UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JEFFREY BARHAM, et al,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil No. 02-2283 EGS
	)	
CHIEF CHARLES H. RAMSEY, et al.,	)	
	)	
Defendants.	)	
	)	

FEDERAL DEFENDANTS' MOTION TO DISMISS,
OR IN THE ALTERNATIVE, FOR SUMMARY JUDGMENT

Federal defendants[1] respectfully move, pursuant to Fed. R. Civ. P. 12(b)(1) and (6) to dismiss the Amended Complaint. In the alternative, this Court should enter summary judgment in favor of the federal defendants, pursuant to Fed. R. Civ. P. 56, because there is no genuine issue as to any material fact and federal defendants are entitled to judgment as a matter of law. In support of this motion, the Court is respectfully referred to the accompanying statement of material facts not in

[1] The federal defendants are Gale A. Norton, in her official capacity as Secretary of the United States Department of the Interior, John Ashcroft, in his official capacity as the Attorney General of the United States, the United States of America, and Unidentified Officers, Supervisors and Law Enforcement Agencies which may be federal, in their official and individual capacities.

dispute, memorandum of points and authorities, declarations and exhibits. A proposed order is also attached.

Respectfully submitted,

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FEDERAL DEFENDANTS' STATEMENT OF MATERIAL FACTS
AS TO WHICH THERE IS NO GENUINE ISSUE

Pursuant to Local Civil Rule 7.1(h), federal defendants hereby submit their statement of material facts as to which there is no genuine issue:

1. On September 27, 2002, demonstrations occurred in Washington, D.C. in connection with the World Bank [WB] and International Money Fund [IMF] meetings that took place in the city. Declaration of Richard Murphy filed in Chang v. United States, Civil No. 02-0210 EGS (D.D.C.) [Chang Murphy Dec.], copy attached, ¶¶ 17, 36, 41.

2. In recent history, these meetings have been accompanied by demonstrations which have involved, sometimes successfully, efforts to disrupt the meetings and activities in the cities in which the meetings were taking place. Chang Murphy Dec., ¶¶ 14 & 15 & Exhs. 1 & 2; Declaration of James W. Rice, II [Rice Dec.], ¶ 3.

3. Before the September 27, 2002 WB/IMF meetings took

place, law enforcement agencies consulted with each other in order to address the problems caused by the disruptive demonstrations in the past. Such coordination is the standard operating procedure for federal law enforcement. Declaration of Richard Murphy in this case [Barham Murphy Dec.], ¶ 4.

4. The Park Police had received information that certain groups of demonstrators intended to disrupt rush hour traffic in Washington, D.C. and to "quarantine" the World Bank/IMF complex in order to disrupt the meetings occurring therein. Chang Murphy Dec., ¶¶ 17, 36 & Exh. 3. The FBI was aware of the possibility of a terrorist attack or other violence. Rice Dec., ¶ 3.

5. The National Park Service annually hosts more than 3,000 demonstrations and special events and regularly engages in advance public safety planning with other federal and local law enforcement agencies as part of its routine procedures. Barham Murphy Dec., ¶ 4.

6. Pursuant to Presidential Decision Directive 39 [PDD-39], signed June 21, 1995, the FBI is the lead federal agency responsible for addressing threats or acts of terrorism in this country. See 28 C.F.R. § 0.85a(k)(1).

7. In May 1998, PDD-62 designated the FBI as the lead federal agency for crisis management in connection with a Weapon of Mass Destruction [WMD] incident. Rice Dec., ¶ 4.

8. With respect to the September 27, 2002 demonstrations,

the FBI's role was: (1) to prevent, respond and investigate any terrorist-related incidents that affected the WB/IMF meeting or participants; (2) to investigate any crimes that occurred against federal property or assaults upon foreign officials (such as WB/IMF attendees) or federal employees; (3) to gather intelligence related to the event; and (4) to provide liaison and assistance, as requested, to local law enforcement and fire-rescue personnel. Rice Dec., ¶ 4.

9. Prior to the September 27th demonstrations, law enforcement agencies including the FBI and the Park Police participated in meetings to discuss how to respond to possible scenarios that could arise during the demonstrations, including the possibility of assaults, vandalism, rioting, or terrorist attacks. Rice Dec., ¶ 5.

10. During these meetings, there was no discussion regarding making illegal arrests of demonstrators, or taking any action to improperly disrupt the demonstrators' lawful activities. Rice Dec., ¶ 6; Barham Murphy Dec., ¶ 6.

11. The Park Police primarily focused its efforts on protecting federal parkland but it was also ready to provide assistance to the Metropolitan Police Department [MPD]. Chang Murphy Dec., ¶ 19.

12. The Park Police occasionally assists MPD and other federal law enforcement agencies in the District of Columbia.

Id. at ¶¶ 11, 21. In such situations, backup officers depend on the requesting officer's full knowledge of the situation and expect that the requesting officer is justified in undertaking such arrests and searches that may occur. Id.

13. Cooperation and coordination between police agencies is often critical because police resources are stretched to cover various responsibilities throughout the city. Id.

14. A decision to make an arrest rests on the arresting police agency. Chang Murphy Dec., ¶ 21.

15. The FBI's role consisted of various tasks, including intelligence gathering, monitoring crowd movement and surveillance for possible terrorist or criminal activity, and at the request of MPD, providing portable fingerprint processing equipment and FBI employees to operate that equipment. Rice Dec., ¶¶ 7-9.

16. On September 27, 2002, a large group of demonstrators gathered in Pershing Park. Chang Murphy Dec., ¶ 41.

17. MPD police officers formed a police line on the west side of Pershing Park, and requested back-up assistance from the Park Police. Id. at ¶ 13.

18. The Park Police was informed by high-ranking MPD officials that demonstrators in Pershing Park had caused property damage in one commercial area, and MPD intended to prevent them from traveling to another commercial area where they might be

expected to cause additional property damage. Chang Murphy Dec., ¶ 42; Barham Dec., ¶ 7.

19. Based on this MPD request for assistance, the Park Police formed a partial and limited static police line on the north and south sides of Pershing Park. Chang Murphy Dec., ¶ 43.

20. Neither the Park Police nor the FBI made any arrests of demonstrators, with the exception of one arrest by Park Police in a different area. Chang Murphy Dec., ¶ 53 & Exh. 8; Rice Dec., ¶ 8.

21. MPD decided to make mass arrests after MPD officers moved the demonstrators within Pershing Park into a smaller area within the Park, and this decision was reached without consulting the Park Police or the FBI. Chang Murphy Dec. at ¶¶ 45-48; Barham Murphy Dec., ¶ 8.

22. Demonstrators were seized and flex-cuffed by MPD officers and then taken by MPD to MPD-controlled buses. During this time the only involvement by the Park Police was to maintain its limited partial static line. Chang Murphy Dec., ¶¶ 48-50.

