NOTE

Institutionalizing the Innocent: Suspicionless Searches of Prison Visitors' Vehicles and the Fourth Amendment

Lara-Beye Molina[*]

TABLE OF CONTENTS

[*] Senior Symposium Editor, UC Davis Law Review. J.D. Candidate, UC Davis School of Law, 2007; B.A. English and Sociology, University of California, Berkeley, 2004. Many thanks to the fabulous coterie: Dustin Friedman, Kansai Uchida, and Stephen Knighten; Dave Navarro. Above all, I thank Jill and Miguel Molina, and Princess for supporting me (regardless of whether I quit and/or fail everything) and enduring my general malaise. This article is dedicated to Tom Seats.

Prison continues, on those who are entrusted to it, a work begun elsewhere, which the whole of society pursues on each individual through innumerable mechanisms of discipline.

— Michel Foucault

INTRODUCTION

A woman, Marie, plans to visit her husband who has been incarcerated in state prison. Marie approaches the prison gates with trepidation. This is her first time visiting her husband in prison. She passes signs containing various regulations. Marie tries to quickly scan the first few signs, but the official language unnerves her.

Marie stops her car in front of the guard booth and begins to tell the officer that she is there to see her husband. Cutting her off mid-sentence, the officer instructs Marie to get out of the car, open the doors and the trunk, and get back in the car. Stunned, Marie complies with the officer's request. The officer scrutinizes the vehicle's interior as he walks a narcotics detection dog around the car.

The dog behaves strangely as it sniffs Marie's body. Marie inwardly panics, wondering what is wrong. The officer scrutinizes Marie, and tells her that she must submit to a strip search before she can visit her husband. Faced with the difficult choice of submitting to the search or foregoing her visit, Marie consents to the search.[1]

When prisoners' family members and friends visit prisons, they often expect to submit to some routine searches similar to those required to board an aircraft.[2] However, prison officials have expanded the scope of the searches required for entry into prisons.[3]

---

[1] This hypothetical is based on *Neumeyer v. Beard*, 421 F.3d 210, 214-15 (3d Cir. 2005).

[2] *See* Spear v. Sowders, 71 F.3d 626, 630 (6th Cir. 1995) (noting that prison administrators may require visitors to submit to some searches merely as condition of visitation); Shields v. State, 16 So. 85, 86 (Ala. 1894) (upholding requirement that visitors submit to search prior to visitation, but stating that sheriff cannot search visitor against his will); People v. Thompson, 523 P.2d 128, 130 (Colo. 1974) (justifying requirement that visitors consent to search as condition of visitation by citing danger of visitors smuggling contraband); Wells v. State, 402 So. 2d 402, 404 (Fla. 1981) (noting that prison visitors expect to submit to search for weapons or other contraband upon entry); People v. Whisnant, 303 N.W.2d 887, 891 (Mich. Ct. App. 1981) (determining that prison officials reasonably may condition entry on submission to pat-down search); VIVIEN STERN, A SIN AGAINST THE FUTURE: IMPRISONMENT IN THE WORLD 123-24 (1998) (noting that prison officials question nearly all visitors about items carried into facility, search visitors' belongings, and require visitors to undergo pat-down search).

[3] *See* United States v. Prevo, 435 F.3d 1343, 1347 (11th Cir. 2006) (upholding

While prisons still require visitors to submit to a simple pat-down search or metal detector sweep, officials may also search prison visitors' vehicles.[4] Although the vehicles remain outside the prison's walls, officials argue these searches help maintain institutional security by preventing contraband from entering the facility.[5]

This Note explores prison practices and policies allowing prison officials to conduct warrantless searches of prison visitors' vehicles.[6] Part I contextualizes these policies and practices in Fourth Amendment jurisprudence.[7] Part II explores the Third Circuit's decision in *Neumeyer v. Beard*, where the court determined that the Fourth Amendment's special needs exception justified suspicionless searches of visitors' vehicles.[8] Part III evaluates the legal and policy implications of these searches.[9] First, Part III argues that these searches violate the Fourth Amendment because prison administrators do not limit them to preventing contraband from entering the prison.[10] Generally, when government actors conduct suspicionless searches and seizures, they must narrowly tailor the search to fulfill a compelling governmental need.[11] However, suspicionless vehicle

vehicular search of visitor to work release correctional facility under Fourth Amendment); *Neumeyer*, 421 F.3d at 214-15 (validating prison practice of conducting suspicionless searches of prison visitors' vehicles under Fourth Amendment special needs doctrine); Romo v. Champion, 46 F.3d 1013, 1016 (10th Cir. 1995) (upholding vehicle checkpoint on road leading to correctional facility under Fourth Amendment); *Spear*, 71 F.3d at 633 (rejecting requirement of individualized suspicion to search visitor's car on prison grounds, particularly if signs warn visitor of possibility of search).

[4] *See* sources cited *supra* note 3 (chronicling searches of prison visitors' vehicles).

[5] *See Prevo*, 435 F.3d at 1347 (observing that prisoners could access loaded pistol and cocaine in defendant's front seat even if defendant did not smuggle items into facility); *Neumeyer*, 421 F.3d at 214-15 (reasoning that random searches of prison visitors' vehicles adequately addressed public interest of keeping drugs out of prison); *Romo*, 46 F.3d at 1016 (finding that vehicle search matches government's interest in drug interdiction and prison security); *Spear*, 71 F.3d at 633 ("[A]n object secreted in a car, to which prisoners may have access, is a potential threat at all times after the car enters the [prison] grounds.").

[6] *See* discussion *infra* Parts I.C, II, III (describing and analyzing suspicionless vehicle searches).

[7] *See* discussion *infra* Part I (describing legal underpinnings of suspicionless vehicle searches).

[8] *Neumeyer*, 421 F.3d at 214-15.

[9] *See* discussion *infra* Part III (evaluating legal and policy arguments for suspicionless vehicle searches of prison visitors).

[10] *See* discussion *infra* Part III.A (contending that suspicionless vehicle searches exceed prison's interest in intercepting contraband).

[11] *See* discussion *infra* Parts I.A, III.A (discussing Supreme Court scrutiny of

searches exceed the prison's interest in intercepting contraband because these searches encompass many items that never penetrate the prison's walls.[12] Part III contends that courts' lenient evaluation of whether visitor searches fulfill an institutional purpose reflects a general willingness to intrude upon the privacy of those associated with criminals.[13] Finally, Part III argues that searches of visitors' vehicles violate public policy because these searches discourage prison visitation.[14] If inmates remain connected to their families and friends while in prison, they return to their communities with support networks that help them avoid crime and stay out of prison.[15]

I. THE LAW: PRIVILEGING INSTITUTIONAL SECURITY OVER VISITORS' FOURTH AMENDMENT RIGHTS

The Fourth Amendment of the United States Constitution safeguards individual privacy and security by prohibiting government officials from conducting unreasonable searches and seizures.[16] Generally, government actors must obtain a warrant to conduct a

suspicionless searches and seizures).

[12] *See* discussion *infra* Part III.A (arguing that suspicionless searches of prison visitors' vehicles exceed governmental interest in intercepting contraband).

[13] *See* discussion *infra* Part III.B (comparing courts' perceptions of prison employees' and visitors' interests).

[14] *See* discussion *infra* Part III.C (chronicling visitation's benefits and discussing how prison regulations discourage visitation).

[15] *See* discussion *infra* notes 246-51 and accompanying text (linking high rates of family visitation with improved behavior in prison and lower recidivism rates).

[16] *See* 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 . . . ."); Hudson v. Palmer, 468 U.S. 517, 524-25 & n.7 (1984) (observing that Fourth Amendment's applicability turns on whether person can claim government action invaded reasonable expectation of privacy); Bivens v. Six Unknown Named Agents, 403 U.S. 388, 392 (1979) (ruling that Fourth Amendment guarantees citizens absolute right to be free from unreasonable searches and seizures by federal government); Chimel v. California, 395 U.S. 752, 766 n.12 (1969) (remarking that Fourth Amendment designed to prevent, not simply to redress, unlawful police action); Terry v. Ohio, 392 U.S. 1, 8-9 (1968) (recognizing individual's right to be free from unreasonable governmental intrusion wherever individual harbors reasonable privacy expectation); Katz v. United States, 389 U.S. 347, 360-61 (1967) (Harlan, J., concurring) (stating that Fourth Amendment has two requirements: "[F]irst, that a person have exhibited an actual (subjective) expectation of privacy and, second, that the expectation be one that society is prepared to recognize as 'reasonable'"); Camara v. Mun. Court, 387 U.S. 523, 528 (1967) (observing that Fourth Amendment safeguards individual privacy and security against arbitrary governmental invasions); United States v. Jeffers, 342 U.S. 48, 51 (1951) (noting that Fourth Amendment requires government's adherence to judicial processes).

search.[17] In obtaining a warrant, government actors usually have to show probable cause, which they do by articulating sufficient facts to support a reasonable belief that a crime has been committed.[18]

However, the United States Supreme Court has upheld some searches as reasonable even when government officials did not obtain a warrant or show probable cause.[19] In those cases, the Court applied

[17] *See* United States v. Place, 462 U.S. 696, 701 (1983) (viewing seizures as per se unreasonable unless accomplished pursuant to judicial warrant issued upon probable cause); Stoner v. California, 376 U.S. 483, 486 (1964) (reasoning that search conducted without warrant survives constitutional inhibition only if surrounding facts bring search within exception to warrant requirement); *Jeffers*, 342 U.S. at 51 (emphasizing that Fourth Amendment requires government adherence to judicial processes).

[18] *See* Illinois v. Gates, 462 U.S. 213, 238 (1983) (defining probable cause as "a fair probability that contraband or evidence of a crime will be found"); Texas v. Brown, 460 U.S. 730, 742 (1983) (describing probable cause as "flexible, common-sense standard"); Brinegar v. United States, 338 U.S. 160, 175-76 (1949) (noting that probable cause does not demand showing that belief is correct or more likely true than false); Husty v. United States, 282 U.S. 694, 700-01 (1931) (observing that probable cause exists if apparent facts lead reasonably prudent man to believe that crime is or has been committed); Carroll v. United States, 267 U.S. 132, 162 (1925) (noting that probable cause exists where "facts and circumstances within [the officers'] knowledge and of which they had reasonably trustworthy information [are] sufficient in themselves to warrant a man of reasonable caution in the belief that" an offense has been or is being committed); Dumbra v. United States, 268 U.S. 435, 441 (1925) (establishing probable cause does not require determination that offense charged has actually been committed); Stacey v. Emery, 97 U.S. 642, 645 (1878) ("If the facts and circumstances before the officer are such as to warrant a man of prudence and caution in believing that the offence has been committed, it is sufficient."); *see also* United States v. Cortez, 449 U.S. 411, 418 (1981) (observing that probable cause does not deal with hard certainties, but with probabilities).

[19] *See* Nat'l Treasury Employees Union v. Von Raab, 489 U.S. 656, 665-66 (1989) ("[N]either a warrant nor probable cause, nor, indeed, any measure of individualized suspicion, is an indispensable component of reasonableness in every circumstance."); Pennsylvania v. Mimms, 434 U.S. 106, 108-09 (1977) (recognizing that Fourth Amendment analysis requires considering reasonableness of governmental invasion in all circumstances); United States v. Martinez-Fuerte, 428 U.S. 543, 560-61 (1976) (ruling that although Fourth Amendment usually required individualized suspicion for constitutional search or seizure, it does not impose irreducible requirement of such suspicion); United States v. Rabinowitz, 339 U.S. 56, 63-64 (1950) ("[R]ecurring questions of the reasonableness of searches must find resolution in the facts and circumstances of each case."); *see also Carroll*, 267 U.S. at 149 (validating search and seizure even though made without warrant). Although not supported by the typical quantum of individualized suspicion, the Supreme Court found that some searches furthering a special governmental need are constitutionally "reasonable." *See generally* Vernonia Sch. Dist. 47J v. Acton, 515 U.S. 646 (1995) (holding that school policy of drug testing athletes did not violate student's constitutional right to be free from unreasonable searches); Mich. Dep't of State Police v. Sitz, 496 U.S. 444 (1990) (finding that checkpoints stopping all motorists and examining drivers for signs of

a balancing test to gauge the search's reasonableness where government actors did not comply with the warrant and probable cause requirements.[20] The Court analyzed whether a compelling governmental interest justifies the intrusion into individual privacy entailed by such searches.[21] Applying this test, the Court may allow government actors to conduct searches based on reasonable suspicion, or in some circumstances, without any showing of suspicion.[22] In

intoxication did not violate Fourth Amendment). *But cf.* Ferguson v. City of Charleston, 532 U.S. 67 (2001) (holding that state hospital's suspicionless drug testing of pregnant patients violated Fourth Amendment); City of Indianapolis v. Edmond, 531 U.S. 32 (2000) (invalidating suspicionless seizures at highway checkpoints because program indistinguishable from general crime control).

[20] *See Vernonia Sch. Dist.*, 515 U.S. at 653 (quoting Skinner v. Ry. Labor Executives' Ass'n, 489 U.S. 602, 619 (1989)) (evaluating searches with no established standard by balancing intrusion on individual's Fourth Amendment interests against legitimate governmental interests); *Nat'l Treasury Employees Union*, 489 U.S. at 665-66 (determining practicability of individualized suspicion and warrant requirement by balancing individual's privacy expectations against government's interests in context); Delaware v. Prouse, 440 U.S. 648, 654 (1979) (judging law enforcement program's permissibility by balancing intrusion on individual's Fourth Amendment interests against promotion of legitimate governmental interests); Bell v. Wolfish, 441 U.S. 520, 559 (1979) (stating that test of reasonableness under Fourth Amendment "requires a balancing of the need for the particular search against the invasion of personal rights that the search entails"); *Martinez-Fuerte*, 428 U.S. at 555 (delineating constitutional safeguards applicable in particular contexts by weighing public interest against individual's privacy interests); United States v. Brignoni-Ponce, 422 U.S. 873, 878 (1975) (determining search's reasonableness by balancing public interest and individual's right to personal security free from arbitrary interference by law officers); *see also Camara*, 387 U.S. at 535 (weighing need for inspection in terms of reasonable goals of code enforcement to determine building inspection's reasonableness).

[21] *See Prouse*, 440 U.S. at 653-54 (evaluating law enforcement practice's permissibility by balancing intrusion on individual's Fourth Amendment rights against promotion of legitimate governmental interest); *Bell*, 441 U.S. at 559 (considering intrusion's scope and justification to balance governmental need for particular search against invasion of personal rights); *Terry*, 392 U.S. at 27 (allowing officer who reasonably believes he is dealing with armed and dangerous individual to conduct protective search for weapons without probable cause to make arrest); *Camara*, 387 U.S. at 533-34 (finding that burden of obtaining warrant is likely to frustrate governmental purpose behind search); Schmerber v. California, 384 U.S. 757, 770-71 (1966) (finding that officer confronted with emergency situation reasonably feared destruction of evidence if search delayed).

[22] *See* Illinois v. Lidster, 540 U.S. 419, 423-24 (2004) (approving suspicionless highway checkpoint seeking information about prior hit-and-run accident); *Sitz*, 496 U.S. at 455 (upholding highway sobriety checkpoint program that stopped all vehicles and examined drivers for signs of intoxication); United States v. Sokolow, 490 U.S. 1, 7 (1989) (requiring officers to articulate "some minimal level of objective justification" for making stop, although "less than proof of wrongdoing by a preponderance of the evidence"); *Cortez*, 449 U.S. at 417 (upholding brief

conducting this inquiry, the Court focuses on the specific facts and circumstances of each case.[23]

A. Administrative Stops

Occasionally, the Supreme Court has suspended the requirement of probable cause when confronted with a compelling governmental need.[24] In these situations, government officials must limit their search to narrowly meet that governmental need.[25] Although the Court has not considered suspicionless searches of prison visitors' vehicles, it has considered the constitutionality of suspicionless stops

investigatory stops when objective facts indicate that person stopped is or is about to be engaged in criminal activity); *Martinez-Fuerte*, 428 U.S. at 561-62 (approving border patrol checkpoints that routinely stopped or slowed automobiles to intercept illegal immigrants); *Brignoni-Ponce*, 422 U.S. at 880 (justifying border patrol investigatory stops on less than probable cause); Terry v. Ohio, 392 U.S. 1, 25-26 (1968) (permitting police officer to conduct brief search for weapons in absence of probable cause if officer believes dealing with armed and dangerous individual).

[23] *See* Ohio v. Robinette, 519 U.S. 33, 39 (1996) (eschewing bright-line rules in favor of fact-specific reasonableness inquiry when analyzing search's reasonableness); Wilson v. Arkansas, 514 U.S. 927, 934 (1995) (commenting that Fourth Amendment's flexible requirement of reasonableness does not mandate rigid rule that ignores countervailing law enforcement interests); Florida v. Bostick, 501 U.S. 429, 439 (1991) (reversing lower court's ruling that questioning aboard bus must always constitute seizure because proper Fourth Amendment inquiry requires considering all circumstances surrounding encounter); Michigan v. Chesternut, 486 U.S. 567, 572-73 (1988) (rejecting "bright-line rule[s] applicable to all investigatory pursuits" as contrary to "traditional contextual approach"); Florida v. Royer, 460 U.S. 491, 506 (1983) (disavowing any "litmus-paper test" or single "sentence or . . . paragraph . . . rule" because endless factual variations implicate Fourth Amendment); Chimel v. California, 395 U.S. 752, 765 (1969) (analyzing search's reasonableness by examining facts and circumstances in light of established Fourth Amendment principles); *Rabinowitz*, 339 U.S. at 63 (rejecting fixed formula to assess search's reasonableness).

[24] *See* cases cited *supra* notes 19-20 (upholding searches and seizures based on less than probable cause).

