UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

GENERIS ENTERTAINMENT, LLC,

Plaintiff,

v.

Case Number 24-12661
Honorable David M. Lawson

MARY ANNE DONLEY, KRISTIN BELTZER, DENNIS OLSHOVE, HOON-YUNG HOPGOOD, LEE GONZALES, EDWARD TOMA, and BLAKE BITNER,

Defendants.
_____/

OPINION AND ORDER GRANTING IN PART AND DENYING IN PART CERTAIN MOTIONS TO DISMISS AMENDED COMPLAINT

Plaintiff Generis Entertainment, Inc. owns a bar and restaurant in Saginaw, Michigan. It found itself in the crosshairs of a Michigan Liquor Control Commission enforcement action after Generis resisted the warrantless seizure of the records of a former employee who had been involved in an after-work, alcohol-related motor vehicle accident. Generis alleges in an amended complaint that the police investigator (defendant Blake Bitner) and the Commission's enforcement director (defendant Mary Anne Donley) violated its rights under the Fourth Amendment, Bitner retaliated against it in violation of the First Amendment and the Fourteenth Amendment's Due Process Clause, and Michigan's entire warrantless inspection program is unconstitutional. All the defendants have filed motions to dismiss. The Liquor Control Commissioners argue that the Court should abstain from deciding the constitutional question so as not to interfere with the ongoing enforcement action, where the plaintiff can assert its constitutional argument. The problem with that argument, however, is that the state administrative law judge has adjourned that proceeding until *this* Court decides the constitutional issue. They also contend that the claim is not ripe for review, but the basic facts of the case do not support that argument. Donley argues that she is

entitled to absolute prosecutorial immunity, and she is correct. Bitner contends that he is shielded by qualified immunity, but at this stage of the case fact questions preclude that argument for at least one of the claims against him. The Court, therefore, will dismiss all claims against defendant Donley, dismiss the due process and First Amendment claims against defendant Bitner, and deny the motions to dismiss in all other respects.

I.

Plaintiff Generis Entertainment, LLC is a licensed liquor retailer that operates the Retro Rocks restaurant in Saginaw, Michigan. Am. Compl. ¶ 11. One of its former employees, Joshua Munger, allegedly stole and consumed alcohol products belonging to Generis at the end of his shift in the early morning hours of October 2, 2023. Munger crashed his pick-up truck into a boulder approximately two miles away while driving home. *Id.* ¶¶ 12-15. Michigan State Police Trooper Blake Bitner responded at the scene and administered several field sobriety tests. *Id.* ¶ 18. When Munger did not perform satisfactorily, Bitner arrested him and transported him to the hospital for a blood test, which confirmed that he was intoxicated. *Id.* ¶¶ 19-20. Generis ultimately fired Munger. *Id.* ¶ 21.

Approximately three weeks after Munger's arrest, Bitner called a Generis employee seeking access to the Retro Rocks premises and copies of business records and video recordings. *Id.* ¶ 27. The amended complaint does not specify what transpired on this call. On October 27, 2023, Bitner arrived at Retro Rocks, without a warrant and uninvited, and requested the materials. Generis alleges that Bitner's purpose was to obtain evidence for the criminal case against Munger. *Id.* ¶¶ 28, 30. Generis personnel resisted; Bitner stated that he also would conduct a liquor inspection while he was onsite. *Id.* ¶¶ 31-32. He demanded that Generis produce information about Munger, including his schedule for the night of the crash. Generis maintains that the request

exceeds the scope of a typical liquor inspection. *Id.* ¶¶ 36-38. Generis, through one of its employees, demanded that Bitner produce a warrant before it would provide the materials. *Id.* ¶ 39. According to Generis, its demand displeased Bitner, who dubbed it a "liquor control code violation." *Id.* ¶ 40. Bitner also said that was "going to conduct a liquor inspection" because the records were not produced and that there could be adverse consequences for "not cooperating" with his demand. *Id.* ¶ 41. Bitner conducted the inspection without interference from Generis employees but left without the records he had sought. *Id.* ¶ 44.

Later that day, Bitner returned with a search warrant, which he executed during the restaurant's busy dinner rush. *Id.* ¶ 46. The plaintiff alleges that Bitner selected this time in retaliation for its decision to ask for a warrant. *Id.* ¶ 47. It also says Bitner retaliated by referring Generis to the Michigan Liquor Control Commission for enforcement action. *Id.* ¶ 48. At some point thereafter, defendant Mary Anne Donley, the MLCC's director of enforcement, issued license violation charges against Generis for failing to cooperate and/or obstructing law enforcement officers during an MLCC investigation and failing to make required records available for warrantless inspection, contrary to Mich. Comp. Laws § 436.1217.

Generis commenced this action against Bitner and Donley in both their individual and official capacities, as well as all of the MLCC commissioners (Kristin Beltzer, Dennis Olshove, Hoon-Yung Hopgood, Lee Gonzales, and Edward Toma) in their official capacities. The amended complaint asserts five claims: 1) that Bitner's initial warrantless inspection was pretextual and that Donley's ongoing enforcement of the warrantless inspection program violates the Fourth Amendment (Count I); 2) that Bitner retaliated against Generis for exercising its constitutional rights by referring it to the MLCC for prosecution (Count II) and by executing the warrant during the busy dinner rush (Count III); 3) that Bitner and Donley violated its right to due process (Count

IV); and 4) that the MLCC Warrantless Inspection Program set out in Michigan Compiled Laws § 436.1217 and Michigan Administrative Rule 436.1011 is unconstitutional (Count V). Generis sought and obtained an adjournment of the state enforcement proceedings, with the State's consent, "until such time as the litigation in the federal court system concerning the constitutionality of the statutes and/or regulations at issue in this complaint has been completed." ECF No. 12-2, PageID.104.

Bitner and the MLCC defendants separately moved to dismiss the amended complaint. Bitner's motion includes several exhibits, such as body camera footage of the search of the plaintiff's premises. Generis asks the Court to exclude those exhibits as beyond the scope that may be considered on a motion to dismiss or in the alternative, to provide a reasonable opportunity for it to present materials to oppose the motion after discovery.

II.

Defendant Bitner and the MLCC defendants each raise jurisdictional challenges to the amended complaint. They contend that the attack on the constitutionality of the statute prescribing the warrantless inspection regime is not ripe for review. They also contend, citing *Younger v. Harris*, 401 U.S. 37 (1971), that the Court should abstain from addressing the constitutional question and dismiss Count V without prejudice. They also have interposed separate merits challenges. I will turn to the jurisdictional questions first.

A.

The MLCC defendants read Count V of the amended complaint as presenting an as-applied challenge to the warrantless inspection provision of Michigan's liquor law, and as such they contend that the claim is not ripe for adjudication because they have not determined yet whether

to punish the plaintiff for a violation. These defendants concede that a facial challenge would be ripe, but they believe that the plaintiff never asked for that relief in its pleading.

"[A] facial challenge consists of a challenge that shows either '(1) that there truly are 'no' or at least few 'circumstances' in 'which the Act would be valid,' or (2) that a court cannot sever the unconstitutional textual provisions of the law or enjoin its unconstitutional applications.'" *Zillow, Inc. v. Miller*, 126 F.4th 445, 455-56 (6th Cir. 2025) (quoting *Connection Distrib. Co. v. Holder*, 557 F.3d 321, 335 (6th Cir. 2009) (*en banc*)). An as-applied challenge, in contrast, "consists of a challenge to the statute's application only to the party before the court." *Amelkin v. McClure*, 205 F.3d 293, 296 (6th Cir. 2000).

The defendants read the amended complaint too narrowly. Although the language is not free of ambiguity, the language is sufficient to pose both a facial challenge to the validity of the statute authorizing the program and an as-applied challenge. *See* Am. Compl. ¶ 97 ("The MLCC Warrantless Inspection Program, *as authoritatively construed* and/or being applied, is unconstitutional under the Fourth Amendment to the United States Constitution." (emphasis added)). Generis attacks the statute in general terms for failing to be connected to a substantial government interest and failing to limit the discretion of officers during a search. *Id.* ¶¶ 99-100. Moreover, the plaintiff's briefing relies heavily on the Supreme Court's decision in *City of Los Angeles, California v. Patel*, 576 U.S. 409, 418-19 (2015), which was a facial challenge to an ordinance requiring hotel operators to turn over information about their guests on demand. As the Court acknowledged in that case, there is no reason a plaintiff may not raise a facial challenge to a statute authorizing warrantless searches in appropriate circumstances. *Patel*, 576 U.S. at 418. And the plaintiff asserted at oral argument that it intends to raise both facial and as-applied theories.

