

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

Zainab Hakim; Henry MacKeen-Shapiro;
Eaman Ali; Assmaa Eidy, Harrison Rhoades,
Arwa Hassaballa; Rhea Chappell; and Zaynab
Elkolaly;

Case No. 5:25-cv-11265

Plaintiffs,

v.

Hon. Stephan J. Murphy, III
Mag. Judge: Elizabeth A.
Stafford

Regents of the University of Michigan; Santa
Ono, individually and as President of the
University of Michigan; Geoffrey Chatas,
individually and as Executive Vice President
and Chief Financial Officer of the University
of Michigan; Richard S. Holcomb, Jr.,
individually and as Associate Vice President
for Human Resources of the University of
Michigan; Amy Grier, individually and as
Associate Director Staff Human Resources of
the University of Michigan; Martino Harmon,
individually and as Vice President for Student
Life of the University of Michigan; Erik
Wessel, individually and as Director of the
Office of Student Conflict Resolution; and
Donovan Golich, individually and as As
Program Manager at the University of
Michigan;

Defendants.

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**Admission to the Eastern District of
Michigan Pending*

**DEFENDANTS' MOTION TO DISMISS
PLAINTIFFS' FIRST AMENDED COMPLAINT WITH PREJUDICE**

Defendants Regents of the University of Michigan, Santa Ono, Geoffrey Chatas, Richard S. Holcomb, Jr., Amy Grier, Martino Harmon, Erik Wessel, and Donovan Golich¹ move to dismiss Plaintiffs' First Amended Complaint in its

¹ Throughout this Motion and Brief, "Defendants" refers to all named defendants, and the term "Individual Defendants" refers to Santa Ono, Geoffrey Chatas, Richard S. Holcomb, Jr., Amy Grier, Martino Harmon, Erik Wessel, and Donovan Golich.

entirety and with prejudice pursuant to Federal Rules of Civil Procedure 12(b)(1) and (6).

The First Amended Complaint (“FAC”) should be dismissed for several reasons.

First, the University and the Individual Defendants in their official capacity are protected by sovereign immunity. And each Individual Defendant is entitled to qualified immunity for any personal capacity claims, particularly where the FAC is devoid of allegations showing their personal involvement in violating a clearly established constitutional right.

Second, Plaintiffs fail to state claims under the First Amendment where they were terminated because of their violent conduct, and therefore they do not plausibly allege that they were retaliated against for engaging in protected speech. Nor do Plaintiffs sufficiently allege viewpoint discrimination. Plaintiffs’ newly added First Amendment claims related to ongoing conduct proceedings fail because Plaintiffs do not adequately allege that they experienced an adverse action. They also do not plead a viable §1985(2) conspiracy claim with the requisite specificity and because, as a matter of law, there is no conspiracy when all alleged conspirators are party of the same entity.

Third, Plaintiffs do not state a due process claim because they fail to adequately allege that the decision to terminate their employment implicated

protected property or liberty interests because they do not have a right to continued employment. And, in any case, Plaintiffs were provided more than sufficient process.

Next, Plaintiffs fail to state a claim related to possible future injuries, which are not ripe.

Finally, three Plaintiffs have impermissibly split their claims.

Pursuant to Local Rule 7.1(a), counsel for Defendants met and conferred with counsel for Plaintiffs via videoconference on August 29, 2025, regarding this Motion. Counsel for Plaintiffs did not concur in the relief sought.

WHEREFORE, Defendants request that the Court grant this Motion and dismiss the First Amended Complaint in its entirety and with prejudice.

Dated: August 29, 2025

Respectfully submitted,

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Defendants.

**BRIEF IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS
PLAINTIFFS' FIRST AMENDED COMPLAINT WITH PREJUDICE**

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Statement of Issues Presented

- I. Are Plaintiffs' claims against the University and the Individual Defendants in their official capacity barred by sovereign immunity?
- II. Are the Individual Defendants entitled to qualified immunity to the extent they are sued in their individual capacity?
- III. Should the Court dismiss Plaintiffs' First Amendment claims because they engaged in unprotected violent conduct, not protected speech, and because they have not adequately alleged viewpoint discrimination?
- IV. Should the Court dismiss Plaintiffs' First Amendment claims related to recent, ongoing conduct proceedings because they do not adequately allege causation or that they experienced an adverse action?
- V. Should the Court dismiss Plaintiffs' §1985(2) conspiracy claim because they fail to plead it with the requisite specificity and because there can be no conspiracy when all alleged conspirators are employed by the same entity?
- VI. Should the Court dismiss Plaintiffs' procedural due process claims because Plaintiffs do not plausibly plead a protected interest in their continued employment and, in any event, they received more than adequate due process?
- VII. Should the Court dismiss Plaintiffs' First Amendment due process claims because they are duplicative of their First Amendment claims?
- VIII. Should the Court dismiss Plaintiffs' claims regarding potential future employment and other actions because those claims are not ripe?
- IX. Should the Court dismiss Plaintiffs Eklolaly's, Chappell's, and Hassaballa's claims because they improperly split their claims?

Controlling or Most Appropriate Authority

Sovereign and qualified immunity:

Kerchen v. Univ. of Mich., 100 F.4th 751 (6th Cir. 2024)

Will v. Mich. Dep’t of State Police, 491 U.S. 58 (1989)

Ex parte Young, 209 U.S. 123 (1908)

Kollaritsch v. Mich. State Univ. Bd. of Trs., 944 F.3d 613 (6th Cir. 2019)

First Amendment claims:

Dambrot v. Cent. Mich. Univ., 55 F.3d 1177 (6th Cir. 1995)

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Pickering v. Bd. of Educ., 391 U.S. 563 (1968)

Brandenburg v. Ohio, 395 U.S. 444 (1969)

Perry Ed. Ass’n v. Perry Loc. Educators’ Ass’n, 460 U.S. 37 (1983)

Due Process claims:

Odom v. Univ. of Mich., 2017 WL 2117978 (E.D. Mich. May 16, 2017)

Brandenburg v. Hous. Auth. of Irvine, 253 F.3d 891 (6th Cir. 2001)

Ripeness:

Norton v. Ashcroft, 298 F.3d 547 (6th Cir. 2002)

Claim Splitting:

Church Joint Venture, L.P. v. Blasingame, 817 F. App’x 142 (6th Cir. 2020)

I. Introduction.

The University of Michigan (“University”) employs political activists and free thinkers. It supports a tradition of free speech on its campus and encourages employees to speak in support of their causes. This is true for Plaintiffs, who were University employees when they participated in campus protests.

Constitutional rights in the employment setting are not without boundaries. To balance competing principles, the University has clear policies and procedures in its Standard Practice Guide (“SPGs”) that: ensure fair access and appropriate use of University spaces; explain what activity crosses the line into prohibited conduct; and establish comprehensive processes for adjudicating violations and imposing discipline. The University enforces these policies to ensure that *all* community members can exercise their rights to freedom of expression while also preserving the University’s interest in maintaining public safety. These policies do not retaliate against employees for the exercise of their First Amendment rights and do not discriminate based on content or viewpoint. Rather, they allow the University to regulate conduct that significantly disrupts campus operations, threatens community safety, infringes on the rights of other community members to express themselves, or could create a hostile or unsafe workplace and campus.

