

24A744

Supreme Court, U.S.  
FILED  
JAN 28 2025  
OFFICE OF THE CLERK

**IN THE SUPREME COURT OF THE UNITED STATES**

LEONARD HARRIS, \*  
Petitioner, \*  
v. \* Case:  
NAKITA ROSS, et al. \*  
Respondent(s) \*

**EMERGENCY APPLICATION FOR STAY OF MANDATE**

To the Honorable John G. Roberts, Jr., Chief Justice of the United States and  
Circuit Justice for the Fourth Circuit:

Petitioner respectfully submits this Emergency Application for a Stay of Mandate pending the disposition of a Petition for Writ of Certiorari. This application arises from a decision by the United States Court of Appeals for the Fourth Circuit, which affirmed the judgment of the District Court in USCA4 Appeal: 23-6433 and denied Petitioner’s petition for rehearing on January 22, 2025.

**TABLE OF CONTENTS**

- Table of Authorities
- Statement of the Case
- Reasons for Granting the Stay
- Significant and Unresolved Issues of Federal Law
- Balance of Equities
- Probability of Success on the Merits
- Matters of Substantial Public Interest

RECEIVED  
JAN 29 2025  
OFFICE OF THE CLERK  
SUPREME COURT, U.S.

Conclusion

Certificate of Service

Appendices

Affidavit of Facts

Documentation of Active State Court Proceedings Affected by the Mandate

Proposed Order

## **TABLE OF AUTHORITIES**

Brady v. Maryland, 373 U.S. 83 (1963)

Federal Rule of Appellate Procedure 41(b)

Fourteenth Amendment of the U.S. Constitution

Eighth Amendment of the U.S. Constitution

Privacy Act of 1974

United States v. Jones, 565 U.S. 400 (2012) (Fourth Amendment protections)

Wilkinson v. Austin, 545 U.S. 209 (2005) (due process in administrative decisions)

United States v. Wilson, 484 F.3d 267 (4th Cir. 2007) (warrant validity)

Burgess v. Goldstein, 997 F.3d 541 (4th Cir. 2021) (use of expunged records)

Heck v. Humphrey, 512 U.S. 477 (1994) (interplay between federal and state claims)

Preiser v. Rodriguez, 411 U.S. 475 (1973) (federal remedies for unconstitutional detentions)

Haines v. Kerner, 404 U.S. 519 (1972) (leniency in pro se pleadings)

Wolf v. McDonnell, 418 U.S. 539 (1974) (due process requirements in disciplinary hearings)

Mathews v. Eldridge, 424 U.S. 319 (1976) (due process framework)

## **STATEMENT OF THE CASE**

The Fourth Circuit issued its decision on August 29, 2024, affirming the judgment of the district court in USCA4 Appeal: 23-6433. On January 22, 2025, the Fourth Circuit denied the petition for rehearing (USCA4 Appeal: 23-6433, Doc: 44), and all pending motions were denied. This appeal originated from the United States District Court for the District of Maryland, at Baltimore, presided over by Judge Theodore D. Chuang (Case No. 1:21-cv-01983-TDC).

Petitioner sought a stay of the mandate from the Fourth Circuit, and on September 13, 2024, a temporary stay of the mandate was issued under Fed. R. App. P. 41(b). However, the court later denied the petition for rehearing on January 22, 2025, effectively lifting the temporary stay. The mandate is scheduled to be issued on January 29, 2025, necessitating this Court's immediate intervention.

The Fourth Circuit record does not address several critical issues raised by Petitioner due to the District Court's denial of discovery, including procedural defects in the warrant, the reconstruction of lost records without notice, and the use of expunged documents to rebuild lost files. Without the opportunity to address

this evidence, Petitioner faces irreparable harm.

## **REASONS FOR GRANTING THE STAY**

### **I. There Are Significant and Unresolved Issues of Federal Law**

#### **Warranting Review:**

- 1. Due Process Violations from the Use of Expunged Records:** This case raises fundamental questions about whether the use of expunged records in judicial proceedings violates constitutional protections and federal law, including the Privacy Act.
- 2. Procedural Defects in Warrants:** Petitioner's case highlights systemic flaws in warrant issuance, including missing report numbers, duplicate identifiers, and invalid attestations under oath, all of which implicate the Fourth Amendment and due process.
- 3. Jurisdictional Overreach Post-Parole Expiration:** Enforcement of supervision conditions beyond the expiration of Petitioner's MSR raises federalism and due process concerns.
- 4. Reconstruction of Lost Records Without Notice:** The use of expunged documents to reconstruct lost files without Petitioner's knowledge violates procedural safeguards under the Fourteenth Amendment.
- 5. Suppression of Exculpatory Evidence:** The suppression of records demonstrating the invalidity of the warrant and expiration of supervision

status constitutes a Brady violation.

**6. Inhumane Detention Conditions:** Following my arrest under the defective warrant, I was detained under inhumane conditions that violated my Eighth and Fourteenth Amendment rights. These conditions included:

**7. Prolonged solitary confinement:** I was held in isolation for extended periods, which exacerbated the physical and psychological toll of my detention.

**8. Unsanitary facilities:** I was confined in facilities infested with rats and roaches, with frequent sewage leaks that made the environment hazardous and dehumanizing.

**9. Denial of legal assistance or timely access to counsel:** Despite repeated requests, I was not provided timely access to legal counsel, leaving me unable to effectively challenge the conditions of my detention or the validity of my warrant.

These coercive conditions were part of a systemic practice designed to pressure detainees into accepting unfavorable terms without meaningful due process. Many individuals, including myself, were left with little choice but to acquiesce to unjust outcomes.

## **II. The Balance of Equities Favors a Stay**

**Irreparable Harm:** Issuance of the mandate will irreparably harm Petitioner by foreclosing meaningful review and precluding state court proceedings.

Minimal Injury to Respondents: A stay preserves the status quo and does not substantially harm Respondents.

**Public Interest:** Ensuring constitutional and statutory compliance is in the public's interest, as the issues raised affect the integrity of the justice system.

**III. Petitioner Has a Reasonable Probability of Success on the Merits**

Petitioner's forthcoming Petition for Writ of Certiorari raises unresolved and conflicting issues of federal law warranting this Court's attention.

**IV. This Case Involves Matters of Substantial Public Interest**

The systemic issues in this case, including misuse of expunged records, procedural defects, and jurisdictional overreach, underscore the importance of granting a stay to ensure adherence to constitutional protections.

**CONCLUSION**

For the foregoing reasons, Petitioner respectfully requests that this Court grant an emergency stay of the Fourth Circuit's mandate pending the disposition of the Petition for Writ of Certiorari.

Respectfully submitted,

  
Leonard Harris, pro se  
lh88@proton.me  
410-357-1802

Date: 01/28/2025

## Certificate of Service

I, Leonard Harris. hereby certify that on January 28, 2025, I filed the foregoing Emergency Application For Stay Of Mandate with the Clerk of Supreme Court of the United States and mailed a copy via USPS 1<sup>st</sup> Class mail to:

Susan Howe Baron, Assistant Attorney General, Department of Public Safety and Correctional Services, 6776 Reisterstown Road, Suite 311 Baltimore, Maryland 21215

Respectfully submitted,



Leonard Harris, pro se    Date: 01/28/2025  
PO Box 1186  
King George, VA 22485  
[lh88@proton.me](mailto:lh88@proton.me)  
410-357-1802

## **APPENDICES**

Appendix A: Fourth Circuit Opinion (USCA4 Appeal: 23-6433)

Appendix B: Order Denying Petition for Rehearing (USCA4 Appeal: 23-6433,  
Doc: 44)

### **Relevant Statutes and Rules**

#### Federal Rules of Appellate Procedure

Rule 41(b): Governs issuance and stay of mandates by appellate courts.

#### Constitutional Provisions

Fourteenth Amendment: Protects due process and equal protection under the law.

Eighth Amendment: Prohibits cruel and unusual punishment.

Fourth Amendment: Protects against unreasonable searches and seizures.

#### Privacy Act of 1974

5 U.S.C. § 552a: Governs maintenance, disclosure, and correction of records by federal agencies.

### **Maryland Statutes on Expungement**

Criminal Procedure § 10-105: Allows for expungement of records after acquittal, dismissal, PBJ, or pardon.

Criminal Procedure § 10-110: Provides criteria for expunging certain convictions, including waiting periods after sentence completion.



## **Exhibit Reference to Key District Court Filings and Orders**

- A. 06/21/2022 Amended Complaint filed in US District Court for Maryland (TDC-21-1983): Outlining the Plaintiff's claims and causes of action.
- B. 03/17/2023: District Court's Memorandum Opinion and Order TDC-21-1983  
The Opinion / Order decision to dismiss and deny relief.
- C. Fourth Circuit No. 23-6433 Decision Submitted: August 27, 2024 Decided:  
August 29, 2024
- D. 09/13/2024 Fourth Circuit No. 23-6433 issued TEMPORARY STAY OF  
MANDATE pending rehearing decision.
- E. January 22, 2025 4<sup>th</sup> Circuit No. 23-6433 Order denial petition for rehearing.

**IN THE SUPREME COURT OF THE UNITED STATES**

LEONARD HARRIS, \*  
Petitioner, \*  
v. \* Case:  
NAKITA ROSS, et al. \*  
Respondent(s) \*

**ORDER GRANTING EMERGENCY APPLICATION  
FOR STAY OF MANDATE**

Having considered the Emergency Application for Stay of Mandate submitted by the Petitioner, and finding that the Petitioner has demonstrated:

- 1. A significant likelihood of success on the merits of the case;
- 2. That irreparable harm will result if the mandate is issued;
- 3. That the balance of equities favors the granting of the stay; and
- 4. That the public interest supports granting the requested relief;

It is hereby **ORDERED** that the mandate issued by United States Court of Appeals for the Fourth Circuit in USCA4 23-6433 is **STAYED** pending the disposition of the Petitioner’s forthcoming Petition for Writ of Certiorari before this Court.

It is further **ORDERED** that Respondents may file a response to the Petitioner’s application within \_\_\_\_\_ days.

**SO ORDERED.**

\_\_\_\_\_  
**Chief Justice John G. Roberts, Jr.**  
**Circuit Justice for the Fourth Circuit**

Dated: \_\_\_\_\_

# EXHIBIT A

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

LEONARD HARRIS,

PLAINTIFF

vs  
V.

NAKITA ROSS, PAROLE AGENT, DPSCS, et al.,

KERRI SMITH FSI, PAROLE SUPERVISOR, DPSCS

DANIELLE FLYNN, FIELD SUPERVISOR II, DPSCS

MARTHA L. DANNER, DIRECTOR OF PAROLE & PROBATION, DPSCS

DAVID BLUMBERG, MARYLAND PAROLE COMMISSION

OFFICER KYLE THOMAS, ELKTON POLICE DEPARTMENT

OFFICER C. SOTO OCASIO MD TRANSPORTATION AUTHORITY

ANNE ARUNDEL COUNTY JENNIFER ROAD DETENTION CENTER

RHONDA OSBORN, DETECTIVE, WARRANT APPREHENSION UNIT

CLEVELAND C. FRIDAY, WARDEN, JESSUP CORRECTIONAL INST.

