UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

No. 25-cv-25610-DPG

David Arnold Gray,
Plaintiff,

v.

Miami-Dade County,
Christina Salinas Cotter, and
Nathan Kogon,
Defendants.
_____/

MOTION TO DISMISS THE AMENDED COMPLAINT

The Supreme Court has said, on many occasions, that although a public employee has a First Amendment right "to participate as a citizen, through petitioning activity, in the democratic process," he does not have the right "to transform everyday employment disputes into matters for constitutional litigation in the federal courts." *Borough of Duryea v. Guarnieri*, 564 U.S. 379, 399 (2011); *accord Garcetti v. Ceballos*, 547 U.S. 410, 420 (2006) ("[W]hile the First Amendment invests public employees with certain rights, it does not empower them to 'constitutionalize the employee grievance.'" (quoting *Connick v. Myers*, 461 U.S. 138, 154 (1983))). The reason this suit is before this Court is because Miami-Dade County employee David Gray is trying to do just that. He seeks to constitutionalize his grievances about: (1) an assistant director's decision not to assign him a preferred workstation; (2) a reply to his own email accusing that assistant director of violating the law because she didn't give him that workstation; (3) his director's decision to structure the department as he saw fit; and (4) his supervisor's decision to assign work responsibilities among her subordinates. The defendants move to dismiss the amended complaint under Federal Rule of Civil Procedure 12(b)(6).

BACKGROUND

This action concerns three employees of the Miami-Dade County Department of Housing and Community Development (HCD): the director, Nathan Kogon, a white man; an assistant director, Christina Salinas Cotter, a white woman; and David Gray, a Black man. Am. Compl. [ECF No. 6] ¶¶ 8, 9, 12.

Gray was promoted to the position of Business Architect in October 2024. Following the promotion, he asked Salinas Cotter to be reassigned to a "visibly vacant window workstation" in accordance with HCD's "practice of assigning window workstations" to employees at that level. *Id.* ¶¶ 10–14. Salinas Cotter, who oversees workstation assignments, denied the request, advising Gray that the workstation had already been earmarked for another employee. *Id.* ¶¶ 14–15; Am. Compl. Exh. A, at 1.[1] Salinas Cotter later assigned window workstations to three white employees promoted or hired into qualifying classifications. *See* Am. Compl. ¶¶ 17–22.

On January 27, 2025, Salinas Cotter disseminated a pre-hire checklist to the department outlining the proper procedures for requesting office space and other onboarding procedures that HCD's human resources team had been following. Am. Compl. Exh. A, at 1. On February 3, Gray received an email from a County commissioner stating that three interns from the Kendall Learning Academy would be assigned to his unit for twelve weeks beginning February 10. Am. Compl. ¶¶ 25–27. Gray requested Salinas Cotter to provide for workstations for the interns. *Id.* ¶ 29. Salinas Cotter explained that she was awaiting further guidance from the County's central

[1] This explanation from Salinas Cotter, contained in an email exhibit Gray attached to his amended complaint, trumps the general and conclusory allegation that she "provided no justification or explanation for the denial." Am. Compl. ¶ 16; *see Llauro v. Tony*, 470 F. Supp. 3d 1300, 1314 (S.D. Fla. 2020) (Gayles, J.) ("'When exhibits attached to a complaint contradict the general and conclusory allegations of the pleading, the exhibits govern.' It is only 'when a complaint contains specific, well-pleaded allegations that either do not appear in the attached exhibit or that contradict conclusory statements in the exhibit' will the complaint allegations govern." (cleaned up) (quoting *K.C.R. ex rel. Gill v. Judd*, 941 F.3d 504, 514 (11th Cir. 2019))), *aff'd sub nom. Llauro v. Linville*, No. 20-12862, 2021 WL 5767935 (11th Cir. Nov. 6, 2021).

human resources because the interns were not part of the County Mayor's internship program. Am. Compl. Exh. A, at 1. During a later conversation, when Gray told Salinas Cotter that the interns would be starting soon, she informed him that they would be utilizing space on the sixteenth floor, which would not be available until a contractor had finished reconfiguring that floor. *Ibid.* Gray replied that that would not be an issue, and that he would work on finding them a place to sit in the meantime. *Ibid.* He had not secured workstations by February 10, when two of the interns arrived, so the three worked inside his cubicle. Am. Compl. ¶¶ 33–36.

Ten days later, he emailed Salinas Cotter accusing her of retaliation and unfair employment practices in violation of County policy and Florida law. Am. Compl. Exh. A, at 2–3. Four days after that, Salinas Cotter replied, writing, "I must address my right, under the same County regulations you cited, to a workplace free from unlawful harassment. Your false claims and allegations constitute harassment, and I will take appropriate steps to report this behavior to the relevant authorities under all applicable laws and policies." *Id.* at 1. She went on to explain that Gray never submitted a formal written request for either his own office space or office space for the interns in accordance with department procedure, and that the appropriate protocol if he believed he was treated unfairly would be to raise the concerns with his immediate supervisor, which he apparently did not do. *Id.* at 1–2.

