

**UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE**

**MICHELE NILSEN, ON BEHALF OF )  
HERSELF AND ON BEHALF OF OTHERS )  
SIMILARLY SITUATED, )**

**PLAINTIFFS )**

**v. )**

**CIVIL No. 02-212-P-H**

**YORK COUNTY, )**

**DEFENDANT )**

**ORDER AFFIRMING RECOMMENDED DECISION  
OF THE MAGISTRATE JUDGE**

The United States Magistrate Judge filed with the court on August 27, 2003, with copies to counsel, his Recommended Decision on Plaintiffs' Motion for Class Certification. Objections to the Recommended Decision were filed the parties on September 26, 2003. I have reviewed and considered the Recommended Decision, together with the entire record, and, after hearing oral argument on December 18, 2003, I have made a *de novo* determination of all matters adjudicated by the Recommended Decision. I concur with the recommendations of the United States Magistrate Judge and **AFFIRM** the certification of a class action under Fed. R. Civ. P. 23(b)(3).

I **DENY** certification under Fed. R. Civ. P. 23(b)(2) at this time, not because I

am deciding that no such class can be certified, but because deciding the merits of that issue adds nothing to the certification under Rule 23(b)(3). I understand that both parties would prefer a ruling on the merits for purposes of appeal, but I am sufficiently confident that certification under Rule 23(b)(3) is appropriate to defer the investment of judicial time in addressing the more difficult issue under Rule 23(b)(2).

I add limiting language at the end of paragraph (2) of the certification to be consistent with the language of paragraph (1). I believe that is what the Magistrate Judge intended. The class as certified matches almost exactly the class Judge Carter has certified in Tardiff v. Knox County, 2003 Dist. LEXIS 19924 (D. Me., Nov. 5, 2003). The only significant difference is that this class is somewhat narrower (as requested by plaintiffs), in being limited to searches before a first court appearance.

If the First Circuit does accept the interlocutory appeal of Judge Carter's class certification in Tardiff, I urge the parties to agree on how this matter should proceed pending resolution of that appeal.

It is therefore **ORDERED** that the Recommended Decision of the Magistrate Judge is hereby **ADOPTED**. The plaintiffs' motion for class certification is **GRANTED**, but only as to a class under Fed. R. Civ. P. 23(b)(3) and only as to a class defined as follows:

All people strip-searched at the York County Jail after October 14, 1996, under a policy or custom of conducting strip-searches without evaluating individualized reasonable suspicion:

(1) while waiting for bail to be set or for a first court appearance after being arrested on charges that did not involve a weapon or drugs or a violent felony; or

(2) while waiting for a first court appearance after being arrested on a default or other warrant that did not involve a weapon or drugs or a violent felony.

**So ORDERED.**

**DATED: DECEMBER 18, 2003**

**/s/D. BROCK HORNBY**

**D. BROCK HORNBY**

**UNITED STATES DISTRICT JUDGE**

**U.S. DISTRICT COURT  
DISTRICT OF MAINE (PORTLAND)  
CIVIL DOCKET FOR CASE #: 02CV212**

Plaintiffs

MICHELE NILSEN, *On Behalf Of  
Herself And On Behalf Of Others  
Similarly Situated*

and

MICHAEL GOODRICH

and

CHARLES NEVILLE

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v.

Defendant

YORK COUNTY

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