PUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-1394

KERRIN BARRETT,

Plaintiff - Appellant,

v.

PAE GOVERNMENT SERVICES, INC.; AREYAL HALL, Officer, Arlington County Police Department; WILLIAM K. LIETZAU; SEAN HORNER; SHANEDRIA WILBORN; BRIAN GALWAY; JOSHUA LUZIER, Officer,

Defendants - Appellees.

Appeal from the United States District Court for the Eastern District of Virginia at Alexandria. Anthony John Trenga, District Judge. (1:18-cv-00980-AJT-TCB)

Argued: May 28, 2020 Decided: September 15, 2020

Before DIAZ and THACKER, Circuit Judges, and TRAXLER, Senior Circuit Judge.

Affirmed by published opinion. Senior Judge Traxler wrote the opinion, in which Judge Diaz and Judge Thacker joined.

ARGUED: Peter Charles Cohen, CHARLSON BREDEHOFT COHEN & BROWN, P.C., Reston, Virginia, for Appellant. Ara Loris Tramblian, BANCROFT, MCGAVIN, HORVATH & JUDKINS, P.C., Fairfax, Virginia; Charles McNeill Elmer, JACKSON LEWIS P.C., Reston, Virginia, for Appellees. **ON BRIEF:** Hans H. Chen, CHARLSON BREDEHOFT COHEN & BROWN, P.C., Reston, Virginia, for Appellant. Ryan Samuel, COUNTY ATTORNEY'S OFFICE, Arlington, Virginia, for Appellees Areyal Hall, Brian Galway, and Joshua Luzier. Crystal L. Tyler, Meredith F. Bergeson, JACKSON LEWIS

P.C., Richmond, Virginia, for Appellees PAE Government Services, Inc., William Lietzau, Sean Horner, and Shanedria Wilborn.

TRAXLER, Senior Circuit Judge:

Plaintiff Kerrin Barrett brought this action under 42 U.S.C. § 1983 and Virginia state law against Arlington County police officers Areyal Hall ("Hall") and Joshua Luzier ("Luzier"), and Arlington County mental health examiner Brian Galway ("Galway")—collectively the "Arlington County defendants." Plaintiff alleges that the Arlington County defendants unlawfully seized and detained her for a mental health evaluation in violation of the Fourth Amendment and falsely imprisoned her in violation of Virginia state law. Plaintiff also sued her employer, PAE Governmental Services, Inc. ("PAE"), and three of PAE's employees, Sean Horner ("Horner"), Shanedria Wilborn ("Wilborn"), and William Lietzau ("Lietzau")—collectively the "PAE defendants." She alleges that the PAE defendants conspired with the Arlington County defendants to unlawfully seize her and falsely imprison her, also in violation of 42 U.S.C. § 1983 and Virginia state law.

The district court granted the PAE defendants' motion to dismiss the Complaint in its entirety, and granted the Arlington County defendants' motion to dismiss the state law conspiracy claims. The district court later granted summary judgment to the Arlington County defendants on the remaining federal and state law claims.[1] We now affirm.

I.

Plaintiff lived and worked in the Middle East for six years—from 2010 to 2016. From April 2012 to July 2013, she worked as a contractor for PAE in Kabul, Afghanistan,

[1] The operative Complaint for purposes of this appeal is the Second Amended Complaint filed on October 31, 2018.

on a U.S. State Department contract that was dedicated to improving the rule of law in that country. In 2014, Plaintiff moved to Dubai in the United Arab Emirates. Plaintiff claims that she became a victim of constant stalking and harassment by Pakistani, Bangladeshi, and other Southeast Asian men while she was living in Dubai, and that the stalkers followed her when she traveled into Oman and Thailand.

Plaintiff moved back to the United States in early 2016. In May of that year, she began working for PAE on another U.S. State Department contract. Plaintiff worked out of PAE's Arlington, Virginia office, and "was responsible for gathering and reporting on prison data, which included women and children incarcerated in the prisons, high value targets, and members of ISIS, the terrorist group in the Middle East." J.A. at 23. As explained in more detail below, in July 2017, Plaintiff informed Defendants Horner and Wilborn that she was being stalked and harassed by Southeast Asian men, who were reporting back to the Dubai-based network on their cell phones, and that she had taken steps to identify her stalkers and their location in the United States. After consulting with PAE's legal staff, Horner contacted the Arlington County Police Department for assistance. Defendants Hall and Luzier responded to the call, and a decision was made to issue an emergency custody order ("ECO") for an involuntary mental health evaluation. The evaluation was performed by Defendant Galway with the Virginia Department of Health Services, who determined that there was probable cause to believe that Plaintiff was suffering from Post-Traumatic Stress Disorder ("PTSD"), and possibly a delusional disorder, and that she posed a genuine danger to herself and others. Galway filed a petition

for a temporary detention order ("TDO") for further evaluation and treatment of Plaintiff, which was granted by a state magistrate judge.

II.

For purposes of the appeal from the district court's grant of summary judgment to the Arlington County defendants, we relate the undisputed facts that the PAE defendants and the Plaintiff reported to them during their investigations.

A. The PAE Defendants

The events that led the PAE defendants to contact the Arlington County police for assistance began in July 2017, when Plaintiff reported the stalking and harassment to Defendants Horner and Wilborn. Plaintiff reported that two incidents had occurred in or near the PAE offices, and they were of particular concern to Horner and Wilborn. First, Plaintiff claimed that a strange "man who fit the pattern of her stalkers came up to her while she was sitting at her desk and said, 'Hello, [long pause] Kerrin' before leaving." J.A. 28 (alteration in original). Second, Plaintiff claimed that she saw a Bangladeshi stalker in the courtyard between the PAE office building and the adjacent Verizon building, and that the man urgently grabbed his cell phone and began talking on it when he saw her. When she returned through the courtyard, Plaintiff approached the security guard in the Verizon building and asked him if he knew anyone who met the description of the man. The security guard told her that there were "a bunch of them up on the 11th floor and that they work for [the] FDIC." J.A. 468.

Plaintiff had previously told her supervisor, Defendant Lietzau, that she believed she was being stalked and harassed by Southeast Asian men. She also informed him about

the courtyard incident and asked for his advice. According to Lietzau, Plaintiff also asked him to "go with her to kind of confront these people." J.A. 564. At Lietzau's suggestion, Plaintiff instead reported the stalking incident to Defendant Horner, who was PAE's Security Manager. Horner testified that Plaintiff also told him that she was being stalked and harassed by:

> a coordinated, sophisticated complex[] network of primarily Southeast Asian males, always different men following her, different vehicles following her, having the ability to follow her, track her phone to the extent where they knew what floor in a building she was at, that her e-mails were compromised. She thought her house was bugged. . . . They would do things like knocking on her door in the middle of the night. They would whistle at her dogs to make them bark. They would run into her car . . . and then take off.

J.A. 163. Plaintiff also told Horner that she had discovered that the stalkers were centralized on the 11th floor of the Verizon building. According to Horner, Plaintiff "was convinced that that's where the centralization[,] or hive was the word she used . . . , were located and she was hoping to figure out a name or something like that to be able to figure out who they are, track them down, who they're sending information to." J.A. 137-38. Horner testified that Plaintiff "was hoping that [he] could help her gain access to [the 11th floor of the building] to help identify potentially one of the stalkers." J.A. 136. Horner advised Plaintiff that he could not do so, and that she should not either. According to Horner, Plaintiff told him that she did not own a firearm, but was considering getting one.

Horner asked Plaintiff to document her concerns in a written report. However, in an ensuing series of emails, Plaintiff accused Horner of being derisive and disrespectful, and cut off their communication:

> To be clear, there is absolutely nothing that can be done about my situation legally. These networks operate just inside the law, here and abroad. My one hope was that I could get assistance identifying who they are reporting back to – or at least the name of one of these "followers," since I now finally determined their location on [Floor] 11 in the adjacent building.
>
> Once again, there is no point in taking any more of your valuable time, nor anyone else's. I will, however, restate that I now am fully aware of the complexity and severity of the war we are fighting, because I live it every day.

J.A. 208. In reply, Horner "strongly recommend[ed]" that Plaintiff not try to "identify the perpetrators or confront[] them." J.A. 211. He also contacted Defendant Wilborn, a PAE Human Resources manager, and asked Wilborn to speak to the Plaintiff. Wilborn documented her conversation with Plaintiff in an Arlington County police report:

> [Plaintiff] stated that when she moved back to the [United States from Dubai], a hive of Southeast Asian men followed her here. According to [Plaintiff], these men have been to her home, knocking on her door at odd hours, sitting outside of her home in black cars and following her every move. I asked [Plaintiff] how these men knew where she lived and she responded that her phone was hacked and they are tracking her through her phone. She also mentioned that she has been followed to work, surrounded in the garage and surveilled in the courtyard. She says that there is a nest of them working for FDIC on the 11th floor of the Verizon building. [Plaintiff] says that on more than one occasion, she has seen these men on phones in the courtyard talking to someone in Dubai (the hub) about her. She said that she needs the phone that the men are talking on. I asked her how she planned to get the phone and she said that she just has to walk up to them and take it. She mentioned that her Afghanistan friends advised that the only way to minimize the threat is to kill them. "They are an uncivilized society and they have to be killed." I asked her what she meant by "them." Her response was, "all Pakistani men." "They just have to be killed, like Trump said, we have to turn the key, lock them out and drop a bomb on Pakistan." She also said that she wishes that when she was in Afghanistan, she should have told her Afghanistan friends to kill "them." She also mentioned that one of these men came here to her desk at work and said "hello Kerrin." She also said that she followed one of them up to the 11th floor of the Verizon building, but she couldn't gain access beyond the floor level. She also says that she has a Glock and that she goes to the range to fire it. She takes her phone with her

> so that the stalkers know that she is there because they are tracking her through her phone.

J.A. 218-19.

Wilborn testified that the majority of PAE's contracts involve State Department support for the Iraq and Afghanistan embassies, and that anywhere from 10 to 15 percent of PAE's employees could fit the description of Plaintiff's alleged stalkers. Wilborn also testified that it would have been difficult for a non-PAE employee to gain access to the PAE offices and find Plaintiff's desk. Given the strong opinions that Plaintiff had voiced about Middle Eastern Asian men, and her view that there was no legal way to solve her problem, Wilborn was concerned for the safety of Plaintiff and the other PAE employees. She worried that Plaintiff might mistakenly identify a PAE employee as a stalker, perceive them as a threat, and harm herself or the "stalker" in "an effort . . . to defend herself in the way that she described" to Wilborn. J.A. 235. After meeting with Plaintiff, Wilborn and Horner met with PAE's legal staff, and a decision was made to have Horner contact the Arlington County Police Department for assistance.

B. The Arlington County Defendants

Officers Hall and Luzier were assigned to respond to the call for assistance at the PAE offices. The dispatch referenced an "employee who has been becoming increasingly dillusional [sic] and believes is being followed by people in an adjacent building. . . . [The reporting person] advises that employee has mentioned recently about owning a firearm and only way to get rid of people following her is to use the firearm." J.A. 272.

The officers met with Horner when they arrived, who reported the substance of the conversations that he and Wilborn had with Plaintiff. Plaintiff, however, was not at work. The officers suggested that Horner contact the Arlington County Department of Human Services ("DHS") directly for their guidance and suggestions, and to call the officers back if they needed further assistance. Horner contacted DHS the same day and spoke with Alexis Mapes, the Emergency Services Supervisor. Mapes documented her conversation with Horner in an email to her staff, which included Defendant Galway:

> [Horner] [r]eports an employee has been increasingly paranoid while at work, citing being followed by Middle Eastern men – who are supposedly following her at work, at home, and whistling at her dog; has described following said men to nearby building to determine who they are and reports that she "found the nest." Employee reported to [Horner] that she did not have a weapon, but made another report to HR that she did have a weapon and the "only way to solve this is to kill them."
>
> . . . . [Horner] plans to consult with HR [and] ask the police to come out to obtain stalking statement from employee when she arrives for the day, with likelihood of employee exhibiting concerning behavior to warrant an ECO/assessment.

J.A. 276. Horner contacted the Arlington County Police Department the following day and requested that Officers Hall and Luzier be dispatched to PAE's offices.

When the officers arrived, they met with Horner again and also spoke directly to Wilborn about her conversation with Plaintiff. The officers then talked to Plaintiff and Wilborn in a conference room. Plaintiff was even-keeled and not disheveled in her appearance. According to Plaintiff, she was initially under the impression that the officers were there to help her investigate and identify her stalkers, but came to realize otherwise when the questioning began. She testified that Officer Luzier was hostile and

unprofessional in his behavior, and dismissive of her concerns. Nevertheless, Plaintiff related the substance of the stalking and harassment to the officers, including that she was being followed by different Asian men in black SUVs, and that they "report back on the phones, and it seems to be a network of people doing it." J.A. 489. She told them about the man in the courtyard and that she had spoken to the security guard in the building. She told them that she had taken steps to become a "hard target" by installing a dash cam in her car and a camera in the front of her home, having dogs, and becoming more vigilant and aware. Plaintiff confirmed to the officers that she owned a Glock pistol, but said it was stored in a closet in her home. She denied telling Wilborn that she would go to the range to practice with her Glock, but she admitted that she had taken an NRA self-defense course in May 2017 to obtain a carry permit under Virginia law. She said she used an NRA-provided gun for the class and had not yet obtained the permit. With regard to Wilborn's report of her talking about "killing" the stalkers, she said that this was a misunderstanding; she was only referring to the cultural differences between the Middle East and the United States as to how such situations would be handled. She told the officers that she had no intent to harm her stalkers, but that "[h]opefully if something happens, I'll have the courage to defend myself." J.A. 271.

During the interview, Officer Luzier left the conference room on a couple of occasions. He spoke with Wilborn about her concerns. He contacted the Fairfax County Police Department for information about Plaintiff's reports, but received no response. And he contacted DHS and was told they had no history of mental health encounters with Plaintiff.

Under Virginia law, a police officer may take a person into custody without prior judicial approval and transport that person involuntarily for a mental health evaluation pursuant to an ECO if the officer:

> has probable cause to believe that any person (i) has a mental illness and that there exists a substantial likelihood that, as a result of mental illness, the person will, in the near future, (a) cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening harm and other relevant information, if any, or (b) suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic human needs, (ii) is in need of hospitalization or treatment, and (iii) is unwilling to volunteer or incapable of volunteering for hospitalization or treatment.

Va. Code Ann. § 37.2-808.A; *see also id.* § 37.2-808.G ("A law-enforcement officer who, based upon his observation or the reliable reports of others, has probable cause to believe that a person meets the criteria for emergency custody . . . may take that person into custody and transport that person to an appropriate location to assess the need for hospitalization or treatment without prior authorization" from a magistrate judge.). After considering all of the information presented to them, the police officers made the decision to issue an ECO, and Plaintiff was transported to the Virginia Hospital Center for a mental health evaluation.

Once an individual is taken into custody by police officers pursuant to an ECO, the individual must be evaluated by "a person designated by the community services board who is skilled in the diagnosis and treatment of mental illness and who has completed a certification program approved" by the Department of Behavioral Health and Developmental Services. Va. Code Ann. § 37.2-808.B. The evaluation must "be conducted immediately. The period of custody shall not exceed eight hours from the time the law-enforcement officer takes the person into custody." *Id.* § 37.2-808.G.

Defendant Galway was assigned to perform Plaintiff's evaluation. Galway reviewed the email that he received from Mapes, documenting her conversation with Horner. He spoke with Wilborn, who confirmed the information that she had reported to the police. He also spoke with Lietzau, who told him that he did not think Plaintiff would hurt anyone and that he would not be concerned if Galway decided not to seek an order of commitment. However, Lietzau testified that the statements Plaintiff had made to Horner and Wilborn were "slightly more pointed and harsh sounding, more dangerous sounding, than the verbal statements" that Plaintiff had made to him. J.A. 592. During the call, another work colleague entered Lietzau's office, who agreed that he did not think Plaintiff posed a threat to others. Although there is no evidence that Galway heard the statement of the other coworker, Lietzau testified that he would have given this information to Galway.

Galway also reviewed the medical records and spoke with Dr. Peter Liu, the emergency room physician. Dr. Liu consulted with a psychiatrist, Dr. Peggy Lomax, and concluded that Plaintiff was suffering from a chronic paranoia disorder, with an acute episode. Dr. Liu concluded that "further investigation is necessary to either rule in delusional paranoia [disorder] [versus] actual[ly] being stalked by multiple middle eastern men." J.A. 386. Dr. Liu also advised Galway that he "felt, given that she was refusing treatment . . . and based on what she had been saying, that he was concerned that she might put herself or others at risk." J.A. 351.

When Galway interviewed Plaintiff, she reiterated her claims that she was being stalked and harassed by the Southeast Asian men. She denied that she was undergoing mental health treatment, and repeatedly refused to voluntarily admit herself for an

evaluation. She told Galway that she did own a gun, but that it was locked away. She also told Galway that she was willing to surrender it. She agreed to seek outpatient care, but no provider or timeframe was discussed. Galway testified that he did not get the impression that Plaintiff would follow through. Plaintiff testified that it was her impression that she and Galway were "horse trading" or "bargaining" over the gun and outpatient care, and she "was hopeful that if [she] answered correctly, then [she] would be let go." J.A. 503.

After completing his evaluation, Galway's assessment was that Plaintiff was suffering from PTSD and possibly from a delusional disorder. Galway returned to the DHS office to discuss the case with Mapes. They discussed whether a less restrictive setting would be appropriate under the circumstances, and whether Plaintiff was likely to seek treatment voluntarily. They also discussed the conflicting information about Plaintiff's possession of a gun and her prior use of the gun, as well as Plaintiff's reported statements to Wilborn about killing others. They then took the case to a DHS team meeting with their colleagues. The consensus decision was that the risk that Plaintiff might harm herself or others was too high, and that she needed inpatient evaluation and treatment.

Mapes documented the meeting, and the basis for the decision, in her affidavit. She concurred that Plaintiff appeared to suffer from PTSD and paranoia. She determined that:

> there was a substantial likelihood that, due to her mental illness, she would cause harm to one of the "stalkers" or to herself by confronting one of the "stalkers" in the near future, given: a) Plaintiff's conflicting statements about whether she had a gun; b) a stated need for the stalkers to be killed; and c) Plaintiff's report that she had recently followed a "stalker" into a nearby building and claimed a "stalker" had come to her desk at work.

J.A. 414. This "raised a substantial concern that Plaintiff would mistake an innocent person for a 'stalker' and either commit an act of violence or take some action to cause one of the men to defend themselves and harm her." J.A. 414. Also,

> Plaintiff did not appear to understand how her perceptions and paranoia were impacting her life, safety, and livelihood. She followed a stranger, repeatedly called the Fairfax police, and jeopardized her employment through her actions. Plaintiff needed mental health treatment for these issues, refused to seek such treatment, and told Mr. Galway she had never sought mental health treatment. Because she told Mr. Galway she had never sought mental health treatment, we had no way of contacting her mental health provider to obtain collateral information about [her].

J.A. 415. Accordingly, Mapes "concluded Plaintiff clearly met the criteria to seek a [TDO] from the magistrate and so advised Mr. Galway." J.A. 414.

Under Virginia law, the magistrate judge, upon sworn petition by a mental health examiner, will issue a TDO "if it appears from all evidence readily available, including any recommendation from a physician, clinical psychologist, or clinical social worker treating the person, that the person" satisfies the same criteria required for the issuance of an ECO. Va. Code Ann. § 37.2-809.B. "The magistrate shall also consider, if available, (a) information provided by the person who initiated emergency custody and (b) the recommendations of any treating or examining physician licensed in Virginia either verbally or in writing prior to rendering a decision." *Id.* In this case, the magistrate judge agreed that there was probable cause to issue a TDO, and Plaintiff was detained for further evaluation and a commitment hearing. In accordance with the Virginia statutes, an independent medical examiner was assigned to evaluate the Plaintiff. The examiner

concluded that Plaintiff did not meet the criteria for involuntary commitment, and the case against Plaintiff was dismissed. *See* Va. Code Ann. §§ 37.2-813 through -817.[2]

C.

Plaintiff filed a complaint under 42 U.S.C. § 1983 against the Arlington County defendants for unlawful seizure under the Fourth Amendment. Plaintiff also brought § 1983 claims against the individual PAE employees, alleging that they conspired with the Arlington County defendants to violate her rights. Plaintiff also alleged that the Arlington County defendants falsely imprisoned her, and that the Arlington County defendants and the PAE defendants conspired to falsely imprison her and violate her civil rights, all in violation of Virginia state law.

In its first order, the district court granted the PAE defendants' motion to dismiss the § 1983 counts against the individual PAE defendants and the state law conspiracy counts against all of the PAE defendants. The district court also granted the Arlington County defendants' motion to dismiss the state law conspiracy counts. In its second order, the district court granted summary judgment to the Arlington County defendants on the remaining federal and state law claims. We affirm both decisions.[3]

[2] Although it is not entirely clear whether the independent examiner or the magistrate judge were made aware of it, Plaintiff had been seeing a psychologist who had diagnosed her with PTSD—contrary to her denials of any such treatment to the Arlington County defendants.

[3] Plaintiff does not appeal the district court's dismissal of the § 1983 claims against Defendant Lietzau, the false imprisonment claim against Defendant Galway, or the claims that Lietzau and PAE conspired with Galway to violate her constitutional rights and falsely imprison her. To the extent Plaintiff's § 1983 claims alleged procedural due process claims

III.

We begin with the district court's decision to grant summary judgment to the Arlington County defendants on Plaintiff's § 1983 claims, and to Officers Hall and Luzier on the false imprisonment claims. We review the decision to grant summary judgment de novo. *See Cybernet, LLC v. David*, 954 F.3d 162, 167 (4th Cir. 2020). "A grant of summary judgment is proper when no genuine dispute of material fact exists for trial. In making this determination, we view the evidence in the light most favorable to the non-moving party and draw all reasonable inferences in that party's favor." *Id.* at 168 (internal citations omitted). "[T]he mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine* issue of *material* fact." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986).

A. Federal Claims Under § 1983

Qualified immunity bars § 1983 actions against government officials in their individual capacities "unless (1) they violated a federal statutory or constitutional right, and (2) the unlawfulness of their conduct was clearly established at the time." *District of Columbia v. Wesby*, 138 S. Ct. 577, 589 (2018) (internal quotation marks omitted); *see also Raub v. Campbell*, 785 F.3d 876, 881 (4th Cir. 2015). "Qualified immunity balances two

under the Fifth Amendment, Plaintiff has also abandoned these claims. In supplemental briefing, Plaintiff agreed that the district court properly confined its analysis of her claims strictly to the Fourth Amendment, and that the district court's orders finally disposed of all aspects of her claims against all defendants.

important interests—the need to hold public officials accountable when they exercise power irresponsibly and the need to shield officials from harassment, distraction, and liability when they perform their duties reasonably." *Pearson v. Callahan*, 555 U.S. 223, 231 (2009). It "gives government officials breathing room to make reasonable but mistaken judgments, and protects all but the plainly incompetent or those who knowingly violate the law." *Stanton v. Simms*, 571 U.S 3, 5 (2013) (per curiam) (internal quotation marks omitted). Accordingly, even if a court finds or assumes that a government official violated an individual's constitutional rights, the official is entitled to immunity so long as the official did not violate clearly established law.[4] "Clearly established means that, at the time of the [official's] conduct, the law was sufficiently clear that every reasonable official would understand that what he is doing is unlawful. In other words, existing law must have placed the constitutionality of the [official's] conduct beyond debate." *Wesby*, 138 S. Ct. at 589 (internal quotation marks and citations omitted).

The Fourth Amendment protects the people "against unreasonable searches and seizures." U.S. Const. amend. IV. Determining whether a person's Fourth Amendment rights have been violated in the mental health context requires us to determine whether the officials had probable cause to seize the person for an emergency mental evaluation. *See Bailey v. Kennedy*, 349 F.3d 731, 739 (4th Cir. 2003). Such probable cause exists "when

[4] *See Pearson v. Callahan*, 555 U.S. 112, 236 (2009) ("The judges of the district courts and the courts of appeals [are] permitted to exercise their sound discretion in deciding which of the two prongs of the qualified immunity analysis should be addressed first in light of the circumstances in the particular case at hand.").

the facts and circumstances within the defendant's knowledge and of which the defendant had reasonably trustworthy information were sufficient to warrant a prudent man to believe that the person poses a danger to himself or others." *Goines v. Valley Cmty. Servs. Bd.*, 822 F.3d 159, 172 (4th Cir. 2016) (internal quotation marks omitted).

"Because probable cause deals with probabilities and depends on the totality of the circumstances, it is a fluid concept that is not readily, or even usefully, reduced to a neat set of legal rules." *Wesby*, 138 S. Ct. at 586 (internal citations and quotation marks omitted). It "is a practical, nontechnical conception that addresses the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act." *Bailey*, 349 F.3d at 739 (internal quotation marks omitted). This is particularly true in the mental health context where police officers and mental health professionals are called upon to make "a number of difficult judgment calls" in their efforts to protect both the individual and the public from potential dangers, *Goines*, 822 F.3d at 170, and there is a "distinct lack of clarity in the law governing seizures for psychological evaluations," *Raub*, 785 F.3d at 882 (internal quotation marks omitted).

The question before us then is to determine whether, based upon the information that was presented to them, Defendants Hall, Luzier, and Galway had probable cause as a matter of law to detain Plaintiff for an emergency mental health evaluation or, if they did not, whether established law was "sufficiently clear that every reasonable official would understand that what he is doing is unlawful." *Wesby*, 138 S. Ct. at 589 (internal quotation marks omitted). The district court held that the officers and Galway were entitled to qualified immunity from suit, and we agree.

The crux of Plaintiff's argument on appeal, as it was below, centers on her testimony that she has been the victim of ongoing harassment and stalking by Southeast Asian men, both overseas and in the United States. But instead of helping her investigate the stalking, the Arlington County defendants disbelieved and dismissed her claims and took her into custody for an emergency psychological evaluation without probable cause. In support, Plaintiff relies upon the fact that she told the officers that she had no intention of harming anyone; that she did not make some of the statements that Horner and Wilborn reported to the Arlington County defendants; and that others were misunderstood or taken out of context. For example, Plaintiff denies using the terms "hive" or "nest" to describe the location of the stalkers on the 11th floor of the Verizon building; denies that she used the term "hub" to describe the location of the Dubai-based network of stalkers; denies that she told Horner that she did not own a gun; admits that she told Wilborn that she owned a gun, but denies that she told her that she practiced at the range with it; and denies that she told Wilborn that she had to take a stalker's phone to find out who is behind the stalking. She does not deny her comments about "killing" Middle Eastern persons, but contends that these comments were taken out of context or misunderstood by Wilborn. According to Plaintiff, she was only referring to the cultural differences between the Middle East and the United States in how such matters would be handled.

As the district court properly concluded, however, Plaintiff's asserted disputes of fact "relate to what Plaintiff said or did *before* her behavior was reported" to the Arlington County defendants, and "whether Plaintiff's statements [to Horner and Wilborn] were taken out of context." J.A. 774. These are not material factual disputes because we must

evaluate the officials' conduct in light of the totality of the facts and circumstances that were presented to them at the time. As the district court explained, "there is no genuine factual dispute as to what information Defendants Hall, Luzier, and Galway had before making the decision to issue the ECO and petition for the TDO, including what Horner, Wilborn, or Plaintiff said" to them. J.A. 774. Thus, the question of whether probable cause existed is based upon the totality of the facts and circumstances presented to the Arlington County defendants, including the reports of all of the persons involved when they made the difficult judgment call to detain Plaintiff for the emergency mental health evaluation.[5]

1. Defendants Hall and Luzier

We hold that the facts and circumstances within the police officers' "knowledge and of which [they] had reasonably trustworthy information were sufficient to warrant a prudent man to believe" that Plaintiff posed a danger to herself and others. *Goines*, 822 F.3d at 172.

First, it is undisputed that Plaintiff was calm and not disheveled in her appearance, and that she denied any intent to harm her stalkers. But from the point of view of the officers, Plaintiff's account to them was largely *consistent* with the most troubling

[5] Plaintiff argues that the district court should not have relied upon Wilborn's written police statement because there is no evidence that the written statement was provided to the police before they issued the ECO. However, even if it is true that Wilborn *wrote* her statement after the ECO was issued, Defendants Horner and Wilborn testified that the information contained therein (including Wilborn's conversation with Plaintiff) was provided to the police officers when they arrived at the PAE offices. Accordingly, we hold that the district court properly relied upon the written statement, and that we may do so as well.

information that Horner and Wilborn had reported to them. Plaintiff told the officers that, while she might be paranoid, she believed that she was being stalked and harassed by Southeast Asian men under the direction of the Dubai-based network. She told the officers that she had taken steps to become a "hard target" for her stalkers, that she had approached the security guard in the adjoining building in an effort to identify the stalker in the courtyard and that, in doing so, she had determined where her Dubai-based stalkers were centralized. Plaintiff told the officers that, despite at least four prior calls to the Fairfax Police Department, nothing had been done to stop the harassment. Plaintiff also admitted that she told the officers that she owned a firearm, that she had recently taken a firearms course to obtain her concealed weapons permit, and that she hoped she would have the courage to defend herself if necessary.

According to the reports of Lietzau and Horner, Plaintiff had sought their assistance to gain access to the adjoining building in order to identify and confront her stalkers. And, when Plaintiff suspected that Horner disbelieved her claims, she told him that she was "fully aware of the complexity and severity of the war we are fighting because I live it every day." J.A. 208. Wilborn's account of Plaintiff's statements to her were even more troubling. Plaintiff told Wilborn that she owned a Glock pistol, went to the range to practice with it, and took her cell phone (which was being tracked) with her so that her stalkers would know she was there. Plaintiff also told her that there was no legal means to deal with her stalkers and, although she made no direct threat to kill her stalkers, she made several references to killing such "uncivilized" Middle Eastern men, and she told Wilborn that she hoped she would be able to defend herself if necessary.

There is no evidence that the officers had reason to question the veracity of the information that the PAE defendants reported to them. The reporting persons were management officials—a PAE security manager and human resources manager. Nor did the officers make a snap decision to detain Plaintiff without meaningful inquiry. The officers met with the PAE employees prior to and during their interview of Plaintiff to discuss the concerns that led them to call the police. Specifically, the PAE defendants explained their concerns that Plaintiff might mistake one of their Middle Eastern employees as a stalker—particularly in light of the fact that she believed that one of her stalkers had successfully breached PAE's offices and that another was watching her just outside the PAE offices.

In the end, therefore, the statements of the PAE defendants and Plaintiff were remarkably consistent. A decision had to be made, and the officers made the reasonable, albeit difficult, judgment call that Plaintiff posed a danger to herself and others and should be transported to the hospital for a mental health evaluation. Officers Hall and Luzier were not required to "walk[] away from the situation" merely because Plaintiff denied making some of the statements that her coworkers had reported to the officers, and denied that she had any intent to harm herself or her stalkers. *Gooden v. Howard Cnty.*, 954 F.2d 960, 967 (4th Cir. 1992) (en banc). Indeed, "had 'the officers done nothing'"—and had Plaintiff hurt herself or one of her perceived stalkers in a misguided attempt to defend herself—"the consequences may have been irremediable." *Cloaninger v. McDevitt,* 555 F.3d 324, 333 (4th Cir. 2009) (quoting *Gooden*, 954 F.3d at 967). As we have recognized in similar cases, it would be "a misguided application of § 1983 to expose to liability those who by all

objective indicia were only trying to help." *Gooden*, 954 F.3d at 967. Officers should not "be faulted for taking action against what they reasonably perceived to be a genuine danger to" the Plaintiff and others at the time. *Id.* at 966.

2. Defendant Galway

For similar reasons, we hold that Defendant Galway had probable cause to seek a TDO from the magistrate judge. Plaintiff argues that Galway lacked probable cause for two additional reasons: Lietzau told Galway that he did not believe Plaintiff would hurt anyone, and Plaintiff told Galway that she would surrender her gun and seek outpatient treatment. But, again, we must evaluate whether Galway had probable cause to detain Plaintiff based upon the *totality* of the facts and circumstances known to him when he made his decision, and not based upon a culling of the more favorable reports that he received.

