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 NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS AS AMICUS CURIAE IN SUPPORT OF PETITIONER

DAVID PORTER
CO-CHAIR
NACDL AMICUS COMM.
801 I STREET, 3RD FLOOR
SACRAMENTO, CA 95814

MEIR FEDER
Counsel of Record
LESLIE B. DUBECK
JONES DAY
222 East 41st Street
New York, NY 10017
(212) 326-3670
mfeder@jonesday.com

June 27, 2011 *Counsel for Amicus Curiae*

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INTEREST OF AMICUS CURIAE[1]

The National Association of Criminal Defense Lawyers ("NACDL") is a non-profit organization with direct national membership of over 12,500 attorneys, in addition to more than 35,000 affiliate members from all 50 states. Founded in 1958, NACDL is the only professional bar association that represents public and private criminal defense lawyers at the national level. The American Bar Association recognizes NACDL as an affiliated organization with full representation in the ABA House of Delegates.

NACDL's mission is to ensure justice and due process for the accused; to foster the integrity, independence, and expertise of the criminal defense profession; and to promote the proper and fair administration of criminal justice, including the protection of Fourth Amendment liberties. NACDL has frequently filed amicus curiae briefs in this Court in cases implicating its substantial interest in safeguarding the individual liberties guaranteed by the Fourth Amendment. *See, e.g.*, *Scott v. Harris*, 550 U.S. 372 (2007); *Brigham City v. Stuart*, 547 U.S. 398 (2006); *Kyllo v. United States*, 533 U.S. 27 (2001); *City of Indianapolis v. Edmond*, 531 U.S. 32 (2000).

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[1] Pursuant to Supreme Court Rule 37.6, counsel for amicus states that no counsel for a party authored this brief in whole or in part, and that no person other than amicus, its members, or its counsel made a monetary contribution to the preparation or submission of this brief. Letters of consent to the filing of this brief have been lodged with the Clerk of the Court pursuant to Rule 37.3.

SUMMARY OF THE ARGUMENT

Unlike *Bell v. Wolfish*, 441 U.S. 559 (1979), which involved a strip search policy applicable only to prisoners who engaged in conduct that raised a risk of smuggling, this case involves a policy applied indiscriminately to all arrestees. The mere fact of arrest and detention does not inherently give rise to the type of risk that may justify a strip search. Arrests can and do result from a wide range of minor offenses and non-criminal violations, and they often occur under circumstances in which there is no reasonable basis for suspecting that the arrestee may be attempting to smuggle contraband into a detention facility. Moreover, to the extent either the type of offense or circumstances of arrest do raise such a concern, traditional Fourth Amendment standards will permit necessary searches. Absent such a basis for suspicion, however, the serious personal invasion of a strip search cannot be justified under the Fourth Amendment.

ARGUMENT

Under the ruling below, citizens who are arrested for minor offenses—or even non-criminal violations—and pose no risk of smuggling may constitutionally be subjected to highly invasive strip searches. That holding goes far beyond *Bell*, a case in which the search policy was limited to prisoners who engaged in specific conduct—contact visits with outsiders—that raised a risk of smuggling. Many offenses and violations that may result in arrest inherently raise no reasonable concern of smuggling, and the traditional reasonable suspicion standard is more than adequate to respond to circumstances of

arrest—or other individual circumstances—that do raise such concern.

AN ACROSS-THE-BOARD POLICY OF STRIP-SEARCHING ALL DETAINEES WITHOUT REGARD TO THE BASIS OF ARREST OR OTHER INDIVIDUAL CIRCUMSTANCES VIOLATES THE FOURTH AMENDMENT.

A. Detention May Be For A Minor Offense That, Standing Alone, Does Not Support A Reasonable Suspicion Of Smuggling

The record in this case reflects no basis for believing that all arrestees—without regard to the offense of arrest—can reasonably be suspected of concealing weapons or other contraband at the time of arrest. To the contrary, there is a wide range of relatively minor offenses and violations that can and do result in arrest but provide no basis for such suspicions.

