Colorado Court of Appeals
2 East 14th Avenue
Denver, CO 80203

Adams County District Court
Case No. 2025CV31717, Honorable Priscilla Loew

Appellee-Plaintiff: 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 CASSSONDRA REEVES; individually on their own behalf and on behalf of those similarly situated,

v.

Appellant-Defendants: ADAMS COUNTY SHERIFF GENE CLAPS, in his dividual 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.

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ANSWER BRIEF

CERTIFICATE OF COMPLIANCE

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The brief complies with the content and form requirements set forth in C.A.R. 28(g) or C.A.R. 28.1(g).

☒ It contains 9463 words.

The brief complies with the standard of review requirements set forth in C.A.R. 28(a)(7)(A) and/or C.A.R. 28(b).

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☒ In response to each issue raised, the appellee must provide under a separate heading before the discussion of the issue, a statement indicating whether appellee agrees with appellant's statements concerning the standard of review and preservation for appeal and, if not, why not.

I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of C.A.R. 28 or 28.1 and 32.

/s/ Michael A. Sink
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ISSUES PRESENTED FOR REVIEW

The Adams County Appellees note the Family Members' statement of Issues Presented for Review does not align with the sequence or the full substance of issues raised in the body of their brief. Most significantly, the Issues Presented omit the Family Members' fourth of six substantive arguments – namely whether the district court applied incorrect legal standards to the third, fourth, fifth, and sixth preliminary injunction factors set forth in *Rathke v. MacFarlane*, 648 P.2d 648 (Colo. 1982). The Adams County Appellees will respond to the Family Member's arguments as set out in their Argument section.

STATEMENT OF THE CASE

A. Relevant Factual History.

The Adams County Detention Facility (ACDF) is one of the largest metro area jails in Colorado. The evidence presented at the hearing established that ACDF, at its busiest, housed up to 1,400 inmates per day. 12/3/25 Tr. at 291:8-11; 12/5/25 at 151:18-22. More recent daily population counts average between 700 and 800. 12/4/25 Tr. at 113:8-18. ACDF is an over 40-year-old facility. Construction began in 1982 and it

was opened for use in 1984. 12/4/25 Tr. at 78:4-10. Since opening, the facility has undergone several renovations in order to adapt the facility to accommodate the rapidly increasing number of inmates. 12/4/25 Tr. at 267:21- 268:3; 12/5/25 Tr. at 134:7-19. ACDF houses both male and female inmates with classification levels ranging from minimum to maximum security.

From January 1 to November 15, 2025, the average daily population of the facility was 779 inmates. 12/3/2025 Tr. at 291:5-7. The inmates in the facility range from people who are booked in and then promptly bond out, to people who are denied bond and who must stay in the facility through their criminal trial. Some inmates also serve short term sentences in ACDF. An average inmate is in custody for approximately 20 days. 12/3/2025 Tr. at 292:1-3. Broken down further, individuals facing misdemeanor charges stay an average of 8 to 9 days, while inmates facing felony charges stay an average of 40 days. 12/3/2025 Tr. at 292:1-9. Due to its size, the population of ACDF is constantly in flux. For example, in the third quarter of 2025, ACDF booked in 3,672

inmates. For that same period, the facility released 3,750 inmates. 12/3/2025 Tr. at 290:10-16.

Each of the Family Members had a relative who was incarcerated at the ACDF for some period of time in 2025. Relevant to that time period, the parties stipulated below to the following facts. CF, pp.1236-1239.

The ACDF has five rooms labeled "Contact Rooms," one connected to each of the housing modules (A, B, C, D, and E). The jail allows professional visitors (except clergy and bonds people) to have in-person contact visits with incarcerated people in the Contact Rooms. The ACDF, however, has not allowed in-person contact visits with family members since approximately 2004.

Sheriff Claps and Jail Division Chief Dunning set the jail visitation policies and procedures. At the time, the Board of County Commissioners had an exclusive contract with HomeWAV, LLC for video calling and video messaging services at the ACDF, which dated back to May 15, 2020. Under that contract, HomeWAV charged inmates $0.15 per minute for telephone calls, $0.20 per minute for video calls, and $0.40 per message for video messages sent or received from outside contacts. HomeWAV

also made a "Minimum Monthly Guarantee" regarding revenue to be paid to the Board that varied by message type.

In addition to the foregoing stipulated facts, the Adams County Appellees also established through the Sheriff's testimony at the hearing that, for a time, the jail had in-person family contact visits but that the jail's prior in-person visitation model could not accommodate the high volume of requests, even with a smaller detainee population. 12/5/2025 Tr. at 123:9-124:21. This led to a strain on scheduling and hostile confrontations. *Id.* It was also plagued by lewd behavior. *Id.* Moreover, as Division Chief Dunning extensively testified, significant contraband smuggling, including weapons and drugs, has also now become a pernicious problem at the jail through various avenues, including the professional in-person visitation process. CF, pp. 1774; 12/5/2025 Tr. at 22:1-25:22; 27:11-32:5. Division Chief Dunning also testified that that the contraband problem is one of the reasons the current in-person family contact ban is maintained. *Id.* at 32:10-17.

At the hearing, Detention Manager Lindsey Laughery testified that, while she might be able to find some free time in the existing

schedule for some in-person contact visits, it would be impossible from a scheduling standpoint to guarantee three hours per week for each of the three related inmates (*i.e.*, nine hours total) due to the limited number of Contact Rooms, staffing levels, and the number of competing legally-required programing obligations. 12/4/25 Tr. at 41:5-20; 101:25-105:4. As such, mathematically, it would be impossible to guarantee equivalent time to all 700 plus inmates.

Ms. Laughery also established that all of the Family Members repeatedly contacted their incarcerated relatives using the HomeWAV system as reflected in the relevant HomeWAV invoices. 12/4/25 Tr. at 46:10-49:24, Ex. I1, I2, J1, J2, and K. She further established that any government-side revenue generated under the Board's contract with HomeWAV goes entirely into the commissary fund for the benefit of inmates. 12/4/25 Tr. at 54:14-55:10; 140:4-142:1. Finally, she testified the HomeWAV contract was set to expire and that the request for proposal for the next contract required "potential bidders to include a solution for indigent inmates to be able to make contact with their loved ones or parties on the outside at no cost." 12/4/25 Tr. at 55:11-56:11.

None of this factual evidence was contested by competing factual evidence from the Family Members. All the Family Members offered were expert opinions, none of which were based on personal experience with or data about the ACDF. 12/3/25 Tr. at 65:8-66:18; 260:8-263:25; 12/4/25 Tr. at 185:6-186:25, 190:18-191:18; 247:15-20. Moreover, even the Family Members' own expert, Dean Williams, conceded that contraband is a significant problem for the Colorado Department of Corrections and that one of several sources of contraband was from in-person contact visits, albeit it was not the primary source in his own personal experience. 12/4/25 Tr. at 191:21-192:14; 194:10-195:10.

