# APPENDICE A

FILED: January 30, 2018

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

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No. 17-1862
(1:16-cv-00682-TSE-JFA)

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SHIRLEY ANN STEWART

Plaintiff - Appellant

v.

ERIC HIMPTON. HOLDER, JR.; THOMAS S. WINKOWSKI; EDWIN C. ROESSLER, Fairfax County Police Department; STACEY KINCAID, Fairfax County Sheriff Dept.; MICHAEL L. CHAPMAN; JOHN F. KERRY, U.S. Department of State; SARAH SALDANA, Immigration and Customs Enforcement; STEPHEN HOLL, Metropolitan Washington Airports Authority; B. A. PITTS, (Fairfax Sheriff), in his Personal capacity; JASON S. MANYX, (U.S. Homeland Security), in his personal capacity; DOUG COMFORT, (Fairfax Police), in his personal capacity; UNITED STATES OF AMERICA; JEH JOHNSON, U.S. Homeland Security

Defendants - Appellees

and

RONALD C. MACHEN, JR.; ALEJANDRO MAYORKAS, and Wife; JASON P. MANYX, and Wife; IVAN D. DAVIS, and Wife; DOE ENTITIES, and others of yet unknown; 1-100; Jane Does 1-100; DOE Corporations 1-100; DOE Governmental; JOE TSUYI, and Wife; DOUG COMFORT, and Wife; DANA J. BOENTE; THERESA CARROLL. BUCHANAN, and Husband; BARACK H. OBAMA

Defendants

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JUDGMENT

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In accordance with the decision of this court, the judgment of the district court is affirmed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

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**No. 17-1862**

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SHIRLEY ANN STEWART,

Plaintiff - Appellant,

v.

ERIC HIMPTON. HOLDER, JR.; THOMAS S. WINKOWSKI; EDWIN C. ROESSLER, Fairfax County Police Department; STACEY KINCAID, Fairfax County Sheriff Dept.; MICHAEL L. CHAPMAN; JOHN F. KERRY, U.S. Department of State; SARAH SALDANA, Immigration and Customs Enforcement; STEPHEN HOLL, Metropolitan Washington Airports Authority; B. A. PITTS, (Fairfax Sheriff), in his Personal capacity; JASON S. MANYX, (U.S. Homeland Security), in his personal capacity; DOUG COMFORT, (Fairfax Police), in his personal capacity; UNITED STATES OF AMERICA; JEH JOHNSON, U.S. Homeland Security,

Defendants - Appellees,

and

RONALD C. MACHEN, JR.; ALEJANDRO MAYORKAS, and Wife; JASON P. MANYX, and Wife; IVAN D. DAVIS, and Wife; DOE ENTITIES, and others of yet unknown; 1-100; Jane Does 1-100; DOE Corporations 1-100; DOE Governmental; JOE TSUYI, and Wife; DOUG COMFORT, and Wife; DANA J. BOENTE; THERESA CARROLL. BUCHANAN, and Husband; BARACK H. OBAMA,

Defendants.

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Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. T.S. Ellis, III, Senior District Judge. (1:16-cv-00682-TSE-JFA)

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Submitted: December 28, 2017 Decided: January 30, 2018

Before MOTZ and FLOYD, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Shirley Ann Stewart, Appellant Pro Se. Dennis Carl Barghaan, Jr., Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Alexandria, Virginia; Juliane Corroon Miller, Debra Schneider Stafford, HUDGINS LAW FIRM, Alexandria, Virginia; Morris Kletzkin, I, Joseph Walter Santini, FRIEDLANDER MISLER, PLLC, Washington, D.C.; Kimberly Pace Baucom, Assistant County Attorney, FAIRFAX COUNTY ATTORNEY'S OFFICE, Fairfax, Virginia, for Appellees.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Shirley Ann Stewart appeals the district court's order dismissing her second amended complaint. We have reviewed the record and find no reversible error. Accordingly, we affirm the district court's judgment. *Stewart v. Holder*, No. 1:16-cv-00682-TSE-JFA (E.D. Va. filed July 19, 2017 & entered July 20, 2017). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

*AFFIRMED*

# APPENDICE B

**IN THE UNITED STATES DISTRICT COURT**
**FOR THE EASTERN DISTRICT OF VIRGINIA**
**Alexandria Division**

| | | |
|---|---|---|
| **SHIRLEY A. STEWART,** | ) | |
| **Plaintiff,** | ) | |
| | ) | |
| **v.** | ) | **Case No. 1:16-cv-682** |
| | ) | |
| **ERIC H. HOLDER, *et al.*,** | ) | |
| **Defendants.** | ) | |

**ORDER**

At issue in this *pro se* constitutional and common law tort case is whether plaintiff's third attempt to allege valid claims passes muster at the motion to dismiss stage. Plaintiff initially filed this action in March 2015 in the United States District Court for the District of Columbia, alleging in a vague and scattershot initial complaint that multiple federal and state officials violated her civil rights based on a traffic stop and a search of her home. The case was transferred to this district, where plaintiff, still proceeding *pro se*, was granted leave to proceed *in forma pauperis* and was permitted to file an amended complaint, in which she again alleged various violations of her civil rights against multiple state and federal officials sued in their official capacities based on the traffic stop and search. All of her claims were dismissed without prejudice pursuant to an order issued on January 23, 2017. *Stewart v. Holder*, No. 1-16-cv-682 (E.D. Va. Jan. 23, 2017) (Order).

Plaintiff then sought leave to file a second amended complaint ("SAC"), which was granted. Like her earlier complaints, the allegations in plaintiff's SAC arise from the traffic stop and search of her home. She now sues three officers — two state and one federal — in their individual capacities, seeking damages for various constitutional violations and common law torts. The three defendants have each filed separate motions to dismiss the SAC on various

grounds, namely (i) that plaintiff's claims are time-barred, (ii) that subject matter jurisdiction is lacking, (iii) that plaintiff fails to state plausible claims for relief, and (iv) that defendants are entitled to qualified immunity. Plaintiff has filed responses to all three motions to dismiss and has waived a hearing with respect to all three motions, and accordingly defendants' motions are ripe for decision.

## I.

The facts of this case were discussed in detail in a previous order dismissing plaintiff's first amended complaint without prejudice. *See Stewart v. Holder*, No. 1-16-cv-682 (E.D. Va. Jan. 23, 2017) (Order). The pertinent facts relating to defendants' current dismissal motions are succinctly stated here.

