UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

CASE NO. 6:05-cv-850-Orl-31KRS

RONALD M. PARILLA, ALDA RUGG, BILLY CATES, THERESA DECLUE, AILEEN NUNEZ, DAVID W. ROBERTS, KIM LEMISTER, SHANE BRADLEY, and FRANTARSHIA STAFFORD, individually and on behalf of a Class of all others similarly situated,

Plaintiffs,

v.

DONALD ESLINGER, individually and in his official capacity as Sheriff of Seminole County, MICHAEL TIDWELL, individually and in his official capacity as Director of the John E. Polk Correctional Facility, DAVID DIGGS, in his individual capacity, and SEMINOLE COUNTY,

Defendants.

SECOND AMENDED CLASS ACTION COMPLAINT

and

JURY TRIAL DEMAND

Plaintiffs, individually, and as representatives of a class of persons similarly situated, sue Defendants and allege:

INTRODUCTION

1. All non-felony arrestees who are booked into the John E. Polk Correctional Facility (hereinafter referred to as "the Seminole County Jail" or "the Jail") are routinely subjected to dehumanizing invasive strip and visual body cavity searches prior to First Appearance, despite the fact that such blanket strip searches violate state and federal law, and despite the absence of prior

written authorization of a supervising officer on duty in violation of Fla. Stat. § 901.211(5). All arrestees who are ordered to be immediately released by a judge or who have produced the required bond are held an unreasonably long period of time prior to release.

2. Unless enjoined and restricted, upon information and belief, Defendants will maintain their practice, policy, and custom of illegally subjecting all pre-First Appearance, non-felony, arrestees charged with non-violent, non-drug and non-weapons related offenses to illegal strip and/or visual body cavity searches; and will continue to strip search arrestees without prior written authorization from a supervising officer on duty in violation of Fla. Stat. § 901.211(5). Unless enjoined and restricted, upon information and belief, Defendants will maintain their practice, policy, and custom of detaining persons ordered by a judge to be immediately released, or who have paid the required bond, an unreasonably long period of time prior to release

JURISDICTION

3. This action is brought pursuant to 42 U.S.C. § 1983 and § 1988, and the Fourth and Fourteenth Amendments to the United States Constitution. Jurisdiction is founded upon 28 U.S.C. § 1331 and § 1343(a)(3) and (4) and the aforementioned statutory and constitutional provisions.

PARTIES

4. Plaintiffs, Parilla, Rugg, Cates, DeClue, Nunez, Roberts, Lemister, Bradley, Stafford, and all those similarly situated, at all material times hereto, were arrested and subjected as a matter of policy, practice and custom, to a strip or visual body cavity search at the Jail.

5. Plaintiff Ronald Parilla was, at all times material hereto, a resident of Oviedo, Florida.

6. Plaintiff Alda Rugg is, and at all times material hereto was, a resident of Oviedo, Florida.

7. Plaintiff Billy Cates is, and at all times material hereto was, a resident of Altamonte

Springs, Florida.

8. Plaintiff Theresa Declue is, and at all times material hereto was, a resident of Heathrow, Florida.

9. Plaintiff Aileen Nunez is, and at all times material hereto was, a resident of Orlando, Florida.

10. Plaintiff David Roberts is, and at all times material hereto was, a resident of Osteen, Florida.

11. Plaintiff Kim Lemister is now a resident of Sanford, Florida, and was at all times material hereto a resident of Lake Mary, Florida.

12. Plaintiff Shane Bradley is, and at all time material hereto was, a resident of Orange City, Florida.

13. Plaintiff Frantarsha Stafford is, and at all times material hereto, was a resident of Orlando, Florida.

14. Defendant Seminole County is, and at all times material referred to herein, was a political subdivision of the State of Florida.

15. Pursuant to state law, Defendant Seminole County has delegated the management and operations of the Jail where the wrongs complained of herein occurred to the Defendant Sheriff of Seminole County.

16. Defendant Seminole County remains responsible for and is liable for the acts of its agent and the policy maker for the County, the Defendant Sheriff of Seminole County, including the payment of damages and attorneys' fees for any of the constitutional violations complained of herein.

17. Defendant, Donald F. Eslinger, is, and at all times material to this action was, the Sheriff

of Seminole County. As Sheriff, he is responsible for the operation of the Jail and is responsible for the care, custody and control of those individuals committed to the Jail, and for making, implementing, allowing, authorizing, or acquiescing in the policies, practices, and customs challenged herein. He is sued in his individual and official capacities.

18. Defendant Michael Tidwell is, and at all times material to this action was, the individual in charge of the day to day operations of the Jail commencing on approximately January 18, 2005. As such, he is responsible for the policies, practices and customs herein challenged. He is sued in his official and individual capacities.

19. Defendant David Diggs was the individual in charge of the day to day operations of the Jail at all times material to this action and until approximately December 31, 2004. As such, he was responsible for the policies, practices and customs herein challenged until approximately December 31, 2004. He is sued in his individual capacity.

