

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

AMIRA SALEM and
KESHUNA ABCUMBY,
on behalf of themselves and a
class of all others similarly situated,

CLASS ACTION

Plaintiffs,

Case No.

vs.

Hon.

MICHIGAN DEPARTMENT OF CORRECTIONS,
DANIEL H. HEYNS, Director, Michigan Department of Corrections,
THOMAS FINCO, Deputy Director of MDOC Correctional Facilities Administration,
DENNIS STRAUB, former Deputy Director of MDOC Correctional Facilities Administration;
RANDY TREACHER, Chief Deputy Director of MDOC Correctional Facilities Administration;
MILLICENT WARREN, Warden, Huron Valley Correctional Facility,
Jointly and severally,

Defendants.

Kenneth J. Hardin II (P44681)
Hardin Thompson, P.C.
Attorneys for Plaintiff
30555 Southfield Road, Suite 400
Southfield, MI 48076
(248) 593-1400
kenhardin@hardinlawpc.net

Teresa J. Gorman (P61001)
Teresa J. Gorman, PLLC
Attorney for Plaintiff
30555 Southfield Road, Suite 400
Southfield, MI 48076
(248) 223-9922
terigorman@aol.com

COMPLAINT AND JURY DEMAND

INTRODUCTION

1. This proposed class action lawsuit seeks injunctive and declaratory relief and damages on behalf of women confined in the all-women Huron Valley Correctional Facility (“Huron Valley”) operated by the Michigan Department of Corrections (“MDOC”). During the last three years, over 1,900 women have been incarcerated in Huron Valley, MDOCs only female prison.

2. During their imprisonment, these women have been routinely and regularly subjected to Defendants’ conducting body cavity searches whereby female prisoners, in addition to standard strip search, were and are required to sit on an unsanitized chair and use their unsanitized hands to spread their genitals, allowing a guard to visually search their vagina for any hidden contraband (“spread-labia searches”).

3. Despite representations by MDOC and its officials that the practice would be discontinued in December 2011, the spread-labia searches have continued to date.

JURISDICTION AND VENUE

4. This is a civil action brought pursuant to 42 U.S.C. § 1983 seeking injunctive and declaratory relief together with monetary damages against Defendants for violations of Eighth and Fourteenth Amendments of the United States Constitution.

5. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 which authorizes Federal courts to decide cases concerning federal questions, and 28 U.S.C. § 1343(a)(3) and (4) which authorizes Federal courts to hear civil rights cases. This Court has personal jurisdiction over the Defendants named herein as public officials of the State of Michigan sued in their official and individual capacities for violations of Plaintiffs’ statutory and constitutional rights. The amount in controversy exceeds Seventy-Five Thousand (\$75,000.00) Dollars.

6. Venue is proper in this court as Defendants conduct their business in the County

of Washtenaw in the Eastern District of Michigan and the named Plaintiffs are or were incarcerated in the Eastern District of Michigan during the relevant time periods.

PARTIES

A. PLAINTIFFS

7. Plaintiff representatives are citizens of the United States and at all relevant times were imprisoned in Huron Valley under the jurisdiction of the MDOC. Plaintiffs bring this action on behalf of themselves and a class of prisoners who are, were or will be confined in Huron Valley and who have been or will be subjected to sexual and physical assaults and abuse, sexual harassment, and degrading, sexually humiliating and unhygienic treatment from Huron Valley correctional officers and staff.

B. DEFENDANTS

8. Defendant MDOC is a Department of the State of Michigan responsible for the care and custody of prisoners incarcerated in the State of Michigan. Defendant MDOC have the responsibility, authority and ability to remedy current and future conditions at Huron Valley that have given rise to the sexual harassment, degrading, sexually humiliating and unhygienic treatment, and deprivation of rights as set forth in this Complaint.

9. Defendant Daniel H. Heyns (“Heyns”) is the Director of the Michigan Department of Corrections. His duties and responsibilities include a responsibility for developing and implementing policies and procedures for the operation and management of the Michigan Department of Civil Rights and its employees. He is responsible for the care, custody and protection of prisoners under the jurisdiction of the Michigan Department of Corrections.

