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## An Analysis of *United States v. Motta*: Refining the Application of the Other-Indicia Approach to Criminal-Alias Mail

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# **An Analysis of *United States v. Morta*: Refining the Application of the Other- Indicia Approach to Criminal-Alias Mail**

Nicholas Manning\*

## *Abstract*

*Americans who use their legal names to send and receive mail through traditional postal services have long maintained a reasonable expectation of privacy in that mail under the Fourth Amendment. Courts have also recognized that even those who use aliases with traditional postal services have a reasonable expectation of privacy in their mail. But circuit courts have split over whether Americans who use aliases in mail purely for criminal purposes—such as sending or receiving drugs—should have that same expectation of privacy.*

*More specifically, courts disagree over the correct approach to analyze a defendant's criminal-alias mail for purposes of Fourth Amendment standing, which is a prerequisite for determining if the government has violated a defendant's reasonable expectation of privacy. Should courts analyze other indicia relevant to the defendant's criminal-alias mail to affirm or deny Fourth Amendment standing? Or should courts legalistically affirm or deny Fourth Amendment standing for Americans who use criminal-alias mail? This Note analyzes a recent case, *United States v. Morta*, in which the Ninth Circuit joined several sister courts and adopted the "other indicia" approach.*

*This Note argues that the Ninth Circuit was right to do so, because the other-indicia approach provides a more thorough analysis of Fourth Amendment standing than the "legalistic" approach. Moreover, the Note argues that *Morta* refined the application of the other-indicia approach by explicitly articulating the need for courts to consider indicia of "connection" in their other-indicia analysis. Ultimately, by adopting and refining the other-indicia approach, *Morta* makes it*

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*An Analysis of United States v. Motta*  
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*easier to prove Fourth Amendment standing for Americans who use aliases in mail for lawful purposes, while appropriately making it harder to prove Fourth Amendment standing for those who use aliases in mail for purely criminal purposes.*

TABLE OF CONTENTS

I.	INTRODUCTION .....	4
II.	HISTORICAL BACKGROUND OF THE OTHER-INDICIA APPROACH.....	7
III.	FACTS AND PROCEDURAL HISTORY OF <i>UNITED STATES V. MORTA</i> .....	11
IV.	ANALYSIS OF THE OPINION.....	13
	A. <i>Judge Manglona’s Opinion</i> .....	13
	1. Is the other-indicia approach a deeper analysis than the legalistic <i>Lozano</i> approach? .....	14
	2. Does Judge Manglona’s opinion reinforce its legal conclusion by analyzing the legal implications of adopting the other-indicia approach? .....	18
	3. Does the other-indicia approach maintain the societal practice of using a mail alias? .....	21
V.	IMPACT AND CONCLUSION.....	23

## I. INTRODUCTION

At first glance, the dark web and traditional postal services seem like worlds apart.<sup>1</sup> Yet, these two worlds collide in the United States in a most unlikely way: Americans transact with drug dealers through the dark web, and dark-web drug dealers use aliases to ship drugs to their customers via traditional postal services.<sup>2</sup> Typically, people who send mail through traditional postal services, such as the United States Postal Service (USPS), have protection under the Fourth Amendment<sup>3</sup> for a right known as their “reasonable expectation of privacy.”<sup>4</sup> Some circuits have even recognized that Americans who use aliases to send or receive mail have their reasonable expectation of privacy protected by the Fourth Amendment, too.<sup>5</sup> However, circuit courts disagree as to whether individuals who use aliases when sending and receiving mail exclusively for criminal purposes *should* have their reasonable expectation of privacy protected under the Fourth Amendment.<sup>6</sup> This circuit split exists, in part, because circuit courts must decide whether individuals who use aliases in mail purely for criminal purposes have Fourth Amendment standing.<sup>7</sup> Should courts conduct an in-depth factual analysis to determine if “other indicia” demonstrate the defendant’s “ownership, possession, control, or connection to” the criminal-alien mail in question,

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1. Katharine Stewart, *The Fourth Amendment, Dark Web Drug Dealers, and the Opioid Crisis*, 70 FLA. L. REV. 1097, 1098 (2018) (describing the dark web as a “global online network that allows users to conduct transactions anonymously”).

2. *Id.* at 1099.

3. *Id.* (“Because the Supreme Court has held that mail sent through the United States Postal Service (USPS) is subject to Fourth Amendment protection, the United States Postal Inspection Service (USPIS) typically cannot search packages without first obtaining a search warrant based on probable cause.”).

4. Stephen P. Jones, *Reasonable Expectations of Privacy: Searches, Seizures, and the Concept of Fourth Amendment Standing*, 27 U. MEM. L. REV. 907, 908 (1997) (“The concept of ‘reasonable expectation of privacy’ is at the forefront of all Fourth Amendment analysis. It is the starting point for any defendant seeking to suppress evidence obtained in violation of the Fourth Amendment. If a defendant does not have a reasonable expectation of privacy in an area searched or an item seized, he does not suffer a Fourth Amendment violation.”).

5. *See, e.g.*, *United States v. Garcia-Bercovich*, 582 F.3d 1234, 1238 (11th Cir. 2009); *United States v. Villarreal*, 963 F.2d 770, 774 (5th Cir. 1992).

6. Stewart, *supra* note 1, at 1099–1100; *see generally infra* notes 9, 42–44.

7. Jones, *supra* note 4, at 910–11 (“[T]he answer to the Fourth Amendment ‘standing’ issue lies in the traditional, non-constitutional limit on courts’ authority—the requirement that the movant assert *his own rights*, not the rights of others. Thus, the Court has rejected an analysis grounded in the traditional notions of ‘standing’ in favor of a focus on the substantive rights of the Fourth Amendment and whether those rights belonged to the defendant.”) (emphasis added).

thereby potentially leading to Fourth Amendment standing?<sup>8</sup> Or should courts skip the in-depth factual analysis and treat all aliases—including criminal ones—the same through a bright-line rule that categorically denies Fourth Amendment standing?<sup>9</sup>

In *United States v. Morta*, Rebecca Rose San Nicolas Morta (Morta) arranged to have drugs delivered to her father’s house in Dededo, Guam with the addressee’s name listed as “Mark Mota.”<sup>10</sup> Post-office investigators intercepted this package, eventually obtained the consent of Morta’s father (Jesse Morta) to open the package (which contained a “white crystalline substance”), and interviewed Morta about the package.<sup>11</sup> After two interviews, Morta signed a written form authorizing a search of her cell phone and affirmed in a written statement that she had agreed to “a proposition to make money and receive drugs.”<sup>12</sup> However, Morta later moved to suppress all evidence obtained from the interviews and the search of her cell phone by submitting a signed declaration that stated the package had belonged to her at

