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FILED

**United States Court of
Appeals Tenth Circuit**

May 11, 2026

**Christopher M. Wolpert
Clerk of Court**

PUBLISH

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

JOSHUA F. YOUNG,
Plaintiff - Appellant,

v.

COLORADO DEPARTMENT OF
CORRECTIONS; MOSES
“ANDRE” STANCIL; JILL
HUNSAKER RYAN,
Defendants - Appellees.

No. 25-1068

STATE OF MONTANA; THE
ARIZONA LEGISLATURE;
STATE OF ALABAMA; STATE
OF LOUISIANA; STATE OF
MISSISSIPPI; STATE OF
ARKANSAS; STATE OF
MISSOURI; STATE OF
NEBRASKA; STATE OF
FLORIDA; STATE OF NORTH
DAKOTA; STATE OF IDAHO;
STATE OF SOUTH CAROLINA;
STATE OF INDIANA; STATE OF
SOUTH DAKOTA; STATE OF

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IOWA; STATE OF TEXAS;
STATE OF KANSAS; SPEAKER
OF THE ARIZONA HOUSE OF
REPRESENTATIVES;
PRESIDENT OF THE ARIZONA
SENATE; THE AMERICAN
CIVIL RIGHTS PROJECT; THE
MANHATTAN INSTITUTE;
THE SOUTHEASTERN LEGAL
FOUNDATON; THE YOUNG
AMERICA'S FOUNDATION,
Amici Curiae.

**APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE
DISTRICT OF COLORADO
(D.C. No. 23-CV-01688-NYW-SBP)**

William E. Trachman (Grady J. Block, Mountain States Legal Foundation, with him on the briefs), Mountain States Legal Foundation, for Plaintiff-Appellant.

Pawan Nelson (Philip J. Weiser, Attorney General, and Monica Manning, Assistant Attorney General, with him on the brief), Colorado Department of Law, Denver, Colorado, for the State of Colorado, for Defendants-Appellees.

* * *

Before **BACHARACH** and **MORITZ**, Circuit Judges,
and **SHELBY**, District Judge.*

* The Honorable Robert J. Shelby, United States District Judge for the District of Utah, sitting by designation.

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BACHARACH, Circuit Judge.

Federal law prohibits race discrimination in the workplace. 42 U.S.C. § 2000e-2(a)(1). The victims are ordinarily minorities, but not always. For example, an employer might overcompensate for past discrimination against minorities by subjecting employees in the majority to a hostile environment. *See Chislett v. New York City Dep't of Ed.*, 157 F.4th 172, 188-89 (2d Cir. 2025) (holding that diversity trainings may have created a hostile work environment for a White employee); *see also Ames v. Ohio Dep't of Youth Services*, 605 U.S. 303, 309 (2025) (“Title VII’s disparate treatment provision draws no distinctions between majority-group plaintiffs and minority-group plaintiffs.”).

Mr. Joshua Young is a White man who used to work for the Colorado Department of Corrections. During his stint there, he had to attend a training program addressing racial sensitivity and the historical suppression of racial minorities. But Mr. Young regarded the training as so extreme that it created a discriminatory environment for Whites like himself.

The issue for us is whether Mr. Young’s allegations about the training program and its aftermath would have created a hostile work environment. We answer *no*.

1. We consider the plausibility of the claim.

The district court answered this question *no*, too, and dismissed the action with prejudice for failure to state a valid claim. *See Fed. R. Civ. P. 12(b)(6)*. On

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appeal, we conduct de novo review, applying the same standard that governed in district court. *Petrella v. Brownback*, 787 F.3d 1242, 1267 (10th Cir. 2015). In applying the standard for dismissal, the district court declined to liberally construe the complaint because it was drafted by counsel rather than a pro se litigant. Mr. Young argues that the court should have liberally construed the complaint regardless of whether it was drafted by counsel.

A tension exists in our case law. We have often said that courts should liberally construe complaints drafted by pro se parties. *E.g.*, *Gaines v. Stenseng*, 292 F.3d 1222, 1224 (10th Cir. 2002); *Collins v. Cundy*, 603 F.2d 825, 827 (10th Cir. 1979) (per curiam). And we’ve declined to liberally construe complaints when they’re drafted by attorneys. *Smith v. Plati*, 258 F.3d 1167, 1174 (10th Cir. 2001); *Mann v. Boatright*, 477 F.3d 1140, 1148 n.4 (10th Cir. 2007). *Celli v. Shoell*, 40 F.3d 324, 327 (10th Cir. 1994). But we’ve also said that complaints are liberally construed even in cases that don’t involve pro se litigants. *Lucas v. Turn Key Health Clinics, LLC*, 58 F.4th 1127, 1136 (10th Cir. 2023); *Reznik v. inContact, Inc.*, 18 F.4th 1257, 1260 (10th Cir. 2021).¹ Given this tension in our case law, we assume for the sake of argument that we should liberally construe the complaint even though it was drafted by counsel.²

¹ We’ve also said that “we read *pro se* complaints more liberally than those composed by lawyers.” *Andrews v. Heaton*, 483 F.3d 1070, 1076 (10th Cir. 2007).

² Mr. Young argues that we should remand for the district court to reconsider the dismissal by liberally construing the complaint. Given de novo review, however, remand is unnecessary because

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In liberally construing the complaint, we consider the plausibility of the claim based on the facts pleaded in the complaint. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). For plausibility, we credit Mr. Young’s allegations and view all reasonable inferences in his favor. *Lucas v. Turn Key Clinics, LLC*, 58 F.4th 1127, 1136 (10th Cir. 2023).

2. Mr. Young hasn’t plausibly alleged a hostile work environment.

Though we view the inferences favorably to Mr. Young, we consider “the nature and specificity” of the required allegations “based on context.” *Kan. Penn Gaming, LLC v. Collins*, 656 F.3d 1210, 1215 (10th Cir. 2011). The context here is a claim involving a hostile work environment based on race, which is actionable under (1) Title VII of the Civil Rights Act, 42 U.S.C. § 2000e-1 to 2000e-17, and (2) 42 U.S.C. § 1981. *See Ford v. West*, 222 F.3d 767, 775 (10th Cir. 2000) (Title VII); *Lounds v. Lincare, Inc.*, 812 F.3d 1208, 1221 (10th Cir. 2015) (42 U.S.C. § 1981).

For this claim, Mr. Young’s burden is “extremely high”; he must allege facts that would render the workplace “overtly hostile.” *Iweha v. State of Kansas*, 121 F.4th 1208, 1224-25 (10th Cir. 2024). The workplace is considered *hostile* only when it “is permeated with ‘discriminatory intimidation, ridicule, and insult’ that is ‘sufficiently severe or pervasive to alter the conditions of the victim’s employment and

we can apply the correct standard for dismissal. *See Brewer v. City of Albuquerque*, 18 F.4th 1205, 1217 n.11 (10th Cir. 2021) (stating that de novo review allowed the Court of Appeals to skirt a party’s argument that the district court had improperly resolved factual disputes at the summary-judgment stage).

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create an abusive working environment.” *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 21 (1993) (quoting *Meritor Savings Bank, FSB v. Vinson*, 477 U.S. 57, 65 (1986)). Because the discriminatory behavior is actionable only if it permeates the workplace, Mr. Young needed to allege “more than a few isolated incidents of racial enmity.” *Bolden v. PRC, Inc.*, 43 F.3d 545, 551 (10th Cir. 1994).

Under this standard, the discriminatory behavior could be actionable if it was either severe or pervasive. *Lounds v. Lincare, Inc.*, 812 F.3d 1208, 1222 (10th Cir. 2015). We have held that the training program alone was not enough to trigger liability. *Young v. Colo. Dep’t of Corrs.*, 94 F.4th 1242, 1245, 1251& n.2 (10th Cir. 2024). After this holding, however, Mr. Young added allegations about the aftermath of the training program. So we consider whether the combination of old and new allegations would have rendered the workplace “permeated with ‘discriminatory intimidation, ridicule, and insult.’” *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 21 (1993) (quoting *Meritor Savings Bank, FSB v. Vinson*, 477 U.S. 57, 65 (1986)). To cross this threshold, the training and its aftermath had to create an abusive working environment by altering a term, condition, or privilege of Mr. Young’s job. *Harsco Corp. v. Renner*, 475 F.3d 1179, 1186 (10th Cir. 2007).

Mr. Young claims that the training program created disturbing generalizations about the role of all White people in perpetuating the mistreatment of racial minorities. This part of the claim involves a glossary, guidance in administering meetings, and recommended videos for further education about race.

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First, Mr. Young points to a glossary allegedly used in the training.³

The glossary refers to

- *race* as an unscientific concept used to justify White people's oppression of minorities,
- *white exceptionalism* as a belief by some Whites that they aren't racist even though they perpetuate white supremacy, and
- *white fragility* as a White person's discomfort and defensiveness when confronted by information about racial injustice.

Appellant's App'x vol. 3, at 548-54. Mr. Young objects to the terminology, but doesn't say how the glossary affected his job responsibilities.

He made similar allegations about the glossary in a prior appeal. First Am. Compl. at 7-9, *Young v. Colo. Dep't of Corrs.*, No. 22-cv-145-NYW-KLM (D. Colo. Apr. 29, 2022) (Dkt. 15); Appellant's Opening Br. At 3-9, 26-27, *Young v. Colo. Dep't of Corrs.*, No. 23-1063 (10th Cir. May 1, 2023). There we concluded that the glossary didn't render the workplace permeated with abuse. *Young v. Colo. Dep't of Corrs.*, 94 F.4th 1242, 1251-54 (10th Cir. 2024). This conclusion fits equally here given the similarity of Mr. Young's arguments about the glossary.

Second, the training allegedly advised leaders to let less powerful people speak first and to treat employees differently based on race. Appellant's App'x vol. 3, at 557. Mr. Young disagrees with this advice,

³ The defendants deny use of the glossary in the training. But Mr. Young alleged use of the glossary and we credit those allegations at this stage. *See* Part 1, above.

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but doesn't explain how it rendered the workplace permeated with abuse.

Third, the training included recommendations of videos about discriminatory housing and intersectionality. These videos contained generalized discussion about White people's attitudes toward race. Mr. Young regards this discussion as offensive, but he doesn't say how the content affected his job responsibilities, interactions with fellow employees, or career advancement.

Mr. Young also relied on these videos in the prior appeal. Appellant's Opening Br. at 11-14, *Young v. Colo. Dep't of Corrs.*, No. 23-1063 (10th Cir. May 1, 2023). We concluded that these videos didn't render the workplace permeated with abuse. *Young v. Colo. Dep't of Corrs.*, 94 F.4th 1242, 1250-51 (10th Cir. 2024). This conclusion fits equally here given the similarity of Mr. Young's allegations about the videos.

Mr. Young argues that he has also made five new allegations about the effect of the training on his day-to-day work:

1. An ongoing commitment existed for this kind of training.
2. Employees had to endorse the race-based ideology reflected in the training.
3. Supervisors acted upon the training for disciplinary decisions.
4. The training compromised security.
5. The Department of Corrections failed to investigate his allegations.

Oral Arg. 4:18-24, 5:30-6:25; Appellant's Opening Br. at 33-34, 46-54.

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First, Mr. Young argues that the Department of Corrections committed to this kind of training and would continue with the same racist blueprint. But this argument stretches even a liberal construction of the complaint. Its attachments show that the contents of the training will change, with the slides themselves noting that the terminology will “be modified on an ongoing basis.” Appellant’s App’x vol. I, at 148.

Regardless of those modifications, however, Mr. Young experienced only a single training session and he quit four months later. His fears about future programming wouldn’t suggest that the workplace had turned “overtly hostile” and “permeated with discriminatory behavior” in this four-month period. *Iweha v. Kansas*, 121 F.4th 1208, 1224-25 (10th Cir. 2024) (“overtly hostile”); *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 21 (1993) (“sufficiently severe or pervasive to alter the conditions of the victim’s employment and create an abusive working environment” (quoting *Meritor Savings Bank, FSB v. Vinson*, 477 U.S. 57, 65 (1986))).

Mr. Young made a similar argument in the prior appeal, relying on his allegation “that [equality, diversity, and inclusion] training would be, at a minimum, an actual recurring obligation.” Appellant’s Opening Br. at 15, *Young v. Colo. Dep’t of Corrs.*, No. 23-1063 (10th Cir. May 1, 2023). We rejected this argument, reasoning that Mr. Young hadn’t “allege[d] that the training occurred more than once.” *Young v. Colo. Dep’t of Corrs.*, 94 F.4th 1242, 1251 (10th Cir. 2024). Here too, Mr. Young hasn’t alleged that the training occurred more than once.

In the earlier version of the complaint, Mr. Young also alleged that training on equity, diversity, and

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inclusion wouldn't be "a one-time event." Appellant's App'x vol. 3, at 573. We concluded that this allegation would not suffice, but added that "[p]erhaps an ongoing, continuing commitment from Mr. Young's supervisors to mandatory [equity, diversity, and inclusion] trainings with content similar to the one here may evolve into a plausible hostile workplace claim." *Young v. Colo. Dep't of Corrs.*, 94 F.4th 1242, 1251 n.2 (10th Cir. 2024). In the new version of the complaint, however, Mr. Young just speculates that future training would treat White people in a negative light.

Second, Mr. Young argues that the job required him to endorse the training's race-based ideology. But the training included admonitions that employees

- didn't need to change their values or beliefs and
- should discuss questions and challenges from the training.

Appellees' Supp. App'x at 11, 29, 49, 68. Given these admonitions, Mr. Young's allegations do not plausibly allege a pattern of abuse against White employees who disagreed with the training. After all, Mr. Young didn't plead any facts suggesting

- that he had experienced negative feedback in the four months following the training or
- that his supervisors had discussed the training.

Mr. Young insists that the training should be enough to trigger liability because it came from the employer itself. He made a similar argument in the prior appeal: "As several courts have recognized, discriminatory conduct coming from supervisors or others in positions of authority over the plaintiff is more severe than conduct perpetuated by coworkers."

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Appellant's Opening Br. at 29, *Young v. Colo. Dep't of Corrs.*, No. 23-1063 (10th Cir. May 1, 2023). We rejected this argument, reasoning that Mr. Young needed to combine his allegation of a policy with a "pattern of race-based intimidation, ridicule, or insult that accompanied his employer's official acts." *Young v. Colo. Dep't of Corrs.*, 94 F.4th 1242, 1252 (10th Cir. 2024). We concluded that Mr. Young hadn't alleged such a pattern, *id.*, and he still hasn't. He instead bases this argument solely on the employer's role in the training, just as he had in the prior appeal.

Third, Mr. Young argues that supervisors were already acting upon the training in making disciplinary decisions. For this argument, Mr. Young refers to an allegation in the complaint about an incident involving another officer of a different race. In this incident, the officer allegedly used a complaint about racism to reverse a disciplinary sanction. Appellant's App'x vol. 3, at 571. But Mr. Young doesn't say whether the accusation of racism was warranted, whether this incident took place after the training, or whether the incident affected his work conditions. Absent that information, one unexplained reversal of discipline against another officer wouldn't render Mr. Young's job permeated with abuse.

Granted, Mr. Young alleges that he thought that others had viewed him as a racist. But he doesn't allege that anyone said that he was racist after the training; his suspicions about unspoken attitudes wouldn't create an abusive working environment. See *Smith v. Nw. Fin. Acceptance, Inc.*, 129 F.3d 1408, 1412 (10th Cir. 1997) (comments creating offensive feelings don't affect employment conditions to a

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“sufficiently significant degree” (quoting *Rogers v. EEOC*, 454 F.2d 234, 238 (5th Cir. 1971))).

Fourth, Mr. Young argues that the training compromised security because White guards might loosen restrictions to avoid accusations of racism. We’ve already characterized these allegations as speculative. *Young v. Colo. Dep’t of Corrs.*, 94 F.4th 1242, 1245, 1251 (10th Cir. 2024).

In his new version of the complaint, Mr. Young adds allegations that the training caused him to second-guess his decisions about using force and screening for contraband. But these allegations don’t refer to particular instances or suggest that the changes jeopardized security. Instead, the new allegations reflect only hesitation—not alteration of the job. *See Trujillo v. Univ. of Colo. Health Sci. Ctr.*, 157 F.3d 1211, 1213-14 (10th Cir. 1998) (holding that a Hispanic employee’s evidence of increased monitoring wasn’t enough to avoid summary judgment on a claim involving a hostile work environment); *see also Faragher v. City of Boca Raton*, 524 U.S. 775, 788 (1998) (“[C]onduct must be extreme to amount to a change in the terms and conditions of employment.”).

Finally, Mr. Young alleges that the Colorado Department of Corrections failed to investigate his allegations. But he doesn’t explain how the Department’s failure to investigate would have affected his work environment.

He made a similar argument in the prior appeal. Appellant’s Opening Br. at 38, *Young v. Colo. Dep’t of Corrs.*, No. 23-1063 (10th Cir. May 1, 2023). We acknowledged the argument, but concluded that it didn’t address the effect of the training on his

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interactions with supervisors and coworkers. *Young v. Colo. Dep't of Corrs.*, 94 F.4th 1242, 1245, 1251 (10th Cir. 2024). This conclusion is equally fitting here.

Mr. Young disagrees, arguing that the failure to investigate constitutes an independent reason to credit his allegations of a hostile work environment. Granted, an employer may incur liability for failing to investigate “an actionable hostile environment.” *Faragher v. City of Boca Raton*, 524 U.S. 775, 807 (1998). But an employer’s failure to investigate may merely “preserve[] the very circumstances that were the subject of the complaint.” *Fincher v. Depository Trust & Clearing Corp.*, 604 F.3d 712, 724 (2d Cir. 2010), *discussed with approval in Daniels v. United Parcel Serv., Inc.*, 701 F.3d 620, 640 (10th Cir. 2012), *abrogated on other grounds by Muldrow v. City of St. Louis, Mo.*, 601 U.S. 346 (2024). “[U]nless it leads to demonstrable harm,” a failure to investigate “leaves an employee no worse off than before the complaint was filed.” *Daniels*, 701 F.3d at 640.

Combining Mr. Young’s arguments, we consider whether he has pleaded facts showing that the workplace has already become “permeated with ‘discriminatory intimidation, ridicule, and insult.’” *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 21 (1993) (quoting *Meritor Savings Bank, FSB v. Vinson*, 477 U.S. 57, 65 (1986)). Mr. Young hasn’t alleged facts suggesting an abusive environment from a failure to investigate.

* * *

We previously held that

- the single incident of training wasn’t enough to allege a hostile working environment and

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- the allegations about employment opportunities, workplace cohesion, and security risks were speculative.

Young v. Colo. Dep't of Corrs., 94 F.4th 1242, 1245, 1251-52 (10th Cir. 2024). Though Mr. Young has added five allegations, they don't cross the "extremely high" threshold to create a workplace "permeated with discriminatory behavior." *Iweha v. State of Kansas*, 121 F.4th 1208, 1224-25 (10th Cir. 2024) ("extremely high" standard); *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 21 (1993) ("permeated with 'discriminatory intimidation, ridicule, and insult'" (quoting *Meritor Savings Bank, FSB v. Vinson*, 477 U.S. 57, 65 (1986))).⁴ So the district court didn't err in dismissing the claim of a hostile work environment.

