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

ALLEN WOODS, *et al.*	:	
	:	
	:	
Plaintiffs,	:	
	:	
v.	:	Case No. 2:17-cv-4443
	:	
SEAN MARLER,	:	
	:	
	:	
Defendant.	:	

PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

Plaintiffs move this Honorable Court to certify this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and 23(b)(2). Plaintiffs move to certify the following class:

> All current and future pre-trial inmates at the FDC who are or will be eligible to have social visitors but who are unable to see their child or children younger than 16 years old under the FDC's visitation policies, practices, and patterns. The class period commences from the time of the filing of the Complaint and continues so long as Defendant persists in the unconstitutional policies, practices, and patterns.

Plaintiffs Allen Woods and Keith Campbell request that the Court designate them as the class representatives.

In support of this motion, Plaintiffs rely on the accompanying Memorandum.

Respectfully submitted,

/s/ Mira Baylson

Mira Baylson
Pa. Bar No. 209559
Amanda Pasquini
Pa. Bar No. 324537
Jordan DiPinto
Pa. Bar No. 324337
DRINKER BIDDLE & REATH LLP
One Logan Square, Suite 2000
Philadelphia, PA 19103
Tel: 215-988-2677
Mira.baylson@dbr.com

Benjamin D. Geffen
Pa. Bar No. 310134
Mary M. McKenzie
Pa. Bar No. 47434
PUBLIC INTEREST LAW CENTER
1709 Benjamin Franklin Parkway, 2nd Floor
Philadelphia, PA 19103
Tel: 215-627-7100
bgeffen@pubintlaw.org
mmckenzie@pubintlaw.org

Jim Davy
Pa. Bar No. 321631
PENNSYLVANIA INSTITUTIONAL LAW PROJECT
718 Arch St., Suite 304S
Philadelphia, PA 19106
Tel: 215-925-2966
jdavy@pailp.org

Counsel for Plaintiffs and Proposed Class Members

Dated: March 5, 2018

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ALLEN WOODS, *et al*.,	:	
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Plaintiffs,	:	
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v.	:	Case No. 2:17-cv-4443
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SEAN MARLER,	:	
	:	
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Defendant.	:	

MEMORANDUM OF LAW IN SUPPORT OF
PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

Warden Marler will not allow Allen Woods and Keith Campbell to see their children because they are not married to their children's mothers and do not have other adult immediate family members who can bring the children to visit. At least one hundred other pre-trial inmates in Warden Marler's jail face the same predicament. Warden Marler's policy is unconstitutional. If the Court orders him to restore child visitation opportunities for such inmates, that would remedy the problem for Mr. Woods, Mr. Campbell, and all other inmates in their situation. This is a textbook example of a situation warranting classwide treatment under Federal Rule of Civil Procedure 23(b)(2). All of the elements of Rule 23(a)–(b) are easily satisfied here:

- *Rule 23(a)(1) (numerosity):* Warden Marler has stipulated that the Proposed Class satisfies this element;
- *Rule 23(a)(2) (commonality):* Warden Marler imposes a common policy on all members of the Proposed Class;

- *Rule 23(a)(3) (typicality):* Plaintiffs will be able to see their children if the Court grants the requested relief, as will the other members of the Proposed Class;
- *Rule 23(a)(4) (adequacy of representation):* Plaintiffs and their counsel will represent the interests of the Proposed Class vigorously and fairly; and
- *Rule 23(b)(2) (injunctive/declaratory relief):* Equitable relief from this Court will end Warden Marler's injurious conduct for all of the Proposed Class.

I. BACKGROUND AND INTRODUCTION

Allen Woods and Keith Campbell, the Plaintiffs in this action, are being held while awaiting trial and sentencing at the Federal Detention Center of Philadelphia ("FDC"). The FDC, under the oversight and supervision of Defendant, Sean Marler ("Warden Marler"), implements a cruel and unconstitutional visitation policy (the "FDC Policy") that makes it impossible or unreasonably difficult for many pre-trial inmates to see their children while in custody.[1] Because of the FDC Policy, Mr. Woods cannot see his six-year-old son, and Mr. Campbell cannot see his two-year-old son. In just the same way, the FDC Policy blocks one hundred or more pre-trial inmates[2] in the FDC from ever seeing their minor children.

