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United States District Court,
E.D. Pennsylvania.

Lisa WILSON, Lawrence Bowden, Kimwan Toppin, Shirlean Loper, on behalf of themselves and all others similarly situated, Plaintiffs,
v.
TINICUM TOWNSHIP, Tinicum Township Police Department, Tinicum Police Chief Robert T. Lythgoe, Jr., Officers Thomas Canzanese and Walter Fife of the Tinicum Township Police Department, in their individual and official capacities, and Unknown Police Officers Numbers one and two of the Tinicum Township Police Department, in their individual and official capacities, Defendants.

No. CIV. A. 92-6617. | July 20, 1993.

Opinion

REED.

MEMORANDUM

I. INTRODUCTION

***1** This lawsuit concerns the alleged unconstitutional practices and policies of Tinicum Township. Plaintiffs allege that Tinicum Township has a policy of stopping, detaining, and searching cars and their occupants travelling on I–95 without cause or proper consent and of targeting African–Americans for special attention in implementing the policy. Plaintiffs' Memorandum of Law in Support of their Motion for Class Certification ("Plaintiffs' Memo."), at 4. Plaintiffs seek relief for (1) the targeting of African–Americans travelling on I–95 for stops and searches in violation of equal protection guarantees, and (2) the stopping of travellers on I–95 for pretextual traffic violations with the intent of coercing consent or improperly searching the stopped vehicles for drugs in violation of the prohibitions against unreasonable searches and seizures. *Id.* at 9–10. The relief sought takes two forms: (1) injunctive relief to prevent the defendants from continuing to employ their alleged unconstitutional practices against those who travel on I–95 in the future, and (2) damages to redress the harms to those who have already been subjected to the alleged unconstitutional actions of the defendants. *Id.* at 10.

Currently before me is the motion of plaintiffs for certification of the following two classes and two sub-classes:

> CLASS I: Injunctive classes certified pursuant to Fed. R. Civ. P. 23(b)(2) consisting of (a) all individuals who travel or will travel I–95 through Tinicum Township and (b) all African–American and Hispanic individuals who travel or will travel I–95 through Tinicum Township.
>
> CLASS II: Damage classes certified pursuant to Fed. R. Civ. P. 23(b)(3) consisting of (a) all individuals travelling on I–95 who have been stopped or subjected to searches and seizures by the defendants since November 18, 1990 as a result of defendants alleged customs and policies of stopping travellers on I–95 for pretextual traffic violations with the intent of coercing consent or improperly searching the stopped vehicles for drugs and (b) all African American and Hispanic individuals travelling I–95 since November 18, 1990 who have been stopped or subjected to searches or seizures as a result of defendants' alleged policy or custom of stopping and searching minority individuals on I–95 because of their minority status.

Id. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 because of the existence of federal questions arising under the Fourth and Fourteenth Amendments of the United States Constitution. The supplemental jurisdiction of this Court is also invoked for certain state law and constitutional claims. 28 U.S.C. § 1367.

Upon consideration of the motion, the response of the defendants thereto, and the reply of the plaintiffs, and for the reasons which follow, I shall grant the motion for certification, and shall certify the classes of persons defined in the accompanying order.

II. FACTUAL BACKGROUND

***2** The named plaintiffs in this action are four African–Americans. On the evening of August 13, 1991, the plaintiffs, while returning from a church celebration, were stopped along I–95 by Tinicum Township Police Officer Thomas Canzanese ("Officer Canzanese"). While Officer Canzanese was examining the driver's license and registration of plaintiff Lawrence Bowden ("Bowden"), two more Tinicum Township police vehicles arrived on the scene, one of which contained a police dog. The police officers used the dog to search the car as well as all of the plaintiffs, who were lined up on the shoulder of the road. After being allowed to return to the car, Plaintiff Bowden, stated that Officer Canzanese told him that "[i]n order to make this a legitimate stop, I'm going to give you

a warning for obstruction of your car's rear-view mirror." Plaintiffs' Memo., Bowden Verification, at Exhibit 1, p.2. Because the only object hanging from the rear view mirror of the car was a thin piece of string on which an air freshener had previously been attached, and because Plaintiff Bowden believed, that due to the lateness of the hour, it was not possible for anyone to have seen the string hanging from the mirror, he asked the officers why he had been stopped. *Id.* at p.2, 3. Plaintiff Bowden stated that in response to this question, an officer replied "because you are young, black and in a high drug-trafficking area, driving a nice car." *Id.,* at p.3.

