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Isolation for Profit: How Privately Provided Video Visitation Services Incentivize Bans on In-Person Visitation Within American Correctional Facilities

J. Tanner Lusk*

Abstract

American correctional facilities are banning in-person visitation in lieu of privately provided and expensive video visitation services. This Note discusses the types of private services provided; how video visitation negatively affects inmates' mental health and finances; and the ongoing legal battle occurring in Knox County, Tennessee, regarding whether the Knox County Jail's ban on in-person visitation violates the Constitution. Because of the significant degree of deference courts grant correctional facilities when considering whether challenged regulations violate the Constitution, it will be difficult for the Knox County Jail inmates to successfully argue that the jail has violated their constitutional rights. There are, however, other methods to challenging bans on in-person visitation. Through political advocacy, individuals and organizations have successfully motivated counties throughout the United States to overturn and prohibit bans on in-person visitation. Going forward, political advocacy seems like the best method for challenging these bans.

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I. Introduction

"*A new system called 'video visitation' is replacing in-person jail visits with glitchy, expensive Skype-like video calls. It's inhumane, dystopian and actually increases in-prison violence—but god, it makes money*."[1]

Private companies are increasingly controlling the methods by which prisoners communicate with their family and friends.[2] Companies, such as Securus Technologies (Securus), implement and manage phone-call systems, electronic messaging systems, and video-conferencing systems in correctional facilities.[3]

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1. Jack Smith, IV, *The End of Prison Visitation*, MIC (May 5, 2016), https://mic.com/articles/142779/the-end-of-prison-visitation#.5J6dSZ78a (last updated Sept. 6, 2016) (last visited Nov. 24, 2019) (emphasis added) [https://perma.cc/2B42-GU43].

2. *Id.*

3. *See About Us*, SECURUS TECHNOLOGIES, https://securustech.net/about-us/

Although these services allow greater access to communication for some inmates, in many cases, correctional facilities across the nation use this technology to replace in-person visitation.[4]

In Knox County, Tennessee, the Knox County Sheriff's Office has banned in-person visitation within its facilities in lieu of video visitation.[5] As a result of the ban, Knox County's inmates can only visit with friends, family, and others through Securus's video calls.[6] Knox County inmates filed a proposed civil rights class action lawsuit in the United States District Court for the Eastern District of Tennessee on December 23, 2018.[7] In the complaint, plaintiffs allege that the Knox County Sheriff's Department violated the First, Eighth, and Fourteenth Amendments of the United States Constitution by "aboli[shing] . . . all in-person visitation . . . ."[8] This Note considers whether the ban violates the Knox County inmates' constitutional rights and, if litigating the constitutional concerns proves to be an insufficient method for challenging the bans, whether political advocacy can be a successful alternative.

(last visited Nov. 24, 2019) ("[W]e help maintain relationships between inmates and their family and friends through easy to use inmate calling options and video visitation from anywhere using Apple® or Android® smartphones, tablets or PCs.") [https://perma.cc/TP8V-VZR8].

4. *See* Debra Weiss, *Another Jail Eliminates In-Person Visits and Adopts 50-Cent-a-Minute Video Visitation*, A.B.A. J. (July 24, 2018), http://www.abajournal.com/news/article/another_jail_eliminates_free_in_person_visits_and_adopts_video_visitation (last visited Nov. 24, 2019) ("[A]n estimated 600-plus correctional facilities across the country have implemented some form of video calling. About three-quarters of the jails that implement the technology 'end up eliminating or scaling back in-person visits . . . .'") [https://perma.cc/8Z63-QVB4].

5. *See* KNOX COUNTY SHERIFF, POLICY AND PROCEDURE MANUAL ch. 12, at 2 ("Knox County Correctional Facilities use video visitation as the only method for personal visits.") [hereinafter KNOX COUNTY SHERIFF].

6. *See Exhibit 4: Knox County (TN) Proposed Contract with Securus*, PRISON POL'Y INITIATIVE 2, https://static.prisonpolicy.org/messaging/Exhibit4.pdf (last visited Nov. 24, 2019) ("County hereby contracts with Contractor to provide for . . . an Inmate Communication and Management System, including . . . Inmate Phone System, Inmate Communications (Kiosks/Tablets), Inmate Visitation, [and] Electronic Messaging . . . .") [https://perma.cc/E7N9-H9LA].

7. Complaint for Plaintiffs, Amble et al. v. Spangler et al., No. 3:2018cv00538 (E.D. Tenn. Dec. 23, 2018).

8. *Id.* at 1.

II. Video Visitation Services

Providing goods and services to prisons is a booming business for private companies.[9] Ahmad Afzal, owner of Fine Cotton Textiles, which manufactures prison jumpsuits, underwear, and suicide safety smocks for U.S. prisons, recognized this when he stated that "[b]usiness is very good . . . [b]ecause crime is crazy and there are lots of inmates. . . . [T]he number of customers is increasing every day."[10] Private companies provide services for communication,[11] medical care,[12] food,[13] transportation,[14] and probation.[15] This Note focuses on Securus's video visitation services.

Video visitation allows inmates incarcerated far from home to communicate with their family and friends; bypasses restrictive jail visitation hours and policies that can prevent working

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9. *See* Timothy Williams, *The High Cost of Calling the Imprisoned*, N.Y. TIMES, Mar. 30, 2015, § A, at 12 (reporting that the prison phone system is a $1.2 billion-a-year industry).

10. Rupert Neate, *Welcome to Jail Inc: How Private Companies Make Money Off U.S. Prisons*, THE GUARDIAN (June 16, 2016), https://www.theguardian.com/us-news/2016/jun/16/us-prisons-jail-private-healthcare-companies-profit (last visited Nov. 24, 2019) [https://perma.cc/7QQ9-2TEA].

11. *See U.S. For-Profit Privatized Correctional Services*, PRISON LEGAL NEWS (Jan. 2017), https://www.prisonlegalnews.org/news/publications/list-major-profit-prison-services-and-companies/ (last visited Nov. 24, 2019) (listing Global Tel* Link, Securus Technologies, Century Link, Pay Tel, Telmate, NCIC, Consolidated Telecom, ICSolutions, Legacy Inmate Communications, IWEBVisit, JPay, HomeWAV, Turnkey Corrections, and JailATM as companies that provide communication services to prisons) [https://perma.cc/3BK7-3DK5].

12. *See id.* (listing Corizon Health, Centurion, NaphCare, Correct Care Solutions, Wexford Health Sources, Armor Corr. Health Services, Advanced Correctional Healthcare, Correctional Medical Care, Southern Health Partners, MHM, Cal. Forensic Medical Group, Southwest Correctional Medical Group, CFG Health Systems, PrimeCare Medical, Inc., and Correct Health as companies providing medical services to prisons).

13. *See id.* (listing Aramark, Canteen Corr. Services, Trinity Services Group, ABL Management, and Food Services of America as companies providing food services to prisons).

14. *See id.* (listing Transcor, PTS of America, U.S. Prisoner Transport Services, Black Talon Enterprises, GEO Transport, and In-Custody Transportation as companies providing transportation services to prisons).

15. *See id.* (listing Sentinel Offender Services, Judicial Correctional Services, Georgia Probation Services, and CSRA Probation Services as companies providing probation services).

individuals, school-age children, the elderly, and the disabled from visiting; and reduces the disruptive effect[16] that visiting a jail can have on children.[17] Unfortunately, many correctional facilities implementing video visitation policies focus more on generating profits than on improving the quality and frequency of communication.[18]

Securus is one of the leading providers of communication systems to correctional facilities.[19] Securus provides correctional facilities with traditional telephone service,[20] video visitation,[21] and electronic messaging.[22] Securus installs and manages

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16. *See* Jasmine M. Hedge, Children of Incarcerated Parents: The Relation of Contact and Visitation to the Parent-Child Relationship and Internalizing and Externalizing Problems 30 (May 2016) (unpublished Ph.D. dissertation, Clemson University) (on file with Clemson Libraries, Clemson University)

> Visitation policies are often cited as reasons for low rates of visitation, as many family members encounter intimidating and uncomfortable conditions that deter future contact. . . . [A]dolescents have reported mixed feelings about visitation because there was no time to talk individually, it involved unpleasant searches, and facilities were physically uncomfortable.

17. *See* Bernadette Rabuy & Peter Wagner, S*creening Out Family Time—The For-Profit Video Visitation Industry in Prisons and Jails,* PRISON POL'Y INITIATIVE (Jan. 11, 2017), https://www.prisonpolicy.org/visitation/report.html (last visited Nov. 24, 2019) (listing benefits and drawbacks of video visitation services in prisons) [https://perma.cc/Z2H7-QV6Z].

18. *See Advocacy Groups Call for End to Ban on In-Person Visits at Tennessee Jail*, PRISON LEGAL NEWS, Oct. 8, 2018, at 23 ("It's all about the money.").

19. *See About Us*, *supra* note 3 ("[W]e help maintain relationships between inmates and their family and friends through easy to use inmate calling options and video visitation from anywhere using Apple® or Android® smartphones, tablets or PCs.").

20. *See Phone Products*, SECURUS TECHNOLOGIES, https://securustech.net/phone-products/index.html (last visited Nov. 24, 2019) (discussing Securus's phone services) [https://perma.cc/T6SK-GN38].

21. *See Video Products*, SECURUS TECHNOLOGIES, https://securustech.net/video-products/index.html (last visited Nov. 24, 2019) ("Securus Video Visitation is a fully web-based visitation system that allows friends, family members, attorneys, and public officials to schedule and participate in video visitation sessions with an inmate—from anywhere with internet access using the free Securus app, computer or tablet.") [https://perma.cc/AL2L-H2BH].

22. *See EMESSEGING,* SECURUS TECHNOLOGIES, https://securustech.net/emessaging/index.html (last visited Nov. 24, 2019) (providing a way to send electronic text messages and photographs to inmates while also allowing the inmate an opportunity to reply to the message if the sender attaches a return

communication systems in correctional facilities without any charge to the facility.[23] The inmates pay to use Securus's services,[24] and the facilities housing the inmates receive lucrative[25] commissions.[26]

In addition to commissions, Securus's communication systems also provide convenience to correctional facilities.[27] The systems allow facilities to provide communication between inmates and the inmates' families and friends while decreasing visitation traffic.[28] Correctional facilities claim that decreasing visitation traffic increases internal security and reduces staff needs.[29]

To increase revenue, Securus has, in the past, included provisions in its contracts that required prisons to ban in-person

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stamp) [https://perma.cc/BWZ2-2ZHA].

23. *See* SECURUS TECHNOLOGIES, REQUEST FOR PROPOSAL—170423 BAFO—VIDEO VISITATION PINAL COUNTY, AZ 6–7 (2017), http://www.pinalcountyaz.gov/Purchasing/Lists/ContractVendors/Attachments/458/Securus%20Technologies%20Contract.pdf (last visited Nov. 24, 2019) ("[Securus] will provide all supervision, labor, materials, equipment, software, storage, documentation, training, technical support, and supplies necessary to furnish, install, implement, operate, and maintain our Web-based video visitation system at no cost to Pinal County.") [https://perma.cc/J9UQ-H6K8].

