was sent to the hospital; Brawley, obviously nine months
12 pregnant, did not look well and was in pain. Glasco Dep. 73:8-14. Officer Glasco also
13 observed Ms. Brawley vigorously object to being sent back to the prison. Brawley Decl.
14 6:24-25, 7:1-2. She accompanied her to a birthing room, and personally removed her
15 restraints as Ms. Brawley was given an epidural for labor pains. Glasco Dep. 83:12-15.
16 Officer Glasco was present, and, as she indicated is standard procedure, was visually
17 observing Brawley at all times as she developed a fever that sent hospital staff into a flurry of
18 observable activity, packing Brawley with towels and fanning her. *Id.* at 93:5-20, 94:4-14.
19 Because she was present in the room at all times, it can be inferred from the circumstances
20 that Officer Glasco understood that Brawley's baby's heartbeat was dangerously elevated,
21 and that she observed the fact that Brawley was administered oxygen. All of these facts were
22 indisputably known or were obvious to Officer Glasco, whether or not she ever understood
23 Brawley to be technically in labor.

24
25 ⁸ While a summary judgment motion is not the venue for resolving credibility issues, it is apparent
26 from Ms. Brawley's medical records, the transport "incident report," the statements made to Officer
Joy by the nurse at St. Joseph Hospital objecting to his presence in a room where a woman was "in
labor", and from Ms. Brawley's own testimony, that anyone accompanying her so closely would
surely have understood that Ms. Brawley was "in labor."

1 Officer Glasco also knew that she was not supposed to shackle laboring women.
2 Glasco Dep. 50:7-16. Furthermore, Officer Glasco, like Officer Turensky in the *Nelson* case,
3 was asked by medical personnel at various times to remove the shackles, and was never
4 instructed by medical personnel to put them back on. Brawley Decl. 7:24-25. Nonetheless,
5 at each juncture – even when Ms. Brawley could not feel her legs or walk – Officer Glasco
6 reattached the leg iron. Glasco Dep. 104:1-10; Brawley Decl. 8:7-8.

7 There is no evidence that Officer Glasco, unlike the guards who handcuffed Mr. Hope
8 to the hitching post, *Hope v. Pelzer*, 536 U.S. at 737-738, set out to injure or torment
9 Brawley. But as *Farmer v. Brennan* instructs, it is not necessary to establish that Officer
10 Glasco intended to harm Brawley, or even that harm ultimately resulted. *Farmer*, 511 U.S. at
11 835. What cannot be disputed is that Officer Glasco knew that she should not restrain
12 laboring women; that Brawley was a pregnant woman experiencing a serious medical
13 condition that the restraints could obviously have significantly worsened; that Brawley was
14 in pain; that Brawley posed no danger to Officer Glasco, herself, or the general public, and
15 was obviously in no position to flee even if she had ever exhibited behavior indicating a
16 propensity for escape. Viewed in the light most favorable to Officer Glasco, her actions
17 amounted to deliberate indifference in violation of the Eighth Amendment.

18 **B. Shackling Ms. Brawley during labor and immediately postpartum violated her**
19 **right to be free of cruel punishment under the Washington State Constitution.**

20 Casandra Brawley also seeks a declaratory judgment that the DOC violated the
21 Washington State Constitution’s prohibition of cruel punishment when its corrections
22 officers shackled her during her labor. Even though Brawley is no longer incarcerated at
23 WCCW or pregnant, and is thus unlikely to face this situation again, this Court may issue a
24 declaratory judgment because the issue is of continuing and substantial public interest. *See,*
25 *e.g., Sorenson v. Bellingham*, 80 Wn.2d 547, 558 (1972) (exception to the general rule
26 against ruling on seemingly moot claims applies when a matter is of “continuing and

1 substantial public interest.”) (citing *State ex rel. Yakima Amusement Co. v. Yakima County*,
2 192 Wash. 179 (1937)). An issue of “continuing and substantial” public interest exists when
3 1) the issue is of a more public than private nature, 2) a resolution of the issue would provide
4 future guidance for public officers and 3) the issue is likely to recur. *Sorenson* at 558.
5 Courts may also consider whether the parties are genuinely adverse, and the quality of the
6 advocacy on the issues. *In re Marriage of Horner*, 151 Wn.2d 884, 891-892 (2004) (citing
7 *Westerman v. Cary*, 125 Wn.2d 277, 286-287 (1994)).

