

Colorado Supreme Court 2 East 14th Avenue Denver, Colorado 80203	DATE FILED March 30, 2026 10:14 AM FILING ID: F7BFB4C2C5DB5 CASE NUMBER: 2026SA106		
District Court, Adams County Case No. 2025CV31717 Div. A; Judge Patricia Loew			
In Re: Petitioners/Plaintiffs: E.L. and D.L., by and through their parent and next friend SCARLET RAMIREZ; J.B., by and through his parent and next friend AUTUMN RAY; ASHLEE TRUJILLO; and CASSONDRA REEVES, individually on their own behalf and on behalf of those similarly situated, v. Respondents/Defendants: ADAMS COUNTY SHERIFF GENE CLAPS, in his individual and official capacities; BOARD OF COUNTY COMMISSIONERS OF ADAMS COUNTY; ADAMS COUNTY JAIL DIVISION CHIEF WILLIAM DUNNING, in his individual and official capacities; and HOMEWAV, LLC.	▲ COURT USE ONLY ▲	Case Number:	
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PETITION FOR ORDER TO SHOW CAUSE PURSUANT TO C.A.R. 21

CERTIFICATE OF COMPLIANCE

I certify this petition complies with all requirements of C.A.R. 21, C.A.R. 28(g), and C.A.R. 32, including all formatting requirements in these rules.

The Petition contains 9,488 words (not more than 9,500), excluding the case caption, certificate of compliance, tables of contents and authorities, signature block, and certificate of service. I acknowledge the Petition may be stricken if it fails to comply with any of the requirements of C.A.R. 21, C.A.R. 28(g), and C.A.R. 32.

/s/ Nelson Boyle

Nelson Boyle (#39525)

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INTRODUCTION

This case is about the right of a child and a parent to hug each other, to hold each other's hands, and to look into each other's eyes. Nearly 50 years ago, this Court ordered the Adams County Sheriff to provide visits that permit the basic right of human contact. Though Adams County has never sought relief from that order, the jail now enforces a permanent, total ban on all in-person family visits (the "Family Visit Ban"). Like a growing number of jails, it generates income by requiring families to pay for phone or video calls to talk to each other.

Petitioners are young children separated from their incarcerated parents by the Family Visit Ban, and parents separated from their incarcerated children. They represent a subclass of similarly situated children and parents who have both a fundamental constitutional right and a biological need to have human contact with each other "to maintain healthy relationships" and ensure proper "mental and emotional development of children." Order, App. 2887.

Despite the trial court's finding that children and parents in Adams County are suffering ongoing, irreparable harm, the court denied Petitioners' request for a preliminary injunction allowing children to have contact visits with their parents. The court's order resulted from its refusal to answer a basic question of constitutional interpretation: whether Colorado's constitution protects the rights of children and

parents to form and maintain their familial relationships. The trial court went to great lengths—erroneously holding that the Colorado Bill of Rights is not enforceable in equity and imposing a qualified-immunity standard on a remedial state statute that was enacted to *eliminate* qualified immunity—to avoid answering that question. The court then reflexively applied a federal standard that no Colorado court has ever adopted to government intrusions of state constitutional rights and that no Colorado court ever should. Even then, it misapplied that federal standard in ways that mangle Colorado law. Petitioners ask this Court to reverse and remand for reconsideration of the factors for issuing a preliminary injunction.

PARTIES AND RULING COMPLAINED OF

Petitioners, Plaintiffs and proposed representatives of the Prospective Relief Subclass, are minor brothers E.L. and D.L., represented by their mother and next friend Scarlet Ramirez, and Ashlee Trujillo. Respondents are Defendants Adams County Sheriff Gene Claps, Board of County Commissioners of Adams County, and Adams County Jail Division Chief William Dunning (“County Defendants”). The court below is the District Court for Adams County, Judge Patricia Loew, presiding. The case at issue is *E.L. v. Claps*, case number 2025-CV-31717.

Plaintiffs challenge the order denying Petitioners’ motion for preliminary injunction. App. 2883.

REASONS WHY NO OTHER ADEQUATE REMEDY IS AVAILABLE

“Relief under Rule 21 is generally appropriate when there would be no adequate remedy available on appeal, when a party may suffer irreparable harm absent relief under Rule 21, or when a case ‘raises issues of significant public importance that we have not yet considered.’” *In re E.K.*, 2022 CO 34, ¶ 9 (quoting *Rademacher v. Greschler*, 2020 CO 4, ¶ 20) (brackets omitted). This case satisfies each ground, and this Court has issued a rule to show cause in original proceedings under C.A.R. 21(a)(1) where, like here, the trial court refused to grant preliminary equitable relief. *E.g.*, *Kourlis v. Dist. Ct., El Paso Cnty.*, 930 P.2d 1329, 1330 (Colo. 1997); Order to Show Cause, *Boe v. Children’s Hosp. of Colo.*, No. 2026SA66, 2026 WL 615739 (Colo. Mar. 3, 2026).

I. Jurisdiction Is Necessary to Prevent Ongoing Irreparable Harm to Children and Parents.

After a three-day hearing, the trial court found that the subclass—children and parents of people jailed in Adams County—are experiencing ongoing “irreparable harm” due to Respondents’ complete ban on all child-parent contact. App. 2903. “Even short periods of separation between children and their incarcerated parents are documented to cause significant emotional harm.” *Id.* (citation omitted). These harms are ongoing and will continue to occur “regardless of the ultimate outcome of

an appeal from a final judgment.” *People v. Kilgore*, 2020 CO 6, ¶ 11 (citation and quotation marks omitted).

II. An Appeal to the Court of Appeals Is an Inadequate Remedy.

“The length of the regular appeals process” will compound the ongoing irreparable harm to the subclass. *In re E.K.*, ¶ 10 (holding that delay from appeal would cause parent irreparable harm). “Moreover, the swift resolution” of parental rights “impacts the short- and long-term stability of [a child’s] life and her relationship with [her parents]. Under these circumstances, appeal is not an adequate remedy.” *Madrone v. Madrone*, 2012 CO 70, ¶ 8.

III. The Trial Court’s Order Raises Issues of Public Importance and First Impression.

Despite finding that Respondents’ Family Visit Ban causes irreparable harm, the trial court did not end that harm because it declined to consider whether the Colorado Constitution protects the fundamental right to family association. Thus, this case raises questions of significant public importance that this Court has not yet considered, including several constitutional questions. *Accord* Order, App. 2893 (“[T]he Court finds that Plaintiffs’ claims . . . involve issues of great public importance.”).

A. Does the Colorado Constitution protect a fundamental right of familial association for children and parents?

Petitioners ask this Court to resolve whether the Colorado Constitution protects a fundamental liberty interest in family association and, if so, under what circumstances can the State's interests overcome that right. These are foundational questions that this Court has never had occasion to squarely decide. Yet the trial court did not decide whether familial association is a fundamental right protected by the Colorado Constitution independent of any protection under federal law and, by doing so, did not apply the heightened standard of review that this Court has established to protect fundamental rights. *See* App. 2896–97, 2900. The trial court also ignored this Court's instruction that "Colorado's constitutional provisions are independent of, and may extend beyond, the federal constitution to offer greater protection for the people of Colorado." *People v. Rodriguez*, 112 P.3d 693, 698 (Colo. 2005) (citation omitted). The trial court abdicated its "responsibility to consider whether our own state constitution requires more extensive protections than those mandated by the Fourteenth Amendment." *Millis v. Bd. of Cnty. Comm'rs of Larimer Cnty.*, 626 P.2d 652, 657 (Colo. 1981) (citation omitted).

