No. _____

In The
Supreme Court of the United States

TYNISA WILLIAMS, individually and on behalf of a class of others similarly situated,

Petitioner,

v.

CITY OF CLEVELAND,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

ELMER ROBERT KEACH, III, ESQUIRE
Counsel of Record
MARIA K. DYSON, ESQUIRE
LAW OFFICES OF ELMER ROBERT KEACH, III, PC
One Pine West Plaza
Suite 109
Albany, NY 12205
Telephone: 518.434.1718
Telecopier: 518.770.1558
Electronic Mail: bobkeach@keachlawfirm.com

NICHOLAS MIGLIACCIO, ESQUIRE
MIGLIACCIO LAW FIRM, PLLC
412 H Street, NE
Suite 302
Washington, DC 20002
Telephone: 202.470.3520
Telecopier: 202.800.2730
Electronic Mail: nmigliaccio@classlawdc.com

D. AARON RIHN, ESQUIRE
ROBERT PEIRCE & ASSOCIATES, PC
2500 Gulf Tower
707 Grant Street
Pittsburgh, PA 15219
Telephone: 412.281.7229
Telecopier: 412.281.4229
Electronic Mail: arihn@peircelaw.com

DANIEL KARON, ESQUIRE
KARON LLP
700 West St. Clair Avenue
Suite 200
Cleveland, OH 44113
Telephone: 216.622.1851
Telecopier: 216.241.8175
Electronic Mail: dkaron@karonllc.com

COCKLE LEGAL BRIEFS (800) 225-6964
WWW.COCKLELEGALBRIEFS.COM

QUESTIONS PRESENTED

In a prior decision of this Court, blanket strip and visual cavity searches of detainees entering the general population of a local jail were held to be reasonable under the Fourth Amendment. *See Florence v. Board of Chosen Freeholders*, 556 U.S. 318 (2012). Regardless, this Court's ruling specifically exempted searches involving "the touching of detainees," and those involving "intentional humiliation and other abusive practices." *Id.*, at 339. The Court also continues to require a balancing of the privacy rights of detainees with the need for the strip searches in question, and that prison policies be reasonably related to penological interests. *See Turner v. Safley*, 483 U.S. 78, 84-85 (1987). The questions presented are:

Whether the court below erroneously held that the physical delousing of all detainees entering the Cleveland Workhouse, whereby delousing solution was sprayed onto the genitals and anus of naked pre-trial detainees with a pressurized spray canister, was constitutional under the Fourth Amendment given reasonable *de minimis* alternatives to this procedure, including self-application of the solution.

Whether the court below erroneously held that routine group strip searches and physical delousing of all detainees entering the Cleveland Workhouse, whereby detainees were strip searched and deloused in groups of three, were constitutional under the Fourth Amendment given reasonable *de minimis* alternatives to this procedure, including the utilization of privacy partitions recommended by state regulators.

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The unreported Order of the United States District Court for the Northern District of Ohio granting Plaintiff's request for permanent injunction, dated May 5, 2017, has been appended at Appendix 62.

The Opinion of the United States Court of Appeals for the Sixth Circuit, reported at 907 F.3d 924, reversing the District Court's Decision granting in part Plaintiff's Motion for Summary Judgment and request for permanent injunction, and remanding for further proceedings, dated November 2, 2018, has been appended at Appendix 1.

The unreported Order of the United States Court of Appeals for the Sixth Circuit denying Rehearing En Banc, dated December 7, 2018, has been appended at Appendix 66.

The Judgment of the United States Court of Appeals for the Sixth Circuit is appended at Appendix 34.

JURISDICTION

The Opinion of the United States Court of Appeals for the Sixth Circuit Court reversing the United States District Court for the Northern District of Ohio's Decision granting in part Plaintiff's Motion for Summary Judgment and request for permanent injunction was entered on November 2, 2018. The unreported Order of the Sixth Circuit denying Rehearing En Banc was entered on December 7, 2018. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISION INVOLVED

