

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

**GREGORY T. ANGELO, et al.,**

**Plaintiff,**

**v.**

**CHIEF MICHAEL ANZALLO, et al.,  
in his official and individual capacity,**

**Defendants.**

---

:  
:  
:  
:  
:  
:  
:  
:  
:  
:  
:  
:

**Case No: 1:22-cv-01878-RDM**

**MEMORANDUM OF LAW IN SUPPORT OF  
CHIEF ANZALLO’S MOTION TO DISMISS**

Michael Anzallo, Chief of Police of the Washington Metropolitan Area Transit Authority’s (“WMATA’s”) Metro Transit Police Department (“MTPD”), in his official and individual capacity, by and through undersigned counsel and pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6), hereby move this Court for an order dismissing him. In support of his motion, Chief Anzallo submits this Memorandum of Law for the Court’s consideration and states the following:

**I. INTRODUCTION**

On June 30, 2022, Plaintiffs filed a Complaint and Motion for Preliminary and Permanent Injunctive Relief against the District of Columbia and MPD Chief Robert Contee, Jr., alleging violations of Plaintiffs’ Second and Fifth Amendment rights under 42 U.S.C. § 1983.

On December 28, 2022, this Court denied Plaintiffs’ motion for preliminary and permanent injunctive relief, holding that Plaintiffs lacked standing to assert their claims. ECF #32. On January 11, 2022, the Plaintiffs filed a consent motion for a scheduling order. ECF #33.

The Court issued a minute order, allowing Plaintiffs until February 1, 2023, to file an amended complaint. *See* Minute Order of January 11, 2023.

Plaintiffs filed their Amended Complaint on February 1, 2023, alleging essentially the same facts and claims raised in their original Complaint. Two notable differences are the addition of MTPD Chief Michael Anzallo and D.C. Attorney General Brian Schwalb as party-Defendants.

## **II. FACTS**

Plaintiffs allege that D.C. Code §7-2507(a)(6), the District of Columbia law that prohibits the carrying of firearms on public transportation vehicles, including within WMATA's Metrorail system, infringes on Plaintiffs' Second Amendment right to carry and use handguns for personal protection, as well Plaintiffs' due process rights under the Fifth Amendment. Plaintiffs allege that they hold concealed pistol carry licenses issued in the District of Columbia and that they ride the Metrorail system. *See* Amended Complaint, ECF # 34, ¶¶ 1-31.

## **III. STANDARD OF REVIEW**

Federal Rule of Civil Procedure 12(b)(1) requires dismissal of an action if the court lacks subject matter jurisdiction. *See* Fed. R. Civ. P. 12(b)(1) (2016); *see also* *Curran v. Holder*, 626 F. Supp. 2d 30, 32 (D.D.C. 2009) ("Rule 12(b)(1) presents a threshold challenge to the Court's jurisdiction . . . [and] the Court is obligated to determine whether it has subject-matter jurisdiction in the first instance.") (internal citations omitted). When a motion to dismiss is filed pursuant to Fed. R. Civ. P. 12(b)(1), the cause of action is presumed to lie outside the federal courts' limited jurisdiction. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). The party seeking to invoke the jurisdiction of a federal court bears the burden of

establishing the court's subject matter jurisdiction. *Runkle v. Gonzales*, 391 F. Supp. 2d 210, 220 (D.D.C. 2005); *U.S. Ecology, Inc. v. Dep't of the Interior*, 231 F.3d 20, 24 (D.C. Cir. 2000).

A motion to dismiss under F. R. Civ. P. 12(b)(1) is resolved in one of two ways; a facial challenge and/or a factual challenge to a complaint. See *Herbert v. National Academy of Science*, 974 F.2d 192, 197 (D.C. Cir. 1992). In a facial challenge, the district court decides the motion to dismiss solely on the allegations in the complaint. *Id*; see also *Al-Owhali v. Ashcroft*, 279 F. Supp. 2d 13, 20 (D.D.C. 2003) The district court accepts the well-pleaded allegations in the complaint as true and considers the factual allegations in the light most favorable to the non-moving party. See *Erby v. United States*, 424 F. Supp. 2d 180, 182 (D.D.C. 2006). In a factual challenge, a district court looks beyond the factual allegations in the complaint and considers other extrinsic information. See *Herbert*, 974 F.2d at 197; see also *Jerome Stevens Pharmacy, Inc. v. FDA*, 402 F.3d 1249, 1253 (D.C. Cir. 2005).

