No. 21-1575

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

RASHAD MATTHEW RIDDICK,

Plaintiff-Appellant

v.

JACK BARBER, Former Interim Commissioner of Virginia Department of Behavioral Health and Developmental Services, *et al.*,

Defendants-Appellees

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

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE IN SUPPORT OF PLAINTIFF-APPELLANT AND URGING REVERSAL

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INTEREST OF THE UNITED STATES

This appeal concerns the standard for alleging that a state hospital violated an involuntarily committed patient's Fourteenth Amendment substantive-due-process rights by putting him in four-point restraints and solitary confinement for prolonged periods of time. The Civil Rights of Institutionalized Persons Act authorizes the Attorney General to investigate and seek equitable relief for a pattern or practice of unconstitutional conditions in a range of state and local institutions, including those holding civilly committed individuals. 42 U.S.C. 1997a(a). Accordingly, the United States has a substantial interest in ensuring that courts properly apply the Fourteenth Amendment in this context.

The United States files this brief under Rule 29(a) of the Federal Rules of Appellate Procedure.

STATEMENT OF THE ISSUES

1. Whether a plaintiff challenging conditions of confinement in a civil-commitment context must identify at the pleading stage the accepted professional standard governing the challenged conditions.

2. Whether a claim challenging the prolonged use of restraints and seclusion in the civil-commitment context should be automatically dismissed where a defendant has exercised its discretion under a state law authorizing exemptions to rules restricting such practices.

STATEMENT OF THE CASE

A. Factual Background

Rashad Riddick is a patient involuntarily committed to the care and custody of the Virginia Department of Behavioral Health and Developmental Services (DBHDS). *See* J.A. 83-84.[1] At the times relevant to this case, Riddick was housed at Central State Hospital in Petersburg, Virginia (Hospital). J.A. 83-84. Riddick alleges that for a two-week period in January 2018, Hospital staff placed him in four-point restraints. J.A. 85. During that time, Riddick alleges that he could not go to group treatment, use the law library, attend religious services, or exercise at the gym, and that he was permitted to take out only one arm at a time from his restraints while showering, preventing him from properly washing himself. J.A. 85. Riddick further alleges that in February 2018, Hospital staff placed him in "an empty psychiatric ward" where he remained "in total isolation for 577 days with absolutely no physical human contact." J.A. 85-86. During that period, Riddick alleges that he was prohibited from attending church services, group treatment, or, for his first year in isolation, outdoor recreation. J.A. 86. Riddick alleges that this prolonged period of isolation caused him to "experience[] gross

[1] "J.A. __" refers to the page numbers of the Joint Appendix filed by plaintiff-appellant Rashad Riddick. "Doc. __, at __" refers to the docket entry number and relevant pages of the district court filings below in *Riddick v. Barber*, No. 3:19-cv-71 (E.D.V.A.).

hallucinations," "talk[] to himself a lot," and "experience[] long periods of depression where [he] stopped eating." J.A. 86.

B. Applicable State Law

Chapter 115 of DBHDS's regulations contains numerous safeguards to "protect the rights of individuals receiving services from providers of mental health, developmental, or substance abuse services in Virgina." 12 Va. Admin. Code § 35-115-10(A) (2017). Among other things, those regulations prohibit providers licensed, funded, or operated by DBHDS from "restrain[ing] for behavioral purposes or seclu[ding]" adult patients for more than four hours at a time. *Id.* § 35-115-110(C)(14). The regulations also prohibit "standing orders for the use of seclusion or restraint for behavioral purposes." *Id.* § 35-115-110(C)(15). But the DBHDS commissioner may issue written, "time limited" exemptions from those and all other safeguards in Chapter 115 for "individuals under forensic status and individuals committed to [DBHDS] custody . . . as sexually violent predators." *Id.* § 35-115-10(D). Such exemptions must be "based solely on the need to protect individuals receiving services, employees, or the general public." *Ibid.* DBHDS issued such an exemption with regard to Riddick. J.A. 39, 92.

