

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

KENARD PITNEY, Individually and	:	CIVIL ACTION
on behalf of a class of similarly	:	
situated individuals	:	
	:	
v.	:	NO. 19-799
	:	
CITY OF CHESTER, et al.	:	JURY TRIAL DEMANDED

**AMENDED CLASS ACTION COMPLAINT**

Plaintiff Kenard Pitney, individually and on behalf of a class of similarly situated individuals, for his Complaint herein, alleges the following on information and belief, except as to the allegations concerning his individual claim which are asserted upon personal knowledge:

**INTRODUCTION**

1. This is a class action brought to address the deprivation by the City of Chester (“defendant”) of rights secured to Kenard Pitney (“plaintiff”) and the proposed Class by the Constitution of the United States of America and the Constitution and laws of the Commonwealth of Pennsylvania. Since 1995, the City of Chester has enforced an illegal, unlawful policy requiring that all individuals placed in a holding cell must be subjected to an illegal, humiliating, degrading strip search, without any consideration of the nature of the crime, the circumstances of the arrest, and the particular characteristics of the arrestee. These strip searches, which include a search of the arrestees’ genitalia, are conducted despite the lack of any suspicion that the arrestee may be carrying contraband. These policies are derived from the written procedures of the City of Chester and/or the City of Chester Police Department. They also stem from the defendant’s deliberate indifference to the rights of persons detained by the defendant.

2. The policy of the City of Chester to force all individuals who are to be placed in a holding cell to be subjected to a humiliating strip search, including a search of the genitalia, despite the fact that those individuals may not be held with any other arrestees and are often being held for only a matter of minutes while their paperwork is processed. Critically, these individuals are stripped searched even through there is no suspicion that they might be carrying contraband and without any consideration of the nature of the crime charged, the circumstances of the arrest or the particular characteristics of the arrestee. In short, every citizen who is placed in a holding cell, even if they are to be held alone without any contact with any other detainees and despite the fact that they may be arrested for the most minor of offenses, is subjected to a humiliating strip search including the inspection of their genitalia .

3. Plaintiff brings this action on behalf of himself and a class of individuals who were not only strip searched after being arrested for minor offenses, but who were strip searched either (a) prior to an appearance before a judge or judicial officer with authority to release the detainee and/or (b) without being given a reasonable opportunity to post bail. These searches were conducted despite the fact that the individuals were not going to be placed in the general population at a correctional facility. Blanket searches conducted in this fashion constitute a violation of the Constitutional rights of plaintiff and the class members he seeks to represent. Specifically, these actions - - which were carried out pursuant to defendant's policy - - were taken against the plaintiff in violation of his rights under the Fourth Amendment of the United States' Constitution.

4. Plaintiff seeks monetary damages individually and for each member of the proposed Class who have suffered from the wrongful actions of the defendant described herein, a declaration that defendant's policies are unconstitutional and/or unlawful, and an injunction

precluding defendant from continuing to violate the rights of the persons detained and/or placed in its custody.

### **JURISDICTION**

5. This Court has jurisdiction over this action under the provisions of 28 U.S.C. §§1331, 1341 & 1343 because it is filed to obtain compensatory damages and injunctive relief for the deprivation, under color of state law, of the rights of citizens of the United States secured by the Constitution and federal law pursuant to 42 U.S.C. §§ 1981 and 1983. This Court also has jurisdiction over this action under the provisions of 28 U.S.C. §2201, as it is filed to obtain declaratory relief relative to the constitutionality of the policies of a local government. This Court has supplemental jurisdiction over plaintiff's pendant state law claims under 42 U.S.C. §1367(a) inasmuch as plaintiff's state law claims are so related to plaintiff's federal claims that they form part of the same case or controversy as the federal claims.

6. Venue is proper under 28 U.S.C. §1391(b)(2) because a substantial part of the events or omissions giving rise to plaintiff's and the class' claims occurred within this judicial district.

### **PARTIES**

7. Plaintiff Kenard Pitney is a resident of the Commonwealth of Pennsylvania and at all times relevant to this action was present in the City of Chester, Pennsylvania.

