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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PLAINTIFF'S REPLY IN SUPPORT OF RENEWED MOTION FOR A PRELIMINARY INJUNCTION

1.0 Introduction

The Defendants' Opposition seeks to defend an indefensible choice without explaining what purpose it serves. Once again, Florida's government seems focused on inhumanity as a state-sponsored policy. Did the Defendants get together and say, "What is the cruelest thing we can do?" Of course not. They simply devoted 5 minutes and 48 seconds to rubber-stamping a decision to break up a family, probably forever, under the checklist item of "separate a perpetrator from victim." Even if that is what 99% of cases reasonably call for, we cannot strive for "government by checklist." Such important decisions require nuance and human-level analysis, else

we could relegate them to computer programs. Due process requires consideration and fairness, however, which the Defendants failed to provide here.

Once the flaws were revealed, Defendants could have done the reasonable thing and rescinded the condition. Instead, they employed *post-hoc* rationalizations, arguing that the *Turner* test protects their cold-hearted decision. It does not, and even if it did, *Turner* would have required that they have a legitimate penological purpose for an action *before* they took that action. Defendants reflexively acted, however, with no thought, and now seek to create a *Turner* excuse. This case is not about every criminal in Florida. This case is not about challenging a law that requires Foy to be separated from her son – indeed, there is no such law. This case is not about a blanket policy that applies in every case, absent an exception. This case is about *one purported victim* and forcing the government to think when it makes decisions, not to simply rule by the maxim "because we said so."

No public interest is served by the cruelty of sentencing the remnants of this family to a lonely death and a higher chance of recidivist failure.[1] The closest Defendants get to identifying a public interest is citing a statute which recognizes that habitual offenders are, generally, a serious threat to society. *See* Opposition, 16, 18, & 21. It says nothing specific about Plaintiff and her son and the public interest

[1] Post-incarceration family contact improves convicts' mental health, helps them successfully re-enter society, and reduces the chances of their recidivism. *See* Motion at 14-15; ECF 43-11 and 43-12.

in separating them. Defendants cannot provide more than a nominal excuse as to why Ms. Foy cannot live with, talk to, or worship with her son. If Mr. Graham-Foy is a "serious threat to society" then why can "society" sit in a church pew next to him on Christmas Eve, but his own mother may not? If Mr. Graham-Foy went to jail for drugs and violence, why is he released from prison with anger management and drug treatment *"if time permits."* ECF 43-1 at 23:2-7. The government is flexible with respect to drug treatment and violence prevention – but keeping a mother from praying with her son, *that* is their line in the sand? This Court should be government's conscience and erase that line.

2.0 Argument

Plaintiff is likely to succeed on the merits of her claims, she has standing, and the other factors at issue support the granting of a preliminary injunction.

2.1 *Turner* Does Not Apply

That *Turner* may be applied to the deprivation of the rights of "outsiders" is inapposite; the incidental abridgment of the rights of "outsiders" is limited to where outsiders threaten the safe operations of a prison, and where prison administrators require leeway in the day-to-day operation of their facilities, shielding them from "inflexible strict scrutiny analysis [which] would seriously hamper their ability to anticipate security problems and to adopt innovative solutions to the intractable problems of prison administration." *Turner v. Safley*, 482 U.S. 78, 89 (1987).

Graham-Foy is not a prisoner. Plaintiff is likewise not asking for any relief against a *correctional facility*. This is not a policy that incidentally affects a non-prisoner. There is no policy. This was a single voluntary decision,[2] made with no due process to the affected party, and clearly with zero analysis. *Turner* does not apply.

The Supreme Court acknowledges that *Turner* does not explicitly apply to probation and has suggested disinterest in expanding *Turner's* scope, and this Court should not do what the Supreme Court wished to avoid. *See Griffin v. Wisconsin*, 483 U.S. 868, 874 n.2 (1987) ("We have no occasion in this case to decide whether, as a general matter, [the *Turner*] test applies to probation regulations as well."); *see also United States v. Haymond*, 139 S. Ct. 2369, 2383 (2019). Defendants ask this Court to cast aside *United States v. Myers*, 426 F.3d 117 (2d Cir. 2005) and *United States v. Loy*, 237 F.3d 251 (3d Cir. 2001), which declined to apply *Turner* to conditions of supervised release, and instead look to a Northern District of Illinois decision which, in a single short paragraph, disapproves of the decisions in *Myers*, *Loy*, and *People v. Morger*, 2019 IL 123643 (Ill. 2019). *See* Opposition, 19-20, citing *Montoya v. Jeffreys*, 565 F. Supp. 3d 1045, 1063 (N.D. Ill. 2021).

