No. 21-1575

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

RASHAD RIDDICK,

Plaintiff–Appellant,

v.

JACK BARBER and REBECCA VAUTER,

Defendants–Appellees.

On Appeal from a Final Judgment of the
United States District Court for the Eastern District of Virginia
Case No. 3:19-cv-0071, Hon. David J. Novak

BRIEF FOR APPELLANT [CORRECTED]

RICHARD B. KATSKEE
JOSHUA BRITT†
MOKSH GUDALA†
JAKE SHERMAN†
Duke University
School of Law
210 Science Dr., Box 90360
Durham, NC 27708-0360
(919) 613-7230

Counsel for Appellant

† Law student appearing under L.R. 46(a).

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

TABLE OF AUTHORITIES—continued

Page(s)

TABLE OF AUTHORITIES—continued

Page(s)

Constitution, Statutes, Regulations, and Rules of Court

TABLE OF AUTHORITIES—continued

Page(s)

Other Authorities

INTRODUCTION

When Rashad Riddick was involuntarily committed to Central State Hospital, he, and the people of Virginia, expected that the hospital would treat him with care and respect. But that has not been his experience. Rather than improve Mr. Riddick's mental health, Rebecca Vauter, Central State's then-director, and Jack Barber, then-Commissioner of the Virginia Department of Behavioral Health and Developmental Services, contributed to his mental deterioration by restraining and then secluding him for 591 days straight. Despite physical restraints and then complete isolation, Mr. Riddick drafted a *pro se* complaint that states a plausible, and indeed compelling, Fourteenth Amendment claim.

For starters, Mr. Riddick alleges that he "was approached by Central State Hospital's Response Team and advised that per Commissioner Jack Barber . . . and Rebecca A. Vauter . . . he was to be placed into 4-point restraints indefinitely." J.A. 85. He was held in those restraints for at least fourteen days, notwithstanding that Virginia requires that patients normally be restrained for no more than four ***hours***.

Then, after seeking specific, individualized approval from Barber, Vauter issued a standing order keeping Mr. Riddick in seclusion. For the next 577 days—nineteen months—he had no access to religious services or recreation and no interactions or face-to-face contact with anyone—not even hospital staff. He was observed solely through a two-way mirror and by

video cameras. Yet Virginia's maximum permissible period of seclusion, too, is normally just four hours. And as the Second Amended Complaint also alleges, even if an exemption is granted to permit seclusion beyond that period, it must be time-limited—which was not the case here.

Despite those allegations, the district court dismissed this action, holding principally that Mr. Riddick had not alleged a substantial departure from accepted medical practice. But Mr. Riddick specifically alleged that his treatment at the hands of Vauter and Barber flouted the governing state regulations: He was kept in hard restraints for 84 times the normal regulatory maximum and then in strict seclusion for 3,462 times the normal regulatory cap.

The district court also held that Mr. Riddick did not plausibly allege Barber's involvement in the violations of his Fourteenth Amendment rights, despite specific allegations that hospital staff informed Mr. Riddick of Barber's involvement. Nor did the district court credit that, under the Virginia regulations, Mr. Riddick could not have been held in restraints or seclusion for more than four hours without Barber's specific, individualized approval of a regulatory exemption, which Vauter herself said that she sought and obtained.

Even the most seasoned lawyer could not document all the horrors of Mr. Riddick's two weeks in restraints and 577 days in seclusion. But involuntarily committed patients proceeding *pro se* do not need to provide

so detailed a chronology. Not even represented parties do. Mr. Riddick needed to plead just enough plausibly to allege that Vauter's conduct substantially departed from accepted standards, and that Barber was involved in the course of conduct that violated his rights. Mr. Riddick has not just cleared that low bar. He's far overleaped it.

JURISDICTIONAL STATEMENT

The district court had federal-question jurisdiction over this Section 1983 action under 28 U.S.C. § 1331. This Court has jurisdiction under 28 U.S.C. § 1291 to review the district court's final judgment granting Defendants' motion to dismiss.

ISSUES PRESENTED

1. Does an involuntarily committed *pro se* plaintiff adequately plead that medical personnel acted substantially outside the scope of acceptable professional judgment when they held him in restraints and then seclusion for 3,546 times the ordinary limit under state law?

2. Does a *pro se* plaintiff adequately allege a defendant's personal involvement in violating his rights when he alleges both that the defendant was the only person who could approve holding him in prolonged restraint and seclusion and that the approval was in fact granted?

3. Should a *pro se* plaintiff receive appointed counsel when his mental illness and conditions of involuntary confinement prevent him from adequately conducting legal research, interviewing witnesses, and

obtaining pertinent evidence to challenge the constitutionality of abusive treatment by the state officials entrusted with his care?

STATEMENT OF THE CASE

A. Factual Allegations.

Mr. Riddick, who has been involuntarily committed at Central State Hospital since 2014, alleges that Central State placed him in extended periods of restraint and seclusion in violation of his constitutional rights.

He specifically alleges that on January 30, 2018, hospital staff informed him that Rebecca Vauter, the director of Central State, and Jack Barber, the Interim Commissioner for the Virginia Department of Behavioral Health and Developmental Services, ordered that he be immobilized indefinitely by means of four-point restraints. J.A. 85.

For two full weeks, the hospital kept Mr. Riddick's upper body wholly restrained. J.A. 85. He was forced even to eat and sleep while in the restraints. J.A. 85. When he showered, Central State staff allowed him to remove only a single arm to wash himself. J.A. 85. As a result, "hygiene became a major issue." J.A. 85. Otherwise, the immobilization was complete and unrelenting. While Mr. Riddick was restrained, hospital staff did not permit him to attend religious services, group therapy, or other essential activities. J.A. 85–86. Nor could Mr. Riddick conduct legal research, for he was completely barred from the hospital library. J.A. 85.

When Mr. Riddick complained, Vauter responded that he was "restricted to the ward" until she could "determine if [his] request for porch and library access [could] be safely managed." J.A. 92–93.

The Virginia Administrative Code, however, generally forbids keeping an adult patient in restraints for more than four hours. *See* 12 Va. Admin. Code § 35-115-110(C)(14); J.A. 87–88. Yet Mr. Riddick was restrained for roughly eighty-four times the legal limit. J.A. 85.

In a letter dated February 2, 2018, Vauter explained to Mr. Riddick that she had sought an exemption under 12 Va. Admin. Code § 35-115-10(D) to restrain him beyond the four-hour maximum. J.A. 92. Although Virginia law allowed Barber (and only Barber), as Interim Commissioner of the Virginia Department of Behavioral Health and Developmental Services, to grant an individualized exemption authorizing Vauter to put a specific patient in restraints for a longer period, any exemption needed to be "time limited," "in writing," and "based solely on the need to protect individuals receiving services, employees, or the general public." 12 Va. Admin. Code § 35-115-10(D).

Mr. Riddick was never shown the written exemption that Barber issued to grant Vauter that authority. Accordingly, in his February 14 response to Vauter's letter, Mr. Riddick pointed out that Vauter had not "set a time limit" or "demonstrated that [the] exemption [was] in writing," as required by Virginia law. J.A. 97.

Treating his letter as an administrative appeal of Vauter's restraint order, the hospital dismissed the challenge on March 22, taking the position that the allegation that Vauter had improperly invoked the regulatory exemption under Section 35-115-10(D) was not in what the hospital took to be Mr. Riddick's initial administrative complaint. J.A. 99.

Meanwhile, however, and just one day after Mr. Riddick responded to Vauter's letter (*compare* J.A. 97 *with* J.A. 85–86), he was moved into seclusion—an extreme form of solitary confinement—for what ended up being a grueling nineteen months (J.A. 86).

