

No. 10-945

IN THE
Supreme Court of the United States

ALBERT W. FLORENCE,
Petitioner,

v.

BOARD OF CHOSEN FREEHOLDERS OF
THE COUNTY OF BURLINGTON ET AL.,
Respondents.

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

BRIEF OF THE AMERICAN BAR
ASSOCIATION AS *AMICUS CURIAE* IN SUPPORT
OF PETITIONER

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INTEREST OF AMICUS CURIAE¹

Pursuant to Supreme Court Rule 37.3, the American Bar Association (“ABA”), as *amicus curiae*, respectfully submits this brief in support of Petitioner. The ABA requests that the Court consider the broad-based consensus views embodied in the ABA’s criminal justice standard on strip searches when deciding whether routine, suspicionless strip searches of minor offender arrestees should be permitted upon their admission to detention facilities.

The ABA is the largest voluntary professional membership organization and the leading organization of legal professionals in the United States. Its nearly 400,000 members span all 50 states and other jurisdictions, and include attorneys in private law firms, corporations, non-profit organizations, government agencies, and prosecutor and public defender offices, as well as judges, legislators, law professors, and law students.²

The ABA began its comprehensive study of the criminal justice system in 1964 under the aegis of

¹ Pursuant to Rule 37.6, *amicus* certifies that no counsel for a party authored this brief in whole or in part and that no person or entity, other than amicus, its members, or its counsel, has made a monetary contribution to the preparation or submission of this brief. The parties have filed written consent to the filing of amicus briefs pursuant to Rule 37.

² Neither this brief nor the decision to file it should be interpreted to reflect the views of any judicial member of the ABA. No member of the ABA Judicial Division Council participated in the preparation of this brief, or in the adoption or endorsement of the positions in this brief.

then-ABA President Lewis F. Powell, Jr.³ The first full edition of the ABA STANDARDS FOR CRIMINAL JUSTICE was published in 17 volumes in 1974.⁴ With broad input from the criminal justice community, this study has included prison conditions and practices, and has resulted in the development and refinement of model standards to guide officials in the safe and secure administration of prisons. Addressing current conditions and challenges, the ABA has recently published a new version of Volume 23, THE TREATMENT OF PRISONERS (2010).⁵

³ A history of the development of the ABA STANDARDS FOR CRIMINAL JUSTICE is available on the website of the ABA's Criminal Justice Section, http://www.americanbar.org/groups/criminal_justice/policy/standards.html (last visited June 24, 2011). Also available on the ABA website is Martin Marcus, *The Making of the ABA Criminal Justice Standards: Forty Years of Excellence*, CRIM. JUST. Winter 2009 at 10, 14-15 (describing the careful and balanced process by which the Standards are developed and promulgated).

⁴ The ABA STANDARDS FOR CRIMINAL JUSTICE is now published in 23 volumes by subject matter. Each standard becomes ABA policy after adoption by the ABA's House of Delegates. The House of Delegates is composed of over 560 delegates representing states and territories, local and state bar associations, affiliated organizations, ABA sections and divisions, ABA members, and the Attorney General of the United States, among others. *See* ABA General Information, <http://www.americanbar.org/leadership/delegates.html> (last visited June 24, 2011).

⁵ The "black letter" standards of The Treatment of Prisoners were adopted by the ABA House of Delegates in 2010, and are available at http://www.americanbar.org/content/dam/aba/publishing/criminal_justice_section_newsletter/crimjust_policy_midyear2010_102i.authcheckdam.pdf (last visited June 24, 2011). The commentary for these standards was recently approved and is available at <http://www.americanbar.org/>

ABA Criminal Justice Standard (“ABA Standard”) 23-7.9(d) of this volume concerns strip searches of pretrial detainees upon their admission to a detention facility. As set out in this Standard, the ABA has concluded that individualized reasonable suspicion should be present in order to conduct a strip search of an individual arrested for a minor offense that does not involve violence or drugs.

