IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

TEENA FOY,

***Plaintiff*,**

v. **Case No.: 4:24cv140-MW/MAF**

FLORIDA COMMISSION ON OFFENDER REVIEW et al.,

***Defendants*.**
_____/

ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFF'S SECOND MOTION FOR PRELIMINARY INJUNCTION

This is Plaintiff's second motion for preliminary injunction. The first motion was filed in April, shortly after Plaintiff filed her complaint. In an earlier Order, this Court denied Plaintiff's first motion for lack of standing—specifically, Plaintiff failed to demonstrate that her injury was redressable by the named Defendants. ECF No. 37. Plaintiff corrected the standing deficiency and filed a second motion for preliminary injunction, ECF No. 43. Defendants responded to Plaintiff's motion, ECF No. 51, and a hearing was held on June 21, 2024. For the reasons stated below, Plaintiff's motion is **GRANTED in part** and **DENIED in part**.

I

Teena Foy has one child, Scott Graham-Foy. For years, Ms. Foy and Mr. Graham-Foy's relationship has been tested. First, it was tested by Mr. Graham-Foy's yearslong battle with opiate addiction, which resulted in several felony convictions and stints on probation. In 2011, their relationship was tested even further when Mr. Graham-Foy attacked his mother with a frying pan and a knife. Mr. Graham-Foy pleaded guilty to this assault and was sentenced to serve fifteen years in the Florida Department of Corrections.

During his time in prison, Mr. Graham-Foy became sober, and Ms. Foy and Mr. Graham-Foy took steps to repair their relationship. Letters turned into phone conversations. Eventually, Ms. Foy began to visit her son in person twice a month. The two have since become as close as they were prior to the assault, relying on each other for advice and emotional support.

Now, their relationship faces another test. Because of his prior drug convictions, Mr. Graham-Foy was designated a habitual felony offender under section 775.084, Florida Statutes. As a result, Mr. Graham-Foy was placed on conditional release supervision pursuant to section 947.1405, Florida Statutes. Under this provision, an offender sentenced under section 775.084 "shall, upon reaching the tentative release date or provisional release date . . . be released under

supervision subject to specified terms and conditions . . . .” § 947.1405, Fla. Stat. (2023).

The Florida Commission on Offender Review (“the Commission”) oversees the conditional release program and sets out terms and conditions of release—such as restitution, participation in drug treatment, and other terms the Commission finds appropriate. *See* Fla. Admin. Code R. 23-23.008(2) (stating that “the Commission imposes any special conditions it considers warranted”). The Commission has three members. In January, those members were Chairperson Melinda Coonrod, Commissioner Richard Davison, and Commissioner David Wyant.[1] Any assignment of or change in conditions requires a majority vote—in other words, a change must be reviewed and voted on by “[a] panel of no fewer than two Commissioners.” *See* Fla. Admin. Code R. 23-23.010(7).

On January 24, 2024, then-Commissioners Davison and Wyant voted to release Mr. Graham-Foy from prison and place him in the Conditional Release Supervision program to serve the remainder of his sentence. This term will expire in June of 2026. At the meeting, these two Commissioners also voted to impose the following special conditions: substance abuse therapy, anger management program,

[1] At the time of writing, David Wyant has replaced Melinda Coonrod as Chairperson. The two other Commissioners are Richard Davison and Susan Whitworth. *See* ECF No. 63 at 3. Pursuant to Rule 25(d), the parties are automatically substituted as Defendants. *See* Fed. R. Civ. P. 25(d).

curfew, and no contact with the victim. ECF No. 30-2 at 4. Thus, as the victim of her son's crime, Ms. Foy cannot have any contact with her son. But Ms. Foy seeks contact with her son. To that end, she wrote several letters to the Commission expressing her wish to see him and asking that the no-contact condition be removed. ECF No. 30-6 at 4–9. In response to her letters, the Commission placed Mr. Graham-Foy's case on a docket for review on January 31, 2024. At that meeting, Commissioners Davison and Wyant again voted to keep the "no contact with victim" condition in place.

Ms. Foy now sues Commissioner Davison, Commissioner Whitworth, and Chairperson David Wyant in their official capacities as members of the Commission. Ms. Foy seeks injunctive and declaratory relief that the no-contact condition violates her fundamental rights, including her rights to freedom of association (specifically, association with her son), freedom of speech, and freedom of religion. Further, she claims that she did not receive due process before the State of Florida designated her a "victim," subjecting her to significant restrictions on her fundamental rights.

