Docket No._____

IN THE
UNITED STATES SUPREME COURT

_____

MARTIN MURFF

Petitioner,

-vs-

UNITED STATES OF AMERICA,

Respondent.

_____

On Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

_____

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

The U.S. Marshals Service manages the detention of federal pretrial prisoners. According to the U.S. Marshals Service 2026, Fact Sheet Facts and Figures, out of an average daily detention population of 55,533 prisoners, the vast majority (roughly 75%, or over 41,010 individuals) are housed in state, local, or contracted private facilities rather than direct Bureau of Prisons-managed detention facilities and prisons. Appendix C

However, notwithstanding their placement in a Bureau of Prisons Contract facility, such detainees remain federal inmates as defined by 28 C.F.R. § 500.1(c). They are also entitled to the regulatory right that prohibits the opening of inmates' incoming special/legal mail outside of their presence and the copying of such mail, as established by 28 C.F.R. § 540.18.

The reality is that these regulatory rights of federal inmates are routinely and totally disregarded for the multitudes of those placed in state, local, or contracted private facilities rather than directly managed by the Bureau of Prisons.

Whether the copying and storage of federal inmates' incoming special/legal mail by prison staff infringes on their Sixth Amendment right to counsel, access to courts, and free expression when communicating with legal counsel, courts, or elected officials?

Whether housing federal inmates in contracted facilities nullify their regulatory rights with respect to the handling and processing of their incoming special/legal mail?

LIST OF PARTIES

Martin Murff and the United States of America are the parties to the proceedings.

RELATED PROCEEDINGS

United States v. Kevin Fordham, Case No. 2:21-cr-20354 (US District Court for the Eastern District of Michigan)

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OPINION AND JUDGMENT BELOW

Petitioner seeks review of a final judgment entered by the United States Court of Appeals for the Sixth Circuit. The published opinion is officially reported at *United States v. Fordham, Murff, Reid,* 183 F.4th 442 (6th Cir. 2026) and reprinted at Appendix A, 1-30.

STATEMENT OF JURISDICTION

This Petition is filed within ninety (90) days of the July 22, 2026-Judgment of the United States Court of Appeals for the Sixth Circuit, as required by Rule 13.1 of the Supreme Court Rules. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISION INVOLVED

U.S. Const. Am. VI:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

FEDERAL REGULATIONS INVOLVED

28 C.F.R.§ 500.1(c)

> Inmate means all persons in the custody of the Federal Bureau of Prisons or Bureau contract facilities, including persons charged with or convicted of offenses against the United States; D.C. Code felony offenders; and persons held as witnesses, detainees, or otherwise.

28 C.F.R. § 540.18

> (a) The Warden shall open incoming special mail only in the presence of the inmate for inspection for physical contraband and the qualification of any enclosures as special mail. The correspondence may not be read or copied if the sender is adequately identified on the envelope, and the front of the envelope is marked "Special Mail - Open only in the presence of the inmate."

STATEMENT OF THE CASE

On May 26, 2021, an indictment charged Martin Murff and 39 other defendants with Racketeer Influenced and Corrupt Organizations Act (RICO) offenses involving the Almighty Vice Lord Nation and others. Indictment, RE 1, Page ID # 1-172. In addition to the Count One—RICO Conspiracy offense, Murff was indicted in Count Five for Conspiracy to Distribute Controlled Substances, all contrary to 18 U.S.C. § 1962(d) and 21 U.S.C. §§ 846, 841(a)(1), 841(b)(1)(A), respectively. The district court designated the case as a "mega-case" due to its complexity. Order, RE 215, PagelD. # 682-683.

The discovery in this case was voluminous and included investigative reports, Title III interceptions from many cell phones, search warrant pleadings, photos, cell phone data, social media data, and surveillance videos. As a result, the court appointed a Coordinating Discovery Attorney. Order, RE 237, PagelD. # 782-785.

Additionally, the district court issued a protective order allowing inmates to examine discovery materials using discovery disks or other digital storage devices while being supervised by the jail or detention facility. The order also stated that "after the defendants have completed the discovery review session, [they] shall not be permitted to keep or take . . . any discovery materials in any

form, including . . . copies and notes of such materials. . . . " Order, RE 384, PagelD. # 1444-1450.

Federal agents arrested Murff on June 3, 2021, in Chicago, Illinois. The government moved for pretrial detention during the initial appearance proceedings; the court continued the matter to June 8, 2021. (N.D. Ill., E. D., No. 1:21-cr-00362-1, RE 1-2). Following the detention hearing, the court ordered Murff's pretrial detention and "his removal in the custody of the United States Marshals Service to answer the pending charges in the Eastern District of Michigan." (N.D. Ill., E. D., No. 1:21-cr-00362-1, RE 8).