8. See *United States v. Morta*, No. 1:21-cr-00024, 2022 WL 1447021, at \*8–9 (D. Guam May 9, 2022).

9. See e.g., *United States v. Daniel*, 982 F.2d 146, 149 (5th Cir. 1993) (“[E]ven if we accept the Government’s assertion that ‘Lynn Neal’ was Daniel’s alias, we still question whether Daniel would have Fourth Amendment ‘standing’ to assert the claim, particularly when the use of that alias was obviously part of his criminal scheme.”); *United States v. Koenig*, 856 F.2d 843, 846 (7th Cir. 1988) (“Because Graf was neither the sender nor the addressee of the package and thus has no privacy right in it, he therefore has no standing to make the request.”); *United States v. Smith*, 39 F.3d 1143, 1145 (11th Cir. 1994) (“Given . . . the fact that [Smith] was neither the sender nor addressee of the letter, we hold that this arrangement with Kirkconnell was insufficient to preserve [Smith’s] legitimate expectation of privacy in the letter.”). But see several cases that suggest in reasoned dicta that courts should take the opposite approach and affirm Fourth Amending standing for all alias mail. *United States v. Pitts*, 322 F.3d 449, 459 (7th Cir. 2003) (“Pitts and Alexander had a right to use false names in sending and receiving mail. There is nothing inherently wrong with a desire to remain anonymous when sending or receiving a package, and thus the expectation of privacy for a person using an alias in sending or receiving mail is one that society is prepared to recognize as reasonable.”) (citation omitted); *United States v. Johnson*, 584 F.3d 995, 1002 (10th Cir. 2009) (“While some courts have found an expectation of privacy when an individual uses an alias or a pseudonym, such a situation is distinguishable because it is not necessarily illegal to use a pseudonym to receive mail unless fraud or a stolen identification is involved.”) (citation omitted); see Rachel Key, *Criminal Procedure—Resolving the Circuit Split Regarding the Expectations of Privacy in Mail Addressed with an Alias*, 46 UNIV. OF ARK. LITTLE ROCK L. REV. 303, 307-08 (2023) (citing *United States v. Johnson*, 584 F.3d 995, 1002–04 (10th Cir. 2009)) (noting that “[t]he district court’s denial of the defendant’s motion to suppress was affirmed . . . suggesting a preference for the bright-line rule that an individual does retain a reasonable expectation of privacy when they use an alias or pseudonym to receive mail.”).

10. *Morta*, No. 1:21-cr-00024, at \*1–3.

11. *Id.*

12. *Id.* at \*3.

the time of its opening.<sup>13</sup> In doing so, Morta legally contended that she had Fourth Amendment standing and that the inspection of the package violated her Fourth Amendment right to a reasonable expectation of privacy in the package.<sup>14</sup> In order for the District Court in Guam to make a finding regarding her Fourth Amendment standing, though, it first needed to decide which approach to adopt when analyzing Morta's right to a reasonable expectation of privacy in the package.<sup>15</sup> That necessity arose because the Ninth Circuit lacked binding precedent regarding the correct approach to use when analyzing a defendant's reasonable expectation of privacy in alias mail.<sup>16</sup>

Ultimately, Judge Manglona chose to adopt the "other indicia" approach to conduct the court's analysis despite the existence of a Ninth Circuit concurring opinion that favored a "legalistic" or bright-line approach.<sup>17</sup> Here, Judge Manglona argued that the other-indicia approach provided a deeper analysis of relevant factors than the legalistic approach and still maintained the important societal practice of using an alias in the mail.<sup>18</sup> In the end, Judge Manglona concluded that Morta did not have Fourth Amendment standing because Morta was neither the sender nor the addressee of the package in question, and she did not meet her burden of establishing other indicia sufficient to connect her to the package for purposes of establishing a

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13. *Id.*; see also Jones, *supra* note 4, at 909–10 ("The concept of standing enters the realm of the Fourth Amendment via the motion to suppress. If a criminal defendant, i.e., a party, moves to suppress certain evidence as a result of a violation of the Fourth Amendment, [the party] must have a legal right to do so.").

14. See *Morta*, No. 1:21-cr-00024, at \*3; see also Jones, *supra* note 4, at 909–10.

15. See *Morta*, No. 1:21-cr-00024, at \*4.

16. *United States v. Lozano*, 623 F.3d 1055, 1062 (9th Cir. 2010) (O'Scannlain, J., concurring) ("Our circuit has not decided whether an individual has a legitimate expectation of privacy with respect to a package that is not addressed to him. In an unpublished, nonprecedential decision, however, we held that a defendant did not have a legitimate expectation of privacy in a package addressed to a co-resident of his home."); see also *Morta*, No. 1:21-cr-00024, at \*6 ("Only in the absence of binding precedent do we consider other sources of decisional law such as out-of-circuit cases." (quoting *Carrillo v. County of Los Angeles*, 798 F.3d 1210, 1222–23 (9th Cir. 2015))).

17. See *Morta*, No. 1:21-cr-00024, at \*8 (describing the approach favored by Judge O'Scannlain in his *Lozano* concurrence as "legalistic" because it focused "on one line of a package (the sender or addressee) to the exclusion of the line directly underneath (the physical address)."); *Lozano*, 623 F.3d at 1064 (O'Scannlain, J., concurring) ("I would hold that a defendant does not have a legitimate expectation of privacy in a package not addressed to him, even if it listed his street address and even if the addressee was his criminal alias. Because the package in this case was not addressed to Lozano, and Bill Corner was at most Lozano's criminal alias, I would hold that Lozano did not have a legitimate expectation of privacy in the mailed package.").

18. *Morta*, No. 1:21-cr-00024, at \*8–9.

reasonable expectation of privacy.<sup>19</sup>

This Note will further explore how the court correctly adopted and used the other-indicia approach to determine that *Morta* did not have Fourth Amendment standing. Part II offers historical context for the development of the other-indicia approach and briefly describes the current inter- and intra-circuit split that pervades criminal-alias mail. Part III relays the operative facts of *United States v. Morta* and the procedural history leading up to that opinion. Part IV analyzes how Judge Manglona reached her conclusion, critiques portions of the *Morta* court's analysis, and presents counterarguments to the other-indicia approach offered by courts and legal scholars. Part V concludes by acknowledging that *Morta* refines the other-indicia approach and functions as an additional data point to assess its efficacy. It also discusses *Morta*'s direct impact and how *Morta* illuminates the need to resolve the inter- and intra-circuit split around criminal-alias mail.

## II. HISTORICAL BACKGROUND OF THE OTHER-INDICIA APPROACH

Originally, the U.S. Supreme Court strictly analyzed the text of the Fourth Amendment and focused on property law concepts.<sup>20</sup> In 1878, the Supreme Court applied this approach to its *Ex parte Jackson* decision.<sup>21</sup> Here, per Katharine Stewart, the Court held that “sealed letters and packages are subject to the protections of the Fourth Amendment, except for inspection of the packages’ exterior and weight.”<sup>22</sup> The Court also differentiated these forms of mail from others like “magazines, pamphlets, and other printed matter, purposely left in a condition to be examined” and noted that these latter forms of mail did not have the protection of the Fourth Amendment.<sup>23</sup> Decades later, in *Olmstead v. United States*, the Court used strict textualism once again to hold that wiretapping was not a search under the Fourth Amendment because the Fourth Amendment only protected against physical invasions of real or

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19. *Id.* at \*11.

20. Stewart, *supra* note 1, at 1101. *See also* U.S. CONST. amend. IV (“The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”).

21. *See* Stewart, *supra* note 1, at 1101.

22. *Id.*

23. *Id.* (quoting *Ex Parte Jackson*, 96 U.S. 727, 733 (1878)).



personal property.<sup>24</sup> This emphasis on property law, however, would change with the Supreme Court's next major Fourth Amendment opinion.<sup>25</sup>

In *Katz v. United States*, the Court declared that “the Fourth Amendment protects people, not places,” and seemingly did away with property law concepts in deciding Fourth Amendment issues.<sup>26</sup> Justice Harlan's concurring opinion in *Katz* established a two-prong test that became the new framework through which the Court analyzed Fourth Amendment issues.<sup>27</sup> It tested: “(1) whether the person had a subjective expectation of privacy; and (2) whether society was prepared to recognize that expectation as reasonable.”<sup>28</sup> This change reflected the Court's newfound emphasis on privacy interests rather than property interests<sup>29</sup> and embodied a broad construction that allowed the Fourth Amendment to “adapt to the changing needs of society.”<sup>30</sup> *Katz* also “made it clear . . . that the ‘person’ provided for in the text of the Fourth Amendment extended beyond the physical body. The Fourth Amendment ‘person’ included peoples’ *expectations* that their activity will remain private.”<sup>31</sup>

The Supreme Court continued to evolve Fourth Amendment jurisprudence with its holding in *Rakas v. Illinois* nearly a decade later.<sup>32</sup> In *Rakas*, the Court abandoned its traditional analysis for Fourth Amendment standing<sup>33</sup> and instead analyzed whether the government invaded the

24. *Id.* at 1101-02 (discussing *Olmstead v. United States*, 277 U.S. 438, 466 (1928)).

