Note

Bare Analysis: Prison Visitor Strip and Body-Cavity Searches and Federal Courts' Insufficient Fourth Amendment Analysis

*Tristen Lindell**

Strip and body-cavity searches are among the most egregious invasions of personal privacy that the government can impose. The Fourth Amendment, as interpreted by the Supreme Court, demands that courts thoroughly analyze these searches. Courts must consider not only the suspicion that warranted the search, but the way the search was performed. But in the prison visitor context, U.S. Courts of Appeals have not done so. Instead of evaluating whether the search in question was conducted reasonably, including reasonableness in scope, courts have considered only whether prison officials possessed reasonable suspicion. This flies in the face of Supreme Court precedent.

This Note advocates for something better. It examines three approaches to Fourth Amendment analysis utilized by U.S. Courts of Appeals in the prison-visitor context. Among these options, this Note advances the Eleventh Circuit's approach, a totality-of-the-circumstances inquiry that captures the whole picture: the suspicion to warrant the search and the way the search was performed. By adopting this approach, courts can remain faithful to Supreme Court precedent and vindicate the constitutional rights of prison visitors.

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INTRODUCTION

"[W]e pay a high price for being the families of prisoners and I can say with conviction that strip searches are one of the biggest destroyers of families and are an attempt to punish us for crimes we have not committed."[1] In the context of visits to carceral facilities, testaments like this are not unique. Prison visitors are routinely subjected to highly invasive and traumatic search procedures.[2] From stripping completely naked in the company of complete strangers, to exposing their anal and vaginal cavities for visual inspection, to feeling prison officials probe and manipulate their most intimate parts,[3] prison visitors suffer harrowing experiences.

Courts have described these searches as "embarrassing and humiliating,"[4] "an invasion of personal rights of the first magnitude,"[5] and "demeaning, dehumanizing, undignified, humiliating, terrifying, unpleasant, embarrassing, [and] repulsive, signifying degradation and submission."[6]

Make no mistake, prison officials do not humiliate visitors for humiliation's sake. The Supreme Court has recognized that "[a] detention facility is a unique place fraught with serious security dangers. Smuggling of money, drugs, weapons, and other contraband is all too common an occurrence."[7] Carceral facilities have legitimate safety and security concerns that precipitate

1. *'We Pay a Very High Price for Being the Families of Prisoners': The Reality of Strip Searches in Prisons*, CONECTAS (Oct. 3, 2022) [hereinafter *The Reality of Strip Searches in Prisons*], https://www.conectas.org/en/noticias/we-pay-a-very-high-price-for-being-the-families-of-prisoners-the-reality-of-strip-searches-in-prisons [https://perma.cc/9DY6-USX6].

2. *See infra* Part I.C (summarizing the nature of strip and body-cavity searches and providing testaments from prison visitors).

3. *See, e.g.*, Gilmore v. Ga. Dep't of Corr., 144 F.4th 1246, 1252 (11th Cir. 2025) (en banc) (discussing a search in which a prison official lifted a person's breasts and swiped between her buttocks); Blackburn v. Snow, 771 F.2d 556, 561 n.3 (1st Cir. 1985) (explaining the procedures associated with strip, visual body-cavity, and manual body-cavity searches); Leverette v. Bell, 247 F.3d 160, 165 n.3 (4th Cir. 2001) (distinguishing between strip, visual body-cavity, and manual body-cavity searches).

4. Hunter v. Auger, 672 F.2d 668, 674 (8th Cir. 1982).

5. Chapman v. Nichols, 989 F.2d 393, 395 (10th Cir. 1993).

6. Florence v. Bd. of Chosen Freeholders, 566 U.S. 318, 345 (2012) (Breyer, J., dissenting) (quoting Mary Beth G. v. City of Chi., 723 F.2d 1263, 1272 (7th Cir. 1984)).

7. Bell v. Wolfish, 441 U.S. 520, 559 (1979).

even these intrusive searches.[8] Thus, the Supreme Court has authorized strip and body-cavity searches[9] of prison inmates under the Fourth Amendment, even in the absence of any individualized suspicion of wrongdoing.[10]

But prisoners and prison *visitors* "stand in wholly different circumstances,"[11] divided by the "harsh facts of criminal conviction and incarceration."[12] Prison visitors retain stronger Fourth Amendment rights against unreasonable searches, including strip and body-cavity searches.[13] The Supreme Court has not, however, evaluated strip or body-cavity searches where prison visitors are concerned.[14] Thus, federal circuit courts have been left with the task.

Unfortunately, many circuits have failed to properly conduct that analysis. The Supreme Court has made clear that courts should consider a search's scope and manner to determine its constitutionality,[15] particularly where strip and body-cavity searches are concerned.[16] But instead, federal courts have analyzed solely whether prison officials had reasonable suspicion to conduct the search.[17] The specific circumstances of that search, including its uniquely invasive scope and manner, are left out of

8. *See infra* Part I.B.

9. *See infra* Part I.C.

10. *See Bell*, 441 U.S. at 558–60 (concluding that body-cavity searches imposed after every contact visit were reasonable); *Florence*, 566 U.S. at 330 (concluding that body-cavity searches of detainees did not require reasonable suspicion).

11. New Jersey v. T.L.O., 469 U.S. 325, 338 (1985) (quoting Ingraham v. Wright, 430 U.S. 651, 669 (1977)).

12. Blackburn v. Snow, 771 F.2d 556, 563 (1st Cir. 1985).

13. *See, e.g.*, Thorne v. Jones, 765 F.2d 1270, 1276 (5th Cir. 1985) (reasoning that, between prison inmates and visitors, "it would be anomalous indeed to accord the former class greater protection from unreasonable searches than the latter"); Cates v. Stroud, 976 F.3d 972, 979 (9th Cir. 2020) ("Like prisoners, prison visitors retain only those rights that are consistent with the prison's significant and legitimate security interests. But visitors' privacy interests, and their threats to prison security, are distinct from those of inmates and detainees.").

14. Gilmore v. Ga. Dep't of Corr., 144 F.4th 1246, 1254 (11th Cir. 2025) (en banc).

15. *See infra* Part I.A (examining the Supreme Court's two-step approach to searches predicated upon reasonable suspicion, which considers the searches' scope and manner).

16. *See infra* Part II.A (explaining the Supreme Court's emphasis on scope and manner in the strip and body-cavity search context).

17. *See infra* Part II.B.1 (presenting this pattern of Fourth Amendment analysis).

the equation.[18] As a result, strip and body-cavity searches are analyzed in a vacuum, and the anguish and trauma suffered by prison visitors—whose only crime was endeavoring to visit their loved ones—are left without redress.

This Note has two objectives: (1) examine U.S. Courts of Appeals' inadequate analysis of strip and body-cavity searches of prison visitors; and (2) propose a solution that evaluates both reasonable suspicion *and* invasiveness, as the Fourth Amendment requires. To accomplish these objectives, this Note proceeds in three Parts.

Part I provides necessary background material. It begins with a brief discussion of the Fourth Amendment and the principles of Fourth Amendment analysis that the Supreme Court has instructed lower courts to apply in the search context.[19] Part I then presents the countervailing concerns that courts must weigh in each strip and body-cavity search case: the legitimate security concerns of carceral facilities and the harmfulness of strip and body-cavity searches.[20] Part I also emphasizes the variability of strip and body-cavity searches,[21] making case-by-case analysis of such searches crucial.

Part II examines the case law pertinent to strip and body-cavity searches of prison visitors. Part II first introduces the relevant Supreme Court precedent involving body-cavity searches of inmates.[22] Although prison visitors retain *stronger* Fourth Amendment protections than the inmate plaintiffs in those cases, the Supreme Court nevertheless articulated a holistic reasonableness analysis for strip and body-cavity searches of inmates.[23] Part II then analyzes much of the prison-visitor precedent from U.S. Courts of Appeals.[24] This Note focuses on three particular circuits that failed to sufficiently analyze the

18. *See infra* Part II.B.1 (identifying courts' neglect of individual searches' invasiveness).

19. *See infra* Part I.A.

20. *See infra* Parts I.B–C.

21. *See infra* Part I.C (asserting that strip and body-cavity searches are highly variable based on the search procedures themselves, the conduct of prison officials, and the characteristics of those searched).

22. *See infra* Part II.A.

23. *See infra id.* (emphasizing the reasonableness balancing test and four factors articulated in *Bell* and reiterated by Justice Breyer in his dissent in *Florence*).

24. *See infra* Part II.B (analyzing precedent from the Eighth, First, Second, Fourth, and Eleventh Circuits).

invasiveness of the searches before them: the First Circuit, Second Circuit, and Eighth Circuit.[25] Part II also presents case law from the Fourth Circuit and Eleventh Circuit, which have proposed methods of analysis that properly evaluate the invasiveness of individual searches.[26]

Circuit court precedent reflects three possible approaches to Fourth Amendment analysis of strip and body-cavity searches: (1) make reasonable suspicion determinative, regardless of a search's invasiveness ("the majority approach"); (2) weigh the government's suspicion directly with a search's invasiveness ("the Fourth Circuit approach"); and (3) evaluate reasonable suspicion and invasiveness in a "totality of the circumstances" analysis ("the Eleventh Circuit approach").[27] Part III analyzes each of these approaches, concluding that the Eleventh Circuit approach is best.[28]

Part III argues that the Eleventh Circuit approach is the only method that both complies with Supreme Court precedent and avoids practical concerns regarding difficulty of implementation.[29] The Eleventh Circuit approach, unlike the majority approach, properly accounts for the individual invasiveness of each search by examining its scope and manner, rather than merely determining whether prison officials had reasonable suspicion.[30] And unlike the Fourth Circuit approach, the Eleventh Circuit approach involves the commonly applied reasonable suspicion standard, rather than a nebulous, undefined, sliding scale of suspicion.[31]

But regardless of the method courts choose to adopt, this Note contends that a given strip or body-cavity search's invasiveness must be analyzed. Otherwise, courts fail to do right by the Fourth Amendment and those it protects.

25. *See infra* Part II.B.1.

26. *See infra* Parts II.B.2–3.

27. *See infra* Part III.

28. *See infra* Part III.C (explaining the strengths of the Eleventh Circuit approach to Fourth Amendment analysis).

29. *See infra* Part III.C.

30. *See infra id.* (identifying the Eleventh Circuit approach's consideration of searches' individual invasiveness and its consistency with Supreme Court precedent).

31. *See infra* Parts III.B–C (analyzing the practicality of the Fourth and Eleventh Circuit approaches).

I. BACKGROUND ON FOURTH AMENDMENT ANALYSIS AND STRIP AND BODY-CAVITY SEARCHES

To understand the inadequacy of Fourth Amendment analysis of prison visitor strip and body-cavity searches, several preliminary questions must be examined. What makes a search constitutional? What does the Fourth Amendment demand from courts' analysis of individual cases? What do strip and body-cavity searches entail? What security concerns give rise to these searches? And in what ways do these searches vary from one to the next? This Part examines all of these questions. Section A provides relevant Fourth Amendment background.[32] Section B presents the security concerns surrounding the smuggling of contraband into carceral facilities.[33] Finally, Section C examines the countervailing concerns presented by strip and body-cavity searches, including a discussion of the searches' variability and profound harmfulness.[34]

A. THE FOURTH AMENDMENT REQUIRES A HOLISTIC REASONABLENESS INQUIRY THAT ACCOUNTS FOR THE INVASIVENESS OF A SEARCH

The Fourth Amendment, by its terms, protects "[t]he right of the people to be secure in their persons . . . against unreasonable searches and seizures."[35] This language has confounded courts and legal scholars for centuries.[36] One question it raises is particularly relevant to the analysis of strip and body-cavity searches: What makes a search unreasonable? Indeed, this question is so paramount to Fourth Amendment analysis that

32. *See infra* Part I.A.

33. *See infra* Part I.B.

34. *See infra* Part I.C.

35. U.S. CONST. amend. IV.

36. *See, e.g.*, Chapman v. United States, 365 U.S. 610, 618 (1961) (Frankfurter, J., concurring) ("The course of true law pertaining to searches and seizures . . . has not—to put it mildly—run smooth."); Cady v. Dombrowski, 413 U.S. 433, 440 (1973) ("[T]he decisions of this Court dealing with the constitutionality of warrantless searches, especially when those searches are of vehicles, suggest that this branch of the law is something less than a seamless web."); Ronald J. Bacigal, *The Fourth Amendment in Flux: The Rise and Fall of Probable Cause*, 1979 U. ILL. L.F. 763, 763 (1979) ("[A]ttempting to comprehend the fourth amendment cases is rather like stepping through the Looking Glass with Alice. Precedents and analytical approaches appear and disappear like the Cheshire Cat.").

reasonableness has been repeatedly dubbed the "touchstone" of Fourth Amendment cases.[37]

But reasonableness was not always the touchstone. Prior to the 1960s, in which the Supreme Court decided *Camara v. Municipal Court of San Francisco*[38] and *Terry v. Ohio*,[39] the Fourth Amendment's Warrant Clause dominated Fourth Amendment jurisprudence.[40] Searches conducted without a warrant supported by probable cause were presumptively unconstitutional.[41] The Reasonableness Clause, prohibiting unreasonable searches,[42] served a secondary role.[43] It was sometimes used to license warrantless searches, but it never authorized searches—at least in the criminal investigation context—on anything less than probable cause.[44]

That changed when the Supreme Court decided *Camara* and *Terry*. In *Camara*, the Court proposed for the first time that courts measure the reasonableness of a search by "balancing the need to search against the invasion which the search entails."[45]

37. *See, e.g.*, Pennsylvania v. Mimms, 434 U.S. 106, 108–09 (1977) ("The touchstone of our analysis under the Fourth Amendment is always 'the reasonableness in all the circumstances of the particular governmental invasion of a citizen's personal security.'" (quoting Terry v. Ohio, 392 U.S. 1, 19 (1968))); Ohio v. Robinette, 519 U.S. 33, 39 (1996) ("We have long held that the 'touchstone of the Fourth Amendment is reasonableness.'" (quoting Florida v. Jimeno, 500 U.S. 248, 250 (1991))); Lange v. California, 141 S. Ct. 2011, 2017 (2021) ("[T]he ultimate touchstone of the Fourth Amendment is 'reasonableness.'" (quoting Brigham City v. Stuart, 547 U.S. 398, 403 (2006))).

38. 387 U.S. 523 (1967).

39. 392 U.S. 1 (1968).

40. Scott E. Sundby, *A Return to Fourth Amendment Basics: Undoing the Mischief of* Camara *and* Terry, 72 MINN. L. REV. 383, 386 (1988).

41. *See id.* ("Prior to *Camara*, fourth amendment analysis had a relatively high amount of predictability: the Court presumed that a warrant based on probable cause was required before the police could perform a search or arrest.").

42. U.S. CONST. amend. IV.

43. Sundby, *supra* note 40, at 386.

44. *See id.* at 386–89 (explaining that, due to the warrant requirement's rigidity, it was ordinarily applied only to the criminal context; but when it was applied, "probable cause remained sacrosanct, immune from modification even in the name of reasonableness").

45. Camara v. Mun. Ct. of S.F., 387 U.S. 523, 536–37 (1967); *see also* Sundby, *supra* note 40, at 392–94 (contending that the Court in *Camara* adopted this balancing test to redefine probable cause).

