SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LESLIE A. STROTH **PART** 12

Justice

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CHARLES DOUGLAS, JULIAN GILBERT, DEREK BARON, EMILY MARTIN, NICHOLAS MOORE,

Plaintiff,

- v -

THE CITY OF NEW YORK, THE NEW YORK CITY POLICE DEPARTMENT, STEVEN FERREIRA, AARON HUSBANDS, PATRICK KING, EDWIN NIEVES, POLICE OFFICERS JOHN DOE #1-24 (TRUE NAMES BEING PRESENTLY UNKNOWN AND FICTITIOUS TO PLAINTIFFS), POLICE OFFICER JANE DOE (TRUE NAME BEING PRESENTLY UNKNOWN AND FICTITIOUS TO PLAINTIFFS)

Defendant.

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INDEX NO. 153606/2021

MOTION DATE 07/12/2022

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 65, 66, 67, 68, 69, 70, 81, 82, 83, 84, 90

were read on this motion to/for DISMISS.

The instant motion to dismiss arises out of an action relating to the allegedly unlawful arrests of plaintiffs Charles Douglas, Julian Gilbert, Derek Baron, Emily Martin, and Nicholas Moore (plaintiffs) as they protested the murder of George Floyd in May and June 2020. Plaintiffs assert six causes of action in their amended complaint, which seeks a declaratory judgment that New York Criminal Procedure Law (CPL) § 150.20 prohibits arrests for eligible low-level offenses (first cause of action) and damages for violations of Article I, § 12 of the New York State Constitution (second cause of action), false arrest (third cause of action), assault and battery (fourth cause of action), and excessive force (fifth cause of action).

Defendants the City of New York (the City), the New York City Police Department (NYPD), and Police Officers Steven Ferreira, Aaron Husbands, Patrick King, and Edwin Nieves (collectively,

defendants) move for an order dismissing the complaint as against the NYPD, which it asserts is a non-suable entity, and partially dismissing plaintiffs' amended complaint.

Specifically, defendants seek an order dismissing plaintiffs' first, second, and third causes of action for failure to state a cause of action pursuant to CPLR 3211 (a) (7), arguing that the police are authorized to transport a person to a precinct and/or booking center to issue an appearance ticket under CPL § 150.20 (1)(a), or, in the alternative, that defendants are entitled to absolute immunity for their determination to issue appearance tickets to plaintiffs at locations other than the scenes of the incidents. Plaintiffs oppose defendants' motion.

I. Facts Alleged in Plaintiffs' Amended Complaint[1]

On May 25, 2020, George Floyd, a Black man, was killed by a white police officer in Minneapolis during an arrest for using an allegedly counterfeit twenty-dollar bill at a convenience store.[2] Following Mr. Floyd's murder, protests against police brutality, particularly toward Black citizens, occurred across the United States. All plaintiffs in this matter attended one or more of these protests in New York City and were allegedly unlawfully arrested at or near the demonstrations for violating the City-wide curfew in effect at the time[3] and/or for disorderly conduct. Each plaintiff was allegedly either put in handcuffs or zip ties, transported to a booking center and/or police precinct, and detained for several hours. Although there are similarities between the facts surrounding plaintiffs' claims, the circumstances of each individual plaintiff are discussed below.

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[1] The following facts are adopted from plaintiffs' amended complaint. For purposes of evaluating a motion to dismiss pursuant to CPLR 3211, the Court will accept all facts alleged in the amended complaint as true. *See Leon v Martinez*, 84 NY2d 83, 87 (1994).

[2] *See How George Floyd Died, and What Happened Next*, NY Times, July 9, 2022, available at https://www.nytimes.com /article/george-floyd.html.

[3] On June 2, 2020, former New York City Mayor Bill de Blasio implemented an 8 p.m. to 5 a.m. citywide curfew to "stop any disorder" at the George Floyd protests. Elisha Fieldstadt, *NYC curfew extended for the rest of the week*, NBC News, June 2, 2020, available at https://www.nbcnews.com/news/us-news/live-blog/2020-06-02-nationwide-protests-over-george-floyd-death-live-n1221821/ncrd1222126#blogHeader (last accessed Mar. 23, 2023).