3. Mr. Young hasn't plausibly alleged a constructive discharge.

Mr. Young also claims that the abusive work environment forced him to quit. But we've held that he hasn't plausibly alleged a hostile work environment. That holding dooms the claim of a constructive discharge. *Jones v. Barnhart*, 349 F.3d 1260, 1270 (10th Cir. 2003). So the court didn't err in dismissing this claim.

⁴ Mr. Young points out that the Attorney General, Equal Employment Opportunity Commission, and Department of Education recognize that training in equity, diversity, and inclusion can rise to the level of unlawful discrimination. We assume for the sake of argument that these agencies are right. The question here, however, is whether Mr. Young has alleged a plausible claim that the training and the aftermath created a workplace permeated with discriminatory behavior. *See Harris*, 510 U.S. at 21.

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4. The district court didn't err in making the dismissal *with prejudice*.

The district court dismissed the action with prejudice after Mr. Young had filed four versions of the complaint in two separate actions. Mr. Young argues that the dismissal should have been without prejudice.

For this argument, we consider whether the district court abused its discretion. *Seale v. Peacock*, 32 F.4th 1011, 1027 (10th Cir. 2022). The court didn't abuse its discretion because Mr. Young hadn't said how he could avoid the shortcomings in his fourth version of the complaint. *See Hall v. Witteman*, 584 F.3d 859, 868 (10th Cir. 2009) (affirming the district court's denial of a request to file an amended complaint because the plaintiff "nowhere explained how a proposed amendment would cure the deficiencies identified by the district court"). So we uphold the decision to make the dismissal *with prejudice*.

Affirmed.

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FILED

**United States Court of
Appeals Tenth Circuit**

May 11, 2026

**Christopher M. Wolpert
Clerk of Court**

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

JOSHUA F. YOUNG,
Plaintiff - Appellant,

v.

COLORADO DEPARTMENT
OF CORRECTIONS; MOSES
“ANDRE” STANCIL; JILL
HUNSAKER RYAN,
Defendants - Appellees.

No. 25-1068
(D.C. No. 1:23-
CV-01688-NYW-
SBP)
(D. Colo.)

STATE OF MONTANA; THE
ARIZONA LEGISLATURE;
STATE OF ALABAMA; STATE
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NEBRASKA; STATE OF
FLORIDA; STATE OF NORTH
DAKOTA; STATE OF IDAHO;
STATE OF SOUTH
CAROLINA; STATE OF
INDIANA; STATE OF SOUTH
DAKOTA; STATE OF IOWA;

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STATE OF TEXAS; STATE OF
KANSAS; SPEAKER OF THE
ARIZONA HOUSE OF
REPRESENTATIVES;
PRESIDENT OF THE
ARIZONA SENATE; THE
AMERICAN CIVIL RIGHTS
PROJECT; THE MANHATTAN
INSTITUTE;
THE SOUTHEASTERN
LEGAL FOUNDATION; THE
YOUNG AMERICA'S
FOUNDATION,
Amici Curiae.

JUDGMENT

Before **BACHARACH, SHELBY,*** and **MORITZ**,
Circuit Judges.

This case originated in the District of Colorado and
was argued by counsel.

The judgment of that court is affirmed.

Entered for the Court
Per Curiam

* The Honorable Robert J. Shelby, United States District Judge
for the District of Utah, sitting by designation.

Appendix 18a

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Judge Nina Y. Wang

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

JOSHUA F. YOUNG,

Plaintiff,

v.

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

Defendants.

MEMORANDUM OPINION AND ORDER

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

BACKGROUND

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

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to take Equity, Diversity, and Inclusion (“EDI”) training, which consisted of several computer modules. [*Id.* at ¶¶ 7, 9]. Mr. Young took the training in March 2021. [*Id.* at ¶ 8].

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

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

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

White Exceptionalism: The belief held by some white allies that they are the exception to white racism even though they fail to address the implicit ways in which they perpetuate white

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supremacy. These individuals are often more interested in not seeming racist than actually improving the lives of people of color. This is sometimes referred to as **fakequity**.

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

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

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

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¶ 49]. Plaintiff alleges that these materials “were racially discriminatory and motivated by invidious racial stereotypes and “demeaned and stigmatized [him] and similarly situated individuals based on race and skin color.” [*Id.* at ¶ 52].

Plaintiff alleges that he “expected and knew that EDI training would recur annually” because all CDOC trainings occurred annually. [*Id.* at ¶¶ 65, 95]. He also alleges that he “expected that the modules on ‘EDI’ would stay roughly the same, from year to year, in the sense that they would include materials that made sweeping generalizations about him, his race, and his attributes and behavior as a Caucasian person.” [*Id.* at ¶ 66]. Mr. Young also alleges that, generally speaking, employees within the CDOC are “expected to live up to their training”; that “[t]raining in the prison context was meant to be taken seriously, and applied”; and that his supervisors “repeatedly emphasized the importance of faithfully taking trainings and abiding by those various trainings.” [*Id.* at ¶¶ 72-73]. Employees could be written up for refusing to participate in trainings. [*Id.* at ¶ 95].

Plaintiff alleges that he “was aware that his colleagues were taking the EDI trainings around the time that he took the trainings” and that the trainings “came up in conversations among [his] colleagues at work.” [*Id.* at ¶¶ 68, 71]. He says he was stressed about “whether his colleagues believed the training to be true[] and were applying the training as they interacted with him in the prison setting” because he knew that his co-workers were taking the EDI training and because the training “made negative, offensive generalizations about Caucasians like Young.” [*Id.* at ¶¶ 69, 78]. He also alleges that the

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training “contributed to a culture of suspicion and distrust” in the CDOC and “created a dangerous atmosphere where a failure to adhere to racism and race-based differential treatment could itself result in accusations of racism, or discipline for failing to abide by the training,” [*id.* at ¶¶ 82-83], but he does not allege that any such conduct actually occurred as a result of the training, *see generally* [*id.*]. Plaintiff does allege that he “sensed that some of his colleagues viewed him as a racist due to his status as a Caucasian individual.” [*Id.* at ¶ 85]. In addition, he alleges that he “considered some of his colleagues to be especially agreeable with respect to the training, and to use the training as leverage to promote racially discriminatory beliefs in the workplace, by challenging others who made innocent comments,” [*id.*], but he provides no specific examples of this occurring, *see generally* [*id.*].

Plaintiff also details how the EDI training caused him to change his behavior in the workplace or change his approach in the workplace, alleging that (1) he was worried he would be written up if he had to search a prison visitor and the visitor claimed that the search was due to the visitor’s race, [*id.* at ¶ 84]; (2) he was hesitant to use force against prisoners, and there were several instances in which he “needed to use force, but the race-based implications of the training made him second-guess his actions, leading to an unsafe environment,” [*id.* at ¶ 87]; and (3) he “lacked confidence that his employer would support him against frequent, baseless accusations of racism by prisoners and their visitors,” [*id.* at ¶ 90].

Mr. Young filed an internal complaint in response to the EDI training, which was denied. [*Id.* at ¶¶ 101-

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02]. He later resigned from his employment with the CDOC in July 2021. [*Id.* at ¶ 106].

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

While Mr. Young’s appeal was pending, he filed this separate case. [Doc. 1]. After receiving briefing about the propriety of two cases, based on the same incident, proceeding simultaneously, *see* [Doc. 19; Doc. 22], the Court administratively closed this case until the resolution of Mr. Young’s appeal, *see* [Doc. 24]. On March 11, 2024, the Tenth Circuit affirmed the Court’s dismissal of the first action. *See Young v. Colo. Dep’t of Corr.*, 94 F.4th 1242 (10th Cir. 2024) (“*Young I*”). The Court then reopened this case, *see* [Doc. 28], and Plaintiff filed the Amended Complaint on June 3, 2024, [Doc. 34].

Mr. Young asserts three claims in this case: (1) a Title VII hostile work environment claim against the CDOC (“Count One”), [*id.* at ¶¶ 113-31]; (2) a hostile work environment claim under 42 U.S.C. § 1981 against Defendants Moses Stancil, the Executive

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Director of the CDOC, and Jill Hunsaker Ryan, the Executive Director of the CDPHE, in their official capacities (“Count Two”), [*id.* at ¶¶ 3-4, 132-49]; and (3) a constructive discharge claim against all Defendants (“Count Three”), [*id.* at ¶¶ 150-61]. Defendants move to dismiss all of Plaintiff’s claims under Rule 12(b)(6). [Doc. 35].

LEGAL STANDARD

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

In deciding a motion under Rule 12(b)(6), the Court must “accept as true all well-pleaded factual allegations . . . and view these allegations in the light most favorable to the plaintiff.” *Casanova v. Ulibarri*, 595 F.3d 1120, 1124 (10th Cir. 2010) (quotation omitted). But the Court need not accept “[t]hreadbare

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

ANALYSIS

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

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delta between his prior complaint and a plausible . . . hostile environment claim.”)].¹

I. Hostile Work Environment

Under Title VII, it is unlawful for an employer to “discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s race, color, religion, sex, or national origin.” 42 U.S.C. § 2000e-2(a)(1). And 42 U.S.C. § 1981 declares that “[a]ll persons within the jurisdiction of the United States shall have the same right . . . to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for

¹ Mr. Young asserts in his Response that “[p]leadings are to be liberally construed and if there is any possibility of recovery the case should not be dismissed.” [Doc. 43 at 3 (quoting *Gas-A-Car, Inc. v. Am. Petrofina, Inc.*, 484 F.2d 1102, 1107 (10th Cir. 1973))]. *Gas-A-Car* predates the Supreme Court cases setting out applicable pleading standards—*Twombly* and *Iqbal*—by several decades and does not reflect the present requirement that a complaint set forth sufficient facts establishing “more than a sheer possibility that a defendant has acted unlawfully.” See *Iqbal*, 556 U.S. at 678. In addition, the Tenth Circuit has instructed that parties represented by counsel are not entitled to liberal construction of their pleadings. See, e.g., *Shue v. Laramie Cnty. Det. Ctr.*, 594 F. App’x 941, 947 (10th Cir. 2014); *Tatten v. City & Cnty. of Denver*, 730 F. App’x 620, 624 (10th Cir. 2018). The Court is also mindful that, even when litigants are not represented by counsel, it may not act as counsel for a party. See *Garrett v. Selby Connor Maddux & Janer*, 425 F.3d 836, 840 (10th Cir. 2005) (“[T]he court cannot take on the responsibility of serving as the litigant’s attorney in constructing arguments and searching the record.”). Accordingly, the Court applies the legal standards detailed above, focusing on whether the Amended Complaint contains “sufficient factual matter” to state a claim that is “plausible on its face.” *Iqbal*, 556 U.S. at 678.

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the security of persons and property as is enjoyed by white citizens.” Both Title VII and § 1981 “authorize a plaintiff to bring a claim for hostile work environment based on unlawful race discrimination.” *Lounds v. Lincare, Inc.*, 812 F.3d 1208, 1221 (10th Cir. 2015). Whether asserted under Title VII or § 1981, the standards applicable to a hostile work environment claim are the same. *Id.*

A workplace is unlawfully hostile when it is “permeated with discriminatory intimidation, ridicule, and insult, that is sufficiently severe or pervasive to alter the conditions of the victim’s employment and create an abusive working environment.” *Iweha v. Kansas*, 121 F.4th 1208, 1221 (10th Cir. 2024) (quotation omitted). A prima facie hostile work environment claim contains the following elements: (1) the plaintiff is a member of a protected group; (2) the plaintiff was subject to unwelcome harassment; (3) the harassment was based on the plaintiff’s race; and (4) the severity or pervasiveness of the harassment “altered a term, condition, or privilege of the plaintiff’s employment and created an abusive working environment.” *Lounds*, 812 F.3d at 1222 (quotation omitted).

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

To sufficiently allege this element, “[a] plaintiff must allege facts showing that the work environment ‘is both subjectively *and* objectively hostile or abusive[.]’” *Brown v. LaFerry’s LP Gas Co.*, 708 F. App’x

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518, 520 (10th Cir. 2017) (quoting *Lounds*, 812 F.3d at 1222). “In other words, it is not enough that a particular plaintiff deems the work environment hostile; it must also be of the character that it would be deemed hostile by a reasonable employee under the same or similar circumstances.” *Lounds*, 812 F.3d at 1222. “Conduct that is not severe or pervasive enough to create an objectively hostile or abusive work environment—an environment that a reasonable person would find hostile or abusive—is beyond Title VII’s purview.” *Iweha*, 121 F.4th at 1221 (quotation omitted).

Severity and pervasiveness “are independent and equal grounds upon which a plaintiff may establish . . . a hostile environment claim.” *Tademy v. Union Pac. Corp.*, 614 F.3d 1132, 1144 (10th Cir. 2008). The two grounds “are, to a certain degree, inversely related; a sufficiently severe episode may occur as rarely as once, while a relentless pattern of lesser harassment that extends over a long period of time also violates the statute.” *Brown*, 708 F. App’x at 521 (quotation omitted). There is no “mathematically precise test” used to determine whether a work environment was unlawfully hostile. *Lounds*, 812 F.3d at 1222 (quotation omitted). To determine whether alleged harassment is sufficiently severe or pervasive, courts consider a “variety of factors,” including “the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee’s work performance.” *Id.* (quotation omitted). But “isolated incidents of discriminatory conduct” are “insufficient to support a claim for hostile

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work environment.” *Ford v. Jackson Nat’l Life Ins. Co.*, 45 F.4th 1202, 1228 (10th Cir. 2022) (quotation omitted).

1. *Young I*

In *Young I*, the Tenth Circuit concluded that Plaintiff’s allegations were insufficient to plausibly plead a severe or pervasive hostile work environment. *Young I*, 94 F. 4th at 1251. The Tenth Circuit observed that Plaintiff had “provide[d] no specific facts, context, or explanation for why or how he was forced to resign” from his position with the CDOC. *Id.* And aside from allegations showing that he “was offended by the EDI training, and that he was upset about the Department’s response when he complained about the EDI training,” Mr. Young had not set forth any allegations about the effect of the EDI training on his actual workplace environment—such as “what he experienced in the workplace due to the EDI training—particularly his interactions with supervisors and co-workers.” *Id.* The Tenth Circuit provided additional examples of the kinds of allegations lacking in Mr. Young’s complaint: Mr. Young “[did] not allege that the training occurred more than once, that his supervisors threatened to punish or otherwise discipline employees who failed to complete or agree with the materials, or that co-workers engaged in specific acts of insult or ridicule aimed at him because of the training.” *Id.* Nor did he allege that he was “singled out by other correctional officers for race-based opprobrium,” that he was “physically confronted by a co-worker because of his objections to the EDI training,” or any “racial animus manifesting itself in Mr. Young’s day-to-day *work environment*.” *Id.* at 1254. However, the *Young I* majority suggested

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in a footnote that “[p]erhaps an ongoing, continuing commitment from Mr. Young’s supervisors to mandatory EDI trainings with content similar to the one here may evolve into a plausible hostile workplace claim” and that “requiring government employees to either endorse a particular race-based ideological platform or risk losing their jobs could also evolve into a plausible claim of pervasive hostility.” *Id.* at 1251 n.2

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

2. Plaintiff’s Allegations in this Case

As mentioned above, severity and pervasiveness are assessed by looking at (1) the frequency and severity of the conduct; (2) whether the conduct was physically threatening or humiliating or was merely an offensive utterance; and (3) whether the conduct unreasonably interfered with the employee’s work performance. *Lounds*, 812 F.3d at 1222. Mr. Young argues that his Amended Complaint “closely tracks the Tenth Circuit’s guidance” in *Young I*, [Doc. 43 at 13], and his defense of the sufficiency of his

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allegations is framed around the *Young I* decision, see [*id.* at 10-13].

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

² To be clear, the Court does not hold that pleading facts showing an ongoing commitment from Plaintiff’s supervisors (or the other types of allegations mentioned in *Young I*) would automatically be sufficient to state a hostile work environment claim, and the Court does not interpret the *Young I* opinion to hold so, either. See *Young I*, 94 F. 4th at 1251 n.2 (“*Perhaps* an ongoing, continuing commitment from Mr. Young’s supervisors to mandatory EDI trainings with content similar to the one here *may evolve* into a plausible hostile workplace claim. . . . And requiring government employees to either endorse a particular

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

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

Of course, the frequency of the challenged conduct “is simply one factor in the analysis,” and “no single factor is required.” *Lockard v. Pizza Hut, Inc.*, 162 F.3d 1062, 1072 (10th Cir. 1998) (quoting *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 23 (1993)). And even a single incident, if “extremely serious,” may be sufficient to state a hostile work environment claim. *Duran v. LaFarge N. Am., Inc.*, 855 F. Supp. 2d 1243,

race-based ideological platform or risk losing their jobs *could also evolve* into a plausible claim of pervasive hostility.” (emphasis added)). “[W]hether certain conduct amounts to severe or pervasive harassment depends on the particular circumstances and context in which such behavior takes place.” *Id.* at 1253.

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1248 (D. Colo. 2012) (quoting *Faragher v. City of Boca Raton*, 524 U.S. 775, 788 (1998)). But as Plaintiff acknowledges, *see* [Doc. 43 at 14], the Tenth Circuit has already concluded that “the single training session here is not enough,” without more, to constitute a hostile work environment. *Young I*, 94 F.4th at 1251 n.2. Plaintiff acknowledges that the Court is “bound to accept the holding of the Tenth Circuit,” but “preserves for appellate review the issue of whether a single EDI training . . . objectively creates a severely hostile work environment.” [Doc. 43 at 14]. He contends that “the fact that the offensive conduct of the EDI training and its subsequent implementation came from official employer training, rather than remarks by a rogue colleague, makes it more severe” and that “forced adherence to a belief system is much more likely to ‘permeate’ the workplace with ridicule and insult than comments or slurs.” [*Id.* at 14-15].