Likewise, “[t]o survive a Rule 12(b)(6) motion to dismiss, a complaint must contain a short and plain statement of the claim showing that the pleader is entitled to relief ....” *Lash v. Lemke*, 971 F. Supp. 2d 85, 91 (D. D.C. 2013) quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) “[I]n passing on a motion to dismiss ... the allegations of the complaint should be construed favorably to the pleader.” *Id*; quoting *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974). The facts of a complaint are presumed to be true. See *Sparrow v. United Air Lines, Inc.*, 216 F. 3d 1111, 1113 (D.C. Cir. 2000) “However, the Court need not accept as true a legal conclusion couched as a factual allegation, nor inferences that are unsupported by the facts set out in the complaint.” *Trudeau v. FTC*, 456 F.3d 178, 193 (D.C. Cir. 2006) quoting *Papasan v. Allain*, 478 U.S. 265, 286 (1986) ) “[While] the pleading standard does not require detailed factual allegations, ... it demands more than an unadorned, the-defendant-unlawfully-harmed-me

accusation.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Thus, “[t]o survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face....” *Id.*; see also *WMATA v. Ferguson*, 977 A.2d 375, 377 (D.C. Cir. 2009) (A complaint alleging negligence may not rest on mere conclusory assertions as to the existence of any element of the claim).

#### IV. SUMMARY OF ARGUMENT

Plaintiffs’ have asserted, under 42 U.S.C. § 1983, two counts for constitutional torts under the Second and Fifth Amendments, and as to all Defendants. These claims against Chief Anzallo in his official and individual capacities must be dismissed as a matter of law.

There are two reasons Plaintiffs’ claims against Chief Anzallo in his official capacity must be dismissed. First, suit against Chief Anzallo in his official capacity is simply another way of bringing an action against WMATA. See, e.g., *Hafer v. Melo*, 502 U.S. 21, 25 (1991). In his official capacity, Chief Anzallo may therefore assert the same defenses that WMATA may assert. WMATA possesses sovereign immunity for its governmental functions, and police functions are quintessential governmental functions. Therefore, Plaintiffs’ claims against Chief Anzallo in his official capacity must be dismissed under Fed. R. Civ. P. 12(b)(1).

Second, Chief Anzallo, sued in his official capacity, is not a “person” as defined in under § 1983. Plaintiffs Amended Complaint sets forth two counts under 42 U.S.C. § 1983 against all Defendants. See Amended Complaint, ECF # 34. Plaintiffs’ two counts under § 1983 must be dismissed against Chief Anzallo in his official capacity because they do not fall within the ambit of § 1983 claims, as he possesses the same immunity from § 1983 claims as does WMATA. See, e.g., *Will v. Michigan Dept. of State Police*, 491 U.S. 58, 71 (1989).

Additionally, Plaintiffs' claims against Chief Anzallo in his individual capacity fail under 12(b)(6), because Plaintiffs fail to allege any actions Chief Anzallo has taken that rise to the level of a cognizable claim. Indeed, Plaintiffs fail to allege anything about Chief Anzallo in his individual capacity *at all*. See Amended Complaint, ECF #34 at ¶¶ 40, 41.<sup>1</sup>

Last, Chief Anzallo incorporates by reference this Court's findings and decision in its December 28, 2022, Order dismissing Plaintiffs' original complaint. There, the Court held that Plaintiffs lacked standing to bring their claims because they did not allege any "injuries in fact," depriving the Court of subject matter jurisdiction. Plaintiffs' Amended Complaint fails again to demonstrate any injuries in fact, and for these reasons, Chief Anzallo respectfully moves to dismiss all claims against him