The Marshals Service placed Murff in the Sanilac County Jail in Sandusky, Michigan, on July 5, 2021, to await trial. From the U.S. District Court for the Eastern District of Michigan to the Sanilac County Jail, the round-trip mileage is 190 miles, and the driving time is approximately 3.16 hours.[1] However, because counsel's starting point was further from the courthouse, the round-trip travel time to the Sanilac County Jail was approximately four and a half (4½) hours, depending on roadway and weather conditions. Motion, RE 811, Page ID # 4762.

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[1]https://www.mapquest.com/directions/list/LzEvL2Zyb20vdXMvbWljaGlnYW4vZGV0cm9pdC80ODIyNi0yNzAwLzIzMS13LWxhZmF5ZXR0ZS1ibHZkLTQyLjMzMDM3LC04My4wNDk1MS90by91cy9taWNoaWdhbi9zYW5kdXNreS80ODQ3MS0xMzk2LzY1LW4tZWxrLXN0LTQzLjQyMjI2LC04Mi44MzA0Mg==

In October 2022, Murff's initial appointed counsel was compelled to withdraw from the representation as a result of his medical condition. RE, 686, Page ID # 3615-3617. The court thereafter appointed the undersigned as substitute counsel. Appointment Notice, RE, 699.

Whenever counsel sent Murff letters, the return addressee was denoted as "Law Offices Linda D. Ashford, P.C.," and the envelopes were clearly marked: "Attorney-Client–Open only in the presence of the inmate." At all relevant times, counsel uploaded and maintained copies of her current State of Michigan Bar Card and Michigan Driver's License in the Sanilac County Jail attorneys' portal as required. Motion, RE 811, Page ID # 4752.

Although the envelopes indicated that the mail had been sent by an attorney, Murff reported that the jail personnel opened his legal correspondence in his presence but kept the originals and only gave him duplicates. Motion, RE 811, Page ID # 4752-4753.

Defense counsel had talks with the Assistant United States Attorney assigned to the case and sent a letter on February 2, 2023, to the United States Marshal for the Eastern District of Michigan in an effort to resolve this matter informally. Motion, RE 811, Page ID # 4753. However, because a satisfactory resolution to the issue could not be brokered, counsel moved on February 8, 2023, for a hearing to inquire into the Sanilac County Jail's ongoing deprivation

of Murff's attorney-client privilege and Sixth Amendment right to counsel. Motion, RE 811, Page ID # 4751-4764. Co-defendant D-26, Winisford Watkins, joined Murff's motion.

Murff also contended in his motion for an inquiry, his reply to the government's response, and his joint statement of facts that 28 C.F.R. § 540.18(a) applied to this case. Section 540.18(a) provides that federal inmates' "correspondence may not be read or copied if the sender is adequately identified on the envelope, and the front of the envelope is marked "Special Mail - Open only in the presence of the inmate."' [underscoring supplied] Motion, RE 811, Page ID # 4754-4755; RE 836, PagelD # 4972-4973.

Murff further argued that while the U.S. Marshals Service was authorized to contract for detention space for prisoners who are not housed in federal facilities, its contractual relationship with the Sanilac County Jail, did not vitiate Murff's status as a federal prisoner.

The Service was therefore duty bound to abide by the law, inclusive of 28 C.F. R. § 540.18(a), and to execute the directives issued by the Attorney General and the Bureau of Prisons, with respect to his confinement. The district court held an evidentiary hearing on the motion on May 8, 2023. Appendix B; Transcript, RE 966, Page ID # 6082-6138. Murff testified that he had been

housed at Sanilac County Jail for 22 months, since July 5, 2021. Appendix B; Transcript, RE 966, Page ID # 6090.

He stated that when he first arrived, the staff would open his legal mail in his presence, inspect it for contraband, and then provide him with his mail and envelope. But, eight to 10 months later, this procedure changed. The staff then slid a copy of his legal mail, and sometimes the envelope, underneath his cell door. Appendix B; Transcript, RE 966, Page ID 6091-6092.

"Then another time Officer[2] Mantroup read my legal mail," Murff testified:

> He's like, 'Man, it's from your lawyer. She's setting up a meeting with you.' I said, "So you read it?" He was like, 'Yeah.' I said, "You read it, huh?" 'Yeah.'

Appendix B; Transcript, RE 966, Page ID 6092-6093.

On other occasions, the duty officer would tell him that he had legal mail, take him to a copier, copy both the mail and envelope, then give the copies to him. Murff said that he had asked where the originals of his legal mail would be kept. He was told that it would be put in his property. Appendix B; Transcript, RE 966, Page ID # 6092.

