UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

DEANNA LETRAY,

Plaintiff,

v.

5:20-CV-1194
(FJS/TWD)

CITY OF WATERTOWN; COLLEEN O'NEILL, Jefferson County Sheriff; KRISTOPHER M. SPENCER; JOEL DETTMER; CHARLES DONOGHUE, City of Watertown Police Chief; GEORGE CUMMINGS; SAMUEL WHITE; JEFFERSON COUNTY; DEBORAH DAVIS; and PATRICK LARKINS,

Defendants.

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SCULLIN, Senior Judge

MEMORANDUM-DECISION AND ORDER

I. INTRODUCTION

Plaintiff brought this action pursuant to 42 U.S.C. § 1983 and New York State law, alleging that Defendants City of Watertown, Jefferson County, Colleen O'Neill, Kristopher M. Spencer, Charles Donoghue, Joel Dettmer, George Cummings, Virginia Kelly,[1] Patrick Larkins, Deborah Davis, and Samuel White violated her Fourteenth Amendment equal protection rights, her New York State Constitution equal protection rights, and New York State Civil Rights Law ("NYCRL") § 40-c. *See* Dkt. No. 58, Second Amended Complaint, at ¶¶ 92-107. Plaintiff also brought a claim alleging that Defendants City of Watertown, Jefferson County, O'Neill, Spencer, Donoghue, and Dettmer violated her Fourth Amendment rights. *See id.* at ¶¶ 72-77.

Defendants City of Watertown and Donoghue now move for summary judgment with respect to Plaintiff's Fourth Amendment, Fourteenth Amendment equal protection, New York State equal protection, and NYCRL § 40-c claims. *See* Dkt. No. 94. Plaintiff moves for summary judgment with respect to her Fourth Amendment claim against Defendants City of Watertown, Jefferson County, O'Neill, Spencer, Donoghue and Dettmer.[2] *See* Dkt. No. 106.

[1] The parties have stipulated to dismiss Defendant Kelly from this action. *See* Dkt. No. 105.

[2] Plaintiff's request for oral argument, *see* Dkt. No. 106 at 2, is denied.

II. BACKGROUND

A. Facts[3]

1. Plaintiff's gender identity

Plaintiff is a transgender[4] woman. *See* Dkt. No. 107, Plaintiff's Statement of Material Facts ("SMF"). Since 2010, Plaintiff has lived "in her affirmed female gender," wearing women's clothing and prosthetic breasts, putting on makeup, wearing a feminine wig, and going by the name "DeAnna." *See id.* at ¶¶ 51-52, 80. Although she has used the name "DeAnna LeTray" publicly since 2010, she did not obtain a court-ordered name change until 2019. *See id.* at ¶ 46. Prior to 2019, Plaintiff's New York State driver's license listed her sex as male and displayed her "deadname,"[5] Anthony Campanaro. *See id.* at ¶ 43.

2. Domestic dispute and arrest

On September 28, 2017, Plaintiff presented as a woman: she wore makeup, a long red wig, boho pants, a crop top, prosthetic breasts, and carried a purse. *See id.* at ¶ 80. That night, she was involved in a domestic dispute with Josh Coffey. *See id.* at ¶¶ 8, 10-14. Plaintiff confronted Coffey at his residence, banging on doors and breaking a window; Coffey threatened

[3] Unless otherwise noted, the facts are not in dispute.

[4] The parties agree that a transgender individual is someone whose gender identity is different from their birth-assigned sex. *See* Dkt. No. 107 at ¶ 48.

[5] The parties agree that the term "deadname" refers to the name a transgender person was given at birth and no longer uses upon transitioning. *See* Plaintiff's SMF at ¶ 122 n.6.

Plaintiff with a shotgun. *See id.* at ¶¶ 2, 8, 13, 14, 85. Watertown Police[6] Officers Cummings and White responded to Coffey's residence. *See id.* at ¶ 15.

When initially interacting with the officers, Plaintiff explained that she was a transgender woman. *See id.* at ¶¶ 99, 101. She provided the officers with the name that appeared on her government-issued identification and with her preferred name, "DeAnna LeTray." *See id.* Plaintiff claims that Officer Cummings called her a "guy," "a man dressed like a woman," a "liar," asked her "how long have you dressed like that?," and questioned her about her sexuality and genitalia. *See id.* at ¶ 101. After Plaintiff indicated that she planned to walk home, she claims that Officer Cummings stated," "you have serious mental problems – you are a guy dressed like a woman . . . we can't let you walk the streets looking and dressed like that." *See id.* at ¶¶ 102-03. During his deposition, Officer Cummings testified that he did not make any comments about Plaintiff's appearance. *See id.* at ¶ 104. Plaintiff additionally claims that, throughout her arrest, the officers referred to her by male pronouns and her deadname; mocked the way she dressed; and repeatedly called her "a man dressed like a woman." *See id.* at ¶ 112.

Officer Cummings arrested Plaintiff for criminal mischief and discovered that she possessed MDMA, a controlled substance. *See id.* at ¶¶ 21, 23. Officer White transported Plaintiff to the Watertown police station for booking. *See id.* at ¶¶ 22, 105.