Moreover, there is no ripeness defect in either event. "Ripeness is related to standing, and shares a foundation in Article III's case-and-controversy requirement." *Miller v. City of Wickliffe*, 852 F.3d 497, 503 (6th Cir. 2017). The doctrine prevents courts from adjudicating issues in the abstract before a factual basis is fully developed. *Abbott Laby's. v. Gardner*, 387 U.S. 136, 148 (1967), *abrogated on other grounds by Califano v. Sanders*, 430 U.S. 99, 105 (1977). It focuses on the injury-in-fact component of the standing elements, requiring a plaintiff to demonstrate that it has suffered an injury — here the threat of enforcement of the challenged statute — that is "sufficiently imminent." *Platt v. Bd. of Comm'rs on Grievances & Discipline of Ohio Sup. Ct.*, 769 F.3d 447, 451 (6th Cir. 2014) (citing *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 159 (2014)). "[W]hen a case is anchored in future events that may not occur as anticipated, or at all," the case is not ripe for review. *City Commc'ns, Inc. v. City of Detroit*, 888 F.2d 1081, 1089 (6th Cir. 1989) (citing *Dames & Moore v. Regan,* 453 U.S. 654, 689 (1981)).

The related doctrine of prudential ripeness, although not constitutional in nature and sometimes the subject of questions as to its continuing validity, continues to be applied in this Circuit. *See Carman v. Yellen*, 112 F.4th 386, 400 (6th Cir. 2024). The doctrine "is concerned with (1) whether a claim is fit for judicial review; and (2) the hardship to the parties." *Id.* at 401 (*Kiser v. Reitz*, 765 F.3d 601, 607 (6th Cir. 2014)).

The defendants assert that the case is unripe because they have not yet ascertained how they will apply the law. That position runs headlong into the pleaded facts. The law is not new, and the inspection that the defendants are defending here, which forms the basis of the state administrative prosecution, already occurred and may occur again. *See* Am. Compl. ¶ 94 (describing the ongoing existence of the rules being challenged). The defendants offer no concession that the search was conducted in error, and it is likely that the bar will be subject to

regular inspection again. The contours of the dispute are sufficiently primed for judicial review. The defendants' position appears to be that the MLCC's administrative adjudicative process — or some Michigan court — ultimately may determine that Generis should prevail in the state administrative proceedings based on its constitutional defenses, but that argument more naturally invokes the abstention doctrines discussed below.

B.

When an abstention defense is raised, the common rejoinder is found in *Colorado River Water Conservation District v. United States*, 424 U.S. 800, 817 (1976), that federal courts have a "virtually unflagging obligation" to exercise the jurisdiction that Congress has established for them. Refusing to exercise jurisdiction is a practice that is limited to a few narrowly circumscribed instances; abstention "is the exception, not the rule." *Id.* at 813.

The amended complaint presents what is known as a "mixed action," that is, one that seeks both coercive relief (for damages) and declaratory relief. *Fire-Dex, LLC v. Admiral Ins. Co.*, 139 F.4th 519, 526 (6th Cir. 2025). District courts have considerable discretion to decline to exercise jurisdiction under the Declaratory Judgment Act. 28 U.S.C. § 2201(a) (stating that district courts "*may* declare the rights and other legal relations of any interested party seeking" declaratory relief) (emphasis added); *Wilton v. Seven Falls Co.*, 515 U.S. 277, 286 (1995). Not so much for coercive actions; "[i]f the district court has subject matter jurisdiction over a claim for coercive relief, the court must exercise jurisdiction over that claim unless a traditional abstention doctrine applies." *Fire-Dex*, 139 F.4th at 527. And because "[t]he pairing of a coercive claim with a declaratory claim doesn't affect the district court's unflagging obligation to exercise jurisdiction over the coercive claim," *ibid.*, declining to accept a declaratory judgment claim in a mixed action where the claims are "tightly linked" generally will be thought to be an abuse of discretion. *Id.* at 529.

The question, then, for both types of actions here is whether a "traditional abstention doctrine" applies. The defendants point to *Younger v. Harris*, 401 U.S. 37 (1971), where the Supreme Court held that federal courts should not entertain litigation that would interfere with the orderly progress of state court criminal prosecutions and certain categories of civil proceedings. To present that argument, the MLCC defendants cite both Federal Rule of Civil Procedure 12(b)(1) and Rule 12(b)(6). Because the thrust of the argument questions the propriety of adjudicating the dispute and not the merits of it, Rule 12(b)(1) is thought to be the more fitting procedural device. *See Rogers v. Stratton Indus., Inc.*, 798 F.2d 913, 917 (6th Cir. 1986) ("Normally, Rule 12(b)(6) judgments are dismissals on the merits and Rule 12(b)(1) dismissals are not."); *Downing v. Botezat*, No. 23-300, 2024 WL 3908722, at *2 (E.D. Tenn. Aug. 22, 2024) (observing that "federal abstention doctrines generally focus on whether the Court should exercise its jurisdiction, not whether jurisdiction exists") (citing *Tenet v. Doe*, 544 U.S. 1, 6 n. 4 (2005) (explaining that *Younger* abstention "represents the sort of 'threshold' question we have recognized may be resolved before addressing jurisdiction")).

"*Younger* abstention derives from a desire to prevent federal courts from interfering with the functions of state criminal prosecutions and to preserve equity and comity." *Doe v. Univ. of Ky.*, 860 F.3d 365, 368 (6th Cir 2017). Although the Supreme Court has recognized that the doctrine also counsels abstention in certain state civil proceedings, "such applications are narrow and exist only in a few exceptional circumstances." *Id.* at 369. Those are where a state civil proceeding effectively is akin to a criminal prosecution or circumstances that "implicate a State's interest in enforcing the orders and judgments of its courts." *Sprint Commc'ns, Inc. v. Jacobs*, 571 U.S. 69, 72-73 (2013) (citing *New Orleans Pub. Serv., Inc. v. Council of City of New Orleans*, 491 U.S. 350, 373 (1989) (*NOPSI*)). Once the court determines that a case falls in a category where

Younger is applicable, it must analyze the case "using a three-factor test." *Doe*, 860 F.3d at 369 (citing *Middlesex County Ethics Committee v. Garden State Bar Ass'n*, 457 U.S. 423 (1982)). These factors assess "(1) whether the underlying proceedings constitute an ongoing state judicial proceeding; (2) whether the proceedings implicate important state interests; and (3) whether there is an adequate opportunity in the state proceedings to raise a constitutional challenge." *Tindall v. Wayne Cnty. Friend of Ct.*, 269 F.3d 533, 538 (6th Cir. 2001). "Where a review of these considerations suggests that the state court should properly adjudicate the matter, a federal court should abstain and order the federal complaint dismissed. If, however, a plaintiff can demonstrate extraordinary circumstances such as bad faith, harassment, flagrant unconstitutionality, or another unusual circumstance warranting equitable relief, then a federal court may decline to abstain." *Ibid.*

The MLCC defendants insist that the case touches all three bases because its pending civil enforcement proceeding against Generis falls within one of the recognized categories for abstention as it mirrors a criminal prosecution, the validity of its inspection regime is an important component of its liquor law enforcement mechanism, and Michigan law permits Generis to raise its constitutional claims in an appeal of an adverse decision to the circuit court. Generis does not appear to quibble with the defendants' argument that the proceeding falls within one of the recognized categories for abstention. It asserts, however, that the first element is absent because there is no "ongoing state judicial proceeding," since the state administrative law judge stayed the enforcement action until the resolution of the constitutional challenges in *this* case. *See* ECF No. 12-2, PageID.104. Generis also disputes that an adequate opportunity for review of constitutional issues exists because Michigan administrative tribunals cannot pass on the constitutionality of statutes.

On this record, the second and third *Middlesex* factors are satisfied. The challenge to the warrantless inspection procedures involves an "important state interest." The liquor code violation hearing is a part of the state's procedures for regulating retail distributors of alcohol. Liquor regulation is unquestionably an important state interest: courts long have recognized that states "have legitimate interests in 'promoting temperance and controlling the distribution of [alcohol].'" *Lebamoff Enters. Inc. v. Whitmer*, 956 F.3d 863, 871 (6th Cir. 2020) (quoting *North Dakota v. United States*, 495 U.S. 423, 432-33 (1990) (plurality opinion)).