23. The FBI had no direct contact with any arrestee. Rice Dec., ¶ 8.

24. The arrested individuals were fingerprinted by MPD personnel, who forwarded the fingerprint cards to FBI personnel, who then scanned the fingerprint cards into the FBI's Integrated Automated Fingerprint Identification System [IAFIS], in order to

verify the identities of the arrestees. Rice Dec., ¶¶ 10, 14.

25. Adding plaintiffs' fingerprints to the IAFIS database is no different than what occurs any time an individual is arrested and fingerprinted by local law enforcement authorities who then routinely submit the fingerprint cards to the FBI. Rice Dec., ¶¶ 10, 14.

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MEMORANDUM IN SUPPORT OF FEDERAL DEFENDANTS' MOTION TO DISMISS, OR IN THE ALTERNATIVE, FOR SUMMARY JUDGMENT

PRELIMINARY STATEMENT

Plaintiffs have brought this case to challenge actions allegedly taken by various law enforcement agencies, federal and local, in connection with certain demonstrations which occurred on September 27, 2002, here in Washington, D.C.[2] In particular, plaintiffs argue that alleged "round-ups" and mass arrests of persons gathered in the area of Franklin Square Park and Pershing Park, in the vicinity of 13th and 15th Streets, N.W., and Pennsylvania Avenue, N.W., violated their constitutional, common law and statutory rights. Plaintiffs allege that these arrests demonstrate a conspiracy on the part of federal and local law enforcement to disrupt free speech and criminalize dissent. Plaintiffs seek injunctive relief as well as damages for the

[2] Plaintiffs also seek to certify a class of the individuals arrested on September 27, 2002. Federal defendants opposed plaintiffs' motion for class certification on March 28, 2003. See Docket Entry # 20.

violations they allege.

Plaintiffs' First Amended Complaint, as it pertains to the federal defendants, must be dismissed. As is evident from the lack of specific factual allegations in the First Amended Complaint as to actions taken by federal law enforcement officials or agencies, plaintiffs have failed to state a claim against the federal defendants. The reason for this is simple. The conduct about which plaintiffs complain, to the extent it in fact occurred, was conducted by the District of Columbia's Metropolitan Police Department [MPD], and not by any federal agencies or employees.

The accompanying declarations of James W. Rice, II, for the FBI [Rice Dec.], and the two declarations of Richard Murphy, for the United States Park Police, show that any action taken by federal law enforcement during the course of the arrests of plaintiffs was minimal and peripheral. No federal law enforcement officers or officials "rounded-up" plaintiffs, arrested any of them, transported them to any detention facility, or detained them there. Rather, the Park Police only responded to an MPD request to help form part of a police line at Pershing Park for a limited period of time, and the FBI used its portable fingerprint processing equipment to scan fingerprint cards provided by MPD into the FBI's fingerprint system, in order to verify the identities of the arrestees. Such actions, clearly

limited in nature, caused no legally cognizable injury to plaintiffs. Moreover, these actions are in fact the legal functions with which these federal agencies are charged.

Accordingly, for the reasons set forth below, the First Amendment Complaint should be dismissed as it pertains to the federal defendants.

FACTUAL BACKGROUND

A. Events Leading Up to September 27, 2002

This case arises out of a weekend of protests relating to the World Bank and the International Money Fund [IMF] meetings that took place in September 2002. In recent history, these meetings have been accompanied by demonstrations which have involved, sometimes successfully, efforts to disrupt the meetings and activities in the cities in which the meetings were taking place.

The accompanying Declaration of Richard Murphy filed in Chang v. United States, Civil No. 02-0210 EGS (D.D.C.) [Chang Murphy Dec.],[3] a case also involving arrests made during the September 27, 2002 demonstrations here in Washington, D.C., provides relevant background information leading up to these arrests and details the Park Police's involvement in the events

[3] Major Murphy is with the United States Park Police and at the time relevant to this case was a Captain formally assigned to the Park Police Special Forces Branch responsible for crowd control at major demonstrations on federal parkland in the National Capitol Region. Chang Murphy Dec., ¶ 3.

occurring on that day. The Chang Murphy Declaration has been supplemented by another declaration from Major Murphy in this case [Barham Murphy Dec.], which provides greater detail as to the planning that went into law enforcement's efforts to prepare for these demonstrations. Finally, the Declaration of James W. Rice, II [Rice Dec.], a Supervisory Special Agent in the FBI's Washington Field Office, explains the FBI's limited role in connection with processing the fingerprint cards of plaintiffs after they had been arrested and fingerprinted by MPD, and the FBI's legal obligation to serve as the lead federal agency with respect to terrorist acts within the United States, and the activities associated with those responsibilities. Rice Dec., ¶ 4.

As the Chang and Barham Murphy Declarations and the Rice Declaration explain, law enforcement planning for the September 2002 demonstrations did not occur in a vacuum. Rather, law enforcement officials were mindful of the 1999 protests during the World Trade Organization meetings in Seattle, which substantially disrupted activities in that city and resulted in significant property damage and numerous arrests. Chang Murphy Dec., ¶ 14 & Exh. 1; Rice Dec., ¶ 3. Again in April 2000, World Bank-IMF meetings here in Washington, D.C. were disrupted by protesters. Hundreds of people were arrested after attempting to breach an MPD police line protecting the World Bank-IMF

buildings. Chang Murphy Dec., ¶ 15 & Exh. 2; Rice Dec., ¶ 3. Subsequent international demonstrations of a similar vein resulted in the use of deadly force by law enforcement officers to protect themselves against attacking rioters. Rice Dec., ¶ 3.

Consequently, law enforcement agencies consulted with each other prior to the demonstrations planned for September 2002, in order to address the problems caused by the disruptive demonstrations in the past. Such coordination is the standard operating procedure for federal law enforcement. Barham Murphy Dec., ¶ 4. The World Bank/IMF meetings scheduled for that period involved a gathering of more than 8,000 national and international dignitaries, and the World Bank/IMF buildings where the meetings were to occur were designated foreign missions for that period. The Park Police had received information that certain groups of demonstrators intended to disrupt rush hour traffic in Washington, D.C. and to "quarantine" the World Bank/IMF complex in order to disrupt the meetings occurring therein. Chang Murphy Dec., ¶¶ 17, 36 & Exh. 3. The FBI was aware of the possibility of a terrorist attack or other violence, especially because these meetings were scheduled approximately one year after the September 11, 2001 deadly terrorist attacks. Rice Dec., ¶ 3.

Consistent with its charge as the agency responsible for federal parkland in Washington, D.C., the National Park Service

[NPS] engaged in extensive planning. The NPS annually hosts more than 3,000 demonstrations and special events and regularly engages in advance public safety planning with other federal and local law enforcement agencies as part of its routine procedures. Examples of this in past years include the planning that occurred before the annual Fourth of July Celebrations and the March for Life demonstrations, the 1999 NATO 50th Anniversary Summit, the 1997 Promise Keepers demonstration, the 1995 Million Man March, and the 1993 Holocaust Memorial Museum. Barham Murphy Dec., ¶ 4.