Galway reviewed the reports and concerns of Horner and Wilborn, as well as the medical reports. Galway believed, based upon his training and assessment, that Plaintiff suffered from PTSD and possibly a delusional disorder, and he questioned whether she would follow through with outpatient treatment. Dr. Liu's view was consistent with Galway's evaluation, and he advised Galway that he also believed that Plaintiff posed a danger to herself and others. Like the officers, Galway had no reason to question the veracity of the reports that he received from the other PAE employees, or Dr. Liu's opinion, and there is nothing to suggest that he failed to perform a sufficient inquiry before making his judgment call. On the contrary, his actions reflected great care and recognition of the gravity of the decision that he was making. He consulted with his supervisor and the DHS

team regarding the proper course of action before making the judgment call to apply for the TDO.

For these reasons, we hold that the totality of the facts and circumstances were sufficient to warrant a prudent man in Galway's position to believe that the Plaintiff posed a danger to herself and others, and that an emergency mental health detention for further evaluation and treatment was prudent.

3.

Because the undisputed evidence establishes that the Arlington County defendants had probable cause to detain Plaintiff, qualified immunity bars her § 1983 claim under the first prong of the qualified immunity test, and summary judgment was properly awarded. But even if we were to assume that probable cause to detain Plaintiff was lacking, the Arlington County defendants are also entitled to qualified immunity under the second prong because "the unlawfulness of their conduct was [not] clearly established at the time" the decision was made. *Wesby*, 138 S. Ct. at 589 (internal quotation marks omitted).

Relying principally on our decision in *Bailey v. Kennedy*, Plaintiff argues that it was clearly established that the Arlington County defendants lacked probable cause to believe that she posed a danger to herself or others. But, unlike in *Bailey*, the officials here did not rely on a single piece of evidence or take Plaintiff into custody without any independent basis for concluding that Plaintiff posed a genuine danger of harming herself and others. *See Bailey*, 349 F.3d at 740 (holding that a single 911 report was an insufficient based to seize the Plaintiff for a psychological evaluation). As explained above, the Arlington County defendants relied upon numerous statements from Plaintiff's coworkers about her

frustrations with her stalkers and the actions she had taken to address them, as well as upon Plaintiff's own statements about her inability to resolve the situation, her ownership of a weapon, and her recent attendance at a firearms class.[6]

Accordingly, we reject Plaintiff's argument that the law at the time of the officials' conduct "was sufficiently clear that every reasonable official would understand that what he is doing is unlawful," placing the unconstitutionality of the officials' conduct "beyond debate." *Wesby*, 138 S. Ct. at 589 (internal quotation marks omitted). On the contrary, "[r]easonable [officials], relying upon our decision[s] . . . would have concluded that involuntarily detaining [Plaintiff] was not only reasonable, but prudent." *S.P. v. City of Takoma Park*, 134 F.3d 260, 267 (4th Cir. 1998).[7]

B. The State Law Claims

We also affirm the district court's grant of summary judgment to Officers Hall and Luzier on Plaintiff's state law claims for false imprisonment. Under Virginia law, "[f]alse imprisonment is the restraint of one's liberty without any sufficient legal excuse. If the

[6] Plaintiff's reliance on our decision in *Goines v. Valley Community Services Board* is also misplaced. *See* 822 F.3d 159 (4th Cir. 2016). In *Goines*, we reversed a district court's decision granting a motion to dismiss the complaint because the complaint allegations were sufficient to demonstrate a lack of probable cause. As the district court correctly noted, we have a "fully developed factual record" in this case, "which demonstrates that the Officers acted on far more evidence and a lengthier investigation than did the officers in *Goines*." J.A. 782, n.2.

[7] Because we conclude that the Arlington County defendants had probable cause to detain Plaintiff for a mental health evaluation, and did not violate clearly established law in doing so, we need not address the defendants' alternative argument that the Virginia magistrate's ruling was an intervening act that insulated the defendants from liability.

plaintiff's arrest was lawful, the plaintiff cannot prevail on a claim of false imprisonment." *Lewis v. Kei*, 708 S.E.2d 884, 890 (Va. 2011) (internal citation omitted). The district court granted summary judgment to the officers because, to state a claim for false imprisonment, the "plaintiff must allege that the process leading to the arrest was unlawful," and "the facially valid ECO that Defendant Hall issued upon conclusion of the interview with Plaintiff was a form of legal process." J.A. 786 (internal quotation marks omitted).

Because Plaintiff did not challenge this basis for the district court's grant of summary judgment on the false imprisonment claims in her opening brief, she has waived her appeal from it. *See Grayson O Co. v. Agadir Int'l LLC*, 856 F.3d 307, 316 (4th Cir. 2017) ("A party waives an argument by failing to present it in its opening brief or by failing to develop its argument—even if its brief takes a passing shot at the issue." (internal quotation marks and alterations omitted)); *Brown v. Nucor Corp.*, 785 F.3d 895, 918 (4th Cir. 2015) ("Failure of a party in its opening brief to challenge an alternate ground for a district court's ruling waives that challenge.") (alterations omitted)); *Cavallo v. Star Enter.*, 100 F.3d 1150, 1152 n.2 (4th Cir. 1996) ("[A]n issue first argued in a reply brief is not properly before a court of appeals.").

Moreover, even if Plaintiff had challenged the district court's ruling on this point, Plaintiff "failed as a matter of law to proffer evidence sufficient under Virginia law for a jury to find that Defendants Luzier or Hall falsely imprisoned her." J.A. 787. As explained above, Officers Hall and Luzier spoke with the witnesses at length, interviewed Plaintiff about her concerns, and had probable cause to believe that Plaintiff posed a threat to herself and others. They lawfully detained her for an emergency mental health examination

pursuant to Virginia's mental health statute. This decision was, in turn, validated by the mental health examiner, in consultation with his supervisor, and by the issuance of the TDO by the state magistrate judge. Accordingly, we hold that the officers had the requisite legal justification to detain Plaintiff for the evaluation, and they followed the legal process provided by Virginia law in doing so. Therefore, they are entitled to summary judgment on the false imprisonment claims.

IV.

We now turn to the Plaintiff's claim that the district court erred in dismissing her § 1983 claims for unlawful seizure against Defendants Horner and Wilborn, and her state law conspiracy claims against PAE and the individual PAE defendants.

"To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). "While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Twombly*, 550 U.S. at 555 (internal quotation marks, alterations, and citations omitted). "Nor does a complaint suffice if it tenders naked assertions devoid of further factual enhancement." *Iqbal*, 556 U.S. at 678. "Factual allegations must be enough to raise a right to relief above the speculative level." *Twombly*, 550 U.S. at 555. "[W]here a conspiracy is alleged, the plaintiff must plead facts amounting to more than 'parallel conduct and a bare assertion of conspiracy. Without more, parallel

conduct does not suggest conspiracy, and a conclusory allegation of agreement at some unidentified point does not supply facts adequate to show illegality.'" *A Society Without A Name v. Virginia*, 655 F.3d 342, 346 (4th Cir. 2011) (quoting *Twombly*, 550 U.S. at 556-57). "The factual allegations must plausibly suggest agreement, rather than being merely consistent with agreement." *Id.*

A. The Federal Claims Under § 1983

Ordinarily, private actors are not liable under 42 U.S.C. § 1983, because the statute only provides relief for deprivations of constitutional rights by state actors. Nevertheless, "private persons who willfully participate in joint action with a state official act under color of law within the meaning of § 1983." *Scott v. Greenville Cnty*, 716 F.2d 1409, 1422 (4th Cir. 1983) (internal quotation marks omitted). To establish a conspiracy under § 1983, the plaintiff must show that the Defendants "acted jointly in concert and that some overt act was done in furtherance of the conspiracy which resulted in [the] deprivation of a constitutional right." *Hinkle v. City of Clarksburg*, 81 F.3d 416, 421 (4th Cir. 1996). This is a "weighty burden." *Id.*

Plaintiff's complaint alleges that her seizure resulted from two separate conspiracies. The first is that the PAE defendants "agreed on a plan to use [Plaintiff's] reports of being stalked at the office to discredit her [by] falsely claiming that she was a threat and danger to others that required her immediate removal from the office and transportation to a hospital for examination." J.A. 32. Their motive for doing so, Plaintiff alleges, was to discredit her recent claims that PAE was fraudulently overstating its performance on the State Department contract that she was working on, and had failed to

provide sufficient security against her alleged stalkers. However, Plaintiff does not allege that Officers Hall and Luzier were a part of this alleged conspiracy; indeed, she affirmatively acknowledges that they were not. Rather, Plaintiff's § 1983 conspiracy claims rest upon her conclusory allegations that Officers Luzier and Hall entered into a separate agreement with the PAE defendants to remove Plaintiff from the workplace—regardless of her answers to their questions and regardless of whether they had probable cause to do so.

Plaintiff, however, sets forth no factual allegations that might explain why the police officers would enter into such an agreement with the PAE defendants to intentionally violate Plaintiff's constitutional rights. There is no allegation that the police officers even knew the PAE defendants, much less that they had any preexisting relationship with them. There is no allegation that the police officers knew about the PAE defendants' separate conspiracy, nor any explanation as to why the police officers would agree to help them cover up their alleged illegal activities and security failures. In sum, there are no factual allegations that plausibly suggest that the officers agreed to go along with the PAE defendants' illegal plan to violate Plaintiff's rights. Even if an allegation of a specific motive might not be required to state a claim for conspiracy, the Plaintiff was still required to allege *some* facts that would plausibly suggest that the police officers entered into an agreement with the PAE defendants to accomplish the same conspiratorial objective. She has not. "Although in form a few stray statements [in her complaint] speak directly of agreement, on fair reading these are merely legal conclusions resting on the prior allegations." *Twombly* , 550 U.S. at 564 (footnote omitted).

While Plaintiff claims that it was sufficient to allege that the officers met with Horner and Wilborn prior to and during their interview of Plaintiff, this argument fails to save her conspiracy claim. As explained above, the "factual allegations must plausibly suggest *agreement*, rather than being merely *consistent* with agreement." *Society Without a Name*, 655 F.3d at 346 (emphasis added). The mere fact that the officers met with the reporting persons when they were dispatched to the PAE offices does not plausibly suggest that they shared a common plan or "conspiratorial objective" to violate Plaintiff's civil rights. *Hinkle*, 81 F.3d at 421. On the contrary, the meetings were consistent with the normal interaction between the police and citizenry when a complaint is investigated. Because Plaintiff's allegations that Officers Hall and Luzier conspired with Horner and Wilborn to illegally seize Plaintiff and remove her from the workplace for a psychological evaluation is comprised of nothing more than conclusory assertions and rank speculation, we affirm the district court's dismissal of the claims under Rule 12(b)(6).

B. The State Law Claims

Plaintiff's claims that the PAE defendants and the Arlington County police officers conspired to violate her civil rights and to falsely imprison her, in violation of Virginia state law, fail for the same reasons. Under Virginia law, "[a] civil conspiracy is a combination of two or more persons, by some concerted action, to accomplish some criminal or unlawful purpose, or to accomplish some purpose, not itself criminal or unlawful, by criminal or unlawful means." *Hechler Chevrolet, Inc. v. General Motors Corp.* 337 S.E.2d 744, 748 (Va. 1985).

Plaintiff's state law conspiracy claims rest upon the same conclusory and speculative allegation that the PAE employees and the police officers conspired to violate her civil rights and to falsely imprison her, regardless of how she acted or what she said to the police. As explained above, Plaintiff does not allege that the Arlington County defendants were a part of the alleged conspiracy to have Plaintiff involuntarily committed because of her whistleblowing activities or PAE's security failures, and the conclusory allegations in the Complaint are insufficient to support a plausible inference that the Arlington County police officers conspired with the PAE defendants to unlawfully seize and detain her without probable cause, in violation of the Fourth Amendment, or to falsely imprison her under state law.

V.

For the foregoing reasons, we affirm the district court's order dismissing all of the claims against the PAE defendants, as well as the state law conspiracy claims against the Arlington County defendants. We also affirm the district court's order granting summary judgment to the Arlington County defendants.[8]

AFFIRMED

[8] In light of our conclusions, we need not address Plaintiff's appeal of the district court's dismissal of her claim for punitive damages.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VRIGNIA
Alexandria Division

KERRIN BARRETT, Plaintiff, v. PAE GOVERNMENT SERVICES, *et al.*, Defendants.	)	Civil Action No. 1:18-cv-980 (AJT/TCB)

ORDER

Pending before the Court are Defendants Galway's, Hall's, and Luzier's Motion to Dismiss Counts 6, 9, 12, 13, and 14 of the Second Amended Complaint and Plaintiff's Request for Punitive Damages [Doc. 41] and Defendants PAE Government Services, Inc., William Lietzau, Sean Horner, and Shanedria Wilborn's Motion to Dismiss Plaintiff's Second Amended Complaint [Doc. 43] (collectively "the Motions"). The Court held a hearing on the Motions on January 16, 2019, following which it took the Motions under advisement. Upon consideration of the Motions, the memoranda in support thereof and in opposition thereto and the argument of counsel at the hearing on January 16, 2019, the Motions are GRANTED; and this action will be dismissed in its entirety against Defendants PAE Government Services, Inc., William Lietzau, Sean Horner, and Shanedria Wilborn and dismissed against Defendants Brian Galway, Areyal Hall and Joshua Luzier as to Counts 6, 9, 12, 13, and 14, together with her claim for punitive damages.

I. BACKGROUND

Plaintiff alleges the following in her Second Amended Complaint [Doc. 38]:

Plaintiff has a doctorate in Organizational Learning and Instructional Technology and an Ed.M. in Technology in Education. She specializes in "the adaptation of technology in development contexts" and has extensive experience as a government contractor and adviser to foreign and international governments in integrating new technologies and on national security matters.

Plaintiff worked for Defendant PAE Government Services, Inc. ("PAE") from April 2012 to July 2013; at that time, her title was "Senior Monitoring and Evaluation Advisor ('M&E') for the Justice Sector Support Program ('JSSP')—U.S. Department of State in Kabul, Afghanistan." The position involved monitoring and advising on technology use in Afghanistan's justice system. She again worked for PAE as a proposal writer from November to December 2015.

From 2014 to 2016, Plaintiff was living in Dubai and working as an "independent consultant." In June 2015, a Pakistani gang moved into her neighborhood and began stalking and harassing women in the area. Plaintiff "took a stand against the stalking, along with some of her other female neighbors, who were also experiencing this stalking." When she did so, her name was published in a local newspaper. Thereafter, Plaintiff's phone was hacked, and "[s]he was then trailed as she traveled around the world, including into Oman and Thailand." She returned to the United States in 2016.

From March to April 2016, Plaintiff again did proposal writing as a contractor for PAE, and then joined PAE as an employee in May 2016 as "Senior Monitoring and Evaluation Advisor in the Corrections Sector Support Program ('CSSP'), Afghanistan." In that role, she monitored program performance data for the Department of State and gathered prison statistics. Plaintiff worked out of PAE's Arlington, Virginia office. Defendant Lietzau was Plaintiff's direct supervisor.

"During the course of her work [with PAE], Dr. Barrett discovered that PAE was fraudulently overstating its performance under the CSSP contract by over counting the number of Afghan individuals that it had mentored and/or trained under the contract." In November or December 2016, Plaintiff blew the whistle on PAE to Lietzau, and informed him again in July 2017, two weeks before the incident giving rise to Plaintiff's suit. However, Lietzau, "[f]earing that the fraud and its exposure would damage his professional reputation as head of the CSSP contract," did not act on this information from Plaintiff. Instead, Lietzau engaged in a conspiracy with other PAE employees

> to discredit Dr. Barrett through a plan that would claim (falsely) that she was a danger and a threat to others, have the police come to PAE's office to remove her from the building and take her to a hospital, and once at the hospital, claim (again, falsely) that she made a threat about 'bombing Pakistan,' which would ensure her commitment to the psychiatric ward of the hospital, which would result in the revocation of her security clearances, her termination from PAE, and the elimination of a source of oversight over PAE's reporting practices on the CSSP contract.

This plot was made possible because Plaintiff had complained to Lietzau and others at PAE of stalking of her that had continued after her return to the United States. According to Plaintiff, "South Asian or Middle Eastern men, from countries such as Pakistan" had been following her, driving or walking near her, making phone calls while watching her, following her car in their cars, parking outside her house, harassing her by yelling "Hello!" or other unintelligible words at her, vandalizing her car, and otherwise spying on her. In one instance, a Middle Eastern man "came up to her while she was sitting at her desk and said, 'Hello, [long pause] Kerrin' before leaving." She made multiple reports of these incidents to the Fairfax County Police Department. At one point, Lietzau had instructed Plaintiff to speak with Defendant Horner, a Security Manager at PAE, about these incidents, and during their conversation, Plaintiff had told Horner that she owned a gun (a registered firearm). Horner,

Lietzau, and Defendant Wilborn, PAE's HR Manager, spoke with other co-workers of Plaintiff who said they had no reason to discredit Plaintiff's reports of stalking and did not feel she was a threat to others.

Nevertheless, on July 10 or 11, 2017, Defendants Lietzau, Horner, and Wilborn "agreed on a plan to use Dr. Barrett's reports of being stalked at the office to discredit her in the manner described earlier." Thereafter, Horner contacted the Arlington County Police Department and spoke with Defendants Hall and Luzier (both Arlington County Police Department officers) about coming to PAE's office to remove Plaintiff from the premises "on the pretense that she was a threat and danger to others." Someone from PAE also called the Arlington Department of Human Services "to claim that Dr. Barrett was a threat and danger to others and to discuss committing her to a psychiatric facility for a mental illness." On July 12, 2017, Defendants Hall and Luzier came to PAE's office, met with Horner and possibly other PAE employees, and "agreed to remove Dr. Barrett from the workplace, regardless of her answers to the police officer's questions, based on her ostensibly being a threat and danger to others." They decided to return to the office the next day to remove Plaintiff from the workplace and have her sent to a hospital for a mental evaluation.

The next day, July 13, 2017, Wilborn approached Plaintiff in her office and asked her to speak to the police, who were waiting in a conference room. Prior to meeting with Plaintiff, Hall and Luzier had met with Defendants Lietzau, Horner, and Wilborn "for at least thirty minutes to discuss the plan of removing Dr. Barrett from the workplace." Believing this to be a meeting about the stalking incidents she had reported, Plaintiff agreed to answer questions from the officers. She then described the stalking incidents to them. After an initial round of questions, Luzier again met with Wilborn, Horner, and Lietzau outside the room to discuss the plan of

removing Plaintiff from the office and sending her to a mental health facility, irrespective of her conversations with the police that day. Eventually, Wilborn and Officer Luzier returned to the conference room and resumed their questioning of Plaintiff. At one point, the officers questioned Plaintiff about her gun and, after receiving her answer, Luzier left the room again to discuss the plan to remove her with Lietzau, Horner, and Wilborn. They did this again several more times during the course of their questioning of Plaintiff. At no point during this questioning did Plaintiff state or suggest that she planned or would ever harm herself or others or use her gun.

Finally, Officer Luzier, who had been "hostile" throughout his questioning of Plaintiff, "abruptly stood and said that he was going to take Dr. Barrett to 'talk to the DHS folks who know more about this 'surveillance thing' than I do.'" Plaintiff assumed that Luzier meant the U.S. Department of Homeland Security, but he evidently mean the Virginia Department of Human Services. Plaintiff, frightened and confused, responded that she was "not going anywhere." Officer Luzier responded, "Then I'm making an ECO." This was an Emergency Custody Order, which allows an officer to involuntarily detain a person and send them for a mental health evaluation. He then instructed her to come with them. Plaintiff complied with the officers and was taken from the office to the Emergency Room as Virginia Hospital Center.

While Plaintiff was at the hospital, Defendant Galway, who performs mental health assessments for the Virginia Department of Human Services, came to see Plaintiff. Galway asked Plaintiff a series of questions, which Plaintiff answered cooperatively. The questioning focused heavily on Plaintiff's gun. After extensive questioning, Galway asked Plaintiff who she would most trust and whose opinion she would value most among her co-workers. She gave him Lietzau's name. Galway then called Lietzau to ask him about Plaintiff. According to Plaintiff, "Mr. Lietzau should have told Mr. Galway the truth; that he did not believe that Dr. Barrett was

capable of hurting others, and that Dr. Barrett's account of being stalked was credible given what he knows of the intimidation phenomena involved here and in other similar circumstances." But he did not.

When Galway returned to the room, he stated that the person with whom he spoke at PAE (presumably Lietzau) told him that Plaintiff said that the United States "should bomb Pakistan." Plaintiff had never stated anything like that. He repeatedly attempted to convince Plaintiff to voluntarily sign herself in to the psychiatric ward at the hospital, but she refused. Although two of Plaintiff's friends corroborated Plaintiff's account of the stalking and passed this information on to Galway, he refused to change his mind and instead sought a Temporary Detention Order pursuant to Virginia law to involuntarily commit Plaintiff to the psychiatric ward. He filed a sworn petition on behalf of himself and the Virginia state agencies for whom he worked in the Virginia General District Court in support of the Temporary Detention Order, stating therein that he believed "there existed a substantial likelihood that in the near future, Dr. Barrett would cause serious physical injury both to herself and to others, and that she would suffer serious harm due to what he claimed was her lack of capacity to protect herself from harm or to provide for her own basic human needs." He did not, however, check the box indicating that she had a mental illness. A General District Court Magistrate signed and issued the Order on July 13, 2017, despite the fact that Galway had not yet submitted a required preadmission screening report but had falsely represented that he had in the petition (he completed and submitted the report later that day). Plaintiff was then committed to the psychiatric ward temporarily until her commitment hearing.

On July 17, 2017, a Magistrate held a commitment hearing to assess whether she would be committed indefinitely or released. After speaking with two assessors who met with Plaintiff,

her co-workers, and her friends, the Magistrate determined that she was not a danger to herself or others, dismissed the case, and "told Mr. Lietzau to 'provide for her [Dr. Barrett's] security.'" The Magistrate further stated that the Virginia mental health system, in particular the process of involuntarily committing people to psychiatric hospitalization, is "broken and in serious need of significant reform," as evidenced by Dr. Barrett's case.

After her release, Plaintiff resigned from PAE. She lost her clearance due to the incident. The Temporary Detention Order and Emergency Custody order are on her record and cannot be expunged. This will impact her ability to get a clearance or hold sensitive jobs in the future. She is also responsible for various medical costs billed to her, despite her not having a choice to receive the treatment.

II. LEGAL STANDARD

A Rule 12(b)(6) motion tests the legal sufficiency of the complaint and does not resolve contests surrounding the facts or merits of a claim. *See Giarratano v. Johnson*, 521 F.3d 298, 302 (4th Cir. 2008). In assessing a 12(b)(6) motion, the Court must "assume the truth of all facts alleged in the complaint and the existence of any fact that can be proved, consistent with the complaint's allegations." *E. Shore Mkts., Inc. v. J.D. Assocs. Ltd. P'ship*, 213 F.3d 175, 180 (4th Cir. 2000). Fed. R. Civ. P. 8(a)(2) requires "only a short and plain statement of the claim showing that the pleader is entitled to relief"; however, to survive a Rule 12(b)(6) motion, "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*. 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.*

III. ANALYSIS

A. Defendants Galway's, Hall's, and Luzier's Motion to Dismiss Counts 6, 9, 12, 13, and 14 of the Second Amended Complaint and Plaintiff's Request for Punitive Damages [Doc. 41]

1. Counts 6, 9, 12, and 14 (§ 1983 Conspiracy and Civil Conspiracy)

Plaintiff has alleged both a statutory conspiracy under Section 1983 and a common law conspiracy under Virginia law. "To establish a conspiracy claim under § 1983, a plaintiff must present evidence that the defendants acted jointly in concert and that some overt act was done in furtherance of the conspiracy which resulted in the deprivation of a constitutional right." *Penley v. McDowell Cty. Bd. of Educ.*, 876 F.3d 646, 658 (4th Cir. 2017) (alterations omitted) (quoting *Massey v. Ojaniit*, 759 F.3d 343, 357–58 (4th Cir. 2014)). This burden is "weighty." *Id.* (internal quotation marks omitted) (quoting *Hinkle v. City of Clarksburg*, 81 F.3d 416, 421 (4th Cir. 1996)). "While they need not produce direct evidence of a meeting of the minds, [plaintiffs] must come forward with specific circumstantial evidence that each member of the alleged conspiracy shared the same conspiratorial objective." *Hinkle*, 81 F.3d at 421. The evidence "must, at least, reasonably lead to the inference that [the defendants] positively or tacitly came to a mutual understanding to try to accomplish a common and unlawful plan." *Id.* "[R]ank speculation and conjecture" are not enough. *See id.* at 422.

To establish a civil conspiracy claim in Virginia, a plaintiff must show "an unlawful combination of two or more persons to do that which is contrary to law, or to do that which is wrongful and harmful towards another person." *Werth v. Fire Companies' Adjustment Bureau*, 171 S.E. 255, 258 (Va. 1933).

Here, Plaintiff has failed to allege the requisite "unlawful combination of two or more persons" as to Defendants Hall and Luzier because she has failed to allege facts that make plausible the existence of any agreement by them with the other Defendants in the case. The

Second Amended Complaint does not allege that Defendants Hall or Luzier (the law enforcement officers who removed her from the workplace and detained her) knew that she was not a danger to others or that her employers and colleagues at PAE were covering up their own misconduct or reporting false information about Plaintiff to Hall and Luzier. Nor does it allege any motive that Hall and Luzier might have to engage with those PAE employees in such a concerted effort to cover up the latter's criminal conduct.

In support of her conspiracy claims, Plaintiff relies heavily on her allegations in Paragraph 91, which states:

> On or around July 12, 2017, at Mr. Horner's request, Officer Hall and Officer Luzier visited PAE's headquarters and met with Mr. Horner and possibly others at PAE. At that meeting, the officers agreed to remove Dr. Barrett from the workplace, regardless of her answers to the police officer's questions, based on her ostensibly being a threat and danger to others.

[Doc. 38 at 21]. Plaintiff also points to her allegation, repeated several times, that Officer Luzier stepped out of the room during his meeting with Plaintiff at her workplace several times to talk with Lietzau and reiterate their plan to remove her and send her for a mental health evaluation, "regardless of her answers to the police officer's questions," based on her ostensibly being a threat and danger to others. *See, e.g.*, *id.* at ¶¶ 98, 109, 114, 261. But fatally missing from these allegations, and the rest of the Second Amended Complaint, is that the officers *knew* that she was not in fact a danger to others but nevertheless agreed to remove Plaintiff from the workplace and detain her. Even liberally read, Plaintiff simply alleges that the officers, called to the scene, decided to remove her after their discussions with Plaintiff's employers and without regard to what she might say to them during their discussion, not that they knew she was not a danger yet still agreed to detain her. These allegations are therefore insufficient to make plausible Plaintiff's claim of a conspiracy under § 1983 to unlawfully deprive her of her civil rights. At most,

Plaintiff has alleged that Defendants Luzier and Hall detained her based upon inaccurate or false information that Plaintiff was a danger to herself or others. Plaintiff has therefore failed to allege as to Defendants Hall and Luzier facts sufficient to make plausible a claim for either civil conspiracy (which requires an agreement to commit a tort) or a § 1983 conspiracy (which requires an agreement to unlawfully deprive a person of their civil rights).

Similarly, Plaintiff has failed to allege facts that make plausible the claim that Defendant Galway (the mental health examiner at the mental institution) engaged in any agreement to deprive Plaintiff of her civil rights or to commit the tort of false imprisonment against her. Indeed, the Second Amended Complaint fails to allege circumstances that even allowed for the opportunity for Galway to conspire with PAE or any other Defendant before any involuntary detention and effectively alleges that Lietzau withheld from Galway the truth about the Plaintiff when the two spoke over the phone after Plaintiff's involuntary detention. *See* [Doc. 38 at ¶ 176] ("Mr. Lietzau should have told Mr. Galway the truth; that he did not believe that [Plaintiff] was capable of hurting others, and that [Plaintiff's account] of being stalked was credible given what he knows of the intimidation phenomena involved here and in other similar kinds of circumstances."). Accordingly, Plaintiff has failed to state a plausible § 1983 or civil conspiracy claim as to Defendant Galway.

2. Count 13 (False Imprisonment)

Count 13 alleges false imprisonment against Defendant Galway. In Virginia, false imprisonment is "the direct restraint by one person of the physical liberty of another without adequate legal justification." *W.T. Grant Co. v. Owens*, 141 S.E. 860, 865 (Va. 1928). In order to state a claim for false imprisonment, a plaintiff must allege that the process leading to the arrest was unlawful. *Cole v. Eckerd Corp.*, 54 Va. Cir. 269, 2000 WL 33595085, at *2 (Va. Cir. Ct.

2000); *Montanile v. Botticelli*, 2008 WL 5101775, at *4 (E.D. Va. Nov. 25, 2008). A defendant need not directly restrain or "personally arrest" a plaintiff if the defendant requested that others do so. *Montanile*, 2008 WL 5101775 at *4. A plaintiff must affirmatively "allege that the arrest was made without a lawful warrant or other form of lawful process – that is, a warrant regular and legal in form or regular on its face." *Id.* at *5 (citations omitted). A warrant that is "regular on its face—even one procured *without probable cause*—does not create a cause of action for false imprisonment." *Id.* at *4 (emphasis added) (citing *Cole v. Eckerd Corp.*, 54 Va. Cir. 269, WL 33595085 at *2 (Va. Cir. Ct. 2000)). That an officer could have investigated further does not invalidate an arrest pursuant to a facially valid warrant. *Lewis v. Kei*, 708 S.E.2d 884, 890 (Va. 2011).

Here, Defendant Galway, acting pursuant to Virginia law, submitted a petition to the General District Court in support of a Temporary Detention Order, and the Magistrate subsequently issued that Order. *See* [Doc. 38 at ¶ 194]. Plaintiff did not attach a copy of the Temporary Detention Order as an exhibit and does not challenge its facial validity. Thus, even if the Temporary Detention Order was issued absent probable cause, its issuance and apparent facial validity preclude a claim for false imprisonment. Moreover, Plaintiff's contention that the Temporary Detention Order does not protect Defendant Galway from a false imprisonment claim because he authored the allegedly false petition that gave rise to the Magistrate's finding of cause to detain Plaintiff ignores that under Virginia law a false imprisonment claim cannot be stated where the "process leading to the arrest" was lawful. As alleged, Galway, upon receiving Plaintiff into custody, sought and obtained a Temporary Detention Order pursuant to Virginia law and thereafter proceeded to detain Plaintiff pursuant to the Order. *See King v. Darden*, 2018 WL 3651590, at *2, 4–5 (E.D. Va. Aug. 1, 2018) (dismissing a false imprisonment claim against

a Virginia State Police officer who conducted a cursory investigation of alleged election fraud and swore out an arrest warrant on "scant facts," because the Magistrate thereafter issued a warrant on the basis of that investigation and the plaintiff was arrested pursuant to that warrant).

3. Punitive Damages

Under Virginia law, "[a] claim for punitive damages at common law in a personal injury action must be supported by factual allegations sufficient to establish that the defendant's conduct was willful or wanton." *Woods v. Mendez*, 265 Va. 68, 76 (2003). In § 1983 actions, punitive damages may be awarded only "when the defendant's conduct is shown to be motivated by evil motive or intent, or when it involves reckless or callous indifference to the federally protected rights of others." *Smith v. Wade*, 461 U.S. 30, 56 (1983). Here, Plaintiff does not allege any facts that make plausible that Defendants Hall, Luzier or Galway engaged in willful, wanton, or reckless conduct or any callous indifference to Plaintiff's federally protected rights. Accordingly, Plaintiff's request for punitive damages will be dismissed.

