

No. _____

IN THE
Supreme Court of the United States

_____†_____

MARITZA REYES,
Petitioner

v.

FLORIDA A&M
UNIVERSITY BOARD
OF TRUSTEES,
Respondent.

_____†_____

On Petition For Writ of Certiorari
To The United States Court of Appeals
For the Eleventh Circuit

_____†_____

APPENDIX TO PETITIONER'S
PETITION FOR WRIT OF CERTIORARI

Maritza Reyes, *Pro Se*
Counsel of Record
P.O. Box 5102
Winter Park, FL 32793
mreyesclaim@gmail.com
305-308-8200
Counsel for Petitioner

APPENDIX

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APPENDIX A

IN THE UNITED STATES COURT OF APPEALS

For the ELEVENTH CIRCUIT

No. 25-10453

MARITZA REYES,

Plaintiff-Appellant,

versus

FLORIDA A&M UNIVERSITY BOARD OF
TRUSTEES (FAMU),

Defendant-Appellee.

Appeal from the United States District Court for the
Middle District of Florida

D.C. Docket No. 6:22-cv-01525-WWB-DCI

Filed on June 22, 2026

ON PETITION FOR REHEARING AND PETITION
FOR REHEARING EN BANC

Before LUCK, LAGOA, and BLACK, Circuit Judges.

PER CURIAM:

The Petition for Rehearing En Banc is DENIED, no judge in regular active service on the Court having requested that the Court be polled on rehearing en banc. FRAP 40. The Petition for Rehearing En Banc is also treated as a Petition for Rehearing before the panel and is DENIED. FRAP 40, 11th Cir. IOP 2.

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APPENDIX B

NOT FOR PUBLICATION

IN THE UNITED STATES COURT OF APPEALS

For the ELEVENTH CIRCUIT

No. 25-10453

Non-Argument Calendar

MARITZA REYES,

Plaintiff-Appellant,

versus

FLORIDA A&M UNIVERSITY BOARD OF
TRUSTEES (FAMU),

Defendant-Appellee.

Appeal from the United States District Court for the
Middle District of Florida

D.C. Docket No. 6:22-cv-01525-WWB-DCI

Filed on March 23, 2026

Before LUCK, LAGOA, and BLACK, Circuit Judges.

PER CURIAM:

Maritza Reyes appeals the district court's grant of summary judgment to Florida A&M University Board of Trustees (FAMU) on her Title VII discrimination, hostile work environment, and retaliation claims as well as its denial of her motions to file a corrected response to FAMU's summary judgment motion and to reopen discovery. She brings three issues on appeal, which we address in turn. After review, we affirm.

I. CORRECTED RESPONSE TO SUMMARY JUDGMENT

Reyes contends the district court should have granted her motion to replace her response to FAMU's summary judgment motion because her eye condition prevented her from filing a complete response. A party moving to extend an already expired deadline must show "good cause" for extending the deadline and demonstrate that it failed to meet that deadline due to "excusable neglect." Fed. R. Civ. P. 6(b)(1)(B) (explaining courts may generally extend a party's deadline "on a motion made after the time has expired" only if the party missed the deadline due to "excusable neglect"); Fed. R. Civ. P. 16(b)(4) (explaining courts can only modify a scheduling order "for good cause"). To show good cause for failing to timely file, a party must show it could not meet its deadline despite acting diligently. *Jimenez v. U.S. Att'y Gen.*, 146 F.4th 972, 1002-03 (11th Cir. 2025) (holding a district court did not abuse its discretion by denying a plaintiff's motion to extend its deadline to

amend its complaint). A plaintiff who has received multiple extensions and asserts she cannot meet a deadline due to illness does not demonstrate she acted diligently. *See Young v. City of Palm Bay*, 358 F.3d 859, 861-64 (11th Cir. 2004) (holding a district court did not abuse its discretion in denying a plaintiff's fifth motion to extend his deadline to respond to a summary judgment motion even though counsel asserted that illness prevented timely filing his response because the court had already extended the plaintiff's deadline with four continuances). In determining whether a party has shown excusable neglect, we have identified the following factors: "the danger of prejudice to the nonmovant, the length of the delay and its potential impact on judicial proceedings, the reason for the delay, including whether it was within the reasonable control of the movant, and whether the movant acted in good faith." *United States v. Beaufils*, 160 F.4th 1147, 1170 (11th Cir. 2025).

The district court did not abuse its discretion by determining that Reyes was not diligent and denying Reyes's motion to file a corrected response. *See id.* at 863 (reviewing a district court's denial of a motion for an extension of time to file a response for abuse of discretion). Reyes was required to show both "good cause" for substituting her response and "excusable neglect" for not entering a complete response by the deadline as the deadline to file her response to FAMU's summary judgment motion had already passed when she filed her motion to substitute her response. *See* Fed. R. Civ. P. 6(b)(1)(B); 16(b)(4). Reyes did not diligently attempt to offer a full

response to FAMU's summary judgment motion because she filed an incomplete response after receiving three extensions and a total of 48 days to draft her response. Although Reyes asserted her inability to file a complete response stemmed from an eye condition that developed on the due date, her eye condition was not good cause for granting yet another extension because the court had already granted her three extensions. *See Young*, 358 F.3d at 861-64. In addition, her 44-day delay in filing a motion asking the district court to allow her to replace the incomplete response does not constitute excusable neglect. *See Beaufile*, 160 F.4th at 1170. Thus, we affirm as to this issue.