While the fact that the EDI training allegedly “constituted official acts of” the employer is relevant to the Court’s analysis, *Young I*, 94 F.4th at 1252, Mr. Young does not point the Court to allegations plausibly alleging a *severe* hostile work environment based on the training alone. “[T]he bar to establish a hostile work environment based on an isolated incident [is] very high.” *Lopez v. Brennan*, No. 2:15-cv-00595-EJF, 2018 WL 4688352, at *6 (D. Utah Sept. 28, 2018). “[C]ourts have required the conduct to be especially egregious or extreme where only isolated incidents are alleged.” *Morris v. City of Colo. Springs*, 666 F.3d 654, 667 (10th Cir. 2012) (collecting cases in which severity bar was met by single incident, including cases involving sexual assault, rape, and

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physical assault causing injury). “Most incidents found to meet this standard involve some kind of physical assault.” *Brown*, 708 F. App’x at 522. While some courts have concluded that “the use of an unambiguously racial epithet . . . might well [be] sufficient to establish a hostile work environment,” *Ayissi-Etoh v. Fannie Mae*, 712 F.3d 572, 577 (D.C. Cir. 2013) (per curiam) (quotation omitted) (cited favorably in *Lounds*, 812 F.3d at 1230), it is well established that “a plaintiff cannot demonstrate pervasive harassment by pointing to ‘a few isolated incidents of racial enmity or sporadic racial slurs. Instead, there must be a steady barrage of opprobrious racial comments,’” *Brown*, 708 F. App’x at 522 (quoting *Herrera v. Lufkin Indus., Inc.*, 474 F.3d 675, 680 (10th Cir. 2007)). See, e.g., *id.* at 521-22 (three comments, “while inappropriate and offensive, were not sufficiently pervasive or extreme to support a hostile work environment claim”); *Chavez v. New Mexico*, 397 F.3d 826, 832 (10th Cir. 2005) (“two racially offensive remarks” fell “far short of the ‘steady barrage’ required for a hostile environment claim”); *Juarez v. City & Cnty. of Denver*, No. 23-cv-00409-PAB-NRN, 2024 WL 1156610, at *11 (D. Colo. Mar. 15, 2024) (dismissing hostile work environment claim where the plaintiff alleged facts about two race-based comments but “describe[d] no other incidents where [his supervisor] or any other co-workers or supervisors made discriminatory comments that [the plaintiff] overheard”); *Federspill v. Denver Pub. Sch.*, No. 17-cv-01480-WJM-STV, 2019 WL 13444880, at *4 (D. Colo. Jan. 31, 2019) (“three incidents where [the plaintiff’s supervisor] made racial comments to [the plaintiff]” were insufficient to state a hostile work environment claim), *report and recommendation*

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adopted, 2019 WL 13444881 (D. Colo. Mar. 1, 2019); *Sidlo v. Millercoors, LLC*, 718 F. App'x 718, 728 (10th Cir. 2018) (concluding that “one incident directly connected to national-origin discrimination” was insufficient to establish a severe or pervasive environment at summary judgment).

The objective severity of harassment is evaluated “from the perspective of a reasonable person in the plaintiff’s position, considering all the circumstances.” *Harsco Corp. v. Renner*, 475 F.3d 1179, 1187 (10th Cir. 2007). While Plaintiff takes issue with the messages conveyed in the training, “[t]he mere utterance of a statement which engenders offensive feelings in an employee would not affect the conditions of employment to a sufficiently significant degree to violate Title VII.” *Gross v. Burggraf Constr. Co.*, 53 F.3d 1531, 1537 (10th Cir. 1995) (quotation omitted); *see also Lounds*, 812 F.3d at 1222 (harassment must be both subjectively and objectively severe). Plaintiff has not directed the Court to any allegations raised in this case that were not raised in *Young I* that would change the Tenth Circuit’s determination that the single training was not sufficient, alone, to plausibly allege a hostile work environment. *See* [Doc. 43 at 14-15]. Accordingly, the Court concludes that Plaintiff has failed to allege facts plausibly establishing an objectively severe hostile work environment. Plaintiff’s remaining arguments focus on pervasiveness, *see [id.]* at 7-14], and the Court’s analysis is limited accordingly.

Next, Plaintiff references the Tenth Circuit’s statement that “requiring government employees to either endorse a particular race-based ideological platform or risk losing their jobs could also evolve into

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a plausible claim of pervasive hostility.” *Young I*, 94 F. 4th at 1251 n.2. Plaintiff contends that he “has little difficulty pleading such allegations here” because he alleges that “[e]mployees within the Department of Corrections are expected to live up to their training” while at work; that “[t]raining in the prison context was meant to be taken seriously, and applied”; that his “supervisors repeatedly emphasized the importance of faithfully taking trainings and abiding by those various trainings”; and that he and his co-workers “understood that they were obligated to take the training and adhere to it.” [Doc. 43 at 10-11 (quoting [Doc. 34 at ¶¶ 71-73])]. He asserts that even “[w]ithout more” than these allegations, his “claims can survive.” [*Id.* at 11].

The cited allegations, however, lack the factual enhancement required to state a plausible claim. *See Matney*, 80 F.4th at 1144 (an allegation is conclusory if it lacks underlying facts or any factual enhancement). Most of the allegations Plaintiff cites are entirely general, related to the CDOC’s general view of “trainings” *as a whole*. *See, e.g.*, [Doc. 34 at ¶¶ 72-73]. Allegations asserting that CDOC employees were generally expected to take their training seriously and abide by them are insufficient to plausibly allege that Mr. Young and his co-workers were required, *as a condition of their employment*, to endorse any particular belief or ideology *related to the EDI training*. Indeed, there are no specific, well-pleaded factual allegations plausibly establishing that Mr. Young was directed to change his beliefs to mirror the messages conveyed in the EDI training or risk losing his job, or that “his supervisors threatened to punish or otherwise discipline employees who failed

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to complete or agree with the materials.” *Young I*, 94 F.4th at 1251. Plaintiff’s allegation that “[t]he trainings created a dangerous atmosphere where a failure to adhere to racism and race-based differential treatment could . . . result in . . . discipline for failure to abide by the training,” [Doc. 34 at ¶ 83], is a conclusory assertion unsupported by factual enhancement. Indeed, as mentioned above, there are no allegations that any of Plaintiff’s supervisors had *any* conversations with him about the EDI training. See *generally* [*id.*].

Plaintiff’s other allegations in support of his compelled-belief theory are similarly devoid of factual support. For example, Plaintiff alleges that “his supervisors and even their supervisors—essentially the highest officials in the Department of Corrections—were insisting that [Plaintiff] review, believe, and live by these trainings, and that his colleagues do the same,” [*id.* at ¶ 70], and that he was “instructed that [he] had to comply with the EDI training as a condition of [his] ongoing employment,” [*id.* at ¶ 93]. But Plaintiff does not identify who allegedly “insist[ed]” that he needed to “believe[] and live by” the EDI training, who instructed him that conforming his beliefs was a condition of his employment, or explain how or when those messages were conveyed. See [*id.*]. To the extent Plaintiff relies on a citation to the training transcripts to provide additional context, see [*id.* at ¶ 93], the quoted statement from the training—“As employees of the State of Colorado, it’s good to remember we are here because we’ve made a commitment to serve our community”—does not constitute a well-pleaded factual allegation that Mr. Young and his fellow

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employees were told that their employment was conditioned on compliance with the EDI training's message. At bottom, these allegations are simply "naked assertion[s] devoid of further factual enhancement" that "do not 'raise a right to relief above the speculative level.'" *VDARE Found. v. City of Colo. Springs*, 11 F.4th 1151, 1173 (10th Cir. 2021) (quoting *Iqbal*, 556 U.S. at 678, and *Twombly*, 550 U.S. at 555) (alteration in original).

Next, the *Young I* court observed that Plaintiff had not "plead[ed] sufficient facts showing that he experienced severe or pervasive harassment in the course of his day-to-day job." *Young I*, 94 F4th at 1253. Allegations about the CDOC's post-training workplace environment are relevant to whether Plaintiff sufficiently alleges that the EDI training "unreasonably interfere[d] with [his] work performance" and whether the environment is "of the character that it would be deemed hostile by a reasonable employee under the same or similar circumstances." *Lounds*, 812 F.3d at 1222 (quotation omitted). Plaintiff argues his Amended Complaint now contains allegations addressing his day-to-day work environment. See [Doc. 43 at 11-12].

Specifically, Plaintiff argues that his Amended Complaint contains allegations that "[h]is colleagues started leveraging the training against him, in order to promote racist beliefs against" him, [*id.* at 11 (citing [Doc. 34 at ¶ 85])], and that he "was subjected to regular insults by prisoners related to race, and he expected the insults to keep escalating," [*id.* (citing [Doc. 34 at ¶ 79])]. He also references allegations concerning his own subjective state of mind, e.g., that he "felt isolated, and unable to do exactly what the

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training insisted that he do—have difficult conversations about race at the workplace,” [*id.* (citing [Doc. 34 at ¶ 76])]; that he “lost confidence in his core purpose as an employee,” [*id.* at 12 (citing [Doc. 34 at ¶ 90])]; that “[h]e knew that his failure to treat people differently based on race would be factored into both his and his colleagues’ quarterly performance reviews, and affect promotions,” [*id.* at 11 (citing [Doc. 34 at ¶ 95])]; and that he “perceived that the training was already affecting personnel decisions within the CDOC,” [*id.*]. He contends that these allegations are sufficient to “respond[] to the Tenth Circuit’s admonitions.” [*Id.*].

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

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deemed hostile by a reasonable employee under the same or similar circumstances.” *Id.*

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

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

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Am. Indian Health Council, Inc., 334 F. App'x 914, 921 (10th Cir. 2009). But pleading standards require *some* factual context beyond conclusory allegations, and a plaintiff cannot plausibly allege that their workplace environment was *permeated* with discriminatory ridicule or harassment without giving any factual context into the frequency or type of alleged harassing behavior. *Matney*, 80 F.4th at 1144; *see also Rowe v. Schulte Hosp. Grp., LLC*, No. 5:23-cv-00326-SLP, 2023 WL 4768705, at *3 (W.D. Okla. July 26, 2023) (dismissing hostile work environment claim based on “vague” allegations of sexual harassment where the plaintiff “d[id] not identify the content of the[] statements, when they occurred, how often they occurred or any specific individuals to whom they were made”); *Powell v. McDonough*, No. 20-cv-01223-MV-KK, 2023 WL 2743529, at *4 (D.N.M. Mar. 31, 2023) (dismissing claim where the plaintiff did not allege “any factual detail about the making of th[e offensive] comment, the making of the other derogatory sexual remarks to which the Amended Complaint only generally mentions, the ways in which these comments combined with any other differential treatment that led to her eventual termination, or any other facts that, taken together in their totality, would support a plausible finding or inference of pervasive or severe harassment based on sex”).

Similarly, Plaintiff argues in his Response that “[h]e was subjected to regular insults by prisoners related to race, and he expected the insults to keep escalating.” [Doc. 43 at 11 (citing [Doc. 34 at ¶ 79])]. The single incident referenced in the Amended Complaint occurred *before* Mr. Young participated in the EDI training. *See* [Doc. 34 at ¶ 79 (“Young’s prison

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setting even before the trainings was already highly racially charged. On one occasion, a prisoner, an inmate who Young knew to be the leader of a gang, exclaimed ‘So I hear you’re a racist.’”)]. This allegation thus does not provide context into “what [Plaintiff] experienced in the workplace *due to the EDI training*.” *Young I*, 94 F.4th at 1251 (emphasis added). And Plaintiff’s assertion that he “expected these [comments] to escalate significantly as the training achieved its purposes,” [Doc. 34 at ¶ 79], addresses only how Mr. Young *expected* his workplace environment to change; it does not provide any insight into whether and how the EDI training *actually affected* his workplace. In fact, Mr. Young does not cite any example of a race-based comment directed at him after CDOC introduced the EDI training. See *generally* [*id.*].

Setting aside any unsupported, conclusory allegations that need not be taken as true, the Amended Complaint does not establish “what [Plaintiff] experienced in the workplace due to the EDI training—particularly his interactions with supervisors and co-workers.” *Young I*, 94 F.4th at 1251. While Plaintiff alleges that the EDI training “came up in conversations among [his] colleagues at work,” [Doc. 34 at ¶ 71], this cursory assertion provides no insight into Plaintiff’s day-to-day work environment or how it was objectively hostile. Plaintiff still does not allege, for example, specific facts about “his interactions with supervisors and co-workers” related to the training, that “co-workers engaged in specific acts of insult or ridicule aimed at him because of the training,” that he was “singled out by other correctional officers for race-based

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opprobrium,” that he was “physically confronted by a co-worker because of his objections to the EDI training,” or that there was any “racial animus manifesting itself in Mr. Young’s day-to-day *work environment*.” *Young I*, 94 F.4th at 1252, 1254.³ In sum, while Plaintiff may have sufficiently alleged that the EDI training interfered with his work performance based on *his* subjective reaction to it, he does not allege sufficient objective facts about his workplace to establish that his workplace “would be deemed hostile by a reasonable employee under the same or similar circumstances.” *Lounds*, 812 F.3d at 1222.

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

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

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EDI training made him “hesitant to use force with prisoners” and that “[i]n the last several months of his employment, there were several instances where he needed to use force, but the race-based implications of the training made him second-guess his actions.” [*Id.* at ¶ 87].

The context or setting of a workplace is relevant to the Court’s analysis. *See Oncale v. Sundowner Offshore Servs., Inc.*, 523 U.S. 75, 81 (1998) (the objective inquiry “requires careful consideration of the social context in which particular behavior occurs and is experienced by its target”); *see also Semsroth v. City of Wichita*, 304 F. App’x 707, 726 (10th Cir. 2008) (finding prison setting relevant to severity analysis because the alleged harassing conduct—failing to provide backup to corrections officer plaintiff—could have put the plaintiff in danger). But again, Plaintiff’s allegations go to his own subjective reaction to the training and how the training allegedly affected his work performance. And even taking these allegations as true—that the EDI training affected how Plaintiff performed his job and that Plaintiff’s hesitancy could have created an unsafe working environment—they are insufficient by themselves to plausibly allege that the workplace was so permeated with discriminatory ridicule and harassment that a reasonable employee would view the workplace as hostile, given the deficiencies addressed above.

Comparable Cases. A few comparator cases highlight the insufficient nature of Plaintiff’s allegations here. First, in *De Piero v. Pennsylvania State University*, a professor alleged that he was subjected to a hostile work environment while employed at Penn State based on what the court

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described as “a series of university-sanctioned professional development meetings and comments from supervisors that addressed racial issues in sweeping, absolute terms.” 711 F. Supp. 3d 410, 415-16 (E.D. Pa. 2024). Specifically, the plaintiff alleged that (1) he was required to attend five conferences or trainings over the span of a year and a half that “ascrib[ed] negative traits to white people or white teachers without exception and as flowing inevitably from their race”; (2) a colleague commented to him that “the resistance to wearing masks” is “more likely to be led by white males”; (3) he received an email “instructing Penn State’s white employees to ‘feel terrible’”; (4) he received “multiple emails urging him to watch a video titled ‘White Teachers Are a Problem,’” and (5) when he complained about this conduct to the associate director of Penn State’s Affirmative Action Office, she told him that there was a “problem with the white race.” *Id.* at 423. The court concluded that “[t]aken together, these allegations plausibly amount to ‘pervasive’ harassment that, at least on a motion to dismiss, passes muster,” and even expressly distinguished the sufficiency of the plaintiff’s allegations case from Mr. Young’s pleading in *Young I*. *See id.*

Similarly, in *Diemert v. City of Seattle*, another case involving allegations of a hostile work environment, the plaintiff alleged that he was required to attend mandatory race and social justice training and that, at one training, the facilitators stated that “white people are like the devil” and “white people are cannibals.” 689 F. Supp. 3d 956, 960-61 (W.D. Wash. 2023). In addition to that, he alleged that he was asked by a manager, “What could a straight

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white male possibly offer our department?"; that he was told by another director-level employee that "all white people have white privilege and are racist"; and that when he reported these comments to his supervisor, "she told him he should step down and that he used his white privilege to retain the position." *Id.* at 960-61. He also alleged that his supervisor "'chest bumped' him, got in his face, and told [him] he had white privilege and racist motives." *Id.* at 961. The court denied the defendant's attempt to dismiss the claim under Rule 12(b)(6), concluding that because the plaintiff had alleged that his co-workers and supervisors "verbally and physically assaulted him because of his race" and that he was "the target of potentially offensive comments and other abusive actions, also because of his race," he had "pleaded sufficient factual allegations showing a pattern of race-based harassment of a repeated, routine, or generalized nature that affected his ability to do his job." *Id.* at 963.

Finally, in *Johnson v. Oregon ex rel. Oregon Department of Environmental Quality*, the plaintiff alleged that her employer requiring trainings that "'aggressively promoted' anti-white concepts" by incorporating "negative statements about 'whiteness' or 'white folks,'" such as "endorses[ing] the statement '[whiteness] is a death sentence.'" No. 3:24-cv-00279-JR, 2024 WL 5038803, at *1-2 (D. Or. Dec. 9, 2024). The plaintiff also alleged that her employer "rejected policies of equal employment" and "segregated employees based on race by giving non-white employees one paid hour a week to enter 'safe spaces' that were only available for non-white employees." *Id.* at *2. Beyond the training, she also alleged that her

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co-workers made comments “that white employee[s]’ accomplishments result from ‘unearned privilege,’” that “‘white voices are not worth listening to,’” and that “‘discrimination against white people is legitimate.’” *Id.* at *4. According to that plaintiff, these comments “went on over a period of years, such that ascribing negative characteristics to white people became commonplace at” her workplace. *Id.*

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

For all of these reasons, the Court agrees that Plaintiff has not stated a plausible hostile work environment claim under either Title VII or § 1981.

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For this reason, the Motion to Dismiss is **GRANTED** with respect to Counts I and II.

II. Constructive Discharge

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

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

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

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

CONCLUSION

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

- (1) Defendants’ Motion to Dismiss [Doc. 35] is **GRANTED**;

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- (2) Plaintiff's claims are **DISMISSED with prejudice** under Rule 12(b)(6);⁴
- (3) Defendants are entitled to their costs under Local Rule 54.1 and Federal Rule 54; and
- (4) The Clerk of Court is **DIRECTED to TERMINATE** the case.⁵

DATED: January 27, 2025

BY THE COURT:

/s/ Nina Y. Yang

Nina Y. Wang

United States District Judge

⁴ A dismissal with prejudice is appropriate where a complaint fails to state a claim under Rule 12(b)(6) and granting leave to amend would be futile." *Brereton v. Bountiful City Corp.*, 434 F.3d 1213, 1219 (10th Cir. 2006). Because this is Plaintiff's second attempt to state a claim under Rule 12(b)(6), and because his claims are still deficient despite the Tenth Circuit's guidance in *Young I* and despite dozens of additional allegations, the Court concludes that dismissal with prejudice is appropriate.

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

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**UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO**

JOSHUA F. YOUNG,

Plaintiff,

v.

COLORADO
DEPARTMENT OF
CORRECTIONS;
MOSES “ANDRE”
STANCIL; AND JILL
HUNSAKER RYAN,
Defendants.

No. 23-CV-1688

**FIRST AMENDED
COMPLAINT**

Plaintiff hereby files this First Amended Complaint under Fed. R. Civ. P. 15(a), the parties’ Joint Motion to Amend Order Setting Initial Case Deadlines, ECF 31, and the Court’s order granting that motion. ECF 33. A redline is attached as Exhibit 1.

Joshua Young was a rising star at the Colorado Department of Corrections. After starting as a Corrections Officer at Limon Correctional Facility in 2017, he quickly rose to the position of Housing Sergeant in 2019. In that position, Young ran a close-custody unit in one of the most challenging prisons in Colorado. In 2020, he took the position of Visiting Sergeant, where his job was to ensure the safety of both prisoners and visitors during visitation periods. His job and his safety, along with the safety of colleagues, prisoners, and guests, depended on making smart decisions and treating people equally, regardless of their race or skin color.

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Unfortunately, the Colorado Department of Corrections had different ideas. It announced that Young and his colleagues had to review official training, referred to as “Equity, Diversity, and Inclusion” training. The training insisted, among other things, that all Caucasians are racist, that they perpetuate white supremacy, that the very notion of race was invented by white people to justify the oppression of people of color, that white supremacy is an ever-present feature of daily life in the United States, and that Caucasians who deny their own racism are merely “fragile” racists who cannot accept their own prejudice. Indeed, the Colorado prison system’s forced training wanted its employees to believe and internalize these messages, to the detriment of prison safety, and to create a culture of distrust among its hard-working officers. *See* Exhibits 2-5 (Transcripts of Modules 1, 2, 3, and 4).

