

No. 25-1068

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

Joshua F. Young,

Plaintiff-Appellant,

v.

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

Defendants-Appellees.

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

REPLY BRIEF OF PLAINTIFF-APPELLANT JOSHUA F. YOUNG

Oral Argument Requested

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Introduction

Respectfully, Appellees' Answer brief is essentially a motion for summary judgment. They ask the Court to rely on record evidence to contradict the well-pleaded allegations in the complaint, repeatedly ask the Court to consider extraneous details unrelated to Young's allegations, beg the Court to resolve disputed questions of fact, and fast-forward to the conclusion that Young would lose his claims if they went to a jury. *See, e.g.*, Answer Br. at 36 (arguing that the use of a racial slur to insult Caucasians was "used only to depict the historical and personal experience of someone being racially stereotyped with that slur"). This is not how motions to dismiss work. *See Jones v. Woodrow*, No. 24-1313, 2025 WL 1078249, *2 (10th Cir. Apr. 10, 2025) (Matheson, J., joined by Tymkovich, J.) ("When reviewing a Rule 12(b)(6) dismissal, we accept a complaint's well-pleaded allegations as true, viewing all reasonable inferences in favor of the nonmoving party, and liberally construe the pleadings.") (emphasis added).¹

Along the way, Appellees have opted to ignore three entire sections of Young's Opening Brief:

- The District Court erred by under-weighting the differential treatment applied to non-Caucasians within CDOC. (Opening Br. at 42-44).

¹ As described below, the District Court expressly declined to "liberally construe" the pleadings, announcing that the standard did not apply here.

- The District Court erred by under-weighting the fact that Young complained about the racially hostile environment, but CDOC ignored the complaint. (Opening Br. at 46-47).
- The District Court erred by under-weighting the threat to Young’s safety. (Opening Br. at 47-50).

This was an ill-advised strategy, because arguments not raised in an Answer Brief are generally waived or forfeited. *See Frasier v. Evans*, 992 F.3d 1003, 1033 (10th Cir. 2021) (reversing District Court’s denial of qualified immunity where Appellee failed to respond to law enforcement officers’ legal arguments); *id.* at 1033 (“[T]his waiver in itself sounds the death knell for Mr. Frasier’s challenge to the officers’ assertion of qualified immunity.”). The Court ought to reverse on this basis alone.

But more broadly, as set forth in Young’s Opening Brief, this Court in *Young I* articulated exactly how plaintiffs could plead a cause of action for hostile work environment. Young has met those markers.

I. The EDI Materials Are Deeply Offensive.

a. The Glossary Was Both Part of the EDI Training and Mandatory.

Seemingly recognizing that the glossary at ER Vol. 3, at 0761-0775 is a problem for them, the government tries a novel strategy—arguing that it doesn’t exist. But that’s wrong.

First, Young pleads that the glossary was at the very beginning of the training, even before the transcribed Modules attached to the complaint began. The First Amended Complaint (“FAC”) is unambiguous on this point, alleging that “Young’s EDI training began with a review of a glossary of terms assembled by CDPHE’s Health Equity Office.” [ER Vol. 3 at 0548 (emphasis added).] That’s consistent with the whole point of having a glossary—which is to define relevant terms in a manner that will be used by a reader. [*Id.* at 549 (glossary was compiled to “provide common language”)]. Under Appellees’ argument, the government painstakingly prepared a 15-page glossary with hundreds of terms in it [ER Vol. 3 at 0761-0775], described how it would lead to common usage of terms, but then opted to nevertheless leave it on the cutting room floor for the very EDI training that it was imposing. Hardly.

But the Court’s task is not to resolve this debate; it is to assume the truth of Young’s allegations and determine whether they state a claim. *See Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2006) (court must proceed “on the assumption that all the allegations in the complaint are true (even if doubtful in fact).”); *Clinton v. Security Benefit Life Insurance Company*, 63 F.4th 1264, 1276 (10th Cir. 2023) (“There is a low bar for surviving a motion to dismiss, and a well-pleaded complaint may proceed even if it strikes a savvy judge that actual proof of those facts is improbable, and that a recovery is very remote and unlikely.”) (cleaned up).

Here, the strategic importance of the Glossary is plain: it frames the entire program. It establishes the definitions that give the subsequent modules their discriminatory meaning, and tells non-Caucasian CDOC employees that their Caucasian colleagues invented race in order to oppress them. By defining “race” as a tool of white oppression, the Glossary ensured that any subsequent interaction within the prison would be viewed through the required “equity lens” that casts a Caucasian employee as an oppressor. How employees used the various training materials is a classic question of fact that cannot be resolved before discovery. Yet undaunted, Appellees ask this Court to affirm what a court must never do on a 12(b)(6) motion: weigh competing versions of the facts.