To be sure, there are certain offenses for which courts have found an arrest, standing alone, to create a reasonable suspicion of contraband. *See, e.g.*, *Masters v. Crouch*, 872 F.2d 1248, 1255 (6th Cir. 1989) (strip search following arrest for crime of violence); *Hicks v. Moore*, 422 F.3d 1246, 1252 (11th Cir. 2005) (finding reasonable suspicion based on battery charges); *Campbell v. Miller*, 499 F.3d 711, 718 (7th Cir. 2007) (finding reasonable suspicion based on possession of narcotics). But in many cases, as here, the nature of an arrest provides no reasonable basis to suspect that the arrestee may be concealing weapons or contraband. *See* Pet. App. 3a (noting that Mr. Florence was arrested on a bench

warrant issued for a "non-indictable variety of civil contempt").

Mr. Florence's arrest and strip search, moreover, cannot be dismissed as an aberration. Individuals have been strip searched after arrests for refusing to sign a summons, *Jones v. Edwards*, 770 F.2d 739, 740-42 (8th Cir. 1985); not paying parking tickets, *Walsh v. Franco*, 849 F.2d 66, 68-70 (2d Cir. 1988); *Giles v. Ackerman*, 746 F.2d 614, 617 (9th Cir. 1984) (per curiam); driving with a suspended license, *Chapman v. Nichols*, 989 F.2d 393, 394-95 (10th Cir. 1993); failing to license a dog, *Watt v. City of Richardson Police Dep't*, 849 F.2d 195, 196 (5th Cir. 1988); and failing to pay child support, *Powell v. Barrett*, 541 F.3d 1298, 1300-01 (11th Cir. 2008) (en banc). In each of these cases, the court specifically found that there was no reasonable suspicion of contraband. *See Jones*, 770 F.2d at 740-41; *Walsh*, 849 F.2d at 70; *Giles*, 746 F.2d at 618; *Chapman*, 989 F.2d at 394; *Watt*, 849 F.2d at 199; *Powell*, 541 F.3d at 1300.

Moreover, a wide range of minor violations and offenses can lead to arrest and detention. *See Atwater v. City of Lago Vista*, 532 U.S. 318 (2001) (allowing arrests for non-jailable offenses). For example, individuals have been arrested for violating a noise ordinance, *Amaechi v. West*, 237 F.3d 356 (7th Cir. 2001); not wearing a seatbelt, *Atwater*, 532 U.S. 318; not stopping parallel to a stop sign, *Revely v. City of Huntington*, No. 3:07-0648, 2009 WL 1097972 (S.D. W. Va. Apr. 23, 2009); selling tickets next to a sports arena before an event, *Chortek v. City of Milwaukee*, 356 F.3d 740 (4th Cir. 2004); improperly using a car horn, *Lee v. Ferraro*, 284 F.3d

1188, 1192-93 (11th Cir. 2002); littering by ripping up a parking ticket and tossing it on the street, *Sands v. City of New York*, No. CV 04 5275 BMC CLP, 2006 WL 2850613 (E.D.N.Y. Oct. 3, 2006); throwing a lit cigarette on the ground, *Shipp v. Bucher*, No. 8:07-cv-440-T-17TBM, 2009 WL 179668 (M.D. Fla. Jan. 26, 2009); displaying a "Friends of Police" emblem on a car when not a member of the organization, *Bennett v. Booth*, No. Civ. A. 3:04-1322, 2005 WL 2211371 (S.D. W.Va. Sept. 9, 2005); being in a park after hours, *Tanberg v. Sholtis*, 401 F.3d 1151 (10th Cir. 2005); unpaid parking tickets, *Thomas v. City of Peoria*, 580 F.3d 633 (7th Cir. 2009); driving "more closely than is reasonable and prudent," *Holloman v. City of Myrtle Beach*, No. 4:04-1868, 2006 WL 4869353, at *5 (D.S.C. June 8, 2006); and distributing handbills without a permit, *Lorenzo v. City of Tampa*, 259 F. App'x 239 (11th Cir. 2007) (per curiam).

Because so many offenses give rise to no reasonable basis to suspect the arrestee of secreting contraband, the mere fact of arrest—without regard to the nature of the offense, or other individual circumstances—provides no justification for subjecting arrestees to strip searches.

B. The Reasonable Suspicion Standard Preserves Authority To Conduct Necessary Searches

The reasonable suspicion demanded by the Fourth Amendment is fully consistent with the needs of prison security. "[The reasonable suspicion] standard is flexible enough to afford the full measure of fourth amendment protection without posing an insuperable barrier to the exercise of all search and seizure powers." *Hunter v. Auger*, 672 F.2d 668, 674 (8th Cir.

