IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

RAQUEL PACHECO,	)	
	)	
Plaintiff,	)	**CASE NO.: 1:26-cv-21901-CMA**
	)	
v.	)	
	)	
CITY OF MIAMI BEACH, a Florida municipal corporation; **STEVEN MEINER**, in his individual and official capacities as mayor of Miami Beach; **DAVID SUAREZ**, in his official capacity as Miami Beach City City Commissioner; **WAYNE A. JONES,** in his individual and official capacities as Chief of Miami Beach Police Department; and **ERIC CARPENTER,** in his official capacity as Manager of the City of Miami Beach;	)	
	)	
Defendants.	)	
	)	

PLAINTIFF'S RESPONSE
TO DEFENDANTS' JOINT MOTION TO DISMISS

COMES NOW the Plaintiff by and through her undersigned attorneys, and responds to the Defendants' Motion to Dismiss (Dkt. No. 39) and says:

INTRODUCTION

1. Plaintiff's claims fall into two categories: (1) Counts I through IIII assert First Amendment claims centered around government intimidation in response to a social media post; and (2) Count IV asserts a First Amendment claim for blocking Plaintiff's access to a public website based on objections to the content of her posts.

2. The Defendants fail to alert the Court to the fact that their Motion to Dismiss is directed only to Counts I through III and that no claim is made that Count IV fails to state a cause of action. Accordingly, Count IV will survive the Defendants' Motion even if the other counts are dismissed by the Court.[1]

3. The Counts centered on police intimidation state a cause of action. It is well-established that government cannot engage in intimidation of citizens in response to viewpoint-based or content-based objections to the citizen's speech:

> "[A]s a general matter the First Amendment prohibits government officials from subjecting an individual to retaliatory actions" for engaging in protected speech. Hartman v. Moore, 547 U.S. 250, 256, 126 S.Ct. 1695, 164 L.Ed.2d 441 (2006). If an official takes adverse action against someone based on that forbidden motive, and "non-retaliatory grounds are in fact insufficient to provoke the adverse consequences," the injured person may generally seek relief by bringing a First Amendment claim. Ibid.

Nieves v. Bartlett, 587 U.S. 391, 398 (2019).

That principle applies even if the threats stop short of an actual arrest so long as a person of ordinary firmness would be deterred from speaking because of the government action. *See*, Bennett v. Hendrix, 423 F.3d 1247, 1250–51 (11th Cir. 2005).

4. Because all well-pleaded facts are deemed true at this stage of the proceedings, Defendants cannot defeat Plaintiff's allegations that they acted willfully in violation of clearly established law and that they did so to advance their censorious purposes.[2]

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[1] Count IV properly states a cause of action based on allegations that Plaintiff was unlawfully blocked from a public social media site because Defendant SUAREZ disagreed with her political views. *See, e.g.*, Lindke v. Freed, 601 U.S. 187 (2024); Attwood v. Clemons, 818 Fed. Appx. 863, 867–68 (11th Cir. 2020).

[2] Plaintiff acknowledges that the claims against MEINER, JONES, SUAREZ and CARPENTER in their official capacities are subject to dismissal as they are duplicative of the claims brought against the City of Miami Beach.

5. Qualified immunity does not insulate Defendants MEINER and JONES from individual liability because any reasonable official in their position would know that government cannot use law enforcement intimidation and public castigation as tools to pressure citizens into abandoning their lawful political speech.

STATEMENT OF THE FACTS

Plaintiff RAQUEL PACHECO is a long-time activist and vocal critic of the Mayor and certain of the City's policies. (ECF 8 at 4, ¶18). Much of that activism takes place through social media. Plaintiff has posted many messages critical of the Mayor and of the City - particularly with regard to ordinances, policies and public statements concerning the conflict in Gaza and the City's treatment of LGBT residents on social media websites such as Facebook. (ECF 8 at 10-12).

On January 7, 2026, Plaintiff posted the following statement on her Facebook account concerning public statements made by the Mayor, Defendant MEINER:

> The guy who consistently calls for the death of all Palestinians, tried to shut down a theater for showing a movie that hurt his feelings, and REFUSES to stand up for the LGBTQ community in any way (even leaves the room when they vote on related matters) wants you to know that you're all welcome here. [Followed by three emojis of clowns].

(ECF 8 at 11-12, ¶56).

On Sunday, January 11, 2026, at 7:43 P.M., Defendant MEINER forwarded Plaintiff's social media post by e-mail to the City's Chief of Police, Defendant JONES, and others saying:

> Chief, As we discussed, please see the post below.

(ECF 8 at 13, ¶58).

In the early morning hours, on January 12, 2026, at 1:46 A.M., Defendant JONES responded to the Mayor's e-mail about Plaintiff's social media post:

> [W]hile she didn't issue a direct threat, her allegations are undeniably provocative and have the potential to incite others to escalate to that level.