On February 27, Gray submitted a complaint to the Miami-Dade County Commission on Ethics and Public Trust alleging that Salinas Cotter was abusing her authority. Am. Compl. ¶ 51–55.[2] On May 8, he received word from the commission that it would dismiss the complaint for lack of jurisdiction during a meeting on May 14 because it involved personnel actions and

[2] The stated purpose of the Commission on Ethics "is to serve as the guardian of the public trust by, among other things, educating the public, candidates for elective office, elected and appointed officials and other public servants as to the required standards of ethical conduct and enforcing those standards of conduct. It is not the intent of the County Commission that the Ethics Commission serve as a personnel board resolving personnel matters involving County and municipal employees." Miami-Dade Cty. Code § 2-1067.

discrimination matters outside the scope of the commission's governing ordinance. *Id.* ¶¶ 56–57, 63. The commission did in fact dismiss the complaint on that date, over Gray's objection. *Id.* ¶¶ 58–62.

The day before the commission dismissed the complaint, Director Kogon informed Gray that he would report directly to Salinas Cotter. *Id.* ¶¶ 66–69. The next day, Gray sent an email to Kogon with the subject line "Formal Disclosure Regarding Ethics Complaint and Reassignment," in which he informed Kogon that he had filed an ethics complaint against Salinas Cotter with a hearing scheduled for that day. *Id.* ¶¶ 70–71; *see also* Email from David Gray to Nathan Kogon, May 14, 2025, 8:41 a.m., attached as ***Exhibit 1***, at 1–2.[3] Based on his own legal analysis, he claimed that Kogon's reassignment "raise[d] serious concerns and may constitute a violation of anti-retaliation protections." Am. Compl. ¶¶ 72–73; Exh. 1, at 2. Kogon responded that he was not previously aware of "the ethics complaint, the nature of the complaint, or the hearing scheduled for today," and explained that the "decision to have your reporting structure fall under Program Excellence was made to unite and consolidate business architecture, data reporting, and metrics within one framework" and was "made objectively and independently by me, without any suggestion or direction from Ms. Salinas-Cotter." Exh. 1, at 1; *see* Am. Compl. ¶¶ 74–75.

Following the dismissal of the ethics complaint, Gray alleges that Salinas Cotter began "publicly undermining [his] expertise, credibility, and authority" as the Business Architect. Am. Compl. ¶ 89. During a meeting in late May, Salinas Cotter discussed changing Gray's job title

[3] When resolving a motion to dismiss, a court may properly consider a document not attached to a complaint "under the incorporation-by-reference doctrine if the document is (1) central to the plaintiff's claim; and (2) undisputed, meaning its authenticity is not challenged." *Johnson v. City of Atlanta*, 107 F.4th 1292, 1300 (11th Cir. 2024). The elements of his doctrine are satisfied for the email exchange between Gray and Kogon. These emails are central to Gray's claim, as he describes them in the amended complaint, and their authenticity cannot be challenged.

and informed him he would no longer attend leadership meetings, collaborate directly with internal divisions, or engage with other County departments, including "CITD"[4] without her approval. *Id.* ¶¶ 90–94. During a meeting with CITD, Salinas Cotter stated that she was the only member of HCD who could "marry the business with the technical needs," a statement that Gray claims "publicly attack[ed] [his] professional competence" and "directly contradicted the core function of the Business Architect position." *Id.* ¶¶ 96–99. When a CITD assistant director asked, "What about the Business Architect?", Salinas Cotter responded that she was "getting a Business Initiative Manager," which Gray believes "signaled to CITD that [he] would be replaced or sidelined." *Id.* ¶¶ 101–103.

In October 2025, Salinas Cotter hired Amit Sharma, whom Gray alleges is a white man, into the role of Business Initiative Manager and assigned him duties that overlapped Gray's Business Architect responsibilities. *Id.* ¶¶ 104–105. She scheduled a formal meet-and-greet between Sharma and CITD leadership to present him as the new technical point of contact, excluding Gray. *Id.* ¶¶ 108–109. Gray believes this exclusion was "designed to damage [his] credibility following his protected disclosures." *Id.* ¶ 113.

LEGAL STANDARD

For a complaint to withstand a Rule 12(b)(6) motion, it "must state a claim for relief that is plausible, not merely possible." *Quality Auto Painting Ctr. of Roselle, Inc. v. State Farm Indem. Co.*, 917 F.3d 1249, 1260 (11th Cir. 2019) (en banc). A claim is "plausible" if the complaint contains "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *see Bell Atl.*

[4] The amended complaint does not define this acronym, though it likely refers to the County's Communications, Information and Technology Department. *See Communications, Information and Technology Department*, Miami-Dade County (2026), https://www.miamidade.gov/global/comms-tech/home.page.

Corp. v. Twombly, 550 U.S. 544, 555–57 (2007).