Plaintiffs ignore the well-documented violent, threatening, and disruptive behavior each exhibited on University property. Instead, the First Amended

Complaint (“FAC”) lumps Plaintiffs’ behavior with various community members who protested peacefully without consequence. But the evidence incorporated into the FAC does not support this falsehood. Their conduct crossed the line from peaceful protest to violent and threatening behavior that violated policy. They faced accountability not because of their speech, but because of their conduct through their willful violations of longstanding University policies—including by participating in a violent mob that forced its way into a locked building, disobeying direct commands from police officers, and assaulting those very officers. Plaintiffs cannot escape the consequences of their actions under the guise of asserting constitutional rights.

In response to Defendants’ initial Motion to Dismiss, Plaintiffs filed a FAC, which remains flawed. First, the University and Individual Defendants are entitled to sovereign immunity in their official capacities. The Individual Defendants are also entitled to qualified immunity in their individual capacities. Next, it fails to state a claim for constitutional violations. Plaintiffs assert a variety of First Amendment theories—but the allegations show only the application of neutral policies that prohibit University employees from engaging in violent or threatening behavior, and they offer no more than conclusory speculation that Plaintiffs were targeted for their beliefs. The University’s uniform enforcement of its neutral policies eliminates the possibility for Plaintiffs to support First Amendment claims. Plaintiffs’ newly-added retaliation claims based on recent, ongoing conduct proceedings fail to state a claim

upon which relief may be granted. And their §1985(2) conspiracy claim fails because they do not plead it with the requisite specificity and because there can be no conspiracy when all alleged conspirators are employed by the same entity.

The FAC also does not adequately plead a cognizable due process violation. Plaintiffs fail to identify a qualifying liberty or property interest in their continued employment, and, at bottom, they received sufficient due process. Plaintiffs are simply averse to being held accountable. Next, Plaintiffs' claims of future harm are not ripe. Finally, several Plaintiffs have impermissibly split their claims with an earlier, currently pending lawsuit stemming from the same facts.

This Court should dismiss.

II. Background.

This Motion is based on the FAC's allegations and its incorporated documents. Those documents are properly considered because they are referred to in the FAC and central to the claims. *Nolan v. Detroit Edison Co.*, 991 F.3d 697, 707 (6th Cir. 2021). Where exhibits "contradict[] allegations in the complaint, rendering them implausible, 'the exhibit trumps the allegations.'"² *Id.*

A. The University's Viewpoint-Neutral Policies and Procedures.

University employees are required to comply with longstanding policies and

² A chart summarizing and identifying where each attached exhibit is referred to and incorporated into the First Amended Complaint is attached as Ex. 2.

procedures designed to maintain a safe learning and working environment. (ECF No. 23, PageID.377, ¶5; Ex. 1, Relevant SPGs.) The SPGs apply to full-time, part-time, probationary, and regular employees.³ (Ex. 1, SPG 201.10 and 601.18.) Under SPG 601.18, “Violence in the University Community,” employees must behave in a manner that “does not foster acts of violence, threats, and aggression.” (*Id.*, SPG 601.18.) Employees who violate the policy are subject to discipline. (*Id.*) The SPG defines “Acts of violence and aggression” to include “verbal or physical actions that create fear or apprehension of bodily harm or threaten the safety of a supervisor, co-worker, faculty member, student, patient, general public or the University community at large.” (*Id.*) Examples include physical assaults, conduct “that would be interpreted by a reasonable person as carrying a potential for violence and/or acts of aggression,” and acts that threaten harm to person or property. (*Id.*)

As set forth in SPG 201.12, “Discipline,” employees are required to behave in a manner that maintains the “orderly and efficient” operation of the University. (*Id.* SPG 201.12.) “The University, in its sole discretion, will determine when an employee’s performance, conduct, or behavior meets this standard.” (*Id.*) “Misconduct” is defined as behavior, through acts or omissions, “that interferes with or adversely affects in any way the orderly or efficient operation of the University.” (*Id.*, SPG 201.12 & 201.10.) “This includes any violation of rules and regulations”

³ The SPGs are publicly available at <https://spg.umich.edu/>.

and “off duty or off premises behavior which adversely affects the employment relationship.” (*Id.*) Forms of discipline for violating rules or regulations range from oral warnings to termination, which may be “for any reason.” (*Id.*, SPG 201.12.) When termination is considered, a meeting is offered to discuss the circumstances, and employees are provided with an oral or written statement of the alleged misconduct and an opportunity to respond. (*Id.*) Employees may file a grievance, which is governed by SPG 201.08. (*Id.*, SPG 201.08.) Plaintiffs were each afforded notice and an opportunity to be heard in accordance with these policies and procedures. (ECF No. 23, FAC, ¶¶128, 136, 166–172, 174–81, 201-03, 207–210, 234–36, 214-16 [sic], 222-23 [sic], 228–30 [sic], 237–39 [sic], 245–248 [sic], 258–60 [sic], 267–70 [sic], 278–80 [sic], 286–88 [sic], 296–98 [sic], 305–07 [sic].)⁴

B. Plaintiffs Were Held Accountable for Their Behavior Based on Established University Procedures.

Ruthven Building Trespass. Plaintiffs Elkolaly, Chappell, and Hassaballa admittedly each participated the Ruthven Administration Building (“Ruthven”) occupation on November 17, 2023. (FAC, ¶¶113, 118, 120.) Despite describing their actions as an anodyne “sit-in,” they acknowledge that a large group of students occupied the building, that numerous law enforcement agencies were dispatched,

⁴ References to the FAC (ECF No. 23) are to paragraph numbers. Due to a numbering error, the numbering reverts to paragraph 214 on page 43 (PageID.416). Paragraph numbers after page 43 are denoted by “sic.”

and that dozens of students were arrested and cited. (*Id.*, ¶109.)

Elkolaly gained access to Ruthven, including the rotunda and the President's office, refused to comply with police commands, and pushed officers. (Ex. 13, Elkolaly Police Report.) Chappell and Hassaballa also trespassed, pushed officers, and failed to follow police commands. (Ex. 6, Chappell Police Report; Ex. 19, Hassaballa Police Report.)

Hassaballa and Elkolaly, who were no longer students nor employed, received letters stating that they were ineligible for rehire, describing the applicable policy violated (SPG 601.18) and the violations. (FAC, ¶¶128, 202-04; Ex. 20, Hassaballa Notice Letter; Ex. 14, Elkolaly Notice Letter.) They each commenced the grievance process and received the evidence relied on to make the no-rehire determination, including police reports. (FAC, ¶¶133-35, 207-09.) After separate hearings, the no-rehire decisions were upheld. (*Id.* ¶¶136–37, 144-45, 210, 216-17; Ex. 21, Hassaballa Outcome Letter; Ex. 15, Elkolaly Outcome Letter.)