20. At all material times mentioned herein, each of the Defendants was acting under the color of state law and the conduct of each constitutes state action.

FACTS

A. RONALD M. PARILLA

21. On December 3, 2004, Plaintiff Parilla went to the Seminole County Courthouse in Sanford, Florida for a non-moving traffic citation for an improperly registered company car. After passing through the metal detector he asked Seminole County Deputy Sheriff Carraday for directions to "courtroom F" as noted on his ticket. Carraday told Plaintiff Parilla that there was no "courtroom F" and directed him to "courtroom 1B," pointing towards the courtroom as they spoke. In the courtroom, a court employee told Plaintiff Parilla to sit down until his name was called.

22. Approximately two hours later, the judge in "courtroom 1B" suggested that there were too many people in his courtroom and called the names of people still on his docket. The people not named, which included Plaintiff Parilla, were told by the judge to go to "courtroom 1A" next door. Shortly after Plaintiff Parilla arrived at "courtroom 1A," the room began filling with Deputy Sheriffs. Then, one of the Deputies announced to the crowd that the judge in "courtroom 1A," Judge John R. Sloop, had signed warrants for their arrests for failure to appear.

23. Plaintiff Parilla and the others were taken into custody, handcuffed, and moved to another location in the courthouse where leg-irons and waist chains were applied.

24. At the courthouse, Plaintiff's belt, shoelaces and personal belongings were taken. He was then subjected to a pat down search and placed in a van and transported to the jail.

25. At the Jail, Plaintiff Parilla was subjected to a strip or visual body cavity search. He was required to remove all his clothing, lift his private parts and spread his rectum.

26. The correctional officer who performed the search did not have the prior written authorization of a supervising officer on duty. The search was performed without their being, recorded in writing or otherwise, a particularized reasonable suspicion that the search would be productive of contraband or weapons.

27. At the conclusion of the search, Plaintiff Parilla was allowed to dress in his civilian clothing.

28. An Order signed by a judge that Plaintiff Parilla be immediately released from custody was filed by the clerk of the Eighteenth Judicial Circuit Court of Florida at 2:22 p.m. and faxed to the Jail at 3:48 p.m. on December 3, 2004. Plaintiff Parilla was not released from Jail custody until approximately 8:40 p.m.

29. Prior to December 3, 2004, Plaintiff Parilla had never been incarcerated.

30. Plaintiff Parilla is a 56 year old married Mercedes-Benz salesman. As a result of having to wait nearly 5 hours to be released after the receipt of the court order that he be immediately released, Plaintiff Parilla missed possible work opportunities and other normal daily activities. He was humiliated and embarrassed by being subjected to the aforementioned strip and visual body cavity search and by being required to stand naked for any passerby to observe. He suffered mental and emotional distress as a direct and proximate result of Defendants' actions in depriving him of rights secured to him by the Fourth and Fourteenth Amendments to the United States Constitution.

B. ALDA RUGG

31. On December 3, 2004, Plaintiff Rugg appeared at the Seminole County Courthouse in response to a ticket for failure to display a tag in the vehicle she was driving. She was sent to "courtroom 1B" and later sent to "courtroom 1A" where she was arrested in the courtroom for "failure to appear" in court.

32. After her arrest, Plaintiff Rugg was placed in handcuffs, bellychains and leg irons and transported to the Jail. Immediately after arrival at the jail, Plaintiff Rugg, and the other women arrested in the courtroom, were taken to a hallway were they were made to open their mouth and lift their tongues. Then Plaintiff Rugg was taken to a room where an officer told her to remove all her clothing. She was made to squat and cough, lift her breasts and run her fingers through her hair.

33. The strip and/or visual body cavity search made Plaintiff Rugg feel extremely uncomfortable and dehumanized.

34. The correctional officer who performed the search did not have the prior written authorization of a supervising officer on duty. The search was performed without their being,

recorded in writing or otherwise, a particularized reasonable suspicion that the search would be productive of contraband or weapons.

35. Despite an immediate release Order signed by a judge and entered by the clerk at 2:30 p.m. and faxed to the Jail around 3:46 p.m. on December 3, 2004, Plaintiff Rugg was kept in jail custody inside a holding cell until about 9:00 p.m.

36. Prior to December 3, 2004, Plaintiff Rugg had never been arrested or incarcerated.

37. Plaintiff Rugg is a housewife with two children, one of whom is disabled. By being held over 5 hours after being ordered by a judge to be immediately released, Plaintiff Rugg was unable to meet her disabled son at his bus stop and to otherwise care for him, and was otherwise unable to engage in her normal everyday activities. She was humiliated, embarrassed and suffered mental and emotional distress as a result of being subjected to a strip and/or visual body cavity search and as a result of being unreasonably detained in custody for nearly an entire day for failure to display car tags. She was also humiliated and embarrassed by being required to stand naked for any passerby to observe. The mental and emotional distress she suffered were a direct and proximate result of Defendants' actions in depriving her of rights secured to her by the Fourth and Fourteenth Amendments to the United States Constitution.

