

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**FILED**

JUL 23 2003

CLERK, U S DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA  
BY \_\_\_\_\_  
DEPUTY CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

-----oo0oo-----

MARY BULL, et al.,  
Plaintiffs,

NO. CIV. S-03-0458 FCD PAN

v.

MEMORANDUM AND ORDER

COUNTY OF SACRAMENTO COUNTY,  
et al.,

Defendants.

-----oo0oo-----

This matter comes before the court on defendants' motion to dismiss on the basis that plaintiffs' claims are barred by the Rooker-Feldman doctrine and, in the alternative, by the Younger and Colorado River abstention doctrines. The court heard oral argument on July 11, 2003, and by this order now renders its decision.

/ / /

/ / /

/ / /

1 **BACKGROUND<sup>1</sup>**

2 On March 7, 2003, plaintiffs Mary Bull, Scott Brusaschetti,  
3 Jason Wilson, Rose Panofsky, Nicholas Page, Ellen Faulkner,  
4 Donizetti Hale and all others similarly situated ("plaintiffs")  
5 filed the instant class action complaint against defendants  
6 County of Sacramento and Sacramento County Sheriff Lou Blanas  
7 (collectively, "defendants") alleging violations of 42 U.S.C. §  
8 1983 ("section 1983") and the Unruh Civil Rights Act (Cal. Civ.  
9 Code § 52.1(b)).

10 Specifically, plaintiffs allege that they were unlawfully  
11 subjected to visual body cavity searches pursuant to defendant  
12 Sacramento County Sheriff's policy of subjecting all persons  
13 arrested and intended to be housed in the Sacramento County Main  
14 Jail to visual body cavity searches prior to arraignment.  
15 Plaintiffs claim that the policy of conducting such searches in  
16 groups where the persons searched may be observed by others being  
17 searched, and without individualized reasonable suspicion that  
18 the searches would be productive of contraband, is a violation of  
19 their rights under section 1983 and the Unruh Civil Rights Act.  
20 Plaintiffs allege that these searches are unlawful and entitle  
21 plaintiffs to damages under section 1983 and the Unruh Civil  
22 Rights Act.

23 Prior to the instant action, six of the named plaintiffs  
24 filed a complaint in Sacramento County Superior Court on behalf  
25 of themselves and a class of similarly situated individuals  
26

---

27 <sup>1</sup> The factual background as recited herein is taken  
28 primarily from plaintiffs' complaint ("Pls.' Compl."), filed  
March 7, 2003.

1 charged with misdemeanors and minor infractions. Plaintiffs  
2 alleged violations of the California Constitution, California  
3 Penal Code section 4030, and 42 U.S.C. § 1983. This action was  
4 certified as a class action by the Sacramento County Superior  
5 Court on December 6, 2001 and was joined with an action filed by  
6 named plaintiff Donizetti Hale for all purposes.

7 On February 5, 2003, the Sacramento County Superior Court  
8 issued an order granting summary adjudication as to plaintiffs'  
9 causes of action arising under the California Constitutional  
10 Right to Privacy and Penal Code section 4030.<sup>2</sup> The court also  
11 granted summary adjudication dismissing plaintiffs' cause of  
12 action under section 1983 against the County of Sacramento and  
13 Sheriff Blanas in his official and/or individual capacities. In  
14 finding that a California sheriff is a state official and  
15 therefore immune from liability under section 1983, the court  
16 followed a California court of appeals decision in County of Los  
17 Angeles v. Superior Court (Peters), 68 Cal. App. 4th 1166 (1998).  
18 In contrast, the Ninth Circuit has held in Brewster v. Shasta  
19 County, 275 F.3d 803, 807 (9th Cir. 2001), and Cortez v. County  
20 of Los Angeles, 294 F.3d 1186, 1190 (9th Cir. 2002), that  
21 sheriffs are county officials and therefore liable under section  
22 1983. Nevertheless, the superior court reasoned that the  
23 determination of a sheriff's status as a state or county actor is  
24 dependent upon an interpretation of California law, and,  
25 therefore, the superior court is bound by the interpretation of

---

26  
27 <sup>2</sup> See Superior Court Order, Case No. 01AS01545, filed  
28 Feb. 5, 2003 ("Superior Court Order"), attached as Ex. C to P. &  
A. in Opp'n to Defs.' Mot. to Dismiss Pls.' Compl. ("Pls.'  
Opp'n"), filed May 20, 2003.

1 the California Court of Appeal.

