

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

EDWARD BIZZARRO, RICHARD :
WRIGHT, and APRIL WEDDING, :
individually and on behalf of a Class :
of others similarly situated, :

Plaintiffs, :

- vs - :

OCEAN COUNTY, THEODORE J. :
HUTLER, JR., both individually and :
in his official capacity as Warden of :
the Ocean County Jail, and :
SANDRA MUELLER, both :
individually and in her official :
as Chief of Corrections of the Ocean :
County Department of Corrections, :

Defendants. :

Civil Action No. 3:07-CV-05665

(FLW-TJB)

**THIRD AMENDED
CLASS ACTION COMPLAINT**

INTRODUCTION

1. This is a class action lawsuit brought to redress the deprivation by Defendants of rights secured to the Plaintiffs and proposed Class by the United States Constitution, the laws of the United States of America and the laws of the State of New Jersey. For at least the past two years prior to the date of the commencement of this litigation, the Ocean County Sheriff's Department and Ocean County Department of Corrections have had a policy of strip-searching all individuals who enter the Ocean County Jail and are placed in jail clothing, regardless of the crime upon which they are charged. Upon information and belief, this policy is, in part, derived from the written procedures of the Ocean County Sheriff's Department and Ocean County Department of Corrections, and was promulgated by senior Department officials, specifically Theodore J.

Hutler, Jr., Warden of the Ocean County Correctional Facility, and Sandra Mueller, Chief of Corrections of the Ocean County Correctional Facility

2. It has been well established in this judicial circuit for many years that individuals charged with misdemeanors or minor violations cannot be strip-searched absent particularized suspicion that they possess weapons or contraband. In short, the policy of Ocean County and the Ocean County Sheriff's Department to force those charged with minor crimes to undergo the indignities of a strip search upon entry into the Ocean County Jail was clearly illegal.

3. Edward Bizzarro, Richard Wright, and April Wedding (together, "Plaintiffs") bring this action on behalf of themselves, and on behalf of a class of thousands of others who were strip searched after being charged with petty crimes, to vindicate the clear and unnecessary violation of their civil rights and those of the class members they propose to represent. Plaintiffs were charged with misdemeanor and violation offenses, and subjected to strip searches, in violation of their rights against unreasonable searches under the Fourth Amendment of the United States Constitution. Plaintiffs seek monetary damages for themselves and each member of the proposed class, and a declaration that the Sheriff's Department's and Correction's Department policies were unconstitutional. With the foregoing as background, Plaintiffs Edward Bizzarro, Richard Wright, and April Wedding complain as follows:¹

¹ Plaintiffs file this Third Amended Complaint pursuant to the Court's direction contained in its June 9, 2009 opinion certifying and ordering the certification of the Class in this action under Federal Rule of Civil Procedure 23 and ordering the filing of this complaint deleting claims for injunctive relief. Accordingly, Plaintiffs are also not setting forth a claim for certification under Rule 23(b)(2) but reserve the right to re-amend or seek leave to re-amend to do so should, subsequently, the Court's June 9, 2009 opinion be reversed or superseded or the factual predicates for that opinion be altered.

JURISDICTION

4. This Court has jurisdiction over this action under the provisions of 28 U.S.C. § 1331, 1341 & 1343 because it is filed to obtain compensatory damages and punitive damages, for the deprivation, under color of state law, of the rights of citizens of the United States secured by the Constitution and federal law pursuant to 42 U.S.C. §§ 1981 & 1983. This Court also has jurisdiction over this action under the provisions of 28 U.S.C. § 2201, inasmuch as it is filed to obtain declaratory relief relative to the Constitutionality of the policies of a local government. Supplemental jurisdiction exists over Plaintiffs' pendent state law claim pursuant to 28 U.S.C. §§ 1367(a) because Plaintiffs' state law claim is so related to the federal claims within such original jurisdiction that it forms part of the same case or controversy as do the federal claims.

5. Venue is proper under 28 U.S.C. § 1391(e)(2) because the events giving rise to Plaintiffs' claims and those of proposed class members occurred in this judicial district.

PARTIES

6. Plaintiff Edward Bizzarro ("Bizzarro") resides in Manahawkin, New Jersey. In or about September of 2007, Bizzarro was arrested for failing to pay child support and transported to the Ocean County Jail where he was strip searched upon admission.

7. Plaintiff Richard Wright ("Wright") resides in Toms River, New Jersey. On or about October 1, 2007, Wright turned himself in on a warrant for child support. Wright was strip searched upon his admission to the Ocean County Jail.