Put another way, a court must weigh "legitimate governmental interests" against the citizen's privacy interests.[46]

The Court applied this test in *Terry*.[47] In *Terry*, a police officer observed two men on the street and suspected them of planning a robbery.[48] The officer approached the men, spoke briefly with them, grabbed one of the men, spun him around, and patted the outside of his clothing to search for a weapon, which the officer found.[49] This brief exchange resulted in the Supreme Court's landmark decision that "stop-and-frisk" searches and seizures may be initiated only upon a lesser showing of reasonable suspicion, rather than the more demanding requirement of probable cause and a warrant.[50]

The Supreme Court has described probable cause as a "fair probability" of finding contraband.[51] Contrarily, the Court has described reasonable suspicion as "minimal," "obviously less demanding" than probable cause, and merely "something more than an 'inchoate and unparticularized suspicion or "hunch."'"[52] Although it has admitted that these standards can be somewhat vague,[53] the Court has nonetheless asserted that reasonable suspicion is easier to satisfy than probable cause.[54]

46. *See* Wyoming v. Houghton, 526 U.S. 295, 299–300 (1999) (articulating the balancing test).

47. Terry v. Ohio, 392 U.S. 1, 20–21 (1968) ("[T]here is no ready test for determining reasonableness other than by balancing the need to search . . . against the invasion which the search . . . entails." (quoting *Camara*, 387 U.S. at 536–37)).

48. *Id.* at 6.

49. *Id.* at 6–7.

50. *See id.* at 27 ("Our evaluation of the proper balance that has to be struck in this type of case leads us to conclude that there must be a narrowly drawn authority to permit a reasonable search for weapons for the protection of the police officer, where he has reason to believe that he is dealing with an armed and dangerous individual, regardless of whether he has probable cause to arrest the individual for a crime."); *see also* United States v. Sokolow, 490 U.S. 1, 7 (1989) (observing that reasonable suspicion requires only minimal justification for making a stop, which is "obviously less demanding than . . . probable cause").

51. Illinois v. Gates, 462 U.S. 213, 238 (1983).

52. *Sokolow*, 490 U.S. at 7 (quoting *Terry*, 392 U.S. at 27).

53. *See id.* ("The concept of reasonable suspicion, like probable cause, is not 'readily, or even usefully, reduced to a neat set of legal rules.'" (quoting *Gates*, 462 U.S. at 232)).

54. *See id.* (calling reasonable suspicion "obviously less demanding" than probable cause).

Terry thus marked the creation of an objective, and less demanding, reasonable suspicion standard.[55] Courts prescribe the standard to measure the government's information warranting a particular search.[56] Originally used to authorize stop-and-frisk interactions between police and civilians,[57] the reasonable suspicion standard—as well as the reasonableness balancing test that engendered it—has been implemented in numerous contexts,[58] including strip and body-cavity searches of prison visitors.[59]

Although the Court loosened the prerequisites for initiating certain searches, the *Terry* Court stressed the importance of holistically analyzing the scope and manner of those searches. In *Terry*, the Court emphasized that the Fourth Amendment is meaningful only when a given search is evaluated "in light of the particular circumstances."[60]

The Court accounted for the particular circumstances in *Terry* with a two-step inquiry. It considered not only (1) whether the facts gave rise to reasonable suspicion,[61] but also (2) whether the search *itself* was conducted reasonably.[62] The Court asserted

55. *See* Florida v. Royer, 460 U.S. 491, 510–11 (1983) (Brennan, J., concurring) (recognizing the "*Terry* reasonable suspicion standard"); *Sokolow*, 490 U.S. at 7 (explaining the significance of the reasonable suspicion standard created in *Terry*).

56. *See* New Jersey v. T.L.O., 469 U.S. 325, 340–41 (1985) (prescribing a reasonable suspicion standard to searches in the school environment because "[t]he school setting . . . requires some modification of the level of suspicion of illicit activity needed to justify a search").

57. *See Terry*, 392 U.S. at 12 (referring to the conduct at issue as a "stop and frisk"); *id.* at 27 (authorizing a "reasonable search for weapons" when a "reasonably prudent" officer would be warranted in a belief of danger, premised upon "specific reasonable inferences which he is entitled to draw from the facts in light of his experience").

58. *See, e.g.*, *T.L.O.*, 469 U.S. at 341–47 (applying the balancing test and adopting a reasonable suspicion standard for searches of students by public school authorities); United States v. Montoya de Hernandez, 473 U.S. 531, 537–42 (1985) (applying the balancing test and adopting a reasonable suspicion standard to detain travelers at the U.S. border for more than a routine customs search and inspection).

59. *See infra* Part II.B (summarizing cases that applied the reasonable suspicion standard to prison-visitor strip and body-cavity searches).

60. *Terry*, 392 U.S. at 21.

61. *See id.* at 27–28 (analyzing the police officer's observations and whether they warranted suspicion that the men the officer observed were armed with weapons).

62. *See id.* at 29–30 (analyzing the search itself by virtue of the officer's patting and reaching into the defendant's clothing).

that "[t]he Fourth Amendment proceeds as much by limitations upon the *scope* of governmental action as by imposing preconditions upon its *initiation*."[63] In simple terms, even when a search is permitted, the government cannot search someone however it pleases; the government must conduct the search in a reasonable manner.

Accordingly, to assess the search's reasonableness, the Court analyzed the police officer's conduct during the search, which included patting and reaching into the defendant's clothing.[64] The search's scope and manner were "as vital a part of the inquiry as whether [the search was] warranted at all."[65] Thus, in a two-step inquiry, the Court explicitly accounted for any invasiveness posed by the search. Reasonable suspicion—the justification for initiating the search—was necessary, but not sufficient, for a constitutional search.

The Supreme Court has relied on this two-step approach to Fourth Amendment analysis in other contexts. For instance, in *New Jersey v. T.L.O.*, the Supreme Court adopted a reasonable suspicion standard for searches of public school students,[66] but cautioned that these searches, as conducted, must *also* be reasonable in scope.[67] This included considerations such as the nature of the search itself, the "age and sex of the student, and the nature of the alleged infraction."[68] Here too, reasonable suspicion was necessary, but not sufficient, to render a search reasonable.

The Court made that much clear in *Safford Unified School District v. Redding*, where it held that a strip search of a student was excessively intrusive, notwithstanding the reasonable suspicion that initially justified a search.[69] The Court's two-step

63. *Id.* at 28–29 (emphasis added).

64. *Id.*

65. *Id.* at 28.

66. *See* 469 U.S. 325, 341–42 (1985) ("Under ordinary circumstances, a search of a student by a teacher or other school official will be 'justified at its inception' when there are reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school.").

67. *Id.* at 341.

68. *Id.* at 342.

69. Safford Unified Sch. Dist. No. 1 v. Redding, 557 U.S. 364, 373–75 (2009) (finding reasonable suspicion of pill possession but also that "the content of the suspicion failed to match the degree of intrusion").

approach that explicitly accounts for invasiveness is not limited to frisks, as in *Terry*, but logically applies to strip searches as well.

The Court has further stressed that a search's reasonableness is highly contextual, predicated upon the "totality of the circumstances."[70] As Justice Breyer affirmed in *Georgia v. Randolph*, "the Fourth Amendment does not insist upon bright-line rules. Rather, it recognizes that no single set of legal rules can capture the ever-changing complexity of human life."[71] Indeed, in *Ohio v. Robinette*, the Court noted that it has "consistently eschewed bright-line rules, instead emphasizing the fact-specific nature of the reasonableness inquiry."[72] It proceeded to cite several examples of such precedent,[73] which observed that Fourth Amendment cases present "endless variations in the facts and circumstances,"[74] necessitating case-by-case consideration of the searches at issue.[75]

To be sure, the Supreme Court has applied bright-line rules in the Fourth Amendment context before—most notably, the presumption that a search requires a warrant issued upon probable cause.[76] But even this rule has become "riddled with exceptions" due to the varying circumstances that police and other government officials encounter.[77] This Note discusses one such

70. Ohio v. Robinette, 519 U.S. 33, 39 (1996).

71. 547 U.S. 103, 125 (2006) (Breyer, J., concurring).

72. *Robinette*, 519 U.S. at 39.

73. *See id.* (first citing Florida v. Royer, 460 U.S. 491 (1983); then citing Michigan v. Chesternut, 486 U.S. 567 (1988); and then citing Florida v. Bostick, 501 U.S. 429 (1991)).

74. *Id.* (quoting *Royer*, 460 U.S. at 506).

75. *See id.* ("[T]he proper inquiry necessitates a consideration of 'all the circumstances surrounding the encounter.'" (quoting *Bostick*, 501 U.S. at 439)); *see also Royer*, 460 U.S. at 506–07 (observing that even discrete Fourth Amendment contexts can present "endless variations in the facts and circumstances," making it difficult to "reduce to a sentence or a paragraph a rule" that determines whether a search is unreasonable).

76. *See* Katz v. United States, 389 U.S. 347, 357 (1967) (observing that warrantless searches, even with probable cause, have generally been held unlawful and per se unreasonable); Sundby, *supra* note 40, at 386 ("Prior to *Camara*, fourth amendment analysis had a relatively high amount of predictability: the Court presumed that a warrant based on probable cause was required before the police could perform a search or arrest.").

77. *See* United States v. Chaidez, 919 F.2d 1193, 1196–97 (7th Cir. 1990) (collecting cases, including those involving administrative searches, school searches, and border searches, demonstrating that the requirement for a warrant issued upon probable cause is "riddled with exceptions"); Sundby, *supra*

exception: strip and body-cavity searches of prison visitors, which require no warrant and no probable cause, but reasonable suspicion instead.[78] And when the Supreme Court has loosened the requirement for initiating a search (e.g., reasonable suspicion as opposed to probable cause), the Court has nevertheless required that the nature of the search itself be reasonable.[79] Accordingly, courts must analyze the circumstances of searches, including their invasiveness.

Strip and body-cavity searches require case-by-case consideration, which includes their invasive scope and manner. Otherwise, courts fail to perform the due diligence the Constitution demands.

B. CARCERAL FACILITIES HAVE LEGITIMATE SAFETY AND SECURITY CONCERNS THAT GIVE RISE TO STRIP AND BODY-CAVITY SEARCHES OF VISITORS

In the context of strip and body-cavity searches of prison visitors, the governmental interests guiding courts' application of the Fourth Amendment are obvious: preserving safety and security in carceral facilities.[80] Safety concerns surrounding

note 40, at 415 (highlighting that the Supreme Court should "apply the warrant and probable cause requirements with full vigor and stop riddling them with exceptions").

78. *See infra* Part II.B (presenting cases that have adopted and applied a reasonable suspicion requirement in this context).

79. *See, e.g.*, Terry v. Ohio, 392 U.S. 1, 28–29 (1968) ("The manner in which the . . . search [was] conducted is, of course, as vital a part of the inquiry as whether [it was] warranted at all. The Fourth Amendment proceeds as much by limitations upon the scope of governmental action as by imposing preconditions upon its initiation."); New Jersey v. T.L.O., 469 U.S. 325, 341 (1985) (explaining that, to be reasonable, any search "as actually conducted" must be reasonable in scope (quoting *Terry*, 392 U.S. at 20)); Safford Unified Sch. Dist. No. 1 v. Redding, 557 U.S. 364, 375 (2009) (quoting *T.L.O.*, 469 U.S. at 341–42) (noting the same rule and that, in the context of schools, a search's indignity, a student's age and sex, and the nature of a student's infraction bear on a search's reasonableness).

80. *See, e.g.*, Bell v. Wolfish, 441 U.S. 520, 559 (1979) ("A detention facility is a unique place fraught with serious security dangers. Smuggling of money, drugs, weapons, and other contraband is all too common an occurrence."); Florence v. Bd. of Chosen Freeholders, 566 U.S. 318, 330 (2012) ("Correctional officials have a significant interest in conducting a thorough search as a standard part of the intake process."); Hunter v. Auger, 672 F.2d 668, 674 (8th Cir. 1982) ("Incidents in which inmates have obtained drugs, weapons, and other contraband are well-documented in case law and regularly receive the attention of the news media. Within prison walls, a central objective of prison administrators is to safeguard institutional security.").

contraband are not trivial.[81] According to a study encompassing approximately 20% of U.S. state prisons in 2018, prisons recovered an average of 29 weapons, 31 cell phones, and 34 controlled substances per 1,000 incarcerated individuals, with maximum reported values of 575 weapons, 366 cell phones, and 296 controlled substances.[82] In correctional facilities, weapons, drugs, alcohol, cell phones, and other varieties of contraband facilitate violence, addiction, and dangerous underground economies.[83]

Violence is an obvious concern. Although some studies have found weapon-related injuries to be relatively minimal,[84] others have reported that as many as 141 in 1,000 incarcerated men and 94 in 1,000 incarcerated women were harmed by another inmate with a weapon.[85] Drug contraband also contributes to violence, particularly in the prison context, where people are more likely to use drugs and suffer from substance use disorders than the general population.[86] Moreover, drugs propagate unregulated economies, providing an additional outlet for violent victimization.[87]

Beyond inmate-on-inmate violence, contraband can cause incarcerated individuals to harm themselves. In 2021, 58% of incarcerated individuals were drug-dependent.[88] Very few of these

81. M.O. Dix et al., *Contraband Detection Technology in Correctional Facilities*, NAT'L INST. OF JUST. 2 (2021), https://www.ojp.gov/pdffiles1/nij/grants/300856.pdf [https://perma.cc/3XL8SYJ7].

82. Bryce Peterson et al., *Prison Contraband: Prevalence, Impacts, and Interdiction Strategies*, 8 CORR. 428, 434, 437 (2023).

83. *Id.* at 428.

84. *See id.* at 430 ("Surveys of contraband-related injuries found 1.57 in every 1,000 individuals in maximum-and-medium security facilities, and .97 in every 1,000 staff, were injured by contraband weapons over a twelve-month period . . . .").

85. *Id.*

86. *See* Caitlyn Norman, *A Global Review of Prison Drug Smuggling Routes and Trends in the Usage of Drugs in Prisons*, 5 WIRES FORENSIC SCI., Mar./Apr. 2023, at 2 ("A large proportion of people in prison have been found to have a history of substance use disorders as well as significantly greater levels of drug use than in the general population. . . . The presence and use of drugs in prisons can lead to increased prisoner-on-prisoner and prisoner-on-staff assaults . . . ." (citations omitted)).

87. Peterson et al., *supra* note 82, at 430.

88. *See* M.N. Parsons et al., *Detecting and Managing Drug Contraband*, NAT'L INST. OF JUST. 1 (2021), https://www.ojp.gov/pdffiles1/nij/grants/302135.pdf [https://perma.cc/KKV9K5UZ] ("The fact that 58% of inmates continue to meet the criteria for drug

individuals receive adequate treatment—a meager 20% of inmates with drug abuse problems are involved in prison-based treatment programs.[89] These sobering statistics tragically implicate death. In California alone, almost 1,000 drug overdoses occurred in prisons in 2018,[90] and overdoses increased by 113% between 2016 and 2019.[91] Drug use also increases the risk of suicide.[92]

When considering the troubling effects of contraband on incarcerated individuals, it is important to note that numerous studies indicate prison visits do not meaningfully increase the volume of contraband in prisons.[93] In fact, prison visits have been linked to "improve[d] safety and security by lowering rates of institutional misconduct and recidivism."[94] Indeed, prison visitation has been linked to decreases in misconduct by as much as 25% and in recidivism by 26%.[95]

Nevertheless, the minimal literature that does exist is inconclusive at best. Some literature and prison staff have

dependence during incarceration underscores the problem of drug availability and continued abuse within correctional facilities.").

