

No. 25-3845

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JEREMY J. QUINN, JR.,
Plaintiff-Appellant,

v.

JOHN/JANE DOE, ET AL.,
Defendants-Appellees.

On Appeal from the United States District Court
for the N.D. of Ohio, Western Division, No. 22-cv-00661
(Hon. Darrell A. Clay)

**BRIEF OF THE HUMAN RIGHTS DEFENSE CENTER, THE
AMERICAN CIVIL LIBERTIES UNION, THE AMERICAN CIVIL
LIBERTIES UNION OF OHIO FOUNDATION, NEW YORK
STATE DEFENDERS ASSOCIATION, PUBLIC
ACCOUNTABILITY, AND UPTOWN PEOPLE'S LAW CENTER
AS AMICI CURIAE IN SUPPORT OF
PLAINTIFF-APPELLANT QUINN**

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CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Amici curiae make these disclosures under Sixth Circuit Rule 26.1:

1. Is any amicus a subsidiary or affiliate of a publicly owned corporation?

No. The Human Rights Defense Center, the American Civil Liberties Union, the American Civil Liberties Union of Ohio Foundation, New York State Defenders Association, Public Accountability, and Uptown People's Law Center are nonprofit entities. No entity has a parent company, and none has issued stock.

2. Is there a publicly owned corporation, not a party to the appeal or an amicus, that has a financial interest in the outcome?

No.

/s/ Shunhe Wang
Shunhe Wang

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TABLE OF CONTENTS

	Page
INTEREST OF AMICI CURIAE	1
INTRODUCTION	1
ARGUMENT	4
I. ODRC’s Control-Number Policy Predictably and Systematically Obstructs Prisoners’ Access to Courts and Protected Legal Correspondence	4
A. Treating court mail as regular mail undermines prisoners’ right to access courts	6
B. Harms to prisoners are systemic because protection turns on third-party compliance that prisoners cannot control	10
1. State courts	11
2. Federal courts	14
C. ODRC’s control-number policy is administratively unworkable and produces inconsistent outcomes, even when courts try to intervene.....	17
D. ODRC compounds the constitutional injury by disciplining prisoners over mail they cannot control	20
II. ODRC’s Control-Number Policy Lacks a Rational Connection to Security	23
III. Ohio’s Policy Is an Outlier	28
CONCLUSION	33

TABLE OF AUTHORITIES

	Page
Cases	
<i>Allah v. Chambers-Smith</i> , No. 2:22-cv-21, Dkt. 91 (S.D. Ohio June 25, 2024).....	17, 24
<i>Am. Civil Liberties Union Fund of Mich. v. Livingston Cnty.</i> , 796 F.3d 636 (6th Cir. 2015)	5
<i>Bishop v. Forshey</i> :	
No. 2:25-cv-292, Dkt. 10 (S.D. Ohio May 5, 2025)	6, 22
No. 2:25-cv-292, Dkt. 10-1 (S.D. Ohio May 5, 2025)	6-7, 21, 23
No. 2:25-cv-292, Dkt. 25 (S.D. Ohio Aug. 11, 2025).....	21
<i>Brown v. Chambers-Smith</i> :	
No. 2:22-cv-2469, Dkt. 7 (S.D. Ohio June 29, 2022)	6
No. 2:22-cv-2469, Dkt. 36-11 (S.D. Ohio Dec. 6, 2022)	15
<i>Brown-Austin v. Chambers-Smith</i> , 2025 WL 1312133 (S.D. Ohio May 6, 2025)	16
<i>Copeland v. Kelly</i> , No. 1:22-cv-129, Dkt. 31 (S.D. Ohio Aug. 30, 2024).....	16
<i>Foster v. Ohio Dep’t of Rehab. & Corr.</i> , No. 2:22-cv-2153, Dkt. 79 (S.D. Ohio Feb. 11, 2025)	15-16
<i>Holmes v. Ohio Dep’t of Rehab.</i> , 2025 WL 2214405 (S.D. Ohio Aug. 5, 2025)	17
<i>Houston v. Lack</i> , 487 U.S. 266 (1988)	9
<i>Johnson v. Cool</i> , No. 1:22-cv-31, Dkt. 46 (S.D. Ohio Oct. 16, 2024)	15

Kendrick v. Chambers-Smith:

2024 WL 277316 (S.D. Ohio Jan. 25, 2024) 7

No. 1:22-cv-00170, Dkt. 38 (S.D. Ohio Jan. 25, 2024) 16, 20

King v. Aramark Corr. Servs.,

2024 WL 3461784 (S.D. Ohio Mar. 22, 2024) 15

Kirby v. Warden, London Corr. Inst., No. 1:21-cv-482, Dkt. 29

(S.D. Ohio July 5, 2022) 15

Knop v. Johnson,

977 F.2d 996 (6th Cir. 1992) 5

Krzywkowski v. Davis, No. 2:24-cv-03902, Dkt. 33

(S.D. Ohio Oct. 22, 2024) 16

*Lane v. Brown, 372 U.S. 477 (1963) 10**Lavado v. Keohane,*

992 F.2d 601 (6th Cir. 1993) 18

McGowan v. Erdos, No. 1:22-cv-35, Dkt. 1

(S.D. Ohio Jan. 18, 2022) 6

Merriweather v. Zamora,

569 F.3d 307 (6th Cir. 2009) 5

Mobley v. O'Donnell,

2019 WL 8324728 (Ohio Ct. Common Pleas June 27, 2019) 8

Morr v. United States,

243 F.2d 913 (6th Cir. 1957) 14

Muhammad v. Pitcher,

35 F.3d 1081 (6th Cir. 1994) 5

Norris v. Watson, No. 3:25-cv-133, Dkt. 11

(S.D. Ohio Sep. 25, 2025) 15

<i>Ohio Justice & Pol’y Ctr. v. Chambers-Smith</i> , No. 1:25-cv-291, Dkt. 37-7 (S.D. Ohio Oct. 1, 2025)	26-27
<i>Pough v. DeWine</i> , No. 2:21-cv-00880, Dkt. 200 (S.D. Ohio June 25, 2024)	16
<i>Rutherford v. Free</i> , No. 2:24-cv-00764, Dkt. 5-1 (S.D. Ohio Apr. 1, 2024)	16
<i>Sallier v. Brooks</i> , 343 F.3d 868 (6th Cir. 2003)	2, 5, 17-18, 20
<i>Shine-Johnson v. Chambers-Smith</i> , 2024 WL 4296989 (S.D. Ohio Sep. 26, 2024)	17
<i>Shomer v. Rheinscheld</i> , No. 2:24-cv-01283, Dkt. 9 (S.D. Ohio Apr. 10, 2024)	16
<i>Smith v. Hogan</i> , No. 2:24-cv-02620, Dkt. 5 (S.D. Ohio Oct. 2, 2024)	16
<i>Stapleton v. Warden, Ross Corr. Inst.</i> :	
No. 2:22-cv-501, Dkt. 12 (S.D. Ohio July 11, 2023)	8
No. 2:22-cv-501, Dkt. 15 (S.D. Ohio Aug. 17, 2023)	8
<i>State v. Brooks</i> , 2025 WL 1190151 (Ohio Ct. App. Apr. 21, 2025)	12
<i>State v. Haslam</i> , 2025 WL 3230791 (Ohio Ct. App. Nov. 10, 2025)	12-13
<i>State v. Lockhart</i> , 2025 WL 3496507 (Ohio Ct. App. Dec. 5, 2025)	11
No. 25 CAA 07 0061, Br. of Appellee (Ohio Ct. App. Sep. 22, 2025) ...	14
<i>State v. West</i> , 192 N.E.3d 522 (Ohio Ct. App. 2021)	8
<i>State ex rel. Feathers v. Pittman</i> , 2025 WL 2438710 (Ohio Ct. App. Aug. 25, 2025)	11

State ex rel. Howard v. Ohio Dep't of Rehab. & Corr.:

200 N.E.3d 288 (Ohio 2022).....	12, 15, 16
No. 2022-1045, Notice (Ohio Jan. 9, 2023).....	12
No. 2022-1045, Motion (Ohio Jan. 9, 2023)	12
No. 2022-1045 (Ohio Jan. 19, 2023)	14