Central State staff took him to an empty ward. J.A. 85–86. On his arrival, Vauter left the otherwise-vacant nurse's station, announcing that Mr. Riddick would be kept alone in the ward until further notice. J.A. 85–86. Later, Mr. Riddick was told that Vauter had sought from Barber a standing order for Mr. Riddick's seclusion (J.A. 88), despite state regulations specifically providing that standing orders for indefinite periods of seclusion are strictly forbidden even when an exemption to exceed the four-hour maximum has been granted (*see* 12 Va. Admin. Code § 35-115-10(D) ("These exemptions shall be time limited . . . .")).

In the end, Central State denied Mr. Riddick all human contact for 577 days. J.A. 86. Even hospital staff observed him solely through a two-way mirror and video cameras (J.A. 46; J.A. 86), despite Virginia law, which requires Central State to "monitor the use of . . . seclusion through

continuous face-to-face observation" (12 Va. Admin. Code § 35-115-110(C)(17)). The hospital refused to permit Mr. Riddick to leave seclusion even to attend religious services, use the hospital library, or obtain treatment through group therapy. J.A. 86. This oppressive isolation caused Mr. Riddick's mental health to deteriorate considerably, resulting in depression, anxiety, and hallucinations. J.A. 86. Mr. Riddick began to talk to himself to make up for the lack of human interaction. J.A. 86. For extended periods, he even stopped eating. J.A. 86.

Mr. Riddick's seclusion, lasting some 13,848 hours, was 3,462 times longer than the four-hour limit permitted by Virginia law. *See* 12 Va. Admin. Code § 35-115-110(C)(14). Standing orders, even when exemptions from the four-hour limit are granted, are unequivocally prohibited. *Id.* § 35-115-110(c)(15); *see also id.* § 35-115-10(D) ("These exemptions shall be time limited . . . .").

A few months after his placement in seclusion, Mr. Riddick submitted objections to his confinement. J.A. 39. He specifically complained that, as part of his maltreatment, hospital staff were not observing him even from outside his door, which was how they observed other secluded patients. J.A. 39.

Vauter dismissed Mr. Riddick's objections in August 2018, writing that she had "already sought and obtained the necessary exemption to 12

VAC35-115-110," and that "this exemption was reviewed and approved," permitting her to ignore the face-to-face-observation requirement. J.A. 39.

B. Central State's History of Unlawful Restraint and Seclusion.

Sadly, Mr. Riddick is not the only patient to endure unlawfully abusive restraint and seclusion at Central State. In 1999, the Commonwealth of Virginia entered into a consent decree with the United States Department of Justice to resolve an investigation into Central State's patient-care practices. *See Va. Central State Hosp. Settlement*, U.S. Dep't of Justice, https://tinyurl.com/yh6etskc (last updated Aug. 6, 2015).[1] The Department of Justice concluded that the hospital's "inappropriate use of restraints and seclusion as punishment" had resulted in "tragic consequences." *CRIPA Investigation of Central State Hospital*, U.S. Dep't of Justice, https://tinyurl.com/7d3z666e (last updated June 6, 2023). The Department specifically found that a patient died after being placed in restraints for 300 hours—shorter than the period Mr. Riddick was restrained—despite warnings from her treating physician that the restraints posed a grave threat to her safety. *Id.* The Department further found that other patients were improperly restrained or secluded for periods

[1] "This court and numerous others routinely take judicial notice of information contained on state and federal government websites." *United States v. Garcia*, 855 F.3d 615, 621 (4th Cir. 2017), *abrogated on other grounds*, *Maslenjak v. United States*, 582 U.S. 335 (2017).

lasting 668, 720, and 1,727 hours (*id.*), which are all far shorter than the period that Mr. Riddick was restrained and then secluded.

Following its investigation, the Department of Justice concluded that the "[r]estraint and seclusion practices" at Central State "depart[ed] substantially from accepted professional standards." *Id.* As a result, the United States demanded—and Virginia agreed—that the hospital must adjust its policies to "comport with professional standards." *Id.* Among other requirements, the hospital needed to monitor restrained and secluded patients properly, and it needed to document each use of restraint or seclusion to articulate the criteria for the patient's release. *Id.*

The hospital did none of that for Mr. Riddick.

C. History of This Action.

When internal administrative review yielded him no relief, or even any meaningful response, Mr. Riddick drafted his original Complaint in this action. *See* J.A. 8–21. He worked on the Complaint without access to basic legal-research tools, both because he was in seclusion (J.A. 15) and because no patients at Central State are allowed internet access (J.A. 24–25; J.A. 34). Vauter suggested that the hospital could supply "cases or citations" that Mr. Riddick came across in his research (J.A. 34), without explaining how he was supposed to find cases to request when Vauter did not allow him even to use the hospital library (J.A. 92–93). In fact, Mr. Riddick had

to submit a special request merely to get an up-to-date copy of the applicable state regulations. J.A. 34.

In March 2019, Mr. Riddick—still held in strict seclusion and proceeding *pro se*—filed his suit against Vauter, Barber, and other state officials under 42 U.S.C. § 1983 to enforce his Fourteenth Amendment right to be free from unreasonable restraint. *See* J.A. 8–21. *See generally Youngberg v. Romeo*, 457 U.S. 307, 321 (1982). Defendants moved to dismiss for failure to state a claim. With his opposition to that motion, Mr. Riddick attached letters that he had exchanged with Central State staff, including Vauter's August 2018 letter concerning his prolonged seclusion. *See* J.A. 33–41; J.A. 91–97.

After what at that point had been eighteen months in seclusion, Mr. Riddick moved in August 2019 for appointment of counsel. J.A. 48–50. He explained that his prolonged seclusion had caused his mental health to deteriorate to the point that he could no longer represent himself. J.A. 49. The seclusion also made it impossible to conduct legal research, as Mr. Riddick detailed in his opposition to Defendants' motion to dismiss. J.A. 24–25.

In November 2019, the district court dismissed with prejudice Mr. Riddick's claims against some of the defendants but dismissed without prejudice the claims against Vauter, Barber, and Barber's successor, Hughes Melton. J.A. 77. The court held that Mr. Riddick had adequately

alleged that Vauter personally participated in his maltreatment but had not pleaded sufficient facts to establish Barber's personal participation or Vauter's deviation from accepted professional standards. J.A. 74–76.

The district court also denied appointment of counsel, reasoning that Mr. Riddick had responded to the court's earlier orders with filings that were "meticulous, orderly, and notarized." J.A. 76–77.

Still proceeding *pro se*, Mr. Riddick appealed that 2019 Order of Dismissal. *See* J.A. 78–81. This Court held, however, that it lacked jurisdiction over the appeal, citing finality concerns, and remanded with instructions to allow Mr. Riddick to file an amended complaint. J.A. 81.

Accordingly, Mr. Riddick filed his Second Amended Complaint, naming Vauter, Barber, and Melton as defendants. J.A. 84. Mr. Riddick alleged that they "failed to adhere" to the pertinent portions of the Virginia Administrative Code, quoting the four-hour limits on restraint and seclusion. J.A. 87. To add more factual allegations, he also attached additional state regulations regarding care for the involuntarily committed, as well as his correspondence with Vauter—including Vauter's February 2018 letter concerning the exemption that she had sought and obtained for the use of prolonged restraint. *See* J.A. 91–132.

In February 2021, Vauter, Barber, and Melton filed a motion to dismiss the Second Amended Complaint. *See* J.A. 134–135.

The next month, Mr. Riddick filed a renewed motion seeking appointed counsel, specifically explaining that Central State had confiscated his USB drive containing "all of [his] legal matters . . . [pertinent to] this lawsuit from its inception." J.A. 153. He further explained that he could not represent himself without the documents on the USB drive or access to the court's electronic filing system. J.A. 153.