A. Plaintiff Charles Douglas

Plaintiff Charles Douglas alleges that he and his friends were observing a protest in Union Square in Manhattan on May 31, 2020 at 11:30 p.m., when a police officer approached them and ordered them to disperse. Douglas claims that he complied but that as he was walking away, the same police officer shoved him and told several other officers to "get this one," at which point the officers forced him to the ground and piled on top of him. NYSCEF doc. no. 64, Amended Complaint, at 6-18. Douglas was then placed in handcuffs, which were later replaced with zip ties, and forced to sit on the sidewalk for several hours until an officer collected his identification.

Douglas alleges that he was then transported in a police van to One Police Plaza in Manhattan where he sat, amongst others, in the van for more than an hour and then waited in line for another hour outside One Police Plaza. He states that he was eventually placed in an overcrowded and dirty holding cell for two and a half hours, after which he was given an appearance ticket for disorderly conduct under New York Penal Law § 240.20, a violation-grade offense. *See* Penal Law § 240.20. He was released at 7:45 a.m. – over eight hours from his initial encounter with the police at the protest. The disorderly conduct charge against him was later dismissed. In the aftermath of the arrest, Douglas sought mental health care and experienced pain, numbness, and tingling in his wrists due to the tightness of the zip ties.

B. Plaintiff Julian Gilbert

Plaintiff Julian Gilbert alleges that he was participating in a peaceful march on June 4, 2020 at McCarren Park in Brooklyn, when he noticed a police presence forming and decided to go home. While walking away with his bicycle, several officers ordered him to leave, and he complied. He attempted to bike toward the Williamsburg Bridge to avoid a crowd of fleeing protesters, when the police officers began hitting his legs and bicycle and one officer shouted, "grab him." NYSCEF doc. no. 64, at 9-11. The officers then allegedly pulled him off his bicycle and threw him face down onto the ground. One of the officers

then threw plaintiff's bicycle into a pile of trash on the curb while the other officers spread his legs apart and placed him in handcuffs.

According to Gilbert, the officers sat him on the ground in the middle of the street behind a police van and then placed him on an MTA bus with one to two dozen other people, with no room for social distancing, to be transported to Brooklyn Central Booking. He was first asked for his identification when he arrived at said facility. Gilbert was moved between multiple overcrowded and dirty cells and held until 2:00 a.m., over six hours from his initial police encounter at the march, when he was given an appearance ticket for violating the curfew,[4] a class B misdemeanor, which was never docketed. Upon his release, Gilbert felt discomfort in his hands and wrists for at least a week and a half, experienced emotional distress, and had anxiety about possibly being exposed to COVID-19 while in custody.

C. Plaintiffs Derek Baron, Emily Martin, and Nicholas Moore

Plaintiffs Derek Baron, Emily Martin, and Nicholas Moore were all participating in a protest in Mott Haven in the Bronx before 8 p.m. on June 4, 2020. They allege that the police "kettled"[5] the protesters to prevent anyone from leaving and trapped them in a tight group. NYSCEF doc. no. 64, at 11-18. Plaintiff Derek Baron[6] claims that this caused them to fall to the ground and when they stood up, an officer grabbed them and threw them to the ground again, face first. The officer put his knee on Baron's neck while another officer put zip ties on their wrists. Baron stayed still until an officer hit them in their temple, causing them to bleed from the nose and lose their glasses. An officer then picked Baron up and ordered them to walk back and forth with an officer for an hour.

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[4] *See* n 3, *supra.*

[5] "Kettling" is a police tactic for controlling large crowds during demonstrations or protests in which surround protesters to contain them within a limited area. *See* Wyatte Grantham-Philips, et al, *What is Kettling? Here's a Look into the Usage and History of the Controversial Police Tactic*, June 25, 2020, available at https://www.usatoday.com/story/news/nation/2020/06/24/ kettling-controversial-police-tactic-black-lives-matter-protests/3248681001/ (last accessed Feb. 22, 2023).

[6] Plaintiff Baron prefers to use the personal pronouns they/them/theirs.

