STATE OF MICHIGAN

IN THE 7th CIRCUIT COURT FOR THE COUNTY OF GENESEE

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S.L., T.L.L., T.L., C.L., M.L., J.L., N.L., D.L., and H.L., by their next friend Onisha Lyle, Z.T.E., Z.W., K.W., by their next friend Monica Garfield, A.H., by her next friend Karla Darling, A.B. and E.B., by their next friend Brya Bishop, O.W., by her next friend Martreanna Browning, LE'ESSA HILL, FLORENCE MARBLE, and PAUL MARBLE, individually and on behalf of a class of similarly situated persons,

Plaintiffs,

v.

SHERIFF CHRISTOPHER SWANSON, GENESEE COUNTY, GLOBAL TEL*LINK CORPORATION (D/B/A VIAPATH TECHNOLOGIES), and DEB ALDERSON,

Defendants.

No. 2024-120601-CZ

Hon. CELESTE D. BELL P-41453

PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION AND MEMORANDUM OF LAW IN SUPPORT

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PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

Plaintiffs S.L., T.L.L., T.L., C.L., M.L., J.L., N.L., D.L., and H.L., by their next friend Onisha Lyle; and Z.T.E., Z.W., and K.W., by their next friend Monica Garfield; individually and on behalf of a putative subclass of similarly situated persons, move this Court to enter a preliminary injunction against Defendants Sheriff Christopher Swanson and Genesee County to preliminarily enjoin their policy prohibiting people from visiting in person their family members detained inside the Genesee County Jail (the "Family Visitation Ban") under MCR 3.310, stating as follows:

1. Plaintiffs filed their Complaint contemporaneously on March 15, 2024 on behalf of the following proposed Class and Prospective Relief Subclass:

   a. A **Class** consisting of all individuals with a parent or child detained at the Genesee County Jail at any point since March 15, 2021; and

   b. A **Prospective Relief Subclass** consisting of all individuals whose parent or child is currently detained or will become detained in the Genesee County Jail. The Prospective Relief Subclass is, by its nature, a transitory class seeking only declaratory and injunctive relief on behalf of people whose own individual claims for prospective relief would be capable of repetition yet evading review absent the ability to proceed as a class.

2. Plaintiffs' Complaint brings claims against Sheriff Christopher Swanson and Genesee County (the "County Defendants") as well as Global Tel*Link Corporation (D/B/A ViaPath Technologies) and Deb Alderson. For clarity, this motion for preliminary injunctive relief is brought only against the County Defendants.

3. Plaintiffs S.L., T.L.L., T.L., C.L., M.L., J.L., N.L., D.L., H.L., Z.T.E., Z.W., and K.W. are members of the Prospective Relief Subclass. S.L., T.L.L., T.L., C.L., M.L., J.L., N.L., D.L., and H.L. are currently separated from their father while he is incarcerated at the Genesee County Jail. Z.T.E., Z.W., and K.W. are currently separated from their mother and father while both parents are incarcerated at the jail.

4. Plaintiffs S.L., T.L.L., T.L., C.L., M.L., J.L., N.L., D.L., H.L., Z.T.E., Z.W., and K.W. request that the court grant their motion and prohibit the County Defendants from enforcing the Family Visitation Ban.

5. In support of this motion, Plaintiffs rely on the Memorandum of Law and Exhibits filed contemporaneously with this motion.

6. Plaintiffs S.L., T.L.L., T.L., C.L., M.L., J.L., N.L., D.L., H.L., Z.T.E., Z.W., and K.W. are entitled to preliminary injunctive relief, as the following requirements are met:

a. Plaintiffs S.L., T.L.L., T.L., C.L., M.L., J.L., N.L., D.L., H.L., Z.T.E., Z.W., and K.W. are likely to prevail on the merits of their claims;

b. Plaintiffs S.L., T.L.L., T.L., C.L., M.L., J.L., N.L., D.L., H.L., Z.T.E., Z.W., and K.W. will suffer irreparable harm without an injunction;

c. Issuing an injunction will not harm the County Defendants; and

d. The public interest favors an injunction.

7. Plaintiffs request that the Court grant their motion and prohibit the County

Defendants from enforcing the Family Visitation Ban.

Respectfully submitted,

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INTRODUCTION

The Family Visitation Ban, enforced by Sheriff Christopher Swanson and Genesee County (the "County Defendants"), infringes on Plaintiffs' fundamental rights to family integrity and intimate association. The policy prohibits parents and children from seeing each other as part of a scheme to generate more revenue from paid phone and video calls. Plaintiffs are unable to see, touch, or embrace their jailed loved ones. The Family Visitation Ban is arbitrary, overbroad, and not necessary to further any compelling government interest. On behalf of themselves and the Prospective Relief Subclass, Plaintiffs ask the Court to grant their motion for Preliminary Injunction and prohibit the County Defendants from enforcing the Family Visitation Ban.

FACTUAL BACKGROUND

A. Plaintiffs are unable to see, touch, or hug their loved ones.

For years, when a child's parent was confined to a jail cell at the Genesee County Jail, the child could lessen the harsh pain of separation by visiting their mom or dad in person. Like most jails in the U.S., the jail encouraged in-person visits, and families used them to maintain essential relationships through the weeks, months, or years during which a family member was jailed.

