FILED
SAN MATEO COUNTY
MAY 21 2024
Clerk of the Superior Court
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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN MATEO

A.B.O. COMIX, KENNETH ROBERTS, ZACHARY GREENBERG, RUBEN GONZALEZ-MAGALLANES, DOMINGO AGUILAR, KEVIN PRASAD, MALTI PRASAD, and WUMI OLADIPO,

Plaintiffs,

v.

COUNTY OF SAN MATEO and CHRISTINA CORPUS, in her official capacity as Sheriff of San Mateo County

Defendants.

Case No. 23-CIV-01075

Assigned for All Purposes to:
Hon. V. Raymond Swope, Dept. 23

ORDER GRANTING DEFENDANTS' MOTION FOR JUDGMENT ON THE PLEADINGS WITH REGARD TO COUNT TWO OF PLAINTIFFS' AMENDED COMPLAINT

Date: April 10. 2024
Time: 2:00 p.m.
Action Filed: March 9, 2023
Trial Date: None Set

Defendants County of San Mateo's and Christina Corpus's (hereinafter collectively "Defendants" or "County") motion for judgment on the pleadings in this matter came on for hearing on April 10, 2024 at 2:00 p.m. before the Honorable V. Raymond Swope, pursuant to a continuance order on January 31, 2024. Cara Gagliano of the Electronic Frontier Foundation appeared for Plaintiffs A.B.O. Comix, Kenneth Roberts, Zachary Greenberg, Ruben Gonzalez-Magallanes, Domingo Aguilar, Kevin Prasad, Malti Prasad, and Wumi Oladipo (collectively "Plaintiffs"). Chad DeVeaux of Bartko LLP appeared for Defendants County of San Mateo and Christina Corpus, in her official capacity as Sheriff of San Mateo County.

At the previous hearing on January 31, 2024, this Court continued Defendants' motion to April 10, 2024, for the parties to address Count Two of Plaintiffs' Amended Complaint, asserting claims for unreasonable search and seizure under Article I, § 13 of the California Constitution. The Court also instructed the Parties to provide supplemental briefing addressing how Plaintiffs' Section 13 claim should be analyzed, including whether Plaintiffs have alleged a search or seizure triggering Section 13's protections. The Court, having reviewed and considered the papers, and having considered the arguments of counsel, and GOOD CAUSE APPEARING, HEREBY ORDERS that the Motion for Judgment on the Pleadings as to Count 2 of Plaintiffs' Amended Complaint is GRANTED WITHOUT LEAVE TO AMEND.

I. Plaintiffs' Search-and Seizure Claim Fails as a Matter of Law

Plaintiffs' suit targets the County's policy of digitizing inmate mail and providing copies on tablets and kiosks (the "mail policy") using Smart Communication's ("Smart") services. The County implemented this policy, inter alia, to prevent exposure to fentanyl and other drugs, which are easily introduced into jails by mail "through paper that ha[s] been soaked, sprayed or otherwise treated with illicit substances before being mailed to prisoners." (See *Human Rights Def. Center v. Bd. of County. Commissioners* (D.N.H. 2023) 654 F.Supp.3d 85, 92.)

Count 2 of Plaintiffs' Amended Complaint ("AC") alleges that the mail policy "constitutes an unreasonable search and seizure of correspondence and other information in which Plaintiffs and others maintain a reasonable expectation of privacy" in violation of Article I, § 13 of the California Constitution ("§ 13"). AC ¶¶ 48, 90. In defense of this claim, Plaintiffs assert that here is no "applicable exception to the warrant requirement" permitting the State to collect and electronically aggregate "non-legal mail sent to its jails." (Plaintiffs' Supp. Brief Re § 13 Analysis ("SB") at 6:15-17, 8:4-5.)

a. No Legitimate Expectation of Privacy Exists in Correspondence with Inmates

Section 13 is California's "counterpart to the Fourth Amendment." (*People v. Sabo (*1986)

185 Cal.App.3d 845, 448 fn.1.) This provision "only prohibits 'unreasonable' [searches]. Reasonable searches are permitted." (*Pac. Lighting Leasing Co. v. Sup. Ct.* (1976) 60 Cal.App.3d 52, 565.) A "search is not unreasonable ... if there is no reasonable expectation of privacy in the object which is searched." (*People v. Fick* (1980) 107 Cal.App.3d 892, 895 (citing *Katz v. U.S.* (1967) 389 U.S. 347, 350-53).) This only exists when the asserted "expectation of privacy" is one "that society is willing to recognize as reasonable." (*People v. Magee,* (2011) 194 Cal.App.4th 178, 183.) In judging whether this criterion is met, courts "begin with history" by "look[ing] to . . . the founding era to determine the norms" the Constitution "was meant to preserve." (*Virginia. v. Moore* (2008) 553 U.S. 164, 168.)