C. Procedural History

Riddick filed suit pro se in the Eastern District of Virginia. J.A. 4. The district court dismissed his first amended complaint without prejudice. J.A. 54-55.

Riddick appealed that order. J.A. 6. This Court dismissed Riddick's first appeal for lack of appellate jurisdiction and instructed the district court to give Riddick an opportunity to file a second amended complaint. *Riddick v. Barber*, 822 F. App'x 200, 201 (4th Cir. 2020).

On remand, Riddick filed a second amended complaint alleging two claims under 42 U.S.C. 1983 against DBHDS and Hospital officials, including the Hospital's director at the relevant time, Rebecca Vauter, for violating his Fourteenth Amendment due-process rights by placing him in four-point restraints and secluding him for prolonged periods of time. J.A. 83-90. The complaint states that *Youngberg v. Romeo*, 457 U.S. 307 (1982), sets forth the standard that governs conditions-of-confinement claims in a civil-commitment context. J.A. 87. Under *Youngberg*, a decision regarding restraints or seclusion, "if made by a professional, is presumptively valid," and "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 that decision on such a judgment." 457 U.S. at 323. The complaint cites the Hospital staff's noncompliance with 12 Va. Admin. Code § 35-115-110(C)(14) and (15), which restrict the use of restraints and seclusion to no more than four hours and prohibit standing orders regarding the same, as evidence of a violation of Riddick's Fourteenth Amendment rights. J.A. 87-89.

The district court dismissed Riddick's second amended complaint with prejudice. J.A. 165-166. First, the court held that Vauter is the only defendant subject to suit under Section 1983 because, in the court's view, the complaint contains no allegations that anyone else "personal[ly] participat[ed] in the alleged constitutional violations." J.A. 177. Next, the court correctly identified *Youngberg* as setting forth the applicable standard. J.A. 177. But the court held that Riddick failed to "identify the accepted professional standard" regarding restraints and seclusion or to "identif[y] the actions that departed from that standard." J.A. 178. Although the court acknowledged that Riddick's time in four-point restraints and seclusion vastly exceeded the limitations set forth in 12 Va. Admin. Code § 35-115-110(C)(14), it held that that regulation "does not by its own force establish that Vauter acted contrary to the accepted professional judgment." J.A. 178. That is because the DBHDS commissioner had issued an exemption pursuant to 12 Va. Admin. Code § 35-115-10(D) regarding Riddick, and the complaint does not "set forth any allegations to the effect that Vauter contravened acceptable professional judgment in seeking" that exemption. J.A. 178.

After entry of judgment, Riddick timely appealed. J.A. 181.

SUMMARY OF ARGUMENT

Under *Youngberg v. Romeo*, 457 U.S. 307 (1982), conditions of confinement in the civil-commitment context that substantially depart from "professional judgment" violate the Fourteenth Amendment's Due Process Clause. *Id.* at 323. The district court erred in holding that Riddick was required at the pleading stage to "identify the accepted professional standard" governing the restraints and seclusion that he challenges to state a *Youngberg* claim. J.A. 178. An absence or departure from professional judgment can be inferred from factual allegations concerning the challenged restraints and seclusion without identification of a precise professional standard. Taken together, the factual allegations in Riddick's complaint—including the lengthy period of time that he was restrained and secluded (which far exceeded the presumptive maximum permitted under Virginia law), the assertion that he had not become physically aggressive or dangerous, and the existence of a "written standing order" keeping him in seclusion indefinitely (J.A. 88)—are sufficient to plausibly allege a *Youngberg* claim.

