No. _____

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IN THE
SUPREME COURT OF THE UNITED STATES

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J.B., a Minor, by Thomas Benjamin and Janet Benjamin, Parents and Natural Guardians,
Petitioners,

v.

JAMES B. FASSNACHT, Pennsylvania State Police Officer, in his individual capacity; et al.,
Respondents.

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On Petition For Writ Of Certiorari
To The United States Court of Appeals
For The Third Circuit

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PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Under the Constitution, individual protections are calibrated differently for children than for adults. *See, e.g.*, *Miller v. Alabama*, 132 S. Ct. 2455 (2012); *J.D.B. v. North Carolina*, 564 U.S. 261 (2011); *Graham v. Florida,* 560 U.S. 48 (2010); *Roper v. Simmons,* 543 U.S. 551 (2005).

Adults arrested for minor, nonviolent offenses can be strip searched upon admission to jail, even in the absence of reasonable suspicion to believe that they are concealing weapons or contraband, because such search policies are "reasonably related to penological interests." *Florence v. Board of Chosen Freeholders of Cty. of Burlington*, 132 S. Ct. 1510, 1527 (2012).

Strip searches of children, however, present unique concerns. They are therefore permitted in schools only when "reasonably related to the objectives of the search and not excessively intrusive in light of the age and sex of the student and the nature of the infraction[.]" *Safford v. Redding,* 557 U.S. 364, 375 (2009) (citing *New Jersey v. T.L.O.*, 469 U.S. 325, 342 (1985)). This Court has not yet decided what standard applies to strip searches of children in juvenile detention centers. The Third Circuit applied *Florence*.

The questions presented are:

1. Does *Florence* establish the standard for suspicionless strip searches of youth in juvenile detention centers?

2. Does *Florence* establish the standard for suspicionless strip searches of youth in juvenile detention centers prior to a judicial determination of the appropriateness of detention?

PARTIES TO THE PROCEEDING

Petitioner J.B., plaintiff-appellee below, is a minor, bringing this case by and through his parents and guardians, Thomas and Janet Benjamin.

Respondents who were defendants-appellants below are Lancaster County; Daren Dubey, Individually and in his official capacity as Security Officer at the Lancaster County Youth Intervention Center; and Joseph Choi, Individually and in his official capacity as Security Officer at the Lancaster County Youth Intervention Center Lancaster County.

Additional defendants before the district court who were not appellants below are James B. Fassnacht, Pennsylvania State Police Officer, in his individual capacity; Brian Bray, Pennsylvania State Police Corporal, in his individual capacity; David Mueller, Individually and in his official capacity as Director of the Lancaster County Office of Juvenile Probation; Carole Trostle, Individually and in her official capacity as Probation Officer at the Lancaster County Office of Juvenile Probation; Drew Fredericks, Individually and in his official capacity as Director of the Lancaster County Youth Intervention Center; John Doe; Jane Doe, Individually and in their official capacity as Security Officers at the Lancaster County Youth Intervention Center; and Robert Kling, Individually and in his official capacity as Probation Officer at the Lancaster County Office of Juvenile Probation.

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PETITION FOR WRIT OF CERTIORARI

J.B., a minor, by and through his parents, respectfully petitions for a writ of *certiorari* to review the judgment of the United States Court of Appeals for the Third Circuit.

OPINIONS AND ORDERS BELOW

The opinion of the Court of Appeals for the Third Circuit is reported at 801 F.3d 336 and is reprinted in the Appendix to this Petition at App. 1-26. The district court's October 28, 2015 order dismissing the case with prejudice is reprinted at App. 27. The district court's order granting summary judgment in part and denying summary judgment in part is reported at 39 F. Supp. 3d 635 and reprinted at App. 28-51.

STATEMENT OF JURISDICTION

The United States Court of Appeals for the Third Circuit entered its decision on September 15, 2015. Justice Samuel J. Alito signed an order extending time for filing this petition up to and including January 13, 2016. The jurisdiction of this Court is invoked under 28 U.S.C. §1254.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourth Amendment to the United States Constitution provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Title 42, Section 1983 of the United States Code provides, in pertinent part:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . , subjects, or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, ...

STATEMENT OF THE CASE

A. Factual Background

In July 2009, an adult guard at the Lancaster Youth Intervention Center (LYIC) subjected 12-year-old J.B. to a strip search. The guard required J.B. to turn around, drop his pants and underwear, bend over, spread his buttocks, and cough. App. 5. J.B. then spent the weekend in detention at the LYIC. He appeared before a judge for the first time on the following Monday morning. *Id*. The judge determined

that J.B.'s detention was unnecessary and released J.B. to his parents. App. 5.

The incident giving rise to the search took place three weeks earlier, when J.B. and some neighborhood children got into a disagreement. J.B. threatened one of the other children while holding a homemade knife over her head. App. 31. Officer James B. Fassnacht was called to the scene. He did not consider J.B. to be a threat to himself or anyone else; he did not consider J.B. to be a flight risk; and he knew that J.B.'s parents were available to supervise him at home. Fassnacht Dep. at 46 (C.A. J.A. A141). Officer Fassnacht therefore did not take J.B. into custody. Rather, J.B. remained at home without incident until his parents received the call to bring him to the police barracks, three weeks later. App. 4. As part of the detention intake process, he was strip-searched.

J.B. was never adjudicated delinquent. Rather, on October 28, 2009, he appeared in juvenile court, where he entered into a consent decree for the charges of terroristic threats and summary harassment. App. 33. Pursuant to the consent decree, J.B. agreed to write a letter of apology and abide by probation requirements. *Id.* J.B. fulfilled the terms of his probation and consent decree and had no further involvement with the juvenile justice system. *Id.* Under Pennsylvania Law, successful completion of the terms of a consent decree leads to dismissal of the case. 42 Pa. Cons. Stat. § 6340. On October 10, 2010, the record of J.B.'s consent decree was expunged. *Id.*

B. Procedural History

On February 3, 2012, J.B., by his parents, instituted a civil rights action under 42 U.S.C. § 1983, alleging, among other things, that the detention center strip search violated J.B.'s Fourth Amendment right to be free from unreasonable search and seizure. App. 6.

Defendants filed a motion for summary judgment, which the United States District Court for the Eastern District of Pennsylvania granted in part and denied in part. In relevant part, the district court held that *Florence v. Board of Chosen Freeholders of Cty. of Burlington*, 132 S. Ct. 1510 (2012), did not apply to searches of juveniles entering detention and therefore that county officials did not have the right to conduct blanket strip searches of youth upon admission to a detention facility. App. 44. The district court further reasoned that *Florence* addressed the strip searches of adult inmates and made no reference to juvenile detainees. App. 41. Accordingly, the district court analyzed J.B.'s search under a reasonable suspicion standard, as articulated in *Bell v. Wolfish*, 441 U.S. 520 (1979). *Id.* Applying this standard, the district court held that there was a genuine issue of material fact as to whether the detention facility had a reasonable suspicion to strip search J.B. and denied Defendants" summary judgment motion. App. 44. The district court then certified for interlocutory appeal the question of whether *Florence* is applicable to strip searches of all juveniles admitted into a juvenile detention facility. App. 6-7.

On September 15, 2015, the United States Court of Appeals for the Third Circuit reversed the decision of the district court, holding that *Florence* extends to

searches of juveniles upon admission to a detention facility. App. 26. In holding strip searches of juveniles constitutional under the Fourth Amendment, the court acknowledged the unique harms to youth of strip searches, but proceeded improperly to equate juvenile detention searches to adult jail searches and apply adult standards without modification to children. App. 14-17.

REASONS FOR GRANTING THE WRIT

This Court has identified the standard that applies to strip searches of adults being admitted to the general population of an adult jail. *Florence*, 132 S. Ct. at 1527. It has also identified the standard that applies to strip searches of children in schools. *Safford v. Redding,* 557 U.S. 364, 375 (2009). The Court has not yet determined the standard that applies to strip searches of children being admitted to the general population of a juvenile detention facility. This case presents just that question, which is "an important question of federal law that has not been, but should be, settled by this Court." S. Ct. R. 10(c).

The Court of Appeals for the Third Circuit held that strip searches of youth entering pre-trial detention are governed by the same standard as adult strip searches, set forth in *Florence*, without modification. It rejected the applicability of *Safford* entirely, and failed to account for the unique developmental status of children when deciding what standard should apply. Its holding is contrary to this Court's precedent that directs courts to consider juvenile status when crafting constitutional standards. *Miller v. Alabama*, 132 S. Ct. 2455 (2012); *J.D.B. v. North Carolina*, 564

U.S. 261 (2011); *Graham v. Florida*, 560 U.S. 48 (2010); *Roper v. Simmons*, 543 U.S. 551 (2005). Accordingly, the court also "decided an important federal question in a way that conflicts with relevant decisions of this Court." S. Ct. R. 10(c).

I. THIS CASE PRESENTS AN IMPORTANT, UNSETTLED QUESTION OF LAW THAT THE COURT OF APPEALS DECIDED IN A MANNER CONTRARY TO THIS COURT'S PRECEDENT.

A. The First Question Presented Is Important, Recurring, And Unsettled.

The first question presented asks what standard applies to strip searches of children in juvenile detention centers.

1. The problem of suspicionless strip searches of juveniles is regularly occurring and unsettled, worthy of this Court's consideration. It has divided the lower courts, with district courts and courts of appeals struggling to decide the appropriate standard to apply to the constitutionality of juvenile-strip-search policies. Unsurprisingly, they have reached widely varied results. *Compare, e.g., Smook v. Minnehaha Cty.,* 457 F.3d 806 (8th Cir. 2006) (suspicionless strip search of juvenile detainee at intake constitutional); *and N.G. v. Connecticut*, 382 F.3d 225, 229 (2d Cir. 2004) (same); *with Mashburn v. Yamhill Cty.*, 698 F. Supp. 2d 1233 (D. Or. 2010) (suspicionless strip search of juveniles following contact visits unconstitutional, applying *Safford* standard); *and Moyle v. Cty. of Contra Costa*, 2007 WL 4287315 (N.D. Ca. Dec. 5, 2007) (policy permitting blanket strip searches upon admission

and after contact visits in juvenile hall unconstitutional). *Cf. Mabry v. Lee County*, 100 F. Supp. 3d 568 (N.D. Miss. 2015) (no clear constitutional right of juvenile detainees to be free from suspicionless strip searches); *Doe v. Preston*, 472 F. Supp. 2d 16 (D. Mass. 2007) (same); *Taggart ex rel. Perry v. Solano Cty.*, 2006 WL 737017, at *2 (E.D. Cal. Mar. 20, 2006) (summary judgment on qualified-immunity grounds denied in case involving juvenile strip searched upon admission to detention).

As this diversity of opinion demonstrates, the lower courts are in desperate need of this Court's guidance. Indeed, both the Sixth and Eighth Circuits have identified the gap in this Court's caselaw that, according to them, precludes a finding that the right of juveniles to be free from suspicionless searches is clearly established. In *T.S. v. Doe*, for example, the Sixth Circuit determined that the right of juvenile detainees held on minor offenses to be free from suspicionless searches was not clearly established, and thus that defendants were entitled to qualified immunity. *T.S. v. Doe*, 742 F.3d 632 (6th Cir. 2014). The court noted: "If this case involved adult detainees, *Florence* clearly holds that there would be no constitutional violation. Here, however, *Florence* does not squarely address the constitutional issue . . . ." *Id.* at 637.

In *Smook v. Minnehaha County,* the Eighth Circuit likewise remarked on the absence of this Court's precedent on "the reasonableness of strip searches of juveniles in lawful state custody," observing that the adult strip search cases "did not consider the different interests involved when the State has responsibility to act in loco parentis." 457 F.3d at 813-14.

Many district courts also have explicitly noted the lack of guidance from this Court. *See, e.g., Mabry*, 100 F.Supp.3d at 576 (no caselaw from this Court on "strip searches in the context of juvenile detention centers"); *Trujillo v. City of Newtown, Kan.*, 2013 WL 535747 at *6 (D. Kan. Feb. 12, 2013) ("it was not clearly established that Buford could not strip search Plaintiff upon intake at the Harvey County Jail"); *Mashburn*, 698 F. Supp. 2d at 1245 (observing that this Court has not "addressed the constitutionality of strip searches in juvenile detention facilities"); *Doe v. Preston*, 472 F. Supp. 2d 16, 25 (D. Mass. 2007) (constitutionality of routine suspicionless searches of juvenile detainees was not clearly established). Plenary review of the decision below would allow this Court to fill the void left by existing precedent and clarify the standard for the lower courts.

2. Review should be granted also because the issue is of critical importance. The permissibility of strip searches at juvenile detention centers affects every child admitted into a juvenile detention center across the country. The consequences of those searches on children cannot be overstated. As this Court noted in *Safford Unified Sch. Dist. No. 1 v. Redding*—a school-strip-search case that was in a posture similar to this one—strip searches are uniquely intrusive, and particularly harmful to children. 557 U.S. at 377. The issue was important enough for this Court to grant certiorari in *Safford*, and it is important enough for the Court to grant certiorari here.