25. *Id.*

26. *Id.* at 1102 (quoting *Katz v. United States*, 389 U.S. 347, 351, 353 (1967)). *But see* Stewart, *supra* note 1, at 1110 (arguing that “the Court made it clear that property rights are still at the heart of the Fourth Amendment. The test articulated in *Jones* did not eliminate the *Katz* reasonable expectation of privacy test; it merely supplemented *Katz* by adding, or rather reviving, an alternative test.”); *United States v. Jones*, 565 U.S. 400, 411 (2012) (“What we apply is an 18th-century guarantee against unreasonable searches, which we believe must provide *at a minimum* the degree of protection it afforded when it was adopted. The concurrence does not share that belief. It would apply *exclusively* *Katz*'s reasonable-expectation-of-privacy test, even when that eliminates rights that previously existed.”)

27. Stewart, *supra* note 1, at 1102 (citing *Katz*, 389 U.S. at 361 (Harlan, J., concurring)).

28. *Id.* (citing *Katz*, 389 U.S. at 361 (Harlan, J., concurring)); *see also* Jones, *supra* note 4, at 908–09 (noting that the *Katz* test technically has three elements because it requires government action and listing these elements as “(1) a government action that results in a violation of, (2) a subjective expectation of privacy, (3) that society is prepared to recognize as reasonable.”).

29. Stewart, *supra* note 1, at 1102.

30. Jones, *supra* note 4, at 914.

31. *Id.* (emphasis added).

32. Stewart, *supra* note 1, at 1102 (citing *Rakas v. Illinois*, 439 U.S. 128 (1978)).

33. *Id.* at 1102 n.31 (“Before *Rakas*, a person could challenge a search under two different theories

defendant's Fourth Amendment interest.<sup>34</sup> In other words, if a defendant did not have a reasonable expectation of privacy in the area searched, then the defendant could not challenge the government's search.<sup>35</sup> The Court confirmed this interpretation of the Fourth Amendment when it stated in *United States v. Jacobsen* that a search "occurs when an expectation of privacy that society is prepared to consider reasonable is infringed."<sup>36</sup> Alongside confirming this evolution in the analysis of Fourth Amendment standing, *Jacobsen* also confirmed that Americans still had a "legitimate expectation of privacy" in "[l]etters and other sealed packages" under Fourth Amendment jurisprudence.<sup>37</sup>

This evolved jurisprudence permitted circuit courts to find that a reasonable expectation of privacy existed in a package addressed to an alias.<sup>38</sup> However, the circuits split within and among themselves about whether a reasonable expectation of privacy existed in a package addressed to an alias used solely as part of a criminal scheme.<sup>39</sup> For example, the Fifth, Seventh, and Eleventh Circuits have split internally about this issue, with some district courts denying the existence of a reasonable expectation of privacy in criminal-alias mail.<sup>40</sup> Here, these district courts drew a bright line that prohibited a defendant from claiming Fourth Amendment standing when the criminal-alias mail did not list the defendant's actual name as the sender or addressee of the mail.<sup>41</sup> On the other hand, several district courts within the Fifth, Seventh, and Eleventh Circuits denied the existence of a reasonable expectation of privacy in criminal-alias mail unless other indicia of

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that had nothing to do with that person's reasonable expectation of privacy in the area searched: possession of what was seized or legitimacy of presence.").

34. *Id.* at 1102 (citing *Rakas*, 439 U.S. at 140).

35. *Id.* at 1102-03; *see generally* *United States v. Morta*, No. 1:21-cr-00024, 2022 WL 1447021, at \*4 (D. Guam May 9, 2022) ("Fourth [A]mendment standing is . . . a matter of substantive [F]ourth [A]mendment law; to say that a party lacks [F]ourth [A]mendment standing is to say that his reasonable expectation of privacy has not been infringed. It is with this understand[ing] that we use 'standing' as a shorthand term.") (quoting *United States v. Taketa*, 923 F.2d 665,669 (9th Cir. 1991)).

36. Stewart, *supra* note 1, at 1103 (quoting *United States v. Jacobsen*, 466 U.S. 109, 113 (1984)).

37. *Jacobsen*, 466 U.S. at 114 (1984).

38. Stewart, *supra* note 1, at 1103 ("The circuit courts which have ruled on the issue of Fourth Amendment rights in packages sent with aliases have concluded that there is a reasonable expectation of privacy in a package addressed to an alias.").

39. Stewart, *supra* note 1, at 1104-05.

40. *See* cases cited *supra* note 9.

41. *See* cases cited *supra* note 9.

ownership, possession, or control were present.<sup>42</sup> With this approach, the district courts analyzed indicia relevant to the defendant's relationship with the mail—primarily ownership, possession, or control—to determine if the defendant had Fourth Amendment standing.<sup>43</sup> This other-indicia approach gained support within the First, Fourth, and Eighth Circuits as well,<sup>44</sup> with the First and Fourth Circuits most clearly and explicitly articulating this approach.<sup>45</sup>

Finally, the Ninth Circuit did not have binding precedent regarding the two established approaches for analyzing a reasonable expectation of privacy in criminal-alias mail at the time of the *Morta* decision.<sup>46</sup>

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42. *United States v. Richards*, 638 F.2d 765, 770 (5th Cir. 1981) (noting that the defendant lawfully possessed the package at the time of its seizure and—when “[c]onsidering all the circumstances”—finding that the defendant had “a legitimate expectation that the contents of the package were private, and ha[d] standing to assert [F]ourth [A]mendment protection.”), *cert. denied*, 454 U.S. 1097 (1981); *United States v. Villarreal*, 963 F.2d 770, 774–75 (5th Cir. 1992) (noting that defendants had a reasonable expectation of privacy in the drums because one of the defendants had identified himself as the alter ego to which the drums were addressed, both defendants were the immediate recipients of the drums, and both conspired together to pick up the drums); *United States v. Pierce*, 959 F.2d 1297, 1303 (5th Cir. 1992) (noting that the defendant did not have a reasonable expectation of privacy in the package because he was not listed as the sender or addressee of the package, he continually denied owning the package, and he did not receive the package); *United States v. Pitts*, 322 F.3d 449, 455–56, 459 (7th Cir. 2003) (finding no legitimate expectation of privacy in the package through its abandonment analysis, which evaluated whether any other indicia could uphold the defendant's reasonable expectation of privacy); *United States v. Garcia-Bercovich*, 582 F.3d 1234, 1236–38 (11th Cir. 2009) (finding that the defendant had standing to challenge the search and seizure because, similar to the defendants in *Villarreal*, the defendant identified himself as the alias to which the package was addressed, was the immediate recipient of the package, and conspired to pick up the package).

43. *See* cases cited *supra* note 42.

44. *United States v. Stokes*, 829 F.3d 47, 50, 53 (1st Cir. 2016) (finding that the defendant had no Fourth Amendment standing when analyzing the case's facts through factors of “ownership, possession and/or control”); *United States v. Givens*, 733 F.2d 339, 341–42 (4th Cir. 1984) (finding that the defendant potentially could have proven other indicia sufficient to uphold a legitimate expectation of privacy in the package if the defendant had claimed and proven that the package was addressed to her established alter ego); *United States v. Rose*, 3 F.4th 722, 729 (4th Cir. 2021) (finding that the defendant had no legitimate expectation of privacy “in the packages addressed to Ronald West because at the time of the searches, there were no objective indicia that Rose owned, possessed, or exercised control over the packages.”); *United States v. Lewis*, 738 F.2d 916, 919 n.2, 920–21 (8th Cir. 1984) (finding that the defendant did not possess a legitimate expectation of privacy after analyzing the defendant's connections to the mailbox, including his control over it, his relation to the address of the mailbox, and his relation to the contents of the mailbox).