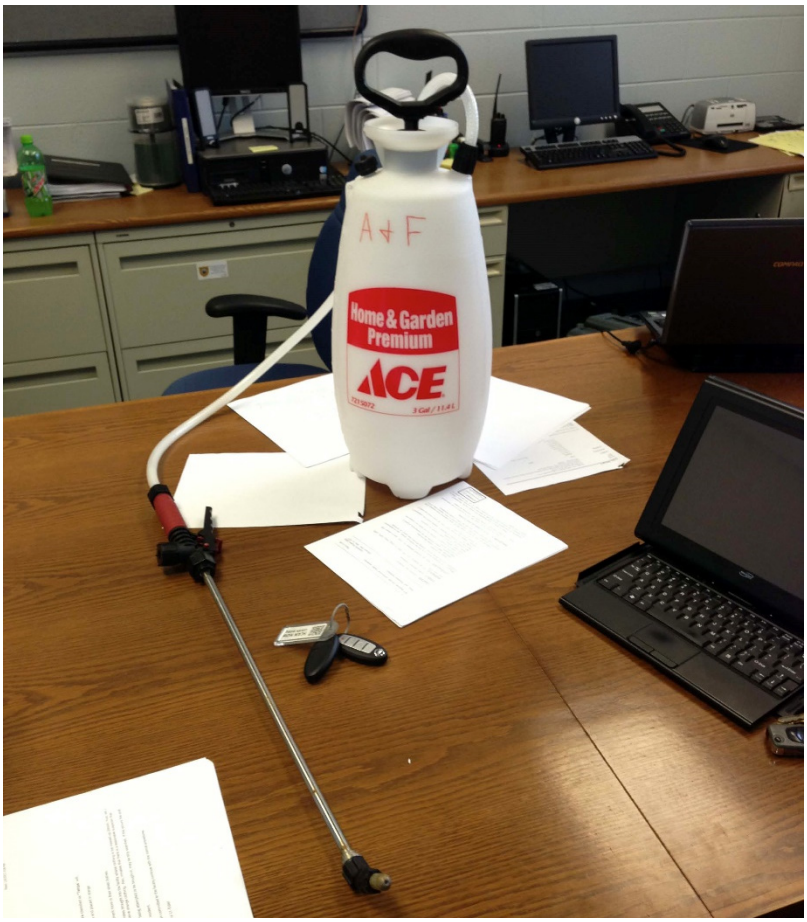
This Petition addresses the unreasonable search and seizure provisions of the Fourth Amendment of the United States Constitution.

U.S. Const. amend. IV

> "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."

STATEMENT OF THE CASE

In this Court's prior decision in *Florence v. Board of Chosen Freeholders*, Chief Justice Roberts detailed the Court's desire to "not embarrass the future" when deciding on the constitutionality of blanket strip searches at local jails. *Florence*, 566 U.S. 318, 340. The Petitioner here respectfully maintains that the Sixth Circuit's decision below does exactly that. This Court's decision allowing for blanket strip searches on admission to a local jail has now been utilized below to justify a range of perverse and unnecessary jail practices. Here, it has been used as a justification to allow for the compulsory physical delousing of pre-trial detainees using a pressurized spray canister—depicted below—to spray delousing solution on the head, genitals and anus of pre-trial detainees who do not have lice:



(N.D. Ohio Docket Number 111-22, Page ID 1650). The Sixth Circuit also allowed for compulsory group strip searches and group delousing of pre-trial detainees when privacy partitions could have easily been installed to preserve the dignity of detainees who are required to disrobe. As noted by Justice Alito in his concurrence in *Florence*, "most of those arrested for minor offenses are not dangerous." *Id.*, at 341. Despite this Court's limitation in *Florence* to searches not

involving "the touching of detainees" and "other abusive practices," the Sixth Circuit found that the holding in *Florence* justified lining three detainees up in a shower room and using the "hose treatment" to spray delousing solution on their genitals. This obscene practice cannot be constitutional—this cannot be the law.

The Petitioner herein respectfully Petitions for a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit reversing an award of Summary Judgment and the issuance of a Permanent Injunction by the United States District Court for the Northern District of Ohio. *See Williams v. City of Cleveland*, 210 F.Supp.3d 897 (N.D. Ohio 2016), *reversed*, *Williams v. City of Cleveland*, 907 F.3d 924 (6th Cir. 2018). Jurisdiction before the District Court was proper under federal question jurisdiction. 28 U.S.C. § 1331.

Below, Respondent City of Cleveland admitted that, as a matter of municipal policy, it implemented a delousing procedure involving the use of a pressurized spray canister to spray the genitals, buttocks, pubic hair, and hair of detainees with "liceall" solution after they were admitted to the Cleveland Workhouse. The Workhouse detained pre-trial misdemeanor detainees almost exclusively. This procedure was forced upon detainees in groups in a shower area in the jail where detainees could see each other in a state of complete undress while they were deloused. The Petitioner in this case, Tynisa Williams, was required to squat while being deloused, with the liceall solution being sprayed directly onto her anus. There were clearly *de minimis*

alternatives available to promote the legitimate penological interest of maintaining hygiene within the jail, such as allowing detainees to apply the solution to their own body—the same practice visited by this Court in the *Florence* decision. It is difficult to imagine a more humiliating and revolting practice. The City of Cleveland further admitted to conducting group strip searches, with these searches continuing until the District Court issued a Permanent Injunction prohibiting the practice on September 28, 2016. These searches could have easily been conducted in groups—and respected a detainee's right to bodily integrity—with the installation of innocuous privacy curtains. In fact, Petitioner Tynisa Williams was strip searched in a group setting on several occasions, including on several occasions where her family posted bail for her shortly after her admission to the Workhouse. Numerous courts have held that an "unusually dire" justification was necessary to justify the offensive practice of group strip searching and delousing procedures.