The district court also erred in dismissing Riddick's complaint simply because an exemption was issued under state law from the regulatory safeguards restricting the use of restraints and seclusion. The Virginia regulation at issue empowers the DBHDS commissioner to exempt an involuntarily committed patient from regulatory safeguards applicable to people in the agency's custody whenever

necessary "to protect individuals receiving services, employees, or the general public." 12 Va. Admin. Code § 35-115-10(D) (2017). But the complaint pleads facts giving rise to a plausible inference that the requirements for such an exemption were not met in this case—lending further support to Riddick's allegations that these conditions were not the product of valid professional judgment.

ARGUMENT

I. The district court erred in requiring Riddick to expressly identify professional standards that govern restraints and seclusion in a civil-commitment context.

Claims challenging conditions of confinement in the civil-commitment context are governed by the standard set forth in *Youngberg v. Romeo*, 457 U.S. 307 (1982). Under that standard, a condition of confinement violates the Fourteenth Amendment's Due Process Clause if it reflects the absence of or a departure from "professional judgment." *Id.* at 323. The district court erred in holding that Riddick was required at the pleading stage to "identify the accepted professional standard" governing the restraints and seclusion that he challenges. J.A. 178.[2] At the pleading stage, an absence or departure from professional

[2] The operative (pro se) complaint labels Riddick's claims as concerning "*procedural* due process" (J.A. 87 (emphasis added)), and the district court repeated that label (J.A. 171-172). But the complaint identifies *Youngberg* as the applicable framework (J.A. 87), and that case concerns *substantive*-due-process rights, 457 U.S. at 309. The district court therefore correctly analyzed Riddick's

judgment can be inferred from factual allegations concerning the challenged restraints and seclusion without identification of a precise professional standard.

A. The *Youngberg* standard.

In *Youngberg*, the Supreme Court held that, among other things, the Fourteenth Amendment's Due Process Clause guarantees involuntarily committed patients "conditions of reasonable care and safety" and "reasonably nonrestrictive confinement conditions." 457 U.S. at 324. As with all substantive-due-process rights, involuntarily committed patients do not enjoy an "absolute" right to those liberty interests. *Id.* at 319-320. Instead, courts must "weigh[] the individual's interest in liberty against the State's asserted reasons for restraining individual liberty." *Id.* at 320. *Youngberg* held that, in the civil-commitment context, the proper balance is achieved by ensuring "that professional judgment in fact was exercised" before a patient is subjected to challenged conditions of confinement. *Id.* at 321 (citation omitted).

Under the *Youngberg* standard, a decision regarding conditions of confinement made by "a qualified professional" is presumed valid, but that deference dissipates when there is a "substantial departure from accepted

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claims under the *Youngberg* standard, not under a procedural-due-process framework. J.A. 177-178.

professional judgment, practice, or standards." 457 U.S. at 322-323. A "qualified professional" is someone who is "competent, whether by education, training or experience, to make the particular decision at issue." *Id.* at 322-323 & n.30. "Long-term treatment decisions normally should be made by persons with degrees in medicine or nursing, or with appropriate training in areas such as psychology, physical therapy, . . . the care and training of" people with mental disabilities, or employees subject to such professionals' supervision. *Id.* at 323 n.30.

The *Youngberg* standard provides greater protection than the standard that applies to conditions-of-confinement claims in the carceral context. That is because "[p]ersons who have been involuntarily committed are entitled to more considerate treatment and conditions of confinement than criminals whose conditions of confinement are designed to punish." *Youngberg*, 457 U.S. at 321-322. An individual serving a criminal sentence can challenge conditions of confinement under the Eighth Amendment by demonstrating "[a] prison official's deliberate indifference to a substantial risk of serious harm." *Farmer v. Brennan*, 511 U.S. 825, 828 (1994) (citation and internal quotation marks omitted). But under *Youngberg*, the Fourteenth Amendment provides greater protection to involuntarily committed individuals by focusing the constitutional inquiry on whether the condition in question is supported by safety or treatment needs. *See* 457 U.S. at 324 (holding that involuntarily committed individuals may not be

restrained "except when and to the extent professional judgment deems this necessary to assure . . . safety or to provide needed training"); *see also Bell v. Wolfish*, 441 U.S. 520, 538-539 (1979) (holding that in the pretrial detention context, the Fourteenth Amendment prohibits conditions that "amount to punishment" and thus requires that conditions be "reasonably related to a legitimate government objective").