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[2]Mantroup was ranked as a deputy, as Murff later clarified in his statement.

Murff said he questioned to no avail the propriety of copying his legal mail to Sergeant Morden, Deputy Mantroup, and Sergeant Kensley. Appendix B; Transcript, RE 966, Page ID # 6094.

While the jail permitted attorney-client telephone calls and virtual meetings, they typically had to be arranged in advance and were limited to 30-minute increments.[3] The lengthy travel time and the restrictive jail scheduling rules seriously limited the frequency of personal meetings, making confidential mail correspondence all the more vitally important to effective representation.

The protective order also impacted the representation. Under the supervision of jail officials, the order permitted inmates to review discovery materials utilizing digital devices, which had to be returned after their review. The order also specifically prohibited inmates from retaining or removing any discovery items, including copies and notes of them. Order, RE 384, Page lD # 1444-1450.

Considering the limitations imposed by the protective order, coupled with the lengthy travel time and the restrictive jail scheduling rules, discreet correspondence would have aided the representation. The Sanilac County Jail's incoming legal mail policy had a chilling effect on attorney-client confidentiality.

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[3]However, depending upon the availability of time slots, an attorney could book back-to-back 30-minute appointments.

As a result of this policy, counsel refrained from asking Murff to respond in writing to specific questions regarding the case or directing him to particular discovery items by Bates number, which hindered preparation for an upcoming in-person meeting.

Further, the jail's technology did not allow for the sharing of documents in a virtual meeting. Therefore, neither phone calls nor virtual meetings replaced the need for confidential written communications.

Murff also testified about the circumstances surrounding the delivery of his legal correspondence, which was sent via United States Postal Service (USPS) priority mail. The tracking number for this envelope was 9405511206203904902167. According to the USPS tracking report, the item was delivered to the Sanilac County Jail on February 16, 2023, at 9:30 a.m. Murff identified a copy of the priority envelope and tracking report, which were received as Defense Exhibit 1. Appendix B; Transcript, RE 966, Page ID # 6096-6097,

He testified that he was asleep in his cell on the morning of February 17, 2023, at 3:00 a.m. when Deputy Mantroup opened the door and woke him up. Deputy Mantroup asked Murff if he wanted his legal mail, and Murff said yes. Mantroup then took Murff to the copier, made copies of his legal mail and

envelope, and then gave the copies to him. Defense Exhibit 1. Appendix B; Transcript, RE 966, Page ID # 6098.

Murff stated that he did not submit grievances regarding Deputy Mantroup's reading of his legal mail, and waking him up at 3:00 a.m. to deliver his legal mail, because he had discussed the issue with his attorney and planned to seek a remedy in court. Appendix B; Transcript, RE 966, Page ID # 6105-6106.

In another line of testimony, the defense began questioning Murff regarding a printout reflecting a $150.00 money order that was sent to him at the jail. The government objected on relevancy grounds. The defense responded that the testimony was relevant because it provided circumstantial proof of retaliation and a hostile environment in which Murff had been subjected since the motion before the court was pending. The court overruled the government's objection and admitted the printout as Defense Exhibit 2. Appendix B; Transcript, RE 966, Page ID # 6099-6100.

Murff testified that Deputy Jacobs brought him a $150.00 money order that a friend had sent to him on March 11, 2023. He endorsed the money order, and later that day, Murff checked his account "because I was going to put some money on my phone," and his balance had increased by $150.00. However, on March 31, 2023, he learned that Aaron Hillman had voided this money order,

thereby reducing his balance by $150.00. Appendix B; Transcript, RE 966, Page ID # 6100-6101.

When Murff realized money was missing from his account, he said he consulted with Miss Morgan, Sergeant Kensley, and Sergeant Morden before filing a grievance. They told him that the money order had been "misplaced" and that he should contact the sender to cancel it, if they could. Murff said that, despite his requests, the Sanilac County Jail had not provided him with supplemental accounting statements since March 2023. He testified on May 8, 2023 that the jail had yet to restore the money to his account. Appendix B; Transcript, RE 966, Page ID # 6102-6103.

The government called Lieutenant Ryan McConnachie, the jail administrator for Sanilac County Sheriff's Office, to testify. In this capacity, he stated that he oversees the jail, as far as policy, which includes keeping contraband out of the jail. Appendix B; Transcript, RE 966, Page ID # 6110-6111.

Lieutenant McConnachie said that about a year ago, he had learned through an informant of one instance where Suboxone was smuggled into the facility via "bogus" legal mail. "From what we believed . . . it was somebody using an attorney's credentials. . . . but we don't think it came from the attorney," he said. The matter was turned over to the drug unit for investigation. However,

nothing happened as far as he was aware. Appendix B; Transcript, RE 966, Page ID # 6112, 6119-6120.