In 2014, however, County Defendants agreed to a profit-sharing contract with Securus—a company that contracts with jails to charge exorbitant rates to communicate with people in jail through phone calls, video calls, and electronic messages. Ex. F. The County Defendants agreed to prohibit in-person visits at the jail in exchange for a substantial cut of Securus's future revenue. The County Defendants' new policy permanently eliminated in-person visits for families. This Family Visitation Ban left expensive and recorded phone and video calls as the only way for family members regularly to hear a jailed loved one's voice.

Four years later, in 2018, Defendant Swanson led the County to switch providers, negotiating and then signing a contract with Global Tel*Link (later "ViaPath"), or GTL. The

County's cut from the company's phone call revenue is $240,000 per year plus additional kickbacks for every video call that is purchased. Ex. G. The contract has been extended through 2027. Ex. H. The County Defendants and GTL continue to profit from the Family Visitation Ban.

B. The Family Visitation Ban is causing grievous and irreparable harm.

The County Defendants' ban on family visits has had profound consequences for people with parents and children inside. No relationship can compare to the intimacy shared by a child and their parent. They have shared countless moments, some spectacular and many more mundane, yet no less intimate or cherished. Now, due to Defendants' policy, Plaintiffs have spent months or years suffering through physical separation from the people they need the most.

Plaintiffs S.L., T.L.L., T.L., C.L., M.L., J.L., N.L., D.L., and H.L. are the children of Troy Lyle, who has been incarcerated in the Genesee County Jail since January 2023. They have only been allowed to see or touch their father just once in the fourteen months that they have been separated. "I feel really sad constantly about not being able to see him," says 17-year-old S.L. Ex. E-2, S.L. Aff. ¶ 5. Troy calls the kids regularly, but as T.L.L. observes, "it's not the same thing as seeing him in person." Ex. E-3, T.L.L. Aff. ¶ 4. "It's impossible for me and my 8 siblings to get any quality time with Dad on phone or video calls." S.L. Aff. ¶ 6. The one time Troy's children got to visit him in-person, they thought it was going to be long and fun.[1] Ex. E-4, C.L. Aff. ¶ 7.

[1] There is one jail-based program, called Motherly Intercession, that provides a small number of parents a chance to spend one hour every 12 to 16 weeks with their minor children. Incarcerated parents are required to enroll in the class, which has limited capacity. There is not space for most parents to enroll in the program. Parents who are lucky enough to get a spot must attend one-hour sessions each week for at least 12 weeks. Toward the end of the 12-weeks, minor children are permitted to spend one hour with their incarcerated parent. Sometimes the visitation hour occurs during a regular school day and the child will miss the opportunity to see their parent for another 3-4 months. Adult children and parents of incarcerated adult children cannot visit. The only other option for family contact are sporadic "graduations" from various educational programs in the jail. Visitors can see their detained loved one from afar and are permitted a hug for several seconds at the end of the graduation.

When seven-year-old J.L. got to hug his dad, he was so happy. But the visit was not long enough to maintain the kind of connection they had before their dad was incarcerated. Leaving upset J.L. so much that his stomach hurt. Ex. E-6, J.L. Aff. ¶ 7. "I don't understand why they won't let him see us," he says. *Id.* ¶ 8. "There are so many key experiences in a child's life that require in-person connection," observes the children's mother. "He's missing their whole character development, which I see is also hurting them and affecting their behavior every day." Ex. E-1, Onisha Lyle Aff. ¶ 6. "My dad cares about us so much," says S.L. "Things would be so much better if I could see my dad in person." S.L. Aff. ¶¶ 4, 7.

Z.T.E., Z.W., and K.W. are the children of Sabrina and DeMarcus Williams, who have been incarcerated in the Genesee County Jail since February 2023. Z.T.E., the eldest daughter, is ten years old. Her sister, Z.W., is six. Their brother K.W. is four. "Before Sabrina was in jail, the three kids were always right up under her," explains the children's grandmother. Ex. E-7, Monica Garfield Aff. ¶ 4. In the year since their parents have been detained, Z.T.E., Z.W., and K.W. have only seen their mother in-person a few times. They have seen their father just once. "I wish I could go see and hug my mommy all the time," says ten-year-old Z.T.E. Ex. E-8, Z.T.E. Aff. ¶ 7. "I see them deteriorating because they can't see their mom," observes Ms. Garfield. *Id.* ¶ 7. "If they are not reunited with their mother soon it's going to tear them into pieces." *Id.* ¶ 7.

There are dire consequences to keeping Plaintiffs from seeing their parents and children. Professor Julie Poehlmann, Ph.D, a nationally recognized expert with two decades of experience studying child and family well-being in the context of incarceration, explains that children's well-being depends on their ability to maintain healthy attachments to their caregivers. Ex. B, Poehlmann Expert Report ¶¶ 19–21. Repeated and regular contact—especially physical touch—is essential to those attachments, and such physical contact remains essential for social connections,

emotion regulation, and comfort as children grow older. *Id.* ¶¶ 22–33. The incarceration of a parent or child places immense strain on the parent-child relationship, causing severe, negative consequences that can affect the remainder of their lives. *Id.* ¶¶ 35–36. Children with incarcerated parents experience increased risk of child delinquency, poor academic achievement, and social and emotional problems. *Id.* Parents with incarcerated children experience financial strain, emotional distress, and even physical challenges. Preserving positive parent-child relationships can mitigate the harms of incarceration, but doing so depends on physical access to one another and positive touch. *Id.* ¶¶ 41–43. Without those opportunities for face-to-face interaction and contact, family bonds inevitably weaken, and a parent and child's health and well-being suffer.

