

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

NAKISHA BOONE and GEORGE BYRD, :
both individually and on behalf of a class :
of others similarly situated, :

Plaintiffs, :

v. :

CITY OF PHILADELPHIA, :

Defendant. :

Civil Action Number: 05-CV-1851

JURY TRIAL DEMANDED

FIRST AMENDED CLASS ACTION COMPLAINT

I. INTRODUCTION

This is a class action brought to redress the deprivation by Defendant of rights secured to the Plaintiffs and proposed Class by the United States Constitution and the laws of the United States of America. For at least the past 10 years, the Philadelphia Prison Systems (“PPS”) has had a policy of strip-searching all individuals who enter the City of Philadelphia’s jail facilities and are placed into jail clothing, regardless of the crime upon which they are charged. Upon information and belief, this policy is, in part, derived from the written procedures of the PPS, and was promulgated by the City of Philadelphia.

It has been well established that individuals charged with misdemeanors or summary offenses cannot be strip-searched absent particularized suspicion that they possess weapons or contraband. In short, the policy of PPS and the City of to force those charged with minor crimes to undergo the indignities of a strip search upon entry into their jail facilities is not only clearly illegal, but is insensitive and unnecessary.

Nakisha Boone and George Byrd (“Plaintiffs”) bring this action on behalf of themselves, and on behalf of a class of thousands of others who were strip searched after being charged with petty crimes, to vindicate the clear and unnecessary violation of their civil rights and those of the class members they propose to represent. These individuals were charged with misdemeanor offenses and were subjected to a strip search, in violation of their rights against unreasonable searches under the Fourth Amendment of the United States Constitution. Plaintiffs seek monetary damages for themselves and for each member of the proposed class, a declaration that City of Philadelphia’s policies are unconstitutional, and an injunction precluding City of Philadelphia and the PPS from continuing to violate the rights of those placed into their custody. With this as a background, Plaintiffs, Nakisha Boone and George Byrd complain as follows:

II. JURISDICTION

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, punitive 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 & 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.

1. Venue is proper under 28 U.S.C. § 1391(e)(2) because the events giving rise to Plaintiffs’ claims and those of proposed class members occurred in this judicial district.

III. PARTIES

2. Plaintiff Nakisha Boone resides at 308 North Redfield Street, Philadelphia, PA 19139. On November 13, 2004, Ms. Boone was detained on misdemeanor charges – a bench warrant relative to a 1998 misdemeanor charge of endangering the welfare of a child – following a traffic stop by the Philadelphia Police Department. Ms. Boone was transported to the Riverside Correctional Facility (“RCF”) the following day. As a result of this detention, Ms. Boone was strip searched during the booking process at RCF. Specifically, she was required to remove all her clothes and squat before a Corrections Officer. She was also forced to bend over and spread the lobes of her buttocks. The six year old criminal charges upon which Ms. Boone was detained were later dismissed by the Philadelphia City Municipal Court.

3. Plaintiff, George Byrd resides at 5 Landbourn Path, Sewell, NJ 08080. On April 2, 2005, Mr. Byrd was detained on misdemeanor charges relating to driving under the influence of the alcohol. Mr. Byrd was transported to the Philadelphia Prison System. As a result of his detention, Mr. Byrd was strip searched during his booking process. Specifically, he was required to move all clothes and squat before a Corrections Officer.

4. Defendant City of Philadelphia is a Municipality located in Pennsylvania. Defendant, City of Philadelphia, is responsible for enacting uniform policies and overseeing the PPS. At all times relevant hereto, Defendant City of Philadelphia was responsible for the policies, practices, supervision, implementation and conduct of all matters pertaining to the PPS and was responsible for the appointment, training, supervision and conduct of all personnel including those working for the PPS. In

addition, at all times relevant hereto, Defendant, together with the PPS, was responsible for enforcing the rules of the PPS.

IV. CLASS ACTION ALLEGATIONS

5. Plaintiffs bring this action pursuant to Rules 23(b)(2) and 23(b)(3) of the Federal Rules of Civil Procedure on behalf of themselves and a class of similarly situated individuals who were charged with misdemeanors or minor crimes and were strip searched upon their entry into the PPS.