Although this Court's prudence in considering *Turner* is to be credited in order to afford complete analysis, the Second and Third Circuits and the Supreme Court

[2] As Defendants acknowledge, the imposition of the condition was not mandatory, but rather was a "decision." *See* ECF 51 at 17-18; ECF 43-1 at 116; Fla. Admin. Code §23-23.010(5)(a).

of Illinois had no need to discuss a case which does not apply, since *Turner* and its progeny apply only to inmates. While Defendants argue *Myers* and *Loy* should be discounted because they relate to conditions of release imposed by a court and not an executive agency, *Turner* does not differentiate based upon the identity of a jailer—*Turner* applies to an incarcerated inmate whether they are in the custody of the State of Florida or the U.S. Marshals.

Moreover, *Montoya* is based upon a fundamental misapplication of the law, which Defendants echo in their brief. In deciding that an individual on parole was 'in custody,' thus triggering *Turner*, the district court cited a string of decisions relying on the question of whether a plaintiff had standing to bring a writ of *habeas corpus*. *See Montoya*, 565 F. Supp. at 1062-63; Opposition, 19, citing *id*. and *Maleng v. Cook*, 490 U.S. 488, 491 (1989). Further, *Montoya* is not useful to this analysis. Foy is not challenging a prison rule that generally applies to all inmates in custody. Foy has raised an as-applied challenge to a decision made by unelected officials to specifically target one inmate and prohibit him from visiting his own mother, even after his mother highlighted the cruelty of it all at a public hearing. *Montoya v. Jeffreys* was a class action that challenged generally applicable standards that applied to all members of the class, or *Turner* itself, which called for deference to prison officials based on the "inordinately difficult undertaking" of running a prison, a concern that is not implicated here.

The *habeas corpus* statute requires that a writ be filed on behalf of a plaintiff who is "in custody." *See* 28 U.S.C. § 2254. However, courts construe the *habeas* statute's "in custody" requirement "'very liberally.'" *Howard v. Warden*, 776 F.3d 772, 775 (11th Cir. 2015), quoting *Diaz v. Fla. Fourth Judicial Circuit*, 683 F.3d 1261, 1264 (11th Cir. 2012); *see also Maleng*, 490 U.S. at 492. However, nothing correctly suggests that the government can use *Turner* to disregard alternate levels of scrutiny for its actions outside a jail by employing the liberality of the "in custody" requirement applied in *habeas* cases.

The liberal treatment of the custody requirement for *habeas* writs allows individuals to seek relief to remedy a *deprivation* of their rights, and Defendants wish to twist this interpretation to *curtail* those rights. Plaintiff is not invoking the *habeas* statute and her rights cannot be limited by it.

2.2 If it Applied, *Turner* Would Support an Injunction

Even if *Turner* applied, Plaintiff is entitled to an injunction. Defendants fall short of making any showing of what legitimate penological interest is served by the specific government action here – separating Foy and her son, even for the limited purpose of worshipping together. The *optional* no-contact provision was imposed without Defendants making any specific findings that Graham-Foy was a danger to Plaintiff or that Plaintiff had been manipulated into granting her consent to contact. The only support Defendants' offer is a generic citation claiming Graham-Foy is

among the group of offenders who pose the "greatest threat to the public safety," without any explanation as to how that definition relates to Plaintiff or the no-contact position. *See* Opposition, 21.[3]

Finally, Defendants do not rebut Plaintiff's argument that procedural due process is never subject to *Turner*, and thus at the very least, Plaintiff's procedural due process claim survives *Turner* scrutiny.

2.3 Plaintiff is Likely to Succeed on the Merits of Her Claims

Through the briefing, and through the testimony and evidence, Plaintiff established a likelihood of success.

2.3.1 Freedom of Association

Plaintiff has a right to familial association. Defendants argue that Plaintiff's right of association with her son are rooted in the Fourteenth Amendment, not the First Amendment. Defendants think that if they cabin all of Plaintiff's claims within the Fourteenth Amendment and assert that Plaintiff cannot raise any Fourteenth Amendment claims, they can tarnish Plaintiff's rights with impunity. Incorrect.

