NO. 96340-1

SUPREME COURT OF THE STATE OF WASHINGTON

JONATHAN O., JOHNS, individually, and DAVID W. LYNCH and JENNIFER LYNCH, husband and wife,

Petitioners,

v.

STATE OF WASHINGTON DEPARTMENT OF CORRECTIONS and COYOTE RIDGE CORRECTION CENTER,

Respondents.

ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION

In 1911, Washington granted workers a "swift and certain" no fault remedy for injuries suffered in the workplace through the Industrial Insurance Act. In exchange, it granted employers immunity from workplace injury suits by workers. RCW 51.04.010. The Legislature created one narrow exception to employer immunity—for injuries caused by "the deliberate intention" of the employer. RCW 51.24.020. Applying settled Washington law, the Court of Appeals properly held this case does not fall within that exception, and this Court should not accept review.

Petitioners Johns and Lynch, corrections officers employed by Respondent, Washington Department of Corrections (DOC), were injured at work while trying to control two inmates (Cruze and Kopp) who suddenly and randomly assaulted one of the officers. There was no evidence DOC had "actual knowledge" that injury to the officers was "certain to occur" and willfully disregarded such knowledge, as is required for the "deliberate intention" exemption to apply, under *Birklid v. Boeing Co.*, 127 Wn.2d 853, 865, 904 P.2d 278 (1995) and its progeny.

Despite the absence of evidence satisfying the *Birklid* test, the trial court denied DOC's motion for summary judgment. The Court of Appeals properly reversed and remanded the case for dismissal. There is no conflict with precedent, no constitutional claim, and no showing of substantial

public interest requiring this Court's review. RAP 13.4(b). The Court should deny review.

II. COUNTERSTATEMENT OF THE ISSUES

1. Did the Court of Appeals' unpublished decision properly apply well-settled law in holding that the Industrial Insurance Act's (IIA's) "deliberate intent" exception did not apply, where the employer lacked actual knowledge that an injury by a third party human actor was certain to occur?

2. Did the Court of Appeals' unpublished decision properly follow this Court's rulings in *Birklid, Vallandigham,* and *Walston* to conclude that known risk of injury is insufficient to satisfy the deliberate intent exception to the IIA?

3. Did the Court of Appeals properly conclude that plaintiff employees failed to establish a genuine issue of material fact to survive summary judgment on the deliberate intent exception where the inmates' known history of assault, multiple infractions, and placement at a medium-custody facility did not establish that DOC had actual knowledge that injury to the officers was certain to occur?

III. COUNTERSTATEMENT OF THE CASE

Officer Johns and Sergeant Lynch sued their employer, DOC, for

injuries sustained in the course of their employment.[1]

A. Corrections Officers Injured on the Job

Both Officer Johns and Sergeant Lynch were experienced corrections officers. Johns began employment as a corrections officer in 2008 at Airway Heights Corrections Center, and transferred to Coyote Ridge Corrections Center in 2010. CP at 86-87, 89. Lynch began his employment with DOC in 1994. CP at 100-10. He promoted through the ranks to a Correctional Sergeant in 1999. CP at 101-02. DOC provided both Officer Johns and Sergeant Lynch with extensive training, including multiple courses involving the risk posed by inmates. CP at 93-98, 112-23.

Officer Johns was injured on September 11, 2012, when two inmates randomly assaulted him.[2] Sergeant Lynch was injured when he responded to assist in subduing the inmates. The inmates were Schawn Cruze and David Kopp, cellmates who had been told 40 minutes before that they were being reassigned to different cells. CP at 76.

Cruze was committed to DOC in July 1997 as a persistent offender. CP at 34-43. He was sentenced to life in prison without possibility of parole or early release (LWOP) after a conviction for Assault in the Second Degree

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[1] The third petitioner is Jennifer Lynch, employee David Lynch's wife.

[2] On January 15, 2016, Mr. Johns left his employ with DOC to accept a position as an officer with the Hanford Patrol. Those positions are highly competitive and require applicants to pass rigorous physical standards. *See* 10 CFR 1046.

(DV) for an attack on his brother, and had been transferred to Coyote Ridge on August 10, 2012. CP at 34-43; 335. He had "an infraction-filled institutional career"[3] including two allegations of non-injury assault on staff members, the most recent being four years before the September 11 incident.[4] Cruze "had worn out his welcome in the state's close custody and maximum custody facilities." *Johns v. Dep't of Corrs.*, No. 35140-8, 2018 WL 3359657 at *1 (Wash. Ct. App. July 20, 2018) (unpublished).