Similarly, there is "an adequate opportunity in the state proceedings to raise constitutional challenges." *Middlesex*, 457 U.S. at 432. Generis bears the burden of demonstrating the inadequacy of the state forum. *See Aaron v. O'Connor*, 914 F.3d 1010, 1018 (6th Cir. 2019). The plaintiff asserts that there is no opportunity to obtain meaningful review of its constitutional challenge to the statute, as framed by its claim here, because the ALJ cannot decide constitutional issues. However, the cases it cites for that point only pertain to the scope of issues that may be reviewed by the state's appellate courts, not the scope of review of the state's administrative tribunals. *See Walters v. Nadell*, 481 Mich. 377, 387, 751 N.W.2d 431, 437 (2008); *Allen v. Keating*, 205 Mich. App. 560, 564, 517 N.W.2d 830, 832 (Mich. Ct. App. 1994)). Instead, the state forum does provide an adequate opportunity to litigate constitutional claims. The Michigan Liquor Control Code and its associated rules set out a comprehensive notice and hearing procedure for assessing alleged violations of the state's alcohol management provisions. *See* Mich. Comp. Laws § 436.1903; Mich. Admin. Code r. 436.1905. The plaintiff focuses on whether the administrative tribunal is authorized to pass on its constitutional arguments, but even if it were not, a licensee may appeal from the Commission's final determination with leave of the circuit court, Mich. Comp. Laws § 436.1903(2), and the circuit courts are empowered to hear and decide

constitutional questions. *Slezenger v. State of Mich. Liquor Control Comm'n*, 314 Mich. 644, 646, 23 N.W.2d 243, 243 (1946) ("All questions involving the constitutionality of the law as well as the legality of the revocation could properly have been raised in certiorari proceedings."); *see also Womack Scott v. Dep't of Corr.*, 246 Mich. App. 70, 81, 630 N.W.2d 650, 657 (2001) ("Constitutional issues not within the administrative agency's jurisdiction can be raised in the circuit court through the review procedure in the APA; no separate action is contemplated or allowed."). In fact, Michigan courts have considered constitutional challenges to the Liquor Code using this exact method. *See, e.g.*, *Ron's Last Chance, Inc. v. Liquor Control Comm'n*, 124 Mich. App. 179, 184, 333 N.W.2d 502, 504 (1983) (considering a sanctioned licensee's arguments that Commission rules were unconstitutionally vague and that the statute unconstitutionally delegates authority to the Commission).

It is the first *Middlesex* factor that is wanting in this case. It is not because of the nature of the state proceeding. A state administrative — rather than judicial — proceeding is sufficient to trigger *Younger*. *See, e.g.*, *Ohio C.R. Comm'n v. Dayton Christian Sch., Inc.*, 477 U.S. 619, 627-29 (1986) (holding that a district court should have abstained from a private school's lawsuit asserting that pending state administrative proceeding violated its constitutional rights); *Doe v. Univ. of Ky.*, 860 F.3d 365, 370-71 (6th Cir 2017) (applying *Younger* to a university disciplinary proceeding). However, the record demonstrates that the administrative prosecution is not "ongoing." It has been stayed indefinitely while the present lawsuit proceeds. *See* ECF No. 12-2, PageID.104 (order postponing the case "until such time as the litigation in the federal court system concerning the constitutionality of the statutes and/or regulations at issue in this complaint has been completed"). And the state defendants consented to the dormancy of that administrative prosecution. *See ibid.* (indicating that "Assistant Attorney General Asevedo did not oppose the

Licensee's motion for Adjournment"). *See O'Neill v. Coughlan*, 511 F.3d 638, 641 (6th Cir. 2008) (indicating that "a state can waive application of *Younger* abstention"). Certainly, Generis is entitled to raise its constitutional issue *somewhere*. An abstention order here would set it upon an uncertain path, like Escher's ants on a Möbius loop. *See* M.C. Escher, *Mobius Strip II* (woodcut 1963), https://www.nga.gov/artworks/61286-mobius-strip-ii. *Younger* abstention is not appropriate in this case.

The MLCC defendants also argue that the Court should abstain based on *Burford v. Sun Oil Company*, 319 U.S. 315 (1943), insisting that a decision in this case would enmesh the federal court in difficult questions of state law and disrupt a coherent state policy for the regulation of alcohol licensees. As the Supreme Court taught in *Burford*, abstention may be appropriate in some cases as a matter of comity, especially in cases where equitable relief is sought. *See Ada–Cascade Watch Co., Inc. v. Cascade Res. Recovery, Inc.*, 720 F.2d 897, 903 (6th Cir. 1983). The doctrine applies in two general situations: "when there are difficult questions of state law bearing on policy problems of substantial public import whose importance transcends the result" and "where the exercise of federal review of the question in a case and in similar cases would be disruptive of state efforts to establish a coherent policy with respect to a matter of substantial public concern." *NOPSI*, 491 U.S. at 361 (citation modified). When faced with a request to abstain under *Burford*, a district court must balance the state and federal interests at stake, but "[t]his balance only rarely favors abstention." *Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 728 (1996).

Burford does not present good grounds for abstention in this case. "Where plaintiffs raise federal constitutional claims, *Burford* abstention is discouraged." *Bassett v. Snyder*, 951 F. Supp. 2d 939, 955 (E.D. Mich. 2013) (citing *Habich v. City of Dearborn*, 331 F.3d 524, 533 (6th Cir. 2003)). The defendants argue that the Liquor Code is an example of a reticulated area of state law

warranting abstention, but they do not adequately explain what complex issues are implicated here or how they mimic examples where courts have abstained under *Burford*. *See AmSouth Bank v. Dale*, 386 F.3d 763, 784 (6th Cir. 2004) ("Because *Burford* abstention is concerned with potential disruption of a state administrative scheme, rather than the mere existence of such a scheme, looking behind the action to determine whether it implicates the concerns of *Burford* is necessary."). The defendants point out that an injunction limiting its warrantless inspections might threaten its ability to adequately regulate liquor licensees, but "there is . . . no doctrine requiring abstention merely because resolution of a federal question may result in the overturning of a state policy." *NOPSI*, 491 U.S. at 363 (quoting *Zablocki v. Redhail*, 434 U.S. 374, 380 n. 5 (1978)). *Burford* abstention is not justified.

The defendants have not established that any traditional abstention doctrine applies here. The Court must exercise the jurisdiction conferred upon it for both the coercive and declaratory claims.

C.

Next, the defendants, all officials of the State of Michigan sued in their official capacity in Count V, argue that sovereign immunity bars Generis' request for a "prospective injunction" enjoining defendant Donley's "ongoing" Fourth Amendment and Due Process violations, as well as any order enjoining the MLCC warrantless inspection program. That argument also implicates subject matter jurisdiction. *Nair v. Oakland Cnty. Cmty. Mental Health Auth.*, 443 F.3d 469, 476 (6th Cir. 2006). Suits against state officials in their official capacity equate to suits against the State itself. *Will v. Mich. Dep't of State Police*, 491 U.S. 58, 71 (1989).

Under the Eleventh Amendment, "an unconsenting State is immune from suits brought in federal courts by her own citizens as well as by citizens of another State." *Edelman v. Jordan*, 415

U.S. 651, 663 (1974). The defendants bear the burden of establishing that they are entitled to sovereign immunity. *Guertin v. State*, 912 F.3d 907, 936-37 (6th Cir. 2019). There are three exceptions to Eleventh Amendment immunity: (1) when the state has waived its immunity by consenting to the lawsuit; (2) when Congress has abrogated the state's sovereign immunity; and (3) when the plaintiff seeks only prospective injunctive relief against a state official from violating federal law. *Boler v. Earley*, 865 F.3d 391, 410 (6th Cir. 2017) (citing cases). Only the third exception is in play here.

Under *Ex Parte Young*, 209 U.S. 123 (1908), a plaintiff may "bring claims for prospective relief against state officials sued in their official capacity to prevent future federal constitutional or statutory violations, 'regardless of whether compliance might have an ancillary effect on the state treasury.'" *Boler*, 865 F.3d at 412 (quoting *S & M Brands, Inc. v. Cooper*, 527 F.3d 500, 507 (6th Cir. 2008)). However, "[i]njunctive relief is available under the *Young* exception only against state officers — not the state itself — who violate federal law." *Lawson v. Shelby Cnty.*, 211 F.3d 331 (6th Cir. 2000) (citing *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89 (1984)). "To determine whether a suit falls within the *Young* [exception to Eleventh Amendment immunity], a court ordinarily 'need only conduct a 'straightforward inquiry into whether [the] complaint alleges an ongoing violation of federal law and seeks relief properly characterized as prospective.'" *Enbridge Energy, LP v. Whitmer*, 135 F.4th 467, 473 (6th Cir. 2025) (quoting *Verizon Md., Inc. v. Pub. Serv. Comm'n of Md.*, 535 U.S. 635, 645 (2002)).