(ECF 8 at 13, ¶¶59-60). The Police Chief did not state that Plaintiff had committed or was suspected of having committed any crime. Instead, Defendant JONES focused on the possibility that other, unnamed third parties, might be provoked by Plaintiff's political commentary.

Despite acknowledging that there was not even arguable probable cause to believe that Plaintiff had committed a crime, Defendant JONES directed two Miami Beach police detectives to go to Plaintiff's home to interrogate her about her social media post. The detectives knocked on Plaintiff's front door at approximately 1:45 P.M. on January 12, 2026 and identified themselves as law enforcement officers.[3] (ECF 8 at 13, ¶62).

The interaction between Plaintiff and the two detectives is accurately reflected in video taken by the Plaintiff which is referenced in the Amended Complaint and is available at https://tinyurl.com/ytm7u86a. (ECF 8 at 15, ¶76 n. 2).[4] Although Plaintiff stated that she would not speak to them without her attorney present, the detectives continued to press Plaintiff to confirm that she was the individual who posted the social media commentary at issue. Plaintiff refused to acknowledge that she was the author. (ECF 8 at 14, ¶¶70-72). Crucially, one of detectives instructed Plaintiff to refrain from posting similar comments in the future: "I would think to refrain from posting things like that." (ECF 8 at 15, ¶75; Video at 1:23 – 1:26).

Plaintiff was shaken by this encounter. (ECF 8 at 14, ¶¶64-66). Plaintiff alleged in her Amended Complaint that "[a] reasonable person would perceive such a police visit - initiated in

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[3] The two detectives were wearing their badges around their necks so that their status as law enforcement officers was patently obvious. (ECF 8 at 13, ¶63).

[4] Defendants correctly note that this Court may consider the video recording when evaluating their Motion to Dismiss because it is specifically referenced in the Complaint and is undisputed. *See, generally*, Baker v. City of Madison, Alabama, 67 F.4th 1268, 1277–78 (11th Cir. 2023).

response to protected political speech - as an attempt to intimidate or deter further expression." (ECF 8 at 15, ¶77). But more importantly, Plaintiff was in fact intimidated and has since refrained from criticizing the City and its officials about their policies, including policies concerning the State of Israel, LGBT rights and their support for Florida legislation that would label certain protestors as terrorists. (ECF 8 at 15-16, ¶¶79-83). Plaintiff would have responded vigorously to those policies through social media – as she had done for years previously – but for her fear of further police action:

> Plaintiff decided not to post after all, because she was frightened Defendants would become irrationally incensed, which based on this prior experience, she reasonably believed could result in her arrest.

(ECF 8 at 16, ¶82).

Plaintiff alleges that, in addition to the violation of her First Amendment rights, she has suffered "reputational harm, fear, humiliation, and distress as a result of police officers showing up at her home to confront her about her constitutionally protected speech and order her not to post such content again." (ECF 8 at 16, ¶84). That harm was exacerbated when the Defendants brought up Plaintiff's social media post at a public hearing. (ECF 8 at 16-19). Defendants SUAREZ and MEINER took a particularly active role in excoriating Plaintiff for her political views. (ECF 8 at 18, ¶¶92-96). The Commission generally, and Defendants JONES and MEINER specifically, applauded the law enforcement intrusion at Ms. Pacheco's home and ratified the actions of their officers. (ECF 8 at 18-19, ¶¶97-100).[5]

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[5] The City does not argue that the actions of its officers were divorced from City policies for purposes of Monell v. Dep't of Soc. Services of City of New York, 436 U.S. 658 (1978). In any event, such a defense could not prevail given Plaintiff's allegations of the City's actions and policies to stifle speech critical of Israel, its public dressing down of Plaintiff and her political views, and the City's express ratification of the officers' interrogation at Plaintiff's home.

MEMORANDUM OF LAW

I. STANDARD OF REVIEW FOR MOTIONS TO DISMISS

The standard for reviewing a motion to dismiss is universally understood. For purposes of the Motion to Dismiss, the Court must view the allegations of the Complaint in the light most favorable to the Plaintiffs, must consider the allegations of the Complaint as true, and must accept all reasonable inferences therefrom. *See*, Jackson v. Okaloosa County, Fla., 21 F.3d 1531, 1534 (11th Cir. 1994); *See, also*, Madaio v. United States, __ F.Supp. 3d __, 2026 WL 835775, at *2–3 (S.D. Fla. Mar. 26, 2026). "[O]nce a claim has been stated adequately, it may be supported by showing any set of facts consistent with the allegations in the complaint." Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 563 (2007). "[A] well-pleaded complaint may proceed even if it strikes a savvy judge that actual proof of those facts is improbable, and that a recovery is very remote and unlikely." Twombly, 550 U.S. at 556.