45. *See* cases cited *supra* note 44; *see also* Key, *supra* note 9, at 312 (“Although not as explicitly expressed as the First and Fourth Circuits, the Eight Circuit has also implemented an ‘other indicia’ test when determining whether a reasonable expectation of privacy exists under the use of an alias.”).

46. *See* cases cited *supra* note 16.

III. FACTS AND PROCEDURAL HISTORY OF *UNITED STATES V. MORTA*

On the last day of January 2020, a Priority Mail parcel (Parcel) arrived in Guam via plane.<sup>47</sup> USPS employees removed the Parcel from the plane and brought it to the Barrigada Post Office.<sup>48</sup> Between 12:00 AM and 1:00 PM on February 1, 2020, U.S. Postal Inspector Leroy Versoza (Inspector Versoza) profiled the Parcel, a process that consisted of examining the package “for inconsistencies or things that would indicate, based on [his] training and experience, some sort of contraband or something suspicious specifically about this parcel.”<sup>49</sup> This process led Inspector Versoza to discover a discrepancy between the zip code of the “sender” line and the zip code from which the Parcel originated.<sup>50</sup> Inspector Versoza also noticed that the last name of the sender (Figueroa) appeared misspelled, the information on the label was handwritten, and there were no phone numbers listed on the package—all “flags” for him to separate the Parcel for further investigation by a general analyst.<sup>51</sup> Soon thereafter, general analyst On-Fat Choi ran the information from the Parcel through two government databases to locate contact information for both the Parcel’s recipient and sender.<sup>52</sup>

He and Inspector Versoza discovered the recipient’s name, “Mark Mota,” did not associate with the recipient address (165 North Mariposa Court in Dededo, Guam); however, a similar name, “Morta,” did associate with the recipient address.<sup>53</sup> Moreover, these two government employees located the contact information of the sender—Monica Figueroa—through the CLEAR database.<sup>54</sup> Prior to reaching out to Monica Figueroa, a narcotics canine also sniffed the Parcel, but the canine did not alert to the presence of narcotics in the Parcel.<sup>55</sup> A few days later, Inspector Versoza made contact with Monica

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47. *United States v. Morta*, No. 1:21-cr-00024, 2022 WL 1447021, at \*1 (D. Guam May 9, 2022).

48. *Id.*

49. *Id.*

50. *Id.*

51. *Id.* Here, the court highlights the fact that Inspector Versoza grew suspicious of the Parcel in part because the sender’s last name (Figueroa) was spelled incorrectly on the Parcel. However, the opinion itself never provides this incorrect spelling of “Figueroa” despite alluding to the misspelling several times. *Id.*

52. *Id.* (noting that the two databases included the PMN database and the CLEAR database).

53. *Id.*

54. *Id.* at \*2 (noting that this contact information included Figueroa’s home address in California, as well as four phone numbers associated with her).

55. *Id.*

Figuroa over a phone call and discussed the Parcel with her: she disavowed all knowledge of the Parcel and stated that she did not send it, did not know anything about it, and did not give Inspector Versoza consent to open it.<sup>56</sup> Based on his training and experience, Inspector Versoza understood this conversation with Monica Figuroa to mean that someone had “taken her information and used it, increasing his suspicion as to the contents of the Parcel.”<sup>57</sup>

Next, Inspector Versoza and two other government agents (collectively, the “Officers”) culminated a series of “knock-and-talks”—visits to the recipient address made in an attempt to speak to those present at the address to gain permission to open the package—with a final knock-and-talk on February 3, 2020.<sup>58</sup> This time, Jesse Morta opened the door and agreed to speak with the Officers on his front porch after identifying himself as the owner of the house.<sup>59</sup> Jesse Morta told the Officers that no one named Mark Mota lived at his house; the only residents at the house included himself, his daughter (Rebecca Rose San Nicolas Morta, Defendant), and his grandson Mark Morta San Agustin (as well as three other grandchildren).<sup>60</sup>

With this information in hand, the Officers asked Jesse Morta to sign a consent form permitting the Officers to open the Parcel on the porch.<sup>61</sup> Jesse Morta not only signed the form but also gave the Officers verbal consent to open the Parcel.<sup>62</sup> Moments later, the Officers opened the Parcel and discovered a resealed box of crackers within it.<sup>63</sup> Within the box of crackers, the Officers discovered a vacuum-sealed bag containing coffee grounds, and concealed within that bag, they discovered another vacuum-sealed bag containing a white crystalline substance.<sup>64</sup> Jesse Morta told the Officers that he had not expected a package but that his daughter had a narcotics problem and, upon her return to the house, he would bring her to the Barrigada Post Office for an interview with the Officers.<sup>65</sup> While awaiting for Morta to

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56. *Id.*

57. *Id.*

58. *Id.*

59. *Id.*

60. *Id.*

61. *Id.*

62. *Id.* at \*3.

63. *Id.*

64. *Id.*

65. *Id.*

arrive, the Officers tested the white substance with a narcotics detection kit, which indicated the presence of methamphetamine.<sup>66</sup>

Later that day, Morta arrived at the Barrigada Post Office with her father and signed a form indicating her willingness to talk to the Officers.<sup>67</sup> After Morta initially denied any knowledge of the Parcel during her interview, an interviewer indicated to Morta that they had another package at the Barrigada Post Office with “a lot of similarities” to the Parcel.<sup>68</sup> Morta then indicated that she was not being truthful and wanted to start the interview over.<sup>69</sup> Thereafter, the record is silent about the content of the interview.<sup>70</sup> However, the next day, Morta returned to the Barrigada Post Office and signed a written consent form authorizing the inspectors to search her cell phone.<sup>71</sup> Later that day, she also provided a written statement indicating that she agreed to “a proposition to make money and receive drugs.”<sup>72</sup>

On September 15, 2021, a grand jury indicted Morta with one count of Attempted Possession with Intent to Distribute Fifty or More Grams of Methamphetamine Hydrochloride, in violation of 21 U.S.C. §§ 846, 841(a)(1) and (b)(1)(A)(viii).<sup>73</sup> Morta then moved to suppress all evidence obtained from her statements and the cell-phone search, declaring via a signed statement that the Parcel belonged to her.<sup>74</sup>

#### IV. ANALYSIS OF THE OPINION

##### A. Judge Manglona’s Opinion

The court correctly chose the other-indicia approach to determine that Morta had no Fourth Amendment standing because the other-indicia approach provides a deeper factual analysis of Fourth Amendment standing than the legalistic *Lozano* approach and continues to maintain the important societal

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66. *Id.*

67. *Id.*

68. *Id.*

69. *Id.*

70. *Id.*

71. *Id.*

72. *Id.*

73. *Id.*

74. *Id.*

practice of using aliases for mail.<sup>75</sup>

1. Is the other-indicia approach a deeper analysis than the legalistic *Lozano* approach?

After dismissing *Morta*'s curtilage claim,<sup>76</sup> the court noted per *Bryd v. United States* and *Rakas v. Illinois* that—absent “the existence of recognized property rights capable of invasion through ‘physical intrusion’”<sup>77</sup>—*Morta* must show a legitimate expectation of privacy in the Parcel to win on her motion to suppress.<sup>78</sup> In other words, *Morta* needed to satisfy the twin prongs of the *Katz* test to win on her motion to suppress.<sup>79</sup> Here, *Morta* argued that she was the intended recipient of the Parcel despite not being the named

75. Compare *id.* at \*9 (noting Judge Manglona’s description of the other-indicia approach: “An individual has a reasonable expectation of privacy in a sealed mail or packages when they are listed as the sender or the addressee. An individual does not have a reasonable expectation of privacy in mail or packages when they are neither listed as the sender nor the addressee, *absent some other indicia* indicating ownership, possession, control, or connection to that mail or package. An individual does not automatically lose their right to privacy under the Fourth Amendment solely by using a pseudonym, alias, or *nom de plume*. An individual does, however, lose their right to privacy when using a moniker solely for criminal purposes.”) with *United States v. Lozano*, 623 F.3d 1055, 1064 (9th Cir. 2010) (O’Scannlain, J., concurring) (“I would hold that a defendant does not have a legitimate expectation of privacy in a package not addressed to him, even if it listed his street address and even if the addressee was his criminal alias.”). Judge Manglona’s “other indicia” approach aligns with the “other indicia” cases from the First, Fourth, and Eighth Circuits, as well as the line of “other indicia” cases from the Fifth, Seventh, and Eleventh Circuits. See cases cited *supra* notes 42, 44. On the other hand, Judge Lozano’s “legalistic” approach aligns with the line of cases from the Fifth, Seventh, and Eleventh Circuits that categorically denied a reasonable expectation of privacy in alias mail through a bright-line rule. See cases cited *supra* note 9.

