

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SAJAN KURIAN, individually and on behalf of a
class of others similarly situated,

Plaintiffs,

v.

THE COUNTY OF LANCASTER, THE LANCASTER
COUNTY PRISON BOARD, and JOHN DOES 1 - 20,

Defendants.

COMPLAINT - CLASS ACTION

Civil Action No.

Jury Trial Demanded

INTRODUCTION

This is a class action brought to redress the deprivation by Defendants of rights secured to the Plaintiff and the proposed Class under the United States Constitution and the laws of the United States of America. The Lancaster County Prison Board, an agency of the County of Lancaster, has a uniform practice and procedure of strip-searching all individuals who enter the Lancaster County Prison and are placed in prison clothing, regardless of the crime or violation for which they are detained. Upon information and belief, this uniform practice and procedure is, in part, derived from the written procedures of the Lancaster County Prison Board, and was promulgated by senior Board members.

It is well established that individuals charged with misdemeanors, summary violations, or other similar charges and/or crimes cannot be strip searched upon entry or transfer to the Lancaster County Prison absent particularized suspicion that those detainees possess weapons or contraband. In short, the uniform practice and procedure of Lancaster County and the Lancaster County Prison Board to force those charged with such crimes to undergo the indignities of a strip search upon transfer and/or entry into the Lancaster County Prison is not only clearly illegal, but is insensitive, unnecessary, and offensive. What is particularly troubling is that Defendants have continued to engage in this misconduct notwithstanding an overwhelming number of cases, within this Circuit and others, that have squarely declared these practices to be unlawful and unconstitutional.

Plaintiff brings this action on behalf of himself and a class of thousands of others who were unconstitutionally strip searched to vindicate the clear and unnecessary violations of their civil rights. Plaintiff was charged with a non-felony offense and was subjected to a strip search in violation of his rights against unreasonable searches guaranteed by the Fourth Amendment of the United States Constitution, which is made applicable to the states by the Fourteenth Amendment. Plaintiff seeks monetary damages for himself and on behalf of the proposed class, a declaration that the Prison Board's uniform practices and procedures are unconstitutional, and an injunction preventing Lancaster County and the Lancaster County Prison Board from continuing to

violate the rights of those placed into their custody. With this as a background, Plaintiff complains as follows:

JURISDICTION

1. This Court has jurisdiction over this action under the provisions of 28 U.S.C. § 1331, 1341 and 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 and 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 Sajan Kurian ("Kurian" or "Plaintiff") is an adult male individual who resides in Lancaster, Pennsylvania. On or about Tuesday, April 11th, 2006, Kurian was arrested and placed in the Lancaster County Prison for a technical violation of parole for a driving while intoxicated arrest in York County.

4. Defendant County of Lancaster (the "County") is a county government organized and existing under the laws of the Commonwealth of Pennsylvania. The County can be served at 50 North Duke Street in Lancaster, Pennsylvania. At all times relevant hereto, the County, acting through its Prison Board, was responsible for the policies, practices, supervision, implementation and conduct of all matters pertaining to the Lancaster County Prison and was responsible for the appointment, training, supervision and conduct of all Prison Board personnel, including those working in the Lancaster County Prison. In addition, at all relevant times, the County was responsible for enforcing the rules of the Lancaster County Prison, and for ensuring that Prison Board personnel employed in the Prison obey the Constitution and laws of the United States and of the Commonwealth of Pennsylvania.

5. The Lancaster County Prison Board (the "Prison Board") is an entity organized and existing under the laws of the Commonwealth of Pennsylvania, and can be served at the Lancaster County Courthouse, 50 North Duke Street, Room 502, Lancaster, Pennsylvania PA 17602. At all times relevant hereto, the Prison Board was responsible for operating, organizing, overseeing and administering the Lancaster County Prison (the "Prison"). At all times relevant hereto, Defendant Prison Board, together with the County of Lancaster, was responsible for the policies, practices, supervision, implementation and conduct of all matters pertaining to the Prison, and was responsible for the appointment, training, supervision and conduct of all Prison Board personnel, including those working in the Prison. In addition, at all times relevant hereto,

Defendant Prison Board, together with the County of Lancaster, was responsible for enforcing the rules of the Prison, and for ensuring that Prison Board personnel employed in the Prison obeyed the Constitution and laws of the United States and of the Commonwealth of Pennsylvania.

