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CONSTITUTIONAL AND STATUTORY PROVISIONS

AMENDED OPINION, U.S. COURT OF APPEALS FOR THE SIXTH CIRCUIT (NOVEMBER 26, 2025)

RECOMMENDED FOR PUBLICATION
Pursuant to Sixth Circuit I.O.P. 32.1(b)

File Name: 25a0324p.06

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

CHARLES BOZZO,

Plaintiff-Appellant,

v.

JENNIFER NANASY, Discipline Coordinator, Michigan Department of Corrections; HEIDI E. WASHINGTON, Director, Michigan Department of Corrections,

Defendants-Appellees.

No. 25-1199

Appeal from the United States District Court for the Western District of Michigan at Grand Rapids.
No. 1:24-cv-00624—Jane M. Beckering, District Judge.

Before: THAPAR, READLER, and HERMANDORFER, Circuit Judges.

AMENDED OPINION

READLER, Circuit Judge.

Charles Bozzo was fired from his job as a correctional officer with the Michigan Department of Corrections after a coworker accused him of making harassing comments. Years later, he sued two MDOC employees under 42 U.S.C. § 1983, claiming that the pair violated Bozzo's constitutional rights in terminating him. The district court dismissed the action on statute of limitations grounds and for failure to state a claim. We affirm.

I.

We borrow the facts as alleged in the complaint. Beginning in 2013, Bozzo worked on-and-off as a correctional officer at the Michigan Department of Corrections. But his employment ended for good due to bad blood between him and Jane Doe, a fellow MDOC employee. At one point in time, the two had carpooled together to work. In 2017, however, Doe reported Bozzo for lewd and obscene comments made during their drives. Doe later reported Bozzo for other instances of misconduct. Upon learning of these complaints, Bozzo seemingly directed some "obscenities" at Doe when discussing her actions with fellow correctional officers. R.1, PageID 10-12. Once Bozzo's words made their way back to Doe, she reported him for that conduct, too.

The situation came to a head on June 19, 2019, when MDOC served Bozzo with a misconduct charge regarding his carpool comments and his later remarks about Doe in the workplace. The charge summarized

the allegations against Bozzo as well as the MDOC rules his purported misconduct implicated. Five days later, MDOC held a disciplinary conference with Bozzo and his union representative. According to Bozzo, the conference was brief, amounting to little more than his representative making a short statement about Bozzo's employment and the charges. MDOC informed Bozzo of his termination on July 31, 2019.

Bozzo challenged that decision by invoking his collectively bargained right to arbitration. A three-day arbitration hearing was held ending on December 17, 2020. At the hearing, Jennifer Nanasy, MDOC's discipline coordinator, testified that MDOC applied its recently updated employee policies to Bozzo, which took a more stringent approach to harassment allegations. A few months later, on March 1, 2021, the arbitrator issued a ruling in favor of MDOC.

On December 18, 2023, Bozzo filed a complaint in federal court. Named as defendants were Nanasy as well as Heidi Washington, MDOC's director. He sued under 42 U.S.C. § 1983, alleging constitutional violations spanning the First, Fourth, Fifth, Eighth, Ninth, and Fourteenth Amendments. In large part, Bozzo took issue with his arbitration hearing (where he claims he was "set up" using "surprise" testimony and "subjective" new policies) and with the arbitrator (who he claims relied on "falsehood[s]" and derived "significant income" from MDOC arbitrations). *Bozzo v. Nanasy*, No. 23-cv-1316, Dkt. No. 1, PageID 13-15, 23 (W.D. Mich. Dec. 18, 2023). After Bozzo failed to respond to defendants' motion to dismiss, the district court dismissed the action without prejudice for lack of prosecution. Bozzo re-filed largely the same complaint on June 14, 2024. Defendants again moved to dismiss, and the district

court again granted their motion, this time on multiple grounds. One, that Bozzo's claim was untimely under the statute of limitations. And two, that Bozzo had forfeited his constitutional arguments save for his Fourteenth Amendment procedural due process claim, which failed to state a claim in any event.

Bozzo appealed. As in district court, he advances only his procedural due process claim. He asserts that the district court erred in dismissing the action as time-barred and that he stated a plausible claim for relief under § 1983.

II.

We review the complaint's dismissal de nova *Operating Eng'rs' Loc. 324 Fringe Benefit Funds v. Rieth-Riley Constr. Co.*, 43 F.4th 617, 621 (6th Cir. 2022). We take as true Bozzo's well-pleaded factual allegations as well as any reasonable inferences derived from those allegations. Having done so, we then ask whether those allegations moved Bozzo's claims across the line from possible to plausible, thereby surviving dismissal. *Forman v. TriHealth, Inc.*, 40 F.4th 443, 448 (6th Cir. 2022) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)).

A. Start with the threshold statute of limitations question. Although the statute of limitations is an affirmative defense, an action remains subject to dismissal under Federal Rule of Civil Procedure 12(b)(6) if the complaint's allegations "affirmatively show that the claim is time-barred." *Cataldo v. US. Steel Corp.*, 676 F.3d 542, 547 (6th Cir. 2012) (citing *Jones v. Bock*, 549 U.S. 199, 215 (2007)). In that instance, a plaintiff can survive dismissal only by showing that an exception

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Section 1983 claims borrow the limitations period applicable to personal injury actions under the law of the state in which they arose. *Eidson v. State of Tenn. Dep't of Child's Servs.*, 510 F.3d 631, 634 (6th Cir. 2007). The parties do not dispute that Michigan's three-year statute of limitations applies to this action. *See Rapp v. Putnam*, 644 F. App'x 621, 625 (6th Cir. 2016) (citing *Carroll v. Wilkerson*, 782 F.2d 44, 44 (6th Cir. 1986) (per curiam)); Mich. Comp. Laws Ann. § 600.5805(2). But they do not agree on the date on which that three-year clock started ticking.

A bit of background, then, on claim accrual for § 1983 claims. Although state law governs the duration of the limitations period, federal law dictates when a § 1983 claim accrues. *Wallace v. Kato,* 549 U.S. 384, 388 (2007). On that front, the Supreme Court instructs us that the statute of limitations begins to run when the plaintiff has "a complete and present cause of action." *Id.* (quoting *Bay Area Laundry & Thy Cleaning Pension Tr. Fund v. Ferbar Corp. of Cal.*, 522 U.S. 192, 201 (1997)). Said differently, the limitations period commences "the first day that every element of a claim has occurred such that the plaintiff may sue in court over the claim." *Reguli v. Russ*, 109 F.4th 874, 879 (6th Cir. 2024) (per curiam) (citing *Wallace*, 549 U.S. at 338).

Despite Supreme Court precedent suggesting otherwise, our Court's cases have applied a "discovery rule" to § 1983 claims. Under that framework, a claim accrues when a "plaintiff knows or has reason to know of the injury which is the basis of his action." *Johnson v. Memphis Light Gas & Water Div.*, 777 F.3d 838, 843

(6th Cir. 2015) (quoting *Roberson v. Tennessee,* 399 F.3d 792, 794 (6th Cir. 2005)). We have noted the apparent contradiction between the Supreme Court's occurrence-based rule and our discovery rule. *See, e.g., Reguli*, 109 F.4th at 885 (Murphy, J., concurring); *Snyder-Hill v. Ohio State Univ.*, 54 F.4th 963, 974 (6th Cir. 2022) (Readler, J., dissenting from the denial of rehearing en banc). But we need not weigh in further on that tension today. As both parties assume the discovery rule applies notwithstanding Supreme Court precedent, we take the case as presented to us. *United States v. Sineneng-Smith*, 140 S. Ct. 1575, 1579 (2020).

Turn, then, to the timing issues underlying Bozzo's claim. A "complete and present" "procedural due process claim" has two elements. *Reed v. Goertz*, 143 S. Ct. 955, 961 (2023). First, there must be a "deprivation by state action of a protected interest in life, liberty, or property." *Id.* Second, there must be "inadequate state process." *Id.* (citing *Zinermon v. Burch*, 494 U.S. 113, 125 (1990)). Taking these requirements together, a procedural due process claim is "complete" only once the "deprivation" and the State's failure to "provide due process" have both occurred. *Id* (quoting *Zinermon*, 494 U.S. at 126).

When do we deem those events to have transpired with respect to Bozzo? Beginning with the required "deprivation," Bozzo alleges a loss of property occurring when his public employment was terminated. *See Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542-43 (1985) ("pretermination hearing[s]" before "deprivation"); *Farhat v. Jopke*, 370 F.3d 580, 597 (6th Cir. 2004) (describing terminated employee's "post-deprivation due process"). That date is often identifiable from employment records or the like. *See Damsel v.*

Fisher, 114 F.3d 1187, 1997 WL 328607, at *2 (6th Cir. 1997) (table) (per curiam). Here, MDOC formally terminated Bozzo on July 31, 2019, "in a short correspondence." R.1, PageID 16. So Bozzo's "deprivation" occurred on that date.

As for the requisite process, "a plaintiff's injury accrues at the time that process was denied because 'the allegedly infirm process is an injury in itself." *Am. Premier Underwriters, Inc. v. Nat'l R.R. Passenger Corp.*, 839 F.3d 458, 461 (6th Cir. 2016) (quoting *Nasierowski Bros. Inv. Co. v. City of Sterling Heights*, 949 F.2d 890, 894 (6th Cir. 1991)). It follows that a plaintiff may have a "complete and present cause of action" before "the entity sued has . . . reached a 'final decision' on the underlying substantive issues." *Id.* (citing *Printup v. Dir., Ohio Dep't of Job & Fam. Servs.*, 654 F. App'x 781, 784-88 (6th Cir. 2016)) (citation modified). Consider, for example, our decision in *Printup*. There, the plaintiff lost her job after a social services agency mistakenly labeled her a child abuser. *Printup*, 654 F. App'x at 783. She challenged that determination through an administrative hearing with the agency, which, if resolved in her favor, would have resulted in her reinstatement. *Id.* Although she was unsuccessful at that hearing, a state court later vindicated her claim on appeal. *Id* The plaintiff then filed a procedural due process claim arising from the agency's initial mislabeling, asserting that her claim accrued when the administrative hearing officer affirmed the agency's mistaken decision. *Id.* at 785. We disagreed. To our minds, the plaintiff's claim accrued when the alleged procedural mistakes resulted in her termination, before the administrative hearing officer simply upheld those mistakes. *Id.* at 787-88.