B. Procedural History.

On October 28, 2025, the Family Members filed their complaint and their emergency motion for temporary restraining order and preliminary injunction. CF, pp.3-7, 820-839. On November 4, 2025, they filed a notice of hearing scheduled for November 6, 2025. CF, pp.1009-1010. On November 6, 2025, the Adams County Appellees entered their appearance. CF, pp.1011-1013. After a hearing, the Court denied the Family Members' request for a temporary restraining order, referring the

matter to a full injunction hearing. 11/6/25 TR, pp.1-23; CF, pp.1014-1015. On November 19, 2025, the Adams County Appellees filed their response to the motion for preliminary injunction. CF, pp.1030-1083. The parties filed their respective witness and exhibit lists for the hearing. CF, pp.1084-1093. The Family Members replied on November 26, 2025. CF, pp.1161-1196.

Nearly four weeks after filing their complaint and only after the Adams County Appellees filed their response and the parties had exchanged their hearing lists and exhibits did the Family Members file an emergency motion for expedited discovery on November 21, 2025. CF, pp.1094-1116. In it, they requested extensive discovery in the span of nine days, with two holidays in between. *Id.* The Adams County Appellees opposed the motion. CF, pp. 1135-1145. The district court denied the motion on November 24, 2025. CF, pp. 1149-1151. Pursuant to that order, the Family Members filed a notice that they intend to proceed with the preliminary injunction hearing as scheduled despite the ruling. CF, pp.1152-1155.

The district court conducted a three-day evidentiary hearing on the motion for preliminary injunction between December 3 and 5, 2025, with closing arguments separately made on December 9, 2025. In between, the parties filed supplemental authorities with the district court. CF, pp.1241-1548. Afterwards, the parties filed supplemental briefing on mootness. CF, pp.1562-1627. On January 30, 2026, the Court issued an order denying the Family Members' motion for entry of a preliminary injunction. CF, pp.1769-1794.

SUMMARY OF THE ARGUMENT

Neither the district court, nor the Adams County Sheriff, or Jail Division Chief Dunning, or the Adams County Board of County Commissioners either held or argued below that familial association is not important or that it is not in some ways protected by state and federal constitutional provisions. Incarceration, moreover, inherently separates families. So, of course, separating parents from children who are placed in jail for on average 20 days could, at least in some cases, cause irreparable harm. In fact, that was the one element of the six injunction factors set out in *Rathke v. MacFarlane*, 648 P.2d 648 (Colo. 1982), the

Family Members prevailed upon below. But potential irreparable harm, which is what the Family Members spent the vast bulk of their efforts trying to establish, is not the only injunction factor. Nor can it be leveraged to decide the other five. Constitutional interests, moreover, are not absolute. They often must be balanced against competing societal and governmental interests. The more abstractly the Family Members define the constitutional rights at issue, moreover, the less useful it is for balancing out competing constitutional interests.

One of the persistent difficulties with the Family Members' arguments below was the lack of a consistent state or federal constitutional theory. For instance, the Family Members are coy as to whether the in-person contact visit ban violates existing federal constitutional standards. On the one hand, the Family Members did not file a federal constitutional claim, as they repeatedly point out. On the other hand, they keep invoking two versions of federal law from both before and after the Colorado Supreme Court's 1978 decision in *Wesson v. Johnson*, 579 P.2d 1165 (Colo. 1978). Then they complain the district court somehow erred by looking at federal law to evaluate their claims,

only to invite this Court to do the same thing. Or, they repeatedly present the state constitutional issue as already having been decided in their favor, but cannot point to a case that actually decided it. Then they pivot and argue the district court failed to "extrapolate" such a right – a right, it turns out, that may or may not need to be more demanding than the federal standard.

Below, the district court capably and methodically evaluated the factual and legal arguments presented by Family Members and correctly applied the *Rathke* factors to them in determining that the Family Members were not entitled to preliminary injunctive relief. As such, this Court should affirm the district court's order.

ARGUMENT

I. The Family Members Failed to Establish the ACDF's In-Person Contact Visit Ban Violates a Fundamental State Constitutional Right to Familial Association.

A. Standard of Review and Issue Preservation.

The Adams County Appellees agree that constitutional interpretation presents a question of law that this Court reviews de novo and that the Family Members raised this issue below.

B. Arguments.

1. The district court did not fail to undertake an independent state constitutional analysis.

The Family Members' first constitutional argument is predicated on a statement in *Millis v. Bd. of Cnty. Comm'rs of Larimer Cnty.*, 626 P.2d 652, 657 (Colo. 1981) that Colorado courts have a "responsibility to consider whether our own state constitution requires more extensive protections than those mandated by the Fourteenth Amendment."

It is notable the Family Members begin the merits section of their brief with this argument. It implies what the Family Members refuse to expressly state, namely that such an inquiry is necessary in the first instance. In other words, the Family Members cannot point to a case where a Colorado appellate court has already conducted this inquiry under Article II, Sections 3, 25, or 28 and adopted a heightened state standard. If such a case already existed, the Family Members could simply lead by pointing to it. Instead, they fault the district court for not creating it based on an independent analysis.

The "responsibility" mentioned by *Millis*, moreover, is less outcome determinative than the Family Members evidently deem it to be. Plenty

of Colorado constitutional provisions are read in lockstep with federal constitutional provisions. *See*, *e.g.*, *People v. August*, 375 P.3d 140, 143-44 (Colo. App. 2016). There is no per se error in that outcome. The mere point of *Millis* is that state courts cannot simply *presume* that outcome is *always* the case.

Here the district court manifestly did conduct an independent analysis of the Colorado constitutional provisions at issue – most especially by analyzing all of the significant Colorado decisions cited to it by the Family Members. The fact that the Family Members could not provide a single relevant case establishing an independent – *i.e.*, higher – standard, does not mean the district court somehow erred. The district court was open to the possibility that there might be a higher state standard. It just determined that there was no basis cited to it by the Family Members (or otherwise located) that supported such a conclusion.

Lastly, the Family Members fault the district court for not expressly evaluating their arguments that "the Inalienable Rights Clause (Article II, Section 3) and the Unenumerated Rights Clause (Article II, Section 28) also protect a fundamental right to familial

association[.]" Op. Br. at 12-13. That argument was advanced in no more than half a paragraph in their motion. The district court did acknowledge all three constitutional bases asserted by the Family Members, CF, pp. 1783; *contra* Op. Br. at 15, n.2, before evaluating their claimed constitutional right to familial associations, primarily through the lens of the due process clauses. CF, pp. 1783-86; *contra* Op. Br. at 15, n.2. Evidently, the Family Members fault the district court for not expressly including another reference to all three provisions in its concluding paragraph. CF, p.1786. But any such omission is immaterial and is, at worst, invited error.

