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 AMICUS CURIAE NEW JERSEY COUNTY JAIL WARDENS ASSOCIATION IN SUPPORT OF RESPONDENTS

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STATEMENT OF INTEREST OF *AMICUS CURIAE*[1]

Amicus curiae the New Jersey County Jail Wardens Association ("Association") is a membership organization of county jail wardens in New Jersey founded in 1959 to share information regarding the operation of county jails, and to present a united effort to attain objectives defined by the members. The Association submits this brief out of concern that the security of the nation's jails not be compromised by unworkable and ill-conceived constitutional rules governing the search of jail admittees for contraband, and that wardens and their institutions not be subject to unwarranted claims under 42 U.S.C. § 1983 as a result of such rules. The Association is also concerned that constitutionalizing the rule that petitioner seeks would frustrate future efforts to modify restrictive state laws on intake searches that the Association believes are impairing jail security and jeopardizing the safety of inmates and correctional staff alike.

ARGUMENT

Respondents have capably briefed the constitutional law governing this case, and the Association will not replicate that effort. The Association instead devotes this brief to giving the

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[1] No counsel for a party authored this brief in whole or part, and no party or counsel for a party or person other than *amicus curiae*, its members, or counsel for *amicus curiae* made a monetary contribution to fund the preparation or submission of the brief. The parties have filed written letters of global consent to *amici curiae* briefs.

Court a fuller perspective on the operation of county jails; the imperative of preventing contraband of all kinds into jail populations; and the mischief that will ensue from the rule that petitioner proposes.

The fundamental point is this. Jails are institutions that confine often lawless and dangerous persons in close quarters. There is inherent risk to detainees and correctional staff alike from the nature of the institution and the confined population, and that risk is intensified by widespread and growing gang activity in prison. Contraband – which encompasses not just weapons, dangerous implements, and drugs, but also any item that is unauthorized (or held in unauthorized amounts) – has value in the underground economy of jails. The competition in jail for such goods begets violence, extortion, and disorder. Correctional officials must have the authority to stem the flow of contraband into their facilities, for the protection of both inmates and staff. In the experience of New Jersey jail wardens, persons committed on indictable offenses are not significantly more likely than other admittees to secrete contraband on their persons. Minimally intrusive visual inspections of private areas of admittees ("strip searches") upon admission routinely yield concealed contraband. Performance of such searches as standard intake procedure is reasonable in light of institutional safety imperatives and the reduced expectations of privacy in the jail setting. Petitioner's proposed "reasonable suspicion" rule is unworkable, unduly compromises jail safety, and invites strategic behavior from recidivist and street-wise prisoners and criminal gangs that will foster disorder in the nation's jails.

The following statement from one inmate, who was committed on a probation violation for a credit-card offense and not strip-searched on intake, and who later confessed to smuggling contraband, illustrates the problem: "I had it tucked in my bra when I came in. The officer didn't feel it when she patted me down. I knew I wasn't going to get strip searched when I came in, so I wasn't worried about it." Office of the Sheriff, Cape May County, Disciplinary Report #11-082.

This Court should not constitutionalize the unwarranted rule that petitioner advocates, which will hamper the ability of county jails to stem contraband smuggling and control gang activities in jail. Instead, it should affirm the decision below.

A. Jails By Their Nature Create Conditions That Place Correctional Staff And Inmates At Risk Of Violence And Extortion By Other Inmates.