Chappell received notice that her conduct at Ruthven was being reviewed. (FAC, ¶164.) After a meeting with Human Resources, Chappell was placed on unpaid suspension pending an investigation. (*Id.* ¶¶167, 170-71; Ex. 7, Chappell Suspension Letter.) Chappell was later informed that she violated University policy and was terminated. (FAC, ¶¶174-77; Ex. 8, Chappell Term Letter.) Chappell appealed the decision, received the evidence considered, and attended a grievance

hearing, after which the termination decision was upheld. (FAC, ¶¶178–82, 188–89; Ex. 9, Chappell Outcome Letter.)

Art Museum Incident. Plaintiffs Hakim, MacKeen-Shapiro, Ali, Rhoades, and Eidy attended a protest at the University of Michigan Museum of Art (“UMMA”) on May 3, 2024. (FAC, ¶230.) Hakim refused to comply with commands from police officers to move back and physically pushed back against officers. (Ex. 16, Hakim Police Report.) Hakim also repeatedly refused to comply with police officers’ commands. (*Id.*) She was cited for “Assault and Battery/Simple Assault,” “Resisting Officers,” and unlawful assembly. (*Id.*)

MacKeen-Shapiro received a similar citation. (Ex. 22, MacKeen-Shapiro Police Report.) He refused to comply with police commands, physically pushing against police barriers and using amplified sound without proper approval. (*Id.*)

Ali “us[ed] her body to push against officers who [were] attempting to keep her and other protesters on the sidewalk so barricades can be placed.” (Ex. 3, Ali Police Report.) She also refused to exit a restricted area after officers instructed her to move to allow vehicles to leave. (*Id.*)

Eidy was also in the restricted area and refused to comply with police commands. (Ex. 10, Eidy Police Report.) Eidy physically pushed back against officers. (*Id.*)

Rhoades was observed behaving violently, swinging a pointed three-foot

long wooden stake toward officers, violating the University's anti-violence policy. (Ex. 25, Rhoades Police Report.)

After the University received evidence of Hakim's, MacKeen-Shapiro's, Ali's, Rhoades's, and Eidy's respective conduct, it separately placed each on administrative paid suspension. (FAC, ¶¶214 [sic], 236-37 [sic], 257-58 [sic], 277-78 [sic], 295-96 [sic].) Each received written notification of the allegations which identified the applicable policy that was violated (SPG 601.18) and the evidence against them, including police reports and body camera videos. (FAC, ¶¶216-17 [sic], 238-39 [sic], 259-60 [sic], 279-80 [sic], 297-98 [sic]; Ex. 4, Ali Notice Letter; Ex. 11, Eidy Notice Letter; Ex. 17, Hakim Notice Letter; Ex. 23, MacKeen-Shapiro Notice Letter; Ex. 26, Rhoades Notice Letter.) Each was provided a separate opportunity to meet with Human Resources. (FAC, ¶¶222-23 [sic], 245-46 [sic], 267-69 [sic], 286-87 [sic], 305-06 [sic].) And each admits that, during those meetings, they were able to "strongly dispute[]" that they behaved violently. (*Id.*, ¶¶228 [sic], 248 [sic], 270 [sic], 288 [sic], 307 [sic].) Following those separate meetings, each was terminated. (*Id.*, ¶¶229-30 [sic], 251-52 [sic], 271-72 [sic], 289-90 [sic], 308-09 [sic]; Ex. 5, Ali Term. Letter; Ex. 12, Eidy Term. Letter; Ex. 18, Hakim Term. Letter; Ex. 24, MacKeen-Shapiro Term. Letter; Ex. 27, Rhoades Term. Letter.)

C. Following the Conclusion of the Attorney General’s Investigation, the University Proceeds with (1) Student Disciplinary and (2) Employment Proceedings Regarding Conduct by Ali, Eidy, and MacKeen-Shapiro.

Student conduct proceedings at the University are governed by the Statement of Student Rights and Responsibilities (“Statement”). (Ex. 29, Statement.) Although complaints resulting in disciplinary proceedings are generally filed within six months of the incident, the Resolution Coordinator can waive that period when the delay is reasonable. (*Id.*, *Stage 1* at p 7.) Additionally, delays may occur when a student is undergoing “criminal action for the same behavior which forms the basis of a complaint.” (*Id.* at p 13.)

Following certain actions, the Michigan Attorney General (“AG”)’s Office issued charges for trespassing, resisting arrest, and obstructing a police officer. On May 5, 2025, the AG dismissed charges against University students, including Eidy, MacKeen-Shapiro, and Ali, due to a reallocation of resources. (*See, e.g.*, AG Press Release, *available at* <https://www.michigan.gov/ag/news/press-releases/2025/05/05/ag-nessel-issues-statement-after-dismissing-charges-tied-to-um-protest>.)

Following the dismissal of criminal charges, pursuant to the Statement, the University initiated its student misconduct proceedings against Plaintiffs Ali, Eidy, and McKen-Shapiro. (Ex. 30, Ali OSCR Notice; Ex. 31, Eidy OSCR Notice; Ex. 32, MacKeen-Shapiro OSCR Notice.) Ali, Eidy, and MacKeen-Shapiro were

provided notice of the proceedings being initiated, an opportunity to be heard before the Resolution Coordinator, an opportunity to examine the evidence against them, and an opportunity to appeal. (*See id.*; FAC, ¶ 320 [sic]; Ex. 29, *Stage 2*.)

Separately, on July 31, 2025, Ali, Eidy, and MacKeen-Shapiro received written notification of the allegations regarding their conduct, which identified the applicable policy that was violated (SPG 601.18) and the summarized the allegations. (FAC, ¶331; Ex. 33, Ali 7/31/25 Notice; Ex. 34, Eidy 7/31/25 Notice; Ex. 35, MacKeen-Shapiro 7/31/25 Notice.) Each was provided a separate opportunity to meet with Human Resources. (FAC, ¶331; Ex. 34, Ali 7/31/25 Notice; Ex. 35, Eidy 7/31/25 Notice; Ex. 36, MacKeen-Shapiro 7/31/25 Notice).

These proceedings were in process when the FAC was filed.

III. Standard of Review.

A complaint may be dismissed for “lack of subject-matter jurisdiction” under Federal Rule of Civil Procedure 12(b)(1). Eleventh Amendment sovereign immunity is a jurisdictional defense under Rule 12(b)(1). *Does v. Whitmer*, 69 F.4th 300, 305 (6th Cir. 2023); *Russell v. Lundergan-Grimes*, 784 F.3d 1037, 1046 (6th Cir. 2015).

To survive a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), “a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)).

Plausibility requires “more than a sheer possibility that a defendant has acted unlawfully”; rather, the plaintiff must “plead[] factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 678. The Court “accept[s] well-pleaded factual allegations (as well as reasonable inferences from those allegations) in the complaint as true,” but “need not credit ‘a legal conclusion couched as a factual allegation’ or a ‘naked assertion devoid of further factual enhancement.’” *U.S. ex rel. Angelo v. Allstate Ins. Co.*, 106 F.4th 441, 448 (6th Cir. 2024). A complaint that does not provide sufficient factual detail or the “when, where, in what or by whom” to support conclusory allegations fails to state a claim. *Ctr. for Bio-Ethical Reform v. Napolitano*, 648 F.3d 365, 373 (6th Cir. 2011).

