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**NOT FOR CITATION**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

ROBERT-JOHN FOTI, et al.,

Plaintiffs,

v.

OFFICER McHUGH, et al.,

Defendants.

No. C 04-2567 PJH

**ORDER GRANTING MOTION TO  
DISMISS FIRST AMENDED COMPLAINT<sup>1</sup>**



Now before the court is the motion of defendants Officer McHugh, U.S. Marshals Service, and Federal Protective Service for an order dismissing the first amended complaint pursuant to Federal Rule of Civil Procedure 12(b)(1) for lack of subject matter jurisdiction and pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim. Having read the parties' papers and carefully considered their arguments, and the relevant legal authority, and good cause appearing, the court hereby GRANTS the motion.

**INTRODUCTION**

Pro-se plaintiffs Robert-John:Foti ("Foti"), Joe Neufeld ("Neufeld"), and Ken Augustine ("Augustine") bring this action pursuant to Bivens v. Six Unknown Named

<sup>1</sup> Pursuant to Civil Local Rule 7-13, this order may not be cited except as provided by Civil Local Rule 3-4(e).

1 Agents, 403 U.S. 388, 396-97 (1971),<sup>2</sup> alleging violation of their rights under the First,  
2 Fourth, Fifth, Thirteenth, and Fourteenth Amendments to the United States Constitution,  
3 and also alleging various state-law tort claims. Defendants are the U.S. Marshals Service;  
4 Federal Protective Services ("FPS"); Officer McHugh, employed by either the U.S.  
5 Marshals Service or FPS; and "other unknown number of unnamed officers" of the U.S.  
6 Marshals Service and FPS. Plaintiffs seek damages and injunctive relief.

### 7 BACKGROUND

8 The San Francisco division of the United States District Court for the Northern  
9 District of California is located at the Federal Building, 450 Golden Gate, San Francisco.  
10 The entrances to the Federal Building are staffed by officers of defendant FPS. Anyone  
11 wishing to enter the Federal Building is required first to place his or her belongings on a  
12 conveyor belt that runs through an x-ray machine, and then to show state-issued  
13 identification and walk through a metal detector.

14 At some point prior to May 4, 2004, Foti, who was the plaintiff in another suit  
15 pending in the Northern District of California, Foti v. County of San Mateo, C-00-4783 SI,  
16 was apparently refused admittance to the Federal Building by FPS officers because he had  
17 no identification (or refused to show identification). On May 4, 2004, Foti, Neufeld,  
18 Augustine, and a fourth person (Peter Clark Dougherty) wrote a letter to Thomas Klenieski  
19 at the U.S. Marshals Service at 450 Golden Gate, asking for an "administrative hearing"  
20 regarding the policy of requiring that everyone entering the building show a form of state-  
21 issued identification. They claim that they received no response to the request. On May  
22 20, 2002, Neufeld attempted to enter the Federal Building to file a lawsuit. He was initially  
23 refused admittance to the building because he had no identification, but one of the court  
24 security officers escorted him to the clerk's office. He then filed the complaint in Neufeld v.

25 \_\_\_\_\_  
26 <sup>2</sup> In Bivens, the United States Supreme Court held that employees or agents of the  
27 federal government may be held personally liable for violations, committed under the color of  
28 individual a federal common law basis to sue federal government actors if they violate the  
individual's constitutional rights. However, . . . the right to sue as established by Bivens is  
qualified and is not absolute. Adams v. Johnson, 355 F.3d 1179, 1183 (9th Cir. 2004).

1 United States Postal Service, C-02-2434 WHA.

2 The incident that led to the filing of the complaint in the present action occurred on  
3 May 21, 2004. On that day, Foti, Neufeld, and Augustine attempted to enter the Federal  
4 Building to attend a hearing in case No. C-00-4783 SI, in which Foti was the plaintiff. They  
5 had no identification (or refused to show identification), and the security officers refused to  
6 allow them to enter the building. Foti claims that defendant Officer McHugh assaulted him  
7 by placing his arm in a "wristlock control hold." He also asserts that Officer McHugh forced  
8 him out of the building and into the street, and compelled him to remain there, surrounded  
9 by other officers. Foti was apparently subsequently permitted to enter the building and  
10 attend the hearing, accompanied by a clerk. Plaintiffs claim that Neufeld and Augustine  
11 were not permitted to enter.

