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APPENDIX A

IN THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

No. 22-2472

[Filed December 15, 2023]

CARLOS A. WILLIAMS,
Plaintiff-Appellant,

v.

LOUIS DEJOY, Postmaster General,
Defendant-Appellee.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
No. 1:17-cv-08613 — **Sara L. Ellis**, *Judge*.

ARGUED NOVEMBER 7, 2023 —
DECIDED DECEMBER 15, 2023

Before EASTERBROOK, WOOD, and ST. EVE, *Circuit Judges*.

ST. EVE, *Circuit Judge*. Carlos Williams alleges his former employer, the United States Postal Service, fired him for discriminatory reasons. Of his several

theories, he focuses on retaliation: he worked there for seventeen years, and throughout that time he filed complaints over his and other postal workers' treatment. His bosses were unhappy. Even so, the Postal Service did not fire him until 2014, when he failed to appear at work for months. This appeal asks us to overturn a jury verdict that rejected Williams's discrimination claims. We affirm.

I. Background

A. Factual History

Plaintiff Carlos Williams worked for the United States Postal Service ("USPS") from 1997 to 2014. At all relevant times, he occupied a letter carrier post in the Glen Ellyn Post Office. Two managers, Connie Principe and John Walsh, supervised him there. Williams's protected characteristics are also relevant to this employment discrimination suit: he is a Black man who identifies as a Choctaw and a Moor, and he was born in 1972—placing him in his early forties when the alleged discrimination took place.

During his tenure with USPS, Williams showed a keen interest in labor and employment law. This often manifested in legal actions against USPS management. Williams filed claims on his own behalf, variously alleging employment discrimination, retaliation, and violations of holiday pay policies. And through an organization called the "No Harassment Foundation," he aided others with their claims. Altogether, he has filed at least fifteen complaints with the Equal Employment Opportunity Commission ("EEOC") about his managers' conduct.

This appeal touches on just two of Williams's quarrels with USPS. Each pertains to a firing: one in 2013, and one in 2014.

The 2013 Firing: On May 24, 2013, Williams filled in for another letter carrier. Along his route, a young woman approached his truck to pick up her mail. She was eighteen years old. Instead of her usual postwoman, she encountered Williams, who started asking her questions about her age and her plans for after high school. The interaction soon crossed a line. When she mentioned her interest in the fashion industry, Williams offered to let her model for his clothing line. He called it "Clexsy," informing her it was a mashup of the words "classy" and "sexy." He then went two steps further by offering to take her for a ride in his new Volvo and adding ominously that she would not "have to do anything with him." Williams also handed her a slip of paper with his name and phone number. Her response was to retreat inside her family home and close and lock the door. Williams came back later, too. Apparently distracted, he had forgotten to deliver a package to the family. Her father accepted the delivery; the young woman told her parents what happened.

The next day, her mother called the post office. Williams's manager, Connie Principe, advised her to call the police if the daughter had felt threatened or harassed. So she did. Williams felt consequences soon after, when USPS put him on emergency placement—off-duty status without pay—five days after the incident. He remained in that placement for almost a month. Then USPS brought him back.

But on Williams's second day back on the job, a report from USPS's Office of the Inspector General concluded that Williams's conduct reflected poorly on his employer. That finding led to a notice of removal from employment on July 11, which in turn kicked off the process to fire Williams. Williams responded by filing union grievances. After almost a year, these grievances led to an arbitration on June 4, 2014. There, Williams settled the grievances on successful terms: Williams would return to work on June 6, and USPS would give him half of the backpay for his eleven months off the job. Williams, however, did not return on June 6.

The 2014 Firing: Williams did not personally sign the settlement immediately: a union representative did so for him. It is for that reason, he says, that he did not come to work on June 6—he did not know about the start date. USPS sent Williams letters saying his start date was either June 6 or June 9—the parties disagree on that date—and urging him to return to work. Williams never showed up on June 9, or any date thereafter. Instead, he called into an automated system to request two weeks of sick leave; these calls repeated every two weeks. Williams never contacted his supervisor, and no medical documents ever accompanied the requests. And so USPS did not authorize any leave.

On July 5, USPS designated Williams absent without leave, or AWOL. Nine days later, they sent him a notice of removal charging him as AWOL—the parties call this the "charging document." A month later, on August 18, USPS separated Williams from his

employment. A letter dated August 29 informed Williams of that fact.

B. Procedural History

Williams filed a complaint with the EEOC, which the agency dismissed on USPS's motion for summary judgment. Williams tried again with another complaint—he met the same fate. Then he retained a lawyer and brought this suit against USPS, asserting Title VII claims rooted in both the 2013 and 2014 firings. In particular, he alleged that USPS discriminated against him on the bases of race, color, sex, age, national origin, and association with a disabled person (his wife suffered from and ultimately succumbed to cancer during these events). He also alleged that USPS had retaliated against him for his No Harassment Foundation activities.

The district court narrowed the suit's scope after USPS moved for summary judgment. Partially granting USPS's motion, the district court cut things down to only the 2014 firing and only the claims alleging retaliation and discrimination on the bases of race, gender, and national origin.

Williams's retained counsel thereafter moved to withdraw. Williams asked the district court to recruit him a new lawyer, and it did. *See* 28 U.S.C. § 1915(e)(1). When that lawyer explained that he was unqualified to litigate employment discrimination claims, the court recruited an experienced employment lawyer, who agreed to take up the case. She too withdrew after Williams pressed her to amend the complaint and add certain far-fetched legal theories of

his own design. The court declined to recruit a third lawyer.

And so Williams carried on with the case pro se. In the leadup to trial, plaintiff Williams filed a self-styled Motion to Dismiss, apparently trying to dismiss the "case" against him that had led to his firing six years earlier. The district court construed this as a motion for reinstatement to duty and denied it. Next Williams moved to reopen discovery so he could re-depose certain witnesses and develop a record for his new legal theories. The court also denied this motion. With trial looming, the parties then moved *in limine* to admit or exclude certain evidence. The district court granted these motions in part and denied them in part. The rulings (under Federal Rule of Evidence 403) aimed to keep the core evidence in the case while excising prejudicial, confusing, and dilatory evidence. With that goal in mind, the district court forbade the government from raising the 2013 incident and limited Williams's retaliation evidence to the bare procedural history of each complaint he had filed.

Williams then proceeded to trial pro se. Though he was able to make an opening statement and examine witnesses, he did need occasional help from the court. Trial lasted five days, and the jury rendered a swift verdict for USPS. This appeal followed.

II. Discussion

Williams raises a surfeit of issues on appeal. The first batch concerns his own legal ideas—strange double jeopardy and due process theories, plus the peculiar motion to dismiss. Next we turn to the district

court's choice not to recruit a third lawyer, and then to the motions *in limine*. We then address Williams's grievances with the district court's trial management.

A. Substantive Issues

Williams first advances a "double jeopardy" argument, whose novelty stems from its lack of merit. Recall that USPS had suspended him initially, then brought him back. Only after the Office of the Inspector General issued its damning report did the Glen Ellyn branch initiate his removal. Citing old administrative decisions from the Merit Systems Protection Board, Williams urges us to hold that the removal proceedings illegally punished him a second time for his 2013 conduct: first the suspension, then the firing. We are not bound by those administrative precedents. Nor are they relevant to this employment discrimination claim—Williams never ties the disciplinary two-step to any protected characteristic. It does not even seem to be unusual for USPS to discipline a postal worker this way. *See, e.g.*, *Matthews v. Milwaukee Area Local Postal Workers Union*, 495 F.3d 438, 439–40 (7th Cir. 2007) (postal worker suspended, then fired for the same conduct).

Next, he suggests that his ultimate firing deprived him of due process, since he had a property right in his employment. Williams, however, never pleaded a due process claim. "The district court was not required to address a claim or theory that plaintiff did not assert." *Gates v. Board of Educ. of the City of Chicago*, 916 F.3d 631, 641 (7th Cir. 2019). Nor are we.

Williams's third challenge is that the district court construed his self-styled "motion to dismiss" as a motion for reinstatement to duty status (which it denied). But district courts can "recharacterize the motion in order to place it within a different legal category" to "create a better correspondence between the substance of a *pro se* motion's claim and its underlying legal basis." *Castro v. United States*, 540 U.S. 375, 381–82 (2003). Just so here. Williams also contends that the district court had to wait for a response from USPS before ruling on his motion. District courts, however, have "inherent authority to manage their dockets and courtrooms with a view toward the efficient and expedient resolution of cases," including by denying meritless motions without awaiting a response. *Dietz v. Bouldin*, 579 U.S. 40, 47 (2016) Further, the District Court's Local Rules belie Williams's argument: "Failure to file a supporting or answering memorandum shall not be deemed to be a waiver of the motion or a withdrawal of opposition thereto, but the court on its own motion or that of a party may strike the motion or grant the same without further hearing." N.D. Ill. LR 78.3. The district court handled the "motion to dismiss" appropriately and did not err.

B. Recruitment of Counsel

We turn now to the district court's choice not to recruit a third lawyer for Williams. The first time Williams asked for recruited counsel, the district court granted his request. But that counsel withdrew, citing inexperience with employment discrimination cases. Then the district court recruited an experienced

employment lawyer, who accepted the assignment. But she too ultimately withdrew after representing Williams for six months. This time, the district court denied Williams's request to recruit counsel. Williams maintains it was a mistake not to recruit someone new, given his claims' complexity and novelty and his proximity to trial. He also argues he was prejudiced, suggesting an attorney's help would have shortened the odds of a winning verdict.

Williams, like other litigants, enjoys no right to counsel in civil cases. *McCaa v. Hamilton*, 893 F.3d 1027, 1030 (7th Cir. 2018). Still, he and others "may ask the district court to request an attorney to represent the litigant." *Id.* (citing 28 U.S.C. § 1915(e)(1)). In many cases, a pro se litigant can expect that a court's decision whether to recruit counsel will follow a set process, which comprises two questions: "(1) has the indigent plaintiff made a reasonable attempt to obtain counsel or been effectively precluded from doing so; and if so, (2) given the difficulty of the case, does the plaintiff appear competent to litigate it himself?" *Pruitt v. Mote*, 503 F.3d 647, 654 (7th Cir. 2007) (en banc). Here, the district court eschewed this analysis in declining to appoint Williams a third attorney.

Williams's arguments roughly map onto the *Pruitt* questions. As to the first question, he argues that he tried to secure counsel by asking law school clinics and law firms for help. On the second, he contends that his case was particularly complex, especially if the court embraced his homegrown double jeopardy and due

process arguments. That complexity, he argues, called for professional help.

Williams misses that this is no ordinary case. His arguments might go a long way to persuade a district court that it should appoint *one* lawyer. Now, though, he is asking for a third after making unreasonable demands on the second. We have been clear: "The valuable help of volunteer lawyers is a limited resource." *Cartwright v. Silver Cross Hosp.*, 962 F.3d 933, 937 (7th Cir. 2020) (quoting *Dupree v. Hardy*, 859 F.3d 458, 462–63 (7th Cir. 2017)). "The courts must be careful stewards of this limited resource." *Id.* at 934. When pro bono counsel has "invested many hours of valuable time in the case before moving to withdraw because the client would not cooperate," a wise court will economize with its scarce pool of pro bono volunteers. *Id.*

Here, the district court heeded our warning in *Cartwright* and deployed its resources judiciously. Williams did not cooperate with his pro bono attorney, who boasted not just experience but expertise in employment discrimination. That attorney did not disclose her specific reasons for moving to withdraw—rather, minding her professional obligations, she adverted only to "a substantial and fundamental disagreement on how to proceed with the litigation." Williams fleshed out the details. In resisting her motion to withdraw, Williams explained that he had asked the lawyer to amend the pleadings to include his meritless due process and double jeopardy claims. The district court rightly chose not to expose another

lawyer to the reputational risks Williams's requests would, if granted, have posed.

Besides, the decision not to recruit counsel for Williams worked no prejudice. Even in those cases where *Pruitt* does apply, and a court skips the two-step inquiry, "we only reverse based on that error if the plaintiff shows prejudice." *McCaa*, 893 F.3d at 1031. Williams cannot. The relevant question is whether "there is a reasonable likelihood that the presence of counsel would have altered the outcome." *Pruitt*, 503 F.3d at 660. On these facts, even a skilled lawyer would struggle to make a case. The USPS's defense was that it fired Williams for not showing up to work for months—and the undisputed evidence proved that he had not showed up to work for months. Williams fails to show prejudice: these flaws would sink his case no matter who steered the ship.

