

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CARL A. BARNES)
DC Jail)
1903 E Street, SE)
Washington, DC 20021)
DCDC 278-872,)

DERNARD HAWKINS)
4214 Benning Road, N.E.)
Apt 203)
Washington, DC 20019)
DCDC 281-828)

TONEY JAMES MALLOY)
4524 Iowa Ave, Apt 6)
Washington, DC 20011)
DCDC 289-872)

DAVID PETERSON)
1114 Trinidad Ave N.E.)
Washington, DC 20002)
DCDC 252-552)
and)

MAURICE WILLIAMS)
321 Adams Street NE, #2)
Washington, DC 20002)
DCDC 197-245)

and)

RAZINA JONES)
1222 Iwid Ave., S.E.)
Washington, DC 20003)

Civil No. 06-315 (RCL)

On behalf of all others)
similarly situated,)
)
Plaintiffs)
)
v.)
)
GOVERNMENT OF 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)
Defendant)

CLASS ACTION

SECOND AMENDED COMPLAINT FOR INDIVIDUAL MONEY
DAMAGES AND CLASS INJUNCTIVE RELIEF AND JURY DEMAND

Introduction

1. This is an action brought by each of Carl A. Barnes,
Dernard Hawkins, David Peterson, Toney James Malloy and
Maurice Williams (the "Overdetention Named Plaintiffs") on his own
behalf and on behalf of the class defined below injured (or presently
subject to injury) by the Government of the District of Columbia's

recently revived pattern and practice of allowing its Department of Corrections to overdetain inmates, and by the District's deliberate indifference to the effect of the practice of overdetention on the rights of inmates. To overdetain means holding a detainee or prisoner in a District of Columbia Department of Corrections ("Department of Corrections") facility past midnight of his or her release date, as defined below.

2. This is also an action brought by Carl A. Barnes, David Peterson, Toney James Malloy and Maurice Williams (the "Strip Search Named Plaintiffs") on his own behalf and on behalf of a Strip Search Class of individuals who were injured (or presently subject to injury) by the District's conduct in subjecting them to blanket strip searches and visual body cavity searches (both described below) after they were returned to a Department of Corrections facility after a judicial determination that there was no longer a basis for their detention, other than to be processed for release, and by District's deliberate indifference to the effect of the practice of blanket strip searches and visual body cavity searches on the rights of inmates.

3. The Overdetained Named Plaintiffs bring this action against the Government of the District of Columbia under Section 1983 of the Civil Rights Act of 1871, 42 U.S.C. § 1983, to enforce the Fourth, Fifth and Eighth Amendments, for injuries suffered by them, because the District overdetained them and other members of the class at a Department of Corrections facility.

4. The Strip Search Named Plaintiffs bring this action against the Government of the District of Columbia under Section 1983 of the Civil Rights Act of 1871, 42 U.S.C. § 1983, to enforce the Fourth and Fifth Amendments, for injuries suffered by them, because the District subjected them and the class to the blanket strip searches.

Jurisdiction and Venue

5. This Court has jurisdiction over the Overdetained Named Plaintiffs and Strip Search Named Plaintiffs' § 1983 claims pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1343(a)(3).

6. Venue is appropriate in this District. Each of the claims for relief arose in this judicial district.

Class Action Allegations

7. The Court certified these two classes under Federal Rule of Civil Procedure 23(b)(2) and (b)(3) and certified all named plaintiffs named in the Second Amended Complaint as named plaintiffs in an order dated 3/26/07 (docket # 33).

8. Plaintiffs have moved separately to add Ms. Jones as a named plaintiff for each of the classes.

9. The Overdetained 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: (a) Each person who has been, is, or in the future will be incarcerated in any District of Columbia Department of Corrections facility from September 1, 2005 forward; and (b) who was not released, or, in the future, will not be released by midnight on the date on which the person is entitled to be released by court order or the date on which the basis for his or her detention has otherwise expired.

10. The Strip Search Named Plaintiffs also 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 member of the class who was, or in the future will be, from September 1, 2005,

forward: (i) in the custody of the Department of Corrections; (ii) taken to court from a Department of Corrections facility; (iii) ordered released by the court or otherwise became entitled to release by virtue of the court appearance because the charge on which he had been held was no longer pending or was dismissed at the hearing, was ordered released on his own recognizance, or had posted bail, was sentenced to time served, was acquitted or was otherwise entitled to release; (iv) was not the subject of any other pending case or cases which imposed any condition of release other than personal recognizance; (v) was not the subject of any detainer or warrant; (vi) was returned from court to the DC Jail or CTF or other District facility, to be processed out of Department of Corrections custody; and (vii) was subjected to a strip search and/or visual body cavity search without any individualized finding of reasonable suspicion or probable cause that he was concealing contraband or weapons; before being released, regardless of whether he was overdetained.

11. Certification of these two classes under Federal Rule of Civil Procedure 23(b)(2) was and remains appropriate, because the

District of Columbia has a pattern and practice that has uniformly affected all members of both classes, and injunctive relief against the District will benefit each and every plaintiff and class member. Although the District had agreed to stop these practices, and indeed had done so in the context of the settlement of Bynum v. District of Columbia , Civil Action No. 02-956 (RCL), the final approval order did not require that the practices stop. These practices continued after the Bynum Settlement making it clear that a court order is necessary to ensure the rights of the class members.

12. The classes are entitled to injunctive relief, for example, setting up an independent monitor to supervise the Department of Corrections' inmate management system to ensure that all inmates are released on or before their release dates, and other relief as specified below. Certification of a class under Federal Rule of Civil Procedure 23(b)(3) was and remains 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.

13. Regarding the Overdetained Named Plaintiffs, and members of the Overdetention Class, there are no individual questions on the issue of liability other than whether an individual has been overdetained, and the answer to that question can be determined by ministerial inspection of the Department of Corrections' records.

14. Computer records are available for inspection on the overdetections.

15. Regarding the Strip Search Named Plaintiffs, and members of the Strip Search Class, there are no individual questions on the issue of liability, because neither the DC Jail nor CTF keeps records of the searches and therefore neither the DC Jail nor CTF can show that any of the searches were conducted based on an individual determination of reasonable suspicion.

16. Among the questions of law and fact common to the classes are:

a) whether the Constitution provides a maximum length of time measured in hours beyond which the District cannot hold a person to perform

administrative tasks incident to release before releasing that person from jail;

b) whether the District has exceeded that maximum for each class member;

c) whether the District has a pattern and practice of holding detainees and inmates past their release dates;

d) whether the District has a pattern and practice of being deliberately indifferent to the rights of detainees and inmates by holding them past their release dates;

e) whether the District's acts as alleged herein violate the Constitution of the United States by holding detainees and inmates past their release dates;

f) whether the District has a policy of and practice of subjecting persons to blanket strip searches and visual body cavity searches after they have become entitled to release;

g) whether such policy, if found to exist, violates the Fourth and/or Fifth Amendments;

h) whether plaintiffs and the members of the Overdetention Class and the Strip Search Class and future members are entitled to equitable relief, and, if so, what is the nature of that relief;

i. 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.

17. Each of the Overdetention Class and the Strip Search Class is so numerous that joinder of all members is impracticable. The exact number of Overdetention Class and Strip Search Class members numbers in the thousands.

18. The Overdetained Named Plaintiffs' claims are typical of the claims of the other members of the class, as plaintiffs and all other members of the class were injured by exactly the same means, that is, by the overdetentions.

19. The Strip Search Named Plaintiffs' claims are typical of the claims of the other members of the Strip Search Class, as the Strip Search Named Plaintiffs and all other members of the Strip Search

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

20. The Overdetained Named Plaintiffs and the Strip Search Named Plaintiffs will fairly and adequately protect the interests of the members of the Overdetention Class and Strip Search 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.

21. The Overdetained Named Plaintiffs and Strip Search Named Plaintiffs have no interests that are contrary to or in conflict with those of the class or Strip Search Class.

Parties

22. Plaintiff Carl A. Barnes was currently being held past his Release Date at the DC Jail as of the filing of this action and was strip searched without reasonable suspicion after being ordered to be released from custody.

23. Plaintiff Dernard Hawkins was currently being held past his Release Date at the DC Jail as of the filing of this action.

24. Plaintiff David Peterson was currently being held past his Release Date at the DC Jail as of the filing of this action and was strip searched without reasonable suspicion after being ordered to be released from custody.