II. PLAINTIFF STATES A CAUSE OF ACTION FOR VIEWPOINT-BASED DISCRIMINATION AND FIRST AMENDMENT RETALIATION

There is no principle more fundamental to the First Amendment than the idea that government may not retaliate against one of its citizens for engaging in free speech:

> Official reprisal for protected speech "offends the Constitution [because] it threatens to inhibit exercise of the protected right," Crawford–El v. Britton, 523 U.S. 574, 588, n. 10, 118 S.Ct. 1584, 140 L.Ed.2d 759 (1998), and the law is settled that as a general matter the First Amendment prohibits government officials from subjecting an individual to retaliatory actions, including criminal prosecutions, for speaking out, id., at 592, 118 S.Ct. 1584; *see also* Perry v. Sindermann, 408 U.S. 593, 597, 92 S.Ct. 2694, 33 L.Ed.2d 570 (1972) (noting that the government may not punish a person or deprive him of a benefit on the basis of his "constitutionally protected speech"). Some official actions adverse to such a speaker might well be unexceptionable if taken on other grounds, but when nonretaliatory grounds are in fact insufficient to provoke the adverse consequences, we have held that retaliation is subject to recovery as the but-for cause of official action offending the Constitution. (additional citations omitted).

Hartman v. Moore, 547 U.S. 250, 256 (2006).

To state a claim for retaliation under the First Amendment, a plaintiff must plead three elements:

> (1) [the plaintiff] engaged in constitutionally protected speech, such as h[is] right to petition the government for redress; (2) the defendant's retaliatory conduct adversely affected that protected speech and right to petition; and (3) a causal connection exists between the defendant's retaliatory conduct and the adverse effect on the plaintiff's speech and right to petition.

Huggins v. Sch. Dist. of Manatee Cnty., 151 F.4th 1268, 1281 (11th Cir. 2025), *quoting* DeMartini v. Town of Gulf Stream, 942 F.3d 1277, 1289 (11th Cir. 2019); *See, also*, Bennett v. Hendrix, 423 F.3d 1247, 1250 (11th Cir. 2005) (Foundational case establishing same three elements).

In Counts I and II of her Amended Complaint, Ms. Pacheco alleges that Defendants targeted her because of their objections to both the content of Plaintiff's speech and to the particular viewpoint adopted (*i.e.* one sympathetic to Palestinian rights and to LGBT individuals). Viewpoint-based retaliation is a particularly virulent form of content-based discrimination. *See* Rosenberger v. Rector & Visitors of Univ. of Virginia, 515 U.S. 819, 829 (1995) ("When the government targets not subject matter, but particular views taken by speakers on a subject, the violation of the First Amendment is all the more blatant. … Viewpoint discrimination is thus an egregious form of content discrimination."). Government discrimination based on viewpoint is "presumptively unconstitutional." Matal v. Tam, 582 U.S. 218, 248 (2017).

Defendants do not appear to contest the first or third elements of the cause of action. There can be no question that Ms. Pacheco engaged in constitutionally protected speech. She spoke as a private citizen on two of the most disputed political issues of our time: the plight of the Palestinians in the ongoing conflict in Gaza and the treatment of LGBT individuals in the United States and, particularly, in Miami Beach. *See, generally*, Snyder v. Phelps, 562 U.S. 443, 451–52 (2011) ("Speech on matters of public concern is at the heart of the First Amendment's protection.")

There was a direct causal link between Plaintiff's speech and the appearance two police officers on her doorstep. The facts show that Plaintiff posted a political comment on social media criticizing the Mayor's policies concerning the conflict in Gaza and LGBT citizens in the community. There is no dispute that the Mayor passed on that social media post to the Miami Beach Chief of Police with the expectation that he would act on the complaint. There is also no doubt that the Police Chief directed two of his officers to go to Plaintiff's home to ask about the post. Finally, the officers themselves explained that the reason for their visit was to discuss Plaintiff's social media post and suggest that she not make similar comments in the future ("I would think to refrain from posting things like that."). There is an obvious and direct link, therefore, between Plaintiff's speech, the unwelcome police inquiry and the chilling direction to avoid political speech on these topics in the future. That link was further reinforced by the public flogging Plaintiff endured at the February 5, 2026 City Commission hearing.

Defendants' entire argument hinges on whether a "person of ordinary firmness" would have self-censored in response to the government action taken against them. The "person of ordinary firmness" test is in fact a hurdle which a First Amendment claimant must meet. *See*, Bennett, 423 F.3d at 1250. However, the standard is not accurately described in the Defendants' Motion. If one accepted the Defendants' perspective, government officials would be free to intimidate citizens in their own homes in direct retaliation for political commentary, so long as police officers do not threaten them with immediate arrest. Defendants claim that a "person of ordinary firmness" would simply ignore the police interrogation and would continue to engage in the same speech activities which drew law enforcement to their doorstep. It may be that a committed activist, such as Ms. Pacheco, would be undeterred by police intimidation that stopped

short of arrest. But a jury is very likely to conclude that the *average* American would be cowed by such an encounter and would immediately censor themselves to avoid further police action.