A court considering a motion to dismiss accepts well-pleaded factual allegations as true and construes them in the light most favorable to the plaintiff, but "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *MSP Recovery Claims, Series LLC v. Metro. Gen. Ins. Co.*, 40 F.4th 1295, 1302 (11th Cir. 2022) (quoting *Iqbal*, 556 U.S. at 678). The allegations of a *pro se* litigant are held to "less stringent standards than formal pleadings drafted by lawyers," but "'this leniency does not give a court license to serve as *de facto* counsel for a party, or to rewrite an otherwise deficient pleading in order to sustain an action.'" *Campbell v. Air Jam. Ltd.*, 760 F.3d 1165, 1168–69 (11th Cir. 2014) (quoting *GJR Invs., Inc. v. County of Escambia*, 132 F.3d 1359, 1369 (11th Cir. 1998)).

ARGUMENT

Gray's amended complaint raises four claims under 42 U.S.C. § 1983. "The first inquiry in any § 1983 suit" is to "isolate the precise constitutional violation with which [each defendant] is charged." *Baker v. McCollan*, 443 U.S. 137, 140 (1979).

Count I against the County and Salinas Cotter, titled "unlawful employment practices," asserts a violation of the Fourteenth Amendment. Am. Compl. ¶¶ 116–124. An employment discrimination claim against a state actor is cognizable under § 1983 for a violation of the Equal Protection Clause of that amendment. *Hornsby-Culpepper v. Ware*, 906 F.3d 1302, 1312 n.6 (11th Cir. 2018). The remaining three claims assert violations of both the First and Fourteenth Amendments: Count II, titled "petition clause violation," against the County and Salinas Cotter; Count III, titled "retaliatory reassignment," against the County and Kogon; and Count IV, titled "retaliatory hostile environment," against the County and Salinas Cotter. *Id.* ¶¶ 125–153. To the extent these counts raise First Amendment claims, they sound in retaliation.

To the extent Counts II, III, and IV raise Fourteenth Amendment claims, they sound in procedural due process. Each count (including Count I, for that matter) includes the allegation that Gray "received no notice or opportunity to be heard" before the defendants engaged in some unlawful conduct. Am. Compl. ¶¶ 121–122, 130–131, 140–141, 150–151. Because substantive due process claims are unavailable in the employment context, *McKinney v. Pate*, 20 F.3d 1550, 1560 (11th Cir. 1994), *abrogated on other grounds as recognized in Littlejohn v. Sch. Bd. of Leon Cty.*, 132 F.4th 1232 (11th Cir. 2025), procedural due process is the road he must travel.

That said, Gray does not state any claim upon which relief can be granted. Director Kogon and Assistant Director Salinas Cotter are protected by qualified immunity from the claims asserted against them. In addition, there is no viable municipal liability claim against the County.

I. The individual defendants are entitled to qualified immunity.

"[A]n entitlement to qualified immunity raised on a motion to dismiss *will* be granted if the complaint fails to allege the violation of a clearly established constitutional right." *Miller v. Palm Beach Cty. Sheriff's Office*, 129 F.4th 1329, 1333–34 (11th Cir. 2025) (emphasis in original & cleaned up). To assert the defense, a defendant need only establish that he was acting within the scope of his discretionary authority when the allegedly wrongful acts occurred. *Id.* at 1333. Gray concedes that Kogon and Salinas Cotter were acting within the scope of their authority as management employees. Am. Compl. ¶¶ 8–9, 14, 30, 69, 90. On this limited showing, the Court is required to grant qualified immunity unless Gray satisfies both prongs of the two-pronged qualified immunity standard: "(1) the facts alleged in his complaint constitute a violation of his constitutional rights, and (2) the constitutional rights were 'clearly established' when the defendant committed the act complained of." *Morris v. Town of Lexington*, 748 F.3d 1316, 1322 (11th Cir. 2014). The amended complaint does not satisfy either.

A. Gray does not allege a violation of any constitutional right.

1. There is no claim under § 1983 for "retaliatory hostile work environment."

At the outset, Count IV must fail because "retaliatory hostile work environment" is not an actionable claim under § 1983. It is Title VII of the Civil Rights Act of 1964, not § 1983, that "prohibits the creation of a hostile work environment in retaliation for an employee's engagement in protected activity." *Tonkryo v. Sec'y, Dep't of Veterans Affs.*, 995 F.3d 828, 835 (11th Cir. 2021); *see Gowski v. Peake*, 682 F.3d 1299, 1311–12 (11th Cir. 2012) (recognizing a retaliatory hostile work environment claim for the first time under Title VII), *overruled on other grounds by Babb v. Wilkie*, 589 U.S. 399 (2020), *as recognized in Babb v. Sec'y, Dep't of Veterans Affs.*, 992 F.3d 1193, 1196 (11th Cir. 2021). To the defendants' knowledge, the Eleventh Circuit has never recognized a retaliatory hostile work environment claim. *See Sullivan v. City of Frederick*, No. 17-1881, 2018 WL 337759, at *7 (D. Md. Jan. 9, 2018) ("It is somewhat unclear whether one can bring a 'hostile work environment first amendment retaliation' claim, and what precisely that would entail."), *aff'd*, 738 F. App'x 198 (4th Cir. 2018). Because Gray has not asserted any claim under Title VII, this claim must be dismissed.

