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

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| WEIH STEVE CHANG, *et al.*, | ) | |
| Plaintiffs, | ) | |
| v. | ) | Civil Action No. 19-1241 (TSC) |
| LAURA L. ROGERS, *et al.* | ) | |
| Defendants. | ) | |

**FEDERAL DEFENDANTS' MOTION TO DISMISS**

Defendant Laura L. Rogers, in her official capacity as Acting Director of the Department of Justice's Office on Violence Against Women, and the Office on Violence Against Women hereby move to dismiss the claims against them pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). The reasons for this motion are set forth in the accompanying Memorandum of Points and Authorities in Support of the Federal Defendants' Motion to Dismiss. A proposed order is attached for the Court's consideration.

Dated: October 30, 2019

Respectfully submitted,

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**MEMORANDUM OF POINTS AND AUTHORITIES**
**IN SUPPORT OF THE FEDERAL DEFENDANTS' MOTION TO DISMISS**

Plaintiffs Weih Steve Chang and Gordon Gene Smith (collectively, "Plaintiffs") bring this putative class action asserting various claims based on the purportedly unlawful enactment and implementation of the Violence Against Women Act ("VAWA") against, *inter alia*, the Department of Justice's Office on Violence Against Women ("OVW"), and OVW's Acting Director Laura L. Rogers, in her official capacity only (collectively, "Federal Defendants").[1] *See* First Amended Verified Class Action Complaint ("Complaint"), ECF No. 9. The Court should dismiss all claims against the Federal Defendants under Federal Rules of Civil Procedure 12(b)(1) and (b)(6) because Plaintiffs lack standing and the Complaint fails to state a claim upon which relief could be granted.

[1] Although Plaintiffs purport to bring claims against all defendants under *Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971), plaintiffs' counsel has informed counsel for federal defendants that the *Bivens* claims do not apply to Defendant Rogers, the only individually named federal defendant.

## BACKGROUND

Congress enacted VAWA to combat "crimes disproportionately affecting women," such as rape and domestic abuse, because such crimes "are often treated less seriously than comparable crimes against men."[2] S. Rep. 102-197, at 43 (1991). *See also* S. Rep. No. 103-138, at 42 (1993). In subsequent reauthorizations, Congress amended VAWA to clarify that nothing in the Act "shall be construed to prohibit male victims of domestic violence, dating violence, sexual assault, and stalking from receiving benefits and services under [the Act]." Pub. L. No. 109-162, § 3(a), 119 Stat. 2970 (codified at 34 U.S.C. § 12291(b)(8)). Indeed, with the reauthorization of VAWA in 2013, Congress enacted a new, separate nondiscrimination provision that covers all VAWA-funded and OVW-administered grant programs, which prohibits discrimination based on sex, among other protected categories. Pub. L. No. 113-4, § 3(b)(4), 127 Stat. 61-62 (codified at 34 U.S.C.§ 12291(b)(13)).

Among other provisions, VAWA provides federal grants to state, local, tribal, and private entities to help reduce the incidence of domestic violence, sexual assault, stalking, and other crimes falling within VAWA's scope. *See* OVW, U.S. Dep't of Justice, OVW Grants and Programs, https://www.justice.gov/ovw/grant-programs.[3] OVW awards and administers these

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[2] VAWA was originally enacted as Title IV of the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, tit. IV, 108 Stat. 1902-1955 (Sept. 13, 1994). It has since been repeatedly reauthorized and amended. *See* Violence Against Women Reauthorization Act of 2013, Pub. L. No. 113-4, 127 Stat. 54-160 (Mar. 7, 2013); Violence Against Women and Department of Justice Reauthorization Act of 2005, Pub. L. No. 109-162, 119 Stat. 2960-3135 (Jan. 5, 2006); Victims of Trafficking and Violence Prevention Act of 2000, Pub. L. No. 106-386, div. B, 114 Stat. 1491-1539 (Oct. 28, 2000). Except as otherwise relevant, this brief discusses VAWA as it is currently implemented, as that is the statutory scheme Plaintiffs challenge here.

[3] The Court may consider facts outside the Complaint on a motion to dismiss without converting the motion into a motion for summary judgment when the facts are subject to judicial notice. *Stewart v. Nat'l Educ. Ass'n*, 471 F.3d 169, 173 (D.C. Cir. 2006). Judicial notice of the OVW

grants. *See* OVW, U.S. Dep't of Justice, OVW Grants and Programs, https://www.justice.gov/ovw/grant-programs. Also at issue here, VAWA makes interstate domestic violence a federal criminal offense. *See* 18 U.S.C. § 2261(a).

