capacity to take care of themselves," *Schall v. Martin*, 467 U.S. 253, 265 (1984), the State must exercise special care to ensure that their rights are protected. In this case, the State has abandoned any pretense of care. Defendants have not only failed to assist the class members in accessing the courts but have actively stood in their way by barring their access to attorneys. Accordingly, Plaintiff K.L.W. seeks immediate injunctive relief to protect his right to access the courts. He sues on his own behalf and on behalf of all current and future residents of Columbia.

Statement of Facts

K.L.W. is a developmentally disabled fourteen-year-old in custody at Columbia Training School, *see* Ex. 1: Williams Decl. at ¶ 1, a juvenile prison that houses ten- to eighteen-year-old girls and ten- to fourteen-year-old boys. Ex. 2: Miss. Dep't of Youth Services, *Columbia Training School: Weekly Offense Report – By County* (Mar. 16, 2004); Ex. 3: Miss. Dep't of Human Services, *Statistics for Fiscal Year 2003: Dispositions by Age*, available at < http://www.mdhs.state.ms.us/dys_ch11.html> (visited April 10, 2004). At a hearing that lasted approximately five minutes, Plaintiff K.L.W. was adjudicated delinquent on February 12, 2004 – he was accused of stealing a cellular telephone that belonged to his school. He has been confined at Columbia since February 18, 2004, *see id.*, and will remain there until Defendant James, the Acting Superintendent, decides to release him.[1] "The average length of stay . . . is two to three months, but some youth may stay up to six months or longer." Ex. 4: U.S. Dep't of Justice, *CRIPA*

[1] Under Mississippi law, the duration of a child's commitment to training school is within the facility administrator's discretion. Miss. Stat. § 43-21-605(1)(g)(iii); *accord Morgan v. Sproat*, 432 F. Supp. 1130, 1154-55 (S.D. Miss. 1977).

Investigation of Oakley & Columbia Training Schools in Raymond & Columbia, Mississippi at 2 (June 19, 2003) [hereinafter "DOJ Letter"].

Due to K.L.W.'s disability, he attends special education classes at home; his reading level is several grades below average for a child of his age. The lawyer who was appointed to represent K.L.W. at his delinquency hearing never made any effort to determine whether special education services were available at Columbia. *See* Ex. 1: Williams Decl. at ¶ 2. In fact, "Columbia has no options available" for children like K.L.W. Ex. 4: DOJ Letter at 31; *see also id.* at 30 ("The problems [DOJ] encountered with the provision of special education services at both facilities [Columbia and Oakley Training School] were pervasive."). Although there was a time when Columbia offered "individual and family counseling," DOJ found that those services had been discontinued. *Id.* at 31; *see also id.* at 32 ("Columbia provides no transition services for students' re-entry into their home communities – another violation of federal law.").

K.L.W.'s mother, Rosetta Williams, visits her son at Columbia as often as the Defendants' policies permit. *See* Ex. 1: Williams Decl. at ¶ 3. During one of her March visits, Ms. Williams was alarmed to see dark bruises circling her son's neck and wrists. *Id.* Fearfully, K.L.W. told her that a security guard had choked him, handcuffed him so tightly that the restraints left marks that lasted for days, and threatened to increase his sentence if he told anyone. *Id.* at ¶¶ 3-4 & 7. Understandably, the incident and the threats terrified K.LW., who told his mother that "he was more scared than he had ever been in his life." *Id.* at ¶¶ 7 & 9. Ms. Williams was horrified and complained to a staff member. *Id.* at ¶ 8. The staff member – who identified herself as the "on-call counselor"

– advised Ms. Williams to have her son file a grievance. *Id.* Although Ms. Williams was concerned that her son's disability would make it difficult or impossible for him to file a grievance, she relayed the staff member's advice to him and encouraged him to follow it. *Id.* at ¶ 9. She also asked K.L.W. if he was interested in speaking with a lawyer; he said that he was. *Id.* at ¶ 10.