2. The denial of a preferred workstation is not an adverse employment action under the Equal Protection Clause.

Equal Protection Clause claims alleging employment discrimination "are subject to the same standards of proof and use the same analytical framework as discrimination claims brought under Title VII of the Civil Rights Act of 1964 and 42 U.S.C. § 1981." *Hornsby-Culpepper*, 906 F.3d at 1312 n.6. Claims of race discrimination under any of these statutory schemes "require a showing that the employer subjected the employee to an 'adverse employment action'" that was due to intentional racial discrimination. *Davis v. Legal Servs. Ala., Inc.*, 19 F.4th 1261, 1266 (11th Cir. 2021).

Adverse employment actions are those "tangible employment actions" that "affect continued employment or pay—things like terminations, demotions, suspensions without pay, and pay raises or cuts—as well as other things that are similarly significant standing alone." *Ibid.* (cleaned up). "Trivial slights," on the other hand, "are not actionable." *Monaghan v. Worldpay US, Inc.*, 955 F.3d 855, 860 (11th Cir. 2020).

The action alleged in Count I—Salinas Cotter's refusal to assign Gray to a workstation with a window—is not an adverse employment action. "[A]n inferior, deficient workspace generally falls short of 'tangible' adverse employment action for purposes of unlawful discrimination." *Wandji v. Wilkie*, No. 18-3036, 2020 WL 7647552, at *14 (D.S.C. Nov. 9, 2020), *adopted,* 2020 WL 7237922 (D.S.C. Dec. 9, 2020), *aff'd sub nom. Wandji v. McDonough*, 850 F. App'x 851 (4th Cir. 2021); *see also Brodetski v. Duffey*, 141 F. Supp. 2d 35 (D.D.C. 2001). In *Brodetski*, an employee alleged that he was "denied … his right to select a new workstation based on his seniority within the office" and that he was "the only person in the office deprived of his right to choose a workstation." 141 F. Supp. 2d at 39. The court rejected his claim, finding that these did not constitute adverse employment actions. *Id.* at 45. Gray's allegation that Salinas Cotter denied him the "privilege" to select a window workstation mirrors Brodetski's allegation that he was denied the "right" to select a new workstation. Am. Compl. ¶ 118. The same goes for Gray's allegation that white employees were given window workstations; it resembles Brodetski's allegation that he was the only one denied the right to choose a new workstation. *Ibid.*

Courts across the country have found that even reassignment to a less desirable workstation is not an adverse employment action.[5] Thus, Salinas Cotter's alleged refusal to assign Gray to a

[5] *See, e.g.*, *Kaminsky v. Wilkie*, 856 F. App'x 602, 605 (6th Cir. 2021) (movement of plaintiff's office space into cubicle "does not constitute an adverse employment action because it is the kind of mere annoyance or petty

more desirable workstation cannot be an adverse employment action. Gray therefore cannot plausibly state a claim that the refusal violated the Equal Protection Clause.

3. Gray does not allege any constitutionally protected property interest that would give rise to a procedural due process claim.

To state a procedural due process claim, a plaintiff must allege "(1) a deprivation of a constitutionally-protected liberty or property interest; (2) state action; and (3) constitutionally-inadequate process." *Humphreys v. Comm'r, Ga. Dep't of Corr.*, 161 F.4th 1300, 1311 (11th Cir. 2025) (cleaned up). "Property interests, of course, are not created by the Constitution," but rather "are created and their dimensions are defined by existing rules or understandings that stem from an independent source," *Bd. of Regents v. Roth*, 408 U.S. 564, 577 (1972), such as "a statute, a regulation, an express or implied contract, or a mutually explicit understanding," *Barnes v. Zaccari*, 669 F.3d 1295, 1303 (11th Cir. 2012) (cleaned up). "The hallmark of property … is an individual entitlement grounded in state law, which cannot be removed except 'for cause.'" *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 430 (1982).[6]

slight that courts have held does not constitute actionable harm" (cleaned up)); *Unal v. Los Alamos Pub. Schs.*, 638 F. App'x 729, 743–45 (10th Cir. 2016) (workspace relocation was not adverse employment action); *Mitchell v. Vanderbilt Univ.*, 389 F.3d 177, 183 (6th Cir. 2004) (reduction in laboratory space from 2000 square feet to 150 square feet was not adverse employment action); *Richardson v. Richland Cty. Sch. Dist. No. 1*, 52 F. App'x 615, 616 (4th Cir. 2002) (teacher's assignment to "undesirable classroom" not adverse employment action); *Slater v. NYU Langone Health Sys.*, No. 24-3711, 2025 WL 2208292, at *12 (E.D.N.Y. Aug. 4, 2025) (decision to move plaintiff to smaller workspace with smaller desk that made it difficult to complete tasks was mere "trivial harm," "petty slight" or "minor inconvenience," not adverse employment action (quoting *Burlington N. & Santa Fe Ry. Co. v. White*, 548 U.S. 53, 68 (2006))); *Hawley v. OPWDD-Cent. NY DDSO*, No. 24-0248, 2025 WL 1127447, at *16 (N.D.N.Y. Apr. 16, 2025) (plaintiff's relocation to "worst cubicle location in the entire building" that was "two feet away from an outside door with a high traffic area" and was "cold or hot depending on the season" was not adverse employment action, even under broader retaliation standard); *Wonasue v. Univ. of Md. Alumni Ass'n*, 984 F. Supp. 2d 480, 492 (D. Md. 2013) (moving employee to "inferior office" did not constitute adverse employment actions); *Rock v. McHugh*, 819 F. Supp. 2d 456, 470 (D. Md. 2011) (plaintiff's removal from three-window office to shared cubicle was not adverse employment action); *Cunningham v. N.Y. State Dep't of Labor*, No. 05-1127, 2010 WL 1781465, at *6 (N.D.N.Y. Apr. 30, 2010) ("Although perhaps inconvenient, the relocation of plaintiff's office does not rise to level of an adverse employment action[,] … [e]ven if the decision to move plaintiff to the first floor was the product of a retaliatory motive[.]"), *aff'd*, 429 F. App'x 17 (2d Cir. 2011); *Murray v. City of Winston-Salem*, 203 F. Supp. 2d 493, 502 (M.D.N.C. 2002) ("[R]elocating [plaintiff]'s workspace from a private office to a cubicle is not sufficient to constitute an adverse employment action.").