The defendants assert that the declaratory relief Generis seeks is retroactive, not prospective, and therefore the *Ex Parte Young* exception does not excuse the Eleventh Amendment bar to the challenge to the warrantless inspection practices. The Court does not read the amended complaint that way. The thrust of Count V is clear enough: Generis seeks to enjoin the MLCC's

warrantless inspection program going forward. The defendants assert that the claim focuses on Trooper Bitner's past conduct, which implicates retroactive relief only, rather than an ongoing violation of federal law. *See*, *e.g.*, Am. Compl. ¶ 101 ("Because of the violations of the Fourth Amendment to the United States Constitution [the plaintiff] suffers from imminent and credible threat of injury of government punishment in an administrative agency action . . . "). Even if this specific allegation is backward-looking, a fair reading of the entire amended complaint suggests that the defendants' understanding is too narrow. The amended complaint describes a method of investigation that the defendants never have admitted was unlawful, so the harm possibly could recur. And consider paragraph 104 of the amended complaint, which states that the plaintiff seeks a "declaratory judgment and/or injunction against all Defendants in their official capacities pursuant to the *Declaratory Judgment Act* and 42 U.S.C. § 1983 that the MLCC Warrantless Inspection Program provided by M.C.L. § 436.1217(2)-(3) and Rule 436.1011(4) violates the Fourth Amendment. . . ." Am. Compl. ¶ 104 (emphasis in original). This relief, which is distinctly prospective in nature, falls within the core of the *Ex Parte Young* exception to sovereign immunity. *T.M., Next Friend of H.C. v. DeWine*, 49 F.4th 1082, 1088 (6th Cir. 2022) (reiterating that "federal courts have jurisdiction to enjoin state officials from ongoing unlawful conduct") (citing *Ex Parte Young*, 209 U.S. at 159).

III.

Turning to the merits, the defendants seek dismissal under Rule 12(b)(6) of all counts of the amended complaint. Defendant Bitner argues that he is entitled to qualified immunity on the Fourth Amendment claims against him, defendant Donley contends that she is entitled to absolute prosecutorial immunity, and the MLCC defendants believe that the constitutional challenge to the warrantless inspection regime lacks merit.

A.

Starting with the facial challenge to the warrantless inspection program, the Fourth Amendment prohibits "'unreasonable searches and seizures.'" *Liberty Coins, LLC v. Goodman*, 880 F.3d 274, 280 (6th Cir. 2018) (quoting U.S. Const. amend. IV). The protection that the Amendment provides applies to commercial businesses just as with individuals. *Marshall v. Barlow's, Inc.*, 436 U.S. 307, 312 (1978). It is generally understood that a search or seizure is "unreasonable" "if it is not conducted pursuant to a warrant issued upon probable cause." *Liberty Coins*, 880 F.3d at 280 (citing *Camara v. Mun. Ct. of City & Cnty. Of San Francisco*, 387 U.S. 523, 528-29 (1967)). "A warrantless search or seizure is *per se* unreasonable under the Fourth Amendment — subject only to a few specifically established and well-delineated exceptions." *King v. United States*, 917 F.3d 409, 422 (6th Cir. 2019) (quotations omitted).

One exception is for so-called "special need" administrative inspections. The Supreme Court has provided guidance for evaluating the constitutionality of such administrative programs since they were first recognized as potentially constitutional in *Camara* and in *See v. City of Seattle*, 387 U.S. 541 (1967). The defining cases are *New York v. Burger*, 482 U.S. 691 (1987), and *City of Los Angeles, California v. Patel*, 576 U.S. 409 (2015), and the Sixth Circuit's helpful gloss on those decision in *Liberty Coins*.

Those cases establish that "[w]hen a search is conducted for a 'special need' other than to investigate criminal wrongdoing, the probable-cause standard is modified." *Liberty Coins*, 880 F.3d at 280. To conduct an administrative search, for instance, the government need only show that the search complies with ""reasonable legislative or administrative standards." *Camara*, 387 U.S. at 538. The standard is further relaxed for searches of businesses operating in certain closely regulated industries, like liquor sales. *See Patel*, 576 U.S. at 424 (citing *Colonnade Catering Corp.*

v. United States, 397 U.S. 72, 77 (1970)). For these businesses, "[n]o warrant or opportunity for precompliance review may be required at all . . . ." *Liberty Coins*, 880 F.3d at 280. Even so, a warrantless search of these businesses must satisfy three criteria set out by the Supreme Court in *Burger*: (1) "there must be a 'substantial' government interest that informs the regulatory scheme pursuant to which the inspection is made"; (2) "the warrantless inspections must be 'necessary' to further [the] regulatory scheme"; and (3) "the statute's inspection program, in terms of the certainty and regularity of its application, [must] provid[e] a constitutionally adequate substitute for a warrant." 482 U.S. at 702-703 (citations modified).

The inspection regime challenged here is found in section 436.1217(1) through (3) of the Michigan Compiled Laws:

> (1) The commission may make investigations that it considers proper in the administration of this act and the rules promulgated under this act concerning alcoholic liquor, or the manufacture, distribution, or sale of alcoholic liquor, or the collection of taxes on alcoholic liquor.
>
> (2) A licensee shall make the licensed premises available for inspection and search by a commission investigator or law enforcement officer empowered to enforce the commission's rules and this act during regular business hours or when the licensed premises are occupied by the licensee or a clerk, servant, agent, or employee of the licensee. Evidence of a violation of this act or rules promulgated under this act discovered under this subsection may be seized and used in an administrative or court proceeding.
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> (3) The commission or a duly authorized agent of the commission may examine or copy the books, records, or papers of a person relative to a requirement pertaining to this act, access to which has been obtained pursuant to this section.

Mich. Comp. Laws §§ 436.1217(1)-(3). The statute also allows Commissioners and their agents to issue subpoenas directing persons to testify under oath and to produce documents "at any reasonable time and place." *Id.* §§ (4), (5).

Although Generis argues that the warrantless inspection program does not meet the first *Berger* requirement, preventing criminal activity in the liquor industry, protecting public health,

and stopping illegal alcohol sales all are substantial government interests. The State has a substantial interest in regulating the sales of alcohol in order to promote public health and safety. *Cf. Burger*, 482 U.S. at 708 (defining the state interest in that case as "regulating the vehicle-dismantling and automobile-junkyard industry" due to the rise of motor vehicle theft); *Colonnade Catering Corp. v. United States*, 397 U.S. 72, 77 (1970) (approving of warrantless inspections of liquor businesses and stating that the industry has "long [been] subject to close supervision and inspection"). Generis's assertion, essentially, is that the government lacks an interest in enforcing its statutes in a pretextual manner, as it claims Bitner did here. That argument frames the inquiry about the government's interest too narrowly, and it is not relevant to a facial challenge, which asks whether the statute is unconstitutional in *all* applications.

Generis says it "does not dispute" that warrantless inspections are necessary to further the Liquor Code's regulatory scheme, satisfying the second requirement. But it suggests that the inspections are being used here as a "convenience tool for purely criminal investigative pursuits against third parties." ECF No. 36, PageID.499. This argument fails for the same reason as above: it is irrelevant to a facial challenge. The necessity of a warrantless inspection program in this context is straight-forward: it helps ensure that liquor code violations, such as illegal alcohol sales, are not being concealed.

The main issue presented by the facial challenge to the warrantless inspection program here focuses on *Burger*'s third requirement, which mandates that the statute's inspection program must be applied with certainty and regularity so that it amounts to "a constitutionally adequate substitute for a warrant." *Burger*, 482 U.S. at 703. Generis contends that Michigan's scheme gives law enforcement unfettered discretion to search the premises of licensees, particularly for information to support prosecutions against third parties, and that the scheme is not sufficiently defined to limit

the time, place, and scope of the inspections. The defendants respond that the scheme is sufficiently narrow because the statute setting out the program limits investigations to those that the MLCC "considers proper in the administration of this act" and places constraints on the individuals authorized to conduct the searches and the times they may be carried out. *See* Mich. Comp. Laws § 436.1217.

The Sixth Circuit has explained that a statute must do "two things" to provide a constitutionally adequate substitute for a warrant: "[i]t must be 'sufficiently comprehensive' so that businesses are on notice that they will be subject to periodic searches of a properly defined scope" and "[i]t must constrain the discretion of an inspecting officer by being 'carefully limited in time, place, and scope.'" *Liberty Coins*, 880 F.3d at 286 (quoting *Burger*, 482 U.S. at 702). In *Burger*, the Supreme Court found sufficient a statute permitting warrantless inspections of automotive junkyards because the statute informed the business owner that inspections would be conducted "on a regular basis," provided guidance about who was authorized to conduct inspections, and the time and scope of the search was limited to the business' regular operating hours and for "records, as well as any vehicles or parts of vehicles which are subject to the record keeping requirements" of the statute. *Burger*, 482 U.S. at 711-12 (citations omitted).