In the founding era, jails often took inspiration from Jeremy Bentham's "Panopticon"—a circular design with a tower at the center allowing guards to continuously "inspect each of the concentrically arrayed cells." (George Fisher, The Birth of the Prison Retold, 104 Yale L.J. 1235, 1262 fn. 133 (1995).) Bentham claimed "the most important point" of this design was to preserve security by making inmates "always feel themselves as if under inspection." (*Washington v. Meachum* (Conn. 1996) 680 A.2d 262, 277 fn. 18 (quoting Jeremy Bentham, Panopticon 24 (1791)).) It is thus unsurprising that "[i]n a line of cases beginning with *Stroud* [v. *U.S.* (1919) 251 U.S. 15]," which affirmed the conviction of the famous Bird Man of Alcatraz, our "courts have deferred to [jailers] in finding that legitimate penological interests justify the examination of . . . jail mail." (*U.S. v. Mohsen* (N.D. Cal. Dec. 22, 2005) 2005 WL 8160182, at *1.) It is "settled that prisoners have no legitimate expectation of privacy in their correspondence." (*Crump v. Gomez* (N.D. Cal. Apr. 27, 1995) 1995 WL 274359, at *2 (citing *Murphy v. Morris* (8th Cir. 1988) 849 F.2d 1101, 1104-05).) As such, jails may "read and copy non-privileged mail" because the "interest . . . in monitoring nonprivileged correspondence justifies minor burdens placed on freedom to communicate with friends and relatives." (*Calihan v. Adams* (E.D. Cal. Jan. 26, 2011) 2011 WL 284467, at *4.)

California courts thus recognize "there is no right of privacy in a detention facility." (*People v. Von Villas* (1992) 11 Cal.App.4th 175, 212.) Rather, "in the jail house the age-old truism still obtains: Walls have ears." (*Ahmad A. v. Sup. Ct.* (1989) 215 Cal.App.3d 528 (quoting

Miguel de Cervantes, Don Quixote, pt. II [1615], ch. 48).) Seeking to avoid this rule, Plaintiffs posit that anytime a search is made without a warrant, the Court must conduct a case-specific evaluation concerning whether "a reasonable expectation of privacy" was violated. SB at 4:13-14. "[U]nder the doctrine of stare decisis," however, precedent holding that warrantless searches of particular places or objects do "not intrude on any expectation of privacy society is prepared to recognize as legitimate" are binding in future cases. *People v. Solorzano* (2007) 153 Cal.App.4th 1026, 1032. For example, it is settled that warrantless "airport screens of . . . luggage" are "reasonable." (*Verdun v. City of San Diego* (9th Cir. 2022) 51 F.4th 1033, 1039.) Thus, an offended passenger may not ask a court to judge on a case-by-case basis whether the search of his luggage was unreasonable. (*See id.*)

"Determining whether an expectation of privacy is 'legitimate'" under "[§] 13" "entails a balancing of interests." (*Sacramento Cnty. Deputy Sheriffs' Ass'n v. Cnty. of Sacramento* (1996) 51 Cal.App.4th 1468, 1480 ("SCDSA").) Searches in jail settings implicate "two interests"—"the interest of society in the security of its [jails] and the [inmates'] interest in privacy . . . ." (*Id.*) California courts "*strike the balance in favor of institutional security, which ... is central to all other corrections goals.*" (*Id.* (emphasis added).) It is clear that "society would insist that [a] prisoner's expectation of privacy always yield to what must be considered the paramount interest in institutional security." (*Id.*) Thus, an expectation of privacy in a jail "is fundamentally incompatible with the close and continual surveillance of inmates . . . required to ensure institutional security." (*Id.* (quoting *Hudson v. Palmer* (1984) 468 U.S. 517, 527-28).)

