

In the Supreme Court of the United States

DERICK GREGORY JAMES,

Petitioner,

v.

THE GEO GROUP, INC., ASSISTANT WARDEN LAWRENCE, CHRISTOPHER
CRUZ, UXAVIER BROOMSFIELD, WILLIAM HAMILTON, CHARMANICA
SPIVEY, PERRI SCOTT, AND CHRISTOPHER CASTNER

Respondents.

**On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Eleventh Circuit**

**RESPONDENTS' BRIEF IN OPPOSITION
TO PETITION FOR WRIT OF CERTIORARI**

SCOTT A. SCHIPMA
THE GEO GROUP, INC.
4955 Technology Way
Boca Raton, FL 33431

DOMINIC E. DRAYE
Counsel of Record
WILLIAM E. EYE
GREENBERG TRAURIG LLP
2101 L Street, N.W.
Washington, DC 20037
drayed@gtlaw.com
(202) 331-3100

SEPTEMBER 10, 2026

QUESTION PRESENTED

Whether the court of appeals correctly held that the district court did not abuse its discretion in striking Petitioner's fourth amended complaint, which he filed without obtaining defendants' consent or leave of court, as required by Federal Rule of Civil Procedure 15(a)(2).

LIST OF PARTIES TO THE PROCEEDINGS

The parties listed in the caption were parties to the proceeding below. Petitioner Derick Gregory James was the plaintiff in the district court and appellant in the court of appeals. Respondent The GEO Group, Inc. (NYSE: GEO) and the individual defendants were defendants in the district court and appellees in the court of appeals. There are no related proceedings.

RULE 29.6 STATEMENT

The GEO Group, Inc. (NYSE: GEO) is a publicly traded company. BlackRock Fund Advisors is a publicly held corporation that owns 10% or more of The GEO Group, Inc.'s stock. No other publicly held corporation owns 10% or more of The GEO Group, Inc.'s stock.

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INTRODUCTION

The Petition presents no issue warranting this Court's review. Petitioner identifies no circuit conflict, no unsettled question of federal law, and no departure from this Court's precedent. Instead, he seeks review of an unpublished decision affirming the district court's judgment dismissing his fourth complaint and striking his fifth complaint, which was filed while his fourth was pending and without leave of court.

Petitioner's premise is also wrong. The Eleventh Circuit did not "ignore" *Haines v. Kerner*, 404 U.S. 519 (1972), as he asserts. It recognized that courts liberally construe pro se filings. But this liberality does not excuse noncompliance with procedural rules, a point this Court made clear in *McNeil v. United States*, 508 U.S. 106, 113 (1993). Petitioner filed a fourth amended complaint without obtaining leave of court or obtaining Respondents' consent, in violation of Fed. R. Civ. P. 15(a)(2). The court of appeals correctly held that the district court did not abuse its discretion by striking that unauthorized pleading, particularly given that the district court had already afforded Petitioner four opportunities to plead his claims.

Even if this Court was inclined to reconsider long-settled principles governing amended complaints, this case is a poor vehicle for doing so. Petitioner abandoned his challenge to the dismissal of his third amended complaint. And as to his stricken fourth amended complaint, the Eleventh Circuit identified

an independent basis for affirmance—*i.e.*, Petitioner’s failure to satisfy the district court’s local conferral rule. Thus, even if the district court was obligated to construe Petitioner’s motion to proceed pro se as a motion for leave to file yet another complaint, Petitioner did not satisfy the local rules, meaning the latest complaint is unauthorized in any event.

At bottom, Petitioner asks this Court to engage in fact-bound error correction concerning the unauthorized filing of his fourth amended complaint. The Petition does not present any question that merits review, and there is no error to be corrected. The Petition should be denied.

OPINIONS BELOW

The Eleventh Circuit’s unreported decision affirming the district court’s dismissal of Petitioner’s third amended complaint and striking of his fourth amended complaint is available at 2026 WL 18542 and reproduced at Pet. App. 1–12. The district court’s unreported decision dismissing Petitioner’s third amended complaint and striking his fourth amended complaint is available at 2023 WL 12220031 and reproduced at Resp. App. 8a. The district court’s order denying Petitioner’s motion for reconsideration is available at 2024 WL 6971189 and reproduced at Pet. App. 13–16.

JURISDICTION

The court of appeals issued its decision on January 2, 2026. The Petition was timely filed on March 18, 2026. Respondents waived their right to respond on June 26, 2026. The Court called for a response on August 11, 2026.

STATEMENT OF THE CASE

I. Factual Background

Petitioner Derrick James is a prisoner at South Bay Correctional Facility (“South Bay”), a state facility operated by Respondent The GEO Group, Inc. (“GEO”). James alleges that he was stabbed by inmates at South Bay on two occasions. In the first instance, an inmate stabbed him several times in the back of the head. Pet. App. 2. Prison officials took James to the hospital for treatment. *Ibid.* After he recovered, prison officials placed him in confinement for an unrelated disciplinary violation. *Ibid.*

James requested a transfer to a different facility but was ultimately released into general population at South Bay. *Ibid.* One month later, another inmate stabbed James. *Id.* at 2–3. After being treated by medical staff, James was released into general population. *Id.* at 3.

