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.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

BRIEF OF *AMICI CURIAE* STATE OF MICHIGAN AND 11 OTHER STATES SUPPORTING RESPONDENTS

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QUESTION PRESENTED

Whether a strip search of a detainee upon admission into a jail's general population is constitutional, where the search does not involve physical contact and is conducted to protect the health and safety of the detainee and other inmates.

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INTEREST OF *AMICI CURIAE*

The *amici* states are responsible for the security and health of jail detainees and personnel, and are especially challenged by the escalation of smuggling to meet that responsibility. Police have effectively used strip searches of the same nature as those this Court upheld in *Bell* v. *Wolfish*, 441 U.S. 520 (1979), to detect, remove, and deter dangerous contraband plaguing jails.

The strip search policies complained of in this case apply only to those prisoners being admitted into a jail's general population and apply to all newly-admitted inmates without discrimination. Like their equivalent policies in other states, the Burlington and Essex County policies keep out contraband, i.e., weapons and drugs, and provide effective health screening of inmates essential to identifying infectious diseases and other concealed risks to the general population's health.

These policies also avoid equal protection difficulties that would arise if jail personnel were required to establish reasonable cause to strip search a detainee entering the general population. If this Court imposes an individualized suspicion standard, the *amici* states will be deprived of an indispensable means to administer jail facilities, incapable of guaranteeing that concealed health risks would be identified for the benefit of jail general populations.

Accordingly, the *amici* states respectfully request that the Court uphold the right of jail officials to strip search a detainee upon admission into a jail's general population.

CLARIFICATION OF THE QUESTION PRESENTED

The question actually presented in this case differs significantly from the question Petitioner has framed. The district court analyzed the question "whether the search procedure of non-indictable offenders is unreasonable when it is performed pursuant to a blanket policy without reasonable suspicion." *Florence* v. *Bd. of Chosen Freeholders of the County of Burlington*, 595 F. Supp. 2d 492, 504 (D.N.J. 2009). The court then certified the following question for Third Circuit review: "whether a blanket policy of strip searching all non-indictable arrestees *admitted to a jail facility* without first articulating reasonable suspicion violates the Fourth Amendment . . . ." *Florence* v. *Bd. of Chosen Freeholders of the County of Burlington*, 657 F. Supp. 2d 504, 511 (D.N.J. 2009) (emphasis added). Accordingly, the court of appeals addressed the question "whether it is constitutional for jails to strip search arrestees *upon their admission to the general population*." *Florence* v. *Bd. of Chosen Freeholders of the County of Burlington*, 621 F. 3d 296, 298 (3rd Cir. 2010) (emphasis added). No court in this proceeding has answered the question "whether the Fourth Amendment permits a jail to conduct a suspicionless strip search *of every individual arrested* for any minor offense *no matter what the circumstances*." Pet. Br. i (emphasis added).

Accordingly, the question the *amici* states address is limited to those detainees admitted into a jail's general population. To expand the question to include all arrestees, as Petitioner has done, is inconsistent with the facts of this case, and it necessarily includes many persons not affected by strip-search policies.

INTRODUCTION AND SUMMARY OF ARGUMENT

Over the course of a year, more than 13.5 million individuals spend time in jail or prison in the United States. Society can legitimately deprive these individuals of their liberty, but it should not deprive them of their health and safety, or that of the 750,000 men and women who staff incarceration facilities.

Burlington and Essex Counties, like many jurisdictions, have adopted a blanket search policy for all detainees upon their admission to a detention facility. The search does not involve physical contact, and the search is essential to detect weapons and drugs as well as other contraband and to ensure the health of not only the jail's general population and jail officials, but of the detainee himself. Petitioner also alleges that he was subjected to a strip search and a visual body-cavity search under Essex's former written policies, see Pet. App. 140a-142a, but any searches conducted under that policy were constitutional.

For two basic reasons, the Counties' policies do not violate the Fourth Amendment.

First, detainees have no expectation of privacy in jail. Accordingly, strip searches of those admitted to a jail's general population do not implicate the Fourth Amendment.

Second, a uniform strip-search policy for detainees entering a general jail population is reasonable under the Fourth Amendment. Such a search is analogous to a search incident to arrest and is similarly reasonable because it protects detainees and detention personnel.

