NO. 26-612

In the Supreme Court of the United States

KENOSHA COUNTY, WISCONSIN, ET AL.,

Petitioners,

v.

ALEKSY RUDERMAN, ET AL.,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF OF AMICUS CURIAE NATIONAL SHERIFFS' ASSOCIATION IN SUPPORT OF PETITIONERS

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IDENTITY AND INTEREST OF THE AMICUS CURIAE[1]

The NATIONAL SHERIFFS' ASSOCIATION ("NSA") is a non-profit association formed under 26 U.S.C. § 501(c)(4). Formed in 1940 the NSA seeks to promote the fair and efficient administration of criminal justice throughout the United States and in particular to advance and protect the Office of Sheriff throughout the United States. The NSA has over 13,000 members and is the advocate for 3,083 sheriffs throughout the United States.

The NSA also works to promote the public interest goals and policies of law enforcement throughout the nation. It participates in the judicial process where the vital interests of law enforcement and its members are affected.

Amicus represents the nation's sheriffs, who operate more than 3,000 local detention facilities throughout the country. The vast majority of these facilities house both convicted felons waiting to be transferred to other facilities as well as pretrial detainees awaiting court appearances. In addition the majority of these facilities also handle individuals arrested on minor offenses being held only temporarily while they arrange to post bail or otherwise arrange their release.

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[1] Pursuant to Rule 37.6, no counsel for a party authored this brief in whole or in part, and no person or entity other than amicus, its members, or its counsel made a monetary contribution intended to fund its preparation or submission. Pursuant to Rule 37.2, counsel of record for all parties received timely notice of amicus's intent to file this brief.

Sheriffs as the custodians of the inmates housed within these facilities are charged with providing a safe and secure environment for both the inmates and for their employees.

SUMMARY OF ARGUMENT

Since the time our Constitution was enacted, pretrial detainees have been required to perform basic housekeeping duties to maintain their health and safety while detained. Immigration detainees, like pretrial detainees, have not been convicted of anything. They, too, should be required to clean up after themselves for their own health and safety. Such miniscule duties do not constitute slavery or forced labor. They are simply non-punitive, reasonable administrative restrictions related to the safe and orderly management of a detention facility. Restricting detainees from cleaning up after themselves will have dire consequences for jail and detention facilities holding over half a million detainees each year. Such consequences will include increased costs of operation, staffing shortages, logistics issues and security problems.

ARGUMENT

I. Detainees Historically Had to Clean Their Living Area for Basic Hygiene

In early colonial America, jails were unmanaged log holding structures (frontier jails made of logs) where prisoners slept in their own filth on dirty straw. When the Philadelphia Society for Alleviating the Miseries of Public Prisons (led by Quakers) overhauled the Walnut Street Jail in the late 1780s, they introduced strict personal accountability requiring detainees to keep their immediate cells entirely free of dirt, establishing the template for the 19th-century American carceral system. Contemporary federal courts have continued this tradition for the past half a century, holding that pretrial detainees can be required to perform basic housekeeping duties in their living areas.

In *Bijeol v. Nelson*, 579 F.2d 423 (7th Cir. 1978), a pre-trial detainee sued prison officials, claiming that they violated his constitutional rights by requiring him to perform general housekeeping duties without pay, and, when refusing to do so, placing him in segregation. The district court granted prison officials summary judgment. On appeal, the Seventh Circuit explained that by the very nature of confinement, restrictions do occur. 579 F.2d at 424. The court explained that this has been recognized with respect to convicted prisoners. *Id.*, *citing*, *Pell v. Procunier*, 417 U.S. 817, 822, 41 L. Ed. 2d 495, 94 S. Ct. 2800 (1974); *Wolff v. McDonnell*, 418 U.S. 539, 556, 41 L. Ed. 2d 935, 94 S. Ct. 2963 (1974). The *Bijeol* court also stated that those cases have also been applied to pre-trial detainees. *Bijeol*,

579 F.2d at 424, *citing*, *Padgett v. Stein*, 406 F. Supp. 287 (M.D. Pa. 1975). The Seventh Circuit in *Bijeol* reasoned that as it recognized in *Butler v. Crumlish*, 229 F. Supp. 565, 566 (E.D. Pa. 1964): Pending trial . . . a defendant may be imprisoned in a cell and must submit to the routine of the prison relating to his meals, his exercise and the many other activities of daily life. *Bijeol*, 579 F.2d at 424. The court stated, "All these matters, however, are incidental elements in the organized caretaking of the general company of prisoners." *Id.*

