No. 25-

IN THE

Supreme Court of the United States

CURTIS LEVAR WELLS, JR.,

Petitioner,

v.

JAVIER FUENTES, *et al.,*

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

This case concerns a federal law enforcement officer's initial detention of a civilian with a *post-hoc* explanation of a "welfare check" or "community caretaker" detention, starting a baseless investigation that was continued by other officers. Ultimately, a parking-lot search and seizure resulted in property being taken under pretextual "safekeeping" without reasonable suspicion, consent, or warrant. Later, without reasonable suspicion, consent, warrant, or exigent circumstances, the property was further rummaged through to craft a known-false narrative that the property may contain contraband.

Ultimately, a motion to suppress the evidence was granted due to Fourth Amendment violations, the subject charges were dismissed and later expunged. Mr. Wells' claims under, *inter alia*, 42 U.S.C. § 1983 were dismissed under Fed. R. Civ. P. 12(b)(6), with disputes being resolved in the movant's favor, and the Fourth Circuit has affirmed dismissal.

The questions presented in this matter are:

1. In the absence of any objective indicia of consent, and when the Fourth Circuit considers a small subset of facts in violation of *Robinette* and *Bostick*, what words or conduct permit officers to infer, and for the Fourth Circuit to affirm, consent to searches and seizures that would otherwise violate the Fourth Amendment?

2. What constitutes unreasonable conduct, "pretextual rummaging," and disobedience with

this Court's holdings in *Bertine* and *Opperman* when seven police officers remove and handcuff a driver in a parking lot, investigate, and cite the driver for mere infractions, and take some, but not all, property from the vehicle, without an inventory, not related to such infractions as "safekeeping" without consent, exigent circumstances, and without warrants?

3. When may police later, in the calm of the police department, convert safekept property to evidence without warrant, without exigent circumstances, without reasonable suspicion, and without consent?

4. Did the Fourth Circuit dangerously expand the "community caretaker exception" to the Fourth Amendment to permit officers to investigate criminal activity based upon perceived furtive gestures in violation of this Court's holding in *Caniglia v. Strom*?

5. In light of this Court's 2008 holding in *Heller* and 2010 holding in *McDonald*, and the Second Amendment itself, did the Fourth Circuit correctly hold that in 2020, the individual right to keep and openly bear arms in public was not a clearly established right?

PARTIES

Petitioner is Curtis Levar Wells, Jr.

Respondents are Javier Fuentes, Scott Wanek, Michael P. Armstrong, Lauren Lugasi, Kimberly Soules, Austin Kline, John Vanak, Keith Shepherd, United States of America.

Former Appellees Barnickle and County of Arlington were dismissed by stipulation dated December 8, 2023.

LIST OF ALL PROCEEDINGS

Wells v. Fuentes, et al., No. 1:22-cv-00140 U. S. District Court for the Eastern District of Virginia. Judgment entered Jun. 2, 2023.

Wells v. Fuentes, et al., No. 23-1638, U. S. Court of Appeals for the Fourth Circuit. Judgement entered Jan. 22, 2025.

Wells v. Fuentes, et al., No. 23-1638, U. S. Court of Appeals for the Fourth Circuit. En Banc denied entered Mar. 21, 2025.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner respectfully seeks a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit.

OPINIONS BELOW

The Fourth Circuit's opinion below (Pet. App. A) is published at *Wells v. Fuentes*, 126 F.4th 882, 894 (4th Cir. 2025). The opinion denying rehearing en banc (Pet. App. C) is published at *Wells v. Fuentes*, No. 23-1638, 2025 U.S. App. LEXIS 6697, at *2 (4th Cir. Mar. 21, 2025). The United States District Court for the Eastern District of Virginia's opinion dismissing the case (Pet. App. B) is published at *Wells v. Fuentes*, No. 1:22-cv-00140 (MSN/IDD), 2023 U.S. Dist. LEXIS 96692, at *1 (E.D. Va. May 31, 2023).

JURISDICTION

The District Court dismissed this case by order dated June 2, 2023. The Fourth Circuit affirmed such dismissal on January 22, 2025, and rehearing en banc was denied on March 21, 2025. The Chief Justice granted Petitioner's application to extend the time to file the instant Petition to August 18, 2025. This Court has jurisdiction under 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Amendment II:

> A well regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed.

United States Constitution, Amendment IV:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

42 U.S.C. § 1983, in relevant part:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress [].

STATEMENT OF THE CASE

I. February 9, 2020, initial seizure of Mr. Wells outside Arlington Cemetery.

Mr. Wells picked up a strawberry-banana smoothie from a nearby shop and was heading to his apartment in Alexandria when he received a phone call. He stopped to take the call in a small parking lot near Arlington Cemetery in the afternoon of February 9, 2020. There were no calls to police to report any suspicious person, no report of any criminal conduct, and Mr. Wells was alone in his vehicle. Also, Mr. Wells' vehicle was not impeding traffic, nor was his car "on the side of the road," as wrongly observed by the Fourth Circuit's Opinion. There was no commotion, furtive gestures, or any indicia of any problem – but Officer Armstrong saw an African American man sitting alone in a nice car and began investigating, later to make the false claim he was acting as a caretaker.

Officer Armstrong was a civilian DOD military police officer tasked to patrol inside Arlington Cemetery – Armstrong left his post, traveled several minutes to exit, and, outside of the Cemetery, pulled his patrol car behind Mr. Wells, blocking his vehicle from leaving. Armstrong detained Mr. Wells, made no call for medical assistance, approached Mr. Wells, asked him, "does this car belong to you?" – indicating that Armstrong was investigating. Further, he made it clear to Mr. Wells that he was not permitted to leave.

Without making any report of a medical concern, he reported a suspicious person to Arlington County police. The ACPD dispatched at least five police officers, and no

medical personnel. Later, in Armstrong's testimony in the criminal action, and in his pleadings at all stages in this case, Armstrong has repeatedly lied that this was a brief 1-minute encounter welfare or caretaking check, and that he immediately removed himself; however, Armstrong can be heard on an audio recording approximately 35 minutes later asking Mr. Wells where he detached from, removing Mr. Wells' property from his vehicle, and posing further questions about his military service.[1] Further contradicting Armstrong, Fuentes testified that when he arrived, Armstrong's vehicle continued to block Mr. Wells' vehicle from leaving – Mr. Wells was unreasonably seized by Armstrong.

II. ACPD Officers' unreasonable searches and seizures.

After Armstrong initiated the detention and investigation, the ACPD officers, initially Fuentes, approached Mr. Wells and continued the investigation without warrants, without reasonable suspicion, and without consent. Notably, when Fuentes first approached, Mr. Wells explicitly declined to permit any searches and explicitly stated he does not consent. Despite such statements, Fuentes and the other ACPD officers proceeded to violate the Fourth Amendment.

The officers removed lawfully-owned property from Mr. Wells' vehicle, and the officers were recorded indicating their intent to investigate, as opposed to

1. The audio recording was filed in Fourth Circuit and partially considered by it; the instant reference is to the timestamp 4:43:30 p.m. wherein Armstrong can be heard investigating Mr. Wells – upon information and belief, Armstrong was unaware he was being recorded by another an Arlington County officer.

conducting a good-faith inventory – irrespective of whether the vehicle *had to be towed*, a mere red herring, the officers attempted to utilize the inventory as a pretextual rummaging without any consideration of their policy. The Fourth Circuit and District Court Opinions found the officers substantially complied with policy – however, there has been no evidentiary record of such policies allegedly complied with, how they complied, or what form of an inventory was conducted.

The officers can be heard on the audio recording indicating they are leaving significantly expensive items in the vehicle, such as Mr. Wells' laptop, there was no written inventory done, and Mr. Wells was not presented with, nor signed, the department form, first provided to Mr. Wells during this case on November 22, 2022, after it was not provided during a pre-filing FOIA request. Furthermore, the option was given, and Mr. Wells agreed, that all items be locked in the trunk, and towed to Mr. Wells' home – but, because the police suspected and were investigating their suspicions of criminal activity, and acting in bad faith, they took as "safekeeping" some, but not all, of Mr. Wells' property, and investigated it further – they failed to conduct even a cursory inventory and failed to comply with nearly any departmental policy on inventory searches.

Ultimately, on February 9, 2020, Mr. Wells rode with the tow-truck driver to his home – he was not arrested and his car was not impounded. On that day, he received two infraction citations because his temporary tag was expired and he could not find his license while he was handcuffed sitting on a curb, though he was a licensed driver in Virginia.

Back at the police department, the next day, Mr. Wells' personal property was investigated by Appellee Wanek, without a warrant, without reasonable suspicion, and without consent – as was learned from a FOIA production, Appellee Wanek crossed out "safekeeping" from the form and wrote in "evidence."[2] The first warrants were later sought to arrest Mr. Wells and to search his apartment. There were no exigent circumstances to search the property taken as "safekeeping."

III. Evidence suppressed, charges dismissed and expunged.

Mr. Wells' civil rights injuries continued to mount after the February 9, 2020, encounter; warrants were sought and issued without probable cause, upon knowingly-false or misleading information, Mr. Wells was later arrested, incarcerated from February 18, 2020, through September 7, 2020, largely in solitary confinement because of COVID, and then released when all felony charges were dismissed after evidence was suppressed due to Fourth Amendment violations; the charges were later expunged.

Mr. Wells initiated this action to obtain justice from this unjust series of events infringing upon his Fourth Amendment rights, because, it seems, he was a firearm owner. Based upon the conclusory paragraph of the Fourth Circuit's Opinion, it appears that if Mr. Wells were not a firearm owner, he would not have been treated as a presumptive criminal. The "arsenal" the Fourth Circuit found Mr. Wells possessed on February 9, 2020, comprised

2. The Property Retrieval Process form was submitted in the Joint Appendix to the Fourth Circuit. JA69-70.

of two exceptionally common firearms, appropriate ammunition for a range day, toys, rubber knives, plastic Halloween masks, and miscellaneous tools – living in an apartment without a garage had caused his trunk to become cluttered.

On February 9, 2020, Mr. Wells was nothing short of a model for the civilian side of a police-civilian encounter. He was cordial, to a fault, cooperative, and calm – because he had nothing to hide. Unfortunately, the parable of, 'if you're guilty, you need a lawyer – if you're innocent, you *really* need a lawyer' proved painfully true, and Mr. Wells was met with irrational police who concluded everything he possessed was stolen, that he was a "fucking bullshitter," and while he was handcuffed sitting on a curb a fair remove from his vehicle, the contents of his vehicle were removed and investigated – absent any reasonable suspicion, absent consent, and absent any exigent circumstance.

Also, the officers documented in their reports and utilized later as part of their objectively unreasonable probable cause affidavits that Mr. Wells was in possession of a "***handwritten list of chemical compounds that have potential to make the human body bulletproof or even invincible***." Such irrational fantasy was created, whole cloth, by the police – Mr. Wells had no such thing.

The import of such irrational conduct of the officers on February 9, 2020, and thereafter, is that the Fourth Circuit's Opinion, affirming the Eastern District of Virginia's Opinion dismissing the case, is now a published Opinion in contradiction to this Court's sound jurisprudence on the Fourth Amendment – it also contains numerous intra-circuit and inter-circuit contradictions,

and contradicts the Virginia Supreme Court's similar jurisprudence.

REASONS FOR GRANTING THE PETITION

Mr. Wells' case is of national importance and requires this Court's supervision because the Fourth Circuit has flouted this Court's jurisprudence, the requirements of Virginia Supreme Court's precedents, as well as other circuit court decisions as to several extremely important doctrines that govern civilian-police interactions. Furthermore, the Fourth Circuit's Opinion at issue in this Petition resolved factual disputes in the light most favorable to the moving party in considering Fed. R. Civ. P. 12(b)(6) motions to dismiss. Notably, the lower court's opening paragraph includes contested facts that were concluded against Mr. Wells' pleadings, and in favor of the moving parties on Fed. R. Civ. P. 12(b)(6) motions, or created *ex nihilo* for the first time by the Fourth Circuit:

> Curtis Wells parked somewhere he shouldn't have. He stopped beside a road running between Arlington Cemetery and the Pentagon, then gestured wildly while he took a phone call. Police understandably checked on him. When they did, they realized Wells had neither license nor registration and wrote him a ticket. Without a registration, Wells couldn't stay parked on the roadside. And without a license, he couldn't drive home either. So the police had to tow his car.

Wells v. Fuentes, 126 F.4th 882, 885 (4th Cir. 2025). At no time and in no place is there any evidence that Mr.

Wells parked somewhere "he shouldn't have" – as can be seen from the photographs of that day, there were no, "no parking" signs. On the contrary, Armstrong was where he shouldn't have been – he left his post within Arlington Cemetery to harass Mr. Wells.

Further, Mr. Wells did not stop beside a road, he was stopped in a parking lot, again, photographs produced pursuant to FOIA demonstrate this fact without question. Mr. Armstrong states in his heavily discredited testimony during the criminal matter that he observed gestures, this is disputed matter, Mr. Wells says he did not make such gestures – on a 12(b)(6) motion, this fact must be concluded to Mr. Wells' favor and, thus, discounted. Mr. Wells had both a registered vehicle and a Virginia license – the paper temporary tag on his vehicle had recently expired, but the vehicle was registered, and Mr. Wells was a licensed driver in Virginia, but he was handcuffed sitting on a curb and could not produce it to the officers – during the audio recording, his Texas license was found, and later, as he was parting from the officers, his Virginia license was found.

The lower courts made findings of fact absent any support or pleading, and, by doing so, effectively extended the aegis of qualified immunity to, as but one example, officers utilizing the so-called "caretaking exception" to swallow whole the Fourth Amendment, permitting an officer to detain and investigate and later justify the conduct as caretaking – and then later lie under oath and in his pleadings about his conduct.

The Fourth Circuit's Opinion proceeds to ignore this Court's holdings in *Opperman* and *Bertine*, and their progeny, to permit the officers to excuse their

searches and seizures of Mr. Wells and his property because they had to tow Mr. Wells' vehicle. However, the officers failed to perform even the basic tasks expected of inventory-search policies, made comments, that were audio recorded, indicating they were investigating Mr. Wells of crimes, and immediately converted the property taken as "safekeeping" to "evidence" and proceeded to rummage through it on the pretext of an inventory search. Flouting the Fourth Amendment, the officers suspected everything Mr. Wells said indicated criminal conduct, failed to comport with department policy on inventory searches, and utilized an inventory search as a pretextual rummaging to investigate.

I. The Fourth Circuit's dangerous view of consent contradicts this Court's Fourth Amendment Jurisprudence.

In its January 22, 2025, Opinion, the Fourth Circuit found consent based upon Mr. Wells' words and conduct that cannot be reasonably interpreted to imply consent. Failing to consider all of the circumstances, a mandatory feature of this Court's jurisprudence, the Fourth Circuit set a dangerous precedent on consent that must be overturned by this Court. In considering a property retrieval form[3] and only two words spoken by Mr. Wells during the approximately one-hour and sixteen minute recording,[4] and ignoring the well-plead facts that were not recorded to include the pleading that Mr. Wells never consented, the Fourth Circuit concluded that Mr.

3. Produced to the Fourth Circuit in the Joint Appendix. JA69-70.

4. Produced to the Fourth Circuit as a Digital Media Volume.

Wells consented to the searches and seizures – but did not consider all of the circumstances, did not consider whether such consent, to the extent it existed, was coerced (as Mr. Wells was surrounded by seven armed officers, handcuffed, sitting on a curb) and did not consider the numerous other statements by Mr. Wells vitiating any possibility of a finding of consent.

Notably, the fact that Mr. Wells informed Fuentes he did not consent to the searches should be sufficient to permit the case to go to a jury, and not decided on contested facts by Fed. R. Civ. P. 12(b)(6) motion. And, most importantly, the conversations and property retrieval form that the Fourth Circuit utilized to find consent occurred as much as one hour after the searches and seizures began, as can be heard in the audio recording and as the evidence will show.

The Fourth Circuit's finding of consent disobeys this Court's holdings in both *Robinette*[5] and *Schneckloth v. Bustamonte*,[6] and splits with, *inter alia*, the 10th Circuit in *Elliott* as to when consent may be found.[7] Notably, in *Robinette*, this Court's guidance required that the Fourth Circuit turn to and consider the fact that each time Wells was asked about what to do, he vitiated a finding of consent by saying, *inter alia*, "I can't just like … get an Uber with

5. *Ohio v. Robinette*, 519 U.S. 33, 40 (1996) ("The Fourth Amendment test for a valid consent to search is that the consent be voluntary, and voluntariness is a question of fact to be determined from all the circumstances.")

6. *Schneckloth v. Bustamonte*, 412 U.S. 218, 228, 93 S. Ct. 2041, 2048 (1973).

7. *United States v. Elliott*, 107 F.3d 810, 814 (10th Cir. 1997).

that?" "Can I, like, buy you dinner? Is there anything I can do to not get towed?" "I would be for leaving everything in the trunk."[8] Only after the officers were frustrated at the fact that Wells was not consenting, but remained cordial and cooperative, did the officers simply ignore him, take some of his property, and investigate it.

Additionally, the Fourth Circuit's Opinion disobeyed the requirements of *Bostick*, because the Fourth Circuit focused too narrowly on a single or too few facts instead of considering all of the circumstances. *Florida v. Bostick*, 501 U.S. 429, 438, (1991). Similarly, the lower court disobeyed this Court's holding in *Schneckloth v. Bustamonte*, 412 U.S. 218, 227 (1973) ("[I]t is only by analyzing all the circumstances of an individual consent that it can be ascertained whether in fact it was voluntary or coerced.")

The Fourth Circuit was bound to consider all of the circumstances, to include the facts that Mr. Wells' conversations with the officers indicated he did not consent, and the officers' private conversations, also recorded, indicated their intent to investigate the property for criminal activity, vitiate consent, and belie the officers' later-crafted excuses for their inexcusable conduct. The Fourth Circuit's Opinion is dangerous in finding that merely following along with a conversation, approximately an hour after the search and seizures began, and Mr. Wells signing a form that does not mention consent,[9] at all, can somehow be the narrow and few facts focused upon

8. February 9, 2020, Audio Recording at 4:39:30-4:39:50 p.m., 4:48 p.m., 4:48:50 p.m.

9. JA69.

in violation of the *Bostick*, *Robinette*, and *Bustamonte*, requirements to consider all the circumstances.