The named plaintiffs contend that the actions and words of the police officers who stopped, detained, and searched them, reflect the practices and policies of Tinicum Township. Plaintiffs' Memo., at 3. To support this contention, the named plaintiffs have attached to their memorandum of law the verifications or affidavits of ten other individuals who attest that they have experienced similar treatment by the Tinicum Township Police, namely, being subjected to a search after being stopped along I–95 by the Tinicum Township Police for a minor traffic violation. *See* Plaintiffs' Memo., Exhibits 2, 4–9, 11–13. Seven of the ten individuals who stated that they were subjected to similar treatment by the Tinicum Township Police were African–American citizens of the United States.

The named plaintiffs further support their contention by attaching to their memorandum of law a verification of Miranda Jones ("Ms. Jones"), an employee of the American Civil Liberties Union of Pennsylvania. Ms. Jones helped summarized Tinicum Township police records that were produced in response to plaintiffs' first document production request concerning the number of stops on I–95 by the Tinicum Township police department from November 17, 1990 to December 17, 1992. Ms. Jones states in her verification that of the 725 legible records[1] produced by the defendants, 114 revealed that searches were conducted.[2] Plaintiffs' Memo., at Exhibit 10, p.2. In addition, the vehicle driver's race was noted on 178 of the 725 legible records. *Id.* Of the 178 records which indicate the driver's race, 89 stops were of African–Americans, 77 were of Caucasians, and 12 were of Latin–Americans. *Id.*

***3** In support of plaintiffs' motion for class certification, they have submitted a very thorough Memorandum of Law in an attempt to establish that all the required elements of Fed.R.Civ.P. 23 have been met. In opposition to plaintiffs' motion, the defendants assert that class certification should be denied on two grounds. First, defendants allege that a single test case is the superior method by which this issue can be resolved. Defendant's Memorandum of Law in Response to Plaintiffs' Motion for Class Certification Under Federal Rule of Civil Procedure 23 ("Defendants' Memo."), at 4, 5. Second, the defendants also allege that commonality does not exist among the claims of the plaintiffs because even if the plaintiffs prevail on the substantive aspects of their claims, the court would have to determine damages unique to each plaintiff. *Id.* at 5.

III. DISCUSSION

A. Rule 23(a): Prerequisites to a Class Action

A class action may only be certified if the prerequisites of Fed.R.Civ.P. 23(a) have been satisfied. *General Tel. Co. of Southwest v. Falcon,* 457 U.S. 147, 161 (1982). When a class is divided into subclasses, a court must treat each subclass as a separate class, applying the provisions of Rule 23 accordingly. Fed.R.Civ.P. 23(c)(4)(B). The preconditions of Rule 23(a) are as follows:

> (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

Fed.R.Civ.P. 23(a). In determining whether class certification pursuant to Rule 23 is warranted, a court is bound to take the substantive allegations of the pleadings and any affidavits as true. *Fishbein v. Druz,* No. 89–5987, 1989 U.S. Dist. LEXIS 11282, at *4 (E.D. Pa. Sept. 21, 1989) (citing *Blackie v. Barrack,* 524 F.2d 891, 901 n.17 (9th Cir.1975), *cert. denied,* 429 U.S. 816 (1976)); *Roe v. Operation Rescue, Inc.,* 123 F.R.D. 500, 502 (E.D.Pa.1988). Further, my task under Rule 23 does not entail a consideration of the merits of the case; rather, it simply requires a determination as to whether the requirements of the rule have been met. *Eisen v. Carlisle & Jacquelin,* 417 U.S. 156, 177–78 (1974). A district court has wide discretion in deciding whether or not to certify a proposed class, and its decision will be reversed only for abuse of discretion. *In Re A.H. Robins Co.,* 880 F.2d 709, 728–29 (4th Cir.) (citing *Jenkins v. Raymark Indus. Inc.,* 782 F.2d 468, 471–72 (5th Cir.1986)), *cert. denied, Anderson v. Aetna Casualty & Surety Co.,* 493 U.S. 959 (1989).