The reason for the Fourteenth Amendment's more robust protections in the civil-commitment context is that the purpose of civil commitment is to "provide reasonable care and safety, conditions not available to [involuntarily committed patients] outside of an institution." *Youngberg*, 457 U.S. at 320 n.27. Thus, the *Youngberg* standard "requires more than negligence" on the part of institutional officials, but "a lower standard of culpability compared to the Eighth Amendment standard for deliberate indifference." *Doe 4 v. Shenandoah Valley Juvenile Ctr. Comm'n*, 985 F.3d 327, 342-343 (4th Cir.), *cert. denied*, 142 S. Ct. 583 (2021). And it is an "objective standard" that "does not require proof of subjective intent." *Id.* at 343 (citation and internal quotation marks omitted).

B. A plaintiff states a *Youngberg* claim at the pleading stage by alleging facts from which a departure from professional judgment plausibly can be inferred.

By dismissing Riddick's complaint for failing to "identify the accepted professional standard" governing restraints and seclusion in the civil-commitment

context that he believes was contravened in this case, the district court imposed a heightened pleading requirement lacking support in *Youngberg* or ordinary pleading standards. J.A. 178. To be sure, a plaintiff proceeding under the *Youngberg* standard bears the ultimate burden of establishing at trial "a substantial departure from accepted professional judgment, practice, or standards" by a preponderance of the evidence. 457 U.S. at 323. But at the motion-to-dismiss stage, a plaintiff need plead only "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). That standard is met if a complaint "pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). The district court misapplied the plausibility standard by failing to recognize that an absence of or departure from professional judgment can be inferred from the facts alleged in a complaint, even though the complaint does not set forth the precise contours of the applicable professional standards.

Requiring plaintiffs to plead the professional standard governing challenged conditions is at odds with *Youngberg*'s recognition that "expert testimony . . . may be relevant to whether [officials'] decisions were a substantial departure from the requisite professional judgment." 457 U.S. at 323 n.31; *see also Ammons v. Washington Dep't of Soc. & Health Servs.*, 648 F.3d 1020, 1034 n.15 (9th Cir.

2011) (denying summary judgment at an "early stage" because there is no "'golden code' of professional conduct" and "conclusive application of the *Youngberg* standard . . . require[d] additional facts, expert testimony, and a host of other evidence in order to definitively determine what a reasonable professional would have done"); *Myers v. Saxton*, No. 9:20-cv-465, 2021 WL 149062, at *4 (N.D.N.Y. Jan. 15, 2021) (distinguishing cases granting summary judgment for defendants on *Youngberg* claims in denying a motion to dismiss and noting that "record evidence (by way of expert testimony) may be useful in 'shed[ding] light on what constitutes minimally accepted standards across a profession'" (quoting *Society for Good Will to Retarded Children, Inc. v. Cuomo*, 737 F.2d 1239, 1248 (2d Cir. 1984)); *Miesegaes v. Allenby*, No. 15-cv-1574, 2019 WL 4391132, at *7 (C.D. Cal. Apr. 25, 2019) ("Although there is a presumption of validity accorded to professionals under the *Youngberg* standard, at the pleading stage, Plaintiff only needs to allege facts to show that it is plausible that Defendants departed substantially from professional standards."). Plaintiffs—especially pro se plaintiffs like Riddick—typically will not be able to obtain such evidence regarding the nuances of applicable standards of care unless their claims can advance past the pleading stage.

C. A *Youngberg* violation plausibly can be inferred from Riddick's complaint.

Even without a precise articulation of the professional standards governing restraints and seclusion in the civil-commitment context, the allegations set forth in the operative complaint and its attachments support a "reasonable inference" of an absence of or departure from professional judgment. *See Iqbal*, 556 U.S. at 678. The district court therefore erred in dismissing Riddick's claims.