24. *See Video Visitation*, SECURUS TECHNOLOGIES, https://securustech.net/video-products/video-visitation/index.html (last visited Nov. 24, 2019) (listing "funding options" to use Securus Video Visitation) [https://perma.cc/P6TD-AXV5].

25. *See* Smith, *supra* note 1 ("These deals are lucrative: In Los Angeles County, for example, it brings in a baseline, contractual guarantee of $15 million a year.").

26. *See* FACE TO FACE KNOX, TO WHAT END?: ASSESSING THE IMPACT OF THE KNOX COUNTY JAIL'S BAN ON IN-PERSON VISITS 2 (2018), https://drive.google.com/file/d/1H4JdRulGhQ9tKeMKUxsimxLsyE5nYlMF/view (last visited Nov. 24, 2019)

> Under the County's current contract with Securus Technologies, the County takes a 50% "commission" on every remote video call, which goes into the County's general revenue fund. Because Securus pays the full cost of installing and operating the system, there is no need for the county to charge an extra fee.

[https://perma.cc/9ZLA-X98R].

27. *See id.* (introducing reasons for the changes implemented by the Knox County Sheriff's office).

28. *See id.* ("When the ban was initiated, the Sheriff's Office gave the following reasons for eliminating in-person visits: Decreased visitation traffic—requires less staff . . . .").

29. *See id.* (stating that because of the ban no contraband would enter the jail and that the chances for violence would be lessened).

visitation.[30] In a report by the Prison Policy Initiative, the organization stated that the following provision was a common element of Securus's contracts: "For non-professional visitors, Customer will eliminate all face to face visitation through glass or otherwise at the Facility and will utilize video visitation for all non-professional on-site visitors."[31] On May 6, 2015, Securus announced that it would no longer explicitly require county jails and state prisons to replace in-person visitation with video calls.[32]

Additionally, Securus has also included provisions in contracts that detail commission rate increases that are conditional on the prison meeting agreed-to-quotas.[33] For instance, in a contract with Maricopa County, Arizona, Securus included a provision that stated the following:

> Contractor shall provide an initial revenue share of ten percent (10%) of gross revenues per month upon implementation of the base Video Visitation System if the County reaches a minimum usage rate of 8,000 paid visits for the given month. Upon Contractor realizing $2,603,201.95 in gross revenue, as verified by electronic tracking of visit usage times the visitation rate, the revenue percentage shall increase to twenty percent (20%) of gross revenue per month, regardless of visitation volume. The

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30. *See Securus Ends Its Ban on In-Person Visits, Shifts Responsibility to Sheriffs*, PRISON POL'Y INITIATIVE (May 6, 2015), https://www.prisonpolicy.org/blog/2015/05/06/securus-ends-ban/ (last visited Nov. 24, 2019) ("There is clear language banning in-person visits in 70% of the Securus contracts we examined for our report . . . .") [https://perma.cc/56Z4-Y26X].

31. Rabuy & Wagner, *supra* note 17.

32. *See Securus Technologies Revises Video Visitation Policy—Defers to Prison/Jail Officials on Rules for Onsite Visits*, PRISON POL'Y INITIATIVE (May 4, 2015, 6:22 PM), https://www.prisonpolicy.org/scans/securus_technologies_revises_video_visitation_policy-defers_to_prison-jail_officials_on_rules_for.pdf (last visited Nov. 24, 2019)

> Securus examined our contract language for video visitation and found . . . we were writing in language that could be perceived as restricting . . . person-to-person contact . . . . So we are eliminating that language and 100% deferring to the rules that each facility has for video use by inmates.

[https://perma.cc/JNS9-8FBS].

33. *See Exhibit 2: Maricopa County Video Visitation Contract*, PRISON POL'Y INITIATIVE 15, https://ecfsapi.fcc.gov/file/7520964282.pdf (last updated Nov. 6, 2013) (last visited Nov. 24, 2019) (detailing the commission structure for revene generation) [https://perma.cc/4QNF-LH9S].

> parties agree that the set commission rates shall be periodically reviewed in relation to the actual visitation volume and gross revenue and may be adjusted by mutual written consent.[34]

Provisions such as this provide jails with financial incentives to curtail in-person visitation in lieu of video visitation.

Because of a desire to increase facility security and produce revenue, some facilities have completely banned in-person visitation in lieu of visitation solely through video visitation, provided by Securus and similar providers.[35] Currently, 600 correctional facilities in forty-six states have implemented some sort of video visitation system, and each year, more of those facilities ban in-person visitation.[36] The Prison Policy Initiative reported that as of 2015, of the jails that implemented video visitation within their facilities, seventy-four percent of those jails banned in-person visitation.[37]

Currently, the constitutionality of blanket-bans on in-person visitation is being litigated in Knox County, Tennessee.[38]

III. Knox County Jail

Knox County Jail, located in Knox County, Tennessee, houses approximately 1000 inmates.[39] In April 2014, Knox County eliminated in-person visitation between inmates and outside visitors.[40] In place of in-person visitation, Knox County

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34. *Id.*

35. *See* Weiss, *supra* note 4 ("Lucius Couloute, an expert at the Prison Policy Initiative, told Ars Technica and the Guardian that . . . 600-plus correctional facilities . . . have implemented some form of video calling. About three-quarters of the jails . . . end up eliminating or scaling back in-person visits . . . .'").

36. *See* Smith, *supra* note 1 (discussing the trend of correctional facilities implementing video visitation technology).

37. *See* Rabuy & Wagner, *supra* note 17 ("The record is not always clear about whether the jails or the companies drive this change, but by banning in-person visits, it is clear that the jails are abandoning their commitment to correctional best practices.").

38. Complaint for Plaintiffs, *supra* note 7.

39. *See* FACE TO FACE KNOX, *supra* note 26, at 3 ("With a population of about 1000 inmates at the Detention Facility, this means there are, on average, ten more assaults every month.").

40. *See* FACE TO FACE KNOX, *supra* note 26, at 2 ("Since April 2014, the Knox

implemented a video conference system, which Securus installed and manages.[41]

Inmates who wish to visit with family and friends must use Securus's video conference system.[42] Inmates can use the system in two ways.[43] First, those who choose to communicate with the inmate can drive to the Knox County Jail and use a kiosk within the jail to video call the inmate for free.[44] Second, those who choose to communicate with the inmate can remotely call the inmate at a cost of $5.99 for fifteen minutes.[45] In addition to video-calling, inmates may also use tablets provided by Knox County Jail to message and email others.[46] Inmates may either purchase the tablet for $425, rent it for five dollars per day, or borrow it for fifteen minutes at no charge.[47]

The Knox County Jail says that its primary reason for banning in-person visitation is its concern over safety within the facility, but opponents of the ban argue that the primary motivation of the county is to make money.[48] For every fifteen-minute remote video call, Knox County pockets $2.62 of the $5.99 charge as a

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County Sheriff's Office has banned in-person visits at all county jail facilities.").

41. *See* FACE TO FACE KNOX, *supra* note 26, at 2 ("Because Securus pays the full cost of installing and operating the system, there is no need for the county to charge an extra fee.").

42. *See* KNOX COUNTY SHERIFF, *supra* note 5, at 2 ("Knox County Correctional Facilities use video visitation as the only method for personal visits.").

43. *See* KNOX COUNTY SHERRIF, *supra* note 5, at 2 (detailing different ways video visitation can be used).

44. *See* KNOX COUNTY SHERRIF, *supra* note 5, at 2 (stating that visitors can utilize kiosks for personal video visitation at no charge).

45. *See* KNOX COUNTY SHERRIF, *supra* note 5, at 2 ("There is a charge of $5.99 per thirty (30) minute visit.").

46. *See Knox County Commission Passes Resolution to Supply Inmates with Tablets*, WVLT (Apr. 21, 2017), https://www.wvlt.tv/content/news/Knox-County-Commission-passes-resolution-to-supply-inmates-with-tablets-420077863.html (last visited Nov. 24, 2019) [hereinafter *Knox County Commission Resolution*) (discussing Knox County's purchase of 900 tablets, how the county intended to use the tablets, and the public's response to the purchase) [https://perma.cc/VKV5-V39K].

47. *See* Complaint for Plaintiffs, *supr*a note 7, at 11 ("Inmates get 15 minutes a day with the tablets unless they have a gold pass, but gold passes cost $5.99 a day.").

48. *See* FACE TO FACE KNOX, *supra* note 26, at 2 ("[T]he video call system makes money for the County, while in-person visits do not.").

"commission."[49] From March 2014 to November 2017, Knox County earned $68,777.00 from the "commissions."[50] In total, over the past four years, remote visits have brought in $164,000 in total revenue.[51] Of that $164,000, $79,000 went to Knox County and the rest went to Securus.[52]

Knox County has not provided data that supports its argument that the ban would increase the jail's security. Knox County stated that banning in-person visitation would decrease visitation traffic, which would reduce the amount of staff needed at the facility; reduce the amount of contraband entering the facility; and reduce the risk of violence in the facility.[53]

Face to Face Knox, "a grass-roots coalition of citizens in Knox County who seek just and humane treatment for incarcerated individuals at the Knox County jail,"[54] published a report on January 29, 2018, *To What End? Assessing the Impact of the Knox County Jail's Ban on In-Person Visits*.[55] In its report, Face to Face Knox found that the potential benefits bolstered by the Knox County Jail had not occurred and stated that "[t]he ban on in-person visits makes the jail more dangerous, does nothing to stop the flow of contraband, and strips money away from the pockets of families."[56] The report found that contraband coming into the jail had not decreased, that assaults had increased among the 1000 inmates by an average of ten assaults per month, and that the rate of disciplinary infractions had increased.[57]

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49. *See* Complaint for Plaintiffs, *supra* note 7, at 14 (discussing the financial details of the ban).

50. *See* Complaint for Plaintiffs, *supra* note 7, at 14 (outlining the profitability of the program at paragraph 74).

51. *See* Complaint for Plaintiffs, *supra* note 7, at 14 ("[M]ore than $164,000 in total revenue of the past four years . . .").

52. *See* Complaint for Plaintiffs, *supra* note 7, at 14 ("About $79,000.00 went back into county coffers and the rest into profits for provider Securus Technologies.") (internal citations omitted).

53. *See* FACE TO FACE KNOX, *supra* note 26, at 2 (listing some reasons the Knox County Sheriff's Office eliminated in-person visitation).

54. Face to Face Knox (@F2FKnox), TWITTER, https://twitter.com/f2fknox (last visited Nov. 24, 2019) [https://perma.cc/36L9-REJR].

55. FACE TO FACE KNOX, *supra* note 26.

56. FACE TO FACE KNOX, *supra* note 26, at 2.

57. *See* FACE TO FACE KNOX, *supra* note 26, at 3 (discussing Face to Face Knox's contrary findings).