The Burlington and Essex County policies are consistent with the Court's ruling in *Bell* v. *Wolfish*, 441 U.S. 520 (1979). In *Bell*, this Court upheld a policy of uniform prisoner strip searches after contact visits. The same interests are at stake when a detainee enters a jail's population. To the extent a detainee has an expectation of privacy, compelling governmental health and safety interests outweigh the intrusion. The safety of everyone in the jail would be compromised in the absence of these policies. The imposition of a reasonable-suspicion requirement would also threaten detainee equal-protection rights.

The *amici* states respectfully request that the Court affirm the judgment of the court of appeals.

ARGUMENT

I. Strip searches of those admitted to jail general populations are not searches implicating the Fourth Amendment because an admitted detainee has no expectation of privacy in jail.

This Court has consistently recognized that detention-facility inmates do not have an expectation of privacy in the facility. Accordingly, no Fourth Amendment rights are implicated when jail officials strip search a detainee when admitted into a jail's general population.[1]

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[1] Consistent with the position of the Essex County departments, Essx Br. 1 n.1, this brief uses the phrase "strip search" to include both strip searches as well as visual body cavity searches as described by this Court in *Bell*. *Id.* at 558.

In *Katz* v. *United States*, 389 U.S. 347 (1967), this Court determined that a search implicating the Fourth Amendment requires an intrusion on expected privacy. *Id.* at 353. Anticipating Petitioner's argument, the Court explained that "the Fourth Amendment cannot be translated into a general constitutional 'right to privacy.' . . . [T]he protection of a person's general right to privacy—his right to be let alone by other people—is . . . left largely to the law of the individual States." *Id.* at 350–51 (emphasis and footnotes omitted). Justice Harlan summarized the Court's test as follows: a search intruding on reasonably expected privacy can only be unreasonable in violation of the Fourth Amendment if (1) a person has an "actual," "subjective," and "reasonable expectation of privacy" in the thing searched, and (2) contemporary society judges the subjective expectation to be objectively reasonable. *Id.* at 360–61 (Harlan, J., concurring); accord, e.g., *Skinner* v. *Ry. Labor Executives' Ass'n*, 489 U.S. 602, 616 (1989). In a later case, *United States* v. *Knotts*, 460 U.S. 276 (1983), this Court explained that a privacy interest implicating the Fourth Amendment arises only if a person has a "justifiable," "reasonable," or "legitimate" expectation of privacy, i.e., one that is not merely self-perceived but that "society is prepared to recognize as 'reasonable.'" *Id.* at 280–81.

In *Vernonia School District 47J* v. *Acton*, 515 U.S. 646 (1995), the Court affirmed that the nature of a setting and the relationship between the person and the government may abate the reasonableness of the expectation of privacy. *Id.* at 654. It has previously emphasized that "to say that a public jail is the equivalent of a man's 'house' or that it is a place where he can claim constitutional immunity from search or

seizure of his person, his papers, or his effects, is at best a novel argument." *Lanza* v. *N.Y.*, 370 U.S. 139, 143 (1962). The nature of incarceration necessarily reduces the reasonableness of the individual's expectation of privacy in that particular setting. *Hudson* v. *Palmer*, 468 U.S. 517, 527 (1984); see *Bell* v. *Wolfish*, 441 U.S. 520, 559–60 (1979).

Moreover, while the Fourth Amendment does protect privacy interests, it does not protect one's interest in concealing evidence of crime or contraband. *Hudson* v. *Mich.*, 547 U.S. 586, 594 (2006). Because an inmate has no expectation of privacy in a jail, Petitioner is essentially arguing for the right of pre-trial detainees *to conceal* anything, including weapons and health hazards, from detention personnel.

There is nothing special about this case that would suggest a different result here. The *sine qua non* of a search implicating the Fourth Amendment is the intrusion into a reasonable expectation of privacy. The strip search of a detainee admitted to a jail's general population is not a Fourth Amendment search according to this Court's jurisprudence, because there is no reasonable expectation of privacy in a jail or prison. Rather, one is expected to endure the embarrassment of exposing his full body to police and jail officials when the circumstances and security needs of the facility require it. American society has long been aware of and appreciated the reasons for this loss of privacy. Prison searches conducted to detect contraband and ensure detainee and inmate safety do not violate any reasonable expectation of privacy.

II. A policy of uniformly strip searching pre-trial detainees is also reasonable under the Fourth Amendment.

In addition, a policy of uniform strip searches when a detainee is admitted into a jail's general population is reasonable under the Fourth Amendment.

