
Dear Prisoners—Be Prepared to be Gawked at: Other Prisoners Watching You Strip Naked is Reasonably Related to Penological Interests, or is it?

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ABSTRACT

The Fourth Amendment states that citizens have the constitutional right to privacy, which includes being free from unreasonable searches. When citizens become prisoners, however, their rights, including their Fourth Amendment right against unreasonable searches, may be limited. For example, the Supreme Court upheld the constitutionality of blanket strip search policies in correctional institutions. The Supreme Court, however, cautioned that an unreasonably conducted strip search is unconstitutional if the strip search does not pass the reasonableness test. Because the Supreme Court has only reviewed cases involving privately conducted strip searches, the federal circuit and district courts have faced a new challenge: applying the reasonableness test to non-private, group strip searches.

A strip search where a naked prisoner is forced to bend over and squat in front of not only the correctional officer conducting the strip search but also an audience of other naked prisoners is likely an extremely humiliating experience. Several courts agree that a wider audience enhances the invasion of privacy. What the courts have to determine regarding group strip searches is whether a legitimate penological interest of a correctional institution outweighs a prisoner's privacy interests.

This Comment will first examine the case law dealing with group strip searches. Next, this Comment will argue that courts rely too much on the correctional officers' discretion when determining whether a group strip search advances a legitimate penological interest of the correctional institution. Finally, this Comment will analyze ways to combat the

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deference and recommend that the Supreme Court formally adopt a “less invasive alternatives” test when courts balance the needs of the correctional institution against the privacy interests of the prisoners.

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I. INTRODUCTION

Approximately 2.3 million people are being held in 1,719 state prisons, 102 federal prisons, 901 juvenile correctional facilities, 3,163 local jails, 80 Indian County jails, and other detention centers and prisons (collectively referred to as “correctional institutions”) across the United

States.¹ Each year, correctional institutions facilitate roughly 11 million admissions.²

Once a prisoner arrives at a correctional institution, a correctional officer (CO) then screens and interviews the prisoner for medical and security reasons.³ To combat potential security dangers correctional institutions subject prisoners to invasive strip searches⁴ as part of the initial screening, after visits with attorneys and family members, and after shifts at jobs or upon returning from a court hearing.⁵ Strip searches are necessary to maintain the correctional institution's security and safety by discovering drugs, weapons, and other prohibited items that prisoners might smuggle into the correctional institution.⁶

The Supreme Court held that correctional institutions are constitutionally permitted to conduct private strip searches if the strip search is reasonably conducted and related to a legitimate penological justification.⁷ Strip searches, however, are not always a private affair behind closed doors between the COs and the one prisoner being strip searched.⁸ What remains unclear is whether strip searching multiple prisoners at the same time, in full view of each other, or strip searching a prisoner in a public location is reasonable and related to a legitimate penological justification, and therefore constitutional.⁹

1. Peter Wagner & Bernadette Rabuy, *Mass Incarceration: The Whole Pie 2018*, PRISON POLICY INITIATIVE (Mar. 14, 2018), <https://www.prisonpolicy.org/reports/pie2018.html>.

2. *Id.*

3. See *Inmates Custody and Care*, FED. BUREAU OF PRISONS, https://www.bop.gov/inmates/custody_and_care/entering_prison.jsp (last visited Jan. 31, 2019). Correctional institutions are “unique place[s] fraught with serious security dangers.” *Bell v. Wolfish*, 441 U.S. 520, 559 (1979).

4. See *Florence v. Bd. of Chosen Freeholders*, 566 U.S. 318, 330 (2012). Strip search is defined as “the removal of all clothing and the inspection of all folds of the skin and exterior parts of the body.” *Strip Search*, BOUVIER LAW DICTIONARY (Desk ed. 2012). Depending on the jurisdiction, a strip search may include a visual body cavity search. See *Blackburn v. Snow*, 771 F.2d 556, 561 n.3 (1st Cir. 1985). A visual body cavity search is the “visual inspection of the anal and genital areas.” *Id.* “Strip search” as used throughout this Comment will include a visual body cavity search.

5. See *Body Cavity Searches at Michigan's Women's Huron Valley Correctional Facility*, AM. CIVIL LIBERTIES UNION, <https://bit.ly/2G13W0E> (last updated Apr. 12, 2012).

6. See *Bell*, 441 U.S. at 559.

7. See *Florence*, 566 U.S. at 339; see also *Bell*, 441 U.S. at 559.

8. See, e.g., *Sumpter v. Wayne Cty.*, 868 F.3d 473 (6th Cir. 2017); *Lewis v. Sec'y of Pub. Safety & Corr.*, 870 F.3d 365 (5th Cir. 2017); *Williams v. City of Cleveland (Williams III)*, 907 F.3d 924 (6th Cir. 2018), *reh'g denied*, 2018 U.S. App. LEXIS 34594 (6th Cir. Dec. 7, 2018); *Stoudemire v. Mich. Dep't of Corr.*, 705 F.3d 560 (6th Cir. 2013); *Lopez v. Youngblood*, 609 F. Supp. 2d 1125 (E.D. Cal. 2009).

9. See *Farmer v. Perrill*, 288 F.3d 1254, 1259 (10th Cir. 2002); see also *Crump v. Passaic Cty.*, 147 F. Supp. 3d 249, 258 (D.N.J. 2015).

Group strip searches are particularly more invasive and humiliating than private strip searches,¹⁰ but until the case law develops, the extent of what penological interests are considered legitimate and reasonable to prompt the need to conduct a group strip search remains uncertain.¹¹ Until the Supreme Court draws the line, prisoners are likely to face a legal system that favors the needs of COs and correctional institutions over prisoners' privacy rights.¹²

This Comment will address group and non-private strip searches and will seek to synthesize the arguments and rationale that the circuit and district courts rely on to determine whether a sufficient link exists between a correctional institution's group strip search policy or practice and the needs of the correctional institution.¹³ Part II of this Comment will discuss the Supreme Court's decisions related to the constitutionality of strip searches.¹⁴ Part II will also provide a discussion of the impact of the Supreme Court's decisions concerning group and non-private strip searches on lower courts.¹⁵ Part II will conclude with a discussion of lower court cases that address group strip searches.¹⁶

Then, Part III of this Comment will explain the three-step reasonableness test that lower courts utilize when addressing the constitutionality of group strip searches.¹⁷ Part III will also discuss the application of a "less invasive alternative" test to challenge the discretion of COs.¹⁸ Lastly, Part III will recommend that the Supreme Court formally adopt the "less invasive alternative" test to determine whether a group strip search is unreasonable.¹⁹ Finally, Part IV will offer concluding statements on the issues raised in this Comment.²⁰

II. BACKGROUND

The Fourth Amendment to the United States Constitution states that "[t]he peoples' right to be secured in their persons . . . against unreasonable searches . . . shall not be violated."²¹ Although the Fourth

10. See *Sumpter*, 868 F.3d at 483.

11. See generally *Sumpter*, 868 F.3d 473; *Lewis*, 870 F.3d 365; *Stoudemire*, 705 F.3d 560.

12. See *infra* Section III.B.

13. See *infra* Part III.

14. See *infra* Section II.A.

15. See *infra* Section II.B.1. "Lower courts," as used throughout this Comment, includes both federal district courts and circuit courts.

16. See *infra* Section II.B.2.

17. See *infra* Section III.A.

18. See *infra* Section III.B.

19. See *infra* Section III.C.

20. See *infra* Part IV.

21. U.S. CONST. amend. IV.

Amendment protects all citizens,²² the Supreme Court established that prisoners' Fourth Amendment protections might be limited.²³

One such limitation is in the context of strip searches.²⁴ When confronted with cases premised on Fourth Amendment protections, courts²⁵ are required to balance the nature of the strip search against the need for the strip search.²⁶ When applying the reasonableness standard to claims that challenge a correctional institution's policies or practices, courts generally afford deference²⁷ in favor of COs' penological expertise and interests.²⁸

A. *Supreme Court Jurisprudence*

Applying the Fourth Amendment "reasonableness standard," the Supreme Court held in both *Bell v. Wolfish*²⁹ and *Florence v. Board of Chosen Freeholders*³⁰ that strip searches in correctional institutions are constitutional.³¹ The Supreme Court in *Bell* first discussed the constitutionality of strip searches in correctional institutions in 1979.³² The prisoners challenged the Bureau of Prisons' policy³³ that permitted COs to

22. *See id.*

23. *See Bell v. Wolfish*, 441 U.S. 520, 558 (1979).

24. *See, e.g., Florence v. Bd. of Chosen Freeholders*, 566 U.S. 318 (2012); *Bell*, 441 U.S. 520; *Sumpter v. Wayne Cty.*, 868 F.3d 473 (6th Cir. 2017); *Lewis v. Sec'y of Pub. Safety & Corr.*, 870 F.3d 365 (5th Cir. 2017).

25. "Courts," as used throughout this Comment, will include the U.S. Supreme Court, federal circuit courts, and federal district courts.

26. *See Sumpter*, 868 F.3d at 480. Courts do not universally apply a single dictionary definition of "strip search." *Florence*, 566 U.S. at 323. In *Florence*, the Court noted that the term "strip search" is itself imprecise. *Id.* at 325. The Court explained that the term "strip search" can mean anything from having a prisoner remove clothing while a CO observes from a distance to instructing a prisoner to make various motions to dislodge anything that could be on the prisoner's body. *Id.* On the extreme end, a strip search may include a body cavity search. *Id.* What the term "strip search" actually means depends on the context in which a court uses the term. *Id.*

27. *See Bell*, 441 U.S. at 547; *see also infra* Section II.B.