II. The Fourth Circuit's Opinion violates the narrow 'Inventory Search Exception.'

The Fourth Circuit's Opinion contradicts its own holding as well as this Court's jurisprudence: "[O]fficers' searches must 'generally' accord with such 'standard procedures.' [R]easonable police regulations relating to inventory procedures administered in good faith satisfy the Fourth Amendment.' Searches that satisfy these two requirements clear the [Fourth] Amendment's reasonableness hurdle." *Wells v. Fuentes*, 126 F.4th 882, 894 (4th Cir. 2025) (citing *United States v. Banks*, 482 F.3d 733, 739 (4th Cir. 2007) and *Colorado v. Bertine*, 479 U.S. 367, 374 (1987)). However, the Fourth Circuit indicated that because Mr. Wells possessed "dangerous gear" it rebuffed Mr. Wells' complaints of Second and Fourth Amendment injury because the officers are not under the requirement to search every "tiny compartment and seizing every item would go far further than required to achieve that end and would intrude on motorists' privacy more than necessary." *Wells v. Fuentes*, 126 F.4th 882, 894 (4th Cir. 2025).

Mr. Wells' case, however, demonstrates that the Fourth Circuit should have made the opposite conclusion, when considering its premises. From the audio recording and photographs taken by police on February 9, 2020, the officers indeed did search 'every tiny compartment,' and seized meaningless items that could only serve to investigate or invade Mr. Wells' privacy. For example, the officers searched and seized business cards, a notebook

with a proverb written on the cover, rubber training knives, and toys – while leaving behind a valuable laptop, other computer hardware, and one of two soft body armors used by Mr. Wells for exercise and games of airsoft.

The Fourth Circuit reviewed these factual circumstances and failed to comport with this Court's requirements in *Opperman* and *Bertine* – the inventory search must be conducted according to department policy, in good faith, and not for investigative purposes. *South Dakota v. Opperman*, 428 U.S. 364, (1976); *Colorado v. Bertine*, 479 U.S. 367, 372 (1987). Opinions finding the exception should apply, notably, both *Opperman* and *Bertine*, contain a distinguishing feature absent in Mr. Wells' case: impounded or abandoned vehicles.

> The Vermillion police were indisputably engaged in a caretaking search of a lawfully impounded automobile. The inventory was conducted only after the car had been impounded for multiple parking violations. The owner, having left his car illegally parked for an extended period, and thus subject to impoundment, was not present to make other arrangements for the safekeeping of his belongings. The inventory itself was prompted by the presence in plain view of a number of valuables inside the car. As in *Cady*, there is no suggestion whatever that this standard procedure, essentially like that followed throughout the country, was a pretext concealing an investigatory police motive.

South Dakota v. Opperman, 428 U.S. 364, 375-76 (1976). In contrast, the ACPD officers failed to comport with

their policies, were not impounding Mr. Wells' vehicle, did not take all valuables which were in plain view, and Mr. Wells was present to make other arrangements for his property – and, for the valuable property the police left behind, he did – notably, the vehicle was towed to his home with a locked trunk and he rode in the tow-truck, with the driver.

Finally, while there was no evidence adduced as to what the department policy held regarding when officers may perform a warrantless search or seizure of a vehicle, not impeding traffic, in an out-of-the-way parking lot, the Fourth Circuit, as well as the District Court, determined the officers substantially complied with it. Should this matter be permitted to proceed, evidence will show the policy would not have permitted the officers to search or seize as they did on February 9, 2020, that is, they were obligated to obtain a warrant or contact the Office of the Commonwealth's Attorney, and secure the property in the vehicle, because Mr. Wells was not taken to a hospital or arrested – the vehicle being towed to Mr. Wells' home means it was not in police custody and, therefore, the items could not be searched or seized.

Because the officers have repeatedly argued they were conducting an inventory search continued on the back of a community caretaker intervention, and taking property in good faith for safekeeping, then they could not have been involved, in any way, in investigating Mr. Wells for criminal conduct. Despite that, the Fourth Circuit reviewed the audio recording and ignored the conversations in which the officers were clearly investigating Mr. Wells for suspected criminal conduct, ignored the fact that Armstrong reported Mr. Wells as

a "suspicious person," and the ACPD dispatched at least five officers, but no medical personnel. The later-crafted stories of community caretaking and inventory search exceptions should be narrowly defined exceptions to the default rule that this conduct was *per se* unreasonable and violated the Fourth Amendment – the officers' reliance upon *post-hoc* generated stories and justifications must be disregarded for the purposes of the Fed. R. Civ. P. 12(b)(6) motions to dismiss.

III. Later conversion of property from "Safekeeping" to "Evidence" independently violated the Fourth Amendment.

Detective Wanek, on or about February 10, 2020, converted the property taken as safekeeping, struck out that term on the property retrieval form, and wrote in "evidence." JA69-70. The Fourth Circuit disregarded this Court's jurisprudence and requirements when evaluating whether police may later investigate property – the Fourth Circuit, indeed, considered no case law on this topic.

Notably, this Court's opinion in *Arizona v. Hicks* requires that property otherwise validly observed in plain view during a permitted investigation of other matters, namely, a shooting in an apartment, was a seizure and search in violation of the Fourth Amendment. *Arizona v. Hicks*, 480 U.S. 321, 323 (1987). Wanek had no exigent circumstances, reasonable suspicion, nor consent to search the property – even if one assumes the property was consensually taken as safekept property on February 9, 2020. If there were probable cause of a crime, he must first obtain a warrant to search it. Flipping the Fourth Amendment on its head, Wanek searched the property,

took extensive notes, produced pursuant to FOIA, made phone calls to people who knew Mr. Wells, opened containers, examined the serial number on the rifle plate and firearms, and contacted Detective Shepherd to fabricate more evidence, and then used the fruits of that search to obtain an arrest warrant and search warrant of Mr. Wells' home.

Such conduct by Wanek constituted an independent Fourth Amendment violation that resulted in subsequent civil rights, and other, injuries detailed in Mr. Wells' pleadings.

IV. An attended vehicle is constitutionally more similar to searching a home than to an abandoned car.

A. *Cady v. Dombrowski*

In *Cady v. Dombrowski*, this Court established a constitutionally significant distinction between the search of a home and the search of a vehicle. 413 U.S. 433, 439, 443 (1973). In *Cady*, the vehicle searched and seized was involved in an accident, that was a hazard on the highway, and its drunk driver was taken to a hospital, with blood and a suspected weapon inside the vehicle. *Id.* Thus, this Court concluded such search was not unreasonable because the abandoned vehicle was a nuisance to motorists, and the trunk was suspected to contain a gun and was subject to being robbed by vandals. *Id.* at 448.

Demonstrating the close nature of this dispute, Justices Brennan, Douglas, Stewart, and Marshall dissented and would hold the search of the vehicle unconstitutional, even with such facts. *Id.* at 450.

In contrast to the facts that guided the majority holding in *Cady*, in this case, Mr. Wells was present, not arrested, not taken to a hospital, was not suspected of any crime, other than two minor infractions, and asked for his property to be locked in his trunk and towed to his home, as once offered by an officer as can be heard on the February 9, 2020, audio recording. Mr. Wells' case, with the driver and owner present and not arrested, presents a constitutionally significant distinction from an abandoned or nuisance car; that is, Mr. Wells' case is closer to the search of a home for the purposes of a Fourth Amendment examination.

Also, the Virginia Supreme Court in in *Cromartie* mirrors this Court's holding that all searches without a warrant are, by default, unreasonable – unless the officers comport with their duties and policies in good faith. *Cromartie v. Billings*, 298 Va. 284, 307, 837 S.E.2d 247, 260 (2020) ("Warrantless searches, of course, are per se unreasonable, subject to a few well-defined exceptions"). Similar to *Cromartie*, the ACPD officers conducted an investigation into suspected crimes that had no connection to the two cited infractions, and thus violated, *inter alia*, Mr. Wells' right to be free from unreasonable search and seizure. The Fourth Circuit's Opinion flips the few, narrow, and well-defend exceptions to fuzzy, Fourth-Amendment-swallowing leviathans.

B. This Court further narrows the exception.

Recognizing that the *Cady* Court's opinion does not permit an expansive "community caretaker" exception to the Fourth Amendment, this Court recently refused to expand that exception. *Caniglia v. Strom*, 593 U.S. 194, 199

(2021) ("But, this recognition that police officers perform many civic tasks in modern society was just that—a recognition that these tasks exist, and not an open-ended license to perform them anywhere"). The community caretaker concept is uniquely related to necessities such as removing disabled or nuisance vehicles, and not, as in the instant case, to an occupied vehicle not in a lane of travel, with a driver who is not arrested, under investigation, or hospitalized, who may make arrangements for his property and vehicle.

V. The Fourth Circuit Acknowledges a Circuit Split.

As acknowledged by the Fourth Circuit's Opinion, the Fourth Circuit does not have a so-called "anti-piggybacking rule" however, it has been adopted in numerous other circuits, that officers must each make their own reasonable apprehension of the circumstances before they commit their own violation of the Constitution. As observed in *Hayes*, the unconstitutional acts of other officers do not relieve subsequent officers' "responsibility to decide for himself whether to violate clearly established constitutional rights by intruding into the office without a warrant or exigent circumstances." *O'Rourke v. Hayes*, 378 F.3d 1201, 1210 (11th Cir. 2004).

The Fourth Circuit Opinion concedes, or fails to consider, that Armstrong had no basis to initiate contact with Mr. Wells on February 9, 2020. However, it proceeds to permit the ACPD officers to justify their seizure based upon the investigation started by Armstrong – if Armstrong's interdiction was for welfare purposes, it could not be an investigation to justify the ACPD's continuation.

In any event, the Fourth Circuit's conclusion is in direct contradiction to the 11th Circuit holding in *Hayes*, that is, the Fourth Circuit concludes, "[w]e do not have a clearly established anti-piggybacking rule." *Wells v. Fuentes*, 126 F.4th 882, 893 n.11 (4th Cir. 2025). This Court should intervene to ensure uniformity and to guide law enforcement officers as to whether they are required to perform their own evaluation of searches and seizures.

The Appellees have demurred to this argument by raising the prospect of officers coming upon emergency situations, such as a gunfight or brawl. The Appellees ponder a counterfactual wherein officers instructed not to piggyback upon prior officers' findings would then be paralyzed with indecision in a crucial moment. Such ponderings are inapplicable. Mr. Wells was cordial, calm, cooperative, and responsive. Furthermore, as more officers appeared on scene, he was handcuffed sitting on a curb, a fair remove from his secured firearms. At some point, some later-arrived officers should be expected to question the legitimacy of the investigation. Mr. Wells is not asking the Court to hold that when arriving at a gunfight, an officer must ask for a timeout to analyze whether the Fourth Amendment is being violated – when officers arrive to a jovial, calm, and cooperative driver, and there is no basis for the detention or seizure, those officers must be held to make their own determination or faced with the 'if all the other officers were jumping off a bridge, would you?' inquiry. *See O'Rourke v. Hayes*, 378 F.3d 1201, 1210 (11th Cir. 2004).

VI. Second Amendment Injury.

The Fourth Circuit erroneously held that Mr. Wells did not have a clearly established right to open carry

his firearms on February 9, 2020. *Wells v. Fuentes*, 126 F.4th 882, 896-897 (4th Cir. 2025) ("In 2020, existing precedent had not established that the Second Amendment protects a right to public carry"). However, the right to keep and openly bear arms in public has been a clearly established right since the ratification of the Second Amendment. Additionally, this Court's holding in *Heller* and *McDonald* demonstrate such individual rights were clearly established in the case law since at least 2008, and far earlier. *District of Columbia v. Heller*, 554 U.S. 570, 629 (2008), *McDonald v. City of Chi.*, 561 U.S. 742, 750 (2010). The observations in *Bruen* and its detailed historical articulation of the fact that while some firearms in some circumstances have been banned, open carrying of firearms has almost never been prohibited, or, if prohibited, not for long. *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1, 53 (2022).

VII. This action is substantially similar to *Hicks v. Ferreyra.*

This Court should intervene to maintain uniformity among recent matters within the Fourth Circuit. Under facts relevantly similar to Mr. Wells' case, Nathaniel Hicks, then a United States Secret Service agent, filed suit against two United States Park Police officers for, what was characterized as, brief welfare checks. *Hicks v. Ferreyra*, 64 F.4th 156 (4th Cir. 2023). Ultimately, after some procedural meandering, a jury heard the case and awarded damages of $205,000 in compensatory damages and $525,000 in punitive damages. *Id*. In its *Hicks II* opinion, the Fourth Circuit affirmed the jury award for the plaintiff's Fourth Amendment injury caused by the "welfare check." *Hicks v. Ferreyra*, 64 F.4th 156 (4th Cir.

2023). This Court denied the law enforcement officers' petition. *Ferreyra v. Hicks*, 144 S. Ct. 555, 2024 U.S. LEXIS 218 (U.S., Jan. 8, 2024).

The jury's mandate speaks loudly: these types of post-hoc, welfare check justifications violate the Fourth Amendment and cannot be tolerated. Mr. Wells, similarly, should be afforded his day in Court to present this case and his injuries to a jury so that he, also, may obtain justice for the civil rights violations he suffered.

CONCLUSION

For the foregoing reasons, and in the interests of substantial justice, this Court should grant this Petition and issue a writ of certiorari to the Fourth Circuit Court of Appeals.

Respectfully submitted,

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APPENDIX

TABLE OF APPENDICES

APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT, FILED JANUARY 22, 2025

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 23-1638

CURTIS LEVAR WELLS, JR.,

Plaintiff–Appellant,

v.

JAVIER FUENTES, BADGE #1666; SCOTT WANEK, BADGE #1137; MICHAEL P. ARMSTRONG, BADGE #331; LAUREN LUGASI, BADGE #1625; KIMBERLY SOULES, BADGE #1630; AUSTIN KLINE, BADGE #1720; JOHN VANAK, BADGE #1399; KEITH SHEPHERD; JOHN DOES 1 THROUGH 10; UNITED STATES OF AMERICA,

Defendants–Appellees,

and

ASHLEY BARNICKLE, BADGE #1574; COUNTY OF ARLINGTON,

Defendants.

Appendix A

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. Michael Stefan Nachmanoff, District Judge. (1:22-cv-00140-MSN-IDD)

Argued: September 26, 2024 Decided: January 22, 2025

Before THACKER, RICHARDSON, and BENJAMIN, Circuit Judges.

Affirmed by published opinion. Judge Richardson wrote the opinion, in which Judge Thacker and Judge Benjamin joined.

RICHARDSON, Circuit Judge:

Curtis Wells parked somewhere he shouldn't have. He stopped beside a road running between Arlington Cemetery and the Pentagon, then gestured wildly while he took a phone call. Police understandably checked on him. When they did, they realized Wells had neither license nor registration and wrote him a ticket. Without a registration, Wells couldn't stay parked on the roadside. And without a license, he couldn't drive home either. So the police had to tow his car.

Wells's parking ticket became a criminal case when officers found an assortment of weapons and tactical gear in his car. Along with guns, face masks, and a grenade, officers spotted a body armor plate carrier in the back seat. The police sent Wells home that day and kept some of his gear for safekeeping. But further investigation

suggested that the plate may have been stolen from the Army. So, nine days later, police arrested Wells for receiving stolen property.

Wells now challenges the officers' actions. But the Fourth Amendment proscribes only unreasonable police actions. And when officers enjoy qualified immunity, their actions must not only be unreasonable, but patently so. Because everything Wells describes passes that test, and because his other claims fall short, we affirm the dismissal of all his claims.

I. Background

A. Officer Armstrong Approaches Wells by Arlington Cemetery

Curtis Wells parked his Mustang outside Arlington Cemetery in February 2020.[1] There, he took a phone

1. Normally, on appeal of a Rule 12(b)(6) dismissal, we consider only the facts alleged in the complaint. But Wells asks us to consider exhibits that he attached to his complaint as well, including police footage, and testimony and documents from the records of criminal proceedings against him. Below and here, the defendants agree that this is appropriate. With the parties in agreement, we will treat Wells's exhibits as adopted by the complaint. *See Blankenship v. Manchin*, 471 F.3d 523, 526 n.1 (4th Cir. 2006); *see also Balogh v. Virginia*, 120 F.4th 127, 131 (4th Cir. 2024); *Occupy Columbia v. Haley*, 738 F.3d 107, 116 (4th Cir. 2013); *cf. Doriety for Est. of Crenshaw v. Sletten*, 109 F.4th 670, 679–80 (4th Cir. 2024).

call and drank a strawberry-banana smoothie. Michael Armstrong—a police officer assigned to the cemetery—noticed Wells's gestures while he was on the phone.[2] From Armstrong's point of view, Wells was making "animated," "flamboyant motion[s]," and Armstrong worried that the "commotion" might mean trouble. J.A. 89–90, 92. Perhaps "a medical emergency." J.A. 91. Or perhaps "somebody was just upset that their car had broken down." J.A. 91. Either way, "[b]eing close to a military installation," he drove up to check on Wells. J.A. 91. When he reached Wells, Armstrong parked behind the Mustang. And as he did, he noticed that Wells's car bore an expired temporary registration. So he summoned Arlington County police and chatted with Wells while he waited for them to arrive.

B. Arlington Police Arrive, Detain Wells, and Search His Mustang

When the local law-enforcement officers turned up, one of them, Officer Javier Fuentes, learned from Armstrong that Wells's registration had expired. Fuentes also discovered that Wells wasn't carrying a driver's license. And when he asked Wells whether he had any guns in the car, Wells replied that he had an AR-15 in the trunk and a Glock in the center console. Finally, glancing into the car, Fuentes saw a ballistic plate carrier—a type of body armor—resting in plain view on the back seat. With that, Fuentes cuffed Wells and sat him on the curb while

2. Arlington Cemetery lies between Fort Myer and the Pentagon. Military police like Armstrong patrol the cemetery and its surroundings under a joint agreement with Arlington County police.

he sorted out what to do. Other local officers retrieved the weapons and ran their serial numbers.

