

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
CIVIL ACTION NO: 1:25-CV-00191**

LAILA DAMES, EMILY ROGERS,
KATHRYN NEWMAN, MATHANGI
MOHANARAJAH, and ANSHU
SHAH,

Plaintiffs,

v.

LEE ROBERTS, AMY JOHNSON,
DESIREE RIECKENBERG, BRIAN
JAMES, RASHEEM HOLLAND,
LAWRENCE TWIDDY, JENNIFER
SPANGENBERG, J. KALA BULLETT,
and AVERY COOK,

in their individual and official
capacities;

NICK LYNCH, N.G. BROWN, FNU
LEE, and DESTINY WYLIE,

in their individual capacities,

Defendants.

**MEMORANDUM OF LAW IN
OPPOSITION TO
PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION**

In April 2024, Plaintiffs Dames, Newman, Rogers, and Mohanarajah disregarded repeated directives to disperse from an encampment they and other individuals had established and occupied on the campus of the University of North Carolina at Chapel Hill (“UNC-CH”), in violation of UNC-CH’s policies. As a result, these Plaintiffs—none of whom were formally

associated with UNC-CH at the time—were either arrested or detained by law enforcement. They were also issued trespass notices that excluded them from UNC-CH’s campus for two years.¹

Plaintiffs seek to preliminarily enjoin the foreseeable consequences of their conduct, alleging that the trespass notices violate their First Amendment rights as a “prior restraint” on their speech and also violate their due process rights under the Fourteenth Amendment. D.E. 10 ¶¶319-36; 353-71; D.E. 11; D.E. 12 at 2. But Plaintiffs are unlikely to prevail on their claims and otherwise fail to justify preliminary relief.

UNC-CH is a public university with a core purpose of educating students. Its viewpoint neutral removal of Plaintiffs from its campus was thus reasonably based on the limited purposes for which that campus may be used. Moreover, Plaintiffs—who are neither enrolled in nor employed by UNC-CH—simply cannot show that they have any constitutionally-protected interest in being physically present on UNC-CH’s campus. Nor can they show that the notice and hearings they were provided on the trespass notices violated their due process rights.

¹ For the purposes of this motion, “Plaintiffs” refers to Dames, Newman, Rogers, and Mohanarajah, all of whom received trespass notices as a result of their refusal to disperse from UNC-CH’s campus when directed. It does not include Plaintiff Shah, who heeded directives to disperse and consequently was not detained, arrested, or issued a trespass notice. D.E. 10 ¶¶201-13.

As a result, Plaintiffs will be unable to succeed on the merits of their claims. And they cannot show that any other factor weighs in favor of a preliminary injunction. Plaintiffs' Motion for Preliminary Injunction should be denied.

STATEMENT OF THE CASE

Plaintiffs filed this lawsuit in March 2025, asserting eleven claims against thirteen individual defendants acting on behalf of the UNC-CH. D.E. 1; D.E. 1-1 through 1-8. Plaintiffs' claims arose from actions taken by UNC-CH administrators, law enforcement officers, and others related to the clearing of a tent encampment established by protesters in April 2024. *Id.* They included claims under the First, Fourth and Fourteenth Amendment, as well as state-law constitutional and tort claims. *Id.*

Plaintiffs filed an Amended Complaint in April 2025, removing two claims and adding allegations. D.E. 10; D.E. 10-1 through 10-9. On April 24, 2025, Plaintiffs moved for a preliminary injunction. D.E. 11. Defendants sought and received an extension of time in which to respond to both Plaintiff's Amended Complaint and Motion for Preliminary Injunction, up to and including June 10, 2025 (D.E. 13).

STATEMENT OF THE FACTS

UNC-CH, the nation's first public university, is dedicated to research, scholarship, and creativity, and to teaching a diverse community of students

to become the next generation of leaders.² In support of this mission, UNC-CH has throughout its long history maintained a commitment to fostering the free exchange of ideas. Affidavit of Christi Hurt (D.E. 19-2), Ex. 1. UNC-CH has consistently affirmed this commitment and encourages vigorous debate and public engagement within its academic community, including peaceful, non-disruptive demonstrations. *See id.* Ex. 1, 7. However, any such public engagement must comply with UNC-CH's policies for expression and demonstrations on UNC-CH's campus, as well as the use of UNC-CH's campus and facilities. *Id.* Exs. 1-6. Failure to follow these policies may result in an individual's ejection from campus. *Id.* Ex. 2. As described below, that is exactly what occurred here.

A. UNC-CH has established policies and standards related to the exercise of free expression on campus, as well as the use of campus facilities.