Although Defendants weave an argument that the First Amendment does not protect familial associations, the Supreme Court clearly and decisively held

[3] This designation is based mostly upon Graham-Foy's history of nonviolent drug-seeking offenses. He then had a single violent outburst, where he pled rather than face the possibility of longer incarceration. This is not a hardened criminal, but a once-drug-addicted young man, now middle aged, whose greatest chance at avoiding recidivism is being with family.

otherwise. In *Bd. of Dirs. of Rotary Int'l v. Rotary Club of Duarte*, the Supreme Court affirmed this proposition:

> Of course, we have not held that constitutional protection is restricted to relationships among family members. We have emphasized that the First Amendment protects those relationships, including family relationships, that presuppose "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 distinctively personal aspects of one's life."

481 U.S. 537, 545 (1987); *see also Shahar v. Bowers*, 114 F.3d 1097, 1102 n.9 (11th Cir. 1997) ("The Supreme Court has identified the origin of the right to intimate association as First Amendment freedom of association.").

Defendants claim that the right to social, political, and religious association is siloed into the First Amendment and the right to familial association is siloed into the Fourteenth Amendment. The cases Defendants cite demonstrate that there is no such distinction—the right of association, including intimate association, stems from the First Amendment.

Defendants' confusion comes from characterizations of certain rights as "fundamental." While fundamental rights are protected by the substantive due process clause, this description does not signify that the right arises *solely* from the due process clause. *See Washington v. Glucksberg*, 521 U.S. 702, 720 (1997) (recognizing that the Due Process Clause protects fundamental rights, including "the specific freedoms protected by the Bill of Rights.") A fundamental right can be

protected by the First *and* Fourteenth Amendments. Some rights emanate from multiple Constitutional sources, such as the right to privacy, which grows from the penumbras of the First, Third, Fourth, Fifth, and Ninth Amendments. *See Griswold v. Connecticut*, 381 U.S. 479, 484 (1965).

Neither *Roberts* nor *Stanglin* reach the proposition Defendants grant them. Neither case dealt with familial association, and not surprisingly, they did not delve into the source of familial protections—each case concerned social clubs and their memberships. The Eleventh Circuit's decision in *McCabe v. Sharrett* came closer, reaching questions concerning the relationship between spouses. It refers to the right of intimate association as being "protected from undue governmental intrusion as a fundamental aspect of personal liberty," which "encompasses the 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." *McCabe v. Sharrett*, 12 F.3d 1558, 1563 (11th Cir. 1994). Although parts of *McCabe* discuss the difference between speech-related associational rights and familial rights, it concludes that some associations involve both types of associations and does not confine intimate association to the Fourteenth Amendment. *See id.*

Defendants cite *Gaines v. Wardynski* for the proposition that intimate associational rights are distinguishable from the First Amendment, but it holds the opposite. *See* 871 F.3d 1203, 1212-13 (11th Cir. 2017) ("The First Amendment

protects two different forms of association: expressive association and intimate association.") ("The question in this case is not whether there is a First Amendment right to intimate association; there is."); *see also Little v. Palm Beach Cty.*, 30 F.4th 1045, 1053 (11th Cir. 2022) ("association has been characterized as a right 'implicit' in the First Amendment.")

Defendants then cite an out-of-circuit case predating *Gaines*, which laments the extension of the right of association to intimate relationships and does not reach any applicable destination. *Swank v. Smart*, 898 F.2d 1247 (7th Cir. 1990). *Swank* found no protection as to free speech or intimate association, as neither speech nor association carried any significant weight there. *Id*. at 1250-51.

Defendants' discussion of *Trujillo v. Bd. of Cty. Comm'rs*, is likewise confused. Defendants hang on the opinion's vague statement that the right of expressive association and the right of intimate association come from "different constitutional roots," but it need not refer to being rooted in different *amendments*. 768 F.2d 1186, 1189-90 (10th Cir. 1985). In fact, Defendants acknowledge that *Trujillo* finds the right of association within the First Amendment. Opposition, 5-6.

Finally, Defendants' discussion of *Robertson v. Hecksel* emphasizes that a right need not spring from particular Amendment. The plaintiff there brought her case under the Fourteenth Amendment, and the Court explicitly distinguished her claims from other cases where the plaintiff sued "under the First Amendment's right

of intimate association, which contains 'an intrinsic element of personal liberty.'" *Robertson v. Hecksel*, 420 F.3d 1254, 1258 n.3 (11th Cir. 2005), citing *Trujillo*, 768 F.2d at 1188-89. Controlling law consistently holds that the First Amendment extends to the right to intimate association.