25. Plaintiff Maurice Williams was currently held in the DC Jail as of the filing of this action on a detention order in a traffic case that had been vacated on 2/8/06. He was scheduled for a hearing on a show cause order for a probation violation on a misdemeanor case issued by a District of Columbia Superior Court Judge after which he was likely to be further overdetained and subjected to an illegal court return strip search.

26. Plaintiff Toney James Malloy is an inmate in the custody of the Department of Corrections who as of the time of the filing of the first amended complaint was being held in the District of Columbia Superior Court lock up for return to the DC Jail or the holding facility at DC General after being sentenced to probation with no confinement with no other charges on which he was being held, and at that time had no warrants, detainers or other basis for detention.

27. Plaintiff Razina Jones was an inmate in the DC Jail who was ordered released at Superior Court on 2/28/06 and who was subjected to an illegal strip search on 2/28/06 upon reentry to the DC Jail and released the next morning.

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

FACTUAL ALLEGATIONS

Components of the Department of Corrections

29. The District of Columbia Department of Corrections holds prisoners committed by the District of Columbia Superior Court, the District of Columbia District Court, and other agencies, in the Central Detention Facility ("DC Jail"), the Correctional Treatment Facility ("CTF") and at various halfway houses located in the District of Columbia.

30. Most prisoners held in the custody of the Department of Corrections are either pre-trial detainees, misdemeanants serving sentences, or parole and probation violators.

The Inmate Management System

31. The records office located at the DC Jail ("Records Office") is responsible for administering and maintaining the records, including the judgment and commitment files, of all persons housed at the DC Jail, CTF and the halfway houses.

32. The Records Office is also responsible for ensuring that all persons housed at the DC Jail, CTF and the halfway houses are released according to their Release Dates specified in their dispositions and court orders.

33. The District of Columbia Superior Court has a policy pursuant to which an in-custody-defendant or a defendant ordered into custody may not leave the courtroom without an order (commitment order or release order) for each case on which he appeared.

The Overdetention Problem

34. "Overdetain" means holding a detainee or prisoner in Department of Corrections' custody past the person's release date.

35. "Release Date" for each detainee or inmate is the day on which the person is entitled to be released by court order or the date on which the basis for his or her detention has otherwise expired.

36. “Exit Date” for each detainee or inmate is the day on which the person is actually released from the custody of the District of Columbia Department of Corrections.

37. The Department of Corrections had a long and documented history of overdetaining detainees and inmates past their release dates.

38. The Department of Corrections, in response to a class action lawsuit, for a brief period in 2005 ameliorated the overdetention problem.

39. However, since at least November 2005, the Department of Corrections again begun overdetaining large numbers of inmates.

40. The rate of overdetentions, after dipping in early 2005, spiked in late 2005 and by January 2006 had exceeded the over detention rate prevailing in late 2004. .

The Court Return Strip Search Problem

41. Prior to late 2000 or early 2001, the Department of Corrections followed a practice under which most inmates taken from custody of the Department of Corrections to court and ordered released by a judicial officer because the charge was no longer pending or because of a change in conditions of release was returned to the DC Jail or CTF for processing for release rather than being released from the courthouse.

42. In late 2000 or early 2001, the Department of Corrections instituted a policy under which every inmates taken from custody of the Department of Corrections to court and ordered released by a judicial officer because the charge was no longer pending or because of a change in conditions of release was returned to the DC Jail or CTF for processing for release rather than being released from the courthouse.

43. From the beginning of the class period (9/1/05) until July 2008 virtually all court returns were released from MHU (the Medical Holding Unit ("MHU") or is a holding facility at the old DC General Hospital defined below) or the DC Jail.

44. As a result, because the DC Jail and CTF had then and now policies of subjecting all inmates (new intakes and court returns) to blanket strip searches upon entering the facilities, all court returns entitled to release sent back to the DC Jail and CTF after their court appearances suffered blanket strip searches.

45. The strip searches of inmates entering the DC Jail and CTF described herein are strip searches of inmates in groups of several inmates at once.

46. In 2005 the Department of Corrections instituted a program (which was not reduced to a program statement or post order) of diverting some in-custody defendants ordered released or otherwise entitled to release from the Superior Court of the District of Columbia to a holding facility on the grounds of DC General Hospital where they would not be subject to a strip search, absent individualized suspicion, while the record review for detainers and warrants and property retrieval was conducted prior to release, providing the release could be effected before 10:00 p.m.

47. All other court returns (including court returns entitled to release) were returned to the DC Jail or CTF and subjected to blanket strip searches.

48. In 2008 the DOC began releasing some court returns from the Superior Court but DOC has continued to release some court returns from MHU and the DC Jail.

49. The cause of the over-detentions and illegal post release strip searches of court returns entitled to release was and remains the District of Columbia's maintaining a release system in the DOC which *in toto* simply delays all releases until the system, in its sweet time, and with the resources the government of the District of Columbia chooses provide it, is ready to make releases of inmates from DOC facilities

50. The system attaches weight to the governmental interests involved in releases but disregarded the interests of the inmate in a prompt release.

51. The over-detention problem and resultant post release strip search problem remained especially severe in the first year after the termination of the Bynum class period because of the problems with the DOC's release system including not enough time to release in-custody defendants returning from court appearances because of the 10 pm cutoff imposed by D.C. Code § 24-211.2(b)(6), failing to adequately staff the Records Office and other positions involved in the release process, re-committing court returns back into the DC Jail or CTF without regard to the disposition of their court cases, back-log, and awaiting juvenile releases, losing track of inmates going to court and re-admitting them to the DC Jail or CTF and subjecting them to blanket strip searches without court orders and thus without knowing whether they were ordered continued held or ordered released (causing over detentions and post release strip searches), not making in-court releases until July 2008, having no program for identifying at court persons who needed meds, relying on a sneaker network to deliver court orders from the courts to the Records Office staff, staff not following the Records Office manual, relying on paper records to process commitments and releases (instead of JACCS, the DOC's computerized inmate population accounting system) and the deliberate indifference of the acting warden Patricia Britton and the acting director Elwood York and the resignation of competent managers from the Records Office and the failure to replace them (or in some cases a combination of

these factors). The DOC never effectively addressed these problems in the release process despite the Bynum case and promises of reform.

52. The Department of Corrections, in response to a class action lawsuit, agreed to institute reforms to ameliorate the over-detention problem and the strip search problem. Bynum v. District of Columbia, 412 F.Supp.2d 73, 83 (D.D.C. 2006)(final approval order).

53. However, the over-detentions and illegal strip searches continued even after the Bynum class period ended on 8/31/05 and continued practically unabated throughout the first 18 months of the class period.

54. Plaintiffs' statistical analysis shows that in six of the first 12 months of the class period, over 50 percent of court returns entitled to release were potentially over-detained, and the rate was almost always above 30 percent through March 2007. (A strong correlation exists between the number of potential over detentions and the number of actual over detentions.)

55. Additionally, Plaintiffs reviewed the raw data underlying the District's analysis of the approximately 6,000 releases identified by the District's script or query (computer code that extracts data from a larger data set) for identifying potential over detentions and for the first year after the Bynum class period/ first year of this class period Plaintiffs identified 2,050 actual over-detentions, 1,280 on-time releases, and 2,619 releases in which the over-detention status could not be determined based on the data.

56. The District's analysis identified over 1,200 inmates held past their Release Dates during the first year of this class period alone which the District attributed solely or in part to the 10:00 pm cut-off rule.

57. The numbers of overdetections and overdetection hours in the first year of the Barnes class period is at least 2,547 and 74,411, respectively.

58. The number of these over detained court returns entitled to release subjected to post release strip searches in the first-year of the class period is at least 2,351.

59. While persons entitled to release because of completion of sentence had a consistently lower potential overdetection rate than court returns entitled to release, persons entitled to release because of completion of sentence also exhibited relatively higher potential overdetection rates during the first year of the *Barnes* class period in comparison to more recent years. Six of the first 12 months show a potential overdetection rate above 15 percent, whereas this rate is almost always at or below 10 percent beginning in November 2006.

60. The number of overdetections for the whole overdetection class period to date is at least between 4,432 and 4,540, and that the number of overdetection hours for the whole overdetection class period to date is at least between 162,515 and 252120.

61. DOC officials and City Council Members and the

62. Mayor were aware of these problems and the over detention and post release strip search problems, but remained deliberately indifferent to the risk of over detentions and post release strip searches and acquiesced in the current overdetention and strip search problems. As part of the Bynum Settlement Agreement the DOC retained \$3,000,000 for construction of a stand-alone inmate processing center ("ICP")

63. The IPC was intended to provide adequate processing facilities for intakes, releases, and associated records processing for inmates in DOC facilities.