II

A district court may grant a preliminary injunction if the movant shows: (1) she has a substantial likelihood of success on the merits; (2) she will suffer irreparable injury unless the injunction issues; (3) the threatened injury to the movant outweighs whatever damage the proposed injunction may cause the opposing party;

and (4) if issued, the injunction would not be adverse to the public interest. *Siegel v. LePore*, 234 F.3d 1163, 1176 (11th Cir. 2000) (en banc). Although a "preliminary injunction is an extraordinary and drastic remedy," it should be granted if "the movant 'clearly carries the burden of persuasion' as to the four prerequisites." *United States v. Jefferson Cnty.*, 720 F.2d 1511, 1519 (11th Cir. 1983) (quoting *Canal Auth. v. Callaway*, 489 F.2d 567, 573 (5th Cir. 1974)).[2] No one factor, however, is controlling. This Court must consider the factors jointly, and a strong showing on one factor may compensate for a weaker showing on another. *See Fla. Med. Ass'n, Inc. v. U.S. Dep't of Health, Educ., & Welfare*, 601 F.2d 199, 203 n.2 (5th Cir. 1979). Applying this standard, this Court first considers whether Ms. Foy has established a likelihood of success on the merits.

III

As to substantial likelihood of success on the merits, this Court addresses this factor first because, typically, if a plaintiff cannot "establish a likelihood of success on the merits," this Court "need not consider the remaining conditions prerequisite to injunctive relief." *Johnson & Johnson Vision Care, Inc. v. 1-800 Contacts, Inc.*, 299 F.3d 1242, 1247 (11th Cir. 2002). And because standing is always "an

[2] In *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc), the Eleventh Circuit adopted as binding precedent all decisions of the former Fifth Circuit handed down prior to October 1, 1981.

indispensable part of the plaintiff's case," this Court begins its merits analysis with standing. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992).

Over time, the Supreme Court has developed a three-part test for determining when standing exists. Under that test, a plaintiff must show (1) that they have suffered an injury-in-fact that is (2) traceable to the defendant and that (3) can likely be redressed by a favorable ruling. *See Lujan*, 504 U.S. at 560–61. And "where a plaintiff moves for a preliminary injunction, the district court . . . should normally evaluate standing 'under the heightened standard for evaluating a motion for summary judgment.' " *Waskul v. Washtenaw Cnty. Cmty. Mental Health*, 900 F.3d 250, 255 (6th Cir. 2018) (quoting *Food & Water Watch, Inc. v. Vilsack*, 808 F.3d 905, 912 (D.C. Cir. 2015)); *see also Cacchillo v. Insmed, Inc.*, 638 F.3d 401, 404 (2d Cir. 2011). Thus, "a plaintiff cannot 'rest on such mere allegations, [as would be appropriate at the pleading stage,] but must set forth by affidavit or other evidence specific facts, which for purposes of the summary judgment motion will be taken to be true.' " *Cacchillo*, 638 F.3d at 404 (some alteration in original) (quoting *Lujan*, 504 U.S. at 561).

First, Plaintiff's injury. While she brings different legal theories, Ms. Foy's injury stems from one underlying fact—namely, Defendants are preventing her from having contact with her only living family member, her son. This causes her emotional anguish and pain, chills her speech, prevents her from fully exercising her

religion, and impedes her constitutional right of association. Defendants argue that this is not a cognizable injury because the Commission imposed conditions of release on Mr. Graham-Foy, not Ms. Foy. But the conditions imposed on Mr. Graham-Foy necessarily impact Ms. Foy as well. *See, e.g.*, *Procunier v. Martinez*, 416 U.S. 396, 409 (1974) ("[T]he First Amendment liberties of free citizens are implicated in censorship of prison mail."), *overruled on other grounds*.[3] The undisputed evidence is that Mr. Graham-Foy may not engage in any contact with Ms. Foy, in any form. For purposes of Article III, this Court finds that Ms. Foy has demonstrated an injury-in-fact.

Turning to traceability, this requires a showing that Ms. Foy's "injury [is] fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court." *31 Foster Children v. Bush*, 329 F.3d 1255, 1263 (11th Cir. 2003). Based on the record before this Court, Ms. Foy's injury is fairly traceable to the Commission. Two Commissioners imposed the no-contact condition upon Ms. Foy's son. The Commission was not required to impose this condition. Instead, it is a discretionary condition that the Commission has the power—but not the obligation—to impose. *See* Fla. Admin. Code § 23-23.01095(a) (outlining the standard conditions of release). Had the

[3] Indeed, the Eleventh Circuit has recognized that restrictions on prisoners impact the constitutional rights of those outside. *Prison Legal News v. Sec'y, Fla. Dep't Corr.*, 890 F.3d 954 (11th Cir. 2018).

Commissioners not included this special condition, Ms. Foy would not have an injury. Accordingly, Ms. Foy's injury is traceable to the Commission.

Finally, redressability. Redressability considers "whether the injury that a plaintiff alleges is likely to be redressed through the litigation." *Sprint Commc'ns Co., L.P. v. APCC Servs., Inc.*, 554 U.S. 269, 287 (2008) (emphasis removed). For the same reasons that Ms. Foy's injury is fairly traceable to the Commission, an injunction requiring the Commissioners to remove the no-contact condition would substantially redress Ms. Foy's injury. Accordingly, Ms. Foy has satisfied all three elements of Article III standing to proceed with her motion for preliminary injunction.

IV

Before turning to the merits of Ms. Foy's claims, this Court pauses to address the appropriate legal standard. The parties do not dispute the standards that govern Ms. Foy's due process claims, but they disagree regarding the standard governing the remaining claims.

