UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RICHARD JONES, **Plaintiff,** **v.** **DISTRICT OF COLUMBIA,** **Defendant.**	**Civil Action No. 16-2405(CKK)**

DEFENDANT THE DISTRICT OF COLUMBIA'S MOTION TO DISMISS

Defendant the District of Columbia (District) respectfully moves this Court under FED. R. CIV. P. 12(b)(1) and FED. R. CIV. P. 12(b)(6) to dismiss the Complaint on the following grounds:

1. Plaintiff fails to state an overdetention claim because plaintiff was not overdetained.
2. Plaintiff fails to allege a violation of a constitutional right as a result of his alleged overdetention.
3. Plaintiff fails to state a claim under 42 U.S.C. § 1983 because plaintiff fails to adequately allege that the District has a custom, policy, or practice of overdetention, or is deliberately indifferent.
4. Plaintiff fails state a claim under 42 U.S.C. § 1983 for unlawful search because the routine search he was subject to was reasonable to protect the general population at the jail and the corrections officers from contraband.
5. Plaintiff fails to state a claim for common law false arrest because he was not arrested.
6. Plaintiff fails to state a claim for invasion of privacy because plaintiff has not adequately alleged he had a right to privacy, that a reasonable person in his position

would have found the search objectively offensive, or that he found the search subjectively offensive.

For the foregoing reasons, as discussed in the attached memorandum of points and authorities, which is incorporated here, the District of Columbia asks the Court to dismiss the Complaint with prejudice. A proposed order also is attached for the Court's consideration.

Dated: March 21, 2017.

Respectfully submitted,

KARL A. RACINE
Attorney General for the District of Columbia

ELIZABETH SARAH GERE
Deputy Attorney General
Public Interest Division

/s/ Toni Michelle Jackson
TONI MICHELLE JACKSON, Bar No. 453765
Chief, Equity Section

/s/ Amanda J. Montee
AMANDA J. MONTEE, Bar No. 1018326
TY JOHNSON, Bar No. 1044025
Assistant Attorney General
Suite 630 South
441 Fourth Street, N.W.
Washington, D.C. 20001
(202) 724-5691
(202) 741-8934 (fax)
amanda.montee@dc.gov

Counsel for Defendant The District of Columbia

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MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF DEFENDANT DISTRICT OF COLUMBIA'S MOTION TO DISMISS

TABLE OF CONTENTS

TABLE OF AUTHORITIES 3

INTRODUCTION 5

FACTS 5

ARGUMENT 6

I. Standard of Review 6

II. Plaintiff's *Monell* Claim Alleging Overdetention Should Be Dismissed 6

A. Plaintiff Was Not Overdetained 6

B. Plaintiff's Detention for "Hours" While His Release Paperwork Was Processed Was Not Unconstitutional 7

1. Plaintiff Fails to State a Claim Sufficient to Establish a Fourth Amendment Violation 7

2. Plaintiff Fails to State a Claim Sufficient to Establish a Fifth Amendment Procedural or Substantive Due Process Violation 7