When a district court has already recruited a capable attorney, and a pro se litigant undermines their professional efforts, the district court need not undertake another *Pruitt* inquiry. Far from erring, the district court showed Williams patience and solicitude, recruiting one lawyer and then another.

C. Evidentiary Rulings

Next, Williams contends that the district court mishandled various pretrial evidentiary rulings. He appeals three of the district court's rulings on motions *in limine*. We review for abuse of discretion. *Downing v. Abbott Lab'ys*, 48 F.4th 793, 804 (7th Cir. 2022).

First, Williams moved to admit the substance of his past EEOC activity into evidence. Williams, remember,

had filed several complaints on behalf of other postal workers through the No Harassment Foundation. He moved similarly to admit the complaints from prior proceedings where he represented himself. The district court granted these motions in part and denied them in part, concluding that Williams could tell the jury only that he had filed each complaint, when he had filed it, and how it had turned out. The court reasoned that those facts alone were relevant to Williams's retaliation claims. Anything else would be substantially more confusing for the jury or more prejudicial than probative, so Federal Rule of Evidence 403 barred its use.

Now on appeal, Williams urges us to reverse, insisting that he needed to admit the substance of other employees' complaints to tie his firing to his involvement with the No Harassment Foundation. Put another way, he thought the substance would help demonstrate USPS's motive to retaliate. Our caselaw demands more. "[E]vidence of discrimination and retaliation against other employees" comes with a "high likelihood of juror confusion and inherent delay" that "outweigh[s] what little value could be gleaned from it." *Lewis v. City of Chicago Police Dep't*, 590 F.3d 427, 443–44 (7th Cir. 2009). That goes double in a situation like this one, with numerous claims over several years. The district court acted well within its discretion in excluding this evidence.

Williams's own past filings fare no better. His claim alleged that higher-ups retaliated for his filing complaints—asking jurors to assess the merits of those complaints would cause confusion and distract from

that core issue. Once again, the district court acted well within its discretion.

Second, Williams moved to admit paperwork showing that USPS agreed to 50% backpay for the time he had been away from work following the 2013 firing. The district court rejected the motion, holding that this paperwork was irrelevant: it went to his 2013 firing, and the only claims at trial focused on the 2014 firing.

Williams now argues that the documents are relevant to any issue involving the arbitration proceedings. But those proceedings bear little relationship to the 2014 firing and therefore to his claims at trial. They are relevant only in that they led to his assignment to return to work on June 6 (or June 9). The backpay agreement is another matter entirely. Whatever monies USPS owed could not have changed Williams's scheduled start date.

Third, Williams moved to exclude the USPS charging document establishing he had gone AWOL as of June 6, 2014. The district court denied his request, holding that the evidence was central to USPS's defense and Williams remained free to argue finer points about the precise date he was due back to work.

To exclude relevant evidence, Federal Rule of Evidence 403 requires that its probative value be substantially outweighed by a danger of unfair prejudice, confusion, or delay. The charging document is highly relevant here. Standing alone, it proved (1) that Williams was due to return to work, and (2) that Williams was on notice of that fact. Given that the probative value was so great, it is hard to imagine

exclusion under Rule 403. Still worse for Williams, the prejudicial effect was minimal. Even if the jury credited the document's June 6 date rather than Williams's arguments for June 9, Williams never returned to work. That three-day difference hardly matters.

Williams tacks on an argument that the district court should have reopened discovery and let him re-depose witnesses, since his initial (retained) lawyer had refused to develop a record on Williams's due process and double jeopardy arguments. Here, too, we review for abuse of discretion. *Sullivan v. Flora, Inc.*, 63 F.4th 1130, 1139 (7th Cir. 2023). There was none. Williams is bound by his counsel's decisions because lawyers' "actions are imputed to their clients." *Wade v. Soo Line R.R. Corp.*, 500 F.3d 559, 564 (7th Cir. 2007). He cannot be heard to complain that counsel declined to pursue his pet legal theories.

D. Trial-Management Decisions

Last, Williams lodges a string of thirteen complaints over the district court's trial management. None exceeds thirty words. All these, as "perfunctory and undeveloped arguments … are waived." *Rock Hemp Corp. v. Dunn*, 51 F.4th 693, 704 (7th Cir. 2022). Even if they were not waived, they misinterpret the record to try and twist the district court's efforts to help Williams into inklings of bias. Not one has merit.

III. Conclusion

The judgment of the district court is

AFFIRMED.

APPENDIX B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 17 C 8613

[Filed October 16, 2019]

CARLOS A. WILLIAMS,
Plaintiff,

v.

MEGAN J. BRENNAN, as Postmaster General for the United States Postal Service,
Defendant.

Judge Sara L. Ellis

OPINION AND ORDER

After the United States Postal Service ("USPS") terminated his employment in 2014, Plaintiff Carlos A. Williams filed this employment discrimination lawsuit against Megan J. Brennan, the Postmaster General for USPS. He contends that USPS engaged in race, color, national origin, and gender discrimination as well as retaliation in violation of Title VII of the Civil Rights Act of 1964 ("Title VII"), 42 U.S.C. § 2000e *et seq.*; age discrimination in violation of the Age Discrimination in Employment Act ("ADEA"), 29 U.S.C. § 621 *et seq.*; and

disability discrimination under the Rehabilitation Act, 29 U.S.C. § 701 *et seq.*[1] USPS has filed a motion for summary judgment on Williams' complaint. The Court finds questions of fact with respect to whether USPS issued Williams a notice of removal in 2014 because of his race, gender, or national origin or in retaliation for his protected activity. But Williams cannot proceed on the remainder of his claims because he cannot establish that certain of the challenged incidents amount to actionable adverse employment actions or that one of his protected characteristics caused the actionable adverse actions to occur.

BACKGROUND[2]

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[1] Although Williams purports to bring his disability discrimination claim under the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12101 *et seq.*, the Court treats it as arising under the Rehabilitation Act because the ADA does not apply to federal agencies. *See Hancock v. Potter*, 531 F.3d 474, 478 n.4 (7th Cir. 2008).

[2] The facts in this section are derived from the Joint Statement of Undisputed Material Facts, Williams' Statement of Additional Facts, and USPS' responses thereto. The Court has considered USPS' objections to the statements of fact and supporting exhibits. It notes that many of the statements included in Williams' Statement of Additional Facts are not actually disputed and so should have been included as part of the parties' Joint Statement. Although Williams therefore has run afoul of the Court's standing order on summary judgment practice, the Court nonetheless considers the statements and responses to the extent appropriately presented, supported, and relevant to resolution of the pending motion for summary judgment. All facts are taken in the light most favorable to Williams, the non-movant.

I. Williams' Background and Initial Employment with USPS

Williams is an African American male born in 1972. He identifies as a Moor and Choctaw Indian.[3] After working for USPS for some time, Williams received a career appointment in 1997. He worked as a mail processing clerk at the Palatine Processing and Distribution Center from 1997 until 2010, when USPS reassigned him to the Glen Ellyn Post Office as a letter carrier. At the Glen Ellyn Post Office, Connie Principe, a Caucasian female born in 1962, and John Walsh, a Caucasian male born in 1960 both supervised Williams. James Gillispie, an African American male born in 1963, served as the Glen Ellyn Postmaster. Gillispie learned of Williams' Moor background sometime in 2010, but the record does not indicate that Williams told anyone that he is Choctaw Indian.

In 2011, Williams joined an organization called the No Harassment Foundation, where he, along with Anita Hatcher and Kenny Reed, helped USPS employees file complaints of harassment, discrimination, and retaliation. Williams testified that, at some point in 2012, Walsh remarked that Williams thought he did not have to follow the rules because he was black. During his time working at the Glen Ellyn Post Office, Williams filed over fifteen EEO complaints against USPS, including around five against Gillispie, Walsh, and Principe. This includes an EEO complaint Williams filed against Walsh and Gillispie within about

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[3] Williams testified that he considers being Moor and Choctaw Indian as one and the same.

three months after he transferred to the Glen Ellyn Post Office, after which Williams claims Gillispie's treatment of him changed. On April 29, 2014, an EEOC administrative law judge concluded that Walsh had retaliated against Williams for his protected EEO activity when Walsh issued Williams a notice of removal in 2010 based on the late delivery of express mail.

II. Holiday Pay

USPS' Employee and Labor Manual ("ELM") provides that, to receive holiday leave pay, an employee must be in a pay status either the last scheduled hour before or the first scheduled hour after the holiday. To the extent an employee is on extended leave without pay ("LWOP"), an employee cannot use paid leave for the last scheduled hour before or the first scheduled hour after a holiday to qualify for holiday pay.

Williams did not receive holiday pay for the Christmas Day 2012 holiday. He was on LWOP on his scheduled work day immediately before and after Christmas Day (December 22 and 26). Williams also did not receive holiday pay for the Martin Luther King, Jr. 2013 holiday. He was on LWOP on the scheduled work days both immediately before and after that holiday (January 19 and 22). Williams did receive holiday pay for New Year's Day 2013. Although he was on LWOP on his scheduled work day immediately before New Year's Day (December 29), he was on FMLA-dependent sick leave the day after (January 2), meaning he was in a pay status for the first scheduled hour after the holiday. Williams testified that he

requested to be placed on paid leave on the days before and after these three holidays.

III. AWOL Designations

In May 2011, Williams' wife was diagnosed with breast cancer. Although she went into remission in May 2012, the cancer returned in the summer or fall of 2013 and she passed away on May 20, 2014. Williams testified that he told Principe, Walsh, and Gillispie about his wife's diagnosis. Between 2011 and 2013, Williams requested sick or paid leave to take his wife to treatments. Williams testified that, at times, Principe, Walsh, and Gillispie did not approve such leave and instead placed him on LWOP. The record does not include any specific dates on which such denials allegedly occurred or whether Williams had sick or paid leave available when he made those requests.

Williams also complains that Principe improperly designated him as AWOL between March 12, 2013, and April 16, 2013, changing his FMLA requests to AWOL designations in his time and attendance records. But these records do not include any AWOL designations during this time period, with Williams instead paid for working or being on paid leave.

IV. April 9, 2013, Incident

After completing his mail route on April 9, 2013, Williams returned to the Glen Ellyn Post Office. Williams and Principe disagree about the events that followed. Williams testified he intended to put away mail, unload his truck, take his five-minute wash up, and then punch out for the day. The parties agree that

Principe approached him and told him to punch out immediately. After Williams insisted that he would punch out only after taking his five-minute wash up, Williams testified that Principe threatened to call the police if he did not punch out immediately. After Principe reiterated this, Williams responded, "then do it." Doc. 39 ¶ 17. Principe testified that Williams became "loud and belligerent," and threatened her, indicating he had something for her and stating "I'll show you, sister." *Id.* ¶ 20. Feeling physically threatened, Principe testified she then called the police. Williams claims he did not lose his temper or ever threaten Principe. When the police arrived, Williams agreed to leave. The police and USPS did not take further action.

Aside from this incident, Williams also testified that Gillispie and Principe sent him home on several occasions, but Williams has not identified any specific dates or details surrounding these other alleged occasions.

V. Williams' Initial Removal from USPS

On May 24, 2013, Ellen Smid, an eighteen-year-old, approached Williams, who was sitting in his delivery truck parked outside of the house Smid shared with her parents. Smid approached the truck intending to save the mail carrier a trip to the front door. Instead of encountering the regular mail carrier for that route, she encountered Williams, who was covering that route that day. According to Smid, Williams asked her questions, including "how old [she] was, [and] what [she] wanted to pursue when [she] graduated high school," and told her "that he had this clothing line

[she] should check out, and that he had a new 'Volvo' that he could take [her] for a ride in but [she] 'wouldn't have to do anything with him." *Id.* ¶ 23. Smid recounted that Williams wrote down his name, number for her, and the name of his fashion line, Clexsy, which he told her meant "sexy and classy." *Id.* The interaction made Smid uncomfortable, and she retreated to her house and locked the door. About ninety minutes later, Williams returned to the Smid house to deliver a package he had forgotten to deliver earlier. After Smid's father accepted the delivery, Smid told her father about what happened. Smid also posted about the incident on her Facebook page. Williams acknowledged speaking with Smid while delivering mail and admitted to complimenting her eyes, telling her about his Clexsy website and his Volvo, and giving her his telephone number. He denied offering to give Smid a ride or asking her to model for any websites.

