

**No. 25-1068**

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT**

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Joshua F. Young,

*Plaintiff-Appellant,*

v.

Colorado Department of Corrections; Moses “Andre” Stancil; Jill Hunsaker Ryan,

*Defendants-Appellees.*

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On Appeal from the United States District Court for the District of Colorado  
No. 23-cv-01688-NYW-SBP, The Honorable Nina Y. Wang

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**OPENING BRIEF OF PLAINTIFF-APPELLANT JOSHUA F. YOUNG**

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Oral Argument Requested

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## DISCLOSURE STATEMENT

The undersigned attorneys for Plaintiff-Appellant, Mr. Joshua F. Young, certify that Young is an individual. He is not a member of any publicly traded company or its parent corporation.

Respectfully submitted this 23rd day of April, 2025.

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### **Statement of Related Cases**

The following case is related under Tenth Circuit Rule 28.2(C) as a prior appeal:

- *Young v. Colorado Dep't of Corr.*, 94 F.4th 1242 (10th Cir. 2024), docketed March 20, 2023.

Counsel is not aware of any other cases or proceedings that would be deemed related to this appeal.

**I. Jurisdictional Statements**

**a. The District Court possessed subject matter jurisdiction over the dispute.**

The District Court possessed subject matter jurisdiction, based on federal-question jurisdiction. Young brought claims for (1) violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2(a)(1), (2) violation of the Civil Rights Act of 1866, 42 U.S.C. § 1981, and (3) constructive discharge. [ER Vol. 3, at 0577; 0579; 0581] Federal courts have jurisdiction over these claims. *See* 28 U.S.C. § 1331.

No party contested the District Court’s jurisdiction, and the District Court did not question the exercise of jurisdiction.

**b. This Court possesses appellate jurisdiction over the dispute.**

Under 28 U.S.C. § 1291, this Court has jurisdiction over all final decisions from the U.S. District Court for the District of Colorado.

**c. Appellant timely appealed.**

The District Court dismissed Appellant’s complaint on January 27, 2025. The deadline to timely appeal was 30 days from the date of that order, or February 26, 2025. *See* Fed. R. App. P. 4(a)(1)(A). Appellant timely filed his Notice of Appeal on February 26, 2025.

**d. The District Court’s Order was final and disposed of the entire case.**

The District Court granted Appellees’ Motion to Dismiss in its entirety, dismissing Young’s hostile work environment claim under Title VII for failure to

state a claim, and dismissing his Section 1981 claim because “the standards applicable to a hostile work environment are the same.” [ER Vol. 4, at 1009.] The District Court similarly granted Appellees’ Motion to Dismiss Young’s constructive discharge claim, stating that such claims are barred if a claim for hostile work environment has not been pled. [ER Vol. 4, at 1028-29.] The dismissal was with prejudice, and judgment was entered. [ER Vol. 4, at 1031.] This appeal is thus from a final order that disposed of all of Young’s claims.

## **II. Statement of the Issues Presented for Review**

1. Did Young properly allege a claim for a racially hostile work environment, under either Title VII or Section 1981?
2. Did Young properly allege a claim for constructive discharge?

## **III. Statement of the Case**

### **a. Before the EDI Training, Young had a promising future with CDOC.**

Joshua Young thought that he had a bright future within the Colorado Department of Corrections. Despite the inherent difficulties of serving as a Corrections Officer in a Level IV prison facility, he was promoted in 2019 to the rank of Housing Sergeant, where he “ran one of the most challenging prisons in Colorado.” [ER Vol. 3, at 0544.] Young was promoted again the very next year, in 2020, this time to the rank of Visiting Sergeant. [*Id.*] In that role, he was responsible

not just for prisoner safety, but for the safety of prison visitors and guests, and his colleagues who could suffer injury if a guest brought contraband into the prison. [*Id.*]

Put simply, Young was on the fast-track to professional success and couldn't easily be put-off by ordinary employer training. [ER Vol. 3, at 0573 (“Young’s motivation to work in the prison system was based on his belief that the prisoners could be helped.”); ER Vol. 3, at 0572 (“Young felt a personal responsibility to work with prisoners to become better people, to be civil, and to avoid considering other prisoners as enemies due to their race or skin color.”).]

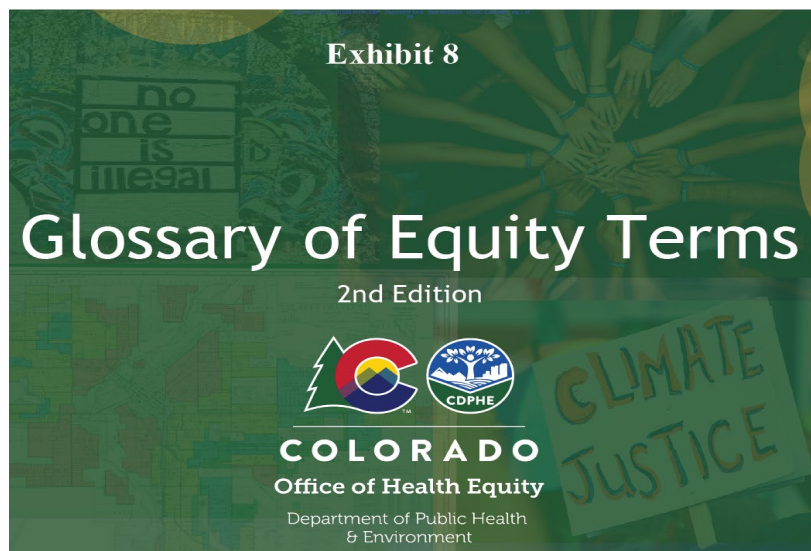
**b. In 2021, CDOC adopted racially hostile EDI materials.**

In February 2021, “the Colorado Department of Corrections announced that all employees were required to take an Equity, Diversity, and Inclusion Training.” [ER Vol. 3, at 0547.] Young soon thereafter diligently took the mandatory training in March 2021, understanding that “[l]ike all other assigned training, the material from the EDI training was expected to be used every day at work.” [*Id.*; ER Vol. 3, at 0569] (“Young was accustomed to following the rules and the trainings within the prison.”).]

The EDI training contained a glossary, numerous links, and several computer modules, with all CDOC employees (Caucasian and otherwise) working through materials like those described below. [ER Vol. 3, at 0547 (“The EDI training contained several computer modules.”)]. This was common for Young and his

colleagues. [ER Vol. 3, at 0569 (“Many of Young’s trainings were computer-based. His duty to review these trainings was absolute, and no less meaningful merely because it was taken on a computer.”).]

First, Young’s EDI training began with a review of a “glossary” of terms that was prepared and distributed by Colorado’s Office of Health Equity, part of the state’s Department of Public Health & Environment. [ER Vol. 3, at 0548 (“Young’s EDI training began with a review of ‘a glossary of terms assembled by CDPHE’s Health Equity Office.’”).]



[ER Vol. 3, at 0761.]

The glossary purported to establish a “common language” for CDOC employees, along with any others taking the EDI training. The glossary was not just for informational purposes; it was “meant ... to be implemented.” [ER Vol. 3, at 0762.]

In an effort to provide common language, the Office of Health Equity has compiled a list of terms relevant to the work and movement to advance equity. Take note that evolving language is a positive sign in social justice movements. To that end, this list will be modified on an ongoing basis.

If a term exists that you'd like to further explore or you don't quite agree with, we encourage you to browse the internet for additional articles, blogs, etc. on the topic. Just as language evolves over time, our opinions and beliefs may also evolve.

[ER Vol. 3, at 0549; *see also* ER Vol. 3, at 0697 (Module 4) (“One theory of change requires normalizing conversations about race, making sure we have a shared understanding of commonly held definitions of implicit bias and institutional and structural racism.”).]

The glossary states that the definitions contained within it “are relevant to the work and movement to advance equity.” [ER. Vol. 3, at 763] It indicates that Young had an ongoing duty to review new terms as they were added in the future, because “this list will be modified on an ongoing basis.” [ER Vol. 3, at 0762] And it did not contemplate that CDOC employees were permitted to openly disagree and debate the terms in the workplace; rather, if there was a term that an employee “[didn’t] quite agree with,” he or she was encouraged to review additional materials until they agreed, because “[j]ust as language evolves over time, our opinions and beliefs may also evolve.” [ER Vol. 3, at 0550.]

As this Court has already found, the glossary provided CDOC employees with definitions of terms in grossly offensive language, targeted at Caucasian CDOC

employees like Young specifically. *Young v. Dep't of Corr.*, 94 F.4th 1242, 1251 (10th Cir. 2024) (*Young I*) (“If not already at the destination, this type of race-based rhetoric is well on the way to arriving at objectively and subjectively harassing messaging.”).

For instance, the definition of “BIPOC” briefly identifies what the acronym means; but then it follows with a screed about how all BIPOC individuals stand in contrast to “whiteness,” with “Indigenous and Black people hav[ing] been most impacted by whiteness.”

**BIPOC:** Acronym for Black, Indigenous People, and People of Color; the term is used to acknowledge that Indigenous and Black people have been most impacted by whiteness, both historically and in the present day. This shapes the experiences of and relationship to white supremacy for all people of color within a U.S. context.

\*Adapted from [The BIPOC Project](#)

[ER Vol. 3, at 0762-63.]

Lest there be any doubt—the definition was not discussing merely historic injustices; it describes “whiteness” as impacting all non-Caucasians “in the present day,” and that it “shapes the experiences of and relationship to white supremacy for all people of color within a U.S. context.” As an individual who is not BIPOC, the glossary charged Young with both promoting “whiteness” and white supremacy on a contemporary, day-to-day basis. [ER Vol. 3, at 0551 (“Defendants’ state-

sanctioned training therefore implied a direct relationship between ‘whiteness’ and ‘white supremacy,’ which it contends presently affects ‘all people of color in the United States.’”].]

The glossary also defined the term “race”—which is used innumerable times throughout the separate training modules—in pejorative terms. Like the term “BIPOC,” the definition of race includes commentary that is meant to be considered and adopted when it is used in the modules: “The concept [of race] has no genetic or scientific basis, and was created and used to justify social and economic oppression of people of color by white people.” [ER Vol. 3, at 0551.]

**Race:** A social construct that artificially groups people by skin tone and other physical traits. The concept, which has no genetic or scientific basis, was created and used to justify social and economic oppression of people of color by white people.

\*Adapted from [Luna Jiménez Institute for Social Transformation](#)

In other words, every time that the subsequent modules or other links referred to race, racial discrimination, or racial diversity, takers of the training were meant to recall the glossary’s definition of “race” as their “common language.” [*Id.* (“[T]he following definitions are to be used as background information for the training.”)].]

The glossary also defined “White Exceptionalism,” which apprised Young that he actively perpetuated white supremacy solely due to his Caucasian race. Because Young does not consider himself a white supremacist, the training

concluded that as a Caucasian person, Young is “more interested in not seeming racist than actually improving the lives of people of color.”

**White Exceptionalism:** The belief held by some white allies that they are the exception to white racism even though they fail to address the implicit ways in which they perpetuate white supremacy. These individuals are often more interested in not seeming racist than actually improving the lives of people of color. This is sometimes referred to as **fakequity** (Erin Okono).

\*Adapted from [\*Me and White Supremacy: Combat Racism, Change the World, and Become a Good Ancestor\*](#) by Layla Saad

[ER Vol. 3, at 0774.] Effectively, the EDI Training itself was predicting Young’s failure to achieve equity and succeed as a CDOC employee—because it was hopeless for Young to genuinely meet his employer’s stated expectations. Unless he acknowledged his part in perpetuating white supremacy, Young could never sufficiently support equity, only “fakequity.”

Separately, the EDI Training instructed Young and his colleagues to expect that Caucasian people would have an involuntary, reflexive response to “information about racial inequality and injustice.”

**White Fragility:** Discomfort and defensiveness, often triggered by feelings of fear or guilt, on the part of a white person when confronted by information about racial inequality and injustice.

[*Id.*] Caucasian CDOC employees like Young, said the EDI Training, will be “triggered by fear or guilt,” and thus will invariably react with discomfort and defensiveness, when racial inequality or injustice is brought up in the workplace.

Apart from the glossary, the EDI Training modules—which were generally not before this Court in *Young I*—were rife with racist concepts and negative stereotypes. Unsurprisingly, they mentioned race countless times. [ER Vol. 3, at 0554 (“The word ‘race’ or one of its variants—defined by the glossary as invented by Caucasians to oppress non-Caucasians—was used innumerable times, throughout the EDI training.”).] And in Module 3, the EDI Training instructed that CDOC prison guards needed to be especially attuned to instances of “cultural appropriation.” [ER Vol. 3, at 0689.] In their daily jobs as prison workers, Young and his Caucasian colleagues needed to maintain heightened awareness of their “assumption that a dominant (i.e. white) culture’s [had a] right to take other cultural elements.” Earlier in the training, in another reference to a “dominant” group, Module 2 advised Young and his colleagues that some groups were oppressed and marginalized, and that Caucasians, as the dominant group, were responsible for the “ideological oppression” of non-Caucasians. [ER Vol. 3, at 0556.]

Module 4 introduced the highly questionable “Bystander Intervention” process, wherein Young and his colleagues were given instructions about how to evaluate their colleagues’ relative “power,” and abruptly intervene if someone of

“lower power” was “interrupted, talked over, disregarded, or ignored.” [ER Vol. 3, at 0557.] On the other hand, if a colleague of equal or greater power was affected similarly, no intervention was required. [*Id.*] “Power” was based on both race and sex metrics. [*Id.*] The Bystander Intervention process contained no exception for emergent situations, such as those that might arise in a prison setting.

Also in Module 4, the EDI Training instructed Young and his colleagues to regularly evaluate their colleagues’ inherent “privilege,” so as to treat them differently for the purpose of “micro-affirmations.” If a colleague was not privileged, Young had a duty to offer micro-affirmations, so that he could appropriately “acknowledge those who don’t enjoy the same privilege as all of their counterparts.” [ER Vol. 3, at 0696.] Otherwise, micro-affirmations were not necessary. [*Id.*]

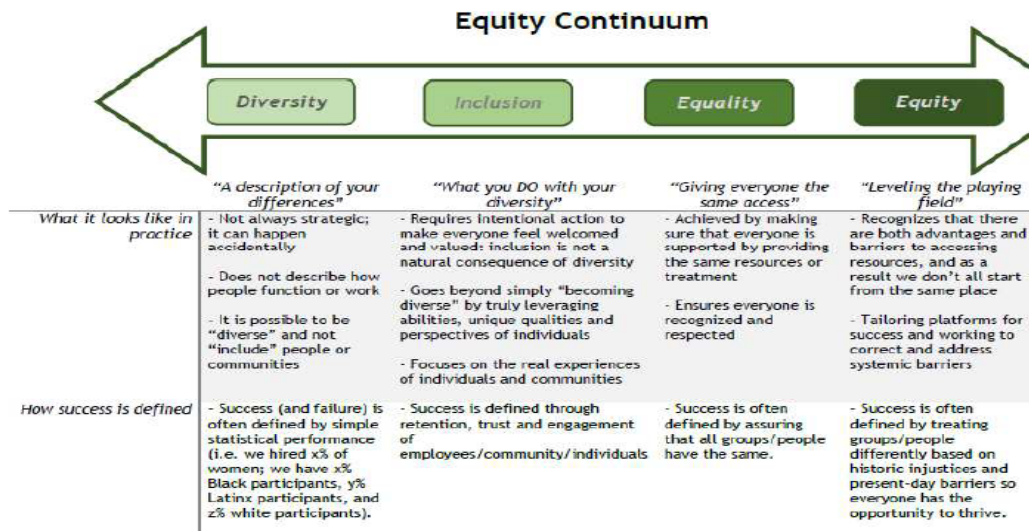
The EDI Training also addressed how all conversations and meetings in the workplace should proceed. Like many other aspects of the EDI Training, this process was not before the Court in *Young I*. “Women and members of historically marginalized groups” should “speak first.” [ER Vol. 3, at 0697.] This was due to, according to the EDI Training, to systemic issues where “women and people of color aren’t given as much opportunity to contribute.” [ER. Vol. 3, at 0557] Indeed, it should be announced at the beginning of every meeting that women and non-Caucasians will be entitled to speak first, “to serve as guidelines and equip your staff

to be more equitable and inclusive.” [*Id.* (“It’s helpful to share these strategies out loud at the beginning of meetings.”); ER Vol. 3, at 0555 (“The modules instructed Young and his colleagues that even the most routine of decisions, they needed to take account of race.”).]

Another part of Young’s mandatory EDI training was reviewing and understanding the “Equity Continuum,” which promoted the value of employees treating their colleagues differently based on their race: “Success is often defined by treating groups/people differently based on historic injustices and present-day barriers so everyone has the opportunity to thrive.” [ER Vol. 3, at 0559.]

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**Exhibit 10**



[ER Vol. 3, at 0777.]

Such a practice amplified the Bystander Intervention Process, as well as the idea that women and non-Caucasians ought to generally speak first in all conversations.

Additional EDI materials were presented as “Other Tools & Resources.” Although the official EDI computer module training did not require that these materials be read in order to click through to the final screen, they were never labeled “optional.” “Young had advanced quickly through the ranks of CDOC precisely because he took seriously suggestions from his employer about tools and resources for his success.” [ER Vol. 3, at 0561.]