Even if the Court prefers to wade into this dispute, it need not take Young’s word for it. The government has twice produced the glossary in its initial disclosures, offering the document as relevant to its defenses in the case:

The Defendants may use the following documents to support their defense:

...

6. Materials related to the EDI Training, including the following:
 - a. Glossary of Terms, bates-labeled 000245 through 000259;
 - b. Staff EDI Module Description, bates-labeled 000260;

- c. Embedded video links, images, and references from EDI training, bates-labeled 000261 through 000367; and
- d. EDI training modules 1 through 4, bates-labeled 000368 through 000371.

[ER Vol. 4 at 0904-05] (*Young I* initial disclosures) (emphasis added). It would be strange for Appellees to use a document “to support their defense” that they now contend has nothing to do with the case. And not for nothing, Appellees never made the argument below that Ms. Hunsaker Ryan—who is the Director of the CDHPE, which prepared the glossary—ought to be specifically dismissed because the glossary wasn’t part of Young’s training. That alone speaks volumes. [*Accord* ER Vol. 4 at 838 (“CDPHE’s intent in creating the glossary is to ‘advance equity.’”).

The FAC specifically pleads that the EDI training “began with a review of the key terminology included in the CDOC’s ‘Glossary of Equity Terms.’” [ER Vol. 3 at 0548]. It alleges that this Glossary provided the foundational “common language” [ER Vo. 3 at 0549] that, for instance, defined “Race” as a power construct “created by white people” to maintain their advantage [ER Vol. 3 at 0551] and defined “White Supremacy” as the pervasive system all “white peoples” perpetuate [ER Vol. 3 at 0552–53.] Just as if such racist commentary were offered about African-Americans or Hispanics, it is no surprise that these statements caused the CDOC workplace to suffer dramatically and swiftly.

b. The Other Parts of the Training Demeaned and Stigmatized Caucasians.

CDOC wants to play a cherry-picking game, offering the Court some of the milder statements from the EDI training modules, so as to minimize the import of the rest of it. But employers are responsible for everything they say, or they could strategically avoid Title VII liability by making a bunch of milquetoast comments before driving home the deeply racist ones. That trick won't work here. These modules are not benign seminars about the importance of understanding one another; they are prescriptive guides for race-based conduct within CDOC.

The training explicitly commands employees to engage in differential treatment based on race and identity. The directive that individuals from “marginalized” groups must be given the opportunity to “speak first” is a race-based rule of order. [ER Vol. 3 at 0557.] The instruction to use a Bystander Intervention model based on racial and identity-based “power” dynamics is a command to inject race into every workplace interaction. [ER Vol. 3 at 0557.] Most damningly, the state’s “Equity Continuum” provides an official definition of success that is expressly contingent on abandoning equal treatment, stating that “[s]uccess is often defined by treating groups/people differently based on historic injustices[.]” [ER Vol. 3 at 0559.] These mandates required employees to categorize their colleagues by race, and to afford them differential treatment based on that categorization. This is the very definition of race-based discrimination. It is precisely the kind of

employer-mandated, race-conscious conduct that this Court correctly identified as “troubling” in *Young I*, 94 F.4th at 1253. On the basis of their own exhibits, Appellees have admitted to mandating a discriminatory code of conduct sufficient to state a claim.

To be clear, DEI practitioners often conceal their discriminatory practices by marketing them as “inclusionary”; in reality, however, they are anything but. *Cf.* Executive Order 14151, *Ending Radical And Wasteful Government DEI Programs And Preferencing* (Jan. 20, 2025) (noting that DEI is used as a disguise for “illegal and immoral discriminatory programs”)²; Equal Employment Opportunity Commission, *What to Do if You Experience Discrimination Related to DEI at Work*.³

II. The EDI Materials Affected CDOC—That Was the Point.

a. The Purpose of the Training Was to Change the Workplace.

CDOC would like the Court to believe that its EDI training (1) was perfectly ordinary and inoffensive, but also just a one-time, isolated occurrence; (2) were promulgated to “eradicate race discrimination,” [ER Vol. 3 at 838 (emphasis added)], but also that employees were perfectly free to take or leave its admonitions; (3) directly instructed employees to adopt personal habits about treating colleagues

² <https://www.whitehouse.gov/presidential-actions/2025/01/ending-radical-and-wasteful-government-dei-programs-and-preferencing/>

³ https://www.eeoc.gov/sites/default/files/2025-03/One_Pagers_2025-2_%28002%29_508.pdf (last visited, August 11, 2025).

differently based on race, but actually promoted equality; and (4) abruptly pushed out a rising superstar in the CDOC prison system in a matter of four months, but also had a minimal effect on the workplace. These logical twists would make a pretzel blush.