28. *See, e.g., Florence*, 566 U.S. at 323, 328; *Bell*, 441 U.S. at 546–48; *Sumpter*, 868 F.3d at 480, 485; *Lewis*, 870 F.3d at 368; *Williams v. City of Cleveland (Williams I)*, 771 F.3d 945, 950 (6th Cir. 2014); *Stoudemire v. Mich. Dep't of Corr.*, 705 F.3d 560, 571–72 (6th Cir. 2013); *Lopez v. Youngblood*, 609 F. Supp. 2d 1125, 1137 (E.D. Cal. 2009).

29. *Bell v. Wolfish*, 441 U.S. 520 (1979).

30. *Florence v. Bd. of Chosen Freeholders*, 566 U.S. 318 (2012).

31. *See id.* at 339; *see also Bell*, 441 U.S. at 559.

32. *See generally Bell*, 441 U.S. 520.

33. *See Searches of Inmates*, 28 C.F.R. § 552.11 (2018). The regulation states: Staff may conduct a visual search where there is a reasonable belief that contraband may be concealed on the person, or a good opportunity for concealment has occurred [sic]. For example, placement in a special housing unit . . . , leaving the institution, or re-entry into an institution after contact with the public . . . is sufficient to justify a visual search. The visual search shall be

require prisoners “to expose their body cavities for visual inspection as part of a strip search conducted after every contact visit with a person from outside the correctional institution.”³⁴ The Court held that the strip search policy, even without individualized probable cause, did not violate the Fourth Amendment.³⁵

The Court reasoned that even though the record reflects only one occurrence where a strip search resulted in confiscating contraband, minimizing the security dangers to the correctional institution outweighed the intrusion of the prisoners’ privacy.³⁶ *Bell* set the standard that strip searches are constitutional if three factors are deemed “reasonable”: (1) the manner in which the strip search is conducted, (2) the justification for initiating the strip search, and (3) the location of the strip search.³⁷

Then, about 30 years later, the Supreme Court decided whether the seriousness of the offense or an individualized reasonable suspicion were necessary considerations before conducting strip searches.³⁸ In *Florence*, the police arrested the plaintiff because he had an outstanding arrest warrant for failing to appear at a hearing to enforce a fine.³⁹ The plaintiff was admitted to one correctional institution and then shortly after that transferred to a second correctional institution.⁴⁰ Upon being admitted to each of these correctional institutions, COs strip-searched the plaintiff.⁴¹ The correctional institutions’ blanket strip search policies “applied regardless of the circumstances of the arrest, the suspected offense, or the [prisoner’s] behavior, demeanor, or criminal history.”⁴²

After being released from the second correctional institution, the plaintiff filed a lawsuit seeking relief for violations of his Fourth

made in a manner designed to assure as much privacy to the inmate as practicable.

Id. § 552.11(c)(1).

34. *See Bell*, 441 U.S. at 558 (noting that the Metropolitan Correctional Center follows the Bureau of Prisons’ policy); *see also* *Block v. Rutherford*, 468 U.S. 576, 578 n.1, 588–89 (1984) (defining non-contact visits as having a clear glass panel separating prisoners from visitors, who visit over telephones, and having privacy partitions separating each individual privacy location; whereas contact visits would allow a limited degree of physical contact without the glass barrier).

35. *See Bell*, 441 U.S. at 560 (explaining that the Supreme Court declined to distinguish pre-trial prisoners from convicted prisoners).

36. *See id.* at 559 (noting that the lack of occurrences where strip searches resulted in confiscating contraband may even be a testament that the strip search technique is an effective deterrent).

37. *See id.*

38. *See generally* *Florence v. Bd. of Chosen Freeholders*, 566 U.S. 318 (2012).

39. *See id.* at 323.

40. *See id.* at 323–24.

41. *See id.* The correctional institutions’ policies were to strip search each prisoner upon being admitted to the correctional institution. *Id.*

42. *See id.* at 324.

Amendment rights.⁴³ The plaintiff maintained that persons arrested for minor offenses should not be subjected to the same invasive strip searches, as part of the routine intake process, as other prisoners arrested for more serious crimes involving drugs and weapons.⁴⁴ Alternatively, the plaintiff suggested that if COs have a particularized suspicion that a prisoner is concealing contraband, then that prisoner could be strip searched even if arrested for a minor offense.⁴⁵

The Court held that COs do not need to consider the seriousness of an offense when determining whether to strip search a prisoner; therefore, the correctional institution's blanket strip search policy struck a reasonable balance between prisoner privacy and the needs of the correctional institution.⁴⁶ The Court's reasoning in *Florence* closely mirrored its reasoning in *Bell* in that in both cases, the Court focused on ensuring the correctional institutions' security.⁴⁷ Specifically, a new prisoner entering a correctional institution poses a risk to the correctional institution's staff and general prisoner population if COs are not permitted to inspect the new prisoner's body for hidden contraband.⁴⁸ The Court reasoned that "[w]eapons, drugs, and alcohol all disrupt the safe operation of a [correctional institution]."⁴⁹

The Court explained that contraband successfully brought into the correctional institution creates leverage and power among the prisoners.⁵⁰ Leverage and power among the prisoners results in a substantial risk for everyone in the correctional institution.⁵¹ To dissipate such a risk, the Court agreed with the COs' explanation that security is improved when all prisoners are required to undergo some type of strip search when entering the correctional institution.⁵²

Besides discovering hidden contraband, the Court explained other justifications for conducting a thorough strip search of prisoners as part of the intake process.⁵³ For example, strip searches are necessary to help discover and treat any physical injuries and contagious conditions, such as

43. *See id.*

44. *See id.*

45. *See id.*

46. *See id.* at 339 (explaining that even though a blanket strip search policy is constitutional, strip searches conducted in an unreasonable manner may be deemed unconstitutional).

47. *See id.* at 328–29; *Bell v. Wolfish*, 441 U.S. 520, 559 (1979).

48. *See Florence*, 566 U.S. at 322.

49. *See id.* at 332.

50. *See id.* at 333 (explaining that leverage is created by placing value on such contraband resulting in the prisoners' own "underground economy").

51. *See id.* at 333–34 (explaining that the ultimate goal of COs is to minimize risk for both the prisoners and the staff in the correctional institution).

52. *See id.* at 328.

53. *See id.* at 330.

lice.⁵⁴ Additionally, strip searches help identify gang members, allowing COs to then isolate gang members from one another, which promotes safety for everyone in the correctional institution.⁵⁵

Finally, the Court reasoned that if persons arrested on minor offenses are exempt from strip searches, prisoners may coerce people outside of the prison to commit minor offenses and smuggle contraband into the correctional institution without being subjected to a strip search upon intake.⁵⁶ Furthermore, upon a prisoner's arrival at the prison, COs would only have a few minutes to determine whether the prisoner's offense was serious enough to authorize the strip search, which could give rise to charges of discriminatory application.⁵⁷ The Court ultimately refused to accept such an offense-based standard because it would create an "unworkable standard" for the COs to apply and create unnecessary risk.⁵⁸

B. Aftermath of the Supreme Court's Decisions as Applied to Group Strip Searches

As a result of the Supreme Court's holdings in *Bell* and *Florence*, lower courts adopted the "reasonableness test" to apply to group strip searches.⁵⁹ In applying the reasonableness test, lower courts must consider the scope of the particular intrusion, the justification for initiating the group strip search, and whether the need for the group strip search outweighed the privacy interests of the prisoners.⁶⁰

In determining the reasonableness of a strip search, the Supreme Court advised lower courts to give COs considerable deference when analyzing whether the manner in which the strip search was conducted advanced a legitimate penological interest.⁶¹ Courts give deference to COs because correctional institutions are often "crowded [and] unsanitary,"⁶²

54. *See id.* at 330–31.

55. *See id.* at 331 (noting markings and tattoos representative of gang affiliations are often covered up by clothing).

56. *See id.* at 336.

57. *See id.* at 337 (explaining that if the CO's conduct is later deemed discriminatory, then the CO may be held liable for conducting an improper strip search, and to avoid potential liability a CO may choose to forgo the strip search).

58. *See Florence*, 566 U.S. at 334, 338.

59. *See infra* Section II.B.2.

60. *See Florence*, 566 U.S. at 327; *Bell v. Wolfish*, 441 U.S. 520, 559 (1979).

61. *See Florence*, 566 U.S. at 323, 328; *see also Bell*, 441 U.S. at 546–48; *Sumpter v. Wayne Cty.*, 868 F.3d 472, 480, 485 (6th Cir. 2017); *Lewis v. Sec'y of Pub. Safety & Corr.*, 870 F.3d 365, 368 (5th Cir. 2017); *Williams I*, 771 F.3d 945, 950 (6th Cir. 2014); *Stoudemire v. Mich. Dep't of Corr.*, 705 F.3d 560, 571–72 (6th Cir. 2013); *Lopez v. Youngblood*, 609 F. Supp. 2d 1125, 1137 (E.D. Cal. 2009).