C. BILLY CATES

38. On December 2, 2004, Plaintiff Cates was five minutes late to court, having originally gone to the old courthouse. When he arrived at the new Seminole County Courthouse in Sanford he was arrested for appearing late. Bond was set.

39. Plaintiff Cates was taken into custody, handcuffed, and moved to another location in the courthouse where leg-irons, belly-chains, and leg irons were applied.

40. At the courthouse, Plaintiff Cates' belt, shoelaces and personal belongings were taken. He was then subjected to a pat down search and placed in a van and transported to the Jail.

41. At the Jail, Plaintiff Cates was subjected to a strip and/or visual body cavity search by a correctional officer at approximately noon on December 2, 2004. He was required to remove all his clothing, lift his private parts and spread his rectum for inspection.

42. The correctional officer who performed the search did not have the prior written authorization of a supervising officer on duty. The search was performed without their being, recorded in writing or otherwise, a particularized reasonable suspicion that the search would be productive of contraband or weapons.

43. Plaintiff Cates' mother and brother came to the Jail and paid Plaintiff Cates' bond at 9:00 p.m. on December 3, 2004. However, Plaintiff Cates was not released until 14 hours later at 11:00 a.m. on December 4, 2004.

44. Plaintiff Cates is a 25 year, self-employed floor installer. He was humiliated and embarrassed by being subjected to the aforementioned strip and/or visual body cavity search and by being required to stand naked for any passerby to observe. By being unreasonably held without justification over 14 hours after his family posted his bond, Plaintiff Cates was unable to engage in work and otherwise engage in his normal everyday activities. He suffered mental and emotional distress as a direct and proximate result of Defendants' actions in depriving him of rights secured to him by the Fourth and Fourteenth Amendments to the United States Constitution.

D. THERESA DeCLUE

45. On December 3, 2004, Plaintiff DeClue went to the Seminole County Courthouse in Sanford, Florida for an infraction charging her with driving with a suspended license. Her traffic

ticket instructed that she report to "courtroom 1B." In the courtroom, a court employee told Plaintiff DeClue to sit down until her name was called.

46. Approximately two hours later, the judge in "courtroom 1B" suggested that there were too many people in his courtroom and called the names of people still on his docket. The eleven people not named, which included Plaintiff DeClue, were told by the judge to go to "courtroom 1A" next door. Shortly after Plaintiff Declue arrived at "courtroom 1A," the room began filling with Deputy Sheriffs. Then, one of the Deputies announced to the crowd that the judge in "courtroom 1A," Judge John R. Sloop, had signed warrants for their arrests for failure to appear.

47. Plaintiff DeClue and the others were taken into custody, handcuffed, and moved to another location in the courthouse where leg-irons and waist chains were applied.

48. At the courthouse, Plaintiff DeClue's personal belongings were taken. She was then subjected to a pat down search and placed in a van and transported to the Jail.

49. At the Jail, Plaintiff DeClue was subjected to a strip and/or visual body cavity search. She was required to remove all her clothing, squat and spread her rectum.

50. The correctional officer who performed the search did not have the prior written authorization of a supervising officer on duty. The search was performed without their being, recorded in writing or otherwise, a particularized reasonable suspicion that the search would be productive of contraband or weapons.

51. At the conclusion of the search, Plaintiff DeClue was required to dress in a Jail uniform.

52. An Order signed by a judge to "immediately release" Plaintiff DeClue from custody was filed by the clerk of the Eighteenth Judicial Circuit Court of Florida at 2:22 p.m. and faxed to the Jail at 3:48 p.m. on December 3, 2004. Despite the Order, Plaintiff DeClue was not released from the

Jail until approximately 9:00 p.m.

53. Prior to December 3, 2004, Plaintiff DeClue had never been in a Jail.

54. Plaintiff DeClue is a 29 year old Administrative Assistant for a major employer in the Orlando area. She was humiliated and embarrassed by being subjected to the aforementioned strip and visual body cavity search and by being required to stand naked for any passerby to observe. By being unreasonably held without justification over 5 hours after being ordered to be immediately released, Plaintiff DeClue was unable to engage in work and otherwise engage in her normal everyday activities. She suffered mental and emotional distress as a direct and proximate result of Defendants' actions in depriving her of rights secured to her by the Fourth and Fourteenth Amendments to the United States Constitution.

E. AILEEN NUNEZ

55. On December 3, 2004, Plaintiff Nunez went to the Seminole County Courthouse in Sanford, Florida for a non-moving traffic violation. She was told to report to "courtroom 1B." In the courtroom, a court employee told Plaintiff Nunez to sit down until her name was called.

56. Approximately two hours later, the judge in "courtroom 1B" suggested that there were too many people in his courtroom and called the names of people still on his docket. The eleven people not named, which included Plaintiff Nunez, were told by the judge to go to "courtroom 1A" next door. Shortly after Plaintiff Nunez arrived at "courtroom 1A," the room began filling with Deputy Sheriffs. Then, one of the Deputies announced to the crowd that the judge in "courtroom 1A," Judge John R. Sloop, had signed warrants for their arrests for failure to appear.

