

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

CASE NO.: 6:05-CV-850-ORL-31-KRS

RONALD M. PARILLA, ALDA RUGG,
BILLY CATES, THERESA DECLUE,
AILEEN NUNEZ, DAVID W. ROBERTS,
KIM LEMISTER, and FRANTARSHIA
STAFFORD, individually and on behalf of
a class of all others similarly situated,

Plaintiffs,

v.

DONALD ESLINGER, individually and
in his official capacity as Sheriff of Seminole
County, MICHAEL TIDWELL, individually
and in his official capacity as Director of the
John E. Polk Correctional Facility, DAVID DIGGS,
in his individually capacity, and SEMINOLE
COUNTY,

Defendants.

ANSWER AND AFFIRMATIVE DEFENSES TO
SECOND AMENDED CLASS ACTION COMPLAINT,
BY DEFENDANTS ESLINGER, TIDWELL, AND DIGGS

COME NOW Defendants Donald Eslinger, individually and in his official capacity as Sheriff of Seminole County, Florida, Michael Tidwell, individually and in his official capacity as Director of the John E. Polk Correctional Facility, and

David Diggs, in his individual capacity, and answer Plaintiffs' Second Amended Class-Action Complaint as follows:

1. It is admitted that Donald Eslinger is, and at all material times to this action was, the Sheriff of Seminole County, Florida. It is admitted that all actions undertaken by the Sheriff in relation to this action were taken in his discretionary authority as Sheriff.

2. It is admitted that Michael Tidwell is the current commander of the John E. Polk Correctional Facility and that all actions undertaken by him in regard to this matter were in his discretionary authority.

3. It is admitted that David Diggs was the commander of the John E. Polk Correctional Facility until approximately December 31, 2004, and that all actions undertaken by him in regard to this matter were in his discretionary authority.

4. All other allegations of Plaintiffs' Complaint not expressly admitted herein are denied.

5. It is specifically denied that the claims, or circumstances surrounding the claims of, the named Plaintiffs are common to, typical of, or representative of the claims of the proposed classes. It is further denied that the named Plaintiffs or their claims are otherwise appropriate as common to, typical of, representative of

the proposed classes and it is further denied that this action may properly be maintained as a class action.

AFFIRMATIVE DEFENSES

First Affirmative Defense

6. The Second Amended Class-Action Complaint fails to state a claim upon which relief may be granted in terms of the alleged unconstitutional strip searches. Specifically, particularized reasonable suspicion is not the correct standard for strip searches for safety and security, conducted at a pre-trial detention center.

Second Affirmative Defense

7. The Court has previously dismissed the claims for unconstitutional strip searches based on failure to obtain prior written authorization for search. To the extent that Plaintiffs continue to seek redress based on such claims, Defendants would assert that prior written authorization is not required by the U.S. Constitution nor does the requirement for prior written authorization in state statute represent a federal right actionable under §1983.

Third Affirmative Defense

8. The Complaint fails to state a claim upon which relief may be granted as to the Fourteenth Amendment overdetention claims brought in Count II of the Second Amended Class-Action Complaint. Pursuant to the Court's order of

December 5, 2005, these claims are governed by a Fourteenth Amendment due process analysis. The correct standard is a shocks the conscience or deliberate indifference standard and the time-frames complained of do not shock the conscience, reflect deliberate indifference to the constitutional rights of the Plaintiffs, or otherwise represent violations of Plaintiffs' rights.

Fourth Affirmative Defense

9. All claims brought on behalf of proposed class members, where the proposed class members were incarcerated or otherwise detained on the date of the filing or the bringing of this action, are barred by 42 U.S.C. § 1997(e) absent a showing by said Plaintiffs of a physical injury.

Fifth Affirmative Defense

10. To the extent sued in their individual capacities, each of the named Defendants was acting in his discretionary capacity as a governmental official and did not violate clearly established law such that he is entitled to qualified immunity from suit under 42 U.S.C. § 1983.

Sixth Affirmative Defense

11. Defendant Sheriff Eslinger is independently entitled to qualified immunity, to the extent sued in his individual capacity, as the actions complained of in the Second Amended Class-Action Complaint were not undertaken pursuant

to the Sheriff's supervisory capacity and because the Defendant did not violate clearly established law.

Seventh Affirmative Defense

The Court lacks jurisdiction over the injunctive relief sought under such doctrines as separation of powers and sovereign immunity, and should otherwise abstain from entry of any Order which interferes with the Defendants' judgment as members of the Executive branch in discretionary policy-making. The Court should defer to the Defendants in matters of jail management and should not interfere with decisions of the Defendants in day-to-day operation of the jail as the Court is not equipped to monitor or manage such issues and is in an inferior position to do so, particularly with respect to the claims based on the procedures used or length of time for intake and release of inmates.

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of May 2006, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to the following: J. Larry Hanks, Esq., 6500 South Hwy. 17-92, Fern Park, FL 32730; Randall C. Berg, Jr., Esq., Peter M. Siegel, Esq., Cullin A. O'Brien, Esq., 200 S. Biscayne Blvd., Miami, FL 33131; Henry W. Jewett, II, Esq., and David T. White, III, Esq., 201 E. Pine Street, Suite 1500, Orlando, FL 32802.

I further certify that I mailed the foregoing document and the notice of electronic filing by first-class mail to the following non-CM/ECF participants: n/a



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