3. Booking

Officers ordered Plaintiff to remove her wig for her booking photograph, despite testifying that they were able to identify Plaintiff as the same person with her wig and without

[6] During all relevant times, Defendant Donohue served as the Watertown Police Chief. *See* Plaintiff's SMF at ¶¶ 40, 59-61, 161.

her wig and that they did not have any basis for believing that Plaintiff was trying to hide her identity.[7] *See id.* at ¶¶ 26, 114-16. Plaintiff did not want to be photographed without her wig, which she considered "her hair." *See id.* at ¶ 26. Plaintiff asked the officers if she could remove her makeup because she felt it would be humiliating to take the photo with makeup on but without her wig. *See id.* at ¶ 123. Officers refused and instructed Plaintiff to go into one of the interview rooms adjacent to the booking area. *See id.* at ¶ 28.

On her way to the room, Plaintiff picked up her hairclip and began putting it into her hair. *See id.* at ¶¶ 29-30. Officer Cummings claims that he ordered her to drop the hairclip, and she refused. *See id.* at ¶ 30. Plaintiff denies that she was ordered to drop her hairclip; instead, she claims that, after she told Officer Cummings that she was holding a hairclip, he threw her to the ground and ripped her wig and part of her natural hair out of her head. *See id.* Plaintiff claims that Officer Cummings then told her, "you are going to go to the jail and get strip searched . . . we are going to show you that you are a man. You are going to love that." *See id.* at ¶ 131. Officers transported Plaintiff to Jefferson County Correctional Facility ("JCCF"). *See id.* at ¶ 32.

4. Strip search at JCCF

By agreement, Watertown Police Department ("WPD") brings certain arrestees to JCCF.[8] *See id.* at ¶ 138. JCCF holds the arrestees until arraignment, at which time WPD transports the individual to court. *See id.* The WPD arrestees are held in holding cells alone, not in the jail's

[7] Officer Cummings also testified during his deposition that women wearing synthetic hair in the form of a weave are not required to remove it for booking photographs and that he could have, but chose not to, allowed Plaintiff to take two photos – one with and one without her wig. *See* Plaintiff's SMF at ¶¶ 116-17.

[8] During all relevant times, Defendant Spencer was the administrator of JCCF and Defendant O'Neill was the Jefferson County Sheriff. *See* Plaintiff's SMF at ¶¶ 155-60.

general population. *See id.* at ¶¶ 142-43. However, if the arrestee is unable to post bail following arraignment, the arrestee is brought back to JCCF and admitted to general population. *See* Dkt. No. 113, Defendants' Responses to Plaintiff's SMF, at ¶¶ 186-187.

JCCF policy requires all arrestees entering the jail to undergo a strip search and visual body-cavity search. *See* Plaintiff's SMF at ¶¶ 148-49. There is no individualized inquiry into the need for either search. *See id.* at ¶ 154. Upon her arrival and pursuant to JCCF policy, Plaintiff was subjected to a strip search and visual body-cavity search.[9] *See id.* at ¶ 179. Plaintiff was held overnight and arraigned the next morning on misdemeanor charges for criminal mischief, possession of a controlled substance, and obstruction of governmental administration. *See id.* at ¶¶ 41, 182. Plaintiff never entered the jail's general population and was released after posting bail. *See id.* at ¶¶ 186-87.

Ultimately, Plaintiff pled guilty to the following violations: disorderly conduct, harassment, and trespass. *See* Dkt. No. 94-21 at 8. WPD's records related to Plaintiff's arrest document her as a male, use he/him pronouns, and refer to her by her deadname. *See* Plaintiff's SMF at ¶ 106.

B. Procedural history

After the Court dismissed Plaintiff's complaint pursuant to 28 U.S.C. § 1915(e), *see* Dkt. No. 7, Plaintiff filed amended pleadings, *see* Dkt. Nos. 12, 58. Plaintiff's second amended complaint contains eight causes of action: (1) unreasonable strip search in violation of the Fourth Amendment against Defendants City of Watertown, Jefferson County, O'Neill, Spencer,

[9] Defendants Davis, Larkins and Dettmer were JCCF corrections officers who were on duty during Plaintiff's search. *See* Dkt. No. 58 at 3; Dkt. No. 113-1 at 2; Dkt. No. 107-11 at 1.

Donoghue, and Dettmer; (2) sexual assault in violation of the Fourth and Fourteenth Amendments against Defendant Dettmer; (3) unreasonable body-cavity search in violation of the Fourth Amendment against Defendant Dettmer; (4) failure to intervene in violation of the Fourteenth Amendment against Defendants Cummings, Larkins, and Davis; (5) excessive use of force in violation of the Fourth Amendment against Defendants Cummings, White and Dettmer; (6) denial of equal protection in violation of the Fourteenth Amendment against Defendants City of Watertown, Jefferson County, O'Neill, Spencer, Donoghue, Dettmer, Cummings, Kelly, Larkins, Davis and White; (7) denial of equal protection in violation of the New York State Constitution against Defendants City of Watertown, Jefferson County, O'Neill, Spencer, Donoghue, Dettmer, Cummings, Kelly, Larkins, Davis, and White; and (8) discrimination in violation of NYCRL § 40-c against Defendants City of Watertown, Jefferson County, O'Neill, Spencer, Donoghue, Dettmer, Cummings, Kelly, Larkins, Davis, and White. *See* Dkt. No. 58, Second Amended Compl. at ¶¶ 72-107.

