

26-865

**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

Courtney Green,

Plaintiff-Appellant

v.

**Commissioner Quiros, Warden Caron, Deputy Warden Ogando,
Correctional Officer Starzyk, Correctional Officer Coggeshall,**

Defendants-Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

**Brief of *Amici Curiae* American Civil Liberties Union of
Connecticut and American Civil Liberties Union of Vermont in
Support of Plaintiff-Appellant Courtney Green and Reversal**

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Corporate Disclosure Statement

Pursuant to Fed. R. App. P. 26.1 and 29(a)(4)(A), *amici curiae* state that the American Civil Liberties Union of Connecticut and the American Civil Liberties Union of Vermont are private, non-profit corporations. They have no parent corporations and no stock, so no corporation directly or indirectly owns more than 10% of their stock.

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Identity and Interest of the *Amici Curiae*¹

The ACLU of Connecticut (“ACLU-CT”) and ACLU of Vermont (“ACLU-VT”) are nonpartisan, nonprofit organizations that defend, promote, and preserve civil rights and liberties guaranteed by state and federal law. In furtherance of that mission, the organizations oppose government actions that result in unjustified and degrading searches. The ACLU-CT and ACLU-VT have a substantial interest in the proper resolution of this appeal because it involves a severe—yet unjustified—intrusion into an incarcerated person’s right to bodily integrity.

¹ No party’s counsel authored this brief in whole or in part, and no person other than *amici curiae*, their members, or their counsel contributed money that was intended to fund preparing or submitting this brief.

Summary of Argument

A body cavity search requiring that you “lift [your] testicles, turn around, bend, squat, [and] cough . . . ,” Ver. Compl., Doc. 1 ¶ 36,² is a “serious invasion of privacy,” *Harris v. Miller*, 818 F.3d 49, 58 (2d Cir. 2016), “regardless how professionally and courteously [it is] conducted . . . ,” *Hunter v. Auger*, 672 F.2d 668, 674 (8th Cir. 1982). On this point, there is a broad consensus—in the courts, among medical professionals, and under international law. Because body cavity searches are so degrading, the practice demands careful scrutiny.

Appellant Courtney Green—now free—was forced to undergo body cavity searches after video calls during a period of incarceration at Connecticut’s Carl Robinson Correctional Institution that left him “humiliated,” “embarrassed,” “upset,” and “agitated.” Ver. Compl., Doc. 1 ¶¶ 46, 50, 52; Green Decl., Doc. 43 ¶ 25. In response, Mr. Green filed this lawsuit, which presents two Fourth Amendment claims. The first is a challenge, under *Turner v. Safley*, 482 U.S. 78 (1987), to a prison rule

² Recognizing that a verified complaint may be treated as an affidavit at summary judgment, the district court considered Mr. Green’s complaint in adjudicating the instant motion. Opinion, Doc. 52 at 3 n. 20 (citing *Elliott v. Cartagena*, 84 F.4th 481, 486 (2d Cir. 2023)).

Throughout this brief, *amici* have not cited to any docket entries in the appellate record and refer to the District of Connecticut’s docket entries with the shorthand, “Doc.”

requiring body cavity searches after video calls. And the second is a challenge, under *Bell v. Wolfish*, 441 U.S. 520 (1979), to two searches to which Mr. Green was subjected in June 2024.

The district court gave each claim short shrift. Notwithstanding that Mr. Green was *pro se* and the non-moving party on a motion for summary judgment, the court downplayed material evidence and construed the record against him. Its errors demand *de novo* review.³

As for Mr. Green’s challenge to the search policy, he introduced evidence that, *inter alia*, undercut its sole justification: the prevention of contraband. On his telling, video calls and contact visits were spaced so far apart and so closely monitored that body cavity searches after the calls were gratuitous. Neither point is disputed. And based on his testimony a reasonable jury could find the search policy unconstitutional.

As for Mr. Green’s challenge to the June 2024 body cavity searches, there is no question that each invaded his right to bodily privacy. But the latter search was particularly offensive. It was intrusive, unhygienic, unjustified, and conducted in plain view of other incarcerated individuals

³ “A district court’s grant of summary judgment” is reviewed “*de novo*.” *Pucino v. Verizon Wireless Commc’ns, Inc.*, 618 F.3d 112, 117 (2d Cir. 2010). In doing so, a reviewing court must “construe the facts in the light most favorable to the non-moving party and [] resolve all ambiguities and draw all reasonable inferences against the movant.” *Id.*

and staff. Defendants were free to disagree with Mr. Green’s account of the search, but they did no such thing. From Mr. Green’s uncontroverted testimony, a jury could find that the “need for the particular search[es]” was not justified by the grave “invasion of personal rights that [each] search entail[ed].” *Harris*, 818 F.3d at 58 (quoting *Bell*, 441 U.S. at 559).

This Court must reverse and remand for trial.