12 On June 25, 2004, Foti filed the complaint in the present action. When he  
13 attempted to enter the Federal Building to file the papers, Foti was refused admittance  
14 because he had no identification (or refused to produce identification). Plaintiffs claim that  
15 the clerk and the FPS officers refused to escort him to the clerk's office, and that he was  
16 able to file the complaint only because another person who was with him (and who  
17 apparently had identification) was able to act as a "go-between."

18 On July 9, 2004, Foti and Augustine attempted to enter the Federal Building to  
19 attend a hearing – plaintiffs do not specify the case – but were denied admission because  
20 they had no identification (or refused to produce identification).

21 On September 10, 2004, Foti attempted to enter to Federal Building to obtain  
22 subpoenas for discovery in case No. C-00-4783 SI. He was denied access to the building  
23 because he had no identification (or refused to produce identification).

24 On September 24, 2004, Foti attempted to enter the Federal Building to attend a  
25 hearing in case No. C-00-4783 SI. He was denied access to the building because he had  
26 no identification (or refused to produce identification). Plaintiffs claim that no one would  
27 escort Foti to the courtroom.

28 On November 4, 2004, Foti and Augustine attempted to enter the Federal Building

1 to attend a hearing in case No. C-00-4783 SI. (Augustine was there to observe.) They  
2 were denied access to the building because they had no identification (or refused to  
3 produce identification). Plaintiffs claim that no one would escort Foti and Augustine to the  
4 courtroom. Plaintiffs also assert that one of the FPS officers came from behind his station,  
5 and put his hands on both of them to push them out of the building because they had failed  
6 to produce identification.

7 Plaintiffs filed the first amended complaint on November 9, 2004. Plaintiffs allege  
8 forty-six causes of action, asserting similar (though not identical) claims as to each of the  
9 six incidents described above – occurring on May 21, 2004; June 25, 2004;<sup>3</sup> July 9, 2004;  
10 September 10, 2004; September 24, 2004; and November 4, 2004. Foti asserts claims as  
11 to all six incidents, Neufeld asserts claims as to the May 21 incident, and Augustine asserts  
12 claims as to the May 21, July 9, June 25,<sup>4</sup> and November 4 incidents.

13 Plaintiffs allege common law tort claims for assault and battery, false arrest and  
14 imprisonment, and kidnaping; claims of violations of 18 U.S.C. § 1509 (obstruction of  
15 justice); and claims of violations of their First, Fourth, Fifth, Thirteenth, and Fourteenth  
16 Amendment rights. There is some overlap among the constitutional claims, but the first  
17 amended complaint essentially asserts the following: 1) denial of freedom of association  
18 and denial of the right to petition for redress of grievances, in violation of the First  
19 Amendment; 2) false arrest and imprisonment and unlawful search, in violation of the  
20 Fourth Amendment; 3) denial of due process, in violation of the Fifth and Fourteenth  
21 Amendments; and 4) involuntary servitude, in violation of the Thirteenth Amendment.

22 Defendants now move for an order dismissing the first amended complaint. They  
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24 <sup>3</sup> It is not clear whether plaintiffs are claiming violations of their rights in connection with  
25 an incident on June 25, one on July 25, or both. In the factual background section of the first  
26 amended complaint, plaintiffs refer to the incident on June 25, when Foti filed the complaint  
27 in this action. They also refer in passing to the "hearing[ ] of June 25," without any further  
28 explanation. In the allegations under causes of action 19-25, plaintiffs refer to a July 25  
incident (without further factual detail); rather than to a June 25 incident.

<sup>4</sup> As is the case with Foti, it is not clear whether Augustine asserts claims in connection  
with an incident on June 25 or one on July 25.

1 argue that the tort claims, the constitutional claims seeking injunctive relief, and the claims  
2 of obstruction of justice must be dismissed for lack of subject matter jurisdiction. They also  
3 assert that the constitutional claims against Officer McHugh and the unnamed officers  
4 must be dismissed because the officers are entitled to qualified immunity.