Defendants City of Watertown and Donohue now move for summary judgment with regard to Plaintiff's first, sixth, seventh and eighth causes of action. *See* Dkt. No. 94. Plaintiff moves for summary judgment with regard to her first cause of action. *See* Dkt. No. 106.

III. DISCUSSION

A. Standard of review

The entry of summary judgment is warranted "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). An issue of fact is material for purposes of this inquiry if it "might affect the outcome of the suit under the governing law." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242,

248 (1986) (citation omitted). A dispute of material fact is genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Id.*

In assessing whether there are any genuine disputes of material fact, "a court must resolve any ambiguities and draw all inferences from the facts in a light most favorable to the nonmoving party." *Ward v. Stewart*, 286 F. Supp. 3d 321, 327 (N.D.N.Y. 2017) (citing *Jeffreys[v. City of New York]*, 426 F.3d [549,] 553 [(2d Cir. 2005)]). Summary judgment is inappropriate "where a review of the record reveals sufficient evidence for a rational trier of fact to find in the [non-movant's] favor." *Treglia v. Town of Manlius*, 313 F.3d 713, 719 (2d Cir. 2002) (citation omitted).

B. Fourth Amendment claim based on strip-search policy

Defendants[10] contend that JCCF's strip-search policy was constitutional given the safety concerns of the correctional facility and the Supreme Court's reasoning in *Florence v. Bd. of Chosen Freeholders of Cnty. of Burlington*, 566 U.S. 318 (2012). *See* Dkt. No. 113-5 at 3-9.[11]

Plaintiff counters that JCCF's strip-search policy was unconstitutional because *Florence* is inapposite and the Fourth Amendment requires individualized reasonable suspicion to strip search an arrestee who is charged with a minor offense and who is not guaranteed to enter general population or have contact with other detainees. *See* Dkt. No. 106-1 at 6-8; Dkt. No. 116 at 2-4.

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[10] In the context of Plaintiff's Fourth Amendment claim related to JCCF's strip-search policy, the Court uses the term "defendants" to refer to Defendants City of Watertown, Jefferson County, O'Neill, Spencer, Donoghue, and Dettmer.

[11] Defendants also raise arguments based on qualified immunity, municipal liability, and personal involvement. *See* Dkt. No. 113-5 at 9-13; Dkt. No. 94-21 at 9-12. However, because the Court concludes that there was no Fourth Amendment violation, it need not reach these arguments.

The Court agrees with Defendants. Before *Florence*, the Second Circuit held that individuals arrested for misdemeanors could not be lawfully strip searched without individualized reasonable suspicion that the individual possessed contraband. *See Weber v. Dell*, 804 F.2d 796, 799-802 (2d Cir. 1986). However, in *Florence*, the Supreme Court held that the Fourth Amendment permits strip searching all arrestees who *will* enter general population, regardless of the charged offense. *See Florence*, 566 U.S. at 326-40. The Supreme Court declined to address whether individualized reasonable suspicion was required for arrestees "without assignment to the general jail population and without substantial contact with other detainees." *Id.* at 338-39. As a result, it is unsettled whether "categorically strip-searching . . . detainees charged with misdemeanors and segregated *alone* from the general population" passes constitutional muster. *In re Nassau Cnty. Strip Search Cases*, 639 F. App'x 746, 750-51 (2d Cir. 2016) (summary order).

Although *Florence* involved an arrestee assigned to general population, the reasoning in *Florence* provides the controlling framework for evaluating JCCF's policy. In *Florence*, the Court emphasized "the importance of deference to correctional officials" and the related rule that "a regulation impinging on an inmate's constitutional rights must be upheld 'if it is reasonably related to legitimate penological interests.'" *Florence*, 566 U.S. at 326 (quotation and other citations omitted). The Court explained that "correctional officials must be permitted to devise reasonable search policies to detect and deter the possession of contraband in their facilities," *id.* at 328, and that "'a responsible Fourth Amendment balance is not well served by standards requiring sensitive, case-by-case determinations of government need, lest every discretionary judgment in the field be converted into an occasion for constitutional review.'" *Id.* at 330-31 (quoting [*Atwater v. City of Lago Vista*, 532 U.S. 318,] 347, 121 S. Ct. 1536 [(2001)]).

Accordingly, the Second Circuit has characterized *Florence*'s holding as follows: "absent 'substantial evidence' of an 'exaggerated' response to penological concerns, the 'security imperatives involved in jail supervision override the assertion that some detainees must be exempt from the more invasive search procedures at issue absent reasonable suspicion of a concealed weapon or other contraband.'" *Murphy v. Hughson*, 82 F.4th 177, 185 (2d Cir. 2023) (quotation omitted); *see Kenlock v. Mele*, No. 22-2799, 2023 WL 8538182, *2 (2d Cir. Dec. 11, 2023) (noting that "[Fourth Amendment Prison p]olicies will be upheld if they are reasonably related to a legitimate penological interest." (citing [*Harris v. Miller*, 818 F.3d 49,] 57-58 (citing *Turner v. Safley*, 482 U.S. 78, 89 (1987); *see also Florence v. Bd. of Chosen Freeholders*, 566 U.S. 318, 326 (2012) (application to pretrial detainees))).