Recent years have witnessed increases in jail populations that have only just begun to taper off. U.S. Dep't of Justice, Bureau of Justice Statistics, *Jail Inmates at Midyear 2010 – Statistical Tables*, Fig. 1 (2011) ("*Jail Inmates Statistical Tables*"), http://www.bjs.gov/index.cfm?ty=pbdeltail&iid=2375. The populations in county jails vary greatly; in New Jersey, which has 21 county jails, the average daily inmate population in 2010 ranged from 115 in Hunterdon County to 3,032 in Essex County.[2] Jail

[2] New Jersey jail population-related statistics are accessed by the member wardens from the New Jersey County Correction Information System.

populations are a mix of the sentenced, the unsentenced, and those on other status; over 20% of the population in a number of New Jersey jails consists of sentenced offenders.[3]

Turnover is rapid. Nationally, nearly 13 million persons were admitted to a jail in 2010, which is about 17 times the average daily jail population. *Jail Inmates Statistical Tables*, at 2. The national weekly turnover rate was nearly 65%. *Id.* Table 4. The average length of stay in jail is measured in weeks, but there is a substantial range. For example, in the Ocean County jail, the average stay is 28 days, but some inmates are confined for just a few hours and some for more than 3 years. In the Middlesex County jail, the average stay is 42 days, but some inmates have been confined for 4 years. Overall, in New Jersey in 2010, there were 2,776 weekly admissions and 2,799 weekly discharges in a county jail system with an average statewide daily population of 16,718.

Admissions vary from day to day. For example, at the Atlantic County jail, there were on average 31 daily admissions in 2010, with a peak of 65 in a day. At the Essex County jail, there were 58 per day, with a peak near 120. In Passaic County, the average is

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[3] The unsentenced include those who are being held for a pending municipal court hearing or trial, grand jury proceeding, New Jersey superior court hearing or trial, or drug court proceeding. The sentenced include those serving municipal or superior court sentences, and those whose transfer to state prison is pending. A large number of inmates in county jails may have other status, including parole and probation violators, family or juvenile court holds, fugitives, and U.S. federal marshal detainees.

20, with a peak of 57. A number of factors account for the variation. Commitments are often highest on Fridays (which are the sentencing days at municipal courts in many counties). Admissions rise on weekend nights when assault, DUI, and domestic-violence arrests are common. Admissions may also peak when there are warrant raids or drug sweeps, or when local police agencies transfer two or three days' worth of arrestees held in municipal lock-ups and police-station detention cells after arraignment.

Jail facilities also vary significantly. In most facilities, inmates are confined in multiperson cells (usually 2 or 3 in a cell). Some facilities have four to six beds in dormitory cells, and others have dormitory rooms. The dormitory rooms in the Hudson County and Passaic County jails house 64 and 36 inmates respectively. Many jails are crowded; nine of the 21 New Jersey county jails operated at more than 100% of their rated capacity as of July, 2010. Besides exposure to cellmates, inmates mix with other inmates in common areas during recreational and meal periods.

Many inmates, regardless of the infraction for which they were arrested or the crime for which they were committed, have violent tendencies. The pressures of confinement, especially in crowded conditions, may also foster violence, coercion, and extortion. Inmate-on-inmate violence and inmate-on-staff violence is thus a constant occurrence and risk against which jails must guard.

B. The Activities And Rivalries Of Organized Gangs Increase Violence And Extortion At Jails.

The inherent risks of jail for inmates and staff are exacerbated by the penetration of organized criminal gangs into the jail system. The State of New Jersey Commission of Investigation, in a study of the state prison system, aptly described the problem:

> [B]urgeoning numbers of gang-affiliated inmates today increasingly exploit systemic weaknesses to organize and thrive inside prison walls. They communicate widely with cohorts both inside and outside of prison via cellular phones and other means, and they readily secure, use and deal in contraband, including illegal narcotics. They carry out illicit financial transactions and launder money through an official system of inmate accounts. They extort fellow inmates and their families. They corrupt corrections personnel, including custody officers and civilian staff. Together, these circumstances enable them to nurture and advance violent criminal enterprises while incarcerated, and their ability to operate in this fashion raises the specter of greater violence, not just inside the prisons, but once they return to the outside world.

