IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ALLEN WOODS, et al.,	:	
	:	
Plaintiffs	:	
	:	
v.	:	CIVIL ACTION NO. 17-cv-4443
	:	
SEAN MARLER,	:	
	:	
Defendant	:	

O R D E R

AND NOW, this day of , 2018, upon consideration of the Sean Marler's Motion to Dismiss, the memoranda in support thereof, and any opposition thereto,

IT IS HEREBY ORDERED that:

1. The Motion is GRANTED.

2. Plaintiffs' complaint is DISMISSED WITH PREJUDICE.

_____
HONORABLE MARK A. KEARNEY
UNITED STATES DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ALLEN WOODS, et al.,	:	
	:	
Plaintiffs	:	
	:	
v.	:	CIVIL ACTION NO. 17-cv-4443
	:	
SEAN MARLER,	:	
	:	
Defendant	:	

DEFENDANT'S MOTION TO DISMISS COMPLAINT

Pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure, Defendant Sean Marler respectfully moves to dismiss plaintiffs' complaint with prejudice. The grounds in support for this motion are fully set forth in the accompanying memorandum of law, which is incorporated herein by reference.

Respectfully submitted,

LOUIS D. LAPPEN
United States Attorney

/s/ Margaret L. Hutchinson
MARGARET L. HUTCHINSON
Assistant United States Attorney
Chief, Civil Division

/s/ Paul J. Koob
RICHARD M. BERNSTEIN
PAUL J. KOOB
Assistant United States Attorneys
615 Chestnut Street, Ste. 1250
Philadelphia, PA 19106-4476
(215) 861-8432
(215) 861-8334
(215) 861-8349 (fax)

Dated: December 8, 2017

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ALLEN WOODS, et al.,	:	
	:	
Plaintiffs	:	
	:	
v.	:	CIVIL ACTION NO. 17-cv-4443
	:	
SEAN MARLER,	:	
	:	
Defendant	:	

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS

Plaintiffs Allen Woods and Keith Campbell bring this putative class action complaint against Sean Marler, the warden[1] of the Philadelphia Federal Detention Center (FDC Philadelphia) to challenge the pretrial detainee visitation policy that limits visitors to immediate family members and requires child visitors under sixteen years old to be accompanied by an adult (the Policy).[2] Plaintiffs claim that the Policy effectively limits their abilities to see their respective children. Plaintiffs, however, likely do not have standing to bring their claims because, although both have immediate family members who stand ready, willing, and able to accompany plaintiffs' minor children on visits to the FDC Philadelphia, the mothers of each child—not parties to this action and not before the Court—stand in the way of allowing those

[1] The previous warden changed the pretrial detainee visitation policy in February 2016. But Warden Marler assumed his role before the policy went into effect in July 2016. A copy of the pretrial detainee visitation policy is attached hereto as **Exhibit A**. The Court may consider the Policy, and the Program Statement it implements—also attached hereto as **Exhibit B**—on this 12(b)(6) motion because both are "matters incorporated by reference or integral to the claim, items subject to judicial notice, [and] matters of public record." *Buck v. Hampton Twp. Sch. Dist.*, 452 F.3d 256, 260 (3d Cir. 2006).

[2] To date, plaintiffs have not served the United States Attorney's Office or the Attorney General of the United States as required under Rule 4(i) of the Federal Rules of Civil Procedure. To prevent delay, Warden Marler responds to the complaint with this motion to dismiss.

visits. Moreover, even if plaintiffs have standing, prison officials are entitled to considerable deference in establishing prison policies designed to maintain order and security in the institution. The Policy is reasonably related to those legitimate penological interests and Plaintiffs have failed to meet their heavy burden to show the Policy extends beyond those legitimate interests. Other pretrial detainees have brought challenges to similar policies and the Supreme Court has rejected each one. Plaintiffs' claims should similarly fail.