On December 23, 2018, Knox County inmates filed a proposed civil rights class action lawsuit in the United States District Court for the Eastern District of Tennessee.[58] The plaintiffs allege that the Knox County Sheriff's Department violated the First, Eighth, and Fourteenth Amendments of the U.S. Constitution regarding "its abolition of all in-person visitation . . . ."[59]

In the complaint's statement of facts, plaintiffs stated that their friends and family members are forced to use kiosks if they wish to communicate with the inmate at the jail; that remote video calls cost $5.99 for fifteen minutes; that it is difficult to get access to a kiosk; and that the kiosks are prone to technical issues such as a blurry screen, loss of video feed, and communication ending prematurely without providing a refund to the inmate for time not used.[60]

In the plaintiffs' claim for relief, under Count One, the plaintiffs claim that ending in-person visitation in lieu of Knox County Jail's "pay to view" policy violates plaintiffs' rights under the Fourteenth, First, and Eighth Amendments to the U.S. Constitution.[61] First, the plaintiffs claim that they have a constitutional right to in-person visitation.[62] Second, the plaintiffs claim that the ban violates the inmates' First Amendment right of intimate association and is not reasonably related to a valid penological objective.[63] Third, the plaintiffs claim that the defendants' "arbitrary" ban on in-person visitation between inmates and their family, friends, and employers violates the Eighth Amendment's prohibition against cruel and unusual

58. Complaint for Plaintiffs, *supra* note 7.

59. *See* Complaint for Plaintiffs, *supra* note 7, at 1–2 (outlining the class action generally).

60. *See* Complaint for Plaintiffs, *supra* note 7, at 7–13 (compiling statements from Knox County inmates regarding the shortcomings of video communication technology at Knox County Jail).

61. *See* Complaint for Plaintiffs, *supra* note 7, at 22 ("The in-person visitation ban violates the substantive due process mandate of the Fourteenth Amendment of the United States Constitution, and the First and Eighth Amendments as applicable to the States through the Fourteenth Amendment.").

62. *See* Complaint for Plaintiffs, *supra* note 7, at 22 (outlining the inmates claim for relief first as a violation of a constitutional right to personal visitation).

63. *See* Complaint for Plaintiffs, *supra* note 7, at 23 ("The ban on in-person visitation . . is not reasonably related to a valid penological objective.").

punishment.[64] Plaintiffs allege that the ban makes it difficult to maintain relationships, which results in higher recidivism rates, and that it is a "dramatic departure from accepted standards of confinement."[65]

In the plaintiffs' Prayer for Relief, they request a declaration that the defendants' policies, practices, and customs violate the United States Constitution; a finding that as a direct and proximate result of defendants' actions and inactions, plaintiffs have suffered injuries entitling them to declaratory relief against defendants; an injunction directing the defendants to end the ban on in-person visitation within its facility; and an award of nominal, punitive, and compensatory damages.[66]

IV. Burdens on Inmates and Their Families

Before addressing the constitutional issues discussed in the plaintiffs' proposed class action lawsuit, it is necessary to take a closer look at the consequences that bans have on inmates' mental health and finances.

A. Mental Burdens

In the proposed class action lawsuit, plaintiff Alonzo Hoskins stated that his mental health has deteriorated since being incarcerated at the Knox County Jail.[67] He stated that before incarceration he never used psychiatric medications, but now he does.[68] He blames the deterioration on being "cut off from his family" and the living conditions at the Knox County Jail.[69] In

64. *See* Complaint for Plaintiffs, *supra* note 7, at 23 (introducing the inmate's allegation of cruel and unusual punishment).

65. Complaint for Plaintiffs, *supra* note 7, at 23.

66. *See* Complaint for Plaintiffs, *supra* note 7, at 33–35 (listing requests).

67. *See* Complaint for Plaintiffs, *supra* note 7, at 8 (discussing the mental and physical deterioration of Alonzo Hoskins).

68. *See* Complaint for Plaintiffs, *supra* note 7, at 8 ("He never took psychiatric medications before, but now he does.").

69. *See* Complaint for Plaintiffs, *supra* note 7, at 8 (discussing the stress experienced by Alonzo Hoskins).

addition to his mental-health issues, Alonzo has lost weight, lost hair, and experienced difficulty sleeping.[70]

The effects on Alonzo's and others' mental health should come as no surprise. Psychologists have found that video visitation is inferior to in-person visitation regarding the quality of interaction between the participants.[71] Video visitation falls short in six key aspects.[72] First, video calls increase the formality of the conversation between participants, regardless of their relationship.[73] This means that participants are more likely to talk at one another, rather than engage in a natural conversation.[74] Second, visual signals that facilitate understanding between participants, such as head nods, eye contact, and facial expressions, are harder to recognize during video calls.[75]

Third, the process of establishing trust takes longer during video communication than it would during in-person communication.[76] This is especially detrimental when the inmate is communicating with doctors or young children.[77] Fourth, there is an absence of mutual eye contact, which interferes with

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70. *See* Complaint for Plaintiffs, *supra* note 7, at 8 (describing the nature of Alonzo Hoskins's decline).

71. *See* Emily Widra, *Seeing Eye to Eye: Understanding the Limits of Video Visitation*, PRISON POL'Y INITIATIVE (Apr. 11, 2016), https://www.prisonpolicy.org/blog/2016/04/11/eye-contact/ (last visited Nov. 24, 2019) ("While there are benefits to video communication, primarily regarding long-distance communication, psychologists have repeatedly found numerous differences between face-to-face and video communication.") [https://perma.cc/LLK9-T4DU].

72. *See id.* (listing the ways in which video visitation falls short).

73. *See id.* ("Video communication increases the formality of the conversation . . . .").

74. *See id.* ("[P]eople are more likely to be talking *at* one another when they are using video technology rather than having a more natural conversation.").

75. *See id.* ("[V]isual signals that facilitate listener understanding. . . . such as head nods, eye contact, and facial expressions, are key to in-person interactions but are difficult to recognize in video communication.").

76. *See id.* ([T]rust takes longer via video communication than in face-to-face conversations . . . .").

77. *See id.* ("This is especially worrisome . . . between incarcerated people and doctors (tele-medicine) as well as between incarcerated parents and their young children."); *see also* Rabuy & Wagner, *supra* note 17 ("Video visitation can add to the already significant trauma that children of incarcerated parents face, especially for young children who are unfamiliar with the video technology.").

communication and reduces conversation fluidity.[78] Fifth, video communication deters participants' willingness to express intimacy and social connection.[79] Sixth, the reduced content and process coordination in video communication leads to quicker conversations, reduced interactivity, and less complex utterances.[80]

These differences between video visitation and in-person visitation are significant considering the impact that in-person visitation has on the inmate's rehabilitation process and recidivism rate.[81] A study by the Minnesota Department of Corrections found that "visits from family and friends offer a means of establishing, maintaining, or enhancing social support networks."[82] The study found that improving social bonds for incarcerated offenders is important because it helps "prevent them from assuming a criminal identity" and because "many released prisoners rely on family and friends for employment opportunities, financial assistance, and housing."[83] The improvement of these social bonds reduces the inmate's recidivism rate, meaning that the more visits that someone receives in prison, the less likely he is to commit another crime upon release.[84]

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78. *See* Wildra, *supra* note 71 ("The absence of mutual eye contact and a shared visual field disrupts communication and decreases conversation fluidity . . .").

79. *See* Wildra, *supra* note 71 ("[I]t is more difficult for people to express intimacy and social connection with video communication.").

80. *See* Wildra, *supra* note 71 ("The decreased content and process coordination in video communication leads to shorter conversations, reduced interactivity, and less complex utterances.") (citations omitted).

81. *See generally* MINN. DEP'T OF CORR., THE EFFECTS OF PRISON VISITATION ON OFFENDER RECIDIVISM (2011), https://mn.gov/doc/assets/11-11MNPrisonVisitationStudy_tcm1089-272781.pdf (last visited Nov. 24, 2019) (presenting findings on the effects of visitation on prisoner recidivism rates) [https://perma.cc/3AJ5-4465].

82. *Id.* at 1.

83. *Id*. at 2.

84. *See id.* at 29 ("[F]indings suggest that prison visitation can improve recidivism outcomes by helping offenders not only maintain social ties with both nuclear and extended family . . . while incarcerated, but also by developing new bonds such as those with clergy or mentors.").

In his dissent in *Kentucky Department of Corrections v. Thompson*,[85] Justice Marshall recognized the significant effect that visitation has on recidivism:

> Confinement without visitation "brings alienation and the longer the confinement the greater the alienation. There is little, if any, disagreement that the opportunity to be visited by friends and relatives is more beneficial to the confined person than any other form of communication.
>
> "Ample visitation rights are also important for the family and friends of the confined person. . . . Preservation of the family unit is important to the reintegration of the confined person and decreases the possibility of recidivism upon release. . . . [V]isitation has demonstrated positive effects on a confined person's ability to adjust to life while confined as well as his ability to adjust to life upon release . . . ."[86]

Testimony from those burdened by bans on in-person visitation add additional weight to the scientific findings.[87] When asked about the effects of an in-person visitation ban at the Travis County Correctional Facility in Texas, inmates stated that when using video call systems they cannot look the other participant in the eye because "[i]t's impossible" and the "personal, intimate aspects" of their loved ones do not show.[88] Lauren Johnson, a visitor to the Travis County Correctional Facility, stated, "[i]t's not something you can quantify. Eye contact is a huge deal. It's blowing them kisses and putting your hands to the glass. The kids get lost with the video terminals. It's just not the same experience. It's a disconnected feeling."[89] Susan Gregory, wife to an inmate in

85. Ky. Dep't of Corr. v. Thompson, 490 U.S. 454, 465 (1989) (Marshall, J., dissenting) (arguing that the Kentucky regulations did not give state inmates a liberty interest in visitation that is entitled to the protections of the due process clause) (quoting National Conference of Commissioners on Uniform State Laws, Model Sentencing and Corrections Act § 4–115, cmt. (1979)).

86. *Id.* at 468 (quoting National Conference of Commissioners on Uniform State Laws, Model Sentencing and Corrections Act § 4–115, cmt. (1979)).

87. *See* Emily Wildra, *In Their Own Words: The Value of In-Person Visitation to Families*, PRISON POL'Y INITIATIVE (May 9, 2017), https://www.prisonpolicy.org/blog/2017/05/09/video-visitation-quotes/ (last visited Nov. 24, 2019) (providing quotes from inmates and their loved ones on the value of in-person visitation) [https://perma.cc/A5HG-SAMA].

88. *See id.* (describing the difficulties associated with video visitation between prisoners and visitors).

89. *Id.*

the Travis County facility stated, "Even if it's through plexiglass, at least you can have some kind of live interaction with your loved one. That would have made it better for me and him to maintain that human contact."[90]

B. Financial Burdens

Use of Securus's technology and services can be costly for inmates and their families. At the Knox County Jail, one hour of remote visitation every week for one year costs the visitor $1246.00.[91] Visitation is free if visitors use one of the kiosks located inside of the jail, but that is not always an available or practical option.[92] Experienced Skype and Facetime users, who were familiar with video calling, commented in an interview with the Prison Policy Initiative that, while using Securus's kiosks, they have experienced the kiosks' video feed freezing and becoming blurry, video calls' audio cutting in and out, and video calls ending prematurely.[93] As Ashika Coleman, an inmate located in Travis County, Texas, heartbreakingly put it, "[i]t's just too much frustration to come down here, wait for an hour and then only get 25 minutes for a not-so-good call. I think the hassle is why people don't visit me as much anymore."[94]

Prisoners can also use tablets to communicate, but in order to get actual value out of the tablet, the prisoner must either purchase the tablet for $425[95] or rent it for $5.00 a day.[96] Prisoners

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90. *Id.*

91. Complaint for Plaintiffs, *supr*a note 7, at 14 ("One hour of remote visitation of every week for one year, costs $1246.00 to the visitor.").

