

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

MICHAEL REY, individually and on behalf of
a class of others similarly situated,

Plaintiffs,

vs.

Civil Action No.:

THE COUNTY OF ALLEGHENY; RAMON
C. RUSTIN, individually and in his official
capacity as Warden of the Allegheny County
Jail; EDWARD D. URBAN, individually and
in his official capacity as Deputy Warden of
the Allegheny County Jail; GREGORY E.
GROGAN, individually and in his official
capacity as Deputy Warden of the Allegheny
County Jail; LANCE E. BOHN, individually
and in his official capacity as Deputy Warden
of the Allegheny County Jail; and WILLIAM
L. EMERICK, both individually and in his
capacity as Assistant Deputy Warden of the
Allegheny County Jail,

Defendants.

Defendants.

COMPLAINT IN CLASS ACTION

INTRODUCTION

This is a Class Action brought to redress the deprivation by Defendants of rights secured to the Plaintiff and Proposed Class by the United States Constitution and the laws of the United States of America. The Allegheny County Bureau of Corrections has had a policy of strip-

searching all individuals who enter the Allegheny County Jail and placing them in jail clothing, regardless of the crime with which they are charged. Upon information and belief, this policy is, in part, derived from the written procedures of the Allegheny County Bureau of Corrections, and was promulgated by senior Bureau of Corrections officials; specifically, Defendants Ramon C. Rustin, Edward D. Urban, Gregory E. Grogan, Lance E. Bohn, and William L. Emerick. It has been well established in this judicial circuit for many years that individuals charged with misdemeanors or non-felony violations cannot be strip-searched absent particularized suspicion that they possess weapons or contraband. In short, the policy of Allegheny County and the Allegheny County Bureau of Corrections to force those charged with minor crimes to undergo the indignities of a strip-search upon entry into the Allegheny County Jail is not only clearly illegal, but is insensitive and unnecessary.

Plaintiff Michael Rey brings this action on behalf of himself, 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 his civil rights and those of the Class Members he proposes to represent. Plaintiff was charged with a non-felony offense, and was subjected to a strip-search, in violation of his right against unreasonable searches under the Fourth Amendment of the United States Constitution. Plaintiff seeks monetary damages for himself, and for each member of the Proposed Class; a declaration that the Bureau of Corrections' policies are unconstitutional; and an injunction precluding Allegheny County and the Allegheny County Bureau of Corrections from continuing to violate the rights of those placed into their custody. With this as a background, Plaintiff Michael Rey complains as follows:

JURISDICTION

1. 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, punitive damages, and injunctive relief 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, as it is filed to obtain declaratory relief relative to the constitutionality of the policies of a local government.

2. Venue is proper under 28 U.S.C. § 1391(e)(2) because the events giving rise to Plaintiff's claims and those of Proposed Class Members occurred in this judicial district.

PARTIES

3. Plaintiff Michael Rey is 44 years old and resides at 333 Annabelle Street, Pittsburgh, Pennsylvania 15211. On or about February 13, 2006, Plaintiff was arrested and placed in the Allegheny County Jail on charges of failing to pay child support.

4. Defendant County of Allegheny (the "County") is a county government organized and existing under the laws of the Commonwealth of Pennsylvania 950 Second Avenue, Pittsburgh, Pennsylvania 15219-3100. At all times relevant hereto, the County, acting through its Bureau of Corrections, was responsible for the policies, practices, supervision, implementation

and conduct of all matters pertaining to the Allegheny County Jail, and was responsible for the appointment, training, supervision and conduct of all Bureau of Corrections personnel, including those working in the Allegheny County Jail. In addition, at all relevant times, the County was responsible for enforcing the rules of the Allegheny County Jail, and for ensuring that Bureau of Corrections personnel employed in the Jail obeyed the Constitution and laws of the United States and of the Commonwealth of Pennsylvania.