IV. Argument.

A. Plaintiffs’ Claims Are Barred by Immunity.

1. The Eleventh Amendment Bars Plaintiffs’ Section 1983 Claims Against the University of Michigan and Its Officials.

The Eleventh Amendment “forbids a plaintiff from suing a state, a state agent, or a state instrumentality for monetary damages in federal court unless that state has consented to suit, or unless Congress has clearly and expressly abrogated the state’s immunity to suit.” *Kerchen v. Univ. of Mich.*, 100 F.4th 751, 761 (6th Cir. 2024). Moreover, “official-capacity suits generally represent only another way of pleading an action against an entity of which an officer is an agent” such that Plaintiffs’ claims

against Ono, Chatas, Holcomb, Grier, Harmon, Wessel, and Golich in their official capacity are subject to dismissal for the same reasons. *Monell v. Dep’t of Soc. Servs.*, 436 U.S. 658, 690 n.55 (1978). *See also Kerchen*, 100 F.4th at 761 (stating that claims against University employee “in his official capacity are construed as asserted against Michigan itself”).

The University is undoubtedly a state entity cloaked in sovereign immunity. *Kerchen*, 100 F.4th at 761. Since the University has not waived its immunity, the Eleventh Amendment precludes any recovery from the University, because Plaintiffs cannot “directly su[e] a State in federal court.” *McCormick v. Miami Univ.*, 693 F.3d 654, 661 (6th Cir. 2012).

Additionally, Section 1983 allows for liability only against a “person” who “depriv[es]” someone of any federal “rights, privileges, or immunities” while acting “under color of any statute, ordinance, regulation, custom, or usage, of any State.” 42 U.S.C. § 1983. The Supreme Court has held that “neither a State nor its officials acting in their official capacities are ‘persons’ under § 1983.” *Will v. Mich. Dep’t of State Police*, 491 U.S. 58, 71 (1989); *see also Lapidus v. Bd. of Regents of Univ. Sys. of Ga.*, 535 U.S. 613, 617 (2002).

To the extent Plaintiffs seek injunctive relief against the Individual Defendants in their official capacities, this too is barred. Although, under *Ex parte Young*, 209 U.S. 123 (1908), federal courts may issue “prospective injunctive and

declaratory relief compelling a state official to comply with federal law,” this exception “does not . . . extend to any retroactive relief,” *S & M Brands, Inc. v. Cooper*, 527 F.3d 500, 507 (6th Cir. 2008) (citing *Quern v. Jordan*, 440 U.S. 332, 336 (1979)). The FAC fails to sufficiently plead facts establishing that the Individual Defendants violated federal law warranting prospective injunctive relief or declaratory relief, as explained more fully in Sections B and C, *infra*. Moreover, Plaintiffs primarily seek retrospective injunctive relief, to “repeal all adverse employment actions” already taken. (ECF No. 23, PageID.450–51.) But such retrospective relief is barred by sovereign immunity where it does not prevent a continuing or ongoing violation of federal law. *Michigan Interlock, LLC v. Alcohol Detection Sys., LLC*, 360 F. Supp. 3d 671, 677-78 (E.D. Mich. 2018), *aff’d*, 802 F. App’x 993 (6th Cir. 2020).

Accordingly, Plaintiffs’ Section 1983 claims against the University and the Individual Defendants in their official capacities are barred by sovereign immunity.

2. Plaintiffs’ Section 1983 Claims Against the Individual Defendants Are Barred by Qualified Immunity.

“Qualified immunity shields government officials from standing trial for civil liability in their performance of discretionary functions, unless their actions violate clearly established rights.” *Kollaritsch v. Mich. State Univ. Bd. of Trs.*, 944 F.3d 613, 626 (6th Cir. 2019). “The immunity serves dual values: ensuring that wronged individuals can vindicate their constitutional rights while simultaneously reducing

the social costs that result from subjecting public officials to increased litigation, like the distractions officials may face in contending with numerous lawsuits and the deterrent effect such litigation might have on otherwise capable people who choose not to enter public office.” *Bambach v. Moegle*, 92 F.4th 615, 622 (6th Cir. 2024). A decision on qualified immunity at the earliest stage of litigation is vital to vindicate its protection against unnecessary litigation. *Kerchen*, 100 F.4th at 761.

Plaintiffs bear the burden of showing that each Individual Defendant is not entitled to qualified immunity. *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). This requires each to plausibly allege facts showing “(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.” *Ashcroft v. al-Kidd*, 563 U.S. 731, 735 (2011) (quoting *Harlow*, 457 U.S. at 818). The Court has discretion “to decide which prong of the qualified immunity equation to tackle first.” *Cunningham v. Shelby Cty.*, 994 F.3d 761, 764 (6th Cir. 2021).

“When multiple defendants are named[,] then §1983 liability is analyzed individually based on [a defendant’s] own actions.” *Wiley v. City of Columbus*, 36 F.4th 661, 669 (6th Cir. 2022). Thus, “[d]amage claims against government officials arising from alleged violations of constitutional rights must allege, **with particularity**, facts that demonstrate what each defendant did to violate the asserted constitutional right.” *Kollaritsch*, 944 F.3d at 626 (internal quotation marks omitted;

emphasis added).

Plaintiffs have failed to plead a constitutional violation by any Individual Defendant, let alone a violation of a clearly established right. They fail to explain how each committed specific acts that violate their constitutional rights. And Plaintiffs offer only conclusory factual allegations regarding alleged constitutional violations that fail to sufficiently plead how each of them purportedly violated any Plaintiff's clearly established constitutional rights. As to Ono, the Amended Complaint alleges only that students "called" on him during protests to divest from Israeli investments and chanted for him to meet with students—not that he took any specific act regarding their employment. (FAC ¶¶100, 117.) Plaintiffs then speculatively allege that Ono, or *possibly* one of the other Individual Defendants was responsible for their termination or the new disciplinary proceedings. (*Id.* ¶¶127, 158–61, 163, 197-199, 201, 226–28, 214 [sic], 232-34 [sic], 236 [sic], 253-55 [sic], 257 [sic], 273-75 [sic], 277 [sic], 291-93 [sic], 295 [sic], 310-12 [sic], 321 [sic], 333 [sic], 417 [sic]).