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Exhibit 11 of 1

## Other Tools & Resources

### More EDI videos

[Redlined, A Legacy of Housing Discrimination](#) – a video that explains Redlining more in-depth  
[I AM DENVER: Derek Okubo tours Amache](#) – a video about Japanese Internment camps in Colorado  
[Intersectionality 101](#) – a video teaching us the basics of Intersectionality  
[LGBT 101](#) – An introduction to the Queer community

### Books about Race and Marginalized Identities

- [White Fragility: Why It's So Hard for White People to Talk About Racism](#) – Robin DiAngelo
- [An Indigenous Peoples' History of the United States](#) – Roxanne Dunbar-Ortiz
- [How to Be an Antiracist](#) – Ibram X. Kendi
- [The Making of Asian America](#) – Erika Lee
- [So You Want to Talk About Race](#) – Ijeoma Oluo

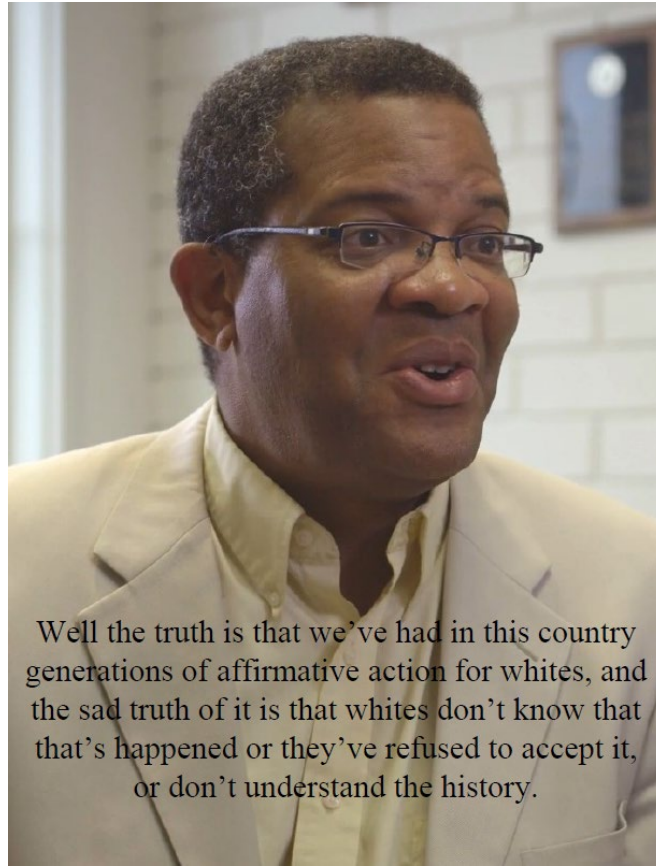
[ER Vol. 3, at 0778.]

In the video *Redlined, A Legacy of Housing Discrimination*, several speakers make negative generalizations about Caucasians like Young. One of interviewees uses the full N-word, placing it in the voice of all individuals other than African-Americans. [ER Vol. 3, at 0562 (“The concept of a middle-class black only exists in the mind of a middle class black. Everywhere else in the suburbs, you were that nigger family on the corner Warren Road and Boulevard Way.”).]<sup>1</sup>

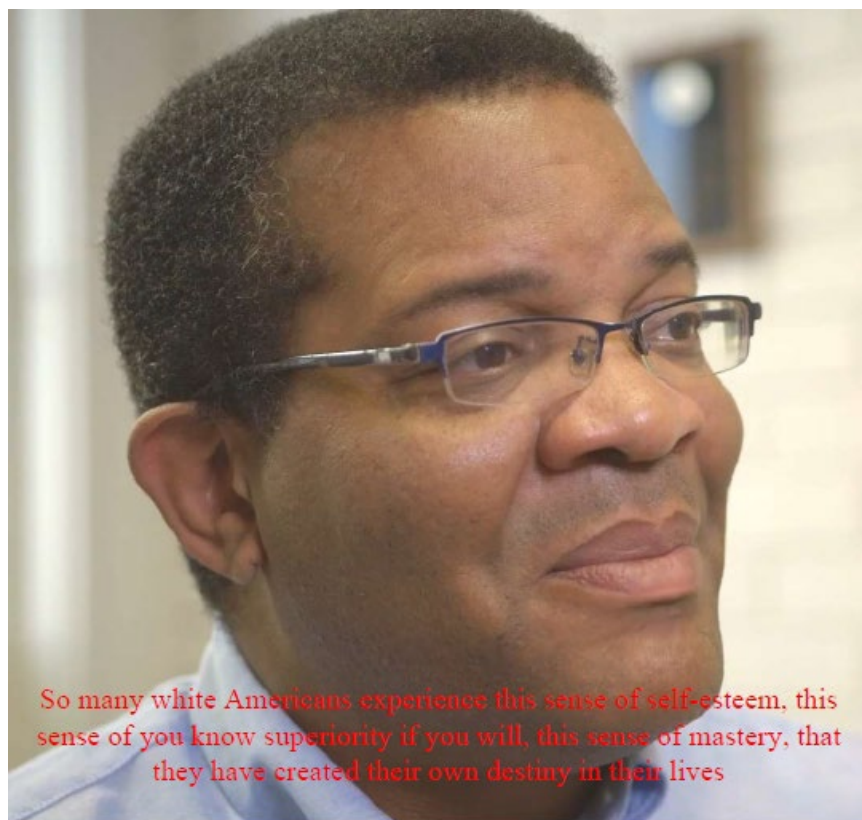
The same video describes Caucasian individuals as misunderstanding their purported success. The video asserts that successful Caucasians—such as Young—think that their accomplishments are based on merit, when racism is actually responsible for their accomplishments. [ER Vol. 3, at 0563 (“Well the truth is that we’ve had in this country generations of affirmative action for whites, and the sad truth of it is that *whites don’t know that that’s happened or they’ve refused to accept it*, or don’t understand the history. What that leads to is this false kind of narrative [for Caucasians] that ‘I did it myself,’ you know this Horatio Alger, individual responsibility, narrative.”) (emphasis added).]

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<sup>1</sup> Defendants have previously characterized this statement as benign, based on the word “were,” which indicates past tense. But this is a factual dispute, given that the line immediately preceding it uses the present-tense word “exists.” Given the fact that the other commentary in the video is about present-day circumstances, and the relevance to modern-day racial issues, it would be odd if the speaker were only speaking about the past. (Indeed, the only reference to strictly historical events). Regardless, a motion to dismiss is not the appropriate place to resolve this question.



The video echoes this theme repeatedly, insisting that Caucasians have a feeling of superiority because of their racism against African-Americans, Latinos, and Native Americans. [ER Vol. 3, at 0564 (“So many white Americans experience this sense of self-esteem, this sense of you know superiority if you will, this sense of mastery, that they have created their own destiny in their lives, and they have no acknowledgment of this invisible hand that supported them throughout their lives, and not just them, but there’s a legacy of that invisible hand across generations, that has translated itself from the original affirmative action to trillions of dollars of ‘head start’ ahead of other communities like African-Americans, Latinos, Native Americans, others, who don’t have the same benefit.”) (emphasis added).]



In another training video called Intersectionality 101, figures are used to describe how racial groups have different characteristics, which in turn mean that members of specific racial groups have different personality attributes. A Caucasian woman named Gretta is contrasted with two other individuals—Jerry and Fatima—as the video literally separates them by a physical divider, and states “Gretta, on the other hand, can ignore intersectionality if she wants to—another form of privilege.” [ER Vol. 3, at 0565.]



[ER Vol. 3, at 0565]

Young’s EDI Training also pointed to the Colorado Office of Heath Equity—which published the glossary above—for more links. There, Young found materials that spoke of “white norms” and “white talk,” and advised readers that white fragility was responsible for any defensiveness that he felt in response to the EDI Training. [ER Vol. 3, at 0781 (“It’s as simple as acknowledging that your skin tone ... grants you opportunity, power, or privilege that others do not experience.”).]

**c. The EDI Trainings swiftly affected CDOC and Young’s working conditions.**

Even before the EDI Training, Young worked in an exceedingly racially charged environment. [ER Vol. 3, at 0570 (“Young’s prison setting even before the trainings was already highly racially charged.”); *id.* (“Young was also subjected to regular insults by prisoners, including accusations related to his race.”); *id.*

(describing a prison gang leader accusing Young of racism even before the EDI Training occurred).]

The EDI Training was like tossing a match onto gasoline. The cultural impact on the prison setting was quick. [ER Vol. 3, at 0574 (“The training affected the prison setting. Indeed, that was its point.”); ER Vol. 3, at 0699 (“The intention of this course is to bring awareness to EDI and how it can be applied to the work that you do as a state employee.”); *id.* (“The racially discriminatory nature of the training materials, which classified individuals by race . . . directly contributed to a culture of suspicion and distrust in the Department of Corrections.”); ER Vol. 3, at 0574 (noting that achieving “equity” requires active efforts to “repair[] injustices” specifically in the context of “criminal justice”).]

The EDI training announced that CDOC employees would be “measured” based on their conformity with EDI Training and its principles. [ER Vol. 3, at 0573 (“[T]he trainings were factored into quarterly performance reviews, which were used to determine promotions.”).] The training informed every CDOC employee that achieving “a vision for racial equity” would require “accountability” for each employee. [ER Vol. 3, at 0697.] And employees were notified that it was just the beginning—in reality, the true goal of CDOC was the “transformation of government to advance racial equity.” [ER Vol. 3, at 0698.] Even sub-conscious

thoughts that were contrary to equity needed to be squelched in order to “foster[] equity, diversity, and inclusion” in state agencies.

Unsurprisingly, the Training made a splash with Young’s colleagues. Adherence was strict, and Young’s conversations with his colleagues left him with the understanding that each of them had a duty to live out the EDI Training, regardless of any personal resistance to the racist expectations established therein. [ER Vol. 3, at 0568 (“[H]is supervisors and even their supervisors—essentially the highest officials in the Department of Corrections—were insisting that he review, believe, and live by these trainings, and that his colleagues do the same.”)]; *Young I*, 94 F.4th at 1245 (“[R]ace-based training programs can create hostile workplaces when official policy is combined with ongoing stereotyping and explicit or implicit expectations of discriminatory treatment.”).

After these conversations, Young’s daily life began to suffer. On one hand, he was responsible for safety related to guests trying to visit the prison, and had devoted his career to the rigid structures of the prison setting. [ER Vol. 3, at 0569 (“Young was accustomed to following the rules and the trainings within the prison. ... Young faithfully took trainings and applied them.”).] But on the other hand, he knew that every interaction that he had with a prisoner, guest, or colleague risked his career, reputation, and livelihood. [ER Vol. 3, at 0570 (“The trainings created a dangerous atmosphere where a failure to adhere to racism and race-based differential treatment

could itself result in accusations of racism, or discipline for failing to abide by the training.”); ER Vol. 3, at 0571 (“The race-focused ideas from the training made it constantly feel like Young might be written up, with his superiors more likely to credit the complaints due to the EDI concepts. This made it significantly harder for Young to do his assigned job.”).]

Young felt trapped. Despite his previous success, he now felt isolated in the workplace. [ER Vol. 3, at 0569.] Discussing his feelings about the EDI Training could lead to severe discipline. [*Id.*] And discussing skepticism regarding the training—which again, as intended, pervaded his daily life—was in fact tantamount to expressing racist beliefs in the workplace. And even casual workplace conversations became career-threatening, and chilled. [ER Vol. 3, at 0558 (“Employees, including Young and his colleagues, were worried about casual workplace conversation, and whether certain topics might introduce dangerous risks to their employment.”).]

More stress followed. Young perceived that many of his colleagues were adopting the EDI Training, and applying it as they interacted with him at work. [ER Vol. 3, at 0569; ER Vol. 3, at 0571 (“Young sensed that some of his colleagues viewed him as a racist due to his status as a Caucasian individual.”).] He even faced isolation from his colleagues, because, in addition to the Bystander Intervention process, the training had directly instructed employees to have “courageous” and

“uncomfortable” conversations in the workplace about “racism, privilege, dominant culture, oppression, and historical trauma.” [ER Vol. 3, at 0702.]

Young also believed that individual prisoners and guests to the prison would be able to access the EDI Training, and weaponize it in their interactions with him, and accuse him of racism. [ER Vol. 3, at 0570.] That had two acute impacts: (1) Young’s fundamental purpose of being a prison guard to help rehabilitate prisoners was destroyed; and (2) it created dangerous conditions, where Young’s daily job was done differently, based on fear of accusations of racism. Even in cases where Young’s ordinary training called for him to use force, he hesitated, leading to discrete instances where his own safety and the safety of others was compromised. [ER Vol. 3, at 0571-72.] The same was true for his colleagues. [*Id.* (“Gillis confided in him that he too thought that the training was problematic, and had affected him as well.”).]

Young also feared discipline based on accusations of racism, for not adequately treating individuals differently based on race. [*Id.* (“Visitors would often claim they were being searched due to their race and would frequently write complaints.”).] Young had to second-guess his day-to-day duties out of fear that his supervisors would credit complaints against him based specifically on the EDI Training’s instructions. [*Id.*; *Id.* (“He also lacked confidence that his employer would support him against frequent, baseless accusations of racism by prisoners and their

visitors.”).] Even more, “[h]e was expected to use race in his personal decision-making.” [ER Vol. 5, at 0929-30; ER Vol. 3, at 0571 (“[T]he training would force him to treat others differently based on their race, which was contrary to his core personal and ethical beliefs.”).] This was even explicitly stated in the training materials, which required CDOC employees to “operationalize racial equity, integrating racial equity into our routine decision-making processes and development and implementation of measurable actions.” [ER Vol. 3, at 0697.]

Young knew that his supervisors were bound by the training and its principles. [ER Vol. 3, at 0573. (“Those in management positions were required to enforce the discriminatory behaviors described in the trainings.”).] He knew that his performance review would suffer, given his chilled interactions with colleagues, because “[p]erformance was graded on a 1-3 scale, and the training was expected to be reflected in communications with inmates and staff.” [*Id.*] And in any event, he no longer saw any point in seeking a promotion, because “he couldn’t see himself having to teach and enforce the discriminatory rules and concepts imposed by the trainings.” [ER Vol. 3, at 0575.]

The EDI Training affected personnel decisions. Despite employees knowing that their colleagues were making innocent comments, they “leveraged” the training to make false accusations against Caucasians, because they were especially agreeable with the EDI Training, and affirmatively wanted to promote race

discrimination in the workplace. [ER Vol. 3 at 0574] In another instance, a correctional officer working with Young was initially disciplined for misconduct, but then alleged that the discipline was motivated by race. Young observed that the discipline was reversed soon thereafter. [ER. Vol. 3, at 0571 (“The officer was reinstated, lending credence to the idea that the training content could absolutely influence personnel decisions.”); *see also* ER Vol. 3, at 0574 (before this Court in *Young I*, Appellees themselves stated that the EDI Training was implemented to “eradicate” all race discrimination and “advance equity”).]

Even continuing to be employed by CDOC caused Young to feel like an accessory to the race-based decision-making. [ER Vol. 3, at 0571]; *see also Young I*, 94 F.4th at 1251 (“Taken seriously by managers and co-workers, the messaging could promote racial discrimination and stereotypes within the workplace. It could encourage racial preferences in hiring, firing, and promotion decisions.”). The idea of getting promoted within CDOC caused Young deep distress. [ER Vol. 3, at 0573 (“This destroyed Young’s desire to seek promotions, as he did not want to be put in a position where he would have to enforce the concepts from the trainings.”).]

With little choice left, Young filed an internal complaint with CDOC. But his complaint was summarily dismissed. [ER Vol. 3, at 0575.] CDOC declined to even investigate the effect of the EDI Training on the workplace. [ER Vol. 4, at 0845.] Young thereafter tendered his resignation. [ER Vol. 3, at 0575 (“Two days later,

apprised of the fact that his employer was formally refusing to address the hostile work environment, Young gave notice of his resignation from the Department of Corrections”); ER Vol. 3, at 0572 (“Young’s knowledge that his colleagues were being instructed in the same manner with the same trainings exacerbated his stress in his workplace, and made him think that he had no choice but to resign his position.”).]

**d. The EDI Training was set to recur.**

All training within CDOC is at least annual. [ER Vol. 3, at 0567.] Young knew that the EDI Training would not be a one-time event, as he was personally informed that compliance with the EDI Training would factor into his performance reviews, and would thus need to be incorporated into daily prison life. [ER Vol. 3, at 0573 (“Young was assured that the EDI training and how he incorporated its principles would be part of his performance review.”).] It was clear that CDOC was committed to a “Universal Policy” to influence the work of every employee of CDOC. [ER Vol. 3, at 0690 (“Responsibility and Expectation of All Employees: Recognize that we all carry with us conscious and unconscious bias toward others.”).]

≡ EDI Module 3: What are EDI Strategies?

## Universal Policy: Addressing Bias

The state should provide training and guidance to work against an individual's unconscious biases which are reinforced by daily messages - both subtly and overtly - and influence how we perform our work serving the community, as well as guidance for fostering equity, diversity, and inclusion in all state agencies.