1) The Classes Plaintiffs Propose are so Numerous that Joinder is Impracticable

The first requirement for the maintenance of a class action under Rule 23(a) is that the proposed class is so large that joinder of its members would be impracticable. "Joinder

need not be impossible, only impracticable." *Ardrey v. Federal Kemper Ins. Co.,* 142 F.R.D. 105, 110–11 (E.D.Pa.1992). "[N]o hard and fast number rule can or should be stated since 'numerosity is tied to 'impracticability' of joinder under specific circumstances. Nevertheless, ... numbers in excess of forty, particularly those exceeding one hundred or one thousand have sustained the requirement." 3B *Moore's Federal Practice* ¶ 23.05 (2nd Ed.1987) (citations omitted). *See, e.g., Weiss v. York Hosp.,* 745 F.2d 786, 808 n.35 (3d Cir.1984), *cert. denied,* 470 U.S. 1060 (1985).

***4** Plaintiffs' proposed injunctive classes, Class I(a) and Class I(b), encompass the travelers, both white and minority, who may be subject to the Tinicum Township Police Department's alleged unconstitutional policies and customs with respect to stops and searches on I–95. The defendants do not challenge the injunctive classes nor the damage classes on the basis of numerosity. This Court may "accept common sense assumptions in order to support a finding of numerosity" under Rule 23(a). *Ardrey,* 142 F.R.D. at 109 (quoting *Wolgin v. Magic Marker Corp.,* 82 F.R.D. 168, 171 (E.D.Pa.1979)). *See also In re Sugar Industry Antitrust Litigation,* 73 F.R.D. 322, 335 (E.D.Pa.1976) (estimates of the size of a proposed class are sufficient for the analysis under Rule 23(a)(1)). Plaintiffs' allege that on a daily basis thousands of individuals travel I–95 through Tinicum Township. Plaintiffs' Memo., at 13. Due to the fact that the injunctive classes number in the thousands, a number that far exceeds the minimum requirements to satisfy Rule 23(a)(1), I find that joinder of both of the classes would be impracticable. The plaintiffs, therefore, have satisfied the numerosity requirement in regard to the injunctive classes.

Similarly, I find that the plaintiffs proposed damage classes, Class II(a) and Class II(b), also satisfy the numerosity requirement. Class II(a) consists of all individuals travelling on I–95 who have been stopped or subjected to searches and seizures by the defendants since November 18, 1990 as a result of defendants alleged unconstitutional customs and policies. Plaintiffs' claim that Class II(a) exceeds 114 members. Plaintiffs' Memo., at 14. Class II(b) consists of all African–American and Hispanic individuals who have been stopped or subjected to searches and seizures as a result of defendants' alleged unconstitutional policy or custom. Although only 178 of the 725 legible records plaintiffs obtained from the defendants indicated the race of the individuals stopped, plaintiffs' allege that 101 of the 178 records reveal that the race of the individuals was either African–American or Hispanic. *Id.* As stated above, classes numbering in excess of forty, particularly those exceeding one hundred or one thousand have sustained the numerosity requirement of Rule 23(a). I find, therefore, that the plaintiffs have also satisfied the numerosity requirement in regard to both of the proposed damage classes because they are so numerous that joinder is impracticable.

2) There are Questions of Law or Fact Common to the Classes

The second requirement of Rule 23(a) is that there exist questions of law or fact common to the members of the proposed class. "[A] single common question is sufficient to satisfy Rule 23(a)(2)." *Simon v. Westinghouse Elec. Corp.,* 73 F.R.D. 480, 484 (E.D.Pa.1977).[3] Common questions are those which arise from a " 'common nucleus of operative facts.' " *In Re Asbestos School Litigation,* 104 F.R.D. 422, 429 (E.D.Pa.1984) (citations omitted), *vacated on other grounds,* 789 F.2d 996 (3d Cir.), *cert. denied,* 479 U.S. 852 (1986). An example of the existence of a common question is when proposed class members challenge the same conduct of the defendants. *Kromnick v. State Farm Ins. Co.,* 112 F.R.D. 124, 127 (E.D.Pa.1986) (citing *Muth v. Dechert, Price & Rhoads,* 70 F.R.D. 602, 607 (E.D.Pa.1976)).

***5** The classes of persons which plaintiffs here propose are challenging the same alleged illegal conduct of the defendants, namely, the unconstitutional policy of stopping, detaining, and searching cars and their occupants without cause or proper consent. Plaintiffs' Memo., at 4. In addition, the minority classes which plaintiffs propose allege that they have been targeted for special attention in implementing the alleged unconstitutional policy. *Id.* The claims plaintiffs assert, therefore, involve a common central issue: whether the defendants engaged in violations of the proposed class members rights under the Fourth and Fourteenth Amendments of the United States Constitution and the laws of the Commonwealth of Pennsylvania.