The Seventh Circuit in *Bijeol* explained that a pre-trial detainee has no constitutional right to order from a menu or have maid service. *Id.* Daily general housekeeping responsibilities are not punitive in nature and for health and safety must be routinely observed in any multiple living unit. *Id.*

The trial court in *Bijeol* found that a pre-trial detainee may constitutionally be compelled to perform simple housekeeping tasks in his or her own cell and community areas. *Id.* at 425. The work must not be overly burdensome in the time or labor required. *Id.* In addition, such work must not be assigned so as to preclude a pretrial detainee from effectively participating in his or her defense to pending criminal charges. *Id.*

The trial court also found that Bijeol did not allege that any of the disciplinary proceedings were carried out in an improper manner and found that his claim rested on whether he could be required to perform housekeeping tasks. *Id.* On appeal, the Seventh Circuit concluded that pre-trial detention centers must maintain some stability and discipline. *Id.* The appeal court stated, "The action taken here was fair

and reasonable. Believing that the trial court reached a proper decision, we affirm." *Id.*

Likewise, the Eighth Circuit in *Martinez v. Turner*, 977 F.2d 421 (8th Cir. 1992) also provided that requiring a pre-trial detainee to perform general housekeeping chores is not punishment. *Id.* at 423.

In addition, the Fourth Circuit in *Hause v. Vaught*, 993 F.2d 1079 (4th Cir. 1993), also held that a pre-trial detainee performing basic housekeeping functions was not punitive and was related to the legitimate, non-punitive government objective of prison cleanliness and did not constitute a 14th Amendment violation. *Id.* at 1085.

American jails have required detainees to perform basic housekeeping duties in their living areas since the founding of our country. And courts have consistently held that pre-trial detainees can be required to clean up after themselves in their living areas for the health and safety of the detainees.

Immigration detainees are simply a more recent group added to jail detainees which also include those being held in civil contempt for non-payment of child support, those awaiting placement as committed sex offenders and others. All of these detainees have in common that they are not convicted criminals. If this Court were to hold that immigration detainees cannot be forced to perform even basic hygiene duties like cleaning their own living areas, the Court sets the stage for every other type of jail detainee, including pre-trial detainees, to make virtually identical claims.

Based on the above cases, it is clear that requiring a detainee to clean up after himself is not punitive and is not a violation of the detainee's rights. Just as

children are required to clean their rooms by parents without subjecting parents to violations of child labor laws, detainees should be required to clean up after themselves for basic human hygiene. If the detainees were placed under house arrest, they would have to clean up after themselves at home or live in squalor. Such basic hygiene should not be considered forced labor any more than having to bathe occasionally is forced labor.

II. Dire Consequences Will Result from Prohibiting Detainees from Performing Basic Housekeeping Duties

In 2024, the average daily population in jails in the United States was 667,700 persons. Of those, 454,036 or 68% were pre-trial detainees. Bureau of Justice Statistics, *Jail Inmates in 2024 - Statistical Tables*, https://bjs.ojp.gov/library/publications/jail-inmates-2024-statistical-tables/web-report. About 65,765 people are held in U.S. Immigration and Customs Enforcement (ICE) detention, according to data from the TRAC Immigration Detention Quick Facts current as of July 11, 2026. https://tracreports.org/immigration/quickfacts/. (Other recent tracking figures show the daily population reaching peak highs between 70,000 and 73,400 individuals depending on the exact date and reporting metrics). Approximately 70.6% (about 46,436 people) of those in ICE detention have no criminal conviction. *Id.* Based on these figures, jails and detention centers would have to provide housekeeping services and basic hygiene services to about half a million detainees (pre-trial and immigration) 365 days a year, 24 hours a day, if unconvicted detainees did not have to clean up after themselves.

The court below has held that immigration detainees cannot be compelled to even clean up after themselves in their housing area while being detained. If this Court were to uphold such a ruling, the entire jail/detention system in America would experience dire consequences.

If since the founding of our country detainees were required to clean up after themselves but suddenly cannot be required to perform even basic hygiene housekeeping duties, the consequences will be far reaching. If cells are not cleaned, there will be a serious and dangerous increase in sanitation related issues like vermin and disease making living conditions inhumane. In addition, such a situation will result in 8th and 14th Amendment violations subjecting jails to civil rights liability exposure to other inmates based on deliberate indifference to the health and safety of the inmates.