When Baron told the officer that the zip ties were too tight and causing pain, the officer did nothing. They were then searched, placed in a hot police van (in which no one was wearing a mask), transported to the 41st Precinct in the Bronx, and placed in metal handcuffs. Baron was then moved to Queens Central Booking and was placed in an overcrowded holding cell with no sink or toilet and where no one was wearing masks or observing social distancing. After one hour in the cell, Baron was asked for their identification, was moved to a different cell, and was detained for another 45 minutes until given an appearance ticket specifying the charge as violating "3108." NYSCEF doc. no. 64, at 14. Baron was released at 2:30 a.m., more than six hours from their initial encounter with the police at the protest. Afterward, Baron received medical treatment, and continues to suffer pain from the injuries sustained that day, including a broken nose, handcuff palsy, and costochondritis.

At the same protest in Mott Haven, plaintiff Emily Martin alleges that she was also caused to fall to the ground from the police kettling and was lying on top of plaintiff Baron while others fell on top of her. She sensed a burning sensation in her throat and lungs, possibly from pepper spray or tear gas. An officer struck her in the torso with a baton multiple times. When Martin stood up, she was grabbed by another officer who put her wrists in zip ties, resulting in pain and bruising, and was ordered into an unmarked van, at which point she was asked for her identification, which she provided. Martin was transported first to the 48th Precinct in the Bronx and then to Brooklyn Central Booking two or three hours later, where she was placed in a cell which was so cold that it caused her teeth to chatter. After several hours waiting in the cell, Martin was given an appearance ticket that specified her charge as violating curfew, a class B misdemeanor. *See* Administrative Code of the City of New York § 3-108. She was released eight hours after her initial encounter with the police at the protest. Martin continues to suffer mental and physical stress from the experience.

Plaintiff Nicholas Moore was also at the early evening protest in Mott Haven, and alleges that officers trapped him and the other marchers along the protest route, causing him to fall to the ground. As he tried to stand up, an officer pushed him back down and put his hands in zip ties. He was then transported to the 48th Precinct in the Bronx where he was placed in a small cell with three other unmasked people, one of whom was coughing. Two hours later, he was transported to Brooklyn Central Booking and moved to several different cells until he was given an appearance ticket at 5:00 a.m. and released. Afterward, Moore experienced pain and tingling in his hands from the handcuffs, which persisted for several months.

Notably, none of the plaintiffs herein had open warrants or failed to appear for any previous court proceedings. They all provided their identification when asked. All plaintiffs were potentially exposed to COVID-19, given the lack of masks and social distancing throughout their transport and detainment, and being placed in overcrowded and unsanitary holding cells until they were ultimately issued appearance tickets and released. All suffered mental anguish and/or physical pain in the aftermath. All charges against the plaintiffs were either dismissed or never filed.

II. Defendants' Motion to Dismiss

A. Motion to Dismiss the NYPD as Defendant as Non-Suable Entity

Preliminarily, defendants correctly argue that all claims against the NYPD should be dismissed as it is a non-suable entity. The New York City Charter § 396 provides that "[a]ll actions and proceedings for the recovery of penalties for the violation of any law shall be brought in the name of the city of New York and not in that of any agency, except where otherwise provided by law." NY City Charter § 396. Plaintiffs do not oppose and consent to the dismissal of NYPD as a named defendant in this suit. Therefore, on consent, all claims against the NYPD are dismissed.

B. Motion to Dismiss Plaintiffs' First, Second, and Third Causes of Action Pursuant to CPLR 3211 (a)(7)

1. CPL § 150.20 – "Appearance ticket; when and by whom issuable"

In January 2020, New York enacted legislation amending CPL § 150.20 (1)(a) to require police officers to issue desk appearance tickets to pedestrians stopped for eligible low-level offenses rather than arrest them. As amended, CPL § 150.20 (1)(a) provides that:

> Whenever a police officer is authorized pursuant to section 140.10 of this title to arrest a person without a warrant for an offense other than a class A, B, C or D felony or a violation of section 130.25, 130.40, 205.10, 205.17, 205.19 or 215.56 of the penal law, he *shall*, except as set out in paragraph (b) of this subdivision, subject to the provisions of subdivisions three and four of section 150.40 of this title, *instead issue to and serve upon such person an appearance ticket*. (Emphasis added).