FACTUAL ALLEGATIONS

Plaintiffs seek declarative and injunctive relief against Warden Marler. Plaintiffs claim the Policy violates the First and Fifth Amendments because it has the effect of preventing them from visiting with their minor children. The Policy implements Program Statement 5267.09, which regulates visitation and has the explicit purpose of "ensur[ing] the security and good order of the institution." Exhibit B at 1. As amended in July 2016, the Policy restricts visits to members of the "immediate family," consisting of "parents, step-parents, foster parents, sibling, current spouses, and children." Compl. ¶ 8. Children, if under the age of sixteen, must be accompanied by an adult in the "immediate family." *Id.* The Policy also notes the particular need to control child visitors while in the institution. Exhibit A at 5. The Policy does not apply to inmates who are designated to a particular institution and serving their sentence, but only to pretrial detainees. *Id.* at ¶ 10.

Plaintiffs allege that they are pretrial detainees and are parents of a six-year old and two-year-old child, respectively. Compl. ¶¶ 42, 47-48. Neither Woods nor Campbell is married to the mother of his child. *Id.* at ¶ 56. Under the Policy, the mothers of plaintiffs' children are not considered members of the "immediate family," and, therefore, the mothers cannot visit the

prison. *Id.* at ¶ 8. Plaintiffs allege a close relationship with the respective children, but they claim that because of the Policy, they have not been able to receive visits from the children since their incarceration. *Id.* at ¶¶ 42-56. Plaintiffs also allege that, while they have "immediate family" members who could accompany and supervise their children on visits to the FDC Philadelphia, the children's mothers "will not allow" those immediate family members to provide such supervision. *Id.* at ¶¶ 43, 55.

Plaintiffs contest the constitutionality of the Policy on a variety of grounds. Compl. ¶¶ 65-77. First, they allege the Policy violates their First Amendment right of association. *Id.* at ¶¶ 65-68. Second, plaintiffs claim the Policy infringes on their substantive due process rights under the Fifth Amendment. *Id.* at ¶¶ 69-73. Third, plaintiffs argue the Policy denies their equal protection under the law based on their status as pretrial detainees. *Id.* at ¶¶ 74-77. Further, they allege and purport to represent a class consisting of "[a]ll current and future inmates at the FDC who are or will be eligible to have social visitors but [are] unable to see their child or children under the [Policy]." *Id.* at ¶ 58. Plaintiffs allege that the proposed class satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure. *Id.* at ¶¶ 60-64. Warden Marler separately filed a motion to strike the class allegations.

ARGUMENT

I. Plaintiffs lack standing because their inability to visit with their children is not fairly traceable to the Policy, but to third parties not before the Court.

Constitutional standing requires a litigant to have the following: (1) a concrete and particularized injury that is actual or imminent; (2) the injury is fairly traceable to the defendant's challenged action and not the result of the independent action of some third party who is not before the court; and (3) it must be likely that the injury will be redressed by a

favorable decision. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992) (citations omitted).

All of plaintiffs' claims stem from the same problem: the mothers of their children refuse to allow an immediate family member to accompany the children to FDC Philadelphia. That interference—by an independent third-party not before the court—is the cause of plaintiffs' ills. Both plaintiffs admit that they have immediately family members who could supervise their children in visits to FDC Philadelphia. Compl. ¶¶ 43, 54. But those visits do not occur because both legal guardians "will not allow" (Compl. ¶¶ 43, 55) immediate family members to accompany the minor children on visits to FDC Philadelphia. Plaintiffs concede that the legal guardians—not the Policy—prevent these visits from occurring, for reasons including the "difficult relationship" between one legal guardian and plaintiff Campbell's immediate family members (*Id.* at ¶ 55). As a result, the legal guardians of the minor children—not the Policy or any prison official—are the cause of their injuries. Accordingly, plaintiffs lack standing to sue Warden Marler over the prison Policy.

II. Plaintiffs fail to allege facts sufficient to support their conclusion that the Policy violates any constitutional right.