[25] *See Royer*, 460 U.S. at 500 ("[If] legitimate law enforcement interests justify warrantless search[,] the search must be limited in scope to that which is justified by the particular purposes served by the exception."); *Terry*, 392 U.S. at 19 ("The scope of the search must be 'strictly tied to and justified by' the circumstances which rendered its initiation permissible.") (quoting Warden v. Hayden, 387 U.S. 294, 310 (1967) (Fortas, J., concurring)); Kremen v. United States, 353 U.S. 346, 347 (1957) (holding that search which is reasonable at its inception may violate Fourth Amendment by virtue of its intolerable intensity and scope); United States v. Davis, 482 F.2d 893, 910 (9th Cir. 1973) (requiring officials to limit administrative screening search to satisfying administrative need); *see also* Florida v. Jimeno, 500 U.S. 248, 251 (1991) (noting that "scope of a search is generally defined by its expressed object"); Agnello v. United States, 269 U.S. 20, 30-31 (1925) (limiting permissible breadth of search incident to arrest).

in other circumstances.[26] Lower courts evaluating suspicionless searches of prison visitors often adopt the Supreme Court's framework for analyzing suspicionless searches in other contexts.[27]

In *City of Indianapolis v. Edmond*, for example, the Supreme Court considered the reasonableness of suspicionless vehicle stops aimed at interdicting unlawful drugs.[28] The city established vehicle checkpoints where police officers stopped a predetermined number of vehicles at random.[29] After stopping a vehicle, an officer scrutinized the driver for signs of impairment, and scanned the passenger cabin from outside the vehicle.[30] Another officer walked a narcotics detection dog around the vehicle's exterior.[31] Officers conducted each stop in the same manner unless they developed probable cause or reasonable suspicion.[32] Motorists sued the city, claiming that these administrative stops constituted unreasonable seizures violating the Fourth Amendment.[33]

The Court struck down these suspicionless stops because the Court determined that examining passing cars did not narrowly address the government's interest in confiscating narcotics.[34] The Court acknowledged that the government has a compelling interest in

[26] *See generally Lidster*, 540 U.S. at 419 (approving highway checkpoint seeking information about prior hit-and-run accident); City of Indianapolis v. Edmond, 531 U.S. 32 (2000) (striking down city's drug interdiction stops because they served general law enforcement purpose); Mich. Dep't of State Police v. Sitz, 496 U.S. 444 (1990) (upholding highway sobriety checkpoint program that stopped vehicles and examined drivers for signs of intoxication); Delaware v. Prouse, 440 U.S. 648 (1979) (invalidating registration and licensing stops that endowed police officers with unrestrained discretion); United States v. Martinez-Fuerte, 428 U.S. 543 (1976) (approving border patrol checkpoints that routinely stop or slow automobiles to intercept illegal immigrants).

[27] *See* Neumeyer v. Beard, 421 F.3d 210, 215-16 (3d Cir. 2005) (distinguishing suspicionless vehicle search from invalidated stop and detention programs); Romo v. Champion, 46 F.3d 1013, 1016-20 (10th Cir. 1995) (analyzing search at vehicle checkpoint on road leading to prison in light of Supreme Court administrative stop cases); *see also* United States v. Prevo, 435 F.3d 1343, 1347 (11th Cir. 2006) (evaluating search of visitor's car in light of institutional security rationale).

[28] 531 U.S. at 34.

[29] *Id.* at 35. Police selected checkpoint locations several weeks in advance based on the area's crime statistics and traffic flow. *Id.* Officers could not stop vehicles out of sequence. *Id.*

[30] *Id.*

[31] *Id.*

[32] *Id.* Absent the development of reasonable suspicion or probable cause, each stop lasted approximately two or three minutes, or less. *Id.*

[33] *Id.* at 36-37.

[34] *Id.* at 43-45.

intercepting illegal narcotics in light of the severe and intractable nature of the drug problem.[35] Nevertheless, the Court found no evidence that random vehicle stops effectively addressed this issue.[36] Rather than confining their investigation to detecting narcotics, officers used these checkpoints to search for evidence of other criminal wrongdoing.[37] Because the checkpoints failed to address effectively the special need of intercepting illegal narcotics, the Court refused to suspend the probable cause requirement.[38]

In deciding *Edmond*, the Court distinguished the city's drug interdiction program from other administrative stop programs that appropriately addressed a legitimate governmental interest.[39] In past cases, the Supreme Court approved brief suspicionless stops of vehicles that checked drivers for signs of intoxication, or that intercepted illegal immigrants near borders.[40] In these cases, the Court determined that officers could effectively discern whether a driver was intoxicated or if a car contained illegal immigrants by briefly detaining the vehicle.[41] Thus, these stops allowed government actors to address effectively the problem of drunk driving or apprehend illegal immigrants without excessively intruding on people's privacy.[42] Rather than using these searches as a pretext to

[35] *See id.* at 42 ("The Court acknowledged that the government has a compelling interest in intercepting illegal narcotics in light of the severe and intractable nature of the drug problem.").

[36] *Id.* at 44-46.

[37] *Id.* at 41-42; *see supra* note 18 and accompanying text (discussing scope of probable cause in relation to criminal wrongdoing); *see also* Delaware v. Prouse, 440 U.S. 648, 659-61 (1979) (finding that interest served by spot-check licensing program is indistinguishable from general crime control).

[38] *Edmond*, 531 U.S. at 44.

[39] *Id.* at 42-45.

[40] *See* Mich. Dep't of State Police v. Sitz, 496 U.S. 444, 451-52 (1990) (validating sobriety checkpoints); United States v. Martinez-Fuerte, 428 U.S. 543, 563-64 (1976) (approving border checkpoints). In *Edmond* the Court suggested that it might permit checkpoints designed to thwart an imminent terrorist attack or catch a fleeing dangerous criminal. *Edmond*, 531 U.S. at 44-45. Although related to crime control, these exigencies are "far removed from the circumstances under which authorities might simply stop cars as a matter of course to see if there just happens to be a felon leaving the jurisdiction. . . . [W]e decline to approve a program whose primary purpose is ultimately indistinguishable from the general interest in crime control." *Id.*

[41] *See Sitz*, 496 U.S. at 454-55 (noting that empirical data validates sobriety checkpoints); *Martinez-Fuerte*, 428 U.S. at 554 (citing checkpoint's rate of apprehending illegal immigrants to demonstrate program's effectiveness).

[42] *See supra* note 40 (describing how Court ascertained checkpoints' efficacy).

effectuate other law enforcement objectives, the government circumscribed their intrusions to meet compelling needs.[43]

Courts often analogize suspicionless searches of visitors' vehicles to administrative searches upheld by the Supreme Court.[44] Courts do this by characterizing preventing contraband from entering prisons as a compelling governmental interest.[45] They recognize the hazards that contraband poses to the internal order and security of the penal environment.[46] If an inmate acquires weapons or drugs, he or she may

[43] *See Edmond*, 531 U.S. at 44 (suggesting permissibility of roadblock designed to thwart imminent terrorist attack or catch dangerous criminal); *Sitz*, 496 U.S. at 451-52 (noting drunk driving problem's magnitude and indisputable state interest in eradicating problem); *Martinez-Fuerte*, 428 U.S. at 557 (identifying smugglers' and illegal aliens' apprehension as government's most vital traffic checking operation).

[44] *See* Neumeyer v. Beard, 421 F.3d 210, 215-16 (3d Cir. 2005) (distinguishing suspicionless vehicle search from invalidated stop and detention programs); Romo v. Champion, 46 F.3d 1013, 1016-20 (10th Cir. 1995) (analyzing search at vehicle checkpoint on road leading to prison in light of Supreme Court administrative stop cases); *see also* United States v. Prevo, 435 F.3d 1343, 1347 (11th Cir. 2006) (evaluating search of visitor's car in light of institutional security rationale).

[45] *See* Evans v. Stephens, 407 F.3d 1272, 1289 (11th Cir. 2005) (noting correctional facility's primary goal must be intercepting contraband because of dangers contraband presents in correctional setting); Thompson v. City of Los Angeles, 885 F.2d 1439, 1446 (9th Cir. 1989) ("[T]he prevention of the introduction of weapons or other contraband into the jail . . . is indeed an extremely weighty government interest."); Hunter v. Auger, 672 F.2d 668, 674 (8th Cir. 1982) ("Within prison walls, a central objective of prison administrators is to safeguard institutional security. To effectuate this goal, prison officials are charged with the duty to intercept and exclude by all reasonable means all contraband smuggled into the facility."); McDonell v. Hunter, 612 F. Supp. 1122, 1126 (S.D. Iowa 1985) (describing prevention of distribution of weapons, drugs, and other contraband to inmates as imperative to institutional security); Brown v. Hilton, 492 F. Supp. 771, 777 (D.N.J. 1980) ("A Penitentiary is a unique institution fraught with sensitive security hazards, not the least of these being smuggling of contraband such as drugs, money, knives, etc.") (internal quotation marks omitted).

[46] *See* Hudson v. Palmer, 468 U.S. 517, 527 (1984) (recognizing that prison administrators must confront perplexing problem of introduction of drugs and other contraband into prison environment); Block v. Rutherford, 468 U.S. 576, 588-89 (1984) (noting unauthorized narcotic use plagues virtually every penal and detention center in country); Bell v. Wolfish, 441 U.S. 520, 559 (1979) (characterizing serious security dangers in detention centers including smuggling of money, drugs, weapons, and other contraband); *Prevo*, 435 F.3d at 1346 (emphasizing critical security measures that prisons employ to keep contraband away from prison property and out of prison facilities); Goff v. Nix, 803 F.2d 358, 365 (8th Cir. 1986) (taking judicial notice of "high level of violent crime, unauthorized use of narcotics, and other drugs currently plaguing penal institutions"); Thorne v. Jones, 585 F. Supp. 910, 912-13 (M.D. La. 1984) (describing serious security problems presented by smuggling of contraband into prison); State v. Manghan, 313 A.2d 225, 228 (N.J. Super. Ct. Law Div. 1973) ("[T]he perils of the availability of drugs in a penal institution cannot be

use these items to harm employees or manipulate other prisoners.[47] Courts cite this governmental interest in maintaining institutional security to empower prison administrators to search visitors' vehicles.[48] This security interest empowering prison administrators to

exaggerated. . . . [Prison officials] ha[ve] a duty to adopt reasonable procedures to insure that drugs are not available to inmates."); STERN, *supra* note 2, at 122 (noting that keeping drugs out of prison consumes considerable amount of prison administrators' time and attention); *see also* Estes v. Rowland, 17 Cal. Rptr. 2d 901, 908 (Ct. App. 1993) (finding that prison's drug problem affects communities outside prison because "friends and relatives of inmates may be coerced into illegally acquiring drugs [for] the inmate").

[47] *See* Whitley v. Albers, 475 U.S. 312, 321-22 (1986) (discussing threats to staff and inmates in prison environment); Jones v. N.C. Prisoners' Labor Union, 433 U.S. 119, 132 (1977) (describing "ever-present potential for violent confrontation and conflagration" in prisons); *Neumeyer*, 421 F.3d at 214 ("The penal environment is fraught with serious security dangers. Incidents in which inmates have obtained drugs, weapons, and other contraband are well-documented in case law and regularly receive the attention of the news media."); *Evans*, 407 F.3d at 1289 ("[C]ontraband poses the greatest security risk for officials at detention facilities."); Spear v. Sowders, 71 F.3d 626, 630 (6th Cir. 1995) ("Prisons are dangerous and filled with law-breaking because that is where the criminals are. Even the most secure prisons are dangerous places for inmates, employees, and visitors."); Sec. & Law Enforcement Employees v. Carey, 737 F.2d 187, 191-92 (2d Cir. 1984) ("Once contraband, including drugs, money, weapons, and myriad of other items, is introduced into the prison environment, the order and routine that must be maintained to achieve stability and security in these facilities is apt to be undermined and disrupted. The consequence obviously can place the lives and well-being of both staff and inmates in serious jeopardy."); Holton v. Mohon, 684 F. Supp. 1407, 1415 (N.D. Tex. 1987) (describing strip and body cavity search's purpose as looking for weapons or contraband to protect inmates and prison personnel); BUREAU OF LABOR STATISTICS, U.S. DEP'T OF LABOR, OCCUPATIONAL OUTLOOK HANDBOOK 2006-2007 (2005), *available at* http://stats.bls.gov/oco/ocos156.htm (describing correctional officers' work as stressful and hazardous).

[48] *See Neumeyer*, 421 F.3d at 214 ("[C]onsidering the relatively minor inconvenience of the searches, balanced against the . . . officials' special need to maintain the security and safety of the prison that rises beyond their general need to enforce the law, the prison officials' practice of engaging in suspicionless searches of prison visitors' vehicles is valid."); *Romo*, 46 F.3d at 1017 (upholding suspicionless search of prison visitor's vehicle at roadblock because search matched interest in intercepting narcotics that visitors attempt to take to inmates); *Spear*, 71 F.3d at 633 (upholding vehicle search based on prison's interest in intercepting contraband); *Estes*, 17 Cal. Rptr. 2d at 920 (upholding vehicle search as justifiable component of comprehensive program dealing with contraband problem in prisons); People v. Turnbeaugh, 451 N.E.2d 1016, 1019 (Ill. App. Ct. 1983) (rejecting argument that "[s]earching incoming cars was not a sufficiently reasonable method of detecting incoming contraband, because of routine extensive searches of the person of each visitor to the institution, which would take place with or without vehicle searches"); State v. Daniels, 887 A.2d 696, 698 (N.J. Super. Ct. App. Div. 2005) (discerning no reason to exclude visitor's vehicle from property subject to search).

search visitors' vehicles grants administrators great power to regulate inmates.[49]

B. Supreme Court Silence on the Scope of Prison Visitor Rights

The Supreme Court has not specifically addressed the scope of prison visitors' Fourth Amendment rights.[50] Despite this silence, the Court's jurisprudence on prisoners' and pretrial detainees' Fourth Amendment rights sheds light on the rights accorded prison visitors.[51] Initially, inmates' and visitors' rights appear unrelated because visitors retain the liberties that inmates lose as a consequence of being incarcerated.[52] In the absence of constitutional guidance on visitors' rights, however, courts use the government's interest in institutional security to analogize visitors' rights to inmates' rights.[53]

In *Bell v. Wolfish*, for example, the Supreme Court considered the Fourth Amendment rights of pretrial detainees held in a federally operated, short-term, custodial facility.[54] The pretrial detainees alleged that various facility regulations amounted to pretrial punishment, thereby violating their constitutional rights.[55] Inmates

[49] *See* discussion *infra* Part I.B (describing Supreme Court deference to prison administrators' expertise).

[50] *See* discussion *infra* Part I.C (describing how lower courts evaluate prison visitors' Fourth Amendment rights in absence of Supreme Court guidance).

[51] *See* discussion *infra* Part I.C (discussing courts' comparisons of visitors and prisoners). *See generally* Ky. Dep't of Corr. v. Thompson, 490 U.S. 454 (1989) (holding that prison regulations listing visitors excluded from visitation did not give inmates liberty interest in visitation protected by Due Process Clause); *Hudson*, 468 U.S. at 517 (rejecting contention that inmate possessed reasonable expectation of privacy in his prison cell entitling him to Fourth Amendment protection); *Bell*, 441 U.S. at 521 (justifying limiting convicted prisoners' and pretrial detainees' retained constitutional rights with institutional goals of maintaining security and preserving internal order).

[52] *See* Boren v. Deland, 958 F.2d 987, 988 (10th Cir. 1992) ("Prison visitors do not abandon their constitutional rights when they enter a penitentiary."); Daugherty v. Campbell, 935 F.2d 780, 786 (6th Cir. 1991) (holding that prison visitors do not "suffer a wholesale loss of rights" even though exigencies of prison security diminish their expectation of privacy); Blackburn v. Snow, 771 F.2d 556, 563 (1st Cir. 1985) (describing societal recognition that free citizens entering prison as visitors retain legitimate expectation of privacy); *see also* Procunier v. Martinez, 416 U.S. 396, 408-09 (1974) (invalidating censorship of prisoners' mail because "censorship of prisoner mail works a consequential restriction on the First and Fourteenth Amendments rights of those who are not prisoners").

[53] *See* discussion *infra* this Part (justifying limitations on visitors' Fourth Amendment rights with compelling need to maintain institutional security).

[54] Bell v. Wolfish, 441 U.S. 520, 523 (1979).

[55] *Id.* at 526-27.

challenged prison policies that required them to undergo body cavity searches following visits and policies that forced them to allow prison officials to inspect their rooms.[56] The Court determined that the Fourth Amendment permitted the government to detain individuals to ensure their presence at trial.[57] Thus, prisons could impose regulations reasonably related to ensuring a detainee's presence at trial.[58]

Once the government lawfully detains an individual, the government possesses an interest in regulating that individual within the detention facility.[59] This interest in institutional security allows the government to impose administrative restraints beyond those strictly necessary to ensure a detainee's trial appearance.[60] For example, government officials may conduct various searches of detainees, inspect their rooms, monitor their mail, or limit their phone calls.[61] These additional restraints allow the government to operate an orderly and secure detention facility.[62] In scrutinizing these measures, the Court affords prison administrators wide-ranging deference because of their familiarity with the institution's needs.[63] This means

[56] *Id.* at 527 n.7.

[57] *See id.* at 537. In *Bell*, the Court looked to whether the facility imposed the disability for the purpose of punishment or whether it incidentally flowed from another legitimate governmental purpose. *Id.* at 537-38. Taken from *Kennedy v. Mendoza-Martinez*, this test distinguishes permissible regulatory restraints from punitive measures the government may not impose prior to a determination of guilt. Kennedy v. Mendoza-Martinez, 372 U.S. 144, 168-69 (1963).

[58] *Bell*, 441 U.S. at 539.

[59] *Id.* at 540.

[60] *Id.* "[I]n addition to ensuring the detainees' presence at trial, the effective management of the detention facility . . . is a valid objective that may justify imposition of conditions and restrictions of pretrial detention and dispel any inference that such restrictions are intended as punishment." *Id.*

[61] *Id.* at 527 n.7, 544-62 (analyzing and ultimately upholding various restrictions and practices designed to promote security and order at pretrial facility).

[62] *Id.* at 540.

[63] *Id.* at 547. Although courts may disagree with the means selected to effectuate the institution's interest, courts should not "second-guess the expert administrators on matters on which they are better informed." *Id.* at 544. In assessing whether prison restrictions reasonably relate to institutional order, courts must recognize that these "considerations are peculiarly within . . . [the] professional expertise of corrections officials." Pell v. Procunier, 417 U.S. 817, 827 (1974). Absent substantial evidence indicating that officials have exaggerated their response to these considerations, courts should ordinarily defer to their expert judgment. *Id.*; *see* Jones v. N.C. Prisoners' Labor Union, 433 U.S. 119, 126 (1977) (according prison administrators' wide-ranging deference because of complex and difficult realities of running penal institution); Procunier v. Martinez, 416 U.S. 396, 404 (1974) ("[F]ederal courts have

that courts will only invalidate prison regulations if they obviously do not serve a legitimate penological interest.[64]

In the prison context, courts seem reluctant to require that officials narrowly tailor regulations to match governmental objectives.[65]

adopted a broad hands-off attitude toward problems of prison administration."); *see also* Meachum v. Fano, 427 U.S. 215, 225 (1976) (refusing to hold that any substantial deprivation imposed by prison authorities triggers Due Process Clause's procedural protections).