B. The Third Circuit's Decision To Apply *Florence* To Juvenile Strip Searches Without Modification Conflicts With Decisions Of This Court.

This Court's review is also critical because the Third Circuit decided the case in a manner that is inconsistent with this Court's case law. It concluded that the adult standard for strip searches—established by this Court in *Florence*—applies to juvenile cases. *See* App. 26. (citing *Florence*, 132 S. Ct. 1510).

The *Florence* standard does not take into account the juvenile status of the offender. The decision below therefore cannot be squared with this Court's precedents requiring courts to do just that.

1. The rule that constitutional standards must calibrate for juvenile status is well established. This Court has long recognized that legal standards developed for adults cannot be uncritically applied to children. *See, e.g.*, *May v. Anderson*, 345 U.S. 528, 536 (1953) ("Children have a very special place in life which law should reflect. Legal theories and their phrasing in other cases readily lead to fallacious reasoning if uncritically transferred to determination of a State's duty towards children."); *Haley v. Ohio*, 332 U.S. 596, 599 (1948) (plurality opinion) ("[a child] cannot be judged by the more exacting standards of maturity."). Although "neither the Fourteenth Amendment nor the Bill of Rights is for adults alone," *In re Gault*, 387 U.S. 1, 13 (1967), this Court has held that "the Constitution does not mandate elimination of all differences in the treatment of juveniles," *Schall v. Martin*, 467 U.S. 253, 263 (1984) (citing *McKeiver v.*

Pennsylvania, 403 U.S. 528 (1971)) (holding that juveniles have no right to a jury trial). Indeed, in *Graham v. Florida*, this Court wrote that "criminal procedure laws that fail to take defendants' youthfulness into account at all would be flawed." 560 U.S. at 76.

In the past decade, this Court has highlighted the relevance of adolescent status and emergent research on adolescent development to constitutional standards in a series of opinions relating to youth culpability and sentencing. *See Miller*, 132 S. Ct. at 2455 (striking down the mandatory imposition of life without parole sentences for juveniles); *Graham*, 560 U.S. at 48 (striking down the imposition of life without parole sentences for juveniles convicted of nonhomicide offenses); *Roper*, 543 U.S. at 551 (striking down the juvenile death penalty as unconstitutional).

This Court has applied a similar analysis in the context of criminal procedure, clarifying that the inquiry in a *Miranda* custody determination involving a child is whether a "reasonable *child*" would have perceived him or herself free to leave or halt the interrogation. *J.D.B.*, 564 U.S. at ___ (emphasis added). These cases stand for the proposition that what we know about adolescent development—through common sense, social science, and neuroscience—must be accounted for in the definition or application of legal standards. More specifically, the cases recognize three key characteristics that distinguish adolescents from adults: "[a]s compared to adults, juveniles have a 'lack of maturity and an underdeveloped sense of responsibility'; they 'are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure'; and their characters are 'not as

well formed.'" *Miller*, 132 S. Ct. at 2464 (citing *Roper*, 543 U.S. at 569-70).[1]

As this Court noted in *J.D.B.*, "[o]ur history is replete with laws and judicial recognition" that children cannot be viewed simply as miniature adults. *J.D.B.*, 131 S. Ct. at 2404 (citing *Eddings v. Oklahoma*, 455 U.S. at 115-16). For example, this Court has articulated legal distinctions between minors and adults in cases involving state restrictions on minors' reproductive rights, finding that "[t]he State has a strong and legitimate interest in the welfare of its young citizens, whose immaturity, inexperience, and lack of judgment may sometimes impair their ability to exercise their rights wisely." *Hodgson v. Minnesota*, 497 U.S. 417, 444 (1990).

With strip searches in particular, this Court has relied upon the unique vulnerability of adolescents, and their heightened expectation of privacy, to hold a suspicionless strip search unconstitutional in the school context. *Safford*, 557 U.S. at 382. The Court in *Safford* grounded its Fourth Amendment reasonableness analysis in the special context of juvenile expectations, explaining that "[t]he reasonableness of [the student's] expectation [of privacy] (required by the Fourth Amendment standard) is indicated by the consistent experiences of other young people similarly searched, whose adolescent vulnerability intensifies

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[1] Thus, "[t]he reality that juveniles still struggle to define their identity means it is less supportable to conclude that even a heinous crime committed by a juvenile is evidence of irretrievably depraved character." *Roper*, 543 U.S. at 570. In contrast, this Court noted that adults "detained for minor offenses can turn out to be the most devious and dangerous criminals." *Florence*, 132 S. Ct. at 1520.

the patent intrusiveness of the exposure." *Id.* at 366. It further identified the "*categorically extreme* intrusiveness of a search down to the body of an adolescent," *id.* at 376 (emphasis added), even when the student was not required to completely undress, *id.* at 369. Because of this "categorically extreme intrusiveness," "general background possibilities fall short," and the school must have "some justification in suspected facts" to conduct the search. *Id.* at 376.

In short, the constitutional distinction between children and adults is longstanding. This Court has consistently recognized that children are deserving of special considerations and protections because of their unique developmental status, and it has done so specifically in the context of juvenile strip searches.

2. Despite this jurisprudential history, the Third Circuit applied the adult *Florence* standard to juvenile strip searches. But *Florence* does not account for developmental status, as the case did not involve children.

Florence involved an adult who was subject to a strip search. This Court held that jail officials may conduct blanket strip searches of adults at intake because the search is considered "reasonably related to legitimate penological interests." *Florence,* 132 S. Ct. at 1515 (quoting *Turner v. Safley*, 482 U.S. 78, 89 (1987)). It explained that courts should defer to officials' judgment in virtually all cases. A search may be found unconstitutional only if "there is 'substantial evidence' demonstrating [officials'] response to the situation is exaggerated." *Id.* at 1518 (quoting *Block v. Rutherford*, 468 U.S. 576, 584-85 (1984)). *Florence* applied a categorical rule, with this Court reasoning that

the particular security concerns presented in adult jails justified strip searches even in the absence of reasonable suspicion that the individual had contraband. *Id.* at 1512. The Court rejected a standard that would require individualized suspicion as infeasible due to the sheer numbers of inmates being processed in *adult* jails, and the limited information available to staff at intake. *Id.* at 1515-16. It had no occasion to consider whether or how these considerations might apply in *juvenile* detention centers, however.

Moreover, none of the cases relied upon by this Court in *Florence* involved juveniles or took into account juvenile status. The standard applied in *Florence* was first established by this Court in *Turner v. Safley* to govern the First Amendment rights of *adult* inmates in prison. 482 U.S. 78 (1987). *Turner,* too, built upon precedent concerning the constitutional rights of incarcerated *adults*. *See Turner*, 482 U.S. at 86-90 (citing *Pell v. Procunier*, 417 U.S. 817 (1974) (finding that prohibitions on prisoners' initiating interviews by press did not violate prisoners' rights); *Jones v. North Carolina Prisoners' Union*, 433 U.S. 119 (1977) (holding that bans on inmate solicitation and group meetings were rationally related to reasonable objectives of prison administration); *Bell v. Wolfish*, 441 U.S. 520 (1979) (holding constitutional body cavity searches of pretrial detainees following contact visits); *Block*, 468 U.S. 576 (upholding jail's policy denying pretrial detainees contact visits and random searches of cells)).

Neither *Florence*, *Turner,* nor the precedents they relied upon address the legal rights of *juveniles* held prior to adjudication.

3. The Third Circuit nevertheless applied *Florence,* declaring in circular fashion that *Florence* was the governing standard because *Florence* did not "contemplate[] an exception based on age classifications," App. 24, even though juvenile status was not at issue in that case. As this Court has repeatedly held, juvenile status must be taken into account in determining children's legal or constitutional rights. The Court should grant review to clarify that the rule applies with equal force in the strip-search context.

a. The Third Circuit's rationale for applying *Florence* crumbles in the face of this Court's prior case law. The Third Circuit reasoned that juvenile and adult jails shared the same "penological interests" and, as a categorical matter, "these penological interests outweigh the privacy interests of juvenile detainees." App. 19. This logic is squarely at odds with this Court's decisions.

This Court has recognized that, while the primary purpose of the adult criminal justice system is to determine guilt and impose punishment, the juvenile system has core goals of rehabilitation and individualized treatment. *See McKeiver*, 403 U.S. at 539-40 (refusing to apply a constitutional right to jury trial in juvenile court because of the importance of allowing states to provide rehabilitation to youth). Juvenile detention centers are distinct from adult jails, *see Schall*, 467 U.S. at 265-68, because they focus on individualized responses, and the care and education of youth in their custody. *See e.g.*, Kathleen A. Baldi, *The Denial of A State Constitutional Right to Bail in Juvenile Proceedings: The Need for Reassessment in Washington State*, 19 Seattle U. L. Rev. 573, 583

(1996) ("Although a child's detention may have the same practical effect upon his freedom as does the confinement of an adult, the child's confinement is for his own welfare. In contrast, the pre-trial confinement of an adult criminal defendant is used solely to ensure his presence at trial.").

Indeed, the Pennsylvania statute under which J.B., petitioner in this case, was detained allows for detention *for the child's benefit*, permitting detention either when it may protect the person or property of other people "or of the child," as well as when the child "has no parent, guardian, or custodian or other person able to provide supervision and care for him and return him to the court when required." 42 Pa. Cons. Stat. § 6325. Across the country, young people may be detained for their own welfare, or because a parent is not available to supervise them.[2]

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[2] The overwhelming majority of states have similar provisions governing the detention of children. *See* Alaska Stat. § 47.12.250 (2016); Ala. Code § 12-15-128(a)-(c)) (2016); Ark. Code Ann. § 9-27-326(c) (2016); Cal. Welf. & Inst. Code § 635 (2016); Colo. Rev. Stat. § 19-2-508(3)(a)(i)-(iii) (2016); Conn. Gen. Stat. § 46b-133(c), (e) (2016); Fla. Stat. § 985.24(1) (2016); Haw. Rev. Stat. § 571-31.1 (2016); Iowa Code § 232.22(1) (2016); Idaho Code § 20-516(2) (2016); 705 Ill. Comp. Stat. 405/5-410(2)(a) (2016); Ind. Code § 31-37-6-6(a) (2016); Kan. Stat. Ann. § 38-2331 (2016); Kan. Stat. Ann. § 38-2343(a) (2016); Ky. Rev. Stat. Ann. § 610.280(1) (2016); Md. Code Ann. Cts. & Jud. Proc. § 3-8A-15 (2016); Me. Stat. tit. 15, § 3203-A(4)(C)-(D) (2016); Mich. Comp. Laws § 712A.15(2) (2016); Minn. Stat. § 260B.176 (2016); Minn. Stat. § 260B.178 (2016); Miss. Code Ann. § 43-21-301(3)(a)(ii) (2016); N.C. Gen. Stat. § 7B-1903(b) (2016); N.D. Cent. Code § 27-20-14(1) (2016); Neb. Rev. Stat. § 43-251.01 (2016); N.H. Rev. Stat. Ann. § 169-B:14 (2016); N.M. Stat. Ann. § 32A-2-11(A) (2016); Nev. Rev. Stat. § 62C.030(2) (2016); Ohio Rev. Code Ann. § 2151.31(C)

Moreover, young people may be held in detention for such minor misconduct as violating curfew, running away from home to escape abuse, and engaging in other typical adolescent behavior such as underage drinking or skipping school, or for violating valid court orders for engaging in such status offenses. *See, e.g., Smook*, 457 F.3d at 808 (considering the constitutionality of strip searches of minors detained for curfew violations); *N.G.*, 382 F.3d at 227 (considering the constitutionality of strip searches for juveniles in detention for violating curfew; running away from home; being beyond the control of parents; engaging in indecent or immoral conduct; being truant or defying school rules; or for a child thirteen or older, engaging in sexual intercourse with a person of similar age). The nature and purposes of juvenile detention are not comparable to those of adult jails.