57. At the Courthouse, Plaintiff Nunez was placed in restraints and then taken to the Jail.

58. Upon arrival at the Jail, Plaintiff Nunez was subjected to a strip or visual body cavity

search. She was forced to squat and cough, and the officers ran their fingers through her hair. A correctional officer removed her bra because it had an under wire. At 2:22 p.m., an order that Plaintiff Nunez be "immediately released from custody ROR [release on own recognizance]" was filed in the Clerk's Office, and faxed to Defendants at 3:48 p.m. However, Plaintiff Nunez was not released until approximately 9:00 p.m.

59. A correctional officer performed the strip search prior to obtaining the written authorization of a supervising officer on duty. The search was performed without their being, recorded in writing or otherwise, a particularized reasonable suspicion that the search would be productive of contraband or weapons.

60. Plaintiff Nunez is a 25 year old bank employee. She was humiliated and embarrassed by being subjected to the aforementioned strip and/or visual body cavity search and by being required to stand naked for any passerby to observe. By being unreasonably held without justification over 5 hours after being ordered "immediately released," Plaintiff Nunez was unable to engage in work and otherwise engage in his normal everyday activities. She suffered mental and emotional distress as a direct and proximate result of Defendants' actions in depriving her of rights secured to her by the Fourth and Fourteenth Amendments to the United States Constitution.

F. DAVID W. ROBERTS

61. On December 3, 2004, Plaintiff Roberts went to the Seminole County Courthouse in Sanford, Florida, for a non-moving traffic violation. He went to "courtroom 1B," where a court employee told Plaintiff Roberts to sit down until his name was called. He had gone to the Courthouse to simply pay his fine of $50 for being one life jacket short in his boat.

62. Approximately two hours later, the judge in "courtroom 1B" suggested that there were

too many people in his courtroom and called the names of people still on his docket. The people not named , which included Plaintiff Roberts, were told by the judge to go to "courtroom 1A" next door. Shortly after Plaintiff Roberts arrived at "courtroom 1A," the room began filling with Deputy Sheriffs. Then, one of the Deputies announced to the crowd that the judge in "courtroom 1A," Judge John R. Sloop, had signed warrants for their arrests for failure to appear.

63. Plaintiff Roberts and the others were taken into custody, handcuffed, and moved to another location in the courthouse where leg-irons and waist chains were applied.

64. At the courthouse, Plaintiff's belt, shoelaces and personal belongings were taken. He was then subjected to a pat down search and placed in a van and transported to the jail.

65. At the jail, Plaintiff Roberts was subjected to a strip or visual body cavity search. The correctional officer who performed the search did not have the prior written authorization of the supervisor on duty. The search was performed without there being, recorded in writing or otherwise, a particularized reasonable suspicion that the search would be productive of contraband or weapons.

66. At 2:22 p.m., an order that Plaintiff Roberts be "immediately released from custody ROR [release on own recognizance]" was filed in the Clerk's Office, and faxed to the Jail at 3:45 p.m. However, Plaintiff Roberts was not released until approximately 9:00 p.m.

67. Plaintiff Roberts is a 39 year old employee of a local construction firm. He was humiliated and embarrassed by being subjected to the aforementioned strip and visual body cavity search and by being required to stand naked for any passerby to observe. By being unreasonably held without justification over 5 hours after being ordered "immediately released," Plaintiff Roberts was unable to engage in work and otherwise engage in his normal everyday activities. He suffered mental and emotional distress as a direct and proximate result of Defendants' actions in depriving

him of rights secured to him by the Fourth and Fourteenth Amendments to the United States Constitution.

G. KIM LEMISTER

68. On September 13, 2002, Plaintiff Lemister was arrested at 1:00 a.m. for driving while intoxicated. She was on one crutch as a result of a knee injury. She was taken to the Jail to be booked. She was told by the female correctional officer on duty to go into the bathroom, take off her clothes and take a shower. When Plaintiff Lemister finished showering, she was told to go back into the shower and thoroughly wash her hair. After the shower, she was told to spread her legs and was given a visual body cavity search. The correctional officer took her bra because it contained an underwire. Her head was then sprayed for lice as were all other body areas containing hair. She was not given a towel to dry. She was told to dress in a jail uniform and taken to a single cell in the infirmary area because she possessed a crutch.

69. On information and belief, the female correctional officer who performed the search did not have the prior written authorization of a supervising officer on duty. The search was performed without there being, recorded in writing or otherwise, a particularized reasonable suspicion that the search would be productive of contraband or weapons.

70. Plaintiff Lemister's boyfriend came to the Jail and paid her bond at 2:00 a.m. She was released the next morning at approximately some time between 10:30 to 11:00 a.m.