Plaintiff, an African-American, is a master electrician who resides in Herndon, Virginia. Defendants are (1) Deputy B.A. Pitts of the Fairfax County, Virginia Sherriff Department, (2) Detective Doug Comfort of the Fairfax County, Virginia Police Department, and (3) Homeland Security Investigations Special Agent Jason Manyx. Plaintiff's claims arise out of a traffic stop conducted by Deputy Pitts, Detective Comfort's investigation of plaintiff, and a search of plaintiff's home involving Special Agent Manyx. Plaintiff brings three counts in her SAC, one against each defendant, and each count alleges multiple constitutional and common law claims.[1]

With respect to Count I against Deputy Pitts, plaintiff's claims against him focus on a traffic stop that took place on September 19, 2013 in Fairfax County, Virginia. On that day, Deputy Pitts pulled plaintiff over, ostensibly for expired tags, but plaintiff alleges in conclusory

[1] As noted in the previous order, it appears that plaintiff's claims are not properly joined because her claims do not arise out of "the same transaction, occurrence, or series of transactions or occurrences" as required for proper joinder under Rule 20(a)(2)(A), Fed. R. Civ. P. *See Stewart*, No. 1-16-cv-682, at *2 n.2 (E.D. Va. Jan. 23, 2017) (Order). Because plaintiff's claims must be dismissed for other reasons, it is unnecessary to address this issue.

fashion that the stop was pretextual because her tags were not expired and that she was racially profiled. After pulling plaintiff over, Deputy Pitts examined plaintiff's tags and saw that they were not expired, but nevertheless directed plaintiff to produce her identification. Plaintiff handed over various false forms of identification, including an identification card from the "World Service Authority." Because plaintiff could not produce a valid driver's license or any other valid form of identification, Deputy Pitts arrested plaintiff for driving on a suspended license and driving without a valid license. After the arrest, plaintiff alleges that she overheard Deputy Pitts having a long conversation with Detective Comfort over the radio and that Detective Comfort said that federal agents would arrive at plaintiff's house soon. Plaintiff alleges that this conversation shows that Deputy Pitts and Detective Comfort conspired to surveil plaintiff and violate her civil rights.

With respect to Count II against Detective Comfort, plaintiff's claims against him stem from his role in investigating plaintiff for her activities as a "sovereign citizen," a person who believes that the United States government is illegitimate. Plaintiff alleges that Detective Comfort, the Fairfax County Police Department's expert on extremist groups, works with the federal government on cases involving suspected extremists in Fairfax County. In particular, plaintiff alleges that Detective Comfort worked with federal agents, including Special Agent Manyx, to investigate plaintiff. For instance, Detective Comfort allegedly provided information to federal agents as to plaintiff's whereabouts and also participated in the search of plaintiff's home.

Finally, with respect to Count III, plaintiff's claims against Special Agent Manyx arise out of a search of her Herndon, Virginia home on October 8, 2013. Plaintiff alleges that she was asleep in her home when she heard a loud explosion. She further alleges that when she walked

out of her bedroom, several armed men, who she later discovered were Homeland Security and Immigration Customs Enforcement agents, confronted her with assault weapons and ordered her to put her hands on the wall. According to plaintiff, the agents grabbed her, dragged her down the stairs to the main floor, forced her to sit in a chair, and handcuffed her hands behind her back. The agents also arrested the tenant living in plaintiff's basement. Plaintiff alleges that the agents never indicated who they were, never showed her a warrant, and ignored her demands to call her attorney. The agents then walked around her house taking photographs and videos. About 30 to 45 minutes after the agents entered her home, Special Agent Manyx arrived with a warrant to search her home, but plaintiff alleges that she could not see the warrant because she was still handcuffed to the chair. Plaintiff claims that the agents continued to ignore plaintiff's request to call her attorney, and she was ultimately taken out of her home in handcuffs.

Plaintiff later learned that she was arrested for impersonating a foreign diplomat, consul, or officer under 18 U.S.C. § 915[2] based on her possession of false identification documents. Plaintiff was taken before a magistrate judge and then released on her own recognizance. She returned home to find that the agents had damaged the entrances to her home. A federal public defender was appointed to represent plaintiff, but the case against her was ultimately dismissed with prejudice.

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[2] The statute provides that:

> Whoever, with intent to defraud within the United States, falsely assumes or pretends to be a diplomatic, consular or other official of a foreign government duly accredited as such to the United States and acts as such, or in such pretended character, demands or obtains or attempts to obtain any money, paper, document, or other thing of value, shall be fined under this title or imprisoned not more than ten years, or both.

18 U.S.C. § 915.

Plaintiff filed her initial complaint on March 4, 2015 in the United States District Court for the District of Columbia. The case was then transferred to this district on June 20, 2016, where plaintiff was granted leave to proceed *in forma pauperis* on July 14, 2016. She filed a first amended complaint on September 15, 2016, which alleged various constitutional and related common law tort claims against nine federal and state defendants sued in their official capacities.[3] Defendants filed motions to dismiss plaintiff's claims, which motions were granted in their entirety and all of her claims were dismissed without prejudice by order issued on January 23, 2017. *See Stewart*, No. 1-16-cv-682 (E.D. Va. Jan. 23, 2017) (Order). Plaintiff then sought leave to file an SAC, which was granted, and plaintiff filed her SAC on March 10, 2017.

In her SAC, plaintiff brings a number of claims against defendants for violations of her constitutional rights, as well as related common law tort claims, based on the traffic stop, defendants' investigation of her false identification documents, and the search of her home. In particular, plaintiff claims that:

1. Deputy Pitts (i) violated 42 U.S.C. §§ 1981 and 1983 by depriving her of her right to "freedom," her right to participate in interstate commerce, and her First, Fourth, and Fourteenth Amendment rights, (ii) violated 42 U.S.C. § 1985(3) by conspiring to deprive plaintiff of her civil rights, and (iii) also committed the common law torts of gross negligence, false arrest, and false imprisonment;

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[3] Although plaintiff's official capacity claims were dismissed without prejudice, the order dismissing her first amended complaint identified a number of flaws with her official capacity claims. *See generally Stewart*, No. 1-16-cv-682 (E.D. Va. Jan. 23, 2017) (Order). Accordingly, she now clearly states in the caption of her SAC that she is suing Deputy Pitts, Detective Comfort, and Special Agent Manyx in their individual capacities. *See id.* (E.D. Va. Mar. 10, 2017) (SAC).

