

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 FOR THE NATIONAL SHERIFFS'
ASSOCIATION, ET AL. AS AMICI CURIAE
SUPPORTING RESPONDENTS**

TRAVIS WISDOM

*Travis R. Wisdom, LLC
861 N. Dean Road
Suite C
Auburn, AL 36830
(334) 826-0722*

ROBERT SPENCE

*Counsel of Record
Rosen Harwood, PA
2200 Jack Warner Pkwy
Suite 200
Tuscaloosa, AL 35401
rspence@rosenharwood.com
(205) 344-5000*

*i***TABLE OF CONTENTS**

	Page
TABLE OF AUTHORITIES	ii
INTEREST OF THE <i>AMICI CURIAE</i>	1
SUMMARY OF ARGUMENT.....	2
A DETENTION FACILITY’S POLICY TO STRIP SEARCH ALL DETAINEES ADMITTED TO THE GENERAL POPULATION OF THE FACILITY DOES NOT VIOLATE THE FOURTH AMENDMENT TO THE UNITED STATES CONSTITUTION.....	5
THE JUDICIARY MUST ACCORD GREAT DEFERENCE TO DECISIONS MADE BY THE ADMINISTRATORS OF CORRECTIONAL FACILITIES WHICH IMPACT MATTERS OF INSTITUTIONAL SAFETY AND SECURITY	8
CONCLUSION	10
APPENDIX (Amici List)	1s

*ii***TABLE OF AUTHORITIES**

	Page
CASES	
<i>Bell v. Wolfish</i> , 441 U.S. 520, 559 (1979)	<i>passim</i>
<i>Hudson v. Palmer</i> , 468 U.S. 576, 584 (1984).....	3, 6, 8, 9
<i>Hudson v. Palmer</i> , 468 U.S. 517, 524 (1984).....	3, 6, 7
<i>Johnson v. California</i> , 543 U.S. 499, 532-33(2005).....	7
<i>Missouri v. Jenkins</i> , 515 U.S. 70, 132 (1995)	4
<i>Overton v. Bazzetta</i> , 539 U.S. 126, 134 (2003)	6
<i>Pell v. Procunier</i> , 417 U.S. 817, 827 (1974)	9
<i>Turner v. Safley</i> , 482 U.S. 78, 84-85 (1987).....	4
RULES	
Supreme Court Rule 37.2(a)	1
OTHER AUTHORITIES	
Willens, Structure, Content and the Exigencies of War: American Prison Law After Twenty-Five Years 1962- 1987, 37 Am. U. L.Rev. 41, 55-56 (1987).....	7

**AMICI CURIAE BRIEF OF THE
NATIONAL SHERIFFS' ASSOCIATION, ET AL.,
IN SUPPORT OF THE RESPONDENTS**

The National Sheriffs' Association, et al., respectfully submit this *amici curiae* brief in support of Respondents Board of Chosen Freeholders of County of Burlington, et al. (collectively, the "Respondents"). Pursuant to Supreme Court Rule 37.2(a), counsel of record have received timely notice of the intent to file this brief.

INTEREST OF AMICI CURIAE¹

The National Sheriffs' Association (the "NSA") is a non-profit association organized under § 501(c)(4). Formed in 1940, the NSA seeks to promote the fair and efficient administration of criminal justice throughout the United States, and, in particular, to advance and protect the Office of Sheriff throughout the United States. The NSA has over 20,000 members, and is the advocate for 3,083 sheriffs throughout the United States.

The NSA also works to promote the public interest goals and policies of law enforcement throughout the nation. It participates in judicial processes where the vital interests of law enforcement and its members are affected.

¹ Pursuant to Rule 37.6 of the Rules of this Court, the *amici curiae* states that no counsel for a party has written this brief in whole or in part and that no person or entity other than the *amici curiae* or their counsel has made a monetary contribution to the preparation or submission of this brief. The parties' consent to the filing of this brief was entered on April 13, 2011.

