

intentionally misgendering a person, leaving them cuffed for long periods of time, refusing to use a preferred name when addressing them, and making insulting remarks about a person's gender identity. The officers here violated all of these provisions.

3. Ms. Dominguez's experience of harassment and discrimination is not unique. In November 2017, the New York City Department of Investigation issued a report, based on extensive investigation and analysis, that "found clear gaps in the NYPD's implementation of and training on the [2012 Patrol Guide] revisions" concerning transgender and gender nonconforming people. Among other things, the report found that the "reach and impact" of in-service training was "inadequate"; that, over a period of four years analyzed, "only six of [the] NYPD's 77 precincts received" that training; and that the NYPD's policies and instructions regarding how to use transgender people's names were rife with deficiencies.

4. Ms. Dominguez brings this suit to challenge New York City's ongoing failure to ensure that transgender New Yorkers are not subjected to mistreatment and abuse at the hands of the police. As a result of the unlawful harassment and discrimination she faced, Ms. Dominguez seeks damages and declaratory relief for the defendants' violations of the New York City Human Rights Law, the New York State Human Rights Law, the New York State Civil Rights Law, the New York State Constitution, and the Community Safety Act, and also based on claims of malicious prosecution and negligent training and supervision.

Parties

5. Plaintiff Linda Dominguez is a resident of the Bronx, New York.

6. Defendant Megan Francis is an NYPD officer in the 44th precinct with shield number 24530.

7. Defendant John Doe is an NYPD officer in the 44th precinct. Plaintiff believes she will be able to identify him with reasonable discovery. Plaintiff perceived him as a male officer. He was present in the precinct during the night of April 18 and early morning of April 19, 2018, in the vicinity of her holding cell.

8. Defendant James Roe is an NYPD officer in the 44th precinct. Plaintiff believes she will be able to identify him with reasonable discovery. Plaintiff perceived him as a male officer. He was present in the precinct during the night of April 18 and early morning of April 19, 2018, in the vicinity of her holding cell.

9. Defendant City of New York is a municipality organized under the laws of the State of New York. The New York City Police Department (“NYPD”) is a department of the City of New York, and the employer of all the officer defendants.

Facts

The NYPD’s History of Mistreatment of and Discrimination Against Transgender People

10. The NYPD has a long history of profiling, harassing, and abusing lesbian, gay, bisexual, and transgender (LGBT) people, especially transgender people of color.

11. In 2005, Amnesty International issued a report investigating several decades of police interactions across the country with a focus on incidents from New York City and other metropolitan centers.¹ The report concluded that “transgender individuals . . . experience heightened risk of police abuse and misconduct,” and “[t]ransgender people, particularly low-income transgender people of color, experience some of the most egregious cases of police

¹ See generally Amnesty International, *USA: STONEWALLED: POLICE ABUSE AND MISCONDUCT AGAINST LESBIAN, GAY, BISEXUAL AND TRANSGENDER PEOPLE IN THE U.S.*, AMR 51/122/2005 (2005), available at <https://www.amnesty.org/en/documents/AMR51/122/2005/en/>.

brutality reported.”² It included numerous reports of New York City police unfairly profiling transgender women as sex workers, conducting illegal and inappropriate searches of transgender people, and mistreating transgender people in police custody.³

12. A report issued by Make the Road New York in 2012 found high rates of NYPD misconduct against transgender people in Queens.⁴ Specifically, 59% of transgender respondents had been stopped by police, 61% had been harassed by police, and 46% had been physically harassed by police.⁵ Some transgender respondents reported being sexually assaulted by police and being afraid to contact the police for help when they were victims of a crime.⁶

13. The Center for Constitutional Rights (CCR) also documented profiling, sexual and physical violence, and misgendering of transgender women of color by the NYPD in 2012.⁷ In a report focusing on the communities most affected by the NYPD’s stop-and-frisk tactics, CCR found that “[t]ransgender women in particular are a huge target for NYPD discrimination” and described a wide range of reported police abuses against them.⁸

14. In 2012, in response to years of advocacy by transgender New Yorkers and their allies, the NYPD made a number of changes to its Patrol Guide designed to establish basic protections for transgender and gender nonconforming people who come into contact with the

² *Id.* at 3.

³ *See id.* at 20-25, 78-96.