## ARGUMENT

### A. CHIEF ANZALLO, IN HIS OFFICIAL CAPACITY, POSSESSES THE SAME SOVEREIGN IMMUNITY FROM SUIT AS WMATA

The Supreme Court has held that "official-capacity suits generally represent only another way of pleading an action against an entity of which an officer is an agent." *Hafer v. Melo*, 502 U.S. 21, 25 (1991) (internal quotation marks omitted). Consequently, when an official is named as a defendant based upon the position held, "the real party in interest ... is the governmental entity and not the named official." *Id.* Plaintiffs' claims against Chief Anzallo in his official capacity, therefore, are analyzed the same way as if WMATA were the party-defendant.

This Circuit has long recognized WMATA's immunity from all claims arising from its police functions, which are "quintessential governmental functions." *Dant v. WMATA*, 829 F.2d

---

<sup>1</sup> Even assuming, *hypothetically*, that Plaintiffs succeeded in asserting some cognizable claim against Chief Anzallo in his individual capacity under § 1983, that claim would be barred by the doctrine of qualified immunity.

69, 74 (D.C. Cir. 1987); *see also Burkhart v. WMATA*, 112 F.3d 1207, 1216 (D.C. Cir. 1997); *Beebe v. WMATA*, 129 F.3d 1283, 1287 (D.C. Cir. 1997).

Plaintiffs' suit against Chief Anzallo in his official capacity is barred for the same reasons suit against WMATA would be barred. WMATA, and Chief Anzallo in his official capacity, are immune from claims arising out of WMATA's police function. This Court lacks subject matter jurisdiction over WMATA, and its employees sued in their official capacity, based upon WMATA's sovereign immunity.

WMATA is a tri-jurisdictional compact agency of Maryland, Virginia, and the District of Columbia. *See, e.g., Morris v. WMATA*, 781 F.2d 218, 220 (D.C. Cir. 1986); *Dant v. WMATA*, *supra*. It was created by interstate compact for the purpose of providing mass transit in the Washington D.C. Metropolitan Area. *Id.* Each jurisdiction conferred its respective immunities upon WMATA. *See Morris*, 781 F.2d 219. *See also KiSKA Constr. Corp v. WMATA*, 321 F.3d 1151, 1158 (D.C. Cir. 2003). WMATA is immune from suit except to the extent that its sovereign immunity has been waived under Section 80 of the Compact. *See, e.g., Morris*, 781 F.2d 219; *see also Delon Hampton & Assocs., Ctd., v. WMATA*, 943 F. 2d 355, 359 (4th Cir. 1991) (*citing Beatty v. WMATA*, 860 F.2d 1117, 1126 (D.C. Cir. 1988)). WMATA did not waive its immunity for governmental functions under Section 80, which states that WMATA "shall not be liable for any such torts occurring in the performance of a governmental function." D.C. Code § 9-1107.01(80(a)).

"WMATA's police activities are an exercise of a governmental function" and fall outside WMATA's waiver under Section 80 of the Compact. *Dant*, 829 F.2d at 74. When Congress approved WMATA's Compact, it "foreclosed judicial remedy against WMATA for all torts, including invasions of federal civil rights, committed by WMATA in the exercise of [its]

police functions....” *Id.* at 71. “It is fairly established ... [that] the operation of a police force is a governmental function and the acts or omission in connection therewith ordinarily does not give rise to liability.” *Martin*, 667 F. 2d at 436; *see also Dant*, 829 F. 2d at 74.

