

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

BRAD LEE BARNHILL
CATHERINE NICOLE DONKERS
Plaintiffs,

v.

CHARLES P. STRONG, JR., *et al.*
Defendants.

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Civil No. JFM 07-1678

MEMORANDUM OPINION

Plaintiffs Brad Lee Barnhill and Catherine Nicole Donkers have brought this action alleging that they were unlawfully arrested and prosecuted on charges of handgun possession and resisting arrest.¹ Among the various defendants sued in this case are the Maryland State Troopers who arrested and detained plaintiffs, as well as the Trooper involved in a handgun forfeiture proceeding that plaintiffs allege deprived them of property without due process of law.² These defendants have filed a motion to dismiss on the grounds of an expired statute of limitations, failure to comply with the Maryland Tort Claims Act, qualified statutory immunity, and the inapplicability of the Fifth Amendment to state actors. For the reasons outlined below, defendants' motion is granted.

¹ In particular, plaintiffs make claims for common law false arrest and false imprisonment, common law malicious prosecution, and unlawful search, seizure, excessive force, and deprivation of property without due process of law in violation of the Maryland and United States Constitutions.

² In two earlier rulings, I dismissed all charges against the state Commissioner and the prosecutors. (*See* Docket Number 15 (dismissing claims against Commissioner); Docket Number 25 (dismissing claims against prosecutors).)

FACTS

The relevant facts, drawn from plaintiffs' complaint, are as follows. On September 12, 2001, plaintiffs were driving in Maryland when they were pulled over by several Maryland State Troopers for an unspecified non-moving violation. (Compl. at 2.) Allegedly acting without cause, the Troopers then "assaulted and battered [plaintiffs] under the pretext of handcuffing them, interrogated [them] without the presence of counsel, compell[ed] them to provide evidence against themselves, and then performed a search of [plaintiffs'] private automobile . . . without lawful authority . . ." (*Id.* at 2–3.) The Troopers discovered two pistols and accompanying holsters in the glove compartment of plaintiffs' car. (*Id.* at 3.) Subsequently, plaintiffs were arrested and charged with handgun possession and resisting arrest. (*Id.*)

At this time, plaintiffs were transported to a detention facility and, approximately eight hours later, brought before a Commissioner for the purpose of setting bond. (*Id.*) Unable to post bond, plaintiffs spent the night in the detention facility, where they were given a tuberculosis test against their will and strip-searched.³ (*Id.* at 3–4.) Plaintiffs were initially convicted of the handgun and resisting arrest charges in the District Court for Washington County on December 10, 2001. (Defs.' Ex. A.) After a series of appeals, however, the Circuit Court for Washington County found that the search of plaintiffs' car was unlawful and consequently granted plaintiffs' motion to suppress the handgun. (Compl. at 4; Defs.' Ex. B.) On June 29, 2004, the handgun and resisting arrest charges were dismissed in light of plaintiffs' successful motion to suppress. (Compl. at 4; Defs.' Ex. B.) Plaintiffs then attempted to "secure the return of [the] pistols and holsters" by challenging the administrative forfeiture proceeding in the District Court for

³ Although it is never stated in the complaint, it seems clear that the plaintiffs were released from custody the following day, September 13, 2001.

Washington County. (Compl. at 4; Defs.' Ex. C.) This challenge was unsuccessful, and the District Court held in favor of the State on January 31, 2005. (Compl. at 4; Defs.' Ex. C.) Plaintiffs filed this lawsuit against the Troopers, the State prosecutors, and the Commissioner, on June 25, 2007.

ANALYSIS

Plaintiffs' complaint outlines twenty-eight counts against a variety of defendants, and twenty-four of those counts are at issue in the pending motion. Plaintiffs' claims in these twenty-four counts can be broadly grouped into six categories:

- (1) Maryland common law claims for false arrest and false imprisonment;
- (2) Maryland common law claims for malicious prosecution;
- (3) Maryland constitutional claims for unlawful search, seizure, and excessive force, in violation of Article 26 of the Maryland Declaration of Rights;
- (4) Maryland constitutional claim for deprivation of property without due process of law, in violation of Article 45 of the Maryland Declaration of Rights;
- (5) Federal claims for unlawful search, seizure, and excessive force, in violation of 42 U.S.C. § 1983; and
- (6) Federal claim for deprivation of property without due process of law, in violation of 42 U.S.C. § 1983.