[64] *See* Turner v. Safley, 482 U.S. 78, 89 (1987) ("[W]hen a prison regulation impinges on inmates' constitutional rights, the regulation is valid if it is reasonably related to legitimate penological interests."); Block v. Rutherford, 468 U.S. 576, 586 (1984) (requiring "valid, rational connection" between prison regulation and legitimate governmental interest put forward to justify regulation); *Pell*, 417 U.S. at 827 (deferring to prison officials' expert judgment unless substantial evidence indicates officials have exaggerated their response to security considerations); Wolff v. McDonnell, 418 U.S. 539, 556 (1974) (requiring mutual accommodation between prison's institutional needs and Constitution); *see also* Johnson v. Avery, 393 U.S. 483, 486 (1969) (noting that federal courts will discharge their duty to protect constitutional rights if prison regulation or practice offends constitutional guarantees).

[65] *See* Sandin v. Conner, 515 U.S. 472, 482 (1995) (instructing federal courts to afford appropriate deference and flexibility to state officials managing volatile prison environment); *Turner*, 482 U.S. at 90 (noting that courts should defer to prison officials' expert judgment if inmates have alternative means of exercising constitutional right); Whitley v. Albers, 475 U.S. 312, 321-22 (1986) (deferring to prison officials' judgment in implementing security measures that respond to actual confrontations and prophylactic measures intended to prevent breaches of prison discipline); Rhodes v. Chapman, 452 U.S. 337, 350 n.14 (1981) (leaving matters of prison's internal security to prison administrators' discretion); Bell v. Wolfish, 441 U.S. 520, 547 (1979) ("Prison administrators . . . 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."); *N.C. Prisoners' Labor Union*, 433 U.S. at 126 (recognizing wide ranging deference to prison officials); *Pell*, 417 U.S. at 827 (instructing courts to be particularly conscious of "judicial deference owed to corrections officials . . . in gauging the validity of the regulation"); Conyers v. Abitz, 416 F.3d 580, 584 (7th Cir. 2005) (deferring to prison officials' judgment in evaluating necessary measures to preserve institutional order and discipline); Bahrampour v. Lampert, 356 F.3d 969, 973 (9th Cir. 2004) ("State prison officials are given deference in day-to-day prison operations due to separation of powers and federalism concerns."); Stanley v. Henson, 337 F.3d 961, 966 (7th Cir. 2003) (citing *Bell*, 441 U.S. at 547) (affording prison officials' decisions substantial — though not complete — deference); Ort v. White, 813 F.2d 318, 322 (11th Cir. 1987) (holding that courts must keep in mind paramount concerns of maintaining order and discipline when considering inmate challenges to prison officials' conduct); Tubwell v. Griffith, 742 F.2d 250, 252 (5th Cir. 1984) (upholding prison administrators' decisions unless they have unreasonably exaggerated their response to security and disciplinary considerations); Wolfish v. Levi, 573 F.2d 118, 125 (2d Cir. 1978) ("Concern with minutiae of prison

Although the Supreme Court advised courts to defer to prison administrators' judgment in regulating prisoners, the Court never formally stated that this deference should govern prison visitors' treatment.[66] Nevertheless, courts seem hesitant to carefully review prison regulations that apply to visitors.[67]

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?"); Newman v. Alabama, 559 F.2d 283, 286 (5th Cir. 1977) (noting that prison administrators, not courts, must be permitted to make difficult judgments concerning prison operations); Ford v. Bd. of Managers of N.J. State Prison; 407 F.2d 937, 940 (3d Cir. 1969) ("Discipline reasonably maintained in [state] prisons is not under the supervisory direction of the federal courts."); Carter v. Cuyler, 415 F. Supp. 852, 856 (E.D. Pa. 1976) ("[P]rison discipline remains still largely within the discretion of the prison authorities and federal courts will interfere only where paramount federal constitutional or statutory rights intervene." (citing Breeden v. Jackson, 457 F.2d 578, 580 (4th Cir. 1972))).

[66] *See Martinez*, 416 U.S. at 408-09 (rejecting regulation of prisoner correspondence because of non-prisoner's First Amendment rights); Boren v. Deland, 958 F.2d 987, 988 (10th Cir. 1992) (finding that prison visitors cannot constitutionally suffer wholesale loss of rights, nor even one commensurate with that suffered by inmates); *see also* Wood v. Clemmons, 89 F.3d 922, 929-30 (5th Cir. 1996) (finding that reasonable suspicion standard strikes balance between visitors' legitimate privacy interests and prison's need to maintain institutional order); Spear v. Sowders, 71 F.3d 626, 629-30 (6th Cir. 1995) ("Fourth Amendment does not afford a person seeking to enter a penal institution the same rights that a person would have on public streets or in a home."); Romo v. Champion, 46 F.3d 1013, 1018 (10th Cir. 1995) (acknowledging that prison visitor possesses legitimate expectation of privacy diminished by exigencies of penal environment); Daugherty v. Campbell, 935 F.2d 780, 786 (6th Cir. 1991) (finding that prison visitor retains legitimate expectation of privacy diminished by exigencies of prison security); Blackburn v. Snow, 771 F.2d 556, 563 (1st Cir. 1985) ("[T]hose visiting a prison cannot credibly claim to carry with them the full panoply of rights they normally enjoy. But neither may they constitutionally be made to suffer a wholesale loss of rights — nor even one commensurate with that suffered by inmates.").

[67] *See* United States v. Prevo, 435 F.3d 1343, 1347 (11th Cir. 2006) (deferring to corrections officials' common sense judgment that two layers of searches, or "double-tier of deterrence," is better than one); Neumeyer v. Beard, 421 F.3d 210, 214 (3d Cir. 2005) (empowering officials to conduct suspicionless vehicle searches based on duty to intercept and exclude contraband); *Spear*, 71 F.3d at 630 (citing deference accorded prison authorities' decisions to provide authorities leeway in conducting visitor searches); *Romo*, 46 F.3d at 1015 (deferring to judgment of prison administrators when considering roadblock that stopped motorists entering correctional facility); Hunter v. Auger, 672 F.2d 668, 676 (8th Cir. 1982) ("Because of the substantial state interest in banning drugs and other contraband from prisons, correctional officials are entitled to formulate visitation regulations designed to accomplish this end."); State v. Daniels, 887 A.2d 696, 698 (N.J. Super. Ct. App. Div. 2005) (disregarding defendant's claim that "physically impossible for any contraband to be transported directly from a visitor's car to an inmate, absent a human intermediary, who is subject to a mandatory personal search").

C. Balancing Institutional Security Against Visitors' Privacy Rights

Prison officials can require visitors to submit to a variety of searches to prevent contraband from entering the facility.[68] Virtually all prison visitors must consent to a pat-down search or metal detector sweep as a condition of entry.[69] Administrators must have reasonable suspicion to escalate this routine search and require a visitor to consent to an invasive bodily search as a condition of entry.[70] Some prisons also allow officials to search visitors' vehicles.[71] Currently, the standards

[68] *See* sources cited *infra* notes 69-71 (describing permissible searches of prison visitors).

[69] *See Spear*, 71 F.3d at 630 ("Visitors can be subjected to some searches, such as a pat-down or a metal detector sweep, merely as a condition of visitation, absent any suspicion."); Thorne v. Jones, 585 F. Supp. 910, 918 (M.D. La. 1984) (noting that peculiar security problems inherent in prisons may justify pat-down search of all visitors); Shields v. State, 16 So. 85, 86 (Ala. 1894) (upholding searches of all persons prior to visitation, but noting that sheriff cannot search visitor against his will); People v. Thompson, 523 P.2d 128, 130 (Colo. 1974) (citing danger of visitors transporting contraband into penitentiary to justify requirement that visitors consent to search); Wells v. State, 402 So. 2d 402, 404 (Fla. 1981) (observing prison visitors expect to submit to search for weapons or other contraband); People v. Whisnant, 303 N.W.2d 887, 891 (Mich. Ct. App. 1981) (upholding condition that visitor submit to pat-down search prior to entry); STERN, *supra* note 2, at 123-24 (noting that prison officials question nearly all visitors about items carried in, search their belongings, and subject visitors to pat-down search).

[70] *See Wood*, 89 F.3d at 929-30 (declining to permit strip search absent individualized suspicion); *Spear*, 71 F.3d at 630 (noting that visitors' residual privacy interests require that prison authorities reasonably suspect that visitor bears contraband before conducting invasive search); *Boren*, 958 F.2d at 988 (requiring prison officials to support strip searches of prison visitors with reasonable suspicion); *Daugherty*, 33 F.3d at 556-57 (requiring prison officials to possess reasonable suspicion before authorizing strip search of prison visitor); *Blackburn*, 771 F.2d at 564 (requiring prison officials establish reasonable suspicion before subjecting visitors to "grossly invasive body search"); *Hunter*, 672 F.2d at 674-75 ("[P]rison officials must have reasonable grounds, based on objective facts, to believe that a particular visitor will attempt to smuggle contraband by secreting and carrying it on his person [to conduct a strip search].").

[71] *See Prevo*, 435 F.3d at 1347 (declaring vehicle searches on prison property are obvious way to keep contraband out of prisons); *Neumeyer*, 421 F.3d at 214 (validating prison officials' practice of engaging in suspicionless searches of prison visitors' vehicles under special needs doctrine); *Spear*, 71 F.3d at 633 (declining to require individualized suspicion for vehicle search on prison grounds, particularly if visitor warned about search's possibility); *Romo*, 46 F.3d at 1018 (upholding search at vehicle stop and search at roadblock on road to prison's visitor parking lot); Estes v. Rowland, 17 Cal. Rptr. 2d 901, 908-10 (Ct. App. 1993) (validating random canine searches of visitors' vehicles entering prison grounds as administrative searches); People v. Turnbeaugh, 451 N.E.2d 1016, 1019 (Ill. App. Ct. 1983) (finding governmental interest in keeping contraband out of prisons justifies vehicle search);

governing these searches and frequency in which officials employ them are unclear.[72]

In the prison visitor context, courts try to balance visitors' Fourth Amendment rights with the government's need for institutional security.[73] Two circuit court decisions exemplify how courts apply this balancing analysis.[74] *Hunter v. Auger* illustrates how visitors' bodily privacy expectations must yield to security concerns within the prison environment.[75] *Spear v. Sowders* further diminishes visitors' privacy expectations by extending the search's permissible scope from visitors' bodies to their vehicles.[76]

The Court of Appeals for the Eighth Circuit evaluated the constitutionality of strip-searching prison visitors in *Hunter v. Auger*.[77] In *Hunter*, prison officials required several individuals seeking to visit incarcerated relatives to submit to strip searches or forego visiting their relatives.[78] Two appellants submitted to the strip searches and prison officials did not discover any contraband.[79] One appellant refused to consent to the search, and consequently lost her visiting

Daniels, 887 A.2d at 698 (discerning no reason to exclude visitor's vehicle from property subject to search because visitor may use car to transport drugs or other contraband into area near prison).

[72] *See Prevo*, 435 F.3d at 1349 (upholding vehicle search conducted after visitor requested to leave without submitting to search); *Neumeyer*, 421 F.3d at 212, 215-16 (upholding vehicle search program even though no standards governed searches and officers conducted searches as "time and complement permitted"); *Estes*, 17 Cal. Rptr. 2d at 908 (concluding individuals entering prison property do not impliedly consent to search after passing sign notifying visitors that vehicles are subject to search); *Turnbeaugh*, 451 N.E.2d at 1019 (upholding search of all visitors' cars but recognizing method of preventing contraband from entering prison not foolproof because no contemporaneous search of vehicle's occupants); Gadson v. State, 668 A.2d 22, 28 (Md. 1995) (invalidating prison official's detention of visitor who indicated preference to leave rather than submit to vehicle search).

[73] *See Romo*, 46 F.3d at 1016 (evaluating roadblock's constitutionality by weighing public interest, seizure's ability to advance public interest, and interference with individual liberty); *Spear*, 71 F.3d at 633 (balancing prison's interest in intercepting contraband against visitor's residual privacy interests); *Hunter*, 672 F.2d at 674 (weighing prison administration's interest in preserving institutional security against extensive intrusion on personal privacy resulting from strip search).

[74] *See* discussion *infra* Part I.C (discussing balancing analysis applied in prison visitor cases).

[75] *Hunter*, 672 F.2d at 674-75 (requiring reasonable suspicion to strip search prison visitors).

[76] *Spear*, 71 F.3d at 633 (finding reasonable suspicion requirement for strip searches is not inconsistent with permitting suspicionless vehicle searches).

[77] *Hunter*, 672 F.2d at 674-75.

[78] *Id.* at 670-71.

[79] *Id.*

privileges.[80] Appellants later learned that prison officials based their requests for these strip searches on uncorroborated, anonymous tips that these visitors would attempt to smuggle in contraband.[81] Appellants sued prison officials, claiming that these searches violated their Fourth Amendment rights.[82]

The Eighth Circuit determined that these strip searches unreasonably infringed on the prison visitors' Fourth Amendment rights.[83] The court acknowledged the difficulties of prison management, and encouraged administrators to employ all reasonable means to constrict the flow of drugs, weapons, and other contraband into the prison.[84] Nevertheless, the court refused to grant prison officials unlimited discretion in ferreting out contraband.[85]

Strip searches deeply intrude upon an individual's privacy interest.[86] To perform a strip search, government officials must usually possess a search warrant and demonstrate that there is a clear indication that they will find evidence.[87] To satisfy this standard, officials must

[80] *Id.* at 671.

[81] *Id.* at 670-71.

[82] *Id.* at 670.

[83] *Id.* at 675; *see* Burgess v. Lowery, 201 F.3d 942, 947-48 (7th Cir. 2000) (striking down strip search of all visitors because "prisoners themselves are subjected to such searches before the visit, and, if the prison wants, after the visit as well"); Daugherty v. Campbell, 33 F.3d 554, 556-57 (6th Cir. 1994) (holding that generalized suspicion of smuggling activity does not justify strip search). *But see* Long v. Norris, 929 F.2d 1111, 1115 (6th Cir. 1991) (finding no clearly established constitutional right to be free from strip and body cavity search absent probable cause or reasonable suspicion); Thorne v. Jones, 765 F.2d 1270, 1275 (5th Cir. 1985) (reviewing constitutional challenge to prison requirement that visitors submit to strip searches before visiting inmates only for reasonableness).

[84] *Hunter*, 672 F.2d at 674.

[85] *Id.*

[86] *Id.*; *accord Daugherty*, 33 F.3d at 556-57 (recognizing strip search as embarrassing and humiliating experience, even if conducted in professional and courteous manner); United States v. Sandler, 644 F.2d 1163, 1167 (5th Cir. 1981) (en banc) (observing that strip, body cavity, or stomach searches embarrass person involved); United States v. Dorsey, 641 F.2d 1213, 1217 (7th Cir. 1981) (declaring that indignities and invasions of privacy attending strip searches are self-evident); Tinetti v. Wittke, 479 F. Supp. 486, 491 (E.D. Wis. 1979) ("[Searches including] the visual inspection of the anal and genital areas, ha[ve] been characterized by various witnesses here, and by judges in some other cases, as demeaning, dehumanizing, undignified, humiliating, terrifying, unpleasant, embarrassing, repulsive, signifying degradation and submission."); *cf.* Terry v. Ohio, 392 U.S. 1, 24-25 (1968) (recognizing that even limited search of outer clothing for weapons is likely to be annoying, frightening, and perhaps humiliating experience).

[87] *See* Schmerber v. California, 384 U.S. 757, 769-70 (1966) (holding that Fourth Amendment forbids intrusions beyond body's surface on "mere chance that desired

demonstrate that the circumstances clearly indicate that they will uncover the desired evidence.[88] While the *Hunter* court refused to grant prison officials carte blanche authority to strip search visitors, it implemented a reasonable suspicion standard instead of the clear indication standard.[89] This standard requires that officials reasonably suspect that a visitor has concealed contraband on his or her person.[90] Prison officials need to articulate specific facts and rational inferences to support their suspicion.[91] Reasonable suspicion is a lower standard than the clear indication standard required outside the prison setting.[92] In outlining this reduced standard, the court reasoned that

evidence might be obtained"); Horton v. Goose Creek Indep. Sch. Dist. 690 F.2d 470, 478 (5th Cir. 1982) (recognizing that societal interest in bodily integrity applies with its fullest vigor against any intrusion on human body); *see also* Barlow v. Ground, 943 F.2d 1132, 1137-39 (9th Cir. 1991) (determining that police violated Fourth Amendment by warrantless drawing of arrestee's blood); Jauregui v. Superior Court, 225 Cal. Rptr. 308, 311-12 (Ct. App. 1986) (holding that warrant authorizing search of defendant's person did not authorize administration of emetic, which caused defendant to regurgitate balloons containing heroin); State v. Clark, 654 P.2d 355, 359-60 (Haw. 1982) (holding no exigent circumstances justified warrantless search of defendant's vaginal cavity); State v. Stevens, 495 A.2d 910, 914-15 (N.J. Super. Ct. Law Div. 1984) (determining that law enforcement personnel's interest in discovering weapons or contraband cannot justify strip searching non-misdemeanor traffic violators); Patchogue-Medford Cong. of Teachers v. Bd. of Educ., 510 N.E.2d 325, 329-30 (N.Y. 1987) (equating intrusiveness of requirement that person urinate in government official's presence with strip search).

88 *See* cases cited *supra* note 87 (articulating clear indication standards for invasions beyond body's surface).

89 *Hunter*, 672 F.2d at 674-75.

90 *Id.* at 674-75; *accord* Wood v. Clemmons, 89 F.3d 922, 929-30 (5th Cir. 1996) (refusing to justify strip search absent some quantum of individualized suspicion); Daugherty v. Campbell, 33 F.3d 554, 556-57 (6th Cir. 1994) (requiring prison officials to possess reasonable suspicion before strip searching prison visitor).

91 Hunter v. Auger, 672 F.2d 668, 675 (8th Cir. 1982).

92 *See Schmerber*, 384 U.S. at 770 ("In the absence of a clear indication that in fact such evidence will be found, these fundamental human interests require law officers to suffer the risk that such evidence may disappear unless there is an immediate search."); People v. West, 216 Cal. Rptr. 195, 198 (Ct. App. 1985) ("The indication or 'plain suggestion' that the individual whom the authorities want to search is concealing something within a body cavity must be 'clear.'"); State v. Merjil, 655 P.2d 864, 867 (Haw. 1982) (citing *Clark*, 654 P.2d at 355) (elucidating clear indication standard for conducting body cavity searches); State v. Palmer, 803 P.2d 1249, 1252 (Utah Ct. App. 1990) (citing *Schmerber*, 384 U.S. at 768-72) (finding that exigent circumstances must justify warrantless bodily intrusion, circumstances must clearly indicate that search will yield evidence, and officials must perform search in reasonable manner). Courts generally interpret "clear indication" as a more demanding standard to meet than reasonable suspicion, but less difficult than probable cause. *Accord Clark*, 654 P.2d at 362 n.10; *see* United States v. Mendez-

prison visitors forfeit privacy interests by willingly entering the prison environment.[93] The court explained that a reasonable suspicion standard respected visitors' residual privacy expectations without creating an insurmountable barrier to institutional security.[94]

The Eighth Circuit implicitly compared visitors to inmates to support its conclusion that visitors' privacy expectations must yield to the exigencies of institutional security.[95] Despite this comparison, the court scrupulously protected visitors from suffering a loss of privacy commensurate with inmates.[96] Prison officials may search inmates at their discretion as long as prison officials do not use these searches to punish or humiliate inmates.[97] In contrast, prison officials must

Jimenez, 709 F.2d 1300, 1302 (9th Cir. 1983) (citing United States v. Aman, 624 F.2d 911, 913 n.1 (9th Cir. 1980)) (defining clear indication to mean more than real suspicion but less than probable cause).