Ms. Foy proposes that the governing standard for her First Amendment claims is strict scrutiny, but that doesn't work. True, a state action which burdens a fundamental right is ordinarily subject to strict scrutiny. But "the Constitution sometimes permits greater restriction of such rights in a prison than it would allow elsewhere." *Beard v. Banks*, 548 U.S. 521, 528 (2006). This is because "running a

prison is an inordinately difficult undertaking[.]" *Pesci v. Budz*, 935 F.3d 1159, 1165 (11th Cir. 2019) (internal quotation omitted). "[S]afety and order at these institutions requires the expertise of correctional officials, who must have substantial discretion to devise reasonable solutions to the problems they face[.]" *Florence v. Bd. of Chosen Freeholders*, 566 U.S. 318, 326 (2012). So, while "[p]rison walls do not form a barrier separating prison inmates from the protections of the Constitution [,]" judicial intervention into prison administration is fraught. *Pope v. Hightower*, 101 F.3d 1382, 1384 (11th Cir. 1996) (citing *Procunier v. Martinez*, 416 U.S. 396, 405 (1974)). Courts are "ill-equipped to deal with the increasingly urgent problems of prison administration and reform." *Id.* Additionally, prison administration is an area generally entrusted to the executive and legislative branches. Thus, judicial intervention into this realm raises significant "separation of powers issues which counsel towards judicial restraint." *Turner v. Safley*, 482 U.S. 78, 84–85, 107 S. Ct. 2254, 2259 (1987).

So if not strict scrutiny, then what? The legal standard can't be something akin to rational basis review—courts have made clear that "a more searching" inquiry is appropriate where prison administration implicates a prisoner's constitutional rights. *Williams v. Pryor*, 240 F.3d 944, 950 (11th Cir. 2001). Because the appropriate legal standard was not immediately apparent, this Court prompted the parties to consider whether the standard outlined by the Supreme Court in *Turner* may be appropriate.

Defendants now take the position that this standard should be applied to Ms. Foy's First Amendment claims.

In *Turner*, the Supreme Court developed a modified level of scrutiny to analyze certain constitutional claims involving inmates. To pass constitutional muster, a prison must show that its regulation is "reasonably related to legitimate penological interests." *Turner*, 482 U.S. at 89.

Turner is not a perfect fit for this case. For one thing, this case does not concern any individual presently incarcerated. Ms. Foy has never been in prison, and Mr. Graham-Foy has been released into conditional release supervision pursuant to section 947.1405, Florida Statutes. Also, the Supreme Court reserved the question of whether *Turner* applies in the context of supervised release. *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."), and the Eleventh Circuit has yet to apply *Turner* in this context.

But even with this imperfect fit, *Turner* is the best available standard for this Court to analyze Ms. Foy's First Amendment claims. Both the Supreme Court and the Eleventh Circuit have recognized that the rights of those outside of prison are impacted by restrictions on their family members in custody. *Procunier v. Martinez*, 416 U.S. 396, 409 (1974), *Prison Legal News v. Sec'y, Fla. Dep't Corr.*, 890 F.3d 954 (11th Cir. 2018). And in *Prison Legal News*, the Eleventh Circuit applied *Turner*

to First Amendment claims raised by an organization outside of prison to the application of a regulation against inmates. *See* 890 F.3d at 967. That's similar to Ms. Foy's First Amendment claims here—she challenges the application of a regulation against someone under Department of Corrections supervision.

Moreover, the concerns which counsel a policy of judicial restraint in the realm of prison administration are no less salient in the context of conditional release. Like running a prison, administration of a conditional release program presents a complicated and onerous task—one which necessitates similar discretion to the state officials tasked with overseeing those programs. Subjecting each action of the officials overseeing a conditional release program to a rigid strict scrutiny analysis would "seriously hamper their ability to anticipate security problems and to adopt innovative solutions" to the varied challenges which undoubtedly arise in administering such a program. *See Turner*, 482 U.S. at 89.

Furthermore, like prison, judicial intervention into a conditional release program raises significant concerns about separation of powers. These concerns counsel for judicial restraint no less forcefully in the context of conditional release. Finally, Mr. Graham-Foy is still supervised by the Department of Corrections during his period of conditional release, making him functionally—although not physically—in the Department's custody. *See* § 947.1405(8), Fla. Stat. (assigning to

the Department of Corrections the task of providing "intensive supervision by experienced correctional probation officers").

It is true that some factors that courts have found material to the *Turner* standard when applied in the context of a prison will make little sense in relation to a conditional release program—for example, analyzing a rule's impact on other inmates. But some common-sense tailoring is all that is needed to modify the test to suit this novel application. Accordingly, this Court will apply *Turner* to Ms. Foy's First Amendment claims.

V

Having identified the standard, this Court now addresses the merits of Ms. Foy's claims. Ms. Foy brings six claims. She states that the no-contact condition imposed by the Commission violates her freedoms of speech and religion. Additionally, Ms. Foy argues that the no-contact condition runs afoul of both substantive and procedural due process under the Fourteenth Amendment and the Florida Constitution, arguing that designating her a "victim" gave her greater procedural rights beyond notice and opportunity to be heard. Finally, Ms. Foy argues that the condition impedes her right to association with her son. This Court addresses each claim in turn.