⁴ *See generally* Make the Road New York, *TRANSGRESSIVE POLICING, Police Abuse of LGBTQ Communities of Color in Jackson Heights* (2012), available at https://maketheroadny.org/pix_reports/MRNY_Transgressive_Policing_Full_Report_10.23.12B.pdf.

⁵ *Id.* at 15, 18.

⁶ *Id.* at 23-25.

⁷ *See generally* Center for Constitutional Rights, *STOP AND FRISK, THE HUMAN IMPACT* (2012), available at <https://ccrjustice.org/sites/default/files/attach/2015/08/the-human-impact-report.pdf>.

⁸ *Id.* at 12.

police. These revisions included requiring that NYPD officers refer to people by names, titles, and pronouns consistent with their gender identities; prohibiting “discourteous or disrespectful” remarks about gender identity or expression; prohibiting officers from profiling people based on gender identity or gender expression; prohibiting officers from handcuffing transgender people in custody to objects like rails, bars, or chairs for extended periods of time; and prohibiting “using the fact that a person gave a preferred name rather than a legal name as evidence of a charge of ‘false personation.’”⁹

15. Despite making these policy changes on paper, the NYPD failed to change its practices or provide proper training. Widespread NYPD mistreatment of transgender people, particularly transgender people of color, continues to occur.

16. A report based on a 2015 survey of transgender people found that 61% of respondents in New York State who interacted with law enforcement officers who thought or knew they were transgender experienced mistreatment from those officers.¹⁰ Mistreatment included being verbally harassed, repeatedly referred to as the wrong gender, physically assaulted, or sexually assaulted, including being forced by officers to engage in sexual activity to avoid arrest. Fifty-eight percent of respondents in New York State said they would feel uncomfortable asking the police for help if they needed it.¹¹

17. A 2016 report from the National Coalition of Anti-Violence Projects found that only 25% of LGBT and HIV-affected survivors of hate violence in New York City sought

⁹ See New York City Department of Investigation’s Office of the Inspector General for the NYPD, *REVIEW OF NYPD’S IMPLEMENTATION OF PATROL GUIDE PROCEDURES CONCERNING TRANSGENDER AND GENDER NONCONFORMING PEOPLE* at 2-3 (2017), available at https://www1.nyc.gov/assets/doi/press-releases/2017/nov/31_LGBTQ_ReportRelease_112117.pdf.

¹⁰ See National Center for Transgender Equality, *2015 U.S. Transgender Survey, New York State Report* at 2 (2017), available at <http://www.transequality.org/sites/default/files/USTS%20NY%20State%20Report%20%281017%29.pdf>.

¹¹ *Id.*

assistance from the police about the hate violence they experienced.¹² For those who did seek assistance, at least 45% of them experienced indifferent or hostile attitudes from the police. Of those survivors who answered further questions about their experience of reporting hate violence, 38% said they were unjustly arrested, and 16% reported physical violence from police.¹³

18. The New York City Civilian Complaint Review Board (CCRB) is an independent city agency empowered to receive, investigate, mediate, hear, make findings about, and recommend action on complaints against NYPD officers. In 2016, the CCRB released a report finding that 466 complaints had been filed with the CCRB between 2010-2015 about misconduct toward LGBT people, mostly Black and Latinx LGBT people.¹⁴ The CCRB's recommendations to address this problem included "audits of the [NYPD] to ensure that the changes in the Patrol Guide regarding the treatment of transgender individuals are being properly and consistently implemented," "more opportunities to conduct cultural competency trainings and refresher courses for police officers," and a revamped "Department-wide training."¹⁵

NYC Department of Investigation Report

19. In a November 2017 report, *Review of NYPD's Implementation of Patrol Guide Procedures Concerning Transgender and Gender Nonconforming People*,¹⁶ the NYC Department of Investigation (DOI) found "clear gaps in NYPD's implementation of and training on the revisions" to the Patrol Guide made in 2012 to establish standards for the treatment of

¹² See National Coalition of Anti-Violence Programs, *LESBIAN, GAY, BISEXUAL, TRANSGENDER, QUEER, AND HIV-AFFECTED HATE VIOLENCE IN 2016* at 67 (2017), available at http://avp.org/wp-content/uploads/2017/06/NCAVP_2016HateViolence_REPORT.pdf.