92. See Complaint for Plaintiffs, supra note 7, at 11 (outlining the prohibitive cost of tablet use).

93. *See* Rabuy & Wagner, *supra* note 17 ("Video visitation is not ready for prime time.").

94. Zoe Erler, *The Upside (And Downside) of Video Visitation*, PRISON FELLOWSHIP (May 12, 2016), https://www.prisonfellowship.org/2016/05/upside-downside-video-visitation/ (last visited Nov. 24, 2019) [https://perma.cc/3PTG-BGG6].

95. *See Knox County Commission Resolution*, *supra* note 46 ("The tablets will be provided to inmates to give them a communication and management system. Tablets will be sold to inmates at the cost of $425.").

96. *See* Complaint for Plaintiffs, *supr*a note 7, at 11 ("[G]old passes [allowing the inmate to rent the tablet used for visitation] cost $5.00 a day.").

can also borrow tablets for free, but they are limited to fifteen minutes a day.[97] Prisoners complain that it is difficult to obtain tablets and that fifteen minutes is not long enough, but they cannot afford to pay $5.00 a day to rent a tablet.[98]

Because of the burdens on the wellbeing and finances of inmates and their families, it is necessary that people challenge bans on in-person visitation. Two available pathways for challenging these bans are through litigation addressing constitutional concerns and political advocacy.

V. Constitutional Arguments

In their proposed class action civil rights lawsuit against Knox County Jail, plaintiffs claim the ban on in-person visitation violates the Fourteenth Amendment's substantive due process mandate; the First Amendment's right to intimate association; and the Eighth Amendment's prohibition of cruel and unusual punishment.[99]

In the following sections, this Note discusses the Fourteenth Amendment's substantive due process mandate, whether there is a fundamental right to prisoner visitation that falls within the scope of the substantive due process mandate, and whether Knox County Jail's ban on in-person visitation violates the Constitution.

A. The Fourteenth Amendment's Substantive Due Process Mandate

The Fourteenth Amendment's Due Process Clause provides that "nor shall any State deprive any person of life, liberty, or property, without due process of the law."[100] The Supreme Court's interprets the Fourteenth Amendment as providing two different

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97. *See* Complaint for Plaintiffs, *supr*a note 7, at 11 ("Inmates get 15 minutes a day with the tablets . . . .").

98. *See* Complaint for Plaintiffs, supra note 7, at 11 (outlining the prohibitive cost of tablet use).

99. *See* Complaint for Plaintiffs, *supra* note 7, at 22–23 (alleging Counts 1 and 2, which describe violations of the Fourteenth, First, and Eighth Amendments).

100. U.S. CONST. amend. XIV, § 1.

kinds of constitutional protection: procedural due process and substantive due process.[101]

Substantive due process protects rights that are considered "fundamental," which are rights that are "implicit in the concept of ordered liberty."[102] The Supreme Court has determined that "most—but not all—of the rights enumerated in the Bill of Rights are fundamental . . . ."[103] The Court has also determined that some unenumerated rights are fundamental.[104]

If the Court finds that a right merits substantive due process protection, then the right is "protected 'against certain government actions regardless of the fairness of the procedures used to implement them.'"[105] This approach "forbids the government to infringe . . . 'fundamental' liberty interests at all . . . unless the infringement is narrowly tailored to serve a compelling state interest."[106] If, however, an individual claims that the government has interfered with a right of the individual and the right is not considered a fundamental right, courts look at whether the government had a legitimate government purpose in creating its policy and whether the policy was rationally related to the purpose.[107]

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101. *See* McKinney v. Pate, 20 F.3d 1550, 1555 (11th Cir. 1994) ("The Supreme Court's interpretation of [the Due Process Clause] explicates that the amendment provides two different kinds of constitutional protection: procedural due process and substantive due process.").

102. *See* Palko v. Connecticut, 302 U.S. 319, 324–25 (1937) ("[I]mmunities that are valid as against the federal government by force of the specific pledges of particular amendments have been found to be implicit in the concept of ordered liberty, and thus, through the Fourteenth Amendment, become valid as against the states.").

103. *McKinney*, 20 F.3d at 1556.

104. *See* Planned Parenthood v. Casey, 505 U.S. 833, 847 (1992)

> [T]he Due Process Clause of the Fourteenth Amendment incorporates most of the Bill of Rights against the States. It is tempting . . . to suppose that liberty encompasses no more than those rights already guaranteed . . . by the express provisions of the first eight Amendments . . . . this Court has never accepted that view.

(citations omitted).

105. Collins v. City of Harker Heights, 503 U.S. 115, 125 (1992) (citing Daniels v. Williams, 474 U.S. 327, 331 (1986)).

106. Reno v. Flores, 507 U.S. 292, 302 (1993) (citing Collins v. Harker Heights, 503 U.S. 115 (1992); United States v. Salerno, 481 U.S. 739, 746 (1987)); *see also* Bowers v. Hardwick, 478 U.S. 186, 191 (1986) (outlining strict scrutiny analysis).

107. *See* Williamson v. Lee Optical of Okla., Inc., 348 U.S. 483, 491 (1955)

B. Is There a Fundamental Right to Prisoner Visitation?

In *Kentucky Dept. of Corrections v. Thompson*, the Supreme Court stated that inmates do not possess a due process right to "unfettered visitation."[108] More recently, in *Overton v. Bazzetta*,[109] the Court stated:

> We 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. We need not attempt to explore or define the asserted right of association at any length or determine the extent to which it survives incarceration because the challenged regulations bear a rational relation to legitimate penological interests.[110]

In his treatise, *Rights of Prisoners*, Michael Mushlin, professor of law at Pace University, interprets the above quotations from *Thompson* and *Overton* as begging the question of whether there is a fundamental right, "not to 'unfettered visitation' but, rather, to a program of reasonable visitation."[111] Professor Mushlin lists several "solid foundations" on which to construct a constitutional right to prison visitation.[112]

Professor Mushlin claims that the right to visitation may exist "as an independent fundamental constitutional right under the First Amendment . . . ."[113] Mushlin points out that the Supreme Court has recognized that the states are forbidden to unreasonably

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(discussing rational basis review and finding that the challenged regulation had no rational relation to the government's objective, and therefore, it was beyond constitutional bounds).

108. Ky. Dep't of Corr. v. Thompson, 490 U.S. 454, 460 (1989) ("Respondents do not argue—nor can it seriously be contended, in light of our prior cases—that an inmate's interest in unfettered visitation is guaranteed directly by the Due Process Clause.").

109. Overton v. Bazetta, 539 U.S. 126, 133–37 (2003) (finding that the prison regulations satisfy the *Turner v. Safley* Test and do not violate the Eighth Amendment).

110. *Id.* at 131–32.

111. 3 MICHAEL B. MUSHLIN, RIGHTS OF PRISONERS § 13:2 (5th ed. 2018) (quoting Ky. Dep't of Corr. v. Thompson, 490 U.S. 454, 460 (1989)).

112. *See id.* § 13:3 (introducing visitation as an independent fundamental constitutional right).

113. *Id.*

interfere with family relationships;[114] that an unwed father has a right to a hearing before termination of his parental rights;[115] that states cannot prohibit married individuals from using contraceptives;[116] and that there is a right of association grounded in the free speech clause,[117] which includes the "right to come together for the purposes of expressing ideas"[118] and which may be "broad enough to encompass meetings and communications between family and friends."[119] Professor Mushlin argues that case law supports the proposition that "the state cannot, without some justification, impose governmental policies that have the effect of weakening family and social relationships[,]"[120] and that within the fundamental right to privacy in family relationships, there could be an independent fundamental right to visitation.[121]

Based on the Supreme Court's decision in *Overton* to avoid explicitly declaring that there is a fundamental right to visitation,[122] and the Court's hesitance to expand the collection of

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114. *See* Moore v. City of East Cleveland, 431 U.S. 494, 503–04 (1974) ("Our decisions establish that the Constitution protects the sanctity of the family precisely because the institution of the family is deeply rooted in this Nation's history and tradition. It is through the family that we inculcate and pass down many of our most cherished values, moral and cultural.").

115. *See* Stanley v. Illinois, 405 U.S. 645, 658 (1972) ("Illinois parents are constitutionally entitled to a hearing on their fitness before their children are removed from their custody. It follows that denying such a hearing to Stanley and those like him while granting it to other Illinois parents is inescapably contrary to the Equal Protection Clause.").

116. *See* Griswold v. Connecticut, 381 U.S. 479, 486 (1965) ("We deal with a right of privacy older than the Bill of Rights . . . . Marriage is a coming together for better or for worse, hopefully enduring, and intimate to the degree of being sacred. It is an association that promotes a way of life . . . .").

117. *See* MUSHLIN, *supra* note 111, § 13:3 ("The Court also has recognized a right of association grounded in the Free Speech Clause of the First Amendment." (citing NAACP v. Alabama *ex rel.* Patterson, 357 U.S. 449 (1958))).

118. MUSHLIN, *supra* note 111, § 13:3 (citing De Jonge v. Oregon, 299 U.S. 353 (1937)).

119. MUSHLIN, *supra* note 111, § 13:3 (citing Mayo v. Lane, 867 F.2d 374, 375 (7th Cir. 1989)).

120. MUSHLIN, *supra* note 111, § 13:3.

121. *See* MUSHLIN, *supra* note 111, §13:3 ("Thus, there is strong analytical support for an independent constitutional entitlement found in the fundamental constitutional right to privacy in family relationships that is implicated when prisoners seek to visit their families.").

122. *See* Overton v. Bazetta, 539 U.S. 126, 132 ("We need not attempt to explore or define the asserted right of association at any length . . . .").

fundamental rights,[123] it is unlikely that the Court will determine that there is a fundamental right to visitation. Regardless of whether there is a fundamental right to visitation as an extension of the First Amendment right to association or not, the Court applies rational basis review,[124] which gives significant deference to the government.[125]

The Supreme Court has required that when a prison policy allegedly violates the First Amendment or the substantive due process mandate of the Fourteenth Amendment, the government's policy only has to be rationally related to a legitimate government interest to survive the challenge.[126] When determining whether the government has unconstitutionally infringed on a prisoners' access to visitation, the Court applies either the *Turner v. Safley*[127] test (in the case of convicted detainees) or the *Bell v. Wolfish*[128] test (in the case of pretrial detainees).

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123. *See* Collins v. City of Harker Heights, 503 U.S. 115, 125 (1992) ("[T]he Court has always been reluctant to expand the concept of substantive due process because guideposts for responsible decisionmaking in this uncharted area are scarce and open-ended. . . . [J]udicial self-restraint requires us to exercise the utmost care whenever we are asked to break new ground in this field.") (citations omitted).

124. *See Overton*, 539 U.S. at 131–32 (2003) ("We need not attempt to explore or define the asserted right of association at any length or determine the extent to which it survives incarceration because the challenged regulations bear a rational relation to legitimate penological interests.").

125. *Id.* at 132 ("We must accord substantial deference to the professional judgment of prison administrators, who bear a significant responsibility for defining the legitimate goals of a corrections system and for determining the most appropriate means to accomplish them.").