The day after the interaction between Williams and Smid, Smid's mother called the Glen Ellyn Post Office twice and spoke with Principe. During the second call, Principe recalled Smid's mother stating she did not want Williams near the Smid house. Smid's mother also asked Principe if she should call the police. Principe told her to do so if Smid felt threatened, harassed, or stalked. Smid's mother called the police that same day. Principe later told Gillispie and Jayne Duewerth, the manager of post office operations, about the incident as reported by Smid's mother. Principe did not discuss the incident with Williams.

On May 29, USPS placed Williams on off-duty status without pay, also called an emergency

placement, based on the information USPS received from the Smid family. Gillispie signed the emergency placement letter. Williams testified that, in connection with this incident, Gillispie commented that Williams was "40 something years old and talking to an underage girl while on [his] route." Doc. 39-2 at 88:21–23. Williams also claims Principe and Walsh made similar comments.

After USPS issued the emergency placement, USPS' Office of the Inspector General ("OIG") investigated the incident. In a report dated June 25, 2013, OIG concluded that "Williams engaged in conduct which did not reflect favorably upon the USPS in that he gave his name, telephone number, and name of a clothing line which solicited female models to an 18 year old girl while engaged in the performance of his official duties." Doc. 39 ¶ 29. On July 11, after the OIG's investigation, USPS issued Williams a notice of removal, signed by Walsh and Gillispie. The notice charged Williams with unacceptable conduct arising from the May 24 interaction with Smid, specifying Williams violated USPS' standard of conduct, including ELM sections 665.11, 665.16, 667.16, and 667.331, as well as City Delivery Carrier Duties and Responsibilities ("M-41") section 112.28, 112.6, and 112.61.

Williams filed grievances with his union related to his emergency placement and removal. An arbitration took place on June 4, 2014. The parties settled before the arbitration concluded. As part of the settlement, the notice of removal converted to a seven-day suspension, with Williams receiving fifty percent of his back pay. The settlement also indicated Williams

would return to work on June 6, 2014. Angela Davenport, a labor relations specialist for USPS, signed the settlement on behalf of USPS. Corey Walton, a union representative from the National Association of Letter Carriers, signed the settlement on Williams' behalf. Williams disagreed with the terms of the settlement agreement.[4] Williams claims that no one told him that he should return to work on June 6 until he saw the pre-arbitration settlement agreement directing him to do so sometime between June 9 and 11, when he received the settlement documentation from a union official.

When Principe learned of the agreement to return Williams to work, she expressed her displeasure to a colleague in Florida. She told him that "[a] jerk got his job back," referring to Williams as "the biggest !!!! you know what!," the "[b]iggest jerk," an "[i]diot . . . out on EP soliciting a high senior," and a "SCUM BAG." Doc. 47-7 at 1–2.

VI. Williams' Scheduled Return to Work and Subsequent Removal

Williams did not report to work on June 6, 2014, as provided for in the pre-arbitration settlement. That day, USPS sent Williams two letters to his address of record (on South King Drive in Chicago, Illinois), directing him to report to work on June 6 at the Glen

[4] Williams also complains that he has never received the backpay that formed a part of the settlement agreement. The record reflects that he has continuously objected to the calculation of the backpay amount and has not signed and returned the paperwork to authorize release of the payment.

Ellyn Post Office. Gillispie also sent Williams another letter that day, directing him to report to work on June 9. That letter was delivered to Williams' address of record on June 7. But Williams did not report to work on June 9 either. Instead, after receiving the pre-settlement arbitration letter, Williams called the USPS Integrated Voice Recognition ("IVR") system, an automated attendance call center, to request leave. This sent a notification to Principe and Gillispie that Williams had requested eighty hours of leave from June 9 through 24. Although Williams made this request, his supervisors had to approve it.

Because Williams sought more than three days of sick leave, USPS policy required him to submit medical documentation to support the leave request. Specifically, the USPS ELM provides that supervisors may accept employees' statements explaining their absence for sick leaves of three days or less, but that, for requests of over three days, the employee must provide medical documentation or other acceptable evidence. For extended medical leave requests, employees need not submit such evidence more frequently than once every thirty days. The ELM also provides that, if employees fail to provide acceptable documentation, the absence may be charged to annual leave, LWOP, or AWOL. It also provides that failure to regularly attend work may result in discipline, including removal.

After Williams did not show up to work on June 9, Principe sent him a request for medical documentation to substantiate his absence, with the letter explaining that the failure to respond may result in the absence

being classified as AWOL. Williams did not respond to the letter. USPS then sent Williams another request for documentation on June 17. That letter noted that Williams had called requesting leave but did not have any injury claims open. Williams again did not respond or report to work. Instead, Gillispie and Principe received notification on June 21 that Williams had requested another eighty hours of leave from June 20 to July 7 through the IVR system. Gillispie then sent Williams a notice of investigatory interview on June 26, instructing Williams to appear for an investigatory interview on July 1 at 11:00 a.m. at the Glen Ellyn Post Office. Williams did not report for the interview. Gillispie also testified that he called Williams between three and five times to instruct him to return to work, with Principe present for at least one of these calls.

On July 5, USPS designated Williams as AWOL. On July 7, Williams again requested eighty hours of leave through the IVR system. On July 14, USPS issued Williams a notice of removal, signed by Principe and Gillispie, based on Williams' AWOL status. The notice informed Williams of his right to file a grievance within fourteen days of receipt. Although Williams continued to call the IVR system to request leave every two weeks through August 19, he did not file a grievance. Having received no grievance, per the terms of the notice of removal, USPS separated Williams from employment on August 18. USPS informed Williams of the separation in a letter dated August 29.

Nothing in the record indicates that Williams provided Gillispie or Principe with any requested documentation to support his leave requests. Williams

testified that he may have spoken to Gillispie in July and told Gillispie that he was not AWOL but rather was suffering from depression and could provide medical documentation for his absence once his doctor returned from abroad. Gillispie did not recall this conversation or having received any documentation. On August 21, Williams emailed Christie Kapanowski, an EEO ADR specialist, a letter from Dr. Joseph Shoshana, which stated that Dr. Shoshana had treated Williams on a weekly basis since June 6, 2014, for depression and anxiety "stemming from emotional distress related to incidents at work and his wife's illness and subsequent death." *Id.* ¶ 39. Dr. Shoshana indicated that Williams could not work and needed continuous care. Kapanowski forwarded the letter to Ray Vaicaitis. Williams did not copy Gillispie or Principe on this email, but Williams testified he sent the letter to Gillispie and again provided it to Gillispie on August 21. Williams also testified that he provided USPS with a doctor's note and prescription from Dr. Scott Goldstein dated June 9 or 10, 2014, but the record does not include any other details about these documents. Finally, Williams claims he spoke with Jenny Stoiga, who works for USPS' Employee Assistance Program, about his medical conditions. Both Gillispie and Principe testified they did not know that Williams had any medical condition, restrictions, or limitations at the time of the notice of removal.

Williams also testified that he did not receive any of the letters USPS sent him regarding his absences until after July 14 because he did not live at the King Drive address that USPS had on record for him. Williams claims he lived at that address until 1998, although he

acknowledges that his parents lived there through at least September 2014. Nonetheless, Williams used that address in 2014 for other purposes, such as the 2013 tax return he filed on March 24, 2014. Despite the USPS ELM requiring employees to keep USPS informed of their current mailing address, Williams did not make a formal change of address request with USPS and only informed USPS' human resources department that he had moved sometime between August and October 2014.

VII. EEO Complaints

On June 6, 2013, Williams filed an EEO complaint claiming discrimination on the basis of race, color, sex, age, national origin, and association with a disabled person. He also claimed retaliation. Specifically, Williams alleged (1) USPS failed to provide him with holiday pay for three holidays; (2) a supervisor told him to go home fifteen minutes after he started work; (3) USPS falsified his FMLA absence requests between March 12 and April 16, 2013; (4) Principe called the police on him following an April 2013 altercation; (5) USPS placed him on emergency placement on May 29, 2013; and (6) he received a notice of removal on July 11, 2013. The EEOC granted USPS' motion for summary judgment on August 21, 2017, with USPS issuing its final agency decision on September 28, 2017.

Williams file a second EEO complaint on September 17, 2014.[5] In this complaint, he asserted discrimination on the basis of race, color, national origin, gender, age, and disability, as well as retaliation. The EEOC accepted for investigation Williams' challenge to his July 2014 notice of removal. The EEOC granted USPS' motion for summary judgment on August 15, 2017, with USPS issuing its final agency decision on September 22, 2017.

VIII. Alleged Comparators

Williams has identified several mail carriers at USPS' Glen Ellyn facility, claiming they are relevant comparators for his claims.[6] Thomas Bach, a Caucasian male over the age of forty, has no prior EEO activity. On September 24, 2013, Principe and Gillispie issued Bach an emergency placement for improper conduct and falsification of an official record, specifically, falsifying a signature confirmation record. Bach received a notice of removal for the same conduct. Through the grievance process, USPS reduced the notice of removal to a fourteen-day suspension. USPS did not discipline him for attendance issues.

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[5] It appears that Williams initiated this complaint prior to September 2014 because in the September 17 complaint, he complains that a mediation on the complaint was rescheduled from August 22, 2014, to September 16, 2014.

[6] In addition to those discussed in this section, Williams identified Anthony Maneck as a comparator in his complaint. Because he does not seek to rely on Maneck in his response, the Court does not consider whether Maneck could serve as a comparator.

Joanne Tricoci, a Caucasian female over the age of forty, has been disabled or on FMLA. In 2013 and 2014, she provided care for her ailing mother. She had no prior EEO activity. Walsh and Gillispie issued Tricoci discipline for her failure to maintain a regular schedule, including a letter of warning, a seven-day notice of suspension, and a fourteen-day notice of suspension. During the grievance process, USPS learned that Tricoci was in the hospital during her absences, with her leave covered under the FMLA.

Williams testified that Ron Utsler, a Caucasian older male, had committed a crime and had a restraining order issued against him. Williams stated that USPS allowed Utsler to retire instead of terminating him. Williams also testified that Ron Pierce, a Caucasian older male, had pocketed a wallet he found on his route. Williams claims that although OIG confronted Pierce about the incident, USPS did not terminate him.

IX. Claimed Threats of Retaliation

Williams presents several additional pieces of evidence concerning his claims of retaliation. He has provided the Court with an EEO complaint filed by Barbara Walker, who also worked at the Glen Ellyn Post Office, contending that Gillispie and Principe subjected her to discipline because, among other things, Williams had named her as a witness in a hearing on one of his EEO complaints. Williams also submits what he claims are emails sent to him by a number of other individuals who worked at the Glen Ellyn Post Office. In the emails, these individuals indicate that they have heard Gillispie and Principe

remark that, if the other employees filed EEO complaints, they would find themselves unemployed like Williams.

LEGAL STANDARD

Summary judgment obviates the need for a trial where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56. To determine whether a genuine issue of fact exists, the Court must pierce the pleadings and assess the proof as presented in depositions, answers to interrogatories, admissions, and affidavits that are part of the record. Fed. R. Civ. P. 56 & advisory committee's notes. The party seeking summary judgment bears the initial burden of proving that no genuine issue of material fact exists. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986). In response, the non-moving party cannot rest on mere pleadings alone but must use the evidentiary tools listed above to identify specific material facts that demonstrate a genuine issue for trial. *Id.* at 324; *Insolia v. Philip Morris Inc.*, 216 F.3d 596, 598 (7th Cir. 2000). Although a bare contention that an issue of fact exists is insufficient to create a factual dispute, *Bellaver v. Quanex Corp.*, 200 F.3d 485, 492 (7th Cir. 2000), the Court must construe all facts in a light most favorable to the non-moving party and draw all reasonable inferences in that party's favor. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986).

