

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN**

TAUREAN PROCH,

Case No. 2:22-cv-12141

Plaintiff,

District Judge Laurie J. Michelson
Magistrate Judge Patricia T. Morris

v.

SHERIFF MAT KING,
SERGEANT D. FLEMING,
LIEUTENANT R. OLEJNIK,
LIEUTENANT K. ADAMS,
SECURUS TECHNOLOGIES,
INC.

Defendants.

**SECURUS TECHNOLOGIES, INC.’S
MOTION FOR SUMMARY JUDGMENT**

NOW COMES Defendant, Securus Technologies, LLC (f/k/a Securus Technologies, Inc.) (“Securus”), and moves this Honorable Court for summary judgment pursuant to Fed. R. Civ. P. 56 for the reasons set forth in the brief in support of this Motion, which is hereby incorporated by reference.

Counsel for Securus and Plaintiff conferred on March 4, 2025 and March 6, 2025. Securus explained the nature of the motion and its legal basis and requested but did not obtain concurrence in the relief sought. Plaintiff advised that its legal basis for opposing the instant motion is, in part, set forth in Plaintiff’s opposition to

Securus' earlier motion to dismiss, as well as the objections filed with respect to Magistrate Judge Morris' report and recommendation on Securus' motion to dismiss. Plaintiff also indicated that he believes the record contains evidence supporting his positions.

WHEREFORE Defendant prays this Honorable Court GRANT its Motion to Dismiss Amended Complaint, together with such additional relief in Defendant's favor as this Court deems just and proper.

Dated: March 7, 2025

Respectfully submitted,

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Defendants.

**BRIEF IN SUPPORT OF SECURUS TECHNOLOGIES, INC.'S
MOTION FOR SUMMARY JUDGMENT**

QUESTIONS PRESENTED

1. Whether Securus is entitled to summary judgment on Plaintiff's conspiracy claims because there is no evidence in the record that Securus conspired to violate Plaintiff's constitutional rights?

Defendant answers: Yes

2. Whether Securus is entitled to summary judgment on Plaintiff's First Amendment claim because the Policy was rationally related to a legitimate penological interest?

Defendant answers: Yes

CONTROLLING/APPROPRIATE AUTHORITIES

Cases

Florence v. Bd. of Chosen Freeholders of Cnty. of Burlington, 566 U.S. 318 (2012)

Frasier v. Evans, 992 F.3d 1003 (10th Cir. 2021)

Gerber v. Herskovitz, 14 F.4th 500 (6th Cir. 2021)

Goff v. Monroe, 2024 WL 340808 (E.D. Mich. Jan. 30, 2024)

Overton v. Bazetta, 539 U.S. 126 (2003)

Simpson v. Cnty. of Cape Girardeau, Missouri, 879 F.3d 273 (8th Cir. 2018)

Turner v. Safley, 482 U.S. 78 (1987)

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BRIEF IN SUPPORT OF SECURUS' MOTION TO DISMISS
AMENDED COMPLAINT

In this case, Plaintiff seeks to hold a government contractor liable for the government's policy—even though the government contractor had no role in enacting, implementing, or enforcing the challenged policy—simply because the government contractor entered into a contract with the government years before the policy was enacted. As set forth herein, Plaintiff's theory is without merit and Securus is entitled to summary judgment on each of the claims against it.

Plaintiff takes issue with St. Clair County Jail's (the "Jail") postcard-only policy enacted in August 2022, which limits general incoming mail to postcards (the "Policy"). Plaintiff claims that this Policy violates his due process and First Amendment rights. But he does not stop there.

Plaintiff asserts that Securus conspired with St. Clair County (the "County") to violate his constitutional rights. However, there is not an iota of evidence in the record supporting his assertion of conspiracy. So Plaintiff relies on a contract between Securus and the County under which Securus agreed to provide tablet services that can be utilized by individuals incarcerated at the Jail to communicate with their loved ones, among many other multimedia features. Under this contract, Securus agreed to pay commissions to the County, returning a portion of the money spent on Securus' services to the County.

The problem with Plaintiff's reliance on the contract is that it was entered into **two years before** the Policy was implemented. And in those two years, incarcerated individuals were not limited to postcards only for incoming mail. There is no evidence that in those two years, Securus entered into another agreement—implicit, explicit, or otherwise—to limit incoming mail. There is no evidence that Securus discussed the need to change the mail policy with the County, suggested to the County that it should change the mail policy, or had any role with respect to the changing of the mail policy. Instead, the evidence shows that Securus, as the Jail policymakers put it, “had nothing to do with the mail policy, the new mail policy.”

Rather, the County implemented the policy to further two legitimate penological interests—institutional security and institutional efficiency. The evidence shows that the Jail was concerned about contraband being mailed to the Jail, the Jail researched various solutions to curb the introduction of contraband via mail, and the Jail ultimately determined that the postcard-only policy would best serve the Jail's goal of institutional security and efficiency.

Consequently, this Court should grant summary judgment on Plaintiff's claims against Securus.