B. Do plaintiffs suffering ongoing violations of their rights under the Colorado Bill of Rights have a cause of action for an injunction?

Second, the trial court made a flagrant error when it held that there is no cause of action for equitable relief to enforce the Colorado Constitution. App. 2900–01. This holding contradicts this Court’s precedent that the Bill of Rights is self-executing, *see Medina v. People*, 387 P.2d 733, 736 (Colo. 1963); *Colorado State Civ. Serv. Emp. Ass’n v. Love*, 448 P.2d 624, 627 (Colo. 1968); undermines the broad equity powers of Colorado courts under the Constitution, *see Matter of A.W.*, 637 P.2d 366, 373–74 (Colo. 1981); *Goebel v. Colorado Dep’t of Institutions*, 764 P.2d 785, 799–800 (Colo. 1988); and undermines opinions from this Court enforcing the Colorado Constitution in equity, *e.g.*, *Tattered Cover, Inc. v. City of Thornton*, 44 P.3d 1044 (Colo. 2002), *as modified on denial of reh’g* (Apr. 29, 2002).

C. Must plaintiffs allege a violation of a clearly established right to state a claim under the Enhance Law Enforcement Integrity Act?

Third, the trial court interpreted a remedial statute, the Enhance Law Enforcement Integrity Act (“ELEIA”), C.R.S. § 13-21-131, contrary to its text and legislative intent. ELEIA created a private right of action for damages against peace officers who violate the Colorado Bill of Rights and eliminated statutory, qualified, and governmental immunity for such claims. C.R.S. § 13-21-131(1)–(2)(b). Though the purpose of ELEIA was to *expand* access to remedies, the trial court interpreted

the statute to require Petitioners to “establish[]” that “Colorado’s courts have recognized” constitutional protections in a specific context—here, “in-person visits” in jails. Order, App. 2897-98. The standard applied by the trial court is functionally equivalent to qualified immunity, in contravention of the plain text and purpose of the statute, *see* C.R.S. § 13-21-131(2)(b), and in contravention of longstanding American precedent that such immunities—even where they are not, as here, superseded by statute—are inapplicable to injunctive relief.

The court’s contra-textual interpretation of ELEIA is particularly egregious when combined with its holding that there is no prospective relief for violations of the Colorado Constitution. The combination of these rulings prevents judicial review for countless constitutional violations and freezes the development of Colorado’s constitutional law.

ISSUES PRESENTED

1. Whether the Colorado Constitution protects a fundamental liberty interest in family association and under what circumstances this liberty interest can be overcome by the State’s interests.
2. Whether Colorado courts have the authority to issue equitable remedies, including injunctions, for violations of the Colorado Bill of Rights.

3. Whether the Enhance Law Enforcement Integrity Act, C.R.S. § 13-21-131, provides relief only where Colorado courts have previously recognized a specific state constitutional right in a similar or identical factual setting.

FACTS

In 1978, this Court held that the Adams County Sheriff violated the federal constitution by denying human contact visits. *Wesson v. Johnson*, 579 P.2d 1165, 1167–68 (Colo. 1978) [hereinafter *Wesson*]. The Court remanded the case to the Adams County District Court “to order the respondent to permit contact visitations.” *Id.* at 1168. The district court held a hearing and entered a detailed final order on March 1, 1979. *Wesson v. Bowling*, 604 P.2d 23, 24 (Colo. 1979); *see also* App. 1686–88. Though Respondents have never sought relief from this court order, Respondents testified that they have been violating it for decades. App. 1320:3–1321:3, 1386:23–1387:12, 1392:1–5.

Respondents’ Family Visit Ban is a permanent, total ban on all in-person or contact visits for all people, including parents and children. Order, App. 2885; Stipulations, App. 688 ¶ 1. Respondents instead offer paid phone and video calls pursuant to an agreement with a corporation called HomeWAV—a conspiracy to generate profits by funneling all human contact to monopoly-priced calls that is the subject of claims for damages not relevant to this Petition. Stipulations, App. 689

¶¶ 12, 15; Complaint, App. 67–68. Petitioners filed this action and motion for preliminary injunction on October 28, 2025, seeking an order prohibiting Respondents from enforcing the Family Visit Ban. Order, App. 2884–5. The trial court held a three-day evidentiary hearing from December 3–5, 2025, during which Petitioners testified and presented testimony from four experts. Respondents called a jail employee, Chief Dunning, and Sheriff Claps. *See generally* App. 692–1472.

Due to Respondents’ Ban, Petitioners E.L. and D.L., who are six and four years old respectively, could not hug or visit their father from February 2025 until he left the jail during the preliminary injunction hearing on or about December 5, 2025. Order, App. 2886. The separation “was challenging for both E.L. and D.L., who had trouble interacting with their father only over the phone or video calls due to their young ages.” *Id.* Dr. Julie Poehlmann, “an expert on child well-being in the context of parental incarceration,” testified that “video calls and phone calls” can never “substitute” for physical contact. App. 1190:11–21, 1209:9–17. Babies and “very young children” like Petitioners “don’t have the cognitive capacity to understand what’s happening” in a phone or video call. App. 1213:5–13. Petitioners “developed separation anxiety, struggled with school, and felt unsafe outside of home due to the separation [C]ontinued separation w[ill] result in further

emotional and developmental harm to E.L. and D.L.” Order, App. 2886–87 (citations omitted).

Petitioner Ashlee Trujillo cannot hug or look into the eyes of her 18-year-old son, who was first incarcerated pretrial in July 2025 and detained because the family was unable to pay the cash bond required for his release. *Id.* at 2887; Notice, App. 2910. The separation feels “like somebody is just pulling out your heart and just stomping on it non-stop.” App. 739:22–23. “Trujillo’s primary means of communication with her son [i]s through the HomeWAV system,” which causes her “financial hardships from trying to maintain a relationship with her son.” Order, App. 2887.

The trial court found that the “emotional and developmental harm,” as well as “financial hardships,” “experienced by representative Plaintiffs is shared by the putative Subclass members.” *Id.* at 2886–87. “Physical touch between parents and children is necessary to maintain healthy relationships, and to the mental and emotional development of children.” *Id.* at 2887.

“[B]ans on in-person visits can undermine the safety and wellbeing of people incarcerated in a jail, the staff, and the public.” *Id.* at 2888. “[I]n-person, contact visits are associated with less violence and fewer infractions in jails, and with greater success for incarcerated people reentering society.” *Id.* Correctional associations do

not endorse visit bans as good policy. App. 867:9–872:3; Hearing Exhibits, App. 1991–2013. Former Executive Director of the Colorado Department of Corrections, Dean Williams, testified that all of Colorado’s prisons and jails across the country allow human contact visits. App. 1169:14–24, 1174:5–16; *see also* App. 863:14–24, 880:8–883:20, 890:8–900:22 (expert Schiraldi detailing jails with contact visits across the country); App. 1285:3–20 (Denver jail allows human contact visits); Hearing Exhibits, App. 2034–2122.¹

The jail “was designed to accommodate contact visitation,” Order, App. 2888, with seven contact rooms accommodating 18–25 people per room, App. 1312:19–1313:8. Nevertheless, Respondents claim to have never offered, and to have no experience with, contact visits. App. 1070:12–15, 1320:3–1321:3, 1331:21–1332:1, 1385:18–1387:12, 1392:1–5. Respondents have never reviewed studies, policies, or procedures focused on the costs, benefits, and practical implementation of parent-child contact visits. App. 1096:5–21, 1099:9–12, 1102:7–15, 1285:3–1286:2, 1329:3–1332:1, 1349:5–7, 1413:12–19.