B. Defendants PAE Government Services, Inc., William Lietzau, Sean Horner, and Shanedria Wilborn's Motion to Dismiss Plaintiff's Second Amended Complaint [Doc. 43]

Defendant PAE and its employees named as Defendants (Lietzau, Horner, and Wilborn) (collectively, "the PAE Defendants") move for dismissal of all claims against them on the following grounds:

- Plaintiff's claims under 42 U.S.C. § 1983 against Defendants Lietzau, Horner, and Wilborn (Counts 3, 4, 5 and 11) should be dismissed with prejudice because these Defendants are private actors and because Plaintiff has failed to allege sufficient facts to plausibly show that they engaged in joint action with any state actor or to allege any other basis for holding them liable.

- Plaintiff's claims of conspiracy under 42 U.S.C. § 1983 against Defendants Lietzau, Horner, and Wilborn (Counts 6 and 12) should be dismissed with prejudice because Plaintiff has failed to allege sufficient facts to plausibly show that they engaged in concerted action pursuant to a mutual agreement, understanding or common plan or objective. Plaintiff's claims of conspiracy under 42 U.S.C. § 1983 against Defendants

Lietzau, Horner, and Wilborn (Counts 6) should also be dismissed with prejudice because these Defendants were employees of PAE acting within the scope of their employment and could not conspire with one another as a matter of law.

- Plaintiff's claims of conspiracy to falsely imprison her against Defendants PAE, Lietzau, Horner, and Wilborn (Count 9) should be dismissed with prejudice because PAE and/or its employees cannot conspire with one another as a matter of law and because Plaintiff has failed to allege sufficient facts to plausibly show that they engaged in concerted action pursuant to a mutual agreement, understanding or common plan or objective.

- Plaintiff's claims of conspiracy to falsely imprison her against Defendants PAE and Lietzau (Count 14) should be dismissed with prejudice because PAE and its employees cannot conspire with one another as a matter of law, because Plaintiff has failed to allege sufficient facts to plausibly show that they engaged in concerted action and because the TDO pursuant to which Plaintiff is alleged to have been falsely imprisoned was facially valid.

1. Counts 3, 4, 5, and 11 (§ 1983 claims)

"Like the state-action requirement of the Fourteenth Amendment, the under-color-of-state-law element of § 1983 excludes from its reach "merely private conduct, no matter how discriminatory or wrongful." *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 150 (1970) (internal quotation marks omitted) (quoting *American Mfgrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 50 (1999)). Nevertheless, a non-state actor can be held liable in a § 1983 claim when the actor was a "willful participant in joint activity with the State or its agents." *Brentwood Acad. v. Tennessee Secondary School Ass'n*, 531 U.S. 288, 296 (2001). However, "[f]or a private party to be held liable under § 1983, the plaintiff must allege that the private party engaged in a conspiracy with state actors to deprive him of his constitutional rights. *Manship v. Trodden*, 2007 WL 3143559, at *3 (E.D. Va. Oct. 22, 2007), *aff'd*, 273 F. App'x 247 (4th Cir. 2008) (citing *Dennis v. Sparks*, 449 U.S. 24 (1980)). And "[t]o state a conspiracy, the complaint must include allegations of fact indicating that there was a combination, agreement, or understanding among all or between any of the defendants, and that the private actor was a willful participant in joint action with the state

or its agents." *Id.* (citations and quotations omitted) (quoting *Ammlung v. City of Chester*, 494 F.2d 811, 814 (3d Cir. 1974); *Dennis*, 449 U.S. at 27–28).

Here, Plaintiff alleges in multiple counts that the PAE Defendants "acted jointly with" the police in the issuance of the Emergency Custody Order. *See, e.g.*, [Doc. 38 at ¶¶ 260, 267, 274]. However, as discussed above, Plaintiff has failed to allege facts that make plausible any conspiratorial agreement between any of the PAE Defendants and the governmental Defendants or Defendant Galway (the mental health evaluator), because she does not allege that the governmental Defendants or Galway had any knowledge of the PAE Defendants' alleged conspiracy to have Plaintiff involuntarily committed in order to cover up their alleged criminal activity. The Plaintiff has therefore failed to adequately allege the "joint action" necessary to have the PAE Defendants deemed state actors for purposes of a § 1983 claim.. Accordingly, for the same reasons that Plaintiff has failed to state a claim for either civil conspiracy or § 1983 conspiracy against the governmental Defendants, she has also failed to state a § 1983 claim against the PAE Defendants, who cannot be "state actors" without having formed some mutual *agreement* with state actors to deprive Plaintiff of her constitutional rights. Counts 3, 4, 5, and 11 will therefore be dismissed.

2. Counts 6 and 12 (§ 1983 conspiracy claims)

Similarly, Counts 6 and 12, which raise § 1983 conspiracy claims against the PAE Defendants, fail to state a claim for the same reasons as those discussed above. "To state a claim against a private entity on a section 1983 conspiracy theory, the complaint must allege facts demonstrating that the private entity acted in concert with the state actor to commit an unconstitutional act." *Spear v. Town of W. Hartford*, 954 F.2d 63, 68 (2d Cir. 1992). Accordingly, for the same reasons that Plaintiff has failed to state a claim for either civil

conspiracy or § 1983 conspiracy against the governmental Defendants, she has also failed to state a § 1983 conspiracy claim against the PAE Defendants, who cannot be "state actors" without having formed some mutual *agreement* with state actors to deprive Plaintiff of her constitutional rights. Counts 6 and 12 will therefore be dismissed.

3. Counts 9 and 14 (respectively, conspiracy to falsely imprison against PAE, Lietzau, Horner, and Wilborn; and conspiracy to falsely imprison against Lietzau and PAE)

Counts 9 and 14 allege against the PAE Defendants a civil conspiracy to falsely imprison the Plaintiff. Specifically, Count 9 alleges a conspiracy between PAE, Lietzau, Horner, and Wilborn for their actions in having Plaintiff removed from the workplace, and Count 14 alleges a conspiracy between PAE, Lietzau, and Galway for their actions in obtaining the Temporary Detention Order after the police took her into custody.

Under Virginia law, "the elements of a common law civil conspiracy claim are (i) an agreement between two or more persons (ii) to accomplish an unlawful purpose or to accomplish a lawful purpose by unlawful means, which (iii) results in damage to plaintiff." *Glass v. Glass*, 228 Va. 39, 47, 321 S.E.2d 69 (1984). Moreover, "in Virginia, a common law claim of civil conspiracy generally requires proof that the underlying tort was committed." *Almy v. Grisham*, 639 S.E.2d 182, 189 (Va. 2007). This is because "[t]he gist of the civil action of conspiracy is the damage caused by the acts committed in pursuance of the formed conspiracy and not the mere combination of two or more persons to accomplish an unlawful purpose or use unlawful means." *Id.* at 190. Hence, where "there is no actionable claim for the underlying alleged wrong, there can be no action for civil conspiracy based on that wrong." *Citizens for Fauquier County v. SPR Corp.*, 37 Va. Cir. 44, 50 (1995). As discussed above, Plaintiff has failed to state a claim for false imprisonment and therefore has failed to adequately allege the required predicate for a civil conspiracy claim to falsely imprison under Virginia law.

IV. CONCLUSION

For the above reasons, it is hereby

ORDERED that Defendants Galway's, Hall's, and Luzier's Motion to Dismiss Counts 6, 9, 12, 13, and 14 of the Second Amended Complaint and Plaintiff's Request for Punitive Damages [Doc. 41] be, and the same hereby is GRANTED; and Counts 6, 9, 12, 13 and 14 and Plaintiff's claim for punitive damages are DISMISSED against Defendants Galway, Hall, and Luzier; and it is further

ORDERED that Defendants PAE Government Services, Inc., William Lietzau, Sean Horner, and Shanedria Wilborn's Motion to Dismiss Plaintiff's Second Amended Complaint [Doc. 43] be, and the same hereby is, GRANTED; and this action is DISMISSED as to Defendants PAE Government Services, Inc., William Lietzau, Sean Horner, and Shanedria Wilborn.

The Clerk is directed to forward copies of this Order to all counsel of record.

/s/
Anthony J. Trenga
United States District Judge

January 25, 2019
Alexandria, Virginia

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VRIGNIA
Alexandria Division

KERRIN BARRETT,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 1:18-cv-980 (AJT/TCB)
	)	
PAE GOVERNMENT SERVICES, *et al.*,	)	
	)	
	)	
Defendants.	)	
	)	

ORDER

In this action brought pursuant to 42 U.S.C. § 1983 and under Virginia tort law, Plaintiff Kerrin Barrett alleges that Defendants Areyal Hall and Joshua Luzier, the police officers who issued an Emergency Custody Order ("ECO") and took her into custody to receive a mental health evaluation pursuant to Virginia's mental health law, Va. Code Ann. § 37.2-809, and Defendant Brian Galway, an Arlington County employee who filed a Petition for Involuntary Admission for Treatment to and obtained a temporary detention order ("TDO") from a Virginia magistrate pursuant to the same statute, violated her constitutional rights by detaining her without authority of law and falsely imprisoned her. Defendants Galway, Hall, and Luzier have filed a Motion for Summary Judgment (the "Motion") pursuant to Federal Rule of Civil Procedure 56. *See* [Doc. 79]. The Court held a hearing on the Motion on April 5, 2019, after which it took the Motion under advisement.

For the reasons stated herein, there are no genuine issues of material fact and Defendants are entitled judgment as a matter of law as to their qualified immunity defense and otherwise. The Motion is therefore GRANTED.

I. BACKGROUND

A. Factual Background

Unless otherwise noted, the facts set forth in this section are undisputed.

During the relevant time period, Plaintiff worked for PAE Government Services, Inc. ("PAE") as "Senior Monitoring and Evaluation Advisor in the Corrections Sector Support Program ('CSSP'), Afghanistan." [Doc. 38 at ¶ 38]. In that role, she monitored program performance data for the Department of State and gathered prison statistics. Plaintiff worked out of PAE's Arlington, Virginia office. *Id.* at ¶¶ 38, 41. Defendant William Lietzau was Plaintiff's direct supervisor. *Id.* at ¶ 42.

On July 10, 2017, Plaintiff approached Sean Horner, PAE's Security Manager, to express concerns that a network of "Bangladeshi/Southeast Asian" men had been stalking and surveilling her for the past two years both while she lived and traveled abroad and after she returned to the United States. [Doc. 80 at 2]. She reported that the stalking had begun in 2015 while she was living in Dubai. *Id.* She further stated that the stalking continued and in fact escalated after she returned to the United States in 2016. *Id.* Mr. Horner kept notes of the meeting, which are included in the record on summary judgment. *See* [Doc. 80-2].

Plaintiff explained to Mr. Horner that she believed that the stalkers were tracking her location through her phone and that her emails had been hacked. [Doc. 80 at 2]. She reported that these individuals had knocked on her door in the middle of the night and whistled at her dogs to agitate them. *Id.* at 2–3. She said that in early July 2017, she was walking through a courtyard outside of PAE's office when she saw a "Bangladeshi man" watching her while using his cell phone. *Id.* at 3. Believing him to be one of the stalkers, she followed him as he entered a commercial building in which the Federal Deposit Insurance Corporation had offices ("the FDIC

building"). *Id.* The parties dispute whether she told Mr. Horner that she followed him to the 11th floor of the building to learn that he worked there or simply learned that he went to the 11th floor by remaining in the lobby and watching the floor indicator on the elevator, but in any event, she learned that he went to the 11th floor. *See, e.g., id.* at 3. Based on this, she told Mr. Horner that she believed that the 11th floor of the FDIC building was the central headquarters of these stalkers (the parties dispute whether she used the word "hive" to describe this center of operations). *Id.*

As a follow up to this discussion, Mr. Horner sent Plaintiff an email asking her to memorialize her concerns in a written report. [Doc. 80-4 at 1]. Plaintiff agreed to do so at first, but then changed her mind because she believed that Mr. Horner's description of her account as "possible stalking" evinced disbelief on his part and that there was therefore no reason to pursue the matter any further with him. *See id.* at 2, 4. She stated that she believed that "there is absolutely nothing that can be done about my situation legally," and that, based upon her belief that she had discovered the stalker's central location on the 11th floor of the FDIC building, had become "fully aware of the complexity and severity of the war we are fighting, because I live it every day." *Id.* at 8.

Thereafter, Mr. Horner contacted Shanedria Wilborn (also known as "Shae" Wilborn), PAE's human resources manager, about his discussions with Plaintiff. [Doc. 80-1 at 12]. Ms. Wilborn approached Plaintiff at her desk on July 11, 2017 and asked if she could speak with her about her concerns. [Doc. 80-6 at 6]. Plaintiff agreed to do so. *Id.* She repeated essentially the same narrative to Ms. Wilborn as she had told Mr. Horner but included additional details. *See id.* at 7–12. For example, she told Ms. Wilborn that a Middle Eastern man had approached her at her desk at PAE and said, "Hello, [long pause] Kerrin" before leaving. *Id.* at 13, [Docs. 80-5 at

2, 38 at ¶ 61]. Additionally, she told Ms. Wilborn that she owned a Glock pistol. [Doc. 80-5 at 2].

After speaking with Plaintiff, Ms. Wilborn spoke again with Mr. Horner and other PAE employees, including its legal counsel. [Doc. 83 at 14]. Subsequently, on July 12, 2017, Mr. Horner called the Arlington County Police Department concerning Plaintiff. [Doc. 83-2 at 7–11]. Pursuant to Mr. Horner's call, Defendants Hall and Luzier (collectively, "the Officers") were dispatched and arrived at PAE's office to discuss the matter. [Doc. 83 at 14–15]. Mr. Horner relayed Plaintiff's account and his and Ms. Wilborn's concerns to the Officers. *See, e.g.*, *id.* at 15. The Officers suggested that Mr. Horner should contact the Arlington County Department of Human Services ("the Arlington DHS") for assistance with the matter and, because Plaintiff was not at work that day, should also call the Officers again when she was present at work so they could speak with her. *Id.* at 16. That same day, Mr. Horner contacted the Arlington DHS and spoke with Alexis Mapes, the agency's Emergency Services Supervisor, about Plaintiff. [Doc. 80 at 7]. Ms. Mapes then sent an email to her staff about the situation which summarized Plaintiff's concerns about stalking, suggested that Plaintiff was paranoid, and relayed concerns about Plaintiff having a gun. *Id.*

The next day, July 13, 2017, Mr. Horner called the Officers again after confirming that Plaintiff was present at work for a meeting. *Id.* at 8. The Officers returned to PAE to speak with Plaintiff. *Id.* Before doing so, they spoke with Ms. Wilborn. [Doc. 83 at 17]. Ms. Wilborn told them that Plaintiff reported that she was being followed by black SUVs, had seen a man in the courtyard near PAE looking at her while talking on a cell phone, and had learned that he went to the 11th floor of the FDIC building after following him into the entrance of the building and observing where the elevator went. *Id.* She further told the Officers that Plaintiff owned a gun

and stated that she hoped she would be willing to defend herself when the time came. *Id.* at 17–18. She also told the Officers that Plaintiff had stated that her stalking would have been handled differently had she been stalked overseas. *Id.* at 18.

After speaking with Ms. Wilborn, the Officers interviewed Plaintiff in a conference room about her concerns and asked her extensive questions about her account and her gun ownership. *See, e.g., id.* at 18–20. During the interview, Plaintiff repeated that she believed that she was under constant surveillance and was being followed by multiple men in black SUVs, and reported that, on the advice of a colleague, she had taken steps to become a "hard target" in order to deter the stalking activity. *Id.* at 19–20. At the end of the interview, the Officers issued the ECO pursuant to Va. Code § 37.2-808(G), took Plaintiff into custody, and transported her to Virginia Hospital Center. *Id.* at 20. During this time, Ms. Wilborn memorialized her conversation with Plaintiff in a written report she gave to the Officers. *See* [Doc. 80-5].

After she arrived at the hospital, Plaintiff was interviewed by Defendant Galway, a designee of the Arlington County Community Services Board ("ACCSB") pursuant to Va. Code § 37.2-808(A), which is responsible for handling civil commitment proceedings on behalf of the County. [Doc. 80 at 9]. Prior to the interview, Defendant Galway reviewed the email from Ms. Mapes, his supervisor, and Ms. Wilborn's statement to the Officers and spoke with Ms. Wilborn and Dr. Peter Liu, the emergency room physician who initially saw Plaintiff upon her arrival. *Id.* at 10. During his interview with Plaintiff, he questioned her about her discussions with Ms. Wilborn and her ownership of a gun. *See, e.g., id.* at 10–11. She was unwilling to voluntarily sign herself into the hospital to begin mental health treatment but did state that she was willing to see a psychologist voluntarily. *Id.* at 11. During his interview with Plaintiff, he also left the room to speak by phone with Defendant Lietzau, Plaintiff's supervisor at PAE, who opined that

he did not believe Plaintiff was likely to hurt anyone. [Doc. 83 at 21]. After speaking with Plaintiff, Defendant Galway spoke with Ms. Mapes and other coworkers in a team meeting. [Doc. 80-15 at 34–35]. Thereafter, and based on the "general consensus" by him, Ms. Mapes, and all of the other team members present at the meeting that Plaintiff should be involuntarily committed, Defendant Galway decided to file a Petition for Involuntary Admission for Treatment with a Virginia magistrate. [Doc. 80-15 at 42–43]. After reviewing the petition, the magistrate found probable cause to issue a TDO and did so pursuant to Va. § 37.2-809. [Doc. 80-18].

Thereafter, Plaintiff was admitted into the hospital and assessed by a psychiatrist and two Arlington County mental health assessors, who agreed that Plaintiff should not be released prior to her civil commitment hearing. [Doc. 80 at 12–13]. The civil commitment hearing was held on July 17, 2017, and the Virginia special justice presiding over the hearing dismissed the case and ordered Plaintiff released. *Id.* at 13.

B. Procedural History

Plaintiff filed this action on August 8, 2018. [Doc. 1]. She named PAE, Mr. Lietzau, Mr. Horner, and Ms. Wilborn as Defendants in addition to the Officers and Mr. Galway. With Defendants' consent and the Court's permission, she filed a Second Amended Complaint on October 31, 2018. [Doc. 38]. Defendants moved to partially dismiss the Second Amended Complaint, and on January 25, 2019, the Court granted those motions, dismissing the entirety of the Second Amended Complaint as against Defendants PAE, Lietzau, Horner and Wilborn. [Docs. 41, 43, 72]. The Court also dismissed Counts 6, 9, 12, 13 and 14 and the claims for punitive damages against the Officers and Defendant Galway. [Doc. 72]. Defendants did not

move to dismiss the still-pending counts but have now moved for judgment in their favor as to those counts on summary judgment. [Doc. 79].

Five Counts remain: (1) a § 1983 claim against Defendant Hall for unlawful seizure (Count 1); (2) a § 1983 claim against Defendant Luzier for unlawful seizure (Count 2); (3) a claim under Virginia law against Defendant Hall for false imprisonment (Count 7); (4) a claim under Virginia law against Defendant Luzier for false imprisonment (Count 8); and (5) a § 1983 claim against Defendant Galway for unlawful seizure (Count 10). [Doc. 80 at 2].

II. LEGAL STANDARD

Summary judgment is appropriate only if the record shows that "there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c); *see also Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247 (1986); *Evans v. Techs. Apps. & Serv. Co.*, 80 F.3d 954, 958 (4th Cir. 1996). The party seeking summary judgment has the initial burden to show the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). A genuine issue of material fact exists "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson*, 477 U.S. at 248. Once a motion for summary judgment is properly made and supported, the opposing party has the burden of showing that a genuine dispute exists. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586–87 (1986). To defeat a properly supported motion for summary judgment, the non-moving party "must set forth specific facts showing that there is a genuine issue for trial." *Anderson*, 477 U.S. at 247–48 ("[T]he mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine* issue of *material* fact."). Whether a fact is considered "material" is determined by the

substantive law, and "[o]nly disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." *Id.* at 248. The facts shall be viewed, and all reasonable inferences drawn, in the light most favorable to the non-moving party. *Id.* at 255; *see also Lettieri v. Equant Inc.*, 478 F.3d 640, 642 (4th Cir. 2007).

III. ANALYSIS

Defendants initially seek dismissal against Officer Luzier as a matter of law on Counts 2 and 8 on the ground that Plaintiff has failed to produce sufficient evidence of his participation in the issuance of the ECO and taking Plaintiff into custody, as he was simply a backup officer to Officer Hall. [Doc. 80 at 14]. However, Ms. Wilborn testified that Defendant Luzier participated in the Officers' questioning of Plaintiff, and Plaintiff testified that Defendant Luzier was heavily involved in questioning her and was the one who told her that she was going with the police. *See* [Docs. 83-3 at 51, 83-5 at 19]. He also made phone calls to his supervisor in an attempt to obtain records of Plaintiff's prior encounters with the Fairfax County Police and to the Arlington DHS to investigate Plaintiff's history of encounters, if any, with that agency, which further involved him in the decisionmaking process. [Doc. 83-9 at 37–38, 39–40]. Based on the present record, there is a genuine dispute of fact concerning whether Defendant Luzier was merely a backup officer who assumed a passive role in the decisionmaking process leading to the ECO and Plaintiff's resulting detention. Accordingly, after viewing the evidence in the light most favorable to Plaintiff, summary judgment on Plaintiff's claims against Defendant Luzier is not warranted on the grounds that he did not sufficiently participate in the decision to issue the ECO. Accordingly, the Court will consider both Defendants Luzier's and Hall's qualified immunity defense and the sufficiency of the evidence as to Plaintiff's state law claim against both of these Defendants.

A. Section 1983 Claims (Counts 1, 2, and 10)

Counts 1, 2, and 10 are federal claims alleging deprivation of Plaintiff's constitutional rights. Because Plaintiff's claims are constitutional claims for money damages, asserted under 42 U.S.C. § 1983 against state actors, the Court must first consider whether qualified immunity precludes her recovery before deciding whether her constitutional rights were violated.

"Qualified immunity protects 'all but the plainly incompetent or those who knowingly violate the law.'" *Hope v. Pelzer*, 536 U.S. 730, 752 (2002) (quoting *Malley v. Briggs*, 475 U.S. 335, 341 (1986)). Thus, "mere mistakes in judgment, whether the mistake is one of fact or one of law," are protected. *Id.* (quoting *Butz v. Economou*, 438 U.S. 478, 507 (1978)). The Court must therefore determine whether Plaintiff's constitutional claims, on the basis of which she seeks damages, are "clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982).

The parties dispute various aspects of the circumstances leading to Plaintiff's detention and what Plaintiff told Mr. Horner, PAE's security officer, and Ms. Wilborn, PAE's human resources manager.[1] However, these disputes relate to what Plaintiff said or did before her behavior was reported to the police and/or whether Plaintiff's statements were taken out of context. These disputes are not material, however, since there is no genuine factual dispute as to what information Defendants Hall, Luzier, and Galway had before making the decision to issue the ECO and petition for the TDO, including what Horner, Wilborn or Plaintiff said to either Defendants Hall or Luzier. Nor is there any evidence that the Officers had reason to believe that Horner's or Wilborn's accounts were inaccurate. Accordingly, the case is ripe for resolution on

[1] Examples include whether she ever used the word "hive" to describe the office on the 11th floor of the FDIC building in which she believed her stalkers were congregating and whether she actually followed one of her suspected stalkers to the 11th floor or simply traced him to that floor by watching the floor indicator stop there after he got in the elevator. *See* [Doc. 83 at 3–10].

summary judgment; and the liability of these Defendants turns on whether, based on the information they had, their decisions were unreasonable under clearly established law. *See Gooden v. Howard Cty., Md.*, 954 F.2d 960, 966 (4th Cir. 1992) (en banc) (stating that officers who acted on the basis of complaints by "an apartment resident whose veracity they had no reason to doubt" could "hardly be faulted for attaching credence to such citizen complaints" when those complaints later turned out to be inaccurate, because "the police cannot invariably be held under § 1983 as guarantors of every such report"); *Kelley v. Myler*, 149 F.3d 641, 647 (7th Cir. 1998) ("Probable cause does not depend on the witness turning out to have been right; it's what the police know, not whether they know the truth, that matters." (quotation and alteration omitted)).

1. The Officers

As to the Officers, Defendant Hall stated that she made her decision to detain Plaintiff on the basis of statements given to her by Mr. Horner and Ms. Wilborn. There is no dispute of fact as to what these individuals reported to the Officers. Ms. Wilborn reported to the police that Plaintiff:

- Expressed concerns about being followed by a Pakistani male;
- Reported that a "hive" of southeastern Asian men had followed her for several months while she was in Dubai and had followed her to the United States and continued to stalk her for many months;
- Reported that these men were "following her every move," hacking her phone, surveilling her inside her house, spying on her at work and in the parking garage of her work;

- Stated, when asked about how she planned to get the phone that these men were speaking on, that she would walk up to them and take it from them;
- Stated that the only way to deal with these men was to "kill them";
- Stated that "them" referred to all Pakistani men, that these men came from an "uncivilized society," and that a bomb needed to be dropped on Pakistan;
- Reported that she had followed one of them up to the 11th floor of the FDIC building but was unable to get beyond the area outside of the elevator doors;
- Reported that she owned a Glock and that she went to the gun range to fire it while taking her phone with her so that her stalkers knew she was going to the gun range;
- Stated that she hoped she would have the courage to defend herself when the time came; and
- Stated that if she had been stalked overseas, her stalking would have been handled differently than how she was dealing with it in the United States.

[Doc. 80-5 at 1–2]. Ms. Wilborn included all of these statements in her written statement to the police, and she corroborated these in her deposition. *See* [Doc. 80-6 at 7–11].

Mr. Horner testified in his deposition that he discussed "all of the concerns that Dr. Barrett had expressed" in his conversations with her, which included "[t]hose documented in my notes as well as similar concerns expressed to Shae Wilborn, similar to what was—what's indicated in her handwritten police report." [Doc. 80-1 at 17]. The information in Mr. Horner's notes is consistent with Ms. Wilborn's written statement in most respects. *See* [Doc. 80-2]. As reported to the Officers, the principal discrepancies between Mr. Horner's account of his conversations with Plaintiff and Ms. Wilborn's account of hers were (1) Plaintiff told Mr. Horner that she did not have a gun yet told Ms. Wilborn that she had a gun and (2) Plaintiff reported to

Ms. Wilborn that she followed the man she believed to be one of her stalkers to the 11th floor of the FDIC building and told Mr. Horner that she simply deduced that he went to the 11th floor by watching the floor indicator on the elevator (and, in fact, asked Mr. Horner for assistance in getting to the 11th floor so she could confront them). Except for these discrepancies, the accounts that Mr. Horner and Ms. Wilborn provided to the Officers were consistent.

Defendant Hall reported that Plaintiff exhibited a "calm" demeanor during her interview. [Doc. 83-14 at 17]. Plaintiff told the Officers in the interview that she had been followed by black SUVs and had people ringing her doorbell, that she had seen a man outside the PAE offices using a cell phone while watching her, and that she either followed the man to the 11th floor of the FDIC building or watched from the lobby as the elevator indicator stopped on the 11th floor (Defendants Hall's and Luzier's recollections differed as to this statement). She reported that she had taken steps to become a "hard target" in order to deter her assailants, including getting four dogs, installing a dash camera in her vehicle, installing surveillance cameras in her home, owning a gun, and hopefully "having the courage to defend herself, if necessary." [Doc. 80-13 at 8–9]. She also told them that she owned a gun but did not have it at work and would not bring it to work as doing so was prohibited by PAE's policy. [Doc. 83-14 at 8]. She further told them that she did not intend to harm herself. [Doc. 83-14 at 16].

In deciding whether Plaintiff satisfied the standard for involuntary commitment set forth in Va. Code Ann. § 37.2-809, the Officers had to consider the above accounts along with Plaintiff's statements and demeanor. From the Officers' point of view, Plaintiff's account and the accounts of Mr. Horner and Ms. Wilborn were consistent in that both demonstrated that Plaintiff believed that she was being followed and surveilled by a group of South Asian men, and that she had taken steps to become a "hard target" in the belief that doing so was necessary to

defend herself against this conduct or make her alleged stalkers' jobs more difficult. The Officers therefore had to make a judgment call in weighing Plaintiff's calm demeanor and her answers against the more concerning accounts of Plaintiff's statements presented by Mr. Horner and Ms. Wilborn. In reaching her conclusion, Defendant Hall stated that she reviewed all of this information as a whole and ultimately decided that Plaintiff should be detained for the purpose of a mental health evaluation, based primarily on what she believed to be evidence that Plaintiff was suffering from paranoia and a corresponding risk that she might harm others in the belief that she was defending herself:

> So when she spoke in detail about feeling, by her own admission, paranoid by people following her, men following her; feeling under constant surveillance; feeling like she needed to be a hard target; having a weapon and saying, Hopefully, if something happens, I'll have the courage to defend myself; following men into buildings because they had a phone in their hand and then looked at her all led me to believe that there was a possibility that she may hurt others. . . . So her telling me that she believed that men who looked at their phone and then looked at her, that she was constantly being surveillance [sic]—under surveillance, that men of Pakistani descent were following her, that black SUVs were following her, led me to believe that there was some level of paranoia going on here.

[Doc. 80-13 at 10–11].

This decision, which rested upon a weighing of the various accounts and an assessment of Plaintiff's demeanor, did not violate clearly established law. As the Fourth Circuit has acknowledged, there is limited case law on involuntary detentions for the purpose of conducting mental health evaluations. In 2015, the Fourth Circuit observed that while its "previous decisions concerning seizures for mental health evaluations have indeed emphasized a 'general right to be free from seizure' absent a finding of probable cause," it has not developed its case law concerning application of that right to particular cases, especially when compared to "the painstaking definition of probable cause in the criminal arrest context." *Raub v. Campbell*, 785 F.3d 876, 882 (4th Cir. 2015) (quotation and alteration omitted). This absence of precedential

guidance is especially true, the Court observed, in the context of seizure of persons for a mental health evaluation out of fear that they would harm others, as opposed to themselves. *Id.*

In cases involving involuntary detention of persons over concerns that they might harm *themselves*, the Fourth Circuit has held that officers were entitled to qualified immunity under circumstances similar to those in the case at bar in important respects. For example, in *Gooden*, officers were twice called to an apartment complex after residents reported screams emanating from one of the apartments. 954 F.2d at 962. During their second visit, the officers personally heard "blood-chilling" screams and other strange noises coming from the apartment. *Id.* Nevertheless, the woman who lived in the apartment denied hearing or making any such noises (although she did admit to "yelping" once because she had burned herself with an iron). *Id.* However, based upon their perception that the woman appeared to have been crying and out of concern that she was "mentally disordered" and might harm herself, they took her to a nearby hospital for an evaluation. *Id.* at 963–964. The Court, sitting en banc, held that the officers' conduct was reasonable because they acted on the basis of multiple complaints, personal observations, and their own investigations. *Id.* at 966. The Court also found it relevant that the officers acted pursuant to a Maryland law authorizing mental health seizures. *Id.*

Similarly, in *S.P. v. City of Takoma Park, Maryland*, officers dispatched to the scene found the plaintiff at her home crying and distraught. 134 F.3d 260, 264 (4th Cir. 1998). She admitted that she had had a "painful argument" with her husband but denied having thoughts of suicide or depression. *Id.* at 264, 267. However, she told the officers that, if not for her children, "she would have considered committing suicide." *Id.* at 267. Because of the woman's demeanor and the officers' concern that she may harm herself, they took her to a hospital for evaluation. *Id.* The Fourth Circuit affirmed the district court's grant of qualified immunity because the

officers "had ample opportunity to observe and interview" her, "did not decide to detain [her] in haste," and acted pursuant to state law authorizing mental health seizures. *Id.* at 267–68. Moreover, the Court noted that, just as in *Gooden*, even though the plaintiff "exhibited no signs of physical abuse and denied any psychiatric problems," the officers acted reasonably in relying on their perceptions of her as "evasive and uncooperative." *Id.* at 268.