<i>State ex rel. Miller v. Foley</i> , No. 22-1521, Dkt. 1 (Ohio Dec. 12, 2022)	11
--	----

<i>State ex rel. Pointer v. Ohio Adult Parole Auth.</i> , No. 2022-0307, Dkt. 6 (Ohio Apr. 19, 2022).....	13
--	----

<i>State ex rel. Tyler v. Alexander</i> , 555 N.E.2d 966 (Ohio 1990)	8
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<i>State ex rel. Ware v. Booth</i> , No. 2023-1293 (Ohio July 16, 2024)	22
--	----

<i>State ex rel. White v. Aveni</i> , 239 N.E.3d 344 (Ohio 2024)	11-12
---	-------

<i>Straughter v. Eddy</i> , 2023 WL 6290069 (S.D. Ohio Sep. 27, 2023).....	15
---	----

Swain v. Chambers-Smith:

2024 WL 4540091 (S.D. Ohio Oct. 22, 2024).....	16
No. 2:23-cv-2809, Dkt. 26 (S.D. Ohio July 25, 2024)	6, 18

<i>Swain v. Chambers-Smith</i> , 2024 WL 4956351 (S.D. Ohio Dec. 3, 2024).....	16
---	----

<i>Taper v. Warden, Lebanon Corr. Inst.</i> , No. 1:24-cv-602, Dkt. 15 (S.D. Ohio Dec. 10, 2024).....	16
--	----

<i>Thomas v. Black</i> , 2024 WL 5106373 (N.D. Ohio June 14, 2024)	8
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<i>Thompson v. Warden, Pickaway Corr. Inst.:</i>	
No. 2:22-cv-2042, Dkt. 22 (S.D. Ohio Sep. 11, 2023).....	8
No. 2:22-cv-2042, Dkt. 23 (S.D. Ohio Sep. 11, 2023)	8
No. 2:22-cv-2042, Dkt. 24 (S.D. Ohio Sep. 11, 2023)	8
<i>Turner v. Safley,</i>	
482 U.S. 78 (1987)	10, 23, 32-33
<i>Vinson v. Brown</i> , No. 2:23-cv-80, Dkt. 19	
(S.D. Ohio Jan. 8, 2024)	16
<i>Warner v. Chambers-Smith</i> , No. 2:24-cv-1565, Dkt. 20	
(S.D. Ohio Nov. 4, 2024)	16
<i>Williams v. Chambers-Smith</i> , No. 2:24-cv-00393, Dkt. 12	
(S.D. Ohio May 31, 2024).....	16
<i>Williams v. Warden, Chillicothe Corr. Inst.</i> , No. 2:23-cv-01042,	
Dkt. 28 (S.D. Ohio Dec. 20, 2023).....	16

Rules

Ohio S. Ct. Prac. R. 3.02(A)(1)(a)	8
--	---

Regulations

20 Ill. Admin. Code § 525.140	28
28 C.F.R. § 540.18.....	32
28 C.F.R. § 540.18(a)	29
37 Tex. Admin. Code § 291.2(2)	29
50 Fed. Reg. 40108, 40109 (Oct. 1, 1985)	32
103 Mass. Code Regs. § 481.11(4).....	30-31
Ala. Dep't of Corr. AR 448, § III.F	28

Alaska Admin. Code tit. 22, § 05.520(b)	28
Ariz. Dep’t of Corr. DO 902, § 11.0 (May 15, 2023).....	28
Ark. Code R. 004.00.20-027 (AR 860), § II.A.1	28
Cal. Code Regs. tit. 15, § 3143	30, 32-33
Colo. Dep’t of Corr. AR 300-38, § IV(B)	28
Conn. Dep’t of Corr. Dir. No. 10.7, §§ 3(j), 9, 11 (Dec. 16, 2022)	28
D.C. Dep’t of Corr. Pol’y & Proc. 4070.4H (Apr. 22, 2024)	28
Del. Dep’t of Corr. Pol’y No. 4.0, § IV.D (Apr. 15, 2016)	28
Fla. Admin. Code Ann. r. 33-210.10-2(4).....	30
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Ga. Comp. R. & Regs. 125-3-3-.03(1)(j).....	30
Ga. Comp. R. & Regs. 125-3-3-.03(2)	25
Ga. Dep’t of Corr. SOP IIB05-0001, § III(I).....	28
Haw. Dep’t of Corr. & Rehab., Pol’y No. COR.15.02 (Jan. 1, 2024)	28
Idaho Dep’t of Corr. SOP No. 402.02.01.001, § 26 (Mar. 11, 2018)	28
Ind. Dep’t of Corr., Pol’y No. 02-01-103, § III(D) (Mar. 15, 2021)	28-29
Iowa Admin. Code r. 201-20.4(904)	29
Kan. Admin. Regs. §§ 44-12-601(a)(1), (f)(3)	29
Ky. Dep’t of Corr. Pol’y No. 16.2, §§ I, II.G.2, II.G.8.....	31
Ky. Dep’t of Corr. Pol’y No. 16.2, § II.G.3.....	30
La. Admin. Code tit. 22, pt. I, §§ 313(E), (F)(8)-(10)	29

Mass. Code Regs. § 481.11(3)	25
Md. Code Regs. 12.03.03.01(B)(9)	29-30
Me. Dep't of Corr. Pol'y No. 21.2, § VI(D)	29
Minn. Dep't of Corr. Pol'y No. 302.020	31
Miss. Dep't of Corr. SOP No. 31-01-01 (Feb. 1, 2014)	29
Mo. Dep't of Corr. Pol'y IS13-1.1 (June 15, 2022)	29
Mont. Dep't of Corr. Pol'y DOC 3.3.6, § IV.D (Dec. 4, 2024)	29
Neb. Dep't of Corr. Servs. Pol'y No. 205.01 (Dec. 31, 2025)	29
Nev. Dep't of Corr. AR 722.09 (Nov. 16, 2016)	29
N.H. Admin. Code R. Ann. § Cor 314.12	29
N.J. Admin. Code § 10A:31-19.7	29
N.M. Corr. Dep't Pol'y CD-151200 (Sep. 27, 2023)	29
N.Y. Comp. Codes R. & Regs. tit. 7, §§ 721.2-.3	29
N.C. Dep't of Pub. Safety Prisons Pol'y D.0300 (Oct. 13, 2021)	29
ODRC Pol'y 75-MAL-01	7
ODRC Pol'y 75-MAL-03	2, 5, 19, 25
Ohio Admin. Code § 5120:1-7-02(B)(38)	22
Ohio Admin. Code § 5120-3-08(A)	23
Ohio Admin. Code § 5120-9-17(B)(2) (2021)	31
Ohio Admin. Code § 5120-9-17(B)(2)	2, 5
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Ohio Admin. Code § 5120-9-07(F)(5)(h)	22
Ohio Admin. Code § 5120-9-07(H)(3)	23
Ohio Admin. Code § 5120-9-08(L)	23
Okla. Dep’t of Corr. OP-030117 (Sep. 1, 2024)	29
Or. Admin. R. 291-131-0030	29
Pa. DC-ADM 803	31
R.I. Code R. 240-RICR-10-00-1.4	29
S.C. Dep’t of Corr. Pol’y PS-10.08 (Sep. 6, 2022)	29
S.D. Admin. R. 17:50:10:04	29
Tenn. Dep’t of Corr. Admin. Pol’y & Procs. No. 507.02, § IV.O (Dec. 8, 2023)	29
Tex. Dep’t of Crim. Just., BP-03.91	33
Utah Admin. Code R251-705-3	29
Vt. Dep’t of Corr. Dir. No. 409.05 (Dec. 6, 2010)	29
Va. Dep’t of Corr. Operating Proc. 803.1(VI) (Apr. 1, 2024)	29
Wash. Dep’t of Corr. Pol’y Doc No. 450.100 (Dec. 31, 2023)	29
W. Va. Div. of Corr. Pol’y Dir. 503.00 (Oct. 16, 2023)	29
Wis. Admin. Code DOC § 309.04(3)	29

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https://www.bop.gov/about/statistics/population_statistics.jsp 32

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 Program Statement 5265.14 (Apr. 5, 2011)
https://www.bop.gov/policy/progstat/5265_014.pdf 32

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<https://mn.gov/doc/assets/MN%20DOC%20Attorney->

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INTEREST OF AMICI CURIAE¹

Amici—Human Rights Defense Center, American Civil Liberties Union, American Civil Liberties Union of Ohio Foundation, New York State Defenders Association, Public Accountability, and Uptown People’s Law Center—are nonprofit organizations that advocate for prisoners, support public-defense and access-to-justice efforts, and promote transparency and accountability in correctional systems. This case implicates those concerns because Ohio’s control-number policy interferes with prisoners’ receipt of confidential court correspondence and other protected legal mail, burdening protected communication, obstructing access to courts, and reducing transparency and accountability in prisons.

