UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

TEENA FOY,

Plaintiff,

Case No. 4:24-cv-00140-MW-MAF

v.

RICHARD D. DAVISON, in his Official Capacity, DAVID A. WYANT, in his Official Capacity, and MELINDA N. COONROD, Chairperson and Commissioner, Florida Commission on Offender Review, in her Official Capacity,

Defendants.

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PLAINTIFFS' RENEWED MOTION FOR PRELIMINARY INJUNCTION

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PLAINTIFF'S RENEWED MOTION FOR PRELIMINARY INJUNCTION

Plaintiff Teena Foy seeks a preliminary injunction so that she can live with her son, so they can be a family. This Court is asked to enjoin Defendants Richard Davison, David Wyant, and Melinda Coonrod from continuing to violate Plaintiff's constitutional rights, including removing the "No Victim Contact" condition from Scott Graham-Foy's release, as it applies to Ms. Foy and Ms. Foy only – to cease interfering with Foy and Graham-Foy's right to familial association. Defendants' actions violated Foy's due process rights and infringe on Foy's First Amendment freedoms of association, religion, and speech. Foy asks that this Court restore her rights, giving weight to FLA. CONST. art. I, § 16.

1.0 Introduction

The right to familial association is fundamental. *See Moore v. City of East Cleveland*, 431 U.S. 494, 503 (1977) (the Constitution "protects the sanctity of the family"); *Doe v. Marshall*, 367 F. Supp. 3d 1310, 1331 (M.D. Ala. 2019) (observing *Moore* creates a fundamental right of familial association). "The family entity is the core element upon which modern civilization is founded." *Custody of Smith*, 137 Wash. 2d 1, 15 (1998). Suppression of fundamental rights is only permitted if the state does so to serve a compelling interest with no lesser means available to it.

Here, however, Defendants decided, in a perfunctory hearing, where Foy was afforded no due process, that this family must cease to exist. **Exhibit 1**, Transcript

of May 2, 2024, Hearing ("Trans."), at 44:11-25; **Exhibit 2; Exhibit 3**. Protecting victims who *want* to be kept from their assailants makes sense, but here, there is no reason to "protect" Ms. Foy. She never asked for protection. Nor did she ask for the State's involvement. Her fundamental rights are at stake, and she was permitted to *listen to* a five-minute hearing and a 13-second long "appeal," then was told that she could not have a family for at least 27 months, which may be longer than she has to live.

Scott Graham-Foy, Plaintiff's son suffered from serious drug addiction. Trans., 27:5-7. Graham-Foy developed an opiate addiction after surgery as a teenager. *Id.,* 26:11-23. The government paints him as a "habitual offender." *Id.,* 41:7-9. However, this creates a misleading narrative that he was habitually *violent*. His record shows multiple drug-seeking crimes before he received effective drug treatment. *Id.* at 38:15-41:3. He nearly died from an overdose, and only survived because his mother intervened. *Id.* at 6:15-7:1. Graham-Foy's tragic story culminated in a night when, once again, he was on drugs. *Id.* at 7:5-23. Graham-Foy struck Plaintiff with a frying pan and a kitchen knife. *Id.*

The government's version of the story (aside from this) is inconsistent with Plaintiff's—the actual witness's—version. She denies the police report's claim that Graham-Foy put gauze in Foy's mouth, gagged her, and kept her from seeking help. *Id.* at 8:5-22. This is not about minimizing his crime, but the Court should at least

know what really happened. Graham-Foy did attack Foy, but he was immediately remorseful. He and Foy testified that he expressed pain and remorse immediately. *Id.* at 8:12-14[1] & 27:8-25 & 28:14-17. Graham-Foy was reported to the police by medical professionals, but Foy never sought prosecution. *Id.* at 9:1-5 & 19:20-20:4 Graham-Foy never had a trial; he pled guilty. *Id.* at 9:8-9. Therefore, Foy never had an opportunity to be heard as the victim, nor to correct the record, nor to plead for mercy for her son, nor for herself. *Id.* at 9:6-11.

Graham-Foy received effective addiction treatment in prison. *Id.* at 34:15-24. He is clean. *Id*. While serving his sentence, Foy and Graham-Foy rekindled their relationship. *Id.* at 9:12-11:2 & 32:18-33:22. Foy, a devout Catholic, who believes that the Lord requires us to forgive one another, sought reconciliation with her son. *Id.* 17:19-21& 85:23-86:1. For Foy, forgiveness is not merely a state of mind, but an act to be practiced with actual meaningful actions. *See, e.g.,* Matthew 18:21-35 (instructing Catholics that forgiveness requires actions demonstrating forgiveness, it is not merely in the heart nor in the words); Trans., 82:10-18.

The State believes that Graham-Foy has been rehabilitated enough to be released. He can function like any other member of society, but for one major restriction – he cannot receive a hug from his willing and loving mother, because the

[1] Foy testified: "he started crying and he said, Why have I done this to the person that loves me the most? Mom, I'll take you to the ER."

State permanently labeled her a "victim," then unilaterally decided that this means she cannot choose to be around her son. Graham-Foy must literally flee from his mother if he sees her, lest he be sent back to prison for having contact with her.

Typically, a crime victim wants the State to prevent their attacker from contacting them. However, Foy wants to be with her son more than anything else. She sees such contact as not only necessary to her familial association rights, but as crucial to Graham-Foy's recovery. Notably, the State released Graham-Foy with a condition of no contact with Foy, without any caveat nor any carve out. However, its conditions of anger management classes and drug treatment are left wide open, "*if time permits*." Trans., 23:2-7. If he was incarcerated for acting violently from his drug addiction, why is addressing those issues not more important to the State than keeping him from his mother? The irrationality of this position shocks the conscience and violates her substantive due process rights.