Attorneys at the Mississippi Center for Justice ("MCJ") and the Southern Poverty Law Center ("SPLC") had previously told Ms. Williams that they were willing to meet with K.L.W. on a pro bono basis, but wm9sw("Mthe Defendants'J16.3(.) -2.30.02 Tc00 Tw[(an

After seeing the bruises on her son's body and hearing the fear in his voice, Ms. Williams reiterated her desire for MCJ/SPLC's help in protecting K.L.W. from further abuse and retaliation. MCJ/SPLC attorneys agreed to meet with K.L.W. as soon as possible and advised Ms. Williams to contact Columbia and request a legal visit. Ms. Williams called the Acting Administrator of Columbia, Defendant James, and asked if a visit could be arranged. When he heard what Ms. Williams wanted, he told her to get a court order and abruptly hung up the telephone. *See* Ex. 1: Williams Decl. at ¶ 11. After weeks of worry, Ms. Williams was finally allowed to return to Columbia. During that visit, she asked K.L.W. if he had filed a grievance. He has not – though not for lack of trying. K.L.W. reported that he had asked his counselor for a grievance form. Despite her promises to give him a form, she has never done so. *See id.* at ¶ 12.

Recent investigations by the United States Department of Justice ("DOJ") and the Mississippi legislature have shown that

reporting mechanisms or grievance procedures. *Id.* at 12. Children and staff stated that

toilet or ventilation, for periods of up to three consecutive days. Ex. 4: DOJ Letter at 7-

Negara, 335 F.3d 357, 363 (5th Cir. 2003). There is no question that the Plaintiffs in this case have carried their burden of persuasion on all counts.

I. There Is a Substantial Likelihood of Success on the Merits

To determine the likelihood of success on the merits, courts look to the standards provided in the relevant substantive law. *See Valley v. Rapides Parish School Bd.*, 118 F.3d 1047, 1051 (5th Cir. 1997). Here, those standards are found in the leading Supreme Court cases governing the rights of incarcerated persons to access the courts. *See generally Lewis v. Casey*, 518 U.S. 343 (1996); *Bounds v. Smith*, 430 U.S. 817 (1977).

A. Incarcerated Persons Are Constitutionally Entitled to Meaningful and Effective Access to the Courts

"It is now established beyond doubt that prisoners have a constitutional right of access to the courts." *Bounds*, 430 U.S. at 821; *accord Lewis*, 518 U.S. at 350. To survive a constitutional challenge, the State must "insure that inmate access to the courts is adequate, effective, and meaningful." *Bounds*, 430 U.S. at 822. This right is not limited to incarcerated adults – it applies with equal force to children. *See In Re Gault*, 387 U.S. 1, 13 (1967) ([N]either the Fourteenth Amendment nor the Bill of Rights is for adults alone."); *see also, e.g., John L. v. Adams*, 969 F.2d 228, 230 (6th Cir. 1992) (holding that juveniles have constitutional right to access courts);

The right to access the courts arises from two constitutional provisions – the First Amendment's right to petition the government for redress of grievances and the Fourteenth Amendment's due process clause. *Jackson v. Procunier*, 789 F.2d 307, 310 (5th Cir. 1986). Although the right was originally recognized in the context of direct appeals and habeas petitions, the Supreme Court has "extended [the] universe of relevant claims . . . to 'civil rights actions' – i.e., actions under 42 U.S.C. § 1983 to vindicate 'basic constitutional rights.'" *Lewis*, 518 U.S. at 354 (quoting *Wolff v. McDonnell*, 418 U.S. 539, 579 (1974)). This extension reflects the Court's understanding that "civil rights actions are of fundamental importance . . . in our constitutional scheme because they directly protect our most valued rights." *Bounds*, 430 U.S. at 827 (internal quotations and citations omitted).

Meaningful access to the courts is "one of, perhaps **the**, fundamental constitutional right." *Cruz v. Hauck*, 475 F.2d 475, 476 (5th Cir. 1973) (emphasis in original). "In an organized society it is the right conservative [sic] of all other rights, [lying] at the foundation of orderly government. It is one of the highest and most essential privileges of citizenship . . . granted and protected by the federal constitution." *Jackson*, 789 F.2d at 311 (quoting *Chambers v. Baltimore & O.R. Co.*, 207 U.S. 142, 148 (1907) (ellipsis in original)). In light of the core importance of the right, it is not surprising that the Supreme Court has "consistently required States to shoulder affirmative obligations to assure all prisoners meaningful access to the courts." *Bounds*, 430 U.S. at 824.