64. The IPC has not been constructed as of the date of filing of this amended complaint even though every year as part of its agency review the DOC informs the City Council that the project has not been funded and remains un-built.

65. The DOC did not make courthouse releases (that is, identifying and releasing court returns entitled to release directly from the Superior Court) from 2001 to 2008.

66. The Government of the District of Columbia has known based on analyses provided by Bynum class counsel and reports of the courthouse release system employed in LA County that courthouse releases would speed releases and reduce erroneous releases and over detentions.

67. Bynum class counsel testified on these topics in November 2002 before the District of Columbia City Council and that courthouse releases would speed releases and reduce erroneous releases and over detentions.

68. Bynum class counsel prepared a courthouse release package and in about 2004 sent it and the policies and procedures the LA County Sheriff's Department formulated for making courthouse releases to all stake holders including opposing counsel in the Bynum case.

69. The DOC finally began making some courthouse releases from the Superior Court in July 2008.

70. For example, instead of devising a system for transmitting dispositions directly from the Superior Court judicial officers who made them to DOC Records Office staff the District has for years relied on the Superior Court Marshal to transmit paper orders from courtrooms at the Superior Court and the District Court to the Records Office or other DOC staff, even when the District knew this system causes delays in release of inmates.

71. The District did not even participate in an analysis of the "sneaker network" system of delivering court orders and other paperwork for court returns until late 2007.

72. The District did not even make substantive additions to Records Office staff until late 2007 even though the DOC has known for years that the Records Office was understaffed to the point it could not promptly and reliably process commitments and releases.

Carl A. Barnes' Overdetention by the DC Jail

73. On or about 11/17/06 Plaintiff Carl A. Barnes was committed to the DC Jail.

74. Plaintiff Barnes' Release Date was 2/15/06.

75. Plaintiff Barnes was currently being overdetained in the DC Jail as of the filing of this action.

76. Carl Barnes was released from the DC Jail on 2/21/09.

77. Plaintiff Barnes has suffered damages as a result of the over detention.

Dernard Hawkins' Overdetention by the DC Jail

78. On or about 2/15/06 Plaintiff Dernard Hawkins was committed to the DC Jail.

79. Plaintiff Dernard Hawkins' Release Date was on or about 2/16/06.

80. Plaintiff Dernard Hawkins was currently being overdetained at the DC Jail as of the filing of this action.

81. Plaintiff Dernard Hawkins was released after his Release Date on 2/22/06.

82. Plaintiff Dernard Hawkins has suffered damages as a result of the overdetention.

Plaintiff David Peterson's Overdetention by the DC Jail

83. On or about 2/13/06 Plaintiff David Peterson was committed to the DC Jail.

84. Plaintiff Peterson's Release Date was 2/20/06.

85. But Plaintiff David Peterson was not released on 2/20/06 even though the Department of Corrections lacked a basis to continue detaining him.

86. Plaintiff Peterson's was currently being overdetained in the DC Jail as of the filing of this action.

87. David Peterson was released on 2/24/06.

88. Plaintiff Peterson has suffered damages as a result of the overdetention.

Plaintiff Razina Jones' Over-detention by the DC Jail

89. On or about 2/25/06 Plaintiff Razina Jones was committed to the DC Jail.

90. Razina Jones was entitled to release on 2/28/06 because a judge of the Superior Court ordered her released at a court hearing at Superior Court and she had no other cases, warrants or detainers to hold her.

91. Instead of being released at Superior Court, Razina Jones was returned to DC Jail on 2/28/06,

92. She was not released from DC Jail until the morning of 3/1/06 because there was not enough time to release her before the 10 pm cutoff after her court appearance on 2/28/06.

93. Plaintiff Jones has suffered damages as a result of the over-detention.

Plaintiff Carl A. Barnes's Strip Search

94. On 2/15/06 Plaintiff Carl A. Barnes was taken to the Superior Court and the Superior Court judge sentenced him to time served.

95. Plaintiff Carl A. Barnes was entitled to release on 2/15/05.

96. But, instead of being released or diverted to the holding facility at DC General on 2/15/06, Plaintiff Carl A. Barnes was returned to the DC Jail's general population and subjected to a strip search and visual body cavity search without any individualized finding of reasonable suspicion or probable cause that he was concealing contraband or weapons even though a court had ordered his release.

97. Plaintiff Barnes has suffered damages as a result of the post release strip search.

Plaintiff David Peterson's Strip Search

98. On 2/21/06 Plaintiff David Peterson was again taken to the Superior Court and the Superior Court judge ordered his immediate release.

99. On 2/21/06 Plaintiff David Peterson was diverted to the holding facility at DC General because the judge in his case had previously ordered that he be released on 2/20/06 and again on 2/21/06 ordered his release.

100. Plaintiff David Peterson was entitled to release on 2/20/05.

101. But, instead of being released from the holding facility at DC General on 2/21/06, Plaintiff David Peterson was returned to the DC Jail's general population and subjected to a strip search and visual body cavity search without any individualized finding of reasonable suspicion or probable cause that he was concealing contraband or weapons even though a court had ordered his release.

102. The guards at the DC Jail subjected Mr. Peterson to a post release strip search in front of about 5 guards and 75 other inmates.

103. Plaintiff Peterson has suffered damages as a result of the strip search.

Dernard Hawkins' post release strip search at the DC Jail

104. On or about 2/15/06 Plaintiff Dernard Hawkins was taken to the Superior Court for a hearing on a bench warrant issued by a Superior Court judge.

105. The Court quashed the warrant and vacated the show cause hearing at the appearance.

106. However, instead of being released from the Superior Court courthouse or diverted to the holding facility at DC General on 2/15/06, Plaintiff Dernard Hawkins was taken to the DC Jail and committed to the DC Jail even though he had no other pending cases, no warrants or no detainers blocking his release, and in front of two guards and 7 other inmates subjected to a strip search and visual body cavity search without any individualized finding of reasonable suspicion or probable cause that he was concealing contraband or weapons even though a court had ordered his release.

107. Plaintiff Hawkins has suffered damages as a result of the post release strip search.

Plaintiff Maurice Williams' post release strip searches at the DC Jail

108. Plaintiff Maurice Williams at the time the First Amended Complaint was filed (2/24/06) was held in the DC Jail on a traffic hold that had been vacated 2/8/06. He was the subject of a show cause order for probation violation in a misdemeanor case issued by a District of Columbia Superior Court (but he was not subject to a hold in the misdemeanor probation case and the Records Office did not show him as being held in the misdemeanor probation case), and he had a hearing scheduled for 2/27/06 in the misdemeanor probation case, after which he was likely to be overdetained and subjected to an illegal court return strip search. The judge in the misdemeanor probation case issued a release order at the 2/27/06 hearing (even though there was no hold in that case) but the DC Jail continued to hold him on the traffic case (even though the traffic hold had been vacated 2/8/06) until 3/1/06 even though the Superior Court records showed that the traffic hold had been discharged on 2/8/06. Pursuant to the custom of overdetections and the policy of strip searches Mr. Williams was overdetained for

23 days and subjected to an illegal strip search after judges had ordered his release.

109. The post release strip searches of Mr. Williams were conducted in front of several guards and many other inmates.

110. Plaintiff Williams has suffered damages as a result of the post release strip searches.

Plaintiff Toney James Malloy' post release strip search at the DC

Jail

111. Plaintiff Toney James Malloy was an inmate in the custody of the Department of Corrections who as of the time of the filing of the second amended complaint being held in the District of Columbia Superior Court lock up after being sentenced to probation with no confinement with no other charges on which he was being held, no warrants, detainers or other basis for detention.

112. Pursuant to the policy of the District of Columbia Department of Corrections, Plaintiff Toney James Malloy, instead of being released from the District of Columbia Superior Court courthouse, was returned to a Department of Corrections facility for out-processing.

113. Pursuant to a practice and custom of the District of Columbia Department of Corrections known to policymakers, Plaintiff Toney James Malloy was subjected to a suspicionless strip search in front of guards and other inmates and overdetained before being released. On 2/24/06, his Release Date, Plaintiff Toney James Malloy was subjected to a blanket strip search in the DC Jail after his return to from court as a condition of entry into the DC Jail in front of two guards and about 30 other inmates.

114. Plaintiff Malloy has suffered damages as a result of the post release strip search.

Plaintiff Razina Jones' post release strip search at the DC Jail

115. Razina Jones was entitled to release on 2/28/06 because a judge of the Superior Court ordered her released at a court hearing at Superior Court and she had no other cases, warrants or detainers to hold her.