Responsibility and Expectation of All Employees:  
Recognize that we all carry with us conscious and unconscious bias toward others, and through awareness, strive to remove any influence of that bias on your work for the state and your relationships with colleagues.

The idea that CDOC would abruptly reverse course, and radically change the training to something totally different in the future, was non-sensical. [ER Vol. 3, at 0573.] Any reasonable observer would understand that if CDOC was intent on forcing the EDI Training on Young and his colleagues, it was committed to the world-view behind that training.

The EDI Training itself promised even more aggressive training soon, related to employees' sub-conscious thoughts about others. [ER Vol. 3, at 0558 (“Young and other employees were instructed that they might even be subjected to training and guidance that would affect their sub-conscious thoughts.”); ER Vol. 3, at 0762.] And that the glossary would soon contain more terms for Young to learn and digest. [ER at 0762 “this list [of terms in the opening glossary] will be modified on an ongoing basis.”).]

Appellees themselves have never denied that CDOC had an “ongoing commitment” to EDI Training, or that the specific training at issue in this case would stay the same across future years. [ER Vol. 3, at 0574 (“Defendants themselves have admitted that the EDI training was intended to ‘eradicate’ race discrimination, ‘curtail all forms of discrimination,’ and ‘advance equity.’”); ER Vol. 3, at 0567 (“Young expected that Defendants would continue to promote materials that described him in negative terms, as a Caucasian person.”).] No reasonable observer would expect CDOC to revert to some milquetoast version of a different EDI Training. Even the Attorney General himself has publicly written in favor of aggressive DEI programs.<sup>2</sup>

**e. The District Court dismissed Young’s complaint.**

The District Court dismissed Young’s complaint. It held that while Young had pled allegations that a failure to adhere to the EDI Training could result in accusations of racism, “he does not allege that any such conduct actually occurred as a result of the training.” [ER Vol. 3, at 0735.] It also noted that Young’s supervisors didn’t technically advise him to change any of his personal beliefs, and that his allegations “lack the factual enhancement required to state a plausible

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<sup>2</sup> Formal Opinion of Attorney General Philip J. Weiser, No 23-02 (Oct. 4, 2023) <https://coag.gov/app/uploads/2023/10/AG-Formal-Opinion-No-23-02.pdf> (“In order to combat these persistent inequities and achieve the benefits of a diverse workforce, public and private employers of all types have adopted DEI programs.”).

claim.” [ER Vol. 4, at 1017.] Thus, while Young may have subjectively perceived the workplace as hostile, said the District Court, he has not pled enough to establish that the workplace was objectively hostile. [ER Vol. 4, at 1020.] It also faulted him for purportedly not alleging “any specific actions taken by his supervisors that would suggest their ‘ongoing commitment’ to the EDI training.” [ER Vol. 4, at 1013.]

The District Court dismissed Young’s complaint with prejudice, holding that any attempt to amend would be futile. [ER Vol. 4, at 1029.]

#### **IV. Summary of the Argument**

“[Title VII] prohibit[s] employers from allowing work conditions to be permeated with hostile racial or sexual animus. To the extent diversity programs generate such animus, they are equally subject to the prohibitions of Title VII.” *Young I*; *id.* (“The rhetoric of these programs sets the stage for actionable misconduct by organizations that employ them.”); *id.* (“[R]ace-based training programs can create hostile workplaces when official policy is combined with ongoing stereotyping and explicit or implicit expectations of discriminatory treatment.”).

Young had the benefit of this Court’s holding and analysis in *Young I* when he filed his Amended Complaint. That holding noted that Young had not yet met his burden to plead that CDOC “objectively and subjectively alter[ed] the terms of employment for its employees and create[d] an abusive working environment.” [*Id.*; ER Vol. 3 at 0735 (“Although he alleges the explicitly race-based implications of

the training could eventually compromise employment opportunities, workplace cohesion, and prison security, those allegations are too speculative at this time to meet what our case law requires.”.)]

In the Amended Complaint in this action, Young filled in the gaps, articulating how the EDI Training described in *Young I* affected the workplace within the Limon Correctional Facility.

## **V. Standard of Review**

This Court reviews a grant of a motion to dismiss for failure to state a claim *de novo*. See *Herrera v. City of Espanola*, 32 F.4th 980, 991 (10th Cir. 2022). The Court also “accept[s] a complaint’s well-pleaded allegations as true, viewing all reasonable inferences in favor of the nonmoving party, and liberally construe[s] the pleadings.” *Lucas v. Turn Key Health Clinics, LLC*, 58 F.4th 1127, 1136 (10th Cir. 2023); *Florence v. Seggos*, No. 21-834, 2022 WL 2046078, at \*2 (2nd Cir. June 2, 2022) (District Court committed error when it drew an inference in favor of a defendant). To survive a motion to dismiss for failure to state a claim, the complaint need merely “allege sufficient facts to state a claim for relief plausible on its face.” *Id.* at 1136 (citing *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)).

Title VII makes it an “unlawful employment practice for an employer . . . to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s race[.]” 42

U.S.C. § 2000e-2(a)(1). The statute reaches not only “economic” or “tangible” decisions such as hiring or discharge, *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 21 (1993), but also the “intangible fringe benefits” that encompass the “emotional and psychological stability of ... workers.” *Rodgers v. E.E.O.C.*, 454 F.2d 234, 237–39 (5th Cir. 1971); *Meritor Sav. Bank, FSB v. Vinson*, 477 U.S. 57, 65-69 (1986) (following *Rodgers*); *Patterson v. McLean Credit Union*, 491 U.S. 164, 180 (1989) (*Rodgers/Meritor* apply in racial context); *Ellison v. Brady*, 924 F.2d 872, 876 (9th Cir. 1991).

An employer therefore violates Title VII where race-based conduct is “sufficiently severe or pervasive to alter the conditions of employment and create an abusive working environment.” *Ellison*, 924 F.2d at 876. The inquiry is both subjective and objective: the plaintiff must experience hostility, and a reasonable person in the same position must likewise find the environment abusive. *See Harris*, 510 U.S. at 21-22; *see also Andrews v. City of Philadelphia*, 895 F.2d 1469, 1483 (3d Cir. 1990) (“The objective standard protects the employer from the ‘hypersensitive’ employee but still serves the goal of equal opportunity.”); *see also McGinest v. GTE Serv. Corp.*, 360 F.3d 1103, 1115 (9th Cir. 2004). This standard “shields employers from the idiosyncratic concerns of the rare hyper-sensitive employee,” *Ellison*, 924 F.2d at 879, yet it also “takes a middle path,” requiring no

“nervous breakdown” or tangible injury before the law intervenes. *Harris*, 510 U.S. at 21-22.

## **VI. Argument**

Young went from being a model employee—twice promoted, including in 2020, the year before the EDI Training—to resigning in a matter of months, after the training occurred. What happened to drive out a rising star, with a deep personal commitment to helping rehabilitate prisoners, in such a short time? The answer is obvious: (1) the EDI Training, (2) the EDI Training’s effect on the workplace within CDOC, and (3) CDOC’s refusal to even investigate its workplace discrimination.

Imagine if even a fraction of Young’s facts had arisen in the context of a non-Caucasian plaintiff, advising them of their negative traits and inability to change them. And consider that many of the statements described above—which are hardly relevant to working in any employer setting, much less a racially charged prison—were not made by peers, or even direct supervisors, but by what is essentially “corporate,” instructing employees about how they must act to secure “Equity, Diversity, and Inclusion.” *Young I*, 94 F.4th at 1252 (“Certainly, Mr. Young is correct that the harassment the plaintiff in *Henry* faced constituted official acts of the company and thus was relevant to the court’s analysis.”); *cf. Doe I v. Bd. of Educ. of City of Chicago*, 364 F. Supp. 3d 849, 861 (N.D. Ill. 2019) (“[C]ourts recognize

that harassment by a teacher inherently harms students and affects their educational experience.”) (original emphasis).

Last, consider that the EDI Training in this context was not the equivalent of stray remarks or slurs—it was meant to be adopted, lived, and believed, even to the degree that an employee was being instructed to believe that he or she inherently possessed negative traits. *Young I*, 94 F.4th at 1245 (“Mr. Young’s objections to the contents of the EDI training are not unreasonable: the racial subject matter and ideological messaging in the training is troubling on many levels.”). These facts distinguish Young’s case from even those where highly offensive remarks are uttered repeatedly—even in those cases, however abhorrent, plaintiffs are not instructed by their official employer’s policies to believe the insults.

**1. Young has stated a claim for hostile work environment.**

To state a claim for a racially hostile work environment claim under Title VII, a plaintiff must allege the following elements: (1) membership in a protected class; (2) being subjected to unwelcome harassment; (3) that the harassment was due to race, and that (4) the harassment was so severe or pervasive that it altered a term, condition, or privilege of the Plaintiff’s employment and created an abusive environment.

The dispute here revolves around (2) and (4). The harassment underlying Young’s departure from CDOC was (a) due to race, and (b) severe or pervasive, or

both. As this Court is aware, “pervasiveness and severity are independent and equal grounds upon which a plaintiff may establish this element of a hostile environment claim.” *Tademy v. Union Pac. Corp.*, 614 F.3d 1132, 1144 (10th Cir. 2008) (internal quotation marks omitted). But Tenth Circuit precedent “reveals no talismanic number of incidents needed to give rise to a hostile discrimination claim... [W]hether a hostile environment claim is actionable depends not only on the number of incidents, but also on the severity of the incidents.” *Id.* at 1143. Young addresses both tests below.

Separately, “[t]he totality of the circumstances is the touchstone of a hostile work environment analysis.” *Lounds v. Lincare*, 812 F.3d 1208, 1222 (10th Cir. 2015) (brackets and internal quotation marks omitted). Courts consider numerous factors in this “holistic analysis.” *Id.* One factor is the severity of the discriminatory conduct; another factor is whether “discriminatory conduct ... unreasonably interferes with an employee’s work performance.” *Id.* “[T]here is a qualitative dimension to the pervasiveness inquiry (as well as the one for severity).” *Id.* at 1223; *cf. Brown v. City of Guthrie, Okl.*, No. CIV-78-1374-W, 1980 WL 380, \*7 (W.D. Okla. 1980) (“[T]he phrase ‘terms, condition, or privileges of employment’ ... is an expansive concept which sweeps within its protective ambit the practice of creating a working environment heavily charged with ethnic or racial discrimination.”).

Lest there be any doubt, training related to “diversity” and “equity”—to say nothing of the tangible effects of such training—can absolutely rise to the level of a hostile environment. *See* U.S. Equal Emp. Opportunity Comm’n, WHAT TO DO IF YOU EXPERIENCE DISCRIMINATION RELATED TO DEI AT WORK (Mar. 2025)<sup>3</sup> (“Depending on the facts, DEI training may give rise to a colorable hostile work environment claim.”).

**a. The harassment was pervasive.**

Having alleged race-based degradation in both content and application, Young need only to show that the harassment was severe or pervasive—each is an independent route to liability. *See Tademy*, 614 F.3d at 1144. The severe or pervasive threshold is meant only to screen out claims based on “merely offensive” conduct, not to insulate employers from meaningful harm. *Harris*, 510 U.S. at 21. Courts, therefore, reject any suggestion that a plaintiff must endure prolonged torment or be driven to psychiatric collapse before Title VII offers relief. *See Harris*, 510 U.S. at 22; *see also id.* at 21 (the appropriate standard “takes a middle path between making actionable any conduct that is merely offensive and requiring the conduct to cause a tangible psychological injury.”); *Ellison*, 924 F.2d at 878 (“It is the [complained of] conduct which must be pervasive or severe, not the alteration in the conditions of employment.”).

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<sup>3</sup> <https://www.eeoc.gov/what-do-if-you-experience-discrimination-related-dei-work>

This time, Young added the arguments that the Court found missing in *Young*. I. The EDI Training was not a one-time lesson, meant to be casually viewed between other work tasks, but then placed out of mind until the next year's training. Rather, it was a comprehensive instruction list on how Young ought to interact with colleagues, do his routine tasks, and internalize negative messages about himself—whether it be about power, privilege, cultural appropriation, implicit bias, ideological oppression, his lack of merit-based accomplishments, or his ferocious hatred of African-Americans. The CDOC's hardest-working employees, like Young, were impacted the most because they were primed to take official training seriously. [ER Vol. 3 at 0545 (CDOC “create[d] a culture of distrust among its hard-working officers.”).]

And the EDI Training did effect the workplace. From chilling even casual conversations, to being leveraged by Young's more agreeable colleagues, to ultimately affecting the disciplinary decisions of even Lieutenants within the prison, Young witnessed the tangible and immediate effects of the EDI Training—from March to July 2021—to the point where he, personally, was second-guessing his own decisions in his interactions with visitors to the prison who might be carrying contraband. Young was literally in danger in response to CDOC's training.

Young couldn't even discuss his misgivings about the EDI regime without courting reprisal. Even mild doubts about the training would brand him “fragile” and

an opponent of equity (of only supporting “fakeequity”), and his colleagues were already weaponized the training in a litany of ways. [ER Vol. 3, at 0555 (“operationaliz[ing] racial equity [and] integrating racial equity into our routine decision-making processes and development and implementation of measurable actions” was required).] Silence was the only safe course. As this Court warned in *Young I*, “employees who object to these types of messages risk being individually targeted for discriminatory treatment—especially if employers explicitly or implicitly reward discriminatory outcomes.” *Young I*, 94 F.4th at 1251. That chilling effect clearly demonstrates how the harassment was not confined to a discrete training, but permeated the workplace, satisfying the “pervasive” prong of the hostile-environment test.

His employer dismissed his complaint out of hand, telling him that he was wrong to even feel as though discrimination occurred. [ER Vol. 4, at 0845.] This utterly inexplicable decision—to not look into prison safety conditions—left Young with the (accurate) impression that EDI was a deep commitment of CDOC, here to stay, regardless of the consequences.

More broadly, mandatory employer training is, by its very nature, “pervasive.” *See, e.g., Pisoni v. Illinois*, Nos. 12–0678–DRH, 12–0755–DRH, 2013 WL 2458522, at \*4 (S.D. Ill. June 6, 2013) (“[T]he joint amended complaint alleges that ‘Defendants developed mandatory training exercises which were unsafe and

which increased the likelihood of injury or death to Plaintiffs with the intent of forcing Plaintiffs off the SWAT team.’ Clearly, these allegations set forth plausible claims under the ADEA for both hostile work environment and retaliation.”). In other contexts, the nature of the harassment, being official employer policy, has impacted courts’ analysis. *See Grant v. Metro. Gov’t of Nashville and Davidson Cnty.*, No. 3–04–cv–00630, 2017 WL 1153927, \*2 (M.D. Tenn. Mar. 27, 2017) (declining to reconsider a grant of a motion for a new trial after a jury verdict in favor of two cities on a race discrimination claim because “the Court also found that the Defendant’s training materials included racially discriminatory remarks”).

Here, Young has gone to great lengths to account for the opinion in *Young I*. This Court should let his claim proceed.

**b. The harassment was severe.**

**i. The EDI Training itself constituted severe racial harassment.**

As this Court recognized in *Young I*, “[i]n the context of a hostile work environment claim, a single event, if extraordinarily severe, can alter the conditions of a working environment.” 94 F.4th at 1250. However, the Court then held that “the single training session here is not enough.” *Id.* at 1251, n.2; *id.* at 1253 (“[H]e cannot rest only on the insults he experienced on the day he completed the EDI training.”).

While Young acknowledges that this holding is binding, he respectfully preserves the issue of whether a single EDI training—such as the one here, which

included numerous unambiguous race-based accusations and epithets, including the accusation that he necessarily thought of African-Americans using the full N-Word slur—objectively creates a hostile work environment. *Id.* at 1245 (“To the extent diversity programs generate such animus, they are equally subject to the prohibitions of Title VII and the Fourteenth Amendment.”). On this issue, there is a circuit split. *See, e.g., Castleberry v. STI Group*, 863 F.3d 259, 265 (3d Cir. 2017) (“[T]he parties dispute whether the supervisor’s single use of the ‘n-word’ is adequately ‘severe’ and if one isolated incident is sufficient to state a claim under that standard. Although the resolution of that question is context-specific, it is clear that one such instance can suffice to state a claim.”).

While the cases generally involve a black plaintiff who is the victim of the slur, that context may be relevant on summary judgment. *Cf. Lounds*, 812 F.3d at 1230 (question of whether the term “nigga” might be viewed as a “friendly salutation” and not offensive “was “the kind of question that should be left to the judgment of a reasonable jury.”); *Ellis v. Hobbs*, No. 17-1011 WJ/GBW, 2018 WL 5044233, \*1 (D.N.M. Oct. 17, 2018) (characterizing *Lounds* as rejecting the approach that a term is not offensive if “employees did not intend the use of the term to insult or ridicule plaintiff”); *accord McDonald v. Santa Fe Trail Transp. Co.*, 427 U.S. 273, 280 (1976) (“Title VII prohibits racial discrimination against the white petitioners in this case upon the same standards as would be applicable were they

Negroes and Jackson white.”); *Ricci v. DeStefano*, 557 U.S. 557, 592 (2009) (“No individual should face workplace discrimination based on race.”).

