

No. 10-945

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IN THE  
**Supreme Court of the United States**

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ALBERT W. FLORENCE,  
*Petitioner,*  
*v.*

BOARD OF CHOSEN FREEHOLDERS OF THE COUNTY OF  
BURLINGTON, *et al.*,  
*Respondents.*

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

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BRIEF FOR PSYCHIATRISTS AS AMICI CURIAE  
IN SUPPORT OF PETITIONER

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## **INTEREST OF AMICI CURIAE**

Amici are psychiatrists who together have extensive experience dealing with strip searches, including providing expert testimony and treating individuals who have suffered some form of psychiatric harm from strip searches. They also collectively have significant experience treating psychiatric traumas more generally, as well as experience with policies at penal institutions, including strip searches. More detailed information on each amicus appears in the appendix to this brief.<sup>1</sup>

## **SUMMARY OF ARGUMENT**

I. Strip searches threaten severe, often lasting psychological harm. This is because they involve an extreme intrusion on personal privacy. From a young age, we are taught that privacy—particularly in our own bodies—is of paramount importance, and that its invasion constitutes a serious indignity. This sense of entitlement to privacy is heightened with respect to particular parts of the body, for society demands that we keep these parts covered at nearly all times. A strip search, in which individuals reveal the most private parts of their bodies to complete strangers, is a privacy violation of the highest order, because privacy is integral to individuals' sense of self, and is closely tied with dignity and autonomy. That the person being searched must submit to this invasion against his

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<sup>1</sup> No counsel for a party authored any part of this brief and no person other than amici curiae and their counsel made a monetary contribution to the preparation or submission of the brief. The parties have consented to the filing of this brief by submitting blanket letters of consent to the Clerk.

will only magnifies the feelings of powerlessness and loss of control.

The psychological harm occasioned by strip searches is well-documented in social-science literature. Scholars have reported that individuals subject to search experience post-traumatic stress symptoms, including shock, depression, anxiety, inability to sleep, and even suicidal tendencies. Expert testimony adduced in litigation confirms these results. Courts have long recognized that strip searches cause severe and pervasive psychological injury, even absent the coercion and intrusiveness present in this case.

Certain groups are particularly susceptible to psychological harm from strip searches. Women experience strip searches as a form of sexual violence, and thus are especially likely to feel humiliation and a sense of low self-esteem as a result. Likewise children are likely to suffer serious emotional damage from the trauma of a search. That these groups are especially vulnerable, however, does not mean that others are unlikely to suffer harm. On the contrary, it is rare that an individual can endure a strip search without suffering ill-effects, no matter how professionally the search is performed.

II. This Court has held time and again that a search can pass muster under the Fourth Amendment only if the need for that particular search justifies the intrusion on personal rights that it entails. The invasion of privacy associated with a strip search is so extreme that it cannot be justified in cases where individuals are arrested for minor, non-drug offenses. Absent individualized suspicion that such individuals are concealing contraband, there is no compelling need

sufficient to justify the psychological harm occasioned by the search.

## ARGUMENT

### I. STRIP SEARCHES THREATEN SERIOUS AND LASTING PSYCHOLOGICAL HARM TO THE PERSON SEARCHED

Under this Court's decision in *Bell v. Wolfish*, 441 U.S. 520 (1979), a central factor in determining the constitutionality of a search is "the scope of the ... intrusion," *id.* at 559. With a strip search, the intrusion is so extreme that such a search frequently causes serious psychological damage to the target of the search.

#### A. Strip Searches Attack Fundamental Attributes Of A Person's Psyche, Including Privacy, Autonomy, And Dignity

The psychological harm inflicted by strip searches flows primarily from the violation of dignity and self esteem caused by the search. Humans have a powerful psychological need to be treated with dignity and respect. When they are instead treated without respect, when they are subjected to indignities, they almost invariably suffer shame and a loss of self esteem that can cause psychological problems. Few experiences are as grave an indignity as a strip search.