2.3.2 Freedom of Religion and Speech

Plaintiff is likely to succeed on her remaining First Amendment claims, as the unconstitutional condition inhibits the free exercise of Plaintiff's faith and hinders her speech. Defendants argue that there are many churches from which the Plaintiff and her son can choose, and if they happen upon the same church at the same time, doing so would not violate the terms of Graham-Foy's conditional release. Defendants miss the point.

First, Catholic churches are not fungible entities. Defendants relegate them to the status of fast food establishments. Plaintiff and her son could get a Big Mac at any McDonald's, but many Catholics do not choose where to attend a service randomly, nor do they necessarily base it on geography, nor do they even attend the same service every week. Many "parish hop," looking to find a place that speaks to them on a given day. Saint Joan of Arc is the patron saint of prisoners, those in need of courage, and those persecuted for their faith. With all three conditions requiring intercession in this case, if there were a mass at a particular church to honor St. Joan, based on their religion, both Plaintiff and her son would naturally gravitate there.

The patron saint of judges is St. John of Capistrano. It is not unlikely that Plaintiff and her son could find themselves praying for the Court at the same place at the same time. In short, the number of churches available to them does not affect the chances of attending the same mass. However, Defendants believe that even if they wish to pray at the same mass, kneel before the same altar, and pray to the same saint at the same time, there is a legitimate penological reason for the State of Florida to prevent them from doing so.

Defendants argue that even if they happened to find themselves at the same church, it would not be a knowing violation. However, this argument ignores the result—no matter what, one of the two would have to leave, because the moment they saw each other, the unknowing violation becomes a knowing one.[4] Forcing Plaintiff to leave were she to happen upon a mass attended by her son violates *her* free exercise rights, and there is no legitimate interest under any test, *Turner* or otherwise, for this restriction.

Defendants' arguments as to Plaintiff's speech rights are similarly unavailing. They argue that since Plaintiff is free to send one-way communications to her son, Plaintiff's speech is unburdened. However, one-way communication is not

[4] Defendants' representation of leniency were they to encounter one another by happenstance is insufficient; Defendants' refusal to even let Plaintiff and her son be in the same courthouse for these hearings demonstrates how strictly they intend to enforce the condition, and the risk of Graham-Foy's long-term reimprisonment chills Plaintiff's conduct regardless of Defendants' belated argument of counsel.

sufficient; it is impossible for Plaintiff to engage in meaningful speech with her son without his ability to respond or even acknowledge receipt. Defendants citations to *Zargarpur*, *Drollinger*, and *Clark* are inapplicable, as they concern weaker relationships and are otherwise not controlling, as discussed further *infra*. One must ask the question – even if *Turner* applies, what penological interest is served by refusing to even permit a son to send his mother a letter, or to talk to her on the phone? Even under *Turner's* relaxed and inapplicable level of scrutiny, there is no justification for intransigent cruelty. Even in the decisional pillar of the government's argument, *Montoya v. Jeffreys*, the appellate court held that preventing any telephonic communication between parents and children is unconstitutional even under the *Turner* standard. *Montoya v. Jeffreys*, 99 F.4th 394, 398 (7th Cir. 2024). Thus, by FCOR's own authority, Ms. Foy is entitled to *some* injunction, the only question is its breadth.

2.3.3 Due Process

Pointing to a line of wrongful death cases declining to apply substantive due process protections to the family of the decedents, Defendants argue that Plaintiff is foreclosed from pursing Fourteenth Amendment claims. However, the cases cited do not affect Plaintiff's claims here.

Defendants rely on *Robertson v. Hecksel*, a §1983 wrongful death case brought by the mother of an adult killed by police. 420 F.3d 1254 (11th Cir. 2005).

After discussing the contours of the parent-child relationship under the Fourteenth Amendment, the Court held that the substantive due process clause does not provide a parent a "constitutional right of companionship with an adult child."[5] *Id.* at 1262. Plaintiff does not, however, assert a right to *companionship* arising from the Fourteenth Amendment – the right to *companionship* is what plaintiffs assert when seeking monetary compensation in wrongful death cases. Foy does not seek money: She seeks the Court to recognize that the State's power to separate her from her son, who is still alive, is limited by the Constitution. Admittedly, if the government's cruel decision leads ultimately to Graham-Foy's death, *Robertson* likely would bar financial recovery for a wrongful death claim.[6] That does not mean that there is no right to be vindicated here by injunctive relief.