C. Banning jail visitation harms the jail population, jail staff, and the public.

In-person visits are not only critical for visitors. Empirical data demonstrates that in-person visits have beneficial effects on the safety of incarcerated persons, jail staff, and the public at large.

Banning visits hurts incarcerated people by eliminating the primary avenue they have to develop optimism and prepare for reentry. Professor Joshua Cochran, Ph.D., a criminologist and national expert on visitation and correctional policy, observes that in-person visitation "is linked to reduced likelihoods of self-harm and suicide." Ex. C, Cochran Expert Report ¶ 15. Cochran notes that there is also "a statistically significant relationship between an absence of social contact and a person's likelihood to engage in self-harm." *Id.* Without the hope and connection provided by in-person visits with loved ones, people despair, and their health suffers.

Banning visits also increases misconduct during incarceration and, in turn, makes jails less safe. According to Dora Schriro, a corrections administrator with nearly 35 years of experience running jail and prison systems in St. Louis, New York City, Arizona, and Missouri, "[i]n-person contact visits are also a highly effective means to decrease violence and other forms of misconduct in the facility." Ex. D, Schriro Expert Report ¶ 32. "They are a highly effective strategy, one that

buoys everyone's spirit, and reduces conflict among inmates and between inmates and staff," she explains. *Id.* Empirical data supports these professional observations. As Cochran observes, "[r]esearch finds a consistent, statistically significant relationship between visitation and reduced disciplinary infractions during incarceration," noting that visitation is particularly beneficial when it starts early in a period of incarceration. Ex. C at ¶ 16. From this, Cochran concludes that visitation in jails "may pose particular benefits for improving behavior and other outcomes among people detained." *Id.* ¶ 18. Conversely, banning visits in jails makes misconduct more likely, leading to a less rule-abiding and more dangerous environment.

Perhaps because of their positive effect on jail safety, in-person visits also boost staff morale. As Schriro explains, "[t]hroughout my career, I have observed that the more productively engaged inmates are, the greater their confidence in their future becomes, and the better their interactions with the workforce become as well." Ex. D at ¶ 42. Visits keep people engaged. Schriro also observes that "[i]n-person contact visits improve staff safety and job satisfaction, both of which contribute to improvements staff recruitment and retention." *Id.*, Part E.

Finally, banning visits harms the public. Most notably, it significantly undermines community safety. Incarcerated people who receive sustained family contact through visitation are far less likely to return to jail or prison after release. Citing numerous influential studies and meta-analyses, Cochran concludes "[t]here is strong evidence that incarcerated people who are visited are less likely to recidivate." Ex. C at ¶ 20. The most recent, thorough research aggregates findings from 16 different rigorous studies, concluding that in-person visitation is linked to an average 26% reduction in recidivism. *Id.* ¶ 21. In addition to the body of literature supporting a robust link between visitation and reduced recidivism, people who receive visits experience better reentry outcomes. After release, they are more likely to reestablish productive social and familial roles,

more likely to have access to social capital, and more likely to be employed. *Id.* ¶¶ 25–30.

The evidence is clear that "more contact visits are correlated with a decrease in the severity and number of inmate-on-inmate, inmate-on-staff, and staff-on-inmate incidents of violence, as well as a decrease in acts of self-harm, uses of force, the trafficking of contraband, and revocations or recidivism after their release." Ex. D at ¶ 51. The converse is also true. "[I]f institutions further restrict access to visitation, or shut it down altogether, . . . we would see worse outcomes in recidivism, mental health, optimism, buy-in, and so on." Ex. C at ¶ 31.

D. <u>County Defendants prohibit in-person visits in order to make money.</u>

The County Defendants' decision to ban visits is encouraged by a kickback scheme. The County Defendants first conspired with Securus to eliminate in-person contact visits in order to maximize the income the jail and company could make off of families desperate to stay in touch with their loved ones in the jail through phone and video calls. Enticed by the financial promise of ending in-person visits, the Genesee Board of Commissioners enthusiastically signed on. As the Board's chairperson put it: "That video visitation is going to work . . . A lot of people will swipe that Mastercard and visit their grandkids."[2]

The ban on visits went into effect on September 22, 2014. The County Defendants profited handsomely from the combination of their new policy and their new revenue source, but by the end of 2017, they were looking for a better deal. Then-Undersheriff (now-Sheriff) Christopher Swanson was looking to make the facility a "revenue generating machine." Ex. I at 6. In 2018, at Swanson's direction, the jail's captain, Jason Gould, told an account executive for GTL—the competitor to Securus—that the County Defendants wanted to make more money from phone and

[2] Ron Fonger, Jail inmates targeted as new Genesee County revenue source, MLive (Sept. 5, 2012), https://www.mlive.com/news/flint/2012/09/jail_inmates_targeted_as_new_g.html.

video calls than the cash-incentive arrangement with Securus: "We need the best deal you can do," he wrote. Ex. J. And he got it. As a result, Swanson referred to Gould as "Captain Gold." Ex. K.

The County Defendants switched providers for the jail, negotiating and then signing a contract with GTL in 2018. Under that contract, which remains in effect, GTL pays the County Defendants $180,000 per year from the company's phone call revenue, an annual cash payment called a "technology grant" of $60,000, and 20% of the cost of every video call (the contract priced video calls at: $10.00 for 25 minutes). Ex. G. GTL projected that the County would earn another $16,000 per year from video call revenue alone. Based on their negotiations, representations to each other, and policies, the contract promises the County at least $240,000 in incentive payments each year based on its current policies, and likely many tens of thousands of dollars more.