Even if the Court finds plaintiffs have standing to sue, their claims still fail as matter of law. Prison administrators receive "substantial deference" when a challenger brings a constitutional challenge to prison policies or practices. *Overton v. Bazzetta*, 539 U.S. 126, 132 (2003). In *Bell v. Wolfish*, the Supreme Court explained, "the problems that arise in the day-to-day operation of a corrections facility are not susceptible of easy solutions," and, therefore, prison officials "should be accorded wide-ranging deference in the adoption and execution of policies and practices that in their judgment are needed to preserve internal order and discipline

and to maintain institutional security." 441 U.S. 520, 547 (1979) (citations omitted). This deference comes, in part, because the judiciary is "'ill equipped' to deal with the difficult and delicate problems of prison management." *Thornburgh v. Abbott*, 490 U.S. 401, 407 (1989) (citing *Procunier v. Martinez*, 416 U.S. 396, 404-405 (1974)). As it relates to "claims to prison access[,] . . . prison officials may well conclude that certain proposed interactions, though seemingly innocuous to laymen, have potentially significant implications for the order and security of the prison." *Id.* at 407. Accordingly, the Supreme Court "has afforded considerable deference to the determinations of prison administrators who, in the interest of security, regulate the relations between prisoners and the outside world." *Id.* at 408 (citing *Procunier*, 416 U.S. at 404-405). Plaintiffs' status as pretrial detainees does nothing to erode the deference granted to the prison adminstrators. *Bell*, 441 U.S. at 547 n.29.

To overcome that "wide-ranging deference," the challenger needs "substantial evidence in the record to indicate that the officials have exaggerated their response to these considerations." *Bell*, 441 U.S. at 548. Otherwise, "courts should ordinarily defer to [prison officials'] expert judgment in such matters." *Id.* (citing *Pell v. Procunier*, 417 U.S. 817, 827 (1974)); *accord Block v. Rutherford*, 468 U.S. 576, 584 (1984). Here, plaintiffs fail to allege that any FDC Philadelphia official has "exaggerated" in crafting the Policy as a response to legitimate penological interests, let alone any facts in support of the conclusion. *See Bell*, 441 U.S. at 548.

A. Plaintiffs have no First Amendment right to visitation with family members.

Although prison administrators recognize the benefits of visitation for both detainees and family members, plaintiffs do not have a constitutional right to visitation with family members. *See Abuhoran v. Morrison*, No. 03-3091, 2005 WL 2140537, at **7 & 7 n.31 (E.D. Pa. Sept. 1,

2005) (citing *Thorne v. Jones*, 765 F.2d 1270, 1274 (5th Cir. 1985)); *accord Ford v. Beister*, 657 F.Supp. 607, 611 (M.D. Pa. 1986). First Amendment rights are rooted in free speech, the advancement of beliefs and ideas, and the advocacy of points of view; not the right to visit with another person. *White v. Pazin*, No. 12-917, 2016 WL 6124234, at *11 (E.D. Cal. Oct. 19, 2016). Accordingly, plaintiffs' First Amendment claim, premised on a right to visitation in a federal corrections facility, fails as a matter of law.

B. Plaintiffs fail to plead a violation of their First Amendment right to association because the Policy is rationally related to maintaining safety and security at the FDC.

Even assuming that a right to visitation with minor children exists, that right is not absolute. *Vargas v. House of Corrections*, No. 89-2906, 1989 WL 79337, at *1 (E.D. Pa. Jun. 29, 1989) (citing *Lynott v. Henderson*, 610 F.2d 340, 342 (5th Cir. 1980)). "[A]n inmate does not retain rights inconsistent with proper incarceration . . . [a]nd . . . freedom of association is among the rights least compatible with incarceration." *Overton v. Bazzetta*, 539 U.S. at 131. The level of scrutiny for these policies reflects this reality: policies or practices that affect a constitutional right retained after incarceration pass constitutional scrutiny when they are rationally related to legitimate penological interests. *Id.* at 131-32.