Despite being presented with evidence that only served to further strengthen the Petitioner's claims, the Sixth Circuit overruled both the decision of its own prior panel, which found that the policies in question were akin to how "an object or animal" is treated, and that of the District Court, which held that the Defendant failed to provide sufficient evidence to demonstrate why *de minimis* alternative procedures were not appropriate. As aptly discussed by Circuit Judge Helene N. White, who dissented in part in *Williams*, the majority opted to give substantial deference to the

penological interests raised by the Jail, and conducted no balancing of the constitutional rights involved. *Williams v. City of Cleveland*, 907 F.3d 924, 938-40 (6th Cir. 2018) (White, J., dissent). The majority also conducted no analysis of the substantial evidence amassed by the Plaintiffs that demonstrated the existence of *de minimis* alternatives that protected the dignity of detainees, and promoted the jail's legitimate penological concerns, and the fact that the policies in and of themselves were unnecessary, ineffective, and a gross exaggeration to the jail's security concerns. *Id*.

Prior to this Court's decision in *Florence v. Board of Chosen Freeholders*, the state of the law as it related to both strip searches of detainees, and the general penological policies that corrections officials implemented, had generally been the same for years—jailers could not strip search individuals charged with misdemeanors and other minor crimes without reasonable suspicion that they were harboring contraband or weapons. Furthermore, jail policies had to serve a legitimate penological interest and be balanced against a detainee's constitutional right to privacy and bodily integrity. These concepts were fervently upheld by judicial districts across the country because, as this Court once held, a person's interest in his own bodily integrity is the "most personal and deep-rooted expectations of privacy." *Winston v. Lee*, 470 U.S. 753, 760 (1985). While strip and visual cavity searches are a routine part of the administration of a jail, it must not be forgotten that these types of searches are "particular[ly] severe and degrading," "are imposed at grave

human cost, even when they are constitutionally justified" and "is a humiliating invasion that offends bodily autonomy and may cause lasting psychological harm." *Johnson v. Gov't of D.C.*, 2014 WL 12579819, at *2 (D.C. Cir. Aug. 1, 2014); *Mary Beth G. v. Chicago*, 723 F.2d 1263, 1272 (7th Cir. 1984) (Strip searches are "demeaning, dehumanizing, undignified, humiliating, terrifying, unpleasant, embarrassing, [and] repulsive, signifying degradation and submission."). Strip searches performed in public or groups, like the policy being challenged by the Petitioner, have accordingly been determined to be "undoubtedly humiliating and deeply offensive to many . . . " *Florence*, 566 U.S. at 341 (Justice Alito, concurring).

Other penological policies, such as the compulsory physical delousing of detainees with the pressurized spray canister at issue in this case, not only implicate the psychological trauma of being in a state of complete undress in front of strangers, but also involve being physically touched by corrections officers. These practices were previously described by the Sixth Circuit below as being one of the most degrading and offensive policies that can be imposed on a detainee. *Williams v. City of Cleveland*, 771 F.3d 945, 952 (6th Cir. 2014) ("courts have uniformly recognized that a search in which officers intentionally contact a naked detainee causes still deeper injury to personal dignity and individual privacy."). These are the important issues that the Petitioner lays before the Court with this Petition. This Court's decision in *Florence v. Board of Chosen Freeholders* modified the law regarding

blanket strip searches of detainees charged with minor crimes who were being admitted into a local jail. Not only did *Florence* change the landscape of the law on issues that impact a population of persons that are some of the least-protected and advocated-for individuals in society, but it was a "splintered . . . decision that included two concurrences and a strongly worded dissent,"[1] was decided on the "facts of [the] case" before it,[2] and that left the country, its jailers, and judicial districts with little guidance on how to address future jail litigation. This Court essentially opened up a Pandora's Box of strange and unnecessary practices that are now being decided by lower courts, including those visited in this case.

WHY CERTIORARI SHOULD BE GRANTED

"Rule 10 sets forth situations that can weigh in favor of certiorari, although they are neither controlling nor fully measuring the Court's discretion." *Brown v. United States*, 139 S.Ct. 14, 16 (2018) (internal quotations omitted). However, Justice Rehnquist, reflecting on the Court's wide discretion to avoid hearing cases, once stated that "the existence of such discretion does not imply that it should be used as a sort of judicial storm cellar to which we may flee to escape from controversial or sensitive cases." *Ratchford v. Gay Lib*, 434

[1] *West v. Murphy*, 771 F.3d 209, 217 (4th Cir. 2014).

[2] *Florence v. Bd. of Chosen Freeholders of Cty. of Burlington*, 566 U.S. 318, 339 (2012).