Three days later, on March 8, 2021, the district court denied that renewed request for counsel. J.A. 156. The court held that Central State's confiscation of the USB drive did not amount to exceptional circumstances justifying appointment of counsel under 28 U.S.C. § 1915(e)(1). J.A. 157. The court further concluded that Mr. Riddick's claims were not so complex as to prevent him from litigating on his own. J.A. 157. "[O]ut of an abundance of caution," the court directed the clerk's office to mail to Mr. Riddick a copy of the docket sheet, Mr. Riddick's Second Amended Complaint, Vauter and Barber's motion to dismiss, and the court's earlier order dismissing the original complaint. J.A. 157–158. It granted Mr. Riddick fourteen days to respond to Vauter and Barber's motion to dismiss or else have the motion deemed unopposed. J.A. 158.

On March 22, the deadline for his response, Mr. Riddick moved to have the court treat his previous opposition to Defendants' earlier motions to dismiss as his response to the remaining defendants' new motion to

dismiss, explaining that Central State staff had "just 20 minutes ago presented [him] with this Courts [sic] order . . . ."[2] J.A. 160. Beyond explicitly stating that he received the court's March 8 Order "the same exact day of which [he] had been ordered to respond by" (J.A. 160), Mr. Riddick straightforwardly explained that he did not "have the necessary resources with which to respond to Defendants [sic] Motion to Dismiss" and reiterated his lack of legal-research tools and resources (J.A. 160). He further stated that his USB drive had been "purposefully confiscated by CSH personell [sic] so as to prevent him from prevailing in this lawsuit." J.A. 160.

On April 27, the court granted Mr. Riddick's motion to treat his opposition to the motion to dismiss the earlier complaint as an opposition to Defendants' new motion to dismiss the Second Amended Complaint. It specifically found that Mr. Riddick "does not have access to resources that would allow him to intelligently respond to Defendants' Motion to Dismiss." J.A. 168.

The district court then dismissed all claims with prejudice. J.A. 179. While concluding that Mr. Riddick had pleaded enough facts to establish Vauter's personal participation, the court nonetheless held that he had not alleged sufficient facts to state a claim that Vauter deviated from accepted professional standards when she kept him in hard restraints for two weeks

---

[2] Mr. Riddick's March 22 motion was formally entered on the district court's docket on March 29.

and in strict seclusion for nineteen months. J.A. 177–178. It further held that Mr. Riddick failed to allege sufficient facts to establish that Barber personally participated in the acts that harmed him. J.A. 176–177.

In so ruling, the court expressed the view that 12 Va. Admin. Code § 35-115-110(C)(14) could not establish standards of care against which to measure Vauter's actions because Vauter had received exemptions, approved by "the Comissioner," to place Mr. Riddick in restraints and seclusion beyond the four-hour maximums. J.A. 178. In other words, the court held that Vauter had exercised professional judgment by merely seeking the exemptions from Barber, "because [12 Va. Admin. Code § 35-115-10(D)] allows Central State to exercise professional judgment in seeking and obtaining approval to suspend its requirements." J.A. 178.

The court did not cite or otherwise acknowledge any documents that Mr. Riddick attached directly to his Second Amended Complaint apart from Vauter's letter defending her decision to place Mr. Riddick in restraints—which Defendants had invoked in their motion to dismiss. *Compare* J.A. 178 *with* J.A. 148. Similarly, the Court considered documents attached to Mr. Riddick's opposition brief, but only those that Defendants specifically cited. *Compare* J.A. 178 *with* J.A. 148, J.A. 39, *and* J.A. 91–92.

Mr. Riddick timely filed his notice of appeal in May 2021. J.A. 180–183. This Court ordered the appointment of appellate counsel on August 23, 2023. J.A. 184–186.[3]

SUMMARY OF ARGUMENT

Despite litigating *pro se* while being held in complete seclusion for nineteen months, Mr. Riddick still managed to make substantial factual allegations of violations of his rights that are more than adequate to survive a motion to dismiss.

Mr. Riddick's Second Amended Complaint adequately alleges that Vauter's actions substantially departed from accepted practice. The Virginia Administrative Code sets the baseline for the use of restraint and seclusion at a maximum of four hours each. By expressly quoting those standards and attaching the pertinent regulations, Mr. Riddick gave a proper yardstick against which to measure Vauter's conduct. He also alleged that Vauter placed him in restraints for 2 weeks and then in seclusion for 577 days, both of which are orders of magnitude beyond what Virginia has determined to be acceptable. Those allegations plausibly state a claim that Vauter substantially deviated from accepted medical practice. And importantly, whether a healthcare professional substantially departed

[3] Mr. Riddick has now voluntarily dismissed his appeal as to Defendant Melton, who did not become Commissioner of the Virginia Department of Behavioral Health and Developmental Services until after Mr. Riddick was already in seclusion, and who is now deceased.

from accepted practice is a factual question rather than a legal one, so it cannot be resolved at the motion-to-dismiss stage.

The Second Amended Complaint also adequately alleges Barber's personal involvement in violating Mr. Riddick's rights. Mr. Riddick's allegations show both that Barber was the only person with the lawful authority to grant exemptions to permit the prolonged restraint and seclusion, and that Vauter actually sought and obtained the exemptions. Therefore, Barber had to be personally involved.

Finally, the district court erred in denying Mr. Riddick's request for appointment of counsel, failing to appreciate that Mr. Riddick's mental state and the hospital's denial of access to legal resources or an adequate law library warranted appointed counsel. Because later stages of this litigation will require even more skilled representation, Mr. Riddick should be granted appointed counsel on remand.

STANDARDS OF REVIEW

This Court reviews the "grant of a motion to dismiss *de novo* . . . accept[ing] as true all of the factual allegations contained in the complaint and draw[ing] all reasonable inferences in" Mr. Riddick's favor. *Ray v. Roane*, 948 F.3d 222, 226 (4th Cir. 2020) (citations omitted). All that Mr. Riddick needed to do was to make factual allegations sufficient to "state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Plausibility does not require probability, but rather, just more

than "a sheer possibility that a defendant acted unlawfully." *Id.* And because Mr. Riddick filed his complaint *pro se* and alleged violations of his civil rights, his complaint is entitled to the most liberal construction. *See Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (per curiam); *Jehovah v. Clarke*, 798 F.3d 169, 176 (4th Cir. 2015).

This Court reviews the denial of a motion to appoint counsel for abuse of discretion. *Miller v. Simmons*, 814 F.2d 962, 966 (4th Cir. 1987).

ARGUMENT

Read liberally, and construing all facts and drawing all inferences in Mr. Riddick's favor, the Second Amended Complaint plausibly alleges both that his prolonged restraint and seclusion by Vauter is not a valid exercise of professional judgment and that Barber was personally involved in depriving Mr. Riddick of his rights. Despite lack of counsel and total seclusion, Mr. Riddick has alleged not just plausible, but strong, claims for relief. That is more than enough to defeat a motion to dismiss. *See Williams v. Kincaid*, 45 F.4th 759, 765–766 (4th Cir. 2022) (*pro se* plaintiff's "recitation of facts need not be particularly detailed, and the chance of success need not be particularly high," to overcome Rule 12(b)(6) motion to dismiss (quoting *Owens v. Balt. City State's Att'ys Off.*, 767 F.3d 379, 403 (4th Cir. 2014)).

Given the complex legal issues ahead of him and the evidence that must be discovered and marshaled to litigate his claims, Mr. Riddick should receive appointed counsel on remand.

I. THE SECOND AMENDED COMPLAINT PLAUSIBLY ALLEGES THAT VAUTER AND BARBER VIOLATED MR. RIDDICK'S CONSTITUTIONAL RIGHTS.

Civilly committed patients may bring Fourteenth Amendment claims for damages when they have been subjected to unsafe or unreasonably restrictive conditions of confinement. *Youngberg*, 457 U.S. at 315–316. While "decisions made by the appropriate professional are entitled to a presumption of correctness" (*id.* at 324), those "decisions . . . are not conclusive" (*Thomas S. ex rel. Brooks v. Flaherty*, 902 F.2d 250, 252 (4th Cir. 1990)). "[W]hen the decision by the professional is . . . a substantial departure from accepted professional judgment," the plaintiff overcomes the presumption. *Youngberg*, 457 U.S. at 323. That is the case here.