Due to this incident, the lieutenant testified that:

> We started copying mail. And then after it didn't stop the issue, then we started copying legal mail and giving them the copy and then securing the original in their property.
>
> Since [this legal mail handling procedure] was brought into question a few months ago, I think for the same case [Murff's], we decided then to seal the inmate mail -- or have the inmate seal the mail [with evidence tape] and then date and initial it, just to try to protect the integrity.

Appendix B; Transcript, RE 966, Page ID # 6112-6113.

During the evidentiary hearing, the defense submitted a three-page request for the court to take judicial notice of the adjudicative fact "that modern commercial copiers [those built since 2002] and multifunction printers are vulnerable to data theft, as anything else in information technology (IT) office systems. They store copies of documents, and they also have usage logs that hackers can get to, as can anyone servicing the device." Appendix B; Transcript, RE 966, Page ID # 6106-6107.

An article by CBS News titled "Digital Photocopiers Loaded With Secrets" (April 19, 2010) was referenced and submitted with the request. It explained how a list of targets from a significant narcotics raid by the Buffalo Police Narcotics Unit, as well as names, residences, social security numbers, medical

data, and other information, was retrieved from used copy machines owned by several companies.

The request further stated that:

> notice of the adjudicative facts requested is relevant to rebut any assertion that Sanilac County Jail's revised February 28, 2023-Inmate Privilege Mail Policy somehow guarantees the confidentially of Martin Murff's attorney-client communications. Of note, the government furnished the defense with the revised policy on **May 1, 2023,** though it was reportedly revised, effective February 28, 2023. [emphasis in original].

The district court denied the request ". . . because the Court's view of judicial notice is facts that are so overwhelming that they're not in dispute. I don't know that any copier that is in use at Sanilac County, is going to retain and copy, that could be hacked." The court did, however, receive the request for judicial notice as an exhibit; the request will be denoted as Defense Exhibit 3. Appendix B; Transcript, RE 966, Page ID # 6108.

On cross-examination, Lieutenant McConnachie stated he did not believe that the jail's "copier/scanner/fax-type machine" was 20 years or more old. He also confirmed that Sanilac County Jail policy requires attorneys to upload copies of their current State of Michigan Bar Card and ID [Michigan Driver's License] in the designated attorneys' portal before visiting an inmate. Appendix B; Transcript, RE 966, Page ID # 6118, 6122-6123.

The lieutenant further testified that there was no Michigan Bar Directory at the jail and that he had only recently discovered that it was available online. As a result, the jail did not check the directory to confirm a supposedly legal mailing. But he said that "we have done that" using Google. Finally, regarding the detection of Suboxone, the lieutenant said, "I believe there is a field test that can be done, yes." Appendix B; Transcript, RE 966, Page ID # 6118-6119, 6122.

The district court determined at the conclusion of the hearing that Sanilac County Jail's legal mail policy is reasonable and comports with the First and Sixth Amendments because it is written, neutrally applied to everyone, and a legitimate penological interest exists. And the mail is opened in the presence of the inmate; the original is sealed in the inmate's presence and taped so that it would show signs of manipulation if opened. Further, there are no allegations of hacking copiers, and no ongoing claims that jail staff are reading inmate mail. Appendix B; Transcript, RE 966, Page ID # 6133-6137.

The Sixth Circuit Court of Appeals held that Murff was not entitled to relief because no constitutional violation had been shown. The Sixth Circuit further stated the following:

> Murff's challenge to the mail policy fails because the policy does not constitute an intrusion. The only harm he alleges arises from steps he took to avoid *potential* intrusions that could occur under the mail policy; he never claims that any such intrusion into his attorney-client relationship actually occurred.[3]

> [3]In the hearing on his mail-policy claim, Murff testified about one incident where an officer purportedly admitted to reading his legal mail. Even if that would qualify as an intrusion, Murff did not allege that such violations were ongoing and does not complain of or attribute prejudice to that single incident on appeal. His challenge is instead centered on the mail policy itself.

Murff also believes that the county jail was subject to federal Bureau of Prisons regulations and that its mail policy violated 28 C.F .R. § 540.18. Even assuming Murff is correct that the regulation applies and contradicts the jail's policy, a regulatory infraction does not provide a standalone basis for reversing his conviction. *Cf United States v. Caceres,* 440 U.S. 741, 754-55 (1979). Because Murff has shown no constitutional violation, he is not entitled to relief. Appendix A-18.