Defendants argue that the state common law claims for false arrest and false imprisonment, the state constitutional claims under Article 26, and the federal claims for unlawful search, seizure, and excessive force are time-barred by the statute of limitations. Defendants next argue that all state law claims are barred by the Notice of Claim provisions of the Maryland Tort Claims Act. Defendants further contend that, as State Troopers, they are entitled to a qualified immunity that mandates dismissal of the state claims. Finally, defendants argue that the federal claim for deprivation of property without due process of law should be dismissed because plaintiffs pled a Fifth Amendment violation and the Fifth Amendment applies only to the federal government. For the reasons laid out below, defendants' motion is granted in part and denied in part.

I. Statute of Limitations

A. State Common Law Claims for False Arrest and Imprisonment⁴

The state causes of action, both those filed pursuant to the Maryland Declaration of Rights and those filed pursuant to the common law, are subject to a three year statute of limitations. *See* Md. Code. Ann. Cts. & Jud. Proc. § 5-101 (creating a three year default statute of limitations); *cf. Davidson v. Koerber*, 454 F. Supp. 1256, 1260 (D. Md. 1978) (holding that Article 23 of the Maryland Declaration of Rights is subject to the default statute of limitations). The dispositive question for the state claims is *when* the causes of action accrued. In Maryland, a cause of action accrues “when the legally operative facts permitting the filing of [the] claims came into existence.” *Heron v. Strader*, 761 A.2d 56, 59 (Md. 2000).

The gravamen of plaintiffs’ claims of false arrest and imprisonment is that the defendants arrested and detained plaintiffs without legal authority or consent. (Compl. ¶¶ 30–31, 82–83.) The practical issue is whether false arrest and false imprisonment claims accrue at the time of the arrest and imprisonment or at the time criminal charges are resolved by an acquittal or dismissal. Maryland is clear that accrual occurs at the time of arrest or imprisonment.

In examining the timeliness of a Notice of Claim filed pursuant to the Local Government Tort Claims Act, the Maryland Court of Appeals stated that to analyze when a cause of action arises, courts “must examine the elements of the cause of action, since . . . a cause of action is said to have arisen ‘when the facts exist to support each element.’” *Heron*, 761 A.2d at 59

⁴ These claims include Counts 1 and 6. In their opposition brief, plaintiffs claim that they did not “file claims in this suit for false arrest, false imprisonment, assault, battery, [and] kidnapping . . .” (Pls.’ Opp’n to Defs.’ Mot. to Dismiss at 3.) Rather, plaintiffs assert, the state claims they seek to pursue are constitutional torts. (*Id.*) Nevertheless, the complaint itself clearly alleges false arrest and imprisonment, and I will thus consider these common law claims as well. Moreover, constitutional torts in Maryland are subject to the same three year statute of limitations. *See infra* § I(B).

(quoting *Owens-Illinois v. Armstrong*, 604 A.2d 47, 54 (Md. 1992)). “The elements of false arrest and false imprisonment are identical. Those elements are: 1) the deprivation of the liberty of another; 2) without consent; and 3) without legal justification.” *Id.*

In *Heron*, the Maryland Court of Appeals made clear that claims for false arrest and false imprisonment arise on “the date that [plaintiff] was arrested and detained by the police” and not the later date of acquittal. *Id.* (“The facts alleged to support each element of [plaintiff’s] claim were in existence at that time.”). Accordingly, the statute of limitations begins to run on the day of arrest or imprisonment. Here, plaintiffs were arrested and detained on September 12, 2001, and presumably released on September 13, 2001, after their overnight stay. (Compl. ¶ 17.) Because the statute of limitations is three years, any accrued claim filed after September 13, 2004 is time-barred. Plaintiffs filed this lawsuit on June 25, 2007. Consequently, plaintiffs’ claims for false arrest and imprisonment are untimely and Counts 1 and 6 of the complaint are dismissed.

B. State Constitutional Claims Under Article 26 of the Maryland Declaration of Rights⁵

Plaintiffs’ state constitutional claims for unlawful search and seizure and excessive force allege violations of Article 26 of the Maryland Declaration of Rights.⁶ *See Widgeon v. E. Shore Hosp. Ctr.*, 479 A.2d 921 (1984) (finding that plaintiff can sustain a tort action to remedy alleged violations of Articles 24 and 25 of the Maryland Declaration of Rights). As mentioned above, these claims are subject to a three year statute of limitations. *Cf. Davidson*, 454 F. Supp. at 1260

⁵ These claims include Counts 3, 5, 8, 10, 12, 14, 16, and 18.