SUMMARY OF ARGUMENT

Nearly 14 million Americans are arrested each year. Many of these arrests are for misdemeanor offenses or civil infractions that – like the offense of which Petitioner was accused – do not involve violence or drugs and do not suggest a motive or opportunity to smuggle contraband into a prison. Neither Petitioner nor this majority of arrestees should be subject to the grave intrusion of a strip search on admission to a detention facility unless there is individualized, reasonable suspicion of possession of contraband.

ABA Standard 23-7.9(d) encapsulates this approach to strip searches in prisons. In doing so, the Standard reflects this Court’s traditional Fourth Amendment approach of taking into account all the surrounding facts and circumstances of the search, including the reason for an arrestee’s initial apprehension, in order to determine whether a search is reasonable. More specifically, the Standard is consistent with this Court’s precedents requiring that an appropriate balance be struck between the

invasion of personal rights and the government's interest in maintaining secure prison facilities.

ARGUMENT

I. The ABA Standard on Strip Searches Strikes the Proper Balance Between Personal Rights and Prison Security.

The ABA's comprehensive study of the American criminal justice system has long included consideration of the principles and functional parameters needed to operate jails and prisons for the safe, secure, and humane incarceration of prisoners and detainees.⁶ The ABA's standard concerning strip searches, Standard 23-7.9(d), supports a careful balancing of detainees' rights with the security needs of correctional facilities. It also reflects the reality that 14 million Americans are arrested each year but, as in Petitioner's case, many of these arrests are for misdemeanor offenses or civil infractions that do not involve violence or drugs and ordinarily do not suggest a

⁶ The resulting standards, contained in Volume 23 (THE TREATMENT OF PRISONERS) of the ABA STANDARDS FOR CRIMINAL JUSTICE, were developed from the consensus views of a broad range of correctional system professionals, including current and former chief administrators and counsel of major correctional systems, prosecutors, defenders, judges, and representatives of the American Correctional Association and the U.S. Department of Justice, among others. *See* THE TREATMENT OF PRISONERS, at I-III, *available at* http://www.americanbar.org/content/dam/aba/publishing/criminal_justice_section_newsletter/crimjust_policy_midyear2010_102_i.authcheckdam.pdf (last visited June 24, 2011).

motive or opportunity to smuggle contraband into a prison.⁷

ABA Standard 23-7.9(d) therefore provides that detainees⁸ like Mr. Florence, who are arrested and detained for minor, non-violent, non-drug-related offenses, should be strip searched only when there is individualized, reasonable suspicion that they have contraband:

⁷ See Criminal Justice Info. Servs. Div., Fed. Bureau of Investigation, U.S. Dep't of Justice, Crime in the United States tbl.29 (2009), available at http://www2.fbi.gov/ucr/cius2009/data/table_29.html (last visited June 24, 2011); see also N.Y. State Div. of Criminal Justice Servs., Crime in New York State: 2010 Preliminary Data (2011), available at <http://criminaljustice.state.ny.us/pio/annualreport/2010-crime-in-nys-preliminary.pdf> (last visited June 24, 2011). A large percentage of arrests in the United States are for misdemeanor offenses and civil infractions. For example, in New York City in 2010, 343,308 people were arrested. Of this number, 251,169 arrests, or nearly three-quarters of the total number of arrests, were for misdemeanor crimes or civil infractions. N.Y. State Div. of Criminal Justice Servs., Adult Arrests 2001-2010: New York City (2011), available at <http://www.criminaljustice.state.ny.us/crimnetlojsa/arrests/nyc.htm> (last visited June 24, 2011); cf. K. Babe Howell, *Broken Lives from Broken Windows: The Hidden Costs of Aggressive Order-Maintenance Policing*, 33 N.Y.U. REV. L. & SOC. CHANGE 271, 283-84 (2009) (discussing the distribution of minor offense arrests in New York City in greater detail).