STATEMENT OF FACTS

I. Plaintiff Taureen Proch

Plaintiff was incarcerated at the Jail from May 31, 2022 to January 15, 2023.

See ECF No. 82, PageID.754 ¶ 10. While incarcerated, Plaintiff used multiple means of communication provided by Securus and also used other digital media available to incarcerated individuals.

Specifically, both prior to and after the enactment of the Policy on August 1, 2022, *see* Exhibit 1, Plaintiff used Securus services to send messages, make phone calls, rent movies, purchase games, and conduct video visits. *See* Exhibit 2; Exhibit 3 at 72:1-3 (Plaintiff acknowledging his use of video visits). During his seven months in incarceration, Plaintiff made 850 phone calls totaling just under 5,000 minutes, used the Securus tablet to receive 17 videos and 72 photographs, and sent and received numerous lengthy emails. *See* ECF No. 38-3, PageID.326 ¶ 9; *see also* Exhibit 3 at 57:1-16 (Plaintiff testifying that he used the tablet to send e-messages on a fairly regular basis).

II. Securus' relationship with the County

In late 2016, the County completed a Request for Information for phone and video services to be offered at the Jail. *See* Exhibit 4 at 3. The County then issued a Request for Proposal, and ultimately chose Securus as the vendor for phone and video services because it was “the best proposal that will benefit the County as a whole” and because the “rates to be charged to the family and friends of the jail inmates are lowest among all the proposals received.” *See* Exhibit 5 at 3.

Securus and the County then entered into a contract in September 2017, under which Securus agreed to provide the Jail with phone and video visit services. *See* Exhibit 5 at 8. That contract was amended in 2020 (the “2020 Agreement”). *See* Exhibit 6 at 4. Under this amendment, Securus provided “free basic community tablets” and offered “personal rental tablets with premium content.” *Id.* at 1. Incarcerated individuals can purchase premium content such as songs, games, movies, and television episodes. *Id.* The tablet also had numerous applications, including phone, eMessaging, eCards, VideoGrams, Music, Job Search, Podcasts, Ashland University, FM Radio, and Law Library. *Id.* at 1-2. The eMessaging application “allows for two-way electronic communication between friends and family and an inmate.” *Id.* at 2.

To communicate electronically, an incarcerated individual purchases an “eMessaging ‘stamp’” which can be used to send text messages, photographs, eCards, and VideoGrams. *Id.* The cost of the stamp is \$0.50 per stamp. *Id.*¹ at 3. Securus pays the County a 20% commission on each redeemed stamp. *Id.* The revenue generated from these commissions is used for the betterment of incarcerated individuals. *See* Exhibit 9 (“the funds in this [commissary fund] account are generated from commissions on inmate purchases; and ... this Fund will be limited

¹ By comparison, in 2022, the price of postage stamps was 60 cents for a one-ounce letter and 44 cents for a domestic postcard. *See* Exhibit 7. And in 2023, the price increased to 63 cents and 48 cents, respectively. *See* Exhibit 8.

to uses benefitting the entire general inmate population; and” ... “purchases made from this fund for the betterment of all inmates will be approved by the Board of Commissioners.”).

The 2020 Agreement is the sole basis for Plaintiff’s assertion that Securus conspired with the County Defendants² to violate his constitutional rights.

III. The Policy, the reason for its need, the research, and the effect of its implementation

Two years after Securus and the County entered into the 2020 Agreement, the Jail implemented the Policy on August 1, 2020. *See* Exhibit 1. The Policy did not affect the existing outgoing mail procedure. Under the Policy, “[a]ny general mail incoming to the facility must be in the form of postcards only.” Exhibit 1 at 2. The Policy does not limit other incoming mail, such as legal mail, to postcards. *Id.* at 1-2 (defining Special Correspondence to include, among other things, legal mail, and stating “Special Correspondence is excluded from the postcard-only rule”). Nor does the Policy limit the number of postcards that an individual may receive. The Policy also permits incarcerated individuals to receive paid subscriptions, such as newspapers. *Id.* at 3.

The Policy was enacted for two reasons—for institutional security and efficiency, *i.e.*, to prevent the introduction of contraband through mail and to ensure

² The County Defendants are Sheriff Mat King, Lieutenant Richard Olejnik, Lieutenant Kyle Adams, and St. Clair County. *See* ECF No. 82, PageID.756 ¶ 16.

that the incoming mail is processed efficiently. *See* Exhibit 10 at 89:6-17 (“the main factor was the contraband that was being sent into jail and the safety and security that it posed to both staff and inmates”); *id.* at 88:1-10 (“So the mail policy was revised due to an ongoing issue with suspected illegal substances, narcotics being mailed into the facility, but volume continued to increase regarding the substances that were being either suspected or found within the mail, which prompted a review and change of policy.”); *id.* at 134:4-13; ECF No.; 38-3, PageID.325-26 ¶ 7 (“The main goals for the postcard only policy for incoming general mail was to reduce the risk of contraband entering the jail and to reduce the time necessary for Deputies to process incoming mail.”).

