

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JEFFREY BARHAM, ET AL.	:	
Plaintiffs	:	
	:	
v.	:	Civil Action No. 02-CV-2283 (RMU)
	:	
CHIEF CHARLES H. RAMSEY, ET AL.	:	
Defendants	:	
	:	
	:	
	:	

MOTION FOR CLASS CERTIFICATION AND NOTICE

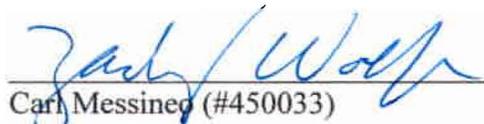
Plaintiffs move the Court, pursuant to Fed. R. Civ. P. 23(c)(1), for an order determining that this action will be maintained as a class action under Rule 23(b)(3) with respect to the claims of the following class: All persons who were arrested on September 27, 2002 as part of the mass arrests of persons that took place in Pershing Park.

Plaintiffs also move the Court pursuant to Rule 23(c)(2) for an order directing (1) that defendants shall provide to plaintiffs within thirty days of the date of the order the name of each class member and (a) the current address of each class member, or (b) all documents or records in the defendants' possession, custody or control that would assist plaintiffs in determining the class member's current address (including, but not limited to, social security number, date of birth, any known former addresses, current or former telephone numbers, addresses of next of kin, etc.); (2) that within thirty days after the defendants provide to plaintiffs a class member's current address, or defendants' documents pertaining to that class member, plaintiffs, at their expense, shall provide to the class member first class mail notification of the action and the matters stated in Rule 23(c)(A) through (C), with the "specified date" under Rule 23(c)(2)(A) being thirty days after the mailing of the notice; (3) that class members' responses should be mailed to counsel for

plaintiffs; and (4) that plaintiffs shall file the responses with the Court and serve copies on defendants.

A copy of this motion is being served upon defendants contemporaneously with the service of the First Amended Complaint in this matter, along with a request for defendants' consent. Should consent be secured, plaintiffs shall advise the Court through praecipe or other appropriate mechanism.

Respectfully submitted,



Carl Messineo (#450033)

Mara Verheyden-Hilliard (#430031)

Zachary Wolfe (#463548)

PARTNERSHIP FOR CIVIL JUSTICE, INC.

NATIONAL LAWYERS GUILD

MASS DEFENSE COMMITTEE

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Counsel for Plaintiffs

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	:	

**MEMORANDUM IN SUPPORT OF MOTION
FOR CLASS CERTIFICATION AND NOTICE**

The proposed class, and their claims, satisfy the requirements of Rules 23(a) and (b)(3).

Class Allegations

The Class Allegations regarding the mass false arrests in Pershing Park on September 27, 2002 are set forth in the First Amended Complaint at ¶¶138-145.

Class Members So Numerous that Joinder is Impractical

The class of persons subjected to the mass arrest on September 27, 2002 is composed of approximately 400+ persons. The class is so numerous that joinder of all members is impracticable. Eisenberg v. Gagnon, 766 F.2d 770 (3rd Cir. 1985) (ninety); Brady v. Thurston Motor Lines, 726 F.2d 136 (4th Cir. 1984) (seventy-four); Carlisle v. LTV ElectroSystems, Inc., 54 F.R.D. 237 (N.D. Tex. 1972) (forty-eight).

Common Questions of Law and Fact

There are questions of law and fact common to the class. These questions include whether defendants (1) violated the class members' First, Fourth and Fourteenth Amendment rights and their common law rights against false arrest and false imprisonment by detaining and arresting virtually all participants and observers of a peaceful political assembly and

demonstration without lawful justification; (2) subjected the arrestees to extended harsh conditions of confinement including, but not limited to, being hogtied wrist-to-ankle for hours; and (3) deliberately misinformed arrestees of their rights to post collateral and appear at a hearing to contest the arrest. All arrestees were detained in the park at the same location as a group in one singular police action against the class members collectively, were arrested and taken into custody in the same singular police action at the same time and as a group, and were confined in common or similar harsh conditions. Defendants violated plaintiffs' rights by common or similar conduct against each class member.

Typicalities of Representatives' Claims

With respect to defendants' liability, the claims of the class representatives are typical of the class. No fact material to defendants' liability to the representatives is atypical or peculiar to the representatives generally.

Adequacy of the Class Representatives

The class representatives and their legal counsel will fairly and adequately protect the interest of the class. There is no evidence of any material conflicts of interests between the representatives and any member of the class. Counsel for the plaintiffs are able and experienced federal litigators and are fully qualified to represent the class.