The sole foundation for Plaintiffs’ claims against Chief Anzallo -- in both his official and individual capacities – are found in only two paragraphs, out of the one hundred and thirty-three paragraphs of the Amended Complaint. *See* Amended Complaint (“Am.Compl.”), ECF # 34 at ¶¶ 40 and 41. Plaintiffs assert no allegations pertaining to Chief Anzallo other than in these two paragraphs. *Id.*

Plaintiff correctly identifies Chief Anzallo as the current Chief of WMATA’s police department. *Id.* at ¶ 40. Section 76 of the WMATA Compact established WMATA’s police force as the “Metro Transit Police.” *See* D.C. Code § 9-1107.01(76(a)). Chief Anzallo is the Chief of the Metro Transit Police Department (“MTPD”).<sup>2</sup>

MTPD “enforces the laws of the Signatories, and the laws, ordinances and regulations of the Authority.” D.C. Code § 9-1107.01(76(a)). In fact, the WMATA Compact, as codified in the D.C. Code, requires that MTPD enforce *all* criminal laws of *each* Signatory (and their political subdivisions). *Id.* MTPD has “concurrent jurisdiction in the performance of their duties with the duly constituted law enforcement agencies of the Signatories . . . in which any transit facility is . . . located[...].” *Id.* In the District of Columbia, MTPD and MPD share concurrent jurisdiction within the Metro system. *Id.*<sup>3</sup>

---

<sup>2</sup> Plaintiffs incorrectly identify the police department as “WMATA-PD.”

<sup>3</sup> Plaintiffs state that MTPD “enforce[s] the laws of the District of Columbia as they pertain to the Metro System including the law at issue in this proceeding.” Am. Compl. ECF # 34, at ¶ 40. This is inaccurate. *See* D.C. Code § 9-1107.01(76(a)). MTPD enforces all criminal laws – not just laws that pertain to “the Metro System.” *Id.*

Section 76 of the WMATA Compact directs MTPD to enforce the laws of the Signatories, which includes the District of Columbia. Plaintiffs have expressly recognized that MTPD is required by the WMATA Compact to enforce the laws of each of its Signatory jurisdictions. *See* Am. Compl., ECF #34 at ¶ 40. This is true, whether for gun carry laws or for other criminal laws of its Signatories and their political subdivisions. MTPD’s statutory purpose is to enforce the laws of the jurisdictions in which it polices. *See* D.C. Code § 9-1107.01(76(a)).

In the second of the two paragraphs of the Amended Complaint which reference Chief Anzallo, Plaintiffs allege that their counsel sent Chief Anzallo a letter on January 31, 2023 (one day before Plaintiffs’ filed their Amended Complaint), asking the Chief to “waive enforcement of the Metro carry ban as to my clients and enter into a non-prosecution agreement” with Plaintiffs. Am. Compl., ECF # 34 at ¶ 41. MTPD is a police department; it is not charged with prosecutorial decision-making authority. That power is vested in the Office of the Attorney General of the District of Columbia, a fact to which Plaintiffs admit in their Amended Complaint. *See* Am. Compl., ECF # 34 at ¶ 33. (“Brian Schwalb [is] the Attorney General of the District of Columbia . . . [and] is responsible for the prosecution of the District’s laws at issue in this lawsuit.”). *Id.*

All allegations against Chief Anzallo in paragraphs 40 and 41 arise out of, and pertain to, MTPD’s enforcing the law, *i.e.*, to WMATA’s police function. WMATA, through MTPD, enforces the criminal laws of its Signatory jurisdictions and their political subdivisions. *See* D.C. Code § 9-1107.01(76(a)). WMATA enjoys immunity from claims pertaining to its police function. *See, e.g., Griggs v. WMATA*, 232 F. 3d 917, 922 (D.C. Cir. 2000) (Section 80 of the Compact cloaks WMATA itself with absolute immunity for torts arising in the exercise of

governmental functions). Chief Anzallo, in his official capacity, enjoys the same sovereign immunity from claims as WMATA does. *Hafer*, 502 U.S. at 25.

Wherefore, Chief Anzallo respectfully requests that this Court dismiss all claims against him in his official capacity for lack of subject matter jurisdiction under Rule 12(b)(1).