Notably, the 2020 amendment replaced the word "may" with "shall," indicating that the statute now serves as a mandate that police officers issue an appearance ticket instead of arresting a person who commits a low-level offense as defined in the statute. *See* CPL § 150.20 (1)(a). There are eleven exceptions to the appearance ticket mandate.[7]

The parties agree that CPL § 150.20 (1)(a) provides that the only action the police are authorized to take when charging a person with a low-level offense is issue to and serve upon that person an appearance ticket, unless one of the referenced exceptions apply. No exceptions apply in this case.. However, the parties disagree as to how that appearance ticket may be issued by the NYPD.

[7] The exceptions are as follows: (1) if the person has an outstanding local criminal or superior court warrant; (2) if the person has failed to appear in court proceedings in the last two years; (3) if the person has been unable or unwilling to provide their identity and a method of contact; (4) if the person is charged with a crime between members of the same family or household; (5) if the person is charged with a crime defined in article 130 of the penal law; (6) if it reasonably appears the person should be brought before the court for consideration of issuance of an order of protection; (7) if the person is charged with a crime for which the court may suspend or revoke his or her driver license; (8) if it reasonably appears to the officer that the person is in such distress that bringing the person before the court would be in such person's interest; (9) if the person is eighteen years of age or older and charged with criminal possession of a weapon on school grounds; (10) if the person is eighteen years of age or older and charged with a hate crime; and (11) if the offense is a qualifying offense pursuant to CPL § 510.10 (4)(t) or § 530.40 (4)(t). *See* CPL § 150.20 (1)(b).

a. Defendants' Position Regarding the Application of Amended CPL § 150.20 (1)(a)

Defendants maintain that the only conclusion to be drawn from the caselaw, legislative intent, and practical implementation of CPL § 150.20 (1)(a) is that police officers are not prohibited from issuing appearance tickets at precincts and/or booking centers, rather than at the scenes of the alleged offenses. Therefore, defendants posit that since the police officers were authorized to transport plaintiffs, there is no basis on which to issue a declaratory judgment, to find violations of the state constitution, or to substantiate a claim for false arrest. Defendants argue that, as plaintiffs were not "arrested," as contemplated by CPL § 150.20 (1)(a), when they were transported to police facilities to receive their appearance tickets, no violation of CPL § 150.20 (1)(a) occurred.

In support of their position, defendants cite to *Welch v City of New York* (2021 WL 5742458, at *1 [Sup Ct, NY County Dec. 2, 2021]), in which the City sought to dismiss the plaintiffs' complaint, including a cause of action for false arrest similarly based on CPL § 150.20 (1)(a). The Court granted the City's motion to dismiss that cause of action and held that while the given violation mandated the issuance of an appearance ticket in that case,

> [T]here is simply no indication that appearance ticket was required to be given at the scene of the occurrence, nor that there was a time limit to the arrest of the plaintiff. As such, there was no legal impediment to the police officers giving the appearance ticket to the defendants at another location. *Welch*, 2021 WL 5742458, at *1.

Defendants argue that, as in *Welch,* the police officers here were authorized to transport plaintiffs to give them their appearance tickets and doing so did not constitute an arrest in violation of CPL § 150.20 (1)(a).

Defendants further assert that the legislature's intent in amending CPL § 150.20 (1)(a) was to prevent "full custodial arrests," whereby individuals are detained through arraignment, not situations in which individuals are detained for some time before receiving their appearance tickets. Defendants additionally contend that, as a practical matter, appearance tickets could not have been issued at the scene

of the George Floyd protests, given their size and mobility, as well as sporadic violence and looting, which made it impractical for police officers to attempt to issue appearance tickets at the scene.

b. Plaintiffs' Position Regarding the Application of Amended CPL § 150.20 (1)(a)

In their opposition to defendants' motion to dismiss, plaintiffs argue that contrary to defendants' arguments, the amended complaint sufficiently pleads all three causes of action that defendants seek to dismiss. At the outset, plaintiffs argue that *Welch* (2021 WL 5742458) is not binding on this Court and that persuasive caselaw exists that controverts the holding in *Welch*.