As further incentive to maximize call revenue and ban visits, the contract allows GTL to penalize the County Defendants by terminating the video call system and removing the kiosks if the Sheriff does not produce sufficient cash revenue from the video calls for the Defendants to split between themselves. Ex. G. The company can cut off the gravy train at any time if the County Defendants do not produce enough revenue.

The County Defendants understood and intended that, to fulfill their end of the bargain, County Defendants would ban regular in-person visits. GTL even installed the new video kiosks in the lobby, kiosks that would never be necessary if in-person visits were permitted. The jail's captain explained the switch to GTL in the simplest terms: money. "GTL offers a set guaranteed commission that is more than the average monthly commission we currently get [from Securus]." Ex. L.

LEGAL STANDARD

Courts consider four factors when deciding whether to grant preliminary injunctive relief: "(1) the likelihood that the party seeking the injunction will prevail on the merits, (2) the danger

that the party seeking the injunction will suffer irreparable harm if the injunction is not issued, (3) the risk that the party seeking the injunction would be harmed more by the absence of an injunction than the opposing party would be by the granting of the relief, and (4) the harm to the public interest if the injunction is issued." *Davis v City of Detroit Fin Rev Team*, 296 Mich App 568, 613 (2012).[3] These factors "are meant to simply guide the discretion of the court; they are not meant to be rigid and unbending requirements." *Johnson v. Mich Minority Purchasing Council*, 341 Mich. App. 1, 25 (2022). All factors favor Plaintiffs.

I. Plaintiffs Are Likely to Prevail on the Merits.

The Michigan Constitution protects the parent-child relationship by safeguarding the fundamental rights to parent-child companionship free from interference by the government unless that interference is narrowly tailored to serve a compelling interest. County Defendants' blanket ban on visits is so harmful, broad, and contrary to state interests that it fails any legal test that might reasonably apply. Plaintiffs are likely to prevail on the merits.

A. The Michigan Constitution Protects the Fundamental Rights to Family Integrity and Intimate Familial Association.

The family is a traditional building block of society. The importance of protecting close family relationships has long been recognized as "fundamental" to personal liberty. See, e.g., *Reist v Bay Cnty Cir Judge*, 396 Mich 326, 342 (1976) ("The family entity is the core element upon which modern civilization is founded."). As the Michigan Supreme Court has explained, "[t]he interest of parent and child in their mutual support and society are of basic importance in our society and their relationship occupies a basic position in this society's hierarchy of values." *Id.* at 341–42. The parent-child relationship is a profound source of emotional, physical, psychological,

[3] Citations and quotation marks are omitted throughout unless otherwise indicated.

and social support, and the liberty of children and parents to associate without undue government interference is a bedrock of our legal system. See, e.g., *In re Sanders*, 495 Mich 394, 409 (2014) ("Parents have a significant interest in the companionship, care, custody, and management of their children, and the interest is an element of liberty protected by due process."). Few things are as important to our continued vitality as a community as protecting this sacred bond. As a result, "the integrity of the family unit has been zealously guarded by the courts." *Reist*, 392 Mich at 342.

The Michigan Constitution recognizes the sanctity of close family relationships by protecting children's and parents' fundamental rights to familial integrity and association. Const 1963, art 1, §§ 3, 17, 23. A parent "has a fundamental liberty interest in the care, custody, and management of his child that is protected by . . . article 1, § 17 of the Michigan Constitution." *In re Rood*, 483 Mich 73, 91 (2009). "The right is an expression of the importance of the familial relationship and 'stems from the emotional attachments that derive from the intimacy of daily association' between child and parent." *Sanders*, 495 Mich at 409 (quoting *Smith v Org of Foster Families for Equality & Reform*, 431 US 816, 844 (1977)).

This right to family integrity is reciprocal, meaning it is held by parents and children alike. *Reist*, 396 Mich at 341 (explaining "[t]he interest of parent and child in their mutual support and society"); *Rood*, 483 Mich at 91 ("[P]arents and children have fundamental rights in their mutual support and society."); *see also Ayotte v Dep't of Health & Human Servs*, 326 Mich App 483, 498 (2018) ("The fundamental constitutional right to family integrity extends to . . . both parents and children.").[4] The fundamental right encompasses this mutual connection, regardless of age. *See*

[4] The interest in mutual care and association is not limited to biological parents and children—it extends to step-parents, adoptive children, and other intentional parent-child relationships. See *In re Clausen*, 442 Mich 648, 655 (1993) (holding that "individuals may acquire a liberty interest against arbitrary governmental interference in the family-like associations into which they have

Berger v Weber, 411 Mich 1, 31 (1981) ("Parents often continue to provide their children with society, companionship, nurturance and guidance long after the children themselves become parents. Some children never leave their parents' homes. Other children, whether married or single, become the devoted caretakers and companions of aged parents, whose society and companionship play a prominent role in their lives."). The well-being of those children and parents—and the ability to communicate and touch them and look into their eyes—are among the most profound pleasures and, indeed, needs of existence.

The purpose of recognizing the reciprocal right to family integrity and intimate association—and designating such a right as fundamental—is to protect families from the exercise of governmental power in ways that threaten this special relationship. See, e.g., *DeRose v DeRose*, 469 Mich 320, 333–344 (2003) (holding third-party visitation statute unconstitutional because it infringed on parents' fundamental right to manage the upbringing of their children by not requiring deference to their preferences).[5] Protecting these relationships from unwarranted state interference safeguards the ability to define one's identity that is central to any concept of liberty.