U.S. 1080, 1081-82 (1978). The factors that this Court looks at when determining whether a case is appropriate for review, include, but are not limited to " . . . conflicting decisions from other courts and unsettled questions of federal law." *Montana v. Hall*, 481 U.S. 400, 406 (1987) (per curiam); *Sewell v. United States*, 507 U.S. 953 (1993) (dissent recognizing importance of granting certiorari where there is a circuit court split.). This Court also considers whether it has previously issued a decision that has left open important questions that then "deeply divide[s] federal and state courts." *Virginia v. Harris*, 558 U.S. 978 (2009) (Chief Justice Roberts, dissenting on an issue involving whether the Fourth Amendment requires independent corroboration before the police can act on an anonymous tip reporting drunk driving.). One of the primary reasons why Certiorari is granted is when the case will affect more than just the parties in the case. *Upper Skagit Indian Tribe v. Lundgren*, 138 S.Ct. 1649, 1657 (2018). For example, Chief Justice Rehnquist, dissenting on a case involving the prohibition of the use of campus facilities to a group of persons on the basis of sexual orientation, found that the sharp split among judges who had considered the issue demonstrated the need for guidance from the Supreme Court. *Ratchford v. Gay Lib*, 434 U.S. 1080, 1081-82 (1978).

I. THIS COURT SHOULD CLARIFY WHETHER CONDUCTING NON-EMERGENT GROUP STRIP SEARCHES AND PHYSICAL DELOUSING IS CONSTITUTIONAL GIVEN THE SPLIT OF AUTHORITY IN THE CIRCUIT COURTS.

The Petitioner asserts that a review of the constitutionality of the City of Cleveland's policies of conducting blanket group physical delousing and visual cavity searches is warranted for a range of reasons. First, the question of whether strip searches performed in groups or in public during non-emergent situations are constitutional is a question that has yet to be decided by this Court. *Story v. Foote*, 782 F.3d 968, 972 (8th Cir. 2015) ("The Supreme Court, moreover, has not clearly established that the presence of other inmates renders a . . . search unreasonable."). Also, there is not only a sharp divide among circuit courts on this question, the various judges in the District and appellate courts who have considered this case have vastly different opinions about how to apply the legal standards to this issue in this post-*Florence* era. The Sixth Circuit's decision has far-reaching consequences, including to the thousands of detainees who were subjected to these inhumane policies in Cleveland—policies that can now be employed throughout Ohio, Michigan, Tennessee and Kentucky. This case is exactly the type of case that merits a grant of certiorari.

A. There Is A Conflict Among The Circuit And District Courts That Have Considered These Issues, Including Among Judges On The Sixth Circuit.

Here, there are ample reasons for the Court to hear this case as it relates to the Petitioner's challenge to the City of Cleveland's policy of group strip searching and physical delousing. First, within the history of this litigation, multiple judges have reached different conclusions about the merits of the Petitioner's case. In October 2013, District Court dismissed the Petitioner's Complaint holding that "[i]n light of *Florence*" "the Plaintiffs' allegations do not demonstrate any unconstitutional conduct attributable to Defendant" both as it related to the claims of strip searching and delousing. *See Williams v. City of Cleveland*, 2013 WL 5519403, *4, *6 (N.D. Ohio Sept. 30, 2013). In November 2014, the initial Sixth Circuit Panel reversed the District Court's decision finding that *Florence* did not abrogate the Petitioner's claims, and describing the practices involved akin to how "an object or animal" is treated. *Williams v. City of Cleveland*, 771 F.3d 945, 955 (2014). Thereafter, the District Court denied in part Defendant's Motion for Summary Judgment and granted in part Petitioner's Motion for a Permanent Injunction finding that there were *de minimis* alternative procedures to conducting group strip searches, including implementing the use of a privacy partition. The District Court further held that "the application of the delousing solution [with the hose method] . . . [was] not a rational response to the jail's legitimate interest

in preserving health and well-being within the facility, given other less humiliating and invasive alternative methods to eradicate lice, such as permitting detainees to self-apply a solution." *Williams v. City of Cleveland*, 210 F.Supp.3d 897, 905 (N.D. Ohio 2016).

On Appeal, the Sixth Circuit reversed the District Court's decision and dismissed the Petitioner's case in its entirety, finding that deference should be accorded to the Jail's policies, failing to consider the substantial evidence presented by the Petitioner demonstrating that the Jail's policies were a gross overreaction to legitimate penological interests, and the existence of *de minimis* alternative procedures that addressed the Jail's concerns, but also protected the dignity of detainees. Appendix, pp. 19-24. Therefore, there is a sharp division among the judges who have considered this very case which demonstrates the need for this Court to review and clarify the law. Another factor that weighs in favor of this Court's review is that this case involves the rights of hundreds of thousands of individuals. Specifically, the case below is a class action seeking to address both those who have been previously harmed by the challenged practices, and to prevent the City of Cleveland from continuing to engage in these practices. The City of Cleveland House of Correction's ("Jail") takes in several thousand detainees per year, all of whom must suffer through the indignities detailed above. Moreover, District Courts will inevitably look to the decision issued by the Sixth Circuit to justify these practices in other jails.