The Family Members, not the district court, chose to cite to all three provisions in tandem in a single paragraph in support of a generalized right to "familial association," CF, pp. 826-27; a term found in none of the constitutional texts invoked. The paragraph at issue then concluded with a catena of quotations regarding the importance of parental rights - none of which interpret the constitutional provisions at issue. In between, the Family Members cited two cases that reference Sections 3 and 28, but that do not recognize a right to familial association. Most critically, those

two citations end in a footnote (footnote 7) that lists four recognized "inherent rights," none of which include familial association. CF, p.826 n.7. The Family Members then analogize those four rights to familial association before, wait for it, *citing to Wesson*. *Id.* Having collapsed their own Sections 3 and 28 arguments back into the due process clause via *Wesson*, they cannot now complain the district court erred by following their lead. *People v. Zapata*, 779 P.2d 1307, 1309 (Colo. 1989).

2. The Colorado Constitution does not create an abstract or generalized right to "family association" that invalidates the Adams County in-person family contact visit ban.

The Family Members' next constitutional argument starts with the bold assertion that "Colorado precedent compels the conclusion that the Colorado Constitution protects the fundamental right to family association." Op. Br. at 13-14. What follows is two short paragraphs lifting brief quotations from five Colorado cases, none of which actually recognize a fundamental right to family association under the Colorado constitution let alone under the three constitutional provisions invoked by the Family Members. Incongruously, several of these cases apply federal constitutional rights; something the Family Members are not only

aware of, but expressly invite this Court to replicate, Op. Br. at 13-14 – all without a trace of awareness that they criticize the district court for not conducting a wholly independent state constitutional analysis or will later argue that "[f]ederal [s]tandard [s]hould [n]ot [a]pply to [e]valuate Colorado [c]onstitutional [r]ights." Op. Br. at 20.

In equally quick succession, *Air Pollution Variance Bd. v. W. Alfalfa Corp.*, 553 P.2d 811, 816 (Colo. 1976), involved due process administrative hearing rights arising out of a health department inspection hearing. The Court in *Vega v. People*, 893 P.2d 107, 110-11 & n.5 (Colo. 1995) denied a criminal defendant's due process challenge to jury instructions and his sentencing. In *Watso v. Colorado Dep't of Soc. Servs.*, 841 P.2d 299, 307 (Colo. 1992), the Court upheld the constitutionality of Colorado's Child Protection Act, C.R.S. §§ 19-3-301 to 316, in the face of federal due process challenge. 841 P.2d at 309. *In re D.I.S.* is substantially similar to *Watso*, and again involved parental custodial rights, but this time in an as-applied challenge to Colorado's guardianship statute, C.R.S. § 15-14-204(2)(a). 249 P.3d 775, 786-87 (Colo. 2011). In *L.L. v. People*, the Colorado Supreme Court held "a

parent's due process rights are not violated when the majority of her parental rights, including the right to custody and visitation, are suspended until her children are eighteen years of age[.]" 10 P.3d 1271, 1275-76 (Colo. 2000) (emphasis added). The "due process rights" discussed by the Court were the federal due process rights. *Id.* at 1275-76. And the case involved no discussion of the Colorado Constitution. Finally, as for *Salah v. People*, cited elsewhere in the Family Members' brief, Op. Br. at 8, 17, 23, 25, the Colorado Supreme Court confronted a case involving a probationer who asserted a right to familial association under the Fourteenth Amendment to the U.S. Constitution in a challenge to a restriction on his ability to contact or live with his nephew. 550 P.3d 698, 700 & 703-04 (Colo. 2024). The Court did not find in favor of the probationer. *Id.* at 708. And again the case involved no discussion of the Colorado Constitution.

In short, none of these cases establish a fundamental right to association under the Colorado constitution. Interestingly, in their March 2026 Rule 21 petition, the Family Members essentially conceded as much. CF, p.2748 ("While this Court has not previously answered

whether Article II, Section 25 protects the right to familial association […]"). In short, the district court did not err in finding the cases cited to it by the Family Member to be less than compelling.

3. The district court did not err by applying a deferential federal standard to the Family Members' claimed constitutional rights.

The Family Members' third argument is a hybrid one. It toggles between a discussion of levels of scrutiny and the significance of the Colorado Supreme Court's decision in *Wesson*, 579 P.2d 1165 (Colo. 1978). The Adams County Appellees will address each in turn.

The Family Members' level of scrutiny argument begins by presupposing what the brief has not yet demonstrated – *i.e.*, that the Colorado Constitution, especially Article II, Sections 3, 25, or 28, protects a *fundamental right* to family association. They then argue, "[i]f the right is fundamental, courts must 'strictly scrutinize the offending restriction.'" Op. Br. at 15, quoting *Lorenz v. State*, 928 P.2d 1274, 1277 (Colo. 1996). But the Family Members have simply skipped over the prior step. Neither their motion below nor their brief on appeal establishes that Article II, Sections 3, 25, or 28, protects a right to family association, let

alone a fundamental one. *Lorenz* itself cautions that "[g]enerally, constitutional review of equal protection and substantive due process claims involves a determination of whether the right being abridged is fundamental or not[.]" 928 P.2d at 1277. *Lorenz* involved ballot access, a well-established right, but even still the Court noted that strict scrutiny does not always apply. In making that assessment, moreover, the Colorado Supreme Court acknowledged constitutional rights are not always fundamental and that the same or associated rights may get differential treatment depending on the context. *Id.* at 1277-78 ("[I]n assessing the constitutionality of ballot access restrictions, sometimes the courts apply strict scrutiny and sometimes a more flexible standard.").

In line with *Lorenz*, this Court similarly ruled in *Craig v. Masterpiece Cakeshop, Inc.*, 370 P.3d 272, 292-93 (Colo. App. 2018) (quotation omitted, emphasis added), *rev'd on other grounds sub nom. Masterpiece Cakeshop, Ltd. v. Colo. Civil Rights Comm'n*, 584 U.S. 617 (2018), that Colorado Courts often, but not always, apply a heightened standard to infringements of state fundamental rights that parallel

federal rights. In such cases, however, the Court has not construed "the Colorado Constitution [to] require[e] the application of a heightened scrutiny test." *Id.*

Here, it should be noted, Colorado courts treat the state due process clause nearly identically to the federal one, with two exceptions not applicable here. *See Dean v. People*, 366 P.3d 593, 596 (Colo. 2016) (Colorado due process includes equal protection); *People v. District Court*, 439 P.2d 741, 743 (1968) (Colorado due process precludes placing burden of proof on defendant for insanity defense). Otherwise, Colorado courts read the two Due Process clauses in parallel. *People v. Gibson*, 203 P.3d 571, 576 (Colo. App. 2008); *People v. Dunaway*, 88 P.3d 619, 630 (Colo. 2004).

The Family Members next cite to three cases purporting to apply strict scrutiny to "parental association" or the "parent-child relationship." Op. Br. at 15-16. But even a cursory review of the three cases quickly reveals that none of them address the actual issue presented for review here.