Defendants' actions violate Foy's First Amendment rights of association, speech, and religion. They violate Foy's rights to substantive and procedural due process. They violate the Constitutional authority which gives crime victims' rights. For Foy, who is aging and ailing, time is running out. She cannot wait for a trial to conclude. She seeks mercy from this Court in the form of immediate relief: that this Court bestow the grace upon this small family to simply *exist*.

2.0 Factual Background

Graham-Foy was released on March 21, 2024. Trans., 41:25-42:2. In prison, Graham-Foy turned his life around. He earned a college degree and has secured gainful employment. *Id.* at 31:18-21 & 35:5-21. On January 29, 2024, Defendants ordered the terms of his conditional release, which are in effect until June 21, 2026. *See* **Exhibit 4**. Graham-Foy's release was made subject to standard conditions, but the Defendants also imposed an additional requirement: that he have no contact, whatsoever, with the victim—his own mother. *See id.*; Trans., 22:21-24. Now, Foy cannot call or hug her son. While he was in prison, they wrote to each other. *Id.* at 9:12-17. While in prison, they spoke on the phone. *Id.* While in prison, they were able to see and embrace each other. *See* **Exhibit 5**; **Exhibit 6**; Trans., 10:25-11:2. Now that Graham-Foy is suitable to be back in society, he is no longer suitable for contact with the only person who truly wants contact with him – his mother.

Foy wants a relationship with her son. Trans., 12:24-13:4. Her faith led her to forgive her son, and she wants her son to feel the warmth of that forgiveness. *Id.* at 8:19-25. Foy wants to help her son, and her son wants to help her. *Id*. at 14:4-15:11. For her own welfare, she *needs* her son, and her welfare is being harmed by the State – despite the State promising in the Florida Crime Victim's Bill of Rights that her welfare and dignity are to be respected. *Id*. at 13:7-15:14.

Foy is nearly 78 years old, and Graham-Foy is her only remaining relative. Trans., 11:3-5 & 13:5-6. Plaintiff has kidney cancer and severe cardiovascular issues, having had two heart bypasses. *Id*. at 11:6-23. Plaintiff has mobility issues and difficulty with everyday activities. *Id*. at 11:15-23. How long she has left to live is uncertain, but 27 months will be either the rest of her life or a significant portion of it. *Id*. at 14:12-16. Beyond the desire to have a relationship with her son, as a practical matter, Plaintiff needs her son to help aid her as she ages. *Id*. at 13:1-4.

After Defendants imposed the no-contact condition on Graham-Foy's conditional release, *he* moved the Circuit Court overseeing his sentence for relief from that condition, with Plaintiff's blessing. *See* **Exhibit 7**. The Circuit Court granted that Motion on February 13, 2024, modifying the No Victim Contact condition to permit Graham-Foy to have "non-violent contact" with Plaintiff. *See* **Exhibit 8**. This was a reasonable result and served every interest the State could possibly articulate. But the State intervened and got the condition re-imposed. **Exhibit 9**. Defendants failed to account for what the only victim of the crime actually wanted. Trans., 13:9-18.

3.0 Legal Standards

"A plaintiff seeking a preliminary injunction must establish [1] that he is likely to succeed on the merits, [2] that he is likely to suffer irreparable harm in the absence

of preliminary relief, [3] that the balance of equities tips in his favor, and [4] that an injunction is in the public interest." *Winter v. NRDC, Inc.*, 555 U.S. 7, 20 (2008).

3.1 Levels of Scrutiny

There are differing levels of scrutiny to be applied to the government's actions. Strict scrutiny applies to most, rational basis applies to the religious freedom claim. The State suggests that *Turner* applies, and that if so, they prevail. They are incorrect. Supervised release conditions that implicate fundamental rights are subject to strict scrutiny. *United States v. Myers*, 426 F.3d 117, 126 (2d Cir. 2005) (Sotomayor, J.); *United States v. Loy*, 237 F.3d 251, 256 (3d Cir. 2001). Where a government action infringes on fundamental rights, it will be upheld "only when it is 'narrowly tailored to serve a compelling state interest.'" *Doe v. Moore*, 410 F.3d 1337, 1343 (11th Cir. 2005), citing *Reno v. Flores*, 507 U.S. 292, 302 (1993). Strict scrutiny applies to Plaintiff's intimate association and substantive due process claims. *See McCabe v. Sharrett*, 12 F.3d 1558, 1566 (11th Cir. 1994); *Zablocki v. Redhail*, 434 U.S. 374, 98 (1978); *Doe v. Moore*, 410 F.3d 1337, 1343 (11th Cir. 2005). As to Plaintiff's free speech claim, strict scrutiny is applied as it is a prior restraint. Plaintiff's religious freedom claim is assessed under rational basis. *Thai Meditation Ass'n of Ala., Inc. v. City of Mobile*, 83 F.4th 922, 928 (11th Cir. 2023).

3.2 The *Turner* Standard

"[W]hen a *prison regulation* impinges on *inmates'* constitutional rights, the regulation is valid if it is reasonably related to legitimate penological interests." *Turner v. Safley*, 482 U.S. 342, 78, 89 (1987) (emphasis added). This case is about Foy's rights, not an inmate's rights. Like the protagonist of Queen's "We Are the Champions," Foy is serving a sentence, but committed no crime. Were Graham-Foy the plaintiff, then his rights would *potentially* be subject to the *Turner* standard. However, even then, supervised release conditions that affect fundamental rights are not evaluated under *Turner*. *See Myers*, 426 F.3d at 126; *Loy*, 237 F.3d at 256. But he is not the plaintiff. Foy has lost *her* rights because she has been involuntarily designated "victim." *Turner* is not the correct standard here.

