No. _____

In The
Supreme Court of the United States

BRANDON RAUB,

Petitioner,

v.

MICHAEL CAMPBELL,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI WITH APPENDIX VOLUME I OF II (Pages 1 – 263)

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QUESTIONS PRESENTED

Respondent is a state-certified, government mental health examiner who caused petitioner to be seized outside his home and brought to the jail for a mental health evaluation. Following that evaluation, respondent caused petitioner to be further detained under a petition for temporary detention.

On summary judgment, the evidence showed that the government examiner instigated the seizure and detention chiefly because of petitioner's "conspiracy theory" views regarding the events of 9-11 and his extreme distrust of the government.

Given this factual background, the following questions are presented:

1. Does the Fourth Amendment right to be free from unreasonable seizures include a right to be free from seizure and further detention, on grounds of mental illness, when there is (i) a lack of evidence of mental illness, (ii) a violation of professional standards by the government mental health examiner instigating the seizure and detention, and/or (iii) gross negligence by that examiner?

2. Was such a right clearly established in August 2012, when the events at issue in this case occurred?

3. In a First Amendment retaliation case, do this Court's precedents, including *Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle*, 429 U.S. 274 (1977), and *Givhan v. Western Line Consol. School Dist.*, 439 U.S. 410 (1979), require courts to fix on the claimant the entire burden of proof regarding causation (as the Fourth Circuit does), or do they require courts to

use a burden-shifting approach (as is the practice in other circuits)?

4. Regardless how the burden of proof is allocated, is the issue whether the burden has been met to be decided as a matter of law (as in the Fourth Circuit) or is it to be left to the finder of fact (as in other circuits)?

LIST OF PARTIES

All parties to the proceeding in the court of appeals, the court whose judgment is sought to be reviewed, are set forth in the caption of the case.

TABLE OF CONTENTS

Page

APPENDIX:

TABLE OF AUTHORITIES

Page(s)

CASES

CONSTITUTIONAL PROVISIONS

STATUTES

RULES

OTHER AUTHORITY

OPINIONS BELOW

The decision of the court of appeals is reported as *Raub v. Campbell*, 785 F.3d 876 (4th Cir. 2015). The decision and order are reprinted at App-1a.

The final decision and order of the district court are reported as *Raub v. Campbell*, 3 F. Supp. 3d 526 (E.D. Va. 2014). They also are reported at No. 3:13cv328, 2014 U.S. Dist. LEXIS 26258. They are reprinted at App-24a.

The decision and order of the district court granting in part and denying in part Raub's motion to file a second amended complaint are reported as *Raub v. Campbell*, No. 3:13cv328, 2014 U.S. Dist. LEXIS 4655 (E.D. Va. Jan. 14, 2014). They are reprinted at App-59a.

The decision of the district court, denying in part and granting in part defendant's motions to dismiss and granting Raub's motion for expedited discovery with limitations, is reported as *Raub v. Bowen*, 960 F. Supp. 2d 602 (E.D. Va. 2013). The decision and accompanying order are reported at No. 3:13cv328, 2013 U.S. Dist. LEXIS 109122. They are reprinted at App-80a.

JURISDICTION

The decision of the court of appeals was entered on April 29, 2015. On July 14, 2015, the Chief Justice, acting in his role as Circuit Justice, granted petitioner's motion to extend the time for filing this petition until August 26, 2015. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. The First Amendment provides: "Congress shall make no law . . . abridging the freedom of speech. . . ."

2. The Fourth Amendment provides: "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."

3. The Fourteenth Amendment provides: " . . . nor shall any State deprive any person of life, liberty or property without due process of law . . . ."

4. 42 U.S.C. § 1983 provides:

> "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . 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 . . . ."

5. Virginia Code §§ 37.2-808 and 37.2-809 are the Virginia statutes authorizing seizure and detention on grounds of mental illness. They appear at App-115a and 123a.

STATEMENT OF THE CASE

Overview

This case arises out of the seizure and detention of Brandon Raub, a young Marine veteran with strong, anti-government political views. The seizure and detention were instigated by Michael Campbell, a state-certified, government mental health examiner who regards those views as "delusional" and "paranoid."

Raub brought suit against Campbell in federal district court on the grounds that, by instigating the seizure and detention without probable cause, Campbell violated Raub's rights under the Fourth Amendment, made applicable to the States by the Fourteenth Amendment.[1] Raub also alleged that Campbell caused him to be seized and detained in retaliation for his strong anti-government views, thus violating the First Amendment. In response, Campbell raised a defense of qualified immunity.

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[1] Jurisdiction in the federal district court was based on 28 U.S.C. §§ 1331 and 1343.

On summary judgment, expert evidence showed that, from a professional viewpoint, there was no evidence of mental illness. This was not a gray area where reasonable professionals could differ. The expert evidence – which was unrebutted – showed that Campbell's seizure and detention of Raub violated professional standards and was grossly negligent. Even so, the district court granted summary judgment based on Campbell's claim of qualified immunity and dismissed the case.

On appeal, the Fourth Circuit affirmed the dismissal based on qualified immunity, concluding that Campbell's actions did not violate any "clearly established" constitutional standard, but never deciding whether a constitutional violation actually occurred.[2] The court of appeals also found that Campbell was entitled to qualified immunity on the First Amendment claim, basing that decision on its conclusion that Raub had not met what it ruled was "claimant's burden" to show that his protected expression was the "but for" cause of the alleged retaliation.

Raub seeks review by this Court to ensure that, in our nation of laws, government mental health professionals can be held accountable when they cause citizens to be seized and detained without probable cause. Such accountability is especially important where, as here, there was not only a lack of probable cause, but a seizure and detention motivated by disdain for unorthodox political views.

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[2] Jurisdiction in the court of appeals was based on 28 U.S.C. § 1291.

The Initial Seizure

On the afternoon of August 16, 2012, Raub was peacefully reposed in his home in Chesterfield County, Virginia, when a large number of federal and local law enforcement officers swarmed outside. They did not come because of any report of a disturbance. Nor did they have reason to believe that any crime had been committed. Both federal and state prosecutors had already eliminated that possibility. App-183a. Instead, they arrived to question Raub about his "conspiracy theory" views, as reported to federal authorities in an e-mail from another former Marine, Howard Bullen, who had read some of Raub's inflammatory speech on Facebook. Raub's rhetoric included postings calling for revolution and for the arrest of former presidents George W. Bush and George H. W. Bush. App-182a-83a; 287a-88a.[3]

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[3] Raub's statements on Facebook, as reported by Bullen, included the following (many of which – marked here with asterisks (*) – are quotations from pop culture song lyrics. *See* Report of Dr. Catherine Martin, App-233a):

> "This is revenge. Know that before you die."*
>
> "Richmond is not yours. I'm about to shake some shit up."
>
> "This is the start of you dying. Planned spittin with heart of Lion."*
>
> "Leader of the New School. Bringing back the Old School. MY LIFE WILL BE A DOCUMENTARY."*
>
> "I'm gunning whoever run the town."*
>
> "W, you're under arrest bitch."

(Footnote Continued)

In the e-mail, Bullen also stated that he had stopped keeping in touch with Raub a few years after he returned from Iraq in 2007, that he had not spoken with Raub recently, and that his only contact with Raub had been reading his Facebook posts. App-284a.

Before deciding to confront Raub at his home, the officers sought advice from the Chesterfield Commonwealth's Attorney whether probable cause existed to arrest Raub based on his Facebook postings. The Commonwealth's Attorney's office responded that Raub had not violated any state law. App-183a. The officers next consulted the U.S. Attorney's office, which informed them that Raub had violated no federal laws. *Id.* Stymied in their efforts to identify any crime with which to charge Raub, the officers decided to "make contact with Raub to see what mental state he is in and if he needed to be evaluated by Crisis Intervention." *Id.*

> "The World will Find This."
>
> "I know ya'll are reading this, and I truly wonder if you know what's about to happen."
>
> "W, you'll be one of the first people dragged out of your house and arrested."
>
> "And daddy Bush too."
>
> "The revolution will come for me. Men will be at my door soon to pick me up to lead it. **;)**" [Emphasis added to "emoticon" wink.]
>
> "You should understand that many of the things I have said here are for the world to see."

App-287a-88a.

Upon arriving at Raub's home, the officers, led by Chesterfield Detective Michael Paris, asked to speak with him about his political views, including views critical of the government. Confronted with this show of force, Raub agreed to speak with the officers in his front yard, where he proceeded to discuss his political views, including his belief that the United States government was involved in the attacks of September 11, 2001. App-193a-94a. Raub made no threat to harm himself or any other person. *Id*.

Following this discussion, Paris became ill, the result of an unrelated medical condition, and collapsed face-down on the ground, where he lay temporarily unconscious. App-194a. When Paris recovered enough to stand, he made his way to a police vehicle and, from there, spoke by phone with Campbell about Raub.[4] App-195a.

Paris' notes show that, "[a]fter informing Campbell of our contact with Brandon Raub, Campbell advised [Paris] to bring Raub in for evaluation." *Id*. Paris then "asked *Campbell* to repeat *his decision* to evaluated [sic] Raub," and Paris handed the telephone to another officer, who also "hear[d] directly from Campbell on the decision to evaluate Raub." *Id.* (emphasis added). In his deposition, Campbell confirmed his role in deciding

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[4] Campbell is a "certified prescreener and senior clinician employed by the Chesterfield Community Service Board." App-60a. As such, he is required by law to be "skilled in the assessment and treatment of mental illness and [to have] completed a certification program approved by the Department [of Mental Health . . .]." Va. Code § 37.2-809.

to seize Raub for evaluation, stating that Paris did not call him seeking "confirmation" of a decision Paris had already made, but "seeking guidance" from Campbell as to how to proceed. App-222a-23a.[5] Campbell never spoke with Raub on the phone, and he never asked to do so. App-205a.

Campbell's decision was conveyed to two uniformed officers, who seized Raub, handcuffed him and forced him into the caged portion of a waiting police vehicle. Shirtless and shoeless, Raub was not allowed to retrieve any clothing. He was taken to the Chesterfield jail, where he was detained for an evaluation by Campbell.

The Petition for Temporary Detention

Upon arriving at the jail, Raub was forced to sit, still half-naked, tied to a wooden bench with his hands cuffed behind him for five hours. Campbell saw Raub for only twelve minutes. App-241a, 243a;

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[5] In Virginia, the standard for seizing a person for a mental health evaluation requires:

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

Va. Code §§ 37.2-808(A) & (G), App-115a & 119a. The same criteria apply to a subsequent temporary detention order. Va. Code § 37.2-809, App-123a-24a.

see also App-211a. Campbell met Raub in an open space in the jail, with people entering, leaving and moving about the room during the interview. App-241a. Sometime that evening, while Raub was in the jail, Campbell received, for the first time, a copy of the Bullen e-mail quoting Raub's Facebook postings. App-207a, 210a.

Later that night, Campbell filled out his Prescreening Report (App-264a) and attached it to his Petition for a Temporary Detention Order ("TDO") (App-151a-56a). In the Prescreening Report, Campbell checked boxes for "delusions" and "paranoid." Yet, as explained in the expert testimony of Dr. Catherine Martin, a licensed clinical psychologist who reviewed Campbell's evaluation, the evaluation was seriously flawed and based chiefly on Raub's political views:

> [Campbell] fails to describe in his Prescreening Report any symptoms corresponding to those checked boxes ["delusions" and "paranoid"], even though such a description is required by the Prescreening Report form. [Instead,] these descriptions appear to be references to Raub's belief in "conspiracy theories," and not behavior directly observed by Campbell in the assessment.
>
> App-246a.

Dr. Martin's negative assessment of Campbell's report was confirmed by discovery during Raub's lawsuit:

- Campbell admitted in his deposition that his statement to the magistrate that Raub's "behaviors have become much more extreme lately," App-213a-16a, was based not on personal observation by Campbell or anyone else, but on the Bullen email. In noting changes in "behavior," Campbell had in mind Raub's "constant referral to conspiracy theories and the government to blame for atrocities during 9/11." App-215a-16a. In other words, the supposed "changes" were not changes in "behaviors" at all, but were changes in Raub's political views.
- During his deposition, Campbell also admitted that Raub's mother told him that she had not seen any changes in his behavior. App-217a. This was confirmed by the "Progress Notes," written and signed by Campbell, which state that "Raub's mother, with whom he resides, 'has not seen any changes or psychotic behavior in [Raub].'" App-198a. This was critical information in assessing Raub's mental condition, yet Campbell withheld it from the magistrate. App-243a.[6]

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[6] In the district court, Raub specifically pointed out Campbell's withholding of this information and argued that (Footnote Continued)

- Campbell also told the magistrate that Raub displayed "paranoia," and that Raub was having "delusions." *See* App-272a. Yet, when deposed, Campbell admitted that the basis for his diagnosis of "paranoia" was Raub's "extreme distrust for the government." App-217a-20a. When pressed in his deposition to identify the nature of those "delusions," Campbell again identified Raub's distrust of the government:

> The idea that the United States government is dropping thorium through jet trails is delusional. The fact [sic] that the United States sent a missile into the Pentagon is delusional. The fact that he feels he has been chosen to lead this revolution is delusional thinking.

App-222a.

Campbell "deliberately . . . omitted material information from, his petition to the magistrate." App-178a. The court of appeals declined to address the argument, mistakenly ruling that it had not been argued in the district court. App-18a n.8.

Citing Campbell's deposition, Dr. Martin explained:

> Campbell regards Raub as "paranoid" chiefly because of his "extreme distrust of the government," and regards Raub as delusional chiefly because of his views about the activities of the United States government. Campbell describes Raub as believing that the United States government is "dropping Thorium through jet trails" and "sent a missile into the Pentagon." *These views may be eccentric but they are views shared by many conspiracy theorists, and they are not delusional beliefs in a psychological sense. Similarly, "extreme distrust of government" is a political view and not a sign of paranoia in a psychological sense.*

App-246a-47a (emphasis added).[7]

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[7] Dr. Martin also rebutted the other observations claimed by Campbell to support seizing and detaining Raub. For example, "Paris . . . told Campbell that Raub appeared

(Footnote Continued)

Campbell's admissions and Dr. Martin's report did not come until Raub filed his lawsuit. Meanwhile, relying on representations in the defective papers prepared by Campbell, the state magistrate issued a TDO, ordering that Raub be temporarily detained at a local hospital for further evaluation and treatment. App-151a-56a.[8] Based on

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'preoccupied and distracted' during the interview, with rapid mood swings and roving, intermittent eye contact." App-6a.

As Dr. Martin explains, however, the type of eye contact described is *socially appropriate*, since Raub was neither trying to "stare down" Paris with constant eye contact nor was he "staring into space" as he spoke. Such eye contact is not "evidence of psychosis." Moreover, to appear "preoccupied and distracted" is a *normal* reaction when a person is placed in a stressful situation, such as being confronted at one's home by a group of law enforcement officers. App-234a.

Dr. Martin also explained that the statement about "mood swings" is not descriptive enough to allow any conclusions to be drawn. *Id.* Moreover, this "mood swing" observation is contradicted by another observation reported by Paris in the very next sentence, in which he told Campbell "that Mr. Raub was extremely serious and intense during the *entirety* of the conversation, and that he never joked or expressed any kind of light-heartedness." *Id.* (citing App-204a-05a) (emphasis added). (At no point did Paris say that Raub's demeanor "shifted wildly," an inaccurate choice of words by the court of appeals. App-5a.)

[8] While at the hospital, Raub was evaluated by another mental health professional, James Correll, who recommended that Raub be detained past the TDO period. His report was deeply flawed and heavily influenced by Campbell's misguided evaluation and the concerns of law enforcement; however, Correll was not a government actor, and his errors are beyond the scope of this lawsuit. Moreover, after-the-fact evidence cannot be used to cure the lack of probable cause at the time a seizure was made. *See United States v. Al-Talib*, 55 F.3d 923, 931 (4th Cir. 1995) ("To determine whether probable cause

(Footnote Continued)

a later petition, dated August 20, 2012, a special justice ordered that Raub be transferred across the state to a Veterans Administration hospital for further confinement. App-164a. Raub was released on August 23, 2012, by order of the Circuit Court of the City of Hopewell, which found that the August 20 petition was "so devoid of factual allegations that it could not reasonably be expected to give rise to a case or controversy." App-175a. Raub has no history of mental health problems or alleged problems before – or after – the events that are the subject of this lawsuit. App-255a.

The Litigation and Appeal Below

Raub filed suit against Campbell in the U.S. District Court for the Eastern District of Virginia, alleging a violation of his Fourth Amendment right to be free from seizure without probable cause. He also alleged that his seizure violated the First Amendment, both because it was intended as retaliation for the political views expressed in his postings, and because the false allegation that he was mentally ill would suppress and chill his constitutionally-protected speech.

While the initial and first amended complaints also named other defendants, discovery revealed that Campbell was the one responsible for both the initial seizure of Raub and detention under the TDO. Thus, the other defendants were dismissed

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existed, courts look to the totality of the circumstances *known to the officers at the time of the arrest*." (emphasis added)) (citing *Illinois v. Gates*, 462 U.S. 213, 230-31 (1983)).

before the district court entered final judgment, and those dismissals are not at issue here.

Critical to this case is the expert report of Dr. Catherine E. Martin, a licensed clinical psychologist with experience in commitment proceedings and in psychological evaluations for veterans. *See* App-258a-63a. Dr. Martin conducted an extensive review of (i) the information available to Campbell when he spoke by telephone with Paris and instigated the seizure of Raub, and (ii) the information available to Campbell at the time of his jailhouse evaluation of Raub, including a review of the five-hours of silent video footage. The video shows a half-naked, but self-composed Raub tied to a bench with his hands bound behind him for the entire time, the comings and goings of various police officers, and the scanty, twelve-minute interview by Campbell in the midst of that commotion and distraction.

Based on her review, Dr. Martin concluded that there was a "lack of evidence of mental illness" and that "it was a violation of professional standards – and grossly negligent" for Campbell to instigate the seizure of Raub and to file the Petition for TDO. App-235a, 255a. A copy of Dr. Martin's report appears in full at App-228a-263a.

Despite Dr. Martin's strong report, the district court slipped into the role of fact-finder, rather than the judge of legal issues, decided that it was not persuaded by Raub's evidence and granted summary judgment to Campbell. Raub appealed that decision.

On appeal, despite its general recognition of the probable cause standard, the Fourth Circuit found itself at a loss to apply that standard in the case at bar, where the issue was not the action of

police officers, but the actions of a government mental health examiner. As the Fourth Circuit noted:

> Although our cases and the governing statutes provide some guidance as to the standards for probable cause to seize someone for a mental health evaluation, we are aware of no case clearly proscribing Campbell's conduct, or even conduct similar to it.
>
> Rather, all of our decisions involving mental health seizures have involved circumstances in which law enforcement officers seized an individual . . .

App-13a.

Faced with what it viewed as a gap in the law – on a constitutional issue of substantial importance – the court of appeals might have explicated the probable cause standard. Yet, the Fourth Circuit declined to address this issue, skipping over the first prong of the qualified immunity analysis (whether Raub's constitutional rights were violated) and deciding the case based on the second prong (whether the right was clearly established). App-17a-18a.[9] The court held "that Campbell is entitled to

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[9] The qualified immunity analysis is explained in *Pearson v. Callahan*, 555 U.S. 223 (2009), and potentially involves two steps: (i) "whether the facts that a plaintiff has alleged or shown . . . make out a violation of a constitutional right," *id.* at 232 (citing *Saucier*, 533 U.S., at 201), and (ii) "whether the right at issue was clearly established at the time,

(Footnote Continued)

qualified immunity on the ground that the unlawfulness (if any) of his conduct was not clearly established at the time he recommended Raub's seizure." App-17a.

On Raub's First Amendment claim, the court of appeals assigned to Raub the burden of proving that he would not have been seized or detained "but for" Campbell's retaliation based on Raub's political views. Failing to apprehend the burden-shifting approach prescribed by *Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle*, 429 U.S. 274 (1977),[10] the Fourth Circuit said: "'[I]t is not enough that the protected expression played a role or was a

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of defendant's alleged misconduct." *Id.* If the official's conduct violates a clearly established constitutional right, then qualified immunity does not apply. *Id.*

In *Pearson*, the Court held that the two-step approach adopted in *Saucier*, which considered the prongs in a set order, "should no longer be regarded as mandatory." *Id.* at 236. Even so, this Court has given guidance for when it is advisable to use both steps: "[T]he two-step procedure promotes the development of constitutional precedent and is *especially valuable with respect to questions that do not frequently arise in cases in which a qualified immunity defense is unavailable*." *Id.* at 226 (emphasis added). This guidance, clearly applicable to the case at bar, was not followed by the court of appeals.

[10] In *Mt. Healthy*, the Court explained that, to analyze a retaliation claim, the burden is first "placed upon respondent to show that his conduct was constitutionally protected, and that this conduct was a 'substantial factor' – or, to put it in other words, that it was a 'motivating factor'" in the adverse action by the state actor. 429 U.S. at 287. Once that burden has been carried, the burden shifts to the state actor to show "by a preponderance of the evidence that it would have reached the same decision . . . even in the absence of the protected conduct." *Id.*

motivating factor in the retaliation; *claimant must show* that but for the protected expression the [state actor] would not have taken the alleged retaliatory action.'" App-19a (emphasis added) (quoting *Huang v. Bd. of Governors of the Univ. of N.C.*, 902 F.2d 1134, 1140 (4th Cir. 1990)).

Having thus assigned the full burden to Raub – and despite the posture of the case on summary judgment – the court of appeals ruled that Raub had not met his burden. Citing "other evidence" considered by Campbell – and disregarding Dr. Martin's expert report – the court of appeals concluded that "even if Raub's protected speech contributed to Campbell's decision to recommend his detention, it was not dispositive." *Id.* Thus, the Fourth Circuit ruled that Campbell was entitled to qualified immunity against Raub's First Amendment claim.

REASONS WHY THE WRIT SHOULD BE GRANTED

In deciding whether to grant certiorari, this Court typically looks for something more than a circuit court's error of law. Here that "something more" is provided by the importance of the Fourth Amendment and First Amendment interests implicated here, and by the value of this case as a vehicle for the Court to confirm – or, in the alternative, to establish – constitutional principles in an important arena of government action.

In addition, there is a twofold split in the circuits on the burden of proof in First Amendment retaliation cases. First, there is a split over whether burden-shifting applies to such cases. Second, however the burden may be allocated, there is,

surprisingly, a split over whether meeting that burden is an issue of law or an issue of fact. This case provides an opportunity for the Court to resolve these conflicts.

I. The Fourth Circuit's Decision Undermines the Need for Probable Cause in Mental Health Seizures and Detentions.

Every year, thousands of Americans are deprived of their liberty – sometimes justly, sometimes not – based on allegations that they present a danger to themselves or others due to mental illness. Often these allegations are made by government mental health examiners, who are subject to the Fourth Amendment prohibition against unreasonable seizures, made applicable to the States by the Fourteenth Amendment.

It is well-established that "for the ordinary citizen, commitment to a mental hospital produces 'a massive curtailment of liberty . . .'" *Vitek v. Jones*, 445 U.S. 480, 491 (1980) (quoting *Humphrey* v. *Cady*, 405 U.S. 504, 509 (1972)). Thus, "[t]his Court repeatedly has recognized that civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection." *Addington v. Texas*, 441 U.S. 418, 425 (1979).

It is likewise well-established that due process, in the mental health context, requires probable cause for any seizure or detention. As the Fourth Circuit has recognized, "the general right to be free from seizure *unless probable cause exists* [is] clearly established in the mental health seizure context." *Gooden v. Howard County*, 954 F.2d 960, 968 (4th Cir. 1992) (emphasis added) (cited in

decision below, App-10a). Other circuits agree. *E.g.*, *Ahern v. O'Donnell*, 109 F.3d 809, 817 (1st Cir. 1997) (per curiam) ("[I]nvoluntary hospitalization is no less a loss of liberty than an arrest."); *Glass v. Mayas*, 984 F.2d 55, 58 (2d Cir. 1993) ("The Fourth Amendment requires that an involuntary hospitalization may be made only *upon probable cause*, that is, only if there are reasonable grounds for believing that the person seized is subject to seizure under the governing legal standard") (emphasis added) (citations omitted); *Monday v. Oullette*, 118 F.3d 1099, 1102 (6th Cir. 1997)) ("Fourth Amendment requires an official seizing and detaining a person for a psychiatric evaluation to have *probable cause* to believe that the person is dangerous to himself or others.") (emphasis added); *Pino v. Higgs*, 75 F.3d 1461, 1467-68 (10th Cir. 1996) ("Because a seizure of a person for an emergency mental health evaluation raises concerns that are closely analogous to those implicated by a criminal arrest, and both are equally intrusive, we conclude that the 'probable cause' standard applies here.").

In addition, this Court has recognized that, in the mental health context, a lay interpretation of facts is generally not enough. Instead, "[w]hether the individual is mentally ill and dangerous to either himself or others and is in need of confined therapy turns on the meaning of the facts which must be interpreted by *expert psychiatrists and psychologists*." *Addington*, 441 U.S. at 429 (emphasis added). While some cases may require a policeman to use his own lay judgment in deciding whether to make the initial seizure, this is not such a case. Here, Detective Paris called Campbell, a state-certified mental health professional, to obtain his

guidance whether Raub should be seized at his home. Campbell, not Paris, made the decision that Raub was to be seized. And, it was Campbell who conducted the cursory jailhouse interview and who obtained the temporary detention order that restarted and prolonged Raub's loss of liberty.[11]

When the clearly-established need for *probable cause* is coupled with the clearly-established need for an *expert assessment* of the facts, the result is also clear: a state mental health professional violates the Fourth Amendment when he causes an individual to be seized and detained based on an assessment of mental illness so deficient as to violate professional standards.

The principle that a professional can be held individually liable for decisions beyond the bounds of professional judgment was recognized by this Court more than thirty years ago in *Youngberg v. Romeo*, 457 U.S. 307, 323 (1982), a case involving conditions of confinement of the mentally retarded. There, the Court said: "liability may be imposed only when the decision by the professional is such a substantial departure from accepted professional judgment, practice, or standards as to demonstrate that the person responsible actually did not base the decision on such a judgment."

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[11] Under Virginia Code § 37.2-808, an initial seizure can last no longer than four hours (plus an additional two hours if extended by a magistrate). Raub's initial seizure lasted beyond four hours, with no magistrate's extension. The detention effected by the TDO is best viewed as a new seizure, rather than simply a continuation of the first one.

In this case – as in *Youngblood* – the point is not to suggest that officials are always to be held liable for mistaken decisions. "Officials are not liable for bad guesses in gray areas; they are liable for transgressing bright lines." *Maciariello v. Sumner*, 973 F.2d 295, 298 (4th Cir. 1992) (citing *Anderson v. Creighton*, 483 U.S. 635, 639-40 (1987)). In the mental health context, some areas are gray. Reasonable professionals can sometimes differ, but the boundaries of professional judgment are not infinite. Where, as here, there is no evidence of mental illness and where the assessment of mental illness violates professional standards, a bright line has been crossed, and the government mental health professional who crossed that line has violated a clearly-established constitutional right. Campbell is not entitled to qualified immunity. That protection does not extend to "the plainly incompetent or those who knowingly violate the law." *Malley v. Briggs*, 475 U.S. 335, 341 (1986).

A "professional judgment" standard was recognized by the district court, which held that, in determining whether there is probable cause in the mental health context, the issue is "whether a reasonable person, exercising professional judgment and possessing the information at hand, would have concluded that Raub, as a result of mental illness, posed an imminent threat to others." App-43a.[12] The court of appeals, however, disregarded that legal

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[12] After recognizing this standard, the district court then misapplied it to the facts and granted summary judgment to Campbell by essentially disregarding Dr. Martin's expert report. App-37a-38a.

standard when it ruled, in effect, that there is no clearly-established constitutional standard applicable to a mental health professional, like Campbell, whose assessment of mental illness is so lacking in evidentiary support that it violates professional standards:

> We choose . . . not to reach the question of whether Campbell's conduct amounted to a constitutional violation. Rather, *we hold that because Campbell's conduct was not proscribed by clearly established law, summary judgment on the basis of qualified immunity was proper*.

App-11a (emphasis added).

The Fourth Circuit was wrong in this conclusion. As shown by the foregoing discussion, Campbell's conduct was indeed prescribed by clearly-established law. Thus, the Fourth Circuit "decided an important federal question in a way that conflicts with relevant decisions of this Court." Sup. Ct. Rule 10(c).

There is more. As this Court has explained, "the right allegedly violated must be defined at the appropriate level of specificity before a court can determine if it was clearly established." *Saucier*, 533 U.S. at 202. That inquiry "must be undertaken in light of the specific context of the case." *Id.* at 201.

Here, the right violated – and the specific context of the case – are defined by the testimony of Dr. Martin, which on summary judgment, must be taken as true. *E.g.*, *Tolan v. Cotton*, 572 U.S. __, __, 134 S. Ct. 1861, 1863 (2014) (per curiam). It would

seem self-evident that there is a right to be free from seizure and detention based on allegations of mental illness when, as here, there is (i) a "lack of evidence of mental illness," (ii) a "violation of professional standards" by the government mental health examiner instigating the seizure and detention, and/or (iii) "gross negligen[ce]" by that examiner. App-235a, 255a. Surely, any reasonable mental health examiner would have known this.

By ruling that there is no clearly-established constitutional standard applicable to cases such as this one – and by refusing to establish any such standard – the Fourth Circuit has created a dangerous precedent. The ruling effectively immunizes state mental health examiners from any liability for causing the seizure and detention of citizens, even when the egregious set of facts present here clearly demonstrates there was no probable cause.

II. The Fourth Circuit's Decision Undermines Free Speech.

Like many Americans, Raub does not trust the United States government. Like a surprising number of Americans – so-called "conspiracy theorists" – he believes our government was responsible for firing a missile into the Pentagon and the other attacks on September 11, 2001. And, he believes our government is dropping harmful chemicals into the atmosphere. Holding such views about our government, Raub also favors a revolution against that government, and he has preached the need for drastic action against those persons responsible. All of these ideas make Raub politically unorthodox, but they do not make him mentally ill. To conclude otherwise would suggest that all

conspiracy theorist should be committed to state asylums.

Raub's speech is protected by the First Amendment. As this Court explained in *Brandenburg v. Ohio*, 395 U.S. 444, 444-45 (1969), speech "advocat[ing] . . . the duty, necessity, or propriety of crime, sabotage, violence, or unlawful methods of terrorism as a means of accomplishing industrial or political reform" is protected by the First Amendment.[13]

There is, of course, an exception "where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action." *Id.* But that exception does not apply here. Both federal and state prosecutors were consulted before Raub was seized and, consistent with *Brandenburg*, they both advised that Raub's statements and postings – as inflammatory as they might be – broke no law. App-183a.

The mental health system should not be used to lock up people whom we worry may be "dangerous" but who have committed no crime and who are really not mentally ill. Therein lies a danger presented by this case.

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[13] In *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 902 (1982), black citizens who might choose not to join a store boycott were publically told that "we're gonna break your damn neck." This specific reference to physical violence was more ominous that the generalized threat of "revengeance" made by the Ku Klux Klan in *Brandenburg*, 359 U.S. at 446. Yet, this Court made it clear that such "emotionally charged rhetoric . . . did not transcend the bounds of protected speech." 458 U.S. at 928. Raub's speech is likewise protected.

With the criminal justice system unavailable as a response to Raub's speech, the mental health system was used instead. Campbell charged Raub with being paranoid chiefly because of his "extreme distrust of the government," and he charged Raub with being delusional chiefly because of his views about the activities of the United States government. App-217a-20a. For a government mental health examiner to brand the politically unorthodox with the stigma of mental illness – and to violate professional standards in the process – is reminiscent of the "political psychiatry" that once notoriously held sway in the Soviet Union. As one commentator has observed, "the opportunity to use psychiatry as a means to stifle opponents or solve conflicts is an appealing one, not only to dictatorial regimes but also to well-established democratic societies." Robert van Voren, *Political Abuse of Psychiatry – An Historical Overview*, 36 Schizophrenia Bulletin 1, 33 (Jan. 2010), *available at* https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2800147.

This case is important – and worthy of this Court's review – because of the dangerous precedent that the Fourth Circuit decision creates. The decision not only frees government mental health examiners from constitutional accountability, it gives them broad license to use political unorthodoxy as a proxy for mental illness. Such a decision will chill the speech of Americans who share Raub's viewpoint, and it will further alienate them from the political mainstream by giving credence to their belief that our government is destructive of liberty and not to be trusted.

III. This Case Provides an Excellent Vehicle for the Court to Confirm – or Establish – Important Constitutional Principles.

Certiorari should be granted because, given the Fourth Amendment questions presented, a decision on the merits will likely be highly significant, regardless of the outcome.

On the one hand, a decision in favor of Raub would reverse a dangerous precedent, foreclose similar errors by other lower courts and confirm as established law an important principle: a government mental health examiner acts without probable cause when he causes the seizure and detention of a citizen in the absence of evidence of mental illness and in violation of professional standards.

On the other hand, if this Court were to agree with the court of appeals that there is no clearly-established law in this area, the case would furnish an excellent vehicle for the Court to establish the law for future cases. *See* Sup. Ct. Rule 10(c) ("an important question of federal law that has not been, but should be, settled by this Court"). For the Court to avail itself of that opportunity would be especially appropriate because the constitutional standards for government mental health examiners are not likely to become an issue outside of the qualified immunity context. *Pearson*, 555 U.S. at 236 (the two-step procedure "is especially valuable with respect to questions that do not frequently arise in cases in which a qualified immunity defense is unavailable.").

This case provides the Court with evidence that is about as clear cut as might be imagined.

Decided on summary judgment, the case involves both an initial seizure and a continued detention, where the expert evidence shows there was a "lack of evidence of mental illness," and where it was "a violation of professional standards – and grossly negligent" to instigate that seizure and detention. App-235a, 255a. In addition, it was a state-certified, *government* mental health examiner who was responsible for those deprivations of liberty, and the examiner caused the deprivations based chiefly on the unorthodox political beliefs of the citizen he was examining. This Court need not draw fine lines in order to say that, surely, this goes too far. And, if established law does not already clearly prohibit such government misconduct, then surely the law should now do so.

This is not an esoteric matter with limited relevance. Government mental health examiners cause citizens to be seized and detained every day. For this Court to shine the spotlight on the constitutional principles that must guide that work will have a salutary effect. Professionalism will likely be increased, causing fewer mistakes to be made on both sides of the ledger. Fewer individuals in need of treatment will be left upon the streets, and fewer individuals with no mental health issues will be deprived of their liberty unnecessarily. This is a matter worthy of the Court's attention.

IV. Certiorari Should Be Granted in Order to Resolve Circuit Splits Regarding the Burden of Proof in First Amendment Retaliation Claims.

Certiorari also should be granted in order to resolve two circuit splits, and to correct errors of law that have persisted in the Fourth Circuit for decades. First, there is a split on whether burden-shifting applies to First Amendment retaliation cases. Second, however the burden may be allocated, there is a split on whether meeting that burden is an issue of law or an issue of fact. The Fourth Circuit is on the wrong side of both splits. Indeed, it appears to be the only circuit out of step.[14]

Burden-Shifting

In *Mt. Healthy*, *supra*, this Court explained that, in a First Amendment retaliation claim, the analysis of causation involves two steps:

> [1] Initially, . . . the burden [is] properly placed upon [plaintiff] to show that his conduct was constitutionally protected, and that this conduct was a "substantial factor" - or, to put it in other words, that

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[14] In addition to conflicting with other circuits, *see* Sup. Ct. Rule 10(a), the Fourth Circuit's longstanding errors may also be viewed as implicating "important federal question[s]" decided "in a way that conflicts with relevant decisions of this Court." *See* Sup. Ct. Rule 10(c).

> it was a "motivating factor" in the [state actor's adverse action].

429 U.S. at 287. Then the burden shifts:

> [2] [Plaintiff] having carried that burden, …the District Court should have gone on to determine *whether the Board had shown by a preponderance of the evidence that it would have reached the same decision* as to [the adverse action] even in the absence of the protected conduct.

Id. (emphasis added).

Two years later, this Court decided *Givhan v. Western Line Consol. School Dist.*, 439 U.S. 410 (1979), which did not change *Mt. Healthy*, but simply applied it:

> Since this case was tried before *Mt. Healthy* was decided, it is not surprising that [the state actors] did not attempt to prove in the District Court that the decision not to rehire petitioner would have been made even absent consideration of her "demands."
>
> * * * * *
>
> [W]hile the District Court found that petitioner's "criticism" was the "primary" reason for the School District's failure to rehire her, it did not find that she would have been rehired *but for* her criticism.

439 U.S. at 417 (emphasis added); *see id.* (remanding case for further proceedings). In other words, the point of *Givhan* is this: once a plaintiff shows that he

was subject to adverse state action because of his protected speech, there is still the "but for" issue of whether the adverse action would have been taken anyway. But, *Mt. Healthy* explained that the burden on *that issue* is placed on the state actor, and nothing in *Givhan* changed that.

Applying a straightforward reading of *Mt. Healthy* and *Givhan*, all of the regional circuits – except for the Fourth Circuit – use a burden-shifting approach in First Amendment retaliation cases.[15]

First Circuit: The approach followed by the various circuits is exemplified by a decision from the First Circuit:

> [U]nder the *Mt. Healthy* burden-shifting mechanism applicable to a First Amendment political discrimination claim, the *burden of persuasion itself passes to the defendant-employer* once the plaintiff produces sufficient evidence from which the fact finder reasonably can infer that the plaintiff's protected conduct was *a* 'substantial' or 'motivating' factor behind her dismissal.

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[15] While some of these cases arose in the context of government employment, there is no reason for state actors to be treated more favorably when they take adverse action against ordinary citizens. Given that the free speech rights of government employees can be limited by a balancing test inapplicable to non-employees, *e.g.*, *Connick v. Myers*, 461 U.S. 138, 150 (1983), *Pickering v. Bd. of Educ.*, 391 U.S. 563, 568 (1968), any difference in treatment should favor the non-employee citizen.

Acevedo-Diaz v. Aponte, 1 F.3d 62, 67 (1st Cir. 1993) (emphasis in original). Leaving no doubt as to its meaning, the First Circuit then went on to say:

> Accordingly, once the burden of persuasion shifts to the defendant-employer, the plaintiff-employee will prevail unless the fact finder concludes that the defendant has produced enough evidence to establish that the plaintiff's dismissal would have occurred in any event for nondiscriminatory reasons.

Id. Every other circuit (except for the Fourth) follows this same approach:

Second Circuit: "[A] defendant can avoid liability by showing that it would have taken the same action in the absence of the impermissible reason. *The burden is on the government to make out the defense*." *Anemone v. Metro. Transp. Auth.*, 629 F.3d 97, 115 (2d Cir. 2011) (internal quotation marks and citations omitted) (emphasis added).

Third Circuit: "Zold has presented sufficient evidence . . . that the Township defendants employed an impermissible political motive in their decision [not to reappoint her]. Therefore, on remand, *the burden will be on the defendants* to demonstrate by a preponderance of the evidence that Zold would not have been reappointed solely because of her poor job performance." *Zold v. Mantua*, 935 F.2d 633, 641 (3d Cir. 1991) (emphasis added).

Fifth Circuit: "To prevail, Beattie must show that she engaged in protected conduct and that it was a motivating factor in her discharge. Then, the burden shifts to defendants to show by a

preponderance of the evidence that they would have come to the same conclusion in the absence of the protected conduct." *Beattie v. Madison County Sch. Dist.*, 254 F.3d 595, 601 (5th Cir. 2001).

Sixth Circuit: Once the employee shows that protected speech was a "substantial factor" or "motivating factor" in the decision not to rehire him, "the burden of proof shifts to the employer to prove that the employee would have been fired absent the protected conduct." *Hildebrand v. Bd. of Trs.*, 662 F.2d 439, 443 (6th Cir. 1981).

Seventh Circuit: "If a plaintiff establishes a prima facie case, the burden shifts to the employer to demonstrate that it would have taken the same action in the absence of the protected speech." *Valentino v. Vill. of S. Chi. Heights*, 575 F.3d 664, 670 (7th Cir. 2009).[16]

Eighth Circuit: "Initially, the burden is on the plaintiff to show that his or her conduct is constitutionally protected and that this conduct was a substantial or motivating factor in the action taken against him or her. The defendant may then defeat

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[16] More recently, the Seventh Circuit appears to have made a distinction between the burden of proof at the summary judgment stage and the burden of proof at trial. *Kidwell v. Eisenhauer*, 679 F.3d 957, 965 (7th Cir. 2012) ("In the end, the plaintiff must demonstrate that, but for his protected speech, the employer would not have taken the adverse action. . . . But preliminarily at summary judgment, the burden of proof is split between the parties.") Even so, the distinction is not relevant here because the case at bar was decided at the summary judgment stage, where the Seventh Circuit still follows a burden-shifting approach.

the plaintiff's claim by demonstrating that the same action would have been taken in the absence of the protected conduct." *Barnes v. Bosley*, 745 F.2d 501, 507 (8th Cir. 1984).