N.J. Comm'n of Investigation, *Gangland Behind Bars*, at 1-2 (May 2009) (available at http://www.state.nj.us/sci/pdf/Gangs%20SCI%20

Report%20Full.pdf). Gangs, despite popular perceptions of them as a youth phenomenon, are sophisticated and "highly structured" organizations "led by adults and resembling traditional criminal syndicates." *Id.* at 9. Gang membership has been rising quickly across the country, and in correctional institutions. More than 20% of inmates at New Jersey prisons are gang members, and gang-member inmates enter the prison system at a rate of 75-80 per month. *Id.* at 11.

The same problems with gangs that have arisen in the state prison system plague county jails. For example, Bergen County has identified 90 gang members in it facilities; Monmouth County has 96 confirmed or suspected gang members out of a population of 1158. The actual numbers are likely higher. Union County, which has dedicated staff to gang intelligence, has identified 204 gang members out of a population of 1066.

Gangs thrive on the vulnerability of inmates in jail. Gangs derive strength from numbers, and jails prove fertile grounds for recruiting. Even individuals who resist joining a gang on the outside succumb out of fear of the unknown and an instinct for self-preservation. Rivalries among competing gangs are intense, and hostilities break out. In New Jersey county jails, gangs have executed contract "hits" upon members of rival gangs; robbed or extorted inmates in packs of gang members; engaged in smuggling of cell phones, drugs, and other contraband; and arranged for retaliatory crimes to be committed on correctional staff outside of the jail by its members. Gangs "discipline" their own wayward members with violence. Even the very small Cape May County jail

(population of 343 in July, 2010) recorded 45 incident reports related to or motivated by gang activity in 2010.

C. Contraband Of All Kinds Is A Significant Security Risk In Jails.

Petitioner gives short shrift to the institutional imperatives of safety, and the threats posed by contraband and gangs. In particular, his arguments are largely based on the misconception that the only types of contraband that matter are weapons and drugs. Pet'r Br. 10, 30. Petitioner severely underestimates the threat of contraband to order in county jails.

New Jersey county jails uniformly define contraband broadly in their written policies. Contraband includes ammunition, explosives, weapons, hazardous chemicals and gases; unauthorized drugs or medications, currency and stamps, and communication devices. But it also includes any item not authorized by the jail (or unauthorized amounts of permitted items). *See* Peter M. Carlson & Judith Simon Garrett, PRISON AND JAIL ADMINISTRATION: PRACTICE AND THEORY 63 (2d ed. 2008) ("Contraband is any item or article that an inmate is forbidden to possess.")

Weapons and escape implements are an obvious threat to order in jails. So too are drugs. Inmates under the influence of drugs or other intoxicants can become violent. The drug trade can induce violence. Many inmates who were not addicted on the outside begin using drugs on the inside.

But even everyday items that are innocuous on the outside are dangerous within a jail. Lighters and

matches are fire and arson risks or potential weapons. Cell phones are used to orchestrate violence and criminality both within and without jailhouse walls. Pills and medications enhance suicide risks. Chewing gum can block locking devices; hairpins can open handcuffs; wigs can conceal drugs and weapons. Gang paraphernalia can incite assaults or be used for recruiting. Fabrics and clothing can be used to make dummies or fashion escape outfits. *See* Carlson & Garrett, *supra*, at 64 (discussing fire, hygiene, and concealment risks of ordinary property, and recommending strict limitations on medicine, clothing, and newspapers and magazines an inmate may possess). Inmate ingenuity in the manipulation of contraband knows no limits.

Most importantly, any items that are valued and scarce portend disruption in jail. Contraband fosters a black market in desired goods within the jail. And, in jail, the strong prey on the weak. If an inmate has jewelry or clothing, or drugs, or tobacco, or money that another desires, he or she is at risk of an attack or robbery or extortion. The economic value of contraband feeds the propensity to violence. An outbreak of violence between two inmates puts other inmates and also correctional staff at risk, and can be a spark that leads to a broader conflagration (particularly, if the incident involves members of rival gangs).