II. SUMMARY JUDGMENT

Reyes asserts summary judgment was improper because the evidence she presented created a genuine issue of material fact on each of her claims—discrimination, retaliation, and hostile work environment.

A. Discrimination

Title VII prohibits employers from discriminating against any individual with respect to her compensation, terms, conditions, or privileges of employment “because of” her race or sex. 42 U.S.C. § 2000e-2(a)(1). Courts adjudicate summary judgment motions in employment discrimination claims using the *McDonnell Douglas* framework. *Ismael v. Roundtree*, 161 F.4th 752, 759 (11th Cir. 2025). Under the *McDonnell Douglas* framework for discrimination, an employee bears the burden of demonstrating a

prima facie case which requires showing: (1) the employee is part of a protected group; (2) she was well qualified; (3) she suffered an adverse employment action; and (4) she was treated less favorably than similarly situated employees outside of her protected group. *Id.*

If an employee does not establish a prima facie case, “she does not automatically lose on summary judgment.” *Id.* at 764. Rather, the district court must consider whether the employee has established a convincing mosaic of intentional discrimination from record evidence and deny summary judgment if she has. *Id.* at 765.

Concerning her discrimination claim, Reyes cannot establish that FAMU treated her less favorably than a similarly situated employee because she provided no evidence that Yolanda Jones, the person she names as a comparator, is similarly situated to her in all material respects. *See Jenkins v. Nell*, 26 F.4th 1243, 1249 (11th Cir. 2022) (explaining “ordinarily a similarly situated comparator and the plaintiff will: have engaged in the same basic conduct or misconduct, be subject to the same employment policies, have the same supervisor(s), and share an employment or disciplinary history”). Reyes cannot establish a prima facie case of discrimination under the *McDonnell-Douglas* framework. *See Ismael*, 161 F.4th at 759.

Reyes also cannot establish a convincing mosaic of discrimination because she presented no evidence that Provost Maurice Edington, who made

the decision to deny Reyes’s application for promotion to full professor, discriminated against her. *See id.* at 764 (stating under the convincing mosaic standard, “the plaintiff must produce enough evidence, on her own and without any helpful evidentiary burdens or presumptions, to demonstrate a material issue of triable fact”). Reyes does not contest that President Larry Robinson had authority to decide whether to promote her to full professor and delegated that decision to Edington. Accordingly, to create a convincing mosaic of discrimination, Reyes must present evidence that Edington declined to promote her for a discriminatory reason. *See id.* However, the only evidence in the record concerning Edington’s reasoning for rejecting Reyes’s application is (1) his affidavit where he disclaimed any discriminatory intent, and (2) the letter he sent Reyes, in which he stated that he decided to deny her application due to her lack of scholarship. Reyes’s evidence that her scholarship met the Nunn Memo’s¹ and the faculty handbook’s requirements for promotion to full professor cannot demonstrate that Edington decided against promoting her for a reason other than her scholarship because Reyes presents no evidence that Edington’s belief that her work failed to meet FAMU’s scholarship standards was insincere. *See Todd v. Fayette Cnty. Sch. Dist.*, 998 F.3d 1203, 1218 (11th Cir. 2021) (noting that to show discrimination, we are concerned with “the employer’s beliefs, not the

¹ The Nunn Memo was a memo authored by law professor Kenneth Nunn providing FAMU’s rules for promotion and tenure.

employee's beliefs and, to be blunt about it, not on reality as it exists outside of the decision maker's head"). Because Reyes points to no evidence that contravenes Edington's disclaiming any discriminatory motivation, Reyes cannot establish that Edington intentionally discriminated against her. Thus, Reyes cannot create a convincing mosaic of intentional discrimination. *See Ismael*, 161 F.4th at 758 (stating we review a district court's grant of summary judgment de novo and view all evidence and factual inferences reasonably drawn from the evidence in the light most favorable to the non-moving party).

B. Retaliation

Retaliation claims follow the same burden-shifting framework but with a modified initial prima facie burden—the employee must first show that: (1) she engaged in a protected activity, such as filing a complaint for discrimination; (2) she suffered a material adverse action; and (3) there was a causal connection between her protected activity and the adverse action. *Id.* at 759.

Reyes has presented no evidence that Edington's motivation for denying her application for a promotion was to penalize her for filing complaints. Accordingly, Reyes cannot show a causal connection between filing complaints and FAMU denying her a promotion, so she cannot establish a prima facie case of retaliation. *See id.* Furthermore, Reyes cannot create a convincing mosaic of retaliation because the only evidence in the record concerning Edington's

motivation indicates it was not discriminatory. *See id.* at 758, 764-65. Thus, Reyes presents no evidence that creates a genuine issue of material fact as to her retaliation claim.