¹ The trial court did not discredit or find incorrect a single fact or opinion offered by Petitioners’ experts or fact witnesses.

ARGUMENT

At the core of this case is whether the Colorado Constitution protects the fundamental rights of children and parents to form and maintain familial relationships and, if so, under what conditions the State is justified in imposing certain constraints on those rights for people who are detained in a local jail. Petitioners ask this Court to hold that the Colorado Constitution protects the fundamental right to familial association, announce the correct, heightened legal standard for evaluating government infringements of that right, and remand to the trial court for application of the proper standard and crafting appropriate relief.

I. Respondents' Family Visit Ban Violates the Fundamental Right to Familial Association.

Petitioners asked the trial court to recognize a fundamental right to family association under Article II, § 25 (Due Process Clause), § 3 (Inalienable Rights Clause), and/or § 28 (Unenumerated Rights Clause) of the Colorado Constitution. App. 654–55. Though this Court has not explicitly recognized that the state constitution protects family association, this Court's precedent makes clear that such a right is fundamental: Article II, Section 25 is at least as protective as the federal Due Process Clause, and federal courts describe the right to familial association under the Fourteenth Amendment as “perhaps the oldest of the fundamental liberty interests recognized,” *In re D.I.S.*, 249 P.3d 775, 780 (Colo. 2011) (quoting *Troxel*

v. Granville, 530 U.S. 57, 65 (2000)). Thus, the Colorado Constitution must also protect a fundamental right to form and maintain family relationships. One of the great strengths of our system of federalism is that Colorado families can rely on the protections of their State Constitution even if trends in federal courts were to weaken the protections of federal law.

The trial court erred in failing to determine whether the Colorado Constitution protects familial relationships *at all*. Rather than engage in any independent analysis of the state constitution, the trial court simply distinguished each due process case cited by Petitioners on the basis that the case alone “did not acknowledge the existence of a separate or more-extensive state constitutional basis for familial association claims.” App. 2899.² But the trial court was obligated to undertake that

² The court never considered Petitioners’ arguments that the Inalienable Rights (Article II, Section 3) and the Unenumerated Rights (Article II, Section 28) clauses of the Colorado Constitution protect a fundamental right to familial association. *But see* Motion, App. 577–78; Reply, App. 654. Both provisions create substantive rights, and neither has an enforceable federal analogue. *Compare Colorado Anti-Discrimination Comm’n v. Case*, 380 P.2d 34, 40 (Colo. 1962) (Section 28 is a source of substantive rights), *with Holmes v. Town of Silver City*, 826 F. App’x 678, 681–82 (10th Cir. 2020) (holding the federal corollary, the Ninth Amendment, “is not an independent source of individual rights”); *see City of Longmont v. Colorado Oil & Gas Ass’n*, 2016 CO 29, ¶ 58 (Section 3 confers “fundamental” rights). Thus, the trial court erred by functionally holding that Sections 3 and 28 of the state constitution do not provide *any protections*, and by interpreting the state constitution in lockstep with the federal constitution despite “‘general institutional differences between the state government and its federal counterpart’ . . . , including *the existence of state constitutional provisions that provide rights not guaranteed by the*

inquiry for itself. The court’s failure to interpret the Colorado Constitution was an abdication of the court’s “duty ‘to say what the law is’” *Lobato v. State*, 2013 CO 30, ¶ 46 (quoting *Marbury v. Madison*, 5 U.S. 137, 177 (1803)).

Because the court failed to separate the Colorado rights at issue here from federal due process rights in other cases, it failed to apply binding Colorado precedent regarding “fundamental” rights. It simply ignored Colorado precedent requiring courts to evaluate any infringement of a fundamental liberty interest under heightened scrutiny. Instead, the trial court applied a more deferential federal standard developed in recent decades (after this Court’s application of a more heightened standard in *Wesson*) for the “conditions” claims of convicted prisoners. That standard has been widely criticized and has never been adopted by any Colorado court to evaluate incursions of state constitutional rights—let alone to the rights of non-convicted pretrial detainees or non-incarcerated relatives. The court provided no reasoning or support for adoption of the deferential federal standard to Petitioners’ state constitutional claims.

Had the court conducted the required independent state constitutional analysis, this Court’s precedent compels the conclusions that the Colorado

federal constitution,” *People v. McKnight*, 2019 CO 36, ¶ 40 (citation omitted) (emphasis added).

Constitution protects the fundamental right to familial association, that violations of such rights are subject to more exacting scrutiny, and that Respondents' Family Visit Ban fails that scrutiny.

A. The Colorado Constitution protects a fundamental right to family association.

Though the trial court acknowledged that, under the U.S. Constitution, “the parent-child relationship is afforded the greatest constitutional protection,” Order, App. 2895 (quoting *Salah v. People*, 2024 CO 54, ¶ 22), the court did not engage with what level of protection, if any, is provided to parent-child relationships under the Colorado Constitution—the only constitution invoked by Petitioners in this case. The court erred in failing to hold that the Colorado Constitution protects a fundamental right to family association.

This Court has held that “[t]he due process clause of our state constitution, Article II, Section 25, requires at a minimum the same guarantees as those protected by the due process clause of the federal constitution.” *Air Pollution Variance Bd. v. W. Alfalfa Corp.*, 553 P.2d 811, 816 (Colo. 1976). While this Court has not previously answered whether Article II, Section 25 protects the right to familial association, it is instructive to review cases interpreting the federal analog. In recognizing analogous rights, however, Colorado courts are not constrained to

interpret state constitutional rights in lockstep with federal rights. *Vega v. People*, 893 P.2d 107, 110 n.5 (Colo. 1995).

In applying the federal constitution, this Court has stated, unequivocally, that parents and children “have a ***fundamental*** liberty interest,” *In re D.I.S.*, 249 P.3d at 780 (citations omitted) (emphasis added), in forming and “maintain[ing] family relationships free from governmental interference,” *L.L. v. People*, 10 P.3d 1271, 1275 (Colo. 2000) (citation omitted) (noting the right is “fundamental”). *See also Espinoza v. O’Dell*, 633 P.2d 455, 463 (Colo. 1981) (A parent’s interest “runs parallel to the child’s interest in a continued relationship and association with its parent . . .”). “This relationship is ‘perhaps the oldest of the fundamental liberty interests recognized,’” “far more precious than any property right,” *In re D.I.S.*, 249 P.3d at 780, 785 (citations omitted), “essential,” and “one of the ‘basic civil rights of man,’” *Watso v. Colorado Dep’t of Soc. Servs.*, 841 P.2d 299, 307 (Colo. 1992) (citations omitted). “[T]he parent-child relationship is afforded the greatest constitutional protection within the context of the right to familial association.” *Salah v. People*, 2024 CO 54, ¶ 27. This Court should hold that the Colorado Constitution likewise protects a fundamental right for parents and children to form and maintain familial relationships.