ANALYSIS

I. Discrimination and Retaliation Claims

Williams claims that USPS discriminated against him in violation of Title VII, the ADEA, and the Rehabilitation Act. He also claims USPS retaliated against him in violation of Title VII for his prior EEO activity. Courts previously spoke of proceeding under an indirect or direct method to prove these claims, but the Seventh Circuit has instructed that instead of using such tests, the Court should consider the evidence "as a whole" to determine whether it "would permit a reasonable factfinder to conclude that the plaintiff's [protected characteristics] caused the [adverse employment actions]." *Ortiz v. Werner Enters., Inc.*, 834 F.3d 760, 765 (7th Cir. 2016); *see Monroe v. Ind. Dep't of Transp.*, 871 F.3d 495, 504–05 (7th Cir. 2017) (applying *Ortiz* to claims under the ADA and Rehabilitation Act); *Carson v. Lake Cty., Ind.*, 865 F.3d 526, 532–33 (7th Cir. 2017) (applying *Ortiz* to ADEA claim); *Lauth v. Covance, Inc.*, 863 F.3d 708, 716 (7th Cir. 2017) (applying *Ortiz* to retaliation claim).[7] This does not mean that the Court cannot consider the traditional burden-shifting test laid out in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S. Ct. 1817, 36 L. Ed. 2d 668 (1973). *Ortiz*, 834 F.3d at 766 (noting that its decision does not overrule *McDonnell Douglas*). Although the parties conduct an analysis under both the previously recognized direct and indirect methods,

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[7] To the extent differences exist in the standards for proving discrimination and retaliation under Title VII, the ADEA, and the Rehabilitation Act, the Court notes such differences as they arise.

because they essentially make the same arguments under both methods, the Court finds it more appropriate to consider the evidence as a whole in addressing whether a reasonable factfinder could determine that Williams' protected characteristics caused the complained-of adverse actions.[8] *See id.* at 765–66. First, however, because USPS challenges whether certain of Williams' claimed employment actions qualify as materially adverse, an issue applicable to both inquiries, the Court addresses the scope of Williams' discrimination claims.

A. Adverse Employment Actions

For purposes of Williams' discrimination claims, a materially adverse employment action is an action that involves "a significant change in employment status," *Boss v. Castro*, 816 F.3d 910, 917 (7th Cir. 2016) (quoting *Andrews v. CBOCS W., Inc.*, 743 F.3d 230, 235 (7th Cir. 2014)), and is "more disruptive than a mere inconvenience or an alteration of job responsibilities," *Nichols v. S. Ill. Univ.-Edwardsville*, 510 F.3d 772, 779 (7th Cir. 2007) (quoting *Rhodes v. Ill. Dep't of Transp.*, 359 F.3d 498, 504 (7th Cir. 2004)). Adverse employment actions generally fall into three categories: "(1) termination or reduction in compensation, fringe benefits, or other financial terms of employment; (2) transfers or changes in job duties that cause an employee's skills to atrophy and reduce future career

[8] The parties do not neatly separate their arguments with respect to each of the various alleged bases of discrimination and retaliation. The Court has done its best to sort out the arguments and evidence into the appropriate buckets.

prospects; and (3) unbearable changes in job conditions, such as a hostile work environment or conditions amounting to constructive discharge." *Barton v. Zimmer, Inc.*, 662 F.3d 448, 453–454 (7th Cir. 2011). The standard for showing an adverse employment action for a retaliation claim is lower than that for a discrimination claim. *Burlington N. & Santa Fe Ry. Co. v. White*, 548 U.S. 53, 67, 126 S. Ct. 2405, 165 L. Ed. 2d 345 (2006). "[A] plaintiff must only show that the employer's action would cause a 'reasonable worker' to be dissuaded from making or supporting a charge of discrimination." *Chaib v. Indiana*, 744 F.3d 974, 986–87 (7th Cir. 2014) (quoting *White*, 548 U.S. at 68), *overruled on other grounds by Ortiz*, 834 F.3d 760. As demonstrated below, the different standards do not affect the Court's analysis in this case.

USPS acknowledges that Williams suffered three adverse employment actions: the 2013 emergency placement, the 2013 notice of removal, and the 2014 notice of removal. But USPS argues that the alleged incidents regarding holiday pay, improper AWOL designations, being sent home early, and Principe calling the police on Williams do not rise to the level of adverse employment actions. Williams does not meaningfully respond to USPS' argument, stating instead that "even assuming, without conceding, that the instances referenced by Defendant . . . did not individually constitute adverse employment action, a reasonable jury can conclude that these incidents, together, created unbearable work conditions and created a hostile work environment." Doc. 53 at 5. But in doing so, Williams effectively concedes that these incidents individually do not amount to adverse

actions, and the Court need not address the viability of these individual actions further. *See Nelson v. Napolitano*, 657 F.3d 586, 590 (7th Cir. 2011) (the court is not "obliged to research and construct legal arguments for parties, especially when they are represented by counsel"); *Bonte v. U.S. Bank, N.A.*, 624 F.3d 461, 466 (7th Cir. 2010) ("Failure to respond to an argument . . . results in waiver."); *United States v. Elst*, 579 F.3d 740, 747 (7th Cir. 2009) ("Perfunctory and undeveloped arguments as well as arguments unsupported by pertinent authority are waived.").

Williams also cannot proceed on his newly-raised contention that USPS created a hostile work environment. Although a hostile work environment can amount to an adverse employment action, Williams cannot change his theory in response to USPS' motion for summary judgment. *See Shanahan v. City of Chicago*, 82 F.3d 776, 781 (7th Cir. 1996) ("A plaintiff may not amend his complaint through arguments in his brief in opposition to a motion for summary judgment."). More importantly, as with any of the individual actions, Williams has not sufficiently developed his argument to allow the Court to determine whether a hostile work environment existed at the Glen Ellyn Post Office. *See Nelson*, 657 F.3d at 590; *Elst*, 579 F.3d at 747. Therefore, the Court will not consider this belated attempt to assert a hostile work environment and instead finds it appropriate to only address whether USPS acted discriminatorily with

respect to the 2013 emergency placement and notice of removal and the 2014 notice of removal.[9]

B. Causation

Having determined the actionable adverse actions, the Court turns to an analysis of whether any of Williams' protected characteristics caused these actions. Williams may demonstrate causation through evidence of, for example, comments or animus toward the protected group, suspicious timing, more favorable treatment of similarly situated employees, or pretext. *Monroe*, 871 F.3d at 504. Although Williams' Title VII status-based discrimination claims require only that the protected characteristic was a motivating factor in the employer's actions, Williams' age and retaliation claims require but-for causation, meaning "proof that the unlawful retaliation would not have occurred in the

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[9] Williams also appears to contend for the first time that USPS' failure to pay him backpay, as provided for in the pre-arbitration settlement, amounts to a breach of the settlement agreement and an adverse action. The Court similarly cannot consider this as a basis for his discrimination claims or as a separate breach of contract claim, where Williams belatedly raises the argument in an attempt to avoid summary judgment and his complaint includes no mention of issues related to the pre-arbitration settlement. *See Conner v. Ill. Dep't of Nat. Res.*, 413 F.3d 675, 679 (7th Cir. 2005) ("Conner's raising of the temporary assignment pay issue for the first time in her response to a motion for summary judgment thus amounted to adding a new count of discrimination to the lawsuit, or amending her original complaint."); *Whitlock v. Williams Lea, Inc.*, No. 16 CV 6347, 2019 WL 1382267, at *5 (N.D. Ill. Mar. 27, 2019) (refusing to consider retaliation claim where complaint did not mention retaliation or include facts about termination, with plaintiff raising the issue for the first time in the summary judgment response brief).

absence of the alleged wrongful action or actions of the employer." *Univ. of Tex. Sw. Med. Ctr. v. Nassar*, 570 U.S. 338, 343, 360, 133 S. Ct. 2517, 186 L. Ed. 2d 503 (2013) (retaliation); *Gross v. FBL Fin. Servs., Inc.*, 557 U.S. 167, 176, 129 S. Ct. 2343, 174 L. Ed. 2d 119 (2009) (age discrimination). While Williams briefly acknowledges the need for but-for causation to establish his retaliation claim, USPS does not separately argue that Williams cannot meet the higher causation standard for his age and retaliation claims, instead speaking generally about his failure to establish a causal link for all claims, and so the Court treats the claims in the same way for summary judgment purposes.

1. 2013 Emergency Placement and Notice of Removal[10]

To create a disputed issue of fact as to causation with respect to the 2013 emergency placement and notice of removal, Williams points to statements and actions by his supervisors allegedly showing biases against his protected groups, as well as alleged evidence of comparators and pretext. First, Williams highlights a statement he claims Walsh made in 2012 about how Williams did not think he had to follow the rules because he was black. Without anything more, such an isolated remark, unconnected to the 2013 emergency placement and notice of removal and made by a non-decisionmaker over a year before these

[10] Based on Williams' response, the Court does not understand him to claim retaliation or disability discrimination with respect to the 2013 emergency placement or notice of removal.

actions, does not create a question of fact. *See Egonmwan v. Cook County Sheriff's Dep't*, 602 F.3d 845, 850 (7th Cir. 2010) (for a stray remark to establish discriminatory motivation, it must be "(1) made by the decisionmaker, (2) around the time of the decision, and (3) in reference to the adverse employment action"). And the record does not suggest any basis to connect Principe's call to the police in April 2013 to any of Williams' protected characteristics. *See Berry v. Delta Airlines, Inc.*, 260 F.3d 803, 808 (7th Cir. 2001) ("Title VII proscribes only workplace discrimination on the basis of sex, race, or some other status that the statute protects; it is not a 'general civility code' designed to purge the workplace of all boorish or even all harassing conduct.").

Next, Williams claims he has identified similarly situated employees outside of his protected classes whom USPS treated more favorably. "Similarly situated employees 'must be directly comparable to the plaintiff in all material respects,' but need not be identical in every conceivable way." *Coleman v. Donahoe*, 667 F.3d 835, 846 (7th Cir. 2012). Typically, a plaintiff must at least show that the comparators "(1) dealt with the same supervisor, (2) were subject to the same standards, and (3) engaged in similar conduct without such differentiating or mitigating circumstances as would distinguish their conduct or the employer's treatment of them." *Id.* at 847. For purposes of the 2013 emergency placement and notice of removal, Williams has identified three potential comparators: (1) Bach, a Caucasian male over the age of forty who is not disabled; (2) Utsler, a Caucasian

older male; and (3) Pierce, a Caucasian older male. None of these individuals engaged in protected activity.

Initially, Williams has produced no admissible evidence to allow the Court to consider Utsler and Pierce as proper comparators. *See Durkin v. City of Chicago*, 341 F.3d 606, 614 (7th Cir. 2003) (plaintiff, not defendant, has the burden to prove that defendant treated similarly situated employees more favorably). Although Williams has presented his own testimony about Utsler and Pierce, his general and conclusory testimony as to their protected characteristics and his understanding of the discipline USPS imposed on them cannot defeat summary judgment. *See Boss*, 816 F.3d at 919 (speculation about comparators' work histories does not suffice to show similarly situated employees); *Gates v. Caterpillar, Inc.*, 513 F.3d 680, 690 (7th Cir. 2008) (plaintiff's limited information on comparators was "too vague to allow this Court to determine whether Gates and the men are 'similarly situated'"); *South v. Ill. Envtl. Prot. Agency*, 495 F.3d 747, 753 (7th Cir. 2007) (plaintiff failed to identify similarly situated employees where he identified individuals with the same employment responsibilities and supervisor but did not present information as to other "salient characteristics" that would allow a trier of fact to determine that the employer treated them differently); *Oest v. Ill. Dep't of Corr.*, 240 F.3d 605, 614 (7th Cir. 2001) (a Title VII plaintiff's "own uncorroborated, conclusory statements that similarly situated co-workers were treated differently" is not enough to defeat summary judgment), *overruled by Ortiz*, 834 F.3d 760.

Additionally, none of these individuals could serve as proper comparators for Williams' age discrimination claim. *See Zaccagnini v. Charles Levy Circulating Co.*, 338 F.3d 672, 675 (7th Cir.2003) (for purposes of age discrimination claim, a comparator may be a substantially younger person, regardless of whether that person is under the age of forty); *Hartley v. Wis. Bell, Inc.*, 124 F.3d 887, 892–93 (7th Cir.1997) (ten-year age difference with comparator is presumed substantial, regardless of whether the comparator also falls within the protected class). Bach is at least ten years older than Williams, and Williams testified that both Utsler and Pierce are older than him as well.