INTRODUCTION

This appeal presents the question whether a prison may treat mail from a federal or state court as *ordinary* correspondence—opening and reading it outside a prisoner’s presence—unless the court first

¹ No counsel for a party authored any portion of this brief, no party or party counsel contributed money to prepare or submit this brief, and no one other than counsel to amici curiae contributed money to fund or prepare this brief. A motion for leave to file accompanies this brief.

registers *each piece of mail* with the prison and affixes to it a unique control number.

For decades, this Court has answered no. In *Sallier v. Brooks*, this Court held that “mail from a court constitutes ‘legal mail’” and may not be opened outside the prisoner’s presence when requested. 343 F.3d 868, 877 (6th Cir. 2003). *Sallier* reflects settled First Amendment principles protecting access to courts and guarding against deterrence of prisoners’ petitioning when prison officials read court correspondence.

The Ohio Department of Rehabilitation and Correction’s outlier policy conflicts with that rule. Ohio prisons treat court mail as ordinary mail unless the court has first registered for and placed a control number unique to that piece of legal mail on the envelope. Ohio Admin. Code § 5120-9-17(B)(2); ODRC Pol’y 75-MAL-03. If a court does not comply, the Ohio Department of Rehabilitation and Correction (ODRC) processes that legal mail, no matter how otherwise clearly identified as originating from a court, as ordinary mail. Correctional officers may open the court’s mail outside the prisoner’s presence, read it for

“security threats,” create copies, and—most importantly—deny delivery if the mail exceeds the five-page regular-mail limit.

ODRC’s control-number policy restructures how court correspondence functions inside Ohio prisons. The policy shifts constitutional protection away from the nature of the mail—whether it comes from a court—and makes mail access depend instead on administrative compliance by third parties outside the prison system. In practice, that means legal protections turn on whether hundreds of separate federal and state courts, operating under their own procedures and constraints, elect to participate in ODRC’s registration system. Many have not.

Worse, ODRC does not even apply its own rule as written. It purports to informally exempt federal courts, creating an ad hoc two-track regime untethered to any standard. And ODRC has repeatedly demonstrated it cannot administer the policy consistently. Implementation has been chaotic—so much so that courts have had to issue case-specific orders to ensure delivery of routine court mail and have sanctioned ODRC officials for violating those orders.

The implications extend beyond Quinn. Court mail is delayed, copied, truncated, or opened outside prisoners' presence as a matter of course. Prisoners risk discipline, including conduct reports and sanctions, when they participate in proceedings before courts that do not comply with ODRC's control-number policy. For prisoner-litigants, particularly those proceeding pro se, court mail is often their only source of rulings, deadlines, and other obligations. By eroding that channel's reliability, ODRC jeopardizes the right of access to courts. The Constitution does not tolerate a regime in which protection for court correspondence exists formally yet fails functionally across an entire prison system.

ARGUMENT

I. ODRC's Control-Number Policy Predictably and Systematically Obstructs Prisoners' Access to Courts and Protected Legal Correspondence

Ohio's control-number policy inverts this Court's settled rule that all court correspondence is protected legal mail. Instead, all court mail is presumptively treated as ordinary mail, unless a court or clerk's office obtains and affixes to the envelope a control number unique to each

individual piece of mail. Ohio Admin. Code § 5120-9-17(B)(2); ODRC Pol’y 75-MAL-03.

If a federal or state court declines to comply with ODRC’s control-number policy, ODRC processes court correspondence as regular mail, subjecting it to handling outside the prisoner’s presence and to regular-mail restrictions that delay delivery, limit the length of correspondence, and sometimes prevent receipt altogether.² Those foreseeable failures frustrate protected petitioning and obstruct access to courts—the very harms this Court has long recognized in the legal-mail context. *See, e.g., Sallier*, 343 F.3d at 874-78; *Knop v. Johnson*, 977 F.2d 996, 1012 (6th Cir. 1992); *Muhammad v. Pitcher*, 35 F.3d 1081, 1082-86 (6th Cir. 1994); *Merriweather v. Zamora*, 569 F.3d 307, 316-18 (6th Cir. 2009); *Am. Civil Liberties Union Fund of Mich. v. Livingston Cnty.*, 796 F.3d 636, 643-45 (6th Cir. 2015).

² As explained below, while ODRC informally exempted federal-court mail from the control-number requirement, its facilities have not consistently implemented this exception.

A. Treating court mail as regular mail undermines prisoners' right to access courts

ODRC's control-number policy compromises prisoners' primary channel for receiving court orders and filings, impairing their ability to meet deadlines and litigate effectively. ODRC withholds any regular mail over five pages. And downgrading court mail to regular mail results in delayed receipt by prisoners.

In many cases, routing court mail through regular-mail processing means the prisoner never receives it, because the mail is mishandled³ or withheld under regular-mail rules. ODRC caps regular mail, but not legal mail, at five pages, ODRC Pol'y 75-MAL-01 § VI.C.1.a, and withholds regular mail that exceeds this limit. *See* Am. Compl. at 9, *Swain v. Chambers-Smith*, No. 2:23-cv-2809 (S.D. Ohio July 25, 2024), Dkt. 26 (alleging that ODRC only provided five pages and withheld the rest); Compl. at 3, *Bishop v. Forshey*, No. 2:25-cv-292 (S.D. Ohio May 5, 2025), Dkt. 10 (alleging that ODRC withheld the entirety of court mail over five pages); Exs. to Compl. at 14, *Bishop* (S.D. Ohio May 5, 2025),

³ *See, e.g.*, Compl. & Exs. at 7, 33, *Brown v. Chambers-Smith*, No. 2:22-cv-2469 (S.D. Ohio June 29, 2022), Dkt. 7 (legal mail delivered to wrong prisoner); Compl. at 27-28, *McGowan v. Erdos*, No. 1:22-cv-35 (S.D. Ohio Jan. 18, 2022), Dkt. 1 (legal mail delivered to wrong prison).

Dkt. 10-1 (ODRC enforcing a five-page limit on court mail reclassified as regular mail). As the Court knows, court orders, reports and recommendations, and briefs frequently exceed five pages, making ODRC's limit in practice a default presumption that prisoners cannot receive court mail.

Incomplete delivery is another source of delay. When prison officials confiscate and copy documents outside of prisoners' presence, they often produce incomplete sets of papers. *See, e.g., Kendrick v. Chambers-Smith*, 2024 WL 277316, at *2 & n.4 (S.D. Ohio Jan. 25, 2024) (ordering the Clerk of Court to resend an opinion and order because plaintiff did not receive complete copies). Prisoners often cannot verify the accuracy of these copies themselves, as ODRC destroys originals of regular mail after thirty days. ODRC Pol'y 75-MAL-01 § VI.B.5. So prisoners' constitutional right to receive legal mail depends on anonymous prison employees accurately and reliably copying court correspondence.

As a result, federal courts have repeatedly granted extensions and even reopened matters after prisoners failed to timely receive filings

mailed without a control number.⁴ And when relief is not granted, the consequences are stark: prisoners can forfeit potentially meritorious claims. *See infra* Section I.B.