The FBI was also involved in these coordination efforts. Pursuant to Presidential Decision Directive 39 [PDD-39], signed June 21, 1995, the FBI is the lead federal agency responsible for addressing threats or acts of terrorism in this country. See 28 C.F.R. § 0.85a(k)(1). In May 1998, PDD-62 designated the FBI as the lead federal agency for crisis management in connection with a Weapon of Mass Destruction [WMD] incident. With respect to the September 27, 2002 demonstrations, the FBI's role was: (1) to prevent, respond and investigate any terrorist-related incidents that affected the WB/IMF meeting or participants; (2) to investigate any crimes that occurred against federal property or assaults upon foreign officials (such as WB/IMF attendees) or federal employees; (3) to gather intelligence related to the event; and (4) to provide liaison and assistance, as requested, to local law enforcement and fire-rescue personnel. Rice Dec., ¶

4.

Prior to the September 27th demonstrations, law enforcement agencies including the FBI, the Park Police, the United States Marshal's Service, and the United States Capitol Police participated in meetings to discuss how to respond to possible scenarios that could arise during the demonstrations, including the possibility of assaults, vandalism, rioting, or terrorist attacks. Rice Dec., ¶ 5. During these meetings, there was no discussion regarding making illegal arrests of demonstrators, or taking any action to improperly disrupt the demonstrators' lawful activities. Rice Dec., ¶ 6; Barham Murphy Dec., ¶ 6.

Recognizing that demonstrators may properly engage in conduct that does not violate the law, the Park Police identified its objectives to include maintaining security around the White House complex, protecting citizens and visitors, assuring the safety of Park Police personnel, safeguarding the Park Service's monuments and memorials, and assuring that the World Bank-IMF meetings occurred without disruption. Chang Murphy Dec., ¶ 18; Barham Murphy Dec., ¶ 6.

The Park Police primarily focused its efforts on protecting federal parkland but it was also ready to provide assistance to the Metropolitan Police Department. Chang Murphy Dec., ¶ 19. The Park Police occasionally assists MPD and other federal law enforcement agencies in the District of Columbia. Id. at ¶¶ 11,

21. For example, to help address with increasing criminal activities, in 1994 the Park Police helped patrol the Fifth District of the Metropolitan Police Department. Id. Park Police assistance, however, is traditionally done on a case-by-case basis that follows a request for assistance, and after the Park Police determines whether it has sufficiently available police resources. Id.

If the Park Police has sufficiently available police resources, it will also provide backup assistance to other police agencies. Id. at ¶ 12. Such backup assistance cover a wide range of activities and situations, from ensuring that a requesting officer is not attacked while conducting an arrest or search, closing city streets following motor vehicle accidents, providing police lines, preserving crime and accident scenes, to chasing suspects identified by the requesting officer. Chang Murphy Dec., ¶ 12. In such situations, backup officers depend on the requesting officer's full knowledge of the situation and expect that the requesting officer is justified in undertaking such arrests and searches that may occur. Id. See also Rice Dec., ¶ 13 (FBI did not question the basis for any arrests). Cooperation and coordination between police agencies is often critical, because police resources are stretched to cover various security areas, a large range of potential targets located throughout the metropolitan area, as well as to perform essential

police services in the rest of the city and Federal parkland. Id.

A decision to make an arrest, however, always rests on the arresting police agency. Chang Murphy Dec., ¶ 21. When back-up assistance is requested, the Park Police do not normally "second-guess" the requesting officer if the request for assistance appears reasonable. Barham Dec., ¶ 7.

The FBI's role consisted of various tasks. Some FBI personnel were assigned to the FBI's Joint Terrorism Task Force to engage in intelligence gathering. At the request of MPD, additional FBI personnel were assigned to work directly with MPD intelligence teams and were supervised by MPD personnel. The duties of these FBI personnel included monitoring crowd movement and surveillance for possible terrorist or criminal activity. At the request of MPD, and pursuant to 28 U.S.C. § 533, the FBI also provided portable fingerprint processing equipment and approximately ten support employees from the FBI's Criminal Justice Information System [CJIS] Division to operate that equipment, in order to assist MPD with prisoner identification. Rice Dec., ¶¶ 7-9.

B. September 27, 2002

On September 27, 2002, a large group of demonstrators gathered in Pershing Park. Chang Murphy Dec., ¶ 41. MPD police officers formed a police line on the west side of Pershing Park,

and requested back-up assistance from the Park Police. Id. at ¶ 13.

Major Murphy was informed by high-ranking MPD officials that demonstrators in Pershing Park had caused property damage in one commercial area, and MPD intended to prevent them from traveling to another commercial area where they might be expected to cause additional property damage. Chang Murphy Dec., ¶ 42; Barham Dec., ¶ 7. Based on this MPD request for assistance, and the rapidly evolving situation, Major Murphy directed the Park Police to form a partial and limited static police line on the north and south sides of Pershing Park. Chang Murphy Dec., ¶ 43.

MPD then asked Major Murphy if the demonstrators could be arrested for demonstrating on federal parkland without a permit. Major Murphy responded that, although no group had been given a permit to demonstrate in the park, the Park Police would make no arrests without first warning the demonstrators that they were in violation of Park Police regulations and then allowing them the opportunity to comply with those regulations. Chang Murphy Dec., ¶ 44. The Park Police were not asked by MPD to issue any such warnings, nor did they do so.

The Park Police, significantly, made no arrests. Rather, MPD decided to make mass arrests after MPD officers moved the demonstrators within Pershing Park into a smaller area within the Park, and this decision was reached without consulting the Park

Service or the Park Police. Id. at ¶¶ 45-48. The decision to arrest the demonstrators was made without any consultation by MPD with the Park Police. Barham Murphy Dec., ¶ 8. Demonstrators were seized and flex-cuffed by MPD officers and then taken by MPD to MPD-controlled buses. During this time the only involvement by the Park Police was to maintain its limited partial static line. Chang Murphy Dec., ¶¶ 48-50; Barham Murphy Dec., ¶¶ 7-8.

The Park Police did arrest one person who is not a named plaintiff in this case. This individual was warned three times by the Park Police and chose to ignore those warnings and attempt to cross a Park Police line located on the south side curb of Pennsylvania Avenue and 15th Street. Chang Murphy Dec., ¶ 53 & Exh. 8. Other than this one arrest, the remaining arrests -- which are the subject of this litigation -- were carried out entirely by MPD. Furthermore, "[n]either the National Park Service nor the Park Police were involved in the transport, confinement, processing or release of any of the persons who MPD arrested." Chang Murphy Dec., ¶ 16.