These core distinctions matter under this Court's jurisprudence. In conditions-of-confinement cases, for example, this Court has made clear that while the Eighth Amendment requires deference to administrators in prisons, *see, e.g.*, *Whitley v. Albers*, 475 U.S. 312, 321-22 (1986), a less deferential Fourteenth Amendment standard applies when punishment is not the primary goal. In *Youngberg v. Romeo,* for instance, this Court held that individuals confined for

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(2016); Okla. Stat. Ann. tit. 10A § 2-3-101(A)-(C) (2016); R.I. Gen. Laws § 14-1-11(c), (e) (2016); S.C. Code Ann. § 63-19-820 (2016); S.D. Codified Laws § 26-8C-3 (2016); Tenn. Code Ann. § 37-1-114(c) (2016); Tex. Fam. Code Ann. § 54.01(e) (2016); Va. Code Ann. § 16.1-248.1(A) (2016); Vt. Stat. Ann. tit. 33, § 5291 (2016); Wash. Rev. Code § 13.40.040(1)-(2) (2016); Wis. Stat. § 938.205 (2016); Wis. Stat. § 938.208 (2016); W. Va. Code § 49-4-705 (2016); W. Va. Code § 49-4-706 (2016); Wyo. Stat. Ann. § 14-6-206 (2016).

treatment purposes, such as those involuntarily confined to mental health facilities, "are entitled to more considerate treatment and conditions of confinement than criminals whose conditions of confinement are designed to punish." *See, e.g. Youngberg v. Romeo,* 457 U.S. 307, 321-22 (1982). Similarly, the majority of circuits to address the issue have applied the Fourteenth rather than the Eighth Amendment to juvenile conditions cases. *See, e.g., A.J. ex. rel. L.B. v. Kierst*, 56 F.3d 849 (8th Cir. 1995); *Gary H. v. Hegstrom*, 831 F.2d 1430, 1431-32 (9th Cir. 1987); *H.C. v. Jarrard.*, 786 F.2d 1080, 1084-85 (11th Cir. 1986); *Alexander v. Boyd*, 876 F. Supp. 773, 795-96 (D.S.C. 1995).[3] The Third Circuit's decision is contrary to the logic of these cases.

b. The Third Circuit also reasoned that "any individualized, reasonable suspicion inquiry falters in juvenile detention centers for the same reasons it does so in adult facilities." App. 20. This too is unsupported—and indeed contradicted—by this Court's prior cases. This Court has previously recognized that

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[3] Even under the Eighth Amendment, a standard more protective of youth is applied in juvenile conditions cases, given the relevance of adolescent development to this Court's Eighth Amendment jurisprudence on sentencing. *See Miller*, 132 S. Ct. 2455 (striking down the mandatory imposition of life without parole sentences for juveniles); *Graham*, 560 U.S. 48 (striking down the imposition of life without parole sentences for juveniles convicted of nonhomicide offenses); *Roper*, 543 U.S. 551 (striking down the juvenile death penalty as unconstitutional). *See also* Marsha L. Levick, Jessica Feierman, Sharon Messenheimer Kelley & Naomi E.S. Goldstein, *The Eighth Amendment Evolves: Defining Cruel and Unusual Punishment through the Lens of Childhood and Adolescence*, 15 Univ. Penn. J. of Law & Social Change 286 (2012).

the intake process of juvenile detention centers is categorically distinct from the intake procedures in adult jails. *Schall v. Martin,* 467 U.S. 253 (1984). While it may be especially "difficult to classify" adult inmates at intake, *Florence*, 132 S. Ct. at 1512, such classifications are a routine component of the juvenile detention process.

In *Schall v. Martin*, this Court explained that "[t]he heart of the intake procedure is a 10- to 40-minute interview of the juvenile, the arresting officer, and sometimes the juvenile's parent or guardian," and that the objectives are to determine not only the nature of the offense but also "background information" on the child. 467 U.S. at 284. The procedures described in *Schall* remain characteristic of juvenile detention intake today. *See, e.g.*, Pa. R. Juv. Ct. Proc. 240 (requiring the juvenile probation officer to conduct an investigation, which may include an intake conference with the juvenile, the juvenile attorney, and/or the guardian).[4]

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[4] Across the country, for example, juvenile systems have designed risk assessments specifically to aid in the detention decision-making process, *see, e.g.*, Berkeley Law University of California, Chief Justice Earl Warren Institute on Law and Social Policy, *JDAI Sites and States* (November 2012), https://www.law.berkeley.edu/wp-content/uploads/2015/04/JDAI-Rep-1-FINAL.pdf, and mental health screens to help triage immediate needs of detained youth, *see e.g.,* National Youth Screening and Assessment Partners, *Mental Health Screening (MAYSI-2) & Assessment*, *available at* http://www.nysap.us/MHScreening.html.

Additionally, the low rate of juvenile detention—just over 200,000 youth are detained annually[5]—stands in stark contrast to the 13 million adults admitted each year to jail. *See Florence*, 132 S. Ct. at 1515. Thus, the reasons justifying a categorical rule for adult jails are inapplicable to juvenile detention centers.

C. The Developmental Status Of Children Demands A Distinct Standard For Strip Searches.

This Court has made clear that a strip search is a severe and harmful intrusion into privacy. *Bell*, 441 U.S. at 560. As Justice Breyer recognized in his *Florence* dissent, without contradiction from the majority, "[e]ven when carried out in a respectful manner, and even absent any physical touching, such searches are inherently harmful, humiliating, and degrading." *Florence*, 132 S. Ct. at 1526 (Breyer, J., dissenting). These kinds of searches give the Court the "most pause." *Id.* (quoting *Bell*, 441 U.S. at 558).

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[5] In 2013, there were 221,600 youth in detention nationwide. National Center for Juvenile Justice & Office of Juvenile Justice and Delinquency Prevention, *Juvenile Court Statistics 2013*, http://www.ojjdp.gov/ojstatbb/njcda/pdf/jcs2013.pdf at 32. Moreover, many youth detention facilities house 50 or fewer youth, and detention centers with bed capacities of 20 or less are common. Melissa Sickmund, et al., *Easy Access to the Census of Juveniles in Residential Placement*, *available at* http://www.ojjdp.gov/ojstatbb/ezacjrp/. The largest facilities in the country house two to three hundred youth total, with declining populations. The Lancaster facility at issue here has only 72 beds in the entire facility. These facilities are simply not processing hundreds of individuals per day like the adult jails described in *Florence*.

Strip searches give the Court even greater pause when performed on a juvenile because "adolescent vulnerability intensifies the patent intrusiveness of the exposure." *Safford*, 557 U.S. at 375. This principle has been recognized by other courts striking as unconstitutional strip searches of children in schools and immigration detention centers. *See, e.g.*, *Thomas ex. rel. Thomas v. Roberts*, 261 F.3d 1160, 1168 (11th Cir. 2001) (strip searches represented a serious intrusion on the rights of the children); *Jenkins v. Talladega City Bd. of Educ.*, 95 F.3d 1036, 1044 (11th Cir. 1996) ("the perceived invasiveness and physical intimidation intrinsic to strip searches may be exacerbated for children"), *vacated*, 115 F.3d 821 (11th Cir. 1997) (holding that teachers were entitled to qualified immunity); *Cornfield v. Consol. High Sch. Dist. No. 230*, 991 F.2d 1316, 1323 (7th Cir. 1993) (strip search was particularly intrusive on 16-year-old, because that is the "age at which children are extremely self-conscious about their bodies"); *Doe v. Renfrow*, 631 F.2d 91, 93 (7th Cir. 1980) (strip search of 13 year old was a "violation of any known principle of human decency."); *Flores v. Meese*, 681 F. Supp. 665, 667 (C.D. Cal. 1988) ("Children are especially susceptible to possible traumas from strip searches.")[6]

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[6] Social science research further confirms what courts have said: strip searches can be particularly damaging for young people, causing post-traumatic stress disorder, increased withdrawal or anxiety, increased anger or defiance, depression, inability to concentrate, phobic reactions, later delinquent behavior, and even suicide. Katherine Hunt Federle, *Children and the Law: An Interdisciplinary Approach with Cases, Materials, and Comments*, 209 (Oxford University Press 2013). *See also* Scott A. Gartner, *Strip Searches of Students: What Johnny Really Learned at*

For the many young people[7] in the juvenile justice system with prior histories of victimization, and particularly sexual victimization, strip searches may be particularly damaging. *See N.G. v. Connecticut,* 382 F.3d 225, 232 (2d Cir. 2004) (Sotomayor, J., dissenting) (noting, without contradiction from the majority, that the "adverse psychological effect of a strip search is likely to be more severe upon a child than an adult, especially a child who has been the victim of sexual abuse").

These considerations compel adoption of a standard that provides for greater protection against strip searches for juveniles than for adults. After all, this Court has recognized that Fourth Amendment "standards are 'fluid concepts that take their substantive content from the particular contexts' in which they are being assessed." *Safford,* 557 U.S. at 371 (citing *Ornelas v. United States,* 517 U.S. 690, 696 (1996)). A standard less deferential to facility administrators, and more protective of youth, is appropriate in assessing strip searches in juvenile facilities. Such a standard must take into account the young person's

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School and How Local School Boards Can Help Solve the Problem, 70 S. Cal. L. Rev. 921, 928-29 (1997); Steven F. Schatz et al., *The Strip Search of Children and the Fourth Amendment*, 26 U.S.F.L. Rev. 1, 12 (1991).

[7] Experts have found that at least 75 percent of youth in the juvenile justice system have experienced "traumatic victimization" and 50 percent have posttraumatic stress disorder (PTSD). Cally Sprague, Nat'l Child Traumatic Stress Network (NCTSN), *Judges and Child Trauma: Findings from the National Child Traumatic Stress Network/National Council of Juvenile and Family Court Judges Focus Groups* (Aug. 2008), *available at* www.nctsn.org/sites/ default/files/assets/pdfs/judicialbrief.pdf.

developmental status, and in particular, the unique harms that befall youth subjected to strip searches. This more protective standard tracks this Court's jurisprudence on adolescents. The Third Circuit's decision below does not.

II. THIS CASE ALSO RAISES A QUESTION EXPRESSLY IDENTIFIED, BUT LEFT UNRESOLVED, IN *FLORENCE*.

The second question presented seeks clarification of the applicable standard for juvenile strip searches conducted at intake before a judge has authorized the juvenile's detention.

1. This is a variation of the issue that was expressly identified, but not decided, by four Justices of this this Court in *Florence*. *See* 132 S. Ct. at 1523 (4-justice portion of Justice Kennedy's opinion) (noting the case did "not present the opportunity to consider" circumstances where an arrestee's "detention has not yet been reviewed by a magistrate or other judicial officer"); *id.* at 1525 (Alito, J., concurring) ("The Court does not address whether it is always reasonable, without regard to the offense or the reason for detention, to strip search an arrestee before the arrestee's detention has been reviewed by a judicial officer.").

That question as it relates to juveniles *is* squarely presented by this case. J.B. was taken into detention on a Friday, held in secure detention over the weekend pending a judicial hearing the following Monday,[8]

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[8] Under Pennsylvania law, this detention hearing was required within 72 hours to make a probable cause determination, and to determine whether detention was necessary. 42 Pa. Cons. Stat. § 6331.

and then released immediately once he appeared before the judge. App. 33. At the detention hearing, the judge allowed him to return straightaway to his mother and father, concluding that detention was unnecessary.

The Court should take the opportunity now to decide the question left open in *Florence* as it relates to juveniles.

2. The Court should conclude that, at a minimum, a more demanding standard than *Florence* must apply to strip searches conducted before a judge approves the juvenile's detention. As Justice Alito explained in his concurrence, a strip search prior to judicial review warrants careful scrutiny:

> It is important to note, however, that the Court does not hold that it is *always* reasonable to conduct a full strip search of an arrestee whose detention has not been reviewed by a judicial officer and who could be held in available facilities apart from the general population. Most of those arrested for minor offenses are not dangerous, and most are released from custody prior to or at the time of their initial appearance before a magistrate. In some cases, the charges are dropped. In others, arrestees are released either on their own recognizance or on minimal bail. In the end, few are sentenced to incarceration. For these persons, admission to the general jail population, with the concomitant humil-

> iation of a strip search, may not be reasonable, particularly if an alternative procedure is feasible.

Id. at 1524. The rights of an individual after arrest but prior to his appearance before a judge warrant particular protections.

This Court has long recognized the importance of judicial detention determinations in protecting the rights of individuals facing confinement. It is not sufficient to rest on the probable cause determination made by a police officer "engaged in the often competitive enterprise of ferreting out crime." *Gerstein v. Pugh,* 420 U.S. 103, 112-13 (1975). Rather, once the urgent concerns of the arrest have been addressed, the neutral and detached magistrate plays a vital role in protecting the individual from unjustified interference with his or her liberty: "When the stakes are this high, the detached judgment of a neutral magistrate is essential if the Fourth Amendment is to furnish meaningful protection from unfounded interference with liberty." *Id.* at 114, (underscoring the importance of the right, and noting that "[a]t common law it was customary, if not obligatory, for an arrested person to be brought before a justice of the peace shortly after arrest.").

An individual held in detention after arrest but prior to a judicial detention hearing is in a uniquely vulnerable position: he or she has not yet received key procedural protections, but may still face significant harms. Prior to the probable cause hearing, there is a particular risk that innocent people—or those who need not be held in secure placement—will be confined. *See Cty. of Riverside v. McLaughlin*, 500 U.S. 44, 71 (1991) (J. Scalia dissenting) ("Hereafter a law-

abiding citizen wrongfully arrested may be compelled to await the grace of a Dickensian bureaucratic machine, as it churns its cycle for up to two days—never once given the opportunity to show a judge that there is absolutely no reason to hold him, that a mistake has been made.").