By this point, the officers faced a complex problem. They already knew that Wells had committed at least two offenses: driving without a license and driving with an expired registration. *See* Va. Code §§ 46.2-104, 46.2-646. Without a license, Wells couldn't lawfully drive home. At the same time, his car couldn't remain parked in a public lot with an expired tag. *See* Arlington County, Va., Code § 14.2-2(A)(2) (2015).

Given all this, the local officers knew they needed to tow Wells's Mustang. Following Arlington County Police Department practice, the officers performed an inventory search of the car before towing it. That search turned up a formidable arsenal: five loaded AR-15 magazines, a drone, a laptop, rubber knives, face masks, radios, a Texas license plate, a smoke grenade, two tactical vests, a list of weapons to be purchased, a "Stanley Fat Max 24-inch yellow crowbar," and a Ceradyne ballistic plate bearing serial number 2923205 inside the earlier-discovered plate carrier. J.A. 266–68.

This gear raised another problem. Normally, the police could have just sent Wells home. Though he couldn't drive, he could walk or call a cab, and he could ordinarily take with him whichever of his possessions he wanted from his car. But the guns, grenade, and plate carrier posed an issue. Arlington Cemetery is right next to the Pentagon, and the officers understandably didn't want to

deck Wells out in weapons and tactical gear, then send him walking past one of the nation's most sensitive sites.[3] Instead, they recommended that he phone a friend to pick him up. But Wells couldn't find anyone to get him. So the local police suggested that Wells leave his gear with them. "Okay," he replied. J.A. II 01:06:10–01:06:30. Accordingly, the local police decided which items warranted separate safekeeping and which could remain in the trunk, then explained the property retrieval process to Wells. "Cool, cool," he said. J.A. II 01:12:18. After Wells signed the property retrieval form, the local police gave his Mustang to the tow company.

C. Arlington County Police Revisit Wells's Property in Custody

The next day, Arlington County's Detective Scott Wanek took another look at Wells's in-custody gear. The armor plate aroused Wanek's interest because it bore an Army serial number—and Wells, Wanek discovered, is a veteran of the Army's Third Infantry Regiment. Wells served with the Old Guard's Echo Company until 2019, when he received a General Under Honorable Conditions discharge. Seeing this, Wanek called the military police and spoke to Detective Keith Shepherd. Shepherd told Wanek that Echo Company reported several armor plates as stolen about a month before Wells was discharged. So Wanek did some digging. He discovered that after Wells's gear return, "he was given a 'statement of no charges,' meaning that [he] had returned all issued equipment." J.A. 268. Yet somehow, a serialized Army plate turned up in

3. Nor, apparently, could Wells summon a ride—because Ubers don't allow guns.

the back of his car. And as far as Shepherd knew, there was no legitimate way Wells could have left the Army but kept the Army's plate.

D. Arlington County Police Arrest Wells, and Virginia Brings Criminal Charges

Wanek thus sought a warrant to arrest Wells. Three days after Wanek got the warrant, he called Wells and invited him to "pick up his gear" from the Arlington County courthouse. J.A. 295. But this was a ruse. When Wells arrived at the courthouse, this time driving a Pontiac, he was arrested. And when Wanek asked him about the plate, Wells confessed that he had stolen it from his Army roommate during out-processing. Meanwhile, Officer Ashley Barnickle impounded and requested a search warrant for the Pontiac because local police suspected Wells had more plates and intended to sell them. When the warrant arrived, Barnickle searched the Pontiac and found more tactical equipment, along with various unknown substances: a rifle magazine loaded with 28 green-tipped rounds; lock picks; a hemorrhage bandage; gauze; "spikes/darts with case"; a black bag containing various pills and white powder, and a notebook with Proverbs 3:5 on the cover ("Trust in the Lord with all your heart, And do not lean on your own understanding."). J.A. 284.

Later, in February 2020, Wells was convicted of the traffic offenses. In March, a grand jury indicted him for receiving stolen property valued in excess of $500, a violation of Va. Code § 18.2-108. Wells was denied bail because the state court considered him a "flight risk and a danger to the community." And in July, another grand jury

indicted Wells on drug charges. In September, Virginia declined to prosecute the stolen-property case. Wells was then released from jail. And in April 2021, Virginia likewise declined to prosecute the drug case.

E. Wells Sues

With the criminal cases over, Wells brought state and federal claims against many state and federal officers, Arlington County, and the United States. He pleaded Fourth Amendment claims under 42 U.S.C. § 1983 against the state defendants for detaining him, searching his car, and seizing his property on February 9; searching his property again once it was in police custody; and lying to magistrates to secure the later arrest and search warrants. He likewise pleaded a Second Amendment claim against the state defendants for taking his guns. As for the federal defendants, he claimed Fourth and Fifth Amendment violations under *Bivens v. Six Unknown Named Agents*, 403 U.S. 388, 91 S. Ct. 1999, 29 L. Ed. 2d 619 (1971). Last, he brought state tort claims against various individual officers for false imprisonment and malicious prosecution, a *Monell v. Dep't Soc. Servs.* claim against Arlington County, *see* 436 U.S. 658, 98 S. Ct. 2018, 56 L. Ed. 2d 611 (1978), and a direct claim against the United States, citing the Federal Tort Claims Act, *see* 28 U.S.C. § 1346 *et seq.*

1. The United States Steps In

Because Wells sued two federal officers for state torts, the United States stepped in as a party, substituting itself for Armstrong and Shepherd under the Westfall

Act, 28 U.S.C. § 2679(d)(1). Wells moved to strike the substitution, complaining (without evidence) that Armstrong and Shepherd had acted ultra vires and were therefore ineligible for the Westfall Act's protections. The district court denied Wells's motion. It reasoned that absent evidence to counter the U.S. Attorney's Westfall Act certification, that certification presumptively proved that Armstrong and Shepherd acted within the scope of their employment.

2. The District Court Dismisses Wells's Claims

All defendants successfully moved to dismiss Wells's claims. The district court reasoned that qualified immunity protected the federal officers even if a *Bivens* remedy were available. So too for the state defendants. And because Wells never alleged that Arlington County's policies caused the harms he complained of, the district court also rejected *Monell* liability. Wells's state tort claims against state officers likewise failed because Wells didn't allege all their elements. As for the United States, the district court held that Armstrong and Shepherd performed discretionary functions, so Wells's claim against them was barred by sovereign immunity.

Wells now appeals.[4]

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4. We have jurisdiction to decide Wells's appeal under 28 U.S.C. § 1291. And we review *de novo* the dismissal of his claims—whether they were dismissed on the merits, *Evans v. United*

II. Discussion

State and federal officials alike "are immune from suit . . . unless they have violated a [federal] statutory or constitutional right that was clearly established at the time of the challenged conduct." *City & Cnty. of S.F. v. Sheehan*, 575 U.S. 600, 611, 135 S. Ct. 1765, 191 L. Ed. 2d 856 (2015) (quotation omitted). Though qualified immunity is controversial, we are bound to apply it in full measure. And it is demanding.

Qualified-immunity cases involve two steps. At step one, the plaintiff pleads a § 1983 or *Bivens* action by showing that an official's conduct violated his right.[5] *See*

States, 105 F.4th 606, 616 (4th Cir. 2024), or for lack of jurisdiction, *Doe v. Meron*, 929 F.3d 153, 163 (4th Cir. 2019). To avoid dismissal, 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, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007)). And to "nudg[e] the claims across the line from conceivable to plausible," the facts alleged must surpass "the speculative level." *Evans*, 105 F.4th at 616 (quoting *Bazemore v. Best Buy*, 957 F.3d 195, 200 (4th Cir. 2020)).

5. What this showing requires of the plaintiff depends on the stage of litigation. On a Rule 12(b)(6) motion, we ask whether the plaintiff has plausibly alleged all the elements his claim requires. At summary judgment, we ask whether there's a real, trial-worthy dispute about some fact that the claim turns upon. Either way, what is required at step one is essentially a normal merits analysis

Stanton v. Elliott, 25 F.4th 227, 233 (4th Cir. 2022). At step two, qualified immunity allows the official to beat the plaintiff's claim by showing that the asserted right was less than "clearly established" at the time of the conduct. *Plumhoff v. Rickard*, 572 U.S. 765, 778, 134 S. Ct. 2012, 188 L. Ed. 2d 1056 (2014).[6] What does it mean for the asserted right to be "clearly established?" It must be the case that "any reasonable official in the defendant's shoes would have understood that he was violating it." *Id.* at 779. Of course, the "reasonable official"—like the "reasonable man" posited by some tort cases—is a fiction. Qualified immunity's real bite lies in what this hypothetical is supposed to measure: The law is not "clearly established," or obvious to "any reasonable official," unless "existing precedent" has "placed the statutory or constitutional question beyond debate." *Ashcroft v. al-Kidd*, 563 U.S. 731, 741, 131 S. Ct. 2074, 179 L. Ed. 2d 1149 (2011).

It's easier to show that a right was *probably* violated than inarguably violated, and so "[t]here are cases in which it is plain that a constitutional right is not clearly established but far from obvious whether in fact there is such a right." *Pearson v. Callahan*, 555 U.S. 223, 237,

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indexed to the relevant stage of litigation. *See Behrens v. Pelletier*, 516 U.S. 299, 309, 116 S. Ct. 834, 133 L. Ed. 2d 773 (1996).

6. Qualified immunity thus consists of two questions, on which the burden of proof is split in the Fourth Circuit. Has the plaintiff shown that his rights were violated, and has the officer shown that the asserted rights were less than clearly established? *Thurston v. Frye*, 99 F.4th 665, 673 (4th Cir. 2024).

129 S. Ct. 808, 172 L. Ed. 2d 565 (2009). Thus, to avoid "substantial expenditure of scarce judicial resources," we may take these two steps in either order—or, answering one in the negative, decline to answer the other. *Id.* at 236. If we choose to take the second, qualified-immunity inquiry first, we assume that the plaintiff has shown all the facts alleged. In other words, we assume that the plaintiff can carry his burden at step one. *See Stanton*, 25 F.4th at 233 & n.5. Then we ask whether *if* what he says were true, this would amount to an inarguable breach of law.

Because at step two the question must be beyond debate from the perspective of *any* reasonable officer, we often say that qualified immunity calls for an "objective" test. *See Harlow v. Fitzgerald*, 457 U.S. 800, 815–17, 102 S. Ct. 2727, 73 L. Ed. 2d 396 (1982). The Supreme Court has explained "that bare allegations of malice should not suffice to subject" officers to the "burdens" of suit. *Id.* at 817–18. This means we do not ask at step two whether the defendant officials subjectively knew they broke the law, or even did so deliberately. *Id.* at 818–19. Instead, we *assume* that the plaintiff can win at step one and then ask only whether what the officer allegedly did was undebatably wrong.[7]

7. Some of our cases rightly observe that despite this rule, defendant officers' motivations really can matter at *step one*. In First Amendment retaliation cases, for example, or in Eighth Amendment deliberate-indifference cases, it's clearly established that whether an officer broke the law *depends* on his private, subjective motives—which means we can't answer the step-one question without knowing something about those real motives.

Yet because the precise scope of "clearly established law" depends on "existing precedent," the factual details of past cases matter a great deal. *al-Kidd*, 563 U.S. at 741–42. The Supreme Court has "repeatedly" admonished that we should not "define clearly established law at a high level of generality." *Id.* at 742. Instead, to find a violation of clearly established law, we must be able to "'identify a case' or a 'body of relevant case law' where 'an officer acting under similar circumstances was held to have violated the Constitution.'" *Rambert v. City of Greenville*, 107 F.4th 388, 402 (4th Cir. 2024) (cleaned up) (quoting *D.C. v. Wesby*, 583 U.S. 48, 64, 138 S. Ct. 577, 199 L. Ed. 2d 453 (2018)). If no prior case has announced a "rule" that "obviously resolve[s]" the rights claim at hand, then the right was not clearly established. *Wesby*, 583 U.S. at 64.[8]

See Crawford-El v. Britton, 523 U.S. 574, 588–89, 118 S. Ct. 1584, 140 L. Ed. 2d 759 (1998); *Thompson v. Virginia*, 878 F.3d 89, 106 (4th Cir. 2017). So although it's true that we never consider officers' true intentions at step two, we *do* still consider officials' subjective motivations at step one if those motivations are elements of a plaintiff's claim. But if we take step two first, we don't need to know—and therefore don't ask—whether the officers acted with malice. We assume that the plaintiff has made out his claim, including any element of subjective malice, and then ask whether it is clear beyond debate that the conduct pleaded broke the law.

8. That "specificity is especially important" in Fourth Amendment cases, where it is "difficult for an officer to determine how the relevant legal doctrine . . . will apply to the factual situation the officer confronts." *Mullenix v. Luna*, 577 U.S. 7, 12, 136 S. Ct. 305, 193 L. Ed. 2d 255 (2015) (internal quotation marks omitted). The Supreme Court often reiterates this proposition. *See, e.g., Wesby*, 583 U.S. at 64 ("[W]e have stressed the need to 'identify

This objective, fact-bound standard is "demanding." *Id.* at 63. The "crucial question" is whether *every* reasonable officer would know *this* action in *this* situation was unlawful. *Plumhoff*, 572 U.S. at 779. If even one reasonable officer could think that "existing precedent" did not put the legality of the conduct at issue "beyond debate," then all officers are immune. *al-Kidd*, 563 U.S. at 741.

A. Wells's Fourth Amendment Claims Fail

The Fourth Amendment protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV. Wells alleges search and seizure alike. But the officers' alleged conduct did not run afoul of clearly established law. So qualified immunity shields the officers.

The Fourth Amendment, fundamentally, demands reasonable conduct. *See, e.g., Brigham City v. Stuart*, 547 U.S. 398, 403, 126 S. Ct. 1943, 164 L. Ed. 2d 650 (2006) ("[T]he ultimate touchstone of the Fourth Amendment is 'reasonableness.'"). In explaining what is reasonable and what is not, the Supreme Court has identified certain types of conduct that often clear the reasonableness hurdle. The typical reasonable search or seizure happens

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a case where an officer acting under similar circumstances was held to have violated the Fourth Amendment.'" (quoting *White v. Pauly*, 580 U.S. 73, 79, 137 S. Ct. 548, 196 L. Ed. 2d 463 (2017))). For this reason, cases like this one are not "'the rare obvious case,' where a general standard can clearly establish the answer." *Garrett v. Clarke*, 74 F.4th 579, 589 (4th Cir. 2023) (quoting *Wesby*, 583 U.S. at 64).

within the boundaries of a valid warrant. *See Maryland v. Garrison*, 480 U.S. 79, 86, 107 S. Ct. 1013, 94 L. Ed. 2d 72 (1987). But without a warrant, searches and seizures may still be reasonable. For instance, warrantless searches are often reasonable when they accompany an arrest. *See, e.g., Riley v. California*, 573 U.S. 373, 382, 134 S. Ct. 2473, 189 L. Ed. 2d 430 (2014). So too under exigent circumstances, when "there is compelling need for official action and no time to secure a warrant." *Mitchell v. Wisconsin*, 588 U.S. 840, 849, 139 S. Ct. 2525, 204 L. Ed. 2d 1040 (2019).

Yet these categories are more heuristics than hard-edged rules. They have inherently fuzzy boundaries because classifying conduct requires circumstance-specific analysis. *See, e.g., United States v. Banks*, 540 U.S. 31, 36, 124 S. Ct. 521, 157 L. Ed. 2d 343 (2003) (explaining that the Court has "largely avoid[ed] categories and protocols for searches" because "it is too hard to invent categories without giving short shrift to details that turn out to be important in a given instance"). And these guidelines don't exhaust the universe of reasonable actions. The categories can help, but "reasonableness [is] a function of the facts of cases," and seldom does one fact have "dispositive[] significance." *Id.* For this reason, we must decide in every individual case whether officers acted reasonably.

"[A]most without exception," whether police action satisfies this reasonableness command turns on "an objective assessment of an officer's actions in light of the facts and circumstances then known to him." *Scott v. United States*, 436 U.S. 128, 137, 98 S. Ct. 1717, 56 L. Ed. 2d 168 (1978). We thus generally do not consider officers'

subjective intentions. *Brigham City*, 547 U.S. at 405; *Whren v. United States*, 517 U.S. 806, 813–14, 116 S. Ct. 1769, 135 L. Ed. 2d 89 (1996). Instead, we consider only what an imaginary, reasonable officer could have done in the same situation with the same knowledge. And whether a particular action falls within the reasonableness window or without depends on whether "the circumstances, viewed objectively, justify the action." *Brigham City*, 547 U.S. at 404 (cleaned up).

As laid out above, in qualified-immunity cases, we layer a second objective inquiry atop the first. At the first layer (the Fourth Amendment one), we ask whether a reasonable officer could have done the challenged act—that is, whether his conduct was factually reasonable. This determines whether officers violated a constitutional right. And at the second layer (the qualified-immunity one), we ask whether the conduct was "*legally* [ ]reasonable"—that is, whether any officer could have thought the act factually reasonable and thus lawful under the Fourth Amendment. *Anderson v. Creighton*, 483 U.S. 635, 641, 107 S. Ct. 3034, 97 L. Ed. 2d 523 (1987) (emphasis added). This determines whether the asserted right was clearly established. All together, step-two asks in Fourth Amendment cases whether every reasonable officer would know that the challenged conduct was *un*-reasonable.[9]

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9. As explained, qualified immunity does not foreclose inquiry into officers' subjective motivations when those motivations form an element of the plaintiff's claim. But Fourth Amendment claims do not invite this subjective analysis. *See Hunsberger v. Wood*,

1. Officers Lawfully Approached Wells

First, Wells claims that Armstrong seized him simply by pulling up behind him and blocking him in. An officer merely approaching a person does not implicate the Fourth Amendment. Police can always talk to people in public—just as "any private citizen might do without fear of liability." *Caniglia v. Strom*, 593 U.S. 194, 198, 141 S. Ct. 1596, 209 L. Ed. 2d 604 (2021) (internal quotation marks omitted) (quoting *Florida v. Jardines*, 569 U.S. 1, 8, 133 S. Ct. 1409, 185 L. Ed. 2d 495 (2013)). The Fourth Amendment is implicated only if police do more, like prevent someone from leaving. *See United States v. Mendenhall*, 446 U.S. 544, 554, 100 S. Ct. 1870, 64 L. Ed. 2d 497 (1980). We assume without deciding that Armstrong did more and thereby seized Wells. Given this, our question is whether Wells had a clearly established right against seizure in this situation.