The FBI did not participate in crowd control or participate in any of the arrests of the demonstrators. The FBI also had no role in the transportation of the demonstrators arrested to the D.C. Police Academy. Rice Dec., ¶¶ 8, 10. Indeed, FBI personnel had no direct contact with any arrestee. Rather, upon their arrival, the arrested individuals were fingerprinted by MPD

personnel, who forwarded the fingerprint cards to FBI CJIS personnel stationed in the Academy gymnasium. FBI CJIS personnel then scanned the fingerprint cards into the FBI's Integrated Automated Fingerprint Identification System [IAFIS], in order to verify the identities of the arrestees. Rice Dec., ¶ 9. Adding plaintiffs' fingerprints to the IAFIS database is no different than what occurs any time an individual is arrested and fingerprinted by local law enforcement authorities who then routinely submit the fingerprint cards to the FBI. Thus, the FBI played no role in the post-arrest processing of WB/IMF demonstrators other than operating the fingerprint card scanning equipment. Rice Dec., ¶¶ 10, 14.

The FBI also was involved in intelligence-gathering, as part of its responsibilities to prevent or effectively respond to any terrorist or other criminal activities. These intelligence-gathering activities, however, were limited to direct observation of crowd activity on September 27, 2002, looking for any terrorist or other criminal activity. Rice Dec., ¶ 12.

Because federal defendants were not involved in any alleged violations of the demonstrators rights, did not coordinate or conspire to violate plaintiffs' rights, and did not participate in MPD's decision to arrest plaintiffs or in the actual arrests themselves, the federal defendants should be dismissed from this lawsuit.

ARGUMENT

I. Plaintiffs' Constitutional Claims Against The Federal Defendants Must Be Dismissed.

In Counts I, II and III of the Complaint, plaintiffs allege that defendants violated their constitutional rights under the First, Fourth and Fourteenth Amendments, by disrupting their First Amendment activities and subjecting them to false arrest and false imprisonment. Plaintiffs also argue that defendants' actions in processing and treating them differently than others arrested for minor offenses violates their rights to due process and equal protection under the law. Finally, plaintiffs seek to pursue their constitutional claims against the unidentified individual federal defendants under Bivens v. Six Unknown Federal Narcotics Agents, 403 U.S. 388 (1971) [Bivens]. Complaint, at p. 44.

A. The Constitutional Claims Against Unidentified Individual Federal Defendants Must Be Dismissed.

The Complaint lists as defendants "Unidentified Officers [and] Supervisors" and claims that this includes individuals who "engaged in joint action with the named defendants to deprive plaintiffs of their clearly established constitutional rights." Complaint, ¶ 49. The Complaint further states that these unidentified individuals "engaged in the mass arrests and political roundups" without probable cause or lawful justification. Id.

Such allegations do not, and cannot state a claim against any unnamed individual federal defendants. There is no authority for joining fictitious unidentified defendants, and thus they should be dismissed. See, e.g., Armstrong v. United States Bureau of Prisons, 976 F. Supp. 17, 23 (D.D.C. 1997).

Moreover, it is well-settled that individual service is required in Bivens action. See Simpkins v. District of Columbia Government, 108 F.3d 366, 369 (D.C. Cir. 1997) (defendant federal officer in Bivens suit must be served as an individual, pursuant to Fed. R. Civ. P. 4(e)); James v. United States, 709 F. Supp. 257 (D.D.C. 1989)(same). Accordingly, unless an individual federal employee voluntarily makes an appearance or otherwise waives any personal jurisdiction defense, plaintiffs must begin the process of acquiring personal jurisdiction with proper service of process. The docket in this case indicates no compliance with these service requirements.

Equally important, with respect to federal employees sued in their individual capacities, the defense of qualified immunity may be then asserted as an affirmative defense. Wilson v. Layne, 523 U.S. 603, 609 (1999); Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982). Such a defense obviously cannot be raised, however, unless the identity of the individual defendant is known and the actions such a defendant purportedly took alleged.

Plaintiffs are not entitled to use this litigation as a

fishing expedition to see if they can find some individual federal defendant who may have violated their rights. See Laird v. Tatum, 408 U.S. 1, 14 (1972) ("Stripped to its essentials, what respondents appear to be seeking is a broad-scale investigation, conducted by themselves as private parties armed with the subpoena power of a federal district court . . . ."); Ellsberg v. Mitchell, 807 F.2d 204, 207-208 (D.C. Cir. 1986) ("We decline to license any plaintiff to embark on a fishing expedition in government waters on the basis of such speculation."); Dickson v. United States, 831 F. Supp. 893, 900 (D.D.C. 1993) (court rejected plaintiffs' argument that the CIA's tradition of secrecy and bad faith warranted fishing expedition where plaintiffs' allegations were factually vague and legally non-specific). This is especially true in light of the accompanying Murphy and Rice declarations, demonstrating that federal law enforcement agencies had minimal involvement in the events covered by the Complaint and the involvement they did have did not violate any of plaintiffs' rights. See infra at 20-28.

Accordingly, to the extent the Complaint can be read to raise Bivens claims against unidentified federal employees, such claims should be dismissed.

B. The Constitutional Claims Against the Federal Organizations and Against the Individual Defendants in Their Official Capacities Must Be Dismissed On Sovereign Immunity Grounds.

To the extent that plaintiffs may be seeking damages against

any federal law enforcement agencies, and the individual federal defendants in their official capacities, plaintiffs' claims must be dismissed because there has been no waiver of sovereign immunity for such claims. Sovereign immunity bars all suits against the United States except in accordance with the explicit terms of the statutory waiver of such immunity. Lane v. Pena, 518 U.S. 187, 190-91 (1996); Cox v. Secretary of Labor, 739 F. Supp. 29, 30 (D.D.C. 1990); see also, United States v. Testan, 424 U.S. 392, 399 (1976); United States v. Mitchell, 445 U.S. 535, 538 (1980); Kline v. Republic of El Salvador, 603 F. Supp. 1313, 1316 (D.D.C. 1985). That plaintiff may have named federal employees as defendants in their official capacities does not operate to evade the immunity of the sovereign. See Clark v. Library of Congress, 750 F.2d 89, 103-104 (D.C. Cir. 1984) (sovereign immunity acts as a bar to a damages remedy against the Librarian of Congress in an official capacity).

The Federal Tort Claims Act [FTCA] does not waive the federal government's immunity from suit for any constitutional torts that may be committed by its employees. 28 U.S.C. §§ 2679(b)(1) and (b)(2); Kline v. Republic of El Salvador, 603 F. Supp. at 1317; see also Laswell v. Brown, 683 F.2d 261 (8th Cir. 1982); Birnbaum v. United States, 588 F.2d 319, 327-328 (2nd Cir. 1978). Nor does the Administrative Procedure Act, 5 U.S.C. § 701, et seq., act as a waiver of sovereign immunity in suits

seeking money damages against the government. Scanwell Laboratories, Inc. v. Thomas, 521 F.2d 941, 948 (D.C. Cir. 1975), cert. denied, 425 U.S. 910 (1976); Cook County Legal Assistance Foundation v. Pauken, 573 F. Supp. 231, 234 (N.D. Ill. 1983).

Additionally, to the extent that plaintiffs' First Amended Complaint can be read to seek monetary relief in tort against an agency of the United States, it is clear that the only possible basis for jurisdiction in this Court would be under the FTCA. See Kline v. Republic of El Salvador, 603 F. Supp. at 1316.