Plaintiffs cite *Matter of Alfred B.* (77 Misc 3d 602 [NY Fam Ct, NY County 2022]), in which police officers stopped the respondent for jaywalking and requested his identification. Respondent provided the requested information but before the officers attempted to verify his information, they placed him in handcuffs, searched him, and recovered a firearm. *See id.* The Court granted respondent's motion to suppress the firearm because its recovery was a product of the officer's violation of CPL § 150.20 (1)(a). *See id.* It held that, "when presented with an accused who, although lacking a photo ID, is cooperative and provides information regarding his identity, the officer *may not immediately take that person into custody*." *Id.* at 609 (emphasis added). The Court also found the stop pretextual. *See id.*

Applying the court's reasoning in *Matter of Alfred B.*, plaintiffs argue that the statute does not allow the police officers to take plaintiffs, who were all eligible to receive appearance tickets, into custody; handcuff them; transfer them to one or more precincts; place them in holding cells; and detain them for many hours before verifying their identities and issuing them appearance tickets. Plaintiffs assert that such conduct constitutes an impermissible "arrest" for a low-level offense that is specifically prohibited by the statute.

Plaintiffs further argue that this Court need not look behind CPL § 150.20 (1)(a) to the legislative intent, as defendants incorrectly suggest, because the plain language of the statute is clear and

unambiguous. *See People v Pabon*, 28 NY3d 147, 152 (2016); *see also Makinen v City of New York*, 30 NY3d 81 (2017). They assert that CPL § 150.20 (1)(a) specifically mandates that police officers issue an appearance ticket in lieu of making an arrest for eligible low-level offenses. However, should the Court consider the legislative intent, plaintiffs point out that CPL § 150.20 (1)(a) was amended as part of the 2020 bail reforms (*see* 2019 NY Senate-Assembly Bill S1509C, A2009C),[8] the central purpose of which was to reduce the impact that unnecessary detention has on New Yorkers' lives.

Plaintiffs further maintain that defendants' argument that it is impossible for an officer to ascertain an individual's eligibility for an appearance ticket at the scene of the offense is legally irrelevant, citing to *Bank of NY Mellon v Luria* (75 Misc3d 1205[A] [Sup Ct, Putnam County 2022]["It is the Legislature's intent as expressed in the language of the statute that must prevail regardless of the court's notions of policy, practicality and prudence."]). Plaintiffs note that, in any event, technology allows police officers to promptly determine eligibility for an appearance ticket at the scene of the offense, which they employ daily.

2. CPLR 3211 (a) (7)

In evaluating a CPLR 3211 (a) (7) motion to dismiss, the Court's role is ordinarily limited to determining whether the complaint states a cause of action. *See Frank v DaimlerChrysler Corp.*, 292 AD2d 118 (1st Dept 2002). Upon such a motion the Court must accept the facts alleged as true and determine simply whether plaintiff's facts fit within any cognizable legal theory. *See* CPLR 3026; *Morone v Morone*, 50 NY2d 481 (1980). The complaint shall be liberally construed, and the allegations are given the benefit of every possible favorable inference. *See Leon v Martinez*, 84 NY2d 83, 87 (1994). "At this

[8] On January 1, 2020, a set of bail reforms went into effect in New York. The reforms remove monetary bail and pre-trial detention for most misdemeanors and non-violent felonies. *See* Center for Court Innovation, *Bail Reform in New York: Legislative Provisions and Implications for New York City,* April 2019, https://www.innovatingjustice.org/sites/default/files/media/document/2019/Bail_Reform_NY_full_0.pdf; *see also* Bill Jacket Supplement, NYSCEF doc. no. 67.

stage, evaluation on the merits is improper." *L. Magarian & Co. v. Timberland Co.*, 245 A.D.2d 69, 69 (1st Dep't 1997).

a. First Cause of Action: Declaratory Judgment/Statutory Construction

Plaintiffs' first cause of action seeks a declaratory judgment that CPL § 150.20 (1)(a) prohibits arrests for eligible low-level offenses. To sufficiently plead a cause of action for declaratory judgment, plaintiffs must demonstrate a "justiciable controversy" (CPLR 3001[9]), and the complaint must specify the "rights and other legal relations on which a declaration is requested and state whether further or consequential relief is or could be claimed and the nature and extent of any such relief which is claimed." CPLR 3017 (b).