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freely entered, even in the absence of biological connection or state-law recognition of the relationship.") (quoting *Smith*, 431 US at 845–46).

[5] Additionally, the U.S. Supreme Court has long recognized the fundamental importance of the parent-child relationship. Starting over a hundred years ago, the Supreme Court has deemed the rights to parent one's child "essential to the orderly pursuit of happiness by free men," *Meyer v Nebraska*, 262 US 390, 399 (1923), among the "basic civil rights of man," *Skinner v Oklahoma*, 316 US 535, 541 (1942), and "[r]ights far more precious . . . than property rights," *May v. Anderson*, 345 US 528 (1953). Indeed, "the interest of parents in the care, custody, and control of their children [] is perhaps the oldest of the fundamental liberty interests recognized by this Court." *Troxel v Granville*, 530 US 57, 65 (2000) (plurality op.) (collecting cases). That liberty interest is so deeply rooted that it does not "evaporate simply because they have not been model parents." *Santosky v Kramer*, 455 US 745, 753 (1982). A fundamental aspect of [Plaintiffs'] constitutionally protected right to freedom of association is "the formation and preservation" of their relationships with their jailed parents and children, which "by their nature, involve deep attachments and commitments." *Roberts v US Jaycees*, 468 US 609, 618–20 (1984).

B. <u>The County Defendants' Family Visitation Ban Burdens These Rights.</u>

When a child and parent are separated by incarceration, in-person contact visits have historically been crucial to their ability to maintain "their mutual support and society." See *Reist*, 396 Mich at 341. The importance of the family relationship, both to the individuals involved and to the society, "stems from the emotional attachments that derive from the intimacy of daily association between child and parent." *In re Detmer/Beaudry*, 321 Mich App 49, 57 (2017). That daily intimacy depends on physical presence and touch as vital parts of a loving, successful parent-child relationship. "Intimate association [] implies an expectation of access of one person to another particular person's physical presence, some opportunity for face-to-face encounter."[6] Because of Defendants' policies, such access is unavailable at the jail.

Research demonstrates the importance of contact visits to the parent-child relationship. More visits during incarceration are associated with more post-release parent-child contact, increased odds of parent-child residence, more frequent visits for nonresidential parents, more feelings of closeness in the parent-child relationship, and increased relationship quality. Ex. B ¶¶ 41–44. Indeed, in-person contact strengthens parent-child relationships—a significantly larger positive effect than correspondence by mail or by phone[7]—and contact visits are more beneficial than those with barriers that prevent family members from holding hands, hugging, or cradling a newborn. *Id.* Children with higher relationship quality with incarcerated parents subsequently exhibit less depression and loneliness and improved feelings of life purpose. *Id.* ¶ 44. More frequent parent-child visits are also beneficial for incarcerated parents, resulting in improved

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[6] Kenneth L. Karst, *The Freedom of Intimate Association*, 89 Yale LJ 624, 630 (1980).

[7] Danielle Haverkate and Kevin Wright, *The Differential Effects of Prison Contact on Parent-Child Relationship Quality and Child Behavioral Changes*, 5 Corrections: Policy, Practice, & Research 222 (2020), available at https://static.prisonpolicy.org/scans/Haverkate_Wright_2020.pdf.

mental health, fewer behavioral infractions, more optimal co-parenting, and better post-incarceration adjustment. Ex. D ¶¶ 29–36.

Video calls, phone calls, or messaging—all of which are recorded and non-private—do not substitute for the critical role of in-person visits, for a child's elemental need to be held, or a parent's deeply rooted need to hold their child's hand and know that they are, for the moment, sharing life. "The video screen is often blurry or will sometimes shut off," notes S.L. Ex. E-2 at ¶ 6. "[I]t's not very clear," says 11-year-old M.L. of phone calls. "I don't like how sometimes it hangs up on its own." Ex. E-5 at ¶ 7. "At the end of the call, a lady says 'there are 60 seconds left' and then mommy tells me she loves me and she'll call me as soon as there is more money," says Z.T.E. Ex. E-8 at ¶ 6. "They are so expensive, I can't pay my own bills, take care of the kids, and pay for those calls," explains her grandmother. Ex. E-7 at ¶ 5. "I feel so uncomfortable with the way phone and video calls are recorded," says S.L. "There are a lot of things that I, as a 17 year old girl, need to talk to my dad about that I can't." Ex. E-2 at ¶ 7.

The Family Visitation Ban subjects Plaintiffs to physical separation from their parent or child for a period that—with extremely limited exceptions—lasts months or years. Plaintiffs S.L., T.L.L., T.L., C.L., M.L., J.L., N.L., D.L., and H.L. have been separated from their father for fourteen months, with the exception of a one-hour visit that the nine of them attempted to share. The children rely on the emotional attachments that come from seeing their father regularly; by shutting down the visits by which they would maintain those attachments, the visitation ban has fractured their sense of family. Plaintiffs Z.T.E., Z.W., and K.W. have been separated from their mother for over a year, with just a few short and insufficient visits during that time. They have only seen their father once. They are unable to see, be comforted by, or maintain their intimate connection with the most important people in their lives. The County Defendants' policy deprives

Plaintiffs of the emotional and psychological attachments that we all derive from the intimacy of regular association.

Without regular in-person contact visits, family bonds weaken, and both parent and child's health and well-being suffer, leading to lasting harm. By denying Plaintiffs physical companionship with their jailed parents, the County Defendants infringe on their fundamental right to family integrity and intimate association.