A. Strip searches are analogous to searches incidental to arrest and are similarly reasonable because they protect detainees and detention personnel.

Under the Burlington and Essex County policies, strip searches are incidental to detention and arrest, and as all searches incidental to arrest are reasonable, a uniform strip search policy does not violate the Fourth Amendment.

A strip search upon admission to a prison's general population is similar to a search incidental to arrest. Their purposes are nearly identical—to ensure safety. This Court has acknowledged the similarity of searches at the time and place of arrest to searches upon admission to a detention facility, calling transportation to a police station "a continuation of the custody inherent in the arrest status" and the "factors" justifying a pre-detention search "somewhat different from," but "in some circumstances . . . even greater than," those of a search immediately upon arrest. *Ill.* v. *Lafayette*, 462 U.S. 640, 645 (1983). "For example, the interests supporting a search incident to arrest would hardly justify disrobing an arrestee on the street, but the practical necessities of routine jail administration may even justify taking a prisoner's clothes before confining him . . . ." *Id.*

In *United States* v. *Robinson*, 414 U.S. 218 (1973), this Court sustained the reasonableness under the Fourth Amendment of searches incidental to arrest because the protection of law enforcement officials and discovery of evidence of crime—even crime for which the arrestee was not arrested—were sufficient justifications for such a search. *Id.* at 226 (quoting *Chimel* v. *Cal.*, 395 U.S. 752, 762–63 (1969)). Moreover:

> [i]t is the fact of the lawful arrest which establishes the authority to search, and we hold that in the case of a lawful custodial arrest a full search of the person is not only an exception to the warrant requirement of the Fourth Amendment, but is also a 'reasonable' search under that Amendment.

Robinson, 414 U.S. at 235.

This Court in *Robinson* emphasized "the traditional and unqualified authority of the arresting officer to search the arrestee's person." *Id.* at 229 (citing *Chimel*, 395 U.S. at 763). The search of an arrestee's person is reasonable even to the point of "a very full incident search," *Robinson*, 414 U.S. at 229 (quoting *Sibron* v. *N.Y.*, 392 U.S. 40, 77 (1968) (Harlan, J. concurring)), or "a relatively extensive exploration of the person," *Terry* v. *Ohio*, 392 U.S. 1, 25 (1968) (quoted in *Robinson*, 414 U.S. at 227). Incidental searches do not require the arresting officer to judge the particular danger posed by or have individual suspicion of the arrestee to conduct a full search. The officer must make "a quick *ad hoc* judgment" as to the prudence of searching the arrestee, given the objectives of ensuring his and the arrestee's safety and the discovery of evidence of crime. *Robinson*, 414 U.S. at

235. This judgment has valid "authority" as "a reasonable intrusion under the Fourth Amendment" and therefore is not subject to judicial review. *Id*.

Robinson did not declare that "*any* search" of an arrestee upon arrest was categorically reasonable, but rather only searches for weapons, contraband, and evidence of crime. *Mary Beth G.* v. *Chi.*, 723 F.2d 1263, 1269 (1983). These types of searches are indistinguishable from the Burlington and Essex County policies, which seek to identify contraband and health hazards to the detainee and the prison's general population. Under *Robinson*, these policies do not violate the Fourth Amendment.

Significantly, this Court has also held that searches which could be lawfully conducted at the time and place of arrest may also be conducted at a later time, including when the arrestee arrives at the detention facility. *United States* v. *Edwards*, 415 U.S. 800, 803 (1974) (citing *Abel* v. *United States*, 362 U.S. 217 (1960) (search after placing arrestee in a cell was permitted at least in part because the "administrative mechanics of arrest" had not been completed)). *Edwards* indicates that law enforcement has some discretion as to the timing of searches incident to arrest, which may be delayed for sufficient reason. In that case, the arrestee's clothes were suspected of being evidence of a crime. Because the jail did not have replacement clothes for him to wear, it seized and searched his clothes the morning after his detention so he would not be left naked overnight. *Edwards*, 415 U.S. at 805. Such a "reasonable delay" did not change the nature or reasonableness of the search as one incidental to arrest, for "Edwards was no more imposed

upon than he could have been at the time and place of the arrest or immediately upon arrival at the place of detention." *Id*. As noted above, a strip search upon admission to a jail's general population shares the purposes of a search incident to arrest, and the delay of a strip search until arrival at a detention facility is reasonable.