8. Defendant, City of Chester, is a municipality of the Commonwealth of Pennsylvania and owns, operates, manages, directs and controls the Chester Police Department. At all times relevant hereto, the City of Chester, as well as its agents, servants and employees, was responsible for the policies, practices, supervision, implementation and conduct of all matters pertaining to the Chester Police Department, as well as for the appointment, training,

supervision and conduct of all Chester Police Department personnel. In addition, at all relevant times, the City of Chester was responsible for enforcing the rules of the City of Chester and/or the Chester Police Department and for ensuring the personnel employed by the City of Chester and the Chester Police Department obeyed the Constitution and laws of the United States and the Commonwealth of Pennsylvania.

### **CLASS ACTION ALLEGATIONS**

9. Plaintiff brings this action pursuant to Rules 23(a) and (b) of the Federal Rules of Civil Procedure on behalf of himself and a Class of similarly situated individuals who were arrested for misdemeanors or other minor violations and who were unlawfully and unconstitutionally strip-searched upon being detained and/or placed into custody by defendant.

10. Specifically, the Class that plaintiff seeks to represent with regard to claims brought pursuant to violations of rights protected by the United States Constitution, the Pennsylvania Constitution and other applicable laws is defined as follows:

All persons who have been (1) detained by and/or placed in the custody of the Chester Police Department or any facility under the authority of the City of Chester (2) as a result of being arrested and/or charged with non-indictable offenses such as: civil enforcement offenses, i.e., child support enforcement arrears, traffic offenses, petty disorderly offenses, disorderly persons offenses, misdemeanors, contempt proceedings, failure to pay financial fines, penalties and/or costs in like matters as set forth above; and/or failure to appear at any court proceedings on like matters as set forth above; and (3) who were strip-searched upon their entry into detainment and/or custody and/or were strip-searched prior to an appearance before a judge or judicial officer who had the authority to release the person as referred to above from detainment and/or custody and/or (4) persons who appeared before a judge or judicial officer in the matters referred to above who were not released from detainment and/or custody and who were strip-searched as set forth above, and (5) the strip-search was conducted and/or performed according to the City of Chester's blanket strip search policy, that is, without reasonable suspicion and/or probable cause based on objective and articulable facts that

the aforesaid person or persons possessed controlled substances, weapons and/or other contraband. The class includes persons who were strip searched on or after March 1, 1995 and extends to the date on which the City of Chester and the Chester Police Department are enjoined and/or cease to strip-search the class of persons referred to above.

11. This Amended Complaint relates back to the original filing as it “asserts a claim . . . that arose out of the conduct, transaction or occurrence set out . . . in the original pleading” under Fed.R.Civ.P. 15(c). No new facts need to be pled from the Complaint as filed.

12. This action has been brought and may properly be maintained as a class action under federal law and satisfies the numerosity, commonality, typicality, and adequacy requirements for maintaining a class action under Fed.R.Civ.P. 23(a).

13. The members of the Class are so numerous as to render joinder impracticable. Upon information and belief there have been thousands of citizens arrested for non-felony and/or minor offenses who were placed into the custody of the City of Chester - - most, if not all, of whom are members of the proposed Class. Upon information and belief, the size of the proposed Class totals thousands of individuals, some of whom have had their civil rights violated on multiple occasions.

14. Upon information and belief, joinder of all of these individuals is impracticable because of the large number of Class members and the fact that the Class members are likely disbursed over a large geographical area, with some members presently residing outside of Pennsylvania and this Judicial District. Furthermore, upon information and belief, many members of the Class are low-income persons, may not speak English, and likely would have great difficulty pursuing their rights individually.

15. Common questions of law and fact exist as to all members of the Class that predominate over any questions that affect only individual members of the Class. The

predominate common questions of law and fact include, without limitation, questions as to whether the defendant's written and/or *de facto* policies and practices of strip-searching individuals who are charged with non-indictable charges or minor violations as defined in paragraph 10 when transferred to and/or placed into detention and/or custody of the City of Chester, were illegal and/or in violation of the Fourth, Eighth and Fourteenth Amendments to the United States Constitution, the Pennsylvania Constitution, Pennsylvania law and/or other applicable law, and whether such written and/or *de facto* policy and practices existed during the Class period.

16. Plaintiff's claims are typical of the claims of the members of the Class: Plaintiff and all members of the Class have sustained damages arising out of defendant's course of conduct. The harms suffered by plaintiff are typical of the harms suffered by the Class.