II. Proceedings Below

A. James files four complaints.

James brought suit against GEO and several prison officials under 42 U.S.C. § 1983, alleging that the attacks were the result of deliberate

indifference and inadequate supervision by GEO and its employees, in violation of the Eighth Amendment. *Ibid.*

James initially proceeded pro se. After a preliminary screening, the district court allowed the complaint to proceed. James then filed his first amended complaint as a matter of right under Federal Rule of Civil Procedure 15(a)(1). *Ibid.*

Now represented by counsel, James obtained leave of court under Fed. R. Civ. P. 15(a)(2) to file a second amended complaint (the “SAC”). Respondents moved to dismiss, arguing that the SAC was a shotgun pleading that violated Fed. R. Civ. P. 8 and 10. *Ibid.* The district court agreed, observing that the SAC presented the facts in a lengthy unstructured narrative, used vague and conclusory language, asserted allegations against multiple defendants without distinguishing which acts pertain to which defendants, and failed to separate each cause of action into different counts. *Ibid.* The district court dismissed the SAC without prejudice and gave James another opportunity to amend. *Ibid.*

Still represented by counsel, James then filed his third amended complaint (the “TAC”). Respondents moved to dismiss again, contending that the TAC pleading was still a shotgun pleading. *Ibid.*

B. James dismisses counsel and files an unauthorized fifth complaint.

While that motion was pending, James moved to dismiss his counsel and proceed pro se. Resp. App. 1a. James asserted that he wished to “immediately file” a fourth amended complaint (the “FAC”) because the TAC might be dismissed with prejudice. *Ibid.* James filed his proposed FAC the same day without seeking leave of Court or consent from opposing counsel, as required by Fed. R. Civ. P. 15(a)(2). One week later, the district court granted James’s request to proceed pro se, but its order was silent on his proposed FAC. Resp. App. 6a.

Respondents moved to strike the FAC, contending that James failed to seek leave of court or confer with defense counsel before filing. Pet. App. 4. James responded that the district court permitted him to file the FAC when it granted his motion to proceed pro se and that he was unable to confer with defense counsel because he was represented by counsel when he filed his motion. *Ibid.* He also requested that the district court accept the TAC as the operative pleading if his FAC was deemed improper. *Ibid.*

C. The district court dismisses the TAC and strikes the FAC.

The district court issued an omnibus order dismissing the TAC with prejudice and striking the FAC. *See* Resp. App. 8a. The district court ruled that the TAC failed to cure the flaws afflicting its predecessors and that it failed to state a claim. *Id.* at 9a–13a.

As to the FAC, the district court ruled that James had filed it without Respondents' consent or leave of court, as required by Fed. R. Civ. P. 15(a)(2), and without satisfying the conferral requirement of Southern District of Florida Local Rule 7.1. Pet. App. 13a. Having dismissed the TAC and stricken the FAC, the district court directed the Clerk to close the case. *Ibid.*

James moved the district court to reconsider its ruling. Pet. App. 13–17. James conceded that the TAC was a shotgun pleading and that he failed to obtain leave of court or to confer with defense counsel prior to filing the FAC. *Id.* at 14. Instead, James argued that he told his attorney that he was filing a pro se FAC and that it was his attorney's responsibility to confer with defense counsel. The district court noted the inconsistency with James's position—*i.e.*, he “wanted to both proceed *pro se* and rely on his attorney to represent him”—and denied his motion. *Ibid.* Among other things, the district court observed that, while “leave to amend should be freely given,” a “party has no absolute right to file four amended complaints after being given three opportunities.” *Id.* at 15. Citing this Court's precedent, the district court reasoned that “a court need not grant leave to amend after ‘repeated failure to cure deficiencies by amendments previously allowed.’” *Ibid.* (quoting *Foman v. Davis*, 371 U.S. 178, 182 (1962)).

D. James appeals.

James appealed the district court’s order dismissing the TAC and striking the FAC. The Eleventh Circuit affirmed in a ten-page order. *See* Pet App. 1–10.

The Eleventh Circuit affirmed the dismissal of the TAC because James abandoned his argument by asserting that “he is not able to nor can argue . . . [whether] the [TAC] was another shotgun pleading” and “request[ing] that [t]his [h]onorable [c]ourt determine as such.” Pet. App. 6; *see also id.* at 5–7 (collecting cases on abandonment).

As to the FAC, the Eleventh Circuit affirmed the district court’s ruling for two reasons. First, “James never sought leave to file his [FAC] as required by rule 15(a)(2).” Pet. App. 7. The court reasoned that “[b]ecause James did not have leave to file his [FAC], the district court did not abuse its discretion in striking it.” *Ibid.* Second, “[c]ontrary to the local rules, James did not confer with opposing counsel before filing the fourth amended complaint.” *Id.* at 8. Under the Southern District of Florida’s Local Rule 7.1(a)(2), “movants (including pro se parties) must confer with opposing counsel before filing any motion in a civil case.” *Ibid.* (citing S.D. Fla. L.R. 7.1(a)(2) (requiring that counsel for the movant must confer with opposing counsel “[p]rior to filing any motion in a civil case”), S.D. Fla. L.R. 1.1 (providing that “counsel” includes “a party if that party is proceeding pro se”)).

Notably, the Eleventh Circuit recognized that federal courts must liberally construe the pleadings of pro se litigants. *Id.* at 9 (collecting cases). But this liberality does not excuse noncompliance with procedural rules. *Ibid.* (citing *McNeil*, 508 U.S. at 113).

For those two independent reasons, the Eleventh Circuit affirmed the district court's judgment. This Petition followed.

REASONS FOR DENYING THE PETITION

The petition should be denied for several reasons.

First, James identifies no conflict among the courts of appeals and no unsettled question of federal law. He instead raises a question this Court resolved long ago: like all litigants, parties proceeding pro se must follow procedural rules governing litigation in federal court. *See McNeil*, 508 U.S. at 113.

Second, the petition suffers from serious vehicle problems. James affirmatively abandoned any argument regarding the dismissal of his TAC, thereby failing to preserve it for review by this Court. And as to his FAC, the Eleventh Circuit identified an independent, alternative ground supporting its decision affirming the district court's order striking the FAC, meaning that James would lose on remand even if he somehow prevailed before this Court.

Finally, the decision below is correct. The district court gave James ample opportunity to plead his claims. No litigant, pro se or otherwise, has an

unqualified right to file five complaints. *See Davis*, 371 U.S. at 182 (holding that a court need not grant leave to amend after “repeated failure to cure deficiencies by amendments previously allowed”). If district courts have discretion to deny motions for leave to amend in such circumstances, then *a fortiori* they do not commit reversible error by striking a fourth amended complaint submitted without leave of court.