Consistent with constitutional obligations and to avoid liability for deliberate indifference to disease and other sanitary conditions, jails cannot allow filthy and squalid conditions to develop. As any experienced jail administrator knows, such conditions would develop simply given the nature of jails and the people who are housed there. To avoid massive civil rights liability claims of both a civil and criminal nature, facility administrators will still need to keep the facilities reasonably clean and, if not able to require inmates to clean up after themselves, the administrators are left with three options.

First, they could require staff to perform the cleaning. That will increase costs and result in staffing shortages.

For the first option, for many facilities this would require a massive increase in staff because current custody staff will have to take on these duties, which takes them away from their primary mission of providing inmate supervision. A number of new employees will need to be hired to essentially provide hotel maid service. These maid service people will have to be hired in a way that they can meet the often rightfully rigorous background and other checks used to vet people who are employed to work in jails. If hiring standards are lowered for these positions, issues of misconduct, corruption, prisoner abuse and such will certainly go up. If the hiring standards are maintained, national experience has shown there is already a severe shortage in many places of corrections staff and this shortage is guaranteed to worsen. Many courts have found staff shortages to be a direct cause of unconstitutional jail conditions as well as risking the creation of substandard jails and inhumane conditions inconsistent with a civilized society.

A second option to perform the housekeeping tasks would be to have non-detainees perform them. This will require moving the inmates while the tasks are performed, increasing risks to staff and inmates of increased inmate violence and an increase in passing of contraband.

The second option is also not a viable option. Many facilities only house pre-trial detainees so there are no sentenced prisoners that could be used. Even in those places that house both sentenced and pre-trial prisoners, allowing a smaller group of prisoners the mobility, access and effective power and authority over other inmates would be contrary to over a hundred years of established best practices of correctional facility

operations. There are sound reason facilities work to prevent such power differentials among inmates. Such circumstances can readily lead to enhanced gang activity, violence, dealing in drugs or other contraband, risks to staff and a situation where the "inmates are running the asylum."

The third option for jails is to hire cleaning companies resulting in greatly increased costs, security problems, contraband smuggling and related issues. This third option is equally problematic.

Experience has shown that in many jurisdictions the major offenders that commit inmate sexual abuse and contraband smuggling are not facility staff but contractor employees who are often poorly paid and more prone to bribery and corruption. Such employees are also screened at a much lower level, if at all, for a history of misbehavior. This would increase the risk of prison violence and sexual assault which Congress expressly intended to reduce by enacting laws such as the Prison Litigation Reform Act (PREA). Thus the likely result of accepting the detainees' argument is a significant increase in the risk of not only misconduct but other criminal activity as well that puts inmates and facility staff at greater risk of harm.

In sum, any option available to jails to provide maid service to detainees is fraught with dire consequences. These options are simply not practical and should not be required so detainees do not have to clean up after themselves.

III. Any Pre-trial Detainee Conditions of Confinement, Such as a Cell Cleaning Requirement, Must Be Analyzed Pursuant to *Bell v. Wolfish*

While the Supreme Court has not explicitly evaluated a cell-cleaning requirement, any such administrative measure must be analyzed under the constitutional framework established in *Bell v. Wolfish*, 441 U.S. 520, and *Block v. Rutherford*, 468 U.S. 576.

This Court in *Bell v. Wolfish* specifically examined the scope of rights of pre-trial detainees. *Id.* at 441 U.S. 520, 523.

In *Bell*, this Court explained that in evaluating the constitutionality of conditions or restrictions of pre-trial detention that implicate only the protection against deprivation of liberty without due process of law, we think that the proper inquiry is whether those conditions amount to punishment of the detainee. *Id.* at 535. For under the Due Process Clause, a detainee may not be punished prior to an adjudication of guilt in accordance with due process of law. *Id.* A person lawfully committed to pretrial detention has not been adjudged guilty of any crime. He has had only a judicial determination of probable cause as a prerequisite to the extended restraint of his liberty following arrest. And, if he is detained for a suspected violation of a federal law, he also has had a bail hearing. Under such circumstances, the Government concededly may detain him to ensure his presence at trial and may subject him to the restrictions and conditions of the detention facility so long as those conditions and restrictions do not amount to punishment or otherwise violate the Constitution. *Id.* at 536-537.