2. Detective Comfort (i) conspired with other defendants to deprive her of her civil rights, presumably a violation of 42 U.S.C. § 1985(3), (ii) violated plaintiff's Fourteenth Amendment right to due process and her right to freedom, and (iii) was also grossly negligent;[4]
3. Special Agent Manyx (i) violated her First Amendment right to freedom of association and Fifth Amendment right to due process, (ii) is responsible for plaintiff's false arrest and false imprisonment, and (iii) is also liable for negligence, gross negligence, and malicious prosecution.

Plaintiff explicitly sues each defendant in their individual capacities. Plaintiff seeks millions of dollars in compensatory damages, as well as punitive damages, against each defendant.

Deputy Pitts, Detective Comfort, and Special Agent Manyx have each filed separate motions to dismiss plaintiff's claims in her SAC. Plaintiff has filed responses to all three motions and has waived oral argument with respect to all three motions.[5] As a result, defendants' dismissal motions are ripe for decision.

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[4] Plaintiff also alleges that Deputy Pitts and Detective Comfort violated her right to due process under the Fifth Amendment, but the Fifth Amendment's due process clause applies only to the federal government. U.S. Const. amend. V. Furthermore, plaintiff does not specify the textual source for her right to "freedom," but for the reasons explained *infra* in Parts II and III, there are no facts plausibly establishing that Deputy Pitts or Detective Comfort unlawfully deprived plaintiff of her freedom in any sense, and accordingly it is unnecessary to discern the precise textual source of this asserted right.

[5] To the extent that plaintiff's briefs include factual allegations that do not appear in her SAC, such allegations are not considered in assessing plaintiff's claims. *See S. Walk at Broadlands Homeowners Ass'n, Inc. v. OpenBand at Broadlands, LLC*, 713 F.3d 175, 184 (4th Cir. 2013) ("It is well-established that parties cannot amend their complaints through briefing . . . ."); *Henthorn v. Dep't of Navy*, 29 F.3d 682, 688 (D.C. Cir. 1994) (stating that "factual allegations in briefs or memoranda . . . may never be considered when deciding a 12(b)(6) [Fed. R. Civ. P.] motion").

## II.

The first issue is whether plaintiff's claims against Deputy Pitts survive his motion to dismiss. Deputy Pitts first contends that plaintiff's claims against him, which all stem from the September 19, 2013 traffic stop, should be dismissed with prejudice as time-barred because plaintiff named him as a defendant in this action for the first time in her SAC, which was filed far outside the applicable two-year limitations period for her claims.[6] Deputy Pitts further argues that the relation-back provision of Rule 15(c), which generally provides that an amendment adding a party can relate back to the date of the initial compliant when certain conditions are satisfied, does not save her claims because he did not receive notice within the required timeframe. Although Deputy Pitts is correct that a two-year statute of limitations applies to plaintiff's claims and that he was first named as a defendant in this action outside that period, his argument with respect to the relation-back rule fails because he did in fact receive notice of plaintiff's claims within the proper time period.

To begin with, all of plaintiff's constitutional and related common law tort claims are subject to a two-year statute of limitations.[7] The limitations period began to run when Deputy

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[6] A statute of limitations defense must normally "be raised by the defendant through an affirmative defense," whereas a Rule 12(b)(6), Fed. R. Civ. P., motion to dismiss, which "tests the sufficiency of the complaint, generally cannot reach the merits of an affirmative defense." *Goodman v. Praxair, Inc.*, 494 F.3d 458, 464 (4th Cir. 2007) (en banc). But "where facts sufficient to rule on an affirmative defense are [clearly] alleged in the complaint," the statute of limitations defense can be considered on a Rule 12(b)(6), Fed. R. Civ. P., motion. *Id.*

[7] Plaintiff's common law claims for gross negligence, false arrest, and false imprisonment under Virginia law are subject to Virginia's two-year statute of limitations for personal injury actions. *See* Va. Code § 8.01-243(A).[7] The Fourth Circuit has held that this two-year statute of limitations also applies to § 1983 claims. *Lewis v. Richmond City Police Dep't*, 947 F.2d 733, 735 (4th Cir. 1991). And because § 1981 claims against governmental officials are subject to the same requirements as § 1983 claims, Virginia's two-year statute of limitations applies to plaintiff's § 1981 claim as well. *See Dennis v. Cty. of Fairfax*, 55 F.3d 151, 156 (analyzing

Pitts stopped plaintiff on September 19, 2013. *See Cox v. Stanton*, 529 F.2d 47, 50 (4th Cir. 1975) ("[T]he time of accrual is when plaintiff knows or has reason to know of the injury which is the basis of the action."); *Laws v. McIlroy*, 283 Va. 594, 599 ("The statute of limitations begins to run when the cause of action accrues, which, [for personal injury actions,] is the date the injury is sustained . . . .") (quotation marks omitted).[8] Accordingly, plaintiff timely filed her initial complaint on March 4, 2015. Although plaintiff's initial complaint set forth multiple factual allegations against Deputy Pitts, she did not name him as a defendant. Nor did plaintiff name Deputy Pitts as a defendant in her first amended complaint, filed on September 15, 2016, although plaintiff did name the Fairfax County Sheriff as a defendant in that first amended complaint. Instead, plaintiff first named Deputy Pitts as a defendant in her SAC, filed on March 10, 2017. As Deputy Pitts correctly points out, plaintiff added him to this lawsuit far outside the applicable two-year statute of limitations period, and accordingly the only way plaintiff's claims against him can overcome the limitations hurdle is through the relation-back provision of Rule 15(c)(1)(C), Fed. R. Civ. P., which is triggered when a plaintiff seeks to add a party to an action.[9]

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plaintiff's § 1981 claim under the standards for § 1983 claims). Claims under § 1985 are also governed by the local statute of limitations for personal injury actions, which, again, is Virginia's two-year statute of limitations. *See Lake v. Arnold*, 232 F.3d 360, 368 (3d Cir. 2000).

[8] Plaintiff argues that there is no statute of limitations problem here because she has suffered continuing harm from Deputy Pitts' stop, but her claims began to accrue on September 19, 2013. Furthermore, she cites no binding authority for her argument that continuing harm tolls the statute of limitations in these circumstances, but in a brief in response to a motion to dismiss her first amended complaint, she cited the Fourth Circuit's decision in *Virginia Hospital Association v. Baliles* to support this argument. In *Baliles*, the Fourth Circuit concluded that continued enforcement of an unconstitutional statute did not trigger the statute of limitations until the violation (*i.e.*, the enforcement of the statute) ended. 868 F.2d 653, 663 (4th Cir. 1989). That case is inapposite because plaintiff's claims against Deputy Pitts are based on a discrete incident, not an ongoing statutory violation.

