

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

MIAMI DIVISION

CASE NO. 04-20516-CIV-JORDAN/BROWN

JUDITH HANEY, et al.,)
)
Plaintiffs)
)
vs.)
)
MIAMI-DADE COUNTY, et al.,)
)
Defendants)
)

ORDER DENYING DEFENDANTS' MOTION TO DISMISS

Judith Haney, Liat Mayer, Jamie Loughner, Darcy Smith, and Amanda Wells, individually and on behalf of all persons similarly situated, sue Miami-Dade County and various individual defendants, for subjecting them to strip and visual body cavity searches, in violation of the Fourth and Fourteenth Amendments. The plaintiffs seek declaratory and injunctive relief, as well as monetary damages, pursuant to 42 U.S.C. §§ 1983 and 1988. Miami-Dade County has moved to dismiss the claims for injunctive relief, arguing that the plaintiffs lack standing to seek injunctive relief. For the reasons stated below, the defendants' motion to dismiss [D.E. 23] is DENIED.

I. STANDARD OF REVIEW

The defendants' motion to dismiss should not be granted unless it appears beyond doubt that the plaintiffs could prove no set of facts in support of their claims which would entitle them to relief. *See Conley v. Gibson*, 355 U.S. 41, 45-46 (1957). I must take the allegations of the plaintiffs' complaint as true and must read the complaint to include any theories on which they can recover. *See Lindner v. Portocarrero*, 963 F. 2d 332, 334-36 (11th Cir. 1992). A dismissal under Rule 12(b)(6) "is viewed with disfavor and rarely granted." *Brooks v. Blue Cross & Blue Shield of Florida, Inc.*, 116F. 3d 1364, 1368-69 (11th Cir. 1997) (citing *Madison v. Purdy*, 410 F. 2d 99, 100 (5th Cir. 1969); *International Erectors, Inc. v. Wilhoit Steel Erectors & Rental Service*, 400 F. 2d 465, 471 (5th Cir. 1968) ("Dismissal of a claim on the basis of barebone pleadings is a precarious disposition with a high mortality rate.")). Rule 12(b)(6) permits the dismissal of a complaint on a dispositive issue of law only when no construction of the factual allegations of the complaint can support the cause of action. *See Executive 100, Inc. v. Martin County*, 922 F.2d 1536, 1539 (11th Cir. 1991).

In addition, where injunctive relief is sought, the plaintiffs must demonstrate that they face a real and immediate threat of future injury resulting from a similar encounter with the defendants. See *City of Los Angeles v. Lyons*, 461 U.S. 95, 107-8 (1983) (holding that plaintiff's standing to enjoin use of chokeholds by police officers hinged on "whether he was likely to suffer future injury from the use of chokeholds by police officers"). At the motion to dismiss stage, "[a court] must evaluate standing based on the facts alleged in the complaint, and . . . may not 'speculate concerning the existence of standing or 'piece together support for the plaintiff.'"" See *Shotz v. Cates*, 256 F.3d 1077, 1080 (11th Cir. 2001) (citing *Cone Corp. v. Florida Department of Transportation*, 921 F.3d 1190, 1210 (11th Cir. 1991)). However, at this stage, courts "'presum[e] that general allegations embrace those specific facts that are necessary to support the claim.'" See *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992) (citing *Lujan v. National Wildlife Federation*, 497 U.S. 871, 889 (1990)) (distinguishing between the varying levels of proof required to establish standing at different stages of litigation: "In response to a summary judgment motion, however, the plaintiff can no longer rest on such 'mere allegations,' but must 'set forth' by affidavit or other evidence 'specific facts,' Fed. Rule Civ. Proc. 56(e), which for purposes of the summary judgment motion will be taken to be true. And at the final stage, those facts (if controverted) must be 'supported adequately by the evidence adduced at trial.'").