People v. Zoller, 544 P.3d 1251 (Colo. App. 2023), involved yet another probationer who was subject to a no-contact order under C.R.S. §§ 18-1-1001(1) and 18-1.3-204(1)(a). *Id.* at 1254-56. And again, the case involved the federal due process clause. *Id.* at 1256 (relying on federal precedent). It did not discuss the Colorado constitution. And while the Court reversed the district court's order, it did so on formal procedural grounds – *i.e.*, the lack of sufficient factual findings. *Id.* at 1256-57. As such, it remanded for further proceedings – it did not opine on the ultimate issue in favor the plaintiff. *Id.* at 1257.

In re E.L.M.C., 100 P.3d 546, 552 (Colo. App. 2004), involved a religious freedom challenge under the First Amendment and Article II, § 4 of the Colorado Constitution to the allocation of joint parental responsibilities under the Uniform Dissolution of Marriage Act, C.R.S. §§ 14-10-123, 123.4, and 124, C.R.S. 2003, to a former domestic partner who was neither a natural nor an adoptive parent. 100 P.3d at 548-49. This Court did not recognize a generalized "familial association" right, let alone one under Article II, Sections 3, 25, or 28.

Finally, *In re Marriage of McSoud*, 131 P.3d 1208, 1216 (Colo. App. 2006) also involved a religious freedom challenge under the First Amendment and Article II, § 4 of the Colorado Constitution to the allocation of parental rights under the Uniform Dissolution of Marriage Act, C.R.S. § 14-10-124. 131 P.3d at 1215-1216.

As for the baseline federal standard, in *Block v Rutherford*, the United States Supreme Court "granted certiorari to decide whether pretrial detainees have a right guaranteed by the United States Constitution to contact visits[.]" 468 U.S. 576, 577 (1984). As held by the Court:

> That there is a valid, rational connection between a ban on contact visits and internal security of a detention facility is too obvious to warrant extended discussion. […] Contact visits invite a host of security problems. They open the institution to the introduction of drugs, weapons, and other contraband. Visitors can easily conceal guns, knives, drugs, or other contraband in countless ways and pass them to an inmate unnoticed by even the most vigilant observers. And these items can readily be slipped from the clothing of an innocent child, or transferred by other visitors permitted close contact with inmates.
>
> Contact visitation poses other dangers for a detention facility, as well. Detainees by definition persons unable to meet bail-often are awaiting trial for serious, violent offenses, and many have prior criminal convictions. Exposure of this type [of]

> person to others, whether family, friends, or jail administrators, necessarily carries with it risks that the safety of innocent individuals will be jeopardized in various ways.

Id. at 586. The Court concluded by holding that "the Constitution does not require that detainees be allowed contact visits when responsible, experienced administrators have determined, in their sound discretion, that such visits will jeopardize the security of the facility." *Id.* at 589 (emphasis added).

The Court reiterated this holding in *Kentucky Dep't of Corrections v. Thompson*: "The denial of prison access to a particular visitor is well within the terms of confinement ordinarily contemplated by a prison sentence, and therefore is not independently protected by the Due Process Clause." 490 U.S. 454, 461 (1989) (quotation omitted). And in 2003, in *Overton v Bazzetta*, the Court again addressed a nearly identical issue to the one raised here and again reached the same conclusion. 539 U.S. 126, 131-32 (2003).

Colorado courts, moreover, have repeatedly followed *Block* and *Overton* regarding contact visits. *See*, *e.g.*, *Green v. Nadeau*, 70 P.3d 574, 578 (Colo. App. 2003) ("There is no entitlement or constitutional right to

contact visits."); *Buenabenta v. Neet*, 160 P.3d 290, 295 (Colo. App. 2007) ("inmate's due process rights were not violated when his visitation privileges were suspended without a hearing"); *Boyd v. Watkins*, 2006 Colo. App. LEXIS 3750, *5-7 (Colo. App. May 25, 2006) ("plaintiff has no due process right to visitation").

In short, none of the cases cited by the Family Members establish that the Colorado Constitution, especially Article II, Sections 3, 25, or 28, protects a fundamental right to family association that is subject to a higher standard than federal law, which itself does not grant them the right they seek.

* * *

This brings us at last to *Wesson* – the engine of the Family Members' entire case. In *Wesson*, the Colorado Supreme Court held that pretrial detainees had a limited right to in-person contact visitation under the *U.S. Constitution*. 579 P.2d 1165, 1167 (Colo. 1978). Apart from a passing reference to the right to bail, the case contained no discussion of the Colorado Constitution. *Id.* at 522, n.1. Despite the finding of a federal right, the Court also held that "contact visitation can only be

denied when mandated by a substantial state interest such as, for example, the security requirements of the detention facility." *Id.* at 1167. "When a facility has not established a general program of contact visitation the burden is on the state to prove that the security of the institution precludes the operation of such a program." *Id.* The Court cautioned, however, that "[i]t is not a court's function to set out the specifics of a reasonable contact visitation program. That is the function of the authorities at the jail." *Id.* at 1168, n.3.

Six years after *Wesson* was decided, the U.S. Supreme Court expressly ruled in *Block*, that pretrial detainees do not have a right guaranteed by the U.S. Constitution to contact visits. 468 U.S. at 586 & 589. Thus, an intervening Supreme Court decision vitiated the sole legal basis for the Colorado Supreme Court's ruling in *Wesson*. Despite the Family Members' labelling *Wesson* as a "landmark" decision, Op. Br. at 14, no Colorado or Federal case appears to have relied on *Wesson* since *Block*. And given that *Wesson* did not interpret the Colorado Constitution, the Family Members cannot and have not offered any

explanation for how *Wesson*'s analysis controls at any constitutional level.

That leaves only the potentially independent district court's consent decree to which the Sheriff was a party. The Family Members imply that this order must still be in effect and that the Sheriff has "been violating it for decades." Op. Br. at 3; *see also id.* at 35. The Adams County Appellees, however, have never conceded that they have violated the order or that the order was never vacated. They have only conceded the paper docket for the original case number stemming from 1978 showed no filing to modify the order. After six years, it is highly unlikely it would have been in that action. *See* C.R.C.P. 60(b); *State v. Shryock*, 2024 Colo. App. LEXIS 2617, *11-15 (Colo. App. Mar. 7, 2024). Whether a separate case was ever filed or not in the intervening 40 plus years, neither side knows.

In any event, as *Wesson* itself makes clear, the (former) federal right was not unqualified. Under certain circumstances, a jail can deny or limit contact visitation, as the Court in *Wesson* expressly acknowledged. *Wesson*, 579 P.2d at 1167. And that was without any

consideration of how technological changes like the advent of video calling might serve as an adequate substitute for in-person contact visitation at a future point in time. Where the governing law has materially changed, where the physical characteristics of the jail are materially different and incarceration levels have significantly increased, where the ability to smuggle in dangerous contraband has materially increased, and where technology has changed to allow inmates alternate forms of interaction with family members, the then-Sheriff was justified in changing the policy at the jail and the current Sheriff is justified in maintaining that change. Nothing on the face of *Wesson* foreclosed that ability. Nor did the consent order entered by the district court.