Defendants contend that the issue of damages undermines plaintiffs' claim of commonality because if the plaintiffs prevail on the substantive aspects of their claims, the court would have to determine damages unique to each plaintiff. Defendants' Memo., at 5. Presumably, defendants contention is directed only towards the proposed damage classes, because the issue of damages would not arise if relief is granted to the proposed injunctive classes. In regard to the proposed damage classes, even if dollar damages to which each class member will be entitled may vary, the need for individual damage calculations does not detract from the appropriateness of class certification where common questions as to liability predominate. *In re Asbestos School Litigation,* 104 F.R.D. at 432. I find that the plaintiffs, therefore, have demonstrated that the claims of the proposed classes stem from the same alleged unconstitutional conduct of the defendants and that there exist common questions of law or fact which will have to be answered in resolving this case. Consequently, I find that plaintiffs have met the commonality requirement of

Rule 23(a)(2).

3) The Claims of Plaintiffs are Typical of the Claims of the Classes

The third element of Rule 23(a) is that "the claims ... of the representative parties are typical of the claims ... of the class." Fed.R.Civ.P. 23(a)(3). This so-called typicality requirement tends to overlap other elements of Rule 23, such as the requirement that the named representatives adequately represent the class, and that there exist common questions of law and fact. *Eisenberg v. Gagnon,* 766 F.2d 770, 786 (3d Cir.), *cert. denied,* 474 U.S. 946 (1985). Rule 23(a)(3) requires that the claims of the "class representatives present sufficiently common issues of law and fact upon which the class action is based, to assure that the interests of the absent class members will be adequately represented." *Green v. USX Corp.,* 843 F.2d 1511, 1533 (3rd. Cir.1988).

The typicality requirement may be met despite the existence of factual distinctions between the claims of the named plaintiffs and the claims of the proposed class. *Eisenberg,* 766 F.2d at 786; *Appleyard v. Wallace,* 754 F.2d 955, 958 (11th Cir.1985). Courts have, for example, found that a strong similarity of legal theories will fulfill the typicality element, notwithstanding the presence of substantial factual differences. *Appleyard,* 754 F.2d at 958 (citations omitted). The Court of Appeals for the Third Circuit has suggested that the typicality element essentially entails an examination of whether

> ***6** the named plaintiff's individual circumstances are markedly different or ... the legal theory upon which the claims are based differs from that upon which the claims of other class members will perforce be based.

Weiss v. York Hosp., 745 F.2d 786, 809 n.36 (3d Cir.1984), *cert. denied,* 470 U.S. 1060 (1985).

In support of their contention that their claims are typical of the proposed classes, plaintiffs assert that the legal theories they invoked regarding equal protection or illegal searches and seizures are identical to the legal theories invoked on behalf of the classes they seek to represent. Plaintiffs' Memo., at 16. Furthermore, the named plaintiffs assert that their circumstances as African–Americans who travel on I–95 and risk being subjected to alleged customs and policies of the defendants in the future are typical of the many others who travel on I–95 everyday. *Id.* Similarly, the named plaintiffs allege that they were subjected to the same customs and policies of the defendants as other members of the damage classes were subjected to in the past. *Id.* Defendants do not contend that the named plaintiffs' claims are atypical of the claims of the classes they seek to represent. I find, therefore, that the plaintiffs have satisfied the typicality requirement of Rule 23(a)(3), because their claims against the defendants possess the same essential characteristics as the claims of the proposed classes. Plaintiffs' individual circumstances are not markedly different from those of the proposed classes, and the legal theories upon which plaintiffs' claims are based do not differ from the theories upon which the claims of the proposed classes are founded.

4) The Representative Parties will Fairly and Adequately Protect the Interests of the Classes

The fourth and final requirement of Rule 23(a) is that the named plaintiffs will fairly and adequately protect the interests of the proposed classes. This requirement, codified in Rule 23(a)(4), is met if (1) plaintiffs' interests are not antagonistic to the interests of the members of the proposed classes, and (2) plaintiffs' attorneys are qualified, experienced, and generally able to conduct the litigation. *See Sosna v. Iowa,* 419 U.S. 393, 403 (1975); *Hoxworth v. Blinder Robinson & Co.,* 980 F.2d 912, 923 (3d Cir.1992); *Bogosian v. Gulf Oil Corp.,* 561 F.2d 434, 449 (3d Cir.1977), *cert. denied,* 434 U.S. 1086 (1978). The burden is on the defendants to show inadequacy of representation. *Lewis v. Curtis,* 671 F.2d 779, 788 (3d Cir.), *cert. denied,* 459 U.S. 880 (1982).