Here, CDOC wanted Young to indelibly associate himself with the long and brutal oppression of blacks. *Cf. Ayissi-Etoh v. Fannie Mae*, 712 F.3d 572, 580 (D.C. Cir. 2013) (Kavanaugh, J., concurring) (“No other word in the English language so powerfully or instantly calls to mind our country’s long and brutal struggle to overcome racism and discrimination against African–Americans.”).<sup>4</sup> Without more, that ought to be enough to get past the pleading stage.

**ii. Young suffered severe racial harassment, only part of which was the EDI Training itself.**

In a prison setting, “actions of co-officers and superiors that undermine an officer’s sense of personal safety or compromise [their] capacity to command respect and obtain compliance from co-workers, subordinates, and inmates assume greater, not lesser, significance.” *Dawson v. County of Westchester*, 373 F.3d 265, 273 (2d Cir. 2004). “[C]onduct by superiors which exposes a plaintiff to physically dangerous work conditions because of [their] race is properly considered in determining whether the plaintiff has been subjected to a hostile work environment

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<sup>4</sup> Note that no Court—neither the District Court nor this Court in *Young I*—has been willing to even reprint the actual slur used by the EDI Training at issue here. *Young I*, 94 F.4th at 1247 (“Mr. Young alleges Redlined features an interviewee using the N-word, ‘placing it in the voice of all individuals other than African-Americans.’”) (emphasis added).

because of her race.” *Frias v. Spencer*, No. 2:11-cv02178-TLN-CMK, 2016 WL 6988654, \*4 (E.D. Cal. Nov. 29, 2016).

Here, the fact that the offensive conduct of the EDI training and its subsequent implementation came from official employer training, rather than remarks by a rogue colleague, makes it more severe. As the Seventh Circuit has recognized, “a supervisor’s use of [racially offensive language] impacts the work environment far more severely than use by co-equals.” *Rodgers v. Wester-Southern Life Ins. Co.*, 12 F.3d 668, 675 (7th Cir. 1993). The EDI training—and its implementation described in the allegations above—was expressly endorsed by the CDOC at the highest levels, sending the message that its content represented official state policy.

**2. The District Court committed multiple reversible errors of law.**

**a. The District Court erred by not liberally construing the complaint.**

The District Court went out of its way to explain that it was not liberally construing Young’s allegations, and that such a practice was due only to *pro se* litigants. [ER Vol. 4 at, 1008.] This was erroneous.

On appeal of a 12(b)(6) dismissal, the Court “accept[s] a complaint’s well-pleaded allegations as true, viewing all reasonable inferences in favor of the nonmoving party, and liberally construe[s] the pleadings.” *Griffith v. El Paso Cnty., Co.*, 129 F.4th 790, 807 (10th Cir. 2025) (emphasis added); *Lucas*, 58 F.4th at 1136; *Reznik v. inContact, Inc.*, 18 F.4th 1257, 1260 (10th Cir. 2021) (“In evaluating such

a motion, the court must take as true all well-pleaded facts, as distinguished from conclusory allegations, view all reasonable inferences in favor of the nonmoving party, and liberally construe the pleadings.”).

And there is no doubt that district courts within this circuit ought to be doing the same. *See Clinton v. Sec. Benefit Life Ins. Co.*, 63 F.4th 1264, 1274-75 (10th Cir. 2023) (“In reviewing an order granting a motion to dismiss, our role is like the district court’s: we accept the well-pleaded facts alleged as true and view them in the light most favorable to the plaintiff”). It would make little sense for a district court to base a dismissal on not construing a complaint’s allegations liberally, only to have this Court apply a different standard—creating an endless loop of dismissal and appellate reversal, with respect to the very same complaint.

Throughout its order below, the District Court demanded exacting precision with every allegation. As just one example, the District Court acknowledged that Young alleged a “dangerous environment” because the EDI Training took place in the prison context, yet it dismissed those allegations as “subjective” and “speculative,” without drawing the obvious inference that a mandatory, race-based policy could objectively endanger prison staff and inmates alike. [ER Vol. 4, at 1014, 1024.] In doing so, the court substituted a demand for evidentiary detail for the Rule 8 notice standard, contravening the liberal-construction mandate that governs a motion to dismiss.

That error was outcome-determinative. The First Amended Complaint pleads that CDOC’s EDI program (1) classified employees by race, (2) directed them to “operationalize” racial distinctions in routine decision-making, and (3) predictably chilled split-second security judgments—facts that, taken as true, permit a reasonable inference of an objectively hostile and unsafe workplace. The District Court nonetheless faulted Young for not pleading that “such conduct actually occurred,” ER Vol. 4, at 1005, ignoring allegations that contraband searches were impeded, use-of-force decisions were second-guessed, meritorious discipline was reversed, and a fellow officer corroborated the safety breakdown. By refusing to credit these well-pleaded facts—and by viewing every ambiguity against, rather than in favor of, the non-moving party—the court imposed a heavier burden than appropriate.

Had the District Court applied that this Court’s precedents faithfully, it would have concluded that Young’s allegations easily cross the plausibility threshold, warranting discovery, rather than dismissal with prejudice. If this Court has any doubt, it should at least reverse and remand with clear instructions to liberally construe the allegations in the complaint.

**b. The District Court erred by under-weighting the false racism accusations leveled against Young.**

Young is not a white supremacist. He is committed to equal treatment under the law, and worked in the correctional system specifically because he believed that

prisoners could become rehabilitated. Turning the tables on him, and instead accusing him of perpetuating racism and white supremacy, based solely on his skin color, objectively contributed to a hostile environment. *See Cox v. Onondaga Cnty. Sheriff's Dept.*, 760 F.3d 139, 149 (2d Cir. 2014) (false accusations of racism by Caucasian employees against black employee “could be viewed by a reasonable observer as ... racial harassment.”); *cf. Schiebel v. Schoharie Cent. Sch. Dist.*, 120 F.4th 1082, 1097 (2d Cir. 2024) (false allegations of sexism against a male were discriminatory when made due to the accused’s sex); *Murdaugh v. City of New York*, No. 10 Civ. 7218(HB), 2011 WL 798844, \*4 (S.D.N.Y. Mar. 8, 2011) (false allegations against an employee that were motivated by her sex were part of a hostile environment).

Here, the accusations of racial bias against Young were direct and repeated, and endorsed by the highest levels of his employer. Young was instructed that he was a white supremacist. He was instructed that he perpetuated white racism and white supremacy, and that rejecting that conclusion was both false and an indicator of his white fragility. He was told that he, like all Caucasian individuals, thinks of blacks as “niggers,” with the full N-word being used. He was informed, unequivocally, that Caucasians like him were responsible for the ideological oppression of his non-Caucasian colleagues, and that being worried about “cultural

appropriation” was an important part of his role as a Caucasian person, because white culture was dominant.

These statements—which Young pleads are absolutely false—were based on Young’s race, and thus constituted racial harassment. *Cf. Schiebel*, 120 F.4th at 1097 (“We have recognized that a false accusation of sexual misconduct qualifies as such discrimination.”); *Menaker v. Hofstra Univ.*, 935 F.3d 20, 38 (2d Cir. 2019) (“Here, Kaplan did not accuse Menaker of just any misconduct; she accused him of sexual misconduct. That choice is significant, and it suggests that Menaker’s sex played a part in her allegations.”); *B.W. v. Austin Indep. Sch. Dist.*, 121 F.4th 1066, at 1082 (5th Cir. 2024) (Mem.) (Ho, J., dissenting from denial of *en banc* review) (“It’s racist to characterize whites as racist. Because it’s racist to attach any negative trait to a group of people based on their race. And it’s no less racist just because the victimized racial group is white.”).

**c. The District Court erred by under-weighting the differential treatment applied to non-Caucasians within CDOC.**

While most Title VII cases proceed on the basis that an employer is tolerating a pattern of derogatory statements made by peers, that is not the only way to establish a hostile environment. Employers are liable where their official actions “convey[] the message that members of a particular race are disfavored and that members of that race are, therefore, not full and equal members of the workplace.” *Aman v. Cort Furniture Rental Corp.*, 85 F.3d 1074, 1083 (3d Cir. 1996).

The same is true where an employee witnesses discrimination taking place in the workplace, and understands that they may suffer a similar fate. *See Meritor*, 477 U.S. at 66 (approving of cases where a hostile environment was based on an employer's discriminatory treatment of others); *Jackson v. Quanex Corp.*, 191 F.3d 647, 661 (6th Cir. 1999) (employee adequately stated an objective claim based on evidence race was being used in employer's other decisions). The EEOC has long concluded the same. *See* EEOC Dec. No. 71-969, CCH EEOC Decisions (1973) ¶ 6193 (employer is responsible for behavior of its agents and failure to take reasonable steps calculated to maintain working environment free from racial intimidation or insult.).

Here, Young adequately pled that CDOC was using race as a factor in discipline, based on his colleagues' disciplinary decision being reversed after the subject of the discipline made a complaint of racism. *See Gray v. Greyhound Lines, East*, 545 F.2d 169, 176 (D.C. 1976) ("Indeed, if matters such as discipline and assignment of work and equipment were not considered 'terms, conditions, or privileges of employment,' it would be difficult to give that language any meaning at all."). This was an entirely predictable result of the EDI Training. *Young I*, 94 F.4th at 1251 ("Taken seriously by managers and co-workers, the messaging could promote racial discrimination and stereotypes within the workplace.").

Appellees conveyed that Caucasian employees were disfavored, and that Young needed to internalize derogatory messages, as well as affirmatively suffer unequal treatment based on race, if he was going to stay employed by CDOC. Young had every reason to believe that promotions would also depend adhering to the racist principles in the EDI Training. [ER 3, at 0573 (“Young knew that disregarding or disobeying official training would not lead to his promotion.”)]; *see also Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 272 n.9 (2023) (“SFFA”) (Thomas, J. concurring) (“In a zero-sum game . . . any sorting mechanism that takes race into account in any way has discriminated based on race to the benefit of some races and the detriment of others.”); *Myers v. Ameritech Corp.*, No. 01-71025, 2002 WL 31994281 (E.D. Mich. May 13 2002) (recognizing that anti-white slurs and employer inaction to appease African-American employees can satisfy the severe or pervasive test).

**d. The District Court erred by under-weighting the need to believe the EDI Training materials as a condition of employment.**

The District Court erred by concluding that Young’s allegations “in support of his compelled-belief theory are devoid of factual support.” [ER 4, at 1018.] Respectfully, this conclusion is belied by numerous allegations in the complaint.

First, Young knew from experience that there was no way to opt-out of mandatory training. [ER Vol. 3, at 0573 (“If employees refused to participate in the

trainings, they would be written up.”); ER Vol. 3, at 0551 (“[T]akers of the training were meant to recall this initial part of the mandatory training and use the glossary’s definition of ‘race’ as their ‘common language.’”) (emphasis added).] Indeed, if the EDI Training did not have to be followed, that would make it unique among all CDOC trainings, which of course were meant to instill operational compliance in an environment where predictability was necessary. [ER Vol. 3, at 0568 (“Young knew that adherence to training was strict. Employees within the Department of Corrections are expected to live up to their training. Training in the prison context was meant to be taken seriously, and applied.”); ER Vol. 3, at 0569 (“Whether about the use of force, accommodating visiting prisoners’ disabilities, or contraband and apparel policies for visitors, Young faithfully took trainings and applied them.”).]

Second, the EDI Training itself conveyed numerous indicators that it was not a one-time session that could immediately be ignored or neglected. [ER Vol. 3, at 0560 (“The EDI trainings imparted on Young and his colleagues the idea that they ought to be inspired to view more and more materials, or they would never advance to new heights or sufficiently satisfy their employer.”); ER Vol. 3, at 0561 (quoting training as stating emphatically that employees “must continue to stay fit by deepening their awareness and advancing to new heights.”); ER Vol. 4 at 0855 EEOC Charge noting that CDOC employees “are being taught to view each other’s actions through the lens of race”)]; *see also Hartman v. Pena*, 914 F. Supp. 225, 230

(N.D. Ill. 1995) (“[T]he program’s objective was to influence continuing future behavior of the participants.... Participants were expected to return to the employment environment, as Hartman did, feel the effects of the exercises, and make a practical application of their workshop experiences.”).

All these facts combined, Young’s claim for a hostile work environment survives. *See Young I*, 94 F.4th at 1251, n.2 (“[R]equiring government employees to either endorse a particular race-based ideological platform or risk losing their jobs could also evolve into a plausible claim of pervasive hostility.”).

**e. The District Court erred by under-weighting the fact that Young complained about the racially hostile environment, but CDOC ignored the complaint.**

Young begged CDOC to address the effects of the EDI Training in the workplace. Belying the idea that he merely had a disagreement with the training at issue here—he did not file his complaint immediately after taking the training, in March 2021. Instead, it was months later when the complaint process was initiated, once the effects of the training within CDOC became obvious.

On July 6, 2021, CDOC informed Young that it wouldn’t even bother investigating. Instead, it simply wrote that “[a]ll Colorado state employees were required to complete the training to which you referred.” [ER Vol. 4, at 0845.] Why would CDOC refuse to open an investigation—any investigation whatsoever—into whether the EDI Training was affecting the prison system? One would think that

even a cursory review of the conditions within the CDOC would be appropriate, given the potential impact of a racially hostile environment within CDOC. Yet nothing. Instead, CDOC was so committed to its training and the concepts therein, that it failed even to investigate Young’s formal complaint.

Such a failure constitutes an independent reason to hold that Young has stated a claim for a hostile environment. *See Riggins v. Town of Berlin*, 2024 WL 2972896, \*3 (2d Cir. 20124) (employer had a duty to respond to accusation that female employee was involved in a sex scandal, when it could “determine that [the] accusations were false and put an end to [a colleague’s] harassment.”); *Malik v. Carrier Corp.*, 202 F.3d 97, 105 (2d Cir. 2000) (“[A]n employer’s investigation of a sexual harassment complaint is not a gratuitous or optional undertaking; under federal law, an employer’s failure to investigate may allow a jury to impose liability on the employer.”); *Hartwell v. Sw. Cheese Co., LLC*, 276 F. Supp. 3d 1188, 1221 (D.N.M. 2016) (employer’s tolerance of racial slurs is relevant to a hostile environment claim).

**f. The District Court erred by under-weighting the threat to Young’s safety.**

The District Court acknowledged that Young pled allegations related to the safety of the workplace—in other words, that CDOC created “a dangerous environment because it took place in the prison context.” [ER Vol. 4, at 1024.] But it dismissed those allegations, holding that they went to his subjective reaction to the

training, and were “insufficient by themselves” to plead that a reasonable employee would view the workplace as hostile. [ER Vol. 4, at 1025.] That was error.

The District Court did not acknowledge that Young wasn’t the only employee of CDOC who altered their work habits—his friend James Gillis had as well. [ER Vol. 3, at 0572.] Nor did it acknowledge that Young had personally witnessed CDOC take race into account in the employee discipline process, when a black colleague had his discipline reversed after alleging that it was motivated by that supervisor’s racism. In other words, supervisors within CDOC—even Lieutenants, and even when a disciplinary decision involved multiple supervisors—had their ordinary discipline decisions reversed due to racial considerations, and a concomitant allegation that racism was involved.

Young had every reason to believe—based on the EDI Training and its messages—that inevitable accusations of racism against him would also be credited, and that even meritless invocations of racism by visitors or prisoners threatened his ordinary decision-making. [*Id.* (“The trainings caused Young to feel like the State of Colorado was working against him, against prison safety, and against his well-being.”); ER Vol. 4, at 0855 (EEOC charge describing how the EDI Training is “causing safety issues in the prison environment,” particularly in light of the Limon Correctional Facility’s highly questionable conduct of classifying prisoners by race for housing unit decisions).] Young also had reason to believe that an accusation of

racism was inevitable, as he had previously been accused by a prison gang leader of racism. [ER Vol. 3, at 0570.]

Young pled that he thought that both guests to the prison and the prisoners themselves had access to the EDI Training, and Appellees have never contended otherwise. In other words, these groups, too, could leverage the statements made in the training to thwart Young from completing his day-to-day tasks, or accuse him of racism. Let alone the fact that they might believe statements in the training to be true, such that Young truly was responsible for “ideological oppression” of non-Caucasians.

In *Young I*, this Court held that Young had not adequately specified how prison safety was affected by the EDI Training and its subsequent enforcement within CDOC. *Young I*, 94 F.4th at 1251. In his Amended Complaint below, Young elaborated that the training polluted split-second security decisions with racial second-guessing. [ER Vol. 3, at 0572.] The danger was not hypothetical. When Young and other officers attempted routine contraband searches, visitors frequently alleged racial bias; because supervisors were “more likely to credit the complaints due to the EDI concepts,” the training “made it significantly harder for Young to do his assigned job” and undermined the very procedures meant to keep weapons and drugs out of the facility. [ER Vol. 3, at 0570–71]; *see also Diemert v. City of Seattle*, 689 F. Supp. 3d 956, 963 (W.D. Wash. 2023) (plaintiff “pleaded sufficient factual

allegations showing a pattern of race-based harassment of a repeated, routine, or generalized nature that affected his ability to do his job.”) (emphasis added).