J.B.'s case illuminates why policies permitting blanket strip searches prior to judicial hearings are particularly problematic. No officer involved in this case thought J.B. was a threat to himself or others. *See* Bray Dep. at 17 (C.A. J.A. A266); Fassnacht Depo. at 46 (C.A. J.A. A141). Like the hypothetical adult detainees described by Justice Alito in his concurrence in *Florence*, J.B. was never ultimately adjudicated delinquent. Rather, three months after his detention, he appeared before a juvenile court judge and entered into a consent decree, which required him to write a letter of apology and abide by probationary conditions. App. 5-6. At the end of the three months, the petition charging delinquency was dismissed. *See* 42 Pa. Cons. Stat. § 6340.

Juveniles should not be subject to strip searches as a matter of course before any judge has approved their initial detention. This is an oft-recurring problem, expressly recognized in *Florence* for adults, but left undecided. Now is the time for the Court to resolve the question, and this case presents this Court with an ideal vehicle for doing so.

CONCLUSION

For the foregoing reasons, J.B. respectfully requests that this Court grant the petition for a *writ of certiorari*.

Respectfully Submitted,

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January 13, 2016

PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 14-3905

J.B., a Minor, by Thomas BENJAMIN and
Janet Benjamin, Parents and Natural Guardians

v.

JAMES B. FASSNACHT, Pennsylvania State Police Officer, in his individual capacity; BRIAN BRAY, Pennsylvania State Police Corporal, in his individual capacity; LANCASTER COUNTY; DAVID MUELLER, Individually and in his official capacity as Director of the Lancaster County Office of Juvenile Probation; CAROLE TROSTLE, Individually and in her official capacity as Probation Officer at the Lancaster County Office of Juvenile Probation; DREW FREDERICKS, Individually and in his official capacity as Director of the Lancaster County Youth Intervention Center; JOHN DOE; JANE DOE, Individually and in their official capacity as Security Officers at the Lancaster County Youth Intervention Center; ROBERT KLING, Individually and in his official capacity as Probation Officer at the Lancaster County Office of Juvenile Probation, DAREN DUBEY, Individually and in his official capacity as Security Officer at the Lancaster County Youth Intervention Center; JOSEPH CHOI, Individually and in his official capacity as Security Officer at the Lancaster County Youth

App. 2

Intervention Center LANCASTER COUNTY;
JOSEPH CHOI; DARREN DUBEY,

Appellants

On Appeal from the United States District Court
for the Eastern District of Pennsylvania

(E.D. Pa. No. 5:12-cv-00585)

District Judge: Honorable Jeffrey L. Schmehl

Argued: July 9, 2015

Before: FUENTES, NYGAARD, and ROTH, *Circuit Judges*

(Opinion Filed: September 15, 2015)

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OPINION OF THE COURT

FUENTES, Circuit Judge

In *Florence v. Board of Chosen Freeholders of County of Burlington,*[1] the Supreme Court held that all arrestees who are committed to the general population of a detention center may be subject to a close visual inspection while undressed. Today we are asked whether *Florence* applies to juvenile offenders admitted to the general population of a juvenile detention center. We hold that it does.

I. Background

At twelve years old, J.B. skillfully constructed a homemade flame thrower using PVC pipe, a lighter, and spray paint. He then activated this contraption in his backyard. The flame thrower shot flames 1-2 feet in length, attracting the attention of several neighborhood girls, ages 7-11, who were playing nearby. The girls told their babysitter about the flames, and the babysitter asked J.B. to stop playing with the flame thrower as it was unsafe. Later that day, the same girls went to J.B.'s front yard and began teasing him. This teasing resulted in hand-to-hand fighting between J.B. and at least two of the girls. During this conflict, J.B. brandished a

[1] 132 S. Ct. 1510 (2011).

homemade knife, approximately 5 inches long, which he held over one of the girl's heads, stating that he was stronger than her, "so [he could] kill [her] and over power [her]."[2] The girls also alleged that J.B. directly threatened to kill them. After J.B. threatened the girls and displayed the knife, they left his yard and told their babysitter what had transpired.

The father of two of the girls involved, called the state police that evening to report the incident. Trooper James Fassnacht received notice of this report and interviewed the father, all of the young girls, and J.B. J.B. admitted to threatening to break one of the girl's arms and to holding a homemade knife over another girl's head.[3] Fassnacht informed J.B.'s father that charges of terroristic threats and summary harassment would be filed at a later date. Three weeks later, Fassnacht filed a juvenile allegation against J.B. with Lancaster County Juvenile Probation Intake Officer Carole Trostle. Trostle then informed Fassnacht that Lancaster County Juvenile Probation was ordering J.B.'s detention due to the seriousness of the charges.

J.B.'s parents surrendered J.B. to the Pennsylvania State Police barracks in Ephrata, Pennsylvania. He was then transported to the Lancaster County Youth Intervention Center ("LYIC"). Upon arrival, J.B. was processed and subjected to a strip search

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[2] App. 8.

[3] App. 8.

pursuant to LYIC policy.[4] This policy states that such searches are conducted to look for signs of "injuries, markings, skin conditions, signs of abuse, or further contraband."[5] Officers are instructed to wear rubber gloves, refrain from touching the detainee, and to bring the detainee "to the shower area and close the privacy curtain in order to obstruct the transporters' view."[6] During the strip search, J.B. stood behind a curtain so that only the officer conducting the search could observe him as he removed his clothing. J.B. removed his pants and underwear for approximately ninety seconds. In addition, J.B. was asked to turn around, drop his pants and underwear, bend over, spread his buttocks, and cough. J.B. was detained from Friday, July 24 through Monday, July 27, 2009, when, after a hearing, he was released to his parents. In October 2009, a juvenile hearing was held and J.B. did not contest the charges of terroristic threats and summary harassment. Instead, he entered into a consent decree by which he agreed to write a letter of apology to his victims and abide by other probation

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[4] The LYIC policy is not a blanket strip search policy, per se. Rather, facility officials complete an "Unclothed Search Checklist," to determine whether a new detainee should be strip searched. During a deposition, however, one LYIC official stated that, in practice, all new detainees are strip searched. The official stated that he could not recall a new detainee not having been strip searched. App. 296-97.

[5] App. 355.

[6] App. 354.

requirements in exchange for the opportunity to have his record expunged.

In February 2012, Plaintiffs Thomas and Janet Benjamin brought suit on behalf of J.B., asserting various civil rights violations under 42 U.S.C. § 1983 for false arrest, unreasonable search and seizure, false imprisonment, and violations of due process against various prison officials. Defendants filed a motion for summary judgment, which the District Court granted in part and denied in part. Of particular relevance, the District Court rejected Defendants' argument that Plaintiffs' unreasonable search claims failed pursuant to *Florence*. The District Court held that *Florence* does not apply to juveniles and thus it did not affect the legality of J.B.'s search. In so holding, the District Court reasoned that the facts of *Florence* addressed strip searches of adult inmates and made no reference to juvenile detainees. Accordingly, the District Court proceeded by analyzing J.B.'s search under a reasonable suspicion standard, as articulated in *Bell v. Wolfish*.[7] Because the District Court found there to be a genuine issue of material fact as to whether the detention facility officials possessed a reasonable suspicion to strip search J.B., it denied summary judgment on this claim. The District Court was particularly bothered by the three-week time lapse between the incident and J.B.'s detention. Under 28 U.S.C. § 1292(b), the District

[7] 441 U.S. 520, 558-59 (1979).

Court then certified the question of whether *Florence* applies to all juveniles being committed to a juvenile detention facility.[8]

II. Discussion

A. *Florence*

In *Florence*, the petitioner was arrested on an outstanding bench warrant after a traffic stop. He was subjected to a strip search upon admission to jail where he was required to lift his genitals, turn around, and cough while squatting. The petitioner was released the next day after the charges against him were dismissed. Following this incident, petitioner sued the governmental entities that operated the jail under 42 U.S.C. § 1983, maintaining that people arrested for minor offenses "could not be required to remove their clothing and expose the most private areas of their bodies to close visual inspection as a routine part of the intake process."[9] The Supreme Court disagreed. At the outset, the Supreme Court

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[8] We have jurisdiction over this interlocutory order pursuant to 28 U.S.C. § 1292(b). "[A] non-final order may only be certified for interlocutory appeal if the court determines it: (1) involves a 'controlling question of law,' (2) for which there is 'substantial ground for difference of opinion,' and (3) which may 'materially advance the ultimate termination of the litigation' if appealed immediately." *Knipe v. SmithKline Beecham*, 583 F. Supp. 2d 553, 598-99 (E.D. Pa. 2008) (quoting *Katz v. Carte Blanche Corp.*, 496 F.2d 747, 754 (3d Cir. 1974)).

[9] *Florence*, 132 S. Ct. at 1514-15.

held that "[c]orrectional officials have a legitimate interest, indeed a responsibility, to ensure that jails are not made less secure by reason of what new detainees may carry in on their bodies. Facility personnel, other inmates, and the new detainee himself or herself may be in danger if these threats are introduced into the jail population."[10]

Referring to jail "in a broad sense to include prisons and other detention facilities,"[11] the Supreme Court held that "[c]orrectional officials have a significant interest in conducting a thorough search as a standard part of the intake process."[12] The Court identified three main risks justifying a blanket strip search policy in such facilities: (1) the danger of introducing contagious infections and diseases; (2) the increasing number of gang members who go through the intake process; and (3) the detection of contraband, *i.e.*, any unauthorized item, concealed by new detainees.[13] The necessity of a strip search to detect contraband is clear. The Supreme Court clarified, however, that a strip search is also necessary to detect diseases and wounds and identify potential gang members. With respect to diseases and wounds, the Court explained that "[p]ersons just arrested may have wounds or other injuries requiring immediate

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[10] *Id.* at 1513.

[11] *Id.*

[12] *Id.* at 1518.

[13] *Id.* at 1518-19.

medical attention. It may be difficult to identify and treat these problems until detainees remove their clothes for a visual inspection."[14] Similarly, identifying potential gang affiliations is critical before a detainee enters the general population, where "[f]ights among feuding gangs can be deadly, and the officers who must maintain order are put in harm's way."[15] Thus, a strip search allows corrections officers to inspect for certain tattoos and other signs of gang affiliation, which facilitates "[t]he identification and isolation of gang members before they are admitted."[16] As a result of these risks, the Court held that "[i]t is not surprising that correctional officials have sought to perform thorough searches at intake. . . . Jails are often crowded, unsanitary, and dangerous places. There is a substantial interest in preventing any new inmate . . . from putting all who live or work at these institutions at even greater risk when he is admitted."[17]

While conceding that correctional officials must be allowed to conduct an effective search during the intake process, the petitioner in *Florence* asserted that an invasive strip search was not necessary where the detainee had not been arrested for a serious crime or for any offense involving a weapon or drugs. The Supreme Court rejected this argument

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[14] *Id.* at 1518.

[15] *Id.* at 1518-19.

[16] *Id.* at 1519.

[17] *Id.* at 1520.

holding that the petitioner's standard would be unworkable given the realities of prison administration. Stating that "jails can be even more dangerous than prisons because officials there know so little about the people they admit at the outset," the Supreme Court explained that officers responsible for the intake process often lack access to criminal history records, and even those records can be inaccurate or incomplete.[18] Such an individualized inquiry may also lead to discriminatory application by officers who "would not be well equipped to make any of these legal determinations during the pressures of the intake process."[19]

Thus, the Supreme Court explained that "[i]n addressing this type of constitutional claim courts must defer to the judgment of correctional officials unless the record contains substantial evidence showing their policies are an unnecessary or unjustified response to problems of jail security."[20] Emphasizing prison officials' need for discretion, the Court stated that "[m]aintaining safety and order at these institutions requires the expertise of correctional officials, who must have substantial discretion to devise reasonable solutions to the problems they face."[21] Further, the Court emphasized the deference

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[18] *Id.* at 1521.

[19] *Id.* at 1522.

[20] *Id.* at 1513-14.

[21] *Id.* at 1515.

owed to correctional officers and stated "a regulation impinging on an inmate's constitutional rights must be upheld 'if it is reasonably related to legitimate penological interests.'"[22] Strip searches of all detainees prior to admission to the general population of a jail serves such penological interests.

The majority opinion, however, left open the possibility of exceptions to this holding. For example, the majority acknowledged that this case did not require it to rule on the types of searches that would be reasonable where a detainee would be held without assignment to the general jail population and without substantial contact with other detainees.[23] In such a situation, "[t]he accommodations . . . may diminish the need to conduct some aspects of the searches at issue."[24] Similarly, Chief Justice Roberts wrote separately in a concurrence to emphasize that "the Court does not foreclose the possibility of an exception to the rule it announces."[25] Because "factual nuances [did not] play a significant role" in *Florence*, Chief Justice Roberts admonished that "[t]he Court is nonetheless wise to leave open the possibility of exceptions, to ensure that we 'not embarrass the future.'"[26] In another concurrence, Justice Alito echoed

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[22] *Id.* (quoting *Turner*, 107 S. Ct. 2254).

[23] *Id.* at 1522.

[24] *Id.* at 1523.

[25] *Id.* (Roberts, C.J., concurring).

[26] *Id.* (quoting *Nw. Airlines, Inc. v. Minnesota*, 322 U.S. 292, 300 (1944)).