Additionally, there is a serious conflict among the Circuit Courts on the issue of group and public strip searches. First, strip searches performed in public or in groups inordinately heightens what is already a degrading and humiliating search procedure that detainees, regardless of what they have been charged with, whether it's an eighteen-year-old college student charged with disorderly conduct, or a seventy-year-old grandmother who failed to pay parking tickets[3]. These individuals, and countless others charged with minor crimes, will now experience group strip and visual cavity searches after the Sixth Circuit's decision in *Williams*. Some courts have held, and the Petitioner maintains that state of the law should be, that group strip searches should only be performed in exigent or emergency situations. *Small v. Wetzel*, 528 F. App'x 202, 207 (3d Cir. 2013) (strip search conducted during prison lockdown was an emergency situation and not the general policy.)[4].

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[3] *Florence v. Bd. of Chosen Freeholders of Cty. of Burlington*, 566 U.S. 318, 345-46 (2012) (Justice Breyer, writing for the dissent, questioning whether the Court would really uphold a blanket strip search policy in the case of a mother arrested for failing to buckle her children's seatbelt.).

[4] *May v. Trancoso*, 2011 WL 894502, at *4 (7th Cir. 2011); (faulting prison officials for failing to offer explanation for "non-emergency strip search" in front of a group of spectators.); *Stoudemire v. Michigan Dept. of Corr.*, 705 F.3d 560, 574 (6th Cir. 2013) (although [the Defendant] had a valid reason for searching [Plaintiff], no special circumstances provided additional justifications for strip searching [Plaintiff] where others could see her naked.); *Mays v. Springborn*, 575 F.3d 643, 650 (7th Cir. 2009) (District

However, jail policies or practices allowing for non-emergent group strip searches have been repeatedly upheld in several parts of the Country, either because of the lack of clarity in the law, or because Courts have found that they are constitutional. *Sumpter v. Wayne Cty.*, 868 F.3d 473, 488 (6th Cir. 2017) (the Court did not address Plaintiff's claim that the jail had *de minimis* alternatives to conducting group strip searches because it granted the Defendants qualified immunity given "[n]either *Stoudemire*,[5] nor *Williams*,[6] nor any other case, would have put [Defendants] on notice that conducting group strip searches . . . was unreasonable.") (internal citations omitted).[7] The Circuit split on

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Court erred in holding that group strip searches, without a valid justification, were per se constitutional.).

[5] *Stoudemire v. Michigan Dept. of Corr.*, 705 F.3d 560, 574 (6th Cir. 2013).

[6] *Williams v. City of Cleveland*, 771 F.3d 945 (6th Cir. 2014).

[7] *T.S. v. Doe*, 742 F.3d 632, 634 (6th Cir. 2014) (Finding that, in light of ambiguity in the law post-*Florence*, qualified immunity should be given to jail officials regarding the group strip search and delousing of juvenile arrestees housed in a cell block with only five other recently arrested juveniles, and who were released the next day.); *Story v. Foote*, 782 F.3d 968, 972 (8th Cir. 2015) (Upholding a visual body cavity search performed in view of other inmates upheld and the Court stated that "[t]he Supreme Court, moreover, has not clearly established that the presence of other inmates renders a body-cavity search unreasonable."); *Harris v. Miller*, 818 F.3d 49, 62 (2d Cir. 2016) ("Courts have arrived at different conclusions as to what makes the place in which the search was conducted more or less reasonable. Some courts have found that searches conducted in the presence of other inmates are more reasonable because there is less chance for abuse. Other courts have found that searches conducted outside the presence of other inmates are more reasonable.") (internal quotations

group strip searches can be seen by a cursory review of the case law. *Compare, Stoudemire v. Michigan Dep't of Corr.*, 705 F.3d 560, 574 (6th Cir. 2013) and *Mays v. Springborn*, 719 F.3d 631, 634 (7th Cir. 2013) *with Powell v. Barrett*, 541 F.3d 1298, 1301 (11th Cir. 2008). A review of decisions from District Courts further demonstrates this division.[8] Without clarity from this Court about the constitutionality of group strip searches, there will continue to be confusion and conflict among lower Federal courts.

The Petitioner acknowledges that there is limited authority from the Circuit Courts on compulsory delousing. Specifically, the Sixth Circuit in *Williams* found the practice to be constitutional. The Fourth Circuit did not consider the legality of the practice, having decided an appeal from the delousing regimen in the West Virginia Regional Jail Authority on qualified immunity, and further declining to consider injunctive and declaratory relief. *See Cantley v. West Virginia Regional Jail and Correctional Facility Auth.*, 771 F.3d

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omitted); *McCreary v. Richardson*, 738 F.3d 651, 658 (5th Cir. 2013) (Addressing Muslim inmate's claim that he was subjected to lengthy public strip search in front of female guards and holding that "we do not subject officials to monetary liability for picking the losing side when there is divergent case law."); *Powell v. Barrett*, 541 F.3d 1298, 1301 (11th Cir. 2008) (approving group searches consisting of up to thirty to forty other inmates during booking process.) .