In several incidents during his final months, Young “needed to use force, but the race-based implications of the training made him second-guess his actions, leading to an unsafe working environment.” [ER Vol. 3, at 0571–72.] That hesitation imperiled not only Young’s own safety, but that of fellow officers, prisoners, and visitors. These well-pleaded facts establish more than a subjective reaction; they describe a workplace where official policy actively compromised security, satisfying the objective component of a hostile-environment claim in the uniquely perilous prison context. To be clear, it doesn’t take much before the terms and conditions of employment change in the prison setting. *See Dawson*, 373 F.3d at 273 (“[I]n the prison context especially, officers must depend upon their co-workers for mutual protection and rely upon them for their own ability to assert authority over others in potentially dangerous situations.”).

**g. The District Court erred by rejecting Young’s well-pleaded allegations that the EDI Training would recur.**

In *Young I*, this Court held out the possibility that “[p]erhaps an ongoing, continuing commitment from Young’s supervisors to mandatory EDI trainings with content similar to the one here may evolve into a plausible hostile workplace claim.” *Young I*, 94 F.4th at 1251, n. 2. But the District Court emphasized the Court’s use of the word “perhaps,” and concluded that Young had not pled that CDOC was

committed to similar EDI Training in the future. That was error. Instead, it should have credited the allegations pled by Young, which establish that an ongoing commitment existed.

First, at least some EDI Training would be annual. That was consistent with all employee training within CDOC, and based on Young’s personal experience, having completed several years with annual employee training. [ER Vol. 3, at 0567 (“Young expected and knew that EDI training would recur annually, as with their other training.”).] So, at most, the question is what kind of EDI Training would recur.

While Young lacks a crystal ball, every indicator was that CDOC was “all-in” on aggressive, racially charged training. As an initial matter, the fact that CDOC was using the training materials outlined above—which were very clearly stamped with approval and carefully chosen and organized—was *prima facie* evidence that a deliberate decision had already been made to focus on regular anti-Caucasian messaging. The fact that Young and his colleagues were adopting and internalizing the training meant that it was unlikely to be undone any time soon. [ER Vol. 3, at 0568 (“Young was aware that training was expected to be learned, believed, internalized, and applied every single day on the job.”).] Further, CDOC moved swiftly to ensure that that the new EDI Training principles “would be a part of employee performance review[s]” that very year, in 2021. [ER Vol. 3, at 0573.]

The training spoke in broad terms about how enduring its lessons would be. It wanted to “normalize” workplace conversations about race, to tackle implicit bias and “structural” racism. [ER Vol. 3, at 0555.] It promised future expanded training about “unconscious biases,” along with a commitment to fostering “equity, diversity, and inclusion in all state agencies.” [ER Vol. 3, at 0558.] It made clear that that there was an ongoing expectation that employees self-evaluate themselves to recognize biases in their “work for the state and relationship with your colleagues.” Appellees themselves have similarly described the very EDI Training at issue in this case, indicating that they do not agree that anything about the 2021 EDI training was offensive or problematic. [ER Vol. 3, at 0574 (stating, before *Young I*’s subsequent holding, that the 2021 EDI Training was not offensive and merely designed to “advance equity” and “curtail” race discrimination).]

Put simply, Young adequately pled that the “drumbeat” of “essentialist, deterministic, and negative” language about him had begun, was fully in motion, and would continue that way.

**3. The EDI Training and its implementation were especially troubling because they entrenched racial stereotyping.**

The Limon Correctional Facility was no place to tinker with novel racial theories, often reserved for academic debate. But that didn’t stop Appellees. The messages from the training involved racial stereotypes perpetuated by official state actors. *SFFA*, 600 U.S. at 221 (the government may not further “stereotypes that

treat individuals as the product of their race, evaluating their thoughts and efforts—their very worth as citizens—according to a criterion barred to the Government by history and the Constitution.”); *id.* at 216; (Harvard and UNC relied “on the pernicious stereotype that ... race in itself says something about who you are.”); *Young I*, 94 F.4th at 1255 (“When a state agency treats employees on the basis of race, it engages in the offensive and demeaning assumption that employees of a particular race, because of their race, think alike.”) (cleaned up).

In the context of the EDI Training and its implementation, CDOC assigned its employees to racial categories—primarily Caucasians and non-Caucasians—and then made sweeping statements about each group, casting them as racial enemies against one another, in perpetuity. This was arbitrary, and likely violated the Constitution. *Young I*, 94 F.4th at 1255 (“So state-sanctioned training programs that import racial assumptions or promote race-based differential treatment may very well offend the Equal Protection Clause.”); *SFFA*, 600 U.S. at 217 (“Indeed, the use of these opaque racial categories undermines, instead of promotes, respondents’ goals.”); *id.* at 276-77 (Thomas, J., concurring) (“([A]ll racial categories are little more than stereotypes, suggesting that immutable characteristics somehow conclusively determine a person's ideology, beliefs, and abilities. Of course, that is false.”).

Creating made-up categories of racial groups, and then ascribing specific, immutable characteristics to such groups, is both totally irrelevant to the workplace setting, and a recipe for ensuring that a workplace becomes hostile based on race. *Cf. SFFA*, 600 U.S. at 277 (Thomas, J., concurring) (“Racialism simply cannot be undone by different or more racialism.”); *id.* at 276 (“[T]hese policies appear to be leading to a world in which everyone is defined by their skin color, demanding ever-increasing entitlements and preferences on that basis.”). In a prison setting, it is hard to draw any other conclusion than that CDOC wanted to create that environment.

Here, the fact that Young experienced an actionable, hostile environment is entirely in accord with what CDOC tried to accomplish—forcing its employs to obsess over race in day-to-day decision-making and interactions, by universally trying to instill demeaning and racist stereotypes about its employees. Indeed, it would be surprising if CDOC had not become a racially hostile environment, given that it tried its level best to make it so, even by violating the Constitution.

**4. The Equal Employment Opportunity Commission has addressed hostile work environments caused by “Diversity” training.**

Courts give persuasive weight to agency interpretations that reflect “a body of experience and informed judgment,” with the degree of weight turning on the agency’s thoroughness, reasoning, and consistency. *See Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 388 (2024) (*quoting Skidmore v. Swift & Co.*, 323 U.S. 134, 139-40 (1944)). In this context, the EEOC has squarely warned that so-called

“DEI,” or in this case, “EDI,” programs violate Title VII when they “take an employment action motivated—in whole or in part—by an employee’s or applicant’s race, sex, or another protected characteristic.” U.S. Equal Emp. Opportunity Comm’n, WHAT YOU SHOULD KNOW ABOUT DEI-RELATED DISCRIMINATION AT WORK (Mar. 19, 2025).<sup>5</sup> Because Title VII imposes a “categorical prohibition” on race-based terms and conditions of employment, the Commission stresses that no amount of branding can convert discrimination into compliance: if a DEI initiative requires employees to accept race-based stereotypes, imposes race-conscious job expectations, or otherwise makes race “a factor” in workplace decisions, it is unlawful. *Id.*<sup>6</sup>

Critically, the EEOC also recognizes that DEI programming itself can foster an actionable hostile environment. Agency guidance explains that “depending on the facts, an employee may be able to plausibly allege or prove that a diversity or other DEI-related training created a hostile work environment by pleading or showing that

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<sup>5</sup> <https://www.eeoc.gov/wysk/what-you-should-know-about-dei-related-discrimination-work>

<sup>6</sup> The Department of Justice has its own project to combat discriminatory practices within the federal government, because “policies related to ‘diversity, equity, and inclusion...violate the text and spirit of our longstanding Federal civil-rights laws.” *See* Dep’t of Justice, *Eliminating Internal Discriminatory Practices* (Feb. 5, 2025), <https://www.justice.gov/ag/media/1388556/dl?inline>. The DOJ is focused on “training and programs” that reference buzzwords like “unconscious bias,” “cultural sensitivity,” “inclusive leadership,” and “any emphasis on race- or sex-based criteria rather than merit.” *Id.* at 1-2.

the training was discriminatory in content, application, or context.” *Id.* The EEOC has gone so far as to publish posters that employers may post in their common rooms to address the dangers of DEI initiatives.<sup>7</sup>

## WHAT TO DO IF YOU EXPERIENCE DISCRIMINATION RELATED TO DEI AT WORK



Title VII of the Civil Rights Act of 1964 prohibits employment discrimination based on protected characteristics such as race and sex. Different treatment based on race, sex, or another protected characteristic can be unlawful discrimination, no matter which employees are harmed. Title VII's protections apply equally to all racial, ethnic, and national origin groups, as well as both sexes.

**Before you can sue in federal court, you first must file a charge of discrimination with the EEOC.** The U.S. Equal Employment Opportunity Commission (EEOC) investigates charges of discrimination and can file a lawsuit under Title VII against businesses and other private sector employers. The Department of Justice can file a lawsuit under Title VII against state and local government employers based on an EEOC charge, following an EEOC investigation.

### What can DEI-related discrimination look like?

Diversity, Equity, and Inclusion (DEI) is a broad term that is not defined in the statute. Under Title VII, DEI policies, programs, or practices may be unlawful if they involve an employer or other covered entity taking an employment action **motivated**—in whole or in part—by an employee's race, sex, or another protected characteristic. In addition to unlawfully using quotas or otherwise “balancing” a workforce by race, sex, or other protected traits, DEI-related discrimination in your workplace might include the following:

#### Disparate Treatment

DEI-related discrimination can include an employer taking an employment action motivated (in whole or in part) by race, sex, or another protected characteristic. Title VII bars discrimination against applicants or employees in the terms, conditions, or privileges of employment, including:

- Hiring
- Exclusion from training
- Firing
- Exclusion from mentoring or sponsorship programs
- Promotion
- Exclusion from fellowships
- Demotion
- Selection for interviews (including placement on candidate slates)
- Compensation
- Fringe benefits

#### Harassment

Title VII prohibits workplace harassment, which may occur when an employee is subjected to unwelcome remarks or conduct based on race, sex, or other protected characteristics. Harassment is illegal when it results in an adverse change to a term, condition, or privilege of employment, or it is so frequent or severe that a reasonable person would consider it intimidating, hostile, or abusive. Depending on the facts, DEI training may give rise to a colorable hostile work environment claim.

#### Who can be affected by DEI-related discrimination?

Title VII protects employees, potential and actual applicants, interns, and training program participants.

#### What should I do if I encounter discrimination related to DEI at work?

If you suspect you have experienced DEI-related discrimination, contact the EEOC promptly because there are strict time limits for filing a charge. The EEOC office nearest to you can be reached by phone at 1-800-669-4000 or by ASL videophone at 1-844-234-5122.



www.EEOC.gov

In other words, when mandatory trainings traffic in racial generalizations, compel employees to internalize group guilt, or endorse differential treatment, the Commission views them through the same lens as any other harassment: they are prohibited if they intimidate, ridicule, or demean, as they did here. Because the

<sup>7</sup> [https://www.eeoc.gov/sites/default/files/2025-03/One\\_Pagers\\_2025-2\\_%28002%29\\_508.pdf](https://www.eeoc.gov/sites/default/files/2025-03/One_Pagers_2025-2_%28002%29_508.pdf)

EEOC’s DEI guidance is the considered product of the agency charged with enforcing Title VII, and is fully consistent with its prior pronouncements, the Court should accord it substantial *Skidmore* respect in evaluating the hostile-environment standard at issue here.

And separately, if the training had taken place in an educational environment, it would have constituted racial harassment in violation of Title VI of the Civil Rights Act. *See* U.S. Dep’t of Educ., Off. for Civ. Rts., ANNUAL REPORT TO THE SEC’Y, PRESIDENT, AND CONGRESS, at 46 (2021) (“[P]olicies or pedagogical practices that perpetuate the idea that students may be categorized by race, assigned a set of characteristics, and be considered to possess certain characteristics based on that race, may subject students or staff to discrimination in violation of Title VI.”).<sup>8</sup>

Under Title VI, a racially hostile environment occurs when conduct is severe and pervasive, as well as objectively offensive—an even greater threshold than under Title VII. *Seymore v. Tulsa Tech. Ctr.*, 2024 WL 3342452, at \*4 (10th Cir. 2024) (“To allege a plausible claim of a racially hostile environment under Title VI, the plaintiff must allege...that she was subjected to harassment based on her race and that the harassment was so severe, pervasive, and objectively offensive that it

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<sup>8</sup> <https://www2.ed.gov/about/reports/annual/ocr/report-to-president-and-secretary-of-education-2020.pdf>

deprived the plaintiff of access to the educational benefits or opportunities provided by the school.”) (emphasis added).

And very recent guidance from the Department of Education reaffirms that DEI programs which include messages that certain races bear unique moral burdens violate Title VI because “deny students the ability to participate fully in the life of a school.” See U.S. Dep’t of Educ. Off. for Civ. Rts., *Dear Colleague Letter on Title VI of the Civil Rights Act in Light of Students for Fair Admissions v. Harvard* (February 14, 2025) (“DEI programs, for example, frequently preference certain racial groups and teach students that certain racial groups bear unique moral burdens that others do not. Such programs stigmatize students who belong to particular racial groups based on crude racial stereotypes. Consequently, they deny students the ability to participate fully in the life of a school.”) (emphasis added).<sup>9</sup> If such programs meet the higher threshold necessary in the Title VI context, they certainly meet it in the employment context. *SFFA*, 600 U.S. at 290 (Gorsuch, J., concurring) (“Both Title VI and Title VII codify a categorical rule of individual equality, without regard to race.”) (cleaned up). With three different agencies each deliberating and concluding that DEI training will often trigger Title VII liability, this Court ought to give them *Skidmore* deference, for the power of their persuasive effect.

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<sup>9</sup> <https://www.ed.gov/media/document/dear-colleague-letter-sffa-v-harvard-109506.pdf>

**5. Young states a claim for constructive discharge.**

Young plausibly pleads constructive discharge. An employee states such a claim by alleging facts showing the employer’s unlawful conduct “made working conditions so difficult that a reasonable person in the employee’s position would feel compelled to resign.” *Sandoval v. City of Boulder, Colo.*, 388 F.3d 1312, 1325 (10th Cir. 2004). Young pled exactly that: the mandatory EDI program forced him to choose between betraying his principles and quitting; it gutted his motivation to help rehabilitate inmates, and convinced him he could not safely or ethically continue. [ER Vol. 3, at 0567, 0571-73.]

Courts recognize constructive discharge where an employee must abandon a meaningful career rather than endure discrimination. *See Goss v. Exxon Off. Sys. Co.*, 747 F.2d 885, 888 (3d Cir. 1984) (conditions “so intolerable that a reasonable person subject to them would resign” supports the finding of constructive discharge); *Meyer v. Brown & Root Constr. Co.*, 661 F.2d 369, 371 (5th Cir. 1981) (employee told to “quit or be fired” for refusing harassment supported finding of constructive discharge). Here, CDOC placed Young in the same bind—either leave or remain in a racially hostile environment and “become an accessory to violating his principles.” [ER Vol. 3, at 0571.] Further, the pleadings detail Young’s internal complaint, summarily rejected without investigation, which alleged hostility that was ongoing

and mandatory. [ER. Vol. 4, at 0856] Such unavailing resort to internal remedies bolsters constructive-discharge claims. *See Goss*, 747 F.2d at 888-89.

Because the District Court did not directly evaluate the merits of Young’s constructive discharge claim, the best approach is to reverse and remand.

**6. The District Court should not have dismissed with prejudice.**

The District Court erred in dismissing Young’s claims with prejudice rather than without prejudice on the basis that any further effort by Young to state a claim would be “futile.” But the severe remedy of dismissal with prejudice was unwarranted under established principles governing Rule 12(b)(6) dismissals.

The court’s justification for dismissal with prejudice—that this was “Plaintiff’s second attempt to state a claim under Rule 12(b)(6)” and that his claims remained “deficient despite the Tenth Circuit’s guidance in *Young P*”—fails to establish actual futility. [ER Vol. 4, at 1029.] Generally, futility will occur only when an underlying legal theory is fundamentally flawed or legally impossible to maintain.

The District Court’s own analysis demonstrates that the purported deficiencies are primarily issues of factual specificity, rather than inherent legal impossibility. The court based its holding on its opinion that Young’s allegations lacked “factual enhancement,” and that Young did not “identify who” made certain statements or explain “how or when those messages were conveyed.” [ER Vol. 4, at 1018-21.] These are precisely the types of minor gaps that can be remedied through more

detailed pleading, rather than something that is conclusively futile. Any dismissal should have therefore been without prejudice. That approach would have better served the interests of justice.

### **Conclusion**

For these reasons, Young urges the Court to reverse and remand the District Court's decision below. It may do so either by (1) holding that Young has stated a claim for relief under one of his theories; (2) holding that the District Court committed a legal error, and should thus address the Appellees' motion to dismiss anew; or (3) that the District Court erred by dismissing with prejudice.

### **Statement Regarding Oral Argument**

Oral argument is appropriate. The issues presented are nuanced, and the Court may wish to press the parties on these topics. Undersigned counsel submits, respectfully, that oral argument in *Young I* was materially helpful to the Court, and that the allegations in this action are sufficiently different, such that oral argument would still assist in reaching a decision in this matter.

Dated this 23rd day of April, 2025.