10. Defendant Thomas Finco (“Finco”) is the Deputy Director of the MDOC’s Correctional Facilities Administration (“CFA”) and has served in that capacity since October 1, 2011. Defendant Finco’s duties and responsibilities include the operation of all correctional institutions in the MDOC system, including promulgating and administering MDOC’s policies.

11. Defendant Dennis Straub (“Straub”) was the Deputy Director of the CFA before October 1, 2011. His duties and responsibilities included the promulgation and administration of MDOC policies.

12. Defendant Randy Treacher (“Treacher”) is the Chief Deputy Director of the CFA. His duties and responsibilities include the supervision of Defendants Straub and Finco during their respective terms.

13. Defendant Millicent Warren was and is the Warden of Huron Valley. Her responsibilities and duties include the training, assignment, supervision, discipline and investigation of correctional officers and MDOC employees at Huron Valley. She is responsible for the unlawful treatment to which the Plaintiffs were subjected.

14. Defendant Warden Warren is also responsible for the custody, safety, protection, fair treatment and rehabilitation of the prisoners in Huron Valley and for ensuring that Huron Valley is operated according to proper correctional standards, statutes and/or laws to ensure the safety and protection of vulnerable populations, including Plaintiffs.

15. Defendant Warden Warren is also responsible for developing procedures and implementing policies to prevent the sexual abuse and degrading treatment of Huron Valley’s female prisoners and for ensuring an adequate and effective mechanism for the safe and effective reporting of sexual harassment and degrading, sexually humiliating and unhygienic treatment experienced by female prisoners housed at Huron Valley.

CLASS ACTION ALLEGATIONS

16. This action is brought by the named Plaintiffs on behalf of female prisoners who, since October 2010, have been, are now, or will be hereafter incarcerated at Huron Valley under the jurisdiction of the Michigan Department of Corrections and who have been subjected to sexual harassment and degrading and unhygienic treatment by MDOC custodial staff.

17. The number of women who have been subjected to these violations of their rights while under the jurisdiction of the MDOC since 2010 exceeds 100 women. The number of class members is sufficiently numerous to make class action status the most practical method for Plaintiffs to challenge the policies, procedures and practices of Defendants that are a proximate cause of their ongoing abuse.

18. There are questions of law and fact raised by the named Plaintiffs' claims common to, and typical of, those raised by the Class they seek to represent.

19. Questions of law or fact common to the Class, without limitation, include:

- a. Defendants' conducting body cavity searches on female prisoners whereby female prisoners, in addition to standard strip search, were required to sit on an unsanitized chair and use their unsanitized hands to spread their genitals, allowing a guard to visually search their vaginal and anal cavities for any hidden contraband.
- b. Defendants' conducting spread-labia vaginal searches on numerous female prisoners in full view of one another.
- c. Defendants' failure to properly supervise, train, monitor, discipline and/or regulate prison staff and failure to properly protect this vulnerable population resulting in sexual harassment and degrading and unhygienic treatment.

- d. Defendants' ongoing failure to promulgate and implement proper policies and procedures to protect female prisoners and properly supervise, train, and discipline prison staff in violation of Plaintiffs' constitutional, common law, and statutory rights.

20. The violations of law and resulting harms alleged by the named Plaintiffs are typical of the legal violations and harms suffered by all Class members.

21. Plaintiff Class members will fairly and adequately protect the interests of the Plaintiff class members. Plaintiffs' counsel knows of no conflicts of interest between the class representatives and absent class members with respect to the matters at issue in this litigation; the class representatives will vigorously prosecute the suit on behalf of the Class; and the class representatives are represented by experienced counsel. Plaintiffs are represented by attorneys with substantial experience and expertise in complex and class action litigation involving the issues in this litigation. Plaintiffs' attorneys have identified and thoroughly investigated all claims in this action, and have committed sufficient resources to represent the Class.

21. The maintenance of the action as a class action will be superior to other available methods of adjudication and will promote the convenient administration of justice. Moreover, the prosecution of separate actions by individual members of the Class could result in inconsistent or varying adjudications with respect to individual members of the Class and/or one or more of the Defendants.

22. Defendants have acted or failed to act on grounds generally applicable to all Plaintiffs, necessitating declaratory and injunctive relief for the Class.