At bottom, the decision below applies settled procedural rules to the peculiar procedural posture of James’s case. The Eleventh Circuit correctly rejected the Petition’s underlying premise: although courts liberally construe pro se filings, pro se litigants remain subject to ordinary procedural requirements, which James violated several times over.

I. The Petition Presents No Question Warranting this Court’s Review.

James does not contend that the Eleventh Circuit’s decision conflicts with any other court of appeals. He cites no lower-court decision at all. Indeed, his table of authorities identifies only one judicial decision—*Haines v. Kerner*, 404 U.S. 519 (1972)—along with Fed. R. Civ. P. 15(a)(2). Pet. at 5. James instead asserts that the courts below “ignore[d] this Court’s instructions set forth in *Haines v. Kerner*,” and that there is “a clarity issue” concerning whether *Haines* applies to violations of the Federal Rules of Civil Procedure. Pet. 2, 10. Both contentions are meritless.

1. The decision below does not conflict with *Haines*, which held that allegations in a pro se prisoner’s complaint are held “to less stringent standards than formal pleadings drafted by lawyers.” 404 U.S. at 520. The Eleventh Circuit recognized that rule, observing that courts “liberally construe pro se pleadings.” Pet. App. 5–7, 9. The Petition is thus founded on a false premise—*i.e.*, that the Eleventh Circuit “ignored” the rule from *Haines* despite expressly acknowledging its obligation to liberally construe pro se pleadings.

2. Nor is there a “clarity issue” between the *Haines* rule and the Federal Rules of Civil Procedure. Petitioner overreads *Haines*’s liberal-construction principle to imply exemption from procedural requirements. But this Court has expressly rejected that proposition. In *McNeil*, the Court acknowledged the liberal-construction principle reflected in *Haines* but explained that it had “never suggested that procedural rules in ordinary civil litigation should be interpreted so as to excuse mistakes by those who proceed without counsel.” 508 U.S. at 113. To the contrary, “strict adherence to procedural requirements” promotes the “evenhanded administration of the law.” *Ibid.* (quoting *Mohasco Corp. v. Silver*, 447 U.S. 807, 826 (1980)). The Eleventh Circuit applied that distinction to reach the uncontroversial conclusion that the district court did not abuse its discretion by foreclosing James’s fifth bite at the apple filed in contravention of Fed. R. Civ. P. 15(a)(2). Nothing about that conclusion warrants this Court’s review.

II. This Case Is a Poor Vehicle to Resolve Any Purported “Clarity Issue.”

Even if James presented a question of import, this case would be a poor vehicle for resolving it. James abandoned any argument regarding the dismissal of his TAC; independent grounds support striking his FAC; and in all events, he seeks review of a fact-bound issue of no broader consequence.

A. James abandoned any argument regarding dismissal of the TAC.

James failed to preserve any argument regarding the dismissal of the TAC. To the contrary, he affirmatively abandoned such arguments. In his appellate brief, James asserted that “he is not able to nor can argue . . . [whether] the [TAC] was another shotgun pleading.” Pet. App. 6. As a result, the Eleventh Circuit correctly deemed his arguments abandoned and declined to assess the propriety of the district court’s dismissal of the TAC. *Id.* at 5–7.

This Court’s “traditional rule” “precludes a grant of certiorari” when an issue “was not pressed or passed upon below.” *United States v. Williams*, 504 U.S. 36, 41 (1992) (quotation marks omitted); see *United States v. United Foods, Inc.*, 533 U.S. 405, 417 (2001) (declining to consider argument attacking the judgment where the argument was not “pressed in the court whose opinion we are reviewing, or at least passed upon by it”). This rule “precludes” review of any issues concerning the TAC.

B. Multiple Independent Grounds Supported Affirmance of the District Court’s Order Striking the FAC.

James’s arguments regarding the FAC fare no better. There are two independent bases for affirmance of the district court’s order striking the FAC.

First, James filed the FAC without first obtaining leave of court or consent from defense counsel, as required under Fed. R. Civ. P. 15(a)(2). Pet. App. 7. That alone is dispositive, as recognized by the Eleventh Circuit. *Ibid.*

Second, James violated the district court’s local rules by moving to proceed pro se and filing his FAC without conferring with defense counsel. District courts have discretion to adopt local rules with the force of law. *See Hollingsworth v. Perry*, 558 U.S. 183, 191 (2010). The Southern District of Florida adopted a rule requiring that all litigants, including pro se litigants, confer with opposing counsel before filing any motion in a civil case. *See* S.D. Fla. L.R. 7.1(a)(2) (requiring that counsel for the movant must confer with opposing counsel “[p]rior to filing any motion in a civil case”); S.D. Fla. L.R. 1.1 (providing that “counsel” includes “a party if that party is proceeding pro se”). James did not dispute below (and does not dispute here) that he failed to follow those rules.

Where, as here, independent issues preclude relief, this Court’s consideration of the question presented would be “advisory or academic.” *Medellín v. Dretke*, 544 U.S. 660, 664 (2005) (dismissing writ as improvidently granted on that basis); *accord Ticor Title Ins. Co. v. Brown*, 511 U.S. 117, 121–24 (1994)

(same where “it is not clear that our resolution” of the relevant “question will make any difference even to these litigants”). James’s FAC was properly stricken regardless whether *Haines* somehow obviates the requirements of Fed. R. Civ. P. 15(a)(2).

The Eleventh Circuit’s independent holding thus presents precisely this sort of threshold obstacle. Even if James prevailed on his contention that *Haines* required the district court to construe his pro se filing as a request for leave under Rule 15(a)(2), the independent local-rule violation would remain.

C. The Decision Below Is a Fact-Bound Application of Settled Law.

The actual issue decided below is far narrower than the abstract question presented. The Eleventh Circuit considered whether the district court abused its discretion by striking the FAC that James filed without obtaining leave to amend. That question turns on the unusual procedural history of this case and the contents of James’s particular filings.