> [He] could not be housed at the Clallam Bay Corrections Center, Stafford Creek Corrections Center, or the Washington State Penitentiary because he had "compromised" staff members by entering into relationships with married staffers whose spouses also worked at the facility. In light of the Prison Rape Elimination Act of 2003, 34 U.S.C. §§ 30301-30309, Mr. Cruze was considered a victim of those relationships. The relationships were not counted among his infraction history. Other institutions barred him due to previous threats of violence he had made against staff members.

Id. at n.1.

Kopp was serving a twenty-year sentence for murder. He had only two serious infractions: July 2012 for violation code 710 (related to tattoos) and 752 (positive test for unauthorized drugs, alcohol, or other intoxicants).

On September 11, the Facility Risk Management Team met to discuss cell reassignments to accommodate new inmates coming to the

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[3] *Johns*, 2018 WL 3359657 at *1.

[4] The two non-injury assaults were on 5/10/ 2005 and 3/6/2008. CP at 60-64.

facility and to increase the safety of the unit. CP at 66-70. The Team determined that Cruze and Kopp should be transferred to different cells. CP at 66-70. "The information was not well received by either man, although Mr. Cruze claimed credit for instigating the ensuing troubles." *Johns*, 2018 WL 3359657 at *1. "To express their displeasure . . . Cruze grabbed a wooden-handled mop and a plastic-handled brush from an unlocked broom closet. He gave the mop to Kopp. As the two men walked past a workstation in one of the prison's common rooms, they turned and started hitting" Officer Johns. *Id.* Other officers, including Sergeant Lynch, responded and quickly subdued the inmates. CP at 76, 345, 484. Cruze later admitted that he was upset about the possibility "he might be placed with a child molester" and that Officer Johns "was simply the 'wrong guy at the wrong time.'" *Johns*, 2018 WL 3359657 at *2.

Johns and Lynch sued their employer, DOC, alleging "physical and emotional injuries" they suffered as a result of the altercation. CP at 1-5. DOC asserted that the IIA provided the employees' exclusive remedy and that it was immune from suit. CP at 6-11. DOC subsequently moved for summary judgment. In response, Johns and Lynch argued that DOC was not entitled to immunity because their injuries had resulted "from the deliberate intention of [DOC] to produce such injury." RCW 51.04.020; CP at 237-353. The trial court denied DOC's motion for summary judgment.

B. The Court of Appeals Grants DOC's Request for Discretionary Review and Enters Summary Judgment Dismissal in Its Favor

DOC sought discretionary review. *Johns*, 2018 WL 3359657 at *1. Review was granted with a finding, "the superior court committed obvious error that renders further proceedings useless." CP at 478-84; RAP 2.3(b)(1). After briefing and oral argument, the panel unanimously reversed the trial court and held, "the trial court erred in rejecting DOC's motion for summary judgment. DOC was immune from this suit." *Johns*, 2018 WL 3359657 at *3.

The court concluded Johns and Lynch "were unable to satisfy the first prong of the *Birklid* deliberate exception test"; thus, the court did "not address the arguments concerning the second ('willful disregard') prong of the *Birklid* test." *Johns*, 2018 WL 3359657 at n.5. The court engaged in a *de novo* review, in which it "view[ed] the facts, and all reasonable inferences drawn from them, in the light most favorable to [Johns and Lynch.]" *Johns*, 2018 WL 3359657 at *2. Applying that presumption, "[t]he evidence in this record does not establish that DOC acted with the deliberate intent to injure when it placed Cruze at [Coyote Ridge]." *Id. at *2.*

The court explained that the IIA "is the exclusive remedy for workers who are injured during the course of their employment . . . [unless the] injury results to a worker from the deliberate intention of his or her

employer to produce such injury . . . ." *Id.* Relying specifically on *Birklid v. Boeing Co*, 127 Wn.2d 853, 865, 904 P.2d 278 (1995), and *Vallandigham v. Clover Park Sch. Dist. No. 400*, 154 Wn.2d 16, 109 P.3d (2005), the Court of Appeals emphasized this Court's holding that "the first prong of the *Birklid* test can be met in only very limited circumstances where continued injury is not only substantially certain but *certain* to occur." *Johns*, 2018 WL 3359657 at *3 (emphasis in original). "Substantial certainty of injury is insufficient to satisfy the test." *Id.* Applying that holding, the Court of Appeals concluded "[t]here was no certainty that Cruze would act out, let alone that he would do so by assailing corrections officers." *Id.* Accordingly, the court held, "DOC was immune from this suit." *Id.*