Even if *Turner* applied to Foy's First Amendment and Substantive Due Process claims, it cannot apply to her *Procedural* Due Process claim. Florida promises crime victims certain rights. Among those promises the State makes:

> To preserve and protect the right of crime victims to achieve justice, ensure a meaningful role throughout the criminal and juvenile justice systems for crime victims, and ensure that crime victims' rights and interests are respected and protected by law in a manner no less vigorous than protections afforded to criminal defendants and juvenile delinquents, every victim is entitled to the following rights, beginning at the time of his or her victimization. The right to due process and to be treated with fairness and respect for the victim's dignity.

FLA. CONST. art. I, § 16(b). None of that has anything to do with the conditions of Graham-Foy's post-incarceration conduct. *Turner* applies to fundamental rights of *incarcerated* persons – not to the Due Process rights of non-criminals.

Even if *Turner* did apply to all claims, the Defendants' actions still fail. *Turner* was a familial association case involving two prisoners who wished to marry, and that right was upheld due to its fundamental nature. The most compelling interest in this case is the right to familial association. This right is so strong, that even two *prisoners* serving time *in prison* for a murder have such strong familial associational rights, over the State's objection, even under *Turner*. *See also Gillpatrick v. Frakes*, No. 4:18CV3011, 2019 U.S. Dist. LEXIS 221460, at *20 (D. Neb. June 7, 2019) (right to familial association overcomes *Turner*). If Graham-Foy and Foy had jointly killed some innocent person, they would have greater familial association rights, even under *Turner,* than they have now.

If *Turner* applies, it should apply as if this were a visitation privilege case. *Overton v. Bazzetta* suggests that limitations on visitation, even while someone is in prison, are permissible if imposed "for a limited period as a regular means of effecting prison discipline." 539 U.S. 126, 137 (2003). However, lengthy, permanent, or arbitrary limitations on family visits are not consistent with *Turner*. *Id*. At no point during the five-minute "hearing" nor the 13-second "appeal," was there any individualized analysis of the situation under the *Turner* factors. This

arbitrariness violates both *Turner* and due process. *See Manning v. Ryan*, 13 F.4th 705, 708 (8th Cir. 2021) (arbitrary denial of visitation rights violates the Constitution); *Easterling v. Thurmer*, 880 F.3d 319, 323 (7th Cir. 2018) (same). Further, the uncontroverted evidence is that the denial will last 27 months, which is itself lengthy, and unconnected to prison misconduct. Further, it is likely a lifetime sentence *for Ms. Foy*. This does not meet *Turner* as modified by *Overton*.

4.0 Argument

The Defendants' actions are an affront to freedom of association, freedom of speech, freedom of religion, and due process. Their actions violate the Florida Constitution's guarantee of rights to crime victims.[2]

4.1 Plaintiff is Likely to Succeed on the Merits

Plaintiff brought seven claims for relief: (1) violation of freedom of association, (2) violation of freedom of religion, (3) violation of freedom of speech, (4) violation of procedural due process rights, (5) violation of substantive due process rights, (6) violation of rights under the Florida Constitution, and (7) declaratory judgment. Plaintiff is likely to succeed on each of these claims.

[2] To the extent this Court finds that preliminary injunctive relief is not appropriate, Plaintiff asks this Court to enter an injunction pending appeal given the fact that if there is an appeal, Ms. Foy may likely die before it is resolved.

4.1.1 Freedom of Association

The Constitution protects "intimate association" and "expressive association." *Gaines v. Wardynski*, 871 F.3d 1203, 1212 (11th Cir. 2017), *McCabe v. Sharrett*, 12 F.3d 1558, 1562-63 (11th Cir. 1994). "[C]hoices to enter into and maintain certain intimate human relationships must be secured against undue intrusion by the State because of the role of such relationships in safeguarding the individual freedom that is central to our constitutional scheme." *Roberts v. United States Jaycees*, 468 U.S. 609, 617-18 (1984). The right to intimate association includes "personal relationships that attend the creation and sustenance of a family—marriage, childbirth, the raising and education of children, and cohabitation with one's relatives," and is "protected from undue governmental intrusion as a fundamental aspect of personal liberty." *McCabe*, 12 F.3d at 1563. Graham-Foy is Foy's son; the relationship is protected. *See also McGuire v. Marshall*, 512 F. Supp. 3d 1189, 1232 (M.D. Ala. 2021) (noting 11th Circuit's recognition of the right to familial association). The right to familial association applies to adult children and their parents. *See Chaudhry v. City of Los Angeles*, 751 F.3d 1096, 1106 (9th Cir. 2014). "*Sawyer* teaches that one's first amendment right to associate encompasses the right to simply meet with others." *Wilson v. Taylor*, 733 F.2d 1539, 1543 (11th Cir. 1984) (citing *Sawyer v. Sandstrom*, 615 F.2d 311, 316 (5th Cir.1980)).

Burdens on familial association are subject to strict scrutiny. *See McCabe*, 12 F.3d at 1566 (applying strict scrutiny); *see also Zablocki v. Redhail*, 434 U.S. 374, 398 (1978) (state action that "directly and substantially" interferes with intimate association is subject to strict scrutiny); *Chi Iota Colony of Alpha Epsilon Pi Fraternity v. City Univ. of New York*, 502 F.3d 136, 143 (2d Cir. 2007) ("Where a governmental regulation substantially interferes with close familial relationships, the most exigent level of inquiry—strict scrutiny—is applied."), citing *Zablocki, supra* at 388. To survive strict scrutiny, the state action must be "narrowly tailored to serve a compelling state interest." *Reno v. Flores*, 507 U.S. 292, 302 (1993); *Doe v. Moore*, 410 F.3d 1337, 1342-43 (11th Cir. 2005). Defendants' actions fail.