Specifically, prior to the enactment of the Policy, the Jail had numerous incidents of narcotics coming into the jail, such as suboxone being hidden in the fold of envelopes or elsewhere in the mail. *See* Exhibit 11 at 3-4. Exhibit 12; Exhibit 13. Outside of finding narcotics in mail, the Jail was aware that incarcerated individuals were receiving contraband in mail. Indeed, a year before passing the Policy, the Jail was discussing the “ongoing allegations recently that more and more drugs are entering the facility through the mail,” some in the form of “small paper squares pictured below” which “tested positive for synthetic cannabinoids.” *See* Exhibit 14 at 1-2; *see also* Exhibit 15 (incarcerated individual informing a Jail employee that he “got Fentanyl in here every day during my last stay . . . 4 or 5 hits a day in my

mail.”); Exhibit 16 (multiple instances of Jail staff being notified about narcotics in mail); Exhibit 17 at 72:17-74:6 (“we have received mail that included illicit substance like Suboxone strips . . .”).

Given the issue of contraband coming through mail, the deputies and other staff that handled the mail at the Jail approached the Lieutenants, the Lieutenants researched potential solutions and determined that the postcard policy was the best policy, and the Lieutenants drafted the Policy, presented it to the Jail Administrator, and the Sheriff ultimately adopted it. *See* Exhibit 10 at 285:1-9.³

More precisely, “several people that handled mail,” such as relief officers and deputies, had “identified issues with the mail and had suggested that [the two Lieutenants] look into changes.” *See* Exhibit 10 at 90:3-19; 92:10-14. And the problem these employees identified was that there “were substances attached to various parts of the envelope and or paperwork within the envelope that was soaked in an unknown substance.” *Id.* at 92:15-21. Once it was brought to the Lieutenants’ attention, “Lieutenant Adams and [Olejnuk] researched what the problem was and what potential solution would fix our problem.” *Id.* at 93:9-16.

The Lieutenants determined three separate potential solutions that would curb contraband coming in through mail. The first solution was the postcard-only

³ This is a typical process for policy changes at the Jail. *See* Exhibit 10 at 64:5-20 (describing the process of changing policy as identifying the need for policy change, doing research, revising the policy, and submitting for review to the Administrator).

solution. Exhibit 10 at 94:4-12. The second solution was “a device that would scan each piece of paper within the mail, which would detect if there was some type of narcotic or substance attached to the mail.” *Id.*; *see also* Exhibit 14 at 1 (discussing the “mail scanner machine”). And the third solution was “a scanning outlet where mail would be sent to an offsite facility and the mail would be scanned by a third party and then delivered to the inmate [electronically].” Exhibit 10 at 94:13-21. Of the three solutions, the two Lieutenants chose the postcard-only solution because it “was the most practical policy . . . that allowed [the Jail] to have a safe environment for both staff and inmates without increasing things such as workload and or cost to [the Jail].” *Id.* at 99:15-100:1.

The second solution was rejected because of costs, inefficiencies, the risk of misplacement, and danger to the staff. Specifically, this solution required paying “upwards of \$150,000” for the device and would “dramatically slow[] down” the processing time for mail because prior to scanning, the Jail staff would be required to “open an envelope, remove anything that was affixed to any of the paperwork, placed on each side of the scanning device and scan.” Exhibit 10 at 100:2-102:4. This “could take several minutes” for “one piece of mail.” *Id.* at 101:17-20. By contrast, the postcard would be processed in “a matter of seconds.” *Id.* at 101:4-20. Additionally, because this solution required opening envelopes and taking out the contents, there was a chance that the contents would be misplaced. *Id.* at 103:4-20.

Moreover, because this solution required the Jail staff to interact with potentially contaminated mail, the Jail staff health was at risk. *Id.* at 104:18-105:12; *id.* at 106:3-16. Indeed, in a neighboring county, two officers had to use Narcan because they were exposed to fentanyl while treating an incarcerated individual who had overdosed on fentanyl. *Id.* at 106:3-107:3; *see also* Exhibit 18 at 2.

The third solution was rejected because of costs and technological difficulty. To implement this solution, the Jail would have incurred additional costs because the third-party processor would “charge[] the jail a fee for the processing of th[e] mail.” Exhibit 10 at 119:17-120:8. And, at the time, the Jail did not have the technological ability to deliver the scanned mail in “an electronic fashion to an inmate.” *Id.* Additionally, if the Jail implemented the solution, there would have been families that “would send mail to” the Jail, resulting in inefficiencies because the Jail would then have to deal with re-routing the mail that should have been sent directly to the third-party mail vendor. *Id.* at 122:20-123:10.