126. *See id.* at 131–32 ("We need not attempt to explore or define the asserted right of association at any length or determine the extent to which it survives incarceration because the challenged regulations bear a rational relation to legitimate penological interests.").

127. *See* Turner v. Safley, 482 U.S. 78, 99–100 (1987) (finding that the prison regulation on correspondence was constitutionally valid and the regulation prohibiting an inmate's right to marry was unconstitutional).

128. Bell v. Wolfish, 441 U.S. 520, 520–22 (1979) (finding that the prison's "double-bunking" practice and the "publisher-only" rule were constitutionally valid).

C. Does Knox County's Ban on In-Person Visitation Violate Either the Turner v. Safley *Test or* Bell v. Wolfish *Test?*

1. Turner v. Safley Test

The Supreme Court has stated that when a prison regulation interferes with a convicted detainee's constitutional rights, "the regulation is valid if it is reasonably related to legitimate penological interests."[129] When determining whether a prison regulation violates a convicted detainee's rights that are protected by either the First Amendment or the substantive due process mandate of the Fourteenth Amendment, courts apply the factors stated in *Turner v. Safley*.[130]

In *Turner v. Safley*, the Supreme Court formulated "a standard of review for prisoners' constitutional claims that is responsive both to 'the policy of judicial restraint regarding prisoner complaints and to the need to protect constitutional rights.'"[131] The Court listed factors relevant in determining the reasonableness of a prison regulation.[132] First, "there must be a 'valid rational connection' between the prison regulation and the legitimate governmental interest put forward to justify it."[133] A regulation cannot stand where the connection between the regulation and the asserted goal is "so remote as to render the policy arbitrary or irrational."[134] The governmental objective must also be "a legitimate and neutral one."[135]

Second, courts must determine whether there are alternative means to exercising the asserted right.[136] In determining whether

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129. *Turner*, 482 U.S. at 89.

130. *See* Overton v. Bazetta, 539 U.S. 126, 132 (2003) ("In *Turner* we held that four factors are relevant in deciding whether a prison regulation affecting a constitutional right that survives incarceration withstands constitutional challenge . . . .").

131. *Turner*, 482 U.S. at 85 (quoting Procunier v. Martinez, 416 U.S. 396, 406 (1974)).

132. *See id.* at 89 ("As our opinions in *Pell*, *Bell*, and *Jones* show, several factors are relevant in determining the reasonableness of the regulation at issue.").

133. *Id.* (quoting Block v. Rutherford, 468 U.S. 576, 586 (1984)).

134. *Id.* at 89–90.

135. *Id.* at 90.

136. *See id.* ("A second factor relevant in determing the reasonableness of a

there are alternative means available to inmates for exercising a constitutional right, the court is only concerned with whether some alternative means exists, not with whether the alternative means are ideal.[137] Where there are alternative means, "courts should be particularly conscious of the 'measure of judicial deference owed to corrections officials in gauging the validity of the regulation.'"[138]

Third, courts must consider "the impact accommodation of the asserted constitutional right will have on guards and other inmates, and on the allocation of prison resources generally."[139] If the accommodation of an asserted right would have a significant "ripple effect" on other inmates or prison staff, courts should be "particularly deferential to the informed discretion of corrections officers."[140]

Fourth, the courts should consider whether there is evidence of "ready alternatives," which can suggest whether the regulation is reasonable or not.[141] If an inmate can point to an "alternative that fully accommodates the prisoner's rights at de minimis cost to the penological interests," a court can consider that as evidence that the regulation is unreasonable.[142]

The Supreme Court has not applied the *Turner v. Safley* test to determine whether a blanket prohibition on in-person visitation violates the constitutional rights of affected prisoners. In *Overton v. Bazzetta*, the Supreme Court applied the factors discussed in *Turner* to determine whether a prison's regulation placing restrictions on visitation violated the First Amendment's right of association and the Fourteenth Amendment's substantive due process mandate.[143] In *Overton*, the Michigan Department of Corrections promulgated regulations limiting visitors after an

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prison restriction, as *Pell* shows, is whether there are alternative means of exercising the right that remain open to prison inmates.").

137. *See* Overton v. Bazetta, 539 U.S. 126, 135 (2003) (specifying what the court is to focus on).

138. Turner v. Safley, 482 U.S. 78, 90 (1987) (quoting Pell v. Procunier, 417 U.S. 817, 827 (1974)).

139. *Id.* at 90.

140. *Id.*

141. *See id.* ("[T]he absence of ready alternatives is evidence of the reasonableness of a prison regulation.").

142. *Id.* at 91.

143. *See* Overton v. Bazetta, 539 U.S. 126, 132–36 (2003) (outlining and applying the four factors from *Turner*).

increase in visitation and substance abuse.[144] Visitors, other than clergy and attorneys, had to be included on an approved list.[145] Minor children that were not either a child, step-child, grandchild, or sibling of the inmate could not be included on the approved list.[146] Former inmates could also not be put on the approved list unless they were an immediate family member of the inmate and had approval from the facility's warden.[147] Prisoners who had two or more substance-abuse violations were not allowed any visitors other than clergy and attorneys, but could apply for visitation privileges after two years.[148]

Prisoners sued the prison under 42 U.S.C. § 1983, alleging that visitation restrictions violated the First and Eighth Amendments through the Fourteenth Amendment.[149] The United States District Court for the Eastern District of Michigan agreed with the prisoners and concluded that the visitation restrictions violated the constitutional rights of Michigan prisoners because "[e]ven under the most deferential review, these restrictions are not reasonably related to legitimate penological interests."[150] The Sixth Circuit affirmed.[151]

The Supreme Court reversed and found that each factor of the *Turner* test weighed in favor of the government.[152] First, the Court found that the regulations had a rational relation to the facility's legitimate penological interest in maintaining internal security because the prison regulations were aimed at promoting internal security, which the Court stated, was the "most legitimate of

144. *See id.* at 129 ("[P]rison officials found it more difficult to maintain order during visitation and to prevent smuggling or trafficking in drugs.").

145. *See id.* (discussing who was and who was not allowed to visit prisoners).

146. *See id.* at 126 ("[M]inor children are not permitted to visit unless they are the children, stepchildren, grandchildren, or siblings of the inmate . . . .").

147. *See id.* ("[F]ormer prisoners are not permitted to visit except that a former prisoner who is an immediate family member of an inmate may visit if the warden approves.").

148. *See id.* (distinguishing prisoners with two or more substance-abuse violations).

149. Bazzetta v. McGinnis, 148 F. Supp. 2d. 813 (E.D. Mich. 2001).

150. *Id.* at 859.

151. Bazzetta v. McGinnis, 286 F.3d 311 (6th Cir. 2002).

152. *See* Overton v. Bazetta, 539 U.S. 126, 126–27 (2003) (finding that the facility's regulations were constitutionally valid).

penological goals."[153] The Court found that the regulations were aimed at promoting internal security because they aimed to reduce visitation, reduce the prevention of future crimes, and reduce the smuggling of illegal substances into the prison.[154]

Second, the Court determined that the inmates had alternative means of engaging in communication.[155] The Court stated that if alternative means did not exist, then the regulations would be unreasonable, but that that was not the case.[156] The inmates could communicate with individuals that were not on the approved list by sending messages to them through those individuals that were on the approved list and by communicating by letter and telephone.[157] In response to the respondents' argument that phone calls are brief and expensive, the Court stated that "[a]lternatives to visitation need not be ideal . . . they need only be available."[158]

Third, the Court found that accommodating the respondents' requests 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."[159] The Court went on to state that "[w]hen such consequences are present, we are 'particularly deferential' to prison administrators' regulatory judgments."[160]

Fourth, the Court found that respondents had not met the "high" standard of pointing to an "obvious regulatory alternative

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153. *See id.* at 133–35 ("The regulations promote internal security, perhaps the most legitimate of penological goals, by reducing the total number of visits and by limiting the disruption caused by children in particular.") (citations omitted).

154. *See id.* (focusing on the justifications for the ban).

155. *See id.* at 135 ("Here, the alternatives are of sufficient utility that they give some support to the regulations, particularly in a context where visitation is limited, not completely withdrawn.").

156. *See id.* ("Were it shown that no alternative means of communication existed, though it would not be inclusive, it would be some evidence that the regulations were unreasonable. That showing, however, cannot be made.").

157. *See id.* ("Although this option is not available to inmates barred all visitation after two violations, they and other inmates may communicate with persons outside the prison by letter and telephone.").

158. *Id.*

159. *Id.*

160. *Id.* (quoting Turner v. Safley, 482 U.S. 78, 90 (1987)).

that fully accommodates the asserted right while not imposing more than a de minimis cost to the valid penological goal."[161] In conclusion, the Court in *Overton* decided that the prison's restrictions on visitation did not violate the respondent's constitutional rights.[162]

Because of a "history of upholding limitations on visitation and prisoner rights,"[163] it is unlikely that U.S. District Court for the Eastern District of Tennessee will find that the Knox County Jail violated the Constitution when it banned in-person visitation. The current case, however, is potentially distinguishable from *Overton* because it appears that some of the factors of the *Turner* test weigh in favor of the Knox County jail inmates.[164]

As for the first factor, Knox County has stated that the focus of the ban on in-person visitation is to promote internal security by reducing visitor traffic and the amount of illegal substances entering the facility.[165] The Supreme Court stated in *Overton* that

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161. *See id.* at 136 ("[T]hese alternatives do not go so far toward accommodating the asserted right with so little cost to penological goals that they meet Turner's high standard.").

162. *See id.* at 126 ("The regulations satisfy each of four factors used to decide whether a prison regulation affecting a constitutional right that survives incarceration withstands constitutional challenge.").

163. Chesa Boudin, Trevor Stutz & Aaron Littman, *Prison Visitation Policies: A Fifty-State Survey*, 32 YALE L. & POL'Y REV. 149, 153 (2013). *See also* Ky. Dep't of Corr. v. Thompson, 490 U.S. 454, 465 (1989) (holding that inmates do not have a liberty interest in receiving visitors that is entitled to the protections of the Due Process Clause); Block v. Rutherford, 468 U.S. 576, 586 (1984) (finding a jail's blanket prohibition on contact visits to be constitutionally valid); Macedon v. Cal. Dep't of Corr., 67 F. App'x 407, 408 (9th Cir. 2003) (affirming summary judgment against an inmate's challenge of the denial of family visits); Newman v. Alabama, 559 F.2d 283, 291 (5th Cir. 1997) (leaving visitation regulations to the discretion of prison administrators); Bellamy v. Bradley, 729 F.2d 416, 420 (6th Cir. 1984) ("Prison inmates have no absolute constitutional right to visitation."); Ford v. Beister, 657 F. Supp 607, 611 (M.D. Pa. 1986) ("[T]he Constitution does not require that detainees be allowed contact visits . . . ."); Laaman v. Helgemoe, 437 F. Supp. 269, 322 (D.N.H. 1977) (allowing curtailment of visitation as punishment but recognizing First Amendment limits); Craig v. Hocker, 405 F. Supp. 656, 674 (D. Nev. 1975) ("So long as there are reasonable alternative means of communication, a prisoner has no First Amendment right to associate with whomever he sees fit.").

164. *See* Turner v. Safley, 482 U.S. 78 (1987) (setting forth a four-factor test).