3. Plaintiff Fails to State a Claim Sufficient to Establish an Eighth Amendment Violation 9

C. Plaintiff Fails to Allege That the District Has a Custom, Policy, or Practice of Overdetaining Inmates 9

III. Plaintiff Fails to State a Claim for a Search in Violation of His Fourth and Fifth Amendment Rights 12

A. Plaintiff Fails to Allege He Was Searched 12

B. Routine Searches of Inmates Prior to Admission to the General Population are Constitutional 12

IV. Plaintiff's Common Law Claims Should Be Dismissed for Failure to State a Claim 15

A. Plaintiff Fails to State a Claim for False Arrest 15

B. Plaintiff Fails to State a Claim for Invasion of Privacy 15

CONCLUSION 16

TABLE OF AUTHORITIES

Ashcroft v. Iqbal, 556 U.S. 662 (2009) 6, 11, 12

Banks v. York, 515 F. Supp. 2d 89 (D.D.C. 2007) 9

Bame v. Dillard, 637 F.3d 380 (D.C. Cir. 2011) 13, 14

Barnes v. District of Columbia, 793 F. Supp. 2d 260 (2011) 7, 8, 10, 15

Barnhardt v. District of Columbia, 723 F. Supp. 2d 197 (D.D.C. 2010) 15

Bell v. Wolfish, 441 U.S. 520 (1979.....12, 13, 14

Bell Atlantic Corporation v. Twombly, 550 U.S. 544 (2007) 6, 12

Berry v. Baca, 379 F.3d 764 (9th Cir. 2004) 8

Block v. Rutherford, 468 US 576 (1984) 14

Brown v. District of Columbia, 514 F.3d 1279 (D.C. Cir. 2008) 9

Browning v. Clinton, 292 F.3d 235 (D.C. Cir. 2002) 6

Bull v. City & County of San Francisco, 595 F.3d 964 (9th Cir. 2010) 13

Cohen v. District of Columbia, 744 F. Supp. 2d 236 (D.D.C. 2010) 8

County of Sacramento v. Lewis, 523 U.S. 833 (1998) 8

Estelle v. Gamble, 429 U.S. 97 (1976) 9

Feirson v. District of Columbia, 506 F.3d 1063 (D.C. Cir. 2007) 10

Florence v. Board of Chosen Freeholders of Burlington, 566 U.S. 318 (2012) 14

Florence v. Board of Chosen Freeholders of Burlington, 621 F.3d 296 (3rd Cir. 2010) 13

George Washington University v. District of Columbia, 318 F.3d 203 (D.C. Cir. 2003) 8

Hunter v. District of Columbia, 824 F. Supp. 2d 125 (D.D.C. 2011) 10

Ingraham v. Wright, 430 U.S. 651 (1977) 9

Johnson v. District of Columbia, 780 F. Supp. 2d 62 (D.D.C. 2011) 13, 14

Jones v. Delaney, 610 F. Supp. 2d 46 (D.D.C. 2009) 10

Kowal v. MCI Communications Corp., 16 F.3d 1271 (D.C. Cir. 1994) 12

Lewis v. O'Grady, 853 F.2d 1366 (7th Cir. 1988) 8

Mary Beth G. v. City of Chicago, 723 F.2d 1263 (7th Cir. 1983) 13

McCarthy v. Kleindienst, 741 F.2d 1406 (D.C. Cir. 1984) 15

Monell v. New York City Department of Social Services, 436 U.S. 658 (1978) 10

Oklahoma City v. Tuttle, 471 U.S. 808 (1985) 10

Powell v. Barrett, 541 F.3d 1298 (11th Cir. 2008) 13

Rhodes v. Chapman, 452 U.S. 337 (1981) 9

Silverman v. Barry, 845 F.2d 1072 (D.C. Cir. 1988) 8

Smith v. District of Columbia, 674 F. Supp. 2d 209 (D.D.C. 2009) 10

Taylor v. District of Columbia, 691 A.2d 121 (D.C. 1997) 15

Warren v. District of Columbia, 353 F.3d 36 (D.C. Cir. 2004) 10

Williams v. Savage, 569 F. Supp. 2d 99 (D.D.C. 2008) 16

Wolf v. Regardie, 553 A.2d 1213 (D.C. 1989) 15, 16

INTRODUCTION

Plaintiff—a former Department of Corrections (DOC) inmate who was released by the District of Columbia (District) hours after the receipt of a court order—brings this lawsuit alleging that he was overdetained and unlawfully subjected to a strip search. But plaintiff was released on the same day the court ordered his release: there was no overdetention. Plaintiff's claims should be dismissed.

FACTS[1]

Plaintiff Richard Jones, a DOC inmate at the D.C. Jail, attended a hearing at the federal courthouse on December 7, 2015, during which DOC was ordered to release him. Compl. at ¶ 43. Following the hearing, plaintiff was transported from the courthouse to D.C. Jail to await the completion of his release processing by DOC. *Id.* at ¶¶ 41, 45. Within "several hours" of his return to D.C. Jail plaintiff was released. *Id.* at ¶ 41.