Applying *Florence* to this case, the Court finds that JCCF's policy is consistent with the Fourth Amendment. Although JCCF's institutional safety concerns are slightly diminished by the fact that the arrestee may post bail and never be sent to general population or have contact with other detainees, JCCF still has weighty penological interests regarding the safety and health of officers and arrestees. For instance, in *Florence*, the Court discussed how everyday items may pose significant safety dangers in a correctional facility: lighters and matches are fire and arson risks or potential weapons, pills and medications enhance suicide risk, chewing gum can block locking devices, hair-pins can open handcuffs, wigs can conceal drugs and weapons, and something as simple as an overlooked pen can pose a substantial risk. *See Florence*, 566 U.S. at 330-33 (stating that "[c]orrectional officials have a significant interest in conducting a thorough search as a standard part of the intake process"). JCCF also has an interest in preventing the spread of "lice or contagious infections" from arrestees to correctional staff, and in being able to identify "wounds or other injuries [on arrestees] requiring immediate medial attention." *Id.* at

330-31 (noting that "[i]t may be difficult to identify and treat these problems until detainees remove their clothes for a visual inspection" (citation omitted)).

Plaintiff has not introduced substantial evidence that JCCF's policy is an exaggerated response or not reasonably related to these penological concerns. Moreover, Plaintiff's position that the Fourth Amendment prohibits strip searching misdemeanor arrestees unless officials are certain that the arrestee will be entered into general population would permit many arrestees to retain and use contraband while awaiting arraignment and while being transported to arraignment. *See id.* at 322 (stating that "[c]orrectional officials have a legitimate interest, indeed a responsibility, to ensure that jails are not made less secure by reason of what new detainees may carry in on their bodies").

Beyond the fact that Plaintiff's position would saddle corrections officials with unwanted safety risks and is inconsistent with the deference discussed in *Florence*, determining when an arrestee is definitively destined for general population involves a murky inquiry that would create inconsistency and uncertainty. *See id.* at 322-23 (noting that, "[i]n addressing [Fourth Amendment claims] courts must defer to the judgment of correctional officials unless the record contains substantial evidence showing their policies are an unnecessary or unjustified response to problems of jail security"). According, because JCCF's policy is reasonably related to legitimate penological concerns, Plaintiff's Fourth Amendment claim, contained in her first cause of action, fails as a matter of law.[12]

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[12] Since JCCF's strip-search policy is constitutional as a matter of law and Plaintiff has had a full and fair opportunity to argue otherwise, the Court finds that non-moving Defendants Jefferson County, O'Neill, Spencer, and Dittmer are also entitled to summary judgment with regard to Plaintiff's first cause of action. *See* Fed. R. Civ. P. 56(f)(1); *Project Release v. Prevost*, 722 F.2d 960, 969 (2d Cir. 1983) (stating that "[a] court may grant summary judgment *sua sponte* when it is clear that a case does not present an issue of material fact" (emphasis in original and citations omitted)); *Coach Leatherware Co., Inc. v. AnnTaylor, Inc.*, 933 F.2d 162, 167 (2d Cir. 1991)

C. Equal protection and NYCRL claims[13]

Defendants[14] argue that Plaintiff's equal protection claims musts be dismissed because Plaintiff pled guilty to three charges arising from her arrest. *See* Dkt. No. 94-21 at 12-13. Defendants also contend, in the alternative, that there is no evidence that Plaintiff's arrest was based on her transgender status. *See id.*

Plaintiff asserts that here guilty pleas are immaterial to her equal protection claims because those claims are based on differential treatment because of her transgender status and gender identity, not false arrest or malicious prosecution. *See* Dkt. No. 106-1 at 14-15. Plaintiff argues that she was subjected to differential treatment in the form of derogatory comments,

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(stating that "[t]he prevailing view in this Circuit is that a court need not give notice of its intention to enter summary judgment *against* the moving party . . . the threat of procedural prejudice is greatly diminished if the court's *sua sponte* determination is based on issues identical to those raised by the moving party" (emphasis in original)); *Orix Credit Alliance, Inc. v. Horten*, 965 F. Supp. 481, 484 (S.D.N.Y. 1997) (stating that "[n]otice to the moving party of the intention to grant summary judgment in favor of the non-moving party is not required . . . where summary judgment is granted to the non-moving party on an issue which has been fully raised by the moving party" (citations omitted)).

[13] The Court analyzes Plaintiff's federal and state equal protection claims identically because New York's "Equal Protection Clause 'is no broader in coverage than the Federal provision.'" *Hernandez v. Robles*, 7 N.Y.3d 338, 362 (2006) (quotation omitted); *see Am. Atheists, Inc. v. Port Auth. of N.Y. & N.J.*, 936 F. Supp. 2d 321, 339 (S.D.N.Y. 2013) (stating that "New York courts apply the same analysis for Equal Protection challenges under the New York [C]onstitution as under the Federal Constitution" (citations omitted)). Additionally, the Court analyzes Plaintiff's NYCRL § 40-c claim using the same framework because the statute entitles individuals to "the equal protection of the laws of this state or any subdivision thereof." NYCRL § 40-c(1); *see Matter of Aurecchione v. N.Y. State Div. of Human Rights*, 98 N.Y.2d 21, 25-26 (2002) (applying federal case law when the state discrimination statutes "address[es] the same type of discrimination . . . afford[s] victims similar forms of redress, [and is] textually similar" (citation omitted)).

