

Keisha Holloway
Address redacted
[Redacted]

and

Donna Curtis
Address redacted
[Redacted]

and

On behalf of all others
similarly situated

Plaintiffs,

v.

GOVERNMENT OF THE
THE DISTRICT OF COLUMBIA,

SERVE: Mayor ANTHONY WILLIAMS
Or his designee
Office of the Secretary
Gladys Herring
John Wilson Building
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

and

UNITED STATES MARSHALS SERVICE
Civil Process
600 Army Navy Drive
Arlington, VA 22202-4210

and

TODD DILLARD, Individually
United States Marshal, D.C.
Superior Court
H. Carl Moultrie Courthouse
500 Indiana Avenue, N.W.
Room C-250
Washington, DC 20001,

02-2364 (RMC)

and)
)
 JOHN DOE NUMBERS 1-10)
 Deputy Marshals, D.C. Superior Court)
 H. Carl Moultrie Courthouse)
 500 Indiana Avenue, N.W.)
 Washington, DC 20001,)
)
 and)
)
 JOHN DOE NUMBERS 11-20)
 Deputy Marshals, D.C. Superior Court)
 H. Carl Moultrie Courthouse)
 500 Indiana Avenue, N.W.)
 Washington, DC 20001,)
)
 Defendants)

CLASS ACTION

FIRST AMENDED COMPLAINT FOR MONEY DAMAGES AND INJUNCTIVE RELIEF
AND PRELIMINARY INJUNCTION AND JURY DEMAND

Introduction

1. Plaintiffs bring this class action lawsuit on behalf of themselves and all other women arrestees who 1) were subjected to blanket strip, visual body cavity and/or squat searches while being held in the Superior Court Cell Block of the District of Columbia Superior Court, waiting for presentment before a judge or other judicial officer of the District of Columbia Superior Court on charges brought under a District of Columbia statute that were either a) a non-violent, non-drug related traffic charge, b) a non-violent, non-drug related misdemeanor charge, or c) a non-violent, non-drug related felony charge, or 2) were subjected to blanket strip, visual body cavity and/or squat

searches just before they were admitted to, or while being held in, the Superior Court Cell Block of the District of Columbia Superior Court, while waiting for presentment before a judge or other judicial officer of the District of Columbia Superior Court on charges brought under a District of Columbia statute regardless of the charges against them because similarly situated men are not subjected to such searches.

2. A "blanket" search means a search undertaken without making an individualized or categorical determination that reasonable suspicion exists to justify the search.

3. Although this amended complaint is written in the present tense, it refers to events that occurred before the last day of April, 2003, when the federal defendants represented to the plaintiffs and the Court that they stopped the strip search practices described herein.

4. Plaintiffs ask the Court to declare two separate subclasses, as described below.

5. Plaintiffs Dianna Johnson, Rubbiya Muhammad, Carolyn Montgomery, Tonya Cecelia Mack and Laura Lambert (the "Fourth Amendment Named Plaintiffs") are women arrestees arrested under a District of Columbia statute, on a) non-violent, non-drug related traffic charges, b) non-violent, non-drug related misdemeanor charges, or c) non-violent, non-drug related felony charges who were subjected to blanket strip, visual body cavity and/or squat

searches without any individualized finding of reasonable suspicion or probable cause that they were concealing drugs, weapons or other contraband, by United States Marshals at the District of Columbia Superior Courthouse, just before they were held in the Superior Court Cell Block waiting for presentment before a judge or other judicial officer of the District of Columbia Superior Court.

6. The great majority of the "Fourth Amendment Named Plaintiffs" and the class members were released from custody after presentment directly from the presentment courtroom either because their cases were no-papered or because they were released on personal recognizance. The Fourth Amendment class does not apply to those who were returned to jail custody because they had bail set that they were unable to post or were detained on the charges on which they were presented or other charges such that they were properly processed into the general jail population for continued detention and were subjected to visual body cavity or squat searches prior to being processed into the general jail population at the DC Jail or the Correctional Treatment Facility.

7. The Fourth Amendment Named Plaintiffs base their claims on the Fourth Amendment of the Constitution, which prohibits subjecting persons arrested on traffic, misdemeanor or felony non drug, non violent offenses to strip and squat searches without an individualized finding of reasonable suspicion or probable cause

that the person was concealing drugs, weapons or other contraband.

8. Plaintiffs Dianna Johnson, Rubbiya Muhammad, Carolyn Montgomery, Tonya Cecelia Mack, Laura Lambert, Dianne Wilkes, Vickie Brooks, Keisha Holloway and Donna Curtis (the "Fifth Amendment Named Plaintiffs") are women arrestees arrested on all types of District of Columbia charges, including drug and violent offenses, who were subjected to blanket strip, visual body cavity and/or squat searches, by United States Marshals at the District of Columbia Superior Courthouse, while held in the Superior Court Cell Block waiting for presentment before a judge or other judicial officer of the District of Columbia Superior Court on a charge brought under a District of Columbia statute. Defendants subject women arrestees to such searches, but do not subject similarly situated men arrestees, including men charged with drug and violent offenses, to them.

9. The great majority of the "Fifth Amendment Named Plaintiffs" and the class members are released from custody after presentment directly from the presentment courtroom either because their cases are no-papered or because they are released on personal recognizance. The Fourth Amendment class does not apply to those who were returned to jail custody because they had bail set that they were unable to post or were detained on the charges on which they were presented or other charges such that they were properly

processed into the general jail population for continued detention and were subjected to visual body cavity or squat searches prior to being processed into the general jail population.

10. The Fifth Amendment Named Plaintiffs base their claims on the equal protection component of the due process clause of the Fifth Amendment of the United States Constitution, which prohibits treating similarly situated men and women differently based on their gender.

11. As used herein, "presentment" refers to the initial proceeding before the Court referred to in Rule 5 of the Superior Court Rules of Criminal Procedure.

12. Violent offense means any of the offenses defined as a "crime of violence" in D.C. Code § 23-1331(4) as defined under Title 22 of the D.C. Code, misdemeanor simple assault, D.C. Code § 22-404 and misdemeanor threats, D.C. Code § 22-407.

13. Drug offense means any offense under District of Columbia law that has as an element, the possession, possession with intent to distribute, or the distribution of, any substance referred to in D.C. Code § 48-901.02, or any item defined as drug paraphernalia by D.C. Code § 48-1101(3).