The FDC Policy, which is among the most draconian visitation policies in the federal system, serves no legitimate penological interest and is at odds with the regulations and the stated priorities of the Federal Bureau of Prisons. Without visitation, it is difficult for inmates to maintain relationships with their children, and depriving inmates of visitation with their children

[1] The FDC Policy is reproduced in the Appendix at Bates pages 00034–054.

[2] As used in this Motion and in the Complaint, the term "pre-trial inmate" refers both to an inmate who is awaiting trial and to an inmate who is awaiting sentencing. "Although it is a misnomer, the case law often refers to an inmate awaiting sentencing—even if he has pled guilty to his crimes or been convicted after trial—as a 'pre-trial detainee.'" *Bistrian v. Levi*, 696 F.3d 352, 367 n.6 (3d Cir. 2012).

damages those inmates' chances of successful reentry. This deprivation can also have negative consequences for an inmate's eventual custody level within the Bureau of Prisons. This lawsuit alleges that the FDC Policy illegally denies Mr. Woods, Mr. Campbell, and an unknown but large number of other pre-trial inmates (the "Proposed Class") their rights under the First and Fifth Amendments to the United States Constitution.

As alleged in the Complaint, the FDC Policy denies pre-trial inmates any visitation by friends and relatives except for members of their "immediate family." *See* App. at 00037. "Immediate family" consists only of parents, stepparents, foster parents, siblings, current spouses, and children. *Id.* A child under the age of 16 cannot enter the FDC without an adult who independently qualifies to visit as that inmate's immediate family member. *See id.* at 00038. When an inmate is not currently married to the other parent of his or her child, that other parent is not a member of the "immediate family" who can bring the child to visit. Many inmates, including Plaintiffs and the other Proposed Class members, are not currently married to the other parent of their children and do not have adult immediate family members who are available and suitable to bring their minor children to the FDC. The practical impact of the FDC Policy is that Plaintiffs, along with many other pre-trial inmates at the FDC, cannot receive visits from their children.

Although most people held in the FDC are pre-trial inmates, the FDC also holds some sentenced inmates, including those who are brought into the FDC on writ or who are serving a sentence at the FDC. As alleged in the complaint, Warden Marler and the FDC implement a different policy for sentenced inmates, which permits them to have as visitors not only immediate family members, but also more distant relatives, as well as unrelated friends. *See id.* at 00037. A sentenced inmate can therefore enjoy a visit with his or her child when the child is

accompanied by any of a range of eligible adults, including a more distant relative or an unrelated friend of the inmate—such as the inmate's child's mother.

"Class actions serve an important function in our system of civil justice." *Gulf Oil Co. v. Bernard*, 452 U.S. 89, 99 (1981). Here, Plaintiffs' claims are particularly well-suited for class treatment. Courts routinely recognize that cases alleging systemic constitutional violations in a carceral setting and seeking facility-wide or system-wide declaratory and injunctive relief fit the mold for class certification. *See, e.g.*, *Brown v. Plata*, 563 U.S. 493 (2011); *Shelton v. Bledsoe*, 775 F.3d 554 (3d Cir. 2015); *Hagan v. Rogers*, 570 F.3d 146 (3d Cir. 2009); *Hassine v. Jeffes*, 846 F.2d 169 (3d Cir. 1988); *Williams v. City of Phila.*, 270 F.R.D. 208, 222 (E.D. Pa. 2010) (collecting cases showing that "Rule 23(b)(2) is an appropriate vehicle in actions challenging prison conditions").

As demonstrated below, class certification is appropriate in this case because the Plaintiffs and the Proposed Class satisfy the requirements of Rule 23(a) and Rule 23(b)(2). This Court should exercise its broad discretion in favor of certifying a class, with the Plaintiffs as class representatives, so that Plaintiffs and the Proposed Class can enjoin Warden Marler from enforcing this uniform policy that deprives the Proposed Class members of their constitutionally guaranteed rights.

II. ARGUMENT

"Rule 23 is designed to assure that courts will identify the common interests of class members and evaluate the named plaintiffs' and counsel's ability to fairly and adequately protect class interests." *Sullivan v. DB Invs., Inc.*, 667 F.3d 273, 296 (3d Cir. 2011) (en banc) (quotation marks and citations omitted). The legal standard for determining whether class certification is

appropriate is that the proposed class must satisfy all the requirements of Federal Rule of Civil Procedure 23(a) and at least one of the alternative requirements of Rule 23(b).