That is in fact the standard adopted by the Eleventh Circuit:

> "[I]t would be unjust to allow a defendant to escape liability for a First Amendment violation merely because an unusually determined plaintiff persists in his protected activity ...." Mendocino Envtl. Ctr., 192 F.3d at 1300. There is no reason to "reward" government officials for picking on unusually hardy speakers.

Id. at 1252. The Eleventh Circuit employs an explicitly objective test which does not take into account whether a particular plaintiff is unusually timid or uncommonly bold in resisting government intimidation:

> The defendants point to other cases applying a subjective test, under which the plaintiffs would have to show that they were actually chilled in the exercise of their First Amendment rights. … For the reasons that follow, we join our sister Circuits in adopting an objective test for proving a retaliation claim.

Id. at 1251.

Defendants make much of the fact that Ms. Pacheco appeared at the next City Commission meeting to complain about the police action at her home. (ECF 39 at 7-9). That was a courageous act on her part. But First Amendment jurisprudence does not expect all of us to be heroes. The fact that Ms. Pacheco had the fortitude to confront her oppressors does not mean that government gets a free pass for trying to shut her up (although as stated in the Complaint, she did in fact refrain from posting certain political content after the police encounter because she feared being targeted by law enforcement and subjected to punishment). *Compare*, Kravchenko v. Town of Redington Beach, Florida, 2025 WL 2943000 at *17–18 (M.D. Fla. 2025), *report and recommendation adopted*, 2025 WL 2778267 (M.D. 2025) ("That Plaintiff was not personally deterred from displaying messages on his truck is not dispositive of this element.").

Defendants argue that Plaintiff cannot assert a First Amendment claim because she was not

arrested and was not threatened with immediate arrest. (ECF 39 at 5, 12-13).[6] But a person of ordinary firmness may be deterred from speaking based on threats other than immediate incarceration. The standard to be applied is intentionally low:

> In Judge Posner's words, "[t]he effect on freedom of speech may be small, but since there is no justification for harassing people for exercising their constitutional rights it need not be great in order to be actionable." Bart, 677 F.2d at 625.

Bennett, 423 F.3d at 125; *See, also*, Echols v. Lawton, 913 F.3d 1313, 1323 (11th Cir. 2019) and Eisenberg v. City of Miami Beach, 1 F. Supp. 3d 1327, 1343 (S.D. Fla. 2014) (Both citing Bennet for same proposition). In addition, Defendants do not grapple with the fact that the police investigation at Plaintiff's home was not a one-off event. Rather, the police interrogation was part of a broader campaign against Plaintiff which included the orchestrated dressing down she had to endure at the February 5, 2026 commission meeting. And to be clear, that public embarrassment was not improvised on the spot in response to a random public comment, but was a carefully staged event including a slide show of Plaintiff's public media posts put together by Defendant SUAREZ.

Defendants cite to two cases in which First Amendment claims failed because the plaintiffs could allege no more than a public run-in with law enforcement engaged in their normal duties. (Doc. 39 at 12-13 addressing Bethel v. Town of Loxley, 2006 WL 8437719 (S.D. Ala. 2006) and Kilpatrick v. United States, 2009 WL 5215585 (N.D. Fla. 2009)). Neither case is binding on this

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[6] In their argument directed to qualified immunity, Defendants cite to Rehberg v. Paulk, 611 F.3d 828, 835 (11th Cir. 2010) for the proposition that there is no stand-along constitutional violation for "retaliatory investigations". (ECF 39 at 19-20). However, that is not a fair framing of Plaintiff's allegations in this case. Plaintiff *does* maintain that the police questioning at her home was retaliatory and in violation of her First Amendment rights. But that is only part of her constitutional grievance. Plaintiff also alleges that the detective's instruction not to post similar comments in the future is both a prior restraint and a threat separate from the investigation into her identity. Plaintiff further notes that the character assassination which she underwent at the February 5, 2026 commission meeting is a separate instance of retaliation on par with the violation upheld in Bloch v. Ribar, 156 F.3d 673 (6th Cir. 1998). *See*, discussion *infra* at 13-14.

Court and both are distinguishable on their facts. First, the Defendants in this case subverted law enforcement to serve their own ends. There was no legitimate police investigation. Defendant JONES himself acknowledged that Plaintiff's post was lawful and there was no cause to believe that a crime had been committed. (ECF 8 at 13 ¶60). In addition, the investigation in the instant case was uniquely intrusive as the detectives confronted Plaintiff in her own home and warned her against future posts as well as her past comments. The two cases cited by Defendants also lack the deeper context alleged here. Plaintiff alleges that the City of Miami has undertaken extraordinary efforts to shut down speech critical of Israel or sympathetic to Palestinians. (ECF 8 at 5-10, 17-20). And neither case involved a public campaign to ostracize Plaintiff for her beliefs in front of her neighbors as occurred at the February 5, 2026 commission meeting. (ECF 8 at 17-19).