8. Plaintiff April Wedding ("Wedding") resides in Little Egg Harbor, New Jersey. In or about August of 2007, Wedding was arrested for late payment of a traffic fine and was strip searched upon her admission to the Ocean County Jail.

9. Defendant County of Ocean (the “County”) is a county governmental entity organized and existing under the laws of the State of New Jersey. At all times relevant hereto, the County, acting through its Sheriff’s Department and Department of Corrections, was responsible for the policies, practices, supervision, implementation and conduct of all matters pertaining to the Ocean County Jail and was responsible for the appointment, training, supervision and conduct of all Sheriff’s Department personnel, including those working in the Ocean County Jail. In addition, at all relevant times, the County was responsible for enforcing the rules of the Ocean County Jail, and for ensuring that Sheriff’s Department and Department of Corrections’ personnel employed in the Jail obey the Constitution and laws of the United States and of the State of New Jersey.

10. The Ocean County Sheriff’s Department (the “Sheriff’s Department”) is a County Sheriff’s Department organized and existing under the laws of the State of New Jersey. Although not a legal entity for the purposes of this litigation, the Department is listed as a party for the purposes of identification. At all times relevant hereto, the Sheriff’s Department was responsible for operating, organizing, overseeing and administering the Ocean County Jail (“OCJ”). At all times relevant hereto, Defendant Sheriff’s Department, together with the County of Ocean, was responsible for the policies, practices, supervision, implementation and conduct of all matters pertaining to the OCJ, and was responsible for the appointment, training, supervision and conduct of all Sheriff’s Department personnel, including those working in the OCJ. In addition, at all times relevant hereto, Defendant Sheriff’s Department, together with the County of Ocean, was responsible for enforcing the rules of the Ocean County Jail, and for ensuring that Sheriff’s Department personnel employed in the OCJ obeyed the Constitution and laws of the United States and of the State of New Jersey.

11. Defendant Ocean County Department of Corrections (the "Jail" or "OCDOC") is a county governmental organization and exists under the laws of the State of New Jersey. Although not a defendant for purposes of this litigation, the Department is listed as a party for the purposes of identification. At all times relevant hereto, the County, acting through its Warden and the OCDOC, was responsible for the policies, practices, supervision, implementation and conduct of all matters pertaining to the Ocean County Jail and was responsible for the appointment, training, supervision and conduct of all Sheriff's Department personnel, including those working in the Ocean County Jail. In addition, at all relevant times, the County was responsible for enforcing the rules of the Ocean County Jail, and for ensuring that Sheriff's Department and OCDOC personnel employed in the Jail obey the Constitution and laws of the United States and of the State of New Jersey.

12. Defendant Theodore J. Hutler, Jr. ("Warden Hutler") is the duly appointed Warden of the Ocean County Department of Corrections, and, as such, was a policy maker with respect to the treatment of pre-trial and other detainees over which the OCDOC exercises custodial or other control. Warden Tyler is made a Defendant in this action in both his individual and official capacities.

13. Defendant Sandra Mueller ("Chief Mueller") is the Chief of Corrections of Ocean County and, as such, was a policy maker with respect to the treatment of pre-trial and other detainees over which the OCDOC exercises custodial or other control. Chief Mueller is made a Defendant in this action in both her individual and official capacities.

14. Collectively, Warden Hutler and Chief Mueller will be referred to as the "Policy Making Defendants."

CLASS ACTION ALLEGATIONS

15. Plaintiffs brings this action as a class action pursuant to Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure on behalf of themselves and a class of similarly situated individuals who were charged with misdemeanors (disorderly persons offenses) or other non-indictable offenses and were strip searched upon their entry into the Ocean County Jail.

16. The class that Plaintiffs seek to represent is defined as follows:

All persons who have been or will be placed into the custody of the Ocean County Jail after being charged with non-indictable offenses such as disorderly persons offenses, traffic infractions, and/or civil commitments and were strip searched upon their entry into the Ocean County Jail. The class period commences on November 28, 2005 and ends on December 28, 2007.. Specifically excluded from the class are Defendants and any and all of their respective affiliates, legal representatives, heirs, successors, employees or assignees.

17. This action has been brought and may properly be maintained as a class action under Federal law and satisfies the numerosity, commonality, typicality and adequacy requirements for maintaining a class action under Fed. R. Civ. P. 23(a).

18. The members of the class are so numerous as to render joinder impracticable. There are hundreds of people arrested for misdemeanors, traffic warrants, child support and other violations which do not support probable cause to search, who are placed into the custody of the Ocean County Jail every month — all of whom are members of the proposed class. Upon information and belief, the size of the proposed class totals at least 4,000 individuals, some of whom have had their civil rights violated on more than one occasion.