This rule "applies equally to an inmate's incoming mail." (*Treglia v. Cate* (N.D. Cal. Aug. 28, 2012) 2012 WL 3731774, at *3 (citing Hudson, 468 U.S. at 527-28).) Thus, jailers may "read and copy non-privileged [inmate] mail" without restriction. (*Crump*, 1995 WL 274359, at *2.) California law thus applies a bright-line rule to inmate search-and-seizure claims: persons "incarcerated in a jail or prison possess[] no justifiable expectation of privacy" in their communications or in their cells. (*People v. Loyd* (2002) 27 Cal.4th 997, 1001.) And these same rules apply to "those on the 'outside' who seek to enter [the jail] environment, in person or through the written word." (*In re Collins* (2001) 86 Cal.App.4th 1176, 1182, 1185.)

In *Loyd*, our Supreme Court adopted *Lanza v. N.Y.* (1962) 370 U.S. 139 into our State's law. (*Loyd,* 27 Cal.4th at 1002.) *Loyd* and *Lanza* establish that non-incarcerated persons also do not enjoy any legitimate expectation of privacy when they communicate with inmates. In *Lanza*, the non-incarcerated petitioner's (*Lanza*'s) communications with his brother who "was confined to a New York jail" were secretly "recorded." (*Lanza*, 370 U.S. at 140-41.) Lanza was later "summoned to testify" regarding those communications and he was jailed for "refus[ing] to answer these questions." (*Id.*) Lanza argued the jail's recording constituted "an unreasonable search or seizure." (*Id.* at 142.) The High Court rejected this claim, holding in jails "official surveillance has traditionally been the order of the day" and, as such, a jail is definitively not "a place where [one] can claim constitutional immunity from search or seizure . . . ." (*Id.* at 143.) Thus, those on the outside enjoy no expectation of privacy with regard to mail they send to inmates.

Even law enforcement officers enjoy no expectation of privacy "within the confines of the [jail]." (*SCDSA*, 51 Cal.App.4th at 1481.) In *SCDSA*, "a concealed . . . surveillance camera" was installed in "the Release Office of [a] county jail." (*Id.* at 1472.) The office "was not generally accessible to inmates," but occasionally "inmates entered the room on supervised cleaning detail." (*Id.*) Two deputies sued the jail after they discovered the camera "sticking out of a vent." (*Id.*) They argued that the jail's secret recording was a "search and seizure in violation of . . . [§] 13." (*Id.*) The deputies claimed they had a "reasonable expectation of privacy" in the office because each had disrobed there to "adjust bandages" and "tuck in" shirts. (*Id.* at 1474-75.) They argued the jail's surveillance "raise[d] the spectre of the Orwellian state." (*Id.*at 1483.)

The court noted that case law "reveals a long history of judicial recognizing" that communications with inmates enjoy "no justifiable expectation of privacy." (*Id.* at 1480.) While these "cases focused on inmates or visitors," the court held "the same principle applies to deputy sheriffs who accept employment in that setting." (*Id.* at 1478.) This is because judging whether people in a "particular setting" enjoy a "reasonable expectation of privacy . . . requires a balancing of the need for the particular search against the invasion of personal rights that the search entails." (*Id.* at 1477, 1479.) This requires balancing "the scope of the particular intrusion, the manner in

which it is conducted, the justification for initiating it, and the place in which it is conducted." *Id.*

Balancing these criteria, the court held the deputies' claim that they had a right of privacy "within the confines of [a jail]" is "fundamentally incompatible with the close and continual surveillance . . . required to ensure institutional security." (*Id.* at 1480-81.) Jails "are places of involuntary confinement of persons who have a demonstrated proclivity for antisocial criminal, and often violent conduct." (*Id.*) Jailers "must be ever alert to attempts to introduce drugs and other

contraband into the premises." (*Id.*) Thus, "society is [not] prepared to accept" the deputies' "expectation of privacy as reasonable." (*Id.*) The court found the jail's surveillance was analogous to Lanza's recording of communications "between an inmate and his brother." (*Id.* at 1478.) It further held that the fact that plaintiffs were "not inmates but deputy sheriffs" and the Release Office was "not generally used by inmates" did "not insulate [them] from the institutional security needs of the jail." (*Id.* at 1841, 1483.) Because it was "a room to which inmates [occasionally] ha[d] access" it was one "in which jail security concerns are appropriate." (*Id.* at 1482.)