The interests of the named plaintiffs' are not antagonistic to the interests of any member of the proposed classes, and they are represented by experienced and able counsel who are thoroughly familiar with both civil rights litigation and class action litigation. Plaintiffs have expressed that they have brought this suit not only to secure their rights, but also the rights of all who were subjected to the alleged unconstitutional policies and customs of the Tinicum Township Police Department. Plaintiffs' Memo, at 18. The careers of the three attorneys representing the plaintiffs have all centered around civil rights litigation. *Id.* at 17. Two of the plaintiffs attorneys have considerable experience litigating successful class actions which have been based upon civil rights violations. Plaintiffs assert that maintaining this action as a class action will pose minimal management problems due to the expertise of their counsel in litigating such matters. *Id.* at 27. Moreover, defendants have not argued that plaintiffs have any interests that are antagonistic to any member of the proposed classes nor have they argued that plaintiffs' attorneys are not qualified to conduct the proposed litigation. I find, therefore, that the plaintiffs have met the adequacy requirement of Rule 23(a)(4).

***7** Based on the foregoing discussion, I find that plaintiffs have satisfied the four (4) preconditions of Rule 23(a). I will now proceed to determine whether plaintiffs have

also fulfilled the requirements of Rule 23(b)(2) with respect to the injunctive classes and Rule 23(b)(3) with respect to the damage classes.

B. Certification of the Injunctive Classes

In addition to satisfying the four preconditions of Rule 23(a), the plaintiffs must show pursuant to Rule 23(b)(2) for each proposed injunctive class, that the defendants have acted in a manner that is generally applicable to the class, thereby making injunctive or other relief appropriate to the class as a whole.[4] *Hassine v. Jeffes,* 846 F.2d 169, 179 (3d Cir.1988). The first injunctive class plaintiffs propose, Class I(a), consists of all individuals who travel or will travel I–95 through Tinicum Township. "When a suit seeks to define the relationship between the defendant(s) and the world at large, ... [Rule 23](b)(2) certification is appropriate." *Weiss v. York Hosp.,* 745 F.2d 786, 811 (3d Cir.1984), *cert. denied,* 470 U.S. 1060 (1985). *See Roe v. Operation Rescue, Inc.,* 123 F.R.D. 500, 506 (E.D.Pa.1988) (certifying a 23(b)(2) class attempting to "define the relationship between anti-abortion groups and individuals and the 'world' consisting of those receiving and offering abortions and reproductive health services"). Moreover, "[r]ule 23(b)(2) is especially designed for civil rights cases." *Wilson v. County Commissioners,* No. 86–4322, 1987 U.S. Dist. LEXIS 3022, at *5 (E.D. Pa 1987), (quoting *Inmates of Lycoming County Prison v. Strode,* 79 F.R.D. 228, 234 (M.D. Pa.1978)). *See also Anderson v. Rizzo,* 80 F.R.D. 72 (E.D.Pa.1978) (23)(b)(2) class certification granted for civil rights action seeking declaratory and injunctive relief as to city procedures for dealing with seizure and disposition of allegedly abandoned motor vehicles); *Santiago v. City of Philadelphia,* 72 F.R.D. 619 (E.D.Pa.1976) (certifying 23(b)(2) class in a civil rights action challenging the conditions of confinement, and the treatment of incarcerated juveniles, at a youth study center).

The plaintiffs' proposed Class I(a) seeks to enjoin Tinicum Township from continuing to practice its alleged policy of violating the civil rights of individuals by stopping travelers on I–95 without reasonable suspicion or probable cause on pretextual traffic violations with the intent of searching their vehicles for drugs. I find, therefore, since plaintiffs proposed Class I(a) seek to define the relationship between the defendants and the world at large, i.e., individuals traveling on I–95, that Class I(a) falls within the ambit of Rule 23(b)(2). Thus, class certification for plaintiffs' proposed Class I(a) pursuant to Rule 23(b)(2) is appropriate.