DEMETRIUS E. PAGE, REGIONAL ADMINISTRATOR DPSCS

BRUCE GERBER, MARYLAND DIVISION PAROLE AND PROBATION

CORRIE MCCALL, PAROLE SUPERVISOR, DPSCS

E. DYER, PAROLE AGENT

DEFENDANTS

\*  
\*  
FILED  
LOGGED  
JUN 21 2022  
CLERK OF DISTRICT COURT  
DISTRICT OF MARYLAND  
ENTERED  
RECEIVED

Civil Action No.

TDC-21-1983

JURY TRIAL DEMANDED

FIRST AMENDED 42 U.S.C. §1983 COMPLAINT

NOW COMES the Plaintiff, pro se, pursuant to Federal Rules of Civil Procedure 15(a)(1)(B) and Case Management Order for Cases Filed by Incarcerated Individuals

Pursuant to 42 USC §1983 and moves this Court for leave to add additional defendants and to file an Amended Complaint in the above-titled action. Plaintiff files this first amended complaint within the 21-day period, Pursuant the Court's 08/05/21 Case Management Order for Cases Filed by Incarcerated Individuals Pursuant To 42 U.S.C. § 1983; Section IV. Special Requirements for Prisoner Plaintiffs, A. Amendment of The Complaint, Paragraph 3, which states, in part: "... *the Plaintiff may instead file a single Amended Complaint within 21 days of receipt of that [defendant's] responsive pleading. Fed. R. Civ. P. 15(a)(1)(B)*"

The above referenced 42 U.S.C. §1983 COMPLAINT was filed primarily upon events transpiring between February 2020 and July 30, 2021, leading up to Plaintiff's parole revocation hearing.

This action is brought to address additional Plaintiff's deprivation of rights pursuant to: Title 42 of the U.S. Code, § 1983—Civil Action for Deprivation of Rights; Title 42 of the U.S. Code, § 1985—Conspiracy to Interfere with Civil Rights; and Title 42 of the U.S. Code, § 1981—Equal Rights Under the Law; and/or the deprivation under color of law of Plaintiff's rights as secured by the United States Constitution and Maryland Constitutional Rights: Deprivation of Rights Under Color of Law and Conspiracy Against Rights.

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the to the deprivation of any rights, privileges, or immunities secured by the Constitution and

laws, shall be liable to the party injured in an action at lawsuit in equity, or other proper proceeding for redress." 42 U.S. Code § 1983 - Civil action for deprivation of rights  
The Court has recognized, "...in the cases involving revocation of parole or probation, a liberty interest that is separate from a statutory entitlement and that can be taken away only through proper procedures. *Morrissey v. Brewer*, 408 U.S. 471 (1972); *Gagnon v. Scarpelli*, 411 U.S. 778 (1973); (Also see: US Constitution › Fourteenth Amendment -- Rights Guaranteed: Privileges and Immunities of Citizenship, Due Process, and Equal Protection / Procedural Due Process.

A parole officer's job is to assist and monitor parolees as they adjust to their new-found freedom. They help former inmates with everything from finding employment to dealing with old problems, like substance abuse. A parole officer may also be the one to decide whether a parolee goes back to prison

### **JURISDICTION AND VENUE**

This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331, 1367. Venue is proper under 28 U.S.C. § 1391(b). The parties resided in this judicial district, and the events giving rise to the claims asserted herein occurred in this judicial district as well.

### **STATEMENT OF CLAIM**

At all relevant times herein, defendants were "persons" for purposes of 42 U.S.C. Section 1983 and acted under color of law to deprive plaintiff of his constitutional rights, as set forth more fully below.

### **PARTIES**

Defendant No. 1

Name                      NAKITA ROSS

Job or Title              PAROLE AGENT, DPSCS

Employer MD Department Public Safety & Correctional Services  
Address District Court Multi-Service Ctr  
170 East Main St Elkton, MD 21921  
 Individual Capacity  Official Capacity

Defendant No. 2

Name KERI SMITH FSI  
Job or Title PAROLE SUPERVISOR, DPSCS (Cecil County)  
Employer MD Department Public Safety & Correctional Services  
Address District Court Multi-Service Ctr  
170 East Main St Elkton, MD 21921  
 Individual Capacity  Official Capacity

Defendant No. 3

Name DANIELLE FLYNN  
Job or Title Field Supervisor II, DPSCS  
Employer MD Department Public Safety & Correctional Services  
Address 8552 Second Avenue 1st Floor  
Silver Spring, MD 20910  
<danielle.flynn@maryland.gov>  
 Individual Capacity  Official Capacity

Defendant No. 4

Name MARTHA L. DANNER  
Job or Title Director of Parole & Probation, DPSCS  
Employer Department Public Safety & Correctional Services Headquarters

Address 6776 Reisterstown Road, Suite 212  
Baltimore, MD 21215  
<martha.danner@maryland.gov>  
 Individual Capacity  Official Capacity

Defendant No. 5

Name DAVID BLUMBERG  
Job or Title Parole Commissioner  
Employer Maryland Parole Commission  
Address 6776 Reisterstown Rd, Unit 307, Baltimore, MD 21215,  
 Individual Capacity  Official Capacity

Defendant No. 6

Name KYLE THOMAS  
Job or Title Police Officer  
Employer Elkton Police Department In re: Case #2020-054941  
Address 100 Railroad Ave, Elkton, MD 21921  
 Individual Capacity  Official Capacity

Defendant No. 7

Name C. SOTO OCASIO  
Job or Title Police Officer MDTA #1853  
Employer Maryland Transportation Authority Police  
Address 4330 Broening Highway Baltimore, MD 21222  
 Individual Capacity  Official Capacity

Defendant No. 8



Name Jennifer Road Detention Center Anne Arundel County  
Job or Title Anne Arundel County Detention Center  
Employer  
Address 131 Jennifer Road Annapolis, MD 21401  
 Individual Capacity  Official Capacity

Defendant No. 9

Name RHONDA OSBORNE  
Job or Detective  
Employer Community Supervision Enforcement Program / Warrant  
Apprehension Unit  
Address Maryland Division of Parole and Probation  
 Individual Capacity  Official Capacity

Defendant No. 10

Name CLEVELAND C. FRIDAY  
Job or Title Warden, Jessup Correctional Institution (JCI)  
Employer MD Department Public Safety & Correctional Services  
Address 7805 House of Correction Rd, Jessup, MD 20794  
 Individual Capacity  Official Capacity

Defendant No. 11

Name DEMETRIUS E. PAGE  
Job or Title Regional Administrator / demetrius.page@maryland.gov  
Employer MD Department Public Safety & Correctional Services  
Address REGIONAL OFFICES OF COMMUNITY SUPERVISION

Individual Capacity       Official Capacity

Defendant No. 12

Name                    BRUCE GERBER, DPSCS  
Job or Title            bruce.gerber@maryland.gov  
Employer               MD Department Public Safety & Correctional Services  
Address

Individual Capacity       Official Capacity

Defendant No. 13

Name                    CORRIE MCCALL, FSI  
Job or Title            PAROLE SUPERVISOR, DPSCS (Cecil County)  
Employer               MD Department Public Safety & Correctional Services  
Address                District Court Multi-Service Ctr  
170 East Main St Elkton, MD 21921

Individual Capacity       Official Capacity

Defendant No. 14

Name                    E. DYER <ericad.dyer@maryland.gov>  
Job or Title            PAROLE AGENT, DPSCS  
Employer               MD Department Public Safety & Correctional Services  
Address                District Court Multi-Service Ctr  
170 East Main St Elkton, MD 21921

Individual Capacity       Official Capacity

### PREVIOUS LAWSUITS BY PLAINTIFF

Plaintiff has filed no other lawsuits dealing with the same facts involved in this action or otherwise relating to his/her imprisonment.

#### Introduction

On the initial filing date of the above referenced 42 U.S.C. §1983 complaint, Plaintiff was confined at Jessup Correctional Institution in Jessup Maryland awaiting a Maryland Parole Commission Revocation Hearing. On July 30, 2021, Plaintiffs underwent a parole revocation hearing. Judge Robyn Lyles, Commissioner presided over the revocation hearing. Two of the three charges terminated in the Plaintiff's favor: (1) Charge for violating Rule 9: Special Condition 34, Failing to sign an "Authorization for Release of information and Records" was dismissed; and (2) Charge for violating Condition 8, "Absconding from Custody and Supervision" was also dismissed. MD Code, Correctional Services, a **felony**, § 6-10(b)(1) defines: "Absconding" as willfully evading supervision. (2) "Absconding" does not include missing a single appointment with a supervising authority. Commissioner Lyles did not find Plaintiff guilty of "willfully evading supervision." Commissioner Lyles ruled that, Plaintiff was found to have violated Rule 1, "... failing to report to his parole agent on or after July 23, 2020." Plaintiff's revocation concluded with the parole case being administratively dismissed and closed. Plaintiff was released from incarceration on the same date, July 30, 2021. The doctrines of Res judicata and Collateral estoppel bars litigating issues already decided, to include Plaintiff's parole retake hearing, from being relitigated again, as the issues have been resolved by final judgment on the merits. (**Attachment A** – 7/30/21

Parole Revocation Hearing Transcripts). The defendants conspired (a meeting of the minds) and agreed to falsely impugn felonious intent onto Plaintiff's innocent actions. Plaintiff did not "willfully evade supervision", Plaintiff was released from custody and after Elkton Police advised that Plaintiff was free to leave, Plaintiff left the hospital, exercising an act of his own free, which is not unlawful criminal or felonious act. The defendant's alleged a felonious intent "absconding" onto plaintiff's innocent acts, to purposely deprive Plaintiff of equal protection of the law.

The evidence will show that Nakita Ross and/or Kerri Smith and/or Danielle Flynn and/or Martha Danner participated individually and/or together in an (1) abuse of their government positions to bully, harass, intimidate, retaliate and "Bully" Plaintiff into signing an "Authorization for Release of Information and Records." To force Plaintiff into signing a document and provide defendant's "permission" to place Petitioner in a program that was not otherwise authorized by his convictions." Agent Ross acted in conspiracy with: Kerri Smith and/or Martha Danner and/or Danielle Flynn to deprive Plaintiff of his civil rights, and as well, the deprivation of Plaintiff's civil rights itself. (2) Agent Ross and Kerri Smith acted together (and / or) conspired with others to "Frame" Plaintiff, by providing false evidence to wrongly accuse Plaintiff of "not reporting," to have Plaintiff arrested and incarcerated, and to expose Plaintiff to 10 or more years of incarceration... **with only 4 months remaining** to successfully complete his 29 years sentence. Evidence will show Plaintiff did report to Parole Agents on the dates, times requested and by the manner requested. Evidence will show **Plaintiff did not miss one day of reporting** to his parole agents between 7/13/20 and 7/27/20 as alleged. Plaintiff's Google Voice records and emails will show Plaintiff did contact Agent

Ross as requested. (See Plaintiff Affidavit) Agent Ross and Kerri Smith provided false evidence to wrongly accuse Plaintiff of "not reporting" ... and the false evidence provided by the agents resulted in Plaintiff's arrest, incarceration, humiliation, immeasurable physical stress, emotional stress and financial hardship.