First, Riddick alleges that he was restrained and secluded for extremely long periods of time. J.A. 85-86 (alleging that Riddick was placed in four-point restraints for two weeks and kept "in total isolation for 577 days with absolutely no physical human contact"). Courts have deemed duration of isolation a relevant consideration in the carceral or pretrial context. *See Reed v. Palmer*, 906 F.3d 540, 543 n.1, 551 (7th Cir. 2018) (holding that youths detained pretrial stated Fourteenth Amendment claims based on, among other things, allegations of being held in isolation for more than two months and five months respectively); *Palakovic v. Wetzel*, 854 F.3d 209, 216-217, 226 (3d Cir. 2017) (holding that a prisoner stated an Eighth Amendment claim based on "multiple 30-day stints in solitary confinement" over a 13-month period despite officials' knowledge of his significant mental-health challenges (citation omitted)); *Covino v. Vermont Dep't of Corr.*, 933 F.2d 128, 130 (2d Cir. 1991) (vacating a district court's dismissal of a pretrial detainee's conditions-of-confinement claim, which involved allegations

of nine months of isolation). Here, the alleged duration of Riddick's restraint and seclusion—although not dispositive—likewise supports a plausible inference of Fourteenth Amendment violations.

That inference is especially plausible here because the alleged duration of Riddick's restraint and seclusion far exceeded the presumptive maximum that Virginia law sets forth for such practices. DBHDS's own regulations meant to "protect the rights of individuals" in the agency's custody provide that a civilly committed patient ordinarily cannot be restrained or secluded for more than four hours at a time. 12 Va. Admin. Code § 35-115-10(A) (2017); *see also id.* § 35-115-110(C)(14). Although a period of restraint or seclusion longer than Virginia's presumptive maximum might not necessarily be inconsistent with professional judgment, depending on the circumstances, Riddick alleges that he was placed in four-point restraints for two weeks and secluded for 577 days—in other words, for approximately *336 hours* and *13,848 hours*, respectively. J.A. 85-86.

Other allegations in the operative complaint and its attachments likewise bolster the inference of a *Youngberg* violation. In an administrative complaint challenging his conditions of confinement, Riddick stated that he "did not physically assault anyone [or] harm [him]self or others" before he was restrained. J.A. 92 (Hospital's February 2, 2018, letter quoting Riddick's administrative

complaint); *see also* J.A. 96-97 (Riddick's February 14, 2018, response to the Hospital's letter stating that he had "not become physically aggressive, nor harmed [him]self or endangered any patient, staff, or the public" before he was restrained).[3] In its response to Riddick's administrative complaint, the Hospital did not dispute those allegations but instead stated that the restraints and seclusion were justified based on a "*concern* that [Riddick] *could* become aggressive." J.A. 92 (emphases added). Even if professional judgment might in some circumstances support periods of restraint and seclusion as lengthy as those alleged, a court could draw the reasonable inference that the imposition of such conditions of confinement based on a mere hypothesis of future aggression is not consistent with the *Youngberg* standard.

Riddick also alleges that he was secluded pursuant to a "written standing order." J.A. 88; *see also* J.A. 85-86 (alleging that Riddick was told that he would be restrained "indefinitely" and that he would be secluded "until further notice"). Not only would a standing order be contrary to the presumptively applicable

[3] The district court treated the Hospital's February 2 letter, which was attached to the operative complaint, as "integral" to it. J.A. 178 n.5 (citing Fed. R. Civ. P. 10(c) and quoting *Philips v. Pitt Cnty. Mem'l Hosp.*, 572 F.3d 176, 180 (4th Cir. 2009)). On appeal, this Court should review all documents attached to the operative complaint, including Riddick's February 14 response to the Hospital's letter. Riddick attached the same letter to his opposition to defendants' first motion to dismiss, and that copy is more legible. *See* Doc. 28-2, at 1-3.

prohibition set forth in 12 Va. Admin. Code § 35-115-110(C)(15), but a reasonable court also could infer that a hospital that secluded a patient based on such an order did not tailor conditions of confinement to the applicable professional standard.