Ninth Circuit: "[O]nce a plaintiff makes a showing that protected speech was a 'substantial' or 'motivating' factor in the employer's taking a non-trivial adverse employment action, defendants can 'escape liability only by sustaining the burden of proving by a preponderance of the evidence that [they] would have reached the same decision . . . even in the absence of the [plaintiff's] protected conduct.'" *Thomas v. Cty. of Riverside*, 763 F.3d 1167, 1169 (9th Cir. 2014) (*quoting Allen v. Iranon*, 283 F.3d 1070, 1074 (9th Cir. 2002)).

Tenth Circuit*:* "[T]he burden then shifts to the defendant, who must show by a preponderance of the evidence it would have reached the same employment decision in the absence of the protected activity." *Trant v. Oklahoma*, 754 F.3d 1158, 1167 (10th Cir. 2014) (citing *Cragg v. City of Osawatomie*, 143 F.3d 1343, 1346 (10th Cir. 1998)).

Eleventh Circuit: "[T]he burden of proof shifts to the government to show by a preponderance of the evidence that it would have reached the same decision to discipline the employee in the absence of the protected speech." *Waters v. Chaffin*, 684 F.2d 833, 837 (11th Cir. 1982).

D.C. Circuit: "[T]he employer should have an opportunity to show 'by a preponderance of the evidence that it would have reached the same decision even in the absence of the protected conduct.'" *O'Donnell v. Barry*, 148 F.3d 1126, 1133

(D.C. Cir. 1998) (quoting *Mt. Healthy*, 429 U.S. at 287).

In sharp contrast with the approach followed by all these circuits, the Fourth Circuit does not use burden-shifting in First Amendment retaliation cases. This is not a random error found only in the case at bar. The Fourth Circuit has been out of step for over three decades.

The Fourth Circuit's peculiar approach can be traced back to *Jurgensen v. Fairfax County*, 745 F.2d 868 (4th Cir. 1984). While purporting to follow *Mt. Healthy* and *Givhan*, the court said "*the plaintiff-employee must demonstrate* . . . that [his] protected speech or activity was the 'motivating' or *"but for" cause* for his discharge or demotion." *Id.* at 878 (emphasis added).[17]

Two years later, the Fourth Circuit followed the same approach in *Johnson v. Elizabethtown*, 800 F.2d 404, 406 (4th Cir. 1986) ("In order to prevail on her constitutional claim, Johnson must prove (1) that her speech was protected under the first amendment and (2) that the protected speech was

[17] The Fourth Circuit correctly noted that *Mt. Healthy* requires the plaintiff to show that his constitutionally protected speech was "'a substantial factor' – or, to put it in other words, that it was a 'motivating factor' in the [employer's] decision" to take adverse action. *Jurgensen*, 745 F.2d at 878 (quoting *Mt. Healthy*, 429 U.S. at 287). The Fourth Circuit then said that the *Mt. Healthy* test was "later refined" in *Givhan* as "a 'but for' standard." *Id.* What the Fourth Circuit failed to apprehend, however, is that the "but for" burden is imposed on the *state actor*.

the 'but for' cause of her discharge.") (citing *Jurgensen*, 745 F.2d at 878).

The Fourth Circuit's misreading of *Givhan* received its most emphatic formulation in *Huang v. Board of Governors of University of North Carolina*, 902 F.2d 1134, 1140 (4th Cir. 1990), where the court said:

> The causation requirement is rigorous; it is not enough that the protected expression played a role or was a motivating factor in the retaliation; *claimant must show that "but for"* the protected expression the employer would not have taken the alleged retaliatory action.

Id. at 1140 (citing *Givhan*, 439 U.S. at 417; *Jurgensen*, 745 F.2d at 878; and *Johnson*, 800 F.2d at 406) (emphasis added).

It was precisely this longstanding misreading of *Givhan* that the Fourth Circuit invoked in the case at bar when it dismissed Raub's First Amendment claim.

> "[I]t is not enough that the protected expression played a role or was a motivating factor in the retaliation; *claimant must show* that 'but for' the protected expression the [state actor] would not have taken the alleged retaliatory action."

App-19a (quoting *Huang*, 902 F.2d at 1140) (emendation by Fourth Circuit) (emphasis added). Thus, the Fourth Circuit dismissed Raub's First Amendment claim by allocating the burden of proof in a manner inconsistent with a correct reading of

Mt. Healthy and *Givhan*, as understood and applied by eleven other circuits.

Under a burden-shifting approach, there was no basis to dismiss Raub's case. The evidence presented by Raub showed that his protected speech was a substantial motivating factor in Campbell's decision to instigate the seizure and detention. With the burden of proof then shifted to the defendant, Campbell failed to show – and never testified – that he would have instigated that seizure and detention even if Raub had not made statements about the United States government and the need for revolution.

Issue of Law or Fact?

This case was decided on summary judgment. However the burden of proof might be allocated, the resolution of the causation issue was properly an issue for the finder of fact to resolve. Yet, the court of appeals chose to resolve the issue instead, treating it as an issue of law, rather than an issue of fact. *See* App-19a.

This peculiar approach also has its roots in the Fourth Circuit's 1982 decision in *Jurgensen*, *supra*. After placing on the plaintiff the full burden of proving that his protected speech was the "but for" cause of the government's adverse action, the Fourth Circuit then went on to say that "the resolution of [this] critical issue[] is a matter of law and not of fact." 745 F.2d at 878.

The Fourth Circuit based this conclusion on its misreading of a footnote in *Connick v. Myers*, 461 U.S. 136 (1983). *See Jurgensen*, 745 F.2d at 878 (citing *Connick*, 461 U.S. at 147 n. 7). The cited

Connick footnote says only this: "The inquiry into the *protected status* of speech is one of law, not fact." (Emphasis added). It says nothing about the inquiry into *causation*.

Again, the approach followed by the Fourth Circuit is a marked – and erroneous – departure from the approach followed by other circuits, which uniformly treat *Mt. Healthy* causation questions as issues for the finder of fact at trial, not as issues of law.[18] As such, the defendant state actor is not to be granted summary judgment where there are genuine issues of material fact on which a reasonable jury could find against that defendant.

The Fourth Circuit did not ask what conclusions a reasonable jury might reach. Had it done so, Campbell's heavy reliance on Raub's political views – as shown, for example, by his Prescreening Report and deposition – would have made this a jury question. Instead, the court of appeals made the decision. In so doing, it not only decided the "but for" issue incorrectly, it implicitly treated the issue as one of law, just as the Fourth

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[18] *See*, *e.g.*, *McCue v. Bradstreet*, No. 14-1922, 2015 U.S. App. LEXIS 12304 (1st Cir. July 16, 2015); *Anemone v. Metro. Transp. Auth.*, 629 F.3d 97, 117 (2d Cir. 2011); *Smith v. City of Allentown*, 589 F.3d 684 (3d Cir. 2009); *Haverda v. Hays County*, 723 F.3d 586, 595-96 (5th Cir. 2013) *Hildebrand v. Board of Trustees*, 662 F.2d 439, 443 (6th Cir. 1981); *Valentino v. Vill. of S. Chi. Heights*, 575 F.3d 664 (7th Cir. 2009); *Barnes v. Bosley*, 745 F.2d 501, 508 (8th Cir. 1984); *Allen v. Iranon*, 283 F.3d 1070, 1076 (9th Cir. 2002); *Cragg v. City of Osawatomie*, 143 F.3d 1343, 1346 (10th Cir. 1998); *Waters v. Chaffin*, 684 F.2d 833, 837 n.10 (11th Cir. 1982); *O'Donnell v. Barry*, 148 F.3d 1126, 1133 (D.C. Cir. 1998).

Circuit said in *Jurgensen* was the approach it was going to follow.

This Court should grant certiorari in order to resolve the split between the Fourth Circuit and the other circuits on how the burden of proof should be allocated in First Amendment retaliation cases, and to confirm that the *Mt. Healthy*/*Givhan* requirement for burden-shifting remains the proper approach, thus correcting the erroneous approach that has governed in the Fourth Circuit for decades.

The Court also should grant certiorari in order to resolve the split between the Fourth Circuit and the other circuits on whether it is an issue of law or an issue of fact whether the burden of proof has been met in any given case, and to confirm that it is an issue of fact, again correcting a long-standing error in Fourth Circuit jurisprudence.

CONCLUSION

The petition for certiorari should be granted.

Respectfully submitted,

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APPENDIX

APPENDIX TABLE OF CONTENTS
VOLUME I OF II

Page

APPENDIX TABLE OF CONTENTS
VOLUME II OF II – SEALED

Page

[Entered April 29, 2015]

PUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 14-1277

BRANDON RAUB,

Plaintiff – Appellant,

v.

MICHAEL CAMPBELL,

Defendant – Appellee,

and

DANIEL LEE BOWEN; RUSSELL MORGAN GRANDERSON; LLOYD C. CHASER; LATARSHA MASON; MICHAEL PARIS; TERRY GRANGER; UNITED STATES OF AMERICA; JOHN DOES 1−10,

Defendants.

Appeal from the United States District Court for the Eastern District of Virginia, at Richmond. Henry E. Hudson, District Judge. (3:13-cv-00328-HEH-MHL)

Argued: January 28, 2015 Decided: April 29, 2015

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

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

ARGUED: William H. Hurd, TROUTMAN SANDERS LLP, Richmond, Virginia, for Appellant. Stylian Paul Parthemos, COUNTY ATTORNEY'S OFFICE FOR THE COUNTY OF CHESTERFIELD, Chesterfield, Virginia, for Appellee. **ON BRIEF:** Stephen C. Piepgrass, TROUTMAN SANDERS LLP, Richmond, Virginia; John W. Whitehead, Douglas R. McKusick, THE RUTHERFORD INSTITUTE, Charlottesville, Virginia; Anthony F. Troy, Charles A. Zdebski, ECKERT SEAMANS CHERIN & MELLOTT, LLC, Richmond, Virginia, for Appellant. Jeffrey L. Mincks, Julie A.C. Seyfarth, COUNTY ATTORNEY'S OFFICE FOR THE COUNTY OF CHESTERFIELD, Chesterfield, Virginia, for Appellee.

DIAZ, Circuit Judge:

In the summer of 2012, Brandon Raub composed a series of ominous Facebook posts, which drew the attention of his former fellow Marines. They contacted the FBI expressing concern, and the FBI--in coordination with local law enforcement--dispatched a team to Raub's Virginia home. After speaking with Raub, and on the recommendation of Michael Campbell, a local mental health evaluator, the local officers detained Raub for further evaluation. Campbell then interviewed Raub and, on the basis of that interview and Raub's Facebook posts, petitioned a state magistrate judge for a temporary detention order, which was granted. Raub was subsequently hospitalized against his will for seven days.

Raub filed suit under 42 U.S.C. § 1983, seeking damages and injunctive relief against Campbell for violating his Fourth Amendment and First Amendment rights. The district court granted summary judgment to Campbell on the basis of qualified immunity, concluding that Campbell acted reasonably in recommending Raub's seizure and further detention. For the reasons set forth below, we affirm.

I.

In reviewing de novo the district court's grant of summary judgment, we recite the facts and all reasonable inferences to be drawn from them in the light most favorable to the non-moving party--in this

case, Raub. Henry v. Purnell, 652 F.3d 524, 531 (4th Cir. 2011) (en banc).

In August 2012, two Marine veterans who had served with Raub during his deployment to Iraq contacted the FBI. They were concerned by Raub's "increasingly threatening" Facebook posts. J.A. 532. In an email, one of the Marines, Howard Bullen, provided specific examples of Raub's posts:

- "This is revenge. Know that before you die."
- "Richmond is not yours. I'm about to shake some shit up."
- "This is the start of you dying. Planned spittin with heart of Lion."
- "Leader of the New School. Bringing Back the Old School. MY LIFE WILL BE A DOCUMENTARY."
- "I'm gunning whoever run the town."
- "W, you're under arrest bitch."
- "The World will Find This."
- "I know ya'll are reading this, and I truly wonder if you know what's about to happen."
- "W, you'll be one of the first people dragged out of your house and arrested."
- "And Daddy Bush, too."
- "The Revolution will come for me. Men will be at my door soon to pick me up to lead it ;)"
- "You should understand that many of the things I have said here are for the world to see."

J.A. 532–33. Although Bullen characterized Raub's statements as "typical extremist language," he also told the FBI that Raub "genuinely believes in this and is not simply looking for attention." Id. at 533. Bullen expressed concern that Raub's "threatening and action-oriented" rhetoric had worsened in recent months. Id.

The FBI decided to interview Raub.[1] Supported by a team comprised of federal and local law enforcement officers, Detective Michael Paris and FBI Agent Terry Granger approached Raub at his home and questioned him about his Facebook posts.

Raub, wearing only a pair of white shorts and speaking to the officers through the screen door of his home, admitted that he wrote the posts. Although he never threatened violence, Raub refused to answer directly when asked if he intended to commit violence. At one point, he told Paris and Granger, "[W]e will all see very soon what all of this means." J.A. 193.

Paris observed that Raub's demeanor shifted wildly over the course of the conversation, alternating between calm and "extremely intense and emotional." Id. Raub questioned Paris and Granger about their knowledge of government conspiracy theories--including Raub's theories that the government launched a missile into the

[1] Agents had conferred with state and federal prosecutors, who advised that Raub's statements, by themselves, did not provide sufficient grounds for criminal charges.

Pentagon on 9/11 and that the government exposes citizens to radioactive thorium--and wondered why the officers were not arresting government officials for these crimes.

After interviewing Raub for nearly half an hour, Paris and Granger discussed whether they should detain Raub for a mental health evaluation. To that end, Paris spoke by telephone with Michael Campbell, a certified mental health "prescreener" with the local emergency services agency. Paris described Raub's Facebook posts and told Campbell that Raub appeared "preoccupied and distracted" during the interview, with rapid mood swings and roving, intermittent eye contact. J.A. 574. In addition, Paris expressed concern about Raub's military weapons training and his potential access to weapons.[2] Campbell, believing that Raub might be psychotic, recommended that Paris detain Raub for an evaluation.

Raub was placed in custody and transported to the local jail.[3] There, he was handcuffed to a bench in the jail's intake room. Because Raub was not allowed to retrieve his clothes before being detained, he was both shirtless and shoeless when Campbell arrived to speak with him. Campbell asked Raub about the Facebook posts, as well as Raub's beliefs in government conspiracies and an

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[2] The record does not say why Paris thought Raub had access to weapons.

[3] Virginia law requires that a person seized for an emergency detention be taken to an "appropriate location to assess the need for hospitalization or treatment." Va. Code Ann. § 37.2-808(G) (2011).

impending revolution. Although Raub said little in response--declining after twelve minutes to answer any further questions--when asked whether he felt justified in following through with the threats that had caused his detention, Raub replied, "I certainly do, wouldn't you?" J.A. 576. In addition, he told Campbell, "the revolution is coming," and "if you [k]new of what was coming[,] wouldn[']t you try to stop it[?]" J.A. 705. When asked why he thought the authorities had approached him about his posts, Raub replied, "because they know I am on to them." J.A. 523.

Campbell also noted that Raub appeared preoccupied and distracted and had difficulty answering questions. This behavior, combined with Raub's professed belief in an impending revolution that he was destined to lead, prompted Campbell to conclude that Raub might be paranoid and delusional, and that he was "responding to some internal stimulus." J.A. 576.

After speaking with Raub, Campbell read the email that Bullen had sent to the FBI. Campbell also spoke with Raub's mother, who said that she shared her son's beliefs and had noticed no change in his behavior. Campbell nonetheless concluded that Raub met the statutory standard for involuntary temporary detention,[4] given Raub's "recent change

[4] The statute authorizing temporary detention requires a finding that (1) a person has a mental illness; (2) "there exists a substantial likelihood that, as a result of [that] mental illness, the person will" harm himself or others; (3) the person needs hospitalization or treatment; and (4) the person will not volunteer for hospitalization or treatment. Va. Code Ann. § 37.2-809(B) (2010).

in . . . behavior[] and more severe posts about revolution with plans for action," as reflected in the email. J.A. 705.

Consequently, Campbell petitioned for and received a temporary detention order from a magistrate judge. Raub was taken to a hospital, where a psychologist examined him and agreed that Raub exhibited symptoms of psychosis. Hospital staff thereafter petitioned the state court for an order of involuntary admission for treatment. After a hearing, held four days after Raub was detained, the court ordered that Raub be admitted for thirty days; however, just three days later, the court ordered Raub released from the hospital, concluding that "the petition [was] . . . devoid of any factual allegations." J.A. 879.[5]

Raub subsequently filed suit against multiple defendants, alleging claims under state and federal law. He amended his complaint twice, with the Second Amended Complaint alleging claims under 42 U.S.C. § 1983 against only one defendant--Campbell. In addition to damages, Raub also sought to enjoin Campbell from seizing Raub in the future or retaliating against him based on the exercise of his constitutional rights. The district court granted Campbell's motion for summary judgment on the basis of qualified immunity and denied Raub's request for injunctive relief.

Raub appeals, pressing three arguments. First, he contends that Campbell violated his Fourth

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[5] The court provided no further explanation for its conclusion.

Amendment right to be free from unreasonable seizures by recommending that Raub be taken into custody for a mental health evaluation and by petitioning the state court for a temporary detention order. Second, Raub avers that Campbell violated his First Amendment right of free speech by basing his conclusion that Raub was delusional on Raub's Facebook posts and his responses to Campbell's questions. Finally, Raub contends that, even if his constitutional claims fail, he is still entitled to injunctive relief. We address each argument in turn.

II.

We review de novo the district court's decision to grant Campbell summary judgment on the basis of qualified immunity. West v. Murphy, 771 F.3d 209, 213 (4th Cir. 2014). Generally, qualified immunity operates to protect law enforcement and other government officials from civil damages liability for alleged constitutional violations stemming from their discretionary functions. Anderson v. Creighton, 483 U.S. 635, 638–39 (1987). The protection extends to "all but the plainly incompetent or those who knowingly violate the law." Malley v. Briggs, 475 U.S. 335, 341 (1986). Indeed, as we have emphasized repeatedly, "[o]fficials are not liable for bad guesses in gray areas; they are liable for transgressing bright lines." S.P. v. City of Takoma Park, Md., 134 F.3d 260, 266 (4th Cir. 1998) (quoting Maciariello v. Sumner, 973 F.2d 295, 298 (4th Cir. 1992)).

The defense of qualified immunity is broader than a mere defense to liability. Rather, intended to

"spare individual officials the burdens and uncertainties of standing trial," it provides for immunity from suit where a state actor's conduct is objectively reasonable under the circumstances. Gooden v. Howard Cnty., Md., 954 F.2d 960, 965 (4th Cir. 1992) (en banc); see also Mitchell v. Forsyth, 472 U.S. 511, 526 (1985) (plurality opinion) (noting that qualified immunity is "effectively lost if a case is erroneously permitted to go to trial"). We therefore prefer questions of qualified immunity to be decided "at the earliest possible stage in litigation." Cloaninger ex rel. Estate of Cloaninger v. McDevitt, 555 F.3d 324, 330 (4th Cir. 2009) (quoting Hunter v. Bryant, 502 U.S. 224, 227 (1991) (per curiam)). And we have recognized that, on a defense of qualified immunity, once a state actor's conduct is established beyond dispute, the question of whether that conduct was reasonable is one of law for the court to decide. Id. at 333.

Our qualified immunity analysis typically involves two inquiries: (1) whether the plaintiff has established the violation of a constitutional right, and (2) whether that right was clearly established at the time of the alleged violation. West, 771 F.3d at 213 (quoting Pearson v. Callahan, 555 U.S. 223, 232 (2009)). However, we need not reach both prongs of the analysis. See Pearson, 555 U.S. at 242. Rather, we may address these two questions in "the order . . . that will best facilitate the fair and efficient disposition of each case." Id.

III.

Raub's Fourth Amendment argument is based on the claim that Campbell acted without probable cause in recommending that Raub be taken into custody for a mental health evaluation, and when he petitioned the state court for a temporary detention order. We choose, however, not to reach the question of whether Campbell's conduct amounted to a constitutional violation. Rather, we hold that because Campbell's conduct was not proscribed by clearly established law, summary judgment on the basis of qualified immunity was proper.[6]

In this prong of the qualified immunity analysis, the "inquiry turns on the objective legal reasonableness of [Campbell's] action, assessed in light of the legal rules that were clearly established at the time it was taken." Pearson, 555 U.S. at 244 (internal quotation marks omitted). As a result, we look not to whether the right allegedly violated was established "as a broad general proposition" but whether "it would be clear to a reasonable official that his conduct was unlawful in the situation he

[6] We reject Campbell's argument that he cannot be held liable under § 1983 because he was not directly responsible either for Raub's initial seizure or his temporary detention under the magistrate's order. Section 1983 "imposes liability not only for conduct that directly violates a right but for conduct that is the effective cause of another's direct infliction of the constitutional injury." Sales v. Grant, 158 F.3d 768, 776 (4th Cir. 1998); see also Malley, 475 U.S. at 344 n.7 (explaining that § 1983 liability extends to the natural consequences of a person's actions). Thus, because Raub's seizure and detention were based, at least in part, on Campbell's recommendation, Campbell is liable under § 1983 unless he is entitled to qualified immunity.

confronted." Saucier v. Katz, 533 U.S. 194, 201-02 (2001), as modified by Pearson, 555 U.S. 223; see also S.P., 134 F.3d at 266 (4th Cir. 1998) ("[T]he established contours of probable cause [must have been] sufficiently clear at the time of the seizure such that the unlawfulness of the officers' actions would have been apparent to reasonable officers.").

Raub points to three general reasons why Campbell's conduct was unconstitutional. First, he contends that a reasonable mental health professional would not have relied solely on Detective Paris's report, but rather would have spoken to Raub prior to recommending his initial seizure. Second, he argues that no reasonable mental health professional would have interviewed Raub in a jail intake room, while he was shirtless, shoeless, and handcuffed to a bench. Finally, Raub asserts that no reasonable mental health professional would have concluded on these facts--Raub's Facebook posts, conflicting reports about Raub's behavioral changes, and Raub's statements and behavior during his interview with Campbell--that Raub should be detained for a mental health evaluation.

Our previous decisions concerning seizures for mental health evaluations have indeed emphasized a "general right to be free from seizure" absent a finding of probable cause. Gooden, 954 F.2d at 968. However, we have also noted a distinct "lack of clarity in the law governing seizures for psychological evaluations," compared with the "painstaking[]" definition of probable cause in the criminal arrest context. Id.; see also S.P., 134 F.3d at

266. Although our cases and the governing statutes provide some guidance as to the standards for probable cause to seize someone for a mental health evaluation, we are aware of no case clearly proscribing Campbell's conduct, or even conduct similar to it.

Rather, all of our decisions involving mental health seizures have involved circumstances in which law enforcement officers seized an individual because they feared he or she might be a danger to him- or herself. In most of these cases, we granted qualified immunity to the seizing officers. For example, in Gooden, officers were twice called to an apartment complex on reports of screams emanating from one of the apartments. 954 F.2d at 962. On the second occasion, the officers personally heard "blood-chilling" screams and other strange noises coming from the apartment. Id. However, when the officers spoke with the woman who lived in the apartment, she denied hearing or making any such noises (although she did admit to "yelping" once because she had burned herself on an iron). Id. Nevertheless, the woman appeared to have been crying, and the officers were concerned that she was "mentally disordered" and might pose a danger to herself. Id. at 963. As a result, they took her to a nearby hospital for evaluation. Id. at 964.

In our en banc reversal of the panel's decision to affirm the district court's denial of qualified immunity, we held that the officers' conduct was reasonable, as they acted on the basis of multiple complaints, personal observations, and their own investigations. Id. at 966. We also found relevant the

fact that the officers acted pursuant to a Maryland law authorizing mental health seizures. Id.

We came to a similar conclusion in S.P. There, officers responded to an emergency dispatch and found the plaintiff at her home, crying and distraught. 134 F.3d at 264. She admitted that she had had a "painful argument" with her husband but denied having thoughts of suicide or depression. Id. at 264, 267. At the same time, however, she told the officers that, if not for her children, "she would have considered committing suicide." Id. at 267. Because of the woman's demeanor and the officers' concern that she may cause harm to herself, the officers took her to a nearby hospital for evaluation. Id.

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

In contrast, in Bailey v. Kennedy--notably, the only case in which we have denied qualified immunity for seizures in the mental health context--law enforcement officers detained the plaintiff based solely on a 911 report that he was intoxicated, depressed, and suicidal. 349 F.3d 731, 734 (4th Cir. 2003). There, the officers responded to the plaintiff's

home, where they found him sitting at his dining room table eating lunch. He denied thoughts of suicide, declined to give the officers permission to search the house, and asked them to leave. Id. The officers did not see weapons or other indicia of a potential suicide in the house.

After leaving, the officers decided they "ha[d] to do something" and returned to knock on the door. Id. at 735. When the plaintiff told them the suicide report was "crazy" and that the officers needed to leave, the officers instead entered his home and subdued him by handcuffing him and striking him multiple times in the face. Id. We concluded that "the 911 report, viewed together with the events after the police officers arrived, was insufficient to establish probable cause to detain [the plaintiff] for an emergency mental evaluation." Id. at 741.

When confronted with a similar situation in Cloaninger, we distinguished that case from Bailey on the ground that the law enforcement officers had more information than the "mere 911 call in Bailey." 555 F.3d at 333. There, police officers were summoned to Cloaninger's home after he called a VA hospital seeking medical help, and a police dispatcher informed law enforcement officials that Cloaninger had threatened suicide. Id. at 328. In addition, one of the officers was aware that "Cloaninger had previously made suicide threats" and also believed that he "had firearms in the house." Id. at 332.

When officers arrived at Cloaninger's home to check on him, he refused to respond "to their

concerns for his well-being." Id. The officers then called a VA hospital nurse, who confirmed that Cloaninger "had a history of threatening suicide." Id. The nurse also indicated that, under the circumstances, an emergency commitment order would be appropriate. Id. at 333. We held that "the initial VA call, coupled with knowledge of Cloaninger's prior suicide threats and the belief that he possessed firearms," constituted probable cause that Cloaninger was a danger to himself. Id. at 334.

While these cases outline the standard for probable cause in situations where law enforcement officials must decide whether to detain an individual on the belief that he might be a danger to himself, they provide less guidance here. Indeed, none of the cases delineates the appropriate standard where a mental health evaluator must decide whether to recommend a temporary detention on the belief that an individual might be a danger to others. They certainly do not speak to the necessity, length, and substance of a psychological evaluation, nor to the evidence needed to support probable cause in such a circumstance.

Nonetheless, to the extent the cases should have informed Campbell's conduct, they support the view that he acted reasonably under our prevailing legal standards. Unlike in Bailey, Campbell's recommendation that Raub be detained was supported by far more than a 911 call. Rather, it was based on the initial observations of law enforcement officers, the content of Raub's Facebook posts, the information provided by Raub's former colleagues, and--later--on Campbell's own evaluation and

observations of Raub. Indeed, the quantum of evidence here is greater than that in Cloaninger--where we found probable cause based only on an initial hospital call, a history of suicide reports, and a belief that Cloaninger possessed firearms--and is more like the circumstances in Gooden and S.P.--where officers based their seizure on both prior reports of distress and their personal observations of individuals at the scene.

In sum, we think it doubtful that Campbell violated Raub's Fourth Amendment rights based on our existing precedent. We need not, however, pass on that question because we hold that Campbell is entitled to qualified immunity on the ground that the unlawfulness (if any) of his conduct was not clearly established at the time he recommended Raub's seizure.[7] See Pearson, 555 U.S. at 241 (cautioning against deciding "questions of constitutionality . . . unless such adjudication is unavoidable") (internal quotation marks omitted); see also Buchanan v. Maine, 469 F.3d 158, 168 (1st Cir. 2006) (stating that avoiding the Fourth Amendment question in qualified immunity analysis is appropriate where the "inquiry involves a

[7] The report of Raub's psychological expert, Dr. Catherine Martin, does not change our conclusion. Although Dr. Martin questions whether Campbell's probable cause determination was ultimately correct, we need not resolve that issue under this stage of our analysis. Our inquiry here is "not whether another reasonable, or more reasonable, interpretation of the events can be constructed . . . years after the fact," Hunter, 502 U.S. at 228 (1991), but whether Campbell's conduct was reasonable under then prevailing law.

reasonableness question which is highly idiosyncratic and heavily dependent on the facts").[8]

IV.

We turn next to Raub's contention that the district court erred in granting summary judgment on his First Amendment claim. Raub's argument is based on his allegation that Campbell recommended Raub be detained for an evaluation based on Raub's "unorthodox political statements." Appellant's Br. at 50. Under the first prong of the qualified immunity analysis, the district court concluded that Raub failed to advance facts sufficient to support a First Amendment claim, and we agree.

A plaintiff seeking to assert a § 1983 claim on the ground that he experienced government retaliation for his First Amendment-protected speech must establish three elements: (1) his speech was protected, (2) the "alleged retaliatory action

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[8] We also reject Raub's argument that Campbell is not entitled to qualified immunity because he negligently omitted from his petition for a temporary detention order the statement of Raub's mother, who told Campbell she had noticed no changes in Raub's behavior. In the arrest context, a law enforcement officer's omission of material facts from a warrant affidavit deprives him of qualified immunity only if the omission was made intentionally or with a "reckless disregard for the truth." Miller v. Prince George's Cnty., Md., 475 F.3d 621, 627 (4th Cir. 2007) (quoting Franks v. Delaware, 438 U.S. 154, 171 (1978)). Allegations of negligence or mistake are not enough. Id. at 627–28. To the extent Raub contends Campbell intentionally or recklessly misled the magistrate judge, he failed to properly raise this issue below. Thus, we decline to consider it. See Robinson v. Equifax Info. Servs., LLC, 560 F.3d 235, 242 (4th Cir. 2009).

adversely affected" his protected speech, and (3) a causal relationship between the protected speech and the retaliation. Suarez Corp. Indus. v. McGraw, 202 F.3d 676, 685–86 (4th Cir. 2000). Of note, our causal requirement is "rigorous." Huang v. Bd. of Governors of the Univ. of N.C., 902 F.2d 1134, 1140 (4th Cir. 1990). "[I]t is not enough that the protected expression played a role or was a motivating factor in the retaliation; claimant must show that 'but for' the protected expression the [state actor] would not have taken the alleged retaliatory action." Id.

Raub's evidence falls far short of this requirement. Raub contends that Campbell recommended his detention based on his "political" statements concerning 9/11 conspiracies and impending revolution. Assuming these statements are indeed protected by the First Amendment, Raub ignores the numerous other facts on which Campbell's recommendation was based, including the nature of Raub's Facebook posts, both Campbell's and Paris's observations of Raub's demeanor, the information contained in Bullen's email about the recent increase in the seemingly threatening posts, and Bullen's belief that Raub should be taken seriously. Thus, even if Raub's protected speech contributed to Campbell's decision to recommend his detention, it was not dispositive.

As a result, we agree with the district court that Raub did not make out a First Amendment violation, and that Campbell is therefore entitled to qualified immunity.

V.

Finally, we reject Raub's claim for injunctive relief. As the district court noted, a finding of qualified immunity extends only to Campbell's liability for damages. See Harlow v. Fitzgerald, 457 U.S. 800, 819 n.34 (1982). Nevertheless, the district court concluded that Raub did not meet the standard for injunctive relief because, among other reasons, he could not demonstrate the "immediate threat of future injury," required for the equitable remedy. Raub v. Campbell, 3 F. Supp. 3d 526, 540 (E.D. Va. 2014). We review a denial of injunctive relief for abuse of discretion. Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Bradley, 756 F.2d 1048, 1055 (4th Cir. 1985).

We agree with the district court that injunctive relief is not appropriate on this record. First, we have recognized that "federal injunctive relief is an extreme remedy." Simmons v. Poe, 47 F.3d 1370, 1382 (4th Cir. 1995). To obtain such an injunction, a plaintiff must show (1) irreparable injury, (2) remedies at law "are inadequate to compensate for that injury," (3) "the balance of hardships between the plaintiff and defendant" warrants a remedy, and (4) an injunction would not disserve the public interest. Monsanto Co. v. Geertson Seed Farms, 561 U.S. 139, 156–57 (2010).

Where a § 1983 plaintiff also seeks injunctive relief, it will not be granted absent the plaintiff's showing that there is a "real or immediate threat that [he] will be wronged again . . . in a similar way." Simmons, 47 F.3d at 1382 (quoting City of Los

Angeles v. Lyons, 461 U.S. 95, 111 (1983)). Even assuming Raub could make out a violation of his constitutional rights, "past wrongs do not in themselves amount to that real and immediate threat of injury." Simmons, 47 F.3d at 1382 (quoting Lyons, 461 U.S. at 103). Consequently, Raub's claim that he will in the future be subject to "unreasonable seizures and retaliation because of his political beliefs," Appellant's Br. at 58, is merely speculative, such that he cannot make out "this prerequisite of equitable relief." See Lyons, 461 U.S. at 111.

VI.

For the reasons given, we affirm the district court's judgment.

AFFIRMED

FILED: April 29, 2015

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 14-1277
(3:13-cv-00328-HEH-MHL)

BRANDON RAUB,

Plaintiff – Appellant,

v.

MICHAEL CAMPBELL,

Defendant – Appellee,

and

DANIEL LEE BOWEN; RUSSELL MORGAN GRANDERSON; LLOYD C. CHASER; LATARSHA MASON; MICHAEL PARIS; TERRY GRANGER; UNITED STATES OF AMERICA; JOHN DOES 1-10,

Defendants.

J U D G M E N T

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

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

/s/ PATRICIA S. CONNOR, CLERK

[Entered February 28, 2014]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

BRANDON RAUB,	)	
	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No.
	)	3:13CV328-HEH
MICHAEL CAMPBELL,	)	
	)	
Defendant.	)	

MEMORANDUM OPINION
(Defendant's Motion for Summary Judgment)

This is a civil rights action brought under 42 U.S.C. § 1983 against Michael Campbell ("Campbell"), a Chesterfield County mental health clinician, alleging violations of Plaintiffs First and Fourth Amendment rights. In essence, Plaintiff claims that as a result of Campbell's inept mental evaluation, Plaintiff was detained without probable cause, pending a more comprehensive mental assessment. Plaintiffs core contentions are that Campbell misconstrued his comments and actions as posing a threat of imminent danger as a result of mental illness. His allegations hinge in large part on the opinion of a practicing psychologist who, after a retrospective analysis, disagrees with Campbell's conclusion. Moreover, Plaintiff alleges that the law

enforcement officers' actions, abetted by Campbell, were intended to suppress his First Amendment right to criticize policies of the United States.

The case is presently before the Court on the remaining defendant,[1] Campbell's Motion for Summary Judgment, premised primarily on his contention that he is entitled to qualified immunity on the constitutional claims. Both parties have filed extensive memoranda supporting their respective positions.[2] The Court heard oral argument on February 18, 2014. For the reasons that follow, Campbell's Motion for Summary Judgment will be granted.

This case evolves from a communication sent to the Federal Bureau of Investigation by an individual who had previously served with Plaintiff Brandon Raub ("Raub") in the U.S. Marine Corps concerning disturbing information posted by Raub on the Internet. This individual described Raub's postings as being increasingly threatening in tone. (Def.'s Mem. Support Mot. Summ. J., Ex. B, Paris Dep. at 44:11-13, ECF No. 90-2; and Ex. F, Campbell Dep. at 41:18-20, ECF No. 90-6.)

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[1] In its original form, the complaint in this case encompassed a host of other federal and state law enforcement officials. Following discovery, the other defendants were dismissed by Plaintiff.

[2] Plaintiff requested leave to file an amended complaint adding claims for negligence and false imprisonment. This request was denied by Memorandum Opinion and Order dated January 14, 2014, on the ground that the amended complaint, as submitted, failed to plead a plausible claim on either theory. (ECF Nos. 107, 108.)

Several days later, on August 15, 2012, an FBI agent requested that Detective Michael Paris ("Detective Paris") conduct a review of Chesterfield County Police Department records to determine what, if any, prior contact they had with Raub. At that time, Detective Paris was on detail to the FBI Joint Terrorism Task Force. Later that same day, Howard Bullen ("Bullen"), another former Marine who had served with Raub in Iraq, contacted the FBI to express his concern about Raub's unsettling behavior and threatening communications. Suspecting that Raub may be contemplating violent acts, Bullen relayed a number of Raub's postings to the FBI. (Paris Dep. at 44.) These postings revealed comments by Raub that he would be chosen to lead "the revolution" and that "[m]en will be at my door soon to pick me up to lead it." (Campbell Dep. at 49:22-23.) The Facebook postings sent by Bullen to the FBI also included the following comments:

> "I'm gunning whoever run the town." (August 13, 2012)
> "This is the start of you dying" (August 14, 2012)
> "Richmond is not yours. I'm about to shake some shit up." (August 14, 2012)
> "This is revenge. Know that before you die." (August 15, 2012)

(*Id.* at 49:6-14; Paris Dep. at Ex. 7 thereto.)

Bullen further advised the FBI that in his view, Raub's Facebook postings had become increasingly threatening and action-oriented. Bullen expressed to the FBI his concern that Raub's

postings were "possibly more than just extremist rhetoric" and that he personally felt Raub genuinely believed in this and was not simply looking for attention. (Paris Dep. at 44:12-13; Ex. 7 thereto.) The following day, August 16, 2012, the above described e-mail traffic was forwarded to Detective Paris. (*Id.* at Ex. 7 thereto.)

Disturbed by Raub's postings, the FBI agent supervising the Joint Terrorism Task Force requested that Chesterfield County police officers, accompanied by FBI agents, conduct an interview of Raub to determine if he posed a serious risk of violence. (*Id.* at 47:4-48:22.) According to Paris, the supervising FBI agent instructed him that "[t]he postings are a little more volatile. They're getting a little bit more violent oriented and we can't wait until Friday. We've got to go tonight." (*Id.* at 54:9-14.) Later that evening, a team of law enforcement officers was assembled to perform that task. The group was comprised of three Chesterfield officers, including Detective Paris, three FBI agents, and a secret service agent.[3] As Detective Paris explained, "[i]t was determined that contact would be made to determine ... whether Brandon Raub was capable of acts of violence to the public or ... to determine if there was a need for Crisis Intervention to conduct an evaluation." (*Id.* at 48:18-22.)

Following preliminary planning, Detective Paris, along with an FBI agent, conducted a conversation with Raub in the doorway of his

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[3] In Detective Paris' opinion, Raub's comments about both former Presidents Bush were sufficiently threatening in tone to warrant notification of the U.S. Secret Service. (*Id.* at 47:5-7.)

residence. When asked whether he intended to carry out the violent acts mentioned on his Facebook post, Raub gave evasive responses. (*Id.* at 70:1-3.) At one point during the interview, Raub advised Detective Paris and the agent that the federal government launched a missile into the pentagon and that there was no airplane that flew into the structure on 9/11. (*Id.* at 96:12-14.) Raub also inquired why the FBI was not taking action against government officials for their crimes against American citizens. (*Id.* at Exs. 1 and 2 thereto.) He further stated that the federal government flies planes over people's houses, exposing them to the radioactive substance thorium. (*Id.*)

The interview conducted of Raub did little to allay their concerns. At its conclusion, the FBI agent advised Detective Paris, that "[w]e need to get this guy evaluated." (*Id.* at 66:24-67:1.) Detective Paris concurred. (*Id.* at 33:21-22; 66:24- 67:l-2.)[4]

At approximately 7:15 p.m. on August 16, 2012, Campbell was in his office at the Chesterfield County Department of Mental Health Support Services. (Campbell Dep. at Ex. A thereto.) He received a telephone call from the Chesterfield County Emergency Communication Center requesting that he contact Detective Paris. (*Id.* at Ex. A thereto; 25:7-8.) Campbell promptly placed the call and was advised by Detective Paris that he was

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[4] Detective Paris also contacted both the Chesterfield Commonwealth's Attorney's Office and the United States Attorney's Office for advice as to whether Raub had violated any state or federal law. Both responded negatively. (*Id.* at 50:6-51:3; 72:21-73:3.)

assisting the FBI and Secret Service in an investigation of Raub. Detective Paris informed Campbell that in company with other Chesterfield officers and federal agents, he had just completed an interview of Raub at Raub's residence. According to Campbell, he received the following information:

> Detective Paris informed me that Mr. Raub had made on-line threats about killing people, that he believed that the United States Government had perpetrated the September 11, 2001, terrorist attacks on the World Trade Center and the Pentagon, and that he believed that the government was committing atrocities on American citizens by dropping a radioactive substance called thorium on them from airplanes. Detective Paris indicated to me that the statements and threats were made over the Internet, and he described the language of some of the threats to me. Although I do not remember the exact wording of any of the threats now, they were specific threats of violent action against human beings.

(*Id.* at 86:9-22.)

Detective Paris also advised Campbell that the FBI had received information from another individual who had served with Raub in the U.S. Marine Corps. This individual described Raub's behavior as recently becoming more extreme.