Consequently, any damages claims for constitutional torts raised against federal agencies or employees in their official capacities must be dismissed.

C. Plaintiffs' Claims for Injunctive Relief Against The Federal Defendants Fail for Lack of Standing.

In Steel Co., aka Chicago Steel & Pickling Co. v. Citizens for a Better Environment, 523 U.S. 83 (1998), the Supreme Court reiterated the well established three requirements to meet the irreducible constitutional minimum of standing: (1) there must be an alleged injury in fact, (2) there must be a causation connection between the plaintiff's injury and the complained of conduct of the defendant, and (3) there must be redressability or a likelihood that the requested relief will redress the alleged injury. The Court stated that the party invoking federal jurisdiction bears the burden of establishing its existence. Id. at 88.

Here plaintiffs' claims against the federal defendants fail for lack of causation. Plaintiffs allege that they were the victims of false arrest and imprisonment and their First Amendment rights were violated when their demonstration activities were halted by the arrests. The Murphy and Rice declarations, however, make clear that federal law enforcement officers had no involvement in these actions. The decision to stop plaintiffs from further engaging in First Amendment activities was entirely made by MPD, not by the Park Police present on the scene. Chang Murphy Dec., ¶ 47; Barham Murphy Dec., ¶ 3. Similarly the FBI had no involvement in this decision. Rice Dec., ¶¶ 10, 13. Further, the actual arrests were carried out by MPD alone. Neither the Park Police nor the FBI were involved in the decision to make the arrests or the actual arrests themselves. Chang Murphy Dec., ¶ 47; Barham Murphy Dec., ¶ 3; Rice Dec., ¶ 8. The transportation to a detention facility, and the detention there, was also carried out solely by MPD officers. Chang Murphy Dec., ¶ 50; Rice Dec., ¶ 10.

The only action taken by the Park Police in connection with plaintiffs was to provide back-up assistance in the form of a partial static line near the demonstrators. Plaintiffs do not allege that the partial static line provided by the Park Police prevented them from being able to leave the area of the

demonstrations. Thus, to the extent that plaintiffs allege that they were harmed when they could not voluntarily disperse, or when they were arrested and transported to a detention facility, no action by federal defendants caused these injuries.

As to plaintiffs' claims regarding having their fingerprints taken, the only action taken by the FBI was to process fingerprints through the IAFIS **after** MPD had gathered the fingerprints from the demonstrators who were arrested. Rice Dec., ¶¶ 10-14. Thus, plaintiffs' claims that they were harmed by allegedly illegal fingerprinting was not a harm caused by the FBI.

Plaintiffs' claims regarding any surveillance engaged in by the FBI fails to establish standing because it resulted in no concrete harm to the plaintiffs. The Supreme Court has held that "[m]ere surveillance by government authorities" does not support a claim that a person's First Amendment rights have been violated. Laird v. Tatum, 408 U.S. 1, 15-16 (1972). See Anderson v. Davila, 125 F.3d 148, 160 (3d Cir. 1997) ("surveillance of individuals in public places does not, by itself, implicate the Constitution"); Mason v. Ward, 1991 WL 143713, at *6 (S.D.N.Y. July 20, 1991) ("Mere surveillance conducted by government authorities does not give rise to an action for violation of rights guaranteed under the First Amendment.").

In Laird, the Supreme Court rejected a claim that Army surveillance violated the plaintiffs' First Amendment rights. The Court held that no cognizable injury could be based on "merely [] an individual's knowledge that a government agency was engaged in certain activities or from an individual's concomitant fear that, armed with the fruits of those activities, the agency might take some other and additional action detrimental to the class. Laird, 408 U.S. at 11. Thus, the mere existence of government investigative and intelligence-gathering is insufficient to establish standing. Mason, 1991 WL 143713 at *6.

Finally, plaintiffs allege that they were harmed by a conspiracy between law enforcement agencies to disrupt their right to free speech and to engage in illegal mass arrests. The Murphy and Rice declarations, however, make clear that federal law enforcement agencies had no involvement in any such conspiracy. Barham Murphy Dec., ¶ 6; Rice Dec., ¶ 13; see infra at 30-37. Thus, even if plaintiffs could show that some kind of conspiracy exists and they were harmed by it, they cannot make the causal link to federal defendants.

Accordingly, plaintiffs' claims against the federal defendants should be dismissed for lack of standing.

II. Federal Defendants Violated No Legal Rights of Plaintiffs in Providing Back-up Assistance To Local Law Enforcement.

The Murphy and Rice declarations set forth the limited

participation by the Park Police and the FBI in the events that occurred on September 27, 2002, which plaintiffs alleged caused them harm. Significantly, both the Park Police and the FBI acted at the request of MPD and, as demonstrated below, performed functions that are standard and entirely lawful.

A. Actions by the Park Police.

The Park Police's only involvement in action affecting plaintiffs was to form a limited police line around parts of Pershing Park after high level officials from MPD informed them that some members of the demonstrators had engaged in property damage in a commercial area. Chang Murphy Dec., ¶¶ 43, 49; Barham Murphy Dec., ¶ 7. The Park Police, therefore, reasonably believed that their back-up assistance was needed to prevent demonstrators from leaving the area and going to another area where property damage might occur. See Chang Murphy Dec., ¶ 42.

The Park Police relied in good faith on the apparently reasonable request of another law enforcement organization in forming the police line around two sides of Pershing Park. Numerous cases stand for the proposition that such reliance is proper.

In Whiteley v. Warden, 401 U.S. 560 (1971), a county sheriff obtained an arrest warrant for a person suspected of a crime and sent a message statewide over the radio describing the suspect. In reliance on the radio message, police in another county

stopped the suspect and searched his car. The arrest was ultimately determined to be invalid, due to lack of probable cause. The Supreme Court, however, stated:

> We do not, of course, question that Laramie police were entitled to act on the strength of the radio bulletin. Certainly police officers called upon to aid other officers in executing arrest warrants are entitled to assume that the officers requesting aid offered the magistrate the information requisite to support an independent judicial assessment of probable cause.

Id. at 230.

In United States v. Hensley, 469 U.S. 221 (1985), police officers stopped a car in reliance on another police department's "wanted flyer," which had been issued for armed robbery suspects. The Supreme Court held that:

> [W]hen evidence is uncovered during a search incident to an arrest in reliance merely on a flyer or bulletin, its admissibility turns on whether the officers who *issued* the flyer possessed probable cause to make the arrest. It does not turn on whether those relying on the flyer were themselves aware of the specific facts which led their colleagues to seek their assistance. In an era when criminal suspects are increasingly mobile and likely to flee across jurisdictional boundaries, this rule is a matter of common sense: it minimizes the volume of information concerning suspects that must be transmitted to other jurisdiction and enables police in one jurisdiction to act promptly in reliance on information from another jurisdiction.

Id., 469 U.S. at 231.