1982); *see also, e.g.*, *Sec. & Law Enforcement Emp., Dist. Council 82 v. Carey*, 737 F.2d 187, 205 (2d Cir. 1984) (same (quoting *Hunter*)); *United States v. Himmelwright*, 551 F.2d 991, 995 (5th Cir. 1977) ("[W]e feel that the 'reasonable suspicion' standard is flexible enough to afford the full measure of protection which the fourth amendment commands"); *Evans v. Stephens*, 407 F.3d 1272, 1297 (11th Cir. 2005) (en banc) (same (quoting *Himmelwright*)); *Leverette v. Bell*, 247 F.3d 160, 168 (4th Cir. 2001) ("We emphasize that reasonable suspicion is the minimum requirement, and point out that the more personal and invasive the search activities of the authorities become, the more particularized and individualized the articulated supporting information must be.").

Reasonable suspicion may be based on, among other things, "the crime charged, the particular characteristics of the arrestee, and/or the circumstances of the arrest." *E.g.*, *Hartline v. Gallo*, 546 F.3d 95, 100 (2d Cir. 2008) (internal quotations and citations omitted). In determining whether reasonable suspicion exists, officers are able to "make inferences from and deductions about the cumulative information available" and "to draw on their own experience and specialized training" to analyze factors that "might well elude an untrained person." *United States v. Arvizu*, 534 U.S. 266, 273 (2002) (internal quotation marks omitted).

In particular, the reasonable suspicion standard accommodates the possibility that in some circumstances even detainees arrested for minor violations or offenses may reasonably be suspected of attempting to smuggle contraband into a facility.

Thus, reasonable suspicion to conduct a strip search has been found following an arrest of juveniles for "loitering and truancy" where, among other things, the arresting officer saw one of the juveniles hand an object to the other as he approached their vehicle and the arrest occurred in an area where drinking and drug activity regularly took place. *Justice v. City of Peachtree*, 961 F.2d 188, 194 (11th Cir. 1992). Likewise, reasonable suspicion to conduct a strip search has been found following an arrest for misdemeanor destruction of property where arrestee had a rolled-up sock concealed in his clothing. *Doe v. Balaam*, 524 F. Supp. 2d 1238, 1243-44 (D. Nev. 2007).

Other cases where reasonable suspicion sufficient to conduct a strip search has been found include: *Kraushaar v. Flanigan*, 45 F.3d 1040, 1045-46 (7th Cir. 1995) (arrest for driving under the influence where the officer believed he saw the arrestee conceal something); *Campbell*, 499 F.3d at 718 (arrest was for narcotics possession, arrestee fit the description of a person just involved in a drug deal, and the arresting officer observed the defendant drop a bag of marijuana); *Cea v. O'Brien*, 161 F. App'x 112, 113 (2d Cir. 2005) (arrest for failing to comply with a court order to surrender handguns based on the nature of the charge and the arrestee's demeanor at the time of arrest).

And myriad facts about an arrestee have been held to support, or negate, a reasonable suspicion of contraband, including: whether the arrestee "is allowed to visit the bathroom unescorted before an arrest," *Shain v. Ellison*, 273 F.3d 56, 64 (2d Cir. 2001) (noting that this fact "may well" create

"reasonable suspicion"); whether the arrestee has a "criminal history of narcotics, weapons or shoplifting violations," *Watt*, 849 F.2d at 198; whether an informant's tip indicates the arrestee has contraband, *see Bradley v. Village of Greenwood Lake*, 376 F. Supp. 2d 528, 536 (S.D.N.Y. 2005); whether the arrestee was "cooperative and orderly" at the time of arrest, *Giles*, 746 F.2d at 618; *Watt*, 849 F.2d at 199 ("[arrestee's] cooperativeness, obvious sobriety, and rationality . . . should have been counted in her favor by the police, as well as her polite acquiescence in searches of her purse and exterior person"); and whether the arresting officer bothered to conduct a frisk or pat-down search at the time of the arrest, *Logan v. Shealy*, 660 F.2d 1007, 1013 (4th Cir. 1981) (finding no reasonable suspicion for strip search and noting that the plaintiff "had been at the Detention Center for one and one-half hours without even a pat-down search").[2]

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[2] To assess whether there is reasonable suspicion to conduct a strip search of someone entering the United States, similarly broad factors have been cited as supporting a search, including:

> (1) Excessive nervousness. (2) Unusual conduct. (3) An informant's tip. (4) Computerized information showing pertinent criminal propensities. (5) Loose-fitting or bulky clothing. (6) An itinerary suggestive of wrongdoing. (7) Discovery of incriminating matter during routine searches. (8) Lack of employment or a claim of self-employment. (9) Needle marks or other indications of drug addiction. (10) Information derived from the search or conduct of a traveling companion. (11) Inadequate luggage. (12) Evasive or contradictory answers.