⁸ This brief uses the term “detainees” to describe individuals who have been arrested and, following upon that arrest, have been taken into initial detention in holding cells or detention facilities, including jails and prisons. See ABA Standard 23-1.0(i). ABA Standard 23-7.9(d) specifically addresses strip searches of such detainees. Detainees, as that term is used herein, are thus a subset of a larger universe of detained individuals referred to as prisoners.

(d) Visual searches of a prisoner's private bodily areas, whether or not inspection includes the prisoner's body cavities, should:

...

(ii) be permitted only upon individualized reasonable suspicion that the prisoner is carrying contraband, unless the prisoner has recently had an opportunity to obtain contraband, as upon admission to the facility, upon return from outside the facility or a work assignment in which the prisoner has had access to materials that could present a security risk to the facility, after a contact visit, or when the prisoner has otherwise had contact with a member of the general public; *provided that a strip search should not be permitted without individualized reasonable suspicion when the prisoner is an arrestee charged with a minor offense not involving drugs or violence and the proposed strip search is upon the prisoner's admission to a correctional facility or before the prisoner's placement in a housing unit.*

ABA Standard 23-7.9(d) (emphasis added).⁹

⁹ Minor offenses are defined differently across jurisdictions but typically include misdemeanor offenses and civil infractions – offenses that may warrant a fine or citation, but do not typically warrant extended jail time. Numerous jurisdictions have made a similar distinction in their law on strip searches of detainees. *See, e.g.*, Federal Bureau of Prisons, U.S. Dep't of Justice, Program Statement 5140.38, Civil Contempt of Court Commitments § 11 (2004), *available at* <http://www.bop.gov/DataSource/execute/dsPolicyLoc> (last visited June 24, 2011) (“Detainees charged with misdemeanors, committed for civil

As an initial matter, the Standard recognizes that a strip search is a grave and inherently degrading intrusion on an individual's rights, and therefore should not be carried out on every person who is arrested. In this case, Mr. Florence, who was arrested for a minor offense (despite his proof that he had resolved the matter, ultimately resulting in his release without charge), was strip searched twice: once within the close quarters of an eight-foot stall, where the supervising officer inspected Mr. Florence's mouth, tongue, armpits, buttocks, and genitals, and once when he was forced to strip off his clothes in a shower area with a group of four other prisoners, all of whom were required to open their mouths, lift their genitals, and "squat and cough" in plain sight of one another. J.A. 255a-257a.

This Court, like numerous other courts, has recognized the humiliating nature of strip searches like the ones endured by Mr. Florence. *See Bell v. Wolfish*, 441 U.S. 520, 560 (1979) ("We do not underestimate the degree to which these searches may invade the personal privacy of inmates."); *see also, e.g.*, Pet. App. 19a (noting that strip searches constitute an "extreme intrusion on privacy"); *Wood v. Clemons*, 89 F.3d 922, 928 (1st Cir. 1996) ("[A] contempt (without also serving a concurrent criminal sentence) or held as material witnesses may not be searched visually unless there is reasonable suspicion that he or she may be concealing a weapon or other contraband."); Va. Code Ann. § 19.2-59.1 ("No person in custodial arrest for a traffic infraction, Class 3 or Class 4 misdemeanor, or a violation of a city, county, or town ordinance, which is punishable by no more than thirty days in jail shall be strip searched unless there is reasonable cause to believe on the part of a law-enforcement officer authorizing the search that the individual is concealing a weapon."); *see also* sources cited *infra* notes 13-14 (discussing other jurisdictions).

strip search, by its very nature, constitutes an extreme intrusion upon personal privacy, as well as an offense to the dignity of the individual” (citation and internal quotation marks omitted)).

At the same time, ABA Standard 23-7.9(d) recognizes that contraband in correctional facilities presents a serious threat to the safety and security of correctional officers and prisoners. Therefore, the inherently invasive and degrading nature of strip searches must be balanced carefully with the actual and likely security risks to which the searches are addressed.