A. As alleged, Vauter's actions were far outside the bounds of accepted practice.

1. *Youngberg* claims are parallel to those brought under the Eighth Amendment by persons convicted of crimes. *Id.* at 315–316. So because "it is cruel and unusual punishment to hold convicted criminals in unsafe conditions, it must be unconstitutional to confine the involuntarily committed—who may not be punished at all—in unsafe conditions." *Id.* And hence, because the "right to freedom from bodily restraint . . . survives

criminal conviction[,] . . . it must also survive involuntary commitment." *Id.* at 316.

In *Youngberg* claims, however, courts also take into account the treating physician's professional judgment. *Id.* at 321. But while medical judgments receive some deference, the *Youngberg* "standard of professional judgment presents a lower standard of culpability compared to the Eighth Amendment standard of deliberate indifference." *Doe 4 ex rel. Lopez v. Shenandoah Valley Juv. Ctr. Comm'n*, 985 F.3d 327, 343 (4th Cir. 2021); *accord id.* at 349 (Wilkinson, J. dissenting). So the professional-judgment rule does not license maltreatment of civilly committed patients just because the defendant has a medical license.

2. To identify the pertinent "accepted professional standards," courts may look to the "written policies" of the relevant state agency. *Thomas S.*, 902 F.2d at 252. In Virginia, the State Board of Behavioral Health and Developmental Services has promulgated specific, detailed regulations governing the rights and treatment of involuntarily committed patients. *See* Va. Code Ann. § 37.2-203.

Those regulations specify that the usual maximum period for restraint of involuntarily committed adults is four hours (with shorter maximums for youths). 12 Va. Admin. Code § 35-115-110(C)(14). The regulations further mandate that "providers shall not issue standing orders for the use of . . . restraint" (*id.* § 35-115-110(C)(15)) but instead must "limit

each approval for restraint for behavioral purposes . . . to four hours" (*id.* § 35-115-110(C)(14)).

The same goes for seclusion: State officials must "limit each approval for . . . seclusion to four hours." *Id.* Virginia has straightforwardly and unequivocally mandated that "providers shall not issue standing orders for the use of seclusion." *Id.* § 35-115-110(C)(15). And whenever hospital staff seclude a patient—no matter what the duration—they must "monitor" the patient "through continuous face-to-face observation." *Id.* § 35-115-110(C)(17).

Together, these regulations specify what Virginia has identified as the appropriate bounds of acceptable professional conduct.[4]

---

[4] The federal government and every other state in this Circuit share Virginia's careful limitation of the permissible periods of restraint and seclusion for involuntarily committed individuals. *See* 42 C.F.R. § 482.13(e) (generally limiting use of restraint or seclusion to four hours, with possible renewals for a maximum of 24 hours; mandating hourly face-to-face evaluations; and strictly prohibiting standing orders of seclusion); W. Va. Code R. § 64-59-10 (same); Md. Code Regs. §§ 10.21.12.09, 10.21.13.07 (generally prohibiting use of restraint or seclusion for more than 24 hours, with continuous supervision and daily or every-other-day reevaluations if patient is to be restrained for a longer period, and requiring daily, every-other-day, or weekly reevaluations if patient is to be secluded for a longer period); 10A N.C. Admin. Code §§ 28D.0206(g)–(l), 28D.0208(g) (limiting use of restraint and seclusion to four hours; prohibiting standing orders; requiring that renewals of restraint or seclusion—each for at most 24 hours at a time—be approved by North Carolina Human Rights Committee); S.C. Code Ann. § 44-22-150 (limiting restraint or seclusion to 24 hours, requiring written authorization for extensions, and providing that restraints must be removed every 2 hours for motion and exercise).

3. Mr. Riddick's Second Amended Complaint contains sufficient facts plausibly to allege that Vauter substantially departed from those accepted practices. Despite needing to allege facts pertaining to Vauter's conduct only, and not the specific professional standards of conduct against which to measure them,[5] Mr. Riddick quotes those very standards—the Virginia regulations for treatment of the involuntarily committed. J.A. 87–88. And as alleged, Vauter's use of restraint and seclusion, which Barber specifically

---

[5] In *Doe 4*, for example, unaccompanied immigrant children challenged the adequacy of the medical care that they received at a youth-detention facility. 984 F.3d at 329. In their complaint, they did not identify a precise standard of accepted professional practice. Rather, they alleged facts about their treatment—*e.g.*, that the facility's staff members were "unable to recognize" the mental-health needs of the children, that the children frequently harmed themselves, and that the detention center did not properly treat them. Second Amended Class Action Complaint at ¶¶ 94–115, *Doe 4 ex rel. Lopez v. Shenandoah Valley Juv. Ctr. Comm'n*, No. 5:17-cv-0097 (W.D. Va.) (Dkt. No. 68). And the children claimed, based on those facts, that the treatment was "such a substantial departure from accepted professional judgment . . . as to demonstrate that the Defendant [had] not actually based its decision-making on such judgment." *Id.* ¶ 147.

On appeal from a grant of summary judgment to the detention center, this Court held that the district court had erroneously applied a deliberate-indifference standard and remanded for an application of *Youngberg* instead. *Doe 4*, 984 F.3d at 329. Neither this Court nor the district court (before or after remand) even hinted that the complaint might somehow have failed to state a claim because it did not allege any specific professional standard against which to measure the care that the children received.

The district court's dismissal of Mr. Riddick's action on that ground has no basis in law. *Contra* J.A. 178 (dismissing Mr. Riddick's action because he had "not stated any facts that identify the accepted professional standard"). And it is the opposite of the liberal construction to which Mr. Riddick's Second Amended Complaint is entitled. *Contra Jehovah*, 798 F.3d at 176.

approved, exceeded those regulatory maximums by orders of magnitude, placing their actions beyond the pale of acceptable practice.

Rather than limiting restraint to four hours, hospital staff reported to Mr. Riddick that Vauter ordered and Barber approved that he "be placed into 4-point restraints indefinitely." J.A. 85. Vauter kept him in those painful restraints for two weeks (J.A. 85), which is more than eighty-four times the limit that Virginia and the federal government have mandated. She had her staff keep Mr. Riddick fully restrained every minute of every day, except for allowing him one arm when he showered. "[H]ygiene became a major issue," because Mr. Riddick could not "properly wash[] his body." J.A. 85. Because, moreover, Vauter kept Mr. Riddick in a "permanent stress position for over 2 weeks," her use of the restraints—which she could impose only with Barber's express approval—caused Mr. Riddick significant physical pain. *Id.* Neither did she allow Mr. Riddick to use the hospital's law library (J.A. 85), such as it is (*see supra* pp. 9–10, 13), or use the gym or attend religious services (J.A. 86).

Vauter's use of restraints was, moreover, just the beginning of her abusive treatment of Mr. Riddick. Despite Virginia's express prohibition against "standing orders" for seclusion (12 Va. Admin. Code § 35-115-110(C)(15)), she issued, with Barber's approval, a "written standing order" that in the end kept Mr. Riddick in seclusion "for 577 days" (J.A. 86), which is 3,462 times the regulatory maximum.

Vauter's imposition of indefinite seclusion and her decision to leave Mr. Riddick in that condition for 19 months were incompatible with the state standards that Mr. Riddick correctly identified in his Second Amended Complaint. What is more, after confining Mr. Riddick to an empty ward, Vauter also completely ignored the procedures that Virginia has mandated to monitor patients' safety and ensure the therapeutic value of any seclusion. Throughout Mr. Riddick's 577 days of being locked away in that empty ward, he was prohibited from seeing another human—even through a window. J.A. 86. Hospital staff observed him solely through video cameras and a two-way mirror. J.A. 46; J.A. 86; *cf.* 12 Va. Admin. Code § 35-115-110(C)(17) (requiring hospital staff to "monitor" secluded patients "through continuous face-to-face observation"). And rather than producing any therapeutic value, the extended seclusion resulted in Mr. Riddick's "experienc[ing] gross hallucinations, . . . talk[ing] to himself a lot, and experienc[ing] long periods of depression where [he] stopped eating." J.A. 86.