The result was that Young suffered discrimination in his employment, under Title VII and 42 U.S.C. § 1981, and was constructively discharged.

Statement of Related Case

Plaintiff initially brought suit in January 2022. *See Young v. Colorado Department of Corrections*, 22-cv-00145-NYW-KLM (D. Colo., Jan. 19, 2022). In that case, Young alleged hostile work environment discrimination under Title VII, and sought injunctive relief under 42 U.S.C. § 1983. That case was dismissed by Judge Nina Wang, without prejudice. *See* Order on Motion to Dismiss in *Young v. Colorado Dep’t. of Corrections*, at 26 (Feb. 3, 2023) (Exhibit 6) (“Plaintiff’s hostile work environment claim is **DISMISSED without prejudice** for failure to state a claim); *see*

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id. (“Plaintiff’s equal protection claim is **DISMISSED without prejudice** for lack of subject matter jurisdiction.”) (bold in original).

However, despite dismissing without prejudice, Judge Wang did not grant leave to amend, and immediately entered judgment, and directed the Clerk of Court to terminate the case. *Id.* at 26 (“The Clerk of the Court is **DIRECTED to TERMINATE** the case.”) (bold in original).

Young then appealed that ruling to the Tenth Circuit Court of Appeals on March 1, 2023. On March 11, 2024, the Tenth Circuit affirmed the District Court’s dismissal. *See Young v. Colorado Department of Corr.*, No. 23-1063 (10th Cir. Mar. 11, 2024) (Exhibit 7) (Young Op.). The Tenth Circuit held that “diversity” training materials may trigger hostile environment liability under Title VII. *Id.* at 2. (“To the extent diversity programs generate such animus, they are equally subject to the prohibitions of Title VII and the Fourteenth Amendment.”); *id.* at 3 (“The rhetoric of these programs sets the stage for actionable misconduct by organizations that employ them.”).

But while the EDI training materials before the Tenth Circuit—all of which and more are described in this complaint—contained “troubling” racial rhetoric, that Court held that Young had not yet pled facts to show the training created a workplace “permeated with discriminatory intimidation, ridicule, and insult[.]” Young Op., Exhibit 7, at 3 (“Although he alleges the explicitly race-based implications of the training could eventually compromise employment opportunities, workplace cohesion, and prison security, those allegations are too speculative at this

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time to meet what our case law requires.”); *id.* at 11-13.

In this amended complaint, Young fixes these issues, and includes voluminous factual allegations that address the areas identified by the Tenth Circuit. These allegations demonstrate the ongoing and pervasive nature of the hostile environment created by the EDI training, the compulsory nature of the training enforced by Young’s supervisors, and specific instances of discriminatory treatment Young experienced from his co-workers. To be clear, none of the allegations in this Complaint are inconsistent with Young’s prior allegations, and Young is prepared to testify under oath regarding each allegation. And Young’s claims, having been dismissed without prejudice, but refiled in June 2023, remain within the statute of limitations.

PARTIES

1. Plaintiff Joshua F. Young resides in Colorado Springs, in the District of Colorado.

2. Defendant Colorado Department of Corrections is the principal department of the Colorado state government that operates the state prisons.

3. Defendant Moses “Andre” Stancil is the Executive Director of the Colorado Department of Corrections. He is sued in his official capacity.

4. Defendant Jill Hunsaker Ryan is the Executive Director of the Colorado Department of Public Health & Environment, which created and/or promulgated some or all of the training materials used by the Colorado Department of Corrections. She is sued in her official capacity.

JURISDICTION AND VENUE

5. This Court has jurisdiction over this complaint under 28 U.S.C. §§ 1331 and 1343 because this case presents a substantial question of federal law, specifically whether Defendants' discriminatory training materials created a hostile work environment in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, et. seq. and 42 U.S.C. § 1981.

6. Venue is appropriate in this district under 28 U.S.C. § 1391. A substantial part of the events giving rise to this claim occurred in this district, and Defendants maintain one or more offices and employees in this district.

Facts

7. In February 2021, the Colorado Department of Corrections announced that all CDOC employees were required to take an Equity, Diversity, and Inclusion (EDI) training.

8. Young took the annual training in March 2021, soon after it was assigned. Like all other assigned training, the material from the EDI training was expected to be used every day at work.

9. The EDI training contained several computer modules, with employees like Young working through materials like those described below.

10. First, Young's EDI training began with a review of "a glossary of terms assembled by CDPHE's Health Equity Office." *See* Exhibit 8.

11. The glossary displayed the official markings of the State of Colorado and CDPHE, along with the Office of Health Equity:

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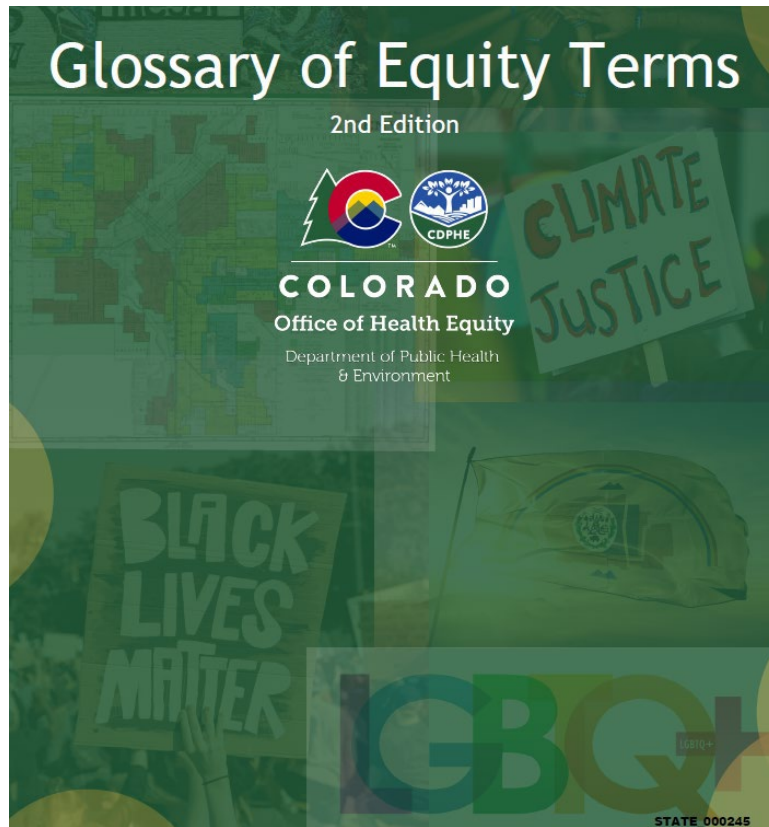


Exhibit 8, at STATE_000245.

12. The glossary was meant not just to be read as part of the mandatory EDI training, but to be implemented, by providing a “common language” for Young, his colleagues, and any others taking the EDI training:

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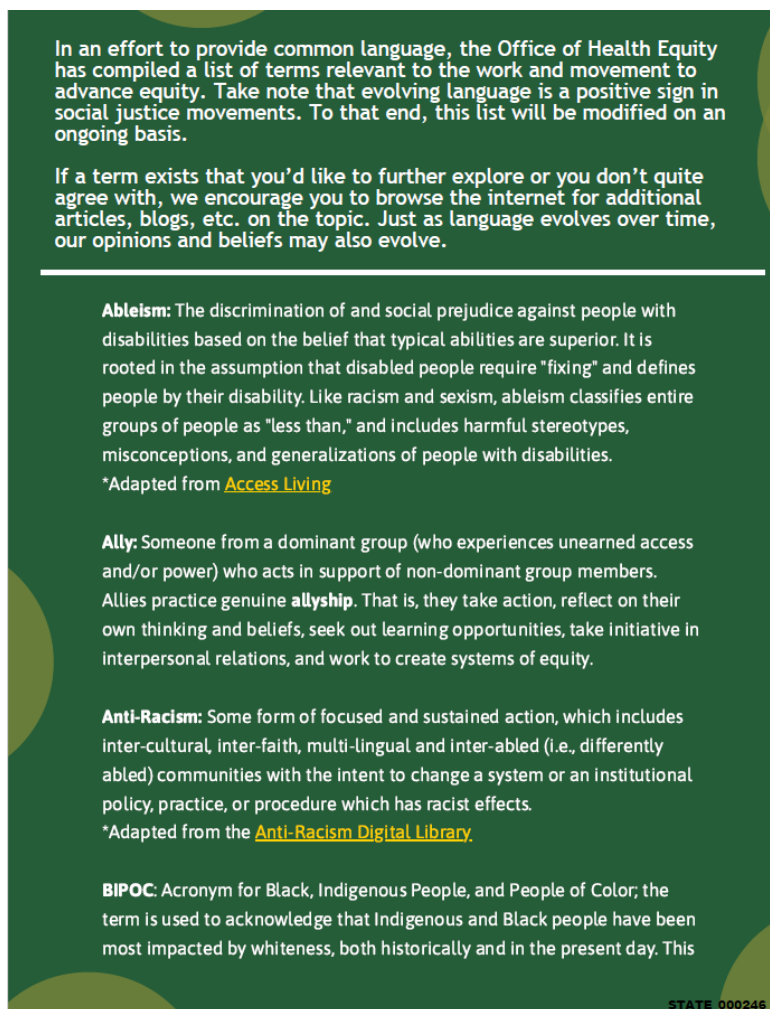


Exhibit 8, at STATE_000246.

13. The terms defined in the glossary were explicitly meant to be used and adopted by CDOC employees—beyond merely for the purposes of taking the EDI training—to further the goals of advancing “equity.” *Id.* (“Take note that evolving language is a positive sign in social justice movements.”).

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14. If employees disagreed with the contents of the glossary, it was obvious that eventual conformity was nevertheless necessary: “Just as language evolves over time, our opinions and beliefs may also evolve.” *Id.*

15. Employees were expected to apply the lessons of the training to their day-to-day work. Exhibit 9 (“How do I include EDI in my work? In this module you will explore ways to challenge and disrupt bias within your team, become familiar with EDI-specific expectations for all employees, and familiarize yourself with the resources available (both internal and external) to help support EDI policy and foster a safe, equitable workplace for all.”).

16. The glossary provided Young the meaning of certain EDI terms in grossly offensive language, targeted at Caucasian employees specifically. For instance, the definition of “BIPOC” adopted the term “whiteness” to describe how “Indigenous and Black people have been impacted most by whiteness,” and how whiteness has shaped “the experiences of and relationship to white supremacy for all people of color within a U.S. context.”

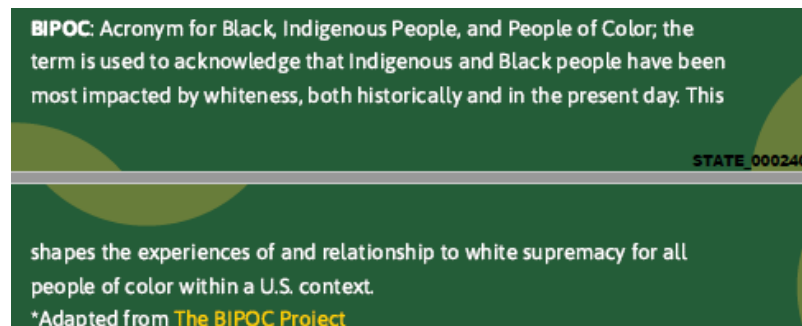


Exhibit 8, at STATE_000246-47.

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17. Defendants' state-sanctioned training therefore implied a direct relationship between "whiteness" and "white supremacy," which it contends presently affects "all people of color in the United States."

18. Similarly, the official definition of "race" for the EDI trainings similarly blamed "white people" like Young for creating the very idea of race "to justify social economic oppression of people of color by white people."

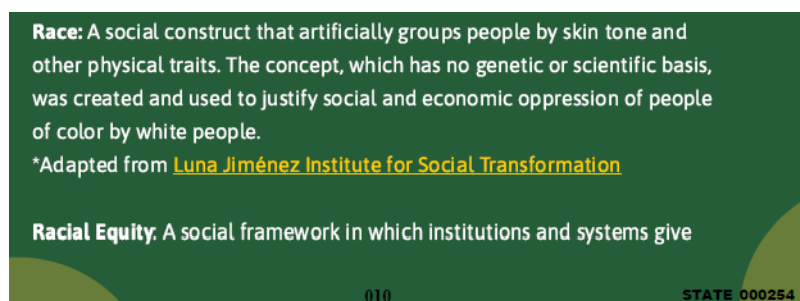


Exhibit 8, at STATE_000254.

19. In other words, every time the EDI modules or other training materials referred to race, racial discrimination, or racial diversity, takers of the training were meant to recall this initial part of the mandatory training and use the glossary's definition of "race" as their "common language." Exhibit 8, at STATE_000254 ("[T]he following definitions are to be used as background information for the training.").

20. The glossary also defined a term called "White Exceptionalism," which apprised Young of the fact that he perpetuated white supremacy solely due to his Caucasian race, regardless of his individual actions. Indeed, because Young has never actually been a white supremacist, the training apprised him that it had concluded that as a white person, Young is "more

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interested in not seeming racist than actually improving the lives of people of color.” Unless he acknowledged his part in perpetuating white supremacy, Young could never sufficiently support equity, only “fakequity.”

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

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

Exhibit 8, at STATE_000258.

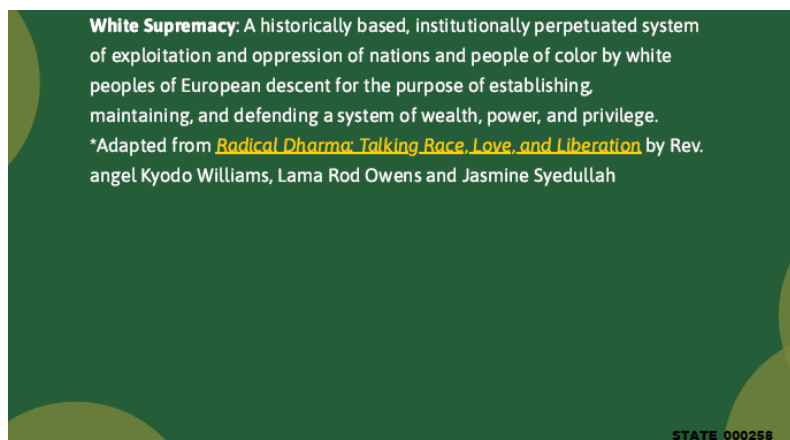
21. The EDI training also announced that when a white person like Young is confronted “by information about racial inequality and injustice,” he or she will invariably experience “[d]iscomfort and defensiveness, often triggered by fear or guilt.”

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

Id.

22. The glossary also defined the phrase “White Supremacy.” But far from describing radicals like Neo-Nazis, skinheads, or members of the Ku Klux Klan, the glossary pronounced broadly that White Supremacy is “institutionally perpetrated” by Caucasian people. Exhibit 8, at STATE_000258 (White Supremacy is an “*institutionally perpetrated* system of exploitation and oppression of nations and people of color by *white peoples of European descent* for the purpose of establishing, maintaining, and defending a system of wealth, power, and privilege.”).

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Id. (emphasis added).

23. For good measure, the training explained why the word “Black” is capitalized in the EDI training, and ought to be capitalized generally, “to convey a shared sense of history and identity among people in the African diaspora and within Africa.” It further explained why the EDI training, as well as state employees, did not and should not capitalize the word “white.” The racial groups had to be treated differently, said the EDI training, so as to avoid a “symbolic nod to white supremacy.”

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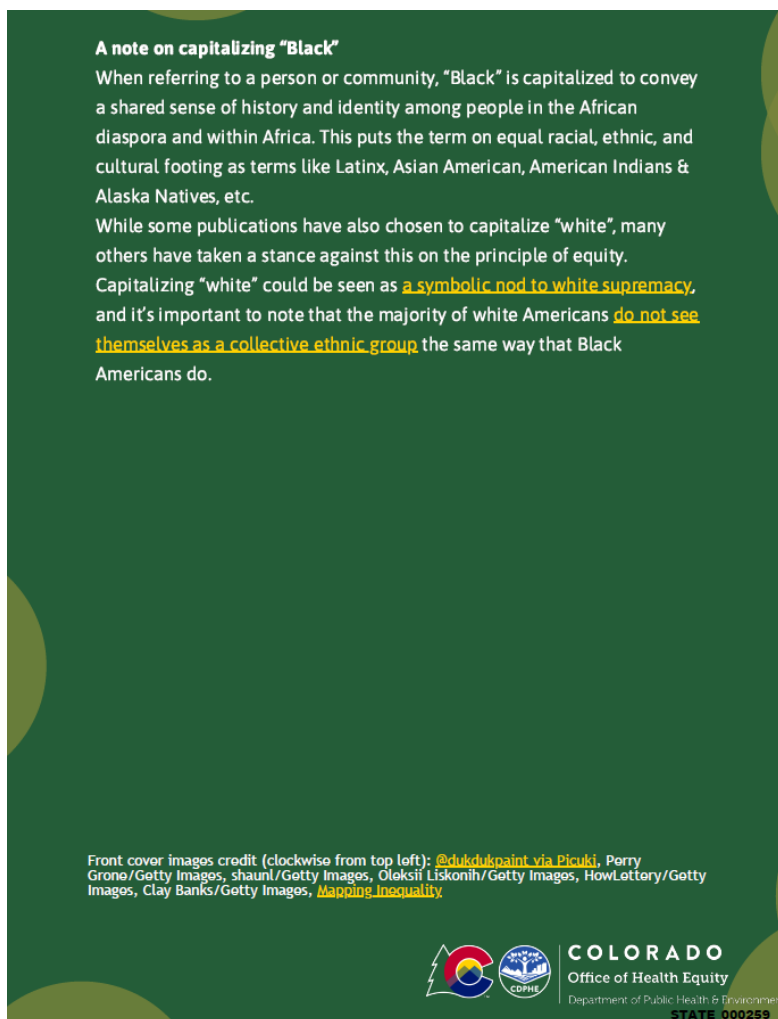


Exhibit 8, at STATE_000259.

24. The word “race” or one of its variants—defined by the glossary as invented by Caucasians to oppress non-Caucasians—was used innumerable times, throughout the EDI training. *See, e.g.*, Exhibit 2, at 5 (Module 1) (“Social factors that impact quality of life are: Identity, often racial or ethnic background.”); *id.* at 7 (“Property values were determined by race.”); *id.*

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at 12 (“[R]acial and income inequality actually hinders economic prosperity . . .”); Exhibit 4, at 3 (Module 3) (“The most well-documented inequities throughout history are based on race, and so these are the ones that we are able to highlight most often.”); *see also* Exhibit 5, at 4 (Module 4) (“Racial Equity Tool”). This is a small sub-sample of the times where the modules referred to “race.”

25. Indeed, based on the four modules that followed, Young and other employees were instructed to have *more* conversations about race in the workplace. *See, e.g.*, Exhibit 5, at 4 (Module 4) (“One theory of change requires normalizing conversations about race.”); *id.* at 6 (“The intention of this course is to bring awareness to EDI and how it can be applied to the work that you do as a state employee.”).