Plaintiffs allege that various VAWA grant recipients in Delaware treated Plaintiffs unlawfully in connection with domestic violence offenses, including by subjecting them to malicious prosecutions. *See* Compl. ¶¶ 136-58. Specifically, Plaintiff Chang alleges that the Delaware police attempted to arrest him on domestic violence charges when he was in fact the victim of abuse and that a Delaware law clinic denied him help based on his sex when he sought assistance in connection with the alleged abuse. *Id.* ¶¶ 137-38. Plaintiff Smith alleges that he was arrested nine times for domestic abuse and charged with twenty-one domestic violence charges, although he was later pardoned of at least one resulting conviction. *Id.* ¶¶ 138, 141, 143. Both Plaintiffs were temporarily prohibited from seeing their children as a result of the domestic abuse charges against them. *Id.* ¶¶ 154-57.

**STANDARD OF REVIEW**

Federal Rule of Civil Procedure 12(b)(1) requires dismissal when the plaintiff fails to meet his or her burden of establishing subject-matter jurisdiction, including when a plaintiff fails to establish elements of standing. *In re Rail Freight Fuel Surcharge Antitrust Litig.*, 587 F. Supp. 2d. 29, 33-34 (D.D.C. 2008). When reviewing a facial challenge under Rule 12(b)(1), courts apply the same standard to jurisdictional allegations that they apply to factual allegations under Federal Rule of Civil Procedure 12(b)(6). *See West Virginia v. U.S. Dep't of Health & Human Servs.*, 145

website is appropriate because it is a publicly available official document. *See Kaempe v. Myers*, 367 F.3d 958, 965 (D.C. Cir. 2004). *See also Pharm. Research & Mfgs. of Am. v. U.S. Dep't of Health & Human Servs.*, 43 F. Supp. 3d 28, 33 (D.D.C. 2014).

F. Supp. 3d 94, 98-99 (D.D.C. 2015), *aff'd*, 827 F.3d 81 (D.C. Cir. 2016), *cert. denied*, 137 S. Ct. 1614 (2017).

Rule 12(b)(6) requires dismissal when the plaintiff fails to make allegations sufficient to "state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A "claim has facial plausibility" when the "well-pleaded factual allegations" allow "the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678-79 (2009). Thus, the plausibility pleading standard "demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Id.* at 678. Moreover, "[w]hile the complaint is to be construed liberally in plaintiff's favor, the Court need not accept inferences drawn by the plaintiff if those inferences are unsupported by facts alleged in the complaint; nor must the Court accept plaintiff's legal conclusions." *United States v. All Assets Held at Bank Julius Baer & Co.*, 571 F. Supp. 2d 1, 15 (D.D.C. 2008).

**ARGUMENT**

The Court should dismiss the Complaint because Plaintiffs lack standing and because their claims lack any legal basis.

I The Court Should Dismiss this Case Because Plaintiffs Cannot Show Standing.

Rather than reach the merits of Plaintiffs' claims, the Court should dismiss the Complaint for lack of jurisdiction because Plaintiffs have failed to establish standing.[4] "[S]tanding is an essential and unchanging part of the case-or-controversy requirement of Article III." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992). *See Steel Co. v. Citizens for a Better Envt.*, 523 U.S.

[4] Although Plaintiffs have brought a putative class action, that fact does not alter the standing analysis. Before certification of a class, courts look only to the standing of the individual plaintiffs. *See O'Shea v. Littleton*, 414 U.S. 488, 494 (1974); *Ramirez v. U.S. Immigration & Customs Enforcement*, 338 F. Supp. 3d 1, 22 (D.D.C. 2018). Should the Court deny the instant motion, the Federal Defendants reserve all arguments concerning class certification.

83, 94-95 (1988). "[S]tanding is not dispensed in gross.' Rather, 'a plaintiff must demonstrate standing for each claim he seeks to press' and 'for each form of relief' that is sought." *Davis v. FEC*, 554 U.S. 724, 734 (2008) (alteration in original) (internal citations omitted). As the party invoking federal jurisdiction, Plaintiffs bear the burden of establishing all three elements of Article III standing: (1) an injury in fact that is (2) traceable to the challenged conduct and (3) would be redressed by a favorable decision. *See Lujan*, 504 U.S. at 560-61. Here, Plaintiffs have failed to establish standing to assert any of their claims.