To balance its commitment to free expression with effective campus operations, UNC-CH maintains several policies that provide reasonable restrictions on the time, place, and manner in which expressive activities, including demonstrations, may take place. D.E. 19-2, Exs. 1-6. Together these policies provide guidelines for use of the campus and its facilities for expressive events. They also provide notice of consequences when individuals engaged in

² *Mission and Values*, The University of North Carolina at Chapel Hill, <https://www.unc.edu/about/mission/> (last accessed May 14, 2025).

such activities violate policies, disrupt campus activities, or otherwise refuse to comply with directives from UNC-CH.

1. Policies reiterating UNC-CH's commitment to free expression on campus.

UNC-CH has established a campus policy and standard on free expression. D.E. 19-2, Ex. 1-2. Under those documents, “[s]tudents, staff, and faculty may assemble and engage in spontaneous expressive activity as long as such activity is lawful and does not materially and substantially disrupt the functioning of the University.” *Id.* Ex. 2.

UNC-CH also maintains a policy governing “demonstrative events.” *Id.* Ex. 3. That policy reiterates UNC-CH’s commitment to the First Amendment rights of students, faculty, staff, and campus visitors while also emphasizing the need to maintain safety, protect property, and enable UNC-CH’s operations to be performed. *Id.*

These policies, moreover, are consistent with the North Carolina General Statutes and the “Policy on Free Speech and Free Expression Within the University of North Carolina System.”³ That policy, in particular, “support[s] and assist[s] the constituent institutions of the University of North Carolina

³ See *Policy on Free Speech and Free Expression Within the University of North Carolina System*, The UNC Policy Manual 1300.8, <https://tinyurl.com/mvr8uje9> (adopted Dec. 15, 2017) (hereafter, “Policy 1300.8”) (D.E. 19-1).

System in their continuing efforts to embrace the free speech and free expression rights of the members of their campus communities, and balance those rights with protections against unlawful activity.” Policy 1300.8 § II.

2. Policies articulating guidelines for expressive activity and campus use.

Accordingly, UNC-CH’s policies and standards provide detailed, viewpoint neutral guidelines governing expressive activity on UNC-CH’s campus. At the highest level, such activity must be “lawful” and not “materially and substantially disrupt the functioning of the University.” D.E. 19-2, Ex. 2. The policies also outline more specific rules that must be followed when gathering in both indoor and outside spaces on campus. *E.g., id.* Ex. 3. For example, UNC-CH’s facilities use policy and standard provide certain criteria for the use of exterior spaces, including prohibiting the erection of temporary structures (like tents). *Id.* Exs. 4-5. The facilities use policy prohibits the use of those spaces “where such use may disturb the conduct of University activities.” *Id.* Ex. 4.

3. Policies outlining consequences for disrupting campus operations.

UNC-CH’s policies also provide clear notice of consequences for individuals who violate UNC-CH policies and standards by engaging in disruptive activity. Students, employees, or faculty members who have “materially and substantially disrupt[ed] the functioning of the University”

may be subjected to disciplinary sanctions that may result in suspension, expulsion or other removal from the university. D.E. 19-2, Ex. 2. Any “visitors” on campus who refuse to leave after they are asked to do so will be “subject to arrest and trespass.” *Id.* Ex. 3.⁴

To that end, UNC-CH’s campus police officers are authorized by the Chancellor to provide “notices of trespass” to individuals who have committed violations of university policy or criminal law. D.E. 19-3 ¶5 & Ex. 1. Those notices may be issued where it is “necessary to order person(s) to leave a building, area, or all [UNC-CH] property,” including when an individual has been arrested or has otherwise caused a disruption or safety concern that necessitates their removal from campus. *Id.* An individual who receives a trespass notice may appeal that order to the Chief of UNC-CH’s police department, who may “uphold, rescind, or modify the Notice of Trespass.” D.E. 19-3, Ex. 1.

B. Protesters on UNC-CH’s campus violate university policies and standards.

Starting in October 2023, UNC-CH experienced a number of protests led by local chapters of Students for Justice in Palestine (“SJP”). D.E. 19-2 ¶5.

⁴ These consequences are consistent with those outlined by the UNC System, which provides that guests on university campuses who have “substantially disrupted the functioning of the . . . constituent institution” may be “temporarily or permanently barred” from campus in addition to facing possible criminal charges. Policy 1300.8 § VII.A.2.

These protests were part of a larger, nationwide effort by SJP. D.E. 10 ¶¶52-57.