As to Chatas, Plaintiffs simply allege that he sent communications informing certain Plaintiffs that their grievance had been escalated to his office for review and that he upheld the termination decision, without explaining how his actions violated a clearly established constitutional right. (*Id.* ¶¶144-45, 188-89, 216-17.) As with Ono, the FAC offers only conclusory allegations that Chatas or *possibly* another

Individual Defendant was responsible for adverse employment actions against them. (*Id.* ¶¶158-61, 163, 197-99, 201, 226-28, 214 [sic], 232-34 [sic], 236 [sic], 253-55 [sic], 257 [sic], 273-75 [sic], 277 [sic], 291-93 [sic], 295 [sic], 310-12 [sic], 321 [sic], 333 [sic], 417 [sic]). The FAC is equally lacking with respect to Holcomb, which relies on the same vague conclusory statements as with Ono and Chatas. (*Id.*)

Plaintiffs repeat this lackluster pleading for new Defendants Hamorn, Wessel, and Golich, for whom Plaintiffs added simply because of their role in overseeing the student disciplinary proceedings against Eidy, Ali, and MacKeen-Shapiro. (FAC, ¶¶22-24, 321-22 [sic].) Entirely absent is any specific allegation regarding any action taken by any of these new defendants, let alone any action that would violate a clearly established constitutional right. (*Id.*) Plaintiffs instead rely upon generalized and impermissible group pleading or conclusory allegations, which is insufficient. *See Johnson v. Moseley*, 790 F.3d 649, 653 (6th Cir. 2015) (plaintiff must show how each defendant “through his or her own individual actions, *personally* violated plaintiff’s rights under clearly established law”) (emphasis in original).

While Plaintiffs allege that Grier participated in the grievance appeal process and in the adverse employment actions, they fail to sufficiently allege that she violated a clearly established constitutional right. Instead, they simply describe actions Grier took in connection with Plaintiffs’ suspensions and termination, as well as the grievance process, including that Grier signed letters describing the outcomes

of the hearings. (See, e.g., FAC, ¶¶129, 137, 143.) As with the other defendants, Plaintiffs’ post-amendment allegations only offer the vague conclusory group pleading statements that Grier (or possibly another Individual Defendant) violated their rights, without specifying how. Far from showing a violation of constitutional rights, these allegations confirm that Grier ensured Plaintiffs were afforded due process (to the extent any process was required) by providing notice and an opportunity to be heard.

Plaintiffs also cannot sue based solely on the Individual Defendants’ supervisory status. “Personal participation is a *sine qua non* of individual capacity §1983 suits; *respondeat superior* is not within the purview of §1983 liability.” *Johnson v. Daniels*, 769 F. Supp. 230, 234 (E.D. Mich. 1991), *aff’d*, 70 F.3d 1272 (6th Cir. 1995). Rather, Plaintiffs must show that each “encouraged the specific incident of misconduct or in some other way directly participated in it.” *Phillips v. Roane County*, 534 F.3d 531, 543 (6th Cir. 2008). Courts dismiss claims where there is no evidence of active, personal involvement. See *Johnson*, 790 F.3d at 653; *Helphenstine v. Lewis Cty.*, 60 F.4th 305, 321 (6th Cir. 2023) (supervisory liability claim failed where “claim rests entirely on [defendant’s] purported failure to act”); *Doe v. Baum*, 2019 WL 4809438, at *4 (E.D. Mich. Sept. 30, 2019).⁵

Ultimately, Plaintiffs fail to allege specific conduct committed by each

⁵ Unpublished cases are attached in alphabetical order as Exhibit 36.

Individual Defendant that violated a clearly established constitutional right.

B. Plaintiffs Fail to State First Amendment Claims.

1. Plaintiffs Fail to State Free Speech Claims (Count I).

The documentary evidence incorporated into the FAC confirms that Plaintiffs were terminated not because of speech but because of their violent behavior.

Plaintiffs engaged in unprotected conduct rather than protected speech. To state a retaliation claim, Plaintiffs must plausibly allege that they: “(1) engaged in constitutionally protected speech or conduct; (2) an adverse action was taken against [them] that would deter a person of ordinary firmness from continuing to engage in that conduct; [and] (3) there is a causal connection between elements one and two—that is, the adverse action was motivated at least in part by [their] protected conduct.” *Dixon v. Univ. of Toledo*, 702 F.3d 269, 274 (6th Cir. 2012) (internal quotation marks omitted). Plaintiffs cannot establish the first and the third elements.

In the context of public employment, courts employ a two-part test to determine whether speech is protected. *Dambrot v. Cent. Mich. Univ.*, 55 F.3d 1177, 1186 (6th Cir. 1995). First, the court determines whether the statement constitutes speech on a matter of public concern. *Id.* If so, step two requires analyzing whether the employee’s interest in commenting upon matters of public concern outweighs the interest of the employer in “promoting the efficiency of the public services it performs through its employees.” *Pickering v. Bd. of Educ.*, 391 U.S. 563, 568

(1968). Assuming for the purposes of this motion that Plaintiffs have satisfied the first step, their claim fails at the second.

Although the First Amendment offers broad protection, “when a speaker incites a crowd to violence, his incitement does not receive constitutional protection.” *Bible Believers v. Wayne Cty., Mich.*, 805 F.3d 228, 245 (6th Cir. 2015). Speech qualifies as “incitement” if: (1) the speech explicitly or implicitly encouraged the use of violence or lawless action; (2) the speaker intends that his speech will result in the use of violence or lawless action; and (3) the imminent use of violence or lawless action is the likely result of his speech. *Brandenburg v. Ohio*, 395 U.S. 444, 477 (1969). The First Amendment similarly excludes “fighting words” that “inflict injury or tend to incite an immediate breach of the peace.” *Chaplinsky v. New Hampshire*, 315 U.S. 568, 572 (1942). Further, “a physical assault is not by any stretch of the imagination expressive conduct protected by the First Amendment.” *Wisconsin v. Mitchell*, 508 U.S. 476, 484 (1993). “‘Violence or other types of potentially expressive activities that produce special harms distinct from their communicative impact . . . are entitled to no constitutional protection.’” *Id.* (quoting *Roberts v. U.S. Jaycees*, 468 U.S. 609, 628 (1984)).

Plaintiffs overlook their violent and threatening behavior that led to their termination and no-rehire status. While the FAC alleges Plaintiffs did not engage in violent conduct, the incorporated evidence directly contradicts those assertions,

rendering them implausible.⁶ *See Iqbal*, 556 U.S. at 678.

Officers observed Plaintiffs Hakim, Ali, and Eidy refusing to comply with police commands and assaulting officers by physically pushing their bodies against officers trying to control the protests and ensure a safe environment for the public. (See Exs. 3, 10, 16.) Plaintiff MacKeen-Shapiro was similarly observed failing to comply with police commands and physically pushing against police barriers. (See Ex. 22.) And Plaintiff Rhoades was also observed behaving violently with a three-foot-long stake. (See Ex. 25.) Likewise, officers observed Plaintiffs Hassaballa, Chappell, and Elkolaly intentionally refusing to comply with commands to stand down or vacate Ruthven, ultimately leading to their trespass of University property, while also pushing officers. (See Exs. 6, 13, 19.) The conduct of each Plaintiff was likely to lead to, and in fact did lead to, the imminent use of violence and lawless action. Plaintiffs' actions constitute incitement and is not protected by the First Amendment, nor were Plaintiffs' physical assaults against officers. *See, e.g., Brandenburg*, 395 U.S. at 477; *Mitchell*, 508 U.S. at 484. In short, physical assaults against police officers, disorderly conduct, and trespassing are not constitutionally

⁶ The police reports which are referred to in the FAC and attached to this motion are permissible and do not convert this motion to a motion for summary judgement. *See Fremont Reorganizing Corp. v. Duke*, 811 F. Supp. 2d 1323, 1334 (E.D. Mich. 2011) (“[W]here the plaintiff does not refer directly to given documents in the pleadings, if those documents govern the plaintiff’s rights and are necessarily incorporated by reference then the motion need not be converted to one for summary judgment.”).

protected. Despite Plaintiffs' attempts to argue otherwise, their violent and riotous behavior was the basis for their termination, nothing else.

