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United States District Court,
D. Connecticut.

Lorenzo D. FOREMAN, et al. Plaintiffs,
v.
STATE of Connecticut, John Armstrong, et al.
Defendants.

No. Civ.A.3:01CV61(CFD). | March 5, 2003.

Opinion

RULING ON PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

DRONEY, J.

***1** The three plaintiffs allege in the Third Amended Complaint [Doc. # 50] that they were subject to strip searches while detained at the New Haven Community Correctional Center on Whalley Avenue in New Haven, Connecticut ("NHCCC") for what they characterize as "minor" civil offenses involving non-payment of child support. They assert that one of the plaintiffs, Charles Campbell, was searched pursuant to a written policy of the NHCCC requiring that all arrestees undergo strip searches, and that the other two plaintiffs, though arrested before that policy had been formally adopted, were strip searched in violation of then-existing State of Connecticut Department of Corrections policy and without reasonable suspicion. The plaintiffs claim that in permitting these searches, the defendants deprived them of their constitutional rights to be free from unreasonable searches under the Fourth and Fourteenth Amendments of the U.S. Constitution in violation of 42 U.S.C. § 1983 .[1] The Third Amended Complaint also seeks certification of a class, actual and punitive damages, and permanent injunctive relief.

[1] Subject matter jurisdiction is proper under 28 U.S.C. §§ 1331 and 1343.

Pending is the plaintiffs' Motion for Preliminary Certification as Representatives of A[sic] Subclasses Under FRCP 23(a) and (b)(2) for the Limited Purpose of Obtaining Declaratory and Injunctive Relief [Doc. # 42]. Specifically, the plaintiffs request that this Court 1) certify plaintiff Charles Campbell as a representative of the subclass of persons strip searched at NHCCC between January 21, 2000 and January 12, 2001 that were charged with minor or non-criminal offenses (presumably the dates during which the above-mentioned policy was in effect) absent reasonable suspicion, and 2) certify plaintiffs Lorenzo Foreman and Horace Dodd, Sr., as representatives for the subclass of persons strip searched at NHCCC between January 11, 1998 and January 21, 2000 that were charged with minor or non-criminal offenses absent reasonable suspicion. Of particular legal significance, the plaintiffs' current motion only seeks class status for the limited purpose of seeking injunctive relief challenging the "blanket strip search policy."

The Court need not consider the parties' arguments for and against class certification based upon the plaintiffs' ability to meet the requirements of Fed.R.Civ.P. 23, as the Court finds that class certification is not warranted pursuant to *Galvan v. Levine,* 490 F.2d 1255 (2d Cir.1973). In *Galvan,* the Second Circuit held that when a plaintiff seeks class certification for the purpose of seeking injunctive and declarative relief of a prohibitory nature, based on the alleged unconstitutionality of an administrative practice, "class action designation is largely a formality" and unnecessary. *See Galvan,* 490 F.2d at 1261. The Court reasoned that "what is important in such a case for the plaintiffs ... is that the judgment run to the benefit not only of the named plaintiffs but of all other similarly situated." *Id.* The Court found that this concern had been met where the State recognized that any judgment would bind it in the future as to potential class members and where it had already withdrawn the challenged policy. *Id.*

***2** *Galvan* has been clarified by subsequent Second Circuit decisions:

> [T]he *Galvan* rule is narrow and only applies to those specific cases in which the plaintiffs suing a governmental agency seek *only* prospective injunctive relief ... the Second Circuit has modified *Galvan* and has directed the district courts to focus on the more relevant criteria of the defendant's admission to the exercise of a "policy," its accession to "the identity of issues as to all potential class litigants," and the declaration of its intention to abide by the ruling of a single action.

Gulino v. Bd. of Educ. of the City Sch. Dist. of the City of New York, 201 F.R.D. 326, 334 (S.D.N.Y.2001) (citing *Hurley v. Ward,* 584 F.2d 609, 611–12 (2d Cir.1978)). Applying these additional considerations here, the Court finds that class certification is unnecessary under *Galvan.* The plaintiffs concede that, for the purposes of this motion, they are seeking only prohibitive injunctive and declaratory relief. The defendants have evidenced an intent to be bound by any ruling. *See* Def.'s Mem. in Opp. to Mot. for Class Cert. [Doc. # 46] ("[I]f this case were to

proceed as to only the named plaintiffs, the judgment, if it were in favor of plaintiffs, would have the same effect as declaring the challenged strip search policy unconstitutional and ... defendants would, as a practical matter have to withdraw the challenged policy."). Moreover, the defendants here, as in *Galvan,* have already "withdr [awn] the challenged policy." *See Galvan,* 490 F.2d at 1261; Def.'s Mem. in Opp. to Mot. for Class Cert. [Doc. # 46] ("that [NHCC] policy memo ... has already been rescinded.").

For the foregoing reasons the plaintiffs' Motion for Preliminary Certification as Representatives of A[sic] Subclasses Under FRCP 23(a) and (b)(2) for the Limited Purpose of Obtaining Declaratory and Injunctive Relief [Doc. # 42] is DENIED. This ruling is without prejudice to plaintiffs moving to certify a class for the purpose of seeking damages or other relief.