REASONS FOR GRANTING THE PETITION

Introduction

It has been firmly established that "[o]nce an accused has a lawyer, a distinct set of constitutional safeguards aimed at preserving the sanctity of the attorney-client relationship takes effect." *Patterson v. Illinois,* 487 U.S. 285, 290 n.3 (1988). In *Wolff v. McDonnell,* the plaintiffs challenged a policy which allowed prison officials to read all incoming mail, including clearly marked mail from attorneys. 418 U.S. 539 (1974). This Court approved a revised prison policy that prohibited prison officials from reading such legal mail, but allowed the mail to be opened in the prisoner's presence to inspect for contraband.

This Court should grant a writ of certiorari in this case because the issue is of fundamental importance not just to Petitioner but to approximately 75% of the federal detainees who are housed in state, local, or contracted private facilities rather than direct Bureau of Prisons-managed detention facilities and prisons. Appendix C; U.S. Marshals Service 2026, Fact Sheet Facts and Figures, p 2.

However, notwithstanding their placement in a Bureau of Prisons Contract facility, such detainees remain federal inmates as defined by 28 C.F.R. § 500.1(c). They are also entitled to the regulatory right that prohibits

the opening of inmates' incoming special/legal mail outside of their presence and the copying of such mail, as established by 28 C.F.R. § 540.18.

The primary reason for shielding special mail from being read or copied by prison staff is to safeguard the Sixth Amendment right to counsel, access to courts, and free expression when communicating with legal counsel, courts, or elected officials.

Another reason is to avoid institutional retaliation or chilling effects where staff could freely read letters from lawyers, judges or oversight bodies; inmates could feel hesitant or afraid to report abuse, talk about legal strategy or seek redress against prison conditions.

The reality is that these regulatory rights of federal inmates are routinely and totally disregarded for the multitudes of those placed in state, local, or contracted private facilities rather than directly managed by the Bureau of Prisons.

This Court should grant this petition to determine whether the copying and storage of federal inmates' incoming special/legal mail by contracted staff infringes on their Sixth Amendment right to counsel, access to courts, and free expression when communicating with legal counsel, courts, or elected officials.

Additionally, this Court should determine whether the housing of federal inmates in contracted facilities nullify their regulatory rights with respect to the handling and processing of their incoming special/legal mail.

I. SANILAC COUNTY JAIL'S INCOMING LEGAL MAIL POLICY SUBSTANTIALLY PREJUDICED MURFF, IN VIOLATION OF HIS SIXTH AMENDMENT RIGHT TO COUNSEL AND FEDERAL REGULATORY RIGHTS.

A. The Sanilac County Jail's Incoming Legal Mail Policy Substantially Prejudiced Murff, in Violation of His Sixth Amendment Right to Counsel.

A review of regulations governing "legal mail" is subject to a heightened standard. See *Sallier v. Brooks*, 343 F.3d 868, 873-74 (6th Cir. 2006) (finding that legal mail is entitled to a heightened level of protection to avoid impinging on a prisoner's legal rights, the attorney-client privilege, and the right to access the courts); accord *Kensu v. Haigh,* 87 F.3d 172, 174 (6th Cir. 1996); *Jones v Caruso,* 569 F3d 258, 267 (6th Cir. 2009); *ACLU Fund of Mich v. Livingston Co,* 796 F3d 636, 643 (6th Cir. 2015).

Consequently, "[w]hen the government deliberately interferes with the confidential relationship between a criminal defendant and defense counsel, that interference violates the Sixth Amendment right to counsel if it substantially prejudices the criminal defendant." *Williams v. Woodford,* 384 F.3d 567, 584-85 (9th Cir. 2004).

Such is the case here. After opening Murff's incoming legal mail in his presence, the Sanilac County Jail protocol required that the staff make copies of the originals for him, seal the originals with tape that he initialed and dated, and store the originals in his property. Appendix B; Transcript, RE 966, Page ID # 6112-6113. This policy was an unreasonable, exaggerated response to the jail's penological concerns, which substantially harmed Murff in violation of his Sixth Amendment right to counsel. "[W]hen a prison regulation impinges on inmates' constitutional rights, the regulation is valid if it is reasonably related to legitimate penological interests." *Turner v. Safley,* 482 U.S. 78, 89, 107 S. Ct. 2254, 96 L. Ed. 2d 64 (1987).

The Court held in *Turner*, that "several factors" are relevant in determining the reasonableness of the regulation at issue, including 1) whether a "valid, rational connection" exists between the prison regulation and the legitimate governmental interest put forward to justify it; 2) the existence of an alternative means for inmates to exercise their constitutional right; 3) the impact that accommodation of the constitutional right will have on guards and other inmates, and on the allocation of prison resources; and 4) the absence of ready alternatives as evidence of the reasonableness of a prison regulation. *Turner,* 482 U.S. at 89-90; *Turner v Long,* ___F App'x___; 2024 U.S. App. LEXIS 14881, at *11 (6th Cir. June 17, 2024).