Gangs, rapacious by nature, seek to dominate the contraband trade in prison. Contraband is a source of power and control and profit. It does not matter whether a gang member brings the drugs or other contraband into the jail; the contraband will end up

in the hands of the strongest members or groups, and generally those are gangs. Gangs organize to accumulate contraband; they orchestrate thefts, commit assaults, and approach inmates in packs to take the contraband from the weak.

Gangs are not content simply to control contraband that happens to come into the jail. Recorded conversations indicate a constant flow of contraband into the jail. Gangs orchestrate the smuggling of contraband into jail (using contraband cell phones to maintain constant telephonic contact with outside members); gangs particularly value drugs and material that can be fashioned into weapons (shanks). Gangs target inmates with access to the outside world to promote contraband smuggling: for example, they coerce inmates who are serving sentences only on the weekends ("weekenders") into smuggling contraband into the jail, knowing that under current New Jersey law these inmates are not likely to be strip-searched. Even though these are supposedly among the lowest-risk inmates, weekender inmates have been discovered smuggling drugs and tobacco products into county jails.

To be sure, there are many channels of contraband inflow into jail besides new commitments. Gangs corrupt correctional officers to sneak contraband in, and abuse contact visits. But a jail will never gain satisfactory control of contraband if certain known smuggling channels – like "mules" committed on nonindictable offenses – remain open.

Because contraband is one of the major sources of disorder in prison, particularly in the modern era of gang dominance in the prison population, correctional

officials must have the proper tools in their arsenal to stem the tide of contraband into county jails.

D. Petitioner's Reasonable Suspicion Rule Would Deprive Jails Of The Power To Control The Influx Of Contraband, And Thus Increase Violence and Disorder.

Petitioner proposes that the Fourth Amendment should restrict jails from conducting strip searches on admittees absent "reasonable suspicion," which he defines as arising from three circumstances: (1) a present or prior offense that is "serious" (*i.e.*, indictable) or involves drugs or weapons; (2) indications in the facts of arrest of a purposeful attempt to gain admission to the facility; or (3) some manifestation of risk of contraband smuggling during the initial entrance and preliminary search at the jail. Pet'r Br. 10. Petitioner's ill-conceived rule reflects misapprehension of the realities and purposes of jail commitment procedures.

1. Officers Conducting Intake Searches Do Not Typically Have Information On Criminal History And The Circumstances Of Arrest.

Recognizing that offense of commitment is itself an inadequate predictor of contraband risk, *see infra* at 15-16, petitioner attempts to give his proposed test a patina of reasonableness by suggesting that jails may constitutionally conduct strip searches based on criminal history or the circumstances of the offense. That argument simply betrays the impracticality of petitioner's position. Criminal history and the circumstances of arrest are typically unknown to the searching officer at the time of admission.

The essential purpose of jail intake procedure is to process and secure the inmate as expeditiously as possible, consistent with jail cleanliness and security. In a typical booking procedure, the admittee is brought to the receiving area by the transporting officer (who is not necessarily the arresting officer). The booking officer reviews the commitment document (such as an arrest, bench, parole, or probation warrant, or sentencing order) for validity and accuracy, and verifies the admittee's identity. The commitment document contains very little information, usually disclosing information such as the charges of commitment, the relevant statute, and (if applicable) sentencing and bail information. After having verified the accuracy and validity of the commitment document, the booking officer gathers necessary personal and medical information; records and takes custody of inmate property; takes fingerprints; and determines if the admittee requires special handling (such as medical treatment). *See, e.g.*, Resp'ts Essex County Correctional Facility and Essex County Sheriff's Dep't Br. 4-5 (describing Essex County intake procedure). After this initial processing, the inmate is placed in a holding area to await a search. Because most correctional staff are needed to manage the confined population, only 1-3 officers (depending on the size of the institution) are typically available to conduct searches.[4]