17. The representative plaintiff has the requisite personal interest in the outcome of this action and will fairly and adequately protect the interests of the Class.

18. The representative plaintiff has retained counsel with substantial experience in the prosecution of class actions and civil rights litigation. Plaintiff's counsel has the resources, expertise, and experience to successfully prosecute this action against the City of Chester. No conflicts exist between plaintiff and members of the Class, or between counsel and members of the Class.

19. This action seeks, in part, declaratory and injunctive relief. As such, the plaintiff seeks class certification under Fed.R.Civ.P. 23(b)(2), in that all members of the proposed Class were subjected to the same policies and acts of deliberate indifference. In short, defendant City of Chester acted on grounds generally applicable to all members of the Class.

20. In addition to certification under Fed.R.Civ.P. 23(b)(2), and in the alternative, plaintiff seeks certification under Fed.R.Civ.P. 23(b)(3).

21. A class action is superior to other available methods for the fair and efficient adjudication of this controversy, since joinder of all individual members of the Class is impracticable given the large number of members of the Class and the fact that they are disbursed over a large geographical area. Furthermore, the expenses and burden of individual litigation will make it difficult or impossible for individual members of the Class to redress the wrongs done to them. The cost to the federal court system of adjudicating thousands of individual cases would be enormous. Individualized litigation would also magnify the delay and expense to all parties and the court system. By contrast, the conduct of this action as a class action in this District presents far fewer management difficulties, conserves the resources of the parties and the court system, and protects the rights of each member of the Class.

22. Upon information and belief, there are no other actions pending to address the defendant's flagrant violation of the civil rights of thousands of individuals, even though upon information and belief the defendant has maintained its illegal practices for many years.

23. As an alternative to certification under Fed.R.Civ.P. 23(b)(3), plaintiff also seeks partial certification under Fed.R.Civ.P. 23(c)(4).

### **FACTUAL ALLEGATIONS**

#### **Facts Applicable To The Class Generally**

24. The Fourth Amendment of the United States Constitution prohibits government agencies and state officials, such as the defendant in this action and those it supervises, from performing strip searches of arrestees who have been charged with misdemeanors or other minor

crimes unless there is a reasonable suspicion that the arrestee is concealing a weapon, drugs, or other contraband.

25. The City of Chester has instituted a written and/or *de facto* policy, custom or practice of strip searching all individuals who enter its custody and/or are detained by the defendant, regardless of the nature of the individual's charged crime and without the presence of reasonable suspicion to believe the individual was concealing a weapon, drugs or other contraband.

26. The City of Chester knows that it may not institute, enforce or permit enforcement of a policy or practice of conducting strip searches without the presence of particularized, reasonable suspicion. This Court and the Federal Courts of Appeal have stated repeatedly that state officials may not strip search individuals charged with misdemeanors or other minor violations in the absence of particularized, reasonable suspicion.

27. The defendant's written and/or *de facto* policy, practice and custom mandating wholesale strip searches of all misdemeanor and minor violation arrestees has been promulgated, effectuated and/or enforced in bad faith and contrary to clearly established law. A reasonable suspicion to conduct a strip search may only emanate from particular circumstances antecedent to the search, such as the nature of the crime charged, a particular characteristic of the arrestee, and/or the circumstances of the arrest.

28. The City of Chester has promulgated, implemented, enforced and/or failed to rectify a written and/or *de facto* policy, practice or custom of strip searching all individuals placed into custody and/or detained by the defendant without any reasonable suspicion, or indeed suspicion of any sort, that such individuals were concealing a weapon, drugs or other contraband. This written and/or *de facto* policy made the strip searching of pre-trial detainees routine; neither



the nature of the offense charged, the characteristics of the arrestee, nor the circumstances of a particular arrest were relevant to the enforcement of the policy, practice and custom of routine strip searches. The written and/or *de facto* policy, practice or custom of strip searching applied to all individuals “charged by the Chester Police, or any other law enforcement agency with a violation of law which will require that person to be placed in a locked cell or having contact with others in custody” with the limited exception of those transported to Chester Lockup “from another confinement facility who has remained under guard for the entire period of transport.”