Detective Paris informed Campbell that there were "several Marines that were concerned, several Marines that knew Brandon, knew how effective he was, how, you know, he was an expert with explosives, and in his current communications with them, they felt that he was at extreme risk of doing something to hurt people." (*Id.* at 78:12-17.)

During their fifteen minute conversation, at Campbell's request, Detective Paris also described Raub's behavior and rapid mood swings. Detective Paris characterized Raub as preoccupied and distracted.

> Mr. Raub would make eye contact with Detective Paris for a few seconds, but then his eyes would rove away while he continued to talk before returning to Detective Paris. In my professional experience, this phenomenon can sometimes be evidence of psychosis. It can indicate that the subject is distracted by some internal stimulus. Detective Paris also informed me that Mr. Raub had rapid mood swings during their conversation - another common symptom of instability - and that when Detective Paris asked him about the specific threats which he had made, Mr. Raub would not answer his questions.

(Def.'s Mem. Support Summ. J., Ex. E, Campbell's Ans. to Interrogs. at 3, ECF No. 90-5.) Campbell

found these observations by Detective Paris to have significance in his evaluation.

At this point, Detective Paris and Special Agent Terry Granger ("Special Agent Granger") of the FBI, who assisted him with the interview, concluded "we need to get this guy evaluated. You know, we can't leave here without doing something." (Paris Dep. at 33:20-22; 66:24-67:2.) When Detective Paris sought Campbell's guidance, he concurred that an evaluation was appropriate. (Campbell's Ans. to Interrogs. at 4.) Detective Paris also advised Campbell that he "believed that Mr. Raub represented a threat in some form to harm other individuals." (Paris Dep. at 71:11-13.) Detective Paris concluded that there was probable cause to detain Raub for a mental health evaluation under Va. Code § 37.2-808(8).[5] (Campbell's Ans. to

[5] Va. Code § 37.2-808 provides in pertinent part:

> (A) Any magistrate shall issue, upon the sworn petition of any responsible person, treating physician, or upon his own motion, an emergency custody order when he has probable cause to believe that any person (i) has a mental illness and that there exists a substantial likelihood that, as a result of mental illness, the person will, in the near future, (a) cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening harm and other relevant information, if any, or (b) suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic human needs, (ii) is in need of hospitalization or treatment, and (iii) is unwilling to volunteer or incapable of volunteering for hospitalization or treatment....

Interrogs. at 2.) Raub was then transported to the Chesterfield County Detention Center for a mental evaluation.

Subsequently that evening, Raub was interviewed by Campbell for approximately fifteen minutes, at which point Raub stated he chose "not to answer any more questions." (Campbell Dep. at 46:22-23.) During the interview, Raub demonstrated what Campbell perceived to be symptoms of paranoia as evidenced by his statement that he believed that the U.S. government caused the atrocities of 9/11. (*Id.* at 45:5-8.) Raub also demonstrated what Campbell described as red flags during the interview. For example, Campbell identified what he considered to be unpredictable behavior: "drastically changed their baseline thinking and blaming this on the government, blaming atrocities on the government, exploding the Pentagon by the government and feeling that he has been somehow chosen to be a leader of this oncoming revolution to me is unpredictable behaviors." (*Id.* at 48:3-8.)

At the end of his interview with Raub, Campbell initially was hesitant to conclude that either the Internet postings described to him or the

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> (G) A law-enforcement officer who, based upon his observation or the reliable reports of others, has probable cause to believe that a person meets the criteria for emergency custody as stated in this section may take that person into custody and transport that person to an appropriate location to assess the need for hospitalization or treatment without prior authorization.

threats were sufficient in his opinion to warrant a temporary detention order. Campbell then asked the Secret Service agent to provide him with copies of the e-mails from the two individuals who had previously served with Raub in the Marine Corps. After reviewing the postings in more detail, Campbell found these communications to be extremely disturbing.

These e-mails included the following statements:

> "This is revenge. Know that before you die."
> "Richmond is not yours. I'm about to shake some shit up."
> "This is the start of you dying. Planned spittin with heart of a lion."
> "Leader of the New School. Bringing back the Old School. My life will be a documentary."
> "I'm gunning whoever run the town."
> "W, you're under arrest bitch."
> "The world will find this."
> "I know ya'll are reading this, and I truly wonder if you know what's about to happen."
> "W, you'll be one of the first people dragged out of your house and arrested."
> "And daddy Bush too."
> "The revolution will come for me. Men will be at my door soon to pick me up to lead it."

> "You should understand that many of the things I have said here are for the world to see."

(Campbell Dep. at 49:6-25.)

After reviewing the e-mails in context of the other information before him, Campbell concluded that the threats were sufficiently specific to warrant action. Campbell also determined that Raub exhibited symptoms of paranoia:

> I see someone is paranoid when they feel that they are being watched and being marked and being the potential risk that's going on in his mind; that he's going to be this leader of a revolution, that he's been chosen for it and that the United States Government knows this.

(*Id.* at 54:11-16.) In Campbell's view the presentation was also consistent with delusional thinking. "The idea that the United States Government is dropping thorium through jet trails is delusional. The fact that the United States sent a missile into the Pentagon is delusional. The fact that he feels that he has been chosen to lead this revolution is delusional thinking." (*Id.* at 55:8-13.)

In Campbell's opinion, Raub also demonstrated symptoms of homicidal ideation, and in Campbell's view, presented a potential threat. "When he terminated the conversation, I asked him, you know, do you feel justified in the statements that

you have made and the risk of other people.... He said something on the lines of, '[i]f you knew' - 'if you know what I knew, wouldn't you?'" (*Id.* at 65:1-6.) Before concluding his assessment, Campbell called Raub's mother to gain her perspective. She reported no apparent changes in behavior recently. She also added that "a lot of us" share his political views. (*Id.* at 44:23-25; 60:24-61:10.)

At this point, Campbell was convinced that Raub satisfied the standards set forth in Virginia Code § 37.2-809 for the issuance of a temporary detention order to enable Raub to receive further evaluation and mental health treatment.[6] Campbell then completed preparation of his prescreening report, arranged for Raub's admission to the John Randolph Medical Center for follow-up examination, and prepared the petition for a temporary detention order. The petition was presented to the Chesterfield County magistrate, who made the requisite finding

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[6] Va. Code § 37.2-809(B) sets for the standard for issuance of temporary detention orders. It reads in pertinent part:

> A magistrate shall issue, upon the sworn petition of any responsible person, treating physician, or upon his own motion and only after an evaluation conducted in-person or by means of two-way electronic video and audio communication system ... by an employee or a designee of the local community services board to determine whether the person meets the criteria for temporary detention, a temporary detention order if it appears from all the evidence readily available, including any recommendation from a physician or clinical psychologist treating the person, that the person [meets the standards set forth in § 37.2-808].

of probable cause, issued a temporary detention order for Raub, who was then transferred to the John Randolph Medical Center for further evaluation.[7] Raub was eventually released by order of the Circuit Court for the City of Hopewell, Virginia. This lawsuit seeking compensatory and punitive damages followed.

In his Second Amended Complaint, alleging violations of the First, Fourth and/or Fourteenth Amendments to the U.S. Constitution, Raub maintains that his detention and examination were without probable cause and that there was a lack of evidence of mental illness to justify further evaluation. He also contends that Campbell's actions were intended to suppress offensive political speech guaranteed by the First Amendment to the U.S. Constitution. Based on the information and clinical impressions available on August 16, 2012, Raub contends that Campbell was grossly negligent in filing the petition for involuntary treatment.

The Fourth Amendment requires that an involuntary hospitalization may be ordered "only upon probable cause, that is, only if there are reasonable grounds for believing that the person seized is subject to seizure under the governing legal standard." *Villanova v. Abrams*, 972 F.2d 792, 795 (7th Cir. 1992). Raub's Fourth Amendment claim has two distinct strands. First, he contends that

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[7] Following his evaluation at John Randolph Medical Center, mental health officials from that facility presented a second Petition for Involuntary Admission for Treatment to a separate Special Justice. This Petition was granted and Raub was transferred to Salem Veterans Administration Medical Center. (Second Am. Compl. ¶¶ 29-31, ECF No. 112.)

Campbell was responsible for a deprivation of his right to liberty when he was detained by two officers at his home at the direction of Campbell. Separately, Raub alleges that he was deprived of liberty when Campbell petitioned for a temporary detention order based on his flawed prescreening report. He argues that Campbell's negligent deprivation of his liberty bars qualified immunity.

In essence, Raub's claims are predicated on his belief that his personal presentation, comments, and threatening e-mails were insufficient to warrant detention for evaluation under Virginia law. Specifically, that there was "a substantial likelihood that, as a result of mental illness, [Raub] will, in the near future, (a) cause serious physical harm to himself or others ...." Va. Code § 37.2-808(A). Raub appears to suggest that Campbell should have found his comments and behavior to be inconsequential political commentary embraced by a number of citizens. Raub contends that "[b]y impermissibly conflating politics and psychology, Campbell caused Raub to be detained for his political views, not his mental condition." (PL's Supplemental Mem. in Opp'n at 9, ECF No. 113.) Furthermore, Raub adds "[n]or does it constitute mental illness to express a desire to participate - or even lead - a revolution against a government perceived as overbearing and tyrannical." (*Id.* at 8.) This is the basis of his First Amendment claim. Raub's reasoning is strained and strategically teases out the more ominous language of the e-mails from his analysis.

Central to Raub's position is the expert report of Catherine E. Martin, Ph.D. ("Dr. Martin"), a

clinical psychologist with offices in Midlothian, Virginia. Dr. Martin, after reviewing the record evidence[8] and conducting an hour and a half long interview, concluded that Raub exhibited no signs of mental illness, delusion, or abnormalities. In Dr. Martin's opinion, the e-mail postings were too non-specific to constitute threats in the clinical sense. She also added that "[i]t is notable that in the 14-months that have elapsed since August 2012 and my interview, Raub has had no reportable incidents, no need for treatment and no medication prescribed for any mental health issues." (PL's Mot. Leave File Second Amended CompL, Ex. B, Martin's Report at 22, ECF No. 101-4.)

Ultimately, Dr. Martin concluded that "[g]iven the lack of evidence of mental illness, it was a violation of professional standards - and grossly negligent – for Campbell to file the Petition for Involuntary Treatment against Raub." (*Id.* at 21.) Of course, Dr. Martin's impressions are the product ofan in depth retrospective review of the record, coupled with the benefit of Raub's post-evaluation behavior. Campbell, on the other hand, conducted an emergency evaluation based on the information at hand.[9] Unfortunately for Campbell, the exigencies ofthe situation did not permit lengthy deliberation.

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[8] In her expert report, Dr. Martin listed the materials she relied upon in formulating her opinion. These included two video tapes and fifteen documents consisting of deposition transcripts, statements of witnesses, petitions, as well as pre- and post-detention medical reports. (PL's Supplemental Mem., Ex. A at 2-3.)

[9] In determining whether the decisions made by Campbell were objectively reasonable, the court makes the assessment based

The standard for review of summary judgment motions is well established in the Fourth Circuit. Summary judgment is appropriate only if the record shows "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). The evidentiary basis on which such motions are resolved include pleadings, depositions, answers to interrogatories, admissions on file, together with affidavits, if any. Fed. R. Civ. P. 56(c). As the United States Supreme Court pointed out in *Anderson v. Liberty Lobby, Inc.*, the relevant inquiry in a summary judgment analysis is "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." 477 U.S. 242, 251-52 (1986). In reviewing a motion for summary judgment, the court must view the facts in the light most favorable to the nonmoving party—here, Raub. *Id.* at 255.

Once a motion for summary judgment is properly made and supported, the opposing party has the burden of showing that a genuine dispute exists. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87 (1986). "[T]he mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine* issue of *material* fact." *Anderson*, 477 U.S. at 247-48 (emphasis in original). The court must grant

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on how the situation was viewed by a mental health evaluator, not an experienced psychotherapist. *See Reichle v. Howards*, ___ U.S. ___, 132 S. Ct. 2088, 2093 (2012).

summary judgment if the nonmoving party "fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Celotox Corp. v. Catrett*, 477 U.S. 317, 322 (1986). To defeat an otherwise properly supported motion for summary judgment, the nonmoving party must rely on more than conclusory allegations, "mere speculation," or the "building of one inference upon another," the "mere existence ofa scintilla of evidence," or the appearance of some "metaphysical doubt" concerning a material fact. *Lewis v. City of Va. Beach Sheriff's Office*, 409 F. Supp. 2d 696, 704 (E.D. Va. 2006) (citations omitted). In meeting this burden, the nonmoving party must "go beyond the pleadings" and present affidavits or designate specific facts in depositions, answer to interrogatories, and admissions on file to establish a genuine issue of material fact. *Celotox Corp.*, 477 U.S. at 324.

While there is spirited debate in the immediate case about the legal significance of the facts and Campbell's diagnostic impressions and conclusions, the material facts themselves do not appear to be in serious dispute. Campbell's Motion for Summary Judgment is principally predicated on his argument that he is entitled to qualified immunity.[10] Although he adamantly contends that there was no constitutional violation on his part,

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[10] Ordinarily, no factual findings are necessary to the analysis of a qualified immunity claim because "the [] issue is a purely legal one: whether the facts alleged (by the plaintiff, or, in some cases, the defendant) support a claim of violation of clearly established law." *Mitchell v. Forsyth*, 472 U.S. 511, 528 n.9 (1985); *accord Elder v. Holloway*, 510 U.S. 510,516 (1994).

Campbell stresses that the constitutional concept of probable cause in the mental health context was—and still is—far from clearly established. The standard for determining whether a person poses a serious threat of public danger is an inexact science, hence, a quintessential gray area.

Qualified immunity "shield[s] [officials] from civil damages liability as long as their actions could reasonably have been thought consistent with the rights they are alleged to have violated." *Anderson v. Creighton*, 483 U.S. 635, 638 (1987).

To determine whether Raub's claims can survive a qualified immunity-based challenge, the Court will follow the two-step inquiry laid out in *Saucier v. Katz*, 533 U.S. 194, 201 (2001). This analytical framework requires the court to determine initially whether there has been a constitutional violation, and second, whether the right violated was clearly established. *Id.*; *see also Melgar v. Greene,* 593 F.3d 348, 353 (4th Cir. 2010). The "dispositive inquiry in determining whether a right is clearly established is whether it would be clear to a reasonable [official] that his conduct was unlawful in the situation he confronted."[11] *Saucier*, 533 U.S. at 202. "Ordinarily, in order for the law to be clearly established, there must be a Supreme Court or [Fourth Circuit] decision on point. . . ."

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[11] In reviewing the situation Campbell confronted, it is important to be mindful of the public consequences if his decision had been different and Raub had decided to gun "whoever run the town." (Campbell Dep. at 49:14.) Dr. Martin's thought process was not encumbered by these high stakes. And, unlike Dr. Martin, Campbell did not have the benefit of hindsight.

Oliver v. Woods, 209 F.3d 1179, 1185 (10th Cir. 2000) (citations omitted); *see Wilson v. Layne*, 141 F.3d 111, 117 (4th Cir. 1998). As the Supreme Court recognized in *Ashcroft v. al-Kidd*, although "[w]e do not require a case directly on point. . . existing precedent must have placed the statutory or constitutional question beyond debate. ___ U.S. ___, 131 S. Ct. 2074, 2083 (2011).

In *John Doe v. Broderick*, Chief Judge Traxler provided instructive guidance on the rationale underlying qualified immunity:

> "Qualified immunity thus provides a 'safe-harbor' from tort damages for police officers performing *objectively reasonable* actions in furtherance of their duties." This "safe-harbor" ensures that officers will not be liable for "bad guesses in gray areas" but only for "transgressing bright lines." Of course, officers are not afforded protection when they are "plainly incompetent or . . . knowingly violate the law." But, in gray areas, where the law is unsettled or murky, qualified immunity affords protection to an officer who takes an action that is not clearly forbidden -- even if the action is later deemed wrongful. Simply put, qualified immunity exists to protect those officers who reasonably believe that their actions do not violate federal law.

225 F.3d 440, 453 (4th Cir. 2000) (emphasis in original) (citations omitted).

"[T]he basic purpose of qualified immunity [] is to spare individual officials the burdens and uncertainties of standing trial in those instances where their conduct would strike an objective observer as falling within the range of reasonable judgment." *Gooden v. Howard County*, 954 F.2d 960, 965 (4th Cir. 1992) (en banc) (citing *Anderson v. Creighton*, 483 U.S. 635, 638 (1987)).

Given the finite well of authority dealing directly with the application of the probable cause standard to mental health officials, Raub draws an analogy to its use in the law enforcement context. The contours of the standard as applied here, however, are necessarily animated by the text of Virginia Code §§ 37.2-808 and 809. In the mental health context, the concept of probable cause focuses on the more nebulous issues of mental illness and potentiality of violence, rather than an assessment of clearly articulated facts and circumstances. While the distinction may seem subtle, it is quite significant. In the final analysis, the issue distills to whether a reasonable person, exercising professional judgment and possessing the information at hand, would have concluded that Raub, as a result of mental illness, posed an imminent threat to others.

A comprehensive survey of the legal landscape yields no well-lit path of analysis from either the Supreme Court[12] or the Fourth Circuit. Unlike

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[12] In *O'Connor v. Donaldson*, 422 U.S. 563, 576-77 (1975), the court discussed the constitutional implications of long term

reported cases in the Fourth Circuit discussing the entitlement of private mental evaluators to qualified immunity in connection with involuntary commitment proceedings, Campbell is clearly a state actor. *See Hall v. Quillen*, 631 F.2d 1154, 1156 (4th Cir. 1980); *S.P. v. City of Takoma Park, Md*, 134 F.3d 260, 269-70 (4th Cir. 1998) (finding court appointed private physician not to be a state actor). While sparse, cases from other circuits have upheld qualified immunity for government officials conducting such examinations when their actions are objectively reasonable. *See Glass v. Mayas*, 984 F.2d 55, 58 (2d Cir. 1993); *Scott v. Hern*, 216 F.3d 897, 910 (10th Cir. 2000).

Despite the absence of authority squarely on point, the Fourth Circuit has provided some edification in the context of law enforcement officers detaining individuals for mental evaluation. However, aside from the distinction noted above, it is important to keep in mind that Campbell had no statutory power to detain—only to evaluate and recommend. His petition, which was comparable to a police officer's affidavit in support of a search warrant, contained only a recitation of his observations, diagnostic impressions, and recommendation.[13]

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confinement of non-dangerous individuals. Its teachings have no direct application here.

[13] Typically a law enforcement officer who truthfully presents the results of his investigation to a magistrate, who in turn finds probable cause and issues a warrant, is entitled to qualified immunity—even if other officers disagree as to the thoroughness of the investigation. *See Porterfield v. Lott*, 156 F.3d 563, 567-69 (4th Cir. 1998); *Torchinsky v. Siwinski*, 942

In *Gooden v. Howard County*, police officers were summoned to an apartment complex to investigate reports of loud screaming and yelling. 954 F.2d at 962. The officers were directed to Gooden's apartment, but left the premises after she denied being the source of the commotion. The officers returned to the apartment about one week later on reports of a long, loud, blood-chilling scream emanating from Gooden's unit. *Id.* at 962-63. As they approached the door of her apartment, the officers heard a scream from within. When confronted, Gooden initially denied any knowledge of the noise, but eventually admitted that she had "yelped" after she accidently burned herself on an iron. *Id.* at 962. Gooden declined assistance and asked the officers to leave her apartment. *Id.* The officers next interviewed the neighbor who had complained about the noise from Gooden's unit. *Id.* at 963. During their conversation with that individual, the officers heard loud "thuds" and additional screaming from Gooden's apartment. *Id.* The officers took particular note ofthe varying voice tones and believed that they might be the product of multiple personalities exhibited by Gooden herself. *Id.* They returned to

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F.2d 257, 263-64 (4th Cir. 1991). In the immediate case, there appears to be no question as to the truthfulness of Campbell's factual representations to the magistrate. At issue are his diagnostic impressions and the manner in which he conducted his evaluation.

Raub's contention that Campbell's failure to advise the magistrate that "Raub's mother, with whom he resides, 'has not seen any changes or psychotic behavior in [Raub]'" does not constitute a material omission. (PL's Supplemental Mem. at 7.) As discussed *infra*, Campbell's decision to file the Petition for a Temporary Detention Order was premised on the threatening nature of the e-mails. It was not unreasonable for Campbell to discount Raub's mother's opinion of her son.

her apartment and confronted Gooden, who appeared to have been crying and acting "strangely." *Id.*

Concluding that Gooden might be a danger to herself, the officers detained her for a mental examination. *Id.* Similar to the immediate case, upon subsequent examination, a doctor found no sign of mental illness and released her. *Id.* at 964. Gooden filed suit under 42 U.S.C. § 1983 and officers invoked qualified immunity. The district court initially denied qualified immunity as did a divided panel of the Fourth Circuit. *Id.* However, on rehearing en banc, the Fourth Circuit reversed, holding that "[i]n cases where officers are hurriedly called to the scene of a disturbance, the reasonableness of their response must be gauged against the reasonableness of their perceptions, not against what may later be found to have actually have taken place." *Id.* at 965. In its opinion, the Fourth Circuit focused not on the clinical correctness of the officers' perceptions, but whether their perceptions were reasonable. *Id.* The Fourth Circuit concluded that under these circumstances, "the officers can hardly be faulted for taking action against what they reasonably perceived to be a genuine danger to the residents ... or to Ms. Gooden herself." *Id.* at 966.

In *S.P. v. City of Takoma Park*, the court again had an opportunity to discuss qualified immunity in the context of a detention for a mental examination. In this case, a husband and wife had been engaged in a heated argument eventually causing the husband to leave the house. 134 F.3d

260, 264 (4th Cir. 1998). The husband contacted the Takoma Park Police Department and persuaded the dispatcher to send officers to the home to check on the possibility that his wife may be suicidal. Upon their arrival, the officers found the wife to be "visibly agitated and crying" about a "painful argument" she had with her husband. *Id.* She advised the responding officers that "if it was not for her kids, she would end her life." *Id.* at 264. At the direction of their supervisor, and over the wife's protestations, the officers detained her and transported her to a hospital for a mental evaluation. Initially, mental health professionals concluded that the wife was clinically depressed and suicidal. However, a psychiatrist subsequently conducted a complete psychiatric examination and concluded that the initial impression of the mental health professional was incorrect. *Id.* at 264-65. The wife was released and subsequently filed a civil rights suit against the Takoma Park police officers.

The Fourth Circuit, in finding the officers' conduct to be objectively reasonable, emphasized that "[t]he police officers did not decide to detain [the wife] in haste. Rather, they had ample opportunity to observe and interview [the wife] before making a deliberate decision [to detain her]... Reasonable officers, relying upon our decision in *Gooden* and the other circuit court decisions addressing similar situations, would have concluded that involuntarily detaining [the wife] was not only reasonable, but prudent." *Id.* at 267.

More recently, in the case of *Cloaninger v. McDevitt*, the Fourth Circuit again upheld a grant of

qualified immunity for a police officer's observations and independent knowledge confirming the potentially dangerous nature of the situation at hand. In *Cloaninger*, officers responded to reports ofan individual threatening suicide. 555 F.3d 324, 328 (4th Cir. 2009). One of the officers had previously encountered Cloaninger and was aware of prior threats of suicide. Other officers of their department responding to threats of suicide on another occasion had found firearms in his residence. Cloaninger was uncooperative and demanded that the officers leave his property. *Id.*

When the responding officers were unsuccessful in communicating with Cloaninger, they summoned their supervisor. The supervisor attempted to communicate with Cloaninger both through the doorway and by telephone. Cloaninger demanded to be taken to the VA hospital. When the officers declined, he ordered them off his property, threatening to "kill them all and then kill himself." *Id.* When the officers contacted the VA hospital for guidance, a nurse advised them that she was familiar with Cloaninger and that he had a history of calling the hospital and threatening suicide. *Id.* When the officers suggested the necessity for an emergency commitment order, the nurse concurred. Cloaninger was then taken into custody and transported to the magistrate's office, where an emergency commitment order was issued. *Id.* at 328-29. Cloaninger subsequently filed a complaint under 42 U.S.C. § 1983 claiming that the officers had violated his Fourth and Fourteenth Amendment rights. The Fourth Circuit concluded that "the circumstances facing the defendants were exigent

and we hold that the undisputed facts in this case establish that the officers' conduct was objectively reasonable." *Id.* at 334.

On the other hand, in *Bailey v. Kennedy*, the Fourth Circuit rejected a qualified immunity claim where officers acted solely on a neighbor's report that plaintiff was drunk and possibly suicidal. 349 F.3d 731, 742 (4th Cir. 2003). When an officer responded to Bailey's home, he found him to be intoxicated, but otherwise cooperative and nonviolent. *Id.* at 740. After conferring with other officers who arrived at the scene, Bailey was detained for a mental health evaluation. The Fourth Circuit concluded, "accepting the facts as the district court viewed them, the 911 report, viewed together with the events after the police officers arrived, was insufficient to establish probable cause to detain [Bailey] for an emergency mental evaluation." *Id.* at 741. Pivotal to the Fourth Circuit's holding was the absence of any observations by the officers indicating any danger to Bailey or anyone else. The lack ofany articulable manifestations of danger, in that court's view, precluded a finding that the officers' actions were objectively reasonable. *Id.* at 740-41. That is not the case here.

Campbell was able to particularize the factual basis for his conclusions, including specific comments by Raub, supporting his findings. Under these circumstances, his conclusions and actions were objectively reasonable. To fully assess Campbell's evaluation of Raub, it is important to be mindful of the necessity for an immediate decision. In addition to the e-mails and his personal

observations, Campbell relied on impressions of seasoned police officers, FBI agents, and former Marines who had served with Raub. Raub's Marine colleagues had an experiential basis for their observations.

The other facet of Raub's constitutional claim alleges a deprivation of right to freedom of speech under the First Amendment. Specifically, he contends that "[t]he actions of Campbell... were an effort to discredit, silence and punish Raub for the content and viewpoint of his political speech using the pretextual and false allegation that Raub was suffering from a mental illness and was subject to involuntary commitment under Virginia law." (Second Am. Compl. ¶ 48.) "Premised on mistrust of governmental power, the First Amendment stands against attempts to disfavor certain subjects or viewpoints." *Citizens United v. FEC*, 558 U.S. 310, 340 (2010).

Raub's First Amendment claim is founded on his belief that Campbell based his finding of dangerousness and sought a temporary detention order solely because of Raub's somewhat unorthodox political beliefs. During their initial conversation, Detective Paris advised Campbell that Raub "believed that the United States government had perpetrated the September 11, 2001 terrorist attacks on the World Trade Center and the Pentagon, and that he believed that the government was committing atrocities on American citizens by dropping a radioactive substance called [t]horium on them from airplanes." (Campbell Ans. to Interrogs. at 2.) Raub also informed Campbell that "a

revolution was about to begin and that he was going to lead it." (Campbell Ans. to Interrogs. at 5.) In Campbell's view, such beliefs were suggestive of delusional thinking and paranoia. (Campbell Dep. at 54:1, 11-17; 55:7-13.)

These comments, however, were not the specific basis for Campbell's conclusion that Raub's comments and behavior were sufficiently threatening to warrant application for a temporary detention order. Before he made that decision, Campbell insisted on reviewing the actual e-mails from Raub's fellow Marines received by the FBI. (Campbell Ans. to Interrogs. at 5-6.) "After I read this email, I was convinced that Mr. Raub met the standards under Va. Code § 37.2-809 for the issuance of a temporary detention order" (*Id.* at 6; Campbell Dep. at 49:3-50:13.)

Although Campbell found Raub's political musings to be detached from reality and indicative of delusional thinking, it was the threatening tenor of his e-mails that formed an independent factual basis for Campbell's finding of probable cause. Even though Dr. Martin would have reached a different conclusion, the factual basis for Campbell's actions are unrebutted in the record evidence. Unlike Dr. Martin, an improvident decision by Campbell could have had tragic consequences.

Given the collective information presented to Campbell, and the results of his interview with Raub, Campbell's decision as a mental health evaluator to seek a temporary detention order was objectively reasonable, irrespective of Raub's

political beliefs. Raub's assertion that Campbell, in league with the Chesterfield County Police Department and the FBI, was involved in a conspiracy to suppress dissident speech is unsupported by the evidence—and frankly, far-fetched.[14]

Aside from Raub's failure to advance any factual basis to support an actionable First Amendment claim on the record at hand, he has failed to demonstrate a violation of a clearly established right. *Saucier*, 533 U.S. at 200. As the Fourth Circuit noted in *Tobey v. Jones*, "[i]n *Reichel*, an appeal from summary judgment, the Supreme Court found that it was not clearly established that a plaintiff could make out a cognizable First Amendment claim for an arrest that was supported by probable cause." 706 F.3d 379, 392 (4th Cir. 2013) (citing *Reichel v. Howards*, ___ U.S. ___, 132 S. Ct. 2088, 2097 (2012)) (emphasis omitted). During the briefperiod following the court's decision in *Reichel*, and prior to the detention of Raub, neither the Supreme Court nor the Fourth Circuit provided further clarification on this point. Decisions in other circuits hew closely to the holding in *Reichel*. *See Patrizi v. Huff*, 690 F.3d 459, 467 n.7 (6th Cir. 2012); *Thayer v. Chiczewski*, 705 F.3d 237,253 (7th Cir.

[14] In the first iteration of his complaint, Raub maintained that the Chesterfield County Police and the federal agents conspired to detain him as part of a program sponsored by the Department of Homeland Security, dubbed "Operation Vigilant Eagle." (Compl. ¶¶ 49-56, ECF No. 1.) He appears to have abandoned this contention in the amended versions of his complaint.

2012). Consequently, Raub's First Amendment claim cannot survive summary judgment challenge.[15]

In his Supplemental Memorandum in Opposition to Defendant's Motion for Summary Judgment, based on qualified immunity, Raub asserts that a finding of qualified immunity would not foreclose his entitlement to injunctive relief. (PL's Supplemental Mem. at 3.) **S***ee Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). Raub suggests that his "claim for injunctive relief [could be rendered moot by Campbell] by entering into an enforceable agreement not to participate in any future mental health evaluation or commitment proceeding involving Raub." (*Id.* at fn.2.) While Raub may be correct that the theoretical underpinnings of qualified immunity and injunctive relief turn on separate axis, the public policy implications of his request preclude injunctive relief in this case.

Federal courts historically have been reluctant to enjoin state officials from executing their statutory duties absent compelling proof of imminent constitutional injury. As the Supreme Court noted in *Los Angeles v. Lyons*, "the need for a proper balance between state and federal authority counsels restraint in the issuance of injunctions against state officers engaged in the administration of the States' criminal laws in the absence of irreparable injury which is both great and

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[15] Although the Court need not directly address the issue, the threatening language in Raub's emails undoubtedly exceeds the boundaries of First Amendment protected speech. *See United States v. Hassan*, 2014 U.S. App. LEXIS 2104 (4th Cir. Feb. 4, 2014) (citing *United States v. Amawi*, 695 F.3d 457, 482 (6th Cir. 2012).

immediate." 461 U.S. 95, 112 (1983) (citing *O'Shea v. Littleton*, 414 U.S. 488, 499 (1974)). Notwithstanding the prescience of Raub's expert psychotherapist, there is no way for law enforcement officials or mental health evaluators to foretell the mindset or behavior of Raub in future years. To assess the danger inherent in restraining future official action in Raub's case, one need only review the e-mails he conveyed to his fellow Marines, which this Court finds to be both threatening and actionable. Therefore, the public interest would be disserved by the permanent injunction sought in this case. *See Monsanto Co. v. Geertson Seed Farms*, ___ U.S. ___, 130 S. Ct. 2743, 2748 (2010).

Raub has also failed to demonstrate constitutional injury in the first instance, much less an immediate threat of future injury. Even if Raub had shown that his rights were violated on one occasion, it does not establish any likelihood of a reoccurrence. *See Lyons*, 461 U.S. at 113. As the court concluded in *Lyons*, "[a]bsent a sufficient likelihood that [Lyons would] again be wronged in a similar way, Lyons is no more entitled to an injunction than any other citizen of Los Angeles; and a federal court may not entertain a claim by any or all citizens who no more than assert that certain practices of [public officials] are unconstitutional." *Id.* at 111. Raub has failed to show a real or immediate threat of future detention for a mental examination without probable cause. He therefore lacks standing to petition for injunctive relief. *Id.* at 111-12.

Moreover, in the event of a reoccurrence, if Raub is able to prove that his detention for a subsequent mental evaluation is without probable cause or in violation of Virginia law, he has an adequate remedy at law in the form of compensatory and/or punitive damages.

Raub clearly fails to satisfy the well-established standard for the granting of injunctive relief articulated in *Monsanto Co.* The law is well settled that federal injunctive relief is an extreme remedy granted in only the most compelling circumstances. *Simmons v. Poe*, 47 F.3d 1370, 1382 (4th Cir. 1995). This is not such a case.[16]

In the final analysis, Raub places far too much weight on the studied opinion of his expert psychologist. The fact that his expert drew different conclusions than Campbell adds little impetus to his argument. Qualified immunity turns on the perspective of the public official whose actions are under review. In both *Gooden* and *City of Takoma Park*, a subsequent diagnosis of no mental illness by a psychiatrist did not preclude a finding that detention for a mental evaluation was objectively reasonable.

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[16] The facts and circumstances of Raub's detention have been extensively mined and thoroughly briefed by the parties. Consequently, this Court finds no need to conduct an evidentiary hearing before denying a permanent injunction in this case. Considering the comprehensive scope of the record evidence, a hearing would not have altered the Court's decision. *Lone Star Steakhouse & Saloon v. Alpha of Va., Inc.*, 43 F.3d 922, 938 (4th Cir. 1995); *see also Eisenberg ex rel. Eisenberg v. Montgomery Cnty. Pub. Schs.*, 197 F.3d 123, 134 (4th Cir. 1999).

Here, context is important. In stressful situations where lives are potentially at risk, public safety officials are frequently called upon to make tough decisions. Some involve close calls based on scant information hastily gathered. But duty still demands decisive action—citizens expect no less. That's why the law affords such officials reasonable room to exercise guided discretion and a safe harbor from litigation waged by persons who, in retrospect, may have acted differently.

Campbell's Motion for Summary Judgment will therefore be granted and both remaining claims in Raub's Second Amended Complaint will be dismissed.

An appropriate Order will accompany this Memorandum Opinion.

/s/
Henry E. Hudson
United States District Judge

Dated: Feb. 28, 2014
Richmond, VA

[Entered February 28, 2014]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

BRANDON RAUB,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No.
	)	3:13CV328-HEH
MICHAEL CAMPBELL,	)	
	)	
Defendant.	)	

ORDER
(Defendant's Motion for Summary Judgment)

THIS MATTER is before the Court on Defendant's Motion for Summary Judgment (ECF No. 89), filed on November 18, 2013. The parties have fully briefed the issues and the Court heard oral argument on February 18, 2014. For the reasons set forth in the accompanying Memorandum Opinion, the Motion is GRANTED. Accordingly, the remaining claims in the Second Amended Complaint (ECF No. 112) are DISMISSED, and the trial dates of June 18-19, 2014 are CANCELLED.

The Clerk is directed to send a copy of this Order and the accompanying Memorandum Opinion to all counsel of record.

This case is CLOSED.

It is so ORDERED.

/s/
Henry E. Hudson
United States District Judge

Date: Feb. 28, 2014
Richmond, Virginia

[Entered January 14, 2014]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

BRANDON RAUB,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action
	)	No. 3:13CV32–HEH
MICHAEL CAMPBELL,	)	
	)	
Defendant.	)	

MEMORANDUM OPINION
(Motion to File Second Amended Complaint)

This matter is before the Court on Plaintiff Brandon Raub's ("Raub") Motion for Leave to File a Second Amended Complaint (ECF No. 101), filed on December 9, 2013. The parties have filed memoranda addressing the issue, and the matter is ripe for disposition. For the foregoing reasons, the motion is granted in part and denied in part.

I. BACKGROUND

This case involves the alleged unlawful seizure and detention of Raub "upon the pretext that he was mentally unstable," which Raub contends was "the result of animus against him because of his speech critical of the government." (Pl.'s Mot. for Leave to File Second Amend. Compl., Ex. A ¶ 1, ECF

No. 101-3) ("Proposed Second Amend. Compl.") Pursuant to the parties' Consent Dismissal as to defendants Lee Bowen ("Bowen"), Russell Morgan Granderson ("Granderson"), Michael Paris ("Paris"), Terry Granger ("Granger"), the officers involved in taking Raub into custody, and the United States of America (collectively "former defendants"), this Court dismissed these defendants with prejudice on November 27, 2013. (ECF No. 99.) Michael Campbell ("Campbell"), a certified prescreener and senior clinician employed by the Chesterfield Community Services Board ("CSB"), is the only defendant remaining. (Proposed Second Amend. Compl. ¶ 8.) Raub seeks leave to file a second amended complaint, which removes the "*Bivens*" claim, adds a claim of negligence, and reinstates the previously dismissed false imprisonment claim.

In the present motion, Raub seeks to dismiss the "*Bivens*" claim, which originally alleged in pertinent part that Campbell and the former defendants "deprived Raub of his constitutional rights to be free from unreasonable seizure and not to be deprived of his liberty without due process of law, as guaranteed by the Fourth and/or Fifth Amendments." (First Amend. Compl. ¶ 54, ECF No. 64.)

Second, Raub seeks to reinstate the previously dismissed false imprisonment claim against Campbell.[1] In his first amended complaint, Raub alleged in support of the false imprisonment claim

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[1] This Court dismissed without prejudice the false imprisonment claim against Campbell in its Memorandum Opinion issued on August 2, 2013. (ECF No. 39.)

that the former defendants arrested and detained him by force. (*Id.* at ¶ 62.) In his proposed second amended complaint, Raub now contends as part of his false imprisonment claim that "Campbell *directed* the detention of Raub, thereby imposing restraints upon Raub's liberty, without legal justification." (Proposed Second Amend. Compl. ¶ 52) (emphasis added).

Third, Raub requests leave to add a claim for negligence, specifically that,

> Campbell had a duty to comply with Va. Code § 37.2-808(A) when he swore out a Petition for Involuntary Admission for Treatment as 'responsible person' stating 'he has probable cause to believe that [Raub] (i) has a mental illness and that there exists a substantial likelihood that, as a result of mental illness, the person will, in the near future, (a) cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening harm and other relevant information, if any, or (b) suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic human needs, (ii) is in need of hospitalization or treatment, and (iii) is unwilling to volunteer or incapable of volunteering for hospitalization or treatment.

(*Id.* at 57.) Raub further asserts that Campbell breached that duty when he swore out a Petition for Involuntary Admission for Treatment ("Campbell's Petition") based on:

> a. Raub's political views that Campbell categorized as psychological symptoms;
> b. Hearsay of statements that were not specific threats of harm;
> c. Treating alleged preoccupied and distracted conduct by Raub as evidence of psychosis;
> d. Raub speaking seriously in conversations with law enforcement; and
> e. Treating Raub's silence in the face of questioning by law enforcement as a sign of mental illness.

(*Id.* at 58.) Plaintiff contends "Campbell's breach of his duty to act as a 'responsible person' proximately caused Raub to be involuntary (sic) detained and suffer damages." (*Id.* at 59.)

II. STANDARD OF REVIEW

Rule 15 of the Federal Rules of Civil Procedure provides that parties should "freely" be given leave to amend their pleadings "when justice so requires." Fed. R. Civ. P. 15(a)(2). As the Fourth Circuit has explained, "[a] motion to amend should be denied only where it would be prejudicial, there has been bad faith, or the amendment would be futile." *Nourison Rug Corp. v. Parvizian*, 535 F.3d

295, 298 (4th Cir. 2008) (citing *HCMF Corp. v. Allen*, 238 F.3d 273, 276-77 (4th Cir. 2001)).

Amendment is futile when a proposed amended complaint fails to state a claim. *U.S. ex rel. Wilson v. Kellogg Brown & Root, Inc.*, 525 F.3d 370, 376 (4th Cir. 2008). Whether a complaint fails to state a claim, and, thus, amendment would be futile is analyzed under Rule 12(b)(6) of the Federal Rules of Civil Procedure. Thus, the "[f]actual allegations must be enough to raise a right to relief above the speculative level," *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citation omitted), to one that is "plausible on its face," *id.* at 570, rather than merely "conceivable." *Id.* In considering a Rule 12(b)(6) motion, a plaintiff's well-pleaded allegations are taken as true and the complaint is viewed in the light most favorable to the plaintiff. *T.G. Slater & Son v. Donald P. & Patricia A. Brennan, LLC*, 385 F.3d 836, 841 (4th Cir. 2004) (citation omitted). Legal conclusions enjoy no such deference. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

III. DISCUSSION

Since there is no objection to Plaintiff's motion to dismiss Count II, the "*Bivens*" claim will be removed from the complaint, and Raub will be directed to amend the first amended complaint accordingly. Fed. R. Civ. P. 15(a)(2). For obvious reasons, the removal of this claim would not prejudice Campbell, there is no indication that this amendment has been made in bad faith, and futility is irrelevant to the removal of a claim. *Nourison Rug Corp.*, 535 F.3d at 298.