Given the pitfalls of the latter two solutions, the Lieutenants chose the postcard-only solution because it “was the best choice.” Exhibit 10 at 125:17-126:2; 127:15-18. The Lieutenants “drafted the policy change to submit for administrative approval.” *Id.* at 86:4-21; *see also id.* at 85:14-16 (“both Lieutenant Adams and I worked on the policy change.”); Exhibit 17 at 37:15-20 (“I worked with my partner, Lieutenant Olejnik, to adjust our then current policy to align with, you know, the

goal of switching to the general mail postcard only directive.”). Next, the Lieutenants spoke with the Jail Administrator. *Id.* 96:6-97:2. The Sheriff ultimately approved the policy, later testifying that he did so because “[a]ny time we can do something to lessen the amount of contraband coming into our jail, simultaneously cutting back on the amount of contraband coming into our jail, simultaneously cutting back on the amount of physical work with our limited staff, as long as it’s not violating anybody’s rights, I’m all for it.” *See* Exhibit 19 at 46:25-47:12. Soon after the Policy was enacted, the Jail reaffirmed the reason for passing the policy, noting in an August 16, 2022 email: “[t]he purpose of the postcards is to prevent contraband from entering the jail, not prevent families from communicating with the incarcerated.” Exhibit 20.

And the Policy was effective. Since the Policy was enacted, the Jail has found no contraband in mail. *See* Exhibit 11 at 5 (“No documented incidents of contraband arriving in mail after the implementation of Mail Policy.”). Moreover, the Policy has also reduced the time required for the Jail staff to process incoming mail. *See id.* at 5-6.

IV. Securus had no role in the Policy

As evidenced by the process that led to the Policy, Securus played no role in the County’s decision to enact the Policy. Indeed, there is no evidence that Securus and the County ever discussed the need to limit incoming mail, let alone limit mail

to postcards-only; nor is there any evidence that Securus and the County agreed, expressly or tacitly, to limit incoming mail. To the contrary, discovery has only confirmed that “Securus had nothing to do with the mail policy.” *See* Exhibit 17 at 118:25-119:3.

The Jail has two Lieutenants: Kyle Adams and Richard Olejnik. *See id.* at 12:12-19; Exhibit 10 at 37:1-7. The Lieutenants share responsibility and oversee the daily operations of the Jail, including the safety and security of incarcerated people and staff. *See* Exhibit 10 at 38:13-39:2; Exhibit 17 at 14:3-9. One of the Lieutenants’ responsibilities is to “create drafts of policies that then get reviewed by administration for approval.” *See* Exhibit 10 at 13:18-22; *id.* at 30:11-14. The Lieutenants are also the point of contact with Securus and ensure that “Securus is providing what was agreed upon” in the contract. *See* Exhibit 10 at 56:1-15; 59:20-60:6; Exhibit 17 at 16:5-9. And because the Lieutenants are not responsible for the budget, “revenue is not necessarily [their] main concern” in considering possible solutions to a problem. Exhibit 10 at 71:11-17.

The two Lieutenants uniformly testified that Securus had no role in the Policy. Lieutenant Olejnik testified that Securus (1) **did not** tell, imply or encourage the County to pass the Policy, (2) **did not** discuss that passing the Policy would result in additional revenue for both Securus and the County, (3) **did not** create, help create, or discuss the creation of the procedures underlying the Policy, (4) **does not** play any

role in the enforcement of the Policy, and (5) **did nothing** to encourage the enforcement of the Policy. *See* Exhibit 10 at 285:1-287:12. Similarly, Lieutenant Adams testified that Securus (1) **did not** tell, suggest, or encourage the County to enact the Policy, (2) **did not** have any input on the content of the Policy, and (3) **plays no role** in implementing or enforcing the Policy. Exhibit 17 at 118:1-119:2.

In addition to there being no direct evidence that Securus and the County conspired to violate Plaintiff's constitutional rights by passing the Policy, there is also no circumstantial evidence to support the existence of a conspiracy. The crux of Plaintiff's claim is that Securus and the County Defendants conspired to enact the Policy to make more money. *See, e.g.*, ECF No. 93, PageID 964, 967 ("what matters is that the Mail Policy was an act take in furtherance of the shared 'general conspiratorial objective' of making profit."); ECF No. 89, PageID.892 ¶ 9 ("In short, Securus conspired with St. Clair County to violate the First Amendment and Due Process rights of Plaintiff . . . by enacting the mail policy to extract as much profit as possible out of incarcerated people and their families."); *id.*, PageID.929, 934 ¶¶ 153, 177.

If there was a conspiracy, the County and Securus' financial data would reflect an increase in revenue after the Policy was enacted. But that is not what happened.

For Securus, after the enactment of the Policy, the average monthly revenue decreased by 10%. *See* Exhibit 21 ¶ 21. And looking through the lens of monthly

revenue per incarcerated individual, Securus’ revenue decreased by 12%. *Id.* Indeed, for each individual communication product offered, Securus’ revenue decreased. For calls, Securus’ monthly revenue decreased by 13% overall and 15% per incarcerated individual. *Id.* ¶ 25. For video visits, Securus’ monthly revenue decreased by 6% and 8% per incarcerated individual. *Id.* ¶ 26. For eMessaging, Securus’ monthly revenue decreased by 6% and 7% per incarcerated individual. *Id.* ¶ 27. Similarly, with respect to the County, after the enactment of the Policy, the average monthly commissions that the County received decreased by 13%. *Id.* ¶ 23. And the monthly commissions per incarcerated individual decreased by 15%. In other words, neither the County nor Securus derived any financial benefit from the implementation of the Policy.