Amici represents the nation's sheriffs, who operate more than 3,000 local detention facilities throughout the country. The vast majority of these facilities house both convicted felons waiting to be transferred to other facilities as well as pretrial detainees awaiting court appearances. In addition, the majority of these facilities also handle individuals arrested on minor offenses being held only temporarily while they arrange to post bail or otherwise arrange their release.

Sheriffs, as the custodians of the inmates housed within these facilities, are charged with providing a safe and secure environment for both the inmates and for their employees. *Amici* and all other associations joining in the attached brief assert that the decision of the lower court is vital to their ability to provide their states, counties, regions or municipalities with safe and secure detention facilities.

SUMMARY OF ARGUMENT

This Court should affirm the decision of the Third Circuit to conclusively establish that a detention facility's adoption of a blanket policy requiring that all detainees be strip searched prior to being admitted to the general population of the facility is not a violation of such detainee's constitutional rights. Two very compelling reasons necessitate an affirmation of the circuit's ruling.

First, as this Court held in *Bell v. Wolfish*, detention centers are "unique place[s] fraught with serious security dangers." 441 U.S. 520, 559 (1979). These dangers can be categorized into three areas: 1)

the smuggling of contraband into detention facilities which threatens the safety of inmates, employees and visitors; 2) the identification of gang, racial or organized crime affiliations through distinguishing body markings, and 3) the detection of serious medical or health problems and the ability to prevent the spread of disease or epidemic. Any failure to prevent and eliminate such dangers could result in severe injury and harm to inmates, employees, visitors or, in the case of escape, members of the general public. As such, hindering or compromising law enforcement's ability to deter, prevent or eliminate these dangers should be exercised with extreme caution and only in instances of clear constitutional violations. Internal safety in detention centers always outweighs the invasion of the personal privacy rights of a particular detainee. Otherwise, a detainee could keep his personal privacy rights but, ultimately, lose his life or limbs at the cost of maintaining these rights.

Furthermore, detention in a correctional facility "carries with it the circumscription or loss of many significant rights." *Hudson v. Palmer*, 468 U.S. 517, 524 (1984). "Loss of freedom of choice and privacy are inherent incidents of confinement in such a facility." *Bell*, 441 U.S. at 537. The loss of personal privacy rights during a strip search is outweighed by the objective for which it serves - internal security and safety for both detainees and employees.

Secondly, as this Court noted in *Block v. Rutherford*, the judiciary should play "a very limited role...in the administration of detention facilities." 468 U.S. 576, 584 (1984). "There is no difference between courts running school systems or prisons and courts

running Executive Branch agencies." *Missouri v. Jenkins*, 515 U.S. 70, 132 (1995). "Separation of powers concerns counsel a policy of judicial restraint." *Turner v. Safley*, 482 U.S. 78, 84-85 (1987).

Based on the federalism concerns previously articulated by this Court, the institution of a blanket policy allowing detainees to be strip searched prior to their admission into the general population of a detention center in an effort to maintain internal safety should be left to the sound discretion of the law enforcement professionals who operate the detention facilities. Courts should give great deference to detention facility operators, directors and administrators who have determined the necessity of such policies. The intrusion of the blanket strip search, similar to that at issue in *Bell*, should be weighed in favor of the detention facility's asserted justification for it. A legitimate security and safety concern must outweigh the invasion of the personal privacy rights of an individual detainee being admitted into the general population of a detention facility. Additionally, the doctrine of federalism further prevents the judiciary from substituting its judgment regarding the safety, health and security concerns facing detention centers for that of those who operate said centers, particularly since, as noted by this Court, "courts are ill-equipped" to deal with the management of detention facilities. *Bell*, 441 U.S. at 559.