26. Each of these conversations were supposed to apply the EDI training’s definition of race; which, of course had been offered by the “common language” in the glossary. Exhibit 5, at 4 (Module 4) (“One theory of change requires normalizing conversations about race, making sure we have a shared understanding of commonly held definitions of implicit bias and institutional and structural racism.”).

27. The modules instructed Young and his colleagues that even the most routine of decisions, they needed to take account of race. Exhibit 5, at 4 (Module 4) (“We must also operationalize racial equity, integrating racial equity into our routine decision-making processes and development and implementation of measurable actions.”); Exhibit 5, at 6 (Module 4) (“We know we presented a lot of information in this program, but you should know that you are not alone in the journey to understand

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inequities and to make a difference through your role in state government.") (emphasis added).

28. The trainings also directed further insults at Caucasians. For instance, in Module 3, the trainings defined cultural appropriation, noting that its occurrence is based on "white" dominance. Exhibit 4, at 15 (Module 3)

Be aware of arts that appropriate culture and do not accurately portray the people from that culture. Cultural appropriation is defined as: the theft of cultural elements for one's own use, commodification, or profit—including symbols, art, language, customs, etc.—often without understanding, acknowledgment, or respect for its value in the original culture. *Results from the assumption that a dominant (i.e. white) culture's right to take other cultural elements.*

(emphasis added).

29. The language of "dominance" is reflected in other portions of the training, including one portion about "Ideological Oppression." See, e.g., Exhibit 3, at 14 (Module 2) ("Ideological oppression starts when the *dominant group* associates positive qualities with itself and negative qualities with the marginalized or the othered group.") (emphasis added).

30. The implication from describing Caucasians as the dominant group is that Caucasians like Young, alone, are responsible for ideological oppression of "marginalized" and "othered" groups.

31. Young and his colleagues were instructed that his conformity with EDI would be "measured," and that he would be held "accountable" for this vision of racial equity. Exhibit 5, at 4 (Module 4)

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(“Operationalizing a vision for racial equity means implementation of new tools for decision-making, measurement, and accountability.”)

32. Young and other employees were instructed that the training was just the very beginning of a racial equity agenda. The true goal was full “transformation of government to advance racial equity.” Exhibit 5, at 5 (Module 4).

33. To follow the training, Young would also have to personally “organize to achieve racial equity.” Exhibit 5, at 5 (Module 4).

34. Young also reviewed the “Bystander Intervention” process, as part of the training. That intervention process specifically called for Young to evaluate his colleagues’ status in terms of being of “lower power,” based on race and sex metrics. See Exhibit 5, at 3 (Module 4) (“Bystander Intervention: This is the act of stepping in and intervening in the moment when *a person of lower power and/or status* is interrupted, talked over, disregarded, or ignored.”) (emphasis added).

35. The Bystander Intervention process also suggested to Young and his colleagues that they need not engage in any intervention if a Caucasian person was interrupted by a non-Caucasian person, given their status and power.

36. Young and his colleagues were instructed that they ought to affirm other people’s competence through “micro-affirmations,” depending on how much “privilege” an individual had. Exhibit 5, at 4 (Module 4) (“[Micro-affirmations] serve to acknowledge those who don’t enjoy the same privilege as all of their counterparts.”). Given the context, the notion of “privilege” was tied to one’s race.

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37. Young and other employees were instructed to let women and non-Caucasians speak first in group settings. Exhibit 5, at 4 (Module 4) (“Typically, women and people of color aren’t given as much opportunity to contribute. To challenge this, invite women and members of historically marginalized groups to speak first.”); *see id.* at 4 (“It’s helpful to share these strategies out loud at the beginning of meetings to serve as guidelines and equip your staff to be more equitable and inclusive.”).

38. Young and other employees were instructed in the modules that reminders of these instructions needed to be spoken out loud at the beginning of meetings.

39. Employees, including Young and his colleagues, were worried about casual workplace conversation, and whether certain topics might introduce dangerous risks to their employment.

40. Young and other employees were instructed that they might even be subjected to training and guidance that would affect their sub-conscious thoughts. *See* Exhibit 4, at 3 (Module 3) (“SLIDE: The state should provide training and guidance to work against an individual’s unconscious biases which are reinforced by daily messages—both subtly and overtly—and influence how we perform our work serving the community, as well as guidance for fostering equity, diversity, and inclusion in all state agencies.”).

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■ EDI Module 3: What are EDI Strategies?

Universal Policy: Addressing Bias

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

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

Exhibit 4, at 16 (Module 3).

41. Young was expected to “immediately implement” these strategies “during meetings,” and to have his supervisors implement them even before such meetings began. Exhibit 4, at 5 (Module 4); *see id.* at 5 (“The key is to go over each strategy with your team, prior to meetings, until they become a habit.”).

42. Another part of Young’s mandatory EDI training was reviewing and understanding the “Equity Continuum,” which unambiguously promoted the value of state employees treating their colleagues differently based on their race. In the bottom right corner of the Equity Continuum, it states: “Success is often defined by treating groups/people differently based on historic injustices and present-day barriers so everyone has the opportunity to thrive.”

43. The implication of the Equity Continuum was that individuals within Young’s workplace—including colleagues, prisoners, and himself—would need to be treated differently, according to race, in order to achieve success.

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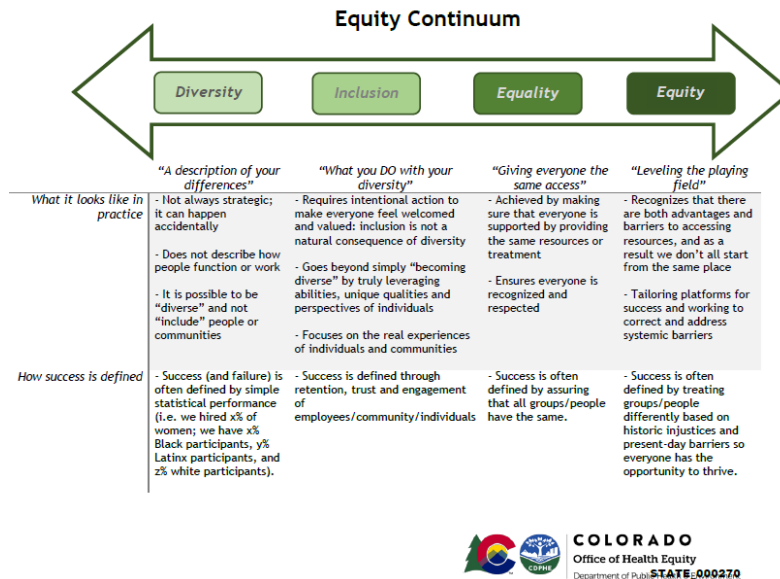


Exhibit 10, at STATE_000270.

44. Even more EDI materials were presented as "Other Tools & Resources."

Other Tools & Resources

More EDI videos

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

Books about Race and Marginalized Identities

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

Exhibit 11.

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45. Young and his colleagues were strongly discouraged by the Department of Corrections to stop at merely reviewing and understanding the initial materials, and emphatically encouraged to review the other tools and resources. *See* Exhibit 5, at 2 (Module 4) (“There is a list of Tools & Resources for you to continue your journey); *Id.* at 6 (“*[W]e want you to explore innovative ideas . . .* There are no simple answers or silver bullets and often times using an equity lens in *our work* is more about expanding our awareness about others and asking more questions to challenge assumptions rather than having all the answers. *There are tools and resources listed on this slide and the next to help you do just that.*”) (emphases added).

46. The EDI trainings imparted on Young and his colleagues the idea that they ought to be inspired to view more and more materials, or they would never advance to new heights or sufficiently satisfy their employer. Exhibit 5, at 5 (Module 4) (“Has this training inspired you? Made you curious to learn more?”); *id.* (“Just like working out, one must continue to stay fit by deepening their awareness and advancing to new heights.”) (referring to the other tools and resources) (emphasis added).

47. Young also reviewed the other tools and resources because the initial trainings seemed to be incomplete, in the sense that they lacked explanation for why Young ought to adopt its instructions.

48. Where a tool or resource was not endorsed by the State of Colorado, the training mentioned as much. *Compare, e.g.,* Exhibit 2, at 3 (Module 1) (“After the video, there will be suggestions for other videos to watch that may or may not be related to the topic.

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These are not endorsed by the State of Colorado, though they may help you to continue your EDI learning journey.” (emphasis added); Exhibit 3, at 3 (Module 2); Exhibit 4, at 3 (Module 3) (same).

49. To be clear, while the official EDI computer module training did not require that these materials be read and absorbed in order to comply with the minimum obligations of the training, they were never labeled “optional.”

50. Young had advanced quickly through the ranks of CDOC precisely because he took seriously suggestions from his employer about tools and resources for his success.

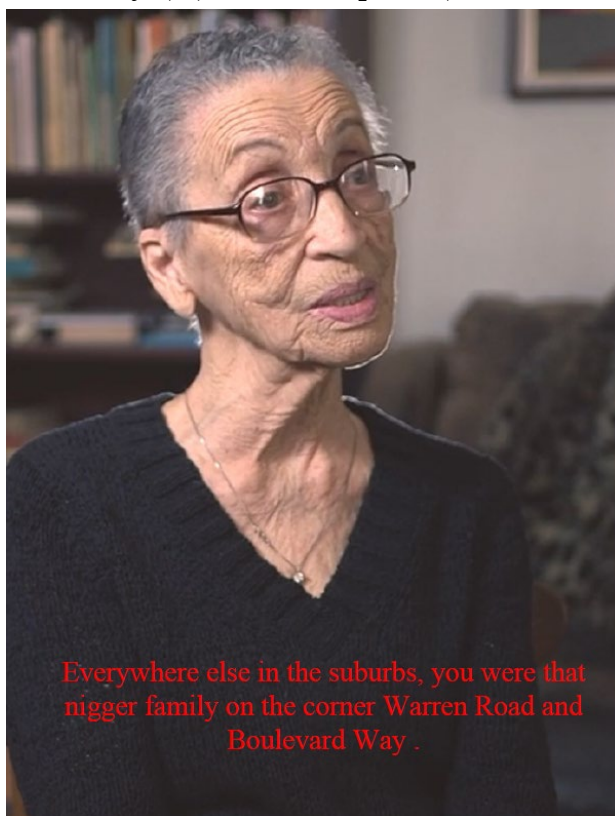
51. Notably, the fact that these materials were described as “other” tools and resources demonstrates that all of the materials—regardless of whether the computer module would technically be satisfied without reading them—were cast into the same category: “tools and resources” for employees to be trained on EDI.

52. These training materials were racially discriminatory and motivated by invidious racial stereotypes. The materials classified individuals by race, treated individuals differently based on race, and instructed employees to treat each other differently based on race. The materials also demeaned and stigmatized Young and similarly situated individuals based on race and skin color. The use of racial stereotypes and negative characterizations in the training materials contributed to a severe and pervasive hostile work environment.

53. These materials, too, were part and parcel of a racially hostile work environment.

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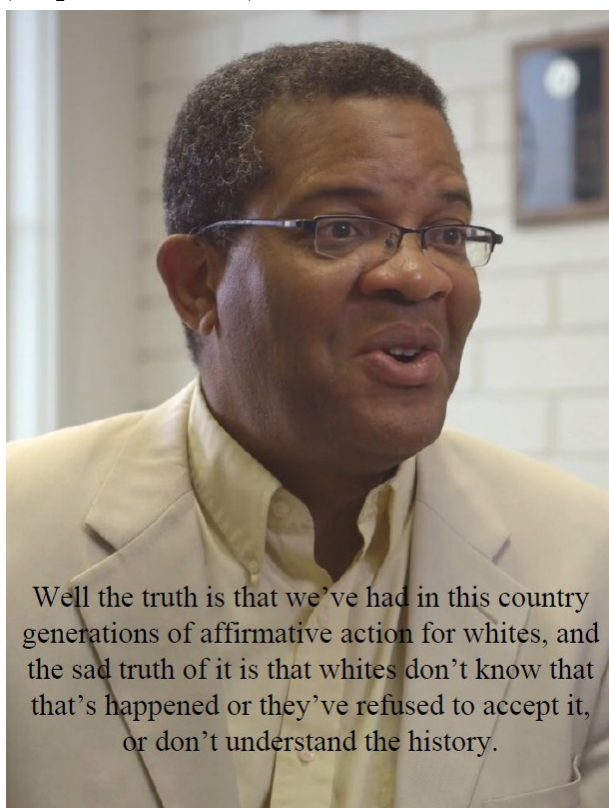
54. In a video Young watched entitled *Redlined, A Legacy of Housing Discrimination*, for instance, one of the interviewees uses the full N-word, placing it in the voice of all individuals other than African-Americans, including Caucasians like Young.¹ (“The concept of a middle-class black only exists in the mind of a middle class black. Everywhere else in the suburbs, you were that nigger family on the corner Warren Road and Boulevard Way.”) (Time stamp 3:10).



¹ A link to the video is here: <https://siliconvalleyathome.org/redlining-new-video-from-the-200/>

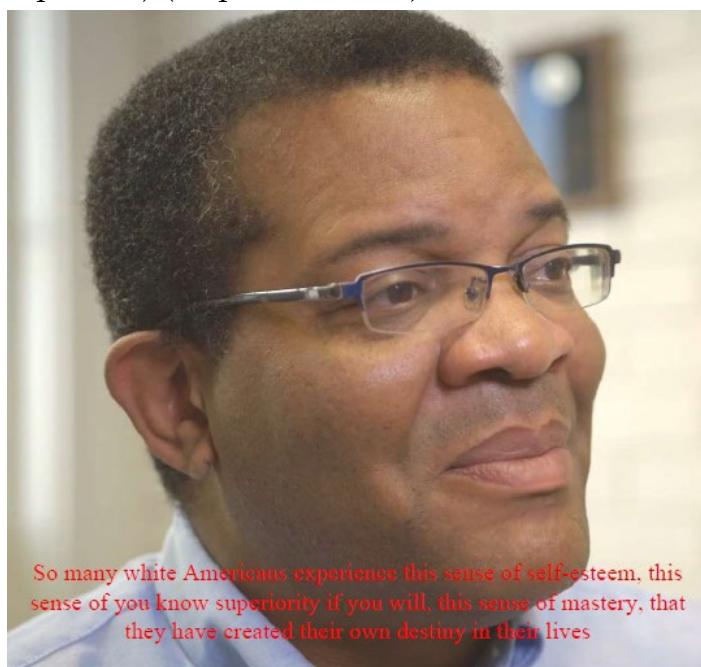
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55. The same video describes all white individuals as having a misunderstanding regarding their purported success. The video asserts that successful Caucasians think that their accomplishments are based on merit, when in fact racism is responsible for their accomplishments. *Id.* (“Well the truth is that we’ve had in this country generations of affirmative action for whites, and the sad truth of it is that *whites don’t know that that’s happened or they’ve refused to accept it*, or don’t understand the history. What that leads to is this false kind of narrative [for whites] that ‘I did it myself,’ you know this Horatio Alger, individual responsibility, narrative.”) (Time stamp 3:30) (emphasis added).



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56. The video echoes this theme again and again, insisting that Caucasians have a feeling of superiority because of their racism against African-Americans, Latinos, and Native Americans. *Id.* (“So many white Americans experience this sense of self-esteem, this sense of you know superiority if you will, this sense of mastery, that they have created their own destiny in their lives, and they have no acknowledgment of this invisible hand that supported them throughout their lives, and not just them, but there’s a legacy of that invisible hand across generations, that has translated itself from the original affirmative action to trillions of dollars of ‘head start’ ahead of other communities like African-Americans, Latinos, Native Americans, others, who don’t have the same benefit.”) (Time stamp 10:37) (emphasis added).



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57. In another training video Young watched, also under the “Other Tools & Resources” category, called Intersectionality 101, animated Claymation figures are used to describe how racial groups have different characteristics, which in turn mean that members of specific racial groups have different qualities or personality attributes.

58. A Caucasian woman named Gretta is contrasted with two other individuals—Jerry and Fatima—as the video literally separates them by a physical divider, and states “Gretta, on the other hand, can ignore intersectionality if she wants to—another form of privilege.”



See Exhibit 12.

59. Young also reviewed the official website for Colorado’s Office of Health Equity, which the EDI training pointed to for additional links. That website contained links to materials referring to “white norms,” “white talk,” and further references to “white fragility.”

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How do I acknowledge that I have not experienced racism or *have* benefited from privilege, power? It's as simple as acknowledging that your skin tone, education, role/status, etc. grants you opportunity, power, or [privilege](#) that others do not experience. Acknowledge that [white norms](#) in our communities and workplaces that can leave others feeling left out.

Exhibit 13; *see id.* at 3 (“Expect defensiveness; Consider the idea of *white fragility* and how it might be influencing or thwarting the interaction.”) (emphasis added).

60. “White Talk” is purportedly speech used by Caucasian individuals to defend themselves from accusations of racism in workplace conversations about race. Exhibit 14 at 5 (“When a heated dialogue occurs on race, the conversation between diverse participants is typically on the content level, but the true dialogue is taking place on a less visible level (*White talk* vs. back talk). Common statements (content level) when *White talk* occurs: “My family didn’t own slaves! I had nothing to do with the incarceration of Japanese Americans.”) (emphasis added).

61. Young did not review all of the “other tools and resources” materials. For instance, although Young did not read “How to be an Anti-racist,” Young knew in broad terms that it expressly advocated racial discrimination, and that the training was impliedly advocating discrimination against Caucasians.

62. Similarly, although Young did not read the book “White Fragility,” Young knew in broad terms that the book described Caucasians as inherently defensive about accusations surrounding race.

63. Although Young did not review “So you want to Talk About Race,” the title of the book echoed the definition of race offered in the glossary: a concept

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created and used to justify social economic oppression of people of color by white people like Young.

64. These materials demeaned and stigmatized Plaintiff, along with all other similarly situated individuals, based on race and skin color.

65. Young expected and knew that EDI training would recur annually, as with their other training. Further, Young expected that Defendants would continue to promote materials that described him in negative terms, as a Caucasian person. To the extent that the same or similar materials are used by Defendants, and to the extent that Young is reinstated, the materials will continue to injure him and contribute to an ongoing hostile work environment.

66. Young also expected that the modules on “EDI” would stay roughly the same, from year to year, in the sense that they would include materials that made sweeping generalizations about him, his race, and his attributes and behavior as a Caucasian person.

67. Young expected that Defendants would continue to promote materials that described him in negative terms, as a Caucasian person.

Effect on the Workplace

68. Young was aware that his colleagues were taking the EDI trainings around the time that he took the trainings.

69. Young suffered personal stress based on the fact that he knew his colleagues were taking the same EDI trainings, and reviewing both the modules and potentially the other tools and resources which made negative, offensive generalizations about Caucasians like Young.

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70. Young suffered personal stress based on the fact that his supervisors and even their supervisors—essentially the highest officials in the Department of Corrections—were insisting that he review, believe, and live by these trainings, and that his colleagues do the same. Young Op., Exhibit 7, at 17 (“Certainly, Mr. Young is correct that the harassment the plaintiff in *Henry* faced constituted official acts of the company and thus was relevant to the court’s analysis.”) (emphasis added).