In addition to according "substantial deference" to the prison official's policy, plaintiffs bear the burden to disprove the validity of the prison's reasons for the policy. *Id.* at 132. Courts review four factors to determine whether a prison policy affecting a constitutional right that survives incarceration passes constitutional muster:

1. whether the regulation has a valid, rational connection to a legitimate governmental interest;
2. whether alternative means are open to inmates to exercise the asserted right;
3. what impact an accommodation of the right would have on guards and inmates and

prison resources; and

4. whether there are ready alternatives to the regulation.

Id. at 132 (citing *Turner v. Safely*, 482 U.S. 78, 89-91 (1987)) (internal quotations omitted).

"The Supreme Court repeatedly has emphasized that maintaining internal security and order in jails and prisons are 'legitimate governmental objectives' and that courts must give prison officials considerable discretion to manage internal security in their institutions." *Steele v. Cicchi*, 855 F.3d 494, 505 (3d Cir. 2017) (citing *Sandin v. Conner*, 515 U.S. 472, 482-83 (1995)); *Rosario v. Lynch*, No. 13-cv-01945, 2017 WL 4098709, at *12 (E.D. Pa. Sept. 15, 2017) ("Visitation privileges are a matter within the discretion of prison administrators . . . and only an unreasonable or discriminatory denial of a discretionary privilege may amount to denial of a constitutional right.") (citations omitted); *see also* 28 C.F.R. § 540.40 ("The Warden may restrict inmate visiting when necessary to ensure the security and good order of the institution.")

Prison officials' "legitimate interests that stem from [their] need to manage the facility in which the individual is detained" may require measures that go beyond ensuring that the detainee appears for trial. *Bell*, 441 U.S. at 541. As an example, the Supreme Court in *Bell* provided that, "the Government must be able to take steps to maintain security and order at the instruction and make sure certain no weapons or illicit drugs reach detainees." *Id.* at 540. The government's interests in maintaining security and ensuring order and discipline "may require limitation or retraction of the retained constitutional rights of both convicted prisoners and pretrial detainees." *Id.* at 546; *see also Block*, 468 U.S. at 586 ("there is no dispute that internal security of detention facilities is a legitimate governmental interest").

In *Overton*, the Supreme Court applied *Turner* and upheld the constitutionality of a prison's policies to limit pretrial detainees' visitors to immediate family members and ten others;

prohibit minors from visiting unless they are the children, stepchildren, grandchildren or siblings of the detainee; and requiring that an adult, immediate family member, or legal guardian accompany any child visitor. 539 U.S. at 133. The Court found that each regulation bore "a rational relation to the [the prison's] valid interests in maintaining internal security and protecting child visitors from exposure to sexual or other misconduct or from accidental injury." *Id.* The policies "promote internal security, perhaps the most legitimate of penological goals . . . by reducing the total number of visitors and by limiting the disruption caused by children in particular." *Id.* "Protecting children from harm is a legitimate goal; reducing the number of children allows guards to supervise them better to ensure their safety and to minimize the disruptions they cause within the visiting area." *Id.* Moreover, it was reasonable for the prison policy "to ensure that the visiting child is accompanied and supervised by those adults charged with protecting the child's best interest." *Id.* at 133.

As in *Overton*, the Policy satisfies the first prong of the *Turner* analysis because it is rationally related to legitimate penological interests. FDC Philadelphia officials have legitimate interests in managing an orderly facility, maintaining internal security, and ensuring contraband does not enter the prison. The Policy, as a means of implementing Program Statement 5267.90, is designed to "ensure the security and good order of the institution." *See* Exhibit B, Program Statement 5267.09 (citing 28 C.F.R. § 540.40). The Policy accomplishes these goals "by reducing the number of visitors to the prison and by limiting the disruption caused by children in particular." *See Overton*, 539 U.S. at 133. The Policy specifically notes the disruption that children can cause during prison visitation:

> Children should be controlled to the extent of consideration for other's visiting and not be permitted to wander from the immediate area, running about the visiting room, or

> creating noise that disturbs other visits. Failure to control children will result in termination of the visit. The visiting room officer is not responsible for supervising children.