165. *See* FACE TO FACE KNOX, *supra* note 26, at 2 ("When the ban was initiated, the Sheriff's Office gave the following reasons for eliminating in-person visits: Decreased visitation traffic—requires less staff[;] No contraband entering jail[;] . . . Lessens chances for violence . . . .").

promoting internal security is the "most legitimate of penological goals."[166] Knox County has stated a legitimate penological goal, but its ban actually undermines that goal.[167] The Court in *Turner* stated that the legitimate goal and the regulation cannot be "so remote as to render the policy arbitrary or irrational."[168] Statistics show that the Knox County Jail's ban on in-person visitation is actually making the prison less safe.[169] Assaults within the prison have increased; mental health issues haves arisen among the inmates; and contraband flows into the prison at the same rate it did prior to the ban.[170]

Additionally, the ban is excessive. The ban is overly broad because the jail, in its attempt to reduce contraband entering the facility, has taken away in-person visitation from all those detained, not just the ones who are a threat to bring contraband into the facility.[171] The ban is simultaneously too narrow because it has not reduced the amount of contraband entering the facility, which means that the ban has not successfully targeted the sources of smuggled contraband.[172]

Because Knox County Jail's ban undermines the county's legitimate penological goal and is excessive, it is arguable that the ban is not reasonably related to the county's goal. Therefore, it is possible that the court will find that factor one weighs in favor of the plaintiffs.

As for the second factor, the Knoxville County Jail has provided alternative methods of communication to Knox County inmates.[173] Inmates can still communicate with family, friends,

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166. Overton v. Bazzetta, 539 U.S. 126, 127, 133 (2003).

167. *See* FACE TO FACE KNOX, *supra* note 26, at 3 (discussing how Knox County Jail's ban on in-person visitation has made the facility less safe).

168. *Turner*, 482 U.S. at 89–90 (1987).

169. *See* FACE TO FACE KNOX, *supra* note 26, at 3 ("The ban has made the jail less safe for both inmates and staff. The total rate of assaults increased by an average of one assault per 100 inmates after the ban was enacted in April 2014.").

170. FACE TO FACE KNOX, *supra* note 26 at 3, 6 (noting the rise in inmate-on-inmate assaults as well as the drop in trust, intimacy, and social connection between inmates and visitors).

171. *See* KNOX COUNTY SHERIFF, *supra* note 5, at 2 ("Knox County Correctional Facilities use video visitation as the only method for personal visits.").

172. *See* FACE TO FACE KNOX, *supra* note 26, at 3 (discussing Face to Face's findings).

173. *See Knox County Corrections Division*, KNOX COUNTY, TENN. SHERIFF,

and others through video call, phone call, messaging, and by letter.[174] These alternatives were sufficient in *Overton*, where the Court stated that "[a]lternatives to visitation need not be ideal . . . they need only be available."[175] Therefore, it is likely that factor two weighs in favor of Knox County.

As for the third factor of the *Turner* test, it is unclear what the financial cost to the Knox County Jail would be. However, unlike in *Overton*, the impact of the accommodating the inmates' request would not "impair the ability of corrections officers to protect all who are inside the prison's walls."[176] Again, the ban on in-person visitation has made the jail less safe.[177] Lifting the ban and returning in-person visitation back to the jail would likely assist the correctional officers in protecting the facility and those within it. Therefore, it is arguable that factor three weighs in favor of the plaintiffs.

As for the fourth factor of the *Turner* test, it is likely that the plaintiffs can meet the "high" standard of pointing to an "obvious regulatory alternative that fully accommodates the asserted right while not imposing more than a de minimis cost to the valid penological goal"[178] because reimplementing in-person visitation would arguably promote Knox County Jail's legitimate penological goal by making the facility safer. Therefore, it is arguable that factor four weighs in the plaintiffs' favor.

In conclusion, because of the significant deference given to jail administrators by the courts,[179] it will be difficult for the plaintiffs to prove that the *Turner* test's four factors weigh in their favor. Still, it is arguable that Knox County's ban is not rationally related

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http://www.knoxsheriff.org/jail/ (last visited Nov. 24, 2019) (listing information for various methods of communication) [https://perma.cc/PW96-66G8].

174. *See id.* (listing information on telephoning, messaging, and mailing a letter to an inmate in Knox County Jail).

175. Overton v. Bazzetta, 539 U.S. 126, 135 (2003).

176. *Id.*

177. *See* FACE TO FACE KNOX, *supra* note 26, at 3 (discussing Face to Face Knox's findings).

178. *Overton*, 539 U.S. at 136 (2003).

179. *See* Turner v. Safley, 482 U.S. 78, 85 (1987) ("Prison administration is, moreover, a task that has been committed to the responsibility of those branches, and separation of powers concerns counsel a policy of judicial restraint. Where a state penal system is involved, federal courts have . . . additional reason to accord deference to the appropriate prison authorities.").

to its legitimate penological goal and that reinstating in-person visitation would more successfully further the county's legitimate penological goal.

2. Bell v. Wolfish *Test*

As stated earlier, it is unlikely that a court would find that Knox County Jail's ban on in-person visitation violates the First Amendment or the Fourteenth Amendment regarding convicted detainees. However, the Supreme Court has applied a different test when determining if a facility's regulations violate the constitutional rights of pretrial detainees.[180]

In *Bell v. Wolfish*, the Supreme Court discussed the principles regarding rights of pretrial detainees and the standard of review courts must use in determining if a jail regulation violates the constitutional rights of pretrial detainees.[181] In *Wolfish*, the plaintiffs filed a class action law suit in the Southern District of New York challenging the legality of conditions facing pretrial detainees in a New York City federal correctional facility.[182] The plaintiffs challenged the Metropolitan Correctional Facility's practice of putting two inmates in cells intended to house only one inmate, restrictions that required that inmates could only receive reading materials from approved publishers, room searches in the absence of the inmates, and required cavity searches.[183]

The district court held that because the detainees are "presumed to be innocent and held only to ensure their presence at trial, 'any deprivation or restriction of rights beyond those which are necessary for confinement alone, must be justified by a compelling necessity.'"[184] Applying that rule, the court enjoined the

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180. Bell v. Wolfish, 441 U.S. 520 (1979).

181. *See id.* at 520 ("In evaluating the constitutionality of conditions or restrictions of pretrial detention that implicates only the protection against deprivation of liberty without due process of law, the proper inquiry is whether those conditions or restrictions amount to punishment of the detainee.").

182. United States *ex rel.* Wolfish v. United States, 428 F. Supp. 333 (S.D.N.Y. 1977).

183. *See Bell*, 441 U.S. at 527 ("The petition served up a veritable potpourri of complaints that implicated virtually every facet of the institution's conditions and practices.").

184. United States *ex rel.* Wolfish v. Levi, 439 F. Supp. 114, 124 (S.D.N.Y.

double-bunking practice and the publisher-only rule on a partial motion for summary judgment.[185] After trial, the court enjoined the practice of requiring inmates to expose their body cavities for visual inspection following contact visits and granted relief in favor of pretrial detainees with respect to the requirement that detainees remain outside their rooms during room inspection.[186] The Court of Appeals for the Second Circuit affirmed.[187]

The Supreme Court addressed whether the conditions of confinement violated the individual liberty, due process, and privacy of pretrial detainees as protected by the First, Fourth, and Fifth Amendments through the Fourteenth Amendment.[188]

The Supreme Court stated four principles regarding the rights of pretrial detainees.[189] First, pre-trial detainees do not forfeit all constitutional protections by reason of their confinement.[190] Second, those rights are subject to restrictions and limitations.[191] Third, "maintaining institutional security and preserving internal order and discipline are essential goals that may require limitation or retraction of the retained constitutional rights of . . . pretrial detainees."[192] Fourth, deference must be shown to the correctional facility's officials, even when they have no expertise.[193]

1977) (quoting Detainees of Brooklyn House of Detention v. Malcolm, 520 F.2d 392, 397 (2d Cir. 1975)).

185. *United States ex rel. Wolfish*, 428 F. Supp. at 344

> To summarize: Upon the cross motions before the court, petitioners are entitled to a partial decree enjoining (a) double celling, (b) enforcement of the "publishers only" rule, (c) failure to give receipts for seized property, and (d) the practices respecting mail hereinabove found to be invalid.

186. *See* Bell v. Wolfish, 441 U.S. 520, 528 (1979) (discussing procedural history).

187. Wolfish v. Levi, 573 F.2d 118 (2d Cir. 1978).

188. *See Bell*, 441 U.S. at 524 ("We granted certiorari to consider the important constitutional questions raised by these decisions and to resolve an apparent conflict among the Circuits.").

189. *See id*. at 545 ("Our cases have established several general principles that inform our evaluation of the constitutionality of the restrictions at issue.").

190. *See* Wolff v. McDonnell, 418 U.S. 539, 555–56 (1974) ("There is no iron curtain drawn between the Constitution and the prisons of this country.").

191. *See* Price v. Johnston, 334 U.S. 266, 285 (1948) ("Lawful incarceration brings about the necessary withdrawal or limitation of many privileges and rights, a retraction justified by the considerations underlying the penal system.").

192. *See* Bell v. Wolfish, 441 U.S. 520, 546 (1979).

193. *See* Pell v. Procunier, 417 U.S. 817, 827 (1974) ("Such considerations are

The Supreme Court stated that the essential objectives of pretrial confinement are ensuring that the detainee is present at trial and effectively managing the detention facility once the individual is confined.[194] Where an individual is lawfully committed to pretrial detention, "the Government concededly may detain him to ensure his presence at trial and may subject him to the restrictions and conditions of the detention facility so long as those conditions and restrictions do not amount to punishment, or otherwise violate the Constitution."[195]

The Supreme Court also discussed the test that courts must apply when determining whether a jail's regulation violates constitutional rights of pretrial detainees.[196] Where there is no showing of an expressed intent to punish on the part of the correctional facility, the court must determine whether the Court has a legitimate nonpunitive governmental purpose and whether the challenged policy is rationally related to that purpose.[197] Therefore, "if a particular condition or restriction of pretrial detention is reasonably related to a legitimate governmental objective, it does not, without more, amount to punishment."[198] If, however, the restriction is not reasonably related to a legitimate goal because it is "excessive,"[199] "arbitrary,"[200] or "purposeless,"[201] then the court can infer that the purpose of the governmental

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peculiarly within the province and professional expertise of corrections officials, and, in the absence of substantial evidence in the record to indicate that the officials have exaggerated their response to these considerations, courts should ordinarily defer to their expert judgment in such matters.").

194. *See Bell*, 441 U.S. at 539–40 ("[W]e do not accept respondents' argument that the Government's interest in ensuring a detainee's presence at trial is the *only* objective that may justify restraints and conditions once the decision is lawfully made to confine a person.").

195. *Id.* at 536–37.

196. *See id.* at 561 (discussing the *Bell v. Wolfish* test).

197. *See id.* ("Therefore, the determination whether these restrictions and practices constitute punishment in the constitutional sense depends on whether they are rationally related to a legitimate nonpunitive governmental purpose and whether they appear excessive in relation to that purpose.").

198. *Id.* at 539.

199. *Id.* at 561.

200. *Id.* at 539.