*First*, strip searches involve a severe intrusion of the privacy of the individual searched. While a person's privacy has many components, one of the most fundamental is the privacy of certain parts of one's body. It is difficult to overstate the degree to which this sense of privacy is ingrained in our psyche. From relatively early in our lives, we are taught that certain "private parts" of our bodies should virtually always be concealed from others. This teaching typically

comes through explicit statements (usually from parents) reinforced by daily observation of those around us: Almost no matter what the setting, all the people we see and interact with as children (and indeed throughout our lives)—parents, grandparents, other relatives, teachers, friends, and so on—invariably have their “private parts” covered. And whenever those around us engage in conduct that requires us to uncover those parts, be it using the bathroom or trying on different clothes, it is done behind closed doors. Then as we grow older, we come to understand that the law conveys the same powerful message regarding the privacy of our bodies and our right to keep them covered. *See generally United States v. Afanador*, 567 F.2d 1325, 1331 (5th Cir. 1978) (“In a civilized society, one’s anatomy is draped with constitutional protections.”). A person who removes another’s clothing without the latter’s consent, for example, is almost certainly guilty of a crime anywhere in the country. Indeed, so private are certain parts of our body that it is a crime to expose them to other people without their consent.

Moreover, while the privacy associated with our bodies is greatest as to their “private parts,” it is not limited to them. Our society and culture place a high value on physical attractiveness. People who believe that their bodies do not conform to what is generally thought to be attractive—whether because they believe they are too fat, too thin, too wrinkly or otherwise aged, too pale, are disfigured, have unappealing marks or skin conditions, or for other reasons—commonly resort to keeping as much of their body as possible hidden by clothing.

In short, people have an extremely deep-seated sense of privacy in certain parts of their bodies. A

strip search is a complete violation of that deep-seated privacy. Suddenly the body parts that the person who is searched strives every day to shield from others' view must be completely revealed. It must be revealed, moreover, in front of a complete stranger, one who is not merely present but is actively and intensively scrutinizing those deeply private areas. Further, the subject is often required to take steps that heighten the exposure—and hence the humiliation and dehumanization—such as lifting the breasts or penis and testicles, squatting, bending over, or spreading the buttocks.

There is little question that this exposure constitutes a privacy violation of the highest order. It inevitably threatens psychological harm because privacy is central to our conception of ourselves as valuable individuals. See Magi, *Fourteen Reasons Privacy Matters: A Multidisciplinary Review of Scholarly Literature*, 81 *Library Q.* 187, 192 (2011) (“[P]rivacy is a fundamental right that enables people to think of their existence as their own and protects the individual’s interest in becoming, being, and remaining a person.” (internal quotation marks omitted)); Post, *Three Concepts of Privacy*, 89 *Geo. L.J.* 2087, 2092 (2001) (“[A]n invasion of privacy can constitute ‘an intrinsic offense against individual dignity.’” (quoting Rosen, *The Unwanted Gaze: The Destruction of Privacy in America* 19 (2000))). Indeed, “[t]he right to privacy ... is essential to insure dignity and freedom of self-determination.” *Privacy and Behavioral Research*, 155 *Sci.* 535, 536 (1967); accord Kupfer, *Privacy, Autonomy, and Self-Concept*, 24 *Am. Phil. Q.* 81, 82 (1987) (“[P]rivacy is essential to the development and maintenance of an autonomous self.”). Moreover, “bodily integrity may be inextricably linked to con-

cepts of personal identity, so that a systematic deprivation of privacy and dignity can weaken the individual’s sense of self.” James, *Constitutional Limitations on Body Searches in Prisons*, 82 Colum. L. Rev. 1033, 1049-1050 (1982).<sup>2</sup>

*Second*, and closely related, a strip search involves not just an exposure but coercion. One or more agents of the state—generally in full uniform, sometimes armed, and always with the unquestioned authority to use force if necessary—is requiring the person being searched to submit to this most severe violation of privacy against his or her will. That undermines, and often eviscerates, the person’s feeling of autonomy, of having control over his or her own body. And this in turn can cause great psychological harm, leading to a feeling of powerlessness, of being dominated, forced to submit to another. See Wallinger, *Autonomy Support* 101, 48 Duquesne L. Rev. 385, 386 (2010) (“[H]umans have three basic psychological needs which must be satisfied to ensure optimum health and well-being[, the first of which is] autonomy.” (citing Ryan & Deci, *Self-Determination Theory and the Facilitation of Intrinsic Motivation, Social Development, and Well-Being*, 55 Am. Psychologist 68, 68 (2000))).