Rule 15(c)(1)(C), Fed. R. Civ. P., provides that an "amendment to a pleading relates back to the date of the original pleading when:"

> (C) the amendment changes the party or the naming of the party against whom a claim is asserted, if Rule 15(c)(1)(B) is satisfied and if, within the [90-day] period provided by Rule 4(m) for serving the summons and complaint, the party to be brought in by amendment:
> (i) received such notice of the action that it will not be prejudiced in defending on the merits; and
> (ii) knew or should have known that the action would have been brought against it, but for a mistake concerning the proper party's identity.

Rule 15(c)(1)(C), Fed. R. Civ. P. There is no question that Rule 15(c)(1)(B), Fed. R. Civ. P., which provides that the amendment must assert a claim "that arose out of the conduct, transaction, or occurrence set out" in the initial complaint, is satisfied here because plaintiff set forth multiple factual allegations relating to the September 19, 2013 traffic stop in her timely initial complaint. As a result, the question is whether, within the 90-day period provided by Rule 4(m), Fed. R. Civ. P., Deputy Pitts (i) received notice of the action such that he will not be prejudiced in defending it and (ii) knew or should have known that plaintiff would have sued him, but for a mistake concerning his identity. Deputy Pitts argues that plaintiff cannot satisfy this requirement because he did not receive notice of this action until October 12, 2016 — after the statute of limitations and the 90-day period allegedly expired. This argument fails because it does not factor in the tortured procedural history of this case, which resulted in the suspension of the 90-day period until August 4, 2016, which means that Deputy Pitts timely received notice of this action on October 12, 2016.

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[9] Plaintiff argues that naming John Doe defendants in her initial complaint cures any statute-of-limitations problem, but that argument is unavailing. *See Goodman*, 494 F.3d at 473 ("[S]ubstitutions for 'Doe' defendants after limitations have run would be barred by [Rule 15(c), Fed. R. Civ. P.]."); *Locklear v. Bergman & Beving AB*, 457 F.3d 363, 367 (4th Cir. 2006) (noting the "weight of federal case law holding that the substitution of named parties for 'John Doe' defendants does not constitute a mistake pursuant to Rule 15(c)(3).").

The Fourth Circuit has held that the period under Rule 4(m), Fed. R. Civ. P., for serving a defendant is suspended until the district court grants a plaintiff's *in forma pauperis* application and authorizes service of process. *Robinson v. Clipse*, 602 F.3d 605, 608–09 (4th Cir. 2010). In this case, plaintiff submitted an *in forma pauperis* application with her initial complaint on March 4, 2015 in the United States District Court for the District of Columbia. *Stewart*, No. 1-16-cv-682 (E.D. Va. June 15, 2016) (Application to Proceed *in forma pauperis*) (Doc. 1-2). Although the District of Columbia District Court ordered her case transferred to this district on March 16, 2015, and also ordered that this district would make the *in forma pauperis* determination, for reasons not apparent in this record plaintiff's case was not actually transferred to this district until over a year later, on June 20, 2016. Plaintiff's *in forma pauperis* application was then granted on July 14, 2016, and plaintiff was ordered to prepare summonses on August 4, 2016. *See Stewart*, No. 1-16-cv-682 (E.D. Va. Aug. 4, 2016) (Order). Under the Fourth Circuit's rule in *Clipse*, the 90-day period for notifying a new defendant of this action did not begin to run until August 4, 2016, which means that Deputy Pitts must have received adequate notice of this action by November 4, 2016 for the relation-back rule to permit plaintiff's amended claims against him to proceed.

Deputy Pitts admits that he received notice of this action on October 12, 2016 when the Fairfax County Sherriff, who was named as a defendant in the first amended complaint, was served with that complaint. As a result, he would not suffer prejudice in defending this action on the merits, as he was presumably aware that his actions on the September 19, 2013 traffic stop were central to plaintiff's claims against the Fairfax County Sheriff; indeed, it appears that plaintiff essentially copied the factual allegations involving Deputy Pitts from her first amended complaint to her SAC. Because Deputy Pitts had adequate notice within the applicable time

period of the allegations against him, he was not prejudiced by being added to this action. *See Goodman*, 494 F.3d at 470 (stating that the requirements of the relation-back rule "assure that the new party had adequate notice *within the limitations period* and was not prejudiced by being added to the litigation"). Moreover, Deputy Pitts either knew or should have known that plaintiff would have sued him, given that his actions formed the core of her allegations against the Fairfax County Sheriff, and plaintiff may not have understood the difference between suing the Fairfax County Sheriff in her official capacity and Deputy Pitts in his individual capacity. *See Stewart*, No. 1-16-cv-682, at *8 (E.D. Va. Jan. 23, 2017) (Order) (noting that plaintiff's first amended complaint was "not a model of clarity, particularly with respect to whether she is suing defendants in their official or [individual] capacities").[10] As a result, taking into account (i) the unique procedural history of this case, including the inexplicable delay in transferring this case, (ii) the suspension of the 90-day period caused by the delay in granting plaintiff's *in forma pauperis* application and authorizing summonses, and (iii) the liberal amendment policy of Rule 15, Fed. R. Civ. P., particularly given that plaintiff is proceeding *pro se*, Deputy Pitts' statute of limitations argument is rejected and plaintiff's claims against him are deemed timely.

Because plaintiff's claims against Deputy Pitts are timely, the next issue is whether she states plausible claims for relief under Rule 12(b)(6), Fed. R. Civ. P. The standard for the factual sufficiency of a complaint is well-established. Under the familiar *Iqbal/Twombly*[11] standard, the "well-pled allegations of the complaint" must be accepted as true and the "facts and reasonable

[10] *See also Sanders-Burns v. City of Plano*, 594 F.3d 366, 378 (5th Cir. 2010) ("Notice is sufficient if the newly named party was made aware of the issues in the complaint.") (brackets omitted) (quoting 3 Edward Sherman & Mary P. Squiers, Moore's Federal Practice — Civil § 151.19[3][c]).