B. The trial court erred in applying a deferential federal standard to infringement of Petitioners’ fundamental state constitutional rights.

Because the liberty interest in family association under the Colorado Constitution is “fundamental,” the trial court erred in applying a deferential federal standard for prison conditions that would be novel in Colorado law and contrary to Colorado’s approach to “fundamental” rights.

1. Colorado courts apply heightened scrutiny to infringements of fundamental rights.

Under Article II, Section 25 of the Colorado Constitution,³ courts “initially ask whether the challenged rule infringes upon a fundamental constitutional right.” *City & Cnty. of Broomfield v. Farmers Reservoir & Irrigation Co.*, 239 P.3d 1270, 1277 (Colo. 2010). If the right is fundamental, the court must “strictly scrutinize the offending restriction.” *Lorenz v. State*, 928 P.2d 1274, 1277 (Colo. 1996); *see also*, e.g., *Garhart ex rel. Tinsman v. Columbia/Healthone, L.L.C.*, 95 P.3d 571, 583 (Colo. 2004) (government action that “abridges a fundamental right” under Article II, section 25 is subject to strict scrutiny), *as modified on denial of reh’g* (Aug. 16, 2004), *as modified* (Sept. 1, 2004). “[T]he state must prove that the challenged

³ Had the trial court engaged with Petitioners’ argument that Article II, Section 3 also protects their rights in the case, *but see supra* note 2, strict scrutiny would have been the appropriate standard. *See City of Longmont*, ¶ 58.

legislation is necessary to promote some compelling governmental interest.” *People v. Young*, 859 P.2d 814, 818 (Colo. 1993).

Colorado courts apply such scrutiny when state action interferes with the parent-child relationship in a variety of contexts. *E.g.*, *People v. Zoller*, 2023 COA 117, ¶ 20 (A mandatory protective order that infringes on the “fundamental right to parental association” is permissible only if “(1) it is justified by compelling circumstances, and (2) the purpose of the order cannot be accomplished by less restrictive means.”); *In re Marriage of Ciesluk*, 113 P.3d 135, 145 (Colo. 2005) (“[I]n the absence of demonstrated harm to the child, the best interests of the child standard is insufficient to serve as a compelling state interest overruling the parents’ fundamental rights.”); *In re Marriage of McSoud*, 131 P.3d 1208, 1216 (Colo. App. 2006) (“[S]tate action, such as a parental responsibilities order, that infringes on such a constitutional right is permissible only if it is necessary to promote a compelling state interest and does so in the least restrictive manner possible.”); *In re E.L.M.C.*, 100 P.3d 546, 552 (Colo. App. 2004) (“[T]he strict scrutiny test applies to statutes which infringe on the parent-child relationship.”).

Colorado does not interpret the protections afforded to family relationships differently depending on the context of the state intrusion. The last time this Court opined on the federal due process protections afforded to “family relationships” in a

carceral setting—the Adams County jail—this Court held that “[a]ny restrictions upon [contact visits for] pretrial detainees must be narrowly drawn so as to minimally interfere with such a relationship.” *Wesson*, 579 P.2d at 1167. More recently, this Court demanded the same standard of protection for parent-child relationships where the litigant had been convicted of a crime and was subject to reduced liberties while serving a sentence of probation. *See Salah*, ¶ 29.

2. Federal courts now apply a lesser standard, which has never been adopted by Colorado courts to state constitutional rights.

In contrast, after *Wesson*, federal courts began applying a balancing test from *Turner v. Safley* to evaluate many constitutional claims that challenge prison policies. *See Overton v. Bazzetta*, 539 U.S. 126, 132 (2003) (applying the balancing test from *Turner v. Safley*, 482 U.S. 78 (1987)). Prior to *Turner* and similar cases, the federal courts applied more searching scrutiny to cases involving fundamental rights and jail or prison policies. *E.g., Procunier v. Martinez*, 416 U.S. 396, 413 (1974) (holding that a prison regulation that burdens a fundamental right must “further an important or substantial governmental interest[.]” and the restriction must “be no greater than is necessary or essential to the protection of the particular governmental interest involved”), *overruled in part by Thornburgh v. Abbott*, 490 U.S. 401 (1989). Oddly, the trial court here did not apply the current federal standard. Instead, it cited *Block v. Rutherford*, 468 U.S. 576 (1984), *see App.* 2896–97, which

predates *Turner*. *Block* is factually distinguishable from this case, does not apply the standard now used even by federal courts, and issued no holding about any “fundamental right.”⁴ Nevertheless, the trial court relied upon it to hold that “Plaintiffs have not established a reasonable probability of success on the merits under U.S. Constitutional law,” App. 2897. The court then extended that holding to Petitioners’ claims under the Colorado Constitution. App. 2900.

The trial court’s reasoning defies recent uncontradicted federal cases holding that—even under federal law—total, permanent bans like the Family Visit Ban would be unconstitutional. Since *Block*, the U.S. Supreme Court has held that limits

⁴ First, *Block* did not uphold a policy as extreme as Respondents’ Family Visit Ban: the challenged policy permitted “unmonitored” family and friend visits for twelve hours a day through “clear glass panels separat[ing] the inmates from the visitors,” but prohibited visits without glass partitions. 468 U.S. at 578 n.1. Second, *Block* did not address the substantive due process right to family association of unincarcerated children and parents; instead, the detained plaintiffs raised a procedural due process claim. 468 U.S. at 583. The Court issued no holding on any “fundamental” right and the case cannot be precedent on such a claim even in federal court. Finally, the trial record in *Block* is materially different from the evidence presented to the court at the preliminary injunction hearing: decades of post-*Block* research show the importance of human contact for children and parents, jail security, and community safety. *E.g.*, Order, App. 2903 (finding irreparable harm to children and parents from separation and policy prohibiting physical touch); *id.* at 2888 (“[B]ans on in-person visits can undermine the safety and wellbeing of people incarcerated in a jail, the staff, and the public,” and “in-person, contact visits are associated with less violence and fewer infractions in jails, and with greater success for incarcerated people reentering society.”).

on family visits (even for those convicted of felonies) may violate the Constitution if they extend to immediate family like “children, grandchildren, and siblings,” *Overton*, 539 U.S. at 133, or are otherwise “permanent or for a [long] period” or if “applied in an arbitrary manner,” *id.* at 137. Though “[s]ome curtailment” of the right to familial association may be required by the exigencies of the jail or prison context, the Court has never held or “impl[ied] that any right to intimate association is altogether terminated by incarceration.” *Id.* at 131. For instance, the Court previously struck down an “almost complete ban on [prisoners’] decision to marry.” *Turner*, 482 US at 99. Since *Overton*, federal courts have held that “prison officials who permanently or arbitrarily deny an inmate visits with family members” violate the Constitution. *Manning v. Ryan*, 13 F.4th 705, 708 (8th Cir. 2021); *see also Easterling v. Thurmer*, 880 F.3d 319, 323 n.6 (7th Cir. 2018); *Beard v. Banks*, 548 U.S. 521, 535 (2006); *Tyson v. Tanner*, No. 08-CV-4445, 2010 WL 2216507, at *8–9 (E.D. La. May 7, 2010); *Ryerse v. Caruso*, No. 1:08-CV-516, 2009 WL 2982756, at *8 (W.D. Mich. Sept. 11, 2009). No federal appellate court has ever upheld a permanent, facility-wide ban on family visits, let alone between children and parents.

