



## **Bull vs. San Francisco**

# **U.S. Court of Appeals, 9th Circuit, Upholds the Blanket Strip Search Policy of San Francisco County**



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*United States v. Juan Pineda-Moreno, 2010 U.S. App. LEXIS 625  
( 9th Cir. Decided January 11, 2010)*

Courts holds Policy that Allows Strip Search of All Persons Admitted into Custodial Housing (General Population) is Reasonable Under the Fourth Amendment

The United States Court of Appeals for the Ninth Circuit adopted a similar stance as the United States Court of Appeals for the Eleventh Circuit in upholding entering summary judgment on behalf of San Francisco County in a class action civil rights lawsuit challenging the Sheriff's strip search policy.<sup>i</sup>

The policy at issue included a blanket provision that all persons who would be placed in general population (custodial housing) would be strip searched before entry to ensure that no contraband would enter the custodial housing units. The Sheriff implemented this policy based on several conclusions which the court found persuasive. First members of the sheriff's office testified that the admissions area was one of the most likely points of entry for contraband; second the jail had documented numerous incidents of contraband being recovered in the jail in a fairly short period of time; third, the sheriff and his staff testified to the inherent need to conduct strip searches in order to prevent contraband and weapons from entering the jail which would impact the safety of inmates, officers, other staff, and visitors to the jail.

In upholding the policy, the Ninth Circuit concluded that individual reasonable suspicion to believe that a person entering general population is not required before conducting a strip search of that

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person. The fact that the jail demonstrated a problem with contraband which the court described as a “pervasive”, coupled with the inherent jeopardy to safety caused by contraband in the jail, and the testimony of jail staff that the admissions area was an obvious and difficult point of entry for the contraband.

The court noted some other factors in upholding the policy. The court first noted that persons who were pretrial detainees, intoxicated persons held until sober, and those who were subject to the “cite and release” statute, were placed in a holding area and were not strip searched since they were not going to be placed in custodial housing. It was also recognized that the practice of San Francisco County was to allow pretrial detainees up to twelve hours to secure bond before being placed in general population. The court found this to be a reasonable amount of time.

The court expressly cited that the policy allowed for visual inspection only and did not allow for physical contact based on entry into general population. Additionally the court noted the process of strip searching under the policy required that the strip search be done in a professional manner and in an area of privacy such that the arrestee cannot be seen by others involved in the search.

Much like the United States Court of Appeals for the Eleventh Circuit’s opinion in *Powell v. Barrett*,<sup>ii</sup> the court relied on the United States Supreme Court decision in *Bell v. Wolfish*,<sup>iii</sup> in which the Court upheld a policy requiring the strip search of inmates following contact visits. Notably, in *Wolfish* and reiterated by the Ninth Circuit in this case is the concept that courts should give deference to jail officials on matters where the procedure of the jail is for institutional security and there is a “valid, rational connection between the prison regulation and the legitimate governmental interest put forward to justify it.”

It should be noted that the court emphasized that it was not considering the issue of strip searches for evidence seizure which has a totally different legal foundation, but was restricting its analysis and decision to institutional security of jails when persons are placed into general population.

As a final note, the court expressly criticized its prior decisions in *Thompson v. City of Los Angeles*, and *Giles v. Ackerman*,<sup>iv</sup> as improper analysis of *Wolfish*. In doing so, the court also expressly disagreed with other Circuits (specifically citing the 1<sup>st</sup> and 6<sup>th</sup> Circuits) which require individualized reasonable suspicion prior to a strip search.

## **Bottom Line:**

### **Ninth Circuit Jurisdictions:**

**A blanket strip search policy for all persons who are going to be placed into custodial housing/general population is reasonable under the Fourth Amendment subject to the following parameters:**

**The jail has documented issues of contraband recovered.**

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**The jail does not strip search those who are subject to release without ever entering a custodial housing unit/general population.**

**The jail allows pretrial detainees a reasonable amount of time to bond out. (In this case 12 hours was deemed a reasonable amount of time)**

**Strip Searches are done in a professional manner in an area of privacy where non-participants to the search cannot observe the search.**

**Strip searches are done by staff members of the same gender as the person who is searched.**

The policy language at issue in the case:

*The written policy instructions for conducting strip searches stated:*

1. *Strip searches include a visual body cavity search. A strip search does not include a physical body cavity search.*
2. *The search will be conducted in a professional manner in an area of privacy so that the search cannot be observed by persons not participating in the search.*
3. *The searching officer will instruct the arrestee to:*
  - a. *Remove his/her clothing.*
  - b. *Raise his/her arms above their head and rotate 360 degrees.*
  - c. *To bend forward and run his/her hands through his/her hair.*
  - d. *To turn his/her head first to the left and then to the right so the searching officer can inspect the arrestee's ear orifices.*
  - e. *To open his/her mouth and run his/her finger over the upper and lower gum areas; then raise his/her tongue so the officer can inspect the interior of the arrestee's mouth. Remove dentures if applicable.*
  - f. *To turn around and raise first one foot, then the other so the officer can check the bottom of each foot.*
4. *The searching officer will visually inspect the arrestee's breasts, buttocks, and genitalia.*
5. *The searching officer will thoroughly search the arrestee's clothing, underclothing, shoes, and socks.*
6. *At the completion of the search, the searching officer will instruct the arrestee to dress.*

## **CITATIONS:**

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<sup>i</sup> *Bull v. San Francisco*, 2010 U.S. App. LEXIS 2684 (9<sup>th</sup> Cir. en banc February 9, 2010).

<sup>ii</sup> *Powell v. Barrett*, 541 F.3d 1298 (11<sup>th</sup> Cir. en banc 2008).

<sup>iii</sup> *Bell v. Wolfish*, 441 U.S. 520 (1979).

<sup>iv</sup> *Thompson v. City of Los Angeles*, 885 F.2d 1439 (9<sup>th</sup> Cir. 1989), and *Giles v. Ackerman*, 746 F.2d 614 (9<sup>th</sup> Cir. 1984) (per curiam).