The search that occurs before the entry into a jail facility, of course, is more probing than the one that occurs incident to arrest. But the level of intrusion in each is reasonably necessary based on the circumstances of the search to guarantee safety. Cf. *Lafayette,* 462 U.S. at 645 ("the practical necessities of routine jail administration may even justify taking a prisoner's clothes before confining him"). Each search corresponds to the nature of the danger presented by the detention. For a police officer after an arrest from a crime, the primary concern is one of the officer's safety. See *Robinson,* 414 U.S. at 234-35 (identifying the "danger to an officer" that is posed "in the case of the extended exposure which follows the taking of a suspect into custody and transporting him to the police station"). By comparison, the danger presented by an inmate's entry into the jail is that of an inmate smuggling a weapon, or bringing in an infectious disease into a facility, where that person may be incarcerated for an extended period of time.

The paradigm danger presented by an inmate being introduced into a residential detention facility is that of hiding a weapon. See *Bull* v. *City and County of San Francisco*, 595 F.3d 964, 967 (9th Cir. 2010) (en banc) ("The record contains reports of the death of an inmate housed in the general population from drugs

obtained within the prison, and of one detainee who set her clothes on fire with a lighter smuggled into the cell, of another who mutilated himself with staples similarly secreted into the jail, and of a third who attempted suicide with razor-blades smuggled into the jail in his rectal cavity."). This danger is substantial not just for jail employees, but also for inmates. See *Petrusak* v. *State,* 39 Ill.Ct.Cl. 113; 1987 WL 960490, *5 (Ill.Ct.Cl. 1987)(providing relief in a tort action against the State for its negligence in performing an "incomplete" search—an inmate was stabbed when "the lower abdomen and groin area where [the perpetrator] claimed to have secreted the knife was not searched"). The more probing search is reasonable in light of the ability of the inmate being processed into a detention facility to plan to secret hidden devices.

In sum, the search of an arrestee in the process of becoming a detainee is analogous to a search at the scene of arrest, and neither implicates the warrant preference of the Fourth Amendment. The paramount objectives, ensuring health and security, justify strip searches of pre-trial detainees upon admission to detention facilities as reasonable.

B. *Bell* v. *Wolfish* previously held that the governmental interest in maintaining the security of a jail justifies a uniform strip search policy of all detainees without individual suspicion as reasonable under the Fourth Amendment.

1. The reasonableness of a uniform strip search policy requires a case-specific balancing of detention-facility and detainee interests, and a recognition of special needs that renders individual suspicion prohibitively impractical.

A uniform strip search policy for detainees upon admission to jails and other detention facilities is inherently reasonable under the Fourth Amendment. The petitioner in *Bell* v. *Wolfish*, 441 U.S. 520 (1979), similarly claimed that a policy of uniform prisoner strip searches after contact visits, instituted to detect and deter weapons and other contraband in the prison, violated the Fourth Amendment. This Court answered the question the Petitioner again poses to it in this case: "whether visual body-cavity inspections . . . can *ever* be conducted on less than probable cause. Balancing the significant and legitimate security interests of the institution against the privacy interests of the inmates, we conclude that they can." *Bell*, 441 U.S. at 560.

More specifically, *Bell* and other precedents support the conclusion that the strip search policies challenged here do not require individual suspicion to be reasonable. The test for Fourth Amendment

reasonableness requires a balancing of the authorities' need for a search against the invasion of personal rights the search entails. That balancing requires courts to 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; accord, e.g., *Camara* v. *Mun. Court*, 387 U.S. 523, 536–37 (1967).

When balancing governmental and detainee interests, it must be noted that "[l]awful incarceration brings about the necessary withdrawal or limitation of many privileges and rights, a retraction justified by the considerations underlying our penal system." *Price* v. *Johnston*, 334 U.S. 266, 285 (1948) (quoted in *Bell*, 441 U.S. at 546–47); *accord Jones* v. *N.C. Prisoners' Labor Union*, *Inc.*, 433 U.S. 119, 125 (1977); *Pell* v. *Procunier*, 417 U.S. 817, 822 (1974). "This principle applies equally to pretrial detainees and convicted prisoners." *Bell*, 441 U.S. at 547. Thus, an inmate's privacy expectation must "always yield to what must be considered the paramount interest in institutional security." *Hudson* v. *Palmer*, 468 U.S. 517, 528 (1984); see *Bell*, 441 U.S. at 558–60. The government interest in detention-facility health and security need not be a heightened "compelling interest," but only an interest for which a strip search is a proportionate intrusion upon a genuine expectation of privacy. *Acton*, 515 U.S. at 660–61 (1995). A petitioner has a "heavy burden" of demonstrating that policies aimed at meeting "genuine security considerations" are unreasonable. *Bell*, 441 U.S. at 561–62.