C. Hostile Work Environment

To establish a hostile work environment claim, an employee must prove that: (1) she belongs to a protected class; (2) she was subjected to unwelcome harassment; (3) the harassment was based on her race; (4) the harassment was severe or pervasive enough to alter the terms of her employment and create an abusive working environment; and (5) the employer is responsible for the environment under a theory of vicarious or direct liability. *Smelter v. S. Home Care Servs., Inc.*, 904 F.3d 1276, 1284 (11th Cir. 2018).

Reyes does not attempt to rebut the district court's conclusion that she did not suffer any physically threatening conduct, that any other conduct was too infrequent or sporadic to be pervasive, and she did not demonstrate that any conduct unreasonably interfered with her job performance. Further, none of the deposition testimony Reyes points to on appeal substantiates her hostile work environment claim because that testimony does not indicate any FAMU employee took any action against her due to her race. *See id.* For example, nothing in Robinson's or Dean LeRoy Pernell's testimony shows Pernell selected the scholarship standard he used to review Reyes's application based on her race. Also, nothing in

Robinson's testimony indicates he declined to follow up on Reyes's complaints beyond forwarding them to various other university officials because of Reyes's race. In addition, nothing in Robinson's testimony indicates Professor Patricia Broussard reviewed Reyes's scholarship in a discriminatory manner. Furthermore, nothing in Broussard's testimony suggests she took any action against Reyes due to her race. Because the testimony that Reyes points to cannot establish she was subject to race-based harassment, it cannot establish a hostile work environment claim. *See id.*

Accordingly, Reyes cannot demonstrate that a genuine issue of material fact exists as to any of her claims, so the district court did not err by granting summary judgment to FAMU. *See Fed. R. Civ. P. 56(a).*

III. MOTION TO REOPEN DISCOVERY

Reyes asserts the district court should have granted her motion to reopen discovery because it allowed FAMU to file its answer to her operative complaint after discovery closed. A district court may deny a motion to reopen discovery when the parties have already conducted a significant amount of discovery, and more discovery would not be helpful. *Artistic Entm't, Inc. v. City of Warner Robins*, 331 F.3d 1196, 1202 (11th Cir. 2003). More discovery would not be helpful when additional discovery would not resolve any dispositive, disputed evidentiary issue. *See id.* at 1203 (holding additional discovery would not help to resolve a question of law); *see also Avirgan*

v. Hull, 932 F.2d 1572, 1580-81 (11th Cir. 1991) (holding additional discovery was unnecessary because the court gave the parties ample time to conduct discovery on the dispositive issue).

Reopening discovery would not have been helpful because the parties conducted significant discovery, and Reyes articulates no dispositive evidentiary issue that discovery could resolve. *See Artistic Entm't, Inc.*, 331 F.3d at 1203. The parties conducted significant discovery because they took four depositions and, by her own admission, Reyes collected over 1,000 pages of evidence.

Additionally, resolving the disputes Reyes lists in her brief would not change the outcome of this litigation. Proving the Nunn Memo contained FAMU's faculty promotion policies would only demonstrate that Reyes's scholarship was not Edington's real reason for denying her application if Edington believed the Nunn Memo stated the applicable scholarship requirement and that Reyes met that requirement. *See Todd*, 998 F.3d at 1218. Because no evidence indicates Edington's belief that Reyes's publications failed to meet FAMU's scholarship standards was insincere, proving the Nunn Memo contained FAMU's faculty promotion policies would not have created a genuine issue of material fact as to Reyes's discrimination or retaliation claims. *See id.* Similarly, whether FAMU hired Reyes on a tenure-track position and the race or gender of the members of the Retention, Promotion, and Tenure Committee has no bearing on Edington's motives or whether any FAMU employee

discriminated against Reyes. Thus, conducting additional discovery on these points would not have precluded summary judgment on Reyes's discrimination, retaliation, or hostile work environment claims.

Because the parties conducted significant discovery and reopening discovery would not have helped to resolve any dispositive issue, the district court did not abuse its discretion by denying Reyes's motion to reopen discovery. *United States v. Undetermined Quantities of All Articles of Finished and In-Process Foods*, 936 F.3d 1341, 1344 (11th Cir. 2019) (reviewing a district court's denial of a motion to reopen discovery for abuse of discretion). Accordingly, we affirm.

AFFIRMED.

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APPENDIX C

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

MARITZA REYES,
Plaintiff,

v.

FLORIDA A&M UNIVERSITY BOARD OF
TRUSTEES (FAMU),
Defendant.

Case No.: 6:22-cv-1525-WWB-DCI

Filed on January 10, 2025

Before WENDY W. BERGER, District Judge.

ORDER

THIS CAUSE is before the Court on Defendant's Motion for Summary Final Judgement (Doc. 76), Plaintiff's Response in Opposition (Doc. 91), and Defendant's Reply (Doc. 93). For the reasons set forth below, the Motion will be granted.

