

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

JULIE ABBATE  
816 C Street, S.E.  
Washington, DC 20003

CHRISTOPHER DOWNES  
3327 Mantua Drive  
Fairfax, VA 22031

JOSEPH L. MAYER  
9340 Fairfax Street  
Arlington, VA 22309

MINDI MORGAN  
1215 North Quinn Street, Apartment #17  
Arlington, VA 22209

TOM ULRICH  
2902 Woodway Place  
Cheverly, MD 20785

individually and on behalf of a class  
of persons similarly situated,

Plaintiffs,

v.

CHIEF CHARLES H. RAMSEY  
in his individual capacity  
Chief of Police  
Metropolitan Police Department  
300 Indiana Avenue, N.W.  
Washington, DC 20001,

THE DISTRICT OF COLUMBIA  
John A. Wilson Building  
1350 Pennsylvania Avenue, N.W.  
Washington, DC 20004,

Defendants.

CASE NUMBER 1:03CV00767

JUDGE: Emmet G. Sullivan

DECK TYPE: Civil Rights (non-employment

DATE STAMP: 03/27/2003

## **COMPLAINT**

Plaintiffs Julie Abbate, Christopher Downes, Joseph Mayer, Mindi Morgan, and Tom Ulrich, individually and on behalf of a class of persons similarly situated, allege as follows:

### **INTRODUCTION**

1. This is a class action seeking damages and other relief for the illegal mass arrest and detention of over 400 persons who were participating in or observing a peaceful demonstration at Pershing Park in Washington, D.C., on the morning of Friday, September 27, 2002. Those arrested had committed no crime when they were surrounded by police from the Metropolitan Police Department and were given no opportunity to disperse or otherwise depart peacefully. They were forced by phalanxes of armed police to remain in the park until a convoy of buses arrived at the scene, and were then arrested *en masse*, placed on the buses, and hauled off in handcuffs or other restraints to the Police Academy in southwest Washington. There they were detained on the buses for many hours, with their hands cuffed behind their backs. Thereafter, they were detained through Saturday on the floor of the police gymnasium, often with one of their wrists cuffed to the opposite ankle.

2. Although the arrestees were charged with “failure to obey a police order,” no order to disperse was ever given, as even the MPD now admits, and in fact the arrestees had not disobeyed any orders. The charge of “failure to obey a police order” was unfounded and pretextual. The MPD recently completed a report summarizing the findings of its internal investigation of the Pershing Park arrests. According to the Chair of the City Council Judiciary Committee, Kathy Patterson, the confidential report concludes that “not a single arresting officer

gave or observed a police warning” and that “law enforcement officials did not hear any orders given to those who were subsequently arrested.”

3. The true purpose of the Pershing Park mass arrests instead appears to have been to disrupt and prevent political demonstrations scheduled for the weekend of September 27-29, 2002. There was no probable cause for the arrests and no legitimate justification for the lengthy detention and mistreatment of the arrestees.

4. The named plaintiffs, each of whom was arrested at Pershing Park and detained for as much as 30 hours before being released, accordingly bring this action under 42 U.S.C. § 1983 and the common law to vindicate their own civil rights and the civil rights of the class, including the rights to be free from the unreasonable seizure of their persons and to exercise their First Amendment rights of speech and assembly.

#### **JURISDICTION AND VENUE**

5. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1343(a)(3) and (4), and 1367. Plaintiffs bring this action under 42 U.S.C. § 1983 to vindicate rights arising under the First, Fourth, and Fifth Amendments to the United States Constitution. The Complaint also seeks relief authorized by the Declaratory Judgment Act, 28 U.S.C. §§ 2201-02. Plaintiffs’ common law claims arise from the same occurrences as plaintiffs’ constitutional claims and are within the supplemental jurisdiction of this Court.

6. Venue is proper in this district under 28 U.S.C. § 1391(b). A substantial part of the events or omissions giving rise to the claims asserted in this Complaint occurred within this judicial district.

## **PARTIES**

7. Plaintiff Julie Abbate is a resident of Washington, D.C. Ms. Abbate was arrested in Pershing Park on the morning of September 27, 2002. She was thereafter detained and held against her will until approximately 9:00 in the evening on September 28, 2002.