Finally, Williams argues that Bach engaged in similar if not more serious conduct—falsifying a customer's signature—but kept his job after the incident. But USPS did not treat Bach more favorably. Once USPS learned of the signature incident, USPS placed Bach on emergency placement and, after an investigation, issued Bach a notice of removal. Similarly, after USPS received a complaint about Williams' interaction with Smid, USPS placed Williams on emergency placement and, after an investigation, issued Williams a notice of removal. Although it appears that the subsequent grievance process concluded more quickly for Bach than for Williams, the grievance process is not at issue here. But ultimately, that process resulted in USPS reinstating both Bach and Williams to their jobs. Because the record does not allow an inference that USPS treated Bach more favorably, Williams cannot rely on him as a comparator to suggest causation.

USPS also argues that Williams cannot demonstrate that USPS provided pretextual reasons for the 2013 emergency placement and notice of removal. "Pretext requires more than showing that the decision was mistaken, ill considered or foolish, and so long as the employer honestly believes those reasons, pretext has not been shown." *Formella v. Brennan*, 817 F.3d 503, 513 (7th Cir. 2016) (citation omitted). Williams can "demonstrate pretext directly by showing that 'a discriminatory reason more likely motivated' [the adverse actions], or indirectly by showing that [USPS'] explanations are 'unworthy of credence.'" *Senske v. Sybase*, 588 F.3d 501, 507 (7th Cir. 2009) (citation omitted). The pretext inquiry focuses on "whether the employer's stated reason was honest, not whether it was accurate, wise or well-considered." *Stewart v. Henderson*, 207 F.3d 374, 378 (7th Cir. 2000).

USPS maintains that it put Williams on emergency placement immediately after the Smid incident based on Smid's mother's report of the incident and her expressed fear he could cause harm to or harass to her high school aged daughter. And USPS states it based the 2013 notice of removal on the OIG's investigation, which concluded that "Williams engaged in conduct which did not reflect favorably upon the USPS," Doc. 39 ¶ 29, and its determination that this unacceptable conduct violated several of USPS' standards of conduct and policies.

First, Williams argues that USPS' reasons for the 2013 emergency placement and notice of removal are pretextual because no USPS policy prevented him from

having "a mutually friendly conversation with an adult postal customer." Doc. 53 at 13. But the emergency placement and notice of removal both cited USPS policies as the bases for the actions, *see* Docs. 40-12 & 40-13. Williams cannot avoid the application of these rules by recharacterizing the incident in favorable terms. And even if Williams viewed the conversation as "mutually friendly," Smid and her mother did not view it that way and the OIG's investigation substantiated that Williams engaged in improper conduct. *See Lauth*, 863 F.3d at 715–16 ("Lauth's belief that he was performing his job adequately is not relevant to the question of whether Covance believed it had a legitimate, non-discriminatory basis to terminate him."); *Mirocha v. Palos Cmty. Hosp.*, 240 F. Supp. 3d 822, 839 (N.D. Ill. 2017) (plaintiff could not create an issue of fact by claiming he was performing adequately or challenging his supervisors' assessment of his performance). While Williams may believe that his actions did not warrant termination, the Court does not sit as a "super personnel department that second-guesses employer's business judgments." *Millbrook v. IBP, Inc.*, 280 F.3d 1169, 1181 (7th Cir. 2002) (citation omitted) (internal quotation marks omitted); *Widmar v. Sun Chem. Corp.*, 772 F.3d 457, 464 (7th Cir. 2014) ("This court has repeatedly stated that it is not a super-personnel department that second-guesses employer policies that are facially legitimate. . . . A court cannot interfere because an employer's decision is unwise or unfair.").

Williams also argues that the fact that USPS imposed two forms of discipline for the same conduct demonstrates pretext. Williams claims that, because

USPS brought him back to work after the emergency placement but before issuing the notice of removal, USPS subjected him to double jeopardy for the same incident. Williams relies on a 1977 arbitrator's decision that USPS did not have just cause to discharge a grievant for the same conduct for which it had placed her on an emergency placement but then allowed her to return to work. Doc. 47-14 at 6–8. Williams correctly points out that "an agency cannot impose a disciplinary or adverse action more than once for the same misconduct." *Cooper v. Dep't of Veterans Affairs*, 2012 M.S.P.B. 23, ¶ 5. Although USPS' issuance of a notice of removal, on its face, appears to violate this prohibition on double jeopardy, the Court only considers the honesty of USPS' stated reason for his termination, not its validity or reasonableness.[11] *Seymour-Reed v. Forest Pres. Dist. of DuPage Cty.*, 752 F. App'x 331, 335 (7th Cir. 2018). Williams does not provide any evidence indicating a deviation from USPS' internal employment procedures. *See Jajeh v. Cty. of Cook*, 678 F.3d 560, 572–73 (7th Cir. 2012) (finding plaintiff's speculative arguments about what went into employer's decision not to promote were not sufficient evidence to show employer failed to follow its internal employment procedures). And the 1977 arbitrator decision alone cannot give rise to an inference that USPS did not believe the reason given for the 2013

[11] Moreover, the parties do not present the Court with sufficient facts surrounding the decision to bring Williams back to work prior to issuing him a notice of removal. Any issues unrelated to his discrimination claims that Williams had surrounding that notice of removal were settled in the pre-arbitration settlement and are not properly before the Court here.

notice of removal. *See Guinto v. Exelon Generation Co.*, 341 F. App'x 240, 246–47 (7th Cir. 2009) (no pretext existed based on a violation of policy where employer "truthfully stated why it rejected [plaintiff's] application, but [that] explanation violated its own policies"). Williams does not point to evidence that Principe, Gillispie, or Walsh knew of this double jeopardy prohibition or willfully ignored it in issuing the notice of removal. *See Ference v. Aon Consulting, Inc.*, No. 07 C 2918, 2008 WL 2098037, at *11–12 (N.D. Ill. May 19, 2008) (plaintiff could not show pretext based on failure to follow alleged policy where no evidence that employees knew of policy or, assuming the policy existed, that employer deviated from it for discriminatory reason). Instead, the evidence only allows the interpretation that USPS removed Williams from his position based on the findings of the OIG investigation. Therefore, without any evidence of discriminatory animus contributing to his receipt of the emergency placement and notice of removal in 2013, a reasonable juror could not find that USPS undertook these adverse actions based on any of Williams' protected characteristics.

2. 2014 Notice of Removal

As for the 2014 notice of removal, Williams argues that USPS acted pretextually and treated similarly situated employees differently. He also relies on evidence of alleged suspicious timing and discriminatory statements. With respect to pretext, USPS represents that it issued the notice of removal because Williams did not return to work as instructed and failed to substantiate his extended absence from

work. Williams claims this stated reason for his removal amounts to pretext because he informed USPS of his need for FMLA leave. But the fact that Williams called the IVR system to request leave did not excuse him from providing medical documentation to support that request because USPS' policy requires documentation for sick leave requests exceeding three days. Here, Williams requested leave for eighty hours at a time, necessitating documentation. Williams does not dispute that he failed to provide documentation until after USPS issued the notice of removal. While he claims he only received the letters requesting documentation after the fact, nothing in the record suggests that Principe and Gillispie knew of this at the time USPS issued the notice. Additionally, Williams had an obligation to keep USPS apprised of his current address and acknowledges he did not do so until after his removal. Moreover, although Williams claims he informed Gillispie that he would provide documentation once his doctor returned to the United States, this does not change the fact that, at the time Gillispie and Principe issued the notice of removal, Williams had failed to provide the required documentation despite having received several warnings. And USPS policies specifically provide for the possibility of termination upon the failure to report to work and provide medical documentation to excuse any such absences. Gillispie and Principe provided Williams with numerous opportunities to substantiate his absence, but he did not do so in a timely fashion.

Williams, however, argues that the Court should consider Principe's derogatory comments about Williams returning to work to find USPS' reasons

unworthy of credence. While Principe's comments about Williams certainly do not reflect well on her, nothing in the record suggests these comments related to any of Williams' protected characteristics. *See Fulmore v. Home Depot, U.S.A., Inc.*, 423 F. Supp. 2d 861, 877–78 (S.D. Ind. 2006) ("[E]vidence that Baven's supervisors were not kind in reprimanding or otherwise communicating with her and Haslett, while perhaps unfortunate, does not demonstrate or raise the inference that Baven was not promoted because of her race.").

Alternatively, Williams may show pretext by pointing to comparator evidence. *See Coleman*, 667 F.3d at 857–858 ("Where the plaintiff argues that an employer's discipline is meted out in an uneven manner, the similarly-situated inquiry dovetails with the pretext question."). Williams identifies one potential comparator for purposes of the 2014 Notice of Removal: Joanne Tricoci, who also had attendance issues. Tricoci is a Caucasian female over the age of forty who did not engage in protected activity but has been disabled and on FMLA, making her a potential comparator for Williams' race, gender, national origin, and retaliation claims.[12] USPS engaged in progressive discipline with Tricoci for her unexcused absences,

[12] Williams has not identified a comparator for his disability claim. USPS also argues he cannot prevail on this claim because he cannot demonstrate USPS knew of his depression before issuing the notice of removal. Although a question of fact exists on that issue, with Williams testifying that he informed Gillispie before that time, this dispute ultimately makes no difference in the Court's analysis, where Williams does not present any evidence of causation related to his claimed disability.

issuing her a letter of warning, a seven-day notice of suspension, and a fourteen-day notice of suspension, but stopping short of a notice of removal. USPS contends that it ultimately discovered that Tricoci's absences were covered by the FMLA and so argues that this sufficiently differentiates her from Williams. Although they may have had somewhat different situations, the inquiry does not require "perfect congruence" between the two. *See Donley v. Stryker Sales Corp.*, 906 F.3d 635, 639 (7th Cir. 2018) ("Perfect congruence is not required, however. The question is whether the two employees are situated similarly enough for reasonable comparison."). A reasonable juror could find Williams and Tricoci engaged in comparable behavior and question why USPS immediately issued Williams a notice of removal instead of engaging in progressive discipline, as it did with Tricoci. This is particularly the case where USPS relied on the subsequent receipt of medical information to excuse Tricoci's absences but did not do the same for Williams. Therefore, Williams has at least raised a question of fact as to whether USPS treated Tricoci differently with respect to attendance issues and so acted with discriminatory animus for purposes of his race, gender, national origin, and retaliation claims related to the 2014 notice of removal.

Finally, to further buttress his retaliation claim, Williams argues that the evidence suggests USPS retaliated against him because it issued the notice of removal shortly after receiving an EEO ruling that found that USPS retaliated against Williams in 2010. "Although suspicious timing alone is rarely enough to create an inference of retaliatory motive, it can

sometimes raise an inference of a causal connection, especially in combination with other evidence." *Gracia v. SigmaTron Int'l, Inc.*, 842 F.3d 1010, 1021 (7th Cir. 2016). When combined with the evidence of USPS' apparent uneven application of discipline to Tricoci, a jury could infer that USPS actually issued the 2014 notice of removal not because of his absences but rather in retaliation for his protected activity.[13] Therefore, the Court allows Williams to proceed on his claims of race, gender, and national origin discrimination and retaliation related to the 2014 notice of removal.