The posture of the case confirms its lack of broader significance. The Eleventh Circuit reviewed for abuse of discretion the district court’s decision concerning leave to amend and afforded deference to the district court’s application of its local rules. Pet. App. 5. And the dispute concerns whether James’s motion to proceed pro se—which merely stated his intention to file the FAC—also constituted a procedurally proper request for leave to amend. Even if James could identify some error in that determination—he cannot, as

explained below—such fact-bound error correction would not warrant this Court’s review. *See* Sup. Ct. R. 10.

III. The Decision Below Is Correct.

The Eleventh Circuit correctly applied settled law to affirm the district court’s order dismissing the TAC and striking the FAC. James abandoned his argument regarding the TAC. And regarding the FAC, the Eleventh Circuit properly applied the abuse-of-discretion standard to determine that the district court did not commit reversible error by striking the FAC, which was unauthorized several times over.

Affirmance was undoubtedly appropriate because the district court gave James ample opportunities to amend. This is not a case where a pro se litigant is deprived of his day in court due to a mere technicality. To the contrary, the district court gave James *four* opportunities to plead his claims and exercised its discretion to strike his *fifth* complaint where it was filed in violation of the Federal and Local Rules.

James’s argument to the contrary overreads *Haines* to excuse a pro se litigant’s obligation to follow procedural rules. The Court rejected that argument in *McNeil*. No litigant, pro se or otherwise, has an absolute right to file five complaints. *See Davis*, 371 U.S. at 182 (holding that a court need not grant leave to amend after “repeated failure to cure deficiencies by amendments previously allowed”). If district courts have discretion to deny motions for leave to

amend in such circumstances, then they do not commit reversible error by striking a fourth amended complaint submitted without leave of court.

CONCLUSION

The Petition should be denied.

Respectfully submitted.

SCOTT A. SCHIPMA
THE GEO GROUP, INC.
4955 Technology Way
Boca Raton, FL 33431

DOMINIC E. DRAYE
Counsel of Record
WILLIAM E. EYE
GREENBERG TRAURIG LLP
2101 L Street, N.W.
Washington, DC 20037
drayed@gtlaw.com
(202) 331-3100
Counsel for Respondents

**SUPPLEMENTAL
APPENDIX**

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United States District Court
Southern District Of Florida
West Palm Beach Div.

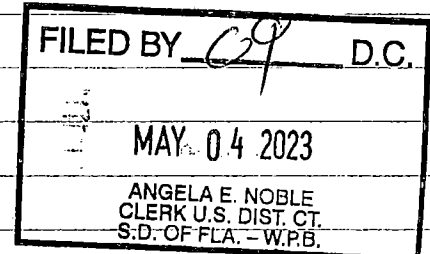
FILED BY
N. J.

Derrick G. James,
Plaintiff,

Case No: 22-80298-Civ- Martinez

v.

The Geo Group, Inc., Assistant Wardens
Cruz and Spivey, Scott, and Broomfield,
Defendants,



Plaintiffs Motion To Dismiss
Counsel And Proceed Pro Se

This Honorable Court dismissed Plaintiffs SAC without prejudice on March 22, 2023, due to a shotgun pleading. Plaintiff's Counsel, Attorney Ana Davide was allowed to then correct the deficiencies by This Honorable Court. On March 30, 2023, Attorney Davide filed Plaintiffs TAC. On April 13, 2023, Defendants filed yet again a Motion To Dismiss response, again arguing that Attorney Davide has yet again filed another Civil Complaint of a shotgun pleading, then requesting that such should be dismissed "with prejudice"

Wherefore, due to the seriousness of the near death experiences that have taken place against Plaintiff on December 8, 2021 and March 27, 2022, while at South Bay C.I., a dismissal with prejudice would be worse than the stabbings themselves. Therefore, Plaintiff request that Plaintiff be allowed to dismiss his Counsel then immediately file a "Pro Se" Fourth Amended Complaint¹ due to the possibility of TAC being dismissed by This Honorable Court "with prejudice," thus closing the door for good on Plaintiffs claims, Especially, due to a recent diagnose of PTSD, because of constant memories and thoughts about those recent 12/8/21 and 3/27/22 stabbings.² See Exhibit A, Mental Health and Medical Doctors et al report.

¹ FAC is completed- Pro Se.

² Plaintiff's claims can not be lost for error!

Respectfully Submitted,

Derrick G. James

Derrick G. James 536293

Santa Rosa C.I. Annex

Milton, FL 32583

Certificate Of Service

I Hereby Certify that a true and correct copy of the foregoing has been
US Mail to Attorney Ana Davide, Attorney Carlos A. Garcia on this 30th
day of 2023.

Derrick H. James

135-SANTA ROSA ANNEX
 5850 East Milton Rd. Milton, FL 32583
 8509817602 Fax: 8509817655

March 9, 2023
 Page 1
 FL MH Case Manager

DERRICK JAMES

DC#: 536293
 Race/Sex: Black or African American / Male
 DOB: 03/09/1965
 Facility: 135-SANTA ROSA ANNEX

03/08/2023 - FL MH Case Manager: MH CM:MDST Initial CSU ISP/LvLr/Tablet rev 3/9/23 Initial
 Provider: Hultgren, MHP, Centurion
 Location of Care: 135-SANTA ROSA ANNEX
 Status: ON HOLD DOCUMENT. Contents are preliminary

Date DC4-663 Consent Completed: 03/06/2023
 FLORIDA DEPARTMENT OF CORRECTIONS

Individualized Service Plan

Reason for Encounter:
 ISP Updated Initial
 Date of MDST 03/09/2023

PROVIDED TO
 SAMUEL C. J.
 MAR 21 2023
 FOR BUREAU OF

Mental Health Diagnoses

- 1 Adjustment disorder with mixed anxiety and depressed mood (F43.23)
- 2 PTSD (F43.10)

Problem # / Problem Name MH Problem: Depression

Problem Description in Behavioral Terms Per chart, patient has previously reported that he experiences the following symptoms: feeling of sadness, irritability, social isolation, disturbance of vegetative functioning and sleep deficits.