The Third Circuit's ruling in *Robinson v. Pa. Dept. of Corr.* (3d Cir. 2021) 851 Fed.App'x 289 confirms that these settled rules bar Plaintiffs' search and seizure claim. There, an inmate alleged Smart's "scann[ing] and convert[ing]" of mail "into digital documents" constituted a "search and seizure violation." (*Id.* at 291.) This claim was "without merit" because inmates have "no reasonable expectation of privacy to trigger" any "search and seizure . . . protections." (*Id.* At 293.) The court further dismissed this claim without leave to amend because the law on the subject is so clear that "amendment . . . would be futile." (*Id.* at 292-93.)

b. **The Constitution Does Not Limit the Use of Lawfully Obtained Information**

Tacitly recognizing that they, in fact, do not have any legitimate expectation of privacy in their non-legal mail, Plaintiffs posit that the mail policy is unconstitutional because of "how" the data extracted from mail "is and can be used." (SB at 7:18.) Specifically, they claim using "software to aggregate" inmate mail and allow police "to search that data" is unlawful. (*Id.* at

7:14-17.) This argument is without merit. Once a jail extracts information from an inmate that to which he or she has forfeited any "expectation of privacy" as a consequence of "[l]awful incarceration," the State's *"subsequent use of [that data] ... does not create an independent search" and "[t]here is no additional invasion of ... privacy interest" for "subsequent use ... of evidence constitutionally obtained."* (*U.S. v. Robinette* (E.D. Cal. Jan. 18, 2013) 2013 WL 211112, at *8-9 (emphasis added).) Cases upholding this proposition are legion.[1]

Robinette is instructive. Robinette, a prisoner awaiting trial, argued the "forced taking of [his] DNA" without "a warrant" was an "unreasonable search and seizure." (2013 WL 211112, at *1, *4.) The extraction was mandated by a law requiring that DNA be collected from anyone arrested for "a crime of violence." (*Id.*) The court noted that "[t]here is no question" that DNA collection is a "search." (*Id.* at *2.) However, as explained above, the Constitution "does not proscribe all searches and seizures"—"only those that are unreasonable." (*Id.* at *7.) And inmates forfeit any "expectation of privacy" in their DNA because "the institutional needs and objectives of [jails] necessarily require, as a practical matter, the curtailment of certain rights." (*Id.* at *8.) In particular, "identification" of inmates is "a matter of legitimate state interest" and DNA is "an identifying marker unique to the individual from whom the information is derived." (*Id.* at *9.)

When confronted with the fact that his incarceration stripped him of any legitimate expectation of privacy in his DNA, Robinette argued the policy still was an unreasonable search and seizure because the Government's "subsequent use" of his DNA was "unreasonable." (*Id.* at *8 (emphasis added).) He argued that the DNA-collection policy was verboten because after an

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[1] *E.g., U.S. v. Muhtorov* (10th Cir. 2021) 20 F.4th 558, 605 ("later use" of "lawfully collected communications ... is not a separate Fourth Amendment event" and does not subject initial search to further scrutiny); *Johnson v. Quander* (D.C. Cir. 2006) 440 F.3d 489, 499 (when Government collects data in a manner that complies with the Fourth Amendment, its "storage and use of it does not give rise to an independent Fourth Amendment claim."); *Kunstler v. CIA* (S.D.N.Y. Dec. 19, 2023) 2023 WL 8776339, at *7-8 (same); *Montgomery v. Lumpkin* (N.D. Tex. May 15, 2021) 2021 WL 1947558, at *4 (same); *Emerson v. Kelly* (N.D. Ohio June 30, 2015) 2015 WL 3968250, at *9 (same); *Crabbs v. Scott* (S.D. Ohio Nov. 20, 2013) 2013 WL 12498338, at *2 (same); *People v. Roberts* (2021) 68 Cal.App.5th 64, 103-04 (same); *People v. Buza* (2018) 4 Cal.5th 658, 673 (same); *People v. Baylor* (2002) 97 Cal.App.4th 504, 508 (same); *Wilson v. State* (Md. App. 2000) 752 A.2d 1250, 1271-72 (same); *People v. King* (N.Y. App. Div. 1997) 232 A.D.2d 111, 117 (same).