[8] *See*, *for example, Lopez v. Youngblood*, 609 F.Supp.2d 1125, 1138 (E.D. Cal. 2009) and *Thomas v. Williams*, 2018 WL 3093342, *3-4 (N.D. Ill. June 22, 2018) found group strip searches illegal. *Greene v. White*, 2016 WL 11410282, *6 (D.S.C. Feb. 29, 2016) found such searches to be proper.

201, 207 (4th Cir. 2014). Regardless, the Petitioner respectfully requests that the Court consider the question of delousing, given that such conduct was clearly not anticipated by the *Florence* decision, and the delousing regimen can now be applied to tens of thousands of individuals every year with no consideration of their actually having lice.

B. The Sixth Circuit Ignored Substantial Evidence Presented By The Petitioner That Demonstrated Both That The Jail's Policies Were A Gross Overreaction To Penological Concerns, And That There Were *De Minimis* Alternatives To Searching Detainees In Groups.

Although this Court held that blanket strip searches of misdemeanor detainees entering the general population was constitutional, and that deference should be accorded to the decisions of prison officials, it still held that "the need for a particular search must be balanced against the resulting invasion of personal rights." *Florence v. Bd. of Chosen Freeholders of Cty. of Burlington*, 566 U.S. 318, 327 (2012). "That balancing requires consideration of 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." *Booker v. LaPaglia*, 617 F. App'x 520, 529 (6th Cir. 2015). "[T]he existence of obvious, easy alternatives may be evidence that the regulation is not reasonable, but is an 'exaggerated response' to prison concerns." *Turner v. Safley*, 482 U.S. at 90. "[W]here it

is reasonable . . . to respect an inmate's constitutional privacy interests, doing so is not just a palliative to be doled out at the state's indulgence. It is a constitutional mandate." *Canedy v. Boardman*, 16 F.3d 183, 188 (7th Cir. 1994).

As it relates to the Petitioner's claim for group strip searches, the majority in the Sixth Circuit held, without considering any of the Petitioner's substantial evidence to the contrary, that the Jail was only conducting group strip searches when there was need for expediency. *Williams v. City of Cleveland*, 907 F.3d 924, 936 (6th Cir. 2018) ("It appears, however, that groups of two or three detainees were only strip searched together in circumstances when large numbers of inmates were waiting to be processed. The 'need' for this particular aspect of the search procedure was, therefore, one of expediency."). The Sixth Circuit also held that the Petitioner failed to provide evidence questioning the legitimacy of the City's proffered justification. *Id.* ("Williams has not provided evidence questioning the legitimacy of the City's proffered justification."). However, as noted by the dissent, the majority merely gave deference to the Jail without considering any of the substantial evidence proffered by the Petitioner that not only questioned the legitimacy of these practices, but also proved the existence of an easy obvious alternative to the group strip search practices implemented by the Jail. First, the Defendant did not argue on appeal that this practice was only implemented on a sporadic and exigent basis. Rather, there was ample evidence in the record that group strip searches were

the norm, and were done regardless of whether there was a need for exigency or expediency. (Defendant's Cross-Motion for Summary Judgment, N.D. Ohio Docket Number 118, Page ID 1938) ("The City continues to strip search incoming prisoners in groups.").

The only justification for this offensive practice was that the Jail was "busy," but a senior Jail official testified that while it may "slow things down just a little bit," detainees could easily be strip searched individually versus as part of a group." Appendix, p. 57. Moreover, the District Court did not forbid group strip searches, but merely required that those searches be done with the installation of a modesty panel. Appendix, pp. 63-64. The Petitioner also demonstrated, through photographic and testimonial evidence, that the installation of a modesty panel could easily be done, and could allow the Jail to continue conducting strip searches in groups. (Diagram and Photograph of Clothing Room, Docket Numbers 111-32 and 111-33, Page IDs 1660, 1661).

In fact, both the State of Ohio and the Ohio Corrections Officer Basic Training Manual recommends the use of privacy partitions, noting that they are "inexpensive and effective" and "demonstrates good faith of a department to conduct searches in a constitutional manner." (Ohio Dep't of Corrections Body Searches Policy, N.D. Ohio Docket Number 111-18, Page ID 1645). The Defendant could not provide any explanation as to how the installation of a privacy partition would cause any burden on the Jail, and in fact, the former Workhouse Jail Administrator, and current jail supervisor,

admitted in their deposition testimony that these partitions could be easily installed, and would not preclude officers from completely observing detainees as they disrobe. (Joseph Stottner Dep., N.D. Ohio Docket Number 107, Page ID 1333-38). The majority did not consider any of this evidence, and in fact, the word modesty panel or a discussion of the *de minimis* alternatives does not even appear in its analysis. Rather, the Court opted to give complete deference to the jailers, without conducting any balancing of the constitutional rights at stake, or search of the record to consider the evidence provided by the Petitioner.