In light of this flexibility built into the reasonable suspicion standard, there is no justification for strip-searching all arrestees without regard to individual circumstances.

1. Hypothetical Opportunities To Smuggle Contraband Do Not Justify Suspicionless Searches

In holding that across-the-board suspicionless strip searches are permissible, the Third Circuit relied on its own conjecture "that incarcerated persons will induce or recruit others to subject themselves to arrest on non-indictable offenses to smuggle weapons or other contraband into the facility." Pet. App. 23a (describing this situation as "plausible" and thus "disagree[ing] with Plaintiffs' contention that the risk that non-indictable offenders will smuggle contraband is low"). The Ninth and Eleventh Circuits engaged in similar conjecture when upholding suspicionless searches of all arrestees. *See Powell*, 541 F.3d at 1313-14 (rejecting "factual premise" that "everyone who is arrested is surprised, seized, and slapped into handcuffs without a moment's notice" by noting possible exceptions); *Bull v. City & Cnty. of San Francisco*, 595 F.3d 964, 978 & n.14 (9th Cir. 2010) (en banc) (rejecting suggestion "that arrestees charged with minor offenses 'pose no security threat to the facility'" and criticizing dissent for engaging in such "appellate fact finding," but offering no basis for finding a contrary fact).

(continued…)

United States v. Asbury, 586 F.2d 973, 976-77 (2d Cir. 1978) (internal citations omitted).

But speculation that some circumstances may create an opportunity for non-indictable offenders to smuggle contraband does not justify searching all such offenders. If the circumstances of arrest suggest that possibility, those circumstances may well create a reasonable suspicion that a strip search will reveal contraband. *E.g.*, *Hartline*, 546 F.3d at 100 (reasonable suspicion may be "based on . . . the particular characteristics of the arrestee, and/or the circumstances of the arrest"). Likewise, if "those in a vehicle who are pulled over and arrested []have time to hide items on their person before the officer reaches the car door," as the Eleventh Circuit supposes might happen, that fact may contribute to reasonable suspicion. *E.g.*, *Justice*, 961 F.2d at 194 (finding reasonable suspicion based on officer's belief that arrestee may have hid contraband as the officer approached).

Experience has borne out that suspicionless strip searches at intake are not necessary to address the problem of smuggling in jails and prisons. Until recently, "ten circuit courts of appeals . . . [had held] that an arrestee charged with minor offenses may not be strip searched consistent with the Fourth Amendment unless the prison has reasonable suspicion that the arrestee is concealing a weapon or other contraband," and none had held to the contrary. *See* Pet. App. 2a, 3a-14a & n.4 (discussing state of the law for nearly three decades, from 1979 until 2008). And numerous states allow strip searches of detainees arrested for certain offenses only if there is individualized suspicion as to that detainee. *See, e.g.*, Cal. Penal Code § 4030(f); Colo. Rev. Stat. § 16-3-405(1); Conn. Gen. Stat. 54-33*l*(a); Fla. Stat.

901.211(2); Iowa Code Ann. § 804.30; 725 Ill. Comp. Stat. Ann. 5/103-1(c); Mich. Comp. Laws 764.25a; Mo. Ann. Stat. § 544.193(2); Ohio Rev. Code Ann. § 2933.32(B)(1); Tenn. Code Ann. 40-7-119(b); Va. Code Ann. § 19.2-59.1; Wash. Rev. Code. § 10.79.130. Even as Courts required individualized suspicion for strip searches, however, "major security problems because of dramatic increases in contraband entering the jail . . . did not develop." William C. Collins, National Institute of Corrections, United States Department of Justice, *Jails and the Constitution: An Overview* 28-29 (2d ed. 2007), *available at* http://static.nicic.gov/Library/022570.pdf.

2. Suspicionless Strip Searches Cannot Be Justified As A Means Of Removing Officer Discretion

The Third Circuit also erred when it relied on the possibility that a reasonable suspicion standard "raises equal protection concerns," Pet. App. 17a; *see also Bull*, 595 F.3d at 983 (Kozinski, J., concurring), to support its holding that suspicionless searches are reasonable under the Fourth Amendment.