The trial court’s application of *Block* was error. This Court has *never* embraced such lesser federal standards in *any case*, let alone as a framework for violations of fundamental state constitutional rights of unincarcerated children and

parents.⁵ Indeed, this Court has never applied the standards announced in any of the federal cases relied upon by the trial court to support its holding that Petitioners “cannot establish that they have a cognizable due process interest,” App. 2897. The trial court was not compelled by any state precedent to adopt the federal standard to state constitutional claims.

3. The federal standard does not and should not apply to evaluate state constitutional rights.

The trial court provided no rationale for its decision to ignore Colorado precedent regarding fundamental rights and instead apply the more permissive federal standard. App. 2896–97. It did not explain why Colorado *should* follow the multi-decade federal retreat from scrutiny of policies that affect incarcerated people or their non-incarcerated families. Nor is there any legal support for such a decision, which undermines Colorado’s constitutional independence and ignores key differences between the federal and Colorado constitutional schemes.

⁵ The Court of Appeals has only applied *Block* and *Turner* in a small number of published cases, all involving claims of incarcerated people brought under the *federal* constitution. See *Alward v. Golder*, 148 P.3d 424, 426–27 (Colo. App. 2006) (First Amendment claim); *Green v. Nadeau*, 70 P.3d 574, 578 (Colo. App. 2003) (Eighth Amendment claim); *People v. Whalin*, 885 P.2d 293, 296 (Colo. App. 1994) (First Amendment claim).

First, there is no compelling reason for Colorado courts to adopt the federal standard of review where “the protections afforded” by the state and federal constitutions “are ‘highly generalized’”—as in due process cases. *People v. McKnight*, 2019 CO 36, ¶¶ 38–40 (citation omitted). “Colorado’s constitutional provisions are independent of, and may extend beyond, the federal constitution” *Rodriguez*, 112 P.3d at 698. Even where the text of the Colorado Constitution is similar or identical to its federal counterpart, this Court has recognized that state provisions provide more robust protection. *See People v. Young*, 814 P.2d 834, 842 (Colo. 1991) (collecting cases). “There is no reason to think, as an interpretive matter, that constitutional guarantees of independent sovereigns, even guarantees with the same or similar words, must be construed in the same way.” *McKnight*, ¶¶ 38–40 (citation omitted); *Rocky Mountain Gun Owners v. Polis*, 2020 CO 66, ¶ 35 (same); *see also, e.g., People ex rel. Juhan v. Dist. Ct. for Jefferson Cnty.*, 439 P.2d 741, 745 (Colo. 1968) (“There is not the slightest requirement that the meaning of ‘due process of law’ shall be the same in each of the fifty states.”). Colorado courts have a “responsibility to consider whether our own state constitution requires more extensive protections than those mandated by” the federal constitution. *Millis*, 626 P.2d at 657. The trial court abdicated that responsibility here.

Second, where the U.S. Supreme Court's interpretation of a federal constitutional provision "has had a rather tortuous history," with expansion and retrenchment of rights, this Court has declined "to follow the twists and turns of this federal road to the end." *Bock v. Westminster Mall Co.*, 819 P.2d 55, 58 (Colo. 1991). In such circumstances, this Court has noted that "[t]he federal about-face was, therefore, not the . . . last word on [the constitutional right] in the several states. The definitive word was left to the state courts to write." *Id.*

Such is the case with the right to family association. Over recent decades, the U.S. Supreme Court has stepped back from meaningful scrutiny where jails and prisons are concerned. *See supra* Section I.B.2. Colorado courts are not forevermore bound to interpret Colorado's Constitution in lockstep with the federal courts. *Cf. Rocky Mountain*, ¶ 34 ("[W]e reject Plaintiffs' contention that our state constitutional provision must be interpreted in lockstep with its federal counterpart."). *Wesson* is a key example. As this Court's analysis in *Wesson* demonstrates, applying careful scrutiny to infringements of the fundamental right to familial association in Colorado jails is both workable and imperative to protect families' constitutional rights. The trial court, however, functionally held that *Wesson's* meaningful scrutiny is no longer good law in Colorado because of the

“twists and turns” in federal courts. *See* App. 2898. This was error. *See Bock*, 819 P.2d at 58.

Third, the U.S. Supreme Court’s retreat from robust protections for fundamental rights reflects a concern that is inapplicable to Colorado: federalism. *See Turner*, 482 U.S. at 85 (“Where a state penal system is involved, federal courts have . . . additional reason to accord deference to the appropriate prison authorities.”); *accord Developments in the Law—The Interpretation of State Constitutional Rights*, 95 Harv. L. Rev. 1324, 1348–50 (1982). “[T]he very premise of the cases that foreclose federal remedies constitutes a clear call to state courts to step into the breach. . . . With federal scrutiny diminished, state courts must respond by increasing their own.” William J. Brennan, Jr., *State Constitutions and the Protection of Individual Rights*, 90 Harv. L. Rev. 489, 503 (1977).

Fourth, “[s]tate courts . . . have a freer hand in doing something the Supreme Court cannot: allowing local conditions and traditions to affect their interpretation of a constitutional guarantee.” *McKnight*, ¶ 40 (citation omitted). “When there are . . . ‘distinctive state-specific factors,’ . . . interpreting the state constitution in a manner that departs from federal courts’ interpretations . . . may be the most logical option.” *Id.* (citation omitted). Such is the case in Colorado, where the legislature has made clear that “family life and the preservation of the traditional family unit

are of vital importance to the continuation of an orderly society” C.R.S. § 13-22-702. In 2023, the legislature found that “[p]reserving children’s relationships with parents who are incarcerated benefits families by decreasing risks to children’s mental health . . . and benefits society by reducing recidivism rates and facilitating successful returns to our communities.” App. 2015. Thus the legislature “declare[d] that measures are necessary to reduce the trauma of family separation caused by incarceration.” *Id.* These legislative pronouncements make clear that “society as a whole suffers” due to restrictive visit policies in jails and prisons. *See Johnson v. California*, 543 U.S. 499, 511 (2005).⁶

Fifth, the federal standard announced in *Turner* has been widely criticized. Applying a deferential standard of review only to jail and prison regulations “is a highly unusual way to construe constitutional rights. Typically, even in areas where courts afford deference to government officials, constitutional claims hinge on the right at issue.” Justin Driver & Emma Kaufman, *The Incoherence of Prison Law*, 135 Harv. L. Rev. 515, 539 (2021). There is a vast body of literature criticizing the *Turner* standard doctrinally, theoretically, and in practical effect. *See* David M.

⁶ In some such circumstances, even the U.S. Supreme Court applies strict scrutiny to prison policies that infringe on federal constitutional rights. *Johnson*, 543 U.S. at 509–10 (rejecting *Turner* and applying strict scrutiny).

Shapiro, *Lenient in Theory, Dumb in Fact: Prison, Speech, and Scrutiny*, 84 Geo. Wash. L. Rev. 972, 976 n.20 (2016) (collecting research).