[14] In the context of Plaintiff's equal protection and NYCRL claims, the Court uses the term "defendants" to refer to Defendants City of Watertown and Donoghue.

misgendering, and physical assault, resulting in physical and psychological injuries. *See id.* at 17. Plaintiff also contends that Defendants' actions are subject to, and fail to satisfy, heightened scrutiny. *See id.* at 19-21. The Court agrees with Plaintiff.

The Equal Protection Clause requires the State to treat all persons similarly situated alike, avoiding classifications that are "arbitrary or irrational" and those that reflect "'a bare . . . desire to harm a politically unpopular group.'" *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 446-47 (1985) (quotation and other citations omitted). To prove a violation of the Equal Protection Clause, a plaintiff must establish that (1) he or she was "treated differently than others similarly situated" because of intentional or purposeful discrimination and (2) "the disparity in treatment cannot survive the appropriate level of scrutiny." *Phillips v. Girdich*, 408 F.3d 124, 129 (2d Cir. 2005) (citations omitted).

1. Heck v. Humphrey bar

Plaintiff's guilty please for disorderly conduct, harassment, and trespass do not bar her equal protection claims based on differential treatment during her arrest, booking, and detention. *Heck v. Humphrey*, 512 U.S. 477 (1994) "precludes the use of § 1983 suits for damages that *necessarily* have the effect of challenging existing state or federal criminal convictions." *Poventud v. City of New York*, 750 F.3d 121, 124 (2d Cir. 2014) (emphasis added). The purpose of this rule is twofold: first to avoid the use of § 1983 actions to substitute for writs of habeas corpus to challenge convictions; and second, to avoid the prospect of inconsistency between a conviction and a subsequent successful constitutional challenge to that conviction's underpinning in a civil action. *See Heck*, 512 U.S. at 483-87.

Here, even if Defendants are found liable for violating the Equal Protection Clause by treating Plaintiff differently on the basis of her transgender status during her arrest, booking, and detention, this finding would not *necessarily* demonstrate the invalidity of Plaintiff's guilty pleas because Plaintiff's conduct during the domestic dispute could still sufficiently support the charges for disorderly conduct, harassment, and trespass. In other words, because Plaintiff challenges Defendants' conduct during the course of her arrest and not the validity of the charges to which she pled guilty, *Heck* does not bar her equal protection claims. *Cf. Jackson v. Suffolk Cnty. Homicide Bureau*, 135 F.3d 254, 257 (2d Cir. 1998) (explaining that "a claim for use of excessive force lacks the requisite relationship to the conviction . . . a finding that excessive force had in fact been used would not necessarily require the invalidation of the conviction").

2. Differential treatment

To act with discriminatory purpose means to "'select[] or reaffirm[] a particular course of action at least in part because of, not merely in spite of, its adverse effects upon an identifiable group.'" *United States v. City of New York*, 717 F.3d 72, 93-94 (2d Cir. 2013) (citing [*Personnel Administrator v. Feeney*, 442 U.S. 256, 279 (1979)]). A plaintiff need not point to a specific comparator if "a facially neutral statute or policy with an adverse effect was motivated by discriminatory animus" towards an identifiable group. *Pyke v. Cuomo*, 258 F.3d 107, 109 (2d Cir. 2001) (holding that Native American plaintiffs did not need to demonstrate "the disparate treatment of otherwise similarly situated non-Native American individuals" if the plaintiffs established that "defendants discriminatorily refused to provide police protection because the plaintiffs [were] Native American"); *see J.E.B. v. Ala. ex rel T.B.*, 511 U.S. 127, 130-31 (1994) (reaffirming that "[i]ntentional discrimination on the basis of gender by state actors violates the

Equal Protection Clause . . . where, as here, the discrimination serves to ratify and perpetuate invidious, archaic, and overbroad stereotypes"). Finally, verbal abuse constitutes actionable differential treatment if accompanied by physical abuse or an appreciable psychological injury. *See Willey v. Kirkpatrick*, 801 F.3d 51, 70 (2d Cir. 2015); *Cole v. Fischer*, 379 F. App'x 40, 43 (2d Cir. 2010) (summary order); *cf. Clark v. Hanley*, 89 F.4th 78, 114 (2d Cir. Dec. 27, 2023) (Chin, J., dissenting) (stating that "because the plight of transgender prisoners is an issue as to which social mores are changing quickly and dramatically[,] [c]ourts both in this Circuit and elsewhere have recently permitted transgender prisoners' [§] 1983 claims to survive motions to dismiss, sometimes even where prison officials' sexually harassing conduct was purely verbal").