A

Ms. Foy argues that the no-contact condition interferes with her right to free speech. Specifically, Ms. Foy argues that she is unable to speak to her son, as doing so would violate the no-contact condition and send Mr. Graham-Foy back to prison. She argues this is an unconstitutional burden on her speech.

This Court does not agree that the no-contact condition unconstitutionally burdens Ms. Foy's speech. She can speak to anyone, anywhere, about anything (within lawful limits)—even, according to Defendants, her son.[4] Accordingly, this Court need not even reach the *Turner* factors, which would come into play if the condition "impinge[d] on" Ms. Foy's constitutional rights. As a result, Ms. Foy has not demonstrated a substantial likelihood of success on the merits for her speech claim, and this Court need not analyze the remaining preliminary injunction factors with respect to this claim. *Johnson & Johnson Vision Care, Inc.*, 299 F.3d at 1247.

B

Next, religion. Ms. Foy is a practicing Catholic. At the hearing, she testified that the no-contact condition burdens her religious practice by preventing her from

[4] To the extent that Ms. Foy argues that her speech is chilled, that argument fares no better. In order to succeed on a chilled speech argument, the chill must be "objectively reasonable." *See Pittman v. Cole*, 267 F.3d 1269, 1284 (11th Cir. 2001). Mr. Graham-Foy can only be revoked and sent back to prison for a "willful and substantial" violation of the conditions of his release. *Houck v. Fla. Parole Comm'n*, 953 So. 2d 69 (Fla. 1st DCA 2007) (citing *State v. Carter*, 835 So. 2d 259, 262 (Fla. 2002)). It is unreasonable to assume that Ms. Foy sending Mr. Graham-Foy a letter would be a "willful and substantial" violation, assuming he does nothing in response. Therefore, any chill is not objectively reasonable.

attending mass. Ms. Foy testified that she is afraid that if she and Mr. Graham-Foy chose the same church, he will be sent back to prison for violating the terms of his release. Nor could the two solve the problem by prearranging which mass to attend to ensure compliance with the condition, because they are not allowed to speak.

For the same reasons that the no-contact condition does not impinge on Ms. Foy's speech rights, this Court concludes that it does not burden her religious freedom. Ms. Foy's fear is not objectively reasonable. As mentioned earlier, Mr. Graham-Foy's conditional release can only be revoked for a "willful and substantial" violation of the conditions of his release. Should the two accidentally appear for the same mass, this would not be a willful and substantial violation of the terms of his release. Mr. Graham-Foy could simply leave.

Accordingly, Ms. Foy has not demonstrated she is substantially likely to succeed on the merits of her religious freedom claim, and this Court need not analyze the remaining preliminary injunction factors with respect to this claim.

C

This Court next addresses Ms. Foy's due process claims, beginning with procedural due process. The Fourteenth Amendment says that no state shall "deprive any person of life, liberty, or property without due process of law." U.S. Const. amend. XIV. "The fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'" *Mathews v. Eldridge*,

424 U.S. 319, 333 (1976) (quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)). Ms. Foy argues that a fundamental liberty interest—her right to associate with her son—was violated when the Commissioners imposed a no-contact condition on her son's conditional release, and she was not granted a meaningful opportunity to be heard.

This Court disagrees. When protected interests are implicated, a hearing is required—but that does not mean the hearing must conform to the aggrieved person's request. The undisputed record evidence demonstrates that a victim advocate contacted the Commission on Ms. Foy's behalf after Mr. Graham-Foy's case first appeared on the docket. ECF No. 30-7. Moreover, the victim advocate forwarded the letters Ms. Foy had written. *Id.* Following that, the Commission re-set Mr. Graham-Foy's case for a second vote "at victim's request." ECF No. 30-8 at 1. The Commission's Director of Field Operations avers that "the Commission considered Ms. Foy's correspondence" prior to the vote. ECF No. 30-1 ¶ 8 (affidavit of Megan Higgins). Finally, the Commission wrote "per the commission vote on 1/31/2024, the commission has agreed to deny the request to modify [the no-contact condition]." *Id.* at 2.

Ms. Foy argues that this brief, single-sentence decision with no explanation means that the Commission did not consider her letters in making its decision. As a result, she had no meaningful opportunity to be heard. In making this argument, Ms.

Foy asks this Court to assume the worst of the Commission. Namely, because the Commissioners did not discuss the contents of her letters during the vote—or write notes regarding the contents of her letters—this means the Commissioners did not consider those letters. This Court is unwilling to make that assumption, particularly since the Commission's Director of Field Operations attests that those letters *were* considered. Based on this record, this Court finds that in resetting her son's case at her request after considering information from her letters, the Commission provided Ms. Foy a meaningful opportunity to be heard. Thus, Ms. Foy has not demonstrated a substantial likelihood of success with respect to her procedural due process claim, and this Court need not analyze the remaining preliminary injunction factors with respect to this claim.