76. *Morta*, No. 1:21-cr-00024, at \*5 (finding that Defendant “is afforded no additional Fourth Amendment protections by virtue of the Parcel being brought by law enforcement to the curtilage of the Recipient Address, despite being Defendant’s residence” because bringing the Parcel to the home did not amount to trawling for evidence). *Morta*, alongside arguing that she had a reasonable expectation of privacy in the Parcel because she had an ownership and possessory interest in the Parcel, also argued that she had a reasonable expectation of privacy in the Parcel because it “was searched at her home.” *Id.* at \*4. However, the court denied this real-property-rights-based legal argument. *Id.*; see generally *Stewart*, *supra* note 1, at 1110 (“The Court stated that *Katz* did not eliminate traditional trespassory invasions of constitutionally protected areas by the government from the definition of searches.”).

77. *Morta*, No. 1:21-cr-00024, at \*5 (quoting *Florida v. Jardines*, 569 U.S. 1, 5 (2013)).

78. *Id.* See *Byrd v. United States*, 138 S. Ct. 1518, 1526 (2018); *Rakas v. Illinois*, 439 U.S. 128, 143 n.12 (1978) (“Legitimation of privacy by law must have a source outside of the Fourth Amendment, *either* by reference to concepts of real or personal property law *or* to understandings that are recognized and permitted by society.”).

79. See *Morta*, No. 1:21-cr-00024, at \*5; see also *supra* note 28 (noting the twin prongs of the *Katz* test).

addressee (Mark Mota) and therefore still had a legitimate expectation of privacy in the Parcel.<sup>80</sup> With these legal stakes in the ground, the court then outlined its rationale for adopting the other-indicia approach to analyze Morta's legal argument.<sup>81</sup> It argued that the other-indicia approach provided a deeper, more relevant analysis than the legalistic *Lozano* approach<sup>82</sup> because the other-indicia approach allowed the court to look at a new line of the Parcel and account for other indicia that might demonstrate Morta's "ownership, possession, control, or connection to" the Parcel.<sup>83</sup>

The court began its analysis by noting that the Parcel did not name Rebecca Rose San Nicolas Morta as either the sender or the addressee.<sup>84</sup> As such, she presumptively did not have a reasonable expectation of privacy in the Parcel.<sup>85</sup> At this depth of analysis, the other-indicia approach and the legalistic *Lozano* approach yield the same result: Morta does not have Fourth Amendment standing because her legal name was neither the sender nor the addressee.<sup>86</sup> Therefore, she could not have been the sender or addressee.<sup>87</sup> However, Morta submitted a signed declaration asserting that she had "ownership, possession, and control of the Parcel at the time it was detained by Postal Inspectors and at the time it was opened without a search warrant."<sup>88</sup> Although the *Lozano* approach would limit the analysis of this piece of Morta's evidence, the court's other-indicia approach permits reference to additional facts within the record and thereby provides a more thorough explanation as to why Morta's legal argument ultimately does not succeed in this case.<sup>89</sup>

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80. *See Morta*, No. 1:21-cr-00024, at \*6.

81. *Id.* at \*8–9.

82. *Id.* at \*8.

83. *Id.* Here, the court explicitly articulates an additional category of indicia—connection—to the other indicia analysis conducted by the First and Fourth Circuits. *Id.*; *see also* cases *supra* note 44.

84. *See Morta*, No. 1:21-cr-00024, at \*9.

85. *Id.*

86. *Id.*; *see* *United States v. Lozano*, 623 F.3d 1055, 1064 (9th Cir. 2010) (O'Scannlain, J., concurring) ("I would hold that a defendant does not have a legitimate expectation of privacy in a package not addressed to him, even if it listed his street address and even if the addressee was his criminal alias.").

87. *See Morta*, No. 1:21-cr-00024, at \*9; *Lozano*, 623 F.3d at 1064.

88. *See Morta*, No. 1:21-cr-00024, at \*9. The Officers opened the Parcel with Jesse Morta's written and oral consent. *See supra* notes 61–62 and accompanying text. This presumably explains why the court does not dedicate any space in its opinion to analyzing the Officers' warrantless search of the Parcel. *See Morta*, No. 1:21-cr-00024, at \*9–10.

89. *See* cases cited *supra* note 87.



Here, the court used the *United States v. Rose* factors—the sender’s name, the named recipient, the recipient address, and the phone numbers listed on the Parcel<sup>90</sup>—to better determine whether Morta actually had “ownership, possession, control, or connection to” the Parcel.<sup>91</sup> The court also bolstered its analysis by examining the following *United States v. Stokes* factors: “historical use of the property searched or the thing seized; the ability to regulate access; the totality of the surrounding circumstances; the existence or nonexistence of a subjective anticipation of privacy; and the objective reasonableness of such an expectancy under the facts of a given case.”<sup>92</sup>

The court then applied the *Rose* and *Stokes* factors to Morta’s case, noting where Morta met the indicia and where she fell short.<sup>93</sup> For the first *Rose* factor, the court noted that the sender’s name (Monica Figueroa) bore no connection to Morta because Monica Figueroa disclaimed any knowledge of the Parcel and its contents.<sup>94</sup> Therefore, this factor weighed against Morta’s reasonable expectation of privacy in the Parcel.<sup>95</sup> Next, the court noted that Morta herself “expressly disavowed knowledge of the named recipient, Mark Mota, in her declaration.”<sup>96</sup> This fact also weighed against Morta’s reasonable expectation of privacy in the Parcel.<sup>97</sup> Morta did prove a connection with the recipient address, however, because no “Mark Mota” lived at 165 North Mariposa Court in Dededo, Guam, but Morta herself did live there.<sup>98</sup> As such, this factor weighed toward Morta having a reasonable expectation of privacy in the Parcel.<sup>99</sup> And the final *Rose* factor—phone numbers listed on the

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90. *See Morta*, No. 1:21-cr-00024, at \*9 (quoting *United States v. Rose*, 3 F.4th 722, 729 (4th Cir. 2021)).

91. *Id.*; *see id.* at \*8. The court described the four categories of indicia it analyzed with the following language: “[W]hether the individual has a *connection* to the address or those that reside at the address; whether the individual is the *owner* of the address, the package, or the receptacle in which the package is deposited; whether the individual physically *possessed* the package; and whether the individual exercised *control* and dominion over the package.”)

92. *Morta*, No. 1:21-cr-00024, at \*9 (quoting *United States v. Stokes*, 829 F.3d 47, 53 (1st Cir. 2016)); *see also id.* at \*7 (discussing additional factors that the *Stokes* court used in its other indicia analysis—such as “whether anyone else had access to [the] [address]”—which ultimately did not appear in the *Morta* court’s other indicia analysis).

93. *Id.* at \*9–10.

94. *Id.* at \*9.

95. *Id.*

96. *Id.* (“The package was addressed to Mark Mota. I know of no person by the name of Mark Mota.”).