This Court in *Bell* reasoned that not every disability imposed during pretrial detention amounts to "punishment" in the constitutional sense. *Id.* at 537. Once the Government has exercised its conceded authority to detain a person pending trial, it obviously is entitled to employ devices that are calculated to effectuate this detention. *Id.* Traditionally, this has meant confinement in a facility which, no matter how modern or how antiquated, results in restricting the movement of a detainee in a manner in which he would not be restricted if he simply were free to walk the streets pending trial. Whether it be called a jail, a prison, or a custodial center, the purpose of the facility is to detain. Loss of freedom of choice and privacy are inherent incidents of confinement in such a facility. *Id.* And the fact that such detention interferes with the detainee's understandable desire to live as comfortably as possible and with as little restraint as possible during confinement does not convert the conditions or restrictions of detention into "punishment." *Id.*

This Court in *Bell* recognized a distinction between punitive measures that may not constitutionally be imposed prior to a determination of guilt and regulatory restraints that may. *Id.*

In determining whether particular restrictions and conditions accompanying pre-trial detention amount to punishment in the constitutional sense of that word, this Court in *Bell* provided that a court must decide whether the disability is imposed for the purpose of punishment or whether it is but an incident of some other legitimate governmental purpose. *Id.* at 538. Absent a showing of an expressed intent to punish on the part of detention facility officials, that determination generally will turn on whether an alternative

purpose to which the restriction may rationally be connected is assignable for it, and whether it appears excessive in relation to the alternative purpose assigned to it. *Id.* Thus, if a particular condition or restriction of pre-trial detention is reasonably related to a legitimate governmental objective, it does not, without more, amount to "punishment." *Id.* Conversely, if a restriction or condition is not reasonably related to a legitimate goal — if it is arbitrary or purposeless — a court permissibly may infer that the purpose of the governmental action is punishment that may not constitutionally be inflicted upon detainees qua detainees. *Id.* Courts must be mindful that these inquiries spring from constitutional requirements and that judicial answers to them must reflect that fact rather than a court's idea of how best to operate a detention facility. *Id.* at 539.

This Court in *Bell* explained that the Government's interest in ensuring a detainee's presence at trial is not the only objective that may justify restraints and conditions once the decision is lawfully made to confine a person. *Id.* at 540. If the government could confine or otherwise infringe the liberty of detainees only to the extent necessary to ensure their presence at trial, house arrest would in the end be the only constitutionally justified form of detention. *Id.* The Government also has legitimate interests that stem from its need to manage the facility in which the individual is detained. *Id.* These legitimate operational concerns may require administrative measures that go beyond those that are, strictly speaking, necessary to ensure that the detainee shows up at trial. *Id.* For example, the Government must be able to take steps to maintain security and order at the institution and make certain no weapons or illicit drugs reach

detainees. *Id.* Restraints that are reasonably related to the institution's interest in maintaining jail security do not, without more, constitute unconstitutional punishment, even if they are discomforting and are restrictions that the detainee would not have experienced had he been released while awaiting trial. *Id.* In addition to ensuring the detainees' presence at trial, the effective management of the detention facility once the individual is confined is a valid objective that may justify imposition of conditions and restrictions of pre-trial detention and dispel any inference that such restrictions are intended as punishment. *Id.*

The *Bell* Court explained that courts might disagree with the choice of means to effectuate interests of jail safety and security, but it should not second-guess the expert administrators on matters on which they are better informed. *Id.* at 544. Concern with minutiae of prison administration can only distract the court from detached consideration of the one overriding question presented to it: does the practice or condition violate the Constitution? *Id.*

The *Bell* Court held that simply because prison inmates retain certain constitutional rights does not mean that these rights are not subject to restrictions and limitations. *Id.* at 545. "Lawful incarceration brings about the necessary withdrawal or limitation of many privileges and rights, a retraction justified by the considerations underlying our penal system." *Id.* at 545-546. The fact of confinement as well as the legitimate goals and policies of the penal institution limits these retained constitutional rights, according to this Court in *Bell*. *Id.* at 546

The *Bell* Court believed that maintaining institutional security and preserving internal order and

discipline are essential goals that may require limitation or retraction of the retained constitutional rights of both convicted prisoners and pre-trial detainees. *Id.* "Prison officials must be free to take appropriate action to ensure the safety of inmates and corrections personnel and to prevent escape or unauthorized entry. Accordingly, we have held that even when an institutional restriction infringes a specific constitutional guarantee, such as the First Amendment, the practice must be evaluated in the light of the central objective of prison administration, safeguarding institutional security." *Bell*, 441 U.S. at 547.