71. The trainings came up in conversations among Young’s colleagues at work. Young, and, upon information and belief, Young’s colleagues, understood that they were obligated to take the training and adhere to it, regardless of any personal resistance.

72. Young knew that adherence to training was strict. Employees within the Department of Corrections are expected to live up to their training. Training in the prison context was meant to be taken seriously, and applied. Young was aware that training was expected to be learned, believed, internalized, and applied every single day on the job.

73. Many of Young’s trainings were computer-based. His duty to review these trainings was absolute, and no less meaningful merely because it was taken on a computer. Young’s supervisors repeatedly emphasized the importance of faithfully taking trainings and abiding by those various trainings. Employees were expected to consistently act on their training.

74. Young was accustomed to following the rules and the trainings within the prison. Sometimes this involved reading prison policies; other training

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involved computer-based modules. Whether about the use of force, accommodating visiting prisoners' disabilities, or contraband and apparel policies for visitors, Young faithfully took trainings and applied them.

75. The idea that Young or his colleagues could simply dismiss the training and avoid ongoing duties to apply its principles was absurd to Young. *See also* Exhibit 4, at 15-16 (Module 3) ("Further, the policies set an expectation for all employees that you recognize your bias and strive to remove any influence of bias on your work for the state and your relationships with your colleagues."). The racially discriminatory classifications, stereotypes, and instructions contained in the training materials were expected to be applied in the workplace, creating a severe and pervasive hostile work environment.

76. Young felt isolated at the workplace, knowing that talking to colleagues or objecting to the training would potentially lead to discipline.

77. Young was concerned that even expressing skepticism of the validity of the training would cause him to be accused of racism.

78. Young experienced significant stress surrounding whether his colleagues believed the training to be true, and were applying the training as they interacted with him in the prison setting. Indeed, the trainings themselves contemplated that conversations in the workplace would be uncomfortable. Exhibit 5, at 9 (Module 4) ("You'll be held to the expectations outlined in this policy."); *id.* at 9 ("Engage in and support respectful dialogue and courageous conversations (even when uncomfortable)

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about racism, privilege, dominant culture, oppression, and historical trauma.”).

79. Young’s prison setting even before the trainings was already highly racially charged. On one occasion, a prisoner, an inmate who Young knew to be the leader of a gang, exclaimed “So I hear you’re a racist.” Young was also subjected to regular insults by prisoners, including accusations related to his race. He expected these to escalate significantly as the training achieved its purposes.

80. Upon information and belief, Young thought that prisoners would also be able to access the EDI training. Such exposure created inherent danger in his position, and completely destroyed his purpose for being employed in the prison setting in the first place.

81. Upon information and belief, Young thought that the general public, including visitors to the prison, would be able to access the EDI training. (This is consistent with many CDHPE materials, including the glossary, being available online).

82. The racially discriminatory nature of the training materials, which classified individuals by race, treated individuals differently based on race, and instructed employees to treat each other differently based on race, directly contributed to a culture of suspicion and distrust in the Department of Corrections.

83. The trainings created a dangerous atmosphere where a failure to adhere to racism and race-based differential treatment could itself result in accusations of racism, or discipline for failing to abide by the training.

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84. The trainings added particular stress and challenges when visitors came to the prison. If guards had even a slight suspicion that a visitor was carrying contraband, they had to check them thoroughly. Visitors would often claim they were being searched due to their race and would frequently write complaints. The race-focused ideas from the training made it constantly feel like Young might be written up, with his superiors more likely to credit the complaints due to the EDI concepts. This made it significantly harder for Young to do his assigned job.

85. Young sensed that some of his colleagues viewed him as a racist due to his status as a Caucasian individual. He also considered some of his colleagues to be especially agreeable with respect to the training, and to use the training as leverage to promote racially discriminatory beliefs in the workplace, by challenging others who made innocent comments. *See Exhibit 5, at 6 (Module 4)* (“[U]sing an equity lens in our work is more about expanding our awareness about others and asking more questions to challenge assumptions rather than having all the answers.”).

86. Young especially felt harassment based on the idea that the training would force him to treat others differently based on their race, which was contrary to his core personal and ethical beliefs. Young felt that his continued employment would force him to become an accessory to violating his principles and the Constitution. For example, in one incident, a lieutenant and sergeant were involved in disciplining a correctional officer who claimed that his discipline was motivated by race. The officer was reinstated,

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lending credence to the idea that the training content could absolutely influence personnel decisions.

87. The trainings made Young hesitant to use force with prisoners even in situations where it was justified. In the last several months of his employment, there were several instances where he needed to use force, but the race-based implications of the training made him second-guess his actions, leading to an unsafe working environment.

88. The trainings caused Young to feel like the State of Colorado was working against him, against prison safety, and against his well-being. James Gillis, a case manager who worked with Young at the prison and was responsible for ensuring prisoners were prepared for release, also expressed concerns about the negative impact of the training on the prison. As Young was leaving his job, Gillis confided in him that he too thought that the training was problematic, and had affected him as well.

89. Young's knowledge that his colleagues were being instructed in the same manner with the same trainings exacerbated his stress in his workplace, and made him think that he had no choice but to resign his position.

90. Young felt a personal responsibility to work with prisoners to become better people, to be civil, and to avoid considering other prisoners as enemies due to their race or skin color. The trainings fundamentally undermined Young's sense of purpose within the Department of Corrections. They caused him to lose confidence that he could succeed in his core personal mission. He also lacked confidence that his employer would support him against frequent, baseless accusations of racism by prisoners and their visitors.

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This took away a significant part of his motivation to come to work and try to help rehabilitate inmates.

91. The trainings—officially endorsed by the Department of Corrections—shook Young’s belief that the prison system wanted to rehabilitate prisoners and to treat their fellow prisoners as equals regardless of race.

92. Young’s motivation to work in the prison system was based on his belief that the prisoners could be helped. The trainings destroyed his ability to keep going and stay employed in a difficult work environment.

93. Young and other employees were instructed that they had to comply with the EDI training as a condition of their ongoing employment. *See, e.g.*, Exhibit 2, at 13 (Module 1) (“As employees of the State of Colorado, it’s good to remember we are here because we’ve made a commitment to serve our community.”).

94. Those in management positions were required to enforce the discriminatory behaviors described in the trainings. Young knew that disregarding or disobeying official training would not lead to his promotion. This destroyed Young’s desire to seek promotions, as he did not want to be put in a position where he would have to enforce the concepts from the trainings. Young expressed his distress about the situation to his wife, other correctional officers, and James Gillis.

95. The idea that the problematic EDI training was a one-time event is nonsensical, as all trainings at the Department of Corrections occurred annually. If employees refused to participate in the trainings, they would be written up. Moreover, the trainings were factored into quarterly performance reviews, which

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were used to determine promotions. Young was assured that the EDI training and how he incorporated its principles would be part of his performance review. Performance was graded on a 1-3 scale, and the training was expected to be reflected in communications with inmates and staff. This meant that every race-based concept from the training would eventually be factored into his evaluations, adding stress to everything he did. Young knew that many of his colleagues wanted bright futures with CDOC, and thus incorporated the training into their lives.

96. The training affected the prison setting. Indeed, that was its point. Defendants themselves have admitted that the EDI training was intended to “eradicate” race discrimination, “curtail all forms of discrimination,” and “advance equity.” *See* Brief for Appellees at 3-4, 39, *Young v. Colorado Dep’t of Corr.*, 94 F.4th 1242, (10th Cir. Jun. 14, 2023), No. 23-1063. (Exhibit 15). The idea that the training wasn’t meant to actually change the workplace—both with colleagues and prisoners alike—or that employees could simply take the training, disagree with it, and move on, is wildly inconsistent with the record. *See, e.g.*, Exhibit 8, STATE_000250-51 (“[Equity] requires eliminating barriers like poverty and repairing injustices in systems such as education, health, criminal justice, and transportation.”) (emphasis added).

97. The Tenth Circuit has recognized that the “racial subject matter and ideological messaging in the [EDI] training is troubling on many levels” and “sets the stage for actionable misconduct by organizations that employ them.” *Young Op.*,

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Exhibit 7, at 3. The court further noted that “race-based training programs can create hostile workplaces when official policy is combined with ongoing stereotyping and explicit or implicit expectations of discriminatory treatment.” *Id.*

98. While Defendants have asserted that the EDI training was aimed at eradicating discrimination, the extremely biased and inflammatory content of the training materials and the resulting hostile environment for white employees like Young belie any purportedly benign motive. The Tenth Circuit has already recognized that this type of race-based training can “promote racial discrimination and stereotypes within the workplace” and “encourage racial preferences in hiring, firing, and promotion decisions.” Young Op., Exhibit 7, at 14.

99. Defendants’ contention that the EDI training had a non-discriminatory intent of advancing equity does not negate the racially discriminatory impact of the training on Young and other white employees. As the Tenth Circuit observed and endorsed, when employers talk about race “with a constant drumbeat of essentialist, deterministic, and negative language, they risk liability under federal law,” regardless of the proffered non-discriminatory justification. *Id.* at 21 n.4.

100. Any objective person would experience a hostile work environment based on the fact alleged above. Young Op., Exhibit 7, at 14 (“If not already at the destination, this type of racebased rhetoric is well on the way to arriving at objectively and subjectively harassing messaging.”).

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Internal Complaint and Resignation

101. Young complained to his workplace, filing an internal complaint document.

102. Rather than work with Young to resolve his concerns or find any middle ground, the Department of Corrections fully denied Young's internal complaint, dismissing the idea that the training posed any discrimination concerns.

103. On July 6, 2021, Young was informed that his complaint would not even be investigated by the Office of the Inspector General. *See* Exhibit 16 ("Your report did not establish reasonable cause to indicate the presence of discrimination [or] discriminatory harassment.").

104. Notably, the denial letter addressed to Young does not distinguish between computer-module based training and videos like Redlining or Intersectionality 101. It refers to all of the training as a whole, as "required."

105. Young agonized over the decision to leave for quite a while, as he couldn't see himself having to teach and enforce the discriminatory rules and concepts imposed by the trainings.

106. Two days later, apprised of the fact that his employer was formally refusing to address the hostile work environment, Young gave notice of his resignation from the Department of Corrections.

107. Young timely filed a complaint with the Equal Opportunity Commission on July 13, 2021. *See* Exhibit 17.

108. Young's last day of employment July 22, 2021.

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109. Young subsequently supplemented his complaint at the request of the EEOC on July 26, 2021. *See* Exhibit 18.

110. On November 19, 2021, the U.S. Department of Justice, Civil Rights Division, issued a letter informing Young of his right to institute a civil action pursuant to Title VII of the Civil Rights Act of 1964. *See* Exhibit 19 (Right to Sue Letter).

111. Title VII generally prohibits employers, especially state actors, from asking others to engage in race discrimination. *See Ricci v. DeStefano*, 557 U.S. 557, 594 (2009) (Scalia, J., concurring) (“[I]f the Federal Government is prohibited from discriminating on the basis of race, . . . then surely it is also prohibited from enacting laws mandating that third parties—e.g., employers, whether private, State, or municipal—discriminate on the basis of race.”).

112. While employed at the Department of Corrections, Plaintiff was instructed to treat his colleagues differently based on their race and/or sex. Exhibit 5, at 4 (Module 4) (“Typically, women and people of color aren’t given as much opportunity to contribute. To challenge this, invite women and members of historically marginalized groups to speak first.”); *see id.* at 4 (“It’s helpful to share these strategies out loud at the beginning of meetings to serve as guidelines and equip your staff to be more equitable and inclusive.”).

CAUSES OF ACTION

FIRST CLAIM FOR RELIEF

**(Against Defendant Colorado Department of
Corrections)**

(Title VII of the Civil Rights Act of 1964 – 42 U.S.C.
§ 2000e-2(a)(1))

(Employment Discrimination – Hostile Work
Environment)

113. Plaintiff realleges and incorporates by reference the allegations set forth above as if fully set forth herein.

114. Title VII precludes employers from engaging in race discrimination, including by holding employers liable for a hostile work environment based on race.

115. During the relevant period, Young was employed by the Defendant, the Colorado Department of Corrections.

116. Young is a member of one of the classes protected by Title VII because he is a Caucasian individual.

117. No employer would dare include in their official corporate training materials the same insulting and humiliating statements about other races besides Caucasians.

118. The racially discriminatory training materials promulgated by Defendants and imposed on the workplace—along with CDOC’s refusal to address Young’s complaint—created severe racial discrimination against Young, based on his race.

119. The racially discriminatory training materials promulgated by Defendants and imposed on the

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workplace—along with CDOC’s refusal to address Young’s complaint—created pervasive racial discrimination against Young, based on his race.

120. When Young complained of the use of racially discriminatory training materials, Defendant dismissed his concerns and his complaint.

121. Defendants knew of the harassing nature of the training materials—Defendants created and implemented the materials, and Young directly objected to their use—yet did nothing to cure the issue.

122. Based on the facts detailed above, Young’s workplace was permeated with discrimination, intimidation, ridicule, and insult.

123. The racially discriminatory training materials promulgated by Defendants and imposed on the workplace—along with CDOC’s refusal to address Young’s complaint—created an abusive working environment, based on race.

124. The racially discriminatory training materials promulgated by Defendants and imposed on the workplace—along with CDOC’s refusal to address Young’s complaint—altered the terms, conditions, and privileges of Young’s employment.

125. At all times, the racially discriminatory conduct engaged in by Young’s employer was unwelcome.

126. The racially discriminatory conduct engaged in by Young’s employer unreasonably interfered with his work performance.

127. The racially discriminatory training materials promulgated by Defendants and imposed on the workplace—along with CDOC’s refusal to address

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Young's complaint—caused Young to perceive the workplace as abusive and hostile, and it was abusive and hostile objectively.

128. Any reasonable person in Young's place would experience a hostile work environment based on race.

129. Young was harassed and intimidated to the point that he no longer felt comfortable working for the Department of Corrections, and ultimately resigned.

130. Young alleges and establishes that the workplace was abusive and hostile based on direct evidence, as opposed to indirect evidence.

131. Based on all of the circumstances, Young suffered a hostile work environment.

SECOND CLAIM FOR RELIEF

**(Against Defendants Moses "Andre" Stancil and
Jill Hunsaker Ryan)**

(42 U.S.C. § 1981)

(Employment Discrimination – Hostile Work
Environment)

132. Plaintiff realleges and incorporates by reference the allegations set forth above as if fully set forth herein.

133. Section 1981 protects employees from private race discrimination in the employment context. ("All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens.").

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134. “The same substantive standards apply to a hostile work environment claim regardless of whether the plaintiff has brought it under § 1981 or Title VII.” *Lounds v. Lincare, Inc.*, 812 F.3d 1208, 1221 (10th Cir. 2015).

135. Young is a member of one of the classes protected by Section 1981 because he is a Caucasian individual.

136. No employer would dare include in their official corporate training materials the same insulting and humiliating statements about other races besides Caucasians.

137. The racially discriminatory training materials promulgated by Defendants and imposed on the workplace—along with CDOC’s refusal to address Young’s complaint—created severe racial discrimination against Young, based on his race.

138. The racially discriminatory training materials promulgated by Defendants and imposed on the workplace—along with CDOC’s refusal to address Young’s complaint—created pervasive racial discrimination against Young, based on his race.

139. Based on the facts detailed above, Young’s workplace was permeated with discrimination, intimidation, ridicule, and insult.

140. The racially discriminatory training materials promulgated by Defendants and imposed on the workplace—along with CDOC’s refusal to address Young’s complaint—created an abused working environment, based on race.

141. The racially discriminatory training materials promulgated by Defendants and imposed on the workplace—along with CDOC’s refusal to address

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Young's complaint—altered the terms, conditions, and privileges of Young's employment.

142. When Young complained of the use of racially discriminatory training materials, Defendant dismissed his concerns and his complaint.

143. Defendants knew of the harassing nature of the training materials—Defendant created and implemented the materials, and Young directly objected to their use—yet did nothing to cure the issue.

144. At all times, the racially discriminatory conduct engaged in by Young's employer was unwelcome.

145. The racially discriminatory conduct engaged in by Young's employer unreasonably interfered with his work performance in the racially charged environment of a prison setting.

146. The racially discriminatory training materials promulgated by Defendants and imposed on the workplace—along with CDOC's refusal to address Young's complaint—caused Young to perceive the workplace as abusive and hostile, and it was abusive and hostile objectively.

147. Any reasonable person in Young's place would experience a hostile work environment based on race.

148. Young was harassed and intimidated to the point that he no longer felt comfortable working for the Department of Corrections, and ultimately resigned.

149. Based on all of the circumstances, Young suffered a hostile work environment.

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THIRD CLAIM FOR RELIEF

(Against All Defendants)

(Employment Discrimination -- Constructive Discharge)

150. Plaintiff realleges and incorporates by reference the allegations set forth above as if fully set forth herein.

151. The racially discriminatory training materials promulgated by Defendants and imposed on the workplace—along with CDOC’s refusal to address Young’s complaint—were illegal.

152. The training materials promulgated by Defendants and imposed on the workplace—along with CDOC’s refusal to address Young’s complaint—were racially discriminatory.

153. The racially discriminatory training materials promulgated by Defendants and imposed on the workplace made Young’s working conditions so difficult that a reasonable person in the employee’s position would feel compelled to resign.

154. The conditions of Young’s employment were objectively intolerable.

155. The racially discriminatory training materials promulgated by Defendants and imposed on the workplace made Young’s job so unattractive and unpleasant as to constructively terminate him from his employment.

156. Based on the facts detailed about, Young’s workplace was permeated with discrimination, intimidation, ridicule, and insult, causing Young to resign.

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157. The racially discriminatory training materials promulgated by Defendants and imposed on the workplace—along with CDOC’s refusal to address Young’s complaint—created an abused working environment, based on race.

158. Young felt that his continued employment would force him to become an accessory to violating his principles and the Constitution. *Cf. Johnson v. California*, 543 U.S. 499 (2005) (applying a heightened standard of review to racial classifications, even in prisons).

159. Young in fact resigned.

160. Under the circumstances, Young had no choice but to resign.

161. To the extent required by law, Young referred to the principles of constructive discharge in his EEOC charge. Exhibit 17. Young explicitly stated that the discrimination against him was “ongoing,” and told the EEOC that “the Charging Party is resigning from his position.” In the narrative of the complaint, Young reiterated the causal relationship between the discrimination and his resignation. [*Id.* at 4 (“The effects on Young have been so severe and pervasive that they altered the terms of his working conditions, and constitute one reason that he is resigning from his position.”); *id.* at 4 (“His employer’s refusal to remedy the situation is partly why he is leaving his position.”).].

RELIEF REQUESTED

Plaintiff respectfully requests that this Court:

162. Find liability against Defendant Colorado Department of Corrections for a violation of Title VII, 42 U.S.C. § 2000e-2(a)(1).

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163. Find liability against Defendant Colorado Department of Corrections for a violation of 42 U.S.C. § 1981.

- A. Enter a declaratory judgment that Defendants violated 42 U.S.C. § 2000e-2(a)(1) by directly creating, and failing to cure, a racially discriminatory hostile work environment;
- B. Enter a declaratory judgment that the Department of Correction's use of racially discriminatory training materials violates Title VII of the Civil Rights Act of 1964;
- C. Enter an order permanently enjoining Defendants from continuing to utilize racially discriminatory materials in its mandatory trainings;
- D. Award Plaintiff backpay, front pay, and emotional distress damages;
- E. Award Plaintiff such costs and attorney fees as allowed by law, including under 42 U.S.C. § 1988; and
- F. Grant Plaintiff such other and further relief as the Court deems appropriate.