While Foy's substantive due process claim arises from the Fourteenth Amendment, the substantive due process clause protects not only the fundamental liberties arising from that clause, but also certain other fundamental rights, including the First Amendment's right to intimate association, as discussed *supra*. *See, e.g.,*

[5] Although the Opinion purports at its inception to rule on the substantive due process protections extending to "the relationship between a mother and her adult son," this is an oversimplification, and by its conclusion, the Opinion clarifies that its holding is limited to companionship. *See id.* at 1255, 1262.

[6] The government has previously taken the position that they could "cure" the problem by simply sending Graham-Foy back to prison and allowing visitation and letter writing to continue as it did for years. Accordingly, it seems absurd, but sadly necessary to note that Foy is not suggesting that the government actually execute her son in order to resolve the case.

Washington, 521 U.S. at 720; *Griswold*, 381 U.S. at 484. Plaintiff's claim derives from her right of association, which the First Amendment protects as a fundamental right, rather than mere compensation for lack of companionship. *See* ECF 42 at ¶ 81; *Gaines*, 871 F.3d at 1212-13; *Little*, 30 F.4th at 1053; *Roberts*, 468 U.S. at 612. And as discussed *supra*, the Court in *Robertson* explicitly distinguished itself from a Tenth Circuit case where the court allowed the plaintiff to bring claims related to her adult son "but did so under the First Amendment's right of intimate association, which contains 'an intrinsic element of personal liberty.'" *Robertson*, 420 F.3d at 1258 n.3, citing *Trujillo*, 768 F.2d at 1188-89.

Companionship is not simply another name for the right of association. Companionship, as used in the cases cited by Defendants, is a legal term of art referring to a certain type of damage suffered by a family member after a relative's death; it is not a stand-in for every claim based upon the deprivation of the right of association, as Defendants assert. *See* Fla. Stat. § 768.21(2) ("The surviving spouse may also recover for loss of the decedent's companionship and protection and for mental pain and suffering from the date of injury"); Fla. Stat. § 768.21(3) ("Minor children of the decedent … may also recover for lost parental companionship"); *Ripple v. CBS Corp.*, 49 Fla. L. Weekly S123 (Fla. May 9, 2024) (discussing companionship); *Plantation Gen. Hosp. Ltd. P'ship v. Div. of Admin. Hearings*, 243 So. 3d 985, 991 (Fla. 4th DCA 2018) (same).

It is thus not a coincidence that *all* cases cited by Defendants concern wrongful death and survival statutes—**every one of those cases concerned *companionship***, and ***not* the right of association**. *See Robertson*, 420 F. 3d at 1262 ("parent does not have a constitutional right of **companionship**"); *Gunn*, 2018 U.S. Dist. LEXIS 61074, at *26 ("between a parent and deceased adult child, there is no … right of **companionship** and support"); *Russ v. Watts*, 414 F.3d 783, 791 (7th Cir. 2005) ("parents have no constitutional right to recover for the loss of society and **companionship**"); *McCurdy v. Dodd*, 352 F.3d 820, 830 (3d Cir. 2003) ("fundamental guarantees of the Due Process Clause do not extend to a parent's interest in the **companionship** of his independent adult child"); *Butera v. District of Columbia*, 344 U.S. App. D.C. 265 (2001) ("[parent] did not have a constitutional right to the **companionship** of her adult son"); *Ortiz v. Burgos*, 807 F.2d 6, 7 (1st Cir. 1986) ("The narrow question before us is whether his stepfather and siblings have a constitutionally protected interest in the **companionship** of their adult son and brother") (emphasis added throughout).

This distinction explains why the Eleventh Circuit, and the other circuits cited, were so reluctant to adopt the plaintiff's theory in *Robertson*—legislatures carefully draft their laws to decide who receives renumeration whenever there is a wrongful death. The Court reasonably did not want to create law which would open up that list by judicial fiat. *See Robertson*, 420 F.3d at 1262 ("[I]t is the province of the

Florida legislature to decide when a parent can recover for the loss of an adult child.") Accordingly, *Robertson* was never intended to restrict the right of a familial association; it was intended to protect municipal treasuries from lawsuits brought by an ever-growing list of brothers, sisters, cousins, and uncles after the death of a relative. The right to recover money for the death of a relative is not the same as the right of a mother to associate with her son, and no Court has ruled otherwise.