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<sup>2</sup> Justice Brandeis similarly commented on the fundamental nature of privacy, albeit in a different context, remarking that privacy is “the right most valued by civilized men.” *Olmstead v. United States*, 277 U.S. 438, 478 (1928) (Brandeis, J., dissenting), *overruled on other grounds by Katz v. United States*, 389 U.S. 347, 353 (1967). And a plurality of this Court has more recently observed that “[i]nmates in jails, prisons, or mental institutions retain certain fundamental rights of privacy.” *Houchins v. KQED, Inc.*, 438 U.S. 1, 5 n.2 (1978) (plurality opinion).

It is the coercion—the forced stripping away of bodily privacy—that primarily distinguishes a strip search from virtually all other situations in which people expose their bodies to others. Two individuals who disrobe to engage in sexual activity with one another, for example, do so voluntarily. They also commonly do so simultaneously; this mutuality serves to further diminish the shame or discomfort that usually accompanies exposure of the body. (Nonetheless, individuals in this situation will often take steps—lowering the lights, for example—to address discomfort caused by the exposure.) Similarly, when a person exposes his or her body as part of a medical examination, it is done voluntarily. Even so, doctors are trained to minimize the inherent intrusiveness of the exposure. For example, doctors examining the entire body often have each body part exposed only during the time that it is actually being examined, rather than having the patient entirely naked (and thus excessively exposed) throughout the examination.

In sum, strip searches constitute a powerful assault on some of our most longstanding and deeply held psychological bulwarks, including the privacy of our bodies and our view of ourselves as individuals clothed in dignity and respect and with the power to control our bodies, and in particular decide who will see them and under precisely what circumstances. It is entirely unsurprising that the shattering of such deep-seated beliefs frequently causes psychological trauma.

**B. Case Law And Academic Literature Are Replete With Evidence Of The Psychological Damage That Strip Searches Can Cause**

The fact that strip searches commonly inflict psychological harm is well-documented in the social-science literature. As one commentator recently summarized, “[b]eing strip searched leaves people disgusted and annoyed, or worse, degraded, humiliated and paralyzed. Victims may feel helpless, indignant, and shocked, and may experience, for several years, psychological symptoms of trauma[.]” Ha, *Blanket Policies for Strip Searching Pretrial Detainees*, 79 *Fordham L. Rev.* 2721, 2740 (2011) (footnotes omitted). This is consistent with amici’s personal experience, which includes interviews with or treatment of scores of strip search victims.

Nor is documentation of the psychological harm threatened by strip searches a new phenomenon. To the contrary, over twenty-five years ago, one observer reported that “[p]ost-search symptoms include sleep disturbance, recurrent and intrusive recollections of the event, inability to concentrate, anxiety, depression and development of phobic reactions.” McKeown, *Strip Searches Are Alive and Well in America*, 12 *Hum. Rts.* 37, 42 (1985); *see also id.* (“Victims suffer a sense of helplessness and indignity but are often too shocked to be outraged.”). Individuals subjected to a strip search can even be driven to attempt suicide. *See id.* at 37-38, 42.

The psychological harm from strip searches is also borne out in the case law. Parties who seek redress after being subjected to one or more strip searches commonly adduce expert testimony regarding the psychiatric harm inflicted on them by the search or

searches. “Psychological experts have ... testified that [adult] victims often suffered post-search symptoms including sleep disturbance, recurrent and intrusive recollections of the event, inability to concentrate, anxiety, depression and development of phobic reactions, and that some victims have been moved to attempt suicide.” Shatz, *et al.*, *The Strip Search of Children and the Fourth Amendment*, 26 U.S.F. L. Rev. 1, 12 (1991) (internal quotation marks omitted).<sup>3</sup>

For example, in *Lee v. Ferraro*, 284 F.3d 1188 (11th Cir. 2002), a young woman was strip searched following her arrest by a male police officer “for improperly honking her car horn on a busy city street during rush hour,” *id.* at 1190. As part of her lawsuit against the officer, she presented testimony from a psychologist who diagnosed her with post-traumatic stress disorder (PTSD) stemming from the strip search and overnight detention that followed. *See id.* at 1192.<sup>4</sup> Similarly, in *Adedeji v. United States*, 782 F. Supp. 688 (D. Mass. 1992), a woman who was subjected to a strip search and body-cavity search by airport customs officials presented psychiatric testimony (from one of the signatories of this brief) that the incident led her to suffer from PTSD, *see id.* at 701-702. Crediting this testimony, and rejecting the defense’s contrary expert testimony regarding the source of the

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<sup>3</sup> Psychiatric testimony regarding strip searches was offered in *Bell* itself. *See* 441 U.S. at 577 (Marshall, J., dissenting) (“A psychiatrist testified that the practice placed inmates in the most degrading position possible[.]”).