C. The Family Visitation Ban Violates the Michigan Constitution.

1. Defendants' Ban on Visits Must be Tailored to Further a Compelling Interest.

Under the Michigan Constitution, a government policy that burdens fundamental rights may be upheld only if the policy both furthers a compelling state interest *and* is the least restrictive means of achieving that interest. See *Rose v Stokely*, 258 Mich App 283, 299–300 (2003) ("When state legislation creates a classification scheme . . . that affects a fundamental interest, courts apply strict scrutiny review."); *Morreale v Dep't of Cmty Health*, 272 Mich App 402, 407 (2006) (same). Because "[a] parent's interest . . . in the parent-child relationship is a fundamental right," Michigan courts apply strict scrutiny when the state interferes with the parent-child relationship. *In re AH*, 245 Mich App 77, 83 (2001); see also *In re B & J*, 279 Mich App 12, 22 (2008) (applying strict scrutiny to reverse termination of parental rights).

However, while the general principles requiring a compelling interest and narrow tailoring for an infringement on the parent-child relationship are clear, Michigan courts have yet to consider their application to a total and permanent ban on in-person visits that denies parents and children in-person contact with their incarcerated family. This case thus presents a novel application of these legal principles.

The U.S. Supreme Court, interpreting the U.S. Constitution, has not announced a standard for assessing infringements on the fundamental federal right to intimate association between a

child and parent.[8] The few federal courts that *have* grappled with the issue have held that blanket bans on visitation violate the U.S. Constitution. Several federal courts, including in Michigan, have struck down policies such as the one at issue here because the government failed to show they were narrowly tailored. See, e.g., *O'Bryan v Saginaw Cnty, Mich*, 437 F Supp 582, 598 (ED Mich, 1977) (jail visit ban unconstitutional because "[a]ny infringement on [the family relationship] [is] forbidden unless such infringement is necessitated by a compelling state interest"); *Rhem v Malcolm*, 371 F Supp 594, 625 (SDNY), supplemented, 377 F Supp 995 (SDNY, 1974) ("[T]he doctrine of least necessary restraint requires, as a matter of due process, that jail visiting conditions be curbed only to the extent needed to assure institutional security and administrative manageability."), aff'd and remanded, 507 F2d 333 (CA 2, 1974). Others have applied a slightly more deferential standard when weighing the harm to individuals against the government's interests, but have held that visitation bans do not survive even that lower scrutiny. See, e.g., *Manning v Ryan*, 13 F4th 705, 708 (CA 8, 2021) (holding that "prison officials who permanently or arbitrarily deny an inmate visits with family members" violate the Constitution when they do not engage in individualized balancing of the interests at stake); *Easterling v Thurmer*, 880 F3d

[8] While the U.S. Supreme Court has never explicitly considered what standard should apply to infringements on the fundamental parent-child relationship, it has moved from applying searching scrutiny to policies infringing on the fundamental rights of incarcerated people to applying a more deferential standard. *Compare Procunier v Martinez*, 416 US 396, 411 (1974) (holding that a prison regulation that burdens a fundamental right must "further an important or substantial governmental interest[]" and the restriction must "be no greater than is necessary or essential to the protection of the particular governmental interest involved"), *overruled by Thornburgh v. Abbott*, 490 US 401 (1989), *with Turner v Safley*, 482 US 78 (1987) (evaluating ordinary prison regulations based on their rational connection to a legitimate penological goal, the availability of alternatives, and the impact of protecting the right on institutional order). Michigan courts have not embraced the *Turner* test, citing it a total of three times in published opinions, typically only in passing. The Michigan Supreme Court has never cited it, and has not endorsed *Turner* as the framework for constitutional claims related to jails, let alone claims raising "fundamental" parent-child rights brought by people who are not incarcerated. The Michigan courts should reject *Turner*, which fails to account for the separate protections provided by the Michigan Constitution.

319, 323 n 6 (CA 7, 2018) ("[P]rison officials may not restrict an inmate's visitation with family members without balancing the inmate's interests against legitimate penological objectives.").

Requiring a compelling interest and narrow tailoring here is consistent with Michigan's traditional approach to protecting fundamental rights. There is no reason in law, history, or the evidence to carve out an exception for jail policies to the Michigan Constitution's fundamental rights analysis.[9] No court should permit the deprivation of fundamental rights—particularly not those of free citizens—without a showing that the infringement is the least restrictive way to serve compelling interests. Regardless of whether the government may have purportedly valid reasons to jail a parent, it cannot, once the person is jailed, unduly burden the rights of the person's children or parents to family integrity and intimate association *in ways that do not serve important interests*. While jailing a person may entail some interference with familial rights by necessity, additional interference with the most sacred legal rights beyond that which is essential must be done only for compelling reasons and in a way that minimizes the infringement to only what is necessary.

Permitting a jail to ban parent-child contact without compelling reasons and a careful weighing of alternatives is out of keeping with Michigan's longstanding approach to safeguarding the parent-child relationship. The scheme to ban all visits in Genesee County must therefore draw searching judicial scrutiny. However, as discussed below, no matter what standard of review this Court applies, the County's indiscriminate ban on family visits cannot be upheld.