## 5 DISCUSSION

### 6 A. Subject Matter Jurisdiction

#### 7 1. Legal Standard

8 Federal courts are courts of limited jurisdiction, possessing only that power  
9 authorized by Article III of the United States Constitution and statutes enacted by Congress  
10 pursuant thereto. Bender v. Williamsport Area Sch. Dist., 475 U.S. 534, 541 (1986). Thus,  
11 federal courts have no power to consider claims for which they lack subject-matter  
12 jurisdiction. Chen-Cheng Wang ex rel. United States v. FMC Corp., 975 F.2d 1412, 1415  
13 (9th Cir. 1992).

14 Subject matter jurisdiction is fundamental and cannot be waived. Billingsly v. C.I.R.,  
15 868 F.2d 1081, 1085 (9th Cir. 1989). The court is under a continuing duty to dismiss an  
16 action whenever it appears that the court lacks jurisdiction. Id. Federal courts are courts  
17 of limited jurisdiction. Stock West, Inc. v. Confederated Tribes, 873 F.2d 1221, 1225 (9th  
18 Cir. 1989). Federal courts can adjudicate only those cases which the Constitution and  
19 Congress authorize them to adjudicate – those involving diversity of citizenship or a federal  
20 question, or those to which the United States is a party. Kokkonen v. Guardian Life Ins.  
21 Co. of America, 511 U.S. 375, 377 (1994). The burden of establishing that a cause lies  
22 within this limited jurisdiction rests upon the party asserting jurisdiction. Id.; see also Tosco  
23 Corp. v. Communities for a Better Env't, 236 F.3d 495, 499 (9th Cir. 2001).

#### 24 2. Defendants' Motion

25 Defendants argue that the tort claims must be dismissed for failure to exhaust  
26 administrative remedies under the Federal Tort Claims Act, and that the constitutional  
27 claims against the Marshals Service and FPS and the claims of obstruction of justice must  
28 be dismissed because plaintiffs have not sustained their burden of establishing a waiver of

1 sovereign immunity for those claims. "It is well settled that the United States is a  
2 sovereign, and, as such, is immune from suit unless it has expressly waived such immunity  
3 and consented to be sued." Gilbert v. DaGrossa, 756 F.2d 1455, 1458 (9th Cir. 1985).  
4 The court must strictly construe in favor of the government the scope of any waiver of  
5 sovereign immunity. Dep't of the Army v. Blue Fox, Inc., 525 U.S. 255, 261 (1999). Any  
6 claim for which sovereign immunity has not been waived must be dismissed for lack of  
7 jurisdiction. Gilbert, 756 F.2d at 1458.

8 The Federal Tort Claims Act ("FTCA"), 28 U.S.C. §1346(b), contains a limited  
9 waiver of the United States' sovereign immunity. See Vickers v. United States, 228 F.3d  
10 944, 948 (9th Cir. 2000). As a jurisdictional prerequisite to bringing suit under the FTCA, a  
11 plaintiff must first file an administrative claim with the offending agency, and the claim must  
12 be denied before filing in federal court. Blair v. IRS, 304 F.3d 861, 864-65 (9th Cir. 2002);  
13 Brady v. United States, 211 F.3d 499, 502-03 (9th Cir. 2000).

14 Put another way, the FTCA bars claimants from bringing suit in federal court until  
15 they have exhausted their administrative remedies. See 28 U.S.C. § 2675(a); see also  
16 McNeil v. United States, 508 U.S. 106, 113 (1993). In the present case, plaintiffs have not  
17 satisfied this prerequisite and therefore cannot avail themselves of the FTCA's limited  
18 waiver of sovereign immunity. Thus, the state-law tort claims – for assault and battery,  
19 false arrest and imprisonment, and kidnaping – must be dismissed because plaintiffs have  
20 not exhausted their administrative remedies by filing a claim under the FTCA.<sup>5</sup> Before  
21 plaintiffs can file a lawsuit alleging such tort claims, they must exhaust their administrative  
22 remedies. Once that requirement is satisfied, and if the claim is denied, they may file suit  
23 in the U.S. District Court, but must name the United States as the defendant.