6. Various other persons (including without limitation, Corrections Officers) and governmental agencies or entities (collectively the “John Doe Defendants”), the identities of which are presently unknown, have participated as co-conspirators with Defendants in the violations alleged herein and have performed acts in furtherance thereof. The acts charged in this Complaint have been done by Defendants and their co-conspirators, or were authorized, ordered or done by their respective officers, agents, employees or representatives.

7. Collectively, the County of Lancaster, the Lancaster County Prison Board, and the John Doe Defendants shall be referred to herein as “Defendants.”

CLASS ACTION ALLEGATIONS

8. Plaintiff brings this action pursuant to Rules 23(a), 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 detained for misdemeanors, summary offenses, violations of probation or parole, traffic infractions, civil commitments, or other similar charges and/or crimes and were strip searched upon their transfer and/or entry into the Lancaster County Prison (the “Class”).

9. 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 Lancaster County Prison after being detained for misdemeanors, summary offenses, violations of probation or parole, traffic infractions, civil commitments, or other similar charges and/or crimes and were or will be strip searched upon their transfer and/or entry into the Lancaster County Prison pursuant to the policy, custom and practice of the Lancaster County Prison Board and the County of Lancaster. Specifically excluded from the class are Defendants and any and all of their respective affiliates, legal representatives, heirs, successors, employees or assignees.

10. This action has been brought and may properly be maintained as a class action pursuant to the Federal Rules of Civil Procedure, as Plaintiff and the Class satisfy the numerosity, commonality, typicality and adequacy requirements for maintaining a class action under FED. R. CIV. P. 23(a).

11. The number of members in the Class is so numerous as to render joinder impracticable. Upon information and belief, there are hundreds of people detained for misdemeanors and other violations who are placed into the custody of the Prison 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. Upon information and belief, the precise size of the Class can be readily determined from documents and records maintained by Defendants.

12. 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 Lancaster County and the geographic area served by 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 on an individual basis.

13. Common questions of law and fact exist as to all members of the Class, in that they each possessed the right to be free from unreasonable searches, and each were victims of Defendants' blanket policy of conducting strip searches absent individualized particularized suspicion, as required by law. All members of the Class were detained for misdemeanors, summary offenses, violations of probation or parole, traffic infractions, civil commitments, or other similar charges and/or crimes when placed into the custody of the Prison, and all were illegally strip searched in violation of well established law.

14. Plaintiff's claims are typical of the claims of the members of the Class. Plaintiff and all members of the Class were injured as a result of Defendants' illegal conduct. The harms suffered by the Plaintiff are typical of the harms suffered by the Class members.

15. 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, or in conflict with, the interests of the members of the Class.

16. Plaintiff has retained counsel who have substantial experience and success in the prosecution of class actions and in civil rights litigation. In short, Plaintiff's counsel has the resources, expertise and experience to successfully prosecute this action against Lancaster County and the Lancaster County Prison Board, and intends to prosecute this action vigorously. Counsel for the Plaintiff knows of no conflicts among members of the Class or between counsel and members of the Class.

17. 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 which required the illegal strip searches of individuals detained for misdemeanors, summary offenses, violations of probation or parole, traffic infractions, civil commitments, or other similar charges and/or crimes and placed into the custody of the Prison. The County of Lancaster and the Lancaster County Prison Board acted on grounds generally applicable to all class members, thereby making appropriate final equitable relief with respect to the Class as a whole.

18. In addition to certification under FED. R. CIV. P. 23(b)(2), Plaintiff seeks certification under FED. R. CIV. P. 23(b)(3).

19. 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 detained for

misdemeanors, summary offenses, violations of probation or parole, traffic infractions, civil commitments, or other similar charges and/or crimes and committed to the Prison is a violation of, *inter alia*, the Fourth and Fourteenth Amendments to the United States Constitution, whether such a written and/or *de facto* policy existed during the class period, whether Plaintiff and members of the Class are entitled to damages and/or equitable relief and, if so, the nature of this relief.

20. A class action is the superior method 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 maintenance of this action as a class action in this Court 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.

21. Upon information and belief, there are no other actions pending to address the Defendants' flagrant violation of the civil rights of members of the Class.

22. 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), if appropriate.