Accordingly, taken together, the allegations in Riddick's complaint plausibly state a substantive-due-process violation under *Youngberg*.

II. A *Youngberg* claim challenging prolonged use of restraints and seclusion should not be automatically dismissed based on the issuance of an exemption to state rules restricting such practices.

In dismissing Riddick's claims, the district court appeared to infer the exercise of professional judgment from the DBHDS commissioner's apparent issuance of an exemption under 12 Va. Admin. Code § 35-115-10(D) (2017) from the regulatory safeguards governing restraints and seclusion. *See* J.A. 178 (stating that the operative complaint does not "set forth any allegations to the effect that Vauter [the Hospital's director at the relevant time] contravened acceptable professional judgment in seeking" a Section 35-115-10(D) exemption). But especially given the need to view the facts in the complaint in the light most favorable to the plaintiff, *see Megaro v. McCollum*, 66 F.4th 151, 157 (4th Cir. 2023), the mere issuance of the exemption, without more, cannot overcome the allegations in Riddick's complaint that plausibly support an inference that *Youngberg* was violated.

To begin, Riddick's factual allegations could cast doubt on whether a qualified individual exercised professional judgment, within the meaning of *Youngberg*, in issuing an exemption. Under Section 35-115-10(D), the DBHDS commissioner has broad authority to issue an exemption to *any* rule in the regulatory chapter governing the care of individuals in DBHDS custody whenever the commissioner deems one necessary "to protect individuals receiving services, employees, or the general public." 12 Va. Admin. Code § 35-115-10(D). But as discussed (p. 15, *supra*), Hospital officials' apparent reason for seeking that exemption—"a concern" that Riddick "could become aggressive"—is in significant tension with Riddick's allegations that he "did not physically assault anyone" nor "harm [himself] or others." J.A. 92; *see also* J.A. 96.

Moreover, although Section 35-115-10(D) expressly requires that any exemption be "time limited," Riddick alleges that he was told that he was being put in restraints "indefinitely," and that he was to stay in seclusion "until further notice" pursuant to a "standing order." J.A. 85-86, 88. These alleged deviations from applicable regulatory criteria help support a plausible inference that these exceptional conditions were not supported by a judgment that they were necessary for reasons of safety or treatment. *See* p. 14, *supra*.

Finally, the district court's decisive reliance on Section 35-115-10(D) wrongly suggests that the *Youngberg* standard is satisfied whenever a professional

renders the decision in question. Not so. Liability attaches under *Youngberg* not only for the absence of professional judgment, but also for "a substantial departure from accepted professional judgment, practice, or standards." 457 U.S. at 323; *see also West v. Schwebke*, 333 F.3d 745, 749 (7th Cir. 2003) (rejecting the notion that "no decision by a person with an advanced degree is open to question" under the *Youngberg* standard). Even an exemption granted by a person with professional credentials therefore is not necessarily dispositive.

Accordingly, although the issuance of a Section 35-115-10(D) exemption does not on its own establish the absence of or departure from professional judgment, it also does not conclusively establish "that professional judgment in fact was exercised." *Youngberg*, 457 U.S. at 321 (citation omitted). The district court erred, therefore, in dismissing Riddick's complaint based on the fact that an exemption was issued.

CONCLUSION

For the foregoing reasons, this Court should reverse the district court's dismissal of Riddick's claims.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limit of Federal Rules of Appellate Procedure 29(a)(5) and 32(a)(7)(B)(i) because it contains 3,882 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f). This brief also complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a)(5) and (6) because it was prepared in Times New Roman 14-point font using Microsoft Word for Microsoft 365.

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