Argument

1. **Body cavity searches in prison are dehumanizing, degrading, and humiliating.**

A body cavity search is a dehumanizing experience. The practice has given the Supreme Court “the most pause.” *Bell*, 441 U.S. at 558. It “represents a serious intrusion upon personal rights,” *Justice v. City of Peachtree City*, 961 F.2d 188, 192 (11th Cir. 1992)—“an invasion . . . of the first magnitude,” *Chapman v. Nichols*, 989 F.2d 393, 395 (10th Cir. 1993), that is “frightening and humiliating . . . even when conducted with all due courtesy,” *Byrd v. Maricopa Cnty. Sheriff’s Dep’t*, 629 F.3d 1135, 1143 (9th Cir. 2011). Put bluntly, a body cavity search is “demeaning, dehumanizing, undignified, humiliating, [and] terrifying . . .” *Henry v. Hulett*, 969 F.3d 769, 778 (7th Cir. 2020) (en banc); *see also Hunter*, 672 F.2d at 674; *Sumpter v. Wayne Cnty.*, 868 F.3d 473, 488 (6th Cir. 2017); *United States v. Sandler*, 644 F.2d 1163, 1167 (5th Cir. 1981); *Alexander v. Connor*, 105 F.4th 174, 181 (4th Cir. 2024); *Reppert v. Marino*, 259 F. App’x 481, 492 (3d Cir. 2007); *Blackburn v. Snow*, 771 F.2d 556, 564 (1st Cir. 1985); *Helton v. United States*, 191 F. Supp. 2d 179, 182 (D.D.C. 2002).

This consensus is echoed by medical professionals and international law. The American Academy of Emergency Medicine, for instance, warns that “body cavity searches, carry risks, including physical harm and

psychological trauma,” and it “strongly opposes involuntary forensics procedures, including body cavity searches, in emergency settings, even under court order.”⁴ Likewise, the United Nations’ Mandela Rules are unequivocal that “[i]ntrusive searches, including strip and body cavity searches” are to be used only “if absolutely necessary.”⁵ They further instruct that body cavity searches may only be conducted by a medical professional or staff trained “in standards of hygiene, health and safety.”⁶

For Mr. Green, the body cavity searches that followed video calls remained branded in his memory. Green Depo., Doc. 40-3, 97:19–24. Being ordered to “lift his arms, lift his testicles, turn around, bend, squat, [and] cough . . . in plain view of others not involved in the strip search,” left him feeling “humiliated,” “embarrassed,” “upset,” and “agitated.” Ver. Compl., Doc. 1 ¶¶ 36–37, 46, 50, 52; Green Decl., Doc. 43 ¶ 25.

In 1978, Judge Robert L. Carter cautioned against searches of this sort. “The ultimate degradation,” he warned, “is the required lifting of the testicles and the bending over to spread the buttocks.” *Hurley v. Ward*,

⁴ Am. Acad. of Emergency Med., *Statement on Forensic Searches* (Mar. 2025), <https://www.aaem.org/wp-content/uploads/2025/03/Forensic-Searches-Statement.pdf>.

⁵ The United Nations Standard Minimum Rules for the Treatment of Prisoners, Rule 52 (Dec. 17, 2015), https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-ebook.pdf.

⁶ *Id.*

448 F. Supp. 1227, 1230 (S.D.N.Y. 1978). And this degradation, of course, manifests for incarcerated women as well. Consider Terri Ricks’ testimony to the Connecticut legislature:

When my friends and family would come to visit me during the beginning of my sentence, I would be strip searched before and after seeing them. This was especially problematic and traumatic when women are experiencing their monthly menstrual cycle. I never understood why I had to go into a room, take off all my clothes and have to expose myself in front of people, then go see my family feeling so violated that I could barely talk to them After enduring this torture for six months, I had to apologize to my family and ask them to stop coming to visit⁷

As Mr. Green and Ms. Ricks explain, strip searches exact a terrible psychological toll—even when conducted with the utmost professionalism. *See also Byrd*, 629 F.3d at 1143. But there is an additional indignity: when incarcerated people “are required to open their mouths, wag their tongues, turn and show the bottoms of their feet and spread their toes” the procedure is “akin to displaying slaves for auction, cattle for market, and animals for sale.” *Hurley*, 448 F. Supp. at 1230. So, for 4,527 Black people in the custody of the Connecticut Department of Correction (nearly half the population), a strip search takes on an even more dehumanizing

⁷ Terri Ricks, *Written Testimony Supporting S.B. 1196* (Mar. 15, 2023), <https://www.cga.ct.gov/2023/juddata/TMY/2023SB-01196-R000315-Ricks,%20Terri-ACLU%20of%20Connecticut-Supports-TMY.PDF>.

dimension, especially where, as here, the search involves close inspection and public display of one’s genitals and buttocks.⁸

The degradation that inheres from a prison strip search has not escaped this Court’s attention. In its *per curiam* opinion in *Harris*, this Court recognized that “regardless of who performs the search, a visual body cavity search . . . is invasive.” 818 F.3d at 58. It noted that “one of the clearest forms of degradation in Western Society is to strip a person of his clothes” and that “the right to be free from strip searches and degrading body inspections is thus basic to the concept of privacy.” *Id.* at 58–59 (citation modified) (quoting *Canedy v. Boardman*, 16 F.3d 183, 185 (7th Cir. 1994)). Ultimately, *Harris* fine-tuned the balancing test to be employed when analyzing the constitutionality of a particular strip search in prison, but it did so with care—attending regularly to those aspects of a search that can be especially intrusive. *See, e.g., id.* at 59 (explaining that “the type of search . . . and the person performing the search . . . are independently relevant”).