[11] *Ashcroft v. Iqbal*, 556 U.S. 662 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007).

inferences derived therefrom" must be construed "in the light most favorable to the plaintiff." *Harbourt v. PPE Casino Resorts Md., LLC*, 820 F.3d 655, 658 (4th Cir. 2016). The complaint must contain "sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face" such that the court can draw "the reasonable inference" that defendants committed the alleged violations. *McCleary-Evans v. Md. Dep't of Transp., State Highway Admin.*, 780 F.3d 582, 585 (4th Cir. 2015) (quotation marks omitted). Additionally, "a *pro se* complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers" and therefore must be "liberally construed." *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (quotation marks omitted).[12]

Liberally construed, plaintiff brings the following claims against Deputy Pitts: (i) A claim under 42 U.S.C. § 1981, (ii) claims under 42 U.S.C. § 1983 for deprivation of her rights to freedom, participation in interstate commerce, and due process, as well as her First Amendment rights (iii) a claim under 42 U.S.C. § 1985(3) for conspiracy to violate her civil rights, and (iv) related common law claims for false arrest, false imprisonment, and gross negligence. Moreover, although plaintiff's SAC does not specifically assert a Fourth Amendment claim, the facts alleged in the SAC, liberally construed, warrant construing the SAC as including a claim that Deputy Pitts violated the Fourth Amendment by unreasonably prolonging the traffic stop. *See United States v. Branch*, 537 F.3d 328, 335 (4th Cir. 2008) (stating that traffic stops

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[12] *See also De'lonta v. Johnson*, 708 F.3d 520, 524 (4th Cir. 2013) ("[Courts must] afford liberal construction to the allegations in *pro se* complaints raising civil rights issues."). There must, of course, be limits to the principal that *pro se* plaintiffs' complaints are entitled to liberal construction. Indeed, the Fourth Circuit, sitting *en banc*, has cautioned that "[i]n interpreting a *pro se* complaint, . . . our task is not to discern the unexpressed intent of the plaintiff, but what the words in the complaint mean." *Laber v. Harvey*, 438 F.3d 404, 413 n.3 (4th Cir. 2006) (en banc). As a result, liberal construction of *pro se* complaints does not permit "complete rewriting" of the complaint, nor does it invite or permit courts to act as counsel for plaintiff. *Id.*

constitute a seizure under the Fourth Amendment and are subject to a reasonableness requirement).[13] Plaintiff's putative Fourth Amendment claim is addressed first, followed by her remaining claims.

A traffic stop is "subject to the constitutional imperative that it not be unreasonable under the circumstances." *Id.* (quotation marks omitted). The nub of plaintiff's claim is that the September 19, 2013 traffic stop violated her Fourth Amendment rights because, after allegedly pulling plaintiff over for expired tags and then discovering that the tags were not expired, Deputy Pitts nevertheless asked plaintiff to produce her driver's license and identification. Plaintiff argues that Deputy Pitts should have allowed her to proceed on her way as soon as he realized that her tags were not expired, and that his failure to do so made the stop unlawful.[14] Deputy Pitts claims that he is entitled to qualified immunity with respect to this claim. The qualified immunity analysis involves a "two-pronged inquiry:" (1) Whether defendant violated a constitutional right and (2) whether "the right at issue was clearly established at the time of defendant's alleged misconduct." *Safar v. Tingle*, 859 F.3d 241, 246 (4th Cir. 2017) (quotation marks omitted). Plaintiff's § 1983 claim fails under both prongs because Deputy Pitts did not violate the Fourth Amendment by stopping plaintiff and asking for her identification, and even if he had violated the Fourth Amendment, plaintiff's right to a reasonable seizure in these circumstances was not clearly established.

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[13] *See also Covey v. Assessor of Ohio Cty.*, 777 F.3d 186, 191 (4th Cir. 2015) (assessing plaintiffs' claim under § 1983 that defendants violated their Fourth Amendment rights by conducting an unreasonable search).

[14] Plaintiff also argues that the stop was pretextual and that Deputy Pitts racially profiled plaintiff, but the Supreme Court has made clear that courts do not "examine the subjective understanding of the particular officer involved" in a traffic stop. *Heien v. North Carolina*, 574 U.S. ___, 135 S. Ct. 530, 539 (2014).

With respect to whether Deputy Pitts violated the Fourth Amendment, the Fourth Circuit has made clear that "[o]bserving a traffic violation provides sufficient justification for a police officer to detain the offending vehicle for as long as it takes to perform the traditional incidents of a routine traffic stop," namely requesting the driver's license and registration, running a background check, and issuing a citation. *Branch*, 537 F.3d at 335. Accepting plaintiff's allegation that Deputy Pitts stopped her solely because he believed her tags were expired, and that he asked for her identification only *after* inspecting the tags and realizing that the tags were in fact not expired, he was still entitled to "perform the traditional incidents of a routine traffic stop." *Id.* It is hard to imagine a more routine incident of a traffic stop than an officer asking a driver for her license and identification. *Id.* And even though Deputy Pitts allegedly discovered that plaintiff's tags were not expired before asking for her license, the Fourth Circuit has stated that a driver "must be allowed to proceed on [her] way" only "once the driver has demonstrated that [she] is entitled to operate [her] vehicle." *Id.* at 336; *see also United States v. Clayborn*, 339 F.3d 700, 701 (8th Cir. 2003) (rejecting the argument that an officer who pulled driver over for lack of license plates, and then realized the driver had a valid temporary license, had to end the stop at that point without asking for license and registration). Deputy Pitts could make the determination that plaintiff was entitled to drive only after checking her identification. His decision was not only a permissible exercise of his duty to ensure that drivers are allowed to operate their cars, but also turned out to be prudent in light of plaintiff's failure to produce a valid driver's license or identification. *See Rodriguez v. United States*, 575 U.S. ___, 135 S. Ct. 1609, 1615 (2015) (noting that checking a driver's license "serves the same objective as enforcement of the traffic code: ensuring that vehicles on the road are operated safely and responsibly").

Even if Deputy Pitts' request for plaintiff's driver's license and identification unconstitutionally prolonged the traffic stop, plaintiff's claim does not succeed because Deputy Pitts is entitled to qualified immunity on the ground that plaintiff's Fourth Amendment right with respect to the allegedly prolonged stop was not clearly established in these circumstances. As the Fourth Circuit recently stated, a "right is clearly established only if its contours are sufficiently clear that a reasonable official would understand that what he is doing violates that right." *Booker v. S.C. Dep't of Corr.*, 855 F.3d 533, 538 (4th Cir. 2017). In other words, the "unlawfulness of the official's conduct must be apparent in light of pre-existing law," and as such "existing precedent must have placed the statutory or constitutional question beyond debate." *Id.* (quotation marks omitted). Furthermore, it is a "longstanding principle that "clearly established law should not be defined at a high level of generality," and "must be particularized to the facts of the case so as to avoid transforming qualified immunity into a rule of virtually unqualified liability." *Safar*, 859 F.3d at 246 (quotation marks omitted). As a result, there must be a "case where an officer acting under similar circumstances was held to have violated the Fourth Amendment" in order to conclude that an "officer has breached a clearly established right." *Id.* (quotation marks omitted). In assessing whether clearly established law exists, courts must "first examine cases of controlling authority in this jurisdiction," namely decisions of the "Supreme Court, [the Fourth Circuit], and the highest court of the state in which the case arose." *Booker*, 855 F.3d at 538. Courts may also "look to a consensus of cases of persuasive authority from other jurisdictions, if such exists." *Id.* (quotation marks and emphasis omitted).