5. The Allegheny County Bureau of Corrections (the “Bureau of Corrections”) is an entity organized and existing under the laws of the Commonwealth of Pennsylvania, with a principal place of business at 950 Second Avenue, Pittsburgh, Pennsylvania 15219-3100. Although not a legal entity for the purposes of litigation, the Office is listed as a party for the purposes of identification. At all times relevant hereto, the Bureau of Corrections was responsible for operating, organizing, overseeing and administering the Allegheny County Jail (the “Jail”). At all times relevant hereto, Defendant Bureau of Corrections, together with the County of Allegheny, was responsible for the policies, practices, supervision, implementation and conduct of all matters pertaining to the Jail, and was responsible for the appointment, training, supervision and conduct of all Bureau of Corrections personnel, including those working in the Jail. In addition, at all times relevant hereto, Defendant Bureau of Corrections, together with the County of Allegheny, was responsible for enforcing the rules of the Jail, and for ensuring that Bureau of Corrections personnel employed in the Jail obeyed the Constitution and laws of the United States and of the Commonwealth of Pennsylvania.

6. Defendant Ramon C. Rustin (“Warden Rustin”) is the duly appointed Warden of the Allegheny County Jail, and as such, is a policy maker with respect to the treatment of pre-trial and other detainees over which the Jail exercises custodial or other control. Warden Rustin’s principal place of business is the Allegheny County Jail, 950 Second Avenue, Pittsburgh, Pennsylvania 15219. Warden Rustin is made a Defendant in this action in both his individual and official capacities.

7. Defendant Edward D. Urban (“Deputy Warden Urban”) is the duly appointed Deputy Warden of the Allegheny County Jail, and as such, is a policy maker with respect to the treatment of pre-trial and other detainees over which the Jail exercises custodial or other control. Deputy Warden Urban’s principal place of business is the Allegheny County Jail, 950 Second Avenue, Pittsburgh, Pennsylvania 15219. Deputy Warden Urban is made a Defendant in this action in both his individual and official capacities.

8. Defendant Gregory E. Grogan (“Deputy Warden Grogan”) is the duly appointed Deputy Warden of the Allegheny County Jail, and as such, is a policy maker with respect to the treatment of pre-trial and other detainees over which the Jail exercises custodial or other control. Deputy Warden Grogan’s principal place of business is the Allegheny County Jail, 950 Second Avenue, Pittsburgh, Pennsylvania 15219. Deputy Warden Grogan is made a Defendant in this action in both his individual and official capacities.

9. Defendant Lance E. Bohn (“Deputy Warden Bohn”) is the duly appointed Deputy Warden of the Allegheny County Jail, and as such, is a policy maker with respect to the treatment of pre-trial and other detainees over which the Jail exercises custodial or other control.

Deputy Warden Bohn's principal place of business is the Allegheny County Jail, 950 Second Avenue, Pittsburgh, Pennsylvania 15219. Deputy Warden Bohn is made a Defendant in this action in both his individual and official capacities.

10. Defendant William L. Emerick ("Assistant Deputy Warden Emerick") is the duly appointed Assistant Deputy Warden of the Allegheny County Jail, and as such, is a policy maker with respect to the treatment of pre-trial and other detainees over which the Jail exercises custodial or other control. Assistant Deputy Warden Emerick's principal place of business is the Allegheny County Jail, 950 Second Avenue, Pittsburgh, Pennsylvania 15219. Assistant Deputy Warden Emerick is made a Defendant in this action in both his individual and official capacities.

11. Collectively, Warden Rustin, Deputy Warden Urban, Deputy Warden Grogan, Deputy Warden Bohn, and Assistant Deputy Warden Emerick will be referred to as the "Policy Making Defendants."

CLASS ACTION ALLEGATIONS

12. Plaintiff brings this action pursuant to Rules 23(b)(2) and 23(b)(3) of the Federal Rules of Civil Procedure on behalf of himself and a Class of similarly situated individuals who were charged with misdemeanors or minor crimes and were strip-searched upon their entry into the Allegheny County Jail.