Not only did Defendants' actions constitute unlawful viewpoint discrimination, they also amounted to unlawful retaliation. Cases have upheld First Amendment retaliation claims under a wide range of circumstances in which nobody was arrested or threatened with arrest. Within the Eleventh Circuit, a retaliation claim was allowed where a detention officer instructed an inmate to stop filing grievances or "have a boot put in your ass". While that statement might have been merely rhetorical, the Court held that "a reasonable jury could find that there was a threat of possible violence that could deter a person of ordinary firmness from filing additional grievances." Pittman v. Tucker, 213 Fed. Appx. 867, 871 (11th Cir. 2007).

In Bailey v. Wheeler, 843 F.3d 473, 479 (11th Cir. 2016), a law enforcement agency was accused of retaliation where it issued a "BOLO" in response to an employee's complaints about racial profiling which warned that the employee was a "loose cannon" and "a danger to any [law enforcement officer]". The plaintiff was never actually arrested or threatened with arrest, but the

BOLO was sufficient to support the First Amendment claim. Indeed, the Eleventh Circuit went so far as to deny qualified immunity to the offending officer. Id. at 483–85. [7]

In a case close to home, this Court upheld a First Amendment claim in Lozman v. City of N. Bay Vill., 2009 WL 10699944 (S.D. Fla. Feb. 12, 2009) where the retaliatory action was the disbursement of pornographic cartoons suggesting that the plaintiff should abandon his political advocacy or information would be released about a sealed indictment. No information was ever released and no indictment was ever pursued in this case. Rather, it was the threatening and humiliating cartoon which sufficed to support the claim.

Cases from outside our Circuit are also instructive on this point. In Garcia v. City of Trenton, 348 F.3d 726 (8th Cir. 2003), there was no threat of arrest in reaction to the plaintiff's First Amendment-protected criticism of the mayor. Instead, the plaintiff received four parking tickets totaling just $35.00. The plaintiff testified that these minor fines were sufficient to cause "medically diagnosed anxiety" and "she refrained from speaking at city council meetings for fear of additional retaliation." Garcia v. City of Trenton, 348 F.3d 726, 728 (8th Cir. 2003). The Eighth Circuit upheld the First Amendment claim.

In Dingwell v. Cossette, 327 F.Supp. 3d 462 (D. Conn. 2018), the plaintiff was not arrested or threatened with arrest himself. Instead, the retaliatory action by law enforcement was to "publicly shame and discredit" the plaintiff because his son had been arrested. The Court declined

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[7] The statements in the Bailey BOLO can be compared to Defendant SUAREZ's slideshow comparing Plaintiff to the white supremacist Nick Fuentes and statements that Plaintiff "hates Jews". Defendant JONES piled on by describing Plaintiff's social media posts as "potentially inciteful false remarks" which justified police intervention "to ensure there was no immediate threat to the elected official or the broader community that might emerge as a result of the post." Defendant MEINER added to those embarrassing and intentionally incendiary allegations by claiming that Plaintiff's political commentary was "literally antisemitism 101" (ECF 8 at 18-19, ¶¶92-100).

to grant qualified immunity to the police chief at the motion to dismiss stage because "[i]t would be contrary to the purpose of the qualified immunity doctrine to construe it to allow a police department to intentionally silence its critics by using its power and authority, conferred to protect and defend the public, to threaten, intimidate, and embarrass members of the public they are empowered to protect." Id. at 476–77.

In Hartley v. Wilfert, 918 F.Supp.2d 45 (D.D.C. 2013) the police action relied on the inconvenience of an interview and the possibility of having to fill out paperwork and made no actual threat at all. In that case a demonstrator outside the White House was approached by police and told to move along. If she refused, they informed her that she would have to give "background data" and "submit to questions" which might land her on a Secret Service list. Id. at 53–54.

The case of Cohoon v. Konrath, 563 F. Supp. 3d 881 (E.D. Wis. 2021) presents an interesting parallel to the case at bar as both claims involved police responses to social media posts deemed objectionable by local officials. In Cohoon, a teenager posted on-line about her experiences with COVID-19 at the beginning of the epidemic. Following numerous inquiries from concerned citizens a sheriff's deputy went to the plaintiff's home and instructed her to remove the post and she did so. Id. at 886–87. The facts of Cohoon offer a useful comparison to Ms. Pacheco's experiences in this case. The initial police action in Cohoon was more confrontational as the deputy said that he would "start taking people to jail" if the post was not removed. Id. at 886. On the other hand, the deputy did not direct the teenager to refrain from making posts in the future and there was no organized campaign by local elected officials to embarrass the plaintiff publicly as occurred in the instant case. Ultimately, the court issued declaratory relief in the plaintiff's favor, finding that the defendants' conduct violated her First Amendment rights.

Other successful claims of First Amendment retaliation did not involve law enforcement

action at all. In Bart v. Telford, 677 F.2d 622, 624 (7th Cir. 1982), the plaintiff was a failed mayoral candidate who suffered retaliation in the form of a series of petty taunts including criticism for bringing a cake to the office to celebrate a coworker's birthday. Id. at 624. While this may sound more like childish bullying than full-on retaliation, the allegations were enough for the Seventh Circuit:

> It is true that a certain air of the ridiculous hangs over the harassment allegations, in particular the allegation that we quoted earlier regarding the birthday cake. But we cannot say as a matter of law that the exercise of First Amendment rights by public employees cannot be deterred by subjecting employees who exercise them to harassment and ridicule through selective enforcement of work rules.