The issue here is whether clearly established law provided "fair warning" to Deputy Pitts that he acted unconstitutionally by asking for plaintiff's identification after concluding that her tags were not expired. *Id.* (quotation marks omitted). As the above explanation makes clear,

Deputy Pitts had no such warning that he was acting unconstitutionally; to the contrary, Fourth Circuit precedent establishes that he acted lawfully in requesting that plaintiff produce her driver's license and identification. *See Branch*, 537 F.3d at 335. Moreover, the Supreme Court recently affirmed that the Fourth Amendment allows officers to conduct "ordinary inquiries incident to" a traffic stop — including a license check — even if those inquiries are unrelated to the purpose the stop. *Rodriguez*, 135 S. Ct. at 1614–15 (quotation marks omitted). Given that neither Supreme Court nor Fourth Circuit precedent clearly establishes that Deputy Pitts unconstitutionally prolonged the traffic stop of plaintiff,[15] it is unnecessary to examine whether a consensus of persuasive authority from other circuits exists.[16] In sum, even assuming, *arguendo*, that Deputy Pitts violated plaintiff's Fourth Amendment right to proceed on her way after he realized her tags were not expired, Deputy Pitts is entitled to qualified immunity because that right was not clearly established at the time of the stop.

Plaintiff's remaining claims against Deputy Pitts must be dismissed for failure to state plausible claims for relief. Plaintiff's § 1983 claims against Deputy Pitts for deprivation of her rights to freedom, participation in interstate commerce, due process, and her First Amendment rights all fail because she alleges no facts whatsoever indicating that Deputy Pitts unlawfully deprived her of any of these rights. Instead, the facts alleged indicate that Deputy Pitts lawfully stopped plaintiff, lawfully asked for her identification, and lawfully arrested plaintiff after

[15] No Supreme Court of Virginia decisions clearly establish that Deputy Pitts acted unlawfully in these circumstances.

[16] In any event, such a consensus does not exist. *Compare Clayborn*, 339 F.3d at 701 (concluding that officer could lawfully ask for driver's identification even after realizing that driver had a temporary license) *with United States v. McSwain*, 29 F.3d 558, 561–62 (10th Cir. 1994) (concluding that Fourth Amendment violation occurred where officer's "suspicion regarding the validity of [defendant's] temporary registration sticker was completely dispelled *prior* to the time he questioned [defendant] and requested documentation").

finding that she was using a false identification. Furthermore, because plaintiff's § 1983 claims fail, her § 1981 claim also fails because that claim is subject to the same analysis as her § 1983 claims. *See Dennis*, 55 F.3d at 156 (analyzing plaintiff's § 1981 claim under the standards for § 1983 claims).

Her final federal claim against Deputy Pitts suffers the same fate. She alleges that Deputy Pitts and others conspired to deprive her of her civil rights, in violation of § 1985(3).[17] To state a plausible § 1985(3) claim, plaintiff must allege facts showing that the alleged conspirators were "motivated by a specific class-based, invidiously discriminatory animus." *Simmons v. Poe*, 47 F.3d 1370, 1376 (4th Cir. 1995). Plaintiff's SAC is bereft of facts indicating that Deputy Pitts, or any other defendant, acted with a specific discriminatory animus toward her, and her conclusory assertion that she was racially profiled does not suffice to establish a plausible § 1985(3) claim. *See Gooden v. Howard Cty.*, 954 F.3d 960, 969–70 (4th Cir. 1992) (stating that plaintiffs alleging conspiracy claims under § 1985(3) must "plead specific facts in a nonconclusory fashion to survive a motion to dismiss").

Finally, plaintiff's common law tort claims for false arrest, false imprisonment, and gross negligence all fail. Under Virginia law, false arrest or false imprisonment is the "restraint of one's liberty without any sufficient legal excuse." *Montgomery Ward & Co. v. Wickline*, 188 Va. 485, 489 (1948). Here, the allegations show that Deputy Pitts had ample legal excuse to

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[17] Section 1985(3) provides that if:

> [T]wo or more persons in any State or Territory conspire . . . for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws . . . the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

42 U.S.C. § 1985(3).

arrest plaintiff, as she possessed a false identification card from the "World Service Authority," a misdemeanor under Virginia law. *See* Va. Code § 18.2-204.2(A) (prohibiting the possession of a fictitious identification). Furthermore, it is "firmly settled that a peace officer may legally arrest, without a warrant, for a misdemeanor committed in his presence," which means that Deputy Pitts lawfully arrested plaintiff. *Montgomery*, 188 Va. at 489. And because Deputy Pitts lawfully arrested plaintiff, she was not falsely imprisoned. *Lewis v. Kei*, 281 Va. 715, 724 (2011) ("If the plaintiff's arrest was lawful, the plaintiff cannot prevail on a claim of false imprisonment."). Finally, as for gross negligence, there are no facts indicating that Deputy Pitts acted with a "degree of negligence showing indifference to another and an utter disregard of prudence that amounts to a complete neglect of the safety of such other person." *Elliott v. Carter*, 292 Va. 618, 622 (2016). Indeed, as is abundantly clear at this point, Deputy Pitts lawfully stopped and arrested plaintiff, and there are no facts showing that he conducted the traffic stop in a way that would have threatened plaintiff's safety. As a result, plaintiff's common law tort claims against Deputy Pitts, like her federal claims, must all be dismissed for failure to state plausible claims for relief.[18]

**III.**

Detective Comfort has also moved to dismiss plaintiff's claims against him for failure to state plausible claims for relief under Rule 12(b)(6), Fed. R. Civ. P. Although plaintiff's SAC

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[18] Detective Comfort also moves to dismiss plaintiff's claims on the ground that her claims against him are time-barred. Although Detective Comfort was named as a defendant in plaintiff's initial complaint, he asserts that he was never served with that initial complaint and that he did not receive notice of her claims until receiving the SAC, which was outside the limitations period (even taking into account the suspension of the 90-day period due to the delay in granting plaintiff's *in forma pauperis* application and authorizing summonses). In any event, because of the inexplicable delay in transferring plaintiff's case, her claims against Detective Comfort will be addressed on the merits.