62. *See Florence*, 566 U.S. at 333.

and are “unique place[s] fraught with serious security dangers.”⁶³ COs face new problems every day without having simple solutions available.⁶⁴

In *Bell*, the Court noted that courts should defer to the COs’ judgment unless substantial evidence is introduced to prove the alleged conduct was an exaggerated response.⁶⁵ Although courts may not agree with a correctional institution’s policies and practices, the Supreme Court cautioned that COs are better informed than the courts,⁶⁶ and courts should not question their judgment unless substantial evidence suggests otherwise.⁶⁷ As long as the solution is reasonable and the means are linked to minimize risk and maximize security and internal order, courts give great deference to the COs’ judgment.⁶⁸

1. New Challenges Faced by Lower Courts

Because the Supreme Court decided that strip searches are constitutional,⁶⁹ post-*Florence* prisoners claim that the manner in which COs conduct strip searches is unreasonable, and therefore, violates their Fourth Amendment rights.⁷⁰ The strip searches conducted in *Bell* and *Florence* involved one or two COs strip-searching one prisoner behind closed doors, where other prisoners or COs could not see the strip-searched prisoner.⁷¹

In the aftermath of *Bell* and *Florence*, prisoners have challenged the constitutionality of non-private and group strip searches.⁷² Group strip searches involve strip-searching several prisoners simultaneously in an area where naked prisoners can view the strip searches of other naked prisoners without any privacy measures in place.⁷³ Non-private means conducting the strip search in an area where other prisoners or COs not

63. See *Bell*, 441 U.S. at 559.

64. See *id.* at 547. “[T]he problems that arise in the day-to-day operation of a correction[al institution] are not susceptible to easy solutions.” *Id.* Therefore, administrators at correctional institutions “should 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.” *Id.*

65. See *Bell*, 441 U.S. at 541 n.23; see also *Florence*, 566 U.S. at 328.

66. See *Bell*, 441 U.S. at 544.

67. See *id.*

68. See *Florence*, 566 U.S. at 323, 328; see also *Bell*, 441 U.S. at 546–48; *Sumpter v. Wayne Cty.*, 868 F.3d 472, 480, 485 (6th Cir. 2017); *Lewis v. Sec’y of Pub. Safety & Corr.*, 870 F.3d 365, 368 (5th Cir. 2017); *Williams I*, 771 F.3d 945, 950 (6th Cir. 2014); *Stoudemire v. Mich. Dep’t of Corr.*, 705 F.3d 560, 571–72 (6th Cir. 2013); *Lopez v. Youngblood*, 609 F. Supp. 2d 1125, 1137 (E.D. Cal. 2009).

69. See *Florence*, 566 U.S. at 339; see also *Bell*, 441 U.S. at 559.

70. See *infra* Section II.B.2.

71. See *generally Florence*, 566 U.S. 318; *Bell*, 441 U.S. 520.

72. See *infra* Section II.B.2.

73. See *Lopez v. Youngblood*, 609 F. Supp. 2d 1125, 1130–31 (E.D. Cal. 2009).

part of the strip search can view the strip search.⁷⁴ Group strip searches pose a challenge for lower courts when determining whether the penological interest justifies conducting strip searches in a group as opposed to privately.⁷⁵ As of early 2019, the Supreme Court has not addressed the constitutionality of group strip searches.

2. Prisoner Privacy versus Reasonable Penological Interest Test Applied by Lower Courts

The issue lower courts address is not whether group strip searches, in general, are constitutional, but rather whether the need to conduct a group strip search in the particular case advanced a penological interest that outweighed the prisoners' privacy interests.⁷⁶ Depending on the court and the context, what is considered a reasonable penological interest varies and involves a fact-specific, case-by-case determination.⁷⁷

a. Lower Court Decisions Where the Group Strip Search was Reasonably Related to a Legitimate Penological Interest

In *Lewis v. Secretary of Public Safety & Corrections*,⁷⁸ the Fifth Circuit considered whether the District Court properly granted defendants' motion for summary judgment.⁷⁹ In *Lewis*, the Garment Factory's⁸⁰ practice involved group strip-searching about 10 prisoners at a time.⁸¹ The group was collectively instructed to disrobe and perform various tasks

74. See Daphne Ha, *Blanket Policies for Strip Searching Pretrial Detainees: An Interdisciplinary Argument for Reasonableness*, 79 *FORDHAM L. REV.* 2721, 2745–46 (2011). “Group strip searches,” as used throughout this Comment includes both group and non-private strip searches.

75. See *Florence*, 566 U.S. at 326 (explaining that a correctional institution's policy that limits a prisoner's constitutional rights must be upheld “if it is reasonably related to legitimate penological interests”); see also *Bell*, 441 U.S. at 559; *infra* Section II.B.2.

76. See generally *Sumpter v. Wayne Cty.*, 868 F.3d 473 (6th Cir. 2017); *Lewis v. Sec'y of Pub. Safety & Corr.*, 870 F.3d 365 (5th Cir. 2017); *Williams I*, 771 F.3d 945 (6th Cir. 2014); *Stoudemire v. Mich. Dep't of Corr.*, 705 F.3d 560 (6th Cir. 2013); *Lopez*, 609 F. Supp. 2d 1125.

77. See generally *Sumpter*, 868 F.3d 473; *Lewis*, 870 F.3d 365; *Williams I*, 771 F.3d 945; *Stoudemire*, 705 F.3d 560; *Lopez*, 609 F. Supp. 2d 1125.

78. *Lewis v. Sec'y of Pub. Safety & Corr.*, 870 F.3d 365 (5th Cir. 2017).

79. See *id.* at 367; see also *Summary Judgment*, *BOUVIER LAW DICTIONARY* (Desk ed. 2012) (defining “summary judgment” as a specialized motion where the moving party seeks judgment on the issue as a matter of law when the issues in the dispute can be decided without regard to any genuine dispute over a material fact).

80. See *Lewis*, 870 F.3d at 367 (explaining that prisoners worked at the Garment Factory which was owned and operated by the Louisiana Department of Corrections and was located next to a sally-port where supply trucks and civilian drivers enter; the prisoners at the Garment Factory made clothes and lines and had access to sewing tools and equipment).

81. See *id.*

necessary to search for any hidden contraband on the prisoners' bodies.⁸² The Fifth Circuit affirmed the District Court's granting of the defendants' motion for summary judgment and concluded that preventing the introduction of contraband into the correctional institution and maintaining security at the correctional institution are legitimate penological interests.⁸³

The Fifth Circuit reasoned that by conducting the group strip searches at the Garment Factory, the Garment Factory sought to prevent contraband from entering the main correctional institution from the prisoners and outside truck drivers that worked in the Garment Factory.⁸⁴ The Fifth Circuit further reasoned that the group strip search policies were used to prevent prisoners from removing items capable of being used as weapons from the Garment Factory.⁸⁵

More recently, in *Sumpter v. Wayne County*,⁸⁶ the Sixth Circuit considered whether the correctional institution's periodic practice⁸⁷ of conducting group strip searches constituted a clearly established Fourth Amendment violation.⁸⁸ In *Sumpter*, most of the group strip searches at issue took place in the correctional institution's registry⁸⁹ and involved escorting the plaintiff and as many as five women prisoners to a room where they were all strip-searched at the same time.⁹⁰ While being strip

82. *See id.*

83. *See id.* at 368; *see also* Lewis v. Chatterson, No. 1:10-CV-00291, 2015 U.S. Dist. LEXIS 174076, at *16 (W.D. La. Oct. 7, 2015) (concluding that “[t]he strip search and body cavity search policies . . . are reasonably related to well know, common-sense, legitimate penological objectives in prison security”).

84. *See Lewis*, 870 F.3d at 369.

85. *See id.* at 367–68 (relying on testimony of COs who participated in the group strip searches that stated they have “personally found marijuana, stolen clothes, cell phones and money during the strip searches. . .”); *Lewis*, 2015 U.S. Dist. LEXIS 174076, at *16 (concluding that “[u]nder the facts and circumstances of this case, the Garment Factory searches . . . appear to have been conducted in a reasonable and efficient manner designed to prevent the transportation by [prisoners] of tools, material for weapons, money, phones, and garments from the Garment Factory to the main are [sic] of the [correctional institution]”).

86. *Sumpter v. Wayne Cty.*, 868 F.3d 473 (6th Cir. 2017).

87. *See id.* at 483–84. “According to [the correctional institution’s] policy applicable during plaintiff’s detention, [COs] were to conduct strip searches ‘out of view of the public and other [prisoners]’ [w]hen possible” and that “[g]roup [strip] searches were the exception.” *Id.*

88. *See id.* at 478.

89. *See id.* at 479 (explaining that the group strip searches at issue “occurred in the [correctional institution’s] [r]egistry, where [prisoners] are routinely searched when first arriving to the [correctional institution] or returning from a trip outside” and then escorted to see medical personnel or to be taken to their cellblock).

90. *See id.* at 479, 484 (noting that the group strip searches of up to five prisoners were only conducted when there was a line of twenty or more women waiting to be processed and the high volume of prisoners demanded it).

searched, the CO made several rude comments about the plaintiff's body odor and hygiene.⁹¹

The Sixth Circuit held that the group strip searches conducted in the correctional institution's registry did not violate a clearly established Fourth Amendment right.⁹² The Sixth Circuit explained that addressing the constitutionality of group strip searches involves a three-step analysis: (1) determining the nature of the intrusion; (2) evaluating the need for the search; and (3) determining whether the strip search was reasonably related to legitimate penological interests.⁹³

First, the Sixth Circuit acknowledged that strip searches, as a well-established principle, are an extreme invasion of privacy.⁹⁴ The court stated that strip searches conducted in front of an audience or in a discourteous manner enhanced the degree of the invasion of privacy.⁹⁵ The registry group strip searches were a significant invasion of the plaintiff's privacy because not only was the plaintiff's naked body visually inspected, but her naked body was exposed to several other prisoners.⁹⁶ Because the group strip searches were "especially" intrusive, step one was satisfied.⁹⁷

For step two, the Sixth Circuit addressed the penological justification for conducting the strip search in a group.⁹⁸ The Sixth Circuit explained that because the CO conducted the group strip searches in a manner that was inconsistent with the correctional institution's policies, the Sixth Circuit had to determine whether a legitimate penological interest for deviating from the policy existed.⁹⁹ The Sixth Circuit relied on the CO's judgment that group strip searches, as an expedited process, are necessary when a high volume of prisoners are awaiting admittance because delays impact the health of the prisoners and the safety of the correctional institution.¹⁰⁰ The Sixth Circuit concluded that in this case, the need for an

91. *See id.* at 483 (noting that the CO told the plaintiff that she "smell[ed] like a funky monkey" and that she "needed to clean herself better").