A DETENTION FACILITY'S POLICY TO STRIP SEARCH ALL DETAINEES ADMITTED TO THE GENERAL POPULATION OF THE FACILITY DOES NOT VIOLATE THE FOURTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

Over 30 years ago, the Supreme Court reviewed the strip search policy of New York City's Metropolitan Correctional Center ("MCC") in *Bell v. Wolfish*, 441 U.S. 520 (1979), and thereby established the touchstone for all jail strip search policies. In that case, the Court examined a strip search policy strikingly similar to those at issue in the current case. The rationale adopted by the Court in upholding the constitutionality of the MCC's policy is precisely the rationale used to create the policies at issue in the current case.

Shortly after the Court released *Bell*, the Circuits began to interpret the language of the decision narrowly, thereby restricting the use of strip searches. Recently, however, a split has developed as the Circuits have re-examined the rationale for strip searches and gained a greater appreciation for the mounting dangers that jail administrators face in dealing with an ever increasing population. Over the intervening years since the Court released the *Bell* decision, the population of local detention facilities has exploded, and state prisons have become more and more incapable of accepting new inmates. The resulting population increase has caused local detention facilities to adopt policies and procedures to better insure the safety of the inmates and staff and the security of the facilities.

The *Bell* Court, while noting that prisoners do not forfeit all constitutional protections by reason of their confinement, provided that

simply because prison inmates retain certain constitutional rights does not mean that these rights are not subject to restrictions and limitations...The fact of confinement as well as the legitimate goals and policies of the penal institution limit these retained constitutional rights...This principle applies equally to pretrial detainees and convicted prisoners. A detainee simply does not possess the range of freedoms of an unincarcerated individual.

Bell, 441 U.S. at 545-6. The Court in *Bell* went on to state that, "[a] detention facility is a unique place fraught with serious security dangers. Smuggling of money, drugs, weapons, and other contraband is all too common an occurrence." *Id.* 559-560 (internal citations omitted). The smuggling of such contraband has long been recognized by the appellate courts as an intractable problem that threatens the health and safety of inmates, corrections officers, and jail employees. *See, e.g., Overton v. Bazzetta*, 539 U.S. 126, 134 (2003); *Bell, supra*, at 559; *Block v. Rutherford*, 468 U.S. 576, 588-589(1984); *Hudson v. Palmer*, 468 U.S. 517, 527(1984).

In addition to preventing the introduction of contraband into facilities, strip searches provide an opportunity for detention officers to observe tattoos, body piercings, and other distinguishing marks which may assist in indentifying gang affiliations. Such knowledge is critical to the task of appropriately

segregating populations within detention facilities. As Justice Thomas has previously recognized:

Controlling prison gangs is the central challenge facing correctional officers and administrators. Carlson, *Prison interventions: Evolving Strategies to Control Security Threat Groups*, 5 *Corrections Mgmt. Q.* 10 (Winter 2001) (hereinafter Carlson). The worst gangs are highly regimented and sophisticated organizations that commit crimes ranging from drug trafficking to theft and murder. *Id.*, at 12; *Cal. Dept. of Justice, Division of Law Enforcement, Organized Crime in California Annual Report to the California Legislature 2003*, p. 15, available at http://caag.state.ca.us/publications/org_crime.pdf. In fact, street gangs are often just an extension of prison gangs, their “‘foot soldiers’” on the outside. *Ibid.*; Willens, *Structure, Content and the Exigencies of War: American Prison Law After Twenty-Five Years 1962-1987*, 37 *Am. U. L.Rev.* 41, 55-56 (1987). And with gang membership on the rise, the percentage of prisoners affiliated with prison gangs more than doubled in the 1990's. (Footnote omitted).

Johnson v. California, 543 U.S. 499, 532-33(2005).

A further rationale necessitating strip searches is to assist detention officers in detecting medical problems that might pose serious health problems to a confined population. Detention facility administrators are charged with controlling the spread of disease and infection and, as such, must be free to institute policies

and procedures to protect against such epidemics. Obviously, maintaining the health and condition of the detention center's population is a legitimate governmental interest that outweighs the personal privacy rights of individual detainees.