2 Defendants now move to dismiss plaintiffs' complaint on the  
3 basis that this court lacks subject matter jurisdiction over  
4 plaintiffs' section 1983 claim pursuant to the Rooker-Feldman  
5 doctrine and, in the alternative, plaintiffs' claims are barred  
6 by the Younger and Colorado River abstention doctrines.<sup>3</sup>

7 **STANDARD**

8 Federal Rule of Civil Procedure 12(b)(1)<sup>4</sup> permits a defendant  
9 to move for dismissal for lack of jurisdiction over the subject  
10 matter at any time. American Fire & Casualty Co. v. Finn, 341  
11 U.S. 6, 16-18 (1951). The court is under a continuing duty to  
12 dismiss an action whenever it appears that the court lacks  
13 jurisdiction. Billingsley v. C.I.R., 868 F.2d 1081, 1085 (9th  
14 Cir. 1989).

15 Where the Rooker-Feldman doctrine applies, a district court  
16 is found to be without subject matter jurisdiction. District of  
17 Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983);  
18 Worldwide Church of God v. McNair, 805 F.2d 888, 889 (9th Cir.  
19 1986) (holding that because the Rooker-Feldman doctrine applies  
20 to plaintiffs' claim, "we conclude that the district court lacked  
21 subject matter jurisdiction over the action, and that it should  
22 have dismissed on that basis").

23 \_\_\_\_\_  
24 <sup>3</sup> Defendants do not identify the specific Federal Rule of  
25 Civil Procedure pursuant to which they move to dismiss  
26 plaintiffs' complaint. However, because the basis for dismissal  
27 is lack of subject matter jurisdiction, the court construes  
28 defendants' motion as one made pursuant to Federal Rule of Civil  
Procedure 12(b)(1).

<sup>4</sup> Any further references to a "Rule" are to the Federal  
Rules of Civil Procedure unless otherwise indicated.

1 **ANALYSIS**

2 **A. Plaintiffs' 42 U.S.C. § 1983 Claim**

3 Defendants move to dismiss plaintiffs' section 1983 claim on  
4 the basis that it is barred by the Rooker-Feldman doctrine.  
5 Plaintiffs argue that Rooker-Feldman does not apply here because  
6 the federal action is not "inextricably intertwined" with the  
7 decision made in state court. Plaintiffs raise two bases for this  
8 assertion: (1) the federal court can find in favor of plaintiffs  
9 without reviewing the decision of the state court; and (2) the  
10 Rooker-Feldman doctrine applies only when a state court judgment  
11 is res judicata on a federal claim and, in this instance, the  
12 state court judgment falls into the public interest exception to  
13 res judicata.

14 **1. Review of the Superior Court Decision**

15 The Rooker-Feldman doctrine provides that a federal court,  
16 other than the United States Supreme Court, lacks subject matter  
17 jurisdiction to adjudicate a claim that is "inextricably  
18 intertwined" with a determination previously made by a state  
19 court. District of Columbia Court of Appeals v. Feldman, 460 U.S.  
20 462, 476 (1983). This doctrine is premised, in part, on the  
21 inability of a district court as a court of original jurisdiction  
22 to review the final determinations of a state court. Rooker v.  
23 Fidelity Trust Co., 263 U.S. 413, 415-16 (1923) (finding that  
24 district courts may not exercise appellate jurisdiction over  
25 state courts); Doe & Associates Law Offices v. Napolitano, 252  
26 F.3d 1026, 1029 (9th Cir. 2001) ("If the federal constitutional  
27 claims presented to the district court are 'inextricably  
28 intertwined' with the state court's judgment, then [plaintiff] is

1 essentially asking the district court to review the state court's  
2 decision, which the district court may not do").

3 This doctrine applies even when the challenge to the state  
4 court decision involves federal constitutional issues. Feldman,  
5 460 U.S. at 484-86 ("This rule applies even though, as here, the  
6 challenge is anchored to alleged deprivations of federally  
7 protected due process and equal protection rights") (quoting Doe  
8 v. Pringle, 550 F.2d 596, 599 (10th Cir. 1976), cert. denied, 431  
9 U.S. 916 (1977); Robinson v. Ariyoshi, 753 F.2d 1468, 1471-72  
10 (9th Cir. 1985) (federal court has no jurisdiction over federal  
11 constitutional issues if consideration would require a review of  
12 the allegations underlying the state judicial decision), vacated  
13 on other grounds, 447 U.S. 902 (1986). However, Rooker-Feldman  
14 does not operate to bar a federal court from hearing a "general  
15 constitutional challenge," defined by the Ninth Circuit as "one  
16 that does not require review of a final state court decision in a  
17 particular case." Doe & Associates, 252 F.3d at 1029 (citing  
18 Dubinka v. Judges of the Superior Court, 23 F.3d 218, 221 (9th  
19 Cir. 1994)).