First, Plaintiffs lack any injury upon which to base a challenge to VAWA's criminal provisions. Both Plaintiffs admit to being prosecuted for domestic violence by the State of Delaware. Compl. ¶¶ 8-9. Neither alleges that he was prosecuted by any federal entity or individual for a violation of VAWA's criminal provision, 18 U.S.C. § 2261(a). Plaintiffs therefore lack any injury arising from the creation of the offenses codified in that statute and lack standing to challenge it.

Second, Plaintiffs do not have any injury that would provide them standing to challenge OVW's submissions to Congress under the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 551-59, as they do in Count IV of the Complaint. Compl. ¶ 184. A plaintiff must show that he or she is within the zone of interest of an agency action to have prudential standing to challenge it. *See Am. Bar Ass'n v. U.S. Dep't of Educ.*, 370 F. Supp. 3d 1, 18 (D.D.C. 2019). Here, Plaintiffs allege that OVW made false statements to Congress in its biennial reports. Compl. ¶ 184. They make no allegations from which the Court could infer how the purported inclusion of false statements in those reports affect Plaintiffs or how they are generally within the zone of interest of reports submitted to Congress. *See generally id.* They therefore have not established standing with regard to that claim.

Third, Plaintiffs cannot show that federal defendants Rogers or OVW caused VAWA grant recipients to act unlawfully by subjecting them to malicious prosecution or denying them legal assistance. For a plaintiff to have Article III standing, "there must be a causal connection between the injury and the conduct complained of—the injury has to be fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court." *Lujan*, 504 U.S. at 560 (citations and alterations in original omitted) (emphasis added). *See also Allen v. Wright*, 468 U.S. 737, 752 (1984) (stating that a plaintiff has failed to traceability when "the line of causation between the illegal conduct and injury [is] too attenuated"). Here, any injuries to Plaintiffs were the result of either the other defendants or non-parties to this case, which were caused neither by the VAWA statute nor by OVW's award of grants under that statute. VAWA contains no provisions that direct that individuals be treated differently on the basis of their sex or gender. *See generally* Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, tit. IV, 108 Stat. 1902-1955 (Sept. 13, 1994) (as amended). Indeed, the VAWA statute specifically prohibits any person from "be[ing] denied the benefits of, or be[ing] subjected to discrimination under any program or activity funded in whole or in part with funds made available under the Violence Against Women Act of 1994 [and its reauthorizations]" "on the basis of actual or perceived . . . sex, gender identity[,] . . . [or] sexual orientation."[5] 34 U.S.C. § 12291(b)(13)(A). Any unlawful discriminatory actions are therefore in no way authorized by the Federal Government and not traceable to it.[6]

[5] This provision is subject to an exception when "sex segregation or sex-specific programming is necessary to the essential operation of a program." 34 U.S.C. § 12291(b)(13)(B). However, neither legal assistance in domestic violence cases nor criminal prosecution of those cases implicates that exception.

[6] Plaintiffs may argue that Congress added this nondiscrimination provision to the Act in its 2013 reauthorization, after OVW grant recipients allegedly falsely arrested and denied services

Fourth, Plaintiffs cannot show that the harms allegedly inflicted on them in the past would be redressed by the declaratory and injunctive relief they seek.[7] Redressability requires that it "be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Lujan*, 504 U.S. at 561 (internal punctuation omitted). The Supreme Court held in *City of Los Angeles v. Lyons*, 461 U.S. 95 (1983), that a plaintiff lacks standing to enjoin a government defendant from engaging in an unconstitutional practice unless the plaintiff demonstrates a "real and immediate threat of again being" subject to the practice. *Id.* at 109-10. Neither Plaintiff alleges that he is involved in a domestic relationship and likely to again be arrested for, or subject to, domestic violence. *See generally* Compl. As such, neither Plaintiff has made any showing that his claimed injuries will be remedied by declaratory or injunctive relief against the Federal Defendants.