89. *Id.* at 4.

90. M.O. Dix et al., *supra* note 81, at 2.

91. M.N. Parsons et al., *supra* note 88, at 2.

92. *See* Norman, *supra* note 86, at 2 ("The presence and use of drugs in prisons can lead to . . . a higher risk of suicide in prison.").

93. *See, e.g.*, Sarah Aukamp, *Correlates of Contraband in US Prisons: A Summary of Recent Findings*, URB. INST. 1 (2024), https://www.urban.org/sites/default/files/2024-10/Correlates_of_Contraband_in_US_Prisons.pdf [https://perma.cc/Z5LV-T2PB] ("[P]rison visitation was not related to the volume of contraband, even though it is commonly thought that visitors are a major conduit of contraband in prisons."); Peterson et al., *supra* note 82, at 436 ("Despite the concern about visitors, it is important to note that prior research has not found any significant increase in overall levels of contraband as a result of prison visits."); *see also* Rochisha Shukla et al., *The Scope, Severity, and Interdiction of Contraband Cell Phones in Correctional Facilities*, URB. INST. 4–5 (2024), https://www.urban.org/sites/default/files/2024-01/The_Scope_Severity_and_Interdiction_of_Contraband_Cell_Phones_in_Correctional_Facilities.pdf [https://perma.cc/L7JW-JVB2] (highlighting that, of twenty state departments of corrections surveyed, "most respondents reported that visitors, vendors/contractors, and volunteers in prisons posed the least severe threat as cell phone contraband entry points").

94. Peterson et al., *supra* note 82, at 436; *see also* Aukamp, *supra* note 93, at 3 (observing that contact visits and related programs "provide more agency to incarcerated people and facilitate successful community reintegration").

95. Evelyn F. McCoy & Breanna Boppre, *Making Jail and Prison Visits Easier Makes Communities Safer*, URB. INST. (Mar. 13, 2024), https://www.urban.org/urban-wire/making-jail-and-prison-visits-easier-makes-communities-safer [https://perma.cc/E67N-UVRZ].

continued to point to visitors as a source of smuggling.[96] According to these sources, visitors rely upon contact visits and body-cavity smuggling to traffic contraband into prisons.[97] This explains carceral facilities' reliance upon the intrusive search techniques discussed in the following Section.[98]

C. STRIP AND BODY-CAVITY SEARCHES ARE HIGHLY VARIABLE AND PROFOUNDLY HARMFUL

Strip and body-cavity searches in particular feature the "endless variations" of Fourth Amendment possibilities contemplated by the Supreme Court.[99] Although courts often use "strip search" as a blanket term,[100] the searches that fall under this umbrella vary in important respects. Specifically, courts have converged on three categories, each more invasive than the last: strip searches, visual body-cavity searches, and manual body-cavity searches.[101]

96. *See* M.N. Parsons et al., *supra* note 88, at 4 ("Points of entry are one of the most common routes for drug smuggling into facilities; inmates, visitors, and correctional staff bring drugs through the front door. This predominant route of drugs entering correctional facilities is exacerbated by contact visits . . . ."); Peterson et al., *supra* note 82, at 436 ("Nearly 38% of facilities reported that visitors bringing in contraband was a 'big problem.'"); William L Dittmann, Perceptions of and Experiences with Contraband in Correctional Facilities: A Qualitative Examination 23 (Dec. 2019) (Ph.D. dissertation, Sam Houston State University) (ProQuest) (citing social and legal visits as common methods of contraband entry into correctional facilities).

97. *See* M.N. Parsons et al., *supra* note 88, at 4 (asserting that point of entry smuggling is "exacerbated by contact visits"); Norman, *supra* note 86, at 5 ("Based on the strict regulations now at most prisons, visitors most often conceal items in body cavities, undergarments, and sometimes in babies' clothing or nappies/diapers.").

98. Before delving into those techniques, it is worth recognizing that carceral facilities are not constrained to strip and body-cavity searches in detecting and preventing smuggling. Carceral facilities can, and do, utilize a number of alternatives: Advanced scanning technology, canine sniffs, supervised visits, and non-contact visits each deter and mitigate the risk of contraband smuggling. *See* M.N. Parsons et al., *supra* note 88, at 4–7 (presenting these alternatives)*; see generally* M.O. Dix et al., *supra* note 81 (examining a variety of search technologies used in carceral facilities). These alternatives are not only prophylactic, but relatively unintrusive—at least when compared to strip and body-cavity searches.

99. Florida v. Royer, 460 U.S. 491, 506 (1983).

100. *See infra* notes 215–16, 230–33, 254 and accompanying text (identifying incorrect uses of the term "strip search").

101. *See, e.g.*, Blackburn v. Snow, 771 F.2d 556, 561 n.3 (1st Cir. 1985) (distinguishing between strip, visual body-cavity, and manual body-cavity

A strip search generally requires an individual to strip naked in order to be searched.[102] However, that individual's anal and genital areas (i.e., their body cavities) are not visually examined.[103] In a visual body-cavity search, however, an individual is forced to strip naked *and* expose their anal or genital areas for visual examination.[104] Searched individuals may be required to bend over, squat, lift their genitalia, or spread their genitalia and buttocks.[105] Finally, in a manual body-cavity search, the individual's anal or genital areas are not only visually scrutinized, but touched and probed by prison officials.[106]

As mentioned, legitimate security concerns precipitate these searches in the carceral context. The smuggling of drugs, weapons, and other contraband into prisons is no small concern; courts have made that much clear.[107] But it takes little imagination to envision how one might feel after being subjected to one of these searches.

Of all the searches subject to Fourth Amendment scrutiny, perhaps none violate bodily privacy and dignity more than strip and body-cavity searches.[108] After all, the typical search of one's person does not examine their naked body. Not so with strip and body-cavity searches.[109] This is especially true for visual and manual body-cavity searches, in which complete strangers scrutinize and physically probe the anal and genital regions—the

searches); Leverette v. Bell, 247 F.3d 160, 165 n.3 (4th Cir. 2001) (distinguishing between strip, visual body-cavity, and manual body-cavity searches).

102. *Blackburn*, 771 F.2d at 561 n.3.

103. *Id.*

104. *Id.*; *Leverette*, 247 F.3d at 165 n.3.

105. Florence v. Bd. of Chosen Freeholders, 566 U.S. 318, 343 (Breyer, J., dissenting) (citing Dodge v. County of Orange, 282 F. Supp. 2d 41, 46 (S.D.N.Y. 2003)); Bell v. Wolfish, 441 U.S. 520, 558 n.39 (1979).

106. *Blackburn*, 771 F.2d at 561 n.3; *Leverette*, 247 F.3d at 165 n.3.

107. *See supra* note 80 (collecting cases that discuss such security concerns).

108. *See, e.g.*, Mary Beth G. v. City of Chi., 723 F.2d 1263, 1272 (7th Cir. 1983) ("[W]e can think of few exercises of authority by the state that intrude on the citizen's privacy and dignity as severely as the visual anal and genital searches practiced here."); *Bell*, 441 U.S. at 576–77 (Marshall, J., dissenting) ("[T]he body-cavity searches of MCC inmates represent one of the most grievous offenses against personal dignity and common decency."); Calloway v. Lokey, 948 F.3d 194, 202 (4th Cir. 2020) (characterizing "a strip search of a prison visitor" as "an exceedingly personal invasion of privacy").

109. *See supra* notes 102–06 and accompanying text (explaining what strip and body-cavity searches ordinarily entail).

most personal areas of one's body.[110] Needless to say, these searches inflict much more than abstract harm.[111]

Strip and body-cavity searches cause profound trauma.[112] When victims are asked to discuss their experiences, bone-chilling testaments abound. One incarcerated woman described a visual body-cavity search—which required her to use her fingers to manually spread her vagina open—as "dehumanizing in every way," comparing it to "a forced self-rape act."[113] Another stated that with each search she experiences, she suffers "flashbacks, nightmares, night sweats, palpitations . . . inability to

110. *See Florence*, 566 U.S. at 343 (Breyer, J., dissenting) (emphasizing that searches involving "close observation of the private areas of a person's body," such as the testicles, vagina, or anus, "constitute a far more serious invasion" of privacy than other searches (citing Dodge v. County of Orange, 282 F. Supp. 2d 41, 46 (S.D.N.Y. 2003))).

111. Meher Babbar, Note, *The Fourth Amendment Stripped Bare: Substantiating Prisoners' Reasonable Right to Bodily Privacy*, 115 NW. U. L. REV. 1737, 1740 (2021) (noting that strip-search survivors suffer "a cognizable physical and psychological injury").

112. *See* Michelle VanNatta, *Conceptualizing and Stopping State Sexual Violence Against Incarcerated Women*, 37 SOC. JUST. 27, 34 (2010) (referring to the "trauma inflicted by prison strip-searches," some of which leave prisoners "so traumatized . . . that they refuse all visits, even from attorneys and their own children"); Chris Bath, *Police Searches of People: A Review of PACE Powers*, NAT'L APPROPRIATE ADULT NETWORK 2 (2022), https://www.appropriateadult.org.uk/phocadownload/Research/2022_Police_Searches.pdf [https://perma.cc/4CPS-EDFK] ("For strip and intimate searches, we can't remove the trauma but what [sic] we should always minimize it. We must treat people with respect and dignity, . . . This will help to reduce the highly traumatic use of force in searches."); *id.* at 46–47 (providing general observations and personal testaments regarding trauma in strip searches of youth); *Addressing Trauma: Eliminating Strip Searches*, JUV. L. CTR. 2 (2017), https://jlc.org/sites/default/files/publication_pdfs/AddressingTrauma-EliminatingStripSearch.pdf [https://perma.cc/XA4C-E88Z] ("Although strip searches are intended to locate hidden contraband, the practice is invasive, degrading, and can traumatize youth. . . . The experience of a strip search can cause youth to experience anxiety, depression, loss of concentration, sleep disturbances . . . shame, guilt, depression, and other lasting emotional scars."); *Invasive Search*, AM. C.L. UNION, https://www.aclu.org/invasive-search [https://perma.cc/DZ5R-JC8W] (presenting testaments from numerous female prisoners regarding searches of their body cavities, which either caused or triggered post-traumatic stress for several prisoners); Babbar, *supra* note 111, at 1740 ("Strip-search survivors do not suffer a merely abstract harm but rather a cognizable physical and psychological injury. . . . The resulting trauma has forced survivors into treatment for suicidal depression, [and] triggered memories of past sexual and physical abuse . . . .").

113. *Invasive Search*, *supra* note 112.

concentrate, [and] racing thoughts/panic attacks" that jeopardize her participation in prison programs.[114]

Indeed, the searches can be so egregious that prisoners refuse free legal services and visits from loved ones simply to avoid being strip searched.[115] One schoolchild victim of a body-cavity search lamented that, in the aftermath, she felt like she was "locked in a box" that was "collapsing around [her]," that no one cared, and that she might never "feel normal again."[116]

Prison visitors are likewise vocal about the significant harm they've experienced. One visitor relived her traumatizing visit to her incarcerated husband, during which she was aggressively asked "to spread [her] genitals wider" by a correctional officer.[117] Another woman, seventy-two years of age, was patted down after being forced to remove her bra, a process that "made her feel violated."[118] One visitor went as far as to label strip searches "one of the biggest destroyers of families" and "an attempt to punish us for crimes we have not committed."[119]

These are just a few examples. At best, strip and body-cavity searches are extremely harmful. At worst, they constitute sexual abuse.[120] Nonetheless, prison visitors, endeavoring to visit their

114. *Id.*

115. *See* VanNatta, *supra* note 112, at 34 ("One attorney noted that some prisoners are so traumatized by strip-searches that they refuse all visits, even from attorneys and their own children."); *see also Invasive Search*, *supra* note 112 ("[J]ust the thought of a visit causes me to have anxiety attacks for the strip search that I know awaits me . . . .").

116. Bath, *supra* note 112, at 47.

117. Anabel Sosa, *California Prisons Have a Drug Problem. A Strip Search Policy Takes Aim at Visitors*, CAL MATTERS (Aug. 8, 2023), https://calmatters.org/justice/2023/08/california-prison-strip-search [https://perma.cc/794SRDZ8].

118. Ben Conarck, *Women Describe 'Degrading' Strip Searches at Baker Prison Visitation*, FLA. TIMES-UNION (last updated Mar. 24, 2018), https://www.jacksonville.com/story/news/crime/2018/03/21/women-describe-degrading-strip-searches-at-baker-prison-visitation/12907325007 [https://perma.cc/D4YP-6S6M].

119. *The Reality of Strip Searches in Prisons*, *supra* note 1.

120. *E.g.*, VanNatta, *supra* note 112, at 29 ("[T]he strip-search is a form of sexual abuse."); Bath, *supra* note 112, at 7 ("People speak about being strip searched in the same terms as people talk about sexual abuse . . . ."); Emma McMurphy, *Is Strip-Searching a Form of Sexual Abuse?*, ROOTED IN RTS. (Feb. 23, 2018), https://rootedinrights.org/is-strip-searching-a-form-of-sexual-abuse [https://perma.cc/Y3R9-VH8A] ("[S]trip-searches are a type of sexual assault.").

incarcerated loved ones, expose themselves to the invasive procedures.[121]

Given the Supreme Court's emphasis on a holistic reasonableness inquiry,[122] the variability of strip and body-cavity searches is significant. As noted earlier, strip searches, visual body-cavity searches, and manual body-cavity searches involve different levels of invasiveness.[123] Searches differ not only in type, but in the characteristics of those searched. Certain victims experience greater trauma due to age, sex, gender, sexual orientation, religion, culture, ethnicity, disability, and previous sexual abuse or violence.[124] As a result, from person to person, the amount of trauma experienced can be "radically different."[125] This trauma is compounded when experienced at the hands of prison officials.[126]

Moreover, trauma can vary tremendously based on how prison officials conduct the searches.[127] The conditions, nature,

121. Of course, these procedures are prone to chill prison visits. *See* Calloway v. Lokey, 948 F.3d 194, 213 (4th Cir. 2020) (Wynn, J., dissenting) (observing that "humiliating, degrading, and intrusive searches" have the potential to deter prison visits and related programs); *cf. supra* note 115 and accompanying text (highlighting that prisoners may refuse visits to avoid being strip searched).

122. *See supra* notes 60–75 and accompanying text (discussing the Court's emphasis on a contextual reasonableness inquiry based on the totality of the circumstances of each search).

123. *See supra* notes 102–06 and accompanying text (explaining the different search procedures).