The Ninth Circuit applied the Whitley decision in United States v. Robinson, 536 F.2d 1298, 1300 (9th Cir. 1976), to hold that although an officer who issues a wanted bulletin must have legally sufficient probable cause , the officer who acts in

reliance on the bulletin need not have personal knowledge of the evidence supporting the probable cause determination. In reaching this conclusion, the Ninth Circuit stated that:

> effective law enforcement cannot be conducted unless police officers can act on directions and information transmitted by one officer to another and that officers, who must act swiftly, cannot be expected to cross-examine their fellow officers about the foundation for the transmitted information.

Id. at 231.

The Supreme Court in Hensley concluded that if a wanted flyer or bulletin has been issued on the basis of articulable facts supporting a reasonable suspicion that a person has committed an offense, then reliance on that bulletin to perform an investigatory stop under Terry v. Ohio, 392 U.S. 1 (1968), is justified. Hensley, 469 U.S. at 232. But even if it turns out that the flyer was issued in the absence of a reasonable suspicion, an officer relying in good faith on the information has a defense to a civil suit. Turner v. Raynes, 611 F.2d 92, 93 (5th Cir. 1979), cert. denied, 449 U.S. 900 (1980) (officer relying in good faith on an invalid arrest warrant has defense to civil suit).

Additionally, courts have developed the concept of "collective information," which stands for the proposition that "probable cause is to be evaluated by the courts on the basis of the collective information of the police rather than that of only the officer who performs the act of arresting." Smith v. United

States, 358 F.2d 833, 835 (D.C. Cir. 1966). As the Court of Appeals for this Circuit stated in Williams v. United States, 308 F.2d 326, 327 (D.C. Cir. 1962), "[t]he whole complex of swift modern communication in a large police department would be a futility if the authority of an individual officer was to be circumscribed by the scope of his first hand knowledge of facts concerning a crime or alleged crime." Significantly, the Court of Appeals in Smith stated that the applicability of its decision in Williams would be no different if it involved "officers from different cities or even different police organizations. . . ." Id., 358 F.2d at 836.

As the Second Circuit stated recently in United States v. Colon, 250 F.3d 130 (2d Cir. 2001):

> The collective knowledge doctrine was developed in recognition of the fact that with large police departments and mobile defendants, an arresting officer might not be aware of all the underlying facts that provided probable cause or reasonable suspicion, but may nonetheless act reasonably in relying on information received by other law enforcement officials.

Id. at 134.

The foregoing principles of collective knowledge and the right to rely on information provided by another law enforcement official properly extend from the criminal arena to the area of civil liability. As the Fifth Circuit stated in Turner v. Raynes:

> It would be a strange and unworkable rule that required a sheriff, at his peril, to determine the ultimate legal

> validity of every warrant – regular on its face and issued by proper authority – before serving it.

611 F.2d at 93.

The apparent reasonableness of MPD's request was all that was required to permit federal law enforcement officials to assist MPD. Moreover, maintaining a Park Police line is far less of an intrusion than the Terry stop at issue in Hensley or Whitely. The police line was requested by high level MPD officials, who earlier had been dealing with the group and observed that the group had earlier vandalized one commercial area and was concerned that the group would try to do it again. See Chang Murphy Dec., ¶¶ 41, 43. With the Park Police reasonably and objectively relying on the other police agency's request, the Park Police are entitled to Hensley's good-faith defense. The reason for this is clear: if backup officers are somehow first required to inquire into all of the underlying facts and circumstances before they provide assistance to another agency, effective law enforcement -- which sometimes requires officers to make instant decisions and take actions to ensure public safety -- would be seriously hindered. Id. at ¶ 13. In this situation, the Park Police were aware that property damage had been done by some individuals involved in the protests and reasonably responded to a request for assistance by the Metropolitan Police Department in forming a police line. Id. at ¶¶ 41, 43.

Additionally, "[a]s a general rule, mere presence at the scene of a search, without a showing of direct responsibility for the action, will not subject an officer to liability." Ghandi v. Police Dept. Of City of Detroit, 747 F.2d 338, 352 (6th Cir. 1984). As such, the Sixth Circuit has ruled that officers were not liable when they had "no direct involvement in a search [but t]heir only function was to insure the integrity of the search . . . " Accord Hays v. Jefferson County, Ky., 668 F.2d 869, 874 (6th Cir. 1982), Aquisto v. Danbert, No. 97-1668, 1998 U.S.App.LEXIS 21694 (6th Cir. 1998)(Local Rule 24 Citation)(officer who entered house but did not participate in search not liable). This rationale applies in both search and arrest situations, and therefore, the Park Police are not liable, given their limited role as part of a police line, and lack of involvement in the decision to make the arrests and the actual arrests themselves.

B. The FBI

Plaintiffs allege that the FBI was involved in allegedly illegal fingerprinting of the demonstrators arrested. But the FBI's only involvement in this regard was to process fingerprint cards given to them by MPD, after MPD officials took fingerprints from the demonstrators arrested. Rice Dec., ¶ 10.

The FBI is authorized to provide assistance to local law enforcement officials by virtue of 28 U.S.C. § 533. Rice Dec.,

¶ 9; 1 Op. Off. Legal Counsel 31 (Mar. 22, 1977) at 31, found at 1997 WL 18016. Pursuant to 28 U.S.C. § 534(a)(1), the Attorney General "shall acquire, collect, classify, and preserve identification, criminal identification, crime and other records," and the word "shall" denotes a requirement and not merely an authorization. United States v. Rosen, 343 F. Supp. 804, 806 (S.D.N.Y. 1972). The FBI has been delegated the duty to collect this information pursuant to 28 U.S.C. § 534(c). See 28 C.F.R. § 0.85(b) (FBI shall "collect and preserve fingerprints and identification records from criminal justice and other governmental agencies"). Significantly, the FBI has no duty to independently determine the validity of the arrests before entering fingerprints taken by local law enforcement into its criminal database. Crow v. Kelley, 512 F.2d 752, 754 (8th Cir. 1975).

The foregoing demonstrates that the FBI CJIS employees who took fingerprint cards from MPD officials and scanned the information into the FBI's IAFIS were performing duties they are required to do by law. Plaintiffs' claims regarding the FBI involvement in the fingerprinting process, therefore, are unavailing.

Moreover, the FBI does not disseminate arrestees' information. Rather, information concerning plaintiffs' arrests was scanned into the IAFIS databank, just like in the case of

every other arrested individual who fingerprints are sent to the FBI. Rice Dec., ¶ 14. Further, access to the FBI's databank is only available to authorized police authorities. Id.

Plaintiffs also allege that the FBI was engaged in illegal surveillance activities during the demonstrations. The Rice Declaration, however, explains that the FBI is responsible for addressing threats or acts of terrorism in the United States and is the lead federal agency for crisis management in connection with weapons of mass destruction. Rice Dec., ¶ 4. In order for the FBI to perform its responsibilities, it obviously had to engage in surveillance of the crowds in order to look for possible terrorist or criminal activity. Id. at ¶¶ 6-8. Significantly, the FBI only engaged in surveillance by direct observation. Rice Dec., ¶ 12.