Defendants' no-contact condition restricts Plaintiff's fundamental association rights. Even though direct punishment for violating the condition falls upon Graham-Foy and not Foy herself, Foy is still injured by the condition because she is chilled from exercising the intimate relationship. *See* Order, ECF 37, at 6. After all, if she exercises *her* rights, her son goes to prison, potentially for the rest of *her* life.

There is no compelling state interest in keeping Foy from her son. Graham-Foy is not a threat to Foy. Graham-Foy's crime involved a single incident of immediately regretted physical violence. He has turned his life around and Defendants offer no evidence to the contrary. Even if he were a threat, Foy is a grown woman with the agency to choose to assume any risk (although there is none).

Nor is Defendants' condition narrowly tailored. As the Circuit Court already found, any state interest in preventing recurrent violence on victims of crimes could be satisfied by forbidding non-violent contact. While Graham-Foy was *incarcerated*, Plaintiff and her son were free to have contact—both physical and remote. Trans., 10:12-14; 10:25-11:2. It makes no sense that she has lesser associational freedom now. The condition fails to satisfy strict scrutiny.

Even if the *Turner* framework applied, Defendants' actions would still be unacceptable. *Turner* sets out a four-factor analysis to determine if a prison regulation is reasonably related to a legitimate penological interest:

> (1) whether there is a "valid, rational connection between the prison regulation and the legitimate governmental interest put forward to justify it";
>
> (2) whether "alternative means" of exercising the right "remain open to prison inmates";
>
> (3) what "impact accommodation of the asserted constitutional right will have on guards and other inmates, and on the allocation of prison resources generally"; and
>
> (4) whether any "obvious, easy alternatives" to the current regulation exist, which would suggest that the policy is an "exaggerated response to prison concerns."

Turner, 482 U.S. at 89-90.

As to the first factor, there is no rational connection between the No-Contact condition and Defendants' purported interest, as there is no legitimate governmental interest in preventing a victim-mother from voluntarily associating with her son.

"[A] mentally competent [person] has the right of self-determination and freedom to make fundamental choices affecting his life[.]" *Marquardt v. Sec'y, Fla. Dep't of Corr.*, 720 F. App'x 550, 556 (11th Cir. 2017). Whether or not it is a bad choice, it is Foy's choice to make, not Defendants.' She is not a ward of the state.

The restriction is not even rationally related to any interest Defendants may have. As set forth in the report of Prof. Joshua Cochran, submitted in connection with a challenge to restrictions on prison visitation, studies show that "family support after incarceration improved mental health after release…critical for successful reentry" (p. 3); visitation "improved relationships with family" (p. 8); and help situate people in their communities (p. 9). *See* **Exhibit 10**. Similarly, per the report of a former-warden Dr. Dora Schriro, in-person visits with family are the "industry standard" (pp. 5-8); such help maintain stability, minimize misconduct, and sustain successful reentry (p. 8); and the better the "relationships with their families are, the more likely they are to remain in the community upon their release, crime free" (p. 11), and "there is no substitute for an in-person contact visit with a member of one's family" (p. 15). *See* **Exhibit 11**. These are hardly novel findings. *See Pell v. Procunier*, 417 U.S. 817, 825 (1974) (noting prison director's determination that personal visits "aid in the rehabilitation of the inmate while not compromising the other legitimate objectives of the corrections system"); *see also*, *e.g.*, National Sheriffs' Association, Inmates' Legal Rights 67 (rev. ed. 1987) (visits

"with family, friends and others [are] important if the inmate is to retain his ties to the community and his knowledge of what the free society is like"); U.S. DOJ, FEDERAL STANDARDS FOR PRISONS AND JAILS, Standard 12.12, Discussion (1980) ("Visiting is an important element in maintaining inmates' contact with outside society"); NATIONAL ADVISORY COMMISSION ON CRIMINAL JUSTICE STANDARDS AND GOALS, Corrections, Standard 2.17, Commentary (1973) ("Strained ties with family and friends increase the difficulty of making the eventual transition back to the community. The critical value for offenders of a program of visiting with relatives and friends long has been recognized.")

As to the second factor, there are no alternatives; Foy wishes to be with her son and only allowing the association will remedy the constitutional wrong.

As to the third factor, there can be no impact on guards, other inmates, or prison resources because Graham-Foy is not incarcerated. Moreover, even if this factor were applied, the accommodation would *lessen* the burden on the conditional release program, because they would not have to monitor whether Plaintiff is associating with Graham-Foy, and as discussed above, it would likely lessen the likelihood of recidivism. Further, as shown at the hearing, Ms. Foy will require drug and anger management treatment if Graham-Foy can live with her. *See* Trans., at 23:3-15. Meanwhile, the State only requires these if "time permits." As discussed

above, visitation lessens the likelihood of misconduct. The State is acting *contrary* to its stated interests, not merely inconsistently.

As to the fourth factor, as Foy and the Circuit Court have pointed out, there are obvious, easy alternatives to the No-Contact condition. Allowing *non-violent* contact between Foy and Graham-Foy would satisfy all of Defendants' concerns without burdening Foy's rights. Moreover, although Foy is entitled to unrestricted contact with her son, the condition bars even remote contact, an "obvious, easy alternative" which is suggestive of an "exaggerated response" to Defendants' concerns. If *Turner* applies, these restrictions fail it. If *Turner* as modified by *Overton* applies, they fail even more. And of course, if any higher level of scrutiny applies, they fail spectacularly.