STATEMENT OF GENERAL FACTS

23. Since 2009, all female prisoners under the jurisdiction of the MDOC have been incarcerated at Huron Valley.

24. Pursuant to a MDOC strip search training video from 1998, standard strip searches included the removal of all clothing and requiring the female prisoner to go through a series of movements intended to reveal if anything is being concealed, including bending and coughing, as well as spreading the buttocks cheeks for visual inspection.

25. In addition to the standard strip search, additional spread-labia search was and is regularly performed whereby the female prisoner is required to sit naked on an unwashed and unsanitized chair wet with bodily fluids from other prisoners, with her legs spread, and use her own unwashed hands to spread her labia for guard inspection.

26. Female prisoners carrying communicable diseases such as HIV, AIDS, tuberculosis, hepatitis C, sexually transmitted diseases, and other vaginal infections have been forced to submit to spread-labia searches while on their menstrual cycles, leaving blood on the chair.

27. The spread-labia search was and is performed on female prisoners after they have contact visits, finish shifts in prison jobs, receive medical care, and at other arbitrary times dictated by MDOC officials.

28. On December 13, 2011, responding to complaints and grievances about the procedure from 2009 to 2011, Warden Warren issued a Notice to Staff directing that the “procedure of requiring the prisoner to sit in a chair lined with sanitary paper and manually spreading the labia as to inspect the entrance of the vagina is no longer authorized as of 0600 hours on Friday, December 16, 2011.”

29. On April 12, 2012, the Americans Civil Liberties Union transmitted a letter to

MDOC demanding for a “decisive end” to the spread-labia search practice. The letter was also signed by 34 human rights, health, legal and religious organizations and individuals.

30. At the time of the filing of this Complaint, the spread-labia search practice continues at Huron Valley and prisoners continue to file grievances regarding the procedure.

31. In contravention of MDOC’s policies and/or standard correctional practices, Defendants have conducted and continue to conduct sexually humiliating, degrading, unhygienic and unconstitutional spread-labia searches of female prisoners.

32. Defendants, without adequate procedures, training or supervision, have subjected female prisoners to spread-labia searches without taking adequate steps to protect their health, safety, privacy and rights.

33. Defendants have failed to implement and effectuate policies, procedures and mechanisms to deter the sexually humiliating, degrading, unhygienic and unconstitutional spread-labia searches of female prisoners.

34. As a result of Defendants’ acts and omission in failing to safeguard female employees, the plaintiffs in this case have all experienced sexual harassment, sexual humiliation, embarrassment, psychological trauma, and fear.

35. Defendants’ mechanisms for addressing grievances through an administrative process are ineffective and futile for Plaintiffs’ complaints as Defendants do not provide an adequate or available system to exhaust their claims administratively.

36. Plaintiffs are regularly not allowed to file grievances challenging policies or procedures and Defendants do not provide an alternative administrative mechanism to exhaust the claims set forth in this Complaint.

37. A grievance cannot be instituted except through a written form and Defendants and their agents consistently fail to ensure that Plaintiffs are provided with the grievance forms,

routinely refuse to process grievances, and regularly fail to ensure responses to grievances, rendering administrative process for Plaintiffs unavailable or futile.

38. Defendants, by policy and practice, have created barriers to the grievance system rendering the administrative process effectively unavailable to Plaintiffs.

**STATEMENT OF FACTS RELATIVE TO
NAMED PLAINTIFFS AND CLASS REPRESENTATIVES**

A. Plaintiff Amira Salem

39. Plaintiff Amira Salem is currently a prisoner at Huron Valley.

40. Commencing in 2009 and continuing until late 2010 and early 2011, Plaintiff was subjected to spread-labia searches where she was ordered to get completely naked, sit in an unsanitized chair, open her legs wide, and manually open her labia to allow correctional officers to peer into her vagina.

41. Plaintiff Salem is Muslim and her religion prohibits women from exposing their genitalia in the manner required by the spread-labia search.

42. As a direct result of the unlawful search, Plaintiff Salem has suffered from anxiety attacks, flashbacks of sexual abuse, psychological and mental distress. She has avoided and thus been deprived of family and religious visitations due to the humiliation, degradation, shame, disgust and physical and mental abuse the spread-labia procedure causes after each visit.