In any event, a 48-year-old consent decree cannot define the modern constitutional standard. *See Klein v. Zavaras*, 80 F.3d 432, 435 (10th Cir. 1996); *Cagle v. Sutherland*, 334 F.3d 980, 986-87 & n.9 (11th Cir. 2003). This is especially true as to parties who have not and cannot file a claim for violation of the court order under C.R.C.P. 107. The Family Members have not established the ADCF family visitation policy violates federal constitutional standards. And they especially have not established that

the district court erred in applying the federal standard where the Family Members themselves invoked and, at one point, now invite this Court to do so. *Zapata*, 779 P.2d at 1309.

4. The Adams County in-person family contact visit ban does not fail meaningful scrutiny.

Setting aside for a moment that the Family Members have not demonstrated that in-person contact visits with pretrial detainees is a fundamental constitutional right protected by Article II, Sections 3, 25, or 28, their proposed standard is that a "jail must have good reasons," "grounded in evidence," to restrict in-person family contact visits at the jail and may not restrict them "more than necessary." Op. Br. at 16; *see also id.* at 17, *citing Wesson*, 579 P.2d at 1167. While it is unclear whether the Family Members mean this "heightened" or "meaningful" standard to be strict or intermediate scrutiny, Op. Br. at 15, 23, the ACDF's in-person family contact ban meets this standard.

As the Sheriff established at the hearing (and uncontested by any evidence submitted by the Family Members) the "prior in-person visitation model could not accommodate the high volume of requests, even with a smaller detainee population." As a result, "[t]he strain on

scheduling led to hostile confrontations." "This occurred against a backdrop of heightened institutional instability, including gang activity, interpersonal violence among visitors, and instances of lewd conduct." CF, pp. 1774; 12/3/2025 Tr. at 123:9-124:21. Moreover, as Jail Division Chief Dunning testified, significant contraband smuggling is a reason the current policy is maintained. CF, pp. 1774; 12/5/2025 Tr. at 32:10-17. Even if the foregoing were not the case, the number of inmates has climbed relative to the available physical space of the jail such that it would be *physically impossible* to grant all inmates the right to in-person family contact visits in a secure environment. That is enough to support an in-person family contact ban under *Wesson*. 579 P.2d at 1167.

The fact some of these conditions arose before Sheriff Claps took office and were communicated to him rather than directly experienced by him does not make the policy any less based in evidence. Op. Br. at 25. Historical experience is evidence – whether the Family Members or their experts deem it sufficient or not. It is not mere speculation or inferential reasoning. Jail officials are not required to hire outside experts to conduct controlled double-blind multi-year longitudinal studies every time they

need to address an imminent security problem at the jail. Nor are the hard physical constraints of the jail somehow altered by "consider[ing] whether a parent-child contact program would be beneficial[.]" *Id.* Coupled with the provision of video and voice phone calls and messages as an alternative to in-person visitation, ACDF's in-person family visitation policy satisfies more than a mere rational basis test.

The Family Members' supposition based on the mere size of the rooms that each room can simultaneously house 18-25 inmates without any additional physical barriers or deputy presence, Op. Br. at 26, is a dangerous and unsupported security opinion. All the Family Members actually established at the hearing is there might be enough physical space, current staffing resources, and scheduling availability to give the *three* inmate relatives of the Family Members preferential treatment in the form of some limited time for in-person contact visits. But that is a far cry from what the proposed injunction here would demand.

II. The District Court Did Not Improperly Interpret ELEIA.

A. Standard of Review and Issue Preservation.

The Adams County Appellees agree with the Family Members as to the standard of review. They also agree that this issue was generally raised and preserved below, although the Family Members base a new argument on appeal on *Evans v. Romer*, 854 P.2d 1270, 1274, 1278–83 (Colo. 1993), which they did not raise below.

B. Argument.

It is the movants' burden under C.R.C.P. 65 to establish an entitlement to relief under a cognizable legal theory. *Rathke*, 648 P.2d at 653. Colorado's Enhance Law Enforcement Integrity Act (ELEIA), § 13-21-131 C.R.S. 2025, allows a plaintiff to sue a peace officer who, "under color of law, subjects or causes a person to be subjected," to the deprivation of "any individual rights that create *binding obligations* on government actors secured by the bill of rights" embodied in Article II of the Colorado Constitution. § 13-21-131(1) (emphasis added). But similar to Section 1983, Section 13-21-131 "is not itself a source of substantive rights," but merely provides "a method for vindicating […] rights

elsewhere conferred." *Baker v. McCollan*, 443 U.S. 137, 144, n.3 (1979); *see also Casper v. Vallario*, No. 23CA0840, 2024 Colo. App. LEXIS 1688, *15 (Colo. App. June 27, 2024). If plaintiffs do not assert an established constitutional right that creates a "binding obligation," the complaint is subject to dismissal for failure to state a claim. *See Puerta v. Newman*, 542 P.3d 693, 699-711 (Colo. App. 2023).

Here, the Family Members failed to cite to a relevant "binding obligation" under Article II. Colorado courts simply do not appear to have recognized a general right to familial association under Article II, Sections 3, 25, or 28; let alone a specific right to in-person contact visits with incarcerated family members. As such, those provisions fail to satisfy the statutory prerequisite to asserting an ELEIA claim. *See Puerta*, 543 P.3d at 699-700.

The Family Members simply ignore *Puerta* in their opening brief. *Puerta* does no more than interpret the express statutory "binding obligation" requirement. It does not, as the Family Members imply, reintroduce qualified immunity. The federal qualified immunity standard requires precedent arising out of an identical or substantially

similar fact pattern. *See Saucier v. Katz*, 533 U. S. 194, 202 (2001); *White v. Pauly*, 580 U.S. 73, 79 (2017). In other words, qualified immunity imposes another layer of factual analysis and congruence not presented or argued for here. *See*, *e.g.*, *Hernandez v. Mesa*, 582 U.S. 548, 554 (2017). *Puerta* holds no more than that a constitutional right or standard has to have been previously created to be enforceable under ELEIA. If the rule were otherwise, ELEIA would raise serious due process notice issues. *See*, *e.g.*, *In re Abrams*, 488 P.3d 1043, 1052 (Colo. 2021).

For the first time on appeal, the Family Members appeal to *Evans*, 854 P.2d at 1274, 1278–83, for the proposition that the district court was under an obligation to independently extrapolate a new state constitutional right from decisions that do not constitute "direct precedent." But whatever else it holds, *Evans* was not interpreting the express statutory requirements of ELEIA, which did not then exist. Rather, in *Evans* the Court upheld the district court's grant of preliminary injunction based on its view that the district court *had not* merely extrapolated a new constitutional right, but was in fact applying existing federal non-discrimination precedent, especially *Gordon v.*

Lance, 403 U.S. 1 (1971) and *Hunter v. Erickson*, 393 U.S. 385 (1969). It did not, therefore, impose an obligation to do the very thing it denied doing.