14. Traffic and District of Columbia offenses means any offense prosecuted by the Corporation Counsel's Office of the District of Columbia.

15. Superior Court Cell Block as used herein includes not only the lock up behind Superior Court Courtroom C-10, but also the lock up behind the courtroom where presentments are held for persons arrested on traffic offenses, if strip, squat and visual body cavity searches are held there, and also the hallway leading to the Superior Court Cell Block where the searches described herein actually occur.

16. The Fourth Amendment Named Plaintiffs bring this action against the Government of the District of Columbia, Todd Dillard in his individual capacity, and Does 1-10, in their individual capacities, pursuant to Section 1983 of the Civil Rights Act of 1871, 42 U.S.C. § 1983, to enforce their Fourth Amendment Rights. Alternatively, the Fourth Amendment Named Plaintiffs bring this action against Todd Dillard, in his individual capacity, and Does 1-10 in their individual capacities, directly under the Fourth Amendment to the Constitution. The Fourth Amendment Named Plaintiffs bring this action against the United States Marshals Service directly under the Fourth Amendment to the Constitution.

17. The Fifth Amendment Named Plaintiffs bring this action against the Government of the District of Columbia, Todd Dillard in his individual capacity, and Does 11-20, in their individual

capacities, pursuant to Section 1983 of the Civil Rights Act of 1871, 42 U.S.C. § 1983, to enforce their Fifth Amendment Rights. Alternatively, the Fifth Amendment Named Plaintiffs bring this action against Todd Dillard, in his individual capacity, and John Does 11-20, in their individual capacities, directly under the Fifth Amendment to the Constitution. The Fifth Amendment Named Plaintiffs bring this action against the United States Marshals Service directly under the Fifth Amendment to the Constitution.

JURISDICTION AND VENUE

18. This Court has federal question jurisdiction pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1343(a)(3) because plaintiffs' claims are based on Section 1983 and the Constitution.

19. Venue is appropriate in this District. The claim for relief arose in this judicial district.

Fourth Amendment Class Action Allegations

20. The Fourth Amendment Named Plaintiffs bring this action under Rules 23(a), 23(b) (2), and 23(b) (3) of the Federal Rules of Civil Procedure on behalf of a class consisting of each woman who, in the three years preceding the filing of this action, up until the date this case is terminated ("the class period"), was or will be, (i) while being held or just before being put in the Superior Court Cell Block; (ii) for presentment under a statute of the District of Columbia; on either (iii)(a) a non drug, non

violent traffic offense; (iii)(b) a non drug, non violent misdemeanor; or (iii)(c) a non drug, non violent felony; (iv) was subjected to a blanket strip, visual body cavity search and/or squat search without any individualized finding of reasonable suspicion or probable cause that she was concealing drugs, weapons or other contraband.

21. Certification of a class under Federal Rule of Civil Procedure 23(b)(2) is appropriate because defendants District of Columbia and the United States Marshals Service and the other defendants have a policy and engage in a pattern and practice of conduct that has uniformly affected all members of the class, and injunctive relief against Defendants will benefit each and every plaintiff and class member.

22. The class is entitled to injunctive relief of terminating the above described policy of blanket searches not based on individualized or particularized suspicion or probable cause.

23. Certification of a class under Federal Rule of Civil Procedure 23(b)(3) is also appropriate, in that common questions of law and fact predominate over any individual questions, and a class action is superior for the fair and efficient adjudication of this controversy as detailed below.

24. Regarding the Fourth Amendment Named Plaintiffs, and members of the class, there are no individual questions on the issue of liability, because every woman arrestee held in the Superior

Court Cell Block is subjected to the blanket searches, and none of the defendants keeps records of the searches and therefore none of the defendants can show that any of the searches were conducted based on an individual determination of reasonable suspicion. Should records exist demonstrating any searches were done pursuant to such individualized suspicion, such people would, by definition, not be members of the class.

25. Among the questions of law and fact common to the class are:

- a. whether Defendant District of Columbia and the United States Marshals Service have a policy, custom and practice of subjecting female arrestees being held in the Superior Court Cell Block pending presentment to blanket strip, visual body cavity searches and/or squat searches without an individualized determination that the woman was in possession of drugs, weapons or other contraband;
- b. whether such policy, if found to exist, violates the Fourth Amendment;
- c. whether the individual defendants were deliberately indifferent to the rights of such women arrestees;
- d. whether plaintiffs and the members of the class have sustained damages and, if so, the proper measure of such damages;

- e. whether plaintiffs and the members of the class and future members are entitled to equitable relief, and, if so, what is the nature of that relief; and
- f. whether determination of damages suffered by a statistically representative sample of the class provides the basis for determination of all class members' damages except those who opt out.

26. The class is so numerous that joinder of all members is impracticable. The exact number of class members is unknown to plaintiffs at this time, but is likely to consist of at least many hundreds of people.

27. Every week at least 10 women meeting the Fourth Amendment class definition are held in the Superior Court Cell Block pending presentment and subject to the illegal searches. Thus this class well exceeds 1000 members.

28. Defendant District of Columbia has within its records the names and addresses of all the current and past class members in the "CJIS" computer system (computerized booking program used by District of Columbia Metropolitan Police Department described below).

29. The Fourth Amendment Named Plaintiffs' claims are typical of the claims of the other members of the class, because the Fourth Amendment Named Plaintiffs and all other members of the class

were injured by exactly the same means, that is, by the blanket searches.

30. The Fourth Amendment Named Plaintiffs will fairly and adequately protect the interests of the members of the class and have retained counsel who are competent and experienced in complex federal civil rights class action litigation and/or complex federal prisoner rights litigation.

31. The Fourth Amendment Named Plaintiffs have no interests that are contrary to or in conflict with those of the class.

32. The Fourth Amendment Named Plaintiffs know of no difficulty that will be encountered in the management of this litigation that would preclude its maintenance as a class action, and the class action is superior to any other available means to resolve the issues raised on behalf of the Fourth Amendment Class. The class action will be manageable because so many different records systems exist from which to ascertain the members of the putative class. For example, the District of Columbia Metropolitan Police Department maintains "CJIS", a computerized booking system that captures the name, address, charge, date of charge, date of presentment and post presentment custody status, for every arrestee, and the District of Columbia Superior Court maintains "CIS", a computer database that captures the name, address, charge, date of charge, date of presentment, docket number and post presentment custody status disposition for every arrestee.