4.1.2 Freedom of Religion

The government's restriction is so draconian that it prevents Foy from going to any church that her son may also attend, or he goes to jail. They cannot even pre-arrange to attend different churches. **Exhibit 12**, Declaration of Teena Foy ("Foy Decl.") at ¶¶ 7-10. They must simply play religious Russian roulette.[3] When the State acts so arbitrarily that it prevents a mother and son from even *being in the same church during Mass*, the State has gone too far.

[3] This is not to suggest that it would be reasonable for them to be forced to prearrange which mass to attend in order to accommodate the State's desire to keep them apart.

A burden on religion is unconstitutional if there is no legitimate government interest or the action is not rationally related to protect that interest. *GeorgiaCarry.Org, Inc. v. Georgia*, 687 F.3d 1244, 1255 n.21 (11th Cir. 2012). Plaintiff's forgiveness is not merely "thoughts and prayers." ECF 9-1, ¶10. It requires action. *Id*., ¶18. During Catholic Mass, parishioners engage in the "sign of peace." This involves shaking hands or embracing others. This is the ritualistic manifestation of Matthew 5:23-24. "*First go and be reconciled to them; then come and offer your gift.*" If Ms. Foy were to physically manifest the *sign of peace*, with her son, Graham-Foy goes to jail.

This serves no government interest. Preventing a family from attending Mass together has no rational relationship to any legitimate interest. Even if we were to apply the deferential *Turner* test, the State fails. There is no valid nor rational connection between keeping Foy from attending any Mass she wants, even if her son happens to choose the same Mass. *See* Foy Decl. at ¶¶ 7-10. There are no alternate means to attend Mass together. No guards nor other inmates are affected. The obvious and easy alternative is to prevent "violent contact," as one judge already found to be proper. *See* **Exhibit 8**. "Your family may not go to church together" is an exaggerated response.

This would be an unreasonable and irrational burden on Foy's religious practices as well. She should be able to go to any church she wants without being the cause of her son's incarceration.

4.1.3 Freedom of Speech

Something is a prior restraint if it "forbid[s] certain communications when issued in advance of the time that such communications are to occur." *Alexander v. United States*, 509 U.S. 544, 550 (1993), citing NIMMER ON FREEDOM OF SPEECH § 4.03, p. 4-14 (1984). The condition prohibits communication between Foy and her son, no matter what the content of the communication is. She cannot call him to tell him that she loves him, because if he answers the phone, he is in "contact" with her. She cannot speak with him at all.

Any prior restraint bears "a heavy presumption against its constitutional validity." *Southeast Promotions, Ltd. v. Conrad*, 420 U.S. 546, 558 (1975); *Burk v. Augusta-Richmond Cty.*, 365 F.3d 1247, 1251 (11th Cir. 2004) ("Prior restraints are presumptively unconstitutional and face strict scrutiny.")

As discussed *supra*, Defendants' no-contact condition does not satisfy strict scrutiny in that it neither satisfies a compelling government interest, nor is it narrowly tailored. Moreover, the restriction is not based on time, place, or manner, and leaves no alternative channels for communication open—instead, it bans all communication between Foy and her son (including her right to receive speech from him). The State has not even suggested a reason that this mother and son cannot have a conversation. The Circuit Court's suggestion of "no violent contact" would be a reasonable tailoring. But the State is unmoved to be voluntarily reasonable.

Even if we apply *Turner*, Defendants' burden on Foy's free speech rights would not pass for the same reasons stated above. It is not reasonably related to any penological interest that Ms. Foy be prohibited from even *conversing with* her son. It is an "exaggerated response" to the stated governmental concerns that she cannot even speak with him, not even on the phone. The State can find no shelter under *Turner* for stopping a mother and son from writing to each other, praying with each other, or having a video chat.

4.1.4 Due Process and Violation of Florida's Constitution

Defendants' actions violate the Due Process Clause of the Fourteenth Amendment and FLA. CONST. art. I, § 16. The Fourteenth Amendment protects against deprivation of a constitutionally protected interest in "life, liberty, or property" without due process. *See* U.S. CONST. amend. XIV, § 1; *Maddox v. Stephens*, 727 F.3d 1109, 1118 (11th Cir. 2013). Likewise, the Florida Constitution's Declaration of Rights states that "every victim is entitled to … (1) [t]he right to due process and to be treated with fairness and respect for the victim's dignity." FLA. CONST. art. I, § 16(b).[4] The protections of due process can be broken down into two

[4] Because Plaintiff's rights under the Florida Constitution overlap with her rights under the Fourteenth Amendment, these rights are addressed together. Further, the Court is not asked to enforce the Florida Constitutional rights independently, but rather as a component of her Fourteenth Amendment rights.

types: procedural due process and substantive due process. *See McKinney v. Pate*, 20 F.3d 1550, 1555 (11th Cir. 1994). Defendants' actions violate both.

4.1.4.1 Substantive Due Process

Ms. Foy is in poor health. If she were on her deathbed, and she called Graham-Foy to say goodbye, this conversation would put her son behind bars. Her final earthly act: sentencing Graham-Foy to imprisonment. If this does not shock the conscience, then the conscience might be temporarily deactivated.