Exhibit A at 5. Although the guard's are not responsible for supervising children, they are responsible for the safety of inmates, staff, and visitors within the institution. The Policy allows guards to better protect children because it reduces the number of child visitors (by requiring children to be accompanied only by an immediate family member) and enables the guards to supervise the children's interactions with inmates more aptly. As the *Overton* court recognized, reducing the number of visitors, and reducing the number of child visitors, is reasonably related to legitimate penological interests. *Id.* at 133.

Prison officials also have a legitimate interest in promoting the security of the facility. The Policy serves that goal by reducing the number of adult visitors without immediate family connections. Individuals outside a pretrial detainee's immediate family are significantly more likely to smuggle contraband into the prison. *See Wilson v. Nevada Dept. of Prisons*, 511 F. Supp. 750, 752 (D. Nev. 1981) (upholding prison's limited visitation policy because "[p]rison officials believe that non-family members are more likely to introduce contraband into the prison or be subject to manipulation by inmates than family members. Their experience is that family members are less likely to be involved in criminal activity and that the inmates are less likely to try to take advantage of family members. The problem that exists is a two-way street of introduction of contraband into the prison and the creation of security problems through the visitations, on the one hand, and the potentiality that the inmates will try to take advantage of or extort money or favors from the visitors, on the other hand.")

The Policy also satisfies the other three factors of the *Turner* analysis. As to the second

factor, detainees have alternative means of exercising their constitutional right by sending messages with those who are allowed to visit. *Overton*, 539 U.S. at 135; *accord Nouri v. County of Oakland*, 615 F. App'x 291, 299 (6th Cir. 2015) (finding plaintiff had alternative means of communicating with minor children by communicating through other visitors). Pretrial detainees may also correspond with children in letters or email or speak with them by telephone. Although letter writing may not be ideal with children, the *Overton* court found that "[a]lternatives to visitation need not be ideal . . . they need only be available." *Id.*.

The third and fourth *Turner* factors—impact on prison resources and the existence of an alternative—likewise favor the Policy. Plaintiffs' requested relief—to declare the Policy unconstitutional and enjoin its enforcement—would have a significant impact on prison resources. Courts are "particularly deferential to prison administrators' regulatory judgments" when the detainee's request "would cause a significant reallocation of the prison system's financial resources and would impair the ability of corrections officers to protect all who are inside a prison's walls." *Overton*, 539 U.S. at 135. A likely result would be a flood of visitation requests, each of which entails review of "extensive paperwork and . . . a background check prior to approval." (Compl. ¶ 29). Moreover, these requests would undoubtedly yield more visitors—and more child visitors—which would overburden the prison's resources to provide adequate supervision to pretrial detainees, inmates, and visitors alike. As the Court in *Overton* explained, "[i]ncreasing the number of child visitors in that way surely would have more than a negligible effect on the goals served by the regulation." 539 U.S. at 136.

Accordingly, because Plaintiffs fail to satisfy any element of the *Turner* analysis and because they fail to allege any fact to suggest that the Policy was created for anything but the

legitimate penological interests identified above, their First Amendment claim should be dismissed.

C. Plaintiffs fail to successfully plead a substantive due process claim because the Policy is not a condition amounting to punishment.

Pretrial detention conditions of confinement that allegedly violate the protection against the deprivation of liberty without due process of law are unconstitutional only if the conditions amount to punishment of the detainee. *Bell v. Wolfish*, 441 U.S. 520, 535 (1979). Courts answer the following questions to determine whether prison conditions are punitive in nature:

> Whether the sanction involves an affirmative disability or restraint, whether it has historically been regarded as a punishment, whether it comes into play only on a finding of *scienter*, whether its operation will promote the traditional aims of punishment-retribution and deterrence, whether the behavior to which it applies is already a crime, whether an alternative purpose to which it may rationally be connected is assignable for it, and whether it appears excessive in relation to the alternative purpose assigned are all relevant to the inquiry, and may often point in differing directions.