1. No "valid, rational connection" exists between the jail's policy and the legitimate governmental interest put forward to justify it.

Sanilac County Jail Lieutenant McConnachie testified that he had learned through an informant of one instance where Suboxone was smuggled into the facility via "bogus" legal mail. He explained that his use of the term "bogus" legal mail meant that ". . . it was somebody using an attorney's credentials. . . . but we don't think it came from the attorney." Appendix B**;** Transcript, RE 966, Page ID # 6112, 6119-6120.

He also confirmed that attorneys must upload copies of their State of Michigan Bar Card and ID [Michigan Driver's License] in the designated Sanilac County Jail portal before visiting an inmate. Appendix B; Transcript, RE 966, Page ID # 6118.

There simply was no "valid, *rational* connection" between the jail's legal mail policy and the legitimate governmental interest put forward to justify it. In the event that the jail questioned the authenticity of legal mail, the rational approach to verify the mail in question was to directly contact the attorney who ostensibly sent it. An attorney's phone number and email address are readily

accessible using the hardbound Michigan Bar Journal, the State Bar of Michigan's online website, or, in some cases, the jail's attorney portal.[4]

Thus, if the jail's incoming legal mail policy objective was to ensure that an impostor could not send contraband to the facility using an actual attorney's name and mailing address, the wholesale copying and retention of *all* incoming legal mail was an unreasonable, overbroad response to its penological objective.

Because no "valid, rational connection" exists between the Sanilac County Jail's incoming legal mail policy and the legitimate governmental interest put forward to justify it, the policy is necessarily unconstitutional. *Turner v. Safley,* 482 U.S. at 89-91. The failure to satisfy the first factor, renders the Sanilac County Jail's incoming legal mail policy unconstitutional without regard to the remaining three factors. *Id*. In any event, the policy's unconstitutionality is further illustrated by an examination of the remaining *Turner* factors.

2. Murff had no alternative means to protect his constitutionally-protected attorney-client relationship.

Regarding the second factor, Murff had no alternative means to exercise his constitutional right. Confidential communications are essential to building

[4]Many federal and state correctional institutions make phone calls to certify that an attorney has sent legal mail to a specific inmate. Others request confirmation via emails sent to attorneys with a copy of the postmarked and delivered mail envelope attached.

strong and trusting attorney-client relationships and to ensuring the attorney obtains the information necessary to represent the client effectively.

a. The confidentiality of attorney-client correspondence was put at added risk by the mere act of copying legal mail using a digital copier.

While deciding that Murff "has not shown any policy-caused intrusion" into his attorney-client relationship, the Sixth Circuit overlooked that copying Murff's legal mail alone presented additional security risks to the confidentiality of his attorney-client correspondence. Appendix A-18.

Pursuant to Fed. R. Evid. 201(b)(2), Murff asks this court to take judicial notice of the following adjudicative facts:

> Today's generation of networked multifunction devices — known as "digital copiers" — are "smart" machines that . . . can do everything from copying, printing, scanning, faxing to emailing documents. Digital copiers require hard disk drives to manage incoming jobs and workloads, and to increase the speed of production.
>
> The hard drive in a digital copier stores data about the documents it copies, prints, scans, faxes or emails. If [the user does not] take steps to protect that data, it can be stolen from the hard drive, either by remote access or by extracting the data once the drive has been removed.

Federal Trade Commission, *Digital Copier Data Security: A Guide for Businesses,* (July 2017).[5]

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[5]https://www.ftc.gov/business-guidance/resources/digital-copier-data-security-guide-businesses (last visited 10/12/2026)

Rule 201(b)(2) provides that a court may judicially notice a fact that is "not subject to reasonable dispute" because it "can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned."

This court should take judicial notice of this article because it was posted on the Federal Trade Commission's website. *Broom v. Shoop*, 963 F.3d 500, 508 (6th Cir. 2020) citing *United States v. Garcia,* 855 F.3d 615, 621 (4th Cir. 2017) ("This court and numerous others routinely take judicial notice of information contained on state and federal government websites.")

Further, under Fed. R. Evid. 201(d), judicial notice may be taken at any stage of the proceeding, including on appeal. *Abu-Joudeh v Schneider,* 954 F.3d 842, 848 (6th Cir. 2020).