Plaintiffs second proposed injunctive class, Class I(b), consists of all African–American and Hispanic individuals who travel or will travel I–95 through Tinicum Township. Plaintiff's Memo., at 10. Class I(b) seeks an injunction preventing defendants from continuing its alleged discriminatory practice of stopping minorities traveling on I–95 in the future on the basis of race. *Id.* at 19. Class certification under 23(b)(2) is appropriate where a plaintiff seeks injunctive relief against discriminatory practices by a defendant. *Weiss v. York Hospital,* 745 F.2d 786, 791, 811 (3d Cir.1984), *cert. denied,* 470 U.S. 1060 (1985). *See, e.g., Nicacio v. United States Immigration & Naturalization Service,* 797 F.2d 700 (9th Cir.1985) (class certified on behalf of persons of Hispanic appearance who traveled or would travel highways of state of Washington to enjoin policy of stopping and interrogating persons of Hispanic appearance); *Spring Garden United Neighbors Inc. v. City of Philadelphia,* No. 85–3209 (E.D.Pa.1986) (certifying (b)(2) class consisting of all persons of Hispanic ancestry or appearance seeking redress from alleged unlawful stops, detentions, arrests, and assaults of persons in the Spring Garden Community of Philadelphia following the killing of a police officer). I find that because plaintiffs' proposed Class I(b) seeks injunctive relief against the defendants' alleged discriminatory practices that class certification for Class I(b) under 23(b)(2) is appropriate as well.

C. Certification of the Damage Classes

***8** Plaintiffs also seek certification of two damage classes pursuant to Rule 23(b)(3). There is a significant distinction between certification of an injunctive class pursuant to Rules 23(b)(2), and certification of a damage class pursuant to Rule 23(b)(3). When an action is certified under Rule 23(b)(3), class members are entitled to notice of the pendency of the action and may elect to "opt out" of the class and thereby not be bound by the judgment rendered in the class action. *See* Fed.R.Civ.P. 23(c)(2); *In Re A.H. Robins Co., Inc.,* 880 F.2d 709, 728 (4th Cir.), *cert. denied,* 493 U.S. 959 (1989); *In Re School Asbestos Litigation,* 789 F.2d 996, 1002 (3d Cir.), *cert. denied,* 479 U.S. 852 (1986); *Kyriazi v. Western Electric Co.,* 647 F.2d 388, 392–93 (3d Cir.1981). When a class action is certified under Rule 23(b)(2), however, all persons comprising the class become mandatory members. In other words, "all those who come within the description in the certification become, and must remain, members of the class because no opt-out provision exists." *In Re School Asbestos Litigation,* 789 F.2d at 1002. Nor is any notice to members of the class of the pendency of a class action required under Rule 23(b)(2). *See Kyriazi,* 647 F.2d at 393.

Rule 23(b)(3), requires on the other hand, that "questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy." Fed.R.Civ.P. 23(b)(3). Defendants

contend that the issue of damages undermines plaintiffs' claim of commonality because if the plaintiffs prevail on their substantive claims, each of the damage claims will be the "epitome of the atypical." Defendants' Memo., at 5 (quoting *Smith v. Lower Merion Township,* No. 90–7501, 1991 WL 205023, at *1 (E.D. Pa. Oct. 7, 1991) (declining to certify a proposed class consisting of student-tenants and landlords seeking to challenge the legality and constitutionality of a zoning ordinance). However, [i]t is settled law that individual proof of damages does not preclude certification of a class under Rule 23(b)(3) where common issues of liability predominate." *Kromnick v. State Farm Ins. Co.,* 112 F.R.D. 124, 127 (E.D.Pa.1986). Furthermore, "where plaintiffs have alleged that the police have engaged in a presumptively invalid procedure ... a 23(b)(3) class is appropriate since the liability which the plaintiffs seek to establish is based on the operation itself rather than on the circumstances surrounding each individual stop or arrest." *Cliett v. Philadelphia,* No. 85–1846, slip op. at 4 (E.D. Pa. Oct. 16, 1985) (certifying a class under 23(b)(3) consisting of individuals seeking damages for alleged violations of their constitutional rights arising from a police operation that allegedly involved the stopping, frisking and/or questioning of individuals solely on their presence in certain targeted high-crime areas) (citing *Abramovitz v. Ahern,* 96 F.R.D. 208, 217 (D.Conn.1982)). *See also Arrington v. Philadelphia,* No. 88–2264, slip op. at 10 (E.D. Pa. Feb. 13, 1989) (certifying a class under 23(b)(3) consisting of individuals seeking damages for being stopped, questioned, searched and/or detained by police during a police investigation based solely on the fact that the individual's race, sex and/or age resembled a high-profile crime suspect).