Respectfully submitted,

/s/ William E. Trachman

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## CERTIFICATE OF COMPLIANCE

I hereby certify that:

1. This brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 32(a)(7)(B) because it contains 13,000 words, excluding the parts exempted by Federal Rule of Appellate Procedure 32(f) and Circuit Rule 32(B).

2. This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the typestyle requirements of Federal Rule of Appellate Procedure 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in 14-point font.

DATED this 23rd day of April , 2025.

*/s/ William E. Trachman*

William E. Trachman

## CERTIFICATE OF DIGITAL SUBMISSION

I hereby certify that with respect to the foregoing:

- a. All required privacy redactions have been made.
- b. The hard copies submitted to the clerk are exact copies of the ECF submission.
- c. The digital submission has been scanned for viruses with the most recent version of a commercial virus scanning program, Kaseya Antivirus, and according to the program is free of viruses.

*/s/William E. Trachman*

William E. Trachman

### **CERTIFICATE OF SERVICE**

I hereby certify that on April 23, 2025, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Tenth Circuit by using the CM/ECF system. I certify that all participants in this case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

# **ATTACHMENT 1:**

## ***District Court Memorandum and Order Granting Defendants' Motion to Dismiss***

***Filed January 27, 2025  
(01/27/2025)***

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO  
Judge Nina Y. Wang**

Civil Action No. 23-cv-01688-NYW-SBP

JOSHUA F. YOUNG,

Plaintiff,

v.

COLORADO DEPARTMENT OF CORRECTIONS,  
MOSES “ANDRE” STANCIL, and  
JILL HUNSAKER RYAN,

Defendants.

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**MEMORANDUM OPINION AND ORDER**

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This matter is before the Court on Defendants’ Motion to Dismiss (the “Motion” or “Motion to Dismiss”) [Doc. 35, filed July 3, 2024]. The Court has reviewed the Motion, the related briefing, and the applicable case law, and concludes that oral argument would not materially assist in the resolution of this matter. For the reasons set forth herein, the Motion to Dismiss is respectfully **GRANTED**.

**BACKGROUND**

***Factual Background.*** The Court takes the following facts from the First Amended Complaint (the “Amended Complaint”), [Doc. 34], and construes the well-pleaded allegations as true for the purposes of this Order. Plaintiff Joshua F. Young (“Plaintiff” or “Mr. Young”) previously worked for the Colorado Department of Corrections (“CDOC”). See, e.g., [*id.* at ¶¶ 101–06, 112]. In February 2021, the CDOC announced that all of its employees would be required to take Equity, Diversity, and Inclusion (“EDI”) training,

which consisted of several computer modules. [*Id.* at ¶¶ 7, 9]. Mr. Young took the training in March 2021. [*Id.* at ¶ 8].

Plaintiff alleges that the training began with a review of a glossary of terms that was “assembled by” the Health Equity Office of the Colorado Department of Public Health and Environment (“CDPHE”) and “explicitly meant to be used and adopted by CDOC employees . . . to further the goals of advancing ‘equity.’” [*Id.* at ¶¶ 10, 13]. Plaintiff alleges that the glossary “provided . . . the meaning of certain EDI terms in grossly offensive language, targeted at Caucasian employees specifically.” [*Id.* at ¶ 16]. Mr. Young highlights the following glossary definitions:

**BIPOC:** Acronym for Black, Indigenous People, and People of Color; the term is used to acknowledge that Indigenous and Black people have been most impacted by whiteness, both historically and in the present day. This shapes the experiences of and relationship to white supremacy for all people of color within a U.S. context.

**Race:** A social construct that artificially groups people by skin tone and other physical traits. The concept, which has no genetic or scientific basis, was created and used to justify social and economic oppression of people of color by white people.

**White Exceptionalism:** The belief held by some white allies that they are the exception to white racism even though they fail to address the implicit ways in which they perpetuate white supremacy. These individuals are often more interested in not seeming racist than actually improving the lives of people of color. This is sometimes referred to as **fakequity**.

**White Fragility:** Discomfort and defensiveness, often triggered by feelings of fear or guilt, on the part of a white person when confronted by information about racial inequality and injustice.

**White Supremacy:** A historically based, institutionally perpetuated system of exploitation and oppression of nations and people of color by white peoples of European descent for the purpose of establishing, maintaining, and defending a system of wealth, power, and privilege.

[*Id.* at ¶¶ 16, 18, 20–22]. Mr. Young alleges that the “trainings also directed further insults at Caucasians” in that it “defined cultural appropriation” by “noting that its occurrence is based on ‘white’ dominance.” [*Id.* at ¶ 28]. The training also included instruction on a “Bystander Intervention” process, defined as “the act of stepping in and intervening in the moment when a person of lower power and/or status is interrupted, talked over, disregarded, or ignored,” [*id.* at ¶ 34 (emphasis and quotation omitted)], which Mr. Young interpreted as a “suggest[ion] to [him] and his colleagues that they need not engage in any intervention if a Caucasian person was interrupted by a non-Caucasian person, given their status and power,” [*id.* at ¶ 35]. The EDI training also presented links to “Other Tools & Resources.” [*Id.* at ¶¶ 44–45]. These materials were not required within the training, but “were never labeled ‘optional.’” [*Id.* at ¶ 49]. Plaintiff alleges that these materials “were racially discriminatory and motivated by invidious racial stereotypes and “demeaned and stigmatized [him] and similarly situated individuals based on race and skin color.” [*Id.* at ¶ 52].

Plaintiff alleges that he “expected and knew that EDI training would recur annually” because all CDOC trainings occurred annually. [*Id.* at ¶¶ 65, 95]. He also alleges that he “expected that the modules on ‘EDI’ would stay roughly the same, from year to year, in the sense that they would include materials that made sweeping generalizations about him, his race, and his attributes and behavior as a Caucasian person.” [*Id.* at ¶ 66]. Mr. Young also alleges that, generally speaking, employees within the CDOC are “expected to live up to their training”; that “[t]raining in the prison context was meant to be taken seriously, and applied”; and that his supervisors “repeatedly emphasized the importance

of faithfully taking trainings and abiding by those various trainings.” [*Id.* at ¶¶ 72–73]. Employees could be written up for refusing to participate in trainings. [*Id.* at ¶ 95].

Plaintiff alleges that he “was aware that his colleagues were taking the EDI trainings around the time that he took the trainings” and that the trainings “came up in conversations among [his] colleagues at work.” [*Id.* at ¶¶ 68, 71]. He says he was stressed about “whether his colleagues believed the training to be true[] and were applying the training as they interacted with him in the prison setting” because he knew that his co-workers were taking the EDI training and because the training “made negative, offensive generalizations about Caucasians like Young.” [*Id.* at ¶¶ 69, 78]. He also alleges that the training “contributed to a culture of suspicion and distrust” in the CDOC and “created a dangerous atmosphere where a failure to adhere to racism and race-based differential treatment could itself result in accusations of racism, or discipline for failing to abide by the training,” [*Id.* at ¶¶ 82–83], but he does not allege that any such conduct actually occurred as a result of the training, *see generally* [*id.*]. Plaintiff does allege that he “sensed that some of his colleagues viewed him as a racist due to his status as a Caucasian individual.” [*Id.* at ¶ 85]. In addition, he alleges that he “considered some of his colleagues to be especially agreeable with respect to the training, and to use the training as leverage to promote racially discriminatory beliefs in the workplace, by challenging others who made innocent comments,” [*id.*], but he provides no specific examples of this occurring, *see generally* [*id.*].

Plaintiff also details how the EDI training caused him to change his behavior in the workplace or change his approach in the workplace, alleging that (1) he was worried he would be written up if he had to search a prison visitor and the visitor claimed that the

search was due to the visitor's race, [*id.* at ¶ 84]; (2) he was hesitant to use force against prisoners, and there were several instances in which he "needed to use force, but the race-based implications of the training made him second-guess his actions, leading to an unsafe environment," [*id.* at ¶ 87]; and (3) he "lacked confidence that his employer would support him against frequent, baseless accusations of racism by prisoners and their visitors," [*id.* at ¶ 90].

Mr. Young filed an internal complaint in response to the EDI training, which was denied. [*id.* at ¶¶ 101–02]. He later resigned from his employment with the CDOC in July 2021. [*id.* at ¶ 106].

***Procedural Background.*** On January 19, 2022, Mr. Young filed a lawsuit, against the same Defendants named in this case, based on the EDI training at the CDOC. See *Young v. Colo. Dep't of Corr.*, No. 22-cv-00145-NYW-KLM, 2023 WL 1437894, at \*3 (D. Colo. Feb. 1, 2023). In his amended complaint in that case, he raised one claim asserting a hostile work environment and one Fourteenth Amendment equal protection claim. *Id.* On February 1, 2023, this Court granted the defendants' motion to dismiss and dismissed Mr. Young's claims without prejudice. See *id.* at \*13. Mr. Young appealed the dismissal of his case to the Tenth Circuit. See *Young v. Colo. Dep't of Corr.*, No. 22-cv-00145-NYW-KLM, ECF No. 48 (D. Colo. Mar. 3, 2023).

While Mr. Young's appeal was pending, he filed this separate case. [Doc. 1]. After receiving briefing about the propriety of two cases, based on the same incident, proceeding simultaneously, see [Doc. 19; Doc. 22], the Court administratively closed this case until the resolution of Mr. Young's appeal, see [Doc. 24]. On March 11, 2024, the Tenth Circuit affirmed the Court's dismissal of the first action. See *Young v. Colo. Dep't*

of *Corr.*, 94 F.4th 1242 (10th Cir. 2024) (“*Young I*”). The Court then reopened this case, see [Doc. 28], and Plaintiff filed the Amended Complaint on June 3, 2024, [Doc. 34].

Mr. Young asserts three claims in this case: (1) a Title VII hostile work environment claim against the CDOC (“Count One”), [*id.* at ¶¶ 113–31]; (2) a hostile work environment claim under 42 U.S.C. § 1981 against Defendants Moses Stancil, the Executive Director of the CDOC, and Jill Hunsaker Ryan, the Executive Director of the CDPHE, in their official capacities (“Count Two”), [*id.* at ¶¶ 3–4, 132–49]; and (3) a constructive discharge claim against all Defendants (“Count Three”), [*id.* at ¶¶ 150–61]. Defendants move to dismiss all of Plaintiff’s claims under Rule 12(b)(6). [Doc. 35].

### LEGAL STANDARD

Under Rule 12(b)(6), a court may dismiss a complaint for “failure to state a claim upon which relief can be granted.” Fed. R. Civ. P. 12(b)(6). “[A] complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). “[W]hen *Iqbal* speaks of a claim’s facial plausibility,” this means that “the complaint must plead ‘factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.’” *Clinton v. Sec. Benefit Life Ins. Co.*, 63 F.4th 1264, 1275 (10th Cir. 2023) (quoting *Hogan v. Winder*, 762 F.3d 1096, 1104 (10th Cir. 2014)); see also *Robbins v. Oklahoma*, 519 F.3d 1242, 1247 (10th Cir. 2008) (explaining that plausibility refers “to the scope of the allegations in a complaint,” and that the allegations must be sufficient to nudge a plaintiff’s claims “across the line from conceivable to plausible”).

In deciding a motion under Rule 12(b)(6), the Court must “accept as true all well-pleaded factual allegations . . . and view these allegations in the light most favorable to

the plaintiff.” *Casanova v. Ulibarri*, 595 F.3d 1120, 1124 (10th Cir. 2010) (quotation omitted). But the Court need not accept “[t]hreadbare recitals of the elements of a cause of action [that are] supported by mere conclusory statements.” *Iqbal*, 556 U.S. at 678; see also *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (“[A] formulaic recitation of the elements of a cause of action will not do.”). “A conclusory allegation is one in which an inference is asserted without ‘stating underlying facts’ or including ‘any factual enhancement.’” *Matney v. Barrick Gold of N. Am.*, 80 F.4th 1136, 1144 (10th Cir. 2023) (quoting *Brooks v. Mentor Worldwide LLC*, 985 F.3d 1272, 1281 (10th Cir. 2021)).

### ANALYSIS

Defendants argue that all three of Plaintiff’s claims should be dismissed under Rule 12(b)(6). See generally [Doc. 35]. Specifically, they argue that both of Plaintiff’s hostile work environment claims are insufficiently pled because Plaintiff does not allege facts plausibly establishing that he was subject to race-based harassment or that any such harassment was severe or pervasive. [*Id.* at 7–15]. They argue that these same deficiencies necessitate dismissal of Plaintiff’s constructive discharge claim, too. [*Id.* at 15–16]. Mr. Young disagrees. He argues that, in *Young I*, “[t]he Tenth Circuit laid out several markers for how Mr. Young’s claims could proceed,” [Doc. 43 at 9], and asserts that the operative pleading adequately alleges facts corresponding to those “markers,” see [*id.* at 10–13]; see also [*id.* at 13 (“Mr. Young’s complaint closely tracks the Tenth Circuit’s guidance describing the delta between his prior complaint and a plausible . . . hostile environment claim.”)].<sup>1</sup>

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<sup>1</sup> Mr. Young asserts in his Response that “[p]leadings are to be liberally construed and if there is any possibility of recovery the case should not be dismissed.” [Doc. 43 at 3 (quoting *Gas-A-Car, Inc. v. Am. Petrofina, Inc.*, 484 F.2d 1102, 1107 (10th Cir. 1973))].

## I. Hostile Work Environment

Under Title VII, it is unlawful for an employer to “discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s race, color, religion, sex, or national origin.” 42 U.S.C. § 2000e-2(a)(1). And 42 U.S.C. § 1981 declares that “[a]ll persons within the jurisdiction of the United States 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.” Both Title VII and § 1981 “authorize a plaintiff to bring a claim for hostile work environment based on unlawful race discrimination.” *Lounds v. Lincare, Inc.*, 812 F.3d 1208, 1221 (10th Cir. 2015). Whether asserted under Title VII or § 1981, the standards applicable to a hostile work environment claim are the same. *Id.*

A workplace is unlawfully hostile when it is “permeated with discriminatory intimidation, ridicule, and insult, that is sufficiently severe or pervasive to alter the conditions of the victim’s employment and create an abusive working environment.”

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*Gas-A-Car* predates the Supreme Court cases setting out applicable pleading standards—*Twombly* and *Iqbal*—by several decades and does not reflect the present requirement that a complaint set forth sufficient facts establishing “more than a sheer possibility that a defendant has acted unlawfully.” See *Iqbal*, 556 U.S. at 678. In addition, the Tenth Circuit has instructed that parties represented by counsel are not entitled to liberal construction of their pleadings. See, e.g., *Shue v. Laramie Cnty. Det. Ctr.*, 594 F. App’x 941, 947 (10th Cir. 2014); *Tatten v. City & Cnty. of Denver*, 730 F. App’x 620, 624 (10th Cir. 2018). The Court is also mindful that, even when litigants are not represented by counsel, it may not act as counsel for a party. See *Garrett v. Selby Connor Maddux & Janer*, 425 F.3d 836, 840 (10th Cir. 2005) (“[T]he court cannot take on the responsibility of serving as the litigant’s attorney in constructing arguments and searching the record.”). Accordingly, the Court applies the legal standards detailed above, focusing on whether the Amended Complaint contains “sufficient factual matter” to state a claim that is “plausible on its face.” *Iqbal*, 556 U.S. at 678.

*Iweha v. Kansas*, 121 F.4th 1208, 1221 (10th Cir. 2024) (quotation omitted). A prima facie hostile work environment claim contains the following elements: (1) the plaintiff is a member of a protected group; (2) the plaintiff was subject to unwelcome harassment; (3) the harassment was based on the plaintiff's race; and (4) the severity or pervasiveness of the harassment "altered a term, condition, or privilege of the plaintiff's employment and created an abusive working environment." *Lounds*, 812 F.3d at 1222 (quotation omitted).

Defendants argue, inter alia, that Plaintiff fails to allege facts to satisfy the fourth element of his hostile work environment claims—that he experienced harassment that was so severe or pervasive so as to alter a term or condition of his employment and create an abusive working environment. [Doc. 35 at 10–15].

To sufficiently allege this element, "[a] plaintiff must allege facts showing that the work environment 'is both subjectively *and* objectively hostile or abusive[.]'" *Brown v. LaFerry's LP Gas Co.*, 708 F. App'x 518, 520 (10th Cir. 2017) (quoting *Lounds*, 812 F.3d at 1222). "In other words, it is not enough that a particular plaintiff deems the work environment hostile; it must also be of the character that it would be deemed hostile by a reasonable employee under the same or similar circumstances." *Lounds*, 812 F.3d at 1222. "Conduct that is not severe or pervasive enough to create an objectively hostile or abusive work environment—an environment that a reasonable person would find hostile or abusive—is beyond Title VII's purview." *Iweha*, 121 F.4th at 1221 (quotation omitted).