2. *Defendants' Ban on Visits Is Not Tailored to Further a Compelling Interest.*

The least restrictive means test presumes a state infringement on fundamental rights invalid

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[9] While the U.S. Supreme Court's decisions have been interpreted to create such a carve-out, this Court is not bound by federal courts interpreting the federal constitution. See *Bauserman v Unemployment Ins Agency*, 509 Mich 673, 687 (2022); *People v Goldston*, 470 Mich 523, 534 (2004) ("In interpreting our Constitution, we are not bound by the United States Supreme Court's interpretation of the United States Constitution, even where the language is identical.").

unless it is "precisely tailored to serve a compelling governmental interest." *Doe v Dep't of Soc Servs*, 439 Mich 650, 662 (1992). It "demands that (1) a state regulation be justified by a compelling state interest, and (2) the means chosen be essential to further that interest." *People v DeJonge*, 442 Mich 266, 286 (1993). If the state cannot meet its burden to prove both elements, the challenged policy is unconstitutional.[10]

The Family Visitation Ban does not satisfy this test. First, preventing children and parents from seeing each other is not in itself a compelling state interest. Nor is profit. See *Champion v Sec'y of State*, 281 Mich App 307, 318 n 6 (2008) ("It would indeed be troubling to conclude that Michigan can, without state constitutional ramifications, effectively burden a citizen's free exercise of religion, or any constitutional right, if sufficient monies are thrown in its direction . . . . [A] desire for federal funds is not a compelling interest."). Any suggestion that the ban is intended to advance community safety is misguided; while public and institutional safety are valid interests, a total ban on family visitation does not further them. Instead, the blanket prohibition on visits undermines safety by increasing the likelihood of violence in the jail, see Ex. C ¶¶ 16–19; harming staff safety, see Ex. D ¶¶ 42–45; and making it more likely that the people inside the jail will be rearrested for new offenses following their release, see Ex. C ¶¶ 20–30; Ex. D ¶¶ 51, 53. In sum, the blanket visitation ban does not further any state interest.

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[10] There is nothing special about jails that requires a lower standard of judicial review. Federal courts have had no difficulty administering the Religious Land Use and Institutionalized Persons Act ("RLUIPA"), which requires that any substantial burden the government places on the religious exercise of an incarcerated person be in furtherance of a compelling governmental interest and the least restrictive means of furthering that interest. 42 U.S.C. § 2000cc(a)(1). Experience with RLUIPA demonstrates that such a test can be applied in the jail setting to protect expressive freedoms without compromising institutional security. See *Cutter v. Wilkinson*, 544 US 709, 725 (2005) ("For more than a decade, the federal Bureau of Prisons has managed the largest correctional system in the Nation under the same heightened scrutiny standard as RLUIPA without compromising prison security, public safety, or the constitutional rights of other prisoners.") (quoting Brief for U.S. as Amici Curiae Supporting Petitioners at 24, *Cutter*, 544 US 709 (2005).

To the extent the County Defendants attempt to justify their scheme to profit from the Family Visitation Ban after the fact by pointing to jail security, this argument fails. First, the evidence demonstrates that banning all visits *frustrates* that goal. See part II.C., supra; see also Ex. D at ¶ 41 ("[V]isitation does not significantly contribute to contraband."). Second, even if the evidence showed that restricting visits could improve security, a total, undifferentiated, and permanent ban is not "essential" or "precisely tailored" to that goal—which is why most corrections facilities do not enforce such a ban. There are numerous reasonable alternatives that could further jail security without taking visits away from everyone. For example, visits to specific detained individuals can be limited based on an "individualized determination" if there is a basis to believe that visits will cause security problems. See Ex. D at ¶ 24 (quoting American Bar Association's Treatment of Prisoners 3rd edition (2010), Standard 23-8.5(c)). County jails and state prisons—including every prison in Michigan[11]—implement these alternatives every day.

Defendants cannot establish that their prohibition on all family visits is the least restrictive way to further a compelling state interest.

3. Defendants' Ban on Visits Also Fails Any Lesser Form of Scrutiny.

Even if this Court applies a less searching standard despite the fundamental nature of the rights at stake, the blanket prohibition on visiting parents and children is so arbitrary, broad, and counterproductive that it would fail any legal test that balances the relevant interests.

First, the visitation ban cannot be justified by any legitimate penological goal. Even assuming valid penological interests such as rehabilitation of (convicted) prisoners, institutional security, and deterrence of crime, *Pell v. Procunier*, 417 US 817, 822–23 (1974), County

[11] See, e.g., *Policy Directive: Prisoner Visiting* at 4-6, Mich Dep't of Corrections, No 05.03.140 (Dec. 2, 2019), available at https://tinyurl.com/nfz3nvad (allowing contact visits while permitting individualized restrictions to non-contact visits under certain circumstances).

Defendants did not end family visits based on an expert calculation—or any assessment, for that matter—that it would further any such goals. They did not consider the evidence and determine that a blanket ban was important for well-being of staff, for security of inmates, or the well-being of society. Nor could they, given the overwhelming evidence to the contrary. They did it to increase revenue, which is not a legitimate penological goal for a jail. Instead, they implemented and continue to enforce the ban despite the fact that severing the critical lifeline of family visits is proven to *undermine* rehabilitation, damage institutional security for both confined people and jail staff, and lead to an increase in crime and further incarceration. See part II.C., supra; see also Ex. D ¶ 59 ("We know better than to prohibit all in-person visits as part of blanket bans on contact with loved ones. There is every reason to do better from a corrections perspective.").