**B. CHIEF ANZALLO, IN HIS OFFICIAL CAPACITY, IS NOT A “PERSON”  
UNDER 42 U.S.C. § 1983 REQUIRING DISMISSAL OF CLAIMS**

The Amended Complaint asserts two counts under 42 U.S.C. § 1983 against all Defendants. *See* Am. Compl., ECF #34 at pp.47-48. Section 1983 states that, “[e]very person who, under the color of state law, subjects another to the deprivation of any constitutional right shall be liable to the injury party.” 42 U.S.C. § 1983. In *Will v. Michigan*, the Supreme Court held that “neither a state nor its officials are ‘persons’ under § 1983.” *Will v. Michigan Dept. of State Police*, 491 U.S. 58, 71 (1989).

Chief Anzallo *is* a person, of course. The Supreme Court explained, however, that while “state officials literally are persons,” that a “suit against a state official in his or her official capacity is not a suit against the official but rather is a suit against the official's office.” *Id.* (citing *Brandon v. Holt*, 469 U.S. 464, 471 (1985)). Suit against state officials in their official capacity is the same thing as suit against the State itself. *See Kentucky v. Graham*, 473 U.S. 159, 165–166 (1985); *Monell, supra*, at 690, n. 55.

Thus, state officials acting in their official capacities, cannot be “persons” for purposes of suit under § 1983. *Id.* Although WMATA is not a state, it possesses state-level immunity. WMATA is an interstate compact agency created by Maryland, Virginia, and the District of Columbia, with the consent of Congress. *Id.*; *see also Morris*, 781 F.2d at 219-20; *Dant*, 829 F.2d at 74. When WMATA was created, Maryland and Virginia, as well as the District of Columbia, conferred their own immunities upon WMATA. *Id.*

WMATA and its officials in their official capacity cannot be sued under § 1983, just as States and state officials in their official capacity cannot be sued. *See e.g., Hawkins v. Washington Metropolitan Area Transit Authority*, 311 F.Supp.3d 94, 108 (D.D.C., 2018) (Dismissal of Section 1983 claims against WMATA and MTPD officer in his official capacity); *Cutchin v. District of Columbia*, 174 F.Supp.3d 427, 430 (D.D.C., 2016) (Dismissal of § 1983 claims against MTPD officers in their official capacities).

Wherefore, Chief Anzallo, in his official capacity, respectfully requests that this Court dismiss with prejudice both counts of Plaintiffs' § 1983 claims against him pursuant to 12(b)(6).

**C. PLAINTIFFS FAIL TO ALLEGE ANY CLAIM AGAINST CHIEF ANZALLO IN HIS INDIVIDUAL CAPACITY UPON WHICH RELIEF MAY BE GRANTED.**

Rule 12(b)(6) allows a party to move for dismissal of a complaint on the grounds that it “fail[s] to state a claim upon which relief can be granted.” Fed. R. Civ. P. 12(b)(6). “[A] complaint [does not] suffice if it tenders ‘naked assertion[s]’ devoid of ‘further factual enhancement.’ ” *Iqbal*, 556 U.S. at 678 (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 557 (2007)). Plaintiffs' Amended Complaint against Chief Anzallo in his individual capacity must be dismissed for those reasons.

Plaintiffs have alleged no injury arising from the actions of Chief Anzallo; more precisely, they have failed to allege anything about him at all. The Amended Complaint alleges nothing more than a recitation of Plaintiffs' fears about travelling in the Metro system without being able to carry their guns, as well as their fears of potentially being arrested for violating the law of the District of Columbia if they did carry their guns in violation of D.C. Code § 7 - 2507(a)(6). As a matter of law, they have asserted no cognizable claim against Chief Anzallo. “Plaintiff has alleged no injury beyond his fears, and the Court cannot exercise jurisdiction over

any defendant [ . . . ] on such flimsy allegations. *Gomez v. Nielsen*, 301 F.Supp.3d 91, 98 (D.D.C., 2018).

The Amended Complaint is devoid of any representation that Chief Anzallo, in his individual capacity, has taken any action against Plaintiffs or has caused them any harm. It is well established that a complaint must contain “more than an unadorned, the-defendant-unlawfully-harmed-me accusation” and that “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” *Iqbal*, 556 U.S. at 678. Here, the allegations of the Amended Complaint fail to rise even to the level of threadbare recitals of elements and conclusory statements. The two paragraphs of the Amended Complaint that make bare mention of Chief Anzallo merely identify him in his role as MTPD’s Chief of Police, with Plaintiffs pointing out MTPD’s legal mandate to enforce the laws of the jurisdictions in which they police. *See* Am. Comp. # ECF #34 at ¶¶ 40, 41.