Finally, no federal precedent requires adoption of *Turner* to a case like this one. Indeed, the U.S. Supreme Court has never applied the *Turner* standard to evaluate infringement of the fundamental right to maintain the parent-child relationship, let alone to claims brought by non-incarcerated family members whose loved ones are awaiting trial and presumed innocent. And as the record and the trial court's factual findings demonstrate, much has changed in the forty years since *Turner*. Rigorous empirical evidence now confirms that "in-person, contact visits are associated with less violence and fewer infractions in jails, and with greater success for incarcerated people reentering society." Order, App. 2888. And scientific studies have proven that "[p]hysical touch between parents and children is *necessary* to maintain healthy relationships, and to the mental and emotional development of children." App. 2887 (emphasis added). "Denial of physical contact between parents and children," as imposed by the Family Visit Ban, "increases the risk of 'health and mental health concerns, rearrest for [an incarcerated] parent, trauma, and other negative consequences for the individual, family, and society.'" App. 2887–88. We now understand that "[t]hese harms are mitigated by contact visits between parents and children." App. 2888. The evidence confirms the immense importance of

physical contact to the right to familial association and supports this Court’s tradition of protecting the parent-child relationship.

C. The Family Visit Ban fails meaningful scrutiny.

The trial court failed to engage in an independent analysis of the state constitution and ignored this Court’s precedent requiring heightened protection of Coloradans’ fundamental rights. Restrictions on parent-child visits “must be narrowly drawn so as to minimally interfere with such a relationship.” *Wesson*, 579 P.2d at 1167. Such restrictions “must be supported by specific findings regarding the compelling circumstances that justify the limitation.” *Salah*, ¶ 30. It is clear that Respondents’ Family Visit Ban is extreme, that it violates an existing court order, and that Respondents never considered any alternatives. The policy cannot stand.

A total, permanent ban on physical contact between children and parents interferes with their constitutionally protected relationship. *See, e.g., Salah*, ¶ 21 (“The importance of the familial relationship, to the individuals involved and to the society, *stems from the emotional attachments that derive from the intimacy of daily association*” (emphasis in original) (citation omitted)). The separation of a parent and child combined with the denial of visitation is as injurious to the relationship as is the termination of parental rights. *See Overturf v. Dist. Ct. of 20th Jud. Dist.*, 602 P.2d 850, 851 (Colo. 1979) (“[I]naction is tantamount to termination

when children are in foster homes and no visitation by the mother is allowed.”). Because “[p]hysical touch between parents and children is necessary to maintain healthy relationships, and to the mental and emotional development of children,” Order, App. 2887, there is no substitute for in-person visits. *Accord People ex rel. D.G.*, 140 P.3d 299, 305 (Colo. App. 2006) (“The term visitation contemplates face-to-face encounters between parents and children.”); App. 1209:9–17 (Dr. Poehlmann testifying that “video calls and phone calls” cannot “substitute” for physical contact).

Because the Family Visit Ban infringes on the fundamental right to familial association, Respondents must show that such a policy is “necessitated by a compelling state interest.” *Wesson*, 579 P.2d at 1167 (citation omitted). The trial court’s factual findings show the Ban fails this test. First, Respondents’ interest is “protecting the health and safety of detainees, staff, and visitors.”⁷ Order, App. 2888, 2897. But “bans on in-person visits can undermine the safety and wellbeing of people incarcerated in a jail, the staff, and the public. . . . [I]n-person, contact visits

⁷ The court identified this government interest by finding that “the current visitation policy was implemented primarily to mitigate the influx of contraband.” App. 2888. Though heightened scrutiny analysis is not impacted by this finding, it is clearly erroneous because Respondents testified that contraband could not have come into the jail through the pre-Ban policy of through-glass visits. App. 1324:14–1325:10, 1360:1–1361:3 (Dunning testifying there was “zero chance of contraband” being passed during visits); App. 1386:9–22, 1387:13–1388:2 (Claps).

are associated with less violence and fewer infractions in jails, and with greater success for incarcerated people reentering society.” App. 2888 (citations omitted); *see also Flores v. Colorado Dep’t of Corr.*, 3 P.3d 464, 466 (Colo. App. 1999) (“Visitation assists in safe and effective confinement by contributing to offender stability.”); *Wesson*, 579 P.2d at 1167 (“The right to touch, see and hear visitors has an important psychological impact upon persons who are confined.”). And the court found that the Ban harms both detainees and visitors who are separated from their child or parent. App. 2887–88.

But the court did not find, and Respondents did not provide evidence, that the Ban furthers the interest in safety. Respondents “don’t know the basis” for the decision to stop offering contact visits, as the jail has apparently *never* offered them. App. 1395:1–10. Respondents have never analyzed any visit policies to determine whether one presents more or less risk than the current complete ban. *See* App. 1096:5–21, 1099:9–12, 1102:7–15, 1285:3–1286:2, 1329:3–1332:1, 1349:5–7, 1413:12–19; *cf.* App. 1405:25–1409:25 (Claps testifying he did not know whether a parent-child contact program would be beneficial because he has not done his “own research”). Indeed, Respondents have *no experience* with contact visits, despite a

court order requiring such visits that has never been lifted.⁸ *See Wesson* Order, App. 1686–88; App. 1070:12–15, 1320:19–21, 1331:21–1332:1, 1385:18–1386:17.

Second, the court did not conclude that Respondents’ Family Visit Ban is the “le[ast] restrictive means” of ensuring facility security. *See Salah*, ¶ 29. Instead, the court found that the jail “was designed to accommodate contact visitation.” App. 2888; *see also* App. 2183 (procedures for contact visits). Respondent Dunning testified the jail has seven contact rooms that can accommodate 18–25 people at a time. App. 1312:19–1313:8; *see also* App. 2123–25 (photographs). Respondents cannot meet their burden where “the evidence before the trial court clearly shows that some areas in the jail could be used for contact visitation without impairment of security.” *Wesson*, 579 P.2d at 1168.

Though the trial court found that a family contact visit program would require changes at the jail, the court did not find that such changes were impossible or difficult. App. 2888. Nor did Respondents provide evidence about the costs or

⁸ Though Respondents have never studied any alternative visit policies and profit from their Ban, *see* App. 689 ¶¶ 12, 15, the court rejected Petitioners’ contention that the current government interest is profit. This shows a pattern of clearly erroneous factual findings, *see supra* note 7, likely due to the fact that the court did not reference the transcripts in its order and procedurally erred in denying Petitioners’ requests for discovery to countermand the unsupported and self-serving testimony of Respondents, *see* App. 1424:1–13, 1425:14–1427:5, 1465:24–1466:6.

benefits of a parent-child contact visit program, which they have not studied. App. 1096:5–21, 1099:9–12, 1102:7–15, 1285:3–1286:2, 1329:3–1332:1, 1349:5–7, 1413:12–19. Dr. Poehlmann—who the court relied on repeatedly, *see* Order, App. 2887–88, 2892, 2903—testified that the supplies necessary to offer child-friendly visits would amount to perhaps \$1,000 *per year*. App. 1231:2–9. “The state cannot meet [its] burden if with reasonable expenditures physical aspects of the building could be altered or additional personnel could be hired so as to enable the facility to operate a contact visitation program without impairing security.” *Wesson*, 579 P.2d at 1167–68 (citations omitted).

