# US Supreme Court sanctions strip searches even for minor infractions

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The US Supreme Court ruled Monday that prison authorities can routinely subject people detained even on minor misdemeanor charges to invasive strip searches, whether or not there is reason to believe they are dangerous or are concealing contraband.

The 5-4 decision, authored by the so-called "swing" member of the court, Justice Anthony Kennedy, and joined by the four-member right-wing bloc, is the latest in a series of reactionary rulings broadening the police powers of the state and trampling on the Bill of Rights.

The ruling makes a mockery of the Fourth Amendment to the US Constitution, which bars unreasonable searches and seizures. It is but the latest in a host of court rulings, particularly in the aftermath of the 9/11 terror attacks and the launching of the so-called "war on terrorism," that seek to accustom the American people to intrusive state violations of their privacy rights and the heavy-handed presence of the police in all aspects of life.

While the four-member liberal bloc on the court lined up behind the dissent written by Justice Stephen Breyer, the Obama administration sided with the prison authorities and the right wing on the court. It filed an amicus brief in support of blanket strip searches of newly detained individuals and against the case brought by plaintiff Albert Florence, a New Jersey car dealership finance director who was wrongfully arrested in 2005 on a misdemeanor charge and subjected to two strip searches in six days before he was able to see a judge and prove his innocence.

The administration's intervention in this case to support police state-type measures is not an aberration. It has intervened repeatedly in the federal courts in defense of unconstitutional procedures, including "rendition" of alleged terrorists to be interrogated and tortured in foreign countries and warrantless domestic spying. Over the past several months, Obama has signed a law authorizing the indefinite detention without trial of anyone targeted by the president as a "terrorist," and his attorney general has defended the "right" of the president to order the assassination of any person, including a US citizen, anywhere in the world.

Florence, an African-American, was driving with his pregnant wife and four-year-old son in March 2005 when he was pulled over by a New Jersey state trooper. He was arrested on a bench warrant for an unpaid fine. The warrant had been cancelled two years earlier after the fine was paid, but it had never been removed from the police data system.

Florence was taken away in handcuffs and spent the next six days at the Burlington County Detention Center, where he was ordered to undress, sprayed with a delousing agent and inspected for contraband and gang tattoos. He spent an additional day at the Essex County Correctional Facility in Newark, where he was stripped and ordered to squat and cough, a maneuver designed to eject anything hidden in the rectum.

Brought before a magistrate, he was released without charge. Shortly after, Florence filed suit against both prisons, charging violations of the Fourth Amendment ban on unreasonable searches and the Fourteenth Amendment guarantee of due process.

The Supreme Court decision in *Florence v. Board of Chosen Freeholders of County of Burlington* upholds a ruling against Florence by the Third US Circuit Court of Appeals in Philadelphia, which overturned a summary judgment handed down by the US District Court in favor

of the plaintiff.

The district court ruled as a matter of course that strip-searching a non-indictable offender without reasonable suspicion violated the Fourth Amendment. Prior to Monday's Supreme Court ruling, as many as seven federal appellate courts had ruled that prison authorities could not strip-search a detainee being admitted into the general prison population unless there was "reasonable suspicion" that the individual was dangerous or was concealing weapons, drugs or other contraband.

Kennedy threw all such considerations aside in his remarkably anti-democratic decision. The bulk of his opinion reiterated the arguments of the New Jersey authorities as to why prison safety and security required the blanket strip-searching of all new detainees being brought into the general prison population, whether they were charged with failing to buckle their seat belt or homicide.

Kennedy declared specifically that the authorities did not have to have a reasonable suspicion about a detainee to subject him or her to an intrusive visual strip search, including of the genitals and body cavities. "Every detainee," he wrote, "who will be admitted to the general population may be required to undergo a close visual inspection while undressed."

In a sentence reversing the Bill of Rights' bias in favor of individual civil liberties as opposed to the repressive powers of the state, Kennedy wrote: "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."

The default position, in other words, is that asserted by the police and prison authorities, which must be accepted unless a prisoner can prove that any measures inflicted on him are "unnecessary or unjustified" by the demands of "security." Albert Florence, Kennedy wrote, failed to meet this test.

This is a formula for justifying the most horrific and degrading violations of democratic and human rights—from solitary confinement to outright torture.

Chief Justice John Roberts and Associate Justice Samuel Alito wrote separate concurring opinions in which they attempted to somewhat narrow the scope of Kennedy's decision. They both suggested that prisoners charged with minor offenses could be spared strip searches if they were held separately from the general prison population.

Associate Justice Clarence Thomas dissociated himself from the final part of Kennedy's opinion, in which Kennedy said his ruling did not consider what types of searches might be constitutional for prisoners held apart from other detainees. Thomas, apparently, favors a blanket sanction for strip searches with no exceptions.

In his dissent, Breyer challenged the claim that strip searches for all those being brought into the general prison population were necessary for maintaining security and the health and safety of prisoners and staff. The core of his dissent, however, was his assertion that the majority consensus violated privacy rights and the constitutional prohibition of arbitrary searches.

Calling strip searches "inherently harmful, humiliating and degrading," he wrote that the strip-search policy upheld by the majority "would subject those arrested for minor offense to serious invasions of their privacy." He continued, "In my view, such a search of an individual arrested for a minor offense that does not involve drugs or violence is an unreasonable search forbidden by the Fourth Amendment."

Justices Ruth Bader Ginsburg, Sonia Sotomayor and Elena Kagan joined the dissent.

Susan Chana Lask, Florence's lawyer, said after Monday's ruling: "The 5-4 decision was as close as we could get… in this political climate with recent law for indefinite detention of citizens and without trial that shaves away our constitutional rights every day."