[6] "The independent source need not use the phrase 'for cause' so long as the parties understood their agreement would have that effect." *Barnes*, 669 F.3d at 1303.

Three years ago, another court in this District dismissed a procedural due process claim brought by Gray where he "rel[ied] on a handful of County regulations that govern various, routine aspects of the County's relationship with its employees" to establish his constitutionally protected property right. *Gray v. Howard*, No. 22-23693, 2023 WL 4405215, at *3 (S.D. Fla. July 7, 2023) (Scola, J.). Judge Scola ruled that his allegations fell "far short of even implying a property interest established by state law, nevermind establishing a constitutionally-protected property interest." *Ibid.*

The specter of that prior complaint reappears in this one—in weaker form. Whereas there he cited County regulations, Count I invokes a mere departmental "practice" of assigning window workstations to certain employees and states the conclusion that window workstations are "a customary privilege." Am. Compl. ¶¶ 10–11. Gray alleges no constitutionally protected property interest at all in support of the other three claims. *See generally id.* ¶¶ 125–153. If County regulations fell short of establishing "an individual entitlement grounded in state law, which cannot be removed except 'for cause,'" *Logan*, 455 U.S. at 430, internal practices surely do as well. The procedural due process claims must fail.

4. Gray cannot state a First Amendment retaliation claim because he did not suffer an adverse employment action and did not speak as a citizen on a matter of public concern.

"[A] public employer retaliates in violation of the First Amendment when it takes an adverse employment action that is likely to chill the exercise of constitutionally protected speech." *Bell v. Sheriff of Broward Cty.*, 6 F.4th 1374, 1377 (11th Cir. 2021) (cleaned up). But an employee's speech is not constitutionally protected if he did not speak "as a citizen on a matter of public concern." *Alves v. Bd. of Regents of Univ. Sys. of Ga.*, 804 F.3d 1149, 1159 (11th Cir. 2015) (quoting *Garcetti*, 547 U.S. at 418). Gray's retaliation claims must fail because he did not

suffer an adverse employment action and he did not speak as a citizen on a matter of public concern.

The starting inquiry in any First Amendment case by a public employee–plaintiff is whether the plaintiff spoke as a citizen on a matter of public concern. If he didn't, he "has no First Amendment cause of action based on his or her employer's reaction to the speech." *Garcetti*, 547 U.S. at 418. This is a question of law for the court to resolve. *Alves*, 804 F.3d at 1159. "An employee's speech is protected only when made as a citizen and 'when it can be fairly considered as relating to any matter of political, social, or other concern to the community, or when it is a subject of legitimate news interest.'" *Green v. Finkelstein*, 73 F.4th 1258, 1263 (11th Cir. 2023) (quoting *Snyder v. Phelps*, 562 U.S. 443, 453 (2011)).

Both of Gray's alleged instances of speech were made as an employee, not a citizen. The first was an email to Salinas Cotter, his supervisor, alleging disparate treatment and abuse of authority. The second was a complaint he filed with the Miami-Dade County Commission on Ethics. In Petition Clause cases,[7] "[w]hether an employee's petition relates to a matter of public concern will depend on 'the content, form, and context of the petition,'" as well as "[t]he forum in which [the] petition is lodged." *Borough of Duryea*, 564 U.S. at 398 (quoting *Connick*, 461 U.S. at 147–48 & n.7). In *Borough of Duryea*, the Supreme Court explained that a petition "filed with an employer using an internal grievance procedure in many cases will not seek to communicate to the public or to advance a political or social point of view beyond the employment context." *Ibid.* Gray's email to Salinas Cotter is, at most, a petition filed using an employer's internal grievance procedure. It does not relate to a matter of public concern.

[7] "Congress shall make no law … abridging … right of the people … to petition the Government for a redress of grievances." U.S. Const. amend I.