⁸ *See* Connecticut Department of Correction Research Unit, *Racial Distribution Among Correctional Facilities Population Confined* (July 1, 2026), <https://portal.ct.gov/-/media/doc/pdf/monthlystat/stato7012026.pdf?rev=6c4bc8727c684dd88a35cad42889ed12&hash=F0F6656899E5FFF275B14FD63450ED55> (documenting the number of Black people in custody as of July 1, 2026); Teresa A. Miller, *Bright Lines, Black Bodies: The Florence Strip Search Case and Its Dire Repercussions*, 46 AKRON L. REV. 433, 464 (2013) (“[C]urrent strip searches are remarkably similar to the way slaves were treated on the auction block.”); I. India Thusi, *Girls, Assaulted*, 116 NW. U. L. REV. 911, 957 (2022).

Mr. Green's claims warrant this kind of judicial care.

2. The search policy fails under *Turner*: subjecting incarcerated people to body cavity searches after video calls is degrading, unsafe, and will not prevent the introduction of contraband.

Mr. Green's challenge to Defendants' policy of searching the body cavities of video call participants proceeds under *Turner*, 482 U.S. 78. Under it, a prison policy burdening a constitutional right survives only where it is "reasonably related to legitimate penological interests." *Harris*, 818 F.3d at 57 (quoting *id.* at 89). On a defensive motion for summary judgment, however, the task is more specific. In this posture, a court should deny summary judgment when a jury could reasonably find that the policy is unrelated to a legitimate penological interest. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

Courts are to "make this determination with reference to [the] four factors discussed in *Turner*." *Harris*, 818 F.3d at 58. They are as follows:

(i) whether there is a valid, rational connection between the prison regulation and the legitimate governmental interest put forward to justify it; (ii) whether there are alternative means of exercising the right in question that remain open to prison inmates; (iii) whether accommodation of the asserted constitutional right will have an unreasonable impact upon guards and other inmates, and upon the allocation of prison resources generally; and (iv) whether there are reasonable alternatives available to the prison authorities.

Covino v. Patrissi, 967 F.2d 73, 78–79 (2d Cir. 1992) (quoting *Turner*, 482 U.S. at 89–90). When considering each factor on a defensive motion for summary judgment, a court must construe the facts and draw all reasonable inferences in the plaintiff’s favor. *Aponte v. Perez*, 75 F.4th 49, 60 (2d Cir. 2023).

Below, the court addressed the *Turner* factors but at every step it either misapplied the law or construed the facts against Mr. Green. It did so notwithstanding that Mr. Green’s *pro se* submissions were to be treated with “special solicitude,” *Graham v. Lewinski*, 848 F.2d 342, 344 (2d Cir. 1988), and “interpreted to raise the strongest arguments that they suggest,” *Biton v. City of New York*, No. 21-23, 2022 WL 1448207, at *1 (2d Cir. May 9, 2022). When the record is appropriately construed, each factor clarifies that the search policy is unrelated to a legitimate penological interest.

2.1 Mr. Green’s uncontroverted testimony negates the connection between the search policy and the prevention of contraband.

“The first *Turner* ‘factor’ is more properly labeled an ‘element’ because it is not simply a consideration to be weighed but rather an essential requirement.” *Salahuddin v. Goord*, 467 F.3d 263, 274 (2d Cir. 2006). It requires a defendant to establish “a valid, rational connection between the prison regulation and the legitimate governmental interest put

forward to justify it.” *Turner*, 482 U.S. at 89. While the ultimate burden is on a plaintiff to introduce enough evidence such that a reasonable jury could find that “a challenged prison regulation is unreasonable,” *Covino*, 967 F.2d at 79, the first *Turner* factor turns the judicial microscope back towards the defendant, requiring, among other things, “proof that the governmental objective underlying the regulations at issue” is “legitimate” and that “the regulations are rationally related to that objective.” *Reynolds v. Quiros*, 25 F.4th 72, 85 (2d Cir. 2022).

No doubt the prevention of contraband is a legitimate interest. That’s why the Supreme Court has, under *Turner*, “upheld a prison policy of conducting visual body cavity searches after” contact visits. *Manson v. Caron*, No. 3:24-CV-00876 (MPS), 2024 WL 4188504, at *3 (D. Conn. Sept. 13, 2024) (citing *Bell*, 441 U.S. at 559–60). But the same security concerns are not present where, as here, the “visits” are by video. *Id.* To overcome this distinction, the court observed that incarcerated people “conducting both video and contact visits at Robinson CI share the same visiting room,” Opinion, Doc. 52 at 19, and then relied on Defendant Caron’s opinion that contraband could, in theory, be “passed or kicked across an open floor or hidden,” *id.* (quoting Caron Decl., Doc. 40-4 ¶ 28).