71. Plaintiff is a 32 year old employee of a bank. She was humiliated and embarrassed by being subjected to the aforementioned strip and/or visual body cavity search. She has suffered mental and emotional distress as a direct and proximate result of Defendants' actions in depriving her of rights secured to her by the Fourth and Fourteenth Amendments to the United States

Constitution.

H. SHANE BRADLEY

72. On December 3, 2004, Plaintiff Bradley went to the Seminole County Courthouse in Sanford, Florida, for several traffic violations. He went to "courtroom 1B," where a court employee told Plaintiff Bradley to sit down until his name was called. He had gone to the Courthouse to simply pay his fine.

73. Approximately two hours later, the judge in "courtroom 1B" suggested that there were too many people in his courtroom and called the names of people still on his docket. The people not named , which included Plaintiff Bradley, were told by the judge to go to "courtroom 1A" next door. Shortly after Plaintiff Bradley arrived at "courtroom 1A," the room began filling with Deputy Sheriffs. Then, one of the Deputies announced to the crowd that the judge in "courtroom 1A," Judge John R. Sloop, had signed warrants for their arrests for failure to appear.

74. Plaintiff Bradley and the others were taken into custody, handcuffed, and moved to another location in the courthouse where leg-irons and waist chains were applied.

75. At the courthouse, Plaintiff's belt, shoelaces and personal belongings were taken. He was then subjected to a pat down search and placed in a van and transported to the jail.

76. At the jail, Plaintiff Bradley was subjected to a strip or visual body cavity search. The correctional officer who performed the search did not have the prior written authorization of the supervisor on duty. The search was performed without there being, recorded in writing or otherwise, a particularized reasonable suspicion that the search would be productive of contraband or weapons.

77. At 2:22 p.m., an order that Plaintiff Bradley be "immediately released from custody ROR [release on own recognizance]" was filed in the Clerk's Office, and faxed to the Jail at 3:49 p.m.

However, Plaintiff Bradley was not released until approximately 8:55 p.m.

78. Plaintiff Bradley is a 26 year old employee of a local landscaping company. He was humiliated and embarrassed by being subjected to the aforementioned strip and visual body cavity search and by being required to stand naked for any passerby to observe. By being unreasonably held without justification over 5 hours after being ordered "immediately released," Plaintiff Bradley was unable to engage in work and otherwise engage in his normal everyday activities. He suffered mental and emotional distress as a direct and proximate result of Defendants' actions in depriving him of rights secured to him by the Fourth and Fourteenth Amendments to the United States Constitution.

I. FRANTARSHIA STAFFORD

79. On December 3, 2004, Plaintiff Stafford appeared at the Seminole County Courthouse in response to traffic tickets for no insurance and no registration. She was initially directed to the wrong courtroom and then arrested for "failure to appear" after being directed to "courtroom 1B" at the Seminole County Courthouse. At the Courthouse, she was handcuffed, forced to take off her shoes and put on jailhouse slippers, and put in belly chains.

80. Upon arrival at the Jail, Plaintiff Stafford was subjected to a strip or visual body cavity search by a correctional officer. She was forced to squat, bend over, and cough and officers ran their fingers through her hair. The correctional officer took her bra because it had an underwire. At 2:22 p.m., an order that Plaintiff Stafford (formerly Coleman) be "immediately released from custody ROR [release on own recognizance]" was filed in the Clerk's Office, and faxed to Defendants at 3:50 p.m. However, Plaintiff Stafford was not released until approximately 9:00 p.m.

81. The correctional officer who performed the strip search did not have the prior written

authorization of a supervising officer on duty. Plaintiff Stafford had never been subjected to a strip search prior to December 3, 2004. The search was performed without there being, recorded in writing or otherwise, a particularized reasonable suspicion that the search would be productive of contraband or weapons.

82. She was humiliated and embarrassed by being subjected to the aforementioned strip and/or visual body cavity search and by being required to stand naked for any passerby to observe. By being unreasonably held without justification over 5 hours after being ordered "immediately released," Plaintiff Stafford was unable to engage in work and otherwise engage in her normal everyday activities. She suffered mental and emotional distress as a direct and proximate result of Defendants' actions in depriving her of rights secured to her by the Fourth and Fourteenth Amendments to the United States Constitution.

J. ALL PLAINTIFFS

83. The strip and visual body cavity searches to which Plaintiffs and all those similarly situated are subjected are short-lived legal violations that are over before they can be challenged in court because all Plaintiffs are released prior to or at First Appearance (within the first 48 hours of incarceration), and are legal violations which are an on-going policy of the Defendants and for which monetary damages alone after-the-fact is not suitable long-term relief. Similarly, the unreasonably long detention in the Jail after being ordered "immediately released" by a judge or after the posting of bond is a short-lived legal violation which is over before it can be challenged in court, and is a legal violation which is an on-going policy of the Defendants and for which monetary damages after-the-fact is not a suitable long-term relief. There is a reasonable likelihood that Defendants' policies and practices will continue and some Plaintiffs and Plaintiff class members will most certainly be

re-arrested in Seminole County, Florida. Therefore, the illegal polices are capable of repetition but evading judicial review if declaratory and injunctive relief is not provided.