***9** Plaintiffs' first proposed damage class, Class II(a), consists of all individuals travelling on I–95 who have been stopped or subjected to searches and seizures by the defendants since November 18, 1990 as a result of defendants alleged customs and policies of stopping travelers on I–95 for pretextual traffic violations with the intent of searching vehicles thus stopped for drugs. Plaintiffs' Memo., at 10. The liability which the members of this class seek is based on the same alleged conduct of the defendants, namely, the unconstitutional policy of stopping, detaining, and searching cars and their occupants without cause or proper consent, rather than on the circumstances surrounding each individual stop. Thus, I find that the question of the validity of the police operation predominates over the individual circumstances surrounding each stop, detention, and/or search of the members of Class II(a).

Similarly, the liability sought by the second damage class proposed by the plaintiffs, Class II(b), which consists of all Hispanic and African–American individuals travelling I–95 since November 18, 1990 who have been stopped or subjected to searches and seizures as a result of defendants' alleged policy or custom of stopping and searching minority individuals on I–95 because of their minority status, is also based on an alleged constitutional violation that is common to all of the members of the class. Thus, I also find with respect to Class II(a), that the question of the validity of the police operation predominates over the individual circumstances surrounding each stop, detention, and search.

Certification under Rule 23(b)(3) also requires a determination of whether "a class action is superior to other available methods for the fair adjudication of the controversy." Fed.R.Civ.P. 23(b)(3). Defendants contend that the litigation of a single test case to resolve the legitimacy of Tinicum Township's alleged policy would be more efficient than a class action. Defendants' Memo., at 2. In support of this contention, defendants assert that if the township's actions are found to be invalid, the township as a losing defendant will be collaterally estopped from continuing the alleged practices. *Id.* at 3. Conversely, defendants assert that if the township's actions are validated by this Court, the doctrine of stare decisis will discourage any other challenges based upon the question of whether the township's actions are legitimate. *Id.*

Defendants' assertion that the collateral estoppel effect of a single test case will preclude the township from continuing its alleged practices seems to be directed towards the relief sought by plaintiffs' proposed injunctive classes. However, the plaintiffs' seek certification of the injunctive classes under Rule 23(b)(2), which, unlike Rule 23(b)(3), does not require a superiority determination. In fact, as stated above, certification under Rule 23(b)(2) is particularly appropriate in cases such as the instant action where the injunctive relief sought is against discriminatory practices or when a plaintiff seeks to define a relationship between the defendants and the world at large. *Weiss,* 745 F.2d at 808. Furthermore, in regard to the damage classes, reliance upon the collateral estoppel effect of a decision in a single test case would not be more efficient than a class action for several reasons. First, as defendants point out, if the township's actions are found to be illegal, the individual damages of the members of the damage classes will still need to be determined. Thus, a multiplicity of suits will arise if the case proceeds as a single test case and the defendants actions are found to be illegal. Second, the threshold issue involved in litigating the injunctive actions will be essentially the same as the damage actions. Thus, since as stated above, certification of the injunctive classes is appropriate under Rule 23(b)(2), if the actions of the damage classes proceed as a test case rather than as part of the injunctive class action, a multiplicity of suits would also arise because the same issues will have to be litigated in two separate cases. I find, therefore, that proceeding with this case as a class action is more efficient than as a single test case.

***10** In addition to efficiency, several other factors also weigh in favor of proceeding with this case as a class action rather than as a single test case. First, plaintiffs' counsel allege that they know of no other civil action arising out of the defendants' actions. When this fact is combined with the experience of the named plaintiffs' counsel and the cost efficiency of proceeding as a member of the class, it does not seem likely that a multiplicity of suits will arise from members of the damage classes "opting out" upon notification of the action. Moreover, the absence of additional actions suggests that other individuals who have been subjected to the defendants' alleged illegal practices have not brought suits because they may not be able to afford to proceed with an individual action. This same factor has led other judges in this district to conclude that a class action is superior to other methods in adjudicating a case involving alleged unconstitutional stops, detentions, and searches in conjunction with a police operation. *See Arrington,* No. 88–2264, slip op. at 11–12 ("[a] class action is especially appropriate where ... a large number of citizens might not otherwise bring suit to protect their constitutional liberties); *Cliett,* No. 85–1846, slip op. at 5 ("the fact that the plaintiffs may be unwilling or unable individually to pursue the possibly small amount of damages to which they may be entitled, weighs in favor of a class action to vindicate their rights").