Problem Frequency, Duration & Intensity 3/7 days per week, 6 hours duration, 7/10 [1L-10H] intensity

Treatment Goal: (target behaviors in measurable terms) During the review period ending 3/23/23, pt will attend individual sessions with MHP every 7 days and will provide 2 ways to manage his mood in a positive manner. Pt will comply with medications 100%

Interventions | Intervention Frequency (or N/A) | Intervention Provider (Specify each by name and title)

Case Management:	1x7 days	Hultgren; MHP; Centurion,
Individual Counseling:	1x7 days	Hultgren; MHP; Centurion,
Psychiatric Follow Up:	1x7 days	Brandabur-Holtman; MD; Psychiatrist; Centurion,
Medication Management:	As prescribed	Folds; RN; DON; Centurion,
Group Counseling:	Clinical group - weekly	A. Hultgren LMHC
Other:	Psychoeducation - weekly	A. Henszey BHT

Problem # / Problem Name MH Problem: Anxiety, Pathological

Problem Description in Behavioral Terms Pt reports distressing memories of previous stabbings; avoidance of other people; persistent fear and anxiety; negative beliefs about people in general; hypervigilance; and trouble sleeping. Pt also reports "claustrophobia" and near panic symptoms when in places without windows

Problem Frequency, Duration & Intensity 6/7 days per week, varies in duration, ranges from 4-8/10 intensity [1L-10H]

Treatment Goal: (target behaviors in measurable terms) During the review period ending 3/23/23, pt will attend individual sessions with MHP every 7 days and will provide 2 ways to manage his anxiety in a positive manner. Pt will comply with medications 100%

TB135-SANTA ROSA ANNEX
 5850 East Milton Rd. Milton, FL 32583
 8509817602 Fax: 8509817655

March 9, 2023
 Page 2
 FL MH Case Manager

DERRICK JAMES

DC#: 536293
 Race/Sex: Black or African American / Male
 DOB: 03/09/1965
 Facility: 135-SANTA ROSA ANNEX

Interventions | Intervention Frequency (or N/A) | Intervention Provider (Specify each by name and title)

Case Management: 1x7 days | Hultgren; MHP; Centurion.
 Individual Counseling: 1x7 days | Hultgren; MHP; Centurion,
 Psychiatric Follow Up: 1x7 days | Brandabur-Holtman; MD; Psychiatrist; Centurion,
 Medication Management: As prescribed | Folds; RN; DON; Centurion.
 Group Counseling: Clinical group - weekly | A. Hultgren LMHC
 Other: Psychoeducation - weekly | A. Henszey BHT

Problem # / Problem Name MH Problem: Discharge Planning and Readiness Skills

Problem Description in Behavioral Terms Discharge readiness skills include adaptive ways to cope with difficult emotions and participation in offered treatment-related and self-betterment activities.

Problem Frequency, Duration & Intensity New admit to CSU, problem initiated

Treatment Goal: (target behaviors in measurable terms) During the review period ending 3/23/23, Pt will attend at least 85% of clinical and therapeutic services to facilitate discharge. Pt will discuss with MHP during individual sessions every 7 days how to access mental health services while in inpatient and when he returns to outpatient.

Interventions | Intervention Frequency (or N/A) | Intervention Provider (Specify each by name and title) Hultgren; MHP; Centurion Hultgren; MHP; Centurion, / Brandabur-Holtman; MD;
 Psychiatrist; Centurion,
 Medication Management: As prescribed | Folds; RN; DON; Centurion,
 Group Counseling: Discharge Readiness - weekly | A. Henszey BHT
 Other: Therapeutic Community - weekly | A. Hultgren LMHC

Problem # / Problem Name MH Problem: Self-Directed Recovery Skills

Problem Description in Behavioral Terms Pt will demonstrate actions that will improve resiliency, social identity, health, well-being, and self-directed recovery by engaging in purpose-driven activities.

Problem Frequency, Duration & Intensity New admit to CSU, problem initiated

Treatment Goal: (target behaviors in measurable terms) During the review period ending 3/23/23, pt will accept showers at least 2x per week, maintain daily hygiene, accept clean clothes when offered, clean his cell, and eat all meals offered.

Interventions | Intervention Frequency (or N/A) | Intervention Provider (Specify each by name and title)
 Hultgren; MHP; Centurion, Hultgren; MHP; Centurion, Brandabur-Holtman; MD;
 Psychiatrist; Centurion,
 Medication Management: As prescribed | Folds; RN; DON; Centurion,
 Group Counseling: Therapeutic Activities - weekly | A. Henszey BHT
 Other: Therapeutic Community - weekly | A. Hultgren LMHC

Problem # / Problem Name MH Problem: Suicidal Behavior

Problem Description in Behavioral Terms Per referral from Okaloosa on 3/3/23: "Patient currently on day 7 of SHOS; admit based on stated suicidal ideations and verbalized plan of "by any means necessary"

TB135-SANTA ROSA ANNEX
 5850 East Milton Rd. Milton, FL 32583
 8509817602 Fax: 8509817655

March 9, 2023
 Page 1
 FL MH Case Manager

DERRICK JAMES

DC#: 536293
 Race/Sex: Black or African American / Male
 DOB: 03/09/1965
 Facility: 135-SANTA ROSA ANNEX

03/08/2023 - FL MH Case Manager: MH CM:MDST Initial CSU ISP/LvLr/Tablet rev 3/9/23 Initial
 Provider: Hultgren, MHP, Centurion
 Location of Care: 135-SANTA ROSA ANNEX
 Status: ON HOLD DOCUMENT. Contents are preliminary

Date DC4-663 Consent Completed: 03/06/2023
 FLORIDA DEPARTMENT OF CORRECTIONS

Individualized Service Plan

Reason for Encounter:
 ISP Updated Initial
 Date of MDST 03/09/2023

PROVIDED TO
 SAMPSON COUNTY
 MAR 21 2023
 FOR MAILING BY

Mental Health Diagnoses

- 1 Adjustment disorder with mixed anxiety and depressed mood (F43.23)
- 2 PTSD (F43.10)

Problem # / Problem Name MH Problem: Depression

Problem Description in Behavioral Terms Per chart, patient has previously reported that he experiences the following symptoms: feeling of sadness, irritability, social isolation, disturbance of vegetative functioning and sleep deficits.

