

KENNEDY, J., concurring

**SUPREME COURT OF THE UNITED STATES**

---

No. 03–1423

---

DARIN L. MUEHLER, ET AL., PETITIONERS *v.* IRIS  
MENA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE NINTH CIRCUIT

[March 22, 2005]

JUSTICE KENNEDY, concurring.

I concur in the judgment and in the opinion of the Court. It does seem important to add this brief statement to help ensure that police handcuffing during searches becomes neither routine nor unduly prolonged.

The safety of the officers and the efficacy of the search are matters of first concern, but so too is it a matter of first concern that excessive force is not used on the persons detained, especially when these persons, though lawfully detained under *Michigan v. Summers*, 452 U. S. 692 (1981), are not themselves suspected of any involvement in criminal activity. The use of handcuffs is the use of force, and such force must be objectively reasonable under the circumstances, *Graham v. Connor*, 490 U. S. 386 (1989).

The reasonableness calculation under *Graham* is in part a function of the expected and actual duration of the search. If the search extends to the point when the handcuffs can cause real pain or serious discomfort, provision must be made to alter the conditions of detention at least long enough to attend to the needs of the detainee. This is so even if there is no question that the initial handcuffing was objectively reasonable. The restraint should also be removed if, at any point during the search, it would be readily apparent to any objectively reasonable officer that

KENNEDY, J., concurring

removing the handcuffs would not compromise the officers' safety or risk interference or substantial delay in the execution of the search. The time spent in the search here, some two to three hours, certainly approaches, and may well exceed, the time beyond which a detainee's Fourth Amendment interests require revisiting the necessity of handcuffing in order to ensure the restraint, even if permissible as an initial matter, has not become excessive.

That said, under these circumstances I do not think handcuffing the detainees for the duration of the search was objectively unreasonable. As I understand the record, during much of this search 2 armed officers were available to watch over the 4 unarmed detainees, while the other 16 officers on the scene conducted an extensive search of a suspected gang safe house. Even if we accept as true—as we must—the factual assertions that these detainees posed no readily apparent danger and that keeping them handcuffed deviated from standard police procedure, it does not follow that the handcuffs were unreasonable. Where the detainees outnumber those supervising them, and this situation could not be remedied without diverting officers from an extensive, complex, and time-consuming search, the continued use of handcuffs after the initial sweep may be justified, subject to adjustments or temporary release under supervision to avoid pain or excessive physical discomfort. Because on this record it does not appear the restraints were excessive, I join the opinion of the Court.