[93] *See* Spear v. Sowders, 71 F.3d 626, 629-30 (6th Cir. 1995) ("Fourth Amendment does not afford a person seeking to enter a penal institution the same rights that a person would have on public streets or in a home."); Romo v. Champion, 46 F.3d 1013, 1018 (10th Cir. 1995) ("[I]ntrusion on plaintiffs' privacy was significantly less than it would have been had the search been conducted outside the context of a prison security operation."); *see also Wood*, 89 F.3d at 929-30 (observing prison officials' need to search visitors to prevent contraband's passage to inmates). *But see* Boren v. Deland, 958 F.2d 987, 988 (10th Cir. 1992) (finding that prison visitors cannot constitutionally suffer wholesale loss of rights, nor even one commensurate with that suffered by inmates); Blackburn v. Snow, 771 F.2d 556, 563 (1st Cir. 1985) ("[T]hose visiting a prison cannot credibly claim to carry with them the full panoply of rights they normally enjoy."); *Hunter*, 672 F.2d at 674 (recognizing visitors' lower expectation of privacy within penal environment).

[94] *Hunter*, 672 F.2d at 674.

[95] *See id.* at 674-75 (citing Bell v. Wolfish, 441 U.S. 520, 560 (1979)).

[96] *See id.*

[97] *See* Covino v. Patrissi, 967 F.2d 73, 79 (2d Cir. 1992) (upholding random visual body cavity searches as reasonably related legitimate penological interests despite finding that prisoners retain limited right to bodily privacy); Goff v. Nix, 803 F.2d 358, 360 (8th Cir. 1986) (upholding requirement that inmate submit to visual body cavity search as condition of movement outside living unit but enjoining verbal harassment during searches); Powell v. Cusimano, 326 F. Supp. 2d 322, 335 (D. Conn. 2004) (observing that inmates retain limited right to bodily privacy under Fourth Amendment); Ostrander v. Horn, 145 F. Supp. 2d 614, 620 (M.D. Pa. 2001) (citing *Bell*, 441 U.S. at 520) (noting that inmates do not have Fourth Amendment right to be free from strip searches, but requiring that officials conduct search in reasonable manner); *see also* Hudson v. Palmer, 468 U.S. 517, 525-26 (1984) (holding inmate does not have reasonable expectation of privacy in his prison cell entitling him to Fourth Amendment protection against unreasonable searches and seizures); Wolff v. McDonnell, 418 U.S. 539, 556 (1974) (recognizing need for major restrictions on prisoners' rights in seeking "mutual accommodation between [prisons'] institutional needs and objectives and the provisions of the Constitution that are of general application"); Price v. Johnston, 334 U.S. 266, 285 (1948) (remarking that lawful

articulate facts giving rise to reasonable suspicion to invasively search visitors.[98] Although the Eighth Circuit preserved visitors' privacy expectations, other courts have been less protective.[99] In considering a similar search, the Sixth Circuit Court of Appeals expanded prison officials' authority to search prison visitors in *Spear v. Sowders*.[100]

In *Spear*, a confidential prison informant notified prison officials that an inmate, Wade, received drugs every time an unrelated woman visited him.[101] After concluding that Spear was Wade's only visitor fitting this description, officials authorized a strip and body cavity search of Spear at her next visit.[102] The next time Spear arrived for a visit, prison officials informed her that she could not visit Wade unless she submitted to the search.[103] Prison officials told Spear that if she did not consent to the search, they would detain her until they obtained a warrant.[104] Wishing to visit Wade and avoid detention, Spear consented and allowed officials to search her clothing, purse,

imprisonment justifies retraction of many rights and privileges available to ordinary citizen); Willis v. Artuz, 301 F.3d 65, 67 (2d Cir. 2002) (holding that Fourth Amendment proscription against unreasonable searches does not apply within prison cell); Murcia v. County of Orange, 226 F. Supp. 2d 489, 498 (S.D.N.Y. 2002) (requiring that searches performed on incarcerated individuals be reasonable). *See generally* 2 MICHAEL R. MUSHLIN, RIGHTS OF PRISONERS § 8.19 (3d ed. 2005) (noting that prisoners' rights are not coextensive with those of non-prisoners because of countervailing security considerations).

98 *See* Wood v. Clemmons, 89 F.3d 922, 929-30 (5th Cir. 1996) (refusing to justify strip search absent some quantum of individualized suspicion); Daugherty v. Campbell, 33 F.3d 554, 556-57 (6th Cir. 1994) (requiring prison officials to possess reasonable suspicion before strip searching prison visitor); *Hunter*, 672 F.2d at 674-75 (holding that Constitution mandates requiring reasonable suspicion to strip search prison visitors); *see also* MUSHLIN, *supra* note 97, § 8.7 (noting that strip search is proper where officials reasonably suspect that visitors will be bringing inmates contraband).

99 *See* United States v. Prevo, 435 F.3d 1343, 1347-48 (11th Cir. 2006) (refusing to entertain defendant's suggestions of "less intrusive" means of keeping contraband out of work release center); Spear v. Sowders, 71 F.3d 626, 632-33 (6th Cir. 1995) (allowing prison officials to conduct suspicionless vehicle searches of visitor's car without providing opportunity to leave rather than submit to search); People v. Turnbeaugh, 451 N.E.2d 1016, 1019 (Ill. App. Ct. 1983) (rejecting argument that "[s]earching incoming cars was not a sufficiently reasonable method of detecting incoming contraband, because of routine extensive searches of the person of each visitor to the institution, which would take place with or without vehicle searches").

100 *See Spear*, 71 F.3d at 632-33 (permitting strip searches based on reasonable suspicion and provisionally upholding suspicionless vehicle search).

101 *Id.* at 629.

102 *Id.*

103 *Id.*

104 *Id.*

and car.[105] The search did not reveal any contraband.[106] Spear sued prison officials, claiming that the strip search and search of her car violated her Fourth Amendment rights.[107]

The Sixth Circuit determined that the confidential prison informant's tip established reasonable suspicion.[108] This level of suspicion allowed prison officials to require Spear to consent to the search as a condition for admittance.[109] However, the prison official's threat to detain Spear vitiated her consent and violated her constitutional right to be free from detention.[110] The court held that prison officials must permit a visitor to leave the prison grounds without submitting to the search because the government's power to intrude hinges on the visitor's request for access.[111]

In its analysis, the Sixth Circuit separated the search of Spear's vehicle from the strip search.[112] The court noted that the Fourth Amendment protects an individual's privacy interest in an automobile and usually requires that officers possess probable cause to search a vehicle.[113] However, the court declined to require that prison officials have individualized suspicion to search a car on prison grounds.[114] The court noted that contraband hidden in a car potentially threatens

---

105 *Id.*

106 *Id.*

107 *Id.* at 628.

108 *Id.* at 631.

109 *Id.* To establish reasonable suspicion, the court noted that this confidential informant had been a reliable source of information in the past and that Wade had an extensive history of drug possession violations in prison. *Id.*

110 *Id.* at 632.

111 *Id.*; *see* Marriott *ex rel.* Marriott v. Smith, 931 F.2d 517, 520 (8th Cir. 1991) (rejecting application of prison visitor exception to search of visitor who had finished visit and no longer could smuggle contraband into jail); Gadson v. State, 668 A.2d 22, 28 (Md. 1995) (striking down detention of prison visitors who indicate preference to leave rather than submit to vehicular canine sniff); *cf.* United States v. Davis, 482 F.2d 893, 910-11 (9th Cir. 1973) (validating airport screening searches only if they recognize individual's right to avoid search by electing not to board aircraft). *But see* United States v. Prevo, 435 F.3d 1343, 1347-48 (11th Cir. 2006) (upholding search of visitor's car at correctional facility even though visitor requested to leave without submitting to search).

112 *Spear*, 71 F.3d at 632-33.

113 *Id.* at 632; *see* California v. Acevedo, 500 U.S. 565, 579 (1991) (applying same Fourth Amendment standards to all vehicle searches regardless of particular area searched, including searches of car's trunk); Arizona v. Hicks, 480 U.S. 321, 326-27 (1987) (holding government actors must have probable cause to search car in traditional law enforcement context); California v. Carney, 471 U.S. 386, 390 (1985) (recognizing that Constitution protects individual's privacy interest in automobile).

114 *Spear*, 71 F.3d at 632-33.

institutional order at all times after the car enters the grounds because prisoners may gain access to the parking lot.[115] Balancing the search's minor intrusion against the government's interest in institutional security, the court refused to find searches of prison visitors' cars per se unreasonable.[116]

The Sixth Circuit required prison officials to provide Spear an opportunity to avoid the strip search by foregoing her visit and leaving the prison grounds.[117] However, the court did not require that officials afford Spear the same opportunity to avoid the vehicle search.[118] In this way, *Spear* extended the search's permissible scope from visitors' bodies to their vehicles.[119]

Courts defer to prison administrators' expert judgment when reviewing prison regulations because administrators are familiar with the institution's needs.[120] This deference originated in *Bell v. Wolfish*, where the Supreme Court cautioned federal courts against interfering with internal prison management.[121] Although *Bell* concerned pretrial detainees, courts analogize visitors' rights to inmates' rights based on the government's interest in preserving institutional order.[122] In

[115] *Id.* at 633. The court neglected to explain how an inmate could gain access to the parking lot. *Id.*

[116] *Id.* Although the Sixth Circuit refused to prohibit suspicionless searches of prison visitors vehicles, the court declined to resolve whether the search of Spear's car was unreasonable. *Id.* The Sixth Circuit remanded this question to the district court. *Id.* at 633-34 (instructing district court to consider signs notifying entrants that car may be searched, prisoner's access to cars, or whether officials "subjected the car to such a lengthy and intrusive search that it was unreasonable").

[117] *See id.* at 632 (requiring prison officials to give visitor opportunity to depart rather than submit to strip and body cavity search).

[118] *See id.* at 633 (finding no clearly established right to leave prison facility without submitting to search where sign notifies visitor that her car would be searched).

[119] *See id.* at 632-33 (permitting strip searches based on reasonable suspicion and provisionally upholding vehicle search).

[120] *See* Bell v. Wolfish, 441 U.S. 520, 547 (1979) (according "wide-ranging deference" to prison administrators in implementing policies that preserve internal order and discipline); Jones v. N.C. Prisoners' Labor Union, 433 U.S. 119, 126 (1977) (giving wide-ranging deference to prison administrators because of challenging and strenuous realities of running penal institution); Pell v. Procunier, 417 U.S. 817, 827 (1974) (recognizing whether prison restrictions reasonably relate to institutional order are peculiarly within corrections officials' professional expertise); Procunier v. Martinez, 416 U.S. 396, 404 (1974) ("[F]ederal courts have adopted a broad hands-off attitude toward problems of prison administration.").

[121] *See Bell*, 441 U.S. at 548 (commenting that prison administrator has "better grasp of his domain than the reviewing judge").

[122] *See* discussion *supra* this Part (citing institutional security to justify visitor

Hunter, the Eighth Circuit employed this analogy to allow prison officials to justify invasive bodily searches of visitors with lower indicia of suspicion.[123] In *Spear*, the Sixth Circuit extended prison administrators' authority, allowing officials to search visitors' vehicles.[124]

In *Neumeyer v. Beard*, the Third Circuit upheld suspicionless searches of prison visitors' vehicles based on the prison's compelling interest in intercepting contraband.[125] The court did not scrutinize the suspicionless search's ability to narrowly meet the proffered institutional interest like in *Edmond*.[126] Instead, the Third Circuit followed the Supreme Court's holding in *Bell* and deferred to prison officials' expert judgment in matters of institutional security.[127]

II. *NEUMEYER V. BEARD*

In *Neumeyer*, prison officials in Pennsylvania randomly searched visitors' vehicles to ensure prohibited items did not enter the prison.[128] This program granted prison officials unbridled discretion in conducting searches and authorized officials to search areas that did not directly implicate institutional security.[129] In evaluating this program, the Third Circuit did not assess the program's ability to keep contraband from entering the prison.[130] Instead, the court deferred to the prison administrators' expert judgment.[131]

A. Facts and Procedure

In *Neumeyer*, the Pennsylvania Department of Corrections allowed prison officials to search vehicles parked on prison grounds with the

regulations).

[123] *See* Hunter v. Auger, 672 F.2d 668, 674 (8th Cir. 1982) (interpreting goal of safeguarding institutional security to allow prison officials to search inmates and visitors).

[124] *See* Spear v. Sowders, 71 F.3d 626, 633 (6th Cir. 1995) (upholding vehicle search even if visitor cannot elect to avoid search by leaving).

[125] Neumeyer v. Beard, 421 F.3d 210, 214-15 (3d Cir. 2005).

[126] *See id.* at 215-16 (upholding suspicionless searches despite program's potential for abuse).

[127] *See id.* at 214 (upholding suspicionless searches of visitors' vehicles based on substantial interest in preserving internal order).

[128] *Id.* at 211.

[129] *Id.* at 212.

[130] *Id.* at 215-16.

[131] *Id.* at 214.

operator's consent.[132] If a visitor refused to consent to the search, he or she could not access the facility.[133] Officials did not request to search every visitor's vehicle.[134] Further, no written standards governed these searches; officers conducted them randomly at their discretion as time permitted.[135] An officer would then report any contraband or evidence of illegal activity he or she discovered to state police.[136]

Plaintiffs Teresa Neumeyer and her husband traveled to the state prison approximately ten times to visit Neumeyer's father, an inmate incarcerated in the facility.[137] On two of these occasions, officers requested permission to search the Neumeyers' vehicle.[138] Both searches failed to yield any contraband or evidence of illegal activity.[139]

The Neumeyers alleged that the prison's policy of subjecting random vehicles to a search as a condition of visiting the prison violated the Fourth Amendment.[140] The District Court for the Middle District of Pennsylvania granted summary judgment in favor of the prison officials.[141] Finding neither a constitutional nor statutory right to visit prison inmates, the district court declined to scrutinize the vehicle search under the Fourth Amendment.[142]

B. Holding and Rationale

The Court of Appeals for the Third Circuit affirmed the district court's summary judgment.[143] The court held that the policy of subjecting prison visitors' vehicles to random suspicionless searches did not violate the Fourth Amendment.[144] Prison officials implemented these searches as part of the prison's overall security

132 *Id.* at 211.

133 *Id.* at 211-12.

134 *Id.* at 212.

135 *Id.*

136 *Id.*

137 *Id.*

138 *Id.*

139 *Id.*

140 *Id.* at 211.

141 Neumeyer v. Beard, 301 F. Supp. 2d 349, 353 (M.D. Pa. 2004).

142 *Id.* at 351-52; *see* Ky. Dep't of Corr. v. Thompson, 490 U.S. 454, 461 n.3 (1989) (expressing no opinion on whether Due Process Clause entitles prisoners to visitation).

143 *Neumeye*r, 421 F.3d at 216.

144 *Id.*

regime.[145] By keeping contraband out of the prison, these searches helped to fulfill the compelling governmental interest in maintaining internal order.[146] The court held that this compelling interest warranted the incidental intrusion occasioned by the vehicle search.[147]

The court noted that the guards' discretion in selecting visitors' vehicles to search created more potential for abuse than a program where guards searched all entering vehicles.[148] However, the court found no evidence that officers singled out individuals on improper bases like race or ethnicity.[149] The court then declined to invalidate this selective scheme, noting that personnel limitations or other constraints could make screening all visitors impracticable.[150]

The Third Circuit upheld suspicionless searches of visitors' vehicles as reasonable even though no standards governed the guards' selection of which vehicles to search.[151] The Third Circuit never scrutinized whether the vehicle searches would be an effective method to intercept contraband.[152] Instead, the court deferred to the prison administrators' claim that these searches served the government's compelling interest in maintaining internal order.[153] Notably, many items inside a visitor's car never come near inmates; visitors do not take most items inside their car into the facility for the visit.[154] These vehicle searches exceed the institutional security rationale because they encompass numerous items that cannot legitimately threaten institutional order.[155]

III. ANALYSIS

In reviewing the searches of prison visitors' vehicles in *Neumeyer*, the Third Circuit should have analyzed whether vehicle searches

[145] *Id.* at 214-15.

[146] *Id.*

[147] *Id.*

[148] *Id.* at 215.

[149] *Id.* at 215-16.

[150] *Id.* at 215.

[151] *Id.* at 215-16.

[152] *Id.* at 214-15.

[153] *Id.*

[154] *See id.* at 212 ("[T]here does not exist any information or allegations in any SCIH/DOC records or reports indicating that the Neumeyers have brought . . . unlawful contraband into the SCIH or possessed the same in their vehicle.").

[155] *See* discussion *infra* Part III.A (contending that suspicionless vehicle searches exceed prison's interest in safeguarding institutional order).

effectively addressed the problem of contraband in prisons.[156] The court should have found that these searches exceeded the governmental interest in safeguarding internal order and struck down the regulation.[157] Thus, the Third Circuit should have required that prison officials reasonably suspect that visitors' vehicles contain concealed contraband before searching them.[158] Other courts require that prison officials satisfy this standard to search prison employees' vehicles.[159] This criterion allows officials to safeguard institutional security without unnecessarily infringing on visitors' Fourth Amendment rights.[160] Additionally, the reasonable suspicion standard encourages people to visit prisons, which benefits inmates and society.[161]

A. Suspicionless Vehicle Searches of Prison Visitors Impermissibly Exceed an Institution's Interest in Intercepting Contraband

In *Neumeyer*, the court used the prison's compelling interest in keeping contraband out of prisons to justify its decision to uphold suspicionless searches of visitors' vehicles.[162] Despite recognizing this

[156] *See* discussion *infra* Part III.A (contending that Third Circuit erred in neglecting to consider suspicionless vehicle search's effectiveness in relation to other prison searches).

[157] *See* discussion *infra* Part III.A (arguing that suspicionless vehicle searches impermissibly exceed prison's interest in intercepting contraband).

[158] *See* discussion *infra* Part III.A (contending that Third Circuit erred in upholding suspicionless vehicle searches of prison visitors).