Rule 23(a) of the Federal Rules of Civil Procedure establishes four prerequisites to the maintenance of a class action suit:

> One or more members of a class may sue or be sued as representative parties on behalf of all members only if: (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class.

In addition, when plaintiffs seek certification under Rule 23(b)(2), the defendant must have "acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole."

All of the requirements of Rule 23(a) and (b)(2) are met here.

A. Warden Marler has stipulated that the Proposed Class is so numerous that joinder is impractical.

Rule 23(a)(1) provides that class certification is appropriate only if "the class is so numerous that joinder of all members is impracticable." The rule "does not require any particular number or require that joinder of all members be impossible, so long as a good-faith estimate of the number of class members is provided." *Stewart v. Assocs. Consumer Discount Co.*, 183 F.R.D. 189, 194 (E.D. Pa. 1998) (footnote omitted). Plaintiffs need not specify the "exact number or identity of the members of the plaintiff class." *Hanrahan v. Britt*, 174 F.R.D. 356, 362 (E.D. Pa. 1997). "There is no magic number of class members needed for a suit to proceed as a class action," but the Third Circuit has "set a rough guidepost in our precedents . . . and stated that numerosity is generally satisfied if there are more than 40 class members." *In re NFL Players Concussion Injury Litig.*, 821 F.3d 410, 426 (3d Cir. 2016). Plaintiffs are entitled to use

circumstantial evidence to provide a good-faith estimate, after which the Court may "rely on 'common sense' to forgo precise calculations and exact numbers." *Marcus v. BMW of N. Am., LLC*, 687 F.3d 583, 596 (3d Cir. 2012).

Here, Warden Marler has stipulated that the numerosity requirement is satisfied. Additionally, declarations made by FDC pre-trial inmates establish that over one hundred current FDC pre-trial inmates are unable to visit with their minor children because of the FDC Policy. *See* Amor Decl., App. at 00055–056; Campbell Decl., App. at 00057–058. The declaration of Felicia Sarner, an Assistant Federal Public Defender in the Eastern District of Pennsylvania, establishes that the FDC Policy has caused a sharp decline in the number of child visitors at the FDC. *See* Sarner Decl., App. at 00059–060. Accordingly, the Proposed Class would include far in excess of forty *current* inmates. The Proposed Class also includes future inmates, whose numbers would make the size of the Proposed Class larger still. Joinder of all these inmates would be impractical, particularly in light of the fact that some members of the Proposed Class stay in the FDC for relatively short periods. The numerosity requirement of Rule 23(a)(1) is therefore satisfied.

B. There are questions of law and fact common to the entire Proposed Class.

This Proposed Class meets the commonality requirement of Rule 23(a)(2), which "does not require that the representative plaintiff[s] have endured precisely the same injuries that have been sustained by the class members, only that the harm complained of be *common* to the class." *Hassine v. Jeffes*, 846 F.2d 169, 177 (3d Cir. 1988). This means that whether class members' claims are common depends on whether there is a "common contention . . . of such a nature that it is capable of classwide resolution—which means that determination of its truth or falsity will resolve any issue that is central to the validity of each one of the claims in one

stroke." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011); *see also Logory v. Cty. of Susquehanna*, 277 F.R.D. 135, 141 (M.D. Pa. 2011) (noting commonality is not determined by the existence of classwide questions "but instead the potential for a 'classwide resolution'").

"Commonality does not require perfect identity of questions of law or fact among all class members. Rather, 'even a single common question will do.'" *Reyes v. Netdeposit, LLC*, 802 F.3d 469, 486 (3d Cir. 2015) (quoting *Wal-Mart*, 564 U.S. at 359). "Because the requirement may be satisfied by a single common issue, it is easily met . . . ." *Baby Neal for and by Kanter v. Casey*, 43 F.3d 48, 56 (3d Cir. 1994). "[C]ommonality is not defeated by a showing that 'individual facts and circumstances' will have to be resolved." *Thomas v. SmithKline Beecham Corp.*, 201 F.R.D. 386, 392 (E.D. Pa. 2001) (quoting *Baby Neal*, 43 F.3d at 57).