The Complaint also alleges that "Carl A. Barnes was returned to the DC Jail's general population and subject to a strip search and visual body cavity search." *Id.* at ¶ 45. There is no plaintiff named Carl A. Barnes in this case. The District assumes the inclusion of this allegation was erroneous.

Plaintiff filed this lawsuit against the District alleging that he was unconstitutionally overdetained and strip searched and that he suffered a false arrest and invasion of privacy in violation of District of Columbia common law. *Id.* at ¶¶ 47-68.

[1] The District does not dispute the allegations of the Complaint solely for purposes of this motion. However, the District reserves the right to dispute the allegations for all other purposes.

ARGUMENT

I. Standard of Review

"A Rule 12(b)(6) motion tests the legal sufficiency of a complaint[.]" *Browning v. Clinton*, 292 F.3d 235, 242 (D.C. Cir. 2002). To survive, a complaint "must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). The Court should not accept facts unsupported by allegations in the complaint or the plaintiff's legal conclusions. *Id*. "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Id*.

II. Plaintiff's *Monell* Claim Alleging Overdetention Should Be Dismissed.

A. Plaintiff Was Not Overdetained.

Plaintiff failed to plead facts to support a claim of overdetention. In the Complaint, plaintiff defines overdetention as "holding a detainee or prisoner in Department of Corrections' custody past the person's release date." Compl. at ¶ 28. The "release date" 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." *Id*. at ¶ 29.

According to plaintiff, on December 7, 2015, while in the custody of DOC, he was sent to the federal courthouse for a hearing. *Id*. at ¶ 40. The court ordered him to be released. *Id*. at ¶ 41. "Several hours" later he was released. *Id*. Because plaintiff was released on his release date, he has not alleged he was overdetained—even under his own definition of overdetention.

B. Plaintiff's Detention for "Hours" While His Release Paperwork Was Processed Was Not Unconstitutional.

Plaintiff's hours-long release processing was not a violation of his constitutional rights. In his Complaint, plaintiff alleges this delay violated his rights under the Fourth, Fifth, and Eighth Amendments. Not so.

1. Plaintiff Fails to State a Claim Sufficient to Establish a Fourth Amendment Violation.

The "several hours" it took for DOC to process plaintiff's release does not meet the standard for overdentention. But, even if it did, this Court has held that an overdetention does not constitute a Fourth Amendment violation. *See Barnes v. District of Columbia*, 793 F. Supp. 2d 260, 273-74 (2011). The Fourth Amendment protects the "right of people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. Amend. IV. As the Court pointed out in *Barnes*, the plaintiff must show his overdetention constituted a seizure of his person to establish a violation of the Fourth Amendment. *Barnes*, 793 F. Supp. 2d at 274. Like the plaintiffs in *Barnes*, plaintiff was already in the custody of DOC when he was ordered released. *Id*. As a result, his freedom of movement had already been terminated. *Id*. The alleged overdetention did not constitute a seizure under the Fourth Amendment. *Id*.

2. Plaintiff Fails to State a Claim Sufficient to Establish a Fifth Amendment Procedural or Substantive Due Process Violation.

Plaintiff has not adequately pled a procedural due process claim under the Fifth Amendment. To be sure, DOC kept plaintiff in its custody during the time it took to administratively process his release. But, "[t]emporarily retaining custody over an inmate who is entitled to release in order to accomplish an administrative task incident to that release is not *per se* unconstitutional." *Id*. at 275. Several courts, including this Court, have recognized the need

for administrative processing following a release order, prior to actually releasing an inmate. *See id*. at 275-76; *Lewis v. O'Grady*, 853 F.2d 1366, 1370 (7th Cir. 1988) ("We recognize that the administrative task incident to a release of a prisoner may require some time to accomplish—in this case perhaps a number of hours."); *Berry v. Baca*, 379 F.3d 764 (9th Cir. 2004).

Plaintiff also has not adequately pled a substantive due process violation. "[T]he doctrine of substantive due process constrains only egregious government misconduct" and "grave unfairness." *George Washington Univ. v. District of Columbia*, 318 F.3d 203, 209 (D.C. Cir. 2003) (citing *Silverman v. Barry*, 845 F.2d 1072, 1080 (D.C. Cir. 1988) (doctrine prevents only "grave unfairness")). In *Silverman*, the United States Court of Appeals for the D.C. Circuit identified two ways a plaintiff might show such unfairness: "a substantial infringement of state law prompted by personal or group animus, or a deliberate flouting of the law that trammels significant personal or property rights…." *Silverman*, 845 F.2d at 1080.