Recognizing the serious security concerns in prison facilities, the ABA Standard acknowledges that a strip search may be necessary whenever particularized circumstances create reasonable suspicion, even for detainees charged with very minor offenses. In addition, the ABA Standard concludes that the balance tips in favor of allowing routine strip searches when detainees charged with serious, violent, or drug-related offenses are admitted to a detention facility. Under these circumstances, the nature of the charged offense increases the risk to security such that it outweighs the intrusiveness of the search.¹⁰

There is little reason, however, to believe that a strip search of a detainee like Mr. Florence is necessary to protect prison security. Under ABA

¹⁰ Moreover, consistent with this Court’s conclusion in *Bell*, 441 U.S. at 559 & n.40, ABA Standard 23-7.9(d) recognizes that, in order to preserve prison security, it may be necessary to strip search pretrial detainees who elect to engage in loosely supervised contact visits and therefore may have opportunity and possible motive to acquire contraband.

Standard 23-7.9(d), then, the balance tips against allowing searches without individualized suspicion when these detainees are admitted to a prison.

First, these arrests typically come as a surprise. There is thus no motive prior to arrest – and limited opportunity during the arrest – to plan to smuggle contraband into a prison. *See, e.g., Roberts v. Rhode Island*, 239 F.3d 107, 112 (1st Cir. 2001). In an analogous situation, this Court has noted the improbability of the hypothetical that an officer will “stumble onto” contraband during a detention for a traffic violation. In *Knowles v. Iowa*, 525 U.S. 113 (1998), the state sought authority to perform full vehicle searches incident to detentions for traffic violations. Then Chief Justice Rehnquist, writing for the Court, rejected the state’s argument on the ground that it was highly unlikely that the search of a detainee’s vehicle would recover evidence or contraband from crimes other than the traffic violation. The Court explained that “the possibility that an officer would stumble onto evidence wholly unrelated to the speeding offense seems remote.” *Id.* at 118.

The possibility that prison officials will discover contraband in a strip search of a minor-offender detainee is even more remote. Even if it were conceivable that an individual might plan an arrest in order to smuggle contraband into a prison, detainees have no control over the institution in which they are placed or the prisoners with whom they will come into contact once there. Moreover, a detainee who seems too willing to be arrested may generate reasonable suspicion justifying a strip search in a particular case, even where the arresting offense is a misdemeanor unrelated to drugs or

violence. *Cf. Miller v. Yamhill County*, 620 F. Supp. 2d 1241, 1246 (D. Or. 2009) (upholding a strip search based upon reasonable suspicion where an individual self-reported to a jail in which he had previously been incarcerated).

Second, arrests for drug-related or violent offenses present an obvious risk that – despite the lack of advance warning – detainees might have had an opportunity to secrete drugs or weapons during an arrest. That risk is not present to the same degree, however, when a person has been arrested for a minor, non-violent, non-drug-related offense. A blanket strip search policy assumes that all arrestees, regardless of the basis for arrest, may possess contraband and will attempt to conceal it on their persons. *Cf. William C. Collins*, Nat'l Inst. of Corr., U.S. Dep't of Justice, Jails and the Constitution: An Overview 35-36 (2d ed. 2007), *available at* <http://static.nicic.gov/Library/022570.pdf> (last visited June 24, 2011) (concluding based on a “substantial amount of data” that “officials were not able to show that people arrested on the street for minor offenses were likely to be carrying contraband that wouldn't be discovered in a search less intrusive than a strip search”).¹¹

A strip search of detainees like Mr. Florence upon admission to a prison, without some other

¹¹ Clearly, detainees may be subjected to searches and security measures (*e.g.*, pat-down searches and confiscation of belongings) that do not involve strip searches. *See, e.g.*, Judy Haney, Statement to Commission of Safety and Abuse in America's Prisons, (Apr. 19, 2005), *available at* http://www.prisoncommission.org/public_hearing_1_witness_haney.asp (last visited June 24, 2011) (describing intrusive nature of pat-down searches in prison setting).