As to Bozzo, he alleges a series of procedural violations at different points in time. For instance, he takes issue with MDOC's handling of Doe's complaints, which date back to the June 24, 2019, pre-termination conference. And he says those due process violations continued all the way up to his post-termination arbitration hearing, which ended on December 17, 2020. That latter date—December 17, 2020—was thus the latest possible date when Bozzo allegedly was denied due process. And as that date occurred after his termination in 2019, it is the point at which both elements of his due process claim had come to fruition, that is, the time at which Bozzo had a "complete and present cause of action." *Am. Premier Underwriters*, 839 F.3d at 461 (quoting *Wallace*, 549 U.S. at 388).

This conclusion is problematic for Bozzo. Measured from that date, Bozzo's June 14, 2024, complaint did not fall within the three-year statute of limitations. True, Bozzo filed his first complaint on December 18, 2023, at the tail end of the limitations period. And under Michigan law, Bozzo's original lawsuit would have tolled the limitations period while it was pending. *See Heard v. Strange*, 127 F.4th 630, 633 (6th Cir. 2025) (citing Mich. Comp. Laws Ann. § 600.5856). But that tolling wore off on May 8, 2024, when the district court dismissed the case without prejudice, *see id.*, and Bozzo waited more than a month after that to re-file his claims, rendering the present action untimely. *See* Mich. Comp. Laws Ann. § 600.5805(2). As a result, his claim is time-barred on its face. *See Cataldo*, 676 F.3d at 547.

Bozzo disagrees. Invoking the discovery rule, he contends that his claims could not have accrued until he "fully realized" that he "was not afforded a fair

grievance and constitutional process," which, he says, occurred on March 1, 2021, when the arbitrator issued a decision in MDOC's favor. Appellant Br. 7. Here, it bears reminding that our focus under the discovery rule is on when a "plaintiff knows or has reason to know of [his] injury." *Johnson,* 777 F.3d at 843 (emphasis added). And, again, the "injury" in a procedural due process claim is the "infirm process" that accompanies a deprivation. *Am. Premier Underwriters*, 839 F.3d at 461 (citing *Nasierowski*, 949 F.2d at 894). Bozzo had already been "deprived" of his job when he attended his arbitration hearing. And he does not allege that he was unaware of the supposed procedural problems at his arbitration hearing as it unfolded (*e.g.*, the "surprise" witness, the arbitrator's "significant income" from MDOC arbitrations). R.1, PageID 17, 26. To the extent Bozzo's allegations could be construed as criticizing the decision that followed, that amounts to "dissatisf[action] with the result," not the process. *Farhat*, 370 F.3d at 597. Because knowledge of procedural defects is what counts, the discovery rule does not change our conclusion as to the accrual date of Bozzo's claim. *See Printup*, 654 F. App'x at 787-88.

With his claim facially time-barred, Bozzo turns to various exceptions to the statute of limitations, beginning with equitable tolling. Bozzo "carries the burden of establishing [his] entitlement to equitable tolling." *Jackson v. United States*, 751 F.3d 712, 718-19 (6th Cir. 2014). But he confronts an immediate roadblock. We apply state tolling rules to § 1983 claims unless they are inconsistent with federal law. *Heard,* 127 F.4th at 634. That turns our attention to Michigan law, which does not permit common law equitable tolling of express limitations periods, including the three-year

period at issue here. *See Trentadue v. Buckler Lawn Sprinkler*, 738 N.W.2d 664, 679-80 (Mich. 2007) (citing Mich. Comp. Laws Ann. § 600.5805) ("[C]ourts are [not] free to cast aside a plain statute in the name of equity."); *Devillers v. Auto Club Ins. Ass'n*, 702 N.W.2d 539, 556-57 (Mich. 2005); *Secura Ins. Co. v. Auto-Owners Ins. Co.*, 605 N.W.2d 308, 311 (Mich. 2000) (per curiam). Equitable tolling, it follows, is unavailable under the Michigan limitations provision at issue here. Nor does Michigan's preference for statutory tolling mechanisms to the exclusion of common law equitable tolling, standing alone, run afoul of federal § 1983 policy. *See Bd. of Regents v. Tomanio*, 446 U.S. 478, 488 (1980).

Even under federal law, we apply equitable tolling "sparingly," meaning that absent "compelling equitable considerations, a court should not extend limitations by even a single day." *Graham-Humphreys v. Memphis Brooks Museum of Art, Inc.*, 209 F.3d 552, 560-61 (6th Cir. 2000). Though we have applied varying approaches to assessing equitable tolling, the inquiry "often" boils down to whether a litigant "fail[ed] to meet a legally-mandated deadline due to unavoidable circumstances beyond that litigant's control." *Zappone v. United States*, 870 F.3d 551, 556-57 (6th Cir. 2017) (quoting *Graham-Humphrey's*, 209 F.3d at 560-61) (citation modified). Here, neither Bozzo's briefing nor his complaint specify any "compelling equitable considerations" that support tolling. *Graham-Humphrey's*, 209 F.3d at 561. And even if Bozzo's waiting on the arbitrator's decision could count (it would not), Bozzo still delayed nearly three years after that decision to file suit. So his failure to exercise "reasonable diligence" would foreclose equitable tolling in any event. *Smith*

v. Davis, 953 F.3d 582, 599 (9th Cir. 2020) (en banc) (rejecting "stop-clock approach" to equitable tolling); *see Cada v. Baxter Healthcare Corp.*, 920 F.2d 446, 452 (7th Cir. 1990) (no "automatic extension . . . by the length of the tolling period").

Bozzo also contends that by "exhausting [his] administrative remedies," he tolled the statute of limitations period. Appellant Br. 12. Yet Bozzo does not identify what administrative remedies he pursued. In any event, "the settled rule is that exhaustion of state remedies is *not* a prerequisite" to a § 1983 action. *Knick v. Township of Scott*, 139 S. Ct. 2162, 2167 (2019) (citation modified). Only prisoners—who are required to exhaust—may receive tolling on that basis. *See Printup*, 654 F. App'x at 787 n.5 (citing *Patsy v. Bd. of Regents*, 457 U.S. 496, 516 (1982)); 42 U.S.C. § 1997e(a).

All in all, Bozzo's § 1983 claim is untimely on its face. And as he cannot establish an exception to the statute of limitations, his complaint was properly dismissed on this basis.

B. Even had the claim been timely, we would likewise agree with the district court that Bozzo failed to state a procedural due process claim, the lone theory from his complaint that he attempts to resurrect on appeal. As already stated, that claim has two elements: "deprivation by state action of a protected interest," and "inadequate state process." *Reed*, 143 S. Ct. at 961. The parties agree that Bozzo had a protected property interest in his employment. That leaves us to resolve whether he plausibly alleged "inadequate process."

In this termination context, we evaluate the process offered to Bozzo both before and after termination.

Before termination, Bozzo must have had "some form of . . . hearing." *Loudermill*, 470 U.S. at 542. Rather than "a full evidentiary hearing," all that was necessary was an "initial check against mistaken decisions." *Id.* at 545. To clear that low bar, the hearing needed to include, at the very least: (1) "oral or written notice of the charges," (2) "an explanation of the employer's evidence," and (3) "an opportunity for the employee," here Bozzo, "to tell his side of the story." *Gilbert v. Homar*, 520 U.S. 924, 929 (1997) (citing *Loudermill*, 470 U.S. at 546). To take one example, in *Buckner v. City of Highland Park*, the employer's representative visited the plaintiff in the hospital, showed him the written allegations against him, and asked him to comment in the presence of his union representative. 901 F.2d 491, 492, 495 (6th Cir. 1990). Despite the lack of formality, we emphasized that the plaintiff received a "chance to be heard." *Id.* at 495. That "critical element" ensured adequate pre-deprivation process. *Id.*

So too here. MDOC served Bozzo with a written misconduct charge summarizing his allegedly harassing comments and listing the MDOC rules he violated. Shortly thereafter, Bozzo, accompanied by his union representative, attended a disciplinary conference. There, his representative addressed briefly Bozzo's future employment and dismissal of the charges. MDOC terminated Bozzo one month later. But before his termination took place, Bozzo received notice of the allegations, MDOC's basis for bringing them, and a chance to speak up everything due process requires before termination. *Gilbert*, 520 U.S. at 929.

Bozzo portrays the conference as little more than a "brief discussion." Appellant Br. 8. But, again, "a full

evidentiary hearing" is not required at this stage. *Loudermill*, 470 U.S. at 545. An "opportunity to respond" is sufficient. *Buckner*, 901 F.2d at 496. And nowhere does Bozzo allege that MDOC limited his ability to speak on the matter.

With pre-termination due process satisfied, we turn our attention to whether MDOC followed through with sufficient post-termination process. At this latter stage, due process requires an "opportunity for a post-deprivation hearing before a neutral decisionmaker." *Farhat*, 370 F.3d at 596 (emphasis omitted). "At a minimum," Bozzo had to "be permitted to attend the hearing, to have the assistance of counsel, to call witnesses and produce evidence on his own behalf, and to know and have an opportunity to challenge the evidence against him." *Rodgers v. 36th Dist. Ct.*, 529 F. App'x 642, 649 (6th Cir. 2013) (quoting *Carter v. W. Rsrv. Psychiatric Habilitation Ctr.*, 767 F.2d 270, 273 (6th Cir. 1985) (per curiam)). Doing so through arbitration procedures set forth in an employee's collective bargaining agreement satisfies those criteria. *Farhat*, 370 F.3d at 596 (citing *Bucker*, 901 F.2d at 497).

That is what happened here. Following his termination, Bozzo invoked his right to arbitration per his collective bargaining agreement. He then attended a three-day hearing before a neutral arbitrator. There, Bozzo had a representative acting as counsel, and he nowhere disputes that he had a chance to present witnesses and evidence as well as the ability to challenge the evidence presented against him. That is, Bozzo enjoyed the minimal procedures needed for a post-termination hearing. Bozzo does claim that a "surprise" witness testified at the hearing, but he gives

no indication as to whether or how that testimony breached procedure. R.1, PageID 17.