Id. at 625. Certainly, Ms. Pacheco experienced far worse hazing at the February 5, 2026 City Commission meeting, not to mention the earlier police visit to her home.

In Bloch v. Ribar, 156 F.3d 673 (6th Cir. 1998), the retaliatory action alleged by the plaintiff was the release of highly personal information concerning the plaintiff's rape. That First Amendment claim was upheld based on the emotional injury suffered by the plaintiff in the absence of any arrest, personal threats, physical injury, or fine. The defendant in that case argued that he "has been unable to locate a single case recognizing a First Amendment retaliation claim where the injury alleged was solely embarrassment, humiliation and/or emotional distress." The Sixth Circuit wryly observed that "[a]pparently Ribar did not search very far" before going on to address the numerous cases where such a claim had been allowed. Id. at 678–81.

This survey of cases conclusively demonstrates that Defendants' narrow view as to what constitutes retaliation under the First Amendment bears no resemblance to the actual law. Defendants retaliated against Plaintiff by sending police officers to her home to investigate her without probable cause, by instructing those officers to warn her against future social media posts and by publicly shaming Plaintiff at the February 5, 2026 commission meeting. A person of

ordinary firmness would surely surrender their First Amendment rights in response to such pressures. At the very least, Plaintiff has the right to have a jury decide the matter.

III. PLAINTIFF STATES A CLAIM FOR A FIRST AMENDMENT VIOLATION BASED ON IMPOSITION OF A PRIOR RESTRAINT.

"[P]rior restraints on speech and publication are the most serious and the least tolerable infringement on First Amendment rights." Nebraska Press Ass'n v. Stuart, 427 U.S. 539, 559 (1976). Plaintiff alleged in her Amended Complaint that the detectives who interrogated her in her home not only asked about her prior social media post criticizing the mayor but also directed her to "refrain from posting things like that" in the future. (ECF 8 at 2-3, ¶6, 15 ¶74, 24 ¶119). This is the basis for Count III of the Amended Complaint which asserts that Plaintiff was the victim of an unconstitutional prior restraint – that is, a restriction on speech in advance of its dissemination. *See, generally*, Southeastern Promotions, Ltd. v. Conrad, 420 U.S. 546, 553 (1975).

The Defendants take an exceedingly narrow view of what constitutes a prior restraint claiming that the doctrine is restricted to an "administrative or judicial order or licensing scheme prohibiting speech before it can take place." (ECF 39 at 17).[8] However, Supreme Court doctrine is far more expansive than that and recognizes that informal prior restraints are violative of the First Amendment just like formal licensing or permitting schemes.

The quintessential case is Bantam Books, Inc. v. Sullivan, 372 U.S. 58 (1963). In that case, the Rhode Island Legislature enacted a statute creating the "Commission to Encourage Morality

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[8] In their Response, Defendants principally rely on the case of Cooper v. Dillon, 403 F.3d 1208, 1215 (11th Cir. 2005) for their argument that Count III fails to state a cause of action. But Cooper is an odd choice for that effort. The statute at issue in Cooper made it a crime to publish information concerning a police internal affairs investigation. By definition, the statute was not a prior restraint because it only punished speech after the fact. Cooper is inapplicable to the parties' dispute which centers on the restraint of future speech.

in Youth". The Commission was charged with reviewing books and other works to determine if they "manifestly tend[ed] to the corruption of the youth". Id. at 59. The Commission had no authority to initiate prosecutions or issue fines. Instead, it simply sent out notices to booksellers advising that a certain item was found to be objectionable and stated that a copy of the notice would be furnished to police and prosecutors. Id. at 63-64. Sometimes a police officer would follow-up to see what the bookstore intended to do in response to the notice. Id. at 63.

The State defended the Commission precisely because it had no formal enforcement powers; it could not fine or prosecute and was essentially advisory in nature. The Supreme Court completely rejected that argument and held that informal prior restraints on speech violate the First Amendment because of their natural chilling effect:

> But though the Commission is limited to informal sanctions - the threat of invoking legal sanctions and other means of coercion, persuasion, and intimidation - the record amply demonstrates that the Commission deliberately set about to achieve the suppression of publications deemed 'objectionable' and succeeded in its aim. We are not the first court to look through forms to the substance and recognize that informal censorship may sufficiently inhibit the circulation of publications to warrant injunctive relief.

Id. at 66–67.

The Eleventh Circuit has adhered closely to Bantam Books:

> The district court held that Speech First lacked standing to challenge the bias-related-incidents policy because, the court said, the JKRT couldn't punish students itself but, rather, could only refer them to other university actors for discipline. We hold that the district court erred in focusing so singularly on the JKRT's power to punish. The reason, already explained, is that a government actor can objectively chill speech - through its implementation of a policy - even without formally sanctioning it.