individualized reasonable suspicion, is not justified by security concerns, and is therefore inconsistent with the respect for the human dignity of prisoners to which the ABA is deeply committed. *See* ABA Standard 23-1.1(d) (“No prisoner should be subjected to cruel, inhuman, or degrading treatment or conditions.”);¹² *cf.* ABA, JUSTICE KENNEDY COMMISSION REPORT TO THE HOUSE OF DELEGATES 4 (2004) (“A purpose to degrade or demean individuals is not acceptable in a society founded on respect for the inalienable rights of the people.” (quoting Anthony M. Kennedy, Address at the American Bar Association Annual Meeting (Aug. 9, 2003))). Indeed, where a search is not reasonably related to a legitimate goal, “a court permissibly may infer that the purpose of the governmental action is punishment that may not constitutionally be inflicted upon detainees *qua* detainees.” *Bell*, 441 U.S. at 539.

¹² The commentary to ABA Standard 23-1.1(d) points out that the language “cruel, inhuman or degrading” is derived from Article 5 of the Universal Declaration of Human Rights, G.A. Res. 217 (III) A, art. 5, U.N. Doc. A/RES/217(III) (Dec. 10, 1948). Such language is repeated in various multilateral treaties to which the United States is a party, including the International Covenant on Civil and Political Rights art. 7, Dec. 16, 1966, 999 U.N.T.S. 171 (“ICCPR”), and the Convention Against Torture and Other Cruel, Inhuman or Degrading Punishment art. 10-13, Dec. 14, 1984, S. Treaty Doc. No. 100-20 (1988), 1465 U.N.T.S. 85. The key concept in international law interpretations of these concepts is respect for human dignity. *See* Basic Principles for the Treatment of Prisoners, 15 G.A. Res. 45/111, annex ¶ 5, U.N. Doc. A/45/111 (Dec. 14, 1990); ICCPR, *supra*, art. 10 ¶ 1.

II. Numerous Jurisdictions Have Adopted Policies Similar to the ABA Standard.

As demonstrated by the implementation of similar statutes in jurisdictions throughout the country, ABA Standard 23-7.9(d) strikes an effective balance between a detainee's rights and prison security concerns. There is no evidence that prisons in those jurisdictions incur greater problems associated with contraband than do prisons in other jurisdictions.

Some of these statutes bar strip searches of detainees arrested for minor offenses not involving drugs or violence, unless there is some reason for individualized suspicion of possession of a weapon or other contraband. *See, e.g.*, Cal. Penal Code § 4030(f) ("No person arrested and held in custody on a misdemeanor or infraction offense, except those involving weapons, controlled substances or violence . . . shall be subjected to a strip search or visual body cavity search prior to placement in the general jail population, unless a peace officer has determined there is reasonable suspicion based on specific and articulable facts to believe such person is concealing a weapon or contraband."); 725 Ill. Comp. Stat. Ann. 5/103-1(c) ("No person arrested for a traffic, regulatory or misdemeanor offense, except in cases involving weapons or a controlled substance, shall be strip searched unless there is reasonable belief that the individual is concealing a weapon or controlled substance").¹³

¹³ *See also, e.g.*, Fla. Stat. 901.211(2) ("No person arrested for a traffic, regulatory, or misdemeanor offense, except in a case