Chief Justice Roberts's sentiments, stating "[i]t is important to note, however, that the Court does not hold that it is *always* reasonable to conduct a full strip search of an arrestee whose detention has not been reviewed by a judicial officer and who could be held in available facilities apart from the general population."[27]

Relying on the importance of deference to correctional officials, *Florence* permitted strip searches of all detainees admitted to the general population of a detention facility. On balance, the Court held that the institutional security risks outweighed any constitutional right of detainees to be free from such strip searches.

B. *Florence* Applies to Juvenile Detainees

This is a case of first impression in this Circuit and all others.[28] We must determine whether the

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[27] *Id.* at 1524 (Alito, J., concurring).

[28] The Sixth Circuit had occasion to consider the applicability of *Florence* to juvenile offenders in *T.S. v. Doe*, 742 F.3d 632 (2014). There, two juveniles were arrested for underage drinking and brought to a juvenile detention center. Upon their arrival, the juveniles were subjected to a strip search per the detention center's normal intake procedures. The Sixth Circuit granted qualified immunity, holding that the right of juvenile detainees to be free from strip searches was not clearly established at the time. It, however, rested this decision less on the applicability of *Florence* and more on the rationale of *N.G. v. Connecticut*, 382 F.3d 225 (2d Cir. 2004) (upholding a strip search of juvenile detainees under the special needs exception to the Fourth

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Supreme Court's holding in *Florence* extends to juvenile detainees. Analogous to *Florence*, we must balance a juvenile detainee's privacy interest with the risks to their well-being and the institutional security risks in not performing such searches.

At the outset, we acknowledge that "[a] strip search with body-cavity inspection is the practice that 'instinctively' has given the Supreme Court 'the most pause.' "[29] Our sister Circuits have recognized that strip searches are "a serious intrusion upon personal rights"[30]; "an offense to the dignity of the individual"[31]; and "demeaning, dehumanizing, undignified, humiliating, terrifying, unpleasant, embarrassing, and repulsive."[32] And "since youth . . . is a . . . condition of

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Amendment) and *Smook v. Minnehaha County*, 457 F.3d 806 (8th Cir. 2006) (same). According to the Sixth Circuit, "[i]f this case involved adult detainees, *Florence* clearly holds that there would be no constitutional violation. Here, however, *Florence* does not squarely address the constitutional issue, so that we could dispose of the merits of this case with nothing more than a citation." *T.S.*, 742 F.3d at 637. Thus, the Sixth Circuit failed to rule explicitly one way or the other on the applicability of *Florence* to juveniles. In dicta, the Sixth Circuit expressed concern "that juvenile and adult detainees are subject to the same rules." *Id.*

[29] *N.G.*, 382 F.3d at 233 (quoting *Bell v. Wolfish*, 441 U.S. 520, 558 (1979)).

[30] *Justice v. City of Peachtree City*, 961 F.2d 188, 192 (11th Cir. 1992).

[31] *Burns v. Loranger*, 907 F.2d 233, 235 n.6 (1st Cir. 1990).

[32] *Mary Beth G. v. City of Chicago*, 723 F.2d 1263, 1272 (7th Cir. 1983).

life when a person may be most susceptible. . . . to psychological damage . . . [c]hildren are especially susceptible to possible traumas from strip searches."[33] Given that strip searches impose the substantial risk of psychological damage for juvenile detainees, at least one of our Sister circuits has found that a juvenile maintains an enhanced right to privacy.[34] We agree.

We do not underestimate the trauma inflicted upon a youth subjected to a strip search. Yet, we must also acknowledge the realities of detention, irrespective of age. "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."[35] Although the Eighth Circuit found an enhanced privacy interest for juveniles subjected to strip searches, it approved such searches, albeit under a reasonableness inquiry balancing the privacy right against other factors,

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[33] *N.G.*, 382 F.3d at 233 (internal citations and quotation omitted).

[34] *See Smook*, 457 F.3d at 811 ("The juvenile's interest in privacy is greater than an adult's, the court thought, because 'the adverse psychological effect of a strip search is likely to be more severe upon a child than an adult, especially a child who has been the victim of sexual abuse." (quoting *N.G.*, 382 F.3d at 232)); *see also N.G.*, 382 F.3d at 232 ("Strip searches of children pose the reasonableness inquiry in a context where both the interests supporting and opposing such searches appear to be greater than with searches of adults confined for minor offenses.").

[35] *Bell*, 441 U.S. at 559.

including institutional security risks and a facility's enhanced risk when housing minors. Using *Florence* as a guidepost, we must balance juvenile detainees' constitutional rights against the overarching security interests to determine whether a strip search upon admission to the general population of a juvenile detention facility "is reasonably related to legitimate penological interests."[36]

Plaintiffs argue that the holding in *Florence* is limited to its facts – that is to say, *Florence* is limited in application to adult detainees. We disagree for several reasons. First, the institutional security reasons identified in *Florence* similarly implicate juvenile detention centers. Indeed, juveniles represent the same risks to themselves, staff, and other detainees as adults in similar facilities. They may carry lice or communicable diseases, possess signs of gang membership, and attempt to smuggle in contraband.[37] Recent trends indicate that children are being recruited into gangs at a much earlier age – even as early as elementary school.[38] Likewise, juveniles

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[36] *Florence*, 132 S. Ct. at 1515.

[37] *See N.G.*, 382 F.3d at 235 ("[C]ontraband such as a knife or drugs can pose a hazard to the security of an institution and the safety of inmates whether the institution houses adults convicted of crimes or juveniles in detention centers.").

[38] *Children and Gangs, Facts for Families*, Am. Acad. of Child & Adolescent Psychiatry (Sept. 2011), *available at* https://www.aacap.org/App_Themes/AACAP/docs/facts_for_families/98_children_and_gangs.pdf. Indeed, gang activity has spread from cities to smaller towns and rural areas. *Id.* "Some children

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present the risk of smuggling in contraband. This case is exemplary of this fact. The Supreme Court defines contraband broadly in *Florence:* "The textbook definition of the term covers any unauthorized item. Everyday items can undermine security if introduced into a detention facility."[39] The Court highlights that even innocuous items such as money, some types of clothing, lighters, matches, cell phones, pills, medications, chewing gum, and hairpins can present serious risks to prison security.[40] In this case, J.B. possessed the guile to craft a homemade flame thrower and knife – he was clever enough, then, even at the young age of twelve, to smuggle contraband into the detention facility.

In addition, juveniles pose risks unique from those of adults as the state acts as the minor's de facto guardian, or *in loco parentis,*[41] during a minor's

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and adolescents are motivated to join a gang for a sense of connection or to define a new sense of who they are. Others are motivated by peer pressure, a need to protect themselves and their family, because a family member also is in a gang, or to make money." *Id.* Signs of gang affiliation may include, "[w]earing clothing of all one type, style, or color, or changing appearance with special haircuts, tattoos, or other body markings." *Id.*

[39] *Florence*, 132 S. Ct. at 1519.

[40] *Id.*

[41] "Where the state is exercising some legitimate custodial authority over children, its responsibility to act in the place of parents (*in loco parentis*) obliges it to take special care to protect those in its charge, and that protection must be concerned with dangers from others and self-inflicted harm. 'Children . . . are

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detention period. This status creates an enhanced responsibility to screen for signs of disease, self-mutilation, or abuse in the home.[42] Self-mutilation is of particular concern – detention may exacerbate underlying mental illness, making initial screening imperative for continued monitoring of the juvenile detainee and to ensure he is provided with adequate mental health services while detained. LYIC's policy regarding strip searches underscores these concerns in that officers are instructed to observe the body for signs of "injuries, markings, skin conditions, signs of abuse, or further contraband."[43]

There is no easy way to distinguish between juvenile and adult detainees in terms of the security risks cited by the Supreme Court in *Florence.* Indeed, "[a] detention center, police station, or jail holding cell is a place 'fraught with serious security dangers.' These security dangers to the institution are the same whether the detainee is a juvenile or an adult."[44] Plaintiffs do not argue to the contrary; rather, they

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assumed to be subject to the control of their parents, and if parental control falters, the State must play its part as *parens patriae*. . . . In this respect, the juvenile's liberty interest may, in appropriate circumstances, be subordinated to the State's *parens patriae* interest in preserving and promoting the welfare of the child." *N.G.*, 382 F.3d at 232 (quoting *Schall v. Martin*, 467 U.S. 253, 265 (1984)).

[42] *N.G.*, 382 F.3d at 236.

[43] App. 355.

[44] *See Justice v. City of Peachtree City*, 961 F.2d at 193 (quoting *Bell*, 441 U.S. at 559).

contend that LYIC could employ less invasive methods to achieve the same end. They suggest using sensitive scanning devices and narcotic scanners. This argument, however, was rejected by *Florence*. There, the Supreme Court explained that "[t]hese [strip search] procedures, similar to the ones upheld in *Bell*, are designed to uncover contraband that can go undetected by a patdown, metal detector, and other less invasive searches."[45] Indeed, aside from failing to detect contraband, less invasive searches may leave undetected markings on the body indicating self-mutilation or potential abuse in the home.

Plaintiffs also maintain that while *Florence* made no reference to any type of age classification for purposes of strip searches, it is *Safford Unified School District # 1 v. Redding*[46] that "sets the law for conducting the search of children."[47] We are unpersuaded. In *Safford*, the Supreme Court applied a reasonable suspicion standard to the strip search of a juvenile in her school. *Safford* may set the law for conducting strip searches of children *in schools*, but it falls far short from setting the law for strip searches of juvenile detainees. The Supreme Court's rationale was not predicated on age as much as it focused on the status of the juvenile as a schoolchild. *Safford* was rooted in the basic notion that schoolchildren are

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[45] *Florence*, 132 S. Ct. at 1520.

[46] 557 U.S. 364 (2009).

[47] J.B. Br. 28.

entitled to an expectation of privacy.[48] A strip search of a juvenile by a school administrator lacking reasonable suspicion, then, was a repugnant invasion of such expectation. We reiterate, however, that "the prisoner and the schoolchild stand in wholly different circumstances."[49] This is so because "the need to maintain order in a prison is such that prisoners retain no legitimate expectations of privacy in their cells."[50] Plaintiffs concede that the security interests at a public school may be different from those of a juvenile detention center, but they argue that "the goals of the policies of both institutions should be to provide a safe environment for juveniles balanced with a respect for dignity and privacy for all."[51] We encourage detention centers with blanket strip search policies to maintain protocol minimizing the embarrassment and indignity of such a search for the juvenile. Nevertheless, J.B. did not possess the same reasonable expectation of privacy upon admission to the LYIC as did the schoolchild in *Safford*. That he was twelve years old when this occurred does not change that fact. Accordingly, we find that these penological interests outweigh the privacy interests of juvenile detainees. Juvenile detainees present risks both similar and unique to those cited in *Florence*. At

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[48] *Safford*, 557 U.S. at 374-77.

[49] *T.L.O.*, 469 U.S. at 338 (quoting *Ingraham v. Wright*, 430 U.S. 651, 669 (1977)).

[50] *Id.*

[51] J.B. Br. 27.

bottom, these risks pose significant dangers to the detainee himself, other detainees, and juvenile detention center staff.

Second, any individualized, reasonable suspicion inquiry falters in juvenile detention centers for the same reasons it does so in adult facilities. In *Florence*, the petitioner argued that a detainee arrested for a minor offense should be exempt from strip searches upon admission. The Supreme Court rejected this argument, finding the standard "unworkable."[52] Such a standard was unworkable because "[i]t . . . may be difficult, as a practical matter, to classify inmates by their current and prior offenses before the intake search."[53] "The difficulties of operating a detention center must not be underestimated by the courts."[54] One difficulty is that facilities often know little to nothing about new detainees. This is a result of many factors. For example, a new detainee might lie about his identity or carry false identification when he is arrested. Any records officers may have access to (and they often do not have access to records) might be inaccurate upon intake. The paucity of information regarding a new detainee makes it unreasonable for an officer to "assume the arrestees in front of them do

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[52] *Florence*, 132 S. Ct. at 1520.

[53] *Id.* at 1521.

[54] *Id.* at 1515.

not pose a risk of smuggling something into the facility."[55]

The Supreme Court has consistently recognized the utility of blanket policies in prison administration. In *Bell v. Wolfish*, the Supreme Court upheld a policy requiring pretrial detainees in any correctional facility run by the Federal Bureau of Prisons to undergo a strip search after every contact visit with a person from outside the institution.[56] Following *Bell*, the Supreme Court then upheld a ban to all contact visits in *Block v. Rutherford* because of the threat they posed.[57] The Court found that "[t]here were 'many justifications' for imposing a general ban rather than trying to carve out exceptions for certain detainees. Among other problems, it would be 'a difficult if not impossible task' to identify 'inmates who have propensities for violence, escape, or drug smuggling.'"[58] This problem was exacerbated by the "brevity of detention and the constantly changing nature of the inmate population."[59] In *Hudson v. Palmer*, the issue was whether prison officials could perform random searches of inmate lockers and cells even without reason to suspect a particular individual

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[55] *Id.*

[56] 441 U.S. 520.