This is only one side of the story—and a speculative one at that. For his part, Mr. Green testified that “[d]uring video visits, inmates sit in a far corner away and not in the presence or vicinity of those who are having contact visits” such that it would be “very unlikely” that contraband could be exchanged. Green Decl., Doc. 43 ¶ 11. Nothing in the record refutes Mr. Green’s testimony. And while Defendant Caron testified generally about contraband during visits, Caron Decl., Doc. 40-4 ¶ 26, he did not suggest that it has ever been recovered from a *video* call participant—either at Carl Robinson or elsewhere.⁹

Worse still for Defendants, Mr. Green testified that “video visits occur . . . where correctional officers are seated” such that they can “continuously monitor prisoners participating in virtual video visits.” Ver. Compl., Doc. 1 ¶ 17. This too was uncontested. While under continuous observation, the likelihood that contraband could be kicked across the room and picked up during a video visit is not just unlikely, it is so remote as to be nearly impossible. *See Hodges v. Stanley*, 712 F.2d 34, 35–36 (2d Cir. 1983)

⁹ Throughout the litigation, Mr. Green attempted to obtain video evidence that would illustrate the layout of the visitation room. He moved to compel production of the videos and then for *in camera* review. *See* Doc. 32; Doc. 44. Even though Mr. Green argued that “the videos illustrate material facts in dispute about the reasonableness of the searches,” Doc. 44, and the court had all summary judgment briefing before it, the court found the videos “not probative of any issues in the case,” Doc. 51. Presumably, the videos would have depicted the visitation room, including the distance between the video calls and contact visits, which would have been highly probative. The court abused its discretion in failing to consider the video altogether.

(holding that a second strip search was unnecessary where a prisoner was under continuous escort); *Bono v. Saxbe*, 620 F.2d 609, 617 (7th Cir. 1980) (raising constitutional concerns regarding the rationale for “strip searches . . . before and after non-contact visits” where the public was physically separated from incarcerated people “and guards observe[d] [the] visits”).

Together, these concessions preclude summary judgment. The remoteness of the video call area and a guard’s constant surveillance suggest that body cavity searches of video participants are arbitrary and irrational. *See Turner*, 482 U.S. at 89–90. The court wrongly applied *Turner* when it discounted Mr. Green’s testimony and presumed that video calls presented an opportunity for the exchange of contraband. *See Jordan v. Cicchi*, 428 F. App’x 195, 199 (3d Cir. 2011) (finding error where the court concluded a “body cavity search was not unreasonable” by presuming there were “opportunities for contact with other prisoners and visitors during the visit”); *Rogoz v. City of Hartford*, 796 F.3d 236, 245–46 (2d Cir. 2015) (prohibiting credibility assessments at summary judgment).

Because the first factor is the *sine qua non* of the *Turner* analysis, “[i]f the connection between the regulation and the asserted goal is ‘arbitrary or irrational,’ then the regulation fails, irrespective of whether the

other factors tilt in its favor.” *Shaw v. Murphy*, 532 U.S. 223, 229–30 (2001). Here, the record contains substantial evidence that the post-video call searches have no relationship to institutional security at Carl Robinson. The Court could end its inquiry at this point.

2.2 The remaining *Turner* factors confirm that the search policy was unrelated to a legitimate penological interest.

If this Court proceeds with the *Turner* analysis, the remaining factors clarify further that people incarcerated at Carl Robinson are subjected to “demeaning, dehumanizing, [and] undignified” searches without penological justification. *Henry*, 969 F.3d at 778.

The second factor is straightforward. It requires courts to consider “whether there are alternative means of exercising the right that remain open” *Turner*, 482 U.S. at 90. Drawing on Judge Shea’s opinion in *Manson*, 2024 WL 4188504, at *4, the district court acknowledged that here “the ‘right in question’ is the Fourth Amendment right to be free from unreasonable searches.” Opinion, Doc. 52 at 20. But it skipped the punch line; *Manson* continued: “If prison officials stopped strip searching inmates after video visits, that right would remain respected.” 2024 WL 4188504, at *4.

The right to be free from unreasonable searches does not turn on available alternative approaches that *officials* could have taken. It depends, instead, on *Mr. Green*'s ability, under the circumstances, to avoid an unjustified, "serious invasion of privacy." *Harris*, 818 F.3d at 58. Because the decision to effectuate a body cavity search is squarely in the hands of prison officials, Mr. Green could not avoid the searches, and, thus, no "other avenues remain available for the exercise of the asserted right." *Reynolds*, 25 F.4th at 92. This factor weighs in Mr. Green's favor.¹⁰