D

To prevail on her substantive due process claim, Ms. Foy must demonstrate official action that "shocks the conscience." *Cty. of Sacramento v. Lewis*, 523 U.S. 833, 846 (1998). Further, "the due process guarantee does not entail a body of constitutional law imposing liability whenever someone cloaked with state authority causes harm." *Id.* at 848. This is a high threshold—and "negligently inflicted harm is categorically beneath" it. *Id.* at 849.

This Court understands that, from Ms. Foy's perspective, the Commissioners inflicted harm by imposing the no-contact condition. But in voting to impose the

condition, the officials were not reckless, or even negligent in their duties. In short, there are myriad reasons that the Commissioners may disregard the wishes of the victim when voting on appropriate conditions of release in a domestic violence case. Moreover, this Court cannot substitute its judgment for the judgment of the Commissioners. It is instead limited to a review of the results of the official action. And the result here—imposing the no-contact condition despite Ms. Foy's letters expressing her wish to the contrary—does not shock the conscience. Thus, Ms. Foy has not demonstrated a substantial likelihood of success with respect to her substantive due process claim, and this Court need not analyze the remaining preliminary injunction factors with respect to this claim.

E

Under the Florida constitution, "every victim is entitled to . . . [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). Ms. Foy argues that "victimhood" is a special status under the state constitution and contains privileges and protections not afforded ordinary citizens. ECF No. 43 at 23. According to Ms. Foy, the process she was given here—an opportunity to submit letters to the Commission—falls short of what Florida requires.

Ms. Foy presents no authority for this novel argument, and this Court's own research revealed no authority in support. Accordingly, at this early stage in the

proceedings, Ms. Foy has not demonstrated a substantial likelihood of success on this claim, and this Court need not analyze the remaining preliminary injunction factors. She is not entitled to relief on her state law claim.

F

This Court will next apply *Turner* to Ms. Foy's association claim. Unlike her pure speech claim, the fact that Ms. Foy is free to write unanswered letters to her son does not defeat her association claim. This is because association protects more than just speech. "[T]he addressee as well as the sender of direct personal correspondence derives from the First and Fourteenth Amendments a protection against unjustified governmental interference with the intended communication." *Procunier v. Martinez*, 416 U.S. 396, 408–09 (1974). This means that Ms. Foy has an interest not only in communicating to her son, but also in receiving whatever he would communicate back were he not prohibited from doing so. Furthermore, Ms. Foy has a fundamental interest at stake because "[f]amily relationships, by their nature, involve deep attachments" and impact "an intrinsic element of personal liberty." *Roberts v. U.S. Jaycees*, 468 U.S. 609, 619–20 (1984).

As discussed above, under *Turner*, a prison regulation—or, in this case, the application of a condition of release—which interferes with Ms. Foy's constitutional rights must be "reasonably related to legitimate penological interests" in order to be

constitutional. To analyze whether a reasonable relationship exists, *Turner* outlines four factors to guide courts in this inquiry, namely—

> (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 that remain open to prison inmates," which is evidence that weighs in favor of the regulation's validity;
>
> (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, as "an alternative that fully accommodates the prisoner's rights at de minimis cost to valid penological interests" is evidence that a regulation is an "exaggerated response" and not reasonable.
>
> *See Turner*, 482 U.S. at 89–91 (internal quotations omitted).

As to the first factor, a rational connection exists between the no-contact condition and legitimate penological interests—at least as far as in-person contact is concerned. Avoiding recidivism and protecting the public from violence are legitimate penological interests. Mr. Graham-Foy has no history of violence except for the single episode which led to his incarceration. In that single episode of violence, Mr. Graham-Foy's mother happened to be the victim.

Restrictions that preemptively address safety concerns are rationally connected to a penological purpose. It is rational for Defendants to account for what

might be a unique risk of violence as between Mr. Graham-Foy and his mother—a risk of violence that does not exist between Mr. Graham-Foy and anybody else. While it is true that Defendants have not proved this fact, the State is not required to "present evidence of an actual security [threat] in order to satisfy the first [*Turner*] factor." *Prison Legal News*, 890 F.3d at 968. Given the nature of Mr. Graham-Foy's charges, the security concerns that come with permitting in-person contact between Mr. Graham-Foy and his mother are self-evident. Officials must be able to "anticipate security problems and . . . adopt innovative solutions" to prevent harm which is yet to occur. *Id.* By prohibiting Mr. Graham-Foy from being in his mother's physical presence, the Commissioners are attempting to reduce the risk of Mr. Graham-Foy reoffending and subjecting his mother to violence again. Accordingly, Defendants' restriction on in-person contact between Plaintiff and her son is rationally connected to legitimate penological goals.

But a restriction on in-person contact is not all this Court is dealing with here. If it was, this would be a much easier case. What is at issue here is a total restriction on *any* contact—in-person or otherwise. This factor cuts differently when considering that Mr. Graham-Foy may not have any contact with his mother whatsoever. He cannot call, text, or even write letters to his mother. The question before this Court is whether the prohibition against *any* contact is rationally connected to legitimate penological goals. The answer is no.

