

U.S. Supreme Court Upholds Jail Strip Search Policy

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Michael S. Bogren
(269) 226-8822
mbogren@plunkettcooney.com

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In a case potentially affecting any governmental entity responsible for a prison, jail, lock-up holding cell or other detention facility, the United States Supreme Court has upheld a policy that requires every person entering the general population of the jail to submit to a visual strip search.

The Supreme Court's holding in *Florence v Bd. of Chosen Freeholders of County of Burlington*, 132 S. Ct. 1510 (2012) settles a split of authority among the federal circuit courts, most of which only allowed a strip search if jail officials could establish reasonable suspicion for conducting such a search on each individual detainee. Most circuits held a strip search unconstitutional when performed on a person who was being detained for a minor offense, such as a traffic violation.

The Supreme Court described the search policy in issue:

"All arriving detainees passed through a metal detector and waited in a group holding cell for a more thorough search. When they left the holding cell, they were instructed to remove their clothing while an officer looked for body markings, wounds, and contraband. Apparently without touching the detainees, an officer looked at their ears, nose, mouth, hair, scalp, fingers, hands, arms, armpits, and other body openings. This policy applied regardless of the circumstances of the arrest, the suspected offense, or the detainee's behavior, demeanor, or criminal history. Petitioner alleges he was required to lift his genitals, turn around, and cough in a squatting position as part of the process. After a mandatory shower, during which his clothes were inspected, petitioner was admitted to the facility."

The Supreme Court held that the policy, and searches conducted under the policy, did not violate the Fourth Amendment. In reaching its conclusion, the court reiterated the great deference that the courts must give to decisions made by those given the responsibility of running jails. In *Florence*, the court stated that "[t]he difficulties of operating a detention center must not be underestimated by the courts . . . Maintaining safety and order at these institutions requires the expertise of correctional officials, who must have substantial discretion to devise reasonable solutions to the problems they face. The court has confirmed the importance of deference to correctional officials and explained that a regulation

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impinging on an inmate's constitutional rights must be upheld "if it is reasonably related to legitimate penological interests." *Florence v. Bd. of Chosen Freeholders of County of Burlington*, 132 S. Ct. at 1515. The court emphasized that correctional officials must be permitted to devise reasonable search policies to detect and deter the possession of contraband in detention facilities.

The court explained that the constitutionality of the policy and the searches must be determined by balancing the interests of maintaining institutional security and preserving internal order and discipline against the privacy interests of the individuals being detained. The court stated that deference must be given to the security measures adopted by the officials in charge of jails unless there is "substantial evidence" demonstrating their response to a given situation is exaggerated. The court held that the policy in question was not an exaggerated response to the problems that can be caused by introducing new detainees into the general population, including:

- The danger of introducing lice or contagious infections, which may only be revealed by visual inspection of the entire body;
- Gang related violence. Full body inspections can reveal tattoos and other evidence of gang affiliation, allowing officials to segregate gang members;
- Detecting contraband concealed by new detainees. Weapons, drugs and alcohol all disrupt the safe operation of a jail.

In rejecting the argument that there must be an articulable suspicion that a person detained for a minor offense is carrying contraband, the Supreme Court noted that the seriousness of an offense "is a poor predictor" of who has contraband. The court pointed out that contraband has been discovered hidden in body cavities of people arrested for trespassing, public nuisance and shoplifting. The officials in charge of the jails in this case urged the court to reject any complicated constitutional scheme requiring them to conduct less thorough inspections of some detainees based on their behavior, suspected offense, criminal history, and other factors. The court found that they offered significant reasons why the Constitution must not prevent them from conducting the same search on any suspected offender who will be admitted to the general population in their facilities. The restrictions suggested by detainees would limit the intrusion on the privacy of some detainees but at the risk of increased danger to everyone in the facility, including the less serious offenders themselves.

The Supreme Court's decision is a return to the common-sense rules that the court has traditionally approved in the jail setting. The courts of appeal have eroded this common-sense approach over the years in favor of complicated and unworkable case-by-case determinations of the "need" to search a detainee. The Supreme Court has forcefully reiterated the deference that the federal courts must give to those charged by the states to maintain safety, order and discipline in jails. The Supreme Court's decision should allow jail officials to protect the inmates and employees of jails without having to worry that their decisions will be subjected to after-the-fact scrutiny by the courts that intrude on their responsibility to preserve internal order and discipline.

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