(3) Institutional involvement in the conspiracy to deprive Plaintiff of Constitutional Rights: MPC and Jessup Correctional Institution (JCI) involvement in conspiracy to deprive Plaintiff of constitutional rights. Plaintiff needed access to his Google Voice documents and records (to use as evidence) to show that he (Plaintiff) did contact Agent Ross and report as was requested. Plaintiff arranged to have the documentation mailed to Jessup Correctional Facility (JCI) on multiple occasions which contained documentation showing Plaintiff did not fail to report. This evidence could have been presented during the parole retake hearing, but JCI officials did and would not (for whatever reason) deliver any mailed documentation to Plaintiff. One document was mailed via "USPS Priority Mail" with tracking however the documents were not delivered to Plaintiff. Plaintiff never received any mail (evidence) to present at his parole retake hearing because the mail was either confiscated or destroyed... and /or was never delivered. Petitioner was not given adequate notice (time and date) of the probable cause revocation hearing would take place The above referenced failure of JCI to deliver mail to plaintiff, interfered with Plaintiff's opportunity to present evidence and right to receive a fair hearing.

### **Facts of Case**

Plaintiff was sentenced to a 29-year sentence that began on 11/29/91 and was to end on 11/29/20. Plaintiff was released on Mandatory Supervision Release (MSR), June 2010; and Plaintiff successfully completed over 10 years of parole before moving to Cecil County where Plaintiff faced tremendous personality challenges from newly assigned Parole Agents, Nikita Ross, and her supervisor Kerri Smith FSI. Prior to Cecil County, did not have any difficulties with any parole agents. Plaintiff had progressed to

a low-level parole supervision, reporting monthly via submitting a form to Plaintiff's Parole Agent, prior to moving to Cecil County around September 2019.

About December 2019, Plaintiff's initial Cecil County Parole Agent E. Dyer (Petitioner's Affidavit Exh.1 or abbreviated **PA Exh. 1**), offered to place Plaintiff on an Abatement of Parole status to begin on 2/12/20, provided "proof showing complete payment of outstanding DPSCS debt" was provided. Plaintiff accepted the offer, agreed to pay the entire remaining debt to DPSCS and emailed the receipts to Agent Dyer. (**PA Exh.2**) Agent Dyer then advised Plaintiff to contact her by phone on 2/12/20 and verify change of status and to begin abatement of parole beginning 2/12/20 and ending on the sentence expiration date.

Instead, on 2/12/20, Plaintiff received a phone call from a different agent, Agent Nikita Ross, who advised she was taking over supervision of Plaintiff's Parole. Stating, "Someone had dropped the ball. It wasn't my fault, and my parole reporting is going to become more frequent." Agent Ross refused to provide a reason for the abatement denial or why parole status was abruptly changed.

On 2/19/20, Plaintiff reported to Agent Ross' office and signed the sign in sheet. Agent Ross came out and advised Plaintiff had to come back on 2/24/20 because the computer wasn't working.

On Thursday, 2/20/20 Agent Ross' made a "Pop-in" surprise visit to Plaintiff's apartment. In the afternoon, Plaintiff just returned from a doctor visit, Plaintiff was unaware Agent Ross was outside his apartment building waiting for him to return. Plaintiff lives on the 3rd floor. The moment Plaintiff entered his apartment, the phone rang, and someone who identified themselves to be Agent Ross, asked, "Are you home?" Plaintiff agreed to come downstairs if we could speak somewhere to maintain privacy. This was Plaintiff's first meeting with Agent Ross, an unannounced surprise visit. During our conversation Agent Ross became angry raises her voice and created an embarrassingly loud disturbance witnessed by many residents sitting in the retirement community lobby. Was so loud and animated that residents stood and looked out of the lobby window... One lady walked outside, out of concern, and stood quietly



next to us and remained there well over 5 minutes. I, out of privacy concerns, asked Agent Ross if we could speak somewhere more private and Agent Ross quipped, "You do know that everything is public record, don't you?" and kept talking. On this same visit, Agent Ross said to Plaintiff's that she was going to violate his parole and described ways she would. One, order Plaintiff to take a lie detector test, ask specific questions about Plaintiff's case, and should any lie be detected, she would violate Plaintiff's parole. Agent Ross also referenced placing Plaintiff' on a GPS... and putting Plaintiff's on a curfew... Plaintiff questioned why, after 10 years of successful parole, with only a few months remaining, would justify her to drastically change the terms and conditions of Plaintiff's parole without providing some explanation. A couple of days after Agent Ross's disturbance at Plaintiff's apartment, another neighbor, who overheard the disturbance, approached and cautioned (Referring to Agent Ross's behavior), "Always remember, you are judged in this place by the behavior of your visitors."

On 3/9/20, Plaintiff had the first parole office visit with Agent Ross, Plaintiff asked Agent Ross to tell him specifically which conviction(s) prompted the change in his parole terms and conditions, Agent Ross responded, "Being convicted of a sexual crime is not necessary, just being charged with a sexual crime is enough to justify placement under COMET." Then added, "You must have done something... otherwise you would not have been charged with anything."

On 3/9/20, Plaintiff was informed that he would be supervised under "COMET regulations" yet Agent Ross refused to provide reason for the abatement denial, why parole status was changed or what the terms and conditions of the change would be. At the completion of our meeting, Plaintiff asked Agent Ross to provide me with documentation (proof) of Plaintiff's prior visits with her, because at that point Plaintiff had 3 visits (2 visits without physical proof and one scheduled visit that was cancelled by her). The first occurred on 2/19/20, Plaintiff came to the office and signed the sign-in sheet. Agent Ross advised Plaintiff had to return 2/24/20 because of computer problems. The second non-documented encounter was the 2/20/20, the surprise "Pop-

in" visit. to and third was the scheduled 2/24/20 visit, that Agent Ross verbally cancelled, and Agent Ross advised the 2/20/20 visit would substitute for the office visit scheduled for 2/24/20. Since Plaintiff was not given any proof / documentation for any of the dates. Agent Ross had already informed Plaintiff, during the "Pop-in" home visit ... that she, Agent Ross, planned to violate his parole...so Plaintiff was suspicious Agent Ross would allege Plaintiff did not abide by Plaintiff's obligations to report on these dates. Before Plaintiff left the 3/9/20 office visit, Plaintiff asked Agent Ross to provide him with proof of his prior visits with her... and Agent Ross responded, "I don't do that..." then quickly tilted her computer screen towards Plaintiff's (in such an angle that Plaintiff couldn't see the screen) and stated, "Here is your proof right here!" ... and then turned the screen back. Plaintiff again asked, while pointing at a stack of blue cards that Plaintiff had become very familiar with over the past 10 years and kindly asked, "Will you please give me a card showing that I was here to see you and the name of your supervisor". Agent Ross reluctantly began writing her information on the blue card then began writing on a second card (white). Agent Ross wrote her name then the name "Corrie McCall" as her supervisor. **(PA Exh.3)**. Later the name for a different supervisor, Kerri Smith FSI (in a Cc) was seen on an email from Agent Ross. Being unsure of the "real" supervisor(s) was/were, sent Cc to both supervisor names in Plaintiff's correspondence with Agent Ross. Agent Ross since angrily chastised me, during the next phone report, stating "I don't appreciate you TATTILING to my supervisor on me." "Tattling" to Agent Ross' supervisor didn't resolve the problems... only resulted in an increase in Agent Ross' disrespectful and retaliatory behavior towards him. Plaintiff felt it necessary for Agent Ross' supervisor to be aware of Agent Ross's disrespectful and unprofessional behavior towards him.

On Monday 3/23/20, the first weekend Governor Hogan closed all offices, Plaintiff had become ill... was supposed to report to Agent Ross' office and Plaintiff called to advise Agent Ross of his illness. Agent Ross insisted that I report to the office anyway and threatened to file a violation of parole if I did not report. **(PA Exh #4)**

On or about 3/31/20, Plaintiff provided medical documentation from his physician stating: due health concerns, his physician recommended Plaintiff not to live alone and



to relocate away from Cecil County. My physician provided him written documentation of her recommendations. My move to Cecil County, 5 months prior, was only intended to be temporary. The usual procedure for changing Plaintiff's address was to provide notice to Plaintiff's parole agent prior to moving. Plaintiff has changed his address 3-4 times over the past 10 years without any issues from Parole Agents. Cecil County Parole and Probation is the first time it was medically necessary (doctor's order) to change Plaintiff's residence and parole agents refused to allow him to move. Agent Ross never provided Plaintiff guidance regarding the newly modified rules and conditions of Plaintiff's "drastically changed" supervision. Under threat to VOP, Plaintiff was being forced to remain at his apartment and risk his health and welfare. (PA Exh #5) On Monday 4/6/20, at 11:30 am, ½ hour after Plaintiff had already checked in... sent an email to Plaintiff stating that Agent Ross had changed the check-in requirements. Agent Ross stated that she had changed how Plaintiff was to report-in, effective that same day (knowing that Plaintiff didn't have a phone) and mandated Plaintiff get a phone and report to her by phone and by 4 pm. Agent Ross provided a different number from the contact number on the blue card (PA Exh #3). The new number given (443-877-5371) was later determined to be Google Voice number. (PA Exh #6)

Between 4/6/20 and 5/4/20, Agent Ross escalated verbal harassment and frequently did not answer the number provided to call. Plaintiff had to call and call and call for hours before Agent Ross would finally answer. The number would stop working and or report that was no longer in service. Plaintiff felt Agent Ross was intentionally making it difficult for Plaintiff to report (in retaliation) for reporting the abusive behavior to her supervisor. (PA Exh 7)

On 4/15/20 Plaintiff wrote a letter to Judge Ballou-Watts and asked for her assistance / advice regarding how to stop Agent Ross' harassment behaviors. The judge's letter provides a window into how the Parole Agents' behavior affected Plaintiff.