First, there is no rational connection to any prospective safety concerns. As this Court already acknowledged *supra*, Defendants do not need to present evidence of "an actual security breach" to satisfy the first *Turner* factor if their decision is motivated by safety concerns. Defendants are allowed to impose a condition in anticipation of a *potential* threat. That is, Defendants do not need to prove the *validity* of a potential threat—the potential of a threat is a legitimate purpose on its own. But in *Turner* and its progeny, the respective state decisionmakers provided testimony as to what their purpose was. Here, toward the close of the second hearing, Defendants' counsel noted that "threats can be made" over the telephone. But that's it. Defendants did not submit an affidavit or call a witness to explain why allowing Mr. Foy to call or write his mother while on conditional release poses a security threat. Instead, Defendants seem to suggest that merely uttering the phrase "threats can be made" as part of a legal argument acts as a talisman against all constitutional qualms raised by a prisoner. Not so.

Here, we have a record. That record demonstrates that Mr. Graham-Foy was allowed to engage in all manner of contact with his mother when he was still incarcerated—up to and including supervised, in-person visitation. *See* Tr. at 9 ¶¶ 15–21 (Ms. Foy testifying that she and Mr. Graham-Foy "corresponded by mail. Then we moved to a phone visit one to two times a week . . . [a]nd after that I was allowed . . . to have a special visit with [Mr. Graham-Foy]. Initially, one time a

month and then it moved to twice a month."). *See also* ECF No. 43-5 (visitation logs). Thus, while it was self-evident that in-person contact poses a security risk, the same cannot be said for remote contact.

Nor does the record support a rational connection to rehabilitation. There is no evidence in the record which suggests that Mr. Graham-Foy's remote contact in any way undermines Defendants' legitimate interest in rehabilitation. To the contrary, Ms. Foy has provided competent evidence to suggest that a total ban on family contact would serve to *undermine* penological goals. Specifically, Ms. Foy introduced an expert report suggesting family contact is perhaps the most effective tool available to help Mr. Graham-Foy successfully reintegrate back into society. *See* ECF No. 43-10. Indeed, the Eleventh Circuit has acknowledged that preventing family contact undermines rehabilitation. *Prison Legal News*, 890 F.3d at 975 (noting that preventing ability of prisoners to call family "would undermine efforts to rehabilitate inmates"). And Plaintiff's evidence stands unrebutted.

To be clear, this Court is not substituting its views for that of Defendants. The problem for Defendants is, they have dedicated no more than a few solitary words of post-hoc legal argument to explain the penological purpose underlying their decision to prohibit remote contact. There is no testimony, affidavit, or other evidence in the record explaining what penological purpose is served by banning remote contact between Ms. Foy and Mr. Graham-Foy—whether that be an

anticipated security threat or some other justification. Juxtapose the utter absence of evidence showing a rational connection to a penological purpose, with the competent evidence in the record that a total ban on family contact would serve to *undermine* at least one penological goal, rehabilitation. In light of this record, this Court is forced to conclude this factor cuts in Plaintiff's favor. The prohibition on all contact between Ms. Foy and her son lacks a rational connection to a legitimate penological interest.

Turning to the second *Turner* factor, there are no alternative means for Ms. Foy to exercise her fundamental right of association with her son. Mr. Graham-Foy is prohibited from communicating with his mother in any way. He cannot write her, call her, see her in person, or otherwise contact her. In fact, Defendants objected to him appearing to testify before this Court so long as Ms. Foy was in the courtroom. As things stand, Ms. Foy has no alternative means of exercising her associational right with her son. Therefore, the second *Turner* factor cuts in her favor.

As to the third *Turner* factor, this Court concludes there would be minimal impact on the conditional release apparatus if Ms. Foy's associational rights are accommodated—at least as far as remote contact is concerned. But it is a close call as to whom this factor favors. The third *Turner* factor generally focuses on whether accommodation of the right at issue would create institutional disruption, have safety implications, or strain resources. *See, e.g.*, *Rodriguez v. Burnside*, 38 F.4th 1324,

1333–34 (11th Cir. 2022) (accommodation would introduce "risk to prison safety and security"); *Pesci*, 935 F.3d at 1171 (accommodation would "increase tension and hostility, potentially resulting in inmate-on-staff violence"); *Prison Legal News*, 890 F.3d at 973 (accommodation would require the prison to "allocate more time, money, and personnel").

There is no argument, much less evidence, in the record that remote communication would in any way disrupt the administration of the conditional release program at issue. Defendants did allocate about twenty seconds of argument, unsupported by any evidence, to the idea that it would be a drain on resources to monitor Mr. Graham-Foy's remote communications with his mother. Defendants' conclusory invocation of these potential costs does not defeat Ms. Foy's showing on the other *Turner* factors.