<sup>4</sup> The lawfulness of the strip search in particular was not the subject of the plaintiff’s complaint and hence the courts did not rule on its constitutionality.

PTSD, the court observed that “a strip search has the potential to be even more intrusive and humiliating to an individual than a body cavity search,” adding that “[p]rotracted strip searches ... conducted by officious, uniformed strangers in an unfamiliar, small and windowless room certainly have the potential to be more psychologically damaging ... than a body cavity examination performed in a hospital by a trained physician,” *id.* at 694 n.16.<sup>5</sup>

Case law also demonstrates that psychiatric harm arises from strip searches even when the searches do not bear all of the same elements of coercion or the same degree of intrusiveness as is present here. For example, in *Cole v. Snow*, 586 F. Supp. 655 (D. Mass. 1984) the strip searches were less coercive than those at issue in this case because they were conducted not on an inmate or detainee but rather on a visitor to a prison, *i.e.*, someone who had the ability to avoid any search by foregoing the visit. The court nonetheless found, based on the plaintiff’s expert psychiatric testimony (again from a signatory to this brief and again over contrary expert testimony from the defense) that three strip searches of the plaintiff had caused her to suffer from post-traumatic stress symptoms as well as severe sexual dysfunction that would require years of therapy to correct. *See id.* at 665-667. With a decisive vote from then-Judge Breyer, the First Circuit af-

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<sup>5</sup> The court found that the customs officials’ conduct violated the plaintiffs’ federal and state constitutional rights. *See id.* at 702-703.

firmed this conclusion. See *Blackburn v. Snow*, 771 F.2d 556, 571-572 (1st Cir. 1985).<sup>6</sup>

Indeed, psychiatric harm has been shown even where the searches were of clothed inmates. In *Jordan v. Gardner*, 986 F.2d 1521 (9th Cir. 1993) (en banc), female inmates challenged a prison's use of "random, non-emergency, suspicionless clothed body searches," *id.* at 1522 (footnote omitted). The searches, in other words, were by male guards in which the inmates were physically touched but not required to undress. "The inmates presented testimony from ten expert witnesses on the psychological impact of forced submission to these searches by male guards, and related issues." *Id.* at 1525-1526. These experts "were unanimously of the view that some would suffer substantially." *Id.* at 1526. More specifically, one expert, "[a] psychologist specializing in psychotherapy for women testified that the unwilling submission to bodily contact with the breasts and genitals by men would likely leave the inmate 'revictimiz[ed],' resulting in a number of symptoms of post-traumatic stress disorder." *Id.*; see also *id.* at 1525 ("The district court found that there is a high probability of great harm, including severe psychological injury and emotional pain and suffering, to some inmates from these searches, even if properly conducted." (internal quotation marks omitted)). The en banc court concluded that "[t]he record more than adequately supports the district court's finding of psychological harm [from

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<sup>6</sup> The First Circuit also affirmed the district court's ruling that the blanket strip-search policy at issue violated the Fourth Amendment. See 771 F.2d at 568-569; *Cole*, 586 F. Supp. at 661-662.

these searches], and the harm is sufficient to meet the constitutional minima.” *Id.* at 1531.<sup>7</sup>

