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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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:
GARDY AUGUSTIN, HEIDI KANE, MARY
KATHERINE PUGLIESE, GREGG WILLS, :
STEVEN ROTH, OSCAR AVELAR, RALPH
DiLIELLO, et al., individually and on :
behalf of all others similarly
situated, :

Plaintiffs, : 99 Civ. 3126 (DRH) (ARL)

- against -

JOSEPH JABLONSKY, individually and
as Nassau County Sheriff, JOHN
and JANE DOES No. 1-100, and COUNTY
OF NASSAU, a Municipal Corporation,

: AMENDED CLASS ACTION
COMPLAINT FOR
: DECLARATORY AND
INJUNCTIVE RELIEF
: AND DAMAGES AN
DEMAND FOR TRIAL
: BY JURY

Defendants. :

-----X
Named plaintiff class representatives GARDY AUGUSTIN,
HEIDI KANE, MARY KATHERINE PUGLIESE, GREGG WILLS, STEVEN ROTH,
OSCAR AVELAR, RALPH DiLIELLO, and the putative plaintiff class, by
their attorneys, Herbst & Greenwald LLP, for their Amended
Complaint allege as follows upon information and belief:

INTRODUCTION

1. This is a civil rights action brought pursuant to
the United States Constitution, as amended, and the Civil Rights
Act of 1871, 42 U.S.C. § 1983 and the New York State Constitution.
It seeks redress for defendants' deprivation, under color of state

law, of plaintiffs' and the plaintiff class's rights, privileges, and immunities secured by the Constitution and laws of the United States and by the New York State Constitution.

2. Defendants have instituted and are continuing to enforce a policy, practice and custom pursuant to which strip and/or body cavity searches are routinely conducted wholly absent reasonable cause as required by the United States and New York State Constitutions. Defendants' policy, practice and custom of conducting strip/body cavity searches absent reasonable suspicion, is inflicted on a class of persons arrested for or charged with non-felony offenses who are admitted to the Nassau County Correctional Center in East Meadow (the "County Jail"), and strip-searched. Conducting strip search/body cavity searches on persons, including the named plaintiffs and those similarly situated, without particularized suspicion borne of the facts of an individual case, is humiliatingly invasive, degrading, unconstitutional, and flatly prohibited by settled law in this Circuit.

3. The plaintiff class seeks (1) a declaratory judgment that a strip/body cavity search of a person admitted to the County Jail, absent particularized reasonable suspicion that the admittee is concealing weapons or other contraband, is unconstitutional; (2) an order enjoining defendants from implementing or enforcing their policy, practice and custom of conducting strip/body cavity searches in the absence of particularized reasonable suspicion; (3) compensatory damages for the injuries caused by defendants'

unlawful conduct; and (4) punitive damages assessed to deter such intentional or reckless deviations from well-settled constitutional law.

JURISDICTION AND VENUE

4. This action arises under the Fourth, Fifth, Eighth, and Fourteenth Amendments to the United States Constitution and the Civil Rights Act of 1871, 42 U.S.C. § 1983, and under the New York State Constitution, Article 1, § 12.

5. The jurisdiction of this Court is predicated upon 28 U.S.C. §§ 1331, 1343(4), 1367, and 2201.

6. The acts complained of occurred in the Eastern District of New York and venue is lodged in this Court pursuant to 28 U.S.C. § 1391(b).

JURY DEMAND

7. Plaintiffs demand trial by jury in this action.

PARTIES

Named Plaintiffs

8. Plaintiff GARDY AUGUSTIN is 24 years old. He resides in the Eastern District of New York. He was arrested by Nassau County Police on or about April 27, 1997 for driving with a suspended license and was charged with a violation of the New York State Vehicle and Traffic Law, a non-felony offense.

9. Mr. Augustin was subsequently admitted to the County Jail, where he was strip searched pursuant to defendants' policy, custom and practice, without inquiry into the nature of the charge(s), the characteristics of the admittee, or the

circumstances of the arrest, and without establishment of reasonable suspicion to believe that he was concealing weapons or contraband of any kind on his person.

10. Plaintiff HEIDI KANE is 41 years old. She resides in the Eastern District of New York. She was arrested by Nassau County Police on or about October 9, 1996 for allegedly violating a Family Court temporary order of protection, a non-felony offense.