Conduct violates substantive due process if it is "arbitrary or conscience shocking in a constitutional sense." *Maddox*, 727 F.3d at 1119, quoting *Waddell v. Hemerson*, 329 F.3d 1300, 1305 (11th Cir. 2003). The right of familial association is part of the substantive right to intimate association. *Griffin v. Strong*, 983 F.2d 1544, 1547 (10th Cir. 1993). It is a Fourteenth Amendment liberty interest. *See id*. "Family relationships 'by their nature, involve deep attachments and commitments to the necessarily few other individuals with whom one shares not only a special community of thoughts, experiences, and beliefs, but also distinctly personal aspects of one's life.'" *Arnold v. Bd. Educ. of Escambia County*, 880 F.2d 305, 312-13 (11th Cir. 1989), quoting *Roberts v. United States Jaycees*, 468 U.S. 609, 618 (1984). "[T]he Constitution protects the sanctity of the family precisely because the institution of the family is deeply rooted in this Nation's history and tradition."

Moore v. E. Cleveland, 431 U.S. 494, 503 (1977). This protection extends to family living arrangements. *Id.* at 499.

Even if *Turner* were the standard, Defendants' actions would still not pass. A recent appellate decision highlights just how deficient the State's actions are. *Montoya v. Jeffreys*, 2024 U.S. App. LEXIS 9383, at *27 (7th Cir. Apr. 18, 2024). The Seventh Circuit held that "presumption of dangerousness" was unconstitutional even when applied to a sex offender. *Id*. at *21. Here, the State has presumed dangerousness. Meanwhile, this Court should be satisfied given the testimony at hearing that Mr. Graham-Foy presents no danger. In any event, presuming he is dangerous violates due process.

The appeals court recognized a fundamental liberty interest in a parents' enjoyment of the companionship of their children. *Id.* at *24. Even applying the deferential *Turner* test, the appeals court found that a presumptive ban on a sex offender speaking to their child, even for the limited time while waiting for a final decision, so violated substantive due process that it failed the *Turner* test. *Id.* at *27.

Here, Foy is barred from *any* contact with her son at all. There was no determination of dangerousness. If it violates substantive due process to prohibit a sex offender from speaking to a vulnerable child, barring an adult mother from speaking to her son for 27 months, and perhaps the rest of her life, does so – *moreso*.

4.1.4.2 Procedural Due Process

The Due Process Clause requires "that a deprivation of life, liberty or property 'be preceded by notice and opportunity for hearing appropriate to the nature of the case.'" *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542 (1985), quoting *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950); *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (where procedural due process must be followed, "[t]he fundamental requirement … is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'"), quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965). As discussed at length, *supra*, the no-contact condition directly deprives Plaintiff of a fundamental liberty interest, *i.e.*, her familial interest in communicating with her son. Accordingly, Defendants were required to afford Plaintiff due process.

> Three factors must be considered as to whether process is sufficient:
>
> > First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

Mathews, *supra* at 335. As to the first factor, the private interest is significant—Foy has fundamental freedom of association, religion, speech, and familial rights.

As to the second factor, Plaintiff was afforded **no** opportunity to be heard. Trans., 120:23-121:1. She had no ability to prevent the deprivation of her rights, and had Defendants respected them, they would have been of enormous value. Although Plaintiff called in to the Commission hearing, Defendants offered Foy no meaningful opportunity to be heard and stated that the Commission does not allow the public to participate. *Id*.[5]

Meanwhile, FLA. CONST. art. I, § 16 should have kicked in and protected her rights. She had the right to achieve justice. She had a right to a meaningful role. She had a right to have her rights and interests protected and respected. She had the right to due process and to be treated with fairness and respect for her dignity. She had an expectation that Defendants would abide their obligations, but that expectation was dashed by the perfunctory nature of the proceedings. "Victimhood" is a status granted under FLA. CONST. art. I, § 16 to grant privileges and *protections* to crime victims. Instead, here, this status has been turned into a punitive one.

Additionally, since there was no particularized notice given, the procedures used by the government were inadequate. Defendants only published public notice of its planned hearing and did not notify Plaintiff of the hearing or of any ability she

[5] As the Court may recall, during the May 2, 2024, hearing, the entire hearing was played for the Court. And during the hearing, while one of the Defendants claimed that Ms. Foy could "appeal," there is no process for a non-inmate to appeal. This was merely to try to quiet her, not a citation to authority. *See* Audio **Exhibits 2 & 3**.

may have to attend and participate. Plaintiff never wanted her son prosecuted. Had he not taken a plea, she would have testified on his behalf, not against him. Foy Decl. at ¶¶ 3-5. Accordingly, she has never been afforded a hearing about what *she wants*. She was never given the opportunity to decline victim status. She never even reported her son to the police for his crime. Trans., 9:1-5. She was involuntarily tagged as "victim" and rejects that status. It is not that she once wanted the status and now regrets it. It was imposed involuntarily on day one, and she has never wanted it. Now, it is the only status that renders her alone in the world, when her son is tantalizingly close in proximity, but barred from her.

Finally, Defendants would not have been burdened by a true opportunity to be heard. Although many victims want a restriction on contact, forgiveness warrants being heard. Marsy's Law promises this, but the Defendants broke that promise.

4.1.5 Declaratory Judgment

As alternative relief in her Complaint, Plaintiff seeks declaratory relief that she may waive or rescind her 'victim' rights under the Florida Constitution so that she is not burdened by their consequences as applied by Defendants. Should the Court find that Plaintiff is not likely to succeed on her other claims, it should find that Plaintiff may do so, and hold that Plaintiff is no longer a "victim" and thus may have unfettered contact with her son.