The Supreme Court reviewed another warrantless inspection protocol in *Patel*. The challenged Los Angeles city ordinance required hotels to make guest records available to the police department and stated that "[w]henever possible" the inspections should "be conducted at a time and in a manner that minimizes any interference with the operation of the business." *Patel*, 576 U.S. at 413. The Court concluded that hotels were not a closely regulated industry, so the reduced Fourth Amendment standards for those businesses in those sectors were not applicable. The ordinance therefore was unconstitutional because it did not "afford[] an opportunity to obtain

precompliance review before a neutral decisionmaker." *Id.* at 420. However, as an alternative holding, the Court opined that even if hotels were subject to the relaxed standards applicable to closely regulated industries, the ordinance was unconstitutional "because it fails sufficiently to constrain police officers' discretion as to which hotels to search and under what circumstances." *Id.* at 427. The Court acknowledged that it had upheld the statute in *Burger*, which specified that searches would be conducted on a "regular basis," but the Los Angeles ordinance "impose[d] no comparable standard." *Ibid.*

In *Liberty Coins*, the Sixth Circuit reviewed three sections of an Ohio statute that regulated precious metals dealers. One of the challenged provisions required "licensees to detail, on police-approved forms, a description of all precious metals purchased, and to make these forms available to the police each business day." *Liberty Coins*, 880 F.3d at 286. Another provision permitted state and local police to quickly view missing items potentially in a dealer's possession, as well as certain information about the seller. *Id.* at 287. The court held that these provisions were constitutionally adequate because "they apply only to licensed precious metals dealers who have chosen to enter this closely regulated industry," "they carefully limit the scope of the warrantless searches to only a narrow subset of information — purchasing records and the precious metals themselves," and they confined the search to a specific time and location. *Id.* at 288. However, the court concluded that a provision that applied to non-licensees was too broad in scope to be constitutionally adequate, and it effectively permitted "searches of dealers' entire businesses" and granted "free access" to business information "at all times." *Id.* 291.

Measured against these examples, the Court cannot say at this stage of the case that Michigan's warrantless inspection regime clearly is constitutional. Certainly, as the defendants point out, the statute contains some terms that constrain its scope in several respects. It limits the

inspections to "regular business hours" or times that the business is occupied by the licensee or its employees. Mich. Comp. Laws § 436.1217(2). It limits the individuals who conduct the inspections to "commission investigator[s] or law enforcement officer[s] empowered to enforce the commission's rules." *Ibid.* And the scope of the investigations seemingly is limited to investigations for the administration of the Liquor Control Code. *Id.* § 436.1217(1). But the statute's breadth still raises questions. Although the statute in *Burger* informed the business owners that inspections would be conducted on a "regular basis," Michigan's contains no such temporal guidance. Of course, the presence or absence of a time limitation in a statute only is "a factor in an analysis," *Burger*, 482 U.S. at 711 n.21, and both the statute in that case and the statute here authorize searches only when the premises are occupied, *id.* at 711. Yet as in *Patel*, the Michigan statute imposes *no standard* that would alert a business about how often or under what conditions their premises may be subject to inspection. *See* 576 U.S. at 428. Another concern: it is not clear that the Michigan statute offers meaningful clarity about the scope of any search, other than stating that "[e]vidence of a violation" of the Liquor Code "may be seized and used in an administrative or court proceeding." Mich. Comp. Laws § 436.1217(2). This access apparently includes the licensee's "books, records, or papers," *id.* § 436.1217(3), but presumably it is not so limited because the administrative code appears to contemplate, for instance, examination of products as well, *see* Mich. Admin. Code R. 436.1027. One could conceive of all manner of materials that might relate, at least tangentially, to a liquor code violation. At least here, the scope of materials sought by trooper Bitner appears to have included personnel information and employee schedules, Am. Compl. ¶¶ 35-36, items that extend beyond the purview of what one typically might consider liquor law enforcement. And the manner Bitner attempted to use the warrantless inspection program apparently betrayed a lack of reasonable constraint on his

discretion. In *Liberty Coins*, the Sixth Circuit was concerned by a statute that "effectively allow[ed] searches of dealers' entire businesses." *Liberty Coins*, 880 F.3d at 291. On a motion to dismiss, it is not clear that the statute is sufficiently limited to be constitutional under *Burger* and its progeny. Discovery may inform the inquiry.

The defendants maintain that other courts in this district and the Sixth Circuit already have determined that Michigan Compiled Laws § 436.1217 provides an adequate substitute for a warrant. *See Hamilton v. Lokuta*, 803 F. Supp. 82, 85 (E.D. Mich. 1992), *aff'd in part, rev'd in part*, 9 F.3d 1548 (6th Cir. 1993) (table). In that case, the owner of a bar sued several police officers after his facility was subjected to a search. *Hamilton*, 803 F. Supp. at 83. The defendants sought summary judgment, reasoning in part that the Michigan Liquor Control Act permitted the warrantless search of the premises. At the time, the warrantless inspection provisions were codified in a different section of the Michigan code, but the relevant language is substantially the same. The court applied the *Burger* criteria and determined that the search was conducted pursuant to a valid exception to the warrant requirement. Relevant here, the court observed that the statute provided an adequate substitute for a warrant because it advised licensees "that a search may be made pursuant to the statute" and "set forth the scope of the inspection, the officials who are authorized to make inspections, and sets the times and places for such inspections." *Id.* at 85. The court of appeals later issued an unpublished *per curiam* affirmance, which stated, without elaboration, that "[t]he [Liquor Control] Act . . . [is] not unconstitutional on [its] face . . . ." *Hamilton*, 1993 WL 460784, at *2.

However, *Hamilton*, does not provide support for the defendants' position. The court of appeals' decision is unpublished and therefore not entitled to precedential weight, *see Keene Grp., Inc. v. City of Cincinnati, Ohio*, 998 F.3d 306, 314 (6th Cir. 2021), and it was abrogated by the

Supreme Court's holding in *Patel*, which comes more than twenty years after *Hamilton*. Recall, the *Patel* court found unconstitutional an ordinance requiring "that hotel guest records 'shall be made available to any officer of the Los Angeles Police Department for inspection,' provided that '[w]henever possible, the inspection shall be conducted at a time and in a manner that minimizes any interference with the operation of the business.'" *Patel*, 576 U.S. at 413. As discussed above, the statute at issue here contains a similar lack of specificity. Absent further factual development, the constitutionality of the State's warrantless inspection program in its liquor law cannot be sustained so easily.

B.

Defendant Donley argues that Counts I and IV of the amended complaint must be dismissed against her because she is shielded by absolute prosecutorial immunity. The Court agrees.

It is well established that a prosecuting attorney enjoys absolute immunity when that prosecutor acts "as [an] advocate for the State" and engages in activity that is "intimately associated with the judicial phase of the criminal process." *Imbler v. Pachtman*, 424 U.S. 409, 430 & n.33 (1976). Those activities include "initiating a prosecution" and "presenting the State's case." *Id.* at 431.

Donley is not an attorney, but as the MLCC's director of enforcement she initiated the license violation charges against Generis. Determining when a prosecutor is an advocate and not an investigator calls for application of "a functional approach." *Buckley v. Fitzsimmons*, 509 U.S. 259, 269 (1993). "This approach looks to 'the nature of the function performed, not the identity of the actor who performed it.'" *Howard v. Livingston Cnty.*, No. 21-1689, 2023 WL 334894, at *4 (6th Cir. Jan. 20, 2023) (quoting *Buckley*, *supra*; *Forrester v. White*, 484 U.S. 219, 229 (1988)).

"Under the functional approach, 'the official seeking absolute immunity bears the burden of showing that [absolute] immunity is justified for the function in question.'" *Ibid.* (quoting *Burns v. Reed*, 500 U.S. 478, 486 (1991)).

Donley correctly represents that the premise of the plaintiff's claims is that she acted unconstitutionally by instituting and maintaining the civil enforcement proceedings, but these actions are within the ambit of the traditional prosecutorial role. Generis responds that absolute immunity only would bar a damages remedy, not the claim itself. It questions how Donley can seek the benefit of absolute immunity when her brief apparently places the responsibility for issuing the administrative enforcement complaint on certain other MLCC staff members. Finally, it says that its allegations do not focus on her role as a prosecutor but on her role as an enforcer of the warrantless inspection program.

The plaintiff's statement that absolute immunity only forecloses a damages remedy is true as it goes, but it is no reason not to dismiss the claims, like these, which cannot be read to support a non-damages remedy.

Donley's statements about the identity of the individual who initiated the proceeding also do not control. It is the plaintiff's allegations that must be taken as true. And here, the amended complaint is clear: Donley's conduct consisted of "issu[ing] license-violation charges . . . ." Am. Compl. ¶ 50. That action certainly is prosecutorial in nature, and it makes no difference that the charges were part of a civil administrative proceeding. *See Butz v. Economou*, 438 U.S. 478, 516 (1978) (holding that agency officials "who are responsible for the decision to initiate or continue a proceeding subject to agency adjudication are entitled to absolute immunity from damages liability"); *Cooperrider v. Woods*, 127 F.4th 1019, 1029-30 (6th Cir. 2025) (holding that the Kentucky Department of Alcoholic Beverage Control's general counsel was entitled to quasi-

prosecutorial immunity because his role in license-revocation proceedings was "quintessentially prosecutorial").

Counts I and IV of the amended complaint will be dismissed as to defendant Donley.

C.

Defendant Bitner contends that he is entitled to qualitied immunity from the claims stated against him in Counts I through IV of the amended complaint.