Ohio state courts present an especially unforgiving forum for prisoners facing mail delays because they reject the prison-mailbox rule. *State ex rel. Tyler v. Alexander*, 555 N.E.2d 966, 967-68 (Ohio 1990). A prisoner's filing is generally timely in Ohio only upon receipt by the court, not upon mailing. *See* Ohio S. Ct. Prac. R. 3.02(A)(1)(a); *State v. West*, 192 N.E.3d 522, 535-36 (Ohio Ct. App. 2021); *Mobley v. O'Donnell*, 2019 WL 8324728, at *3 (Ohio Ct. Common Pleas June 27, 2019).

⁴ *See, e.g.*, Mot. for Extension of Time, *Stapleton v. Warden, Ross Corr. Inst.*, No. 2:22-cv-501 (S.D. Ohio July 11, 2023), Dkt. 12 (requesting extension to object to Report and Recommendation (R&R) because “the clerk of this court did not use a control number,” resulting in delay); Opinion and Order, *id.* (S.D. Ohio Aug. 17, 2023), Dkt. 15 (granting extension and reopening a case after dismissal); Mot. for Extension of Time at 2, *Thompson v. Warden, Pickaway Corr. Inst.*, No. 2:22-cv-2042 (S.D. Ohio Sep. 11, 2023), Dkt. 22 (requesting extension because petitioner never received an R&R or a transfer order); Notation Order and Order for Status Report, *id.* (S.D. Ohio Sep. 11, 2023), Dkt. 23-24 (granting extension and ordering ODRC's counsel to hand-deliver filings); *Thomas v. Black*, 2024 WL 5106373, at *1-2 (N.D. Ohio June 14, 2024) (granting relief from judgment when petitioner did not receive an R&R or a memorandum opinion and order sent without control numbers).

Delays in receiving court mail thus compress prisoners' response windows and heighten the risk of missed deadlines.

These burdens fall most heavily on pro se prisoners, who make up roughly 90 percent of all federal prisoner petitions.⁵ These litigants rely on court mail as the sole or primary source of rulings, deadlines, and the record. Unlike a represented party, a pro se litigant has no counsel receiving CM/ECF notices, monitoring the docket, or promptly replacing missing papers. *See Houston v. Lack*, 487 U.S. 266, 270-72 (1988) (discussing the “unique” situation pro se prisoners face in prosecuting their cases); Tim Reagan et al., Fed. Jud. Ctr., *Federal Courts' Electronic Filing by Pro Se Litigants* 8 (2022) (“Prisoners cannot use CM/ECF, because they do not have sufficient access to the internet.”);⁶

⁵ See Table C-13, U.S. Courts, https://www.uscourts.gov/sites/default/files/document/jb_c13_0930.2025.pdf [<https://perma.cc/E765-A44U>] (federal district courts); *U.S. Courts of Appeals—Judicial Business 2024*, U.S. Courts, <https://www.uscourts.gov/data-news/reports/statistical-reports/judicial-business-united-states-courts/judicial-business-2024/us-courts-appeals-judicial-business-2024> [<https://perma.cc/Q8QX-HDDN>] (federal circuit courts).

⁶ <https://www.fjc.gov/sites/default/files/materials/20/FederalCourtProSeECF.pdf> [<https://perma.cc/2Z2U-LAYM>].

cf. Turner v. Safley, 482 U.S. 78, 90 (1987) (asking whether “alternative means of exercising the right” exist).

B. Harms to prisoners are systemic because protection turns on third-party compliance that prisoners cannot control

Ohio makes protected treatment of court correspondence contingent on the optional participation of third parties—courts and clerks’ offices—that prisoners cannot control. Prisoners thus have no way to know in advance whether any given court mailing will be treated as protected legal mail or processed as ordinary mail. The Supreme Court has rejected that kind of external limitation on fundamental rights in the context of the Fourteenth Amendment. In *Lane v. Brown*, Indiana conditioned indigent prisoners’ ability to obtain appellate review of the denial of post-conviction relief on whether the state Public Defender chose to request a hearing transcript. 372 U.S. 477, 480-82 (1963). The Court held that a state cannot condition the practical availability of judicial review on the unreviewable cooperation of an outside gatekeeper. *Id.* at 485. That principle applies here: Ohio may not make the First Amendment protection recognized in *Sallier*

functionally contingent on whether independent courts and clerks’ offices undertake administrative steps that prisoners cannot compel.

1. State courts

This gatekeeping problem is not theoretical. Many Ohio state courts do not participate in ODRC’s control-number system. Montgomery County’s Clerk of Courts, for example, has disclaimed any obligation to obtain control numbers for outgoing mail. Mandamus Complaint at Ex. E, *State ex rel. Miller v. Foley*, No. 22-1521 (Ohio Dec. 12, 2022), Dkt. 1.⁷ Ohio appellate courts have likewise affirmed trial courts’ conclusions that using control numbers is “discretionary.” *State v. Lockhart*, 2025 WL 3496507, at *1 (Ohio Ct. App. Dec. 5, 2025); *see also State ex rel. Feathers v. Pittman*, 2025 WL 2438710, at *5 (Ohio Ct. App. Aug. 25, 2025) (prisoner did not establish “a clear legal right to a specific manner of mail delivery”); *State ex rel. White v. Aveni*, 239

⁷ *See also* Doug Livingston, *How Ohio Prison Staff Open and Read Confidential Legal Mail*, The Marshall Project (June 23, 2025) (“Livingston article”), <https://www.themarshallproject.org/2025/06/23/legal-ohio-prison-mail-attorney-client-constitutional> [<https://perma.cc/K2LB-ZWAE>] (“A smattering of county courts use control numbers. But several state courts, including Cuyahoga County Common Pleas, do not, which means the timely delivery of court mail depends almost entirely on where an incarcerated person was convicted.” (cleaned up)).

N.E.3d 344, 349 (Ohio 2024) (denying request “to order the clerk of this court to coordinate mail delivery with [prisoner’s] institution”); *State v. Brooks*, 2025 WL 1190151, at *1 n.1 (Ohio Ct. App. Apr. 21, 2025) (court denied a “Request for Court to Obtain Control Number”).

As a result, prisoners’ access to Ohio state courts turns on whether a given clerk’s office chooses to comply. The Supreme Court of Ohio rejects filings where prisoners attribute untimeliness to the control-number policy. *See* Notice of Pleadings Rejected for Filing, *State ex rel. Howard v. Ohio Dep’t of Rehab. & Corr.*, No. 2022-1045 (Ohio Jan. 9, 2023) (merits brief untimely filed due to control-number policy); Mot. for Reconsideration, *id.* (Ohio Jan. 9, 2023); *State ex rel. Howard v. Ohio Dep’t of Rehab. & Corr.*, 200 N.E.3d 288, 288-89 (Ohio 2022) (table) (dismissing the *Howard* appeal for want of prosecution).

Nor is the problem confined to any one level of Ohio’s judiciary. The Ohio Court of Appeals recently confronted this exact issue. In *State v. Haslam*, 2025 WL 3230791 (Ohio Ct. App. Nov. 10, 2025), the court denied leave to file an out-of-time application for reconsideration where a prisoner received the court’s opinion, mailed without a control number, after the filing deadline. *Id.* at *1-2. The court reasoned that “a

court order being sent by ordinary mail to prison is not an extraordinary circumstance. It is normally how our orders are served on inmates who are not represented by counsel.” *Id.* at *2.

Haslam illustrates the structural problem. Ohio appellate courts serve prisoners by ordinary mail as a matter of routine. Under ODRC’s policy, that service is treated as regular mail—opened outside the prisoner’s presence, read, not logged, and not tracked—because the appellate courts decline to participate in the control-number policy. ODRC keeps no institutional record of receipt, and Ohio courts have declined to treat delays in prisoners’ receipt of mail as a basis for equitable relief. The result is that a prisoner’s ability to comply with strict deadlines depends not on his diligence, but on whether court personnel, unknown to the prisoner and outside his control, have registered with ODRC and affixed a control number to their correspondence, as well as the speed and competence of the prison officials processing the ordinary mail. *See also, e.g.,* Br. for Appellant at 8, *State ex rel. Pointer v. Ohio Adult Parole Auth.*, No. 2022-0307 (Ohio Apr. 19, 2022) (arguing that the control-number policy caused appellant to miss a deadline to file objections to an R&R).