Armstrong asserts that a reasonable officer could think pulling up behind Wells was lawful under a doctrine sometimes called the "community-caretaking exception." This doctrine emerged, almost by accident, out of passing comments in two decades-old Supreme Court opinions. *See* Thomas K. Clancy, *The Fourth Amendment: Its History*

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570 F.3d 546, 554 (4th Cir. 2009). In a few limited contexts, like inventory searches, we may examine "programmatic" purposes—that is, the reasons for the general policy for inventory searches. *Id.* But that is not the same as considering *individual* officers' subjective motives. When it comes to individual officers, we consider only whether their conduct was objectively reasonable, not what went through their minds as they did it.

and Interpretation § 10.3 (2017). In the first, *Cady v. Dombrowski*, the Court observed that police are not just crime-fighters. 413 U.S. 433, 93 S. Ct. 2523, 37 L. Ed. 2d 706 (1973). They also regularly "engage in what, for want of a better term, may be described as community-caretaking functions, totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute." *Id.* at 441. In *Cady*, the Court used that principle to explain a search that began as an effort to check a driver's welfare but wound up uncovering evidence. Then, in *South Dakota v. Opperman*, the Court applied the principle to towing disabled or illegally parked vehicles: "The authority of police to seize and remove from the streets vehicles impeding traffic or threatening public safety and convenience is beyond challenge." 428 U.S. 364, 369, 96 S. Ct. 3092, 49 L. Ed. 2d 1000 (1976). From there, the principle assumed a life of its own. And today, the principle has become a doctrine, "broadly utilized" by federal and state courts alike to cover the vast range of situations in which police engage in activity unrelated to law enforcement yet uncover evidence of crime. Clancy, *supra*, § 10.3; *see also Pennsylvania v. Livingstone*, 644 Pa. 27, 174 A.3d 609, 625–27 (Pa. 2017) (thoughtfully detailing the range of state-court treatment of the community-caretaking exception).

Perhaps because the doctrine is so capacious, its boundaries remain hazy, for "many police tasks . . . go beyond criminal law enforcement." *Caniglia*, 593 U.S. at 200 (Alito, J., concurring). Even when limited to the highway, noncriminal police action can take many forms depending on "the recurring practical situations that

result[] from the operation of motor vehicles . . . with which local police officers must deal every day." *Cady*, 413 U.S. at 446. But the idea that police may respond to car accidents without risking civil liability does not hand them a blank check in all other situations. For instance, the Court recently clarified that the community-caretaking exception is not "a *standalone* doctrine that justifies warrantless searches and seizures *in the home*." *Caniglia*, 593 U.S. at 196 (emphasis added). Helpful as this guidance is, the doctrine's limits elsewhere remain unsettled.

We need not decide the exception's precise bounds—or even decide whether it definitively applies here—to conclude that Armstrong violated no clearly established right. Though the exception is fuzzy around the edges, its core claim is that police can reasonably "provid[e] aid to motorists." *Caniglia*, 593 U.S. at 199. And they can reasonably help someone in need more generally. Armstrong saw a car parked outside the cemetery, and he did "not know[]" "if it was a medical emergency," or the "car had broken down," or its occupant was "upset in some way." J.A. 91.[10] A reasonable officer in such

10. Though this appeal comes to us on a motion to dismiss, the parties and district court relied on Armstrong's testimony below. Wells quoted long excerpts from it in his complaint. The federal defendants attached a longer portion as an exhibit to their motion to dismiss. And the district court's discussion of the caretaking issue depended on those submissions.

Now, Wells backpedals—insisting that we should defer to the language in his complaint over the testimony he pasted into it. But

circumstances may well have thought caretaking justified. *See Brigham City*, 547 U.S. at 404. At the very least, we cannot "identify a case" that has held the caretaker exception inapplicable to an analogous situation, so we cannot say that the constitutional question is "beyond debate." *Wesby*, 583 U.S. at 64 (quotations omitted). Nor will we speculate whether Armstrong secretly harbored other, more nefarious motives. Under our precedents, an officer's private beliefs make no constitutional difference in this context. *See Hunsberger*, 570 F.3d at 554. Wells recognizes that the caretaking exception has nebulous borders. But that means Wells cannot claim a clearly established right—ambiguity is a shield, for better or for worse.[11]

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although "it is not always appropriate to conclude that the plaintiff has adopted" whatever is in his complaint, *Goines v. Valley Cmty. Servs. Bd.*, 822 F.3d 159, 166 (4th Cir. 2016), it is too late for Wells to make this argument now. Wells's reliance on the testimony below created a "presumption" that he "adopted [it] as true." *Id.* at 167. Any objection to this was forfeited by his failure to make it below. The argument is forfeited here too, notwithstanding Wells's misgivings, because he does not argue that we shouldn't consider Armstrong's testimony for its truthfulness. *See Grayson O Co. v. Agadir Int'l LLC*, 856 F.3d 307, 316 (4th Cir. 2017) (explaining that a party cannot preserve an argument on appeal just by "tak[ing] a passing shot at the issue" (quotation omitted)).

And given that the testimony was incorporated into Wells's complaint, its content trumps Wells's denials. Even on a motion to dismiss, "in the event of a conflict between the bare allegations in the complaint and any exhibit attached, the exhibit prevails." *Goines*, 822 F.3d at 166 (cleaned up). So Armstrong's testimony about what he saw overcomes Wells's bare denial.

11. Wells also objects that police continued Armstrong's unlawful seizure when they arrived. But this fails for the same

2. Then, Officers Lawfully Inventoried Wells's Mustang

After Officer Armstrong told the local police that Wells carried an expired tag, they could remove Wells from the car to investigate. *See Pennsylvania v. Mimms*, 434 U.S. 106, 110, 98 S. Ct. 330, 54 L. Ed. 2d 331 (1977). And as Wells concedes, they could detain him and remove the guns from his car while they did so.

Wells argues that even though police could lawfully do all that, they couldn't constitutionally search the rest of his car just because they meant to tow it. But here too, the officers take shelter within a Fourth Amendment exception. They reply that they weren't "rummaging" for "incriminating evidence" but conducting a routine administrative inventory search. *Florida v. Wells*, 495 U.S. 1, 4, 110 S. Ct. 1632, 109 L. Ed. 2d 1 (1990). We agree. It's reasonable for a police department to require an inventory before towing a car. This protects police and civilians alike from dangerous items and lost property. *See United States v. Banks*, 482 F.3d 733, 739 (4th Cir. 2007).

Of course, an inventory search must be conducted in good faith. *Id.* Under our precedents, this means two things. First, the policy or practice authorizing the search must not have an impermissible "programmatic purpose." *Hunsberger*, 570 F.3d at 554; *see also Wells*,

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reason as his first claim. When local police arrived, they could rely on Armstrong's seizure (if it was a seizure). We do not have a clearly established anti-piggybacking rule. *See United States v. Hensley*, 469 U.S. 221, 231–32, 105 S. Ct. 675, 83 L. Ed. 2d 604 (1985).

495 U.S. at 4 ("The policy or practice governing inventory searches should be designed to produce an inventory."). Second, officers' searches must "generally" accord with such "standard procedures." *Banks*, 482 F.3d at 739–40; *Colorado v. Bertine*, 479 U.S. 367, 374, 107 S. Ct. 738, 93 L. Ed. 2d 739 (1987) ("[R]easonable police regulations relating to inventory procedures administered in good faith satisfy the Fourth Amendment.").[12] Searches that satisfy these two requirements clear the First Amendment's reasonableness hurdle.

The local officers' search did. Wells had valuable gear in the car, equipment that could have been the basis for costly claims if the police lost or damaged it. *See Bertine*, 479 U.S. at 372–73. The gear was dangerous too. *See id.* And so the officers explained that they followed department policy, which instructed them to inventory vehicles before having them towed. By following the policy's mandates, the police searched "according to standardized criteria." *Id.* at 374 n.6. And Wells alleges nothing to the contrary.[13]

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12. With respect to individual officers, this good-faith requirement is thus an objective one. *Cf. United States v. Leon*, 468 U.S. 897, 919–20, 104 S. Ct. 3405, 82 L. Ed. 2d 677 & n.20 (1984) (explaining the similar, "objective good faith" exception to the exclusionary rule).

13. Wells makes no headway by arguing that the local police should have given him an impound form earlier than they did—or that officers otherwise breached policy in some unspecified way. As we have explained, inventory searches should generally follow department policy. But not every "t" need be crossed. *See Banks*,

Wells's responses are unconvincing. First, he claims that an inventory search could withstand the Fourth Amendment only if officers removed *everything* from the car. But we have never required that. *See, e.g., Bertine*, 479 U.S. at 369 (upholding an inventory search that was "performed in a 'somewhat slipshod manner'"). And for good reason: The point of inventory searches is identifying dangerous or valuable property. *See United States v. Horsley*, 105 F.4th 193, 215–16 (4th Cir. 2024). Combing through every tiny compartment and seizing every item would go far further than required to achieve that end and would intrude on motorists' privacy more than necessary.

Wells next objects that police should not have opened containers within his car. But this too is mistaken. "[A]n inventory-search policy may leave the inspecting officer 'sufficient latitude to determine whether a particular container should or should not be opened in light of the nature of the search and characteristics of the container itself.'" *Banks*, 482 F.3d at 739 (quotation omitted). And Wells does not even try to explain which containers he thinks were wrongly opened or why the circumstances didn't justify opening them.

Last, Wells insists that the local police jumped the gun by beginning the search before they knew his car needed to be towed. As he tells the story, police only realized they needed to tow his car once they discovered valuables inside—items that couldn't be left on the side of the road

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482 F.3d at 739–40 (upholding an inventory search despite six discrepancies, including an improper inventory form, between the policy and the officer's actions). Wells fails to allege any substantial departure from policy and thus cannot show bad faith.

and that Wells couldn't take with him. But the decision about what to do with Wells's property and the decision to tow his car are logically independent. A car with an expired registration cannot lawfully occupy a public thoroughfare in Arlington. Arlington County, Va., Code § 14.2-2(A)(2) (2015). So, because Wells could not legally drive the car away, the officers had to tow the car upon learning that Wells's registration was expired. Wells may be right that local police couldn't know which of his things they would take for safekeeping until he confirmed that no one would pick him up. But they did know, long before Wells gave up trying to phone a friend, that his Mustang needed to be towed. And that triggered a constitutional inventory search.[14]

3. With Wells's Consent, Local Police Lawfully Safekept Wells's Property

Wells also argues that the local police unlawfully took his property for safekeeping. Many of his claims turn on this assertion, but they all fail because it is false: Wells consented to the safekeeping. When officers realized that Wells had weapons, tactical gear, and other valuable items in the car, they explained that he could not leave them by the roadside. And though they did not forbid him to walk home with his kit, they did advise him that it would be unwise to strap on a plate carrier and then stroll past

14. Wells's claim that officers detained him for too long also fails. Police could lawfully detain Wells long enough to perform this search. *See Muehler v. Mena*, 544 U.S. 93, 100, 125 S. Ct. 1465, 161 L. Ed. 2d 299 (2005).

the Pentagon with a rifle slung from his shoulder. Wells prudently took that advice.

Wells now backtracks and claims that although he signed the police property retrieval form, he did not *really* consent. The video of his interaction with the police belies this bare assertion. He accepted, on video, that leaving his things with the police was his best option. Though he—and the police—might have preferred to find someone to take him home, it was Wells who voluntarily abandoned that endeavor. When he did, Wells agreed to leave his things without protest. The video is clear that Wells cheerfully accepted the officers' offer. His claims of coercion therefore fail.[15]

For this reason, the district court rightly dismissed Wells's consent-to-safekeeping arguments. At the motion-to-dismiss stage, "in the event of a conflict between the bare allegations in the complaint and any exhibit attached, the exhibit prevails." *Goines*, 822 F.3d at 166 (cleaned up). We have applied the attached-exhibit rule to videos as well as documents. *Doriety*, 109 F.4th at 679. So if a plaintiff

15. Wells replies, citing *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966), that consent must be clearer than this. How clear, he does not say. But his reliance on *Miranda* is misplaced. *Miranda* does not demand clear consent to questioning. The *Miranda* cases teach nearly the opposite: A suspect must speak "unambiguously" to *invoke* the rights to remain silent and to counsel. *Berghuis v. Thompkins*, 560 U.S. 370, 381, 130 S. Ct. 2250, 176 L. Ed. 2d 1098 (2010). And in any event, we have held that a consent to search does not require magic words—or, for that matter, any words at all. *See United States v. Wilson*, 895 F.2d 168, 172 (4th Cir. 1990) (finding consent in a "shrug[]"). So Wells's repeated statements here suffice.

bases his complaint on a video, yet the video "'blatantly contradicts' [his] allegations," then we will dismiss those allegations as "implausible." *Id.* at 680 (citation omitted).

4. Later, Officers Lawfully Revisited Wells's Property

Wells next alleges that Detective Wanek unreasonably searched his gear the day after police took it for safekeeping. And because this second look prompted Wanek to investigate whether Wells had stolen the Army's ballistic plate, he complains that this tainted his later prosecution for the theft. But this just repackages Wells's other arguments. As Wells concedes, "evidence otherwise taken lawfully, can be later reviewed without Fourth Amendment violation." Opening Br. 38. So the only claim he makes on appeal is that police wrongly seized his property to begin with and that this wrongful seizure infected everything that happened later. Yet as explained, there was no wrongful seizure; Wells voluntarily put the property in police custody. So this claim also fails.[16]

16. Atop the claims already discussed, Wells argues that officers violated his rights by lying to a magistrate. Wanek, he says, lied about the ballistic plate—what it was worth and whether he had reason to think it stolen—to get an arrest warrant. In his view, this constitutes both a Fourth and a Fifth Amendment violation. But given what we have explained, there was no lie. After Wanek's investigation, local police had probable cause to believe Wells stole the plate. Shepherd told Wanek that there was no legitimate way Wells could have left the Army but kept its equipment. Rather than refute this, Wells appears to suggest that police can only seek a warrant if they not only suspect a crime but also know precisely *how* the crime was committed. But we have never required that. We

B. Wells's Second Amendment Claims Fail

Alongside his Fourth Amendment claims, Wells also alleges that officers violated his Second Amendment rights by taking his guns. But this claim runs into the same qualified-immunity problem. It may—*may*—be true that the officers' acts might violate the Second Amendment if they repeated them today. But qualified immunity demands we look at the law's content "*at the time* of the conduct in question." *Mays*, 992 F.3d at 301. In 2020, existing precedent had not established that the Second Amendment protects a right to public carry. *See Kolbe v. Hogan*, 849 F.3d 114, 135–37 (4th Cir. 2017) (en banc). That recognition came from the Supreme Court years later. *See*

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have instead repeatedly stated that an arrest warrant may be issued so long as "facts and circumstances within the officer's knowledge" are sufficient for a person of "reasonable caution" to think that "the suspect has committed . . . an offense." *Humbert v. Mayor and City Council of Baltimore City*, 866 F.3d 546, 555 (4th Cir. 2017) (quoting *Cahaly v. Larosa*, 796 F.3d 399, 407 (4th Cir. 2015)).

Wells also quibbles that the police had reason to doubt the plate was worth enough to support a felony charge. But this too gets him nowhere. Even if the plate wasn't worth much, its theft still would have been a misdemeanor. Va. Code § 18.2-96. Receiving it if it was stolen would have been a misdemeanor too. Va. Code § 18.2-108. And with probable cause to think Wells committed a misdemeanor, officers could seek a warrant for his arrest. *See Thurston*, 99 F.4th at 674 n.4 ("Probable cause need not be tailored to the offense the arresting official suspected at the time of arrest.").

Wells additionally claims that after his arrest, local police again moved too soon by searching the car he arrived in before getting a warrant. But he provides no support for this bare allegation. Even on a motion to dismiss, we will not credit pure speculation. *See, e.g.*, *Evans*, 105 F.4th at 616.

New York State Rifle & Pistol Ass'n v. Bruen, 597 U.S. 1, 8, 142 S. Ct. 2111, 213 L. Ed. 2d 387 (2022). Because Wells did not have a clearly established right in 2020, the police are entitled to qualified immunity.

* * *

Without alleging injury from the violation of a clearly established right, Wells has no federal claim against any of the individual officers.[17] Nor does he have a claim against Arlington County. Even supposing Wells pleaded injury to a constitutional right, he does not explain how any County policy, omission, or practice caused the harm. So no liability can attach to the County. *See Lytle v. Doyle*, 326 F.3d 463, 471 (4th Cir. 2003).[18]

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17. For the federal officers, we have another reason to pause before allowing Wells's claim to proceed. Litigants alleging constitutional violations have a ready avenue to sue *state* officers for damages. That is the principal function of § 1983. But as to federal officers, plaintiffs have fewer options. No statute opens the door to § 1983-style damages actions against federal officers. And though the Supreme Court has cracked that door in a handful of situations, *see Bivens*, 403 U.S. 388; *Davis v. Passman*, 442 U.S. 228, 99 S. Ct. 2264, 60 L. Ed. 2d 846 (1979); *Carlson v. Green*, 446 U.S. 14, 100 S. Ct. 1468, 64 L. Ed. 2d 15 (1980), it has instructed inferior courts to reject opening the door further if we spot "even a single reason to pause." *Egbert v. Boule*, 596 U.S. 482, 492, 142 S. Ct. 1793, 213 L. Ed. 2d 54 (2022) (internal quotation marks omitted). But we need not decide whether to extend the "disfavored" *Bivens* action, *Ziglar v. Abbasi*, 582 U.S. 120, 135, 137 S. Ct. 1843, 198 L. Ed. 2d 290 (2017) (citation omitted), to Wells's claims. Because the federal officers are immune, we may affirm without reaching the *Bivens* question. *See Wood v. Moss*, 572 U.S. 744, 757, 134 S. Ct. 2056, 188 L. Ed. 2d 1039 (2014).