¹³ *Id.*

¹⁴ See New York City Civilian Complaint Review Board, *PRIDE, PREJUDICE AND POLICING: An Evaluation of LGBTQ-Related Complaints from January 2010 through December 2015* at 4 (2016), available at https://www1.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/issue_based/20160630_lgbtq-report.pdf.

¹⁵ *Id.* at 6.

¹⁶ Available at https://www1.nyc.gov/assets/doi/press-releases/2017/nov/31_LGBTQ_ReportRelease_112117.pdf.

transgender and gender nonconforming people.¹⁷ Consistent with the studies and reports cited in previous paragraphs, the DOI investigation uncovered reports of “officers ignoring preferred names and gender identities, using slurs related to gender identity . . . and refusing to take crime reports from transgender and gender nonconforming individuals.” Transgender “people of color in particular reported feeling targeted.”¹⁸

20. The investigation also revealed that the NYPD failed to train many members of the police force on the Patrol Guide revisions, and that it “has not explained to all officers why the changes were necessary or that they specifically apply to [transgender] people.” The report characterized the “reach and impact” of NYPD’s in-service training as “inadequate” and found that, over a period of four years analyzed, “only six of NYPD’s 77 precincts received” that training.¹⁹

21. In addition to inadequate trainings, the report identified additional inadequate policies and practices for ensuring that NYPD officers respect transgender people’s rights. With an entire section of the report devoted to how inadequate forms contribute to the continued problem of misgendering and misnaming, the report concluded that “the policies and instructions on recording preferred names do not conform to the spirit of the 2012 Patrol Guide revisions.” In addition, the report highlighted the ways that an inadequate complaint process exacerbates the problem, since the “NYPD’s handling of complaints . . . makes it difficult for [it] to determine patterns or trends that, if addressed, could lead to greater police accountability and ensure compliance with the Patrol Guide revisions.”²⁰

¹⁷ *Id.* at 5.

¹⁸ *Id.* at 4.

¹⁹ *Id.* at 5, 13-14.

²⁰ *Id.* at 15-20, 26.

Linda Dominguez

22. Linda Dominguez is a Latina woman who is transgender. She lives in the Bronx with her parents, and she has lived there for seven years. She is a licensed cosmetologist.

23. Ms. Dominguez has been diagnosed with gender dysphoria, a diagnosable impairment involving clinically significant distress related to an incongruence between gender identity and assigned sex at birth.

24. Ms. Dominguez speaks fluent Spanish, but she has limited proficiency in English.

25. In May 2017, Ms. Dominguez completed a statutory name change in New York City Civil Court. Her previous legal first name was a traditionally masculine name.²¹ Her current legal first name is Linda. She did not change her last name.

26. Ms. Dominguez has a valid New York State Identification Card that lists her name as “Linda” and her sex as female.

27. On the night of April 18, 2018, at approximately 11:45pm, Ms. Dominguez was walking home from a bus stop near her apartment in the Bronx. She walked across Claremont Park, which was the shortest route to her home.

28. Three NYPD officers, including Officer Francis, approached Ms. Dominguez in the park and questioned her. Ms. Dominguez informed the officers, in limited English, that she does not speak or understand English well.

29. The officers continued to speak to her only in English, but she understood that they asked her for her name. The officers did not give any information about the consequences of sharing an incorrect name.

²¹ The plaintiff does not include her former legal first name in the text of this complaint because she does not wish to be referred to by that name. The defendants are aware of what that name is, and it appears throughout the paperwork associated with her arrest.

30. Ms. Dominguez had been arrested in New York City before. At that time, even though she had already completed a legal name change and gave her current legal first name to the police, the police still used her previous legal first name, including on paperwork associated with that arrest. Because of that history, Linda believed she was obligated to share her previous legal first name with police. Therefore, in the park on April 18, she answered the officers with her previous legal first name, as well as with her last name, which had not changed.

31. Ms. Dominguez had no intent to deceive the police or prevent them from learning her name or her identity. Indeed, she also provided them with her birth date and home address.

32. The officers arrested Ms. Dominguez for trespassing in the park and transported her to the 44th Precinct. There, a Spanish-speaking officer translating for other officers warned her that if she gave any incorrect information, she would face another charge. This was the first time she had received any such warning.

33. Speaking in her native Spanish, Ms. Dominguez explained that she was a transgender woman and had changed her name. She said that her name was currently Linda Dominguez, but that her first name had previously been the name she gave the officers in the park. The Spanish-speaking officer translated this information to the other officers questioning Ms. Dominguez, including Officer Francis.