does not specify any precise causes of action against Detective Comfort, she appears to bring claims against him under (i) § 1985(3) for engaging in a conspiracy to violate plaintiff's civil rights and (ii) § 1983 for deprivation of plaintiff's constitutional rights to freedom and due process. Plaintiff further claims that Detective Comfort was grossly negligent.[19]

Plaintiff claims against Detective Comfort fail for many of the same reasons why her claims against Deputy Pitts must be dismissed. As with Deputy Pitts, there are no facts whatsoever showing that Detective Comfort acted with a "specific class-based, invidiously discriminatory animus," which are required to plead a § 1985(3) claim. *Simmons*, 47 F.3d at 1376. Likewise, plaintiff has failed to plead sufficient facts to support her § 1983 claim that she was deprived of her constitutional rights to freedom and due process. The facts she does allege indicate only that Detective Comfort worked with federal agents to investigate plaintiff. But investigating suspects is what police are supposed to do, and there are no facts indicating that Detective Comfort's expertise in extremist groups or cooperation with federal agents deprived plaintiff of due process or any other constitutional right. Finally, plaintiff's gross negligence claim fails because there are no facts indicating that Detective Comfort conducted his investigation in a way that completely neglected plaintiff's safety. *See Elliott*, 292 Va. at 622. Plaintiff mentions in passing that Detective Comfort relied on hearsay in conducting his investigation of plaintiff, but reliance on hearsay hardly qualifies as utter disregard of plaintiff's safety. In sum, plaintiff's SAC is fatally light on factual allegations and inappropriately heavy

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[19] Plaintiff also claims that Detective Comfort orchestrated the confiscation of plaintiff's property, but she provides no facts as to what property was taken, why it was taken, or whether it was returned to her. Furthermore, as stated in the previous order, plaintiff had documents and templates for manufacturing false identifications in her possession. *See Stewart*, No. 1-16-cv-682, at *3 (E.D. Va. Jan. 23, 2017) (Order). As a result, the property Detective Comfort allegedly confiscated from her was likely contraband used for making false identifications, which of course would not be returnable.

on conclusory assertions, which falls far short of stating the requisite plausible claims for relief against Detective Comfort. *See Iqbal*, 556 U.S. at 678.

**IV.**

With respect to Special Agent Manyx, plaintiff claims that he (i) violated her Fifth Amendment right to due process, (ii) violated her First Amendment right to freedom of association, (iii) violated her civil rights, (iv) committed common law torts of negligence, gross negligence, and malicious prosecution, and (v) is responsible for plaintiff's false arrest and false imprisonment.[20]

To begin with, Special Agent Manyx is a federal officer and plaintiff seeks money damages against him. As a result, plaintiff's claims that he violated her constitutional rights must be construed as constitutional tort claims under the implied right of action for damages established in *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971). The problem with plaintiff's claims that Special Agent Manyx violated her First and Fifth Amendment rights, however, is that the vast majority of plaintiff's factual allegations refer generally to the federal agents who searched her home and allegedly violated her rights. The Fourth Circuit has made clear that "there is no *respondeat superior* liability" in *Bivens* suits, and as such "liability is personal, based on each defendant's own constitutional violations." *Trulock v. Freeh*, 275 F.3d 391, 402 (4th Cir. 2001). Plaintiff has failed to plead specific facts showing that Special Agent Manyx himself, as opposed to some unidentified federal agent that he supervised, violated her First or Fifth Amendment rights. Indeed, the only specific mention of Manyx with respect to the search of her home is that he arrived with arrest and search warrants,

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[20] Plaintiff also appears to include Special Agent Manyx as a co-conspirator in her § 1985(3) claims against Deputy Pitts and Detective Comfort, but any such claim against Special Agent Manyx fails for the same reasons that claim fails against the other defendants.

which hardly indicates, as plaintiff alleges, that Special Agent Manyx violated her rights to freedom of association under the First Amendment or right to due process under the Fifth Amendment.[21] Plaintiff's conclusory assertions to the contrary do not plausibly indicate that he personally violated her First or Fifth Amendment rights. *See Iqbal*, 556 U.S. at 678.[22] As a result, plaintiff's constitutional claims against Special Agent Manyx must be dismissed for failure to state plausible claims for relief.

Plaintiff's remaining common law claims against Special Agent Manyx for negligence, gross negligence, malicious prosecution, false arrest, and false imprisonment must also be dismissed. Pursuant to 28 U.S.C. § 2679(d)(1), the United States Attorney for this district has certified that Special Agent Manyx "was acting within the scope of his . . . employment at the time of the incident out of which" plaintiff's common law claims arise, and accordingly the United States has been substituted as a party defendant in place of Special Agent Manyx with respect to her common law claims against Special Agent Manyx. *See Stewart*, No. 1-16-cv-682 (E.D. Va. June 19, 2017) (Notice and Certification). As a result, plaintiff's common law claims can proceed against the federal government only through the Federal Tort Claims Act ("FTCA"), which waives the government's sovereign immunity. *F.D.I.C. v. Meyer*, 510 U.S. 471, 475

[21] The government also notes that, generously construed, plaintiff's SAC could be read to allege that 18 U.S.C. § 915, the statute plaintiff was prosecuted under, violates the First Amendment, and therefore Special Agent Manyx arrested plaintiff pursuant to an unconstitutional statute. That statute prohibits anyone from impersonating a foreign official with the intent to defraud. *See* 18 U.S.C. § 915. It is unnecessary to address this argument given the disposition of plaintiff's constitutional claims against Special Agent Manyx, but it is worth noting that Special Agent Manyx would be entitled to qualified immunity on such a claim because even if § 915 is unconstitutional, there is currently no authority to that effect and, as a result, Special Agent Manyx did not violate clearly established law in arresting plaintiff for a violation of § 915.

[22] Plaintiff also alleges that Special Agent Manyx threatened to charge her with tax violations in the presence of plaintiff's counsel, but this fact, again, does not establish that Special Agent Manyx deprived plaintiff of her rights to freedom of association or due process.

(1994); *see also Stewart*, No. 1-16-cv-682, at *16 (E.D. Va. Jan. 23, 2017) (Order). The problem for plaintiff, however, is that she already attempted to bring these same common law claims against the federal government under the FTCA in her first amended complaint, and those claims were dismissed for lack of subject matter jurisdiction for failure to comply with the FTCA's statutory presentment requirement. *See Stewart*, No. 1-16-cv-682 at *18–19 (E.D. Va. Jan. 23, 2017) (Order) (citing *Ahmed v. United States*, 30 F.3d 514, 517–18 (4th Cir. 1994)). For the reasons stated in the previous order, plaintiff's failure to comply with the statutory presentment requirement also requires dismissal of her common law claims against the federal government in her SAC for lack of subject matter jurisdiction. *See id.* at *17–19 (dismissing plaintiff's common law claims for failure to comply with the FTCA's requirement that plaintiffs present their tort claims to the appropriate agency with sufficient detail that the agency can investigate the claims) (citing *Ahmed*, 30 F.3d at 517).