As noted by the dissent in the Sixth Circuit, the Petitioner "established through substantial evidence that there are obvious, easy alternatives to [the Jail's] policy of strip-searching detainees in the presence of other female detainees . . . " and that "alternatives can be accommodated at de minimis cost." Appendix, pp. 25-26. All of these factors, and the fact that the most closely held constitutional rights are at stake, weigh strongly in favor of this Court granting the Petitioner's petition for Writ of Certiorari, especially when the Plaintiff has presented substantial evidence regarding the availability of a simple and *de minimis* alternative procedure, the installation of a privacy partition.

C. The Sixth Circuit Also Ignored Substantial Evidence Demonstrating That The "Hose Treatment" Was A Gross Overreaction To Penological Interests. Consideration Of The "Hose Treatment" Provides An Ideal Opportunity For The Court To Clarify The Limits Of The *Florence* Decision.

Next, the Petitioner also requests that the Court accept her Petition for a Writ of Certiorari so that she may challenge the Jail's delousing procedure that was determined to be constitutional below. There is no dispute that the City of Cleveland utilized a formal policy of subjecting all pre-trial detainees admitted to the custody of the Cleveland Workhouse to a uniform physical delousing regimen. This regimen, styled as the "hose treatment," involved spraying the genitals of pre-trial detainees with delousing solution. This procedure was routinely implemented in a group setting, with detainees required to submit to this procedure in a state of complete undress in the presence of other detainees.

To be clear, the Petitioner is not challenging the legitimacy of the Jail's penological interest in maintaining hygiene and preventing lice outbreaks in jail. Nor is the Petitioner challenging the jail's right to require all detainees to submit to procedures that facilitate these interests. In *Florence*, this Court already approved of a prison's blanket-wide policy of requiring all inmates to shower with delousing solution. *Florence*, 566 U.S. at 338. This solution was given to

detainees, and they were permitted to apply it to their own body in the privacy of a shower. (Excerpt of Jerry Coleman Deposition (*Florence v. Board of Chosen Freeholders* D.N.J. Case Number 1:05-CV-3619, Docket Number 77-1), N.D. Ohio Docket Number 72-10, Page ID 582) ("Once he gives [an inmate] the Kwell and instructs him how to use the Kwell, the officer leaves and the inmate takes a shower."). This is a typical procedure employed by many jails across the nation[9]. Some jails take more reasonable steps to balance the privacy and dignity of detainees, and to rationally respond to their own legitimate penological concerns. Specifically, prison officials will either have all detainees submit to a check for lice during their intake procedures, or if there is an observable or self-reported concern for lice, then they would be required to submit to an examination. But the procedures implemented by the City of Cleveland are far more offensive than those decided in *Florence*. This Court expressly limited its ruling to the facts before it and exempted from that ruling "searches that involve the touching of detainees" and those involving "intentional humiliation and other abusive practices." *Florence*, 132 S.Ct. at 1522-23. Having one's body sprayed down by a pressurized stream of delousing solution is an intentional and offensive physical contact, even if indirect, with the degrading nature of the experience often heightened by

[9] *Russell v. Richards*, 384 F.3d 444, 449 (7th Cir. 2004) (policy of requiring inmates to shower with delousing solution was constitutional.); *Valerio v. Wrenn*, 2016 WL 8732511, at *1 (D.N.H. Apr. 1, 2016) (inmates given delousing solution to use during an intake shower).

the fact that it was done in a group or public setting. *Williams*, 771 F.3d at 952 ("Cleveland downplays the 'hose treatment' as not involving physical touching by corrections officers themselves, but the distinction is unconvincing.").

The Jail's justification for this obscene and degrading procedure was the need to maintain hygiene, and control lice infestations. The Jail justified their decision not to adopt alternative procedures, such as those described above, by claiming that detainees could not be trusted to self-apply the solution. The initial Sixth Circuit panel found these procedures to be akin to how "an object or animal" is treated. The initial panel reversed the decision of the District Court and directed that discovery proceed to determine whether or not the Jail's justifications were bona fide, and not a gross exaggeration to what were legitimate penological objectives.