8. Plaintiff Christopher Downes is a resident of northern Virginia. Mr. Downes was arrested in Pershing Park on the morning of September 27, 2002. He was thereafter detained and held against his will for more than 24 hours.

9. Plaintiff Joseph L. Mayer is a resident of northern Virginia. He is a retired United States Army lieutenant colonel. Mr. Mayer was arrested in Pershing Park on the morning of September 27, 2002. He was thereafter detained and held against his will for approximately 29 hours.

10. Plaintiff Mindi Morgan is a resident of northern Virginia. Ms. Morgan was arrested in Pershing Park on the morning of September 27, 2002. She was thereafter detained and held against her will until approximately 2:00 in the afternoon on September 28, 2002.

11. Plaintiff Tom Ulrich is a resident of Maryland. Mr. Ulrich was arrested in Pershing Park on the morning of September 27, 2002. He was thereafter detained and held against his will until approximately 11:00 in the morning on September 28, 2002.

12. Defendant Charles H. Ramsey is the Chief of Police of the District of Columbia Metropolitan Police Department ("MPD"). At all times relevant to this Complaint, defendant Ramsey was acting within the scope of his employment and under color of law of the District of Columbia. Defendant Ramsey is sued in his individual capacity.

13. Defendant District of Columbia is a municipal corporation and constitutes the local government of Washington, D.C.

### **CLASS ALLEGATIONS**

14. Plaintiffs bring this suit on behalf of themselves and as a class action pursuant to the provisions of Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure on behalf of the class of all persons arrested in Pershing Park in Washington, D.C., on the morning of September 27, 2002.

15. On information and belief, the class includes more than 400 persons geographically dispersed throughout the United States, making joinder of all class members impracticable. The exact number and identity of the class members is known to the defendants through the arrest records of the Metropolitan Police Department.

16. Questions of law and fact common to members of the class include:

- a. Whether the police gave any order to disperse prior to the mass arrest;
- b. Whether the class as a whole was peaceful and orderly prior to the mass arrest;
- c. Whether the police who surrounded Pershing Park on the morning of September 27, 2002, had been instructed to prevent anyone in the park from leaving prior to the mass arrest, and did act to prevent people from leaving Pershing Park;
- d. Whether the police lacked probable cause to arrest the class;
- e. Whether defendant Ramsey lacked reasonable grounds to believe and lacked a good faith belief that the class had violated any laws;

f. Whether defendants arrested and detained the class for the purpose of preventing the members of the class from participating in or observing demonstrations in Washington, D.C.;

g. Whether detaining the class on buses for many hours with their hands cuffed behind their backs and thereafter for many more hours with their wrists cuffed to their opposite ankles was excessive force in violation of the Fourth and Fifth Amendments to the United States Constitution and District of Columbia common law prohibitions against assault and battery and intentional infliction of emotional distress;

h. Whether the mass arrest and subsequent detention of the class without probable cause and for an unreasonable length of time violated the Fourth and Fifth Amendments of the United States Constitution and District of Columbia common law prohibitions against false arrest and imprisonment;

i. Whether the mass arrest and subsequent detention, and other mistreatment, of the class for the purpose of preventing class members from participating in or observing demonstrations violated the First Amendment of the United States Constitution;

j. Whether class members' arrest, lengthy detention, cuffing, destruction or loss of personal property, and other mistreatment was caused by defendant Ramsey, acting as a District of Columbia policymaker, and/or was pursuant to a District of Columbia custom, policy, or practice of arresting and detaining demonstrators to prevent them from participating in demonstrations,

and/or was pursuant to a District of Columbia custom, policy, or practice of tolerating police use of excessive force against demonstrators; and

k. Whether defendant Ramsey or other District of Columbia policymakers ratified violations of class members' constitutional rights.

17. The named plaintiffs' claims are typical of the claims of all members of the class. The interests of the named plaintiffs are not antagonistic to the interests of other members of the class, and the named plaintiffs will fairly and adequately protect the interests of members of the class. Plaintiffs are represented by counsel competent to prosecute this civil rights class action.

18. The questions of law and fact common to the members of the class predominate over any questions affecting only individual members, including legal and factual issues relating to damages.

19. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. The class is readily defined and prosecution of a class action will eliminate the possibility of repetitious litigation, while also providing redress for claims which in some instances may not be large enough to warrant the expense of individual litigation.

## **FACTS**

### **The Mass Arrest in Pershing Park**

20. Pershing Park is a public park located on Pennsylvania Avenue, N.W., Washington, D.C., between 14th and 15th Streets. It is adjacent to Freedom Plaza, an open public square lying between 13th and 14th Streets. Freedom Plaza and Pershing Park are located in the center of Washington's downtown government and business district and are in close proximity to numerous hotels and tourist destinations. Office workers, government employees, tourists, visitors and others commonly pass through Pershing Park and Freedom Plaza on a daily

basis. Freedom Plaza is also frequently used for large public gatherings, such as outdoor concerts and festivals as well as political demonstrations and events.

21. One such event was a political demonstration scheduled to occur on the morning of Friday, September 27, 2002, at Freedom Plaza. The demonstration was one of many on a variety of political issues planned for that weekend. The Freedom Plaza event was widely discussed in the media before September 27. The sponsors advertised the event as involving various peaceful activities, such as an anti-“war drums” drumming circle, chanting, and dancing, intended to dramatize the demonstrators’ opposition to an invasion of Iraq.

22. When the demonstrators and their supporters (as well as observers and bystanders) arrived at Freedom Plaza on the morning of September 27, 2002, they were met by a large contingent of police in full riot gear who ordered anyone attempting to enter Freedom Plaza to assemble instead in Pershing Park. The planned demonstration began in Pershing Park and was conducted peacefully and without disruption of traffic or pedestrians.

23. Additional riot police thereafter arrived on the scene and surrounded Pershing Park. The police continued to allow people to enter Pershing Park but refused to allow anyone to leave the park once they had entered (even if they had entered voluntarily and not in response to a police order), and physically blocked efforts by people to leave the park. No order was given to the demonstrators to stop their activities, which continued to attract spectators and on-lookers into Pershing Park.

24. The police then closed the perimeter around Pershing Park and began a coordinated mass arrest of the crowd trapped in Pershing Park. Police charged into the crowd, shoving back those closest to the police lines until the crowd was standing shoulder-to-shoulder with essentially no room to move, and then arrested nearly everyone who happened to be inside



the park. In carrying out many of the arrests, the police struck some people who were offering no resistance and knocked them onto the ground, inflicting injuries ranging from bruises and abrasions to broken bones and dislocations.

25. Persons arrested in Pershing Park were forced to abandon valuable personal property, including bicycles, backpacks, and other belongings. Such property was wantonly lost or damaged by the police in the course of arresting plaintiffs and the class members, or in the course of subsequently handling it.

### **The Detention Of The Class Members**

26. Class members were held for unusually prolonged periods of time under injurious and humiliating conditions. They were not promptly given access either to counsel or the courts, and they were repeatedly denied the ability to obtain a timely release through the normal methods of accepting a citation or posting and forfeiting collateral. Many were not released until Saturday evening, an extraordinary length of time given the minor nature of the unfounded and pretextual charges for which they were arrested.

27. Class members were herded onto buses with their hands cuffed tightly behind their backs. They were driven to a temporary processing and detention facility at the Police Academy. Upon arrival they were kept on the buses for up to 17 hours with their hands still cuffed, and with only very limited access to food, water and sanitary facilities.

28. Following processing, the members of the class were forced to sit on rubber mats in the gymnasium of the Police Academy with their right wrists cuffed tightly to their left ankles for extended periods of time and with only limited access to food, water and sanitary facilities. Many arrestees suffered physical injury ranging from numbness and bruising to potentially

severe nerve damage as a result of being tightly cuffed for long periods of time, first, with hands behind the back, and second, with one wrist cuffed to the opposite ankle.

29. Ordinarily, individuals arrested on minor charges such as “failure to obey” are not detained until they can be brought to court but are offered the options of “citation release,” whereby they receive a citation with a court date at which they can contest the charges against them, or “post and forfeit,” whereby they pay a small sum of money and are released with no court date. During their confinement at the Police Academy, members of the class who wished to obtain a prompt release by receiving a citation were denied this option, ostensibly because the “computers were down.” Other members of the class who wished to post and forfeit collateral in order to obtain their release were denied this option as well, or had it withheld for an extended period of time. During the course of their detention, police officers repeatedly informed members of the class that if they decided to challenge the legality of their arrest, they would be held for an even longer period of time, at least until Monday, September 30, 2002; this information later proved to be false. At some point the “post and forfeit” option was made available to many class members, but the “citation release” option was not.