The evidence showed Respondents’ total, indiscriminate, and permanent ban on parent-child visits is not necessary or reasonable. Many jails and all of Colorado’s prisons do not enforce such a ban, *see* App. 863:14–24, 880:8–883:20, 890:8–900:22, 1169:14–24, 1174:5–16, 1285:3–20, and correctional associations do not endorse visit bans as good correctional policy, *see* App. 867:9–872:3; App. 1991–2013.

Adams County has numerous options to ensure the safety of visits, including limiting visitors’ personal items and using searches, pat downs, metal detectors, and body scanners. App. 1143:12–24, 1361:14–1362:13. This Court has explained that jails can further security without “den[ying] all contact visitation,” such as by

limiting visits “in certain emergency situations” or based on an individualized determination that a detainee “present[s] a threat to the security of the institution.” *Wesson*, 579 P.2d at 1168. Certain circumstances may justify reasonable restrictions on family contact. But as demonstrated by this Court’s consistent approach to protecting fundamental rights, such policies must be supported by good reasons, grounded in evidence and reasoned decision-making, and “narrowly drawn” to meet the state’s compelling interests, *id.* at 1167.

II. The District Court Interpreted the Enhance Law Enforcement Integrity Act Contrary to Its Text and Legislative Intent.

In evaluating whether Petitioners had a reasonable probability of success on their ELEIA claim (Claim I), the trial court articulated the legal question as “whether Colorado’s courts *have recognized* a state constitutional right under Article II to in-person visits.” App. 2898 (emphasis added). The court concluded that such a right was not previously established. *Id.* at 2900. But neither ELEIA nor the standard for granting a preliminary injunction require plaintiffs to show that a court previously decided a similar case. Failure to conduct an independent state constitutional analysis to decide Petitioners’ ELEIA claim was error.

The trial court did not provide any legal reasoning for its conclusion that lack of prior cases clearly establishing “a state constitutional right under Article II to in-person visits based on familial association” defeats Petitioners’ Claim I. *See App.*

2897–2900. The court implicitly adopted Respondents’ argument that ELEIA requires plaintiffs to point to a case where “Colorado courts . . . have recognized . . . a specific right to in-person visits with incarcerated parents.” Opposition, App. 604–05. Neither the text nor the legislative purpose support that restrictive interpretation of ELEIA.

Qualified immunity is a creation of the federal courts that protects government officials from *damages* in federal civil rights actions if the right is not clearly established. *See Cnty. of Adams v. Hibbard*, 918 P.2d 212, 220 (Colo. 1996). “Determining whether a right is clearly established requires a specific inquiry”—usually a case with similar if not identical facts—“not a general inquiry based on abstract rights.” *Moody v. Ungerer*, 885 P.2d 200, 202 (Colo. 1994).

The trial court’s requirement for Petitioners to identify a Colorado case “recogniz[ing] a state constitutional right under Article II to in-person visits based on familial association” essentially adopts a qualified immunity standard: it requires identification of a prior court decision applying a general constitutional right—the right of familial association—to the specific facts of this case—in-person visits in jails or prisons. But that requirement is completely inapplicable to injunctive relief

even in federal court,⁹ and it directly conflicts with the text of ELEIA, which explicitly eliminated qualified immunity. C.R.S. § 13-21-131(2)(b) (“Qualified immunity is not a defense to liability pursuant to this section.”). “If the plain language is unambiguous and does not conflict with other statutory provisions, we look no further.”¹⁰ *People In Interest of W.P.*, 2013 CO 11, ¶ 11 (citation omitted). Thus the court erred.

Finally, the trial court failed to properly assess Petitioners’ probability of success on the merits as required under *Rathke v. MacFarlane*, 648 P.2d 648 (Colo. 1982). “[S]uccess on the merits is defined according to the issue’s underlying legal rules.” *Dallman v. Ritter*, 225 P.3d 610, 621 (Colo. 2010). A plaintiff need not show that another court has established the right asserted in an identical context to show a reasonable likelihood of success. *See, e.g., Evans v. Romer*, 854 P.2d 1270, 1274, 1278–83 (Colo. 1993) (rejecting state’s “contention” that issuance of a preliminary injunction must be based on “direct precedent . . . rather [than] extrapolated” from

⁹ Qualified immunity is not applicable to claims for *equitable* relief, *e.g., Morse v. Frederick*, 551 U.S. 393, 400 n.1 (2007), nor claims against a “governmental entity,” like Respondent Board of County Commissioners, nor claims against officers sued in their official capacities, *Beedle v. Wilson*, 422 F.3d 1059, 1069 (10th Cir. 2005).

¹⁰ The court’s standard should also be rejected because it countermands “a clear legislative pronouncement,” thereby violating separation of powers. *Bermel v. BlueRadios, Inc.*, 2019 CO 31, ¶ 37.

court decisions discussing different applications of the constitutional right at issue (quotation marks omitted)). Evaluating the merits places on the court “a responsibility to engage in an independent analysis of our own state constitutional provision in resolving a state constitutional question.” *Rocky Mountain*, ¶ 34. The court applied an erroneous standard when it held that the lack of precedent was fatal to Petitioners’ claim. Order, App. 2900.

III. The District Court Erred in Concluding that Colorado Courts Cannot Grant Equitable Relief to Enforce the Colorado Bill of Rights.

The trial court held that Petitioners’ claim directly under Article II of Colorado Constitution (Claim II) were “unlikely to succeed” on the merits because there is no “implied cause of action under the Colorado Constitution” for injunctive relief. App. 2900–01. This holding defies longstanding precedent from this Court that the Colorado Bill of Rights is self-executing and that Colorado courts have inherent powers to fashion equitable remedies for constitutional violations.

First, the Colorado “Bill of Rights is self-executing.” *Medina*, 387 P.2d at 736. “[A] self-executing constitutional provision *ipso facto* affords the means of protecting the right given and of enforcing the duty imposed.” *Love*, 448 P.2d at 627 (citation omitted). Where a plaintiff claims a violation of a “self-executing” constitutional provision—as Petitioners do here—they “state a justiciable

controversy.” *Id.*; accord *Developmental Pathways v. Ritter*, 178 P.3d 524, 530–31 (Colo. 2008).

Second, Colorado courts have “unrestricted and sweeping jurisdictional powers” conferred by the Colorado Constitution. *Matter of A.W.*, 637 P.2d at 373 (citations omitted). Colorado “courts traditionally have had the power to issue orders ‘directing public officials to carry out their lawful obligations.’” *Goebel*, 764 P.2d at 800 (citation omitted).¹¹

Third, the trial court’s holding ignores numerous cases where Colorado’s courts have adjudicated claims for equitable relief brought directly under the Colorado Constitution. *See, e.g., Tattered Cover*, 44 P.3d 1044 (private bookstore asserting speech rights under Article II, Section 10 was entitled to adversarial hearing before search warrant could be executed); *Winston v. Polis*, 2021 COA 90 (reversing order dismissing challenge to prison conditions under Article II, Section 20); *Rocky Mountain Gun Owners v. Hickenlooper*, 2016 COA 45 (reversing in part

¹¹ In federal courts, it is well-settled that “[t]he ability to sue to enjoin unconstitutional actions by state and federal officers is the creation of courts of equity, and reflects a long history of judicial review of illegal executive action” *Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 327 (2015) (citations omitted).

order dismissing challenge to state laws under Article II, Section 13), *as modified* (Apr. 21, 2016).