II. Associational Disability Claim

Williams also brings a separate claim that USPS discriminated against him because of his association with his wife, who had a disability. *See Hale v. Pace*, No. 09 C 5131, 2011 WL 1303369, at *4 (N.D. Ill. Mar. 31, 2011) (recognizing associational discrimination claim under the Rehabilitation Act). The Seventh Circuit has identified three situations falling within the scope of an associational discrimination claim, which demonstrate the employer's "motive to

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[13] Williams also argues he has evidence from other Glen Ellyn Post Office employees of statements Principe and Gillispie allegedly made about retaliating against anyone who engaged in protected activity. Williams, however, has not provided the Court with this evidence in admissible form. *See Taylor v. Catholic Charities of Archdiocese of Chicago*, No. 17 CV 2380, 2019 WL 1168115, at *5 (N.D. Ill. Mar. 13, 2019) (emails and statements not admissible where they were not sworn under oath or made under penalty of perjury and so did not qualify as affidavits or declarations under Rule 56(c)(4)). To the extent Williams can properly introduce this evidence at trial, it could also go toward establishing the causation element of his retaliation claim.

discriminate against a nondisabled employee who is merely associated with a disabled person." *Larimer v. Int'l Bus. Machs. Corp.*, 370 F.3d 698, 702 (7th Cir. 2004). These situations are: (1) expense, where the associated individual's disability proves costly to the employer; (2) disability by association, where the employer fears the employee may contract a disease or develop the disability as well; and (3) distraction, where "the employee is somewhat inattentive at work because his spouse or child has a disability that requires his attention, yet not so inattentive that to perform to his employer's satisfaction he would need an accommodation." *Id.* at 700. To establish an associational discrimination claim, Williams must demonstrate: (1) he qualified for the job, (2) he suffered an adverse employment action, (3) USPS knew at the time that he had a relative with a disability, and (4) his case falls into one of the three categories of expense, disability by association, or distraction. *Magnus v. St. Mark United Methodist Church*, 688 F.3d 331, 336–37 (7th Cir. 2012). Ultimately, the evidence must demonstrate that "it is more likely than not the employer took the adverse action . . . because of the plaintiff's association with a disabled individual." *Id.*

USPS argues that Williams cannot show that his case falls within any of the three recognized categories of expense, disability by association, or distraction. Williams responds that his case fits into the distraction and expense categories. He claims he falls within the expense category because USPS had concerns about his requests for paid leave to attend his wife's treatments. But the record does not support Williams' claim that USPS placed him on AWOL status when he should

have received pay for annual or sick leave. Nor does the record support a finding that USPS took any of the actionable adverse employment actions—issuing the 2013 emergency placement and notice of removal or the 2014 notice of removal[14]—because Williams was somewhat inattentive at work because of his wife's disability. No evidence of inattentiveness appears in the record. Therefore, because the evidence does not create a question of fact as to whether Williams' case falls into one of the recognized categories and Williams does not point to any other evidence that would allow the inference that USPS issued him the emergency placement or notices of removal because of his association with his wife, the Court grants judgment for USPS on the associational disability claim.

CONCLUSION

For the foregoing reasons, the Court grants in part and denies in part USPS' motion for summary judgment [43]. The Court enters judgment for USPS on Williams' claims, except with respect to his claims of race, gender, and national origin discrimination and retaliation related to the 2014 notice of removal.

Dated: October 16, 2019

/s/ Sara L. Ellis
SARA L. ELLIS
United States District Judge

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[14] Because Williams' wife died in May 2014, the Court also questions whether Williams can demonstrate he had an association with an individual with a disability at the time of the 2014 notice of removal.

APPENDIX C

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 17 C 8613

[Filed May 6, 2022]

CARLOS A. WILLIAMS,
Plaintiff,

v.

MEGAN J. BRENNAN, as Postmaster General for the United States Postal Service,
Defendant.

Judge Sara L. Ellis

ORDER

The Court grants in part and denies in part Plaintiff Carlos Williams' motions *in limine* and grants Defendant Megan Brennan's, as Postmaster General for the United States Postal Service ("USPS"), motions *in limine* [133]. See Statement for further details.

STATEMENT

I. Williams' Motions *in Limine*

A. Motions to Admit

1. Motion to admit testimony by Plaintiff's coworkers

Williams asks the Court to admit the testimony of his coworkers at the Glen Ellyn Post Office regarding the following topics: (1) their knowledge of Williams' supervisors' (Connie Principe, John Walsh, and Postmaster James Gillispie) "treatment and on-going harassment" of him; (2) the discriminatory or retaliatory acts directed at them by Principe, Walsh, and Gillispie in response to their involvement with Williams and the No Harassment Foundation, an organization through which Williams and two others helped USPS employees file EEO complaints; and (3) an altercation that occurred in April 2013 between Williams and Principe that resulted in Principe calling the police. Doc. 133 at 7. In response, USPS does not object to Williams' request to call witnesses who will testify regarding their personal knowledge of relevant events leading up to and surrounding the 2014 notice of removal, which is the only remaining adverse employment action at issue.[1] However, USPS objects to Williams' motion to the extent it seeks to admit

[1] In ruling on USPS' motion for summary judgment, the Court entered judgment for USPS on Williams' discrimination and retaliation claims related to the remainder of Williams' alleged adverse employment actions, including those related to the 2013 emergency placement and notice of removal. Doc. 62 at 14–22.

testimony regarding other unrelated incidents, wrongdoing not directed at Williams, or claims or arguments that the Court rejected on summary judgment.

Specifically, as to Williams' first proposed topic (coworkers' testimony regarding their knowledge generally of Williams' supervisors' treatment of him), USPS contends that such testimony is only admissible to the extent it relates to the 2014 removal. The Court considered and rejected many alleged statements made by Williams' supervisors and specific examples of their treatment of him as bases for his discrimination and retaliation claims in connection with USPS' motion for summary judgment. Doc. 62. As a result, Williams may not elicit testimony regarding any of those rejected incidents, including, for example, statements Walsh made in 2012 about how Williams did not think he had to follow the rules because he was black. *Id.* at 17. The only issue the Court allowed to proceed to trial is whether certain of Williams' protected characteristics (race, gender, national origin, and protected EEO activity) caused the 2014 notice of removal. *Id.* at 27. Accordingly, the Court will allow Williams' coworkers to testify regarding their personal knowledge of Williams' supervisors' treatment of him in connection with the 2014 notice of removal.

USPS contends that although the Court already resolved Williams' claims related to the 2013 emergency placement and notice of removal, evidence related to those two adverse actions is relevant to the 2014 notice of removal because it explains why Williams was not at work leading up to his 2014

removal for attendance issues. USPS argues that the "jury will need to understand why Williams had not reported to work for over *one year* before [USPS] issued a notice of removal and terminated him in August of 2014." Doc. 146 at 4. While the Court agrees, the parties can accomplish this by simply introducing evidence that confirms that USPS terminated Williams in 2013 and later agreed to allow him to return to work. The Court resolved Williams' claims related to the 2013 emergency placement and notice of removal on summary judgment and as a result, the circumstances surrounding them are irrelevant to his remaining claims regarding the 2014 notice of removal. Thus, the Court will not allow the parties to introduce any evidence regarding the underlying cause of or details surrounding Williams' 2013 termination. To streamline the trial and avoid confusion, the Court encourages the parties to agree to a stipulation regarding Williams' 2013 termination.

USPS further argues that the Court should not permit these witnesses to testify to Walsh's treatment of Williams because Walsh did not supervise Williams in 2014 and was not involved in his 2014 removal and thus, such evidence is irrelevant and may confuse the jury. The Court tends to agree that Walsh's treatment of Williams unrelated to the 2014 notice of removal likely does not carry much probative value. *See Egonmwan v. Cook Cnty. Sheriff's Dep't*, 602 F.3d 845, 850 (7th Cir. 2010) (for a stray remark to establish discriminatory motivation, it must be "(1) made by the decisionmaker, (2) around the time of the decision, and (3) in reference to the adverse employment action"). However, the Court cannot say categorically that

Walsh's treatment of Williams is irrelevant to Williams' remaining claims. For example, as explained in more detail in response to Williams' motion to admit number 2, the EEO complaints Williams filed while working at the Glen Ellyn Post Office are relevant to his retaliation claim and Williams filed multiple EEO complaints against Walsh. Thus, the Court will not limit the proposed testimony to Principe's and Gillispie's treatment of Williams. However, as explained above, the Court will only allow Williams' coworkers to testify regarding their personal knowledge of Walsh's treatment of Williams in connection with the 2014 notice of removal (to the extent such testimony exists).

As to the second proposed topic (discriminatory or retaliatory acts directed at the coworkers by Principe, Walsh, and Gillispie in response to their involvement with Williams and the No Harassment Foundation), USPS argues that the Court should deny Williams' motion under Federal Rules of Evidence 402 and 403 because nonparty grievances are irrelevant to the claims at issue and would risk confusing the jury, cause undue delay, and be unduly prejudicial to USPS. Williams submits that he plans to introduce two witnesses (Barbara Walker and Jermaine Jackson) who will testify that, after USPS terminated Williams, they heard Gillispie and Principe tell workers at the Glen Ellyn Post Office: "[I]f anyone else engaged in filing EEO's they would find themselves in the unemployment line just like Carlos Williams." Doc. 137 at 7. USPS does not object to such testimony if Walker and Jackson have personal knowledge of the statement. Thus, subject to Williams laying the proper foundation

for Walker and Jackson's testimony, the Court will allow them to testify to that statement. However, the Court will not allow them to testify regarding any other alleged discriminatory or retaliatory acts directed at them by Principe, Walsh, or Gillispie. Such testimony is irrelevant to Williams' claims and any minimal probative value the testimony has is certainly outweighed by the significant risk of confusion, delay, and undue prejudice it poses.

Finally, as to the third proposed topic, the Court already rejected Williams' argument that the April 2013 altercation between him and Principe constitutes an adverse employment action or that it occurred because of his protected characteristics. *See* Doc. 62 at 15, 17 (finding the altercation did not amount to an adverse action and that "the record does not suggest any basis to connect [it] to any of Williams' protected characteristics"). Thus, the Court bars any evidence regarding the April 2013 incident.

In summary, the Court grants in part and denies in part Williams' motion to admit number 1. If Williams' coworkers are able to lay the proper foundation, the Court will permit them to testify regarding their personal knowledge of Principe's, Walsh's, and Gillispie's treatment of Williams in connection with the 2014 notice of removal and that they heard Gillispie and Principe say, "[I]f anyone else engaged in filing EEO's they would find themselves in the unemployment line just like Carlos Williams." Doc. 137 at 7. However, the Court bars them from testifying to Williams' managers' treatment of him unrelated to the

2014 notice of removal and any discriminatory or retaliatory acts directed at them.

2. Motion to admit complaints made by Plaintiff or employees represented by Plaintiff or the No Harassment Foundation

Williams asks the Court to admit evidence of all harassment, discrimination, and retaliation complaints made by him and employees represented by him or the No Harassment Foundation from his initial hire in May 2010 through his termination in 2014 to show that USPS' stated reason for his removal was pretextual. As explained above, evidence regarding complaints made by other employees is irrelevant to Williams' 2014 termination and the risks of introducing it strongly outweigh any probative value it carries. As a result, the Court will not allow Williams to introduce such evidence. However, the Court will permit Williams to admit evidence regarding EEO complaints he filed while working at the Glen Ellyn Post Office starting in 2010 to support his retaliation claim. USPS asserts that the Court has "limited Williams's claims to events surrounding his 2014 Notice of Removal and, therefore, the court should not allow Williams to introduce argument relating to events that occurred in 2010, 2011, 2012, and early 2013." Doc. 146 at 9. But this is not entirely accurate. While the Court entered judgment in USPS' favor on Williams' claims related to all alleged adverse employment actions other than the 2014 notice of removal, the Court has not made any finding of fact regarding the protected activity at issue in Williams' retaliation claim. *See Ferguson v. City of*

Chicago, No. 13 C 4084, 2016 WL 3226529, at *4 (N.D. Ill. June 13, 2016) ("The Court's denial of summary judgment . . . 'does not settle or even tentatively decide anything about the merits of the claim. It is strictly a pretrial order that decides only one thing—that the case should go to trial.' The Court could have entered an order deeming certain facts established in the case pursuant to Federal Rule of Civil Procedure 56(g). But the Court did not do so." (citations omitted)).

Therefore, all the EEO complaints Williams filed while working at the Glen Ellyn Post Office are relevant to his retaliation claim. However, the Court will not allow Williams to introduce evidence regarding the facts underlying each complaint. Such evidence would confuse the jury and cause undue delay. Williams must limit evidence regarding his EEO complaints to the following: the fact that he filed a complaint, when he filed the complaint, and the resolution of the complaint. Accordingly, the Court grants in part and denies in part Williams' motion to admit number 2. The Court will allow Williams to admit limited evidence regarding the EEO complaints he filed on his own behalf while working at the Glen Ellyn Post Office, but Williams may not admit evidence of complaints filed by his coworkers. To streamline the trial and avoid confusion, the Court encourages the parties to agree to a stipulation regarding the EEO complaints Williams filed.