On Friday, April 26, 2024, a group of individuals affiliated with SJP established an encampment of tents on Polk Place on UNC-CH's campus. D.E. 19-2 ¶7. As UNC-CH administrators explained to the protesters, the erection of the tents violated Section II.D.2. of the university's facilities use standard. *Id.* After engaging in discussions throughout the day—which included arranging a meeting with the Interim Chancellor that the protesters rejected—the protesters dismantled the tents. *Id.* ¶¶8-9. However, the protesters maintained a presence on Polk Place throughout the weekend of April 27-28. *Id.* ¶10.

On Sunday evening, April 28, 2024, protesters on Polk Place again erected tents in violation of UNC-CH's policies. *Id.* ¶10; D.E. 1-9-3 ¶7. Again, UNC-CH administrators spoke with demonstrators and informed them that the tents violated university policies and standards. D.E. 19-2 ¶10. This time, however, protesters told administrators that they would no longer engage in discussions with UNC-CH. *Id.*; D.E. 19-3 ¶10. The tents remained throughout the following day, in continued violation of university policies and standards and despite UNC-CH administrators' attempts to engage in dialogue with the protesters, who refused to engage. *Id.*

During that time, UNC-CH became concerned about the level of disruption the encampment and its occupants caused to the campus community, which was embarking on final exams. D.E. 19-2 ¶11. For instance, UNC-CH had been informed that students felt intimidated by the protesters. *Id.* This caused students to avoid the area and made navigating campus more difficult. *Id.* In addition, UNC-CH was concerned about the encampment's damage to the physical campus, particularly in the weeks leading up to commencement. *Id.* Protesters were staking signs into the ground, covering sprinkler heads, and permitting trash to pile up around the encampment. *Id.* UNC-CH also was concerned about the security of surrounding campus buildings—specifically, Gardner Hall and the Campus Y—which protesters were accessing and using as bathroom facilities overnight. *Id.* Although doors to those buildings were supposed to remain closed and accessible only to members of the campus community, the doors were being propped open so that anyone could access the buildings, at any hour. *Id.*

As a result, UNC-CH determined that the disruption caused by the protest and encampment, as well as the continued violation of university policies, required clearing the encampment and dispersing the protesters. D.E. 19-2 ¶12; D.E. 19-3 ¶8. Based on advice from Defendant Brian James, Chief of the UNC-CH Police Department, UNC-CH decided to conduct the clearing when the fewest number of protesters would be present at the camp, in an

effort to minimize the disruption to the campus community. *Id.* The clearing was planned for the early morning hours of Tuesday, April 30. *Id.* In the meantime, Chief James liaised with law enforcement partners from other jurisdictions to ensure that he had sufficient personnel to conduct the clearing in a safe and orderly manner. D.E. 19-3 ¶9.

C. UNC-CH directs protesters to leave the area.

Around 5:30 a.m. on Tuesday, April 30, 2024, UNC-CH's Vice Chancellor for Institutional Integrity and Risk Management, George Battle, and Vice Chancellor for Finance and Operations, Nate Knuffman, went to the encampment and verbally informed protesters that due to their failure to comply with university policies and standards, as well as other disruptive activities that had been occurring, they would be required to remove all items from Polk Place and depart from the area by 6 a.m. D.E. 19-2 ¶13; D.E. 19-3 ¶10. Battle and Knuffman also informed protesters that if they refused to comply with this request, they could possibly be arrested, suspended, or expelled. D.E. 19-2 ¶13. A written notice was also distributed throughout the encampment, which contained the same information. *Id.* ¶13 & Ex. 8. Although some protesters remained at the camp, many chose to leave at that time. *Id.* ¶13.

D. Chief James orders protesters to disperse.

Around 6:00 a.m. that same morning, Chief James gathered at Polk Place with the law enforcement officers that had assembled to assist with the clearing of the camp—a group that included officers from other police jurisdictions. D.E. 19-3 ¶11. Chief James directed the protesters to disperse and informed any remaining protesters that officers would begin clearing the encampment. *Id.* Chief James also told the remaining protesters that anyone who wished to leave at that time was free to do so; however, anyone who chose to remain, in defiance of UNC-CH’s direction, may be arrested and cited with criminal trespassing. *Id.*

Law enforcement officers cleared the encampment in an orderly manner. D.E. 19-3 ¶12. During this process, officers continued to reiterate Chief James’s directive to disperse and permitted anyone who chose to leave to do so. *Id.* Although some protesters chose to leave at this time, many others chose to remain and be detained. *Id.* They were escorted from Polk Place to Gerard Hall for processing, criminal citations, and arrests. *Id.* Officers also issued trespass notices to the individuals who were detained. *Id.*

Plaintiffs all participated in the protest and the encampment on Polk Place and were present the morning of April 30, 2024. D.E. 10 ¶¶12-16; D.E. 19-3 ¶12. They were all detained after refusing to leave Polk Place despite direction by UNC-CH, Chief James, and law enforcement officers performing

the clearing. D.E. 10 ¶184. Moreover, Plaintiffs Dames, Rogers, and Newman were all cited with second-degree trespass. D.E. 10 ¶¶116, 140, 162.