For the reasons that follow the Court is of the opinion that the other proposed amendments fail to state an actionable claim, and would therefore be futile. Because the Court holds that the addition of these claims would be futile, it does not need to consider whether those amendments would be prejudicial to Campbell or whether there has been bad faith on Raub's part.

A. False Imprisonment Claim

The Court finds that even with his revised theory of liability, Raub's attempt to revive his false imprisonment claim is futile because it still fails to assert a plausible claim under the facts alleged in his proposed second amended complaint.[2]

False imprisonment is "the direct restraint by one person of the physical liberty of another without adequate legal justification." *Jordan v. Shands*, 255 Va. 492, 497 (1998) (quoting *W.T. Grant Co. v. Owens*, 149 Va. 906, 921 (1928)). The Supreme Court of Virginia has explained that "false imprisonment is a wrong akin to the wrongs of assault and battery, and consists in imposing by force or threats an unlawful restraint upon a man's freedom of locomotion." *Id.*

Given the removal of the former defendants, Raub has recast his claim to now allege that "Campbell *directed* the detention of Raub, thereby imposing restraints upon Raub's liberty, without

[2] Raub does not discuss the addition of the false imprisonment claim in his Memorandum in Support of His Motion for Leave to File a Second Amended Complaint. (ECF No. 101-1.)

legal justification." (Proposed Second Amend. Compl. ¶ 52) (emphasis added). However, Raub's recrafted theory in the context of the complaint, is merely a conclusion without factual support.

Raub contends in relevant part that "[i]n the seizure, transportation and detention of Raub, Bowen and Granderson acted at the request/and or instigation of Campbell," and that Campbell "aided and/or abetted" Bowen and Granderson in the seizure, transportation and detention of Raub. (*Id.* at ¶¶ 19-20.) It is plain from the proposed second amended complaint, though, that Paris and Granger, who were accompanied by other Chesterfield law enforcement officers and federal agents, sought entrance in Raub's home to discuss Raub's statements with him. (*Id.* at ¶ 10.) Raub agreed to leave his home and speak with Paris and Granger outside of his home. (*Id.* at ¶ 11.) Following this discussion, Paris spoke on the telephone with Campbell, however the specific content of the conversation is not disclosed in the complaint.[3] (*Id.* at ¶¶ 13-14.) Chesterfield County Police Officers Bowen and Granderson then handcuffed Raub, and Officers Bowen and/or Granderson transported Raub to detain him. (*Id.* at ¶¶ 16-17.) Thus, the officers "direct[ly] restrain[ed]" Raub – not Campbell.

[3] Instead, the complaint merely states that "Paris spoke by phone with Campbell," and concludes "Campbell directed Paris and/or others with him to take Raub into custody, purportedly under Virginia laws involving mental health evaluations." (*Id.* at ¶ 14.) Without at least some content of the conversation that is central to Raub's false imprisonment claim, the Court must find that Raub's contention that Campbell "directed" the officers to detain him is a mere conclusion. *Ashcroft*, 556 U.S. at 678.

Jordan, 255 Va. at 497 (quoting *W.T. Grant Co.*, 149 Va. at 921).

It was not until *after* the officers detained and transported Raub that Campbell conducted his evaluation of Raub and eventually filed his Petition. (Proposed Second Amend. Compl. ¶¶ 15-17, 22.) Whether Campbell, a certified prescreener and senior clinician for CSB, ordered the police officers over the telephone to detain Raub, and the officers followed such unorthodox orders is pure speculation and at best merely conceivable. Even when the proposed second amended complaint is viewed in the light most favorable to Raub, *T.G. Slater & Son*, 385 F.3d at 841, these allegations do not "raise a right of relief above the speculative level." *Bell Atl. Corp.*, 550 U.S. at 555.

Moreover, an initial detention pursuant to an Emergency Custody Order ("ECO") – like the one executed here (as discussed further *infra*) – can only be conducted under the order of a magistrate judge or the authority of a law enforcement officer. Va. Code §§ 37.2-808(A)[4], 37.2-808(G).[5] Thus, while

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[4] Va. Code § 37.2-808(A) states in pertinent part,

> Any magistrate shall issue, upon the sworn petition of any responsible person, treating physician, or upon his own motion, an emergency custody order when he has probable cause to believe that any person (i) has a mental illness and that there exists a substantial likelihood that, as a result of mental illness, the person will, in the near future, (a) cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening harm and other

Campbell may have had authority to provide advice and counsel to the officers, the decision to detain Raub resided with the officers as a matter of law.[6]

There is simply no factual or legal basis alleged that supports Raub's false imprisonment claim against Campbell. Therefore, the Court finds that the proposed second amended complaint fails to state a plausible claim of false imprisonment, and consequently the amendment would be futile.

> relevant information, if any, or (b) suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic human needs, (ii) is in need of hospitalization or treatment, and (iii) is unwilling to volunteer or incapable of volunteering for hospitalization or treatment.

[5] "A law-enforcement officer, who based upon his observation or the reliable reports of others, has probable cause to believe that a person meets the criteria for emergency custody as stated in this section may take that person into custody and transport that person to an appropriate location to assess the need for hospitalization or treatment without prior authorization." Va. Code § 37.2-808(G).

[6] Further, Raub does not allege a theory of false imprisonment based on the premise that there was a proper initial detention that became improper when it was inappropriately prolonged. *See Sands & Co. v. Norvell*, 126 Va. 384, 400-401 (1919) ("False imprisonment may result not only from the arrest of a person without any valid warrant, but also from the unlawful detention of a prisoner who has been lawfully arrested. Unreasonable delay in presenting a prisoner for examination or trial and a fortiori mistreatment after arrest followed by a release without any hearing before the magistrate, are instances in point.") Thus, the Court does notaddress such a theory.

B. Negligence Claim

Raub argues the proposed second amended complaint "would not be futile because it inserts a new viable cause of action, negligence, against the Defendant." (Pl.'s Mot. for Leave to File Second Amend. Compl., Ex. 1 at 5, ECF No. 101-1.) This Court finds that the negligence claim envisioned by Raub lacks legal and factual moorings. Furthermore, the facts pled could not as a matter of law constitute gross negligence as suggested in his supporting memorandum.

First, Raub's negligence claim both legally and factually falls short of the mark on three fronts. Virginia provides for an ECO under Va. Code § 37.2-808, quoted *supra*, as well as a Temporary Detention Order ("TDO") under Va. Code § 37.2-809. As explained below, the distinction is significant.

Va. Code § 37.2-808(B) indicates how the ECO and TDO can work together and reveals that an ECO is issued to enable a prompt initial evaluation, which is used to determine whether a TDO is necessary to extend the detention under Va. Code § 37.2-809 to allow for further evaluation. Va. Code § 37.2-808(B) states:

> Any person for whom an emergency custody order is issued shall be taken into custody and transported to a convenient location to be evaluated to determine whether the person meets the criteria for temporary detention pursuant to § 37.2-809 and to assess the

> need for hospitalization or treatment. The evaluation shall be made by a person designated by the community services board who is skilled in the diagnosis and treatment of mental illness and who has completed a certification program approved by the Department.

Va. Code § 37.2-808(B).

As indicated *supra*, Raub could only have been initially detained pursuant to the order of a magistrate judge, Va. Code § 37.2-808(A), or by the authority of a law enforcement officer, Va. Code § 37.2-808(G). This initial detention prompted the evaluation by Campbell.[7] (Proposed Second Amend. Compl. ¶ 22.) Based on Campbell's evaluation, he then filed his Petition recommending that a TDO be issued. (*Id.* at ¶ 23.) The magistrate judge ultimately entered the TDO, at least in part on the basis of Campbell's Petition. (*Id.* at ¶ 28.)

Raub alleges that Campbell failed "to comply with Va. Code § 37.2-808(A) when he swore out a Petition for Involuntary Admission for Treatment as (sic) 'responsible person.'" (*Id.* at ¶ 57.) However, under a reasonable reading of the proposed second amended complaint Campbell did not file a Petition

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[7] It is clear that a detention under Va. Code § 37.2-808 is intended to be brief. *See Robertson v. Prince William Hosp.*, 2012 U.S. Dist. LEXIS 58752 (E.D. Va. Apr. 25, 2012) (quoting Va. Code § 37.2-808(J)) ("The person is subject to an ECO until a temporary detention order is issued, the hospital releases the person, or until the emergency custody order expires, which may 'not to exceed four hours from the time of execution.'").

as a "responsible person"[8] under Va. Code § 37.2-808(A) to request an ECO. Instead, he performed an evaluation after an ECO had been deemed necessary by the officers, and filed a Petition for a TDO as a "responsible person" under Va. Code § 37.2-809. (*Id.* at ¶¶ 22-23, 28.) Raub blurs the lines between these distinct statutes and the crucial roles each player has in carrying out an ECO and TDO.

Moreover, Raub incorrectly alleges that "Campbell's breach of his duty to act as a 'responsible person' [when he filed his Petition for a TDO] proximately caused Raub to be involuntary (sic) detained and suffer damages." (*Id.* at ¶ 59.) By the time Campbell evaluated Raub and filed his Petition, Raub had already been seized by the officers under the functional equivalent of an ECO. (*Id.* at ¶¶ 16, 22-23.) Therefore, Campbell's filing of his Petition could not have been the proximate cause of Raub's initial detention.

In addition, the magistrate judge – not Campbell – makes the final decision of whether there is probable cause sufficient to justify a TDO under Va. Code § 37.2-809. *See* Va. Code §§ 37.2-809(B) (quoted *infra*), 37.2-809(C) ("When considering whether there is probable cause to issue a temporary detention order, *the magistrate may, in addition to the petition, consider*" any of the enumerated sources of information.) (emphasis

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[8] "Whenever the term responsible person appears, it shall include a family member as that term is defined in § 37.2-100, a community services board or behavioral health authority, any treating physician of the person, or a law-enforcement officer." Va. Code § 37.2-800.

added). Thus, even hewing closely to the text of the complaint, the extension of his detention (after the officers initially detained Raub) was proximately caused by the magistrate judge's order, not Campbell's. Consequently, the factual allegations central to the negligence claim fail to square with the sweeping legal conclusions in his complaint. Raub's negligence claim therefore fails to meet the test of "plausible on its face." *Bell Atl. Corp.*, 550 U.S. at 570.

Second, aside from the errors of statutory construction in Raub's proposed second amended complaint, the negligence allegations fail to state an actionable claim as a matter of law. In his Memorandum in Support of His Motion for Leave to File a Second Amended Complaint, Raub relies on *Harris v. Kreutzer*, 271 Va. 188 (2006) to support his argument that there is a plausible negligence claim.[9] The Court noted in that case, as Raub emphasizes, that in certain circumstances, a cause of action for malpractice may lie for the negligent performance of a *doctor's* mental and physical examination of a party whose mental or physical condition is in controversy. *Id.* at 198. However, the Court expressly summarized its holding as follows:

> In summary, we hold that a cause of action for malpractice may lie for the negligent performance of a Rule 4:10

[9] Raub also cites *Molchon v. Tyler*, 262 Va. 175, 182 (2001), *Rogers v. Marrow by Marrow*, 243 Va. 162, 167 (1992), and *Bryan v. Burt*, 254 Va. 28, 34 (1997). All of these cases are factually distinguishable as they do not involve court-ordered evaluations, like the one at issue here. Thus, these opinions do not drive our analysis of Raub's negligence claim.

> examination. However, a Rule 4:10[10] physician's *duty is limited solely to the exercise of due care consistent with the applicable standard of care so as not to cause harm* to the patient in actual conduct of the examination.

Id. at 202 (emphasis added). The Supreme Court of Virginia found that there was a consensual physician-patient relationship in those circumstances because "[b]y bringing her personal injury action, Harris gave her implied consent to the Rule 4:10 examination and formed a limited relationship with Dr. Kreutzer for purposes of the examination." *Id.* at 199.

The circumstances of *Harris* do not exist here, and, thus, Raub fails to cite any authority allowing for a claim of negligence in the circumstances at hand. Unlike in *Harris*, Raub did not bring an action that put his mental health at issue and the evaluation was certainly not consensual, implied or otherwise, therefore no physician-patient relationship existed. Instead, Campbell evaluated Raub as a result of the officers' decision to detain Raub for an emergency mental health evaluation. (Proposed Second Amend. Compl. ¶¶ 14, 17, 22.) Moreover, there is no allegation that Campbell is a

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[10] Rule 4:10 of the Rules of the Supreme Court of Virginia states "[w]hen the mental or physical condition... of a party ... is in controversy, the court in which the action is pending, upon motion of an adverse party, may order the party to submit to a physical or mental examination." *Harris*, 271 Va. at 193, n.2 (citing Rule 4:10(a) of the Rules of the Supreme Court of Virginia).

licensed physician[11], and, thus, no physician-patient relationship like that in *Harris* could exist on the facts alleged.

Even if Campbell were a doctor and was conducting a Rule 4:10 examination like in *Harris*, there is nothing in the complaint to indicate that Campbell has not complied with the standard of care that theoretically could be required of him.

> Unlike a physician in a traditional physician/patient relationship, a Rule 4:10 examiner has no duty to diagnose or treat the patient, and *no liability may arise from his report or testimony regarding the examination*. Because the Rule 4:10 examination functions only to ascertain information relative to the underlying litigation, *the physician's duty in a Rule 4:10 setting is solely to examine the patient without harming her* in the conduct of the examination.

Harris, 271 Va. at 201 (emphasis added). Thus, even if teachings of *Harris* applied here, Campbell could not be held liable for his report (or by logical extension, his Petition) resulting from his examination, and as discussed *infra*, Campbell conducted his evaluation "without harming" Raub. *Id.* Without more, the Court finds Raub has failed to state a claim for negligence that is "plausible on its face." *Bell Atl. Corp.*, 550 U.S. at 570

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[11] In fact, Raub alleges that Campbell "is not a licensed psychotherapist in the Commonwealth of Virginia." (Proposed Second Amend. Compl. ¶ 8.)

Third, Campbell's actions cannot as a matter of law constitute gross negligence. While Raub does not specifically allege gross negligence in his proposed second amended complaint, he suggests in his Memorandum in Support of His Motion for Leave to File a Second Amended Complaint that the facts may warrant such a claim. (ECF No. 101-1.) Although gross negligence is not before the Court, it will be addressed briefly out of an abundance of caution and to further demonstrate that Raub has failed to state an actionable claim.

"[T]he standard for gross negligence is one of indifference, not inadequacy." *Kuykendall v. Young Life*, 261 Fed. App'x 480, 490-91 (4th Cir. 2008). "The Virginia Supreme Court has indicated that for the 'cumulative effect of the[] circumstances' to constitute gross negligence, it must amount to 'a total disregard of all precautions, an absence of diligence, or lack of even slight care.'" *Id.* at 490 (quoting *Chapman v. City of Virginia Beach*, 252 Va. 186, 191 (1996)). *See also Roach v. Botetour County School Board*, 757 F. Supp. 2d 591, 597 (W.D. Va. 2010) (granting Rule 12(b)(6) motion to dismiss claim of gross negligence under Virginia law because defendant "exercised at least some modicum of diligence and care," stating "[t]his distinguishes her conduct from gross negligence where even slight diligence or scant care are absent").

Although Plaintiff disagrees with his conclusions, there are no factual allegations that plausibly suggest that Campbell failed to adhere to the evaluation criteria contemplated by the Virginia

Code.[12] According to the proposed second amended complaint, Campbell evaluated Raub in person at the Chesterfield County Jail. (Proposed Second Amend. Compl. ¶ 22.) *Before* Campbell prepared and filed his Petition, he discussed Raub's case with at least one law enforcement officer (Paris) who had talked face-to-face with Raub about Raub's comments. (*Id.* at ¶¶ 10-11, 13-14.)[13] Campbell also

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[12] Va. Code § 37.2-809(B) states in relevant part:

> A magistrate shall issue, upon the sworn petition of any responsible person, treating physician, or upon his own motion and only after an evaluation conducted in-person or by means of a two-way electronic video and audio communication system as authorized in § 37.2-804.1 by an employee or a designee of the local community services board to determine whether the person meets the criteria for temporary detention, a temporary detention order if it appears from all evidence readily available, including any recommendation from a physician or clinical psychologist treating the person, that the person (i) has a mental illness and that there exists a substantial likelihood that, as a result of mental illness, the person will, in the near future, (a) cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening harm and other relevant information, if any, or (b) suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic human needs, (ii) is in need of hospitalization or treatment, and (iii) is unwilling to volunteer or incapable of volunteering for hospitalization or treatment.

[13] Raub complains that Campbell based his Petition in part on "hearsay statements." (Proposed Second Amend. Compl. ¶ 58.) However, Va. Code § 37.2-809(C) expressly permits magistrate

recorded his observations and opinions based on his evaluation in a report accompanying his Petition and provided to the magistrate judge. (*Id.* at ¶ 25.)

After conducting his evaluation, making observations, and having these discussions, Campbell filed the Petition in which he indicated that in his view there was evidence of psychosis, and that Raub was in need of hospitalization or treatment. (*Id.* at ¶¶ 24, 58.) Campbell opined "that there existed a substantial likelihood that, as a result of mental illness, Raub would, in the near future, cause serious physical harm to others as evidenced by recent behavior causing, attempting, or threatening harm," and "that Raub would suffer serious harm due to his lack of capacity to protect himself from harm or provide for his own basic human needs." (*Id.* at ¶ 24.) Whether another mental health evaluation would have resulted in a different conclusion is irrelevant. It is clear that his evaluation was not conducted with indifference. *Kuykendall*, 261 Fed. App'x at 490. Therefore, the complaint – even with the proposed amendment – cannot as a matter of law support a claim of gross negligence.

In sum, Raub has failed to state a claim for negligence because the allegations in his complaint are legally incorrect in essential respects; the claim

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judges to consider "any relevant hearsay evidence" when determining "whether there is probable cause to issue a temporary detention order." It is only logical that if the magistrate judge, who makes the ultimate probable cause determination, can consider hearsay evidence, than the "responsible person" filing the Petition can properly consider it as well.

fails to state a plausible cause of action; and even if Raub had asserted gross negligence, the facts alleged fall far short of supporting such a claim.

IV. CONCLUSION

The Court finds that the removal of the "*Bivens*" claim is warranted under Fed. R. Civ. P. 15(a)(2), and that the addition of the false imprisonment and negligence claims would be futile. *Nourison Rug Corp.*, 535 F.3d at 298; *U.S. ex rel. Wilson*, 525 F.3d at 376. Accordingly, the Court grants Raub's Motion for Leave to File a Second Amended Complaint (ECF No. 101) only to dismiss the "*Bivens*" claim (Count II) from the First Amended Complaint (ECF No. 64). The Court denies the Motion in all other respects. Thus, the First Amended Complaint will be amended by the removal of the "*Bivens*" claim.

An appropriate Order will accompany this Memorandum Opinion.

/s/
Henry E. Hudson
United States District Judge

Date: Jan. 14, 2014
Richmond, Virginia

[Entered January 14, 2014]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

BRANDON RAUB,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No.
	)	13:13CV328-HEH
MICHAEL CAMPBELL,	)	
	)	
Defendant.	)	

ORDER
(Motion to File Second Amended Complaint)

THIS MATTER is before the Court on Plaintiffs Motion for Leave to File a Second Amended Complaint (ECF No. 101) ("the Motion), filed on December 9, 2013. For the reasons set forth in the accompanying Memorandum Opinion, the Motion is GRANTED IN PART AND DENIED IN PART. The Motion is GRANTED for the sole purpose of DISMISSING the "*Bivens*" claim (Count II) from the First Amended Complaint (ECF No. 64). The Court DENIES the Motion in all other respects. Specifically, the Court DENIES the Motion to add claims of false imprisonment and negligence (Counts III and IV of the Proposed Second Amended Complaint, ECF No. 101-3). Therefore, the Court DIRECTS Plaintiff to file a Second Amended Complaint that is identical to the First Amended

Complaint, but without the "*Bivens*" claim (Count II).

The Clerk is directed to send a copy of this Order and the accompanying Memorandum Opinion to all counsel of record.

It is so ORDERED.

/s/
Henry E. Hudson
United States District Judge

Date: Jan. 14, 2014
Richmond, Virginia

[Entered August 2, 2013]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

BRANDON RAUB,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No.
	)	3:13CV328-HEH
DANIEL LEE BOWEN, *et al.*,	)	
	)	
Defendants.	)	

MEMORANDUM OPINION
(Motion to Dismiss)

Brandon Raub ("Raub") was detained for a mental health evaluation after he was arrested by Chesterfield County, Virginia, police officers, acting in concert with federal authorities and mental health professionals. Both a state-court magistrate and a special justice found probable cause for his detention, but a state court judge ultimately reversed the detention orders and ordered Raub's release. This lawsuit ensued and several Defendants now move to dismiss the claims against them.

Based on the events surrounding his detention, Raub asserts constitutional and common law claims against two Chesterfield County police

officers, two mental health professionals,[1] and ten unidentified federal agents. The police officers and mental health professionals move to dismiss based on qualified immunity and for failure to state a claim. (ECF Nos. 8, 15.) Those motions have been thoroughly briefed and the Court heard oral argument on July 26, 2013. For the reasons that follow, the motions will be granted in part and denied in part.

I. BACKGROUND

As required by Rule 12(b)(6) of the Federal Rules of Civil Procedure, the Court assumes Raub's well-pleaded allegations to be true, and views all facts in the light most favorable to him. *T.G. Slater & Son v. Donald P. & Patricia A. Brennan, LLC*, 385 F.3d 836, 841 (4th Cir. 2004) (citing *Mylan Labs, Inc. v. Matkari*, 7 F.3d 1130, 1134 (4th Cir. 1993)). The Court's analysis at this stage is informed and constrained by the four comers of the Complaint.[2]

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[1] A third mental health professional, Lloyd C. Chaser, was also initially named as a defendant. Raub has since dismissed Defendant Chaser from this lawsuit, without prejudice, on the representation that he was not involved in the judicial proceedings that are the subject of this lawsuit.

[2] In addition to the allegations, Defendants ask the Court to consider a "Prescreening Report" and emails attached thereto, which were filed under seal. While the Prescreening Report was referenced and quoted several times in Raub's Complaint, and relied upon extensively during oral argument, the Court cannot consider it at this stage because Raub has disputed the authenticity of the document as filed. (Comp. at ¶¶ 32, 34-35.) Contrary to Defendants' attempt to portray the authenticity issue as a mere procedural technicality, Raub asserts that he has never been provided with the attached

Viewed according to these standards, the facts are construed as follows for purposes of resolving the Motions to Dismiss.

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emails, so he cannot agree that these documents are authentic. While the Prescreening Report may ultimately be dispositive of the case, the Court will not consider it on a motion to dismiss where its authenticity is fairly challenged. *Dittmer Props.*, *L.P. v. FDIC*, 708 F.3d 1011, 1021 (8th Cir. 2013) (citation and internal quotation marks omitted) (Court may consider documents "whose authenticity is *unquestioned*") (emphasis added); *Sec y of State for Defence v. Trimble Navigation Ltd.*, 484 F.3d 700, 705 (4th Cir. 2007) (citation omitted) ("[A court] may consider documents ... attached to the motion to dismiss, so long as they are integral to the complaint and authentic"); *Gasner v. County of Dinwiddie*, 162 F.R.D. 280, 282 (E.D. Va. 1995) ("[T]he document must be one of *unquestioned* authenticity.") (emphasis added).

Even if the Court were to consider the Prescreening Report and incorporated emails, the document would not be dispositive at this stage of the proceedings. There is no indication that any Defendant was aware of the specific contents of those emails before Raub's arrest. *Brown v. Gilmore*, 278 F.3d 362, 367 (4th Cir. 2002) ("Probable cause is determined from the totality of the circumstances known to the officer at the time of the arrest."). The only allegation of *prior* knowledge concerns Raub's "political views, including views he had expressed on various Facebook posts that were critical of the government." (Compl. at ¶ 15.) Construing the facts in the light most favorable to Raub, as the Court must do at this stage, neither the Prescreening Report nor the emails establish that these particular Defendants had probable cause to believe that Raub might engage in acts of violence at the time of his arrest. (*Id.*) In fact, during oral argument, counsel for Defendants repeatedly discussed a series of "necessary inferences" that the Court must draw from the Prescreening Report, suggesting that the evidentiary import of the document may be in dispute.

Raub served his country as a United States Marine, seeing active duty in both Iraq and Afghanistan. (Compl. at ¶ 7.) At some point after returning home, Raub started to express political views highly critical of the government. (*Id.* at ¶¶ 15, 19.) Allegedly concerned about Raub's political beliefs, on August 16, 2012, federal agents and Chesterfield County police officers Daniel Bowen ("Bowen") and Russell Granderson ("Granderson") went to question Raub at his home. (Compl. at ¶ 15.) Bowen and Granderson were in uniform with their badges on display. (*Id.* at ¶ 15.) Raub was introduced to several unidentified agents of the Secret Service and Federal Bureau of Investigation, who had allegedly instructed Bowen and Granderson to confront Raub about his political views. (*Id.* at ¶¶ 16-19.) Raub agreed to speak with the officers on the curtilage of his home, freely discussing his beliefs with all officers and agents present. (*Id.* at ¶ 19.)

After conversing with Raub for a few minutes, one of the federal agents telephoned Michael Campbell ("Campbell" or collectively with Bowen and Granderson, the "County Defendants"), a licensed psychotherapist employed by Chesterfield County, to discuss the situation. (*Id.* at ¶¶ 11, 22-23.) Although Campbell had never met, observed, or evaluated Raub, he allegedly concluded that Raub should be taken into custody as potentially dangerous. (*Id.* at ¶¶ 22-23.) Beyond that, the Complaint does not elucidate the contents of the phone conversation between Campbell and the John Doe Defendant. On Campbell's recommendation, Bowen and Granderson handcuffed Raub and

arrested him without a warrant, relying on Virginia laws involving mental health evaluations. (*Id.* at ¶¶ 21-22.)[3]

Later that day, Campbell evaluated Raub. (*Id.* at ¶ 29.) Around midnight that night, Campbell filed a sworn "Petition for Involuntary Admission for Treatment" (the "First Petition") pursuant to Va. Code §§ 37.2-800 through 37.2-847. (*Id.* at ¶ 30.) In the First Petition, he alleged that Raub had a mental illness and that there was a substantial likelihood that he would cause serious physical harm to others in the near future. (*Id.* at ¶ 31.) Campbell attached a "Prescreening Report" in support of his request, in which he opined that Raub was "psychotic" based on a "clinical finding" that he "had long pauses before answering questions" and was "very labile w[ith] the Secret Service." (*Id.* at ¶ 32.)

Soon thereafter, a magistrate reviewed the First Petition and issued a Temporary Detention Order ("TDO"). The Magistrate found probable cause pursuant to Va. Code § 37.2-809 that Raub

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[3] The Court must emphasize the limited information that it has at this stage with respect to the sequence of events. The Complaint says nothing about the extent of Campbell's knowledge about Raub at the time of arrest and the extent to which the officers relied on Campbell's professional opinion when deciding to arrest. Ultimately, evidence may show that the officers acted in reasonable reliance on Campbell's professional opinion. Evidence may also show that the County Defendants received additional information from the John Doe agents. But the Court is limited in its analysis to the particular facts as alleged in the Complaint, and so this issue must be resolved at a later date.

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

(*Id.* Ex. B.) On these findings, the magistrate ordered that Raub be taken into custody and transported to John Randolph Hospital for emergency evaluation or treatment. (*Id.*) He was held pursuant to this TDO until August 20, 2012. (*Id.* at ¶ 37.)[4]

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[4] Raub alleges that Campbell sought the First Petition at the behest of unidentified federal agents motivated to silence Raub's political speech. (*Id.* at ¶ 34.) Thus, he asserts that the mental health allegations were a "pretext." (*Id.*) Raub specifically points to a Department of Homeland Security program called "Operation Vigilant Eagle," which purportedly conducts surveillance of military veterans. (*Id.* at ¶ 49.) According to his Complaint, this program monitors "Rightwing Extremism," including "anti-government" groups critical of government authority. (*Id.* at ¶ 50.) There are, however, no allegations specifically tying "Operation Vigilant Eagle" to Raub's involuntary detention, so the allegations of this program have no bearing on the analysis.

Allegedly at the behest of the federal agents involved, on August 20, 2012, LaTarsha Mason ("Mason") filed a "Petition for Involuntary Admission for Treatment" (the "Second Petition") in her capacity as a social worker working in conjunction with Chesterfield County.[5] (*Id.* at ¶¶ 12-13,3 7-40, Ex. C.) A Special Justice held a hearing on the Second Petition and found "by clear and convincing evidence that [Raub] meets the criteria for involuntary admission and treatment specified in Virginia Code § 37.2-817(C)." (*Id.* at ¶ 41, Ex. D.)

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[5] It is somewhat unclear from the allegations whether Mason is employed by Chesterfield County or a private entity. Mason submits her own affidavit disputing several facts, including the identity of her employer and at whose direction she filed the Second Petition. In its discretion, the Court excludes this document from consideration, rather than convert the motion into a motion for summary judgment, as it is permitted to do under Fed. R. Civ. P. 12(d). *Bosiger v. U.S. Airways*, *Inc.*, 510 F.3d 442, 450 (4th Cir. 2007) (discussing district courts' discretion in deciding whether to convert motion or disregard extraneous material). For similar reasons, the Court does not consider the "Independent Evaluation" filed under seal in support of Mason's Motion. In the alternative, Mason seeks summary judgment to allow the Court to consider the extraneous evidence, but conversion is unnecessary to afford Mason dispositive relief at this juncture. For purposes of resolving the motion under Fed. R. Civ. P. 12(b)(6), the Court credits Raub's allegations concerning Mason's role in these events. Regardless of whether she is a county employee, there are insufficient allegations to suggest that she violated Raub's constitutional rights or that her actions amounted to "state action" for purposes of Section 1983 liability. *See S.P. v. City of Takoma Park*, 134 F.3d 260, 269 (4th Cir. 1998) (recognizing that private person's actions may constitute state action where jointly conducted with state actors or where state exercises coercive power over private actor). Thus, the claims against Mason will be dismissed without prejudice. *See infra* at Section III(C).

Specifically, he found that Raub had a mental illness, that there was a substantial likelihood that he would cause serious physical harm to others in the near future, and that less restrictive means of treatment were inappropriate. (*Id.* Ex. D.) At the conclusion of the hearing, the Special Justice entered an order requiring Raub to be civilly committed for treatment for thirty days. (*Id.*)

On August 22, 2012, Raub's attorneys appealed the August 20 order and moved to suspend his detention pending appeal. (*Id.* at ¶ 43.) A judge of the Circuit Court for the City of Hopewell, Virginia, held a hearing the next day and found that the Second Petition was "so devoid of any factual allegations that it could not be reasonably expected to give rise to a case or controversy." (*Id.* at ¶ 45, Ex. E.) Raub was then released.

As a result of these events, Raub initiated the immediate action against Bowen, Granderson, Campbell, Mason, and ten "John Doe" agents of the Federal Bureau of Investigation and/or Secret Service.[6] Invoking 42 U.S.C. § 1983, he alleges

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[6] Unfortunately, the allegations in the Complaint raise more questions than they answer, particularly with respect to the John Doe defendants. At oral argument, Plaintiffs counsel stressed that he is not yet sure that the email recipient was present at Raub's arrest. But to be fair to the County Defendants, especially Bowen and Granderson, the Court urges Raub and his counsel to bring all known parties into the case with haste. Based on the context of the allegations, Bowen and Granderson appear to have relied heavily on the information provided by the John Does, as did Campbell, who was telephoned by one of these unidentified agents. Ultimately, the County Defendants' reasonable reliance on the John Does' representations may bear on the qualified immunity analysis.

violations of his Fourth Amendment (Count I) and First Amendment (Count III) rights against Defendants Bowen, Granderson, Campbell, and Mason. He also asserts a state law claim for false imprisonment (Count IV) against Bowen and Granderson specifically, but also against other "Defendants" indiscriminately. Each of these Defendants moves to dismiss principally on qualified immunity grounds, but also arguing that Raub fails to state a claim generally. In large part, both arguments rely heavily on extraneous evidence that goes beyond the pleadings, which the Court will not consider. *See supra* at n.2. Instead, the Court analyzes the arguments within the generally-applicable confines of the Rule 12(b)(6) standard.

II. STANDARD OF REVIEW

"A motion to dismiss under Rule 12(b)(6) tests the sufficiency of a complaint; importantly, it does not resolve contests surrounding the facts, the merits of a claim, or the applicability of defenses." *Republican Party of N.C. v. Martin*, 980 F.2d 943, 952 (4th Cir. 1992) (citation omitted). The Federal Rules of Civil Procedure "require[] only 'a short and plain statement of the claim showing that the pleader is entitled to relief,' in order to 'give the defendant fair notice of what the ... claim is and the grounds upon which it rests.'" *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)). A complaint need not assert "detailed factual allegations," but must

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To that end, Raub has requested expedited discovery to learn the John Does' identities, and this Court will grant that request. *See infra* at Section III(A).

contain "more than labels and conclusions" or a "formulaic recitation of the elements of a cause of action." *Twombly*, 550 U.S. at 555 (citations omitted). Thus, the "[f]actual allegations must be enough to raise a right to relief above the speculative level," *id.* (citation omitted), to one that is "plausible on its face," *id* at 570, rather than merely "conceivable." *Id.* In considering such a motion, a plaintiffs well-pleaded allegations are taken as true and the complaint is viewed in the light most favorable to the plaintiff. *T.G. Slater*, 385 F.3d at 841 (citation omitted). Legal conclusions enjoy no such deference. *Ashcroft v. Iqbal*, 556 U.S. 662,678 (2009).[7]

III. DISCUSSION

Before addressing the merits of Defendants' Motions, the Court must carefully frame the impact of the applicable standard of review. At oral argument, counsel for the County Defendants repeatedly directed the Court to the Prescreening Report, parsing the sequence of events and asking the Court to draw a number of "necessary inferences" in favor of Defendants. Specifically, they ask the Court to infer that the County Defendants had knowledge of the violent nature of Raub's Facebook posts, or at least that one of the John Doe

[7] Raub relies on a number of conclusory allegations that Defendants lacked probable cause. (Compl. at ¶¶ 28, 33, 39.) Consistent with the Supreme Court's decision in *Iqbal*, 556 U.S. at 678, the Court disregards these statements as mere legal conclusions. Instead, the analysis focuses solely on Raub's allegations of the facts surrounding his arrest and detention to determine whether he sufficiently alleges a lack of probable cause.

Defendants possessed such information at the time of Raub's arrest. To draw such an inference in favor of the movant would run afoul of the Rule 12(b)(6) standard. Indeed, there is no authority allowing this Court to draw inferences in favor of a defendant when addressing a motion made under Rule 12(b)(6), and the Supreme Court has specifically rejected attempts to alter the standard of review when the defense of qualified immunity may apply. *Crawford-El v. Britton*, 523 U.S. 574, 594-95 (1998) (rejecting heightened pleading and proof standards where qualified immunity is defense). At the same time, the Court remains cognizant of the Supreme Court's admonition that qualified immunity should be addressed at the earliest possible stage. *Pearson v. Callahan*, 555 U.S. 223,232 (2009) (citations and internal quotation marks omitted). Such competing interests–expediency and liberal pleading standards-weigh heavily in favor of expediting this case towards early summary judgment–particularly with respect to qualified immunity. But the Court must first address the task at hand, the Motions to Dismiss.

Bearing in mind the limitations imposed upon the Court at this stage, the County Defendants have raised the qualified immunity defense in a Rule 12(b)(6) motion, as they are pennitted to do.[8] Stated

[8] "[A] defendant can raise the qualified-immunity defense at both the motion to dismiss and summary judgment stage." *Tobey v. Jones*, 706 F.3d 379, 393-94 (4th Cir. 2013) (citing *Behrens v. Pelletier*, 516 U.S. 299 (1996)). So long as qualified immunity does not turn on *disputed facts*, "whether the officer's actions were reasonable is a question of pure law." *Henry v. Purnell*, 652 F.3d 524,531 (4th Cir. 2011) *(en banc).* As is the case here, however, qualified immunity is peculiarly well-

succinctly, the County Defendants argue that they had probable cause to detain Raub for a mental health evaluation; or, at the very least, they argue that it was not clearly established that a reasonable officer would know probable cause was lacking under those circumstances. Mason, on the other hand, admits that she cannot invoke qualified immunity because she takes the factual position that she is not a government actor. In this way, Mason argues that she cannot be liable for constitutional claims brought under Section 1983. Collectively, all Defendants move to dismiss the state law false imprisonment claim, and Raub offers no specific counterargument in defense of that claim. However, it appears to rise or fall on the same analysis applicable to the Section 1983 claim, and so it will be evaluated accordingly.

A. Qualified Immunity

"Officials are not liable for bad guesses in gray areas; they are liable for transgressing bright lines." *Takoma Park*, 134 F.3d at 266 (citation and internal quotation marks omitted). The Fourth Circuit has lamented that there exists a "lack of clarity in the law governing seizures for psychological evaluations"–or at least that such clarity was lacking when *Takoma Park* was decided in 1998. *Id.* at 266 (citation and internal quotation marks omitted). Nevertheless, there are some clearly established standards to guide a reasonable police officer who detains a person for mental evaluation. At a minimum, police traverse a "bright-line" when executing a mental health seizure without "'probable

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suited for resolution at the summary judgment stage. *See Willingham v. Crooke*, 412 F.3d 553, 558-59 (4th Cir. 2005).

cause to believe that the individual pose[s] a danger to [him]self or others.'" *Bailey v. Kennedy*, 349 F.3d 731, 741 (4th Cir. 2003) (quoting *Takoma Park*, 134 F.3d at 266).

On the limited facts presented in his Complaint, Raub has minimally, but sufficiently, alleged that the County Defendants crossed a bright-line when they arrested him. With such a sparse record, the Court cannot ascertain whether the County Defendants had probable cause or, at the very least, whether the vagaries of existing precedent left the officers without "clearly established" precedent to guide them in the particular circumstances that they faced. Because the Court is bound to construe the allegations in Raub's favor, it must deny qualified immunity, at least at this stage.

"[T]he basic purpose of qualified immunity [] is to spare individual officials the burdens and uncertainties of standing trial in those instances where their conduct would strike an objective observer as falling within the range of reasonable judgment." *Gooden v. Howard County*, 954 F.2d 960, 965 (4th Cir. 1992) *(en bane)* (citing *Anderson v. Creighton*, 483 U.S. 635, 638 (1987)). When a defendant claims qualified immunity, the Court engages in a two-step analysis. First, the Court "'must decide whether a constitutional right would have been violated on the facts alleged.'" *Cloaninger v. McDevitt*, 555 F.3d 324, 330 (4th Cir. 2011) (quoting *Bailey*, 349 F.3d at 739). If a constitutional violation is sufficiently alleged, the Court must then "consider whether the right was clearly established

at the time such that it would be clear to an objectively reasonable officer that his conduct violated that right." *Id.* at 330-31 (citation and internal quotation marks omitted).

For a right to be clearly established, "[t]he contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right." *Saucier v. Katz*, 533 U.S. 194, 202 (2001) (citations and internal quotation marks omitted). Thus, the "dispositive inquiry in determining whether a right is clearly established is whether it would be clear to a reasonable officer that his conduct was unlawful *in the situation he confronted*." *Id.* (emphasis added) (citations and internal quotation marks omitted). This guidance from *Saucier* is particularly applicable here, where the minimal record now before the Court fails to adequately explain the situation that the County Defendants confronted leading up to Raub's arrest. Without further infonnation, the Court cannot detennine "whether it would be clear to [the County Defendants] that [their] conduct was unlawful in the situation [they] confronted." *Id.* (citations and internal quotation marks omitted).

Relying heavily on the Fourth Circuit decisions in *Gooden* and *Takoma Park*, the County Defendants argue that the arrest and detention of Raub was "objectively reasonable" under the circumstances, thereby shielding them with qualified immunity. Because the issue of qualified immunity turns heavily on existing binding precedent, the Court will discuss these and other authorities at some length. *See Oliver v. Woods*, 209 F.3d 1179,

1185 (10th Cir. 2000) ("Ordinarily, in order for the law to be clearly established, there must be a Supreme Court or [Fourth Circuit] decision on point ... ").