B. Plaintiff Keshuna Abcumby

43. Plaintiff Keshuna Abcumby is currently a prisoner at Huron Valley.

44. Commencing in 2009 and continuing until 2011, Plaintiff Abcumby was subjected to spread-labia searches where she was ordered to get completely naked, sit in an unsanitized chair, open her legs wide, and manually open her labia to allow correctional officers to peer into her vagina.

45. On some occasions, Plaintiff Abcumby was required to sit in the chair naked, and

hold her knees up and cough, as if pushing to deliver a baby.

46. On some occasions, a pink disinfectant spray was made available to spray on the chair, but was not allowed the sufficient time required by the product label to work effectively before Plaintiff was required to sit on the chair.

47. As a direct result of the unlawful searches, Plaintiff Abcumby suffered several vaginal bacteria infections, anxiety attacks, flashbacks of sexual abuse, nightmare, night sweats, nausea, vomiting, abnormal menstrual cycles, headaches, high blood pressure, and psychological and mental distress.

CLAIMS FOR RELIEF

COUNT I **§1983 – 8th Amendment**

48. Plaintiffs incorporate by reference the foregoing paragraphs of this Complaint as though fully set forth herein.

49. Defendants knew or should have known that Plaintiffs were and are at substantial risk of sexual and physical abuse, privacy violations, and degrading and sexually humiliating treatment in Huron Valley, and failed to protect them.

50. Defendants' implementation of the spread-labia searches violates the prohibition against cruel and unusual punishment as guaranteed by the Eighth Amendment of the United States Constitution. Defendants' actions deprived Plaintiffs and all similarly-situated prisoners of the equal protection of laws under the Fourteenth Amendment of the United States Constitution.

51. The deprivation of Constitutional rights alleged in this Complaint are the direct result of official policy, custom and practices of Defendants and each of them.

52. Defendants failed to adequately train, supervise and/or institute and implement adequate policies and procedures to conduct searches constitutes deliberate indifference to

Plaintiffs' health, safety, privacy and bodily integrity in violation of their rights under the Eighth Amendment.

53. Defendants are individually liable for the unconstitutional conditions at Huron Valley because they and/or their agents (1) participated in creating and carrying out the unconstitutional policies that caused the harm to each Plaintiff; (2) failed to take necessary steps to ensure the safety and wellbeing of each Plaintiff; and (3) implicitly authorized, approved or knowing acquiesced in the unconstitutional conduct of offending MDOC staff.

54. Defendants also had sufficient knowledge, including through statutes and regulations and MDOC 's internal policies and correctional knowledge, to know that Plaintiffs were and are at substantial risk by the implementation of the unhygienic spread-labia search procedure, and failed to adequately protect them.

55. Defendants' practice and policy of forcing female prisoners at Huron Valley to submit to spread-labia searches constitutes cruel and unusual punishment.

56. Defendants' practice and policy of forcing female prisoners at Huron Valley to submit to spread-labia searches constitutes deliberate indifference to and the unnecessary and wanton infliction of pain and suffering, degradation and psychological injury to Plaintiffs, without penological justification.

COUNT II
§ 1983- 4th and 14th Amendment Due Process And Privacy Violations

57. Plaintiffs incorporate by reference the foregoing paragraphs of this Complaint as though fully set forth herein.

58. Defendants, by their unconstitutional policies, have violated and continue to violate Plaintiffs' rights under the 4th and 14th Amendments by forcing female prisoners to submit to spread-labia searches in the manner previously described.

59. The deprivation of Constitutional rights alleged in this Complaint are the direct result of official policy, custom and practices of Defendants and each of them.

60. Defendants failed to adequately train, supervise and/or institute and implement adequate policies and procedures to conduct searches constitutes deliberate indifference to Plaintiffs' health, safety, privacy and bodily integrity and violates Plaintiffs' rights to equal protection under the law under the 14th Amendment of the United States Constitution and 42 U.S.C. § 1983.