11. Ms. Kane was subsequently admitted to the County Jail, where she was strip searched pursuant to defendants' policy custom and practice, without inquiry into the nature of the charge(s), the characteristics of the admittee, or the circumstances of the arrest, and without establishment of reasonable suspicion to believe that she was concealing weapons or contraband of any kind on her person.

12. Plaintiff MARY KATHERINE PUGLIESE is 40 years old. She resides in the Eastern District of New York. She was arrested by Nassau County Police on or about February 15, 1998 for allegedly violating a Family Court order of protection, a non-felony offense.

13. Ms. Pugliesi was subsequently admitted to the County Jail, where she was strip searched pursuant to defendants' policy custom and practice, without inquiry into the nature of the charge(s), the characteristics of the admittee, or the circumstances of the arrest, and without establishment of reasonable suspicion to believe that she was concealing weapons or contraband of any kind on her person.

14. Plaintiff STEVEN ROTH is 53 years old. He resides in the Eastern District of New York. He was arrested by Nassau County Police on or about March 27, 1998 for allegedly making a telephone call in a manner likely to cause annoyance or alarm, and was charged with aggravated harassment in the second degree, a non-felony offense.

15. Mr. Roth was subsequently admitted to the County Jail, where he was strip searched pursuant to defendants' policy, custom and practice, without inquiry into the nature of the charge(s), the characteristics of the admittee, or the circumstances of the arrest, and without establishment of reasonable suspicion to believe that he was concealing weapons or contraband of any kind on his person.

16. Plaintiff GREGG WILLS is 37 years old. He resides in the Eastern District of New York. He was arrested by Nassau County Police on or about July 14, 1996 for willful nonpayment of support, a non-felony offense.

17. Mr. Wills was subsequently admitted to the County Jail, where he was strip searched pursuant to defendants' policy custom and practice, without inquiry into the nature of the charge(s), the characteristics of the admittee, or the circumstances of the arrest, and without establishment of reasonable suspicion to believe that he was concealing weapons or contraband of any kind on his person.

18. Plaintiff OSCAR AVELAR is 29 years old. He resides in the Eastern District of New York. He was arrested on or about

December 4, 1997 for allegedly committing an act of public lewdness, a non-felony offense, while sitting in his own car at a parking lot in Jones Beach. He was subsequently turned over to the Nassau County Police because of an outstanding warrant for failing to appear in court in response to two traffic tickets in or about 1993, also non-felony offenses.

19. Mr. Avelar was subsequently admitted to the County Jail, where he was strip searched pursuant to defendants' policy custom and practice, without inquiry into the nature of the charge(s), the characteristics of the admittee, or the circumstances of the arrest, and without establishment of reasonable suspicion to believe that he was concealing weapons or contraband of any kind on his person.

20. Plaintiff RALPH DiLIELLO is 43 years old. He resides in the Eastern District of New York. He was arrested on or about April 29, 1998 on a warrant charging him with a non-felony harassment offense.

21. Mr. DiLiello was subsequently admitted to the County Jail, where he was strip searched pursuant to defendants' policy custom and practice, without inquiry into the nature of the charge(s), the characteristics of the admittee, or the circumstances of the arrest, and without establishment of reasonable suspicion to believe that he was concealing weapons or contraband of any kind on his person.

Defendants

22. Defendant JOSEPH JABLONSKI was at all times material herein the Nassau County Sheriff. As Sheriff of Nassau County, he was responsible for the development, implementation and enforcement of all Nassau County Correctional practices and policies, and as such was at all times material herein a policy-maker with respect to the treatment of those admitted to the County Jail. He was likewise responsible for the training and supervision of Nassau County correctional officers and employees, and the overall administration of the County Jail. He is sued individually and in his official capacity.

23. Defendant COUNTY OF NASSAU ("County") is a duly constituted municipal corporation organized and existing under the laws of the State of New York. At all times relevant hereto, defendant County, acting through the Sheriff and its correctional supervisors, officers and employees, was responsible for the policy, practice, supervision, implementation, and conduct of all correctional matters and for the appointment, training, supervision, and conduct of all correctional personnel. In addition, at all times material herein, defendant County was responsible for ensuring that its personnel obeyed the Constitution and laws of the United States and of the State of New York.