92. *See id.* at 478.

93. *See id.* at 482 (quoting *Stoudemire v. Mich. Dep't of Corr.*, 705 F.3d 560, 572 (6th Cir. 2013)) (explaining that the first step requires "examin[ing] the scope, manner, and location of the search," the second step requires giving "due deference to the CO's exercise of her discretionary functions," and the third step requires "weighing the need [for the search] against the invasion").

94. *See id.* at 483.

95. *See id.*

96. *See Sumpter*, 868 F.3d at 483 (citing *Stoudemire*, 705 F.3d at 573) (explaining that even though the comments about the plaintiff's body odor and hygiene points to the "dignity interests" that the Fourth Amendment seeks to protect "against unreasonable searches," they "are not dispositive of reasonableness").

97. *See id.* (noting that "an intrusive search is not necessarily an unreasonable one, especially in the corrections setting").

98. *See id.*

99. *See id.* at 484.

100. *See id.* at 485.

expedited process was a legitimate penological justification for the CO to deviate from the policy.¹⁰¹

The Sixth Circuit summarized the first two steps by stating that “on [the] one hand, the group strip searches . . . were especially intrusive[, but] on the other hand, [the] defendants . . . asserted a legitimate penological justification for [the] periodic[.]” deviation.¹⁰² The Sixth Circuit explained that typically courts would then weigh the intrusion against the justification to determine whether the search was unreasonable.¹⁰³ The Sixth Circuit, however, declined to do so because the defendants asserted qualified immunity,¹⁰⁴ which did not require the court to complete the three-step analysis.¹⁰⁵

Because the Sixth Circuit recognized that no decision “squarely govern[ed]” the issue, the Sixth Circuit concluded that the COs had no reason to be aware that conducting group strip searches was unreasonable when the volume of prisoners needing processing would make individual searches imprudent.¹⁰⁶ Therefore, the Sixth Circuit affirmed the District Court’s decision to grant summary judgment in favor of the COs and the correctional institution.¹⁰⁷

b. Lower Court Decisions Where the Group Strip Search was Not Reasonably Related to a Legitimate Penological Interest

In *Sumpter* and *Lewis*, the defendants identified a specific penological justification for the group strip searches, and the circuit courts either determined that the penological interest outweighed the prisoners’ privacy interests¹⁰⁸ or granted qualified immunity to the defendant.¹⁰⁹ In contrast to *Sumpter* and *Lewis*, other lower courts have addressed the issue

101. *See id.*

102. *Id.*

103. *Id.*

104. *See id.* at 485–86 (explaining that qualified immunity protects the CO from personal liability unless the CO’s alleged conduct violated a clearly established constitutional right).

105. *See id.*

106. . *See Sumpter*, 868 F.3d at 486–88 (noting that the Sixth Circuit rejected the plaintiff’s arguments that there was a right not to be subjected to group strip searches because the plaintiff’s authorities were not analogous to the case at issue, and the defendants in those cases failed to provide a legitimate penological interest to weigh against the particular intrusion); *see also* *Crump v. Passaic Cty.*, 147 F. Supp. 3d 249, 258 (D.N.J. 2015) (explaining that “[a]bsent controlling authority, a robust consensus of cases of persuasive authority is required to find that law in question is clearly established[.]” and that “a single decision from another circuit is far from a robust consensus of cases”).

107. *See Sumpter*, 868 F.3d at 492.

108. *See Lewis v. Sec’y of Pub. Safety & Corr.*, 870 F.3d 365, 367–69 (5th Cir. 2017).

109. *See Sumpter*, 868 F.3d at 485–88.

of group strip searches where the defendant did not assert a legitimate penological justification.¹¹⁰

For example, in *Lopez v. Youngblood*,¹¹¹ the correctional institution had a blanket policy that subjected prisoners to a group strip search anytime they returned from outside the correctional institution.¹¹² During the searches, COs strip-searched groups of prisoners in view of each other and without any partitions or barriers.¹¹³ The plaintiffs asserted that the blanket policy of group strip-searching prisoners constituted a Fourth Amendment violation.¹¹⁴

The District Court for the Eastern District of California rejected the defendants' two main arguments: (1) that the group strip searches were not excessive or conducted in a harassing manner, and therefore, the severe personnel limitations and security concerns justified searches in small groups,¹¹⁵ and (2) that the Ninth Circuit rejected the argument that only privately conducted strip searches are permissible.¹¹⁶ The District Court held that because the defendants offered no evidence that suggested alternative methods were not available or that the COs' safety was a concern, the blanket group strip search policy violated the Fourth Amendment.¹¹⁷

First, the District Court reasoned that unlike the authority cited by the defendants,¹¹⁸ in this case, the defendants did not take any additional steps

110. See, e.g., *Stoudemire v. Mich. Dep't of Corr.*, 705 F.3d 560, 574 (6th Cir. 2013); *Lopez v. Youngblood*, 609 F. Supp. 2d 1125, 1138 (E.D. Cal. 2009).

111. *Lopez v. Youngblood*, 609 F. Supp. 2d 1125 (E.D. Cal. 2009).

112. See *id.* at 1130. The strip searches involved a "visual inspection of the underclothing, female breasts, buttocks, or genitalia of [the prisoner]." *Id.* The strip searches also included a visual body cavity search which included the "visual inspection of the anus and/or vaginal area . . . requiring the prisoners to position themselves in a way that would expose body cavity orifices." *Id.*

113. See *id.* at 1130–31 (noting that other prisoners who were in view of the strip searches were also strip searched at the same time).

114. See *id.* at 1129.

115. See *id.* at 1134. The District Court rejected the defendants' argument that limited space and staffing precluded the ability to conduct individual strip searches because administrative burden and inconvenience arguments typically do not justify a constitutional violation. *Id.*

116. See *id.* at 1135–37 (distinguishing *Thompson v. Souza*, 111 F.3d 694 (9th Cir. 1997), where "the court confronted a plan to detect contraband targeted to specific inmates, not a blanket policy permitting group strip searches," and *Michenfeider v. Sumner*, 860 F.2d 328 (9th Cir. 1988), where the group strip search policy was limited to the state's most dangerous prisoners, which were housed in the maximum security unit, not a blanket group strip search policy and the court focused on CO safety and lack of available alternatives).

117. See *id.* at 1138.

118. See *id.* at 1134–35 (distinguishing *Fernandez v. Rapone*, 926 F. Supp. 255 (D. Mass. 1996), where the group strip searches were not unreasonable because a policy had been in place where the COs were to comply with a prisoner's request to be searched alone, and *Zunker v. Bertrand*, 798 F. Supp. 1365 (E.D. Wis. 1992), where the group strip searches were constitutional because the COs and the correctional institution took

to protect the privacy of the prisoners that would have led the District Court to conclude that security concerns of the correctional institution outweighed privacy interests.¹¹⁹ Second, the District Court recognized situations where a group strip search is warranted to protect the safety of the COs, but in this case, the defendants did not present any evidence that the COs safety was a concern.¹²⁰

Lastly, the District Court acknowledged that the plaintiffs did not challenge the policy of strip-searching prisoners to discover contraband, but rather challenged a blanket policy of group strip-searching prisoners.¹²¹ The District Court concluded that the blanket policy was a Fourth Amendment violation because no evidence proved that group strip searches are more likely to result in finding contraband than individual strip searches.¹²²

Prior to *Lopez*, the Supreme Court had not addressed whether blanket policies for individual or group strip searches were constitutional. At the time *Lopez* was decided, the Supreme Court had only determined that reasonably conducted strip searches are not a violation of a prisoner's Fourth Amendment.¹²³ Three years after *Lopez* was decided, the Supreme Court in *Florence* held that blanket strip search policies are constitutional.¹²⁴ Unlike *Lopez*, which concerned a blanket group strip search policy, *Florence* only applied to individual strip search policies, and the Court declined to carve out exceptions.¹²⁵ Shortly after the Supreme Court's holding in *Florence*, the Sixth Circuit decided at least two other cases, in addition to *Sumpter*,¹²⁶ that addressed group strip searches.¹²⁷ The first was *Stoudemire v. Michigan Department of Corrections*,¹²⁸ where a CO subjected a prisoner, who was waiting for an escort so she could leave the infirmary's common area, to a random strip search.¹²⁹ The CO decided

additional steps to protect the privacy of prisoners by using privacy curtains and obstructing the view of other prisoners waiting to be searched).

119. *See id.* at 1135–36.

120. *See id.* at 1137.

121. *See Lopez*, 609 F. Supp. 2d at 1138.

122. *See id.* (explaining that individual strip searches would afford prisoners at least some privacy).

123. *See Bell v. Wolfish*, 441 U.S. 520, 560 (1979).

124. *See Florence v. Bd. of Chosen Freeholders*, 566 U.S. 318, 339 (2012) (explaining that even though a blanket strip search policy is constitutional, strip searches conducted in an unreasonable manner may be deemed unconstitutional).