The amended complaint plainly specifies the "rights and other legal relations on which a declaration is requested" (CPLR 3017 [b]), in that it requests a declaration that CPL § 150.20 (1)(a) prohibits arrests for eligible low-level offenses. Plaintiffs sufficiently plead that NYPD unlawfully arrested, restrained, transported, and detained them for many hours before issuing them the appearance tickets and releasing them, contrary to the plain language of CPL § 150.20 (1)(a). Further, plaintiffs maintain that none of the exceptions enumerated in the statute, which relieve the NYPD from this mandate, apply.

While CPL § 150.20 (1)(a) may not indicate on its face that an appearance ticket is required to be given at the scene of an occurrence (*Welch,* 2021 WL 5742458, at *1), plaintiffs assert that the statute does not authorize taking someone who qualifies for an appearance ticket into custody without attempting to verify their identifying information, restraining them with handcuffs or zip ties, transporting them to different precincts and booking centers, and detaining them in jail cells before giving them their appearance ticket.

[9] CPLR 3001 provides that "[t]he supreme court may render a declaratory judgment having the effect of a final judgment as to the rights and other legal relations of the parties to a justiciable controversy whether or not further relief is or could be claimed."

Given the parties' contradictory positions, it is abundantly clear that a "justiciable controversy" exists. CPLR 3001.[10] The parties disagree as to the interpretation of the word "arrest" under the CPL, whether the plain language of the statute or the statute as a whole is clear, and what the legislature intended with the recent amendment of CPL § 150.20 (1)(a). The Court need not make a ruling on these issues in a motion to dismiss, nor does it need to consider the practical implications of the ultimate relief sought here.

Rather, the Court is simply tasked with determining whether plaintiffs have stated a sufficient basis to support their cause of action for a declaratory judgment. Plaintiffs plead that they were arrested and transported in contravention of CPL § 150.20 (1)(a) and that they were taken into custody without any attempt to verify their identification, which the court in *Matter of Alfred B.* found to be a violation of CPL § 150.20 (1)(a). Yet, defendants insist that this custodial detention is not an "arrest." Given this controversy, clarification is needed to properly define the statute's terms, which plaintiffs seek to do with a declaratory judgment. Whether the facts and law ultimately support the declaratory judgment sought is an issue to be determined by the trial court.

Therefore, at this early stage in these proceedings, accepting all of the facts alleged in the amended complaint as true, such as the manner in which all of the plaintiffs herein were issued appearance tickets, the NYPD interprets and effectuates CPL § 150.20 (1)(a) in a way that has been called into question by plaintiffs. Plaintiffs properly plead a cause of action for a declaratory judgment, and defendants' motion to dismiss that cause of action is denied.

b. Second Cause of Action: Violations of Constitutional Rights

Plaintiffs' second cause of action alleges violations of plaintiffs' constitutional rights, asserting that the New York State Constitution, Article I, § 12 protects against "unreasonable searches, seizures, and interceptions." Plaintiffs claim that defendants seized, questioned, searched, arrested, transported, and

[10] *See* n 7, *supra.*

detained them without the requisite probable cause in violation of the state constitution and the CPL. They allege the violations are a result of the defendants' failure to adequately and properly screen, train, supervise, monitor, and discipline NYPD officers, as well as defendants' overt and tacit encouragement and sanctioning of, and failure to rectify, the NYPD's unlawful arrest practices.

As discussed above, the defendants argue that, as CPL § 150.20 (1)(a) does not explicitly define the way eligible individuals are to be issued appearance tickets, plaintiffs' constitutional rights were not violated. Defendants also argue that plaintiffs do not state a cognizable claim for constitutional violations because the United States Supreme Court has held that the Fourth Amendment of the Federal Constitution does not prohibit warrantless arrests for minor criminal offenses where the arrests are supported by probable cause. *See Virginia v Moore,* 553 US 164 (2008) (finding that police officers did not violate the Fourth Amendment by arresting an individual driving with a suspended license, even though state law authorized officers only to issue a citation).

In opposition, plaintiffs maintain that their amended complaint adequately alleges that their unlawful arrests and prolonged detentions violated their rights under Article I, § 12 of the New York State Constitution. Plaintiffs also counter that defendants' reliance on the Fourth Amendment is misplaced because plaintiffs' claim is based on the New York State Constitution, which affords broader constitutional protections than the Federal Constitution. *See People v Robinson,* 271 AD2d 17, 22-23 (1st Dept 2000); *People v Torres*, 74 NY2d 224, 228 (1989). Plaintiffs assert that the Court of Appeals has repeatedly established that state law will often be interpreted more generously than federal law. *See People v Weaver,* 12 NY3d 433, 445 (2009) ("[W]e have on many occasions interpreted our own Constitution to provide greater protections when circumstances warrant and have developed an independent body of state law in the area of search and seizure").