inmate's DNA is collected it is uploaded into the CODIS "database and profiled." *Id.* at *7. CODIS is "a centralized repository for [inmate DNA]," which enables police around the country "to exchange and compare DNA profiles." (*Id.* at *1, *1 fn. 1.) It is maintained by "private contracting laborator[ies]" who retain access to all the uploaded data "in perpetuity." (*Crabbs,* 2013 WL 12498338, at *2.) The database—which "contains over ten million DNA profiles"—enables police to perform unparalleled searches of the genetic profiles of inmates and their family members. (*Robinette*, 2013 WL 211112, at *1 fn. 1.) *Robinette* claimed this use rendered the initial search of his DNA unreasonable because once in the database, his intimate genetic data "*is subject to repeated law enforcement searches*." (*Id.* at *7 (emphasis added).)

Nevertheless, the court held that how Robinette's DNA is and can be "used in CODIS" is irrelevant because he had no reasonable "expectation of privacy" in the data collected in the initial search. (*Id.* at *8-9.) And "once [a] search is completed in a constitutional manner, the subsequent use of the [information] collected does not create an independent search" and "[t]here is no additional invasion of the owner's privacy interest" for use of such "constitutionally obtained" data. (*Id.* at *9.) Rather, once one's personal information "has been obtained lawfully, he can no longer assert either privacy claims or unreasonable search and seizure arguments with respect to the use of that [information]." (*King*, 232 A.D.2d at 117.) Thus, the Government's "later use" of "lawfully collected communications . . . is not a separate Fourth Amendment [or § 13] event" which triggers any additional scrutiny. (*Muhotorov,* 20 F.4th at 605.) This is because "[o]nce the act of taking [data or] property is complete, the [search and] seizure has ended and the Fourth Amendment"—and § 13—"no longer applies." (*Fox v. Van Oosterum* (6th Cir. 1999) 176 F.3d 342, 350.) And this remains true no matter how long the Government retains the data or how it uses it. (*Id.*) Subsequent "analysis of [seized data] does not involve any further search" and cannot give rise to any "privacy claims." (*Emerson,* 2015 WL 3968250, at *9.) If this were not so, "any subsequent use of constitutionally obtained [data] would thereafter be subject to an independent constitutional scrutiny" and "law enforcement investigative efforts would come to a stand-still." (*Robinette,* 2013 WL 211112, at *9.) Thus, when the Government collects data in a manner that does not intrude on a reasonable expectation of privacy that data may "be maintained and used by

law enforcement" in any manner it chooses "without further constitutional restriction." (*Montgomery*, 2021 WL 1947558, at *4.)

The court in *Kunstler* recently applied these principles. There lawyers and journalists who "visited [Wikileaks founder] Julian Assange at the Ecuadorian Embassy" claimed the CIA used "unlawful surveillance techniques" that violated their "right to be free from unreasonable searches and seizures." (2023 WL 8776339 at *1-2.) They alleged the CIA contracted with UC Global, an international security firm, to "implement[] an extensive surveillance program" targeting the Embassy. (*Id.* at *2.) They claimed UC Global "surreptitiously copied and took images of the passports, including pages with stamps and visas," and of the phones and computers "of all [Embassy] visitors." (*Id.* at *2, *8.) This information was then uploaded into a sophisticated "database" that aggregated the data and provided "external access to the CIA." (*Id.* at *2, *5.)

The court held that the searches were reasonable because the plaintiffs had "no legitimate expectation of privacy" in "their passports or the appearance of their devices." (*Id.* at *7-8.) Any such privacy interest was forfeited because security concerns mandate that passports and devices must be presented to "security personnel at the Embassy." (*Id.*) Thus, individuals willingly surrender any "legitimate expectation of privacy" in such information when they visit an embassy because, to gain entry, they must "voluntarily turn[] over" that data to staff so they can fulfill their job of "keeping the Embassy secure." (*Id.*) Accordingly, the Government may "obtain such information ... without triggering" any search and seizure protections. (*Id.*)

Moreover, UC Global's aggregation of this data in a searchable database did not render the program verboten. (*Id.* at *2, *5.) When one "voluntarily" reveals otherwise private information by entering a place where security concerns demand a diminished "expectation of privacy"—like an embassy or a jail—the Government may use that data in any way it wishes. (*Id.* at *7.) This "remains true even if the information is revealed on the assumption that it will be used only for a limited purpose." (*Id.*) Likewise, anyone who corresponds with an inmate "voluntarily turns over" the contents of his or her letters to jail officials. (See *id.*) And such officials are free to use that data however they choose "without triggering" any search and seizure protections. (See *id.*)