Moving to the fourth and final *Turner* factor, this, too, favors Ms. Foy. The Fourth *Turner* factor asks whether any "obvious, easy alternatives" exist to the current policy which "accommodate[] the prisoner's rights at de minimis cost to valid penological interests[.]" *See Turner*, 482 U.S. at 90–91 (quotations omitted). If such alternatives exist, then this is evidence that a regulation is an unreasonable "exaggerated response[.]" *Id.* The condition at issue is a total and complete ban of communication between Ms. Foy and her son—including remote communication. The obvious, easy alternative to the no-contact condition would be to allow remote

communication. There is no evidence in the record, nor argument provided, as to how any of Defendants' penological interests would be impacted by allowing remote communication between Ms. Foy and her son, and thereby allow her to exercise her associational rights. This Court concludes that the total ban on all contact for the period of incarceration, which is what is at issue here, is an "exaggerated response[.]" *See Turner*, 482 U.S. at 90. Accordingly, the fourth and final *Turner* cuts in Ms. Foy's favor.

In sum, this Court concludes, based on this record, that the total prohibition of contact between Ms. Foy and her son is not "reasonably related to legitimate penological interests[.]" *Turner*, 482 U.S. at 89. While the test outlined by the Supreme Court in *Turner* is a deferential one, there are limits. The test specifically asks whether there is a *reasonable* connection—not merely a rational justification.

This Court pauses to make clear that if Defendants had imposed only a limit on in-person contact between Ms. Foy and her son—and not a total ban on any form of contact—this would be an easy case. Ms. Foy's son physically assaulted her, and Defendants' limitation on in-person contact between the two passes muster under *Turner*. And perhaps had Defendants provided *some* testimony or evidence as to how remote contact would undermine their penological purpose, this case would come out differently.

Under *Turner*, the State is not free to overreact and unreasonably overburden fundamental rights. *See Turner*, 482 U.S. at 90. For example, prohibiting inmates from talking to anyone, in any form, ever, would save the state the headache and resources associated with allowing guests into the prison to visit, screening mail, and maintaining the phone lines—among numerous other burdens. It would minimize any number of safety threats and dangerous ideas from entering the prison walls. But these benefits would not necessarily render such a policy *reasonable* when it eviscerates an inmate's ability to speak and to associate. This would be especially true if those imposing such a policy presented zero evidence of its rational connection to any legitimate penological purpose. The same can be said about the unconstitutional marriage prohibition policy at issue in *Turner* itself, which too was deemed an "exaggerated response." *See Turner*, 482 U.S. at 97–98. Prohibiting inmates from marrying undeniably has some benefits regarding resource allocation and institutional safety, but a near-total ban was not "reasonable" even in light of those benefits.

Here, the total prohibition of contact appears to be of the same vein—an exaggerated response. As outlined above, the record is bereft of any evidence that allowing remote communication between Ms. Foy and her son would negatively impact any of the State's legitimate penological interests—not security, recidivism, resource allocation, or safety. The main argument against remote contact is the

associated cost of potentially monitoring such communications. But no evidence of the size of that cost, or even that it exists at all, was provided. *See* ECF Nos. 58-1 & 58-2 (affidavits of Commissioners Davison and Wyant). Moreover, Defendants never articulated a penological interest advanced by monitoring remote communications. The evidence in the record, if anything, indicates that family contact vindicates the State's penological goals, specifically rehabilitation and reducing recidivism—it does not undermine them. Defendants cannot justify their restriction of Ms. Foy's rights with a conclusory invocation of the costs of monitoring.

In sum, in light of *Turner*, Ms. Foy is substantially likely to succeed on the merits of her claim that the no-contact condition, as applied, places an unconstitutional burden on her right of association. Accordingly, this Court turns to the remaining preliminary injunction factors.

VI

Recall that the remaining preliminary injunction factors are (1) that Ms. Foy will suffer irreparable injury absent an injunction; (2) that the harm to Ms. Foy of not granting an injunction outweighs the harm an injunction would cause Defendants; and (3) that the injunction would not be adverse to the public interest. *Siegel*, 234 F.3d at 1176. Here, the remaining preliminary injunction factors are intertwined with considerations already discussed regarding the merits of Ms. Foy's

association claim. On balance, these factors weigh in favor of granting Ms. Foy's motion for preliminary injunction.

This Court starts with the second preliminary injunction factor, irreparable injury absent an injunction. Ms. Foy asserts that absent injunctive relief she will continue to suffer the ongoing, daily harm of being unable to contact her only living family member. Moreover, she is in poor health and believes this ongoing harm may continue for the rest of her life. On the other hand, Defendants argue that Ms. Foy is not injured at all, because the restriction is placed only on Mr. Graham-Foy—an argument this Court rejected above. This Court finds that the undisputed fact that Ms. Foy may not associate with her son constitutes an imminent, irreparable harm. Absent an injunction, Ms. Foy's associational rights will continue to be burdened based on a condition that may last for the remainder of her life.

As to the remaining preliminary injunction factors, weighing Ms. Foy's injury against Defendants' interest, the scale tips in Ms. Foy's favor. This is because the state has no legitimate interest in violating an individual's freedom of association. And an injunction would not be adverse to the public interest for this same reason. As the Supreme Court has recognized, "[t]he First Amendment, in particular, serves significant societal interests." *First Nat'l Bank of Bos. v. Bellotti*, 435 U.S. 765, 776 (1978).