116. Instead of being released at Superior Court, Razina Jones was returned to DC Jail on 2/28/06,

117. Upon her return to the DC Jail Plaintiff Jones was subjected to a suspicion-less post release strip search in the female Release and Discharge Processing area.

118. Plaintiff Jones has suffered damages as a result of the post release strip search.

SUBSTANTIVE ALLEGATIONS

Count 1

§ 1983 Deliberate Indifference Liability of the District for the
Constitutional Violations of its Employees

119. The Overdetained Named Plaintiffs and Strip Search Named Plaintiffs reallege and incorporate by reference all allegations set forth in the preceding paragraphs of this Complaint.

120. District of Columbia administrators, policy makers, supervisors and employees caused the intentional, unjustified overdetention of the Overdetained Named Plaintiffs and unreasonable strip searches of the Strip Search Named Plaintiffs and all other class members and Strip Search Class members by deliberate indifference to the risk of constitutional injury of overdetention in administering records relating to inmates' detention and release, and maintaining and acquiescing in a policy and practice of strip searching certain inmates.

121. Overdetaining any person violates that person's Fourth and Fifth and Eighth Amendment rights.

122. Unreasonably strip searching an inmate violates his Fourth and Fifth Amendment rights.

123. District of Columbia employees continue in such conduct up to and including the present.

124. At all relevant times such District of Columbia 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 such District of Columbia employees were acting in furtherance of the business of the District of Columbia.

125. The District is therefore liable by virtue of its deliberate indifference under 42 U.S.C. § 1983 for constitutional injuries to the Overdetained Named Plaintiffs and Strip Search Named Plaintiffs and all other class members and Strip Search Class members caused by the conduct of such employees.

126. Accordingly, all Named Plaintiffs and class members are entitled to damages to be determined at trial, and the Overdetention and Strip Search Classes are entitled to injunctive relief.

Count 2

§ 1983 Monell Custom and Practice Direct Liability of District of
Columbia for Violation of Fourth, Fifth and Eighth Amendment
Rights of Overdetained Named Plaintiffs and Class Members

127. The Overdetained Named Plaintiffs reallege and incorporate by reference all allegations set forth in this Complaint.

128. Beginning approximately in late December 2005, the District of Columbia, and its agents and employees, have had a custom of detaining people past their release dates, thereby causing the intentional, unjustified overdetention of the Overdetained Named Plaintiffs and all other class members.

129. The District's actions, and failure to act, as described above, directly and proximately and affirmatively were the moving force behind the violations of the Overdetained Named Plaintiffs and all other class members' Fourth, Fifth and Eighth Amendment rights.

130. Accordingly, all Overdetention Named Plaintiffs and Overdetention Class members are entitled to damages to be determined at trial, and the Overdetention Class is entitled to injunctive relief.

Count 3

§ 1983 Monell Custom and Practice Direct Liability of District of
Columbia for Violation of Fourth and Fifth Amendment Rights of
Strip Search Named Plaintiffs and Strip Search Class Members for

Illegal Strip Searches

131. The Strip Search Named Plaintiffs reallege and incorporate by reference all allegations set forth in this Complaint.

132. The District's actions, and failure to act, as described above, directly and proximately and affirmatively were the moving force behind the violations of the Strip Search Named Plaintiffs and the Strip Search Class members' Fourth and Fifth Amendment rights.

133. Accordingly, Named Plaintiffs Barnes, Malloy and Petersen and the Strip Search Class members are entitled to damages to be determined at trial, and the Strip Search Class is entitled to injunctive relief.

IRREPARABLE INJURY AND INJUNCTIVE RELIEF

134. The District is overdetaining members of the plaintiff Overdetention Class and unreasonably subjecting members of the Strip Search Class to strip searches and visual body cavity searches, which irreparably harms them, even if they are later able to recover compensatory damages.

135. The District's overdetaining members of the plaintiff Overdetention Class and performing illegally strip searches of the plaintiff Strip Search Class has irreparably harmed, and will continue to irreparably harm, members of the proposed plaintiff Overdetention Class and Strip Search Class, thus making declaratory and injunctive relief necessary.

PRAYER FOR RELIEF

WHEREFORE, 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 Rule

23(b)(3) and certifying the Overdetained Named Plaintiffs as the proper representative of the class consisting of:

(a) Each person who has been, is, or will be incarcerated in any District of Columbia Department of Corrections facility from 9/1/05 up to and until the date this case is terminated; and (b) who was not released, or, in the future, will not be released by midnight on the date on which the person is entitled to be released by court order or the date on which the basis for his or her detention has otherwise expired.

3. declare that this action may be maintained as a class action pursuant to Federal Rule of Civil Procedure 23(a), 23(b) (2) and 23(b)(3) and certifying the Strip Search Named Plaintiffs as the proper representative of the Strip Search Class consisting of each member of the class who was, or in the future will be, from 9/1/05, forward:

(i) was or will be in custody of the Department of Corrections;

(ii) was or will be taken to court from a Department of Corrections facility;

(iii) was or will be ordered released by the court or otherwise became entitled to release by virtue of the court appearance because the charge on which he had been held was no longer pending or was dismissed at the hearing, was ordered released on his own recognizance, or had posted bail, was sentenced to time served, was acquitted or was otherwise entitled to release;

(iv) was not or will not be the subject of any other pending case or cases which imposed any condition of release other than personal recognizance;

(v) was not or will not be the subject of any detainer or warrant;

(vi) was or will be returned to the DC Jail or CTF from court, to be processed out of Department of Corrections custody; and

(vii) was or will be subjected to a strip search and/or visual body cavity search without any individualized finding of reasonable suspicion or probable cause that he was concealing contraband or weapons;

(viii) before being released, regardless of whether he was or will be overdetailed.

4. declare that the Districts' acts alleged above violate the Fourth, Fifth and Eighth Amendments to the Constitution by overdetailed and illegally strip searching plaintiffs as alleged herein;

5. preliminarily and permanently enjoin the Districts from pursuing the course of conduct complained of herein;

6. preliminarily and permanently enjoin the Districts from pursuing settlement directly with any member of the putative Overdetention Class and Strip Search Class described herein unless that person is represented by counsel;

7. award all named plaintiffs compensatory and consequential damages in an amount to be determined at trial;

8. appoint an independent monitor to supervise the Records Office, and report to the court, to ensure that all inmates are released on or before their Release Dates, at the expense of Defendants;

9. appoint an independent monitor to supervise the R&D Offices, and report to the court, to ensure that all detainees and inmates who have been ordered released are not strip searched or full-body cavity searched;

10. award plaintiffs attorneys' fees and costs incurred in bringing this action under 42 U.S.C. § 1988; and

11. grant such other relief as this Court deems just and proper.

Respectfully submitted,

_____/sig/_____
WILLIAM CLAIBORNE
D.C. Bar # 446579

717 D Street, NW
Suite 210
Washington, DC 20004
Phone 202/824-0700
Fax 202/824-0745

JURY DEMAND

Plaintiffs demand a jury of six as to all claims so triable.

_____/sig/_____
WILLIAM CLAIBORNE
D.C. Bar # 446579
Counsel for the Overdetained
Named Plaintiffs and Strip Search
Named Plaintiffs and the class

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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CARL A. BARNES)
DC Jail)
1903 E Street, SE)
Washington, DC 20021)
DCDC 278-872,)

DERNARD HAWKINS)
4214 Benning Road, N.E.)
Apt 203)
Washington, DC 20019)

DC Jail)
1903 E Street, SE)
Washington, DC 20021)
DCDC 281-828)

TONEY JAMES MALLOY)
4524 Iowa Ave, Apt 6)
Washington, DC 20011)
DC Jail)
1903 E Street, SE)
Washington, DC 20021)
DCDC 289-872)

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DAVID PETERSON)
1114 Trinidad Ave N.E.)
Washington, DC 20002)
DC Jail)
1903 E Street, SE)
Washington, DC 20021)
DCDC 252-552)
and)

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MAURICE WILLIAMS)
321 Adams Street NE, #2)

Civil No. 06-315 (RCL)

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1. This is an action brought by each of Carl A. Barnes, Darnard Hawkins, David Peterson, Toney James Malloy and Maurice Williams (the "Overdetention Named Plaintiffs") on his own behalf and on behalf of the class defined below injured (or presently subject to injury) by the Government of the District of Columbia's recently revived pattern and practice of allowing its Department of Corrections to overdetain inmates, and by the District's deliberate indifference to the effect of the practice of overdetention on the rights of inmates. To overdetain means holding a detainee or prisoner in a District of Columbia Department of Corrections ("Department of Corrections") facility past midnight of his or her release date, as defined below.