Further, and regardless, the disruptive nature of Plaintiffs' conduct does not outweigh the University's interest in promoting public safety and efficiency of its services under *Pickering*. See, e.g., *Waters v. Churchill*, 511 U.S. 661 (1994) (disruptive behavior did not outweigh employer's interest under *Pickering* even where employer made its decision without having determined veracity of remarks employee allegedly made); *Farhat v. Jopke*, 370 F.3d 580, 593 (6th Cir. 2004) (behavior that disrupts a public employer's operations by making others fear for their safety does not outweigh employer's interest in efficient operations). Here, the University's interest in efficient operations and maintaining order outweighs Plaintiffs' interest in making statements, even of public interest, where Plaintiffs exhibited disruptive and violent behavior. (See Exs. 6, 10, 13, 16, 19, 22, 25.) For the same reason, this prevents Plaintiffs from establishing that any alleged protected speech was the causal connection between an adverse employment action. Plaintiffs' free speech retaliation claim thus fails.

Plaintiffs have not alleged viewpoint discrimination. Plaintiffs' free-speech discrimination claim also fails. The University can enforce regulations on the time, place, and manner of expression, provided the regulations: (1) are content neutral; (2) are narrowly tailored to serve a significant interest; and (3) leave ample

alternative means of communication. *Perry Ed. Ass’n v. Perry Loc. Educators’ Ass’n*, 460 U.S. 37, 45 (1983). A regulation is content neutral when it is “justified without reference to the content of the speech.” *Va. State Bd. of Pharmacy v. Va. Citizens Consumer Council, Inc.*, 425 U.S. 748, 771 (1976). And the University has a legitimate government interest in ensuring public safety and property rights. *Schenck v. Pro-Choice Network of W. N.Y.*, 519 U.S. 357, 376 (1997). Ample alternatives exist when a policy does not ban a particular manner or type of expression at a given place or time. *Frisby v. Schultz*, 487 U.S. 474, 481 (1988). In contrast, regulations based on the ideas expressed are considered content-based or viewpoint-based restrictions. *United Food & Com. Workers Loc. 1099 v. City of Sidney*, 364 F.3d 738, 751-52 (6th Cir. 2004).

Here, the University has a legitimate interest in keeping its students, employees, community, and property safe, *Schenck*, 519 U.S. at 376, and the policy that Plaintiffs allege their employment was terminated for violating, SPG 601.18, is content-neutral. (Ex. 1, SPG 601.18.) It does not mention speech content, focusing instead on conduct. (*Id.*) The policy ensures University members are free from verbal or physical actions “that create fear or apprehension of bodily harm or threaten [personal] safety.” (*Id.*) And ample opportunities exist for Plaintiffs to express their First Amendment rights: by not engaging in violent conduct.

Finally, Plaintiffs do not allege that any students engaging in remotely

comparable conduct were treated more favorably based on their viewpoint. Without factual allegations of *any* similarly situated students being treated differently, their claims fail. *See, e.g., Wilson v. Johnson*, 247 F. App'x 620, 625 (6th Cir. 2007) (rejecting viewpoint discrimination claim where plaintiff conceded university signage policy was viewpoint neutral and only “evidence of viewpoint discrimination” was that banners were removed “while others were not”).

For these reasons, the FAC fails to state a cognizable claim for violations of Plaintiffs’ First Amendment freedom of speech rights.

2. Plaintiffs Fail to State Petition or Assembly Claims (Counts II–III).

Plaintiffs’ remaining First Amendment claims, predicated on the rights to petition and peaceful assembly, fail for the same reasons articulated above. *See Ramsek v. Beshear*, 468 F. Supp. 3d 904, 914 (E.D. Ky. 2020) (“Courts typically evaluate free speech, assembly and petition claims under the same analysis”) (citing *Clark v. Cmty. for Creative Non-Violence*, 468 U.S. 288, 293 (1984)). Their violent and threatening behavior is thus unprotected. *See Mitchell*, 508 U.S. at 484.

3. Plaintiffs Fail to Allege an Adverse Action or Causation (Count VI).

Plaintiffs also assert that the initiation of student misconduct and employment hearings amounts to retaliation against them for exercising their First

Amendment rights.⁷ (FAC, ¶¶412-22 [sic].) Yet Plaintiffs fail to allege that any adverse action has been taken against them through the initiation of misconduct hearings. (*See id.*) And even if it did, those actions cannot be deemed retaliation, when in fact the proceedings are an example of the due process being afforded to Plaintiffs based on their violent and threatening behavior. *See Dixon*, 702 F.3d at 274.; *Ryan v. Blackwell*, 979 F.3d 519, 525 (6th Cir. 2020) (holding a plaintiff cannot cite disciplinary proceedings to be retaliation when the proceedings were exactly what the plaintiff was entitled to under the university’s policy after the plaintiff was alleged to have violated university policy.)

4. Plaintiffs Fail to Adequately Plead a Section 1985(2) Conspiracy Claim (Count VII).

Plaintiffs fail to state a plausible conspiracy claim under Section 1985(2), as they offer only unsupported conclusory allegations regarding the recently-initiated student disciplinary and employment proceedings. According to Plaintiffs, “[a]ll the Defendants or a subset of two or more of the Defendants” conspired to intimidate plaintiffs from proceeding with this lawsuit through the initiation of the student misconduct hearings. (FAC, ¶¶427-28 [sic].) This assertion is contradicted by the very policies Plaintiffs cite in the FAC.

For Plaintiffs to maintain a cause of action under § 1985(2), they must prove

⁷ Plaintiffs include Ono in their First Amendment Retaliation claim despite that Ono resigned from the University before those proceedings began.

the existence of a conspiracy among “two or more persons.” *Clemens v. Mount Clemens Cmty. Sch. Dist.*, 305 F. Supp. 3d 759, 775 (E.D. Mich. 2018). “It [is] incumbent upon [plaintiffs] to allege with at least some degree of particularity overt acts which defendants engaged in which were reasonably related to the promotion of the claimed conspiracy.” *Toteff v. Vill. of Oxford*, 562 F. Supp. 989, 997 (E.D. Mich. 1983) (internal citations omitted). “Broad conclusory language void of factual allegations is insufficient to state a claim under Section 1985(2).” *Clemens*, 305 F. Supp. 3d at 775.