Meanwhile, the State’s attorneys enforce these procedural consequences. When prisoners attribute untimely filings to the control-number policy, ODRC files briefs opposing relief and insists upon strict compliance with deadlines. In *Howard*, for example, ODRC opposed reconsideration because “no documents may be filed after the filing deadlines.” Respondent’s Opp’n to Relator’s Mot. for Reconsideration at 4, *State ex rel. Howard v. Ohio Dep’t of Rehab. & Corr.*, No. 2022-1045 (Ohio Jan. 19, 2023). And Ohio has maintained that “[t]here is also no rule of procedure requiring the clerk’s office to use the ODRC ‘legal mail’ process for service.” Br. of Appellee—State of Ohio at 2-3, *State v. Lockhart*, No. 25 CAA 07 0061 (Ohio Ct. App. Sep. 22, 2025). With one hand, Ohio establishes a policy that foreseeably causes mail delays. With the other, it invokes strict filing rules to punish prisoners for those delays. *Cf. Morr v. United States*, 243 F.2d 913, 914 (6th Cir. 1957) (the government “can not take advantage of its own fault in the matter”).

2. Federal courts

Federal courts, too, decline to participate in ODRC’s control-number process, expressing “concerns about the extraordinary administrative burden that the new ODRC policy appears to impose on

this Court and on all courts of law that send legal mail to inmates.”

Straughter v. Eddy, 2023 WL 6290069, at *5 (S.D. Ohio Sep. 27, 2023).⁸

One court refused to use a control number on the basis that “the Court does not know what ‘control number’ may have been assigned to Petitioner.” Notation Order, *Kirby v. Warden, London Corr. Inst.*, No. 1:21-cv-482 (S.D. Ohio July 5, 2022), Dkt. 29. As a result, the control-number policy has “generated significant motion practice, delay, and administrative cost in many cases in this Court.” *King v. Aramark Corr. Servs.*, 2024 WL 3461784, at *2 (S.D. Ohio Mar. 22, 2024); *see id.* at *2-3 & nn.4-5 (collecting at least 16 cases).

Federal courts have repeatedly attempted to mitigate the burden of the control-number policy through case-specific orders directing ODRC to treat mail in a given case “as legal mail regardless of whether the mail bears a control number.”⁹ But ODRC must implement this

⁸ For example, control numbers expire after 21 days. Ex. 11 to Am. Compl., *Brown v. Chambers-Smith*, No. 2:22-cv-2469 (S.D. Ohio Dec. 6, 2022), Dkt. 36-11. That expiration rule creates a burden because a clerk cannot obtain control numbers in advance and use them as needed over the life of a case, but must reapply on a rolling basis whenever the court sends mail more than three weeks after ODRC issues a control number.

⁹ *See, e.g.*, Order, *Norris v. Watson*, No. 3:25-cv-133 (S.D. Ohio Sep. 25, 2025), Dkt. 11 (cleaned up); Order, *Johnson v. Cool*, No. 1:22-cv-31 (S.D. Ohio Oct. 16, 2024), Dkt. 46; Order, *Foster v. Ohio Dep’t of*

system of individualized carveouts across multiple facilities and mailrooms, and proper implementation depends on staff in individual facilities correctly identifying which prisoners are subject to which orders. ODRC has not successfully done so. This inability has led federal courts to sanction or threaten to sanction ODRC for violating legal-mail orders. *See, e.g., Swain v. Chambers-Smith*, 2024 WL 4540091, at *1-2 (S.D. Ohio Oct. 22, 2024) (R&R recommending sanctions for ODRC's violation of a court order to treat mail as legal mail); *Swain v. Chambers-Smith*, 2024 WL 4956351, at *1 (S.D. Ohio

Rehab. & Corr., No. 2:22-cv-2153 (S.D. Ohio Feb. 11, 2025), Dkt. 79; *Brown-Austin v. Chambers-Smith*, 2025 WL 1312133, at *2 (S.D. Ohio May 6, 2025); Order at 1, *Copeland v. Kelly*, No. 1:22-cv-129 (S.D. Ohio Aug. 30, 2024), Dkt. 31; Order at 1-2, *Warner v. Chambers-Smith*, No. 2:24-cv-1565 (S.D. Ohio Nov. 4, 2024), Dkt. 20; Mem. Op. & Order at 3-5, *Vinson v. Brown*, No. 2:23-cv-80 (S.D. Ohio Jan. 8, 2024), Dkt. 19; Order at 1, *Taper v. Warden, Lebanon Corr. Inst.*, No. 1:24-cv-602 (S.D. Ohio Dec. 10, 2024), Dkt. 15; Order at 3-4, *Kendrick v. Chambers-Smith*, No. 1:22-cv-00170 (S.D. Ohio Jan. 25, 2024), Dkt. 38; Order & R&R at 14, *Krzywkowski v. Davis*, No. 2:24-cv-03902 (S.D. Ohio Oct. 22, 2024), Dkt. 33; Order at 4-5, *Pough v. DeWine*, No. 2:21-cv-00880 (S.D. Ohio June 25, 2024), Dkt. 200; Order at 17, *Rutherford v. Free*, No. 2:24-cv-00764 (S.D. Ohio Apr. 1, 2024), Dkt. 5-1; Order at 1, *Smith v. Hogan*, No. 2:24-cv-02620 (S.D. Ohio Oct. 2, 2024), Dkt. 5; Order at 3-4, *Williams v. Chambers-Smith*, No. 2:24-cv-00393 (S.D. Ohio May 31, 2024), Dkt. 12; Order at 3-5, *Williams v. Warden, Chillicothe Corr. Inst.*, No. 2:23-cv-01042 (S.D. Ohio Dec. 20, 2023), Dkt. 28; Order at 2-3, *Shomer v. Rheinscheld*, No. 2:24-cv-01283 (S.D. Ohio Apr. 10, 2024), Dkt. 9.

Dec. 3, 2024) (adopting the R&R and holding ODRC in contempt); *Shine-Johnson v. Chambers-Smith*, 2024 WL 4296989, at *2 (S.D. Ohio Sep. 26, 2024) (“[T]he record is clear that [ODRC] repeatedly violated the Court’s [order to classify its mail as legal mail].”).

ODRC has responded to these failures by agreeing, in June 2024, not to enforce the control-number policy for mail from federal courts. *See* Stipulated Order Regarding Legal Mail from Federal Courts at 5-6, *Allah v. Chambers-Smith*, No. 2:22-cv-21 (S.D. Ohio June 25, 2024), Dkt. 91 (“*Allah* stipulation”). Yet litigation over federal-court mail continued after the *Allah* stipulation and after ODRC’s contempt sanction in *Swain*, underscoring ODRC’s inability to fairly administer the control-number policy on its own terms. *See, e.g., Holmes v. Ohio Dep’t of Rehab.*, 2025 WL 2214405, at *1 n.1, *2 (S.D. Ohio Aug. 5, 2025) (identifying three cases filed after the entry of the *Allah* stipulation).

C. ODRC’s control-number policy is administratively unworkable and produces inconsistent outcomes, even when courts try to intervene

ODRC’s control-number policy is unworkable as a matter of administration, and ODRC implements it inconsistently across cases and institutions. That is exactly the kind of system *Sallier* warned

against: a policy that prison officials apply in an “arbitrary and capricious fashion.” 343 F.3d at 878 (citing *Lavado v. Keohane*, 992 F.2d 601, 610 (6th Cir. 1993)).

The policy’s rollout was chaotic. ODRC began enforcing the control-number requirement as early as June 1, 2021. *See* ODRC Mail Timeline Summary, R. 44-8, PageID # 305; Order at 3 & n.4, *Kendrick v. Chambers-Smith*, No. 1:22-cv-00170 (S.D. Ohio Jan. 25, 2024), Dkt. 38 (“*Kendrick* order”) (noting inconsistencies in when ODRC began enforcing the policy). But ODRC did not notify prisoners until October 4, 2021. *Kendrick* order at n.4. For months, prisoners could not inform courts about the new requirement.

The control-number policy, once implemented, ran into failures at the operational level. The registration portal itself has been unreliable. “For months at a time, the fields on the ODRC website that a Clerk of Court must fill in were deactivated.” Am. Compl. at 8, *Swain v. Chambers-Smith*, No. 2:23-cv-2809 (S.D. Ohio July 25, 2024), Dkt. 26.