V. Plaintiff’s claims against Securus

Initially, Plaintiff asserted five claims against Securus in his Amended Complaint. ECF No. 89, PageID. 929-35. Judge Morris struck Plaintiff’s claims under the Michigan Constitution (Counts V & VI) as futile. ECF No. 81, PageID. 749. Consequently, three claims remained pending against Securus—Count I under the First Amendment, Count II under the Fourteenth Amendment Due Process, and Count III as a conspiracy claim. ECF No. 89, PageID. 929-32. However, as Judge Morris explained in recommending dismissal, “Counts I and II allege that the [County] Defendants directly violated [Plaintiff’s] rights under the First and Fourteenth Amendments and that Securus ‘conspired’ in these violations” and

“Count III simply reiterates that [Plaintiff’s] claims against Securus are premised on a civil conspiracy.” ECF No. 105, PageID.1037 n.4. Plaintiff did not challenge this portion of Judge Morris’ decision and her accompanying recommendation that Count III be dismissed. *See* ECF No. 108. Therefore, with no objection, Plaintiff’s Count III against Securus is dismissed.

In sum, Plaintiff’s “only remaining claims against Securus are that the company (1) conspired to violate [his] right to free speech and (2) conspired to deprive [him] of his rights to due process.” ECF No. 105, PageID.1037 n.4.

ARGUMENT

I. There is no evidence that Securus and the County Defendants conspired to violate Plaintiff’s constitutional rights

Plaintiff’s claims that Securus and the County Defendants conspired to violate his First Amendment and Due Process rights by implementing and enforcing the Policy are manifestly without merit.

To successfully assert a § 1983 conspiracy claim, Plaintiff must prove “(1) a single plan existed, (2) the conspirators shared a conspiratorial objective to deprive the plaintiffs of their constitutional rights, and (3) an overt act was committed.” *See Revis v. Meldrum*, 489 F.3d 273, 290 (6th Cir. 2007). “In the § 1983 context, that means the agreement must relate to ‘some deprivation of a federally protected right.’” *See Frasier v. Evans*, 992 F.3d 1003, 1025 (10th Cir. 2021). That is, Plaintiff must show “a state official and private individual(s) reached an understanding to

deprive the plaintiff of his rights.” *See Geiling v. Wirt Fin. Servs.*, 2014 WL 8473822, at *66 (E.D. Mich. Dec. 31, 2014) (quoting *Fries v. Helsper*, 146 F.3d 452, 457 (7th Cir. 1998)); *see also Bailey v. Bd. Of Cnty. Comm’rs of Alachua Cnty.*, 956 F.2d 1112, 1122 (11th Cir. 1992) (“To prove a 42 U.S.C. § 1983 conspiracy, a plaintiff must show that the parties reached an understanding to deny the plaintiff his or her rights [and] prove an actionable wrong to support the conspiracy.”) (internal quotation omitted).

Here, there is no evidence—testimonial, documentary or otherwise—that Securus and the County Defendants had an agreement to deprive Plaintiff of his constitutional rights. Rather, the record shows that the County implemented the allegedly unconstitutional Policy independent of Securus after it determined there was an issue with contraband entering the Jail. *See supra* Statement of Material Facts (“SOF”) Section III. Indeed, the individuals responsible for researching, drafting, and enforcing the Policy—*i.e.*, the Lieutenants—uniformly testified that Securus played no role in its enactment or enforcement. *Id.*

Nor does circumstantial evidence show that there was a tacit agreement between Defendants. *See Bazzi v. City of Dearborn*, 658 F.3d 598, 602-06 (6th Cir. 2011) (“Express agreement among all the conspirators is not necessary to find the existence of a civil conspiracy” and “circumstantial evidence may provide adequate proof of conspiracy.”). Plaintiff claims that Defendants had a shared goal to make

more money under the 2020 Agreement and therefore the County enacted the Policy. ECF No. 89, PageID.891 ¶¶ 4-6; *id.*, PageID.899 ¶ 42. Assuming that a shared conspiratorial objective of making money is actionable (it is not; *see infra*), the circumstantial evidence refutes any claim that the Policy was enacted because Defendants wanted to make more money under the 2020 Agreement.

It would make no sense to suggest that a tacit agreement existed between Securus and the County Defendants to violate Plaintiff's First Amendment and due process rights, given that the Policy was enacted **two years** after the 2020 Agreement. Indeed, Plaintiff does not explain, nor can he, why it would take two full years to engage in an overt act (enacting the Policy) in furtherance of a conspiracy to make more money under the 2020 Agreement. Moreover, if the Policy was enacted for Defendants to make more money, the financial data should reflect that Defendants made substantially more money after the Policy. But the data shows that Defendants did not financially benefit from the Policy. *See supra* SOF Section IV. Indeed, both Securus and the County saw a **decrease** in revenue from Securus' services after the Policy was enacted. *Id.* If, as Plaintiff alleges, there was some correlation between the Policy and the usage rates of Securus' products, then one should see increased usage rates—not the other way around.