IV. REASONS WHY REVIEW SHOULD BE DENIED

A. The "Deliberate Intent" Exception Does Not Apply When the Employer Lacked Actual Knowledge That an Injury by a Third Party Was Certain to Occur

In *Birklid v. Boeing Co*, 127 Wn.2d 853, 865, 904 P.2d 278 (1995), this Court construed the "deliberate intention" standard articulated in RCW 51.24.020. The statute provides, in relevant part, "If injury results to a worker from the deliberate intention of his or her employer to produce such injury, the worker or beneficiary of the worker shall have the privilege to take under this title and also have cause of action against the employer [.]" *Birklid* emphasized the legislatively mandated narrowness of this exception

to employer tort immunity under the IIA, and subsequent decisions have continued that emphasis. In the twenty-three years since *Birklid*, the Legislature has not acted to broaden the exception.

Birklid held, "neither gross negligence nor failure to observe safety procedures and laws governing safety constitutes a specific intent to injure. Nor is an act that has a substantial certainty of producing injury sufficient to show deliberate intention." *Id.* at 860 (internal citations omitted). The *Birklid* court expressly rejected the "expansive interpretation of deliberate intent to injure" adopted by other jurisdictions, and instead was "mindful of the narrow interpretation Washington courts have historically given RCW 51.24.020, and of the appropriate deference four generations of Washington judges have shown to the legislative intent embodied in RCW 51.02.010." *Id.* at 864-65.

1. The Court of Appeals applied well-settled precedent to find that the employer did not have actual knowledge that injury by a third party was certain to occur

The Court of Appeals' unpublished decision has not limited employees' private right of action to only cases involving chemicals. *See* Pet. for Review 10. Rather, it correctly applied longstanding precedent to a situation where two inmates randomly assailed Officer Johns, who "was simply the 'wrong guy at the wrong time.'" *Johns*, 2018 WL 3359657 at *2.

The *Birklid* court established a two-part test for determining

"deliberate intention." The test requires an employee to prove, first, that the employer "had actual knowledge that an injury was certain to occur," and, second, that the employer "willfully disregarded that knowledge." 127 Wn.2d at 865. Washington courts have applied that test to injuries caused by human actors.

In *Folsom v. Burger King*, 135 Wn.2d 658, 959 P.2d 301 (1998), a fired employee murdered two of his former coworkers. The victims' estates sued and argued the employer "deliberately intended to cause injury to the employees such that the employer's immunity under [IIA] is removed[.]" *Id.* at 661. The trial court denied the employer's motion for summary judgment, and this Court reversed. This Court held that the employer did not have actual knowledge injury was certain to occur even though the employer hired the murderer knowing his violent criminal record, discontinued the security system, knew the back door did not lock properly, and knew that keeping cash in restaurant may invite robbery. "However negligent these acts might be, the statutory exception to employer immunity . . . requires more." *Id.* at 667.

The year after *Burger King*, Division 1 decided *Stenger v. Stanwood School Dist.*, 95 Wn. App. 802, 977 P.2d 660 (1999). School district instructional aides sued their employer for injuries suffered while working with a severely disabled special education student. The student had a long

history of "highly aggressive" behavior and of "frequently attacking his teachers and other students." *Id.* at 804-05. The district psychologist advised, "We are unable to provide an appropriate educational placement for [the student] . . . due to the severity of his behavior problems[.]" *Id.* at 806. However, his warning went unheeded, and the student was transferred to the district. *Id.* at 806, 977 P.2d 660. The student's violent behavior continued, and the staff who worked with him—including the plaintiffs—were repeatedly injured.

The trial court granted the school district's motion for summary judgment, citing the IIA as the employees' exclusive remedy. The Court of Appeals reversed, finding there was sufficient evidence to meet the first prong of the *Birklid* test, "that the employer actually knew an injury was certain to occur." *Id.* at 812. In so holding, it noted the student "caused between 1,316 and 1,347 injuries to District staff, inflicting injuries almost on a daily basis." *Id.* at 812. That analysis was later expressly rejected in *Vallandigham v. Clover Park Sch. Dist. No. 400,* 154 Wn.2d 16, 33, 109 P.3d 805 (2005).