In sum, because Ms. Foy has carried her burden as to all four of the preliminary injunction factors with respect to her association claim, this Court finds that she is entitled to a preliminary injunction.[5]

VII

This Court next considers whether Ms. Foy must secure a bond in furtherance of the preliminary injunction. Rule 65(c) provides that a "court may issue a preliminary injunction . . . only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained." Fed. R. Civ. P. 65(c). But "it is well-established that 'the amount of security required by the rule is a matter within the discretion of the trial court . . . [, and] the court may elect to require no security at all.' " *BellSouth Telecomms., Inc. v. MCImetro Access Transmission Servs.*, 425 F. 3d 964, 971 (11th Cir. 2005) (alteration in original) (quoting *City of Atlanta v. Metro. Atlanta Rapid Transit Auth.*, 636 F.2d 1084, 1094 (5th Cir. Unit B 1981)). Moreover, "[w]aiving the bond requirement is particularly appropriate where a plaintiff alleges the infringement of a fundamental constitutional right." *Curling v. Raffensperger*, 491 F. Supp. 3d 1289, 1326 n.25 (N.D. Ga. 2020) (quoting *Complete Angler, LLC*

[5] Ms. Foy's entitlement to a preliminary injunction does not, however, require this Court to grant the requested relief. As this Court has noted previously, courts have broad discretion to fashion equitable relief which is appropriate to the circumstances of the case in question. *See Democratic Exec. Comm. of Fla. v. Lee*, 915 F.3d 1312, 1327–28 (11th Cir. 2019) (explaining that crafting a "Goldilocks solution," rather than approaching equitable relief as an all-or-nothing proposition, is "well within [a court's] discretion").

v. City of Clearwater, 607 F. Supp. 2d 1326, 1335 (M.D. Fla. 2009)). Here, Defendants' constitutional violation weighs against requiring a bond. Further, Defendants made no argument regarding bond and provided no evidence that an injunction would be cost-prohibitive. For these reasons, this Court finds that a bond is unnecessary in this case. Accordingly, in its discretion, this Court waives the bond requirement.

VIII

Having determined a preliminary injunction is warranted, this Court next addresses whether it will stay that injunction pending appeal. Stays pending appeal are governed by a four-part test: "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987); *see also Venues Lines Agency v. CVG Industria Venezolana De Aluminio, C.A.*, 210 F.3d 1309, 1313 (11th Cir. 2000) (applying the same test). Considering that this test is so similar to that applied when considering a preliminary injunction, courts rarely stay a preliminary injunction pending appeal. That rings true here. Because no exceptional circumstances justify staying this Order pending appeal, *cf. Brenner v. Scott*, 999 F. Supp. 2d 1278, 1292 (N.D. Fla. 2014) (Hinkle, J.) (staying of a preliminary

injunction given the public interest in stable marriage laws across the country), this Court refuses to do so. Defendants have every right to appeal, and this Court sees no reason to delay Defendants in seeking an appeal by requiring them to file a motion to stay with this Court under Rule 62.

IX

Having determined that Ms. Foy is entitled to a preliminary injunction, this Court must now decide the scope of relief to which Ms. Foy is entitled. Ms. Foy seeks either an injunction preventing Defendants from enforcing or threatening to enforce the "No Victim Contact" condition, or compelling removal of the condition. For the same reasons that this Court applied *Turner*—namely, a need for judicial restraint where state penal systems are involved—this Court declines to fashion specific relief unless forced to do so.[6] Instead, Defendants may propose protocols for non-physical contact between Ms. Foy and her son consistent with this Order, including how any non-physical contact would be supervised, if at all. Defendants may communicate that plan to this Court on or before **Friday, August 2, 2024**.[7]

Accordingly,

[6] If Defendants prefer not to develop their own protocol, this Court will allow Ms. Foy and her son to communicate via telephone, text message, email, and letter without supervision.

[7] Defendants do not waive any appellate argument by complying with this Order. Once again, this Court notes that it has reviewed Defendants' action under the most deferential standard available under the circumstances—*Turner*—and is giving Defendants an opportunity to propose protocols for non-physical contact.

IT IS ORDERED:

1. Plaintiff Teena Foy's motion for a preliminary injunction, ECF No. 43, is **GRANTED in part and DENIED in part**. The motion is **GRANTED** insofar as she is entitled to a preliminary injunction on her association claim. The motion is otherwise **DENIED**.
2. On or before **Friday, August 2, 2024**, Defendants may confer and file a proposed modification of Mr. Graham-Foy's conditions of release to comply with this Court's Order. Once this Court approves the proposal, this Court will then issue an injunction directing Defendants to comply with their proposal. If Defendants choose not to do so, this Court will allow Ms. Foy to communicate with Mr. Graham-Foy by telephone, text, email, and letter.

SO ORDERED on July 25, 2024.

s/Mark E. Walker
Chief United States District Judge