But even if the Policy was enacted to further the goal of making more money, that is not actionable under § 1983. Not all agreements are actionable simply because

they involve two parties working towards a shared objective. Rather, § 1983 requires a plaintiff to show that the conspirators shared a “conspiratorial objective to deprive a plaintiff of his **constitutional or federal statutory rights.**” *Goff v. Monroe*, 2024 WL 340808, at *6 (E.D. Mich. Jan. 30, 2024); *Gerber v. Herskovitz*, 14 F.4th 500, 511 (6th Cir. 2021) (same). “Therefore, proof that defendants formed an agreement or conspired to engage in lawful activities . . . would be inadequate to support a § 1983 conspiracy.” *Frasier v. Evans*, 992 F.3d 1003, 1025 (10th Cir. 2021) (reversing denial of police defendants’ summary judgment motion in case involving First Amendment conspiracy claim and Fourth Amendment conspiracy claim); see also *David v. Midway City*, 2021 WL 6930939, at *13-14 (D. Utah Dec. 14, 2021) (granting summary judgment in favor of municipality on § 1983 conspiracy claims where underlying conspiracy alleged did not involve any illegal agreement). And here, there is nothing suggesting that the 2020 Agreement was unlawful.

Finally, Judge Morris, in her report and recommendation, suggested that § 1983 encompasses an “encouragement” theory, whereby a party can be liable for encouraging or telling others to commit a constitutional violation. *See* ECF No. 105, PageID.1048-49. Assuming such a theory is available under § 1983, Plaintiff cannot satisfy it. Here, the Lieutenants, who communicate with Securus, uniformly testified that Securus did not suggest, ask, encourage, discuss, imply, create, or help create the Policy. *See supra* SOF Section IV. At bottom, Securus “had nothing to do with

the mail policy,” Exhibit 17 at 118:25-119:3, and therefore Securus is entitled to summary judgment in its favor on each of Plaintiff’s conspiracy claims.

II. Plaintiff’s First Amendment claim fails because the Policy satisfies the Turner factors

Even if this Court finds there is a conspiracy (there is not), Plaintiff’s First Amendment conspiracy claim independently fails because the Policy does not violate the First Amendment. Plaintiff’s claim that limiting incoming general mail to postcards only violates his First Amendment rights has been adjudicated and rejected by multiple courts throughout the country. *See, e.g., Simpson v. Cnty. of Cape Girardeau, Missouri*, 879 F.3d 273, 278–82 (8th Cir. 2018) (applying the Turner test and holding that defendant’s “postcard-only incoming-mail policy is constitutional”); *Althouse v. Palm Beach Cnty. Sheriff’s Off.*, 2013 WL 536072, at *4–7 (S.D. Fla. Feb. 12, 2013) (same); *Human Rts. Def. Ctr. v. Union Cnty., Ark.*, 111 F.4th 931 (8th Cir. 2024) (upholding the constitutionality of the postcard-only policy because it “was reasonably related to legitimate penological objectives and consistent with the First Amendment.”); *Besselaar v. Stallworth*, 2021 WL 4891808, at *4 (S.D. Ala. Aug. 19, 2021) (upholding postcard-only policy); *Covell v. Arpaio*, 662 F. Supp. 2d 1146, 1152–55 (D. Ariz. 2009) (same); *Profit v. Rabon*, 2021 WL 606260, at *1 (N.D. Fla. Feb. 3, 2021) (“Defendants did not violate the First Amendment” by impeding “Plaintiff’s receipt of a mail-order book catalog based on a jail policy that limits all incoming mail for inmates (except legal mail and money

orders) to a postcard format”); *Smith v. Washoe Cnty.*, 2023 WL 9233853, at *5-9 (D. Nev. June 15, 2023) (upholding the postcard-only policy because it “was reasonably related to the legitimate penological interest of safety and security”). This Court should do the same.

It is well settled that “[a]n inmate does not retain rights inconsistent with proper incarceration.” *Overton v. Bazetta*, 539 U.S. 126, 131 (2003); *Turner v. Safley*, 482 U.S. 78, 95 (1987). The courts “must accord substantial deference to the professional judgment of prison administrators, who bear a significant responsibility for defining the legitimate goals of a corrections system and for determining the most appropriate means to accomplish them.” *Overton*, 539 U.S. at 132. This is because courts are “ill equipped” to resolve the “complex and intractable” problems of “prison administration and reform.” *Turner*, 482 U.S. at 84-85. In applying this deference, the Supreme Court “has repeatedly recognized the need for major restrictions on a prisoner’s rights,” including “where First Amendment values [are] implicated.” *Jones v. N.C. Prisoners’ Labor Union, Inc.*, 433 U.S. 119, 129-30 (1977).