Rather than identifying precise aspects of the post-deprivation process with which he takes issue, Bozzo instead attacks the decisionmaker. Emphasizing what he sees as the lack of "neutrality and competence" displayed by the arbitrator, Appellant Br. 9, Bozzo alleges that the arbitrator earned "significant income" from handling other MDOC arbitrations. R.1, PageID 26. But that bare allegation does not plausibly suggest bias. *See Ashcroft v. Iqbal*, 556 U.S. 662, 683 (2009); *cf. Nationwide Mut Ins. Co. v. Home Ins. Co.*, 429 F.3d 640, 648 (6th Cir. 2005) (finding no "reasonable person" would conclude that arbitrator was "partial" simply because he arbitrated prior disputes involving the opposing parties). In a similar vein, he alleges that the arbitrator "relied on disproven falsehood[s]." Appellant Br. 9. Further, he adds, the arbitrator embraced "unwritten, ephemeral 'evolving standards,'" *id.*, a seeming reference to the new agency disciplinary policy applied to Bozzo's case. These claimed errors alone do not plausibly show that the arbitrator was biased against Bozzo, let alone some other procedural defect. Rather, Bozzo's insistence that the arbitrator misapprehended the law and facts suggests that he is simply "dissatisfied with the result." *Farhat*, 370 F.3d at 597. In other words, his gripes go to substance, not procedure. That does not suffice to plead a procedural due process claim.

Bozzo's other arguments are even less availing. We see no evidence that the district court imposed a higher pleading standard than that required by Rule 12(b)(6). *See* R.12, PageID 110 (citing *Twombly*, 550 U.S. at 555). And we see no merit in his remaining

points, many of which were raised for the first time in his reply brief, and all of which are meritless. *See Overstreet v. Lexington-Fayette Urb. Cnty. Gov't*, 305 F.3d 566, 578 (6th Cir. 2002) (citation modified). In sum, we agree with the district court that Bozzo failed to state a viable § 1983 claim.

* * * *

We affirm.

AMENDED JUDGMENT, U.S. COURT OF APPEALS FOR THE SIXTH CIRCUIT (NOVEMBER 26, 2025)

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Before: THAPAR, READLER, and HERMANDORFER, Circuit Judges.

AMENDED JUDGMENT

THIS CAUSE was heard on the record from the district court and was submitted on the briefs without oral argument.

IN CONSIDERATION THEREOF, it is ORDERED that the judgment of the district court is AFFIRMED.

ENTERED BY ORDER OF THE COURT

/s/ Kelly L. Stephens
Clerk

ORDER RECALLING THE MANDATE, U.S. COURT OF APPEALS FOR THE SIXTH CIRCUIT (NOVEMBER 6, 2025)

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Case No. 25-1199

ORDER

Upon sua sponte consideration, it is ORDERED that the mandate in this appeal is hereby recalled.

ENTERED PURSUANT TO RULE 45(a), RULES OF THE SIXTH CIRCUIT

/s/ Kelly L. Stephens
Clerk

Issued: November 06, 2025

SUPERSEDED OPINION ISSUED PRIOR TO RECALL OF MANDATE, U.S. COURT OF APPEALS FOR THE SIXTH CIRCUIT (OCTOBER 17, 2025)

RECOMMENDED FOR PUBLICATION
Pursuant to Sixth Circuit I.O.P. 32.1(b)

File Name: 25a0324p.06

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OPINION

READLER, Circuit Judge.

Charles Bozzo was fired from his job as a correctional officer with the Michigan Department of Corrections after a coworker accused him of making harassing comments. Years later, he sued two MDOC employees under 42 U.S.C. § 1983, claiming that the pair violated Bozzo's constitutional rights in terminating him. The district court dismissed the action on statute of limitations grounds and for failure to state a claim. We affirm.

I.

We borrow the facts as alleged in the complaint. Beginning in 2013, Bozzo worked on and-off as a correctional officer at the Michigan Department of Corrections. But his employment ended for good due to bad blood between him and Jane Doe, a fellow MDOC employee. At one point in time, the two had carpooled together to work. In 2017, however, Doe reported Bozzo for lewd and obscene comments made during their drives. Doe later reported Bozzo for other instances of misconduct. Upon learning of these complaints, Bozzo seemingly directed some "obscenities" at Doe when discussing her actions with fellow correctional officers. R.1, PageID 10-12. Once Bozzo's words made their way back to Doe, she reported him for that conduct, too.

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A. Start with the threshold statute of limitations question. Although the statute of limitations is an affirmative defense, an action remains subject to dismissal under Federal Rule of Civil Procedure 12(b)(6) if the complaint's allegations "affirmatively show that the claim is time-barred." *Cataldo v. US. Steel Corp.*, 676 F.3d 542, 547 (6th Cir. 2012) (citing *Jones v. Bock*, 549 U.S. 199, 215 (2007)). In that instance, a plaintiff can survive dismissal only by showing that

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Section 1983 claims borrow the limitations period applicable to personal injury actions under the law of the state in which they arose. *Eidson v. State of Tenn. Dep't of Child's Servs.*, 510 F.3d 631, 634 (6th Cir. 2007). The parties do not dispute that Michigan's three-year statute of limitations applies to this action. *See Rapp v. Putnam*, 644 F. App'x 621, 625 (6th Cir. 2016) (citing *Carroll v. Wilkerson*, 782 F.2d 44, 44 (6th Cir. 1986) (per curiam)); Mich. Comp. Laws Ann. § 600. 5805(2). But they do not agree on the date on which that three-year clock started ticking.

A bit of background, then, on claim accrual for § 1983 claims. Although state law governs the duration of the limitations period, federal law dictates when a § 1983 claim accrues. *Wallace v. Kato*, 549 U.S. 384, 388 (2007). On that front, the Supreme Court instructs us that the statute of limitations begins to run when the plaintiff has "a complete and present cause of action." *Id.* (quoting *Bay Area Laundry & Dry Cleaning Pension Tr. Fund v. Ferbar Corp. of Cal.*, 522 U.S. 192, 201 (1997)). Said differently, the limitations period commences "the first day that every element of a claim has occurred such that the plaintiff may sue in court over the claim." *Reguli v. Russ*, 109 F.4th 874, 879 (6th Cir. 2024) (per curiam) (citing *Wallace*, 549 U.S. at 338).

Despite Supreme Court precedent suggesting otherwise, our Court's cases have applied a "discovery rule" to § 1983 claims. Under that framework, a claim accrues when a "plaintiff knows or has reason to know of the injury which is the basis of his action." *Johnson*

v. Memphis Light Gas & Water Div., 777 F.3d 838, 843 (6th Cir. 2015) (quoting *Roberson v. Tennessee*, 399 F.3d 792, 794 (6th Cir. 2005)). We have noted the apparent contradiction between the Supreme Court's occurrence-based rule and our discovery rule. *See, e.g.*, *Reguli*, 109 F.4th at 885 (Murphy, J., concurring); *Snyder-Hill v. Ohio State Univ.*, 54 F.4th 963, 974 (6th Cir. 2022) (Readler, J., dissenting from the denial of rehearing en banc). But we need not weigh in further on that tension today. As both parties assume the discovery rule applies notwithstanding Supreme Court precedent, we take the case as presented to us. *United States v. Sineneng-Smith*, 140 S. Ct. 1575, 1579 (2020).

Turn, then, to the timing issues underlying Bozzo's claim. A "complete and present" "procedural due process claim" has two elements. *Reed v. Goertz*, 143 S. Ct. 955, 961 (2023). First, there must be a "deprivation by state action of a protected interest in life, liberty, or property." *Id.* Second, there must be "inadequate state process." *Id.* (citing *Zinermon v. Burch*, 494 U.S. 113, 125 (1990)). Taking these requirements together, a procedural due process claim is "complete" only once the "deprivation" and the State's failure to "provide due process" have both occurred. *Id* (quoting *Zinermon*, 494 U.S. at 126).

When do we deem those events to have transpired with respect to Bozzo? Beginning with the required "deprivation," Bozzo alleges a loss of property occurring when his public employment was terminated. *See Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542-43 (1985) ("pretermination hearing[s]" before "deprivation"); *Farhat v. Jopke*, 370 F.3d 580, 597 (6th Cir. 2004) (describing terminated employee's "post-deprivation due process"). That date is often identifiable

from employment records or the like. *See Damsel v. Fisher*, 114 F.3d 1187, 1997 WL 328607, at *2 (6th Cir. 1997) (table) (per curiam). Here, MDOC formally terminated Bozzo on July 31, 2019, "in a short correspondence." R.1, PageID 16. So Bozzo's "deprivation" occurred on that date.

As for the requisite process, "a plaintiff's injury accrues at the time that process was denied because 'the allegedly infirm process is an injury in itself.'" *Am. Premier Underwriters, Inc. v. Nat'l R.R. Passenger Corp.*, 839 F.3d 458, 461 (6th Cir. 2016) (quoting *Nasierowski Bros. Inv. Co. v. City of Sterling Heights*, 949 F.2d 890, 894 (6th Cir. 1991)). It follows that a plaintiff may have a "complete and present cause of action" before "the entity sued has . . . reached a 'final decision' on the underlying substantive issues." *Id.* (citing *Printup v. Dir., Ohio Dep't of Job & Fam. Servs.*, 654 F. App'x 781, 784-88 (6th Cir. 2016)) (citation modified). Consider, for example, our decision in *Printup*. There, the plaintiff lost her job after a social services agency mistakenly labeled her a child abuser. *Printup*, 654 F. App'x at 783. She challenged that determination through an administrative hearing with the agency, which, if resolved in her favor, would have resulted in her reinstatement. *Id.* Although she was unsuccessful at that hearing, a state court later vindicated her claim on appeal. *Id.* The plaintiff then filed a procedural due process claim arising from the agency's initial mislabeling, asserting that her claim accrued when the administrative hearing officer affirmed the agency's mistaken decision. *Id.* at 785. We disagreed. To our minds, the plaintiff's claim accrued when the alleged procedural mistakes resulted in her termination, before

the administrative hearing officer simply upheld those mistakes. *Id.* at 787-88.

As to Bozzo, he alleges a series of procedural violations at different points in time. For instance, he takes issue with MDOC's handling of Doe's complaints, which date back to the June 24, 2019, pre-termination conference. And he says those due process violations continued all the way up to his post-termination arbitration hearing, which ended on December 17, 2020. That latter date—December 17, 2020—was thus the latest possible date when Bozzo allegedly was denied due process. And as that date occurred after his termination in 2019, it is the point at which both elements of his due process claim had come to fruition, that is, the time at which Bozzo had a "complete and present cause of action." *Am. Premier Underwriters*, 839 F.3d at 461 (quoting *Wallace*, 549 U.S. at 388).