124. *See Body Searches: Addressing Risk Factors to Prevent Torture and Ill-Treatment*, PENAL REFORM INT'L 6 (2015), https://cdn.penalreform.org/wp-content/uploads/2016/01/factsheet-4-searches-2nd-v5.pdf [https://perma.cc/YB9P-UJRN] ("While body searches are humiliating and degrading for any prisoner, some groups are disproportionately affected, such as women, children, LGBTI detainees, members of certain religious groups, ethnic or cultural minorities or persons with disabilities. . . . Individuals may be particularly vulnerable . . . whether or not they belong to a particular group."); Bath, *supra* note 112, at 66–67 (observing that women, transgender individuals, and trauma survivors may experience exacerbated trauma from invasive searches); JUV. L. CTR., *supra* note 112, at 2 (identifying age and previous sexual abuse as aggravating factors); VanNatta, *supra* note 112, at 29 (identifying past experiences, "particularly prior experiences of violence or sexual assault," as relevant to the "degree of violation and harm" suffered).

125. Bath, *supra* note 112, at 67.

126. *See id.* at 46 (asserting that a search is more traumatic when experienced at the hands of "the people who are supposed to protect you and keep you safe").

127. *See* VanNatta, *supra* note 112, at 29 (explaining that the "degree of violation and harm such searches inflict" depends upon "the conditions of the

and extent of any touching involved, as well as the words and demeanor of prison officials at any point in the process, shape the prison visitor's experience.[128] Given these variables, it is unreasonable to presume that all prison officials search visitors with complete uniformity. Accordingly, the searches should not be evaluated in a vacuum—as too many courts have done.[129]

Strip and body-cavity searches are not just traumatic—they implicate different levels of harm based on the circumstances of each search. The varying nature of strip and body-cavity searches provides a crucial backdrop to courts' analysis of the resulting Fourth Amendment cases. Part II examines these cases, with a focus on the various methods of Fourth Amendment analysis from case to case.

II. FEDERAL COURTS' FOURTH AMENDMENT ANALYSIS OF STRIP AND BODY-CAVITY SEARCHES IN THE CARCERAL CONTEXT

Given the profound invasiveness and resulting trauma of strip and body-cavity searches in carceral facilities, it is unsurprising that they produce litigation.[130] Section A of this Part discusses the applicable Supreme Court precedent, while Section B discusses precedent from the circuit courts below, which more squarely addresses the rights of prison visitors. The circuit court precedent makes two things clear: Courts analyze invasive searches of prison visitors (1) inconsistently; and (2) with differing levels of adherence to Supreme Court precedent.

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touching, the nature of the touching, the demeanor and words of the guard before, during, and after the touching," among other factors); *see also* PENAL REFORM INT'L, *supra* note 124, at 4 ("Even where legitimate in principle, searches can constitute inhuman or degrading treatment if they are conducted in a way that is excessive, humiliating, or that creates a feeling of harassment or inferiority.").

128. VanNatta, *supra* note 112, at 29; *see* PENAL REFORM INT'L, *supra* note 124, at 4 (emphasizing the impact of a search's manner); Sosa, *supra* note 117 (highlighting a searching correctional officer's aggressive demeanor).

129. *See infra* Part II.B.1 (presenting examples of cases where the unique invasiveness of the particular search was not evaluated).

130. *See, e.g.*, Calloway v. Lokey, 948 F.3d 194, 211 (4th Cir. 2020) (Wynn, J., dissenting) (visual body-cavity search); Spear v. Sowders, 71 F.3d 626, 634 (6th Cir. 1995) (Jones, J., concurring in part and dissenting in part) (manual body-cavity search); Hunter v. Auger, 672 F.2d 668, 670 n.1 (8th Cir. 1982) (visual body-cavity search); Cates v. Stroud, 976 F.3d 972, 975 (9th Cir. 2020) (visual body-cavity search); Gilmore v. Ga. Dep't of Corr., 144 F.4th 1246, 1252 (11th Cir. 2025) (en banc) (manual body-cavity search).

A. THE U.S. SUPREME COURT'S STRIP AND BODY-CAVITY SEARCH JURISPRUDENCE

Although strip and body-cavity searches of prison visitors have proven both prevalent and problematic, the Supreme Court has never decided a strip and body-cavity case in the prison *visitor* context.[131] The Court has ostensibly left it up to the U.S. Courts of Appeals to grapple with the Fourth Amendment's protection of prison visitors. But the Supreme Court has not remained completely silent on the intersection of invasive searches and carceral facilities. The Court has decided two cases involving body-cavity searches of incarcerated individuals: *Bell v. Wolfish*[132] and *Florence v. Board of Chosen Freeholders*.[133]

In *Bell*, a collection of pretrial detainees and convicted inmates brought a class action against the Metropolitan Correctional Center (MCC), a New York City short-term correctional facility, for a number of questionable practices.[134] These practices included prohibiting the outside receipt of most books, food packages, and other personal items;[135] excluding inmates from their cells during random, unannounced searches;[136] crowding single-occupancy cells with multiple inmates;[137] and visually inspecting inmates' body cavities after contact visits.[138]

It is noteworthy that, amidst all of these practices, the Court was most troubled by the facility's visual body-cavity search requirement.[139] MCC required that inmates undergo a visual body-cavity search after every contact visit.[140] The Court noted the MCC's contention that these mandatory, invasive searches were necessary to discover and deter the smuggling of contraband into the facility.[141] However, it also acknowledged the significant invasiveness of these searches in particular: The Court

131. *See supra* note 14 and accompanying text.

132. 441 U.S. 520 (1979).

133. 566 U.S. 318 (2012).

134. *See Bell*, 441 U.S. at 523 (noting that the district court below "enjoined no fewer than 20 MCC practices" involving pretrial detainees).

135. *Id.* at 528.

136. *Id.* at 555.

137. *See id.* at 541–42 (evaluating the detainees' "double-bunking" claim).

138. *Id.* at 558.

139. *See id.* (noting that the body-cavity searches gave the Court "the most pause").

140. *Id.*

141. *Id.*

asserted that these searches gave it "the most pause."[142] In his dissent, Justice Marshall characterized the facility's searches as "one of the most grievous offenses against personal dignity and common decency."[143]

With the searches' invasiveness in mind, the Court articulated the applicable Fourth Amendment standards for searches generally. The Court first made clear that the Fourth Amendment only prohibits unreasonable searches, making the relevant inquiry whether the body-cavity searches were reasonable.[144] As for conceptualizing "reasonableness," the Supreme Court explicitly recognized that "[t]he test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application."[145] Accordingly, the Court instructed lower courts to balance the government's need for a search with the search's invasiveness "[*i*]*n each case*."[146] This individualized determination requires that courts consider four factors: the search's (1) justification; (2) place; (3) scope; and (4) manner.[147]

After prescribing this standard, the Court applied it to the body-cavity searches at issue. The Court began with the searches' justification and place, emphasizing that detention facilities are "fraught with serious security dangers."[148] It noted that this was true not only generally, but in this specific case, as the MCC had documented an inmate's attempt to smuggle contraband via body cavity.[149] Thus, the Court stressed MCC's justification for these searches, in the context of that particular facility.[150]

But the Court did not end its analysis there. The Court turned its attention to the scope and manner of the searches, emphasizing that these searches undoubtedly invaded the inmates' personal privacy.[151] It also noted the MCC's obligation to

142. *Id.*

143. *Id.* at 576–77 (Marshall, J., dissenting).

144. *Id.* at 558 (majority opinion) (citing Carroll v. United States, 267 U.S. 132, 147 (1925)).

145. *Id.* at 559.

146. *Id.* (emphasis added).

147. *See id.* ("Courts must consider the scope of the particular intrusion, the manner in which it is conducted, the justification for initiating it, and the place in which it is conducted.").

148. *Id.*

149. *Id.*

150. *See id.* (considering MCC's instance of contraband smuggling).

151. *Id.* at 560.

avoid abuse in these searches and instead conduct them in a reasonable manner.[152] This concern for searches' scope and manner is reminiscent of the Court's earlier admonition in *Terry* that the way a search is conducted is "as vital a part of the inquiry" as whether the search was justified in the first place.[153]

To end its inquiry, the Court framed the question before it as whether the visual body-cavity searches experienced by the inmates under the MCC rules could ever be conducted absent probable cause.[154] Ultimately, after balancing governmental interests with privacy interests, the Court answered this question in the affirmative.[155] But to do so, it did not balance the reasonableness of strip or body-cavity searches in the abstract.[156] Instead, consistent with its other Fourth Amendment jurisprudence,[157] the Court contemplated the specific search practices before it, reaffirming an individualized, holistic model of analysis for lower courts to follow.

Two additional points are worth highlighting. First, *Bell* dealt not with the rights of visitors, but with the rights of inmates.[158] The constitutional discrepancy between prisoners and free citizens is well established—the latter undoubtedly retain greater constitutional protections.[159] As the Supreme Court

152. *See id.* ("[A]buse cannot be condoned. The searches must be conducted in a reasonable manner.").

153. Terry v. Ohio, 392 U.S. 1, 28 (1968).

154. *Bell*, 441 U.S. at 560. To be sure, the Court did not conduct a piecemeal analysis of each search experienced by each plaintiff. In a class-action suit, this would obviously be unworkable. But by focusing on the search practices "contemplated by the MCC rules," the Court demonstrated that the Fourth Amendment analysis should be tethered to the scope and manner of the searches at issue. *Id.*

155. *See id.* (concluding that the searches could be conducted after "[b]alancing the significant and legitimate security interests of the institution against the privacy interests of the inmates").

156. *See id.* (explaining that the question before the Court required an examination of the specific search practices "contemplated by the MCC rules").

157. *See supra* Part I.A (discussing the Supreme Court's emphasis on contextual, case-by-case analysis of invasiveness under the Fourth Amendment).

158. *See Bell*, 441 U.S. at 560 (noting that the Court was dealing with the privacy interests of inmates).

159. Blackburn v. Snow, 771 F.2d 556, 563 (1st Cir. 1985) (asserting that "the 'harsh facts of criminal conviction and incarceration'" serve to "separate free citizens from those confined to penal institutions" (quoting New Jersey v. T.L.O., 469 U.S. 325, 338 (1985))); Cates v. Stroud, 976 F.3d 972, 979 (9th Cir. 2020) ("Like prisoners, prison visitors retain only those rights that are consistent with the prison's significant and legitimate security interests. But

observed in *Hudson v. Palmer*, "imprisonment carries with it the circumscription or loss of many significant rights."[160] Indeed, at the time of *Bell*, the Supreme Court framed its Fourth Amendment discussion as arguendo, "assuming for present purposes that inmates . . . retain some Fourth Amendment rights upon commitment to a corrections facility."[161] But despite prisoners' reduced Fourth Amendment protections, the Supreme Court gave even the MCC inmates their day in court.[162]

Second, the Court reached a narrow holding in *Bell*.[163] The Court did not conclude that all body-cavity searches of inmates are *per se* reasonable.[164] It did not dismiss the possibility that a standard of suspicion might sometimes be required for such searches.[165] Instead, the Court upheld the searches "as contemplated by the MCC rules."[166] This restraint is consistent with the Court's emphasis that Fourth Amendment concerns be balanced "[i]n each case."[167] Indeed, Justice Rehnquist, the writer of the majority opinion, would later reiterate the "fact-specific nature of the reasonableness inquiry," necessitating that "all the circumstances surrounding the encounter" be considered.[168]

visitors' privacy interests, and their threats to prison security, are distinct from those of inmates and detainees."); Hudson v. Palmer, 468 U.S. 517, 524 ("[I]mprisonment carries with it the circumscription or loss of many significant rights."); Thorne v. Jones, 765 F.2d 1270, 1276 (5th Cir. 1985) (reasoning that, between prison inmates and visitors, "it would be anomalous indeed to accord the former class greater protection from unreasonable searches than the latter").

160. 468 U.S. at 524.

161. *Bell*, 441 U.S. at 558.

162. *See id.* at 523–24 (explaining that the Court granted certiorari to resolve constitutional questions related to "conditions of confinement and practices" at the MCC); *supra* notes 139–55 and accompanying text (examining the *Bell* Court's Fourth Amendment analysis of the MCC-inmate searches).

163. *See Bell*, 441 U.S. at 560 (noting that the Fourth Amendment question before the Court pertained only to searches "contemplated by the MCC rules").

164. *Id.*

165. *See id.* (framing the question as whether the MCC searches "can *ever* be conducted on less than probable cause").

166. *Id.*

167. *Id.* at 559 (explaining that courts must balance the "need for the particular search against the invasion of personal rights that the search entails" when considering reasonableness under the Fourth Amendment).

168. Ohio v. Robinette, 519 U.S. 33, 39 (1996) (first quoting Florida v. Royer, 460 U.S. 491, 506 (1983); and then quoting Florida v. Bostick, 501 U.S. 429, 439 (1991)).

These searches, as varied as they come, require case-by-case consideration.

The Supreme Court confronted carceral strip and body-cavity searches once more in *Florence v. Board of Chosen Freeholders*.[169] In *Florence*, the plaintiff was arrested during a simple traffic stop.[170] The plaintiff committed no serious offense; he was arrested pursuant to a bench warrant issued for a supposedly unpaid fine.[171] Before the charges against him were ultimately dismissed, the plaintiff spent time in two different jails.[172] At the second jail, during intake, the plaintiff was subjected to a visual body-cavity search; while naked, he was forced to turn around, lift his genitals, squat, and cough.[173] The jail's policy, as written, required careful examination of "all body openings" before arrestees could be admitted to the facility's general population.[174] The second jail executed these searches for every arrestee—no matter how innocuous the alleged offense or the circumstances warranting suspicion.[175]

The Supreme Court held that these procedures did not violate the Fourth Amendment.[176] In doing so, it affirmed the Third Circuit.[177]

The Third Circuit applied *Bell* to a tee, engaging directly with the reasonableness balancing test[178] and the four factors of

169. 566 U.S. 318 (2012).

170. *Id.* at 323.

171. *See id.* (explaining that, although the plaintiff had paid the fine, the warrant was not removed from the statewide computer database, leading to the plaintiff's arrest).

172. *See id.* at 323–24 (detailing the plaintiff's experience at both the Burlington County Jail and Essex County Correctional Facility).

173. *Id.* at 324.

174. Florence v. Bd. of Chosen Freeholders, 621 F.3d 296, 300 n.2 (3d Cir. 2010), *aff'd*, 566 U.S. 318 (2012).

175. *See Florence*, 566 U.S. at 324 ("This policy applied regardless of the circumstances of the arrest, the suspected offense, or the detainee's behavior, demeanor, or criminal history.").

176. *Id.* at 339 (explaining that the search procedures "struck a reasonable balance between inmate privacy and the needs of the institutions").

177. *Id.* at 340.

178. *See Florence*, 621 F.3d at 301 ("In each case [reasonableness under the Fourth Amendment] requires a balancing of the need for the particular search against the invasion of personal rights that the search entails." (quoting Bell v. Wolfish, 441 U.S. 520, 559 (1979))).

scope, manner, place, and justification.[179] First, with respect to scope, the court discussed the precise circumstances of the searches at issue, which "require[d] the arrestees to undress completely and submit to a visual observation of their naked bodies before taking a supervised shower."[180] Although the second jail's policy required examination of all "body openings," the court characterized both jails' procedures as more reminiscent of strip searches than the visual body-cavity searches in *Bell*.[181] The latter required inmates to manually spread their buttocks and female inmates to expose their vaginal cavities.[182]

Second, with respect to manner and place, the Third Circuit highlighted the searches' privacy, sanitary conditions, and brevity,[183] finding these conditions to be "similar to or less intrusive than those in *Bell*."[184] Finally, the court turned to the searches' justification.[185] It emphasized the jails' security interests in preventing smuggling at the time of intake,[186] exacerbated by the gang problems facing New Jersey jails.[187] After applying *Bell*, the Third Circuit ultimately held that, on balance, the security interests favoring the suspicionless intake searches outweighed the arrestees' privacy interests.[188]

179. *See id.* at 306–07 (applying the four *Bell* factors to the search procedures at issue).