⁶ Article 26 reads: “We . . . declare . . . [t]hat all warrants, without oath or affirmation, to search suspected places, or to seize any person or property, are grievous and oppressive; and all general warrants to search suspected places, or to apprehend suspected persons, without naming or describing the place, or the person in special, are illegal, and ought not to be granted.”

(holding that Article 23 of the Maryland Declaration of Rights is subject to the default statute of limitations); *see also Electro-Nucleonics, Inc. v. Wash. Suburban Sanitary Comm'n*, 554 A.2d 804, 810 (Md. 1989) (“Other than [the default limitations statute], there is no statute addressing limitations on actions alleging a violation of art. 24 of the Declaration of Rights or of the other federal and state constitutional provisions implicated in any inverse condemnation claim. Consequently, the general three year statute of limitations found in [the default statute] controls Plaintiff’s claim.”). Accordingly, if three years passed between the accrual of these causes of action and the date this suit was filed, the relevant Counts will be dismissed.

Article 26 of the Maryland Declaration of Rights is “*in pari materia* with the prohibitions against unreasonable searches and seizures embodied in the Fourth Amendment of the federal constitution.” *Solis v. Prince George’s County*, 153 F. Supp. 2d 793, 804 (D. Md. 2001). Plaintiffs’ state constitutional claim here focuses on the fact and the manner of their arrest and detention, which occurred on September 12 and 13, 2001. (*See, e.g.*, Compl. ¶¶ 172–186 (outlining a claim for unreasonable search); *id.* ¶¶ 95–105 (outlining a claim for unreasonable seizure); *id.* ¶¶ 119–131 (outlining a claim for excessive force).)

The state causes of action for unconstitutional search, seizure, and excessive force accrued on those dates, and because this lawsuit was filed in June 2007, the claims are time-barred. *Cf. Wallace v. Kato*, 127 S. Ct. 1091 (2007) (holding that § 1983 lawsuit alleging Fourth Amendment violations must be filed within three years of arrest and detention, and rejecting equitable tolling doctrine that would delay the running of the statute of limitations until criminal proceedings terminated)⁷; *Patterson v. State*, 930 A.2d 348, 370–71 (Md. 2007) (“Because it is

⁷ *Wallace* is discussed extensively below, *see infra* § I(C).

well-settled that Article 26 of the Maryland Declaration of Rights is construed *in pari materia* with the Fourth Amendment, this Court generally has applied Supreme Court precedent to delineate the extent of the protections guaranteed by Article 26.”). In line with this conclusion, Counts 3, 5, 8, 10, 12, 14, 16, and 18 are dismissed.

C. Federal Claims Under Section 1983 for Unlawful Search, Seizure, and Excessive Force⁸

Plaintiffs also allege that defendants violated their federal constitutional rights, enshrined in the Fourth Amendment and incorporated to the states through the Fourteenth Amendment, to be free from unreasonable searches and seizures as well as excessive force. These claims also focus on the arrest and detention of plaintiffs occurring on September 12 and 13, 2001. (*See, e.g.*, Compl. ¶¶ 36–43 (outlining a claim for unreasonable seizure in light of arrest and detention of plaintiffs); *id.* ¶¶ 54–66 (outlining a claim for excessive force in light of manner of arrest); *id.* ¶¶ 157–171 (outlining a claim for unreasonable search in light of *Terry* frisk and search incident to arrest).) Defendants also move to dismiss these claims on the grounds that the statute of limitations expired before suit was filed.

Section 1983 adopts the statute of limitations that the forum State provides for general personal injury cases. *See Owens v. Okure*, 488 U.S. 235, 249–50 (1989) (“We accordingly hold that where state law provides multiple statutes of limitations for personal injury actions, courts considering § 1983 claims should borrow the general or residual statute for personal injury actions.”). In Maryland, the general statute of limitations for personal injury cases is three years. *See Md. Code. Ann. Cts. & Jud. Proc. § 5-101* (making default statute of limitations three years); *Jersey Heights Neighborhood Ass’n v. Glendening*, 174 F.3d 180, 187 (4th Cir. 1999) (“It is

⁸ These claims include Counts 2, 4, 7, 9, 11, 13, 15, and 17.

well-settled that sections 1983 and 1985 borrow the state's general personal injury limitations period, which in Maryland is three years.”). Consequently, plaintiffs' claims will be time-barred if these causes of action accrued more than three years before this suit was filed.