III. The District Court Did Not Err in Holding that the Family Members Lacked a Cause of Action in Support of their Second Claim for Relief.

A. Standard of Review and Issue Preservation.

The Adams County Appellees agree that the standard of review for this issue is de novo. *Evans*, 854 P.2d at 1275. The Adams County Appellees also agree the Family Members preserved this issue.

B. Argument.

With rare exception, Colorado does not allow implied state constitutional causes of action like the one found in Count II. *Board of Cty. Comm'rs v. Sundheim*, 926 P.2d 545, 549-53 (Colo. 1996). *Sundheim* is still good law and binds both this Court and the district court. The Family Members' invitation to ignore *Sundheim* because it is old or not often applied, Op. Br. at 31, is nothing less than an invitation to set aside stare decisis because only the Colorado Supreme Court can overrule its own precedent. *See People v. Novotny*, 320 P.3d 1194, 1203 (Colo. 2014).

Moreover, Colorado courts still apply *Sundheim*'s holding, including in one decision issued by this Court this year. *See*, *e.g.*, *Brooks v. City & Cnty. of Denver*, 593 P.3d 937, *10-11 (Colo. App. 2026); *see also Robledo-Valdez v. Colo. Dep't of Corr.*, No. 20CA1613, 2021 Colo. App. LEXIS 2695, *9-10 (Colo. App. July 15, 2021).

The Family Members' attempt to distinguish *Sundheim* repeatedly makes reference to the purported fact that the decision "is cabined to damages remedies." Op. Br. at 31. The implication is that this distinction, if correct, is somehow relevant. The Family Members, however, stop short of expressly stating they did not seek damages below. If that is their intended argument, it is undercut by their own complaint. As relevant here, Count I, which asserts an ELEIA claim, seeks damages, among other things, against the Sheriff and Division Chief Dunning. CF, p.67. The Board, which is not a post-certified peace officer subject to ELEIA, is not a defendant to that count. *Id.* In the header for Count II, which adds the Board as a defendant, the Family Members claim to seek only "declaratory, preliminary injunctive, and permanent injunctive relief." CF, p.68 (formatting altered).) No damages request is expressly made.

Count III, which also names the Board, only seeks declaratory and permanent injunctive relief as to the Adams County Appellees. CF, p.69.

The problem arises in the Family Members' Request for Relief. CF, pp.70-71, ¶ 385. One of the forms of relief seeks "equitable relief in the form of disgorged profits" from the Board and HomeWAV. CF, p.71. No claim header, however, mentions disgorgement or damages from the Board. Thus, one or both of the claim headers for Counts II or III do not match the Request for Relief, at least as asserted against the Board. And because the Family Members' conspiracy claim (Count III) is a derivative tort claim requiring an underlying constitutional violation, CF, pp.69-70, ¶¶ 380-81, then either directly or indirectly, the Family Members did in fact seek a monetary remedy from the Board.

But even if the Family Members did not mean to assert a damages claim, the other premise of the Family Members' argument – *i.e.*, that *Sundhem* is limited to damages claim - is also not correct. True, the plaintiffs in *Sundheim* did ask for damages. But the damages-focused context of *Sundheim* only arose because Rule 106(a), which was the vehicle at issue in *Sundheim*, already provides for equitable relief –

which the plaintiffs there failed to timely invoke. 926 P.2d 545, 547-48 (Colo. 1996).

Stated differently, the real issue here is the meaning of an "available" alternate remedy. If all the Family Members wanted was declaratory or injunctive relief against the Adams County Appellees, they could have and should have filed a Rule 106 action. C.R.C.P. 106(a)(2) or (4). But here, as in *Sundheim*, they failed to properly invoke Rule 106 – perhaps because they actually did mean to seek damages. Regardless, the Family Members' own litigation decision not to timely pursue a Rule 106 action does not mean that they did not have at one point an available remedy. *See*, *e.g.*, *Robledo-Valdez*, 2021 Colo. App. LEXIS 2695, *10 ("available" remedy does not mean an ultimately successful remedy). Thus, under *Sundheim*, they are not entitled to implied alternate vehicles to press their constitutional claims. If the rule, moreover, was as the Family Members argue it should be, there would be little need for Rule 106 at all.

As to the Sheriff and Division Chief, ELEIA provides another available remedy for any cognizable Article II constitutional claims to the

extent such an enforceable state constitutional right exists. *Robledo-Valdez*, 2021 Colo. App. LEXIS 2695, *10. Moreover, ELEIA provides for both legal and equitable remedies. *Id.*; § 13-21-131(1), C.R.S. 2025. Again, the fact that the Family Members's state constitutional claims ultimately proved unsuccessful does not mean they did not have an express statutory remedy. Nor are they entitled to invent implied claims that circumvent the parameters of statutory or rules-based causes of action. As *Sundheim* put it, "the absence of statutory relief for a constitutional violation does not, by itself, give rise to an implied damage remedy." 926 P.2d at 549.

Nor was it somehow error for the district court to point out that to the extent Article II, Sections 3, 25, and 28 recognize no more than the equivalent of federal constitutional safeguards, 42 U.S.C. § 1983 would also provide an adequate alternative remedy.

Thus, given the presence of Rule 106, ELEIA, and Section 1983, the district court did not err in holding that the Family Members failed to state an implied cause of action.

IV. The District Court Did Not Apply Incorrect Legal Standards to the Third, Fourth, Fifth, and Sixth *Rathke* Factors.

A. Standard of Review and Issue Preservation.

The Adams County Appellees agree that the legal standards invoked by the district court are subject to de novo review. *Owners Ins. Co. v. Dakota Station II Condo. Ass'n, Inc.*, 499 P.3d 1069, 1078 (Colo. App. 2021). The application of those legal standards to the facts at hand, however, presents a mixed question of law and fact. "In mixed-question cases, an appellate court reviews the district court's factual findings for clear error and its legal conclusions as to those facts de novo." *Bill Barrett Corp. v. Lembke*, 488 P.3d 390, 395 (Colo. App. 2018). The Adams County Appellees agree the Family Members argued these *Rathke* factors below.

B. Arguments.

The Family Members fourth issue on appeal is an amalgamation for four separate arguments – one for each of the last four *Rathke* factors. But, with one exception, the sixth *Rathke* factor, the bulk of their arguments entirely presuppose that they will prevail on their substantive constitutional argument. If the Court, therefore, determines the Family Members failed to meet their burden on likelihood of success, their

arguments regarding the third, fourth, and fifth *Rathke* factors simply fall away. Three points, however, are worth responding to in greater detail.