24 The constitutional claims asserted against the Marshals Service and FPS must also  
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27 <sup>5</sup> Moreover, as defendants correctly note, the only proper defendant in a FTCA suit is  
28 the United States. See Allen v. Veterans Admin., 749 F.2d 1386, 1388 (9th Cir. 1984) (citing  
28 U.S.C. §§ 1346(b), 2679(a)). Thus, plaintiffs cannot pursue tort claims against federal  
agencies – such as the U.S. Marshals Service or FPS – or against individual federal  
employees – such as Officer McHugh or the "unknown number of unnamed officers."

1 be dismissed because plaintiffs fail to point to a specific and unequivocal waiver of  
2 sovereign immunity. The United States has sovereign immunity except where it consents  
3 to be sued. United States v. Mitchell, 463 U.S. 206, 212 (1983). Consent is a prerequisite  
4 for jurisdiction. See id. The United States has not waived sovereign immunity in a Bivens  
5 suit for monetary damages or injunctive relief. See United States v. Rural Elec.  
6 Convenience Coop. Co., 922 F.2d 429, 434 (7th Cir.1991) (jurisdictional bar of sovereign  
7 operates when a suit threatens to impose liability for money or property damages or some  
8 form of coercive injunctive relief upon United States); Clemente v. United States, 766 F.2d  
9 1358, 1362-64 (9th Cir. 1985) (Bivens does not waive government's immunity).

10 Anytime a suit is brought against an officer of the federal government in which the  
11 relief sought is prevention or discontinuance of an alleged wrong, there is a concern that  
12 the compulsion the court is asked to impose is actually compulsion against the sovereign.  
13 "If it is, then the suit is barred, not because it is a suit against an officer of the Government,  
14 but because it is, in substance, a suit against the Government over which the court, in the  
15 absence of consent, has no jurisdiction." Larson v. Domestic & Foreign Commerce Corp.,  
16 337 U.S. 682, 687 (1949). Here, plaintiffs seek an order requiring the U.S. Marshals  
17 Service and FPS to modify the security procedures that have been implemented by the  
18 Department of Homeland Security, pursuant to direction and authorization from Congress.  
19 Thus, the injunctive relief sought by plaintiffs would result in compulsion against the  
20 Government. For this reason, the court has no jurisdiction to hear the claim.<sup>6</sup>

21 Moreover, as the purpose of Bivens is to deter the individual officer, the Bivens  
22 remedy does not extend to damages actions against federal agencies, such as the U.S.  
23 Marshals Service or FPS, even where individual officials are protected by qualified  
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25 <sup>6</sup> Plaintiffs also ask the court to "order all officers, marshals, and Clerks, whose names  
26 are unknown to us and present during the incidents which are the subject of this suit," and  
27 "Attorney General Wilfred Fong and Judge Ilston in there [sic] private capacity as  
28 conspirators," served with the complaint in this action, adding "no approximation of the number  
of defendants possible." FAC ¶ 116. The court cannot order service on entities that have not  
been named as defendants in the suit, and does not arrange for service in any event, unless  
it has granted a plaintiff's request to proceed in forma pauperis.

1 immunity. See Fed. Deposit Ins. Corp. v. Meyer, 510 U.S. 471, 484-86 (1994).<sup>7</sup> In  
2 addition, because the remedy exists solely against individual federal officials, not against  
3 the United States, see Kreines v. United States, 33 F.3d 1105, 1109 (9th Cir. 1994), a  
4 Bivens action for damages can be maintained against federal officials only in their  
5 individual capacities – not in their official capacities. Vaccaro v. Dobre, 81 F.3d 854, 857  
6 (9th Cir. 1996).

7 Finally, defendants argue that the “obstruction of justice” claim must be dismissed  
8 for lack of subject matter jurisdiction. Plaintiffs allege that Officer McHugh and other  
9 unnamed officers obstructed justice, in violation of 18 U.S.C. § 1509, when they prevented  
10 Foti from entering the court to make an appearance at a hearing, ordered by Judge Illston.  
11 This claim fails because plaintiffs have not satisfied the requirement of establishing an  
12 explicit waiver of sovereign immunity for such a claim. See, e.g., Scherer v. United States,  
13 241 F.Supp. 2d 1270, 1280 (D. Kan. 2003) (United States has not waived sovereign  
14 immunity under related federal “obstruction of justice” statute – 18 U.S.C. § 1503).