Problem Frequency, Duration & Intensity 3/7 days per week, 6 hours duration, 7/10 [1L-10H] intensity

Treatment Goal: (target behaviors in measurable terms) During the review period ending 3/23/23, pt will attend individual sessions with MHP every 7 days and will provide 2 ways to manage his mood in a positive manner. Pt will comply with medications 100%

Interventions | Intervention Frequency (or N/A) | Intervention Provider (Specify each by name and title)

Case Management:	1x7 days	Hultgren; MHP; Centurion,
Individual Counseling:	1x7 days	Hultgren; MHP; Centurion,
Psychiatric Follow Up:	1x7 days	Brandabur-Holtman; MD; Psychiatrist; Centurion,
Medication Management:	As prescribed	Folds; RN; DON; Centurion,
Group Counseling:	Clinical group - weekly	A. Hultgren LMHC
Other:	Psychoeducation - weekly	A. Henszey BHT

Problem # / Problem Name MH Problem: Anxiety, Pathological

Problem Description in Behavioral Terms Pt reports distressing memories of previous stabbings; avoidance of other people; persistent fear and anxiety; negative beliefs about people in general; hypervigilance; and trouble sleeping. Pt also reports "claustrophobia" and near panic symptoms when in places without windows

Problem Frequency, Duration & Intensity 6/7 days per week, varies in duration, ranges from 4-8/10 intensity [1L-10H]

Treatment Goal: (target behaviors in measurable terms) During the review period ending 3/23/23, pt will attend individual sessions with MHP every 7 days and will provide 2 ways to manage his anxiety in a positive manner. Pt will comply with medications 100%

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION

Case Number: 22-80298-CIV-MARTINEZ-BECERRA

DERRICK G. JAMES,

Plaintiff,

v.

THE GEO GROUP, INC., *et al.*,

Defendants.

**OMNIBUS ORDER ON MOTION TO WITHDRAW AND MOTION TO PROCEED
PRO SE**

THIS CAUSE came before the Court on Plaintiff's Motion to Dismiss Counsel and Proceed *Pro Se* ("Motion to Proceed *Pro Se*"), (ECF No. 58), and the law firm of Ana M. Davide, P.A. and Ana M. Davide, Esq.'s Motion to Withdraw as Counsel for Plaintiff ("Motion to Withdraw"). (ECF No. 61). After careful consideration, it is hereby:

ORDERED AND ADJUDGED that

1. The Motion to Withdraw, (ECF No. 61), and the Motion to Proceed *Pro Se*, (ECF No. 58), are **GRANTED as stated herein**.
2. law firm of Ana M. Davide, P.A. and Ana M. Davide, Esq. **SHALL BE PERMITTED** to withdraw as attorney of record for Plaintiff Derrick G. James in the above-captioned case and is hereby relieved of any further responsibility as counsel for Plaintiff. Counsel shall, first, send a copy of this Order to its client and file with the Clerk a certification of service.
3. Plaintiff **SHALL BE PERMITTED** to proceed *Pro Se*.

DONE AND ORDERED in Chambers at Miami, Florida, this 10 day of May, 2023.



JOSE E. MARTINEZ
UNITED STATES DISTRICT JUDGE

Copies provided to:

Magistrate Judge Becerra
All Counsel of Record

Derrick G. James

536293
Santa Rosa Correctional Institution Annex
Inmate Mail/Parcels
5850 East Milton Road
Milton, FL 32583

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION

Case Number: 22-80298-CIV-MARTINEZ

DERRICK G. JAMES,

Plaintiff,

v.

THE GEO GROUP, INC., *et al.*,

Defendants.

OMNIBUS ORDER

THIS CAUSE came before this Court on Defendants’ Motions to Dismiss the Third Amended Complaint (“TAC”), (“Motions to Dismiss”), (ECF Nos. 53, 54), and Joint Motion to Strike the Fourth Amended Complaint (“FAC”), (“Motion to Strike”), (ECF No. 63). The TAC alleges a violation of the Eighth Amendment under 42 U.S.C. § 1983 (Count I) and negligence (Count II) against eight defendants, The GEO Group, Inc. (“GEO”), two Assistant Wardens (Christopher Cruz and Mr. Lawrence), another Officer (Uxavier Broomsfield), the Women’s Assistant Warden (Charmanica Spivey), the Grievance Coordinator (Perri Scott), Institutional Inspector (Christopher Castner), and the Warden (William Hamilton) (“Individual Defendants”). (TAC ¶¶ 76–83, ECF No. 52.) The TAC also alleges a claim for respondeat superior against GEO (Count III). (*Id.* ¶¶ 84–85.) The Motions to Dismiss largely raise the same arguments, so this Court will address them collectively unless otherwise indicated. This Court reviewed the Motions, pertinent portions of the record, and applicable law and is otherwise fully advised in the premises. Accordingly, after careful consideration, the Motions to Dismiss and the Motion to Strike are **GRANTED** for the reasons set forth herein.