34. After that, Officer Francis placed Ms. Dominguez in a cell. Officer Francis cuffed her to an object resembling a bar or pipe in the cell using pink handcuffs. Ms. Dominguez saw other people in the precinct in handcuffs, but none of those handcuffs were pink. Ms. Dominguez saw no other handcuffs that were any other color than the standard metal handcuff. Ms. Dominguez also saw other people held in cells, but none of them were left in handcuffs while in the cells.

35. On information and belief, Officer Francis used pink handcuffs on Ms. Dominguez and kept her handcuffed while in her cell solely because Ms. Dominguez is transgender and for no legitimate law enforcement purpose.

36. Multiple other NYPD officers, including Defendant Officers John Doe and James Roe, observed that Ms. Dominguez was left cuffed in the cell and was in nonstandard, pink handcuffs. None of those officers took any action to release her from handcuffs, or even to replace the pink handcuffs with standard handcuffs.

37. Throughout her detention, many officers, including Officer Francis and Officers Doe and Roe, referred to Ms. Dominguez by her masculine former first name and as “he” and “him.” They refused to use the name “Linda” or the words “she” or “her” even though they knew she was a transgender woman whose name was now Linda.

38. At various points, multiple officers, including Officer Francis and Officers Doe and Roe, looked, gestured and laughed at Ms. Dominguez in a mocking way. Ms. Dominguez understood the gestures, glares, and mocking and disgusted tones of voice to be referencing her transgender status.

39. Ms. Dominguez was held overnight, in pink handcuffs the entire time, and transported to court the next morning.

40. Upon information and belief, Officer Francis, Officers Doe and Roe, and the other officers kept Ms. Dominguez in pink handcuffs overnight and repeatedly mocked and misgendered her because they had animus towards her based on her transgender status.

41. On or around April 19, 2018, Ms. Dominguez was charged with N.Y. Penal Law § 140.10(a), criminal trespass, for presence in a public park after dark.

42. Ms. Dominguez was also charged with N.Y. Penal Law § 190.23, false personation. N.Y. Penal Law § 190.23 states that a “person is guilty of false personation when after being informed of the consequences of such act, he or she knowingly misrepresents his or her actual name, date of birth or address to a police officer or peace officer with intent to prevent such police officer or peace officer from ascertaining such information.”

43. Officer Megan Francis signed the criminal complaint, in which she referred to Ms. Dominguez as “he” rather than she despite knowing she was a transgender woman, and which did not include any reference to the explanation Linda provided for giving NYPD officers both her previous legal name and her current legal name.

44. Officer Francis initiated a criminal proceeding against Ms. Dominguez when she swore that Ms. Dominguez committed the offense of false personation on the accusatory instrument.

45. Officer Francis did not have probable cause to believe that Ms. Dominguez had committed the crime of false personation.

46. Officer Francis and other officers, including Officers Doe and Roe, were aware that Ms. Dominguez had provided them with both her former legal name and her current legal name because she had changed it due to her gender transition. They were also aware that Ms. Dominguez provided them with her correct address and birth date.

47. On information and belief, Ms. Dominguez was charged with “false personation” with malice, because of her sex, gender, gender identity, gender expression, transgender status, and gender dysphoria.

48. On or around April 19, 2018, the criminal court granted Ms. Dominguez an adjournment in contemplation of dismissal (ACD) for both the trespassing and false personation

charges. An ACD typically terminates in dismissal and sealing of the charges after six months have passed, provided no further arrests occur.

49. On August 23, 2018, after only around four months, Ms. Dominguez requested that the charges against her be dismissed and sealed immediately because the false personation charge was facially invalid, baseless, and discriminatory, and because an early dismissal would permit her to apply for naturalization to become a U.S. citizen sooner. Ms. Dominguez is currently a lawful permanent resident. Criminal Court Judge Leslie Stroth granted the dismissal request on that same day, August 23, 2018. Accordingly, the court terminated the criminal proceedings against Ms. Dominguez in her favor.