6. The class that Plaintiffs seek to represent is defined as follows:

All persons who have been or will be placed into the custody of the PPS after being charged with misdemeanors, summary offenses, violations of probation or parole, traffic infractions, civil commitments or other minor crimes and were or will be strip searched upon their entry into the Philadelphia Prison System pursuant to the policy, custom and practice of the PPS and the City of Philadelphia. The class period commences on April 21, 2003 and extends to the present or until the defendants are enjoined from, or otherwise cease, enforcing their unconstitutional policy, practice and custom of conducting strip searches absent reasonable suspicion. Specifically excluded from the class are Defendant and any and all of their respective affiliates, legal representatives, heirs, successors, employees or assignees.

7. 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).

8. The members of the class are so numerous as to render joinder impracticable. Upon information and belief, there are hundreds of people arrested for misdemeanors and summary offenses who are placed into the custody of the PPS every month – all of whom are members of the proposed class. Upon information and belief,

the size of the proposed class totals at least 30,000 individuals, some of whom have had their civil rights violated on multiple occasions.

9. Upon information and belief, joinder of all of these individuals is impracticable because of the large number of class members and the fact that class members are likely dispersed over a large geographical area, with some members presently residing outside of Philadelphia County 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 in pursuing their rights individually.

10. Common questions of law and fact exist as to all members of the Class, in that they all had their right to be free from unreasonable searches violated by Defendants conducting strip searches absent particularized suspicion. All members of the class were charged with misdemeanors or violations when placed into the custody of the PPS, and all were illegally strip searched in violation of the clearly established law in this judicial circuit.

11. Plaintiffs' claims are typical of the claims of the members of the Class. Plaintiffs and all members of the class sustained damages arising out of Defendants' course of conduct. The harms suffered by the Plaintiffs are typical of the harms suffered by the class members.

12. The representative Plaintiffs have the requisite personal interest in the outcome of this action and will fairly and adequately protect the interests of the Class. Plaintiffs have no interests that are adverse to the interests of the members of the Class.

13. Plaintiffs have retained counsel who has substantial experience and success in the prosecution of class action and civil rights litigation. The named Plaintiff is being represented by Daniel C. Levin of Levin, Fishbein, Sedran & Berman; Elmer Robert Keach, III, Law Offices of Elmer Robert Keach, III, PC; Gary E. Mason and Alexander Barnett of The Mason Law Firm, PLLC; Jonathan Cuneo and Charles LaDuca of Cuneo, Gilbert and LaDuca, LLP; Christopher Hayes, Law Offices of Christopher Hayes, Laura Feldman of Feldman & Pinto, and Kevin Birley of Ostriat Associates, LLC. Proposed Class Counsel has significant experience in class actions and civil rights litigation.

14. In short, Plaintiffs' counsel has the resources, expertise and experience to successfully prosecute this action against the Defendant. Counsel for Plaintiff knows of no conflicts among members of the class, or between counsel and members of the class.

15. This action, in part, seeks declaratory and injunctive relief. As such, the Plaintiff seeks class certification under Fed. R. Civ. P. 23(b)(2), in that all class members were subject to the same policy requiring the illegal strip searches of individuals charged with misdemeanor or minor crimes and placed into the custody of the PPS. In short, the PPS acted on grounds generally applicable to all class members.

16. In addition to certification under Rule 23(b)(2), and in the alternative, Plaintiffs seek certification under Rule 23(b)(3).

17. Common questions of law and fact exist as to all members of the Class, and predominate over any questions that affect only individual members of the Class. These common questions of law and fact include, without limitation, the common and predominate question of whether the Defendant's written and/or *de facto* policy of strip

searching all individuals charged with misdemeanors or minor crimes and committed to the PPS is a violation of the Fourth and Fourteenth Amendments to the United States Constitution, and whether such a written and/or *de facto* policy existed during the class period.

18. A class action is superior to other available methods for the fair and efficient adjudication of this controversy, since joinder of all of the individual members of the class is impracticable given the large number of class members and the fact that they are dispersed over a large geographical area. Furthermore, the expense and burden of individual litigation would 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.