Bell v. Wolfish, 441 U.S. at 537-38 (citing *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 168-169 (1963)) (emphasis in original). Unless a prison official expresses an intent to punish, to inquiry as to whether prison conditions constitute punishment "generally will turn on whether an alternative purpose to which the restriction may rationally be connected is assignable for it, and whether it appears excessive in relations to the alternative purpose assigned to it." *Bell*, 441 U.S. at 538 (cleaned up). In order words, if the condition or restriction is reasonably related to a legitimate government interest, the condition or restriction does not amount to punishment. *Id.*at 539; *see also Block v. Rutherford*, 468 U.S. 576, 584 (1984); *Nouri v. County of Oakland*, 615 F. App'x 291, 299 (6th Cir. 2015).

As the Supreme Court explained:

> Loss of freedom of choice and privacy are inherent incidents of confinement in such a facility. And the fact that such detention interferes with the detainee's understandable

> desire to live as comfortably as possible and with as little restraint as possible during confinement does not convert the conditions or restrictions of detention into "punishment."

Bell, 441 U.S. at 537. Although detainees retain certain constitutional rights, those rights are subject to restrictions: "Lawful incarceration brings about the necessary withdrawal or limitation of many privileges and rights, a reaction justified by the considerations underlying our penal system.'" *Bell*, 441 U.S. at 545-46 (citing *Price v. Johnston*, 334 U.S. 266, 285 (1948)) (internal quotations omitted).

In *Block v. Rutherford*, the Supreme Court held that a complete ban on contact visits for pretrial detainees was rationally related to the legitimate government interests of internal security of a detention facility. 468 U.S. at 589. The "rational connection" between the two was "too obvious to warrant extended discussion." *Id.* at 586. In addition, the scope of the ban—its application to pretrial detainees—was not an issue because of "[t]he burdens of identifying candidates for contact visitation . . . are made even more difficult by the brevity of detention and the constantly changing nature of the inmate population." *Id.* at 587. While the Court explained that it did not "denigrate the importance of visits from family or friends to the detainee," its holding was merely "that the Constitution does not require that detainees be allowed contact visits when responsible, experienced administrators have determined, in their sound discretion, that such visits will jeopardize the security of the facility." *Id.* at 589.

Here, the same reasoning applies. As explained above in Section II.B, prison officials have legitimate interests in maintaining security, order, and discipline, and to prohibit contraband from entering the FDC Philadelphia. The Policy is rationally related to those legitimate interests. As explained above, the prison has a reasonable basis for limiting the number of visitors, particularly visitors who are not immediately family members. The prison also has an interest in

ensuring child visitors are accompanied by a responsible relative and that the child is properly supervised. The Policy is rationally related to these objectives. The Policy also applies to all pretrial detainees, as did the policy in *Block*, and the Policy is not tied to any sanctionable conduct of the detainee. Accordingly, Plaintiffs cannot show the Policy rises to the level of punishment, and their substantive due process claim should be dismissed.

D. Plaintiffs cannot state a claim for an equal protection violation because the Policy is justified by legitimate penological interests.

Plaintiffs bring an equal protection claim based on their status as pretrial detainees. The Third Circuit recently held that, "equal protection requires that pretrial detainees not be treated less favorably than convicted persons, unless the difference in treatment is justified by a legitimate government interest." *Parkell v. Morgan*, 682 F. App'x 155, 159 (3d Cir. 2017) (citing *Lock v. Jenkins*, 641 F.2d 488, 497 (7th Cir. 1981)). As explained above, the Policy is justified by legitimate government interests in maintaining the safety and security of the institution. *See Guilfoil v. Johnson*, No. 15-733, 2017 WL 3473848, at *4 (D. Del. Aug. 11, 2017) (rejecting a challenge under the Equal Protection Clause to a policy requiring officials to remove food items from pretrial detainees' cells in order to control a pest problem and prevent detainees strong-arm tactics of stealing food from others).