125. *See id.* at 327–38.

126. *See supra* text accompanying notes 86–107.

127. *See generally Williams III*, 907 F.3d 924 (6th Cir. 2018), *reh'g denied*, 2018 U.S. App. LEXIS 34594 (6th Cir. Dec. 7, 2018); *Williams I*, 771 F.3d 945 (6th Cir. 2014); *Stoudemire v. Mich. Dep't of Corr.*, 705 F.3d 560 (6th Cir. 2013).

128. *Stoudemire v. Mich. Dep't of Corr.*, 705 F.3d 560 (6th Cir. 2013).

129. *See id.* at 567.

to conduct the random strip search “because [she could]” and then escorted the prisoner to her cell to conduct the strip search.¹³⁰

The Sixth Circuit held the strip search unreasonable¹³¹ and applied the same three-step analysis introduced above in *Sumpter*.¹³² First, the Sixth Circuit recognized that strip searches are inherently invasive¹³³ and because the CO did not block the window of the cell and the strip search did not take place in a private location, the degree of invasion was enhanced.¹³⁴

Second, the Sixth Circuit stated that the court must assume that the reason for initiating a strip search was to detect and deter contraband unless otherwise indicated by the evidence.¹³⁵ The Sixth Circuit concluded that even though the CO may have had a valid reason for strip-searching the prisoner, the record did not demonstrate that exigent circumstances existed at the time to justify strip-searching the prisoner where others could see her naked.¹³⁶ Because no legitimate penological justification for the strip search existed, the invasiveness of the strip search outweighed the non-existent penological justifications.¹³⁷

130. *See id.* at 566–67 (noting that the prisoner’s cell had a window on the cell door that looked out onto a busy hallway, the CO did not cover the window even though people in the hallway could see the strip search being conducted, and the CO conducted the strip search with a smirk on her face).

131. *See id.* at 574.

132. *See id.* at 572 (explaining that first, the Sixth Circuit must determine the degree of the invasion, second, the Sixth Circuit needs to evaluate the need of the search, giving deference to the CO’s judgment, and finally, the Sixth Circuit must determine whether the need for the strip search was reasonably related to a legitimate penological justification); *see also Sumpter v. Wayne Cty.*, 868 F.3d 473, 482 (6th Cir. 2017).

133. *See Stoudemire*, 705 F.3d at 572–73.

134. *See id.* (explaining that even though the CO did not explain her reasoning to the prisoner for conducting the strip search, and was smirking while conducting the search, these elements are not dispositive but add to whether the CO’s conduct made the strip search somewhat more invasive).

135. *See id.* at 573 (noting that the second step requires determining the need for the particular search at issue in the case).

136. *See id.* at 574 (explaining that additional justifications may include evidence that an emergency existed, such as a riot situation, evidence that supports that the location was chosen because other alternatives would have presented a risk to officer safety, evidence that the prisoner had a history of maladaptive behavior, and evidence of time or resources constraints); *see also Crump v. Passaic Cty.*, 147 F. Supp. 3d 249, 257 (D.N.J. 2015) (explaining that there may also be situations where a group strip search may not be a violation of the Fourth Amendment). For example, where strip searches are conducted in front of a group because of a lockdown in the correctional institution, the need for safety and expediency in this type of emergency situation outweighed the consideration of the prisoner’s privacy. *Id.* However, this very specific circumstance does not imply that routine non-private strip searches are reasonable. *Id.*

137. *See Stoudemire*, 705 F.3d at 574; *see also Sumpter v. Wayne Cty.*, 868 F.3d 473, 482 (6th Cir. 2017).

The second case the Sixth Circuit heard was *Williams v. City of Cleveland*.¹³⁸ *Williams* addressed whether forgoing the use of less invasive procedures and subjecting prisoners, as part of the correctional institution's policy, to a group strip search upon being processed into the correctional institution is constitutional.¹³⁹ The Sixth Circuit had to decide whether the plaintiffs' complaint plausibly alleged that the group strip searches were unreasonable.¹⁴⁰ The Sixth Circuit held that because alternatives were available, the group strip searches were unreasonable.¹⁴¹

The Sixth Circuit's analysis focused on whether the correctional institution possessed any readily available alternatives.¹⁴² The Sixth Circuit reasoned that where no reasonable alternatives to the manner in which the CO conducted the strip search are available, courts will likely conclude that the conduct was reasonably related to a legitimate penological interest.¹⁴³ On the other hand, where obvious, easy alternatives that fully accommodate the needs of the correctional institution are available, any marginal benefits associated with a more invasive alternative are likely outweighed by the prisoner's privacy interests, such that choosing the more invasive option would be unreasonable.¹⁴⁴ The Sixth Circuit reversed the District Court's decision and remanded for further proceedings.¹⁴⁵

On remand, the District Court had to determine whether exigent circumstances existed to necessitate strip-searching the prisoners in view of other prisoners.¹⁴⁶ The correctional institution argued that administrative convenience justified the correctional institution's blanket group strip search policy.¹⁴⁷ The correctional institution explained that the policy was necessary because the correctional institution was "busy" and group strip searches would expedite the process.¹⁴⁸ A CO stated, however,

138. *Williams I*, 771 F.3d 945 (6th Cir. 2014).

139. *See id.* at 947 (noting that the case also involved the process of COs spraying the prisoners' naked genitals with a delousing solution from a pressurized metal canister).

140. *See id.*

141. *See id.* at 954.

142. *See id.*

143. *See id.* at 954–55.

144. *See id.*

145. *See id.* (explaining that because the Sixth Circuit heard the case on appeal at the motion to dismiss phase, the Sixth Circuit did not determine whether the group strip searches were unreasonable, rather only decided whether the complaint plausibly alleged that the defendants' conduct was unreasonable).

146. *See Williams v. City of Cleveland (Williams II)*, 210 F. Supp. 3d 897, 906 (N.D. Ohio 2016), *rev'd and remanded*, 907 F.3d 924 (6th Cir. 2018).

147. *See id.* at 907.

148. *See id.*

that individually strip-searching each prisoner could easily be done and would only slow the process “a little bit.”¹⁴⁹

Accordingly, the District Court held that the manner in which the CO conducted the group strip searches violated the plaintiffs’ Fourth Amendment rights.¹⁵⁰ The District Court enjoined the defendants from conducting group strip searches and concluded that the defendants could perform strip searches individually or in groups with installed privacy partitions.¹⁵¹ The privacy partitions would allow the unclothed prisoners to be observed by the CO while obstructing the view of other unclothed prisoners also being searched.¹⁵²

After the District Court granted summary judgment for the plaintiffs’, the defendants appealed to the Sixth Circuit seeking reversal of the District Court’s decision.¹⁵³ The Sixth Circuit first analyzed the issue as to whether the District Court’s grant of a permanent injunction was proper in relation to the named plaintiff’s standing to sue.¹⁵⁴ Here, the plaintiff did not file the lawsuit until after leaving the correctional institution.¹⁵⁵ As a result, the Sixth Circuit ultimately vacated the permanent injunctions because the plaintiff did not have standing to sue, meaning, she did not have a “personal stake in the outcome of the controversy’ at the outset of litigation.”¹⁵⁶

In the first appeal, the Sixth Circuit decided whether the plaintiff’s second amended complaint set forth a plausible claim upon which relief could be granted.¹⁵⁷ In the subsequent appeal, the Sixth Circuit had to decide, based on undisputed facts, whether the defendant executed a policy that violated the plaintiff’s Fourth Amendment rights.¹⁵⁸ In this second

149. *See id.* at 907–08.

150. *See id.*

151. *See id.*

152. *See id.* at 908; *see also* *Crump v. Passaic Cty.*, 147 F. Supp. 3d 249, 256 (citing *Florence v. Bd. of Chose Freeholders*, 566 U.S. 318, 330–33 (2012)) (explaining how even though *Florence* emphasized how visual strip searches can contribute to institutional security and sanitation, a non-private strip search does not contribute to security and sanitation any more than a private strip search does).

153. *See Williams III*, 907 F.3d 924, 928 (6th Cir. 2018), *reh’g denied*, 2018 U.S. App. LEXIS 34594 (6th Cir. Dec. 7, 2018).

154. *See id.* at 932–34.

155. *See id.* at 933.

156. *Id.* (quoting *Newsome v. Batavia Local Sch. Dist.*, 842 F.2d 920, 922 (6th Cir. 1988)). In cases involving prisoners, unless prisoners file a lawsuit before leaving the correctional institution, courts “assume the plaintiff would follow the law in the future and thus avoid exposure to potential searches.” *Id.* (citing *Sumpter v. Wayne Cty.*, 868 F.3d 473, 491 (6th Cir. 2017)). Here, even though Ms. Williams did in fact return to the correctional institution three times since filing the lawsuit at issue in this case, “the relevant inquiry is whether she had a live, actionable claim for relief at the time she filed suit.” *Id.*

157. *See id.* at 935.