[159] *See* Wiley v. Dep't of Justice, 328 F.3d 1346, 1353 (Fed. Cir. 2003) (requiring that warden reasonably suspect that employee kept gun in his vehicle parked in prison's lot to justify search); McDonell v. Hunter, 809 F.2d 1302, 1309 (8th Cir. 1987) (requiring reasonable suspicion to justify searching prison employee's vehicle).

[160] *See Wiley*, 328 F.3d at 1352-53 (articulating reasonable suspicion standard to justify searching prison employee's vehicle); Leverette v. Bell, 247 F.3d 160, 167 (4th Cir. 2001) (recognizing that prison employee does not forfeit all privacy rights by accepting employment); *McDonell*, 809 F.2d at 1309 (requiring reasonable suspicion to justify searching prison employee's vehicle); Sec. & Law Enforcement Employees v. Carey, 737 F.2d 187, 202 (2d Cir. 1984) ("[E]ven within the unique confines of correctional facilities, society recognizes that correctional officers . . . have expectations — albeit diminished — that they will be free from excessive and unwarranted intrusions based upon unrestrained, standardless exercises of authority by prison administrators."); Clark v. State, 395 So. 2d 525, 528 (Fla. 1981) (holding that shakedown search of prison guard involved only minimal intrusion compared with state's interest in keeping contraband out of prison).

[161] *See* discussion *infra* Part III.C (describing visitation's positive impact on inmates and society).

[162] Neumeyer v. Beard, 421 F.3d 210, 214-15 (3d Cir. 2005).

governmental interest, the court never evaluated whether these searches exceeded their professed purpose and unnecessarily infringed on visitors' Fourth Amendment rights.[163] The Third Circuit should have analyzed the search's efficacy in keeping contraband out of prisons and considered whether other searches already fulfilled this need.[164]

Most correctional facilities require prison visitors to submit to routine searches as a condition of entry, such as a pat-down search or metal detector sweep.[165] Prison officials use these searches to prevent visitors from transporting drugs, weapons, or other contraband to inmates inside the facility.[166] These searches closely match the government's security interest in intercepting contraband because they focus on ferreting out contraband actually carried into the facility.[167]

The *Neumeyer* court should have evaluated the search's ability to interdict contraband. It should have followed the Supreme Court's approach and scrutinized the suspicionless search program's ability to address a governmental interest.[168] In *Edmond*, the government's

---

[163] *Id.*

[164] *Id.*

[165] *See* Spear v. Sowders, 71 F.3d 626, 630 (6th Cir. 1995) (allowing officials to subject visitors to some searches, such as pat-down search or metal detector sweep, as condition of visitation); Shields v. State, 16 So. 85, 86 (Ala. 1894) (upholding searches of all persons prior to visitation, but noting that sheriff cannot search visitor against his will); People v. Whisnant, 303 N.W.2d 887, 891 (Mich. Ct. App. 1981) (upholding requirement that visitor submit to pat-down search prior to entry); MUSHLIN, *supra* note 97, § 8.7 (describing rationales used to uphold pat-down searches); STERN, *supra* note 2, at 123-24 (noting that prison officials question nearly all visitors about items carried in, search their belongings, and subject visitors to pat-down search).

[166] People v. Thompson, 523 P.2d 128, 130 (Colo. 1974) (citing danger of visitors transporting contraband into penitentiary to justify requirement that visitors consent to search); Wells v. State, 402 So. 2d 402, 404 (Fla. 1981) (noting that prison visitors expect to submit to search for weapons or other contraband); Thorne v. Jones, 585 F. Supp. 910, 918 (M.D. La. 1984) (reasoning that prisons' peculiar security problems permit requiring visitors to undergo pat-down search).

[167] *See* cases cited *supra* note 166 (describing routine entry searches designed to intercept contraband).

[168] *See* United States v. Edmond, 531 U.S. 32, 43 (2000) (refusing to suspend individualized suspicion requirement where governmental authorities primarily pursue general crime control ends); Mich. Dep't of State Police v. Sitz, 496 U.S. 444, 451 (1990) (citing sobriety checkpoint's statistics to justify program's implementation); Delaware v. Prouse, 440 U.S. 648, 659 n.18 (1979) (rejecting state interest in interdicting unlawful narcotics to justify checkpoints because stop program actually serves general interest in crime control); United States v. Martinez-Fuerte, 428 U.S. 543, 554, 561-62 (1976) (citing apprehension rates to demonstrate program's effectiveness).

stated purpose for the checkpoint program was confiscating illegal drugs.[169] In its opinion, the Supreme Court recognized the drug problem's severity and the complex law enforcement problems created by the drug trade.[170] The Court struck down the program, however, despite the government's compelling interest in disrupting the sale and transportation of illegal drugs.[171] The Court concluded that the program swept too broadly.[172] Rather than narrowly focusing on interdicting narcotics, the program served to detect ordinary criminal wrongdoing.[173]

In *Neumeyer*, the visitor vehicle searches exceeded the government's interest in keeping contraband out of the prison. These vehicle searches allowed prison officials to search items that never entered the prison's walls.[174] Although safeguarding the prison grounds may be a legitimate government interest, items outside the prison's walls do not pose the same imminent threat to prison security as items carried inside.[175] Rather than merely preventing visitors from transmitting contraband to inmates, prison officials use vehicle searches to look for evidence of ordinary criminal wrongdoing. In *Neumeyer*, prison officials reported the discovery of drugs or other evidence of criminal behavior to the police.[176] Even if the visitor never intended to transmit these items to an inmate, the visitor could face prosecution.[177] Additionally, many states — including Pennsylvania — impose harsher penalties for transporting drugs into a corrections facility than

169 *Edmond*, 531 U.S. at 40.

170 *Id.* at 42-43.

171 *Id.* at 44.

172 *Id.* at 44-46.

173 *Id.*

174 *See* Neumeyer v. Beard, 421 F.3d 210, 214 (3d Cir. 2005); *see also* United States v. Prevo, 435 F.3d 1343, 1347-48 (11th Cir. 2006) (refusing to entertain less intrusive means of keeping contraband out of prison); State v. Daniels, 887 A.2d 696, 698 (N.J. Super. Ct. App. Div. 2005) (declining to consider defendant's claim that it is "physically impossible for any contraband to be transported directly from a visitor's car to an inmate, absent a human intermediary, who is subject to a mandatory personal search").

175 *But see Prevo*, 435 F.3d at 1347 (declining to consider defendant's argument that vehicle searches are unreasonable because searches of everyone entering facility already achieve institutional goal).

176 *Neumeyer*, 421 F.3d at 212.

177 *See id.* at 215 (recognizing that vehicle search could result in criminal prosecution); *see also* People v. Turnbeaugh, 451 N.E.2d 1016, 1021 (Ill. App. Ct. 1983) (finding that defendant committed offense of bringing contraband "into" penal institution, even though defendant not actually inside entrance gates).

possessing drugs outside prison grounds.[178] Thus, the government can impose enhanced penalties if these searches yield evidence of criminal conduct, even though the contraband might never have threatened prison security.[179]

Proponents of the *Neumeyer* court's view might support upholding the suspicionless search program even if they believed that the searches swept broader than the interest in institutional order.[180] When considering inmate challenges to prison regulations, the Supreme Court cautions federal courts to refrain from second-guessing prison policies.[181] Consequently, lower courts hesitate to

[178] 18 PA. CONS. STAT. § 5123 (2005) (defining as second degree felony with two year minimum prison sentence); PA. DEP'T OF CORR., HANDBOOK FOR THE FAMILIES AND FRIENDS OF PENNSYLVANIA DEPARTMENT OF CORRECTIONS INMATES 23-25 (2005) (outlining penalties for transporting contraband into correctional facility); *see, e.g.*, ARIZ. REV. STAT. ANN. § 13-2505 (2005) (defining as felony); CAL. PENAL CODE § 4573 (West 2005) (constituting felony punishable by imprisonment for two to four years); MINN. STAT. § 243.55 (2005) (defining as felony punishable by imprisonment for term less than ten years); OHIO REV. CODE ANN. § 2921.36 (West 2005) (imposing mandatory prison term).

[179] *See supra* note 177 and accompanying text (specifying how suspicionless vehicle searches exceed institutional security rationale).

[180] *See* Whitley v. Albers, 475 U.S. 312, 321-22 (1986) (leaving internal security to prison administrators' discretion unless action is in bad faith or without legitimate purpose); Johnson v. Avery, 393 U.S. 483, 486 (1969) (subjecting state detention facility's administration to federal authority only where paramount federal constitutional or statutory rights supervene); *Prevo*, 435 F.3d at 1347 (deferring to corrections officials' judgment that two layers of searches are better than just one); Tubwell v. Griffith, 742 F.2d 250, 252 (5th Cir. 1984) (respecting prison administrators' decisions unless they exaggerate security and disciplinary considerations); Newman v. Alabama, 559 F.2d 283, 291 (5th Cir. 1977) (describing prison officials' duty to take all reasonable precautions to ensure that visitors do not smuggle in weapons or other harmful contraband); Smith v. Schneckloth, 414 F.2d 680, 681 (9th Cir. 1969) (observing that reasonable action within correctional authorities' wide discretion does not violate prisoner's constitutional rights); Walker v. Pate, 356 F.2d 502, 504 (7th Cir. 1966) (declining to meddle with state prison's internal rules and regulations except in exceptional circumstances); Tabor v. Hardwick, 224 F.2d 526, 529 (5th Cir. 1955) (cautioning courts from interfering with prison discipline except in extreme cases); *see also* Turner v. Safley, 482 U.S. 78, 90 (1987) (refusing to impose least restrictive alternative test on prison officials).

[181] *See* Sandin v. Conner, 515 U.S. 472, 482 (1995) (instructing federal courts to afford appropriate deference and flexibility to state officials trying to manage volatile prison environment); *Whitley*, 475 U.S. at 321-22 (deferring to prison officials' judgment in implementing security measures that respond to actual confrontations and prophylactic measures intended to prevent disciplinary breaches); Rhodes v. Chapman, 452 U.S. 337, 350 n.14 (1981) (leaving prisons' internal security to prison administrators' discretion); Bell v. Wolfish, 441 U.S. 520, 547 (1979) ("Prison administrators . . . should be accorded wide-ranging deference in the adoption and execution of policies and practices that in their judgment are needed to preserve

restrict prison administrators' authority to implement regulations designed to safeguard prison order and security.[182]

The Supreme Court deferred to prison administrators' judgments when reviewing prisoner restrictions, and arguably courts should defer to administrators' judgments in the visitor context as well.[183] Visitor vehicle searches rationally relate to the goal of keeping contraband out of the facility.[184] If visitors cannot enter the prison grounds with contraband in their cars, they cannot transport contraband into the facility itself.[185] Recognizing the problem of contraband in prisons, the

internal order and discipline and to maintain institutional security."); Jones v. N.C. Prisoners' Labor Union, 433 U.S. 119, 126 (1977) (recognizing wide ranging deference to prison officials); Pell v. Procunier, 417 U.S. 817, 827 (1974) ("[Prison regulations] are peculiarly within the province and professional expertise of corrections officials, and, in the absence of substantial evidence . . . indicat[ing] that the officials have exaggerated their response to these considerations, courts should ordinarily defer to their expert judgment in such matters."); Procunier v. Martinez, 416 U.S. 396, 405 (1974) ("[C]ourts are ill equipped to deal with the increasingly urgent problems of prison administration and reform. Judicial recognition of that fact reflects no more than a healthy sense of realism. Moreover, where state penal institutions are involved, federal courts have a further reason for deference to the appropriate prison authorities."); *see also Johnson*, 393 U.S. at 486 (deferring to state prison administrators, yet reserving right to invalidate prison regulations that conflict with inmates' federal constitutional or statutory rights).

[182] Conyers v. Abitz, 416 F.3d 580, 584 (7th Cir. 2005) (deferring to prison officials' judgment in evaluating measures aimed at preserving institutional order and discipline); Bahrampour v. Lampert, 356 F.3d 969, 973 (9th Cir. 2004) (deferring to state prison officials in day-to-day prison operations due to separation of powers and federalism concerns); Stanley v. Henson, 337 F.3d 961, 966 (7th Cir. 2003) (citing *Bell*, 441 U.S. at 547) (affording prison officials' decisions substantial — though not complete — deference); Ort v. White, 813 F.2d 318, 322 (11th Cir. 1987) ("[I]n evaluating the challenged conduct of prison officials, a court must keep in mind the paramount concerns of maintaining order and discipline in an often dangerous and unruly environment."); *Tubwell*, 742 F.2d at 252 (upholding prison administrators' decisions unless unreasonably exaggerated in response to security and discipline considerations); Wolfish v. Levi, 573 F.2d 118, 125 (2d Cir. 1978) ("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?"); *Newman*, 559 F.2d at 286 (noting that prison administrators, not courts, must be permitted to make difficult judgments concerning prison operations); *Walker*, 356 F.2d at 504 ("Discipline reasonably maintained in State prisons is not under the supervisory direction of federal courts."); Carter v. Cuyler, 415 F. Supp. 852, 856 (E.D. Pa. 1976) (declining to interfere with prison discipline unless paramount federal constitutional or statutory rights intervene).

[183] *See supra* Part I.C (analogizing regulation of prisoners and visitors based on compelling interest in institutional security).

[184] Neumeyer v. Beard, 421 F.3d 210, 214-15 (3d Cir. 2005) (finding search rationally related to penal interest in intercepting contraband).

[185] *See Prevo*, 435 F.3d at 1345-46 (searching automobiles entering prison property

Third Circuit might have allowed prison officials to conduct these vehicle searches without probable cause in *Neumeyer*.[186] The court may have believed that narrower regulations could not effectively address the intractable problem of contraband in prisons.[187] By conducting a broader search, prison administrators may uncover contraband that goes undetected during a metal detector sweep or pat-down search.[188] Additionally, the threat of a suspicionless vehicle search may deter some visitors who would otherwise try to smuggle contraband to inmates.[189] Thus, the *Neumeyer* court might have upheld a prophylactic regulation that exceeded the prison's security interest in interdicting contraband actually carried into the facility.[190]

is obvious way to keep contraband away from prisons); Spear v. Sowders, 71 F.3d 626, 633 (6th Cir. 1995) ("[Contraband] secreted in a car, to which prisoners may have access, is a potential threat at all times after the car enters the grounds."); People v. Turnbeaugh, 451 N.E.2d 1016, 1019 (Ill. App. Ct. 1983) (rejecting argument that "[s]earching incoming cars was not a sufficiently reasonable method of detecting incoming contraband, because of routine extensive searches of the person of each visitor to the institution, which would take place with or without vehicle searches"); State v. Daniels, 887 A.2d 696, 698 (N.J. Super. Ct. App. Div. 2005) (reasoning that automobile searches rationally relate to institution's interest in detecting and preventing flow of drugs and contraband into prison); State v. Putt, 955 S.W.2d 640, 646 (Tenn. Crim. App. 1997) ("[I]t is hardly a stretch to imagine a visitor leaving a contraband item in the parking lot for an inmate to recover at a later time.").

[186] *See supra* notes 45-47 and accompanying text (discussing danger contraband poses in penal environment).

[187] *See supra* notes 45-47 and accompanying text (discussing danger contraband poses in penal environment).

[188] *See Prevo*, 435 F.3d at 1347 (deferring to officials' judgment that two layers of searches, "double-tier of deterrence," are better than just one); *Turnbeaugh*, 451 N.E.2d at 1019 (rejecting argument that "[s]earching incoming cars was not a sufficiently reasonable method of detecting incoming contraband, because of routine extensive searches of the person of each visitor to the institution, which would take place with or without vehicle searches"); *Daniels*, 887 A.2d at 698 (reasoning that automobile searches rationally relate to institution's interest in detecting and preventing flow of drugs and contraband into prison).

[189] *See Prevo*, 435 F.3d at 1347 ("More searches, or the threat of them, provide more security than fewer searches do."); Estes v. Rowland, 17 Cal. Rptr. 2d 901, 920 n.20 (Ct. App. 1993) (noting search's potential deterrent effect because visitor never knows when vehicle will be subject to search).

[190] *See* Whitley v. Albers, 475 U.S. 312, 321-22 (1986) (deferring to prison security measure taken in responding to actual confrontation with riotous inmates and prophylactic measure intended to reduce breaches of discipline); *Prevo*, 435 F.3d at 1347 (deferring to prison administrators' judgment and refusing to consider defendant's claim that entrance searches of visitors and inmates are sufficient); *Turnbeaugh*, 451 N.E.2d at 1019 (reasoning that vehicle searches of entering cars was reasonable method to detect contraband, despite "routine extensive searches of person of each visitor"); *Daniels*, 887 A.2d at 698 (declining to consider defendant's claim

To accept this argument and uphold these suspicionless searches, however, the Third Circuit would have to ignore the fundamental differences between visitors and inmates.[191] In deferring to prison administrators' expertise, courts overlook the critical distinction between prison visitors and inmates: visitors retain the liberties that inmates have lost.[192] Courts recognize that visitors retain constitutional protections inside prison walls.[193] The constriction of these rights necessitated by the penal environment occupies much of the courts' attention.[194] Rather than focusing on visitors' retained

that it was impossible to directly transport contraband from visitor's car to inmate without human intermediary); *see also* Turner v. Safley, 482 U.S. 78, 90-91 (1987) (refusing to impose least restrictive alternative test on prison regulations); Tubwell v. Griffith, 742 F.2d 250, 252 (5th Cir. 1984) (upholding prison administrators' decisions unless exaggerated in response to security considerations); Newman v. Alabama, 559 F.2d 283, 291 (5th Cir. 1977) (describing prison officials' duty to take all reasonable precautions to ensure that visitors do not smuggle in weapons or other harmful contraband).

[191] *See infra* note 192 (describing fundamental distinction between prisoners and visitors).

[192] While lower courts seemingly overlook this distinction when assessing visitors' Fourth Amendment rights, the Supreme Court recognized it in the First Amendment context. Procunier v. Martinez, 416 U.S. 396, 408-09 (1974). In reviewing a First Amendment challenge to censorship of inmate mail, the Court did not consider the extent to which free speech rights survive incarceration. *Id.* at 408. Regardless of the prisoner's claim, the Court found that the non-prisoner "interest [in correspondence] is grounded in the First Amendment's guarantee of freedom of speech." *Id.* Because of prison regulation's consequent effect on the non-prisoner correspondent, the Court struck down the regulation, thereby "reject[ing] any attempt to justify censorship of inmate correspondence merely by reference to certain assumptions about the legal status of prisoners." *Id.* at 409. Commentators have suggested that the Court should apply this framework when considering restrictions on prison visitation. *See* Virginia L. Hardwick, *Punishing the Innocent: Unconstitutional Restrictions on Prison Marriage and Visitation*, 60 N.Y.U. L. REV. 275, 297 (1985) (noting that courts do not consider non-prisoner family members' rights when failing to find constitutional right of visitation).