The third factor instructs courts to consider "the impact accommodation of the asserted constitutional right will have on guards and other inmates, and on the allocation of prison resources generally." *Turner*, 482 U.S. at 90. Here, the Court concluded that "[p]ermitting any inmate to leave the visiting room without being searched would enable" the smuggling of contraband. Opinion, Doc. 52 at 22. Again, its conclusion rests on crediting—and overstating—Defendant Caron's testimony while ignoring Mr. Green's. If, as Mr. Green testified, there is no real risk that contraband will result from video calls because the calls are far removed

¹⁰ Rather than focus on *Mr. Green*'s ability to be free from unreasonable searches, the district court considered whether *prison officials* have "some alternative to strip searching inmates after video visits." Opinion, Doc. 52 at 22. This conflates the factors. While there are reasonable alternatives to the searches, those alternatives are more appropriately analyzed under the fourth factor.

from the contact visits and closely monitored, Ver. Compl., Doc. 1 ¶ 17; Green Decl., Doc. 43 ¶ 11, then accommodation of Mr. Green’s Fourth Amendment right would “not have an unreasonable impact upon guards and other inmates or upon the allocation of prison resources generally because prison security would still be maintained,” *Manson*, 2024 WL 4188504, at *4 (citation modified).

Far from having a detrimental “ripple effect,” *Turner*, 482 U.S. at 90, accommodating Mr. Green’s Fourth Amendment right would allow “correctional officers [to] expend less time and effort strip searching inmates,” freeing resources for more important and less degrading tasks. *Manson*, 2024 WL 4188504, at *4. Likewise, Mr. Green’s testimony suggests that avoiding gratuitous body cavity searches would make Carl Robinson safer. The searches left Mr. Green feeling “humiliated,” “embarrassed,” “upset,” and “agitated.” Ver. Compl., Doc. 1 ¶¶ 46, 50, 52; Green Decl., Doc. 43 ¶ 25. For others searched in the same manner, it stands to reason that the searches would evoke the same reaction, creating needless tension and hostility. *See Hurley*, 448 F. Supp. at 1230 (“Arbitrary and routine invasions of privacy in the name of security create needless tensions and hostility among the affected inmates.”).

Ultimately, body cavity searches after video calls are unnecessary and dangerous. They lead to upset and humiliation, and they create opportunities for incarcerated people to be subjected to sexual and physical abuse.¹¹ These dangers are the reason why international law proscribes body cavity searches unless they are “absolutely necessary.”¹² And surely, these dangers are enough to tilt the third factor in Mr. Green’s favor.

The fourth factor focuses on “ready alternatives” to a prison policy. *Turner*, 482 U.S. at 90. “[T]he existence of obvious, easy alternatives may be evidence that the regulation is not reasonable, but is an ‘exaggerated response’ to prison concerns.” *Id.* For that reason, “an alternative that fully accommodates” an incarcerated person’s rights “at *de minimis* cost to valid penological interests . . . [is] evidence that the [search policy at issue] does not satisfy the reasonable relationship standard.” *Id.* at 91.

¹¹ See e.g., CT Examiner, *The death of J’Allen Jones at Garner Correctional Institution on March 25, 2018*, YOUTUBE (June 26, 2026), https://www.youtube.com/watch?v=239wfVy_EBU&t=5s (recording the beating death of incarcerated person subjected to a search while suffering severe symptoms of schizophrenia).

¹² United Nations Standard Minimum Rules for the Treatment of Prisoners, Rule 52 (Dec. 17, 2015), https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-ebook.pdf; see also *Lareau v. Manson*, 651 F.2d 96, 107 (2d Cir. 1981) (finding the Rules “instructive”); *Morgan v. LaVallee*, 526 F.2d 221, 226 (2d Cir. 1975) (considering the Rules in assessing prison health regulations).

The obvious alternative here is the *status quo ante*. The prison could continue with current procedures but stop conducting body cavity searches after video calls. Although the court cast this alternative aside because it presumed that video calls and contact visits were “equally” likely to result in contraband, Opinion, Doc. 52 at 21, the record suggests otherwise. As discussed, the distance between the visits and video calls renders the exchange of contraband unlikely, Green Decl., Doc. 43 ¶ 11, which suggests that “the prison would be no worse off if it stopped strip searching inmates after video visits,” *Manson*, 2024 WL 4188504, at *4.

By the same token, close observation of the video calls obviates the need for an alternative. *See* Ver. Compl., Doc. 1 ¶ 17. On this point, the Supreme Court’s reasoning in *Bell* is instructive. While *Bell* held that body cavity searches following contact visits were reasonable under the circumstances, it observed that a “possible alternative” to such searches “would be to closely observe inmate visits.” *Bell*, 441 U.S. at 560 n. 40. As Defendants concede, in contrast to video calls, contact visits provide an opportunity to receive contraband directly from a visitor. Caron’s Resp. to Green’s Req. for Admis., Doc. 42-1 at 25–26, ¶ 20. So, if the close observation of contact visits is a reasonable alternative, then observation of video calls must be as well.

Still, there is more. The court also considered—and rejected—another alternative: physically separating video calls from contact visits, either by conducting the visits and video calls in a separate room or at different times in the same room. Relying on Defendant Caron’s testimony, the court concluded that “the only area where social visits can be conducted safely and with appropriate protocols” is the visitation room. Opinion, Doc. 52 at 21. It then found, “for similar reasons,” that separating video calls from contact visits would “put undue strain on staff resources” *Id.* (citing Caron Decl., Doc. 40-4 ¶ 21).