30. In the late evening and early morning hours of the night of September 27-28, 2002, certain class members were placed in buses and transported from the Police Academy to the Metropolitan Police Department’s Central Booking facility at Judiciary Square, where they were processed again and placed in holding cells. The police officers at Central Booking again repeatedly denied or delayed attempts by arrestees to obtain a citation or to post and forfeit collateral in order to obtain their release. Some arrestees were later transferred for a third time to the D.C. Superior Court building.

31. Neither the prolonged detention of the arrestees nor the conditions of their confinement were required for any legitimate purpose. The defendants intentionally subjected class members to prolonged detention and onerous conditions in order to prevent or deter them and others from engaging in lawful and constitutionally protected activity. On the morning of the arrests, defendant Ramsey stated: “These people that are apprehended are going to miss several protests . . . because they’ll be behind bars.”

### **Culpability of the Defendants**

32. The mass arrest at Pershing Park was carried out by officers of the Metropolitan Police Department, who were acting within the scope of their employment by the District of Columbia. MPD police officers were aided by law enforcement personnel from several other jurisdictions, who were acting as agents of the District of Columbia on September 27, 2002.

33. Chief Ramsey personally directed and approved the actions of the police at Pershing Park. Chief Ramsey said to a reporter at the scene while he observed the lines of riot police surrounding Pershing Park: “Ain’t it a thing of beauty, to see our folks up there ready to go.”

34. There was no probable cause or reasonable basis for the arrest of the class members. The class was peaceful and was not threatening any violence or disruption. No order to disperse had been given by the police before the mass arrest began. On the contrary, class members were forcibly prevented from departing Pershing Park peacefully. Defendant District of Columbia has acknowledged that there was no lawful basis for these arrests. The communications director of the Office of the Corporation Counsel of the District of Columbia has stated that District has declined to prosecute anyone arrested in Pershing Park because “[w]e

did not feel in the cases that came from Pershing Park . . . that we had probable cause that a crime was committed and/or that a specific individual committed a crime.”

35. Defendants’ true motive for the arrest and lengthy detention of the class was to prevent class members from observing or participating in demonstrations that were occurring or expected to occur over the weekend in the District of Columbia.

36. Defendant Ramsey has final decision-making authority and is responsible for establishing government policy for the District of Columbia in matters concerning the arrest and detention of persons by the Metropolitan Police Department. Defendant Ramsey’s decision to arrest and detain the members of the class constituted an official policy of the District of Columbia for purposes of 42 U.S.C. § 1983.

37. The class members’ arrest, lengthy detention, and the use of excessive force by the police were in conformity with a custom, policy, or practice of the District of Columbia.

38. In undertaking the mass arrest and subsequent detention of the class on September 27, 2002, defendants acted maliciously, with the motive and intent to violate the constitutional and common law rights of the class, or with reckless or callous indifference to the federally protected and common law rights of the class.

39. The class members suffered numerous injuries and damages, including the following, as a direct and proximate result of the customs, policies, and practices of the District of Columbia, the actions of District of Columbia policymakers, and the actions of Chief Ramsey and the police acting under his direction:

- a. Violation of their constitutional rights of freedom of speech, assembly, and association under the First Amendment to the United States Constitution;

b. Violation of their constitutional right to be free from an unreasonable search and seizure of their persons under the Fourth Amendment to the United States Constitution;

c. Violation of their constitutional right to be free from deprivation of liberty or property without due process of law under the Fifth Amendment to the United States Constitution;

d. Violation of their right under the common law of the District of Columbia to be free from false arrest, false imprisonment, assault and battery, and the intentional infliction of emotional distress;

e. Monetary loss, including criminal fines, forfeited collateral, medical and legal fees and expenses, and other expenses arising out of their illegal arrest, detention, and mistreatment;

f. Bodily injuries;

g. Personal and reputational injuries, including pain and suffering, humiliation, embarrassment, anguish, and emotional distress, arising out of their illegal arrest and detention and the conditions of their confinement; and

h. Loss and/or destruction of personal property.