19. Upon information and belief, there are no other actions pending to address the Defendants' flagrant violation of the civil rights of thousands of individuals, even though the Defendants have maintained their illegal strip search regimen for at least the past 10 years.

20. In the alternative to certification under Fed. R. Civ. P. 23(b)(3), Plaintiffs also seek partial certification under Fed. R. Civ. P. 23(c)(4).

V. FACTS

Facts Applicable to the Class Generally

21. The Fourth Amendment of the United States Constitution prohibits government agencies and state officials, such as the Defendant in this action and the Corrections Officers they supervise, from performing strip searches of arrestees who have been charged with misdemeanors or other minor crimes unless there is a reasonable suspicion to believe that the arrestee is concealing a weapon or contraband.

22. The City of Philadelphia, has instituted a written and/or *de facto* policy, custom or practice of strip searching all individuals who enter the custody of the PPS and are placed into jail clothing, regardless of the nature of their charged crime and without the presence of reasonable suspicion to believe that the individual was concealing a weapon or contraband.

23. The City of Philadelphia, has instituted a written and/or *de facto* policy, custom or practice of conducting visual body cavity searches (visual inspection of the vaginal and rectal cavities) and strip searches (involving the removal of clothing for a visual inspection) on all individuals who enter their custody, regardless of the individual characteristics or the nature of their charged crime. For purposes of this Complaint, strip and visual cavity searches are collectively referred to as “strip searches.”

24. The City of Philadelphia knows that they may not institute, enforce or permit enforcement of a policy or practice of conducting strip searches without 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 violations absent particularized, reasonable suspicion.

25. The Defendant's written and/or *de facto* policy, practice and custom mandating wholesale strip searches of all misdemeanor and violation arrestees has been promulgated, effectuated and/or enforced in bad faith and contrary to clearly established law.

26. Reasonable suspicion to conduct a strip search may only emanate from the particular circumstances antecedent to the search, such as the nature of the crime charged, the particular characteristics of the arrestees, and/or the circumstances of the arrest.

27. The City of Philadelphia 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 the custody of the PPS and placed into jail clothing without any requirement of reasonable suspicion, or indeed suspicion of any sort. 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.

28. Pursuant to this written and/or *de facto* policy, each member of the Class, including every named Plaintiff, was the victim of a routine strip search upon their entry into the Philadelphia Prison System. These searches were conducted without inquiry into or establishment of reasonable suspicion, and in fact were not supported by reasonable suspicion. Strip searches are conducted for individuals arrested for, among other innocuous offenses, Driving While Intoxicated, Harassment and Trespassing.

29. As a direct and proximate result of the unlawful strip search conducted pursuant to this written and/or *de facto* policy, the victims of the unlawful strip searches –

each member of the class, including every named Plaintiff – has suffered or will suffer psychological pain, humiliation, suffering and mental anguish.

Facts Applicable to the Named Plaintiffs

A. Nakisha Boone

30. Ms. Boone's experience is representative. On or about October 22, 2004 at approximately 6:30 PM, Plaintiff Nakisha Boone was arrested on a bench warrant relative to a criminal charge originally prosecuted against her in 1998. The charge in question, endangering the welfare of a child, is a first degree misdemeanor under 18 P.C.S.A. § 4304. Ms. Boone's arrest occurred after she was stopped for a traffic violation. The circumstances of her criminal charges are that she is alleged to have left her children alone, thereby endangering their welfare. The misdemeanor criminal charges pending against her were later dismissed.

31. The following morning, Ms. Boone was transported to the Riverside Correctional Facility, a component facility of the Philadelphia Prison System, and was booked into the facility. Approximately 24 hours later, Ms. Boone was moved into a room in the booking area of RCF and ordered to remove her clothing. Ms. Boone was then instructed to "squat and cough," and then to bend over and spread the lobes of her buttocks to allow for a visual examination of her vagina and anus. Ms. Boone was then provided with a jail uniform.