The Supreme Court has recognized that pretrial detainees present unique obstacles for prison officials and are no less a security risk than convicted inmates. *Block*, 468 U.S. at 586-87. In fact, pretrial detainees may be even more dangerous than convicted inmates:

> In the federal system, a detainee is committed to the detention facility only because no other less drastic means can reasonably assure his presence at trial. *See* 18 U.S.C. § 3146.[3] As a result, those who are detained prior to trial may in many cases be individuals

[3] The current standard for evaluating whether to detain the accused pending trial appears in 18 U.S.C. §3142(e). The change in statutory section, however, is of no moment because the

> who are charged with serious crimes or who have prior records. They also may pose a greater risk of escape than convicted inmates. (citation omitted)." This may be particularly true at facilities like the MCC [Metropolitan Corrections Center[4]], where the resident convicted inmates have been sentenced to only short terms of incarceration and many of the detainees face the possibility of lengthy imprisonment if convicted.

Bell, 441 U.S. at 546 n.28; *Block*, 468 U.S. at 587. Moreover, the Supreme Court similarly recognized that the danger that pretrial detainees present as it relates to the smuggling of contraband: "Even if people arrested for a minor offense do not themselves wish to introduce contraband into a jail, they may be coerced into doing so by others." *Florence v. Board of Chosen Freeholders of County of Burlington*, 566 U.S. 318, 335 (2012).

The FDC Philadelphia houses the same categories of inmates as the MCC. Prison officials have much less information about pretrial detainees when compared with the information available about convicted inmates. By the time of sentencing for a convicted inmate, the Office of Probation has completed a significant review of the individual's background and history, including personal identifying information, the offense, criminal history, family data, mental and emotional health, substance abuse, special skills, employment, and financial condition. *See* Rule 32 of the Federal Rules of Criminal Procedure; *see also* 18 U.S.C. § 3552. To the contrary, the Bureau of Prisons does not have the benefit of this robust report for pretrial detainees. Accordingly, FDC Philadelphia—an institutional that houses a significant number of pretrial detainees—has a heightened interest in scrutinizing visitors to its facility. Because Warden Marler has a legitimate interest in instituting the Policy to maintain order and security at

---

standard discussed in *Wolf* in § 3146 and the standard that appears in the current § 3142(e) are the same.

4 The Metropolitan Correctional Center or MCC is a federally operated short-term custodial facility in New York, New York.

FDC Philadelphia, Plaintiffs equal protection claim fails as a matter of law.

CONCLUSION

For the foregoing reasons, Warden Marler respectfully requests that the Court dismiss Plaintiffs' complaint with prejudice.

Respectfully submitted,

LOUIS D. LAPPEN
United States Attorney

/s/ Margaret L. Hutchinson
MARGARET L. HUTCHINSON
Assistant United States Attorney
Chief, Civil Division

/s/ Paul J. Koob
RICHARD M. BERNSTEIN
PAUL J. KOOB
Assistant United States Attorneys
615 Chestnut Street, Ste. 1250
Philadelphia, PA 19106-4476
(215) 861-8334
(215) 861-8432
(215) 861-8349 (fax)

Dated: December 8, 2017

CERTIFICATE OF SERVICE

I hereby certify this 8th day of December, 2017 that a copy of the foregoing Motion to Dismiss was served electronically on counsel of record and by United States Mail, postage prepaid, first-class on:

Dana L. Bazelon, Esquire
One South Broad St. Ste. 1500
Philadelphia PA 19107

/s/ Paul J. Koob
PAUL J. KOOB
Assistant United States Attorney