Even in cases in which expert psychological testimony was not explicitly discussed, courts around the country (and elsewhere) have long recognized the extreme psychological implications of strip searches. *See Redding v. Safford Unified Sch. Dist. #1*, 531 F.3d 1071, 1085 (9th Cir. 2008) (en banc) (“Along with our sister circuits, we have long recognized the psychological trauma *intrinsic* to a strip search.” (emphasis added), *aff’d in part and rev’d in part on other grounds*, 129 S. Ct. 987 (2009)). The Seventh Circuit, for example, long ago described strip searches as “de-meaning, dehumanizing, undignified, humiliating, terrifying, unpleasant, embarrassing, repulsive, signifying degradation and submission,” adding that it could “think of few exercises of authority by the state that intrude on the citizen’s privacy and dignity as severely.” *Mary Beth G. v. City of Chi.*, 723 F.2d 1263, 1272 (7th Cir. 1983) (internal quotation marks omitted); *accord id.* at 1275 (lay testimony showed that the psychological effects of strip searches on the plaintiffs included “shock, panic, depression, shame, rage, humiliation, and nightmares, with lasting effects on each woman’s life”); *Thompson v. City of L.A.*, 885 F.2d 1439, 1446 (9th Cir. 1989) (“The feelings of humiliation and degradation associated with forcibly exposing one’s nude body to strangers for visual inspection is beyond dispute.”).

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<sup>7</sup> The en banc court also affirmed the district court’s ruling that the searches violated the Eighth Amendment. *See id.* at 1531.

Other courts have likewise described a strip search as an “extreme intrusion” and “an offense to the dignity of the individual,” *Roberts v. Rhode Island*, 239 F.3d 107, 110 (1st Cir. 2001) (internal quotation marks omitted); “a serious intrusion upon personal rights,” *Chapman v. Nichols*, 989 F.2d 393, 395 (10th Cir. 1993); “a humiliating, degrading and traumatic experience,” *R. v. Golden*, 3 S.C.R. 679 ¶ 83 (Canada 2001); and “thoroughly degrading and frightening,” particularly when the search is of a person arrested for a lesser offense, *John Does 1-100 v. Boyd*, 613 F. Supp. 1514, 1522 (D. Minn. 1985), *quoted in Justice v. City of Peachtree City*, 961 F.2d 188, 192 (11th Cir. 1992). Members of this Court have taken a similar view. *See Arruda v. Fair*, 710 F.2d 886, 887 (1st Cir. 1983) (Breyer, J.) (characterizing strip searches as a “severe if not gross interference with a person’s privacy”); *Kelsey v. County of Schoharie*, 567 F.3d 54, 66 (2d Cir. 2009) (Sotomayor, J., dissenting) (quoting a victim’s account of the experience as “humiliating” and “shameful” (internal quotation marks omitted)).<sup>8</sup> Amici’s view, based on their extensive experience in this area, is that these courts’ various assessments were entirely correct.<sup>9</sup>

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<sup>8</sup> Indeed, this Court has stated that “[e]ven a limited search of the *outer clothing* for weapons constitutes a severe, though brief, intrusion upon cherished personal security,” one that “must surely be an annoying, frightening, and perhaps humiliating experience.” *Terry v. Ohio*, 392 U.S. 1, 24-25 (1968) (emphasis added).

<sup>9</sup> In fact, searches can be so traumatic that they trigger or increase violent behavior, thereby undermining institutional security. *See, e.g.*, James, *supra* p.6, at 1050 & n.123. They also lead some inmates to forego visits with family and others. *See Bell*, 441

### C. Certain Individuals Are Particularly Susceptible To Psychological Harm From Strip Searches

Certain people are especially likely to suffer psychological harm from strip searches. For example, strip searches pose a particular threat of psychological damage for women. “Strip searches of women prisoners are experienced as a type of sexual coercion, which ... undermines self-esteem and self-worth.” McCulloch & George, *Naked Power: Strip Searching in Women’s Prisons, in The Violence of Incarceration* 121-122 (Scraton & McCulloch eds. 2009); *see also id.* at 109 (“[F]emale prisoners[] experience [strip searches] as a form of sexual violence or coercion.”). Indeed, “there is little doubt that strip searching produces feelings of humiliation in women.” *Id.* at 112-113; *see also* Dobash, *et al.*, *supra* n.9, at 204 (female prisoners describe “the degradation and humiliation of the body searches”). One commentator has even described strip searches as “visual rape.” Shuldiner, *Visual Rape: A Look at the Dubious Legality of Strip Searches*, 13 J. Marshall L. Rev. 273 (1979). And “[a]ccording to psychiatrists, victims/survivors of sexual humiliation often struggle with issues of shame and self-blame which undermine their sense of capability and autonomy.” McCulloch & George, *supra*, at 113.