32. On this particular occasion, there was no reasonable suspicion to believe that Ms. Boone was concealing a weapon or other contraband. Indeed, no inquiry was made of Ms. Boone that could have given rise to the requisite reasonable suspicion necessary to conduct a strip search.

33. 34. As a direct and proximate result of the unlawful strip search conducted pursuant to the Defendants' policy, practice and custom, Plaintiff has suffered and continues to suffer psychological pain, humiliation, suffering and mental anguish.

B. George Byrd

35. Mr. Byrd's experience is representative of the class. On April 2, 2005, Mr. Byrd was strip searched at the Philadelphia Prison System. The charge in question was driving under the influence. Mr. Byrd's arrest occurred after he was stopped in his car where he was parked on the side of the road. The misdemeanor criminal charges pending against him were later dismissed.

36. Mr. Byrd was transferred to the Philadelphia Prison System where he was booked into the facility. Mr. Byrd was instructed to squat and cough and then bend over and spread the lobes of his buttocks to allow visual examination. Mr. Byrd was then provided a jail uniform.

37. On this particular occasion, there was no reasonable suspicion to believe that Mr. Byrd was concealing a weapon or other contraband. Indeed, no inquiry was made to Mr. Byrd that could have given rise to the requisite reasonable suspicion necessary to conduct a strip search.

38. As a direct and proximate result of the unlawful strip search conducted pursuant to Defendant's policy, practice and custom, Plaintiff, George Byrd has suffered and continues to suffer psychological pain, humiliation, suffering and mental anguish.

VI. CAUSES OF ACTION

A FIRST CAUSE OF ACTION AGAINST DEFENDANT

-- Unreasonable Search and Failure to Implement Municipal Policies to Avoid Constitutional Deprivations Under of Color of State Law --

39. Plaintiffs incorporate by reference and reallege each and every allegation stated in paragraphs 1 through 38.

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

41. The actions of Defendant detailed above violated Plaintiffs' rights under the United States Constitution. Simply put, it was not objectively reasonable for the City of Philadelphia to strip search Plaintiffs and class members based on their arrests for misdemeanor or other minor criminal charges.

42. These strip searches were conducted pursuant to the policy, custom or practice of the City of Philadelphia. As such, the City of Philadelphia is directly liable for the damages of the named Plaintiff and members of the Class.

43. Upon information and belief, City of Philadelphia is responsible for establishing the policies and procedures to be utilized in the operation of the PPS, and is responsible for the implementation of the strip search policy questioned in this lawsuit. As such, the Defendant is responsible for the damages of the named Plaintiffs and members of the Class.

44. The Defendant knew that the strip search policy, practice or custom was illegal, and acted willfully, knowingly, and with specific intent to deprive Plaintiffs and members of the Class of their Constitutional rights.

45. This conduct on the part of the City of Philadelphia represents a violation of 42 U.S.C. § 1983, given that their actions were undertaken under color of state law.

46. As a direct and proximate result of the unconstitutional acts described above, Plaintiff and members of the proposed class have been irreparably injured.

A SECOND CAUSE OF ACTION AGAINST DEFENDANT

-- Demand for Declaratory Judgment --

47. Plaintiffs incorporate by reference and reallege each and every allegation stated in paragraphs 1 through 46.

48. The policy, custom and practice of the City of Philadelphia is clearly unconstitutional, in that these entities and individuals are directing/conducting the strip searches of all individuals placed into the PPS without any particularized suspicion that the individuals in question have either contraband or weapons.

49. Plaintiffs and members of the Class request that this Court issue a declaratory judgment, and that it declare the strip search policy of the County of Philadelphia to be unconstitutional.

A THIRD CAUSE OF ACTION AGAINST DEFENDANT

-- Demand for Preliminary and Permanent Injunction --

50. Plaintiffs incorporate by reference and reallege each and every allegation stated in paragraphs 1 through 49.

51. The policy, custom and practice of the City of Philadelphia is clearly unconstitutional, in that these entities and individuals are directing/conducting the strip searches of all individuals placed into the PPS without any particularized suspicion that the individuals in question have either contraband or weapons.