180. *Id.* at 307.

181. *Id.* at 300 n.2; *see id.* at 307 ("[T]he searches at issue here are less intrusive than the visual body-cavity searches considered by the Supreme Court in *Bell*. In fact, they are closer to the strip searches upheld by the lower court in *Bell*.").

182. *Id.* at 302–03 (quoting *Bell*, 441 U.S. at 558 n.39).

183. *See id.* at 307 (observing that the searches were conducted in private and under sanitary conditions, and that inmates were naked for no more than several minutes).

184. *Id.*

185. *See id.* ("Because the scope, manner, and place of the searches are similar to or less intrusive than those in *Bell*, the only factor on which Plaintiffs could distinguish this case is the Jails' justification for the searches.").

186. *Id.* at 308 (asserting that the "security interest in preventing smuggling at the time of intake is as strong as the interest in preventing smuggling after the contact visits at issue in *Bell*").

187. *See id.* at 307 (recognizing that New Jersey jails "face serious problems caused by the presence of gangs").

188. *See id.* at 311 ("In sum, balancing the Jails' security interests at the time of intake before arrestees enter the general population against the privacy interests of the inmates, we hold that the strip search procedures . . . are reasonable.").

Satisfied with this analysis, the Supreme Court affirmed the Third Circuit.[189] The Court also referred to the familiar Fourth Amendment balancing test invoked in *Bell*: "The need for a particular search must be balanced against the resulting invasion of personal rights."[190] Due to various governmental interests that would be undercut if the searches required reasonable suspicion,[191] the Court agreed with the Third Circuit that the jails "struck a reasonable balance between inmate privacy and the needs of the institutions."[192] Justice Breyer dissented, likewise acknowledging *Bell* as controlling[193] but concluding that the searches' highly invasive scope outweighed their justification.[194] In any case, both the majority and dissenters in *Florence*, as well as the Third Circuit, relied upon *Bell* and its requirements for Fourth Amendment analysis of strip and body-cavity searches.

Bell and *Florence* demonstrate that strip and body-cavity searches of inmates may generally be conducted without any suspicion to preserve prison security.[195] Although they do not implicate the Fourth Amendment rights of prison visitors, these cases provide the closest analog to the prison visitor searches discussed by this Note. Accordingly, with the Supreme Court's guidance, many federal circuit courts have analyzed visitor searches. The next Section introduces a number of these decisions, explaining the approaches to Fourth Amendment analysis undertaken in each.

189. Florence v. Bd. of Chosen Freeholders, 566 U.S. 318, 340 (2012).

190. *Id.* at 327 (citing Bell v. Wolfish, 441 U.S. 520, 559 (1979)).

191. The Court pointed to the need to detect contraband, gang tattoos, lice, and infections; the "devious[ness]" of even minor offenders; the risk that arrestees might be coerced into smuggling contraband; and the practical difficulty of classifying arrestees by their current and prior offenses. *See id.* at 330–32, 334–36 (raising these concerns).

192. *Id.* at 339.

193. *See id.* at 344 (Breyer, J., dissenting) (indicating that *Bell*'s "balancing inquiry" and four-factor test provided the "applicable standard" for the Court to apply (citing Bell v. Wolfish, 441 U.S. 520, 559 (1979))).

194. *See id.* ("[T]he 'invasion of personal rights' here is very serious and lacks need or justification—at least as to the category of minor offenders at issue." (citation omitted)).

195. *See Bell*, 441 U.S. at 558–60 (concluding that the body-cavity searches imposed after every contact visit were reasonable); *Florence*, 566 U.S. at 330 (concluding that the searches of detainees did not require reasonable suspicion).

B. U.S. COURTS OF APPEALS OFFER THREE METHODS OF ANALYSIS FOR STRIP AND BODY-CAVITY SEARCHES OF PRISON VISITORS

Without a Supreme Court case addressing strip and body-cavity searches of prison visitors,[196] the U.S. Courts of Appeals have been left to decide the issue. Every circuit, except for the Third Circuit[197] and D.C. Circuit, has decided a case involving either a strip or body-cavity search of a prison visitor.[198] Circuits demonstrate different methods of Fourth Amendment analysis in these cases.

Many circuits fail to consider all of the circumstances of the search before it, including facts bearing on the search's invasiveness.[199] Instead, they evaluate only whether the search was supported by reasonable suspicion.[200] Rather than reciting every decision advancing this majority approach, this Section highlights three,[201] from the First, Second, and Eighth Circuits, that feature improper analysis.

196. *Supra* note 131.

197. In a vehicle search case, the Third Circuit explicitly acknowledged that it has not yet reached the question of what standard of suspicion, if any, is required to search a prison visitor's person. *See* Neumeyer v. Beard, 421 F.3d 210, 213 n.2 (3rd Cir. 2005) ("The case at bar involves only vehicle searches; thus, we need not address the question of whether and when the suspicionless search of a prison visitor's person would be constitutional.").

198. *See, e.g.*, Wood v. Clemons, 89 F.3d 922, 926–27 (1st Cir. 1996) (strip search); Varrone v. Bilotti, 123 F.3d 75, 77 (2d Cir. 1997) (strip search, according to the court); Calloway v. Lokey, 948 F.3d 194, 211 (4th Cir. 2020) (Wynn, J., dissenting) (visual body-cavity search); Thorne v. Jones, 765 F.2d 1270, 1276 (5th Cir. 1985) (strip search); Spear v. Sowders, 71 F.3d 626, 634 (6th Cir. 1995) (Jones, J., concurring in part and dissenting in part) (manual body-cavity search); Burgess v. Lowery, 201 F.3d 942, 943 (7th Cir. 2000) (strip search); Hunter v. Auger, 672 F.2d 668, 670 n.1 (8th Cir. 1982) (visual body-cavity search); Cates v. Stroud, 976 F.3d 972, 975 (9th Cir. 2020) (visual body-cavity search); Romo v. Champion, 46 F.3d 1013, 1015 (10th Cir. 1995) (strip search); Gilmore v. Ga. Dep't of Corr., 144 F.4th 1246, 1252 (11th Cir. 2025) (en banc) (manual body-cavity search).

199. *See supra* Part II.B.1 (presenting cases that demonstrate this method of analysis).

200. *See supra id.*

201. For brevity's sake, of course. For another good example of inadequate Fourth Amendment analysis, see *Spear v. Sowders*, 71 F.3d 626 (6th Cir. 1995). The Sixth Circuit in *Spear* framed the question before it as one of reasonable suspicion only. *See id.* at 631 ("The issue is whether Sowders had a reasonable suspicion, at the time of Spear's visit, that she would be smuggling contraband into the prison."). In doing so, the majority neglected to mention that the search before it was a *manual body-cavity search*, which their dissenting colleague was

The Fourth and Eleventh Circuits, however, propose differing methods for evaluating a particular search's invasiveness.[202] The Fourth Circuit approach balances suspicion directly with invasiveness,[203] while the Eleventh Circuit approach evaluates suspicion and invasiveness independently.[204] This amounts to three possible methods of Fourth Amendment analysis. This Section presents each one.

1. The First, Second, and Eighth Circuits Analyzed Strip and Body-Cavity Searches of Prison Visitors Without Analyzing the Invasiveness of the Specific Searches Themselves

The First, Second, and Eighth Circuits are examples of courts that have effectively ignored the invasiveness of the searches before them. Beginning with *Hunter v. Auger*, the Eighth Circuit reviewed the strip search procedures of three Iowa prisons that searched prison visitors' anal cavities based on uncorroborated, anonymous tips of smuggling.[205] The court became the first to adopt a reasonable suspicion standard for strip and body-cavity searches of prison visitors.[206]

Applying the reasonableness balancing test and citing *Bell*,[207] the Eighth Circuit acknowledged that "one's anatomy is

quick to point out. *See id.* at 634 (Jones, J., concurring in part and dissenting in part) ("In this case, my concern is not merely an 'embarrassing and humiliating' strip search, but a manual body cavity search. . . . I cannot fathom any search that treads more on the dignity and privacy of an individual than a manual body cavity search."). Indeed, the majority used the term "strip search," *id.* at 631, which, as mentioned, is an oft-invoked misnomer. *See supra* note 100 and accompanying text.

202. *See supra* Parts II.B.2, II.B.3 (presenting these methods).

203. *See supra* Part II.B.2 (discussing the Fourth Circuit's approach).

204. *See supra* Part II.B.3 (discussing the Eleventh Circuit approach).

205. *See* 672 F.2d 668, 670 n.1 (8th Cir. 1982) (explaining that the "strip searches" before the court included "a visual inspection of the anal area while the subject is bent forward with the buttocks spread"); *id.* at 677 ("Prison authorities ordered the strip searches of appellants wholly on the basis of uncorroborated anonymous tips merely stating that the visitors would attempt to smuggle drugs during visits with their relatives."). One of the three plaintiffs refused to submit to a search and had her visiting privileges suspended indefinitely, pending completion of a "satisfactory personal interview." *Id.* at 671.

206. *See id.* at 674 ("[W]e conclude that the Constitution mandates that a reasonable suspicion standard govern strip searches of visitors to penal institutions.").

207. *See id.* at 673 ("In the context of a search, the test of reasonableness requires that legitimate governmental interests in carrying out the search be balanced against the intrusion on personal rights that the search entails." (citing Bell v. Wolfish, 441 U.S. 520, 559 (1979))).

draped with constitutional protection," requiring the government's interest in searching to "be balanced against the significant invasion of privacy occasioned by a strip search."[208] The court asserted that "a strip search, regardless how professionally and courteously conducted, is an embarrassing and humiliating experience."[209] Thus, rather than allowing such invasive searches to be conducted without any suspicion of wrongdoing, the court concluded that reasonable suspicion was appropriate.[210]

After recognizing invasiveness generally, however, the Eighth Circuit did not meaningfully evaluate the invasiveness of the search before it.[211] Instead, the court only applied its newly adopted reasonable suspicion standard.[212] The only question the court examined was whether a "legitimate basis for the search decision existed," not whether the invasiveness of the searches outweighed the suspicion possessed by prison officials.[213] Indeed, the Eighth Circuit relegated its lone discussion of the searches' scope to a footnote, in which the court stated that the "[s]trip searches . . . consist of an unclothed visual body search, including a visual inspection of the anal area while the subject is bent forward with the buttocks spread."[214] This type of search, which is plainly a visual body-cavity search,[215] is repeatedly mischaracterized as a strip search.[216]

It is worth noting that the Eighth Circuit still held in the plaintiffs' favor, finding that the searches at issue violated the plaintiffs' Fourth Amendment rights due to the absence of reasonable suspicion.[217] But other circuits have not always done so;

208. *Id.* at 674.

209. *Id.*

210. *Id.*

211. *See id.* at 676–77 (evaluating the nature of the tips and degree of corroboration warranting the strip searches at issue but omitting mention of the individual searches' invasiveness).

212. *Id.*

213. *Id.* at 677.

214. *Id.* at 670 n.1.

215. *See supra* notes 104–05 and accompanying text (explaining that visual body-cavity searches may require an individual to bend over and spread their buttocks to expose the anus for examination).

216. *See Hunter*, 672 F.2d at 670–72 (using the term "strip search" repeatedly).

217. *Id.* at 677.

where there has been reasonable suspicion, courts have stopped there.

In *Wood v. Clemons*, after explicitly adopting a reasonable suspicion standard in the context of prison-visitor strip searches,[218] the First Circuit found for the defendant prison official.[219] Although the First Circuit reached its holding on qualified immunity grounds,[220] its reason for doing so was likewise premised on reasonable suspicion alone. The court found that the prison official's conduct was objectively reasonable in light of clearly established law.[221] Specifically, the court observed that "[a]n objectively reasonable official, presented with all of the information in Clemons' possession and similarly situated, could very well have believed that there existed a basis for reasonable suspicion that Wood's visitors would be smuggling drugs . . . ."[222]

Evident from this language, the court analyzed only whether the defendant's circumstances, to an objectively reasonable official, could have created reasonable suspicion.[223] Any analysis or weighing of the search's scope and manner—a search that forced the plaintiff to let go of her baby, strip naked, lift her breasts, squat, and cough[224]—is conspicuously absent.[225] Indeed, the First Circuit acknowledged *Bell* in passing but did not so much as mention its four factors for search analysis.[226]

One year later, the Second Circuit took a similar approach. In *Varrone v. Bilotti*, prison officials searched a visitor based on a drug smuggling tip, the visited inmate's drug offense, and other possible instances of drug smuggling at the prison.[227] The

218. 89 F.3d 922, 929 (1st Cir. 1996) ("'Reasonable suspicion' is indeed the proper standard by which to gauge the constitutionality of prison-visitor strip searches.").

219. *See id.* at 931 (concluding that the defendant was entitled to qualified immunity from liability for the search).

220. *Id.*

221. *Id.* at 929.

222. *Id.* at 931.

223. *See id.* at 929–31 (discussing whether the reliability of the official's source gave rise to reasonable suspicion of drug smuggling).

224. *Id.* at 926.

225. *See id.* at 929–31 (omitting any mention of the circumstances of the nature of the search itself).

226. *See id.* at 928 ("A generous amount of deference is given to prison officials on matters of prison safety, security, and discipline [by the courts]." (citing Bell v. Wolfish, 441 U.S. 520, 547–48 (1979))).

227. 123 F.3d 75, 79–80 (2nd Cir. 1997) (evaluating the information available to the prison official that ordered the search).

Second Circuit, like its predecessors, adopted a reasonable suspicion standard for strip searches of prison visitors.[228] With respect to the search before it, the court found that the information possessed by the defendant prison officials "very likely sufficed to provide reasonable suspicion" warranting a strip search.[229]

Although the Second Circuit used the term "strip search,"[230] the plaintiff asserted that the search was a "humiliating and embarrassing visual body cavity search" in his briefing.[231] Far from grappling with this contention, the Second Circuit examined only the nature of the information warranting reasonable suspicion, such as the tip's specificity and the informant's reliability.[232] The court neither explained nor detailed the nature of the search itself, beyond the conclusory and erroneous label "strip search."[233] In fact, the court framed the issue solely as "whether the information the officers had when they directed and conducted the strip search of Varrone created a reasonable suspicion that he was bringing drugs into the prison."[234] Apparently, the scope and manner of the search had no place in this inquiry.

Like the First Circuit, the Second Circuit acknowledged *Bell*[235] but did not apply the scope, manner, justification, and place factors that *Bell* directed courts to consider in the context of inmate strip searches.[236] The only factors that shaped the

228. *See id.* at 79 (holding that, due to other circuits' adoption of a reasonable suspicion standard and the Second Circuit's foreshadowing of that standard, a reasonable suspicion standard for prison-visitor strip searches was clearly established law).

229. *Id.*

230. *Id.* at 77.