Although state law is adopted for statute of limitations purposes, federal law itself governs the question of when a cause of action accrues. *See Cox v. Stanton*, 529 F.2d 47, 50 (4th Cir. 1975) (“The time limitation for civil rights actions, such as those under section 1983, is borrowed from state law . . . but the state law concerning time of accrual is in no sense loaned to the body of federal civil rights law along with the tolling period.”). “Under federal law, a cause of action accrues when the plaintiff possesses sufficient facts about the harm done to him that reasonable inquiry will reveal his cause of action.” *Nasim v. Warden, Md. House of Correction*, 64 F.3d 951, 955 (4th Cir. 1995). Phrased differently, a federal cause of action accrues when “the plaintiff has ‘a complete and present cause of action’” or when the plaintiff “can file suit and obtain relief.” *Bay Area Laundry and Dry Cleaning Pension Trust Fund v. Ferbar Corp. of Cal.*, 522 U.S. 192, 201 (1997) (quoting *Rawlings v. Ray*, 312 U.S. 96, 98 (1941)).

This issue requires a close analysis of two cases, *Heck v. Humphrey*, 512 U.S. 477 (1994), and *Wallace v. Kato*, 127 S. Ct. 1091 (2007). Citing *Heck*, plaintiffs argue that a cause of action under § 1983 is “not cognizable until the conviction or sentence for the state's criminal claims against Plaintiff have been overturned.” (Pls.' Opp'n to Defs.' Mot. to Dismiss ¶ 1.) In *Heck*, the Supreme Court addressed whether a § 1983 suit was cognizable when it necessarily brought into question the validity of an underlying criminal conviction. In finding that the suit was not cognizable, and that the conviction could only be challenged by a habeas action, the Court noted that the “common-law cause of action for malicious prosecution provides the closest

analogy to claims of the type considered here because, *unlike the related cause of action for false arrest or imprisonment*, it permits damages for confinement imposed pursuant to legal process.” *Heck*, 512 U.S. at 484 (emphasis added).

The Court then observed that the malicious prosecution tort requires the “termination of the prior criminal proceeding in favor of the accused,” reflective of the concern that otherwise a civil action could be used as “a collateral attack on the conviction . . .” *Id.* In light of this observation, the Court held that “in order to recover damages for allegedly unconstitutional conviction or imprisonment . . . a § 1983 plaintiff must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal . . . or called into question by a federal court’s issuance of a writ of habeas corpus.” *Id.* at 486–87 (internal citations omitted). Plaintiffs argue that this means that the statute of limitations on § 1983 claims does not begin to run until the termination of criminal proceedings.

Defendants respond by pointing to *Wallace*, 127 S. Ct. at 1094, in which the plaintiff sought monetary damages under § 1983 for an arrest that allegedly violated his Fourth Amendment rights. In that case, the plaintiff was arrested, interrogated, and confessed to murder. *Id.* He unsuccessfully challenged the admissibility of the confession at the trial court, and was convicted. *Id.* However, the state appellate court found that the arrest did violate his rights; accordingly, his statements were suppressed, the conviction reversed, and the charges against him dropped. *Id.* He then sued in federal court, seeking monetary damages for false arrest in violation of the Fourth Amendment. The District Court and the Seventh Circuit dismissed plaintiff’s claim as time-barred, finding that his “cause of action accrued at the time of his arrest, and not when his conviction was later set aside.” *Id.*

In considering this issue, the Supreme Court specifically looked at the common law torts of false arrest and false imprisonment, noting that “a false imprisonment ends once the victim becomes held *pursuant to [legal] process* – when, for example, he is bound over by a magistrate or arraigned on charges.” *Id.* at 1096 (emphasis in original). Distinguishing false arrest and imprisonment from malicious prosecution, the common law tort relied upon in *Heck*, the Court emphasized that once a prisoner is held pursuant to legal process, any “unlawful detention forms part of the damages for the ‘entirely distinct’ tort of malicious prosecution” *Id.* (quoting W. Keeton, D. Dobbs, R. Keeton, & D. Owen, *Prosser and Keeton on Law of Torts* § 119, p. 885–86).