Because reasonableness under the Fourth Amendment is determined by a balancing test, "neither

a warrant nor probable cause, nor, indeed, any measure of individualized suspicion, is an indispensable component of reasonableness . . . ." *Nat'l Treasury Employees Union* v. *Von Raab*, 489 U.S. 656, 665–66 (1989); accord *United States* v. *Martinez-Fuerte*, 428 U.S. 543, 560–61 (1976) (citing cases), *N.J.* v. *T.L.O.*, 469 U.S. 325, 342 n.8 (1985), and *Samson* v. *Cal.*, 547 U.S. 843, 855, n.4 (2006). The impracticality of requiring individualized suspicion supports the reasonableness of suspicionless searches. *Skinner* v. *Railway Labor Executives' Ass'n*, 489 U.S. 602, 631 (1989).

Accordingly, this Court has declined to require the government to show individual suspicion to search a person when prohibitively impractical, *Von Raab*, 489 U.S. at 674, especially when "the Government seeks to *prevent* the development of hazardous conditions." *Id.* at 668; accord *Camara* v. *Mun. Court*, 387 U.S. 523, 537 (1967). And this Court has acknowledged prison security is a special need. *Skinner*, 489 U.S. at 619–20. Consistent with *Bell,* this special need applies to all detention facilities, such as jails.

2. The governmental interests here outweigh any intrusion upon the privacy expected by a detainee.

In *Bell*, the Court upheld strip searches without distinction as to pre-trial or convicted detainees returning to the facility general population after contact visits. 441 U.S. at 524. *Bell* did not require probable cause to strip search a detainee. *Id.* at 560; see also *Vernonia*, 515 U.S. at 664, n.3.

Applying the four considerations of the *Bell* balancing test, a detainee has no expectation of privacy in conflict with the interest in the general population's health and security. Even if he did, a uniform strip search policy is proportionate to the governmental interest furthered. Consequently, the following factors are relevant if this Court finds a privacy expectation.

First, the scope of a strip search can be very intrusive if it involves a manual body cavity search involving physical contact. But such searches do not take place here.

Second, under the Burlington and Essex County policies, the intrusion is only visual. Moreover, jail officials conduct the search only in the presence of those of the same sex, unless this is impossible.

Third, the state interests justifying the Burlington and Essex County policies are indispensable for a detention facility to function. The health and security of all detainees and facility personnel are jeopardized by the failure to detect weapons and drugs as well as disease and infection, entering the facility. There is no other way to ensure that inmates do not smuggle in weapons into the facility. In the absence of a strip search, everyone—jail employees and inmates—are placed in jeopardy of a criminal assault. See *Petrusak, supra.* Moreover, strip searches are necessary to identifying infectious conditions. That is why the Tenth Circuit has validated facility health and sanitation as reasons for strip searches. *Dunn* v. *White*, 880 F.2d 1188, 1195 (10th Cir. 1989). As this Court recognized in *Illinois* v. *Lafayette*, 462 U.S. 640 (1983), inmates will use their own possessions to injure themselves in detention, justifying the "administrative procedure" of

searching those possessions. *Id*. at 646. Moreover, the Burlington and Essex County policies deter weapons and drugs and other contraband from entering the facility. *Bell*, 441 U.S. at 559. The policy is reasonable so long as the contraband threat in detention facilities remains serious, which it undeniably is.[2]

Fourth, the search is conducted in a private area, away from unnecessary observers. Even under the *Bell* analysis, then, the Burlington and Essex County policies in question are reasonable under the Fourth Amendment.

3. Requiring individual suspicion for strip searches of pre-trial detainees is not required by the Fourth Amendment and would be unworkable because it defeats the deterrent effect the searches are in part calculated to provide and endangers detainees' right to equal protection.