24. Defendants "JOHN and JANE DOES No. 1-100" were at all times material herein Corrections Officers of the defendant COUNTY OF NASSAU working in the County Jail who implemented, enforced and effectuated the strip search policies that are the

subject of this action, acting in the capacity of agents, servants and employees of defendants JABLONSKY and the County, and within the scope of their employment as such. Plaintiffs are unable to determine the names of these defendants at this time, and they are sued under a fictitious designation. They are sued individually and in their official capacities.

CLASS ACTION ALLEGATIONS

25. The plaintiff class seeks a declaration that strip/body cavity searches of persons admitted to the County Jail, absent particularized reasonable suspicion that the admittee is concealing weapons or other contraband, is unconstitutional; an order enjoining defendants from conducting such unconstitutional strip searches; compensatory damages for the injuries caused by defendants' unconstitutional policy; and punitive damages.

26. Plaintiffs sue on behalf of themselves and all other similarly situated individuals, and seek to represent the class comprised of all persons who have been or will be arrested for or charged with non-felony offenses and admitted to the County Jail and strip searched pursuant to defendants' unconstitutional policy, practice and custom of strip searching such persons admitted to the County Jail without particularized reasonable suspicion.

27. The class period commences on the date three years prior to June 3, 1999, the date of the original complaint in this case, and extends to the date on which the County and Sheriff are enjoined from, or otherwise cease, implementing or enforcing their

unconstitutional policy, practice and custom of conducting strip searches of admittees without particularized reasonable suspicion.

28. The members of the class are so numerous as to render joinder impracticable. Upon information and belief, there are and continue to be thousands of persons arrested for non-felony offenses in Nassau County every year who are admitted to the County Jail and thus strip searched, all of whom are members of the class, and all of whose federal and state constitutional rights have been or will be violated by the policy, practice and custom of routinely strip searching persons admitted to the County Jail regardless of whether particularized reasonable suspicion exists.

29. In addition, upon information and belief, joinder is impracticable given the number of class members, and because many members of the class are low-income persons, may not speak English, and who for these and other reasons likely would have great difficulty in pursuing their rights individually.

30. The questions of law and fact common to the class include that the class members have common rights under the United States and New York Constitutions to be free from unconstitutional strip searches, and that defendants' conduct in routinely conducting strip searches without particularized reasonable suspicion violated those rights.

31. The named plaintiffs are adequate representatives of the class. The violations of law alleged by the named plaintiffs stem from the same course of conduct by defendants -- routine, blanket strip searching of every person admitted to the County Jail

-- that violated and continue to violate the rights of members of the class; the legal theory under which the named plaintiffs seek relief is the same or similar to that on which the class will rely. In addition, the harm suffered by the named plaintiffs is typical of the harm suffered by absent class members. The named plaintiffs have the requisite personal interest in the outcome of this action and will fairly and adequately protect the interests of the class.

32. The named plaintiffs are represented by Herbst & Greenwald LLP. Herbst & Greenwald LLP specializes in civil rights cases and has litigated a wide variety of civil rights and other actions against governmental entities and their employees. Herbst & Greenwald LLP is presently plaintiff's counsel in this Court in Shain v. County of Nassau, et al., 96 Civ. 3774 (LDW), the first case to challenge the constitutionality of Nassau County's strip search policies at the Jail. On June 1, 1999, this Court granted partial summary judgment in that case to plaintiff, holding unconstitutional defendants' policy of routinely strip searching all non-felony arrests remanded to the County Jail without reasonable suspicion that the arrestee is concealing weapons or other contraband. Herbst & Greenwald LLP has the resources, expertise and experience to prosecute this action. Counsel for the plaintiffs know of no conflicts among members of the class or between the firm and members of the class.

33. A class action is superior to other available methods for the fair and efficient adjudication of this controversy because: (a) the prosecution of thousands of separate actions would

be inefficient and wasteful of legal resources; (b) the members of the class may be scattered throughout New York State and the United States and are not likely to be able to vindicate and enforce their Constitutional and statutory rights unless this action is maintained as a class action; (c) the issues raised can be more fairly and efficiently resolved in the context of a single class action than piecemeal in many separate actions; (d) the resolution of litigation in a single forum will avoid the danger and resultant confusion of possible inconsistent determinations; (e) the prosecution of separate actions would create the risk of inconsistent or varying adjudications with respect to individuals pursuing claims against defendants which would establish incompatible standards of conduct for defendants; (f) defendants have acted and will act on grounds applicable to all class members, making final declaratory and injunctive relief on behalf of all members necessary and appropriate; and (g) questions of law and/or fact common to members of the class especially on issues of liability predominate over any question, such as that of individual damages, that affect individual members.