Class treatment will be superior because liability can be determined on a class wide basis, and damages can also be determined on a class wide basis through use of statistical sampling.

Fifth Amendment Class Action Allegations

33. The Fifth Amendment Named Plaintiffs bring this action under Rules 23(a), 23(b) (2), and 23(b) (3) of the Federal Rules of Civil Procedure on behalf of a class consisting of each woman who, in the three years preceding the filing of this action, up until the date this case is terminated ("the class period"), was or will be, (i) while in the Superior Court Cell Block or just before being put in the Superior Court Cell Block; (ii) being held for presentment subject to a statute of the District of Columbia; (iii) under similar circumstances as men arrestees; (iv) subjected to a blanket strip, visual body cavity and/or squat search.

34. Certification of a class under Federal Rule of Civil Procedure 23(b)(2) is appropriate, because defendants District of Columbia and the United States Marshals Service and the other defendants have a policy and engage in a pattern and practice of conduct that has uniformly affected all members of the class, and injunctive relief against Defendants will benefit each and every plaintiff and class member.

35. The class is entitled to injunctive relief of terminating the searches.

36. Certification of a class under Federal Rule of Civil Procedure 23(b)(3) is also appropriate, in that common questions of law and fact predominate over any individual questions, and a class action is superior for the fair and efficient adjudication of this controversy as detailed below.

37. Regarding the Fifth Amendment Named Plaintiffs, and members of the class, there are no individual questions on the issue of liability, because every woman arrestee held in the Superior Court Cell Block is subjected to the blanket searches, and none of the defendants keeps records of the searches and therefore none of the defendants can show that any of the searches were conducted based on an individual determination of reasonable suspicion. Should records exist demonstrating any searches were done pursuant to such individualized suspicion, such people would, by definition, not be members of the class.

38. Among the questions of law and fact common to the class are:

- a. whether Defendant District of Columbia and the United States Marshals Service have a policy or custom and practice of subjecting female arrestees being held in the Superior Court Cell Block pending presentment to blanket strip, visual body cavity and/or squat

searches, but not subjecting men arrestees to such searches;

- b. whether the policy of strip searching women arrestees serves any legitimate penological interest;
- c. whether classification of similarly situated men and women arrestees into classes based on gender bears any relationship to defendants' asserted penological interest;
- d. whether such policy, if found to exist, violates the Fifth Amendment;
- e. whether the individual defendants were deliberately indifferent to the rights of such women arrestees;
- f. whether plaintiffs and the members of the class have sustained damages and, if so, the proper measure of such damages; and
- g. whether plaintiffs and the members of the class and future members are entitled to equitable relief, and, if so, what is the nature of that relief; and
- h. whether determination of damages suffered by a statistically representative sample of the class provides the basis for determination of all class members except those who opt out.

39. The class is so numerous that joinder of all members is impracticable. The exact number of class members is unknown to plaintiffs at this time, but is likely to consist of at least several thousands of people.

40. Every week at least seventy-five women meeting the Fifth Amendment class definition are held in the Superior Court Cell Block pending presentment and subject to the illegal searches.

41. The Fifth Amendment Named Plaintiffs' claims are typical of the claims of the other members of the class, because the Fifth Amendment Named Plaintiffs and all other members of the class were injured by exactly the same means, that is, by the blanket searches.

42. The Fifth Amendment Named Plaintiffs will fairly and adequately protect the interests of the members of the class and have retained counsel who are competent and experienced in complex federal civil rights class action litigation and/or complex federal prisoner rights litigation.

43. The Fifth Amendment Named Plaintiffs have no interests that are contrary to or in conflict with those of the class.

44. The Fifth Amendment Named Plaintiffs know of no difficulty that will be encountered in the management of this litigation that would preclude its maintenance as a class action, and the class action is superior to any other available means to resolve

the issues raised on behalf of the Fifth Amendment Class. The class action will be manageable because so many different records systems exist from which to ascertain the members of the putative class. For example, the District of Columbia Metropolitan Police Department maintains "CJIS", a computerized booking system that captures the name, address, charge, date of charge and date of presentment for every arrestee, and the District of Columbia Superior Court maintains "CIS", a computer database that captures the name, address, charge, date of charge, date of presentment, docket number and disposition for every arrestee. Class treatment will be superior because liability can be determined on a class wide basis, and damages can also be determined on a class wide basis through use of statistical sampling.

45. Defendant District of Columbia has within its computerized records described above the names and addresses of all the current and past class members.

PARTIES

46. Plaintiff Dianna Johnson is an adult resident of the District of Columbia.

47. Plaintiff Rubbiya Muhammed is an adult resident of the state of Maryland.

48. Plaintiff Carolyn Montgomery is an adult resident of the District of Columbia.

49. Plaintiff Tonya Cecelia Mack is an adult resident of the District of Columbia.

50. Plaintiff Laura Lambert is an adult resident of the state of California.

51. Plaintiff Dianne Wilkes is an adult resident of the Commonwealth of Virginia.

52. Plaintiff Vicki Brooks is an adult resident of the District of Columbia.

53. Plaintiff Keisha Hollaway is an adult resident of the state of Maryland.

54. Plaintiff Donna Curtis is an adult resident of the state of Maryland.

55. Defendant the Government of the District of Columbia (hereinafter the District of Columbia) is a municipal corporation capable of being sued under D.C. Code § 1-102.

56. Defendant United States Marshals Service is an agency of the federal government located in Washington, DC, and is jointly responsible with Defendant District of Columbia for planning and implementing the strip, visual body cavity and squat searches of women arrestees described below in this Complaint. In the context of the facts of this complaint, it operates as an agent of the District of Columbia, as is more fully explained below.

57. Defendant Todd Dillard is the United States Marshal for the Superior Court of the District of Columbia. Marshall Dillard is sued in his individual capacity.

58. Does 1-10 are Deputy United States Marshals who developed and implemented the current policy complained of by members of the Fourth Amendment Class defined above. Does 1-10 are sued in their individual capacity.

59. Does 11-20 are Deputy United States Marshals who developed and implemented the current policy complained of by members of the Fifth Amendment Class defined above. Does 11-20 are sued in their individual capacity.