29. Pursuant to this written and/or *de facto* policy, each member of the Class, including the named plaintiff, was the victim of a routine strip search upon being placed into custody and/or detained by the defendant. These searches were conducted without inquiry into or establishment of reasonable suspicion to support a strip search, and in fact, such searches were not supported by such a reasonable suspicion. Strip searches were and are conducted for individuals arrested for, among other innocuous offenses, driving while intoxicated, harassment and trespassing.

30. As a direct and proximate result of unlawful strip searches conducted pursuant to this written and/or *de facto* policy, the victims of the unlawful strip searches - - that is, each member of the Class, including the named plaintiff - - has suffered and will suffer psychological harm, pain, humiliation, suffering and mental anguish.

#### **Facts Applicable To The Named Plaintiff**

31. Plaintiff Kenard Pitney’s experiences are representative and corroborative of what members of the Class were subjected to.

32. As a detainee of the defendant, it is plaintiff Kenard Pitney’s Constitutional right to be free of unreasonable searches and seizures.

33. On or about May 18, 2018, plaintiff visited the Harrah's Casino located in Delaware County, Pennsylvania.

34. At approximately 9:30 p.m., plaintiff exited the casino and went to the valet in the casino parking lot. Plaintiff instructed the valet that he wanted to retrieve some items that he left in the car.

35. Plaintiff then walked over to where his vehicle was parked and waited for the valet to arrive with his keys so that plaintiff could retrieve his items.

36. After waiting for a few minutes, a security guard from Harrah's approached the plaintiff and advised him that the valet was not going to give him the keys to his vehicle as the valet believed it would be best for plaintiff to either call a cab or Uber, or make other arrangements to get home.

37. Plaintiff advised the security guard that he wished to call a friend to drive him home. However, he once again told the security guard that he needed to get belongings out of his vehicle. The security guard again refused to unlock plaintiff's vehicle door. Plaintiff then asked for a supervisor.

38. Within a few minutes, a supervisor did arrive on the scene and the supervisor also refused plaintiff's request to gain entry to his vehicle. Plaintiff then asked the supervisor to call the police.

39. In approximately five minutes, officers from the Chester Police Department arrived on the scene at which time plaintiff was talking on his cell phone. When plaintiff requested a few more minutes to speak with his fiancé to arrange a ride home the officers knocked plaintiff's phone out of his hand and placed plaintiff in handcuffs before taking him to the City of Chester police station, where he was handcuffed to a bench.

40. Eventually, plaintiff was placed into a holding cell by himself and strip searched by one of defendant's officers. During the course of the strip search, plaintiff was required to remove his clothes, and hold up his genitals so that the officer could observe the same.

41. The strip search was done in public and, upon information and belief, a female officer may have been allowed to observe the strip search through closed-circuit television.

42. After approximately one and half hours at the police station, plaintiff was released after being given a summons for public intoxication.

43. On or about July 19, 2018, the summons was dismissed.

44. At no time did defendant or its officers have reasonable cause to believe that plaintiff was concealing a weapon, drugs or other contraband, but nevertheless strip-searched plaintiff in conformity with its unconstitutional policy.

#### **COUNT ONE**

##### **Violation Of The United States And Pennsylvania Constitutions Under The Color Of State Law—Unreasonable Searches**

45. Plaintiff incorporates by reference and realleges each and every allegation stated in the preceding paragraphs, as if fully set forth herein.

46. The Fourth Amendment of the United States Constitution protects citizens from unreasonable searches by law enforcement officers, and prevents officers from conducting strip searches of individuals arrested for misdemeanors or other minor violations absent some particularized suspicion that the individual in question possesses either weapons, drugs or other contraband.

47. The actions of defendant detailed above violated plaintiff's and the Class' rights under the United States Constitution. Simply put, it was not objectively reasonable for defendant

to strip search plaintiff and Class members based merely on their arrest for misdemeanor or other minor criminal charges.

48. These unlawful strip searches were conducted pursuant to the policy, custom or practice of the City of Chester and/or the Chester Police Department. As such, the City of Chester is directly liable for the damages of the named plaintiff and the members of the Class.

49. Upon information and belief, the City of Chester is responsible for establishing the policies and procedures to be utilized by the Chester Police Department in detaining or arresting individuals, and is responsible for the implementation of the strip-search policy and the unlawful practices described in this Complaint. As such, the defendant is responsible for the damages of the named plaintiff and members of the Class.