Since Agent Ross' supervisor (Kerri Smith, FSI) did not address Agent Ross' harassment behaviors ... On May 4, 2020, Plaintiff opted to contact Agent Ross' supervisor, Martha Danner (Supervisor over all Parole Agents) and asked for her

assistance. Plaintiff addressed concerns regarding the agent's behaviors towards me... **(PA Exh 8)** but instead of addressing the concerns presented, Martha Danner participated in the retaliatory behaviors. On May 8, 2020, Ms. Danner responded that Plaintiff's case would be transferred, (Agent Ross would continue to be Plaintiff's agent) even if a home plan was approved. Ms. Danner also stated that, "[I] should be calling in [to report] daily and leaving a voicemail as to [my] current status each day." **(PA Exh 9)** On May 13, 2020, Plaintiff called Agent Ross to report and was advised reporting frequency had increased to daily... as per Martha Danner's instructions. Agent Ross provided an additional number (410-926-9542) to report on for Tuesday – Fridays. **(PA Exh 10)**

Plaintiff attached a Google Voice phone log report for the Google Voice number used to contact Agent Ross. The report shows the date, time and frequency of all calls placed using this Google Voice account, between the dates 5/12/20 – 7/24/20. **(PA Exh 11)** including iPad screen and Call Log shows duration of the calls placed, between 7/13/20 – 7/24/20. **PA Exh 12)**

7/6/20 Agent Ross' email, Agent Ross stated, "As of now I have not confirmed your in-person report date for 7/13/20. As of now, continue to report on Mondays, until noted otherwise." **(PA Exh 13)**

On 7/6/20 and 7/13/20, Plaintiff took verbatim notes during his the in-person phone conversation with Agent Ross. A verbatim transcription of the conversation is attached **(PA Exh 14)**

During the 7/6/20 in-person conversation with Agent Ross, advised that she would "let you [Plaintiff] know when your [Plaintiff] next in-person date is, it will likely be the 20<sup>th</sup>, but I will let you know for sure..." Two different tentative dates had been referenced by Agent Ross to be the next possible in-person report dates. **(PA Exh 14)**

Then on Monday, 7/13/20, Agent Ross instructed to Plaintiff to "disregard the Monday number (443) 877-5371 given and to use "just one number" (the Tu-Fri number) to report to her on for the entire week, Monday – Friday. **(PA Exh 14)**

As directed and instructed by Agent Ross, between 7/20/20 and 7/24/20, Plaintiff utilized the Tu-Fri number (410-926-9542) reported and left messages for each day. (PA Exh 13)

Unbeknownst to Plaintiff, Agent Ross filed / submitted a Violation of Parole (VOP) Arrest Warrant Plaintiff's arrest stating Plaintiff had failed to report... stating Plaintiff would not sign a document.

On 7/24/20 Plaintiff mailed a letter to Governor Hogan and asked for his assistance. resolving the harassment from Agent Ross and Kerri Smith. **Attachment D**

On 7/24/20 Agent Ross sent an email to Plaintiff stating, "You failed to report to me on 7/20/20 as you were previously instructed. I have attempted to reach you by phone and email with no success. Additionally, you have failed to return the signed documents as previously requested. You are hereby instructed to report, in person, to the Elkton office on 7/27/20 at 4 pm." (PA Exh 15)

Plaintiff did not receive any communication from Agent Ross between 7/20 and 7/24/20, indicating there was any problem with Plaintiff's not reporting to her. Plaintiff had been reported to Agent Ross in the manner and exactly as Agent Ross had advised. Agent Ross intentionally told Plaintiff to disregard contacting her on the Monday number that Plaintiff was previously contacting her on... told Plaintiff to use the other number (the Tu-Fri number) to call her on... Monday – Friday. Then on 7/27/20... Agent Ross sends an email telling Plaintiff to report on 7/27/20 at 4 pm... and when Plaintiff reported as instructed, Plaintiff was arrested. Plaintiff adhered to every changing demand Agent Ross has instructed of him... but when Agent Ross intentionally introduces misdirection, chaos, and confusion... and changes the phone number of which Plaintiff is to report, and after Plaintiff reports as instructed... Agent Ross files a violation of parole claiming that Plaintiff did not report to her... Agent Ross intentionally contrived evidence against Plaintiff (an innocent person) so that a verdict of guilty could be assured. The record will show that Agent Ross Intentionally "Set Plaintiff Up". ... in possibly the set-up was done in conspiracy with others... plotted and planned... to have Plaintiff reincarnated for an additional 10 years or more years beyond Plaintiff's sentence expiration date... when

Plaintiff had only had 4 months remaining to complete his sentence when Agent Ross, Kerri Smith and other co-conspirators launched the plan to violate Plaintiff's parole.

On 7/27/20, after Plaintiff reported to Parole Agent Ross' office as instructed, Elkton Police officers came and placed Plaintiff in handcuffs. Plaintiff sat in the Parole and probation lobby for over a half hour before Elkton Police entered. Agent Ross did not come out until after police placed Plaintiff in handcuffs. Agent Ross then walked out and advised Plaintiff was being arrested for a Violation of Parole and told Plaintiff he was not to contact her anymore. Plaintiff then remarked, "I am glad I don't have to deal with you anymore!" as he walked out in handcuffs. Plaintiff has never been served with any of the arrest warrants referenced herein. Elkton Police held Plaintiff in custody for about 12 hrs. before being released from custody. Elkton Police stated the reason for release was because no valid arrest warrant was provided to them. Plaintiff was unhandcuffed and released from custody. Plaintiff left the hospital and returned home where Plaintiff remained until after his sentence expiration date, 11/29/20. Plaintiff never received any notification from Agent Ross since release from the hospital. Agent Ross, on 7/27/20 made it exceptionally clear to Plaintiff that he was NOT TO CONTACT HER (Agent Ross) ANYMORE.

JCI Case Management OBCIS Parole Warrant / Summons Data printout dated 6/16/21 shows: Plaintiff's sentence expired 11/29/20 and Plaintiff's Parole Case was closed 2/05/21. **(PA Exh #16)**

Defendants:

**Agent Nakita Ross, Parole Agent**

Official Capacity

Individual liability is premised on personal involvement.

Constitutional Rights violations by a person acting under color of law.

Plaintiff subjected to unconstitutional parole conditions, enforced in "an unconstitutionally arbitrary and / or discriminatory manner

Retaliation against Plaintiff for contacting supervisor

false statements / false oath in Sworn Affidavit of Probable Cause for Arrest Warrant(s)

false imprisonment resulting in Plaintiff's arrest and incarceration  
malicious prosecutions (no probable cause or evidence of criminal wrongdoing)

**Supervisor Keri Smith FSI and Supervisor Corrie McCall**

Official Capacity

Individual liability premised on personal involvement

Supervisory liability. Knowledge about Agent Ross's unlawful conduct and misconduct at the supervisor's direction and with the supervisor's knowledge and consent.

Supervisor Keri Smith had a realistic opportunity to intervene and to prevent harm from occurring.

Constitutional Rights violations by a person acting under color of law.

false statements / false oath in Sworn Affidavit in Probable Cause for Arrest Warrant(s)

false imprisonment resulting in Plaintiff's arrest and incarceration

malicious prosecutions (no probable cause or evidence of criminal wrongdoing)

**E.Dyer, Parole Agent**

Official Capacity

Individual liability premised on personal involvement

**Martha L. Danner, Director of Parole & Probation, DPSCS**

Official Capacity

Individual liability premised on personal involvement

malicious prosecutions (no probable cause or evidence of criminal wrongdoing)

Supervisory liability. Knowledge about Agent Ross's unlawful conduct and misconduct at the supervisor's direction and with the supervisor's knowledge and consent.

Supervisor Keri Smith had a realistic opportunity to intervene and to prevent harm from occurring.

Failure to Intervene

**Field Supervisor II Danielle Flynn**

Official Capacity

Individual liability premised on personal involvement

Supervisory liability. Knowledge about Agent Ross's unlawful conduct and misconduct at the supervisor's direction and with the supervisor's knowledge and consent.

Supervisor Keri Smith had a realistic opportunity to intervene and to prevent harm from occurring.

Constitutional Rights violations by a person acting under color of law

malicious prosecutions (no probable cause or evidence of criminal wrongdoing)

**David Blumberg, Maryland Parole Commission / and Warden Friday (JCI)**

Official Capacity

Individual liability premised on personal involvement (known and Unknown individuals)

8th Constitutional Amendment

Horrendous conditions of confinement: Locked in hot humid cell without ventilation, 4-6" sewage on floor, held in Solitary confinement, not allowed out of cells, 15" per 24 hr. not (no outgoing or incoming mail), no exercise, cell frequently flooded with raw sewage / rats / roaches... not provided cleaning supplies...

**Kyle Thomas, Elkton Police Department**

Individual liability premised on personal involvement

false imprisonment and /or wrongful arrest / detention without valid warrant

**C. Soto, Maryland Transportation Authority Police**

Individual liability premised on personal involvement

false imprisonment and /or wrongful arrest / detention without valid warrant

**Jennifer Road Detention Center, 131 Jennifer Road Annapolis, MD 21401 Anne**

Arundel County

false imprisonment and /or wrongful arrest /detention without valid warrant

**Rhonda Osborn, Warrant Apprehension Unit of Maryland Division of Parole and Probation**

Individual liability premised on personal involvement



false imprisonment and /or wrongful arrest / detention without valid arrest warrant

**Demetrius Page, Bruce Gerber, and Danielle Flynn**

**Note:** In a May 8, 2020 email correspondence from Martha Danner's to Plaintiff (**PA Exh 9**), the Cc reference contains a list of three individuals unknown to Plaintiff on that date: The following names: Demetrius Page, Bruce Gerber, and Danielle Flynn. appear (**PA Exh# 9**). During Plaintiff's 7/30/21 Parole Retake Hearing, one of the names in the list: Danielle Flynn appeared instead of Agent Ross' to defend Agent Ross' actions and to present the case against Plaintiff, Danielle Flynn, FSII stated that she was very familiar with Plaintiff's case, as supervisor above Agent Ross and Kerri Smith, and stated she (Flynn) had been kept apprised of all events relating to Plaintiff's case and relating to Plaintiff's supervision under Agent Ross and Kerri Smith. Prior to the revocation hearing, and at no time did Danielle Flynn attempt to contact Plaintiff or attempt to address Plaintiff's concerns regarding the harassment and discriminatory treatment received under Agent Kerri and Ross supervision. (See 7/30/21 Parole Retake Transcripts).

The Defendant(s) are or were State Government employees, who acted under color of law within the scope of their employment in committing the misconduct described herein.

WHEREFORE, Plaintiff, Leonard Harris, respectfully request that this Court enter judgment in his favor and against Defendants, awarding compensatory damages, costs, and attorneys' fees, along with punitive damages against each of the individual Defendants in their individual capacities, as well as any other relief this Court deems appropriate.

**JURY DEMAND**

Plaintiff, Leonard Harris, hereby demands a trial by jury pursuant to Federal Rule of Civil Procedure 38(b) on all defendants.

**CERTIFICATE OF SERVICE**

I, Leonard Harris, hereby certify that on this 15th day of June 2022, a copy of the foregoing: First Amended 42 U.S.C. §1983 Complaint, Affidavit Of Leonard Harris and associated exhibits and attachments were mailed by first-class mail, postage prepaid, to: US District Court Office of the Clerk, 6500 Cherrywood Lane, Greenbelt, MD 20770.

  
Leonard Harris      06/15/2022



brought Harris to Union Hospital in Elkton because he was complaining of a “medical issue.” Mot. Ex. 1G at 1, ECF 24-10. At the hospital, law enforcement failed to remain with Harris, and after they left, he refused admission to the hospital based on a fear of contracting COVID-19, signed a release, and left. Harris was later observed leaving his residence with luggage in hand and informed a neighbor that he was “leaving.” *Id.*

On August 12, 2020, Agent Ross submitted a supplemental report requesting that the Parole Commission update the Statement of Charges attached to the warrant to include information about the events following Harris’s arrest, which she considered to constitute an escape, and to keep the warrant active. According to Harris, he did not report again because Agent Ross had told him at the time of his arrest that he should no longer contact her, and he believed that his mandatory supervision ended on November 29, 2020, the end date for his original sentence. On June 14, 2021, Harris was re-arrested and placed in the custody at JCI.