I. BACKGROUND

Plaintiff, a Latina woman, accepted a position as an assistant professor of law at the Florida A&M University College of Law ("FAMU Law") in March 2009. (Doc. 34, ¶¶ 4, 25–26). Plaintiff alleges that she was the first Hispanic person hired in a tenure-track position at FAMU Law and the first to apply for tenure. (*Id.* ¶¶ 25, 36). Plaintiff alleges that she applied for tenure on September 12, 2014, and was subjected to a variety of unfair and improper conduct by members of the reviewing committee based on her race. (*See generally id.* ¶¶ 33–77). On April 24, 2015, Plaintiff submitted a complaint alleging discrimination and retaliation on the basis of race, color, national origin, and sex to the Office of Equal Opportunity Programs against the members of the tenure committee, which was dismissed after an investigation. (*Id.* ¶¶ 73–74). Although members of the tenure committee recommended that Plaintiff be denied tenure, she was granted tenure on June 10, 2015. (*Id.* ¶¶ 75–77). Plaintiff subsequently applied for a promotion to full professor in 2018. (*Id.* ¶ 161). Ultimately, Defendant denied Plaintiff the promotion and communicated that decision in a letter dated July 24, 2019, and directed to Plaintiff at the College of

Law. (Doc. 75-3 at 347). Plaintiff alleges that the process was again fraught with discrimination and irregularities. (*See generally* Doc. 34, ¶¶ 159–180). Additionally, Plaintiff alleges generally that she has been subjected to ongoing race and gender-based hostilities since she began her employment at FAMU Law. (*See generally id.*). Plaintiff raised these allegations in a Charge of Discrimination filed with the United States Equal Employment Opportunity Commission (“EEOC”) on May 29, 2020. (Doc. 75-3 at 350–353). Plaintiff then brought the instant suit, alleging claims for discrimination, hostile work environment, and retaliation on the basis of race, color, national origin, and gender in violation of Title VII of the Civil Rights Act of 1964 (“**Title VII**”), 42 U.S.C. § 2000e *et seq.* (Doc. 34, ¶¶ 232–303).

II. LEGAL STANDARD

Summary judgment is appropriate when the moving party demonstrates “that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). A dispute is genuine “if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A fact is material if it may “affect the outcome of the suit under the governing law.” *Id.* “The moving party bears the initial burden of showing the court, by reference to materials on file, that there are no genuine issues of material fact that should be decided at trial.” *Allen v. Bd. of Pub. Educ.*, 495 F.3d 1306, 1313–14 (11th Cir. 2007). Stated differently, the moving party discharges its burden by

showing “that there is an absence of evidence to support the nonmoving party’s case.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986).

However, once the moving party has discharged its burden, “Rule 56(e) . . . requires the nonmoving party to go beyond the pleadings and by her own affidavits, or by the depositions, answers to interrogatories, and admissions on file, designate specific facts showing that there is a genuine issue for trial.” *Id.* at 324 (quotation omitted). The nonmoving party may not rely solely on “conclusory allegations without specific supporting facts.” *Evers v. Gen. Motors Corp.*, 770 F.2d 984, 986 (11th Cir. 1985). Nevertheless, “[i]f there is a conflict between the parties’ allegations or evidence, the [nonmoving] party’s evidence is presumed to be true and all reasonable inferences must be drawn in the [nonmoving] party’s favor.” *Allen*, 495 F.3d at 1314.

III. DISCUSSION

As a preliminary matter, Defendant argues in its Reply that Plaintiff has failed to respond to its Statement of Material Facts, and therefore the Court may consider those facts undisputed in resolving the instant Motion. As the movant, Defendant bears the initial burden of “showing the court, by reference to materials on file, that there are no genuine issues of material fact that should be decided at trial.” *Allen*, 495 F.3d at 1313–14. Plaintiff then must “go beyond the pleadings and by her own affidavits, or by the depositions, answers to interrogatories, and admissions on file, designate specific facts showing

that there is a genuine issue for trial.” *Celotex Corp.*, 477 U.S. at 324 (quotation omitted). Where the nonmovant fails to do so, the Court may consider the movant’s asserted facts undisputed. *See Amguard Ins. Co. v. Super Winn Nail Spa, Inc.*, No. 23-61304-CV, 2024 WL 999453, at *2 (S.D. Fla. Mar. 5, 2024) (“When a party fails to respond to a Motion for Summary Judgment and Statement of Undisputed Facts, Fed. R. Civ. P. 56(e) provides that the court may ‘grant summary judgment if the motion and supporting materials – including the facts considered undisputed – show that the movant is entitled to it.’” (quoting Fed. R. Civ. P. 56(e))); *see also Atlanta Gas Light Co. v. UGI Utils., Inc.*, 463 F.3d 1201, 1208 n.11 (11th Cir. 2005) (“Neither the district court nor this court has an obligation to parse a summary judgment record to search out facts or evidence not brought to the Court’s attention.”).