158. *See id.*

appeal, the plaintiff had to demonstrate that the correctional institution acted unreasonably in conducting the group strip searches.¹⁵⁹

The Sixth Circuit noted that while the correctional institution had a “long-time policy of conducting group strip searches during the intake process . . . groups of two or three [prisoners] were only strip searched together in circumstances when large numbers of [prisoners] were waiting to be processed.”¹⁶⁰ The Sixth Circuit, relying on their decision in *Sumpter*, concluded that even though individual strip searches were possible, the need for the search was one of expediency to avoid significant delays.¹⁶¹ Being expedient and avoiding significant delays promotes safety and addressing health problems as quickly as possible.¹⁶² Ultimately, because the plaintiff did “not provid[e] evidence questioning the legitimacy of the [defendant’s] proffered justification[.]” the Sixth Circuit reversed the District Court’s decision and remanded with instructions to grant summary judgment in favor of the defendants.¹⁶³

After *Bell*, *Florence*, and several of the lower courts decisions, the only articulable “rule” is that group strip searches should not be a part of everyday practice or permitted under a blanket policy. But even that articulation is not wholly accurate. After reading the lower court decisions, a blanket group strip search policy is arguably constitutional with the installation of privacy curtains or similar privacy measures.¹⁶⁴ On the other hand, group strip searches are arguably only reasonable in limited circumstances or as a rarely used exception to individual strip searches.¹⁶⁵

Without a uniform rule to help courts and correctional institutions determine whether a particular group strip search is reasonable, prisoners will continue to be deprived of their dignity and fundamental right of privacy. To ensure that prisoners are being treated equally across all jurisdictions, courts should apply the “less invasive alternative test” to determine if a group strip search was “reasonable.”¹⁶⁶

159. *See id.* at 934-35.

160. *Id.* at 936.

161. *See id.*

162. *See id.*

163. *See id.* at 932, 936.

164. *See supra* text accompanying notes 108–22; *see also supra* notes 118–20, 136 and accompanying text.

165. Riot situations, emergencies, and other exigent circumstances would justify the need to conduct group strip searches rather than taking less invasive measures. *See Sumpter v. Wayne Cty.*, 868 F.3d 473, 498 (6th Cir. 2017) (Clay, J., dissenting); *Stoudemire v. Mich. Dep’t of Corr.*, 705 F.3d 560, 573-74 (6th Cir. 2013).

166. *See infra* Section III.C.

III. ANALYSIS

In *Florence*, the Supreme Court upheld a correctional institution's blanket strip search policy that subjected all prisoners to strip searches after returning from outside the correctional institution or from contact visits.¹⁶⁷ The correctional institution argued that a blanket strip search policy was necessary to ensure the security and safety of all persons inside the correctional institution.¹⁶⁸ Even though the blanket strip search policy in *Florence* was ultimately deemed constitutional, the Supreme Court cautioned that strip searches conducted in an unreasonable manner might be unconstitutional, and that such a determination requires a fact-specific analysis.¹⁶⁹

A. *Three-Step Reasonableness Analysis that Lower Courts Utilize to Address the Constitutionality of Group Strip Searches in Correctional Institutions*

In addressing group strip searches, lower courts perform a three-step analysis: (1) determining the nature of the intrusion; (2) evaluating the need for the search; and (3) determining whether the strip search was reasonably related to legitimate penological interests.¹⁷⁰ The first step requires that courts examine the scope of the privacy invasion, the manner in which the search was conducted, and the location of the search.¹⁷¹ When analyzing the second step, and evaluating the need for the search, courts give deference to the CO's discretion, based on the specific circumstances.¹⁷² The third step requires that courts weigh the need for the group strip search against the prisoners' privacy interests to determine whether the group strip search was related to a legitimate penological interest.¹⁷³

When lower courts have addressed group strip searches, the focus of the analysis has been on the third step.¹⁷⁴ When analyzing the first step, courts start with the basic presumption that a strip search, even a private strip search, is inherently an invasion of privacy.¹⁷⁵ Several lower courts

167. See *Florence v. Bd. of Chosen Freeholders*, 566 U.S. 318, 322, 339 (2012).

168. See *id.* at 333–34.

169. See *id.* at 329–30, 339; see also *Sumpter*, 868 F.3d at 483 n.3.

170. See *Sumpter*, 868 F.3d at 482; see also *Bell v. Wolfish*, 441 U.S. 520, 559 (1979); *Stoudemire v. Mich. Dep't of Corr.*, 705 F.3d 560, 572 (6th Cir. 2013).

171. See, e.g., *Sumpter*, 868 F.3d at 482; *Stoudemire*, 705 F.3d at 572.

172. See, e.g., *Sumpter*, 868 F.3d at 482; *Stoudemire*, 705 F.3d at 572.

173. See, e.g., *Sumpter*, 868 F.3d at 482; *Stoudemire*, 705 F.3d at 572.

174. See, e.g., *Williams III*, 907 F.3d 924, 935–36 (6th Cir. 2018), *reh'g denied*, 2018 U.S. App. LEXIS 34594 (6th Cir. Dec. 7, 2018); *Stoudemire*, 705 F.3d at 571–74; *Lopez v. Youngblood*, 609 F. Supp. 2d 1125, 1134–39 (E.D. Cal. 2009).

175. See, e.g., *Bell*, 441 U.S. at 559–60; *Stoudemire*, 705 F.3d at 572–73.

have agreed that a group strip search is an enhanced invasion of privacy as compared to a private strip search.¹⁷⁶ After relying on these general principles, courts move on to the next step, which is evaluating the need for the particular group strip search.¹⁷⁷

Concerning strip searches generally, discovering contraband to maintain safety and security at a correctional institution has been considered a legitimate justification for conducting strip searches.¹⁷⁸ In some situations, if COs do not provide a justification, courts will assume that discovering contraband was the reason unless proven otherwise.¹⁷⁹ But the need to discover contraband cannot be a one-size-fits-all justification.

Lower courts spend the majority of their analysis trying to determine whether the need to conduct the group strip search was reasonably related to a legitimate penological interest.¹⁸⁰ In other words, lower courts must decide if the need to conduct the group strip search outweighs the prisoner's right to privacy.¹⁸¹

B. The Scale is Tipped in the Correctional Institution's Favor Even Before the Prisoner Files a Lawsuit

Step three of the analysis requires courts to weigh the prisoners' privacy interests against the needs of the correctional institution.¹⁸² When evaluating the need for the strip search, courts have admitted that deference is given to COs because the courts are not experts on what is necessary to maintain safety and security in a correctional institution, even if courts do not agree with the method.¹⁸³ Several courts agree that maintaining safety and security at a correctional institution is a top priority.¹⁸⁴

176. See *Sumpter*, 868 F.3d at 483; *Williams I*, 771 F.3d 945, 953 (6th Cir. 2014); *Stoudemire*, 705 F.3d at 574; *Crump v. Passaic Cty.*, 147 F. Supp. 3d 249, 256 (D.N.J. 2015).

177. See *Bell*, 441 U.S. at 559; *Stoudemire*, 705 F.3d at 573.

178. See *Florence v. Bd. of Chosen Freeholders*, 566 U.S. 318, 326 (2012).

179. See *Stoudemire*, 705 F.3d at 573; see also *Lopez*, 609 F. Supp. 2d at 1137.

180. See, e.g., *Williams III*, 907 F.3d 924, 935–36 (6th Cir. 2018), *reh'g denied*, 2018 U.S. App. LEXIS 34594 (6th Cir. Dec. 7, 2018); *Stoudemire*, 705 F.3d at 571–74; *Lopez*, 609 F. Supp. 2d at 1134–39 (E.D. Cal. 2009).

181. See *Florence*, 566 U.S. at 327.

182. See *Sumpter*, 868 F.3d at 483.

183. See *Florence*, 566 U.S. at 326; see also *Sumpter*, 868 F.3d at 480–81; *Stoudemire*, 705 F.3d at 571–72; *Young v. Cty. of Cook*, 616 F. Supp. 2d 834, 847 (N.D. Ill. 2009).

184. See *Florence*, 566 U.S. at 333–34; see also *Bell v. Wolfish*, 441 U.S. 520, 546 (1979); *Sumpter*, 868 F.3d at 481; *Lewis*, 870 F.3d at 369; *Stoudemire*, 705 F.3d at 573.

1. Courts Give Correctional Officers Too Much Deference

In the brief history of cases that have dealt with group strip searches, the prisoners usually prevailed where the CO did not provide a penological justification or, at least, did not provide a reasonable justification.¹⁸⁵ If no penological justification is provided, one court suggested that the court should assume that a strip search was conducted to find contraband unless evidence indicates otherwise.¹⁸⁶ Because the courts rely so heavily on the COs' discretion, prisoners have the additional burden of disproving the presumption that the strip search was conducted to find contraband.¹⁸⁷ Prisoners must disprove the presumption, even when no penological justification is provided.¹⁸⁸

COs cannot provide vague, generic explanations as to why conducting a group strip search was necessary.¹⁸⁹ One court suggested that the need to conduct a group strip search must be "unusually dire" before that need can outweigh the privacy interests of the prisoners.¹⁹⁰ Prisoners might have a valid constitutional claim if the justification, or lack thereof, for the group strip search does not validate the CO's actions.¹⁹¹ Courts should not merely rely on the CO's opinion without first hearing the full extent of the circumstances surrounding the group strip search.¹⁹² Then, after being fully informed, courts should decide whether the prisoner is raising a valid constitutional claim.¹⁹³

COs might have a valid penological interest in conducting strip searches in general, but COs must have an additional justification to conduct group strip searches without taking extra steps to ensure some

185. See *Stoudemire*, 705 F.3d at 574; see also *Lopez*, 609 F. Supp. 2d at 1138.

186. See *Stoudemire*, 705 F.3d at 573; see also *Lopez*, 609 F. Supp. 2d at 1137.

187. See *Sumpter*, 868 F.3d at 484; see also *Lewis*, 870 F.3d at 369.

188. See *Sumpter*, 868 F.3d at 484; see also *Lewis*, 870 F.3d at 369.

189. See *Sumpter*, 868 F.3d at 497 (Clay, J., dissenting) (noting that a "blanket explanation that whenever the county jail has to process a lot of female [prisoners], they can be publicly strip searched in groups, cannot be justified").

