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Judge: Forced catheterizations by South Dakota law enforcement violated Constitution

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South Dakota law enforcement's practice of using forced catheterizations to obtain urine samples from suspects violates the U.S. Constitution, a federal judge has ruled.

In a sharp rebuke to the practice, Chief Judge Roberto Lange of the U.S. Federal Court for the District of South Dakota said that the process of involuntary catheterization is a violation of the Constitution's Fourth Amendment, which protects citizens from unreasonable police searches and seizures. Lange declined to dismiss the case brought by six individuals who sued the cities of Pierre, Wagner and Sisseton, as well as various law enforcement officers who oversaw forced catheterizations.

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Police used catheters to obtain urine samples to determine if suspects had ingested drugs – South Dakota has a law that makes ingestion of drugs illegal. But Lange said the practice was overkill for low-level drug crimes: Ingestion of marijuana is a misdemeanor while ingestion of methamphetamine is a class-5 felony.

“Defendants’ need to obtain the plaintiffs’ urine to prove a low-level drug crime did not justify subjecting the plaintiffs to involuntary catheterization, a highly invasive—and in these cases—degrading medical procedure,” Lange wrote. In his 106-page opinion, Lange recounted the particulars of each catheterization, including videos taken by law enforcement that showed three of the plaintiffs screaming in agony.

Two plaintiffs – Gena Alvarez and Aaron Peters – were subject to forced catheterizations even though they were not arrested for, or suspected of, drug crimes. Alvarez had been pulled over by the South Dakota Highway Patrol near Winner for drinking and driving, which Lange

noted the officers already had evidence to support a drunken driving charge, and Peters had been arrested by Wagner police on a bench warrant for failing to pay a court fee.

Alvarez, who had a history of being sexually abused, woke up at the Winner Hospital being held down and her clothes removed. The Trooper who arrested her, Adam Woxland, had directed another male officer to hold down her legs while Woxland watched.

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“There is no community interest in involuntarily catheterizing an emotionally distraught woman with a history of having been raped just to see if evidence exists to tack a drug ingestion charge onto an ironclad case of driving under the influence of alcohol,” Lange wrote.

As for Peters, Lange wrote: “Peters was arrested on a bench warrant for failing to pay a court-ordered financial obligation after having been seen outside an apartment complex. The point of catheterizing Peters was to see if he could be charged with a drug-ingestion offense. A video shows Peters being catheterized with four officers holding him down and with his feet twitching as he screams in pain repeatedly.”

Lange also noted that law enforcement could have used a blood test to get evidence of drug use rather invasive catheters.

“Although a blood test is inferior to a urine test in detecting past use of methamphetamine, the Fourth Amendment limits the ability of law enforcement to always get the best evidence, whatever the cost,” he wrote.

The lawsuit followed a 2017 Argus Leader investigation into the practice, which found that even children had been subject to forced catheterization.

Lange dismissed the cases against the individual officers named in the suit, with the exceptions of Woxland’s role in administering the test on Alvarez. Jim Leach, a Rapid City attorney who represented the plaintiffs, said Lange dismissed the officers because they have qualified immunity, and at the time, it wasn’t clear that the practice was illegal.

Lange also dismissed one of the six plaintiffs, Dirk Sparks, because he had unsuccessfully tried to challenge the practice in a previous lawsuit in state court.

“But now,” Leach said, “it is crystal clear this is illegal.” He noted that police officers who continue the practice would no longer be protected by qualified immunity.

“That’s why this practice has to stop,” he said.

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A spokesman for the South Dakota Attorney General’s Office did not immediately respond for comment.

A trial date against the cities and Woxland has not been set.

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