FACTUAL ALLEGATIONS

60. Every person who is arrested in the District of Columbia pursuant to a statute or warrant of the District of Columbia and who is taken to the District of Columbia Superior Court for presentment before a judge or other judicial officer of the District of Columbia is held in a designated area of the Superior Court Courthouse called the Superior Court Cell Block pending presentment.

61. The Chief Judge of the District of Columbia Superior Court controls the disposition of the space at the District of Columbia Superior Court, including areas where arrestees and other prisoners are held. For example, by Superior Court

Administrative Order 02-14 he authorized the MPD to use Cellblock B as a booking center the day of the IMF protests in 2002.

62. The District of Columbia through Chief Judge King also has control of the prisoners in the Superior Court courthouse.

63. Every person held in the Superior Court Cell Block pending presentment who has been arrested either on a District of Columbia warrant or on suspicion of violation of a District of Columbia statute is held in the joint custody of the United States Marshal for the Superior Court of the District of Columbia (Todd Dillard) and the Government of the District of Columbia.

64. Chief Judge King in 2002 issued an administrative order ordering that Marshals cannot remove in-custody defendants from the Superior Court courtrooms until after the judges and courtroom staff have completed appropriate paperwork, and further, Marshals cannot return in-custody defendants to the DC Jail unless the Marshals have all his paperwork in all of his cases. Chief Judge King's Administrative Order 02-22, dated July 25, 2002.

65. The Superior Court of the District of Columbia is an agency of the Government of the District of Columbia.

66. Defendant Todd Dillard as the United States Marshal for the Superior Court of the District of Columbia derives his authority over women arrestees in the Superior Court Cell Block pursuant to statutes of the District of Columbia, including D.C. Code §§ 13-

302, 16-703, 23-501, 23-561, 23-563 and 23-581 and cooperative agreements entered into between the United States Marshals Service and the Government of the District of Columbia pursuant to D.C. Code § 5-133.17.

67. Defendant District of Columbia pays every year for some or all of the costs of operation, maintenance and repair of space used by the United States Marshals Service at the District of Columbia Superior Court Courthouse.

68. Defendant District of Columbia pays every year for some or all of the costs incurred by the United States Marshals Service in performing their duties at the District of Columbia Superior Court Courthouse.

69. The United States Marshal for the Superior Court and his deputies act as the agents of the Defendant District of Columbia pursuant to District of Columbia statutes, policies and/or practices while holding arrestees in the Superior Court Cell Block and other areas of the Superior Court Courthouse.

70. Upon arrest, persons arrested in the District of Columbia are held at one of the seven District "stations" before transport to Central Cellblock (the District of Columbia Metropolitan Police ("MPD") lock-up for holding arrestees) or are taken directly to Central Cellblock.

71. MPD Officers transport the women arrestees from the District stations or the MPD Central Cellblock by van to the Superior Court.

72. Each van load of prisoners has a manifest ("van sheet") listing the names and arrest charges of each of the women arrestees on the van.

73. The arrestees in the Superior Court Cell Block have been subjected to pat down searches by the transporting police officers before being transported to the Superior Court Cell Block by the MPD.

74. Any person who is transported to the Superior Court Cell Block from any of the seven District of Columbia Metropolitan Police Department patrol districts or the District of Columbia Metropolitan Police Department's Central Cell Block has been subjected to a thorough pat down at the patrol station or the District of Columbia Metropolitan Police Department Central Cell Block before being transported to Superior Court Cell Block.

75. The only persons housed in the Superior Court Cell Block designated for arrestees are arrestees brought to the Superior Court Courthouse for presentment to a judicial officer of the District of Columbia on a charge of violating a District of Columbia statute.

76. The great majority of women arrestees are released directly from the Superior Court Courthouse after presentment either because their cases are no-papered or they are released on personal recognizance. The Fourth and Fifth Amendment classes do not encompass those who were returned to jail custody because they had bail set that they were unable to post or were detained on the charges on which they were presented or other charges such that they were properly processed into the general jail population for continued detention and were subjected to visual body cavity or squat searches prior to being processed into the general jail population.

77. 25% to 35% of women arrestees have their cases "no-papered" that is the prosecuting agency rejects the charges completely.

78. Many women arrestees arrested on felony charges have their charges "papered down" to a misdemeanor before presentment.

79. Women and men arrestees who are denied bail at presentment and ordered to the jail and women and arrestees who are held pending trial are transported in vans and buses from the Superior Court Courthouse to the DC Jail. They are not intermingled with pre-presentment women arrestees.

80. There is no "general population" at the Superior Court Cell Block.

81. Other prisoners at the Superior Court Courthouse are not intermingled with the arrestees prior to the search.

82. Men arrestees and women arrestees brought to the Superior Court Courthouse are segregated by sex, and the men and women are held separately in separate areas in the Superior Court Cell Block.

83. The United States Marshal for the Superior Court, and his deputies, follow a policy and custom of subjecting, upon their admission to the Superior Court Cell Block, all women arrestees to blanket strip, visual body cavity and/or squat searches without a particularized finding of reasonable suspicion that the woman arrestee is in possession of weapons, drugs or other contraband.

84. Agents of the Marshals Service actually physically conduct the visual body cavity and squat searches of the women arrestees in a hallway as the women are dropped off by the MPD transport officers on the way to the the Superior Court Cell Block.

85. Agents of the District of Columbia, including the United States Marshal for the Superior Court and his deputies, do not subject men arrestees in the Superior Court Cell Block awaiting presentment to blanket strip, visual body cavity and/or squat searches.

86. The search procedure conducted on the women arrestees in the Superior Court Cell Block is as follows:

87. When women arrestees are transported to the Superior Court Cell Block, a female United States Marshals conducts full body pat down searches on them from head to toe.

88. A female Marshal then makes the women arrestees take off their shoes and shake them out.

89. A female Marshal then directs the arrestees to pull up her skirt or to lower her pants and to pull down any undergarments.

90. A female Marshal then makes the arrestees squat and turn around and display their buttocks and their genitals to the female Marshal.

91. The Marshals stand just a few feet away from the women arrestees as they do the searches.

92. The searches are conducted in front of all the women arrestees already in the hallway leading from the reception area to the Superior Court Cell Block.

93. There is no dedicated searching area.

94. The MPD transport officers mingle with the women arrestees and the US Marshals near the sally port and are aware of the strip/body cavity/squat searches.