Fifth, Plaintiffs' allegations that they are taxpayers whose taxes go in part to fund VAWA grants are insufficient to confer standing. As the Supreme Court explained in *Hein v. Freedom from Religion Foundation, Inc.*, 551 U.S. 587 (2007), "[a]s a general matter, the interest of a federal taxpayer in seeing that Treasury funds are spent in accordance with the Constitution does not give rise to the kind of redressable 'personal injury' required for Article III standing." *Id.* at 599. To meet the narrow exception to this general rule, a plaintiff must show that (1) the

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to them. *See* Compl. ¶¶ 136-37. VAWA formula funding to the states, however, has been subject to the nondiscrimination provision in the Omnibus Crime Control and Safe Streets Act of 1968, which likewise prohibits discrimination of the basis of sex, since VAWA's enactment. See 34 U.S.C. § 10228(c)(1). Moreover, in the 2005 reauthorization of VAWA, Congress amended VAWA to clarify that nothing in the Act "shall be construed to prohibit male victims of domestic violence, dating violence, sexual assault, and stalking from receiving benefits and services under [the Act]." Pub. L. No. 109-162, § 3(a), 119 Stat. 2970 (codified at 34 U.S.C. § 12291(b)(8)).

[7] Again, Plaintiffs' counsel has clarified that Plaintiffs do not seek money damages from Defendant Rogers. *See* note 1, *supra*.

government acted pursuant to its power under the Constitution's Taxing and Spending Clause and (2) the exercise of that power exceeds the permissible scope of Congressional power under that clause. *Id.* at 602. Here, Plaintiffs do not allege a violation of the Taxing and Spending Clause, so they cannot have taxpayer standing to assert their claims. *See generally* Compl. ¶¶ 168-93.

II. Even If Plaintiffs Had Standing, Their Claims Would Lack Merit.

Plaintiffs assert a variety of legal claims alleging constitutional or other deficiencies in VAWA, but none of them have any merit. The Federal Defendants address each count in turn below.

A. *Count I Alleging Violations of the Commerce Clause and Fourteenth Amendment Fails to State a Claim.*

Plaintiffs assert that VAWA exceeds Congress's authority under the Commerce Clause, relying on the Supreme Court's decisions in *United States v. Morrison*, 529 U.S. 598 (2000), and *United States v. Lopez*, 514 U.S. 549 (1995).[8] Compl. ¶¶ 168-75. It is unclear whether this count refers to the Federal Government's issuance of grants under VAWA or its prosecution of interstate domestic violence offenses created by VAWA, and, thus, the Federal Defendants address both potential claims here.

Initially, any Commerce Clause challenge to Congress's authority to appropriate funds for VAWA grants is without merit because Congress exercised that authority under its taxing and

[8] Plaintiffs go on to claim that, because VAWA is allegedly unconstitutional under the Commerce Clause, its enforcement violates the Fourteenth Amendment. Compl. ¶ 175. However, because VAWA is a valid exercise of Congress's Taxing and Spending Clause powers, there is no need to address how a violation of the Commerce Clause would implicate the Fourteenth Amendment. Regardless, the Fourteenth Amendment is inapplicable to the Federal Government. *See S.F. Arts & Athletics, Inc. v. U.S. Olympic Comm'n*, 483 U.S. 522, 542 n.21 (1987).

spending powers, not under the Commerce Clause. *See South Dakota v. Dole*, 483 U.S. 203, 207-208 (1987) (describing the permissible scope of congressional authority to appropriate funds for federal grants). And, so long as Congress's action is permitted by one source of constitutional authority, there is no need to examine whether it is permitted by others. *See Benning v. Georgia*, 391 F.3d 1299, 1304 (11th Cir. 2004) ("Although both [parties] argue that Congress acted within its authority under both the Spending Clause and the Commerce Clause, we need not address both arguments so long as Congress validly exercised either source of authority."); *Charles v. Verhagen*, 348 F.3d 601, 609 (7th Cir. 2003) (same). Thus, because awarding VAWA grants is a permissible exercise of Congress's power under the Taxing and Spending Clause, there is no need for the Court to evaluate whether it is also valid under the Commerce Clause.