In *Gooden*, police were called to an apartment complex on reports of loud screaming and yelling. 954 F.2d at 962. The officers checked with the occupant of the subject apartment, Theresa Gooden, who denied that she was the source of any commotion. The officers left, but about one week later they were again called to the same location on reports of a "long, loud blood-chilling scream" coming from Gooden's apartment. *Id* As they approached her door, the officers themselves heard a scream from within her apartment. When they confronted Gooden about the noises coming from her apartment, she initially denied any knowledge, but then admitted that she had "yelped" after she accidentally burned herself on an iron. *Id.* Denying any danger existed, Gooden insisted that the officers leave her alone. They departed to interview the complaining neighbor, who lived immediately below. *Id.* at 963. While there, the officers heard a loud "thud" and additional screaming from Gooden's apartment, including multiple different voices that they believed might be the product of multiple personalities exhibited by Gooden herself. *Id.* This time, upon confronting Gooden again, she appeared to have been crying and acting "strangely." *Id.*

Based on Gooden's bizarre behavior, the officers concluded that she might be a danger to herself and detained her for a mental examination. *Id.* Upon examination, a doctor found no sign of

mental illness and released her. *Id.* at 964. Gooden filed suit and the officers invoked qualified immunity as a defense. The district court denied qualified immunity, as did a divided panel of the Fourth Circuit. *Id.* Rehearing the matter *en banc*, the Fourth Circuit reversed, holding that "[i]n cases where officers are hurriedly called to the scene of a disturbance, the reasonableness of their response must be gauged against the reasonableness of their perceptions, not against what may later be found to have actually taken place." *Id.* at 965. Thus, it did not matter whether the officers were correct in their perceptions–what mattered was whether their perceptions were reasonable. *Id.* The Court emphasized that the officers did not just act upon the citizen complaint, but had personally encountered Gooden on two occasions, multiple times hearing screams for themselves. *Id.* at 966. "Under these circumstances," the Fourth Circuit concluded that "the officers can hardly be faulted for taking action against what they reasonably perceived to be a genuine danger to the residents ... or to Ms. Gooden herself." *Id.*

Five years later, in *Takoma Park*, the Fourth Circuit relied on *Gooden* to conclude that officers' conduct was shielded by qualified immunity on slightly different facts. In that case, a husband and wife had an argument that led to the husband leaving the house and calling the police. 134 F.3d at 264. After extensive discussions with the husband, the dispatcher sent officers to the home to check on a possibly suicidal person. Upon their arrival, the officers found the wife "visibly agitated and crying" about a "painful argument" she had with her

husband. *Id.* She also told the officers that "if it was not for her kids she would end her life." *Id.* On their supervisor's instructions, the officers detained the wife against her protestations, taking her to a hospital for a mental health evaluation. Initially, mental health professionals concluded that the wife was clinically depressed and suicidal, but within a day, a psychiatrist conducted a complete psychiatric examination and concluded otherwise. *Id.* at 264-65. She was released and subsequently sued the police.

Relying on its analysis in *Gooden*, the Fourth Circuit found the officers' conduct in *Takoma Park* to be "objectively reasonable" and, therefore, within the protection of qualified immunity. The Court specifically emphasized that "[t]he police officers did not decide to detain [the wife] in haste. Rather, they had ample opportunity to observe and interview [the wife] before making a deliberate decision" to detain her. *Id.* at 267. "Reasonable officers, relying upon our decision in *Gooden* and the other circuit court decisions addressing similar situations, would have concluded that involuntarily detaining [the wife] was not only reasonable, but prudent." *Id.* at 267-68 (citing *Gooden*, 954 F.2d at 969). As in *Gooden*, the Court found that qualified immunity shielded the officers from liability.[9]

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[9] The County Defendants emphasize that the individual officers in *Takoma Park* were granted qualified immunity at the 12(b)(6) stage. While this is true, the Fourth Circuit carefully emphasized that all necessary facts were pulled from the plaintiff's pleadings. *Takoma Park*, 134 F.3d at 264, 267. Unlike *Takoma Park*, the County Defendants rely on extraneous evidence from which they ask for a favorable inference. Here, the Court lacks the details that were alleged in the pleadings filed in *Takoma Park*.

In the years since *Takoma Park* and *Gooden*, the Fourth Circuit has authored additional decisions expanding upon the standards governing mental health detentions. In *Bailey*, the Fourth Circuit rejected a qualified immunity claim where the officers acted on nothing but a neighbor's telephone call, in which she indicated that Bailey was drunk and suicidal. 349 F.3d at 734, 742. A police officer was dispatched to Bailey's home, where he found Bailey intoxicated but otherwise cooperative and nonviolent. *Id.* at 740. Once a second officer arrived, however, the two officers discussed the situation and decided to detain Bailey for a mental health evaluation. The Fourth Circuit rejected the officers' argument that the neighbor's 911 call supplied probable cause, explaining:

> Of course, citizen complaints are entitled to some credence, and officers need not wait "until they [see] blood, bruises and splintered furniture." *Gooden*, 954 F.2d at 967 (citation and quotation marks omitted). Nonetheless, accepting the facts as the district court viewed them, the 911 report, viewed together with the events after the police officers arrived, was insufficient to establish probable cause to detain [Bailey] for an emergency mental evaluation.

Id at 740-41. In reaching this conclusion, the Court emphasized that the officers observed no sign of any danger to Bailey or anyone else during the encounter. *Id.*

Several years later the Fourth Circuit upheld the grant of qualified immunity in *Cloaninger*, 555 F.3d 324. In that case, police also responded to reports of a possibly suicidal individual–Cloaninger. One of the police officers arriving on the scene informed the others that he had previous experience with Cloaninger, including previous threats of suicide and the possible presence of firearms in his home. Cloaninger rebuffed the officers' attempts to help him, so they contacted a supervisor. Upon his arrival, the supervisor asked Cloaninger if he was alright, but his inquiries were met with nonresponsive behavior. An officer on the scene then contacted a nurse familiar with Cloaninger's history of suicidal threats. *Id.* at 328-29. She agreed with the officer's suggestion that they seek an emergency commitment order. *Id.* "[A]fter collecting all this information and professional advice," this "additional information ... established probable cause." *Id.* at 333.

Considering *Gooden*, *Takoma Park*, *Bailey*, and *Cloaninger* together, a single common feature emerges to distinguish *Bailey–where* qualified immunity was lacking from those cases where qualified immunity applied. Generally, where police officers' observations or independent knowledge confirm the potentially dangerous nature of the situation, qualified immunity applies. More specifically, it is the officers' own observations during an encounter with an arrestee that rendered their conduct objectively reasonable in *Gooden*, *Takoma Park*, and *Cloaninger*. In *Bailey*, the lack of such observations rendered the officers' actions not objectively reasonable. Also in *Bailey*, the officers

had nothing but a 911 telephone call from a neighbor, and their observations failed to confirm any suicidal intent.

By contrast, the officers in both *Gooden* and *Takoma Park* observed for themselves signs of possible danger. In *Cloaninger*, a somewhat different situation, the officers' observations neither confirmed nor discounted violent designs, but the officers had a history of dealing with Cloaninger's suicide threats and they confirmed that history with medical personnel familiar with him. The Fourth Circuit summarized the distinction, explaining:

> [W]e believe officers have probable cause to seize a person for a psychological evaluation when "the facts and circumstances *within their knowledge* and of which they had *reasonably trustworthy information* were sufficient to warrant a prudent man" to believe that the person poses a danger to himself or others. *Cf. Beck v. Ohio*, 379 U.S. 89, 91 (1964). This dual concern was evident in *Gooden*, where we stated that "the reasonableness of [the officers'] response must be gauged against the reasonableness of their perceptions"–in that case, a "genuine danger" not only to the residents of the apartment complex but to the plaintiff herself. 954 F.2d at 965-66.

Cloaninger, 555 F.3d at 334 (emphasis added).

Applying these cases here, the Court is simply without enough information to determine what the County Defendants knew at the time of Raub's arrest. Under the Rule 12(b)(6) standard, which is decidedly deferential to plaintiffs like Raub, the Court must construe the allegations in his favor, giving him the benefit of all reasonable inferences. *T.G. Slater*, 385 F.3d at 841 (citation omitted). Assuming the truth of Raub's allegations for the sake of analysis, the County Defendants had never met Raub before their encounter with him, Campbell had never evaluated him, and they knew nothing about him except for his "political views ... critical of the government." (Compl. at ¶ 15.) Unlike the situation in *Cloaninger*, it is not yet established that anyone on the scene possessed any knowledge of Raub's alleged history of violent threats. 555 F.3d at 334.

Taken at face value, Raub's allegations paint a picture more akin to the situation presented in *Bailey*, where the officers acted solely on information received from a third party. Here, Raub alleges that the officers acted on almost *no information*, and especially none concerning violence. The County Defendants dispute this allegation. There may eventually be evidence that the County Defendants personally observed signs of danger or otherwise learned more information about Raub's allegedly foreboding comments, thereby placing this case within the rubric of *Gooden*, *Takoma Park*, and *Cloaninger*. But until such facts properly emerge in the record, the case appears to fit more squarely within the analysis of *Bailey*.

Moreover, in each of the Fourth Circuit cases addressing qualified immunity in the context of a mental health detention, the police were "hurriedly called to the scene of a disturbance" or perceived emergency situation. *Gooden*, 954 F.2d at 965. Arguably, such an immediate emergency was present in *Bailey*, where police officers believed a suicide might be imminent, though that belief was later determined to be mistaken and unreasonable. 349 F.3d at 740-41. In Raub's Complaint, there is no allegation of any emergency situation at Raub's home when he was arrested. If the facts later suggest otherwise, the scale could further tip in favor of granting qualified immunity.[10]

The touchstone of the qualified immunity analysis is whether the police violated a right that was "'sufficiently clear' so that a reasonable officer would have understood, under the circumstances at hand, that his behavior violated the right." *Bailey*,

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[10] The facts alleged by Raub raise another concern that the Fourth Circuit addressed in *Cloaninger*. There, the Court considered the rule that "the unique qualities of the home prohibit seizures there without a warrant or exigent circumstances." 555 F.3d at 334. While that rule is generally applicable in the criminal arrest context, the Fourth Circuit tacitly recognized its application to mental health detentions. "'[T]he Fourth Amendment has drawn a firm line at the entrance to the house. Absent exigent circumstances, that threshold may not reasonably be crossed without a warrant.'" *Id.* (quoting *Payton v. New York*, 445 U.S. 573, 590 (1980)). At this time, the record does not yet provide the circumstances of any exigency. Aside from passing reference in *Cloaninger*, the Court has not found any well-developed authority addressing this rule in the context of a mental health seizure. For this reason, the "home arrest without a warrant" issue may be especially appropriate for a qualified immunity defense at the summary judgment stage.

349 F.3d at 741 (quoting *Wilson v. Layne*, 526 U.S. 603, 615 (1999) (internal citations omitted)). In other words, did the police transgress a "bright-line," or were they simply acting within a "gray area." *Id.* (quoting *Takoma Park*, 134 F.3d at 266). Factually, it may be the case that the County Defendants possessed sufficient information to reasonably believe that Raub posed an immediate danger. Or, officers Bowen and Granderson may have reasonably relied on Campbell's professional judgment to reach that conclusion. The record is not developed on these points. But where the Complaint alleges an arrest without any knowledge of a risk of harm, Raub has sufficiently–albeit minimally–alleged that the County Defendants transgressed such a "bright-line." The evidence may yield a different result at the summary judgment stage, but for the time being, the Court must deny the County Defendants' Motion to Dismiss on qualified immunity grounds.

Although the Court presently denies the motion, it is sensitive to the unique posture resulting when a defendant raises the qualified immunity defense. Given the knowledge gaps affecting the qualified immunity analysis, the most appropriate course is to permit limited, focused discovery addressing what the County Defendants knew at the time of Raub's arrest. Such a procedure would balance the competing goals of expediency, *see Pearson*, 555 U.S. at 232 (citations and internal quotation marks omitted), and protecting government actors from broad discovery and trial, *see Gooden*, 954 F.2d at 965. Rapidly moving the qualified immunity issue towards summary judgment is also consistent with the recognized

suitability of summary judgment as a vehicle to resolve qualified immunity. *See Willingham*, 412 F.3d at 558-59. Raub will not be permitted to go beyond the limited scope of discovery that this Court establishes, at least not until after the qualified immunity issue is addressed on summary judgment.[11] In this way, the Court reaches a balance between the immunities afforded to the County Defendants and the liberal pleading standard favoring Raub.

B. First Amendment Claim

The Court reaches essentially the same result with respect to Raub's First Amendment Claim. Based on their argument that the officers had probable cause to arrest Raub, the County Defendants also seek dismissal of the First Amendment claim against them. This argument flows from the Supreme Court's recent statement that there is no recognized First Amendment right to be free from a seizure "that is otherwise supported by probable cause." *Reichle v. Howards*, 132 S. Ct. 2088, 2094 (2012). Having found the record insufficient at this stage to conclude that probable cause supported Raub's arrest–at least on these allegations–this statement from *Reichle* has limited application. Nevertheless, it is necessary for the Court to briefly and separately explain why Raub's First Amendment claim must also proceed.

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[11] Discovery and argument on this limited motion for summary judgment would place no limitation on a subsequent merits-based motion for summary judgment.

In *Tobey v. Napolitano*, this Court denied a motion to dismiss a First Amendment claim on qualified immunity grounds. 808 F. Supp. 2d 830 (E.D. Va. 2011). In that case, Tobey was arrested at an airport after his bizarre act of removing his shirt to display the Fourth Amendment written on his chest in protest of airport security procedures. *Id.* at 834. Among other claims, Tobey asserted that he was arrested in retaliation for his display of the Fourth Amendment. Essentially, the dispute centered on what motivated the arrest–political speech or probable cause to believe that the bizarre behavior was calculated to disrupt the processing of passengers. *Id.* at 851. At the motion to dismiss stage, this Court concluded that the qualified immunity analysis "is based upon factual conclusions not reasonably inferred from the face of Plaintiffs Complaint, and which the Court cannot entertain at this procedural stage." *Id.* Thus, "'the qualified immunity question [could not] be resolved without discovery.'" *Id.* (quoting *DiMeglio v. Haines*, 45 F.3d 790, 795 (4th Cir. 1995)). The Fourth Circuit affinned. *Tobey v. Jones*, 706 F.3d 379, 392 (4th Cir. 2013).

The situation here is similar to that in *Tobey*, because the factual record is similarly sparse. Thus, for purposes of alleging a First Amendment retaliation claim, Raub's Complaint meets the minimum pleading requirements. The three elements of such a claim are: (1) expression of protected speech; (2) retaliatory action that adversely affects constitutionally protected speech; and, (3) a causal relationship between the speech and retaliatory action. *Suarez Corp. Indus. v.*

McGraw, 202 F.3d 676, 685 (4th Cir. 2000) (citations omitted). Here, there is no dispute over whether political speech is protected or whether an arrest for political speech would adversely affect one's ability to further engage in political expression. And the third element–causation–may be inferred from Raub's allegation that the only knowledge that the County Defendants had at the time of arrest concerned his political views. Accordingly, Raub's First Amendment claim survives Defendants' Motions to Dismiss.

C. Section 1983 Claims against Mason

Mason's defense takes a different tact than that of the County Defendants. While she asserts that the qualified immunity defense would shield her conduct *if* she was a government actor, she denies that she is employed by Chesterfield County. Instead, she claims that she is employed by a private hospital. Thus, she argues, the Section 1983 claims against her should be dismissed *because* she is employed by a private entity. Mason is correct, as the allegations here are insufficient to state a claim against her regardless of the identity of her employer. Accordingly, her motion to dismiss will be granted.[12]

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[12] Because the case otherwise proceeds against the County Defendants and the John Doe Defendants, Raub is free to seek leave to amend his Complaint to join Mason should he learn additional facts concerning her involvement in these events.

The only substantive allegation against Mason is found at Paragraph 40 of Raub's Complaint. It states:

> On information and belief, Chaser and Mason filed the [Second Petition] at the request and/or instigation of one or more John Does, who also lacked probable cause to file that petition against Raub. Indeed, the John Does sought to label Raub as mentally ill and continue his incarceration and commitment because of their desire to suppress and chill Raub's political views critical of the government, and the [Second Petition] constituted retaliation against Raub for his constitutionally-protected speech.

(Compl. at ¶ 40.) Three aspects of this allegation give the Court pause. First, the preamble "on information and belief" is a device frequently used by lawyers to signal that they rely on second-hand information to make a good-faith allegation of fact. *Pirelli Armstrong Tire Corp. Retiree Med. Benefits Trust v. Walgreen Co.*, 631 F.3d 436, 442 (7th Cir. 2011) (quoting *Black's Law Dictionary* 783 (7th ed. 1999)); *Pirraglia v. Novell, Inc.*, 339 F.3d 1182 (10th Cir. 2003) (quoting *Black's Law Dictionary* 779 (6th ed. 1990)). This practice is permissible when pleading is governed by Fed. R. Civ. P. 8(a), as is the situation here. *Pirelli Armstrong*, 631 F.3d at 442. It does, however, signal that the allegations against Mason are tenuous at best.

Second, and more striking, is the conclusory nature of all substantive allegations contained in Paragraph 40. Raub alleges that Mason filed the Second Petition at the instruction of the John Doe federal agents. Only in conclusory fashion does Raub then allege that Mason "lacked probable cause." With respect to Mason, there are no facts whatsoever to raise a plausible inference to support the legal conclusion that she "lacked probable cause." Thus, the legal conclusion must be disregarded. *Iqbal*, 556 U.S. at 678. Her situation is otherwise markedly different from that of the County Defendants, because she filed the Second Petition *after* Raub had been examined for some time and within the context of a continuing medical examination, not an initial arrest. Without more, it is not plausible that Mason violated Raub's constitutional rights. Accordingly, the claims against her will be dismissed.

Lastly, the allegations do not suggest that Mason was acting jointly with any state actor. The mere statement that she filed the Second Petition at the request of federal agents, alone, does not rise to the level of "joint action" for Section 1983 purposes. *Mentavlos v. Anderson*, 249 F.3d 301, 313 (4th Cir. 2001) (citation omitted); *see also Takoma Park*, 134 F.3d at 269 (citations omitted). This allegation does not raise any inference that Mason was working with state actors in a "deeply intertwined process of evaluating and detaining individuals who are believed to be mentally ill," as Raub argues. *See Jensen v. Lane Cnty.*, 222 F.3d 570, 575 (9th Cir. 2000) (citation omitted). But even if Raub's allegation was sufficient, his failure to sufficiently allege that she violated his constitutional rights in

the first place would render his claim deficient. Accordingly, the constitutional claims against Mason will be dismissed.[13]

D. State Law False Imprisonment Claim

All Defendants move to dismiss the state law false imprisonment claim that Raub asserts in Count IV. Mason is correct that Count IV appears to be asserted primarily against Bowen and Granderson, though the Complaint is ambiguous on this point. Raub identifies the targets of Count IV as *"one or more* Defendants–including but not limited to Bowen and Granderson." (Compl. at ¶ 72 (emphasis added).) Given such vagaries, the false imprisonment claim will be dismissed as alleged against Mason and Campbell, without prejudice, because it has not "put [them] on notice of the claim." *James v. Pratt & Whitney*, *United Techs. Corp.*, 126 Fed. App'x 607, 613 (4th Cir. 2005); *see also Cataldo v. United States Steel Corp.*, 676 F.3d 542, 551-52 (6th Cir. 2012) ("[Complaint] fails to allege the speaker of the alleged statements, instead referring vaguely only to

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[13] As an alternative argument, Raub argues that Virginia's statutory scheme *required* Mason to file the petition seeking further detention for evaluation, rendering her actions "state actions" by virtue of Virginia's coercive power over her. *Mentavlos*, 249 F.3d at 313. This argument would require this Court to interpret a Virginia statute on a matter of first impression that would distinguish it from the Maryland statute at issue in *Takoma Park*, 134 F.3d at 269. Because the Court finds the allegations insufficient to allege a constitutional claim against Mason in the first place, it need not render a novel interpretation of Virginia law at this juncture. *See Assicurazioni Generali, S.p.A. v. Neil*, 160 F.3d 997, 1002-03 (4th Cir. 1998) (explaining the extensive deference federal courts must give to state courts when interpreting state law).

'defendants,' of which there are many in this case."). Bowen and Granderson are clearly identified in Count IV, but no other Defendant can be expected to know whether that claim includes him or her.

Raub's false imprisonment claim against Bowen and Granderson will proceed, however, because the claim against them turns largely on the same analysis addressed with respect to qualified immunity, *supra* at Section III(A). Under Virginia law, "[f]alse imprisonment is the restraint of one's liberty without any sufficient legal excuse. If the plaintiffs arrest was lawful, the plaintiff cannot prevail on a claim of false imprisonment." *Lewis v. Kei*, 708 S.E.2d 884, 890 (Va. 2011) (citations omitted). Arguing for dismissal of the state law claim, the County Defendants candidly tie the outcome to the analysis of the qualified immunity issue. (Mem. Supp. Mot. Dismiss at 17.) Based on the Court's findings on that issue, the Motion to Dismiss will be denied with respect to Count IV. The County Defendants may renew this issue when they file a motion for summary judgment on qualified immunity.

IV. CONCLUSION

In sum, the Court finds that the allegations in Raub's Complaint meet the bare minimum requirements to survive dismissal. Simply put, the record at this stage is insufficient to address the qualified immunity defense. For similar reasons, the motion to dismiss his state law false imprisonment claim will be denied with respect to Bowen and Granderson, but granted with respect to Campbell

and Mason. Moreover, Raub's constitutional claims against Mason are dismissed, because the few allegations against her are entirely conclusory and do not otherwise give rise to a plausible inference that she violated Raub's constitutional rights through joint action with the government.

An appropriate Order will accompany this Memorandum Opinion.

/s/
Henry E. Hudson
United States District Judge

Date: August 2, 2013
Richmond, Virginia

[Entered August 2, 2013]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

BRANDON RAUB,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No.
	)	3:13CV328-HEH
DANIEL LEE BOWEN, *et al.*,	)	
	)	
Defendants.	)	

ORDER
(Denying in Part and Granting in Part Motions to Dismiss and Granting Motion for Expedited Discovery with Limitations)

THIS MATTER is before the Court on Defendants Bowen, Granderson, and Campbell's Motion to Dismiss (ECF No. 8), Defendant Mason's Motion to Dismiss (ECF No. 15), and Plaintiffs Motion for Expedited Discovery (ECF No. 35). For the reasons set forth in the accompanying Memorandum Opinion, as well as those articulated at a hearing held on July 26, 2013, the Motion to Dismiss is DENIED entirely as to Defendants Bowen and Granderson; DENIED on Counts I and III as to Defendant Campbell; GRANTED on Count IV with respect to Defendant Campbell; and, GRANTED on all Counts with respect to Defendant Mason.

Consistent with the reasons explained in the Memorandum Opinion, the Court hereby GRANTS Plaintiffs Motion for Expedited Discovery, limited as follows:

1. The Court hereby ORDERS the parties to engage in a limited thirty (30) day discovery period, commencing upon the entry of this Order.

2. The scope of this limited discovery is strictly limited to the issue of the qualified immunity defense raised by Defendants Campbell, Bowen, and Granderson, as follows:

    a. The nature and source of information supporting Defendants' belief that Plaintiff posed a danger to himself or others, including the extent to which any of them learned about the content of emails attached to the Prescreening Report, which has been filed under seal;

    b. The content of any telephone call between Defendant Campell and a John Doe Defendant shortly before Plaintiffs arrest and detention, including the identity of the John Doe Defendant who spoke to Defendant Campbell by telephone;

    c. The extent to which Defendants Bowen and Granderson relied on any representations made by the John Doe Defendants or the professional judgment of

Defendant Campbell in deciding to arrest Plaintiff; and,

d. The identities of the John Doe Defendants if known or ascertainable with due diligence.

3. Within the first fifteen (15) days of discovery, Plaintiff may submit only written discovery requests (i.e. interrogatories and requests for production of documents) within the scope of discovery as set forth in Paragraph 2 above.

4. Thereafter, if Defendants agree, Plaintiff may depose Defendants Campbell, Bowen, and/or Granderson within the narrow scope of issues set forth in Paragraph 2 above; if Defendants do not agree to submit to the depositions, the Court will entertain a motion by Plaintiff requesting depositions, setting forth the reason that depositions are necessary and explaining how the depositions will further the limited scope of discovery set forth in Paragraph 2 above.

The Clerk is directed to send a copy of this Order and the accompanying Memorandum Opinion to all counsel of record.

It is so ORDERED.

/s/
Henry E. Hudson
United States District Judge

Date: August 2, 2013
Richmond, Virginia

Va. Code § 37.2-808. Emergency custody; issuance and execution of order.

A. Any magistrate shall issue, upon the sworn petition of any responsible person, treating physician, or upon his own motion, an emergency custody order when he has probable cause to believe that any person (i) has a mental illness and that there exists a substantial likelihood that, as a result of mental illness, the person will, in the near future, (a) cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening harm and other relevant information, if any, or (b) suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic human needs, (ii) is in need of hospitalization or treatment, and (iii) is unwilling to volunteer or incapable of volunteering for hospitalization or treatment. Any emergency custody order entered pursuant to this section shall provide for the disclosure of medical records pursuant to § 37.2-804.2. This subsection shall not preclude any other disclosures as required or permitted by law.

When considering whether there is probable cause to issue an emergency custody order, the magistrate may, in addition to the petition, consider (1) the recommendations of any treating or examining physician or psychologist licensed in Virginia, if available, (2) any past actions of the person, (3) any past mental health treatment of the person, (4) any relevant hearsay evidence, (5) any medical records available, (6) any affidavits submitted, if the witness is unavailable and it so states in the affidavit, and (7) any other information available that the

magistrate considers relevant to the determination of whether probable cause exists to issue an emergency custody order.

B. Any person for whom an emergency custody order is issued shall be taken into custody and transported to a convenient location to be evaluated to determine whether the person meets the criteria for temporary detention pursuant to § 37.2-809 and to assess the need for hospitalization or treatment. The evaluation shall be made by a person designated by the community services board who is skilled in the diagnosis and treatment of mental illness and who has completed a certification program approved by the Department.

C. The magistrate issuing an emergency custody order shall specify the primary law-enforcement agency and jurisdiction to execute the emergency custody order and provide transportation. However, the magistrate shall consider any request to authorize transportation by an alternative transportation provider in accordance with this section, whenever an alternative transportation provider is identified to the magistrate, which may be a person, facility, or agency, including a family member or friend of the person who is the subject of the order, a representative of the community services board, or other transportation provider with personnel trained to provide transportation in a safe manner, upon determining, following consideration of information provided by the petitioner; the community services board or its designee; the local law-enforcement agency, if any; the person's treating physician, if any; or other persons who are available

and have knowledge of the person, and, when the magistrate deems appropriate, the proposed alternative transportation provider, either in person or via two-way electronic video and audio or telephone communication system, that the proposed alternative transportation provider is available to provide transportation, willing to provide transportation, and able to provide transportation in a safe manner. When transportation is ordered to be provided by an alternative transportation provider, the magistrate shall order the specified primary law-enforcement agency to execute the order, to take the person into custody, and to transfer custody of the person to the alternative transportation provider identified in the order. In such cases, a copy of the emergency custody order shall accompany the person being transported pursuant to this section at all times and shall be delivered by the alternative transportation provider to the community services board or its designee responsible for conducting the evaluation. The community services board or its designee conducting the evaluation shall return a copy of the emergency custody order to the court designated by the magistrate as soon as is practicable. Delivery of an order to a law-enforcement officer or alternative transportation provider and return of an order to the court may be accomplished electronically or by facsimile.

Transportation under this section shall include transportation to a medical facility as may be necessary to obtain emergency medical evaluation or treatment that shall be conducted immediately in accordance with state and federal law. Transportation under this section shall include

transportation to a medical facility for a medical evaluation if a physician at the hospital in which the person subject to the emergency custody order may be detained requires a medical evaluation prior to admission.

D. In specifying the primary law-enforcement agency and jurisdiction for purposes of this section, the magistrate shall order the primary law-enforcement agency from the jurisdiction served by the community services board that designated the person to perform the evaluation required in subsection B to execute the order and, in cases in which transportation is ordered to be provided by the primary law-enforcement agency, provide transportation. If the community services board serves more than one jurisdiction, the magistrate shall designate the primary law-enforcement agency from the particular jurisdiction within the community services board's service area where the person who is the subject of the emergency custody order was taken into custody or, if the person has not yet been taken into custody, the primary law-enforcement agency from the jurisdiction where the person is presently located to execute the order and provide transportation.

E. The law-enforcement agency or alternative transportation provider providing transportation pursuant to this section may transfer custody of the person to the facility or location to which the person is transported for the evaluation required in subsection B, G, or H if the facility or location (i) is licensed to provide the level of security necessary to protect both the person and others from harm, (ii) is

actually capable of providing the level of security necessary to protect the person and others from harm, and (iii) in cases in which transportation is provided by a law-enforcement agency, has entered into an agreement or memorandum of understanding with the law-enforcement agency setting forth the terms and conditions under which it will accept a transfer of custody, provided, however, that the facility or location may not require the law-enforcement agency to pay any fees or costs for the transfer of custody.

F. A law-enforcement officer may lawfully go or be sent beyond the territorial limits of the county, city, or town in which he serves to any point in the Commonwealth for the purpose of executing an emergency custody order pursuant to this section.

G. A law-enforcement officer who, based upon his observation or the reliable reports of others, has probable cause to believe that a person meets the criteria for emergency custody as stated in this section may take that person into custody and transport that person to an appropriate location to assess the need for hospitalization or treatment without prior authorization. A law-enforcement officer who takes a person into custody pursuant to this subsection or subsection H may lawfully go or be sent beyond the territorial limits of the county, city, or town in which he serves to any point in the Commonwealth for the purpose of obtaining the assessment. Such evaluation shall be conducted immediately. The period of custody shall not exceed eight hours from the time the law-enforcement officer takes the person into custody.

H. A law-enforcement officer who is transporting a person who has voluntarily consented to be transported to a facility for the purpose of assessment or evaluation and who is beyond the territorial limits of the county, city, or town in which he serves may take such person into custody and transport him to an appropriate location to assess the need for hospitalization or treatment without prior authorization when the law-enforcement officer determines (i) that the person has revoked consent to be transported to a facility for the purpose of assessment or evaluation, and (ii) based upon his observations, that probable cause exists to believe that the person meets the criteria for emergency custody as stated in this section. The period of custody shall not exceed eight hours from the time the law-enforcement officer takes the person into custody.

I. Nothing herein shall preclude a law-enforcement officer or alternative transportation provider from obtaining emergency medical treatment or further medical evaluation at any time for a person in his custody as provided in this section.

J. A representative of the primary law-enforcement agency specified to execute an emergency custody order or a representative of the law-enforcement agency employing a law-enforcement officer who takes a person into custody pursuant to subsection G or H shall notify the community services board responsible for conducting the evaluation required in subsection B, G, or H as soon as practicable after execution of the emergency custody order or after the

person has been taken into custody pursuant to subsection G or H.

K. The person shall remain in custody until a temporary detention order is issued, until the person is released, or until the emergency custody order expires. An emergency custody order shall be valid for a period not to exceed eight hours from the time of execution.

L. Nothing in this section shall preclude the issuance of an order for temporary detention for testing, observation, or treatment pursuant to § 37.2-1104 for a person who is also the subject of an emergency custody order issued pursuant to this section. In any case in which an order for temporary detention for testing, observation, or treatment is issued for a person who is also the subject of an emergency custody order, the person may be detained by a hospital emergency room or other appropriate facility for testing, observation, and treatment for a period not to exceed 24 hours, unless extended by the court as part of an order pursuant to § 37.2-1101, in accordance with subsection A of § 37.2-1104. Upon completion of testing, observation, or treatment pursuant to § 37.2-1104, the hospital emergency room or other appropriate facility in which the person is detained shall notify the nearest community services board, and the designee of the community services board shall, as soon as is practicable and prior to the expiration of the order for temporary detention issued pursuant to § 37.2-1104, conduct an evaluation of the person to determine if he meets the criteria for temporary detention pursuant to § 37.2-809.

M. Any person taken into emergency custody pursuant to this section shall be given a written summary of the emergency custody procedures and the statutory protections associated with those procedures.

N. If an emergency custody order is not executed within eight hours of its issuance, the order shall be void and shall be returned unexecuted to the office of the clerk of the issuing court or, if such office is not open, to any magistrate serving the jurisdiction of the issuing court.

O. (Expires June 30, 2018) In addition to the eight-hour period of emergency custody set forth in subsection G, H, or K, if the individual is detained in a state facility pursuant to subsection E of § 37.2-809, the state facility and an employee or designee of the community services board as defined in § 37.2-809 may, for an additional four hours, continue to attempt to identify an alternative facility that is able and willing to provide temporary detention and appropriate care to the individual.

P. Payments shall be made pursuant to § 37.2-804 to licensed health care providers for medical screening and assessment services provided to persons with mental illnesses while in emergency custody.

Q. No person who provides alternative transportation pursuant to this section shall be liable to the person being transported for any civil damages for ordinary negligence in acts or omissions that result from providing such alternative transportation.

Va Code § 37.2-809. Involuntary temporary detention; issuance and execution of order.

A. For the purposes of this section:

"Designee of the local community services board" means an examiner designated by the local community services board who (i) is skilled in the assessment and treatment of mental illness, (ii) has completed a certification program approved by the Department, (iii) is able to provide an independent examination of the person, (iv) is not related by blood or marriage to the person being evaluated, (v) has no financial interest in the admission or treatment of the person being evaluated, (vi) has no investment interest in the facility detaining or admitting the person under this article, and (vii) except for employees of state hospitals and of the U.S. Department of Veterans Affairs, is not employed by the facility.

"Employee" means an employee of the local community services board who is skilled in the assessment and treatment of mental illness and has completed a certification program approved by the Department.

"Investment interest" means the ownership or holding of an equity or debt security, including shares of stock in a corporation, interests or units of a partnership, bonds, debentures, notes, or other equity or debt instruments.

B. A magistrate shall issue, upon the sworn petition of any responsible person, treating physician, or

upon his own motion and only after an evaluation conducted in-person or by means of a two-way electronic video and audio communication system as authorized in § 37.2-804.1 by an employee or a designee of the local community services board to determine whether the person meets the criteria for temporary detention, a temporary detention order if it appears from all evidence readily available, including any recommendation from a physician or clinical psychologist treating the person, that the person (i) has a mental illness and that there exists a substantial likelihood that, as a result of mental illness, the person will, in the near future, (a) cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening harm and other relevant information, if any, or (b) suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic human needs, (ii) is in need of hospitalization or treatment, and (iii) is unwilling to volunteer or incapable of volunteering for hospitalization or treatment. The magistrate shall also consider the recommendations of any treating or examining physician licensed in Virginia if available either verbally or in writing prior to rendering a decision. Any temporary detention order entered pursuant to this section shall provide for the disclosure of medical records pursuant to § 37.2-804.2. This subsection shall not preclude any other disclosures as required or permitted by law.

C. When considering whether there is probable cause to issue a temporary detention order, the magistrate may, in addition to the petition, consider (i) the recommendations of any treating or examining

physician or psychologist licensed in Virginia, if available, (ii) any past actions of the person, (iii) any past mental health treatment of the person, (iv) any relevant hearsay evidence, (v) any medical records available, (vi) any affidavits submitted, if the witness is unavailable and it so states in the affidavit, and (vii) any other information available that the magistrate considers relevant to the determination of whether probable cause exists to issue a temporary detention order.

D. A magistrate may issue a temporary detention order without an emergency custody order proceeding. A magistrate may issue a temporary detention order without a prior evaluation pursuant to subsection B if (i) the person has been personally examined within the previous 72 hours by an employee or a designee of the local community services board or (ii) there is a significant physical, psychological, or medical risk to the person or to others associated with conducting such evaluation.

E. An employee or a designee of the local community services board shall determine the facility of temporary detention for all individuals detained pursuant to this section. The facility of temporary detention shall be one that has been approved pursuant to regulations of the Board. The facility shall be identified on the preadmission screening report and indicated on the temporary detention order. Except as provided in § 37.2-811 for inmates requiring hospitalization in accordance with subdivision A 2 of § 19.2-169.6, the person shall not be detained in a jail or other place of confinement for persons charged with criminal offenses and shall remain in the custody of law enforcement until the

person is either detained within a secure facility or custody has been accepted by the appropriate personnel designated by the facility identified in the temporary detention order.

F. Any facility caring for a person placed with it pursuant to a temporary detention order is authorized to provide emergency medical and psychiatric services within its capabilities when the facility determines that the services are in the best interests of the person within its care. The costs incurred as a result of the hearings and by the facility in providing services during the period of temporary detention shall be paid and recovered pursuant to § 37.2-804. The maximum costs reimbursable by the Commonwealth pursuant to this section shall be established by the State Board of Medical Assistance Services based on reasonable criteria. The State Board of Medical Assistance Services shall, by regulation, establish a reasonable rate per day of inpatient care for temporary detention.

G. The employee or the designee of the local community services board who is conducting the evaluation pursuant to this section shall determine, prior to the issuance of the temporary detention order, the insurance status of the person. Where coverage by a third party payor exists, the facility seeking reimbursement under this section shall first seek reimbursement from the third party payor. The Commonwealth shall reimburse the facility only for the balance of costs remaining after the allowances covered by the third party payor have been received.

H. The duration of temporary detention shall be sufficient to allow for completion of the examination required by § 37.2-815, preparation of the preadmission screening report required by § 37.2-816, and initiation of mental health treatment to stabilize the person's psychiatric condition to avoid involuntary commitment where possible, but shall not exceed 48 hours prior to a hearing. If the 48-hour period herein specified terminates on a Saturday, Sunday, or legal holiday, the person may be detained, as herein provided, until the close of business on the next day that is not a Saturday, Sunday, or legal holiday. The person may be released, pursuant to § 37.2-813, before the 48-hour period herein specified has run.

I. If a temporary detention order is not executed within 24 hours of its issuance, or within a shorter period as is specified in the order, the order shall be void and shall be returned unexecuted to the office of the clerk of the issuing court or, if the office is not open, to any magistrate serving the jurisdiction of the issuing court. Subsequent orders may be issued upon the original petition within 96 hours after the petition is filed. However, a magistrate must again obtain the advice of an employee or a designee of the local community services board prior to issuing a subsequent order upon the original petition. Any petition for which no temporary detention order or other process in connection therewith is served on the subject of the petition within 96 hours after the petition is filed shall be void and shall be returned to the office of the clerk of the issuing court.

J. The chief judge of each general district court shall establish and require that a magistrate, as provided by this section, be available seven days a week, 24 hours a day, for the purpose of performing the duties established by this section. Each community services board shall provide to each general district court and magistrate's office within its service area a list of its employees and designees who are available to perform the evaluations required herein.

K. For purposes of this section a healthcare provider or designee of a local community services board or behavioral health authority shall not be required to encrypt any email containing information or medical records provided to a magistrate unless there is reason to believe that a third party will attempt to intercept the email.

L. The employee or designee of the community services board who is conducting the evaluation pursuant to this section shall, if he recommends that the person should not be subject to a temporary detention order, inform the petitioner and an on-site treating physician of his recommendation.

[Filed January 27, 2014]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

BRANDON RAUB,	)	
	)	
***Plaintiff*,**	)	
	)	
v.	)	**Case No.**
	)	**3:13CV328-HEH**
MICHAEL CAMPBELL,	)	
	)	
Defendant.	)	
	)	

SECOND AMENDED COMPLAINT

The Plaintiff, Brandon Raub, for his Second Amended Complaint ("Complaint") against Defendant Michael Campbell, as directed by the Court in its Orders of January 14 and 27, 2014, says as follows:

INTRODUCTION

1. This case arises out of the retaliatory and unlawful seizure and detention of Brandon Raub ("Raub"), a citizen of the United States and a military veteran, who was seized, taken from his home and detained without probable cause and in violation of the rights guaranteed to him by the law of Virginia and by the Fourth, Fifth and/or Fourteenth Amendments of the United States

Constitution. Additionally, upon information and belief, it is alleged that the baseless incarceration of Raub, upon the pretext that he was mentally unstable, was the result of animus against him because of his speech critical of the government. As such, the actions taken against Raub violated his fundamental right to engage in core political speech guaranteed by the First Amendment to the United States Constitution.

2. Insofar as the unlawful seizure and/or detention of and retaliation against Raub were caused and/or carried out by Defendant Michael Campbell ("Campbell"), a person acting under color of state law, Raub brings this lawsuit pursuant to 42 U.S.C. § 1983 to vindicate his federal rights as guaranteed by the First, Fourth and/or Fifth Amendments, made applicable to the States by the Fourteenth Amendment.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1343, for those claims seeking redress under the laws and statutes of the United Stated for the deprivation of rights secured by the Constitution and the laws of the United States. This Court also has subject matter jurisdiction over the state law claims under 28 U.S.C. § 1367.

4. Venue properly lies in the Eastern District of Virginia under 28 U.S.C. § 1391(b), as a substantial part of the events giving rise to this action occurred within this District.

PARTIES

5. Plaintiff Brandon Raub resides within Chesterfield County, Commonwealth of Virginia. He is a veteran of the United States Marine Corps, having served in both Iraq and Afghanistan.

6. Defendant Michael Campbell is a licensed psychotherapist employed by the Chesterfield Community Services Board. He is sued in his individual capacity. In all respects set forth in this Complaint, Campbell acted under color of law of the Commonwealth of Virginia.