The Ethics Commission complaint was likewise not filed as a citizen on a matter of public concern. Gray submitted it following Salinas Cotter's alleged decisions denying him a window workstation and denying his request to provide workstations for two interns. But the public would not be "truly interested" in learning how a County department's assistant director was assigning employees to workstations or whether she was making workspace available for interns; "such speech, 'if released to the public, would convey no information at all other than the fact that [an] employee[was] upset with the status quo,' and is of no relevance 'beyond the employee['s] bureaucratic niche.'" *Desrochers v. City of San Bernardino*, 572 F.3d 703, 713 (9th Cir. 2009) (cleaned up) (quoting *Connick*, 461 U.S. at 148, then *Tucker v. Cal. Dep't of Educ.*, 97 F.3d 1204, 1210 (9th Cir. 1996))).

Through this complaint, Gray was not "seek[ing] to participate, as a citizen, in the process of deliberative democracy." *Borough of Duryea*, 564 U.S. at 498. He "simply sought redress for wrongs that he allegedly suffered during his employment, by means of a private complaint." *Dance v. Pennsylvania*, No. 18-1593, 2023 WL 7285549, at *10–11 (M.D. Pa. Nov. 3, 2023) (finding that plaintiff's filing of a charge of discrimination with the U.S. Equal Employment Opportunity Commission was not a petition on a matter of public concern). He filed his petition in the form of a confidential complaint[8] in the context of his disagreements with Salinas Cotter's decisions. *See Ostly v. City & County of San Francisco*, No. 21-8955, 2023 WL 4053800, at *8 (N.D. Cal. June 15, 2023) (finding that plaintiff's confidential report to state bar regarding opposing counsel's conduct in his case did not touch upon a matter of public concern "absent a broader allegation of systematic conduct that transcended his individual cases"), *aff'd*, No. 23-

[8] *See* Miami-Dade Cty. Code § 2-1074(e) ("All proceedings, the complaint, and other records relating to the preliminary investigation … shall be confidential and exempt from the provisions of Section 119, Florida Statutes, either until the alleged violator requests in writing that such investigation and records be made public records or the preliminary investigation is completed[.]").

16000, 2024 WL 3963839 (9th Cir. Aug. 28, 2024). The complaint did not relate to a matter of public concern.

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Gray also did not suffer any adverse employment action. "An 'adverse employment action' … is an action that involves an important condition of employment," such as "discharges, demotions, refusals to hire or promote, and reprimands." *Bell*, 6 F.4th at 1377. "Not all employer actions that negatively impact an employee qualify as 'adverse employment actions.'" *Howard v. Walgreen Co.*, 605 F.3d 1239, 1245 (11th Cir. 2010). "[O]nly those employment actions that result in a *serious and material* change in the terms and conditions of employment will suffice." *Ibid.* (emphasis in original & cleaned up). "Moreover, an employee's subjective view of the significance and adversity of the employer's action is not controlling; the employment action must be materially adverse as viewed by a reasonable person in the circumstances." *Ibid.*

Each of Gray's claims involves a different alleged action. In Count II, he cites Salinas Cotter's email, in which she stated, "I must address my right, under the same County regulations you cited, to a workplace free from unlawful harassment. Your false claims and allegations constitute harassment, and I will take appropriate steps to report this behavior to the relevant authorities under all applicable laws and policies." In Count III, he cites Kogon's restructuring decision placing Gray under Salinas Cotter's supervision. And in Count IV, he cites (1) Salinas Cotter's reduction in his ability to collaborate with other divisions and departments without permission, (2) her comments to CITD that allegedly undermined his authority, (3) her decision to hire Sharma to the position of Business Initiative Manager and assign him duties that overlapped Gray's, and (4) his exclusion from the meet-and-greet with CITD leadership.

None of this conduct amounts to an adverse employment action, even viewed together. The Eleventh Circuit has previously remarked that "negative evaluations, threats of job loss and suspensions without pay, exclusions from meetings, and removal of job duties—even in the aggregate—are not" adverse employment actions. *Ibid.* (citing *Akins v. Fulton County*, 420 F.3d 1293, 1300–02 (11th Cir. 2005)); *see also id.* at 1379 (holding that five-day suspension with pay was not adverse employment action). Even reassignment to a new supervisor is not an adverse employment action. *Stewart v. Miss. Transp. Comm'n*, 586 F.3d 321, 331–32 (5th Cir. 2009); *see also Lowery v. Mills*, 157 F.4th 729, 743 (5th Cir. 2025) (allegations that employer retaliated against plaintiff "by threatening to reduce [his] pay, involuntarily end his affiliation with the Salem Center, reduce his access to research opportunities, inquire about his tweets, labeling him, requesting that his speech be placed under police surveillance, [and] otherwise disciplining him" were not "sufficiently adverse"); *Delaney v. Town of Abington*, 890 F.3d 1, 8 (1st Cir. 2018) ("Comments by a supervisor that were critical of plaintiff's job performance are without more too trivial to deter a person of ordinary firmness from exercising First Amendment rights." (cleaned up)); *Brennan v. Norton*, 350 F.3d 399, 419 (3d Cir. 2003) (declining to find adverse action where "alleged retaliatory acts were criticism, false accusations or verbal reprimands"); *Marrero v. Goya of P.R., Inc.*, 304 F.3d 7, 23–25 (1st Cir. 2002) (reassignment to work in same capacity under different supervisor was not adverse employment action, even though plaintiff was required to do more work and was subject to "extreme supervision"); *Harrington v. Harris*, 118 F.3d 359, 365 (5th Cir. 1997) ("decisions concerning teaching assignments, pay increases, administrative matters, and departmental procedures, while extremely important to the person who dedicated his or her life to teaching" were not adverse employment actions (cleaned up)).