I. RELEVANT BACKGROUND

This action stems from two incidents where Plaintiff was stabbed by other inmates at the South Bay Correctional Facility operated by GEO. (*See generally* TAC.) Specifically, Plaintiff alleges that on December 8, 2021, he was stabbed in the back of the head by another inmate while Plaintiff was in the breezeway near the medical gate entrance. (*Id.* ¶¶ 16, 21.) Plaintiff alleges the area was left completely unguarded and no officers appeared until after Plaintiff chased his attacker to Dorm H, about 180 feet away from where Plaintiff was stabbed. (*Id.* ¶¶ 21–24.) The Officers then escorted Plaintiff to the medical department for treatment before he was later transported to an area hospital. (*Id.*) Following this first stabbing, Plaintiff alleges that he warned Defendants Lawrence and Cruz that the stabbing was gang related and an inmate had been paid to kill Plaintiff. (*Id.* ¶ 25.) Moreover, Plaintiff claims that although Defendants Cruz and Castner told Plaintiff he would be transferred, Plaintiff was released from confinement back to the general population on February 15, 2022. (*Id.*) After the first incident, the attacker and another inmate involved were transferred to a different prison. (*Id.* ¶¶ 35, 37, 53.)

On the second occasion Plaintiff was again stabbed by another inmate while watching a basketball game in Dorm G Wing 1 on March 27, 2022. (*Id.* ¶ 40.) Plaintiff alleges that the following day another inmate told Plaintiff that he was paid \$500 upfront with the promise of another \$500 to stab Plaintiff but that, because it was taking too long, the gang member hired another inmate from a different gang to stab Plaintiff a second time. (*Id.* ¶ 45.) On April 7, 2022, the Confinement Sergeant told Plaintiff that he was again being released back to into open population. (*Id.* ¶ 48.)

II. THE TAC IS A SHOTGUN PLEADING AND FAILS TO STATE A CLAIM

A. Legal Standard

Under Rule 12(b)(6), this Court will grant a motion to dismiss if the complaint fails to state a claim for which relief can be granted. To survive dismissal, the complaint must provide “a short and plain

statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). At this stage of the case, “the question is whether the complaint ‘contains sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.’” *Worthy v. Phenix City, Ala.*, 930 F.3d 1206, 1217 (11th Cir. 2019) (alteration adopted) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). In ruling on a motion to dismiss, the Court construes the allegations “in the light most favorable to plaintiff.” *Speaker v. U.S. HHS CDC & Prevention*, 623 F.3d 1371, 1379 (11th Cir. 2010).

B. Discussion

In addition to Rule 8(a)(2)’s requirement that a plaintiff provide “short and plain statement of the claim showing that the pleader is entitled to relief[.]” Fed. R. Civ. P. 8(a)(2), Rule 10(b) provides that:

[a] party must state its claims or defenses in numbered paragraphs, each limited as far as practicable to a single set of circumstances. A later pleading may refer by number to a paragraph in an earlier pleading. If doing so would promote clarity, each claim founded on a separate transaction or occurrence—and each defense other than a denial—must be stated in a separate count or defense.

Fed. R. Civ. P. 10(b). A complaint is a “shotgun pleading” if it violates Rule 8(a)(2) or Rule 10(b). *Weiland v. Palm Beach Cnty. Sheriff’s Off.*, 792 F.3d 1313, 1320 (11th Cir. 2015). The Eleventh Circuit has identified the following common types of shotgun pleadings:

The most common type—by a long shot—is a complaint containing multiple counts where each count adopts the allegations of all preceding counts, causing each successive count to carry all that came before and the last count to be a combination of the entire complaint. The next most common type . . . is a complaint that does not commit the mortal sin of realleging all preceding counts but is guilty of the venial sin of being replete with conclusory, vague, and immaterial facts not obviously connected to any particular cause of action. The third type of shotgun pleading is one that commits the sin of not separating into a different count each cause of action or claim for relief. Fourth, and finally, there is the relatively rare sin of asserting multiple claims against multiple defendants without specifying which of the defendants are responsible for which acts or omissions, or which of the defendants the claim is brought against.

Id. at 1321–23 (citations omitted). “The unifying characteristic of all types of shotgun pleadings is that they fail to one degree or another, and in one way or another, to give the defendants adequate notice of

the claims against them and the grounds upon which each claim rests.” *Id.* at 1323. “Courts in the Eleventh Circuit have little tolerance for shotgun pleadings.” *Vibe Micro, Inc. v. Shabanets*, 878 F.3d 1291, 1295 (11th Cir. 2018).

For the first time, Plaintiff specifies that his claims are for violation of the Eighth Amendment against all Defendants, negligence against all Defendants, and respondeat superior against GEO. Plaintiff alleges that defendants are liable for failure to prevent him from being stabbed by other inmates.

1. *The TAC is a Shotgun Pleading*

The TAC suffers from many of the same deficiencies as its predecessor. In Plaintiff’s fourth attempt, the first approximately twenty-five pages of the thirty-six-page complaint are identical to the SAC. (*Compare* TAC ¶¶ 1–75 *with* SAC ¶¶ 1–75.) Specifically, the bulk of the TAC remains a lengthy narrative in which not all paragraphs are numbered, and several paragraphs span a page or more. Again, Defendants correctly assert that the TAC is filled with vague, conclusory language, and does not properly delineate which acts or omissions pertain to which Defendant. Although Plaintiff now includes each claim separated into counts, the first two Counts lump “all the defendants together in each claim and provide[] no factual basis to distinguish their conduct.” *Lane v. Cap. Acquisitions & Mgmt. Co.*, No. 04-60602, 2006 U.S. Dist. LEXIS 96422, at *15–16 (S.D. Fla. Apr. 13, 2006). Even more fatal is the fact that each count in the TAC “adopts the allegations of all preceding counts, causing each successive count to carry all that came before and the last count to be a combination of the entire complaint” making the TAC a quintessential shotgun pleading. (*See* TAC ¶¶); *Weiland*, 792 F.3d at 1321–23.