E. Plaintiffs receive trespass notices as a result of their participation in the April 30, 2024, activities.

Following their detention on April 30, Plaintiffs Newman, Dames, and Mohanarajah were issued trespass notices based on their refusal to leave the encampment when directed to do so. D.E. 19-3 ¶12 & Ex. 2; D.E. 10 ¶¶143, 165, 186.⁵ On May 3, 2024, Plaintiff Rogers was issued a similar trespass notice, citing the same grounds. D.E. 19-3 ¶12 & Ex. 2; D.E. 10 ¶118.

All trespass notices were signed by officers in the UNC-CH police department. D.E. 19-3 ¶12 & Ex. 2. Per the police department's policy, the notices also included instructions on how Plaintiffs could timely appeal. D.E. 19-3, Ex. 2.

F. Plaintiffs Newman, Mohanarajah, and Rogers appeal the trespass notices.

Through an attorney, Plaintiffs Newman, Mohanarajah, and Rogers submitted appeals of the trespass notices.⁶ D.E. 19-3 ¶13 & Ex. 3. Defendant Chief James held an in-person meeting with Plaintiffs' attorney on July 5,

⁵ Plaintiff Mohanarajah, a former student at UNC-CH who was not enrolled at the time of the protests, also received a summary suspension from UNC-CH's Emergency Evaluation and Action Committee. D.E. 10 ¶186. That summary action was lifted on November 5, 2024, and is not at issue in Plaintiffs' Motion for Preliminary Injunction. D.E. 10-9.

⁶ Plaintiff Dames did not appeal her trespass notice. D.E. 19-3 ¶13.

2024, to hear these appeals. *Id.* ¶14. Chief James listened to all the arguments made by Plaintiffs’ attorney during the meeting and considered any documents presented to him. *Id.*

Chief James did not find the arguments submitted by Rogers or Newman compelling. *Id.* ¶15. Professor Rogers argued that she needed to associate with colleagues at UNC-CH and had a speaking engagement on UNC-CH’s campus rescinded because of the trespass. *Id.* But there was no reason why she could not host colleagues on Duke’s campus or some other location not on the campus of UNC-CH. *Id.* Ms. Newman contended that she needed to access UNC-CH’s property to attend Alcoholics Anonymous (“AA”) meetings; however, her attorney later clarified that her AA meetings were not actually held on campus. *Id.* Although she argued that she may need to park on campus, there is ample parking available that is not located on the campus of UNC-CH. *Id.* For these reasons, Chief James denied Rogers’ and Newmans’ appeals and provided them with written notice of his decision. *Id.* Ex. 4. Those letters provided that Newman and Rogers could seek relief from the notices twenty-four months after the issuance of his letter through another appeal to his office. *Id.*

Chief James also did not find Mohanarajah’s arguments compelling. D.E. 19-3 ¶16. She specifically argued that she needed to be on campus to continue her studies and work a campus job. *Id.* However, Mohanarajah was not enrolled as a student at the time and her employment status was

conditioned on her status as an enrolled student. *Id.* As a result, there was no need for her to be present on campus. *Id.* For that reason, Chief James denied Mohanarajah’s appeal and provided her with written notice of that decision. *Id.* Ex. 5. In his decision, Chief James noted that should Mohanarajah re-enroll as a student, he would reconsider her trespass notice. *Id.*

ARGUMENT

Preliminary injunctive relief is an “extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief.” *Roe v. Dep’t of Def.*, 947 F.3d 207, 219 (4th Cir. 2020), *as amended* (Jan. 14, 2020) (quoting *Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 22 (2008)). A party seeking such relief must meet a four-factor test, showing “that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.” *Id.*

Plaintiffs seek injunctive relief from the trespass notices issued against them. D.E. 11 at 1. However, their motion should be denied because the record demonstrates that Plaintiffs are unlikely to succeed on the merits of either claim based on those trespass notices—their First Amendment prior restraint claim or their due process claim. D.E. 10 ¶¶319-36, 353-71. Moreover, Plaintiffs also cannot establish the other factors necessary to succeed on their preliminary injunction motion.