15 Alternatively, the § 1509 claims can be dismissed pursuant to Federal Rule of Civil  
16 Procedure 12(b)(6). Section 1509 is a criminal statute, providing no private right of action  
17 and no civil remedies. In general, statutes that provide for punishment by fine or  
18 imprisonment do not create privately enforceable rights or give rise to civil liability. See,  
19 e.g., Aldabe v. Aldabe, 616 F.2d 1089, 1092 (9th Cir. 1980). The Ninth Circuit has ruled  
20 that the related statute – 18 U.S.C. § 1503 – does not provide for a private right of action.  
21 Forsyth v. Humana, Inc., 114 F.3d 1467, 1482 (9th Cir. 1997).

22 B. Qualified Immunity

23 1. Legal Standard

24 The defense of qualified immunity shields government officials “from liability for civil  
25 damages insofar as their conduct does not violate clearly established statutory or  
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27 <sup>7</sup> Plaintiffs appear to be seeking damages only from the individual officers, not from the  
28 Marshals Service or FPS. Claims against the agencies would, in any event, be subject to  
dismissal. See Meyer, 510 U.S. at 484-86.



1 constitutional rights of which a reasonable person would have known." Harlow v.  
2 Fitzgerald, 457 U.S. 800, 818 (1982). Qualified immunity protects "all but the plainly  
3 incompetent or those who knowingly violate the law." Malley v. Briggs, 475 U.S. 335, 341  
4 (1986). Thus, defendants can have a reasonable, but mistaken, belief about the facts or  
5 about what the law requires in any given situation. Saucier v. Katz, 533 U.S. 194, 202  
6 (2001) (quoting Malley, 475 U.S. at 341).

7 "The entitlement is an immunity from suit rather than a mere defense to liability;  
8 [and] . . . it is effectively lost if a case is erroneously permitted to go to trial." Mitchell v.  
9 Forsyth, 472 U.S. 511, 526 (1985). Insofar as possible, a ruling on the issue of qualified  
10 immunity should be made early in the proceedings so that the costs and expenses of trial  
11 are avoided where the defense is dispositive. Saucier, 533 U.S. at 200. Indeed, a  
12 defendant is entitled to a ruling on qualified immunity "early in the proceedings so that the  
13 costs and expenses of trial are voided where the defense is dispositive." Jeffers v. Gomez,  
14 267 F.3d 895, 909 (9th Cir. 2001) (quoting Saucier, 533 U.S. at 200).

15 2. Defendants' Motion

16 Defendants argue that the constitutional claims against Officer McHugh and the  
17 "unnamed officers" must be dismissed because the officers are entitled to qualified  
18 immunity. Under the two-part analysis set forth in Saucier, the court must first examine  
19 whether the officers violated the plaintiffs' constitutional rights on the facts alleged, and  
20 second, if there was a violation, must determine whether the constitutional right or rights  
21 were clearly established. Saucier, 533 U.S. at 201. If a plaintiff's allegations do not state a  
22 claim of violation of clearly established law, a defendant pleading qualified immunity is  
23 entitled to dismissal before the commencement of discovery. Mitchell, 472 U.S. at 526;  
24 see also Butler v. San Diego Dist. Atty's Office, 370 F.3d 956, 964 (9th Cir. 2004). Here,  
25 the officers are entitled to qualified immunity because plaintiffs fail to state a claim of  
26 violation of constitutional rights.

27 Plaintiffs allege variations on four constitutional claims in connection with the six  
28 incidents described above: 1) that the officers violated plaintiffs' First Amendment right to

1 freedom of association (by refusing to allow them to enter the Federal Building unless they  
2 presented identification), and their right to petition for redress of grievances (by keeping  
3 them out of court); 2) that the officers violated plaintiffs' Fourth Amendment rights by  
4 restricting their freedom of movement, by not allowing them to proceed into the Federal  
5 Building, by surrounding them on the street and holding them there for a significant amount  
6 of time, and by demanding that they provide state-issued identification without a  
7 reasonable suspicion of crime; 3) that the officers violated plaintiffs' Thirteenth Amendment  
8 rights by placing them in involuntary servitude by making them dependent on another for  
9 escort into the courts; and 4) that the officers violated plaintiffs' Fifth and Fourteenth  
10 Amendment due process rights by denying their right to access the court (by refusing to  
11 allow them to enter the building unless they presented identification).