8 Brawley’s claim for declaratory relief meets this test. The issue, while arising from
9 Brawley’s personal experience, is of such public concern that Washington State lawmakers
10 responded with legislation. *See* E.S.H.B. 2747. A declaratory judgment here would notify
11 DOC that shackling pregnant women in this manner violates the Washington Constitution,
12 resulting in a higher likelihood that DOC would change its practices in the future. The issue
13 is likely to recur, as a pregnant incarcerated woman facing childbirth at the DOC is unlikely
14 to be able to get appropriate relief prior to birth. Indeed, “[p]regnancy provides a classic
15 justification for a conclusion of nonmootness.” *See Roe v. Wade*, 410 U.S. 113, 125 (1973)
16 (holding that Jane Roe’s case challenging Texas criminal abortion statute was not moot even
17 though she was no longer pregnant by the time of the lower court’s first hearing).

18 Like the federal Constitution, the Washington State Constitution expressly prohibits
19 cruel punishment. WASH. CONST. art. I, § 14. There are few reported decisions addressing
20 Washington’s punishments clause, and the vast majority of those cases involve claims of
21 disproportionate sentencing. *See, e.g., State v. Fain*, 94 Wn.2d 387, 392 (1980) (holding that
22 the state constitution’s clause is more protective of individual rights than its federal
23 counterpart); *see also Brown v. Vail*, 623 F. Supp. 2d 1241, 1246 (D. Wash. 2009) (*Pullman*
24 abstention appropriate where state Constitution is more protective than the federal).

25 In conditions of confinement cases, cruel punishment exists when an incarcerated
26 person is deprived of human dignity by “conditions so base, inhumane, and barbaric as to

1 offend the dignity of any human being.” *Woods v. Burton*, 8 Wash. App. 13, 16-17 (1972),
2 *rev. denied*, 81 Wn.2d 1010 (1973). As the state Constitution’s mandate is even more
3 proscriptive, Brawley is entitled to a declaratory judgment if she establishes her claim under
4 the Eighth Amendment. Likewise, she is entitled to declaratory relief if she proves that she
5 was shackled during labor – as she indisputably was – and that the shackling was violative of
6 the state constitution because it was inhumane, base, and offensive to human dignity.

7 Brawley was transported to the hospital in shackles as she suffered painful
8 contractions. She was then shackled to her hospital bed throughout her labor. After she gave
9 birth by c-section – even though she could not feel her legs, let alone walk – corrections
10 officers kept her shackled to her hospital bed. With no justification, and despite DOC policy
11 against it, Brawley was shackled, causing her to suffer pain, humiliation, and medical risk.
12 Evolving standards of decency do not abide this “base, barbaric, and inhumane” treatment.
13 Accordingly, Ms. Brawley seeks a declaratory judgment that the Washington State
14 Department of Corrections violated her right to be free of cruel punishment.

15 **IV. CONCLUSION**

16 This case is about vindicating a basic level of decency we owe one another as human
17 beings. The Eighth Amendment and its Washington counterpart ensure no less than the
18 “dignity of man.” *Trop v. Dulles*, 356 U.S. 86, 100 (1958). Casandra Brawley’s rights to
19 human dignity assured by those provisions were violated when corrections officials kept her
20 in restraints as she labored and immediately after she gave birth. Ms. Brawley respectfully
21 asks this Court to grant partial summary judgment against Officer Brydee Glasco, and issue a
22 declaratory judgment that Defendant DOC violated the Washington State Constitution when
23 its agents caused Ms. Brawley to be shackled in these circumstances.

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RESPECTFULLY SUBMITTED this 23rd day of March, 2010.

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CERTIFICATE OF SERVICE

I hereby certify that on the date shown below I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following counsel of record:

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Dated: March 23, 2010.

s/ Michael S. Wampold
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