3. Motion to admit testimony and report of Plaintiff's damages expert

Williams asks the Court to admit the testimony and report of his damages expert, James McGovern.

However, after Williams disclosed McGovern as an expert, the Court stayed all remaining expert discovery pending the result of the trial, Doc. 88, in response to the parties' joint request to do so, Doc. 79 at 1. Thus, Williams cannot now change his position and seek to admit McGovern's testimony and report at trial. Williams argues that his attorneys filed the joint request without his consent and that USPS could have engaged in discovery to rebut McGovern's report but chose not to. However, Williams' attorneys signed the joint status report on his behalf. Doc. 79. This is not the proper forum to allege that Williams' attorneys did so without his consent. Moreover, regardless of the parties' previous positions, the evidence is irrelevant to the trial. McGovern's testimony and report pertain to Williams' front pay and backpay damages, which are equitable remedies under Title VII for the Court to decide, not the jury. *See Seventh Circuit Federal Civil Jury Instructions*, No. 3.10 cmt. c ("Under Title VII and the ADA, back pay and front pay are equitable remedies to be decided by the court."); *Pals v. Schepel Buick & GMC Truck, Inc.*, 220 F.3d 495, 501 (7th Cir. 2000); 42 USC § 2000e-5(g)(1). Thus, the jury need not consider McGovern's testimony or report. The Court will do so if Williams prevails at trial. And because the Court stayed expert discovery, USPS could not have engaged in discovery to refute McGovern's report. Thus, the Court denies Williams' motion to admit number 3.

4. Motion to admit communications with Plaintiff's damages expert

Williams also asks the Court to admit communications between McGovern and himself or his former attorneys to show that Williams mitigated his damages through death benefits, unemployment benefits, private citizen work, and EEO representation. USPS raises a failure to mitigate defense in response to Williams' request for backpay, which as discussed above is an issue for the Court to decide. *See EEOC v. Rent-A-Center E., Inc.*, No. 16-2222, 2018 WL 11326934, at *3 (C.D. Ill. Jan. 5, 2018) ("[F]ailure to mitigate is a subsidiary issue of backpay, and therefore should be heard by the Court."). Thus, the jury need not consider any evidence related to backpay or Williams' failure to mitigate damages. Any such evidence is therefore irrelevant and inadmissible at trial. The Court accordingly denies Williams' motion to admit number 4.

5. Motion to admit evidence of Plaintiff's mitigating income

Williams asks the Court to admit evidence of his mitigating income from death benefits, unemployment benefits, private citizen work, and EEO representation provided to his former attorneys. The Court denies Williams' motion to admit number 5 for the same reasons it denied his motion to admit number 4. This evidence is irrelevant to the trial and is accordingly inadmissible.

6. Motion to admit evidence of USPS subjecting Plaintiff to double jeopardy

Williams asks the Court to admit evidence of USPS subjecting him to double jeopardy by bringing him back to work after the emergency placement and then issuing the notice of removal for the same incident in 2013. Williams seeks to admit this evidence to show that the incident constituted an adverse employment action and violated his right to due process under the Fourteenth Amendment. However, the Court already addressed and rejected Williams' argument that this alleged double jeopardy could support Williams' discrimination and retaliation claims. *See* Doc. 62 at 17–22 (entering judgment in favor of USPS on Williams' discrimination and retaliation claims related to the 2013 emergency replacement and notice of removal and rejecting argument that the alleged double jeopardy demonstrates pretext). Williams asserts that at summary judgment, the Court "acknowledged that Double Jeopardy did occur, but ruled it moot because it was settled at arbitration." Doc. 133 at 9. This is inaccurate; the Court did not make any finding regarding whether USPS subjected Williams to double jeopardy in 2013. The Court merely noted that "on its face," the 2013 notice of removal "appears to violate this prohibition on double jeopardy," Doc. 62 at 21–22, and went on to say that "the parties [did] not present the Court with sufficient facts surrounding the decision to bring Williams back to work prior to issuing him a notice of removal. Any issues unrelated to his discrimination claims that Williams had surrounding [the 2013] notice of removal were settled in the pre-

arbitration settlement and are not properly before the Court here," *id.* at 22 n.11. Williams argues that the issue is not moot because the settlement did not make him whole and violated his due process rights. However, Williams' complaint makes no allegations regarding the deficiencies of the 2014 settlement or double jeopardy/due process violations. And as explained above, the Court will not allow the introduction of any evidence regarding the circumstances surrounding the 2013 emergency placement and notice of removal. As a result, any evidence intended to challenge the sufficiency of the 2014 settlement is irrelevant and inadmissible. The Court accordingly denies Williams' motion to admit number 6 and bars any evidence intended to show double jeopardy/due process violations. Williams may only admit evidence that is relevant to his remaining discrimination and retaliation claims related to the 2014 notice of removal.

7. Motion to admit evidence of Plaintiff's submitted backpay paperwork

Williams asks the Court to admit his signed backpay paperwork and Jayne Duewirth's deposition testimony regarding the paperwork to demonstrate that USPS has refused to pay him the backpay it owes him despite having the signed paperwork. However, the Court already considered and rejected Williams' argument that USPS' failure to pay him backpay amounts to an adverse employment action or can form the basis for his discrimination claims. *See* Doc. 62 at 16 n.9. And as previously discussed, Williams'

"complaint includes no mention of issues related to the pre-arbitration settlement." *Id.* Therefore, the Court denies Williams' motion to admit number 7 and bars the introduction of evidence relating to the sufficiency of or details within the pre-arbitration settlement.

8. Motion to admit April 29, 2014 EEOC ruling

Williams asks the Court to admit evidence of and relating to the April 29, 2014 ruling by an EEOC administrative law judge concluding that Walsh retaliated against Williams in 2010 for his protected EEO activity by issuing Williams a notice of removal for his late delivery of express mail. As explained in connection with Williams' motion to admit number 2, the Court will allow Williams to admit the following limited evidence regarding the EEO complaints he filed while working at the Glen Ellyn Post Office (including the 2010 complaint that resulted in the April 29, 2014 ruling) in support of his retaliation claim: the fact that he filed a complaint, when he filed the complaint, and the resolution of the complaint. In response to this motion, USPS agrees to stipulate for the purposes of Williams' retaliation claim that "Williams engaged in protected EEO activity and that he received a favorable EEO ruling on April 29, 2014." Doc. 146 at 15. The Court encourages Williams to agree to such a stipulation to streamline the trial and minimize juror confusion.

Yet, USPS argues that the Court should deny Williams' motion because he fails to demonstrate that Principe or Gillispie, the supervisors involved in issuing the July 2014 notice of removal, knew of the

April 2014 EEO ruling and he thus fails to demonstrate that it is relevant to his retaliation claim. *See Stephens v. Erickson*, 569 F.3d 779, 788 (7th Cir. 2009) ("Clearly, a superior cannot retaliate against an employee for a protected activity about which he has no knowledge."). However, Williams need not demonstrate that Principe or Gillispie knew of the April 2014 EEOC ruling for the ruling to be *admissible*. The EEOC ruling is certainly relevant to his retaliation claim and it will be for the jury to decide, after considering the evidence admitted at trial, whether Principe or Gillispie knew of the ruling and whether Williams has sufficiently shown that they would not have terminated him if he had not engaged in protected EEO activity. Thus, the Court grants Williams' motion to admit number 8 in part and will allow him to admit the following evidence regarding the April 2014 EEOC ruling: the fact that he filed a complaint, when he filed the complaint, and the resolution of the complaint. The Court denies Williams' motion to admit number 8 to the extent it seeks to admit any other evidence relating to the ruling, such as details regarding the underlying allegations of the 2010 complaint.

9. Motion to permit Plaintiff's testimony regarding his attorneys' withdrawal of representation

Williams asks the Court to allow him to testify regarding the disagreements he had with his former attorneys that caused them to withdraw their representation of him so that the jury can understand why he is representing himself *pro se*. Williams appears to argue that because he requests attorney's

fees, the jury will know that his "former paid attorneys abandoned him" and so he should be able to explain to the jury that he is not "a difficult client." Doc. 137 at 15. USPS objects, arguing that such testimony is simply not relevant to Williams' discrimination or retaliation claims or USPS' defenses to those claims. The Court agrees. Williams' disagreements with his attorneys in 2020 and 2021 have no bearing on whether USPS issued the 2014 notice of removal because of Williams' protected characteristics. Moreover, like Williams' request for backpay and front pay, the Court will decide Williams' request for attorney's fees if he prevails at trial. So, the jury will not be aware of Williams' request for attorney's fees. Thus, the Court denies Williams' motion to admit number 9. In response to this motion, USPS agrees to the Court "reading a short statement to the jury stating that Williams was previously represented by counsel but is now proceeding *pro se*, and that he is not entitled to a court-appointed attorney because this is a civil lawsuit." Doc. 146 at 17. The parties should come to the pretrial conference prepared to discuss such a jury instruction.

10. Motion to admit evidence regarding Plaintiff's medical documentation for his requested sick leave

Williams asks the Court to admit evidence of his medical documentation to show that USPS management knew that he had the documentation required for sick leave and was not AWOL. Specifically, Williams seeks to admit his medical documentation and records; communications between his doctors,

psychologists, psychiatrists, and Employee Assistance Program ("EAP") counselors; and communications between these medical professionals/EAP counselors and USPS management officials, USPS lawyers, USPS' Office of the Inspector General ("OIG") personnel, or any other USPS personnel. In response, USPS concedes that if Williams could lay a proper foundation to admit evidence that he or the referenced medical professionals/EAP counselors communicated with either Principe or Gillispie regarding his medical condition prior to his removal on August 18, 2014, such evidence is relevant to Williams' race, gender, and national origin discrimination and retaliation claims. However, USPS argues that the Court should not allow Williams to admit medical records or documentation that his supervisors did not have knowledge of prior to issuing the notice of removal because any such evidence is irrelevant and would be unfairly prejudicial to USPS. However, as explained in connection with Williams' motion to admit number 8, Williams need not demonstrate that Principe or Gillispie knew about this evidence prior to issuing the notice of removal for the evidence to be *admissible*. The medical documentation and related communications are certainly relevant to Williams' 2014 termination and it will be for the jury to decide, after considering the evidence admitted at trial, whether Williams has sufficiently shown that Principe and Gillispie would not have terminated him if he was not part of a protected class and/or had not engaged in protected EEO activity.

However, without more detail regarding the specific communications and documentation that Williams seeks to admit and how he intends to admit it, the

Court cannot determine whether the evidence is admissible. Therefore, the Court reserves ruling on Williams' motion to admit number 10 for trial when it can better assess the admissibility of the proposed evidence. Williams must notify the Court, outside the presence of the jury, before seeking to admit such evidence. Finally, the Court notes that because it entered judgment in favor of USPS regarding Williams' disability discrimination claim, *see* Doc. 62 at 24 n.9, 27, that claim is no longer at issue and Williams may not discuss it at trial. In other words, in connection with introducing evidence regarding his medical condition, Williams may not make any sort of argument regarding his disability discrimination claim.

11. Motion to admit EEO complaints made against USPS personnel

Williams asks the Court to admit evidence of and relating to a complaint made against Gillispie and another USPS employee named Tammy Hollingsworth, including but not limited to any EEO complaints filed by Williams and settlements made, offered, and signed by Gillispie. Williams seeks admission of this evidence to "show the pattern of harassment initiated by James Gillispie concocting sexual harassment allegations against [him]." Doc. 133 at 11. USPS objects to introduction of evidence regarding the incident involving Hollingsworth, arguing that it is irrelevant to Williams' remaining claims and would confuse the jury, create undue delay, and be unfairly prejudicial to USPS. As previously explained, any EEO complaints Williams filed while working at the Glen Ellyn Post Office are relevant to his retaliation claims. However,

the Court will only allow Williams to admit the following limited evidence regarding the EEO complaint: the fact that he filed the complaint, when he filed the complaint, and the resolution of the complaint. The Court will not allow Williams to introduce evidence regarding the underlying details of the incident or allow Williams to argue that Gillispie engaged in a pattern of "concocting sexual harassment allegations" against him. USPS also asserts that Williams failed to include this EEO complaint against Gillispie and Hollingsworth in his complaint, but the complaint alleges that "[d]uring his employment with Defendant, Plaintiff filed at least seven EEO complaints." Doc. 1 at 2. Thus, the Court denies in part and grants in part Williams' motion to admit number 11 as described herein.