2. This is also an action brought by Carl A. Barnes, David Peterson, Toney James Malloy and Maurice Williams (the "Strip Search Named Plaintiffs") on his own behalf and on behalf of a Strip Search Class of individuals who were injured (or presently subject to injury) by the District's conduct in subjecting them to blanket strip searches and visual body cavity searches (both described below) after they were returned to a Department of Corrections

facility after a judicial determination that there was no longer a basis for their detention, other than to be processed for release, and by District's deliberate indifference to the effect of the practice of blanket strip searches and visual body cavity searches on the rights of inmates.

3. The Overdetained Named Plaintiffs bring this action against the Government of the District of Columbia under Section 1983 of the Civil Rights Act of 1871, 42 U.S.C. § 1983, to enforce the Fourth, Fifth and Eighth Amendments, for injuries suffered by them, because the District overdetained them and other members of the class at a Department of Corrections facility.

4. The Strip Search Named Plaintiffs bring this action against the Government of the District of Columbia under Section 1983 of the Civil Rights Act of 1871, 42 U.S.C. § 1983, to enforce the Fourth and Fifth Amendments, for injuries suffered by them, because the District subjected them and the class to the blanket strip searches.

Jurisdiction and Venue

5. This Court has jurisdiction over the Overdetained Named

Plaintiffs and Strip Search Named Plaintiffs' § 1983 claims pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1343(a)(3).

6. Venue is appropriate in this District. Each of the claims for relief arose in this judicial district.

Class Action Allegations

7. The Court certified these two classes under Federal Rule of Civil Procedure 23(b)(2) and (b)(3) and certified all named plaintiffs named in the Second Amended Complaint as named plaintiffs in an order dated 3/26/07 (docket # 33).

8. Plaintiffs have moved separately to add Ms. Jones as a named plaintiff for each of the classes.

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9. The Overdetained 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: (a) Each person who has been, is, or in the future will be incarcerated in any District of Columbia Department of Corrections facility from September 1, 2005 forward; and (b) who was not released, or, in the future, will not be released by midnight on the date on which the person is entitled to be released by court order or the date on which the basis for his or her detention has otherwise expired.

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10. The Strip Search Named Plaintiffs also 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 member of the class who was, or in the future will be, from September 1, 2005,

forward: (i) in the custody of the Department of Corrections; (ii) taken to court from a Department of Corrections facility; (iii) ordered released by the court or otherwise became entitled to release by virtue of the court appearance because the charge on which he had been held was no longer pending or was dismissed at the hearing, was ordered released on his own recognizance, or had posted bail, was sentenced to time served, was acquitted or was otherwise entitled to release; (iv) was not the subject of any other pending case or cases which imposed any condition of release other than personal recognizance; (v) was not the subject of any detainer or warrant; (vi) was returned from court to the DC Jail or CTF or other District facility, to be processed out of Department of Corrections custody; and (vii) was subjected to a strip search and/or visual body cavity search without any individualized finding of reasonable suspicion or probable cause that he was concealing contraband or weapons; before being released, regardless of whether he was overdetained.

4.11. Certification of these two classes under Federal Rule of Civil Procedure 23(b)(2) was and is ~~is~~ remains appropriate, because the

District of Columbia has a pattern and practice that has uniformly affected all members of both classes, and injunctive relief against the District will benefit each and every plaintiff and class member. Although the District had agreed to stop these practices, and indeed had done so in the context of the settlement of Bynum v. District of Columbia, Civil Action No. 02-956 (RCL), the final approval order did not require that the practices stop. These practices have ~~recently been revived,~~continued after the Bynum Settlement making it clear that a court order is necessary to ensure the rights of the class members.

10.—The classes are entitled to injunctive relief, for example, setting up an independent monitor to supervise the Department of Corrections' inmate management system to ensure that all inmates are released on or before their release dates, and other relief as specified below.

12. ~~10A.~~ Certification of a class under Federal Rule of Civil Procedure 23(b)(3) was and remains also appropriate, in that common questions of law and fact predominate over any individual questions, and a class action is

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superior for the fair and efficient adjudication of this controversy as detailed below.

11.12. Regarding the Overdetained Named Plaintiffs, and members of the Overdetention Class, there are no individual questions on the issue of liability other than whether an individual has been overdetained, and the answer to that question can be determined by ministerial inspection of the Department of Corrections' records.

12.13. Computer records are available for inspection on the overdetections.

13.14. Regarding the Strip Search Named Plaintiffs, and members of the Strip Search Class, there are no individual questions on the issue of liability, because neither the DC Jail nor CTF keeps records of the searches and therefore neither the DC Jail nor CTF can show that any of the searches were conducted based on an individual determination of reasonable suspicion.

14.15. Among the questions of law and fact common to the classes are:

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a) whether the Constitution provides a maximum length of time measured in hours beyond which the District cannot hold a person to perform administrative tasks incident to release before releasing that person from jail;

b) whether the District has exceeded that maximum for each class member;

c) whether the District has a pattern and practice of holding detainees and inmates past their release dates;

d) whether the District has a pattern and practice of being deliberately indifferent to the rights of detainees and inmates by holding them past their release dates;

e) whether the District's acts as alleged herein violate the Constitution of the United States by holding detainees and inmates past their release dates;

f) whether the District has a policy of and practice of subjecting persons to blanket strip searches and visual body cavity searches after they have become entitled to release;

g) whether such policy, if found to exist, violates the Fourth and/or Fifth Amendments;

h) whether plaintiffs and the members of the Overdetention Class and the Strip Search Class and future members are entitled to equitable relief, and, if so, what is the nature of that relief;

i. 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.

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~~¶ 17.~~ Each of the Overdetention Class and the Strip Search Class is so numerous that joinder of all members is impracticable. The exact number of Overdetention Class and Strip Search Class members ~~is unknown to plaintiffs at this time, but is likely to consist of at least one hundred people, and likely substantially more than that~~ numbers in the thousands.

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~~¶ 18.~~ The Overdetained Named Plaintiffs' claims are typical of the claims of the other members of the class, as plaintiffs and all

other members of the class were injured by exactly the same means, that is, by the overdetections.

~~17-19.~~ The Strip Search Named Plaintiffs' claims are typical of the claims of the other members of the Strip Search Class, as the Strip Search Named Plaintiffs and all other members of the Strip Search Class were injured by exactly the same means, that is, by the blanket strip searches.

~~18-20.~~ The Overdetained Named Plaintiffs and the Strip Search Named Plaintiffs will fairly and adequately protect the interests of the members of the Overdetention Class and Strip Search 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.

~~19-21.~~ The Overdetained Named Plaintiffs and Strip Search Named Plaintiffs have no interests that are contrary to or in conflict with those of the class or Strip Search Class.

Parties

~~2/1/06~~ Plaintiff Carl A. Barnes was currently being held past his Release Date at the DC Jail as of the filing of this action and was strip searched without reasonable suspicion after being ordered to be released from custody.

~~2/1/06~~ Plaintiff Dernard Hawkins was currently being held past his Release Date at the DC Jail as of the filing of this action.

~~2/1/06~~ Plaintiff David Peterson was currently being held past his Release Date at the DC Jail as of the filing of this action and was strip searched without reasonable suspicion after being ordered to be released from custody.

~~2/1/06~~ Plaintiff Maurice Williams was currently held in the DC Jail as of the filing of this action on a detention order in a traffic case that had been vacated on 2/8/06. He was scheduled for a hearing on a show cause order for a probation violation on a misdemeanor case issued by a District of Columbia Superior Court Judge after which he was likely to be further overdetained and subjected to an illegal court return strip search.

26. Plaintiff Toney James Malloy is an inmate in the custody of the Department of Corrections who as of the time of the filing of the first amended complaint was being held in the District of Columbia Superior Court lock up for return to the DC Jail or the holding facility at DC General after being sentenced to probation with no confinement with no other charges on which he was being held, and at that time had no warrants, detainers or other basis for detention.

27. Plaintiff Razina Jones was an inmate in the DC Jail who was ordered released at Superior Court on 2/28/06 and who was subjected to an illegal strip search on 2/28/06 upon reentry to the DC Jail and released the next morning.