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[4] The vast majority of New Jersey county jails also ensure jail hygiene by mandating that new admittees shower as part of the intake procedure. Showers help prevent the spread of deadly bacteria (like MRSA), ensure the cleanliness of jails, and aid in the control of body vermin. Showers also avoid the security risk of placing inmates with offensive body odor (from the

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The searching officer typically has no access to the admittee's criminal history or the facts of arrest, nor is it feasible to make evaluation of such data part of intake procedure. It is true (as Petitioner points out, Pet'r Br. 34) that jails do eventually research criminal history for purposes of inmate classification, but those are time-consuming inquiries that occur well after admission. Searching officers cannot be diverted from pressing tasks to conduct individualized criminal-history research on admittees. That would only delay the process of admission, and increase the numbers of admittees and the length of waiting times in holding areas. Such a procedure would delay needed medical attention or screening, and give new admittees a longer period of time to ingest or conceal contraband, or use contraband to hurt other admittees, themselves, or staff. Jails will not incur these security risks.

Nor do searching officers have access to (or time to evaluate) information about the circumstances of arrest, beyond the usually terse description of charges in the commitment document. The officer who has transported the admittee from a police station or municipal lock-up or court to the county jail is often not the arresting officer. Furthermore, the function of the transporting officers is simply to transfer custody to the jail securely; these municipal, state, or federal officers are not responsible for the security of county jails. They have many other duties

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circumstances of arrest or their detention in municipal facilities) in cells with other inmates.

(including security of the other transported inmates), and do not typically make themselves available to debrief jail personnel on the facts of arrest or the contraband risks the admittee poses, even if they had such knowledge. Petitioner's arguments are not grounded in reality.

Moreover, any constitutional rule of reasonable suspicion predicated on criminal history or behavior at the time of arrest would draw jails into a quagmire and breed more prisoner litigation about whether the jail in fact had reasonable suspicion to conduct a search. Does one felony drug offense 10 years ago give reasonable suspicion, for example? It would be almost impossible to devise robust standards for applying criminal history. This Court should not go down this path. Part of the reasons why strip searches should be standard is that the factors affecting contraband risk are multitudinous but not easily predicted, and vesting these decisions in individual correctional officers is more likely to lead to arbitrary conduct.[5]

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[5] It is also perverse to apply to *inmates* – who have been arrested for or convicted of violations of the law, and who are a significant contraband risks – the same individualized suspicion standards that apply to searches of jail and prison guards and police officers, *see*, *e.g.*, *McDonell v. Hunter*, 809 F.2d 1302, 1306-07 (8th Cir. 1987); *Kirkpatrick v. Los Angeles*, 803 F.2d 485, 489-90 (9th Cir. 1986); *Sec. & Law Enforcement Emp. v. Carey*, 737 F.2d 187, 204 (2d Cir. 1984); to prison visitors, *Wood v. Clemons*, 89 F.3d 922, 928 (1st Cir. 1996), and even to students who have greater privacy expectations in school than inmates do in correctional facilities, see *Safford Unified Sch. Dist. #1 v. Redding*, 129 S. Ct. 2633, 2639 (2009); *N.J. v. TLO*, 469 U.S. 325, 338-39 (1985) ("We are not yet ready to hold that the schools

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2. The Offense Of Commitment Is Not An Adequate Predictor Of Risk Of Contraband.

As Petitioner implicitly concedes, the offense of commitment alone is not a sound basis for predicting the risk of contraband. First, many forms of contraband – such as cigarette lighters, matches, tobacco products, jewelry, money, cell phones – obviously do not correlate with whether the offense of commitment is indictable or not. Second, in the wardens' experience, even as to drugs and weapons, the offense of commitment is not a robust enough predictor to rely upon exclusively. Individuals who commit minor crimes often also commit serious crimes; for example, offenders who commit motor vehicle violations are often found to be transporting guns or drugs. Even minor offenders without significant criminal proclivities may fashion defensive weapons, or secrete contraband to "buy" protection. Concealment of contraband is also highly correlated with certain types of minor crimes; for example, shoplifting is typically a misdemeanor, but many shoplifters are drug users who rely upon shoplifting to fund their drug habits. Shoplifters have a tendency to conceal drugs in underwear or body orifices, tape them in armpits, or place them above dentures. Finally, nonindictable offenders often are greater contraband risks because they are not searched thoroughly prior to being brought to the county jail. Police are much less likely to do a careful