[57] 468 U.S. 576 (1984).

[58] *Florence*, 132 S. Ct. at 1516 (quoting *Block*, 468 U.S. at 587).

[59] *Block*, 468 U.S. at 587.

of concealing a prohibited item.[60] The Supreme Court upheld such searches and explained in *Florence* that it "recognized that deterring the possession of contraband depends in part on the ability to conduct searches without predictable exceptions."[61] This is so, the Court explained, because "[i]nmates would adapt to any pattern or loopholes they discovered in the search protocol and undermine the security of the institution."[62] Thus, any argument for an individualized inquiry of new detainees is impractical, if not dangerous, given the realities of jail administration.

Not only is such an inquiry unrealistic, it is also vulnerable to abuse. The Supreme Court warned that "[t]he laborious administration of prisons would become less effective, and likely less fair and evenhanded," should an individualized inquiry be implemented.[63] Classifications based on individual characteristics risk discriminatory application on the part of officers. Officers might strip search a juvenile based on sex, race, accent, age, or any other number of characteristics. Pressured, "[t]o avoid liability, officers might be inclined not to conduct a thorough search in any close case, thus creating unnecessary risk for the entire jail population."[64] Because officers in any detention

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[60] 468 U.S. 517 (1984).

[61] *Florence*, 132 S. Ct. at 1516.

[62] *Id.* at 1517.

[63] *Id.* at 1521.

[64] *Id.* at 1522.

facility have an "essential interest in readily administrable rules,"[65] blanket strip search policies upon admission to the general population of a jail, regardless of whether the detainee is a juvenile or adult, make good sense. Any other policy would "limit the intrusion on the privacy of some detainees but at the risk of increased danger to everyone in the facility."[66] Thus, to the extent the Supreme Court addressed this type of inquiry in rejecting the petitioner's argument for an exclusion for non-serious offenders, we similarly reject Plaintiffs' argument that juveniles are to be excluded, or, moreover, that non-serious juvenile offenders be excluded.

Finally, we must disagree with Plaintiffs' assertion that the Supreme Court contemplated an exception for juvenile detainees. The Supreme Court acknowledged that "[t]his case does not require the Court to rule on the types of searches that would be reasonable in instances where, for example, a detainee will be held without assignment to the general jail population and without substantial contact with other detainees."[67] Moreover, Chief Justice Roberts concurred, reiterating that the "Court is nonetheless wise to leave open the possibility of exceptions, to

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[65] *Atwater v. Lago Vista*, 532 U.S. 318, 347 (2001).

[66] *Florence*, 132 S. Ct. at 1522. Thus, the Supreme Court recognized that to the extent prisoners retain an expectation of privacy, that expectation is unreasonable in the face of the security risks in jails.

[67] *Id.*

ensure that we 'not embarrass the future.'"[68] We do not, however, interpret the Court to have contemplated an exception based on age classifications. Instead, the exceptions contemplated by the Court appear to involve factual scenarios where, for instance, release into the general population of the facility is not necessary.[69] Thus, it is reasonable to believe there are scenarios where a juvenile's release into the general population of a detention facility is not necessary. In such a circumstance, the Supreme Court has not ruled on the legality of a strip search and such a search may indeed require a reasonable suspicion analysis as contemplated in *Bell v. Wolfish*.[70] But this is quite a different thing than the Court carving out an exception to its holding based on the individual

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[68] *Id.* at 1523 (quoting *Nw. Airlines, Inc.*, 322 U.S. at 300).

[69] *Id.* at 1524 (Alito, J., concurring).

[70] We defer to the discretion of detention facility officers regarding the decision to place a juvenile detainee in the general population of a facility. We acknowledge that the composition of a juvenile detention center varies from youths detained for minor infractions to more serious offenses. That these detention facilities house youths guilty of status offenses, *i.e.*, behaviors illegal for underage people but not for adults, cannot compel a different result. As acknowledged by the Supreme Court, offense level is a poor way to discern whether a detainee presents a risk to the facility. *See Florence*, 132 S. Ct. at 1520 ("People detained for minor offenses can turn out to be the most devious and dangerous criminals."). With that said, the Supreme Court has had no occasion to review a case, where, a detainee can be held in available facilities removed from the general population and we encourage juvenile detention centers to consider other options where appropriate.

characteristics of a detainee, of which age is a component. Given that the security risks are similar irrespective of whether the facility hosts adults or juveniles and that an individualized inquiry proves unworkable for both, we do not believe the Supreme Court contemplated such an exception.

Furthermore, reading in such an exception would be in contrast to the Supreme Court's use of broad, sweeping language. For example, it defined "jail" in a "broad sense to include prisons and other detention facilities."[71] This comports with the federal definition of prison: "[A]ny Federal, State, or local facility that incarcerates or detains juveniles or adults accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law."[72] In addition, the Court uses adjectives such as "every," and "all," when describing who will be strip searched. For instance, "in broad terms, the controversy concerns whether *every* detainee who will be admitted to the general population may be required to undergo a close visual inspection while undressed"[73]; "[t]here is a substantial interest in preventing *any new inmate*, either of his own will or as a result of coercion, from putting all who live or work at these institutions at even greater risk when he is admitted to the general population"[74];

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[71] *Florence*, 132 S. Ct. at 1513.

[72] 18 U.S.C. § 3626(g).

[73] *Florence*, 132 S. Ct. at 1513 (emphasis added).

[74] *Id.* at 1520 (emphasis added).

and "[t]he Court holds that jail administrators may require all arrestees *who are committed to the general population of a jail* to undergo visual strip searches."[75] The only qualification is that the detainee must be admitted to the general population. This is in contrast to *Safford*, where the Supreme Court carefully delineated its holding, limiting it to strip searches of minors *specifically* in the school setting. We see no such carefully drawn limitations in *Florence*, and we cannot honor Plaintiffs' request to read *Florence* so narrowly as to infer such a limitation.

III. Conclusion

"Deference must be given to the officials in charge of a jail unless there is 'substantial evidence' demonstrating their response to the situation is exaggerated."[76] Plaintiffs fail to put forth such evidence, and thus we reverse the District Court's order denying Defendants' motion for summary judgment on this claim. For all of the reasons stated above, *Florence* guides our decision to uphold LYIC's strip search policy of all juvenile detainees admitted to general population at LYIC.

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[75] *Id.* at 1524 (Alito, J., concurring) (emphasis added).

[76] *Id.* at 1518 (quoting *Block*, 468 U.S. at 585).

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JOSHUA BENJAMIN, a minor, by THOMAS BENJAMIN and JANET BENJAMIN, Plaintiffs, v. OFFICER JAMES B. FASSNACHT, CORPORAL BRIAN BRAY, LANCASTER COUNTY, DAVID MUELLER, CAROLE TROSTLE, ROBERT KLING, DREW FREDERICKS, DAREN DUBEY and JOSEPH CHOI, Defendants.	CIVIL ACTION NO. 12-585

ORDER

AND NOW, this 28th day of October, 2015, after an interlocutory appeal of this Court's August 14, 2014 order, and in light of the opinion and order of the U.S. Court of Appeals for the Third Circuit dated September 15, 2015 which reversed this Court's Augsut 14, 2014 order, it is hereby **ORDERED** that this case is dismissed with prejudice. The Clerk of Courts shall mark this case closed.

BY THE COURT:

/s/ Jeffrey L. Schmehl
Jeffrey L. Schmehl, J.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JOSHUA BENJAMIN, a minor, by THOMAS BENJAMIN and JANET BENJAMIN, Plaintiffs, v. JAMES B. FASSNACHT, PA STATE POLICE CORPORAL BRAY, LANCASTER COUNTY, DAVID MUELLER, CAROLE TROSTLE, ROBERT KLING, DREW FREDERICKS, DAREN DUBEY and JOSEPH CHOI, Defendants.	CIVIL ACTION NO. 12-585

MEMORANDUM OPINION

Schmehl, J. **August 14, 2014**

I. INTRODUCTION

Plaintiffs, Thomas Benjamin and Janet Benjamin, bring this suit on behalf of their minor son, Joshua Benjamin. Plaintiffs contend that Joshua's civil rights were violated when he was arrested and charged with summary offenses and committed to the Lancaster County Youth Detention Center after he threatened several girls in his neighborhood. Before the Court is the Motion for Summary Judgment of Defendants, Officer James B. Fassnacht and Corporal Brian Bray (Docket No. 39) and the Motion for Summary Judgment of Defendants, Lancaster County,

David Mueller, Carole Trostle, Drew Fredericks, Joseph Choi, Robert J. Kling, Jr. and Daren Dubey (Docket No. 41). Defendants have filed a Joint Statement of Undisputed Facts, Plaintiffs have filed their own Statement of Facts, as well as an opposition to both Motions, and all Defendants have filed replies. For the following reasons, Defendants' motions are granted in part and denied in part.

II. LEGAL STANDARD

Summary judgment should be granted if the record, including pleadings, depositions, affidavits, and answers to interrogatories demonstrate "that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. Proc. 56(c). In making that determination, the "evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in his favor." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). A fact is "material" if it might affect the outcome of the suit under the governing law and "genuine" if a reasonable jury could find for the nonmoving party based on the evidence presented on that issue. *Anderson*, 477 U.S. at 251-52, 106 S.Ct. 2505.

III. FACTUAL BACKGROUND

On July 1, 2009, twelve year old Joshua Benjamin (hereinafter "Benjamin") and a friend made a flamethrower in Benjamin's backyard and were using it to

shoot flames approximately one and a half feet long. (*See* Benjamin Dep., Ex. 1 to Defs.' Statement of Facts, pp. 23-24.) Several neighborhood girls saw the flames and told their babysitter, who approached Benjamin and told him to stop playing with the flamethrower. (*See* Ex. 1, p. 27, Pennsylvania State Police Incident Report, Ex. 24; Thomas Benjamin Dep., Ex. 4, p. 13.) Later that day, the same neighborhood girls came to Benjamin's front yard and began teasing him. (Ex. 1, pp. 27, 29, 31.) Eventually, this turned into "hand to hand type fighting" between Benjamin and the girls. (Ex. 1, p. 31.) Benjamin admitted to grabbing the arm of one girl and saying that he could break it. (*Id.*) Benjamin also admitted to having a small piece of aluminum that he had fashioned into a knife in his pocket at the time of the altercation which he held about an inch above the head of one of the girls. (Ex. 1, pp. 32-33.)

Later that night, Michael McLucas, the father of two of the neighborhood girls involved, called the Pennsylvania State Police and reported the incident with Benjamin. (*See* Dep. of PSP Trooper Fassnacht, Ex. 2, pp. 28-29; Ex. 24.) Pennsylvania State Police Trooper James Fassnacht ("Fassnacht") received the report and went to the McLucas residence, where he interviewed Mr. McLucas, as well as the girls who were involved in the incident. (Ex. 2, p. 30.) One of the girls told Fassnacht that Benjamin said he was older than the girls, "so I can overpower you and kill you." (Ex. 2, pp. 30-31; Ex. 24.) The girls also informed Fassnacht that Benjamin held a metal knife

above the head of one of the girls and said that he was going to kill her (Ex. 2, p. 31; Ex. 24.) and grabbed another girl by the throat and pushed her backwards. (Ex. 24.)

Fassnacht then interviewed Benjamin in the presence of his father. (Ex. 2, pp. 34-35.) Benjamin admitted to Fassnacht that he threatened to break one of the girl's arms and that he held a homemade knife over another girl's head. (Ex. 1, pp. 31-33; Ex. 2, p 44; Dep. of Thomas Benjamin, Ex. 4, p. 18.) Benjamin also showed Fassnacht the homemade knife. (Ex. 2, p. 44; Ex. 4, p. 14.) The next day, Fassnacht contacted Thomas Benjamin and informed him that charges of terroristic threats and summary harassment would be filed against Benjamin. (Ex. 2, pp 47-49; Ex. 4, pp. 23-24; Ex. 24.)

On Wednesday, July 22, 2009, three weeks after the incident in question, Fassnacht filed a juvenile petition against Benjamin with Lancaster County Juvenile Probation Intake Officer Carole Trostle (hereinafter "Trostle"). (Ex. 2, pp. 38, 62; Dep. of Carole Trostle, Ex. 5, pp. 12, 16.) On Friday, July 24, 2009, Trostle informed Fassnacht that Lancaster County Juvenile Probation was ordering Benjamin to be detained due to the seriousness of the charges and asked Fassnacht to prepare an affidavit of probable cause. (Ex. 2, pp. 39, 41, 43, 70-71; Ex. 5, pp. 19-20.) Fassnacht prepared an affidavit of probable cause, which he faxed to Lancaster County Juvenile Probation. (Ex. 2, pp. 37, 43; Affidavit of Probable Cause, Ex. 6.) On July 24, 2009, Trostle submitted a Juvenile

Petition, along with Fassnacht's affidavit of probable cause, to the Lancaster County Court of Common Pleas. (Ex. 5, pp. 23-24; Juvenile Petition, Ex. 7.)