FACTS APPLICABLE TO THE ENTIRE CLASS

34. The United States Constitution and New York State Constitution prohibit state officials from performing strip searches on persons who have been arrested for or charged with non-felony offenses unless the officer has a particularized reasonable suspicion that the arrestee is concealing a weapon or other contraband.

35. The defendants know, and at all times material herein have known, that they may not institute, enforce, or permit enforcement of a policy or practice of conducting strip searches without particularized reasonable suspicion.

36. The defendants' policy, practice and custom of routinely strip searching all persons admitted to the County Jail without regard to particularized reasonable suspicion has been promulgated, effectuated and enforced in bad faith and contrary to clearly established law.

37. Reasonable suspicion to conduct a strip search may only arise from the particular circumstances antecedent to the search, such as the nature of the crime charged, the particular characteristics of the admittee, and the particular circumstances of the arrest.

38. In clear defiance of constitutional requirements, the defendants have promulgated, implemented, enforced, and failed to rectify a policy, practice and custom mandating the strip search of all persons admitted to the County Jail without any requirement of reasonable suspicion, or indeed suspicion of any sort. This policy made strip searching of each admittee routine; neither the nature of the offense charged, the characteristics of the individual, nor the particular circumstances of the arrest were considered by the defendants in carrying out the unlawful policy, practice and custom of strip searching everyone.

39. Estimated conservatively, thousands of persons have been or will be unconstitutionally strip searched, absent an

inquiry into or the establishment of particularized reasonable suspicion to justify the strip searches, pursuant to the policy described above.

40. As a direct result of the unlawful strip searches conducted pursuant to the policy, each victim of these unlawful strip searches -- each member of the class, including the named plaintiff -- has suffered or will suffer psychological pain, suffering and mental anguish.

THE EXPERIENCES OF THE NAMED PLAINTIFFS

(1) Gardy Augustin

41. Mr. Augustin's experience is representative of the experiences of the putative class members. On or about April 27, 1997, at about 4 a.m., plaintiff was stopped by the police while driving his car in Nassau County. Mr. Augustin had never been convicted of a felony, or of an offense of violence or involving the possession or use of weapons, drugs or other contraband.

42. Upon being taken into custody, Mr. Augustin was processed at the Third Precinct in Westbury, New York. At the precinct, Mr. Augustin was strip searched in the bathroom by a police officer.

43. Mr. Augustin was subsequently taken to Police Headquarters in Garden City, where he was strip searched again. On April 28, 1997, Mr. Augustin was transported to the District Court in Hempstead, where he was arraigned and bail set. Because he could not immediately pay bail, he was remanded to the custody of the Sheriff and taken to the County Jail.

44. Pursuant to defendants' policy, practice and custom, Mr. Augustin was strip searched. He was directed to remove all of his clothing, including his underwear, while being observed by John Does 1-4, who were conducting and observing the strip searches of other admittees to the Jail who were being strip searched at the same time in the same room. Mr. Augustin was directed to open his mouth, stick his tongue out, up, down, left and right. He was then ordered to lift his genitals to facilitate a frontal visual inspection. He was then directed to turn around, spread his butt cheeks to facilitate a visual inspection of his anal cavity, and then to squat and cough. Mr. Augustin was then ordered to get dressed in an orange uniform, and he was then escorted to a cell where he spent the balance of the night and part of the next day, until a relative could secure and post his bail, at which time he was released.

45. This strip search was conducted in a large room, without privacy, in view of other admittees who were being strip searched at the same time and corrections officers and other persons present in the room at the same time.

46. There was no reasonable suspicion to believe that Mr. Augustin was concealing a weapon or other contraband. Indeed, no inquiry was made of Mr. Augustin that could have given rise to the requisite reasonable suspicion. Moreover, because Mr. Augustin had already been in the custody of Nassau County Police Officers, and had been thoroughly searched (and unlawfully strip searched) prior to his admission to the Jail, the defendants knew or should

have known that there was no reason to suspect that Mr. Augustin possessed any weapons or contraband.