#### **IV. Revocation Proceeding**

On July 30, 2021, Harris attended a parole revocation hearing before Commissioner Robyn Lyles. Commissioner Lyles determined that Harris had absconded from supervision and violated the conditions of his mandatory release by failing to report to a parole agent during and after July 2020. Despite the evidence of his violations, Commissioner Lyles did not revoke Harris’s release; instead, she closed his case as unsatisfactory and released him from custody on the day of the hearing. Where Harris was 67 years old at that time, Commissioner Lyles reasoned that that “[d]uring the global COVID-19 pandemic,” she had “revoked the release of elderly offenders with medical issues as a last resort, and typically only if they have committed a new crime while on supervision.” Lyles Aff. ¶ 2, Mot. Ex. 3, ECF No. 24-29. She also concluded that Harris qualified

# EXHIBIT B

UNITED STATES DISTRICT COURT  
DISTRICT OF MARYLAND

LEONARD HARRIS,

Plaintiff,

v.

Civil Action No. TDC-21-1983

NAKITA ROSS, *Parole Agent, DPSCS,*  
KERRI SMITH,  
*FSI, Parole Supervisor, DPSCS,*  
DANIELLE FLYNN,  
*Field Supervisor II, DPSCS,*  
MARTHA L. DANNER, *Director of*  
*Parole and Probation, DPSCS,*  
DAVID BLUMBERG,  
*Maryland Parole Commission,*  
OFFICER KYLE THOMAS,  
*Elkton Police Department,*  
OFFICER C. SOTO OCASIO,  
*Maryland Transportation Authority,*  
ANNE ARUNDEL COUNTY JENNIFER  
ROAD DETENTION CENTER,  
RHONDA OSBORN, *Detective,*  
*Warrant Apprehension Unit,*  
CLEVELAND C. FRIDAY, *Warden,*  
*Jessup Correctional Institution,*  
DEMETRIUS E. PAGE,  
*Regional Administrator, DPSCS,*  
BRUCE GERBER, *Maryland Division of*  
*Parole and Probation,*  
CORRIE McCALL,  
*Parole Supervisor, DPSCS,* and  
ERICA DYER, *Parole Agent,*

Defendants.

MEMORANDUM OPINION

Self-represented Plaintiff Leonard Harris, formerly confined at Jessup Correctional Institution (“JCI”) in Jessup, Maryland, has filed this civil action pursuant to 42 U.S.C. §§ 1981,

1983, and 1985 against Parole Agent Nakita Ross of the Maryland Department of Public Safety and Correctional Services (“DPSCS”) and nine other DPSCS officials, consisting of Kerri Smith, Danielle Flynn, Martha L. Danner, Rhonda Osborn, Demetrius E. Page, Bruce Gerber, and Corrie McCall; David Blumberg of the Maryland Parole Commission; and Cleveland Friday, the Warden of JCI (collectively, “Defendants”). Also named as Defendants, but presently unserved, are Officer Kyle Thomas of the Elkton Police Department; Officer C. Soto Ocasio of the Maryland Transportation Authority; former DPSCS Parole Agent Erica Dyer, and the Anne Arundel County Jennifer Road Detention Center (collectively, the “Unserved Defendants”). In the operative Amended Complaint, Harris asserts violations of his rights based on the improper altering of the conditions of his mandatory release supervision and false assertions that he violated those terms, which resulted in his confinement at JCI pending a revocation hearing.

Defendants have filed a Motion to Dismiss, or in the Alternative, Motion for Summary Judgment in relation to the Amended Complaint. The Motion is fully briefed. Having reviewed the submitted materials, the Court finds that no hearing is necessary. *See* D. Md. Local R. 105.6. For the reasons set forth below, Defendants’ Motion will be GRANTED, and the claims against the Unserved Defendants will be DISMISSED pursuant to 28 U.S.C. § 1915(e)(2).

## **BACKGROUND**

### **I. Conviction and Sentence**

On September 9, 1992, Harris was sentenced in the Circuit Court for Baltimore County, Maryland to a total of 29 years of imprisonment based on convictions for kidnapping, daytime housebreaking, carrying a weapon openly with intent to injure, and fleeing and eluding the police. On June 28, 2010, after serving approximately 18 years of his sentence, Harris was released on mandatory supervision under which he was to be subject to supervision by the DPSCS Division of

Parole and Probation (“DPP”) until the expiration of the term of his sentence on November 29, 2020. Prisoners who are released on mandatory supervision are deemed to remain in “legal custody until the expiration of the individual’s full term.” Md. Code Ann., Corr. Servs., § 7-502(a) (West 2017).

Harris was initially supervised under general supervision and, according to Harris, by 2019 he had “progressed to a low-level parole supervision,” which required only that he submit a monthly form to his parole agent. Am. Compl. at 10–11, ECF No. 20.

## **II. COMET Supervision**

After completing approximately nine years of mandatory supervision, Leonard moved to Cecil County, Maryland in or about September 2019. Parole Agent Erica Dyer was assigned to supervise Harris as of November 2019. Harris alleges that, in December 2019, Dyer offered to place him on “Abatement of Parole” status beginning on February 12, 2020, on the condition that Harris provide proof that he had paid any outstanding debt to DPSCS. *Id.* at 11. Harris asserts that he accepted this offer, paid the debt, and sent Agent Dyer receipts reflecting his payment of all remaining debt owed. Agent Dyer then instructed Harris to call her on February 12, 2020 to confirm the change in his mandatory release status.

In February 2020, however, after receiving the file from Agent Dyer, DPP Field Supervisor II Danielle Flynn determined that DPP policy required that Harris be supervised as a sex offender because he had been charged with rape and attempted rape in the case underlying the conviction and sentence for which he was under mandatory supervision. Accordingly, Flynn determined that Harris would be transferred from general supervision to the program for such offenders, known as Collaborative Offender Management Enforcement Treatment (“COMET”) supervision. Mot. Ex. 1D at 1, ECF No. 24-7. The COMET program is an intensive supervision program for sex

offenders that includes heightened reporting requirements, electronic monitoring, polygraph testing, and specialized treatment. Upon the transfer of Harris's case to the COMET program, Parole Agent Nakita Ross was assigned to his case.

On February 12, 2020, Agent Ross called Harris and informed him that she was now assigned to his case and that Harris was to report to her. Agent Ross told Harris that "someone had dropped the ball," that it was not his fault, but that Harris would be required to report more frequently. Am. Compl. at 11.

According to Harris, Agent Ross imposed more burdensome supervision requirements. Harris alleges that, on February 19, 2020, he reported to Agent Ross's office as requested, but Agent Ross then came out of her office and instructed him to come back on February 24, 2020 because her computer was not working. Then, on February 20, 2020, Agent Ross made an unannounced, in-person visit to Harris's home. Harris asserts that, during their conversation, Agent Ross became "loud and animated" to the point that neighbors took notice. *Id.* Agent Ross informed Harris that he would be subject to a polygraph test, GPS monitoring, and a curfew. Agent Ross warned Harris that if the polygraph test detected any lies, she would find Harris in violation of his release conditions.

On March 9, 2020, Harris attended his first official meeting with Agent Ross. At this meeting, Harris asked why the conditions of his mandatory release had changed. Agent Ross explained that being charged with a sexual crime, even without a conviction, is enough to warrant placement in the COMET program, but she would not describe the terms and conditions of his supervision going forward. Agent Ross also refused to provide Harris with written proof of his prior visits with her. According to Harris, this refusal demonstrated that at that time, Agent Ross already intended to find him in violation of his mandatory release conditions. At Harris's request,

Agent Ross provided Harris with two cards, one with her name and contact information and another with the name of her supervisor, Corrie McCall. In sending a later email to Agent Ross, Harris cc'ed both McCall and Kerri Smith, another supervisor listed on a prior email from Agent Ross. Harris alleges that Agent Ross subsequently chastised Harris for "tattling" on her to her supervisors by contacting McCall and Smith. *Id.* at 13.

On March 23, 2020, after the Governor of Maryland had ordered offices closed due to the COVID-19 pandemic, Harris had a previously scheduled meeting with Agent Ross. However, because Harris felt ill, he called Agent Ross and requested to reschedule. Harris alleges that Agent Ross "insisted" that he report for the in-person meeting and threatened to find him in violation if he did not appear. *Id.*

On March 31, 2020, Harris submitted to Agent Ross written documentation from his physician stating that, due to the state of his health, Harris should relocate away from Cecil County, Maryland and cease living alone. Harris alleges that Agent Ross failed to provide him with guidance on how to change his address in compliance with his conditions and that he therefore was forced to remain at his apartment in Cecil County and "risk his health and welfare." *Id.* at 14.

On April 6, 2020, Harris was scheduled for another meeting with Agent Ross. After Harris checked in and waited for 30 minutes, Agent Ross sent him an email changing the manner in which Harris was to report effective immediately, mandating that he acquire a phone, and directing him to report to her by phone by 4:00 p.m. that day.

Harris asserts that, between April 6, 2020 and May 4, 2020, Agent Ross "escalated verbal harassment and frequently did not answer the number provided to call." *Id.* Harris states that he was forced to call Agent Ross "for hours" before she answered the telephone and that the number worked only intermittently. *Id.* Harris alleges that Agent Ross "was intentionally making it

difficult for [him] to report” because he had previously contacted her supervisors about her behavior. *Id.*

On April 15, 2020, Harris wrote a letter to Judge Vicki Ballou-Watts of the Circuit Court for Baltimore County to request assistance in resolving the situation. On April 28, 2020, Harris wrote a second letter to Judge Ballou-Watts.

On May 4, 2020, Harris contacted Martha Danner, the DPP Director, about Agent Ross’s conduct. Danner instructed Harris to report to Agent Ross by telephone daily and to leave a voicemail regarding his daily status. Harris alleges that Danner’s response was retaliatory.

On May 13, 2020, when Harris called Agent Ross to report, she informed him that he was now required to report daily, per Danner’s instructions. Agent Ross also provided Harris a specific telephone number to call on Mondays and another telephone number to call on Tuesdays through Fridays.

### **III. Failure to Report**

On June 29, 2020, Harris attended an in-person meeting with Agent Ross. At this meeting, Agent Ross instructed Harris to continue reporting to her by telephone and that she would provide Harris with the date of his next in-person meeting. On July 13, 2020, Agent Ross informed Harris that his next in-person meeting was scheduled for July 20, 2020 at 4:00 p.m. Also on July 13, 2020, Agent Ross instructed Harris to disregard the telephone number previously provided to Harris for Monday calls and to use only the telephone number previously used for Tuesday through Friday calls.

Meanwhile, on July 8, 2020, Harris was instructed to visit the office and sign paperwork for a referral for a polygraph examination. Upon arriving at the office, Harris refused to sign the forms until after he had an attorney review them. Harris was instructed to return the signed



paperwork to Agent Ross by 10:00 a.m. on July 16, 2020. Harris failed to do so. Then, Harris failed to appear for the in-person meeting scheduled for July 20, 2020.

On July 23, 2020, Agent Ross filed a request for a warrant to have Harris arrested and detained for failing to report. In the request, Agent Ross stated that Harris had “refused to respond” to her emails, he claimed not to have a “viable telephone number,” and she could not access his residence due to onsite restrictions. Mot. Ex. 1D at 2. Agent Ross also noted that Harris had refused to sign the paperwork for the polygraph referral.