20 While the distinction is far from clear as to when a claim  
21 is "inextricably intertwined" with a state court decision or  
22 merely a permissible general constitutional challenge, in G.C.  
23 and K.B. Investments, Inc. v. Wilson, 326 F.3d 1096, 1103 (9th  
24 Cir. 2003), the Ninth Circuit stated that "[u]nder the rubric of  
25 either jurisdiction or res judicata, the crux of the question is  
26 whether there has already been actual consideration of and a  
27 decision on the issue presented." Thus, for example, a district  
28 court may not examine a constitutional challenge to a state grand

1 jury subpoena if the party had already challenged the subpoena  
2 through the state courts, since doing so would require finding  
3 that the state court was wrong in issuing the subpoena. Doe &  
4 Associates, 252 F.3d at 1029-30.

5 In the case currently before the court, it is clear that the  
6 Superior Court of Sacramento County actually and expressly  
7 considered and decided the issue of whether defendant Sacramento  
8 County Sheriff Lou Blanas is immune from liability under section  
9 1983. This court cannot find for plaintiffs under section 1983  
10 without determining that defendant is not immune, a decision that  
11 would be in direct conflict with the superior court's order.  
12 Therefore, because the named plaintiffs here were also parties to  
13 the state action, to consider plaintiffs' section 1983 claims  
14 would be to impermissibly review the decision of the superior  
15 court, which is precisely the kind of act barred by the Rooker-  
16 Feldman doctrine.

17 **2. Public Interest Exception to Res Judicata**

18 Plaintiffs also argue that in the Ninth Circuit the Rooker-  
19 Feldman doctrine applies only where the state court judgment  
20 would have res judicata effect on the federal claim. Plaintiffs  
21 suggest that because this court must look to state law to  
22 determine whether a state court judgment is preclusive, the  
23 state's public interest exception applies to foreclose any res  
24 judicata effect. Defendants argue this is an overly restrictive  
25 reading of the Rooker-Feldman doctrine. It is unnecessary to  
26 address this argument, because this case does not fall into the  
27 narrow category of exceptions to the doctrine of res judicata.

28 An otherwise precluded issue may be litigated when "strict

1 application of collateral estoppel would foreclose any  
2 reexamination of the holding of that case." City of Sacramento v.  
3 State of California, 50 Cal. 3d 51, 64 (1990). For example, in  
4 City of Sacramento v. State of California, the state, which was  
5 the losing party in earlier litigation, was permitted to  
6 relitigate an issue regarding its unemployment insurance law  
7 under the public interest exception to preclusion principles. Id.  
8 In finding the case to be appropriate for relitigation, the court  
9 reasoned that if the first decision was "wrong but  
10 unimpeachable," "[t]he state would remain bound, and no other  
11 person would have occasion to challenge the precedent. Yet the  
12 consequences of any error transcend those which would apply to  
13 mere private parties" because "taxpayers statewide will suffer  
14 unjustly" as a result. Id.; see also Kopp v. Fair Political  
15 Practices Commission, 11 Cal. 4th 607 (1995) (also finding that  
16 preclusion doctrines do not bar consideration of a state law  
17 issue because "the consequences of any error transcend those  
18 which would apply to mere private parties" and "if the result of  
19 [the earlier litigation] is wrong but unimpeachable," there would  
20 be no means of correcting the former result under preclusion  
21 principles) (citing City of Sacramento v. State of California, 50  
22 Cal. 3d 51 (1990)).

23 Similarly, in Bates v. Jones, 127 F.3d 870, 872 (9th Cir.  
24 1997), the Ninth Circuit found that res judicata did not preclude  
25 opponents of an initiative imposing lifetime legislative term  
26 limits from intervening even though some of the interveners were  
27 parties to prior state court litigation. The court held that any  
28 res judicata effect was outweighed by the public policy issues at



1 stake since both voters and candidates would suffer serious  
2 injustice if some incumbents were permitted to run for re-  
3 election while others were barred from office because they were  
4 plaintiffs to the state court litigation.