19. Joinder of all of these individuals is impracticable because of the large number of class members and the fact that class members are likely dispersed over a large geographical area, with some members presently residing outside of Ocean County and this Judicial District. Furthermore, many members of the class are low-income persons, may not speak English, and likely would have great difficulty in pursuing their rights individually.

20. Common questions of law and fact exist as to all members of the class, in that they all had their right to be free from unreasonable searches violated by Defendants conducting strip searches absent particularized suspicion. All members of the class were charged with misdemeanors or violations when placed into the custody of the Ocean County Jail, and all were illegally strip searched in violation of the established law in this judicial circuit.

21. Plaintiffs' claims are typical of the claims of the members of the class. Plaintiffs and all members of the class sustained damages arising out of Defendants' course of conduct. The harms suffered by the Plaintiffs are typical of the harms suffered by the class members.

22. The representative Plaintiffs have the requisite personal interest in the outcome of this action and will fairly and adequately protect the interests of the class. Plaintiffs have no interests that are adverse to the interests of the members of the class.

23. Plaintiffs have retained counsel who have substantial experience and success in the prosecution of class action and civil rights litigation. Counsel for Plaintiffs know of no conflicts among members of the class, or between counsel and members of the class.

24. Plaintiffs seek certification under Rule 23(b)(3).

25. Common questions of law and fact exist as to all members of the class, and predominate over any questions that affect only individual members of the class. These common questions of law and fact include, without limitation, the common and predominate question of whether the Defendants' written and/or *de facto* policy of strip searching all individuals charged with misdemeanors or minor crimes and committed to the Ocean County Jail is a violation of the Fourth and Fourteenth Amendments to the United States Constitution, and whether such a written and/or *de facto* policy existed during the class period.

26. A class action is superior to other available methods for the fair and efficient adjudication of this controversy, since joinder of all of the individual members of the class is impracticable given the large number of class members and the fact that they are dispersed over a large geographical area. Furthermore, the expense and burden of individual litigation would make it difficult or impossible for individual members of the class to redress the wrongs done to them. The cost to the federal court system of adjudicating thousands of individual cases would be enormous. Individualized litigation would also magnify the delay and expense to all parties and the court system. By contrast, the conduct of this action as a class action in this District presents far fewer management difficulties, conserves the resources of the parties and the court system, and protects the rights of each member of the class.

27. Upon information and belief, there are no other actions pending to address the Defendants' flagrant violation of the civil rights of thousands of individuals, even though the Defendants have maintained their illegal strip search regimen for at least the class period.

28. In the alternative to certification under Fed. R. Civ. P. 23(b)(3), Plaintiffs also seek partial certification under Fed. R. Civ. P. 23(c)(4).

FACTS

Facts Applicable to the Class Generally

29. The Fourth Amendment of the United States Constitution prohibits state officials, such as the Policy Making Defendants in this action and the Corrections Officers they supervise, from performing strip searches of arrestees who have been charged with misdemeanors (disorderly persons offenses) other minor crimes, traffic offenses, warrants for child support, or other non-indictable offenses, unless the officer has reasonable suspicion to believe that the arrestee is concealing a weapon or contraband.

30. In turn, under New Jersey law, specifically N.J.S.A. 10:6-2(c), any person who is deprived of substantive due process or equal protection rights, privileges or immunities secured by the Constitution or laws of the United States or by the Constitution or laws of the State of New Jersey has a claim under State law.

31. Upon information and belief, the County of Ocean, the Ocean County Sheriffs Department, the Ocean County Department of Corrections, and the Policy Making Defendants have instituted a written and/or *de facto* policy, custom or practice of strip searching all individuals who enter the custody of the Ocean County Jail and are placed into jail clothing, regardless of the nature of their charged crime and without the presence of reasonable suspicion to believe that the individual was concealing a weapon or contraband.

32. Upon information and belief, the County of Ocean, the Ocean County Sheriff's Department, the Ocean County Department of Corrections, and the Policy Making Defendants have instituted a written and/or *de facto* policy, custom or practice of conducting visual body cavity searches (visual inspection of the vaginal and rectal cavities) on all individuals who enter the custody of the Ocean County Jail, regardless of the individual characteristics or the nature of their charged crime. For purposes of this Complaint, strip and visual cavity searches are collectively referred to as "strip searches."