13. The class that Plaintiff seeks to represent is defined as follows:

All persons who have been or will be placed into the custody of the Allegheny County Jail after being charged with misdemeanors, summary offenses, violations of probation or parole, traffic

infractions, civil commitments or other minor crimes and who were or will be strip-searched upon their entry into the Allegheny County Jail pursuant to the policy, custom and practice of the Allegheny County Bureau of Corrections and the County of Allegheny. Specifically excluded from the Class are Defendants and any and all of their respective affiliates, legal representatives, heirs, successors, employees or assignees.

14. 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).

15. The Members of the Class are so numerous as to render joinder impracticable. Upon information and belief, there are hundreds of people arrested for misdemeanors and violations who are placed into the custody of the 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 5,000 individuals, some of whom have had their civil rights violated on multiple occasions.

16. Upon information and belief, 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 Allegheny County and this Judicial District. Furthermore, upon information and belief, many Members of the Class are low-income persons, may not speak English, and likely would have great difficulty in pursuing their rights individually.

17. 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 non-felony violations when placed into the custody of the Jail, and all were illegally strip-searched in violation of the established law in this judicial circuit.

18. Plaintiff's claims are typical of the claims of the Members of the Class. Plaintiff and all Members of the Class sustained damages arising out of Defendants' course of conduct. The harms suffered by the Plaintiff are typical of the harms suffered by the Class Members.

19. The representative Plaintiff has the requisite personal interest in the outcome of this action, and will fairly and adequately protect the interests of the Class. Plaintiff has no interests that are adverse to the interests of the Members of the Class.

20. Plaintiff has retained counsel who have substantial experience and success in the prosecution of class action and civil rights litigation. In short, Plaintiff's counsel has the resources, expertise and experience to successfully prosecute this action against Allegheny County, the Allegheny County Bureau of Corrections and the Policy Making Defendants. Counsel for the Plaintiff knows of no conflicts among Members of the Class or between counsel and Members of the Class.

21. This action, in part, seeks declaratory and injunctive relief. As such, the Plaintiff seeks class certification under Fed. R. Civ. P. 23(b)(2), in that all Class Members were subject to the same policy requiring the illegal strip-searches of individuals charged with misdemeanor or minor crimes and placed into the custody of the Jail. In short, the County of Allegheny, the Allegheny County Bureau of Corrections, the Policy Making Defendants and Jail Officers acted on grounds generally applicable to all Class Members.

22. In addition to certification under Rule 23(b)(2), and in the alternative, Plaintiff seeks certification under Rule 23(b)(3).

23. 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 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.

24. 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.

25. Upon information and belief, there are no other actions pending to address the Defendants' flagrant violation of the civil rights of thousands of individuals.

26. In the alternative to certification under Fed. R. Civ. P. 23(b)(3), Plaintiff also seeks partial certification under Fed. R. Civ. P. 23(c)(4).

FACTS

Facts Applicable to the Class Generally

27. 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 or other minor crimes unless the officer has reasonable suspicion to believe that the arrestee is concealing a weapon or contraband.

28. Upon information and belief, the County of Allegheny, the Allegheny County Bureau 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 Allegheny County Correctional Facility and who 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.

29. Upon information and belief, the County of Allegheny, the Allegheny County Bureau 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 Allegheny 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”).

30. The County of Allegheny, the Allegheny County Bureau 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 defendants' policy was based on the policy promulgated by the Allegheny County Bureau of Corrections.

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

32. 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.

33. Upon information and belief, the County of Allegheny, the Allegheny County Bureau 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 Allegheny 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.

34. Pursuant to this written and/or *de facto* policy, each Member of the Class, including the named Plaintiff, was the victim of a routine strip-search upon their entry into the Allegheny 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 innocuous offenses, Driving While Intoxicated, Harassment, Trespassing and Failure to Pay Child Support.