Clearly, each of the reasons set forth supporting the need for strip searches is reasonably related to a legitimate penological interest justifying implementation and continuation of said strip search policy. Based on the long-established holding articulated by this Court in *Bell*, a detention center's policy to strip search its detainees prior to their admittance into the general population of the detention center does not violate any constitutionally protected rights of the detainees.

THE JUDICIARY MUST ACCORD GREAT DEFERENCE TO DECISIONS MADE BY THE ADMINISTRATORS OF CORRECTIONAL FACILITIES WHICH IMPACT MATTERS OF INSTITUTIONAL SAFETY AND SECURITY.

This Court has counseled the lower courts to refrain from substituting their judgment for that of experienced detention professionals. *See Block*, 468 U.S. at 584-85, (“In setting forth these guidelines, we reaffirmed the very limited role that courts should play in the administration of detention facilities. In assessing whether a specific restriction is “‘reasonably related” to security interests, we said, courts should “‘heed our warning that [s]uch considerations are peculiarly within the province and professional expertise of corrections officials, and, in the absence of substantial evidence in the record to indicate that the officials have

exaggerated their response to these considerations courts should ordinarily defer to their expert judgment in such matters.” (quoting *Pell v. Procunier*, 417 U.S. 817, 827 (1974)). (We also cautioned: “[P]rison administrators [are to be] accorded wide-ranging deference in the adoption and execution of policies and practices that in their judgment are needed to preserve internal order and discipline and to maintain institutional security.” (quoting *Bell*, 441 U.S. at 547). *Block v. Rutherford*, 468 U.S. 576, 584-85 (1984).

Respectfully, *Amici* submit that the Circuits which have found against the constitutionality of blanket strip search policies have simply inappropriately substituted their judgment for that of the administrators actually operating the facilities in determining the need for the policies at issue. While a strip search is, admittedly, highly invasive of one’s privacy, those privacy concerns must give way to the broader safety and security concerns affecting the rest of the detention center’s population. And while *Amici* would concede that very few people want to be strip searched, it is equally true that very few employees want to be tasked with the responsibility of such a search. The search is not done to be demeaning, but, rather, out of necessity and in furtherance of the safety and security of the detention center’s population.

The guidance provided by this Court in *Bell* indicates that the need for the search should be balanced against the invasion of personal rights that the search entails. In that balancing, however, due consideration must be given to the legitimate security concerns of the detention center administrator. Courts have long recognized the serious dangers posed by the

smuggling of contraband into detention facilities, as well as the need of corrections officials to monitor the activities of gang members. The Third Circuit appropriately applied the balancing test set forth in *Bell* in weighing those competing interests, and properly found that a blanket strip search policy did not infringe upon the constitutionally protected rights of detainees.

Privacy inside a detention facility is limited. Because the scope of the particular intrusion into the personal privacy rights of a detainee is limited to ascertaining whether any hidden or unknown safety threats exist, it is not overly intrusive. Typically, physical contact is unnecessary. As such, conducting such searches in a manner that involves a group of detainees or a single detainee undressing and/or showering in front of same sex detention officers does not, of itself, constitute a violation of the Fourth Amendment when it is related to security concerns of the detainees and employees within the detention center.

CONCLUSION

The Court should affirm the opinion of the Third Circuit to permit detention facilities to implement blanket policies requiring the strip search of inmates prior to their admittance into the general population of the facility, as said policies further a legitimate safety, health and security interest for the detainees, employees, administrators and visitors to the facility, and, as such, do not violate the Fourth Amendment.