For the reasons stated above, I find that a class action is the superior method for the fair and efficient adjudication of this case and that questions of law or fact common to the members of the class predominate over any questions affecting only individual members. Certification of proposed Class II(a) and Class II(b) under Rule 23(b)(3), therefore, is appropriate.

IV. CONCLUSION

For the foregoing reasons, the motion of the plaintiffs for class certification shall be granted. I will certify the classes of persons described in the accompanying order. However, if at a later stage of the proceedings I find that certification of any of the classes is no longer warranted, the appropriate class or classes will be decertified. *See* Fed.R.Civ.P. 23(c)(1).

An appropriate order follows.

ORDER

AND NOW, this 20th day of July 1993, upon consideration of the motion of plaintiffs for class certification pursuant to Fed.R.Civ.P. 23 (Document No. 12), the response of defendants thereto, and the reply of plaintiffs, and for the reasons stated in the attached memorandum, it is hereby ORDERED that the motion is GRANTED.

Accordingly, it is FURTHER ORDERED that this lawsuit shall be maintained and shall proceed as a class action pursuant to Fed.R.Civ.P. 23(a) and Fed R. Civ. P. 23(b)(2) for an injunctive class consisting of the following subclasses:

(a) all individuals who travel or will travel I–95 through Tinicum Township; and

***11** (b) all African–American and Hispanic individuals who travel or will travel I–95 through Tinicum Township.

It is FURTHER ORDERED that this lawsuit shall also be maintained and shall proceed as a class action pursuant to Fed.R.Civ.P. 23(a) and Fed.R.Civ.P. 23(b)(3) for a damage class consisting of the following subclasses:

(a) all individuals travelling on I–95 who have been stopped or subjected to searches and seizures by the defendants since November 18, 1990 as a result of defendants alleged customs and policies of stopping travellers on I–95 for pretextual traffic violations with the intent of coercing consent or improperly searching vehicles thus stopped for drugs; and

(b) all African American and Hispanic individuals travelling I–95 since November 18, 1990 who have been stopped or subjected to searches or seizures as a result of defendants' alleged policy or custom of stopping and searching minority individuals on I–95 because of their minority status.

It is FURTHER ORDERED that the parties shall submit a proposed form of notice to members of the damage subclasses as specified in Fed.R.Civ.P. 23(c)(2) no later than September 20, 1993. In the event that the parties are unable to reach such an agreement, each side shall submit its own proposed form of notice no later than October 4, 1993.

Footnotes

1 Ms. Jones stated that several hundred of the records produced by the defendants were of such poor copy quality that they were illegible. Plaintiffs' Memo., Jones Verification, at Exhibit 10, p.2.

2 Plaintiffs contend that the actual number of searches conducted by Tinicum Township police exceeds the 114 searches recorded on the documents produced by the defendants. To support this contention, plaintiffs point to the fact that the police record of the stop involving the named plaintiffs did not indicate that a search was conducted. Plaintiffs' Memo of Law, Bowden Verification, at Exhibit A, attached Police Warning Notice. Plaintiffs also point out that the police records of the stops of seven of the individuals who supplied verifications or affidavits attesting to the fact that they were subjected to searches by Tinicum Township police officers also do not indicate that a search was conducted. Plaintiffs' Memo., at 14 n.17.

3 The commonality requirement of Rule 23(a) is not as demanding as that of Rule 23(b)(3), which requires that questions common to the proposed class "predominate over any questions affecting only individual members." Fed.R.Civ.P. 23(b)(3); *Kromnick v. State Farm Ins. Co.,* 112 F.R.D. 124, 126 (E.D.Pa.1986).

4 Fed.R.Civ.P. 23(b)(2) provides:

> (b) Class Actions Maintainable. An action may be maintained as a class action if the prerequisites of subdivision (a) are satisfied, and in addition:
>
> ...
>
> (2) the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole:
>
> ....