97. *Id.*

98. *Id.*

99. *Id.*

Parcel—neither weighed toward nor against Morta’s reasonable expectation of privacy in the Parcel because the Parcel had no phone numbers on it for either the sender or the intended recipient.<sup>100</sup>

Beginning its analysis of the *Stokes* factors, the court noted that Morta had “no historical use of the Parcel because it was seized prior to Defendant obtaining or possessing it.”<sup>101</sup> This factor therefore weighed against Morta’s reasonable expectation of privacy in the Parcel.<sup>102</sup> The court then noted that one of Morta’s statements in her declaration proved that she had a subjective anticipation of privacy in the Parcel.<sup>103</sup> This factor, therefore, weighed toward Morta’s reasonable expectation of privacy in the Parcel.<sup>104</sup> Furthermore, after qualifying that Morta expressed her subjective privacy interest in greater detail than the defendant in *Stokes*,<sup>105</sup> the court still found that her assertion failed “to rise to the level of objective reasonableness.”<sup>106</sup> Here, the court relied on the *Stokes* court’s reasoning that an “address alone” was insufficient to create an objectively reasonable expectation of privacy in a parcel.<sup>107</sup> As such, because there was “no indication that [the Parcel] [was] associated with [Defendant]” other than the Parcel’s address being 165 North Mariposa Court in Dededo, Guam,<sup>108</sup> this factor weighed against Morta’s reasonable expectation of privacy in the Parcel.<sup>109</sup>

Although the court used this factors-based approach to analyze indicia of “ownership, possession, control, or connection,” it also glossed over two of the *Stokes* factors pertinent to the *Morta* court’s analysis.<sup>110</sup> First, it failed to

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100. *Id.*; see generally *supra* note 54 and accompanying text (noting that the government employees found Monica Figueroa’s phone number through the CLEAR database).

101. *Morta*, No. 1:21-cr-00024, at \*9.

102. *Id.*

103. *Id.* (“I expected that the contents of the package as well as knowledge of its contents would remain my private matter, with the possible exception of the sender of the package.”).

104. *Id.*

105. *Id.* at \*10 (“Here . . . Defendant assert[ed] her subjective privacy interest with more detail than the defendant in *Stokes* by indicating that she expected the specific contents of a specific package”).

106. *Id.*

107. *Id.*; see also *United States v. Stokes*, 829 F.3d 47, 53 (1st Cir. 2016) (“*Stokes* provides little support for his contention that an address alone can create a reasonable expectation of privacy in a parcel.”).

108. *Morta*, No. 1:21-cr-00024, at \*10.

109. *Id.*

110. *Id.* at \*9 (noting that the “historical use of the property searched or the thing seized” and “the totality of the surrounding circumstances” play an important role in determining “ownership, possession, control, or connection”).

explicitly analyze Morta’s ability to regulate access to the Parcel (likely because “it was seized prior to Defendant obtaining or possessing it”).<sup>111</sup> Second, it failed to explicitly analyze the totality of the surrounding circumstances (likely because the court saw the other-indicia approach as inherently “tethered to the totality of the circumstances”).<sup>112</sup> In the end, the court concluded that the two additional indicia Morta could prove did not sufficiently demonstrate Morta’s “ownership, possession, control, or connection to the Parcel.”<sup>113</sup> So, although the other-indicia approach and the *Lozano* approach arrive at the same conclusion, the other-indicia approach still provides a deeper and more comprehensive analysis as to *why* Morta did not have a reasonable expectation of privacy in the Parcel.

2. Does Judge Manglona’s opinion reinforce its legal conclusion by analyzing the legal implications of adopting the other-indicia approach?

Yes, the court reinforced its legal conclusion by analyzing the legal implications of adopting the other-indicia approach, focusing on when a defendant loses a reasonable expectation of privacy or bears the burden in demonstrating a reasonable expectation of privacy.<sup>114</sup>

First, the court rightfully rejected the argument that “Mark Mota” could have been an established alias of Morta because Morta *herself* declared as a defense that she did not know of a person “by the name of Mark Mota.”<sup>115</sup> Interestingly, however, this point reinforces some logic Judge O’Scannlain used in his *Lozano* concurrence because it re-draws a bright line between two groups of defendants: those who use a mail alias but deny association with that alias as their defense and those who use a mail alias but rely on association with that alias as their defense.<sup>116</sup>

111. *Id.*

112. *Id.* at \*8 (“The ‘other indicia’ approach, however, is more tethered to the totality of the circumstances.”).

113. *Id.* at \*9 (“In sum, there are two indicia connecting [Morta] to the package: that she asserted a subjective anticipation of privacy in the Parcel, and that she lives at the Recipient Address.”). Interestingly, Morta proved only one indicia or factor from each of the two sets of factors—the *Rose* factors and the *Stokes* factors—used by the court in its analysis. *Id.*

114. *See id.* at \*10.

115. *Id.*

116. *See* *United States v. Lozano*, 623 F.3d 1055, 1064 (9th Cir. 2010) (O’Scannlain, J., concurring) (quoting *United States v. Daniel*, 982 F.2d 146, 149 (5th Cir. 1993)) (“It is true that the Fifth Circuit

Second, although Morta declared she “worked out the name that would be used on the package for the addressee with the actual sender,” the court correctly found that such a declaration did not sufficiently connect her to the Parcel.<sup>117</sup> Here, the court referenced the record and found nothing that demonstrated that Morta used “‘Mark Mota’ to receive packages, or that she held herself out as ‘Mark Mota’ to others, or whether she used that alias for criminal purposes only.”<sup>118</sup> In other words, because the other-indicia approach is a fact-intensive inquiry and nothing on the record substantiated Morta’s claim about working out the name with the actual sender, the court found that this argument failed to satisfy the other-indicia approach.<sup>119</sup> This conclusion also makes sense because if such a declaration sufficed to prove a connection that warranted Fourth Amendment standing, then defendants could overcome their burden to prove Fourth Amendment standing simply by declaring they played a role in devising the criminal alias used in the mail.<sup>120</sup> Separately, even if the record had established “Mark Mota” as Morta’s criminal alias, “she would not have a reasonable expectation of privacy” in the Parcel because she used the Mark Mota alias “for criminal purposes only.”<sup>121</sup>

Third, the court correctly noted that even if Morta had held herself out in public as “Mark Mota” or used it as an alias to receive other packages in the past for non-criminal purposes, Morta did not produce sufficient evidence to substantiate these claims.<sup>122</sup> Ultimately, as the court suggested, it is the defendant’s burden to prove such claims under Fourth Amendment jurisprudence, and nothing on the record evidenced that Morta used “‘Mark Mota’ as “an established pseudonym for non-criminal purposes.”<sup>123</sup>

Fourth, the court correctly rejected the idea that Morta’s use of “another

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in one line of cases has held that a defendant has a legitimate expectation of privacy in mail addressed to his ‘alter ego.’ But that rule does not apply when, ‘[a]t trial, [defendant]’s theory of defense was that [the defendant] and [the alias] were different persons.’”)

117. *Morta*, No. 1:21-cr-00024, at \*10.

118. *Id.*

119. *Id.*

120. *See id.* (citing *Rakas v. Illinois*, 439 U.S. 128, 130 n.1 (1978)) (“The proponent of a motion to suppress has the burden of establishing that his own Fourth Amendment rights were violated by the challenged search or seizure.”)

121. *Id.*; *see also id.* at \*9 (noting that a defendant who uses “a moniker solely for criminal purposes” forfeits his or her right to reasonable expectation of privacy as part of the other-indicia approach).

122. *Id.* at \*10.