The Petitioner asserts that she provided the Court with substantial evidence demonstrating that the Jail's procedures was an overreaction to a legitimate interest, and that there were easy and obvious *de minimis* alternatives to these procedures. In fact, the Jail now employs a far less intrusive procedure to address delousing where "corrections officers immediately send detainees that are suspected of having lice, to the Workhouse medical unit for assistance." *Williams*, 210 F.Supp.3d at 904. Lieutenant Flowers, the current Jail Administrator, testified that the new policy is working, they have had no major outbreaks, and called the prior compulsory delousing practices "***crazy***." (Flowers Dep.,

N.D. Ohio Docket Number 103, Page ID 1129). The justification provided by the Defendant for the hose method, that detainees could not be trusted to apply the solution to themselves, was not supported by the testimony of corrections officials, "who admitted that their instructions were nearly always followed. . . ." Appendix, pp. 29-30. Notably, the Permanent Injunction issued by the Court did not preclude the use of the hose method for detainees who did not comply with the delousing method. Rather, it struck the reasonable balance of requiring the Jail to use the simple and obvious *de minimis* alternative to allowing compliant detainees to apply the solution to themselves so that they may retain a modicum of dignity at no cost to the facility.

Despite this evidence, the Sixth Circuit, without even discussing any of the evidence presented by the Plaintiff, held that the Defendant has set forth "good reasons for its decision to delouse detainees" in the manner that it did. Appendix, p. 24. This is despite the fact that they acknowledged that the procedures were "admittedly [a] substantial invasion of personal rights. . . ." *Williams v. City of Cleveland*, 907 F.3d 924 (6th Cir. 2018). The Sixth Circuit engaged in no balancing of the rights involved, and considered none of the compelling testimony and evidence provided by the Petitioner. Petitioner maintains that the decision by the majority, following what it believed to be this Court's guidance in *Florence*, opted to give complete deference to the Jail officials. However, as the Sixth Circuit previously held, "we must not confuse deference with abdication: federal courts must take cognizance of the

valid constitutional claims of prison inmates." *Stoudemire v. Michigan Dep't of Corr.*, 705 F.3d 560, 572 (6th Cir. 2013). The District Court aptly noted that the Petitioner was "only asking the Court to require the City to follow its current policies, and not revert back to the older, offensive practices." Appendix, pp. 48-49. Both the District Court, and Sixth Circuit Justice Helene White, in her dissent and concurrence, found that the record amply demonstrated, at the very least, a genuine issue of material fact in this regard. *Williams v. City of Cleveland*, 210 F.Supp.3d 897, 906 (N.D. OH 2016) ("The application of the delousing solution in this manner is not a rational response to the jail's legitimate interest in preserving health and well-being with the facility, given other less humiliating and invasive alternative methods to eradicate lice, such as permitting detainees to self-apply a delousing solution."); *Williams v. City of Cleveland*, 907 F.3d 924, 941 (6th Cir. 2018) (The dissent aptly noted that the majority's reversal of the district court on the basis of testimony that detainees cannot be trusted to self-apply delousing solution is questionable and that, "summary judgment is unjustified" given the conflicting testimony regarding alternatives to the group strip search and mandatory 'hose treatment' delousing policy and "at most, the matter should have been remanded to the District Court."). There was an easy and obvious *de minimis* alternative to the Jail's offensive procedures that treated human beings like animals—yet, the Sixth Circuit ignored all of this evidence for the sake of giving the Jail complete and unquestioning deference.

The Petitioner respectfully suggests that the Court provide review of this decision as having significant importance, in that it significantly, and detrimentally, expands this Court's holding in *Florence*.

CONCLUSION

The Jail's blanket policies of conducting group strip searches and compulsory physical delousing are constitutionally impermissible and should have been declared as such by the United States Court of Appeals for the Sixth Circuit. Petitioner requests that this Petition for Writ of Certiorari be granted by this Honorable Court to remedy this error, and to clarify these important issues of constitutional law.

Respectfully submitted,

ELMER ROBERT KEACH, III, ESQUIRE
Counsel of Record
MARIA K. DYSON, ESQUIRE
LAW OFFICES OF ELMER
ROBERT KEACH, III, PC
One Pine West Plaza
Suite 109
Albany, NY 12205
Telephone: 518.434.1718
Telecopier: 518.770.1558
Electronic Mail:
bobkeach@keachlawfirm.com

NICHOLAS MIGLIACCIO, ESQUIRE
MIGLIACCIO LAW FIRM, PLLC
412 H Street NE
Suite 302
Washington, DC 20002
Telephone: 202.470.3520
Telecopier: 202.800.2730
Electronic Mail:
nmigliaccio@classlawdc.com

D. AARON RIHN, ESQUIRE
ROBERT PEIRCE & ASSOCIATES, PC
2500 Gulf Tower
707 Grant Street
Pittsburgh, PA 15219
Telephone: 412.281.7229
Telecopier: 412.281.4229
Electronic Mail:
arihn@peircelaw.com

DANIEL KARON, ESQUIRE
KARON LLP
700 West St. Clair Avenue
Suite 200
Cleveland, OH 44113
Telephone: 216.622.1851
Telecopier: 216.241.8175
Electronic Mail:
dkaron@karonllc.com

Attorneys for Plaintiff
Tynisa Williams