Plaintiffs maintain that, based on state constitutional law, their amended complaint adequately pleads that their unlawful arrests constituted unreasonable seizures because CPL § 150.20 (1)(a) required police officers to issue appearance tickets in lieu of arresting them, taking them into custody, and/or transporting them to another location. Additionally, even if the Court ultimately finds that such statute does not prohibit officers from detaining individuals for hours and, among other things, transporting them elsewhere to issue appearance tickets, plaintiffs argue that their prolonged detentions were constitutionally prohibited. Comparing pedestrian stops to traffic stops, plaintiffs contend that New York courts have consistently held that the latter should be brief and that there is "no justification to detain [an individual] longer" than necessary to conduct the appropriate administrative tasks. *People v Milaski*, 62 NY2d 147, 156 (1984). Plaintiffs allege that they were held for longer than necessary in poor conditions to determine their eligibility for the appearance tickets, noting that a "detention should not be permitted to outlive its justification." *People ex rel. Maxian on Behalf of Roundtree v Brown*, 164 AD2d 56, 63 (1st Dept 1990).

Here, some plaintiffs claim that they were detained and transported to other locations before being asked for their identifying information and that the officers took anywhere from half an hour to two hours to collect such information. Even then, they were not released for hours. Further, some plaintiffs maintain that not only did their detentions last for many hours but that they were also beaten and injured. Given these circumstances, plaintiffs argue that their detentions were constitutionally prohibited, regardless of the statutory construction of CPL § 150.20 (1)(a).

Accepting these facts as true, plaintiffs sufficiently state a cause of action for the alleged constitutional violations. Plaintiffs were initially charged with low-level offenses but claim that they were not properly issued appearance tickets as required by the statute. Instead, the police officers took them into custody, restrained them, and detained them for many hours before issuing and serving their appearance tickets. Plaintiffs claim that they were held much longer than necessary for the police to verify their

identification and determine their eligibility for appearance tickets. Plaintiffs' allegations of their treatment by the officers at the scene of their alleged offenses, the extensive transportation and processing leading up to the issuance of their appearance tickets, as well as the duration and conditions of their detentions, adequately assert a cause of action for violations of the constitutional provision against unreasonable seizures, especially given the liberal protections of the New York State Constitution. *See People v Torres,* 74 NY2d 224, 228 (1989). Accordingly, defendants' motion to dismiss plaintiff's cause of action for constitutional violations is denied.

c. Third Cause of Action: False Arrest

Plaintiffs' third cause of action alleges false arrest. To succeed on a claim for false arrest, a plaintiff must show that: (1) the defendant intended to confine the plaintiff; (2) the plaintiff was conscious of the confinement; (3) the plaintiff did not consent to the confinement; and (4) the confinement was not otherwise privileged. *See Broughton v State of New York*, 37 NY2d 451, 456 (1975); *Rivera v City of New York*, 40 AD3d 334, 341 (1st Dept 2007). The burden of proving that the confinement was otherwise privileged lies with the City. *See Smith v County of Nassau*, 34 NY2d 18, 22-23 (1974).

In their amended complaint, plaintiffs allege that the individual defendants unlawfully, unjustifiably, and intentionally arrested, detained, and imprisoned plaintiffs against their will, depriving them of their liberty. Plaintiffs maintain that their unlawful arrests and imprisonments were forcible and without probable cause. Specifically, plaintiffs plead that no probable cause existed to indicate that they committed an offense for which CPL § 150.20 (1)(a) would permit an arrest. Plaintiffs assert that their confinements were of no fault of their own without their consent, that they were aware of their confinement at all relevant times, and that none of the statutory exceptions under CPL § 150.20 (1)(b) apply.

Defendants argue that, as plaintiffs were not "arrested" pursuant to CPL § 150.20 (a) (1), they cannot state a claim for false arrest. However, the critical issue with a claim to false arrest is confinement.