In *Vallandigham,* the Supreme Court held, "[e]ven an admission" by the employer that it recognized that injury would probably occur was "not enough to establish knowledge of *certain* injury." 154 Wn.2d at 33. (emphasis in original). In that case, two employees sued their employer

school district for injuries caused by a severely disabled special education student. The trial court granted summary judgment in favor of the school district, finding that neither prong of the *Birklid* test had been met. The Court of Appeals disagreed in part, but affirmed summary judgment in favor of the employer, holding that the school district had actual knowledge that injury was certain to occur, but did not disregard that knowledge (i.e., the employees did not meet the second prong of the *Birklid* test). *Id.* at 18.

The school district knew the student's history of unmanageable behavior and violence (he had caused injuries 96 times in one school year), there was a history of workers' compensation claims, and the District admitted it was taking steps to alleviate the risk of injury. The District had even considered alternative placements for the student, "but declined these alternatives because they were inappropriate or unwilling to take [the student]." 154 Wn.2d at 25. On that basis, the Court of Appeals found that the evidence was sufficient for a jury to conclude that, given the student's "known propensity to injure," the school had actual knowledge that injury was certain to occur. 154 Wn.2d at 32.

This Court, however, flatly rejected the Court of Appeals' analysis and emphasized the historically narrow interpretation of RCW 51.24.020. It explained, "foreseeability, *or even substantial certainty*, is not enough

to establish deliberate intent to injure an employee . . . Only actual knowledge that injury is *certain* to occur will meet the first prong of the *Birklid* test." *Id.* at 33 (emphasis in original). The Court added the employer in *Birklid* "*knew* that the [chemical] fumes would continue to make employees sick absent increased ventilation," but, in contrast, "the Clover Park School District could not *know* what [the student's] behavior would be from day to day." *Id.* at 33 (emphasis in original).

In *Birklid*, this Court rejected both of the tests Johns and Lynch advance here. This Court explained that under the "substantial certainty" test, "If the injury is substantially certain to occur as a consequence of actions the employer intended, the employer is deemed to have intended the injuries as well." 127 Wn.2d at 864. Alternatively, under the "conscious weighing test," the question is "whether the employer had an opportunity consciously to weigh the consequences of its act and knew that someone, not necessarily the plaintiff specifically would be injured." The Court "decline[d] to adopt" either broad test and instead narrowly interpreted the phrase "deliberate intention" in RCW 51.24.020 to mean the employer "had actual knowledge that an injury was certain to occur and willfully disregarded that knowledge." 127 Wn.2d at 864-65. In *Vallandigham*, the Supreme Court admonished, "We cannot overemphasize that the *Birklid* court considered and rejected both a

'substantial certainty' and a 'conscious weighing' test." 154 Wn.2d at 33, 109 P.3d 805.

Yet, those broad standards are what Johns and Lynch argue support their claim. They argue that their employers' knowledge of the assailants' past behavior equated to actual knowledge that injury was certain to occur, and that DOC therefore should be deemed to have intended the injury as well. They seek to apply the same "substantial certainty" and "conscious weighing" tests the Court rejected in *Birklid* and *Vallandigham*. The Court of Appeals here properly rejected their arguments, specifically and appropriately relying on this Court's decisions in *Birklid* and *Vallandigham*. There is no conflict with any decision of this Court.[5]

The *Vallandigham* court held that "[e]ven an admission [that] injury would probably occur is not enough to establish knowledge of *certain* injury. Only actual knowledge that injury is *certain* to occur will meet the first prong of the *Birklid* test." *Id.* at 33 (emphasis in original). In this case, the Court of Appeals similarly found, "Even if DOC had believed Cruze would act out against corrections officers at [Coyote

[5] The Court of Appeals decision here also is consistent with *Brame v. Western State Hosp.*, 136 Wn. App. 740, 150 P.3d 637 (2007) (employees injured by psychiatric patients), which also specifically applied the narrow interpretation of the deliberate intention exception set out in *Birklid* and *Vallandigham*. *See* 136 Wn. App. at 746-50. There is no conflict with any Court of Appeals decision.