Notice of these adjudicative facts is relevant to demonstrate that like other office information technology, data stored on digital copiers is vulnerable to theft. They have usage logs that hackers and anyone maintaining the devices can access in addition to storing copies of data. Therefore, absent certain precautionary measures, the duplication of legal mail, even if it was promptly sealed in an envelope, did not ensure the confidentiality of Murff's attorney-client correspondence.

b. The confidentiality of attorney-client correspondence is further jeopardized by keeping the originals in the inmates' property storage, given the reported frequency with which jails and prisons misplace their property.

Inmate complaints that jail and prison staff lose their property are commonplace. And this is especially the case when inmates are transferred to other facilities. See e.g., *Phillips v Bonner,* ___F Supp 3d___; 2021 U.S. Dist. LEXIS 87837, at *19 (WD Tenn, May 7, 2021) (Plaintiff-inmate alleged his property went missing when he was transferred from a county jail to the Tennessee Department of Correction.); *Webb v Burkhart,* ___F Supp 3d___; 2019 U.S. Dist. LEXIS 36404, at *12-13 (WD Ky, Mar. 6, 2019) (Plaintiff-inmate alleged he lost personal property after transfer from one detention center to another.)

Murff's evidentiary hearing testimony is illustrative of one such example where the jail allegedly "misplaced" his property: Murff stated that on March 11, 2023, a deputy brought him a $150.00 money order that had been sent to him. He endorsed the money order, and later that day, he checked his account, and his balance had increased by $150.00. Appendix B; Transcript, RE 966, Page ID # 6100-6101.

However, on March 31, 2023, he learned that Aaron Hillman had voided this money order, thereby reducing his balance by $150.00. Notwithstanding

Murff's evidence of the transaction as documented in Defense Exhibit 2, the jail staff told Murff that the money order had been "misplaced" and that he should contact the sender to cancel it, if they could. Appendix B; Transcript, RE 966, Page ID # 6101-6102.

Murff further stated the jail had not returned the money to his account as of May 8, 2023, the day he testified. Additionally, the jail had not provided him with any supplemental account statements since March, in spite of his requests. Appendix B; Transcript, RE 966, Page ID # 6102-6103.

The negligent misplacement or intentional stealing of Murff's property is regrettably similar to complaints that inmates frequently assert. At bottom, the confidentiality of attorney-client correspondence is further jeopardized by keeping the originals in the inmates' property storage, considering the reported frequency with which jails and prisons misplace their property. The jail's policy not only undermines the trust that is foundational to the attorney-client relationship but also raises significant concerns regarding the protection of confidential information.

3. Accommodation of the constitutional right had virtually no impact on guards and other inmates, as well as prison resources.

The response is either nonexistent or, at most, minimal with regard to the third factor, which is "the impact that accommodation of the constitutional right will have on guards and other inmates and on the allocation of prison resources."

In terms of the jail's human resource allocation, the time spent copying legal mail is frequently significantly greater than the time spent calling an attorney to confirm the legitimacy of a legal mailing. This is particularly true when the legal mail contains extensive documents like medical records, transcripts, *etc*. Furthermore, Murff's retention of the originals of his incoming legal correspondence would have eliminated the jail's need to waste resources on copying expenses.

4. The existence of ready alternatives evidences the unreasonableness of the jail's legal mail policy.

"The absence of ready alternatives as evidence of the reasonableness of a prison regulation" is the subject of the fourth factor. Here, the incomprehensible testimony of Lieutenant Ryan McConnachie, the jail administrator for Sanilac County Sheriff's Office, must be recalled.

Lieutenant McConnachie testified that there was no Michigan Bar Directory at the jail and that he had only recently discovered that it was available online. As a result, the jail did not check the directory to confirm a

purported legal mailing. The lieutenant also stated that he believed there is a field test available for the detection of Suboxone. Appendix B**;** Transcript, RE 966, Page ID # 6118-6119, 6122.

Though they were not pursued, there were ready alternatives to the jail's overbroad incoming legal mail policy. The Sanilac County Jail could have identified and contacted the attorneys directly using its attorneys' portal and/or the State Bar of Michigan directory to verify a mailing. The jail could have also used preliminary field tests to ascertain whether a questioned legal mail contained Suboxone.

The aforementioned discussion clearly shows that the Sanilac County Jail's incoming legal mail policy failed to satisfy each of the four factors set forth in *Turner* for determining a regulation's reasonableness. As a result, the policy is unquestionably unconstitutional. 482 U.S. at 89-90.

B. The Sanilac County Jail's Incoming Legal Mail Policy Substantially Prejudiced Murff, in Violation of His Federal Regulatory Rights.