For these reasons, Plaintiffs' motion should be denied.

I. Plaintiffs are unlikely to succeed on the merits of either claim implicated by their motion.

Plaintiffs' motion is based on the claims in their lawsuit in which they challenge the trespass notices they received: their prior restraint claim under the First Amendment (Count I), and their due process claim under the Fourteenth Amendment (Count IV). D.E. 12 at 11-12. But, as discussed below, Plaintiffs are unlikely to succeed on the merits of these claims.

A. Plaintiffs' prior restraint claim will fail on the facts and the law.

In Count I of their Amended Complaint, Plaintiffs claim that the trespass notices they received constituted a "prior restraint" on their speech, in violation of the First Amendment. D.E. 10 ¶¶319-36; D.E. 12 at 12-21. Specifically, Plaintiffs contend that Defendants "have completely forbidden Plaintiffs from engaging in political expression anywhere on UNC's campus" and that Defendants "cannot justify such expansive burdens on First Amendment activity." D.E. 12 at 13.

However, Plaintiffs' prior restraint claim is unlikely to succeed on the merits. First, the trespass notices do not constitute a prior restraint on speech. Second, even if the trespass notices incidentally burden Plaintiffs' speech, they were both viewpoint neutral and reasonable in light of UNC-CH's purpose as a public university.

A “prior restraint” on speech “describe[s] administrative and judicial orders forbidding certain communications when issued in advance of the time that such communications are to occur.” *Alexander v. United States*, 509 U.S. 544, 550 (1993) (cleaned up). Thus, “classic examples” of prior restraints on speech include permitting and licensing ordinances, as well as court-ordered injunctions forbidding speech. *Barrett v. Walker Cnty. Sch. Dist.*, 872 F.3d 1209, 1223 (11th Cir. 2017). Prior restraints do not, however, include “subsequent punishments.” *Alexander*, 509 U.S. at 553-54; *see also Madsen v. Women’s Health Center, Inc.*, 512 U.S. 753, 764 n.2 (1994) (declining to adopt a “prior restraint analysis” because the challenged injunction “was issued not because of the content of petitioners’ expression . . . but because of their prior unlawful conduct”). *See also* D.E. 18 at 14-15.

The trespass notices here thus fall within the scope of a subsequent punishment and not a prior restraint. The notices were issued as a result of Plaintiffs’ failure to comply with reasonable directives to disperse issued by UNC-CH and Chief James, after UNC-CH became concerned about protesters’ violations of university policies and the encampment’s disruption to campus operations. D.E. 19-3 ¶12 & Ex. 2; D.E. 19-2 ¶7-10. Moreover, the notices do not restrict speech in any direct way; rather, they simply impact Plaintiffs’ ability to be present on UNC-CH’s campus. D.E. 19-3, Ex. 2; *see also, e.g., Wright v. City of St. Petersburg, Fla.*, 833 F.3d 1291, 1296 & n.5 (11th Cir.

2016) (trespass warning from city park was not a prior restraint “simply because it incidentally burdened” speech). As a result, the trespass notices do not trigger First Amendment scrutiny.

However, even if the Court determines that the notices incidentally impact speech, they do not offend the First Amendment because they are viewpoint neutral and reasonable in light of UNC-CH’s purpose as a public university.

As the Fourth Circuit has long recognized, a public university “campus is a limited public forum.” *Am. C.L. Union v. Mote*, 423 F.3d 438, 444 (4th Cir. 2005).⁷ “Once a limited forum has been created, entities of a ‘similar character’ to those allowed access may not be excluded.” *Warren v. Fairfax County*, 196 F.3d 186, 194 (4th Cir.1999) (*en banc*). However, “if the person excluded is not a member of the group that the forum was made generally available to,” an “external standard” applies—that is, the restriction need only be “viewpoint neutral and reasonable in light of the purpose of the forum.” *Mote*, 423 F.3d at 444.

⁷ Any analysis of a restraint on speech involves three steps: (1) a determination of whether the plaintiff “engaged in protected speech”; (2) an identification of “the nature of the forum”; and (3) a determination of “whether the justifications for the exclusion satisfy the requisite standard for that forum.” *Mote*, 423 F.3d at 442–43.

