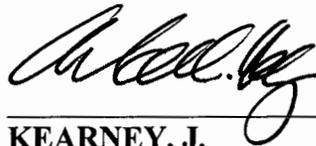


IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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

ORDER

AND NOW, this 11th day of January 2018, upon considering Defendant's Motion to Dismiss (ECF Doc. No. 5) and Plaintiffs' response (ECF Doc. No. 13), it is **ORDERED** Defendant's Motion (ECF Doc. No. 5) is **DENIED**.¹



KEARNEY, J.

¹ Plaintiff pre-trial detainees sue the Defendant Warden of the Federal Detention Center ("FDC") challenging a policy affecting visitation with their minor children ("Policy") as violating the First and Fifth Amendments. The Warden moves to dismiss arguing: (1) Plaintiffs lack standing; (2) there is no First Amendment right to visitation with family members; (3) even if there is a First Amendment right to visitation, the right is not absolute where the Policy is rationally related to legitimate prison policy; (4) Plaintiffs fail to plead a Fifth Amendment due process claim because the Policy is not a condition amounting to punishment; and (5) Plaintiffs fail to plead a Fifth Amendment equal protection claim because the Policy is justified by legitimate penological interests. Addressing each argument in turn, we deny the Warden's motion as each of his arguments rely on developing facts in discovery.

Standing consists of three elements. A plaintiff must have "(1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Spokeo, Inc. v. Robins*, --- U.S. ---, 136 S.Ct. 1540, 1547, 194 L.Ed 2d 635 (2016) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992)). The Warden argues Messrs. Woods and Campbell fail to meet the second element of standing because their injury is not "fairly traceable" to the Policy. The "fairly traceable" element requires "a causal connection between the injury and the conduct complained of – the injury has to be 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." *Lujan*, 504 U.S. at 560. We disagree with the Warden's standing argument. There is no dispute the Policy prevents the mother and legal

guardian of Mr. Woods' child and the mother and legal guardian of Mr. Campbell's child from visiting the FDC because these women do not come within the Policy's definition of "immediate family members" permitted to visit pre-trial detainees. The complaint alleges the mothers would bring their children to the FDC for visits but do not do so because of the Policy. Complaint at ¶¶ 44, 55 (ECF Doc. No. 1). Nevertheless, the Warden argues it is not the Policy causing the problem, but "an independent third-party not before the court" - the mothers who refuse to allow an "immediate family member" to accompany their minor children to the FDC. The causal connection need only be "fairly traceable." This is "akin to 'but for' causation and . . . [is] met even where the conduct in question might not have been a proximate cause of the harm, due to intervening events." *Edmonson v. Lincoln Nat. Life Ins. Co.*, 725 F.3d 406, 418 (citing *The Pitt News v. Fisher*, 215 F.3d 354, 360 (3d Cir. 2000)).

We disagree with the Warden's argument there is no First Amendment right to visitation with family members. Both the Supreme Court's decision in *Overton v. Bazetta*, 539 U.S. 126 (2003) and our court of appeals' decision in *Cordero v. Warren*, 612 F.App'x 650 (3d Cir. 2015) applying *Overton*, lead us to find there is at least some right of association under the First Amendment. Although the Court in *Overton* found it "need not attempt to explore or define the asserted right of association at any length or determine the extent to which it survives incarceration," the Court made two significant but competing observations with respect to the First Amendment issue: (a) based on its previous holdings "freedom of association is among the rights least compatible with incarceration" but (b) "[w]e do not hold, and we do not imply, that any right to intimate association is altogether terminated by incarceration or is always irrelevant to claims made by prisoners." *Overton*, 539 U.S. at 131-32. The Court instead focused on whether the challenged prison policy bore a "rational relation to legitimate penological interests" applying the four factor test articulated in *Turner v. Safely*, 482 U.S. 78 (1987). In *Cordero*, our court of appeals in a *per curiam* decision reversed the dismissal of an inmate's challenge to a visitation policy under a First Amendment association claim. Our court of appeals agreed *Overton* "indicates that [Plaintiff's] claim should move forward," read the complaint to allege the visitation restrictions were not rationally related to legitimate penological interests and, "although the defendants may ultimately show that their actions were justified, at this early stage we must accept [Plaintiff's] allegations as true." *Cordero*, 612 F.App'x at 653. Messrs. Woods and Campbell allege, *inter alia*, the Policy "is not required by any legitimate security or penological considerations." Complaint at ¶ 17.

The Warden's remaining arguments are all premature and more properly made at the summary judgment stage. Whether the Policy satisfies the *Turner* factors sufficient to withstand a First Amendment challenge; whether the Policy amounts to punishment in violation of the Fifth Amendment's due process analysis; and whether the Policy is justified by legitimate government interests in an equal protection analysis are all questions for a later stage of litigation. For now, we review allegations the Policy has no legitimate penological interest; the Policy deprives Plaintiffs of their constitutional right to be free from cruel and unusual conditions of confinement; the Policy restricting Plaintiffs from in-person visits with children interferes with their Fifth Amendment right; the Policy subjects pre-trial detainees to more restrictive visitation rules than sentenced inmates and unconstitutionally interferes with the pre-trial detainees' Fifth Amendment rights; there is no rational basis for the Policy; the Policy deprives pre-trial

detainees of equal protection; and sentenced inmates have more lenient visitation rules for children. Complaint at ¶¶ 15, 17, 69-73, 74-77. Accepting as true all well-pleaded allegations and drawing all reasonable inferences in Plaintiffs' favor as we must do on a Rule 12(b)(6) motion, Plaintiffs allege sufficient facts to state a claim for relief plausible on its face. *Connelly v. Lane Constr. Corp.*, 809 F.3d 780, 786-87 (3d Cir. 2016).