2. *The TAC Fails to State a Claim*

As for Count I Plaintiff lumps all Defendants together and adds only three allegations not contained in the previously dismissed SAC. Specifically, Plaintiff now alleges that all Defendants “failed to take reasonable measures to guarantee the safety of the Plaintiff, including protecting Plaintiff from violence

at the hands of other inmates,” (TAC ¶ 76), “[a]ll Defendants knew of the existence of a substantial risk of serious harm being inflicted upon Plaintiff and there was a strong likelihood of his injury occurring, far more than a mere possibility of injury,” (*Id.* ¶ 77), and “[a]ll Defendants acted with deliberate and callous indifference to the risk of serious harm being inflicted upon Plaintiff.” Plaintiff adds that “Defendants had the subjective knowledge of a risk of serious harm, however they disregarded that risk by failing to respond to it in an objectively reasonable manner.” (*Id.* ¶ 78.) Plaintiff disregards the fact that GEO, a private entity, is treated as a municipality for purposes of liability under § 1983. *See Buckner v. Toro*, 116 F.3d 450, 452 (11th Cir. 1997). Thus, by lumping GEO in with the Individual Defendants, Plaintiff failed to properly allege municipal liability. *See Bd. of Cnty. Comm’rs of Bryan Cnty., Okl. v. Brown*, 520 U.S. 397, 404 (1997); *Buckner*, 116 F.3d at 452. Moreover, this conclusory, threadbare recitation of elements is insufficient. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

As for Count II, it is well established that “[a] penal institution is not an insurer of an inmate against attacks by other inmates.” *Spann v. State, Dep’t of Corr.*, 421 So. 2d 1090, 1091 (Fla. 4th DCA 1982). “The majority rule is that in order to hold the penal authorities liable for an injury inflicted upon an inmate by another inmate, the authorities must know or have reason to anticipate that harm will ensue and fail to use reasonable care in preventing the harm” *Id.* There are no allegations suggesting any Defendant in this case knew or had any reason to anticipate either stabbing incident. Indeed, after the first stabbing, Plaintiff alleged the inmates involved were removed from the facility. (TAC ¶ 53.) Plaintiff does not plead any facts concerning how or why any Defendant could have had knowledge of a potential second attack. Plaintiff asserts he was never affiliated with any gang and was unaware of any details concerning the second attack until after it occurred. (TAC ¶¶ 8, 44–46.) These allegations further suggest Defendants had no reason to anticipate any further harm to Plaintiff after those involved in the first incident were transported to a different facility.

Finally, Count III is plead as an impermissible theory of “respondeat superior” against GEO. “Municipalities cannot be liable under 42 U.S.C. § 1983 on a theory of *respondeat superior*.” *Maschmeier v. Scott*, 269 F. App’x 941, 943 (11th Cir. 2008) (citing *Monell v. Dep’t of Soc. Servs.*, 436 U.S. 658, 691 (1978)).

Therefore, dismissal of the TAC is warranted.

III. MOTION TO STRIKE THE FOURTH AMENDED COMPLAINT

Defendants are correct that the FAC was filed without leave of this Court, and without conferral with Defendant’s Counsel, in violation of Federal Rule of Civil Procedure 15, and Local Rule 7.1(a)(3). “A party may amend its pleading once as a matter of course within . . . 21 days after serving it, or . . . if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.” Fed. R. Civ. P. 15(a)(1). “In all other cases, a party may amend its pleading only with the opposing party’s written consent or the court’s leave.” Fed. R. Civ. P. 15(a)(2). Pursuant to Local Rule 7.1(a)(3), “[p]rior to filing any motion in a civil case . . . counsel for the movant shall confer (orally or in writing), or make reasonable effort to confer (orally or in writing), with all parties or non-parties who may be affected by the relief sought.”

The TAC was filed on March 30, 2023. Plaintiff filed the FAC without seeking leave of this Court and without conferral with Defendants while the Motions to Dismiss and supporting briefing remained pending. Therefore, this Court will strike the FAC and consider only the TAC as the operative pleading. *See, e.g., Wildhaber v. EFV*, No. 17-cv-62542, 2018 WL 3069264, at *4–5 (S.D. Fla. June 21, 2018), *aff’d* 745 F. App’x 141 (11th Cir. 2018); *Pierre v. Catalina Hotel, LLC*, No. 16-25300-CIV, 2017 WL 7805574, at *1–2 (S.D. Fla. Feb. 10, 2017).

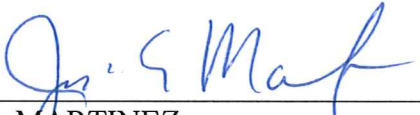
IV. CONCLUSION

This Court has given Plaintiff plenty opportunities to provide a short and plain statement justifying relief. Yet, his fourth attempt still falls short. Therefore, dismissal with prejudice is appropriate because this Court finds that giving Plaintiff a fifth opportunity would be futile. *See, e.g., Behr v. Campbell*, No. 9:18-CV-80221-RLR, 2022 U.S. Dist. LEXIS 48682, at *14–15 (S.D. Fla. Mar. 17, 2022) (dismissing plaintiff's third amended complaint as a shotgun pleading with prejudice); *Thomas v. Univ. of Miami*, No. 22-20296, 2022 U.S. Dist. LEXIS 218422, at *7–8 (S.D. Fla. Dec. 2, 2022) (dismissing plaintiff's second amended complaint as a shotgun pleading with prejudice).

Accordingly, it is **ORDERED AND ADJUDGED** that

1. The Motions to Dismiss, (ECF Nos. 53, 54), are **GRANTED**.
2. The Motion to Strike, (ECF No. 63), is **GRANTED**.
3. The TAC is **DISMISSED WITH PREJUDICE**. The Clerk is directed to **CLOSE** this case and **DENY** all pending motions as **MOOT**.

DONE AND ORDERED in Chambers at Miami, Florida, this 17 day of August, 2023.



JOSE E. MARTINEZ
UNITED STATES DISTRICT JUDGE

Copies provided to:
All Counsel of Record