18. Rather than plausibly allege that County policy caused what happened to him, Wells instead postulates two patterns that—even if

C. Wells's State Claims Likewise Fail

Besides his federal claims, Wells also argues that the officers's conduct violated rights against search and seizure that are conferred by Virginia law. He is mistaken. Virginia courts treat the state law he invokes as coterminous with federal constitutional protections. *Cromartie v. Billings*, 298 Va. 284, 837 S.E.2d 247, 254 (Va. 2020). So these claims fare no better than their federal counterparts.[19]

Wells also presses state tort claims for false imprisonment and malicious prosecution against individual

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true—have little to do with his case. First, he says, Arlington County has a "historical practice of harassing law-abiding gun owners." J.A. 61. But he does not explain how this "historical practice" affected the police's decision to cite him for a traffic offense before they discovered his guns and later safekeep the guns with his permission. Second, he insists, Arlington County officers disproportionately "arrest[] armed persons of color." J.A. 62. This fares no better. The local police didn't arrest Wells when he was armed on February 9. And when they *did* arrest him eight days later, it wasn't because he carried guns; it was because they thought he stole military equipment.

19. To be sure, Virginia unlawful-search rules don't use the federal qualified-immunity standard. But Virginia law gets to the same outcome by a different path. Virginia state law accounts for sovereign immunity, which protects officers from liability unless they lack "even scant care" or else act "in conscious disregard of another's rights, or with reckless indifference to the consequences." *Cromartie*, 837 S.E.2d at 254. In other words, a merely negligent officer faces no liability under Virginia's unlawful-search rule. *Id.* And Virginia courts distinguish negligence from recklessness by a familiar standard: They ask whether a "search was performed contrary to well-established law." *Id.* at 255. For that, in turn, Virginia courts look to federal precedent. *See id.* So without a clearly established Fourth Amendment violation, Wells has no state-law claim either.

police officers. But these claims fail too. False imprisonment requires, among other things, an unlawful arrest. But Wells doesn't dispute that he was arrested on a warrant. And though he urges that the warrant relied on faulty premises, that is not enough to show an unlawful arrest in Virginia. So long as the warrant was "regular and valid," false imprisonment does not lie absent some other issue with the detention. *Lewis v. Kei*, 281 Va. 715, 708 S.E.2d 884, 891 (Va. 2011) (quotation omitted).

Malicious prosecution likewise requires more elements than Wells alleges. For one thing, it requires the government to prosecute without probable cause. *Dill v. Kroger*, 300 Va. 99, 860 S.E.2d 372, 378 (Va. 2021). Wells says Virginia lacked probable cause to prosecute him for the stolen plate because police knew the plate was worth less than $500. But though the punishment is *harsher* if the stolen property is worth more than $500, stealing something worth less than $500 is still a crime in Virginia. Va. Code § 18.2-95, -96. And though Wells alleges that both prosecutions were baseless, his concessions upend that argument. Wells doesn't dispute that drugs were in his Pontiac or that an Army plate was in his Mustang. So this tort claim fails too.[20]

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20. Wells pursues the same state tort theories against Armstrong and Shepherd. For those claims, the United States stepped in to defend on Armstrong and Shepherd's behalf. *See* 28 U.S.C. § 2679(c), -(d)(1). But the United States has sovereign immunity. And though it has waived parts of that immunity, it hasn't waived with respect to federal employees' discretionary functions. *Id.* § 2680(a). If that sovereign immunity applies, district courts lack jurisdiction to consider the merits. *Fed. Deposit Ins. v.*

Appendix A

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Few parking tickets become federal cases. This one was unlucky for Wells because of the arsenal he carried in his car. But with the car where it was, police had to tow it. Needing to tow it, they had to inventory it too. And wisely

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Meyer, 510 U.S. 471, 475, 114 S. Ct. 996, 127 L. Ed. 2d 308 (1994) ("Sovereign immunity is jurisdictional in nature."); *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 101–02, 118 S. Ct. 1003, 140 L. Ed. 2d 210 (1998) (explaining that a court "act[s] ultra vires" if it considers the merits when "jurisdiction is in doubt"). And here, whether immunity applied turned on the scope of the discretionary-function exception. Concluding that the officers performed discretionary functions, the district court dismissed Wells's claim on Rule 12(b)(1), not 12(b)(6).

Yet we need not decide whether Armstrong and Shepherd carried out discretionary functions. The district court lacked jurisdiction for the second reason that, even if we accept Wells's allegations as true, neither Armstrong nor Shepherd committed any state torts. For "in the unique context of the FTCA, all elements of a meritorious claim are also jurisdictional." *Brownback v. King*, 592 U.S. 209, 217, 141 S. Ct. 740, 209 L. Ed. 2d 33 (2021) (citation omitted). Put differently, "a plaintiff must plausibly allege all six FTCA elements not only to state a claim upon which relief can be granted but also for a court to have subject-matter jurisdiction over the claim." *Id.* at 217–18. This, in turn, "means a plaintiff must plausibly allege that 'the United States, if a private person, would be liable . . .' under state law." *Id.* (quoting 28 U.S.C. § 1346(b)(1)). Wells does not. As explained, he does not plausibly allege that anyone committed any state torts. He thus "fails to plausibly allege an element that is both a merit element of [his] claim and a jurisdictional element." *Id.* at 218 n.8. So the district court could "dismiss the claim under Rule 12(b)(1) or Rule 12(b)(6). Or both." *Id.*

or not, Wells chose to leave its contents with the police. Though what ensued proved inconvenient for Wells, it was not unconstitutional. So the dismissal of all his claims is

AFFIRMED.

APPENDIX B — MEMORANDUM OPINION AND ORDER OF THE UNITED STATES DISTRICT FOR THE EASTERN DISTRICT OF VIRGINIA, ALEXANDRIA DIVISION, FILED MAY 31, 2023

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

Case No. 1:22-cv-00140 (MSN/IDD)

CURTIS WELLS,

Plaintiff,

v.

JAVIER FUENTES, *et al.*,

Defendants.

Filed June 2, 2023

MEMORANDUM OPINION AND ORDER

This matter comes before the Court on Defendants' five separate dismissal motions. *See* Dkt. No. 56 (Motion to Dismiss for Lack of Jurisdiction and Failure to State a Claim on behalf of Michael Armstrong, Keith Shepherd, and the United States); Dkt. No. 59 (Motion to Dismiss for Failure to State a Claim on behalf of Javier Fuentes, Austin Kline, Lauren Lugasi, Kimberly Soules, and John Vanak); Dkt. No. 61 (Motion to Dismiss for Failure to State a Claim on behalf of Ashley Barnickle); Dkt. No.

63 (Motion to Dismiss for Failure to State a Claim on behalf of Scott Wanek); Dkt. No. 68 (Motion to Dismiss for Failure to State a Claim on Behalf of Arlington County). Upon consideration of the accompanying memoranda and the parties' briefing, the Court will grant the motions, and the case will be dismissed.

I. BACKGROUND

A. Plaintiff's Allegations

In his Second Amended Complaint, Plaintiff alleges that, on February 9, 2020, he was sitting in his parked Ford Mustang in a lot near the Arlington National Cemetery when Michael Armstrong, a civilian law enforcement officer employed by the Department of the Army, approached him. Dkt. No. 48 ¶ 35 ("Compl."). As explained at a suppression hearing in Plaintiff's criminal case, Officer Armstrong testified that he approached Plaintiff's vehicle because, due to Plaintiff's demeanor, he sensed that "something was wrong," and wanted to make sure that Plaintiff was not suffering from a medical emergency or having vehicular problems. Compl. ¶ 38, n.3. Plaintiff claims that, at that time, he did not feel like he was free to leave because Officer Armstrong parked his cruiser in a way that impeded Plaintiff's ability to drive away. Compl. ¶¶ 35, 39.

During that "welfare check," Officer Armstrong noticed that Plaintiff's temporary license plate was expired. Compl. ¶ 38, n.3. Then, he requested assistance from the Arlington County Police Department ("ACPD").

Compl. ¶ 40. At least five ACPD officers were dispatched: Fuentes, Lugasi, Soules, Kline, and Vanak (together, "ACPD Officers"). Compl. ¶ 41. When they arrived, ACPD Officer Javier Fuentes ordered Plaintiff to step out of the vehicle and asked if there were any firearms inside. Compl. ¶ 50. After responding that there were, Plaintiff was placed in handcuffs, and the guns found in Plaintiff's car (a Glock handgun and an AR-15 rifle) were taken into the officers' possession for the duration of the stop. Compl. ¶ 49. At the conclusion of their investigation, the officers cited Plaintiff for operating his vehicle without a valid license and for bearing an improper registration in violation of Virginia law. Compl. ¶ 58.

Because the vehicle was not properly registered, it could not lawfully be driven (or parked) on local roads. As such, the vehicle needed to be towed. The officers informed Plaintiff that his car needed to be towed and explained why. *See* Dkt. No. 65-1 at 4:48:12 P.M.[1] Plaintiff expressed his understanding: "Well, it's got to be towed, and I've got to figure out what's going on with the weapons." *Id.* Plaintiff then asked if the vehicle had to be towed

1. Throughout his Complaint, Plaintiff relies on portions of the audio recording of his interaction with the ACPD Officers on February 9, 2020. *See, e.g.*, Dkt. No. 48 ¶ 47 n.4. And—both because of those references and because the parties agree that the recording may be considered "for any purpose," *see* Dkt. No. 75 at 1—the Court will consider the contents of that recording. *Cf. Dangerfield v. WAVY Broadcasting, LLC*, 228 F. Supp. 3d 696, 702 n.3 (E.D. Va. 2017) ("On a motion to dismiss, a court evaluates the complaint in its entirety, as well as documents attached or incorporated into the complaint.") (internal quotation omitted)).

to the impound lot (rather than to his home). *See id.* at 5:15:29 P.M. The officers explained that "[b]ecause [they] called [the tow], they have to take it to their lot." *Id.* And because the vehicle was to be towed into police custody, the officers conducted an inventory search pursuant to department policy. In addition to the Glock handgun and AR-15 rifle, ACPD Officers uncovered five fully loaded AR-15 magazines (150 rounds of ammunition), U.S. Army patches, a crowbar, two face masks, two vests with bullet proof armor, a smoke grenade, a Texas license plate, two-way radios, and a handwritten list of other weapons and equipment that Plaintiff possessed or needed to purchase. Dkt. No. 60-4 at 6-7 (search warrant affidavit).[2] Officers also uncovered a Ceradyne, Inc. rifle plate and a "handwritten list of chemical compounds that have potential to make the human body bulletproof or even invincible." *Id.*

The ACPD Officers then talked to Plaintiff about how they would handle his property in light of the necessity of towing his vehicle. Specifically, Officer Soules told Plaintiff that, because officers could not simply leave all his valuable property in the vehicle, Plaintiff could arrange for a friend to come pick up both him and his property. *See* Dkt. No. 65-1 at 4:48:30 P.M. Plaintiff responded that he would agree to leaving everything in his trunk to be towed away. *See id.* at 4:48:50 P.M. The officers again

2. In *Dangerfield*, this Court considered a search warrant affidavit in evaluating a motion to dismiss because it was integral to the allegations in the Complaint and was a public record. *Dangerfield*, 228 F. Supp. 3d at 702 n.3. The Court applies the same analysis here.

cautioned that they could not leave valuable items (like firearms) in the trunk. *Id.* Instead, the officers offered a third option: "[W]e can take it to our property, exactly like she said, for safekeeping. We give you a paper receipt, and then whenever you're ready, you just go pick it up." *Id.* Ultimately, Plaintiff was unable to secure a ride home, and rather than have the officers continue to wait, he agreed to the third option. And after signing the Property Retrieval form, *see* Dkt. No. 48-3, Plaintiff allowed the officers to take the items for safekeeping.

The vehicle was then towed. However, instead of being taken to the police impound lot, the vehicle was taken to Plaintiff's home. Compl. ¶ 67. Plaintiff alleges that the officers "knew that the Mustang was not going to be towed to the impound lot" all along and that their statements to the contrary were a ruse to justify the search of his vehicle. Compl. ¶ 73.

Plaintiff also alleges that on February 10, 2020, the day after the roadside encounter, Arlington County Detective Scott Wanek removed some of his property from safekeeping and searched it. Compl. ¶ 80. Specifically, Plaintiff alleges that Detective Wanek opened the soft body armor sleeve to reveal the Ceradyne, Inc. rifle plate. *Id.* Then, based on the plate's serial number, Detective Wanek reached out to Keith Shepherd, "a detective working for the Department of the Army," to determine whether it was possible that Plaintiff, a former serviceman stationed at Fort Myer, had stolen the plate from the United States government upon his separation from the military. Compl. ¶ 16, 138-39. Detective Wanek also

reviewed the reports of the ACPD Officers who were at the scene, including the representations that they found "a handwritten list of chemical compounds that have potential to make the human body bulletproof." *See* Dkt. No. 60-4 at 6-7; *cf.* Compl. ¶ 98 (challenging the description of that list). The Complaint further alleges that, at the conclusion of his investigation and "based upon bare assumption and speculation," Detective Wanek "made false statements to the magistrate judge to seek and receive an arrest warrant." Compl. ¶¶ 87-88. According to Plaintiff, Detective Wanek's actions were improper, either because he purposely lied under oath or because he intentionally misled the magistrate judge by failing to disclose that the conclusions in the warrant application were speculative. Compl. ¶¶ 90-91. The warrant was issued on February 14, 2020.

On February 18, Plaintiff met with Detective Wanek believing that the detective intended to return Plaintiff's property that had been held for safekeeping. Compl. ¶ 115. On that day, Plaintiff was driving a 2008 Pontiac, which he parked near the police station. Compl. ¶ 117. And, at some point during Plaintiff's conversation with the detective, Plaintiff was arrested pursuant to the February 14 warrant. Compl. ¶ 119. After the arrest, Detective Wanek confiscated the keys to the Pontiac and gave them to ACPD Officer Ashley Barnickle, who then requested a warrant to search the vehicle. *Id.* The magistrate judge issued a warrant later that day. However, according to Plaintiff, Officer Barnickle "sat in" and "searched" the vehicle before it was moved to the police impound lot and before she applied for a search warrant. *Id.* Plaintiff makes this

allegation based on the words used in the application. In Plaintiff's view, Officer Barnickle's use of the affirmative, past-tense language (that the car "contained" a cell phone) proves the officer's conduct occurred before the warrant had been issued. Compl. ¶ 120. Among other things, a bag of drugs was discovered in the Pontiac. Compl. ¶ 128. Plaintiff alleges that he "had never seen nor possessed" the drugs and that "[Officer] Barnickle, or another officer, had the motive, means, and opportunity to plant the bag." Compl. ¶ 130.

B. Procedural History

On February 28, 2022, Plaintiff initiated this suit, alleging constitutional claims against the Federal Defendants (Armstrong, Shepherd, and the United States), Arlington County, the ACPD Officers (Fuentes, Lugasi, Soules, Kline, and Vanak), Officer Barnickle, and Detective Wanek. Dkt. No. 1. The Complaint was later amended twice. *See* Dkt. No. 38 (First Amended Complaint); Dkt. No. 48 (Second Amended Complaint). The Court will only consider the allegations contained in the most recent iteration (Dkt. No. 48), which contains nine claims against the various officers and governmental entities.

Count I seeks relief under 42 U.S.C. § 1983 against the ACPD Officers' (including Detective Wanek and Officer Barnickle) alleging Fourth Amendment violations that occurred during the roadside encounter. Compl. ¶¶ 164-179. *Count II*, also brought under § 1983, alleges that Arlington County and some ACPD Officers (including Detective Wanek) violated Plaintiff's Second and

Fourteenth Amendment rights by seizing his firearms. Compl. ¶¶ 180-195. *Count III* is a common law claim for False Imprisonment brought against Officer Armstrong and the ACPD Officers (including Detective Wanek). Compl. ¶¶ 196-201. *Count IV* is a common law claim for Malicious Prosecution brought against Detective Shepherd and some ACPD Officers (including Detective Wanek). Compl. ¶¶ 202-213. *Count V* alleges that the ACPD Officers (including Detective Wanek and Officer Barnickle) violated Virginia's prohibition against warrantless searches. Compl. ¶¶ 214-224. *Count VI* is a *Bivens* action against Detective Shepherd. Compl. ¶¶ 225-234. *Count VII* is a *Bivens* action against Officer Armstrong. Compl. ¶¶ 235-245. *Count VIII* is a *Monell* claim against Arlington County. Compl. ¶¶ 246-268. And finally, *Count IX* is a claim against the United States brought under the Federal Tort Claims Act ("FTCA"). Compl. ¶¶ 259-268.

In October 2022, Defendants filed five separate dismissal motions, asserting various immunities and other defenses. *See* Dkt. Nos. 56, 59, 61, 63, 68. In November 2022, Plaintiff filed separate responses opposing each of the dismissal motions. *See* Dkt. Nos. 77-81. Later that month, Defendants filed their replies. *See* Dkt. No. 82-86.