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U.S. at 577 (Marshall, J., dissenting), 593 (Stevens, J., dissenting) (each citing the district court’s finding); Dobash, *et al.*, *The Imprisonment of Women* 204 (1986). This undermines inmates’ (and prisons’) efforts at rehabilitation. *See, e.g.*, Naser & Visher, *Family Members Experiences with Incarceration and Reentry*, 7 W. Criminology Rev. 20, 21 (2006) (“[A] remarkably consistent association has been found between family contact during incarceration and lower recidivism rates.”).

Children are also particularly vulnerable to psychological damage from strip searches. This Court has recently recognized the point: In *Safford Unified School District #1 v. Redding*, 129 S. Ct. 2633 (2009), this Court quoted the professional view that strip searches of children “can ‘result in serious emotional damage,’” *id.* at 2642 (quoting Hyman & Perone, *The Other Side of School Violence: Educator Policies and Practices that may Contribute to Student Misbehavior*, 36 J. Sch. Psychol. 7, 13 (1998)); *see also Eddings v. Oklahoma*, 455 U.S. 104, 115 (1982) (“[Y]outh is ... a time and condition of life when a person may be most susceptible to ... psychological damage.”). Other courts have long taken the same view. The Eleventh Circuit stated in one case, for example, that “[c]hildren are especially susceptible to possible traumas from strip searches.” *Justice*, 961 F.2d at 192 (alteration in original) (quoting *Flores v. Meese*, 681 F. Supp. 665, 667 (C.D. Cal. 1988), *aff’d*, 942 F.2d 1352 (9th Cir. 1991) (en banc), *rev’d on other grounds sub nom. Reno v. Flores*, 507 U.S. 292 (1993)); *see also Doe v. Renfrow*, 631 F.2d 91, 92-93 (7th Cir. 1980) (per curiam) (“[The n]ude search of a thirteen-year-old child is ... a violation of any known principle of human decency.”).

Although women, children, and other individuals—such as those with certain cultural or religious beliefs and survivors of domestic or sexual abuse, *see Ha, supra* p.8, at 2742 & nn.189-192—are especially vulnerable to psychological harm from strip searches, this does not mean that others are *unlikely* to suffer psychiatric damage from undergoing a strip search. While it is true that not every person who is strip searched suffers lasting psychological damage, in amici’s experience it is the rare person indeed who can

be subjected to a strip search without experiencing powerful negative effects.

Similarly, just as certain individuals are particularly susceptible to psychological damage from a strip search, certain types of strip searches threaten greater psychological harm than others. For example, a strip search conducted (as with petitioner's search at the Essex County Correctional Facility, *see* Pet. Br. 6) in view of individuals whose presence is demonstrably unnecessary (such as other detainees) is an even more humiliating and degrading experience than a search conducted in a private location. Similarly, searches that—like those in this case—follow and are connected to another highly traumatizing event (here, the improper arrest for a minor offense) can be particularly psychologically damaging. But the fact that some searches are in this respect more harmful than others should not obscure the fact that *every* strip search is inevitably a traumatic and potentially damaging experience. The deprivation of autonomy, invasion of privacy, and loss of human dignity are simply too great to be eliminated. This too is a point courts have long recognized. *See Hunter v. Auger*, 672 F.2d 668, 674 (8th Cir. 1982) (“[A] strip search, regardless how professionally and courteously conducted, is an embarrassing and humiliating experience.” (citing *United States v. Sandler*, 644 F.2d 1163, 1167 (5th Cir. 1981) (en banc), and *United States v. Dorsey*, 641 F.2d 1213, 1217 (7th Cir. 1981))).

**II. THE PSYCHOLOGICAL HARM FREQUENTLY INFLICTED BY STRIP SEARCHES PRECLUDES THEIR USE AGAINST THOSE ARRESTED FOR MOST MINOR OFFENSES, ABSENT INDIVIDUALIZED SUSPICION**

As noted, in *Bell v. Wolfish* this Court reiterated that determining the reasonableness of a search, and hence whether the search is permitted by the Fourth Amendment, “requires a balancing of the need for the particular search against the invasion of personal rights that the search entails.” 441 U.S. at 559. As explained above, the “invasion” associated with a strip search is extreme. And as also explained above, the psychological damage that such an invasion can cause is likewise extreme. This is particularly true for an individual, like petitioner, arrested for a minor offense. For nearly all such individuals, a strip search is far beyond the range of what is expected. When it occurs, the resulting shock boosts the trauma caused by the search.