This conclusion is problematic for Bozzo. Measured from that date, Bozzo's June 14, 2024, complaint did not fall within the three-year statute of limitations. True, under Michigan law, Bozzo's original lawsuit would have tolled the limitations period during the six months before it was dismissed without prejudice. *See Heard v. Strange*, 127 F.4th 630, 633 (6th Cir. 2025) (citing Mich. Comp. Laws Ann. § 600.5856). But Bozzo filed that first complaint on December 18, 2023—one day after the three-year limitations period expired on December 17, 2023, meaning the first lawsuit did nothing to alter the limitations period. *See* Mich. Comp. Laws Ann. § 600.5805(2). As a result, his claim is time-barred on its face. *See Cataldo*, 676 F.3d at 547.

Bozzo disagrees. Invoking the discovery rule, he contends that his claims could not have accrued until

he "fully realized" that he "was not afforded a fair grievance and constitutional process," which, he says, occurred on March 1, 2021, when the arbitrator issued a decision in MDOC's favor. Appellant Br. 7. Here, it bears reminding that our focus under the discovery rule is on when a "plaintiff knows or has reason to know of [his] injury." *Johnson*, 777 F.3d at 843 (emphasis added). And, again, the "injury" in a procedural due process claim is the "infirm process" that accompanies a deprivation. *Am. Premier Underwriters*, 839 F.3d at 461 (citing *Nasierowski*, 949 F.2d at 894). Bozzo had already been "deprived" of his job when he attended his arbitration hearing. And he does not allege that he was unaware of the supposed procedural problems at his arbitration hearing as it unfolded (*e.g.*, the "surprise" witness, the arbitrator's "significant income" from MDOC arbitrations). R.1, PageID 17, 26. To the extent Bozzo's allegations could be construed as criticizing the decision that followed, that amounts to "dissatisf[action] with the result," not the process. *Farhat*, 370 F.3d at 597. Because knowledge of procedural defects is what counts, the discovery rule does not change our conclusion as to the accrual date of Bozzo's claim. *See Printup*, 654 F. App'x at 787-88.

With his claim facially time-barred, Bozzo turns to various exceptions to the statute of limitations, beginning with equitable tolling. Bozzo "carries the burden of establishing [his] entitlement to equitable tolling." *Jackson v. United States*, 751 F.3d 712, 718-19 (6th Cir. 2014). But he confronts an immediate roadblock. We apply state tolling rules to § 1983 claims unless they are inconsistent with federal law. *Heard*, 127 F.4th at 634. That turns our attention to Michigan law, which does not permit common law equitable

tolling of express limitations periods, including the three-year period at issue here. *See Trentadue v. Buckler Lawn Sprinkler*, 738 N.W.2d 664, 679-80 (Mich. 2007) (citing Mich. Comp. Laws Ann. § 600.5805) ("[C]ourts are [not] free to cast aside a plain statute in the name of equity."); *Devillers v. Auto Club Ins. Ass'n*, 702 N.W.2d 539, 556-57 (Mich. 2005); *Secura Ins. Co. v. Auto-Owners Ins. Co.*, 605 N.W.2d 308, 311 (Mich. 2000) (per curiam). Equitable tolling, it follows, is unavailable under the Michigan limitations provision at issue here. Nor does Michigan's preference for statutory tolling mechanisms to the exclusion of common law equitable tolling, standing alone, run afoul of federal § 1983 policy. *See Bd. of Regents v. Tomanio*, 446 U.S. 478, 488 (1980).

Even under federal law, we apply equitable tolling "sparingly," meaning that absent "compelling equitable considerations, a court should not extend limitations by even a single day." *Graham-Humphreys v. Memphis Brooks Museum of Art, Inc.*, 209 F.3d 552, 560-61 (6th Cir. 2000). Though we have applied varying approaches to assessing equitable tolling, the inquiry "often" boils down to whether a litigant "fail[ed] to meet a legally-mandated deadline due to unavoidable circumstances beyond that litigant's control." *Zappone v. United States*, 870 F.3d 551, 556-57 (6th Cir. 2017) (quoting *Graham-Humphrey's*, 209 F.3d at 560-61) (citation modified). Here, neither Bozzo's briefing nor his complaint specify any "compelling equitable considerations" that support tolling. *Graham-Humphrey's*, 209 F.3d at 561. And even if Bozzo's waiting on the arbitrator's decision could count (it would not), Bozzo still delayed nearly three years after that decision to file suit. So his failure to exercise "reasonable diligence" would

foreclose equitable tolling in any event. *Smith v. Davis*, 953 F.3d 582, 599 (9th Cir. 2020) (en bane) (rejecting "stop-clock approach" to equitable tolling); *see Cada v. Baxter Healthcare Corp.*, 920 F.2d 446, 452 (7th Cir. 1990) (no "automatic extension . . . by the length of the tolling period").

Bozzo also contends that by "exhausting [his] administrative remedies," he tolled the statute of limitations period. Appellant Br. 12. Yet Bozzo does not identify what administrative remedies he pursued. In any event, "the settled rule is that exhaustion of state remedies is not a prerequisite" to a § 1983 action. *Knick v. Township of Scott*, 139 S. Ct. 2162, 2167 (2019) (citation modified). Only prisoners—who are required to exhaust—may receive tolling on that basis. *See Printup*, 654 F. App'x at 787 n.5 (citing *Patsy v. Bd. of Regents*, 457 U.S. 496, 516 (1982)); 42 U.S.C. § 1997e(a).

All in all, Bozzo's § 1983 claim is untimely on its face. And as he cannot establish an exception to the statute of limitations, his complaint was properly dismissed on this basis.

B. Even had the claim been timely, we would likewise agree with the district court that Bozzo failed to state a procedural due process claim, the lone theory from his complaint that he attempts to resurrect on appeal. As already stated, that claim has two elements: "deprivation by state action of a protected interest," and "inadequate state process." *Reed*, 143 S. Ct. at 961. The parties agree that Bozzo had a protected property interest in his employment. That leaves us to resolve whether he plausibly alleged "inadequate process."

In this termination context, we evaluate the process offered to Bozzo both before and after termination. Before termination, Bozzo must have had "some form of . . . hearing." *Loudermill*, 470 U.S. at 542. Rather than "a full evidentiary hearing," all that was necessary was an "initial check against mistaken decisions." *Id.* at 545. To clear that low bar, the hearing needed to include, at the very least: (1) "oral or written notice of the charges," (2) "an explanation of the employer's evidence," and (3) "an opportunity for the employee," here Bozzo, "to tell his side of the story." *Gilbert v. Homar*, 520 U.S. 924, 929 (1997) (citing *Loudermill*, 470 U.S. at 546). To take one example, in *Buckner v. City of Highland Park*, the employer's representative visited the plaintiff in the hospital, showed him the written allegations against him, and asked him to comment in the presence of his union representative. 901 F.2d 491, 492, 495 (6th Cir. 1990). Despite the lack of formality, we emphasized that the plaintiff received a "chance to be heard." *Id.* at 495. That "critical element" ensured adequate pre-deprivation process. *Id.*

So too here. MDOC served Bozzo with a written misconduct charge summarizing his allegedly harassing comments and listing the MDOC rules he violated. Shortly thereafter, Bozzo, accompanied by his union representative, attended a disciplinary conference. There, his representative addressed briefly Bozzo's future employment and dismissal of the charges. MDOC terminated Bozzo one month later. But before his termination took place, Bozzo received notice of the allegations, MDOC's basis for bringing them, and a chance to speak up everything due process requires before termination. *Gilbert*, 520 U.S. at 929.

Bozzo portrays the conference as little more than a "brief discussion." Appellant Br. 8. But, again, "a full evidentiary hearing" is not required at this stage. *Loudermill*, 470 U.S. at 545. An "opportunity to respond" is sufficient. *Buckner*, 901 F.2d at 496. And nowhere does Bozzo allege that MDOC limited his ability to speak on the matter.

With pre-termination due process satisfied, we turn our attention to whether MDOC followed through with sufficient post-termination process. At this latter stage, due process requires an "opportunity for a post-deprivation hearing before a neutral decisionmaker." *Farhat*, 370 F.3d at 596 (emphasis omitted). "At a minimum," Bozzo had to "be permitted to attend the hearing, to have the assistance of counsel, to call witnesses and produce evidence on his own behalf, and to know and have an opportunity to challenge the evidence against him." *Rodgers v. 36th Dist. a*, 529 F. App'x 642, 649 (6th Cir. 2013) (quoting *Carter v. W. Rsrv. Psychiatric Habilitation Ctr.*, 767 F.2d 270, 273 (6th Cir. 1985) (per curiam)). Doing so through arbitration procedures set forth in an employee's collective bargaining agreement satisfies those criteria. *Farhat*, 370 F.3d at 596 (citing *Bucker*, 901 F.2d at 497).

That is what happened here. Following his termination, Bozzo invoked his right to arbitration per his collective bargaining agreement. He then attended a three-day hearing before a neutral arbitrator. There, Bozzo had a representative acting as counsel, and he nowhere disputes that he had a chance to present witnesses and evidence as well as the ability to challenge the evidence presented against him. That is, Bozzo enjoyed the minimal procedures needed for a post-termination hearing. Bozzo does claim that a "surprise"

witness testified at the hearing, but he gives no indication as to whether or how that testimony breached procedure. R.1, PageID 17.

Rather than identifying precise aspects of the post-deprivation process with which he takes issue, Bozzo instead attacks the decisionmaker. Emphasizing what he sees as the lack of "neutrality and competence" displayed by the arbitrator, Appellant Br. 9, Bozzo alleges that the arbitrator earned "significant income" from handling other MDOC arbitrations. R.1, PageID 26. But that bare allegation does not plausibly suggest bias. *See Ashcroft v. Iqbal*, 556 U.S. 662, 683 (2009); *cf. Nationwide Mut Ins. Co. v. Home Ins. Co.*, 429 F.3d 640, 648 (6th Cit. 2005) (finding no "reasonable person" would conclude that arbitrator was "partial" simply because he arbitrated prior disputes involving the opposing parties). In a similar vein, he alleges that the arbitrator "relied on disproven falsehood[s]." Appellant Br. 9. Further, he adds, the arbitrator embraced "unwritten, ephemeral 'evolving standards,." *id.*, a seeming reference to the new agency disciplinary policy applied to Bozzo's case. These claimed errors alone do not plausibly show that the arbitrator was biased against Bozzo, let alone some other procedural defect. Rather, Bozzo's insistence that the arbitrator misapprehended the law and facts suggests that he is simply "dissatisfied with the result." *Farhat*, 370 F.3d at 597. In other words, his gripes go to substance, not procedure. That does not suffice to plead a procedural due process claim.