First, upholding the searches in this case does not remove officer discretion. Respondent's current intake policies include a blanket policy of strip searches in the form of a "visual inspection," but more thorough strip searches are conducted only upon a reasonable suspicion. J.A. 10a-13a, 118a, 167a, 390a (Burlington's policy); 56a, 273a, 315a, 331-32a (Essex's policy). In fact, a holding that prisons *may* conduct strip searches of all arrestees—even in the absence of reasonable suspicion—will

eliminate the principal constitutional constraint on official discretion to conduct strip searches.

Second, this Court has never suggested that the risk of (unconstitutional) discrimination by officers is relevant to whether a search is reasonable under the Fourth Amendment. To the contrary, the Court rejected a similar argument in *Whren v. United States*, 517 U.S. 806, 813 (1996). In *Whren*, the Court considered whether the allegedly pretextual basis for a traffic stop could render the stop unconstitutional even though it was supported by probable cause. The petitioner argued that "the Fourth Amendment test for traffic stops should be, not the normal one . . . of whether probable cause existed to justify the stop; but rather, whether a police officer, acting reasonably, would have made the stop for the reason given." *Id.* at 810. According to *Whren*, this alternative Fourth Amendment test was justified to avoid the danger "that police officers might decide which motorists to stop based on decidedly impermissible factors." *Id.* The Court recognized the risk of discrimination, but rejected the suggestion that the risk of discrimination could change the Fourth Amendment analysis. *Id.* at 811-13.

Moreover, contrary to the Third Circuit's suggestion that reasonable suspicion is an unworkable standard, it is in fact a familiar and easily applied standard. For example, *Terry* stops require "reasonable suspicion that a person may be involved in criminal activity." *Hiibel v. Sixth Judicial Dist. Ct.*, 542 U.S. 177, 185 (2004). And police may search an automobile incident to arrest, but only when it is "reasonable to believe evidence relevant to

the crime of arrest might be found in the vehicle." *Arizona v. Gant*, 129 S. Ct. 1710, 1719 (2009). Both of these police encounters would carry the same "potential for abuse" that the Third Circuit noted. Pet. App. 27a (noting that "potential for abuse . . . is high, particularly where reasonable suspicion may be based on such subjective characteristics as the arrestee's appearance and conduct at the time of arrest"). Likewise, even the probable cause standard has a potential for abuse. *See, e.g.*, *Atwater*, 532 U.S. at 354 (holding that an officer may arrest an individual if he has "probable cause to believe that [the] individual has committed even a very minor criminal offense in his presence"). Although any of these standards could be applied in a discriminatory way, the government's desire to insulate itself from equal protection concerns by removing officer discretion cannot justify abandoning the individualized suspicion requirements demanded by the Fourth Amendment.[3]

C. The Particularly Invasive Nature Of Strip Searches Requires Substantial Justification

In light of these considerations, the generalized interest in preventing smuggling—when unsupported by reasonable suspicion—cannot outweigh the intrusion on personal privacy imposed by strip searches, which are "categorically distinct" from

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[3] Although *Delaware v. Prouse*, 440 U.S. 648 (1979), suggests that officer discretion *untrammeled* by the reasonable suspicion standard raises Fourth Amendment concerns, *id.* at 662, it provides no support for the notion that the reasonable suspicion standard itself gives officers excessive discretion. *See id.* at 663.

other searches, *Safford Unified School District No. 1 v. Redding*, 129 S. Ct. 2633, 2641 (2009).

Accordingly, while the security needs of a prison may be sufficient to support certain minimally-invasive suspicionless searches, *e.g.*, *Neumeyer v. Beard*, 421 F.3d 210, 214 (3d Cir. 2005) (prison policy of randomly searching visitor's vehicles was reasonable), strip searches are particularly invasive and require a different balance. *See Blackburn v. Snow*, 771 F.2d 556, 559-61 (1st Cir. 1985) (finding that a policy "requir[ing] that all men, women and children wishing to visit inmates at the institution submit to a strip search before doing so" violated the Fourth Amendment; rejecting argument that "by strip searching all visitors, without regard to any individualized suspicion, the Sherriff . . . could avoid the perception of unfairness, yet effectively check the flow of contraband into the Jail").