Injunctive actions, by their very nature, often present common questions satisfying Rule 23(a)(2) "because they do not also involve an individualized inquiry for the determination of damage awards." *Id.* at 57. Actions seeking an injunction against a common policy imposed on incarcerated inmates have repeatedly been found to raise common questions in this Circuit. *See, e.g.*, *Hagan v. Rogers*, 570 F.3d 146, 158–59 (3d Cir. 2009) (reversing district court's denial of class certification when plaintiff alleged common threat of injury to incarcerated population); *Logory*, 277 F.R.D. at 143; *Dittimus-Bey v. Taylor*, 244 F.R.D. 284, 290 (D.N.J. 2007).

Commonality is easily established in this case. The Proposed Class members are all current or future pre-trial inmates at the FDC. They are all subject to the policies and practices promulgated and enforced by Warden Marler, including the FDC Policy. They are all denied visitation with their children. Individual facts and circumstances do not need to be resolved in order to decide the claims. Questions of law or fact common to the Proposed Class include, but are not limited to the following:

1. Whether the FDC violates the First and Fifth Amendment rights of the Proposed Class members by subjecting them to more restrictive visitation rules than those that apply to sentenced inmates in the FDC, including whether there is a rational basis for imposing more restrictive visitation rules on FDC pre-trial inmates than on FDC sentenced inmates;

2. Whether the FDC Policy unreasonably burdens the Proposed Class members' ability to maintain meaningful ties with their children;

3. Whether the FDC Policy bears a valid, rational connection to a legitimate governmental interest;

4. Whether the FDC Policy allows the Proposed Class members any adequate alternative means of maintaining ties with their children;

5. Whether the requested relief would impose a significant burden on the FDC's resources; and

6. Whether any ready alternatives to the FDC Policy exist that would fully accommodate the Proposed Class members' rights at *de minimis* cost to valid penological objectives.

These questions of law are common to all members of the Proposed Class, and the commonality requirement of Ruled 23(a)(2) is thus satisfied.

C. The claims of the named Plaintiffs are typical of those of the Proposed Class.

The next requirement of Rule 23(a) is that "the claims or defenses of the representative parties [be] typical of the claims or defenses of the class." Fed. R. Civ. P. 23(a)(3). The purpose of this requirement is to assure that the claims of the named plaintiffs and the class "are so interrelated that the interests of the class members will be fairly and adequately protected in their absence." *Gen. Tel. Co. of the Sw. v. Falcon*, 457 U.S. 147, 157–58 n.13 (1982). Here, as pre-trial FDC inmates with children whom they are unable to see because of the FDC Policy, Plaintiffs are members of the Proposed Class and have claims that are typical of the Proposed Class.

"If the claims of the named plaintiffs and putative class members involve the same conduct by the defendant, typicality is established regardless of factual differences." *Newton v. Merrill*

Lynch, Pierce, Fenner & Smith, Inc., 259 F.3d 154, 183–84 (3d Cir. 2001). "The criterion acts as a bar to class certification only when 'the legal theories of the named representatives potentially conflict with those of the absentees.'" *Id.* at 183 (quoting *Georgine v. Amchem Prods., Inc.*, 83 F.3d 610, 631 (3d Cir. 1996), *aff'd sub nom. Amchem Prods., Inc. v. Windsor*, 521 U.S. 591 (1997)). The Third Circuit has consistently directed attention to the purpose of the typicality provision. *See, e.g., In re Schering Plough Corp. ERISA Litig.*, 589 F.3d 585, 598 (3d Cir. 2009) ("[T]he named plaintiffs' claims must merely be typical, in common-sense terms, of the class, thus suggesting that the incentives of the plaintiffs are aligned with those of the class." (internal quotation marks and citation omitted)). Claims challenging conduct that affects the named plaintiffs as well as the other class members, such as the claims in the instant case, "usually satisfy the typicality requirement irrespective of the varying fact patterns underlying the individual claims. . . . Actions requesting declaratory and injunctive relief to remedy conduct directed at the class clearly fit this mold." *Baby Neal*, 43 F.3d at 58 (internal citation omitted); *accord Stewart v. Abraham*, 275 F.3d 220, 227 (3d Cir. 2001).