And ODRC's written policies and website do not disclose the 21-day expiration rule. *See generally* ODRC Pol'y 75-MAL-03.¹⁰

More fundamentally, ODRC has disavowed knowledge of whether individual prisons follow its directives. Brian Wittrup, ODRC's Chief of Strategy and Policy, testified that "28 separate prisons and their leadership" are responsible for "enforcing policy directives and knowing whether or not they're being followed." Dep. Tr. of Brian Wittrup, R. 47, PageID # 375:14, 400:13-24 ("Wittrup Dep. Tr.") (cleaned up); *see also id.* at PageID # 400:19-21 ("There's just no way for me to know . . . if policy is being adhered to[.]"). ODRC also does not track whether, or how often, state courts comply with the control-number directive. Wittrup Dep. Tr., R. 47, PageID # 388:16 - 390:14. ODRC therefore cannot even quantify how often court correspondence is downgraded to ordinary mail.

Layered on top of these failures are piecemeal, case-specific federal-court orders—additional rules that mailrooms must identify and apply correctly to individual prisoners' mail. That added complexity has

¹⁰ <https://drc.ohio.gov/visitation/legal-mail/legal-mail> [<https://perma.cc/H36X-FTSM>].

produced further errors, leading to contempt proceedings and sanctions when ODRC failed to comply. *See supra* Section I.B.2.

In short, ODRC has created a policy it cannot administer and cannot monitor—inviting the “arbitrary and capricious” enforcement *Sallier* forbids. 343 F.3d at 878.

D. ODRC compounds the constitutional injury by disciplining prisoners over mail they cannot control

Beyond delaying and truncating court correspondence, the control-number policy attaches disciplinary and financial consequences to prisoners’ exercise of the right to petition and access the courts. ODRC forces indigent prisoners to choose between letting the prison destroy their legal mail (that the prison treats as ordinary mail that is over the page limit) or pay the return postage. And ODRC issues conduct reports—disciplinary write-ups that can trigger loss of privileges, housing or job changes, segregation, and loss of earned credit—if prisoners refuse to make that Hobson’s choice. ODRC’s enforcement structure penalizes exercising protected rights: because prisoners cannot compel courts to comply with ODRC’s control-number policy, they cannot avoid these sanctions through their own conduct.

These penalties are not theoretical. ODRC issued James Bishop, a pro se Ohio prisoner litigating in federal court, multiple conduct reports tied to his attempts to receive court mail that ODRC reclassified as regular mail, processed outside Bishop's presence, and withheld. On March 10, 2025, ODRC concluded that Bishop committed "abuse of the mail system" after he refused to pay return postage for state-court mail packages deemed "too large to scan" because of an "excessive page count." Exs. to Compl. at 35, *Bishop v. Forshey*, No. 2:25-cv-292 (S.D. Ohio May 5, 2025), Dkt. 10-1 ("Bishop March 10, 2025 Conduct Report").

Later that month, ODRC again charged Bishop "with violation of the institutional mail system" because he refused to either allow the prison to discard "two large mail packets that were too large to scan" from the courts or pay to return them, resulting in ODRC classifying the court's mail "as contraband." Exs. to Mot. for Summary Judgment at 18, *Bishop* (S.D. Ohio Aug. 11, 2025), Dkt. 25 (Case No. NCI-25-001282); *id.* at 23 (linking NCI-25-001282 to the Jefferson County court resending mail returned for "excessive pages"). After issuing Bishop these conduct reports, ODRC placed him in segregation, housed him

with a violent cellmate, subjected him to substandard conditions, destroyed or lost his property, and removed him from an honor dorm. Compl. at 6-7, *Bishop v. Forshey*, No. 2:25-cv-292 (S.D. Ohio May 5, 2025), Dkt. 10.¹¹

Bishop’s allegations are consistent with the sanctions ODRC’s rules authorize once a conduct report issues. Hearing officers may change prisoners’ housing or job assignments. Ohio Admin. Code § 5120-9-07(F)(5)(b). They may require prisoners to make restitution or order extra work duty. *Id.* § 5120-9-07(F)(5)(d), (h). Or they may restrict prisoners’ privileges and place prisoners in limited-privilege housing assignments. *Id.* § 5120-9-07(F)(5)(f)-(g); *cf. id.* § 5120:1-7-02(B)(38) (defining privileges in a related part of the code as including “access to entertainment, commissary, visits by friends, telephone calls to friends or family, snacks, dayroom access and program access”). Hearing officers may also refer conduct reports to a rules infraction board, which

¹¹ See also Livingston article (“[C]orrectional officers punished those who criticized the mailroom or filed lawsuits claiming their mail was mishandled.”); Aff. of Kimani Ware at 2, *State ex rel. Ware v. Booth*, No. 2023-1293 (Ohio July 16, 2024) (prisoner thrown “in the hole” for complaining about mail policies).

can levy similar sanctions and reduce prisoners' earned credit. *Id.*

§§ 5120-9-07(H)(3), 5120-9-08(L).

Bishop's experience also underscores the financial pressure the policy imposes on indigent prisoners. ODRC's demands for payment are significant for Ohio prisoners, who receive between "no compensation" and \$24 per month when working prison jobs. *See* Ohio Admin. Code § 5120-3-08(A). At these prison wages, ODRC's insistence on "restitution of \$4.61" for a single court mailing is a meaningful penalty. Bishop March 10, 2025 Conduct Report.

ODRC presents prisoners with an impossible choice: pay to return court filings, forfeit those papers, or face discipline. That burden will inevitably deter some prisoners from pursuing claims at all.

II. ODRC's Control-Number Policy Lacks a Rational Connection to Security

ODRC's asserted security rationale is implausible given its willingness to exempt federal-court mail. Nor has ODRC produced evidence that the policy reduces contraband. The control-number policy lacks a "valid, rational connection" to a legitimate governmental interest. *Turner*, 482 U.S. at 89.

First, ODRC’s willingness to alter its policy informally to exempt federal courts belies any claim that the control-number mechanism is necessary to address a security threat posed by court mail.¹² ODRC did not and could not articulate any substantive justification for applying the policy to state courts but not federal courts, citing only the “advice of legal counsel” and a preference for fewer exceptions. Wittrup Dep. Tr., R. 47, PageID # 401:8-14, # 408:1-9. The district court did not address the ODRC’s distinction between federal and state courts in its analysis. Order, R. 50, PageID # 435-443.

Second, ODRC has not offered any evidence-based grounds for imposing this per-piece control-number requirement on courts in the first instance. ODRC makes no showing that court correspondence was a meaningful source of contraband; in fact, ODRC does not track whether, or how often, legal-mail contraband originated from senders posing as courts as opposed to attorneys. Wittrup Dep. Tr., R. 47, PageID # 392:17-393:11. Smugglers are more likely to impersonate attorneys, not courts. *See* ODRC Presentation, R. 44-2, PageID # 283,

¹² *Allah* Stipulation at 5 (noting that ODRC changed its “practice” for federal courts, though it had not amended Ohio Admin. Code § 5120-9-17); Wittrup Dep. Tr., R. 47, PageID # 398:23-399:4.

285 (instructions to “create a fake law firm” and to “google any law firm”).

In any event, prison officials do not need control numbers to authenticate court correspondence. Trained staff can distinguish legitimate court mail from illegitimate fakes by examining readily identifiable indicia of origin, such as the use of official court stationery (with addresses pre-printed on return envelopes), or by using other noninvasive tools, including K9 or other external screening. *See* ODRC Presentation, R. 44-2, PageID # 289 (noting illegitimate mail with a stamped return address, “where if it was legitimate legal mail from the Clerk of Courts the address would be printed on the envelope”); *id.* (K9 screening also detected the fake mail); ODRC Pol’y 75-MAL-03 § VI.B.1 (“Reasons to suspect legal mail may contain contraband include, but are not limited to, K9 Unit detection, wet or stained exterior, or evidence of tampering.”).¹³

¹³ Other states use these measures. *See, e.g.,* Ga. Comp. R. & Regs. 125-3-3-.03(2) (providing for external inspection of privileged mail “by fluoroscope, metal detecting device, or manual manipulation”); Mass. Code Regs. § 481.11(3) (privileged mail subject to “fluoroscope examination for contraband material but shall not be opened by a DOC employee except in the presence of the addressee inmate”).