By contrast, and as discussed *supra*, the right to intimate association protects "the freedom to choose to enter into and maintain certain intimate human relationships," including right of "cohabitation with one's relatives." *McCabe*, 12 F.3d at 1563. This specifically includes Plaintiff's interest in associating with her son, both at home and at church.

Since *Robertson*, the Eleventh Circuit has repeatedly confirmed that the right of association exists and that it stems from the First Amendment. *See Gaines*, 871 F.3d at 1212-13 (2017 decision); *Little*, 30 F.4th at 1053 (2022 decision). Although Defendants try to resurrect *Robertson* by citing to *Gunn v. City of Montgomery*, a Middle District of Alabama case from 2018, it is not persuasive, as it again deals with recovery of money for loss of companionship. It is also not correct to the extent

the Defendants hold it out to be inconsistent with *Gaines* and *Little*.[7] 2018 U.S. Dist. LEXIS 61074 (M.D. Ala. Apr. 11, 2018).

Finally, Plaintiff's substantive due process claim also sounds in how Defendants' imposition upon Plaintiff of victim status, a punitive status imposed without due process, deprives her of liberty. Defendants' Opposition neither addresses this argument nor Plaintiff's procedural due process claims .

2.3.4 Claim Under the Florida Constitution

In her Complaint, Plaintiff alleges a separate claim for violation of her rights under Article I, Section 16 of the Florida Constitution, which, to "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," guarantees crime victims "[t]he right to due process and to be treated with fairness and respect for the victim's dignity." Art. I, § 16(b), Florida Constitution. Defendants deprived Plaintiff, a victim, of due process and failed to treat her with fairness and respect.

Defendants argue that Plaintiff is asking to assert a "veto power" over their process, and that because they are not law enforcement agents, and do not have a special relationship with Plaintiff, they are apparently not bound to abide the Florida Constitution's requirements. These arguments miss the mark. First, Plaintiff did not

[7] Defendants mistakenly framed this decision as the words of the Eleventh Circuit. *See* Opposition, 8 ("The Eleventh Circuit rejected that argument, holding ….") However, the decision was that of a district court and is not controlling.

assert a veto power; Defendants explicitly informed her that she was not allowed to speak, and that they would not consider her words. This violates Plaintiff's due process rights under the Florida Constitution as a crime victim. She did not ask for a right to veto—she merely wanted to have her voice considered. Defendants would not do that. The Florida Constitution demands that her wishes and her dignity be taken into account, but instead they handwaved all of these requirements – seemingly, the government only seeks to lean on the victim's bill of rights when it gives them license to be more carceral, cruel, and inflexible. But, when Foy seeks to use the other side of the coin, the government wishes to pretend that this coin defies the laws of physics, and has but one side – the punitive side.

Defendants' argument concerning a lack of special relationship is irrelevant. A plaintiff must only show a "special relationship" where her claims arise from the government's "failure to protect victims from harm caused by third parties." *White v. Lemacks*, 183 F.3d 1253, 1255 (11th Cir. 1999). Here, Plaintiff's harm is caused *by the government*, not by any third party. Moreover, even if a "special relationship" were required, no such relationship is required if the government's actions are "arbitrary or conscience shocking in a constitutional sense." *Waddell v. Hemerson*, 329 F.3d 1300, 1305 (11th Cir. 2003). Defendants' imposition of the optional no-contact condition, despite Plaintiff's protests as the purported victim, were arbitrary and shock the conscience.

2.3.5 Declaratory Judgment

Plaintiff has presented a legitimate controversy as to her status as a victim. Although the status comes with protections, it also comes with punitive elements which burden her ability to communicate with her son. Plaintiff did not ask for this status, and she does not want it. ECF 43-1, 13:13-18. She did not report her son for the crime, and she did not testify against him. *Id*., 9:1-7. Plaintiff also *started the provocation*. *Id*. at 7:21-22. She is not a victim, her interests were never represented, and that status must be removed.

Absent the ability to unburden herself from the restrictions, she wishes to purge herself of the status. Accordingly, declaratory judgment is a proper means to determine whether Plaintiff is properly a victim, despite the status's burdens, or whether she can shed that status.

2.4 Plaintiff's Harm is Irreparable

Although Defendants dispute that Plaintiff has been harmed, Defendants do not dispute that her claimed harm is irreparable. Plaintiff has been harmed by Defendants actions, and that harm is not able to be adequately redressed without injunctive relief.