Bozzo's other arguments are even less availing. We see no evidence that the district court imposed a higher pleading standard than that required by Rule 12(b)(6). *See* R.12, PageID 110 (citing *Twombly*, 550

U.S. at 555). And we see no merit in his remaining points, many of which were raised for the first time in his reply brief, and all of which are meritless. *See Overstreet v. Lexington-Fayette Urb. Cnty. Gov't*, 305 F.3d 566, 578 (6th Cir. 2002) (citation modified). In sum, we agree with the district court that Bozzo failed to state a viable § 1983 claim.

* * * *

We affirm.

OPINION AND ORDER, U.S. DISTRICT COURT FOR THE WESTERN DISTRICT OF MICHIGAN (DECEMBER 27, 2024)

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CHARLES BOZZO,

Plaintiff,

v.

JENNIFER NANASY, ET AL.,

Defendants.

Case No. 1:24-cv-624

Before: Hon. Jane M. BECKERING,
United States District Judge.

OPINION AND ORDER

Through counsel, Plaintiff Charles Bozzo initiated this case against Defendant Jennifer Nanasy, the Michigan Department of Correction's Discipline Coordinator, and Defendant Heidi Washington, the Michigan Department of Correction's Director (collectively "Defendants"). (ECF No. 1.) Pursuant to 42 U.S.C. § 1983, Bozzo asserts that Defendants violated his rights under the First, Fourth, Fifth, Eighth, Ninth, and Fourteenth Amendments of the United

States Constitution when Defendants terminated Bozzo's employment.

Defendants have filed the pending Motion to Dismiss. (ECF No. 5.) The Court, for the following reasons, grants Defendants' motion.

I. Background

A. Facts

Bozzo, in his Complaint, alleges that the Michigan Department of Corrections ("MDOC") employed him as a Correctional Officer most recently from 2015 until July 31, 2019 at the Bellamy Creek Correctional Facility. (Compl. ¶¶ 12, 13.) According to the Complaint, Jane Doe worked with Bozzo as an MDOC Correctional Officer at the Bellamy facility, and they at one point carpooled together. (*Id.* ¶¶ 14, 15.) On more than one occasion from 2017 until 2019, Doe allegedly reported Bozzo to their supervisors for misconduct. (*See id.* ¶¶ 15-22.) Doe allegedly reported that Bozzo made sexual comments to her during their carpool. (*Id.* ¶ 23.) Additionally, she allegedly reported that Bozzo, when speaking to others, referred to her using obscene and derogatory language. (*Id.* ¶¶ 18, 19.) Bozzo, in his Complaint, comments that he "may have engaged in the casual use of obscenities" and that he "used profanities in a colloquial manner of expressing his disdain" for Doe's misconduct reports. (*Id.* ¶ 18).

Bozzo further complains that, on June 19, 2019, MDOC served him with a misconduct charge for the sexual comments he made to Doe during their carpool and the obscene language by which he referred to Doe. (*Id.* ¶ 23.) Bozzo represents that the charge summarized what he said and provided the specific MDOC rules he

violated. (*Id.* ¶¶ 23, 24.) Five days later, the MDOC convened a "brief (20 minute) 'Disciplinary Conference'" which, according to Bozzo, involved "no questioning or testimony." (*Id.* ¶ 27.) Bozzo states that he had his union representative present, and his representative made a short statement regarding Bozzo's future employment and the dismissal of the charges. (*Id.*) Defendants allegedly terminated Bozzo on July 31, 2019, via a "short correspondence." (*Id.* ¶ 28.) The correspondence allegedly advised Bozzo that his employment would be terminated. (*Id.*)

Bozzo represents that he exercised his rights under his Collective Bargaining Agreement and initiated an Arbitration Hearing. (*Id.* ¶ 29.) Bozzo states that his Arbitration Hearing occurred from December 14, 2020 until December 17, 2020. (*Id.*) During the hearing, Defendant Nanasy allegedly testified that MDOC policies had changed. (*Id.*) Defendant Nanasy also allegedly testified that MDOC enforced these new policies in Bozzo's case. (*Id.*) Doe allegedly testified that she was afraid of Bozzo. (*Id.* ¶ 32.)

Bozzo claims that he was "set up." (*Id.* ¶ 30.) Doe's testimony was allegedly filled with lies, inaccurate representations, and misperceptions. (*Id.* ¶ 32.) Further, Bozzo alleges that Defendants brought a "surprise female correctional employee witness" who was not involved in the investigation to testify against Bozzo. (*Id.* ¶ 31.)

The arbitrator issued his opinion and ruling on March 1, 2021. (*Id.* ¶ 33.) Bozzo states that the arbitrator ruled against Bozzo, relying on the new MDOC policies. (*Id.*) Bozzo states the arbitrator found that Bozzo violated those policies and wrote that "in America in 2021, a male employee may not repeatedly

and habitually refer to a female employee [by obscene and derogatory names] and expect to keep his job." (*Id.*)

B. Procedural History

On December, 18, 2023, Bozzo filed a complaint substantially similar to the one at bar.[1] (Compl. as to *Charles Bozzo v. Jennifer Nanasy*, No. 1:23-cv-1316 (W.D. Mich. May 8, 2024), ECF No. 1.) The Court ultimately dismissed that complaint without prejudice under Federal Rule of Civil Procedure 41(b) for failure to prosecute. (J. as to *Charles Bozzo v. Jennifer Nanasy*, No. 1:23-cv-1316, (W.D. Mich. May 8, 2024), ECF No. 15.)

Bozzo filed the Complaint currently before the Court on June 14, 2024. Bozzo asserts, pursuant to 42 U.S.C. § 1983, that Defendants violated his rights secured by numerous amendments to the United States Constitution. (Compl. ¶ 36.) He claims that Defendants violated the First Amendment's free speech clause by implementing policies that restrict him from "speaking freely." (*Id.* ¶ 10.) Under the Fifth and Fourteenth Amendments, he asserts that Defendants deprived him of equal treatment and of his property interest and employment without adequate due process. (*Id.* ¶¶ 36, 37.) For instance, he claims Defendants did not advise him of the charges he faced, did not assert specific charges against him, and denied him a fair hearing. (*Id.* ¶ 42.) Bozzo also asserts that Defendants

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[1] One difference between the two documents is that, in the instant Complaint, Bozzo has added a string of citations to caselaw. (Compl., ECF No. 1 ¶ 11). Bozzo does not explain how this authority applies to the facts in his Complaint.

violated his Fourth Amendment right to privacy by using his private conversations and relationships against him. (*Id.*) Lastly, he asserts Eighth and Ninth Amendment violations. (*Id.* ¶¶ 3, 47.)

Defendants have moved to dismiss Bozzo's Complaint for failure to state a claim on which relief can be granted. They argue, first, that Bozzo's Complaint is untimely and should be dismissed under Michigan's three-year statute of limitations. (Def's Br. in Supp. of Mot. to Dismiss, ECF No. 6, PageID.55.) They contend his claims accrued on July 31, 2019. (*Id.*) In the alternative, Defendants contend that Bozzo fails to make any prima facie constitutional violation and, therefore, he fails to state a claim under § 1983. (*Id.*, PageID.57.)

In light of Defendants' motion, the Court entered an Order affording Bozzo an opportunity to amend his Complaint to cure the allegedly inadequate pleadings. (Order, ECF No. 7.) Instead, Bozzo filed a response, addressing some of Defendants' arguments for dismissal. (Pl.'s Resp. to Mot. to Dismiss, ECF No. 10.) In his response, Bozzo argues that his claims are timely because they accrued on March 1, 2021, the day the arbitrator issued his opinion and ruling. (*Id.*, PageID.91.) Bozzo also opposes Defendants' analysis of his procedural due process claim. (*Id.*, PageID.92.)

Defendants filed a reply. (ECF No. 11.) Defendants assert that Bozzo has conceded the arguments he failed to raise in his opposition brief. (Reply Br., PageID.101.)

Having considered the parties' submissions, the Court concludes that oral argument is unnecessary to

resolve the issues presented. *See* W.D. Mich. LCivR 7.2(d).

II. Legal Standard

Under the Federal Rules of Civil Procedure, a complaint must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). The complaint must "give the defendant fair notice of what the claim is and the grounds upon which it rests." *Dura Pharm., Inc. v. Broudo*, 544 U.S. 336, 346 (2005). A "plaintiff's obligation to provide the 'grounds' of his 'entitlement to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (quoting *Papasan v. Allain*, 478 U.S. 265, 286 (1986)). A complaint's factual allegations must be enough to raise a right to relief above the speculative level so a claim is "plausible on its face." *New Albany Tractor v. Louisville Tractor*, 650 F.3d 1046, 1051 (6th Cir. 2011) (quoting *Twombly*, 550 U.S. at 570). A complaint is facially plausible "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Twombly*, 550 U.S. at 556). While "[t]he plausibility standard is not akin to a 'probability requirement' . . . it asks for more than a sheer possibility that a defendant has acted unlawfully." *Id.* (quoting *Twombly*, 550 U.S. at 556).

The Federal Rules of Civil Procedure permit a defendant to seek dismissal of a complaint based on the "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). To survive a motion

to dismiss, the complaint must state sufficient facts to state a claim to relief that is plausible on its face. *Iqbal*, 556 U.S. at 678. "However, while liberal, this standard of review does require more than bare assertions of legal conclusions" and unwarranted factual inferences. *Colson v. Wilmington Sav. Fund Soc'y*, No. 17-11387, 2018 WL 345174, at *9 (E.D. Mich. Jan. 10, 2018) (quoting *Columbia Nat'l Res., Inc. v. Tatum*, 58 F.3d 1101, 1109 (6th Cir. 1995)). A legally sufficient complaint must establish more than a "sheer possibility" that the plaintiff's claim is true. *Iqbal*, 556 U.S. at 678. The claim must be dismissed if there are insufficient factual allegations to raise a right to relief above the speculative level. *Twombly*, 550 U.S. at 555.