[193] *See* Boren v. Deland, 958 F.2d 987, 988 (10th Cir. 1992) ("[V]isitors do not abandon their constitutional rights when they enter a penitentiary."); cases cited *infra* note 194 (describing how visitors' constitutional rights are diminished by prison environment's exigencies).

[194] *See* Wood v. Clemmons, 89 F.3d 922, 929 (5th Cir. 1996) (finding that reasonable suspicion standard strikes balance between visitors' legitimate privacy interests and institutional order); Spear v. Sowders, 71 F.3d 626, 629-30 (6th Cir. 1995) ("[T]he Fourth Amendment does not afford a person seeking to enter a penal institution the same rights that a person would have on public streets or in a home."); Romo v. Champion, 46 F.3d 1013, 1018 (10th Cir. 1995) (acknowledging that prison visitor possesses legitimate expectation of privacy but noting that exigencies of penal environment diminish this expectation); Daugherty v. Campbell, 935 F.2d 780, 786 (6th Cir. 1991) (finding that prison visitor retains legitimate expectation of privacy

constitutional protections, courts concentrate on how institutional security justifies various visitor searches that courts would not uphold outside the penal environment.[195] Instead of deferring equally to prison administrators' exercise of authority over inmates and visitors, courts should liken visitors to other non-prisoners in similar environments.[196] If the Third Circuit analogized visitors to other non-prisoners, the court would have struck down the suspicionless vehicle searches as exceeding the prison's interest in intercepting contraband.[197]

B. Courts Should Apply the Same Standard to Searches of Prison Visitors' Vehicles That They Apply to Prison Employees' Vehicles

Strip searching prison visitors or prison employees requires reasonable suspicion.[198] Courts afford prison employees more privacy protection in vehicle searches than visitors.[199] In *Neumeyer*, the court approved a policy that allowed prison officials to conduct suspicionless searches of visitors' vehicles.[200] In contrast, prison officials must reasonably suspect that a prison employee's car contains contraband to conduct a search.[201] This standard allows prison

diminished by exigencies of prison security); Blackburn v. Snow, 771 F.2d 556, 563 (1st Cir. 1985) ("[T]hose visiting a prison cannot credibly claim to carry with them the full panoply of rights they normally enjoy. But neither may they constitutionally be made to suffer a wholesale loss of rights — nor even one commensurate with that suffered by inmates.").

[195] *See* cases cited *supra* note 194 (describing how prison security diminishes prison visitors' reasonable expectation of privacy).

[196] *See* discussion *infra* Part III.B (contending that courts should apply same standards to searches of prison visitors and employees).

[197] *See* discussion *infra* Part III.B (arguing that Third Circuit should have compared searches of visitors and employees and used this comparison to invalidate suspicionless searches of visitors' vehicles).

[198] *See* cases cited *supra* note 70 and *infra* note 207 (setting forth reasonable suspicion standard to govern strip searches of prison visitors and employees).

[199] *Compare* Neumeyer v. Beard, 421 F.3d 210, 214-15 (3d Cir. 2005) (permitting suspicionless searches of prison visitors' vehicles), *with* Wiley v. Dep't of Justice, 328 F.3d 1346, 1353-55 (Fed. Cir. 2003) (invalidating search of prison employee's vehicle because warden did not possess reasonable grounds to suspect employee kept gun in his car).

[200] *Neumeyer*, 421 F.3d at 214-15.

[201] *See Wiley*, 328 F.3d at 1353 (concluding that warden must reasonably suspect that employee kept gun in his vehicle parked in prison's parking lot to justify search); McDonell v. Hunter, 809 F.2d 1302, 1309 (8th Cir. 1987) (requiring reasonable suspicion to justify search of prison employee's vehicle); *cf.* Jakubowicz v. Dittemore, No. 05-4135-CV-C-NKL, 2006 WL 2623210, at *5 (W.D. Mo. Sept. 12, 2006) ("The

officials to safeguard institutional security without unnecessarily infringing on employees' Fourth Amendment rights.[202] Because these security considerations apply to prison visitors, the Third Circuit should have required that prison officials satisfy this standard to search prison visitors' vehicles.[203]

Citing prison administrators' ubiquitous security concerns, courts permit some intrusions into prison employees' privacy.[204] Prison employees' privacy expectations must yield to accommodate institutional interests because prison employees willingly accept employment in this highly regulated environment.[205] In crafting

burden of proving whether an employee falls within this special needs exception to the Fourth Amendment falls on the governmental agency seeking to conduct the testing." (citing *Neumeyer*, 421 F.3d at 214)).

202 *See* discussion *infra* this Part (arguing that suspicionless vehicle searches exceed institutional security justification).

203 *See* discussion *infra* this Part (contending that courts should require that prison officials satisfy reasonable suspicion standard before searching visitors' vehicles).

204 *Wiley*, 328 F.3d at 1353 (balancing intrusion on employee's Fourth Amendment interests against prison's substantial interest in maintaining security); Ohio Civil Serv. Employees Ass'n v. Seiter, 858 F.2d 1171, 1177 (6th Cir. 1988) (upholding searches as within "the expectations of persons working daily in a close, dangerous environment, filled with temptations and very special and understood concerns for prison discipline and security"); *McDonell*, 809 F.2d at 1306-07 (observing that burdens of maintaining safety, order, and security diminish prison employees' expectation of privacy); Sec. & Law Enforcement Employees v. Carey, 737 F.2d 187, 202 (2d Cir. 1984) (finding difficult burdens of maintaining safety, order, and security diminishes prison employees' expectations of privacy); State v. Paruszewski, 466 P.2d 787, 789 (Ariz. Ct. App. 1970) (stating that prison security requires continuously checking all persons and places within prison walls, including employees); *see also* Leverette v. Bell, 247 F.3d 160, 168 (4th Cir. 2001) (permitting prison authorities to conduct visual body cavity search of employee when they reasonably suspect that employee has hidden contraband on his or her person); *cf.* Int'l Union v. Winters, 385 F.3d 1003, 1012 (6th Cir. 2004) ("It is well established that an individual who participates in a heavily regulated industry or activity has a diminished expectation of privacy.").

205 *See Wiley*, 328 F.3d at 1352 (noting that prison employee's reasonable expectation of privacy in car mitigated by conspicuous sign indicating that his vehicle was subject to search); *Leverette*, 247 F.3d at 168 (reasoning that prison's manifest interest in preventing introduction of drugs, weapons, and other contraband diminish employee's expectations of privacy); *Seiter*, 858 F.2d at 1177 (observing that prison employees volunteered to work in security conscious environment); *McDonell*, 809 F.2d at 1306 (citing *Carey*, 737 F.2d at 202) ("While correction officers retain certain expectations of privacy, it is clear that, based upon their place of employment, their subjective expectations of privacy are diminished while they are within the confines of the prison."); *Carey*, 737 F.2d at 202 (finding that nature of correction officers' employment significantly diminishes their retained expectations of privacy); United States v. Sihler, 562 F.2d 349, 351 (5th Cir. 1977) ("Requiring such consent [to search] as a condition of employment, and therefore access to the prison, seems to us

standards that govern searches of prison employees, courts narrowly tailor the search to meet the institutional need for security.[206]

To strip search a prison employee, prison administrators must articulate facts to support a belief that the employee concealed contraband on his or her person.[207] This reasonable suspicion standard affords employees significant Fourth Amendment protections

to be a reasonable security measure."); Adrow v. Johnson, 623 F. Supp. 1085, 1088 n.3 (N.D. Ill. 1985) (citing Cook County Dept. of Corrections, General Order No. 9.8) (describing limited search conducted at shift change to ensure institution's safety and security); *Paruszewski*, 466 P.2d at 788-89 (upholding search of prison guard that produced pair of brass knuckles and marijuana even though guard initially refused to consent to search); Clark v. State, 395 So. 2d 525, 529 (Fla. 1981) ("[P]rison guard's expectation of privacy is extremely limited by the environment that he or she chooses to work in."); STERN, *supra* note 2, at 123-24 (noting that many United States prisons submit staff to pat-down searches upon arrival at work); *see also Int'l Union*, 385 F.3d at 1012 ("[E]mployees who work within prisons obviously work in a highly regulated context. Therefore, since these employees work in highly regulated fields, we conclude that they have a diminished expectation of privacy."); United States v. Kelley, 393 F. Supp. 755, 757 (W.D. Okla. 1975) (holding guard did not posses any reasonable expectation of privacy at any time when he was within reformatory).

[206] *See Wiley*, 328 F.3d at 1352-53 (articulating reasonable suspicion standard for search of prison employee's vehicle); *Leverette*, 247 F.3d at 167 (recognizing that prison employee "does not forfeit all privacy rights when she accepts employment"); *McDonell*, 809 F.2d at 1306 (applying reasonable suspicion standard to strip searches of correction officers working in correctional facilities); *Carey*, 737 F.2d at 202 (recognizing that correctional officers have privacy expectations that "they will be free from excessive and unwarranted intrusions based upon unrestrained, standardless exercises of authority by prison administrators" even within "unique confines of correctional facilities"); *Clark*, 395 So. 2d at 528 (holding that shakedown search of prison guard involved only minimal intrusion compared with state's interest in keeping contraband out of prison).

[207] *See Leverette*, 247 F.3d at 168 (upholding visual body cavity search of prison employee when authorities possess reasonable suspicion that employee is hiding contraband on his or her person); *McDonell*, 809 F.2d at 1306 (adopting reasonable suspicion standard for strip searches of correction officers while working in correctional facilities); *Carey*, 737 F.2d at 204 (holding that governmental interest in controlling flow of contraband into correctional facilities justifies strip searches of employees based on reasonable suspicion); Pierce v. Ohio Dep't of Rehab. & Corr., 284 F. Supp. 2d 811, 834 (N.D. Ohio 2003) (approving reasonable suspicion standard as protecting privacy and providing flexibility to keep contraband out of prison); *Adrow*, 623 F. Supp. at 1088-89 (applying reasonable suspicion standard to strip search of corrections officer); Armstrong v. N.Y. State Comm'r of Corr., 545 F. Supp. 728, 731 (N.D.N.Y. 1982) (requiring "articulable facts" supporting belief that employee concealed contraband on his person). *But see* Scoby v. Neal, 981 F.2d 286, 288-89 (7th Cir. 1992) (holding that corrections supervisors entitled to qualified immunity because no clearly established right for correctional officers to be free of warrantless body cavity searches).

without creating an insuperable barrier to institutional security.[208] Courts require that prison officials satisfy this same reasonable suspicion standard to strip search prison visitors.[209]

Although reasonable suspicion governs strip searches of prison visitors and employees, courts apply different standards in the vehicle search context.[210] For prison visitors, courts exclusively focus on institutional concerns and permit suspicionless vehicle searches.[211] Courts treat vehicle searches of prison employees, on the other hand, as workplace searches.[212] By adopting this characterization, public

[208] *See Wiley*, 328 F.3d at 1352-53 (noting employee's privacy expectation in vehicle); *Leverette*, 247 F.3d at 167 ("[P]rison employee . . . does not forfeit all privacy rights when she accepts employment."); *McDonell*, 809 F.2d at 1306 (alluding to correction officers' retained expectations of privacy); *Carey*, 737 F.2d at 203 ("[C]orrections officers, as free citizens, should not have their rights measured against standards applicable to convicted inmates and accused pretrial detainees."). *But see Kelley*, 393 F. Supp. at 757 ("[Prison guard] could have no reasonable expectation of privacy while on prison or reformatory grounds and would be for that reason without the protection of the Fourth Amendment.").

[209] *See Leverette*, 247 F.3d at 167 (analogizing privacy rights of prison visitors and employees); *Carey*, 737 F.2d at 204 ("First, both categories [prison employees and visitors] consist of citizens whom society obviously would recognize as having higher expectations of privacy while outside a correctional facility than while inside. Second, both consist of unincarcerated individuals who may be sources of entry of contraband into inmate populations and thus can pose potential hazards to the correctional facilities' goal of maintaining institutional security. Finally, once they have entered a correctional facility, both have diminished expectations of privacy."). *Compare Leverette*, 247 F.3d at 168 (requiring reasonable suspicion to conduct intrusive bodily search of prison employee), *and* Hunter v. Auger, 672 F.2d 668, 674 (8th Cir. 1982) (requiring reasonable suspicion to strip search prison visitor), *with* Schmerber v. California, 384 U.S. 757, 770 (1966) (conducting invasive bodily search requires clear indication that evidence will be found).

[210] *Compare* Neumeyer v. Beard, 421 F.3d 210, 214-15 (3d Cir. 2005) (permitting suspicionless searches of prison visitors' vehicles), *with Wiley*, 328 F.3d at 1353-55 (invalidating search of prison employee's vehicle because warden did not possess reasonable grounds to suspect employee kept loaded gun in his car).

[211] *See* United States v. Prevo, 435 F.3d 1343, 1346 (11th Cir. 2006) (upholding vehicular search of visitor based on prison's need to intercept contraband); *Neumeyer*, 421 F.3d at 214-15 (validating prison practice of conducting suspicionless searches of prison visitors' vehicles under Fourth Amendment special needs doctrine); Romo v. Champion, 46 F.3d 1013, 1016 (10th Cir. 1995) (upholding vehicle checkpoint on road leading to correctional facility under Fourth Amendment); Spear v. Sowders, 71 F.3d 626, 633 (6th Cir. 1995) (rejecting requirement of individualized suspicion to search visitor's car on prison grounds, particularly if signs warn visitor of possibility of search).

[212] *See* O'Connor v. Ortega, 480 U.S. 709, 725-26 (1987) (holding reasonableness standard governs employer intrusions on constitutionally protected privacy interests of government employees for non-investigatory, work-related purposes and investigations of work-related misconduct); Leverette v. Bell, 247 F.3d 160, 168 (4th

employers can infringe on a government employee's protected privacy interests only when warranted by special needs beyond general law enforcement.[213] Employers must conduct these workplace searches for non-investigatory, work-related purposes or for investigating work-related misconduct.[214] Thus, prison officials could permissibly search an employee's car if the officials believed that the car contained contraband that the employee intended to smuggle to inmates. Courts have used this standard to proscribe suspicionless searches of employees' vehicles without evidence demonstrating that inmates have unsupervised access to the cars.[215]

The *Neumeyer* court should have applied to prison visitors the reasonable suspicion standard that governs searches of prison employees' vehicles.[216] The government's need to prevent contraband

Cir. 2001) (emphasizing that reasonable suspicion is minimum requirement and noting that more invasive search requires higher showing); *McDonell*, 809 F.2d at 1306-08 (holding that urinalyses is "least intrusive method" of mediating real threat that employees who use drugs pose to institutional security); Sec. & Law Enforcement Employees v. Carey, 737 F.2d 187, 209-10 (2d Cir. 1984) (invalidating invasive searches pursuant to prison's random-search policy because searches severely trammel correction officers' legitimate privacy expectations).

[213] *See* Nat'l Treasury Employees Union v. Von Raab, 489 U.S. 656, 671 (1989) ("[I]t is plain that certain forms of public employment may diminish privacy expectations even with respect to such personal searches."); Skinner v. Ry. Labor Executives' Ass'n, 489 U.S. 602, 621, 628 (1989) (holding that government's interest in regulating railroad employees' conduct to ensure safety presents "special needs" that justify departure from warrant and probable cause requirements); *O'Connor*, 480 U.S. at 725-26 (holding that reasonableness standard governs employer intrusions on constitutionally protected privacy interests of government employees for non-investigatory, work-related purposes and investigations of work-related misconduct); *see also* Leventhal v. Knapek, 266 F.3d 64, 73 (2d Cir. 2001) (citing *O'Connor*, 480 U.S. at 717-18) ("[W]orkplace conditions can be such that an employee's expectation of privacy in a certain area is diminished."); *see also* Jakubowicz v. Dittemore, No. 05-4135-CV-C-NKL, 2006 WL 2623210, at *5 (W.D. Mo. Sept. 12, 2006) ("The burden of proving whether an employee falls within this special needs exception to the Fourth Amendment falls on the governmental agency seeking to conduct the testing." (citing *Neumeyer*, 421 F.3d at 214)).

[214] *O'Connor*, 480 U.S. at 725-26. Determining the reasonableness of a workplace search involves a twofold inquiry. *Id.* First, whether the employer reasonably suspected that the search would reveal evidence that the employee is guilty of work-related misconduct. *Id.* (citing Terry v. Ohio, 392 U.S. 1, 20 (1968)). Second, whether the search actually conducted reasonably relates in scope to the circumstances that justified the interference in the first place. *Id.* (citing New Jersey v. T.L.O., 469 U.S. 325, 341 (1985)).

[215] *See McDonell*, 809 F.2d at 1309 ("[I]t is not unreasonable to search vehicles that are parked within the institution's confines where they are accessible to inmates.").

[216] *See infra* notes 217-23 and accompanying text (contending that reasonable suspicion standard should govern searches of prison visitors' vehicles).

from entering prisons diminishes both employees' and visitors' privacy protections.[217] However, both groups retain some constitutional protections within the penal environment.[218] Despite upholding suspicionless searches of visitors' vehicles, the Third Circuit never suggested that prison visitors pose a greater threat to institutional security than prison employees.[219]

In fact, some courts have suggested that employees present a greater threat to security because they spend more time in the facility and freely access sensitive areas.[220] Employees have more opportunities to

[217] *See Leverette*, 247 F.3d at 168 (suggesting that applying reasonable suspicion standard to invasive searches of visitors bolsters court's application of same standard to employees); *McDonell*, 809 F.2d at 1306-07 (noting that courts' determinations that reasonable suspicion standard governs body searches of prison visitors and employees); *Carey*, 737 F.2d at 204 ("[T]here are significant parallels between visitors to correctional facilities and correction officers who work in them. First, both categories consist of citizens whom society obviously would recognize as having higher expectations of privacy while outside a correctional facility than while inside. Second, both consist of unincarcerated individuals who may be sources of entry of contraband into inmate populations and thus can pose potential hazards to the correctional facilities' goal of maintaining institutional security. Finally, once they have entered a correctional facility, both have diminished expectations of privacy."); *cf.* Int'l Union v. Winters, 385 F.3d 1003, 1012 (6th Cir. 2004) ("[E]mployees who either have (1) law enforcement duties, (2) direct and unsupervised contact with prisoners, 80 percent of whom have a history of drug abuse, or (3) a responsibility to deliver health care or psychological services to persons in state custody, would pose a significant potential threat to the health and safety of themselves and others if they use drugs or were under the influence of drugs while on duty."). *But see* Neumeyer v. Beard, 301 F. Supp. 2d 349, 351 (M.D. Pa. 2004) (citing Wiley v. Dep't of Justice, 328 F.3d 1346, 1353 (Fed. Cir. 2003)) (rejecting visitor's analogy to search of employee's vehicle).