FLA. CONST. art. I, § 16(b) grants victims "[t]he right within the judicial process, to be reasonably protected from the accused and any person acting on behalf of the accused," is either mandatory, and thus applies whether or not the victim wishes to be "protected from the accused," or it is voluntary, and thus allows the victim to choose whether she wishes to seek protection. Defendants seem to assert that the 'protections' set forth in FLA. CONST. art. I, § 16(b) are mandatory, and thus cannot be waived, but as discussed above, Defendants turned victimhood into a *punitive* status, not a privileged one. If mandatory, it is a mandate in the absence of due process. Otherwise, if it is merely a *right* to claim victim status, Plaintiff may waive that right. Accordingly, in the alternative to the other relief sought herein or in the Complaint, Plaintiff asks this Court to find that she is likely to succeed on her declaratory judgment claim and enjoin Defendants from deeming her a victim, thus rendering the condition of separation inapplicable to Foy and Graham-Foy.

4.2 The Harm is Irreparable

As a result of the Defendants' unconstitutional no-contact condition, Plaintiff has suffered irreparable harm. She has lost precious time with her son. She will continue to suffer irreparable harm unless this Court enters a preliminary injunction.

Plaintiff is suffering and will continue to suffer irreparable harm due to her health condition. Plaintiff is aging and is suffering from kidney cancer. Trans., 11:13. Absent injunctive relief, Plaintiff would not be able to contact her son for

another 27 months, and Plaintiff is not certain that she will even *live* for another 27 months. *Id*., 11:20. With each passing day, Plaintiff's irreparable injuries are compounded. If Plaintiff does survive, it is not likely that she will live much longer than those 27 months. *Id.*, 11:15-23. Plaintiff's inability to see her son for this period of time—a period of time which could represent her last months on Earth—surely represent irreparable harm. Nothing can compensate her except an injunction.

4.3 The Balance of Equities & Public Interest Favor Plaintiff

The balance of equities and the public interest tips sharply in favor of Plaintiff. Absent the relief sought, the State's actions destroy a family that was more intact *when half of it was in prison*. At least then, they could embrace, pray together, talk together, and be some form of a family. Now? They are both alone in the world, yearning for each other's company. Ms. Foy is unlikely to live long enough to receive Communion with her son again, nor to even embrace him one last time. What greater weight could she bring to a balance of the equities equation?

The State suggested that the problem can be solved *by Graham-Foy just going back to prison*. This is outrageous and shows the exaggerated response. The State suggests that one-sided communication could satisfy the desires for the family to be together. This is only slightly less outrageous. Foy can do nothing, out of fear that she will send her son back to prison. "[I]t is well-established that an actual injury can exist when the plaintiff is chilled from exercising her right to free expression or

forgoes expression in order to avoid enforcement consequences. In such an instance … the injury is self-censorship." *Harrel v. The Fla. Bar*, 608 F.3d 1241, 1254 (11th Cir. 2010), citing *Pittman v. Cole*, 267 F.3d 1269, 1283 (11th Cir. 2001) (citation omitted). Here, the prior restraint is a real and immediate injury as Foy is forced to restrain her freedom of expression to avoid potential legal consequences of her son going back to prison. She cannot walk into Mass without fear that her son may have chosen the same church. She is paralyzed with fear that she will send her son back to prison just by being a mother or a Catholic. Defendants have subjected Plaintiff into an inescapable Catch-22—the contradictory limitations on both her free speech and free will have left her choosing between suffering in self-censorship to protect her son from going back to prison or violating the no-contact order thereby punishing Foy in the process. It cannot be that only solution for Plaintiff to be able to liberally exercise her free speech and maintain a relationship with her son is if Graham-Foy goes back to prison.

Courts "consistently recognized the significant public interest in upholding First Amendment principles." *Doe v. Harris*, 772 F.3d 563, 583 (9th Cir. 2014) (granting preliminary injunction to sex offenders who completed their probation and parole terms where Californians Against Sexual Exploitation Act violated their First Amendment right to free speech). This Court has made clear in past decisions that "a significant encroachment upon associational freedom cannot be justified upon a

mere showing of a legitimate state interest." *Hand v. Scott*, 285 F. Supp. 3d 1289, 1300 (N.D. Fla. 2018), vacated remanded sub nom. *Hand v. Desantis*, 946 F.3d 1272 (11th Cir. 2020), citing *Kusper v. Pontikes*, 414 U.S. 51, 58 (1973).

Here, Plaintiff will suffer irreparable harm if a preliminary injunction is not granted. It is the death sentence for her familial association. There is no harm to the Defendants, nor anyone else, in allowing Plaintiff and Graham-Foy to reunite. They communicated during Graham-Foy's imprisonment, and Foy wants contact. There can be no valid state interest in keeping this mother and son apart as their wish to be together threatens no harm to the public. That the Defendants are concerned about potential, unfounded safety risks is not enough to justify the usurping of Plaintiff's associational and religious freedoms. Finally, if Graham-Foy is not able to assist in the care of his aging and sick mother, Foy will suffer egregious harm. Because it is *always* in the public interest to not only correct, but prevent, individual constitutional rights violations, the balance of equities and the public interest favor issuing a preliminary injunction.

4.4 Plaintiff Has Standing

As this is a renewed motion, with two added Defendants, albeit in identical position as the third, Plaintiff will briefly address standing, though the Court previously acknowledged it. A plaintiff must satisfy three elements to demonstrate that she has standing. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61 (1992).

To establish standing, a plaintiff must demonstrate (1) an injury that is (2) fairly traceable to the defendant's allegedly unlawful conduct, and that is (3) likely to be redressed by the requested relief. *Id*. Because the Court has already made a favorable decision as to the first two elements, the Court need not reach them again. *See United States v. Siegelman*, 786 F.3d 1322, 1327 (11th Cir. 2015), citing *Pepper v. United States*, 562 U.S. 476 (2011) (describing law-of-the-case doctrine).