Third, ODRC's data do not separate court mail from other sources of contraband, so they cannot supply the rational connection *Turner* requires. ODRC points to a downward trend in the contraband attributable to legal mail from 2020 to 2023. DOTS SIRPT – Major Contraband – Drugs – Mailroom (Legal Mail), R. 44-5, PageID # 293. But ODRC's aggregate count of reported drug-contraband incidents shows that those incidents fell from 2021 to 2022, and then increased in 2023, belying any claim that the policy had an effect of reducing contraband. Total Reported Drug Contraband Incidents, R. 44-4, PageID # 292.¹⁴

Moreover, the decline in legal-mail contraband tracks a corresponding collapse in legal-mail volume, Jan 2021 – Sep 2023 Total Incoming Legal Mail, R. 44-3, PageID # 291, suggesting that the policy just shifted contraband incidents to regular-mail channels. And even before the control-number policy took effect, the mailroom already intercepted most instances of contraband, showing that ODRC could effectively screen mail without the control-number policy. Ex. F to Am.

¹⁴ Contraband went up again in 2024 to a four-year high of 12,463 reported incidents. See Livingston article.

Compl., *Ohio Justice & Pol’y Ctr. v. Chambers-Smith*, No. 1:25-cv-291 (S.D. Ohio Oct. 1, 2025), Dkt. 37-7 (in 2020, contraband found in mailroom 354 out of 370 times).

The persistence of post-policy “legal mail” contraband underscores how little ODRC’s data prove: authorized legal-mail sources send contraband, ODRC does not reliably distinguish legal mail from regular mail, or the control-number system failed to prevent the fake-mail problem it purports to solve. The post-policy data do not show that fake court mail ever posed a meaningful issue.

Instead, contraband normally enters through other channels: Quinn asserted that over 98% of contraband enters through staff. *See* Mot. for Reconsideration, R. 52, PageID # 450. Experience from other correctional systems cautions against treating mail as a primary contraband source.¹⁵ New York City previously attributed fentanyl smuggling to mail based on field tests later found to produce false

¹⁵ “Most often, it’s staff—not drug soaked papers—that bring contraband into facilities.” Nazish Dholakia, *More and More Prisons Are Banning Mail*, Vera Inst. of Just. (Mar. 1, 2022), <https://www.vera.org/news/more-and-more-prisons-are-banning-mail> [<https://perma.cc/N9X2-L976>] (cleaned up).

positives 85% of the time,¹⁶ and it reported that contraband enters “in significant part” through correctional staff.¹⁷

III. Ohio’s Policy Is an Outlier

Ohio imposes one of the nation’s most burdensome legal-mail policies. And amici are aware of no other state that treats federal- and state-court mail differently. Forty-three states, the District of Columbia, and the federal government do not implement any type of control-number system.¹⁸ Instead, they generally look to the sender’s source.

¹⁶ Jocelyn Strauber & Marissa Carro, *Field Testing for Fentanyl: An Examination of the Reliability of the New York City Department of Correction’s Narcotics Testing*, N.Y.C. Dep’t of Investigation 17 (Nov. 2024), <https://www.nyc.gov/assets/doi/reports/pdf/2024/FieldTestingRpt11.20.2024.pdf> [<https://perma.cc/9GRU-2BBK>].

¹⁷ Jocelyn Strauber & Marissa Carro, *Contraband Smuggling in the City’s Jails and Critical Recommendations for Improved Security Measures*, N.Y.C. Dep’t of Investigation 1 (Nov. 2024), <https://www.nyc.gov/assets/doi/reports/pdf/2024/ContrabandRpt.11.20.2024.pdf> [<https://perma.cc/AX57-7LJS>].

¹⁸ Ala. Dep’t of Corr. AR 448, § III.F; Alaska Admin. Code tit. 22, § 05.520(b); Ariz. Dep’t of Corr. DO 902, § 11.0 (May 15, 2023); Ark. Code R. 004.00.20-027 (AR 860), § II.A.1; Cal. Code Regs. tit. 15, § 3143; Colo. Dep’t of Corr. AR 300-38, § IV(B); Conn. Dep’t of Corr. Directive No. 10.7, §§ 3(j), 9, 11 (Dec. 16, 2022); D.C. Dep’t of Corr. Pol’y & Proc. 4070.4H (Apr. 22, 2024); Del. Dep’t of Corr. Pol’y No. 4.0, § IV.D (Apr. 15, 2016); Ga. Dep’t of Corr. SOP IIB05-0001, § III(I); Haw. Dep’t of Corr. & Rehab., Pol’y No. COR.15.02 (Jan. 1, 2024); Idaho Dep’t of Corr. SOP No. 402.02.01.001, § 26 (Mar. 11, 2018); 20 Ill. Admin. Code § 525.140; Ind. Dep’t of Corr., Pol’y No. 02-01-103, § III(D) (Mar. 15,

See, e.g., 28 C.F.R. § 540.18(a) (legal mail, or “special mail,” must “adequately identify” the sender and be marked “Special Mail—Open only in the presence of the inmate” (cleaned up)); Tenn. Dep’t of Corr. Pol’y Index No. 507.02, § IV.O (Dec. 8, 2023) (privileged correspondence “bears the appropriate name and title of the sender/receiver”).¹⁹ Most

2021); Iowa Admin. Code r. 201-20.4(904); Kan. Admin. Regs. §§ 44-12-601(a)(1), (f)(3); La. Admin. Code tit. 22, pt. I, §§ 313(E), (F)(8)-(10); Me. Dep’t of Corr. Pol’y No. 21.2, § VI(D); Md. Code Regs. 12.03.03.01(B)(9); Miss. Dep’t of Corr. SOP No. 31-01-01 (Feb. 1, 2014); Mo. Dep’t of Corr. Pol’y IS13-1.1 (June 15, 2022); Mont. Dep’t of Corr. Pol’y DOC 3.3.6, § IV.D (Dec. 4, 2024); Neb. Dep’t of Corr. Servs. Pol’y No. 205.01 (Dec. 31, 2025); Nev. Dep’t of Corr. AR 722.09 (Nov. 16, 2016); N.H. Admin. Code R. Ann. § Cor 314.12; N.J. Admin. Code § 10A:31-19.7; N.M. Corr. Dep’t Pol’y CD-151200 (Sep. 27, 2023); N.Y. Comp. Codes R. & Regs. tit. 7, §§ 721.2-.3; N.C. Dep’t of Pub. Safety Prisons Pol’y D.0300 (Oct. 13, 2021); *North Dakota Corr. Facility Standards*, N.D. Dep’t of Corr. & Rehab. 31 (effective Jan. 1, 2024), <https://www.docr.nd.gov/sites/www/files/documents/2024%20Correctional%20Facility%20Standards.pdf> [<https://perma.cc/2YXS-5CQC>]; Okla. Dep’t of Corr. OP-030117 (Sep. 1, 2024); Or. Admin. R. 291-131-0030; 240 R.I.C.R. 10-00-1.4; S.C. Dep’t of Corr. Pol’y PS-10.08 (Sep. 6, 2022); S.D. Admin. R. 17:50:10:04; Tenn. Dep’t of Corr. Admin. Pol’y & Procs. No. 507.02; 37 Tex. Admin. Code § 291.2(2); Utah Admin. Code R251-705-3; Vt. Dep’t of Corr. Dir. No. 409.05 (Dec. 6, 2010); Va. Dep’t of Corr. Operating Proc. 803.1(VI) (Apr. 1, 2024); Wash. Dep’t of Corr. Pol’y Doc No. 450.100 (Dec. 31, 2023); W. Va. Div. of Corr. Pol’y Dir. 503.00 (Oct. 16, 2023); Wis. Admin. Code DOC § 309.04(3); Wyo. Dep’t of Corr. Pol’y & Proc. No. 5.401 (Jan. 15, 2013); 28 C.F.R. § 540.18(a).