[218] *See supra* note 217 (describing courts' analogizing prison visitors and employees).

[219] *See infra* notes 220-22 and accompanying text (describing threat posed by employees and visitors to prison security).

[220] *See* Ohio Civil Serv. Employees Ass'n v. Seiter, 858 F.2d 1171, 1177 (6th Cir. 1988) ("Not only do prison employees spend more time in prisons, but they also have more access to sensitive areas of the facility. Thus, they pose an even greater potential security risk than the high risk already posed by visitors. Further, the employees volunteered to work in a security conscious environment. While visitors do volunteer to visit the prison, it is unlikely that they chose to place their family members or friends into incarceration."); *see also* Sec. & Law Enforcement Employees v. Carey, 737 F.2d 187, 191 (2d Cir. 1984) (noting that is not unexpected or surprising that some of these guards or corrections officers breach security by smuggling contraband into correctional facilities); Williams v. Price, 25 F. Supp. 2d 605, 613 (W.D. Pa. 1997) (describing guards' involvement in smuggling contraband, including drugs, to prisoners); TED CONOVER, NEWJACK: GUARDING SING SING 104 (2000) ("The first strange thing about contraband was that its most obvious forms — weapons, drugs, and alcohol — could all be found fairly readily inside prison. Some of the drugs

transmit contraband to inmates because they spend a great deal of unsupervised time with inmates.[221] In contrast, constant supervision and limits on visitors' physical contact with inmates afford visitors far fewer opportunities to transmit contraband to inmates.[222] Nevertheless, courts closely circumscribe the government's authority to search employees' vehicles, while allowing the government to randomly and unjustifiably search visitors' vehicles.[223]

The *Neumeyer* court's interpretation of prison employees' and visitors' interests may explain its decision to uphold suspicionless searches of visitors' vehicles. In its opinion, the court noted that safeguarding institutional security is prison employees' core objective.[224] While the Third Circuit explicitly recognized employees' responsibility to keep contraband out of the facility, other courts have implied that prison employees have a personal interest in fulfilling this obligation.[225] These courts reason that any contraband introduced

probably slipped in through the Visit Room, but most, it seemed, were helped into prison by [corrections] officers who were paid off.").

221 *See supra* note 220 (describing guards transmitting contraband to prisoners).

222 *See supra* note 220 (describing guards' unsupervised access to inmates).

223 *See supra* notes 210-15 and accompanying text (comparing prison officials' authority to search visitors and employees).

224 Neumeyer v. Beard, 421 F.3d 210, 214 (3d Cir. 2005) ("Within prison walls, the central objective of prison administrators is to safeguard institutional security."); *see* Hunter v. Auger, 672 F.2d 668, 674 (8th Cir. 1982) ("[C]orrectional officials recognize their duty to constrict the flow of contraband into the prison."); Newman v. Alabama, 559 F.2d 283, 291 (5th Cir. 1977) (stating that prison authorities' "prime consideration is the preservation of the safety and security of the prison," which includes "duty to intercept narcotics and other harmful contraband" being smuggled into facility by visitors); *see also* BEN BYCEL & FRANK MICHAELSON, VISITING AND TELEPHONING IN CALIFORNIA JAILS, PRISONS, AND JUVENILE INSTITUTIONS 66 (1978) (commenting that visiting room officers regard intercepting narcotics and preventing violent behavior as most important functions); ROGER SHAW, CHILDREN OF IMPRISONED FATHERS 17 (1987) (describing nature of prison services as essentially containment and security); BUREAU OF LABOR STATISTICS, *supra* note 47 (describing correction officer's main purpose as "maintaining security and inmate accountability to prevent disturbances, assaults, and escapes").

225 *See* Evans v. Stephens, 407 F.3d 1272, 1289 (11th Cir. 2005) ("[C]ontraband poses the greatest security risk for officials at detention facilities."); *Carey*, 737 F.2d at 202 (discussing correctional employees claim to "have a greater stake in eliminating contraband and its sources than the prison administrators, since it is they who must work among the inmates where the effects of the contraband are most strongly felt"); *see also* Hudson v. Palmer, 468 U.S. 517, 527-28 (1984) (noting that Court routinely "strike[s] the balance in favor of institutional security" because of dangers inherent in penal environment); Bell v. Wolfish, 441 U.S. 520, 559 (1979) (mentioning that detention facility is unique place fraught with serious security dangers); United States v. Prevo, 435 F.3d 1343, 1346 (11th Cir. 2006) ("Because of the character of prisoners

into the volatile prison environment potentially endangers corrections employees.[226] Thus, correctional officers' employment responsibilities intersect with their personal interest in safety to create an incentive to keep contraband from entering the prison.

Although not explicitly stated in the Third Circuit's opinion, opponents seem to envision employees and visitors playing antagonistic roles within the penal environment.[227] These opponents define prison visitors by their relationship to the incarcerated individual.[228] Because of this relationship, courts generally presume that visitors align their interests with prisoners, and consequently view their interests as opposed to corrections employees.[229]

This explanation of visitors' and employees' interests may partially account for the different standard the *Neumeyer* court applied to

and the nature of imprisonment, corrections facilities are volatile places, brimming with peril, places where security is not just a operational nicety but a matter of life or death importance."). *See generally* CONOVER, *supra* note 220 (describing harsh culture of prison, and prison guards' grueling and demeaning working conditions).

226 *See* sources cited *supra* note 225 (describing dangers encountered by prison employees).

227 *See* SHAW, *supra* note 224, at 22 (noting that prison system makes staff "the common enemy of the inmate and his family"); *see also* NORMAN FENTON, TREATMENT IN PRISON: HOW THE FAMILY CAN HELP 20-22, 76-77 (Cal. Dep't of Corr. ed., 1959) (instructing prisoner's family members not to "catch" inmate's resentment towards prison authority; instead family should join with prison employees in treatment program); FELIX M. PADILLA & LOURDES SANTIAGO, OUTSIDE THE WALL: A PUERTO RICAN WOMAN'S STRUGGLE 125, 158 (1993) (describing corrections officers' distant and cold treatment of prison visitors).

228 *See* PADILLA & SANTIAGO, *supra* note 227, at 158 ("The officers have this attitude that the men who are serving time are animals and that they don't have to respect these animals or their families.").

229 *See* BONNIE E. CARLSON & NEIL CERVERA, INMATES AND THEIR WIVES: INCARCERATION AND FAMILY LIFE 36-37 (1992) (noting that procedures and policies governing visitation mainly concern introduction of contraband); *see also* SHAW, *supra* note 224, at 17 (characterizing prison staff and inmates as aligned against each other); Lloyd W. McCorkle, *Guard-Inmate Relationships*, *in* THE SOCIOLOGY OF PUNISHMENT AND CORRECTION 421-22 (Norman Johnston et al. eds., 2d ed. 1970) (discussing undermining of guard's authority by inmates' seemingly innocuous encroachments on guard's duties); Lloyd W. McCorkle & Richard Korn, *Resocialization Within Walls*, *in* THE SOCIOLOGY OF PUNISHMENT AND CORRECTION, *supra*, at 413-15 (discussing custodian's need to maintain social distance from inmates because inmates will exploit custodian's weaknesses); Gresham Sykes & Sheldon L. Messinger, *The Inmate Social Code, in* THE SOCIOLOGY OF PUNISHMENT AND CORRECTION, *supra*, at 403 (discussing inmate norm of treating guards with suspicion and distrust); *cf.* Block v. Rutherford, 468 U.S. 576, 586 (1984) ("Contact visits invite a host of security problems. They open the institution to the introduction of drugs, weapons, and other contraband. Visitors can easily conceal guns, knives, drugs, or other contraband in countless ways and pass them to an inmate unnoticed by even the most vigilant observers.").

searches of visitors' and employees' vehicles. However, this reasoning collapses when considering the strip search and vehicle search standards together.[230] Whether carried into the prison by employees or visitors, contraband transmitted to inmates clearly endangers institutional security.[231] Strip searches and routine searches required for entry aim to intercept contraband actually carried into the facility.[232] Courts apply identical standards to visitors and employees for these categories of searches.[233] By applying the same standards to visitors and employees, courts legitimate these searches' connection to institutional security.[234]

Contraband inside a parked vehicle on the facility's grounds, however, does not pose the same imminent threat to institutional security as contraband carried into the prison.[235] While one can link vehicle searches to preserving order, the differing standards applied to visitors and employees for vehicle searches undermines the search's connection to institutional security.[236] The inconsistent standards for

[230] *See infra* notes 231-36 and accompanying text (considering strip search and vehicle search standards).

[231] *See* sources cited *supra* notes 45-47 (describing danger contraband poses to institutional security).

[232] *See* sources cited *supra* notes 45-47 (describing how routine searches and strip searches address prison security).

[233] United States v. Sihler, 562 F.2d 349, 351 (5th Cir. 1977) (remarking that prison guard voluntarily accepted and continued employment, which routinely subjected him to search); State v. Paruszewski, 466 P.2d 787, 789 (Ariz. Ct. App. 1970) (suggesting that prison can only maintain security by enforcing continuous checks on all persons and places within prison walls, including employees); Clark v. State, 395 So. 2d 525, 529 (Fla. 1981) (finding that prison guard's right to be free from random shakedown searches does not outweigh state's interest in preventing contraband's flow into prisons).

[234] *See supra* notes 231-33 and accompanying text (contending that strip searches and routine searches are legitimately connected to institutional security).

[235] *See* Florida v. Royer, 460 U.S. 491, 500 (1983) ("[If] legitimate law enforcement interests justify warrantless search[,] the search must be limited in scope to that which is justified by the particular purposes served by the exception."); Terry v. Ohio, 392 U.S. 1, 19 (1968) (quoting Warden v. Hayden, 387 U.S. 294, 310 (1967) (Fortas, J., concurring)) ("The scope of the search must be 'strictly tied to and justified by' the circumstances which rendered its initiation permissible."); Kremen v. United States, 353 U.S. 346, 347-48 (1957) (reasoning that search which is reasonable at its inception may violate Fourth Amendment by virtue of its intolerable intensity and scope); United States v. Davis, 482 F.2d 893, 910 (9th Cir. 1973) (requiring officials to limit administrative screening search to satisfying administrative need).

[236] *See* United States v. Prevo, 435 F.3d 1343, 1347 (11th Cir. 2006) (finding that loaded pistol and cocaine in defendant's car remained accessible to passing prisoners inclined to wrongdoing); Spear v. Sowders, 71 F.3d 626, 632-33 (6th Cir. 1995) (observing that object secreted in car potentially threatens institutional security at all

searching prison employees' and visitors' vehicles indicate that these searches only loosely serve the proffered government interest. The Third Circuit erred in upholding suspicionless searches of visitors' vehicles in *Neumeyer* because these searches grossly intrude upon a visitors' privacy while contributing little to prison security.

C. Suspicionless Vehicle Searches Deter Prisoners' Family and Friends from Visiting and Inhibit Prisoners' Rehabilitation

Allowing officers to selectively search visitors' vehicles when they first arrive at the prison's entrance fosters distrust and suspicion on both sides of the transaction.[237] Prison officers view — or, at least treat — visitors as potential suspects, and the officers convey their distrust while performing these searches.[238] Visitors find these searches humiliating and depersonalizing.[239] Furthermore, officers have broad discretion in deciding whom to search, and do not search

times car on premises); McDonell v. Hunter, 809 F.2d 1302, 1309 (8th Cir. 1987) ("[I]t is not unreasonable to search vehicles that are parked within the institution's confines where they are accessible to inmates.").

[237] *See* PADILLA & SANTIAGO, *supra* note 227, at 158 (describing officers' attitude that visits make them work more than they should); Megan Comfort et al., "*You Can't Do Nothing in this Damn Place": Sex and Intimacy Among Couples with an Incarcerated Male Partner*, 42 J. SEX RES. 3, 6-7 (2005) [hereinafter Comfort et al., *Damn Place*] (discussing guards' continual enforcement of civility during contact visits and guards perception of visitors as perpetually trying to thwart rules); Lance C. Couturier, *Families in Peril: Inmates Benefit from Family Service Programs,* CORRECTIONS TODAY, Dec. 1995, at 100 [hereinafter Couturier, *Benefit*] ("Many corrections professionals do not regard families as legitimate clients and do not welcome what they view as the intrusion of family members . . . into their facilities."); *see also* PADILLA & SANTIAGO, *supra* note 227, at 157 ("[A]s soon as I get to the entrance of the prison, I must confront very quickly some cruel and insensitive group of individuals."); Megan L. Comfort, *In the Tube at San Quentin: The "Secondary Prisonization" of Women Visiting Inmates*, 32 J. CONTEMP. ETHNOGRAPHY 77, 82-102 (2003) [hereinafter Comfort, *In the Tube*] ("Women visiting prisoners readily perceive their treatment at the prison as a collapse of institutional differentiation between visitors and inmates.").

[238] *See supra* note 237 (describing prison visitor and prison guard relations at entrance gate); *see also* Comfort et al., *Damn Place, supra* note 237, at 7 (discussing visitors' frustration and hurt at correctional officers' scrutiny and insinuation of visitors' hypersexuality).

[239] *See* HUMAN RIGHTS WATCH, THE HUMAN RIGHTS WATCH GLOBAL REPORT ON PRISONS 106 (1993) (observing that harassment and searches experienced by visitors turn visiting into unpleasant and even humiliating experience); PADILLA & SANTIAGO, *supra* note 227, at 159-61 (describing humiliating experience of "shakedown" and suggesting that many people prefer to not visit rather than allow search); Comfort, *In the Tube*, *supra* note 237, at 101 (describing how visiting procedures or "ceremonies of belittlement" abridge visitor's personhood in "purported interest of institutional security").

every vehicle that comes into the prison.[240] Those visitors that officers decide to search thus often feel singled out as likely criminals.[241] Visitors selected for these searches must then watch as an officer indiscriminately rifles through their vehicle and belongings, searching for evidence of criminal activity.[242] These initial contacts with prison officials at the entrance gate set the tone for the visit.[243] The antagonism and distrust established during these initial contacts discourages family and friends from visiting, and further isolates prisoners from the world beyond the prison gates.

The Supreme Court has never held that incarceration altogether terminates a prisoner's right to associate with family and friends.[244]

---

[240] Neumeyer v. Beard, 421 F.3d 210, 215-16 (3d Cir. 2005) (upholding suspicionless vehicle searches conducted at guard's discretion); *see* ANN AUNGLES, THE PRISON AND THE HOME: A STUDY OF THE RELATIONSHIP BETWEEN DOMESTICITY AND PENALITY 171 (1994) (describing visitors' sense that prison administrators exert arbitrary and overreaching control over visitors); Kathleen McDermott & Roy D. King, *Prison Rule 102: "Stand by Your Man": The Impact of Penal Policy on the Families of Prisoners, in* PRISONERS' CHILDREN: WHAT ARE THE ISSUES? 50, 62 (Roger Shaw ed., 1992) (describing search practices where some staff treated visitors with dignity and tact whereas others subjected families to unnecessary humiliation).

[241] *See supra* notes 238-40 and accompanying text (describing prison visitor and prison guard relations at entrance gate).

[242] *See Neumeyer*, 421 F.3d at 215-16 (upholding suspicionless vehicle searches even though no established standards that govern searches).

[243] *See* CARLSON & CERVERA, *supra* note 229, at 115 (noting that treatment of visitors when they first arrive at facility informs visitors' attitudes about facility and visiting in general); Comfort et al., *Damn Place, supra* note 237, at 7 ("Officers generally believe that rule enforcement during the initial screening processes that occur when visitors first enter the prison sets the tone for how strictly people will expect to be held to regulations throughout their time in the correctional facility."); Comfort, *In the Tube*, *supra* note 237, at 80 (describing entrance as battleground of "contested personhood" where "visitors continually define and defend their social and physical integrity against the degradation of self . . . required by the prison as a routine condition for visiting"); McDermott & King, *supra* note 240, at 62 (arguing that most sensitive interaction between staff and families occurs during search before visit); *see also* Norman Fenton, *Assistance in Treatment from the Families and Friends of Inmates, in* HUMAN RELATIONS IN ADULT CORRECTIONS 88, 88-89 (Norman Fenton ed., 1973) (suggesting that one can gauge employees' level of training, job satisfaction, and general morale of institution by observing how employees treat visitors).

[244] Overton v. Bazzetta, 539 U.S. 126, 131 (2003) ("We do not hold, and we do not imply, that any right to intimate association is altogether terminated by incarceration or is always irrelevant to claims made by prisoners."). However, in a previous case, the Court determined that prisoners did not have a liberty interest in receiving visitors protected by the Due Process Clause. Ky. Dep't of Corr. v. Thompson, 490 U.S. 454, 461 (1989). The Court determined that the Kentucky prison regulations lacked the mandatory language required to create a liberty interest in visitation. *Id.* at 463-64. Although the terms of confinement may include denying visitors' prison access, the

However, the Court allows prison administrators to impose substantial restrictions on prison visitation.[245] In evaluating these restrictions, the Court analyzes whether a challenged regulation rationally relates to legitimate penological interests.[246] While tacitly recognizing that inmates retain some rights of association, the Court's analysis defers to prison officials' expertise in implementing regulations.[247]

Although prison officials can significantly restrict prison visitation, courts consistently acknowledge the positive impact that visiting with family and friends has on inmates.[248] The wealth of social science research buttresses this conclusion, indicating that inmates who maintain contact with their families cope better with their sentence.[249]

Court declined to preclude states from granting visitors a right to visitation. *Id.* at 461 n.3. Marshall's dissenting opinion argues visitation implicates an inmate's retained liberty interests because prison visits are "critically important to inmates as well as to the communities to which the inmates ultimately will return." *Id.* at 468-70 (Marshall, J., dissenting); *see also* Sandin v. Conner, 515 U.S. 472, 483-84 (1995) (limiting prison regulations' ability to create liberty interests); Rowland v. Wolff, 36 F. Supp. 257, 259 (D. Neb. 1971) (rejecting contention that inmate possesses constitutional right to visit with sisters); COMM. ON THE OFFICE OF THE ATTORNEY GEN., NAT'L ASS'N OF ATTORNEYS GEN., PRISON VISITATION 1 (1977) (noting that majority rule is that prisoner has no right to visitation).

[245] *See* Spear v. Sowders, 71 F.3d 626, 630 (6th Cir. 1995) (finding no Due Process right to unfettered visitation). However, in many states, prison officials only take away an inmate's visiting privileges if the inmate seriously violates a rule related to visiting. *See, e.g.*, BYCEL & MICHAELSON, *supra* note 224, at 46 (noting that California inmates lose visitation privileges only after serious infractions, such as attempting to smuggle contraband into prison through visiting room).