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and the prisons need be equated for purposes of the Fourth Amendment.").

pat search of nonviolent misdemeanants than other offenders, and municipalities that hold arrestees pending arraignment often do not do pat-searches, or do them poorly.

Even if *arguendo* indictable offenders did present greater risk, there are many circumstances in which indictable offenders can coerce or coax non-indictable searchable offenders to carry contraband for them. Both types of offenders may be held in the same municipal detention facilities, or transported together to the county jail. And, as noted above, some jails place both types of offenders together in temporary holding areas or cells. Temporary holding may only be a few minutes, or could last several hours depending on circumstance. In smaller institutions, there may only be a few admittees awaiting search; in larger jails like Passaic County, there may be as many as 30-40 admittees awaiting a search in the holding facility. In those holding areas, indictable offenders often have the opportunity to coerce or persuade nonindictable offenders to smuggle contraband for them, knowing that the latter will not be searched.

It is simply a fallacy to presume that the smuggling of contraband into our nation's jails can be dealt with effectively by limiting search authority according to the nature of the charged offense.

3. Concealment Of Contraband Is A Significant Risk Across All Categories Of Detainees.

Petitioner also conjures up a fictional world wherein all admittees are arrested on the spot (or by surprise), and suggests that it is thus fanciful to

think that admittees will have the opportunity to conceal contraband. *See* Pet'r Br. 30.

Once again, petitioner's arguments disregard the complexity of reality. There are numerous circumstances in which there is opportunity for concealment of contraband by offenders of all stripes. Many admittees, who had been out on bail, appear for court on sentencing day knowing they are going to be sent to the county jail; indeed, most have already pled (or agreed to plead) guilty. Those persons can and do conceal contraband to aid them in their prison stay, knowing they generally will not be strip-searched if they are sentenced for a misdemeanor. Other admittees turn themselves in on arrest warrants, and can conceal contraband in advance. Inmates serving weekend sentences arrive at jail knowing they will not be searched, and they too can and do conceal contraband. Even persons who are arrested without notice are often detained in municipal or police-station detention where they are inadequately frisked or pat-searched; those individuals have the opportunity during their temporary detention to secrete contraband on their persons.

The proof is in the pudding. Even though New Jersey significantly restricts the authority of jails to conduct strip searches, *see* N.J. Stat. § 2A:161A-1; N.J. Admin. Code §§ 10A:31-8.4 to -8.7, New Jersey county jails routinely discover surprising amounts of contraband during admission.

The following examples are illustrative. In Atlantic County, officers have seized more than 100 items of contraband from admittees during searches since 2009, including a loaded semi-automatic hand gun. Passaic County reports that in the first half of