Here the claims of Mr. Woods and Mr. Campbell are typical of those of the Proposed Class because Plaintiffs' claims arise from and challenge the same unlawful conduct by Warden Marler that affects the Plaintiffs as well as all other Proposed Class members. Namely, the FDC Policy prevents Plaintiffs and the other members of the Proposed Class from visiting with their children, in violation of these inmates' constitutionally protected rights. The Proposed Class meets the Rule 23(a)(3) typicality requirement.

D. The Plaintiffs will fairly and adequately protect the interests of the Proposed Class.

To meet the final requirement of Rule 23(a), the named plaintiffs must fairly and adequately protect the interests of the proposed class. "[A]dequate representation depends on two factors: (a) the plaintiff's attorney must be qualified, experienced, and generally able to conduct the proposed litigation, and (b) the plaintiff must not have interests antagonistic to those of the class." *New Directions Treatment Servs. v. City of Reading*, 490 F.3d 293, 313 (3d Cir. 2007) (quotation marks and citation omitted). Plaintiffs in this case satisfy both factors.

Plaintiffs' attorneys are qualified and experienced in civil rights litigation, including class actions, as well as in representing inmates in criminal and civil matters. The attached declarations summarize relevant experience of the attorneys for Plaintiffs and the Proposed Class from Drinker Biddle & Reath LLP (Baylson Decl., App. at 00061–062), the Public Interest Law Center (Geffen Decl., App. at 00063–065), and the Pennsylvania Institutional Law Project (Davy Decl., App. at 00066–067). Briefly, Mira Baylson is an attorney at Drinker Biddle & Reath LLP, a national law firm based in Philadelphia. She has extensive experience representing defendants in criminal matters in both state and federal court. She is assisted in this case by associates Amanda Pasquini and Jordan DiPinto. *See generally* Baylson Decl., App. at 00061–062.

Since 1969, the Public Interest Law Center has litigated class actions and other high-impact cases in federal and state courts, particularly class actions seeking equitable relief. *See generally* Geffen Decl., App. at 00063–065. Mr. Geffen has twice served as class counsel in Rule 23(b)(2) class actions, both of which resulted in highly favorable outcomes for the class. The Law Center's legal director, Mary M. McKenzie, is also an active member of the legal team and

has many years of litigation experience, including in class actions. *See generally* Geffen Decl., App. at 00063–065.

The Pennsylvania Institutional Law Project has litigated class actions in federal and state courts for decades, particularly class actions seeking equitable relief on behalf of federal and state inmates. Jim Davy has experience with litigation on behalf of prisoners, specifically, including currently participating on teams litigating class actions against other federal prisons in Pennsylvania. *See generally* Davy Decl., App. at 00066–067.

Together, Plaintiffs' counsel provide "assurance of vigorous prosecution" of the class claims as required by Rule 23(a)(4). *Grasty v. Amalgamated Clothing & Textile Workers Union*, 828 F.2d 123, 129 (3d Cir. 1987) (quotation marks and citation omitted).

Second, as explained in the typicality section, Plaintiffs' interests align with the interests of the Proposed Class as a whole. Plaintiffs do not have any interests antagonistic to those of any other member of the Proposed Class. Antagonism may exist between the named plaintiff and other class members when a unique defense could be asserted against a plaintiff that would distract from the class claims or defenses. *See, e.g.*, *Williams v. City of Phila.*, 270 F.R.D. 208, 222 (E.D. Pa. 2010) (finding that the named plaintiffs "fairly and adequately protect the interests the named plaintiffs' attention at trial"). No such circumstances are present here. On the contrary, the Plaintiffs' interests coincide with those of the Proposed Class to seek a declaration that the FDC Policy is unconstitutional as well as a permanent injunction that would prohibit Warden Marler from further implementing such patterns, practices, and policies. Plaintiffs are not seeking any relief that would be different from the relief that would apply to the entire Proposed Class. The granting of the relief sought by Plaintiffs would benefit the Proposed Class members and would not impair any future Proposed Class member's claims.

Accordingly, this Proposed Class meets the Rule 23(a)(4) adequacy requirement.

E. The Plaintiffs meet the requirements of Rule 23(b)(2).

Having satisfied the requirements of Rule 23(a), Plaintiffs must also satisfy one of the provisions of Rule 23(b).