Severity and pervasiveness "are independent and equal grounds upon which a plaintiff may establish . . . a hostile environment claim." *Tademy v. Union Pac. Corp.*, 614 F.3d 1132, 1144 (10th Cir. 2008). The two grounds "are, to a certain degree, inversely related; a sufficiently severe episode may occur as rarely as once, while a relentless

pattern of lesser harassment that extends over a long period of time also violates the statute.” *Brown*, 708 F. App’x at 521 (quotation omitted). There is no “mathematically precise test” used to determine whether a work environment was unlawfully hostile. *Lounds*, 812 F.3d at 1222 (quotation omitted). To determine whether alleged harassment is sufficiently severe or pervasive, courts consider a “variety of factors,” including “the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee’s work performance.” *Id.* (quotation omitted). But “isolated incidents of discriminatory conduct” are “insufficient to support a claim for hostile work environment.” *Ford v. Jackson Nat’l Life Ins. Co.*, 45 F.4th 1202, 1228 (10th Cir. 2022) (quotation omitted).

**1. *Young I***

In *Young I*, the Tenth Circuit concluded that Plaintiff’s allegations were insufficient to plausibly plead a severe or pervasive hostile work environment. *Young I*, 94 F. 4th at 1251. The Tenth Circuit observed that Plaintiff had “provide[d] no specific facts, context, or explanation for why or how he was forced to resign” from his position with the CDOC. *Id.* And aside from allegations showing that he “was offended by the EDI training, and that he was upset about the Department’s response when he complained about the EDI training,” Mr. Young had not set forth any allegations about the effect of the EDI training on his actual workplace environment—such as “what he experienced in the workplace due to the EDI training—particularly his interactions with supervisors and co-workers.” *Id.* The Tenth Circuit provided additional examples of the kinds of allegations lacking in Mr. Young’s complaint: Mr. Young “[did] not allege that the training occurred more than once,

that his supervisors threatened to punish or otherwise discipline employees who failed to complete or agree with the materials, or that co-workers engaged in specific acts of insult or ridicule aimed at him because of the training.” *Id.* Nor did he allege that he was “singled out by other correctional officers for race-based opprobrium,” that he was “physically confronted by a co-worker because of his objections to the EDI training,” or any “racial animus manifesting itself in Mr. Young’s day-to-day *work environment*.” *Id.* at 1254. However, the *Young I* majority suggested in a footnote that “[p]erhaps an ongoing, continuing commitment from Mr. Young’s supervisors to mandatory EDI trainings with content similar to the one here may evolve into a plausible hostile workplace claim” and that “requiring government employees to either endorse a particular race-based ideological platform or risk losing their jobs could also evolve into a plausible claim of pervasive hostility.” *Id.* at 1251 n.2

Defendants contend that the Amended Complaint in this case does not remedy the pleading deficiencies the Tenth Circuit identified in *Young I*. Specifically, Defendants contend that Plaintiff’s allegations “simply reiterate that [Plaintiff] was upset by the training, but do not allege objectively severe or pervasive hostility,” describing only “his subjective interpretation of how the EDI training may have impacted his workplace.” [Doc. 35 at 12]. In his Response, Plaintiff states that he “has responded” to the *Young I* decision by alleging facts matching the Tenth Circuit’s “markers” about how his case can proceed. [Doc. 43 at 9–11].

## **2. Plaintiff’s Allegations in this Case**

As mentioned above, severity and pervasiveness are assessed by looking at (1) the frequency and severity of the conduct; (2) whether the conduct was physically

threatening or humiliating or was merely an offensive utterance; and (3) whether the conduct unreasonably interfered with the employee’s work performance. *Lounds*, 812 F.3d at 1222. Mr. Young argues that his Amended Complaint “closely tracks the Tenth Circuit’s guidance” in *Young I*, [Doc. 43 at 13], and his defense of the sufficiency of his allegations is framed around the *Young I* decision, see [*id.* at 10–13].

First, Plaintiff contends that he has “properly pled” an “ongoing, continuing commitment from Mr. Young’s supervisors to mandatory EDI trainings,” see *Young I*, 94 F.4th at 1251 n.2, because he has alleged that “all trainings at the Department of Corrections occurred annually” and that he “expected and knew that EDI training would recur annually, as with . . . other training,” [Doc. 43 at 10 (quoting [Doc. 34 at ¶¶ 65, 95])]. The frequency of the alleged harassment—here, the EDI training—is one of the factors relevant to the pervasiveness determination. *Lounds*, 812 F.3d at 1222. But even crediting Plaintiff’s allegations that all CDOC trainings occurred annually and that he *believed* that the EDI training would occur again at some unidentified point in the future, this does not, in the Court’s view, plausibly allege an “ongoing, continuing commitment from Mr. Young’s supervisors to mandatory EDI trainings,” as contemplated in *Young I*. See 94 F.4th at 1251 n.2. Plaintiff does not allege any specific actions taken by his supervisors that would suggest their “ongoing commitment” to the EDI training.<sup>2</sup> In fact,

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<sup>2</sup> To be clear, the Court does not hold that pleading facts showing an ongoing commitment from Plaintiff’s supervisors (or the other types of allegations mentioned in *Young I*) would automatically be sufficient to state a hostile work environment claim, and the Court does not interpret the *Young I* opinion to hold so, either. See *Young I*, 94 F. 4th at 1251 n.2 (“*Perhaps* an ongoing, continuing commitment from Mr. Young’s supervisors to mandatory EDI trainings with content similar to the one here *may evolve* into a plausible hostile workplace claim. . . . And requiring government employees to either endorse a particular race-based ideological platform or risk losing their jobs *could also evolve* into a plausible claim of pervasive hostility.” (emphasis added)). “[W]hether certain conduct

the Amended Complaint contains *no* specific factual allegations at all about any actions taken by his supervisors with respect to the EDI training. See *generally* [Doc. 34]. And notably, Mr. Young’s speculative allegation that he “expected and knew” that the EDI training would be required again in the future does not provide any insight into his day-to-day work environment during the spring and early summer of 2021—the time he alleges his workplace was hostile. See [*id.* at ¶¶ 8, 103, 106 (Plaintiff alleging that he took the training in March 2021 and resigned in July 2021)].

Based on the Amended Complaint’s allegations, the EDI training—which Plaintiff claims to be the genesis of the alleged harassment, see, e.g., [*id.* at ¶¶ 5, 52, 123–24, 127]—occurred once during Mr. Young’s employment, in March 2021, [*id.* at ¶ 8]. Mr. Young does not allege that the messages contained in the EDI training were conveyed to him in the workplace any time after March 2021. See *generally* [*id.*].

Of course, the frequency of the challenged conduct “is simply one factor in the analysis,” and “no single factor is required.” *Lockard v. Pizza Hut, Inc.*, 162 F.3d 1062, 1072 (10th Cir. 1998) (quoting *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 23 (1993)). And even a single incident, if “extremely serious,” may be sufficient to state a hostile work environment claim. *Duran v. LaFarge N. Am., Inc.*, 855 F. Supp. 2d 1243, 1248 (D. Colo. 2012) (quoting *Faragher v. City of Boca Raton*, 524 U.S. 775, 788 (1998)). But as Plaintiff acknowledges, see [Doc. 43 at 14], the Tenth Circuit has already concluded that “the single training session here is not enough,” without more, to constitute a hostile work environment. *Young I*, 94 F.4th at 1251 n.2. Plaintiff acknowledges that the Court is

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amounts to severe or pervasive harassment depends on the particular circumstances and context in which such behavior takes place.” *Id.* at 1253.

“bound to accept the holding of the Tenth Circuit,” but “preserves for appellate review the issue of whether a single EDI training . . . objectively creates a severely hostile work environment.” [Doc. 43 at 14]. He contends that “the fact that the offensive conduct of the EDI training and its subsequent implementation came from official employer training, rather than remarks by a rogue colleague, makes it more severe” and that “forced adherence to a belief system is much more likely to ‘permeate’ the workplace with ridicule and insult than comments or slurs.” [*Id.* at 14–15].

While the fact that the EDI training allegedly “constituted official acts of” the employer is relevant to the Court’s analysis, *Young I*, 94 F.4th at 1252, Mr. Young does not point the Court to allegations plausibly alleging a severe hostile work environment based on the training alone. “[T]he bar to establish a hostile work environment based on an isolated incident [is] very high.” *Lopez v. Brennan*, No. 2:15-cv-00595-EJF, 2018 WL 4688352, at \*6 (D. Utah Sept. 28, 2018). “[C]ourts have required the conduct to be especially egregious or extreme where only isolated incidents are alleged.” *Morris v. City of Colo. Springs*, 666 F.3d 654, 667 (10th Cir. 2012) (collecting cases in which severity bar was met by single incident, including cases involving sexual assault, rape, and physical assault causing injury). “Most incidents found to meet this standard involve some kind of physical assault.” *Brown*, 708 F. App’x at 522. While some courts have concluded that “the use of an unambiguously racial epithet . . . might well [be] sufficient to establish a hostile work environment,” *Ayissi-Etoh v. Fannie Mae*, 712 F.3d 572, 577 (D.C. Cir. 2013) (per curiam) (quotation omitted) (cited favorably in *Lounds*, 812 F.3d at 1230), it is well established that “a plaintiff cannot demonstrate pervasive harassment by pointing to ‘a few isolated incidents of racial enmity or sporadic racial slurs. Instead, there must be

a steady barrage of opprobrious racial comments,” *Brown*, 708 F. App’x at 522 (quoting *Herrera v. Lufkin Indus., Inc.*, 474 F.3d 675, 680 (10th Cir. 2007)). See, e.g., *id.* at 521–22 (three comments, “while inappropriate and offensive, were not sufficiently pervasive or extreme to support a hostile work environment claim”); *Chavez v. New Mexico*, 397 F.3d 826, 832 (10th Cir. 2005) (“two racially offensive remarks” fell “far short of the ‘steady barrage’ required for a hostile environment claim”); *Juarez v. City & Cnty. of Denver*, No. 23-cv-00409-PAB-NRN, 2024 WL 1156610, at \*11 (D. Colo. Mar. 15, 2024) (dismissing hostile work environment claim where the plaintiff alleged facts about two race-based comments but “describe[d] no other incidents where [his supervisor] or any other co-workers or supervisors made discriminatory comments that [the plaintiff] overheard”); *Federspill v. Denver Pub. Sch.*, No. 17-cv-01480-WJM-STV, 2019 WL 13444880, at \*4 (D. Colo. Jan. 31, 2019) (“three incidents where [the plaintiff’s supervisor] made racial comments to [the plaintiff]” were insufficient to state a hostile work environment claim), *report and recommendation adopted*, 2019 WL 13444881 (D. Colo. Mar. 1, 2019); *Sidlo v. Millercoors, LLC*, 718 F. App’x 718, 728 (10th Cir. 2018) (concluding that “one incident directly connected to national-origin discrimination” was insufficient to establish a severe or pervasive environment at summary judgment).

The objective severity of harassment is evaluated “from the perspective of a reasonable person in the plaintiff’s position, considering all the circumstances.” *Harsco Corp. v. Renner*, 475 F.3d 1179, 1187 (10th Cir. 2007). While Plaintiff takes issue with the messages conveyed in the training, “[t]he mere utterance of a statement which engenders offensive feelings in an employee would not affect the conditions of employment to a sufficiently significant degree to violate Title VII.” *Gross v. Burggraf*

*Constr. Co.*, 53 F.3d 1531, 1537 (10th Cir. 1995) (quotation omitted); see also *Lounds*, 812 F.3d at 1222 (harassment must be both subjectively and objectively severe). Plaintiff has not directed the Court to any allegations raised in this case that were not raised in *Young I* that would change the Tenth Circuit’s determination that the single training was not sufficient, alone, to plausibly allege a hostile work environment. See [Doc. 43 at 14–15]. Accordingly, the Court concludes that Plaintiff has failed to allege facts plausibly establishing an objectively severe hostile work environment. Plaintiff’s remaining arguments focus on pervasiveness, see [*id.* at 7–14], and the Court’s analysis is limited accordingly.

Next, Plaintiff references the Tenth Circuit’s statement that “requiring government employees to either endorse a particular race-based ideological platform or risk losing their jobs could also evolve into a plausible claim of pervasive hostility.” *Young I*, 94 F.4th at 1251 n.2. Plaintiff contends that he “has little difficulty pleading such allegations here” because he alleges that “[e]mployees within the Department of Corrections are expected to live up to their training” while at work; that “[t]raining in the prison context was meant to be taken seriously, and applied”; that his “supervisors repeatedly emphasized the importance of faithfully taking trainings and abiding by those various trainings”; and that he and his co-workers “understood that they were obligated to take the training and adhere to it.” [Doc. 43 at 10–11 (quoting [Doc. 34 at ¶¶ 71–73])]. He asserts that even “[w]ithout more” than these allegations, his “claims can survive.” [*id.* at 11].

The cited allegations, however, lack the factual enhancement required to state a plausible claim. See *Matney*, 80 F.4th at 1144 (an allegation is conclusory if it lacks underlying facts or any factual enhancement). Most of the allegations Plaintiff cites are

entirely general, related to the CDOC's general view of "trainings" as a *whole*. See, e.g., [Doc. 34 at ¶¶ 72–73]. Allegations asserting that CDOC employees were generally expected to take their training seriously and abide by them are insufficient to plausibly allege that Mr. Young and his co-workers were required, as a *condition of their employment*, to endorse any particular belief or ideology *related to the EDI training*. Indeed, there are no specific, well-pleaded factual allegations plausibly establishing that Mr. Young was directed to change his beliefs to mirror the messages conveyed in the EDI training or risk losing his job, or that "his supervisors threatened to punish or otherwise discipline employees who failed to complete or agree with the materials." *Young I*, 94 F.4th at 1251. Plaintiff's allegation that "[t]he trainings created a dangerous atmosphere where a failure to adhere to racism and race-based differential treatment could . . . result in . . . discipline for failure to abide by the training," [Doc. 34 at ¶ 83], is a conclusory assertion unsupported by factual enhancement. Indeed, as mentioned above, there are no allegations that any of Plaintiff's supervisors had *any* conversations with him about the EDI training. See *generally* [*id.*].

Plaintiff's other allegations in support of his compelled-belief theory are similarly devoid of factual support. For example, Plaintiff alleges that "his supervisors and even their supervisors—essentially the highest officials in the Department of Corrections—were insisting that [Plaintiff] review, believe, and live by these trainings, and that his colleagues do the same," [*id.* at ¶ 70], and that he was "instructed that [he] had to comply with the EDI training as a condition of [his] ongoing employment," [*id.* at ¶ 93]. But Plaintiff does not identify who allegedly "insist[ed]" that he needed to "believe[] and live by" the EDI training, who instructed him that conforming his beliefs was a condition of his

employment, or explain how or when those messages were conveyed. See [*id.*]. To the extent Plaintiff relies on a citation to the training transcripts to provide additional context, see [*id.* at ¶ 93], the quoted statement from the training—“As employees of the State of Colorado, it’s good to remember we are here because we’ve made a commitment to serve our community”—does not constitute a well-pleaded factual allegation that Mr. Young and his fellow employees were told that their employment was conditioned on compliance with the EDI training’s message. At bottom, these allegations are simply “naked assertion[s] devoid of further factual enhancement” that “do not ‘raise a right to relief above the speculative level.’” *VDARE Found. v. City of Colo. Springs*, 11 F.4th 1151, 1173 (10th Cir. 2021) (quoting *Iqbal*, 556 U.S. at 678, and *Twombly*, 550 U.S. at 555) (alteration in original).

Next, the *Young I* court observed that Plaintiff had not “plead[ed] sufficient facts showing that he experienced severe or pervasive harassment in the course of his day-to-day job.” *Young I*, 94 F.4th at 1253. Allegations about the CDOC’s post-training workplace environment are relevant to whether Plaintiff sufficiently alleges that the EDI training “unreasonably interfere[d] with [his] work performance” and whether the environment is “of the character that it would be deemed hostile by a reasonable employee under the same or similar circumstances.” *Lounds*, 812 F.3d at 1222 (quotation omitted). Plaintiff argues his Amended Complaint now contains allegations addressing his day-to-day work environment. See [Doc. 43 at 11–12].

Specifically, Plaintiff argues that his Amended Complaint contains allegations that “[h]is colleagues started leveraging the training against him, in order to promote racist beliefs against” him, [*id.* at 11 (citing [Doc. 34 at ¶ 85])], and that he “was subjected to

regular insults by prisoners related to race, and he expected the insults to keep escalating,” [*id.* (citing [Doc. 34 at ¶ 79])]. He also references allegations concerning his own subjective state of mind, e.g., that he “felt isolated, and unable to do exactly what the training insisted that he do—have difficult conversations about race at the workplace,” [*id.* (citing [Doc. 34 at ¶ 76])]; that he “lost confidence in his core purpose as an employee,” [*id.* at 12 (citing [Doc. 34 at ¶ 90])]; that “[h]e knew that his failure to treat people differently based on race would be factored into both his and his colleagues’ quarterly performance reviews, and affect promotions,” [*id.* at 11 (citing [Doc. 34 at ¶ 95])]; and that he “perceived that the training was already affecting personnel decisions within the CDOC,” [*id.*]. He contends that these allegations are sufficient to “respond[] to the Tenth Circuit’s admonitions.” [*Id.*].