95. The searching officers could look at the van sheets to make individualized determinations of the need for searches based on the nature of the charge but they do not.

96. Each arrestee coming in from MPD has a plastic wrist band on. The Marshals, as they receive the arrestees, mark the level of the charge on the wrist band in black marker ("D" for District charge, "T" for traffic charge, "V" for domestic violence, "M" for misdemeanor and "F" for felony).

97. The Marshals subject the women arrestees to very thorough searches upon their arrival at the Superior Courthouse.

98. First, the Marshals make women arrestees pass metal detectors upon their arrival at the Superior Court Courthouse.

99. Also, after the women pass the metal detectors, the Marshals perform thorough pat down searches on the women arrestees, check their hair, wig, hairpiece or hat, and remove and inspect coats and shoes.

100. During the pat down searches the Marshals also search the waistband areas, the pockets, the leg areas, the feet and the shoes of the women arrestees.

101. The Marshals then subject women arrestees at the Superior Court Cellblock to strip and squat and visual body cavity searches in which the women drop their pants or lift their skirts, take down their undergarments, and squat and cough.

102. The Marshals perform the strip/squat/visual body cavity searches described above on every single woman arrestee, without exception, and regardless of her charge or her appearance

103. The searches are public, humiliating, and degrading and cause emotional and psychic injury to the women arrestees.

104. The practice of the searches is not supported by a documented history of contraband smuggling at the Superior Court Cell Block.

105. The practice of the searches is not justified by a legitimate security interest.

106. Other less invasive means of searching the women arrestees exist, such as thorough pat downs, electronic screeners and hand held "wands" or scanners, or drug detection canines.

107. After the Marshals conduct the strip, squat and visual body cavity searches on the women arrestees, the Marshals put the women in the Superior Court Cell Block and allow them to have unsupervised visits with attorneys before they enter the courtroom for presentment.

108. The attorneys and the women arrestees are separated only by grills that have 4 inch by 12 inch slots in the grill work for items and paperwork to be passed through.

109. United States Marshals Service employees including Does 1-10 and Does 11-20 participated in making and implementing the policy of subjecting women arrestees to the above-described searches.

110. Defendant District of Columbia employees participated in making and implementing the policy of subjecting women arrestees to the above-described searches and acquiesce in and facilitate the practice.

111. Before instituting the current practice of holding women arrestees at the District stations or Central Cellblock before bringing them to the Superior Court for presentment, the District followed a practice of committing arrestees to the DC Jail and holding them there till they were transported to the Superior Court for presentment.

112. At that time (in the 1980s and 1990s) the District followed a practice of subjecting all women arrestees committed to the DC Jail awaiting transport to the courthouse for presentment {"police cases"} to visual body cavity strip searches.

113. On July 22, 1981 The Honorable Audrey Robinson of this Court entered on Order ("Morgan Order") which directed, among other things, that the District of Columbia not conduct strip or squat searches of female police cases housed at the District of Columbia Detention Facility [DC Jail] in the absence of a "reasonable suspicion that a weapon, contraband or evidence of a crime are concealed on the person or in the clothing of the

arrestee which the District or its agents reasonably believe can only be discovered by a strip or squat search." Morgan v. Barry, 596 F. Supp. 897, 898 (D.D.C. 1984).

114. The Honorable Audrey Robinson entered an Order on October 29, 1985 continuing the Morgan Order (and another order) "for an indefinite period of time". Morgan v. Barry, 81-cv-1419, Docket Entry No. 82, 1985 (docket sheet). The orders remain in effect.

115. The Morgan Order and other orders impose on the District of Columbia an obligation to ensure that the District of Columbia protect female arrestees from blanket strip searches before presentment regardless of where the female arrestees are committed before presentment.

116. The Morgan Order and other orders impose on the District of Columbia an obligation to ensure that anyone to whom the District of Columbia entrusts its female arrestees also protect the District's female arrestees from blanket strip searches before presentment regardless of where the female arrestees are committed before presentment.

117. The Morgan Order and other orders impose on the District of Columbia an obligation to monitor the conduct of persons to whom the District of Columbia entrusts its female arrestees to ensure they are protected from blanket strip searches before presentment regardless of where the female arrestees are committed before presentment.

118. The District of Columbia remained and remains obligated under the Morgan Order and other orders to ensure that Todd Dillard and the Marshals protect the female arrestees from blanket strip searches while the Marshals have physical custody of the District's prisoners.

119. The Morgan Order and other orders impose on Todd Dillard and the Marshals a duty to familiarize themselves with laws and orders which protect the District's female arrestees from blanket strip searches before presentment regardless of where the female arrestees are committed before presentment.

120. The Government of the District of Columbia knows , and knew at all times within the class period, that women arrestees would be subjected to blanket searches in the Superior Court Cell Block and the Government of the District of Columbia acquiesces in the searches.

121. Agents of the District of Columbia regularly mingle at the Superior Court courthouse with the Marshals and the arrestees and know, and knew at all times within the class period, about the searches.

122. Many female District of Columbia employees have been arrested and undergone the strip searches during the class period.

123. The Government of the District of Columbia has during the class period had actual or constructive knowledge that the United States Marshals Service subjected women arrestees to the strip searches complained of herein.

124. The Government of the District of Columbia knowingly and as part of its practice, policy, and custom, nonetheless transferred women arrestees in its custody to the custody of United States Marshals Service, causing each member of the Classes to be subjected to the strip searches.

125. The Government of the District of Columbia has an affirmative duty to protect arrestees from harm, including the risk of violations of constitutional rights by a third party to whom the arrestees are transferred, particularly in areas and on issues where court orders requiring it respect certain constitutional rights have been issued.

126. The Government of the District of Columbia has never protested the searches before the filing of the original complaint in this case.

127. The District of Columbia failed to take any affirmative act reasonably calculated to protect arrested persons in its custody and prevent unconstitutional strip searches.

128. The District of Columbia delegated its duties to the United States Marshals Service but failed to train the Marshals in strip search polices even though the need for training was obvious.

129. The constitutional violations that resulted are foreseeable because of the District's failure to train.

130. Every person who has been arrested either on a District of Columbia warrant or on suspicion of violation of a District of Columbia statute was arrested by a person acting under color of District of Columbia law and engaging in state action. D.C. Code § 23-561; D.C. Code § 23-581.