The warrant was signed and issued by a parole commissioner on July 23, 2020. The warrant alleged that (1) Harris had violated Condition No. 1 of his mandatory supervision, which required that he report to and follow the parole agent’s instructions, by failing to return the polygraph referral forms and to report in-person as directed on July 20, 2020; and (2) that he violated Special Condition No. 34, which required that he comply with the DPP’s sexual offender management program, by failing to return the polygraph referral forms.

On July 24, 2020, Agent Ross sent Harris an email in which she stated that he had failed to report as instructed on July 20, 2020, that her efforts to reach him by phone and email were unsuccessful, and that he had not returned the polygraph referral forms. Agent Ross instructed Harris to report to the DPP office in Elkton, Maryland on July 27, 2020 at 4:00 p.m. According to Harris, he was not told and not aware that Agent Ross had requested a warrant.

Upon reporting to the Elkton office on July 27, 2020, Harris was arrested by the Elkton Police Department. Harris alleges that, during the arrest, Agent Ross instructed him to stop contacting her. According to Harris, he was held in custody by the Elkton Police Department for approximately 12 hours before they released him because “no valid arrest warrant was provided to them.” Am. Compl. at 17. DPP records, however, show that after the arrest, law enforcement

brought Harris to Union Hospital in Elkton because he was complaining of a “medical issue.” Mot. Ex. 1G at 1, ECF 24-10. At the hospital, law enforcement failed to remain with Harris, and after they left, he refused admission to the hospital based on a fear of contracting COVID-19, signed a release, and left. Harris was later observed leaving his residence with luggage in hand and informed a neighbor that he was “leaving.” *Id.*

On August 12, 2020, Agent Ross submitted a supplemental report requesting that the Parole Commission update the Statement of Charges attached to the warrant to include information about the events following Harris’s arrest, which she considered to constitute an escape, and to keep the warrant active. According to Harris, he did not report again because Agent Ross had told him at the time of his arrest that he should no longer contact her, and he believed that his mandatory supervision ended on November 29, 2020, the end date for his original sentence. On June 14, 2021, Harris was re-arrested and placed in the custody at JCI.

#### **IV. Revocation Proceeding**

On July 30, 2021, Harris attended a parole revocation hearing before Commissioner Robyn Lyles. Commissioner Lyles determined that Harris had absconded from supervision and violated the conditions of his mandatory release by failing to report to a parole agent during and after July 2020. Despite the evidence of his violations, Commissioner Lyles did not revoke Harris’s release; instead, she closed his case as unsatisfactory and released him from custody on the day of the hearing. Where Harris was 67 years old at that time, Commissioner Lyles reasoned that that “[d]uring the global COVID-19 pandemic,” she had “revoked the release of elderly offenders with medical issues as a last resort, and typically only if they have committed a new crime while on supervision.” Lyles Aff. ¶ 2, Mot. Ex. 3, ECF No. 24-29. She also concluded that Harris qualified

for COMET supervision and should have been placed on it when he was originally released in 2010.

#### **V. Harris's Claims**

Construed liberally, the Amended Complaint alleges multiple causes of action against Defendants in both their official and individual capacities. First, Harris alleges claims against Agent Ross and other DPSCS officials under 42 U.S.C. § 1983 for violating Harris's constitutional rights by subjecting him to "unconstitutional parole conditions" enforced in an unconstitutionally arbitrary or discriminatory manner, including making false statements in the affidavit for an arrest warrant, in violation of the Fourteenth Amendment rights to due process of law and equal protection of the law. Second, he alleges that Agent Ross retaliated against him for contacting Agent Ross's supervisor to complain about Agent Ross's actions, in violation of the First Amendment. Third, he asserts that Blumberg and Friday violated his rights under the Eighth Amendment based on unconstitutional conditions of confinement during his six weeks of detention at JCI. Fourth, he alleges that Defendants' conduct violated 42 U.S.C. § 1981 and constituted a conspiracy to deprive him of his federal rights, in violation of 42 U.S.C. § 1985. Finally, he alleges that multiple Defendants engaged in false imprisonment, wrongful arrest, and malicious prosecution by detaining Harris without a valid warrant and pursuing the revocation hearing. Harris seeks compensatory and punitive damages, attorney's fees, and costs.

### **DISCUSSION**

#### **I. Preliminary Motions**

In filing their dispositive motion, Defendants included a Motion to Seal certain exhibits containing sensitive information related to Harris. Although Harris objects to the Court's

consideration of some of these exhibits on relevance and related grounds, he does not provide a persuasive reason to refrain from sealing them. The Motion to Seal will therefore be granted.

Harris has also filed a Second Motion for Appointment of Counsel in which he asserts that he has been unsuccessful in retaining an attorney and that he now has some vision loss in one eye. Where Harris has adequately articulated his claims to date, he has not identified a condition that precludes him from representing himself in writing, and the case likely will not proceed to discovery, a hearing, or trial, the Court will deny the motion for the same reasons articulated in the Order denying the First Motion for Appointment of Counsel. *See* Order at 1, ECF No. 37.

## **II. Defendants' Motion to Dismiss or, in the Alternative, Motion for Summary Judgment**

In their Motion, Defendants seek dismissal of the Amended Complaint under Federal Rule of Civil Procedure 12(b)(6) or summary judgment under Rule 56 on the grounds that: (1) all claims against Defendants in their official capacities are not claims against "persons" as required to support a § 1983 claim and are also barred by the Eleventh Amendment to the Constitution; (2) Harris fails sufficiently to allege personal participation or supervisory liability as needed to support the claims against Osborne, Page, Gerber, Blumberg, Friday, and McCall; (3) the undisputed facts do not give rise to a violation of constitutional rights or commission of the state common law torts; and (4) Defendants are entitled to qualified immunity.

### **A. Legal Standards**

To defeat a motion to dismiss under Rule 12(b)(6), the complaint must allege enough facts to state a plausible claim for relief. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). A claim is plausible when the facts pleaded allow "the Court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* Legal conclusions or conclusory statements do not suffice. *Id.* A court must examine the complaint as a whole, consider the factual allegations

in the complaint as true, and construe the factual allegations in the light most favorable to the plaintiff. *Albright v. Oliver*, 510 U.S. 266, 268 (1994); *Lambeth v. Bd. of Comm'rs of Davidson Cnty.*, 407 F.3d 266, 268 (4th Cir. 2005). A self-represented party's complaint must be construed liberally. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007). However, "liberal construction does not mean overlooking the pleading requirements under the Federal Rules of Civil Procedure." *Bing v. Brivo Sys., LLC*, 959 F.3d 605, 618 (4th Cir. 2020).

Defendants have attached several exhibits to their Motions. Typically, when deciding a motion to dismiss under Rule 12(b)(6), the Court considers only the complaint and any documents attached to that pleading. *Sec'y of State for Defence v. Trimble Navigation Ltd.*, 484 F.3d 700, 705 (4th Cir. 2007). Rule 12(d) requires courts to treat such a motion as a motion for summary judgment where matters outside the pleadings are considered and not excluded. Fed. R. Civ. P. 12(d). Before converting a motion to dismiss to one for summary judgment, courts must give the nonmoving party "a reasonable opportunity to present all the material that is pertinent to the motion." *Id.* "Reasonable opportunity" has two requirements: (1) the nonmoving party must have some notice that the court is treating the Rule 12(b)(6) motion as a motion for summary judgment; and (2) the nonmoving party "must be afforded a reasonable opportunity for discovery" to obtain information essential to oppose the motion. *Gay v. Wall*, 761 F.2d 175, 177 (4th Cir. 1985) (citation omitted).

Here, the notice requirement has been satisfied by the title of Defendants' Motion. To show that a reasonable opportunity for discovery has not been afforded, the nonmoving party must file an affidavit or declaration under Rule 56(d), or an equivalent filing, explaining why "for specified reasons, it cannot present facts essential to justify its opposition." Fed. R. Civ. P. 56(d); *see Harrods Ltd. v. Sixty Internet Domain Names*, 302 F.3d 214, 245 (4th Cir. 2002). Harris has

not filed an affidavit seeking discovery, does not otherwise make a persuasive case that discovery is needed, and has submitted certain exhibits of his own with his memorandum in opposition to the Motion. The Court will thus construe Defendants' Motion as a Motion for Summary Judgment for purposes of the arguments requiring consideration of the submitted exhibits. As for Harris's objections to certain sealed exhibits, the identified exhibits, which include Harris's risk assessment, case notes, pre-sentence investigation report, and criminal case docket are all relevant to the issue of whether Harris was properly subjected to COMET supervision, and the Court finds their probative value is not substantially outweighed by the danger of unfair prejudice, so the Court will accept those exhibits as part of the record but keep them under seal. *See* Fed. R. Evid. 403.

Under Rule 56(a), the Court grants summary judgment if the moving party demonstrates that there is no genuine issue as to any material fact, and that the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). In assessing the motion, the Court views the facts in the light most favorable to the nonmoving party, "with all justifiable inferences" drawn in its favor. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). The Court may rely only on facts supported in the record, not simply assertions in the pleadings. *Bouchat v. Balt. Ravens Football Club, Inc.*, 346 F.3d 514, 522 (4th Cir. 2003). A fact is "material" if it "might affect the outcome of the suit under the governing law." *Anderson*, 477 U.S. at 248. A dispute of material fact is "genuine" only if sufficient evidence favoring the nonmoving party exists for the trier of fact to return a verdict for that party. *Id.* at 248-49.

#### **B. Official Capacity Claims**

The Eleventh Amendment to the United States Constitution provides that "the Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced

or prosecuted against one of the United States by Citizens of another State, or by Citizens or subjects of any Foreign State.” U.S. Const. amend. XI. In effect, the Eleventh Amendment bars suits for damages against a state in federal court unless the state has waived its sovereign immunity or Congress has abrogated its immunity. See *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 100 (“It is clear, of course, that in the absence of consent a suit in which the State or one of its agencies or departments is named as the defendant is proscribed by the Eleventh Amendment.”). “[A] suit against a state official in his or her official capacity is not a suit against the official but rather is a suit against the official’s office. As such, it is no different from a suit against the State itself.” *Will v. Mich. Dep’t of State Police*, 491 U.S. 58, 71 (1989). Accordingly, all official capacity claims against Defendants Ross, Smith, McCall, Flynn, Danner, Flynn, Dyer, Blumberg, Friday, Soto Ocasio, Osborn, Page, and Gerber will be dismissed.