As a preliminary matter, Defendants’ arguments are focused on whether the workplace was objectively hostile—not whether Mr. Young subjectively perceived the workplace to be hostile to him. See [Doc. 35 at 10 (“This claim fails because it is unsupported by allegations of objective severe or pervasive hostility.”)]. Allegations about Mr. Young’s subjective feelings about the EDI training, and how he perceived he should act in light of that training, go to whether the EDI training affected *his* work performance—but they provide little insight into the nature of the workplace environment and whether a reasonable person would perceive the workplace as hostile. See, e.g., [Doc. 34 at ¶¶ 76–77, 90, 94]. These allegations do not contain facts alleging that, or detailing how, the EDI training actually impacted his workplace, as contemplated in *Young I*. “[I]t is not enough that a particular plaintiff deems the work environment hostile.” *Lounds*, 812 F.3d at 1222. The Court thus focuses on whether Plaintiff’s allegations plausibly allege a workplace that

the workplace that “would be deemed hostile by a reasonable employee under the same or similar circumstances.” *Id.*

In doing so, the Court’s decision must be based on the allegations in the Amended Complaint—not Plaintiff’s reframing of those allegations in his Response. For example, Mr. Young argues in his Response that “[h]is colleagues started leveraging the training against him, in order to promote racist beliefs against Mr. Young.” [Doc. 43 at 11 (citing [Doc. 34 at ¶ 85])]. This is not what the Amended Complaint alleges. Rather, Plaintiff alleges that he “*considered* some of his colleagues to be especially agreeable with respect to the training, and to use the training as leverage to promote racially discriminatory beliefs in the workplace, by challenging *others* who made innocent comments,” [Doc. 34 at ¶ 85 (emphasis added)]—it does not allege that Plaintiff’s co-workers leveraged the training *against Mr. Young*. Plaintiff cannot add new factual allegations in response to a motion to dismiss. *Sudduth v. Citimortgage, Inc.*, 79 F. Supp. 3d 1193, 1198 n.2 (D. Colo. 2015).

Moreover, even considering the allegation as pleaded in the Amended Complaint, Paragraph 85 is vague, conclusory, and lacks the factual enhancement required by *Twombly* and *Iqbal*. Indeed, Mr. Young provides no factual support for this assertion, such as identifying who these colleagues were, explaining *how* they “use[d] the training as leverage” by “challenging others who made innocent comments,” or how often this occurred. See [Doc. 34 at ¶ 85]. To be sure, there is “no talismanic number of incidents needed to give rise to a hostile discrimination claim,” *Tademy*, 614 F.3d at 1143, and a plaintiff “need not establish precise dates for every insult,” *Nettle v. Cent. Okla. Am. Indian Health Council, Inc.*, 334 F. App’x 914, 921 (10th Cir. 2009). But pleading standards

require *some* factual context beyond conclusory allegations, and a plaintiff cannot plausibly allege that their workplace environment was *permeated* with discriminatory ridicule or harassment without giving any factual context into the frequency or type of alleged harassing behavior. *Matney*, 80 F.4th at 1144; *see also Rowe v. Schulte Hosp. Grp., LLC*, No. 5:23-cv-00326-SLP, 2023 WL 4768705, at \*3 (W.D. Okla. July 26, 2023) (dismissing hostile work environment claim based on “vague” allegations of sexual harassment where the plaintiff “d[id] not identify the content of the[] statements, when they occurred, how often they occurred or any specific individuals to whom they were made”); *Powell v. McDonough*, No. 20-cv-01223-MV-KK, 2023 WL 2743529, at \*4 (D.N.M. Mar. 31, 2023) (dismissing claim where the plaintiff did not allege “any factual detail about the making of th[e offensive] comment, the making of the other derogatory sexual remarks to which the Amended Complaint only generally mentions, the ways in which these comments combined with any other differential treatment that led to her eventual termination, or any other facts that, taken together in their totality, would support a plausible finding or inference of pervasive or severe harassment based on sex”).

Similarly, Plaintiff argues in his Response that that “[h]e was subjected to regular insults by prisoners related to race, and he expected the insults to keep escalating.” [Doc. 43 at 11 (citing [Doc. 34 at ¶ 79])]. The single incident referenced in the Amended Complaint occurred *before* Mr. Young participated in the EDI training. *See* [Doc. 34 at ¶ 79 (“Young’s prison setting even before the trainings was already highly racially charged. On one occasion, a prisoner, an inmate who Young knew to be the leader of a gang, exclaimed ‘So I hear you’re a racist.’”)]. This allegation thus does not provide context into “what [Plaintiff] experienced in the workplace *due to the EDI training.*”

*Young I*, 94 F.4th at 1251 (emphasis added). And Plaintiff’s assertion that he “expected these [comments] to escalate significantly as the training achieved its purposes,” [Doc. 34 at ¶ 79], addresses only how Mr. Young *expected* his workplace environment to change; it does not provide any insight into whether and how the EDI training *actually affected* his workplace. In fact, Mr. Young does not cite any example of a race-based comment directed at him after CDOC introduced the EDI training. *See generally [id.]*.

Setting aside any unsupported, conclusory allegations that need not be taken as true, the Amended Complaint does not establish “what [Plaintiff] experienced in the workplace due to the EDI training—particularly his interactions with supervisors and co-workers.” *Young I*, 94 F.4th at 1251. While Plaintiff alleges that the EDI training “came up in conversations among [his] colleagues at work,” [Doc. 34 at ¶ 71], this cursory assertion provides no insight into Plaintiff’s day-to-day work environment or how it was objectively hostile. Plaintiff still does not allege, for example, specific facts about “his interactions with supervisors and co-workers” related to the training, that “co-workers engaged in specific acts of insult or ridicule aimed at him because of the training,” that he was “singled out by other correctional officers for race-based opprobrium,” that he was “physically confronted by a co-worker because of his objections to the EDI training,” or that there was any “racial animus manifesting itself in Mr. Young’s day-to-day *work environment*.” *Young I*, 94 F.4th at 1252, 1254.<sup>3</sup> In sum, while Plaintiff may have sufficiently alleged that the EDI training interfered with his work performance based on

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<sup>3</sup> The Court does not suggest that these sorts of allegations are necessarily required to state a plausible claim but uses these examples to highlight the lack of allegations describing “what [Plaintiff] experienced in the workplace *due to the EDI training*—particularly his interactions with supervisors and co-workers.” *Young I*, 94 F.4th at 1251 (emphasis added).

his subjective reaction to it, he does not allege sufficient objective facts about his workplace to establish that his workplace “would be deemed hostile by a reasonable employee under the same or similar circumstances.” *Lounds*, 812 F.3d at 1222.

The Court also considers whether the challenged conduct—the EDI training—was physically threatening. *Id.* Plaintiff does not allege or argue that the EDI training was itself physically threatening; instead, he argues that the EDI training *created* a dangerous working environment because it took place in the prison context. [Doc. 43 at 12–13]. In his Amended Complaint, he alleges that prison visitors who needed to be searched on arrival “would often claim they were being searched due to their race and would frequently write complaints” and that “[t]he race-focused ideas from the training made it constantly feel like [Plaintiff] might be written up, with his superiors more likely to credit the complaints due to the EDI concepts.” [Doc. 34 at ¶ 84]. He also alleges that the EDI training made him “hesitant to use force with prisoners” and that “[i]n the last several months of his employment, there were several instances where he needed to use force, but the race-based implications of the training made him second-guess his actions.” [*Id.* at ¶ 87].

The context or setting of a workplace is relevant to the Court’s analysis. See *Oncale v. Sundowner Offshore Servs., Inc.*, 523 U.S. 75, 81 (1998) (the objective inquiry “requires careful consideration of the social context in which particular behavior occurs and is experienced by its target”); see also *Semsroth v. City of Wichita*, 304 F. App’x 707, 726 (10th Cir. 2008) (finding prison setting relevant to severity analysis because the alleged harassing conduct—failing to provide backup to corrections officer plaintiff—could have put the plaintiff in danger). But again, Plaintiff’s allegations go to his own subjective

reaction to the training and how the training allegedly affected his work performance. And even taking these allegations as true—that the EDI training affected how Plaintiff performed his job and that Plaintiff’s hesitancy could have created an unsafe working environment—they are insufficient by themselves to plausibly allege that the workplace was so permeated with discriminatory ridicule and harassment that a reasonable employee would view the workplace as hostile, given the deficiencies addressed above.

**Comparable Cases.** A few comparator cases highlight the insufficient nature of Plaintiff’s allegations here. First, in *De Piero v. Pennsylvania State University*, a professor alleged that he was subjected to a hostile work environment while employed at Penn State based on what the court described as “a series of university-sanctioned professional development meetings and comments from supervisors that addressed racial issues in sweeping, absolute terms.” 711 F. Supp. 3d 410, 415–16 (E.D. Pa. 2024). Specifically, the plaintiff alleged that (1) he was required to attend five conferences or trainings over the span of a year and a half that “ascrib[ed] negative traits to white people or white teachers without exception and as flowing inevitably from their race”; (2) a colleague commented to him that “the resistance to wearing masks” is “more likely to be led by white males”; (3) he received an email “instructing Penn State’s white employees to ‘feel terrible’”; (4) he received “multiple emails urging him to watch a video titled ‘White Teachers Are a Problem,’” and (5) when he complained about this conduct to the associate director of Penn State’s Affirmative Action Office, she told him that there was a “problem with the white race.” *Id.* at 423. The court concluded that “[t]aken together, these allegations plausibly amount to ‘pervasive’ harassment that, at least on a motion to

dismiss, passes muster,” and even expressly distinguished the sufficiency of the plaintiff’s allegations case from Mr. Young’s pleading in *Young I*. See *id.*

Similarly, in *Diemert v. City of Seattle*, another case involving allegations of a hostile work environment, the plaintiff alleged that he was required to attend mandatory race and social justice training and that, at one training, the facilitators stated that “white people are like the devil” and “white people are cannibals.” 689 F. Supp. 3d 956, 960–61 (W.D. Wash. 2023). In addition to that, he alleged that he was asked by a manager, “What could a straight white male possibly offer our department?”; that he was told by another director-level employee that “all white people have white privilege and are racist”; and that when he reported these comments to his supervisor, “she told him he should step down and that he used his white privilege to retain the position.” *Id.* at 960–61. He also alleged that his supervisor “‘chest bumped’ him, got in his face, and told [him] he had white privilege and racist motives.” *Id.* at 961. The court denied the defendant’s attempt to dismiss the claim under Rule 12(b)(6), concluding that because the plaintiff had alleged that his co-workers and supervisors “verbally and physically assaulted him because of his race” and that he was “the target of potentially offensive comments and other abusive actions, also because of his race,” he had “pleaded sufficient factual allegations showing a pattern of race-based harassment of a repeated, routine, or generalized nature that affected his ability to do his job.” *Id.* at 963.

Finally, in *Johnson v. Oregon ex rel. Oregon Department of Environmental Quality*, the plaintiff alleged that her employer requiring trainings that “‘aggressively promoted’ anti-white concepts” by incorporating “negative statements about ‘whiteness’ or ‘white folks,’” such as “endors[ing] the statement ‘[whiteness] is a death sentence.’” No. 3:24-

cv-00279-JR, 2024 WL 5038803, at \*1–2 (D. Or. Dec. 9, 2024). The plaintiff also alleged that her employer “rejected policies of equal employment” and “segregated employees based on race by giving non-white employees one paid hour a week to enter ‘safe spaces’ that were only available for non-white employees.” *Id.* at \*2. Beyond the training, she also alleged that her co-workers made comments “that white employee[s]’ accomplishments result from ‘unearned privilege,’” that “white voices are not worth listening to,” and that “discrimination against white people is legitimate.” *Id.* at \*4. According to that plaintiff, these comments “went on over a period of years, such that ascribing negative characteristics to white people became commonplace at” her workplace. *Id.*

Mr. Young’s allegations are distinguishable from the allegations in *De Piero*, *Diemert*, and *Johnson*. Unlike this case, the plaintiffs in those three cases alleged that, beyond EDI training, they experienced negative race-based comments or actions from their colleagues and/or supervisors in their day-to-day environment over a period of time, which rendered their claims of a pervasive hostile work environment sufficient at the pleading stage. Here, Mr. Young’s well-pleaded allegations remain focused on the training that he found objectionable. But the “single training session,” without any well-pleaded factual allegations detailing how the EDI training affected the workplace or how the workplace was otherwise infected with racial animus, “is not enough” to plausibly allege that Plaintiff’s workplace was “permeated with discriminatory intimidation, ridicule, and insult, that is sufficiently severe or pervasive to alter the conditions of the victim’s employment and create an abusive working environment.” *Young I*, 94 F.4th at 1249, 1251 n.2 (quotation omitted).

For all of these reasons, the Court agrees that Plaintiff has not stated a plausible hostile work environment claim under either Title VII or § 1981. For this reason, the Motion to Dismiss is **GRANTED** with respect to Counts I and II.

## II. Constructive Discharge

“The constructive-discharge doctrine contemplates a situation in which an employer discriminates against an employee to the point such that his working conditions become so intolerable that a reasonable person in the employee’s position would have felt compelled to resign.” *Green v. Brennan*, 578 U.S. 547, 555 (2016) (quotation omitted). “A claim of constructive discharge therefore has two basic elements”: first, the plaintiff must allege “that he was discriminated against by his employer to the point where a reasonable person in his position would have felt compelled to resign,” and second, that he did in fact resign. *Id.* “This standard is objective: the court ‘disregard[s] both the employee’s subjective view of the workplace environment and the employer’s subjective intentions regarding the employee.’” *Sampson v. Kane Is Able, Inc.*, 812 F. App’x 746, 750 (10th Cir. 2020) (quoting *Baca v. Sklar*, 398 F.3d 1210, 1216 (10th Cir. 2005) (alteration in original)).

Defendants move to dismiss Plaintiff’s constructive discharge claim, arguing that because he has not sufficiently alleged a hostile work environment, his constructive discharge claim also fails. [Doc. 35 at 15–16]. Though Plaintiff defends the sufficiency of the allegations supporting his constructive discharge claim, Plaintiff does not contest Defendants’ assertion that the failure to allege a hostile work environment necessitates dismissal of a constructive discharge claim. See [Doc. 43 at 15–17].

The Tenth Circuit has instructed that when a plaintiff “fail[s] to allege facts sufficient to establish a hostile work environment, he necessarily has failed to state a constructive discharge claim based on that environment.” *Brown*, 708 F. App’x at 523. A number of courts have dismissed constructive discharge claims after concluding that the plaintiff failed to adequately allege a hostile work environment. See *Marks v. Sessions*, No. 16-cv-02106-WYD-MEH, 2017 WL 4278498, at \*6 (D. Colo. Sept. 27, 2017); *Hunt v. Cent. Consol. Sch. Dist.*, 951 F. Supp. 2d 1136, 1216 (D.N.M. 2013); *Brent v. Nike, Inc.*, No. 2:19-cv-00749-RJS, 2021 WL 861276, at \*6 (D. Utah Feb. 12, 2021), *report and recommendation adopted*, 2021 WL 858361 (D. Utah Mar. 8, 2021); *Gomez v. Okmulgee Cnty. Crim. Just. Auth.*, No. 6:22-cv-00322-RAW-DES, 2023 WL 4999861, at \*6 (E.D. Okla. Aug. 4, 2023); *Pfannenstiel v. Kansas*, No. 5:21-cv-04006-HLT, 2023 WL 4623848, at \*16 (D. Kan. July 19, 2023), *aff’d*, No. 23-3145, 2024 WL 3534142 (10th Cir. July 25, 2024).

Following this authority, the Court concludes that because Mr. Young has not stated a hostile work environment claim, he similarly has not stated a claim for constructive discharge. Accordingly, the Motion to Dismiss is **GRANTED** as to Count III.

### CONCLUSION

For the reasons set forth herein, **IT IS ORDERED** that:

- (1) Defendants’ Motion to Dismiss [Doc. 35] is **GRANTED**;
- (2) Plaintiff’s claims are **DISMISSED with prejudice** under Rule 12(b)(6);<sup>4</sup>

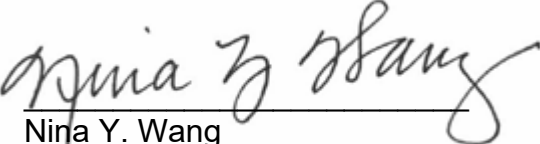
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<sup>4</sup> A dismissal with prejudice is appropriate where a complaint fails to state a claim under Rule 12(b)(6) and granting leave to amend would be futile.” *Brereton v. Bountiful City Corp.*, 434 F.3d 1213, 1219 (10th Cir. 2006). Because this is Plaintiff’s second attempt to state a claim under Rule 12(b)(6), and because his claims are still deficient despite the

- (3) Defendants are entitled to their costs under Local Rule 54.1 and Federal Rule 54; and
- (4) The Clerk of Court is **DIRECTED to TERMINATE** the case.<sup>5</sup>

DATED: January 27, 2025

BY THE COURT:

  
\_\_\_\_\_  
Nina Y. Wang  
United States District Judge

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Tenth Circuit's guidance in *Young I* and despite dozens of additional allegations, the Court concludes that dismissal with prejudice is appropriate.

<sup>5</sup> "Absent a request to amend, a district court may dismiss the action rather than sua sponte granting leave to amend." *Young I*, 94 F.4th at 1256. Plaintiff has not requested leave to amend his Amended Complaint. Accordingly, the Court declines to sua sponte grant unrequested relief.