[246] *See Overton*, 539 U.S. at 132 (applying Turner v. Safley, 482 U.S. 78, 89 (1987)).

[247] *Id.* at 131 (according substantial deference to prison administrator's professional judgment considering their responsibility for defining corrections system's goals and determining means to accomplish goals); *Turner*, 482 U.S. at 90 ("When accommodation of an asserted right will have a significant 'ripple effect' on fellow inmates or on prison staff, courts should be particularly deferential to the informed discretion of corrections officials."); *see* Stanley E. Adelman, *Supreme Court Rules Restrictions on Prison Visitation Are Constitutional,* CORRECTIONS TODAY, Apr. 2004, at 26 (discussing *Overton*'s effects on prison personnel's ability to restrict prison visits).

[248] *See Ky. Dep't of Corr.*, 490 U.S. at 468 (Marshall, J., dissenting) ("[V]isitation has demonstrated positive effects on a confined person's ability to adjust to life while confined as well as his ability to adjust to life upon release" (citing MODEL SENTENCING AND CORR. ACT § 4-115 (1979))); Thornburgh v. Abbott, 490 U.S. 401, 407 (1989) ("Access [to prisons] is essential . . . to families and friends of prisoners who seek to sustain relationships with them."); Pell v. Procunier, 417 U.S. 817, 825 (1974) (noting prison director's determination that personal visits "aid in the rehabilitation of the inmate while not compromising the other legitimate objectives of the corrections system").

[249] *See* AUNGLES, *supra* note 240, at 112 (discussing importance of visitation in

By sustaining strong relationships with family and friends, inmates continue to value free world objectives, rather than adopting the prison subculture's value system.[250]

The benefits of prison visitation extend beyond the actual duration of incarceration.[251] Inmates who maintain close ties to their family and community during incarceration fare better during parole.[252]

relieving tensions and stresses inherent in imprisonment); BYCEL & MICHAELSON, *supra* note 224, at 39-40 (describing importance of visiting to inmates); HUMAN RIGHTS WATCH, *supra* note 239, at 104 (describing crucial importance of contact with relatives to prisoners' well-being); Allen Cook & Norman Fenton, *An Inventory of Constructive Influences from the Outside World, in* HUMAN RELATIONS IN ADULT CORRECTIONS, *supra* note 243, at 74 (maintaining relationships with individuals in outside world raises prison morale and improves inmate's participation in institutional programs); Lance C. Couturier, *Families in Peril: Family Services and Mental Health*, CORRECTIONS TODAY, Dec. 1995, at 102 [hereinafter Couturier, *Mental Health*] (describing "reduction of prison and jail suicides and self mutilations" as "dramatic result of enhanced family and other social contacts"); Couturier, *Benefit*, *supra* note 237, at 105 (legitimating family services to correctional administrators by demonstrating that programs foster more positive social climate and reduce recidivism among parolees); Nancy G. La Vigne et al., *Examining the Effect of Incarceration and In-Prison Family Contact on Prisoners' Family Relationships*, 21 J. CONTEMP. CRIM. JUST. 314, 328 (2005) (noting that prison contact with family members ameliorates some strains associated with imprisonment); McDermott & King, *supra* note 240, at 50-51 (testifying to importance of prisoner's maintaining contact with their family because "family provide[s] a sense of history and hope for a future life beyond the wall"); Suzanne Carol Schuelke, *Prison Visitation and Family Values*, 77 MICH. B.J. 160, 160 (1998) (noting positive correlation between visits and prisoners' institutional behavior); Gresham Sykes, *The Pains of Imprisonment, in* THE SOCIOLOGY OF PUNISHMENT AND CORRECTION, *supra* note 229, at 447 (discussing how visitation and mail privileges relieve prisoner's isolation).

[250] *See* STANLEY L. BRODSKY, FAMILIES AND FRIENDS OF MEN IN PRISON 10-11 (1971) (discussing how inmate's maintenance of family relationships suggests that inmate still values free world objectives); CARLSON & CERVERA, *supra* note 229, at 26-27 (maintaining significant attachments to outside world makes prisoner less likely to acquire "prisoner identity" and adopt dysfunctional attitudes and behaviors of professional criminals); *see also* Donald Clemmer, *Informal Inmate Groups, in* THE SOCIOLOGY OF PUNISHMENT AND CORRECTION, *supra* note 229, at 424 (describing formation of primary inmate groups that share collective understandings and values); Donald Clemmer, *Prisonization, in* THE SOCIOLOGY OF PUNISHMENT AND CORRECTION, *supra* note 229, at 479-81 (describing inmate process of "prisonization" whereby inmate takes on folkways, mores, customs and general culture of penitentiary).

[251] *See infra* notes 253-54 (describing visitation's positive effects that extend beyond incarceration).

[252] *See* BRODSKY, *supra* note 250, at 17 (observing that transition to parole easier for inmates with frequent visitors than those with fewer visitors); CARLSON & CERVERA, *supra* note 229, at 42 (describing "strong and consistent positive relationship that exists between parole success and maintaining strong family ties while in prison"); Couturier, *Mental Health*, *supra* note 249, at 105 (correlating familial interactions with

Moreover, prisoners who frequently visit with their family and friends are less likely to develop the dysfunctional behaviors associated with professional criminals.[253] Instead, these inmates are more likely to remain crime-free after release.[254]

Despite these recognized benefits, a number of factors discourage prisoners' family and friends from visiting.[255] Prisons are often located in remote, rural areas distant from the urban centers from which many prisoners come.[256] This geographic separation creates a time,

reduced recidivism among parolees). *See generally* Daniel Glaser, *Parole Successes and Failures, in* THE SOCIOLOGY OF PUNISHMENT AND CORRECTION, *supra* note 229, at 706 (describing other factors affecting parole success and failure).

[253] *See* BRODSKY, *supra* note 250, at 17 (describing major role in post-release success played by family relationships maintained during incarceration); HUMAN RIGHTS WATCH, *supra* note 239, at 104 (noting inmates less likely to relapse into crime after release if maintain regular contact with loved ones while in prison); Fenton, *supra* note 243, at 90 (describing benefits of family counseling while inmate incarcerated and its value in inmate's adjustment after release); La Vigne et al., *supra* note 249, at 316 (noting consistent correlation of family contact during incarceration with lower recidivism rates); Schuelke, *supra* note 249, at 160 (observing that maintaining close ties to community and family correlate with inmate staying crime-free after release); Jeremy Travis et al., *Families Left Behind: The Hidden Costs of Incarceration and Reentry*, URBAN INSTITUTE 6 (2003), http://www.urban.org/UploadedPDF/310882_families_left_behind.pdf (stating that maintaining family ties reduces recidivism rates).

[254] *See* BRODSKY, *supra* note 250, at 10-11 (1975) (discussing how inmate's maintenance of family relationships suggests that inmate still values free world objectives); CARLSON & CERVERA, *supra* note 229, at 26-27 (maintaining significant attachments to outside world makes prisoner less likely to acquire "prisoner identity" and adopt dysfunctional attitudes and behaviors of professional criminals); *see also* Donald Clemmer, *Informal Inmate Groups, in* THE SOCIOLOGY OF PUNISHMENT AND CORRECTION, *supra* note 229, at 424 (describing formation of primary inmate groups that share collective understandings and values); Donald Clemmer, *Prisonization, in* THE SOCIOLOGY OF PUNISHMENT AND CORRECTION, *supra* note 229, at 479-81 (describing inmate process of "prisonization" whereby inmate takes on folkways, mores, customs and general culture of penitentiary).

[255] *See* Johanna Christian, *Riding the Bus: Barriers to Prison Visitation and Family Management Strategies*, 21 J. CONTEMP. CRIM. JUST. 31, 37, 40-41 (2005) (describing potential barriers to visiting incarcerated relatives, including time, energy, money, child care, and social costs); Comfort, *In the Tube*, *supra* note 237, at 102 (discussing prison's failure to provide sufficient amenities to cover visitors' basic physical and hygienic needs); *infra* notes 256-58 (detailing various barriers to visitation).

[256] BRODSKY, *supra* note 250, at 47 (describing geographic isolation of prisons from major population centers); Christian, *supra* note 255, at 36-46 (describing geographic separation from family as consequence of incarceration); Eva Lloyd, *Prisoners' Children: The Role of Prison Visitors' Centres, in* PRISONERS' CHILDREN: WHAT ARE THE ISSUES?, *supra* note 240, at 178 (describing conditions where visitors must line up outside prison walls with "nowhere to rest, feed or change babies, get something to eat or drink, or for children to play"); *see also* Travis et al., *supra* note 253, at 1 (noting

transportation, and financial burden for potential visitors.[257] Additionally, correctional practices — reflecting the security mission of prisons — often discourage visitation.[258]

Although prison administrators continually cite their important interest in maintaining institutional security, many regulations

great distances separate incarcerated parents from their children; women prisoners average 160 miles from their children while men average 100 miles away).

[257] *See* BRODSKY, *supra* note 250, at 47 (noting that prison's geographic isolation results in time, transportation, and financial burden on visitors); BYCEL & MICHAELSON, *supra* note 224, at 73-74 (describing family who cannot visit incarcerated son because time and money required for trip); HUMAN RIGHTS WATCH, *supra* note 239, at 105 (observing that physical distance relatives must to travel to visit presents obstacle to maintaining regular contact); Christian, *supra* note 255, at 36-46 (studying hardships faced by prison visitors who ride bus from New York City to prisons throughout state); La Vigne et al., *supra* note 249, at 323 (describing most cited barriers to in-person visits as location and expense); Vincent M. Mallozzi, *On the Outside Busing In: A Long and Bittersweet Ride, Weekly, to Visit Loved Ones in Prison*, N.Y. TIMES, May 20, 2005, at B1 (describing family member's weekly trek to visit incarcerated relative that takes 8-10 hours one way); David Scharfenberg, *6 Prisons, 2 Days and a Taxi Fleet*, N.Y. TIMES, Jul. 3, 2005, at 1 (describing cab rides to correctional facilities where drivers learn about their riders' lives); *see also* Comfort, *In the Tube*, *supra* note 237, at 86 (describing lengthy and inefficient procedures required for visiting prisoners that belittles worth of family and friends' time and deprecates visit's importance). Furthermore, few prisons provide childcare facilities or personnel available outside the visiting room. *See* CARLSON & CERVERA, *supra* note 229, at 36-37 (observing that most facilities restrict children's movement during visits and do not provide special facilities such as changing areas, play areas, or refrigeration for formula). This requires family members to secure childcare or bring the child along to the visit. *See* BYCEL & MICHAELSON, *supra* note 224, at 70-71 (describing how lack of childcare facilities affect visit); CARLSON & CERVERA, *supra* note 229, at 36-37 (describing difficulty of controlling children in prison visiting environment); *see also* SHAW, *supra* note 224, at 17-25 (observing that prison administrators view prisoner's child as irrelevant to management of inmate unless it causes prisoner to become problem). While most parents reported contact with their children since their admission, a majority of both fathers and mothers in prison report never visiting with their children in person. *See* BUREAU OF JUST. STATISTICS, U.S. DEP'T OF JUST., INCARCERATED PARENTS AND THEIR CHILDREN 5 (2000) (analyzing statistics of incarcerated parents' contact with their children); Jeremy Travis et al., *supra* note 253, at 5 (citing difficulty scheduling visits, location, humiliating visiting procedures inhospitable visiting rooms, and travel expense as obstacles to parent-child visits in prison).

[258] *See* Jeremy Travis & Michelle Waul, *Prisoners Once Removed: The Children and Families of Prisoners, in* PRISONERS ONCE REMOVED 1, 9 (Jeremy Travis & Michelle Waul eds., 2005), *available at* http://www.urban.org/pubs/prisoners/chapter1.html (noting that "uncomfortable or humiliating security procedures at the prison . . . can strain even the strongest relationships"); Jeremy Travis et al., *supra* note 253, at 6 (describing how intimidating security procedures and other correctional practices impede maintenance of family ties).

governing visitors significantly exceed this purported interest.[259] Coupled with the myriad of regulations governing visitors, suspicionless vehicle searches authorize prison personnel to exert institutional control over prison visitors.[260] Under the guise of safety and security, prison officials freely access and control visitors' bodies, personal belongings, and vehicles.[261] Many visitors avoid visiting incarcerated relatives or friends because they find the prison's extensive battery of searches humiliating and degrading.[262]

Suspicionless searches of prison visitors' vehicles initiate the process of exerting institutional control over prison visitors.[263] This process intensifies as visitors travel from the prison grounds into the institution itself.[264] By organizing and processing visitors' bodies and belongings, these regulations subject visitors to a diluted version of the regulations, surveillance, and confinement that governs inmates' lives.[265] Based on their association with inmates, societal attitudes

[259] *See* AUNGLES, *supra* note 240, at 171 (describing visitors' sense that prison administrators exert arbitrary and overreaching control over visitors); Comfort, *In the Tube*, *supra* note 237, at 80 (analyzing regulations' "attempt to denude visitors and transform them into an obedient corps of unindividuated, nonthreatening entities who can be organized according to the prison's rules"); *see also* CARLSON & CERVERA, *supra* note 229, at 115 (suggesting ways to improve visitation while respecting need for security and concerns about contraband).

[260] *See* AUNGLES, *supra* note 240, at 171 ("The political relations of prison life can be manifestly extended to control over visitors."); Comfort, *In the Tube*, *supra* note 237, at 82 (describing ways correctional facility extends its penal reach to women through regulation of their time and bodies); *see also* Comfort et al., *Damn Place*, *supra* note 237, at 3 (recognizing that correctional control extends to women's bodies within prison walls during visits and at home as women strive to remain connected to absent mates).

[261] *See* AUNGLES, *supra* note 240, at 170 (describing how intrusive surveillance during visits can ruin "good visit" by undermining sense of intimacy and freedom of expression); Comfort, *In the Tube*, *supra* note 237, at 82-103 (analyzing extension of correctional facility's penal reach to prison visitors through regulation of visitors' time and bodies).

[262] *See* STERN, *supra* note 2, at 123 (observing that some prisoners forgo visiting rather than going through attendant humiliations); sources cited *supra* note 239 (describing how visiting procedures subjugate and humiliate visitors).

[263] *See* PADILLA & SANTIAGO, *supra* note 227, at 156 (describing "nasty" reception of visitors once they arrive at front gate); McDermott & King, *supra* note 240, at 62 (arguing that most sensitive interaction between staff and families occurs during search before visit).

[264] Comfort, *In the Tube*, *supra* note 237, at 85-87 (describing transition of women from legally free people to imprisoned bodies that intensifies as they move deeper into prison).

[265] *See* PADILLA & SANTIAGO, *supra* note 227, at 160 (observing that some visitors feel search symbolizes that "they too are criminals"); Comfort, *In the Tube*, *supra* note

impute criminality to friends and relatives of prisoners.[266] Prison procedures and policies that extend correctional control over visitors intensify the stigma already experienced by prisoners' family and friends.[267]

CONCLUSION

In *Neumeyer*, the Third Circuit granted prison officials unbridled discretion in searching visitors' vehicles.[268] Although prison administrators claimed these searches safeguarded institutional order, the Third Circuit never scrutinized whether vehicle searches effectively addressed the problem of contraband in prisons.[269] The

237, at 80-82, 101 (describing how process of visitation transforms visitors from legally free people to imprisoned bodies for visit's duration); *see also* CARLSON & CERVERA, *supra* note 229, at 36 (describing prison visits as brief, infrequent, and with lack of privacy).

[266] *See* BRODSKY, *supra* note 250, at 10 (describing generalization of stigma from prisoner to his family); CARLSON & CERVERA, *supra* note 229, at 15-23 (describing offenders' families as "hidden victims of crime" because stigma accompanying incarceration affects whole family); PADILLA & SANTIAGO, *supra* note 227, at 134 ("People think that, if your husband is in prison, you must be a criminal too."); Christian, *supra* note 255, at 34 (discussing how great stigma surrounding incarceration causes many family members to isolate themselves from people in their lives who could form support networks); Comfort, *In the Tube*, *supra* note 237, at 91-92 ("[P]ersonal association with a prisoner de facto erases any other privileges connected to economic or cultural capital when it comes to visitor processing. . . ."). *See generally* Jens Soring, *Another Christmas in a Prison Visiting Room: Family Gatherings Give Glimpse of Next Generation of Inmates*, 40 NAT'L CATHOLIC REP. 9 (2003) (transcribing current inmate's thoughts on family dynamics in visiting room: "In some ways it is worse if a little boy bonds with his convict father. Then the child puts on the tough-guy strut as he walks into the visiting room and brags to his hero about the lunch money extortion racket in grade school. The harder mothers object to this negative role modeling, the more irresistible the 'gangsta' life becomes to youngsters. And when their 'Daddy' tells them in the visiting room to be good and do what Momma says, they know he does not really mean it . . . ."). Some family members cope with this stigma by distancing themselves overtly or covertly from the incarcerated relative. *See* CARLSON & CERVERA, *supra* note 229, at 22 (describing methods family members use to distance themselves from offender); PADILLA & SANTIAGO, *supra* note 227, at 135 (detailing woman's efforts over eight years to keep her husband's incarceration secret); STERN, *supra* note 2, at 195 (describing families who hide relative's incarceration because of social shame).

[267] *See supra* notes 265-66 (describing stigma that attaches to those associated with inmates).

[268] Neumeyer v. Beard, 421 F.3d 210, 212-16 (3d Cir. 2005) (upholding vehicle search program even though no standards governed searches and officers conducted searches as "time and complement permit").

[269] *Id.* at 214-15.

court should have found that these searches exceeded the governmental interest and struck down the regulation.[270] The Third Circuit should require that prison officials reasonably suspect that visitors' vehicles contain concealed contraband before searching them.[271] Other courts require that prison officials satisfy this standard to search prison employees' vehicles.[272] This criterion would allow officials to safeguard internal order without unduly infringing on visitors' Fourth Amendment rights.[273] Additionally, this standard encourages prison visiting, which benefits inmates and society.[274] If inmates remain connected to their families and friends while in prison, they return to their communities with support networks that help them reintegrate into society.[275]

[270] *See supra* Part III.A (arguing that suspicionless vehicle searches exceed prison's interest in intercepting contraband).

[271] *See supra* Part III.B (arguing that courts should apply reasonable suspicion standard for searches of prison visitors' vehicles).

[272] *See supra* Part III.B (comparing standards for searches applied to prison visitors and employees).

[273] *See supra* Part III.B (contending that reasonable suspicion standard protects institutional security without unduly encroaching on visitors' privacy).

[274] *See supra* Part III.C (discussing social benefits of prison visiting).

[275] *See supra* Part III.C (discussing social benefits of prison visiting).