131. Every person held in the Superior Court Cell Block pending presentment who has been arrested either on a District of Columbia warrant or on suspicion of violation of a District of Columbia statute is held by a person acting under color of District of Columbia law and engaging in state action.

132. Defendant Todd Dillard, as the United States Marshal for the Superior Court of the District of Columbia, derives his authority over women arrestees in the Superior Court Cell Block pursuant to statutes of the District of Columbia, including D.C. Code §§ 13-302, 16-703, 23-501, 23-561, 23-563 and 23-581 and cooperative agreements entered into between the United States Marshals Service and the government of the District of Columbia pursuant to D.C. Code § 5-133.17, and the authority of the Chief Judge acting in an administrative capacity for the District of Columbia.

133. At all times described herein Defendant Todd Dillard and Does 1-10 and Does 11-20 were acting under color of District of

Columbia law and they were acting pursuant to the policy, custom and practice of Defendant District of Columbia.

NAMED PLAINTIFFS ARRESTED ON TRAFFIC OFFENSES

134. Plaintiff Dianna Johnson was arrested on a charge of driving on a revoked license under D.C. Code § 50-1403.01 by officers of the District of Columbia Metropolitan Police Department.

135. Plaintiff Dianna Johnson was held for presentment before a District of Columbia Superior Court Judge or other judicial officer in the Superior Court Cell Block on January 29, 2002.

136. Upon arriving at the Superior Court for presentment, Plaintiff Dianna Johnson was subjected to a strip, visual body cavity and squat search without a particularized finding of reasonable suspicion that she was in possession of weapons, drugs or other contraband.

137. Plaintiff Dianna Johnson was released on personal recognizance directly from the courtroom after presentment on January 29, 2002.

138. Plaintiff Rubbiya Muhammed was arrested on a bench warrant in connection with a DWI (driving while under the influence of alcohol) case under D.C. Code § 50-2205.02 by officers of the District of Columbia Metropolitan Police Department.

139. Plaintiff Rubbiya Muhammed was held for presentment before a District of Columbia Superior Court Judge or other judicial officer in the Superior Court Cell Block on October 5, 2002.

140. Upon arriving at the Superior Court for presentment, Plaintiff Rubbiya Muhammed was subjected to a strip, visual body cavity and squat search without a particularized finding of reasonable suspicion that she was in possession of weapons, drugs or other contraband.

141. Plaintiff Rubbiya Muhammed was released on personal recognizance directly from the courtroom after presentment on October 5, 2002.

NAMED PLAINTIFFS ARRESTED ON MISDEMEANOR SOLICITATION OF PROSTITUTION

142. PlaintiffCarolynn Montgomery was arrested and detained on a charge of solicitation of prostitution under D.C. Code § 22-2701 by officers of the District of Columbia Metropolitan Police Department.

143. PlaintiffCarolynn Montgomery was held for presentment before a District of Columbia Superior Court Judge or other judicial officer in the Superior Court Cell Block on October 5, 2002.

144. Upon arriving at the Superior Court for presentment, PlaintiffCarolynn Montgomery was subjected to a strip, visual

body cavity and squat search without a particularized finding of reasonable suspicion that she was in possession of weapons, drugs or other contraband.

145. PlaintiffCarolynn Montgomery was released on personal recognizance directly from the courtroom after presentment on October 5, 2002.

NAMED PLAINTIFFS ARRESTED ON MISDEMEANOR CONTEMPT OF COURT

146. Plaintiff Tonya Mack was arrested on a warrant for contempt of court for violations of conditions of release in a solicitation of prostitution case under the D.C. Code by officers of the District of Columbia Metropolitan Police Department.

147. Plaintiff Tonya Mack was held for presentment before a District of Columbia Superior Court Judge or other judicial officer in the Superior Court Cell Block on October 4, 2002.

148. Upon arriving at the Superior Court for presentment, Plaintiff Tonya Mack was subjected to a strip, visual body cavity and squat search without a particularized finding of reasonable suspicion that she was in possession of weapons, drugs or other contraband.

149. Plaintiff Tonya Mack was released on personal recognizance directly from the courtroom after presentment on October 4, 2002.

NAMED PLAINTIFFS ARRESTED ON FIRST DEGREE THEFT

150. Plaintiff Laura Lambert was arrested by officers of the District of Columbia Metropolitan Police Department on a charge of theft of more than \$250.00 (shoplifting at Neiman Marcus) under D.C. Code § 22-3211.

151. Plaintiff Laura Lambert was held for presentment before a District of Columbia Superior Court Judge or other judicial officer in the Superior Court Cell Block on October 5, 2002.

152. Upon arriving at the Superior Court for presentment, Plaintiff Laura Lambert was subjected to a strip, visual body cavity and squat search without a particularized finding of reasonable suspicion that she was in possession of weapons, drugs or other contraband.

153. Plaintiff Laura Lambert's case was "papered down" from felony theft to misdemeanor theft before presentment and she was presented on a charge of misdemeanor theft.

154. Plaintiff Laura Lambert was released on personal recognizance directly from the courtroom after presentment on October 5, 2002.

NAMED PLAINTIFF ARRESTED ON MISDEMEANOR SIMPLE ASSAULT

155. Plaintiff Diane Wilkes was arrested and detained on a charge of misdemeanor simple assault under D.C. Code § 22-404 by officers of the District of Columbia Metropolitan Police Department.

156. Plaintiff Diane Wilkes was held for presentment before a District of Columbia Superior Court Judge or other judicial officer in the Superior Court Cell Block on September 25, 2002.

157. Upon arriving at the Superior Court for presentment, Plaintiff Diane Wilkes was subjected to a strip, visual body cavity and squat search without a particularized finding of reasonable suspicion that she was in possession of weapons, drugs or other contraband.

158. Plaintiff Diane Wilkes was released on personal recognizance directly from the courtroom after presentment September 25, 2002.

NAMED PLAINTIFFS ARRESTED ON FELONY THREATS

159. Plaintiff Vickie Brooks was arrested on a charge of felony threats under D.C. Code § 22-1810 by a member of the District of Columbia Metropolitan Police Department.

160. Plaintiff Vickie Brooks was held for presentment before a District of Columbia Superior Court Judge or other judicial officer in the Superior Court Cell Block on September 25, 2002.