The truth is that the EDI training made CDOC a hostile work environment, because that's what Appellees wanted. As Young has repeatedly pled, workplace training within CDOC was always rigorous, mandatory, and imperative. And because the EDI training came from above, every harassing element was magnified. *Cf. Burlington Industries, Inc. v. Ellerth*, 524 U.S. 742, 763 (1998) (“[A] supervisor’s power and authority invests his or her harassing conduct with a particular threatening character.”); *Ames*, 605 U.S. at 319 n.3 (Thomas, J., concurring) (“[A] number of this Nation’s largest and most prestigious employers have overtly discriminated against those they deem members of so-called majority groups. American employers have long been ‘obsessed’ with ‘diversity, equity, and inclusion’ initiatives and affirmative action plans.”); *Howley v. Town of Stratford*, 217 F.3d 141 (2d Cir. 2000) (finding a hostile work environment based on sex where “[t]he [derogatory] comments were made in front of a large group...and some of the comments were connected to [the plaintiff’s] ability to perform her job.”).

The fact that the remarks were not just from supervisors, but the employer itself, ought to be dispositive. *See* Department of Justice, *Guidance For Recipients*

of Federal Funding, July 29, 2025⁴ (hereinafter AG Guidance) (DEI training “[c]reates an objectively hostile environment through severe or pervasive use of presentations, videos, and other workplace training materials that single out, demean, or stereotype individuals based on protected characteristics.”). As Young pled below, the EDI Training was rolled out in early 2021, and his compliance with the training was going to be incorporated into his performance review—quarterly, not merely annually—that very year. [ER Vol. 3, at 573 (“Young was assured that the EDI training and how he incorporated its principles would be part of his performance review. Performance was graded on a 1-3 scale, and the training was expected to be reflected in communications with inmates and staff.”).] There is no “take it or leave it” training in CDOC—the very nature of the setting, a prison system where orders must be followed up and down the hierarchy, belies any such assertion.

b. The DOJ’s Guidance Confirms That CDOC’s Training Creates an Objectively Hostile Environment.

The very federal agencies charged with enforcing Title VII have spoken in this context. The DOJ has issued explicit guidance clarifying that federal law prohibits recipients of federal funding from engaging in the very conduct that CDOC embraced. *See* AG Guidance. Appellees would have this Court treat this expert determination as meaningless. But under the Supreme Court’s enduring precedent

⁴ <https://www.justice.gov/ag/media/1409486/dl?inline> (last accessed Aug. 27, 2025).

in *Skidmore v. Swift & Co.*, 323 U.S. 134 (1944), it is persuasive confirmation that CDOC’s policy is exactly what it appears to be: illegal, employer-mandated racial harassment.

Under *Skidmore*, courts need not interpret complex federal statutes in a vacuum. The Supreme Court recognized that agencies tasked by Congress with the day-to-day administration of these statutes accumulate unique and invaluable expertise. While their interpretations are not entitled to the force of law, they represent a “body of experience and informed judgment to which courts and litigants may properly resort for guidance.” *Skidmore*, 323 U.S. at 140. This deference is a pragmatic acknowledgment that the DOJ and the EEOC are on the front lines of applying Title VII to the evolving realities of the American workplace. Their judgment, particularly when expressed in a formal memorandum from the Attorney General to all federal agencies, is deeply informed and highly persuasive.

The Attorney General’s recent guidance is a precise diagnosis of the maladies described in Young’s Complaint. It warns that “the use of terms such as ‘DEI,’ ‘Equity,’ or other euphemistic terms does not excuse unlawful discrimination.” *AG Guidance* at 2. It then identifies as an example of an “Unlawful DEI Training Program” one that “promote[s] discrimination or hostile environments.” *Id.* at 7. Specifically, the guidance condemns trainings that include “statements stereotyping individuals based on protected characteristics such as ‘all white people are inherently

privileged,” noting that such trainings “may violate Title VI or Title VII if they create a hostile environment.” *Id.* at 8.

The guidance provides a clear, three-part test for when a training program crosses the line: it must single out, demean, or stereotype individuals based on a protected characteristic. CDOC’s EDI training is a textbook example, satisfying not just one, but all three conditions.