Moreover, Congress acted entirely within its Commerce Clause powers when it criminalized interstate domestic violence offenses. Under 18 U.S.C. § 2261(a), "travel in interstate or foreign commerce or . . . enter[ing] or leav[ing] Indian country" is a necessary element of the offense. This type of interstate nexus is a well-established basis for the proper exercise of Commerce Clause authority. *See Cleveland v. United States*, 329 U.S. 14, 19 (1946). *See also, e.g.*, *United States v. Clark*, 435 F.3d 1100, 1102-03 (9th Cir. 2006) (rejecting Commerce Clause challenge to law prohibiting foreign travel for purpose of having sex with a minor). This is precisely why every court to address this issue has rejected claims exactly like those brought by Plaintiffs here. *See, e.g., United States v. Larsen*, 615 F.3d 780, 786 (7th Cir. 2010) ("Accordingly, we join the Second, Fourth, Fifth, and Sixth Circuits in holding that the Interstate Domestic Violence Act is a valid exercise of Congress's power under the Commerce Clause . . . ."). Plaintiffs provide no reason that this Court should reach a contrary conclusion.

B. *Count II Alleging Violations of the Fourteenth Amendment Fails to State a Claim.*

Plaintiffs claim that VAWA and the regulations and policies promulgated by OVW under that statute violate the Fourteenth Amendment's Equal Protection Clause by treating the sexes differently.[9] *See* Compl. ¶¶ 177-78. "To prevail on an equal protection claim, a plaintiff must show that the government has treated [him] differently from a similarly situated party, and that the government's explanation for the differing treatment does not withstand the relevant level of scrutiny." *Muwekma Ohlone Tribe v. Salazar*, 708 F.3d 209, 215 (D.C. Cir. 2013).

Plaintiffs allege that VAWA and OVW's rules, regulations and policies deny plaintiffs equal protection of the laws because they purportedly discriminate on the basis of gender by assuming men are the perpetrators of domestic violence and women are the victims. Plaintiffs, however, do not identify any specific OVW rule, regulation or policy that denies them equal protection. *See generally* Am. Compl. However, VAWA does not violate the Constitution's guarantee of equal protection. As discussed above, VAWA prohibits the kind of discrimination that Plaintiffs allege. *See* § I, *supra*. Thus, there is no difference in treatment upon which to predicate an equal protection claim. To the extent individual VAWA grant recipients have discriminated based on sex or gender, there are no allegations that make those actions traceable to OVW or the Federal Government generally.

C. *Count III Alleging Violations of the Fourth, Fifth, and Sixth Amendments Fails to State a Claim.*

Although this Count appears to be aimed at Plaintiffs' *Bivens* claims, which Plaintiffs do not bring against Federal Defendants, out of an abundance of caution it is addressed here.

[9] Again, the Fourteenth Amendment is applicable only to state governments. *See S.F. Arts & Athletics, Inc.*, 483 U.S. at 542 n.21. However, the Federal Defendants will address Plaintiffs' equal protection claim as though it were brought under the Fifth Amendment, which is applicable to the Federal Government. *See Bolling v. Sharpe*, 347 U.S. 497, 499 (1954).

To support their claims under the Fourth, Fifth, and Sixth Amendments, Plaintiffs make a series of conclusory and largely incomprehensible allegations, none of which states a claim. Plaintiffs claim that pursuant to VAWA "Defendants promulgated and instituted secret extrajudicial authorities to pre-determine 'victims' for the sole purpose of deliberatively seizing the accused persons' properties and other constitutionally protected rights and privileges without due course of law," Compl. ¶ 180, "promulgated and instituted a form of double jeopardy" involving "both private and governmental prosecutions," *id.* ¶ 181, and "deliberately removed" "the assistance of counsel for defense . . . to maximize convictions," *id.* ¶ 182.

To the extent that Plaintiffs are alleging that the VAWA or any OVW regulations or policies include such provisions, VAWA's plain language and OVW's regulations and policies include no provisions that create secret extrajudicial authorities, provide for civil or criminal forfeiture outside the ordinary course, or affect the right of the accused to legal counsel. Indeed, Plaintiffs identify no specific provisions of VAWA or OVW regulations or policies that are the subject of these bizarre claims. *See generally id.* ¶¶ 180-182.

Thus, to the extent they are even referring to VAWA or OVW regulations or policies, rather than state law, they have failed to make a plain statement of their claim pursuant to Federal Rule of Civil Procedure 8(a). Count III should therefore be dismissed on this basis.

D. *Count IV Under the APA and the 10th Amendment Fails to State a Claim.*

Under Count IV, Plaintiffs allege that OVW submitted false information to Congress in its biennial reports in violation of the APA, and that VAWA violates the Tenth Amendment by intermingling state and federal authority. Compl. ¶¶ 184-85.