35. 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 the named Plaintiff -- has suffered or will suffer psychological pain, humiliation, suffering and mental anguish.

Facts Applicable to the Named Plaintiff

36. Plaintiff Michael Rey is a 44 year old male. On or about February 13, 2006, he was arrested on non-felony charges for failing to pay child support and, the following day was transferred from a holding cell in the local courthouse to the Allegheny County Jail.

37. Plaintiff's arrest was void of any reasonable suspicion that he harbored any weapons or contraband.

38. After being remanded to the Allegheny County Jail, Plaintiff remained in a holding cell for 24 hours. Plaintiff was then brought into a shower room and advised by a correctional officer that he would be strip-searched. In connection with the strip-search, Plaintiff was required to completely disrobe, lift his arms and legs, spread the lobes of his buttocks, lift up his testicles and bend over, so that he could be visually inspected by a correctional officer. Plaintiff was then ordered to shower while a Corrections Officer was present.

39. Plaintiff was released from the Allegheny County Jail the following day, after his family was able to come up with the \$5,000.00 fee required to purge his overdue child support account.

40. As a direct and proximate result of the unlawful strip-search conducted pursuant to County and Bureau of Corrections' policy, practice and custom, Plaintiff has suffered and continues to suffer psychological pain, humiliation, suffering and mental anguish.

CAUSES OF ACTION

COUNT I

Violation of Constitutional Rights Under Color of State Law

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

41. Plaintiff incorporates by reference and re-alleges each and every allegation stated in Paragraphs 1 through 40.

42. 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 other minor crimes absent some particularized suspicion that the individual in question has either contraband or weapons.

43. The actions of Defendants detailed above violated Plaintiff's rights under the United States Constitution. Simply put, it was not objectively reasonable for Jail Officers to strip-search Plaintiff and/or the Class Members based on their arrests for minor criminal charges. It was also not objectively reasonable for the Policy Making Defendants to order/direct Allegheny County Corrections Officers to conduct such searches.

44. These strip-searches were conducted pursuant to the policy, custom or practice of the County of Allegheny and the Allegheny County Bureau of Corrections. As such, the County of Allegheny is directly liable for the damages of Plaintiff and Members of the Class.

45. Upon information and belief, Warden Rustin, Deputy Warden Urban, Deputy Warden Grogan, Deputy Warden Bohn, and Assistant Deputy Warden Emerick are responsible for establishing the policies and procedures to be utilized in the operation of the Jail, and are responsible for the implementation of the strip-search policy questioned in this lawsuit. As such, Warden Rustin, Deputy Warden Urban, Deputy Warden Grogan, Deputy Warden Bohn, and Assistant Deputy Warden Emerick are each individually responsible for the damages of the Plaintiff and Members of the Class.

46. Warden Rustin, Deputy Warden Urban, Deputy Warden Grogan, Deputy Warden Bohn, and Assistant Deputy Warden Emerick knew that the Jail's strip-search policy was illegal,

and acted willfully, knowingly, and with specific intent to deprive Plaintiff and Members of the Class of their Constitutional rights.

47. 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.

48. As a direct and proximate result of the unconstitutional acts described above, Plaintiff and the Members of the Class have been irreparably injured.

COUNT II

Demand for Declaratory Judgment

49. Plaintiff incorporates by reference and re-alleges each and every allegation stated in paragraphs 1 through 48.

50. The policy, custom and practice of the Allegheny County Bureau of Corrections, the County of Allegheny and the Policy Making Defendants is clearly unconstitutional, in that these entities and individuals are directing/conducting the strip-searches of all individuals placed into the Jail without any particularized suspicion that the individuals in question have either contraband or weapons.

51. Plaintiff and Members of the Class request that this Court issue a Declaratory Judgment, and that it declare the strip-search policy of the County of Allegheny and the Allegheny County Bureau of Corrections to be unconstitutional.