231. Brief of Plaintiff-Appellee-Cross-Appellant Anthony Varrone at 7, Varrone v. Bilotti, 123 F.3d 75 (2nd Cir. 1997) (Nos. 96-2368(L), 96-2382(XAP)).

232. *See Varrone*, 123 F.3d at 79 ("The information was given to Malone by . . . [the] deputy chief of the narcotics bureau. The information was precise, specific and detailed. . . . The information identified the smugglers by name, stated where and when they would commit the offense and specified the particular drug they would attempt to smuggle.").

233. *See generally* Varrone v. Bilotti, 123 F.3d 75 (2d Cir. 1997) (referring repeatedly to the "strip search" without detailing the interaction).

234. *Id.* at 79.

235. *See id.* (citing Bell v. Wolfish, 441 U.S. 520, 547 (1979)).

236. *See id.* at 79–81 (omitting any mention of the *Bell* factors); *see also supra* note 147 and accompanying text (identifying the *Bell* Court's adoption of these factors).

Second Circuit's analysis were those bearing on the existence of reasonable suspicion.[237]

Thus, the First, Second, and Eighth Circuits exercised less constitutional scrutiny over invasive searches of *free* citizens than the Supreme Court would exercise over searches of *prisoners*—an anomalous approach indeed.[238] The Fourth Circuit, however, offers a different approach to Fourth Amendment analysis of strip and body-cavity searches.

2. The Fourth Circuit, Despite Neglecting a Body-Cavity Search's Invasiveness, Proposed a Method of Analysis that Accounts for Invasiveness by Directly Weighing It with Suspicion

In *Calloway v. Lokey*, a divided Fourth Circuit joined these circuits in avoiding invasiveness analysis.[239] In doing so, however, it articulated Fourth Amendment principles that diverge greatly from those of the other circuits.

The search of the visitor in *Calloway* was premised on the visited inmate's history of smuggling, a tip from another inmate, and the visitor's apparent nervousness and adjustment of her waistband.[240] The Fourth Circuit, like its predecessors, established a reasonable suspicion standard for "a strip search of a prison visitor—an exceedingly personal invasion of privacy."[241]

However, unlike its predecessors, the court emphasized that reasonable suspicion "is the minimum requirement" in these cases.[242] "[T]he more personal and invasive the search activities of the authorities become, the more particularized and individualized the articulated supporting information must be."[243] The Fourth Circuit cited *Leverette v. Bell* for this approach, in which

237. *Varrone*, 123 F.3d at 79 (quoting Sec. & L. Enf't Emps. v. Carey, 737 F.2d 187, 205 (2nd Cir. 1984)) (listing the factors that may be considered to assess "whether reasonable suspicion existed").

238. *See* Thorne v. Jones, 765 F.2d 1270, 1276 (5th Cir. 1985) (reasoning that, between prison inmates and visitors, "it would be anomalous indeed to accord the former class greater protection from unreasonable searches than the latter").

239. 948 F.3d 194 (4th Cir. 2020).

240. *See id.* at 202–03 (depicting the circumstances that produced the search).

241. *Id.* at 202.

242. *Id.* (quoting Leverette v. Bell, 247 F.3d 160, 168 (4th Cir. 2001)).

243. *Id.* (quoting *Leverette*, 247 F.3d at 168).

the same court analyzed a visual body-cavity search of a prison employee.[244]

This approach goes a step further than the aforementioned circuits. Those circuits balanced need against invasiveness only to prescribe a Fourth Amendment standard of suspicion.[245] Reasonable suspicion was the result, and it was all the prison officials had to meet, regardless of the specific and invasive circumstances of the searches at issue.[246] Conversely, the Fourth Circuit asserted that the Fourth Amendment may demand more suspicion due to more invasiveness—a sliding scale, in other words.[247] Put another way, the Fourth Amendment balancing test must be applied to the facts of individual cases: As a search's invasiveness increases, so too must the suspicion justifying that search—beyond reasonable suspicion.

But in awarding the defendant corrections officers summary judgment,[248] the Fourth Circuit failed to heed its own advice regarding the importance of invasiveness. The court dedicated its analysis principally to whether the circumstances gave rise to reasonable suspicion.[249] The court did devote a paragraph of its analysis to discussing the manner of the search, concluding that it was "conducted professionally and in an appropriate setting."[250] The court did not, however, acknowledge or discuss the highly intrusive scope of the search at issue.[251]

Judge Wynn, the dissenter on the panel, highlighted this failure. Judge Wynn reiterated that, as invasiveness increases,

244. *Id.* (citing *Leverette*, 247 F.3d 160).

245. *See, e.g.*, Hunter v. Auger, 672 F.2d 668, 673–74 (8th Cir. 1982) (weighing prison security against prison visitors' privacy interests to conclude that "the Constitution mandates that a reasonable suspicion standard govern strip searches of visitors to penal institutions").

246. *See supra* Part II.B.1 (highlighting the focus on reasonable suspicion, rather than invasiveness).

247. *Calloway*, 948 F.3d at 202 ("[T]he more personal and invasive the search activities of the authorities become, the more particularized and individualized the articulated supporting information must be." (quoting *Leverette*, 247 F.3d at 168)).

248. *Id.* at 205.

249. *Id.* at 202.

250. *Id.* at 205.

251. *See id.* at 202–05 (omitting in its analysis any discussion of the body-cavity search's invasiveness). At most, the court noted in passing that the search was "embarrassing and perhaps frightening." *Id.* at 203. But such feelings are broadly felt by anyone searched in the nude.

so too must the circumstances warranting suspicion.[252] Accordingly, Judge Wynn described the *Calloway* search in detail, noting that it required the plaintiff to raise her arms, lift her breasts, open her mouth, allow her hair to be manipulated, remove her tampon, expose her vagina, and expose her anal cavity.[253]

Given this profound intrusiveness, Judge Wynn chastised the majority for flippantly categorizing a visual body-cavity search as a strip search.[254] And ultimately, weighing suspicion with invasiveness, Judge Wynn concluded that a reasonable jury could find that the correctional officers' limited information did not justify this intrusive search.[255] Thus, *Calloway* is a case that may well have been decided differently if the court meaningfully analyzed—and correctly understood—the search's invasiveness. For Judge Wynn (and, in theory, the Fourth Circuit), this analysis would balance suspicion directly with invasiveness.

3. The Eleventh Circuit Offers a Third Method of Fourth Amendment Analysis that Evaluates the Totality of the Circumstances

Aside from *Calloway*, the preceding cases suggest that invasiveness has no meaningful place in the Fourth Amendment analysis of individual cases, contrary to the Supreme Court's guidance in *Bell*. The Eleventh Circuit, however, has taken yet another approach. In *Gilmore v. Georgia Department of Corrections*,[256] the Eleventh Circuit paid mind to the specific invasive circumstances at issue.[257]

252. *See id.* at 210–11 (Wynn, J., dissenting) ("[T]he more personal and invasive the search activities of the authorities become, the more particularized and individualized the articulated supporting information must be." (quoting *Leverette*, 247 F.3d at 168)).

253. *Id.* at 211.

254. *See id.* ("Although the majority describes it as a 'strip search,' the officers in this case had Ms. Calloway expose her anal area and take out her tampon from her vagina . . . . Unquestionably, the search of Ms. Calloway's body . . . was an intrusive search, more like a visual body cavity search than a standard strip search.").

255. *Id.* at 211.

256. 144 F.4th 1246 (11th Cir. 2025) (en banc).

257. It is worth briefly mentioning *Gilmore*'s procedural posture. The Eleventh Circuit vacated its original decision, *Gilmore v. Ga. Dep't of Corr.*, 111 F.4th 1118 (11th Cir. 2024), *vacated and reh'g en banc granted*, 119 F.4th 839 (11th Cir. 2024), for an en banc rehearing to reevaluate its qualified immunity jurisprudence. The original panel concluded that the correctional officers

In *Gilmore*, the plaintiff sought to visit her incarcerated husband, as she had dozens of times before.[258] She experienced three routine screening searches: a pat-down search, a metal-detector-wand search, and a body-scan search.[259] During her visit, however, correctional officers insisted that she submit to a fourth: a strip search.[260] The officers handed the plaintiff a strip search approval form, refusing to explain their grounds for the strip search.[261] They told her that if she did not sign the form, the officers would send her to jail, prohibit her from seeing her husband again, and strip search her anyway.[262] Without any alternatives, the plaintiff signed the form.[263]

The officers proceeded to search the plaintiff.[264] They did not, however, conduct a mere strip search as they promised, but a manual body-cavity search instead.[265] The officers physically manipulated the plaintiff's breasts, ordered her to "[t]urn around," "bend over," and "open [her] butt cheeks;" swiped between the plaintiff's buttocks; ordered her to spread her vagina; and visually inspected her vagina.[266] After returning to her husband in tears, the plaintiff barely spoke, left the facility, and cried on the way home.[267]

Like its sister circuits, the Eleventh Circuit concluded that strip and body-cavity searches of prison visitors require at least reasonable suspicion, but the court left open whether probable

violated the Fourth Amendment but were entitled to qualified immunity because the law pertaining to prison visitor strip searches was not "clearly established" in the Eleventh Circuit. *Gilmore*, 111 F.4th at 1133–36. But the panel also expressed reservations about the Eleventh Circuit's qualified immunity jurisprudence, specifically when the law can be considered "clearly established." *Gilmore*, 144 F.4th at 1250.

258. *Gilmore*, 144 F.4th at 1251.

259. *Id.*

260. *Id.* at 1252.

261. *Id.*

262. *Id.*

263. *Id.*

264. *Id.*

265. *Id.*

266. *Id.* Although the Eleventh Circuit, like some of its predecessors, used the misnomer of "strip search," *see id.*, the court clearly understood and did not otherwise mischaracterize the intrusive nature of the search at issue. The court repeatedly acknowledged that the officers touched the plaintiff's breasts and buttocks and visually inspected her exposed vagina, which rendered the search "constitutionally more intrusive" than an ordinary strip search "in two significant ways." *Id.* at 1257.

267. *Id.* at 1252.

cause might instead be required.[268] The Eleventh Circuit then considered whether the search before it was supported by reasonable suspicion.[269] After holding that it was not,[270] the court went a step further.

The Eleventh Circuit acknowledged that Fourth Amendment analysis involves a twofold inquiry: Courts must consider not only whether a search was "justified at its inception," but also whether it was "reasonably related in scope to the circumstances which justified the interference in the first place."[271] The court also affirmed that this analysis considers "the totality of the circumstances" of a given search.[272] Accordingly, the court explicitly observed that (1) the officers coerced the plaintiff's consent; (2) the officers did not allow the plaintiff to leave the prison and avoid the search; and (3) the search was unreasonable in scope.[273] The court emphasized that the search's scope was "constitutionally more intrusive" than an ordinary strip search.[274] Not only did the prison officials force the plaintiff to strip naked, but they manipulated her breasts, felt between her buttocks, and inspected her spread vagina while she assumed a "degrading and humiliating position[]."[275]

Evaluating the totality of the circumstances, the Eleventh Circuit concluded that the search "violated the Fourth Amendment at its inception *and in its scope*."[276] Put differently, the court concluded that the search violated the Fourth Amendment for two independent reasons: a lack of reasonable suspicion *and*

268. *See id.* at 1254 ("We need not definitively decide whether this type of strip search requires reasonable suspicion or probable cause. But for the following reasons we conclude that, at the very least, correctional officers must have reasonable suspicion that a visitor is concealing contraband (e.g., drugs or weapons) before they subject her to a strip search."); *id.* at 1256 ("We hold, therefore, that Lieutenant Milton and Officer Irizarry needed at least reasonable suspicion to subject Ms. Gilmore to a strip search.").

269. *Id.* at 1256.

270. *Id.*

271. *Id.* at 1254 (quoting New Jersey v. T.L.O., 469 U.S. 325, 341 (1985)) (internal quotations omitted).

272. *Id.* at 1251, 1253, 1256.

273. *Id.* at 1256–57.

274. *Id.* at 1257.

275. *Id.* at 1258 (quoting Sloley v. VanBramer, 945 F.3d 30, 38 (2d Cir. 2019)) (highlighting the proposition that visual body-cavity searches are more intrusive than strip searches).

276. *Id.* at 1259 (emphasis added).

unreasonableness in scope. This marks a stark contrast from other circuits' jurisprudence.

Although no court has acknowledged any circuit split or discrepancy in the Fourth Amendment analysis of prison visitor strip and body-cavity searches, the Eleventh Circuit, the Fourth Circuit, and the remaining circuits advance distinct approaches. Courts may either (1) make reasonable suspicion determinative, regardless of a search's invasiveness; (2) weigh the government's suspicion directly with a search's invasiveness; or (3) evaluate the totality of the circumstances of a given search, including suspicion and invasiveness. Part III critically explores and compares the merits of these approaches, ultimately arguing that the last one is best.

III. FOURTH AMENDMENT ANALYSIS OF A STRIP OR BODY-CAVITY SEARCH OF A PRISON VISITOR MUST ACCOUNT FOR THAT SEARCH'S INVASIVENESS, AND THE ELEVENTH CIRCUIT OFFERS THE BEST APPROACH

Many U.S. Courts of Appeals have failed to diligently analyze the strip or body-cavity searches before them. They have neglected the searches' invasiveness, evaluating reasonable suspicion only.[277] This majority approach is unfaithful to Supreme Court precedent because it disregards the totality of the circumstances and the Supreme Court's guidance in *Terry* and *Bell*.[278] The Fourth and Eleventh Circuits, on the other hand, propose methods of Fourth Amendment analysis that adhere to Supreme Court precedent.[279] But the Fourth Circuit approach arguably leaves prison officials and courts with a lack of guidance and excessive discretion, posing practical problems in application.[280]

This Part evaluates the three approaches taken by U.S. Courts of Appeals. Section A critiques the majority approach, i.e., the "reasonable-suspicion-only" framework. Section B analyzes the Fourth Circuit approach of directly weighing suspicion against invasiveness. Finally, Section C concludes that the Eleventh Circuit approach—evaluating both reasonable suspicion

277. *See supra* Part II.B.1 (identifying this trend).

278. *See infra* Part III.A (highlighting these flaws in the majority approach).

279. *See infra* Parts III.B–C (presenting the Fourth and Eleventh Circuit approaches and their consideration of the invasiveness posed by individual searches).

280. *See infra* Part III.B (highlighting the practical weakness of a nebulous standard of suspicion in the Fourth Circuit approach).

and invasiveness in a two-step framework—is best. The Eleventh Circuit approach is consistent with Supreme Court precedent and addresses the implementation concerns posed by the Fourth Circuit approach. But regardless of the approach adopted, it must be one that accounts for a specific search's invasiveness.