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

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

54. Plaintiffs demand that the City of Philadelphia immediately desist from strip searching individuals placed into the custody of the Philadelphia Prison System absent any particularized suspicion that the individuals in question have either contraband or weapons, and seek both a preliminary and permanent injunction from this Court ordering as much.

VII. DEMAND FOR TRIAL BY JURY

57. The Plaintiffs hereby demand a trial by jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs Nakisha Boone and George Byrd, on behalf of themselves and on behalf of a class of others similarly situated, requests that this Honorable Court grant them the following relief:

A. An order certifying this action as a class action pursuant to Fed.R.Civ.P. 23.

B. A judgment against Defendant on Plaintiffs' First Cause of Action detailed herein, awarding Compensatory and Punitive 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 a class wide basis.

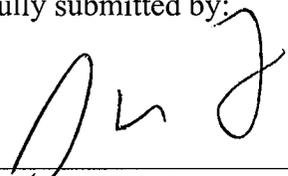
C. A declaratory judgment against Defendant declaring the City of Philadelphia and the PPS' policy, practice and custom of strip and visual cavity searching all detainees entering the system, regardless of the crime charged or reasonable suspicion of contraband, to be unconstitutional and improper.

D. A preliminary and permanent injunction enjoining Defendant from continuing to strip and visual cavity search individuals charged with misdemeanors or minor crimes absent particularized, reasonable suspicion that the arrestee subjected to the search is concealing weapons or other contraband.

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

Dated: 2/23/07

Respectfully submitted by:



Daniel C. Levin, Esquire
Id No.: 80013
Levin, Fishbein, Sedran & Berman
510 Walnut Street, Ste. 500
Philadelphia, PA 19106
Telephone: 215-592-1500
Telecopier: 215-592-4663
Electronic Mail: dlevin@lfsblaw.com

Elmer Robert Keach, III, Esquire
LAW OFFICES OF
ELMER ROBERT KEACH, III, PC
1040 Riverfront Center
Post Office Box 70
Amsterdam, NY 12010
Telephone: 518.434.1718
Telecopier: 518.770.1558
Electronic Mail: bobkeach@keachlaw.com

Gary E. Mason, Esquire
Alexander Barnett, Esquire
THE MASON LAW FIRM, PLLC
1225 19th Street, NW
Suite 600
Washington, DC 20036
Telephone: 202.429.2290
Telecopier: 202.429.2294
Electronic Mail: gmason@masonlawdc.com

Jonathan W. Cuneo, Esquire
Charles LaDuca, Esquire
CUNEO, GILBERT & LADUCA, LLP
507 C Street, NE
Washington, DC 20002
Telephone: 202.789.3960
Telecopier: 202.789.1813
Electronic Mail: CharlesL@cuneolaw.com

Laura Feldman, Esquire
Identification No. 49459
FELDMAN & PINTO
1604 Locust St., 2R
Philadelphia, PA 19103
Telephone: 215-546-2604
Telecopier: 215-592-4663
Electronic Mail:
LFeldman@FeldmanPinto.com

Christopher G. Hayes, Esquire
Identification No. 57253
115 East Chestnut Street, 2nd Floor
West Chester, PA 19380
Telephone: 610-431-9505
Telecopier: 610-431-1269

Electronic Mail:
CHayes@FeldmanPinto.com

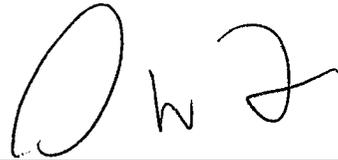
Kevin Birley, Esquire
Ostriat & Associates, LLC
1800 John F. Kennedy Blvd.
Suite 300
Philadelphia, PA 19103

**ATTORNEYS FOR PLAINTIFFS AND
PROPOSED CLASS**

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the Amended Plaintiffs' Class Action Complaint was served on this 23rd day of February, 2007 via first class mail upon defense counsel at the following addresses:

Mark Maguire, Esquire
City of Philadelphia Law Department
One Parkway
1515 Arch Street
14th Floor
Philadelphia, PA 19102

A handwritten signature in black ink, appearing to read "D. C. Levin", written above a horizontal line.

Daniel C. Levin, Esquire