In reviewing the constitutionality of a prison rule that “impinges” on an incarcerated individual’s constitutional right, this Court must apply the *Turner* Test. *See Overton*, 539 U.S. at 132. Under this test, a court considers four factors:

“[1] whether the regulation has a valid rational connection to a legitimate governmental interest; [2] whether alternative means are

open to inmates to exercise the asserted right; [3] what impact an accommodation of the right would have on guards and inmates and prison resources; and [4] whether there are ready alternatives to the regulation.

Id. (internal quotations omitted). The Policy easily passes constitutional muster because (1) there is a rational connection between the Policy and the County's interest in security and efficiency; (2) Plaintiff had numerous alternatives to communicate and, in fact, repeatedly used those alternatives; (3) requiring the Jail to abandon the Policy would force the Jail to dedicate more resources to searching mail and detract from other duties, and would increase the risk that contraband would reach incarcerated individuals; and (4) there are no obvious alternatives that could accommodate the asserted right without imposing more than a *de minimis* cost.

A. The Policy is rationally related to a legitimate penological interest

As to the **first *Turner* factor**, the Policy is “rationally related to both security and efficiency,” and therefore “weighs in favor” of constitutionality. *Simpson*, 879 F.3d at 280. The County enacted the Policy “to reduce the risk of contraband entering the jail and to reduce the time necessary for Deputies to process incoming mail.” *See* ECF No. 38-3, PageID.325-26 ¶ 7; *see also* SOF Section III. That is, the Policy was enacted to further institutional security and institutional efficiency, both of which are legitimate governmental interests. *See Overton*, 539 U.S. at 133 (“[I]nternal security [is], perhaps the most legitimate of penological goals.”); *Simpson*, 879 F.3d at 279 (“Institutional efficiency is also a legitimate penological objective.”); *see also* ECF

No. 37, PageID.274-75 (“[T]here is little doubt that both [security and operational efficiency] are legitimate” penological interests).

“There is a common sense connection between the goal of reducing contraband in the jail and [the Jail’s] postcard-only incoming mail policy.” *Simpson*, 879 F.3d at 279. The Policy limits the opportunities to conceal contraband in mail by reducing the size of individual letters because it prevents senders from hiding small, dangerous items like narcotics between pages, within envelopes, or between folds of paper, which occurred at the Jail prior to the enactment of the Policy. *See* Exhibit 12; Exhibit 13 (“Suboxone strips in the flap of letter”); Exhibit 15; Exhibit 10 at 105:17-106:2 (“there were times narcotics were found within the folds of the envelope, the glue of the envelope behind any stamps or stickers of the envelope.”). This limitation also protects the Jail staff from harm by shielding them from being exposed to serious harm as a result of narcotics in mail. *See* Exhibit 18.

And while contraband was a real issue at the Jail, *Turner* does not require that the Jail only pass curative policies. Instead, the *Turner* test allows the jail to take preventative measures by implementing policies that will reduce any future harm. *See Thompson v. Campbell*, 81 F. App’x 563, 567 (6th Cir. 2003) (“the issue is not whether the prohibited materials have in fact caused problems or are even ‘likely’ to cause problems, but whether a reasonable official might think that the policy advances these interests”); *Simpson*, 879 F.3d at 280 (“[The Jail] may seek to prevent

harm that has yet to occur and, as a result, is not required to provide evidence of previous incidents of contraband reaching inmates through the mail in order to adopt a postcard-only incoming mail regulation.”); *see also Florence v. Bd. of Chosen Freeholders of Cnty. of Burlington*, 566 U.S. 318 (2012) (“correctional officials must be permitted to devise reasonable search policies to detect and deter the possession of contraband in their facilities.”). And while the Policy was effective in promoting security (*see* SOF Section III), the County need not “show that its interests will actually be furthered by the policy,” *Simpson*, 879 F.3d at 280; rather, it must only show that “there is a rational relationship between the policy and the objectives.” *Id.* Here, “it is a rational concept that limiting non-privileged mail to postcards could reduce the risk of contraband being introduced into the jail through the mail.” *Id.*

“There is also a common-sense connection between a postcard-only policy and promoting efficiency.” *Id.* “Removing the need to open envelopes and shuffle through pages of letters could reasonably allow officers to spend less time and energy checking the mail for contraband.” *Id.* “The more officers are tied up inspecting mail, the less time they have to supervise inmates and monitor other security threats.” ECF No. 37, PageID.278. And while the County “does not have to show that the efficiency was or will actually be furthered,” *Simpson*, 879 F.3d at 280, here the record reflects that the Policy has reduced the time to process mail. *See* ECF No. 38-3, PageID.325-26 ¶ 7; Exhibit 11 at 5-6.