In contrast, in *Bailey v. Kennedy*, the only case in which the Fourth Circuit denied qualified immunity at summary judgment for a seizure in the mental health context, officers detained the plaintiff based solely on a 911 report that he was intoxicated, depressed, and suicidal. 349 F.3d 731, 734 (4th Cir. 2003). After receiving the report, the officers went to the plaintiff's home, where they found him eating lunch in his dining room. He denied having suicidal thoughts, declined to give the officers permission to search the house, and asked them to leave. *Id.* The officers did not see weapons or other indicia of a potential suicide in the house. After leaving, the officers decided they "ha[d] to do something" and returned to knock on the door. *Id.* at 735. When the plaintiff told them the suicide report was "crazy" and that the officers needed to leave, the officers instead entered his home and forcibly detained him. *Id.* The Fourth Circuit denied qualified immunity and remanded the case because it concluded that "the 911 report, viewed together with the events after the police officers arrived, was insufficient to establish probable cause to detain [the plaintiff] for an emergency mental evaluation." *Id.* at 741.

Subsequently, in *Cloaninger ex rel. Estate of Cloaninger v. McDevitt*, when confronted with a similar situation to that in *Bailey*, the Court distinguished the case before it from *Bailey* on the ground that the law enforcement officers had more information than the "mere 911 call in *Bailey*." 555 F.3d 324, 333 (4th Cir. 2009). There, police officers were summoned to the

plaintiff's home after he called a VA hospital seeking medical help, and a police dispatcher informed law enforcement officials that he had threatened suicide. *Id.* at 328. In addition, one of the officers was aware that "Cloaninger had previously made suicide threats" and also believed that he "had firearms in the house." *Id.* at 332. When officers arrived at the plaintiff's home to check on him, he refused to respond "to their concerns for his well-being." *Id.* The officers then called a VA hospital nurse, who confirmed that Cloaninger "had a history of threatening suicide" and recommended his emergency commitment. *Id.* at 332–33. The panel held that "the initial VA call, coupled with knowledge of Cloaninger's prior suicide threats and the belief that he possessed firearms," constituted probable cause that the plaintiff was a danger to himself. *Id.* at 334.

Based on the summary judgment record, the Court finds and concludes that Defendant Hall's and Luzier's detention of Plaintiff was reasonable for the purpose of establishing qualified immunity as a matter of law. In that regard, their decision bears several hallmarks of reasonableness that can be extracted from the Fourth Circuit's precedent on mental health seizures. First, rather than seizing her without observation solely on the basis of Mr. Horner's and Ms. Wilborn's statements, the Officers spoke with Plaintiff at length and therefore had ample time to observe her demeanor and hear her side of the story. *See S.P.*, 134 F.3d at 267 (finding qualified immunity where the police officers "had ample opportunity to observe and interview" her and "did not decide to detain [her] in haste"). Second, according to Defendant Hall, whose testimony was uncontroverted, she detained Plaintiff based on her consideration of Plaintiff's, Mr. Horner's, and Ms. Wilborn's accounts, Plaintiff's ownership of a gun, reports that she followed her assailant into another building, and her efforts to become a "hard target," all of which cumulatively gave her the perception that Plaintiff was suffering from paranoia

which could lead to her harming someone out of a truly held but delusional belief that she had to defend herself against those she perceived to be her stalkers. Defendant Hall therefore "acted on the basis of multiple complaints, personal observations, and [her and Defendant Luzier's] own investigations." *Raub*, 785 F.3d at 882. Finally, the Officers acted pursuant to a Virginia law authorizing mental health seizures. *See, e.g.*, *Gooden*, 954 F.2d at 966.[2]

Based on this record, the applicable precedent and the nature of mental health seizures, which are necessarily "idiosyncratic and heavily dependent on the facts," *Buchanan v. Maine*, 469 F.3d 158, 168 (1st Cir. 2006), Defendants Hall and Luzier did not violate clearly established law in detaining Plaintiff. They are therefore entitled to qualified immunity.

2. Defendant Galway

Similarly, in deciding to file a petition for involuntary commitment, Defendant Galway made a judgment call not unlike that made by the Officers. In his deposition testimony, which was uncontroverted with regard to the information before him when he made his decision, he

[2] Plaintiff argues that a more recent Fourth Circuit decision, *Goines v. Valley Community Services Board*, 822 F.3d 159 (4th Cir. 2016), "establishes the unlawfulness of Defendants' conduct in this case." [Doc. 83 at 25]. In *Goines*, the Fourth Circuit denied officers' motion to dismiss on the ground of qualified immunity because the allegations in the complaint did not establish that the officers acted reasonably in detaining the plaintiff for a mental health evaluation. *Id.* at 170. However, as courts are required to do on a motion to dismiss, the Fourth Circuit considered only the allegations in the complaint and accepted those allegations as true (the district court had improperly considered assertions made by the police in an incident report cited by the plaintiff but not attached to his complaint as true). *Id.* at 168–69. The complaint alleged only that the plaintiff himself called the police because he believed his neighbor had spliced his cable line and was causing a signal disruption and did not want the dispute to escalate, had no mental illness, and did not intend to harm himself or others; and the officers refused to hear or investigate his story and instead assumed that he had "mental health issues" simply because he had physical and speech impediments and claimed that the plaintiff reported hearing noises in the wall that the officers could not hear, even though the officers actually did not hear the noises of which the plaintiff complained because they came from the plaintiff's television, which was turned off when the officers were present. *Id.* at 168–71. On those facts alone, the Court "ha[d] little difficulty in concluding that Goines' claims against the Officers should not have been dismissed." *Id.* at 169.

Here, in analyzing Plaintiff's claim on summary judgment, as opposed to on a motion to dismiss, there is a fully developed factual record, which demonstrates that the Officers acted on far more evidence and a lengthier investigation than did the officers in *Goines*. Indeed, whereas the Court in *Gaines* observed that the officers "simply assumed a threat without exploring whether the situation reflected some misunderstanding, a bizarre but non-dangerous incident, or something more problematic," *id.* at 170, the Officers in the instant case met with Mr. Horner and Ms. Wilborn and spoke with Plaintiff at length before taking her into custody.

stated that in assessing Plaintiff's mental condition, he first received an email sent by Alexis Mapes, his supervisor at the Arlington DHS, which summarized the case. [Doc. 80-15 at 15]. Next, he spoke with Ms. Wilborn. He stated that Ms. Wilborn

> reviewed that Dr. Barrett had met with the security person and had talked about these Muslim networks, about being followed by men from the Middle East, that she had gone across the courtyard following someone into their—trying to follow someone into their building, and that she had made statements about wanting security to investigate these issues or else she would do something, including killing them and herself.

Id. at 18–19. He further recalled that Mr. Wilborn reported a "pattern" of conversations Plaintiff had with Ms. Wilborn and other co-workers "that was concerning to them," including that "she was talking about something needed to be done about [her stalkers]." *Id.* at 20.

Next, Defendant Galway spoke briefly with Dr. Liu, the emergency room physician who initially spoke with Plaintiff upon her admission, who summarized the police reports and the information he had gathered and stated that he was concerned that, based on that information, Plaintiff might harm herself or others. *Id.* at 22–23. Thereafter, he spoke with Plaintiff. *Id.* at 28. Plaintiff repeated her accounts of the stalking to him but informed him that she believed that some of her prior statements had been taken out of context. *Id.* Based upon his consultation with Plaintiff and his weighing of the information available to him, he stated that he had a sense that Plaintiff might be suffering from "a significant amount of what sounds like PTSD symptoms and possibly delusional disorder, which [were] affecting how she[wa]s thinking and how she[wa]s behaving." *Id.* at 30.

After speaking with Ms. Wilborn and Dr. Liu, and in the midst of his consultation with Plaintiff, Defendant Galway spoke by phone with Defendant Lietzau, Plaintiff's supervisor at PAE. *Id.* at 31. Mr. Lietzau reported that Plaintiff "was a good employee" and that while she

"seems a bit off," it had not affected her work and that he did not think that she would be likely to hurt anyone. *Id.* at 32.

After gathering all of this information, Defendant Galway met with Ms. Mapes, and they went into a team meeting to discuss the case and weigh the options. *Id.* at 34–35. He reported the following regarding the team's consensus in the case:

> [I]t was generally felt that the risks were at the level where we needed to detain her because she was not giving us sort of a sense that she was going to seek treatment, that she was not willing to sign herself in, and that she had—and one of the big issues was that she owned a gun, and we weren't sure where that was.

Id. at 35. According to Defendant Galway's uncontroverted testimony, Plaintiff's gun ownership created the biggest concern for the team, in light of her comments:

> And she's talking about killing. She's used the expression kill people to not only that day, but the two days before, the day before. She's also—the human resource has been saying that this is a statement that she's made. So it's bad enough we talk to people who say they're going to kill somebody but don't own a gun. It's another thing to have people say that who do own a gun.

Id. at 38–39. According to Defendant Galway, no team member voiced disagreement with his and Ms. Mapes's opinion that they should seek Plaintiff's involuntary commitment on that basis. *Id.* at 42. Based on this consensus and his own investigation and evaluation, he elected to submit the petition for a TDO. *Id.* at 44.

Like Defendant Hall, Defendant Galway made his decision based upon the totality of the circumstances presented to him, which he derived from his conversations with and observations of Plaintiff, the reports he received from Ms. Wilborn and Mr. Liu, the police reports, his conversations with Ms. Mapes and his other team members at the Arlington DHS, and his conversation with Mr. Lietzau, who presented a more favorable opinion as to Plaintiff's likelihood of harming others or herself. Like the Officers, the undisputed evidence demonstrates that he did not make the decision in haste, relied on his own perceptions of Plaintiff rather than

on reports from others, and submitted a petition to temporarily detain Plaintiff pursuant to Virginia's mental health law.

Virginia's civil commitment statute states that a TDO is appropriate when a person found to present a harm to oneself or others "is unwilling to volunteer or incapable of volunteering for hospitalization or treatment." Va. Code Ann. § 37.2-809(B). Plaintiff argues that notwithstanding his assessment of Plaintiff's mental health condition, Defendant Galway violated clearly established law because Plaintiff volunteered to see a psychologist on her own. According to Plaintiff, "[b]ecause Dr. Barrett volunteered for treatment, she no longer met the statutory criteria for a TDO." [Doc. 83 at 30 (citing Va. Code Ann. § 37.2-809(B)]. However, although Plaintiff stated during her consultation with Defendant Galway that she would be willing to see a psychologist, it is undisputed that she repeatedly refused to sign herself into the hospital for mental health treatment. *See* [Docs. 38 at ¶¶ 181–82; 80-15 at 39–40, 44]. Defendant Galway explained that, based on his evaluation, he was concerned that Plaintiff could harm herself or others in the four days prior to her civil commitment proceeding. [Doc. 80-15 at 39–40]. Thus, his decision to seek a TDO was based on a determination that Plaintiff presented an acute risk of harm, and the treatment for which she "volunteered" would not address her mental health in a timely enough fashion to allay those concerns. *See id.* at 39–40 ("[W]e don't know if she's going to get a psychologist next Wednesday or a week from Wednesday. We've got Thursday, Friday, Saturday. The hearing would be Monday. We've got those four days in between to be concerned about—that she owns a gun, has been talking about killing people."). In that regard, she refused voluntary hospitalization, the only treatment available that would address this perceived acute risk.

For these reasons, Defendant Galway is entitled to qualified immunity because he did not violate clearly established law in seeking a TDO.[3]

B. State Law Claims Against the Officers (Counts 7 and 8)

Counts 7 and 8 are state law false imprisonment claims against Defendants Hall and Luzier, respectively. Under Virginia law, "[f]alse imprisonment is the restraint of one's liberty without any sufficient legal excuse." *Lewis v. Kei*, 708 S.E.2d 884, 890 (Va. 2011). And in order to state a claim for false imprisonment, a plaintiff must allege that the process leading to the arrest was unlawful. *Cole v. Eckerd Corp.*, 54 Va. Cir. 269, 2000 WL 33595085, at *2 (Va. Cir. Ct. 2000); *Montanile v. Botticelli*, 2008 WL 5101775, at *4 (E.D. Va. Nov. 25, 2008).

A warrant that is "regular on its face—even one procured *without probable cause*—does not create a cause of action for false imprisonment." *Id.* at *4 (emphasis added) (citing *Cole*, 54 Va. Cir. 269). "Even a police officer who makes a misdemeanor arrest without a warrant and one based upon mistakes of fact or law may not be subjected to civil liability for false imprisonment, provided that the officer acted in good faith and had a reasonable belief in the validity of the arrest." *Cole*, 54 Va. Cir. 269, at *3 (citing *Yeatts v. Minton*, 177 S.E.2d 646 (Va. 1970)). An officer's failure to investigate further, even when he should have, does not invalidate an arrest pursuant to a facially valid warrant. *Kei*, 708 S.E.2d at 890.

Here, although no warrant was involved, the facially valid ECO that Defendant Hall issued upon conclusion of the interview with Plaintiff was a "form of lawful process."

[3] Plaintiff further alleges summary judgment cannot be granted because Defendant Galway made a "material misrepresentation" in the TDO petition by failing to check a box certifying that he believed that Plaintiff met the statutory criteria for commitment pursuant to Va. Code Ann. §§ 37.2-805 through 37.2-819. [Doc. 83 at 31]. Defendant Galway stated in his deposition that the unchecked box was a mistake that occurred "just because I forgot to do it for some reason." [Doc. 83-10 at 24]. More importantly, he checked a series of boxes in the same section of the petition in which the unchecked box was contained, which would not be applicable if he believed that Plaintiff did not meet the statutory criteria. *See* [Doc. 83-18 at 2]. Nothing in the record indicates that Defendant Galway acted intentionally or with any fraudulent intent in failing to check the box; and within the context of the entire petition and TDO process, his failure to check the box is insufficient to preclude summary judgment.

Moreover, the Officers had jurisdiction to detain Plaintiff and did so under Va. Code Ann. § 37.2-809 after investigating and making a determination that Plaintiff was potentially a danger to herself or others. Although in hindsight it may be open to debate whether the wrong conclusion was reached concerning whether Plaintiff was a legitimate threat to the safety of others or herself, there is no evidence in the record that the *process* leading to Plaintiff's seizure was unlawful or that the Officers had any reason to disbelieve the accounts provided to them by Mr. Horner and Ms. Wilborn. During the investigation they conducted, they spoke to multiple witnesses and Plaintiff and analyzed her demeanor, and made their decision based on their firsthand perceptions of Plaintiff's mental health and the accounts of Mr. Horner and Ms. Wilborn. For all these reasons, based on the summary judgment record, Plaintiff has failed as a matter of law to proffer evidence sufficient under Virginia law for a jury to find that Defendants Luzier or Hall falsely imprisoned her.

IV. CONCLUSION

For the foregoing reasons, it is hereby

ORDERED that Defendants Galway, Hall, and Luzier's Motion for Summary Judgment [Doc. 79] be, and the same hereby is, GRANTED; and this action is DISMISSED.

The Clerk is directed to forward copies of this Order to all counsel of record and to enter judgment in favor of the Defendants under Federal Rule of Civil Procedure 58.

/s/
Anthony J. Trenga
United States District Judge

April 9, 2019
Alexandria, Virginia

In The

United States Court of Appeals

For The Fourth Circuit

KERRIN BARRETT,

Plaintiff – Appellant,

v.

PAE GOVERNMENT SERVICES, INC.; AREYAL HALL, Officer, Arlington County Police Department; WILLIAM K. LIETZAU; SEAN HORNER; SHANEDRIA WILBORN; BRIAN GALWAY; JOSHUA LUZIER, Officer,

Defendants – Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA AT ALEXANDRIA

BRIEF OF APPELLANT

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CORPORATE DISCLOSURE STATEMENT

Plaintiff-Appellant Kerrin Barrett is a natural person, not a publicly held corporation or other publicly held entity. She has no parent corporations. She does not have 10% or more of its stock owned by a publicly held corporation or other publicly held entity. There are no publicly held corporations or other publicly held entities with a direct financial interest in the outcome of the litigation. She is not a trade association.

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STATEMENT OF SUBJECT MATTER AND APPELLATE JURISDICTION

This appeal arises from an action filed by Plaintiff-Appellant Dr. Kerrin Barrett ("Dr. Barrett") in the U.S. District Court for the Eastern District of Virginia (the "District Court") against Defendants-Appellees PAE Government Services, Inc. ("PAE"), William Lietzau ("Mr. Lietzau"), Sean Horner ("Mr. Horner"), Shanedria Wilborn ("Ms. Wilborn," and with PAE, Mr. Lietzau, and Mr. Horner, the "PAE Defendants"), Officer Areyal Hall ("Officer Hall"), Officer Joshua Luzier ("Officer Luzier"), and Brian Galway ("Mr. Galway," and with Officer Hall and Officer Luzier, the "County Defendants"). The County Defendants with the PAE Defendants are "Defendants." The District Court exercised subject matter jurisdiction over Counts 1-5 and 10-11 of Dr. Barrett's Second Amended Complaint ("Complaint") pursuant to federal question jurisdiction under 28 U.S.C. § 1331 and over Counts 6-9 and 12-14 of the Complaint pursuant to supplemental jurisdiction pursuant to 28 U.S.C. § 1367. JA18.[1] On January 25, 2019, the District Court entered an Order dismissing Counts 3-6, 9, 11-14, and Dr. Barrett's claim for punitive damages. JA112-27. On April 9, 2019, the District Court issued an Order granting the remaining Defendants' Motion for Summary Judgment and dismissing the remaining claims in the action. JA766-787. The

[1] References to JA in this Brief refer to the Joint Appendix.

Court entered Judgment on April 9, 2019. JA 788. On April 15, 2019, Dr. Barrett timely filed a Notice of Appeal of the District Court's January 25, 2019 Order and of its April 9, 2019 Order. JA789.

This Court has appellate jurisdiction over Dr. Barrett's appeal pursuant to 28 U.S.C. § 1291, which provides that courts of appeal "shall have jurisdiction of appeals from all final decisions of the district courts of the United States."

STATEMENT OF THE ISSUES

1. Did the District Court commit reversible error in dismissing, for failure to state a claim, Counts 3-4 of the Complaint, which allege that two private individuals, Mr. Horner and Ms. Wilborn, conspired and acted jointly with state actors and acted under color of state law to violate Dr. Barrett's civil rights, in violation of 42 U.S.C. § 1983?[2]

2. Did the District Court commit reversible error in dismissing, for failure to state a claim, Count 6 of the Complaint, which alleges that employees of PAE committed civil conspiracy with Officer Hall and Officer Luzier to violate Dr. Barrett's civil rights?

[2] As discussed and displayed in chart form below at page 24, Dr. Barrett does not appeal the District Court's dismissal of the counts related to Mr. Lietzau, consisting of Count 5, Count 11, Count 12, and Count 14. Dr. Barrett also does not appeal the District Court's dismissal of Count 13 against Mr. Galway.

3. Did the District Court commit reversible error in dismissing, for failure to state a claim, Count 9 of the Complaint, which alleges that PAE and its employees conspired with Officer Hall and Officer Luzier to falsely imprison Dr. Barrett?

4. Did the District Court commit reversible error in dismissing, for failure to state a claim, Dr. Barrett's claim for punitive damages?

5. Did the District Court commit reversible error in granting qualified immunity to Officer Hall, Officer Luzier, and Mr. Galway on Counts 1, 2, and 10 of the Complaint, alleging unlawful seizure in violation of 42 U.S.C. § 1983, and in granting summary judgment in their favor on those counts?

6. Did the District Court commit reversible error in granting summary judgment in favor of Office Hall and Officer Luzier on Counts 7 and 8 of the Complaint, alleging false arrest, and did it err in finding that they had a legal justification to seize Dr. Barrett?

STATEMENT OF CASE

I. Introduction.

On July 13, 2017, Dr. Barrett was a 59-year-old, Harvard-educated researcher with a Ph.D. who was working, as she had for much of her professional life, on behalf of the United States on sensitive projects related to national security and nation-building. JA19-21; JA458-59; JA731. As an employee of PAE, Dr.

Barrett had just completed a budget meeting relating to a U.S. State Department contract when her co-workers lured her into a room with Officer Hall and Officer Luzier, who seized Dr. Barrett, removed her from PAE's offices in full view of her co-workers, and delivered her to a locked psychiatric ward. JA123:6-20. Following a petition by Mr. Galway, Dr. Barrett would spend five days in that ward before impartial authorities finally reviewed her case and found no basis to detain her at all. JA56-57.

Before seizing Dr. Barrett, Officer Hall and Officer Luzier met repeatedly with employees of the company where Dr. Barrett worked, both the day before and an hour immediately before. They agreed to detain Dr. Barrett and to take her to a psychiatric hospital against her will regardless of whether probable cause existed to do so, as required by law. JA36 ¶ 98; JA37 ¶ 106; JA38 ¶ 109. Dr. Barrett alleges that by the time of her seizure, the officers knew that no probable cause existed to seize Dr. Barrett. JA14 ¶ 1; JA59 ¶ 249; JA60 ¶ 255. She was not mentally ill, threatened no danger to herself or others, and, having shown up at work to attend a meeting on an international aid contract that she supervised, certainly showed no signs of being unable to care for herself. JA15 ¶ 3. As alleged in the Complaint, Dr. Barrett's employers nevertheless intended for her involuntary commitment to defame and discredit her and to cast doubts on recent charges she had made regarding her employer's contract reporting irregularities and security failings.

JA64 ¶ 281. But Officer Luzier, Officer Hall, and Mr. Galway need not have shared that same motive as Dr. Barrett's employer to engage in the actual conspiracy alleged in the challenged causes of action: the agreements between Dr. Barrett's employers and Officer Luzier, Officer Hall, and later, Mr. Galway, to seize and involuntarily commit Dr. Barrett to a psychiatric facility without probable cause to do so. Dr. Barrett has alleged sufficient facts of that conspiracy to violate her civil rights and to subject her to false imprisonment.

The evidence also shows that the police and Mr. Galway had no reasonable basis to detain Dr. Barrett. By nevertheless doing so, they violated clearly established law. The District Court, therefore, erred by granting them qualified immunity.

II. Relevant Law.

Under Virginia law, the police may take a person into custody and transport that person involuntarily for a mental health evaluation pursuant to an "emergency custody order" ("ECO") only if there is probable cause to believe the following:

> that [the] person (i) has a mental illness and that there exists a substantial likelihood that, as a result of mental illness, the person will, in the near future, (a) cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening harm and other relevant information, if any, or (b) suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic human needs, (ii) is in

> need of hospitalization or treatment, and (iii) is unwilling to volunteer or incapable of volunteering for hospitalization or treatment.

Va. Code Ann. § 37.2-808(A). A law enforcement officer may seize a person without prior judicial authorization if he has probable cause to believe that a person meets the criteria stated above. *Id.* § 37.2-808(G).

After an individual has been seized pursuant to an ECO, he must be examined by an employee or designee of a county community services board ("CSB") who meets certain statutory criteria. Va. Code Ann. §§ 37.2-809(A), (B). Following that examination, and upon a sworn petition typically provided by the CSB examiner, a magistrate may issue a temporary detention order ("TDO") that permits the continued involuntary detention of an individual who meets same criteria for the issuance of an ECO, discussed above. *Id.* § 37.2-809(B). Detention under a TDO generally may last up to 72 hours, but if that 72-hour period ends on a weekend, as it did for Dr. Barrett, the TDO detention may continue until the next business day. *Id.* §§ 37.2-809(H), 37.2-814(A).

Following the TDO detention, an individual is entitled to a commitment hearing before a district court judge or special justice. At that hearing, if the district court judge or special justice finds, by clear and convincing evidence, that the individual meets the criteria discussed above for the issuance of an ECO, the

district court judge or special justice can order the person detained for another 30 days. Va. Code Ann. §§ 37.2-814, 37.2-817(C).

III. Factual background.

A. Dr. Barrett's distinguished background.

Dr. Barrett has a long and distinguished career at the highest levels of government and the private sector in the areas of international development, education, and rule of law. She earned her bachelor's degree in economics from the University of California San Diego and earned a master's degree from Harvard University. JA458-59. Dr. Barrett earned a Ph.D. at the University of New Mexico in organizational learning and instructional technology. JA459.

From April 2012 to July 2013, Dr. Barrett worked as a contractor for PAE in Kabul, Afghanistan, on a U.S. State Department contract dedicated to improving the rule of law in that country. JA21 ¶ 30; JA671-72. From 2014 to 2016, Dr. Barrett lived in Dubai. JA457:14-19. In June 2015, while Dr. Barrett was living in Dubai, men began stalking and harassing Dr. Barrett and other women in the neighborhood where she lived. JA453:12-15; JA475:14-22; JA506:19-507:7.

Dr. Barrett returned to the United States in March 2016. JA548. On May 2, 2016, Dr. Barrett began working as a PAE employee on a U.S. State Department contract for which she was responsible for gathering and reporting on prison data, which included women and children incarcerated in the prisons, high value targets,

and members of ISIS, the terrorist group in the Middle East. JA454:10-13, 498:3-8, 557:15-559:13. During that time, Dr. Barrett worked in PAE's Arlington, Virginia, office. JA498:9-12.

B. Dr. Barrett experiences stalking in the United States.

After returning to the United States, Dr. Barrett observed that she was being stalked in a manner similar to the stalking she had experienced in the Middle East. JA684-88. In discussing her stalking with an expert in law enforcement, Dr. Barrett was advised to become a "hard target," which she understood to mean taking defensive measures that made herself appear less vulnerable and that discouraged stalking. JA510:1-22.

Beginning in July 2016, Dr. Barrett filed non-emergency reports with the Fairfax County Police Department regarding being followed and stalked. JA684. Dr. Barrett did so because she believed that to respond to her stalking, she needed to follow the rule of law, and she wanted the police to document her experience of being stalked. JA477:1-7.

Then, in August 2016, while Dr. Barrett was working at PAE's office, a man who fit the pattern of her stalkers came up to her while she was sitting at her desk and slowly said "Hello Kerrin" before leaving. She had never seen him before. JA418 ¶ 2.

C. On July 6, 2017, Dr. Barrett is stalked outside PAE's offices, and she informs Mr. Lietzau of the stalking.

On July 6, 2017, Dr. Barrett left PAE's Arlington offices and began walking to a nearby Starbucks coffee shop. As she did so, she passed through the courtyard outside of her building, which an adjacent building shared. There, Dr. Barrett noticed a South Asian man look at her and then urgently take out his cell phone and make a call. JA122:3-21; JA512. Dr. Barrett continued to Starbucks and purchased her coffee. JA472:22-473:2. Upon returning to the courtyard outside of her office building approximately 30 to 45 minutes later, Dr. Barrett went into the office building adjacent to hers and asked the security guard in that building's lobby if anyone who worked there matched the description of the man Dr. Barrett had seen in the courtyard. JA473:2-10; JA419 ¶ 4. The security guard told her that a number of South Asian men worked on the eleventh floor of that building. JA473:2-10; JA419 ¶ 4.

Since working with Mr. Lietzau in May of 2016, Dr. Barrett had told him about stalking she had experienced in Dubai and then in the United States. JA555:16-556:10; JA560:2-7; JA565:2-7. On July 10, 2017, Dr. Barrett told Mr. Lietzau about the incident from July 6, 2017, and she also told him that she believed her cell phone was being tapped. JA455:8-13; JA456:11-17; JA561:8-562:8; JA566:12-19. She asked him what she should do. JA456:13-15. Mr.

Lietzau suggested that Dr. Barrett speak to Mr. Horner, a security manager at PAE. JA566:12-567:17.

D. On July 10, Dr. Barrett tells Mr. Horner she is being stalked.

Later in the day on July 10, 2017, Dr. Barrett met with Mr. Horner and told him about the incident from July 6, 2017, involving a man in the building adjacent to PAE's offices and the background of the stalking she had been experiencing. JA423:5-12; JA425:14-426:4; JA494:13-495:14. The notes that Mr. Horner took of his conversation with Dr. Barrett on July 10 indicate that he believed that Dr. Barrett had not traveled up to the eleventh floor of the building adjacent to PAE's headquarters where she believed her possible stalker to be located. JA445:13-447:12. Dr. Barrett never intended to go by herself to confront any individuals on the eleventh floor of the building adjacent to PAE's headquarters where she believed her stalker to be located. JA424:16-18; JA445:22-446:5.

E. On July 11, Dr. Barrett talks to Ms. Wilborn.

In the early evening of July 11, 2017, Ms. Wilborn, a human resources manager at PAE, met with Dr. Barrett. JA522:1-8; JA523:18-524:8. In her conversations with Ms. Wilborn, Dr. Barrett did not act violently, threaten anyone or indicate that she intended or planned to undertake any violent act towards herself or others. JA531:19-532:14; JA533:21-534:3; JA540:17-542:26. Dr. Barrett described to Ms. Wilborn the man in the courtyard outside her office

building who looked at her and then urgently used his cell phone, but Dr. Barrett did not tell Ms. Wilborn that she needed to walk up to the man and take the phone from him. JA419 ¶ 8. Ms. Wilborn testified at deposition that Dr. Barrett never said that she, herself, intended to take the phone away from the man herself. JA529:18-530:4. Dr. Barrett also discussed the advice she had received to become a "hard target." In explaining to Ms. Wilborn what that entailed, Dr. Barrett mentioned installing security cameras and taking different routes to work. JA536:12-21.

To the extent that Dr. Barrett discussed Pakistani men with Ms. Wilborn, Ms. Wilborn testified at deposition that Dr. Barrett never said that Dr. Barrett intended to harm any Pakistani men. Ms. Wilborn also testified at deposition that Dr. Barrett never said she wanted to kill stalkers, but that Dr. Barrett was merely recounting some advice that Afghan acquaintances had given her about how Afghans, but not Dr. Barrett, would deal with stalking. JA37:12-17; JA527:9-18; JA541:16-542:20. Ms. Wilborn testified at deposition that when Dr. Barrett discussed the comments that President Trump had made about dropping bombs on Pakistan, she understood Dr. Barrett to be merely commenting on a political statement and that Dr. Barrett's comment did not lead Ms. Wilborn to conclude that Dr. Barrett intended to hurt other people. JA525:13-526:22.

After speaking to Dr. Barrett on July 11, 2017, Ms. Wilborn emailed Mr. Horner about the conversation she had had earlier that evening with Dr. Barrett. JA534:4-9. On July 12, 2017, Ms. Wilborn discussed with Mr. Horner and others, including PAE's in-house legal staff, the conversation she had had the day before with Dr. Barrett. JA535:1-19.

F. On July 12, 2017, Officers Hall and Luzier speak to Mr. Horner and Ms. Wilborn.

On July 12, 2017, Mr. Horner telephoned the non-emergency line for the Arlington County Police Department and asked to speak to a police officer about Dr. Barrett. JA427:2-7; JA428:4-14; JA429:22-430:3. Mr. Horner testified he did not do so to alert the police that Dr. Barrett posed a danger to herself or others but to inquire whether they would be able to help her, including help her investigate her stalking claims. JA435:4-436:5. Dr. Barrett similarly believed that she would be meeting with the Arlington County Police so they could investigate her stalking claims. JA483:15-484:2.

On July 12, 2017, Officer Hall and Officer Luzier were dispatched to respond to Mr. Horner's non-emergency call. JA601:12-14; JA694:20-695:2. The police dispatcher did not indicate that the call from Mr. Horner was an emergency. JA603:2-11. Neither Officer Hall nor Officer Luzier traveled to PAE's offices with their emergency lights or sirens activated in their police cars. JA602:17-603:1; JA696:4-7.

Upon arriving at PAE's offices on July 12, 2017, Mr. Horner told Officer Hall and Officer Luzier about what Dr. Barrett had told him and what Dr. Barrett had told Ms. Wilborn the day before. JA430:14-431:13. Specifically, Mr. Horner told Officer Hall and Officer Luzier that Dr. Barrett had told Ms. Wilborn that Dr. Barrett was being followed by black SUVs and Pakistani men. JA606:7-16; JA697:13-18. Mr. Horner also told Officer Hall and Officer Luzier that Dr. Barrett had told him that several days earlier, Dr. Barrett had seen a South Asian man in the courtyard outside her office building look at her and urgently use his phone and that because Dr. Barrett believed that man was one of her stalkers, she entered the building where she believed the man worked. JA698:1-13.