As explained above, see supra at 19-20, the FBI's surveillance resulted in no harm to plaintiffs. Rather, it was a product of the FBI's legal responsibilities to deter potential terrorist or criminal activity.

Thus, the actions taken by the Park Police and the FBI were entirely within their legal responsibilities.[4]

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[4] Plaintiffs' First Amended Complaint provides no indication of the "other federal agencies" or what these other defendants allegedly did wrong. Id. at ¶¶ 48, 168. As such, any unidentified claims against unidentified parties must be dismissed. While federal notice pleading standards demand little, each defendant is entitled to notice of the wrongs with which he is charged. See Sparrow v. United Air Lines, 216 F.3d

III. Plaintiffs' Common Law Tort Claims Against The Federal Defendants Must Be Dismissed.

To the extent the Complaint seeks to raise the common law torts of false arrest and false imprisonment, such claims must be dismissed against federal defendant United States.[5] One prerequisite for filing a civil tort action under the FTCA is that the claimant must first file an administrative claim pursuant to 28 U.S.C. § 2675(a). This provision is jurisdictional and cannot be waived by equitable considerations or otherwise. Hohri v. United States, 782 F.2d 227, 245-46 (D.C. Cir. 1986), reh. denied, 793 F.2d 304 (D.C. Cir. 1986), rev'd on other grounds sub nom. United States v. Hohri, 482 U.S. 64 (1987); Stokes v. United States Postal Service, 937 F. Supp. 11,

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1111, 1117 (D.C. Cir. 2000); Watt v. City of Highland Park, 2001 WL 1090152 * 2 (N.D. Ill. 2001) ("A major problem facing the court in trying to determine if plaintiffs' second amended complaint satisfies this minimal standard is that plaintiffs have pleaded their claim against all of the defendants without differentiation.")(quoting Ryan v. Mary Immaculate Queen Center, 188 F.3d 857, 860 (7th Cir. 1999)("It is true that all the federal rules require of a complaint is that it put the defendant on notice of the plaintiff's claim; but notice implies some minimum description of defendant's complained-of conduct.").

[5] It does not appear that the Amended Complaint seeks to raise any common law tort claims directly against any individual federal defendants. Should plaintiffs indicate otherwise, a certification can be filed, pursuant to 28 U.S.C. § 2679(d), substituting the United States as the sole defendant in place of any individual federal defendants against whom common law tort claims have been made in connection with actions taken during the scope of such defendant's employment. But the Amended Complaint sets forth no factual allegations of common law tort against identified individual federal defendants.

14 (D.D.C. 1996) (An administrative claim "is a mandatory jurisdictional prerequisite to filing a lawsuit against the United States."). This statutory requirement requires the putative plaintiff to file with the agency: "(1) a written statement sufficiently describing the injury to enable the agency to begin its own investigation, and (2) a sum-certain damages claim." GAF Corp. v. United States, 818 F.2d 901, 919 (D.C. Cir. 1987). The purpose of the requirement is to enable the agency "to determine whether settlement or negotiations to that end are desirable" and thus perhaps obviate the need for litigation. Id. at 920.

The Complaint alleges no compliance with the FTCA's administrative claim requirements. See Complaint generally. Accordingly, plaintiffs have failed to state a claim under the FTCA. Therefore, to the extent that the Complaint seeks to raise any common law tort claims against the federal government, such claims must be dismissed for failure to exhaust administrative remedies.

IV. Plaintiffs' Civil Conspiracy Claims Should Be Dismissed Pursuant To Federal Rule 12(b)(1) And 12(b)(6).

A. Plaintiffs' Complaint Does Not Meet the Pleadings Standard Required for Pleading A Conspiracy to Violate Civil Rights.

Plaintiffs appear to allege that the federal defendants conspired with the District of Columbia defendants to violate

plaintiffs' First Amendment rights. See First Amended Complaint ¶¶ 57-59, 159, 168. First and foremost, plaintiffs cite only to 42 U.S.C. § 1983 to support their civil conspiracy claim and that statute only applies to state actors; not the federal defendants. See First Amended Complaint, ¶¶ 192-197; Jett v. Dallas Independent School Dist., 491 U.S. 701, 735 (1989). Despite this pleading failure, the Amended Complaint appears to allege that the FBI, the Park Police, and other federal agencies conspired to violate plaintiffs' constitutional rights. See id. at ¶¶ 57-59, 159, 168. To the extent plaintiffs' are attempting to allege federal participation in an alleged conspiracy their claims fail for three reasons. First and foremost, no such conspiracy occurred. Second, there is no evidence of a conspiracy. Finally, the plaintiffs' claims are so inartfully pled they fail as a matter of law.

i. Lawful Conduct Does Not a Conspiracy Make.

The fact that the FBI is charged with being "[t]he lead agency for crisis management," which includes coordination, planning and training of federal, state, and local resources to respond to mass demonstrations, does not suffice to make the FBI a party. Rice Dec. ¶ 4. If the Park Police or the FBI could be made a party based on such allegations alone, the Park Police and the FBI would be a party to every case arising from a mass demonstration in the District of Columbia, regardless of their

actual role in the events. Chang Murphy Dec., ¶ 4; Rice Dec., ¶¶ 3-5.

According to the First Amended Complaint, it was the MPD, not the FBI or the Park Police, who engaged in the alleged unlawful conduct and who made the decision to arrest plaintiffs. In fact, there is not a single, specific allegation to support a finding that the FBI, the Park Police or any other unidentified federal agencies violated plaintiffs' constitutional rights. The fact that the FBI and the Park Police had some duties with regard to the 2002 WB/IMF conference is insufficient to make them parties to this case.

The FBI is tasked with protecting the public and the nation's security in various ways. This requires information and data gathering, training, coordination and planning. See, e.g., 28 C.F.R. § 0.85 (setting out FBI responsibilities). These are the very actions of which plaintiffs complain. Moreover, planning for the more than 3,000 demonstrations and special events per year in the District of Columbia requires the Park Police normally to coordinate with local police authorities. Chang Murphy Dec., ¶ 4. Simply conducting federal business as tasked does not give rise to a cause of action.

ii. Plaintiffs' Cannot Establish Facts to Support Their Ill-Pled Civil Conspiracy Claim.

To establish the elements of a civil conspiracy plaintiffs must prove four elements: (1) an agreement between two or more

persons (2) to participate in an unlawful act or a lawful act in unlawful manner; and (3) an injury caused by an unlawful overt act performed by one of the parties to the agreement (4) pursuant to and in furtherance of the common scheme. Halberstam v. Welch, 705 F.2d 472, 477 (D.C. Cir. 1983); Riggs v. Home Builders Institute, 203 F. Supp.2d 1, 25 (D.D.C. 2002). There is no recognized independent tort action for civil conspiracy in the District of Columbia. Rather, civil conspiracy is a means for establishing vicarious liability for an underlying tort. Halberstam, 705 F.2d at 479. Thus, a successful civil conspiracy claim depends on the performance of some tortious act. Riggs, 203 F. Supp. 2d at 25; Halberstam, 705 F.2d at 477 (quoting W. Prosser, Law of Torts § 46, 293 (4th ed. 1971) ("To establish liability, plaintiffs also must prove that an unlawful overt act produced an injury and damages. 'It is only where means are employed, or purposes are accomplished, which are themselves tortious, that the conspirators who have not acted but have promoted the act will be held liable.'"). Conspirators, therefore, may only be held liable for acts committed by co-conspirators "if the acts are within the scope of the agreement, are done in furtherance of the conspiracy, and are reasonably foreseeable." Ungar v. Islamic Republic of Iran, 211 F. Supp.2d 91, 100 (D.D.C. 2002).

