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**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

TYNISA WILLIAMS, individually)
and on behalf of a class of) Nos. 16-4237/17-3508
others similarly situated,)
 Plaintiff-Appellee,)
 v.)
CITY OF CLEVELAND,)
 Defendant-Appellant.)

Appeal from the United States District Court
for the Northern District of Ohio at Cleveland.
No. 1:09-cv-02991—Benita Y. Pearson, District Judge.

Argued: June 7, 2018

Decided and Filed: November 2, 2018

Before: SILER, COOK, and WHITE, Circuit Judges.

COUNSEL

ARGUED: Stephen W. Funk, ROETZEL & ANDRESS, LPA., Akron, Ohio, for Appellant. Elmer Robert Keach, III, LAW OFFICES OF ELMER ROBERT KEACH, III, PC., Albany, New York, for Appellee. **ON BRIEF:** Stephen W. Funk, ROETZEL & ANDRESS, LPA., Akron, Ohio, Thomas J. Kaiser, CITY OF CLEVELAND, Cleveland, Ohio, for Appellant. Elmer Robert Keach, III, LAW OFFICES OF ELMER

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ROBERT KEACH, III, PC., Albany, New York, D. Aaron Rihn, ROBERT PEIRCE & ASSOCIATES, PC., Pittsburgh, Pennsylvania, Nicholas Migliaccio, MIGLIACCIO & RATHOD, LLP., Washington, D.C., Daniel Karon, KARON LLP., Cleveland, Ohio, for Appellee.

SILER, J., delivered the opinion of the court in which COOK, J., joined, and WHITE, J., joined in part. WHITE, J. (pp. 17–21), delivered a separate opinion concurring in part and dissenting in part.

OPINION

SILER, Circuit Judge. In 2009, Tynisa Williams brought suit against the City of Cleveland (“the City”), on behalf of herself and others similarly situated,¹ pursuant to 42 U.S.C. § 1983. She alleged that the City’s intake procedures conducted at its House of Corrections (“HOC”)—consisting of strip searches and mandatory delousing—violated the Fourth Amendment to the U.S. Constitution.

Williams’s case first came before this court in 2014, on appeal from the district court order granting the City’s motion for judgment on the pleadings. *Williams v. City of Cleveland (Williams I)*, 771 F.3d 945 (6th Cir. 2014). We found that Williams’s second amended complaint set forth a plausible claim for relief. On remand, and after extensive discovery, the

¹ The district court never certified a class, however.

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district court granted Williams's motion for summary judgment in part and denied the City's motion in part.² It thereafter issued a permanent injunction in Williams's favor, which enjoined the City from reinstituting its previous delousing method and from conducting group strip searches without installation of privacy partitions to obstruct the view of other inmates. *Williams v. City of Cleveland (Williams II)*, 210 F. Supp. 3d 897, 908-09 (N.D. Ohio 2016).

The City now appeals the district court's summary judgment and permanent injunction orders.³ For the reasons stated herein, we **reverse** the district court's orders and **remand** with instructions to grant summary judgment in favor of the City on all counts and to vacate the permanent injunction.

FACTUAL AND PROCEDURAL HISTORY

On October 30, 2009, Williams was pulled over and cited for driving with a suspended license. She was brought into the Justice Center, Cleveland's downtown city jail. After spending the night in the downtown jail, Williams was driven to the HOC in a van with several

² The district court granted the City summary judgment on Williams's second cause of action, relating to involuntary medical treatment, which is not before us on appeal. The district court granted Williams's motion for summary judgment on her other claims. 210 F. Supp. 3d at 909.

³ The City separately appealed the district court's summary judgment opinion and order and its order granting a permanent injunction. The appeals have been consolidated under App. R. 3(b).