Mr. Horner told Officers Hall and Luzier that Dr. Barrett said that she owned a gun but that she knew she was not permitted to bring it inside PAE's offices. JA699:1-7. Officer Hall does not recall Mr. Horner telling her anything else about Dr. Barrett's gun. JA699:8-10. At that time, Dr. Barrett owned one Glock handgun, which she had purchased in 2006 while living in Albuquerque. JA468:19-469:2; JA516; JA 158:3-10. Dr. Barrett purchased that gun on the advice of a co-worker at Sandia National Laboratories in 2006, who noted that Dr. Barrett was newly widowed and that Albuquerque had been experiencing a spate of home invasions. JA470:7-21. Dr. Barrett would not, therefore, have told Mr. Horner that she was considering purchasing a gun, because she already owned one.

Mr. Horner also told Officers Hall and Luzier that Dr. Barrett had contacted another police department to report that she was being stalked. JA607:14-608:4. In an ordinary case, Officer Luzier would have taken information about Dr. Barrett's police reports filed with the Fairfax County Police Department to develop more investigatory leads as to what Dr. Barrett's case pertained to and what it encompassed. JA609:5-13. Officer Luzier did not take those steps because Officer Hall was the primary officer called to PAE. JA609:14-610:6. Officer Luzier and Officer Hall never spoke to anyone at the Fairfax County Police Department regarding Dr. Barrett's police reports despite having the information to do so. JA701:22-702:5; JA703:19-704:8.

Mr. Horner did not say to Officer Luzier and Officer Hall on July 12, 2017 that he was concerned that Dr. Barrett would harm herself or others. JA607:6-9.

Mr. Horner hoped that Officers Hall and Luzier would speak to Dr. Barrett on July 12, 2017. JA436:7-10. But because Dr. Barrett was not in PAE's offices on July 12, 2017, Mr. Horner agreed with Officer Hall and Officer Luzier to contact the police when Dr. Barrett was in PAE's offices and able to speak to the police. Mr. Horner also agreed, in the meantime, to contact the Arlington County Department of Human Services ("DHS"). JA433:6-21.

After she left PAE's offices on July 12, 2017, Officer Hall did not have enough information to determine if Dr. Barrett was being stalked, JA700:4-12, and

Officer Hall admitted that she had no basis to know whether or not individuals were following Dr. Barrett, as Dr. Barrett described. JA709:5-8. Nevertheless, after Officer Hall and Officer Luzier left PAE's offices on July 12, 2017, Officer Hall took no further actions regarding Dr. Barrett that day. JA701:22-702:5.

G. On July 12, Mr. Horner contacts the County Department of Human Services.

Later on July 12, 2017, after Officer Hall and Officer Luzier had left PAE's offices, Mr. Horner telephoned Alexis Mapes, a supervisor at DHS's Emergency Services, and described what Dr. Barrett had told Mr. Horner and what Dr. Barrett had told Ms. Wilborn as Ms. Wilborn then described Mr. Horner. JA152:2-153:1.

H. On July 13, the police arrive again and interrogate Dr. Barrett.

On the morning of July 13, 2017, after Mr. Horner learned from Dr. Barrett's manager, Allison Eastridge, that Dr. Barrett was at PAE's offices, he called the Arlington County Police Department non-emergency telephone number to request that the officers he had spoken to the day before return to PAE's offices to speak to Dr. Barrett. JA439:18-440:10; JA441:6-9; JA441:19-442:4; JA443:5-20. When he telephoned the police on July 13, 2017, Mr. Horner did not believe that Dr. Barrett posed any emergency. JA439:12-16.

Officer Hall and Officer Luzier were dispatched to PAE's offices again on July 13, 2017. JA611:7-9; JA704:16-705:4. The radio dispatch call did not indicate that the call was high priority. JA612:7-20. As Officer Hall and Officer

Luzier drove to PAE's offices, they did not turn on their emergency lights or sirens. JA612:21-613:2; JA706:16-22.

When Officer Hall and Officer Luzier arrived at PAE's offices on July 13, 2017, they spoke with Ms. Wilborn. Ms. Wilborn told them that Dr. Barrett had told Ms. Wilborn about being followed by black SUVs, about being followed home, and about an incident in which Dr. Barrett had seen a man in the courtyard outside of PAE's office building looking at her and holding a cell phone. JA614:12-615:4. Ms. Wilborn told the officers that Dr. Barrett had told Ms. Wilborn that Dr. Barrett had followed that man into the building adjacent to PAE's building and watched him get on an elevator and observed what floors the elevator stopped on. JA615:5-20. In her meeting with Officer Hall and Officer Luzier that morning, Ms. Wilborn also said Dr. Barrett had said she owned a gun. JA616:3-6. Ms. Wilborn also said that Dr. Barrett had said that she hoped she would be willing to defend herself if the time came. JA616:15-20. Finally, Ms. Wilborn said that Dr. Barrett had said that if she had been stalked overseas, her stalking would have handled differently there than how she was dealing with it in the United States. JA616:21-617:12.

Dr. Barrett was then lured into a PAE conference room where she met Officer Hall and Officer Luzier. JA618:15-20. Dr. Barrett was dressed in business attire at that time, appeared even-keeled and not disheveled. JA618:5-14. Ms.

Wilborn then sat next to Dr. Barrett around a conference table, either in the chair next to her or one chair away. JA618:21-619:12.

Officer Hall or Officer Luzier asked Dr. Barrett to describe her concerns or situations that she had experienced in the past few days. JA623:2:6. Dr. Barrett described being followed by black SUVs and having people ringing her doorbell. JA624:3-17. She also said that she had contacted the police about those incidents and they were investigating her claims. JA624:17-19; JA635:1-5.

While Officer Hall remained in the PAE conference room with Dr. Barrett, Officer Luzier claims he called his supervisor and asked if he would contact the Fairfax County Police Department via teletype message for information about Dr. Barrett's reports. The Fairfax County Police Department did not respond to the teletype. JA635:11-636:10.

On July 13, 2017, while Officer Hall remained in the PAE conference room with Dr. Barrett, Officer Luzier also telephoned the Arlington County DHS and learned that they had no history of mental health encounters with Dr. Barrett. JA637:16-638:9.

Dr. Barrett also told Officer Hall and Officer Luzier that she had seen a man outside of PAE's offices watching her while using his phone. JA625:7-13. Dr. Barrett described to Officer Luzier and Officer Hall how she had asked the security

guard in the lobby of the building adjacent to PAE's offices about the man who had been watching her. JA537:10-15.

Dr. Barrett told Officers Hall and Luzier that she owned a gun, did not have a concealed carry permit, had no experience with that firearm, did not have it at work, and would never bring it to work because she knew PAE did not allow guns in its office. JA626:16-627:19. Dr. Barrett also told Officers Hall and Luzier that she hoped that if she had to, she would have the courage defend herself, but nothing Dr. Barrett said made Officer Luzier think that she was referring to using her gun when she referred to defending herself. JA628:9-22.

In a police report that Officer Hall wrote on July 13, 2017, after meeting Dr. Barrett, she noted that Dr. Barrett "told me that she has spoken to various law enforcement officers and that they told her to become a hard target. She said that they meant for her to be more vigilant and aware." JA720. At deposition, Officer Hall said that "As I understand, her becoming a hard target involved her purchasing or owning four large dogs, installing a dash cam in her car, as well as a camera at the front door of her home." JA713:14-17.

While speaking to Officer Hall and Officer Luzier, Dr. Barrett remained calm, did not exhibit any violent actions, never threatened herself or others, and never said that she wanted to hurt others. When asked by Officer Hall or Officer Luzier whether she intended to harm herself or others, Dr. Barrett said she did not.

JA629:9-630:16; JA707:5-10; JA708:17-19. Nevertheless, a paperless ECO was issued against Dr. Barrett, ostensibly because Dr. Barrett posed a risk both to herself and to others. JA634:5-18. Officer Hall then drove Dr. Barrett to the Virginia Hospital Center ("VHC") emergency room. JA714:8-20; JA720. There is no evidence in the record – and none in this case – of Dr. Barrett ever confronting anyone about her stalking, nor of any reports by her co-workers that she was acting in a threatening manner.

At some point on July 13, 2017, Ms. Wilborn prepared a statement to the police, at the request of Officer Luzier, purporting to relate what Dr. Barrett had told Ms. Wilborn on July 11, 2017. JA539:1-6. There is no evidence, however, that Ms. Wilborn gave her statement to either Officer Luzier or Officer Wilborn before they issued the ECO.

I. Mr. Galway meets Dr. Barrett at the hospital.

At the VHC, Mr. Galway was designated by the Arlington County CSB to examine Dr. Barrett. JA644:7-10. In evaluating Dr. Barrett, Mr. Galway spoke to Ms. Wilborn. JA645:13-646:21. As part of his examination of Dr. Barrett, Mr. Galway also telephoned Mr. Lietzau. JA647:6:9; JA653:20-654:13. During his telephone call with Mr. Lietzau, Mr. Galway said that he did not see much reason to keep her and was thinking of releasing her. JA581:2-21. Mr. Galway asked Mr. Lietzau if that concerned him. Mr. Lietzau said that it did not. JA582:1-13.

Mr. Lietzau's answer reflected the fact that before he spoke to Mr. Galway on July 13, 2017, Mr. Horner and Ms. Wilborn had told Mr. Lietzau what Dr. Barrett had said to them, but he still believed Dr. Barrett was unlikely to hurt anyone. JA568:13-572:13; JA573:10-574:16; JA575:11-21; JA583:7-11; JA102:8-17. Mr. Lietzau testified that he had worked with Dr. Barrett for more than a year, beginning in May 2016, JA555:18-556:11, and that during that time, he spoke to or saw Dr. Barrett either daily or several times per week. JA14-17.

While Mr. Lietzau was speaking to Mr. Galway, a work colleague of Dr. Barrett, Nick Zyznieuski, entered Mr. Lietzau's office. JA585:1-14. Mr. Zyznieuski said out loud that he had zero concern that Dr. Barrett would pose a threat to anyone at PAE. JA585:15-586:2. After Mr. Zyznieuski spoke, Mr. Lietzau asked Mr. Galway if he heard Mr. Zyznieuski. Mr. Galway gave no indication that he had not heard Mr. Zyznieuski. JA586:3-14.

Mr. Galway asked Dr. Barrett if she would be willing to surrender her gun, and Dr. Barrett said she would. JA657:12-15. When asked by Mr. Galway, Dr. Barrett also agreed to see a psychologist. JA658:11-16. Mr. Galway never asked Dr. Barrett to commit to a specific person or timeframe for doing so. JA420 ¶ 11.

On the afternoon of July 13, 2017, Mr. Galway signed a Petition for Involuntary Admission for Treatment to keep Dr. Barrett confined in VHC's

psychiatric ward. JA661:19-662:5; JA725-26. Later on July 13, 2017, a magistrate judge issued a Temporary Detention Order. JA728-29.

On the morning of July 17, 2017, an independent mental health evaluator examined Dr. Barrett and concluded that she did not meet the criteria for mental health involuntary commitment. JA666:13-668:21; JA731-33. Dr. Barrett remained in VHC's psychiatric ward until later on July 17, 2017, following a commitment hearing before a special justice, who dismissed Dr. Barrett's case. JA 56-57 ¶ 230; JA57-58 ¶ 237.

IV. Procedural History.

On August 8, 2018, Dr. Barrett filed her initial complaint in this action. JA3 (ECF No. 1). On October 31, 2018, she filed her Second Amended Complaint. JA14-74. The Complaint alleges that on or around July 10 or 11, 2017, employees at PAE, including Mr. Horner (a security manager at PAE) and Ms. Wilborn (an HR manager at PAE), agreed on a plan to use Dr. Barrett's reports of being stalked at the office to claim falsely that she was a threat and danger to others that required her immediate removal from the office and transportation to a hospital for examination. They did so to discredit Dr. Barrett and her claims that PAE was filing false reports on a State Department contract and that PAE had failed to maintain security in its offices by allowing intruders to enter and harass Dr. Barrett. Such breaches might jeopardize its business, both current and future.

JA32 ¶ 79. As such, in addition to allegations against Officers Luzier and Hall and Mr. Galway for violating Dr. Barrett's constitutional rights and for false arrest, the Complaint alleged that PAE employees had also violated Dr. Barrett's rights by acting jointly with state actors and conspiring with Officers Luzier and Hall and Mr. Galway. The Complaint contained the following 14 causes of action:

Count 1	Unlawful Seizure under the Constitution – Color of State Law; 42 U.S.C. § 1983	Against Officer Areyal Hall
Count 2	Unlawful Seizure under the Constitution – Color of State Law; 42 U.S.C. § 1983	Against Officer Joshua Luzier
Count 3	Unlawful Seizure under the Constitution – Color of State Law; 42 U.S.C. § 1983	Against Sean Horner
Count 4	Unlawful Seizure under the Constitution – Color of State Law; 42 U.S.C. § 1983	Against Shanedria Wilborn
Count 5	Unlawful Seizure under the Constitution – Color of State Law; 42 U.S.C. § 1983	Against William Lietzau
Count 6	Civil Conspiracy to Violate Constitutional Rights	Against Officer Hall, Officer Luzier, Sean Horner, Shanedria Wilborn, and William Lietzau
Count 7	False Imprisonment	Against Officer Hall
Count 8	False Imprisonment	Against Officer Luzier
Count 9	Civil Conspiracy to Falsely Imprison	Against Officer Hall, Officer Luzier, Sean Horner, Shanedria Wilborn, William Lietzau, and PAE

Count 10	Unlawful Seizure under the Constitution – Color of State Law; 42 U.S.C. § 1983	Against Brian Galway
Count 11	Unlawful Seizure under the Constitution – Color of State Law; 42 U.S.C. § 1983	Against William Lietzau
Count 12	Civil Conspiracy to Violate Constitutional Rights	Against Brian Galway and William Lietzau
Count 13	False Imprisonment	Against Brian Galway
Count 14	Civil Conspiracy to Falsely Imprison	Against Brian Galway, William Lietzau, and PAE

JA16-17. The damages sought in the Complaint include punitive damages. JA71.

On November 21, 2018, the County Defendants filed a motion to dismiss Counts 6, 9, and 12-14 and the claim for punitive damages pending against them. JA75-77. On November 21, 2018, the PAE Defendants also filed a motion to dismiss, seeking to dismiss all of the claims against them, consisting of Counts 3-6, 9, 11-12, and 14. JA78-82.

On January 25, 2019, the District Court granted the County Defendants' Motion to Dismiss. JA119-23. The District Court also granted the PAE Defendants' Motion to Dismiss all of the counts against them. JA123-26.

On March 6, 2019, the County Defendants filed their Motion for Summary Judgment on the remaining claims in the action: Counts 1, 2, and 10 (for Unlawful Seizure under the Constitution – Color of State Law, in violation of 42 U.S.C.

§ 1983, against Officer Hall, Officer Luzier, and Mr. Galway, respectively); and Counts 7 and 8 (for False Imprisonment, against Officer Hall and Officer Luzier, respectively). JA128-29.

Following a hearing, JA734-65, the District Court on April 9, 2019, issued an order on the Defendants' Motion for Summary Judgment. The District Court declined to dismiss Counts 2 and 8 against Officer Luzier after finding sufficient evidence to indicate that he had participated in the issuance and enforcement of the paperless ECO against Dr. Barrett. JA773. The District Court, however, granted summary judgment for the County Defendants on all the remaining counts in the Complaint. JA766-785.

On April 15, 2019, Dr. Barrett filed her Notice of Appeal. JA789. This appeal challenges the District Court's following rulings:

COUNT NUMBER	**COUNT DESCRIPTION**	**DEFENDANT**	**DISTRICT COURT DISPOSITION**
Count 1	Unlawful Seizure under the Constitution – Color of State Law; 42 U.S.C. § 1983	Officer Areyal Hall	Summary Judgment granted to Officer Hall
Count 2	Unlawful Seizure under the Constitution – Color of State Law; 42 U.S.C. § 1983	Officer Joshua Luzier	Summary Judgment granted to Officer Luzier

Count 3	Unlawful Seizure under the Constitution – Color of State Law; 42 U.S.C. § 1983	Sean Horner	Dismissed for failure to state a claim
Count 4	Unlawful Seizure under the Constitution – Color of State Law; 42 U.S.C. § 1983	Shanedria Wilborn	Dismissed for failure to state a claim
Count 6	Civil Conspiracy to Violate Constitutional Rights	Officer Hall, Officer Luzier, Sean Horner, Shanedria Wilborn, and William Lietzau	Dismissed for failure to state a claim
Count 7	False Imprisonment	Officer Hall	Summary Judgment granted to Officer Hall
Count 8	False Imprisonment	Officer Luzier	Summary Judgment granted to Officer Luzier
Count 9	Civil Conspiracy to Falsely Imprison	Officer Hall, Officer Luzier, Sean Horner, Shanedria Wilborn, William Lietzau, and PAE	Dismissed for failure to state a claim
Count 10	Unlawful Seizure under the Constitution – Color of State Law; 42 U.S.C. § 1983	Brian Galway	Summary Judgment granted to Mr. Galway

SUMMARY OF ARGUMENT

The Court should reverse the District Court's dismissal of the counts alleging conspiracy and joint action between the PAE Defendants and Officers Hall and Luzier, because the allegations in the Complaint sufficiently allege that they conspired to seize Dr. Barrett knowing that there was no probable cause to do so.

The Court should also reverse the District Court's grant of summary judgment to Officer Hall, Office Luzier, and Mr. Galway. They had no probable cause to seize and hold Dr. Barrett, and their actions violated clearly established rights. They are not entitled to qualified immunity.

ARGUMENT

I. Standard of review.

This Court's review of the District Court's rulings on Defendants' Motions to Dismiss is *de novo*. *See Novell, Inc. v. Microsoft Corp.*, 505 F.3d 302, 307 (4th Cir. 2007). In reviewing a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), the Court must assume "the truth of all facts alleged in the complaint and the existence of any fact that can be proved, consistent with the complaint's allegations." *E. Shore Mkts., Inc. v. J.D. Assocs. Ltd. P'ship*, 213 F.3d 175, 180 (4th Cir. 2000). When considering a motion to dismiss, a court "accept[s] as true all well-plead allegations and view[s] the complaint in the light most

favorable to the plaintiff." *Sec. of State for Defence v. Trimble Navigation Ltd.*, 484 F.3d 700, 705 (4th Cir. 2007). Dismissal is appropriate pursuant to Rule 12(b)(6) only if "it appears to be a certainty that the plaintiff would be entitled to no relief under any state of facts which could be proven in support of its claim." *Advanced Health-Care Servs., Inc. v. Radford Cmty. Hosp.*, 910 F.2d 139, 143-44 (4th Cir. 1990).

A complaint should not be dismissed unless it fails to allege "enough facts to state a claim to relief that is plausible on is face," *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). Facial plausibility is established once the factual content of a complaint "allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 663 (2009).

This Court reviews the district court's disposition of motions for summary judgment *de novo*, viewing all facts and inferences in the light most favorable to the nonmoving party. *Balbed v. Eden Park Guest House, LLC*, 881 F.3d 285, 288 (4th Cir. 2018). In doing so, the Court is to refrain from weighing the evidence or making credibility determinations. *Lee v. Town of Seaboard*, 863 F.3d 323, 327 (4th Cir. 2017).

Under Federal Rule of Civil Procedure 56(a), "[t]he court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." A dispute

is genuine "if a reasonable jury could return a verdict for the nonmoving party," and "[a] fact is material if it might affect the outcome of the suit under the governing law." *Jacobs v. N.C. Admin. Office of the Courts*, 780 F.3d 562, 568 (4th Cir. 2015).

"Where, as here, the district court articulates the facts as it viewed them in determining that summary judgment was inappropriate, [the Court's] task is relatively straightforward. [The Court] must accept those facts and then determine whether, based on those facts, a reasonable person in the defendant's position could have believed that he or she was acting in conformity with the clearly established law at the time." *Bailey v. Kennedy*, 349 F.3d 731, 738 (4th Cir. 2003) (internal quotations and citations omitted).

II. The District Court erred in dismissing the Joint Action and Conspiracy claims.

Although liability under 42 U.S.C. § 1983 for violation of an individual's civil rights is typically limited to state actors, the allegations in the Complaint support Section 1983 liability against Mr. Horner and Ms. Wilborn. They do so by sufficiently alleging that Mr. Horner, Ms. Wilborn, and others conspired with Officers Luzier and Hall to seize Dr. Barrett on mental health grounds when they knew that they had no legal basis to do so.

A. Law regarding conspiracy to violate Section 1983 and to falsely imprison.

Civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection. *See Addington v. Texas*, 441 U.S. 418, 425 (1979). Thus, the Fourth Amendment's protection against unreasonable search and seizure requires probable cause before involuntary hospitalization, of the sort that Dr. Barrett suffered, may be ordered. *Bailey*, 349 F.3d at 740. "The law does not permit 'random or baseless detention of citizens for psychological evaluations.'" *Id.* (quoting *Gooden v. Howard County*, 954 F.2d 960, 968 (4th Cir. 1992)). Thus, an individual may be detained for an involuntary hospitalization "only if there are reasonable grounds for believing that the person seized is subject to seizure under the governing legal standard." *Villanova v. Abrams*, 972 F.2d 792, 795 (7th Cir. 1992), *quoted in Raub v. Campbell*, 3 F. Supp. 3d 526, 532 (E.D. Va. 2014).

Section 1983 of Title 42 makes individuals liable for violating another's Constitutional rights. 42 U.S.C. § 1983. Ordinarily, liability under Section 1983 is limited to state actors, such as police officers. However, "private persons who willfully participate in joint action with a state official act under the color of law" and thus face liability under Section 1983. *Scott v. Greenville County*, 716 F.2d 1409, 1422 (4th Cir. 1983) (citation omitted). To sustain such a claim of joint action, the plaintiff must allege facts showing an agreement or meeting of the

minds between the state actor and the private actor to engage in a conspiracy to deprive the plaintiff of a constitutional right. *John Hancock Mut. Life Ins. Co. v. Anderson*, No. 90-1749, 1991 U.S. App. LEXIS 11877, at *6 (4th Cir. June 12, 1991).

To establish a conspiracy under Section 1983, a plaintiff must present evidence that the defendants acted jointly in concert and that some overt act was done in furtherance of the conspiracy which resulted in the deprivation of a plaintiff's constitutional right (in this case, the right to be free of an involuntary hospitalization). *See Hafner v. Brown*, 983 F.2d 570, 577 (4th Cir. 1992). A plaintiff need not "produce direct evidence of a meeting of the minds." He need only "come forward with specific circumstantial evidence that each member of the alleged conspiracy shared the same conspiratorial objective." *Hinkle v. Clarksburg*, 81 F.3d 416, 421 (4th Cir. 1996). So long as a plaintiff can show that the conspirators shared the same objective with their conspiracy, "they need not know all the details of the plan designed to achieve the objective or possess the same motives for desiring the intended conspiratorial result." *Hampton v. Hanrahan*, 600 F.2d 600, 620-21 (7th Cir. 1979), *rev'd in part*, 446 U.S. 754 (1980); *Roberts v. Ballard*, No. 2:15-cv-15458, 2017 U.S. Dist. LEXIS 31858, at *7-8 (S.D.W. Va. Mar. 7, 2017) (citing *Hampton*).

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). False imprisonment consists of imposing restraint on a person's freedom of movement by use of fear or force. *Jordan v. Shands*, 255 Va. 492, 497 (1998).

Under Virginia law, civil conspiracy consists of (i) an agreement between two or more persons (ii) to accomplish an unlawful purpose or to accomplish a lawful purpose by unlawful means, which (iii) results in damage to plaintiff. *Glass v. Glass*, 228 Va. 39, 47(1984).

B. Dr. Barrett has alleged a plausible conspiracy between PAE and Officers Hall and Luzier to violate Dr. Barrett's civil rights and to falsely imprison her.

Here, the Complaint alleges more than enough facts to plausibly allege a conspiracy between PAE employees and Officers Hall and Luzier to seize Dr. Barrett on mental health grounds without probable cause, thereby violating her civil rights, subjecting her to false imprisonment, and allowing Section 1983 liability to flow against Mr. Horner and Ms. Wilborn. The District Court erred in finding otherwise. JA119-20.

1. The Court should reverse the District Court's dismissal of Counts 6 and 9, alleging conspiracies to violate Dr. Barrett's constitutional rights and to falsely imprison her.

The Court should dismiss the District Court's denial, for failure to state a claim, of Counts 6 and 9, alleging conspiracies between PAE and its employees and Officers Hall and Luzier, to violate Dr. Barrett's constitutional rights and to falsely imprison her. The Complaint alleges that Officers Luzier and Hall met with Mr. Horner, a security officer for PAE, on July 12, 2017, and discussed seizing Dr. Barrett on mental health grounds and removing her from PAE regardless of how she acted or what she said to the police. JA34 ¶ 91. After realizing that their plan could not be executed immediately because Dr. Barrett was not in the office that morning, Officers Luzier and Hall further agreed with Mr. Horner to return the next day to remove her from PAE's offices. JA35 ¶ 92. The Complaint also alleges that when the officers returned to PAE's offices on July 13, they met with Mr. Horner, Ms. Wilborn, and Mr. Lietzau to further discuss the seizure of Dr. Barrett and her removal from PAE's offices regardless of whether probable cause existed for them to do so. JA36 ¶ 98. Those allegations contain the specific circumstantial evidence that the officers and PAE employees discussed and agreed upon the same conspiratorial objective: to seize Dr. Barrett and remove her from her workplace regardless of whether she demonstrated any of the criteria for a dangerous mentally ill person under Virginia law. *See Hinkle,* 81 F.3d at 421

(holding that plaintiff need not allege direct evidence of meeting of the minds but specific circumstantial evidence showing that each member of alleged conspiracy shared same conspiratorial objective); *Bell v. City of Roanoke Sheriff's Office*, No. 7:09-cv-00214, 2009 U.S. Dist. LEXIS 120153, at *11 (W.D. Va. Dec. 23, 2009) (denying motion to dismiss because allegation that sheriff's personnel agreed to alter surveillance tape provided sufficient circumstantial evidence of conspiracy to violate plaintiff's rights); Va. Code Ann. 37.2-808(A).

The District Court erred in dismissing the joint action and conspiracy claims in the Complaint by finding that

> fatally missing from these allegations, and the rest of the Second Amended Complaint, is that the officers *knew* that she was not in fact a danger to others but nevertheless agreed to remove Plaintiff from the workplace and detain her. Even liberally read, Plaintiff simply alleges that the officers, called to the scene, decided to remove her after their discussions with Plaintiff's employers and without regard to what she might say to them during their discussion, not that they knew she was not a danger yet still agreed to detain her.

JA120. But the Complaint contains the exact allegation that Officer Hall and Officer Luzier knew that Dr. Barrett was not a danger and yet still agreed to detain her. The Complaint alleges that Officer Hall and Officer Luzier seized Dr. Barrett even though they knew they had no probable cause to detain her. JA14 ¶ 1, JA 59 ¶ 249; JA60 ¶ 255. The officers knew that Dr. Barrett had never threatened danger to herself or others when she spoke to them or to or any PAE employee. JA 30

¶ 70; JA32 ¶ 77; JA33-34 ¶ 85; JA39¶ 116; JA39-40 ¶ 118. Yet they still detained her. The Complaint thus alleges, contrary to the District Court's ruling, that Officers Hall and Luzier "knew she was not a danger yet still agreed to detain her." JA120. In doing so, they executed their agreement with the PAE Defendants to falsely imprison Dr. Barrett. *See Bailey*, 349 F.3d at 740. That conspiracy with Officers Hall and Luzier makes Mr. Horner and Ms. Wilborn liable, as private parties, for violating Dr. Barrett's person's civil rights and subjects them to liability under Section 1983, as alleged in Counts 3 and 4 of the Complaint. *Scott*, 716 F.2d at 1422. The agreement between the officers and Mr. Horner and Ms. Wilborn to detain Dr. Barrett without any lawful authority to do so also makes them liable for conspiracy to violate Dr. Barrett's civil rights and for conspiring to falsely imprison her, as alleged in Counts 6 and 9. *See Hafner*, 983 F.2d at 577; *Montgomery Ward & Co.*, 188 Va. at 489; *Glass*, 228 Va. at 47.

The Court should also reject the ruling of the District Court that dismissal was merited because it does not "allege any motive that Hall and Luzier might have to engage with those PAE employees in such a concerted effort to cover up the latter's criminal conduct." JA120. The District Court held that because Officers Hall and Luzier are not alleged to have known about PAE's attempt at discrediting Dr. Barrett, they could not have conspired with PAE in seizing her. JA119-20. But that argument errs on both the nature of the conspiracy being

alleged and the law regarding conspiracy under Section 1983. Dr. Barrett does not claim that Officers Hall and Luzier sought to discredit her as a whistleblower, as the PAE employees did. Instead, starting from the first numbered paragraph of her Complaint, Dr. Barrett alleges that Officers Hall and Luzier conspired with PAE employees to seize and remove her from her office without probable cause to do so. JA14-15 ¶ 1 ("Her employer, and three of its employees, planned and conspired with the police officer *to seize plaintiff and remove her from her workplace, whether there were legitimate grounds to do so or not*") (emphasis added); JA32 ¶ 80; JA34 ¶ 91; JA36 ¶ 98; JA59 ¶ 249; JA60 ¶ 255; JA64 ¶ 281.

Officers Hall and Luzier need not have known about the motive of the PAE defendants to discredit Dr. Barrett's allegations of overbilling and security breaches to agree to the conspiracy that violated her Fourth Amendment rights and that is at issue now: seizing and involuntarily hospitalizing her without the probable cause and legal authority to do so. *See Everette-Oates v. Chapman,* 2017 U.S. Dist. LEXIS 180038, at *15 (E.D.N.C. Oct. 31, 2017); *McDaniel v. Maryland*, No. RDB-10-00189, 2010 U.S. Dist. LEXIS 84784, at *35-36 (D. Md. Aug. 18, 2010). In those cases, which post-date the *Iqbal* and *Twombly* standards for plausibility in pleadings, the courts determined the existence of a conspiracy to violate an individual's civil rights without discussing a motive of the conspirators. In *Everette-Oates*, the court rejected a motion to dismiss based on a claim that the

motive of the defendant to join the conspiracy was implausible. Motive, the *Everette-Oates* court held, "is irrelevant to whether plaintiff has stated a claim for § 1983 conspiracy." *Everette-Oates*, 2017 U.S. Dist. LEXIS 180038, at *14. Continuing, the court held, "It is not an element of a § 1983 claim that plaintiff must allege an additional underlying 'motive' for defendants' common and unlawful plan." *Id.* at *15-16. In *McDaniel*, the court denied a motion to dismiss claim of conspiracy to violate Section 1983 where police officers allegedly met on roadside before confronting plaintiff to devise pretextual reason for baseless traffic stop of plaintiff, analogous to the agreement in this case between the PAE employees and Officers Luzier and Hall to seize Dr. Barrett without a lawful basis to do, on the pretext that she was dangerous due to a mental illness. *McDaniel*, 2010 U.S. Dist. LEXIS 84784, at *35-36. The Court should reject any argument that *McDaniel* is distinguishable because the plaintiff there alleged that the police officers had pulled him over to racially profile him. In *McDaniel,* stopping a motorist due to his race does not describe a motive; it describes the overt act of the conspiracy to violate the motorist's rights. Thus, *McDaniel* found the existence of a conspiracy to violate Section 1983 without any discussion of motive. *See id.*

In holding that "motive" need not be alleged for a conspiracy under Section 1983, the *Everette-Oates* court also held that unlike other civil rights statutes, such as 42 U.S.C. § 1985, no motive of a specific class-based animus is required under

Section 1983. *Id.* at *16 n.2. In this case, however, the District Court improperly imputed just such a pleading requirement of a "motive" into a Section 1983 claim, even though it contains no such requirement. The Court should, therefore, reverse the District Court's dismissal of the conspiracy claims in this case.