Different subsections of Rule 23(b) impose different requirements on litigants certifying classes. Rule 23(b)(2) and Rule 23(b)(3) "actually create two remarkably different litigation devices." *Shelton v. Bledsoe*, 775 F.3d 554, 561 (3d Cir. 2015). One key difference is that Rule 23(b)(2) contains no opt-out requirement for potential class members, as compared to the "additional procedural safeguards for (b)(3) class members beyond those provided for (b)(1) or (b)(2) class members." *Id.* at 560 (internal citation omitted). "Because there is no right to opt out from such a class," *id.* at 561, Rule 23(b)(2) provides that a class action may be maintained when the defendant "acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole." *Sullivan*, 667 F.3d at 317. "To meet this requirement, the putative class must demonstrate that the interests of the class members are so like those of the individual representatives that injustice will not result from their being bound by such judgment in the subsequent application of principles of *res judicata*." *Jeffes*, 846 F.2d at 179.

The Third Circuit has "instructed that [23(b)(2)] classes must be cohesive" to qualify for certification. *Shelton*, 775 F.3d at 561. A class is cohesive when the claims are "homogenous without any conflicting interests between the members of the class." *Wetzel v. Liberty Mut. Ins. Co*., 508 F.2d 239, 248–49, 256 (3d Cir. 1975). As the Supreme Court has explained, "The key to the (b)(2) class is the indivisible nature of the injunctive or declaratory remedy warranted—the notion that the conduct is such that it can be enjoined or declared unlawful only as to all of the

class members or as to none of them." *Wal-Mart*, 564 U.S. at 360 (internal quotation marks and citation omitted). Thus, a showing that a single injunction or declaratory remedy will provide relief for the entire class satisfies the Third Circuit's cohesiveness requirement. *E.g., Sourovelis v. City of Phila*., 320 F.R.D. 12, 25 (E.D. Pa. 2017) (certifying a class of individuals challenging the government's civil forfeiture policy because a declaration that the policy was unconstitutional would benefit the entire class and because challenging the constitutionality of the policy did not implicate "'disparate factual circumstances'").

With respect to actions concerning policies implemented by a common defendant, "[i]njunctive actions, seeking to define the relationship between the defendant and the 'world at large,' will usually satisfy the requirement" for class-based commonality. *Sullivan*, 667 F.3d at 318 (citing *Baby Neal*, 43 F.3d at 59). Indeed, under Rule 23(b)(2), "class cohesion . . . is presumed where a class suffers from a common injury and seeks class-wide injunctive relief." *Barabin v. Aramark Corp.*, No. 02-8057, 2003 U.S. App. LEXIS 3532, at *5 (3d Cir. Jan. 24, 2003). For example, the Third Circuit has rejected 23(b)(2) classes in cases involving proposed classes of individuals who suffered varying injuries from the same conduct of a defendant, "[b]ecause causation and medical necessity often require individual proof." *Gates v. Rohm & Haas Co.*, 655 F.3d 255, 264 (3d Cir. 2011) (collecting cases). When, however, injunctive relief predominates over individual requests for damages, 23(b)(2) actions are more appropriate. *Id.* at 262. Here, the Proposed Class seeks injunctive relief from a common policy applied equally to each of them, which has created the same injury—deprivation of visitation with their minor children.

Rule 23(b)(2) is especially appropriate for prisoners' civil rights actions like this one because of the potential for common resolution through declaratory and injunctive relief.

Williams, 270 F.R.D. at 222 ("Numerous courts have held that Rule 23(b)(2) is an appropriate vehicle in actions challenging prison conditions."). Courts in the Third Circuit have a long history of using Rule 23(b)(2) to adjudicate claims involving treatment of inmates. *E.g.*, *Williams*, 270 F.R.D. at 222 (certifying Rule 23(b)(2) class of inmates); *Colon v. Passaic Cty.*, No. 08-cv-4439, 2009 U.S. Dist. LEXIS 45151, at *16–18 (D.N.J. May 27, 2009) (certifying class of those who were currently, or would become, incarcerated in Passaic County Jail); *Dittimus-Bey v. Taylor*, 244 F.R.D. 284, 293 (D.N.J. 2007) (certifying Rule 23(b)(2) class of individuals incarcerated at Camden County Correctional Facility on overcrowding claim); *Death Row Prisoners of Pa. v. Ridge*, 169 F.R.D. 618, 623 (E.D. Pa. 1996) (certifying Rule 23(b)(2) class of death-row detainees).