123. *Id.*; *see also Rakas*, 439 U.S. at 130 n.1.

false name, unknown to the Court,” in conjunction with the Officers having identified another package with “a lot of similarities” to the Parcel at the Barrigada Post Office established a sufficient connection between the Mark Mota alias (or a similar one) and the Parcel.<sup>124</sup> This application of the other-indicia approach makes sense because Fourth Amendment standing should not be warranted for a defendant when government employees spot a pattern of suspicious packages coming from the same pseudonym or similar pseudonyms.<sup>125</sup> If such governmental conduct did warrant Fourth Amendment standing, then government employees would eliminate the burden of proof placed upon defendants that requires them to establish Fourth Amendment standing when filing a motion to suppress.<sup>126</sup>

Fifth, the court mentioned that even if Morta had claimed the Parcel was addressed to her son and included a misspelling of her son’s name, the court would still have found that Morta lacked a reasonable expectation of privacy in the Parcel.<sup>127</sup> Here, the court relied on an unpublished opinion to justify this conclusion.<sup>128</sup> Instead, it should have relied on the *Rose* and *Stokes* factors to arrive at the same conclusion.<sup>129</sup> Namely, because Morta’s son would presumably have had one factor fewer weighing in his favor (i.e., lacking a subjective expectation of privacy in the package because nothing in the record suggests he knew of the Parcel’s existence), he could not have demonstrated “ownership, control, possession, or connection to” the Parcel through sufficient other indicia.<sup>130</sup> Finally, Morta herself could not have claimed a reasonable expectation of privacy in the Parcel if it were addressed to her son because one cannot assert Fourth Amendment standing vicariously.<sup>131</sup>

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124. *Morta*, No. 1:21-cr-00024, at \*10 (“In other words, just because law enforcement recognizes certain names on packages does not permit a defendant to argue that they held themselves out publicly under an established pseudonym listed on that package.”).

125. *See id.*

126. *Id.*; *see also Rakas*, 439 U.S. at 130 n.1.

127. *Morta*, No. 1:21-cr-00024, at \*10; *see also id.* at \*2 (noting that Jesse Morta’s grandson—in other words, Morta’s son—had the full name of “Mark Morta San Agustin”).

128. *Id.* (citing *United States v. Perez*, No. CR-00-00139-SOM, WL 21054747, at \*636 (9th Cir. 2003)) (holding that a defendant did not have a legitimate expectation of privacy in a package addressed to a co-resident of his home).

129. *United States v. Rose*, 3 F.4th 722, 729 (4th Cir. 2021); *United States v. Stokes*, 829 F.3d 47, 53 (1st Cir. 2016).

130. *Morta*, No. 1:21-cr-00024, at \*9–10; *see discussion supra* Section III.

131. *Jones*, *supra* note 19, at 911–12.

3. Does the other-indicia approach maintain the societal practice of using a mail alias?

Yes, but the court does not provide as compelling support for this reason in its adoption of the other-indicia approach.<sup>132</sup>

First, it does not appear that the court integrated this reason into its analysis of *Morta*'s legal case.<sup>133</sup> Instead, the court spoke abstractly about the pitfalls of adopting the *Lozano* approach and provided a hypothetical for how the other-indicia approach overcomes those problems.<sup>134</sup> Judge Manglona argued that individuals who use aliases under the *Lozano* approach would forfeit their Fourth Amendment privacy rights because their legal names would not appear as the senders or addressees.<sup>135</sup> Moreover, she argued if individuals did not use an alias but instead used their real names as the sender or addressee, then they risked losing their right to privacy from the public because presumably anyone could view those lines and ascertain those individuals' real names.<sup>136</sup> On the other hand, Judge Manglona argued that the other-indicia approach allows individuals to continue to use a "pseudonym, alias, or *nom de plume*, without losing either privacy under the Fourth Amendment or to the public, so long as they had some other connection to the mail."<sup>137</sup> Judge Manglona then described the following hypothetical to support the court's other-indicia approach: "a writer using a pen name would be able to correspond with readers without revealing her identity and address to the public, *and* without losing her Fourth Amendment right to privacy from government intrusion," although the burden to prove that the writer's alias had not been used for solely criminal purposes would still fall on the writer.<sup>138</sup>

Second, although this hypothetical and the other-indicia approach fit together nicely, this part of the court's reasoning for adopting the other-indicia approach overlooks valid criticism offered by scholars and other courts.<sup>139</sup> Namely, the court's opinion overlooks the fact that the other-indicia approach exposes individuals to an invasion of their privacy in alias mail by the

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132. *Morta*, No. 1:21-cr-00024, at \*9.

133. *See Morta*, No. 1:21-cr-00024, at \*9–10.

134. *Id.* at \*9.

135. *Id.*

136. *See id.*

137. *Id.*

138. *Id.*

139. *See infra* notes 140–47.

government.<sup>140</sup> After all, it involves the defendant necessarily having to prove Fourth Amendment standing *in response to* the government’s contention that the defendant used an alias in mail for criminal purposes only.<sup>141</sup> And that burden rests squarely with the defendant because a government actor *has already* searched or seized the mail in question.<sup>142</sup>

Third, the court failed to analyze other opinions that suggested a third approach to criminal-alias mail.<sup>143</sup> For example, the *Morta* court did not closely analyze the majority opinion in *United States v. Pitts*, which contends in dicta that society *is* ready to accept all mail aliases (lawful and criminal alike) as receiving a reasonable expectation of privacy.<sup>144</sup> The bright-line rule suggested by the *Pitts* majority might maintain American citizens’ reasonable expectation of privacy in alias mail better than the other-indicia approach—or it may not.<sup>145</sup> Regardless, Judge Manglona did not rebut the *Pitts* majority’s suggestion directly by analyzing its ability to maintain the important societal

140. Jones, *supra* note 4, at 916 (quoting William J. Stuntz, *Privacy’s Problem and the Law of Criminal Procedure*, 93 MICH. L. REV. 1016, 1020–21 (1995)) (“In a criminal procedure context, ‘privacy’ can mean ‘the ability to engage in certain conduct free from government regulation, freedom from being stared at or stalked or ‘singled out’ in public, the ‘right to be let alone,’ and the ability to keep certain information or aspects of one’s life secret.’”).

141. See Stewart, *supra* note 1, at 1109 (“The court made a compelling argument when it said that the Fourth Amendment demands more than an after-the-fact rationalization for an otherwise illegal search.”).

142. See *Morta*, No. 1:21-cr-00024, at \*9 (“[T]he burden would still remain on the defendant to establish that his or her moniker is not one used solely for criminal purposes.”).

143. See *United States v. Pitts*, 322 F.3d 449, 459 (7th Cir. 2003) (noting that the defendants “had a right to use false names in sending and receiving mail” and therefore had subjective expectations of privacy in their “desire to remain anonymous while sending or receiving a package”); *United States v. Williams*, No. 10-cr-20357-STA/tmp., 2012 WL 6936619, at \*6 (W.D. Tenn. 2012) (“This court agrees with the majority’s Fourth Amendment analysis in *Pitts*. Williams had a reasonable expectation of privacy in the packages even though he used fictitious sender and recipient information.”); see also *United States v. Johnson*, 584 F.3d 995, 1002 (10th Cir. 2009) (“While some courts have found an expectation of privacy when an individual uses an alias or a pseudonym, such a situation is distinguishable because it is not necessarily illegal to use a pseudonym to receive mail unless fraud or a stolen identification is involved.”) (citation omitted); see also cases cited *supra* note 9 and accompanying text.

144. See *Pitts*, 322 F.3d at 459; Stewart, *supra* note 1, at 1105, 1109 (“[T]he Seventh Circuit suggested in dicta that there is a reasonable expectation of privacy in packages sent or received using a criminal alias.”). But see *Morta*, No. 1:21-cr-00024, at \*8 (“While the majority did not distinguish between established aliases for criminal and non-criminal purposes, the [Pitts] concurrence contrasted the use of established, publicly known alter egos, such as *nom de plumes*, with the passing use of fictitious names.”).