**C. Fourteenth Amendment**

The Court construes Harris’s claim that Agent Ross imposed “unconstitutional parole conditions” and enforced those conditions in an unconstitutionally arbitrary or discriminatory manner to be a claim for a violation of due process and equal protection rights under the Fourteenth Amendment. Am. Compl. at 17. Determining whether a plaintiff’s procedural due process rights have been violated is a two-step process. First, the court must determine “[w]hether any procedural protections are due” by deciding whether a “liberty or property” interest within the meaning of the Fourteenth Amendment’s Due Process Clause is at stake. *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972). Second, should the Due Process Clause attach, the court determines “what process is due,” keeping in mind that “due process is flexible and calls for such procedural protections as the particular situation demands.” *Id.*



As to the first step, the United States Supreme Court has recognized that an individual on a parole has a liberty interest in relation to any potential revocation of parole. *Morrissey*, 408 U.S. at 482. As to what process is due, at a parole revocation hearing, a parolee is entitled to written notice of the claimed violations of parole; disclosure of the evidence; an opportunity to be heard in person and to present witnesses and documentary evidence; the right to confront and cross-examine adverse witnesses; a neutral and detached hearing body to consider revocation; and a written statement by the factfinders as to evidence relied on and the reasons for revoking parole. *Id.* at 489. A parole revocation hearing need not apply the evidentiary standards required in a criminal trial and may include consideration of letters and affidavits not admissible at a trial, but it must be “structured to assure that the finding of a parole violation will be based on verified facts and that the exercise of discretion will be informed by an accurate knowledge of the parolee’s behavior.” *Id.* at 484.

The record is clear that Harris received these required procedures at his parole revocation hearing, which resulted in the termination of his case without any additional incarceration. Although he claims that he did not receive sufficient time to prepare for the hearing, and that certain documents were not available, the hearing occurred six weeks after his arrest, he was represented by counsel, and neither he nor his attorney argued that they had insufficient time or ability to prepare for the hearing, which resulted in no additional prison time.

To the extent that Harris’s claim may relate to the changes in his reporting requirements, the imposition of COMET supervision, or his arrest in advance of the parole revocation hearing, the record does not demonstrate any due process violations. While under mandatory supervision, Harris was required to comply with “all laws, rules, regulations, and conditions that apply to parolees” and also with “any special conditions established by a commissioner.” Md. Code Ann.,



Corr. Servs. § 7–502(b) (West 2017). To the extent that Harris complains of Agent Ross’s changes to the specific reporting requirements, such as changing from in-person meetings to phone calls, changing the phone number for reporting, or not being available at certain times, those procedures do not violate due process.

As for the institution of COMET supervision after Harris had completed almost ten years of generalized mandatory supervision, the Maryland Court of Special Appeals has upheld the imposition of COMET supervision as a special condition of probation. *Russell v. State*, 109 A.3d 1249, 1263–64 (Md. Ct. Spec. App. 2015). The same court has also upheld the imposition of COMET supervision on a parolee who was not convicted of a sex crime, when the facts underlying the offense of conviction reflected that the crime was sexual in nature. *See Maddox v. Parole Comm’n. of Md.*, No. 1222, 2022 WL 2693109, at \*3, \*5 (Md. Ct. Spec. App. July 12, 2022). Here, the record demonstrates that the facts underlying Harris’s offenses of conviction included charges of rape, attempted rape, and third-degree sex offense.

Moreover, such conditions may be imposed without judicial review because mandatory release, like parole, is “uniquely an executive function and the enforcement and regulation thereof is vested solely within the Division of Parole and Probation.” *Hillard v. State*, 784 A.2d 1134, 1140 (Md. Ct. Spec. App. 2001); *see Simms v. State*, 501 A.2d 1338, 1340 (Md. Ct. Spec. App. 1986). The authority to impose special conditions on an inmate’s mandatory supervision release is “broad by design” and lies within the discretion of the Maryland Parole Commission. *Maddox*, 2022 WL 2693109, at \*3 (citing Md. Code Ann., Corr. Servs § 7–502(b) and Md. Code Regs. 12.08.01.21.E (2022)).

As for the issuance of a warrant and Harris’s arrest, the Maryland Parole Commission ultimately concluded that Harris failed to report as required after July 20, 2020, and the record

provides no basis to conclude otherwise, so the issuance of the initial warrant was proper and was not based on false statements. As for the second warrant, regardless of whether, as claimed by Harris, Agent Ross told him at the time of his first arrest that he no longer needed to report to her, the record reflects that there was a valid warrant, and that the initial failure to report referenced in the warrant remained unresolved, so the second arrest was valid.

To the extent that Harris's claim that Agent Ross enforced the conditions of his mandatory supervision in an arbitrary and discriminatory manner could be characterized as a substantive due process claim, that claim also fails. Substantive due process prevents "government officials from abusing their power" with conduct that is "arbitrary" or "shocks the conscience." *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 846–47 (1998). The threshold question is whether the behavior of the government officer is "so egregious, so outrageous that it may fairly be said to shock the contemporary conscience." *Id.* at 847 n.8. If it meets this standard, the next step is to assess whether the conduct violates a liberty interest held by the plaintiff. *See Hawkins v. Freeman*, 195 F.3d 732, 738–39 (4th Cir. 1999) (stating that if an executive act does not shock the conscience, then there is "no need to inquire into the nature of the asserted liberty interest"). Harris's placement on COMET supervision, even after a 10-year period of general supervision due to a mistake in his designation, does not meet this standard. *See Lewis*, 523 U.S. at 849; *Hawkins*, 195 F.3d at 746–47 (finding that the revocation of parole mistakenly granted does not shock the conscience).

As for equal protection, although Harris references discrimination, he identifies no facts demonstrating that he was treated differently from other individuals based on any protected class or otherwise. A plaintiff asserting an equal protection claim must allege "that he has been treated differently from others with whom he is similarly situated and that the unequal treatment was the

result of intentional or purposeful discrimination.” *Morrison v. Garraghty*, 239 F.3d 648, 654 (4th Cir. 2001); see *Washington v. Davis*, 426 U.S. 229 (1976) (“The invidious quality of a law claimed to be ... discriminatory must ultimately be traced to a ... discriminatory purpose.”). “The ‘similarly situated’ standard requires a plaintiff to identify persons materially identical to him ... who ha[ve] received different treatment.” *Applegate, LP v. City of Frederick*, 179 F. Supp. 3d 522, 531 (D. Md. 2016) (citation omitted). Harris has provided no facts supporting any such differential treatment. Thus, any equal protection claim necessarily fails.

For all of these reasons, the Court does not find a violation of due process or equal protection and will grant summary judgment on these claims.

**D. First Amendment Retaliation**

Defendants also argue that Harris has failed to state a plausible claim of retaliation in violation of the First Amendment. To state a claim of retaliation for exercising First Amendment rights, a plaintiff must show that: (1) the plaintiff engaged in protected First Amendment activity; (2) the defendant took some action that adversely affected the plaintiff’s First Amendment rights; and (3) there was a causal relationship between the protected activity and the defendant’s conduct. *Martin v. Duffy*, 977 F.3d 294, 299 (4th Cir. 2020).

Here, Harris asserts that Agent Ross retaliated against him for reporting her conduct to her supervisor. As for the conduct that was allegedly retaliatory, the changes to reporting schedules do not rise to the level of conduct adversely affecting First Amendment rights, and, as discussed above, the imposition of COMET supervision was valid. See *supra* part II.C. As for the issuance of an arrest warrant, the Parole Commission found, and the record establishes, that the warrant was valid because there is no basis to dispute that Harris failed to report after July 20, 2020 and did not return the polygraph referral forms. Harris therefore cannot establish that the issuance of the

warrant was retaliatory. *See Martin*, 977 F.3d at 300 (“The causation element in retaliation claims asks whether the considerations which animated the defendant’s conduct were permissible or impermissible.”). The Court will therefore grant summary judgment on the retaliation claim.

**E. Eighth Amendment**

Harris’s Eighth Amendment Claim against Commissioner Blumberg and Warden Friday for unconstitutional conditions of confinement at JCI also fails. Harris was detained at JCI for 46 days, from the time of his arrest on the warrant until the parole revocation hearing after which he was released. Specifically, Harris alleges that he was “locked in [a] hot humid cell without ventilation,” he was in solitary confinement and only allowed 15 minutes per day out of his cell, he received no exercise, the cell frequently had raw sewage, rodents, and roaches on the floor, and he was not allowed to send or receive mail or to have cleaning supplies. Am. Compl. at 19.

The Eighth Amendment “protects inmates from inhumane treatment and conditions while imprisoned.” *Iko v. Shreve*, 535 F.3d 225, 238 (quoting *Williams v. Benjamin*, 77 F.3d 756, 761 (4th Cir. 1996)). Conditions of confinement that “involve wanton and unnecessary infliction of pain,” or which “deprive inmates of the minimal civilized measure of life’s necessities,” may amount to cruel and unusual punishment. *Rhodes v. Chapman*, 452 U.S. 337, 347 (1981). However, conditions that are merely restrictive or even harsh “are part of the penalty that criminal offenders pay for their offenses against society.” *Id.* In order to establish the imposition of cruel and unusual punishment in conditions of confinement, a prisoner must prove two elements: that “the deprivation of [a] basic human need was *objectively* sufficiently serious,” and that *subjectively* the officials act[ed] with a sufficiently culpable state of mind.” *Shakka v. Smith*, 71 F.3d 162, 166 (4th Cir. 1995) (citation omitted). “These requirements spring from the text of the amendment itself; absent intentionality, a condition imposed on an inmate cannot properly be

called 'punishment,' and absent severity, such punishment cannot be called 'cruel and unusual.'" *Iko*, 535 F.3d at 238 (quoting *Wilson v. Seiter*, 501 U.S. 294, 298–300 (1991)).

The objective prong of a conditions claim requires the prisoner to “produce evidence of a serious or significant physical or emotional injury resulting from the challenged conditions,’ or demonstrate a substantial risk of such serious harm resulting from the prisoner’s unwilling exposure to the challenged conditions.” *Shakka*, 71 F.3d at 166 (quoting *Strickler v. Waters*, 989 F.2d 1375, 1381 (4th Cir. 1993)). To establish a sufficiently culpable state of mind, there must be evidence of deliberate indifference, in that a known excessive risk of harm to the inmate’s health or safety was disregarded. See *Wilson v. Seiter*, 501 U.S. 294, 302–03 (1991) (applying the deliberate indifference standard to conditions of confinement claims). “[T]he test is whether the guards know the plaintiff inmate faces a serious danger to his safety and they could avert the danger easily yet they fail to do so.” *Brown v. N.C. Dep’t of Corr.*, 612 F.3d 720, 723 (4th Cir. 2010) (quoting *Case v. Ahitow*, 301 F.3d 605, 607 (7th Cir. 2002)).

Here, the allegations regarding the conditions at JCI during Harris’s brief stay, even if describing problematic conditions, provide no specific facts that would substantiate Harris’s uncorroborated claim that he, a parolee subject to revocation for failing to comply with conditions, was subjected to solitary confinement under draconian conditions. Even assuming his description of the conditions to be true, as is required on a motion to dismiss, Harris has not provided any allegations or facts demonstrating that either Commissioner Blumberg or Warden Friday had any knowledge of such conditions or were aware that Harris had been placed in such conditions. Further, there are no allegations or facts demonstrating that Harris suffered any actual injury from the described conditions. The Eighth Amendment claim will therefore be dismissed.

**F. 42 U.S.C. §§ 1981 and 1985**

Harris's claims under 42 U.S.C. § 1981 and 42 U.S.C. § 1985 will be dismissed for failure to state plausible claims for relief. Section 1981 guarantees equal rights under the law and provides that all persons shall have the same right to "make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens" and shall be "subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other." 42 U.S.C. § 1981(a) (2018). Thus, a violation of § 1981 requires a showing of discrimination or unequal treatment based on race. The Amended Complaint, however, alleges no facts that would support a finding that Harris was treated differently based on race.