Here, based on Plaintiff's following allegations, a reasonable jury could conclude that she was subjected to purposeful differential treatment because of animus towards her transgender status, resulting in physical abuse and an appreciable psychological injury: after learning that Plaintiff was a transgender woman, Officer Cummings called her a "guy," a "man dressed like a woman," and a "liar," *see* Plaintiff's SMF at ¶ 101; Officer Cummings told her, "we can't let you walk the streets looking and dressed like that . . . you have serious mental problems – you are a guy dressed like a woman" and "you are going to go to jail and get strip searched . . . we are going to show you that you are a man. You are going to love that," *see id.* at ¶¶ 103, 131; officers mocked the way Plaintiff was dressed and repeatedly called her "a man dressed like a woman," *see id.* at ¶ 112; officers required Plaintiff to remove her wig for her mugshot, even though cisgender[15] women with synthetic hair are not required to remove it, *see id.* at ¶¶ 114-16; Officer Cummings forcibly removed Plaintiff's wig, slamming her to the ground and ripping off

[15] The term "cisgender" refers to a person whose gender identity corresponds to their sex assigned at birth and is, therefore, not transgender.

some of her natural hair from her scalp, *see id.* at ¶ 128; and as a result of Defendants' conduct Plaintiff contemplated suicide and suffered from severe post-traumatic stress disorder, depression, anxiety, and psychological trauma, *see id.* at ¶ 183.

3. Appropriate level of scrutiny

For two independent reasons, Defendants' alleged differential treatment of Plaintiff based on her transgender status triggers heightened scrutiny. First, differential treatment based on sex triggers heightened scrutiny, *see United States v. Virginia*, 518 U.S. 515, 555 (1996) (citation omitted); and, in *Bostock v. Clayton County*, 590 U.S. 644 (2020), the Supreme Court confirmed that discrimination based on transgender status constitutes sex discrimination, *see id.* at 660 (stating that "it is impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual based on sex"); *see also Hecox v. Little*, 79 F.4th 1009, 1026-27 (9th Cir. 2023) (stating that "discrimination on the basis of transgender status is a form of sex-based discrimination. It is well-established that sex-based classifications are subject to heightened scrutiny" (citing *VMI*, 518 U.S. at 533-34, 116 S. Ct. 2264 and collecting cases)).

Second, quasi-suspect classifications trigger heightened scrutiny, *see Cleburne*, 473 U.S. at 440-41, and – although the Supreme Court and the Second Circuit have not addressed the issue – the vast majority of courts to consider the question have concluded that transgender people constitute a quasi-suspect class.[16] *See, e.g., Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d

[16] Courts use the following four factors to determine whether a group constitutes a quasi-suspect class: (1) whether the class has historically been subject to discrimination, *see Bowen v. Gilliard*, 483 U.S. 587, 602 (1987); (2) if the class has a defining characteristic that bears a relation to its ability to contribute to society, *see Cleburne*, 473 U.S. at 440-41; (3) whether the class may be defined as a discrete group by obvious, immutable, or distinguishing characteristics, *see Bowen*,

586, 611 (4th Cir. 2020) (stating that "[e]ngaging with the suspect class test, it is apparent that transgender persons constitute a quasi-suspect class")); *Adkins v. City of New York*, 143 F. Supp. 3d 134, 140 (S.D.N.Y. 2015) (holding that "transgender people are a quasi-suspect class" and applying heightened scrutiny); *Hecox*, 79 F.4th at 1026 (noting that the Court is "thus compelled to review the constitutionality of the Act under heightened scrutiny as it classifies based on transgender status"). The Court finds no basis for concluding otherwise, and Defendants' briefing, *see* Dkt. No. 94-21; Dkt. No. 112, fails to make any substantive arguments as to why heightened scrutiny does not apply. Accordingly, the Court analyzes Plaintiff's equal protection claims using heightened scrutiny.

Heightened scrutiny is a "demanding" standard that requires the government to demonstrate an "exceedingly persuasive" justification for its differential treatment. *Virginia*, 518 U.S. at 533. Specifically, the government must demonstrate "'that the [challenged] classification serves important governmental objectives and that the discriminatory means employed are substantially related to the achievement of those objectives.'" *Id.* (quotation omitted). "The justification must be genuine," and it may not "rely on overbroad generalizations about the different talents, capacities, or preferences of males and females." *Id.* (citations omitted); *see Sessions v. Morales-Santana*, 582 U.S. 47, 63 n.13 (2017) (directing courts to "reject measures that classify unnecessarily and overbroadly by gender when more accurate and impartial lines can be drawn" (citations omitted)).

Here, Defendants' arguments, *see* Dkt. No. 94-21; Dkt. No. 112, do not entertain the possibility that Plaintiff was subjected to actionable differential treatment and proffer no

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483 U.S. at 602; and (4) whether the class is a minority lacking political power, *see id.* *See Windsor v. United States*, 699 F.3d 169, 181-85 (2d Cir. 2012) (applying the factors to homosexuals), *aff'd*, 570 U.S. 744 (2013).

discernable justifications for the alleged verbal abuse; requirement that Plaintiff remove her wig during her booking photo, despite cisgender women being permitted to keep synthetic hair on; or physical force used while removing Plaintiff's wig. Therefore, because a reasonable jury could conclude that Plaintiff was subjected to actionable differential treatment for which Defendants have not provided an exceedingly persuasive justification, heightened scrutiny has not been satisfied.