FACTS

The Seizure of Raub

7. On Thursday August 16, 2012, Raub was peacefully reposed in his home in Chesterfield County, Virginia.

8. That day, Michael Paris ("Paris"), a detective in the Chesterfield County Police Department, and Terry Granger ("Granger"), a special agent of the Federal Bureau of Investigation, appeared at the front door of Raub's home, announced themselves as federal and/or local law enforcement agents, and sought entrance for the purpose of discussing with Raub his political views, including views he had expressed on various Facebook posts that were critical of the government. Paris and Granger were accompanied by other Chesterfield law enforcement officers who were in

uniform, armed and displaying their badges of authority, and by other federal agents.

9. Confronted with this show of force, Raub agreed to leave his home and to speak with Paris and Granger outside of his home and within the curtilage of his home, where he freely discussed his political views with the officers present, including those views whereby he holds the federal government in disfavor and regards that government with suspicion.

10. At no time did Raub make any threat to do harm to any person or to himself.

11. Following a brief discussion of Raub's political views, Paris became ill and collapsed to the ground, where he lay unconscious for a period of time before recovering to the point that he made his way to Granger's vehicle.

12. While sitting in Granger's vehicle, Paris spoke by phone with Campbell, who encouraged Paris and/or others with him to take Raub into custody, purportedly under Virginia laws involving mental health evaluations.

13. At the time of the phone call between Paris and Campbell, Campbell had never met, observed or evaluated Raub.

14. On information and belief, Granger was present in the vehicle with Paris at the time of his conversation with Campbell, and she encouraged

Paris to take steps to seize Raub and/or jointly made with him the decision to seize Raub.

15. Acting upon the order or request of Paris and/or Granger, and without any warrant or judicial authorization, Daniel Lee Bowen ("Bowen") and Russell Morgan Granderson ("Granderson"), police officers for the Chesterfield County Police Department, seized Raub while Raub was within the curtilage of his residence. By force and/or a show of force, Bowen and Granderson handcuffed Raub against his will, forced him to leave his residence and forced him into the caged portion of a police vehicle waiting outside Raub's home. At the time of this seizure, Raub was wearing only shorts and he asked to retrieve shoes and clothing; however, Granderson and Bowen refused this request.

16. Bowen and/or Granderson then transported Raub – forcibly and against his will – to one or more places of detention (e.g., police headquarters and/or jail), where his forcible detention was continued.

17. The aforesaid seizure, transportation and initial detention were carried out without informing Raub of his legal rights, without informing him of any charge or complaint against him and without providing him with any basis or authorization for his arrest and detention.

18. In the seizure, transportation and detention of Raub, Bowen and Granderson acted at the request and/or instigation of Campbell.

19. In the seizure, transportation and detention of Raub, Bowen and Granderson were aided and/or abetted by Campbell.

20. At the time of the seizure, transportation and detention of Raub, none of the Defendants had probable cause to believe that Raub had committed any crime, nor did any Defendant have probable cause to believe that Raub posed a danger to himself or others, nor did any Defendant have any other legitimate or lawful basis to seize, arrest or detain him.

The Detention Orders

21. Defendant Campbell evaluated Raub while Raub was detained against his will at the Chesterfield County Jail, sometime in the evening of August 16, 2012.

22. At some time during Raub's detention at Chesterfield County Jail – believed to be around midnight – Campbell filed a petition seeking Raub's temporary detention and involuntary admission to a mental health facility pursuant to Virginia Code §§ 37.2-805 *et seq*. ("August 16 Petition").

23. In the August 16 Petition, Campbell alleged (i) that Raub had a mental illness and was in need of hospitalization or treatment, (ii) that there existed a substantial likelihood that, as a result of mental illness, Raub would, in the near future, cause serious physical harm to others as evidenced by recent behavior causing, attempting, or threatening harm and other relevant information, and (iii) that

Raub would suffer serious harm due to his lack of capacity to protect himself from harm or provide for his own basic human needs. *See* "August 16 Petition" attached as Exhibit A.

24. The August 16 Petition was accompanied by a "report" in which Campbell alleged that Raub was "psychotic." Yet, in support of that "diagnosis," the only "significant clinical finding" cited by Campbell was that Raub "had long pauses before answering questions" and that he was "very labile w/ the secret service." Campbell also noted that the FBI and Secret Service began investigating Raub because they wanted Raub to explain his recent posts on Facebook.

25. Campbell lacked probable cause to make the allegations that he set forth in the August 16 Petition and/or report against Raub, and Raub did not provide any credible basis for Campbell to petition for a Temporary Detention Order.

26. On information and belief, Campbell petitioned for Raub's detention at the request and/or instigation of one or more federal agents, who also lacked probable cause to make the allegations set forth in the August 16 Petition and report against Raub. Instead, the baseless allegation that Raub had a mental illness and posed a threat of harm to others or himself was a pretext designed to silence Raub's speech critical of the government by subjecting him to involuntary commitment.

27. Based upon the "bare bones" and conclusory August 16 Petition filed by Campbell and

Campbell's accompanying report, a magistrate issued a Temporary Detention Order at 12:11 a.m. on August 17, 2012. *See* Exhibit B.

28. Pursuant to the Temporary Detention Order, Raub was transported, against his will, to John Randolph Medical Center.

29. The Temporary Detention Order served as the basis to deprive Raub of his liberty until August 20, 2012. At that time, a hearing was held on a newly-filed Petition for Involuntary Admission for Treatment of Raub ("the August 20 Petition" attached as Exhibit C).

30. At the conclusion of the hearing on the August 20 Petition, the Special Justice hearing the matter entered an Order further depriving Raub of his liberty by requiring civil commitment and involuntary treatment for up to 30 days ("August 20 Order"). Copy attached as Exhibit D.

31. Pursuant to the August 20 Order, Raub was transferred, against his will, to Salem Veterans Administration Medical Center in Salem, Virginia, thus isolating Raub from his family, friends, and attorneys.

The State Circuit Court Orders Raub Released and Dismisses the Petition.

32. On August 22, 2012, Raub's legal counsel filed a notice of appeal of the August 20 Order, as well as a motion to suspend and/or modify that Order pending appeal.

33. On August 23, 2012, Raub's legal counsel appeared before the Circuit Court of the City of Hopewell ("the Circuit Court") on Raub's motion to suspend and/or modify the August 20 Order pending appeal.

34. On August 23, 2012, one full week after Raub was seized and taken from his home, the Circuit Court found that the August 20 Petition was "so devoid of factual allegations that it could not reasonably be expected to give rise to a case or controversy." The Court therefore dismissed the August 20 Petition and ordered Raub's immediate release. *See* Circuit Court Order, attached hereto as Exhibit E.

35. Raub has no history of mental illness and has never been treated or sought treatment for mental illness.

36. At no time has any person offered evidence that Raub has harmed or threatened to do harm to any person.

37. As a result of the action of the Defendants as described herein, Raub has sustained pecuniary and non-pecuniary losses, including, but not limited to costs associated with the legal proceedings, emotion distress including emotional pain, suffering, inconvenience, mental anguish and loss of enjoyment of life.

38. Before his arrest on August 16, 2012, Raub used his Facebook account to post his political

views, including views that may be fairly described as "anti-government."

39. On information and belief, Raub attracted the attention of one or more Defendants, acting as agents of the federal government, because he posted such views and was a military veteran. This allegation is supported, for example, by the fact that, when they interrogated Raub at his home on August 16, Granger and/or Paris wanted to talk about his military service as well as the political views he had posted on Facebook.

40. On information and belief, Raub was unlawfully seized because of, and/or in retaliation for, his political views and that the allegation that he was mentally ill was a pretext designed to suppress and chill his constitutionally-protected speech and to defame and discredit him and his beliefs. A seizure motivated by an intent to retaliate against and suppress conduct protected by the Constitution represents willful and wanton misconduct, malice and/or bad faith so as to entitle him to punitive damages. The retaliatory actions against Raub served not only to silence Raub, but to chill the speech of other citizens, particularly military veterans, who desire to speak out against the government and its prosecution of foreign wars.

41. Raub will, as allowed by the First Amendment, continue to engage in speech and expression critical of government policies with which he disagrees, and, as a result faces a continuing threat of the same kind of retaliation from officers and agents of the federal and state government that

resulted in his involuntary, unjustified and illegal seizure and detention in August 2012.

FIRST CAUSE OF ACTION

Unlawful Seizure under the Fourth Amendment – Color of State Law

42. The allegations of the foregoing paragraphs are re-alleged as if set out in full.

43. The actions of Campbell, as alleged herein, deprived Raub of his constitutional rights to be free from unreasonable seizure and not to be deprived of his liberty without due process of law, as guaranteed by the Fourth, Fifth and Fourteenth Amendments.

44. The actions of Campbell were committed under color of state law so as to give rise to liability under 42 U.S.C. § 1983.

45. As the proximate result of said actions, Raub has sustained the damages previously set forth.

46. Pursuant to 42 U.S.C. § 1988, Raub is entitled to attorneys' fees and costs, including expert fees, incurred in bringing the claims alleged in this count.

SECOND CAUSE OF ACTION

Deprivation of Right to Freedom of Speech under the First Amendment

47. The allegations of the foregoing paragraphs are re-alleged as if set out in full.

48. The actions of Campbell as alleged herein were an effort to discredit, silence and punish Raub for the content and viewpoint of his political speech using the pretextual and false allegation that Raub was suffering from a mental illness and was subject to involuntary commitment under Virginia law.

49. The actions of Campbell in this respect were committed under color of state law and/or the law of the United States of America and deprived Raub of his right to freedom of speech and expression guaranteed by the First Amendment to the United States Constitution.

50. As the proximate result of said actions, Raub has sustained the damages previously set forth.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that judgment be entered against Defendant as follows:

1. That this Court award Plaintiff compensatory and/or punitive damages in such amounts as shall be shown by the evidence at trial;

2. That this Court enter an injunction prohibiting Defendant and/or agents acting on behalf of or in conjunction with Defendant from unreasonably seizing Plaintiff and/or retaliating against Plaintiff because of Plaintiff's exercise of rights and privileges protected by the Constitution and laws of the United States.

3. That this Court order Defendant to pay Plaintiff's attorneys' fees and costs, including expert fees, pursuant to 42 U.S.C. § 1988; and

4. That this Court order any and all such other and further relief as it may deem proper.

A TRIAL BY JURY IS DEMANDED.

Dated: January 27, 2014

Respectfully submitted,

/s/ Anthony F. Troy (by permission)
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Of Counsel

CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of January, 2014, I filed a true and correct copy of the foregoing on the Court's Electronic Case Filing System, which will send a notice of electronic filing to the following counsel for defendants:

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PETITION FOR INVOLUNTARY
ADMISSION FOR TREATMENT
Commonwealth of Virginia
VA CODE §§ 16.1-340; 16.1-340.1; 19.2-169.6; 19.2-182.9; 37.2-808 through 37.2-819

Temporary Detention Order No. _____
Case No. _____
Hearing Date and Time _____

Chesterfield [ ] General District Court
CITY OR COUNTY [ ] Juvenile and Domestic Relations Court

In re: Brandon Raub
NAME OF RESPONDENT

[redacted] Male
DATE OF BIRTH GENDER

2912 Bensley North Court
RESIDENCE ADDERESS

MAILING ADDRESS IF DIFFERENT

N. Chesterfield Va 23237
CITY STATE ZIP CODE

CITY STATE ZIP CODE

Chesterfield County Jail
NAME AND ADDRESS OF CURRENT LOCATION OF RESPONDENT

NAME AND ADDRESS OF PARENT/GUARDIAN/LEAGAL CUSTODIAN (IF RESPONDENT IS A JUVENILE)

NAME AND ADDRESS OF
PARENT/GUARDIAN/LEAGAL CUSTODIAN
(IF RESPONDENT IS A JUVENILE)

Michael Campbell	CSB Prescreener
NAME OF PETITIONER	PETITIONER'S RELATIONSHIP TO RESPONDENT

Chesterfield Mental Health Support Services
NAME OF AGENCY OR FACILITY OF PETITIONER (IF APPLICABLE)

(804) 747-6660
FACSIMILE NUMBER

6801 Lucy Corr Blvd
ADDRESS OF PETITIONER

(804) 748-6356
TELEPHONE NUMBER

Chesterfield	VA	23832
CITY	STATE	ZIP CODE

( )
ALTERNATE TELEPHONE NUMBER

I, the undersigned petitioner, being a responsible person, hereby file this petition pursuant to Virginia Code

[X] §§ 37.2-805 through 37.2-819 (Adult Cases Only) and State that the respondent is unwilling to volunteer or incapable of volunteering for hospitalization or treatment, has a mental illness and is in need of hospitalization or treatment, and that there exists a substantial likelihood that, as a result of mental illness, the respondent will, in the near future:

[X] cause serious physical harm to [ ] self [X] others as evidenced by recent

behavior causing, attempting, or threatening harm and other relevant information, if any, or

[X] suffer serious barm due to respondent's lack of capacity to protect self from harm or to provide for respondent's own basic human needs

[X] The preadmission screening report has been prepared by the community services board and the report is attached.

[ ] An initial mandatory outpatient treatment plan has been prepared by the community services board and is attached.

[ ] This petition is filed pursuant to Virginia Code § 37.2-817(C) prior to the expiration of the involuntary admission order entered on _____,to continue such order, of which the respondent is the subject, for a period not to exceed 180 days.

[ ] This motion for mandatory outpatient treatment is filed pursuant to Virginia Code § 37.2-805 or § 37.2-817(C) as the respondent has been the subject of a temporary detention order and voluntarily admitted himself in accordance with § 31.2-814(B) or was involuntarily admitted pursuant to § 37.2-817(C), and on at least two previous occasions within 36 months preceding the date of the hearing, has been the subject of a temporary detention order and voluntarily admitted himself in accordance with § 37.2-814(B) or

has been involuntarily admitted pursuant to § 31.2-817.

[ ] § 19.2-169.6 and as the person having custody over the respondent, who is an inmate, state that the inmate has a mental illness; there exists a substantial likelihood that, as a result of a mental illness, the inmate will, in the near future,

[ ] cause serious physical harm to [ ] self [ ] others as evidenced by recent behavior causing, attempting, or threatening harm and any other relevant information, or

[ ] suffers serious harm due to his lack of capacity to protect himself from harm as evidenced by recent behavior and any other relevant information;

and the inmate requires treatment in a hospital rather than a local correctional facility.

[ ] § 19.2-182.9 and state that the respondent, who is an acquitee on conditional release

[ ] has violated the conditions of the respondent's release, or

[ ] is no longer a proper subject for conditional release,

and the respondent requires inpatient hospitalization.

EXHIBIT
A

Temporary Detention Order No. _____
Case No. _____

[ ] § 16.1-340 or § 16.1-340.1 (Juvenile Cases Only) and state that because of mental illness, the respondent, who is a juvenile

[ ] presents a serious danger to [ ] self [ ] others to the extent that severe or irremediable injury is likely to result, as evidenced by recent acts to threats, or

[ ] is experiencing a serious deterioration of the ability to care for self in a developmentally age appropriate manner, as evidenced by delusionary thinking or by a significant impairment of functioning in hydration, nutrition, self-protection, or self-control,

and the juvenile is in need of compulsory treatment for a mental illness and is reasonably likely to benefit from the proposed treatment.

[ ] The juvenile is currently, detained in a detention home or shelter care facility by order of the _____ Juvenile and Domestic Relations District Court. To the extent known, the following charges against the juvenile are the basis of the detention in the detention home or shelter care facility:

_____
CHARGE

_____
CHARGE

[ ] See attached sheet for additional charges.

To the extent known, the names and addresses of the juvenile's parents are as follows:

NAME OF MOTHER AND ADDRESS

NAME OF FATHER AND ADDRESS

I request that the respondent be examined and accorded such assistance as provided by law. In support of this petition, I further state as follows:

See prescreening

8-16-12	/s/
DATE	PETITIONER

The petitioner appeared this date before the undersigned and, upon being duly sworn, made oath that the facts stated in this petition are true based on the petitioner's knowledge.

DATE	[ ] JUDGE [ ] MAGISTRATE [ ] SPECIAL JUSTICE [ ] CLERK

FOR NOTARY PUBLIC'S USE ONLY:
State of _____
[ ] City [ ] County of _____
Acknowledged, subscribed and sworn to before me this _____ day of _____, 20 _____
By_____

_____	_____
DATE	NOTARY PUBLIC
	Notary Registration No. _____
	(My commission expires_____)

TEPORARY DETENTION ORDER – MAGISTRATE
Commonwealth of Virginia Va Code § 37.2-809; 19.2-169.6; 19.2-182.9

Case No. 041GM1200025802

Chesterfield [X] General Distrct Court
[ ] Circuit Court

BRANDON JAMES RAUB
NAME OF RESPONDENT

2912 Bensley, N. Chesterfield, VA 23237
ADDRESS OF RESPONDENT

COMPLETE DATA BELOW IF KNOWN

RACE	SEX	BORN	HT	WGT	EYES	HAIR
W	M	MO DAY YR [redacted]	FT IN 6' 01"	180		

SSN [redacted]

DL# [redacted] STATE VA

TDO 041GM-1200025802

TO ANY AUTHORIZED OFFICER OF:
Chesterfield County, VA
This temporary detention order is hereby issued [ ] upon the motion of the undersigned magistrate
[X] upon the sworn petition of Michael Campbell
NAME
(804) 748-6356
TELEPHONE NUMBER
an evaluation having been conducted by Michael Campbell
NAME
Crisis (804) 748-6356
AGENCY/FACILITY TELEPHONE NUMBER

based upon finding of probable cause pursuant to

[X] § 37.2-809, it appearing from all evidence readily available, including any recommendation from a physician or clinical psychologist treating the person, that the person (i) has a mental illness, and that there exists a substantial likelihood that, as a result of mental illness, the respondent will, in the near future, (a) cause serious physical harm to him/herself or others as evidenced by recent behavior causing. Attempting, or threatening harm and other relevant information or (b) suffer serious harm due to his/her lack of capacity to protect him/herself from harm or to provide for his/her basic human needs, (ii) is in need of hospitalization or treatment, and (iii) is unwilling to volunteer or incapable of volunteering for hospitalization or treatment.

[ ] subdivision A2 of 19.2-169.6, it appearing from all evidence readily available, including any recommendation from a physician or clinical psychologist treating the inmate, that the inmate (i) has mental illness; (ii) there exists a substantial likelihood that, as a result of a mental illness, the inmate will, in the near future, cause serious physical harm to him/herself or others as evidenced by recent behavior causing, attempting, or threatening harm and other relevant information; and (iii) the inmate requires treatment in a hospital rather than a local correctional facility.

[ ] § 19.2-182.9 that the respondent is an acquittee on conditional release who has violated the conditions of release or is no longer a proper

subject for conditional release, and requires emergency evaluation to assess the need for inpatient hospitalization.

THEREFORE, you are commanded to execute this order, take the respondent into custody and

[X] transport the respondent from the respondent's current location to the location listed below,

[ ] transfer custody of the respondent to the alternative transportation provider, _____ DC-4000, ORDER FOR ALTERNATIVE TRANSPORTATION PROVIDER, is attached,

Chesterfield Jail, Chesterfield, VA
CURRENT LOCATION OF RESPONDENT

John Randolph Hospital 411 West Randolph Road, Hopewell, VA 23860
NAME AND ADDRESS OF FACILITY

[X] Prior to placement in the above temporary detention facility, transport the respondent

- [X] for emergency medical evaluation or treatment
- [ ] for medical evaluation or treatment as may be required by a physician at the temporary detention facility

to: John Randolph Hospital 411 West Randolph Road, Hopewell, VA 23860
NAME AND ADDRESS OF FACILITY

The duration of temporary detention may not exceed the period authorized in Virginia Code § 37.2-809, subdivision A2 of 19.2-169.6 or § 19.2-182.9. If this order commands that the respondent be detained pursuant to § 37.2-814 if it appears, based on an evaluation conducted by the psychiatrist or clinical

psychologist treating the respondent, that the respondent no longer meets the criteria for temporary detention. If the respondent is detained by this order pursuant to subdivision § 19.2-169.6 or § 19.2-182.9, the director of the facility of temporary detention may not release the respondent without order of a judge. If the judicial officer issues this order pursuant to § 37.2-809 or subdivision A2 of § 19.2-169.6, this order becomes void if not executed within [X] 24 hours [ ] _____hours after issuance.

TO ANY HEALTH CARE PROVIDER as defined in Virginia Code § 32.1-127.1:03, or other provider who has provided or is currently providing services or is currently evaluating the respondent: Virginia Code § 37.2-804.2 requires you to disclose certain information upon request. (See Page Two, AUTHORIZATION FOR DISCLOSURE AND USE OF HEALTH INFORMATION)

08/17/2012 12:11 AM
DATE AND TIME OF ISSUANCE

/s/ _____
M. S. Znotens MAGISTRATE

Respondent discharged from institution on this day _____by _____
NAME AND TITLE

EXECUTED by delivering a copy of this Order to the respondent on this day
8-16-12 @ 330
DATE AND TIME OF EXECUTION
8-16-12 @ 330
DATE AND TIME RESPODENT DELIVERED TO FACILITY
S. MICHAUX
OFFICER TAKING RESPONDENT INTO CUSTODY
178 CPD 020
BADGE NO, AGENCY, AND
for _____ SHERIFF

EXHIBIT
B

AUTHORIZATION FOR DISCLOSURE AND USE OF HEALTH INFORMATION

Under Virginia Code § 37.2-804.2, any health care provider, as defined in Virginia Code § 32.1-127.1:03, or other provider who has provided or is currently providing services to a person who is the subject of proceedings pursuant to Title 37.2, Chapter 8 of the Code of Virginia must, upon request, disclose to a magistrate, the court, the person's attorney, the person's guardian *ad litem,* the examiner identified to perform an examination of a person who is the subject of a commitment hearing for involuntary admission, the community services board or its designee performing any related evaluation, preadmission screening, or monitoring duties, or a law-enforcement officer any information that is necessary and appropriate for the performance of his duties pursuant to § 37.2-800 et seq. Any health care

provider, as defined in § 32.1-127.1:03, or other provider who has provided or is currently evaluating or providing services to a person who is the subject of emergency custody or involuntary temporary detention proceedings must disclose information that may be necessary for the treatment of such person to any other health care provider or other provider evaluating or providing services to or monitoring the treatment of the person. Health records disclosed to a law-enforcement officer must be limited to information necessary to protect the officer, the person, or the public from physical injury or to address the health care needs of the person. Information disclosed to a law-enforcement officer must not be used for any other purpose, disclosed to others, or retained.

Any health care provider disclosing records pursuant to Virginia Code § 37.2-804.2 will be immune from civil liability for any harm resulting from the disclosure, including any liability under the federal Health Insurance Portability and Accountability Act (42 U.S.C. § 1320d et seq.), as amended, unless the person or provider disclosing such records intended the harm or acted in bad faith.

PETITION FOR INVOLUNTARY
ADMISSION FOR TREATMENT
Commonwealth of Virginia
VA CODE §§ 16.1-340; 16.1-340.1; 19.2-169.6; 19.2-182.9; 37.2-808 through 37.2-819

Temporary Detention Order No. 041GM120025802
Case No. _____
Hearing Date and Time 08/20/12 10:30AM

HOPEWELL, VA [X] General District Court
CITY OR COUNTY [ ] Juvenile and Domestic Relations Court

In re: Brandon James Raub
NAME OF RESPONDENT

[redacted] Male
DATE OF BIRTH GENDER

2912 Bensley
RESIDENCE ADDRESS

MAILING ADDRESS IF DIFFERENT

N. Chesterfield Va 23237
CITY STATE ZIP CODE

CITY STATE ZIP CODE

John Randolph Medical Center 411 W. Randolph Road, Hopewell, VA 23860
NAME AND ADDRESS OF CURRENT LOCATION OF RESPONDENT

NAME AND ADDRESS OF PARENT/GUARDIAN/LEAGAL CUSTODIAN (IF RESPONDENT IS A JUVENILE)

NAME AND ADDRESS OF
PARENT/GUARDIAN/LEAGAL CUSTODIAN
(IF RESPONDENT IS A JUVENILE)

None

NAME OF PETITIONER | PETITIONER'S RELATIONSHIP TO RESPONDENT

John Randolph Medical Center

NAME OF AGENCY OR FACILITY OF PETITIONER (IF APPLICABLE)

(804) 452-3656

FACSIMILE NUMBER

411 W. Randolph Road, Hopewell, va 23860

ADDRESS OF PETITIONER

(804) 541-4447

TELEPHONE NUMBER

CITY | STATE | ZIP CODE

( )

ALTERNATE TELEPHONE NUMBER

I, the undersigned petitioner, being a responsible person, hereby file this petition pursuant to Virginia Code

[ ] §§ 37.2-805 through 37.2-819 (Adult Cases Only) and STate that the respondent is unwilling to volunteer or incapable of volunteering for hospitalization or treatment, has a mental illness and is in need of hospitalization or treatment, and that there exists a substantial likelihood that, as a result of mental illness, the respondent will, in the near future:

[ ] cause serious physical harm to [ ] self [ ] others as evidenced by recent behavior

causing, attempting, or threatening harm and other relevant information, if any, or

[ ] suffer serious barm due to respondent's lack of capacity to protect self from harm or to provide for respondent's own basic human needs

[ ] The preadmission screening report has been prepared by the community services board and the report is attached.

[ ] An initial mandatory outpatient treatment plan has been prepared by the community services board and is attached.

[ ] This petition is filed pursuant to Virginia Code § 37.2-817(C) prior to the expiration of the involuntary admission order entered on _____,to continue such order, of which the respondent is the subject, for a period not to exceed 180 days.

[ ] This motion for mandatory outpatient treatment is filed pursuant to Virginia Code § 37.2-805 or § 37.2-817(C) as the respondent has been the subject of a temporary detention order and voluntarily admitted himself in accordance with § 31.2-814(B) or was involuntarily admitted pursuant to § 37.2-817(C), and on at least two previous occasions within 36 months preceding the date of the hearing, has been the subject of a temporary detention order and voluntarily admitted himself in accordance with § 37.2-814(B) or

has been involuntarily admitted pursuant to § 31.2-817.

[ ] § 19.2-169.6 and as the person having custody over the respondent, who is an inmate, state that the inmate has a mental illness; there exists a substantial likelihood that, as a result of a mental illness, the inmate will, in the near future,

[ ] cause serious physical harm to [ ] self [ ] others as evidenced by recent behavior causing, attempting, or threatening harm and any other relevant information, or

[ ] suffers serious harm due to his lack of capacity to protect himself from harm as evidenced by recent behavior and any other relevant information;

and the inmate requires treatment in a hospital rather than a local correctional facility.

[ ] § 19.2-182.9 and state that the respondent, who is an acquitee on conditional release

[ ] has violated the conditions of the respondent's release, or

[ ] is no longer a proper subject for conditional release,

and the respondent requires inpatient hospitalization.

EXHIBIT
C

Temporary Detention Order No. 041GM1200025802
Case No. _____

[ ] § 16.1-340 or § 16.1-340.1 (Juvenile Cases Only) and state that because of mental illness, the respondent, who is a juvenile

[ ] presents a serious danger to [ ] self [ ] others to the extent that severe or irremediable injury is likely to result, as evidenced by recent acts to threats, or

[ ] is experiencing a serious deterioration of the ability to care for self in a developmentally age appropriate manner, as evidenced by delusionary thinking or by a significant impairment of functioning in hydration, nutrition, self-protection, or self-control,

and the juvenile is in need of compulsory treatment for a mental illness and is reasonably likely to benefit from the proposed treatment.

[ ] The juvenile is currently, detained in a detention home or shelter care facility by order of the _____ Juvenile and Domestic Relations District Court. To the extent known, the following charges against the juvenile are the basis of the detention in the detention home or shelter care facility:

_____
CHARGE

_____
CHARGE

[ ] See attached sheet for additional charges.

To the extent known, the names and addresses of the juvenile's parents are as follows:

_____

NAME OF MOTHER AND ADDRESS

_____

NAME OF FATHER AND ADDRESS

I request that the respondent be examined and accorded such assistance as provided by law. In support of this petition, I further state as follows:

See prescreening

8/20/12	/s/
DATE	PETITIONER

The petitioner appeared this date before the undersigned and, upon being duly sworn, made oath that the facts stated in this petition are true based on the petitioner's knowledge.

8/20/12	/s/
DATE	[ ] JUDGE [ ] MAGISTRATE [X] SPECIAL JUSTICE [ ] CLERK

FOR NOTARY PUBLIC'S USE ONLY:
State of _____
[ ] City [ ] County of _____
Acknowledged, subscribed and sworn to before me this _____ day of _____, 20 _____
By_____

_____	_____
DATE	NOTARY PUBLIC
	Notary Registration No. _____
	(My commission expires_____)

ORDER FOR TREATMENT
Commonwealth of Virginia VA CODE §§ 37.2-814, -815, -816, -817

Case No. 041GM120025802

HOPEWELL, VA [X] General District Court
[ ] Circuit Court

In re: Brandon James Raub [redacted]
NAME OF RESPONDENT SOCIAL SECURITY NUMBER

2912 Bensley N. Chesterfield VA 23237
ADDRESS CITY STATE ZIP CODE

John Randolph Medical Center 411 W. Radolph Road, Hopewell, VA
PRESENT LOCATION OF RESPONDENT

Petitioner: Lloyd C. Chasser, LCSW LaTarsha Mason, MSW
NAME OF PETITIONER

411 West Radolph Road, Hopewell, VA 23860
ADDRESS CITY STATES ZIP CODE

Present:

[X] Respondent [ ] Respondent did not attend because _____
[X] Attorney for Respondent /s/ [ ] Petitioner

[ ] Independnet Examiner_____ [ ] in person [ ] W.A.S. by audio/video or telephone
[ ] Attending or treating physician _____
[ ] in person [ ] by audio/video or telephone
[ ] Attending or treating physician _____
[ ] in person [ ] by audio/video or telephone
[ ] Community Services Board (CSB) representative
Terry Carter (804) 862-8000, (804) 722-4299

NAME OF CSB REPRESENTATIVE
D 19, Terri Carter (804) 862-8080
NAME OF CSB AND TELEPHONE NUMBER
[ ] in person [X] by audio/video or telephone
[ ] Interpreter _____
[ ] in person [ ] by audio/video or telephone
[ ] Other Lina Ragep, The Rutherford Institute Cathleen Thomas – Mother Michael Powell, The Rutherford Institute Brentley Raub – Brother
NAME ADDRESS RELATIONSHIP

A petition for the involuntary admission for inpatient treatment or mandatory outpatient treatment of the respondent having been filed pursuant to Virginia Code §§ 37.2-805 through 37.2-819,

[ ] prior to the hearing authorized by §§ 37.2-814 through 37.2-819, the director of the facility in which the respondent was detained released by the person pursuant to § 37.2-813 and, without hearing, the petition is hereby dismissed.

[X] the respondent appeared before this court for a hearing At the commencement of the hearing, it was ascertained that the respondent was given

the written explanation of the involuntary admission process. The respondent was informed of the respondent's right to apply for voluntary admission or inpatient treatment as provided for in § 37.2-805 and of the prohibition from purchasing, possessing or transporting a firearm pursuant to § 18.2-308.1:3 upon voluntary admission of the respondent's right to a full and impartial hearing in the event that the respondent is incapable of or unwilling to apply for voluntary admission of the respondent's right to counsel, the basis of detention, the standard upon which the respondent may be detained and treated on an involuntary basis, the respondent's right to appeal the decision to the circuit court, and the respondent's right a jury on appeal.

EXHIBIT
D

Case No. 041GM1200025802

[ ] The Court finds that the respondent has been under a temporary detention order and is willing and capable of seeking voluntary admission for inpatient treatment. The respondent has agreed to this hospitalization and treatment for 72 hours, unless released earlier. The respondent has further agreed to give the facility 48 hours notice of the respondent's desire to leave the facility, and to remain at the facility during these 48 hours unless discharged. The respondent has been advised that by agreeing to this voluntary admission, the respondent cannot purchase, possess or transport firearms until a court issues

an order restoring the respondent's right to purchase, possess or transport a firearm. The respondent has been informed that after release, the respondent may petition to the general district court where the respondent resides to restore such rights, and that the court can restore theses rights only if the court finds that the respondent will not likely act dangerously and that restoring these rights would not be against the public interest.

Based upon the respondent's agreement to the requirements of § 37.2-814(B), the petition is hereby dismissed. The clerk shall certify the respondent's voluntary admission to the Central Criminal Records Exchange pursuant to § 37.2-819.

The court has reviewed the petition, observed the respondent and considered the recommendations of any treating physician or psychologist licensed in Virginia, if available, any past actions of the person, any past mental health treatment of the person, an examiner's certification, any health records available, the preadmission screening report, and any other relevant evidence that was admitted, including whether the person recently has been found unreasonably incompetent to stand trial after a hearing held pursuant to § 19.2-169.1(E).

Having considered all the relevant and material evidence,

[ ] The court finds that the respondent does not meet the criteria for involuntary admission or treatment. The court, therefore, orders that the case is dismissed and that the facility release the respondent from involuntary custody.

[ ] The Court finds by clear and convincing evidence that the person meets the criteria for mandatory outpatient treatment specified in Virginia Code § 37.2-817(D) in that:

[ ] the person has mental illness and there exists a substantial likelihood that, as a result of mental illness, such person will, in the near future,

[ ] cause serious physical harm to [ ] himself [ ] others as evidenced by recent behavior causing, attempting, or threatening harm and other relevant information, or

[ ] suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic human needs; and

[ ] less restrictive alternatives to involuntary inpatient treatment that would offer an opportunity for improvement of the person's condition have been investigated and are determined to be appropriate; and

[ ] the person has agreed to abide by his treatment plan and has the ability to do so;

[ ] the ordered treatment will be delivered on an outpatient basis by the community services board or designated provider to the person as the services are available in the community.

[ ] The person has been the subject of a temporary detention order and voluntarily admitted himself in accordance with § 37.2-814(B) or was involuntarily admitted pursuant to § 37.2-817(C), and on at least two previous occasions within 36 months preceding the date of the hearing, has been the subject of a temporary detention order and voluntarily admitted himself in accordance with § 37.2-814(B) or has been involuntarily admitted pursuant to § 37.2-817.

Accordingly the court so certifies and orders that the respondent be involuntarily admitted to mandatory outpatient treatment for _____ days, a period not to exceed 90 days, and further orders that the respondent shall comply with the initial mandatory outpatient treatment plan, with the comprehensive mandatory outpatient treatment plan and with any modifications thereof that are filed with the court in this proceeding, which plans are incorporated by reference in this order.

The _____ community services board shall monitor the implementation of the mandatory outpatient treatment plan and report any material noncompliance to the court.

Case No. 041GM1200025802

[X] The Court finds by clear and convincing evidence that the person meets the criteria for involuntary admission and treatment specified in Virginia Code § 37.2-817(C) in that:

[X] the person has a mental illness and there exists a substantial likelihood that, as a result of mental illness, such person will, in the near future,

[X] cause serious physical harm to [ ] himself [X] others as evidenced by recent behavior causing, attempting, or threatening harm and other relevant information, or

[ ] suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic human needs; and

[X] less restrictive alternatives to involuntary inpatient treatment that would offer an opportunity for improvement of the person's condition have been investigated and are determined to be appropriate; and

Accordingly, the court so certifies orders the involuntary admission of the respondent to VA Hospital Salem, VA, a facility designated by the community services board, for a period not to exceed 30 days from this order, or if the petition is for recommitment, for a period not to exceed 180 days from this order.

[ ] AUTHORIZATION TO DISCHARGE (Va. Code § 37.2-817(C))

The court further finds by clear and convincing evidence that:

[ ] the person has a history of lack of compliance with treatment for mental illness that has at least twice within the past 36 months resulted in the person being subject to an order for involuntary admission pursuant to Virginia Code § 37.2-817(C);

[ ] in view of the person's treatment history and current behavior, the person is in need of mandatory outpatient treatment following inpatient treatment in order to prevent a relapse or deterioration that would likely to result in the person meeting the criteria for involuntary inpatient treatment;

[ ] as a result of mental illness, the person is unlikely to voluntarily participate in outpatient treatment unless the Court enters an order authorizing discharge to mandatory outpatient treatment following inpatient treatment; and

[ ] the person is likely to benefit from mandatory outpatient treatment.

Based on recommendations of the community services board, the duration of mandatory outpatient treatment pursuant to this order shall be _____ days from the date of discharge.

Accordingly, the court authorizes the person's treating physician to discharge the person from involuntary admission under this order to mandatory outpatient treatment under a discharge plan developed, submitted for approval by the court, and monitored by the community services board in accordance with the provisions of Virginia Code § 37.2-817(C2). Upon discharge from inpatient treatment to mandatory outpatient treatment by the treating physician, the respondent shall com plan that is filed with the court in this proceeding, which plan is incorporated by reference in this order.

It is further ordered, pursuant to § 37.2-818(C), that copies of the relevant records of the subject of this order be released to the treatment facility in which the person has been placed under this order, if any; to the community services board of the jurisdiction where he resides, to the treatment providers identified in any mandatory outpatient treatment plan attached to or incorporated in this order and to any other treatment providers or entities involved in the development or implementation of the mandatory outpatient treatment plan.

[ ] The court further orders pursuant to § 37.2-829 that transportation of the person to the facility shall be provided by

[ ] the Sherriff of _____
CITY OR COUNTY

[ ] the alternative transportation provider as designated on the attached form DC-4000, ORDER FOR ALTERNATIVE TRANSPORTATION PROVIDER.

8/20/ 2012 /s/

DATE [ ] JUDGE [ ] SPECIAL JUSTICE

NOTICE TO THE RESPONDNET:
Pursuant to Virginia Code § 18.2-308.1:3, if you are ordered to be involuntarily admitted to a facility for inpatient treatment or order to mandatory outpatient treatment as a result of a commitment hearing held pursuant to Virginia Code § 37.2-817, or if you we subject of a temporary detention order issued pursuant to Virginia Code § 37.2-809 and you subsequently agreed to voluntary admission pursuant to Virginia Code 37.2-805. It is unlawful for you to purchase, possess or transport a firearm.

AUTHORIZATION FOR DISCLOSURE AND USE OF HEALTH INFORMATION

Under Virginia Code §§ 37.2-804.2 and 37.2-817(K), any health care provider, as defined in Virginia Code § 32.1-127.1:03, or other provider who has provided or is currently providing services to a person who is the subject of proceedings pursuant to Title 37.2, Chapter 8 of the Code of Virginia must, upon request, disclose to a magistrate, the court, the person's attorney, the person's guardian ad litem, the examiner identified to perform an examination of a person who is the subject of a commitment hearing for involuntary admission, the community services

board or its designee performing any related evaluation, preadmission screening, or monitoring duties, or a law-enforcement officer any information that is necessary and appropriate for the performance of his duties pursuant § 37.2-800 et seq. Any health care provider, as defined in § 32.1-127.1:03, or other provider who has provided or is currently evaluating or providing services to a person who is the subject of emergency custody or involuntary temporary detention proceedings must disclose information that may be necessary for the treatment of such person to any other health care provider or other provider evaluating or providing services to or monitoring the treatment of the person. Health records disclosed to a law-enforcement officer must be limited to information necessary to protect the officer, the person, or the public from physical injury or to address the health care needs of the person. Information disclosed to a law-enforcement officer must not be used for any other purpose, disclosed to others, or retained.

Any health care provider disclosing records pursuant to Virginia Code § 37.2-804.2 will be immune from civil liability for any harm resulting from the disclosure, including any liability under the federal Health Insurance Portability and Accountability Act (42 U.S.C. § 1320d et seq.), as amended, unless the person or provider disclosing such records intended the harm or acted in bad faith.

V I R G I N I A:

IN THE CIRCUIT COURT OF THE CITY OF HOPEWELL

COMMONWEALTH OF VIRGINIA

v. CL 120000380-00

BRANDON J. RAUB

ORDER

THIS DAY CAME the defendant, by Counsel, on a motion to dismiss the petition for involuntary commitment and was argued by counsel.

UPON CONSIDERATION WHEREOF, the Court finding said motion proper, doth ORDER the petition dismissed on the grounds that the petition is so devoid of any factual allegations that it could not be reasonably expected to give rise to a case ~~of~~ or controversy.

IT IS FURTHER ORDERED, that Brandon J. Raub be released immediately from the VA Hospital in Salem, VA, or any other facility where he may be held.

ENTERED: 8/23/12

/s/
JUDGE

I ASK FOR THIS:

/s/

Anthony F. Troy (VSB #05985)
Brian D. Fowler (VSB #44070)
TROUTMAN SANDERS LLP
P.O. Box 1122
1001 Haxall Point
Richmond, VA 23219-1122

SEEN:

/s/

Richard K. Newman
Commonwealth's Attorney
100 East Broadway, Room 252
Hopewell, VA 23860

EXHIBIT
E

[Filed February 3, 2014] [EXCERPTS]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

BRANDON RAUB,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**Case No.**
	)	**3:13CV328-HEH**
MICHAEL CAMPBELL,	)	
	)	
Defendant.	)	
	)	

PLAINTIFF'S SUPPLEMENTAL MEMORANDUM IN OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT BASED ON QUALIFIED IMMUNITY

This Supplemental Memorandum in Opposition to Defendants' Motion for Summary Judgment Based on Qualified Immunity is filed by the Plaintiff, Brandon Raub ("Raub"), by counsel, pursuant to the Order of the Court, dated January 24, 2014 (Docket No. 109).