Defendant is correct that Plaintiff’s Response does not dispute the Statement of Material Facts contained in the Motion with citation to record evidence. Indeed, the Response contains few citations to the record at all. Further, Plaintiff’s assertion that the Second Amended Complaint (Doc. 34) “provides a sufficient factual showing for Plaintiff’s claims to survive summary judgment” is unavailing. (Doc. 91 at 3); *see Celotex Corp.*, 477 U.S. at 324 (“Rule 56(e) . . . requires the nonmoving party *to go beyond the pleadings* and by her own affidavits, or by the depositions, answers to interrogatories, and admissions on file, designate specific facts showing that there is a genuine issue for trial.” (emphasis added)); *see also Van T. Junkins & Assocs., Inc. v. U.S.*

Indus., Inc., 736 F.2d 656, 658 (11th Cir. 1984) (“The party adverse to the movant for summary judgment cannot rest on his pleadings to present an issue of fact.”). Accordingly, to the extent that Plaintiff has failed to dispute Defendant’s statement of facts or otherwise support her arguments with record evidence, the Court will treat the facts laid out in the Motion as undisputed.

A. Timeliness of Plaintiff’s Claims

Turning to the merits of the Motion, Defendant first argues that summary judgment is appropriate on Counts I, II, and III because Plaintiff failed to timely exhaust administrative remedies. Timely filing a charge of discrimination with the EEOC is a prerequisite to suit under Title VII. *Maynard v. Pneumatic Prods. Corp.*, 256 F.3d 1259, 1262 (11th Cir. 2001). In Florida, A plaintiff must file a charge of discrimination with the EEOC within 300 days of the alleged discriminatory act. *Id.* at 1262–63. The Eleventh Circuit has held that “an adverse employment action is deemed to have occurred when the employer made the final decision and communicated it to the employee.” *Liu v. Univ. of Mia. Sch. of Med.*, 138 F. Supp. 3d 1360, 1370 (S.D. Fla. 2015) (quoting *Thomas v. CVS/Pharmacy*, 336 F. App’x 913, 915 (11th Cir. 2009); *see also Grayson v. K Mart Corp.*, 79 F.3d 1086, 1100 n.19 (11th Cir. 1996) (“[T]he time for filing an EEOC charge begins to run when the employee receives unequivocal notice of the adverse employment decision.”).

Defendant contends that it notified Plaintiff of the denial of promotion by the July 24, 2019 letter. (Doc. 75-2 at 1, 5). Defendant accordingly argues that Plaintiff's May 29, 2020 Charge of Discrimination—filed 310 days after July 24, 2019—was untimely. While there is no dispute that the July 24, 2019 letter is “unequivocal notice” of Plaintiff's denial of promotion, Plaintiff responds that she did not receive the same until August 5, 2019. (Doc. 75-3 at 172:1–17; Doc. 91 at 7). The Court therefore finds that the record evidence shows a genuine dispute of material fact as to when Plaintiff received notice of her denial of promotion to full professor. Accordingly, the Court will deny summary judgment on the basis that Plaintiff's Charge of Discrimination was untimely. *See Stewart v. Booker T. Washington Ins.*, 232 F.3d 844, 849 (11th Cir. 2000) (“[T]o require a plaintiff to file a discriminatory termination charge with the EEOC prior to the *receipt* of notice of termination would be to require a filing prior to the occurrence of the discriminatory conduct.” (emphasis added)).

B. Employment Action Discrimination

Defendant next argues that Plaintiff has failed to produce evidence to support her claims for employment discrimination on the basis of race, color, national origin, and sex—Counts I, II, and III—related to her denial of promotion to full professor. In

cases where, as here,² there is no direct evidence of discrimination, a burden-shifting framework applies to evaluate circumstantial evidence of discrimination. *See McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973). First, Plaintiff must produce “sufficient evidence to support an inference that the defendant employer based its employment decision on an illegal criterion.” *Williams v. Vitro Servs. Corp.*, 144 F.3d 1438, 1441 (11th Cir. 1998) (quotation omitted). To establish her prima facie case, Plaintiff must prove that (1) she was a member of a protected class; (2) she was qualified for or adequately performed her position; (3) she suffered an adverse employment action; and (4) similarly situated employees outside of her protected class were treated more favorably than she was. *See Knight v. Baptist Hosp. of Mia., Inc.*, 330 F.3d 1313, 1316 (11th Cir. 2003).

If Plaintiff produces sufficient evidence to support an inference that her denial of promotion was motivated by unlawful animus, the burden then shifts to Defendant to articulate legitimate and nondiscriminatory reasons for the employment action. *See Castillo v. Roche Labs, Inc.*, 467 F. App’x 859, 862–63 (11th Cir. 2012). This would require Defendant to produce evidence that would allow the jury to rationally conclude that the employment action was not motivated by discriminatory animus. *See Tex. Dep’t of Cmty Affs. v. Burdine*, 450 U.S. 248, 253–54 (1981). The burden then shifts back to

² Plaintiff contends that she has direct evidence that her denial of promotion was motivated by unlawful animus but fails to identify any such evidence in the record.

Plaintiff to prove that Defendant's proffered nondiscriminatory reason is pretextual and that the actual reason for the adverse employment action was discrimination. *Brown v. City of Opelika*, 211 F. App'x 862, 863–64 (11th Cir. 2006).

There is no dispute that Plaintiff belongs to a protected class with respect to each of her claims for employment discrimination or that her denial of promotion was an adverse employment action. Defendant instead argues that summary judgment is appropriate on Counts I, II, and III because Plaintiff has failed to point to any evidence of actual discriminatory intent or motive.

