

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

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GREGORY GARVEY, Sr. on behalf of himself	)	
and on behalf of others similarly situated,	)	
Plaintiffs	)	
	)	Civil Action No. 07-30049
v.	)	
	)	
FREDERICK B. MACDONALD, and FORBES	)	
BYRON in their individual capacities,	)	
Defendants	)	

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**COMPLAINT**

**INTRODUCTION**

1. This is a civil rights class action for money damages against Franklin County Sheriff Frederick B. Macdonald and Special Sheriff Superintendent Forbes Byron in their individual capacities for routine unconstitutional strip searches on intake of pre-arraignment detainees at the Franklin County Jail and House of Correction (“Franklin County Jail”). On November 29, 2006, named plaintiff Gregory Garvey Sr. was involved in a car accident in Whately, Massachusetts. An officer who responded to the scene notified Mr. Garvey that his right to drive in Massachusetts had been suspended for failure to pay excise taxes. The officer told Mr. Garvey that he would receive a notice of the date to appear in court by mail.

2. Mr. Garvey paid the outstanding excise tax. He never received a notice from the court. At approximately 11:00 pm on January 30, 2007, Sunderland police officers arrived at Mr. Garvey’s home and arrested him on a default warrant for failure to appear in court earlier that day on the charge of operating on a suspended driver’s license. The officers brought Mr. Garvey to the Franklin County Jail where he was held until he could appear in court the next morning.

3. At the jail, correctional officers strip searched Mr. Garvey based on a written policy of the Sheriff that required a strip search on admission to the facility. The officers ordered Mr. Garvey to strip naked, bend over and spread his buttocks, to allow a corrections officer to visually inspect his nude body, including his genitals. Before the jail officers took Mr. Garvey to court, they strip searched him a second time. When Mr. Garvey appeared in court the next morning, the court dismissed the charges against him. Mr. Garvey felt humiliated, degraded and violated as a result of the strip searches.

4. The named plaintiff Gregory Garvey Sr., seeks to represent a class of all people strip searched after March 28, 2004, without individualized reasonable suspicion at the Franklin County Jail due to the policies or practices of the defendant Franklin County Sheriff.

5. On information and belief, hundreds of people have been subjected to unconstitutional strip searches upon admission to the Franklin County Jail.

#### **JURISDICTION**

6. This action is brought pursuant to 42 U.S.C. §§1983 and 1988 and the Fourth, Fifth, Eighth, and Fourteenth Amendments to the United States Constitution. Jurisdiction is founded upon 28 U.S.C. §§1331 and 1343.

#### **PARTIES**

7. Named plaintiff Gregory Garvey Sr. was at all times relevant to this complaint a resident of the Commonwealth of Massachusetts.

8. Defendant Frederick B. Macdonald was at all times relevant to this complaint, a resident of the Commonwealth of Massachusetts. He has been the Sheriff of Franklin County since January 6, 1993. He is sued in his individual capacity for actions he took under color of law.

9. Defendant Forbes Byron was at all times relevant to this complaint a resident of the Commonwealth of Massachusetts and the Special Sheriff Superintendent responsible for operation of the Franklin County. He is sued in his individual capacity for actions he took under color of law.

**FACTS**

10. When their home in Mississippi was destroyed by Hurricane Katrina, Gregory Garvey, his wife Diana Garvey, and his daughter relocated to Massachusetts.

11. In late November 2006, Mr. Garvey was involved in a motor vehicle accident in Whately, Massachusetts.

12. A Whately police officer arrived at the scene of the accident. The officer ran Mr. Garvey's Mississippi driver's license through his computer. He discovered that Mr. Garvey's right to operate a motor vehicle in Massachusetts had been suspended because he had not paid a Massachusetts excise tax years earlier when he had previously lived in Massachusetts.

13. The officer gave Mr. Garvey a motor vehicle citation and told him that he would receive a notice of a court date in the mail. Mr. Garvey did not receive notice of a court date.

14. On Tuesday, January 30, 2007, at approximately 11:00 p.m., Sunderland police officers arrived at Mr. Garvey's home and placed him under arrest for failure to appear in court earlier that day.

15. After the arrest, the police officers took Mr. Garvey to the Sunderland Police Station where he was fingerprinted and processed. Then Sunderland police officers took him to the Franklin County Jail in Greenfield, Massachusetts to be held until he could appear in court the next morning.

16. It was the practice of police officers in Sunderland and other police departments in Franklin County to bring pre-arraignment detainees to the Franklin County Jail to be held before their first court appearance.

17. As Sheriff, Frederick B. Macdonald was responsible for all of the policies of the Franklin County Sheriff's Department, including the strip search policies of the Franklin County Jail. His job responsibilities included assuring that the policies and practices of the jail complied with the Constitution.

18. As the Special Sheriff and Superintendent of the Franklin County Jail, Forbes Byron was responsible for the policies of the Jail including the strip search policies. His job responsibilities included assuring that the policies and practices of the jail complied with the Constitution.

19. Sheriff Macdonald issued and Special Sheriff Byron implemented General Order 506 which, up until February 25, 2007, mandated that all detainees except those in protective custody be strip searched on admission to the jail and again before leaving the jail to go to court.

20. During the admission procedure at the Franklin County Jail, a correctional officer ordered Mr. Garvey to remove all of his clothing and submit to a strip search.

21. Mr. Garvey complied with the request. He removed his clothing and followed the orders of the correctional officer to bend and spread the cheeks of his buttocks. The corrections officer told Mr. Garvey, "We have to watch you do it. Bend over. Spread your cheeks."