FACTS

Facts Applicable to the Class Generally

23. The Fourth Amendment of the United States Constitution, made applicable to the states by the Fourteenth Amendment, prohibits state officials, such as the Defendants in this action and the Corrections Officers they supervise, from performing strip searches of arrestees who have been detained for misdemeanors, summary offenses, violations of probation or parole, traffic infractions, civil commitments, or other similar charges and/or crimes unless the corrections officer has reasonable suspicion to believe that the detainee is concealing a weapon or contraband.

24. Upon information and belief, the Defendants have instituted a written and/or *de facto* policy, custom or practice of strip searching all individuals who enter the custody of the Lancaster County Prison and are placed into Prison clothing, regardless of the nature of their charged crime or violation and without the presence of reasonable suspicion to believe that the individual was concealing a weapon or contraband.

25. Upon information and belief, the 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 Lancaster County Prison, regardless of

the individual characteristics or the nature of their charged crime or violation. For purposes of this Complaint, strip and visual cavity searches are collectively referred to as (“strip searches”).

26. The Defendants know - or should 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 Lancaster Prison’s written policy was based on the policy promulgated by the Lancaster County Prison Board.

27. The Defendants’ written and/or *defacto* policy, practice and custom mandating wholesale strip searches of all misdemeanor and violation detainees has been promulgated, effectuated and/or enforced in bad faith and contrary to clearly established law and to the United States Constitution.

28. 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 or violation, the particular characteristics of the arrestees, and/or the circumstances of the arrest.

29. Upon information and belief, the Defendants have promulgated, implemented, enforced, and/or failed to rectify a written and/or *defacto* policy, practice or custom of uniformly strip searching all individuals placed into the custody of the Lancaster Prison and placed into Prison 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.

30. 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 transfer and/or entry into the Lancaster County Prison. These searches were conducted without any inquiry into or establishment of reasonable suspicion, and in fact were not supported by any reasonable suspicion. Strip searches are conducted for individuals arrested for, among other offenses, Driving While Intoxicated, Harassment, Trespassing, Failure to Pay Child Support, and violations of probation and parole for misdemeanor offenses; none of which signal the particularized reasonable suspicion that the detainee is concealing a weapon or contraband.

31. As a direct and proximate result of the unlawful strip searches 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, and mental anguish.

32. Upon information and belief, Defendants often - if not always - conduct the strip searches in the presence of other detainees, prison officials, and other personnel, thereby adding to the humiliation suffered by members of the Class.

Facts Applicable to the Named Plaintiff

33. Plaintiff Sajan Kurian is an adult male. On or about Tuesday, April 11th, 2006, at approximately 4:30 p.m., he was detained at the offices of the Lancaster County Adult Probation & Parole Services on a technical violation for an arrest for the non-felony charge of Driving Under the Influence of Alcohol.

34. At the time of his arrest, Kurian was on parole for Driving Under the Influence of Alcohol.

35. Kurian's technical violation of parole was void of any reasonable suspicion that he harbored any weapons or contraband.

36. Kurian was patted down by a sheriff at the offices of the Lancaster County Adult Probation & Parole Services before being transported on a bus to the Prison with additional males.

37. When Kurian arrived at the prison with the other detainees, and before being seen by a judge, he was patted down once again by correctional officers. Kurian was then sent through a metal detector. Again, there was no indication that Kurian was in possession of contraband or weapons.

38. Kurian and the other detainees were then instructed to enter a cell, one by one, where they were strip searched in clear view of the other individuals. Kurian was able to observe other individuals being strip searched while he was waiting for his turn to be searched.

39. In connection with the strip search, Kurian was required to completely disrobe, lift up his testicles, bend over and cough, all so that he

could be visually inspected by a correctional officer who used a flashlight to inspect Kurian's anal cavity.

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

CAUSES OF ACTION

COUNT I

Violations of 42 U.S.C. §1983

AGAINST ALL DEFENDANTS

41. Plaintiff incorporates by reference and realleges each and every allegation stated in paragraphs 1 through 40.

42. The Fourth Amendment of the United States Constitution, made applicable to the states by the Fourteenth Amendment, protects citizens from unreasonable searches by law enforcement officers, and prohibits officers from conducting strip searches of individuals detained for misdemeanors, summary offenses, violations of probation or parole, traffic infractions, civil commitments, or other similar charges and/or 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 Prison Officers to strip search Plaintiff and Class members based

on their arrests. It was also not objectively reasonable for the Defendants to order/direct Lancaster County Corrections Officers to conduct such strip searches.