Plaintiff does not allege that DOC officials acted with animus. As a result, to prevail on a substantive due process claim, plaintiff "must show that the state actor was deliberately indifferent to his constitutional rights and that such conduct shocks the conscious." *Cohen v. District of Columbia*, 744 F. Supp. 2d 236, 243 (D.D.C. 2010); *see also Cty. of Sacramento v. Lewis*, 523 U.S. 833, 847 n.8 (1998) ("[T]he threshold question is whether the behavior…[was] so egregious, so outrageous, that it may fairly be said to shock the contemporary conscience.").

Plaintiff cannot meet the standard set forth in *Cohen*, because there are *no* facts alleged in the Complaint sufficient to infer that the "detention"—which lasted several hours—was so egregious that it may fairly be said to shock the contemporary conscience. *Cf. Berry*, 379 F.3d at 773 (a county knew its policy of delaying processing of releases until all information relating to prisoners scheduled for release had been entered into a computer system resulted in delays of up to

48 hours). Plaintiff has not adequately alleged a Fifth Amendment due process violation, his Complaint should be dismissed.

3. Plaintiff Fails to State a Claim Sufficient to Establish an Eighth Amendment Violation.

Plaintiff also fails to state a claim for an Eighth Amendment violation. Plaintiff "must identify a deprivation that is 'objectively, sufficiently serious' in that it 'result[s] in the denial of the minimum civilized measure of life's necessities." *Banks v. York*, 515 F. Supp. 2d 89, 105 (D.D.C. 2007). Plaintiff does not allege he suffered any mistreatment during the time he was held to complete his release processing. To be sure, plaintiff was returned to the general population at D.C. Jail, where he had been detained prior to attending court. Compl. at ¶ 45. But the District's decision to return him to the general population until his release paperwork was processed does not violate the protections found in the Eighth Amendment. "After incarceration, only the 'unnecessary and wanton infliction of pain'… constitutes cruel and unusual punishment forbidden by the Eighth Amendment." *Ingraham v. Wright*, 430 U.S. 651, 664 (1977) (quoting *Estelle v. Gamble*, 429 U.S. 97, 103 (1976)). The normal conditions of confinement that are "part of the penalty that criminal offenders pay for their offenses" do not constitute cruel and unusual punishment under the Eighth Amendment. *Rhodes v. Chapman*, 452 U.S. 337, 347 (1981).

C. Plaintiff Fails to Allege That The District Has a Custom, Policy, or Practice of Overdetaining Inmates.

As explained above, plaintiff fails to state a constitutional violation related to his alleged overdetention. He also fails to state a basis for municipal liability. To state a claim against the District of Columbia under 42 U.S.C. § 1983, plaintiff must allege both an underlying constitutional violation and a basis for municipal liability. *Brown v. District of Columbia*, 514 F.3d 1279, 1283 (D.C. Cir. 2008). First, a complaint must allege facts sufficient to support a

reasonable inference that a person acting under color of District law subjected the plaintiff or caused the plaintiff to be subjected to the deprivation of a constitutional right. *Jones v. Delaney*, 610 F. Supp. 2d 46, 49 (D.D.C. 2009) (citing *Oklahoma City v. Tuttle*, 471 U.S. 808, 829 (1985)). Then, "[t]o impose liability on the District under … § 1983, [a plaintiff] must show 'not only a violation of his rights under the Constitution or federal law, but also that the District's custom or policy *caused* the violation.'" *Feirson v. District of Columbia*, 506 F.3d 1063, 1066 (D.C. Cir. 2007) (quoting *Warren v. District of Columbia*, 353 F.3d 36, 38 (D.C. Cir. 2004)).