Fourth, the sole case relied on by the trial court, *Board of County Commissioners of Douglas County v. Sundheim*, 926 P.2d 545 (Colo. 1996), is inapplicable to claims for declaratory and injunctive relief. *See* App. 2900–01. *Sundheim* is cabined to damages remedies, *id.* at 547 (opining whether “this court has the authority to recognize an implied damages action”), and to the conclusion that “judicial creation of an implied damages remedy [is] unnecessary in this case,” *id.* at 553.¹² No Colorado appellate court has ever applied *Sundheim* in a case where the plaintiff was not seeking damages. *E.g.*, *Giuliani v. Jefferson Cnty. Bd. of Cnty. Comm’rs*, 2012 COA 190, ¶ 34.

Finally, the court was incorrect that Petitioners have alternative “adequate remedies” through 42 U.S.C. § 1983 or ELEIA. App. 2901. First, Petitioners cannot seek relief for violations of *state* constitutional rights under Section 1983. *See Young v. Larimer Cnty. Sheriff’s Off.*, 2014 COA 119, ¶ 9 & n.2; *Gaines v. Stenseng*, 292

¹² Increasingly, state supreme courts acknowledge that constitutional damages remedies are necessary if courts are to fulfill their “quintessentially judicial functions” and if state constitutional rights “are to be more than words on paper.” *Bauserman v. Unemployment Ins. Agency*, 983 N.W.2d 855, 862–65 (Mich. 2022). The availability of state constitutional damages remedies is an evolving and vital issue that may call for further development in Colorado.

F.3d 1222, 1225 (10th Cir. 2002). Second, ELEIA authorizes claims only against peace officers in their individual capacities, not government entities. C.R.S. § 13-21-131(1); *Ditirro v. Sando*, 2022 COA 94, ¶¶ 34–36. Thus, Petitioners could not obtain “adequate” relief under ELEIA: an injunction against Respondents Claps and Dunning individually is insufficient, as it would become ineffective upon Respondents’ departure from the Sheriff’s Office. *Cf. Lewis v. Clarke*, 581 U.S. 155, 162–63 (2017) (“[W]hen officials sued in their official capacities leave office, their successors automatically assume their role in the litigation.”). And Petitioners cannot get any relief against the County, including an injunction to prohibit the County from entering into another contract that restricts family visits. *See* Order, App. 2885; App. 1708 (contracting to “eliminate face-to-face visitation”).

IV. Reconsideration of the Third, Fourth, Fifth, and Sixth *Rathke* Factors Is Necessary.

Because the trial court erred in finding that there are no ongoing constitutional violations, Petitioners ask this Court to vacate the trial court’s holdings on the third, fourth, fifth, and sixth *Rathke* factors,¹³ and remand for reconsideration.

¹³ The trial court found, as a matter of fact, “irreparable harm” under the second *Rathke* factor. App. 2903.

Once a plaintiff establishes under the first factor that there is a reasonable probability of success on the merits due to an ongoing constitutional violation, the five remaining *Rathke* factors weigh in favor of granting a preliminary injunction. *See Rathke*, 648 P.2d at 652 (“State equity courts will enjoin the enforcement of a state statute or law in situations where . . . fundamental constitutional rights are being destroyed”) (collecting cases). Under the second factor, a violation of a constitutional right, as a matter of Colorado law, causes irreparable injury. *See Kilgore*, ¶¶ 9–12 (applying C.A.R. 21); *Cisneros v. Elder*, No. 2018CV030549, 2018 WL 5284263, at *6 (El Paso Dist. Ct. Mar. 19, 2018). Under the third, ongoing constitutional violations cannot be adequately compensated at a later time through damages.¹⁴ *E.g.*, *Cisneros*, 2018 WL 5284263, at *6. Under the fourth, protecting constitutional rights is always in the public interest. *Id.*; *Evans v. Romer*, No. 92 CV 7223, 1993 WL 19678, at *8 (Denver Dist. Ct. Jan. 15, 1993), *aff’d*, 854 P.2d 1270 (Colo. 1993). Under the fifth, the equities favor injunctions to prevent constitutional

¹⁴ Though the trial court found that the ongoing “emotional harm” experienced by parents and children due to the Family Visit Ban “is not measurable and compensable in money damages,” App. 2903 (citing *Macleod v. Miller*, 612 P.2d 1158, 1160 (Colo. 1980)), the court erroneously concluded Petitioners nonetheless did not satisfy the third factor because there is an adequate alternative remedy through an action under 42 U.S.C. § 1983, App. 2904. *But see supra* Section III; *Macleod*, 612 P.2d 1160 (Where injuries are not “compensable by adequate damages,” “an action at law is an inadequate remedy.”).

violations as a matter of law. *Landmark Towers Ass’n, Inc. by EWG-GV, LLC v. UMB Bank, N.A.*, 2018 COA 100, ¶¶ 35, 38, *as corrected* (July 26, 2018). And under the sixth factor, where a suit is brought to halt an ongoing constitutional violation, the legal term “status quo” is defined as the time *before* the violation began. *See Sanger v. Dennis*, 148 P.3d 404, 419 (Colo. App. 2006). Consistent with these cases, the trial court considered the *lack* of constitutional violations relevant to several *Rathke* factors. *See* App. 2902, 2904, 2906, 2907.

Petitioners have found *no case* in which any Colorado court found an ongoing violation of constitutional rights, yet held that a preliminary injunction would be unwarranted. Federal courts, which apply similar factors to the issuance of a preliminary injunction, have held that “[i]n cases in which the deprivation of constitutional rights is at issue, the likelihood of the success on the merits factor is determinative.” *Abay v. City of Denver*, 445 F. Supp. 3d 1286, 1291 (D. Colo. 2020) (citations omitted).

For these reasons, reconsideration is appropriate.

CONCLUSION

For the foregoing reasons, Petitioners respectfully request this Court order Respondents to show cause why the district court did not err and why an injunction should not issue in this case.

DATED: March 30, 2026

Respectfully Submitted,

/s/ Nelson Boyle

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LIST OF SUPPORTING DOCUMENTS

1. Class Action Complaint and Jury Demand (and Exhibits)
2. Emergency Motion for Temporary Restraining Order and Preliminary Injunction (and Proposed Order)
3. County Defendants' Response in Opposition to Motion for Preliminary Injunction (and Exhibits)
4. Plaintiffs' Reply in Support of Their Motion for Preliminary Injunction (and Exhibits)
5. Notice of Filing Stipulations for Preliminary Injunction Hearing
6. Preliminary Injunction Hearing Transcripts
7. Plaintiffs' Preliminary Injunction Hearing Exhibits
8. Defendants' Preliminary Injunction Hearing Exhibits
9. Plaintiffs' Notice of Additional Authorities (and Exhibit)
10. Defendants' Supplemental Authority (and Exhibit)
11. Plaintiffs' Supplemental Brief in Support of Motion for Preliminary Injunction (and Exhibits)
12. Defendants' Supplemental Briefing on "Mootness"
13. Notice Regarding Release of Plaintiff Trujillo's Son from Adams County Detention Facility
14. Order re: Plaintiffs' Motion for Preliminary Injunction
15. Notice of Detention of Plaintiff Trujillo's Son in Adams County Detention Facility

CERTIFICATE OF SERVICE

I hereby certify that on March 30, 2026, a true and correct copy of the foregoing was duly filed and served through Colorado Courts e-filing:

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