See Broughton, 37 NY2d at 456. The amended complaint here plainly alleges that defendants intended to confine plaintiffs, that they were conscious of the confinement, and that they did not consent to it. Defendants have not shown that plaintiffs' confinements were otherwise privileged. Defendants fail to address the fact that the plaintiffs were held in vans and cells, restrained for hours, and were clearly in custody and not free to leave for several hours, which is what occurs in what defendants describe as a full custodial arrest. Such conduct is exactly what CPL § 150.20 (1)(a) was amended to prohibit. Therefore, plaintiffs sufficiently plead a cause of action for false arrest, and defendants' motion to dismiss that cause of action is denied.

C. Defendants' Motion to Dismiss Based on Absolute Immunity

Finally, defendants argue that plaintiffs' first, second, and third causes of action should be dismissed because defendants are entitled to absolute immunity for their determination that CPL § 150.20 (1)(a) authorizes the NYPD to issue appearance tickets at locations other than the scene of the offenses. Defendants assert that as CPL § 150.20 (1)(a) is silent with respect to the location where a police officer may issue an appearance ticket to an eligible recipient, the police officers involved were required to engage in discretionary statutory construction to evaluate where appearance ticket may be issued. Alternatively, defendants assert that they are entitled to qualified immunity because the officers' conduct in transporting and detaining the plaintiffs was appropriate under the circumstances of the protests, and police officers of reasonable competence could disagree as to whether they "arrested" plaintiffs here.

Plaintiffs oppose defendants' argument that they are entitled to absolute immunity, asserting that the individual officer defendants are not entitled to immunity as they were acting outside the scope of their lawful duties and were not empowered to make discretionary decisions regarding arrests pursuant to CPL § 150.20 (1)(a), given the mandatory language of the statute. Plaintiffs also assert that defendants inappropriately invoke qualified immunity at the pleading stage, because whether the officers acted in bad

faith or without a reasonable basis during a City-wide social justice protest is a question of fact not to be considered on a motion to dismiss. *See Drake v City of Rochester*, 408 NYS2d 847, 858 (Sup Ct, Monroe County 1978); *see also Arteaga v State*, 72 NY2d 212, 216 (1988).

Plaintiffs correctly maintain that defendants' arguments regarding absolute or qualified immunity are premature. The Court has not determined whether the officers acted in contravention of CPL § 150.20 (1)(a) in how they issued appearance tickets to plaintiffs, and it is not appropriate to determine issues of facts regarding whether the police officers acted in bad faith or without reasonable basis at this pre-discovery stage of the proceedings.

III. Conclusion

In sum, plaintiffs sufficiently plead causes of action for the requested declaratory judgment, a finding of unreasonable seizure under the New York State Constitution, and false arrest. Therefore, defendants' motion to dismiss plaintiffs' first, second, and third causes of action is denied. Further, all claims against the NYPD are dismissed, on consent. The Court has considered the parties' remaining arguments and finds them to be unavailing.

Accordingly, it is hereby

ORDERED that the defendants' partial motion to dismiss the first, second, and third causes of action in plaintiffs' amended complaint is denied; and it is further

ORDERED that defendant the New York City Police Department is dismissed as a named party to this case; and it is further

ORDERED that plaintiffs' counsel shall serve a copy of this order with notice of entry upon the County Clerk (60 Centre Street, Room 141B) and the Clerk of the General Clerk's Office (60 Centre Street, Room 119), who are directed to mark the Court's records to reflect defendant New York City Police Department as being dismissed from this case pursuant hereto; and it is further

ORDERED that such service upon the County Clerk and the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address (www.nycourts.gov/supctmanh).

This constitutes the decision and order of the Court.

4/6/2023
DATE

LESLIE A. STROTH, J.S.C.

CHECK ONE:	[ ]	CASE DISPOSED		[X]	NON-FINAL DISPOSITION		
	[ ]	GRANTED	[X] DENIED	[ ]	GRANTED IN PART	[ ]	OTHER
APPLICATION:	[ ]	SETTLE ORDER		[ ]	SUBMIT ORDER		
CHECK IF APPROPRIATE:	[ ]	INCLUDES TRANSFER/REASSIGN		[ ]	FIDUCIARY APPOINTMENT	[ ]	REFERENCE