The alleged employment actions did not "result in a *serious and material change* in the terms and conditions" of Gray's employment. *Howard*, 605 F.3d at 1245. Rather, they are more akin to the "petty slights or minor annoyances that often take place at work and that all employees experience," and an employee's decision to report discriminatory behavior "cannot immunize that employee" from such slights. *Burlington N. & Santa Fe Ry. Co. v. White*, 548 U.S. 53, 68 (2006).

Because Gray did not file any petition as a citizen on a matter of public concern and because he did not suffer a sufficiently adverse employment action, the individual defendants are entitled to qualified immunity from his First Amendment claims.

B. Gray does not demonstrate that any constitutional right was clearly established at the time.

As to the second prong, "a defendant cannot be said to have violated a clearly established right unless the right's contours were sufficiently definite that any reasonable official in the defendant's shoes would have understood that he was violating it." *Plumhoff v. Rickard*, 572 U.S. 765, 778–79 (2014). "[T]he violative nature of [the officer]'s particular conduct" must be clearly established. *Mullenix v. Luna*, 577 U.S. 7, 12 (2015) (cleaned up).

A plaintiff can show a clearly established right in three ways: (1) "come forward with case law with indistinguishable facts clearly establishing the constitutional right"; (2) "point to a broad statement of principle within the Constitution, statute, or case law that clearly establishes a constitutional right"; or (3) "show that the officials engaged in conduct so egregious that a constitutional right was clearly violated, even in the total absence of case law." *Jarrard v. Sheriff of Polk Cty.*, 115 F.4th 1306, 1323–24 (11th Cir. 2024) (cleaned up). "In all three methods, the salient question is whether the state of the law at the time of the incident gave the [officer] fair warning that his conduct was unlawful." *Powell v. Snook*, 25 F.4th 912, 920 (11th Cir. 2022)

(cleaned up).

Under the first method, a plaintiff "must point to a case, in existence at the time of the incident," in which a controlling court "found a violation based on materially similar facts." *Baxter v. Roberts*, 54 F.4th 1241, 1263 (11th Cir. 2023) (cleaned up). Identifying a case is "especially important in the Fourth Amendment context, where the [Supreme] Court has recognized that 'it is sometimes difficult for an officer to determine how the relevant legal doctrine … will apply to the factual situation [he] confronts.'" *Mullenix*, 577 U.S. at 12 (quoting *Brosseau v. Haugen*, 543 U.S. 194, 198 (2004)). In short, the state of the law must "make[] it obvious that the officer's acts violated the plaintiff's rights in the specific set of circumstances at issue." *Garcia v. Casey*, 75 F.4th 1176, 1186 (11th Cir. 2023).

Cases where the second and third methods are applied are known as "'obvious clarity' cases." *King v. Pridmore*, 961 F.3d 1135, 1146 (11th Cir. 2020). Obvious clarity is a rare and narrow exception, so "if a plaintiff cannot show that the law at issue was clearly established under the first (materially similar case on point) method, that usually means qualified immunity is appropriate." *Ibid.* The exception is reserved for that small number of cases involving "depraved, inhumane" acts, *Gilmore v. Hodges*, 738 F.3d 266, 279 (11th Cir. 2013), and the two methods contemplate "a principle or provision so clear that, even without specific guidance from a decision involving materially similar facts, the unlawfulness of the officer's conduct is apparent," *Powell*, 25 F.4th at 920.

The amended complaint does not satisfy any of these methods of demonstrating that the law was clearly established. Accordingly, Kogon and Salinas Cotter are entitled to qualified immunity.

II. The amended complaint fails to state a claim for municipal liability.

If the Court concludes that the individual defendants did not violate Gray's constitutional rights, his municipal liability claims against Miami-Dade County necessarily fail. *See Baker v. Madison*, 67 F.4th 1268, 1272 (11th Cir. 2023) ("[B]ecause there was no underlying constitutional violation, Baker's municipal liability claim against the City fails as a matter of law."). Should it determine, however, that Gray has alleged some viable constitutional violation, the County is nevertheless entitled to dismissal.

The bar to establish municipal liability is extremely high. A municipality "cannot be subject to liability *at all* unless the harm was caused in the implementation of 'official municipal policy.'" *Lozman v. City of Riviera Beach*, 585 U.S. 87, 95 (2018) (emphasis added) (quoting *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 691 (1978)). Miami-Dade County's liability therefore must be based on a constitutional violation committed by the County itself, "not on theories of *respondeat superior* or vicarious liability." *Knight ex rel. Kerr v. Miami-Dade County*, 856 F.3d 795, 819 (11th Cir. 2017). The municipal liability standard "requires a plaintiff to show that (1) his constitutional rights were violated; (2) the municipality had a custom or policy that constituted deliberate indifference to that constitutional right; and (3) the policy or custom caused the violation." *Plowright v. Miami-Dade County*, 102 F.4th 1358, 1370 (11th Cir. 2024) (cleaned up).