COUNT III

Demand for Preliminary and Permanent Injunction

52. Plaintiff incorporates by reference and re-alleges each and every allegation stated in Paragraphs 1 through 51.

53. The policy, custom and practice of the Allegheny County Bureau of Corrections, the County of Allegheny, and the Policy Making Defendants is clearly unconstitutional, in that these entities and individuals are directing/conducting the strip-searches of all individuals placed into the Jail without any particularized suspicion that the individuals in question have either contraband or weapons.

54. Upon information and belief, this policy is currently in place at the Jail, with new and/or prospective Members of the Class being subjected to the harms that have already been inflicted upon the Class Representative.

55. The continuing pattern of strip-searching individuals charged with minor crimes will cause irreparable harm to the new and/or prospective Members of the Class, an adequate remedy for which does not exist at law.

56. Plaintiff demands that the County of Allegheny, the Allegheny County Bureau of Corrections, the Policy Making Defendants and Allegheny County Corrections Officers immediately desist from strip-searching individuals placed into the custody of the Jail absent any particularized suspicion that the individuals in question have either contraband or weapons, and seeks both a preliminary and permanent injunction from this Court ordering as much.

DEMAND FOR PUNITIVE DAMAGES

57. The actions of the Policy Making Defendants detailed herein are outrageous in that they continue to propagate an illegal strip-search policy.

58. It is clear that the Policy Making Defendants, the County of Allegheny and the Allegheny County Bureau of Corrections have 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 Allegheny County.

DEMAND FOR TRIAL BY JURY

59. The Plaintiff hereby demands a trial by jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Michael Rey, on behalf of himself and on behalf of a class of others similarly situated, requests that this Honorable Court grant them the following relief:

1. An order certifying this action as a class action pursuant to Fed. R. Civ. P. 23;

2. A judgment against all Defendants, jointly and severally on Plaintiffs' First Cause of Action detailed herein, awarding Compensatory Damages to Plaintiff and each member of the proposed class in an amount to be determined by a Jury and/or the Court;

3. A judgment against Defendant Ramon C. Rustin on Plaintiff's First Cause of Action awarding Punitive Damages to Plaintiff and each Member of the Proposed Class in an amount to be determined by a jury and/or the Court;

4. A judgment against Defendant Edward D. Urban on Plaintiff's First Cause of Action awarding Punitive Damages to Plaintiff and each Member of the Proposed Class in an amount to be determined by a jury and/or the Court;

5. A judgment against Defendant Gregory E. Grogan on Plaintiff's First Cause of Action awarding Punitive Damages to Plaintiff and each Member of the Proposed Class in an amount to be determined by a jury and/or the Court;

6. A judgment against Defendant Lance E. Bohn on Plaintiff's First Cause of Action awarding Punitive Damages to Plaintiff and each Member of the Proposed Class in an amount to be determined by a jury and/or the Court;

7. A judgment against Defendant William L. Emerick on Plaintiff's First Cause of Action awarding Punitive Damages to Plaintiff and each Member of the Proposed Class in an amount to be determined by a jury and/or the Court;

8. A declaratory judgment against all Defendants declaring the County of Allegheny and the Allegheny County Bureau of Corrections' policy, practice and custom of strip and visual cavity searching all detainees entering the Jail, regardless of the crime charged or suspicion of contraband, to be unconstitutional and improper;

9. A preliminary and permanent injunction enjoining Defendants from continuing to strip and visual cavity search individuals charged with misdemeanors or minor crimes absent particularized, reasonable suspicion that the arrestee subjected to the search is concealing weapons or other contraband; and,

10. A monetary award for attorney's fees and the costs of this action, pursuant to 42 U.S.C. § 1988 and Fed. R. Civ. P. 23.

Respectfully submitted by:

ROBERT PEIRCE & ASSOCIATES, P.C.

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