4. That Virginia allows for the possibility of exemptions from the four-hour limits on restraint and seclusion does not strip the regulations of their pertinence to the professional-judgment inquiry. For while "the commissioner"—in this case, Barber—"may" grant an "exemption" from the four-hour maximums (12 Va. Admin. Code. § 35-115-10(D)), the State requires that any "exemption shall be in writing and . . . be time limited"

(*id.*). And in Mr. Riddick's February 2018 letter to Vauter, which is attached to the Second Amended Complaint and therefore is "part of [his] pleading for all purposes" (Fed. R. Civ. P. 10(c)), he alleges that the exemption was not "in writing" and that it had no "time limit" (J.A. 97). So as alleged in the Second Amended Complaint, the exemption that Vauter sought and obtained from Barber also substantially departed from the state-mandated exemption process, in blatant violation of the strict safeguards for patient safety that Virginia has imposed. *See Thomas S.*, 902 F.2d at 252–253 (holding that state hospital failed to exercise professional judgment by not following proper procedures in restraining and secluding plaintiff).

5. Even if Vauter and Barber's exemption had complied with Virginia law in some narrow, formalistic sense because Virginia allows for the possibility of exemptions (which is how the district court viewed the case but we do not believe is legally supportable), surely an exemption cannot license any and all maltreatment that Vauter, Barber, and Central State might dish out. For if exemptions—even those done entirely by the book (which was not the case here)—were to render all conduct toward patients acceptable, that would transform *Youngberg's* presumption of validity into absolute immunity: Any hospital official who filed for an exemption—or worse, a long string of legally noncompliant exemptions—would mechanically satisfy the professional-judgment standard. Under that theory, Vauter could have placed Mr. Riddick in hard restraints and

completely isolated and ignored him until the day he died, despite Virginia's determination that four hours for each, with careful monitoring, is the professionally acceptable norm. And in all events, Virginia's exemption provision cannot nullify *Youngberg*. That would be contrary to, among other things, the Fourteenth Amendment and the Supremacy Clause of the U.S. Constitution.

6. Yet the court below improperly declined to afford Virginia's regulations any weight. Instead, it construed Mr. Riddick's suit here as entailing only a procedural-due-process claim, and then reasoned that Virginia's four-hour maximum could not establish a plausible baseline for "accepted professional judgment, because" the possibility of exemptions "allows Central State to exercise professional judgment in seeking and obtaining approval to suspend its requirements." J.A. 178. That conclusion is wrong twice over.

First, *Youngberg* recognizes substantive rights—not just procedural ones. *See* 457 U.S. at 314–316. So Mr. Riddick was not required to meticulously trace how the Virginia regulatory procedures create a sufficient interest in liberty or property to establish liability, because the rights exist regardless of those procedures. *Cf. Bd. of Regents v. Roth*, 408 U.S. 564, 569–570 (1972).

Second, even if Virginia's four-hour maximums and additional protections for patients held in restraints or seclusion somehow did not

apply—which they do—that does not render those standards wholly irrelevant. "Professional norms may be," and routinely are, "reflected in" nonbinding standards. *Stokes v. Sterling*, 10 F.4th 236, 246 (4th Cir. 2021), *vacated on other grounds*, 142 S. Ct. 2751 (2022). For example, the Supreme Court and this Court regularly look to the American Bar Association's Model Rules of Professional Responsibility and "other comparable guides" to evaluate the reasonableness of attorneys' conduct. *Id.*; *accord Wiggins v. Smith*, 539 U.S. 510, 524 (2003). If the ABA's nonbinding Model Rules may provide standards against which to evaluate attorneys' professional conduct, surely official state regulations governing medical professionals' treatment of involuntarily committed patients—even ones from which Vauter might have obtained limited exemptions—may provide standards against which to evaluate her disturbing and frankly cruel treatment of Mr. Riddick.

In essence, the court below required Mr. Riddick to plead far more than the "factual content that allows the court to draw the reasonable inference that the defendant is liable" (*Iqbal*, 556 U.S. at 678). It required him to identify in the Second Amended Complaint, and without the benefit of counsel, the expert evidence and airtight legal analysis to establish that 591 days of back-to-back restraint and seclusion substantially departed from accepted practice.

7. While "judicial review of challenges to conditions in state institutions" may be limited (*Youngberg*, 457 U.S. at 322), it is not and cannot be nonexistent (*see Thomas S.*, 902 F.2d at 252). Neither does Vauter's conduct require the courts to determine a close case: According to state (and federal) standards, Vauter's actions were so far outside the range of acceptable practice that they shock the conscience. And by its very nature, treatment that shocks the conscience substantially departs from acceptable practice. *See, e.g.*, *Doe 4*, 958 F.3d at 349–351 (Wilkinson, J. dissenting) (professional-judgment standard is "less deferential" to defendants' actions than deliberate-indifference or shocks-the-conscience standards).

B. The factual allegations present questions that cannot be determined in Defendants' favor on a motion to dismiss.

Even if this case were a close one, which it isn't, the Second Amended Complaint presents factual questions, not legal ones. So Rule 12(b)(6) dismissal is improper for that reason also. And Mr. Riddick's allegations mirror the facts that would foreclose summary judgment for Defendants. So as allegations, they must also state plausible claims that cannot be dismissed on the pleadings.

The Supreme Court in *Youngberg* "indicated that a determination of whether the defendants' actions demonstrate a substantial departure from professional judgment is a factual, not a legal issue." *Storm ex rel. Storm v. Northampton Cnty.*, No. 87-3890, 1988 WL 13245, at *1 (E.D. Pa. Feb. 18,

1988) (cleaned up) (citing *Youngberg*, 457 U.S. at 323 n.31). Because the inquiry is a factual one, courts "obviously cannot resolve that question against [the plaintiff] on a motion to dismiss." *Doe ex rel. Tarlow v. District of Columbia*, 920 F. Supp. 2d 112, 126 (D.D.C. 2013).

This Court likewise treats the professional-judgment inquiry as a factual one: In *Thomas S.*, this Court affirmed a judgment that the Secretary of the North Carolina Department of Human Resources had substantially departed from the professional standards for treating patients in public psychiatric hospitals, because the district court "identified the accepted professional standards" and then "found areas in which the decisions of the treating professionals substantially departed" from them. 902 F.2d at 252. This Court flatly rejected the argument that "defer[ence] to [the] professional judgment" of hospital administrators requires district courts to dispose of claims like Mr. Riddick's as a matter of law. *Id.* Rather, the Court affirmed the district court's "finding" that the defendant "substantially departed" from accepted practice, because there was "ample evidence" in the record to support that finding—namely, that seclusion and restraint had not been justified in writing and that hospital staff had failed adequately to "monitor the unwarranted use of seclusion and restraint." *Id.* at 252–253.

The allegations in the Second Amended Complaint here echo the district court's post-discovery factual findings in *Thomas S.*—findings that

this Court declined to disturb despite the defendants' invocation of the professional-judgment rule. Here, Vauter merely "announce[d]" Mr. Riddick's seclusion, without "further instructions" or written justification, and she failed to monitor Mr. Riddick adequately—or seemingly at all. J.A. 86. Those allegations are the very facts that, if proven, would support a finding that Vauter substantially departed from accepted practice. *See Thomas S.*, 902 F.2d at 253.