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

FACTUAL ALLEGATIONS

Components of the Department of Corrections

29. The District of Columbia Department of Corrections holds prisoners committed by the District of Columbia Superior Court, the District of Columbia District Court, and other agencies,

in the Central Detention Facility ("DC Jail"), the Correctional Treatment Facility ("CTF") and at various halfway houses located in the District of Columbia.

~~27-30~~ Most prisoners held in the custody of the Department of Corrections are either pre-trial detainees, misdemeanants serving sentences, or parole and probation violators.

The Inmate Management System

~~28-31~~ The records office located at the DC Jail ("Records Office") is responsible for administering and maintaining the records, including the judgment and commitment files, of all persons housed at the DC Jail, CTF and the halfway houses.

~~29-32~~ The Records Office is also responsible for ensuring that all persons housed at the DC Jail, CTF and the halfway houses are released according to their Release Dates specified in their ~~court orders~~ dispositions and court orders.

~~30-33~~ The District of Columbia Superior Court ~~enforces~~ has a policy pursuant to which an in-custody-defendant or a defendant ordered into custody may not leave the courtroom without an order

(commitment order or release order) for each case on which he appeared.

The Overdetention Problem

~~34~~ 34 "Overdetain" means holding a detainee or prisoner in Department of Corrections' custody past the person's release date.

~~35~~ 35 "Release Date" for each detainee or inmate is the day on which the person is entitled to be released by court order or the date on which the basis for his or her detention has otherwise expired.

~~36~~ 36 "Exit Date" for each detainee or inmate is the day on which the person is actually released from the custody of the District of Columbia Department of Corrections.

~~37~~ 37 The Department of Corrections had a long and documented history of overdetaining detainees and inmates past their release dates.

~~38~~ 38 The Department of Corrections, in response to a class action lawsuit, instituted reforms that for a brief period in 2005 ameliorated and for periods eliminated the overdetention problem.

39 However, ~~in the last few weeks before the filing of this~~
~~action, and, on information and belief, particularly since at least~~
~~late December~~November 2005, the Department of Corrections has
again begun overdetaining large numbers of inmates.

~~40~~ The rate of overdetections, after dipping in early 2005,
spiked in late 2005 and by January 2006 had exceeded the over
detention rate prevailing in late 2004. ~~problem has been especially~~
~~severe in the last few weeks before the filing of this action because~~
~~of problems with the Department of Corrections' computerized~~
~~inmate population accounting system and for other reasons.~~

The Court Return Strip Search Problem

41. Prior to late 2000 or early 2001, the Department of Corrections followed a practice under which most inmates taken from custody of the Department of Corrections to court and ordered released by a judicial officer because the charge was no longer pending or because of a change in conditions of release was returned to the DC Jail or CTF for processing for release rather than being released from the courthouse.

42. In late 2000 or early 2001, the Department of Corrections instituted a policy under which every inmates taken from custody of the Department of Corrections to court and ordered released by a judicial officer because the charge was no longer pending or because of a change in conditions of release was returned to the DC Jail or CTF for processing for release rather than being released from the courthouse.

43. From the beginning of the class period (9/1/05) until July 2008 virtually all court returns were released from MHU (the Medical Holding Unit ("MHU") or is a holding facility at the old DC General Hospital defined below) or the DC Jail.

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44. As a result, because the DC Jail and CTF had then and now policies of subjecting all inmates (new intakes and court returns) to blanket strip searches upon entering the facilities, all court returns entitled to release sent back to the DC Jail and CTF after their court appearances suffered blanket strip searches.

The strip searches of-inmates entering the DC Jail and CTF described herein are strip searches of inmates in groups of several inmates at once.

46. In August 2005 the Department of Corrections instituted a program (which was not reduced to a program statement or post order) policy of diverting some in-custody defendants ordered released or otherwise entitled to release from the Superior Court of the District of Columbia to a holding facility on the grounds of DC General Hospital where they would not be subject to a strip search, absent individualized suspicion, while the record review for detainers and warrants and property retrieval was conducted prior to release, providing the release could be effected before 10:00 p.m.

47. All other court returns (including court returns entitled to release) were returned to the DC Jail or CTF and subjected to blanket strip searches.

48. In 2008 the DOC began releasing some court returns from the Superior Court but DOC has continued to release some court returns from MHU and the DC Jail.

~~41. However, in the last few weeks before the filing of this action, and, on information and belief, particularly since late December 2005, the Department of Corrections has been returning some in-custody defendants entitled to release from the courthouses to the DC Jail or CTF and subjecting them to strip searches after a judge has ordered their release without a finding of individual reasonable suspicion.~~

49. The cause of the over-detentions and illegal post release strip searches of court returns entitled to release was and remains the District of Columbia's maintaining a release system in the DOC which in toto simply delays all releases until the system, in its sweet time, and with the resources the government of the District of Columbia chooses provide it, is ready to make releases of inmates from DOC facilities

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50. The system attaches weight to the governmental interests involved in releases but disregarded the interests of the inmate in a prompt release.

51. The over-detention problem and resultant post release strip search problem remained especially severe in the first year after the termination of the Bynum class period because of the problems with the DOC's release system including not enough time to release in-custody defendants returning from court appearances because of the 10 pm cutoff imposed by D.C. Code § 24-211.2(b)(6), failing to adequately staff the Records Office and other positions involved in the release process, re-committing court returns back into the DC Jail or CTF without regard to the disposition of their court cases, back-log, and awaiting juvenile releases, losing track of inmates going to court and re-admitting them to the DC Jail or CTF and subjecting them to blanket strip searches without court orders and thus without knowing whether they were ordered continued held or ordered released (causing over detentions and post release strip searches), not making in-court releases until July 2008, having no program for identifying at court persons who needed meds, relying on a sneaker network to deliver court orders from the courts to the Records Office staff, staff not following the Records Office manual, relying on paper records to process commitments and releases (instead of JACCS, the DOC's computerized inmate population accounting system) and the deliberate indifference of the acting warden Patricia Britton and the acting director Elwood York and the resignation of competent managers from the Records Office and the failure to replace them (or in some cases a combination of

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these factors). The DOC never effectively addressed these problems in the release process despite the Bynum case and promises of reform.

52. The Department of Corrections, in response to a class action lawsuit, agreed to institute reforms to ameliorate the over-detention problem and the strip search problem. Bynum v. District of Columbia, 412 F.Supp.2d 73, 83 (D.D.C. 2006)(final approval order).

53. However, the over-detentions and illegal strip searches continued even after the ~~end of the~~ Bynum class period ended on 8/31/05 and continued practically unabated throughout the first 18 months of the class period.

54. Plaintiffs' statistical analysis shows that in six of the first 12 months of the class period, over 50 percent of court returns entitled to release were potentially over-detained, and the rate was almost always above 30 percent through March 2007. (A strong correlation exists between the number of potential over detentions and the number of actual over detentions.)

55. ~~For example~~ Additionally, Plaintiffs reviewed the raw data underlying the Defendant's analysis of the approximately 6,000 releases identified by the District's script or query (computer code that extracts data from a larger data set) for identifying potential over detentions and for the first year after the Bynum class period/ first year of this class period Plaintiffs identified 2,050 actual over-detentions, 1,280 on-time releases, and 2,619 releases in which the over-detention status could not be determined based on the data.

56. The District's analysis identified over 1,200 inmates held past their Release Dates during the first year of this class period alone which the District attributed solely or in part to the 10:00 pm cut-off rule.

57. The numbers of overdetections and overdetection hours in the first year of the Barnes class period is at least 2,547 and 74,411, respectively.

58. The number of these over detained court returns entitled to release subjected to post release strip searches in the first-year of the class period is at least 2,351.

59. While persons entitled to release because of completion of sentence had a consistently lower potential overdetection rate than court returns entitled to release, persons entitled to release because of completion of sentence also exhibited relatively higher potential overdetection rates during the first year of the Barnes class period in comparison to more recent years. Six of the first 12 months show a potential overdetection rate above 15 percent, whereas this rate is almost always at or below 10 percent beginning in November 2006.

60. The number of overdetections for the whole overdetection class period to date is at least between 4,432 and 4,540, and that the number of overdetection hours for the whole overdetection class period to date is at least between 162,515 and 252120.