The only arguably relevant portion of § 1985 prohibits a conspiracy to interfere with civil rights consisting of two or more persons conspiring to deprive another person "of the equal protection of the laws, or of equal privileges and immunities under the laws." 42 U.S.C. § 1985(3). Thus, a § 1985 conspiracy claim requires "some racial, or perhaps otherwise class-based, invidiously discriminatory animus behind the conspirators' action." *Bray v. Alexandria Women's Health Clinic*, 506 U.S. 263, 268–69 (1993) (quoting *Griffin v. Breckenridge*, 403 U.S. 88, 102 (1971)). As discussed above, Harris has made no plausible allegations that his treatment was the result of discrimination based on race or some other class of which he was a member. *See supra* part II.C.; *see Francis v. Giacomelli*, 588 F.3d 186, 196–97 (4th Cir. 2009) (holding that an allegation that defendants conspired to violate plaintiff's civil rights was not enough to state a § 1985 claim without supporting facts). The Court therefore finds that Harris has failed to state valid claims under § 1981 or § 1985.



**G. False Imprisonment and Malicious Prosecution**

In the Amended Complaint, Harris asserts that several Defendants, including Agent Ross, Smith, Thomas, Soto Ocasio, Osborn, and the Jennifer Road Detention Center, engaged in false imprisonment, wrongful arrest, or detention without a valid warrant. A common law false imprisonment claim requires a showing of: (1) the deprivation of the liberty of another; (2) without consent; and (3) without legal justification. *Heron v. Strader*, 761 A.2d 56, 59 (Md. 2000). “The test of legal justification, in the context of false arrest and false imprisonment [for which causes of action the elements are the same], is judged by the principles applicable to the law of arrest.” *Carter v. Aramark Sports and Ent. Servs., Inc.*, 835 A.2d 262, 284 (Md. Ct. Spec. App. 2003) (brackets in original). “Legal justification is the equivalent of legal authority.” *K-Mart Corp. v. Salmon*, 547 A.2d 1069, 1076 (Md. Ct. Spec. App. 1988), *overruled on other grounds by Montgomery Ward v. Wilson*, 664 A.2d 916 (Md. Ct. App. 1995).

Here, the applicable regulations on revocation of parole or mandatory release place the responsibility for applying for a warrant on the supervising parole agent. Md. Code Regs. 12.08.01.22.B (2022). The record establishes that a warrant had issued before the arrest on July 27, 2020. Where Harris has presented no facts disputing, and the Parole Commissioner later found, that Harris failed to report as required during and after July 2020, the warrant was supported by probable cause or reasonable grounds to believe that a parole violation had occurred. *See* Md. Code Regs. 12.08.01.22.E.4 (noting that review at a post-arrest preliminary hearing is for whether there was probable cause or reasonable grounds to believe that a violation of parole has occurred); *Samson v. California*, 547 U.S. 843, 850 (2006) (“[P]arolees are on the ‘continuum’ of state-imposed punishments . . . [and] have fewer expectations of privacy than probationers because parole is more akin to imprisonment.”). Because a valid warrant was issued for Harris’s arrest,

the arrest was legally justified. *Feaster v. State*, 47 A.3d 1051, 1059 (Md. Ct. Spec. App. 2012) (noting that a parolee has diminished Fourth Amendment rights and can be arrested even without probable cause). Thus, Harris does not have a valid false imprisonment claim.

Harris also alleges malicious prosecution by Agent Ross, Smith, Danner, and Flynn. Under Maryland law, a malicious prosecution claim requires a showing that: (1) the defendant instituted a criminal proceeding against the plaintiff; (2) the criminal proceeding was resolved in the plaintiff's favor; (3) the defendant did not have probable cause to institute the proceeding; and (4) the defendant acted with malice or a primary purpose other than bringing the plaintiff to justice. *Okwa v. Harper*, 757 A.2d 118, 130 (Md. 2000). Thus, "the termination of those proceedings in the defendant's favor as a necessary element of the cause of action." *Heron*, 761 A.2d at 59. Here, even if the revocation hearing is construed as a criminal proceeding instituted against Harris, the Parole Commissioner concluded that Harris violated the reporting requirement of his mandatory supervision conditions. Based on this ruling adverse to Harris, even though no additional prison time was imposed, the proceeding was not resolved and terminated in Harris's favor, so the Court finds that the malicious prosecution claim fails.

### III. The Unserved Defendants

Service has not yet been accepted on behalf of Defendants Thomas, Soto Ocasio, Dyer, and Jennifer Road Detention Center. However, because Harris filed his Complaint *in forma pauperis* pursuant to 28 U.S.C. § 1915(a)(1), the Court is required to screen the claims and dismiss any that are frivolous or malicious or fail to state a claim on which relief may be granted. 28 U.S.C. § 1915(e)(2)(B)(i), (ii). In doing so, the Court must hold the self-represented complaint to "less stringent standards than pleadings drafted by attorneys and must read the complaint liberally." *White v. White*, 886 F. 2d 721, 722–23 (4th Cir. 1989). Here, the only claims against




Thomas and Soto Ocasio are that these officers arrested Harris wrongfully, without a valid warrant, and therefore engaged in common law false imprisonment. As discussed above, Harris has failed to allege facts that would show that his arrest by Thomas and Soto Ocasio was unlawful in that it was not pursuant to a valid warrant. *See supra* part II.G. In turn, there is no basis to hold liable the Jennifer Road Detention Center, at which he was apparently detained briefly after the arrest. Finally, Harris raises no claims as to Dyer; rather he simply mentions that she offered to decrease the level of his parole supervision prior to his supervision being transferred to Agent Ross. Accordingly, Harris has failed to state any valid claims against the Unserved Defendants, so the claims against them will be dismissed pursuant to 28 U.S.C. § 1915(e)(2).

#### CONCLUSION

For the foregoing reasons, Defendants' Motion to Dismiss, or in the Alternative, Motion for Summary Judgment will be GRANTED. The claims against the Unserved Defendants will be DISMISSED pursuant to 28 U.S.C. § 1915(e)(2). A separate Order shall issue.

Date: March 17, 2023



THEODORE D. CHUANG  
United States District Judge

# EXHIBIT C

**UNPUBLISHED**

**UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT**

---

**No. 23-6433**

---

LEONARD HARRIS,

Plaintiff - Appellant,

v.

NAKITA ROSS, Parole Agent; CLEVELAND C. FRIDAY, Warden of Jessup Correction Institution; MARYLAND PAROLE COMMISSION; DPSCS; KERRI SMITH, Parole Supervisor, DPSCS; DANIELLE FLYNN, Field Supervisor II, DPSCS; MARTHA L. DANNER, Director of Parole & Probation, DPSCS; DAVID BLUMBERG, Maryland Parole Commission; OFFICER KYLE THOMAS, Elkton Police Department; OFFICER C. SOTO OCASIO, MD Transportation Authority; ANNE ARUNDEL COUNTY JENNIFER ROAD DETENTION CENTER; RHONDA OSBORN, Detective, Warrant Apprehension Unit; DEMETRIUS E. PAGE, Regional Administrator DPSCS; BRUCE GERBER, Maryland Division Parole and Probation; CORRIE MCCALL, Parole Supervisor, DPSCS; E. DYER, Parole Agent,

Defendants - Appellees.

---

Appeal from the United States District Court for the District of Maryland, at Baltimore. Theodore D. Chuang, District Judge. (1:21-cv-01983-TDC)

---

Submitted: August 27, 2024

Decided: August 29, 2024

---

Before KING and BENJAMIN, Circuit Judges, and KEENAN, Senior Circuit Judge.

---

Affirmed by unpublished per curiam opinion.

---

Leonard Harris, Appellant Pro Se. Susan Howe Baron, Assistant Attorney General,  
OFFICE OF THE ATTORNEY GENERAL OF MARYLAND, Baltimore, Maryland, for  
Appellees.

---

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Leonard Harris appeals the district court's order granting the Defendants' motion for summary judgment in Harris' civil rights action filed pursuant to 42 U.S.C. § 1983. We have reviewed the record and find no reversible error. Accordingly, we affirm the district court's order. *Harris v. Ross*, No. 1:21-cv-01983-TDC (D. Md. Mar. 17, 2023). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

*AFFIRMED*

# EXHIBIT D

FILED: September 13, 2024

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

---

No. 23-6433  
(1:21-cv-01983-TDC)

---

LEONARD HARRIS

Plaintiff - Appellant

v.

NAKITA ROSS, Parole Agent; CLEVELAND C. FRIDAY, Warden of Jessup Correction Institution; MARYLAND PAROLE COMMISSION; DPSCS; KERRI SMITH, Parole Supervisor, DPSCS; DANIELLE FLYNN, Field Supervisor II, DPSCS; MARTHA L. DANNER, Director of Parole & Probation, DPSCS; DAVID BLUMBERG, Maryland Parole Commission; OFFICER KYLE THOMAS, Elkton Police Department; OFFICER C. SOTO OCASIO, MD Transportation Authority; ANNE ARUNDEL COUNTY JENNIFER ROAD DETENTION CENTER; RHONDA OSBORN, Detective, Warrant Apprehension Unit; DEMETRIUS E. PAGE, Regional Administrator DPSCS; BRUCE GERBER, Maryland Division Parole and Probation; CORRIE MCCALL, Parole Supervisor, DPSCS; E. DYER, Parole Agent

Defendants - Appellees

---

TEMPORARY STAY OF MANDATE

---

Under Fed. R. App. P. 41(b), the filing of a timely petition for rehearing or rehearing en banc stays the mandate until the court has ruled on the petition.

In accordance with Rule 41(b), the mandate is stayed pending further order of this court.

/s/Nwamaka Anowi, Clerk



# EXHIBIT E

FILED: January 22, 2025

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

---

No. 23-6433  
(1:21-cv-01983-TDC)

---

LEONARD HARRIS

Plaintiff - Appellant

v.

NAKITA ROSS, Parole Agent; CLEVELAND C. FRIDAY, Warden of Jessup Correction Institution; MARYLAND PAROLE COMMISSION; DPSCS; KERRI SMITH, Parole Supervisor, DPSCS; DANIELLE FLYNN, Field Supervisor II, DPSCS; MARTHA L. DANNER, Director of Parole & Probation, DPSCS; DAVID BLUMBERG, Maryland Parole Commission; OFFICER KYLE THOMAS, Elkton Police Department; OFFICER C. SOTO OCASIO, MD Transportation Authority; ANNE ARUNDEL COUNTY JENNIFER ROAD DETENTION CENTER; RHONDA OSBORN, Detective, Warrant Apprehension Unit; DEMETRIUS E. PAGE, Regional Administrator DPSCS; BRUCE GERBER, Maryland Division Parole and Probation; CORRIE MCCALL, Parole Supervisor, DPSCS; E. DYER, Parole Agent

Defendants - Appellees

---

ORDER

---

The court denies the petition for rehearing. Accordingly, all pending motions are denied.

Entered at the direction of the panel: Judge King, Judge Benjamin, and  
Senior Judge Keenan.

For the Court

/s/ Nwamaka Anowi, Clerk