Moreover, although this case weighs the privacy of a detainee against the security demands of a prison, a prison's need to exclude contraband is just as strong whether the person being strip searched is a detainee, visitor, or employee.[4] If the Fourth Amendment provides any protection for personal privacy in prison, whether for detainees, visitors, or employees, then the security needs of a prison cannot

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[4] Indeed, the visitors and staff may pose a *greater* risk of contraband. In federal prisons, the main sources of drugs are visitors, mail, and staff, not prisoner intake. *See* Office of the Inspector Gen., Dep't of Justice, Report No. I-2003-002, Federal Bureau of Prisons' Drug Interdiction Activities (Jan. 2003), http://www.justice.gov/oig/reports/BOP/e0302/results.htm.

justify any and all searches, without regard to invasiveness or individual circumstances.

Reflecting the extreme invasiveness of strip searches—and the need for convincing justification for conducting them, even in the prison setting—the Courts of Appeals uniformly have held that strip searches of visitors or employees may only be conducted on individualized suspicion; a blanket policy of strip searching prison visitors and prison employees is unreasonable under the Fourth Amendment. *E.g.*, *Daugherty v. Campbell*, 935 F.2d 780, 787 (6th Cir. 1991) ("We hold that the case law clearly established the contours of the prison visitor's right to be free from a visual body cavity search in the absence of reasonable suspicion that he or she is carrying contraband."); *Cochrane v. Quattrocchi*, 949 F.2d 11, 13 (1st Cir. 1991) (applying reasonable suspicion standard when prison visitors are strip searched); *Thorne v. Jones*, 765 F.2d 1270, 1276 (5th Cir. 1985) (same); *Hunter*, 672 F.2d at 673-74 (same); *Dist. Council 82*, 737 F.2d at 201 (applying reasonable suspicion standard when prison guards are strip searched).

In light of the blanket nature of the search policy at issue here, and the feasibility of satisfying prison security needs without such a blanket policy, the balance struck by the Third Circuit in this case is inconsistent with these decisions.

D. The Third Circuit Erred In Reading *Bell v. Wolfish* As Justifying An Across-The-Board Suspicionless Strip Search Policy

The Third Circuit relied heavily on *Bell* as broadly authorizing suspicionless strip searches without

regard to individual circumstances. This was mistaken. *Bell* required a context-sensitive analysis, involving "a balancing of the need for the particular search against the invasion of personal rights that the search entails." 441 U.S. 520, 559 (1979). "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." *Id.*

As such, *Bell* was a limited decision that does not support the across-the-board suspicionless search policy at issue here. As an initial matter, *Bell* reviewed an injunction that demanded a "particular demonstration of probable cause," before inmates could be searched after contact visits, *United States ex rel. Wolfish v. Levi*, 439 F. Supp. 114, 148 (S.D.N.Y. 1977), and framed the question presented as "whether visual body-cavity inspections as contemplated by the MCC rules can *ever* be conducted on less than probable cause." 441 U.S. at 560 (emphasis added). It therefore did not squarely address whether the Fourth Amendment requires reasonable suspicion or how a requirement of reasonable suspicion might be satisfied.

Further, the search policy at issue in *Bell* was not indiscriminately applied to all prisoners. It was an "across-the-board" policy only in that it applied to all prisoners *who engaged in particular conduct*—contact visits with visitors from outside the facility—that raised a risk of contraband-smuggling. It provides no justification for a policy of *indiscriminate* strip searches, applicable to all arrestees, regardless of the nature of the crime, the circumstances of the arrest,

or other individual circumstances. *See* Pet. App. 23a-24a.

While certain types of crimes—or circumstances of arrest—may raise a risk of smuggling comparable to that at issue in *Bell*, that possibility cannot justify an across-the-board strip search policy applicable even in circumstances where that risk is not reasonably present.

CONCLUSION

Because strip searches are particularly invasive, and because the reasonable suspicion standard preserves authority to conduct searches in appropriate circumstances, the security challenges facing detention facilities cannot justify suspicionless strip searches under the Fourth Amendment.

Respectfully submitted,

DAVID PORTER
CO-CHAIR
NACDL AMICUS COMM.
801 I STREET, 3RD FLOOR
SACRAMENTO, CA 95814

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MEIR FEDER
Counsel of Record
LESLIE B. DUBECK
JONES DAY
222 East 41st Street
New York, NY 10017
(212) 326-3670
mfeder@jonesday.com

Counsel for Amicus Curiae