The Seventh Circuit has also recognized that the professional-judgment inquiry is a factual one. In *West v. Schwebke*, 333 F.3d 745 (7th Cir. 2003) (Easterbrook, J.), that court affirmed the district court's holding that keeping civilly committed individuals in seclusion for eighty-two days generated a "dispute within the profession" that "prevents summary judgment" (*id.* at 747)—let alone dismissal on the pleadings. In opposition to a motion for summary judgment, the plaintiffs in *West* provided affidavits from two psychiatrists who had "concluded unequivocally" that eighty-two days in seclusion "was medically inappropriate." *Id.* That sufficed, the Seventh Circuit held, to raise genuine factual issues whether "defendants kept plaintiffs in seclusion for periods far exceeding what could be justified by considerations of either security or treatment." *Id.* at 749. Thus, the Seventh Circuit held that the case must go to trial. *Id.*

The allegations in the Second Amended Complaint here go further than the facts adduced during discovery in *West*. If 82 days of seclusion was

enough for the Seventh Circuit to hold that a trial was necessary (*see id.* at 747–748), then allegations of 591 consecutive days of restraint or seclusion must at least plausibly state a claim for relief. And although the allegations here are so egregious that someone unfamiliar with the patterns of abuse at Central State might wonder about them, they unfortunately appear to be just business as usual at the hospital. *See CRIPA Investigation of Central State Hospital*, U.S. Dep't of Justice, https://tinyurl.com/7d3z666e (last updated June 6, 2023).

By granting the motion to dismiss, the district court denied Mr. Riddick the opportunity to prove any of his factual allegations. The court instead resolved a factual question—whether Vauter substantially departed from accepted practice—in her favor even before discovery. That was error: When adjudication of a claim turns on factual questions requiring a trial and cannot be resolved on summary judgment, dismissal on the pleadings is equally improper. *See, e.g.*, *Wilson v. Ark. Dep't of Hum. Servs.*, 850 F.3d 368, 373–374 (8th Cir. 2017) (if proffered facts would preclude disposing of suit "[e]ven at summary judgment," then well-pleaded factual allegations preclude Rule 12(b)(6) dismissal). As the Seventh Circuit declared in *West*, the presumption of validity that a medical professional's actions are typically afforded is "a far cry from saying anything goes." 333 F.3d at 749.

II. THE SECOND AMENDED COMPLAINT PLAUSIBLY ALLEGES BARBER'S PERSONAL INVOLVEMENT IN VIOLATING MR. RIDDICK'S CONSTITUTIONAL RIGHTS.

1. Liability under 42 U.S.C. § 1983 requires a defendant's personal involvement in the violation of the plaintiff's civil rights. *See, e.g.*, *Williamson v. Stirling*, 912 F.3d 154, 171 (4th Cir. 2018); *Vinnedge v. Gibbs*, 550 F.2d 926, 928 (4th Cir. 1977). Here, Mr. Riddick seeks to hold Barber liable for "his own . . . misconduct" (*Iqbal*, 556 U.S. at 677) in granting Vauter individualized exemptions from state regulatory limits to restrain and seclude Mr. Riddick for indefinite and grossly excessive periods—not for Vauter's misconduct. "[B]y the very nature of [his] position," Barber himself was required to "review and enforce" Title 12, Chapter 35 of the Virginia Administrative Code and independently consider the appropriateness of any requested exemption to impose prolonged restraints or seclusion on Mr. Riddick. *Gordon v. Schilling*, 937 F.3d 348, 358–359 (4th Cir. 2019) (Virginia Department of Corrections' medical director personally involved where he enforced policy denying plaintiff treatment and reviewed plaintiff's grievance appeals).

2. In resolving whether Mr. Riddick adequately alleged Barber's personal involvement, the district court was required to evaluate the Second Amended Complaint "in its entirety," including "documents attached or incorporated into the complaint." *E.I. Du Pont de Nemours & Co. v. Kolon Indus., Inc.*, 637 F.3d 435, 448 (4th Cir. 2011); *see also Occupy Columbia v.*

Haley, 738 F.3d 107, 116 (4th Cir. 2013); Fed. R. Civ. P. 10(c) ("written instrument" attached to complaint is "a part of the pleading for all purposes"). Statutes, regulations, and letters attached to the Second Amended Complaint thus are incorporated as factual allegations. *See, e.g.*, *Lynch v. City of New York*, 952 F.3d 67, 79 (2d Cir. 2020) (defining "written instrument" as including statutes); *N. Ind. Gun & Outdoor Shows, Inc. v. City of South Bend*, 163 F.3d 449, 452–453 (7th Cir. 1998) (same for letters).[6] These materials must be construed liberally when, as here, the plaintiff proceeds *pro se*. *See Erickson*, 551 U.S. at 94. And the same rules apply to appellate review as should have applied in the district court. *See generally Ray*, 948 F.3d at 226 (dismissal of complaint reviewed *de novo*).

Mr. Riddick expressly alleges Barber's involvement, stating in the text of the Second Amended Complaint that Vauter and Barber ordered that he be placed in restraints indefinitely. J.A. 85. Mr. Riddick further alleges that Vauter sought a standing order for his seclusion that Barber approved. J.A. 88.

---

[6] A plaintiff may, of course, attach or incorporate a document into a complaint for a purpose other than asserting the truth of its contents. *See Goines v. Valley Cmty. Servs. Bd.*, 822 F.3d 159, 167 (4th Cir. 2016). When determining whether to consider a document's contents as true, courts "should consider the nature of the document and why the plaintiff attached it." *Id.* Pertinent considerations include the source of the document (particularly if it was from the defendant), its contents, and its reliability. *N. Ind. Gun & Outdoor*, 163 F.3d at 455. The attachments here show what Vauter expressly told Mr. Riddick. Whether or not she was being truthful about the exemptions is a matter for discovery.

The documents that Mr. Riddick attached to his Second Amended Complaint, including Vauter's February 2018 letter and the Virginia regulations, confirm Barber's involvement. Both the letter and Section 35-115-10(D) specify the possibility of obtaining an exemption from the four-hour limits on restraint and seclusion, but only with specific approval from the Commissioner of the Virginia Department of Behavioral Health and Developmental Services—namely, Barber. *See* J.A. 92; J.A. 102; 12 Va. Admin. Code § 35-115-10(D).

Mr. Riddick also attached to his opposition to the motion to dismiss Vauter's August 2018 letter, adding further support to his allegations. And it is proper to consider as part of a *pro se* complaint the plaintiff's factual allegations made in a filing labeled as an opposition to a motion to dismiss. *See, e.g.*, *Walker v. Schult*, 717 F.3d 119, 122 n.1 (2d Cir. 2013); *Gill v. Mooney*, 824 F.2d 192, 195 (2d Cir. 1987); *Smith v. Blackledge*, 451 F.2d 1201, 1202 (4th Cir. 1971) (document filed by *pro se* plaintiff to "[f]urther [p]articularize" complaint should be considered amendment to complaint rather than response to motion to dismiss). In all events, Mr. Riddick had already referred to the August 2018 letter in the text of his Second Amended Complaint when he alleged that he "remained in solitary confinement per [a] written standing order sought by Defendant Vauter . . . ." J.A. 88. Because the letter thus forms part of the basis of Mr. Riddick's claims (and concretely supports Barber's personal involvement), it is integral to the

Second Amended Complaint, as Defendants themselves argued below (J.A. 148), and should be deemed part of the factual allegations for that reason as well. *See, e.g.*, *Am. Chiropractic Ass'n v. Trigon Healthcare, Inc.*, 367 F.3d 212, 234 (4th Cir. 2004), *abrogated on other grounds*, *Bridges v. Phx. Bond & Indem. Co.*, 553 U.S. 638 (2008).