This conclusion does not follow. Defendant Caron did not testify that separating video calls from contact visits would strain resources. Rather, he stated that “[a]llowing inmates to schedule regular social visits, including video visits, *on an individual basis* instead would put undue strain on staff resources” Caron Decl., Doc. 40-4 ¶ 21 (emphasis added). That’s a different proposition. Defendant Caron does not suggest that it would be difficult to schedule video calls and contact visits at different times. Nor does he explain why a partition could not be erected to separate the video calls from the contact visits. Either alternative would fully accommodate Mr. Green’s rights at *de minimis* cost.

In sum, the *Turner* factors all point the same way. First, Mr. Green’s testimony undermines the connection between the search policy and the prevention of contraband. Second, he has no alternative means of protecting his right to bodily privacy. Third, the prevention of unnecessary searches is likely to improve prison security. Fourth, to the extent officials remain concerned, they could schedule video calls and contact visits at different times or erect a partition between them. Against this, a jury could comfortably find that a policy requiring that incarcerated people submit to body cavity searches after video calls is unrelated to a legitimate penological interest.

3. The June 3 and June 10 body cavity searches fail under *Bell*—both were highly intrusive and unjustified, but the latter search was even worse: it was unhygienic and conducted in front of unnecessary spectators.

In addition to the strip search policy, Mr. Green also challenges the constitutionality of two particularly egregious searches to which he was subjected while incarcerated at Carl Robinson. The first occurred on June 3, 2024, and was conducted by Defendant Starzyk, and the second occurred on June 10, 2024, and was conducted by Defendant Coggeshall. Ver. Compl., Doc. 1 ¶¶ 21–24; 33–37.

When faced with a Fourth Amendment challenge to a particular search, courts balance the “need for the [] search against the invasion of personal rights that the search entails.” *Harris*, 818 F.3d at 58 (quoting *Bell*, 441 U.S. at 559)). This requires consideration of the *Bell* factors: (1) the scope of the intrusion, (2) the manner in which it is conducted, (3) the justification for initiating it, and (4) the place in which it is conducted. *Id.*

Although the district court addressed the *Bell* factors, its analysis was cursory at best. As before, it impermissibly construed the facts against Mr. Green and paid only lip service to relevant evidence. *Contra Graham*, 848 F.2d at 344; *Biton*, 2022 WL 1448207, at *1; *Aponte*, 75 F.4th at 60. Both searches were intrusive and unnecessary, but the latter was even worse: it was conducted in an unsanitary manner and in a place that was publicly exposed. With respect to the latter search in particular, the *Bell* factors all militate against summary judgment. This four-factor consensus should have clarified that a genuine issue of material fact remained as to the reasonableness of the searches, and that, on this record, it would be improper to grant a defensive motion for summary judgment.

The district court was wrong to hold otherwise.

3.1 The intrusion occasioned by the body cavity searches was severe—especially the June 10 search.

In examining the scope of the intrusion, the analysis must consider both “the type of search and the person conducting the search.” *Harris*, 818 F.3d at 58. Each consideration is “independently relevant.” *Id.*

As to the type of search, this Court has defined three: (1) a visual inspection of a “naked individual, without any scrutiny of body cavities,” (2) a “visual body cavity search,” and (3) a “manual body cavity search that includes some degree of touching or probing.” *Id.* (citation modified). Here, the searches involved visual inspection and self-manipulation of “the anal and genital areas,” and, for some reason, the court considered that a strike against Mr. Green’s claim. Opinion, Doc. 52 at 25. That logic is unavailing.

While perhaps not as severe as a manual search, “a visual body cavity search,” like the one conducted here, “is invasive” because it “involves a stranger peering without consent at a naked individual, and in particular at the most private portions of that person’s body.” *Harris*, 818 F.3d at 58; *see also Sloley v. VanBramer*, 945 F.3d 30, 38 (2d Cir. 2019) (“Visual body cavity searches are invasive and degrading, occasioning a serious invasion of privacy and working a significant harm to a person’s bodily integrity.”). The practice resembles “displaying slaves for auction, cattle for market, and

animals for sale.” *Hurley*, 448 F. Supp. at 1230. It simply cannot be that an intrusion so degrading and historically fraught is presumptively reasonable because it did not involve touching or probing as well.

The next consideration concerns “whether the search involved an officer of the same gender as the inmate.” *Harris*, 818 F.3d at 58. On this score, the district court confined its analysis to one sentence: “Plaintiff does not identify either officer [involved in the search] as a woman.” Opinion, Doc. 52, at 25–26. But the matter is more nuanced. As Mr. Green argues, while there was not “a cross-gender search” in a formal sense, “other officers and prisoners who were not involved in the [] search process were able to see him in the nude” during the June 10 search. Pl’s Opp. to Ds’ MSJ, Doc. 42 at 11 (citing Ver. Compl., Doc. 1 ¶¶ 36–37). From this, and Mr. Green’s citation to the portion of the record where he testified to the same, it is reasonable to infer that female officers viewed Mr. Green’s naked body. *See Aponte*, 75 F.4th at 60.

