



should not consider the totality of their conduct, including their admitted procedure of conducting group strip searches, but should instead give the Plaintiffs no ability to raise this issue.

The Plaintiffs have acknowledged the impact of the *Florence* decision on the strip search claims raised in this litigation, and do not plan to burden the Court's time contesting that the bulk of the allegations raised by the Class have been disposed of by this binding precedent. Instead, the Plaintiffs will present the Court with one concise legal issue: Can corrections officials, in the absence of any justification, conduct humiliating group strip and visual cavity searches of pre-trial detainees. The Plaintiffs propose that the easiest way to raise this issue would be for them to be provided with leave to file an amended complaint, which would include revised class definitions, detailing their claims of group strip searches at both the Erie County Holding Center and the Erie County Correctional Facility. (See, Exhibit B, Email from Keach to Domagalski). The Defendants could then file a Rule 12(b)(6) or Rule 12(c) motion regarding this amended complaint, which would squarely address the legal issue detailed above. Should the Court grant the Defendants' motion, that would obviate the need for decertification of the class or a factually complicated motion for summary judgment. Should the Court deny the Defendants' motion, than this litigation can proceed accordingly.

This is exactly the procedure to which class counsel has agreed in other strip search litigation, including a state wide class action against the State of West Virginia. This procedure will efficiently address the central issue remaining in this litigation absent the need for a voluminous, and contested, summary judgment motion addressing thousands of pages of deposition transcripts and other documents, or feuding over potentially tangential issues such as decertification or continuing discovery. The Plaintiffs request that the Court enter a schedule

allowing for the Plaintiffs to file an amended complaint, and then detailing a briefing schedule for the Defendants to file a motion against that complaint.

Respectfully Submitted By:

/s Elmer Robert Keach, III

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