II. ANALYSIS

The plaintiffs seek injunctive relief enjoining strip and visual body cavity searches, conducted on all pre-first appearance, non-felony female detainees, without a reasonable suspicion that such searches would reveal or disclose contraband or weapons. The defendants argue that, under *Lyons*, the plaintiffs lack standing to seek such relief unless there is a substantial likelihood that they will be injured in a similar way in the future. In *Lyons*, the Supreme Court held that the plaintiff - who alleged that he had been subjected to a chokehold by officers of the Los Angeles Police Department - lacked standing to enjoin police use of chokeholds because the probability of future injury was "merely conjectural or hypothetical":

In order to establish an actual controversy in this case, Lyons would have had not only to allege that he would have another encounter with the police but also to make the incredible assertion either, (1) that *all* police officers in Los Angeles always

choke any citizen with whom they have an encounter . . . or, (2) that the City ordered or authorized police officers to act in such a manner.

Lyons, 461 at 105-06. The Supreme Court specifically noted that the plaintiff failed to allege that chokeholds were applied to every person stopped by the LAPD, regardless of the circumstances. In contrast, the plaintiffs in this case allege that *all* pre-first appearance, non-felony female detainees are subject to strip and body cavity searches upon arrest. The current named plaintiffs encompass three out-of-state visitors arrested for civil disobedience in connection with the FTAA protests, an Aventura resident arrested for misdemeanor battery, and a Miami Beach resident arrested for resisting arrest without violence. The last two plaintiffs were added after this suit was filed on March 5, 2004, and their arrests and strip searches took place on March 17, 2004, and April 23, 2004, respectively. *Cf. id.* at 108 (finding that the odds that Lyons would be stopped for a traffic violation and subjected to a chokehold were insufficient to establish standing where five months had passed between Lyons' encounter with the police and the filing of the complaint and no other encounters between Lyons and the police had taken place). Additionally, this case is a potential class action.

The Eleventh Circuit has not ruled, post-*Lyons*, on the specific issue of when, if ever, a plaintiff has standing to seek injunctive relief with regard to allegedly unconstitutional strip searches. The Eleventh Circuit has, however, applied *Lyons* in other contexts, and found that the plaintiffs had standing to seek injunctive relief. *See 31 Foster Children v. Bush*, 329 F.3d 1255, 1266 (11th Cir.2003) (holding that foster care children had standing to seek injunctive relief challenging systemic deficiencies in the system: "when the threatened acts that will cause injury are authorized or part of a policy, it is significantly more likely that the injury will occur again"); *Church v. City of Huntsville*, 30 F.3d 1332, 1339 (11th Cir. 1994) (homeless persons had standing to seek an injunction against the City of Huntsville to prevent the City and its employees from harassing, intimidating, detaining, and arresting them solely because they were homeless). In *31 Foster Children*, the Eleventh Circuit held that, under *Lyons*, the foster care children could seek injunctive relief for acts that were authorized or part of a policy:

As *Lyons* illustrates, future injury that depends on either the random or unauthorized acts of a third party is too speculative to satisfy standing requirements. However, when the threatened acts that will cause injury are authorized or part of a policy, it is significantly more likely that the injury will occur again.

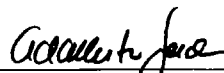
31 *Foster Children*, 329 F.3d at 1266.

The plaintiffs allege that there is a policy of conducting strip and body cavity searches on *all* pre-first appearance, non-felony female detainees. I assume that the plaintiffs' allegations are true, as I am required to do when considering a motion to dismiss. Therefore, there is a substantial likelihood that the plaintiffs and others similarly situated will be injured in the future.

III. CONCLUSION

In sum, the plaintiffs have standing, at this stage of the litigation, to seek injunctive relief enjoining strip and body cavity searches on. The defendants' motion to dismiss the claim for injunctive relief is DENIED. The defendants are free, of course, to raise the standing issue at the summary judgment stage.

DONE and ORDERED in chambers in Miami, Florida, this 24th day of August, 2004.



Adalberto Jordan
United States District Judge

Copy to: All counsel of record
Magistrate Judge Brown