2. The Court should reverse the District Court's dismissal of Counts 3 and 4.

The Court should also reverse the District Court's dismissal of Counts 3 and 4, which allege that Mr. Horner and Ms. Wilborn are liable to Dr. Barrett under Section 1983 because they conspired with Officers Hall and Luzier to deprive Dr. Barrett of her constitutional right to be free from involuntary hospitalization. The District Court dismissed these counts, JA124-25, after erroneously finding that Dr. Barrett "does not allege that the governmental Defendants ... had any knowledge of the PAE Defendants' alleged conspiracy to have Plaintiff involuntarily committed in order to cover up their alleged criminal activity." JA125. But as discussed in the immediately preceding section, the conspiracy between the PAE employees and Officers Hall and Luzier was not generally to help PAE cover up their wrongful acts. The conspiracy involved the agreement between PAE, its employees, and Officers Hall and Luzier to seize Dr. Barrett without probable cause to do so. And as described above, the Complaint sufficiently alleges that Mr. Horner and Ms. Wilborn willfully participated in joint action with Officers Hall and Luzier by conspiring with them to violate Dr. Barrett's constitutional rights.

JA14-15 ¶ 1; JA32 ¶ 80; JA34 ¶ 91; JA36 ¶ 98; JA59 ¶ 249; JA60 ¶ 255; JA64 ¶ 281. That makes them liable for violating Section 1983. *See Scott*, 716 F.2d at 1422; *John Hancock Mut. Life Ins. Co.*, 1991 U.S. App. LEXIS 11877, at *6.

3. The Court should reverse the District Court's premature and erroneous dismissal of Dr. Barrett's claim for punitive damages.

Finally, the Court should reverse the District Court's dismissal of Dr. Barrett's claim for punitive damages. JA123. In dismissing Dr. Barrett's claim for punitive damages, the District Court failed to address the authority holding that a demand for punitive damages is not properly considered on a motion to dismiss. Federal Rule of Civil Procedure 12(b)(6) does not provide a vehicle to dismiss a portion of relief sought or a specific remedy, but only to dismiss a claim in its entirety. *See Charles v. Front Royal Vol. Fire & Rescue Dep't, Inc.*, 21 F. Supp. 3d 620, 629, 631-32 (W.D. Va. 2014); *see also Douglas v. Miller*, 864 F. Supp. 2d 1205, 1220 (W.D. Okla. 2012) (prayer for relief not part of the cause of action so punitive damages not subject to 12(b)(6) dismissal); *Oppenheimer v. Sw. Airlines Co.*, 2013 U.S. Dist. LEXIS 85633, 2013 WL 3149483, at *4 (S.D. Cal. June 17, 2013) ("requests for punitive damages provide no basis for dismissal under Fed. R. Civ. P. 12(b)(6)" and collecting authority in support). Those cases are consistent with the operation of the Federal Rules of Civil Procedure. Rule 8(a), which defines the general rule for pleading, states, "[a] pleading that states a claim for

relief must contain" three separate elements: (1) the basis of jurisdiction; "(2) a short and plain statement of the claim showing that the pleader is entitled to relief; and (3) a demand for the relief sought . . ." Fed. R. Civ. P. 8(a). Thus, under the plain terms of Rule 8(a), a demand for relief is not part of the "statement of the claim," and is only one part of the "claim for relief." *Id.*; *see also Charles*, 21 F. Supp. 3d at 631 (a "demand for relief is not part of a plaintiff's statement of the claim"). Because Rule 12(b)(6) "may be used only to dismiss a 'claim' in its entirety[,]" *id.*, it is not available to dismiss only a demand for relief.

Even if Defendants' Motions to Dismiss were an appropriate vehicle to seek dismissal of Dr. Barrett's demand for punitive damages, such dismissal would still be inappropriate. As the District Court noted, punitive damages can be awarded when the defendant's conduct is shown to be motivated by evil motive or intent or when it involves reckless or callous indifference to the federally protected rights of others. JA123 (citing *Woods v. Mendez*, 265 Va. 68, 76 (2003)). The nature of Section 1983 violations, however, mean that the standards of proof for liability under Section 1983 and punitive damages under section 1983 are "essentially the same." *See Cooper v. Dyke*, 814 F.2d 941, 948 & n.5 (4th Cir. 1987). Because the District Court could not determine, as a matter of law on a Motion to Dismiss, that no liability existed for the County Defendants under Section 1983, it had no basis to dismiss Dr. Barrett's claim for punitive damages. *See id.*; *see also*

North Carolina ex rel. Wellington v. Antonelli, No. 1:01CV01088, 2002 U.S. Dist. LEXIS 24677, at *15 (M.D.N.C. Dec. 20, 2002) (rejecting motion to dismiss punitive damages in Section 1983 case because "At this early stage of litigation, the court cannot ascertain the nature of Defendants' conduct as a matter of law"). While the District Court did subsequently determine that the County Defendants had not violated Dr. Barrett's constitutional rights in violation of Section 1983, it did so in error, as discussed further below. For those reasons, the Court should reverse the District Court's dismissal of Dr. Barrett's claim for punitive damages.

V. The District Court erred in awarding summary judgment to Officer Hall, Officer Luzier, and Mr. Galway.

The Court should also reverse the District Court's grant of summary judgment to Officer Hall, Officer Luzier, and Mr. Galway on the counts against all three of them alleging the violation of Dr. Barrett's civil rights (Counts 1, 2 and 10) and against Officer Hall and Officer Luzier for false imprisonment (Counts 7 and 8). The District Court awarded summary judgment to the County Defendants after extending qualified immunity to them against Dr. Barrett's claims of civil rights violations. But they are not entitled to qualified immunity because they seized Dr. Barrett without probable cause and violated clearly established law in doing so.

A. Standard for qualified immunity.

Determining whether a state officer is entitled to qualified immunity is a two-part inquiry. First, a court must decide whether a constitutional right would have been violated on the facts alleged. Next, assuming that the violation of the right is established, a court must consider whether the right was clearly established at the time such that it would be clear to an objectively reasonable officer that his conduct violated that right. *Bailey*, 349 F.3d at 739.

Considering first Dr. Barrett's unlawful seizure claim, the Court must assess whether the facts alleged, taken in the light most favorable to Dr. Barrett, indicate that Officers Hall and Luzier had probable cause to seize Dr. Barrett for an emergency mental health evaluation. *See Bailey*, 349 F.3d at 739. Probable cause is a "practical, nontechnical conception" that addresses the "the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act." *Illinois v. Gates*, 462 U.S. 213, 231 (1993).

Because probable cause was lacking for her seizure and detention, Dr. Barrett has successfully asserted the violation of a constitutional right – specifically her Fourth Amendment right against unreasonable seizure – and the Court may move on to the other prong of its qualified immunity analysis. *Bailey*, 349 F.3d at 739. A right is "clearly established" if "'the contours of the right [are] sufficiently clear'" so that a reasonable officer would have understood, under the

circumstances at hand, that his behavior violated the right. *Wilson v. Layne*, 526 U.S. 603, 615 (1999) (quoting *Anderson v. Creighton*, 483 U.S. 635, 640 (1987)). The inquiry is an objective one, dependent not on the subjective beliefs of the particular officer at the scene, but instead on what an objectively reasonable officer would have understood in those circumstances. *Bailey*, 349 F.3d at 741.

In deciding whether the right alleged to have been violated was clearly established, the Court must define the right "at a high level of particularity." *Bailey*, 349 F.3d at 741. The requisite level of particularly in this case means inquiring whether it was clearly established that a police officer and county mental health assessor may not detain someone for an emergency mental health evaluation based on a non-emergency call to speak with an individual who never threatened harm to herself or others, who spoke of violence against those stalking her only to disavow its use, who welcomed police contact to help her with her stalking, and who never confronted any of the persons she believed to be stalking her, even after she believed she had recently discovered the location of a possible stalker. *See id.* (defining requisite level of particularity in that case as whether "it was clearly established that a police officer may not detain someone for an emergency mental health evaluation based only on a 911 report that the person was suicidal, where the officers were able to observe the person alleged to be suicidal and observed nothing indicating that the person might have been a danger to himself").

B. The County Defendants lacked probable cause to seize and detain Dr. Barrett.

Reversal is required because the District Court failed to properly examine the evidence of what Dr. Barrett actually told Mr. Horner and Ms. Wilborn, as reflected in their own testimony and the testimony of Mr. Lietzau. Dr. Barrett's statements to Mr. Horner and Ms. Wilborn determined what they told Officer Hall, Officer Luzier, and Mr. Galway and determined whether probable cause existed. The District Court correctly noted that "the liability of these Defendants turns on whether, based on the information they had, their decisions were unreasonable under the clearly established law." JA775. But nothing that Dr. Barrett told Mr. Horner or Ms. Wilborn created any probable cause for the County Defendants to seize Dr. Barrett and lock her in a psychiatric unit for five days. Their actions were unreasonable under clearly established law. There is no basis, therefore, to extend qualified immunity to Officer Horner, Office Luzier, and Mr. Galway or to excuse them from the false arrest of Dr. Barrett.

1. Dr. Barrett told nothing to Mr. Horner or Ms. Wilborn that indicated to Officer Hall or Officer Luzier that she was a threat.

The evidence shows that Dr. Barrett said nothing to Mr. Horner or Ms. Wilborn to make them think that she was a threat to herself or others. Thus, nothing that Mr. Horner or Ms. Wilborn said about their conversations with Dr.

Barrett to Officer Hall or Officer Luzier gave them probable cause to detain Dr. Barrett.

First, regarding Mr. Horner:

- When he telephoned the police, he was not doing so to alert the police that Dr. Barrett posed a danger to herself or others but to inquire whether they would be able to help her, including whether they could investigate her stalking claims. JA435:4-436:5.
- When Dr. Barrett described to Mr. Horner the incident involving the man outside of her office on July 6, she never told him that she had traveled up to the eleventh floor. Rather than attempt to confront the man, she told Mr. Horner that she had stayed in the lobby instead and spoke to the guard. Mr. Horner's notes of the conversation confirm her statement. JA445:13-447:12.
- Mr. Horner never told Officer Luzier and Officer Hall that he was concerned that Dr. Barrett would harm herself or others. JA607:6-9.
- Mr. Horner told Officer Hall and Officer Luzier that Dr. Barrett knew she was not permitted to bring a gun inside PAE's offices. JA699:1-7.

Then, Ms. Wilborn testified to the following about her conversation with Dr. Barrett on July 11, 2019:

- Dr. Barrett did not act violently, threaten anyone or indicate that she intended or planned to undertake any violent act towards herself or others. JA531:19-532:14; JA533:21-534:3; JA540:17-542:26.
- Dr. Barrett never said that she, herself, intended to take the phone away from the man she had observed in the courtyard outside her office building on July 6. JA419 ¶ 8; JA529:18-530:4.
- Dr. Barrett said becoming a "hard target" involved passive acts such as installing security cameras and taking different routes to work. JA536:12-21.
- Dr. Barrett never said she intended to harm any Pakistani men, and when discussing the treatment of stalkers in the Middle East, she was merely recounting some advice that Afghan acquaintances had given her about how Afghans – but not Dr. Barrett – would deal with stalking in the Middle East – not in the United States. Dr. Barrett never said she intended to follow the advice in this country. JA37:12-17; JA527:9-18; JA541:16-542:20.
- Dr. Barrett, when discussing the comments that President Trump had made about dropping bombs on Pakistan, was merely commenting on a political statement, and Dr. Barrett's comment did not lead Ms.

Wilborn to conclude that Dr. Barrett intended to hurt other people. JA525:13-526:22.

- Ms. Wilborn testified that although she thought it was possible that Dr. Barrett might mistake a PAE employee for one of her stalkers, Ms. Wilborn did not conclude that Dr. Barrett would harm that person. JA234:10-235:13; JA237:11-20. In addition, Mr. Lietzau testified that Dr. Barrett never mistook any of her South Asian or Middle Eastern co-workers for persons who were stalking her. JA579:18-580:15.

In short, nothing that Dr. Barrett said to Mr. Horner or Ms. Wilborn indicated that Dr. Barrett intended to harm herself or others, and so nothing they would have told the police would have reasonably indicated probable cause that Dr. Barrett was a threat to herself or others. The District Court, in reaching the opposite conclusion, relied on a written report that Ms. Wilborn provided to Officer Hall and Officer Luzier. JA776 (citing JA218-19). Some of the statements in that report actually indicate Dr. Barrett's disavowal of violence, such as Dr. Barrett's statement that if she had been stalked overseas, people there would have been handled it differently from how Dr. Barrett had reacted in the United States. JA776. But in any case, there is no evidence in the record that Ms. Wilborn ever provided that statement to the police *before* they issued the ECO for Dr. Barrett.

JA539:1-6. In that case, the document is far less reliable as an accurate reflection of what Ms. Wilborn told the police, and could just as easily be a document drafted to justify the issuance of the ECO, after the fact.

2. Dr. Barrett told nothing to Officer Hall or Officer Luzier indicating that she was a threat.

Similarly, when speaking to Officer Hall and Officer Luzier, Dr. Barrett said and did nothing that indicated her intent to harm herself or others:

- Dr. Barrett was dressed in business attire and appeared even-keeled and not disheveled. JA618:5-14.
- She remained calm and did not exhibit any violent actions. JA708:17-19.
- She never threatened herself or others. She never said that she wanted to hurt others. JA707:5-10.
- She said she did not intend to harm herself or others. JA629:14-19.
- She hoped that if she had to, she would have the courage defend herself, but nothing Dr. Barrett said made Officer Luzier think that she was referring to using her gun when she referred to defending herself. JA628:9-22.
- Officer Luzier telephoned the Arlington County DHS and learned that they had no history of mental health encounters with Dr. Barrett. JA637:16-638:9.

In her police report, Officer Hall wrote that Dr. Barrett "told me that she has spoken to various law enforcement officers and that they told her to become a hard target." JA720. But Officer Hall also wrote that becoming a hard target merely "meant for [Dr. Barrett] to be more vigilant and aware." JA720. She also testified that her understanding of becoming a hard target involved only Dr. Barrett "purchasing or owning four large dogs, installing a dash cam in her car, as well as a camera at the front door of her home." JA713:10-17. Becoming a hard target involved only passive measures and did not involve purchasing or owning a gun or committing any act of violence.

Dr. Barrett's involvement with the building adjacent to PAE's offices does not justify qualified immunity or summary judgment because of the substantial questions of material fact about that episode, arising from the conflicting accounts of Mr. Horner, Ms. Wilborn, Dr. Barrett, and the County Defendants about whether Dr. Barrett took the elevator up the floor of that building where she believed her stalker could be. JA424:16-18; JA445:13-447:12; JA615:5-20. Even Officer Hall and Officer Luzier disagreed with each other on what Dr. Barrett told them about that subject. JA625:7-18; JA711:11-712:3. This conflicting testimony, at most, gives rise to genuine questions of material fact about Dr. Barrett's actions in the building across the courtyard from PAE, thus precluding summary judgment.

3. Officers Hall and Luzier's actions indicate that Dr. Barrett was not a threat.

The actions of Officer Hall and Officer Luzier also demonstrate the lack of urgency justifying probable cause. First, on July 12, 2017, Officer Hall and Officer Luzier arrived at PAE's offices in response to Mr. Horner's non-emergency call. JA427:2-7; JA428:4-14; JA429:22-430:3. Neither Officer Hall nor Officer Luzier traveled to PAE's offices with their emergency lights or sirens activated in their police cars. JA602:17-603:1; JA696:4-7. Second, nothing Mr. Horner told the officers about Dr. Barrett on July 12, 2017 actually motivated Officer Hall or Officer Luzier to do anything that day; they left PAE's offices on July 12, 2017 without taking any further actions regarding Dr. Barrett that day. JA701:22-702:5. When Officer Hall and Officer were dispatched to return to PAE on July 13, the radio dispatch call did not indicate that the call was high priority. JA612:7-20. As Officer Hall and Officer Luzier drove to PAE's offices the second time, they did not turn on their emergency lights or sirens. JA612:21-613:2; JA706:16-22. Nothing about what Mr. Horner or Ms. Wilborn told the officers created probable cause to seize Dr. Barrett; nothing about what Dr. Barrett said to the officers created probable cause, and the officers' own actions indicate the lack of probable cause.

C. Case law shows that Dr. Barrett's seizure violated clearly established law.

The issuance of a paperless ECO against Dr. Barrett, contrary to the finding of the District Court, JA778, violated clearly established law, as shown from a comparison of Dr. Barrett's circumstances to existing cases in which the plaintiff was also subject to involuntary hospitalization. Such law exists from the Fourth Circuit's examination of mental health detentions. *See Raub v. Campbell*, 785 F.3d 876 (4th Cir. 2015) ("our cases and the governing statutes provide some guidance as to the standards for probable cause to seize someone for a mental health evaluation").

In *Gooden v. Howard County*, 954 F.2d 960 (4th Cir. 1992), police were "hurriedly called to the scene of a disturbance" where they received eyewitness reports of screaming and repeatedly heard screaming that indicated to them that someone was being hurt. *Id.* at 962, 965. No urgent call was made in Dr. Barrett's case, JA JA427:2-7; JA439:5-11, and after the police arrived in response to a non-emergency dispatch, the police witnessed only typical office place demeanor from Dr. Barrett, JA708:17-19, not screaming typical of an injured person.

In *S.P. v. City of Takoma Park*, an emergency dispatcher sent police to a man who said his wife might commit suicide. The distraught, crying woman made statements including "I want to leave this earth." 134 F.3d 260, 254, 273 (4th Cir. 1998). In *Raub*, the person seized had written Facebook messages threatening

"revenge" and "the start of you dying." 785 F.3d at 878. He refused to say if he intended to commit violence, and when asked if he intended to follow through on his threats, he said "I certainly do." *Id.* at 879. During questioning, the individual wore only a pair of shorts and experienced rapid mood swings. *Id.* at 879-80. Dr. Barrett, by contrast, remained calm in denying any desire to harm herself or others, and when asked if she meant to threaten others, she disavowed violence as the path of others elsewhere. JA527:9-18; JA541:16-542:20. In *Cloaninger v. McDevitt*, 555 F.3d 324 (4th Cir. 2009), the person seized allegedly threatened to kill himself and police officers, and medical providers told the police that the man had a history of threatening suicide. *Id.* at 328. The officers also believed he had a gun in his home. *Id.* at 332. In contrast, Dr. Barrett made no threats against the police, and the police learned that Dr. Barrett had no history of encounters with the Arlington DHS. JA637:16-638:9.

While Dr. Barrett did own a gun, mere gun ownership could not constitute probable cause to seize her; if it did, the Second Amendment right to bear arms would be a dead letter. The Supreme Court, however, has made it clear that the Second Amendment has both force and vitality to individuals such as Dr. Barrett. *See District of Columbia v. Heller*, 554 U.S. 570, 592(2008), *McDonald v. City of Chicago*, 561 U.S. 742, 749 (2010).

Dr. Barrett's case is thus analogous to *Bailey*, where police seized a person solely on the basis of a 911 call and in which the Fourth Circuit rejected a claim of qualified immunity. *Bailey*, 349 F.3d at 741-42. It is also analogous to this Court's decision in *Goines v. Valley Community Services Board*, 822 F.3d 159 (4th Cir. 2016), in which the allegations in the complaint led the Court to deny qualified immunity to the police officers who had involuntarily committed an individual. While Goines did own a gun, he offered to relinquish it, *id.* at 164, just as Dr. Barrett had. JA657:12-15. Goines made no threats to himself or others and had, like Dr. Barrett, initially approached the police thinking they were there to help. *Goines*, 822 F.3d at 170. The police simply refused to listen to Goines, as Officer Hall and Officer Luzier refused to do with Dr. Barrett. JA609:14-610:6; JA701:22-702:5; JA703:19-704:8. The *Goines* Court also faulted the police for refusing to conduct further investigation into Goines' actual complaint: "Further inquiry is useful in the sorts of situations where officers are not presented with emergency circumstances or a 'substantial likelihood' of harmful behavior." *Id.* at 170-71. In Dr. Barrett's case, Officer Hall and Officer Luzier were not presented with an emergency circumstance. Yet they, too, refused to investigate Dr. Barrett's claims of stalking and instead simply assumed that they were the wholly the product of mental illness.

These cases show that Officer Hall and Officer Luzier seizure of Dr. Barrett was unreasonable, lacked probable cause, and cannot support qualified immunity for Officer Hall and Luzier. And, because the detention of an individual for a mental health emergency without probable cause constitutes both a Fourth Amendment violation and false imprisonment, *Bailey*, 349 F.3d at 742, Officer Hall and Officer Luzier are liable for false imprisonment of Dr. Barrett as well.

D. The District Court erred in extending qualified immunity to Mr. Galway.

For reasons similar to Officer Hall and Officer Luzier, Mr. Galway is not entitled to qualified immunity. The information he had did not permit him to lawfully extend Dr. Barrett's detention. After Mr. Galway told Mr. Lietzau that he intended to release Dr. Barrett, JA581:2-21, Mr. Lietzau told Mr. Galway that he knew what Mr. Horner and Ms. Wilborn had told the police but still believed that Dr. Barrett was not a threat to herself or others. JA568:13-572:13; JA573:10-574:16; JA575:11-21; JA583:7-11; JA102:8-17. Then, while Mr. Lietzau was speaking to Mr. Galway, Dr. Barrett's work colleague, Nick Zyznieuski, said out loud for Mr. Galway to hear that he had zero concern that Dr. Barrett would pose a threat to anyone at PAE. JA585:15-586:2.

Dr. Barrett also told Mr. Galway that she was willing to surrender her gun, JA657:12-15, and she agreed with him to see a psychologist. JA658:11-16. Crucially, because Dr. Barrett volunteered for treatment, she no longer met the

statutory criteria for a TDO. That statute permits a TDO only if an individual is "*unwilling to volunteer* or incapable of volunteering for hospitalization *or treatment*." Va. Code Ann. § 37.2-809(B) (emphases added). Dr. Barrett was willing to volunteer, and had volunteered, for treatment. At that point, Mr. Galway had no basis to seek a TDO against her. *Id.*

The District Court cited Mr. Galway's reliance on Ms. Mapes' email describing the phone call she had had with Mr. Horner, but that email contained her interpretation of the second-hand and third-hand information about Dr. Barrett's statements. JA267. Reports about Dr. Barrett in that email were much less reliable than the first-hand evaluation of a non-threatening Dr. Barrett, which Mr. Galway should have relied upon to release her – indeed, there is evidence that Mr. Galway came close to doing just that, as he told Mr. Lietzau. JA581:2-21.

The District Court gave credence to Mr. Galway's claim that despite his doubts and despite Dr. Barrett's willingness to give up her gun and seek mental health treatment, he needed to detain her to address a "perceived *acute* risk." JA785 (emphasis added). But it was unreasonable for Mr. Galway to perceive an "acute" risk. Nothing had occurred in the preceding months and days that established any such risk. By July 2017, Dr. Barrett had been observing stalking behavior for fifteen months, without ever confronting any of her stalkers. JA548; JA684-88. The events of July 6, 2017, involving the man from the adjacent office

building, had occurred a full week before Defendants encountered Dr. Barrett. JA122:3-21; JA512. In that time, she took no action to confront the next-door stalker herself. Instead, Dr. Barrett continued doing what first started doing when she contacted the Fairfax County Police in July 2016, JA684: she turned to individuals she thought she could trust to investigate her stalking through nonviolent means. That included Mr. Lietzau, JA455:8-13; JA456:11-17; Mr. Horner, JA423:5-12; JA425:14-21; Ms. Wilborn, JA419 ¶ 8, and even the Arlington County Police Department, whom both Mr. Horner and Dr. Barrett believed, at least initially, could help Dr. Barrett investigate her stalking. JA438:5-22; JA483:21-484:2. The incident-free week after the events of July 6 should have indicated to Mr. Galway (and earlier, to Officers Hall and Galway) that Dr. Barrett was not substantially likely to harm herself or others *in the near future*. That finding of a threat of immediate harm, as required by statute, Va. Code Ann. § 37.2-809(B), was missing from Mr. Galway's conclusion. By petitioning to confine her under a TDO anyway, Mr. Galway violated Dr. Barrett's Fourth Amendment rights and falsely imprisoned her.

CONCLUSION

For the reasons set forth above, the Court should reverse the District Court's dismissal of Counts 3, 4, 6, and 9 of the Complaint and remand the action for further proceedings. The Court should further reverse the District Court's grant of

summary judgment to the County Defendants on Counts 1, 2, 7, 8, and 10 and remand the action for further proceedings.

Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE

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Dated: June 4, 2019

/s/ Hans H. Chen
Counsel for Appellant

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I hereby certify that on this 4th day of June, 2019, I caused this Brief of Appellant and Joint Appendix to be filed electronically with the Clerk of the Court using the CM/ECF System, which will send notice of such filing to all registered CM/ECF users.

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/s/ Hans H. Chen
Counsel for Appellant

In The

United States Court of Appeals

For The Fourth Circuit

KERRIN BARRETT,

Plaintiff – Appellant,

v.

PAE GOVERNMENT SERVICES, INC.; AREYAL HALL, Officer, Arlington County Police Department; WILLIAM K. LIETZAU; SEAN HORNER; SHANEDRIA WILBORN; BRIAN GALWAY; JOSHUA LUZIER, Officer,

Defendants – Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA AT ALEXANDRIA

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UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
DISCLOSURE OF CORPORATE AFFILIATIONS AND OTHER INTERESTS

Disclosures must be filed on behalf of all parties to a civil, agency, bankruptcy or mandamus case, except that a disclosure statement is not required from the United States, from an indigent party, or from a state or local government in a pro se case. In mandamus cases arising from a civil or bankruptcy action, all parties to the action in the district court are considered parties to the mandamus case.

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No. 19-1394 Caption: Kerrin Barrett v. PAE Government Services, et al.

Pursuant to FRAP 26.1 and Local Rule 26.1,

Areyal Hall, Joshua Luzier, and Brian Galway
(name of party/amicus)

who is appellees, makes the following disclosure:
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity? ☐ YES ☑ NO

2. Does party/amicus have any parent corporations? ☐ YES ☑ NO
If yes, identify all parent corporations, including all generations of parent corporations:

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4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation (Local Rule 26.1(a)(2)(B))? ☐ YES ☑ NO
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Signature: _____ Date: April 17, 2019

Counsel for: Appellees Hall, Luzier, and Galway

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I certify that on April 17, 2019 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by serving a true and correct copy at the addresses listed below:

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UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
DISCLOSURE OF CORPORATE AFFILIATIONS AND OTHER INTERESTS

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No. 19-1394 Caption: Barrett v. PAE Government Services, Inc., et al.

Pursuant to FRAP 26.1 and Local Rule 26.1,

PAE Government Services, Inc., William K. Lietzau, Sean Horner, and Shanedria Wilbom
(name of party/amicus)

who is Appellees, makes the following disclosure:
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity? ☐ YES ☑ NO

2. Does party/amicus have any parent corporations? ☑ YES ☐ NO
If yes, identify all parent corporations, including all generations of parent corporations:
PAE Government Services, Inc.'s parent corporation is Pacific Architects and Engineers, LLC, whose ultimate parent corporation is Shay Holding Corporation.

3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity? ☐ YES ☑ NO
If yes, identify all such owners:

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation (Local Rule 26.1(a)(2)(B))? ☑ YES ☐ NO
If yes, identify entity and nature of interest:

Chubb Insurance has a financial interest in the outcome of this litigation through its role as PAE Government Services, Inc.'s insurer.

5. Is party a trade association? (amici curiae do not complete this question) ☐ YES ☑ NO
If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

6. Does this case arise out of a bankruptcy proceeding? ☐ YES ☑ NO
If yes, identify any trustee and the members of any creditors' committee:

Signature: /s/ Meredith F. Bergeson Date: April 30, 2019

Counsel for: Appellees PAE, Lietzau, Horner, and Wilborn

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I certify that on April 30, 2019 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by serving a true and correct copy at the addresses listed below:

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April 30, 2019
(date)

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Appellees Arlington County Police Officers Areyal Hall and Joshua Luzier, Arlington County mental health examiner Brian Galway (collectively "County Appellees"), as well as Appellees PAE Government Services, William Lietzau, Sean Horner and Shanedria Wilborn (collectively "PAE Appellees"), by counsel, respectfully submit that the District Court's January 25 and April 9, 2019 Orders, by which the Court granted Appellees' motions to dismiss, and the County Appellees' motion for summary judgment, are plainly correct and should be affirmed.

STATEMENT OF ISSUES

1. Whether the Court should affirm the District Court's grant of summary judgment in favor of Officers Hall and Luzier ("Officers") on Counts 1 and 2, unlawful seizure, based on qualified immunity, when 1) the Officers weighed all of the information from numerous witnesses and acted reasonably, with probable cause, and in accordance with Virginia law; 2) Barrett presented no evidence below that the Officers violated clearly established law, while they presented expert testimony that their actions were objectively reasonable; and 3) there is no applicable precedent that put the Officers on notice that anything they did was unconstitutional.

2. Whether the Court should affirm the District Court's grant of summary judgment in favor of the Officers on Counts 7 and 8, state law false imprisonment, because: 1) Plaintiff failed to address Counts 7 and 8 in her opening brief and thus waived any argument the District Court erred; and 2) the Officers acted with a

good faith and reasonable belief in the validity of Barrett's detention pursuant to an Emergency Custody Order ("ECO").

3. Whether the Court should affirm the District Court's grant of summary judgment in favor of Galway on Count 10, unlawful seizure, when: 1) Barrett was detained pursuant to a Temporary Detention Order ("TDO") issued by a magistrate which was an intervening, superseding cause insulating Galway from liability; 2) Galway interviewed Barrett and numerous witnesses over several hours and obtained the consensus of numerous mental health professionals who uniformly believed that he should petition a Virginia magistrate who issued a Temporary Detention Order; 3) Barrett presented no evidence below that Galway violated clearly established law, while Galway presented expert testimony that his actions were objectively reasonable; and 4) there is no applicable precedent that put Galway on notice that anything he did was unconstitutional.

4. Whether the Court should affirm the District Court's dismissal of Counts 3 and 4 for failure to state a claim under § 1983 against Horner and Wilborn when the Complaint fails to plausibly allege that these "private actors" had a mutual agreement or common plan with the Officers to issue the ECO and unlawfully detain Barrett without probable cause.

5. Whether the Court should affirm the District Court's dismissal of Counts 6 and 9 for failure to state a claim of conspiracy under § 1983 and a claim of

conspiracy to falsely imprison under Virginia law when the Complaint fails to plausibly allege that the Officers had a mutual agreement or common plan with Horner, Wilborn, Lietzau and PAE to issue the ECO and unlawfully detain Barrett without probable cause.

6. Whether the Court should affirm the District Court's dismissal of the claim for punitive damages when Barrett does not allege facts to support a claim of conspiracy or willful, wanton, or reckless conduct.

STATEMENT OF THE CASE

On January 25, 2019, the District Court granted PAE Appellees' Motion to Dismiss Plaintiff's Second Amended Complaint, and County Appellees' Motion to Dismiss Counts 6, 9, 12, 13, and 14 of the Second Amended Complaint and Plaintiff's Request for Punitive Damages.

On April 9, 2019, the District Court granted County Appellees' Motion for Summary Judgment on the remaining counts in the Second Amended Complaint and entered judgment against Barrett.

I. Barrett's Appeal of Summary Judgment Order

The following record evidence addresses Barrett's appeal of the District Court's granting summary judgment in favor of the County Appellees on Counts 1, 2, 7, 8, and 10 of her Second Amended Complaint.

A. Barrett Meets with Sean Horner on July 10, 2017

1. On July 10, 2017, Barrett, an employee of PAE, approached Sean Horner, PAE's Security Manager, about her belief that "Bangladeshi/Southeast Asian" men had been stalking her around the world for the past two years. JA 134, 155-8, 161-167.

2. Barrett told Horner that while she was paranoid, she believed that a complex, sophisticated network of stalkers, who were primarily Southeast Asian males and never the same person, watched her at all times from every corner, never using the same car. Barrett told Horner that the stalking had started in Dubai in 2015 and that it picked up immediately upon her return to the United States in 2016. JA 149-50, 159, 162-4. Horner kept detailed notes of his meeting. JA 175-9.