190. See *Williams I*, 771 F.3d 945, 954 (6th Cir. 2014) (citing *Florence*, 566 U.S. at 327).

191. See *Sumpter*, 868 F.3d at 495 (Clay, J., dissenting) (quoting *Turner v. Safley*, 482 U.S. 78, 84 (1987)) ("[T]he Supreme Court has instructed that 'federal courts must take cognizance of the valid constitutional claims of prison[ers].'"); see also *Williams III*, 907 F.3d 924, 936 (6th Cir. 2018) (reversing the District Court's decision to grant the plaintiff summary judgment because the plaintiff did not "provid[e] evidence questioning the legitimacy of the [defendant's] proffered justification"), *reh'g denied*, 2018 U.S. App. LEXIS 34594 (6th Cir. Dec. 7, 2018).

192. See *Young v. Cty. of Cook*, 616 F. Supp. 2d 834, 847 (N.D. Ill. 2009).

193. See *id.* (explaining that even though deference is given to the COs' expertise, "[COs] are still obliged to present evidence in support of their blanket strip search policy").

privacy.¹⁹⁴ Some other justifications that have generally been accepted by the lower courts involve riot situations, emergencies, and exigent circumstances that would justify the need to conduct group strip searches rather than taking less invasive measures.¹⁹⁵

Courts give deference to the COs' judgments, but courts should also scrutinize such judgments. Scrutinizing the COs' judgments would ensure that the penological justifications were the justifications at the time the search was conducted and not the justifications fabricated as a result of a prisoner filing a lawsuit.¹⁹⁶ Prisoners do not necessarily retain all rights while incarcerated, but prisoners are still human beings, and their dignity should be protected.¹⁹⁷

If COs cannot prove that conducting group strip searches contributed to the purpose for the strip search any more than a private strip search would have, then the COs likely acted with a lack of regard for the prisoners' privacy rights.¹⁹⁸ Unless either courts or prisoners challenge deference, courts are likely to find that the penological interest justified the need to conduct the group strip searches, even if that results in the violation of the prisoners' Fourth Amendment rights.¹⁹⁹

2. How Prisoners Can Rebut Such Deference

When courts give COs such deference, prisoners are already working from behind before even filing a lawsuit. Not only do prisoners have to prove the CO's conduct violated a clearly established Fourth Amendment right, but prisoners must also prove the group strip search was not conducted to find contraband.²⁰⁰ As discussed below, presenting evidence that challenges the justification for the group strip search,²⁰¹ or presenting

194. See *Sumpter*, 868 F.3d at 482; see also *Stoudemire v. Mich. Dep't of Corr.*, 705 F.3d 560, 573–74 (6th Cir. 2013); *Williams II*, 210 F. Supp. 3d 897, 906 (N.D. Ohio 2016), *rev'd and remanded*, 907 F.3d 924 (6th Cir. 2018).

195. See *Sumpter*, 868 F.3d at 498 (Clay, J., dissenting); see also *Stoudemire*, 705 F.3d at 573–74.

196. See *Sumpter*, 868 F.3d at 492 (Clay, J., dissenting); see also *Williams I*, 771 F.3d 945, 951–52 (6th Cir. 2014) (explaining that a CO's statement that there was a legitimate penological justification for conducting the strip search “does not conclude the [court's] inquiry”).

197. See *Sumpter*, 868 F.3d at 495, 497 (Clay, J., dissenting) (stating that COs “must be held to a certain standard of human decency and civility” and the group strip searches at issue “were carried out according to the subjective and arbitrary whims of the [CO]”); *Williams I*, 771 F.3d at 953 (quoting *Evans v. Stephens*, 407 F.3d 1271, 1281 (11th Cir. 2005)).

198. See *Crump v. Passaic Cty.*, 147 F. Supp. 3d 249, 256 (D.N.J. 2015).

199. See *Sumpter*, 868 F.3d at 484; see also *Lewis v. Sec'y of Pub. Safety & Corr.*, 870 F.3d 365, 369 (5th Cir. 2017).

200. See *Sumpter*, 868 F.3d at 481; see also *Crump*, 147 F. Supp. 3d at 256. *But see Lopez v. Youngblood*, 609 F. Supp. 2d 1125, 1138 (E.D. Cal. 2009).

201. See *infra* Section III.B.2.a.

evidence that a less invasive alternative to the group strip search was available, may be sufficient for prisoners to prove the group strip search was unreasonable and therefore unconstitutional.²⁰²

a. Challenge the Penological Justification

Group strip searches may be necessary in some situations to maintain safety and security at the correctional institution.²⁰³ On the flip side, however, general assertions of limited space and resources have not been upheld as adequate penological justifications.²⁰⁴ To challenge COs' discretion, prisoners must provide substantial evidence that proves that the CO's decision to group strip search the prisoners was an exaggerated response to the circumstances that prompted the need for a strip search.²⁰⁵ Because courts rely on the CO's deference, however, courts will not doubt the CO's discretion absent a valid reason to do so.²⁰⁶

If prisoners can provide evidence that a group strip search was calculated harassment or conducted with evil intent, the prisoners may have a better chance of rebutting the penological justifications.²⁰⁷ Alternatively, prisoners can challenge the penological justification by offering evidence that proves that a less invasive alternative was available other than conducting a group strip search.²⁰⁸

b. Less Invasive Alternatives Test

The Supreme Court expressly rejected the "least restrictive alternative" test;²⁰⁹ however, what the Supreme Court did deem a factor to consider is whether at the time of the group strip search there was a *less* invasive alternative.²¹⁰ The correctional institution is not required to employ the least invasive alternative, but rather, when less invasive

202. See *infra* Section III.B.2.b.

203. See *supra* Section III.B.2.

204. See *Lopez*, 609 F. Supp. 2d at 1136–37.

205. See *Sumpter*, 868 F.3d at 481; *Crump*, 147 F. Supp. 3d at 256; but see *Lopez*, 609 F. Supp. 2d at 1138.

206. See *Sumpter*, 868 F.3d at 484; see also *Lewis v. Sec'y of Pub. Safety & Corr.*, 870 F.3d 365, 369 (5th Cir. 2017); *Farmer v. Perrill*, 288 F.3d 1254, 1261 (10th Cir. 2002).

207. See *Stoudemire v. Mich. Dep't of Corr.*, 705 F.3d 560, 571 (6th Cir. 2013); see also *Lopez*, 609 F. Supp. 2d at 1134.

208. See *Farmer*, 288 F.3d at 1258.

209. See *Turner v. Safley*, 482 U.S. 78, 90–91 (1987) (explaining that "[COs] do not have to set up and then shoot down every conceivable alternative method of accommodating the [prisoner's] constitutional complaint" however, the existence of alternatives may be evidence that the correctional institution's policy is an exaggerated response to the problem).

210. See *id.*; see also *Williams I*, 771 F.3d 945, 954–55 (6th Cir. 2014); *Farmer*, 288 F.3d at 1260–61; *Crump*, 147 F. Supp. 3d at 256.

alternatives could have been utilized to obtain the same objective as the group strip search at little or no cost to the correctional institution, the need to conduct a group strip search is likely to be deemed unreasonable.²¹¹ Proof of less invasive alternatives that would adequately accommodate the needs of the correctional institution strengthens the prisoners' position. Not only does such evidence prove that the penological interest did not necessitate conducting a group strip search, but such evidence also proves the group strip search was an exaggerated response.²¹²

For example, in *Sumpter*, the majority concluded that because the prisoner did not refute the penological justifications, the majority accepted the penological justifications as valid.²¹³ On the contrary, the dissent suggested that to address the CO's health and safety concerns, instead of conducting group strip searches, the prisoners with medical cards could have been searched one at a time before processing the prisoners without medical cards.²¹⁴ Therefore, the CO's timing problem would be solved, and thus, the strip searches could have been less invasive and embarrassing for the prisoners.²¹⁵

In addition, unless circumstances such as a riot, emergency, or some other exigency arise, the most obvious alternative is to conduct individual strip searches.²¹⁶ One alternative may be the installation and utilization of privacy curtains or partitions.²¹⁷ Correctional institutions could adopt a

211. See *Sumpter*, 868 F.3d at 497 (Clay, J., dissenting); see also *Williams III*, 907 F.3d 924, 938 (6th Cir. 2018) (White, J., dissenting in part) (stating that the plaintiff "established through substantial evidence that there are obvious, easy alternatives to [defendant's] policy of strip-searching [prisoners] in the presence of other female [prisoners]"), *reh'g denied*, 2018 U.S. App. LEXIS 34594 (6th Cir. Dec. 7, 2018).

212. See *Williams II*, 210 F. Supp. 3d 897, 908 (N.D. Ohio 2016), *rev'd and remanded*, 907 F.3d 924 (6th Cir. 2018); see also *Turner*, 482 U.S. at 90. "Evidence of the regulation's impropriety exists when 'there are ready alternatives available to the regulations in question that fully accommodate the prisoner's rights at *de minimis* cost to valid penological interests,' that go untapped." *Williams III*, 907 F.3d at 938 (White, J., dissenting in part) (citing *Spies v. Voinovich*, 173 F.3d 398, 404 (6th Cir. 1999)).

213. See *Sumpter*, 868 F.3d at 484.

214. See *id.* at 497 (Clay, J., dissenting).

215. See *id.*

216. See *Williams I*, 771 F.3d 945, 955 (6th Cir. 2014); see also *Williams II*, 210 F. Supp. 3d at 907 (noting that a lieutenant "admitted that, while it may 'slow things down just a little bit,' the detainees could easily be strip searched individually versus as part of a group").