The FAC lacks factual allegations regarding which Defendants allegedly conspired against Plaintiffs or how they did so. Instead, Plaintiffs simply conclude that a conspiracy existed because disciplinary proceedings were initiated after they filed this lawsuit. But these conclusory allegations are insufficient to satisfy Plaintiffs’ heightened burden to plead a conspiracy claim.

There is a reason the FAC lacks the facts necessary to support their conclusions—there are none. Rather, the Statement explains precisely why the student conduct proceedings were recently initiated. Specifically, “in the interest of fairness to a respondent,” the Statement permits student conduct proceedings to be delayed until after concurrent criminal proceedings are completed. (Ex. 29, Statement at p. 13). The same reason explains the additional employment-related proceedings. Because the proceedings began after the AG dismissed certain

criminal charges, there is a reasonable and legitimate reason for the timing of those proceedings, and no factual basis from which this Court could infer, even at the pleading stage, the existence of an actionable conspiracy.

Finally, Plaintiffs’ conspiracy claim fails because of the “intracorporate-conspiracy doctrine.” *Hull v. Cuyahoga Valley Joint Vocational Sch. Dist. Bd. of Educ.*, 926 F.2d 505, 510 (6th Cir. 1991). Under this doctrine, if “all of the defendants are members of the same collective entity, there are not two separate ‘people’ to form a conspiracy.” *Id.* at 510. “In other words, ‘an agreement between or among agents of the same legal entity, when the agents act in their official capacities, is not an unlawful conspiracy.’” *Barrow v. City of Hillview*, 775 F. App’x 801, 806-07 (6th Cir. 2019) (quoting *Ziglar v. Abbasi*, 582 U.S. 120, 152 (2017)). Because the FAC alleges that each Individual Defendant engaged in acts within the course and scope of their employment, there can be no conspiracy and Count VII must be dismissed.

C. Plaintiffs Fail to State Due Process Claims (Counts IV–V).

1. Procedural Due Process (Count IV).

Plaintiffs’ procedural due process claim requires them first to establish a constitutionally protected property interest.⁸ *Kaplan v. Univ. of Louisville*, 10 F.4th

⁸ To the extent the FAC attempts to assert substantive due process claims, such claims fail. Substantive due process safeguards individuals against unwarranted government interference of a fundamental right unless narrowly tailored to serve a

569, 577 (6th Cir. 2021). If Plaintiffs can establish such an interest, then they must demonstrate that they were deprived of the procedures necessary to protect it. Plaintiffs' claims fail at both steps.

a. Plaintiffs Do Not Have a Protected Property Interest in Continued Employment.

Not every public employee has a protected property interest in employment. Instead, "courts identify property interests by reference to independent sources of entitlement such as state law or a contract between the parties." *Id.* "But neither a 'unilateral expectation' to enjoy the alleged property interest nor an 'abstract need or desire for it' is enough." *Id.* (quoting *Bd. of Regents v. Roth*, 408 U.S. 564, 577 (1972)). "A public employee does not have a property interest in continued employment when his position is held at the will and pleasure of his superiors and when he has not been promised that he will only be terminated for good cause." *Odom v. Univ. of Mich.*, 2017 WL 2117978, at *5 (E.D. Mich. May 16, 2017) (quoting *Chilingrian v. Boris*, 882 F.2d 200, 203 (6th Cir. 1989)).

In Michigan, employment contracts for an indefinite term are presumed to be terminable at the will of either party. *Toussaint v. Blue Cross & Blue Shield*, 292 N.W.2d 880 (Mich. 1980); *Lytle v. Malady*, 579 N.W.2d 906, 910 (Mich. 1998).

legitimate interest. *Washington v. Glucksberg*, 521 U.S. 702, 720–21 (1997). "[T]he right to maintain public employment [is not] . . . a substantive due process right specifically protected under the Fourteenth Amendment." *Houchens v. Beshear*, 850 F. App'x 340, 343-44 (6th Cir. 2021).

This presumption may be rebutted only by proof that the parties to the employment agreement have agreed to a contract which limits the employer's discretion to terminate the employee only for just cause. *Lytle*, 579 N.W.2d at 911.

A plaintiff may prove the existence of a just cause contract in one of three ways: (1) proof of 'a contractual provision for a definite term of employment or a provision forbidding discharge absent just cause'; (2) an express agreement either written or oral, regarding job security that is clear and unequivocal; or (3) a contractual provision, implied at law, where an employer's policies and procedures instill a 'legitimate expectation' of job security in the employee. *Lytle*, 579 N.W.2d at 911. *Lytle* held that, to determine whether the employee has a legitimate expectation of termination only for just cause, the Court must first determine what the employer has promised by way of its policy statements and second if the promise is reasonably capable of instilling a legitimate expectation of just cause employment. *Id.* Not all statements contained in employment policies constitute a promise sufficient to support a legitimate expectation that an employee will not be discharged without just cause. "A lack of specificity of policy terms or provisions, or a policy to act in a particular manner as long as the employer so chooses, is grounds to defeat any claim that a recognizable promise in fact has been made." *Id.*

Here, the FAC does not identify, and the SPG does not provide, a specific promise that Plaintiffs will be terminated only for just cause. To the contrary, SPG

201.12 states that the University may terminate employees for any reason. At the outset, the policy states:

The University requires that employees maintain a standard of performance and conduct that contributes to the continuing excellence and orderly and efficient operation of the University. **The University, in its sole discretion, will determine** whether an employee's performance, conduct or behavior meets this standard.

(Ex. 1, SPG 201.12 (emphasis added).) Describing "termination," the policy is even clearer that it may occur "for any reason":

TERMINATION: Generic term for the ending of the employment relationship at the initiative of the staff member **or the University for any reason**, including misconduct. A misconduct termination, however, is usually referred to as a discharge.

(*Id.* (emphasis added).)

Under Michigan law, this language does not provide for a just cause employment relationship and therefore University employees are employed at-will. In *Liu v. Stone*, 2001 WL 865075 (Mich. Ct. App. July 31, 2001), the court reasoned that "in the absence of oral statements or written contractual terms, the standard practice guide alone cannot be reasonably interpreted to create a promise of just-cause employment for the university's employees." *Id.* at *3. Similarly, in *Ehinger v. University of Michigan Board of Regents*, 1997 WL 33343826 (Mich. Ct. App. Sept. 19, 1997), the court held that the "Standard Practices Guide does not establish a promise of termination for just cause." *Id.* at *3. Thus, Plaintiffs cannot establish that their employment was anything other than at-will. And some Plaintiffs' desire

for future employment does not change this analysis.

b. Plaintiffs Received Adequate Due Process.