47. As a direct and proximate result of the unlawful strip searches conducted pursuant to defendants' policy, practice and custom, Mr. Augustin has suffered and continues to suffer psychological pain, suffering and mental anguish.

(2) Heidi Kane

48. Ms. Kane's experience is also representative of the putative class members. On or about October 9, 1996, at approximately 3 p.m., she voluntarily surrendered at the Nassau County police precinct in Baldwin and was arrested for allegedly violating a Family Court temporary order of protection earlier obtained by her husband. Ms. Kane had never before been arrested.

49. Ms. Kane was subsequently transported to Nassau County Police Headquarters, and then to the County Jail and lodged there for the night prior to appearing in Family Court the next day.

50. Pursuant to defendants' policy, practice and custom, Ms. Kane was strip searched. She was directed to remove all her clothes, including her bra, panty hose and underwear. She was directed to open her mouth. Jane Doe 5, who was conducting the strip search, ran her fingers through Ms. Kane's hair and looked at the front of her entire body. Ms. Kane was directed to lift her arms over her head to facilitate the visual inspection. Ms. Kane was then directed to turn around, bend over and spread her butt cheeks to facilitate an inspection of her anal cavity.

51. The next day Ms. Kane was transported to court, where the charge(s) were dismissed. Prior to leaving the County Jail, Ms. Kane wore only her dress and shoes, because she was not permitted to have her bra, underwear or panty hose back. After the charges were dismissed in Court, Ms. Kane was transported back to the County Jail. There, she was told that she could get her undergarments back only if she was again admitted to the Jail and strip searched. Ms. Kane declined to re-enter the Jail, and abandoned her undergarments.

52. There was no reasonable suspicion to believe that Ms. Kane was concealing a weapon or other contraband. Indeed, no inquiry was made of Ms. Kane that could have given rise to the requisite reasonable suspicion.

53. As a direct and proximate result of the unlawful strip search conducted pursuant to defendants' policy, practice and custom, Ms. Kane has suffered and continues to suffer psychological pain, suffering and mental anguish.

(3) Mary Katherine Pugliese

54. Ms. Pugliese's experience was also representative. On or about February 15, 1998, at approximately 6:15 p.m, she was arrested for allegedly going to her ex-husband's home and ringing his doorbell, in violation of a Family Court temporary order of protection which prohibited her presence at his home. She was subsequently charged with criminal contempt in the second degree, a misdemeanor. Ms. Pugliese had never before been arrested.

55. Upon being taken into custody, Ms. Pugliese was transported to the police precinct in Baldwin, New York, and then to Nassau County Police Headquarters, where she was fingerprinted and photographed. She was then transported to the County Jail, where she was lodged for the night prior to appearing in court the next morning.

56. Pursuant to defendants' policy, practice and custom, Ms. Pugliese was strip searched. She was directed to remove all of her clothing. Ms. Pugliese protested, but ultimately complied. Jane Doe No. 6, who conducted the strip search, conducted a full frontal visual inspection of Ms. Pugliese's naked body. Ms. Pugliese was directed to run her hands through her hair and to shake her hair out. Jane Doe No. 6 then looked in her mouth. Ms. Pugliese was then directed to lift up her breasts to make sure there was nothing underneath. She was then directed to lift up her arms to facilitate a visual inspection of her armpits. Ms. Pugliese was then directed to spread her legs and squat, and to lift each leg in turn, to see if she was concealing anything in her vaginal cavity. Ms. Pugliese was then directed to turn around, bend over, cough, and spread her butt cheeks, to facilitate a visual inspection of her anal cavity.

57. This strip search was conducted in a large room, without privacy, in the presence of another female admittee, who was being strip searched at the same time, and who was in a position to see Ms. Pugliese naked.

58. The next morning, Ms. Pugliese was transported to court, where bail was set. Her parents and siblings were present in court, and posted the bail shortly thereafter. Nevertheless, Ms. Pugliese was returned to the Jail and strip searched again, by Jane Doe No. 7.

59. This second strip search, which was similar to the first, was also conducted without privacy, in the presence of another female admittee, who was being strip searched at the same time, and who was in a position to see Ms. Pugliese naked. Ms. Pugliese also observed that male inmates of the Jail, working in what looked like a laundry room, were in a position to see into the room in which the strip searches were being conducted through an open window.