201. *Id.*

action is punishment and cannot constitutionally be inflicted on the pretrial detainees.[202]

The Court found that the double-bunking practice,[203] the publisher-only rule,[204] the practice of searching rooms in absence of the pretrial detainees,[205] and the practice of performing cavity searches after contact visitation[206] did not amount to punishment of the pretrial detainees.[207] The Court held that each challenged policy was supported by a legitimate government interest, which was ensuring security and order, and that the challenged policies were reasonably related to that purpose.[208] The Court held that courts must rely on facilities' judgment calls, which are "confided to officials outside of the Judicial Branch of Government."[209]

Although the Supreme Court has not addressed whether a jail's blanket prohibition of in-person visitation violates the constitutional rights of pre-trial detainees, in *Block v. Rutherford*,[210] it addressed whether a jail's blanket prohibition of contact visitation violates pretrial detainees' constitutional rights.[211] The Supreme Court considered whether a county jail's blanket prohibition of contact visitation between pre-trial detainees and their spouses, relatives, children, and friends, was constitutionally valid.[212] The plaintiffs in *Block* brought a class

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202. *See id.* ("Conversely, if a restriction or condition is not reasonably related to a legitimate goal—if it is arbitrary or purposeless—a court permissibly may infer that the purpose of the governmental action is punishment that may not constitutionally be inflicted upon detainees *qua* detainees.").

203. *Id.* at 541–43.

204. *Id.* at 548–52.

205. *Id.* at 555–57.

206. *Id.* at 558–60.

207. *Id.* at 562.

208. *See id.* at 561 ("Ensuring security and order at the institution is a permissible nonpunitive objective, whether the facility houses pretrial detainees, convicted detainees, or both.").

209. *Id.* at 562.

210. *See* Block v. Rutherford, 468 U.S. 576, 591 (1984) (finding that pretrial detainees do not have a constitutional right to contact visitation).

211. *See id.* at 586 ("[O]ur inquiry is simply whether petitioners' blanket prohibition on contact visits at Central Jail is reasonably related to the security of that facility.").

212. *See id.* ("The question before us, therefore, is narrow: whether the prohibition of contact visits is reasonably related to legitimate governmental objectives.").

action suit against the Los Angeles County Jail challenging its ban on contact visitation.[213] The jail claimed that its ban was based on the need to reduce the introduction of contraband and weapons into the facility.[214]

The United States District Court for the Central District of California found for the plaintiffs and agreed that "the ability of a man to embrace his wife and children from time to time during the weeks or months while he is awaiting trial is a matter of great importance to him."[215] The court held that the county jail's ban on contact visitation was "'excessive' in relation to the underlying security objectives" and characterized the jail's rejection of all proposals for contact visitation as an "unreasonable fixation upon security."[216] The United States Court of Appeals for the Ninth Circuit affirmed, suggesting that a "blanket prohibition of contact visits for all detainees would be an unreasonable, exaggerated response to security concerns . . . ."[217]

The Supreme Court disagreed and held 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."[218] The Court held that the ban was supported by the government's legitimate interest to keep weapons and contraband from being smuggled into the county jail by visitors and that the ban was not excessive.[219]

Similar to what is stated in Section V.C.1 of this Note, it is unlikely that the U.S. District Court for the Eastern District on Tennessee will find that Knox County's ban on in-person visitation violates the constitutional rights of pretrial detainee plaintiffs

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213. *See id.* at 576 ("Respondents, pretrial detainees at the Los Angeles County Central Jail, brought a class action in Federal District Court against the County Sheriff and other officials, challenging, on due process grounds, the jail's policy of denying pretrial detainees contact visits . . . .").

214. *See id.* at 586 ("[T]here is no dispute that internal security of detention facilities is a legitimate governmental interest . . . .").

215. Rutherford v. Pitchess, 457 F. Supp. 104, 110 (C.D. Cal. 1978).

216. Block v. Rutherford, 468 U.S. 576, 581 (1984).

217. Rutherford v. Pitchess, 710 F.2d 572, 577 (9th Cir. 1983).

218. *Block*, 468 U.S. at 589.

219. *See id.* at 588 ("In sum, we conclude that petitioners' blanket prohibition is an entirely reasonable, nonpunitive response to the legitimate security concerns identified, consistent with the Fourteenth Amendment.").

because, under the test established in *Bell v. Wolfish*, courts give significant deference to the jail administration.[220]

The first prong to address is whether Knox County Jail had a legitimate government purpose when it created its ban against in-person visitation.[221] Knox County Jail claims that the purpose of its ban on in-person visitation is to increase the security of the facility and reduce contraband entering the facility.[222] Because this claimed purpose is the same as the one in *Overton v. Bazzetta*,[223] *Block v. Rutherford*,[224] and *Bell v. Wolfish*,[225] the purpose is a legitimate government interest.

The next prong to address is whether the ban on in-person visitation is rationally related to the government's legitimate purpose of reducing contraband and increasing the facility's security.[226] It is arguable that the ban is not rationally related to the government's purpose of increasing the facility's security. Statistics show that since the ban was implemented, assaults within the jail have increased; that the mental health of the jail's

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220. *See* Bell v. Wolfish, 441 U.S. 520, 547 (1979)

> [P]roblems that arise in the day-to-day operations of a corrections facility are not susceptible of easy solutions. Prison administrators . . . 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 maintain institutional security.

221. *See id.* at 561 ("Therefore, the determination whether these restrictions and practices constitute punishment in the constitutional sense depends on whether they are rationally related to a legitimate nonpunitive governmental purpose . . . .").

222. *See* FACE TO FACE KNOX, *supra* note 26, at 2 ("When the ban was initiated, the Sheriff's Office gave the following reasons for eliminating in-person visits: Decreased visitation traffic—requires less staff[;] No contraband entering jail[;] . . . Lessens chances for violence . . . .").

223. *See* Overton v. Bazzetta, 539 U.S. 126, 133 (2003) ("The regulations promote internal security, perhaps the most legitimate of penological goals . . . .").

224. *See* Block v. Rutherford, 468 U.S. 576, 586 (1984) ("[T]here is no dispute that internal security of detention facilities is a legitimate governmental interest . . . .").

225. *See Bell*, 441 U.S. at 561 ("Ensuring security and order at the institution is a permissible nonpunitive objective, whether the facility houses pretrial detainees, convicted inmates, or both.").

226. *See id.* ("Therefore, the determination whether these restrictions and practices constitute punishment in the constitutional sense depends on whether they are rationally related to a legitimate nonpunitive governmental purpose and whether they appear excessive in relation to that purpose.").

inmates has worsened; and that contraband has continued to flow into the jail at same rate as it did prior to the ban.[227] Additionally, the ban is excessive because it is simultaneously too broad and too narrow. It targets those who are not responsible for smuggling in contraband while simultaneously not being able to prevent those who are smuggling contraband into the facility from doing so.[228]

Because of the "wide-ranging deference"[229] courts give jail administrators, it is difficult for plaintiffs to prove that a correctional facility has not met the requirement of the *Bell v. Wolfish* Test.[230] However, because the plaintiffs in this case can demonstrate that Knox County Jail's legitimate government interest was not rationally related to its ban and was excessive, then there is a chance that the plaintiffs can prove that the Knox County Jail's ban on in-person visitation constituted punishment.

D. Does Knox County's Ban on In-Person Visitation Violate the Eighth Amendment's Protection Against Cruel and Unusual Punishment?

The Eighth Amendment states, "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."[231] The Eighth Amendment also imposes duties on prison officials to "provide humane conditions of confinement;" "ensure that inmates receive adequate food,

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227. *See* FACE TO FACE KNOX, *supra* note 26, at 3 (discussing Face to Face Knox's findings).

228. *See* FACE TO FACE KNOX, *supra* note 26, at 3 (discussing the lack of change in the amount of contraband entering the jail after the ban of in-person visitation).

229. *See* Bell v. Wolfish, 441 U.S. 520, 547 (1979) ("Prison administrators therefore 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 maintain institutional security.").

230. *See id*. at 547–48 ("Such considerations are peculiarly within the province and professional expertise of corrections officials, and, in the absence of substantial evidence in the record to indicate that the officials have exaggerated their response to these considerations, courts should ordinarily defer to their expert judgment in such matters." quoting Pell v. Procunier, 417 U.S. 817, 827 (1974)).

231. U.S. CONST. amend. VIII.

clothing, shelter, and medical care;" and "take reasonable measures to guarantee the safety of the inmates."[232]

To determine whether the government has violated the Eighth Amendment, the Supreme Court has applied a different test than the *Turner v. Safley* test.[233] In *Overton*, prisoners claimed that the restriction on visitation for inmates that had two substance-abuse violations violated the Eighth Amendment because it was a "cruel and unusual condition of confinement in violation of the Eighth Amendment."[234] The Supreme Court held that although the restriction "undoubtedly [made] the prisoner's confinement more difficult to bear," it did not fail to meet the standards mandated by the Eighth Amendment.[235] The Court stated that the withdrawal of privileges for a limited period as means of effecting prison discipline is not a "dramatic departure from accepted standards for conditions of confinement."[236] The Court also stated that the restriction did not create inhumane prison conditions; did not deprive inmates of basic necessities; did not fail to protect the inmates' health or safety; and did not involve the infliction of pain or injury, or deliberate indifference to the risk that it might occur.[237] However, the Court suggested that "if the withdrawal of all visitation privileges were permanent or for a much longer period, or if it were applied in an arbitrary manner to a particular inmate, the case would present different considerations."[238]

In their book *Prisoners' Self-Help Litigation Manual*, authors John Boston and Daniel Manville claim that courts have been more sympathetic to inmates confined in county jails with "extremely

232. Farmer v. Brennan, 511 U.S. 825, 832 (1994).

233. *See* Overton v. Bazzetta, 539 U.S. 126, 136 (2003) (avoiding application of the *Turner* test to the cruel and unusual punishment context).

234. *Id.*

235. *Id.*

236. *Id.* at 137.

237. *See id. (*listing additional considerations*).*

238. *Id.*

limited visiting opportunities."[239] In *Jackson v. Gardner*,[240] the United States District Court for the Eastern District of Tennessee ruled that the Sullivan County Jail violated the Eighth Amendment's prohibition against cruel and unusual punishment.[241] One of the conditions that led to this finding was that inmates were limited to only one non-contact visit per week with blood relatives for fifteen minutes.[242] In response, the district court ordered that the Sullivan County Jail increase visitation for its inmates.[243]

Additionally, in *Laaman v. Helgemre*,[244] the district court determined that extreme limitations on the right to visitation can "threaten the mental and emotional stability of the inmates."[245] The court ruled that a state violates the Eighth Amendment when its visitation policy fails "to allow inmates to keep their community and family bonds," which would "promote[ ] degeneration" and "decrease[ ] [inmates] chances of successful integration into society."[246]

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239. JOHN BOSTON & DANIEL E. MANVILLE, PRISONER'S SELF-HELP LITIGATION MANUAL 221 (4th ed. 2010); *see also* Morrow v. Harwell, 768 F.2d 619, 626–27 (5th Cir. 1985) (requiring weekend visits); Jackson v. Gardner, 639 F. Supp. 1005, 1012 (E.D. Tenn. 1986) (requiring increased visits); McMurry v. Phelps, 533 F. Supp. 742, 764 (W.D. La. 1982) (finding that thirty minutes of visitation per week was inadequate, requiring hours accessible to workers, and condemning lack of privacy and difficulty seeing or hearing); Dawson v. Kendrick, 527 F. Supp. 1252, 1309 (S.D. W. Va. 1981) (ordering corrections to obstructions of sight and hearing); Nicholson v. Choctaw County, 498 F. Supp. 295, 310 (S.D. Ala. 1980) (finding that two sessions of two hours of visitation weekly were inadequate and requiring weekend, evening, and holiday visits).