161. Upon arriving at the Superior Court for presentment, Plaintiff Vickie Brooks was subjected to a strip, visual body cavity and squat search without a particularized finding of reasonable suspicion that she was in possession of weapons, drugs or other contraband.

162. Plaintiff Vickie Brooks was released on personal recognizance directly from the courtroom after presentment September 25, 2002.

NAMED PLAINTIFFS ARRESTED ON AGGRAVATED ASSAULT

163. Plaintiff Keisha Holloway was arrested on a charge of aggravated assault under D.C. Code § 22-404.01 by a member of the District of Columbia Metropolitan Police Department.

164. Plaintiff Keisha Holloway was held for presentment before a District of Columbia Superior Court Judge or other judicial officer in the Superior Court Cell Block on October 5, 2002.

165. Upon arriving at the Superior Court for presentment, Plaintiff Keisha Holloway was subjected to a strip, visual body cavity and squat search without a particularized finding of reasonable suspicion that she was in possession of weapons, drugs or other contraband.

166. Plaintiff Keisha Holloway was released on personal recognizance directly from the courtroom after presentment October 5, 2002.

NAMED PLAINTIFFS ARRESTED ON MISDEMEANOR POSSESSION OF

PARAPHERNALIA

167. Plaintiff Donna Curtis was arrested on a charge of possession of paraphernalia under D.C. Code § 48-1103 by a member of the District of Columbia Metropolitan Police Department.

168. Plaintiff Donna Curtis was held for presentment before a District of Columbia Superior Court Judge or other judicial officer in the Superior Court Cell Block on September 25, 2002.

169. Upon arriving at the Superior Court for presentment, Plaintiff Donna Curtis was subjected to a strip, visual body cavity and squat search without a particularized finding of reasonable suspicion that she was in possession of weapons, drugs or other contraband.

170. Plaintiff Donna Curtis was released on personal recognizance directly from the courtroom after presentment September 25, 2002.

SUBSTANTIVE ALLEGATIONS

CLAIMS OF FOURTH AMENDMENT NAMED PLAINTIFFS

Count 1

Violation of Fourth Amendment Rights of Fourth Amendment

Plaintiffs under § 1983

171. The Fourth Amendment Named Plaintiffs reallege and incorporate by reference all allegations set forth above in this Complaint.

172. While being held for presentment in the Superior Court Cell Block each of the Fourth Amendment Named Plaintiffs and every other class member were subjected to a strip, visual body cavity search and/or squat search without an individual determination that the search would reveal weapons, drugs or other contraband, pursuant to a custom, policy and/or practice of Marshal Dillard, the United States Marshal's Service, and the District of Columbia - each of which is jointly and severally liable and responsible for such policy, custom and/or practice - to conduct such searches.

173. Subjecting an arrestee arrested on a non drug, non violent offense to a strip, visual body cavity search and/or squat search without an individual determination that the search would reveal weapons, drugs or other contraband violates her Fourth Amendment Rights.

174. The Defendants knew that the Fourth Amendment Named Plaintiffs and other class members would be subject to the searches in the Superior Court Cell Block and acquiesced in the searches.

175. Defendants' actions, and failure to act, as described above, directly and proximately and affirmatively were the moving force behind the violations of the Fourth Amendment Named Plaintiffs and the class members' Fourth Amendment Rights.

176. Defendant District of Columbia and the United States Marshals Service's policy, custom and practice described above were the moving force behind the deprivations to the Fourth Amendment Named Plaintiffs' and other class members' Fourth Amendment Rights and the Fourth Amendment Named Plaintiffs and the other class members' injuries as described above.

177. Defendants caused the unreasonable strip, visual body cavity search and/or squat searches of the Fourth Amendment Named Plaintiffs and all other class members by deliberate indifference to the risk of constitutional injury by maintaining and/or acquiescing in a policy and practice and custom of strip searching women arrestees.

178. At all relevant times District of Columbia and United States Marshal Service employees were acting within the scope of their employment, their acts were motivated by a desire to further the interests of the District of Columbia and the United States Marshals Service, and such employees were acting in furtherance of the business of the District of Columbia and the United States Marshals Service.

179. In developing, implementing and participating in the custom, policy, practice and conduct complained of herein, Marshal Todd Dillard was acting as an agent and delegated policy maker of the District of Columbia. Similarly, members of the Marshal's Service, acting under Marshal Dillard's supervision and direction

in developing, implementing and participating in the custom, policy, practice and conduct complained of herein, were acting as agents of the District of Columbia.

180. Defendant District of Columbia and Defendant Todd Dillard and Does 1-10 are therefore liable under 42 U.S.C. § 1983 for constitutional injuries to the Fourth Amendment Named Plaintiffs and all other class members caused by their conduct.

Count 2

Direct Liability of the United States Marshals Service and Todd Dillard (the United States Marshal for the Superior Court) and the United States Marshal Service employees Does 1-10 for Violation of Fourth Amendment Rights of Fourth Amendment Plaintiffs for Illegal Searches

181. The Fourth Amendment Named Plaintiffs reallege and incorporate by reference all allegations set forth above in this Complaint.

182. Each of the Fourth Amendment Named Plaintiffs was arrested by officers of the District of Columbia Metropolitan Police Department under the authority of a District of Columbia statute and held for presentment before a District of Columbia Superior Court Judge or other judicial officer in the Superior Court Cell Block and was actually presented before a District of Columbia

Superior Court Judge or other judicial officer in a courtroom in the District of Columbia Superior Court.

183. At all times that each of the Fourth Amendment Named Plaintiffs and every other class member was in the Superior Court Cell Block, she was in the joint custody of one or more agents of the Government of the United States and the United States Marshals Service and the District of Columbia.

184. While in the Superior Court Cell Block, each of the Fourth Amendment Named Plaintiffs and every other class member was subjected to a strip, visual body cavity search and/or squat search by an agent of the United States Marshals Service without an individual determination that the search would reveal weapons, drugs or other contraband.

185. Defendant United States Marshals Service and Defendant Todd Dillard and Does 1-10 violated the Fourth Amendment rights of the Fourth Amendment Named Plaintiffs by establishing and implementing the search policies described above.

186. The United States Marshals Service and Defendant Todd Dillard and Does 1-10 are therefore directly liable under the Fourth Amendment for constitutional injuries to the Fourth Amendment Named Plaintiffs and all other class members caused by their conduct.