III. Analysis

Defendants have moved to dismiss Bozzo's Complaint for failure to state a claim on which relief can be granted. They argue that Michigan's three-year statute of limitations bars Bozzo's Complaint. In the alternative, they argue that Bozzo has failed to state a § 1983 claim. Moreover, Defendants argue that Bozzo has conceded many of the constitutional violations that underlie his claim. They contend that Bozzo waived his arguments for any First, Fourth, Fifth, Eighth, and Ninth Amendment violations because he did not respond to Defendants' arguments for dismissal in his opposition brief.

A. Failure to Respond

Bozzo's response to Defendants' motion defends only his claim under the Fourteenth Amendment Due Process Clause. (ECF No. 10 at PageID.92-94.)

"It is well understood . . . that when a plaintiff file[s] an opposition to a dispositive motion and addresses only certain arguments raised by the defendant, a court may treat those arguments that the plaintiff fail[s] to address as conceded." *Rouse v. Caruso*, No. 6-cv-10961-DT, 2011 WL 918327, at *18 (E.D. Mich. Feb. 18, 2011) (quoting *Hopkins v. Women's Div., Gen. Bd. Of Glob. Ministries*, 284 F. Supp. 2d 15, 25 (D.D.C. 2003), *aff'd*, 98 F. App'x 8 (D.C. Cir. 2004)); *Plan B Wellness Ctr., LLC v. City of Detroit Bd. of Zoning Appeals*, 838 F. App'x 186, 187 (6th Cir. 2021) (holding that by failing to respond to arguments that it lacked standing to sue, plaintiff conceded that the court lacked subject matter jurisdiction); *Nat'l Mortg. Ass'n v. River Houze*, LLC, 596 F.Supp.3d 925, 932-33 (E.D. Mich. 2022); *see also Humphrey v. U.S. Att'y Gen.'s Off.*, 279 F. App'x 328, 331 (6th Cir. 2008) (recognizing that a party's lack of response to a motion or argument therein is grounds for the district court to grant a motion to dismiss and noting that "if a plaintiff fails to respond or to otherwise oppose a defendant's motion, then the district court may deem the plaintiff to have waived opposition to the motion.") (quoting *Scott v. Tenn.*, 878 F.2d 382, 1989 WL 72470, at *4 (6th Cir. 1989)).

Therefore, Bozzo has conceded his First Amendment free speech claim, his Fourth Amendment claim right to privacy claim, his Fifth Amendment claim (to the extent he raised a standalone Fifth Amendment claim in the Complaint), his Eighth Amendment claim, and his Ninth Amendment claim.[2]

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[2] Defendants motion to dismiss does not address Bozzo's Fourteenth Amendment Equal Protection Claim. However, as the Court

B. Timeliness of Bozzo's Complaint

Bozzo does contest Defendants' statute of limitations argument.

A defendant may raise the statute of limitations as a bar to the plaintiff's claim as an affirmative defense. *See Rumsey v. Mich. Dep't of Corr.*, No. 1:10-cv-880, 2013 WL 5517888, at *20-21, (W.D. Mich. Sept. 30, 2013). The defendant bears the burden of establishing a statute of limitations defense. *Id.* "[D]ismissal is appropriate when 'the allegations in the complaint affirmatively show that the claim is time-barred.'" *Barrio Bros., LLC v. Revolucion, LLC*, No. 1:18-cv-2052, 2019 WL 5213039, at *8 (N.D. Ohio Oct. 16, 2019) (quoting *Cataldo v. U.S. Steel Corp.*, 676 F.3d 542, 547 (6th Cir. 2012)). But, "[i]f the defendant meets this requirement then the burden shifts to the plaintiff to establish an exception to the statute of limitations." *Cataldo*, 676 F.3d at 547.

Bozzo's § 1983 claim is subject to Michigan's three-year statute of limitations. *See Est. of Majors v. Gerlach*, 821 F. App'x 533, 537 (6th Cir. 2020) (citing *Carroll v. Wilkerson*, 782 F.2d 44, 44 (6th Cir. 1986) (per curiam)); MICH. COMP. LAWS § 600.5805(2). Defendants argue that the statute of limitations period for Bozzo's claim began to run on July 31, 2019, when Defendants terminated Bozzo via the short correspondence, and his claim is barred by the statute of limitations. (Defs.' Br., ECF No. 6 at PageID.55.) Bozzo disagrees. He contends his claim accrued on March 1, 2021, when the arbitrator issued his opinion and ruling, and his Complaint was timely filed. (Pl.'s Br.,

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concludes *infra*, Bozzo's pleadings in that respect too, are barred by the statute of limitations and fail to state a claim.

ECF No. 10 at PageID.90.) Accordingly, the Court proceeds to determine whether Bozzo's claim is barred by the statute of limitations.

Onset of the Statute of Limitations Period. Federal law governs when the statutory period for Bozzo's § 1983 claim began to run. *Sevier v. Turner*, 742 F.2d 262, 272–73 (6th Cir. 1984) (citing cases). This moment occurs when plaintiff has a "complete and present cause of action," meaning that the plaintiff "can file suit and obtain relief." *Wallace v. Kato*, 549 U.S. 384, 388 (2007) (quotations omitted). A Plaintiff can do so when the "plaintiff has reason to know of his injury or when he should have discovered it through the exercise of reasonable diligence." *Sevier*, 742 F.2d at 273 (citations omitted). The Court must look to "what event should have alerted the typical lay person to protect his or her rights." *Dixon v. Anderson*, 928 F.2d 212, 215 (6th Cir. 1991), *abrogated on other grounds by Sharpe v. Cureton*, 319 F.3d 259, 268 (6th Cir. 2003). Only then does the statute of limitations clock start ticking. *See Hughes v. Vanderbilt Univ.*, 215 F.3d 543, 548 (6th Cir. 2000).

For claims brought pursuant to the Fourteenth Amendment Procedural Due Process clause "a plaintiff's injury accrues at the time that process was denied because 'the allegedly infirm process is an injury in itself.'" *Am. Premier Underwriters, Inc. v. Nat'l R.R. Passenger Corp.*, 839 F.3d 458, 461 (6th Cir. 2016) (citing *Nasierowski Bros. Inv. Co. v. City of Sterling Heights*, 949 F.2d 890, 894 (6th Cir. 1991)). Even if a "final decision" has not yet been made, "a plaintiff has reason to know of its procedural due process claim at the moment process is denied." *Id.* (citation omitted). For instance, in *Nasierowski*, the Sixth Circuit concluded

that the plaintiff's procedural due process claim accrued when a local zoning council convened a critical session that departed from the required notice and comment procedures, even though the council had not yet reached a final decision on the plaintiff's development plans for his property. *Nasierowski*, 839 F.3d at 461. Similarly, in an unpublished opinion in *Printup v. Dir., Ohio Dep't of Job & Fam. Servs.*, F. App'x 781, 784-84 (6th Cir. 2016), the Sixth Circuit held that the plaintiff's procedural due process claim against a social services agency accrued not when the agency's hearing officer issued a final decision on the plaintiff's status as an employee, but when the plaintiff was initially terminated under allegedly deficient procedural circumstances.

According to Bozzo's Complaint, several events, each on different dates, constituted procedural due process violations. Accordingly, he was alerted that he had a due process claim at each juncture.

First, on June 24, 2019, Bozzo alleges that he had a brief "Disciplinary Conference." (Compl., ¶ 27.) He claims that this conference took place in the warden's office "at which time no question or testimony took place." (*Id.*) And that "Plaintiff and his designated union representative only made short general statements contemplating Plaintiff's future employment and the dismissal of charges." (*Id.*) The entire disciplinary process, in his words, "was arbitrary and capricious and intentionally disregarded" his strong support from supervisors and coworkers. (*Id.* ¶ 42.) Thus, on these allegations, Bozzo had reason to know that Defendants denied him the due process he now alleges was due.

Next, on July 31, 2019, Bozzo was "punished" when Defendants notified him that the MDOC was terminating him. (*See id.* ¶¶ 28, 36.) On the 31st, via a "short correspondence," he claims, "Nanasy advised Plaintiff, despite the vague, staleness, irrelevancy and paucity of evidence in support of the allegations [against him], that he would be terminated." (*Id.* ¶ 28.) He also takes issue with Defendants terminating him regarding the new policy they enacted: "Defendants created a new policy . . . and enforced that new policy in this case that denied [Bozzo] due process of law." (*Id.* ¶ 37.) Moreover, according to Bozzo, "Defendants disregarded basic rules of investigation . . . due process, and an established policy favoring progressive discipline." (*Id.* ¶ 39.) At this point, Bozzo was aware of the policies he allegedly violated and had a pre-termination hearing. Taking all this as true, even if Bozzo was not on notice as of June 24, 2019, on July 31, 2019, Bozzo was on notice that Defendants did not afford him the process to which he believed he was entitled.

Then, from December 14, 2020, to December 17, 2020, Bozzo had an arbitration hearing. (*Id.* ¶ 29.) Bozzo asserts many issues with this hearing. (*See id.*) He claims that he was "falsely depicted and set up as a readymade, convenient male chauvinistic pig so that Defendants could serve his termination as a trophy. . . . " (*Id.* ¶ 30) (cleaned up). He continues, "because of the absence of proof, at the arbitration hearing, the Defendants brought a surprise female correctional employee witness . . . who cast[ed] Plaintiff in a negative light" that was irrelevant to the arbitration. (*Id.* ¶ 31.) Accordingly, Bozzo argues, the arbitration process was not fair and was "infected by clear indication that

the Defendants demanded a certain result to achieve other purposes than applying the Department rules," and that Defendants applied a new rule without notice. (*Id.* ¶ 36.) Finally, Bozzo claims that the hearing and decision "were influenced by a predisposition to favor Jane Doe because of her sex and [her] strong connections to management personnel. . . ." (*Id.* ¶ 42.)

Bozzo's right to due process was allegedly violated, at the latest, during the hearing. Bozzo's allegations are like the plaintiffs in *Printup* and *Nasierowski* whose procedural due process claims accrued when the due process was not afforded, not when the final decision was made. *See Printup* F. App'x 781 at 784–84; *Nasierowski*, 839 F.3d at 461. In sum, viewing Bozzo's Complaint deferentially, Bozzo had reason to know of the alleged procedural due process violation on December 17, 2020, if not before. As a result, the three-year statute of limitations period for his § 1983 claim began to run that same day.