33. The County of Ocean, the Ocean County Sheriff's Department, the Ocean County Department of Corrections, and the Policy Making Defendants know that they may not institute, enforce or permit enforcement of a policy or practice of conducting strip searches without particularized, reasonable suspicion. Upon information and belief, the Ocean County's written policy was based on the policy promulgated by the Ocean County Sheriffs Department and/or the Ocean County Department of Corrections.

34. The Defendants' written and/or *de facto* policy, practice and custom mandating wholesale strip searches of all misdemeanor and violation arrestees has been promulgated, effectuated and/or enforced in bad faith and contrary to clearly established law.

35. Reasonable suspicion to conduct a strip search may only emanate from the particular circumstances antecedent to the search, such as the nature of the crime charged, the particular characteristics of the arrestees, and/or the circumstances of the arrest.

36. Upon information and belief, the County of Ocean, the Ocean County Sheriff's Department, the Ocean County Department of Corrections, and Policy Making Defendants have promulgated, implemented, enforced, and/or failed to rectify a written and/or *de facto policy*, practice or custom of strip searching all individuals placed into the custody of the Ocean County Jail and placed into jail clothing without any requirement of reasonable suspicion, or indeed suspicion of any sort. This written and/or *de facto* policy made the strip searching of pre-trial detainees routine; neither the nature of the offense charged, the characteristics of the arrestee, nor the circumstances of a particular arrest were relevant to the enforcement of the policy, practice and custom of routine strip searches.

37. Pursuant to this written and/or *de facto* policy, each member of the class, including every named Plaintiff, was the victim of a routine strip search upon their entry into the Ocean County Jail. These searches were conducted without inquiry into or establishment of reasonable suspicion, and in fact were not supported by reasonable suspicion. Strip searches are conducted for individuals arrested for, among other offenses, Driving While Intoxicated, Harassment and Trespassing.

38. As a direct and proximate result of the unlawful strip search conducted pursuant to this written and/or *de facto* policy, the victims of the unlawful strip searches, each member of the

class including every named Plaintiff — has suffered or will suffer psychological pain, humiliation, suffering and mental anguish.

Facts Applicable to the Named Plaintiffs

39. Plaintiff Edward Bizzarro was arrested for failing to pay child support. He was transported to the Ocean County Jail and was strip searched upon admission.

40. Plaintiff Richard Wright turned himself in on a warrant for child support and was similarly strip searched upon his admission to the Ocean County Jail.

41. Plaintiff April Wedding was arrested for late payment of a traffic fine and was similarly strip searched upon her admission to the Ocean County Jail.

42. Bizzarro, Wright and Wedding were strip searched according to the policy and practice of the Ocean County Jail, without reasonable suspicion that they were carrying contraband.

43. As a direct and proximate result of the unlawful strip searches conducted pursuant to County and Sheriff's Department policy, practice and custom, Plaintiffs have suffered and continues to suffer psychological pain, humiliation, suffering and mental anguish.

CAUSES OF ACTION

AS AND FOR A FIRST CAUSE OF ACTION AGAINST ALL DEFENDANTS

Violation of Constitutional Rights Under Color of State Law

—Unreasonable Search and Failure to Implement Municipal Policies to Avoid Constitutional Deprivation Under Color of State Law—

44. Plaintiffs incorporate by reference and reallege each and every allegation stated in the preceding paragraphs, as if fully set forth herein.

45. The Fourth Amendment of the United States Constitution protects citizens from unreasonable searches by law enforcement officers, and prohibits officers from conducting strip

searches of individuals arrested for misdemeanors or violations absent some particularized suspicion that the individual in question has either contraband or weapons.

46. The actions of Defendants detailed above violated Plaintiffs' rights under the United States Constitution. Simply put, it was not objectively reasonable for Ocean County Corrections Officers to strip search Plaintiffs and class members based on their arrests for non-indictable/violation charges. It was also not objectively reasonable for the Policy Making Defendants to order/direct Ocean County Corrections Officers to conduct such searches.

47. These strip searches were conducted pursuant to the policy, custom or practice of the County of Ocean, Ocean County Sheriff's Department, and the Ocean County Department of Corrections. As such, the County of Ocean is directly liable for the damages of the named Plaintiffs and members of the class.

48. Upon information and belief, the Policy Making Defendants are responsible for establishing the policies and procedures to be utilized in the operation of the Ocean County Jail, and are responsible for the implementation of the strip search policy questioned in this lawsuit. As such, the Policy Making Defendants are each individually responsible for the damages of the named Plaintiffs and members of the class.

49. The Policy Making Defendants knew that the Ocean County Jail's strip search policy was illegal, and acted willfully, knowingly, and with specific intent to deprive Plaintiffs and members of the class of their Constitutional rights.