More importantly, even if the total ban furthered a legitimate goal, it would still be blatantly overbroad given that myriad alternative policies do not require ending intimate family visits for everyone indefinitely. Even under the more deferential balancing test applied in recent federal lower court cases to visitation claims brought by convicted prisoners, federal courts found blanket bans on parent-child visits unconstitutional. See, e.g., *Easterling*, 880 F3d at 323 n 6; *Manning*, 13 F4th at 708; *Valentine v Englehardt*, 474 F Supp 294, 301 (DNJ, 1979) ("The Court finds that this prohibition [ban on jail visitation by children] is not reasonably related to any legitimate goal of the Passaic County Jail."); see also *O'Bryan*, 437 F Supp at 599 ("A blanket denial of contact visitation is not justifiable.").

Plaintiffs are likely to succeed on the merits of their claim no matter what standard applies. Defendants' Family Visitation Ban violates the Michigan Constitution.

II. Plaintiffs Will Suffer Irreparable Harm Without an Injunction.

Every day that passes is one in which Plaintiffs cannot touch, hug, or hold their parents or

children, or even look into each other's eyes. These harms are irreparable.

Even "temporary loss of a constitutional right constitutes irreparable harm which cannot be adequately remedied by an action at law." *Garner v Mich State Univ*, 185 Mich App 750, 764 (1990). Preventing children and parents from any contact is unquestionably irreparable harm that cannot be fully remedied by damages at law. E.g., *Washington v. Trump*, 847 F3d 1151, 1169 (CA 9, 2017) (identifying "separated families" as an irreparable harm).

The separations are agonizing for Plaintiffs. "Being separated from their mother and father has been terrible," says the grandmother of Z.T.E., Z.W., and K.W. Ex. E-7 at ¶ 7. "I worry they will need therapy to recover from this experience." *Id.* "Sometimes [Z.W.] is in so much distress we take her to be seen by an emergency health professional." *Id.* ¶ 8. "[E]verything is more difficult without being able to see him," says T.L.L. Ex. E-3 at ¶ 6. "It's been really hard focusing on school stuff since he's been gone," says S.L. Ex. E-2 at ¶ 5. "I miss my dad," says 7-year-old J.L. "I want to see him because he's the best dad ever." Ex. E-6 at ¶¶ 6–7.

Unless this Court grants the Preliminary Injunction, the harm to Plaintiffs will only worsen.

III. Issuing an Injunction Would Not Harm the County Defendants.

Preliminary injunctive relief would not meaningfully harm the County Defendants. The evidence establishes that the Family Visitation ban will likely continue to lead to more misconduct in the jail, more crime in the community, lower staff morale and retention, and more money spent by the County when people are re-arrested. Ex. C at ¶¶ 16–19, 20–24; Ex. D at ¶¶ 42–45. Schriro explains that "[t]he resources allocated to in-person visits are [] far less than the cost to revoke probation or rearrest and then to return a released inmate to jail who is not afforded an opportunity to fortify his or her community ties while incarcerated." Ex. D at ¶ 48. An injunction ordering the County Defendants to cease the Family Visitation Ban would increase the safety and security of the jail, lower recidivism, and ultimately save money. Each of these effects is in the County

Defendants' interest. The balance of harms weighs in favor of preliminary relief.

IV. The Public Interest Favors an Injunction.

The public interest weighs in favor of an injunction. First, as a matter of law, "it is always in the public interest to prevent the violation of a party's constitutional rights." *Mich Minority Purchasing Council*, 341 Mich App at 23. Here, the maxim that constitutional violations are *per se* against the public interest is even truer because of the parent-child relationship's "basic position in this society's hierarchy of values." *Reist*, 396 Mich at 342.

Second, an order helping to preserve family connections would bring sweeping benefits to the public at large. The empirical evidence shows that allowing visits protects children and enhances safety. Contact visits allow children to maintain critical attachments that help mitigate the serious and lasting harms caused by the trauma of a parent's incarceration. Ex. B at ¶¶ 40–43, 52–57. "To ensure that incarcerated people and their families, the correctional facility itself, and the community outside the facility reap the public safety, mental health, and other benefits of visitation, jails and prisons must reduce barriers to visitation, including financial barriers, and expand opportunities for it." Ex. C at ¶ 31. Granting preliminary relief would not only alleviate ongoing constitutional violations, it would make the entire County a safer place.

CONCLUSION

For the foregoing reasons, after appropriate and expedited proceedings, the Court should grant Plaintiffs' Motion for Preliminary Injunction. A proposed order is attached as Exhibit A.

Date: March 15, 2024,

Respectfully submitted,

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**Application for admission pro hac vice forthcoming*

STATE OF MICHIGAN

IN THE 7th CIRCUIT COURT FOR THE COUNTY OF GENESEE

N.J., S.L., T.L.J., T.L., C.L., M.L., J.L., N.L., D.L., H.L., A.H., A.B., E.B., O.W., Z.T.E., Z.W., K.W., LE'ESSA HILL, FLORENCE MARBLE, and PAUL MARBLE, individually and on behalf of a class of similarly situated persons, Plaintiffs, v. SHERIFF CHRISTOPHER SWANSON, GENESEE COUNTY, GLOBAL TEL*LINK CORPORATION (D/B/A VIAPATH TECHNOLOGIES), and DEB ALDERSON, Defendants.	Case No. 2024- -CZ Hon. ________________________

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NOTICE OF HEARING

PLEASE TAKE NOTICE that Plaintiffs' Motion for Preliminary Injunction will be brought on for hearing before the Honorable ______________________ on April 15, 2024 at 8:30 a.m. or as soon thereafter as counsel may be heard.

Respectfully submitted,

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Dated: March 15, 2024