First, the training singles out Caucasian employees for unique condemnation. The very definition of “Race” that served as the mandatory linguistic foundation for the entire program was an indictment of a single racial group. It defined race as a construct “created and used to justify social and economic oppression of people of color by white people.” [ER Vol. 3 at 0551.] This is not a neutral, academic definition; it is an accusation of historical malice. The training materials did not stop there. They drilled down to the individual level, instructing Young that he personally perpetuates “white supremacy,” that he is “not the exception to white racism,” and that his very identity—“whiteness”—is responsible for oppressing all people of color. [ER Vol. 3 at 0552–53.] This is the essence of singling someone out: he was branded with a mark of collective, race-based guilt.

Second, the training was calculated to demean and change the workplace. Forcing an employee to absorb the message that the color of their skin makes them an agent of oppression is the apex of degradation. The EDI training was intended to

induce shame and guilt, pathologizing Young’s successful rise with CDOC—having already been promoted twice in four years—as the unearned fruit of privilege, and his very self-esteem as a product of his refusal to acknowledge his own oppressive nature. The training’s most insidious feature was its built-in defense mechanism against dissent: the concept of “White Fragility.” [ER Vol. 3 at 0552.] This intellectually dishonest tool preemptively labeled any objection, discomfort, or rational disagreement from a Caucasian employee not as a valid viewpoint, but as a psychological failing—a symptom of the very racism the training sought to identify. It is a classic Kafkaesque trap that functions to silence and humiliate, creating a workplace where an employee is forced to choose between assenting to his own denigration or being officially branded a fragile racist.

Third, the program is built upon a foundation of crude and sweeping racial stereotypes. It purports to know the inner thoughts of all Caucasian people, alleging that they inwardly harbor racist slurs, and are deluded about the basis of their own success. [ER Vol. 3 at 0561.] This is the very essence of stereotyping that Title VII was enacted to combat: treating an employee not as an individual, but as a fungible representative of a racial group, saddled with a host of immutable and negative traits.

Appellees’ only retort is to plead good intentions, insisting that the “clear purpose of the training was to advance equity.” Ans. Br. 9. This is both factually dubious and legally irrelevant. An employer cannot escape Title VII liability for

mandating a demeaning, stereotypical, and racially hostile policy through spin. The expert judgments of the Department of Justice and EEOC, which are entitled to significant weight under *Skidmore*, confirm what is already plain from the face of the complaint: CDOC's policy is a textbook example of employer-created harassment.

c. *Ames* Confirms the Viability of Anti-Caucasian Title VII Claims.

The Supreme Court's decision in *Ames* further supports Young's claims. There, a unanimous Court, led by Justice Jackson, wrote that "[a]s a textual matter, Title VII's disparate-treatment provision draws no distinctions between majority-group plaintiffs and minority-group plaintiffs." *Ames v. Ohio Dep't of Youth Svcs.*, 605 U.S. 303, 309 (2025); *see id.* at 310 ("Congress left no room for courts to impose special requirements on majority-group plaintiffs alone.").

Notably, in *Young I*, the District Court recognized the then-vitality of the "background circumstances" test, and wrote that it was important to put the degrading insults to Young in their appropriate historical context. *See Young v. Colorado Department of Corrections*, No. 22-cv-00145-NYW-KLM, 2023 WL 1437894 (D. Colo. Feb. 1, 2023), at *5 (describing "the continued viability of [the background circumstances] standard" later rejected in *Ames*); *id.* at *9 (severity of race-based insults changes based on the "historical context" of the plaintiff's race, even on a 12(b)(6) motion). Thankfully, *Ames* clarifies that this logic is out the

window. The federal courts may not treat Young or his claims any differently because he is Caucasian.

Appellees’ briefing before this Court is a thinly veiled attempt to resurrect the ghost of this discarded doctrine. Their central claim—that the barrage of racial stereotyping was not truly hostile because it was “plainly employed to illustrate and educate about historical racism,” (Ans. Br. 24–25)—is nothing more than the “historical context” argument in a new disguise. It is an implicit request to do exactly what *Ames* forbids: to judge the severity of employer-mandated racial harassment differently based on the race of the target. They ask this Court to conclude that official, state-sponsored messaging that “white people” created race to oppress others, and that Caucasians directly and personally perpetuate “White Supremacy” is somehow less hostile because of his race. This cannot be the law.