Here, application of the external standard is appropriate. D.E. 18 at 18-20. Through policy, UNC-CH opened its campus as a limited public forum for expressive activities, but those expressive activities are subject to reasonable regulations. D.E. 19-2, Ex. 1-6. In remaining on campus and refusing to disperse despite directives from UNC-CH and law enforcement, Plaintiffs failed to comply with UNC-CH's policies. D.E. 19-2 ¶¶7, 10, 12; D.E. 19-3 ¶¶7, 10-12. Plaintiffs thus do not fit within the class of persons for whom UNC-CH opened its campus as a limited public forum—that is, individuals who participate in expressive activities in compliance with the reasonable parameters set by UNC-CH. *See Wood v. Arnold*, 321 F. Supp. 3d 565, 583 (D. Md. 2018), *aff'd* 915 F.3d 308 (4th Cir. 2019) (external standard was appropriate where plaintiff parent, “unlike all other parents for which the forum is open, caused school officials to be concerned about safety at school.”).

Applying that standard, the decision to issue trespass notices to Plaintiffs was viewpoint neutral and reasonable in light of UNC-CH's purposes as a public university. D.E. 18 at 20-21; *see also* Policy 1300.8 § IV (UNC system campuses are “dedicated for the specific purpose of furthering the educational, research, and/or service missions of the institution.”). Indeed, the notices do not expressly impact Plaintiffs' speech in any way, nor do they seek to curtail specific viewpoints. Rather, they simply provide that Plaintiffs are not permitted to be on the campus of UNC-CH for a period of twenty-four

months, at which point Plaintiffs can seek to have the trespass notice lifted. D.E. 19-3, Ex. 2. The notices are also reasonable in light of Plaintiffs' activity on campus that led to their arrests—specifically, participating in activities that caused a substantial disruption to the campus community and refusing to disperse when directed. D.E. 19-2 ¶11. It is reasonable that UNC-CH would seek to limit the access to campus of those who disrupted the campus previously.

The notices also do not significantly burden Plaintiffs. On the contrary, neither Newman nor Rogers have a strong or compelling need to be on the campus of UNC-CH, outside of their stated desire to engage in additional expressive activities on campus. D.E. 19-3, Ex. 4. And although Mohanarajah alleges that she has been unable to re-enroll in class because of the trespass notice, that's simply not correct, as her academic status is not tied to the trespass notice. *Id.* Ex. 5. Moreover, Chief James indicated that he would revisit the trespass notice if Mohanarajah re-enrolled. *Id.* Dames has not provided any compelling reason why she needs to be present on campus.

Plaintiffs thus cannot demonstrate that the trespass bans infringe on their rights under the First Amendment. As a result, Plaintiffs' prior restraint claim is unlikely to succeed.

B. Plaintiffs' due process claim is not likely to succeed.

Similarly, Plaintiffs' due process claim (Count IV) is not likely to succeed on the merits. Plaintiffs will be unable to show they have been denied any constitutionally-protected liberty or property interest. Nor can they show they were deprived of notice or an opportunity to be heard.

In order to state a procedural due process claim, Plaintiffs must allege that they were deprived of a constitutionally-protected property or liberty interest without due process. *Sheppard v. Visitors of Virginia State Univ.*, 993 F.3d 230, 239 (4th Cir. 2021); D.E. 18 at 25-26. Here, Plaintiffs contend that they all have a liberty interest in accessing UNC-CH's campus; that Mohanarajah has a property interest in accessing campus "as a student"; and that Rogers and Newman have property rights "in continued employment" that are "implicated" by the trespass notices they received. D.E. 12 at 22-23. Plaintiffs are incorrect on all counts.

First, Plaintiffs do not have a "fundamental liberty interest" (as they suggest) in accessing the campus of UNC-CH. D.E. 18 at 26-27. "[A] university differs in significant respects from public forums such as streets or parks or even municipal theaters." *Widmar v. Vincent*, 454 U.S. 263, 267 n.5 (1981). In particular, "[college and university] facilities are not open to the public in the same way that streets and parks are. University facilities—private and public—are maintained primarily for the benefit of the student body and the

faculty.” *Id.* at 278 (Stevens, J., concurring). Neither Rogers, Dames, Newton, nor Mohanarajah were enrolled students at UNC-CH when the trespass notices were issued. As such, they have no “liberty interest” in being physically present on UNC-CH’s campus. *See, e.g., Souders v. Lucero*, 196 F.3d 1040, 1045 (9th Cir. 1999).

Second, even assuming that Mohanarajah had a property interest in accessing UNC-CH’s campus as a student, this argument fails on the facts. It is undisputed that Mohanarajah was not enrolled as a student when the camp was cleared, when she was issued a trespass notice, or when she appealed the trespass notice. D.E. 10 ¶15; D.E. 19-3 ¶16. Nor has Mohanarajah been enrolled as a student at any point since that time. D.E. 19-3 ¶16. Mohanarajah thus cannot base her due process claim on any such property interest.