2011 alone, there were 3 incidents in which weapons were recovered from strip searches on intake (a metal shank, a sharpened plastic toothbrush secreted in the admittee's anus, and a razor); 3 incidents in which drugs or drug-related items were recovered (42 pills, crack pipe, green substance concealed in admitee's anus); and 2 other incidents involving cigarettes and jewelry. Both the green substance and the toothbrush weapon were hidden in the admittee's anus. In Bergen County, officers have found condoms filled with pills, heroin, hypodermic needles, and paper money concealed in orifices, and a .25 caliber gun concealed under the scrotum and missed on a pat search by arresting officers. In Ocean County, hypodermic syringes, illicit drugs, medication, smoking material, or cash have been discovered, and pills, cigarettes, drugs have been found stashed in the arrestee's vagina or anus. Middlesex County reports that seized contraband includes box cutters, cell phones, currency, and tobacco, and that admittees have stashed cell phones, drugs, and tobacco products in their bodies. In Cape May County, the contraband seized included butcher knives, small handguns, controlled dangerous substances, drug paraphernalia, crack pipes and hypodermic needles. Salem County reports numerous seizures of drugs, lighters, matches, knives, cell phones, cash, jewelry, medication, and tobacco products; the cell phone was smuggled in the admittee's anus. Sussex County reports incidents of drugs and tobacco being hidden in body orifices or taped to the inmate's back or groin area, including a woman who transported four airline bottles of vodka in her vagina. Indictable and nonindictable offenders alike have been found to have hidden contraband on their persons. Given strip-

search restrictions in New Jersey, this likely represents but a small part of the contraband flow into county jails.[6]

4. Petitioner Exaggerates The Trauma Of Strip Searches.

Petitioner greatly exaggerates the trauma associated with strip search (and plaintiff accounts associated with damages litigation must be discounted). *See* Pet'r Br. 22-23. In the wardens' experience, for nearly all admittees, visual strip searches of typically 3-5 minutes in duration and conducted respectfully as standard and regulated procedure by officers of the same sex, are not traumatic for the offender. The Court must also recognize that expectations of privacy in the jail setting are reduced by the necessities of confinement and security. Most inmates are confined in cells where they undress and use the cell toilet in the presence of cellmates, and sometimes in the view of correctional staff. Many inmates, particularly nonindictable offenders, understand that a standard strip search of all inmates upon admission serves to protect them from more dangerous and violent inmates.

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[6] Inmates are typically scanned for metallic contraband by use of devices such as the Body Orifice Scanning System ("BOSS Chair") and metallic wand detectors, but those detectors cannot detect non-metallic contraband, including polymer weapons.

5. This Court Should Not Constitutionalize A Rule That Would Invite Strategic Behavior By Jail-Savvy Inmates Or Gangs.

The paramount concern of a county jail is the security of its personnel and its inmates, and contraband jeopardizes security. This Court should not adopt a constitutional rule that invites strategic behavior on the part of jail-savvy inmates and (in particular) gangs. Jail inmates are highly recidivist (69% of Ocean County inmates have been previously jailed, for example). Recidivists are wise to the ways of the jail system; even non-recidivists will know the word on the street regarding search risks. A person bound for jail who has the opportunity to conceal contraband and knows she cannot be strip-searched can conceal contraband on her body with impunity.

The risk of strategic behavior is heightened with the gangs that infest county jails. Gangs are already coercing or enticing "weekenders" to smuggle contraband for them as "mules." They are no doubt staging arrests for the purposes of smuggling. One can be arrested for very minor infractions such as parking or motor-vehicle violations, or failure to pay child support or a fine, as petitioner points out (Pet'r Br. 25). That means it is very easy for gangs (at low cost to the "mule") to stage arrests to smuggle weapons, cell phones, drugs, currency, and contraband into jails.

This Court should not forever disable county jails from preventing this form of contraband smuggling that contributes to disorder and criminality in jails. Petitioner's individualized suspicion rule would foreclose the adoption of standard search policies

even if jails experienced a surge in contraband smuggling. Jails are just beginning to deal with an evolving, brave new world of gang penetration; the full ramifications of gang activity in the jail system are not fully understood, certainly not yet by political actors. The Association and its members fervently oppose the current restrictions imposed by New Jersey state law as contrary to safe correctional practice, but at least hold out the hope of repeal or modification with more institutional experience. A constitutional holding that enshrines petitioner's proposed rule would extinguish the possibility of state legislative adaptation to changing security imperatives in county jails, and would be both unwarranted and unwise.

CONCLUSION

The judgment below should be affirmed.

Respectfully submitted,

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August 26, 2011