12. Motion to admit evidence of any discipline issued against Plaintiff by his supervisors at the Glen Ellyn Post Office

Williams asks the Court to admit evidence of and relating to any discipline he received from Walsh, Principe, Gillispie, or any person from USPS Labor Relations for the Northern District of Illinois while working at the Glen Ellyn Post Office to show that USPS created a hostile work environment and harassed and retaliated against him. However, the Court already considered and rejected Williams' belated hostile work environment argument, *see* Doc. 62 at 15–16, so Williams may not submit any evidence in support of such an argument. Moreover, Williams may not submit any evidence of specific

incidents of discipline already rejected by the Court as a basis for his discrimination and retaliation claims, including, for example, the 2013 emergency placement and notice of removal and being sent home early by Gillispie and Principe. *See id.* at 15–22. The Court will only allow Williams to introduce evidence regarding the remaining discipline at issue—the 2014 notice of removal—to show that USPS discriminated and retaliated against him. Thus, the Court denies in part and grants in part Williams' motion to admit number 12 as described herein.

13. Motion to admit evidence of Plaintiff's return to work date

Williams asks the Court to admit evidence indicating that Gillispie gave him until June 9, 2014 to return to work to show that he was not AWOL. USPS does not object to Williams' motion, and so the Court grants Williams' motion to admit number 13.

B. Motions to Exclude

1. Motion to exclude evidence that indicates Plaintiff was AWOL starting June 6, 2014

Williams asks the Court to exclude any evidence that indicates he was AWOL starting June 6, 2014 because he argues that Gillispie's June 6, 2014 letter instructing him to return to work on June 9, 2014 indicates he was not AWOL between June 6 and June 9. However, Williams fails to explain why this highly relevant evidence is inadmissible and the Court sees no reason to categorically exclude it. Such evidence is relevant to the key question in the case:

why USPS issued the 2014 notice of removal and more specifically, the circumstances surrounding Williams' return to work in June. Williams is free to argue to the jury that Gillispie's June 6, 2014 letter instructing him to return to work on June 9, 2014 indicates that USPS knew he was not AWOL on June 6, 2014. It will be up to the jury to decide what inferences to draw from the evidence admitted at trial. Thus, the Court denies William's motion to exclude number 1.

2. Motion to exclude evidence that Plaintiff failed to mitigate damages

Williams asks the Court to exclude evidence that he failed to mitigate damages because he argues that USPS knows he received income through Social Security death benefits, private citizen work, and EEO representations. As discussed in response to Williams' motion to admit number 4, the jury need not consider any evidence related to Williams' failure to mitigate damages and thus, such evidence is irrelevant and inadmissible at trial. The Court accordingly grants Williams' motion to exclude number 2 and excludes any evidence related to front pay, backpay, and Williams' failure to mitigate damages. In the event Williams prevails at trial, the parties will present such evidence to the Court.

3. Motion to exclude evidence that Plaintiff refused to sign backpay paperwork

Williams next asks the Court to exclude evidence that he refused to sign the backpay paperwork related to the pre-arbitration settlement because he argues

that USPS is in possession of a signed copy of the paperwork. As explained in connection with Williams' motion to admit number 7, the Court bars the introduction of evidence relating to the sufficiency of or details within the pre-arbitration settlement. Thus, the Court will also not allow any evidence regarding Williams' alleged refusal to sign the backpay paperwork in connection with the pre-arbitration settlement. Any such evidence is irrelevant to the remaining claims at issue. The Court accordingly grants Williams' motion to exclude number 3.

4. Motion to exclude letter from Ellen Smid to Gillispie

Williams asks the Court to exclude the letter from Ellen Smid to Gillispie explaining the May 2013 interaction she had with Williams because he asserts that it was not sworn under oath or made under penalty of perjury. USPS objects, arguing that the letter is relevant and will not be admitted for the truth of the matter therein, making it admissible. USPS indicates it intends to admit the letter, with the proper foundation, to demonstrate the information available to Williams' supervisors when they decided to terminate him in July 2013. However, as explained above, the 2013 termination is no longer at issue in this case and so, the Court will not allow the introduction of any evidence regarding the circumstances surrounding and underlying details of the 2013 termination. Thus, the Court grants Williams' motion to exclude number 4 and excludes Smid's letter to Gillispie.

5. Motion to exclude June 9, 2014 request for documentation

Williams asks the Court to exclude Principe's June 9, 2014 letter requesting medical documentation to substantiate his absences and informing him that failure to respond may result in USPS classifying his absence as AWOL because he argues that this letter conflicts with Gillispie's instruction that he should return to work on June 9, 2014. Williams again fails to explain why this highly relevant evidence is inadmissible and the Court sees no reason to exclude it. Principe's June 9, 2014 letter is relevant to the key issues in this case. To the extent Williams believes the letters conflict, this argument goes to the weight the jury should give the evidence, not its admissibility. As explained in connection with Williams' motion to exclude number 1, Williams is free to make these arguments to the jury and it will be up to them to decide what inferences to draw from the evidence. Thus, the Court denies William's motion to exclude number 5.

6. Motion to exclude June 17, 2014 request for documentation

Williams similarly asks the Court to exclude Principe's June 17, 2014 letter requesting medical documentation to substantiate his absences because he argues that the letter conflicts with Gillispie's instruction that he should return to work on June 9, 2014. The Court denies Williams' motion to exclude number 6 for the same reason it denied his motion to exclude number 5. To the extent the letters conflict,

that argument goes to the weight of the evidence, not its admissibility.

II. Defendant's Motions *in Limine*

1. Motion to preclude evidence or argument regarding discriminatory or retaliatory acts directed at Plaintiff's coworkers

USPS asks the Court to preclude evidence or argument regarding claims of discrimination or retaliation by nonparties or Williams' work with the No Harassment Foundation because such evidence is not relevant and the significant risk of prejudice, juror confusion, and trial delay substantially outweighs its probative value. As explained in connection with Williams' motions to admit number 1 and 2, the Court will not allow the introduction of any evidence regarding alleged discriminatory or retaliatory acts suffered by nonparties while working at the Glen Ellyn Post Office with one exception: subject to laying the proper foundation, Williams' coworkers may testify that they heard Gillispie and Principe say, "[I]f anyone else engaged in filing EEO's they would find themselves in the unemployment line just like Carlos Williams." Doc. 137 at 7. Williams may not testify about his involvement with coworkers' complaints through the No Harassment Foundation because they are irrelevant to his own discrimination and retaliation claims. Therefore, the Court grants Defendants' motion *in limine* number 1 subject to the one exception detailed herein.

2. Motion to preclude evidence or argument regarding claims not previously raised or those resolved on summary judgment

USPS asks the Court to preclude evidence or argument regarding claims he has not previously raised or that the Court resolved on summary judgment because such evidence would confuse the jury and cause undue delay. As discussed in connection with many of Williams' motions to admit and exclude, the parties may not introduce any evidence related to arguments or claims that the Court considered and rejected in its summary judgment opinion. Williams also may not introduce evidence related to claims not pleaded in Williams' complaint. The Court will only allow evidence related to the remaining claims at issue in this case: Williams' race, gender, and national origin discrimination and retaliation claims related to the 2014 notice of removal. Thus, the Court grants Defendants' motion *in limine* number 2.

3. Motion to preclude evidence or argument regarding alleged constitutional violations

USPS asks the Court to preclude evidence or argument that USPS violated Williams' constitutional rights—specifically, that USPS subjected Williams to double jeopardy and/or violated his due process rights. USPS argues that such evidence is irrelevant, likely to confuse the jury, and likely to prejudice USPS. As discussed in connection with Williams' motions to admit number 1 and 6, any evidence regarding the details pertaining to Williams' 2013 termination or

intended to challenge the sufficiency of the 2014 settlement, including Williams' double jeopardy and due process arguments, is irrelevant and inadmissible. Thus, the Court grants Defendants' motion *in limine* number 3 and bars Williams from introducing any evidence or making any double jeopardy/due process arguments.

4. Motion to preclude evidence regarding damages that the jury will not decide

USPS asks the Court to preclude evidence regarding front pay, backpay, reinstatement, or mitigation because they are issues for the Court to decide, not the jury. As discussed in connection with Williams' motions to admit numbers 3, 4, and 5 and his motion to exclude number 2, the jury need not consider evidence related to front pay, backpay, and mitigation because these are equitable remedies for the Court to determine, not the jury. Reinstatement is also an equitable remedy under Title VII that the Court will only determine if Williams prevails at trial. *See Williams v. Pharmacia, Inc.*, 137 F.3d 944, 952 (7th Cir. 1998) ("Title VII explicitly authorizes reinstatement as an equitable remedy."). As a result, the Court grants Defendants' motion *in limine* number 4 and bars introduction of evidence related to front pay, backpay, reinstatement, or mitigation as irrelevant.

5. Motion to preclude argument regarding alleged attorney misconduct

USPS asks the Court to preclude Williams from arguing that the attorneys involved in this case—including his former attorneys, in-house counsel

for USPS, and trial counsel for USPS—have engaged in misconduct, have committed discovery violations, or have a conflict of interest because such argument is irrelevant, would be unfairly prejudicial to USPS, and would confuse the jury. USPS also submits that Williams' claims regarding attorney misconduct are baseless or unsubstantiated and would be for the Court to determine, not the jury. As discussed in connection with Williams' motion to admit number 9, the Court bars Williams from testifying regarding any disagreements he had with his former attorneys. Similarly, the Court will not allow Williams to testify or make arguments to the jury regarding any alleged misconduct on behalf of any attorneys involved in this case. Such evidence is completely irrelevant to Williams' discrimination and retaliation claims relating to the 2014 notice of removal and would be highly prejudicial for the jury to hear. Thus, the Court grants Defendants' motion *in limine* number 5.

Date: May 6, 2022

/s/ Sara L. Ellis

APPENDIX D

ILND 450 (Rev. 10/13) Judgment in a Civil Action

IN THE UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF ILLINOIS

Case No. 17-cv-8613

[Filed May 20, 2022]

Carlos A. Williams, Plaintiff(s), v. Louis DeJoy, Postmaster General, Defendant(s).	))))))))

Judge Sara L. Ellis

JUDGMENT IN A CIVIL CASE

Judgment is hereby entered (check appropriate box):

☐ in favor of plaintiff(s)
and against defendant(s)
in the amount of $,

which ☐ includes pre–judgment interest.
☐ does not include pre–judgment interest.

Post-judgment interest accrues on that amount at the rate provided by law from the date of this judgment.

Plaintiff(s) shall recover costs from defendant(s).

☒ in favor of defendant(s) Louis DeJoy, Postmaster General
and against plaintiff(s) Carlos A. Williams.

Defendant(s) shall recover costs from plaintiff(s).

☐ other:

This action was *(check one)*:

☒ tried by a jury with Judge Sara L. Ellis presiding, and the jury has rendered a verdict.
☐ tried by Judge without a jury and the above decision was reached.
☐ decided by Judge on a motion

Date: 5/20/2022

Thomas G. Bruton, Clerk of Court

Rhonda Johnson, Deputy Clerk

APPENDIX E

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
Chicago, Illinois 60604

No. 22-2472

[Filed February 14, 2024]

CARLOS A. WILLIAMS,
Plaintiff-Appellant,

v.

LOUIS DEJOY, Postmaster General,
Defendant-Appellee.

February 14, 2024

Before
FRANK H. EASTERBROOK, *Circuit Judge*

DIANE P. WOOD, *Circuit Judge*

AMY J. ST. EVE, *Circuit Judge*

Appeal from the United States District Court
for the Northern District of Illinois,
Eastern Division.
No. 1:17-cv-08613

Sara L. Ellis, *Judge*.

O R D E R

On consideration of the petition for rehearing and petition for rehearing en banc, no judge in regular active service has requested a vote on the petition for rehearing en banc[1] and the judges on the original panel have voted to deny rehearing. It is, therefore, **ORDERED** that the petition for rehearing and petition for rehearing en banc is **DENIED**.

[1] Circuit Judge Joshua P. Kolar did not participate in the consideration of this petition for rehearing en banc.