The *Bell* Court recognized that the problems that arise in the day-to-day operation of a corrections facility are not susceptible of easy solutions. *Id.* Prison administrators therefore should be accorded wide-ranging deference in the adoption and execution of policies and practices that in their judgment are needed to preserve internal order and discipline and to maintain institutional security. *Id.* "Such considerations are peculiarly within the province and professional expertise of corrections officials, and, in the absence of substantial evidence in the record to indicate that the officials have exaggerated their response to these considerations, courts should ordinarily defer to their expert judgment in such matters." *Id.* at 547-548. This Court in *Bell* further explained that, on occasion, prison administrators may be "experts" only by Act of Congress or of a state legislature. But judicial deference is accorded not merely because the administrator ordinarily will, as a matter of fact in a particular case, have a better grasp of his domain than the reviewing judge, but also because the operation of our correctional facilities is peculiarly the province of the

Legislative and Executive Branches of our Government, not the Judicial." *Id.* 548.

The *Bell* Court concluded that the determination whether any restrictions and practices constitute punishment in the constitutional sense depends on whether they are rationally related to a legitimate nonpunitive governmental purpose and whether they appear excessive in relation to that purpose. *Id.* at 561.

In summary, the Supreme Court has consistently held that under a general due process framework, detainees are subject to non-punitive, reasonable administrative restrictions related to the safe and orderly management of a facility. These restrictions should include basic hygiene such as housekeeping functions to maintain a clean, sanitary housing environment for their health and safety.

IV. Requiring Basic Hygiene is Not Modern Day Slavery

In *Barrientos v. CoreCivic, Inc.*, 951 F.3d 1269 (11th Cir. 2020), the court noted, "As CoreCivic correctly points out, Congress enacted the TVPA as part of the Victims of Trafficking and Violence Protection Act of 2000 'to combat trafficking in persons, a contemporary manifestation of slavery whose victims are predominantly women and children, to ensure just and effective punishment of traffickers, and to protect their victims.'" *Id.* at 1278, *citing*, Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, § 102(a), 114 Stat. 1464, 1466 (codified at 22 U.S.C. § 7101). Further, "Congress supported that purpose with 24 legislative findings, all of which focus on human trafficking and involuntary servitude. *Id.* § 102(b), 114 Stat. at 1466-69. And the

legislative history indicates that § 1589 in particular was 'intended to address the increasingly subtle methods of traffickers who place their victims in modern-day slavery.'" *Barrientos*, 951 F.3d at 1278, *citing*, H.R. Rep. No. 106-939, at 101 (2000) (Conf. Rep.).

No legislation indicates that the statute in question was intended to apply to people in custody whether pre-trial or sentenced. The logical reason legislation has not mentioned this is because after hundreds of years of history of jails routinely requiring inmates to clean up after themselves, no one in Congress even thought it had to be addressed. Perhaps the silence on the topic reflects that Congress never in its wildest dreams thought that the statute would apply to common sense basic hygiene duties by detainees after a couple hundred years of requiring such.

Requiring detainees to clean up after themselves is not modern day slavery. It is basic hygiene. If a jail had a requirement that detainees bathe at least once per week, that, too, would not be modern day slavery. It would be basic hygiene. To equate basic housekeeping and cleaning up after oneself to slavery borders on ridiculous.

Anti-immigration enforcement proponents are making this far-fetched argument to combat immigration at a risk of upending over 200 years of sound jail operations to ensure the health and safety of over half a million detainees each year. This Court should not condone such a tactic and should hold that detainees, whether pre-trial or immigration detainees, are required to clean their housing areas for their own good.

CONCLUSION

Pre-trial and immigration detainees should be required to perform basic housekeeping functions to ensure their own health and safety while detained. Such a requirement does not constitute slavery and is a constitutionally permissible, non-punitive, reasonable administrative restriction related to the safe and orderly management of a jail or detention facility. Accordingly, the petition for writ of certiorari should be granted and the decision of the court below should be reversed.

Respectfully submitted,

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