40. The constitutional rights of the class members that were violated by Chief Ramsey and the police officers acting under his direction were clearly established and well settled as of September 27, 2002.

41. Defendants intend to employ similar mass arrest tactics in the future. It is likely that plaintiffs, class members, and others will again be participants or onlookers or passersby at demonstrations in the District of Columbia, and therefore are subject to being arrested and

detained again pursuant to the customs, practices, and policies of the District of Columbia simply for observing, attending, or participating in future demonstrations.

**FIRST CLAIM FOR RELIEF:**

**42 U.S.C. § 1983**

42. Plaintiffs reallege and incorporate by reference paragraphs 1 through 41 as if fully set forth herein.

43. Defendant Ramsey and defendant District of Columbia are liable to the named plaintiffs and the class members under 42 U.S.C. § 1983 for the violation under color of law of their constitutional rights of freedom of speech, assembly, and association under the First Amendment to the United States Constitution; their constitutional right to be free from an unreasonable search and seizure of their persons under the Fourth Amendment to the United States Constitution; and their constitutional right to be free from any deprivation of liberty or property without due process of law under the Fifth Amendment to the United States Constitution.

**SECOND CLAIM FOR RELIEF:**

**False Arrest and Imprisonment, Assault and Battery,**  
**Intentional Infliction of Emotional Distress**

44. Plaintiffs reallege and incorporate by reference paragraphs 1 through 43 as if fully set forth herein.

45. Defendant Ramsey and defendant District of Columbia are liable to the named plaintiffs and the class members under District of Columbia law for false arrest and imprisonment, assault and battery, and intentional infliction of emotional distress.

46. The notice requirements of D.C. Code § 12-309 have been satisfied as to the named plaintiffs and the members of the class by virtue of the notice letters sent by the undersigned on March 21 and 26, 2003, by other notice letters sent by individual class members, and by reports and records of the Metropolitan Police Department regarding the September 27, 2002, mass arrest at Pershing Park.

### **PRAYER FOR RELIEF**

WHEREFORE, the named plaintiffs and the other members of the class request relief as follows:

(a) An order certifying this action as a class action pursuant to Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure, certifying the named plaintiffs as class representatives, and designating Covington & Burling as class counsel;

(b) Judgment declaring that the defendants violated the First, Fourth, and Fifth Amendment rights of the class;

(c) Compensatory damages against the defendants jointly and severally;

(d) Punitive damages;

(e) A permanent injunction prohibiting the defendants, and all persons acting as their agents or in concert with them, from:

(i) taking preemptive action to confine, detain, or arrest individuals participating in or observing demonstrations;

(ii) directing individuals participating in or observing demonstrations to proceed to a location for the purpose of making preemptive arrests;

(iii) arresting individuals participating in or observing demonstrations on a charge of failure to obey a police order, or on a charge of unlawful assembly,

without first having provided those individuals with fair notice of the order and opportunity to comply;

(iv) restraining misdemeanor arrestees by handcuffing a wrist to an ankle, unless such restraint is necessary to control an individual who is behaving in a violent or uncontrollable manner; and

(v) failing to provide individuals who are arrested and charged with non-violent misdemeanors as a result of having participated in or witnessed demonstrations with a clear and reasonable opportunity to obtain a “citation release”;

(f) An order compelling the defendants to expunge all records of the arrests of the named plaintiffs and of the other class members relating to the September 27, 2002, arrests, and compelling the defendants to retrieve and expunge, or cause the expungement of, all such records that are in the hands of other government agencies as a result of having been transmitted or forwarded by the defendants;

(g) An order directing the defendants to reimburse criminal fines and forfeited collateral collected from the named plaintiffs and the other members of the class;

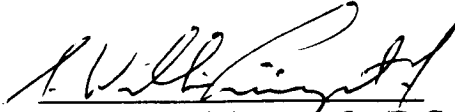
(h) Attorneys’ fees and costs pursuant to 42 U.S.C. § 1988; and

(i) Such other relief, including injunctive relief, as is just and proper under the circumstances.



**JURY DEMAND**

Trial by jury is demanded on all issues for which a jury trial is available.



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