Such cross-gender exposure during the search implicates the heightened sense of intrusion that can result from “hav[ing] one’s naked body viewed by a member of the opposite sex.” *Harris*, 818 F.3d at 59 (quoting *Canedy v. Boardman*, 16 F.3d 183, 185 (7th Cir. 1994)). Indeed, an “involuntary exposure of [one’s genitals] in the presence of people of the

other sex may be especially demeaning and humiliating.” *Id.* (quoting *Lee v. Downs*, 641 F.2d 1117, 1119 (4th Cir.1981)). And this remains true whether the search involves an exposure from a few inches away or, as here, across the room. Certainly, an up-close exposure is even more intrusive, but any cross-gender viewing is humiliating.

Returning to the broader inquiry, there can be no doubt that the required lifting of one’s testicles and spreading of one’s buttocks in view of female officers is a particularly intrusive search. Surely, the searches could have been even worse, but they were nonetheless “invasive and degrading.” *Sloley*, 945 F.3d at 38; see *Allah v. Lawson*, No. 9:23-CV-0785 (LEK/ML), 2025 WL 1033836, at *12 (N.D.N.Y. Feb. 18, 2025) (denying a motion to dismiss a Fourth Amendment challenge to a “visual body cavity search” conducted by officers of the same gender as the plaintiff).

3.2 The June 10 search was conducted in a manner that was objectively unhygienic and unprofessional.

The second *Bell* factor examines the “manner in which [the search was] conducted.” *Harris*, 818 F.3d at 58. Relevant here is whether the search was “professional” in nature. *Id.* at 59–60. To that end, the district court concluded that “no facts in the record suggest that Officers Starzyk and Coggeshall conducted the visual body cavity search unprofessionally.” Opinion, Doc. 52 at 28. That’s not right.

The June 10 search was neither professional nor reasonable. The hallmark of professionalism during any invasive procedure—medical or otherwise—is hygiene. And that holds true for invasive body cavity searches. *See Covino*, 967 F.2d at 79 (citing with approval *Bonitz v. Fair*, 804 F.2d 164, 173 (1st Cir.1986) for the proposition that a search that was, among other things, “conducted in in non-hygienic manner” violates the Fourth Amendment); *Johnson v. Robinette*, 105 F.4th 99, 118 (4th Cir. 2024) (“Strip searches should be hygienic”); *Richmond v. City of Brooklyn Ctr.*, 490 F.3d 1002, 1008 (8th Cir. 2007) (“[T]he law was clear that strip searches should be performed in a hygienic fashion”); *Evans v. Stephens*, 407 F.3d 1272, 1282 (11th Cir. 2005) (considering, *inter alia*, the “unsanitariness of” a strip search in finding it unconstitutional).

In his testimony, Mr. Green explained that “Defendant Coggeshall instructed [him] to lift his arms, lift his testicles, turn around, bend, squat, cough while spreading his buttocks,” and then “to turn back around facing him, and to open his mouth wide using his hands that he just lifted his testicles and spread his buttocks with.” Ver. Compl., Doc. 1 ¶ 36. The hygiene problem is obvious: the sequence of events allowed bacteria and fecal matter to spread from Mr. Green’s buttocks and testicles to his mouth. Even though Mr. Green “objected to this instruction by Defendant

Coggeshall” and the two went “back and forth” about it, Mr. Green had to—and did—comply “with the instruction given.” *Id.*

While there is no evidence that “Officer Coggeshall’s command was designed to intimidate, harass, or punish,” Opinion, Doc. 52 at 27 (quotations omitted), this court has instructed that “[w]hether a particular strip search is constitutional turns on an objective assessment of the facts and circumstances confronting the searching officer at the time, and not on the officer’s actual state of mind at the time of the search,” *Harris*, 818 F.3d at 62 n.4 (citation modified). In this case, Officer Coggeshall conducted a search that was objectively unhygienic. Even if he wore gloves, as Officer Starzyk did during the first search, the second search still would have been unsanitary because Mr. Green was commanded to touch his own genitals, rectum, and then mouth. *Contra* Opinion, Doc. 52 at 27 (stating incorrectly that the second search “proceeded in much the same way as the first”).

And even if an officer’s state of mind was dispositive (which it’s not), Defendant Coggeshall was made aware of the hygiene problem but nonetheless pressed forward. Such intentional disregard for Mr. Green’s health and safety further clarifies that the search was conducted in an unprofessional manner. Put differently, the search objectively contravened professional norms, which, on its own, renders it unreasonable. But

Defendant Coggeshall’s willful disregard for those norms moves the needle even further in the direction of a Fourth Amendment violation.