The doctrine of qualified immunity insulates state actors from liability as long "as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). Once the qualified immunity defense is raised, Generis must show that (1) the defendant violated a constitutional right and (2) that right was clearly established." *McDonald v. Flake*, 814 F.3d 804, 812 (6th Cir. 2016) (citing *Quigley v. Tuong Vinh Thai*, 707 F.3d 675, 680 (6th Cir. 2013)).

This doctrine requires a close look at the contours of the constitutional rights asserted by Generis. "[B]ecause 'immunity protects all but the plainly incompetent or those who knowingly violate the law,' [the] court must not 'define clearly established law at a high level of generality.'" *Tlapanco v. Elges*, 969 F.3d 638, 649 (6th Cir. 2020) (quoting *Kisela v. Hughes*, 584 U.S. 100, 104 (2018)). "A right is 'clearly established' if '[t]he contours of the right [are] sufficiently clear that a reasonable official would understand that what he is doing violates that right.'" *Baynes v. Cleland*, 799 F.3d 600, 610 (6th Cir. 2015) (quoting *Anderson v. Creighton*, 483 U.S. 635, 640 (1987)). Even when there is no case defining a constitutional right that directly mirrors the fact pattern confronted by the defendant, "'an official can be on notice that his conduct violates established law even in novel factual situations.'" *Cahoo v. SAS Analytics Inc.*, 912 F.3d 887, 898 (6th Cir. 2019) (quoting *Littlejohn v. Myers*, 684 F. App'x 563, 569 (6th Cir. 2017)). The

touchstone of the "clearly established" inquiry is "fair warning." *Baynes v. Cleland*, 799 F.3d 600, 612-13 (6th Cir. 2015) (quoting *Hope v. Pelzer*, 536 U.S. 730, 741 (2002)). "If the law did not put the officer on notice that his conduct would be clearly unlawful, summary judgment based on qualified immunity is appropriate." *Saucier v. Katz*, 533 U.S. 194, 202 (2001). Although it is generally the case that qualified immunity should be decided based on the factual record developed during discovery, the validity of the defense "may be apparent from the face of the complaint, rendering a motion to dismiss appropriate." *Crawford v. Tilley*, 15 F.4th 752, 763 (6th Cir. 2021).

To support his motion brought under Civil Rule 12(b)(6), defendant Bitner attached a number of exhibits including body camera footage of his encounter at Generis's establishment, certain transcripts, and the affidavit and search warrant. ECF Nos. 20-2 – 20-6. Generis objects to the Court considering any of these items on a motion to dismiss.

The purpose of a motion to dismiss under Rule 12(b)(6) is to determine if the "complaint . . . contain[s] 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 Atlantic Corp. v. Twombly*, 550 U.S. 544, 547 (2007)). When deciding a motion under Rule 12(b)(6), the Court looks only to the pleadings, *Jones v. City of Cincinnati*, 521 F.3d 555, 562 (6th Cir. 2008), the documents attached to them, *Commercial Money Ctr., Inc. v. Illinois Union Ins. Co.*, 508 F.3d 327, 335 (6th Cir. 2007) (citing Fed. R. Civ. P. 10(c)), documents referenced in the pleadings that are "integral to the claims," *id.* at 335-36, documents that are not mentioned specifically but which govern the plaintiff's rights and are necessarily incorporated by reference, *Weiner v. Klais & Co., Inc.*, 108 F.3d 86, 89 (6th Cir. 1997), *abrogated on other grounds by Swierkiewicz v. Sorema, N.A.*, 534 U.S. 506 (2002), and matters of public record, *Northville Downs v. Granholm*, 622 F.3d 579, 586 (6th Cir. 2010). However, before a court considers documents "integral to the claims" and that

are referenced in the complaint, "it must also be clear that there exist no material disputed issues of fact regarding the relevance of the documents." *Diei v. Boyd*, 116 F.4th 637, 644 (6th Cir. 2024) (quoting *Ouwinga v. Benistar 419 Plan Servs., Inc.*, 694 F.3d 783, 797 (6th Cir. 2012)). If those extra-complaint materials are to be considered, the Court must convert the motion to a motion for summary judgment under Rule 56 and allow all parties to present evidence, which usually means that an opportunity to conduct discovery should be given. *Id.* at 643 (citing Fed. R. Civ. P. 12(d)).

The plaintiff's objections are well taken. The Sixth Circuit has reiterated that "[i]n the motion-to-dismiss context," it has "'consistently held that [courts] may only consider . . . video footage over the pleadings when "the videos are clear and blatantly contradict[ ] or utterly discredit[ ] the plaintiff's version of events."'" *Hodges v. City of Grand Rapids*, 139 F.4th 495, 506-07 (6th Cir. 2025) (quoting *Saalim v. Walmart, Inc.*, 97 F.4th 995, 1002 (6th Cir. 2024)). A "blatant contradiction" can undermine plausibility. "'But when the video does not blatantly contradict or utterly discredit the complaint, [courts] do not consider it on [a] Rule 12 motion. Instead, as when assessing any motion made under Rule 12, [courts] rely on the allegations in the pleadings alone.'" *Ibid.* (quoting *Saalim*, 97 F.4th 1002).

Bitner's exhibits do not blatantly contradict the allegations in the amended complaint. Generis alleges that Bitner abused the warrantless inspection program in the liquor law by using the inspection as a pretext for conducting a criminal investigation. Then, when met with lawful resistance, he retaliated by executing a search warrant in an abusive manner. The body camera footage, the transcripts, and the search warrant do not contradict these allegations. If anything, they confirm them. In any event, consideration of those items is not proper at this stage of the case. *Id.* at 507. The plaintiff's motion to exclude those materials will be granted.

1.

In Count I, Generis alleges that Bitner violated its Fourth Amendment rights because conducting the so-called administrative inspection was a pretext to search without a warrant for evidence of its former employee's criminal violations, not for enforcing Michigan's liquor law. There is established law on this point. Although courts typically ignore the subjective intentions of officers in many Fourth Amendment cases, *e.g.*, *Whren v. United States*, 517 U.S. 806, 814 (1996), in the context of administrative searches, pretext arguments retain some relevance. *See Ashcroft v. al-Kidd*, 563 U.S. 731, 736 (2011) (stating that administrative search cases are an exception where "actual motivations do matter"); *cf. City of Indianapolis v. Edmond*, 531 U.S. 32, 41 (2000) (holding that an administrative search program was unconstitutional where its primary purpose was to pursue general crime control objectives); *Burger*, 482 U.S. at 716 n.27 (observing that there was "no reason to believe" that the challenged inspection was a pretext for a solely penal investigation). That is because the administrative exception to the warrant requirement does "not apply where the officer's purpose is not to attend to the special needs or to the investigation for which the administrative inspection is justified." *al-Kidd*, 563 U.S. at 737. As courts have explained, "[t]he Supreme Court's express concern that programmatic searches not be used as a pretext necessarily requires an inquiry into an officer's purpose . . . when [] an intrusion is sought to be justified pursuant to the administrative search doctrine, and where the [party] has come forward with objective evidence to suggest that the intrusion was not made for the purpose of enforcing the administrative inspection scheme." *United States v. Orozco*, 858 F.3d 1204, 1212-13 (9th Cir. 2017).

An officer's subjective intent is important for determining the validity of claims of this type. An investigator's impure motive will not invalidate an otherwise objectively proper

administrative search. *al-Kidd*, 563 U.S. at 739 ("[T]o say that ulterior motives do *not* invalidate a search that is legitimate because of probable cause to believe a crime has occurred is not to say that it *does* invalidate all searches that are legitimate for other reasons."). The court of appeals has suggested that an officer's mere suspicion of a crime in advance of the search does not render it invalid. *Rodriguez v. City of Cleveland*, 439 F. App'x 433, 445 (6th Cir. 2011). This rule is shared by courts that have set out a test for determining where an administrative search is unconstitutional because of pretext. Those courts apply an objective test and "ask whether the officer *would* have made the [stop or search] in the absence of the invalid purpose." *Orozco*, 858 F.3d at 1213 (quoting *United States v. Maestas*, 2 F.3d 1485, 1489 (10th Cir. 1993)). However, as in *Rodriguez*, they emphasize that "the presence of a criminal investigatory motive, by itself, does not render an administrative stop pretextual." *Ibid.*

These cases establish a clear rule: if an officer's sole intention for performing a search is to investigate a crime, then he must have a warrant unless an exception applies, else the search violates the Fourth Amendment. If the facts objectively demonstrate an objective programmatic administrative purpose for the search or inspection, then that exception to the warrant requirement will validate the conduct, even if the officer also has a criminal investigatory motive. *Orozco*, 858 F.3d at 1213 ("[W]e ask whether the officer *would* have made the stop in the absence of the invalid purpose. Thus, in order to prove that a stop is unreasonably pretextual, a defendant must show that the stop would not have occurred in the absence of an impermissible reason.") (citation modified).