50. Based on the notice it received, in the form of the DOI Report, the publication of the various studies cited in the preceding paragraphs, and other sources, the City and NYPD knew or should have known of its officers' propensity to discriminate against transgender people, officers' routine failure to follow the law and Patrol Guide provisions for treatment of transgender people, and the NYPD's failure to adequately train officers on how to treat transgender people in accordance with the law and Patrol Guide. The City's failure to supervise and train NYPD officers led directly to the defendant officers' unlawful treatment of Linda Dominguez as described in the above paragraphs, and the City accordingly aided the officers in discriminating against her.

Resulting Emotional Distress

51. Ms. Dominguez was humiliated by the harassment and discrimination she experienced during her arrest and detention as described above, and due to the fact that she was targeted with a criminal charge of "false personation" because of her gender identity.

52. During the events described above, and since she returned home from detention on April 19, 2018, she has experienced mental anguish, ongoing humiliation, and embarrassment due to those events.

53. She remains afraid of the police.

The NYPD's Services and the 44th Precinct.

54. The NYPD, as a law enforcement agency, is broadly tasked with preserving public safety, including by ensuring order in public places and responding to civilian requests for assistance in relation to a wide variety of situations, including accidents and emergencies. Through its various precincts and other public-facing subdivisions, the NYPD is open to the public throughout the day and evening either in person or by telephone. All members of the general public are able to enter a precinct or call the NYPD in order to seek assistance, make a complaint, or request information.

55. On its website, the agency states that “in addition to enforcing the law and preventing crime, the New York City Police Department provides residents, workers, businesses, and visitors with a range of services, as well as important information.”

56. The 44th Precinct, where Ms. Dominguez was held overnight, is, among other things, an NYPD building designed to house people overnight. In its holding cells and other spaces designed to house people in the NYPD's custody for extended periods of time, the 44th Precinct is intended, arranged, and designed to be used as the sleeping place of those confined within it.

Claims for relief

Count 1. Malicious Prosecution

57. Plaintiff re-alleges all preceding paragraphs as if fully set forth herein. Officer Francis's actions constitute malicious prosecution.

Count 2. Discrimination in Violation of the New York City Human Rights Law

58. Plaintiff re-alleges all preceding paragraphs as if fully set forth herein. The defendants' actions violate the New York City Human Rights Law, Title 8 of the Administrative Code of New York City.

Count 3. Discrimination in Violation of the New York State Human Rights Law

59. Plaintiff re-alleges all preceding paragraphs as if fully set forth herein. The defendants' actions violate the New York State Human Rights Law, Executive Law § 296.

Count 4. Discrimination in Violation of the New York State Civil Rights Law

60. Plaintiff re-alleges all preceding paragraphs as if fully set forth herein. The defendants' actions violate the New York State Civil Rights Law § 40-c.

**Count 5. Bias-Based Profiling in Violation of the New York City
Community Safety Act**

61. Plaintiff re-alleges all preceding paragraphs as if fully set forth herein. The defendants' actions violate the New York City Community Safety Act, New York City Code § 14-151.

Count 6. Violation of the New York State Constitution

62. Plaintiff re-alleges all preceding paragraphs as if fully set forth herein. The defendants' actions violate the Equal Protection guarantees of the New York State Constitution.

Count 7. Negligent training and supervision

63. Plaintiff re-alleges all preceding paragraphs as if fully set forth herein. The NYPD's actions constitute negligent training and supervision on the part of the defendant City of New York.

Service and Notice of Claim Requirements

64. Plaintiff has complied with the requirements of New York Civil Rights Law § 40-d by serving notice upon the state attorney general.

65. Plaintiff has complied with the requirements of General Municipal Law § 50-e by serving a notice of claim upon the defendants on July 13, 2018, which claim the defendants have failed to adjust or pay.

Requested Relief

WHEREFORE, Plaintiff requests that this Court:

- a. Award Plaintiff nominal and compensatory damages against all defendants based on the claims listed above, in an amount to be determined at trial;
- b. Award Plaintiff punitive damages against all individual defendants based on the claims listed above, in an amount to be determined at trial;
- c. Award Plaintiff statutory penalties against all defendants, for each and every violation of N.Y. Civil Rights Law § 40-c, pursuant to N.Y. Civil Rights Law § 40-d;
- d. Declare that the defendants' actions violated the Community Safety Act, New York City Code § 14-151, and city and state law;
- e. Award Plaintiff costs and attorneys' fees; and
- f. Grant such other relief as the Court finds just and proper.

Respectfully submitted,



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Dated: January 22, 2019
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