The Third Circuit's ruling in Robinson confirms that this rule bars Plaintiffs' claims. It

held that the fact that Smart's technology enables jailers to permanently "stor[e]" mail sent to inmates and to conduct repeated invasive "inspection[s]" of that mail does not offend any of the Constitution's "search and seizure . . . protections." (851 Fed.App'x at 293.)

c. Plaintiffs' Trespass Theory Is Incorrect

Plaintiffs claim the mail policy is a "trespassory search" because it involves a "trespass to chattels." (SB at 5:1-2, 8:8.) This fails at the outset because our courts held long ago that § 13 does not embrace the trespass theory. Section 13's "prohibition [] is against Unreasonable searches and seizures, not trespasses." (*Cowing v. City of Torrance* (1976) 60 Cal.App.3d 757, 763.) *Jones* only changed the definition of a "'search' within the meaning of the Fourth Amendment." (*U.S. v. Jones* (2012) 565 U.S. 400, 405.) No court has revived the trespass theory under § 13. Even if the trespass theory could apply to § 13 claims, Plaintiffs' argument would still fail for two independent reasons.

(i) A Jail Is Not a Constitutionally Protected Area

A "trespass" only qualifies as a search or seizure when there is an intrusion into "a 'constitutionally protected area.'" (SB at 4:25-26 (quoting *Jones*, 565 U.S. at 404-05).) Plaintiffs claim *Jones* held "[c]onstitutionally protected area' simply means any of the four areas enumerated in [§] 13: 'persons, houses, places, and effects.'" (SB at 5:4-5.) This is not so. A trespass on one's "person," "papers," or "effects" only triggers constitutional protection if they were located in a "constitutionally protected area." (*Lanza*, 370 U.S. at 143.) For example, in *Hester v. U.S.* (1924) 265 U.S. 57, the defendants hid bottles of moonshine in an "open field." (*Id.* at 58.) After officers, possessing "no warrant," searched and seized these "effects," the defendants argued the officers "trespass[ed]" on their land and chattels. Id. This failed because searches in "open fields" are permissible even if a "trespass . . . led to the gathering of [the] evidence" because Government agents "physically intruded" on the land or chattels of the owner. (*U.S. v. Doyon* (D. Me. May 29, 2013) 2013 WL 2368821, at *4 fn. 1.) This is because the "theory of *Jones*" only applies to "trespasses in constitutionally protected areas." (*Id.*) And "open fields remain unprotected" by *Jones* "because they are not a constitutionally protected area." (*Id.*)

Jones involved an intrusion on a car. "An automobile" is "a constitutionally protected area." (*Lanza*, 370 U.S. at 142-43.) A "jail," however, is not "a constitutionally protected area." (*Id.*) "[A] jail shares none of the attributes of privacy of a home, an automobile, an office, or a hotel room. In [jail], official surveillance has traditionally been the order of the day." *Id.* Thus, under the law revived by Jones, a jail is not "a place where [one] can claim constitutional immunity from search or seizure of his person, his papers, or his effects . . . ." (*Id.* at 143.)

(ii) Plaintiffs' Trespass Theory Would Ban All Searches of Inmate Mail

Plaintiffs' claim that the mail policy involves a "trespass to chattels" proves too much. (See SB at 8:8.) The prior mail policy required officers to open inmate mail and inspect it "for the presence of drugs or other threats to facility security." However, a common law "trespass" occurs whenever one makes "physical contact with [another's] chattel." (*Bui-Ford v. Tesla, Inc.* (N.D. Cal. Feb. 20, 2024) 2024 WL 694485, at *8.) As such, any policy that allows jails to inspect inmate mail would, by definition, require a "trespass to chattels." Thus, if a jail qualified as a "constitutionally protected area," inmate mail could never be constitutionally inspected. This proposition offered by Plaintiffs is inconsistent with settled law.

II. Conclusion

For the reasons set forth hereinabove, the Motion for Judgment on the Pleadings as to Count 2 of Plaintiffs' Amended Complaint is GRANTED without leave to amend.

IT IS SO ORDERED.

DATED: May 21, 2024

HON. V. RAYMOND SWOPE
JUDGE OF THE SUPERIOR COURT