Although all County Defendants testified that Benjamin's detention was authorized pursuant to a signed warrant or detainer approved and signed by a judge, as that was procedure that was followed in this type of situation, a copy of the court order authorizing Benjamin's detention is unavailable. (Ex. 5, pp. 21-24, 37; David Mueller Dep., Ex. 8, pp. 22-26.; Robert Kling Dep., Ex. 10, pp. 22-23.) Fassnacht does not recall if he ever saw a court order authorizing Benjamin's detention. (Ex. 2, pp. 41, 72.) Further, Bray does not recall if Fassnacht showed him a copy of a court order authorizing Benjamin's detention. (Brian Bray Dep., Ex. 13, p. 11.)

On July 24, 2009, Fassnacht called Thomas Benjamin to inform him that his son would be detained, and Mr. Benjamin stated that he would surrender his son that afternoon at the Ephrata barracks. (Ex. 2, pp. 72-73; Ex. 4, pp, 25-26.) That evening, Benjamin's parents took him to the Ephrata police barracks, where they met with Corporal Brian Bray ("Bray"), as Fassnacht's shift had ended earlier in the day. (Ex. 2, pp. 76-77; Ex. 1, pp. 42-42; Ex. 4, pp. 26-27; Janet Benjamin Dep., Ex. 3 at pp. 36-37.) Bray then transported Benjamin to Lancaster County Youth Intervention Center. (Ex. 13, p. 18.) Upon arrival at the Youth Intervention Center, Benjamin was processed and Daren Dubey ("Dubey") completed an "Unclothed/Body Cavity Search Checklist" form, on

which he checked yes next to the line that stated "Juvenile detainee being committed to L.C.Y.I.C. for an offense, which if committed by an adult, would be a felony charge." (Unclothed/Body Cavity Search Form, Ex. 14.) Benjamin underwent a strip search of his person and clothing which was conducted by Dubey, during which he stood behind a curtain so only Dubey could see him as he removed his clothing. (Ex. 1, p. 21; Daren Dubey Dep., Ex. 15, pp. 39-40; Joseph Choi Dep., Ex. 16, pp. 31, 33; Ex. 14.) Defendant Joseph Choi ("Choi") sat ten to fifteen feet away during the strip search, where he could see Dubey but not Benjamin. (Ex. 15, pp. 39-40, Ex. 16, pp. 31, 33.) Benjamin was told to remove his clothing, drop his pants and underwear and bend over. (Ex. 1, pp. 21-22.) Benjamin's pants were off for about 90 seconds. (*Id.*)

Benjamin was detained at the L.C.Y.I.C. from Friday, July 24, 2009 through Monday, July 27, 2009, when he was released to his parents at a hearing. (Ex. 1, p. 45; Ex. 3, p. 42; Ex. 4, pp. 30-31.) On October 28, 2009, a Juvenile Hearing was held before the Honorable Christopher A. Hackman, where Benjamin entered into a Consent Decree to charges of terroristic threats and summary harassment. (Consent Decree, Ex. 19.) As part of the Consent Decree, Benjamin was required to write a letter of apology to the victims and abide by other probationary requirements. (*Id.*) Benjamin completed his probation and complied with the terms of the Consent Decree and on October 10, 2010, his juvenile criminal record was expunged.

(Order of Expungement, Ex. 22, Confirmation of Expungement, Ex. 23.) Plaintiffs instituted this action on February 3, 2012, and filed their Second Amended Complaint on January 7, 2013.

IV. DISCUSSION

In Count I of their Second Amended Complaint, Plaintiffs bring a claim under section 1983 for false arrest, unreasonable search and seizure, false imprisonment and violations of due process against Defendants Mueller, Trostle, Kling, Fassnacht and Bray. In Count II, Plaintiffs set forth a loss of family consortium claim under the Fourteenth Amendment against Defendants Mueller, Trostle, Kline, Fassnacht and Bray. In Count III, Plaintiffs bring a claim under section 1983 for unreasonable search and seizure, false imprisonment, due process violations and assault and battery under state law against Defendants Dubey and Choi. Counts IV and V assert *Monell* claims under section 1983 against Defendants Lancaster County, Mueller and Fredericks, and Count VI alleges intentional infliction of emotional distress under state law against Defendants Lancaster County, Mueller, Trostle, Fredericks, Dubey and Choi. (*See* Second Amended Complaint.) For the sake of clarity, the issues contained in Defendants' Motions for Summary Judgment shall be grouped together and decided based upon the similarity of the claims.

A. FALSE ARREST AND FALSE IMPRISONMENT CLAIMS CONTAINED IN COUNTS I AND III

Count I of the Second Amended Complaint contains false arrest claims against Defendants Mueller, Trostle, Kling, Fassnacht and Bray. Count III of the Second Amended Complaint contains false imprisonment claims against Defendants Choi and Dubey. Plaintiffs allege that David Mueller ("Mueller"), as director of Lancaster County Juvenile Probation, along with probation officers Trostle and Robert Kling ("Kling"), directed Officers Fassnacht and Bray to detain Benjamin without a warrant, causing Benjamin to be placed in the Lancaster County Youth Intervention Center from July 24, 2009 to July 27, 2009. Plaintiffs claim this resulted in Benjamin's false arrest and false imprisonment in violation of the Fourth Amendment. Defendants argue that since Benjamin did not contest the charges against him, but rather entered into a Consent Decree to the charges of terroristic threats and harassment, he cannot challenge his arrest under section 1983 due to the "favorable-termination rule" set forth in *Heck v. Humphrey*, 512 U.S. 477, 114 S.Ct. 2364, 129 L.Ed.2d 383 (1994). For the reasons that follow, I find that there is no genuine issue of material fact that Plaintiff's false imprisonment and false arrest claims are barred by the *Heck* doctrine; therefore, I will grant Defendants' Motions for Summary Judgment as to these issues and all false arrest and false imprisonment claims contained in the Second Amended Complaint are dismissed.

The favorable-termination rule was first set out in *Heck v. Humphrey*, 512 U.S. 477 (1994), wherein the United States Supreme Court stated:

> [I]n order to recover damages for allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid, a § 1983 plaintiff must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus . . . A claim for damages bearing that relationship to a conviction or sentence that has not been so invalidated is not cognizable under § 1983.

Heck, 512 U.S. at 486-87. In 2005, the Third Circuit interpreted *Heck* to mean that "a § 1983 action that impugns the validity of the plaintiff's underlying conviction cannot be maintained unless the conviction has been reversed on direct appeal or impaired by collateral proceedings." *Gilles v. Davis*, 427 F.3d 197, 208-09 (3d Cir. 2005).

In the instant matter, it is undisputed that Benjamin entered into a Consent Decree to the charges of terroristic threats and harassment and that the Consent Decree required him to do certain probationary things in exchange for expungement of his record pursuant to 18 Pa.C.S.A. § 9123(a)(2). (*See* Consent Decree at Ex. 19; Letter of Apology to Victims at Ex.

20; Motion for Expungement at Ex. 21; Order of Expungement at Exh. 22.) The remaining question is whether a consent decree results in a "favorable termination" for purposes of *Heck* so as to permit Plaintiffs to pursue section 1983 claims in this matter.

In *Gilles*, the Third Circuit found that adult Accelerated Rehabilitative Disposition ("ARD") did not result in a favorable termination under *Heck* and that the plaintiff's participation in ARD therefore barred his section 1983 claims. *Gilles*, 427 F.3d at 211-212. The Court stated that, under *Heck*, "common law bars to suit apply to claims brought under § 1983" and that

> [A] § 1983 malicious prosecution claim was subject to the common law requirement that the plaintiff show the prior criminal proceeding terminated in his favor. The purpose of the requirement . . . is to avoid parallel litigation of probable cause and guilt. It also prevents the claimant from succeeding in a tort action after having been convicted in the underlying criminal prosecution, which would run counter to the judicial policy against creating two conflicting resolutions arising from the same transaction.

Id. at 209 (citations omitted). Further, the Middle District of Pennsylvania addressed a juvenile expungement pursuant to 18 Pa.C.S.A. § 9123(a)(3) and found that it was not a favorable termination for

purposes of *Heck*. *Clark v. Conahan*, 737 F.Supp.2d 239, 254 (M.D. Pa., 2010).

Several other districts have found that in cases of juveniles who were adjudicated delinquent, the *Heck* doctrine applies to bar section 1983 claims. *Dominguez v. Shaw*, 2011 WL 4543901 (D. Ariz., Sept. 30, 2011) (15 year old juvenile adjudicated delinquent for resisting arrest cannot bring section 1983 claim due to *Heck* doctrine); *Grande v. Keansburg Borough, et al.*, 2013 WL 2933794 (D.N.J., June 13, 2013) (*Heck* bars the excessive force claim of an 11 year old who was adjudicated delinquent); *Adkins v. Johnson*, 482 Fed. Appx. 318, 319 (10th Cir.) (*Heck* bars a suit for damages based on allegations that implicate the validity of numerous juvenile judgments), cert. denied, ___ U.S. ___, 133 S.Ct. 439, 184 L.Ed.2d 268 (2012); *Morris v. City of Detroit*, 211 Fed. Appx. 409, 411 (6th Cir. 2006) (a "juvenile adjudication" is the "functional equivalent" of a criminal proceeding and *Heck* therefore applies).

Moreover, Pennsylvania courts have found that a juvenile "consent decree allows for pretrial probation similar to the Accelerated Rehabilitative Disposition program available to adults." *Com. v. Wexler*, 494 Pa. 325, 333 (1981). Accordingly, I find that Plaintiffs' false arrest and false imprisonment claims must fail pursuant to *Heck*, as a successful section 1983 claim for false arrest or false imprisonment would require Benjamin's sentence to have been reversed on appeal or impaired by a collateral proceeding, which did not occur. Instead, Benjamin entered into a consent

decree, similar to adult ARD, and received an expungement, which is clearly not a "favorable termination" of his terroristic threats and harassment charges. Therefore, Benjamin's section 1983 claims for false arrest and false imprisonment are barred and summary judgment is granted to all defendants on Plaintiffs' false arrest and false imprisonment claims found in Counts I and III of the Second Amended Complaint.

B. UNREASONABLE SEARCH AND SEIZURE CLAIM CONTAINED IN COUNT III.

Count III of Plaintiffs' Second Amended Complaint also sets forth a claim against Defendants Dubey and Choi for an allegedly unreasonable search of Benjamin upon his admission to the juvenile detention facility. Defendants present several arguments as to why Plaintiffs' unreasonable search claim should fail. However, after a thorough review of the record, I will deny summary judgment to Defendants Dubey and Choi on this claim.[1]

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[1] Defendants Fassnacht and Bray argue in their Motion for Summary Judgment that any claims against them for an illegal search of Benjamin pursuant to section 1983 must be denied due to their lack of personal involvement in the search. A review of the Second Amended Complaint in this matter shows that it does not appear to set forth any claim against Fassnacht and Bray for the search. To the extent the Second Amended Complaint can be construed as bringing claims of unreasonable search against Fassnacht and Bray, these claims fail due to the

(Continued on following page)

Defendants first argue that Plaintiffs' unreasonable search claim fails pursuant to *Florence v. Board of Chosen Freeholders of County of Burlington*, 132 S.Ct. 1510 (2012). In *Florence*, the United States Supreme Court held that jail officials may search all detainees, regardless of the crime with which they are to be charged, who are to be released into the general population of a detention facility without reasonable suspicion. 132 S.Ct. 1510. Defendants argue that the Court broadly referred to those entering "detention centers" as "arrestees" or "detainees," and that *Florence* therefore applies to all detainees, even juveniles, who are committed to a detention center's general population. Defendants' reading of *Florence* would permit any juvenile detainee to be subjected to a strip search prior to release into the general population at a juvenile detention facility, with or without reasonable suspicion. *Id.* Therefore, it is Defendants' assertion that Benjamin's strip search was permissible prior to his release into the general population at the youth detention facility based on *Florence.*

However, Plaintiffs argue that *Florence* does not apply to juveniles and therefore, does not impact the

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officers' lack of personal involvement in the search. It is undisputed that neither Fassnacht nor Bray had any involvement whatsoever in the actual search of Benjamin. Further, Plaintiffs' response to Defendants' Motion for Summary Judgment does not argue that Fassnacht and Bray should be held responsible for the search of Benjamin. Accordingly, any claim contained in the Second Amended Complaint for an illegal search against Fassnacht and Bray is dismissed.

legality of Benjamin's search. It is true that the facts in *Florence* addressed strip searches of adult inmates and made no reference to juvenile detainees. Further, this court has been unable to locate a case in any district in which *Florence* was applied to juvenile detainees, thereby giving authorities the right to conduct blanket strip searches of juveniles upon admission to a detention facility. I find that *Florence* specifically addresses only adult detainees, is distinguishable from the instant matter and will not bar Plaintiffs' unreasonable search claim. Therefore, I must proceed to analyze the appropriateness of Benjamin's search by determining whether Defendants had a reasonable suspicion to perform a strip search upon him prior to his admission to the juvenile detention facility.