50. This conduct on the part of all Defendants represents a violation of 42 U.S.C. § 1983, given that their actions were undertaken under color of state law.

51. As a direct and proximate result of the unconstitutional acts described above, Plaintiffs and the class have been injured and are entitled to the relief set forth below.

AS AND FOR A SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS

Violation of Statutory Rights Under the New Jersey Civil Rights Act

—Deprivation of Substantive Due Process Rights, Immunities, or Privileges under the New Jersey Constitution—

52. Plaintiffs incorporate by reference and reallege each and every allegation stated in the preceding paragraphs, as though fully set forth herein.

53. N.J.S.A. 10:6-2(c) provides a right of action for any citizen who is deprived of any substantive due process or equal protection rights, privileges or immunities secured by the Constitution or laws of the United States or by the Constitution or laws of the State of New Jersey, or whose exercise or enjoyment of those substantive rights, privileges or immunities has been interfered with or attempted to be interfered with, by threats, intimidation or coercion by a person acting under color of law.

54. The actions of the Defendants as detailed above violated Plaintiffs' and the class's rights under the United States and New Jersey Constitutions. It was neither objectively reasonable nor constitutional for the Corrections Division personnel to strip-search Plaintiffs and all the members of the class based on their arrests for non-indictable offenses. It was neither objectively reasonable nor constitutional for the Sheriff's Department personnel to conduct such search or to have a policy or practice permitting such searches.

55. These strip-searches were conducted pursuant to the policy, custom or practice of Ocean County. As such, the Defendants are directly liable for the damages of the class.

56. Upon information and belief, Ocean County is responsible for establishing the policies and procedures to be utilized in the operation of the Corrections Division and are responsible for the implementation of the strip-search policy questioned in this lawsuit.

57. Ocean County knew that the above described strip-search policy was illegal, and acted willfully, knowingly, and with specific intent to deprive Plaintiffs and the members of the class of their Statutory rights.

58. As a direct and proximate result of the unconstitutional acts described above, Plaintiffs and the class have been irreparably injured and seek damages, as well as the declaratory relief set out immediately below in the Prayer for Relief.

DEMAND FOR PUNITIVE DAMAGES

59. The actions of the Policy Making Defendants detailed herein are outrageous, in that they continue to propagate an illegal strip search policy even though they know for a fact that their actions are unconstitutional.

60. It is clear that the Policy Making Defendants, the County of Ocean, the Ocean County Sheriff's Department, and the Ocean County Department of Corrections have little or no respect for the civil rights of individual citizens or for the rule of law. Consequently, an award of punitive damages is necessary to punish the Policy Making Defendants, and to send a message to them that the requirements of the United States Constitution also apply to government officials in Ocean County.

DEMAND FOR TRIAL BY JURY

61. The Plaintiffs hereby demand a trial by jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs Edward Bizzarro, Richard Wright, and April Wedding, on behalf of themselves and on behalf of a class of others similarly situated, request that this Honorable Court grant the following relief:

- A. An order certifying this action as a class action pursuant to Fed. R. Civ. P. 23.
- B. A judgment against all Defendants, jointly and severally on Plaintiffs' claims detailed herein, awarding compensatory damages and punitive damages to Plaintiffs and each member of the proposed class in an amount to be determined by a jury and/or this Court on an individual and/or a class wide basis.
- C. A judgment against each named Defendant, individually, awarding compensatory damages and punitive damages to Plaintiffs and each member of the proposed class in amount to be determined by a jury and/or this court on an individual and/or a class wide basis.
- D. A declaratory judgment against all Defendants declaring the County of Ocean and the Ocean County Sheriffs Department's policy, practice and custom of strip and visual cavity searching all detainees entering the Ocean County Jail, regardless of the crime charged or suspicion of contraband, to be unconstitutional and improper.
- E. A monetary award for attorney's fees and the costs of this action, pursuant to 42 U.S.C. § 1988, N.J.S.A. 10:6-2, and Fed. R. Civ. P. 23.
- F. Such other and further relief as the Court may deem to be determined proper.

Dated: June 29, 2009

Respectfully submitted,

/s/ Seth R. Lesser

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**ATTORNEYS FOR PLAINTIFFS AND THE
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CERTIFICATE OF SERVICE

I hereby certify that on June 29, 2009, I electronically filed the foregoing Third Amended Class Action Complaint with the Clerk of the District Court using the CM/ECF system on the parties in said action, via ECF by electronically filing, as set forth below:

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