To fulfill its constitutional mandate, the State must do more than stand aside – it must provide the "tools" that inmates need "to challenge the conditions of their confinement." *Lewis*, 518 U.S. at 355; *see, e.g. Bounds*, 430 U.S. at 826 & 828 (holding that State must provide "adequate law libraries or adequate assistance from persons with legal training"); *Johnson v. Avery*, 393 U.S. 483, 490 (1969) (holding that State cannot prohibit consultations with "jailhouse lawyers" in the absence of a "reasonable alternative to assist inmates"). The Court has emphasized that the constitution "guarantees no particular methodology but rather the conferral of a capability – the capability of bringing contemplated challenges to sentences or conditions of confinement before the courts." *Lewis*, 518 U.S. at 356.

Although the State may confer that "capability" on adults in a variety of ways, thereby fulfilling its constitutional obligations, *see Lewis*, 518 U.S. at 356, "special concerns . . . are present when young persons, often with limited experience and education and with immature judgment, are involved." *Fare v. Michael C.*, 442 U.S. 707, 725 (1979); *cf. Bellotti v. Baird*, 443 U.S. 622, 635 (1979) ("[A]lthough children generally are protected by the same constitutional guarantees against governmental deprivations as are adults, the State is entitled to adjust its legal system to account for children's vulnerability . . . ."). In order to insure that incarcerated children have adequate, effective, and meaningful access to courts, "the State must provide the juveniles with access to an attorney." *John L.*, 969 F.2d at 230. Because the Defendants' current policy effectively prohibits children from meeting with lawyers – thereby denying them any hope of meaningful access to the courts – it cannot withstand constitutional scrutiny.

295 (M.D. Tenn. 1990) (citation and footnote omitted),

effective, and meaningful" access to courts is to permit them to consult with attorneys. *Bounds*, 430 U.S. at 822; *see John L.*, 969 F.2d at 230; *Alexander S.*, 876 F. Supp. at 790.

The Supreme Court has repeatedly recognized that children are particularly helpless in legal matters:

> Age 15 is a tender and difficult age for a boy . . . . He cannot be judged by the more exacting standards of maturity. That which would leave a man cold and unimpressed can overawe and overwhelm a lad in his early teens. This is the period of great instability which the crisis of adolescence produces. . . [A child] needs counsel and support if he is not to become the victim first of fear, then of panic. He needs someone on whom to lean lest the overpowering presence of the law, as he knows it, may not crush him.

Gault, 387 U.S. at 45-46 (internal quotations and citation omitted); *see also Michael C.*, 442 U.S. at 725 ("[S]pecial concerns . . . are present when young persons, often with limited experience and education and with immature judgment, are involved."); *Gallegos v. Colorado*

"juveniles are not likely to benefit from a law library[,] . . . courts recognize that an adequate law library does not provide meaningful access to the courts for inmates unable to comprehend legal materials") (citation and footnote omitted), *aff'd in pertinent part by John L.*, 969 F.2d 228; *Morgan*, 432 F. Supp. at 1158 ("[W]ithout assistance [fifteen- to twenty-year-old youth] could not make effective use of legal materials.").

For the same reasons, children's constitutional rights to access the courts cannot be entrusted to other youth – "no matter how sophisticated." *Gallegos*, 370 U.S. at 54; *cf. Johnson*, 393 U.S. at 490 (holding that assistance provided by adult "jailhouse lawyers" is too valuable to prohibit in the absence of a reasonable alternative). In contrast to the "old hands" who served as writ writers in *Johnson*, the Supreme Court has held that

> a 14-year-old boy, no matter how sophisticated, . . . is unable to know how to protest his own interests or how to get the benefits of his constitutional rights. . . . He cannot be compared with an adult in full possession of his senses . . . . Without some adult protection . . . , a 14-year-old boy would not be able to know, let alone assert, such constitutional rights as he had.

Gallegos, 370 U.S. at 54. In this case, the class members' "ages, their lack of experience with the criminal justice system, and their relatively short confinement means that there cannot be a system of writ writers for students who need them." *Morgan*, 432 F. S

access to courts is to permit him to consult with an attorney. *John L.*, 969 F.2d at 230; *Alexander S.*, 876 F. Supp. at 790. In the words of the Supreme Court, a "juvenile needs the assistance of counsel to cope with problems of law [and] to make skilled inquiry into the facts . . . . The child requires the guiding hand of counsel at every step in the proceedings against him." *Gault*, 387 U.S. at 36 (internal quotations, citations, and footnotes omitted).

C. Plaintiffs' Constitutional Rights to Access the Courts Include the Right to be Free From Harassment or Other Retaliation.