Title 28 of the Code of Federal Regulations, Section 500.1(c), defines an inmate as follows:

> *Inmate means all persons in the custody of* the Federal Bureau of Prisons or *Bureau contract facilities*, *including persons charged with* or convicted of *offenses against the United States*; D.C. Code felony offenders; *and persons held as* witnesses, *detainees*, or otherwise. [italics supplied]

1. Notwithstanding his placement in a Bureau of Prisons Contract facility, Murff remained a federal inmate as defined by 28 C.F.R. § 500.1(c).

Thus, Murff was a federal inmate under section 500.1(c) because he was charged with crimes against the United States and was held as a pretrial detainee in the custody of the United States Marshal.

According to the Marshal Office's website,[6] "In order to house these pre-sentenced prisoners, the U.S. Marshals Service contracts with approximately 1,200 state and local governments to rent jail space. Seventy-five percent of the prisoners in U.S. Marshals custody are detained in state, local and private facilities . . . " *See, e.g.*, *Broom v. Shoop*, 963 F.3d at 508 citing *United States v. Garcia,* 855 F.3d at 621 ("This court and numerous others routinely take judicial notice of information contained on state and federal government websites.")

However, merely because the Marshals Service is authorized to contract for detention space for its inmates who are not housed in federal facilities, its contractual relationship with the Sanilac County Jail did not nullify Murff's status as a federal inmate.

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[6]https://www.usmarshals.gov/what-we-do/prisoners/operation/custody-detention (last visited 10/17/2026)

2. 28 C.F.R. § 540.18 prohibits copying inmates' incoming legal mail.

Section 540.18 provides as follows with respect to the handling of Special/Legal mail:

> (a) The Warden shall open incoming special mail only in the presence of the inmate for inspection for physical contraband and the qualification of any enclosures as special mail. **The correspondence may not be** read or **copied if the sender is adequately identified on the envelope,** and the front of the envelope is marked "Special Mail - Open only in the presence of the inmate." [emphasis supplied]

The policy at Sanilac County Jail, which required copying and storing the originals of incoming legal mail for federal inmates, violated 28 C.F.R. § 540.18. This regulation, however, carried the full force and effect of law and was binding on the Sanilac County Jail.

See, *Moody v. United States,* 774 F.2d 150, 156 (6th Cir. 1985) (regulations published in the Code of Federal Regulations "have the force and effect of law, and all persons affected thereby are charged with legal notice of their provisions."); *First Tennessee Bank Nat. Ass'n v. Barreto,* 268 F.3d 319, 329 (6th Cir. 2001); *Nationwide Bldg. Maint., Inc. v. Reich,* 14 F.3d 1102, 1105 (6th Cir.1994).

In rejecting both the constitutional and regulatory claims, the Sixth Circuit stated that "Murff testified about one incident where an officer

purportedly admitted to reading his legal mail. *Even if that would qualify as an intrusion, Murff did not allege that such violations were ongoing and does not complain of or attribute prejudice to that single incident on appeal.* His challenge is instead centered on the mail policy itself." [italics supplied] Appendix A-18, note 3.

To this, Murff points to the decision in *Mangiaracina v. Penzone,* where the court addressed an analogous claim that the prisoner had not alleged that officials who opened his mail had actually read it. 849 F.3d 1191, 1197 (9th Cir. 2017). The Ninth Circuit Court of Appeals stated:

> But indeed, how could he? If the practice of opening legal mail in the presence of the prisoner is designed to prevent correctional officers from reading it, then the natural corollary is that a prisoner whose mail is opened outside his presence **[or whose legal mail is copied on a device that may be subject to hacking and stored outside his presence]** has no way of knowing whether it had been (permissibly) inspected or (impermissibly) read. [emphasis supplied]

"It takes no stretch of imagination to see how an inmate would be reluctant to confide in his lawyer about the facts of the crime, perhaps other crimes, possible plea bargains, and the intimate details of his own life and his family members' lives, if he [questions whether] a guard is going to be privy to them, too." *Id.* at 909-11; *Guajardo-Palma v. Martinson*, 622 F.3d 801, 803 (7th Cir. 2010); *Merriweather v. Zamora,* 569 F.3d 307, 317-19 (6th Cir. 2009).

Moreover, because "[a] criminal defendant's ability to communicate candidly and confidentially with his lawyer is essential to his defense . . . the right to privately confer with counsel is nearly sacrosanct." *Nordstrom v. Ryan,* 762 F.3d 903, 910 (9th Cir. 2014).

RELIEF REQUESTED

For the foregoing reasons, the United States Supreme Court should grant Certiorari and then upon briefing and argument, reverse the Judgment of the Sixth Circuit, vacate the Petitioner's convictions and remand for a new trial.

Respectfully submitted,

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