But even if Plaintiffs could establish a protected property interest in continued employment (or the possibility of future employment), they received more than adequate process. An employee's right to due process must be balanced with the employer's interest in removing employees who violate its policies. *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542 (1985). Thus, the hearing does not have to comply with rigid or elaborate procedures and instead depends on the importance of the interest at stake, so long as it provides notice and a chance to be heard. *Id.*; *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

Here, the FAC references letters that each Plaintiff received detailing notice of the allegations and the policy violated. Each Plaintiff had an opportunity to and did meet with Human Resources, providing them an opportunity to “strongly dispute” that they violated the policy. That process was more than adequate. *See Morrison v. Warren*, 375 F.3d 468, 474 (6th Cir. 2004) (stating pre-termination hearing need not be elaborate and only provide an explanation of the employer's evidence and an opportunity for the employee to tell their side); *Loudermill v. Cleveland Bd. of Educ.*, 844 F.2d 304, 311 (6th Cir. 1988) (informal meeting sufficient); *Roberts v. Girder*, 237 F. Supp. 3d 548, 556 (E.D. Ky. 2017) (informal hearings satisfy due process as right to be heard is not a rigid structure).

Plaintiffs offer only conclusory statements in support of their due process theory, asserting that the University’s “policies and practices” violate the Due Process clause by denying fair notice of adverse employment actions and a fair opportunity to be heard pre-termination and to know and present evidence. (FAC, ¶393 [sic].) But these statements should be disregarded because they contradict the evidence incorporated into the FAC that confirms each Plaintiff was provided notice, a chance to review the evidence, and an opportunity to be heard. Thus, Plaintiffs have failed to state a procedural due process claim.

2. Plaintiffs Do Not State Due Process Claims Related to Their First Amendment Rights (Count V).

Plaintiffs also assert their due process rights to free speech, association, and petition were violated where they were deprived of a hearing. But this claim is duplicative of their First Amendment claims asserted in Counts I through III.

A plaintiff cannot maintain a substantive due process claim when a more specific constitutional provision applies. *See Albright v. Oliver*, 510 U.S. 266, 273 (1994) (“Where a particular Amendment ‘provides an explicit textual source of constitutional protection’ against a particular sort of government behavior, ‘that Amendment, not the more generalized notion of substantive due process, must be the guide for analyzing these claims.’”). For example, in *Brandenburg v. Housing Auth. of Irvine*, 253 F.3d 891, 893 (6th Cir. 2001), an executive director asserted First Amendment free speech violations and substantive due process claims for

deprivation of her free speech rights. Affirming dismissal of the claim, the Sixth Circuit concluded that the “due process right to free speech” claim was duplicative of her First Amendment retaliation claim. *Id.* at 900. Accordingly, Plaintiffs’ due process free speech claims should be dismissed.

D. Plaintiffs’ Claims Regarding Future Employment Are Not Ripe.

Plaintiffs fail to present a live controversy as to possible future employment. “A claim is not ‘amenable to . . . the judicial process,’ when it is filed too early (making it unripe).” *Warshak v. United States*, 532 F.3d 521, 525 (6th Cir. 2008). In *Warshak*, the Sixth Circuit explained:

In ascertaining whether a claim is ripe for judicial resolution, we ask two basic questions: (1) is the claim “fit[] ... for judicial decision” in the sense that it arises in a concrete factual context and concerns a dispute that is likely to come to pass? and (2) what is “the hardship to the parties of withholding court consideration”?

Id. Plaintiffs must show more than a “possible future injury”; instead, they must show that “the injury is certainly impending” or a “substantial risk that the harm will occur.” *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014). Speculative or hypothetical future injuries are not sufficient. *See, e.g., Legatus v. Sebelius*, 988 F. Supp. 2d 794, 804 (E.D. Mich. 2013). In evaluating whether a case is ripe, the courts consider: (1) the likelihood that the injury alleged by the plaintiff will ever occur; (2) whether the factual record is sufficiently developed to allow for adjudication; and (3) the hardship to the parties from refusing consideration. *Norton*

v. *Ashcroft*, 298 F.3d 547, 554 (6th Cir. 2002). Applying that test here reveals Plaintiffs’ claims are not ripe for two key reasons.

Plaintiffs’ claims are based on the University’s decision to bar their future employment. (FAC, ¶5.) But the FAC is devoid of factual allegations showing an actual injury. Instead, the FAC only vaguely alleges that certain Plaintiffs “planned to apply for post-graduate employment” with the University. (FAC, ¶¶51, 131-32, 205-06, 244 [sic], 316 [sic].) It lacks any specificity and does not describe the positions Plaintiffs intend to apply for, when they intend on applying, whether they were qualified, or any other factual details about the future employment opportunities to establish that they had anything more than a mere hope of obtaining employment. Thus, the FAC lacks factual allegations to infer any Plaintiff is likely to suffer an injury from the University’s no-rehire decision. Because Plaintiffs’ claims related to future employment are contingent on future harm that may not occur, these claims should be dismissed.

Similarly, this Court lacks jurisdiction to hear Plaintiffs’ new retaliation claim (Count VI) until Plaintiffs have actually suffered an actionable adverse action, which they fail to plead. *Morrison v. Bd. of Educ. of Boyd Cnty.*, 521 F.3d 602, 609-10 (6th Cir. 2008) (“Absent proof of a concrete harm, where First Amendment plaintiff only alleges inhibition of speech, the federal courts routinely hold that no standing exists.”)

E. Plaintiffs Impermissibly Split Their Claims.

Several Plaintiffs have impermissibly split their claims between a related lawsuit involving their student discipline claims and this case. In Case No. 2:24-cv-13425, Elkolaly, Chappell, and Hassaballa sued the University and Ono, asserting First Amendment and due process claims relating to the same November 2023 protest at Ruthven. (Ex. 28, *Hilgart-Griff* Compl., pp. 23-26, 51-67.) Those claims arise out of the same type of student conduct proceedings that Plaintiffs allege are retaliatory in this case.

Plaintiffs are generally required to “join all claims arising from the same set of facts in a single proceeding and cannot split them across multiple fora.” *Ellis v. Gallatin Steel Co.*, 390 F.3d 461, 479 (6th Cir. 2004). “[B]y bringing two different suits which present two different theories of the case arising from the same factual situation, counsel engaged in the precise behavior that res judicata [in the form defined here as claim splitting] seeks to discourage.” *Church Joint Venture, L.P. v. Blasingame*, 817 F. App’x 142, 147 (6th Cir. 2020) (quoting *Wilkins v. Jakeway*, 183 F.3d 528, 535 (6th Cir. 1999)). Allowing plaintiffs to “re-assert factual allegations . . . would lead to the exact problems res judicata prevents: ‘the expense and vexation’ of multiple lawsuits, wasted ‘judicial resources,’ and the ‘possibility of inconsistent decisions.’” *In re Blasingame*, 920 F.3d 384, 391–92 (6th Cir. 2019). Because Elkolaly, Chappell, and Hassaballa failed to join claims arising from the

same set of facts in their earlier lawsuit, their claims should be dismissed. *Church Joint Venture*, 817 F. App'x at 147.

V. Conclusion

For all the reasons set forth above, Defendants respectfully request that the Court dismiss the FAC in its entirety and with prejudice.

Dated: August 28, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 29, 2025, I electronically filed the foregoing document with the Clerk of the Court using the ECF system which will send notification of such filing to all counsel of record.

/s/ Brian M. Schwartz

Brian M. Schwartz (P69018)