Speech First, Inc. v. Cartwright, 32 F.4th 1110, 1122 (11th Cir. 2022); *See, also*, CAIR-Found., Inc. v. Desantis, _ F.Supp.3d _, 2026 WL 613468 at *5 (N.D. Fla. Mar. 4, 2026) *quoting* Bantam Books ("Where a government uses the 'threat of invoking legal sanctions and other means of

coercion ... to achieve the suppression' of disfavored speech, it functionally creates 'a system of prior administrative restraints' that bears 'a heavy presumption against its constitutional validity.'"); Okwedy v. Molinari, 333 F.3d 339, 342–43 (2d Cir. 2003) (Statements by public officials could "reasonably be interpreted as intimating that some form of punishment or adverse regulatory action will follow the failure to accede to the official's request."); *Compare*, Nat'l Rifle Ass'n of Am. v. Vullo, 602 U.S. 175 (2024) (Indirect pressure through "jawboning" can constitute a violation of the First Amendment).

Plaintiff alleges that a Miami Beach detective directed her not to post any additional provocative messages on her social media account and Plaintiff has in fact refrained from doing because of her reasonable fear of additional law enforcement action. (ECF 8 at 2-3 ¶¶6, 9-12, 15 ¶74, 15-16 ¶¶ 79-83, 24 ¶119-12, 27-28 ¶137-38). Those allegations are sufficient to sustain a claim of an unconstitutional prior restraint.

IV PLAINTIFF HAS ALLEGED SUFFICIENT FACTS TO AVOID DISMISSAL FOR QUALIFIED IMMUNITY AT THIS STAGE

Defendants MEINER and JONES separately argue that they are qualifiedly immune from suit because the laws governing retaliatory action under the First Amendment are not sufficiently established under similar facts.[9] In particular, they argue that the Eleventh Circuit already

[9] Defendants needlessly separate their arguments pertaining to qualified immunity. The reality is that the same law and the same analysis applies to both Defendants as they were part of a single scheme to intimidate Plaintiff so that she would cease her political commentary. Plaintiff alleges that MEINER reached out to JONES with the express purpose of coopting the City's police department in his effort to silence Plaintiff's criticism of MEINER's and the City's policies. JONES was only too happy to oblige, dispatching two detectives to harass Plaintiff in her home. Both Defendants later joined with other Commissioners to publicly shame Plaintiff for her political beliefs - again for the purpose of censoring her speech. The two Defendants were part of a common plan and their claim of qualified immunity fails for a common reason. *See*, discussion, *infra*.

determined in Rehberg v. Paulk, 611 F.3d 828 (11th Cir. 2010) that public officials are entitled to qualified immunity where the First Amendment allegations rely only on a retaliatory investigation. (ECF 39 at 19-21).[10] Once again Defendants take too narrow a view of the both the law and the facts alleged in Plaintiff's Amended Complaint.

"Qualified immunity shields public officials from liability for civil damages when their conduct does not violate a constitutional right that was clearly established at the time of the challenged action." Jarrard v. Sheriff of Polk Cnty., 115 F.4th 1306, 1323 (11th Cir. 2024) (quotation omitted). Assessing qualified immunity is a two-step inquiry. First, the Defendant bears the "burden of raising the defense of qualified immunity by proving that he was acting within his authority." Est. of Cummings v. Davenport, 906 F.3d 934, 940 (11th Cir. 2018). The burden then shifts to the plaintiff to show "(1) that the official violated a statutory or constitutional right, and (2) that the right was clearly established at the time of the challenged conduct." Jarrard, 115 F.4th at 1323 (quotation omitted). By asserting qualified immunity in their Motion to Dismiss, Defendants are limited to the facts as alleged in the Complaint, viewed in the light most favorable to Plaintiff. *See,* Behrens v. Pelletier*,* 516 U.S. 299, 309 (1996).

Almost all qualified immunity disputes turn on whether the law has been so clearly established as to put officials on notice that their actions are unconstitutional. *See*, Hope v. Pelzer, 536 U.S. 730, 741 (2002) ("[O]fficials can still be on notice that their conduct violates established

[10] At least one other Circuit has found that a bad faith police investigation, standing along, can support a First Amendment claim. *See*, Media Matters for Am. v. Paxton, 138 F.4th 563, 580 (D.C. Cir. 2025) ("In distinguishing between 'good faith' and 'bad faith' investigations, this court has explained that 'all investigative techniques are subject to abuse and can conceivably be used to oppress citizens and groups,' and that bad faith use of investigative techniques can abridge journalists' First Amendment rights." (citation omitted)).

law even in novel factual circumstances."). This case is no different. A plaintiff can demonstrate that a right has been clearly established through three pathways:

> First, the plaintiffs may show that "a materially similar case has already been decided." Mercado v. City of Orlando, 407 F.3d 1152, 1159 (11th Cir. 2005) (*citing* Harlow v. Fitzgerald, 457 U.S. 800, 818, 102 S.Ct. 2727, 73 L.Ed.2d 396 (1982)). Second, the plaintiffs can point to a "broader, clearly established principle [that] should control the novel facts [of the] situation." Id. (*citing* Hope, 536 U.S. at 741, 122 S.Ct. 2508). Finally, the conduct involved in the case may "so obviously violate[ ] th[e] constitution that prior case law is unnecessary." Id. (*citing* Lee, 284 F.3d at 1199). Under controlling law, the plaintiffs must carry their burden by looking to the law as interpreted at the time by the United States Supreme Court, the Eleventh Circuit, or the Florida Supreme Court.

Terrell v. Smith, 668 F.3d 1244, 1255 (11th Cir. 2012).

Here, Plaintiff relies on the second method: broadly established principles controlling unique or novel facts. The Eleventh Circuit provides the following standards to guide that determination:

> [T]he principle must be established with "obvious clarity" by the case law so that "every objectively reasonable government official facing the circumstances would know that the official's conduct did violate federal law when the official acted." Id. In other words, an official action is not protected under qualified immunity simply because "the very action in question" has not been held unlawful before, but "in the light of pre-existing law the unlawfulness must be apparent." Anderson v. Creighton, 483 U.S. 635, 640, 107 S.Ct. 3034, 97 L.Ed.2d 523 (1987).

Id. at 1256 (11th Cir. 2012). The broad principle at work in this case is that government may not retaliate against its citizens for engaging in First Amendment-protected speech. *See*, Hartman, 547 U.S. at 256 ("[T]he law is settled that as a general matter the First Amendment prohibits government officials from subjecting an individual to retaliatory actions, including criminal prosecutions, for speaking out…". (citation omitted)); *See, also*, Rosenberger, 515 U.S. at 828 ("Discrimination against speech because of its message is presumed to be unconstitutional."). This right is acknowledged to be well-established in the Eleventh Circuit. *See*, Duncan v. City of Sandy Springs, 2023 WL 3862579 at *6 (11th Cir. 2023) ("The right to be free from retaliation for such

speech is clearly established.").

Plaintiff acknowledges that there are no cases in this jurisdiction which specifically overcame qualified immunity where an improper police investigation was coupled with a directive not to engage in political speech in the future and a public campaign to humiliate and embarrass a citizen for her political views. But a "red cow case"[11] is not required where the broad principle can be fully understood in context. *See, e.g.*, Amnesty Int'l, USA v. Battle, 559 F.3d 1170, 1185 (11th Cir. 2009) ("There need not, however, be a prior case wherein the very action in question has previously been held unlawful.") (citation omitted)). On these facts, there is no possibility that Defendants were acting in good faith; rather they clearly intended to violate Plaintiff's First Amendment rights and went out of their way to do so. Sufficient facts are presented in the Amended Complaint to avoid qualified immunity at the motion to dismiss stage. *Cf.*, Darlow v. City of Coral Springs, 2021 WL 3514826 at *5 (S.D. Fla. 2021), *aff'd sub nom.* Darlow v. Babineck, 2022 WL 15345444 (11th Cir. 2022) ("[A] determination of whether qualified immunity applies in this case - which turns on whether the *Pickering* balance tilts *decidedly* in Plaintiff's favor - is also better-suited for summary judgment.").

WHEREFORE, the Plaintiff prays that Defendants' Motion to Dismiss be denied in its entirety.

[11] "The term 'red cow' is used in Florida to describe a case that is directly on point, that is, a case that not only involves the same animal but also the same color. Kuvin v. City of Coral Gables, 62 So. 3d 625, 645 n. 3 (Fla. 3d DCA 2010) (J. Cortiñas dissenting).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Response has been furnished to ENRIQUE D. ARANA, Esquire (earana@carltonfields.com); SCOTT EVERETT BYERS, Esquire [sbyers@carltonfields.com], 2 MiamiCentral, 700 NW 1st Avenue, Suite 1200, Miami, Florida 33136; RACHEL ANN OOSTENDORP, Esquire [roostendorp@carltonfields.com], 100 SE 2nd Street, Suite 4200, Miami, Florida 33131; CHARLES MARK GARABEDIAN , JR., Esquire [charles@markmigdal.com], 80 SW 8th St, Suite 1999, Miami, Florida 33131; ETAN MARK, Esquire [etan@markmigdal.com], 80 SW 8th Street, Suite 1999, Miami, Florida 33130; JOSEPH HYAM SEROTA, Esquire [jserota@wsh-law.com], 2525 Ponce de Leon Boulevard, Suite 700, Coral Gables, Florida 33134; MATTHEW HARRIS MANDEL, Esquire [mmandel@wsh-law.com], 200 E Broward Boulevard, Suite 1900, Fort Lauderdale, Florida 33301, by E-Mail this 27th day of May 27, 2026.

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