

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

ROBERT SHREVE, individually and on)
behalf of all others similarly situated;)

Case No. 2:10-cv-644

MICHAEL WORLEY, individually and)
on behalf of all others similarly situated;)

Judge: Sargus

MICHAEL REED, individually;)

Magistrate Judge: Abel

DAWN FIORE-BRUNO, individually;)

Plaintiffs,)

UNITED STATES'
COMPLAINT IN INTERVENTION
PURSUANT TO 42 U.S.C. § 14141

UNITED STATES OF AMERICA,)

Applicant for Intervention,)

v.)

FRANKLIN COUNTY, OHIO;)

JIM KARNES, SHERIFF FRANKLIN)
COUNTY OHIO, in his official capacity;)

MARK BARRETT, FRANKLIN)
COUNTY SHERIFF'S OFFICE CHIEF)
DEPUTY, CORRECTIONS, in his official)
capacity;)

STEPHAN L. MARTIN, FRANKLIN)
COUNTY SHERIFF'S OFFICE CHIEF)
DEPUTY, INVESTIGATIONS, in his)
official capacity;)

JOHN / JANE DOES, FRANKLIN)
COUNTY DEPUTIES OF THE)
INTERNAL AFFAIRS BUREAU, in their)
official capacities;)

JOHN / JANE ROES, FACILITY)
COMMANDER(S) FRANKLIN)
COUNTY CORRECTIONS CENTER I)
(FCCCI) FROM JULY 16, 2008 TO)

PRESENT, in their official capacities;)
)
MAJOR MICHAEL HERRELL,)
FORMER FACILITY COMMANDER,)
FRANKLIN COUNTY CORRECTIONS)
CENTER II (FCCC II), in his official)
capacity;)
)
MAJOR DOUG EDGINGTON,)
PRESENT FACILITY COMMANDER,)
FRANKLIN COUNTY CORRECTIONS)
CENTER II, in his official capacity;)
)
Defendants.)
_____)

INTRODUCTION

1. This case challenges a pervasive pattern or practice of subjecting arrestees and inmates at the Franklin County Sheriff’s Office to the excessive and disproportionate use of force by corrections deputies of the Franklin County Sheriff’s Office. In essence, Plaintiffs contend that Defendants engage in a pattern or practice of unlawfully using tasers against inmates and detainees, often against individuals who pose no threat of violence or harm to themselves or others. See Complaint, Shreve, et al. v. Franklin County, et al., No. 2:10-cv-644 (S.D. Ohio, filed July 16, 2010) (Doc. 1).

2. The challenged pattern or practice is carried out through the frequent and gratuitous use of tasers to inflict pain, fear, corporal punishment and humiliation. Tasers operate in two different modes. One mode is designed to subdue a person at a distance by firing two darts or probes that strike and attach to the person. The second is “drive stun” mode, or the “pain compliance option.” Drive stun mode produces a continuous extremely painful electrical shock useful for an officer engaged in close hand contact with a resisting subject.

3. Franklin County Sheriff’s Officials have created and engage in a policy or practice of deploying tasers in a manner that violates the Fourth, Eighth, and Fourteenth

Amendments to the United States Constitution. In case after case, deputies tase people, often in the drive stun mode to cause pain, when the person was greatly outnumbered by a team of deputies who were easily able to physically overpower and control the individual, or accomplish the task at hand, thereby eliminating any objective threat to the person's own safety or that of the deputies. In a number of instances, corrections deputies have tased arrestees or inmates while they were in mechanical restraints. In one case, an inmate was even tased while fully immobilized in a four point restraint chair. The use of force in this instance was found "justified."

4. In another case, deputies came to a cell ostensibly to assist a mentally ill inmate who was banging his head against his bed. Instead of entering the cell to remove the inmate, a team of deputies stood around outside the cell while a sergeant repeatedly tased this inmate a total of fourteen times because he would not slide out of the cell by himself. This use of force was found to be "justified."

5. Often, when an arrestee voices a verbal objection to having to remove his or her clothes, or otherwise shows any lack of cooperation during the booking process, such as failing to answer routine medical questions from a nurse, a team of deputies takes the person into a side tank, forcibly strips the individual without telling the person why they are being "dressed out," and tases the person if there is any degree of resistance, including passive or verbal resistance, to being stripped.