JURY DEMAND

Plaintiff requests a trial by jury on all issues and claims so triable.

DATED this 3rd day of June, 2024.

Respectfully submitted,

/s/ William E. Trachman

William E. Trachman, CO Bar #45684

Grady J. Block, CO Bar #55085

Mountain States Legal Foundation

* * *

Attorneys for Plaintiff Joshua F. Young

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FILED

**United States Court of
Appeals Tenth Circuit**

March 11, 2024

**Christopher M. Wolpert
Clerk of Court**

PUBLISH

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

JOSHUA F. YOUNG,
Plaintiff - Appellant,

v.

COLORADO
DEPARTMENT OF
CORRECTIONS; DEAN
WILLIAMS; JILL
HUNSAKER RYAN,
Defendants - Appellees.

No. 23-1063

**Appeal from the United States District Court
for the District of Colorado
(D.C. No. 1:22-CV-00145-NYW-KLM)**

William E. Trachman (Erin M. Erhardt and David C. McDonald, with him on the briefs), Mountain States Legal Foundation, Lakewood, Colorado, for Plaintiff-Appellant.

Pawan Nelson, Colorado Department of Law, Denver, Colorado (Philip J. Weiser, Colorado Attorney General, Leslie C. Schultze, Senior Assistant Attorney

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General, and Kerry Ferrell, Assistant Attorney General, filed the brief) for Defendants-Appellees.

Before **TYMKOVICH**, **MATHESON**, and **CARSON**,
Circuit Judges.

TYMKOVICH, Circuit Judge.

While Joshua Young was an employee for the Colorado Department of Corrections, he alleges that the Department implemented mandatory Equity, Diversity, and Inclusion training that subjected him to a hostile work environment. After resigning from the Department because of the training program, Mr. Young sued, asserting claims under Title VII and the Equal Protection Clause. In his complaint, he alleged that the training program violated Title VII by creating a hostile work environment and violated the Equal Protection Clause by promoting race-based policies. In particular, he alleged the training demeaned him because of his race and promoted divisive racial and political theories that would harm his interaction with other corrections' personnel and inmates. At the motion-to-dismiss stage, the district court dismissed both claims without prejudice.

Title VII was enacted to combat workplace discrimination. Along with the Fourteenth Amendment's Equal Protection Clause, it broadly prohibits employers from using racial criteria in hiring, firing, and promotion decisions. Both also prohibit employers from allowing work conditions to be permeated with hostile racial or sexual animus. To the extent diversity programs generate such animus, they are equally

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subject to the prohibitions of Title VII and the Fourteenth Amendment.

Although Mr. Young's complaint highlights various materials from the Department's Equity, Diversity, and Inclusion training that he found strongly objectionable, our case law requires more. The training materials and any resulting department policies must be so severe or pervasive as to both objectively and subjectively alter the terms of employment for its employees and create an abusive working environment.

Mr. Young's allegations in the complaint do not meet this threshold. To be sure, Mr. Young's objections to the contents of the EDI training are not unreasonable: the racial subject matter and ideological messaging in the training is troubling on many levels. As other courts have recognized, race-based training programs can create hostile workplaces when official policy is combined with ongoing stereotyping and explicit or implicit expectations of discriminatory treatment. The rhetoric of these programs sets the stage for actionable misconduct by organizations that employ them.

But Mr. Young does not allege that the training occurred more than once—let alone an ongoing presence permeating the workplace. Nor does he allege any race-based harassing conduct, ridicule, or insult from either his co-workers or his supervisors within his workplace that occurred as a result of the training. Although he alleges the explicitly race-based implications of the training could eventually compromise employment opportunities, workplace cohesion, and prison security, those allegations are

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too speculative at this time to meet what our case law requires.

I. Background

*A. Factual History*¹

Mr. Young worked for the Colorado Department of Corrections at its Limon Correctional Facility starting in 2017. Mr. Young's superior performance resulted in his promotion to Housing Sergeant in 2019 and Visiting Sergeant in 2020.

Mr. Young alleges that the "Department of Corrections implemented mandatory trainings that made sweeping negative generalizations regarding individuals who are white, and other gross generalizations about members of other racial demographics." A.C. ¶ 4. He claims the trainings "paint[ed] a grim picture of the United States as a racist country permeated with discrimination." *Id.* ¶ 21. Mr. Young alleges that "[t]hese trainings forced [him] to hear and absorb statements that were facially based on race." *Id.* ¶ 7. Mr. Young considered these "sweeping generalizations about white individuals . . . not merely boorish, juvenile, or annoying comments," but indicative of a workplace "permeated with [race-based] discrimination, ridicule, and insult." *Id.*

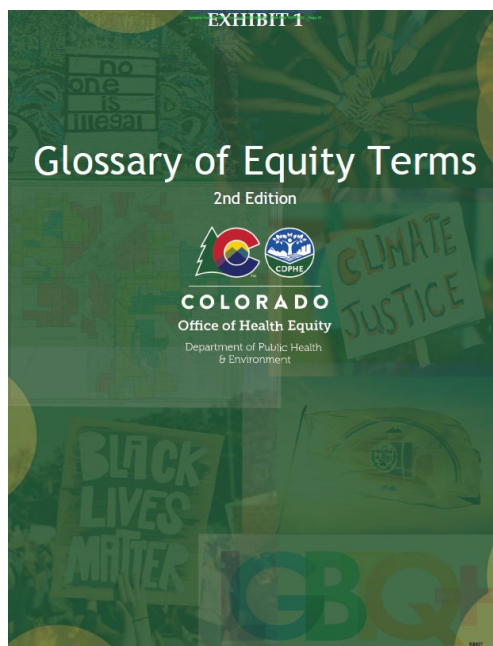
Mr. Young does not describe the format of the mandatory training in his amended complaint, but the briefing on appeal clarifies that the EDI training consisted of several online modules that Department of Corrections employees completed on their own computers. Mr. Young alleges that the training materials for the Department of Corrections were

¹ These facts are taken from Mr. Young's amended complaint.

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provided by the Colorado Department of Public Health & Environment under the auspices of its Equity, Diversity, and Inclusion training.

In the amended complaint, Mr. Young alleges that the “training materials were based upon a glossary of terms stating that all whites are racist, that white individuals created the concept of race in order to justify the oppression of people of color, and that ‘whiteness’ and ‘white supremacy’ affect all ‘people of color within a U.S. context.’” *Id.* ¶ 22. Mr. Young maintains that the “glossary also states that white individuals are triggered by feelings of guilt and fear when confronted with ‘information about racial inequality and injustice,’” a “phenomenon” labeled as “white fragility” in the glossary. *Id.* ¶ 23. The glossary bears the imprimatur of the Colorado Department of Public Health & Environment.



App., Vol. I, 27.

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Mr. Young included other defined terms from the glossary, among the following:

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

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

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

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

A.C. ¶ 24 (cleaned up). He alleges these materials, as a whole, imputed that “Mr. Young promotes racist principles merely by dint of the color of his skin.” A.C. ¶ 26.

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Mr. Young also alleges that the training “included a section on ‘Other Tools & Resources’ that employees were to watch and read.” A.C. ¶ 29 (citing App., Vol. I, 42). Mr. Young alleges he felt pressure to review these materials, and that he reviewed many of them as a result. *Id.* The “Other Tools & Resources” section provided links to additional EDI videos and a list of books about race and marginalized identities.

One of these videos was *Redlined, A Legacy of Housing Discrimination*, described in the section as “a video that explains Redlining more in-depth.” *Id.* Mr. Young alleges *Redlined* features an interviewee using the N-word, “placing it in the voice of all individuals other than African-Americans.” *Id.* ¶ 31. Mr. Young describes the same video as accusing “all white individuals of misunderstanding that whatever success they had was a result of their own merit, as opposed to the simple product of past forms of race discrimination.” *Id.* ¶ 32. In the same vein, the video “describes white individuals as having a misplaced sense of success.” *Id.* ¶ 33.

In the video *Intersectionality 101*, another video linked in the “Other Tools & Resources” section, Mr. Young asserts that “animated Claymation figures are used to describe how racial identities are distinct, and force individuals to have different experiences as they go through life.” *Id.* ¶ 38. In a screenshot of the video Mr. Young attached to the complaint, a “white woman named Greta is contrasted with two other individuals—Jerry and Fatima—as the video literally separates them by a physical divider, and states ‘Greta, on the other hand, can ignore intersectionality if she wants to—another form of privilege.’” *Id.*

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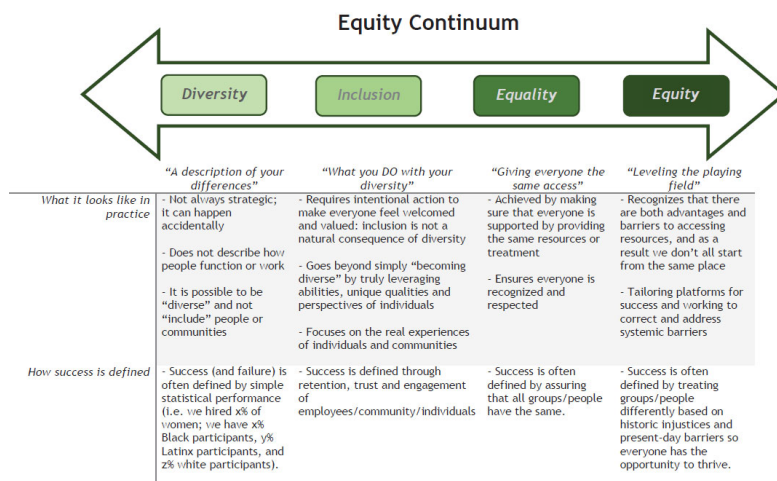


App., Vol. I, 68.

Mr. Young characterizes two of the recommended books—*White Fragility: Why It's So Hard for White People to Talk About Racism*, by Robin DiAngelo; and *How to be an Antiracist*, by Ibram X. Kendi—as “entrench[ing] invidious racial stereotypes.” *Id.* ¶ 36. Mr. Young claims these books “contain outright support for forms of invidious race discrimination masquerading as ‘anti-racist’ literature.” *Id.* ¶ 35.

Mr. Young also alleges that the Office of Health Equity included an “Equity Continuum” document as part of the EDI training materials. *Id.* ¶ 39. Mr. Young characterizes this document and the other training material as advocating for “treating people differently on the basis of race, in contravention of state and federal law.” *Id.*

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App., Vol. I, 69.

Mr. Young states that "[t]hese are just a few of the multitude of examples of the racially discriminatory and abusive teachings that [he] and all employees at the Colorado Department of Corrections have been subjected to." *Id.* ¶ 45. Mr. Young claims that the Department's "trainings created a culture of suspicion and distrust in the [Department]." *Id.* ¶ 46. He alleges that his "own experiences [were] severe and pervasive" and claims that "his knowledge that his colleagues were being instructed in the same manner with the same trainings exacerbated the hostile [work] environment." *Id.* Additionally, he alleges that he felt "harassed and intimidated to the point that he no longer felt comfortable working for the [Department]." *Id.* ¶ 55.

Mr. Young complained through the Department's formal complaint process but was informed that his complaint would not be investigated because it "did not establish reasonable cause to indicate the presence of discrimination [or] discriminatory

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harassment.” A.C. ¶ 49. Mr. Young states that his employer’s refusal to investigate or remedy the situation led him to resign from his employment with the Department of Corrections a short time after the training.

B. Procedural History

Mr. Young sued the Department of Corrections and the Executive Directors of both the Department of Corrections and the Colorado Department of Public Health & Environment. He subsequently amended his complaint, alleging two claims for relief: (1) a hostile work environment claim under Title VII against the Department of Corrections; and (2) an equal protection claim under 42 U.S.C. § 1983 against the Executive Directors.

Defendants moved to dismiss under Federal Rule of Civil Procedure 12(b)(6). The district court dismissed the Title VII claim as failing to state a claim because Mr. Young failed to sufficiently plead the alleged harassment was severe or pervasive. The court dismissed the equal protection claim for lack of standing because Mr. Young was no longer employed by the Department of Corrections, and thus could not challenge any state policy or practice related to prospective relief. The court dismissed both claims without prejudice and, citing Mr. Young’s failure to request leave to amend, did not sua sponte grant Mr. Young leave to amend his claims.

II. Analysis

Mr. Young challenges three of the district court’s decisions: (1) dismissal of his hostile work environment claim; (2) dismissal of his equal

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protection claim; and (3) the district court's failure to sua sponte grant leave to amend. We address each argument in turn.

We review de novo a district court's grant of a motion to dismiss for failure to state a claim. *See Herrera v. City of Espanola*, 32 F.4th 980, 991 (10th Cir. 2022). We "accept a complaint's well-pleaded allegations as true, viewing all reasonable inferences in favor of the nonmoving party, and liberally construe the pleadings." *Lucas v. Turn Key Health Clinics, LLC*, 58 F.4th 1127, 1136 (10th Cir. 2023). To survive a motion to dismiss for failure to state a claim, the complaint must "allege sufficient facts to state a claim for relief plausible on its face." *Id.* (citing *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)).

We similarly review de novo a dismissal for lack of Article III standing. *Safe Streets All. v. Hickenlooper*, 859 F.3d 865, 877 (10th Cir. 2017). And we review denials of leave to amend a complaint under the abuse-of-discretion standard. *SCO Grp., Inc. v. Int'l Bus. Machines Corp.*, 879 F.3d 1062, 1085 (10th Cir. 2018).

A. Hostile work environment claim

1. Legal Standards

Title VII of the Civil Rights Act of 1964 prohibits "discriminat[ion] against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin." 42 U.S.C. § 2000e-2(a)(1). "Although Title VII does not explicitly mention hostile work environment, a victim of a racially hostile work environment may nevertheless bring a cause of action under Title VII." *Tademy v.*

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Union Pac. Corp., 614 F.3d 1132, 1138 (10th Cir. 2008) (quoting *Ford v. West*, 222 F.3d 767, 775 (10th Cir. 2000)). So, in addition to prohibiting discrete acts of discrimination, Title VII also protects employees from racially hostile work environments. *See id.*

To state a racially hostile work environment claim under Title VII, a plaintiff must allege: (1) membership in a protected class; (2) he was subjected to unwelcome harassment; (3) the harassment was due to race; and (4) the harassment was so severe or pervasive that it altered a term, condition, or privilege of his employment and created an abusive environment. *See Lounds v. Lincare, Inc.*, 812 F.3d 1208, 1222 (10th Cir. 2015).

Under these requirements, Title VII is violated when a workplace is “permeated with ‘discriminatory intimidation, ridicule, and insult,’ that is ‘sufficiently severe or pervasive to alter the conditions of the victim’s employment and create an abusive working environment.’” *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 21 (1993) (quoting *Meritor Sav. Bank, FSB v. Vinson*, 477 U.S. 57, 65, 67 (1986)). “In determining whether [a plaintiff] [has] made the requisite showing, we must consider a variety of factors, including, ‘[1] the frequency of the discriminatory conduct; [2] its severity; [3] whether it is physically threatening or humiliating, or a mere offensive utterance; and [4] whether it unreasonably interferes with an employee’s work performance.’” *Sprague v. Thorn Ams., Inc.*, 129 F.3d 1355, 1365 (10th Cir. 1997) (quoting *Harris*, 510 U.S. at 23) (bracketed numerals added).

For harassment to be sufficiently severe or pervasive to alter the terms, conditions, or privileges

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of employment, the complained-of conduct must be both objectively and subjectively offensive. *Id.*; *Harris*, 510 U.S. at 21. “[I]t is not enough that a particular plaintiff deems the work environment hostile; it must also be of the character that it would be deemed hostile by a reasonable employee under the same or similar circumstances.” *Lounds*, 812 F.3d at 1222.

In the context of a hostile work environment claim, a single event, if extraordinarily severe, can alter the conditions of a working environment. *See, e.g., Tademey*, 614 F.3d at 1144 (single noose incident raised issue as to racial animus); *Turnbull v. Topeka State Hosp.*, 255 F.3d 1238, 1243-44 (10th Cir. 2001) (concluding plaintiff presented sufficient evidence to support a hostile work environment claim based on single incident where an inmate “knocked [the plaintiff] to the ground, undressed her and digitally penetrated her, bit and choked her, and repeatedly threatened to kill her”).

“The phrase ‘terms, conditions, or privileges of employment’” is interpreted to reflect a “congressional intent ‘to strike at the entire spectrum of disparate treatment of men and women’ in employment[.]” *Nat’l R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 115-16 (2002) (quoting *Harris*, 510 U.S. at 21). Conduct that alters ‘terms, conditions, or privileges of employment’ is not necessarily limited to instances of economic or tangible discrimination; it also “includes requiring people to work in a discriminatorily hostile or abusive environment.” *Id.*

With these legal principles in mind, we turn to Mr. Young’s allegations.

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2. Mr. Young's Hostile work environment claim

Mr. Young has plausibly alleged the first and third elements of a hostile work environment claim: membership in a protected class, and the harassment was due to race. Only the second and fourth elements of a hostile work environment claim are at play here. The questions are (1) whether Mr. Young sufficiently pleaded that he was subjected to unwelcome harassment, and (2) whether he plausibly alleged that the harassment was so severe or pervasive that it altered the terms or conditions of his employment and created an abusive working environment.

Harassment. Mr. Young argues that incidents alleged in his amended complaint show that he was singled out because of his race. As described above, taking Mr. Young's well-pleaded factual allegations as true, as we must, the incidents alleged in his amended complaint paint an unflattering portrait of the Department of Corrections' employee training requirements.

Mr. Young pleads a number of factual allegations relevant to workplace harassment, including "his knowledge that his colleagues were being instructed in the same manner with the same trainings exacerbated the hostile environment," A.C. ¶ 46; and that he filed a formal complaint and was informed his complaint would not be investigated because it had not "establish[ed] reasonable cause to indicate the presence of discrimination [or] discriminatory harassment." *Id.* ¶ 49. He also alleges that the "mandatory trainings created a racially hostile environment" by forcing him "to hear and absorb statements that were facially based on race," with "sweeping generalizations about white individuals"

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which “indicated that the workplace is permeated with discrimination, ridicule, and insult.” *Id.* ¶ 7. One of the recommended videos had one of the interviewees using the N-word in the context of describing discriminatory housing practices. *Id.* ¶ 31. The training advises trainees to be careful of exclusionary “white norms,” *id.* ¶ 41, and critiques “white exceptionalism,” *id.* ¶ 24(d), a “fakequity” belief that “white allies” are “an exception to white racism” that “perpetuates white supremacy.” *Id.*

If not already at the destination, this type of race-based rhetoric is well on the way to arriving at objectively and subjectively harassing messaging. Taken seriously by managers and co-workers, the messaging could promote racial discrimination and stereotypes within the workplace. It could encourage racial preferences in hiring, firing, and promotion decisions. Moreover, employees who object to these types of messages risk being individually targeted for discriminatory treatment—especially if employers explicitly or implicitly reward discriminatory outcomes.