Plaintiffs' action falls squarely in the group of cases contemplated by Rule 23(b)(2): It is a civil rights and equitable action brought in response to Warden Marler's uniform actions that affect each Proposed Class member in precisely the same way. *See, e.g.*, *In re Cmty. Bank of N. Va. & Guar. Nat'l Bank of Tallahassee Second Mortg. Loan Litig.*, 418 F.3d 277, 302 n.14 (3d Cir. 2005). It seeks declaratory and injunctive relief that would benefit all of the members of the Proposed Class. Likewise, the Proposed Class is cohesive because, as in *Sourovelis v. City of Philadelphia*, determining the constitutionality of a prison policy that affects all members of the Proposed Class does not require an inquiry into "disparate factual circumstances." 320 F.R.D. at 25. For these reasons, class certification under Rule 23(b)(2) is appropriate.

III. CONCLUSION

For all the foregoing reasons, the Court should grant Plaintiffs' Motion and certify the class proposed by the Plaintiffs.

Respectfully submitted,

/s/ Mira Baylson
Mira Baylson
Pa. Bar No. 209559
Amanda Pasquini
Pa. Bar No. 324537
Jordan DiPinto
Pa. Bar No. 324337
DRINKER BIDDLE & REATH LLP
One Logan Square, Suite 2000
Philadelphia, PA 19103
Tel: 215-988-2677
Mira.baylson@dbr.com

Benjamin D. Geffen
Pa. Bar No. 310134
Mary M. McKenzie
Pa. Bar No. 47434
PUBLIC INTEREST LAW CENTER
1709 Benjamin Franklin Parkway, 2nd Floor
Philadelphia, PA 19103
Tel: 215-627-7100
bgeffen@pubintlaw.org
mmckenzie@pubintlaw.org

Jim Davy
Pa. Bar No. 321631
PENNSYLVANIA INSTITUTIONAL LAW PROJECT
718 Arch St., Suite 304S
Philadelphia, PA 19106
Tel: 215-925-2966
jdavy@pailp.org

Counsel for Plaintiffs and Proposed Class Members

Dated: March 5, 2018

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SEAN MARLER,	:	
	:	
	:	
Defendant.	:	

[PROPOSED] ORDER

AND NOW, this _____ Day of _____, 20____, upon consideration of Plaintiffs' Motion for Class Certification and any response or reply thereto, it is hereby **ORDERED** that the Motion is **GRANTED.** Pursuant to Federal Rule of Civil Procedure 23(a) and 23(b)(2), the Court hereby certifies the following class:

> All current and future pre-trial inmates at the FDC who are or will be eligible to have social visitors but who are unable to see their child or children younger than 16 years old under the FDC's visitation policies, practices, and patterns. The class period commences from the time of the filing of the Complaint and continues so long as Defendant persists in the unconstitutional policies, practices, and patterns.

Plaintiffs Allen Woods and Keith Campbell are designated as representatives of the certified class. Counsel for the Plaintiffs—Mira Baylson, Amanda Pasquini, and Jordan DiPinto of Drinker Biddle & Reath LLP; Benjamin D. Geffen and Mary M. McKenzie of the Public Interest Law Center; and Jim Davy of the Pennsylvania Institutional Law Project—are appointed as counsel for the certified class.

SO ORDERED. _____

Mark A. Kearney, U.S.D.J.

CERTIFICATE OF SERVICE

I hereby certify that on March 5, 2018, I caused the foregoing Plaintiffs' Motion for Class Certification and Memorandum of Law in Support of Plaintiffs' Motion for Class Certification to be filed and served on all counsel of record by operation of the CM/ECF system for the United States District Court for the Eastern District of Pennsylvania.

/s/ Mira Baylson

Mira Baylson
Pa. Bar No. 209559
DRINKER BIDDLE & REATH LLP
One Logan Square, Suite 2000
Philadelphia, PA 19103
Tel: 215-988-2677
Mira.baylson@dbr.com