The proper inquiry focuses on the objective effect of the employer’s conduct, not its professed intent or the race of the victim. Indeed, courts have long recognized that racially charged language embedded in official employer materials is a critical component of a hostile work environment. *See, e.g., Grant v. Metro. Gov. of Nashville and Davidson Cnty.*, No. 3:04-0630, 2009 WL 813470, at *1 (M.D. Tenn. Mar. 27, 2009) (finding that a training manual advising employees “how to handle the hot head gorilla” customer was part of a hostile work environment for African Americans). The command of *Ames* is simple and absolute: the question is whether

a reasonable person in the employee's position would find the conduct hostile and abusive, and that question must be answered without placing a judicial thumb on the scale.

III. Appellees Err by Giving Short Shrift to Young's Independent Arguments as to Why Reversal Is Warranted.

a. The District Court's Express Refusal to Properly Construe the Complaint Is Reversible Error.

Appellees never contest that the District Court pointedly announced that it would not be liberally construing Young's allegations. While Appellees try to massage the relevant language, there is no reconciling that announcement with binding Tenth Circuit case law. Indeed, it is rare to see such a stark contrast.

In a footnote that single-handedly undermines its entire analysis, the District Court declared: "Because Plaintiff is represented by counsel, the Court does not liberally construe his pleadings." [ER 1008 Vol. 4 at n.1.] This is a direct, unambiguous repudiation of the law of this Circuit, and the principles of federal pleading.

The duty to construe a plaintiff's allegations liberally at the pleading stage is not a discretionary judicial grace afforded only to the unrepresented. It is a mandatory command rooted in the core philosophy of notice pleading. This Court's precedent is unequivocal and unwavering. "In reviewing a Rule 12(b)(6) dismissal, we must accept all the well-pleaded allegations of the complaint as true and construe

them in the light most favorable to the plaintiff.” *Lucas v. Turn Key Health Clinics, LLC*, 58 F.4th 1127, 1136 (10th Cir. 2023) (emphasis added);⁵ *see also Beacon Theatres, Inc. v. Westover*, 359 U.S. 500, 506 (1959) (“This liberal construction of a pleading is in line with Rule 8 of the Federal Rules of Civil Procedure.”). This rule applies to every complaint, irrespective of who drafted it. The rule serves a vital purpose: it ensures that claims are tested on their allegations, not defeated by pleading technicalities, and prevents the judiciary from terminating litigation before a plaintiff has any chance to substantiate their allegations. That is precisely what occurred below.

Appellees’ Answer Brief is utterly silent on this point. They offer no argument, no justification, and no contrary authority to excuse the District Court’s express departure from well-settled law.

This is not a harmless error. It is a structural one. A district court’s standard of review is the lens through which it views the entire case. By choosing the wrong lens—a harsher, defense-friendly one—the District Court distorted everything it saw. Its refusal to construe the allegations liberally necessarily skewed its interpretation of every critical allegation: the meaning of the word “mandatory,” the objective nature of the safety risks, the severity of the racial labeling, the

⁵ Notably, this case is subsequent to any of the related cases cited by the District Court.

pervasiveness of the policy, and its concrete effect on the workplace. Because the error is one of law that infects the entire analytical framework of the decision, the appropriate remedy is to vacate the judgment and remand for a new analysis conducted under the correct legal standard.

And lest there be any doubt, this legal error affected the District Court's analysis. Just two of many examples are offered here:

First, the District Court improperly minimized the scope of the harassing conduct by refusing to draw the reasonable inference that the officially recommended "Other Tools & Resources" were part of the hostile environment. It dismissed these materials as optional and never actually engages with the materials in its analysis. [ER Vol. 4 at 1004.] But the FAC alleges that Young, a rising star at CDOC who had been promoted twice in four years, "felt pressure to review these materials" because his employer emphatically encouraged him to do so as part of his continued "journey" to "advanc[e] to new heights." [ER Vol. 3 at 0560-0561.] A court applying the correct, standard would hold that materials that an employer officially recommends to ambitious employees are part of the conditions of employment. By refusing to do so, and instead adopting the narrowest possible reading of the facts, the court revealed its abandonment of the liberal construction standard.