11

Respectfully submitted,

Robert Spence
ROSEN HARWOOD, PA
2200 Jack Warner Parkway
Suite 200
Tuscaloosa, Alabama 35401
(205) 344-5000
(205) 758-8358 (facsimile)

Travis Wisdom
TRAVIS R. WISDOM, LLC
861 N. Dean Road, Suite C
Auburn, Alabama 36830
(334) 826-0722
(334) 826-0771 (facsimile)

Attorneys for *Amici Curiae*
National Sheriffs'
Association, et al.

Proof

1s

APPENDIX

Executive Director Robert D. Timmons
Alabama Sheriffs' Association
514 Washington Ave
Montgomery, AL 36104-4346
alsheriffs@aol.com

Executive Director Donald E. Christensen
County Sheriffs' of Colorado
4424 Espirit Dr.
Fort Collins, CO 80524-6047
chieffop@aol.com

Senior Executive Vice President Bud A. Cody
Georgia Sheriffs' Association
PO Box 1000
Stockbridge, GA 30281-8000
tmarchman@georgiasheriffs.org

Executive Director Vaughn Killeen
Idaho Sheriffs' Association
1087 W River St Ste 100
Boise, ID 83702
idahosheriff@gmail.com

Executive Director Stephen P. Luce
Indiana Sheriffs' Association
7215 E 21st St Ste E
Indianapolis, IN 46219-0127
steveluca@avenuebroadband.com

Executive Director Jerry B. Wagner
Kentucky Sheriffs' Association
2550 Ewing Rd

2s

Ewing, KY 41039
kysheriffs@windstream.net

Executive Director James F. Walsh
Massachusetts Sheriffs' Association
271 Cambridge St, Ste 202
Cambridge, MA 2141
james.f.walsh@massmail.state.ma.us

Executive Director Chuck Lange
Arkansas Sheriffs' Association
1 Sheriff Ln
North Little Rock, AR 72114
clange123@aol.com

Executive Director Steve Casey
Florida Sheriffs Association
1983 Centre Pointe Dr
Tallahassee, FL 32317-2519
scasey@flsheriffs.org

Financial Administrator Bill L. Sage
ISSDA
PO Box 526
Atlantic, IA 50022
thegoldstar@mchsi.com

Executive Director Greg Sullivan
Illinois Sheriffs' Association
401 E Washington St Ste 1000
Springfield, IL 62701-1207
greg@ilsheriff.org

Executive Director Sandy Horton
Kansas Sheriffs' Association
PO Box 1122

3s

Pittsburg, KS 66762
ksa@mobill.net

Executive Director Harold A. Turner
Louisiana Sheriffs' Association
1175 Nicholson Drive
Baton Rouge, LA 70802-7535
hal@lsa.org

Executive Director Michael F. Canning
Maryland Sheriffs' Association
12 Francis St
Annapolis, MD 21401-1714
mcanning@maniscanning.com

Executive Director Mary-Anne Beal
Maine Sheriffs Association
15 Oak Grove Rd
Vassalboro, ME 4989
mbeal@mainesheriffs.org

Executive Director James D. Franklin
Minnesota Sheriffs' Association
1951 Woodlane Drive #200
Saint Paul, MN 55125-3048
jfranklin@mnsheriffs.org

Co-Executive Director Kathy McGowan
Montana Sheriffs and Peace Officers Assn
34 W 6th Ave Ste 1C
Helena, MT 59601-5075
mcgowankm@mt.net

Executive Director Amy Prenda
Nebraska Sheriffs' Association

4s

Box 81822
Lincoln, NE 68501
aprenda@windstream.net

Executive Administrative Assistant Susan A. Kane
New Jersey State Sheriffs' Association
C/o Camden County Sheriff's Office
Camden, NJ 8102
suek@camdencounty.com

Executive Director Robert A. Cornwell
Buckeye State Sheriffs Assn
1103 Schrock Rd
Columbus, OH 43229-1826
bob@buckeyesheriffs.org

Executive Director Terrence L. Jungel
Michigan Sheriffs' Association
515 N Capitol Ave
Lansing, MI 48933-1241
tjungel@misheriff.org