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42. ~~The exact cause of the recent overdetections and illegal court return strip searches is not known, but the causes, on information and belief, include recurring problems with the DC Jail's~~

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~~computerized inmate population accounting system and the deliberate indifference of the acting warden Patricia Britton and the acting director Elwood York and the resignation of competent managers from the Records Office and the failure to replace them.~~

~~61. Records Room staff have communicated the overdetention problem to their superiors by e-mail and by other written and oral communications to their superiors~~

~~43. DOC officials and City Council Members and the Mayor were aware of these problems and the over detention and post release strip search problems, but remained deliberately indifferent to the risk of over detentions and post release strip searches and acquiesced in the current overdetention and strip search problems.~~

~~7~~

~~62. As part of the Bynum Settlement Agreement the DOC retained \$3,000,000 for construction of a stand-alone inmate processing center ("ICP")~~

~~63. The IPC was intended to provide adequate processing facilities for intakes, releases, and associated records processing for inmates in DOC facilities.~~

64. The IPC has not been constructed as of the data of filing of this amended complaint even though every year as part of its agency review the DOC informs the City Council that the project has not been funded and remains un-built.

65. The DOC did not make courthouse releases (that is, identifying and releasing court returns entitled to release directly from the Superior Court) from 2001 to 2008.

66. The Government of the District of Columbia has known based on analyses provided by Bynum class counsel and reports of the courthouse release system employed in LA County that courthouse releases would speed releases and reduce erroneous releases and over detentions.

67. Bynum class counsel testified on these topics in November 2002 before the District of Columbia City Council and that courthouse releases would speed releases and reduce erroneous releases and over detentions.

68. Bynum class counsel prepared a courthouse release package and in about 2004 sent it and the policies and procedures the LA County Sheriff's Department formulated for making courthouse releases to all stake holders including opposing counsel in the Bynum case.

69. The DOC finally began making some courthouse releases from the Superior Court in July 2008.

70. For example, instead of devising a system for transmitting dispositions directly from the Superior Court judicial officers who made them to DOC Records Office staff the District has for years relied on the Superior Court Marshal to transmit paper orders from courtrooms at the Superior Court and the District Court to the Records Office or other DOC staff, even when the District knew this system causes delays in release of inmates.

71. The District did not even participate in an analysis of the "sneaker network" system of delivering court orders and other paperwork for court returns until late 2007.

72. The District did not even make substantive additions to Records Office staff until late 2007 even though the DOC has known for years that the Records Office was understaffed to the point it could not promptly and reliably process commitments and releases.

44. Their superiors are disregarding the problem and acquiescing in the current overdetention and strip search problem.

Carl A. Barnes' Overdetention by the DC Jail

45. 73. On or about 11/17/06 Plaintiff Carl A. Barnes was committed to the DC Jail.

46. 74. Plaintiff Barnes' Release Date was 2/15/06.

75. Plaintiff Barnes was currently being overdetained in the DC Jail as of the filing of this action.

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~~47-76.~~ Carl Barnes was released from the DC Jail on 2/21/09.

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~~48-77.~~ Plaintiff Barnes has suffered damages as a result of the over detention.

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Dernard Hawkins' Overdetention by the DC Jail

~~49-78.~~ On or about 2/15/06 Plaintiff Dernard Hawkins was committed to the DC Jail.

~~50-79.~~ Plaintiff Dernard Hawkins' Release Date was on or about 2/16/06.

80. Plaintiff Dernard Hawkins was currently being overdetained at the DC Jail as of the filing of this action.

~~51-81.~~ Plaintiff Dernard Hawkins was released after his Release Date on 2/22/06.

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~~52-82.~~ Plaintiff Dernard Hawkins has suffered damages as a result of the overdetention.

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Plaintiff David Peterson's Overdetention by the DC Jail

~~53-83.~~ On or about 2/13/06 Plaintiff David Peterson was committed to the DC Jail.

~~54-84.~~ Plaintiff Peterson's Release Date was 2/20/06.

85. But Plaintiff David Peterson was not released on 2/20/06 even though the Department of Corrections lacked a basis to continue detaining him.

86. Plaintiff Peterson's was currently being overdetailed in the DC Jail as of the filing of this action.

87. David Peterson was released on 2/24/06.

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88. Plaintiff Peterson has suffered damages as a result of the overdetention.

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Plaintiff Razina Jones' Over-detention by the DC Jail

89. On or about 2/25/06 Plaintiff Razina Jones was committed to the DC Jail.

90. Razina Jones was entitled to release on 2/28/06 because a judge of the Superior Court ordered her released at a court hearing at Superior Court and she had no other cases, warrants or detainers to hold her.

91. Instead of being released at Superior Court, Razina Jones was returned to DC Jail on 2/28/06.

92. She was not released from DC Jail until the morning of 3/1/06 because there was not enough time to release her before the 10 pm cutoff after her court appearance on 2/28/06.

93. Plaintiff Jones has suffered damages as a result of the over-detention.

Plaintiff Carl A. Barnes's Strip Search

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58, 64 On 2/15/06 Plaintiff Carl A. Barnes was taken to the Superior Court and the Superior Court judge sentenced him to time served.

50, 95 Plaintiff Carl A. Barnes was entitled to release on 2/15/05.

44, 95 But, instead of being released or diverted to the holding facility at DC General on 2/15/06, Plaintiff Carl A. Barnes was returned to the DC Jail's general population and subjected to a strip search and visual body cavity search without any individualized finding of reasonable suspicion or probable cause that he was concealing contraband or weapons even though a court had ordered his release.

41, 97 Plaintiff Barnes has suffered damages as a result of the post release strip search.

Plaintiff David Peterson's Strip Search

42, 98 On 2/21/06 Plaintiff David Peterson was again taken to the Superior Court and the Superior Court judge ordered his immediate release.

~~45.99.~~ On 2/21/06 Plaintiff David Peterson was diverted to the holding facility at DC General because the judge in his case had previously ordered that he be released on 2/20/06 and again on 2/21/06 ordered his release.

~~44.100.~~ Plaintiff David Peterson was entitled to release on 2/20/05.

101. But, instead of being released from the holding facility at DC General on 2/21/06, Plaintiff David Peterson was returned to the DC Jail's general population and subjected to a strip search and visual body cavity search without any individualized finding of reasonable suspicion or probable cause that he was concealing contraband or weapons even though a court had ordered his release.

~~45.102.~~ The guards at the DC Jail subjected Mr. Peterson to a post release strip searches in front of about 5 guards and 75 other inmates.

~~44.103.~~ Plaintiff Peterson has suffered damages as a result of the strip search.

Dernard Hawkins' post release strip search at the DC Jail

104. On or about 2/15/06 Plaintiff Dernard Hawkins was taken to the Superior Court for a hearing on a bench warrant issued by a Superior Court judge.

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105. The Court quashed the warrant and vacated the show cause hearing at the appearance.

106. However, instead of being released from the Superior Court courthouse or diverted to the holding facility at DC General on 2/15/06, Plaintiff Dernard Hawkins was taken to the DC Jail and committed to the DC Jail even though he had no other pending cases, no warrants or no detainers blocking his release, and in front of two guards and 7 other inmates subjected to a strip search and visual body cavity search without any individualized finding of reasonable suspicion or probable cause that he was concealing contraband or weapons even though a court had ordered his release.

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107. Plaintiff ~~Barne~~Hawkins has suffered damages as a result of the post release strip search.

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Plaintiff Maurice Williams' post release strip searches at the DC Jail

108. Plaintiff Maurice Williams at the time the First Amended Complaint was filed (2/24/06) was held in the DC Jail on a traffic hold that had been vacated 2/8/06. He was the subject of a show cause order for probation violation in a misdemeanor case issued by a District of Columbia Superior Court (but he was not subject to a hold in the misdemeanor probation case and the Records Office did not show him as being held in the misdemeanor probation case), and he had a hearing scheduled for 2/27/06 in the misdemeanor probation case, after which he was likely to be overdetained and subjected to an illegal court return strip search. The judge in the misdemeanor probation case issued a release order at the 2/27/06 hearing (even though there was no hold in that case) but the DC Jail continued to hold him on the traffic case (even though the traffic hold had been vacated 2/8/06) until 3/1/06 even though the Superior Court records showed that the traffic hold had been discharged on 2/8/06. Pursuant to the custom of overdetections and the policy of strip searches Mr. Williams was overdetained for 23 days and subjected to an illegal strip search after judges had ordered his release.

109. The post release strip searches of Mr. Williams were conducted in front of several guards and many other inmates.

~~64-10.~~ Plaintiff ~~Barne~~ Williams has suffered damages as a result of the post release strip searches.