Second, the District Court incorrectly concluded that Young failed to allege a pervasive impact on the workplace atmosphere. The court dismissed the claim by reasoning that even though Young alleged the training “‘came up in conversations among [his] colleagues at work,’... this cursory assertion provides no insight into Plaintiff’s day-to-day work environment or how it was objectively hostile.” [ER Vol. 4 at 1023.] But the FAC explicitly alleges that the material from the EDI training was “‘expected to be used every day at work” [ER Vol 3. at 0547] (emphasis added), that compliance would be factored into quarterly performance reviews used for promotions [ER Vol. 3 at 0573], and that the training fostered a pervasively hostile atmosphere by officially branding Caucasian officers as an oppressive “dominant group” [ER Vol. 3 at 0556] while forcing Young to “second-guess his actions, leading to an unsafe working environment” [ER Vol. 3 at 0572]; and that the training commanded supervisors to alter daily workplace interactions by instructing them to “invite women and members of historically marginalized groups to speak first” [ER Vol. 3 at 0557], while simultaneously making it “significantly harder for Young to do his assigned job” of performing critical security searches [ER Vol. 3 at 0571]. Properly construed, these allegations, among many others, paint a clear picture of a pervasively altered work environment. By demanding a detailed accounting of specific conversations at the pleading stage, the court improperly held Young to a

heightened standard, while ignoring the powerful and reasonable inferences that flow directly from his allegations.

b. The District Court Under-Weighed Numerous Allegations Giving Rise to Severity and Pervasiveness.

When viewed through the proper legal lens of Rule 12(b)(6), the FAC alleges a hostile work environment that was objectively severe in its content and inherently pervasive in its design. Appellees’ arguments to the contrary are built on a deliberate minimization of the life-and-death realities of a prison, and a mischaracterization of an official, systemic policy as a handful of harmless, isolated comments.

i. The Training Created Objective, Severe Harm by Compromising Officer Safety in a Prison Environment.

Appellees’ attempt to dismiss the alleged safety risk as a mere “subjective reaction” or “personal hesitancy” (Ans. Br. 49–50) is their most dangerous fiction. It reflects a profound disregard for the objective reality of a corrections officer’s work, and a misunderstanding of the objective standard that governs hostile work environment claims.

The standard is whether a *reasonable person* in the plaintiff’s position would find the environment hostile or abusive. *Harris*, 510 U.S. at 21. For a corrections officer, a “reasonable person” analysis must account for the unique context where authority is not about status, but about survival. Conduct that is merely annoying in an office can be lethal in a prison. As the Second Circuit recognized in *Dawson v.*

County of Westchester, any policy that could “compromise [an officer’s] capacity to command respect and obtain compliance” is a fundamental and objectively severe alteration of the work environment. 373 F.3d 265, 273 (2d Cir. 2004). The *Dawson* court understood that in a prison, an officer’s authority is “a crucial tool in maintaining safety for all.” *Id.*

The FAC alleges exactly this type of compromise. CDOC’s policy was not just offensive; it was an operational directive that rewired the dynamics of the prison in a dangerous way. The complaint alleges that the policy taught that Caucasian officers are presumptively biased and that their actions should be viewed with suspicion, predisposing supervisors to credit a race-based grievance from an inmate over an officer’s report. [ER Vol 3 at 0571.]

The complaint provides several concrete examples of this policy in action:

- Young was terrified—as any reasonable CDOC employee would be—of racism allegations made by prison visitors; Young knew, based on the need to comply with the EDI training, that such complaints would be credited and taken seriously, which made it harder to stop contraband from being smuggled into the prison. [ER Vol. 3, at 571.]
- Young personally saw a corrections officer successfully get his discipline revoked by claiming race discrimination—even when a Lieutenant and a Sergeant imposed that discipline jointly. [ER Vol. 3

at 0571 (“The officer was reinstated, lending credence to the idea that the training content could absolutely influence personnel decisions.”).]

- Young second-guessed his own assessment of the ability to use force in “several instances where he needed to use force.” [ER Vol. 3, at 571-72 (emphasis added).] By itself, this led to “an unsafe working environment” not just for Young but for his colleagues. [*Id.* at 572.]
- The effect of the EDI training was to destroy morale for Young—as it objectively would for any employee. CDOC was no longer focused on rehabilitating prisoners, which was previously a core part of its mission. Instead, it was dedicated to creating workplace strife by introducing race-based decision-making in a dangerous environment. And the future was bleak for Caucasian employees like Young. Getting promoted meant obeying and adopting discriminatory beliefs and techniques. [*Id.* at 571-73.]

Imagine any officer confronting a tense situation that requires a split-second decision on the use of force. The pre-EDI calculus is based on training, experience, and security protocols. The post-EDI calculus is corrupted by new, paralyzing variables: “If I use force against this non-Caucasian inmate, will I be investigated? Will my supervisors, steeped in this new ideology, presume I am a racist? Could I lose my job?” That moment of hesitation, bred by an official state policy, is

objectively harmful. [ER Vol. 3, at 571 (superiors more likely to officially write up employees based on race-based ideas from the training).] It is a direct and foreseeable threat to the safety of the officer, other staff, and the inmate population. Appellees would have this Court believe that this threat to life and limb is merely a subjective annoyance. It is not. It is a fundamental, hostile, objective, and dangerous change to the job.

ii. An Official Policy Designed for Daily Implementation is Inherently Pervasive.