Under this rubric, the amended complaint in this case pleads facts that plausibly establish a Fourth Amendment violation. According to that pleading, on arriving at Generis' premises, Bitner "demanded warrantless production information and records on one of Generis' former

employees [Munger] who worked on October 2, 2023 including his schedule and when his clock-in, clock-out times were." Am. Compl. ¶ 36. It is fair to infer that Bitner would not have otherwise visited the bar. It was the criminal investigation, not a routine liquor law inspection, that brought him there. The plaintiff alleges that Bitner's primary purpose was to advance his criminal investigation into Munger and that he only mentioned that he would do a liquor inspection *after* he had requested records concerning Munger. *Id.* ¶¶ 30-31, 36. The plaintiff also avers that the information Bitner requested about Munger was atypical for a liquor inspection. *Id.* ¶ 38. These facts do not suggest an objective basis for Bitner's search for Munger's employee records that would accord with the programmatic purpose for the warrantless inspection protocols. It is true that Michigan courts interpret the warrantless inspection statute broadly to allow the search of a liquor licensee's premises. *See People v. Jones*, 180 Mich. App. 625, 631, 447 N.W.2d 844, 847 (1989). In addition, Michigan law forbids bar employees to be intoxicated on the job. *See* Mich. Comp. Laws § 436.1707(3) ("A licensee, or the clerk, servant, agent, or employee of a licensee, shall not be in an intoxicated condition on the licensed premises."). But those features of Michigan law do not thereby create an objective basis for a program-related search of Generis's records that was motivated by Bitner's investigation of Munger. Taken together, all of the factors identified by the plaintiff support an inference that Bitner *would not* have conducted the administrative search if he had not been interested in obtaining materials to support his criminal investigation of Munger. *Orozco*, 858 F.3d at 1213. Perhaps there is a rationale that might justify Bitner's conduct, and discovery may shed some light on his intentions. For now, however, the materials permissibly available for adjudicating a Rule 12(b)(6) motion confirm that the plaintiff has stated a valid claim for a violation of its constitutional rights under the Fourth Amendment.

The plaintiff also must demonstrate that this right was clearly established. At least two courts in this Circuit have held that the right at issue here was not clearly established in somewhat analogous circumstances. *See Salem v. City of Akron*, 448 F. Supp. 3d 793, 808 (N.D. Ohio 2020); *Drakes Collision, Inc. v. Auto Club Grp. Ins. Co.*, No. 19-13517, 2020 WL 7021697, at *11 (E.D. Mich. Nov. 30, 2020).

In *Salem*, a bar and its owner sued after a group of officers "barged in" to the bar to conduct a liquor inspection without a warrant and informed the owner that it was due to criminal activity that had occurred at a nearby nightclub the night before. 448 F. Supp. 3d at 798. The plaintiffs alleged that the officers violated their Fourth Amendment rights by entering the premises unlawfully based on an improper motive. *Id.* at 801. Relying in part on the reasoning of *Rodriguez*, discussed above, the court explained that it doubted the plaintiffs had stated a constitutional violation because administrative searches are not necessarily unconstitutional solely because the officers had some suspicion of criminal activity. *Id.* at 807. The court also held that an "objectively reasonable officer" faced with the circumstances of the case — i.e., responding "to concerns raised by a recent violent incident at such an establishment" — could have believed that entry into the premises was lawful "in light of Supreme Court and Sixth Circuit authority upholding warrantless administrative inspections where the officers possessed some degree of suspicion of criminal activity." *Id.* at 808.

The Court in *Drakes Collision* confronted somewhat similar issues. There, an auto repair shop sued after it was subject to a warrantless search under Michigan's Vehicle Service and Repair Act that the plaintiff alleged was conducted for the purpose of pursuing a racially motivated pretextual investigation. 2020 WL 7021697, at *3-5. The court determined that even if the plaintiffs had made out a Fourth Amendment claim against the officers, they had not demonstrated

that the right was clearly established, relying on *Rodriguez*'s holding that an administrative search is not invalidated by suspicion of criminal wrongdoing or the discovery of evidence of a crime during the inspection and the plaintiffs' failure to identify caselaw suggesting that the officers' conduct rendered the search unreasonable. *Id.* at *11.

Respectfully, the Court must disagree with these holdings in light of the pronouncements by appellate courts that require an examination of the motives of the state officials who perform the ostensible administrative search. Supreme Court precedent defining the bounds of warrantless searches is clear: an officer's "actual motivations do matter," *al-Kidd*, 563 U.S. at 736, and inspections that are motivated by a desire to enforce penal laws are unconstitutional, *Burger*, 482 U.S. at 716 n.27. *See also Rodriguez*, 439 F. App'x at 467 (White, J., concurring in part) ("The prohibition on warrantless administrative inspections prompted solely by officials' direct criminal suspicion, announced in *Burger* in 1987, has been consistently rearticulated by the Supreme Court thereafter."). It was clearly established that Bitner could not use an administrative inspection scheme as a pretext for pursuing a criminal investigation, which is exactly what the plaintiff alleges occurred here.

The *Drakes Collision* court did not mention this rule, not citing *al-Kidd* and mentioning *Rodriguez* only for the unremarkable proposition that an officer's pre-search suspicion of criminal activity does not necessarily render a warrantless administrative search invalid. 439 F. App'x at 445-46. That statement is merely a common-sense acknowledgement that an officer's previous thoughts, feelings, and hunches do not necessarily suggest that an administrative search is pretextual, a reality that the *Burger* court would have found unsurprising given its statement that administrative searches frequently are connected to other law enforcement functions. *See Burger*, 482 U.S. at 713 (acknowledging that "an administrative scheme may have the same ultimate

purpose as penal laws"); *United States v. Villamonte–Marquez,* 462 U.S. 579, 584 n.3 (1983) (rejecting, in a footnote, a contention that a customs officers' search of a vessel pursuant to an administrative scheme was invalid because the customs officers "were accompanied by a Louisiana State Policeman, and were following an informant's tip that a vessel in the ship channel was thought to be carrying marijuana"). It is an entirely distinct question whether the administrative search was otherwise justified. *Orozco*, 858 F.3d at 1213 (emphasizing that while the presence of a criminal investigatory motive does not render an administrative stop unconstitutional, a "stop [that] would not have occurred in the absence of an impermissible reason" would). That inquiry is dictated by cases like *Burger* and *al-Kidd*, and counsels that qualified immunity must be denied here on the plaintiff's Fourth Amendment claim. The law is clear that an officer may not use an administrative search solely as a means to obtain evidence of criminal law violations.

Moreover, the *Salem* case was decided at the summary judgment stage. On that point, the court of appeals has observed that "analyzing the *second* prong of qualified immunity — whether the alleged constitutional violation is clearly established — 'is sometimes difficult' on the pleadings, since that 'inquiry may turn on case-specific details that must be fleshed out in discovery.'" *Myers v. City of Centerville*, 41 F.4th 746, 758 (6th Cir. 2022) (quoting *Crawford v. Tilley*, 15 F.4th 752, 765 (6th Cir. 2021)). In the Fourth Amendment context, the court has acknowledged that "the application of qualified immunity today can turn on minute factual distinctions," which "is hard to accomplish at the motion to dismiss stage." *Hodges*, 139 F.4th at 505 (quotation marks and citations omitted).

Whether the search occurred precisely as Generis alleges requires further factual development. But at this stage of the case, where the Court must accept the pleaded facts in the

light most favorable to the plaintiff, qualified immunity is not resolvable where "the *complaint* [does not] establish[] the defense." *Ibid.* (quoting *Siefert v. Hamilton County*, 951 F.3d 753, 762 (6th Cir. 2020)).

Bitner's motion to dismiss Count I of the amended complaint will be denied.

2.

Bitner also attacks two counts of the amended complaint alleging that he retaliated against Generis for its opposition to his search by referring it for an administrative enforcement action by the MLCC (Count II) and later, once he had obtained a warrant for the records, by executing it during the peak dinner rush (Count III). Generis contends that this conduct abridged its rights under the First Amendment.

To prevail on a First Amendment retaliation claim, the plaintiff must show that (1) it engaged in protected conduct; (2) an adverse action was taken against him 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 the plaintiff's protected conduct." *Thaddeus–X v. Blatter*, 175 F.3d 378, 394 (6th Cir. 1999) (*en banc*); *see also Evans–Marshall v. Bd. of Educ. of Tipp City Exempted Vill. Sch. Dist.*, 624 F.3d 332, 337 (6th Cir. 2010).