With regard to the APA claim, Plaintiffs' allegations do not state a claim upon which relief could be granted. The APA provides for review only of final agency actions. 5 U.S.C. § 704. To be a final agency action, the action must "mark the 'consummation' of the agency's

decisionmaking process . . . [and] be one by which 'rights or obligations have been determined,' or from which 'legal consequences will flow.'" *Bennett v. Spear*, 520 U.S. 154, 177-78 (1997) (internal citations omitted). A report to Congress does not affect rights or obligations and does not result in legal consequences. Thus, it is not a final agency action subject to review under the APA.

As to Plaintiffs' Tenth Amendment claim, that is equally without merit. The Tenth Amendment on its own provides no substantive rights to Plaintiffs. Rather, so long as Congress "act[s] within the scope of the powers 'delegated to the United States by the Constitution,' it has not exceeded the limits of the Tenth Amendment." *Sperry v. Florida*, 373 U.S. 379, 403 (1963). *See also United States v. DeCay*, 620 F.3d 534, 542 (5th Cir. 2010). Because Plaintiffs have not established that Congress overstepped its authority when it enacted VAWA, no Tenth Amendment claim exists. Moreover, it is unclear how giving additional powers to the states to prevent and prosecute domestic violence offenses would impinge on states' rights, which is what the Tenth Amendment protects.

E. *Count V Alleging Violations of the Tucker Act Fails to State a Claim.*

Plaintiffs assert a Tucker Act claim against Federal Defendants seeking to recover the taxes spent to fund VAWA based on their allegations that VAWA's enactment or implementation violates the Constitution. Compl. ¶¶ 187-188. This claim fails because Plaintiffs have not established any of the claims upon which it is predicated. In addition, this Court would lack jurisdiction to adjudicate this claim. The Court of Federal Claims has exclusive jurisdiction to hear cases against the federal government, not sounding in tort, in excess of $10,000. 28 U.S.C. § 1491(a). *See also Brown v. United States*, 389 F.3d 1296, 1297 (D.C. Cir. 2004). Plaintiffs here seek monetary damages in excess of $75,000. Compl. at 36

(paragraph i of the requested relief). If, as Plaintiffs allege, taxes collected to fund VAWA are an unconstitutional taking, then any claim for compensation would have to be brought in the Court of Federal Claims, not this Court. *See Knick v. Twp. of Scott, Pa.*, 139 S. Ct. 2162, 2710 (2019). Count V should therefore be dismissed.

F. *Count VI Alleging Common Law Violations Fails to State a Claim.*

Plaintiffs make various allegations of wrongdoing concerning their criminal prosecutions by Delaware state authorities, which do not implicate Federal Defendants. Compl. ¶¶ 190-93. Indeed, Count VI contains no allegations of wrongdoing by the Federal Government, only state actors. *Id.*

Nonetheless, to the extent that Plaintiffs' claims could be read as claims against Federal Defendants, the Federal Government cannot be sued for money damages unless it has waived its sovereign immunity. *See Benoit v. U.S. Dep't of Agric.*, 608 F.3d 17, 20 (D.C. Cir. 2010). Plaintiffs do not allege any basis for a waiver of sovereign immunity for any common law claims against Federal Defendants. Compl. ¶¶ 190-93. The only basis on which to pursue common law claims against the Federal Government for money is under the Federal Tort Claims Act after first exhausting administrative remedies. *See id.* Plaintiffs do not allege that they have complied with the provisions of this statute. Plaintiffs also have not identified any ongoing criminal prosecutions against them that could be the basis for declaratory or injunctive relief. *See* Compl. ¶¶ 190-93. Thus, Count VI does not state a claim against the Federal Defendants upon which relief could be granted.

## CONCLUSION

For the foregoing reasons, the Court should dismiss Plaintiffs' Complaint as it pertains to Federal Defendants.

Dated: October 30, 2019

Respectfully submitted,

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**UNITED STATES DISTRICT COURT**
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| Defendants. | ) | |

**ORDER**

Upon consideration of Federal Defendants' Motion to Dismiss, and the entire record in this case, and it appearing to the Court that federal defendants' motion to dismiss should be granted, it is hereby

ORDERED that Federal Defendants' Motion to Dismiss is granted; and it is further

ORDERED that this case is dismissed as to the federal defendants.

_____
UNITED STATES DISTRICT JUDGE