Meaningful access to the courts is impossible for prisoners who fear retaliation. The Fifth Circuit has explicitly held that "prison officials may not retaliate against or harass an inmate because of the inmate's exercise of his right of access to the courts," nor may officials harass or "retaliat[e] against inmates who complain [outside the context of a lawsuit] of prison conditions or official misconduct." *Gibbs v. King*, 779 F.2d 1040, 1046 (5th Cir. 1986) (internal quotations and

To ensure protection of the Plaintiffs' rights to access the courts, the Defendants (including their officials, employees, and other agents) must be enjoined from harassing, intimidating, or otherwise retaliating against children – including K.L.W. -- who try to exercise their constitutional right to access the courts.

II. Preliminary Relief is Essential to Prevent Irreparable Harm

This Court must act immediately to prevent continuing irreparable harm to the members of the class. The irreparable harm at issue is three-fold: (1) Defendants are interfering with Plaintiffs' access to courts by denying them access to counsel; (2) Defendants are retaliating and threatening to retaliate against Plaintiffs for attempting to exercise their rights to access the courts; and (3) Defendants' conduct has the result – whether intended or not – of undermining the Plaintiffs' substantive constitutional claims.

First, because the right to access the courts is grounded in large part in the First Amendment right "to petition the Government for a redress of grievances," U.S. Const. AMEND. I, even a temporary deprivation of the class members' rights to meaningfully access the courts constitutes irreparable harm. It is well-settled that the "[l]oss of First Amendment freedoms, even for minimal periods of time, constitute[s] irreparable injury." *Ingebretsen on behalf of Ingebretsen v. Jackson Public Schl. Dist.*, 88 F.3d 274, 280 (5th Cir. 1996) (citing *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Second, the constant threat of retaliation that haunts children at Columbia has a chilling effect on their willingness to report abuse. Because that chilling effect not only interferes with the Plaintiffs' access to courts but also implicates other First Amendment freedoms, the threat of retaliation in itself constitutes an additional irreparable injury. *See Gibbs*, 779 F.2d at 1046; *see also*

Deerfield Medical Center v. City of Deerfield Beach, 661 F.2d 328, 338 (5th Cir. 1981) (holding that violation of constitutional rights alone constitutes irreparable harm).

Third, preliminary injunctive relief is necessary to prevent irreparable harm of a more tangible nature: the destruction of evidence. The facts underlying the substantive claims for which K.L.W. seeks access to the courts provide a classic illustration of the oft-quoted maxim that "[j]ustice delayed is justice denied." *Coghlan v. Starkey*, 852 F.2d 806, 815 (5th Cir. 1988) (quoting *Stelly v. C.I.R.*, 761 F.2d 1113, 1116 (5th Cir. 1985)); *accord Matter of AWECO, Inc.*, 725 F.2d 293, 299 (5th Cir. 1984). When a child is abused

with an attorney about their commitments and the conditions of their confinement, contact information for available attorneys, and protection against retaliation -- would impose little or no burden on the Defendants. In contrast, that relief would be an enormously important first step in remedying grave constitutional -- and physical – injuries to the members of the class. *Cf. Gault*, 387 U.S. at 38 n.64 ("[C]ounsel can play an important role in the process of rehabilitation.").

IV. The Requirement That a Bond Be Posted Should Be Waived

The Plaintiffs respectfully request that the Court exercise its discretion to waive the bond requirement customarily associated with the issuance of preliminary injunctive relief. *See* Fed. R. Civ. P. 65(c). Several courts have declined to require plaintiffs to post bond in connection with temporary restraining orders and preliminary injunctions. *See Moltan Co. v. Eagle-Picher Indus., Inc.*, 55 F.3d 1171, 1176 (6th Cir. 1995) (approving waiver of bond given strength of case and "the strong public interest involved"); *Bookfriends, Inc. v. Talt*, 223 F. Supp. 2d 932, 953 (S.D. Ohio 2002) (declining to require bond based on finding that defendants would suffer no monetary damage in the event they were wrongfully enjoined); *Sluiter v. Blue Cross & Blue Shield*, 979 F. Supp. 1131, 1145 (E.D. Mich. 1997) ("Due to the strong likelihood of Plaintiffs' success on the merits and their demonstrated financial inability, the Court finds it would be improper to require any security in this matter."). In this case, several factors counsel in favor of waiver, including the strength of the claims, the Plaintiffs' indigency, the strong public interest involved, and the fact that a preliminary injunction would not require the defendants to incur any financial burdens.

Conclusion

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served by hand delivery on:

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This ___ day of April, 2004.

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