The Court finds that Plaintiff has failed to establish a *prima facie* case of employment discrimination. Plaintiff's Response contains only argument that her denial of promotion was motivated by discriminatory animus, without citation to *any* record evidence for support. Similarly, although Plaintiff does name several individuals she contends are "similarly situated" comparators, she fails entirely to explain, with citation to the record, how they qualify as "similarly situated" and how they were treated more favorably. Without record support, Plaintiff necessarily cannot produce "sufficient evidence to support an inference that the defendant employer based its employment decision on an illegal criterion." *Williams*, 144 F.3d at 1441 (quotation omitted). Accordingly, Plaintiff's claims for employment discrimination fail at the outset.

Even assuming that Plaintiff could establish a prima facie case of discrimination, the Court further finds that Defendant has articulated a nondiscriminatory reason for the denial of promotion. *See Perryman v. Johnson Prods. Co.*, 698 F.2d 1138, 1142 (11th Cir. 1983) (“[T]he defendant’s burden of rebuttal is exceedingly light; ‘the defendant need not persuade the court that it was actually motivated by the proffered reasons . . . it is sufficient if the defendant’s evidence raises a genuine issue of fact as to whether it discriminated against the plaintiff.” (quoting *Tex. Dep’t of Cmty Affs.*, 450 U.S. at 254–55)). Specifically, Defendant points to a committee report recommending against Plaintiff’s promotion because Plaintiff had failed to meet the standard for production of scholarship. (Doc. 75-3 at 340–343). Provost Maurice Edington, the final decisionmaker with respect to Plaintiff’s denial of promotion, articulated this same reason to Plaintiff when explaining the reasons for her denial of promotion. (Doc. 75-2 at 1, 6).

The Court finds that this is a legitimate, nondiscriminatory reason for Plaintiff’s denial of promotion, and sufficient to satisfy Defendant’s “exceedingly light” burden of rebuttal. *Perryman*, 698 F.2d at 1142; *see also Gogel v. Kia Motors Mfg. of Ga., Inc.*, 967 F.3d 1121, 1148 (11th Cir. 2020) (“An employer may fire an employee for a good reason, a bad reason, a reason based on erroneous facts, or for no reason at all, as long as its action is not for a discriminatory reason.” (quotation omitted)). Moreover, apart from several conclusory comments, Plaintiff has failed to develop and support any

argument that this reason is pretextual. Any such argument is thus waived. *See W. Sur. Co. v. Steuerwald*, No. 16-61815-CV, 2017 WL 5248499, at *2 (S.D. Fla. Jan. 17, 2017) (“It is axiomatic that arguments not supported and properly developed are deemed waived.”); *see also U.S. Steel Corp. v. Astrue*, 495 F.3d 1272, 1287 n.13 (11th Cir. 2007) (noting that the court need not consider “perfunctory and underdeveloped” arguments and that such arguments are waived); *Resolution Tr. Corp. v. Dunmar Corp.*, 43 F.3d 587, 599 (11th Cir. 1995).

Finally, Plaintiff argues that a Title VII plaintiff who cannot satisfy the *McDonnell Douglas* burden shifting framework may still prove her case with what the Eleventh Circuit has called a “convincing mosaic of circumstantial evidence that would allow a jury to infer intentional discrimination by the decisionmaker.” *Tynes v. Fla. Dep’t of Juv. Just.*, 88 F.4th 939, 946 (11th Cir. 2023) (quotation omitted). “A convincing mosaic of circumstantial evidence is simply enough evidence for a reasonable factfinder to infer intentional discrimination in an employment action—the ultimate inquiry in a discrimination lawsuit.” *Id.* at 947 (quotations omitted); *see also Equal Emp. Opportunity Comm’n v. Exel, Inc.*, 884 F.3d 1326, 1329 (11th Cir. 2018) (“A plaintiff can prove sex discrimination under Title VII by showing that her sex was a motivating factor for any employment practice, even though other factors also motivated the practice.” (quotations omitted)).

Under any standard or procedural framework, however, Plaintiff’s claims cannot survive summary

judgment. As noted above, Provost Edington has disclaimed any discriminatory intent. Further, the committee that evaluated Plaintiff for promotion articulated a legitimate reason for its recommendation of denial. Although Plaintiff contends that she has a “convincing mosaic” of evidence in addition to “mixed-motive” evidence showing otherwise, she does not point to any such evidence, direct or circumstantial, in the record. Plaintiff accordingly fails to create any genuine dispute of material fact, and there is no basis upon which a reasonable jury could infer that Defendant’s failure to promote Plaintiff was motivated by unlawful discriminatory animus. Summary judgment is appropriate on Plaintiff’s claims for employment discrimination in Counts I, II, and III.

C. Hostile Work Environment Harassment

Defendant next seeks summary judgment on Plaintiff’s hostile work environment claims under Title VII, alleged in Counts IV, V, and VI. An employer may be liable for unlawful discrimination against an employee through the “creation of a hostile work environment caused by . . . harassment that is sufficiently severe or pervasive to alter the terms and conditions of work.” *Baldwin v. Blue Cross/Blue Shield of Ala.*, 480 F.3d 1287, 1300 (11th Cir. 2007). To establish her claims for hostile work environment, Plaintiff must show that: (1) she belongs to a protected class; (2) she was subject to unwelcome harassment; (3) the harassment was based on her race, color, or sex; (4) the “harassment was sufficiently

severe or pervasive to alter the terms and conditions of employment and create a discriminatorily abusive working environment”; and (5) “a basis for holding the employer liable.” *Mendoza v. Borden, Inc.*, 195 F.3d 1238, 1245 (11th Cir. 1999).