The pleading requirement for a § 1983 claim is only met where the complaint "include[s] some factual basis for the allegation of a municipal policy or custom," sufficient to pass muster "under the standard set by the Supreme Court in *Twombly* and *Iqbal*." *Smith v. District of Columbia*, 674 F. Supp. 2d 209, 213 n.2 (D.D.C. 2009). There are four basic categories of municipal action which, if proven, may subject a municipality to liability: "(1) an expressed municipal policy; (2) adoption by municipal policymakers; (3) custom or usage; and (4) deliberate indifference. *Hunter v. District of Columbia*, 824 F. Supp. 2d 125, 133 (D.D.C. 2011) (citing *Monell v. New York City Dep't of Soc. Servs*., 436 U.S. 658, 690-94 (1978)).

Plaintiff alleges the District was deliberately indifferent, Compl. at ¶ 50, but provides no factual support for the allegation. Deliberate indifference means that, "faced with actual or constructive knowledge that its agents will probably violate constitutional rights, the city may not adopt a policy of inaction." *Warren v. District of Columbia*, 353 F.3d 36, 39 (D.C. Cir. 2004). Plaintiff must show that the District knew or should have known his constitutional rights would likely be violated. *Barnes*, 793 F. Supp. 2d at 283. He has not. The Complaint does not provide *any* factual allegations which, if true, could prove the District had actual or constructive knowledge that plaintiff's constitutional rights would be violated if he was returned to the jail

while DOC processed his release. Plaintiff's only claim is conclusory, stating, "[t]he District was deliberately indifferent to [plaintiff's] rights." Compl. at ¶ 50. The Court should not accept plaintiff's unsupported legal conclusions. *Ashcroft*, 556 U.S. at 678.

Plaintiff alleges, without specific factual allegations, that the District has a policy or practice of overdetaining inmates. Compl. at ¶ 48. And, at the same time the plaintiff alleges that the District instituted reforms that "ameliorated" and "eliminated" its "overdetention problem." *Id*. at ¶ 32. Plaintiff then contends, based "on information and belief, and based on publically available filing[s]" the District "has again begun overdetaining large numbers of inmates." *Id*. at ¶ 33. But, as explained above, plaintiff was not overdetained; he was returned to D.C. Jail while his release was processed by DOC, and he was released the same day he was ordered to be released—within several hours. *Compare* Compl. at ¶ 8 (proposing a class of "overdetained" inmates who were not released "by midnight on the date on which the person [was] entitled to be released by court order") *with* Compl. at ¶ 41 (alleging plaintiff was ordered released on December 7, 2015 and then was, in fact, released several hours later). If plaintiff *does* have support for his legal conclusion that the District has a practice of overdetaining inmates—whether that support is from information in public filings or otherwise—he must plead those allegations to support his claim. "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice" to satisfy a plaintiff's obligation under Rule 8. *Ashcroft*, 556 U.S. at 678. The Complaint fails to adequately plead a basis for municipal liability.

III. Plaintiff Fails to State a Claim for a Search in Violation of His Fourth and Fifth Amendment Rights.

A. Plaintiff Fails to Allege He Was Searched.

Plaintiff's claim alleging the District is conducting strip searches in violation of the Fourth and Fifth Amendments should be dismissed because the Complaint fails to allege plaintiff Richard Jones was subject to a search. Plaintiff does, however, allege that an individual named Carl A. Barnes was subject to a strip search and visual body cavity search on December 7, 2015. Compl. at ¶ 45. While it is true that at the motion to dismiss stage, a plaintiff receives the benefit of all plausible allegations in the complaint and reasonable inferences, this Court "need not accept inferences…unsupported by the facts set out in the complaint" *See Kowal v. MCI Commc'ns Corp.*, 16 F.3d 1271, 1276 (D.C. Cir. 1994); *Ashcroft*, 556 U.S. at 678; *Twombly*, 550 U.S. at 570. There is no basis to infer plaintiff suffered because of a search of which he alleges Carl A. Barnes was the subject. Plaintiff should not be afforded the assumption that he is alleging the facts regarding the search on his own behalf.