While it is undisputed that the federal agencies

coordinated with local authorities in preparing for the 2002 IMF/WB conference, there is no evidence of an agreement to violate constitutional rights - or any evidence of discussions concerning such violations. Moreover, the only evidence available indicates that the federal defendants were merely engaged in fulfilling their statutory obligations. There is no evidence that the federal agencies turned a blind eye to alleged constitutional violations. And there is even less evidence that during the inevitable coordination and planning, constitutional violations were contemplated.

To establish the first element of a conspiracy the agreement must be an "agreement to participate" in tortious conduct. Ungar, 211 F. Supp. 2d at 99. The fact the Park Police and the FBI coordinated with local and federal authorities is insufficient absent a showing that they agreed to the alleged subsequent violation of rights. Although "[p]roof of a tacit, as opposed to explicit, understanding is sufficient to show agreement," more than simply joint action is required. Halberstam, 705 F.2d at 477. Relevant factors include the relationship between the parties' acts, the time and place of their execution, and the duration of the joint activity. Id.; Ungar, 211 F. Supp. 2d at 100.

While "'acts that are in themselves legal lose that character when they become constituent elements of an unlawful

scheme,'" Lawrence, 665 F.2d at 20-21 (quoting Continental Co. v. Union Carbide Co., 370 U.S. 690, 707 (1962)), that is not what occurred here. There was never an agreement or a scheme to violate constitutional rights. Thus, even if, arguendo, the federal defendants somehow furthered MPD's "scheme" to violate plaintiffs' constitutional rights, the federal defendants failed to take any "overt unlawful act, or lawful act in an unlawful manner." Halberstam 705 F.2d at 477 ("It is only where means are employed . . . which are themselves tortious, that the conspirators who have not acted but have promoted the act will be liable."). Thus, the federal defendants' lawful actions cannot give rise to any liability.

iii. Conspiracy Claims must Be Pled with Specificity.

Plaintiffs' conspiracy allegation(s) against the federal defendants also must fail because it does not meet the standards required for pleading a civil conspiracy claims. Thomas v. News World Communications et al., 681 F. Supp. 55 (D.D.C. 1988)(citing Hobson v. Wilson 737 F.2d 1 (D.C. Cir. 1984)).[6] "A party must

[6] Although a "heightened pleading standard" for § 1983 claims, and other cases in which qualified immunity was a likely defense, was rejected in Crawford-El v. Britton, 523 U.S. 574, 598 (1998), the Supreme Court made it clear that it does not mean to allow mere generalized unsupported assertions to state a cause of action. The Court suggested that demanding a more definite statement, and "limit[ing] the time, place, and manner of discovery or even barr[ing] discovery altogether were appropriate "so that officials are not subjected to unnecessary and burdensome discovery." Crawford-El, 523 U.S. at 598-99. The Court suggested that the "court could grant the defendant's

state with specificity the facts that he believes show the existence and scope of the alleged conspiracy, regardless of whether his claim is against a private party or a public official." Hudson v. Kagan-Kans et al., 1993 WL 32358 *1 (D.C. Cir. 1993). A plaintiff is required to allege a connection between the overt acts, the furtherance of the conspiracy and the plaintiff's injury. Graves v. United States of America, 961 F. Supp. 314 (D.D.C. 1997) (court dismissed plaintiff's complaint because it failed to show with "particularity what acts a defendant performed to carry the conspiracy into effect, how those acts fit into the conspiracy, and how injury to the plaintiff was forseeable"); Martin v. Malhoyt, 830 F.2d 237, 258 (D.C. Cir. 1987) ("[u]nsupported factual allegations which fail to specify in detail the factual basis necessary to enable [defendants] to intelligently prepare their defense, will not suffice to sustain a claim of governmental conspiracy to deprive [plaintiffs] of their constitutional rights.")

"Plaintiffs have a 'weighty burden to establish a civil rights conspiracy' and must allege facts that would at least

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motion for a more definite statement" and "may insist that the plaintiff 'put forward specific nonconclusory factual allegations' that establish improper motive causing cognizable injury in order to survive a prediscovery motion for dismissal or summary judgment. This option exists even if the official chooses not to plead the affirmative defense of qualified immunity. Id. at 598 (quoting Siegert v. Gilley, 500 U.S. 226 (1991)).

raise an inference 'that each member of the alleged conspiracy shared the same conspiratorial objective.'" Cottom v. Town of Seven Devils, 2000 WL 1808990 *4 (W.D.N.C.) (quoting Hinkle v. City of Clarksburg, 81 F.3d 416, 421 (4th Cir. 1996)). "Mere allegations of joint action or a conspiracy are not sufficient to survive a motion to dismiss; . . . in order to allege a [civil rights] conspiracy, a plaintiff needs to describe the 'form and scope' of the conspiracy such as the term of the agreements constituting the conspiracy, when these agreements were formed, and what the participants' roles were." Watt v. City of Highland Park, 2001 WL 1090152 *7 (N.D. Ill.)(citations omitted.)

Here, plaintiffs have pled no facts that support a claim of a conspiracy to violate their constitutional rights. Legal conclusions mischaracterized as facts do not state a claim for a cause of action for conspiracy against federal defendants. Kowal v. MCI Communications Corp., 16 F.3d 1271, 1276 (D.C. Cir. 1994).

Accordingly, to the extent that the Amended Complaint can be read to raise a claim for conspiracy to violate constitutional rights, such a claim should be dismissed.

CONCLUSION

For the reasons stated above, federal defendants' motion to dismiss, or in the alternative, for summary judgment should be granted.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that the accompanying Defendants' Motion to Dismiss, Or In The Alternative For Summary Judgment, with declarations and exhibits, was served upon plaintiffs by electronic filing on this 25th day of April, 2003.

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JEFFREY BARHAM, et al,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil No. 02-2283 EGS
	)	
CHIEF CHARLES H. RAMSEY, et al.,	)	
	)	
Defendants.	)	
	)	

ORDER

Under consideration of federal defendants' motion to dismiss, or in the alternative, motion for summary judgment, of all the papers filed in support of and in opposition to that motion, and of the entire record, it is hereby

ORDERED federal defendants' motion is granted, and it is further

ORDERED that judgment shall be entered in favor of federal defendants and this case as it pertains to the federal defendants shall be dismissed with prejudice.

_____ _____
DATE UNITED STATES DISTRICT JUDGE

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