¹⁹ <https://www.tn.gov/content/dam/tn/correction/documents/507-02.pdf> [<https://perma.cc/LY2W-V838>].

require only that the mail include a verifiable return address and otherwise indicate that a court sent it. *See* Cal. Code Regs. tit. 15, § 3143 (“A notice or request for confidentiality is not required on the envelope.”); Md. Code Regs. 12.03.03.01(B)(9) (defining one category of legal mail as mail “received on official stationery from” a court); Ga. Comp. R. & Regs. 125-3-3-.03(1)(j) (privileged mail, including with courts, depends only on the source of the mail).

Six states other than Ohio—Florida, Kentucky, Massachusetts, Michigan, Minnesota, and Pennsylvania—enforce or have enforced control-number-style policies.²⁰ But Florida, Kentucky, Massachusetts, and Minnesota exempt courts from any requirement to obtain a control number or the equivalent. *See* Fla. Admin. Code Ann. r. 33-210.102(5);

²⁰ Most of these policies took effect in the past two years. *See* Fla. Admin. Code Ann. r. 33-210.10-2(4) (effective Aug. 5, 2025); Ky. Dep’t of Corr. Pol’y No. 16.2, § II.G.3 (effective Feb. 4, 2025); 103 Mass. Code Regs. § 481.11(4) (effective May 1, 2024); Memo. Regarding MN DOC Attorney-Client Privileged Mail Policy Change, Minn. Dep’t of Corr. (Nov. 1, 2024), https://mn.gov/doc/assets/MN%20DOC%20Attorney-Client%20Privileged%20Mail%20Policy%20Change_tcm1089-664502.pdf [<https://perma.cc/L9ZR-T6H4>]; Mich. Dep’t of Corr. Pol’y Dir. 05.03.118 (effective Jan. 5, 2026), https://www.michigan.gov/corrections/-/media/Project/Websites/corrections/Files/05_03_118-Prisoner-Mail-Final-1-5-26.pdf [<https://perma.cc/Z7MP-YQJS>].

Ky. Dep’t of Corr. Pol’y No. 16.2, §§ I, II.G.2, II.G.8;²¹ 103 Mass. Code Regs. § 481.11(4); Minn. Dep’t of Corr. Pol’y No. 302.020, at 1-2, 10-12. And Pennsylvania only requests that courts obtain a one-time control number for all mail, exempting them from the separate requirement to include a “Time Code” that changes every week. Pa. DC-ADM 803, at 1-10 to 1-12.²² Further, when court mail arrives without a court control number, Pennsylvania returns it to the sender instead of reading it, *id.* at 1-6, preserving confidentiality by avoiding staff review or manipulation of its contents—precisely the risk that chills protected legal communications.

Obvious, workable alternatives to Ohio’s control-number policy are readily available, including Ohio’s pre-2021 approach. Before adopting the current per-piece control-number system, ODRC treated court correspondence as legal mail when it had the court’s return address. Ohio Admin. Code § 5120-9-17(B)(2) (2021). That approach

²¹ https://corrections.ky.gov/About/cpp/Documents/16/_CPP%2016.2%20Effective%202025%20-%202-4-25.pdf [<https://perma.cc/GTK3-Y3Q5>].

²² <https://www.pa.gov/content/dam/copapwp-pagov/en/cor/documents/about-us/doc-policies/803%20Inmate%20Mail%20and%20Incoming%20Publications.pdf> [<https://perma.cc/892J-C8EB>].

mirrors the predominant model. The Federal Bureau of Prisons (BOP), for example, requires only that court mail “adequately identify” the sender and be marked with “Special Mail—Open only in the presence of the inmate.” 28 C.F.R. § 540.18; *cf. Turner*, 482 U.S. at 98 (looking to a federal regulation as an “obvious, easy” alternative). In practice, BOP does not even require a “Special Mail” marking for courts. *See* Fed. Bureau of Prisons, Program Statement 5265.14, Correspondence, at 14 (Apr. 5, 2011).²³

BOP has administered this policy without issue for decades, *see* 50 Fed. Reg. 40108, 40109 (Oct. 1, 1985), despite having over three times as many prisoners as Ohio.²⁴ California and Texas, the two states with the largest prison populations,²⁵ have similarly lenient policies. *See* Cal.

²³ https://www.bop.gov/policy/progstat/5265_014.pdf [<https://perma.cc/YD2V-PTL8>].

²⁴ *Compare Statistics*, Federal Bureau of Prisons (last visited Mar. 24, 2026), https://www.bop.gov/about/statistics/population_statistics.jsp [<https://perma.cc/22HG-KWHA>] (over 150,000 prisoners in March 2026), *with State Prison Incarcerated Population*, DataOhio (last visited Mar. 24, 2026), <https://data.ohio.gov/wps/portal/gov/data/view/state-prison-incarcerated-population> [<https://perma.cc/6LH7-3RW2>] (approximately 46,000 prisoners in March 2026).

²⁵ *See How many adults are in California’s state and county correctional systems and how has this changed over time?*, Cal. Legislature’s Nonpartisan Fiscal & Pol’y Advisor (Dec. 2025),

Code Regs. tit. 15, § 3143 (no requirement for “special mail” marking); Tex. Dep’t of Crim. Just., BP-03.91, at 4 (Feb. 20, 2026) (same).²⁶ In light of these readily available alternatives, Ohio’s decision to strip court correspondence of protected treatment unless it bears a unique control number constitutes an “exaggerated response.” *Turner*, 482 U.S. at 90-91.

CONCLUSION

The Court should reverse.

Respectfully submitted,

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March 25, 2026

https://www.lao.ca.gov/PolicyAreas/CJ/5_cj_inmates [<https://perma.cc/6TVW-XB4Q>] (92,600 prisoners held in California state prisons); *State Correctional Institution Population & System Capacity*, Tex. Legis. Budget Bd. (May 2025), https://www.lbb.texas.gov/CJDA/_site/TDCJ.html [<https://perma.cc/P93A-STCG>] (over 135,000 prisoners held in Texas state prisons).

²⁶ <https://www.tdcj.texas.gov/documents/policy/BP0391.pdf> [<https://perma.cc/24R5-76UB>].

Form 6. Certificate of Compliance With Type-Volume Limit

Certificate of Compliance With Type-Volume Limit, Typeface Requirements, and Type-Style Requirements

1. This document complies with [the type-volume limit of Fed. R. App. P. [29(a)(5), 32(a)(7)(B)]] [the word limit of Fed. R. App. P. []] because, excluding the parts of the document exempted by Fed. R. App. P. 32(f) [and []]:

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/s/ Shunhe Wang

Attorney for Amici Curiae

Dated: March 25, 2026

CERTIFICATE OF SERVICE

I certify under Federal Rule of Appellate Procedure 25(d) and Sixth Circuit Rule 25(f) that, on March 25, 2026, I caused a true and correct copy of the foregoing Brief of the Human Rights Defense Center, the American Civil Liberties Union, the American Civil Liberties Union of Ohio Foundation, New York State Defenders Association, Public Accountability, and Uptown People's Law Center as Amici Curiae in Support of Plaintiff-Appellant Quinn to be served on all counsel of record through the Court's CM/ECF system.

/s/ Shunhe Wang
Shunhe Wang

Counsel for Amici Curiae

DESIGNATION OF RELEVANT DISTRICT COURT DOCUMENTS

Pursuant to Sixth Circuit Rule 30(g), Amici Curiae hereby
designate the following relevant district court documents:

Record Entry Number	Description	PageID
44-2	Exhibit to Defendant's Motion for Summary Judgment	283, 285, 289
44-3	Exhibit to Defendant's Motion for Summary Judgment	291
44-4	Exhibit to Defendant's Motion for Summary Judgment	292
44-5	Exhibit to Defendant's Motion for Summary Judgment	293
44-8	Exhibit to Defendant's Motion for Summary Judgment	305
47	Deposition Transcript of Brian Wittrup	375, 388- 390, 392- 393, 398- 401, 408
50	Order on Cross-Motion for Summary Judgment	435-443
52	Plaintiff's Motion for Reconsideration	450