5       The circumstances surrounding the case currently before the  
6 court do not support an exception to the doctrine of res  
7 judicata. In this instance, the consequences of any error in the  
8 original judgment are limited to the plaintiffs involved in that  
9 action and subject to review in the California Court of Appeal.  
10 Moreover, the superior court found defendants' strip search  
11 policy unconstitutional pursuant to the California Constitutional  
12 Right to Privacy (Art. I, § 1) and unlawful under California  
13 Penal Code section 4030, awarding each of the plaintiffs "actual  
14 damages, or one thousand dollars (\$1,000), whichever is greater"  
15 pursuant to California Penal Code section 4030(p). (Superior  
16 Court Order, attached as Ex. C to Pls.' Opp'n.) Had plaintiffs  
17 not already recovered damages in their state court action, the  
18 facts of this case may have invoked important public policy  
19 implications necessitating application of the public interest  
20 exception to the doctrine of res judicata. However, where, as  
21 here, defendants' actions have been adjudged unconstitutional and  
22 unlawful, and plaintiffs have recovered damages in state court  
23 for the harm they sustained, relitigation of this case would, in  
24 practical effect, simply provide plaintiffs with a possible new  
25 avenue to obtain damages. Such relitigation does not invoke  
26 public policy considerations sufficient to warrant application of  
27 the narrow public interest exception.

28       Therefore, this case fails to meet the substantial interest

1 and unusual circumstances necessary to create a public interest  
2 exception to the doctrine of res judicata.

3       **3. Rooker-Feldman and Non-Parties to the State Court**  
4               **Action**

5       Plaintiffs argue that, unlike the class action in state  
6 superior court, this case is brought on behalf of those arrested  
7 for felonies as well as those arrested for misdemeanors. Because  
8 the previous action was brought only on behalf of those arrested  
9 for misdemeanors, plaintiffs argue that there are plaintiffs in  
10 this suit that were not parties to the previous state court  
11 action. At oral argument, plaintiffs' counsel maintained that  
12 their primary purpose was to ensure that the court did not  
13 dismiss the claims of the plaintiffs who were not parties to that  
14 action.

15       Plaintiffs argue correctly that plaintiffs who were not  
16 parties to the action in superior court are not precluded from  
17 litigating their section 1983 claims in federal court. Thus,  
18 while the Rooker-Feldman doctrine bars the section 1983 claims of  
19 all plaintiffs named in the complaint and many other members of  
20 the class, there still remain plaintiffs who are parties to this  
21 action over whom jurisdiction would be proper. Therefore,  
22 plaintiffs shall be permitted to amend their complaint to include  
23 only those plaintiffs who were not parties to the state court  
24 action, and whose claims are not barred by the Rooker-Feldman  
25 doctrine.<sup>5</sup>

---


26  
27       <sup>5</sup> Because the Rooker-Feldman doctrine is a sufficient  
28 basis for dismissal at this time, the court does not reach the  
(continued...)

1 **CONCLUSION**

2 For the foregoing reasons, defendants' motion to dismiss  
3 plaintiffs' 42 U.S.C. § 1983 claim is GRANTED with leave to  
4 amend. Plaintiffs may amend their complaint to include only those  
5 plaintiffs who were not parties to the state court action.  
6 Plaintiffs shall have ninety (90) days from the date of this  
7 order to file their first amended complaint in accordance with  
8 this order. Defendants shall have thirty (30) days from the date  
9 of service of plaintiffs' first amended complaint to file a  
10 response thereto.

11 IT IS SO ORDERED.

12 DATED: July 22 2003.

13   
14 FRANK C. DAMRELL, Jr.  
15 UNITED STATES DISTRICT JUDGE  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

27 \_\_\_\_\_  
28 <sup>5</sup>(...continued)  
other abstention doctrines presented.

United States District Court  
for the  
Eastern District of California  
July 23, 2003

\* \* CERTIFICATE OF SERVICE \* \*

2:03-cv-00458

Bull

v.

County of Sacramento

---

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Eastern District of California.

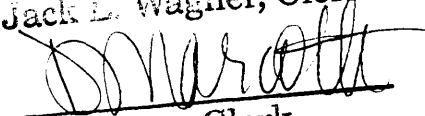
That on July 23, 2003, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office, or, pursuant to prior authorization by counsel, via facsimile.

Mark E Merin  
Law Office of Mark E Merin  
2001 P Street  
Suite 100  
Sacramento, CA 95814

MP/FCD

Avery Emil Dority  
Porter Scott Weiberg and Delehant  
PO Box 255428  
350 University Avenue  
Suite 200  
Sacramento, CA 95865

Terence John Cassidy  
Porter Scott Weiberg and Delehant  
PO Box 255428  
350 University Avenue  
Suite 200  
Sacramento, CA 95865

Jack L. Wagner, Clerk  
  
by: Deputy Clerk