Filing Date. The next question is whether Bozzo timely filed his Complaint within Michigan's three-year-statute of limitations. At the latest, Bozzo's § 1983 claim accrued on December 17, 2020. So, he had to file this Complaint by December 17, 2023. He did not. He filed the Complaint currently before the Court on June 14, 2024. Thus, Defendants have met their burden and have shown that Bozzo failed to timely file his § 1983 action.[3]

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[3] Even if Bozzo is correct that his § 1983 claim accrued on March 1, 2021, he still failed to file this Complaint within three years of that date. Bozzo appears to contend that the earlier complaint the Court dismissed for failure to prosecute tolls the statute of limitations. It does not. *Rice v. Jefferson Pilot Fin. Ins. Co.*, 578

The burden now shifts to Bozzo to establish an exception. *Cataldo*, 676 F.3d at 547. Bozzo claims that the statute of limitations should be tolled because exhausting administrative remedies tolls the limitations period. (Pl.'s Resp. to Mot. to Dismiss, PageID.91.) Yet Bozzo fails to cite any authority requiring him to exhaust his administrative remedies before filing this § 1983 action. Furthermore, Bozzo fails to show what administrative remedies he pursued before filing this claim. The Court thus declines to exercise an already "sparingly" used doctrine. *Robertson v. Simpson*, 624 F. 3d 781, 784 (6th Cir. 2010).

Because Defendants have affirmatively shown that Bozzo's claim falls outside the three-year statute of limitations and Bozzo has failed to prove an exception, the Court concludes that Bozzo's Complaint is untimely and dismissal is warranted.

C. Failure to State a Claim

Even assuming, *arguendo*, that Bozzo timely filed his § 1983 claim and that he had responded to Defendants' arguments for dismissal, he fails to state any prima facie constitutional violation.

First Amendment. Bozzo contends that Defendants violated his right to free speech by disciplining and terminating him for comments he made to and about Doe under MDOC Work Rules #1, #3, and #5. (Compl. ¶ 24.) Defendants argue that the First

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F.3d 450, 457 (6th Cir. 2009) ("We have consistently held . . . that a dismissal of a suit without prejudice usually does not toll the statute of limitations[.]"); *O'Bryan v. Multiple Unknown Agents*, No. 07-cv-12253, 2012 WL 7807951, at *5-6 (E.D. Mich. June 29, 2012) ("A dismissal without prejudice, however, does not toll the statute of limitations.") (citations omitted).

Amendment is not applicable because Bozzo was a public employee and the speech Defendants terminated him for was not a matter of public concern.

"[A]lmost all speech is protected[,] other than 'in a few limited areas.'" *Novak v. City of Parma*, 932 F.3d 421, 427 (6th Cir. 2019) (quoting *United States v. Stevens*, 559 U.S. 460, 468, (2010)). "Things get complicated, however, when a public employee speaks—because such speech pits the employee's interests in speaking freely against the employer's interests in running an efficient workplace." *Myers v. City of Centerville, Ohio*, 41 F.4th 746, 760 (6th Cir. 2022) (citations omitted).

In determining whether a public employee's speech is protected, courts use a three-prong test. *Id.* "First, the employee must have spoken as a private citizen, not 'pursuant to his official duties.'" *Id.* (quoting *Garcetti v. Ceballos*, 547 U.S. 410, 421 (2006)). "Second, the speech must involve 'matters of public concern.'" *Id.* (quoting *Connick v. Myers*, 461 U.S. 138, 142 (1983)). "Third, the employee's interests, 'as a citizen, in commenting upon matters of public concern,' must outweigh 'the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees.'" *Id.* (quoting *Pickering v. Bd. of Educ.*, 391 U.S. 563, 568 (1968)).

Here, Bozzo's argument falters at the second prong. In determining whether Bozzo's speech involves a matter of public concern, the Court considers "the content, form, and context of [his] statements, as revealed by the whole record." *Connick*, 461 U.S. at 147-48. "While motive for the speech is a relevant factor, . . . 'the pertinent question is not *why* the employee spoke, but *what* he said.'" *Westmoreland v. Sutherland*,

662 F.3d 714, 719 (6th Cir. 2011) (quoting *Farhat v. Jopke*, 370 F.3d 580, 591 (6th Cir. 2004)). That means the Court examines "the point of the speech in question." *Boulton v. Swanson*, 795 F.3d 526, 534 (6th Cir. 2015)).

The Court then asks whether that point concerned the public. *Myers*, 41 F.4th at 760. "[S]peech involves a matter of public concern when it can fairly be considered to relate to 'any matter of political, social, or other concern to the community.'" *Westmoreland*, 662 F.3d at 719 (quoting *Connick*, 461 U.S. at 146). Put simply, speech concerns such matters "when it 'is a subject of legitimate news interest; that is, a subject of general interest and of value and concern to the public.'" *Lane v. Franks*, 573 U.S. 228, 241, (2014) (quoting *Snyder v. Phelps*, 562 U.S. 443, 453 (2011)).

Accordingly, speech regarding "internal personnel disputes" generally does not involve matters of public concern. *Brandenburg v. Hous. Auth. of Irvine*, 253 F.3d 891, 898 (6th Cir. 2001). For instance, the "quintessential employee beef: management has acted incompetently." *Barnes v. McDowell*, 848 F.2d 725, 735 (6th Cir. 1988) (quoting *Marry v. Gardner*, 741 F.2d 434, 438 (D.C. Cir. 1984)). "After all, 'the First Amendment does not require a public office to be run as a roundtable for employee complaints over internal office affairs.'" *Myers*, 41 F.4th at 761 (quoting *Connick*, 461 U.S. at 149). Even so, speech that addresses an internal personnel dispute may involve a matter of public concern "if the dispute arose from 'actual or potential wrongdoing or any breach of the public trust.'" *Id.* (quoting *Brandenburg*, 253 F.3d at 898).

Here, Bozzo's speech concerns a "quintessential employee beef." *Barnes*, 848 F.2d at 735. He claims

that the point of his comments was to express disdain and defend his reputation from Doe's allegations. (Compl. ¶ 18.) Even thus characterized, Bozzo's comments are not a matter of public concern. Referring to a coworker by derogatory names is not a legitimate news interest, or a subject of general interest and of value and concern to the public. Nor are sexualized comments. The Court agrees with Defendants that it would be absurd to suggest that making sexualized comments to a coworker and then later referring to them by derogatory names would be a matter of public concern. Consequently, the Court finds Bozzo's First Amendment claim unfounded.

Fourth Amendment. Bozzo also asserts a Fourth Amendment claim against Defendants. He contends that Defendants violated his right to privacy regarding his private conversations and relationships. (*Id.* ¶ 10.) While he does not make the claim clear, the Court assumes Bozzo references Defendants punishing him for statements he made to coworkers regarding Doe. (*See id.*) Construing his Complaint liberally, it seems that Bozzo is alleging Defendants violated his Fourth Amendment rights when Defendants used the words he stated to coworkers against him. (*See id.* ¶¶ 10, 42.)

The Fourth Amendment of the United States Constitution protects "[t]he rights of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. Amend. IV. That said, the Fourth Amendment's protection against unreasonable searches and seizures is triggered only when the government has conducted a search or seizure. *See Small v. Fetter*, No. 5:14-006-KKC, 2015 WL 1393585 (E.D. Ky. Mar. 25, 2015)

(citing *United States v. Attson*, 900 F.2d 1427, 1429 (9th Cir. 1990)). A search occurs "when an expectation of privacy that society is prepared to consider reasonable is infringed." *United States v. Jacobsen*, 466 U.S. 109, 113 (1984).

The Fourth Amendment is not implicated in this case because Bozzo has not adequately alleged that Defendants conducted a search. Bozzo seems to be alleging that he had an expectation of privacy in his conversations with fellow MDOC officers and Doe. (*See* Compl. ¶¶ 10, 42.) United States Supreme Court precedent forecloses Bozzo's argument: there is no reasonable expectation of privacy in comments one shares with another person and which that person later shares with the government. *See United States v. White*, 401 U.S. 745, 749 (1971). In other words, the Fourth Amendment "affords no protection to a wrongdoer's misplaced belief that a person to whom he voluntarily confides his wrongdoing will not reveal it." *Hoffa v. United States*, 385 U.S. 293, 302 (1966). Thus, the Fourth Amendment is not triggered because no search or seizure occurred.

Fifth Amendment. Bozzo asserts a due process claim under the Fifth Amendment of the United States Constitution against Defendants. This claim fails as a matter of law. The Fifth Amendment applies to claims against federal employees. Here, Bozzo has sued only employees of Michigan, who cannot be liable under the Fifth Amendment. *See Scott v. Clay Cnty., Tenn.*, 205 F.3d 867, 873 n.8 (6th Cir. 2000) (noting that a § 1983 plaintiff's Fifth Amendment claim against state employees "was a nullity, and redundant of her invocation of the Fourteenth Amendment Due Process Clause").

Eighth Amendment. To the extent that Bozzo raises an Eighth Amendment violation against Defendants, it, too, fails. Bozzo has not cited a single example of any court recognizing an Eighth Amendment claim raised by a non-incarcerated individual against state employees. Bozzo is not being held for criminal punishment, nor has any civil fine been assessed against him. So, there seems no reason as to why the Eighth Amendment would apply. The Eighth Amendment, on its face, bears no relation to public employment. Thus, Bozzo's claim fails as a matter of law.

Ninth Amendment. Bozzo ostensibly asserts a Ninth Amendment violation under the United States Constitution. The Ninth Amendment, however, does not confer any constitutional rights cognizable in civil rights litigation. "The Ninth Amendment 'has never been recognized as independently securing any constitutional right, for purposes of pursuing a civil rights claim.'" *Reilly v. MDOC* (quoting *Strandberg v. City of Helena*, 791 F.2d 744, 748 (9th Cir. 1986)). This claim fails as a matter of law as well.

Fourteenth Amendment Due Process Clause. Bozzo contends that the way in which Defendants terminated his employment violated his procedural due process rights. (Compl., ECF No. 1 at PageID.22-26.)