Third, any contention that the trespass notices implicate Newman’s and Rogers’ property interest in their “continued employment” is without merit. As an initial matter, Plaintiffs’ complaint contains no allegation that Newman or Rogers were deprived of their employment as a result of the trespass notices they received, or even that their employment was “implicated” by the notices. D.E. 10 ¶¶353-71. Plaintiffs cannot amend their pleadings through additional arguments in their briefs. *See, e.g., Campbell v. Wells Fargo Bank, N.A.*, 73 F. Supp. 3d 644, 652 (E.D.N.C. 2014) (collecting cases). In any event, Newman and Rogers are not employees of UNC-CH and as such cannot even argue that

their employment was jeopardized by the trespass notices they received. Thus, even assuming Plaintiffs had such an interest in their employment, they cannot show that that interest was in any way deprived.

Finally, even if Plaintiffs could establish that they had a liberty or property interest in being on UNC-CH's campus (they cannot), they cannot establish that they were deprived of any interest without due process. D.E. 18 at 28-30.

Here, it is undisputed that Plaintiffs all received trespass notices in writing, either the day of their arrest or shortly thereafter. D.E. 19-3 ¶12 & Ex. 2; D.E. 10 ¶¶118, 143, 165, 186. Those notices specified that Plaintiffs were ordered to "leave immediately" and were subsequently "prohibited from entering upon" UNC-CH property." D.E. 19-3, Ex. 2. The notices also provided Plaintiffs with details about their ability to appeal, in writing, to Chief James within 10 days of being provided with the notice. *Id.* It is further undisputed that Rogers, Newman, and Mohanarajah submitted appeals to Chief James, through their attorney. D.E. 10 ¶219; D.E. 19-3 ¶13. It is undisputed that Chief James convened an in-person hearing on these appeals. D.E. 10 ¶222; D.E. 19-3 ¶14. And it is undisputed that Chief James issued written letters to each plaintiff explaining his decision denying their appeals. D.E. 10 ¶232; D.E. 19-3 ¶¶15-16 & Exs. 4-5. Finally, it is undisputed that Plaintiffs have the

ability to seek to lift the trespass notices after twenty-four months have expired. D.E. 10 ¶230; D.E. 19-3, Exs. 4-5.

Plaintiffs assert several arguments as to why this process was insufficient, none of which are persuasive.

First, Plaintiffs contend that the availability of a post-deprivation hearing alone was insufficient to satisfy due process here. D.E. 12 at 24-25. But that’s not correct. “[W]here a State must act quickly, or where it would be impractical to provide predeprivation process, postdeprivation process satisfies the requirements of the Due Process Clause.” *Gilbert v. Homar*, 520 U.S. 924, 930 (1997). Here, it would be impractical to require a hearing prior to the issuance of each and every trespass notice issued by the UNC-CH police department, particularly where such notices must be issued in real-time to ensure that an individual does not remain on campus after breaking the law, violating UNC-CH policies, or causing some other disruption to campus operations. D.E. 19-3 ¶5.

Moreover, individuals who received such notices are not deprived of a hearing at all—rather, they have the opportunity to request a hearing with Chief James within 10 days of being issued a trespass notice. As a result, the absence of a hearing prior to issuance of a trespass notice does not, by itself, offend due process. *See, e.g., Davison v. Rose*, 19 F.4th 626, 642 (4th Cir. 2021) (holding that due process was satisfied where a parent who received a “no-

trespass” order from school grounds did not receive a hearing prior to the issuance of the order but had “a number of post-deprivation remedies available to him”).

Second, Plaintiffs contend they were not provided with notice of the charges against them—specifically, the “names of witnesses, a report of UNC’s findings, or any allegations that Plaintiffs themselves presented a threat to campus operations.” D.E. 12 at 26. But that is not the standard. Rather, even in the student discipline context (which requires a higher standard for due process than would have been required here), the Fourth Circuit has rejected any “rigid requirement of meticulously detailed notice at the outset of a disciplinary proceeding.” *Doe v. Virginia Polytechnic Inst. & State Univ.*, 77 F.4th 231, 238 (4th Cir. 2023). Instead, in the context of due process, notice must be “reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *Johnson v. Jessup*, 381 F. Supp. 3d 619, 645 (M.D.N.C. 2019) (quoting *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950)). The notices here did both. D.E. 19-3, Ex. 2; *supra* 22.