A. BY FAILING TO CONSIDER THE INVASIVENESS OF THE EXACT SEARCH BEFORE THEM, THE FIRST, SECOND, AND EIGHTH CIRCUITS DISREGARDED THE SUPREME COURT'S FOURTH AMENDMENT PRECEDENT

In the Fourth Amendment context, the Supreme Court has repeatedly recognized the importance of a holistic, contextual reasonableness inquiry.[281] In *Florida v. Royer*, the Court emphasized that Fourth Amendment encounters present "endless variations in the facts and circumstances," making it implausible to analyze a search's reasonableness with a single, bright-line rule.[282] Applying a "litmus-paper test" to Fourth Amendment issues is inappropriate.[283]

The Court reaffirmed the flexibility of Fourth Amendment analysis in *Ohio v. Robinette*, observing that the reasonableness of a search "is measured in objective terms by examining the totality of the circumstances."[284] The Court criticized the adoption of a "*per se* rule" in the context of consenting to a search, asserting that the Court had "consistently eschewed bright-line rules, instead emphasizing the fact-specific nature of the reasonableness inquiry."[285]

And as the Court made clear in *Terry*, *T.L.O.*, and *Safford*, that inquiry includes the scope and manner of a search, not merely its reasonable suspicion.[286] As the Supreme Court has affirmed, the way a search is conducted is "as vital a part of the inquiry" as whether it was justified in the first place.[287] For that reason, the Court has adopted and applied a two-step approach

281. *See* Florida v. Royer, 460 U.S. 491, 506–07 (1983) (recognizing the difficulty of uniformly applying the Fourth Amendment to differing factual settings).

282. *Id.*

283. *Id.* at 506.

284. 519 U.S. 33, 39 (1996).

285. *Id.*

286. *See supra* notes 61–69 and accompanying text.

287. Terry v. Ohio, 392 U.S. 1, 28 (1968).

to Fourth Amendment analysis, evaluating (1) a search's justification; and (2) the nature of the search itself.[288] This approach is conducive to a holistic reasonableness inquiry.

The First, Second, Eighth, and other Circuits have failed to properly conduct that inquiry. In analyzing the reasonableness of strip and body-cavity searches of prison visitors, they have not considered "the totality of the circumstances."[289] Instead, by making reasonable suspicion determinative, these circuits have disregarded the scope and manner of searches and effectively applied the "bright-line rule" or "litmus-paper test" the Supreme Court has denounced.[290]

In *Hunter*, *Wood*, and *Varrone*, the circuit courts did not analyze the invasiveness of the specific searches before them.[291] At most, the courts noted only that strip searches, in general terms, are embarrassing and humiliating.[292] But analyzing a search procedure—an extremely variable one[293]—in general terms is *the opposite* of examining the totality of the circumstances. This much is evident from the Second and Eighth Circuit's misunderstandings of the type of search before them.[294] Even if they had been presented with more inflammatory circumstances, the courts' complete disregard for the searches' circumstances suggests that it would have made little difference.

One might wonder why *Wood* and *Varrone*, as qualified immunity cases, are worth criticizing. To the extent the First and

288. *See supra* notes 61–69 and accompanying text.

289. *Robinette*, 519 U.S. at 39.

290. *See id.* (noting that the Court has "consistently eschewed bright-line rules" due to the "fact-specific nature of the reasonableness inquiry"); Florida v. Royer, 460 U.S. 491, 506 (1983) (criticizing the adoption of a "litmus-paper test for distinguishing a consensual encounter from a seizure" under the Fourth Amendment).

291. *See supra* Part II.B.1 (highlighting the absence of invasiveness analysis in the majority approach).

292. *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."); Wood v. Clemons, 89 F.3d 922, 928 (1st Cir. 1996) ("[A] strip search, by its very nature, constitutes an extreme intrusion upon personal privacy, as well as an offense to the dignity of the individual." (quoting Cochrane v. Quattrocchi, 949 F.2d 11, 13 (1st Cir. 1991))).

293. *See supra* Part I.C (discussing the possible variations of "strip searches").

294. *See supra* notes 215, 230 and accompanying text (observing that the Eighth and Second Circuits mischaracterized body-cavity searches as strip searches).

Second Circuits' analyses were shaped by qualified immunity, the courts were still not relieved of accounting for the searches' invasiveness. Qualified immunity asks whether a government official's conduct was objectively legally reasonable in light of clearly established law.[295] As the First Circuit itself put it in *Wood*, a court must determine whether an objectively reasonable official, in authorizing an invasive search, could have believed their conduct was constitutional in light of clearly established law.[296]

But as the Supreme Court made clear in *Bell*, the constitutionality of a strip or body-cavity search turns not merely on its justification, but also on its scope, manner, and location.[297] Similarly, the Court in *Terry* stressed that the scope and manner of a search must be analyzed, lest the search run too far afield of the underlying reasonable suspicion that makes it constitutional.[298] Thus, even if qualified immunity relaxes prison officials' Fourth Amendment obligations, it does not relax courts' Fourth Amendment obligations to analyze a search's invasiveness. Were it otherwise, prison officials, armed with reasonable suspicion, could conduct public, unsanitary, verbally abusive, manual body-cavity searches with impunity. Surely the objectively reasonable prison official would renounce such a practice.

In each of the three circuit cases, the court's analysis sought to answer only one question: Was there reasonable suspicion for the search?[299] If there wasn't reasonable suspicion, the search was unconstitutional.[300] If there was reasonable suspicion, the search was constitutional, and the inquiry ended there.[301] Thus,

295. Anderson v. Creighton, 483 U.S. 635, 639 (1987) (quoting Harlow v. Fitzgerald, 457 U.S. 800, 818–19 (1982)).

296. *Wood*, 89 F.3d at 927.

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

298. *See* Terry v. Ohio, 392 U.S. 1, 28–29 (1968) ("The manner in which the . . . search [was] conducted is, of course, as vital a part of the inquiry as whether [it was] warranted at all. The Fourth Amendment proceeds as much by limitations upon the scope of governmental action as by imposing preconditions upon its initiation.").

299. *See supra* Part II.B.1 (highlighting the sole focus on reasonable suspicion in each court's reasoning).

300. *See* Hunter v. Auger, 672 F.2d 668, 677 (8th Cir. 1982) (finding that the absence of reasonable suspicion alone violated the Fourth Amendment).

301. *See Wood*, 89 F.3d at 929, 931 (holding that, because an objectively reasonable official could have found reasonable suspicion to conduct the search, the search was constitutional); Varrone v. Bilotti, 123 F.3d 75, 79, 81 (2nd Cir. 1997)

as the *Terry* Court would put it, the circuit courts considered only whether the searches were "justified at their inception"—not whether they were "reasonably related in scope to the circumstances" that justified them.[302] In other words, the courts performed only half of that reasonableness inquiry.[303]

By making reasonable suspicion determinative, this bare analysis creates a broadly applicable bright-line rule. It applies to any government conduct that could conceivably be considered a strip or body-cavity search, as the courts did not evaluate the unique facts and circumstances of the searches before them. This inflexibility is exactly what the Supreme Court has repeatedly condemned.[304] It is all the more problematic in the context of a highly variable and intrusive search procedure.[305] One can only imagine what the *Terry* Court, which emphasized that a pat down of one's clothing must be "an annoying, frightening, and perhaps humiliating experience,"[306] would have said about an inspection of a person's anal cavity. If the invasiveness of the former must be explicitly analyzed,[307] then the same is true of the latter. Removing clothing does not remove Fourth Amendment rights.

To illustrate the problem, imagine two prison visitors. A prison official reasonably suspects that each is smuggling contraband. The official makes each visitor remove his shirt, pants, shoes, socks, and underwear, until each is standing completely naked. The official briefly looks the first visitor over and tells him he is free to go. But the second visitor is less fortunate. The prison official forces him to turn around, bend over, spread his legs and buttocks, and expose his anus. The official proceeds to use his ungloved hand to lift the man's genitalia and probe between his buttocks. Finding nothing, the prison official tells the second visitor that he is likewise free to go.

(holding that qualified immunity was warranted solely on the basis of reasonable suspicion).

302. *Terry*, 392 U.S. at 19–20.

303. *See id.* (explaining that, in determining whether a search is unreasonable, the "inquiry is a dual one").

304. *See supra* notes 282–85 and accompanying text (presenting the Supreme Court's emphasis on a flexible, fact-specific reasonableness inquiry).

305. *See supra* Part I.C (examining the variability and harmful intrusiveness of strip and body-cavity searches).

306. *Terry*, 392 U.S. at 25.

307. *See id.* at 28–30 (assessing the scope and manner of the frisk search).

Under the method of analysis advanced by *Hunter*, *Wood*, and *Varrone*, these two searches are treated identically. If reasonable suspicion is sufficient in every conceivable case, it makes no difference whether a given search is more invasive, conducted in an unreasonable manner, or inflicted upon a more vulnerable individual than others. All searches are treated the same.

Not only did the courts improperly establish a bright-line rule, but they disregarded the Supreme Court's guidance in *Bell*. While evaluating body-cavity searches, the Supreme Court instructed that the government's need for a search must, "in each case," be balanced against the search's invasiveness.[308] To do so, "[c]ourts must consider the scope of the particular intrusion, the manner in which it is conducted, the justification for initiating it, and the place in which it is conducted."[309] Fourth Amendment analysis predicated upon reasonable suspicion alone considers only one of these factors: the justification for initiating the search. The Constitution demands more than one for four.

One might argue that *Bell* should not control courts' Fourth Amendment analysis of strip and body-cavity searches in the prison visitor context. *Bell*, after all, dealt only with the Fourth Amendment rights of inmates.[310] This argument is deficient for three reasons. First, U.S. Courts of Appeals have already acknowledged *Bell* as controlling by citing it in their prison visitor decisions.[311] Second, to support its proposition that a search's scope, manner, and location must each be analyzed, the *Bell* Court cited to a myriad of its Fourth Amendment cases in different search contexts,[312] demonstrating that this holistic analysis is not limited to body-cavity searches of prisoners. And third, as free citizens, prison visitors' rights are *stronger* than those of

308. Bell v. Wolfish, 441 U.S. 520, 559 (1979).

309. *Id.*

310. *See id.* at 558 (noting that the rights of inmates were at issue).

311. *See, e.g.*, Hunter v. Auger, 672 F.2d 668, 673–74 (8th Cir. 1982) (citing *Bell* for the proposition that "the test of reasonableness requires that legitimate governmental interests in carrying out the search be balanced against the intrusion on personal rights that the search entails"); Calloway v. Lokey, 948 F.3d 194, 201 (4th Cir. 2020) (citing *Bell* for the reasonableness balancing test and the four factors that govern that analysis, indicating that *Bell* establishes "the applicable legal principles for conducting a lawful strip search in the prison context"); Cates v. Stroud, 976 F.3d 972, 980 (9th Cir. 2020) (citing *Bell* for the proposition that a prison's security interests must be balanced against prison visitors' privacy interests).

312. *See Bell*, 441 U.S. at 559 (collecting cases).

prisoners, not the other way around.[313] Between prisoners and prison visitors, "it would be anomalous indeed to accord the former class greater protection from unreasonable searches than the latter."[314] By neglecting the invasiveness of prison visitor searches, circuit courts have done exactly that.

But not all of them. The next two Sections evaluate the Fourth and Eleventh Circuits' respective opinions in *Calloway* and *Gilmore*, analyzing those courts' methods of factoring invasiveness into the equation.

B. THE FOURTH CIRCUIT PROPOSED A METHOD OF ANALYSIS CONSISTENT WITH SUPREME COURT PRECEDENT, BUT ONE THAT IMPRUDENTLY LEAVES MINIMAL GUIDANCE FOR APPLICATION

As discussed, the Fourth Circuit conducted a cursory analysis of the visual body-cavity search in *Calloway*.[315] The court did not acknowledge the highly intrusive scope of the search at issue and, in fact, mischaracterized the visual body-cavity search as a strip search.[316] But the Fourth Circuit did one thing right: It proposed a method of Fourth Amendment analysis consistent with Supreme Court precedent.

Before analyzing the merits of the plaintiff's civil rights claim, the Fourth Circuit explicitly acknowledged that the balancing test and four factors from *Bell* governed its Fourth Amendment analysis.[317] The court then held that, to strip search a prison visitor, a prison official must have reasonable suspicion.[318] As mentioned, every other circuit analyzing strip or body-cavity searches of prison visitors has reached the same conclusion.[319]

313. *See supra* note 159 and accompanying text.

314. Thorne v. Jones, 765 F.2d 1270, 1276 (5th Cir. 1985).

315. *See supra* Part II.B.2 (examining *Calloway*, the majority's minimal analysis, and Judge Wynn's criticism of it).

316. *See supra id.* (highlighting these deficiencies in the majority opinion).

317. *See* Calloway v. Lokey, 948 F.3d 194, 201 (4th Cir. 2020) (observing that the reasonableness balancing test and four factors from *Bell* provided "the applicable legal principles for conducting a lawful strip search in the prison context" (citing *Bell*, 441 U.S. at 559)).

318. *Id.* at 202.

319. *See supra* Part II.B.

But unlike those circuits, the Fourth Circuit made reasonable suspicion "the *minimum* requirement."[320] The court demanded that a more invasive search be premised on "more particularized and individualized" information than reasonable suspicion would require.[321] The court thus endorsed a sliding-scale approach to analyze the reasonableness of strip and body-cavity searches.[322]

Judge Wynn, in his dissent, correctly applied this approach by acknowledging that the court mistook a visual body-cavity search for a strip search.[323] Judge Wynn thoroughly explained the particular invasiveness of a visual body-cavity search.[324] Had the majority grappled more vigorously with the invasive scope of the search before it, it could have reached a different determination, particularly because of the deficiencies in the prison officials' information.[325] Of course, the majority might disagree that it misapplied the sliding scale, but the pertinent takeaway is that the court advanced a different approach to Fourth Amendment analysis.

That approach, unlike that of the First, Second, and Eighth Circuits, is consistent with the Supreme Court's Fourth Amendment jurisprudence. First, the approach properly accounts for the "endless variations"[326] and "totality of the circumstances"[327] of strip and body-cavity searches of prison visitors. By weighing the government's suspicion directly with the invasiveness of the search at issue, all circumstances of a search must be accounted for. It is impossible to ignore either component of that balancing test because each component is measured by the weight of the other. By contrast, analyzing only the government's reasonable suspicion to conduct a search can ignore invasiveness with impunity—as the First, Second, and Eighth Circuits did.[328]

320. *Calloway*, 948 F.3d at 202 (quoting Leverette v. Bell, 247 F.3d 160, 168 (4th Cir. 2001)) (emphasis added).

321. *Id.*

322. *Id.*

323. *See id.* at 211 (Wynn, J., dissenting) (observing that the majority labeled a visual body-cavity search a strip search).

324. *Id.*

325. *See id.* at 210 ("[I]t is apparent that [the prison officials] had little individualized, particularized information when they concluded they had reasonable suspicion and summoned officers to conduct the intrusive body search.").

326. Florida v. Royer, 460 U.S. 491, 506 (1983).

327. Ohio v. Robinette, 519 U.S. 33, 39 (1996).

328. *See supra* Part II.B.1 (examining this pattern).

Second, the Fourth Circuit approach is faithful to the Supreme Court's guidance in *Bell*. It applies to "each case" the same Fourth Amendment balancing test: "a balancing of the need for the particular search against the invasion of personal rights that the search entails."[329] This method of analysis likewise accounts for the four factors of justification, scope, manner, and place;[330] the first bears on the government's reasonable suspicion, and the latter three bear on the searched individual's privacy interests. Conversely, courts that analyze reasonable suspicion alone analyze only the suspicion that justified the search. Thus, the Fourth Circuit approach is more consistent with Fourth Amendment principles.

Despite this constitutional consistency, the Fourth Circuit approach suffers from two weaknesses that may render it unworkable: (1) a lack of notice to prison officials; and (2) undue discretion for courts.