6. Plaintiffs, on behalf of themselves and a proposed class of inmates and detainees of the Franklin County Sheriff's Office, have asserted claims under 42 U.S.C. § 1983 on the basis of the same constitutional violations for which the United States can initiate an action under 42 U.S.C. § 14141. On July 23, 2010, Plaintiffs filed a motion for a preliminary injunction, seeking an Order directing Defendants to comply with their taser policy, cease using

tasers in drive stun mode absent an immediate need to prevent loss of life or serious bodily harm, and submit to monitoring by Plaintiffs' counsel through the issuance of biweekly reports of taser use. (Doc. 6). The hearing on Plaintiffs' Motion for a Preliminary Injunction is currently set for November 8, 2010. On August 27, 2010, Plaintiffs amended their complaint to add an additional plaintiff individually and as a proposed class representative. (Doc. 15).

7. Pursuant to 42 U.S.C. § 14141, and for the reasons articulated in the accompanying Memorandum of Law, the United States of America, through its undersigned attorneys, hereby submits this Complaint in Intervention to eliminate the pervasive pattern or practice by Defendants of using tasers in a cruel and abusive manner in violation of the Fourth, Eighth, and Fourteenth Amendments to the United States Constitution. Accordingly, the United States seeks a judgment granting declaratory and injunctive relief to eliminate Defendants' unconstitutional pattern or practice.

JURISDICTION AND VENUE

8. This Court has jurisdiction of this action under 28 U.S.C. §§ 1331 and 1345.

9. The United States is authorized to initiate this action pursuant to 42 U.S.C. § 14141.

10. Venue is proper in the Southern District of Ohio pursuant to 28 U.S.C. § 1391, as the events giving rise to the claims occurred in this district.

DEFENDANTS

11. Defendant Franklin County is a unit of local government organized under the laws of the State of Ohio.

12. Defendant Jim Karnes was at all times relevant to this action the Sheriff of Franklin County, Ohio. He is sued in his official capacity.

13. Defendant Mark Barrett was at all times relevant to this action the Chief Deputy,

Corrections for the Franklin County Sheriff's Office.

14. Defendant Barrett is the deputy in charge of the operations of Franklin County's two correctional facilities, Franklin County Corrections Center I at 370 S. Front Street in Columbus, Ohio and Franklin County Corrections Center II at 2460 Jackson Pike in Columbus, Ohio (FCCC I and FCCC II respectively, or FCCC collectively).

15. Defendant Barrett reviews and approves all use of force reports from all Franklin County corrections deputies, including use of force reports involving deployment of tasers. He is sued in his official capacity.

16. Defendant Stephan L. Martin was at all times relevant to this action the Chief Deputy, Investigations for the Franklin County Sheriff's Office.

17. As Chief of Investigations, Defendant Martin is the head of the Internal Affairs Bureau of the Franklin County Sheriff's Office. The Internal Affairs Bureau is responsible for the investigation of alleged misconduct by members of the Franklin County Sheriff's Office.

18. Defendant Martin's Bureau reviews all use of force reports from Franklin County corrections deputies, including use of force reports involving deployment of tasers. Defendant Martin is sued in his official capacity.

19. Defendants John / Jane Does were the members of the Franklin County Sheriff's Office Internal Affairs Bureau at all times relevant to this action.

20. As members of the Internal Affairs Bureau, Defendants John/ Jane Doe reviewed all use of force reports from Franklin County corrections deputies who worked at FCCC I and FCCC II, including use of force reports involving deployment of tasers. Defendants John / Jane Doe are sued in their official capacities.

21. The names of these John / Jane Doe Defendants can be readily ascertained in discovery and Plaintiff can file an amended complaint immediately upon identification of these

Defendants.

22. Defendants John / Jane Roes were the facility commanders for FCCC I at all times relevant to this action.

23. As FCCC I facility commanders, Defendants John/ Jane Roe reviewed all use of force reports from Franklin County corrections deputies who worked at FCCC I, including use of force reports involving deployment of tasers. Defendants John / Jane Roe are sued in their official capacities.

24. The names of these John / Jane Roe Defendants can be readily ascertained in discovery and Plaintiff can file an amended complaint immediately upon identification of these Defendants.

25. Defendants Michael Herrell and Doug Edgington were the facility commanders for FCCC II during times relevant to this action.

26. As FCCC II facility commanders, Defendants Herrell and Edgington reviewed all use of force reports from Franklin County corrections deputies who worked at FCCC II, including use of force reports involving deployment of tasers. Defendants Herrell and Edgington are sued in their official capacities.