Third, Plaintiffs contend that the hearing they received was inadequate because it was not “adversarial.” D.E. 12 at 26-27. But as Plaintiffs themselves concede, the core of the due process hearing requirement is “an opportunity to present [their] side of the story.” D.E. 12 at 26 (quoting *Goss v.*

Lopez, 419 U.S. 565, 581 (1975)). That is precisely what occurred here. *Supra* 22-23.⁸

Fourth, Plaintiffs contend the hearing they received was inadequate because it was not presided over by a “neutral decisionmaker.” D.E. 12 at 27-28. Specifically, Plaintiffs claim that Chief James, who heard their appeals, was “the same person who ordered Plaintiffs’ arrests in the first place.” *Id.* at 28. This is incorrect. Chief James did not participate in the arrest of any individual Plaintiff, or issue, review, or approve any trespass notice issued to Plaintiffs. D.E. 19-3 ¶12. Rather, Plaintiffs’ arrests and subsequent trespass notices were effectuated by individual law enforcement officers under the discretion provided to them within the scope of their duties and under the relevant policies. *Id.* ¶¶5, 12.

For the reasons discussed above, Plaintiffs will be unable to succeed on the merits of either their prior restraint or due process claim.

⁸ Plaintiffs claim that they were entitled to cross-examine witnesses at their hearing, relying on the Fourth Circuit’s recent decision in *Doe v. Univ. of N. Carolina Sys.*, 133 F.4th 305, 316 (4th Cir. 2025). But that case involved the academic expulsion of a student—a far cry from the situation here.

II. Plaintiffs have failed to meet the other requirements for a preliminary injunction.

In addition to being unable to show a likelihood of success on their claims, Plaintiffs also cannot show that the other factors for a preliminary injunction weigh in their favor. *See Roe*, 947 F.3d at 219.

To start, Plaintiffs are unlikely to suffer irreparable harm. Here, Plaintiffs argue that their alleged constitutional violation is sufficient to establish that they will suffer irreparable harm. D.E. 12 at 29. But “merely asserting a constitutional claim . . . is insufficient to automatically trigger a finding of irreparable harm.” *Cap. Associated Indus., Inc. v. Cooper*, 129 F. Supp. 3d 281, 296 (M.D.N.C. 2015) (cleaned up). The Fourth Circuit has held that within the context of constitutional violations, “a plaintiff’s claimed irreparable harm is inseparably linked to the likelihood of success on the merits.” *WV Ass’n of Club Owners & Fraternal Servs., Inc. v. Musgrave*, 553 F.3d 292, 298 (4th Cir. 2009). Because Plaintiffs have failed to demonstrate a likelihood of success on the merits, they also cannot show they have suffered irreparable harm. *Cooper*, 129 F. Supp. 3d at 296.

More importantly, Plaintiffs did not file their motion for preliminary injunction until almost a year after the trespass notices were issued. As such, they simply cannot contend that they would be irreparably harmed should this Court not grant injunctive relief. *See, e.g., Mooreforce, Inc. v. U.S. Dep’t of*

Transp., 243 F. Supp. 2d 425, 435 (M.D.N.C. 2003) (delay in filing preliminary injunction weighed against a finding of irreparable harm).

Nor do the balance of hardships or the public interest prongs tilt in Plaintiffs' favor. *See Nken v. Holder*, 556 U.S. 418, 435 (2009) (observing that assessing harm to the opposing party and weighing the public interest "merge" when the government is the party opposing a stay). The balancing of hardships does not weigh in favor of the Plaintiffs. Here, the injury Plaintiffs face is wholly personal in their inability to be physically present on UNC-CH's campus due to the trespass notices. Additionally, Plaintiffs do not lack plausible alternatives to achieving what they claim requires them to be on campus. D.E. 19-3, Exs. 4-5.

Conversely, UNC-CH has a strong interest in upholding the trespass notices against the Plaintiffs. UNC-CH's central mission of educating students requires that it be able to keep the campus safe, secure, and without disruption. The ability to maintain and enforce trespass notices against Plaintiffs and others enables UNC-CH to achieve this goal. As a result, UNC-CH's interests in fulfilling its core mission of educating students in a non-disruptive, safe environment heavily outweighs Plaintiffs' interests in being physically present on UNC-CH's campus.

CONCLUSION

For the reasons set forth above, Plaintiffs' Motion for Preliminary Injunction should be denied.

This the 10th day of June 2025.

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CERTIFICATE OF WORD COUNT

I certify that, in compliance with Local Rule 7.3(d), this memorandum of law is no more than 6,250 words according to the word processing software used to prepare this document.

This the 10th day of June, 2025.

/s/ Lindsay Vance Smith
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Special Deputy Attorney General

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing **MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION** with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all registered CM/ECF users, including Plaintiff's counsel, at the following address:

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