12 Plaintiffs do not state a claim of a constitutional violation in any of their four  
13 constitutional causes of action. Plaintiffs allege that McHugh and the "unnamed officers"  
14 violated their Fifth and Fourteenth Amendment due process rights by denying their right to  
15 access the court, by refusing to allow them to enter the building unless they presented  
16 identification. The right of access to the courts is subsumed under the First Amendment  
17 right to petition the government for grievances. Soranno's Gasco, Inc. v. Morgan, 874 F.2d  
18 1310, 1314 (9th Cir. 1989). Alternatively, where the right of access is dependent on some  
19 unavailable procedure – such as a requirement of payment of a filing fee, which is  
20 impossible for an indigent plaintiff – the right at issue is characterized as a due process  
21 right. See, e.g., Boddie v. Connecticut, 401 U.S. 371 (1971) (filing fee requirement for  
22 divorce actions).

23 Here, plaintiffs do not allege that Officer McHugh and the "unnamed officers"  
24 prevented them from filing a lawsuit or from presenting their grievances to the court. Their  
25 complaint is that they could not physically attend a hearing in a case in which one of them  
26 is a party. However, parties routinely appear in court through the presentation of papers.  
27 Plaintiffs' access to the Federal Building was restricted because they chose not to  
28 cooperate with the security requirements established by the Department of Homeland

1 Security. They were not denied "court access." Nor have they alleged facts that establish  
2 that Officer McHugh or the "unnamed defendants" deprived them of life, liberty, or property  
3 without process of law.

4 Plaintiffs also claim that the officers violated plaintiffs' First Amendment right to  
5 freedom of association, by refusing to allow them to enter the building unless they  
6 presented identification. The right of association is derived from the First Amendment right  
7 to freedom of speech and assembly. One aspect of the right of association is the right to  
8 associate for the purpose of engaging in the types of activity expressly protected by the  
9 First Amendment.<sup>8</sup> Presumably, plaintiffs' claim is that they were prevented from  
10 assembling in the courthouse to petition the court for redress of grievances.<sup>9</sup>

11 Because Foti is the only one of the three plaintiffs who was also a plaintiff in the  
12 action pending before Judge Illston, it is difficult to see how he was prevented from  
13 "associating" with others who were there to petition for redress from grievances. Neufeld  
14 and Augustine cannot claim that they were prevented from petitioning for redress from  
15 grievances in connection with Foti's trips to the courthouse to attend hearings in his own  
16 case, as they were not there in any capacity as litigants. Moreover, as with the claim of  
17 denial of court access, plaintiffs cannot establish that they were prevented from associating  
18 to petition the court for redress, as they can petition the court just as effectively on paper.

19 Plaintiffs allege that the officers violated plaintiffs' Thirteenth Amendment rights by  
20 placing them in a state of involuntary servitude by making them dependent on another for  
21 escort into the courts (by refusing to allow them to enter the building unless they presented  
22 identification or someone from inside the building agreed to sign for them). This cause of  
23

24 <sup>8</sup> The Supreme Court has recognized two types of free association rights – the right  
25 to intimate relationships, and the right to associate for the purpose of engaging in the activities  
26 protected by the First Amendment (speaking, practicing religion, petitioning the government).  
Roberts v. U.S. Jaycees, 468 U.S. 609, 617-18 (1984). The former is a personal liberty under  
the Fourteenth Amendment, while the latter is protected by the First Amendment. IDK, Inc.  
v. Clark County, 836 F.2d 1185, 1191-92 (9th Cir. 1988).

27 <sup>9</sup> The court is unaware of any legal authority for the existence of a fundamental  
28 constitutional right to enter a government building simply to associate with particular  
individuals.

1 action must be dismissed because plaintiffs do not allege facts that can be construed to  
2 state a claim for violation of the Thirteenth Amendment.