**V.**

The final issue is whether plaintiff should be given leave to file a third amended complaint. Rule 15(a)(2), Fed. R. Civ. P., provides that courts should "freely give leave [to amend] when justice so requires." Courts need not give leave to amend when amendments would be futile. *Johnson v. Oroweat Foods Co.*, 785 F.2d 503, 509 (4th Cir. 1986).

It is appropriate to deny plaintiff's claims without leave to amend. To begin with, this action began in March 2015 with plaintiff's initial complaint, and she was given leave to file two additional complaints. Her claims in all three complaints stem from the September 2013 traffic stop and the October 2013 search of her home, and her basic allegations with respect to those incidents have not changed since her initial complaint. There is no indication that granting plaintiff a fourth bite at the apple would uncover new factual allegations that would allow her

claims to survive a motion to dismiss. As a result, any proposed amendments to plaintiff's claims against Deputy Pitts and Detective Comfort would be futile. *See Perkins v. United States*, 55 F.3d 910, 917 (4th Cir. 1995) ("[T]he district court was justified in denying [plaintiff's] motion to amend her complaint because the proposed amendments could not withstand a motion to dismiss."). Similarly, plaintiff's failure after three complaints to allege any facts plausibly establishing that Special Agent Manyx violated her constitutional rights also requires denial of leave to amend. *See id.* Finally, because plaintiff's common law claims against the federal government must be dismissed for lack of subject matter jurisdiction, granting leave to amend with respect to these claims would also be futile. *See United States ex rel. Ahumada v. NISH*, 756 F.3d 268, 279, 282 (4th Cir. 2014) (concluding that the district court properly denied leave to amend as futile where proposed amendments would not cure defects in subject matter jurisdiction).

**VI.**

Accordingly, and for good cause,

It is hereby **ORDERED** that defendants' motions to dismiss (Docs. 92, 95, 108) are **GRANTED**. In particular, plaintiff's claims against (1) Deputy Pitts are **DISMISSED WITH PREJUDICE** for failure to state plausible claims for relief, and, with respect to plaintiff's Fourth Amendment claim, on the ground that Deputy Pitts is entitled to qualified immunity,[23] (2) plaintiff's claims against Detective Comfort are **DISMISSED WITH PREJUDICE** for failure to state plausible claims for relief, (3) plaintiff's constitutional claims against Special Agent

[23] Although Deputy Pitts and Special Agent Manyx raise a qualified immunity defense with respect to plaintiff's other claims against them, it is unnecessary to address this issue because plaintiff clearly fails to state plausible claims for relief against Deputy Pitts and Special Agent Manyx given the SAC's utter lack of supporting facts.

Manyx are **DISMISSED WITH PREJUDICE** for failure to state plausible claims for relief, and (iv) plaintiff's common law claims against the federal government are **DISMISSED WITHOUT PREJUDICE** for lack of subject matter jurisdiction.[24]

It is further **ORDERED** that the hearing scheduled in this matter for 10:00 a.m. on Friday, July 28, 2017 is **CANCELLED**.

It is further **ORDERED** that any request for leave to amend is **DENIED** as futile.

Should plaintiff wish to appeal, she must do so by filing a written notice of appeal with the Clerk's Office within sixty (60) days of the entry date of this Order, pursuant to Rules 3 and 4, Fed. R. App. P. A written notice of appeal is a short statement that indicates a desire to appeal and notes the date of the Order plaintiff wants to appeal. Plaintiff need not explain the grounds for appeal until so directed by the court.

The Clerk is directed to send a copy of this Order to the *pro se* plaintiff and all counsel of record and to place this matter among the ended causes.

Alexandria, Virginia
July 19, 2017

/s/
T. S. Ellis, III
United States District Judge

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[24] *See Broadlands*, 713 F.3d at 185 ("A dismissal for lack of . . . subject matter jurisdiction . . . must be one without prejudice, because a court that lacks jurisdiction has no power to adjudicate and dispose of a claim on the merits.").

Although the dismissal of plaintiff's federal claims would allow for the dismissal of her state law claims without prejudice under 28 U.S.C. § 1367(c)(3) for lack of supplemental subject matter jurisdiction, thus allowing her to pursue her state law claims in state court, doing so is inappropriate here. Plaintiff has had multiple opportunities to state plausible claims against defendants and has failed to do so. Allowing her state law claims to go forward in state court would simply invite further unnecessary and vexatious litigation against these officers.

# APPENDICE C

FILED: April 3, 2018

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

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No. 17-1862
(1:16-cv-00682-TSE-JFA)

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SHIRLEY ANN STEWART

Plaintiff - Appellant

v.

ERIC HIMPTON. HOLDER, JR.; THOMAS S. WINKOWSKI; EDWIN C. ROESSLER, Fairfax County Police Department; STACEY KINCAID, Fairfax County Sheriff Dept.; MICHAEL L. CHAPMAN; JOHN F. KERRY, U.S. Department of State; SARAH SALDANA, Immigration and Customs Enforcement; STEPHEN HOLL, Metropolitan Washington Airports Authority; B. A. PITTS, (Fairfax Sheriff), in his Personal capacity; JASON S. MANYX, (U.S. Homeland Security), in his personal capacity; DOUG COMFORT, (Fairfax Police), in his personal capacity; UNITED STATES OF AMERICA; JEH JOHNSON, U.S. Homeland Security

Defendants - Appellees

and

RONALD C. MACHEN, JR.; ALEJANDRO MAYORKAS, and Wife; JASON P. MANYX, and Wife; IVAN D. DAVIS, and Wife; DOE ENTITIES, and others of yet unknown; 1-100; Jane Does 1-100; DOE Corporations 1-100; DOE Governmental; JOE TSUYI, and Wife; DOUG COMFORT, and Wife; DANA J. BOENTE; THERESA CARROLL. BUCHANAN, and Husband; BARACK H. OBAMA

Defendants

ORDER

The court denies the petition for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 35 on the petition for rehearing en banc.

Entered at the direction of the panel: Judge Motz, Judge Floyd, and Senior Judge Hamilton.

For the Court

/s/ Patricia S. Connor, Clerk