1. The Family Members Incorrectly Presuppose This Court Can Order the Entry of a Preliminary Injunction on Remand.

Implicit in the Family Members' fourth argument and made explicit elsewhere in their brief is that they request this Court to order the entry of preliminary injunction on remand. Op. Br. at 3, 7-8, 10-11, 37, 44. It is not at all certain, however, that the Court can issue such an order on remand. The Colorado Supreme Court has previously held that "[t]he court of appeals, in considering the record and the injunctive order issued by the trial court, can approve or limit the injunctive remedy, but cannot impose new or different injunctive relief." *May Dep't Stores Co. v. State ex rel. Woodard*, 863 P.2d 967, 980 (Colo. 1993). This Court can reverse errors, of course, but on this record it cannot prejudge how the proceedings on remand must play out.

The Family Members, themselves, concede they do not have enough information at their disposal, let alone available in the record, to craft

the contours of any injunctive relief. Op. Br. at 10-11; *see also id.* at 37-40. Even below, the Family Members proposed two differing forms of injunctive relief and steadfast refused to elect one over the other. 12/4/25 Tr. at 38:25-40:25. Thus, even if the Family Members were to prove successful on appeal, this Court should not usurp the role of the district court.

2. The District Court Did Not Misapply the Fifth Rathke Factor.

The fifth *Rathke* factor requires the district court to consider whether, if issued, an injunction "will not disserve" the public interest. *Rathke*, 648 P.2d at 654. Below, the Adams County Appellees repeatedly argued the public interest would not be served by the requested injunction because it would violate separation of powers principles. CF, pp.1043-44, 1283; 12/4/25 Tr. at 266:24-267:20; 12/9/25 Tr. at 29:22-30:16; *see Bd. of Cty. Comm'rs v. Nineteenth Judicial Dist.*, 895 P.2d 545, 548 (Colo. 1995).

The Colorado General Assembly recently enacted Colorado H.B. 22-1063, codified at Colo. Rev. Stat. § 2-3-1901 to 1903, creating a Jail Standards Commission. Pursuant to C.R.S. § 2-3-1901.5, "[e]ach county

jail shall comply with the standards adopted by the legislative oversight committee pursuant to section 2-3-1901 (2), beginning July 1, 2026." The Colorado Legislative Oversight Committee issued the 2024 Standards for Jails, which included "Topic G: Visitation."[1] The final version did not require in-person contact family visitation of the kind the Family Members seek here, nor does it authorize a private right of action. *See* C.R.S. §§ 17-20-130(9)(a) & 17-42-103. Thus, the Family Members' attempt to accomplish through judicial fiat what the legislatively authorized committee declined to impose. If the Court were to grant the Family Member's motion for preliminary injunction, it would impose an idiosyncratic standard on only one of over 60 County Sheriffs and interfere with the legislatively mandated statewide jail regulation scheme. This would not serve the public interest.

[1] Colorado Legislative Oversight Committee, 2024 Standards for Jails, available at: https://content.leg.colorado.gov/sites/default/files/2024_jail_standardsfinal_draft-accessible.pdf.

3. The District Court Did Not Misapply the Sixth Rathke Factor.

The sixth *Rathke* factor asks whether the requested injunctive relief will preserve the status quo pending a trial on the merits. *Rathke*, 648 P.2d 648, 653-54 (Colo. 1982). By "status quo," courts mean "status quo ante litem" – *i.e.*, the state of affairs before the filing of the litigation. *See Boe v. Children's Hosp. Colo.*, 589 P.3d 478, 488 (Colo. 2026) ("The status quo is the last uncontested status between the parties before the dispute developed."); *see also Erbsloeh Aluminum Sols., Inc. v. Mueko Mach., Inc.*, No. 1:22-cv-537, 2022 U.S. Dist. LEXIS 184448, *5-6 (W.D. Mich. Aug. 11, 2022). In contrast, preliminary injunctions that are mandatory in nature and change the status quo before a trial on the merits are rare and highly disfavored. *Trinidad Area Health Ass'n v. Trinidad Ambulance Dist.*, 562 P.3d 928, 935 (Colo. App. 2024).

Here, the Family Members sought to invalidate a 19-plus year-old restriction on in-person family contact visitation. Any preliminary injunction would require affirmative conduct by one or more of the Adams County Appellees that has not been undertaken in nearly two decades and at more demanding incarceration levels. *See* C.R.C.P. 65(f). The

district court, therefore, correctly held that the form of the Family Members' injunctive relief would modify, not preserve, the status quo. CF, pp.1792-94.

On appeal, the Family Members point to *Boe* and argue that the status quo should be set before the (former) Sheriff's alleged violation of the *Wesson* order over 20 years ago. Op. Br. at 36. But that is not what *Boe* states. *Boe* points to "the last uncontested status *between the parties* before *the dispute developed*." 589 P.3d at 488. These parties did not have a dispute until the Family Members filed their lawsuit. As such, the district court did not misapply the sixth *Rathke* factor.

V. The District Court Did Not Abuse Its Discretion by Denying the Family Members' Motion for Early Discovery.

A. Standard of Review and Issue Preservation.

As a general rule, discovery rulings, including rulings limiting discovery, are within the district court's sound discretion and will not be disturbed on appeal absent an abuse of that discretion. *Silva v. Wilcox*, 223 P.3d 127, 136 (Colo. App. 2009). The district court abuses its discretion if its discovery ruling is manifestly arbitrary, unreasonable, or

unfair. *Wenz v. Nat'l Westminster Bank, PLC*, 91 P.3d 467, 469 (Colo. App. 2004).

As to issue preservation, the Family Members did file a separate pre-hearing emergency discovery motion below, CF, pp.1094-1103, which the district court denied. CF, pp.1149-51. The Family Members, however, waived any objections to this ruling by expressly agreeing to go forward with the injunction hearing as scheduled in the wake of the district court's order. CF, p.1153. It is also not clear that pre-hearing discovery rulings can be raised in intermediate or interlocutory appeals instead of the Family Members' separate appeal from the final judgment in Appeal No. 2026CA1490. *See Affiniti Colo., LLC v. Kissinger & Fellman, P.C.*, 461 P.3d 606, 610 (Colo. App. 2019).

B. Argument.

The district court did not abuse its discretion in denying the Family Members' motion for expedited preliminary discovery in advance of the injunction hearing. While a court may order early discovery, plaintiffs do not have an absolute right to it. C.R.C.P. 16(b); 26(d). The burden was on

the Family Members to establish good cause, which they failed to do. CF, pp. 1135-1141.

The mere filing of a preliminary injunction has repeatedly been held by federal district courts to be insufficient to warrant early discovery under the equivalent federal standards. *See*, *e.g.*, *Avaya, Inc. v. Acumen Telecom Corp.*, 2011 WL 9293, at *2 (D. Colo. Jan. 3, 2011), *summarizing with approval Notaro v. Koch*, 95 F.R.D. 403, 405 n.3 (S.D.N.Y. 1982); *see also Colo. Mont. Wyo. State Area Conf. of the NAACP*, 2022 U.S. Dist. LEXIS 82767 at *2 (D. Colo. May 6, 2022).