4.4.1 Plaintiff Has Suffered an Injury-in-Fact

As the Court already recognized, Plaintiff has suffered injury-in-fact. Demonstrating an injury-in-fact requires showing "an invasion of a legally protected interest which is (a) concrete and particularized, … and (b) actual or imminent, not conjectural or hypothetical." *Lujan*, 504 U.S. at 560. Defendants' condition deprives Foy of the ability to associate with her son, practice her religion, and have Graham-Foy care for her. It would cause her economic injury by forcing her to employ someone else to assist her. These are legally protected interests. *See Moore v. East Cleveland*, 431 U. S. 494, 503-504 (1977) (describing the "venerable" tradition of cohabitation with relatives, which enjoys "constitutional recognition"); *Sierra Club v. Morton*, 405 U.S. 727, 733 (1972) ("[P]alpable economic injuries have long been recognized as sufficient to lay the basis for standing").

These injuries burden Foy's protected interests, forcing her to relinquish her constitutional rights and otherwise preclude her from having her speech received by

its intended recipient. Were she to unilaterally disavow her status as a "victim" and reach out to her son for comfort and association, she risks punishment in the form of her loved one returning to government custody. This confers her standing. *See*, *e.g.*, *FEC v. Akins*, 524 U.S. 11, 24-25 (1998) (informational injury); *Lujan*, 504 U.S. at 562-63 (aesthetic injury); *Heckler v. Mathews*, 465 U.S. 728, 739-40 (1984) (stigmatic injury). As the Court has observed, Foy's inability to communicate with her son "causes her emotional anguish and pain, chills her speech, prevents her from fully exercising her religion, and impedes her constitutional right of association," which is sufficient to state an injury-in-fact. Order, ECF 37, at 6.

4.4.2 Plaintiff's Injury is Traceable to the Defendants

Although the Court has likewise already determined that Foy's injury is traceable to Defendants, it is helpful to reiterate the rationale. Order ECF 37, at 6-7. All three Commissioners who sit on the FCOR are Defendants and can vote on the conditions of release. Indeed, two Defendants, Davison and Wyant, actually did impose the condition. *See* ECF 30-1, ¶ 2; **Exhibits 2 & 3**. The condition was not mandatory, and thus the decision to impose the condition was within their discretion. *See* Fla. Admin. Code § 23-23.010(5)(a) (standard conditions of release). Accordingly, the action which resulted in Foy's injury is traceable to the Defendants. *Walters v. Fast AC, LLC*, 60 F.4th 642, 650 (11th Cir. 2023).

4.4.3 Plaintiff's Injury Can be Redressed

Demonstrating redressability "requires the plaintiff to show that his injuries are 'likely to be redressed by a favorable judicial decision.'" *Walters*, 60 F.4th at 649 (11th Cir. 2023), quoting *Spokeo, Inc. v. Robins*, 578 U.S. 330, 330 (2016).

As all three members of the FCOR have been joined, Foy's claims are redressable, since only two are required to impose or modify Graham-Foy's terms of conditional release. *See* Fla. Admin. Code §§23-23.006(6); 23-23.008(2); 23-23.010(7). The Court already recognized that Defendant Coonrod is properly sued in her official capacity. Davison and Wyant are similarly situated, they are likewise proper parties. An injunction against all three will redress Foy's claims.

5.0 No Further Hearing is Required

The Parties have already held an evidentiary hearing on the prior motion, and the facts and issues in this Motion are nearly identical. This Court need not hold a further evidentiary hearing. *See Moon v. Med. Tech. Assocs.*, 577 F. App'x 934, 936 (11th Cir. 2014), citing *Care Nursing Serv., Inc. v. Bethesda Mem'l Hosp., Inc.*, 887 F.2d 1535, 1538 (11th Cir. 1989). "[W]here material facts are not in dispute, or where facts in dispute are not material to the preliminary injunction sought, district courts generally need not hold an evidentiary hearing." *McDonald's Corp. v. Robertson*, 147 F.3d 1301, 1313 (11th Cir. 1998).

6.0 Bond Requirement

Foy is on disability and a limited income. She requests a waiver of any bond.

7.0 Conclusion

Plaintiff asks that this Court enjoin Defendants from violating Plaintiff's rights under the U.S. & Florida Constitutions, from enforcing or threatening to enforce their "No Victim Contact" order, and/or compelling removal of the "No Victim Contact" provision or otherwise allowing such full contact. Alternately, Plaintiff asks this Court unburden Plaintiff from the "Victim" designation.

Dated: May 17, 2024. Respectfully submitted,

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Case No. 4:24-cv-00140-MW-MAF

ATTORNEY CONFERENCE CERTIFICATION

Pursuant to Local Rule 7.1(B), counsel for Plaintiff spoke to Counsel for the Defense on May 17, 2024. Defendants do not consent to the relief requested herein.

/s/ Marc J. Randazza
MARC J. RANDAZZA

WORD LIMIT CERTIFICATION

The undersigned certifies that this document complies with word limits set forth in Local Rule 7.1(F) because the memorandum contains 7,650 words which includes the headings, footnotes, and quotations, but does not include the case style, signature block, Table of Contents, Table of Authorities, or Certificates of Word Count, Attorney Conference, and Service.

/s/ Marc J. Randazza
MARC J. RANDAZZA

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 17, 2024, a true and correct copy of the foregoing document is being served upon Defendants via this Court's e-filing system.

/s/ Marc J. Randazza
MARC J. RANDAZZA