B. Routine Searches of Inmates Prior to Admission to the General Population are Constitutional.

Even if this Court construes the allegations in paragraph 45 of the Complaint as pertaining to Richard Jones, the routine search plaintiff describes is not unconstitutional. The search—conducted after plaintiff had been outside of the detention facility—did not violate plaintiff's Fourth or Fifth Amendment rights. The Supreme Court and this Circuit have upheld the use of routine body cavity searches in detention centers fraught with security concerns, such as D.C. Jail.

The seminal Supreme Court opinion on body cavity searches is *Bell v. Wolfish*, 441 U.S. 520 (1979). There, the Supreme Court rejected a Fourth Amendment challenge to a policy of

visual body cavity searches for all detainees following contact visits with outsiders. *Id*. at 560. The Court applied a balancing test to determine the reasonableness of the search: "Courts must consider the scope of the particular intrusion, the manner in which it is conducted, the justification for initiating it, and the place in which it is conducted." *Id*. at 559. Following *Bell*, circuits (but not the D.C. Circuit) have split when considering whether the balancing test demanded individualized suspicion before an arrestee could be subject to a body cavity search. *Compare Mary Beth G. v. City of Chicago*, 723 F.2d 1263, 1273 (7th Cir. 1983), *with Florence v. Bd. of Chosen Freeholders of Burlington*, 621 F.3d 296, 308 (3rd Cir. 2010), *and Powell v. Barrett*, 541 F.3d 1298, 1314 (11th Cir. 2008),[2] *and Bull v. City & Cty. of San Francisco*, 595 F.3d 964, 975 (9th Cir. 2010).

The case law in this circuit is clear. The United States Court of Appeals for the D.C. Circuit issued a decision directly on point in *Bame v. Dillard*, 637 F.3d 380 (D.C. Cir. 2011). In *Bame*, the Court considered a challenge to a United States Marshal Service policy which authorized strip searches of all male arrestees upon arrival at the Superior Court of the District of Columbia before being housed in the cellblock. *Id*. The court proceeded directly to the question of whether, at the time of the search in 2002, plaintiffs had a clearly established Fourth Amendment right to be free from the search absent individualized suspicion. *Id*. at 386. The court found, "[t]he governing precedent was then, as it is now, *Bell v. Wolfish*, and nothing in *Bell* requires individualized, reasonable suspicion before strip searching a person entering a detention facility." *Id*.; *see also Johnson v. District of Columbia*, 780 F. Supp. 2d 62, 74 (D.D.C.

[2] The Eleventh Circuit in *Powell* noted that most courts (and its own precedent) had misinterpreted *Bell* as requiring reasonable suspicion for strip searching minor offenders where, in fact, that decision neither required individualized suspicion nor differentiated the degree of suspicion required based on the type of offense. *Id*. at 1307–11.

2011). The court explained further that "the 'Court's rationale in *Bell* applies equally to any detention facility that is 'fraught with serious security dangers,' as well as the cellblock at the Superior Court." *Bame*, 637 F.3d at 387 (quoting *Bell*, 441 U.S. at 559).

The following year, the United States Supreme Court concurred; explicitly rejecting the proposition that individualized, reasonable suspicion is required before an inmate entering the general population may be subject to a routine, strip search or visual cavity search. *Florence v. Bd. of Chosen Freeholders of Burlington*, 566 U.S. 318 (2012). The Supreme Court explained, "Correctional officials have a legitimate interest, indeed a responsibility, to ensure that jails are not made less secure by reason of what new detainees may carry in on their bodies." *Id*. at 318. The Court granted deference to jail officials in their responses and procedures and maintained that where contraband and safety within the prison are concerned, individualized reasonable suspicion to conduct a search is not required. *Id.* at 330 (quoting *Block v. Rutherford*, 468 US 576, 584).[3] Although the Court discussed limited circumstances where individualized reasonable suspicion may be necessary, those situations involve *non-entry* to general population, or minor, non-violent or civil offenses. None of those circumstances apply here.

Here, when plaintiff was searched he was re-entering the general population at D.C. Jail. When a prisoner is entering the general population from the outside, regardless of the reason, prison officials do not need individualized reasonable suspicion to conduct a search; barring potential contraband from entry into the prison population is a constitutionally sound objective for the search. As such, plaintiff's claim should be dismissed.