For purposes of the balancing required by *Bell*, this extreme intrusion and resulting harm could be outweighed only by the most compelling need for a search. As petitioner explains in his opening brief, no such need exists with individuals like petitioner, who was arrested for a minor non-drug offense and as to whom there was no individualized suspicion that weapons or other contraband were being concealed. The low likelihood that such an individual is in fact carrying prohibited items, and the even lower likelihood that any such items would not be detected by less intrusive means, demonstrates that there is simply no need for a strip search compelling enough to overcome the psychological harm such a search causes.

**CONCLUSION**

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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# APPENDIX

Dr. Stuart Grassian is a Board-certified psychiatrist licensed to practice medicine in Massachusetts. He has interviewed and evaluated scores of individuals who have been strip searched. He has also repeatedly provided expert testimony, for both plaintiffs and defendants, regarding strip searches, including their psychological effects. He has also consulted or advised plaintiffs and defendants in cases involving strip searches.

Dr. James Gilligan is a clinical professor of psychiatry at New York University. He previously served for over thirty years as a member of the faculty of Harvard Medical School's psychiatry department. During that time, he also served as medical director of Massachusetts's prison hospital for the criminally insane and as director of the state's Prison Mental Health Service, which provided mental health care to all inmates in the state's prison system. More recently, as a member of the New York Correctional Association's Board of Advisers, he has participated in investigations of the treatment and mistreatment of mentally ill and suicidal prisoners in the New York state prison system, including appropriate and inappropriate decisions and policies regarding strip searches. He has also recently provided expert testimony in cases involving strip searches at jails in Chicago and Nassau County, New York.

Dr. Thomas Gutheil is Professor of Psychiatry and Co-Founder, Program in Psychiatry and the Law, Harvard Medical School. Recipient of every major award in the forensic field, as well as multiple teaching and writing awards, he is former president of the American Academy of Psychiatry and Law and current president of the International Academy of Law and Mental Health. . He is author or co-author of over two hundred

fifty publications, some of which have been translated into other languages, and many of which are used in almost every forensic training program in the country. An internationally known authority, speaker, and consultant on medico-legal issues, malpractice, liability prevention and risk management, Dr. Gutheil has served as consulting expert or expert witness in forty-two states.

Dr. Terry Kupers is Institute Professor at The Wright Institute and a Distinguished Life Fellow of the American Psychiatric Association. In addition to practicing psychiatry in Oakland, California, he provides consulting services for various public mental health centers and jail mental health services. He also provides expert testimony as well as consultation and staff training regarding the psychological effects of prison conditions including isolated confinement in super-maximum security units, the quality of correctional mental health care, and the effects of sexual abuse in correctional settings—including the psychiatric consequences of strip searches. He has served as a consultant to the U.S. Department of Justice, Civil Rights Division, as well as to Human Rights Watch and Amnesty International. He is Contributing Editor of *Correctional Mental Health Report*. He received the Exemplary Psychiatrist award from the National Alliance on Mental Illness at the American Psychiatric Association meeting in 2005, and the William Rossiter Award from the Forensic Mental Health Association of California, on March 18, 2009.

Dr. Douglas Marcus is Board certified in psychiatry and neurology. Among numerous other positions, he has served as senior attending psychiatrist and medical director of adolescent services at South Oaks Hospital in Amityville, New York, and as director of inpatient

services at the Division of Child and Adolescent Psychiatry, SUNY/Kings County Hospital Center. He has also served for over 25 years as a clinical supervisor of psychiatric residents and child fellows at North Shore LIJ hospitals. His private psychiatric practice includes extensive treatment of individuals for various forms of psychological trauma.

Dr. Judith Ann Marcus is Board certified in adult psychiatry and neurology. She previously served as an assistant professor in psychiatry at the Einstein College of Medicine, and as an assistant clinical professor at Cornell University and the New York University School of Medicine. Her private psychiatric practice includes extensive treatment of individuals for various forms of psychological trauma.