Bitner contends that the test for retaliatory prosecution actions is the relevant standard here, in light of the ongoing MLCC enforcement proceedings. That test generally requires a plaintiff to plead that there was no probable cause for the prosecution. *See Hartman v. Moore*, 547 U.S. 250, 265-66 (2006). Bitner points out that Generis has not pleaded that he lacked probable cause for the MLCC proceedings and says that he would have referred the matter to the MLCC irrespective of any retaliatory motive. The Sixth Circuit has held that the probable cause requirement for these

claims also applies to administrative proceedings. *Meadows v. Enyeart*, 627 F. App'x 496, 505 (6th Cir. 2015); *see also Mifsud v. Uber Techs., Inc.*, 203 F. Supp. 3d 820, 828 (E.D. Mich. 2016) (Parker, J.). It is true that the plaintiff's complaint fails to allege that Bitner lacked probable cause to refer the complaint to the MLCC. However, that is not a fatal defect. Two of the charges underlying the administrative complaint are based on Generis' alleged failure to cooperate with Bitner's requests pursuant to the warrantless inspection scheme that Generis asserts is unlawful. Am. Compl. ¶¶ 50-52. The Supreme Court recently has instructed that malicious prosecution suits must be evaluated charge by charge. *Chiaverini v. City of Napoleon, Ohio*, 602 U.S. 556, 562 (2024). It could hardly be the case that Generis needed to plead specifically that there was no probable cause for a charge that it asserts is without a legal basis. That is enough to suggest the possibility that Bitner's referral of the matter was retaliatory. Bitner's argument that he would have referred the matter to the MLCC regardless of any retaliatory motive would require further evidentiary development beyond the motion to dismiss stage.

More problematic for the plaintiff is the question whether an objectively reasonable officer would have known that referring an entity to the MLCC based on its refusal to cooperate with an investigation (allegedly violating a law that theretofore had been upheld as constitutional) was illegal. The plaintiff cites no case for that proposition, and the Court has not located one. Qualified immunity shields Bitner from liability for the retaliation alleged in Count II. *See Crawford v. Tilley*, 15 F.4th 752, 763 (6th Cir. 2021).

As for the plaintiff's second retaliation theory, Bitner says that there is no authority holding that executing a search warrant during a business' normal business hours is unlawful. Generis counters that the question whether searching a business during its busiest hours is an adverse action should be decided by a jury. But although "[i]t is well established that those who execute lawful

search warrants must do so in a reasonable manner," *Stack v. Killian*, 96 F.3d 159, 162 (6th Cir. 1996), Generis has failed to point to any authority that would clearly establish that executing a search warrant during a business's regular hours, even busy hours, was unreasonable. Moreover, the amended complaint does not include sufficient detail about how the execution of the warrant plausibly was unreasonable or adverse other than the fact that it occurred at an apparently inconvenient time. It is hard to understand how a search warrant that solely sought records would have a significant effect on a bar's normal operations. One might infer that those records are not maintained in a portion of the establishment that is customer-facing. In any event, in the absence of allegations that the execution of the valid search warrant caused anything more than inconvenience, the Court cannot conclude that the amended complaint plausibly pleads the infliction of adverse action upon the plaintiff. Bitner is entitled to qualified immunity for the claim in Count III of the amended complaint.

3.

In Count IV, Generis alleges that Bitner is seeking to punish it for objecting to the warrantless search and that this amounts to a violation of its right to due process. The Due Process Clause of the Fourteenth Amendment have two components: one procedural, the other substantive. Only the substantive component appears to be implicated here.

The substantive component of the Due Process Clause acts as a check on the power of the government vis-à-vis its citizens. "Substantive due process . . . serves the goal of preventing governmental power from being used for purposes of oppression, regardless of the fairness of the procedures used." *Daniels v. Williams*, 474 U.S. 327, 331 (1986). It prohibits the government from infringing on "fundamental rights" without sufficient justification. *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997). To establish a substantive due process claim, a plaintiff

must show that "(1) a constitutionally protected property or liberty interest exists, and (2) the constitutionally protected interest has been deprived through arbitrary and capricious action." *Paterek v. Vill. of Armada, Mich.*, 801 F.3d 630, 648 (6th Cir. 2014) (quoting *Braun v. Ann Arbor Charter Twp.*, 519 F.3d 564, 573 (6th Cir. 2008)).

"[T]he plaintiff must allege 'conduct intended to injure in some way unjustifiable by any government interest' and that is 'conscience-shocking' in nature." *Mitchell v. McNeil*, 487 F.3d 374, 377 (6th Cir. 2007) (quoting *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 849 (1998)). "What seems to be required is an intentional infliction of injury . . . or some other governmental action that is 'arbitrary in the constitutional sense.'" *Stemler v. City of Florence*, 126 F.3d 856, 869 (6th Cir. 1997) (quoting *Lewellen v. Metro. Gov't of Nashville & Davidson Cnty.*, 34 F.3d 345, 351 (6th Cir. 1994)). If a party's actions survive rational basis scrutiny, it has not acted arbitrarily or capriciously. *Shavers v. Almont Twp., Mich.*, 832 F. App'x 933, 940 (6th Cir. 2020) (citing *Brody v. City of Mason*, 250 F.3d 432, 438 (6th Cir. 2001)).

Bitner argues that a substantive due process claim fails because the Fourth Amendment provides the relevant constitutional protection, the plaintiff failed to allege a deprivation of any life, liberty, or property interest, and his actions cannot be characterized as conscience shocking. Bitner prevails on his first argument. "Substantive due process protects only against state action that is not otherwise proscribed by the plain text of other constitutional amendments." *MS Rentals, LLC v. City of Detroit*, 362 F. Supp. 3d 404, 414 (E.D. Mich. 2019) (citing *Ciminillo v. Streicher*, 434 F.3d 461, 465 (6th Cir. 2006)). Where the plaintiff has recourse to an "explicit textual source of constitutional protection," *Graham v. Connor*, 490 U.S. 386, 395 (1989), a more general claim of substantive due process is not available, *see Lewis*, 523 U.S. at 842.

Generis suggests that this authority is inapt because the focus of this claim is the "freedom from imposed government punishment when exercising its Fourth Amendment right[s]." ECF No. 26, PageID.361. But framing the claim that way merely repackages its retaliation claims discussed above. *See* Am. Compl. ¶ 87 ("By seeking to punish [Generis]," the defendants "committed a due process violation of the most basic sort." (cleaned up)). It is true that the Sixth Circuit has acknowledged that the viability of a retaliation claim does not "automatically preclude[] any substantive due process claim that touches on the same conduct." *Beal v. Vanalstine*, No. 24-1224, 2024 WL 5482662, at *4 (6th Cir. Nov. 20, 2024). To determine whether a due process claim merges with another constitutional claim, courts "should evaluate whether the conduct would not be 'shocking' under the substantive due process test but for the violation of an enumerated constitutional right; if so, that enumerated right governs instead of due process." *Howard*, 2023 WL 334894, at *12. In *Howard*, for instance, the court of appeals determined that the plaintiff's allegations that the defendants intentionally conducted an unfounded criminal prosecution against her stood apart from her claim that the prosecution was retaliatory. *Id.* at *13 ("Howard's allegations that Defendants intentionally subjected her to a sustained malicious prosecution can shock the conscience regardless of whether they did so in retaliation for her protected speech."). That is a far cry from the scenario described in the amended complaint. The amended complaint is clear: the plaintiff says that the harm is that Bitner is attempting to "punish" it for refusing to acquiesce to the administrative inspection scheme. Am. Compl. ¶ 87. That plainly is an allegation of retaliation. The plaintiff cannot make out a separate due process claim, and Bitner is entitled to qualified immunity on Count IV of the amended complaint.

IV.

There are no justiciability issues that prevent the Court from adjudicating the claims presented by the plaintiff. It is not appropriate to abstain from hearing any of the claims. The exhibits presented by defendant Bitner are not appropriately considered on his motion to dismiss for failure to state a viable claim against him. Defendant Donley is entitled to absolute prosecutorial immunity on all counts of the amended complaint directed to her. Defendant Bitner is entitled to qualified immunity on the claims Counts II through IV.

Accordingly, it is **ORDERED** that the plaintiff's motion to exclude materials outside the pleadings from consideration on the motion to dismiss (ECF No. 23) is **GRANTED**.

It is further **ORDERED** that the motion to dismiss and for judgment on the pleadings by defendants Mary Anne Donley, Kristin Beltzer, Dennis Olshove, Hoon-Yung Hopgood, Lee Gonzales, and Edward Toma (ECF No. 32), and the motion to dismiss by defendant Blake Bitner (ECF No. 20) are **GRANTED IN PART AND DENIED IN PART**.

It is further **ORDERED** that all counts of the amended complaint are **DISMISSED WITH PREJUDICE** as to defendant Mary Anne Donley, **ONLY**, and Counts II, III, and IV of the amended complaint are **DISMISSED WITH PREJUDICE** as to defendant Blake Bitner.

It is further **ORDERED** that the motions to dismiss and for judgment on the pleadings are **DENIED** in all other respects.

s/David M. Lawson
DAVID M. LAWSON
United States District Judge

Dated: July 8, 2025