3 The Thirteenth Amendment provides that "[n]either slavery nor involuntary servitude,  
4 except as a punishment for crime . . . shall exist within the United States, or any place  
5 subject to their jurisdiction." U.S. Const. amend. XIII. The term "involuntary servitude" has  
6 been defined as meaning "a condition of servitude in which the victim is forced to work for  
7 the defendant by the use or threat . . . of coercion through law or the legal process."  
8 United States v. Kozminski, 487 U.S. 931, 952 (1988). The requirement that an individual  
9 seeking to enter the Federal Building either show acceptable state-issued identification or  
10 be signed in by a federal employee who recognizes the individual does not impose a  
11 requirement that the individual work. Because the identification requirement does not  
12 violate the prohibition against involuntary servitude, plaintiffs fail to state a claim for  
13 violation of the Thirteenth Amendment.

14 Finally, as for the larger issue in this case – whether the United States Government  
15 can legitimately impose a requirement that individuals entering federal property show state-  
16 issued identification – plaintiffs have not stated any facts showing that such a requirement  
17 is unconstitutional. Thus, Officer McHugh and the "unnamed officers" are entitled to  
18 qualified immunity on that ground as well. The U.S. Marshals Service and FPS are both  
19 agencies within the Department of Homeland Security (DHS). Congress has authorized  
20 DHS to "prescribe regulations necessary for the protection and administration of property  
21 owned or occupied by the Federal Government and persons on the property" in  
22 consultation with the General Services Administration ("GSA"). 40 U.S.C. § 1315(c)(1);  
23 see also 41 C.F.R. Part 102-74(C) (regulations governing conduct on and admission to  
24 federal property).

25 These DHS regulations provide, among other things, that when federal property, or  
26 a portion thereof, is closed to the public, admission to the property is restricted to  
27 authorized persons who must, "when requested, display Government or other identifying  
28 credentials to the Federal police officers or other authorized individuals when entering,

1 leaving or while on the property." 41 C.F.R. § 102.74-375(c). In this case, certain areas  
2 within the Federal Building, such as the interior work areas within the clerk's office and the  
3 judges' chambers, are not open to the public. Thus, the security officers can legitimately  
4 require that anyone entering the Federal Building show identification.


5 In addition, Congress has authorized the U.S. Marshals Service to "provide for the  
6 security . . . of the United States District Courts" and to "provide for the personal protection  
7 of federal jurists, court officers, witnesses, and other[s]." 28 U.S.C. § 566(a), (e)(1)(A).  
8 Accordingly, working in conjunction with GSA and the Administrative Office of the Courts,  
9 the U.S. Marshals Service and FPS have established and implemented certain security  
10 measures at federal buildings housing the courts. These measures include the  
11 requirement that anyone entering the building display state-issued identification and pass  
12 through the metal detectors.

### 13 CONCLUSION

14 In accordance with the foregoing, the court finds that defendants motion must be  
15 GRANTED. It is true, as plaintiffs assert, that pro se complaints are held to less stringent  
16 standards than formal pleadings drafted by lawyers. Haines v. Kerner, 404 U.S. 519, 520  
17 (1972) (per curiam); see also Karim-Panahi v. Los Angeles Police Dep't, 839 F.2d 621, 623  
18 (9th Cir.1988) (in civil rights cases where plaintiff appears pro se, "the court must construe  
19 the pleadings liberally and must afford plaintiff the benefit of any doubt"). Nevertheless, in  
20 the present case, there is no possibility that plaintiffs will prevail in their challenge to the  
21 requirement that anyone entering the Federal Building show identification to the security  
22 officers. Thus, the complaint is dismissed WITH PREJUDICE. Having dismissed the  
23 complaint, the court does not address plaintiffs' request for injunctive relief.

24  
25 **IT IS SO ORDERED.**

26 Dated: February 2, 2005

27   
28 \_\_\_\_\_  
PHYLLIS J. HAMILTON  
United States District Judge

UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

Foti et al,

Plaintiff,

v.

McHugh et al,

Defendant.

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Case Number: C-04-2567 PJH

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on February 2, 2005, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.


Abraham A. Simmons  
U.S. Attorney's Office  
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P.O. Box 36055  
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Mission Rafael Station  
San Rafael, CA 94902

Kenneth Augustine  
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Robert-John Foti  
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Dated: February 2, 2005

  
Richard W. Wicking, Clerk  
By: Lurline Moriyama, Deputy Clerk