*****

- Moreover, the "Progress Notes" written and signed by Campbell (but not provided to the magistrate) affirmatively state that "Raub's

> mother, with whom he resides, 'has not seen any changes or psychotic behavior in [Raub].'" Campbell Tr., Exhibit E.[4] This was critical information in assessing Raub's mental condition, yet Campbell withheld it from the magistrate. Martin Rep. at 12.

*****

In sum, the evidence supports the conclusion that Campbell deliberately included false material information in, and/or omitted material information from, his petition to the magistrate.

*****

Respectfully submitted,

/s/ Anthony F. Troy (by permission)
Anthony F. Troy (VSB # 05985)

/s/ William H. Hurd
William H. Hurd (VSB # 16967)

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[4] During his deposition, Campbell also admitted that Raub's mother told him that she had not seen any changes in his behavior. Campbell Dep. Tr. 44.

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Chesterfield County Police
Incident Full Report
Incident Number 201208160230
Case Status: Inactive

Incident Information
Completed Miscellaneous-Mental Subject

Commercial
2912 Bensley Road
Beat/RA/Magisterial: 308/070/Bermuda
Subdivision: None
Cross Street Wentworth St

Time of occurrence:	08/16/2012	17:30:00	Thursday
	08/17/2012	02:00:00	Friday
Receive:	08/16/2012	18:04:30	
Dispatch:	08/16/2012	18:04:46	
Arrive:	08/16/2012	18:04:57	
Reported:	08/16/2012	22:59:28	

Investigations Review Completed - Last Reviewed on 08/29/2012 10:24:18
Uniform Operations Review Completed - Last Reviewed on 08/29/2012 09:26:55
Crime Analysts Review Not Complete

Incident People
1. VICTIM /LEAD /OFFENDER
Brandon James Raub
home address: 2912 Bensley Road Richmond, VA 23237
Adult White Male

Age at Time of Incident 26 ; DOB: 04/16/1986
Demographic Descriptions
1. employed by self employed ; Virginia driver's license # T65-49-3704

2. VICTIM
Russell M Granderson
business address: P.O. Box 148 Chesterfield, VA 23832
business phone:804-748-1251
Adult Black Male
SS# 000000000
Demographic Descriptions
1. line of work: police officer ; employed by Chesterfield County ; Virginia driver's license

3. VICTIM
Chesterfield county
Business address: P.O. Box 148 Chesterfield, VA 23832
Government

4. MISCELLANEOUS
Cathleen L Thomas
home address: 2912 Bensley Road Richmond, VA 23237
Adult White Female
Age anime of Incident: 49 ; DOB: 07/19/1963 ; SS# 388720295
Demographic Descriptions
1. Virginia driver's lioense

Offenses
1. Completed Miscellaneous-Mental Subject
Type of Premises: Residence/Home

Remarks: In the yard
VICTIM: Brandon James Raub

***

***

evaluated would be made. After speaking with Crisis it was determined that Brandon Raub should be brought in for an evaluation. NFD

11. Supplement on 08/22/2012 at 14:17

Corporal Detective Michael Paris, unit 685.

On 8/1512012 I received an email from SA Terry Granger, FBI JTTF Richmond Field Office. In her email agent Granger asked me and Richmond detective George Wade to check our agency data bases for any police contact with Brandon James Raub. I checked police contact of Brandon Raub In RMS and requested a Linx check by Crime Analyst Bonnie Nalepa on 8/16/2012. Search results in RMS showed that Raub received a uniform summons for an expired state inspection in 2010. The Linx check showed a report 200704190143 regarding a threatening letter. This complaint listed Brently Michael Raub as miscellaneous/other in the incident people field with an address of 2912 Bensley Road. I communicated this to SA Granger who in turn informed me that she had opened an assessment on Brandon Raub. Concern over Facebook statements posted to a public Facebook page and on the Facebook page of Brandon Raub was brought to the attention of the FBI.

On 8/16/2012 I was informed by SSA John Wyman that contact would be made with Brandon Raub to determine whether he is capable of acts of violence to the public or government and to determine if there is a need for Crisis Intervention to conduct an evaluation. The Initial plan was to make contact with Brandon Raub Friday, 8/17/2012. After further information was received from complainants the time line to make contact with Brandon Raub was moved to 8/16/2012, Thursday afternoon.

Below are Facebook postings that drew concern and a need to make contact with Brandon Raub.

15 August 2012: "This is revenge. Know that before you die."

14 August 2012: "Richmond is not yours. I'm about to shake some shit up."

14 August 2012: "This is the start of you dying, Planned spittin with heart of Lion."

14 August 2012: "Leader of the New School. Bringing Back the Old School. MY LIFE WILL BE A DOCUMENTARY."

13 August 2012: "I'm gunning whoever run the town."

10 August 2012: "W, you're under arrest bitch."

7 August 2012: "The World will Find This."

29 July 2012: "I know ya'll are reading this, and I truly wonder if you know what's about to happen."

29 July 2012: "W, you'll be one of the first people dragged out of your house and arrested,"

29 July 2012: "And Daddy Bush, too"

Much of the same rhetoric is also on his personal Facebook page:

14 August 2012: "The Revolution will come for me. Men will be at my door soon to pick me up to lead it ;)"

13 August 2012: "You should understand that many of the things I have said here are for the world to see."

I telephoned our ECC to determine calls for service at 2912 Bensley Road and to see if the address was flagged. No calls for service were on record in the last several months. I called our Commonwealth Attorneys office by request of SSA John Wyman to determine if any state criminal laws were violated. I spoke to Dennis Collins who advised that based on the Information Raub did not violate a criminal law. If there was a direct threat to a specific person or persons a criminal violation may have occurred. A similar call was made to the US Attorney's office. The response back from the US Attorney's office was that no federal law was violated but perhaps the US Secret Service should be contacted based on some of the posts directed at the former Bush presidents. Contact was made with the Richmond Secret Service Field Office and SA Alan Busick would assist in the matter.

I called Captain Badgerow Unit 14 to inform him of this matter. I told Captain Badgerow that the FBI wanted to make contact with Raub to see what mental state he is In and if he needed evaluated by Crisis Intervention. The complainants who provided Information to the FBI were concerned that what was posted on Facebook was more than just Raub

stating rhetoric. The complainants know Raub and strongly felt that he may pose an extreme threat to governmentand/or the public. Captain 8adgerowadvlsed me to contact the Watch Commander, Eric Hartman and advise him of the situation: A request by the FBI to have one or two uniformed CPO officers to be present during the initial contact of Raub was also discussed. •

I called Lieutenant Eric Hartman to advise him ofthls matter at approximately 1530 hours. Lt. Hartman informed me that he did not have any units available at this time because they were out on calls. I advised Lt. Hartman that the time for making contact with Raub was projected to be at 17:30 hours. Lt. Hartman said he may have a few units freed up by that time. Lt. Hartman asked that I call him when we expect to make contact with Raub.

At 1515 hours I left the Richmond FBI Field Office and drove to the area of 2912 Bensley Road to determine if anyone was at the residence. After driving by the house I observed two vehicles in the driveway. It appeared that someone was in fact at the residence because the front screen/storm d00r was the only door closed at the front entrance.

It was determined that we would stage behind Bensley Elementary at 18:10 hours because secret Service agent Alan Busick would be arriving later than 1730 hours. I called Lt Hartman to advise the staging time and location. Lt. Hartman said he would get one uniformed unit at the staging area at 1810 hours.

At 1800 I arrived at the staging area. Shortly after Sergeant Mathew McCartney and Officer Daniel Bowen arrived. SA Terry Granger, SA William Vigorito, SA Nick Elder and SA Bruce Perry from the Richmond FBI Field Office were present. Secret Service Agent Alan Blislck was also present at approximately 1805 hours. SA Granger and I would be the two persons making contact with Brandon Raub. All other present would be near the residence on the perimeter.

At approximately 1815 hours SA Granger and I went to the residence of Brandon Raub, 2912 Bensley Road. Brandon Raub came to the front door wearing only white shorts. Raub was asked if he was Brandon Raub. He replied who wants to know. At that time both SA Granger and I showed Raub our badges and ID's. Again we asked Raub If he was Brandon Raub. He replied that he is Brandon Raub and wanted to know why the FBI was standing at his front door. SA Granger told Raub that we were there to talk to him about some of the posts he made on Facebook. Raub replied that he was the person who made the postings. SA Granger advised Raub that some of his friends were concerned about his welfare and we were here to ask him questions about his welfare and the Facebook posts. Raub appeared to be extremely intense and emotional upon responding to our questions regarding his Facebook posts. Raub never answered whether he intends to commit violent acts. He would ask us questions such as do you know that the federal government launched a missile into the pentagon and that there was no airplane that flew into the structure on 911. Raub asked us why we were not arresting members

of the federal government for their crimes against American citizens right now. He said that the federal government flies planes over our houses to expose us to Thorium. Raub said that the US Marines should arrest all government officials who are not for the people. When asked about his Facebook posts, Raub went on to say that we will all see very soon what all of this means. Raub would at times become calm and then he would change his emotional state and become very intense with his mannerisms and verbal communication. SA Granger advised Raub that he was free to post his opinions as long as he did not intend to harm others. Raub never made a statement regarding his intensions of violence or non violence. When Raub was asked about his intensions to commit Violence he would make an anti government statement and not answer the question. Raub would also ask us questions when he was asked about his intensions to commit violence. Raub gave us every indication that he was serious about what he posted and that it was not just rhetoric. Raubs demeanor, tone of voice, non verbal behavior, facial expressions, and response to our questions all were factors in contacting Crisis Intervention to request an evaluation of Brandon Raub.

Prior to the conclusion of the interview, about 20-25 minutes of contact with Raub I began to have physical medical problems. After approximately 3-5 minutes of struggling to stand on my feet, experiencing dizziness, weakness, and hot flashes I eventually collapsed to the ground. According to SA Granger I was unconscious for 1-2 minutes. When I woke up I was lying face down on the ground near Raub's front porch. According to SA Granger Raub

did not move from the front door. He stood Inside the entry way of the house at the front door. The perimeter units moved to the front of the residence on the street.

I was able to walk back to SA Grangers vehicle parked on the street while sitting in the vehicle I observed Raub walk to the end of his driveway and engage in conversation mainly with Secret Service Agent Alan Blisick. SA Blisick was standing on the street in front of Raub's residence. Another Chesterfield County Police unit was present, that being Sergeant Russel Granderson. SA .Granger and I decided to contact Crisis Intervention to request evaluation on Brandon Raub. I called ECC and asked that they request Crisis Intervention call me. Less than three minutes later I received a call from Michael Campbell of Crisis Intervention. After informing Campbell of our contact with Brandon Raub, Campbell advised me to bring Raub in for evaluation. I asked Campbell to repeat his decision to evaluated Raub to one of the uniformed officers on the scene. I handed my phone to Sergeant Russell Granderson and ask that he hear directly from Campbell on the decision to evaluate Raub.

Officer Bowen and Sgt Granderson approached Raub. Raub resisted by attempting to struggle from being handcuffed. Once in handcuffs an attempt to get Raub was made to get him a shirt and footwear was made. While at the front door area of his residence Brently Raub and a w/f arrives at the residence in a red SUV. At that time Raub was escorted to a marked patrol vehicle parked in the driveway. As Raub was being escorting to the patrol

vehicle he began to resist and he became aggressive toward Officer Bowen and Sgt. Granderson. Raub lunged to the side and was forced to the ground near a chain link fence. He was then brought to his feet and was eventually placed In the rear seat of the patrol vehicle. He was then transported for evaluation.

12. Supplement on 08/26/2012 at 13:19

Ofc Kracke, Unit 264

While working the Central Desk, I was informed there were two gentleman out on Rt 10 and Lori Road, holding up protest signs. One of the subjects was wearing a yellow polo shirt with blue jeans and carrying a handgun on his side. The other subject was a white male, wearing a white shirt wl.th dark stripes and khaki short He also was carrying a handgun on his side. It is unknown what type of handguns these are but it appears they are. some type of pistols.

The subjects were holding two signs. One of the signs stated "Freedom of speech is not a mental illness or crime". The second sign, "Protect rights and don't infringe on them". . .

Unit 488JWhitlock and Unit 345/Floyd, along wIth.Unit 95/Sgt Mccartney were up at this location. The two subjects walked to the back of the Police Department in front of the Administration Building. Unit 345 observed the white male in the white shirt get into a red Mustang, Virginia license 1317TP. I ran the license and it came back to a Richardson,

Christopher Michael at 1825 E Marshall Street, Apt 203 Richmond, Virginia 23223. The descriptors were a 6'1", 190 pounds, brown and gray, dab is 1/31/1978. I ran a criminal history, but nothing carne back on that subject.

The two subjects then walked back to the front of the Police Building and started protesting once again. A white female with long brown hair came up and stood beside the subjects for a few minutes and then she left.

Unit 74/8gt Mccasnn was advised of the situation as well as Unit 25/Lt Hartman. NFD

6. Supervisor Summary on 08/1712012 at 05:03

Lt. E. F. Carpenter Unit 30
Re: Assisting Secret Service and FBI

On 8/1612012 Lt. Carpenter was informed by day work supervision that the Secret Service and the FBI request our assistance in reference to subject by the name of Brando RAUB posting disturbing statements on the internet. Officer Bowen Unit 310 and Sgt. Granderson Unit 99 responded to the residence to assist. While at the residence I was informed by Sgt. Granderson that Mr. Raub resisted arrest and assaulted him will attempting to place RAUB in custody for evaluation.

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Corporal Detective Michael Paris, unit 885.

On 8/15/2012 I received an email from SA Terry Granger, FBI JTTF Richmond Field Office. In her email agent Granger asked me and Richmond detective George Wade to check our agency data bases for any police contact with Brandon James Raub. I checked police contact of Brandon Raub in RMS and requested a Linx check by Crime Analyst Bonnie Nalepa on 8/16/2012. Search results in RMS showed that Raub received a uniform summons for an expired state inspection in 2010. The Linx check showed a report 200704190143 regarding a threatening letter. This complaint listed Brently Michael Raub as miscellaneous/other in the incident people field with an address of 2912 Bensley Road. I communicated this to SA Granger who in turn informed me that she had opened an assessment on Brandon Raub. Concern over Facebook statements posted to a public Facebook page and on the Facebook page of Brandon Raub was brought to the attention of the FBI.

On 8/16/2012 I was informed by SSA John Wyman that contact would be made with Brandon Raub to determine whether he is capable of acts of violence to the public or government and to determine if there is a need for Crisis Intervention to conduct an evaluation. The initial plan was to make contact with Brandon Raub Friday, 8/17/2012. After further information was received from complainants the time line to make contact with Brandon Raub was moved to 8/16/2012,

I telephoned our ECC to determine calls for service at 2912 Bensley Road and to see if the address was flagged. No calls for service were on record in the last several months. I called our Commonwealth Attorneys office by request of SSA John Wyman to determine if any state criminal laws were violated. I spoke to Dennis Collins who advised that based on the information Raub did not violate a criminal law. If there was a direct threat to a specific person or persons a criminal violation may have occurred. A similar call was made to the US Attorney's office by SSA John Wyman and agent Granger. The response back from the US Attorney's office was that no federal law was violated but perhaps the US Secret Service should be contacted based on some of the posts directed at the former Bush presidents. Contact was made with the Richmond Secret Service Field Office and SA Alan Blisick would assist in the matter.

I called Captain Badgerow Unit 14 to inform him of this matter. I told Captain Badgerow that the FBI wanted to make contact with Raub to see what mental state he is in and if he needed to be evaluated by Crisis Intervention. The complainants who provided information to the FBI were concerned that what was posted on Facebook was more than just Raub stating rhetoric. The complainants know Raub and strongly felt that he may pose an extreme threat to government and/or the public. Captain Badgerow advised me to contact the Watch Commander, Eric Hartman and advise him of the situation. A request by the FBI to have one or two uniformed CPD officers to be present during the initial contact of Raub was also discussed.

I called Lieutenant Eric Hartman to advise him of this matter at approximately 1530 hours. Lt. Hartman informed me that he did not have any units available at this time because they were out on calls. I advised Lt. Hartman that the time for making contact with Raub was projected to be at 17:30 hours. Lt. Hartman said he may have a few units freed up by that time. Lt. Hartman asked that I call him when we expect to make contact with Raub.

At 1515 hours I left the Richmond FBI Field Office and drove to the area of 2912 Bensley Road to determine if anyone was at the residence. After driving by the house I observed two vehicles in the driveway. It appeared that someone was in fact at the residence because the front screen/storm door was the only door closed at the front entrance.

It was determined that we would stage behind Bensley Elementary at 18:10 hours because Secret Service agent Alan Blisick would be arriving later than 1730 hours. I called Lt Hartman to advise the staging time and location. Lt. Hartman said he would get one uniformed unit at the staging area at 1810 hours.

At 1800 I arrived at the staging area. Shortly after Sergeant Mathew McCartney and Officer Daniel Bowen arrived. SA Terry Granger, SA William Vigorito, SA Nick Elder and SA Bruce Petty from the Richmond FBI Field Office were present. Secret Service Agent Alan Blisick was also present at approximately 1805/1815 hours. SA Granger and I would be the two persons making contact with

Brandon Raub. All others present would be near the residence on the perimeter. My conversations with the Chesterfield units were brief in nature. I did not discuss any particular matter with the uniformed officer from Chesterfield. I did mention to Sergeant McCartney that we would be calling Crisis Intervention if it was determined that Raub needed to be evaluated. Agent Granger did a briefing prior to going to his residence with all present at the staging area.

At approximately 1815/1830 hours SA Granger and I went to the residence of Brandon Raub, 2912 Bensley Road. Brandon Raub Game to the front door wearing only white shorts. Raub was asked if he was Brandon Raub. He replied who wants to know. At that time both SA Granger and I showed Raub our badges and ID's. Again we asked Raub if he was Brandon Raub. He replied that he is Brandon Raub and wanted to know why the FBI was standing at his front door. SA Granger told Raub that we were there to talk to him about some of the posts he made on Facebook. Raub replied that he was the person who made the postings. SA Granger advised Raub that some of his friends were concerned about his welfare and we were here to ask him questions about his welfare and the Facebook posts. Raub appeared to be extremely intense and emotional upon responding to our questions regarding his Facebook posts. Raub never answered whether he intends to commit violent acts. He would ask us questions such as do you know that the federal government launched a missile into the pentagon and that there was no airplane that flew into the structure on 911. Raub asked us why we were not arresting members

of the federal government for their crimes against American citizens right now. He said that the federal government flies planes over our houses to expose us to Thorium. Raub said that the US Marines should arrest all government officials who are not for the people. When asked about his Facebook posts, Raub went on to say that we will all see very soon what all of this means. Raub would at times become calm and then he would change his emotional state and become very intense with his mannerisms and verbal communication. SA Granger advised Raub that he was free to post his opinions as long as he did not intend to harm others. Raub never made a statement regarding his intensions of violence or non violence. When Raub Was asked about his intensions to commit violence he would make an anti government statement and not answer the question. Raub would also ask us questions when he was asked about his intensions to commit violence. Raub gave us every indication that he was serious about what he posted and that it was not just rhetoric. Raubs demeanor, tone of voice, non verbal behavior, facial expressions, and response to our questions all were factors in contacting Crisis Intervention to request an evaluation of Brandon Raub.

Prior to the conclusion of the interview, about 20-25 minutes of contact with Raub I began to have physical medical problems. After approximately 3-5 minutes of struggling to stand on my feet, experiencing dizziness, weakness, and hot flashes I eventually collapsed to the ground. According to SA Granger I was unconscious for 1-2 minutes. When I woke up I was lying face down on the ground near Raub's front porch. According to SA Granger Raub

did not move from the front door. He stood inside the entry way of the house at the front door. The perimeter units moved to the front of the residence on the street.

I was able to walk back to SA Grangers vehicle parked on the street. While sitting in the vehicle I observed Raub walk to the end of his driveway and engage in conversation mainly with Secret Service Agent Alan Blisick. SA Blisick was standing on the street in front of Raub's residence. Another Chesterfield County Police unit was present, that being Sergeant Russell Granderson. SA Granger and I decided to contact Crisis Intervention to request evaluation on Brandon Raub. I called ECC and asked that they request Crisis Intervention call me. Less than three minutes later I received a call from Michael Campbell of Crisis Intervention. After informing Campbell of our contact with Brandon Raub, Campbell advised me to bring Raub in for evaluation. I asked Campbell to repeat his decision to evaluate Raub to one of the uniformed officers on the scene. I handed my phone to Sergeant Russell Granderson and ask that he hear directly from Campbell on the decision to evaluate Raub. As I handed the phone to Sergeant Granderson,

Officer Bowen and Sgt. Granderson approached Raub. Both Granderson and Bowen did not move in quickly when approaching Raub. They positioned themselves between Raub and his residence. All of this took over two minutes, possibly longer before conversation between one of the officers and Raub took place. Raub was engaged in conversation with SA Blisick and SA Bruce Perry as Sergeant

Granderson and Officer Bowen approached Raub. I don't recall who spoke to Raub, Granderson or Bowen. I was standing next to the front passenger door of agent Granger's vehicle which was facing in the direction of Raub, Officer Bowen and Sergeant Granderson. Raub resisted by attempting to struggle from being handcuffed. This was a brief struggle/resistance from Raub. Once in handcuffs an attempt to get Raub a shirt and footwear because he was not wearing any footwear or shirt. While at the front door area of his residence Brently Raub and a w/f arrived at the residence in a red SUV. At that time Raub was escorted to a marked patrol vehicle parked in the driveway. As Raub was being escorting to the patrol vehicle he began to resist and he became aggressive toward Officer Bowen and Sgt. Granderson. Raub lunged to the side and was forced to the ground near a chain link fence. He was then brought to his feet and was eventually placed in the rear seat of the patrol vehicle. He was then transported for evaluation.

Chesterfield Community Services Board
Department of Mental Health Support Services
Progress Note Report

Brandon Raub (#54086)
For Recorded Service Dates of: 04/01/2012 – 09/26/2013

Cost Center	Service Provided	Start Date/Time
Crisis	Crisis Consultation	8/16/12 8:30am

End Date/Time	Provider
8/16/12 10:30 pm	Campbell, Michael, MSW

Delivery Method: Client Present
Place of Service: Local Regional Jail

Narrative:
Client's friends and fellow Marines notified the FBI of increased activity on Facebook which discussed plans for action against the government. Client was detained by the police and an evaluation occured. Client, at first, refused to answer any questions. Client stated "I choose to not answer any questions at this time". This counselor discussed my role and why he was brought in for an assessment and how the process works. Client offered limited information. When Client was asked about the specific messages from facebook and the correspondence between former marine friends, he stated "the revolution is coming". When asked about the threats made, client reponded "if you new of what was coming wouldnt you try to stop it". Client would not elaborate on the posts at this time. This

counselor obtained permission from client to call client's mother. Mother reported that client's rights were violated and she has not seen any changes or psychotic behavior in client. Mother also stated she holds the same beliefs that her son holds and feels violated by the situation. Due to a recent change in client's behaviors and more severe posts about revolution with plans for action, This counselor feels client needs more evaluation and treatment. A TDO is being requested to provide for public safety and potential aftercare.

Electronically Signed By: Campbell, Michael, MSW
Provider ID: FFBD9FFCB9FC4FA88D8 66DFABCB82D8D 8/20/12

Cost Center	Service Provided	Start Date/Time
Crisis	Crisis: Acute Psych Inpatient Service Time	8/21/12 9:30am

End Date/Time	Provider
8/21/12 9:50 am	Moreno, Bonnie, MSW

Delivery Method: Client Present
Place of Service: Non-State Psychiatric Hos

Narrative:
Writer received notification from Sharon Davis with John Randolph that consumer is uninsured and that they are requesting ACP funding. Consumer was committed at his hearing yesterday and is being treated by Dr. Durrani. ACP funding to begin 08/20/12. Writer faxed opening ACP paperwork to RAC and Karen Marsh. Sharon reports that

consumer has been refusing medication and at this point, Dr. Durrani has not ordered any medications. They are still attempting to have consumer transferred to the VA hospital in Salem, VA. Writer will continue to monitor.

Electronically Signed By: Moreno, Bonnie, MSW
Provider ID: 1011D6311A54B858FA97
527B035EA4D 8/21/2012

Cost Center	Service Provided	Start Date/Time
Crisis	Crisis: Acute Psych Inpatient Service Time	8/22/12 12:24 pm

End Date/Time	Provider
8/22/12 12:44 pm	Moreno, Bonnie, MSW

Delivery Method: Client Present
Place of Service: Non-State Psychiatric Hos

Narrative:
Writer received notification from team member Erika, that Sharon Davis with John Randolph reported consumer had been transferred to the VA hospital in Salem, VA yesterday 08/21/12, ACP funding to end. Writer faxed discharge ACP paperwork to RAC.

Electronically Signed By: Moreno, Bonnie, MSW
Provider ID: 1011D6311A54B858F A97 527B035EA4D 8/22/2012

Narrative:
Close case to episode. Client is not requesting follow up services.

Electronically Signed By: Campbell, Michael, MSW
Provider ID: FFBD9FFCB9FC4FA88D8 66DFABCB82D8D 9/20/12

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

BRANDON RAUB,

Plaintiff,

v. Case No. 3:13CV328

DANIEL LEE BOWEN, et. al.,

Defendants.

ANSWERS OF MICHAEL CAMPBELL TO LIMITED INTERROGATORIES APPROVED BY THE COURT

[EXCERPTS]

COMES NOW the Defendant, Michael Campbell, pursuant to the Court's Order of August 2, 2013, and states the following in response to the areas of discovery approved by the Court in paragraph 2 of its Order:

1. Paragraph 2 (a) of the Order:

QUESTION: The nature and source of information supporting Michael Campbell's belief that Brandon Raub posed a danger to himself or others, including the extent to which Campbell learned about the content of emails attached to the Prescreening Report, which has been filed under seal:

ANSWER: I am a senior clinician and certified prescreener for Chesterfield County Emergency Services. I am employed by the Chesterfield County Community Services Board ("CCSB"), more commonly referred to as the Chesterfield County Department of Mental Health Support Services. On Thursday, August 16, 2012, I was at work, in the Rogers Building, which houses the CCSB Emergency Services offices. At approximately 7:15 p.m. that evening, I received a telephone call from an employee of the Chesterfield County Emergency Communication Center ("ECC") requesting that I telephone Chesterfield County Police Detective Michael Paris at a telephone number which was provided to me by the ECC employee. It is common for me to receive such requests, because Chesterfield County police officers seek input from me as to whether they have sufficient cause to detain temporarily an individual so that I can evaluate the individual under Va. Code §§ 37.2-808 and 37.2-809 and determine whether the individual needs to be evaluated by Emergency Services and requires emergency psychiatric services. I receive numerous calls of this type from police officers every month.

Upon receiving the telephone call from the ECC, I immediately telephoned Detective Paris, who promptly answered the telephone. Detective Paris informed me that he was conducting an investigation in conjunction with the FBI and Secret Service, involving a man named Brandon Raub. He was at Mr. Raub's residence and had just finished interviewing Mr. Raub. He informed me that Mr. Raub was an ex-marine who had made substantial, specific threats of violence against other people.

Detective Paris informed me that, in his judgment, the threats were sufficiently serious that he had probable cause to detain Mr. Raub for an evaluation pursuant to Va. Code § 37.2-808(G).

I asked Detective Paris what kind of threats Mr. Raub had made, whether he had indicated any intent to harm himself, what evidence he had that Mr. Raub was mentally ill, whether Mr. Raub was using drugs or alcohol, and whether he thought Mr. Raub was a threat to cause harm to himself or others. Detective Paris informed me that Mr. Raub had made online threats about killing people, that he believed that the United States government had perpetrated the September 11, 2001 terrorist attacks on the World Trade Center and the Pentagon, and that he believed that the government was committing atrocities on American citizens by dropping a radioactive substance called Thorium on them from airplanes. Detective Paris indicated to me that these statements and threats were made over the internet, and he described the language of some of the threats to me. Although I do not remember the exact wording of any of the threats now, they were specific threats of violent action against human beings.

Detective Paris further informed me that the FBI had been alerted to Mr. Raub's potential threat by another former marine who had been a superior officer to Mr. Raub when they were in the U.S. Marines Corp. This other marine had indicated that Mr. Raub's behavior had changed recently by becoming more extreme. According to the other marine, Mr. Raub's behavior had become more odd

and unusual. The other marine was concerned that Mr. Raub was the kind of person who might carry out the threats he was making. Detective Paris expressed to me his concern that, because of his military training, Mr. Raub had the knowledge and experience necessary to carry out his threats. Detective Paris also expressed concern that Mr. Raub might have access to weapons and explosive materials. Detective Paris also informed me that Mr. Raub did not appear to be using alcohol and did not appear to be a threat to cause harm to himself, but he was unsure as to whether or not Mr. Raub was taking any drugs.

I also asked Detective Paris to describe Mr. Raub's behavior during the course of Detective Paris' interview of Mr. Raub. Detective Paris indicated that while Mr. Raub was speaking to him, Mr. Raub appeared preoccupied and distracted. Mr. Raub would make eye contact with Detective Paris for a few seconds, but then his eyes would rove away while he continued to talk before returning to Detective Paris. In my professional experience, this phenomenon can sometimes be evidence of psychosis. It can indicate that the subject is distracted by some internal stimulus. Detective Paris also informed me that Mr. Raub had rapid mood swings during their conversation – another common symptom of mental instability – and that when Detective Paris asked him about the specific threats which he had made, Mr. Raub would not answer his questions. Detective Paris also indicated that Mr. Raub was extremely serious and intense during the entirety of the conversation, and that he

never joked or expressed any kind of light-heartedness.

After describing these symptoms to me, Detective Paris conveyed to me that as a result of his interview with Mr. Raub, he shared the concerns of Mr. Raub's marine acquaintance that Mr. Raub represented a threat, in the immediate future, to harm other individuals. Based upon the information which Detective Paris shared with me, I agreed with Detective Paris. I believed that Detective Paris had confirmed that the information which he had received from Mr. Raub's marine acquaintance was credible, that the change in Mr. Raub's behavior, and his demeanor during his conversation with Detective Paris were possible evidence of mental illness, and that Mr. Raub was likely to have the means, knowledge, expertise, access, and desire to harm other individuals. In my clinical experience, there was sufficient evidence, and there were sufficient safety concerns, to support the detention of Mr. Raub for a mental health evaluation. I did not ask to speak with Mr. Raub over the phone because I already had more than enough evidence based on Detective Paris' fIrst hand observation to warrant an evaluation.

I informed Detective Paris that I concurred in his judgment and thought that Mr. Raub should be temporarily detained and brought *in* so that I could evaluate him in person to determine if he needed to receive additional mental health emergency services. After I informed Detective Paris that I concurred with his evaluation, we concluded our conversation. The conversation lasted approximately 10-15 minutes.

Approximately 30 minutes later, Mr. Raub arrived at the Chesterfield County Jail, where I performed my evaluation of him. He was transported there by Chesterfield County Police Officer Daniel Bowen. Also present was Chesterfield County Police Sergeant Russell Granderson.

I interviewed Mr. Raub for approximately 15 minutes while he was at the Jail. I was unable to interview him for a longer period of time because after the first 15 minutes, Mr. Raub informed me that he "chose not to answer" any more of my questions. During the 15 minute interview, I observed in Mr. Raub the same preoccupation and distractability which Detective Paris had described to me in our telephone conversation. Observing this phenomenon strengthened my opinion that Mr. Raub was responding to some internal stimulus. Mr. Raub also described to me his belief that the 9/11 terror attacks were perpetrated by the United States government, and that the United States government was exposing the American public to Thorium, a radioactive material, by dropping it on people from airplanes. Mr. Raub told me that a revolution was about to begin, and that he was going to lead it. I considered these statements to be evidence of paranoia and delusions of grandeur. I also asked Mr. Raub if he felt justified in following through with the threats which had caused the law enforcement officials to detain him, and he responded by saying "I certainly do, wouldn't you?"

I still needed to review all of the evidence of Mr. Raub's violent tendencies, including information concerning the specific threats which Mr. Raub had

made. I was aware that the law enforcement officials knew the exact wording of the threats that Mr. Raub had made, as communicated to me by Detective Paris when we had spoken by telephone when Detective Paris was at Mr. Raub's home. Although one of the law enforcement officers had provided me with copies of some of Mr. Raub's Facebook posts, these posts were not specific enough or threatening enough, in my opinion, to meet the standards for a temporary detention order, and they also did not provide the input from Mr. Raub's marine acquaintance about the recent changes in Mr. Raub's behavior. Therefore, I asked the law enforcement officers to provide me with the communications which they had received from Mr. Raub's friends. When I did that, a secret service agent, who had arrived at the Jail while I was interviewing Mr. Raub, provided me with a copy of the two page email from Mr. Raub's marine acquaintance that I attached as the last two pages of my 10-page Prescreening Report.

After I read this email, I was convinced that Mr. Raub met the standards under Va. Code §37.2-809 for the issuance of a temporary detention order so that he could receive further evaluation and mental health treatment. I left the Jail and returned to my office where I finished filling out the Prescreening Report which I had begun filling out while I interviewed Mr. Raub. At the same time, I began the process of finding a mental health facility where Mr. Raub could be admitted for further evaluation. It had been my hope that Poplar Springs Hospital, which has an excellent mental health facility for treating military veterans, would be able

to treat Mr. Raub. However, Poplar Springs could not accommodate Mr. Raub, so I arranged for him to be admitted to John Randolph Medical Center. Once I had made arrangements for Mr. Raub to be admitted to John Randolph, I completed the petition for a Temporary Detention Order, which is attached to the Complaint in this case as Exhibit A, and I sent the petition by facsimile to the Chesterfield County Magistrate. As part of my Petition, I submitted a copy of the Prescreening Report including a copy of the email message from Mr. Raub's marine acquaintance, which the Secret Service agent had given to me. A copy of what I submitted to the Magistrate was filed under seal in this matter.

* * * * *

/s/
Michael Campbell

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

BRANDON RAUB,

Plaintiff,

v. Case No. 3:13cv328 HEH

DANIEL LEE BOWEN, et al.,

Defendants.

* *

DEPOSITION OF MICHAEL CAMPBELL

* *

October 1, 2013

Chesterfield, Virginia

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[EXCERPTS]

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BY MR. HURD:

Q Okay. Now, Mr. Campbell, I'm going to ask you to take Exhibit A, if you would, and turn to the bottom of page 5. Second line from the bottom, you'll see where it begins with the sentence, "Therefore," kind of in the middle?

A Yes.

Q Would you read the next two sentences, please, out loud?

A "Therefore, I asked the law enforcement officers to provide me with the communications which they had received from Mr. Raub's friends. When I did that, a secret service agent, who had arrived at the jail while I was interviewing Mr. Raub, provided me with a copy of the two-page email from Mr. Raub's Marine acquaintance that I attached as the last two pages of my ten-page Prescreening Report.

Q Now, is the email that you have identified -- strike that.

Is the email marked as Exhibit D the two-page email that you are referring to in the statement you just read?

A That is the exhibit.

Q So the answer is yes?

10

Campbell - Direct

A Yes.

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19

Campbell - Direct

Q Okay. Now, there was a period of time when you had Brandon Raub in your presence on the day of April -- strike that, of August 16, 2012, correct?

A Correct.

Q And during that time you interviewed him; is that correct?

A That is correct.

Q How long did that interview take?

A I can't give you an exact time. I can give you an approximate time.

Q Give me approximate time, please.

A I would say approximately 15 minutes.

Q Was a videotape made of that interview?

A I believe there is video. I don't know -- I didn't make it. I would assume that there's video at the jail.

Q You interviewed Brandon Raub at the jail; is that correct?

A That's correct.

Q And where in the jail did you interview him?

A It's the area, I believe they call it intake, located next to the magistrate's office.

Q Do you know whether or not an audio recording was made of that interview?

A I can't say for certain. I can assume there's one.

Q Okay. And if a videotape or an audiotape was made, would -- would that have been something -- who would have made that tape?

A I don't know.

Q Then why do you assume one was made?

A I assume everything at the jail is -- is on tape.

***

would, and do you see the right-hand side that begins a sentence with the words "Client's friends"?

A Yes.

Q Would you read that sentence?

A "Client's friends reported client to the FBI for posting extreme conspiracy theories and threats to President Bush."

Q Now, who told you that?

A Detective Paris.

Q Anybody else tell you that?

A Not that I can recall.

Q If you'll count down in the same section, "Assessment," one, two, three, four, five, six, seven, I believe it's eight lines down, there's a sentence that begins with the word "According"?

A Yes.

Q Would you read that sentence, please?

A "According to client's friends, his behaviors have become much more extreme recently, and they state this behavior is, quote, not him."

Q Where did that information come from?

A That either -- one of two sources. I can't recall which one.

Q What are the possibilities?

A One would be Detective Paris. The other

would be the federal officer that gave me the information.

Q That gave you the email that you referred to in your statement?

A Correct.

Q What behaviors are you referring to when you say "his behaviors have become much more extreme recently"?

A The rhetoric of which he was -- of the conspiracy theories and the insistence on talking about it constantly, which is off of baseline, according to the information that I received.

Q Now, this information is what you observed personally or what was given you by somebody else?

MR. MINCKS: Which behavior?

MR. HURD: What Mr. Campbell has referred to.

MR. MINCKS: Well, he was referring to two different kinds of behavior, but go ahead answer the question if you can.

BY MR. HURD:

Q Well, let's pull it apart, then. All right.

So the behaviors that are being referred to in the sentence you read a moment ago include,

number one, the posting of rhetoric on the Internet, and also his talking about conspiracy theories; is that correct?

A The behavior -- I didn't witness the behaviors between him and his friends. I can't state what that behavior -- I can state what was reported to me.

Q Well, what behaviors were reported to you that you are -- had in mind when you wrote down "behaviors have become much more extreme recently"?

A That would be the constant referral to the conspiracy theories and the government to blame for atrocities during 9/11.

Q Any other behaviors?

A At the time, I'm -- these were the behaviors that I was concerned with.

Q Now, you put in quotations the words "not him."

A Uh-huh.

Q Why did you put those words in quotations?

A The first thing I look for is a drastic change in behavior, and by saying "not him" shows a drastic change in had behavior.

His baseline, meaning he wasn't a conspiracy theorist prior to with his friends, with

the relationship they had with him. This was all new after they lost touch with him for a period.

So they were saying that this is something -- either something could have happened. They didn't know why this change in behavior has occurred, but to them, this behavior is not the person that they knew while they served with him in the Marine Corps.

Q And by "behavior," you mean his posting and discussion of conspiracy theories?

A And the -- the, you know, expressing violence. They said he was not a violent person.

Q Well, we'll come back to that in a moment. Did you talk with Raub's mother about changes in behavior?

A I did.

Q And she told you there were no such changes, correct?

A She did.

Q And she also told you that she shares the same conspiracy theories that her son espouses?

A She didn't say conspiracy theories.

Q Okay. She has the same political beliefs this her son espouses?

A If you want to call it political beliefs.

She shares -- she shares the same --

(Mr. Parthemos exited the room.)

A --paranoia of the government.

BY MR. HURD:

Q Okay. And by "paranoia of the government," do you mean the - - Mr. Raub's statement that he believes that the US Government caused the atrocities of 9/11?

A Amongst others, yes.

Q What are the others?

A Specifically, I can't say. The conversation didn't last very long.

Q So there was a point in your conversation with Brandon Raub where he stopped talking to you?

A There is.

Q How long into the 15 minutes or so of your interview with him did he stop talking to you?

MR. MINCKS: Object to the form of the question. Go ahead.

A I'd say right up to the end.

BY MR. HURD:

Q He talked to you for about 15 minutes and then he stopped talking? Is that what you're saying? I don't understand your answer. I'm sorry.

MR. MINCKS: Well, there's no question.

***

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coming around and trying to answer the question. Then having the question repeated for him.

It wasn't -- it appeared that there was something very distractible with him, which is the red flag that I look for.

Q You say, "Very labile with the secret service"?

A Uh-huh.

Q All right. Now, is that why you checked the box "labile" in the "Range of Affect" category earlier in the page?

MR. MINCKS: Object to the form of the question. Go ahead.

A Yes.

BY MR. HURD:

Q There's an area called "Thought Content"?

A Uh-huh.

Q Now, you've already said that you believe that his views about the United States Government reflect paranoia. Is that why you checked the box "paranoid"?

MR. MINCKS: That's not what he said. That wasn't his testimony at all, but go ahead and --

BY MR. HURD:

Q Why did you check the box "paranoid"?

A Because I felt that he was paranoid.

Q Based on what?

A Based on the fact that -- the distrust, the extreme distrust of the government.

Q How about --

MR. MINCKS: I don't think he was done with his answer.

BY MR. HURD:

Q Excuse me.

MR. MINCKS: Go ahead.

A Okay. I see someone is paranoid when they feel that they are being watched and being

marked and being the potential risk that's going on in his mind; that he's going to be this leader of a revolution, that he's been chosen for it and that the United States Government knows this. And that's part of his distrust of the government.