B. The remaining Turner factors favor upholding the Policy

“The final three *Turner* factors should be balanced together.” *Bethel v. Jenkins*, 988 F.3d 931, 940-41 (6th Cir. 2021). Individually, and certainly on balance, these factors favor upholding the Policy. As to the **second *Turner* factor**, Plaintiff had multiple alternative means to exercise his right to communicate with his loved ones, including postcards, eMessaging, video visits, phone calls, and sending photos and videos. *See supra* SOF Section II; Exhibit 10 at 257:18-258:21; *id.* at 271:8-15; Exhibit 17 at 83:18-84:10. Indeed, Plaintiff used alternative means to communicate while incarcerated, including making 850 phone calls, receiving 17 videos and 72 photographs, using video visits, and exchanging lengthy emails. *See supra* SOF Section I. *See Simpson*, 879 So.3d at 280-81 (holding alternative means exists under the postcard-only policy because plaintiff “may still send [her loved one] as many postcards as she likes. She may also receive collect calls[.]”); *See Althouse*, 2013 WL 536072, at *5 n.7 (“Taking Plaintiff’s allegation as true, video visitation still provides an alternative means of communication” and “he can still send postcards to inmates, speak with them via telephone, or arrange for visitation). And the fact that some of these alternatives cost money is irrelevant because “alternatives need not be ideal . . . they need only be available.” *Overton*, 539 U.S. at 135 (rejecting plaintiff’s argument that “phone calls are brief and expensive.”).

Under the **third factor**, courts “give particular deference ‘to the informed discretion of corrections officials’ if the ‘accommodation of an asserted right will have a significant ‘ripple effect’ on fellow inmates or on prison staff.’” *Simpson*, 879 F.3d at 281 (quoting *Turner*, 482 U.S. at 90); *Firewalker-Fields v. Lee*, 58 F.4th 104, 115 (4th Cir. 2023) (the third factor “requires that [courts] give substantial deference to prison officials.”). And here, the Policy resulted in no more contraband or suspected contraband in mail. *See supra* SOF Section III. Therefore, “returning to a letter mail policy would increase the risk that contraband would reach the inmates, creating a greater threat to institutional security.” *Simpson*, 879 F.3d at 281. And given the fact that processing time is shorter under the new policy, requiring the Jail to abandon the postcard-only policy would force the jail to dedicate more time and resources to searching the mail, which would detract from the officers’ other duties related to security and inmate welfare.” *Id.* Moreover, returning to the old policy would expose the staff to significant health risks. *See* Exhibit 18. This “threatened impact to [the Jail’s] institutional efficiency and security” is sufficient to conclude that returning to the old policy “would have a significant ripple effect on the inmates and jail staff.” *Simpson*, 879 F.3d at 281.

Finally, the **fourth factor** supports the Policy. This factor does not impose a least-restrictive-alternative test, but asks instead whether the prisoner has pointed to some obvious regulatory alternative that fully accommodates the asserted right while

not imposing more than a *de minimis* cost to the valid penological goal.” *Overton*, 539 U.S. at 136. Here, the Jail researched using a scanning device or a third-party vendor but rejected those solutions because they imposed significant cost, time, and risk to staff. *See supra* SOF Section III. In other words, any alternatives to the Policy would impose much more than a *de minimis* cost.

CONCLUSION

For each of these reasons, Securus respectfully requests that the Court grant it summary judgment and dismiss Plaintiff’s claims against Securus with prejudice.

Dated: March 7, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on March 7, 2025, I electronically filed the foregoing document via the Court’s CM/ECF system, which will notify all counsel of record authorized to receive such filings.

/s/ Colleen Smeryage

Colleen Smeryage, Esq.

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN**

TAUREAN PROCH,

Case No. 2:22-cv-12141

Plaintiff,

District Judge Laurie J. Michelson
Magistrate Judge Patricia T. Morris

v.

SHERIFF MAT KING,
SERGEANT D. FLEMING,
LIEUTENANT R. OLEJNIK,
LIEUTENANT K. ADAMS,
SECURUS TECHNOLOGIES,
INC.

Defendants.

BRIEF FORMAT CERTIFICATION FORM

I, Colleen L. Smeryage, hereby certify that the foregoing brief complies with Eastern District of Michigan Local Rules 5.1(a), 5.1.1, and 7.1 and Judge Michelson's Case Management Requirements. In particular, I certify that each of the following is true (click or check box to indicate compliance):

- ☒ the brief contains a statement regarding concurrence, *see* LR 7.1(a);
- ☒ the brief, including footnotes, uses 14-point font, *see* LR 5.1(a)(3);
- ☒ the brief contains minimal footnotes and, in all events, no more than 10, *see* Case Management Requirements § III.A;
- ☒ the brief and all exhibits are searchable .pdfs, *see* Case Management Requirements § III.A;
- ☒ the brief is double spaced (except for footnotes and necessary block quotes) with one-inch margins, *see* LR 5.1(a)(2);
- ☒ deposition transcripts have been produced in their entirety and not in minuscrit, *see* Case Management Requirements § III.A;

☒ if the brief and exhibits total 50 pages or more, a courtesy copy with ECF headers will be sent to chambers, *see* Case Management Requirements § III.B.

I also acknowledge that if the Court later finds that these requirements are not met, my brief will be stricken.

/s/ Colleen L. Smeryage
Dated: March 7, 2025