In addition, the federal Bureau of Prisons, as well as a number of states, do not distinguish between detainees arrested for offenses involving violence or drugs and other detainees, but instead require individualized suspicion whenever a minor offense is involved. *See, e.g.*, Federal Bureau of Prisons, U.S. Dep't of Justice, Program Statement 5140.38, *supra* note 7; Conn. Gen. Stat. 54-33(a) (“No person arrested for a motor vehicle violation or a misdemeanor shall be strip searched unless there is reasonable belief that the individual is concealing a weapon, a controlled substance or contraband.”).¹⁴

which is violent in nature, which involves a weapon, or which involves a controlled substance, shall be strip searched unless . . . [t]here is probable cause to believe that the individual is concealing a weapon, a controlled substance, or stolen property; or . . . [a] judge at first appearance has found that the person arrested cannot be released either on recognizance or bond and therefore shall be incarcerated in the county jail.”); Tenn. Code Ann. 40-7-119(b) (“No person arrested for a traffic, regulatory or misdemeanor offense, except in cases involving weapons or a controlled substance, shall be strip searched unless there is reasonable belief that the individual is concealing a weapon, a controlled substance or other contraband.”); Va. Code Ann. § 19.2-59.1 (“No person in custodial arrest for a traffic infraction, Class 3 or Class 4 misdemeanor, or a violation of a city, county, or town ordinance, which is punishable by no more than thirty days in jail shall be strip searched unless there is reasonable cause to believe on the part of a law-enforcement officer authorizing the search that the individual is concealing a weapon.”).

¹⁴ *See also, e.g.*, Colo. Rev. Stat. § 16-3-405(1) (“No person arrested for a traffic or a petty offense shall be strip searched, prior to arraignment, unless there is reasonable belief that the individual is concealing a weapon or a controlled substance or that the individual, upon identification, is a parolee or an offender serving a sentence in any correctional facility in the state or that the individual is arrested for driving while under

Finally, other jurisdictions require individualized suspicion to strip search detainees arrested for *any* crime, regardless not only of whether violence or drugs are involved but also of whether the offense is a minor one. *See* Ohio Rev. Code Ann. § 2933.32(B)(2) (“A . . . strip search may be conducted if a law enforcement officer or employee of a law enforcement agency has probable cause to believe that the person is concealing evidence of the commission of a criminal offense, including fruits or tools of a crime, contraband, or a deadly weapon . . . that could not otherwise be discovered.”); Wash. Rev. Code. Ann. § 10.79.130 (“No person to whom this section is made applicable . . . may be strip searched without a warrant unless . . . [t]here is a reasonable suspicion to believe that a strip search is necessary[.]”).

The successful operation of prisons under these various statutes and the Federal Bureau of Prisons’ statement demonstrates that ABA Standard 23-7.9(d) sets out a practical, workable alternative to permitting a strip search of anyone placed in a detention facility, regardless of the infraction alleged.

the influence of drugs.”); Iowa Code Ann. § 804.30 (“A person arrested for a scheduled violation or a simple misdemeanor shall not be subjected to a strip search unless there is probable cause to believe the person is concealing a weapon or contraband.”); Mo. Stat. Ann. § 544.193(2) (“No person arrested or detained for a traffic offense or an offense which does not constitute a felony may be subject to a strip search . . . by any law enforcement officer or employee unless there is probable cause to believe that such person is concealing a weapon, evidence of the commission of a crime or contraband.”).

III. The ABA Standard on Strip Searches Reflects This Court's Fourth Amendment Precedents.

This Court has recently reemphasized that prisoners “retain the essence of human dignity inherent in all persons.” *Brown v. Plata*, 131 S. Ct. 1910, 1928 (2011). Individuals do not forfeit all constitutional protections simply by reason of their admission to a prison facility. *Wolff v. McDonnell*, 418 U.S. 539, 555-56 (1974) (“There is no iron curtain drawn between the Constitution and the prisons of this country.”); *see also Bell*, 441 U.S. at 558; *Jones v. North Carolina Prisoners' Labor Union Inc.*, 433 U.S. 119, 129-30 (1977); *Meachum v. Fano*, 427 U.S. 215, 225 (1976). The ABA Standard on strip searches reflects this Court's jurisprudence on the Fourth Amendment and on prisoners' rights more generally.