145. See *Pitts*, 322 F.3d at 459; see also Stewart, *supra* note 1, at 1109 (arguing that “[b]ecause the *Pitts* analysis could be countered by existing opinions, the stronger analysis for this [criminal-mail alias] issue is property rights.”).

practice of alias mail vis-à-vis the other-indicia approach as it did with the *Lozano* approach.<sup>146</sup> In failing to do so, Judge Manglona’s opinion leaves itself open to attack from scholars, like Stewart, who argue that providing criminal-mail aliases with protection does serve American citizens better than the other-indicia approach, which would deny Fourth Amendment standing for those who use mail-aliases to commit crimes.<sup>147</sup>

## V. IMPACT AND CONCLUSION

Judge Manglona’s opinion in *United States v. Morta* impacts criminal-mail alias jurisprudence in several ways. First, *Morta* joins *United States v. Stokes*, *United States v. Givens*, *United States v. Rose*, *United States v. Lewis*, and the Fifth, Seventh, and Eleventh Circuit line of cases that use the other-indicia approach to determine Fourth Amendment standing for criminal-alias mail.<sup>148</sup> Second, *Morta* clarifies and augments the other-indicia approach by relying on both the *Rose* and *Stokes* factors as the basis for its analysis, permitting the court to look not only at indicia of “ownership, possession, and control” but also to look explicitly at indicia of “connection.”<sup>149</sup> In other words, *Morta* refines the fact-intensive, totality-of-the-circumstances nature of the other-indicia approach because it builds off the factors used by other courts and provides a clear, descriptive rule statement for its future use.<sup>150</sup> Third, *Morta* may lead the Ninth Circuit to experience an intra-circuit split around criminal-alias mail if other district courts within the Ninth Circuit decide to align their opinions with Judge O’Scannlain’s *Lozano* approach.<sup>151</sup>

Furthermore, *Morta* positions the other-indicia approach as preferable for

146. See *Morta*, No. 1:21-cr-00024, at \*8–9.

147. See Stewart, *supra* note 1, at 1111–12 (outlining legal and non-legal reasons why American dark web drug dealers who use criminal-alias mail should retain their Fourth Amendment rights); see also *Morta*, No. 1:21-cr-00024, at \*9.

148. *United States v. Stokes*, 829 F.3d 47, 52–53 (1st Cir. 2016); *United States v. Givens*, 733 F.2d 339, 341–42 (4th Cir. 1984); *United States v. Rose*, 3 F.4th 722, 729 (4th Cir. 2021); *United States v. Lewis*, 738 F.2d 916, 919 n.2 (8th Cir. 1984); *United States v. Richards*, 638 F.2d 765, 770 (5th Cir. 1981), *cert. denied*, 454 U.S. 1097 (1981); *United States v. Villarreal*, 963 F.2d 770, 774 (5th Cir. 1992); *United States v. Pierce*, 959 F.2d 1299, 1303 n.11 (5th Cir. 1981); *United States v. Pitts*, 322 F.3d 449, 459 (7th Cir. 2003); *United States v. Garcia-Bercovich*, 582 F.3d 1234, 1238 (11th Cir. 2009).

149. See *Morta*, No. 1:21-cr-00024, at \*9–10; see also *supra* note 83 and accompanying text.

150. *Morta*, No. 1:21-cr-00024, at \*9–10; see also *supra* note 75 and accompanying text.

151. *Id.* at \*9; see also *United States v. Lozano*, 623 F.3d 1055, 1064 (9th Cir. 2010) (O’Scannlain, J., concurring).



maintaining the use of aliases in mail.<sup>152</sup> Although this portion of the opinion's analysis detaches itself from the facts of the case, it does explain the advantages of following the other-indicia approach through a straightforward hypothetical that demonstrates where the *Lozano* approach falls short.<sup>153</sup> However, in failing to combat dicta from the *Pitts* majority opinion, *Morta* misses an opportunity to elaborate on the social utility behind the other-indicia approach and defend it as the best way to maintain the societal practice of using aliases in mail.<sup>154</sup> Moreover, *Morta* misses an opportunity to fend off criticism that the other-indicia approach relies on an after-the-fact justification for an otherwise illegal search<sup>155</sup> and to explain how public policy in Guam may have factored into the court's decision to adopt the other-indicia approach.<sup>156</sup>

For example, the residents of Guam—a 209-square-mile island territory within the United States<sup>157</sup> that has a total population of 169,532 as of 2024<sup>158</sup>—historically found it easier to acquire drugs from sources off the island rather than to create or acquire them locally.<sup>159</sup> If that holds true today, then adopting a fact-intensive, totality-of-the-circumstances test like the other-indicia approach likely suits Guam's needs better than a legalistic approach for several reasons.<sup>160</sup> First, it would provide Fourth Amendment standing to those who want to use alias mail for lawful purposes, thereby ensuring law-abiding residents of Guam may still use aliases while non-law-abiding residents could not use mail aliases for importing drugs.<sup>161</sup> Second, it would

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152. *Morta*, No. 1:21-cr-00024 at \*9.

153. *Id.* at \*8–9.

154. *See id.*

155. Stewart, *supra* note 1, at 1109.

156. *See infra* notes 157–64 and accompanying text.

157. National Drug Intelligence Center, *Guam Drug Assessment*, U.S. DEP'T OF JUST. 1 (Aug. 2003), <https://www.justice.gov/archive/ndic/pubs4/4001/4001p.pdf>.

158. CIA World Factbook, *Guam*, CIA (May 15, 2024), <https://www.cia.gov/the-world-factbook/countries/guam/> (last visited May 18, 2024).

159. National Drug Intelligence Center, *supra* note 157, at iii (“Most drugs are transported to Guam through the Guam International Air Terminal; seizures are made from passengers, baggage, and cargo. Couriers transport drugs on their bodies or in their luggage.”); *see also id.* at 2 (“Limited quantities of drugs are transported to Guam through package delivery services; smuggling via this method is not common because the Guam Customs and Quarantine Agency inspects all mail entering Guam from foreign countries.”); *id.* at 3 (noting that “[t]here is no evidence to suggest that crystal methamphetamine”—the drug found in the Parcel—is produced on Guam.”).

160. *See infra* notes 161–64 and accompanying text.

161. *See Morta*, No. 1:21-cr-00024, at \*9.

allow the government of Guam to respond effectively to the increased internet use of its residents,<sup>162</sup> who might rely on the dark web to acquire drugs from off the island and have them shipped via traditional postal services rather than acquiring them from couriers who would bring them onto the island through the Guam International Air Terminal.<sup>163</sup> Third, the other-indicia approach might effectively curtail the importation of methamphetamine—like it did in *Morta*'s case—and thereby reduce violence in the streets and at homes as law enforcement officials have historically correlated increased methamphetamine abuse with increased violence in Guam.<sup>164</sup>

Overall, *Morta* functions as another data point in the current intra- and inter-circuit split around criminal-alias mail.<sup>165</sup> As a district court decision, it also impacts Guam's residents because the District Court of Guam may now prefer to rely on *Morta* as a form of persuasive authority for selecting the other-indicia approach when analyzing an individual's reasonable expectation of privacy in alias mail. From a different perspective, Guam's residents may now have to change their mail-use behaviors to conform with the court's decision. Otherwise, they run the risk of losing their Fourth Amendment privacy rights. Ultimately, *Morta* signals a more pressing matter: the need to unify the intra- and inter-circuit split underlying criminal-alias mail with the other-indicia approach so that dark-web drug dealers and their drug-addicted customers cannot continue to exploit traditional postal services at the expense of everyday American citizens who want—and need—to use alias mail for lawful purposes.

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162. CIA World Factbook, *Guam*, CIA (May 15, 2024), <https://www.cia.gov/the-world-factbook/countries/guam/> (noting that an estimated 136,850 individuals or 80.5% of Guam's population used the internet in 2021); *see also* National Drug Intelligence Center, *supra* note 157, at 3.

163. National Drug Intelligence Center, *supra* note 157, at 3.

164. National Drug Intelligence Center, *supra* note 157, at 3, 10 ("The abuse and availability of crystal methamphetamine is likely to continue to increase on Guam, leading to more violent crime.").

165. *See* discussion *supra* Section II.