BY MR. HURD:

Q Okay. You've marked "delusions" as well under "Thought Content"?

A Yes.

Q And what delusions are you talking about? The same ones you talked about before?

MR. MINCKS: Objection. There's two questions in there.

A Okay.

MR. MINCKS: I think the question is why did you check the box.

A Why did I check the "delusions" box?

BY MR. HURD:

Q Uh-huh.

A Is that the question?

The idea that the United States Government is dropping thorium through jet trails is delusional. The fact that the United States sent a missile into the Pentagon is delusional. The fact that he feels that he has been chosen to lead this revolution is delusional thinking.

Q You checked, later on the page, under the category of "Insight," the category "little." What is the basis for that?

A He was offering little information, and the information he did offer, the insight to me is does this person can they know what's going on around him. And at the time, I didn't feel he did.

Q Well, he was not -- you did not mark him as being disoriented, correct?

A No.

Q That was within normal limits, his orientation, correct?

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89

Campbell – Direct

BY MR. HURD:

Q Was he seeking confirmation for a decision he had made or was he seeking guidance from you as to what decision to make?

MR. MINCKS: Same objection. Go ahead. You can answer.

A I'm going to say guidance. I'm going to say guidance.

Q Okay.

MR. HURD: All right. Tony? Steve?

Thank you for your time. As your lawyers will tell you, you have the right to read these after they're typed up by the court reporter and to indicate any errors you think she has made in transcribing your testimony or you may waive that right, and Mr. Mincks will advise you on that point.

MR. MINCKS: We recommend that you read.

THE DEPONENT: Okay.

(The deposition concluded at 4:03 p.m.)

And further this deponent saith not.

EXHIBIT
E

Chesterfield Community Services Board
Department of Mental Health Support Services
Progress Note Report

Brandon Raub (#54086)
For Recorded Service Dates of: 04/01/2012 – 09/26/2013

Cost Center	Service Provided	Start Date/Time
Crisis	Crisis Consultation	8/16/12 8:30am

End Date/Time	Provider
8/16/12 10:30 pm	Campbell, Michael, MSW
Delivery Method: Client Present	
Place of Service: Local Regional Jail	

Narrative:
Client's friends and fellow Marines notified the FBI of increased activity on Facebook which discussed plans for action against the government. Client was detained by the police and an evaluation occured. Client, at first, refused to answer any questions. Client stated "I choose to not answer any questions at this time". This counselor discussed my role and why he was brought in for an assessment and how the process works. Client offered limited information. When Client was asked about the specific messages from facebook and the correspondence between former marine friends, he stated "the revolution is coming". When asked about

the threats made, client reponded "if you new of what was coming wouldnt you try to stop it". Client would not elaborate on the posts at this time. This counselor obtained permission from client to call client's mother. Mother reported that client's rights were violated and she has not seen any changes or psychotic behavior in client. Mother also stated she holds the same beliefs that her son holds and feels violated by the situation. Due to a recent change in client's behaviors and more severe posts about revolution with plans for action, This counselor feels client needs more evaluation and treatment. A TDO is being requested to provide for public safety and potential aftercare.

Electronically Signed By: Campbell, Michael, MSW
Provider ID: FFBD9FFCB9FC4FA88D8 66DFABCB82D8D 8/20/12

Cost Center	Service Provided	Start Date/Time
Crisis	Crisis: Acute Psych Inpatient Service Time	8/21/12 9:30am

End Date/Time	Provider
8/21/12 9:50 am	Moreno, Bonnie, MSW

Delivery Method: Client Present
Place of Service: Non-State Psychiatric Hos

Narrative:
Writer received notification from Sharon Davis with John Randolph that consumer is uninsured and that they are requesting ACP funding. Consumer was committed at his hearing yesterday and is being

treated by Dr. Durrani. ACP funding to begin 08/20/12. Writer faxed opening ACP paperwork to RAC and Karen Marsh. Sharon reports that consumer has been refusing medication and at this point, Dr. Durrani has not ordered any medications. They are still attempting to have consumer transferred to the VA hospital in Salem, VA. Writer will continue to monitor.

Electronically Signed By: Moreno, Bonnie, MSW
Provider ID: 1011D6311A54B858FA97 527B035EA4D 8/21/2012

Cost Center	Service Provided	Start Date/Time
Crisis	Crisis: Acute Psych Inpatient Service Time	8/22/12 12:24 pm

End Date/Time	Provider
8/22/12 12:44 pm	Moreno, Bonnie, MSW

Delivery Method: Client Present
Place of Service: Non-State Psychiatric Hos

Narrative:
Writer received notification from team member Erika, that Sharon Davis with John Randolph reported consumer had been transferred to the VA hospital in Salem, VA yesterday 08/21/12, ACP funding to end. Writer faxed discharge ACP paperwork to RAC.

Electronically Signed By: Moreno, Bonnie, MSW
Provider ID: 1011D6311A54B858F A97
527B035EA4D 8/22/2012

Narrative:
Close case to episode. Client is not requesting follow up services.

Electronically Signed By: Campbell, Michael, MSW
Provider ID: FFBD9FFCB9FC4FA88D8
66DFABCB82D8D 9/20/12

[Dated October 11, 2013]

Catherine E. Martin, Ph.D.

13801 Village Mill Drive, Suite 105
Midlothian, Virginia 23114

804.912.3026

October 11, 2013

TO WHOM IT MAY CONCERN:

This is to advise that I am submitting this report on behalf of the Plaintiff, Brandon Raub, in the case of *Raub v. Bowen, et al.*, Case No. 3:313CV32E (B.D. Va.).

A. Professional Credentials and Experience

As noted on my curriculum vitae (copy attached), I have a doctorate in clinical psychology, and I am a practicing psychotherapist in Midlothian, Virginia, where I provide individual psychotherapy for adults as well as psychological evaluations for veterans. I am licensed by the Virginia Board of Psychology as a clinical psychologist (License no. 0810003957). In the course of my career, I have participated in the commitment of numerous individuals, including voluntary, involuntary and voluntary upon threat of involuntary proceedings.

Though I have extensive clinical psychology experience, I have not testified in any case during the past four years. I am being compensated for my

time spent in this case at the rate of $1,200 for this initial report and thereafter at the rate of $200 per hour. All of my publications are listed on my curriculum vitae.

B. Documents Reviewed and Background Considered

Prior to preparing this report, I reviewed the Complaint as well as the Answers filed by Defendants Bowen, Granderson, and Campbell to obtain an understanding of the issues in this case. As reflected below, I also met with and assessed Raub in person. In addition, I reviewed and considered the following documents and materials:

- Videotape taken at scene of August 16, 2012 seizure of Raub (found at http://www.youtube.com/watch?v=oxlY5 1 46FO)

- Videotape of Brandon Raub's approximately 5 hour confinement (hand-cuffed and tethered) at the Chesterfield County Jail (August 16-17, 2012)

- Production of Documents by the Defendants in Response to Limited Discovery Approved by the Court, including Bates labeled documents RAUBOOI-053

- Statements of Detective Michael Paris as found at RAUB008-012 and RAUB 041-044

- Statement of Russell Morgan Granderson as found at RAUB006-007

- Statement of Daniel Lee Bowen as found at RAUB002-003

- Answers of Russell Morgan Granderson to Limited Interrogatories Approved by the Court

- Answers of Daniel Lee Bowen to Limited Interrogatories Approved by the Court

- Answers of Michael Campbell to Limited Interrogatories Approved by the Court

- Email of Howard Bullen, dated August 15, 2012, as found at RAUB037-038

- Prescreening Report dated August 16, 2012 filed by Michael Campbell

- Progress Notes signed by Michael Campbell on August 16, 2012

- Petition for Temporary Detention Order, dated August 16, 2012, filed by Michael Campbell

- Department of Behavioral Health and Development Services Independent Examination by Dr. James A. Correll, dated August 20, 2012

- VA Hospital medical records of Brandon Raub (August 21, 2012 to August 23, 2012)

- August 20, 2012 detention hearing transcript

- Transcript of October 1, 2013 deposition of Michael Campbell

- 1 1/2 hour interview with Brandon Raub on October 11, 2013.

C. Professional Opinions

Based on my education and experience, and my review of the facts presented in the foregoing documents, my professional opinions in this matter are as follows:

1. Michael Campbell - phone call: Michael Campbell is a senior clinician and certified prescreener for Chesterfield County Emergency Services. It is unclear whether Mr. Campbell is a licensed mental health provider in the Commonwealth of Virginia.

Based on the information available to Mr. Campbell, on the afternoon/evening of August 16, 2013, at the time Mr. Campbell spoke with Detective

Paris by phone, there was not probable cause to seize Raub. In other words, there was not probable cause for Campbell to believe that Raub "(i) ha[d] a mental illness and that there exist[ed] a substantial likelihood that, as a result of mental illness, [Raub] [would], in the near future, (a) cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening harm and other relevant information, if any, or (b) suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic human needs, [and] (ii) [was] in need of hospitalization or treatment." Va. Code § 37.2-808 (a) and (g).

I have reviewed the Answers of Michael Campbell to Limited Interrogatories Approved by the Court ("Campbell Answers") and offer the following opinions:

- Campbell relates what Paris describes as threats made by Raub:

> "[Paris] informed me that Mr. Raub was an ex-marine who had made substantial, *specific* threats of violence against other people .... Detective Paris informed me that Mr. Raub had made online threats about killing people .... Detective Paris indicated to me that these statement and threats were made over the internet, and he described the language of some of the threats to me. Although I do not remember the exact wording of any of the threats now, they

> were *specific* threats of violent action against human beings."

Campbell Answers at 2 (emphasis added.) I have reviewed the language of the statements attributed to Raub, as set forth in the August 15, 2012 email from Howard Bullen to Jason Fullerton, and none of those statements constitute specific threats of harm in the near future or specific threats of harm at all. (It should also be noted that many of those statements are quotations of song lyrics.) But, even if these statements are treated as threats, they do not establish a basis for the seizure of Raub because they do not establish the likely presence of mental illness or the need for hospitalization or treatment as required by the statutory standard.

- Campbell also states that, according to Paris:

> "[Raub] believed that the United States government had perpetrated the September 11, 2001 terrorist attacks on the World Trade Center and the Pentagon, and that he believed that the government was committing atrocities on American citizens by dropping a radioactive substance called Thorium on them from airplanes."

Campbell Answers at 2. These are not psychological symptoms. They are political views. However ill-grounded these views may be in facts, they are views shared by a significant number of "conspiracy theorists" and, in any event, they cannot be the basis for a finding of mental illness.

- Campbell reports what Paris describes as Raub's behavior, stating that Raub appeared "preoccupied and distracted" and that "Mr. Raub would make eye contact with Detective Paris for a few seconds, but then his eyes would rove away while he continued to talk before returning to Paris." Campbell Answers at 3. But, what Paris described is actually *socially appropriate* eye contact, since he was neither trying to "stare down" Paris with constant eye contact nor was he "staring into space" as he spoke. Contrary to Campbell's statement, such eye contact is not "evidence of psychosis." Moreover, to appear "preoccupied and distracted" is a *normal* reaction when a person is placed in a stressful situation, such as being confronted at one's home by a number of law enforcement officers.

- Campbell also reports that, according to Paris, "Mr. Raub had rapid mood swings during their conversation." Campbell Answers at 3. But there is insufficient detail provided to allow any conclusions to be drawn. Moreover, this "mood swing" observation is contradicted by another observation reported by Paris in the very next sentence, where he told Campbell "that Mr. Raub was extremely serious and intense during the *entirety* of the conversation, and that he never joked or expressed any kind of light-heartedness." Campbell Answers at 3-4 (emphasis added). Again, Raub's reported response – seriousness when questioned by a team of law enforcement – is entirely appropriate. A failure to joke with investigators is not a sign of mental illness.

- Campbell also states that "when Detective Paris asked [Raub] about the specific threats which he had made, Mr. Raub would not answer his questions." Campbell Answers at 3. Such silence in the face of questioning perceived as accusatory is not a sign of mental illness, but is a frequent response in our society to questions by law enforcement, particularly since the "right to remain silent" is well known to most Americans.

- Campbell states that "[he] did not ask to speak with Mr. Raub over the phone because [he] already had more than enough evidence based on Detective Paris' first hand observation to warrant an evaluation." Campbell Answers at 4. But, this is the wrong standard. The question is not whether there was enough evidence to warrant an *evaluation*, but whether there was enough evidence to warrant the *seizure* of Raub. Based on my review of the Answers of Michael Campbell to Limited Interrogatories Approved by the Court, as well as my review of the Campbell deposition, there was not enough evidence to warrant such a seizure under the statutory standard quoted above, Virginia Code § 37.2-808 (a) and (g).

- Given the lack of evidence of mental illness and given Campbell's unwillingness to speak directly with Raub, it was a violation of professional standards – and grossly negligent – for Campbell to approve the seizure of Raub at his home on August 16, 2012.

2. Detective Michael Paris - Based on the information available to Detective Paris on the

afternoon/evening of August 16, 2013, at the time Detective Paris directed that Raub be seized, there was not probable cause to seize Raub.

In other words, there was not probable cause for Paris to believe that Raub "(i) ha[d] a mental illness and that there exist[ed] a substantial likelihood that, as a result of mental illness, [Raub] [would], in the near future, (a) cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening harm and other relevant information, if any, or (b) suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic human needs, [and] (ii) [was] in need of hospitalization or treatment." Va. Code § 37.2-808 (a) and (g).

I have reviewed the various statements by Paris contained within the documents listed in Part B of this Report (see, for example, Detective Paris' statements on August 18, 2012 (RAUB008-009), August 22, 2012 (RAUB009-012) and undated (RAUB041-044)). Insofar as those statements purport to describe Paris' observations of Raub at his home, they do not establish a basis for probable cause for seizing Raub under the statutory standard. Some of those observations (and/or similar observations) already have been discussed in Part C (1) of this Report with respect to Campbell. Others are so non-specific that they cannot provide a credible basis for seizing Raub (for example, vague references to "demeanor, tone of voice, non-verbal behavior and facial expressions"). These statements certainly cannot be classified as "threats" for a clinical purpose.

Paris also mentions the legal advice provided by the Chesterfield Commonwealth's Attorney and the U.S. Attorney. The description of that advice by Paris suggests that the statements by Raub were *not* viewed as direct threats to specific persons and that no laws were violated (RAUB 010). This contradicts the second-hand description of Raub's statements provided by Campbell.

It is unclear whether Paris had read the August 15, 2012 e-mail from Howard Bullen at the time of the August 16 seizure of Raub. On August 18, 2012, Paris wrote that the FBI had received information about Raub from someone who knows him "and whose name the FBI wishes not to disclose at this time." (RAUB008). This suggests that Paris had not yet read the email bearing Bullen's name (though it may mean that Paris knew Bullen's name but was not telling his fellow Chesterfield police officers). In any event, as explained below, the August 15, 2012 e-mail from Howard Bullen to Jason Fullerton does not furnish a basis for seizing Raub.

3. Sgt. Russell Morgan Granderson: Based on the information available to Sgt. Granderson on the afternoon/evening of August 16, 2013, at the time he participated in the seizure of Raub, there was not probable cause to seize Raub.

In other words, there was not probable cause for Granderson to believe that Raub "(i) ha[d] a mental illness and that there exist[ed] a substantial likelihood that, as a result of mental illness, [Raub] [would], in the near future, (a) cause serious physical harm to himself or others as evidenced by recent

behavior causing, attempting, or threatening harm and other relevant information, if any, or (b) suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic human needs, [and] (ii) [was] in need of hospitalization or treatment." Va. Code § 37.2-808 (a) and (g).

I have reviewed the various statements by Granderson contained within the documents listed in Part B of this Report (including Answers of Russell Morgan Granderson to Limited Interrogatories Approved by the Court; Sgt. Granderson's statements on August 17, 2012 (RAUB006-7 and RAUB008) and Sgt. Granderson's September 17, 2012 Memorandum to Captain Zaccarine (RAUB051-52)). None of those statements purports to provide information about Raub, and known to Granderson at the time Raub was seized, beyond what I already addressed in Part C (1) of this Report with respect to Campbell. As I explained, the information presented to Campbell during the phone call was an inadequate basis for Campbell to approve the seizure of Raub; and Granderson has far less information than Campbell.

4. Officer Daniel Lee Bowen: Based on the information available to Officer Bowen on the afternoon/evening of August 16, 2013, at the time he participated in the seizure of Raub, there was not probable cause to seize Raub.

In other words, there was not probable cause for Bowen to believe that Raub "(i) ha[d] a mental illness and that there exist[ed] a substantial likelihood that, as a result of mental illness, [Raub]

[would], in the near future, (a) cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening harm and other relevant infonnation, if any, or (b) suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic human needs, [and] (ii) [was] in need of hospitalization or treatment." Va. Code § 37.2-808 (a) and (g).

I have reviewed the various statements by Bowen contained within the documents listed in Part B of this Report (including Answers of Daniel Lee Bowen to Limited Interrogatories Approved by the Court; and Officer Bowen's statements on August 17, 2012, (RAUB002-3)). With one exception, none of those statements purports to provide information about Raub, and clearly known to Bowen at the time Raub was seized, beyond what I already addressed in Part C (1) of this report with respect to Campbell.

That one exception involves a briefing that occurred at Bensley Elementary School before the law enforcement team moved to Raub's residence. Bowen says that, at the briefing, "one of the federal officers" told him that "Raub had made some *non-specific* online threats of violent acts against people." Bowen Answers at 2 (emphasis added).

(Bowen also said he saw Raub's Facebook posts and email sent "by one of his ex-marines to Terry Granger" but Bowen did not recall whether he saw those materials before or after Raub was seized. Bowen Answers at 4.) In addition, I should note that the materials I reviewed do not include an email from an ex-Marine friend of Raub to *Terry Granger*,

though perhaps Bowen misspoke. The August 15, 2012 email from Howard Bullen to *Jason Fuller* is discussed below.

5. Campbell (TDO): Based on the information available to Mr. Campbell on August 16, 2013, at the time Mr. Campbell petitioned for a temporary detention order, there was not probable cause to continue the detention.

In other words, there was not probable cause to believe that Raub "(i) ha[d] a mental illness and that there exist[ed] a substantial likelihood that, as a result of mental illness, [Raub] [would], in the near future, (a) cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening harm and other relevant information, if any, or (b) suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic human needs, [and] (ii) [was] in need of hospitalization or treatment." Va. Code § 37.2-808 (a) and (g).

Again, I have reviewed the Campbell Answers, the Prescreening Report and Petition for Involuntary Admission prepared by Campbell, as well as the transcript of his October 1, 2013 deposition and the videotape of Brandon Raub's confinement in jail (which included a videotape of Campbell's interview of Raub), and I offer the following opinions:

a. Interview

- I reviewed the videotape of Campbell's interview with Raub. The videotape does not

contain audio, but I was able to make a number of observations based on watching the recording.

- Raub was shirtless and barefoot, with his hands cuffed behind his back. The cuffs were tethered to a bench, on which Raub was seated. Throughout the interview, Campbell was standing, leaning against a wall a few feet away from Raub.

- The interview took place in a roomful of strangers, with officers coming and going during the interview. The presence of strangers during a psychological interview can make a client uncomfortable speaking freely.

- The setting and interview method I observed were not conducive to establishing a rapport with Raub, which is necessary to obtain reliable clinical information.

- The interview was very short, lasting only 12 minutes.

b. Prescreening Report

- The Prescreening Report includes a section entitled "Presenting Crisis Situation," with a line entitled "Reason for Referral," where Campbell writes: "Client has been posting threatening information on the internet. Client believes that 911 was a conspiracy caused by the U.S." While this entry may accurately reflect what Campbell was told, it

is remarkable that there is no mental health information included within the "Reason for Referral."

- In the section entitled "Presenting Crisis Situation," there is also a subsection entitled "Assessment." There are a number of problems with this Assessment.

  - The vast majority of the Assessment consists of secondhand reports of Raub's political views.

  - Campbell says that Raub's friends reported him to the FBI "for posting extreme conspiracy theories and threats to President Bush." As previously noted, a belief in conspiracy theories is not a symptom of mental illness. Moreover, I have reviewed the Facebook postings and e-mail from Howard Bullen and cannot find any "threats to President Bush." While Raub does predict that President George W. Bush will be "dragged out of your house and arrested ... and Daddy Bush, too," this is not a threat because (1) Raub is not saying what action *he* will take; (2) Raub is predicting action that will occur at some indeterminate time in the future (not in the near future); and (3) use of the term "arrested" suggests that Raub was contemplating some action by law enforcement officials, not some illegal act.

- After noting Raub's belief in "conspiracy theories," Campbell states: "This counselor contacted client's mother. She shares the same beliefs and supports her son's behaviors." The fact that Raub's mother, with whom he resides, agrees with his political beliefs, is an indication that Raub's views are not the byproduct of any mental illness. Additionally, while Campbell does not explain what "behaviors" he has in mind, there is no indication from the mother that her son has demonstrated a recent behavioral change. On the contrary, while not included in his Prescreening Report, the Progress Notes written and signed by Campbell affirmatively state that "Raub's mother, with whom he resides, 'has not seen any changes or psychotic behaviorin [Raub].'" (Campbell deposition, Exhibit E.)

- Campbell states: "Due to unpredictable behaviors and threats on the internet, a TDO is being requested to provide treatment and further evaluation." There are several problems with this statement. First, there is no history of "unpredictable behaviors" in the Assessment, nor does Campbell testify in his deposition that he witnesses any such behaviors. Moreover, a review of the videotape of Raub's confinement at the jail shows no such behaviors. Throughout the five hours or so that he was handcuffed (hands behind his back) and tethered to a bench, Raub

displays complete compliance and behavioral self control. Second, Campbell says that the "threats on the internet" are attached, yet a review of the e-mail from Howard Bullen (which is described elsewhere as the attachment) shows no specific threats of harm in the near future and, for that matter, no specific threats at all. Third, the statement refers to "provid[ing] treatment," yet the Assessment does not describe any mental health condition, much less a condition requiring hospitalization or treatment.

- The Assessment is remarkable in that it contains absolutely no information regarding symptoms of mental illness.

- The Prescreening Report also includes a section called "Mental Status Exam." Again, there are a number of problems with this section.

  - In the subsection entitled "Significant Clinical Findings," under the "Mental Status Exam," Campbell was required to "further describe any symptoms checked above." Campbell writes, "Client had long pauses before answering questions." "Long pauses before answering questions" is not a symptom of mental illness, especially when the behavior occurs following a seizure and confinement of the sort experienced by Raub. Moreover, as is shown by the video, Campbell did not

interview Raub in a private setting, but did so while (hands behind his back) and tethered to a bench in an area of the jail where there was substantial activity taking place. This other activity included several police officers coming and going or sitting at their desks while talking as well as bringing in another detainee. At one point during the interview, there were as many as six people in the room (other than Campbell) who were carrying on their own activities and conversations during the interview. This is significant because in his deposition, Campbell says "there was something very distractible with him which is the red flag that I look for." (Campbell deposition at page 53.) Given the context and setting in which the interview occurred no reliable inference can be drawn from any apparent distractibility.

- Under "Significant Clinical Findings" Campbell also writes, "very labile w/ the Secret Service." While "liability" may indicate a "mood disorder," it is not an indicator of psychosis (which was Campbell's diagnosis). In any event, liability must be evaluated in the context in which it is observed. It is important to note that Campbell does not claim to have witnessed any liability firsthand. Instead, he was relying upon reports from the "Secret Service" that are not included in the report, but that apparently relate to

what someone observed when the law enforcement team confronted Raub at his home. This was a situation where mood lability would be a normal reaction. Campbell states that this is why he checked the box "labile" in the "Range of Affect" category earlier in the page. (Campbell deposition at pg. 53)

- While Campbell checks the boxes for "delusions," "grandiose" and "paranoid," he fails to describe in his Prescreening Report any symptoms corresponding to those checked boxes, even though such a description is required by the Prescreening Report form. All of these descriptions appear to be references to Raub's belief in "conspiracy theories," and not behavior directly observed by Campbell in the assessment. This is confirmed by Campbell's deposition. For example, Campbell regards Raub as "paranoid" chiefly because of his "extreme distrust of the government" (Campbell deposition at page 53) and regards Raub as delusional chiefly because of his views about the activities of the United States government. Campbell describes Raub as believing that the United States government is "dropping Thorium through jet trails" and "sent a missile into the Pentagon." (Campbell deposition at page 54). These views may be eccentric but they are views shared by many conspiracy theorists, and they are not delusional beliefs in a psychological

> sense. Similarly, "extreme distrust of government" is a political view and not a sign of paranoia in a psychological sense.

- The Prescreening Report includes a section entitled "Diagnosis DSM IV R[1]." In this section, Campbell diagnoses Raub as "Psychotic D/O NOS," which means psychotic disorder not otherwise specified. Turning to the DSM-IV-TR (the standard reference for psychiatric diagnoses), the diagnosis applied by Campbell is defined as follows:

> > This category includes psychotic symptomatology (i.e., delusions, hallucinations, disorganized speech, grossly disorganized or catatonic behavior), about which there is inadequate information to make a specific diagnosis or contradictory information, or disorders with psychotic symptoms that do not meet the criteria for any specific Psychotic Disorder.
>
> DSM-IV-TR at Section 298.9. The problem with this diagnosis is that there is nothing in the prescreening report to support it. The only "delusions" reported are Raub's beliefs in

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[1] This is apparently a misprint as there was no "DSM-IV-R." DSM-IV-TR was the version of this manual in use at the time of the assessment. In his deposition, Campbell asserts that he uses the "DSM-IV-R" rather than the DSM-IV-TR (Campbell deposition at pages 58-59.) This is troubling since Campbell is referring to a book that does not exist.

conspiracy theories, which is not a delusion in a psychological sense. There are no reports by Campbell of any of the remaining psychotic symptoms: "hallucinations, disorganized speech, grossly disorganized or catatonic behavior." In his deposition, Campbell confirms that he observed no such hallucinations, disorganized speech, grossly disorganized or catatonic behavior. (Campbell deposition at pages 50-51.)

- Campbell provides Raub a GAF score of "40." (The term "GAF" means Global Assessment of Functioning.") In assigning a GAF score, a psychologist is required to "consider psychological, social and occupational function on a hypothetical continuum of mental health-illness." DSM-IV-TR at Section Multi Axial Assessment Axis V: Global Assessment Function. A GAF score of 40 means:

> Some impairment in reality testing or communication (e.g., speech is at times illogical, obscure, or irrelevant) OR major impairment in several areas, such as work or school, family relations, judgment, thinking, or mood (e.g., depressed man avoids friends, neglects family, and is unable to work; child frequently beats up younger children, is defiant at home, and is failing at school).

There is nothing in the Assessment to support any of these impairments, nor did Campbell provide any support in this Assessment for this low score. In his deposition, Campbell said that he gave Raub a score of 40 because of "his beliefs." (Campbell deposition at page 61.) Again, this is using political beliefs as a basis for psychological diagnosis, which is inappropriate. Campbell also says that Raub's belief "impacts his ability to function in the community work environment [or] in a school." Yet, this is contrary to Campbell's decision not to check off any of the corresponding boxes under Axis IV of his diagnosis (in the section immediately prior to the GAF score). Campbell did check off the box entitled "Support Group," but his explanation for that decision was his comment that "the support group that he has is all conspiracy theorists, and therefore, it continues his belief in the conspiracy theories." (Campbell deposition at page 60.) The fact that Raub's support group (friends and family) shares his views is an indication that those views are political in nature and not an indication of a psychological disorder. Moreover, Campbell has misunderstood the reference to a "support group" under Axis IV. The "support group" should be checked if an individual has *problems* with his support group, not if they are supportive of him.

- On page 7 of the Prescreening Report, there is a section entitled, "Risk Assessment," and Campbell has checked a number of boxes on

that page. Those boxes, and my opinion with respect to Campbell's decision to check them, are as follows:

- According to Campbell's first set of check marks: "It appears from all evidence readily available that [Raub] ... [h]as a mental illness and that there exists a substantial likelihood that, as a result of mental illness, [Raub] will, in the near future ... [c]ause serious physical harm to ... others as evidenced by recent behavior, causing, attempting or threatening harm, or other relevant information . . . and ... [i]s in need of hospitalization or treatment." Following this set of check marks, there is space on the form for the evaluator to write in the findings that support his/her check marks. Campbell did not write in any findings, and the other parts of his prescreening report are, as previously explained, insufficient to support the boxes he has checked.

- In a second set of checked boxes, Campbell has checked "No" for the following capacities:

  - "Able to maintain and communicate choice," "Able to understand relevant information," and "Willing to be treated voluntarily." Again there is a place for the evaluator to write his findings, however, Campbell has not done so and there is nothing in the previous

portions of the Prescreening Report to suggest that Raub is unable to maintain and communicate choice or that he was unable to understand relevant information. In his deposition, Campbell said he checked these boxes "no" because Raub "did not feel he needed additional help" and "didn't believe that he was in need of any further assistance." (Campbell deposition at page 63.) In other words, for Campbell, Raub's belief that he did not have a mental health issue was itself a sign of mental health issue. This is entirely inappropriate. The purpose of these questions is to assess the individual's level of cognitive functioning not whether the individual agrees with the evaluator's assessment. Moreover, Campbell's indication that Raub lacks capacity in these two areas is inconsistent with the fact that Campbell checked "Yes" next to the statement indicating that Raub is "[a]ble to understand consequences."

- In a final section of boxes entitled "Risk Factors," Campbell has checked boxes for "Homicidal ideation" as well as "Access to weapons," adding the word "potential" after that statement.

    - "Potential" access to weapons is, of course, an attribute of almost everyone in American society, and

there is no indication anywhere in the Assessment that Campbell ever addressed, or ever explored, Raub's actual access to weapons. (Campbell deposition at pages 65-67.)

- The term "homicidal ideation" is typically used when a patient reports thoughts about committing acts of homicide. In my review of the Assessment and the documents provided, I saw no evidence of homicidal ideation, nor does Campbell provide any evidence of homicidal ideation in his deposition.

- Under the category "Risk Factors," Campbell also checked the box marked, "Other," but failed to provide any indication of what he had in mind in the space provided for that purpose.

- It is also very significant that Campbell chose not to check the box, "Actively psychotic," a decision that undermines the already unsubstantiated diagnosis of "Psychotic Disorder – Not otherwise specified."

c. E-mail of Howard Bullen, August 12, 2012.

- Campbell states that a Secret Service Agent, who arrived at the jail during the interview with Raub, provided him (Campbell) with "a

copy of the two page e-mail from Mr. Raub's acquaintance, that I attached as the last two pages of my 10-page Prescreening Report." Campbell Statement at 6. In the deposition, Campbell identifies this as the e-mail from Howard Bullen to Jason Fullerton dated August 15, 2012, and Campbell explains that he did not have that email until after his interview with Raub had concluded. (Campbell deposition at page 71.) I have carefully reviewed this e-mail and, in my professional opinion, it does not support a diagnosis of mental illness.

- In the e-mail, Bullen makes it clear that he has not recently observed or interacted with Raub, either in person or by telephone. His only recent communications with Raub have been indirectly by Facebook.

- While Bullen said there have been changes in Raub's postings on Facebook, Bullen does not suggest that these changes are the result of any change in Raub's mental status or personality. Thus, the e-mail is not a basis for diagnosing mental illness.

- Moreover, my review of the Facebook postings quoted by Bullen leads me to agree with Bullen's view that, "[t]he posts are all vague," and that "much of this is typical extremist language." These posts are not specific threats; rather, they voice conspiracy theories that, while not

mainstream, are believed by a surprisingly large number of Americans.

- Campbell's statement is also instructive for an admission he makes. Campbell explains that, before reviewing Bullen's e-mail, there was not sufficient basis for a temporary detention order. Campbell's Statement at 5. Yet, the standard for a temporary detention order is *exactly the same* as the standard for an initial seizure by law enforcement. There must be probable cause. Since Campbell admits there was insufficient evidence for a TDO before he received the email, there was likewise insufficient evidence for the initial seizure (when Campbell did not yet have the e-mail). Thus, Campbell's statement supports my opinion that there was not an adequate basis for Campbell to approve the seizure of Raub. (Of course, as I explained previously in this report, in my professional opinion, even with the e-mail, there was not sufficient evidence to support the seizure or temporary detention.)

d. Petition for Involuntary Admission

- I also have reviewed the Petition for Involuntary Admission for Treatment dated August 16, 2012, and signed by Michael Campbell. Campbell attaches the Pre screening Report to this Petition and relies upon that Prescreening Report in support of the Petition. No additional information is provided to substantiate the allegations in the

Petition. Campbell does, however, make one allegation in the Petition that is not addressed by the Prescreening Report. He alleges that "there exists a substantial likelihood that, as a result of mental illness, [Raub] will, in the near future ... suffer serious harm due to [Raub's] lack of capacity to protect self from harm or to provide for respondent's own basic human needs." Campbell provides no explanation for this discrepancy. (Campbell deposition at page 70.)

- Given the lack of evidence of mental illness, it was a violation of professional standards – and grossly negligent– for Campbell to file the Petition for Involuntary Treatment against Raub.

6. Interview with Brandon Raub

After reviewing the documents, transcripts and video, I sat down with Brandon Raub for an approximately hour-and-a-half-long interview on October 11, 2013. In assessing Raub's mental status, I found no abnormalities.

It is notable that in the 14-months that have elapsed since August 2012 and my interview, Raub has had no reportable incidents, no need for treatment and no medication prescribed for any mental health issues. This is consistent with the fact that there was no medication prescribed for Raub upon discharge from the VA Hospital following his detention.

During my assessment, I paid particular attention to those views held by Raub that were cited by Campbell as a basis for believing that there was mental illness present. These views include that the United States government was responsible for the attacks on 9/11 and that the United States government is dropping chemicals from airplanes. In discussing these views with Raub, I found no indication that they were evidence of any underlying psychological condition. On the contrary, Raub was able to provide support for his beliefs by showing me specific web sites supporting his views.[2] One does not need to agree with Raub's analysis or conclusions regarding these matters in order to recognize that his beliefs do not spring from any psychological condition. It was also particularly striking to me that none of Raub's "conspiracy theories" were self-referencing. This is an indication that Raub has derived his beliefs from a cultural context, rather than a bizarre internally-held belief. A helpful analogy would be the difference between a person who believes in Jesus Christ and a person who believes they are Jesus Christ. Self-references per se are, of course, not a sign of mental illness (all of us refer to ourselves all the time); however, self-references in the cinical sense would be expected if Raub was manifesting delusions or hallucinations in the context of a mental illness. None were present here.[3]

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[2] These websites include http://www.ae911truth.org. http://en.wikipedia.org/wiki/Ted_Gunderson, http://en.wikipedia.org/wiki/Albert_Stubblebine, and http://www.youtube.com/watch?v-12VXAw3R0VO.

[3] Campbell may have believed that the statement referenced in the Howard Bullen e-mail, "The revolution will

In sum, my assessment of Brandon Raub, coupled with the 14 months that have elapsed since his detention, confirms my view that there was no probable cause to seize or detain him on August 16, 2012.

I understand that the deposition of Paris will be taken. I reserve the right to supplement my report following the review of that deposition transcript and/or other evidence produced in this matter.

Sincerely,

/s/
Catherine E. Martin

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come for me. Men will be at my door soon to pick me up to lead it," is such a self-referencing statement, indicating that Raub believes that "he's going to be this leader of a revolution." Campbell deposition at 49, 54. In fact, the statement Campbell quotes is followed by the symbol: ";)". this is an "emoticon wink," commonly understood to indicate that the author is speaking tongue-in-cheek. The "wink" is found on both Raub's Facebook posting and Bullen's quotation of that posting. But even without the wink, the facts do not support probable cause to believe that Raub suffered from mental illness.

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EDUCATION

Catherine E. Martin, Ph.D.
The Catholic University of America, Washington, DC, APA accredited program
Ph.D., Clinical Psychology, 2004

The Catholic University of America, Washington, DC, APA accredited program
M.A., Psychology, 2000

James Madison University, Harrisonburg, VA
B.A., Psychology, 1994

Midlothian High School, Midlothian, VA
1990

HONORS

Thomas V. Moore Full Tuition Scholarship, The Catholic University of America, 1998-2001
Magna cum laude graduate, James Madison University, 1994

Hospital Corporation of America Foundation Scholarship for academic achievement, 1992-1994

WORK EXPERIENCE

Psychotherapist, Private Practice, Midlothian, VA December 2010 - present. Individual psychotherapy with adults and psychological evaluations for veterans.

Psychotherapist, Private Practice, Washington, DC, December 2006-January 2007. Individual psychotherapy with adults.

Postdoctoral Fellow, NIMH Clinical Brain Disorders Branch Section on Neuropathology, Bethesda, MD, May 2004-October 2005. Perform psychological autopsy interviews in order to determine the psychiatric diagnoses of post mortem research subjects, conduct data analysis, and prepare scientific manuscripts for submission for publication.

Psychology Intern, Veterans Affait s Medical Center, Washington, DC, August 2002-August 2003. APA accredited internship. Duties: Perform individual psychotherapy, group psychotherapy, and psychological assessments for post-traumatic stress disorder, substance abuse, sexual trauma, and severe mental illness treatment programs.

Needs Assessment Clinician, Potomac Ridge Behavioral Health, Rockville, MD, July 2002-August 2003. Conduct psychological assessments to determine level of psychiatric care needed for patients in inpatient, outpatient, and emergency

room settings. Obtain insurance authorization and physician approval for psychiatric treatment.

Psychotherapy Associate, The Catholic University of America Counseling Center, Washington, DC, August 2001-May 2002. Conduct individual psychotherapy.

Neuropsychology Technician, Commonwealth Psychological Associates, McLean, VA, May-December 2001. Administer, score and interpret neuropsychological tests in a psychology private practice.

Psychotherapy Extern, The American University Counseling Center, Washington, DC, September 2000-August 2001. Conduct individual psychotherapy and perform intake interview assessments.

Research Assistant part-time, Chestnut Lodge Hospital/Stanley Foundation Research Programs, Bethesda, MD, August 2000-August 2002. Perform data management and analysis for a clinical trial examining the use or Omega 3 Fatty Acids in the treatment of schizophrenia.

Research Assistant part-time, NIMH Suicide Research Consortium, Rockville, MD, September 1999-May 2000. Update consortium website including mortality statistics, bibliography, and research findings.

Research Assistant part-time, The Catholic University of America and Chestnut Lodge Hospital,

Rockville, MD, May 1999-August 2000. Master's thesis research project titled "Refining the Assessment of Suicide Risk." Duties: Design assessment interview and administer assessment to patients with schizophrenia, personality-disorders, and mood disorders populations. Perform data analysis and determine inter-rater reliability.

Research Assistant full-time, NIMH/Stanley Foundation Bipolar Network, Bethesda, MD, June 1995-August 1998. Develop data collection fonns, implement data collection tracking procedures, manage data collection for NIMH outpatient clinic, perform data entty and data analysis for multi-site clinical trial.

RESEARCH FUNDING

Grant in Aid, $3,000, The Catholic University of America, Washington, DC, 1999.

POSTERS AND PUBLICATIONS

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stress disorder brain collection. Psychiatry: Interpersonal and Biological Processes, 67(4): 416-18.

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Deep-Soboslay, A., Akil, M., Martin, C.E., Lynch, C., Hennan, M.M., Gao, W., Hyde, T.M., Bigelow, L.B., & Kleinman, J.E. (2003, November). Methods for psychiatt'ic diagnosis in postmortem research. Postel' presented at the 42nd Annual Meeting ofthe American College ofNeuropsychophannacology, San Juan, Puerto Rico.

Wagner, B.M., Silvennan, M.A., & Martin, C.E. (2003, May). Family factors in youth suicidal behaviors. American Behavioral Scientist, 46(9): 1171-91.

Makino, KK, Hibbeln, J.R., Martin, C.E., Dickerson, F., Boronow, J., & Fenton, W.S. (2003, March 1). Smoking and gender predict erythrocyte essential fatty acid composition among medicated patients with schizophrenia or schizoaffective disorder. Biological Psychiatry, 53(5): 431-41.

Luoma, lB., Martin, C.E., & Pearson, J.L. (2002, June). Contact with mental health and primary care prior to suicide: A review of the evidence. The American Joumal of Psychiatry, 159: 909-16.

Makino, KK, Hibbeln, J.R., Martin, C.E., Salem, N., & Fenton, W.S. (2001, April). Eicosapentaenoic acid supplementation in schizophrenia: Red blood cell fatty acid compositional analysis. Poster presented at the NIH Post-baccalaureate IRTA Poster Day, Bethesda, MD.

Martin, C.E., Lindahl, V.H., Jobes, D.A., & Sim, A. (2001, April). Applying the tower of babel nomenclature in suicide research. Poster presented at the 34th Annual Conference of the American Association of Suicidology, Atlanta, GA.

Lindahl, V.H., Martin, C.E., Jobes, D.A., & Sim, A. (2001, April). Aborted suicide attempts in high-risk patients: A pilot study. Poster presented at the 34th Annual Conference of the American Association of Suicidology, Atlanta, GA.