Executive Director Michael R. Covington
Missouri Sheriffs' Assn.
6605 Business Highway 50 West
Jefferson City, MO 65109
mick@msheriffs.com

Exec. Vice President & General Counsel Edmond W.
Caldwell
North Carolina Sheriffs Assn
PO Box 20049
Raleigh, NC 27619-0049
ewc.read@ncsheriffs.net

5s

Executive Director John G. Armeno
 Sheriffs' Association of New Jersey
 19 Wake Forest Trail
 Hopatcong, NJ 7843
 jarmeno@optonline.net

Executive Director Peter R. Kehoe
 New York State Sheriffs Assn
 27 Elk St
 Albany, NY 12207-1002
 pkehoe@nysheriffs.org

Executive Director Holly Russell
 Oregon State Sheriffs' Association
 330 Hood Street NE
 Salem, OR 97303
 Russell@oregonsheriffs.org

Executive Director Robert B. Wollyung
 Pennsylvania Sheriffs' Association
 2426 N Second St
 Harrisburg, PA 17110
 rwollyung@comcast.net

Executive Director Staci Eggert
 South Dakota Sheriff's Association
 123 S Main Ave
 Howard, SD 57349-0130
 admin@southdakotasheriffs.org

Executive Director Gary W. DeLand
 Utah Sheriffs Assn
 PO Box 489
 Santa Clara, UT 84765
 GWD@infowest.com

6s

Executive Director Joseph R. Wolfinger
 Major County Sheriffs' Association
 1201 E Abingdon Dr Ste 425
 Alexandria, VA 22314-1420
 jrwolfinger@verizon.net

Executive Director Donald G. Pierce
 Washington Association of Sheriffs and Police Chiefs
 3060 Willamette Drive NE
 Lacey, WA 98516-6267
 dpierce@waspc.org

Executive Director Dean C. Meyer
 Badger Sheriffs' Association
 311 Miner Ave., Ste. L100
 Ladysmith, WI 54848
 dcmeyer@centurytel.net

Executive Director Byron F. Oedekoven
 Wyoming Association of Sheriffs and Chiefs of Police
 PO Box 605
 Gillette, WY 82717-0605
 byrono@wascop.com

Executive Director Jeffrey B. Moore
 South Carolina Sheriffs Assn
 112 Westpark Blvd
 Columbia, SC 29210-3856
 sheriffsc@aol.com

Executive Director Steve Westbrook
 Sheriffs' Association of Texas
 1601 South Interstate Hwy. 35
 Austin, TX 78741
 steve@txsheriffs.org

7s

Executive Director John W. Jones
Virginia Sheriffs Assn
701 E Franklin St Ste 706
Richmond, VA 23219-2503
jjones@virginiasheriffs.org

Executive Director James P. Mongeon
VT Dept of State's Attorneys & Sheriffs' Assn
12 Baldwin St
Montpelier, VT 05633-6401
jim.mongeon@state.vt.us

Executive Director James I. Cardinal
Wisconsin Sheriffs/Deputy Sheriffs' Assn.
77 Grady Dr
Chippewa Falls, WI 54729-3872
jcardinal@wsdsa.org

Executive Director Rudi A. Raynes-Kidder
West Virginia Sheriffs' Association
2003 Quarrier St
Charleston, WV 25331
rudi@wvsheriff.org

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 FOR THE NATIONAL SHERIFFS'
ASSOCIATION, ET AL. AS AMICI CURIAE
SUPPORTING RESPONDENTS**

TRAVIS WISDOM

*Travis R. Wisdom, LLC
861 N. Dean Road
Suite C
Auburn, AL 36830
(334) 826-0722*

ROBERT SPENCE

*Counsel of Record
Rosen Harwood, PA
2200 Jack Warner Pkwy
Suite 200
Tuscaloosa, AL 35401
rspence@rosenharwood.com
(205) 344-5000*