3.3 Neither search was justified or at all necessary.

The third *Bell* factor rises and falls with Defendants’ justification—or lack thereof—for the strip search policy. So that a court can “assess the reasonableness of an intrusion” into a person’s right to bodily privacy, “officers must provide a justification that is supported by record evidence.” *Harris*, 818 F.3d at 60. But here the sole justification was the search policy. *See* Opinion, Doc. 52 at 28 (“As to the third *Bell* factor . . . the Court has largely covered this in discussing the constitutionality of the search policy . . .”). As discussed, a reasonable jury could find the policy arbitrary and irrational, and, thus, searches premised on that policy are also unjustified.

Notably absent from the record is a justification either for initiating the searches at issue or for those aspects of the searches that were especially intrusive. At no point does Defendant Coggeshall explain his decision to initiate an unhygienic search. Nor does he justify Mr. Green’s exposure to onlookers. Without any explanation to that effect, Defendant Coggeshall makes it “difficult, if not impossible, for [this Court] to determine the reasonableness of [the] visual body cavity search” at issue.

Harris, 818 F.3d at 61. At this stage, Defendant Coggeshall’s silence as to the particularly egregious aspects of the June 10 search further weighs against summary judgment.

3.4 The place where the June 10 search was conducted exposed Mr. Green to spectators.

The fourth *Bell* factor focuses on the reasonableness of the location of the search. In considering the relationship between location and an incarcerated person’s “right to bodily privacy,” a court’s primary concern is whether the search was conducted in a place that allowed for “the presence of unnecessary spectators.” *Harris*, 818 F.3d at 62. This much is reflected in the administrative directives that were in force at the time of the June 10 search. Caron Decl., Doc. 40-4, Attachment 2, at 13 (A “strip-search shall normally be conducted in an area out of view of individuals not involved in the search process”). While this directive “is certainly not itself determinative of unconstitutional conduct, it does demonstrate that officials should avoid conducting strip searches in the presence of others and should have reasonable justifications for doing so.” *Green v. Martin*, 224 F. Supp. 3d 154, 167 n.4 (D. Conn. 2016).

Defendants offer no such justification for Mr. Green’s public exposure during the June 10 search. On that day, after he finished a video call, Mr. Green entered a “holding area.” Ver. Compl., Doc. 1 ¶ 34. He arrived at

“the second to last partition” in the area and was instructed to strip, but the “partition sides [did] not erect enough to provide side blockage” and there was “nothing to provide frontal blockage.” *Id.* ¶¶ 35–37. The result was that officers uninvolved in the search as well as “other prisoners from” Mr. Green’s housing unit could “view [his] unclothed nude body.” *Id.* ¶¶ 18, 37.

Although the court appeared to take comfort in the partitions, *see* Opinion, Doc. 52 at 30, they were woefully ineffective. Without any “frontal” or “side blockage,” the partitions did not prevent spectators from viewing the search. *Id.* ¶ 37. So, when Mr. Green had to “lift his testicles, turn around, bend, squat, [and] cough[,]” he was “in plain view of others” not involved in the search. *Id.* at ¶¶ 36–37. That aspect of the search was humiliating. *See Sumpter*, 868 F.3d at 483 (“The wider an audience for a strip search, the more humiliating it becomes, especially when the stripped individual is exposed to bystanders who do not share the searching officers’ institutional need to view [him] unclothed.”).

Nevertheless, the court, relying on *Miller v. Bailey*, No. 05-CV-5493 (CBA)(LB), 2008 WL 1787692 (E.D.N.Y. Apr. 17, 2008) and *Smith v. City of New York*, No. 14 CIV. 5934 (JCF), 2015 WL 3929621 (S.D.N.Y. June 17, 2015), found public exposure of this sort “insufficient.” Opinion, Doc. 52 at 31. This reliance was misplaced. At most *Miller* suggests that public

exposure during a strip search is not dispositive on its own. *See Miller*, 2008 WL 1787692, at *9. And *Smith* is similar. There, the court observed only that exposure is not itself enough to render “an otherwise constitutional strip search unconstitutional.” *Smith*, 2015 WL 3929621, at *2. Neither case alters *Harris*’ teaching that where, as here, a search is “conducted in the presence of unnecessary spectators,” it “is less reasonable than one conducted in the presence of only those individuals needed to conduct the search.” *Harris*, 818 F.3d at 62.¹³

Like the others, the final factor weighs against summary judgment.

¹³ Nor is *Esquelin v. Schriro*, No. 13-CV-3724 (KBF), 2014 WL 2795408 (S.D.N.Y. June 19, 2014) a gamechanger. This pre-*Harris* case simply did not consider the *Bell* factors, even though the allegations included a potential cross-gender viewing, public exposure, and hostile comments made by the searching officer. *See id.* at *1.

Conclusion

For the foregoing reasons, this Court should reverse the district court's grant of summary judgment and remand for further proceedings.

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July 23, 2026

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I hereby certify that true and accurate copies of the foregoing brief were served electronically through the Court's ACMS System to such counsel as has appeared for defendants-appellees and by email and first-class mail, postage prepaid, to plaintiff-appellant Courtney Green on this 23rd day of July, 2026.

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