The Court also made clear that regardless of the pendency of criminal proceedings, the tort of false imprisonment does not end when “the State drop[s] the charges against [the defendant],” but rather when “legal process [is] initiated.” *Id.* Accordingly, the statute of limitations begins to run from the date of the initiation of legal process. *Id.* *Wallace* clarified that the *Heck* deferred accrual rule “is called into play only when there exists ‘a conviction or sentence that has *not* been invalidated,’ that is to say, an ‘outstanding criminal judgment.’” *Id.* at 1097–98 (quoting *Heck*, 512 U.S. at 487). In short, the Court held that *Heck* only delays accrual when an actual conviction has been obtained by the state and that conviction would be undermined by the civil action. *Id.* at 1098 (“What petitioner seeks, in other words, is the adoption of a principle that goes well beyond *Heck*: that an action which would impugn *an anticipated future conviction* cannot be brought until that conviction occurs and is set aside. . . . We are not disposed to embrace this bizarre extension of *Heck*.”) (emphasis in original). The

Court also dismissed the possibility that a conviction would toll the statute of limitations.⁹ *Id.* at 1099–1100 (dismissing the dissent’s argument for equitable tolling).

Wallace dictates that these claims be dismissed. As in *Wallace*, the claims here of unlawful search, seizure, and excessive force are analogous to the common law torts of false arrest and imprisonment, and *Wallace* makes clear that despite the pendency of criminal proceedings, the statute of limitations on such claims begins to run at the time the legal process is initiated. Here, any search, seizure, or excessive force ended on September 12, 2001, when plaintiffs were brought before the state Commissioner. Any remaining claims form part of a malicious prosecution case. Accordingly, even though plaintiffs’ motion to suppress was not granted for several years, the statute of limitations for these federal claims expired on September 12, 2004. Accordingly, Counts 2, 4, 7, 9, 11, 13, 15, and 17 are dismissed as untimely.

II. Compliance with the Maryland Tort Claims Act

The only remaining Counts are Counts 23, 24, 25, 26, 27, and 28. Those Counts consist of state common law claims for malicious prosecution, a state constitutional claim for deprivation of property without due process of law, and a federal claim for deprivation of property without due process of law. Defendants argue that all the state claims – which are all of the remaining Counts except for Count 27¹⁰ – should be dismissed as untimely in light of plaintiffs’ failure to comply with the Notice of Claim provisions of the Maryland Tort Claims

⁹ The *Wallace* Court’s remedy for dealing with a civil suit that involved issues being addressed in pending criminal proceedings was to suggest a stay. *Wallace*, 127 S. Ct. at 1098 (observing that a court could stay a civil case until the termination of the criminal case if “a plaintiff files a false arrest claim before he has been convicted . . .”).

¹⁰ Count 27 is not subject to the MTCA provisions because it alleges a violation of the United States Constitution. *See infra* § III.

Act (“MTCA”), Md. Code Ann. State Gov’t § 12-101 *et seq.* Plaintiffs counter by arguing that because they are suing defendants in their personal capacity and alleging malice, the MTCA Notice of Claim provisions do not apply. (Pls.’ Opp’n to Defs.’ Mot. to Dismiss at 4.)

The MTCA requires that a timely Notice of Claim be filed with the State Treasurer if the plaintiff is suing a state officer, unless the suit sufficiently alleges that the officer acted with malice. *See Pope v. Barbre*, 935 A.2d 699, 713–19 (Md. 2007) (finding that MTCA notice requirement is not a prerequisite when plaintiff’s complaint “sufficiently alleges malice or gross negligence”) (emphasis in original). Here, plaintiffs’ allegations of malice with respect to the malicious prosecution and deprivation of property claims are insufficient and merely conclusory.¹¹ (*See, e.g.*, Compl. ¶ 287 (“The [defendants’] acts were intentional, wanton, malicious, and oppressive.”); *id.* ¶ 289 (“Because the allegations by the [defendants] were knowingly false . . .”); *id.* ¶ 346 (“[Defendant] acted unreasonably and in reckless disregard of the law . . .”); *id.* ¶ 347 (“[Defendant’s] acts were intentional, wanton, malicious, and oppressive.”); *see generally id.* Counts 23, 24, 25, 26, and 28.)

The conclusory nature of the allegations in Counts 23, 24, 25, 26, and 28, shows that plaintiffs have not pled facts sufficient to give rise to an inference of malice. *Compare Elliott v. Kupferman*, 473 A.2d 960, 969 (Md. Ct. Spec. App. 1984) (“Merely asserting that an act was done maliciously, or without just cause, or illegally, or for improper motive does not suffice. To overcome a motion raising governmental immunity, the plaintiff must allege with some clarity and precision those facts which make the act malicious.”) *with Pope*, 935 A.2d at 714–17

¹¹ The complaint’s allegations of unduly rough treatment during the arrest and overnight detention are not relevant to the instant issue because the malicious prosecution and deprivation of property claims simply have nothing to do – in time or substance – with the alleged excessive force.