Plaintiffs have failed to state a claim against Chief Michael Anzallo in his individual capacity upon which relief can be granted under Rule 12(b)(b).<sup>4</sup> Wherefore, for these reasons, Chief Anzallo respectfully requests dismissal of all claims against him in his individual capacity.

---

<sup>4</sup> Moreover, Chief Anzallo, in his individual capacity, would be shielded by qualified immunity *even if* Plaintiffs were able to articulate a cognizable claim against him in his individual capacity. An officer who allegedly violates a plaintiff’s constitutional rights will be shielded by qualified immunity if the officer was not on notice that his or her actions violated clearly established rights: “Qualified immunity shields federal and state officials from suit unless a plaintiff alleges facts showing (1) that the official violated a statutory or constitutional right, and (2) that the right was ‘clearly established’ at the time of the challenged conduct.” *Ashcroft v. al-Kidd*, 563 U.S. 731, 742 (2011) *quoting Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982).

To place the defense of qualified immunity in the context of Plaintiffs’ claims, *even if Chief Anzallo had personally arrested Plaintiffs for violating D.C. Code §7-2507(a)(6)*, he would be shielded by qualified immunity from Plaintiffs’ § 1983 claims, because no court has ruled that D.C. Code §7-2507(a)(6) is unconstitutional (negating the need for any analysis about whether that constitutional right was clearly established at the time.).

#### **D. PLAINTIFFS' LACK STANDING TO BRING THEIR CLAIMS**

Chief Anzallo incorporates by reference this Court's December 28, 2022, Order where it dismissed Plaintiffs' Complaint for lack of standing. *See* ECF # 32. This Court held that Plaintiffs failed to allege any "injury in fact." *Id.* In their Amended Complaint, Plaintiffs request declaratory and injunctive relief. *See* Am. Compl., ECF # 34. Plaintiffs have, yet again, failed again to demonstrate that they have suffered any "injury in fact," without which they cannot establish Article III standing. The Amended Complaint asserts Plaintiffs' fears about carrying their handgun in violation of § 7-2509.07(a)(6), but no actual harm. These are the same type of allegations that this Court rejected when ruling that their Complaint failed to establish Article III standing, depriving the Court of subject matter jurisdiction. *See* ECF # 32. Wherefore, Chief Anzallo moves to dismiss Plaintiffs' Amended Complaint.

#### **V. CONCLUSION**

For the reasons stated herein, and for other such good cause as this Court may determine, Chief Anzallo respectfully moves that this Court dismiss Plaintiffs' claims against him in their entirety.

Respectfully submitted,

/s/ Janice L. Cole  
Janice L. Cole #440351  
Senior Counsel II  
WMATA  
300 7<sup>th</sup> St., S.W.  
Washington, D.C. 20024  
(202) 962-2543 (o); (202) 604-1833 (mobile)  
[jlcole@wmata.com](mailto:jlcole@wmata.com)

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 1st day of March 2023, a copy of the Motion to Dismiss, Memorandum of Law in Support of the Motion to Dismiss Plaintiff's Amended Complaint, and proposed Order was electronically filed and sent via the court's ECF system to:

George L. Lyon, Jr. (Bar No. 388678)  
Bergstrom Attorneys PLLC  
202.669.0442; fax 202.483.9267  
gll@arsenalattorneys.com

Matthew Bergstrom (Bar No. 989706)  
800.819.0608

4000 Legato Road, Suite 1100  
Fairfax, Virginia 22033

Matthew R. Blecher  
Chief, Civil Litigation Division  
Office of the Attorney General for the District of Columbia

Andrew J. Saindon  
Senior Assistant Attorney General  
Office of the Attorney General for the District of Columbia

/s/ Janice L. Cole  
Janice L. Cole