CLAIMS OF FIFTH AMENDMENT NAMED PLAINTIFFS

Count 3

Liability of Defendants for Violation of Fifth Amendment Rights
of Fifth Amendment Plaintiffs for Illegal Searches under § 1983

187. The Fifth Amendment Named Plaintiffs reallege and incorporate by reference all allegations set forth above in this Complaint.

188. While in the Superior Court Cell Block each of the Fifth Amendment Named Plaintiffs and every other class member were subjected to a visual body cavity search and squat search, pursuant to a custom, policy and/or practice of Marshal Dillard, the United States Marshal's Service, and the District of Columbia - each of which is jointly and severally liable and responsible for such policy, custom and/or practice - to conduct such searches.

189. While in the Superior Court Cell Block each of the Fifth Amendment Named Plaintiffs and every other class member, was similarly situated to every male arrestee.

190. The visual body cavity and squat searches of the women arrestees do not serve any legitimate penological interest.

191. The classification of arrestees into classes based on gender bears no relationship to defendants' asserted penological interest.

192. Defendants knew that the Fifth Amendment Named Plaintiffs and other class members would be subject to the above-described searches in the Superior Court Cell Block and acquiesced in the searches.

193. Defendants' actions, and failure to act, as described above, directly and proximately and affirmatively were the moving force behind the violations of the Fifth Amendment Named Plaintiffs and the class members' Fifth Amendment Rights.

194. Defendant District of Columbia and the United States Marshals Service's policy, custom and practice described above were the moving force behind the deprivations to the Fifth Amendment Named Plaintiffs' and other class members' Fifth Amendment Rights.

195. Defendants' actions, and failure to act, as described above, directly and proximately caused, and was the moving force behind the Fifth Amendment Named Plaintiffs and the other class members' injuries as described above.

196. District of Columbia and United States Marshal Service employees caused the unreasonable strip, visual body cavity search and/or squat searches of the Fifth Amendment Named

Plaintiffs and all other class members by deliberate indifference to the risk of constitutional injury by maintaining and/or acquiescing in a policy and practice of strip searching women arrestees.

197. At all relevant times such District of Columbia and United States Marshal Service employees were acting within the scope of their employment, their acts were motivated by a desire to further the interests of the District of Columbia and the United States Marshals Service, and such employees were acting in furtherance of the business of the District of Columbia and the United States Marshals Service.

198. In developing, implementing and participating in the custom, policy, practice and conduct complained of herein, Marshal Todd Dillard was acting as an agent and delegated policy maker of the District of Columbia. Similarly, members of the Marshal's Service, acting under Marshal Dillard's supervision and direction in developing, implementing and participating in the custom, policy, practice and conduct complained of herein, were acting as agents of the District of Columbia.

199. Defendant District of Columbia and Defendant Todd Dillard and Does 11-20 are therefore liable under 42 U.S.C. § 1983 for constitutional injuries to the Fifth Amendment Named Plaintiffs and all other class members caused by them.

Count 4

Direct Liability of the United States Marshals Service and Todd Dillard and Does 11-20 for Violation of Fifth Amendment Rights of Fifth Amendment Named Plaintiffs

200. The Fifth Amendment Named Plaintiffs reallege and incorporate by reference all allegations set forth in the preceding paragraphs of this Complaint.

201. The visual body cavity and squat searches of the women arrestees do not serve any legitimate penological interest.

202. The classification of arrestees into classes based on gender bears no relationship to defendants' asserted penological interest.

203. Defendant United States Marshals Service and Defendant Todd Dillard and Does 11-20 violated the Fifth Amendment rights of the Fifth Amendment Named Plaintiffs by establishing and implementing the search policies described above.

204. The United States Marshals Service and Defendant Todd Dillard and Does 11-20 are therefore directly liable under the Fifth Amendment for constitutional injuries to the Fifth Amendment Named Plaintiffs and all other class members caused by their conduct.

IRREPARABLE INJURY AND INJUNCTIVE RELIEF

205. Defendants are unreasonably subjecting members of the sub-classes to strip, visual body cavity and/or squat searches, which irreparably harms them, even if they are later able to recover compensatory damages.

206. Defendants' performing illegal searches of the Named Plaintiffs and the class members has irreparably harmed, and will continue to irreparably harm, members of the proposed plaintiff classes, thus making declaratory and injunctive relief necessary.

PRAYER FOR RELIEF

WHEREFORE, the Fourth Amendment Named Plaintiffs respectfully request that this Court grant the following relief:

- 1) grant a jury trial on all claims so triable;
- 2) declare that this action may be maintained as a class action pursuant to Federal Rule of Civil Procedure 23(b)(2) and 23(b)(3) and certify the Fourth Amendment Named Plaintiffs as the proper representative of the class consisting of each woman who, in the three years preceding the filing of this action, up until the date this case is terminated, was or will be, (i) while being held or just before being put in the Superior Court Cell Block; (ii) for presentment under a statute of the District of Columbia; on either (iii)(a) a non drug, non violent traffic offense; (iii)(b) a non drug, non violent misdemeanor; or (iii)(c) a non

drug, non violent felony; (iv) was subjected to a blanket strip, visual body cavity search and/or squat search without any individualized finding of reasonable suspicion or probable cause that she was concealing drugs, weapons or other contraband;

3) declare that this action may be maintained as a class action pursuant to Federal Rule of Civil Procedure 23(b)(2) and 23(b)(3) and certify the Fifth Amendment Named Plaintiffs as the proper representative of the class consisting of each woman who, in the three years preceding the filing of this action, up until the date this case is terminated, was or will be, (i) while or just before being put in the Superior Court Cell Block; (ii) being held for presentment subject to a statute of the District of Columbia; (iii) under similar circumstances as men arrestees; (iv) subjected to a strip, visual body cavity search and/or squat search.

4) declare that defendants' acts alleged above violate the Fourth and Fifth Amendments to the Constitution by illegally strip searching plaintiffs as alleged herein;

5) preliminarily and permanently enjoin defendants from pursuing the course of conduct complained of herein;

6) award all plaintiffs compensatory and consequential damages in an amount to be determined;

- 7) award plaintiffs attorneys' fees and costs incurred in bringing this action under 42 U.S.C. § 1988 and any other applicable statute;
- 8) grant such other relief as this Court deems just and proper.

Respectfully submitted,

_____/s/_____
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