84. As a result of being subjected to the strip and/or visual body cavity searches complained of herein and the unreasonably long detention after being ordered immediately released or after posting bond, each of the Plaintiffs (except Lemister for the length of detention) suffered physical, mental and emotional distress, invasion of privacy, lost work opportunities, and the violation of due process of law and federal constitutional rights, and is entitled to recover damages according to proof.

CLASS ACTION ALLEGATIONS

85. The named Plaintiffs bring this suit as a class action, pursuant to the provisions of Rule 23(b)(2) & (3) of the Federal Rules of Civil Procedure for injunctive and declaratory relief, and monetary damages on behalf of a class of all persons similarly situated.

86. There are two Plaintiff classes. One class consists of all individuals who, within the applicable four year statute of limitations and continuing to this date, were subjected by Defendants to pre-First Appearance strip and/or visual body cavity searches at the John E. Polk Correctional Facility in Seminole County, Florida without Defendants having, and recording in writing, a particularized reasonable suspicion that the searches would be productive of contraband or weapons.

87. The other class consists of all persons unreasonably detained at the Jail for a period in excess of the time necessary to effectuate a release after a judge's order for immediate release or the posting of bond.

88. These Plaintiff classes consists of an unknown but large number of individuals, numbering in the thousands, so that joinder of all members is impracticable.

89. Plaintiffs are informed and believe, and thereupon allege, that Defendants have the ability to identify all such similarly situated Plaintiffs who were subjected to strip and/or visual body cavity searches prior to first appearance without Defendants first having, and recording, a particularized reasonable suspicion that the searches would be productive of contraband or weapons.

90. Plaintiffs are also informed and believe, and thereupon allege, that Defendants have the ability to identify all such similarly situated Plaintiffs who were unreasonably held in the Jail long after being ordered by a judge to be immediately released or after paying their bond.

91. There are questions of fact common to these classes including, but not limited to: (1) whether Defendants routinely subject all arrested persons to strip and/or visual body cavity searches prior to first appearance if they intend such persons to be housed in the John E. Polk Correctional Facility; (2) whether persons are subjected to strip and/or visual body cavity searches prior to First Appearance without there being any particularized reasonable suspicion, based on specific or articulable facts, to believe any particular arrestee has concealed drugs, weapons, and/or contraband in bodily cavities which could be detected by means of a strip and/or visual body cavity search; (3) whether the strip or visual body cavity searches are conducted in an area of privacy so that the searches cannot be observed by persons not participating in the searches, or whether the strip or visual body cavity search are conducted in areas where they may be observed by persons not participating in the searches; and (4) whether persons ordered to be immediately released by a judge or who have posted bond are held for an unreasonable time period prior to being released from the Jail.

92. There are questions of law common to the class, including, but not limited to: (1) whether Defendants may perform strip and/or visual body cavity searches on persons prior to their First Appearance without particularized reasonable suspicion, based on specific or articulable facts, to

believe any particular arrestee has concealed drugs, weapons and/or contraband, which would likely be discovered by a strip and/or visual body cavity search; (2) whether strip and/or visual body cavity searches may be conducted in areas where the search can be observed by people not participating in the search without violating Plaintiffs' federal constitutional rights; (3) whether Defendants' strip and/or visual body cavity search policy and procedure is in accordance with the federal constitution; and (4) whether Defendants' policy and procedure of detaining pre-trial detainees for hours after their immediate release has been ordered by a judge or after their bond has been paid violates Plaintiffs' federal constitutional rights.

93. The claims of the representative Plaintiffs are typical of the classes. Plaintiffs were searched, prior to First Appearance, without reasonable suspicion that a strip and/or visual body cavity search would produce drugs, weapons or contraband. Representative Plaintiffs have the same interests and suffered the same type of injuries as all of the other class members. Plaintiffs' claims arose because of Defendants' policy, practice, and custom of subjecting arrestees to strip and/or visual body cavity searches before First Appearance without having a reasonable suspicion that the search would be productive of contraband or weapons. Plaintiffs' claims (except Lemister) also arose for being unreasonably detained in the Jail for hours despite an order signed by a judge that the Plaintiffs be immediately released or released after posting bond. Plaintiffs' claims are based upon the same legal theories as the claims of the class members. Each class member suffered actual damages as a result of being subjected to a visual body cavity search and being unreasonably held for hours after being ordered immediately released or after posting bond. The actual damages suffered by representative Plaintiffs are similar in type and amount to the actual damages suffered by each class member.