Ridge] when he was transferred there, there still was no certainty that he would do so." *Johns*, 2018 WL 3359657 at *3. Because the court found that Johns and Lynch "were unable to satisfy the first prong of the *Birklid* deliberate exception test," it did not need to address the second ("willful disregard") prong and did not do so. *Id.* The Court of Appeals' decision comports with this Court's holdings in *Birklid* and *Vallandigham* that neither substantial certainty of injury nor negligence is sufficient to satisfy the high standard of "deliberate intention."

Finally, Petitioners assert that the Court of Appeals' decision is in conflict with *Perry v. Beverage*, 121 Wn. 652, 214 P. 146 (1922), and *Mason v. Kenyon Zero Storage*, 71 Wn. App. 5, 856 P.2d 410 (1993). Pet. for Review 11. However, both cases involved an employer or its agent physically assaulting an employee and therefore are factually distinguishable. More importantly, both cases predate *Birklid's* establishment of the two-part deliberate intention test.

The Court of Appeals applied well-settled law to hold the "deliberate intention" exception did not apply when the employees were unable to show the employer had actual knowledge an injury by a third party was certain to occur. Accordingly, review should be denied.

2. The Court of Appeals Properly Applied Precedent to Conclude That Known Risk of Injury Is Insufficient to Satisfy the Deliberate Intention Test.

Knowledge of *risk* of injury does not satisfy the *Birklid* deliberate intention test. Recently, in *Walston v. Boeing Co.*, 181 Wn.2d 391, 334 P.3d 519 (2014), this Court again reaffirmed the *Birklid* test and the rejection of broader tests:

> "[D]eliberate intention" is a high standard that is met . . . only when an employer had actual knowledge that an injury was certain to occur. An act that has substantial certainty of producing injury is insufficient to meet that standard. Similarly, negligence—even gross negligence—is not sufficient to meet the "deliberate intention" standard.

Id. at 396-97 (internal citations to *Birklid* omitted).

At Boeing, Walston had worked with and around asbestos-containing products and inhaled asbestos fibers. In 1985, maintenance workers were repairing pipe insulation in the ceiling above the shop where he worked. The maintenance workers used ventilators and protective clothing, but the employees in the shop continued to work without protection. *Id.* at 394. Boeing conceded that it knew asbestos was a hazardous material and about manifestation of asbestos-related diseases after exposure. The question was whether Boeing had actual knowledge that Walston was certain to be injured by the exposure to asbestos. *Id.* at 395. The Court held that *risk* of injury does not equate to certainty

sufficient to meet the deliberate intention standard. *Id.* at 398.

Yet, knowledge of *risk* of injury is precisely what Johns and Lynch argue should result in DOC's liability. They allege that not only did DOC know that the inmate posed a risk, it exacerbated the risk by placing Cruze at Coyote Ridge. Their argument "impermissibly erodes the requirement of 'deliberate intent,'" *Vallandigham*, 154 Wn.2d at 35, and stands in opposition to the well-settled law of Washington that "a risk of injury is insufficient to meet the deliberate intention standard," *Walston*, 181 Wn.2d at 398.

Johns and Lynch further argue that DOC knew of the unique risk posed by Cruze, which was not present for other correction officers. Pet. for Review 13. The plaintiff in *Walston* pointed to a similar scenario. Boeing required shop employees to continue to work during the pipe repair while "asbestos was flaking and falling from the overhead pipes." *Walston v. Boeing Co.*, 173 Wn. App. 271, 274, 294 P.3d 759 (2013), *aff'd* 181 Wn.2d 391, 334 P.3d 519 (2014). Because Boeing did not provide protection from asbestos exposure, he and other shop workers were uniquely exposed to risks that the maintenance workers, who wore protective clothing and respirators, were not. Nonetheless, the court found that the increased risk of harm did not amount to deliberate intention.

Johns and Lynch point to alleged threats of violence made by

Cruze. However, this Court has expressly rejected the argument that even a "known propensity to injure" is sufficient to establish actual knowledge that injury was certain to occur. *Vallandigham*, 154 Wn.2d at 33, 109 P.3d 805. Further, a threat is not a certainty. In fact, prior to the September 2012 incident, Cruze had not assaulted an employee for over four years, and before that, not since 2005.[6] That stands in stark contrast to the 96 injuries in one school year in *Vallandigham* or the almost daily injuries in *Stenger*. In *Vallandigham* and *Stenger*, the regularity of the assaultive behavior made injuries predictable. Yet, "the first prong of the *Birklid* test can be met in only very limited circumstances where continued injury is not only substantially certain but *certain* to occur." *Johns*, 2018 WL 3359657 at *3.