3. Notably, the district court ***did*** consider the August 2018 letter when dismissing the claims against Vauter, but without considering how it implicated Barber.[7] Barber's personal involvement is, however, the ***only*** plausible inference from Vauter's August 2018 letter and the other facts that Mr. Riddick alleged. That is because all exemptions that Vauter sought from 12 Va. Admin. Code § 35-115-10(D) must have been granted by Barber, for the Code vests the lawful authority to grant exemptions solely in the Commissioner of the Virginia Department of Behavioral Health and Developmental Services. And those exemptions must be particularized for the specific patient. *See* 12 Va. Admin. Code § 35-115-10(D) (Title 12, Chapter 35 applies to involuntarily committed individuals under forensic status "except to the extent that the commissioner may determine this chapter is not applicable to them"). Hence, when Mr. Riddick's

[7] The district court drew the inference that Vauter had exercised professional judgment by seeking the exemption. *See* J.A. 178. That inference, which had the effect of insulating Vauter from liability for placing Mr. Riddick in restraints for two weeks and seclusion for nineteen months, was drawn impermissibly in Vauter's favor at the motion-to-dismiss stage (*see generally Ray*, 948 F.3d at 228).

correspondence with Vauter and the Virginia regulations—which Vauter herself invoked in her letters to Mr. Riddick—are taken together, they necessarily allege Barber's personal involvement, not just Vauter's misconduct.

4. Paradoxically, the district court relied on the critical documents to conclude that Vauter received exemptions (*see* J.A. 178 ("[A]s attachments to Plaintiff's Second Amended Complaint and Response in Opposition make clear, such an exemption was granted here.")) but did not credit them when holding that Mr. Riddick failed to allege Barber's personal involvement. Either no exemptions were granted, in which case Vauter lied to Mr. Riddick and her actions were thoroughly *ultra vires* from the get-go, or Barber was personally involved as the person who reviewed Vauter's requests and granted the exemptions. Mr. Riddick plausibly alleges the latter, based on what Vauter and others on the hospital staff specifically told him. *See* J.A. 39; J.A. 85–86; J.A. 92. The district court's conclusion that exemptions exist necessarily resolved the matter of Barber's personal involvement for the purposes of stating a claim, even if the district court failed to understand the import of its own analysis. So the claims against both Vauter and Barber should be reinstated.

III. MR. RIDDICK WAS, AND IS, ENTITLED TO APPOINTED COUNSEL.

Finally, when a *pro se* litigant has a colorable claim but lacks the capacity to represent himself, the district court should appoint counsel. *Gordon v. Leeke*, 574 F.2d 1147, 1152–1153 (4th Cir. 1978). A district court abuses its discretion if its refusal to appoint counsel results in prejudice that "amount[s] to a denial of fundamental fairness." *Miller*, 814 F.2d at 966. Here, the denial of Mr. Riddick's motions for appointment of counsel did just that.

A. The district court did not adequately consider Mr. Riddick's limited access to legal resources and his deteriorating mental health.

In reviewing the district court's denial of appointed counsel, this Court should assess the character of the *pro se* plaintiff's claims and the plaintiff's circumstances. *Whisenant v. Yuam*, 739 F.2d 160, 163 (4th Cir. 1984), *abrogated on other grounds*, *Mallard v. U.S. Dist. Ct.*, 490 U.S. 296 (1989). Pertinent considerations include the complexity of the case, the plaintiff's ability to investigate facts crucial to the claims, and whether there will be conflicting testimony that will require the skills of counsel to ensure that the truth comes out. *See, e.g.*, *Branch v. Cole*, 686 F.2d 264, 266 (5th Cir. 1982); *McNeil v. Lowney*, 831 F.2d 1368, 1371–1372 (7th Cir. 1987).

In his request for counsel, Mr. Riddick explained that the eighteen months of forced seclusion to which Vauter and Barber had by then subjected him caused his mental health to deteriorate to the point that he

could no longer effectively represent himself. J.A. 49. That alone should have warranted appointed counsel (*see Evans v. Kuplinski*, 713 Fed. App'x 167, 171 (4th Cir. 2017)), especially because Mr. Riddick's case raises serious constitutional claims that may require expert testimony (*see, e.g.*, *West*, 333 F.3d at 747) and may concern conflicting accounts of the circumstances under which Vauter and Barber restrained and secluded Mr. Riddick (*see Whisenant*, 739 F.2d 163–164).

Because Mr. Riddick is involuntarily committed, his confinement will prevent him from deposing Defendants and interviewing other witnesses, both of which are necessary to investigate and introduce the facts to prove his claims. Investigation will be crucial in part because Mr. Riddick alleges that Vauter's asserted reasons for restraining and secluding him were pretextual. J.A. 95–97. Mr. Riddick also alleges that, in addition to the egregious violations of his substantive rights, Vauter and Barber failed to follow proper procedures (J.A. 97), which Mr. Riddick can prove only by obtaining the written exemptions that Barber issued to Vauter or by deposing Vauter, Barber, and other Central State employees.

Further complicating matters for Mr. Riddick as a *pro se* plaintiff, Vauter is no longer at Central State, and Barber is no longer Commissioner of the Department of Behavioral Health and Developmental Services. As an involuntarily committed individual, Mr. Riddick has no access to either of them except through counsel. Although Mr. Riddick thus lacks capacity to

investigate facts crucial to his claims, the court below did not afford these circumstances their proper weight.

What Mr. Riddick faces here is functionally identical to what, in *Whisenant*, this Court held requires appointment of counsel. *See* 739 F.2d at 163. There, because the plaintiff's version of events contrasted sharply with that of the defendants, this Court recognized that the case turned on credibility. *Id.* And with no ability to leave the prison to investigate facts or challenge the defendants' version of those facts, the plaintiff lacked capacity to proceed *pro se*. *Id.* at 163–164. Hence, this Court ruled that the denial of appointed counsel resulted in a fundamentally unfair trial, warranting reversal of the lower court's judgment. *Id.*

Mr. Riddick similarly lacks capacity to conduct necessary discovery. Without appointed counsel on remand, he will face a fundamentally unfair trial—if he can even make it that far without assistance.

Notably, too, Mr. Riddick cannot adequately research legal arguments to support his claims because Central State provides inadequate access to a law library and no access at all to online legal-research tools or resources. In *Evans*, this Court reversed the denial of appointed counsel to a patient ***at Central State***—the very facility where Mr. Riddick is institutionalized—for precisely those reasons. 713 Fed. App'x at 171. Just like Mr. Riddick, the *pro se* plaintiff in *Evans* was involuntarily committed with a severe mental illness. *See id.* Central State did not have or allow

access to an adequate law library. *Id* at 169, 171. And without that access, Mr. Evans simply could not—and Mr. Riddick cannot—conduct the research necessary to pursue claims and vindicate rights in an action like this one. *See id.* at 171. Worse yet, Mr. Riddick has explained that Central State confiscated the USB drive containing the limited legal materials that he did formerly have. J.A. 153. Because Mr. Riddick's circumstances are functionally identical to those in Evans—even down to commitment at the same state institution, with the same inadequate library—Mr. Riddick should have received appointed counsel below, just as this Court ordered in this appeal. *See Evans*, 713 Fed. App'x at 170–171 (exceptional circumstances where plaintiff unable to respond completely to defendants' affirmative defenses because of inadequate law library at Central State).

The district court's failure to appreciate Mr. Riddick's circumstances is an independent basis for reversal. But regardless, and given the strong grounds to reverse dismissal of the substantive claims, Mr. Riddick should be granted prospective relief in the form of appointed counsel on remand.

B. Timely and organized filings should not bar appointment of counsel.

1. The district court's reason for denying Mr. Riddick's first request for counsel was that he had timely filed what the court viewed as organized pleadings. J.A. 76–77. Specifically, the court noted that Mr. Riddick's

motion for appointment of counsel was "meticulous, orderly and notarized," thus supposedly demonstrating lack of need for an attorney. J.A. 76–77.