3. Barrett said that her house was bugged, that her emails were compromised and that the stalkers were able to track her through her phone to the degree that they knew what floor of a building she was on. She claimed that the stalkers would knock on her door in the middle of the night and whistle at her dogs to make them bark. JA 163-6. Horner had previously been employed by the Central Intelligence Agency, and during his employment developed knowledge of the various types of intelligence networks that existed around the world, and knew of no "network that

had the means to effect and carryout the level of network that [Barrett] described." JA 159-61.

4. Barrett told Horner that on July 6, 2017, she had had a "breakthrough" in identifying where the centralization of stalkers, or their "hive," was located. JA 139. She said that she was walking through a public courtyard outside the office and saw a "Bangladeshi man" look at her and take out his cell phone. She had never seen this man before but followed him into another office building and learned that he worked on the 11th floor for the Federal Deposit Insurance Corporation ("FDIC"), where she now believed the "hive" of stalkers was located. JA 135-9, 164-7. Barrett stated that "those types of people" are accountants so it makes sense for the stalkers to be in the FDIC. JA 166-7.

5. Barrett asked Horner to accompany her to the FDIC offices to "confront" the stalkers, but Horner refused and advised Barrett not to do so either. JA 158, 178.

6. Horner asked Barrett if she owned a gun. Barrett said she did not own a gun but was considering getting one. JA 140. She also told Horner that she had hired a private investigator.[1] JA 168-9.

[1] Barrett did not tell Horner that the private investigator she hired, Andrew Rogers, had found no evidence that she was being stalked. JA 183. He reviewed dash cam video that Barrett had provided as proof that she was being stalked but concluded that the video merely showed a man apparently meeting a girlfriend, not stalking Barrett. JA 190-4. Rogers also followed Barrett to dinner and did not observe any surveillance, despite Barrett's claim that she was surveilled during that time. JA 195-

7. In an email, Horner asked Barrett to provide a written statement documenting the stalking and Barrett initially agreed. JA 201-02. However, she later wrote to Horner that she had changed her mind because he had referred to Barrett's claims as "possible stalking" and because "if we are starting with disbelief, I can tell you from experience that there is no point in proceeding." JA 204.

8. Barrett stated in a subsequent email to Horner that "there is absolutely nothing that can be done about my situation legally," that she has "finally determined [the stalkers'] location on Fl. 11 in the adjacent building," and that she is "now fully aware of the complexity and severity of the war we are fighting, because I live it every day." JA 208. With that, she ended the discussion with Horner. *Id.*

B. Barrett Meets with Shanedria Wilborn

9. Horner asked Shanedria Wilborn, PAE's Human Resources Manager, to speak with Barrett because Barrett would not speak with Horner further. JA 141-4. Wilborn spoke with Barrett on July 11, 2017, and documented her meeting in a detailed statement provided to the Arlington County Police Department. JA 218-9.[2]

10. Barrett told Wilborn that her problems with stalking started when she was living in Dubai and had engaged a Pakistani real estate agent to help a friend buy a

200. When Rogers told Barrett his finding that she was not being stalked, she asked him if he was working for the stalkers. JA 200.

[2] Wilborn not only provided this statement, but recounted the details to the Officers. JA 260-262.

house. JA 218. She said that shortly after meeting with the real estate agent, she believed that she was being followed and that a group of Southeast Asian men chased her and her dogs into her home. *Id.* She said that this harassment continued for several months and that she then decided to move back to the United States. *Id*; *see also* JA 226-7.

11. Barrett told Wilborn that when she moved back to the United States, a "hive" of Southeast Asian men followed her here. JA 218. She said that these men follow her every move and that they had hacked and tracked her through her phone. JA 219. She said that the stalking had been escalating and was becoming more aggressive. JA 258-9.

12. Barrett told Wilborn that she has been surveilled in the courtyard outside of the PAE office building and that there was a "nest" of stalkers working for the FDIC on the 11th floor of the adjoining office building. JA 219, 238-9. She said that she saw one of the men talking on his cell phone about her with the "hub" of the stalking, located in Dubai, and that she needed to walk up to the man and take the phone from him. JA 219.[3]

[3] Barrett, at p. 45 of her brief, falsely claims that Wilborn testified in her deposition that Barrett never stated that she needed to personally take that phone from the stalker, but the cited portion of Wilborn's testimony, JA 529, confirms Barrett stated that "she just had to take [the phone]."

13. Barrett reported to Wilborn that, despite the highly restricted access to PAE offices, a stalker had walked up to Barrett's desk in the rear of the offices and said "hello Kerrin." JA 219. Wilborn said that given the high-level security in the office it was unlikely that a stalker gained access and was able to find Barrett's desk, JA 248-50, but was concerned that Barrett would mistakenly identify as a "stalker" one of the many men PAE employs who appear to be Middle Eastern or Southeast Asian and take action against what she wrongly perceived as a threat. JA 224, 232-5, 250-2.

14. Barrett told Wilborn that nothing could be done legally to stop the stalking. JA 227, 229-30. She said that "they are an uncivilized society and they have to be killed." JA 244. She said that she had been advised that these stalkers never give up and that the only way to deal with them is to kill them. JA 228-9.[4]

15. Contrary to what she told Horner about not owning a gun, Barrett told Wilborn that she has a Glock, that she goes to the range to fire it and that when she does so, she keeps her phone with her so the stalkers, who are tracking her through her phone, know that she is at a gun range. JA 219.

[4] These statements speak for themselves and refute Barrett's claim, at Appellant's Brief, p. 45, that she never gave any indication of a disposition towards violence against others.

C. Horner Contacts Arlington County

16. Horner and Wilborn became concerned that Barrett was a potential threat to herself and others.[5] JA 154-7, 232-7, 251-4, 256-7. On July 12, Horner contacted the ACPD, and Arlington police dispatch records note that Horner called, requesting to speak with officers regarding an employee who has become increasingly delusional and believes she is being followed by people in an adjacent building. JA 272. Horner also reported to the police that the employee has a firearm and mentioned that the only way to get rid of people following her is to use the firearm. *Id.*[6]

The Officers were dispatched to respond to Horner's call. Horner recited to the Officers the complete details of his and Wilborn's discussions with Barrett about her stalking allegations. JA 145-6, 170-1. As Barrett was not at the office on July

[5] Their concerns were warranted. Several months earlier, when Barrett had hired a private investigator to look into her claims of stalking, she told the investigator during a recorded interview, "I would have to get someone to stop it. I probably shouldn't say, I, mean it's not really legal, but someone would have to go over there and scare the living shit out of them at the easiest, if not practically beat them to death, and then it would stop." JA 266-7.

[6] The information Horner provided to the police during this call speaks for itself and refutes the claims in Appellant's Brief, p. 44, that Horner did not call the police to report the potential danger Barrett posed to herself and others and was otherwise not concerned that Barrett posed such a threat.

12, the Officers suggested that Horner contact the Arlington County Department of Human Services ("DHS"), and, if necessary, call the police department when Barrett was at the office so that they could speak to her. JA 148-9, 151. Horner contacted DHS the same day.

17. Horner advised Alexis Mapes, Emergency Services Supervisor, of what Barrett had told him and Wilborn. JA 152-3. Mapes then sent an email to her staff, including Galway, advising that Barrett was an employee who had been increasingly paranoid while at work, including fears that she was being followed by Middle Eastern men at work and at home, where they were whistling at her dog. JA 276.

18. Horner told DHS that Barrett had told him that she followed a man to a nearby building to determine who he was and reported that she "found the nest." He told DHS that Barrett had reported to him that she did not have a weapon but told Wilborn that she did have a weapon and that the "only way to solve this is to kill them." JA 276. Horner confirmed that Mapes' email accurately summarized what he had told her. JA 173-4.

D. The Officers Meet with Barrett

19. On July 13, 2017, Horner called the ACPD, and the Officers were again dispatched to PAE's offices. JA 274-5. Wilborn reiterated her concerns about Barrett misidentifying a PAE employee as a stalker, about Barrett's statements that

there was no legal way to solve the stalking, and that she had been told that the only way to deal with the stalkers is to kill them. JA 240-1, 251-2, 261-2.

20. The Officers interviewed Barrett, who told Hall, like she told Horner, that she is paranoid. JA 308-9. Barrett repeated her claims that she was under constant surveillance, that men always following her in black SUVs and that the men following are always different. JA 270-1, 308-9, 312-13. She told Hall that she had been advised to become a "hard target," that she owns a gun and intends to apply for a permit to carry a concealed handgun and that "hopefully if something happens I'll have the courage to defend myself." JA 270-1, 311.[7]

21. Barrett falsely represented to the officers that she had never had mental health treatment or been diagnosed with a mental illness.[8] JA 315-6.

22. Based on the totality of the information provided by Horner, Wilborn and Barrett, Hall issued a "paperless" ECO pursuant to Virginia Code § 37.2-

[7] Barrett does not clearly recall what she told the Officers. JA 268-9.

[8] In 2016, Barrett was diagnosed by her psychologist, Dr. Tilmer Engebretson, as suffering from chronic post-traumatic stress disorder. JA 286. He diagnosed her with this condition on her first visit to him, at which time he informed Barrett of his diagnosis. JA 288, 293-4. Barrett completed fourteen psychotherapy sessions with Dr. Engebretson, JA 286, during which they discussed whether the stalking was real. JA 290-1. In December 2016 she cancelled her upcoming appointment and never returned to see Dr. Engebretson. JA 286.

Barrett also falsely denied having any prior mental health treatment to Galway, to a doctor and other staff at Virginia Hospital Center, JA 295-6, and on an application for a federal government clearance. JA 360.

808.G and transported Barrett to Virginia Hospital Center for further evaluation. Luzier was Hall's backup officer and did not issue the paperless ECO or detain Barrett. JA 318, 324-5, 328.

E. Galway Interviews Barrett

23. At the hospital, Barrett was interviewed by Brian Galway as a designee of the Arlington County Community Services Board ("ACCSB") pursuant to Virginia Code § 37.2-809.A. JA 339. He has had 18 years' experience as a designee of ACCSB and has attended countless civil commitment hearings, serving as petitioner for commitment. During 12 of the years with ACCSB, he served as the main ACCSB representative. JA 336-8.

24. Before speaking with Barrett, Galway had read JA 276, spoken with Wilborn and Dr. Peter Liu in the Emergency Room and reviewed the VHC record concerning Barrett. JA 343, 345, 350, 352-3.

25. He discussed Wilborn's statement to the police with her, and she reiterated the contents of the statement, confirming that Barrett had made the statements directly to her. JA 245-6, 346-8.

26. Dr. Liu told Galway the information he had received from the police, which included what Barrett had told PAE security. JA 350-1. Dr. Liu also told Galway that he was concerned that Barrett was a threat to herself or others. JA 350-1.

27. William Lietzau, Barrett's supervisor and PAE's Vice President of Government Services Division, told Galway that Barrett was "a bit off" but that he did not think she would be likely to hurt anyone. JA 17 (¶ 10), 360. However, Lietzau also told Galway that he had not heard the statements Barrett had made to Horner and Wilborn and could not comment on them. JA 377-8. Lietzau testified in his deposition that he was surprised that Barrett had told a private investigator she wanted to hire someone to beat the stalkers "almost to death" and that he did not know Barrett very well. JA 379-80.[9]

28. Galway's investigation took several hours. He interviewed Barrett, who claimed that the stalking was real. JA 356-7. He weighed what he read in JA 276, and had been told by Wilborn, Lietzau, Dr. Liu, and Barrett. JA 357-8. Galway noted a significant chance that Barrett suffered from PTSD and possibly delusional disorder. *Id.* Contrary to what Barrett told Horner, she admitted that she owned a gun but claimed it was "locked away." *Id.* at 151-2. And contrary to what Barrett had told Wilborn, she told Galway that she had never used the gun. *Id.*

29. Barrett also falsely represented to Galway that she had never had mental health treatment or been diagnosed with a mental illness. JA 354-5. Despite Barrett's

[9] In her Second Amended Complaint, Barrett alleges that Lietzau lied to Galway about Barrett, alleging that Lietzau "should have told Mr. Galway the truth; that he did not believe [Barrett] was capable of hurting others," JA 48, ¶ 176, but that Lietzau instead sought her involuntary commitment on false pretenses. JA 49, 63-4, 66, 68, ¶¶ 181, 275, 281, 294, 295, 306-7.

denials, Galway's evaluation was that she appeared to be suffering from PTSD, the same diagnosis made by Barrett's psychologist, Dr. Engebretson. JA 358.

30. Galway tried to get Barrett to agree to voluntarily sign herself into the hospital, but she adamantly refused. JA 371-2. Barrett also resisted the suggestion that she seek outpatient treatment. JA 367. While Barrett eventually agreed to see a psychologist, she did not commit to a specific person or timeframe for doing so. JA 367-8.

31. Galway returned to his office and discussed Barrett's case with his supervisor, who brought in other mental health workers to discuss the matter. During this team meeting, Galway and others discussed whether there was a less restrictive setting that would be appropriate, including whether Barrett would seek treatment voluntarily. JA 362-3. The group discussed the conflicting information about Barrett's gun and the reported statements about killing others. JA 366.

32. Galway did not believe that Barrett understood the seriousness of the situation and had concerns about her judgment. Her claims of stalking and wanting to confront the stalkers, her statement that the only way to stop the stalkers was to kill them, and her owning a gun were significant risk behaviors that led him to conclude that Barrett was a risk to herself and others and that the matter should be presented to a magistrate. The team agreed with Galway's conclusion. JA 369-70.

33. Based on his interview and all of the additional information that had been provided by Horner and Wilborn, Galway filed a Petition for Involuntary Admission for Treatment, JA 381-2, and a magistrate issued a TDO JA 383-4, pursuant to Virginia Code § 37.2-809.

F. Barrett is Evaluated by Drs. Liu and Lomax

34. When Barrett was brought to the Virginia Hospital Center emergency room, Dr. Liu evaluated her and agreed with the issuance of the TDO, noting in Barrett's chart, JA 386, "I believe further investigation is necessary to either rule in delusional paranoia d/o vs actual being stalked by multiple Middle Eastern men." *Id.* Dr. Peggy Lomax, a psychiatrist at the hospital also recommended in her report that Barrett be admitted. JA 388, 390.

35. Dr. Lomax and Virginia Hospital Center had the statutory authority to release Barrett before a civil commitment hearing, pursuant to Code of Virginia § 37.2-813, but they chose not to do so, affirming their view that Barrett met the criteria for civil commitment.

36. At a civil commitment hearing on July 17, 2017, where neither Horner, Wilborn, Hall, Luzier, nor Galway were present, a special justice dismissed Barrett's case. JA56-57 at ¶¶ 230, 237.

II. Barrett's Appeal of Motion to Dismiss Order

The following allegations from Barrett's Second Amended Complaint relate to Barrett's appeal from the District Court's dismissal of Counts 3, 4, 6, and 9 of the Second Amended Complaint for failure to state a claim.

A. Barrett Reports Stalking Incidents to PAE Appellees

Barrett alleges that the stalking that she experienced while living and working in the Middle East followed her when she returned to the United States. JA 25 (¶ 50). Barrett told PAE co-workers about the stalking. JA 28 (¶ 60). Around the fall of 2016, Barrett also spoke to Lietzau about this stalking. JA 25 (¶ 50).

On or around July 6, 2017, Barrett allegedly saw a South Asian man outside her office building, who, as soon as he saw her, reached into his pocket, pulled out his phone, and made a call ("July 6, 2017 Incident"). JA 30 (¶ 68). On or around July 10, 2017, Barrett told Lietzau about the July 6, 2017 Incident and asked him what she should do. JA 30 (¶ 69). Lietzau replied that it looked as if she had been "bugged" and that someone had put something in her purse. JA 30 (¶ 69). He suggested that Barrett speak with Horner. JA 30 (¶ 69).

At the end of the day on July 10, 2017, Barrett met with Horner and told him about the July 6, 2017 Incident and the stalking that she had been experiencing. JA 30 (¶ 69). During their meeting, Horner asked Barrett if she owned a gun, and she replied that she did. JA 30-31 (¶¶ 71, 73).

B. PAE Appellees Allegedly Derive a "Plan" to Discredit Barrett

Barrett alleges that on or around July 11, 2017, Lietzau, Horner and Wilborn agreed on a plan to use Barrett's reports of stalking at PAE's offices to discredit her by falsely claiming that she was a threat and danger to others and to require her removal or commitment to a hospital for psychiatric examination. JA 25, 32 (¶¶ 49, 79). The purpose of this alleged plan was to avoid scrutiny and exposure of PAE's alleged fraudulent reporting under a contract and its alleged failure to maintain security in its offices. JA 25, 32 (¶¶ 49, 79).

On July 11, 2017, Horner contacted the Arlington County Police Department ("ACPD") and spoke with the Officers about "coming to PAE's offices to remove Dr. Barrett from the workplace and having her sent to a hospital for examination based on the pretense that she was a threat and danger to others." JA 32-33 (¶ 80). That same day, "someone from PAE (likely Mr. Horner or Ms. Wilborn)" contacted Arlington County Department of Human Services ("DHS") "to claim that Dr. Barrett was a threat and to discuss committing her to a psychiatric facility for a mental illness." JA 32-33 (¶ 80).

Around 6:00 p.m. on July 11, 2017, Wilborn met with Barrett. JA 33 (¶ 81). During this meeting, Barrett described the July 6, 2017 Incident and the background of her concerns. JA 33 (¶ 81). During this meeting, Wilborn asked Barrett if she

would be willing to talk to the ACPD and have them investigate the July 6, 2017 Incident. JA 33 (¶ 83).

C. The Officers and the PAE Appellees Allegedly Agree to the "Plan"

According to Barrett, at Horner's request, the Officers visited PAE's headquarters in Arlington on July 12, 2017 and met with Horner "and possibly others at PAE." JA 34 (¶ 91). Barrett alleges that "[a]t that meeting, the officers agreed to remove Dr. Barrett from the workplace, regardless of her answers to the police officer's questions, based on her ostensibly being a threat and danger to others." JA 34 (¶ 91). Because Barrett was working from home on July 12, 2017, Barrett alleges that "Mr. Horner, Officer Hall and Officer Luzier agreed that the police would return to PAE's offices to remove Dr. Barrett from the workplace and have her sent to a hospital for evaluation." JA 35 (¶ 92).

D. The Officers Meet with Barrett and Issue the ECO

On July 13, 2017, the Officers came to PAE's offices to meet with Barrett. JA 36 (¶ 98). Before meeting with Barrett, Barrett alleges that they spoke with Lietzau, Horner, and Wilborn for at least 30 minutes "to discuss the plan of removing Dr. Barrett from the workplace, regardless of her answers to the police officer's questions, based on the pretense that she was a danger and a threat to others and needed to be sent to the hospital for a mental evaluation." JA 36 (¶ 98).

Wilborn asked Barrett to speak with the police who were waiting in a conference room. JA 36 (¶ 97). Barrett went to meet the police because she thought that she was reporting the July 6, 2017 Incident. JA 36 (¶ 97). Luzier told Barrett that he wanted to ask her some questions, and she agreed. JA 36 (¶ 101).

According to the Second Amended Complaint, Luzier asked Barrett what had happened, and she described the July 6, 2017 Incident and "explained the background of the stalking behavior and the related cultural issues." JA 36-37 (¶ 103). Wilborn and Luzier then left the conference room together. JA 37 (¶ 106). Barrett alleges that "[w]hile outside the room, Officer Luzier continued to discuss with Mr. Lietzau, Mr. Horner and Ms. Wilborn the plan of removing Dr. Barrett from the workplace and sending her to the hospital for a mental evaluation, regardless of how she answered Officer Luzier's questions." JA 37 (¶ 106).

Luzier returned to the conference room with Ms. Wilborn and "began questioning Dr. Barrett about her gun." JA 37 (¶ 107). She told him that she had obtained a weapon, that she had attended a National Rifle Association ("NRA") self-defense training course for women, that she had not yet applied for a concealed carry permit, that she was uncomfortable carrying a weapon and that she could not bring it into the workplace. JA 37 (¶ 107).

Luzier and Wilborn left the conference room together a second time while Hall remained. JA 38 (¶ 108). Barrett alleges that "[w]hile outside the room, Officer

Luzier continued to discuss with Mr. Lietzau, Mr. Horner and Ms. Wilborn the plan of removing Dr. Barrett from the workplace and sending her for a mental evaluation, regardless of her answers to Officer Luzier's questions." JA 38 (¶ 109).

When Luzier and Wilborn returned to the conference room, Luzier asked Barrett if she practiced with the gun and if she carried it. JA 38 (¶ 110). Barrett replied that she did not carry the gun and had not practiced using it since the taking the NRA course on May 14, 2017. JA 38 (¶ 110).

Luzier and Ms. Wilborn left the conference room a third time. JA 38 (¶ 108). Barrett alleges that "[w]hile outside the room, Officer Luzier continued his discussion with Mr. Lietzau, Mr. Horner and Ms. Wilborn about removing Dr. Barrett from the building and sending her for a mental evaluation, regardless of her answers to Officer Luzier's questions." JA 39 (¶ 114).

Luzier then returned to the conference room without Wilborn and questioned Barrett about the men following her, and she explained the cultural background of these men and their practices of stalking and violent intimidation. JA 39 (¶¶ 115-116). She also explained her efforts to report the stalking to the Fairfax County Police Department, which seemed to help keep the stalkers away from her home. JA 39 (¶ 117).

Barrett alleges that during the meeting, Luzier said that he was going to take Barrett to DHS who knew more about this "'surveillance thing than [he did]." JA 40

(¶ 123). When Barrett said that she was not going anywhere, Luzier said that he was "making an ECO" or Emergency Custody Order. JA 41 (¶ 125). Eventually, Barrett was subsequently escorted from the building and taken to the Emergency Room at Virginia Hospital Center. JA 42 (¶¶ 136-139).

SUMMARY OF ARGUMENT

The District Court should be affirmed. Barrett's bizarre and worrisome behavior and statements led to two representatives of her employer, two police officers, numerous mental health professionals, and a Virginia magistrate to all uniformly conclude that she should be detained as a danger to herself or others.

This Court should affirm the District Court's grant of summary judgment to the Officers on Barrett's unlawful seizure claims against them on qualified immunity grounds. The Officers acted with probable cause, after carefully weighing information from multiple sources, in executing an emergency custody order ("ECO") to have Barrett evaluated by mental health professionals. And, even if the Officers did not act with probable cause, there is no controlling precedent in this Court that clearly establishes that reasonable officers should have been on notice that they were violating Barrett's constitutional rights.

Likewise, the Court should affirm the District Court's grant of summary judgment to Galway on Barrett's unlawful seizure claim against him on qualified immunity grounds. Galway carefully evaluated Barrett and consulted with her co-

workers and a team of mental health professionals to determine that probable cause existed to petition a magistrate for a TDO for Barrett, which a magistrate granted. Further, there are no Fourth Circuit cases that would have put Galway on notice that his actions violated Barrett's constitutional rights. Finally, the Virginia magistrate's issuance of the TDO was an independent intervening act that caused Barrett's detention, which is an alternative basis for affirming the District Court.

Barrett failed to brief her appeal of the District Court's dismissal of her state law false imprisonment claims against the Officers and therefore waived those claims.

The Court should affirm the District Court's dismissal of Barrett's § 1983 "joint action" claims and her conspiracy claims under § 1983 and Virginia law because her allegations, even when construed in the light most favorable to her, do not plausibly allege a meeting of the minds of the co-conspirators or that County Appellees were acting in concert with the other co-conspirators to unlawfully detain Barrett. Other than rank speculation and conclusory assertion, Barrett's complaint offers nothing to plausibly suggest that there was such a meeting of the minds or that the Officers knew that she was not a danger, but agreed with the PAE Appellees to detain her anyway.[10]

[10] This Court has recognized the danger of litigants adding unfounded conspiracy allegations to block summary judgment against weak claims. *Gooden v. Howard County*, 954 F.2d 960, 970 (4th Cir. 1992).

Finally, the Court should affirm the District Court's dismissal of Barrett's punitive damages claim because she did not allege facts to support her conspiracy claims, that County Appellees acted in a willful or wanton manner, with reckless or callous indifference to Barrett's rights, or that they acted with an evil motive or intent in detaining Barrett.

STANDARD OF REVIEW

This Court reviews *de* novo an award of summary judgment based on qualified immunity. *Odom v. S.C. Dep't of Corr.*, 349 F.3d 765, 769 (4th Cir. 2003). Qualified immunity is a doctrine that balances two important interests—the need to hold public officials accountable when they exercise power irresponsibly and the need to shield officials from harassment, distraction, and liability when they perform their duties reasonably. To establish entitlement to qualified immunity, an officer must show (1) that the facts, taken in the light most favorable to the plaintiff, do not establish a violation of a constitutional right, or (2) that the alleged right, even if violated, was not "clearly established" at the time of the incident. Accordingly, even when the facts in the record establish that the official's conduct violated a plaintiff's constitutional rights, the officer still is entitled to immunity from suit if a reasonable person in the officer's position could have failed to appreciate that his conduct would violate those rights. *Leibelson v. Cook*, 761 Fed. Appx. 196, 201 (4th Cir. 2019).

When qualified immunity is raised as a defense, with the defendant demonstrating that he acted within his discretionary authority, the plaintiff must produce evidence that the defendant's actions violated clearly established law. *See S.P. v. City of Takoma Park, Md.*, 134 F.3d 260, 265 (4th Cir. 1998) (affirming district court's dismissal based on qualified immunity because the plaintiff "failed to allege facts demonstrating the violation of clearly established law").

This Court reviews *de novo* the dismissal of a claim under Fed. R. Civ. P. 12(b)(6) for failure to state a claim. *Ruttenberg v. Jones*, 283 Fed. Appx. 121, 128 (4th Cir. 2008). "[A] Rule 12(b)(6) motion should only be granted if, after accepting all well-pleaded allegations in the plaintiff's complaint as true and drawing all reasonable factual inferences from those facts in the plaintiff's favor, it appears certain that the plaintiff cannot prove any set of facts in support of his claim entitling him to relief." *Edwards v. City of Goldsboro*, 178 F.3d 231, 244 (4th Cir. 1999). Additionally, a complaint must be dismissed if it does not allege "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007) (emphasis added). As the *Twombly* Court explained, "a plaintiff's obligation to provide the 'grounds' of his 'entitlement to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Id.* at 555.

ARGUMENT

I. THE DISTRICT COURT'S GRANT OF SUMMARY JUDGMENT TO HALL, LUZIER AND GALWAY WAS PROPER.

A. Qualified Immunity Generally.

Qualified immunity protects law enforcement and other government officials from civil damages liability for alleged constitutional violations stemming from their discretionary functions. *Raub v. Campbell*, 785 F.3d 876, 880-81 (4th Cir. 2015) (mental health examiner entitled to qualified immunity from claims relating to his examination of appellant and petition for TDO). The protection is broad, extending to "all but the plainly incompetent or those who knowingly violate the law, and officials are not liable for bad guesses in gray areas; they are liable for transgressing bright lines." *Id.* "Mere mistakes in judgment, whether the mistake is one of fact or one of law," are protected. *Hope v. Pelzer*, 536 U.S. 730, 752 (2002). Officials are immune from suit when their actions were objectively reasonable under the circumstances. *Raub*, *supra.*

Determining whether qualified immunity applies is a two-pronged inquiry: (1) whether the facts make out a violation of a constitutional right and (2) whether the right at issue was clearly established at the time of Appellee's alleged misconduct, and a court may address either prong of the analysis first. *Id.* For a right to be clearly established, the law must have been sufficiently clear that every reasonable official would understand that what he is doing is unlawful. *District of Columbia v. Wesby*,

138 S. Ct. 577, 589-90 (2018) (legal principle must be settled law, dictated by controlling authority or a robust consensus of cases; it is not enough that the rule is suggested by then-existing precedent); *City of Escondido, California v. Emmons*, 139 S. Ct. 500, 202 L. Ed. 455, 459-60 (2019) (specificity in identifying clearly established right especially important in Fourth Amendment context, where it is sometimes difficult for an officer to determine how the relevant legal doctrine will apply to factual situation).

Indeed, before concluding that an officer can be held liable for a Fourth Amendment violation, a decision from the Supreme Court, Fourth Circuit or Virginia Supreme Court must be identified where an officer acting under similar circumstances was held to have violated the right in the same way. *Yates v. Terry*, 817 F.3d 877, 887 (4th Cir. 2016) (in determining whether a reasonable officer would know that his conduct was unlawful, the Court "need not look beyond the decisions of the Supreme Court, this [Fourth Circuit] court of appeals, and the highest court of the state in which the case arose."). And there are no decisions within the Fourth Circuit that clearly establish that any reasonable police officer or mental examiner would have been on notice in the circumstances

faced by the County Appellees that they were violating Barrett's constitutional rights.[11]

This is particularly important here, as cases applying the concept in the mental health context are not easily reduced to bright-line rules. *Goines v. Valley Cmty. Servs. Bd.*, 822 F.3d 159, 170-71 (4th Cir. 2016) (upholding dismissal of claims against mental health examiner who sought a TDO). In particular, civil commitment involves a number of judgment calls, which can be especially difficult for officers with little or no training in mental health issues. *Id. See also Raub v. Campbell,* 3 F. Supp. 3d 526, 534 (E.D. Va. 2014), *aff'd* 785 F.3d 876 (4th Cir. 2015) (inexact science of determining whether a person poses a serious threat of public danger is a quintessential gray area); *S.P. v. City of Takoma* Park, 14 F.3d 260, 272 (4th Cir. 1998) ("Unfortunately, the law governing seizures for psychiatric evaluations is not nearly as well-defined as in the area of criminal law"); *Gooden, supra*, 954 F.2d at 967-8 ("We are aware of no cases that define 'dangerousness' with the requisite particularity or explain what type or amount of evidence would be constitutionally sufficient to establish probable cause of a dangerous condition.").

[11] Further, the County Appellees adduced expert testimony from a police officer, a university professor who trains police officers in mental health detentions, and a practicing mental health examiner, all of whom concluded that the County Appellees acted as a reasonable police officer and mental health examiner in taking the actions they did. Copies of their reports and affidavits are found at JA 396-415. Barrett adduced no contrary expert testimony.

This Court has considered only two cases involving the detention of a person on the belief that he may be a danger to others, and both involved mental health examiners. In *Raub*, 785 F.3d at 883-4, this Court noted that while its prior decisions outline the standard for probable cause to detain an individual on the belief that he might be a danger to himself, those decisions provide less guidance on whether to detain an individual on the belief that he might be a danger to others. *Id.* (mental health evaluator entitled to qualified immunity for seeking TDO when he relied on police officers' initial observations, content of Facebook posts, information provided by former colleagues and his own evaluation and observations). The *Raub* Court also noted that no prior Fourth Circuit case delineated the appropriate standard for when a mental health evaluator must decide whether to recommend a temporary detention on the belief that an individual might be a danger to others; *id.*; those cases also did not speak to the necessity, length and substance of a psychological evaluation, nor to the evidence needed to support probable cause in such a circumstance. *Id.*

In *Goines*, the only other Fourth Circuit case involving a potential threat to others, the Fourth Circuit held that a mental health examiner was entitled to qualified immunity for seeking a TDO when, like Galway, he relied on information from police officers and his observations of Barrett's affect and statements. *Goines*, 822 F.3d 159, 170-71.

Cases within the Fourth Circuit involving police officers who detained individuals on the belief that they might be a threat to self, while applying a different standard, also support the actions of Hall. *See Gooden, supra*, 954 F.2d at 966-7 (*en banc* reversal of denial of qualified immunity on summary judgment; noting the potential dangers that officers' actions prevented in detaining appellant based on multiple complaints, personal observations and their own investigations.); *S.P. v. City of Takoma Park*, 134 F.3d 260, 267-8 (4th Cir. 1998) (affirming grant of summary judgment to officers who detained appellant based who, after their ample opportunity to observe and interview her, did not detain her in haste and acted pursuant to state law); *Cloaninger v. McDevitt*, 555 F.3d 324 (4th Cir. 2009) (affirming grant of summary judgment to officers who detained appellant based on a 911 call that appellant had threatened suicide).