Essentially, Johns and Lynch argue that DOC was grossly negligent in placing Cruze in a medium custody facility. "Mak[ing] it easier for the offender"[7] to act out may increase the *risk*, but it does not convert a risk to a certainty. Further, the *Walston* court expressly rejected a similar argument. "An act that has substantial certainty of producing injury is insufficient . . . even substantial certainty that employee injury will occur *by virtue of an employer's action (or inaction)* is insufficient.

[6] The two non-injury assaults were on 5/10/2005 and 3/6/2008. CP at 60-64.
[7] Pet. for Review 14.

Disregard of risk of injury is not sufficient . . . ." *Walston*, 181 Wn.2d at 396-97 (internal citations omitted) (emphasis added).

"Certainty leaves no room for chance. Washington courts have repeatedly held that known *risk* of harm or carelessness is not enough to establish certain injury, even when the risk is substantial." *Shellenbarger v. Longview Fibre Co.*, 125 Wn. App. 41, 46, 103 P.3d 807 (2004). The Court of Appeals properly applied *Birklid, Vallandigham*, and *Walston* to conclude that substantial certainty of injury is insufficient to satisfy the deliberate exception test. There is no conflict warranting review under RAP 13.4(b). Review should accordingly be denied.

B. The Court of Appeals' Applied Clear Precedent to Facts Viewed in the Light Most Favorable to Petitioner Employees to Resolve a Dispute Between Them and Their Employer.

The Court of Appeals' decision does not raise an issue of substantial public interest warranting review by this Court. As "[i]n any appeal from a summary judgment ruling, [the] court engage[d] in a *de novo* review; [its] inquiry [was] the same as the trial court's inquiry." *Johns*, 2018 WL 3359657 at *2. However, Johns and Lynch argue that the Court of Appeals must have ignored facts because "DOC employees face a certain level of *risk* every day." Pet. for Review 17 (emphasis added). They protest that every fact, including the allegedly negligent placement of Cruze at Coyote Ridge, demonstrates the "increased *risk*." Pet. For Review 2, 18 (emphasis

added).

"[V]iew[ing] the facts, and all reasonable inferences to be drawn from them, in the light most favorable to the nonmoving party," the Court of Appeals acknowledged the nature of the offenders' crimes, their infraction histories, and that Coyote Ridge was "an institution that was not designed to provide the close custody that [Cruze] needed . . . ." *Johns*, 2018 WL 3359657 at *1-3. However, for over two decades, the law of Washington has been that neither knowledge of risk of injury, substantial certainty, nor "even gross negligence" is sufficient to satisfy the high standard of "deliberate intention." *Walston*, 181 Wn.2d at 396-97, 334 P.3d 519. The Court of Appeals viewed the facts in the light most favorable to Johns and Lynch, and then applied well-settled law. Its resolution of the dispute between the parties does not merit this Court's review.[8]

V. CONCLUSION

The Court of Appeals properly applied RCW 51.04.010 and 51.24.020. The unanimous unpublished decision applies the well-settled law articulated by this this Court in *Birklid, Vallandigham,* and *Walston*, and it does not conflict with any decision of this Court or the Court of

[8] The petition asserts that "all four grounds for review" in RAP 13.4(b) are satisfied, but the petition makes no argument at all regarding RAP 13.4(b)(3) (constitutional question) or RAP 13.4(b)(4) (substantial public interest). The Court therefore need not consider those grounds for review.

Appeals. Therefore, there is no basis for review under RAP 13.4(b)(1) or (2), and the petition does not even attempt to justify review under the other subsections of RAP 13.4(b). This Court should deny review.

RESPECTFULLY SUBMITTED this 18 day of December, 2018.

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CERTIFICATE OF SERVICE

I hereby certify that I caused to be electronically filed the Motion to Publish with the Clerk of the Court using the electronic filing system which will send a copy of such filing to counsel of record for the other parties to this case, including the following:

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DATED this 18 day of December, 2018, at Spokane, Washington.

NIKKI GAMON

WASHINGTON ATTORNEY GENERAL SPOKANE TORTS

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