But what was missing from that filing underscores a key reason why Mr. Riddick required, and still requires, appointed counsel: Central State's denial of access to a law library and other critical legal resources left him with no way to find the two cases that most directly and powerfully supported his motion—*Whisenant* and *Evans*. That this Court has already recognized the inadequate legal resources at Central State to be an especially strong reason to appoint counsel for those involuntarily committed at the facility (*see Evans*, 713 Fed. App'x at 171) should have weighed heavily in deciding the motion here. Yet Mr. Riddick could not inform the district court of the crucial precedents, because he could not discover their existence. Nor, it appears, did the district court learn of *Evans* some other way.

2. What is more, Central State failed to deliver to Mr. Riddick the district court's order directing him to respond to Vauter and Barber's motion to dismiss, until the very day that his response was due to the court. J.A. 160. With no time and no access to "the necessary resources with which to respond," Mr. Riddick was left with little choice but to ask the court to accept his opposition to the motions to dismiss the Amended Complaint as his opposition to the motion to dismiss the Second Amended Complaint. J.A. 160. That request, though entirely understandable given Mr. Riddick's

plight, was one that a competent lawyer would not have made in lieu of preparing an actual Opposition. Plus, in granting this "reincorporation" motion, the district court specifically found that Mr. Riddick "does not have access to resources that would allow him to intelligently respond to Defendants' Motion to Dismiss" (J.A. 168)—a clear finding warranting appointment of counsel (*see Evans*, 713 Fed. App'x at 171). At the very least, Mr. Riddick's desperate request should have given the district court pause about its ruling just three weeks earlier that Mr. Riddick could adequately and ably represent himself.

That Mr. Riddick accomplished with his filings what he did, despite the utter lack of legal resources and his deteriorating mental health that the unlawful seclusion caused (*see* J.A. 49), is undeniably impressive. But that does not mean he had, or has, the capacity to represent himself effectively throughout this litigation.

3. Later stages of this case will be increasingly demanding, requiring more legal resources and more skilled representation. So even if Mr. Riddick effectively represented himself at the pleading stage—which he did not, because he could not—he faces an arduous, uphill battle, in which his inability to depose Vauter and Barber is alone enough to make effective *pro se* litigation of this case impossible. *See, e.g.*, *Whisenant*, 739 F.2d at 163–164. And the posture of the case at later points and the power imbalance of the parties will, moreover, further hinder Mr. Riddick. That is because

Defendants are functionally the state; their successors control Mr. Riddick's every move; and yet Defendants themselves are inaccessible to Mr. Riddick. And all of that will be true in spades if Mr. Riddick is subjected to prolonged seclusion again—which, sadly, seems all too likely. *See Riddick v. Justice*, No. 3:21-cv-0623, 2021 WL 5348679, at *2 (E.D. Va. Nov. 16, 2021) (Novak, J.) (explaining that in 2021, Mr. Riddick was once again placed in seclusion—for over six months at the time of the opinion—by Vauter's successor at Central State).

4. This Court appointed counsel in this appeal for good reason: A strong but complex case over horrendous, unconstitutional restraint and seclusion should not founder because a *pro se* plaintiff confined to the psychiatric institution that abused him cannot effectively litigate to vindicate his fundamental constitutional rights. What this Court recognized warrants counsel at this juncture will remain true on remand.

In ruling that his motion for appointment of counsel and other pleadings demonstrated lack of need for appointed counsel, the district court created a Catch-22: Involuntarily committed *pro se* plaintiffs must choose between not filing motions seeking counsel at all (or filing ineffective ones), and remain *pro se* because they have not made the case for needing help. Or they must file plausible motions and have those motions denied because they appear at least minimally competent and thus establish lack of need

for an attorney. Either way, the plaintiffs end up remaining *pro se* and are deprived of the access to justice to which they are entitled.

Federal courts have broad powers to grant equitable relief where necessary. The courts thus have flexibility to "mold each decree to the necessities of the particular case," considering the needs of the claimant. *Swann v. Charlotte–Mecklenburg Bd. of Educ.*, 402 U.S. 1, 15 (1971) (quoting *Hecht Co. v. Bowles*, 321 U.S. 321, 329–30 (1944)). And here, Mr. Riddick needs appointed counsel going forward. Accordingly, if this Court remands this case on any ground, it should direct the district court to appoint counsel to represent him throughout the litigation.

CONCLUSION

The district court's judgment should be reversed, the case should be remanded for the litigation to continue, and this Court should direct that counsel be appointed to represent Mr. Riddick in the ongoing proceedings.

Respectfully submitted,

/s/ *Richard B. Katskee*

RICHARD B. KATSKEE
JOSHUA BRITT†
MOKSH GUDALA†
JAKE SHERMAN†
Duke University
School of Law
210 Science Dr., Box 90360
Durham, NC 27708-0360
(919) 613-7230

Counsel for Appellant

Date: November 27, 2023

February 20, 2024 (Corrected Brief)

† Law student appearing under L.R. 46(a).

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 21-1575 **Caption:** Rashad Riddick v. Jack Barber and Rebecca Vauter

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT

Type-Volume Limit, Typeface Requirements, and Type-Style Requirements

Type-Volume Limit for Briefs if Produced Using a Computer: Appellant's Opening Brief, Appellee's Response Brief, and Appellant's Response/Reply Brief may not exceed 13,000 words or 1,300 lines. Appellee's Opening/Response Brief may not exceed 15,300 words or 1,500 lines. A Reply or Amicus Brief may not exceed 6,500 words or 650 lines. Amicus Brief in support of an Opening/Response Brief may not exceed 7,650 words. Amicus Brief filed during consideration of petition for rehearing may not exceed 2,600 words. Counsel may rely on the word or line count of the word processing program used to prepare the document. The word-processing program must be set to include headings, footnotes, and quotes in the count. Line count is used only with monospaced type. See Fed. R. App. P. 28.1(e), 29(a)(5), 32(a)(7)(B) & 32(f).

Type-Volume Limit for Other Documents if Produced Using a Computer: Petition for permission to appeal and a motion or response thereto may not exceed 5,200 words. Reply to a motion may not exceed 2,600 words. Petition for writ of mandamus or prohibition or other extraordinary writ may not exceed 7,800 words. Petition for rehearing or rehearing en banc may not exceed 3,900 words. Fed. R. App. P. 5(c)(1), 21(d), 27(d)(2), 35(b)(2) & 40(b)(1).

Typeface and Type Style Requirements: A proportionally spaced typeface (such as Times New Roman) must include serifs and must be 14-point or larger. A monospaced typeface (such as Courier New) must be 12-point or larger (at least 10½ characters per inch). Fed. R. App. P. 32(a)(5), 32(a)(6).

This brief or other document complies with type-volume limits because, excluding the parts of the document exempted by Fed. R. App. R. 32(f) (cover page, disclosure statement, table of contents, table of citations, statement regarding oral argument, signature block, certificates of counsel, addendum, attachments):

☑ this brief or other document contains 10,062 [*state number of*] words

☐ this brief uses monospaced type and contains _____ [*state number of*] lines

This brief or other document complies with the typeface and type style requirements because:

☑ this brief or other document has been prepared in a proportionally spaced typeface using Microsoft Word 365 [*identify word processing program*] in Century Schoolbook, equaling 14 pts. [*identify font size and type style*]; **or**

☐ this brief or other document has been prepared in a monospaced typeface using _____ [*identify word processing program*] in _____ [*identify font size and type style*].

(s) Richard B. Katskee

Party Name Rashad Riddick (Appellant)

Dated: February 20, 2024

CERTIFICATE OF SERVICE

I certify that on November 27, 2023, the opening brief for Appellant and Joint Appendix were filed, and that on February 20, 2024, the foregoing corrected opening brief was filed, using the Court's CM/ECF system. All participants in the case are registered CM/ECF users and will be served electronically via that system.

/s/ *Richard B. Katskee*