Defendant first contends that Plaintiff’s claims for hostile work environment are untimely. As noted above, prior to bringing suit under Title VII, Plaintiff was first required to file a charge of discrimination within 300 days of the discriminatory acts alleged therein. See *Maynard*, 256 F.3d at 1262–63. With respect to claims of harassment, a Court may consider a series of untimely harassing conduct, provided that such conduct is “part of the same actionable hostile work environment practice, and . . . any act falls within the statutory time period.” *Jimerson v. Int’l Longshoremen’s Ass’n, Local 1423*, No. Civ.A. CV205-101, 2005 WL 3533044, at *16 (S.D. Ga. Dec. 22, 2005) (quotation omitted). “A series of harassing conduct comprises the same hostile work environment where the ‘pre-and post-limitations period incidents involve[d] the same type of employment actions, occurred relatively frequently, and were perpetrated by the same managers.’” *Jones v. Allstate Ins. Co.*, 707 F. App’x 641, 647 (11th Cir. 2017) (quoting *Nat’l R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 120 (2002)).

Plaintiff filed her Charge of Discrimination on May 29, 2020. (Doc. 75-3 at 350). Accordingly, only acts of discriminatory harassment occurring on or after August 3, 2019, are timely. Although Plaintiff’s charge of discrimination alleges a series of discriminatory incidents stretching back to 2010, the

Court notes that these incidents seemed to occur only rarely over a span of more than ten years. (*Id.* at 350–351). Further, the charge of discrimination alleges insulting comments, a “sham” dismissal of Plaintiff’s discrimination charge with Defendant, and accusations related to the performance of Plaintiff’s job duties. Each of these actions is alleged to have been perpetrated by different individuals, some Plaintiff’s colleagues, some her supervisors. The Court accordingly finds that these allegations involve disparate discriminatory acts, committed infrequently, and by different individuals. Therefore, the incidents alleged before August 3, 2019 are not “part of the same actionable hostile work environment practice” and are thus untimely. *Jimerson*, 2005 WL 3533044, at *6. The Court will accordingly not consider evidence of any such incidents in evaluating Plaintiff’s claims for hostile work environment.

On the merits, Defendant argues that Plaintiff’s claims for hostile work environment fail because the alleged harassment is not sufficiently “severe or pervasive.” *Mendoza*, 195 F.3d at 1245. Title VII is not a “general civility code.” *Faragher v. City of Boca Raton*, 524 U.S. 775, 788 (1998) (quotation omitted). In fact, “Title VII does not prohibit all verbal or physical harassment in the workplace[.]” *Oncale v. Sundowner Offshore Servs., Inc.*, 523 U.S. 75, 80 (1998). “[T]he ordinary tribulations of the workplace, such as the sporadic use of abusive language, [race]-related jokes, and occasional teasing[.]” do not violate the law. *Faragher*, 524 U.S. at 788 (quotation omitted). Instead, “Title VII prohibits only the type of severe or pervasive []

harassment that ‘alter[s] the conditions of the victim’s employment.’” *Johnson*, 234 F.3d at 509 (quoting *Oncale*, 523 U.S. at 81). In evaluating whether harassing conduct is severe or pervasive, courts must consider the “totality of the circumstances,” looking to four factors: (1) frequency, (2) severity, (3) whether the conduct is physically threatening or humiliating, and (4) whether the conduct unreasonably interferes with the employee’s job performance.” *Mendoza*, 195 F.3d at 1246. Plaintiff’s subjective perception of harassment as severe or pervasive “must be objectively reasonable.” *Id.* “[T]he objective severity of harassment should be judged from the perspective of a reasonable person in the plaintiff’s position, considering all the circumstances.” *Id.* (quoting *Oncale*, 523 U.S. at 81).

Considering the totality of the circumstances presented in the summary judgment record, Defendant is entitled to summary judgment on Plaintiff’s hostile work environment claims. First, it is undisputed that Plaintiff was never subjected to physically threatening conduct, cutting against the severity of the alleged harassment. Second, the record shows that any harassing conduct or behavior was too infrequent or sporadic to be considered pervasive. Plaintiff cites no record evidence to refute these conclusions. Further, the harassing conduct Plaintiff alleges—again, without record support—simply does not rise to the level of severity necessary to alter the conditions of Plaintiff’s employment. *See, e.g., Barrow v. Ga. Pac. Corp.*, 144 F. App’x 54, 57 (11th Cir. 2005) (affirming summary judgment for employer where African American plaintiff was

repeatedly called racial slurs and occasionally subjected to other racially threatening conduct). Finally, Plaintiff points to no evidence that any of the alleged harassing conduct “unreasonably interfere[d] with [her] job performance.” *Mendoza*, 195 F.3d at 1246. Because Plaintiff has failed to set forth any evidence showing there is a genuine dispute of material fact as to the severity and pervasiveness of the alleged harassment, the Court finds that summary judgment for Defendant on Counts IV, V, and VI is appropriate.