60. Later that day, prior to her release, Ms. Pugliese was forced to strip naked and change back into her clothes in the same room in which the strip searches had earlier been conducted, under the supervision of a male corrections officer, who positioned himself at the door to the room, because a female corrections officer was unavailable.

61. There was no reasonable suspicion to believe that Ms. Pugliese was concealing a weapon or other contraband.

62. As a direct and proximate result of the unlawful strip searches conducted pursuant to defendants' policy, practice and custom, Ms. Pugliese has suffered and continues to suffer psychological pain, suffering and mental anguish.

(4) Steven Roth

63. Mr. Roth's experience is also representative. On or about March 27, 1998, at approximately 10 a.m., Mr. Roth, a public school teacher for 31 years, was arrested in front of his high school class and was subsequently charged with aggravated harassment, a misdemeanor offense, involving a threatening telephone communication which had allegedly occurred on or about March 10, 1998. (The call never occurred and the charge(s) were subsequently dismissed). Mr. Roth had never been convicted of any crime.

64. Upon being taken in to custody, Mr. Roth was processed by the Nassau County Fifth Detective Squad, and was then transported to the Nassau County Medical Center. Mr. Roth has a heart condition, had had three prior heart attacks, and had a stent in his right coronary artery. After evaluation at the hospital Mr. Roth was transported to the County Jail for the remainder of the night prior to appearing in court the next day.

65. Pursuant to defendants' policy, custom and practice, Mr. Roth was strip searched. Upon arrival at the Jail, Mr. Roth was ordered to remove all of his clothing with the exception of his underwear. John Doe No. 8, who was conducting the strip search, ran his hands up and down Mr. Roth's body. Mr. Roth was then directed to turn around and bend over.

66. The next morning, Mr. Roth was transported to court, where bail was set. Although bail was posted later that morning,

Mr. Roth was subsequently transported back to the Jail, and continued to be held in custody until approximately 4 p.m.

67. Prior to being released from the Jail, Mr. Roth was strip searched again, by John Doe No. 9, this time while completely naked. Mr. Roth was again directed to turn around and bend over, and he was directed to spread his butt cheeks to facilitate a visual inspection of his anal cavity.

68. This strip search was conducted without privacy, in the presence of other admittees who were also strip searched prior to being released.

69. There was no reasonable suspicion to believe that Mr. Roth was concealing a weapon or other contraband. Indeed, no inquiry was made of Mr. Roth that could have given rise to the requisite reasonable suspicion. Moreover, because Mr. Roth had already been in the custody of Nassau County Police Officers, and had been searched prior to his admission to the Jail, the defendants knew or should have known that there was no reason to suspect that Mr. Roth possessed any weapons or contraband.

70. As a direct and proximate result of the unlawful strip searches conducted pursuant to defendants' policy, practice and custom, Mr. Roth has suffered and continues to suffer psychological pain, suffering and mental anguish.

(5) Gregg Wills

71. Mr. Wills's experience was also representative. On or about July 14, 1996, Mr. Wills was arrested by Nassau County

police on a civil charge of willful nonpayment of support. Mr. Wills had never been arrested before.

72. Upon being taken into custody, Mr. Wills was transported to and processed at Nassau County Police Headquarters. He was subsequently lodged at the County Jail for the night prior to appearing in Family Court the next morning.

73. Pursuant to defendants' policy, practice and custom, Mr. Wills was strip searched. Upon his initial admission to the Jail, he was directed by John Doe No. 10, the corrections officer conducting the strip search, to remove all his clothes. Completely naked, Mr. Wills was directed to face the wall. After checking the bottom of his feet, John Doe No. 10 directed Mr. Wills to bend over to facilitate a visual inspection of his anal cavity.

74. The next morning, Mr. Wills appeared in Family Court, where bail was set. Mr. Wills could not post the bail, and he was transported back to the Jail, where, pursuant to defendants' policy, practice and custom, he was strip searched again, by John Doe No. 11.

75. Mr. Wills subsequently appeared in Family Court again, where the amount of his bail was reduced. Upon his return to the County Jail, Mr. Wills was strip searched again, by John Doe No. 12.