22. The officer visually inspected the plaintiff's nude body including his genitals.

23. The officer had no reason to suspect that Mr. Garvey had any weapons or contraband hidden on his person. The officer did not find anything as a result of the strip search. After the search, Mr. Garvey was required to put on a jail uniform.

24. The next morning, Mr. Garvey was strip searched again before he was allowed to put on his clothing to go to court.

25. Once at the courthouse, all charges were dropped against Mr. Garvey and he was informed that he was free to leave.

26. Mr. Garvey suffered emotional distress as a result of the strip search. He was surprised and shocked. He felt humiliated, degraded, and violated.

27. General Order 506 of the Office of the Franklin County Sheriff was a policy established and/or maintained by Sheriff Macdonald and implemented by Special Sheriff Byron that required Franklin County Jail officers to view, without evaluating for individualized reasonable suspicion, the naked body of every person at the time of admission to the Franklin County Jail and before leaving for a first court appearance. This policy applied regardless of the person's charges or anticipated duration of detention. The policy directed employees of the Sheriff's Department to conduct unconstitutional strip searches of the plaintiff and members of the plaintiff class.

#### **CLASS ACTION ALLEGATIONS**

28. This action is brought pursuant to Rule 23(a) and (b) (1) and (3) of the Federal Rules of Civil Procedure by the named plaintiff as a class action on behalf of all people strip searched after March 28, 2004, and before February 25, 2007, without individualized reasonable suspicion at the Franklin County Jail due to the a policy or practice of Sheriff Macdonald:

- (a) while waiting for bail to be set or for a first court appearance after being arrested on charges that did not involve a weapon, drugs, contraband or a violent felony, or
- (b) while waiting for a first court appearance after being arrested on a default or other warrant for charges that did not involve a weapon, drugs, contraband or a violent felony.

29. The named plaintiff, Gregory Garvey, is a member of the class. The class represented by the plaintiff is so numerous that joinder of all such persons is impractical. On information and belief, the policy or practice described above has existed for more than three years before this complaint was filed, affecting hundreds of potential class members.

30. There are questions of law and fact common to the class of plaintiffs. Central to all the claims is the nature and constitutionality of the policy or practice of Sheriff Macdonald regarding intake strip searches without individualized reasonable suspicion of pre-arraignment detainees.

31. The named plaintiff's claims or defenses are typical of the claims or defenses of the class of plaintiffs.

32. The named plaintiff will fairly and adequately represent and protect the interests of the members of the class. Counsel for the plaintiff is experienced and capable in civil rights litigation. Class counsel has successfully represented plaintiffs in other class actions alleging unlawful strip searches. Counsel has the resources and expertise to prosecute this action.

33. This action is properly maintainable as a class action because the prosecutions of separate actions by the individual members of the class would create a risk of inconsistent or varying adjudications with respect to individual members of the class, which would establish incompatible standards of conduct for the defendant.

34. This action is properly maintainable as a class action because the prosecution of separate actions would create a risk of adjudications with respect to individual members of the class that would, as a practical matter, be dispositive of the interests of the other members who are not parties or would substantially impair or impede their ability to protect their interests.

35. As a direct result of the policy or practice as described above, class members have been subjected to unlawful strip searches, which has caused each member of the class to endure emotional distress, humiliation, and degradation.

**CLAIM: 42 U.S.C. § 1983**

36. The above paragraphs are incorporated herein.

37. Sheriff Macdonald was the chief executive officer of the Franklin County Sheriff's Department. He promulgated the strip search policy at the Franklin County Jail.

38. Sheriff Macdonald knew, or should have known, that there was a policy of conducting strip searches, without individualized reasonable suspicion, of pre-arraignment prisoners at intake and again before court in violation of the United States Constitution. He had an obligation to correct this practice so that it would conform to the Constitution.

39. Special Sheriff Superintendent Byron was responsible for supervision and daily operations of the Franklin County Jail. He implemented the strip search policy at the Jail.

40. Special Sheriff Superintendent Byron knew, or should have known, that there was a policy or practice of conducting strip searches, without individualized reasonable suspicion, of pre-arraignment prisoners at intake and again before court in violation of the United States Constitution. He had an obligation to correct this practice so that it would conform to the Constitution.

41. By allowing the policy or practice of routine strip searches to continue during the class period, defendants Macdonald and Byron acted with reckless indifference to the constitutional rights of individuals who were detained at the Franklin County Jail as described above.

42. Ten years before January 30, 2007, the law was clearly established that routine intake strip searches of pre-arraignment detainees like the plaintiff and members of the plaintiff class without evaluating for cause were unconstitutional. A decision granting summary judgment to plaintiffs for a similar policy implemented by the Sheriff of Suffolk County Massachusetts was issued on July 31, 2001. Ford v. City of Boston, 154 F. Supp.2d 131 (D.Mass. 2001) (holding the

law regarding strip searches of pre-arraignment detainees without individualized suspicion was clearly established in 1997).

43. By the actions described above, the defendants deprived the named plaintiff and members of the plaintiff class of their clearly established right, guaranteed by the Constitution of the United States, to be free from unreasonable searches.

44. As a direct and proximate result of this conduct, the plaintiff and the plaintiff class have suffered injuries as described above.

**WHEREFORE** the plaintiffs request that this Court:

1. Award compensatory damages and punitive damages to the named plaintiff and to members of the plaintiff class;
2. Award the plaintiffs the costs of this action including reasonable attorney's fees; and
3. Award whatever additional relief this Court deems necessary and appropriate.

**JURY DEMAND**

A jury trial is hereby demanded.

RESPECTFULLY SUBMITTED,

/s/ Howard Friedman

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Date: March 28, 2007



**Neal Alpert**

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**United States District Court**

**District of Massachusetts**

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