Defendants argue that they had a reasonable suspicion that Benjamin may have possessed a weapon or other contraband, and that the strip search was therefore permissible. Strip searches are to be upheld if they are reasonable "under the circumstances." *Bell v. Wolfish*, 441 U.S. 520, 558-59 (1979). In determining the reasonableness of a strip search, courts are to examine "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." *Id.* at 559. "Courts have frequently held that in order to strip search detainees, the arresting officers must have a reasonable individualized suspicion that a detainee is carrying or concealing contraband." *Martinez v. Warner*, 2008 WL 2331957 (E.D. Pa. June 5, 2008).

"[T]he nature of the offense for which a person is arrested may contribute to a reasonable suspicion that the person might attempt to secrete a weapon or contraband." *Owens, on Behalf of Young v. County of Delaware*, 1996 WL 476616 (E.D. Pa., Aug. 15, 1996).

I find that there is a genuine issue of material fact as to whether Defendants Dubey and Choi had a reasonable suspicion to believe that Benjamin possessed a weapon or other contraband. Benjamin was charged with terroristic threats and harassment and used a homemade knife in the commission of these crimes. However, he was brought to the youth detention center **three weeks** after the weapon was allegedly used to threaten his victims. Further, he was brought to the detention center by Corporal Bray, and prior to being taken into custody by Bray, he was under the control of his parents. I find that there is a genuine issue as to whether a twelve year old child such as Benjamin could be a threat to himself or to the officers at the detention center, or could possibly be concealing a weapon or contraband in his body three weeks after the incident in question. Accordingly, a factual question exists as to whether Defendants Choi and Dubey had reasonable suspicion to justify a strip search of Benjamin upon his admission to the detention facility.

Further, I find that there is a genuine issue of material fact as to whether the Lancaster County Defendants did in fact have an unwritten blanket strip search policy at the youth detention center, despite the existence of the Unclothed/Body Cavity

Strip Search checklist form. The existence of such a form is crucial. This form was completed by Dubey upon Benjamin's admission to the facility and was allegedly used to justify Benjamin's strip search.[2] However, Dubey testified that it was his understanding of county policy that every intake to the youth detention center was to undergo an unclothed body cavity search, despite the existence of the checklist. (Dubey Dep., Ex. 8 to Pl's Statement of Facts, pp. 30, 32.) Dubey further testified that regardless of what a juvenile was charged with, he would be subjected to an unclothed body cavity search when going through intake at the detention center. (*Id.*, pp. 36, 52.) Defendant Choi testified that he didn't recall any juvenile who was admitted to the detention facility who was not strip searched. (Choi Dep., Ex. 9 to Pl's Stmt of Facts, p. 12.) Defendant Choi was also asked about the policy of Lancaster County regarding juvenile strip searches. The exchange was as follows:

> Q: Is it the county policy to strip search everybody?
>
> A: Yes, to my knowledge.

(*Id.*, p. 13.)

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[2] I note that this checklist was completed improperly, as Dubey checked the line that stated that if Benjamin had been charged as an adult, his charge would have been a felony. This is incorrect, because if Benjamin had been charged as an adult, the charge would have been a misdemeanor.

Clearly, this testimony of Defendants Dubey and Choi presents a genuine issue of material fact as to whether Lancaster County had a *de facto* policy of strip searching every juvenile detainee who was admitted to the youth detention center, despite the existence of the search checklist form which was supposed to indicate when a search was proper and despite the law requiring a reasonable suspicion to strip search a juvenile detainee. Therefore, I will deny the motion for summary judgment of Defendants Dubey and Choi as to Plaintiffs' unreasonable search claims.

C. DUE PROCESS CLAIMS CONTAINED IN COUNTS I AND III.

In Counts I and III of the Second Amended Complaint, Plaintiffs also present due process claims against all defendants. The Lancaster County defendants argue that Plaintiffs' due process claims fail as a matter of law under the "more specific provision" rule, which requires a claim for constitutional violations to be analyzed under the standard appropriate to a specific constitutional provision, if one exists, rather than under the guise of "due process." I find that Plaintiffs' due process claims are barred because their claims arise out of an allegedly unlawful arrest, detention and search and these claims are properly analyzed under the Fourth Amendment and were thoroughly analyzed previously in this opinion. Therefore, Defendants' Motion for Summary Judgment is granted as to all "due process" claims contained in the Second Amended Complaint.

"[I]f a constitutional claim is covered by a specific constitutional provision, such as the Fourth or Eighth Amendment, the claim must be analyzed under the standard appropriate to that specific provision, not under the rubric of substantive due process." *Betts v. New Castle Youth Dev. Ctr.*, 621 F.3d 249, 260 (3d Cir. 2010). In this matter, Plaintiffs' claims of improper arrest, false imprisonment and search are all properly analyzed under the Fourth Amendment. Consequently, Plaintiff's due process claims in Counts I and III must be dismissed under the "more-specific-provision rule." *See Betts*, 621 F.3d at 261. Further, I note that in their opposition to Defendants' Motions for Summary Judgment, Plaintiffs do not set forth any argument that the due process claims should not be dismissed. Therefore, Defendants' Motion for Summary Judgment is granted as to Plaintiffs' due process claims, and all due process claims are dismissed.

D. LOSS OF FAMILY CONSORTIUM CLAIMS CONTAINED IN COUNT II.

Plaintiffs Thomas and Janet Benjamin have presented a claim in Count II of the Second Amended Complaint for a loss of family consortium under the Fourteenth Amendment against Defendants Mueller, Trostle, Kling, Fassnacht and Bray. This claim is a derivative claim arising from Benjamin's alleged injuries. Defendants argue that Plaintiffs' loss of family consortium claim fails for several reasons, including the fact that since Benjamin's false arrest and false

imprisonment claims fail, any loss of consortium claim must also fail.

It is true that a derivative loss of consortium claim cannot be successful if a plaintiff cannot prevail on the underlying claim as a matter of law. *See Robinson v. County of Allegheny*, 404 Fed. Appx. 670 (3d Cir. 2010) (dismissing a derivative loss of consortium claim where the underlying constitutional claims were barred as a matter of law due to the statute of limitations). In the instant matter, Plaintiffs cannot prevail on the false arrest or false imprisonment claims due to the *Heck* doctrine, as discussed above. Accordingly, Plaintiffs' derivative claim for loss of consortium is barred. Therefore, I will grant summary judgment in favor of Defendants on Plaintiffs' loss of consortium claim found in Count II of the Second Amended Complaint.

E. QUALIFIED IMMUNITY

Defendants suggest that they are entitled to qualified immunity, though they do not elaborate on the grounds for this claimed entitlement. I do not need to address the qualified immunity issue as to Defendants Fassnacht and Bray, as I have already determined that all claims against them should be dismissed. Therefore, I shall examine qualified immunity as to the Lancaster County defendants only.

The doctrine of qualified immunity provides "government officials performing discretionary functions . . . [a shield] from liability for civil damages insofar

as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). A defendant bears the burden of establishing that he is entitled to qualified immunity. *See Beers-Capitol v. Whetzel*, 256 F.3d 120, 142 n. 15 (3d Cir. 2001).

Determinations regarding qualified immunity, and its application in a given case, require a court to undertake two distinct inquiries. The court must evaluate whether the defendant violated a constitutional right. *Saucier v. Katz*, 533 U.S. 194, 201-02 (2001), abrogated in part by *Pearson v. Callahan*, 555 U.S. 223 (2009), and if the defendant committed a constitutional violation, the court must determine whether the constitutional right in question was "clearly established" at the time the defendant acted. *Pearson*, 555 U.S. at 231-32. A right is "clearly established" for purposes of qualified immunity if "every reasonable official would have understood that what he is doing violates that right." *Ashcroft v. al-Kidd*, 131 S.Ct. 2074, 2083 (2011).

In the instant matter, viewing the facts in the light most favorable to Plaintiffs, as I am required to do when deciding Defendants' motions for summary judgment, I find that the alleged conduct of Defendants Dubey and Choi could be construed as violating Benjamin's constitutional right to be free from an unreasonable search, of which every reasonable officer would have known. Therefore, I will deny Defendants'

motion for summary judgment on the basis of qualified immunity.

F. *MONELL* CLAIMS CONTAINED IN COUNTS IV AND V

In order to show municipal liability under section 1983, as a general proposition, a plaintiff must show that "the alleged constitutional transgression implements or executes a policy, regulation, or decision officially adopted by the governing body or informally adopted by custom." *McTernan v. City of York*, 564 F.3d 636, 657 (3d Cir. 2009) (citing *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658 (1978)). In order to succeed on a *Monell* claim such as this, Plaintiff must first establish a constitutional violation. *See Collins v. City of Harker Heights*, 503 U.S. 115, 123 (1992).

As discussed above, both Defendants Dubey and Choi testified that the Lancaster County Youth Detention Center had a policy of strip searching all juveniles who were detained at the facility, despite the facility having a checklist that was to be used to determine whether a strip search was warranted. Therefore, there is a genuine issue of material fact as to whether a constitutional violation occurred, and whether the County and Defendants Fredericks, as director of the LCYDC in his official capacity had a policy, practice or custom of conducting blanket strip searches and acted with deliberate indifference to the rights of the juveniles being detained at the facility. Accordingly, I will deny Defendants' Motion

for Summary Judgment as to the *Monell* claims against the County and Fredericks in his official capacity.[3]

G. STATE LAW CLAIMS

Plaintiffs have also presented state law claims for assault and battery in Count III of the Second Amended Complaint and intentional infliction of emotional distress in Count VI. Defendants argue that all state law claims should be dismissed, and Plaintiffs do not present any argument in their brief as to why these state law claims should remain. As discussed below, I find that there is no genuine issue of material fact that all state law claims fail as a matter of law.

Plaintiffs' assault and battery claims are directed against Defendants Choi and Dubey in Count III of the Second Amended Complaint and are premised on the search of Benjamin's person when he arrived at the Youth Detention Center. First, the battery claim must fail, because battery "requires proof that the defendant acted with the intent to cause harmful or offensive bodily contact with the person of the

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[3] Plaintiffs have also brought a *Monell* claim against Defendant Mueller, the director of Lancaster County Office of Juvenile Probation, in his official capacity. As I have previously determined that Plaintiffs' claims for false arrest and false imprisonment should be dismissed due to the application of the *Heck* doctrine, there is no constitutional violation committed by Defendant Mueller in his official capacity. Accordingly, there is no basis for a *Monell* claim to be sustained as to Defendant Mueller.

plaintiff and that such contact actually followed." *Dull v. W. Manchester Twp. Police Dep't*, 604 F. Supp. 739, 754 (M.D. Pa. 2009). In the instant matter, Benjamin testified that he was never touched during the search. (Ex. 1, pp. 21-22). Therefore, the battery claim must fail.

Assault "requires that the defendant act with the intent to place the plaintiff in apprehension of imminent harmful or offensive bodily contact and that the plaintiff actually experience such apprehension." *Dull*, 604 F.Supp. at 754. I find that this claim must also fail, as Benjamin never testified that he feared an imminent harmful touching when Dubey and Choi were conducting the strip search. Further, Dubey testified that he explained to all detainees that they would not be touched during the search. (Ex. 15, p. 29.) Accordingly, I will grant summary judgment to Defendants on Plaintiffs' state law assault and battery claims.

Plaintiffs have also set forth a state law claim for intentional infliction of emotional distress. Intentional infliction of emotional distress is defined as "[o]ne who by extreme and outrageous conduct intentionally or recklessly causes severe emotional distress to another." *Hoy v. Angelone*, 554 Pa. 134, 150 (1998). "The conduct must be so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized society." *Id.* at 151. "Only if conduct which is extreme or clearly outrageous is established will a claim [for IIED] be

proven." *Dixon v. Boscov's, Inc.*, 2002 WL 1740583 (E.D. Pa. July 17, 2002) (quoting *Shaner v. Synthes*, 204 F.3d 494, 507 (3d Cir. 2000)). Further, to state a claim for intentional infliction of emotional distress under Pennsylvania law, a plaintiff must demonstrate some physical injury, harm or illness caused by the defendant's conduct. *Fox v. Horn*, 2000 WL 49374 (E.D. Pa. Jan. 21, 2000) (citing *Rolla v. Westmoreland Health Sys.*, 651 A.2d 160, 163 (Pa.Super.1994)).

In the instant matter, Plaintiffs have produced no evidence that they experienced physical harm or severe emotional distress. Accordingly, Plaintiffs' claims of IIED are dismissed.[4]

V. CONCLUSION

For the reasons set forth above, Defendants' Motions for Summary Judgment are granted in part and denied in part. An appropriate order follows.

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[4] Plaintiffs' Second Amended Complaint states that the defendants acted "in concert or conspiracy" with each other. To the extent Plaintiffs are making a claim against Defendants for conspiracy, I grant summary judgment on that claim as well. There is no evidence contained in the record that establishes that the defendants entered into an agreement or understanding to deprive Benjamin of his constitutional rights.