61. Defendants are individually liable for the unconstitutional conditions at Huron Valley because they and/or their agents (1) participated in creating and carrying out the unconstitutional policies that caused the harm to each Plaintiff; (2) failed to take necessary steps to ensure the safety and wellbeing of each Plaintiff; and (3) implicitly authorized, approved or knowing acquiesced in the unconstitutional conduct of offending MDOC staff.

62. Defendants also had sufficient knowledge, including through statutes and regulations and MDOC 's internal policies and correctional knowledge, to know that Plaintiffs were and are at substantial risk by the implementation of the unhygienic spread-labia search procedure, and failed to adequately protect them.

63. Defendants' practice and policy of forcing female prisoners at Huron Valley to submit to spread-labia searches has deprived and continues to deprive Plaintiffs of their constitutional right to bodily integrity and right to privacy without due process of law in violation of the 4th and 14th Amendments to the United States Constitution and 42 U.S.C. § 1983.

64. Defendants' practice and policy of forcing female prisoners at Huron Valley to submit to spread-labia searches constitutes deliberate indifference to and the unnecessary and wanton infliction of pain and suffering, degradation and psychological injury to Plaintiffs, without penological justification.

DAMAGES

65. Plaintiffs incorporate by reference the foregoing paragraphs of this Complaint as though fully set forth herein.

66. The acts, omissions and policies of Defendants constituting violations of Plaintiffs' and Plaintiffs' class members' constitutional, statutory and common law rights were and are a proximate cause of Plaintiffs' damages.

67. As a result of Defendants' acts, omissions and policies, the Plaintiff class representatives and the Plaintiff class members, individually and as a class, have suffered severe emotional and psychological injuries, and physical injuries and damages.

68. The physical and emotional injuries inflicted upon Plaintiffs and the class were willful, wanton, cruel and the result of intentional or deliberately indifferent conduct entitling Plaintiffs and the Class to punitive damages.

RELIEF REQUESTED

WHEREFORE, Plaintiffs respectfully request that this Court:

- a. Assert jurisdiction over this action;
- b. Certify this case as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of the proposed Plaintiffs and designate the harmed Plaintiffs as representatives of the class and their counsel of record as Class Counsel.
- c. Issue a Permanent Injunction prohibiting Defendants from subjecting Plaintiffs to policies and procedures that violate their constitutional, statutory rights, and common law rights;
- d. Order appropriate relief to remediate prison conditions such that the spread-labia searches described above are stopped;
- e. Declare unconstitutional the spread-labia searches described above;
- f. Provide adequate medical and mental health treatment to remediate the ongoing harm to the Plaintiffs and the Plaintiff class;
- g. Award damages to Plaintiffs and Class Members for harm caused by Defendants' unconstitutional policies, unconstitutional acts and violations of law, including punitive damages where appropriate;
- h. Award reasonable costs and expenses incurred in the prosecution of this action, including reasonable attorneys' fees and costs; and
- i. Grant such other and further declaratory and equitable relief as the Court deems appropriate, just and proper to protect Plaintiffs from further harm.

Respectfully submitted,

/s/ Kenneth J. Hardin II
Kenneth J. Hardin II (P44681)
Hardin Thompson, P.C.
Attorneys for Plaintiff
30555 Southfield Road, Suite 400
Southfield, MI 48076
(248) 593-1400
kenhardin@hardinlaw.net

Teresa J. Gorman (P61001)
Teresa J. Gorman, PLLC
Attorneys for Plaintiff
30555 Southfield Road, Suite 400
Southfield, MI 48076
(248) 223-9922
terigorman@aol.com

DEMAND FOR JURY TRIAL

Plaintiffs, by and through their counsel, hereby demand a trial by jury.

Respectfully submitted,

/s/ Kenneth J. Hardin II
Kenneth J. Hardin II (P44681)
Hardin Thompson, P.C.
Attorneys for Plaintiff
30555 Southfield Road, Suite 400
Southfield, MI 48076
(248) 593-1400
kenhardin@hardinlaw.net

Teresa J. Gorman (P61001)
Teresa J. Gorman, PLLC
Attorneys for Plaintiff
30555 Southfield Road, Suite 400
Southfield, MI 48076
(248) 223-9922
terigorman@aol.com