D. Retaliation

Defendant finally argues that it is entitled to summary judgment on Plaintiff’s retaliation claim, alleged in Count VII. Under Title VII’s anti-retaliation provision, an employer cannot retaliate against an employee “because he has opposed any practice made an unlawful employment practice by this subchapter, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter.” 42 U.S.C. § 2000e-3(a). To establish retaliation, Plaintiff must show: (1) she engaged in statutorily protected activity; (2) she suffered an adverse employment action; and (3) a causal connection between the protected activity and the adverse action. *Howard v. Walgreen Co.*, 605 F.3d 1239, 1244 (11th Cir. 2010).

Defendant argues summary judgment is appropriate because Plaintiff has failed to establish a causal connection between her protected activity and

an adverse employment action. Plaintiff alleges that she filed multiple formal complaints with Defendant regarding “unequal treatment, discrimination, and bias”—in addition to similar informal statements—and that Defendant subjected Plaintiff to a “pattern of retaliatory conduct.” (Doc. 34, ¶¶ 301–302). However, Plaintiff fails to identify *any* instances of such retaliatory conduct or to cite to the same in the record. Nor does Plaintiff explain the causal connection between the alleged “retaliatory harassment” and an adverse employment action. Without any evidence of the alleged pattern of retaliatory conduct or a causal link to her complaints, Plaintiff’s claim for retaliation cannot survive summary judgment. *See DeBose v. USF Bd. of Trs.*, 811 F. App’x 547, 557 (11th Cir. 2020) (affirming judgment as a matter of law against the plaintiff for failure to present evidence establishing causation between complaints of discrimination and the plaintiff’s termination). Accordingly, Defendant’s Motion will be granted as to Count VII.

IV. CONCLUSION

For the reasons set forth herein, it is **ORDERED** and **ADJUDGED** as follows:

1. Defendant’s Motion for Summary Final Judgement (Doc. 76) is **GRANTED in part** as set forth herein and **DENIED** in all other respects.
2. The Clerk is directed to enter judgment in favor of Defendant, and against Plaintiff, on each of her claims.

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3. Thereafter, the Clerk is directed to terminate all pending motions and close this case.

DONE AND ORDERED in Orlando, Florida on January 10, 2025.

s/Wendy W. Berger

Wendy W. Berger
United States District Judge

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APPENDIX D

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

MARITZA REYES,
Plaintiff,

v.

FLORIDA A&M UNIVERSITY BOARD OF
TRUSTEES ("FAMU"),
Defendant.

Case No.: 6:22-cv-1525-WWB-DCI

Filed on August 12, 2024

Before WENDY W. BERGER, District Judge.

**PLAINTIFF'S NOTICE OF FILING
RECORDINGS AND TRANSCRIPTS IN
SUPPORT OF PLAINTIFF'S RESPONSE IN
OPPOSITION TO DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT AND INCORPORATED
MEMORANDUM OF LAW**

Plaintiff, Maritza Reyes, hereby files the recordings and transcripts listed below in support of Plaintiff's Response in Opposition to Defendant's Motion for Summary Judgment and Incorporated Memorandum of Law.

1. Defendant/FAMU Division of Audit and Compliance Audio Recordings

- a. College of Law Professor John Duncan
- b. College of Law Program Assistant Evett Collins
- c. College of Law Program Assistant Celia Westbrook
- d. College of Law Program Assistant Doranne Riggio
- e. College of Law Professor Phyllis Taite
- f. College of Law Professor Joe Grant

- g. College of Law Program Assistant Celia Westbrook (211u Recording)
- h. College of Law Professor Maritza Reyes

2. Defendant/FAMU Surveillance Video Recordings

- a. February 9, 2015 - IT & Registrar Offices
- b. April 15, 2015 - Faculty Conference Room
- c. February 24, 2016 - Faculty Conference Room
- d. May 6, 2019 - First Floor Elevator Atrium
- e. May 6, 2019- Third Floor Elevator Library/Faculty Suite Entrance
- f. January 15, 2020 - Faculty Conference Room
- g. January 13, 2022 - First Floor Elevator Atrium

3. Deposition Transcripts

- a. College of Law Professor LeRoy Pernell - May 9, 2024 (40 Exhibits)

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- b. College of Law Professor Patricia Broussard - May 16, 2024 (29 Exhibits)
- c. Plaintiff Maritza Reyes - May 24, 2024 (11 Exhibits)
- d. FAMU President/Dr. Larry Robinson - June 20, 2024 (37 Exhibits)

Respectfully submitted this 12th day of August, 2024.

/s/ Maritza Reyes
P.O. Box 5102
Winter Park, FL 32793
mreyesclaim@gmail.com
305-308-8200

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 12, 2024, I electronically filed the foregoing document with the Clerk of the Court by using the CM/ECF system, which will send notice to Defendant's attorneys.

/s/ Maritza Reyes
Plaintiff