Appellees' argument that the EDI training was an "isolated incident" collapses under the weight of their own stated intentions. Pervasiveness is not merely a function of frequency; it is a measure of the harassment's reach and constancy. Harassment is pervasive when it saturates the workplace, becoming an inescapable atmospheric condition.

An official, top-down, employer-mandated policy is qualitatively different from the episodic harassment of coworkers. As argued by the *amici* States, when the hostile ideology is "baked into a mandatory, department-wide training," its effects are inherently pervasive. (Br. of *Amici Curiae* Montana et al. 14). This was not a stray remark whispered in a hallway; it was a new rule of engagement broadcast from the highest levels of the organization. CDOC's own language confirms its goal was maximum saturation: the policy was to be "*integrated into our routine decision-making processes.*" [ER Vol. 3 at 0697.] It is the height of disingenuousness for

CDOC to now claim the policy was not pervasive when pervasiveness was its explicit, stated goal.

Moreover, by linking EDI compliance with performance reviews [ER Vol. 3 at 0573], CDOC ensured that the policy’s coercive pressure would be constant. The training was not the end of the harassment; it was the beginning. It established a new standard against which every employee would be continuously judged. Every official action, every report, every day on the job was now lived under the shadow of this ideological metric. This creates a pervasive environment of coercion that alters the terms of employment every single day.

iii. Employer-mandated Racial Stereotyping Constitutes Severe Harassment.

The EDI policy was not just pervasive; its content was severely hostile, and its source—the employer itself—magnifies that severity exponentially.

This case is governed by the “official act” doctrine that this Court recognized in *Young I*. 94 F.4th at 1253. A comment from a peer can be ignored; a command from an employer carries the full weight of its authority to hire, fire, and discipline. When the State of Colorado, as an employer, officially labels a class of its employees as racist oppressors, the act is severe. The training forced Young to sit and be taught that his race makes him an agent of “White Supremacy” and a beneficiary of a system created by “white people” for oppression. [ER Vol. 3 at 0551–53.] This Court has repeatedly recognized that accusations of racism are “degrading and

humiliating.” *Lounds*, 812 F.3d at 1224. To have those accusations leveled by one’s own employer as a matter of official policy is the apex of workplace degradation.

Appellees’ claim that belief was not compelled is belied by the training itself. The program came with its own thought-terminating cliché to enforce conformity: “White Fragility.” [ER Vol. 3 at 0552.] This concept functions as a perfect circular argument from which there is no escape. Any disagreement or questioning from a Caucasian employee is not treated as a rational response, but as a symptom of the employee’s own ingrained racism. To deny the charge is to prove it. This tactic created a coercive environment where the only safe path was to agree or remain silent. This compelled compliance, under threat of being professionally pathologized, is a severe condition of employment, and a stark departure from previous working conditions.

The FAC provides precisely what *Young I* required: concrete allegations showing the “racial animus manifesting itself” in the workplace. 94 F.4th at 1254. These are the predictable and intended outputs of the EDI system. The complaint alleges that a supervisor’s legitimate disciplinary decision was reversed by superiors solely because of a grievance that invoked the new racial ideology. [ER Vol. 3 at 0571.] It alleges that colleagues began to “leverage[.]” the training’s concepts to lodge false accusations of racism against their Caucasian peers. (ER Vol. 3 at 0574.)

These are not mere anecdotes. They are evidence of the policy’s intended effect. The EDI training forced employees to re-evaluate workplace conduct through a race-based lens, and that is exactly what happened. It poisoned workplace interactions and directly altered personnel outcomes, creating a direct causal link between the discriminatory policy and the hostile environment it produced.

c. The District Court Compounded Its Error By Failing to Draw All Reasonable Inferences in Young’s Favor.

Hand-in-hand with its refusal to construe the allegations liberally, the District Court consistently failed in its concurrent duty to draw all *reasonable inferences* in Young’s favor. *See TAL v. Hogan*, 453 F.3d 1244, 1252 (10th Cir. 2006). At every dispositive juncture, the court chose the inference that favored CDOC, effectively stepping into the role of a fact-finder weighing competing narratives.