4. Personal involvement and municipal liability

Plaintiff contends that Defendants Chief Donoghue and City of Watertown are liable for the alleged equal protection violations because Defendant Chief Donoghue adopted the discriminatory policies that resulted in her differential treatment based on her transgender status. *See* Dkt. No. 106-1 at 18, 21-22.[17]

A municipal official is personally liable under 42 U.S.C. § 1983 if the "official's own individual actions" cause an injury to the plaintiff's constitutional rights. *Tangreti v. Bachmann*, 983 F.3d 609, 616-18 (2d Cir. 2020). Although a municipality is not liable for all constitutional violations committed by its employees under the theory of respondeat superior, a municipality is liable under § 1983 if its policy causes a constitutional injury. *See Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 691-94 (1978). As a result, "when a subordinate municipal official is alleged to have committed the constitutional violation, municipal liability turns on the plaintiff[']s ability to attribute the subordinates' conduct to the actions or omissions of higher ranking officials with policymaking authority." *Amnesty Am. v. Town of West Hartford*, 361 F.3d 113, 126 (2d Cir.

[17] Defendants' briefing, *see* Dkt. No. 94-21; Dkt. No. 112, does not address whether Defendants Chief Donoghue and City of Watertown would be liable if Plaintiff establishes an equal protection violation.

2004). Policymaking authority exists if "the decisionmaker possesses final authority to establish municipal policy with respect to the action ordered." *Pembaur v. City of Cincinnati*, 475 U.S. 469, 481 (1986). To establish causation, the plaintiff must point to a policymaker's "deliberate choice to follow a course of action" that is the "'moving force [behind] the constitutional violation.'" *City of Canton v. Harris*, 489 U.S. 378, 389 (1989) (quotation omitted); *see Higazy v. Templeton*, 505 F.3d 161, 175 (2d Cir. 2007) (explaining that a § 1983 action "employs the tort principle of proximate causation" (citation omitted)).

Here, Defendant Chief Donohue testified during his deposition that all sex-specific policies are interpreted as to treat transgender women as males, without regard to gender identity. *See* Plaintiff's SMF at ¶¶ 71-77. Defendant Chief Donohue's interpretation constitutes municipal policy because he has final authority to establish Defendant City of Watertown's policing policies, *see id.* at ¶ 59; Dkt. No. 107-15 at 47:13-48:25, and because official policy "often refers to formal rules or *understandings* – often but not always committed to writing – that are intended to, and do, establish fixed plans of action," *Pembaur*, 475 U.S. at 480 (emphasis added). Given that City of Watertown police officers received no guidance about the appropriate treatment of transgender individuals, *see* Plaintiff's SMF at ¶¶ 63-68, and Defendant Cummings admitted to not knowing what a transgender person was in 2017, *see id.* at ¶ 78, a reasonable jury could conclude that Defendant City of Watertown's sex-specific policing policies – created by Defendant Chief Donohue – led officers to categorically equate transgender women with men, disregarding gender identity, and causing the officers' verbal abuse, removal of Plaintiff's wig, and alleged physical assault while removing the wig. Therefore, as to Plaintiff's equal protection and NYCRL claims, the Court concludes that Defendants City of Watertown and Chief Donohue are not entitled to summary judgment.

5. Injunctive relief

Plaintiff seeks an injunction ordering Defendants to identify records related to her arrest and to "[c]orrect those records to properly identify [Plaintiff] as a woman, not a man," and to "[d]elete the booking photo depicting [Plaintiff] without her hairpiece from its records, destroy any hard copies of the photo, and cease providing public access to the photo." *See* Second Amended Complaint at 21.

Defendants argue that Plaintiff has no basis to seek the requested injunctive relief because the records match her information as it appeared on her driver's license in September 2017. *See* Dkt. No. 94-21 at 13-14. Plaintiff argues that she has standing to seek injunctive relief because Defendants' discriminatory treatment resulted in the creation of incorrect records that disregard her stated gender identity, constituting an ongoing harm. *See* Dkt. No. 106-1 at 24-25.

To invoke federal jurisdiction, a plaintiff bears the burden of establishing standing for each form of relief sought. *See Nicosia v. Amazon.com, Inc.*, 834 F.3d 220, 239 (2d Cir. 2016) (citation omitted). Standing to seek injunctive relief requires the plaintiff to show that "it is 'likely, as opposed to merely speculative, that the [alleged] injury will be redressed by a favorable decision.'" *Soule v. Conn. Ass'n of Schs., Inc.*, 90 F.4th 34, *47 (2d Cir. 2023) (quoting *Lujan [v. Defenders of Wildlife*, 504 U.S. 555,] 561, 112 S. Ct. 2130 [(1992)]). "A plaintiff makes this showing when the relief sought 'would serve to . . . eliminate any effects of' the alleged legal violation that produced the injury in fact." *Id.* (quoting *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 105-06, 118 S. Ct. 1003, 140 L. Ed. 2d 210 (1998)). Specifically, when seeking an injunction to alter records, the plaintiff "'need not show that a favorable decision will relieve [their] *every* injury,'" *id.* at 48 (emphasis in original) (quotation omitted);

instead, "Article III only requires that some form of altering the records 'would at least partially redress' the alleged injury," *id.* (quotation omitted). "In general, the hurdle a plaintiff must clear to demonstrate that an injury is redressable through injunctive relief is low." *Id.* at 69 (Perez, J., concurring in part and dissenting in part).