(examining pleadings and finding sufficient facts for an inference of malice). Moreover, regardless of the pleadings, it is perfectly apparent that the facts underlying this suit do not show malice; while the plaintiffs legitimately dispute the legality of the traffic stop, such a dispute does not, without more, support an inference of malice. Accordingly, the MTCA Notice of Claim provisions apply and it is undisputed that plaintiffs never filed a notice with the State Treasurer. (*See* Defs.’ Ex. D.) Defendants’ motion to dismiss Counts 23, 24, 25, 26, and 28 on this basis is granted.¹²

III. The Inapplicability of the Fifth Amendment to State Defendants

Count 27 alleges that defendant Johnston violated the Fifth Amendment when he participated in the handgun forfeiture proceeding. (*See* Compl. ¶¶ 331–340.) However, as defendants point out, the Fifth Amendment applies only to the federal government, and defendant Johnston is a state employee. *See Freilich v. Bd. of Dirs. of Upper Chesapeake Health, Inc.*, 142 F. Supp. 2d 679, 691 (D. Md. 2001) (“As an initial matter, [plaintiff’s] claim that [defendants] violate[] her right[]s . . . under the Fifth Amendment must be dismissed . . . because the Fifth Amendment restricts only actions of the federal government . . .”). Plaintiffs tacitly acknowledge this mistake, and seek to amend the Complaint to substitute the Fourteenth Amendment for the Fifth Amendment. (Pls.’ Opp’n to Defs.’ Mot. to Dismiss at 11.) In light of the technical nature of defendants’ objection here, as well as the *pro se* status of the plaintiffs, I would normally consider the Complaint amended, and deny the motion to dismiss on this basis.

¹² Because the motion to dismiss with respect to these Counts is granted, I will not rule on the question of the defendants’ right to qualified statutory immunity under Maryland law. However, it appears that the parties agree that defendants are entitled to immunity if the complaint does not plead facts sufficient to support an inference of malice. (*See* Mem. in Supp. of Defs.’ Mot. to Dismiss at 14–16.; Pls.’ Opp’n to Defs.’ Mot. to Dismiss at 5–11.) Because I find insufficient facts to support an inference of malice with respect to the MTCA Notice of Claim question, it appears likely I would find that these defendants have statutory immunity for the same reason.

However, such an amendment would be futile, as Count 27 – amended or not – clearly fails to state a claim upon which relief can be granted. Plaintiffs’ basic objection is to the result of the state’s handgun forfeiture proceeding. But plaintiffs have already challenged the forfeiture in state court, and lost. (See Defs.’ Ex. C.) The *Rooker-Feldman* doctrine makes clear that, in situations such as this, federal district courts are not to sit as appellate courts reviewing state court rulings. See generally *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005) (“The *Rooker-Feldman* doctrine, we hold today, is confined to cases . . . brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments.”); *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923); *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983). Moreover, the state administrative proceeding itself provided plaintiffs with due process, and defendant Johnston’s mere participation in the proceeding, duly governed by state law, does not give rise to a takings claim against him. Accordingly, defendants’ motion to dismiss Count 27 is granted.

CONCLUSION

For the reasons outlined above, defendants’ motion to dismiss is granted. In particular, Counts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, and 18, are dismissed because the statute of limitations on those claims expired before this suit was filed. See *supra* § I. Additionally, Counts 23, 24, 25, 26, and 28, are dismissed in light of plaintiffs’ failure to comply with the MTCA. See *supra* § II. Finally, defendants’ motion to dismiss Count 27 is granted. See *supra* § III.

Date: February 25, 2008

/s/
J. Frederick Motz
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

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Civil No. JFM 07-1678

ORDER

For the reasons stated in the accompanying memorandum opinion, it is, this 25th day of February 2008

ORDERED

1. The motion to dismiss filed by defendants Randall K. Barnes, Debra S. Hamby, Robert O. Fraley, David Wayne Smith, and Greg Johnston is granted;
2. All claims against the moving defendants are dismissed;
3. All prior rulings made by this court are incorporated herein; and
4. This action is dismissed in its entirety.

/s/

J. Frederick Motz
United States District Judge