Gray does not allege any violation of policy or custom. For one thing, a "county rarely will have an officially-adopted policy of permitting a particular constitutional violation." *Knight*, 856 F.3d at 819 (cleaned up). For another, a plaintiff can demonstrate a custom only "by showing a persistent and widespread practice and the government's actual or constructive notice of that practice." *Khoury v. Miami-Dade Cty. Sch. Bd.*, 4 F.4th 1118, 1131 (11th Cir. 2021). Allegations

showing a "pattern of similar constitutional violations [are] ordinarily necessary." *Craig v. Floyd County*, 643 F.3d 1306, 1310 (11th Cir. 2011) (cleaned up).

A complaint does not plausibly state a custom by alleging, essentially, '*x* unconstitutional thing happened to me, so the municipality must have a custom of permitting *x* unconstitutional thing.' *See Weiland v. Palm Beach Cty. Sheriff's Office*, 792 F.3d 1313, 1329–30 (11th Cir. 2015). In *Weiland*, the Eleventh Circuit affirmed the dismissal of a § 1983 claim where the only facts the plaintiff offered to support the allegation that a sheriff had "a policy of using internal affairs investigations to cover up the use of excessive force against the mentally ill" were facts recounting his own experience with an internal affairs investigation into his own excessive force complaint. *Ibid.*

Gray's pleading is at least as deficient as the plaintiff's in *Weiland*, so the fate of his claim should be the same. The court there applied the same principle it applies over and over in decisions affirming dismissals of § 1983 municipal liability claims: a plaintiff cannot construct a custom out of allegations about his own interactions with a municipality or its employees.[9]

At bottom, the amended complaint does not "establish that the County itself—not its officers, not one … department—'caused a constitutional violation' by way of 'an unofficial custom or practice shown through the repeated acts of a final policymaker for the county.'" *Diaz v. Miami-Dade County*, 424 F. Supp. 3d 1345, 1362 (S.D. Fla. 2019) (quoting *Walker v. City of*

[9] *See, e.g.*, *Myrick v. Fulton County*, 69 F.4th 1277, 1299 (11th Cir. 2023) (affirming dismissal of *Monell* claim because complaint "focuse[d] only on [plaintiff]'s experience at the Fulton County Jail … —a single incident of allegedly unconstitutional activity"); *Roy v. Ivy*, 53 F.4th 1338, 1351 (11th Cir. 2022) ("To the extent that Roy contends he can show an unconstitutional custom or practice … based solely on the multiple delays that he experienced, this contention is meritless."); *Ireland v. Prummell*, 53 F.4th 1274, 1290 (11th Cir. 2022) ("Ireland's screening is a single instance of allegedly wrongful conduct, and it is established law that proof of a single incident of unconstitutional activity is not sufficient to demonstrate a policy or custom for purposes of § 1983 liability."); *Chabad Chayil, Inc. v. Sch. Bd. of Miami-Dade Cty.*, 48 F.4th 1222, 1233 (11th Cir. 2022) (alleged conduct by investigators "in this single case" would not plausibly allege "a custom that rises to the force of law"); *Sosa v. Martin County*, 13 F.4th 1254 (11th Cir. 2021) (affirming dismissal of *Monell* claim where plaintiff "point[ed] to no data other than his own rearrest" to establish a custom), *reinstated following reh'g en banc*, 2023 WL 1776253 (11th Cir. Feb. 6, 2023).

Calhoun, 901 F.3d 1245, 1255 (11th Cir. 2018)), *aff'd*, 849 F. App'x 787 (11th Cir. 2021). He fails to state a plausible claim for municipal liability based on an unconstitutional policy or custom, so all claims against Miami-Dade County must be dismissed.

CONCLUSION

Gray's amended complaint is an effort to constitutionalize routine workplace disagreements that do not implicate the First or Fourteenth Amendment. He has failed to plead facts establishing any constitutional violation, failed to show that any purported right was clearly established, and failed to allege a viable basis for municipal liability. His claims are foreclosed as a matter of law. The amended complaint should be dismissed.

Dated: January 26, 2026.

Respectfully submitted,

GERALDINE BONZON KEENAN
MIAMI-DADE COUNTY ATTORNEY
By: */s/ Zach Vosseler*
Zach Vosseler, Fla. Bar No. 1008856
Assistant County Attorney
Stephen P. Clark Center
111 N.W. First Street, Suite 2810
Miami, Florida 33128
(305) 375-5151
zach@miamidade.gov
Counsel for Defendants

CERTIFICATE OF SERVICE

On January 26, 2026, I electronically filed this document with the Clerk of Court and served a copy on all parties of record via CM/ECF.

/s/ Zach Vosseler
Zach Vosseler
Assistant County Attorney