[3] Where contraband is concerned the Supreme Court opinion discussed the difficulties of filtering through arbitrary factors such as the severity of the offense or prior offenses in determining whether or not an individual carries, or has been coerced to carry, contraband. *Florence v. Bd. of Chosen Freeholders of Burlington*, 566 U.S. 318, 334-39 (2012).

IV. Plaintiff's Common Law Claims Should Be Dismissed For Failure to State a Claim.

A. Plaintiff Fails to State a Claim for False Arrest.

The elements of a common law false arrest claim and a constitutional false arrest claim are practically identical. *Barnhardt v. District of Columbia*, 723 F. Supp. 2d 197, 214 (D.D.C. 2010). "[T]he requisite elements in both cases are that the plaintiff was arrested against his will and that the arrest was unlawful." *McCarthy v. Kleindienst*, 741 F.2d 1406, 1413, 239 U.S. App. D.C. 247 (D.C. Cir. 1984). To prevail, "plaintiff must demonstrate 'that the [District] acted without probable cause, in an objective constitutional sense, to effectuate his arrest.'" *Barnhardt*, 723 F. Supp. 2d at 214 (quoting *Taylor v. District of Columbia*, 691 A.2d 121, 125 (D.C. 1997)).

This Court held in *Barnes* that "overdetention" does not provide a basis for a Fourth Amendment claim because there is no seizure where the individual is already in DOC custody. *See* above Section II-B at 6 (citing *Barnes*, 793 F. Supp. 2d at 273-74). On that basis, plaintiff's alleged overdetention cannot constitute a false arrest. Plaintiff was lawfully in DOC custody on December 7, 2015, when he was taken to the courthouse. Compl. at ¶ 40-41. He was not released from DOC custody at the courthouse, but was instead transported back to D.C. Jail until his release "several hours" later. *Id*. at ¶ 41. Simply put, there are no factual allegations anywhere in the Complaint to support a false arrest claim. The claim should be dismissed.

B. Plaintiff Fails to State a Claim for Invasion of Privacy.

The tort of invasion of privacy for "intrusion of seclusion" requires "(1) an invasion or interference by physical intrusion, by use of a defendant's sense of sight or hearing, or by use of some other form of investigation or examination; (2) into a place where the plaintiff has secluded himself, or into his private or secret concerns; (3) that would be highly offensive to an ordinary, reasonable person." *Wolf v. Regardie*, 553 A.2d 1213, 1217 (D.C. 1989) (internal citations

omitted). Plaintiff's claim fails because he has not plead facts sufficient to establish that he had a reasonable expectation of privacy from search upon his reentry at D.C. Jail; or that the routine search would be highly offensive to an ordinary, reasonable person in his situation. But even more detrimental to plaintiff's claim however, is that plaintiff failed to even allege that the strip search was offensive to him.[4] The Court should dismiss plaintiff's invasion of privacy claim.

CONCLUSION

For the foregoing reasons, the Court should grant the District's Motion to Dismiss and dismiss the action with prejudice.

Dated: March 21, 2017.

Respectfully submitted,

KARL A. RACINE
Attorney General for the District of Columbia

ELIZABETH SARAH GERE
Deputy Attorney General
Public Interest Division

/s/ Toni Michelle Jackson
TONI MICHELLE JACKSON, Bar No. 453765
Chief, Equity Section

/s/ Amanda J. Montee
AMANDA J. MONTEE, Bar No. 1018326
TY JOHNSON, Bar No. 1044025
Assistant Attorneys General
Suite 630 South
441 Fourth Street, N.W.
Washington, D.C. 20001
(202) 724-5691

[4] Plaintiff should not be permitted to correct the deficiencies of the Complaint by amending to add facts of which he was uniquely aware of at the time of filing and could have been properly included. *See Williams v. Savage*, 569 F. Supp. 2d 99, 108 (D.D.C. 2008) (denying plaintiffs' motion to amend the complaint because the information was in their possession at the time of filing and there was no justification for the delay in including the information in the complaint).

(202) 741-8934 (fax)
amanda.montee@dc.gov

Counsel for Defendant The District of Columbia