Prior to filing, the Family Members had already received information from the jail through public records requests and had conducted their own surreptitious inspections of the detention facility on several occasions. CF, pp.101-104. Only after Adams County filed its response to their motion for an injunction – and a mere nine days before the hearing (two of which were holiday), the Family Members demanded a jail inspection and unilateral pre-hearing discovery into the Adams County Appellees' intended witnesses and hearing exhibits. CF, p.1151; *contra* C.R.C.P. 34(b) (presuming parties will have at least 35-days'

notice) & C.R.C.P. 26(d) (preliminary discovery "shall not exceed the limitations established C.R.C.P. 26(b)(2)"); *see also* CF, pp.1094-1103. And this despite the fact the district court had already set a deadline for witness and exhibit disclosures that both sides had complied with. CF, pp.1084-1092. Until that deadline, moreover, the Family Members had not disclosed all of the exhibits they intended to use at the hearing. CF, pp. 1091-92 (disclosing two exhibits not previously produced as an exhibit to the motion). Nor did the Family Members indicate which witnesses they definitively would call at the hearing. CF, pp.1090-92. Thus, any "gamesmanship" objections the Family Members now raise are merely performative. Op. Br. at 39-40.

At the hearing, the Family Members were accorded ample time to cross-examine all three of the witnesses, including the two individual named defendants. On appeal, the Family Members do not point to any concrete evidence they contend would have been obtained through early discovery that was not later presented at the hearing. Nor do they explain how they were concretely harmed by the district court's discovery ruling

– especially in light of the information provided at the witness and document exchange deadline.

In short, the district court's discovery ruling was not clearly erroneous.

VI. The District Court Did Not Make Any Erroneous Factual Findings

A. Standard of Review and Issue Preservation.

The Adams County Appellees agree with the Family Members' statement of the standard of review and that this issue was raised below and, therefore, preserved.

B. Argument.

In injunction proceedings, district courts are permitted to draw logical inferences from the evidence presented in favor of either side. *See Terrell v. Walter E. Heller & Co.*, 439 P.2d 989, 990-91 (Colo. 1968).

On appeal, the Family Members argue the district court "clearly erred when it concluded that 'the current visitation policy was implemented primarily to mitigate the influx of contraband.'" Op. Br. at 40, *quoting* CF, p.1774. They appear to challenge this alleged error at two levels: (1) an absolute denial that there is "any" evidence that the current

visitation ban was implemented to mitigate the influx of contraband; and (2) the in-person family visitation ban was implemented "*primarily* to mitigate the influx of contraband." *Id.* Both arguments, however, are squarely defeated by the actual evidence in the record.

As already noted above, the Sheriff established at the hearing the reasons that the jail's prior in-person visitation model was suspended – albeit years before he was elected Sheriff. 12/5/2025 Tr. at 123:9-124:21. Division Chief Dunning also extensively testified to the significant contraband smuggling problems at the jail, CF, pp. 1774; 12/5/2025 Tr. at 22:1-25:22; 27:11-32:5, and expressly stated that contraband is one of the reasons the current in-person family contact ban remains in place. *Id.* at 32:10-17. None of this factual evidence was contested by competing factual evidence. To the contrary, the testimony of Mr. Williams, the Family Members' own expert, generally acknowledged the dangers of contraband and the importance of combatting its introduction. 12/4/25 Tr. at 191:21-192:14; 194:10-195:10.

The Family Members appear to quibble with the district court's summary of this evidence because the Sheriff's testimony does not

expressly mention contraband as a reason for the original suspension of the program. Op. Br. at 41-42. But nor does the Sheriff's testimony exclude it. 12/5/2025 Tr. at 123:9-124:21. Even if the Sheriff's testimony is narrowly construed, the district court's summary of the evidence refers to the "current visitation policy," which more naturally refers to the current administration's policy. The risk of contraband in maintaining the current policy was expressly established by Division Chief Dunning's testimony. *Id.* at 32:10-17. Any error by the district court in its summary of this evidence, therefore, is trivial at worst.

As for the Family Members argument that the in-person family visitation ban was motivated primarily by impermissible financial gain, that was never supported by anything other than supposition. The uncontested evidence presented at the hearing below was that neither the County nor the Sheriff make money off their contracts with HomeWAV (or their predecessors). The money, instead, goes into a commissary account for the benefit of inmates. The Family Members never introduced any evidence to rebut this.

In short, the district court's holding that "the current visitation policy was implemented primarily to mitigate the influx of contraband," CF, p.1774, was amply supported by uncontested evidence presented at the hearing.

VII. The Court Should Deny Family Members' Request for Appellate Attorney's Fees Regardless of the Outcome of This Preliminary Injunction Appeal

The Family Members conclude their opening brief with a broad request for appellate attorney's fees. Op. Br. at 43. In support, they invoke the attorney's fees provision of ELEIA, § 13-21-131(3), C.R.S. 2025, and cite to *Mosley v. Daves*, 580 P.3d 584 (Colo. App. 2025).

Only one of the two claims on appeal, however, arises under ELEIA. ELEIA, moreover, is silent as to standalone attorney's fees in appeals from the denial of preliminary injunctions. Whatever else § 13-21-131(3), C.R.S. 2025 might require, it requires more than an appellant obtaining the appellate reversal of the denial of its request for an injunction – that is hardly "the results sought by the litigation." *Mosley* does not apply to this situation. *Mosely* only held that "*[w]hen* a party has been awarded attorney fees for a prior stage of the proceedings, the party may recover

reasonable attorney fees and costs for successfully *defending* the appeal." *Mosley*, 874 P.2d at 383 (emphasis added). The italicized conditions do not apply here. The Family Members did not prevail below, were not awarded a reasonable amount of fees below, and are not defending on appeal. As such, the Court should deny their request for appellate attorney's fees regardless of the outcome of this appeal.

CONCLUSION

The Family Members' bore the burden of establishing all six *Rathke* factors and failed to carry all of them – especially by failing to establish the Sheriff's in-person family contact visit policy violated a fundamental state constitutional right. As such, the Court should affirm the district court's denial of their motion for a preliminary injunction.

DATED: September 21, 2026. Respectfully submitted,

s/Michael A. Sink
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Adams County Attorney's Office
Counsel for Adams County Appellees

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on September 21, 2026, a true and correct copy of the foregoing was filed with the Court and served via the Colorado Court's E-filing System on all counsel of record.

s/Kelly C. Vis
Kelly C. Vis
Litigation Paralegal

Pursuant to C.R.C.P. 121 Section 1-26(7), a copy of the original, electronic or scanned signed foregoing document is retained at the Adams County Attorney's Office and is available for inspection upon request.