B. The District Court correctly concluded that the Officers are entitled to Qualified Immunity.

Based on the undisputed material facts and the legal standards set forth above and in this section, the Officers are plainly entitled to qualified immunity, as the District Court held. JA 774-782.[12]

[12] While the Court does not need to reach the issue of whether the Officers acted with probable cause, due to their qualified immunity, the undisputed material facts also clearly demonstrate that Officer Hall had probable cause to issue an ECO and that Galway had probable cause to seek a TDO.

The Officers complied with Virginia Code § 37.2-808.G, which allows an officer to issue an ECO when his observation or the reliable reports of others support probable cause to believe that a person: (i) has a mental illness and that there exists a substantial likelihood that, as a result of mental illness, the person will, in the near future, (a) cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening harm and other relevant information, if any, or (b) suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic human needs; (ii) is in need of hospitalization or treatment; and (iii) is unwilling to volunteer or incapable of volunteering for hospitalization or treatment.

First, the undisputed material facts demonstrate copious support for the Officers' conclusion of probable cause to believe that Barrett suffered from a mental illness. PAE's Security Manager and Human Resources Manager, both highly trained and experienced professionals, concluded that Barrett suffered from paranoia, believed her to be a threat to others, and so advised the Arlington police. Statement of the Case ("SC") 2, 16. Barrett also made several statements to the Officers directly and to PAE employees that supported she was delusional. SC 2-4, 10-14, 20. Barrett believed that stalkers of Middle Eastern descent were always watching her from every corner but that stalkers were never the same person and never used the same car (which would require hundreds, if not thousands, of

individuals and vehicles), that her phone had been hacked and her house bugged, that a man on his phone in the courtyard outside her office was talking to the stalking "hub" in Dubai and that one of these individuals approached her at her desk at work and stated, "Hello Kerrin." *Id.* She further believed that there was a "nest" or "hive" of stalkers in the FDIC offices next door. SC ¶¶ 4-12. These statements would reasonably be construed by any officer as being delusional. JA 401-2.

Second, the undisputed facts also support the Officers' reasonable belief that Barrett posed a danger to others. Both Horner and Wilborn relayed such concerns, including more specifically that Barrett might mistakenly believe that co-workers in their office of Middle Eastern descent were part of the "stalkers."[13] SC ¶¶ 13, 16. In addition, Barrett had previously told a private investigator that she wanted to hire someone to "beat the [stalkers] almost to death." SC ¶16, n.3. She told Horner and Wilborn that there was nothing legally she could do to stop the stalkers and that she was "fighting a war every day." SC ¶ 8. Barrett stated that she perceived anyone she describes as "Middle Eastern," Pakistani, or "Southeast Asian" as a threat, which was of particular seriousness given the diverse and multinational nature of the Washington, D.C. metropolitan area. SC ¶¶ 1, 2, 14. Barrett told her co-workers that the stalking was getting worse, that she had had a "breakthrough" and followed

[13] Ten to fifteen percent of PAE employees fit Barrett's description of the "stalkers." JA 250-1.

a "stalker" and wanted to confront him and forcibly take his cellphone. SC ¶¶ 4, 5, 11-12. She stated that she had a firearm and that the only way to solve the stalking was to kill the stalkers. SC ¶ 15. Any reasonable police officer would conclude that probable cause existed to believe that Barrett would be likely to engage in actions that may cause serious bodily harm to herself or others. JA 402-3.

Third, based on the same undisputed facts, a reasonable police officer would conclude that Barrett needed mental health treatment. Given that Barrett refused the Officers' offer to seek treatment voluntarily, Officer Hall was justified in issuing an ECO – or at the very least, no precedent exists that would lead her to believe that doing so would be a violation of Barrett's constitutional rights. JA 104, 403.

Barrett therefore did not meet her burden in proving that the Officers violated clearly established law, and they are protected from suit by qualified immunity.

Important for this appeal, while Barrett takes issue with some details of Wilborn's and Horner's recollection of what she told them, she does not dispute, because she cannot dispute, that Wilborn and Horner reported their recollections of Barrett's worrisome statements to the Officers, which reports they relied upon in carrying out their official duties. An officer is reasonable in finding probable cause as long as a reasonably credible witness or victim informs the police that someone has committed a crime, even if the information later is determined not to be true. *See Gooden, supra,* 954 F.2d at 966 (in a mental health detention case, police can hardly

be faulted for attaching credence to citizen complaint and cannot be held liable for a violation of the Constitution merely because it later turns out the complaint was unfounded and that "the police cannot invariably be held under § 1983 as the guarantors of every such report"); *McKinney v. George*, 726 F.2d 1183, 1187 (7th Cir. 1984) (if policemen arrest a person on the basis of a private citizen's complaint that if true would justify the arrest, and they reasonable believe it to be true, they cannot be held liable for a violation of the Constitution merely because it later turns out the complaint was unfounded). Often this conclusion is stated in terms of the officers' qualified immunity from civil liability: if they reasonably believed the arrest lawful, they cannot be made to pay damages merely because it turns out they were mistaken. *McKinney*, 726 F.2d at 1187. The inquiry turns on the officer's perception of the facts at the time, which guards against second-guessing the reasonableness of his actions with 20/20 hindsight. *Rowland v. Perry*, 41 F.3d 167, 173 (4th Cir. 1994).[14]

In flat disregard of this principle, and in an attempt to create a factual dispute where none exists, Barrett claims that the District Court erred by not examining what Barrett actually told Horner and Wilborn. Appellant's Brief, pp. 43-46. As the District Court properly held, there was no material dispute as to what Horner and Wilborn told the Officers, there was no evidence that the Officers had any reason to

[14] Furthermore, an officer may choose to rely on either of two conflicting statements in determining probable cause. *See Crews v. County of Nassau* 996 F. Supp. 2d 186, 205-7 (E.D. N.Y. 2014) (citing cases).

believe that their statements were inaccurate, and that is what matters for summary judgment purposes. JA 774-5.

Further, while Barrett raises a few minor quibbles about what she claims she told Horner and Wilborn, she fails to note that she did not dispute the core facts set out above. Instead, she attempts, unsuccessfully, to challenge just a few of the overwhelming number of facts. For example, she falsely asserts that Horner did not call the police because he believed Barrett was a danger to others, Appellant's Brief, p. 44, but the record evidence is that Horner called because Barrett was becoming increasing delusional, believes she is being followed by people in an adjoining building, has a firearm and has stated that the only way to solve the problem is by using the firearm. JA 272.

Even if Barrett was correct as to Horner's call to the police, which she is not, Barrett erroneously seeks to view just a few of the facts the Officers had in isolation, rather than properly considering the totality of the information presented to the Officers. "Probable cause is not a high bar." *District of Columbia v. Wesby*, 138 S. Ct. 577, 586 (2018).[15] The proper inquiry focuses on what an objective officer could reasonably believe, based on that totality of facts and circumstances, and includes an officer's common-sense conclusions about human behavior. *Curley v.*

[15] Probable cause is less demanding than a standard requiring a preponderance of the evidence, and does not demand any showing that such a belief be correct or more likely true than false. *Curley v. Commonwealth*, 295 Va. 516, 622 (2018).

Commonwealth, 295 Va. 516, 622 (2018). Probable cause does not require officers to rule out a suspect's innocent explanation for suspicious facts. *Wesby, supra,* at 588. Barrett does not address the totality of that facts and circumstances presented to the Officers, which more than establishes probable cause under the statute, but rather focuses on only a few facts in isolation, which the U.S. Supreme Court has held is an improper analysis. *Id.*

For example, Barrett asserts, at Appellant's Brief, p. 51, that "mere gun ownership could not constitute probable cause to seize her." Of course, Barrett was not detained based on "mere gun ownership," but rather on the totality of information available to the police. Each fact supporting probable cause should not be viewed in isolation, rather than as a factor in the totality of the circumstances. *Wesby*, *supra*, 138 S. Ct. at 588. The totality of the circumstances requires courts to consider the whole picture, as the whole is often greater than the sum of its parts, especially when the parts are viewed in isolation. *Id.* (noting that a factor viewed in isolation is often more readily susceptible to an innocent explanation than one viewed as part of a totality); *Curley*, 295 Va. at 623 (rejecting "technical dissection" or "divide-and-conquer" analysis of factors supporting probable cause).

Appellant's Brief ignores the copious amount of information that provided probable cause to believe Barrett posed a threat: that Barrett believes she is "fighting a war," that she stated that there is nothing she can legally do about the stalking, that

she had a "breakthrough" in locating the "hive" or "nest" of stalkers in a nearby building, that she goes to the shooting range with her gun so the "stalkers" tracking her through her phone know she uses her firearm regularly, that she wants to confront the stalkers and forcibly take their cell phones, that she believes that a stalker evaded office security and approached her at work, and that she stated that the stalkers never give up and the only way to deal with them is to kill them.[16] This behavior lead to concerns by both Wilborn and Horner that Barrett was a potential threat to herself and others. As the Officer's expert witnesses noted without contradiction, any reasonable police officer would construe this information as a basis to believe Barrett posed a threat. JA 402-3, 412. *See Gooden*, *supra*, 954 F.2d at 967 (officers not required to wait until they saw blood, bruises and splintered furniture); *Cloaninger v. McDevitt*, 555 F.3d 324, 333 (4th Cir. 2009) (had the officers done nothing, the consequences may have been irremediable).

Before concluding that an officer has breached a clearly established right, a case must be identified where an officer acting under similar circumstances was held to have violated the Fourth Amendment. *Safar v. Tingle*, 859 F.3d 241, 246 (4th Cir. 2017). Barrett has identified no such case, because none exists, instead citing

[16] In another attempt to create a dispute of fact where none exists, Barrett disputes that she told Wilborn she wanted to take the stalkers' phones, Appellant's Brief, p. 452. However, she does not and cannot deny that Wilborn reported to the police that Barrett made that statement, JA 218-9, and that is what matters for qualified immunity purposes.

to numerous cases where the police were held to have been protected by qualified immunity. Appellant's Brief, pp. 50-1. Barrett relies on *Bailey v. Kennedy*, 349 F.3d 731 (4th Cir. 2003), but unlike this case, *Bailey* did not involve a determination of whether a person posed a threat to others, "the quintessential gray area." *Raub v. Campbell*, 3 F. Supp. 3d 526, 534 (E.D. Va. 2014), *aff'd* 785 F.3d 876 (4th Cir. 2015). Further, even if *Bailey* did apply, it merely held that a police officer may not rely solely on a 911 report that an individual was suicidal determining that he was a danger to self. *See Raub, supra*, 785 F.3d at 883-4 (noting that while *Bailey* and other cases provided guidance in situations involving danger to self, none delineated the appropriate standard where a mental health evaluator must decide whether to recommend a temporary detention on the belief that an individual might be a danger to others, and did not speak to the necessity, length, and substance of a psychological evaluation, nor to the evidence needed to support probable cause in such a circumstance.)[17] Unlike the officers in *Bailey*, the Officers did not rely solely on a 911 call, and *Bailey* in no way put the Officers on notice that anything they did was unlawful. *Safar, supra*, 859 F.3d at 246 (animating principle of qualified immunity is one of fair notice to officers that their conduct is unlawful). The District Court's

[17] Appellant's Brief, at p. 52, asserts that *Goines v. Valley Cmty. Servs. Bd.*, 822 F.3d 159 (4th Cir. 2016), is analogous to this case. However, the District Court's thorough analysis of *Goines* and its applicability here, which Barrett fails to address, dispels her claim. JA 782, n. 2.

extensive analysis of the case law at JA pp. 778-782 confirms that the grant of summary judgment was correct.[18]

The totality of the facts and circumstances entitled the Officers to qualified immunity, as the District Court correctly found.

C. Barrett has abandoned her Appeal of her State Law Claims

While Barrett purports to appeal the District Court's grant of summary judgment in favor of the Officers on Counts 7 and 8, which are claims for false imprisonment arising under state law, Appellant's Brief, p. 22, her brief makes no argument regarding these claims. Accordingly, she has waived any argument that the District Court improperly granted summary judgment in favor of the Officers on Counts 7 and 8 and the Court should affirm the grant of summary judgment on these counts. *Wood v. Arnold*, 915 F.3d 308, 318 fn. 5 (4th Cir. 2019).

D. The Sole Remaining Claim against Galway Is Barred Because the Magistrate's Issuance of a TDO was an Independent Intervening Act that Caused Barrett's Detention.

In this appeal, Barrett has abandoned Counts 12 and 14 of her Second Amended Complaint, which are claims that Galway conspired with Lietzau to

[18] Barrett claims that because the Officers were dispatched to PAE offices as a non-emergency call, did not drive with lights and sirens activated, and waited until they could interview Barrett before taking any action, they "demonstrate[d] lack of urgency justifying probable cause." Appellant's Brief, p. 49. But Virginia Code § 37.2-808.G does not require the existence of an "emergency," and probable cause does not require "urgency."

deprive her of her Fourth Amendment rights and other rights, and has also abandoned Count 13, that Galway falsely imprisoned her. Appellant's Brief, pp. 24-5.

The sole remaining claim against Galway is Count 10 of the Second Amended Complaint, that Galway violated Barrett's Fourth Amendment rights "by petitioning to confine her under a TDO." Appellant's Brief, p. 55. However, this claim fails because the Magistrate's issuance of a TDO was an independent intervening act which caused Barrett's confinement and Galway is thus not liable. While Galway made this argument below, JA 738, 746, the District Court did not reach this issue in granting the Galway's motion for summary judgment. Given Barrett's abandonment of claims as described above and below, Galway's lack of liability can be resolved due to the superseding actions of the Magistrate which caused Barrett's detention.

Subsequent acts of independent decision makers, like the Magistrate here, may constitute intervening, superseding causes that break the chain between a defendant's purported misconduct and a plaintiff's unlawful seizure. *Evans v. Chalmers*, 703 F.3d 636, 647 (4th Cir. 2012). In a criminal case, such intervening acts of other participants in the criminal justice system insulate a police officer from liability, *id.*, and the rule should have equal applicability in the mental health context. The rule is not absolute—a defendant is not liable for a plaintiff's unlawful seizure

unless the defendant misled or pressured the decision maker. *Id* at 648.[19] To establish that that Galway mislead the Magistrate, however, requires a "false statement" made knowingly and intentionally, or with reckless disregard for the truth. *Franks v. Delaware*, 438 U.S. 154 (1978). While Barrett claimed below that Galway made a material misrepresentation by inadvertently failing to check one of a series of boxes on his TDO petition, the District Court considered and properly rejected this claim, JA 783 n.3, and Barrett has abandoned this argument in this appeal. As such, Galway is not liable for Barrett's detention.

E. Galway is entitled to Qualified Immunity.

The analysis for Galway's qualified immunity is essentially the same as for the Officers. However, he did not detain Barrett, but petitioned a magistrate pursuant to Virginia Code § 37-2.809.B., which contains the same criteria for an ECO and expressly authorizes consideration of information provided by the persons who initiated the ECO. Galway had the same information provided to the Officers and more. A doctor at Virginia Hospital Center, Dr. Liu, believed Barrett was a threat to herself or others and so advised Galway. SC 26, 34. Even though he was unaware that Barrett had been previously diagnosed with a mental illness, as Barrett lied to him about her mental health history, Galway nevertheless correctly concluded that Barrett was likely suffering from post-traumatic stress disorder, as Barrett's

[19] There is no allegation that Galway pressured the Magistrate.

psychologist had also concluded. SC 29. Barrett fails to mention not only that Dr. Liu believed that Barrett should have been detained and evaluated, but that a psychiatrist at the hospital, Dr. Peggy Lomax, also recommended Barrett be admitted, SC 34, as did an entire team of mental health evaluators. SC 32. Given this, it cannot be maintained that Galway "was plainly incompetent or knowingly violated the law," as required to deny him qualified immunity, particularly as he did not even detain Barrett but recommended it to a magistrate.

As in *City of Takoma Park*, he had ample opportunity to observe and interview Barrett, did not decide to seek a TDO in haste and acted pursuant to state law authorizing mental health seizures. 134 F.3d at 267-8. And most important, no precedent exists that would have given Galway reason to believe that he was acting in violation of Barrett's constitutional rights.

Barrett failed to meet her burden of proving that Galway violated clearly established law, and the District Court corrected concluded that he is protected from suit by qualified immunity.

Barrett further asserts because she "volunteered for treatment," she did not meet the criteria for a TDO. Appellant's Brief, pp. 54-5. However, Barrett adamantly refused inpatient treatment. JA 49. Galway discussed with a team of mental health evaluators whether there were less restrictive settings available for Barrett other than a TDO, but he and the team all felt that the risks were at a level

where detention was the only option, given that Barrett would not voluntarily sign herself in for treatment, owned a firearm, and did not appear to be willing to promptly seek treatment or have a plan for doing so. SC 30-2. As the District Court concluded, Galway reasonably concluded that Barrett presented an acute risk of harm and that the "treatment" for which Barrett volunteered would not address her mental health in a timely fashion to allay those concerns. JA 785.

II. THE DISTRICT COURT'S DISMISSAL OF BARRETT'S "JOINT ACTION" AND CONSPIRACY CLAIMS WAS PROPER.

A. The Law Regarding "Joint Action" and Conspiracy to Violate § 1983 and Falsely Imprison.

Private actors are generally not liable under 42 U.S.C. § 1983 because the statute only provides relief for deprivations of constitutional rights by individuals acting under color of state law. *E.g., West v. Atkins*, 487 U.S. 42, 48 (1988). "'Like the state-action requirement of the Fourteenth Amendment, the under-color-of-state-law element of § 1983 excludes from its reach "'merely private conduct, no matter how discriminatory or wrongful.'" *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 150 (1970). The requirement of action under the color of state law "reflects judicial recognition of the fact that 'most rights secured by the Constitution are protected only against infringement by governments.'" *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 936 (1982).

A private party, however, can be liable under a "joint action" theory of liability if "(1) a state official and private individual reached an understanding to deprive the plaintiff of his constitutional rights and (2) the individual was a willful participant in joint activity with the State or its agents." *E.g., Hessami v. Corporation of Ranson*, 170 F. Supp. 2d 626, 634 (N.D. W. Va. 2001); *Chiles v. Crooks*, 708 F. Supp. 127, 130 (D.S.C. 1989).

"Establishing a civil conspiracy under 42 U.S.C. § 1983 requires a plaintiff to show that Defendants 'acted jointly in concert and that some overt act was done in furtherance of the conspiracy which resulted in plaintiff's deprivation of a constitutional right.'" *Davis v. Walmart Stores East, L.P.*, 687 Fed. Appx. 307, 311 (4th Cir. 2017). A private party may be liable under § 1983 "if [he or she] conspire[s] to commit, or [is] jointly engaged in, prohibited actions with state officials." *Davis v. Wal-Mart Stores East, LP*, 177 F. Supp. 3d 943, 956-57 (E.D. Va. 2016).

Under Virginia law, the elements of a common law civil conspiracy claim are (i) an agreement between two or more persons (ii) to accomplish an unlawful purpose or to accomplish a lawful purpose by unlawful means, which (iii) results in damage to plaintiff. *Glass v. Glass*, 228 Va. 39, 47 (1984).

B. The Standard for Pleading "Joint Action" and Conspiracy under *Twombly/Iqbal.*

To allege "joint action" and conspiracy under § 1983, a plaintiff must allege facts showing an agreement or meeting of the minds to engage in a conspiracy to deprive a plaintiff of a constitutional right. *E.g., Ruttenberg v. Jones*, 283 Fed. Appx. 121, 130 (4th Cir. 2008). A plaintiff must allege facts establishing that the defendants shared a "unity of purpose or a common design" to injure him. *A Soc'y Without a Name, for People Without a Home, Millenium Future-Present v. Virginia*, 655 F.3d 342, 346-47 (4th Cir. 2011). "Without an agreement, the independent acts of two or more wrongdoers do not amount to a conspiracy." *A Soc'y Without a Name*, 639 F.2d at 1075-76.

A plaintiff must plead facts amounting to more than "parallel conduct and a bare assertion of conspiracy." *Id.* Without more, parallel conduct does not suggest conspiracy, and a conclusory allegation of agreement does not supply facts adequate to show illegality. *Id.* "The factual allegations must plausibly suggest agreement, rather than being merely consistent with agreement." Id.

"Under *Twombly*, [a plaintiff] is required to allege 'enough facts to state a claim to relief that is plausible on its face,'" and "[t]his requires a 'plausible suggestion of conspiracy.'" *Ruttenberg*, 283 Fed. Appx. at 131. A plaintiff "need[s] to plead facts that would 'reasonably lead to the inference that [defendants]

positively or tacitly came to a mutual understanding to try to accomplish a common and unlawful plan.'" *Ruttenberg*, 283 Fed. Appx. at 131.

A court need not accept unsupported legal allegations, *see Revene v. Charles County Comm'rs*, 882 F.2d 870, 873 (4th Cir. 1989), legal conclusions couched as factual allegations, *see Papasan v. Allain*, 478 U.S. 265, 286, or conclusory factual allegations, *see Harris v. City of Va. Beach*, 11 Fed. App'x 212, 215 (4th Cir. 2001); *United States Firefighters v. Hirst*, 604 F.2d 844, 847 (4th Cir. 1979); *Brightwell v. Moultrie*, No. DKC-12-1520, 2013 U.S. Dist. LEXIS 116860, at *10 (D. Md. Aug. 19, 2013); *Cooper v. Lippa*, No. 3:11-CV-712, 2012 U.S. Dist. LEXIS 56822, at *18-19 (E.D. Va. Apr. 23, 2012).

A plaintiff's factual allegations must amount "to more than rank speculation and conjecture" and must "give rise to an inference that each alleged conspirator shared the same conspiratorial objective" *Hinkle*, 81 F.3d at 422; *Worthington v. Palmer*, No. 3:15-CV-410, 2015 U.S. Dist. LEXIS 159441, at *17-18 (E.D. Va. Nov. 24, 2015). "'If the existence of a conspiracy can be found only through speculation and inference, the claim will be dismissed.'" *Lippa*, 2012 U.S. Dist. LEXIS 56822, at *18-19 (quoting *Hinkle*, 81 F.3d at 423).

C. Barrett Failed to Allege a Plausible Claim of "Joint Action" or a Conspiracy in Connection with the Issuance of the ECO.

The District Court properly dismissed Barrett's § 1983 "joint action" and her § 1983 and common law conspiracy claims in Counts 3, 4, 6, and 9 because she

failed to plausibly allege a mutual agreement or common plan to issue the ECO and remove her from the workplace based on the alleged false pretense that she was a threat and a danger to others. JA 34, ¶ 91. As the District Court correctly held, Barrett's Second Amended Complaint fails to plausibly allege an actionable mutual agreement or common plan because she did not allege anywhere that the Officers *knew* that Barrett was not a danger, but nonetheless agreed to issue the ECO and detain her. JA 120-121. She also did not allege any facts to plausibly suggest why the Officers would ever agree to such a plan.

Barrett's claims are based on her allegation that the Officers met with Horner at PAE's offices on July 12, 2017, and that in that meeting they "agreed to remove Dr. Barrett from the workplace, regardless of answers to the police officers' questions, based on her ostensibly being a threat and danger to others." JA 34, ¶ 91. Barrett, however, alleges no facts to support this conclusory assertion. She alleges no facts to plausibly explain or suggest how or why these parties would ever reach such an agreement in this meeting when they otherwise shared no interest, motive or prior relationship. She just alleges an agreement and then goes on to repeat it formulaically throughout the Second Amended Complaint.

Barrett's allegation of an agreement and the repetition of it throughout the Second Amended Complaint are completely insufficient. First and foremost, as noted by the District Court, Barrett does not allege anywhere that the Officers knew

that she was not a threat or danger to others, but that they agreed to issue the ECO and remove her anyway. Without such knowledge, there can be no agreement. *Worthington v. Palmer*, No. 3:15-CV-410, 2015 U.S. Dist. LEXIS 159441, at *17-18 (E.D. Va. Nov. 24, 2015) (private actor or state actor defendants did not share knowledge of key facts underlying the alleged conspiracy); *Roberts v. Ballard*, No. 2:15-CV-15458, 2017 U.S. Dist. LEXIS 31858, at *11 (S.D. W.Va. Mar. 7, 2017) (no facts alleged to show that certain co-conspirators knew of the conspiracy); *c.f., Fyfe Co., LLC v. Structural Group, LLC*, 2013 U.S. Dist. LEXIS 75685, at *16 (D. Md. May 30, 2013) (no allegation that the defendants had an understanding of key elements of the alleged conspiracy).[20]

While Barrett insists in her brief that the Second Amended Complaint alleges that the Officers knew that she was a danger and a threat, the District Court correctly pointed out that, even when liberally construed, the Second Amended Complaint only alleges that "the officers, called to the scene, decided to remove her after their discussions with Plaintiff's employer [sic] and without regard to what she might say to them during their discussion, not that they knew she was not a danger yet agreed to detain her." Barrett never alleges that the Officers knew that she was not a danger,

[20] To the extent that Barrett alleges that Horner, Wilborn and Lietzau falsely told the Officers that she was a threat and a danger, she still has no claim because providing false information to police officers does not show mutual agreement. *E.g., Cunningham v. Southlake Ctr. for Mental Health, Inc.*, 924 F.2d 106, 108 (7th Cir. 1991).

much less facts plausibly suggesting how or why they knew this fact. There is nothing, just conclusory assertion.

Barrett also bases her claims on other, subsequent communications and meetings involving Horner, Wilborn, Lietzau, and the Officers that allegedly took place on July 13, 2017 before the ECO was issued. In recounting these alleged meetings and discussions, however, she simply repeats the same formulaic, conclusory allegation of a "plan" to "remove Dr. Barrett from the workplace, regardless of her answers to the police officers' questions, based on her ostensibly being a threat and danger to others." JA 36-39, 41. As with the initial July 12, 2017, meeting between Horner and the Officers, Barrett offers nothing to show a mutual agreement or shared plan other than conclusory assertion and speculation.

Further, that the Officers allegedly met and communicated with Horner, Wilborn and Lietzau multiple time does not itself suggest mutual agreement or a common plan. As this Court has noted, the "factual allegations must plausibly suggest agreement, rather than being merely consistent with agreement." *Soc'y Without a Name*, 655 F.3d at 346-47. This principle is central not only to the post-*Iqbal/Twombly* analysis but also to this case because the alleged meetings and communications are completely consistent with the normal interaction between the police and citizenry when a complaint is reported or investigated. *C.f.*, *Loren Data Corp. v. GXS, Inc.*, 501 Fed. Appx. 275, 280-81 (4th Cir. 2012) (no inference of

conspiracy when co-conspirators had no motive to conspire and when their conduct was consistent with other equally plausible explanations).

Second, Barrett alleges no facts to plausibly suggest why the Officers would agree to issue an ECO and detain her knowing that she was not a danger or knowing that the claim that she was a danger was false. Barrett does not allege that the Officers had any prior relationship with PAE or its employees Horner, Wilborn and Lietzau or that they shared any interest in removing her without probable cause. Barrett insists in argument that the Officers had no knowledge involvement with the PAE Appellees' alleged conspiracy to silence Barrett's whistleblowing.

Barrett argues that the District Court erred in dismissing her claims because, she says, it concluded that the co-conspirators did not share the same motives in pursuing the conspiracy. While the District Court observed the absence of any facts suggesting a motive for the Officers to conspire with Horner, Wilborn and Lietzau "to cover up [the PAE Appellees'] criminal conduct," its ruling was squarely based on Barrett's failure to allege any facts suggesting the Officers knew that Barrett was not a threat or a danger, but nonetheless agreed to issue the ECO. (JA 120-121).

In support of this argument, Barrett relies heavily on the district court's decision in *Everette-Oates v Chapman*, No. 5:16-CV-623-FL, 2017 U.S. Dist. LEXIS 180038 (E.D. N.C. Oct. 31, 2017). In *Everette-Oates*, the defendant moved to dismiss a § 1983 conspiracy claim based on an alleged plan to prosecute the

plaintiff for embezzlement by concealing the existence of known documents in the defendants' possession that showed that the plaintiff was innocent. In moving to dismiss, the defendants argued that this claim was implausible because the defendants' alleged motive for prosecuting her was to retaliate against her for inquiring about the defendants' use of FEMA funds and because this motive was implausible when the defendants had no control over such funds. *Id.* at *13. The court denied the motion to dismiss, holding that the plaintiff had stated a claim by alleging that the defendants knew of documents exonerating the plaintiff but nonetheless agreed to conceal them and criminally prosecute her. In doing so, the court stated that the plaintiff's "flawed alleged motive" was irrelevant when she otherwise stated a claim. Importantly, however, the court noted that while it did not have to determine whether the defendants' control of the FEMA funds was plausible, the "plausibility of such allegation [had to] be considered at [that] stage [of the litigation] in conjunction with the complaint as a whole." *Id.* at *16.

The decision in *Everette-Oates* is completely distinguishable because the plaintiff in that case alleged that the defendants knew that documents in their possession proved the plaintiff's innocence, but that they agreed to conceal those documents and prosecute her anyway. Unlike the plaintiff in *Everette-Oates*, Barrett did not allege that the Officers knew that she was not a danger or a threat, but nevertheless agreed with Horner, Wilborn and Lietzau to unlawfully issue the ECO

without probable cause. Importantly for Barrett's argument, the court in *Everette-Oates* noted that the plausibility of allegations bearing on the motives of alleged co-conspirators had to be considered in conjunction with the complaint as a whole. To the extent that the District Court in this case noted the implausibly of the Officers conspiring with PAE employees to cover up their criminal conduct, it did so permissibly as part of its obligation to assess the plausibility of this allegation in conjunction with Barrett's Second Amended Complaint as a whole.

Plaintiff also relies heavily on *McDaniel v. Maryland*, No. RDB-10-00189, 2010 U.S. Dist. LEXIS 84784, at *35-36 (D. Md. Aug. 18, 2010). In *McDaniel*, a plaintiff alleged that three police officers conspired to pull him over for a traffic stop without probable cause. *McDaniel*, 2010 U.S. Dist. LEXIS 84784, at *3. The court held that the plaintiff sufficiently alleged a conspiracy among these officers because the complaint specifically alleged that one officer had advised another officer to tell the plaintiff that he "was following too closely or whatever you want to tell him." *Id.* Unlike *McDaniel*, Plaintiff alleges no such communications suggesting that the Officers knew that Barrett was not a threat or a danger, but agreed to issue the ECO and detain her anyway. Further, unlike this case, the conspiring police officers in *McDaniel* knew each other and had a reasonably inferable motive, e.g. racial bias, for entering into the conspiracy while nothing suggests that the Officers had any

reasonably inferable motive or interest in issuing the ECO when she was not a danger or a threat.

D. The District Court properly dismissed Barrett's Punitive Damages Claim.

Barrett takes issue with the District Court's dismissal of her claim for punitive damages against the County Appellees, erroneously claiming that "the standard of proof for liability under Section 1983 and punitive damages under section 1983 are 'essentially the same.'" Appellant's Brief, p. 39. Of course, the standard is not the same, as, punitive damages are only awarded "when the defendant's conduct is shown to be motivated by evil motive or intent, or when it involves reckless or callous indifference to the federally protected rights of others." *Smith v. Wade*, 461 U.S. 30, 56 (1983). Barrett's punitive damages claim were inextricably tied to her flimsy conspiracy claims, and were both correctly dismissed.

CONCLUSION

For the reasons argued above, the Court should affirm the District Court.

Respectfully Submitted,

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Dated: July 5, 2019

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CERTIFICATE OF FILING AND SERVICE

I hereby certify that on this 5th day of July, 2019, I caused this Brief of Appellees to be filed electronically with the Clerk of the Court using the CM/ECF System, which will send notice of such filing to the following registered CM/ECF users:

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I further certify that on this 5th day of July, 2019, I caused the required copy of the Brief of Appellees to be hand filed with the Clerk of the Court.

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