Nevertheless, legally actionable discriminatory harassment under our case law must also be sufficiently severe or pervasive to alter the terms of employment. We turn to that question next.

Severe or Pervasive Hostility. Even assuming Mr. Young pleaded facts sufficient to demonstrate he endured unwelcome harassment, he must still allege facts that establish severe or pervasive hostility.

It is not enough that the plaintiff subjectively perceived the conduct to be severe or pervasive. We have plausible allegations of that here. Rather, the plaintiff must “show that a rational jury could find

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that the workplace is permeated with discriminatory intimidation, ridicule, and insult.” *Throupe v. Univ. of Denver*, 988 F.3d 1243, 1252 (10th Cir. 2021). Severity and pervasiveness are assessed based on a number of factors within the workplace: the frequency and severity of the discriminatory conduct; whether the conduct is physically threatening or humiliating or merely an offensive utterance; and whether the conduct unreasonably interferes with an employee’s work performance. *See Sprague v. Thorn Ams., Inc.*, 129 F.3d 1355, 1365 (10th Cir. 1997).

The allegations in Mr. Young’s amended complaint do not sufficiently establish these requirements. For example, Mr. Young claims that he was “forced to resign from his position” because of the EDI Training. A.C. ¶ 48. But Mr. Young provides no specific facts, context, or explanation for why or how he was forced to resign. We know Mr. Young was offended by the EDI training, and that he was upset about the Department’s response when he complained about the EDI training. But what we do not know is what he experienced in the workplace due to the EDI training—particularly his interactions with supervisors and co-workers.

While Mr. Young asserts that he experienced severe and pervasive harassment, again he does not allege specific facts that demonstrate how the training related to his actual workplace experience. For example, he does not allege that the training occurred more than once, that his supervisors threatened to punish or otherwise discipline employees who failed to complete or agree with the materials, or that co-workers engaged in specific acts of insult or ridicule aimed at him because of the training. To be sure,

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Mr. Young contends the training could lead to safety or security concerns because of the nature of the workplace—a state prison. But at this point, his concern is speculative.²

To overcome these deficiencies, Mr. Young argues that the nature of the harassment—an employer’s *official* policy—should guide our analysis. Mr. Young relies on two out-of-circuit cases for this proposition. First, he points to *Henry v. CorpCar Services Houston*, a case where an African-American plaintiff worked at a limousine service company staffed with predominantly African-American chauffeurs. 625 F. App’x 607, 608-09 (5th Cir. 2015). In recognition of Juneteenth—the holiday commemorating the 1865 announcement of the abolition of slavery in Texas—the plaintiff asked for time off so he could attend events and speaking engagements. The plaintiff “discussed with [the general manager] in particular the significance of Juneteenth.” *Id.* at 608.

The company went on to schedule multiple safety meetings for June 18th, 19th, and 20th, and required employees to attend at least one of the meetings. The company’s CEO hired a singing telegram—a white woman in a black gorilla suit—to perform at the mandatory meetings. The performer “sang, danced, touched employees, and sat in their laps.” *Id.* “She did

² Perhaps an ongoing, continuing commitment from Mr. Young’s supervisors to mandatory EDI trainings with content similar to the one here may evolve into a plausible hostile workplace claim. But the single training session here is not enough. And requiring government employees to either endorse a particular race-based ideological platform or risk losing their jobs could also evolve into a plausible claim of pervasive hostility—or even venture into the realm of compelled speech.

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Tarzan yells and repeatedly referred in a suggestive manner to ‘big black lips,’ ‘big black butt,’ and bananas.” *Id.* The performer specifically targeted the plaintiff—calling him by name and asking, “[A]re you ready for this? Here’s your Juneteenth. Oh, these nice big black hairy lips. Don’t you want some?” *Id.* at 609. She continued, “Oh, that nice banana in your pants. You could have worked for La Bare’s. Oh, don’t you want to make me scream.” *Id.* During this performance, the general manager, who was also recording a video of the event on his cell phone, leaned over to the plaintiff and said, “Okay. Here’s your Juneteenth.” *Id.* at 608-09.

Certainly, Mr. Young is correct that the harassment the plaintiff in *Henry* faced constituted official acts of the company and thus was relevant to the court’s analysis. And to be sure, the EDI training here was the official policy of the Colorado Department of Corrections. But Mr. Young does not yet allege a comparable pattern of race-based intimidation, ridicule, or insult that accompanied his employer’s official acts, which characterized the situation in *Henry*.

The same is true for the other case Mr. Young cites, *Orlando v. BNP Paribas North America*, No. 14 CIV. 4102 AJP, 2015 WL 6387531, at *18 (S.D.N.Y. Oct. 22, 2015). In that case, the plaintiff—a Jewish man—alleged he was subjected to a hostile work environment when his company twice showed a Hitler-parody video at a mandatory off-site conference.³ When the

³ We note for clarity that the plaintiff’s Title VII claims were time barred but the court found a hostile work environment under New York State Human Rights Law and New York City Human Rights Law. *See Orlando*, 2015 WL 6387531, at *16-18.

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plaintiff reported his concerns to his supervisor, the supervisor “told him to ‘shut the f**k up’ and made an ‘absolutely bone chilling threat at [the plaintiff] and [his] career.’” *Id.* at *2.

We cannot conclude that Mr. Young’s situation is comparable. While Mr. Young also watched a video that he considered offensive, the similarities end there. The two fact patterns, and how their effects manifested in the workplace, are materially different.

Undoubtedly, whether certain conduct amounts to severe or pervasive harassment depends on the particular circumstances and context in which such behavior takes place. Nonetheless, two of our cases are illustrative of mistreatment that characterize a severe or pervasive racially-hostile workplace:

For example, in *Lounds v. Lincare, Inc.*, 812 F.3d 1208 (10th Cir. 2015), the plaintiff—an African-American woman—alleged racial harassment that included co-workers and the plaintiff’s supervisor using the N-word, condoning lynching, use of race-based stereotypes, and other offensive racist terms. For example, one co-worker said during a conversation, “We need to bring back lynching because we have enough trees.” *Lounds*, 812 F.3d at 1213-14. The co-worker then approached the plaintiff and said, “I’m not trying to offend you; it’s not like I said let’s go down to 9th and Grove (the Black Neighborhood) and drag every black person with a noose, tie them to a truck and drag them after hanging them.” *Id.* at 1214 (cleaned up). When the plaintiff objected, the co-worker said she was being too sensitive. *Id.* On another occasion, a different co-worker began chanting, “Boom, N***a!” upon entering the office. *Id.*

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The co-workers' conduct mirrored the conduct of the plaintiff's supervisor. The plaintiff alleged that on her first day at work, her supervisor (who was also the facility manager) asked if her name was "Shaquita." *Id.* at 1213. After asking the plaintiff to introduce herself to the group, the supervisor said, "I thought your name was Shaniqua!" *Id.* At yet another company meeting, the plaintiff's supervisor instructed employees to address the company VP as "Yes Messa." *Id.* at 1214. An employee present at the meeting reported that the comment visibly offended the plaintiff and that the plaintiff "had tears in her eyes" afterward. *Id.*

Consider next *Tademy v. Union Pac. Corp.*, 614 F.3d 1132 (10th Cir. 2008). There, the plaintiff—an African-American male—alleged racial harassment consisting of the N-word and "[N-word] go home" etched into his locker on separate occasions, racist cartoons posted on company billboards, a co-worker describing a black manager as "F***ing Kunta Kinte," a manager addressing him as "boy," and most troubling, a "life-sized hangman's noose prominently suspended from a large industrial wall clock." 614 F.3d at 1135-37. "The sight of the noose caused [the plaintiff] to become so nauseated that he vomited." *Id.* at 1137.

The plaintiffs in *Lounds* and *Tademy* worked in environments permeated with race-based harassment, each enduring racially-abusive conduct, ridicule, and insult from both co-workers and supervisors. The abusive working environments created in *Lounds* and *Tademy* may well be a potential outcome of the type of training Mr. Young has alleged. But at this point, Mr. Young did not plead

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sufficient facts showing that he experienced severe or pervasive harassment in the course of his day-to-day job; he cannot rest only on the insults he experienced on the day he completed the EDI training.⁴

⁴ One example of a complaint involving workplace diversity training that survived a motion to dismiss is found in *De Piero v. Pa. State Univ et. al.*, No. CV 23-2281, 2024 WL 128209 (E.D. Pa. Jan. 11, 2024). In that case, the complaint alleged that the plaintiff—De Piero—had to attend several conferences and training sessions where facilitators “ascrib[ed] negative traits to white people or white teachers without exception and as flowing inevitably from their race.” *Id.* at *7. Importantly, the plaintiff’s complaint included “emails and interpersonal interactions” from the time period as well: (1) a colleague making a comment that “resistance to wearing masks ‘is more likely to be led by white males;’” (2) an email from the Director of Diversity, Equity, and Inclusion instructing white employees at Penn State “‘feel terrible;’” [sic] and (3) messages and emails from the plaintiff’s supervisor encouraging him to “assure that all students see that white supremacy manifests itself in language and in writing pedagogy,” and “urging him to watch a video titled ‘White Teachers Are a Problem.’” *Id.* at *7. De Piero eventually resigned from his position at Penn State, citing his disagreement with its “recent emphasis on so-called ‘antiracist’ programming.” *Id.* at *3.

Another example is found in *Diemert v. City of Seattle*, No. 2:22-CV-1640, --- F. Supp. 3d ---, 2023 WL 5530009 (W.D. Wash. Aug. 28, 2023). In that case, the plaintiff alleged that a division manager asked him, “What could a straight white male possibly offer our department?” *Id.* at *1. Then, a “Director-level employee told Diemert it was ‘impossible to be racist toward ‘white people.’” *Id.* During mandatory training, another director-level employee “repeated a similar sentiment . . . and added that all white people have privilege and are racist.” *Id.* The plaintiff also faced physical aggression from his supervisor, who “‘chest bumped’ him, got in his face, and told [Diemert] he had white privilege and racist motives.” *Id.* at *2. The plaintiff alleged he was forced to resign because the City of Seattle could no longer

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In sum, Mr. Young alleges no comparable actions on the part of his co-workers or supervisors at the Department of Corrections. Mr. Young was not singled out by other correctional officers for race-based opprobrium. Nor was he physically confronted by a co-worker because of his objections to the EDI training. True, the racial rhetoric contained in the Department of Public Health & Environment’s online training materials echoes the racist views espoused by the co-workers and supervisors in *Lounds* and *Tademy*. But the lack of racial animus manifesting itself in Mr. Young’s day-to-day *work environment* distinguishes his case from those that have ratified a racially-hostile workplace claim. In short, Mr. Young has not plausibly alleged severe or pervasive harassment that altered the terms or conditions of his employment to create an abusive work environment.

Because Mr. Young has failed to plausibly allege the second and fourth elements of a Title VII hostile work environment claim, we affirm the district court.

accommodate his request to work from home because of staffing shortages and his belief “that employees of color were given priority to telework.” *Id.*

The two cases stand for roughly the same settled and sound principle, which the court in *De Piero* articulated and we endorse: merely discussing “the influence of racism on our society does not necessarily violate federal law.” No. CV 23-2281, 2024 WL 128209 at *8. But “the way these conversations are carried out in the workplace matters.” *Id.* “When employers talk about race—any race—with a constant drumbeat of essentialist, deterministic, and negative language, they risk liability under federal law.” *Id.* (citing *McDonald v. Santa Fe Rail Transp. Co.*, 427 U.S. 273, 278-79, 286-87 (1976)).

B. Equal protection claim

Mr. Young also asserted an equal protection claim that the district court dismissed for lack of standing.

The Equal Protection Clause of the Fourteenth Amendment guarantees that “[n]o State shall . . . deny to any person within its jurisdiction the equal protection of the laws,” U.S. Const. amend. XIV, § 1, and “keeps governmental decision makers from treating differently persons who are in all relevant respects alike.” *Soskin v. Reinertson*, 353 F.3d 1242, 1247 (10th Cir. 2004). “The Clause ‘creates no substantive rights. Instead, it embodies a general rule that States must treat like cases alike but may treat unlike cases accordingly.’” *Teigen v. Renfrow*, 511 F.3d 1072, 1083 (10th Cir. 2007) (quoting *Vacco v. Quill*, 521 U.S. 793, 799 (1997)). Relief for an Equal Protection Clause violation under 42 U.S.C. § 1983 is limited to prospective injunctive or declaratory relief. *See Williams v. Utah Dep’t of Corr.*, 928 F.3d 1209, 1214 (10th Cir. 2019) (citing *Ex parte Young*, 209 U.S. 123 (1908)).

To satisfy Article III’s standing requirement, a plaintiff must establish: (1) an injury in fact; (2) a sufficient causal connection between the injury and the conduct complained of; and (3) a likelihood of redressability by a favorable decision. *Baker v. USD 229 Blue Valley*, 979 F.3d 866, 871 (10th Cir. 2020). For purposes of prospective injunctive or declaratory relief, a plaintiff must allege that he is “suffering a continuing injury or [is] under a real and immediate threat of being injured in the future.” *Tandy v. City of Wichita*, 380 F.3d 1277, 1283 (10th Cir. 2004). Conjectural or hypothetical injuries, or non-

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impending future injuries are insufficient. *See Brown v. Buhman*, 822 F.3d 1151, 1165 (10th Cir. 2016).

Mr. Young alleges that the individual defendants violated the Equal Protection Clause by using training materials that “classify individuals by race, treat individuals differently based on race, and instruct employees to treat each other differently based on race.” A.C. ¶ 60. Mr. Young requests declaratory and injunctive relief against the two individual defendants and their state agencies to stop them from using the EDI training materials that are based on improper racial motivations.

Mr. Young alleges that the EDI training materials are facially discriminatory. He alleges the materials “demean and stigmatize” him and “other similarly situated individuals, based on race and skin color.” *Id.* Mr. Young further alleges that the “[u]se of the training materials was motivated by a discriminatory purpose,” with “[w]hite individuals . . . uniformly stigmatized . . . as ‘racist,’ [and] ‘privileged,’ with any potential pushback preemptively described as ‘white fragility.’” *Id.* ¶ 67 (internal citations omitted).

The Supreme Court requires that racial classification survive strict scrutiny. “One of the principal reasons race is treated as a forbidden classification is that it demeans the dignity and worth of a person to be judged by ancestry instead of by his or her own merit and essential qualities.” *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 220 (2023) (quoting *Rice v. Cayetano*, 528 U.S. 495, 517 (2000)). When a state agency treats employees “on the basis of race, it engages in the offensive and demeaning assumption that [employees] of a particular race, because of their

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race, think alike.” *Miller v. Johnson*, 515 U.S. 900, 911-12 (1995). So state-sanctioned training programs that import racial assumptions or promote race-based differential treatment may very well offend the Equal Protection Clause.

That said, the district court correctly dismissed Mr. Young’s equal protection claim for lack of standing because Mr. Young was no longer employed by the Department of Corrections. Mr. Young asserts he has standing for prospective relief because he seeks reinstatement under his Title VII cause of action. But Mr. Young does not contend that he has standing to pursue this cause of action apart from his Title VII claim. In other words, Mr. Young’s standing to pursue his equal protection claim requires he first prevail on his Title VII claim. Because he cannot do so, we analyze whether Mr. Young maintains independent standing to pursue an equal protection claim.

Mr. Young has not pleaded sufficient facts to establish Article III standing to pursue his equal protection claim in the amended complaint because he did not plead an ongoing injury that a favorable judgment will redress. Mr. Young’s equal protection claim is based on the injury he purportedly suffered from having to view the EDI training. The relief he seeks is enjoining Defendants from using or promulgating the EDI training materials. But Mr. Young resigned from employment with the Department of Corrections before bringing this lawsuit, did not plead constructive discharge, and has not requested reinstatement as part of his equal protection claim. Because he no longer works for the Department and he has not requested reinstatement as a remedy, any

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relief in the form of a change in Department policy will not redress an ongoing injury *to him*.

Mr. Young contends an employee requesting reinstatement has standing to challenge his former employer's policies. That is true in a narrow sense, but inapplicable given Mr. Young's two causes of action. The authority Mr. Young points to does not hold that a plaintiff who lacks standing for one claim can bootstrap it to another claim for which he requests reinstatement. He relies on *Robinson v. Blank* for this bootstrapping proposition, but the plaintiff there brought a *single* Title VII claim—seeking as relief *both* reinstatement to his former job *and* a change to his former employer's policy. No. 11 CIV. 2480 PAC DF, 2013 WL 2156040, at *1 (S.D.N.Y. May 20, 2013). That is markedly different from Mr. Young's complaint here: he brings one Title VII claim seeking reinstatement as relief and a *separate and distinct* equal protection claim seeking prospective relief. So “[Mr. Young] must demonstrate standing for each claim that [he] press[es].” *TransUnion LLC v. Ramirez*, 594 U.S. 413, 431 (2021). But, as the district court noted, “[t]here is simply no request for reinstatement that is appropriately tied to the equal protection claim as pleaded by [Plaintiff], and equally important, there is no nexus between any potential reinstatement and the relief he does seek.” Order at 25-26.

We affirm the district court's dismissal of Mr. Young's equal protection claim.

C. Leave to Amend the Complaint

In his response to the motion to dismiss, Mr. Young did not request leave to amend his complaint. Nor did

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he separately move to amend. Absent a request to amend, a district court may dismiss the action rather than sua sponte granting leave to amend. *See Barnett v. Hall, Estill, Hardwick, Gable, Golden & Nelson, P.C.*, 956 F.3d 1228, 1236 (10th Cir. 2020); *see also Calderon v. Kan. Dep't of Soc. & Rehab. Servs.*, 181 F.3d 1180, 1186 (10th Cir. 1999) (“[A] court need not grant leave to amend when a party fails to file a formal motion.”). We review for abuse of discretion. *See SCO Group, Inc.*, 879 F.3d at 1085.

Mr. Young contends that he was unable to request leave to amend his complaint because, if he had done so, local rules permitted the district court to reject his response brief. But we see no insurmountable obstacle. Mr. Young could have filed a prophylactic motion for leave to amend that was separate from his response brief. Alternatively, Mr. Young could have identified additional proposed allegations that would have cured the amended complaint’s defects and moved the court to reconsider its dismissal order.

In its direction to the clerk of court to terminate the case, the district court noted that Mr. Young neither requested leave to amend in his briefing nor in a separate filing, thus communicating the rationale for its choice not to sua sponte grant leave to amend. Given the information it had at hand, the district court’s choice not to sua sponte grant leave to amend was not an abuse of discretion.

III. Conclusion

For the reasons stated above, we affirm the district court’s dismissal of Mr. Young’s claims and the denial of leave to amend.

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23-1063, *Young v. Colorado Department of Corrections*
MATHESON, Circuit Judge, concurring:

I concur in the result. I agree that the complaint did not plausibly allege the “severe or pervasive” element of a Title VII hostile work environment claim, that Mr. Young lacks standing for his § 1983 equal protection claim, and that the district court did not err in failing to grant sua sponte leave to amend. I do not think the court otherwise needs to comment on the EDI training or the potential for future legal challenges to it or other EDI programs, nor to address whether Mr. Young plausibly alleged the first three elements of the Title VII claim. I therefore do not join those parts of the opinion as unnecessary to resolve this case.