76. On or about July 19, 1996, Mr. Wills returned to the Family Court, where the amount of his bail was reduced again. Upon his return to the Jail again, Mr. Wills was strip searched for a

fourth time, by John Doe No. 13, notwithstanding the fact that the reduced bail had been or was to be posted that same day.

77. There was no reasonable suspicion to believe that Mr. Wills was concealing a weapon or other contraband. Indeed, no inquiry was made of Mr. Wills that could have given rise to the requisite reasonable suspicion.

78. As a direct and proximate result of the unlawful strip searches conducted pursuant to defendants' policy, practice and custom, Mr. Wills has suffered and continues to suffer psychological pain, suffering and mental anguish.

(6) Oscar Avelar

79. Mr. Avelar's experience is representative as well. On or about December 4, 1997, Mr. Avelar was arrested for, and subsequently charged with, allegedly committing an act of public lewdness, a class B misdemeanor. At the time of his arrest, Mr. Avelar was sitting in his car, which has dark tinted windows, in an empty Jones Beach parking lot, eating and listening to music. Mr. Avelar had never been arrested before.

80. During his processing at the Jones Beach police station, a warrant was discovered charging Mr. Avelar with allegedly failing to appear on an adjourned date in or about 1993 to dispose of two traffic violations. Mr. Avelar was therefore turned over to the Nassau County police. The processing by both the Jones Beach and Nassau County police included a pat search and a search of his shoes for weapons and other contraband. He had none.

81. The next morning, Mr. Avelar appeared in court, where bail was set. Mr. Avelar had no money on him, but called someone to come and post bail for him.

82. Later that day, Mr. Avelar was transported to the County Jail where, pursuant to defendants' policy, practice and custom, he was strip searched. He was directed to take off all his clothes, and was required to submit to a frontal visual inspection of his entire body by John Doe No. 14, who was conducting the strip search. Mr. Avelar was then directed to turn around and squat. Shortly after the strip search procedure was completed, Mr. Avelar was notified that his bail had been posted, and he was released.

83. The strip search occurred in a room without privacy, in the presence of other admittees who were also strip searched.

84. There was no reasonable suspicion to believe that Mr. Avelar was concealing a weapon or other contraband. Indeed, no inquiry was made of Mr. Avelar that could have given rise to the requisite reasonable suspicion. Moreover, because Mr. Avelar had already been in the custody of Jones Beach and Nassau County Police Officers, and had been thoroughly searched prior to his admission to the Jail, the defendants knew or should have known that there was no reason to suspect that Mr. Avelar possessed any weapons or contraband.

85. As a direct and proximate result of the unlawful strip searches conducted pursuant to defendants' policy, practice and custom, Mr. Avelar has suffered and continues to suffer psychological pain, suffering and mental anguish.

(7) Ralph DeLiello

86. Mr. DeLiello's experience was also representative. On or about April 29, 1998, he was arrested on a warrant for misdemeanor harassment and was processed by the Eighth Precinct Detective Squad in Levittown, New York. Mr. DeLiello had never before been convicted of a felony, or of an offense of violence or involving the possession or use of weapons, drugs or other contraband.

87. After being processed, Mr. DeLiello was taken to a detention facility in Garden City, New York, but because it was full, he was transported to the County Jail where he was lodged for the night prior to appearing in court in the morning.

88. Pursuant to the defendants' policy, practice and custom, Mr. DeLiello was strip searched. He was directed to remove all of his clothing, including his underwear. John Doe No. 15, who conducted the strip search, looked into his mouth and under his arms. Mr. DeLiello was subjected to a full frontal visual inspection, including his frontal genitalia. He was then directed to turn around and squat down, bending forward to facilitate a visual inspection of his anal cavity.

89. The next morning, Mr. DeLiello was transported to court, where he was ordered released on his own recognizance. Notwithstanding that order, Mr. DeLiello was nevertheless transported back to the County Jail, strip searched again, by John Doe No. 16, and was not released until later that day.

90. There was no reasonable suspicion to believe that Mr. DeLiello was concealing a weapon or other contraband. Indeed, no inquiry was made of Mr. DeLiello that could have given rise to the requisite reasonable suspicion.

91. As a direct and proximate result of the unlawful strip searches conducted pursuant to defendants' policy, practice and custom, Mr. DeLiello has suffered and continues to suffer psychological pain, suffering and mental anguish.