FACTUAL ALLEGATIONS

27. The United States incorporates by reference the allegations set forth in Paragraphs 1 through 26 as if fully set forth herein.

28. The Franklin County Sheriff's Office is engaged in a pattern or practice of the unlawful use of tasers against detainees and inmates in their custody. This unlawful use of tasers includes, but is not limited to:

- a. viewing tasers as a tool to “soften up” detainees and regularly applying tasers to individuals who do not pose any threat of violence or harm to themselves or others;
- b. deploying tasers in “drive stun” mode, a “pain compliance option” that produces a continuous and extremely painful electrical shock designed to subdue a violently resisting subject to handcuffing;
- c. using tasers on naked – and often bound – detainees who are subjected to full body cavity strip searches during the booking process;
- d. routinely and deliberately applying tasers to individuals who are particularly vulnerable because of physical or mental disability, pregnancy, or incapacitation by alcohol or drugs;
- e. deploying tasers in retaliation for minor rule violations, such as derogatory remarks made to officers or questions about officers’ authority; and
- f. routinely violating the Sheriff’s Office’s own written policy on the deployment of tasers.

29. The Defendants, through their acts or omissions, have engaged in and continue to engage in a policy or practice of systematic deficiencies that has resulted in an excessive and abusive use of tasers by Franklin County Sheriff’s corrections deputies. These systematic deficiencies include, but are not limited to:

- a. ratifying corrections deputies’ misuse of tasers by reviewing the use of force reports and videotapes and finding the use of tasers to be “justified”;
- b. failing to properly train and supervise corrections deputies to use tasers in accordance with applicable legal standards and/or the Franklin County Sheriff’s Office written policy; and

c. failing to discipline deputies whose use of tasers: (1) violates the Sheriff's Office's own written policies; (2) departs from well-established standards of law enforcement and corrections professionals; (3) results in unnecessary physical harm and mental distress; and (4) violates the federal constitutional rights of persons detained in the custody of the Franklin County Sheriff's Office.

CAUSE OF ACTION

30. 42 U.S.C. § 14141 gives the Department of Justice jurisdiction to initiate a civil action to obtain equitable and declaratory relief to eliminate a pattern or practice of conduct by law enforcement officers that "deprives persons of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States." 42 U.S.C. § 14141(a)-(b).

31. Through their acts or omissions, as described in Paragraphs 27 through 29 above, the Defendants have engaged in and continue to engage in unlawful pattern or practice of conduct against detainees and inmates in their custody, in violation of the Constitution (specifically the Fourth, Eighth, and Fourteenth Amendments) and the laws of the United States, as enforced through 42 U.S.C. § 14141.

PRAYER FOR RELIEF


WHEREFORE, the United States, pursuant to 42 U.S.C. § 14141, prays that the Court:

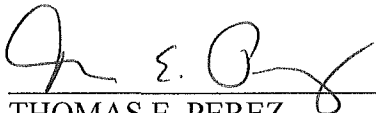
- a. enter a judgment declaring that the Defendants have engaged in a pattern or practice of conduct that violates the rights of Plaintiffs under the Constitution or the laws of the United States, as enforced through 42 U.S.C. § 14141;
- b. enter an order permanently enjoining Defendants from continuing their unlawful policy or practice of using tasers in a cruel and abusive manner in violation of the Fourth, Eighth, and Fourteenth Amendments to the United States Constitution;
- c. appoint an expert—who is not associated with any party to this action and who


has extensive experience in corrections and use of force with taser technology—to monitor, review, and oversee all uses of force involving deployment of tasers by Franklin County Sheriff's corrections deputies and to recommend appropriate discipline and conduct training of deputies where warranted; and

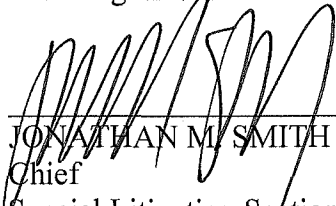
d. grant any such other relief as the Court may deem seem just and proper.


Respectfully submitted,


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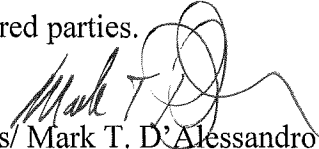
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DATED: November 2, 2010

Attorneys for the United States of America

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Complaint in Intervention was filed electronically on this 3rd day of November, 2010, with the Clerk of Court using the CM/ECF System, which will provide notice of such filing to all registered parties.


s/ Mark T. D'Alessandro
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