II. DISCUSSIONS

A. Federal Defendants (Armstrong, Shepherd, United States)

The Court will start by addressing Plaintiff's claims against the Federal Defendants. As to Officer Armstrong

and Detective Shepherd, Plaintiff makes two separate *Bivens* claims—alleging that Officer Armstrong violated his Fourth and Fifth Amendment rights during the initial encounter (Count VII) and that Detective Shepherd violated his Fourth Amendment rights during his participation in the investigation of Plaintiff's possible crimes (Count VI). As to the United States, Plaintiff alleges two FTCA claims—alleging that the federal government is liable for the torts of False Imprisonment (Count III) and Malicious Prosecution (Count IV).[3]

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3. In his Second Amended Complaint (Dkt. No. 48), Plaintiff alleged these tort claims against the individual federal officers. The Federal Defendants moved to substitute the United States for those individual officers. *See* Dkt. No. 55 (Notice of Substitution). Plaintiff challenges that substitution through a Motion to Strike Substitution. *See* Dkt. Nos. 71 (Motion), 72-73 (Original and Supplemental Memoranda in Support). In response, the Federal Defendants argue that because the individual officers were acting within the scope of their federal duties, the only proper defendant for the FTCA claims was the United States itself, citing the Federal Employees Liability Reform and Tort Compensation Act of 1988, 28 U.S.C. § 2679 ("Westfall Act"). *See* Dkt. No. 76.

The Westfall Act provides that, once the United States Attorney has certified that the defendant-employee was acting within the scope of his or her federal employment at the time of the incident in question, "any civil action or proceeding commenced upon such claim in a United States district court shall be deemed an action against the United States under the provisions of this title and all references thereto, and the United States shall be substituted as the party defendant." 28 U.S.C. § 2679(d)(1). If the plaintiff challenges the scope of certification, the United States Attorney's certification "serves as prima facie evidence and shifts the burden to the plaintiff to prove, by a preponderance of the evidence, that the defendant federal employee was acting outside

Plaintiff also claims that the United States is liable for Shepherd and Armstrong's conduct under the doctrine of *respondeat superior* (Count IX).

The Federal Defendants moved to dismiss the claims, arguing: (1) that the claims against Officer Armstrong and Detective Shepherd would impermissibly extend *Bivens* liability to new contexts; (2) that, even if relief was available under *Bivens*, the claims against the individual officers would be barred by the doctrine of qualified immunity; (3) that the United States cannot be held vicariously liable for the acts of the individual officers; and (4) that, despite the FTCA, the claims against the United States itself are barred by sovereign immunity. Dkt. No. 57. The Court agrees, and the claims will be dismissed.

1. Officer Armstrong and Detective Shepherd

Plaintiff's claims against Officer Armstrong and Detective Shepherd will be dismissed.

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the scope of his employment." *Gutierrez de Martinez v. DEA*, 111 F.3d 1148, 1153 (4th Cir. 1997). To do so, plaintiffs must present more than "conclusory allegations and speculation"—they must provide "specific evidence." *Id.* at 1155. And when they do not, the government's certification is "conclusive." *Id.*

Here, Plaintiff provides no evidence that Detective Shepherd and Officer Armstrong were acting outside of the scope of their employment. Accordingly, Plaintiff's Motion to Strike will be denied, and the Court will analyze Counts III and IV with the other claim against the United States.

Appendix B

a. Is a *Bivens* Remedy Available?

Yes and no. While a *Bivens* remedy is not available for most of Plaintiff's claims against the individual federal officers, there is one exception. The Court then will address the individual claims in turn. To start, however, the Court provides a brief background of the *Bivens* remedy and its limits.

In *Bivens*, the Supreme Court was faced with the question of whether a plaintiff was entitled to seek damages in a civil action after federal officers conducted a warrantless search of his home, arrested him for alleged narcotics violations, and later subjected him to a visual strip search. *Bivens v. Six Unknown Named Agents*, 403 U.S. 388, 389, 91 S. Ct. 1999, 29 L. Ed. 2d 619 (1971). Answering that question in the affirmative, the Court (for the first time) recognized an implied right of action in which "victims of a constitutional violation by a federal agent have a right to recover damages against the official in federal court." *See Carlson v. Green*, 446 U.S. 14, 14, 100 S. Ct. 1468, 64 L. Ed. 2d 15 (1980) (discussing *Bivens*, 403 U.S. 388). However, with two exceptions,[4] the availability of a *Bivens* remedy has been limited to cases that do not involve extending such liability to "any new context or new category of defendants." *Ziglar v. Abbasi*, 582 U.S. 120, 135, 137 S. Ct. 1843, 198 L. Ed. 2d 290 (2017).

4. Those other two cases are: *Davis v. Passman*, 442 U.S. 228, 99 S. Ct. 2264, 60 L. Ed. 2d 846 (1979) (extending remedy to a case brought under the Fifth Amendment) and *Carlson v. Green*, 446 U.S. 14, 100 S. Ct. 1468, 64 L. Ed. 2d 15 (1980) (extending remedy to a case brought under the Eighth Amendment).

To determine whether a case would amount to such an extension, the Supreme Court has developed a two-step inquiry. *Id.* at 139-40. First, courts must ask whether a given case presents a "new *Bivens* context." If the context is *not* new—*i.e.*, if the case is not "different in [any] meaningful way" from the three cases in which the Court has recognized a *Bivens* remedy—then a *Bivens* remedy continues to be available. *Id.* But if the context is new, then courts must proceed to the second step by evaluating whether there are "special factors counseling hesitation in the absence of affirmative action by Congress." *Id.* at 140 (cleaned up). If such "special factors" do exist, a *Bivens* action is not available. *Id.*

i. Plaintiff's Fifth Amendment Claims

Plaintiff's Fifth Amendment claims arise in new contexts. Plaintiff's due-process claims differ significantly from the Fifth Amendment claim recognized in *Davis v. Passman*. There, the plaintiff sought damages after allegedly experiencing gender discrimination by a congressperson. *Davis*, 442 U.S. 228, 244, 99 S. Ct. 2264, 60 L. Ed. 2d 846 (1979). Here, Plaintiff seeks to hold the federal officers liable for "numerous violations of his property rights and liberty rights." Compl. ¶¶ 234 (Shepherd), 245 (Armstrong). The Fourth Circuit has recently held that ignoring similar deviations from the facts of *Davis* would require an expansion of *Bivens* liability. *See Doe v. Meron*, 929 F.3d 153, 169 (4th Cir. 2019) (declining to impose liability).

Furthermore, special factors counsel against extending *Bivens* liability to that new context. When determining whether special factors that counsel hesitation in expanding *Bivens* are present, courts must consider "whether the Judiciary is well suited, absent congressional action or instruction, to consider and weigh the costs and benefits of allowing a damages action to proceed." *Tun-Cos v. Perrotte*, 922 F.3d 514, 523 (4th Cir. 2019) (quoting *Abbasi*, 582 U.S. at 136). "If a factor exists that cause[s] a court to hesitate before answering that question in the affirmative," then a *Bivens* remedy is unavailable. *Id.* "In sum, if there are sound reasons to think Congress *might doubt* the efficacy or necessity of a damages remedy as part of the system for enforcing the law and correcting a wrong, then courts *must refrain* from creating the remedy in order to respect the role of Congress in determining the nature and extent of federal-court jurisdiction under Article III." *Abbasi*, 582 U.S. at 137 (emphasis added).

The fact that Detective Shepherd and Officer Armstrong are military personnel is particularly important. The Fourth Circuit has noted that—in more than fifty years—the Supreme Court has "never" extended *Bivens* liability to "the military context." *See Cioca v. Rumsfeld*, 720 F.3d 505, 510 (4th Cir. 2013). First, in *Chappell v. Wallace*, the Supreme Court recognized "[t]he special status of the military" under the Constitution, "the unique disciplinary structure of the military establishment and Congress' activity in the field" as special factors that precluded the extension of *Bivens* to an employment discrimination claim brought

by military service members against their superiors. 462 U.S. 296, 303-04, 103 S. Ct. 2362, 76 L. Ed. 2d 586 (1983). Then, in *United States v. Stanley*, the Court extended that rationale to civilian claims made against military personnel. *See* 483 U.S. 669, 107 S. Ct. 3054, 97 L. Ed. 2d 550 (1987). Reaffirming *Chappell* and discounting that case's concession that the Court had "never held" "that military personnel are barred from all redress in civilian courts for constitutional wrongs suffered in the course of military service," the Court unambiguously concluded that "no *Bivens* remedy is available for injuries that arise out of or are in the course of activity incident to service." *Id.* at 683-84. The Fourth Circuit has heeded that guidance. *See Cioca*, 720 F.3d at 517 ("[N]o case has permitted a *Bivens* action for money damages in the military setting."); *Lebron v. Rumsfeld*, 670 F.3d 540, 550 (4th Cir. 2012) (rejecting *Bivens* claim against military officers related to plaintiff's detention). And so has this District. *See, e.g.*, *Heap v. Carter*, 112 F. Supp. 3d 402, 430 (E.D. Va. 2015) (rejecting *Bivens* claim related to plaintiff's application for military employment).

This Court will follow suit. The fact that Plaintiff's claims may "not involve sensitive issues of national security or the administration of a uniquely defense-orientated institution," does not undercut the "DoD context" of Plaintiff's claims against military personnel. *See Doe v. United States*, 381 F. Supp. 3d 573, 618 (M.D.N.C. 2019). And that context (in and of itself) is a special factor counseling hesitation—especially considering the instruction of *Stanley, Chappell*, and the Fourth Circuit's applications of those cases.

ii. Plaintiff's Fourth Amendment Claim Against Detective Shepherd

Plaintiff's Fourth Amendment claim against Detective Shepherd is foreclosed by circuit precedent. In *Annappareddy*, the Fourth Circuit declined to extend *Bivens* liability to a similar claim alleging that a federal investigator submitted a false affidavit to obtain a warrant. *Annappareddy v. Pascale*, 996 F.3d 120, 135 (4th Cir. 2021). The court held that no *Bivens* liability was available because the alleged misdeeds there were "different from those in *Bivens*." *Id.* at 136. According to the Fourth Circuit, "speaking to witnesses, drafting reports, and sharing information with prosecutors and other investigators are information-gathering and case-building activities that represent a different part of police work than the apprehension, detention, and physical searches at issue in *Bivens*." *Id.* (cleaned up). And those differences were especially important because proving such claims requires a different type of showing: "one that would pose a greater risk of intruding on the investigatory and prosecutorial functions of the executive branch" than did the claims in *Bivens*. *Id.* Because Plaintiff's Fourth Amendment claim against Detective Shepherd mirrors those at issue in *Annappareddy*, it must suffer the same fate.

And as explained above, the special factor of Detective Shepherd's role as a detective for the Department of the Army counsels against extending *Bivens* liability to a new Fourth Amendment context in this case.

iii. Plaintiff's Fourth Amendment Claim Against Officer Armstrong

There is, however, a remedy for Plaintiff's Fourth Amendment claim against Officer Armstrong. After the briefing for the Federal Defendants' Motion to Dismiss was submitted, the Fourth Circuit decided *Hicks v. Ferreyra*, 64 F.4th 156 (4th Cir. 2023) ("*Hicks II*"), which makes a *Bivens* remedy available for claims (like Plaintiff's) which allege that, under the Fourth Amendment, an officer unreasonably seized their vehicle. In that case, two officers employed by the United States Park Police ("USPP") unreasonably seized a person parked on the shoulder of the Baltimore-Washington Parkway. 64 F.4th at 162-63. At trial, a jury found that the officers violated the plaintiff's Fourth Amendment rights and awarded money damages. *Id.* at 164. On appeal, the officers argued that the district court erred by concluding that they could be held liable under *Bivens* as the roadside-nature of the encounter rendered it a "new context" under Supreme Court precedent. *Id.* at 164-65. The Fourth Circuit disagreed. *Id.* at 169. In so doing, the appellate court held that—because both the arrest in *Bivens* and the stop in *Hicks II* were subject to the same "objective reasonableness" standard—the case was "not an extension of *Bivens* so much as a replay of the same principles of constitutional criminal law prohibiting the unjustified, warrantless seizure of a person." *Id.* at 167 (internal quotation omitted). And because the officers in *Hicks II* "confronted nothing more than established principles of Fourth Amendment law with extensive judicial guidance," the Court held that the plaintiff's claims fell into an existing *Bivens* context. *Id.* at 168.

As noted above, *Hicks II* resolves the issue before the Court today. Like the plaintiffs in *Hicks II* and *Bivens* itself, Plaintiff filed suit "to hold accountable only line-level investigative officers, not high-ranking officials." *Id.* at 167. Like *Hicks II* and *Bivens*, Plaintiff's claims are "based on the officers' discrete actions and did not implicate large-scale policy decisions or other general directives or statutes." *Id.* Like *Hicks II*, Plaintiff is suing federal law-enforcement personnel[5] whose actions were taken in "execution of principles of criminal law well-informed by decades of judicial guidance regarding the Fourth Amendment prohibition on the warrantless seizure of citizens without reasonable, articulable suspicion or

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5. The Court acknowledges that, while both cases involve "federal law-enforcement officers," the officers in *Hicks II* served with the USPP while Officer Armstrong is employed by the Department of the Army. And as the Fourth Circuit has announced in a similar case, Plaintiff's claims against Officer Armstrong would (at least, arguably) extend *Bivens* liability to a new *group* of defendants—military personnel. *See Doe v. Meron*, 929 F.3d 153,169 (4th Cir. 2019) (finding that a plaintiff's claims present a new context when defendants were "employees of the Department of Defense, operating under naval regulations"). Therefore—notwithstanding *Hicks II*—Plaintiff's claims against Officer Armstrong ("a military police officer working for the Department of Defense," Compl. ¶ 10) may nonetheless present a "new context" of *Bivens* liability.

However, the Court need not conclusively find *Bivens* applies here as any error committed by subjecting Officer Armstrong to *Bivens* liability under *Hicks II* is harmless. As explained below, the Court finds that the claims against Officer Armstrong are nonetheless blocked by his assertion of the qualified-immunity defense.

probable cause." *Id.* And as the appellate court has noted, "courts, including [the Fourth Circuit], have applied *Bivens* to Fourth Amendment claims arising from police traffic stops like this one." *Hicks v. Ferreyra*, 965 F.3d at 311 (4th Cir. 2022) (collecting cases) ("*Hicks I*") (cleaned up).

Accordingly, as in the *Hicks* cases, the Court finds that Plaintiff's claims do not represent an extension of the doctrine and are therefore cognizable under *Bivens*. *See Hicks II*, 64 F.4th at 169 (ending its inquiry before addressing any "special factors" after finding that the case did not arise in a new context) (citing *Tun-Cos v. Perrotte*, 922 F.3d 514, 522-23 (4th Cir. 2019)).

a. Did Plaintiff Sufficiently Plead a Constitutional Violation?

No. Notwithstanding the availability of a *Bivens* remedy, Plaintiff's claims against Officer Armstrong do not overcome the assertion of qualified immunity. Officers may assert the defense of qualified immunity only when their conduct "does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818, 102 S. Ct. 2727, 73 L. Ed. 2d 396 (1982). *Saucier v. Katz* sets out the two-step process for determining when the defense applies. *See* 533 U.S. 194, 121 S. Ct. 2151, 150 L. Ed. 2d 272 (2001). First: Determine whether, "[t]aken in the light most favorable to the party asserting the injury," the facts alleged by that party "show the officer's conduct violated a constitutional right." *Id.* at 201. Second:

If a constitutional violation occurred, ask whether "it would be clear to an objectively reasonable officer that his conduct violated that right." *Id.* at 202. In undertaking that second inquiry, the court "must ascertain whether a reasonable [official] could have believed [the challenged conduct] to be lawful, in light of clearly established law." *Meeker v. Edmundson*, 415 F.3d 317, 323 (4th Cir. 2005) (citing *Anderson v. Creighton*, 483 U.S. 635, 641, 107 S. Ct. 3034, 97 L. Ed. 2d 523 (1987)).

Applying that standard, the Court finds that Plaintiff has failed to establish that his Fourth Amendment rights were violated. And while Officer Armstrong correctly argues that Plaintiff's Fourth Amendment rights were not, the Court finds that the Fourth Amendment's protections were implicated by his interaction with Plaintiff. As the Supreme Court has explained, "a person has been 'seized' within the meaning of the Fourth Amendment only if, in view of all the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave." *United States v. Mendenhall*, 446 U.S. 544, 554, 100 S. Ct. 1870, 64 L. Ed. 2d 497 (1980). And, in his Complaint, Plaintiff alleges that Officer Armstrong positioned his car in a manner that prevented him from being able to end the interaction by driving away. *See* Compl. ¶¶ 37, 39. The Court therefore finds that Plaintiff has sufficiently alleged that he was not free to leave, triggering his Fourth Amendment protections.

Those protections, however, are subject to several well-defined exceptions. Defendants argue that the so-called "community caretaker" exception applies to these

facts. Dkt. No. 57 at 21. Under that exception, "a police officer serving as a community caretaker to protect persons and property is constitutionally permitted to make searches and seizures without a warrant." *Phillips v. Peddle*, 7 F. App'x 175, 178 (4th Cir. 2001) (citing *Cady v. Dombrowski*, 413 U.S. 433, 441, 93 S. Ct. 2523, 37 L. Ed. 2d 706 (1973)). In other words—so long as the officer's actions were unrelated to "the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute"—the Constitution does not require either a warrant or a showing that the officer possessed the level of suspicion that would otherwise be needed to justify the intrusion. *Cady*, 413 U.S. at 441.

Here, the Second Amended Complaint and the incorporated materials reflect that Officer Armstrong approached Plaintiff because he was concerned from a community-caretaking standpoint, not because he suspected any criminal activity. *See* Compl. ¶ 38, n.3 (quoting Officer Armstrong's testimony at the state suppression hearing). According to his sworn statements—after witnessing Plaintiff move "erratically" while sitting in the vehicle, Dkt. No. 57-1 at 12:21-13:4—the officer "wasn't sure if it was a medical emergency" or "if maybe somebody was just upset that their car had broken down and they needed some kind of assistance," and that uncertainty "drew [his] attention to the vehicle." *See id.* at 14:2-12 (explaining that family members had a history of seizures, heightening his concerns). And, because it is unable to discredit that sworn testimony at this stage, the Court finds that Plaintiff has failed to allege that a constitutional violation occurred when

Officer Armstrong approached his vehicle. *S. Walk at Broadlands Homeowner's Ass'n, Inc. v. OpenBand at Broadlands, LLC*, 713 F.3d 175, 182 (4th Cir. 2013) (on a motion to dismiss: "In the event of conflict between the bare allegations of the complaint and any exhibit attached to the complaint, the exhibit prevails.") (cleaned up).