FIRST CLAIM FOR RELIEF

(42 U.S.C. § 1983)

92. Plaintiffs repeat and reallege paragraphs 1 through 91 as if the same were fully set forth at length herein.

93. By implementing, promulgating, and continuing to enforce and/or effectuate a policy, practice and custom pursuant to which the named plaintiffs and other members of the plaintiff class were or will be strip searched absent the requisite reasonable suspicion, the defendants have deprived and will continue to deprive each and every plaintiff and member of the plaintiff class of rights, remedies, privileges and immunities guaranteed to every citizen and resident of the United States, in violation of 42 U.S.C. § 1983, and of rights guaranteed by the Fourth, Fifth, Eighth and Fourteenth Amendments of the United States Constitution, conspired among themselves to do so (taking numerous overt steps in furtherance thereof), and failed to prevent one another from doing so.

94. The defendants acted under pretense and color of state law and in their individual and official capacities and within the scope of their employment. Said acts by said defendants were beyond the scope of their jurisdiction, without authority of law, and in abuse of their powers, and said defendants acted willfully, knowingly, and with the specific intent to deprive plaintiffs of their constitutional rights secured by 42 U.S.C. § 1983, and by the Fourth, Fifth, Eighth and Fourteenth Amendments to the United States Constitution.

95. As a direct and proximate result of the misconduct and abuse of authority detailed above, each and every plaintiff and member of the plaintiff class has suffered and continues to suffer psychological pain, suffering and mental anguish.

SECOND CLAIM FOR RELIEF

(New York State Constitution Art. 1, § 12)

96. Plaintiff repeats and realleges paragraphs 1 through 95 as if the same were fully set forth at length herein.

97. By implementing, promulgating, and continuing to enforce and effectuate a policy, practice and custom pursuant to which the named plaintiffs and other members of the plaintiff class were or will be strip searched absent the requisite reasonable suspicion, the defendants have deprived and will continue to deprive each and every plaintiff and member of the plaintiff class of rights, remedies, privileges and immunities guaranteed to every citizen and resident of the State of New York in violation of the New York State Constitution, Article 1. § 12, conspired among

themselves to do so (taking numerous overt steps in furtherance thereof), and failed to prevent one another from doing so.

98. Defendants acted under pretense and color of state law and in their individual and official capacities and within the scope of their employment. Said acts by said defendants were beyond the scope of their jurisdiction, without authority of law, and in abuse of their powers, and said defendants acted willfully, knowingly, and with the specific intent to deprive plaintiffs of their rights secured by the New York State Constitution, Article 1, § 12.

99. As a direct and proximate result of the misconduct and abuse of authority detailed above, each and every plaintiff and member of the plaintiff class has suffered and continues to suffer psychological pain, suffering and mental anguish.

IRREPARABLE HARM

100. If defendants' policy, practice and custom of conducting strip searches absent particularized reasonable suspicion is not enjoined, the named plaintiffs and members of the plaintiff class will be subjected to immediate and irreparable injury for which no adequate remedy at law exists in that members of the plaintiff class will suffer continued violations of their rights under the Fourth, Fifth, Eighth and Fourteenth Amendments to the United States Constitution and Article 1, § 12 of the New York State Constitution.

RELIEF REQUESTED

WHEREFORE, plaintiff asks this Court:

- A. To enter an order certifying this action as a class action pursuant to Fed. R. Civ. P. 23(a) and (b) for the plaintiff class described herein and naming plaintiffs herein as the class representatives.
- B. To enter a judgment declaring unconstitutional defendants' policy, practice and custom of strip searching persons admitted to the County Jail even in the absence of particularized reasonable suspicion that such person is concealing weapons or other contraband.
- C. To issue an order enjoining defendants from implementing or enforcing the aforesaid unconstitutional policy, practice and custom.
- D. To award the named plaintiffs and members of the class compensatory damages in an amount to be determined at trial.
- E. To award the named plaintiffs and members of the class punitive damages in an amount to be determined at trial.
- F. To award the named plaintiffs and members of the class reasonable attorney's fees and costs.
- G. To grant such other and further relief to the named plaintiffs and members of the class as this Court deems just and proper.

Dated: July 19, 1999
New York, New York

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