Before termination, a public employee is entitled to a limited pre-termination hearing followed by a more comprehensive post-termination hearing. *Cleveland Board of Education v. Loudermill*, 470 U.S. 532, 542-43 (1985). An employee is not entitled to a full evidentiary hearing before termination but is entitled to (1) notice of the charges against him and (2) an

opportunity to respond orally or in writing before discharge. *See id.*

As for the pre-termination process, it "should be an initial check against mistaken decisions." *Id.* at 545-46. During this process, there should be "a determination of whether there are reasonable grounds to believe that the charges against the employee are true and support the proposed action." *Id.* For instance, in *Buckner v. City of Highland Park*, 901 F.2d 491, 494 (6th Cir. 1990), the Sixth Circuit explained that a public employee had a constitutional right to "oral or written notice of the charges against him, an explanation of the employer's evidence, and an opportunity to present his side of the story." Notably, "[t]o require more than this prior to termination would intrude to an unwarranted extent on the government's interest in quickly removing an unsatisfactory employee." *Loudermill*, 470 U.S. at 546.

The availability of post-deprivation remedies "allows for an even less formal pre-termination hearing. . . ." *Guarino v. Brookfield Twp. Trs.*, 980 F.2d 399, 409 (6th Cir. 1992). "The law is well-established that it is the opportunity for a post-deprivation hearing before a neutral decisionmaker that is required for due process." *Farhart v. Jopke*, 370 F.3d 580, 596 (6th Cir. 2004). "As long as the procedural requirements are reasonable and give the employee notice and an opportunity to participate meaningfully, they are constitutionally adequate." *Id.* (citing *Hennigh v. City of Shawnee,* 155 F.3d 1249, 1256 (10th Cir.1998)). And if a collective bargaining agreement includes grievance procedures, those procedures can fulfill the plaintiff's right to post-deprivation due process. *Am. Postal Workers Union*

Columbus Area Loc. AFL–CIO v. U.S. Postal Serv., 736 F.2d 317, 319 (6th Cir. 1984). Thus, "the opportunity to challenge the termination in a more detailed post-termination proceeding, under the collective bargaining agreement, satisfies the employee's constitutional due process rights". *Farhart*, 370 F.3d at 596 (citing *Buckner*, 901 F.2d at 497).

Under the authority cited above, Defendants did not deny Bozzo his due process. Defendants gave Bozzo a pre-termination notice and an opportunity to be heard. (Compl. ¶ 23.) While his pre-termination hearing was brief, Defendants advised him of the charges against him, and his union representative had the opportunity to make statements on behalf of his future employment with the MDOC. (*Id.* ¶¶ 23, 24, 27.) That is all that is required before Defendants terminated him. *See Buckner*, 901 F.2d at 494. Defendants likewise afforded Bozzo an adequate post-deprivation process. They provided Bozzo with a post-termination arbitration that he requested, attended, and at which he could present witnesses and testify. (*Id.* ¶¶ 29, 31, 33.) The arbitration was before a neutral arbitrator and lasted three days. (*Id.*) These facts, taken together, belie Bozzo's claim that Defendants denied him his procedural due process. *See Am. Postal Workers Union Columbus Area*, 736 F.2d at 319. Disagreement with the result of arbitration does not give rise to a constitutional violation.

Fourteenth Amendment Equal Protection Clause. Bozzo contends that he was targeted "since he was an older white male," that MDOC "used [his] sex as a reason supporting the decision to terminate him" and that he was "victimized by disparate treatment" since he was disciplined more harshly than

female employees under similar circumstances (Compl., ECF No. 1 ¶ ¶ 41, 44-45). Bozzo does not direct the Court to any facts supporting his bald assertions of discriminatory conduct by Defendants. Moreover, these conclusory allegations are entirely devoid of references or citations to the legal framework upon which Bozzo attempts to bring his claim. Accordingly, Bozzo has failed to "give the defendant fair notice of what the claim is and the grounds upon which it rests." *Dura Pharm. Inc.*, 544 U.S. at 346. Under the federal pleading standard, speculation is not sufficient to state a claim. *Twombly*, 550 U.S. at 555. Without "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged," Bozzo's claim is properly dismissed. *Iqbal*, 556 U.S. at 678.

D. Dismissal with Prejudice

Defendants request that the claims against them be dismissed with prejudice (ECF No. 6 at PageID.70). The Court agrees that dismissal with prejudice is appropriate in this case. "Ordinarily, if a district court grants a defendant's 12(b)(6) motion, the court will dismiss the claim without prejudice to give parties an opportunity to fix their pleading defects." *CNH Am. LLC v. Int'l Union, United Auto., Aerospace & Agr. Implement Workers of Am. (UAW)*, 645 F.3d 785, 795 (6th Cir. 2011). Here, however, Bozzo previously filed a largely identical Complaint against Defendants, which was dismissed without prejudice after Defendants filed a motion to dismiss to which Bozzo failed to respond. In the instant action, Bozzo has already had an opportunity to amend his original Complaint and declined to do so. Nor does he now request—let alone file a motion in support of—a second opportunity to

amend. Further, "[d]ismissal with prejudice and without leave to amend is [] appropriate when it is clear . . . that the complaint could not be saved by an amendment." *Stewart v. IHT Ins. Agency Grp., LLC*, 990 F.3d 455, 457 n.* (6th Cir. 2021). Consequently, the Court will dismiss Plaintiffs' federal claims with prejudice.

IV. Conclusion

For these reasons, the Court dismisses Bozzo's Complaint.

IT IS ORDERED that Defendants' Motion to Dismiss (ECF No. 5) Plaintiff Bozzo's Complaint (ECF No. 1) is GRANTED.

Because this Opinion and Order resolves all pending claims, the Court will also enter a Judgment to close this case. *See* Fed. R. Civ. P. 58.

/s/ Jane M. Beckering
U.S. District Judge

Date: December 27, 2024

JUDGMENT, U.S. DISTRICT COURT FOR THE WESTERN DISTRICT OF MICHIGAN (DECEMBER 27, 2024)

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CHARLES BOZZO,

Plaintiff,

v.

JENNIFER NANASY, ET AL.,

Defendants.

Case No. 1:24-cv-624

Before: Hon. Jane M. BECKERING,
United States District Judge.

JUDGMENT

In accordance with the Opinion and Order entered this date:

IT IS ORDERED that Plaintiff Bozzo's claims in his Complaint (ECF No. 1) are DISMISSED WITH PREJUDICE.

This case is closed.

/s/ Jane M. Beckering
U.S. District Judge

Date: December 27, 2024

ORDER DENYING PETITION FOR REHEARING, U.S. COURT OF APPEALS FOR THE SIXTH CIRCUIT (DECEMBER 29, 2025)

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

CHARLES BOZZO,

Plaintiff-Appellant,

v.

JENNIFER NANASY, Discipline Coordinator, Michigan Department of Corrections; HEIDI E. WASHINGTON, Director, Michigan Department of Corrections,

Defendants-Appellees.

No. 25-1199

Before: THAPAR, READLER, and HERMANDORFER, Circuit Judges.

The court received a petition for rehearing en banc. The original panel has reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. The petition then was circulated to the full court. No judge has requested a vote on the suggestion for rehearing en banc.

Therefore, the petition is denied.

ENTERED BY ORDER OF THE COURT

/s/ Kelly L. Stephens
Clerk

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. amend. XIV, § 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

42 U.S.C. § 1983
Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

MCL § 600.5805
Injuries to persons or property; period of limitations; "adjudication," "criminal sexual conduct," and "dating relationship" defined.

Sec. 5805.

(1) A person shall not bring or maintain an action to recover damages for injuries to persons or property unless, after the claim first accrued to the plaintiff or to someone through whom the plaintiff claims, the action is commenced within the periods of time prescribed by this section.

(2) Except as otherwise provided in this section, the period of limitations is 3 years after the time of the death or injury for all actions to recover damages for the death of a person or for injury to a person or property.

(3) Subject to subsections (4) to (6), the period of limitations is 2 years for an action charging assault, battery, or false imprisonment.

(4) Subject to subsection (6), the period of limitations is 5 years for an action charging assault or battery brought by a person who has been assaulted or battered by his or her spouse or former spouse, an individual with whom he or she has had a child in common, or a person with whom he or she resides or formerly resided.

(5) Subject to subsection (6), the period of limitations is 5 years for an action charging assault and battery brought by a person who has been assaulted or battered by an individual with whom he or she has or has had a dating relationship.

(6) The period of limitations is 10 years for an action to recover damages sustained because of criminal sexual conduct. For purposes of this subsection, it is not necessary that a criminal prosecution or other proceeding have been brought as a result of the conduct or, if a criminal prosecution or other proceeding was brought, that the prosecution or proceeding resulted in a conviction or adjudication.

(7) The period of limitations is 2 years for an action charging malicious prosecution.

(8) Except as otherwise provided in this chapter, the period of limitations is 2 years for an action charging malpractice.

(9) The period of limitations is 2 years for an action against a sheriff charging misconduct or neglect of office by the sheriff or the sheriff's deputies.

(10) The period of limitations is 2 years after the expiration of the year for which a constable was elected for actions based on the constable's negligence or misconduct as constable.

(11) The period of limitations is 1 year for an action charging libel or slander.

(12) The period of limitations is 3 years for a products liability action. However, in for a product that has been in use for not less than 10 years, the plaintiff, in proving a prima facie case, must do so without the benefit of any presumption.

(13) An action against a state licensed architect or professional engineer or licensed professional surveyor arising from professional services rendered is an action charging malpractice subject

to the period of limitation contained in subsection (8).

(14) The periods of limitation under this section are subject to any applicable period of repose established in section 5838a, 5838b, or 5839.

(15) The amendments to this section made by 2011 PA 162 apply to causes of action that accrue on or after January 1, 2012.

(16) As used in this section:

(a) "Adjudication" means an adjudication of 1 or more offenses under chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.1 to 712A.32.

(b) "Criminal sexual conduct" means conduct prohibited under section 520b, 520c, 520d, 520e, or 520g of the Michigan penal code, 1931 PA 328, MCL 750.520b, 750.520c, 750.520d, 750.520e, and 750.520g.

(c) "Dating relationship" means frequent, intimate associations primarily characterized by the expectation of affectional involvement. Dating relationship does not include a casual relationship or an ordinary fraternization between 2 individuals in a business or social context.