94. The representative Plaintiffs will fairly and adequately protect the class interest. Plaintiffs' interests are consistent with and not antagonistic to the interests of the class. They have a strong personal interest in the outcome of this action and have no conflicts of interest with members of the Plaintiff class. The named Plaintiffs were all subjected to strip and visual body cavity searches without legal justification. The named Plaintiffs (except Lemister) were all subjected to being unreasonably detained for hours in the Jail after being ordered immediately released by a judge or after posting bond. As long as the policies, practices and customs of the Defendants continue to permit dehumanizing invasive strip and visual body cavity searches or the Defendants continue to unreasonably detain persons ordered immediately released by a judge or after posting bond, the named Plaintiffs (except Lemister), and the class they represent, are and will remain at high risk of being subjected to searches in clear violation of established constitutional rights or being detained unreasonably in the Jail after being ordered immediately released by a judge or after posting bond.

95. The named Plaintiffs are represented by experienced counsel who specialize in civil rights class action litigation.

96. The prosecutions of separate actions by individual members of the class would create a risk that inconsistent or varying adjudications with respect to individual members of the class would establish incompatible standards of conduct for the parties opposing the class.

97. The prosecutions of separate actions by individual members of the class would create a risk of inconsistent adjudications with respect to individual members of the class which would, as a practical matter, substantially impair or impede the ability of the other members of the class to protect their interests.

98. The Defendants have acted on grounds generally applicable to the class, thereby making

appropriate the final injunctive or declaratory relief with respect to the class as a whole.

99. A class action is superior to all other available methods for the fair and equitable adjudication of the controversy between the parties. Plaintiffs are informed and believe, and thereupon allege, that the interests of members of the class in individually controlling the prosecution of a separate action is low in that most class members would be unable individually to prosecute any action at all. Plaintiffs are informed and believe, and thereupon allege, that most members of the class will not be able to find counsel to represent them. Plaintiffs are informed and believe, and thereupon allege, that it is desirable to concentrate all litigation in one forum because all of the claims arise in the same location. It will promote judicial efficiency to resolve the common questions of law and fact in one form, rather than in multiple courts.

COUNT ONE

(Violation of Fourth Amendments to the U.S. Constitution on Behalf of Plaintiffs and All Persons Similarly Situated)

100. Plaintiffs repeat and reallege paragraphs one (1) through ninety-nine (99) as though fully set forth herein.

101. The strip and/or visual body cavity searches to which Plaintiffs and all those similarly situated were subjected were performed pursuant to policies, practices, and customs of named Defendants.

102. The strip and/or visual body cavity searches to which Plaintiffs and all those similarly situated were subjected are short-lived legal violations that are over before they can be challenged in court because all Plaintiffs are released prior to or at First Appearance (within the first 48 hours of incarceration), are legal violations which are an on-going policy of the Defendants and for which monetary damages after-the-fact is not a suitable long-term solution, there is a reasonable likelihood

that the policy and practice will continue and plaintiff class members will be re-arrested, and therefore the illegal policy is capable of repetition but evading review if declaratory and injunctive relief is not provided.

103. The searches complained of herein were performed without regard to the nature of the alleged offenses for which Plaintiffs had been arrested, without regard to whether or not Plaintiffs were eligible for prompt release and without regard to whether or not Plaintiffs were eligible for and/or were released on their own recognizance. Furthermore, the searches complained of herein were performed without Defendants having a reasonable belief that the Plaintiffs so searched possessed drugs, weapons or contraband or that there existed facts supporting a particularized reasonable suspicion that the searches would produce drugs, weapons or contraband, and those facts being articulated and recorded in a supervisor-approved document.

104. Plaintiffs are informed and believe, and thereupon allege, that Defendants routinely follow their policy, practice, and custom of requiring pre-First Appearance detainees to strip naked and to submit to visual body cavity searches without having a particularized reasonable suspicion that the searches will be productive of drugs, weapons or contraband or weapons.

105. Strip and body cavity searches, as alleged in this Complaint, are done as a matter of routine, and are permitted and encouraged, in accordance with the established policies, practices and customs of the Defendants.

106. In searching the Plaintiffs as alleged, staff at the Jail act or have acted in accordance with the policy, practice and custom authorized or permitted by Defendants Tidwell and Diggs.

107. The policy, practice and custom of strip or visual body cavity searching all arrestees, as authorized or permitted by Defendants Tidwell and Diggs is attributable to Defendant Eslinger who,

if he did not specifically authorize and permit the strip and visual body cavity searches as herein alleged, allowed Defendants Tidwell and Diggs to create and implement the policy, practice and custom employed at the Jail.

108. The policy, practice and custom of strip or visual body cavity searching all arrestees, as authorized or permitted by Defendants Tidwell, Diggs, and Eslinger, is attributable to Seminole County, which has delegated the creation of policy, practice and custom at the Jail to Defendant Eslinger.

109. Defendants Tidwell, Diggs, and Eslinger facilitate, encourage, and acquiesce in the behavior of their subordinates, who routinely conduct strip and visual body cavity searches, as alleged in this Complaint.

110. Individual named Defendants herein are personally responsible for the promulgation and continuation of the strip search policy, practice, and custom pursuant to which Plaintiffs herein and all those similarly situated, were subjected to the searches complained of herein.