240. *See* Jackson v. Gardner, 639 F. Supp. 1005, 1009 (E.D. Tenn. 1986) ("The Court finds, from the facts outlined above that the conditions of confinement at the Sullivan County Jail violate the rights of those confined to be free from cruel and unusual punishment under the Eighth Amendment.").

241. *See id.* at 1010 (stating that whether prison conditions amount to cruel and unusual punishment must be determined "from the evolving standards of decency that mark the progress of a maturing society").

242. *See id.* at 1008 ("The majority . are allowed only one non-contact visit per week for fifteen minutes. This single weekly visit is limited to blood relatives.").

243. *See id.* at 1012 ("[V]isitation must be increased . . ..").

244. *See* Laaman v. Helgemoe, 437 F. Supp. 269, 322 (D.N.H. 1977) (finding that a total denial of visitation would violate the Constitution).

245. *Id.* at 321.

246. *Id.* at 320.

The ban at the Knox County Jail has caused Knox County inmates to suffer from mental health issues,[247] it has increased violence within the facility,[248] and it has disrupted inmate's ability to keep their community and family bonds.[249] Also, it is arguable that the ban does permanently withdrawal all visitation from the inmates because the video visitation they are provided is insufficient and is inferior when compared to in-person visitation.[250] Therefore, the plaintiffs can possibly successfully argue that Knox County's ban violates the Eighth Amendment regarding convicted detainees located within the jail.

It is unnecessary to consider whether Knox County's ban violates the Eighth Amendment regarding pretrial detainees because any punishment of a pretrial detainee is prohibited.[251]

VI. Alternative Challenges to Bans on In-Person Visitation

Because of the difficulty of succeeding on constitutional challenges, the most effective path to defeating bans on in-person visitation is by individuals and organizations persuading administrative agencies and legislatures to abandon and avoid policies that ban in-person visitation. Several state legislatures have made attempts to enact legislation prohibiting bans on in-person visitation.

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247. *See* Complaint for Plaintiffs, *supra* note 7, at 8 (discussing the mental and physical deterioration of Alonzo Hoskins).

248. *See* FACE TO FACE KNOX, *supra* note 26, at 3 (discussing the rise in assaults).

249. *See* Complaint for Plaintiffs, *supra* note 7 at 8

> The stress of being cut off from his family and the living conditions he is forced to endure at the Knox county Facilities have caused him to lose weight, lose hair, have difficulty sleeping, and caused him to suffer from depression and mental health issues so severe that he requires medication.

250. *See* Widra, *supra* note 71 ("While there are benefits to video communication, primarily regarding long-distance communication, psychologists have repeatedly found numerous differences between face-to-face and video communication.").

251. *See* Bell v. Wolfish, 441 U.S. 520, 536 (1979) ("[T]he Government concededly may detain [a pretrial detainee] to ensure his presence at trial and may subject him to the restrictions and conditions of the detention facility so long as those conditions and restrictions do not amount to punishment, or otherwise violate the Constitution.").

In 2015, the Texas state legislature passed House Bill 549, which requires county jails in the state to provide incarcerated people with a minimum of two twenty-minute in-person visits per week, with exceptions for counties that, as of September 1, 2015, have "incurred significant design, engineering or construction costs to provide visitation that does not comply with a rule or procedure adopted under Subsection (a)(20), or does not have the physical plant capability to provide the in-person prison visitation required by a rule or procedure adopted under Subsection (a)(20)."[252]

In California's state legislature, state senator Holly Mitchell recently led the charge to pass Senate Bill 1157, *Strengthening Family Connections*.[253] That bill would have protected in-person visitation rights in California county jails and guaranteed that video visitation did not replace in-person visitation.[254] Unfortunately, it was vetoed by Governor Jerry Brown because "a statutory mandate on local jail operations would be too inflexible."[255] The California state legislature, however, remains undeterred. In February 2019, Assembly Member Jose Medina introduced AB-964, which "would require all local detention facilities to offer in-person visitation" and would "give any facility that does not offer in-person visitation until January 1, 2025, to comply with this requirement."[256]

There have also been efforts in Congress to challenge bans on in-person visitation.[257] U.S. Senator Tammy Duckworth

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252. H.R. 549, 2015, Leg., 84th Sess. (Tex. 2015).

253. *See Strengthening Family Connections in California*, NATION INSIDE, https://nationinside.org/campaign/strengthening-family-connections/ (last visited Nov. 24, 2019) ("The mission of the Strengthening Family Connections: In-Person Visitation Campaign is to pass SB 1157 in California, introduced by California State Senator Holly Mitchell, which will protect in-person visitation rights in California county jails, ensuring that video visitation cannot replace in-person visitation.") [https://perma.cc/2BQ7-8DJR].

254. *See id.* (stating the bill's mission).

255. The Times Editorial Board, Editorial, *Banning In-Person Jail Visits is Foolish and Needlessly Cruel*, L.A. TIMES (May 30, 2017, 4:00 AM), https://www.latimes.com/opinion/editorials/la-ed-video-jail-visits-20170530-story.html (last visited Nov. 24, 2019) [https://perma.cc/XPT7-W7V9].

256. Assemb. B. 964, 2019 Leg., Reg. Sess. (Cal. 2019).

257. *H.R.6441—Video Visitation in Prisons Act of 2016*, CONGRESS.GOV (Dec. 6, 2016), https://www.congress.gov/bill/114th-congress/house-bill/6441/text (last visited Nov. 24, 2019) [https://perma.cc/XX48-YQ5W].

introduced the Video Visitation in Prisons Act of 2016, which is currently navigating through the federal legislative process.[258] That Act would require the Federal Communications Commission to regulate video visits and the Federal Bureau of Prisons to continue to provide in-person visitation and only use video services as a supplement to in-person visitation.[259]

In addition to legislative attempts to prohibit bans on in-person visitation, some county jail administrators have made the decision to abandon the bans. On April 19, 2016, the Travis County Jail in Texas, which was included in the exemption provision of Texas's prohibition on bans on in-person visitation, ended its video-only visitation policy.[260] Only a few days later, on April 22, the Adams County Jail in Mississippi abandoned its Homewav video visitation program in favor of a traditional jail visitation program.[261] Adams County Sheriff Travis Patten stated, "A lot of people couldn't afford those [video] calls. . . . We know that if someone is in the jail they've done something to be there, but I think everybody should have the right to check in on their child and make sure they're ok."[262] On January 16, 2019, the sheriff for Mecklenburg County, North Carolina, Gary McFadden, kept his campaign promise and abandoned the county's ban on in-person visitation.[263] Sheriff McFadden stated that in-person visitation

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258. *See id.* ("Latest Action: House—12/22/2016, Referred to the Subcommittee on Crime, Terrorism, Homeland Security, and Investigations.").

259. *See id.* (creating "[a] prohibition against a provider of a covered service requiring a correctional facility to restrict in-person visitation as a condition of providing such service in such facility").

260. *See* Alison Walsh, *In-Person Visits Return to Jails in Travis County, Texas*, PRISON POL'Y INITIATIVE (Apr. 19, 2016), https://www.prisonpolicy.org/blog/2016/04/19/in-person-visits-return-to-jails-in-travis-county-texas/ (last visited Nov. 24, 2019) ("This morning marked the end of the county's video-only visitation policy and the first time since 2013 that people incarcerated in the county's jails were able to see their loved ones through a plexiglass window instead of a computer screen.") [https://perma.cc/LCZ5-GS5C].

261. *See* Vershal Hogan, *Sheriff to Discontinue Video Visitation at Jail*, THE NATCHEZ DEMOCRAT (Apr. 22, 2016), https://www.natchezdemocrat.com/2016/04/22/sheriff-to-discontinue-video-visitation-at-jail/ (last visited Nov. 24, 2019) (reporting on Adams County's implementation of the ban, its abandonment of the ban, and its proposed policy that would replace the ban) [https://perma.cc/66AC-GHV2].

262. *Id.*

263. *See In-Person Visitations Restored at Mecklenburg County Jails, Sheriff's*

improves public safety, reduces recidivism, and reduces the likelihood that an inmate will commit an infraction inside of the jail.[264]

Going forward, whether bans on in-person visitation will remain in place or be abandoned greatly depends on the efforts of individuals and organizations persuading their state and federal law makers to prohibit the bans.

VII. Conclusion

Where correctional facilities, such as the Knox County Jail, create bans on in-person visitation and replace it with video visitation, the inmates and their families suffer. These bans increase mental distress,[265] recidivism rates,[266] and financial hardships,[267] while also bringing in lucrative commissions[268] for the facilities that enact them.[269] Because of these burdens, it is imperative that individuals and organizations come forward to challenge these bans.

Office Says, WFAE 90.7 (Jan. 16, 2019), https://www.wfae.org/post/person-visitations-restored-mecklenburg-county-jails-sheriffs-office-says#stream/0 (last visited Nov. 24, 2019) (reporting on Mecklenburg County's implementation of the ban, its abandonment of the ban, and its proposed policy that would replace the ban) [https://perma.cc/CUS4-NFNB].

264. *See id.* (listing the benefits of in-person visitation).

265. *See* FACE TO FACE KNOX, *supra* note 26, at 3 (discussing Face to Face's findings); *see also* Complaint for Plaintiffs, *supra* note 7, at 8 (discussing the mental and physical deterioration of Alonzo Hoskins).

266. *See* MINN. DEP'T OF CORR., *supra* note 81, at 29 ("[F]indings suggest that prison visitation can improve recidivism outcomes by helping offenders not only maintain social ties with both nuclear and extended family . . . while incarcerated, but also by developing new bonds such as those with clergy or mentors.").

267. *See* Complaint for Plaintiffs, *supr*a note 7, at 14 (discussing the burdens caused by the expensiveness of the services).

268. *See* FACE TO FACE KNOX, *supra* note 26, at 2

> Under the County's current contract with [Securus], the County takes a 50% "commission" on every remote video call, which goes into the County's general revenue fund. Because Securus pays the full cost of installing and operating the system, there is no need for the county to charge an extra fee.

269. *Id.*

Because of the "wide ranging deference"[270] given to correctional facility administrators, it is unlikely that the plaintiffs will be successful on constitutional challenges to these bans.[271] The bans, however, can be successfully defeated through the political process by individuals and organizations persuading their legislatures and administrative agencies to provide inmates with access to in-person visitation.

270. *See* Bell v. Wolfish, 441 U.S. 520, 547 (1974) ("Prison administrators therefore 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 maintain institutional security.").

271. *See id*. at 547–48 ("Such considerations are peculiarly within the province and professional expertise of corrections officials, and, in the absence of substantial evidence in the record to indicate that the officials have exaggerated their response to these considerations, courts should ordinarily defer to their expert judgment in such matters.") (quoting Pell v. Procunier, 417 U.S. 817, 827 (1974)).