50. The defendant knew that its strip search policy, practice or custom was illegal, and acted willfully, knowingly, and with specific intention to deprive plaintiff and members of the class of their Constitutional rights.

51. This conduct of the City of Chester represents a violation of 42 U.S.C. § 1983, given that its actions were undertaken under the color of state law.

52. As a direct and proximate result of the unconstitutional acts described above, plaintiff and members of the proposed Class have been irreparably injured and seek damages, as well as declaratory and injunctive relief set out in the Prayer for Relief below.

## **COUNT TWO**

### **Supplemental State Law Claims**

53. Plaintiff incorporates by reference and realleges each and every allegation stated in the preceding paragraphs, as if fully set forth herein.

54. The acts of the defendant constitute an illegal search and seizure and intentional and/or negligent infliction of emotional distress under the laws of the Commonwealth of Pennsylvania, for which this Court has supplemental jurisdiction to hear and adjudicate these claims.

55. As a direct and proximate result of the unconstitutional acts as described above, plaintiffs have been irreparably injured and seek damages, as well as the declaratory and injunctive relief set out in the Prayer for Relief below.

### **COUNT THREE**

#### **Demand For Declaratory Judgment**

56. Plaintiff incorporates by reference and realleges each and every allegation stated in the preceding paragraphs, as if fully set forth herein.

57. The policy, custom and/or practice of the City of Chester is clearly unconstitutional in that it is directing or conducting the strip search of all individuals taken into custody and/or detained without any particularized suspicion that the individuals in question possess either weapons, drugs or other contraband.

58. Plaintiff and the members of the Class request that this Court issue a declaratory judgment declaring the strip search policy of the City of Chester to be unconstitutional.

### **COUNT FOUR**

#### **Demand For Preliminary And Permanent Injunction**

59. Plaintiff incorporates by reference and realleges each and every allegation stated in the preceding paragraphs, as if fully set forth herein.

60. The policy, custom and practice of the City of Chester is clearly unconstitutional in that it is directing or conducting the strip search of all individuals taken into custody and/or detained without any particularized suspicion that the individuals in question possess either weapons, drugs or other contraband.

61. Upon information and belief, this policy is currently in place, with new and/or prospective members of the Class being subjected to the harms that have already been inflicted upon the named plaintiff and other members of the Class.

62. The continuing pattern of unlawfully strip-searching individuals charged with minor crimes will cause irreparable harm to the new and/or prospective members of the Class, for which an adequate remedy does not exist at law.

63. Plaintiff demands that the City of Chester immediately desist from strip searching individuals placed into custody and/or detained by the defendant absent any particularized suspicion that the individuals in question possess either weapons, drugs or other contraband, and seeks both a preliminary and permanent injunction from this Court ordering as much.

**DEMAND FOR TRIAL BY JURY**

64. Plaintiff hereby demands a trial by jury as to all issues.

**PRAYER FOR RELIEF**

WHEREFORE, plaintiff Kenard Pitney, on behalf of himself and on behalf of a Class of others similarly situated, requests that this Honorable Court enter judgment against defendant City of Chester and grant them the following relief:

(a) Enter or certify this action as a Class Action pursuant to Fed.R.Civ.P. 23, with plaintiff as the Class representative;

(b) A judgment against the defendant on plaintiff's causes of actions detailed herein, awarding compensatory damages to the named plaintiff and each member of the proposed Class in an amount to be determined by a jury and/or the Court on both an individual and Class-wide basis;

(c) A judgment in favor of plaintiff and each member of the proposed Class judgment against the defendant for punitive damages, in an amount to be determined by a jury and/or the Court on both an individual and Class-wide basis;

(d) A judgment in favor of plaintiff and each member of the proposed Class for prejudgment interest;

(e) Declaratory and injunctive relief to establish appropriate policies and procedures for when strip-searches may be lawfully carried out;

(f) A preliminary and permanent injunction enjoining defendant from continuing to strip search individuals charged with misdemeanors or minor crimes absent particularized, reasonable suspicion that the arrestee/detainee subjected to the search is concealing weapons, drugs or other contraband;

(g) A monetary award for attorney's fees and costs of this action, pursuant to 42 U.S.C. §§ 1983 and 1988 and Fed.R.Civ.P. 23; and

(h) Such other and further relief as the Court deems just and proper.

Respectfully submitted:

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