Subjecting the strip search policies of Burlington and Essex Counties to an individual suspicion would be improper. This Court has explained that "a responsible Fourth Amendment balance is not well served by standards requiring sensitive, case-by-case determinations of government need, lest every discretionary

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[2] In *Bell* v. *Wolfish*, the Court relied not on evidence of smuggling after contact visits but the rationale involved. The *amici* states can demonstrate the presence of contraband and validly argue that a universal strip search policy detects and deters contraband entering jails. Such a policy is effective. See Essex Br. 11, 30-36, 38-39, 45-47.

judgment in the field be converted into an occasion for constitutional review." *Atwater* v. *Lago Vista*, 532 U.S. 318, 347 (2001). This balance must be (1) "workable for application by rank-and-file, trained police officers;" (2) reasonable; and (3) "objective, not dependent on the belief of individual police officers." *Ill.* v. *Andreas*, 463 U.S. 765, 772–73 (1983). Because a scheme of individual suspicion for detainee strip searches would mandate that detention facility personnel abandon an objective judgment that all detainees may be conveying hidden contraband or health hazards, and instead make a subjective, standardless judgment as to the probability that individual detainees pose such threats, it is unreasonable to compromise the important governmental interest for the alleged privacy interest.

Further, requiring government searchers to become familiar with and implement individual suspicion can frustrate the very execution of their duties and "divert valuable agency resources from the[ir] . . . primary mission." *Nat'l Treasury Employees Union* v. *Von Raab*, 489 U.S. 656, 666 (1989). Such a requirement would even "sacrific[e]" the purpose for which they conduct strip searches of detainees upon admission to jail general populations, see *O'Connor* v. *Ortega*, 480 U.S. 709, 741 (1987) (Blackmun, J., dissenting), by defeating the deterrence such a policy provides for the introduction of weapons and drugs into the facility. As a matter of common sense, an inmate is less likely to attempt to smuggle in a weapon or drugs if that inmate knows that he will be subject to a strip search.

Equally important, if detention personnel were required to identify which detainees were "likely" to be

gang members, or to carry health hazards, such subjective judgments might raise serious concerns under the Equal Protection Clause of the Fourteenth Amendment. See *Bull*, 595 F.3d at 983–88 (concurring opinion) (discussing at length the problems, including Equal Protection concerns, with exempting certain persons or categories of persons from a uniform search scheme). "[P]rison inmates convicted of genteel crimes" and other "sub-class[es]" could not logically be exempted from a search policy imposed upon a class of which they are appropriately members. *Id*. at 984. Detention personnel would end up playing a kind of guessing game which would endanger detainees' equal-protection rights and expose detention-facility officials to liability for violation of constitutional rights. And the threat of such litigation, standing alone, would force many facilities to jettison jail-admission searches altogether, endangering the facility's officials, its other inmates, and the detainee himself. To require individual suspicion in this context is unreasonable.

C. The presumption of an arrestee's innocence does not diminish the reasonableness of strip searching him under the Fourth Amendment.

The Petitioner's suggestion—that the strip search of an arrestee is punishment which is unreasonable under the Fourth Amendment by negating his presumption of innocence, Pet. Br. 19—ignores this Court's pronouncement on the question in *Bell*.

To begin, detention does not imply guilt. A person is detained in a jail pending trial because it is believed there is no other way to guarantee his presence at

trial. The presumption of innocence, therefore, "has no application to a determination of the rights of a pretrial detainee during confinement before his trial has even begun." *Bell*, 441 U.S. at 533.

More important, "[n]ot every disability imposed during pretrial detention amounts to 'punishment' . . . . Loss of freedom of choice and privacy are inherent incidents of confinement in such a facility. . . . [This] does not convert the conditions or restrictions of detention into 'punishment.'" *Bell*, 441 U.S. at 536–37. This Court has recognized the "legitimate interests" in operating a detention facility, which:

> [M]ay require administrative measures that go beyond those that are, strictly speaking, necessary to ensure that the detainee shows up at trial. For example, the Government must be able to take steps to . . . make certain no weapons or illicit drugs reach detainees. Restraints that are reasonably related to the institution's interest in maintaining jail security do not, without more, constitute unconstitutional punishment.

Id. at 540 (footnote omitted).

This Court in *Bell* held that the policy litigated there was not punitive and did not violate due process rights. 441 U.S. at 560–61. By uniformly strip searching all pre-trial and post-trial detainees upon admission into a detention facility, the states similarly do not execute punishment, but only an administrative measure necessitated by the health and safety hazards posed by incoming detainees.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted,

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