To understand these weaknesses, consider the practicality of the majority approach. The main advantage of an approach that evaluates only reasonable suspicion is its ease of application—both for prison officials and courts. If a prison official has reasonable suspicion, they can conduct a strip or body-cavity search of a prison visitor. Otherwise, they cannot. It is that simple. The prison official can sleep soundly, knowing that reasonable suspicion insulates them from liability. Similarly, the reasonable suspicion standard has been utilized by courts in a plethora of Fourth Amendment contexts,[331] providing guidance for its judicial application.

But under the Fourth Circuit's sliding-scale approach, reasonable suspicion may not be enough.[332] A more invasive search

329. Bell v. Wolfish, 441 U.S. 520, 559 (1979).

330. *See id.* (asserting that these factors govern the reasonableness analysis).

331. *See, e.g.*, Terry v. Ohio, 392 U.S. 1, 27–30 (1968) (police officer's frisk of a person's clothing); New Jersey v. T.L.O., 469 U.S. 325, 341–47 (1985) (searches of students by public school authorities); United States v. Montoya de Hernandez, 473 U.S. 531, 541–42 (1985) (prolonged detention of a traveler at the U.S. border); Hunter v. Auger, 672 F.2d 668, 674–77 (8th Cir. 1982) (body-cavity search of a prison visitor).

332. *See* Calloway v. Lokey, 948 F.3d 194, 202 (4th Cir. 2020) (noting that reasonable suspicion is the "minimum requirement" when a strip search in the prison context is involved (quoting Leverette v. Bell, 247 F.3d 160, 168 (4th Cir. 2001))).

requires stronger information warranting it.[333] There is no "objective standard" to measure this information with[334]—only an abstract balancing against the invasiveness of the search. Thus, while a strip search might only require the familiar indicia of reasonable suspicion, a visual or manual body-cavity search would require some greater, undefined, nebulous amount of suspicion.

This ambiguity may require prison officials to perform a hurried and unprincipled "Fourth Amendment balancing" exercise to determine whether they probably have enough suspicion—notwithstanding the minimum requirement of reasonable suspicion—to authorize a search. The Supreme Court has recognized the difficulty of such split-second exercises, particularly as they are left to government officials in the field.[335]

The Fourth Circuit approach also empowers judges with a great deal of discretion in determining when an unconstitutional search has occurred. It leaves courts free to prescribe third, fourth, or fifth intermediate standards of suspicion between reasonable suspicion and probable cause—or worse, dispense with standards of suspicion altogether. Of course, one might attack the reasonable suspicion standard on the same ground. Two judges might disagree whether a prison official had more than an "inchoate and unparticularized suspicion" of wrongdoing.[336] But reasonable suspicion, at minimum, is a firmly entrenched and repeatedly applicable standard in Fourth Amendment jurisprudence.[337] Unless and until it can flesh out its case law, the Fourth Circuit's uncertain quantum of suspicion is not.

The Supreme Court has explicitly rejected the creation of a third "intermediate standard" between reasonable suspicion and probable cause, as such "subtle verbal gradations may obscure rather than elucidate" reasonableness under the Fourth

333. *Id.*

334. *Cf. Terry*, 392 U.S. at 21 (emphasizing the importance of using an objective standard).

335. *See, e.g.*, Plumhoff v. Rickard, 572 U.S. 765, 775 (2014) (acknowledging, in the excessive force context, that "police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving" (quoting Graham v. Connor, 490 U.S. 386, 396–97 (1989))).

336. *Terry*, 392 U.S. at 27.

337. *See supra* note 331 and accompanying text.

Amendment.[338] By proposing no standard in particular and allowing invasiveness to directly determine the requisite level of suspicion, the Fourth Circuit risks the gradual creation of third, fourth, or fifth standards of suspicion under the Fourth Amendment—or worse, the application of no standard at all. Thus, despite its consistency with *Bell*, the Fourth Circuit's advocated approach to strip and body-cavity searches of prison visitors may be imprudent.

C. THE ELEVENTH CIRCUIT APPROACH IS FAITHFUL TO SUPREME COURT PRECEDENT AND POSES FEWER PRACTICAL CONCERNS THAN THE FOURTH CIRCUIT APPROACH

The Eleventh Circuit offers a third approach to Fourth Amendment analysis of strip and body-cavity searches of prison visitors. In *Gilmore*, the Eleventh Circuit evaluated "the totality of the circumstances" in a twofold inquiry: The court considered whether the search was (1) "justified at its inception" and (2) "reasonably related in scope to the circumstances which justified the interference in the first place."[339] This is the exact framework from *Terry*,[340] in which the Supreme Court first applied the reasonable suspicion standard.[341] By using this framework, the Eleventh Circuit properly factored invasiveness into the equation.

Under the first step of the framework, the Eleventh Circuit held that the defendant correctional officers lacked reasonable suspicion to strip search the plaintiff, making the search unconstitutional.[342] The court also indicated that the officers tainted the search by coercing the plaintiff's consent and prohibiting her from leaving the facility.[343]

338. *See* United States v. Montoya de Hernandez, 473 U.S. 531, 540–41 (1985) (rejecting the adoption of an intermediate "clear indication" standard between reasonable suspicion and probable cause).

339. Gilmore v. Ga. Dep't of Corr., 144 F.4th 1246, 1254 (11th Cir. 2025) (en banc) (quoting New Jersey v. T.L.O., 469 U.S. 325, 341 (1985)).

340. *See Terry*, 392 U.S. at 19–20 (articulating the same framework for determining whether a search is unreasonable under the Fourth Amendment).

341. *See, e.g.*, Florida v. Royer, 460 U.S. 491, 510–11 (1983) (Brennan, J., concurring) (recognizing the "*Terry* reasonable suspicion standard"); United States v. Sokolow, 490 U.S. 1, 7 (1989) (explaining the significance of the reasonable suspicion standard created in *Terry*).

342. *See Gilmore*, 144 F.4th at 1256 (holding that the correctional officers "needed at least reasonable suspicion" but had no suspicion).

343. *See id.* at 1256–57 (analyzing these components).

But the Eleventh Circuit went further, beyond whether the search was justified at its inception.[344] The court analyzed the unreasonable scope of the search,[345] which likewise made the search unconstitutional.[346] The court asserted that the search was "constitutionally more intrusive" than a standard strip search "in two significant ways": the touching of the plaintiff's intimate body parts and the visual inspection of her vagina.[347] Thus, even if reasonable suspicion had been present, the manual body-cavity search that unfolded would still be unconstitutional.

The Eleventh Circuit approach is consistent with Supreme Court jurisprudence for the same reasons as the Fourth Circuit approach.[348] First, by evaluating the totality of the circumstances, the Eleventh Circuit's inquiry can reach all of the variations and circumstances of a given search. The court demonstrated as much by going beyond the officers' suspicion, looking into the coercive and physically invasive nature of their conduct.[349] Second, the Eleventh Circuit approach incorporates the *Bell* factors into the analysis.[350] The court first considered the search's justification via reasonable suspicion, and then considered the search's invasive scope and manner.[351] Finally, the Eleventh Circuit approach logically mirrors the Supreme Court's two-step approach used in *Terry*, *T.L.O.*, and *Safford*.[352] The court began with reasonable suspicion and ended with whether the search was excessive in nature. In the Eleventh Circuit's view, the manual body-cavity search here was.[353]

One might distinguish *Gilmore* from other circuit court cases for that very reason: *Gilmore* involved a *manual* body-

344. *Id.* at 1257.

345. *Id.* at 1257–58.

346. *See id.* at 1251, 1259 (noting that the search violated the Fourth Amendment at its inception *and* in its scope because of physical touching and the visual body-cavity inspection).

347. *Id.* at 1257–58.

348. *See supra* Part III.B (discussing the Fourth Circuit's consistency with applicable Supreme Court precedent).

349. *See Gilmore*, 144 F.4th at 1251.

350. *See supra* notes 147–53 and accompanying text (presenting the application of the *Bell* factors).

351. *Gilmore*, 144 F.4th at 1254.

352. *See supra* notes 64–69 and accompanying text (discussing these cases and this approach).

353. *See Gilmore*, 144 F.4th at 1257.

cavity search.[354] The Eleventh Circuit did, after all, note the importance of touching to its determination.[355] But the court also observed that the visual search of the plaintiff's vagina—a visual body-cavity search—was "more invasive and implicated even greater privacy concerns" than strip searches,[356] a distinction that was unimportant to other circuits.[357]

Moreover, the important takeaway is not that the Eleventh Circuit deemed a manual body-cavity search unreasonable, but that it independently evaluated that search's invasiveness. Given the two-step framework derived from *Terry*,[358] and the court's regard for the totality of the circumstances,[359] there is no reason to presume the court would engage in less rigorous analysis had it evaluated a less invasive search.

The principles of Fourth Amendment analysis applied by the Eleventh Circuit can be applied to any strip or body-cavity search of a prison visitor—all while remaining faithful to Supreme Court precedent. This framework allows courts to elucidate the many circumstances—whether touching, body cavity inspections, verbal abuse, coercion, sexual harassment,[360] unsanitary conditions, a lack of privacy, excessive duration, or

354. *See id.* at 1252 (discussing the touching of the plaintiff's anal cavity).

355. *See id.* at 1258 (observing that touching presents additional invasiveness concerns).

356. *Id.*

357. *See supra* Parts II.B.1–2 (highlighting the circuits' disregard of the exact type of invasive searches before them, which included mischaracterizing visual body-cavity searches as strip searches).

358. *See* Terry v. Ohio, 392 U.S. 1, 19–20 (1968) ("[I]n determining whether the seizure and search were 'unreasonable' our inquiry is a dual one—whether the officer's action was justified at its inception, and whether it was reasonably related in scope to the circumstances which justified the interference in the first place.").

359. *Gilmore*, 144 F.4th at 1256.

360. Researchers have highlighted that certain prison guards sexually harass women prisoners in the context of strip and body-cavity searches. *See* VanNatta, *supra* note 112, at 34 ("In addition to assaults, prison guards sexually harass those in women's prisons. . . . 'The harassment is pretty regular and pretty constant and people just sort of deal with it, thinking you don't really have the right to question or do anything about it.'"). In the context of this Note, these occurrences are especially noteworthy given that a significant majority of U.S. prisoners are heterosexual men and likely to be visited by women. *See* LAUREN G. BEATTY & TRACY L. SNELL, U.S. DEP'T OF JUST., NCJ 255037, PROFILE OF PRISON INMATES, 2016, at 2 (2021), https://bjs.ojp.gov/content/pub/pdf/ppi16.pdf [https://perma.cc/EW65-JR5W] (reporting that in 2016, among all U.S. prisoners, ninety-three percent were male and ninety-six percent were straight).

otherwise—that might render a search unreasonable, even one supported by reasonable suspicion.

Return to the hypothetical posed in Section III.A. Under the Eleventh Circuit's analysis, a court has the freedom to find the search of the second visitor unreasonable. Unlike many of its sister circuits,[361] the Eleventh Circuit demonstrated that the totality of the circumstances posed by the search—including its scope and manner—were vital to a finding of reasonableness.[362] Conversely, the majority approach advanced by other circuits constrains courts to a finding of reasonableness based on reasonable suspicion alone. The Supreme Court has expressly resisted this result, deeming reasonable suspicion just one part of the reasonableness inquiry.[363] The Eleventh Circuit correctly did the same.

The Eleventh Circuit approach also avoids the implementation concerns posed by the Fourth Circuit approach.[364] Unlike the Fourth Circuit, the Eleventh Circuit did not propose a sliding scale that directly measures the strength of the government's suspicion by the search's invasiveness. To be sure, the court did indicate that reasonable suspicion may not always be enough to strip search a prison visitor, leaving the exact standard of suspicion for another day.[365] But the court also indicated that the choice will be between reasonable suspicion and probable cause.[366] The Eleventh Circuit thus contemplated no variable, undefined standard of suspicion in excess of reasonable suspicion, subject to the split-second judgment of prison officials and the whims of courts applying it. Nor did the court propose an intermediate standard of suspicion between reasonable

361. *See supra* Part III.A (examining the inflexibility of these courts' method of analysis).

362. *See Gilmore*, 144 F.4th at 1256–58 (evaluating the circumstances of the search beyond suspicion).

363. *See* Terry v. Ohio, 392 U.S. 1, 27–30 (1968) (explaining that the manner in which a search is conducted is "as vital a part of the inquiry as whether [it] was warranted at all").

364. *See supra* Part III.B.

365. *See Gilmore*, 144 F.4th at 1256 (concluding that the correctional officers "needed at least reasonable suspicion to subject Ms. Gilmore to a strip search").

366. *See id.* at 1254 ("We need not definitively decide whether this type of strip search requires reasonable suspicion or probable cause.").

suspicion and probable cause, which the Supreme Court has rejected.[367]

Instead, the court utilized the same reasonable suspicion standard as other courts.[368] This assures prison officials and courts of how much suspicion is required, while also incentivizing reasonable behavior in searching visitors to conform to that standard. No amount of suspicion can justify intolerably unreasonable conduct, which a sliding-scale approach arguably authorizes.[369]

Although what constitutes "reasonable behavior" will always be somewhat open-ended, the Fourth Amendment is necessarily open-ended due to the "endless variations"[370] of Fourth Amendment encounters and the "ever-changing complexity of human life."[371] The Eleventh Circuit approach, coupling a familiar Fourth Amendment standard with adaptability to highly variable and invasive searches, strikes the appropriate balance.

Of the alternatives presented by the U.S. Courts of Appeals, the Eleventh Circuit offers the ideal method of analyzing strip and body-cavity searches of prison visitors. Its approach is faithful to Supreme Court guidance and the constitutional rights of prison visitors.

CONCLUSION

The Fourth Amendment exists to "safeguard the privacy and security of individuals against arbitrary invasions by government officials."[372] Courts have a duty to properly apply this constitutional provision to safeguard personal privacy and security. In the context of traumatizing strip and body-cavity searches of prison visitors—who are indelible to improving the lives of incarcerated individuals—this duty is paramount.

367. *See* United States v. Montoya de Hernandez, 473 U.S. 531, 540–41 (1985) (rejecting the adoption of an intermediate "clear indication" standard between reasonable suspicion and probable cause).

368. *See Gilmore*, 144 F.4th at 1256 (applying the reasonable suspicion standard).

369. *See* Calloway v. Lokey, 948 F.3d 194, 202 (4th Cir. 2020) (indicating that more invasive behavior would be reasonable if supported by more particularized and individualized information).

370. Ohio v. Robinette, 519 U.S. 33, 39 (1996) (quoting Florida v. Royer, 460 U.S. 491, 506 (1983)).

371. Georgia v. Randolph, 547 U.S. 103, 125 (2006) (Breyer, J., concurring).

372. Carpenter v. United States, 585 U.S. 296, 303 (2018) (quoting Camara v. Mun. Ct. of S.F., 387 U.S. 523, 528 (1967)).

Most circuit courts have failed to fulfill this duty by disregarding the circumstances of the searches before them. These courts should follow the model adopted by the Eleventh Circuit, assessing not only the reasonable suspicion warranting a search, but that search's particular invasiveness. Courts can thus remain faithful to Supreme Court precedent while safeguarding the rights of prison visitors.