Predominance of the Common Questions

The circumstances of the false arrest of the class members was virtually identical, as all arrestees were detained in Pershing Park at the same location as a group in one singular police action against the class members collectively, were arrested and taken into custody in the same singular police action at the same time and as a group, and were confined in common or similar harsh conditions. Though some plaintiff class members may have suffered a type of injury that

others did not, such as the deprivation of access to medication for a condition not generally suffered by others, the overwhelming majority of injuries were similar or suffered in common. The common questions of law and fact bearing upon the lack of probable cause or lawful justification to arrest, not questions of unique injury, are the predominant questions presented.

According to Peter Lavalee, the D.C. Corporation Counsel's communication director as quoted in the *Washington City Paper*, "We no-papered everything in Pershing Park. We did not feel in the cases that came from Pershing Park – that the witness statements and the evidence that we had [presented] probable cause that a crime was committed and/or that a specific individual committed a crime."¹

To plaintiffs' knowledge, no other litigation has been commenced concerning class claims. *Chang, et al. v. District of Columbia, et al.*, 02-CV-02010 has been filed, which arises out of the same events, and presents individual claims of seven George Washington University students who were falsely arrested.

Concentration of the class action in this Court would be appropriate, as it would be convenient for the defendants. Plaintiffs, many from within the District and others from outside the District, briefly converged in Pershing Park and are now dispersed around the country. Hence, there is no alternative forum that would be more convenient for the plaintiff class.

Plaintiffs foresee no difficulty in managing the case as a class action, which is advantageous in terms of judicial and litigation economy.

¹ Jason Cherkis, "Boss Hogtie: Police Chief Charles Ramsey had a plan for the more than 400 people in Pershing Park last September: Arrest them all, detain them for hours, and then tie them wrist to ankle for 12 hours. He says he'll do it again," *The Washington City Paper*, January 17-23, 2003 at 20, 23.

Proposed Method of Notice

Plaintiffs' proposed method of notice, first class mail, with plaintiffs bearing the expense, is proper. Eisen v. Carlisle & Jacquelin, 417 U.S. 156 (1974). Since plaintiff class members were defendants' arrestees and prisoners, whose identity information was required to be recorded on standard processing and release forms, it is appropriate that defendants be ordered to provide plaintiffs available information concerning class members' identities and locations, so that plaintiffs may provide the best notice possible.

WHEREFORE, for the reasons set forth above, plaintiffs respectfully request that their motion be granted.

Respectfully submitted,



Carl Messineo (#450033)

Mara Verheyden-Hilliard (#430031)

Zachary Wolfe (#463548)

PARTNERSHIP FOR CIVIL JUSTICE, INC.

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Counsel for Plaintiffs

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	:	
	:	
	:	

ORDER

Upon consideration of plaintiffs' motion for class certification and notice, any opposition and reply thereto, it is this ____ day of _____, 2003, hereby

ORDERED that plaintiffs motion is GRANTED; and it is

FURTHER ORDERED that this action will be maintained as a class action under Rule 23(b)(3) with respect to the claims of the following class: All persons who were arrested on September 27, 2002 as part of the mass arrests of persons that took place in Pershing Park; and it is

FURTHER ORDERED that defendants shall provide to plaintiffs within thirty days of the date of this order the name of each class member and (a) the current address of each class member, or (b) all documents or records in the defendants' possession, custody or control that would assist plaintiffs in determining the class member's current address (including, but not limited to, social security number, date of birth, any known former addresses, current or former telephone numbers, addresses of next of kin, etc.); and it is

FURTHER ORDERED that plaintiffs, within thirty days after the defendants provide to plaintiffs a class member's current address or defendants' documents pertaining to that class

member, plaintiffs shall at plaintiffs' expense provide to the class member first class mail notification of the action and the matters stated in Rule 23(c)(A) through (C), with the "specified date" under Rule 23(c)(2)(A) being thirty days after the mailing of the notice; and it is

FURTHER ORDERED that class members' responses should be mailed to counsel for plaintiffs that plaintiffs shall file the responses with the Court and serve copies on defendants.

UNITED STATES DISTRICT JUDGE

copies to:

Carl Messineo
Mara Verheyden-Hilliard
Zachary Wolfe
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John Ashcroft
Attorney General of the United States
U.S. Department of Justice
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Washington, DC 20530

Certificate of Service

As of the time of filing, defendants have not been served with the Summons and initial Complaint in this matter. The foregoing, therefore, shall be served with the service of process, as will be reflected in the Return of Service.


Zachary Wolfe