Thus—because the claims against him would extend *Bivens* liability to a new context and because the special factors surrounding those claims militate against such an extension—Plaintiff's claims against Detective Shepherd will be dismissed. And, because Plaintiff fails to allege a constitutional violation against him, Officer Armstrong is entitled to qualified immunity, and the claims against him will be dismissed.

2. The United States

The claims against the United States—Count III (false imprisonment), Count IV (malicious prosecution), and Count IX (vicarious liability)—will also be dismissed.

a. Can the United States be Held Vicariously Liable under the FTCA?

No. Skipping ahead, the Court starts by addressing Plaintiff's contention that the United States can be liable for Shepherd and Armstrong's conduct under the FTCA through the doctrine of *respondeat superior*. *See* Compl. ¶ 264 ("The United States is liable to [Plaintiff] under the doctrines of *respondeat superior* and vicarious liability for the wrongful conduct of Shepherd and Armstrong.").

As the Federal Defendants point out, that claim is not cognizable. *See* Dkt. No. 57 at 22-23. Nor does it need to be. The FTCA applies exclusively to claims against federal employees that are "acting within the scope of [their] office or employment." 28 U.S.C. § 2674. In other words, "[a]ll FTCA liability is *respondeat superior* liability." *Johnson v. Sawyer*, 47 F.3d 716, 730 (5th Cir. 1995).

Thus—because FTCA liability and employer liability are one in the same—Count IX is not cognizable as a standalone claim and will therefore be dismissed. *See Thompson v. Dilger*, 696 F. Supp. 1071, 1072 n.1 (E.D. Va. 1988) ("[T]he FTCA subjects the United States to liability only for negligent or wrongful acts of a federal employee. Claims of vicarious or strict liability are, therefore, excluded.")

b. Does the Court Have Jurisdiction Over the Other FTCA Claims?

No. Turning to Counts III and IV, the United States argues (and the Court agrees) that Plaintiff's claims should be dismissed for lack of subject matter jurisdiction.

As the Supreme Court has explained, "[a]bsent a waiver, sovereign immunity shields the Federal Government and its agencies from suit." *FDIC v. Meyer*, 510 U.S. 471, 474, 114 S. Ct. 996, 127 L. Ed. 2d 308 (1994). The FTCA waives the United States' sovereign immunity with respect to certain damages actions based on "the negligent or wrongful act[s] or omission[s]" of federal employees. 28 U.S.C. § 1346(b)(1). However, the FTCA's

waiver is limited by several exceptions, which, if applicable, preserve the federal sovereign's immunity from suit and deprive the district court of subject matter jurisdiction. *See Medina v. United States*, 259 F.3d 220, 223 (4th Cir. 2001); *Blanco Ayala v. United States*, 982 F.3d 209, 214 (4th Cir. 2020) (noting that the FTCA's "broad waiver of sovereign immunity is cabined by a list of exceptions").

At issue in this case is the so-called "discretionary-function exception." Under that exception, the United States preserves its immunity as to any claim "based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a federal agency or an employee of the Government, whether or not the discretion involved be abused." 28 U.S.C. § 2680(a). This exception "prevent[s] judicial 'second-guessing' of legislative and administrative decisions grounded in social, economic, and political policy through the medium of an action in tort." *Williams v. United States*, 50 F.3d 299, 309 (4th Cir. 1995). A claim is based upon an agency's performance of a discretionary function when: (1) "the challenged governmental conduct involves an element of judgment or choice" because no "statute, regulation, or policy prescribes a specific course of action," and (2) "the judgment was one that the exception was designed to protect, namely a judgment based on considerations of public policy." *Rich v. United States*, 811 F.3d 140, 144 (4th Cir. 2015). Boiled down: "[f]or a complaint to survive a motion to dismiss, it must allege facts which would support a finding that the challenged actions are not the kind of conduct that can be said to be grounded in the policy of the regulatory regime." *United*

States v. Gaubert, 499 U.S. 315, 324-25, 111 S. Ct. 1267, 113 L. Ed. 2d 335 (1991).

First, there can be little doubt that the threshold requirement is satisfied here. Plaintiff is seeking to hold the United States liable for Shepherd and Armstrong's decisions to assist local law enforcement officers in the search of his vehicle and the investigation of his possession of the rifle plate. *See* Compl. ¶¶ 196-201 (lumping Armstrong in with ACPD officers for actions taken during the roadside search); Compl. ¶¶ 202-213, 201 (lumping Shepherd in with ACPD officers for actions taken during the subsequent investigation). As this Court has recognized, "[i]t is well-established that decisions by law enforcement regarding whom to investigate, how to investigate, and whether to prosecute constitute discretionary activity by government officials." *Blanco Ayala v. United States*, 386 F. Supp. 3d 635, 640 (E.D. Va. 2019), *aff'd*, 982 F.3d 209 (4th Cir. 2020). And while the Court finds that Plaintiff's constitutional rights were not violated during either series of events, that would not change the outcome. *Blanco Ayala*, 386 F. Supp. 3d at 640-41 ("[T]here is no requirement that the decisions made by law enforcement officers during the investigation or prosecution of a case must be correct to fall within the discretionary-function exception.") (citing *Hodgson v. United States*, No. SA:13-CV-702, 2014 U.S. Dist. LEXIS 115435, 2014 WL 4161777, at *11 (W.D. Tex. Aug. 19, 2014)); *see also* 28 U.S.C. § 2680(a) (stating that the discretionary-function exception applies "whether or not the discretion involved be abused").

Second, the Court finds that the law enforcement decisions at issue were of the type that the exception was designed to protect. *See Gaubert*, 499 U.S. at 322-23. "The basis for the discretionary[-]function exception was Congress' desire to prevent judicial second-guessing of legislative and administrative decisions grounded in social, economic, and political policy through the medium of an action in tort." *Berkovitz v. United States*, 486 U.S. 531, 536-37, 108 S. Ct. 1954, 100 L. Ed. 2d 531 (1988) (internal quotation omitted). Both Armstrong and Shepherd's actions fall within the justifications of the exception. *See Blanco Ayala*, 386 F. Supp. 3d at 640. Indeed, as other courts within the Fourth Circuit have recognized, "claims of negligent investigation or negligent arrest by law enforcement officers are barred by the discretionary[-] function exception." *Burgess v. Watson*, 2014 U.S. Dist. LEXIS 127098, 2014 WL 4540256, at *3 (M.D.N.C. Sept. 11, 2014) (citing *Suter v. United States*, 441 F.3d 306 (4th Cir. 2006)). And the Fourth Circuit itself has specifically applied the discretionary-function exception to claims arising out of military investigations. *See Blakey v. U.S.S. Iowa*, 991 F.2d 148, 153 (4th Cir. 1993).

Thus—because the claims fall within an exception to the waiver of sovereign immunity—Plaintiff's claims against the United States will be dismissed.

B. Arlington County

Second, the Court will address Plaintiff's claims against Arlington County. Although the Second Amended Complaint is unclear, Plaintiff apparently seeks to hold

the County Defendant liable for alleged violations of the Second and Fourth Amendments (Counts II and VIII, respectively). As to the Second Amendment claim, Plaintiff alleges that "Arlington County's widespread infringement upon Second Amendment rights has been evidenced by the historical practice of harassing law-abiding gun owners." Compl. ¶ 247. As to the Fourth Amendment claim, Plaintiff alleges that the "lack of supervision over the process of the officers searching Mr. Wells' car and seizing his property" and the "customary conduct of Wanek and Barnickle in their warrant application processes" resulted in the "numerous constitutional violations" he allegedly suffered. Compl. ¶¶ 252, 254. The County moved to dismiss both claims, arguing that Plaintiff has only pled conclusory statements that there was a countywide policy or custom that led to Plaintiff's alleged constitutional deprivation. *See* Dkt. No. 68. The Court agrees.

On its face, § 1983 does not reach local governments. *See* 28 U.S.C. § 1983 (imposing liability to "all *persons* acting under the color of law" (emphasis added)). However, for these purposes, a municipal entity can be considered a "person" (and thus subject to suit) "when execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury that the government as an entity is responsible under § 1983." *Hunter v. Town of Mocksville*, 897 F.3d 538, 554 (4th Cir. 2018) (quoting *Monell v. Dep't of Social Servs.*, 436 U.S. 658, 694, 98 S. Ct. 2018, 56 L. Ed. 2d 611 (1978)). That said, "a municipality cannot be held liable *solely* because it employs a tortfeasor—or, in other

words, a municipality cannot be held liable under § 1983 on a *respondeat superior* theory." *Monell*, 436 U.S. at 691. "To be sure," however, "official policy often refers to formal rules or understandings—often but not always committed to writing—that are intended to, and do, establish fixed plans of action to be followed under similar circumstances consistently and over time." *Pembaur v. City of Cincinnati*, 475 U.S. 469, 480-81, 106 S. Ct. 1292, 89 L. Ed. 2d 452.

The Fourth Circuit has identified four avenues through which a plaintiff asserting a § 1983 claim may demonstrate municipal liability for a policy or custom:

> (1) through an express policy, such as a written ordinance or regulation; (2) through the decisions of a person with final policymaking authority; (3) through an omission, such as a failure to properly train officers, that manifests deliberate indifference to the rights of citizens; or (4) through a practice that is so persistent and widespread as to constitute a custom or usage with the force of law.

Lytle v. Doyle, 326 F.3d 463, 471 (4th Cir. 2003) (cleaned up).

1. Did Plaintiff Establish a Policy or Custom that Led to His Constitutional Harm?

No. Because each of Plaintiff's arguments regarding the existence of a policy fall short for similar reasons,

the Court will analyze them together. Broadly, Plaintiff argues that the County is liable for Mr. Wells' injuries "because the routine or habitual unreasonable nature of the conduct of the ACPD officers *on and after* February 9, 2020, evince a pattern of unconstitutional conduct and irrationality." Dkt. No. 77 (emphasis added). Specifically, to show a policy or custom of Second Amendment violations, Plaintiff relies on statistical data that, in his view, shows that Black gun owners are arrested at a disproportionate rate in Arlington County. Compl. ¶ 250. Plaintiff also relies on a county ordinance that prohibits possession of a firearm in certain county-owned buildings and at county-run events. Compl. ¶ 249 (citing Arlington County, Va. Code § 13-11). To show a policy or custom of Fourth Amendment violations, Plaintiff points to the "pattern" of alleged constitutional violations that were committed by the Defendants in this case. *See* Dkt. No. 77 (citing paragraphs of the Second Amended Complaint). Those arguments are unpersuasive.

Starting with the Second Amendment, the thrust of Plaintiff's argument is that Arlington County has an "irrational" "anti-gun" custom of "harassing gun owners." Dkt. No. 77 at 24-25. The Court notes that, even if that were true, Plaintiff's evidence (the ordinance and the statistics) is unavailing. First, the Supreme Court has never held that individuals have a right to possess a gun in government buildings and events. *See N.Y. State Rifle & Pistol Assoc. v. Bruen*, 142 S. Ct. 2111, 2133, 213 L. Ed. 2d 387 (2022) ("*Bruen*") (noting that schools and government buildings are "sensitive places" "where arms carrying could be prohibited consistent with the

Second Amendment"). For that reason, the ordinance Plaintiff cites hardly evidences a policy that mandates unconstitutional violations. The statistical information is also unhelpful. While it may be true, according to the report provided, that Black men are approached by Arlington County officers at a disproportionate rate, that alone does not satisfy *Monell*'s requirement that plaintiffs show a pattern of *unconstitutional* (not just *undesirable*) conduct. *See Whren v. United States*, 517 U.S. 806, 813-14, 116 S. Ct. 1769, 135 L. Ed. 2d 89 (1996) (holding that "subjective intentions play no role" in the Fourth Amendment analysis).

As to the Fourth Amendment claim, Plaintiff provides no more than conclusory allegations that the officers "acted pursuant to the policies, practices, informal customs, or acted without sufficient training or supervision by their employers." Compl. ¶ 251. Indeed, Plaintiff fails to identify any of the policies, practices, or informal customs he contends are at issue here. Nor does he identify a specific area of training that the County failed to provide. At best, Plaintiff identifies the "pattern" of alleged violations that he endured. But, to hold the *county* liable he must do more. *Starbuck v. Williamsburg James City Cnty. Sch. Bd.*, 28 F.4th 529, 534 (4th Cir. 2022) (noting that, alone, a *respondeat superior* theory is "impermissible" to impose liability under *Monell*).

Thus—because the claims do not allege a policy or custom caused the alleged constitutional violations—Plaintiff's claims against the Arlington County will be dismissed.

C. ACPD Officers (Fuentes, Lugasi, Soules, Kline, and Vanak)

Next, the Court turns to the claims against the local officers. Plaintiff claims that the ACPD Officers are liable for: (1) violating the Fourth Amendment and Virginia law when they continued the stop initiated by Officer Armstrong (Counts I and V); (2) violating the Fourth Amendment and Virginia law when they searched his Mustang (Counts I and V); (3) violating the Second Amendment when they took his firearms into safekeeping (Count II); (4) committing the tort of false imprisonment when they continued the detention initiated by Officer Armstrong (Count III); and (5) committing the tort of malicious prosecution when they cooperated with Detective Wanek's investigation (Count IV). The ACPD Officers moved for dismissal, asserting the defense of qualified immunity as to Counts I, II, and V. *See* Dkt. No. 60 at 19-28. The officers also argue that Plaintiff fails to state a claim as to Counts III and IV. *Id.* at 28-30. The Court agrees, and the claims against the local officers will be dismissed.

1. Did Plaintiff Sufficiently Plead a Constitutional or Statutory Claim?

No. Because Plaintiff fails to establish that the search or seizure was unreasonable, his allegations do not overcome qualified immunity's first prong, nor do they amount to a claim under Virginia's state analog. The Court will take Plaintiff's four constitutional arguments in turn.

First, as to the claim that the ACPD Officers violated the Fourth Amendment when they continued Plaintiff's detention, the Court notes that it is well-settled that officers in one jurisdiction are "entitled to rely on the determination of [an officer from] another jurisdiction that there is reasonable suspicion to stop a person." *United States v. Avagyan*, 164 F. Supp. 3d 864, 884 (E.D. Va. 2016). Officers responding to a call for assistance are "not required to conduct an independent investigation of facts to come to their own determination"—indeed, "[s]uch a requirement would be unworkable in the environments in which the police operate." *Guerrero v. Deane*, 750 F. Supp. 2d 631, 652 (E.D. Va. 2010). Thus, even if Officer Armstrong's decision to stop Plaintiff was improper, the responding ACPD Officers would not be liable for the continuation of that detention. *See United States v. Hensley*, 469 U.S. 221, 232, 105 S. Ct. 675, 83 L. Ed. 2d 604 (1985) (noting that officers who rely on information from another in good faith "may have a good-faith defense to any civil suit"). Here, the ACPD Officers were responding to Officer Armstrong's call for assistance with a stop already in progress. As such, the responding officers were permitted to (and did) rely on Armstrong's determination that the detention was warranted in good faith. And because Plaintiff alleges no facts that suggest otherwise, he has failed to show how the officers' conduct was unreasonable.

Second, as to the officers' decision to search the vehicle, the ACPD Officers argue that their conduct was reasonable under the inventory-search exception to the Fourth Amendment. The Court agrees.

Appendix B

Police officers frequently perform inventory searches when they impound vehicles or detain suspects. *See, e.g., Illinois v. Lafayette*, 462 U.S. 640, 648, 103 S. Ct. 2605, 77 L. Ed. 2d 65 (1983); *South Dakota v. Opperman*, 428 U.S. 364, 376, 96 S. Ct. 3092, 49 L. Ed. 2d 1000 (1976) (holding that evidence discovered during the impoundment of an illegally parked automobile is admissible at trial). Such searches "serve to protect an owner's property while it is in the custody of the police, to insure against claims of lost, stolen, or vandalized property, and to guard the police from danger." *Colorado v. Bertine*, 479 U.S. 367, 372, 107 S. Ct. 738, 93 L. Ed. 2d 739 (1987); *see also United States v. Banks*, 482 F.3d 733, 739 (4th Cir. 2007) ("A proper inventory search is merely an incidental administrative step.") (cleaned up). And for the inventory-search exception to apply, the search must have "be[en] conducted according to standardized criteria," such as a uniform police department policy, *Bertine*, 479 U.S. at 374 n.6, and performed in good faith, *Banks*, 482 F.3d at 739. *See United States v. Brown*, 787 F.2d 929, 932 (4th Cir. 1986).

Plaintiff argues that the exception does not apply for two reasons. His first argument—that the exception cannot apply when the officers did not inventory every item in the vehicle—is foreclosed by the law. While the officers did not remove all the property found for safekeeping, Plaintiff does not show how that failure brought the officers so out of step with the department's procedures as to deprive them of the exception's protection. *See United States v. White*, 707 F. App'x 766, 769-70 (4th Cir. 2017) (finding that, despite the officer's failure to list every item

found in the vehicle, he generally complied with standard procedures in conducting the search and rejecting the argument that the inventory search was conducted in bad faith for the purpose of gathering evidence).

Plaintiff's second argument—that the search was "pretextual rummaging" since the officers never expected the car to be towed—is foreclosed by the facts. The audio directly refutes Plaintiff's suggestion that the search was a "ruse." *See* Dkt. No. 65-1 at 4:48:35 (Plaintiff is informed that the vehicle had to be towed); *id.* at 4:48:12 (same); *id.* at 5:02:30 (Plaintiff is informed that the vehicle would be towed to the police impound lot and could not be towed to his home); *id.* at 5:15:29 (same).[6] Therefore, because the search was conducted while the officers were under the reasonable belief that the vehicle would be towed into police custody, the exception applies. *See United States v. Fort*, 313 F. App'x 665, 667 (4th Cir. 2009) (Table) (holding that an inventory search was valid even though the vehicle was never taken into police custody because the defendant's wife arrived to drive it away).