44. These strip searches were conducted pursuant to the policy, custom or practice of the County of Lancaster and the Lancaster County Prison Board. As such, the County of Lancaster is directly liable for the damages of Plaintiff and members of the Class.

45. Upon information and belief, the Defendants are responsible for establishing the policies and procedures to be utilized in the operation of the Prison, and are responsible for the implementation of the strip search policy questioned in this lawsuit. As such, the Defendants are each responsible for the damages of the Plaintiff and members of the Class.

46. The Defendants knew that the Prison'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 unlawful 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 suffered damages.

COUNT II

Demand for Declaratory Judgment

AGAINST ALL DEFENDANTS

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

50. The policy, custom and practice of the Lancaster County Prison Board and the County of Lancaster is clearly unconstitutional, in that these entities and individuals are directing/conducting the strip searches of all individuals placed into the Prison 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 Lancaster and the Lancaster County Prison Board to be unconstitutional.

52. Alternatively, Plaintiff and members of the Class lack an adequate remedy at law.

53. Plaintiff and members of the Class would be irreparably injured absent an order from this Court declaring these practices unlawful and unconstitutional.

COUNT III

Demand for Preliminary and Permanent Injunction

AGAINST ALL DEFENDANTS

54. Plaintiff incorporates by reference and realleges each and every allegation stated in paragraphs 1 through 53.

55. The policy, custom and practice of the Lancaster County Prison Board and the County of Lancaster is clearly unconstitutional, in that these entities and individuals are directing/conducting the strip searches of all individuals placed into the Prison without any particularized suspicion that the individuals in question have either contraband or weapons.

56. Upon information and belief, this policy is currently in place at the Prison, with new and/or prospective members of the Class being subjected to the harms that have already been inflicted upon the Plaintiff.

57. The continuing pattern of strip searching individuals detained for misdemeanors, summary offenses, violations of probation or parole, traffic infractions, civil commitments, or other similar charges and/or 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.

58. Plaintiff demands that the County of Lancaster and the Lancaster County Prison Board immediately desist from uniformly strip searching all individuals placed into the custody of the Prison 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.

59. Alternatively, Plaintiff and members of the Class lack an adequate remedy at law.

60. Plaintiff and members of the Class would be irreparably injured absent an order from this Court declaring these practices unlawful and unconstitutional.

61. Plaintiff and members of the Class are reasonably likely to succeed on the merits of their underlying claim, thereby making the issuance of a preliminary injunction appropriate.

DEMAND FOR PUNITIVE DAMAGES

62. The actions of the Defendants detailed herein are outrageous, in that they continue to propagate an illegal strip search policy in the face of numerous court decisions declaring such practices unlawful.

63. It is clear that the Defendants 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 Defendants, and to send a message to them that the requirements of the United States Constitution indeed apply to government officials in Lancaster County.

DEMAND FOR TRIAL BY JURY

64. Plaintiff and members of the Class hereby demand a trial by jury.

PRAYER FOR RELIEF

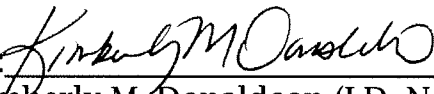
WHEREFORE, Plaintiff Sajan Kurian on behalf of himself and on behalf of a Class of others similarly situated, request that this Court grant them the following relief:

- A. An order certifying this action as a class action pursuant to FED. R. Civ. P. 23(a), 23(b)(2) and 23(b)(3);
- B. A judgment against all Defendants, jointly and severally on Plaintiff's 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;
- C. A declaratory judgment against all Defendants declaring the County of Lancaster and the Lancaster County Prison Board's policy, practice and custom of strip and visual cavity searching all detainees entering the Prison, regardless of the crime charged or suspicion of contraband, to be unconstitutional and improper.
- D. A preliminary and permanent injunction enjoining Defendants from continuing to strip and visual cavity search individuals detained for misdemeanors, summary offenses, violations of probation or parole, traffic infractions, civil commitments, or other similar charges and/or crimes absent particularized, reasonable suspicion that the arrestee subjected to the search is concealing weapons or other contraband.

- E. A monetary award for attorney's fees and the costs of this action, pursuant to 42 U.S.C. § 1988 and other applicable fee shifting statutes and principals.

Dated: August 22, 2007

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