In *Bell*, this Court reiterated the overarching constitutional requirement that searches under the Fourth Amendment be reasonable. 441 U.S. at 559. To meet this requirement, searches must be reasonable both in scope and in intrusiveness under all of the relevant circumstances. *Terry v. Ohio*, 392 U.S. 1, 19 (1968) (“[T]he central inquiry under the Fourth Amendment [is] the reasonableness in all the circumstances of the particular governmental invasion of a citizen's personal security.”); *see also Ohio v. Robinette*, 519 U.S. 33, 39 (1996); *O'Connor v. Ortega*, 480 U.S. 709, 725-26 (1987); *New Jersey v. T.L.O.*, 469 U.S. 325, 341-42 (1985); *Pennsylvania v. Mimms*, 434 U.S. 106, 108-09 (1977).

In a specific example of this reasoning, *Bell* articulated a “test of reasonableness under the Fourth Amendment,” requiring “a balancing of the need for the particular search against the invasion of

personal rights that the search entails. Courts must consider the scope of the particular intrusion, the manner in which it is conducted, the justification for initiating it, and the place in which it is conducted.” *Bell*, 441 U.S. at 559 (citing numerous cases applying the “all the circumstances” inquiry in diverse contexts).

The circumstances surrounding the strip searches at issue in this case are vastly different than those at issue in *Bell*, and accordingly should require a different result. In *Bell*, this Court held that a policy requiring that detainees be strip searched after contact visits was reasonable under the circumstances. *Bell*, 441 U.S. at 560. Those circumstances included the fact that the detainees were already confined, and had the opportunity to plan ways in which to smuggle contraband into the prison facility by means of scheduled contact visits with outside parties. Even detainees charged with minor offenses may become enmeshed in smuggling schemes as a result of interactions with other prisoners once inside the facility. Further, the detainees could opt out of these intrusive searches by forgoing contact visits for more traditional visitation procedures, such as visiting in private booths separated by plexiglass.

By contrast, detainees like Mr. Florence, who are accused of minor offenses, are unlikely to have the motive or opportunity to plan to be arrested with contraband hidden on their persons for the purpose of smuggling it into a prison. Moreover, almost all such contraband can be discovered and confiscated through less intrusive means than a strip search. ABA Standard 23-7.9(d) reflects the consensus of a broad range of correctional system professionals that

automatic application of such an invasive and degrading procedure on admission to a facility is not reasonable when balanced against the likely security risks.

Further, the Fourth Amendment permits individuals to be arrested for any perceived violation of law, no matter how small. *See, e.g., Atwater v. City of Lago Vista*, 532 U.S. 318, 354 (2001) (upholding the arrest and detention of a woman for “driving without her seatbelt fastened, failing to secure her children in seatbelts, driving without a license, and failing to provide proof of insurance”); *Stewart v. Lubbock County*, 767 F.2d 153 (5th Cir. 1985) (fine-only misdemeanors); *Hill v. Bogans*, 735 F.2d 391 (10th Cir. 1984) (traffic violations); *Jones v. Edwards*, 770 F.2d 739 (8th Cir. 1985) (leash law violations). Were this Court to affirm the Third Circuit’s decision as consistent with the Fourth Amendment, virtually any of the 14 million Americans arrested each year could be subject to a strip search upon their admission to a detention facility, even when arrested for minor infractions, including alleged offenses like Mr. Florence’s that do not involve violence or drugs, and regardless of the circumstances surrounding arrest.

Finally, the Third Circuit’s concern that a reasonable suspicion policy will give undue discretion to officials, thus raising “equal protection concerns,” is misplaced. *See* Pet. App. 27a. Law enforcement officers have been searching people based on reasonable suspicion for over forty years—since this Court decided *Terry v. Ohio* in 1968. *See* 392 U.S. at 19. Moreover, any rule that this Court adopts will be implemented by correctional officers under written policies that provide specific guidance,

and such implementation will not be subject to the decision-making pressure that officers in the field encounter.

CONCLUSION

For the reasons stated above, the judgment of the United States Court of Appeals for the Third Circuit should be reversed.

Respectfully submitted,

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