Third, as to the officers' decision to take some of Plaintiff's property into safekeeping, the Court's analysis begins and ends with Plaintiff's consent. As made clear in the video recording of the roadside encounter, the ACPD Officers gave Plaintiff the option to either have someone

6. To the extent that the video evidence conflicts with the Plaintiff's allegations, the video controls. *See Goines v. Valle Community Servs. Bd.*, 822 F. 3d. 159, 166 (4th Cir. 2016) ("[I]n the event of conflict between the bare allegations in the complaint and any exhibit attached, the exhibit prevails.").

come pick him up and take all the property removed from the Mustang with him or to have the officers place the property into safekeeping to be retrieved from police custody at his convenience. Then—although the officers would have "prefer[red]" that he chose to be picked up and take his things, Dkt. No. 65-1 at 4:48:50 P.M.—Plaintiff ultimately decided that he did not want to hold the officers any longer and opted for the officers to take temporary possession of the items, signing a property safekeeping form to that effect. *Id.* at 4:50:20 P.M.; *see also* Dkt. No. 48-3 (signed property safekeeping form).[7]

And *fourth*, as to the Second Amendment claims, the Court again notes its skepticism toward the viability of Plaintiff's argument regarding his right to bear arms—even after the Supreme Court's recent decision in *Bruen*, 142 S.Ct. 2111. *See Fort*, 313 F. App'x at 668 (holding that it was proper for officers to place an assault rifle, loaded magazines, tactical gear, and other items in safekeeping "to avert any danger . . . posed by the property"). However, the Court need not address the merits of that claim because, as with the other property discussed above, any encroachment on Plaintiff's gun rights was excused

7. As to Plaintiff's claims made under Va. Code § 19.2-59, the Court recognizes that claims under that provision have "consistently been held to provide the same protections as the Fourth Amendment." *See Nazario v. Gutierrez*, No. 2:21-cv-169, 2022 U.S. Dist. LEXIS 142044, 2022 WL 3213538 (E.D. Va. Aug. 9, 2022) (citing *Carter v. Virginia*, 209 Va. 317, 163 S.E.2d 589, 592 (Va. 1968)). As such, those claims will be dismissed for the same reasons the Court dismisses those made under the federal Constitution.

by his consent to the weapons' placement in safekeeping. *See* Dkt. No. 48-3.

Thus—because Plaintiff fails to allege a constitutional violation—the ACPD Officers are entitled to qualified immunity, and the constitutional claims against them will be dismissed. And—because the officers' conduct was reasonable—the statutory claims will be dismissed as well.

2. Did Plaintiff Sufficiently Plead a Tort Claim?

No. Plaintiff failed to allege sufficient facts to sustain either his false-imprisonment or malicious-prosecution claim.

To start, as explained above, Plaintiff cannot reasonably argue that the fact of his detention was unlawful. Perhaps recognizing this fact, Plaintiff's opposition brief asserts (for the first time) that he is not challenging the fact of his detention—instead, he argues that the *length* of the detention made it unlawful. Dkt. No. 79 at 17. And—although the Court need not address his new argument at all, *see Porter v. Hamilton*, No. 1:20-cv-203, 2022 U.S. Dist. LEXIS 37281, 2022 WL 619959, at *1 n.3 (E.D. Va. Mar. 2, 2022) (noting that plaintiffs may not amend their complaint by raising new arguments in a response to a motion to dismiss)—the Court finds that the argument fails on its merits. Without providing support, Plaintiff asserts that two hours was too long for the officers to hold him. Plaintiff, however, fails to account

for the fact that the officers needed to perform a (valid, *see supra* pp. 23-25) inventory search of the vehicle, the fact that they all had to wait for the tow truck to arrive, and the fact that the officers also gave Plaintiff time to try to find a ride. Considering those facts (along with Plaintiff's failure to allege why they do not justify the length of the stop), the Court finds that Plaintiff failed to state a claim for false imprisonment. *See Rodriguez v. United States*, 575 U.S. 348, 354, 135 S. Ct. 1609, 191 L. Ed. 2d 492 (holding that an officer's authority to continue a traffic stop "ends when tasks tied to the traffic infraction are—or reasonably should have been—completed"); *United States v. Perez*, 30 F.4th 369, 376-77 (4th Cir. 2022) (citing *Rodriguez* and holding that a stop was not impermissibly extended by the need to wait on a tow truck's arrival).

Plaintiff's malicious-prosecution claim is equally deficient. To state a claim for malicious prosecution, Plaintiff would need to allege (among other things) that the prosecution was initiated without probable cause and with the cooperation of the defendants. *Lewis v. Kei*, 281 Va. 715, 708 S.E.2d 884, 889 (Va. 2011). However, although Plaintiff states that the ACPD Officers "materially cooperated" with the prosecution by "providing misleading notes" about what they observed during their search of Plaintiff's vehicle, his Amended Complaint does not identify any specific statements. Nor does he explain how any of the statements were false. Nor does he explain how any of the alleged conduct or statements were a motivating factor in the Commonwealth Attorney's decision to prosecute Plaintiff for receipt of stolen property. Indeed, as is routine, the officers submitted their reports and copies of

the notes found in Plaintiff's vehicle to prosecutors. *See* Dkt. No. 62-5. The Court finds that doing only that does not qualify as the "material involvement" required under Virginia law. *Cf. Lewis*, 708 S.E.2d at 889 ("Actions for malicious prosecution arising from criminal proceedings are not favored in Virginia and the requirements for maintaining such actions are more stringent.").

Thus—because Plaintiff fails to allege sufficient facts—his tort claims against the ACPD Officers will be dismissed.

D. ACPD Officer Barnickle

The Court now turns to Plaintiff's claims against Officer Barnickle. In the Second Amended Complaint, Plaintiff asserts that Officer Barnickle violated both the Fourth Amendment (Count I) and the state statutory analog, Va. Code § 19.2-59 (Count V). Specifically, Plaintiff alleges that Officer Barnickle (1) searched his Pontiac before obtaining a warrant, (2) planted a bag of drugs in the car, and (3) submitted a falsified warrant application. *See* Compl. ¶¶ 118-33. Officer Barnickle moved for dismissal, also asserting the defense of qualified immunity. As such, the Court must again conduct the two-step inquiry laid out above. *See supra* pp. 13-14.

1. Did Plaintiff Sufficiently Plead a Constitutional Violation?

No. To make it past qualified immunity's first step, Plaintiff must allege that it is more than merely possible

that Officer Barnickle violated his constitutional rights. He has not.

The Court starts by finding that Plaintiff's allegations that Officer Barnickle planted drugs in the Pontiac while it was in police custody—supported by only Plaintiff's statement that he had never seen nor possessed the drugs that were uncovered—fails to make out a claim for relief that is "plausible on its face." *See Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007). That claim will therefore be dismissed.

Next, the Court rejects the claim that Officer Barnickle violated the Fourth Amendment when she (allegedly) searched the Pontiac prior to obtaining a signed warrant. Although the parties devote considerable portions of their briefing to discussions of the "automobile exception" to the warrant requirement, *see* Dkt. No. 62 at 7-9; Dkt. No. 81 at 6-7, the Court need not address that issue because a different doctrine guides its analysis.

As pointed out in Officer Barnickle's Reply (Dkt. No. 84), the "inevitable discovery doctrine" generally "allows the government to use evidence gathered in an otherwise unreasonable search if it can prove by a preponderance of the evidence that law enforcement would have ultimately or inevitably discovered the evidence by lawful means." *United States v. Seay*, 944 F.3d 220, 223 (4th Cir. 2019) (internal quotations omitted); *Nix. v. Williams*, 467 U.S. 431, 444, 104 S. Ct. 2501, 81 L. Ed. 2d 377 (1984) (establishing the "inevitable discovery" exception to the exclusionary rule). For these purposes, "lawful

means" include searches that fall into an exception to the warrant requirement, "such as an inventory search[] that would have inevitably uncovered the evidence in question." *Id.* Plaintiff was arrested upon his arrival at the ACPD station on February 18, 2020. Accordingly, all his belongings (including the Pontiac) would have been taken into police custody and subjected to an inventory search pursuant to department policy. Admittedly, that question is complicated by the fact that just because a legal exception allows ill-gotten evidence to be included at a criminal proceeding does not mean that a Fourth Amendment violation did not occur in the first instance. The Court, however, does not need to resolve that issue. Instead, the Court finds that, at a minimum, it has not yet been clearly established that officers can be held civilly liable for searching a vehicle that would have eventually been searched later pursuant to department policy. *Cf. Anderson v. Creighton*, 483 U.S. 635, 644, 107 S. Ct. 3034, 97 L. Ed. 2d 523 (1987) (holding that officers that act in an "objectively legally reasonable" manner "should no more be held personally liable in damages than should officials making analogous determinations in other areas of law").

The claim that Officer Barnickle intentionally misled the magistrate judge to obtain a warrant to search the Pontiac also fails. Officers are permitted to, in good faith, rely on information obtained from other members of law enforcement. *See United States v. Hensley*, 469 U.S. 221, 231, 105 S. Ct. 675, 83 L. Ed. 2d 604 (1985). And as made clear in Officer Barnickle's warrant application, she relied on information obtained from both local and federal officers involved with the case. *See* Dkt. No. 62-4 at 16 (stating that

the "Basis for Facts" included information from Detective Wanek, Officer Shepherd, and an FBI task force agent). Plaintiff has not made any allegations that such reliance was in bad faith or was otherwise unreasonable. *Cf. United States v. Ventresca*, 380 U.S. 102, 111, 85 S. Ct. 741, 13 L. Ed. 2d 684 (1965) ("Observations of fellow officers of the Government engaged in a common investigation are plainly a reliable basis for a warrant applied for by one of their number."); *Mom's, Inc. v. Willman*, 109 F. App'x 629, 636 (4th Cir. 2004) (holding that an officer's reasonable reliance on information from another severed the causal connection between their conduct and any underlying constitutional violation). For that reason, the Court finds that Plaintiff has not adequately alleged that Officer Barnickle violated his Fourth Amendment rights.

Thus—because Plaintiff fails to allege a clearly established constitutional violation—Officer Barnickle is entitled to qualified immunity, and the claims against her will be dismissed.

E. ACPD Detective Wanek

Finally, the Court addresses the claims against ACPD Detective Wanek. Plaintiff alleges that Detective Wanek is liable for: (1) violating the Fourth Amendment and the state analog when he opened the soft body armor to reveal the serial number on the seized rifle plate (Counts I and V); (2) violating the Second Amendment when the Detective decided to hold Plaintiff's firearms as evidence (Count II); (3) committing common law false imprisonment when he obtained a warrant for Plaintiff's arrest (Count III);

and (4) committing the tort of malicious prosecution when he obtained a warrant for Plaintiff's arrest (Count IV). Detective Wanek moved for dismissal on the grounds that he was entitled to qualified immunity on the constitutional claims and that Plaintiff failed to adequately allege facts that would support his state law tort claims. *See* Dkt. No. 64. The Court will start with the constitutional claims and the now-familiar qualified-immunity inquiry.

1. Did Plaintiff Sufficiently Plead a Constitutional Violation?

No. Starting with Plaintiff's Fourth Amendment claims against Detective Wanek, the Court finds that no violation occurred. Plaintiff's first contention to the contrary is that Detective Wanek conducted an unreasonable search when he opened the soft body armor to inspect the serial number of the enclosed rifle plate on February 10, 2020. Compl. ¶ 80. However, once evidence is lawfully seized, officers do not violate the Fourth Amendment when they reexamine that evidence—even when that officer is examining the evidence for an entirely different purpose. *See United States v. Davis*, 690 F.3d 226, 254 n.30 (4th Cir. 2012) (citing *United States v. Thompson*, 837 F.2d 673, 674 (5th Cir. 1988) ("A person lawfully arrested has no reasonable expectation of privacy with respect to property properly taken from his person for inventory by the police. Later examination of that property by another law-enforcement officer is, therefore, not an unreasonable search within the meaning of the Fourth Amendment."); *see also United States v. Jenkins*, 496 F.2d 57, 73-74 (2d Cir. 1974) (holding that a person no longer has a reasonable

expectation of privacy in the serial numbers of already-seized property). Because the contents of the Mustang (including the body armor and rifle plate) remained in continuous police custody, Detective Wanek's subsequent examination was lawful.

Plaintiff's second contention is that Detective Wanek violated the Fourth Amendment when he made misrepresentations in his warrant application. In Plaintiff's view, Detective Wanek made false statements about the value of the rifle plate and his belief that it was stolen from Fort Myer in his warrant application. Both allegations fail for the same reason: any inaccuracies were based on Detective Wanek's reliance on statements made by Detective Shepherd, the federal investigator. *See* Dkt. No. 64-6 at 1-3 (explaining that the information was based on interviews with personnel at Fort Myer, including Detective Shepherd). Again, Plaintiff has not made any allegations that such reliance was in bad faith or was otherwise unreasonable. *Cf. Ventresca*, 380 U.S. at 111; *Mom's Inc.*, 109 F. App'x at 636. For that reason, the Court finds that Plaintiff has not adequately alleged that Detective Wanek violated his Fourth Amendment rights in this regard.

As to Plaintiff's Second Amendment claim against Detective Wanek, the Court notes that, even assuming the seizure of Plaintiff's firearms violated the Second Amendment, that right has not yet been clearly established by either the Fourth Circuit or the Supreme Court. Indeed, Plaintiff has not presented (nor has the Court

been able to find) any cases that stand for the proposition that the right to bear arms is infringed when officers seize a firearm without probable cause that it was involved in a particular crime. And the Seventh Circuit's decision in *Sutterfield* supports the conclusion that Plaintiff cannot overcome qualified immunity's second hurdle. *See Sutterfield v. City of Milwaukee*, 751 F.3d 542 (7th Cir. 2014). There, the court noted that "[w]hether and to what extent the Second Amendment protects an individual's right to possess a particular gun (and limits the power of the police to seize it absent probable cause to believe it was involved in a crime) is an issue that is just beginning to receive judicial attention." *Id.* at 571. And while that court reasoned that "the seizure of a particular firearm did not otherwise interfere with [the] Second Amendment interest," *id.*, this Court need only recognize that neither the Fourth Circuit nor the Supreme Court has joined the Seventh Circuit in addressing that issue. And because those courts have not, neither will this one. *See Pearson v. Callahan*, 555 U.S. 223, 236, 129 S. Ct. 808, 172 L. Ed. 2d 565 (2009) (holding that courts need not decide whether a constitutional violation occurred when it is evident that the right at issue has not been clearly established by prior precedent").

Thus—because Plaintiff fails to allege the violation of a clearly established constitutional right—Detective Wanek is entitled to qualified immunity, and the claims against him will be dismissed.

2. Did Plaintiff Sufficiently Plead a Tort Claim?

No. Both the false imprisonment and malicious prosecution claims are based on the same allegations

about Detective Wanek's warrant application discussed above. Because the Court already found that the warrant application was constitutionally sound, these claims must also be rejected.

Thus—because the detective's conduct was reasonable—Plaintiff's state law claims will be dismissed.

III. CONCLUSION

To end, the Court acknowledges Plaintiff's assertion that there is an ongoing epidemic of undesirable and unfortunate police-citizen interactions happening nationwide. *See Jamison v. McClendon*, 476 F. Supp. 3d 386, 390-91 nn.1-19 (S.D. Miss. 2020) (Reeves, J.) (collecting cases). However, as explained above, the officers in this case did not commit the types of abuses at issue in those cases. As such, they are entitled to the various defenses afforded them by binding precedent. For those reasons, the Court is not free to come to any conclusion other than the one reached today. Accordingly, it is hereby

ORDERED that Plaintiff's Motion to Strike Substitution (Dkt. No. 71) is **DENIED**; it is further

ORDERED that the Motion to Dismiss filed on behalf of Michael Armstrong, Keith Shepherd, and the United States (Dkt. No. 56) is **GRANTED**; it is further

ORDERED that the Motion to Dismiss filed on behalf of Arlington County (Dkt. No. 68) is **GRANTED**; it is further

ORDERED that the Motion to Dismiss filed on behalf of Javier Fuentes, Austin Kline, Lauren Lugasi, Kimberly Soules, and John Vanak (Dkt. No. 59) is **GRANTED**; it is further

ORDERED that the Motion to Dismiss filed on behalf of Ashley Barnickle (Dkt. No. 61) is **GRANTED**; and it is further

ORDERED that the Motion to Dismiss filed on behalf of Scott Wanek (Dkt. No. 63) is **GRANTED**.

/s/ Michael S. Nachmanoff
Hon. Michael S. Nachmanoff
United States District Judge

May 31, 2023
Alexandria, Virginia

APPENDIX C — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT, FILED MARCH 21, 2025

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 23-1638
(1:22-cv-00140-MSN-IDD)

CURTIS LEVAR WELLS, JR.,

Plaintiff-Appellant

v.

JAVIER FUENTES, BADGE #1666; SCOTT WANEK, BADGE #1137; MICHAEL P. ARMSTRONG, BADGE #331; LAUREN LUGASI, BADGE #1625; KIMBERLY SOULES, BADGE #1630; AUSTIN KLINE, BADGE #1720; JOHN VANAK, BADGE #1399; KEITH SHEPHERD; JOHN DOES 1 THROUGH 10; UNITED STATES OF AMERICA

Defendants-Appellees

and

ASHLEY BARNICKLE, BADGE #1574; COUNTY OF ARLINGTON,

Defendants

Filed March 21, 2025

Appendix C

ORDER

The petition for rehearing en banc was circulated to the full court. No judge requested a poll under Fed. R. App. P. 40. The court denies the petition for rehearing en banc.

For the Court

/s/ Nwamaka Anowi, Clerk