111. Defendants' policies, practices, and customs regarding the strip and visual body cavity searches complained of herein violated Plaintiffs' rights under the Fourth Amendment of the U.S. Constitution to be free from unreasonable searches and seizures, and directly and proximately damaged Plaintiffs as herein alleged, entitling Plaintiffs to recover damages for said constitutional violations pursuant to 42 U.S.C. § 1983.

COUNT TWO

(Unreasonable Detention After Being Ordered to be Immediately Released is an Unreasonable Seizure in Violation of a Liberty Interest Forbidden by the Fourteenth Amendment to the U.S. Constitution on Behalf of Plaintiffs and All Persons Similarly Situated)

112. Plaintiffs (except Lemister) repeat and reallege paragraphs one (1) through ninety-nine (99) as though fully set forth herein.

113. The unreasonably long detention in the Jail, after a release order is entered and after Jail officials are made aware of the order, or after the posting of bond, to which Plaintiffs (except Lemister) and all those similarly situated were subjected were performed pursuant to policies, practices, and customs of named Defendants.

114. The unreasonable detention to which the Plaintiffs (except Lemister) and all those similarly situated were subjected are short-lived legal violations that are over before they can be challenged in court, are legal violations which are an on-going policy of the Defendants and for which monetary damages alone after-the-fact is not a suitable long-term solution, there is a reasonable likelihood that the policy, practice, and custom will continue and Plaintiff class members will be re-arrested, and therefore the illegal policy, practice, and custom is capable of repetition but evading review if declaratory and injunctive relief is not provided.

115. Plaintiffs are informed and believe, and thereupon allege, that Defendants routinely follow their policy, practice, and custom of unreasonable detention after receipt of release orders or the posting of bond.

116. Unreasonably long detentions, as alleged in this Complaint, are done as a matter of routine, and are permitted and encouraged, in accordance with the established policies, practices and

customs of the Defendants.

117. In unreasonably detaining the Plaintiffs as alleged, staff at the Jail act or have acted in accordance with the policy, practice and custom authorized or permitted by Defendants Tidwell and Diggs.

118. The policy, practice and custom of unreasonably long detention, as authorized or permitted by Defendants Tidwell and Diggs is attributable to Defendant Eslinger who, if he did not specifically authorize and permit the unreasonably long detention as herein alleged, allowed Defendants Tidwell and Diggs to create and implement the policy, practice and custom employed at the Jail.

119. The policy, practice and custom of unreasonably long detention, as authorized or permitted by Defendants Tidwell, Diggs, and Eslinger, is attributable to Seminole County, which has delegated the creation of policy, practice and custom at the Jail to Defendant Eslinger.

120. Defendants Tidwell, Diggs, and Eslinger facilitate, encourage, and acquiesce in the behavior of their subordinates, who routinely unreasonably detain persons ordered to be released or after the payment of bond, as alleged in this Complaint.

121. Individual named Defendants herein are personally responsible for the promulgation and continuation of the unreasonable detention policy, practice, and custom to which Plaintiffs, and all those similarly situated, were subjected.

122. Defendants' policies, practices, and customs regarding the unreasonable detention after being ordered released or the payment of bond, violated Plaintiffs' (except Lemister) rights to due process and a liberty interest under the Fourteenth Amendment, and directly and proximately damaged Plaintiffs as herein alleged, entitling Plaintiffs (except Lemister) to recover damages and

declaratory and injunctive relief as requested hereunder for said constitutional violations pursuant to 42 U.S.C. § 1983.

Wherefore, Plaintiffs pray for relief as hereunder appears.

PRAYER FOR RELIEF

A. For declaratory and injunctive relief declaring illegal and enjoining, preliminarily and permanently, Defendants' policies, practices, and customs of subjecting pre-first appearance detainees to strip and visual body cavity searches without having a reasonable suspicion that such searches would be productive of drugs, contraband or weapons;

B. For declaratory and injunctive relief declaring illegal and enjoining, preliminarily and permanently, Defendants' policies, practices, and customs of unreasonably detaining persons in the Jail after the receipt of a release order or the payment of bond;

C. Certification of this action as a class action, designation of Plaintiffs as class representatives and counsel as class counsel;

D. For compensatory, general, and special damages for each representative and for each member of the class of Plaintiffs, as against all Defendants;

E. Exemplary damages as against all of the individual Defendants in an amount sufficient to deter and to make an example of those Defendants;

F. Attorneys' fees and costs under 42 U.S.C. § 1988; and

G. The cost of this suit and such other relief as the court finds just and proper.

JURY TRIAL DEMANDED

Plaintiffs demand trial by jury as to all issues triable as a right before a jury.

Respectfully submitted,

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By: Randall C. Berg, Jr., Esq.

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document will be sent by CM/ECF to all counsel of record in this matter on the date of its electronic filing.

s/ Randall C. Berg, Jr.
By: Randall C. Berg, Jr., Esq.