Plaintiff Toney James Malloy' post release strip search at the DC

Jail

~~64-111~~ Plaintiff Toney James Malloy was an inmate in the custody of the Department of Corrections who as of the time of the filing of this second amended complaint ~~is~~ being held in the District of Columbia Superior Court lock up after being sentenced to probation with no confinement with no other charges on which he ~~was~~ being held, no warrants, detainers or other basis for detention.

69.—Pursuant to the policy of the District of Columbia Department of Corrections, Plaintiff Toney James Malloy, instead of being released from the District of Columbia Superior Court courthouse, ~~will be~~was returned to a Department of Corrections facility for out-processing.

112.

—Pursuant to a ~~recent~~ practice and custom of the District of Columbia Department of Corrections known to policymakers, Plaintiff Toney James Malloy ~~will be~~was subjected to a suspicionless strip search in front of guards and other inmates and overdetained before being released.

113. On 2/24/06, ~~his~~ Release Date, Plaintiff Toney James Malloy was subjected to a blanket strip search in the DC Jail after his return to from court as a condition of entry into the DC Jail in front of two guards and about 30 other inmates.

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114. Plaintiff Malloy has suffered damages as a result of the post release strip search.

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Plaintiff Razina Jones' post release strip search at the DC Jail

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115. Razina Jones was entitled to release on 2/28/06 because a judge of the Superior Court ordered her released at a court hearing at Superior Court and she had no other cases, warrants or detainers to hold her.

116. Instead of being released at Superior Court, Razina Jones was returned to DC Jail on 2/28/06.

117. Upon her return to the DC Jail Plaintiff Jones was subjected to a suspicion-less post release strip search in the female Release and Discharge Processing area.

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74.118. Plaintiff Jones has suffered damages as a result of the post release strip search.

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SUBSTANTIVE ALLEGATIONS

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Count 1

§ 1983 Deliberate Indifference Liability of the District for the Constitutional Violations of its Employees

74.119. The Overdetained Named Plaintiffs and Strip Search Named Plaintiffs reallege and incorporate by reference all allegations set forth in the preceding paragraphs of this Complaint.

74.120. District of Columbia administrators, policy makers, supervisors and employees caused the intentional, unjustified overdetention of the Overdetained Named Plaintiffs and unreasonable strip searches of the Strip Search Named Plaintiffs and all other class members and Strip Search Class members by deliberate indifference to the risk of constitutional injury of overdetention in administering records relating to inmates' detention and release, and maintaining and acquiescing in a policy and practice of strip searching certain inmates.

~~73.~~ 122. Overdetaining any person violates that person's Fourth and Fifth and Eighth Amendment rights.

~~74.~~ 123. Unreasonably strip searching an inmate violates his Fourth and Fifth Amendment rights.

~~75.~~ 124. District of Columbia employees continue in such conduct up to and including the present.

~~76.~~ 125. At all relevant times such District of Columbia 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 such District of Columbia employees were acting in furtherance of the business of the District of Columbia.

~~77.~~ 126. The District is therefore liable by virtue of its deliberate indifference under 42 U.S.C. § 1983 for constitutional injuries to the Overdetained Named Plaintiffs and Strip Search Named Plaintiffs and all other class members and Strip Search Class members caused by the conduct of such employees.

~~78.~~ 127. Accordingly, all Named Plaintiffs and class members are entitled to damages to be determined at trial, and the Overdetention and Strip Search Classes are entitled to injunctive relief.

Count 2

§ 1983 Monell Custom and Practice Direct Liability of District of
Columbia for Violation of Fourth, Fifth and Eighth Amendment
Rights of Overdetained Named Plaintiffs and Class Members

~~74-127~~ The Overdetained Named Plaintiffs reallege and incorporate by reference all allegations set forth in this Complaint.

~~84-128~~ Beginning approximately in late December 2005, the District of Columbia, and its agents and employees, have had a custom of detaining people past their release dates, thereby causing the intentional, unjustified overdetention of the Overdetained Named Plaintiffs and all other class members.

~~84-129~~ The District's actions, and failure to act, as described above, directly and proximately and affirmatively were the moving force behind the violations of the Overdetained Named Plaintiffs and all other class members' Fourth, Fifth and Eighth Amendment rights.

~~82-130~~ Accordingly, all Overdetention Named Plaintiffs and Overdetention Class members are entitled to damages to be

determined at trial, and the Overdetention Class is entitled to injunctive relief.

Count 3

§ 1983 Monell Custom and Practice Direct Liability of District of Columbia for Violation of Fourth and Fifth Amendment Rights of Strip Search Named Plaintiffs and Strip Search Class Members for

Illegal Strip Searches

~~§ 131.~~ The Strip Search Named Plaintiffs reallege and incorporate by reference all allegations set forth in this Complaint.

~~§ 132.~~ The District's actions, and failure to act, as described above, directly and proximately and affirmatively were the moving force behind the violations of the Strip Search Named Plaintiffs and the Strip Search Class members' Fourth and Fifth Amendment rights.

~~§ 133.~~ Accordingly, Named Plaintiffs Barnes, Malloy and Petersen and the Strip Search Class members are entitled to damages to be determined at trial, and the Strip Search Class is entitled to injunctive relief.

IRREPARABLE INJURY AND INJUNCTIVE RELIEF

~~¶ 104~~ The District is overdetaining members of the plaintiff Overdetention Class and unreasonably subjecting members of the Strip Search Class to strip searches and visual body cavity searches, which irreparably harms them, even if they are later able to recover compensatory damages.

~~¶ 135~~ The District's overdetaining members of the plaintiff Overdetention Class and performing illegally strip searches of the plaintiff Strip Search Class has irreparably harmed, and will continue to irreparably harm, members of the proposed plaintiff Overdetention Class and Strip Search Class, thus making declaratory and injunctive relief necessary.

PRAYER FOR RELIEF

WHEREFORE, 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 Rule

23(b)(3) and certifying the Overdetained Named Plaintiffs as the proper representative of the class consisting of:

(a) Each person who has been, is, or will be incarcerated in any District of Columbia Department of Corrections facility from 9/1/05 up to and until the date this case is terminated; and (b) who was not released, or, in the future, will not be released by midnight on the date on which the person is entitled to be released by court order or the date on which the basis for his or her detention has otherwise expired.

3. declare that this action may be maintained as a class action pursuant to Federal Rule of Civil Procedure 23(a), 23(b) (2) and 23(b)(3) and certifying the Strip Search Named Plaintiffs as the proper representative of the Strip Search Class consisting of each member of the class who was, or in the future will be, from 9/1/05, forward:

(i) was or will be in custody of the Department of Corrections;

(ii) was or will be taken to court from a Department of Corrections facility;

(iii) was or will be ordered released by the court or otherwise became entitled to release by virtue of the court appearance because the charge on which he had been held was no longer pending or was dismissed at the hearing, was ordered released on his own recognizance, or had posted bail, was sentenced to time served, was acquitted or was otherwise entitled to release;

(iv) was not or will not be the subject of any other pending case or cases which imposed any condition of release other than personal recognizance;

(v) was not or will not be the subject of any detainer or warrant;

(vi) was or will be returned to the DC Jail or CTF from court, to be processed out of Department of Corrections custody; and

(vii) was or will be subjected to a strip search and/or visual body cavity search without any individualized finding of reasonable suspicion or probable cause that he was concealing contraband or weapons;

(viii) before being released, regardless of whether he was or will be overdetained.

4. declare that the Districts' acts alleged above violate the Fourth, Fifth and Eighth Amendments to the Constitution by overdetaining and illegally strip searching plaintiffs as alleged herein;

5. preliminarily and permanently enjoin the Districts from pursuing the course of conduct complained of herein;

6. preliminarily and permanently enjoin the Districts from pursuing settlement directly with any member of the putative Overdetention Class and Strip Search Class described herein unless that person is represented by counsel;

7. award all named plaintiffs compensatory and consequential damages in an amount to be determined at trial;

8. appoint an independent monitor to supervise the Records Office, and report to the court, to ensure that all inmates are released on or before their Release Dates, at the expense of Defendants;

9. appoint an independent monitor to supervise the R&D Offices, and report to the court, to ensure that all detainees and inmates who have been ordered released are not strip searched or full-body cavity searched;

10. award plaintiffs attorneys' fees and costs incurred in bringing this action under 42 U.S.C. § 1988; and

11. grant such other relief as this Court deems just and proper.

Respectfully submitted,

_____/sig/_____
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JURY DEMAND

Plaintiffs demand a jury of six as to all claims so triable.

_____/sig/_____
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Counsel for the Overdetained
Named Plaintiffs and Strip Search
Named Plaintiffs and the class