First, and most fundamentally, the court failed to draw the eminently reasonable inference that in a hierarchical organization like CDOC, a “mandatory” training is intended to be implemented. The FAC alleges CDOC demands strict adherence to the chain of command. [ER Vol. 3 at 0568–69.] In such a culture, obedience is the default, and an order is presumed to be an order to act. Yet the District Court inverted this commonsense inference. It gave dispositive weight to CDOC’s generic disclaimers—tepid suggestions that employees need not “personally agree” with the ideology—while ignoring CDOC’s specific, forceful, and repeated commands to “*operationalize*” the EDI framework and “*integrate*”

racial equity into our routine decision-making processes.” [ER Vol. 3 at 0555, 0697.] These are not words of suggestion; they are words of implementation. To “operationalize” something is to make it a functional part of an operational system. A reasonable reading of the complaint compels the inference that CDOC’s specific commands to act controlled over its general disclaimers about belief.

Second, the court refused to draw the obvious inference of the policy’s recurrence and permanence. The complaint alleges two key facts: that CDOC trainings are conducted annually, and that the EDI ideology was immediately integrated into employee performance reviews. [ER Vol. 3 at 0573, 0567.] The only reasonable inference from these combined facts is that the EDI policy was not a fleeting, one-time event, but the rollout of a permanent feature of the employment landscape. It establishes a continuous, self-perpetuating cycle of ideological enforcement: the annual training introduces and reinforces the ideology, the mandate to use it in “routine decision-making” ensures its daily presence, and the performance review serves as the coercive tool to punish non-compliance. The District Court’s erred by viewing these facts in isolation, treating the training as a single snapshot in time. But these facts describe an interconnected system of control, creating an ongoing and pervasive condition of employment.

IV. Young Has Stated a Claim for Constructive Discharge, and Dismissal With Prejudice Was an Abuse of Discretion.

Appellees' arguments against the constructive discharge claim (Ans. Br. 57–59) are derivative of their failed attack on the hostile work environment claims. As such, they fail for the same reasons. Because the hostile work environment claim is not just plausible but powerful, the constructive discharge claim must also survive.

The legal standard is whether an employer's unlawful actions make working conditions so intolerable that a *reasonable person* in the employee's position would feel compelled to resign. *Green v. Brennan*, 578 U.S. 547, 555 (2016). The FAC alleges a perfect storm of intolerable conditions that any reasonable officer would find unbearable. Young was presented with a dilemma, each option professionally untenable. He could: (1) work under an official state policy that degraded him, while simultaneously compromising his physical safety, and violating his conscience and ethics by treating individuals according to a discriminatory, race-based script; or (2) resist the ideology and face career ruin from having poor performance reviews and being labeled a racist.

The final, decisive event was CDOC's summary refusal to even investigate Young's formal, internal complaint. [ER Vol. 3 at 0575.] This was not mere inaction; it was an affirmative signal from the employer that the hostile conditions were permanent, and that no internal redress was possible. It demonstrated the utter futility of any attempt to seek relief within the system. At that moment, a reasonable person

would conclude that resignation was the only remaining option to escape a dangerous and impossible situation.

V. At a Minimum, the District Court’s Dismissal With Prejudice Was Error.

Finally, the District Court’s decision to dismiss the claim with prejudice was a clear abuse of discretion. To find amendment futile when the court’s analysis dwelled on nitpicking the specificity of the allegations contradicts the very purpose of pleading rules. More broadly, this case involves the application of core Title VII principles to a new and insidious form of official discrimination. The factual context is paramount, and to foreclose any possibility of discovery was punitive and unjust.

Conclusion

The judgment below is the product of a departure from the notice pleading standard. The District Court began its analysis with a clear and confessed legal error—refusing to apply the correct standard of review—and proceeded to act as a fact-finder for the defense.

The FAC, when read as the law requires, states a claim. It alleges that CDOC implemented a mandatory policy of racial hostility. The policy was severe, constituting an official act of employee degradation. It was pervasive, designed to saturate the workplace and be enforced through coercion. And its consequences were objectively dangerous, placing the lives of officers at risk.

Title VII does not prohibit only crude, obvious slurs; it also prohibits sophisticated, state-sponsored racial stereotyping designed to degrade and humiliate employees. It was enacted to protect employees from precisely this type of employer-mandated discrimination. The District Court's judgment must be reversed.

Dated this 27th day of August, 2025.

Respectfully submitted,

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Oral Argument Statement

Young continues to believe that oral argument is necessary in this case.

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 6,478 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 27th day of August , 2025.

/s/ William E. Trachman

William E. Trachman

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I hereby certify that with respect to the foregoing:

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/s/William E. Trachman

William E. Trachman

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I hereby certify that on August 27, 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.

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William E. Trachman