217. See *Williams II*, 210 F. Supp. 3d at 908; see also *Young v. Cty. of Cook*, 616 F. Supp. 2d 834, 840 (N.D. Ill. 2009) (noting that the defendants' expert was unaware of any other jails that have conducted group strip searches without privacy dividers in the last twenty years); *Williams III*, 907 F.3d 924, 938-39 (6th Cir. 2018) (White, J., dissenting) (explaining that in response to several lawsuits on the issue of group strip searches the Ohio Corrections Officer Basic Training Manual states that the "search area should provide privacy from outside observation[:] 1. [m]odesty panels are inexpensive and effective[:]; and 2. [u]se of these panels demonstrates good faith of a department to conduct searches

policy that requires COs to adhere to any requests by prisoners to be privately strip-searched rather than subject to a group strip search.²¹⁸ One court even suggested that prohibiting contact visits would be a less invasive alternative.²¹⁹ When these alternatives are available, but not utilized, lower courts should be hesitant to decide that the penological interest justified the need to conduct a group strip search.²²⁰

C. Recommendation

Prisoners face a particular challenge when alleging that group strip searches are unconstitutional because little case law on the issue exists.²²¹ The rule derived from *Florence* is that strip searches are constitutional if they are reasonably conducted and a legitimate penological justification outweighs the prisoner's right to privacy.²²² In *Florence*, the Supreme Court declined to carve out potential exceptions to the rule²²³ and did not consider the rule's application to group strip searches.²²⁴ Furthermore, the Court instructed lower courts to give deference to the discretion of the COs when determining whether a strip search is reasonably related to a legitimate penological interest.²²⁵

Such deference has tipped the scale in favor of COs even before prisoners file lawsuits.²²⁶ The Supreme Court is in the best position to ensure that prisoners and correctional institutions' interests are balanced on an even scale. The Supreme Court should formally adopt the use of the less invasive alternative test when determining whether the need to conduct a group strip search was reasonably related to a legitimate penological interest.²²⁷ Requiring courts to use the less invasive alternative test analysis will ensure COs' justifications were, at the time of the search, legitimate, rather than self-serving, and protect the already limited rights that prisoners retain while incarcerated.

in a constitutional manner"), *reh'g denied*, 2018 U.S. App. LEXIS 34594 (6th Cir. Dec. 7, 2018).

218. See *Lopez v. Youngblood*, 609 F. Supp. 2d 1125, 1135 (E.D. Cal. 2009) (citing *Fernandez v. Rapone*, 926 F. Supp. 255 (D. Mass. 1996)).

219. See *Bell v. Wolfish*, 441 U.S. 520, 559 n.40 (1979).

220. See *Williams I*, 771 F.3d at 950, 954; see also *Crump v. Passaic Cty.*, 147 F. Supp. 3d 249, 256 (D.N.J. 2015).

221. See *Stoudemire v. Mich. Dep't of Corr.*, 705 F.3d 560, 568 (6th Cir. 2013); see also *Crump*, 147 F. Supp. 3d at 258.

222. See *Florence v. Bd. of Chosen Freeholders*, 566 U.S. 318, 339 (2012); see also *Stoudemire*, 705 F.3d at 571.

223. See *Florence*, 566 U.S. at 338; see also *Bell*, 441 U.S. at 559; *Williams I*, 771 F.3d at 951; *Crump*, 147 F. Supp. 3d at 258.

224. See *Florence*, 566 U.S. at 338–39.

225. See *Bell*, 441 U.S. at 547.

226. See *infra* Section III.B.

227. See *infra* Section III.B.2.b.

The cases that discuss group strip searches imply that blanket group strip search policies that are part of the daily practices of the correctional institution are likely unconstitutional.²²⁸ But where is the line drawn between a group strip search being reasonably related to a legitimate penological interest and violating the prisoners' right to privacy? Group strip searches in situations like emergencies, riots, and lockdowns are unavoidable,²²⁹ and thus, a clear safety issue exists.

How far can the correctional institutions go beyond group strip-searching two to three prisoners when the intake area gets "busy" or a group of 10 prisoners before leaving a garment factory? The prisoner, or former prisoner, with limited resources is required to challenge the judgments of the COs which courts give practically unchecked deference, but the correctional institution is not required to explain why the installation of modesty panels could not be accomplished.²³⁰ Determining where the line should be drawn concerning the number of prisoners that can be strip-searched at once is likely too fact-specific to establish a bright line rule. Alternatively, however, requiring consideration or implementation of less invasive alternatives—modesty panels, policies where prisoners may request a private search, policies where prisoners with medical cards are searched first—before conducting a group strip search is likely an easier standard to apply.

A declaration by the Supreme Court, requiring the use of the less invasive alternative test, would help guide the lower courts' analysis of the third step: balancing the need to conduct a group strip search against the correctional institution's penological interests. Because alternatives that afford prisoners some privacy are available and would meet the same goal as conducting the group strip search at little to no cost, group strip searches, absent exigent circumstances, should be held as unreasonable and unconstitutional.²³¹

IV. CONCLUSION

Lower courts have applied the three-step analysis established by the Supreme Court when determining the reasonableness of group strip searches.²³² The three-step analysis requires: (1) determining the nature of the intrusion; (2) evaluating the need for the search; and (3) determining

228. See *Lopez v. Youngblood*, 609 F. Supp. 2d 1138 (E.D. Cal. 2009); see also *infra* Section II.B.2.

229. See *Stoudemire v. Mich. Dep't of Corr.*, 705 F.3d 560, 57273 (6th Cir. 2013); see also *Crump v. Passaic Cty.*, 147 F. Supp. 3d 249, 257 (D.N.J. 2015).

230. See *Williams III*, 907 F.3d 924, 939 (6th Cir. 2018) (White, J., dissenting), *reh'g denied*, 2018 U.S. App. LEXIS 34594 (6th Cir. Dec. 7, 2018).

231. See *Williams I*, 771 F.3d 945, 954–55 (6th Cir. 2014).

232. See *supra* Section II.B.

whether the strip search was reasonably related to legitimate penological interests.²³³ When conducting the analysis, most courts have concluded that with respect to group strip searches, steps one and two are well-established and are non-issues.²³⁴

Correctional institutions are “unique place[s] fraught with serious security dangers.”²³⁵ To combat these risks and dangers, the COs face situations that do not have simple solutions.²³⁶ Because the courts are not experts on the situations COs face in correctional institutions, courts rely on the COs’ instincts and discretion when evaluating the need for the search.²³⁷ Courts, however, should not blindly rely on the COs’ discretion. Prisoners need to challenge and provide evidence that undermines the COs’ discretion.²³⁸ The Supreme Court should formally adopt the use of the “less invasive alternative” test to analyze whether the need to conduct a group strip search was reasonably related to a legitimate penological interest.²³⁹ In most situations, if less invasive alternatives are available, courts should deem the group strip search unconstitutional.²⁴⁰

Even though the Supreme Court in *Florence* concluded that blanket strip search policies are constitutional, the Court also emphasized that the manner in which the search is conducted could render the search unconstitutional.²⁴¹ Protection of prisoners’ dignity is the responsibility of the COs, and the deference afforded to the COs should reflect this responsibility when deciding whether the group strip search was reasonably justified.²⁴² Prisoners have limited rights, but that does not mean they forfeited all of their freedoms.²⁴³

233. See *Sumpter v. Wayne Cty.*, 868 F.3d 473, 482 (6th Cir. 2017); see also *Stoudemire*, 705 F.3d at 572; *Farmer v. Perrill*, 288 F.3d 1254, 1259–60 (10th Cir. 2002).

234. See *Sumpter*, 868 F.3d at 483; see also *Williams I*, 771 F.3d at 953; *Crump*, 147 F. Supp. 3d at 256–57.

235. See *Bell v. Wolfish*, 441 U.S. 520, 559 (1979).

236. See *Bell*, 441 U.S. at 547; *Sumpter*, 868 F.3d at 481.

237. See *Florence v. Bd. of Chosen Freeholders*, 566 U.S. 318, 326 (2012); see also *Sumpter*, 868 F.3d at 480–81; *Stoudemire*, 705 F.3d at 571–72; *Farmer*, 288 F.3d at 1260; *Young v. Cty. of Cook*, 616 F. Supp. 2d 834, 847 (N.D. Ill. 2009).

238. See *Sumpter*, 868 F.3d at 484; see also *Lewis v. Sec’y of Pub. Safety & Corr.*, 870 F.3d 365, 369 (5th Cir. 2017); *Stoudemire*, 705 F.3d at 573; *Farmer*, 288 F.3d at 1261.

239. See *supra* Section III.C.

240. See *Williams III*, 907 F.3d 924, 938–39 (6th Cir. 2018) (White, J., dissenting), *reh’g denied*, 2018 U.S. App. LEXIS 34594 (6th Cir. Dec. 7, 2018).

241. See *Florence*, 566 U.S. at 338; see also *Williams I*, 771 F.3d 945, 951–52 (6th Cir. 2014).

242. See *Sumpter*, 868 F.3d at 495, 497 (Clay, J., dissenting); see also *Williams I*, 771 F.3d at 953 (citing *Evans v. Stephens*, 407 F.3d 1271, 1281 (11th Cir. 2005)).

243. See *Sumpter*, 868 F.3d at 481; see also *Williams I*, 771 F.3d at 945, 950; *Stoudemire*, 705 F.3d at 572; *Farmer*, 288 F.3d at 1259.