2.5 The Balance of Equities and Public Interest Favor Plaintiff

Defendants lack any cogent rationale as to how the public is protected by their cruelty. Plaintiff is literally the only member of the public supposedly 'protected,'

while every other member of the public is free to see Graham-Foy, to embrace him, to talk to him on the phone, to correspond with him, and to worship alongside him. Further, Plaintiff is in poor health and is unlikely to outlive the condition.

Let us imagine the scales of justice. On one side, we have a mother and son who wish to speak to each other, worship together, and associate with one another. In the absence of relief, the mother will die alone and the son will have a far greater tendency to recidivism. On the other side, we have the government wishing to just do what it feels like doing, with no oversight, no thought, no due process, in a *single circumstance*, as no actual law nor policy is being challenged. This is only an as-applied challenge. But, if the government is to be credited, its ability to say "because we said so, and we're not listening to reason" this *one time* outweighs condemning a family, wiping away the First and Fourteenth Amendments, as well as the rights that the Florida Constitution grants. Rather than increasing any burden on the Defendants, injunctive relief would act to relieve Defendants of the burden of checking to see if Graham-Foy has contacted Plaintiff. Further, Plaintiff testified that she wishes to personally monitor and enforce her son's rehabilitation. ECF 43-1, 23:8-15. This is something the government seems to find unimportant.

Injunctive relief could only make the government's job easier. Any balancing of these equities here should only be engaged in with protective eye covering, because the scales would tip so fast and so forcefully in Foy's that injury could occur.

2.6 Plaintiff has Standing

The Court previously already found standing. Plaintiff has suffered extensive, concrete harm by Defendants' actions, which have deprived her of her ability to communicate with her son—something she was able to do while he was in prison. She cannot live with her son, have a conversation with him, or even pray with him. This injury is traceable to the actions of the Defendants and may be redressed by an injunction against the Defendants.

Defendants argue again that because Graham-Foy would be the one going to prison, there is no injury which could give Plaintiff standing. This callous argument ignores the very real emotional distress Plaintiff would suffer should she cause her son return to prison. It also ignores her injury caused by Defendants' deprivation of her rights, and it ignores her economic injury caused by the requirement that she pay someone to look after her as she ages rather than have her son assist.

As discussed in Plaintiff's earlier reply brief, ECF 31, neither *Zargarpur* nor *Drollinger* are relevant here. *See Zargarpur v. Townsend*, 18 F. Supp. 3d 734, 737 (E.D. Va. 2013); *Drollinger v. Milligan*, 552 F. 2d 1220 (7th Cir. 1977). In *Zargarpur*, an illegal romantic relationship between a 15-year-old student and his teacher was not protected, unlike a familial relationship ordinarily protected. *See Roberts*, 468 U.S. at 617-18. Likewise, *Drollinger* found that the plaintiff had standing to the extent the condition prohibited contact between him and his

granddaughter but found that the relationship between him and his daughter-in-law was too weak.

Defendants also cite to *Clark v. Prichard*, where, in two short sentences, a concurrence summarily asserts, without elaboration, that a mother's two children did not have standing to challenge a term of the mother's probation. 812 F.2d 991, 999 (5th Cir. 1987). Although the opinion denied relief, it did not reach any conclusion as to the children's standing. *Id*. at 996.

This Court has already decided that Plaintiff has suffered an injury that is traceable to Defendants, and the amended complaint allows her claims to be properly redressable. Defendants have not asked this Court to reconsider its decision, and they have not raised any new arguments which would alter the Court's prior reasoning, nor that should change the law of this case.

3.0 Conclusion

Defendants violated Plaintiff's rights, and Plaintiff asks this Court to enter a preliminary injunction barring Defendants from continuing to violate those rights. An injunction is necessary and proper. It should remove the restriction altogether. However, should the Court find any rationale at all for the restriction, the scope of the injunction can be tailored to address any actual legitimate governmental concerns. Alternately, Plaintiff asks this Court she be unburdened by "victim"

designation assigned to her, and that the absence of that status removes the function of the restriction.

Dated: June 17, 2024. Respectfully submitted,

/s/ Marc J. Randazza
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 17, 2024, a true and correct copy of the foregoing document was filed electronically with the Clerk of Court and has been served on all parties of record through the CM/ECF system.

/s/ Marc J. Randazza
MARC J. RANDAZZA