For example, in *Soule*, the plaintiffs – non-transgender girls – alleged that they were subjected to sex discrimination because transgender girls were permitted to complete against them in track and field. *See Soule*, 90 F.4th 40. The Second Circuit held that the plaintiffs had standing to seek an injunction requiring the defendants to alter public athletic records by removing race times of transgender girls and reranking title and placements of non-transgender girls because "[t]he loss of publicly recognized titles and lower placements in specific races is itself an existing and ongoing effect of Plaintiffs' alleged injury – an effect that would be redressed by public record alterations reflecting those achievements." *Id.* at 49. The Second Circuit noted that, although the "significance of these athletic records may not be apparent to those who do not participate in the world of competitive sports . . . [t]hat one may not deem them valuable is simply not the relevant inquiry for standing purposes." *Id.* The court reasoned that it must avoid "import[ing] a value judgment into the standing analysis where it does not belong" because "[j]ust as an award of nominal damages partially (even if nominally) remedies the violation of a legal right, injunctive relief can partially (even if nominally) remedy the existing harms that flow from the past denial of equal opportunity . . . ." *Id.* at 49-50 (citation omitted).

Here, Plaintiff's alleged injuries are redressable by the injunctive relief she seeks. Like the plaintiffs in *Soule*, Plaintiff alleges that discrimination led Defendants to create incorrect records upon which third parties will rely. Plaintiff specifically alleges that Defendants violated the Equal Protection Clause by disregarding her stated gender identity, ultimately creating

records and a booking photograph that misrepresent her gender identity. *See* Dkt. No. 106-1 at 15-19, 24-25. Correcting Plaintiff's arrest records and deleting her booking photograph – in which Plaintiff was not permitted to wear her wig, an "important" part of her gender identity, *see* Plaintiff's SMF at ¶ 80 – would eliminate some ongoing effects of the alleged injuries because Defendant City of Watertown employees would no longer have access to records that incorrectly portray Plaintiff's gender identity and because the public would no longer have access to the booking photograph that incorrectly portrays Plaintiff's gender identity. As in *Soule*, the injunctive relief sought would redress the alleged discrimination by updating records that would have been correct but for the alleged discrimination. *See Soule*, 90 F.4th at 46 (stating that, "[i]n cases involving claims of discriminatory treatment, the alleged harm is frequently twofold: plaintiffs are discriminated against and that discriminatory treatment results in the denial of certain benefits that they would otherwise have enjoyed"). Accordingly, the Court finds that Plaintiff has standing to seek both forms of injunctive relief. However, even assuming Plaintiff's claims succeed on the merits, the Court expresses no view as to whether the requested relief would be appropriate. *See id.* at 51 (stating that "[t]he fact 'that [a] plaintiff has standing to pursue her claim does not mean that she is entitled to the relief she seeks'" (quotation omitted)).

IV. CONCLUSION

Accordingly, having reviewed the entire file in this matter, the parties' submissions, and the applicable law, and for the above-stated reasons, the Court hereby

ORDERS that Plaintiff's request for oral argument, *see* Dkt. No. 106, is **DENIED**; and the Court further

ORDERS that Defendants' motion for summary judgment, *see* Dkt. No. 94, is **GRANTED** insofar as Plaintiff's first cause of action, alleging an unreasonable strip search and visual body-cavity search in violation of the Fourth Amendment as against Defendants City of Watertown and Donohue, and **DENIED** in all other respects; and the Court further

ORDERS that Defendants Jefferson County, O'Neill, Spencer, and Dettmer's motion for summary judgment is **GRANTED** with regard to Plaintiff's first cause of action alleging an unreasonable strip search and visual body-cavity search in violation of the Fourth Amendment; and the Court further

ORDERS that Plaintiff's motion for summary judgment, *see* Dkt. No. 106, is **DENIED**; and the Court further

ORDERS that the following claims remain for trial: (1) Fourth and Fourteenth Amendment sexual-assault claims against Defendant Dettmer; (2) Fourth Amendment unreasonable body-cavity search claim against Defendant Dettmer; (3) Fourteenth Amendment failure to intervene claim against Defendants Cummings, Larkins, and Davis; (4) Fourth Amendment excessive use of force claim against Defendants Cummings, White, and Dettmer; (5) Fourteenth Amendment denial of equal protection claim against Defendants City of Watertown, Jefferson County, O'Neill, Spencer, Donoghue, Dettmer, Cummings, Larkins, Davis, and White; (6) New York State Constitution denial of equal protection claim against Defendants City of Watertown, Jefferson County, O'Neill, Spencer, Donoghue, Dettmer, Cummings, Larkins, Davis, and White; and (7) NYCRL § 40-c claim against Defendants City of Watertown, Jefferson County, O'Neill, Spencer, Donoghue, Dettmer, Cummings, Larkins, Davis, and White; and the Court further

ORDERS that counsel for the parties shall file a joint letter on or before **February 27, 2024**, indicating which of the following weeks they are available to try this case: July 8, 2024, July 15, 2024, and/or July 29, 2024. Once the Court receives that information, it will issue a Final Pretrial Scheduling Order, setting forth dates for the submission of pretrial materials and for a Final Pretrial Conference.

IT IS SO ORDERED.

Dated: February 22, 2024
Syracuse, New York

Frederick J. Scullin, Jr.
Senior United States District Judge