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other inmates. She was placed in a holding cell for three to four hours with approximately ten other female detainees. A female correctional officer took her to a back room with two other female detainees and gave them uniforms. The officer then provided the detainees with lock bins in which to store their street clothes and ordered the detainees to remove their clothing, including their bras and underwear. The detainees were then ordered to get into the shower, which had three separate stalls, and they were given about one minute to shower. The women were ordered to exit the shower, which left them standing approximately one foot from each other in the nude.

The correctional officer then proceeded to spray the detainees with a delousing solution, one at a time. Williams stated during her deposition that they were sprayed “over the whole body,” from head to toe, with a “body mist.” The solution “smelled like bug spray” and was sprayed on the detainees through a nozzle attached to a jug. Williams asserted that the officer was only standing six inches away from the inmates when they were sprayed. After delousing their front sides, the officer asked them to turn around, with their arms out and legs spread. Williams testified that she was ordered to “squat” during the delousing, but she was unaware of whether everyone who underwent the intake process was asked to squat while being deloused. Williams claimed that the spray “penetrated [her] anus.” Williams admitted, however, that the spray was a “light mist,” which did not “hit [her] with any kind of

force.” She only felt the mist because “it was a liquid and cold.”

The officers then directed the detainees to put on their uniforms, without being given the opportunity to shower again. Williams waited for ten to fifteen minutes in the holding cell before being escorted to the pod: a large room with several bunks. She was then immediately released on bail, at approximately 6:00 p.m.

Later in 2009, Williams brought this class action against the City, arguing that she and similarly situated pretrial detainees were deprived of their Fourth Amendment rights when they were subjected to mandatory strip searches and delousing upon entry at the HOC without individualized suspicion of lice or concealed contraband. She sought monetary damages, a declaration that the City’s policies were unconstitutional, and an injunction precluding the City from continuing its allegedly unconstitutional practices.⁴

I. Stay Resulting From *Florence*

In 2011, the Supreme Court granted a writ of certiorari to resolve the question of whether pretrial detainees could be strip searched upon entry into jail

⁴ Williams was again incarcerated at the HOC on September 21, 2011, on unrelated charges. She stated during her deposition that the intake procedure “was basically the same without the delousing.” Williams was held at the HOC again on March 8, 2012, for a period of 62 days, and she experienced the same intake procedure on that occasion as she did in 2011. Finally, Williams was incarcerated at the HOC for one day in 2014 and again underwent the same intake procedure as 2011 and 2012.

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without individualized suspicion. *Florence v. Bd. of Chosen Freeholders of Cty. of Burlington*, 563 U.S. 917 (2011). The district court granted the City’s motion to stay Williams’s class action until the Supreme Court decided *Florence*. The Court handed down its decision in 2012 and held that “undoubted 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.” *Id.* at 330. The Supreme Court clarified, “[t]here also may be legitimate concerns about the invasiveness of searches that involve the touching of detainees[,]” but it did not reach that issue in *Florence* because no such facts were alleged in that case. *Id.* at 339. Moreover, as noted by the Fourth Circuit in *Cantley v. West Virginia Regional Jail & Correctional Facility Authority*, “[t]he Supreme Court did not expressly reach the delousing issue in [*Florence*], simply commenting that ‘[t]he danger of introducing lice or contagious infections’ into a detention facility ‘is well documented.’” 771 F.3d 201, 206 n.3 (4th Cir. 2014).

The district court lifted the stay in Williams’s case in August 2012 and granted Williams’s motion to amend her complaint to add a class representative.⁵ The City moved for judgment on the pleadings, and Williams responded in opposition with a proposed second amended complaint. Williams alleged in her proposed complaint that the City employed a policy of

⁵ In December 2015, the district court granted the City’s unopposed motion to dismiss the intervening plaintiff, Sean Bealer.

directing correctional officers to “use pressurized metal spray cans to spray caustic delousing solution over the naked bodies and genitals of detainees.” She took issue not only with “the use of delousing on all detainees, but also about the manner in which the delousing occurs.” Williams alleged that the City directed correctional officers to “[f]orcibly spray[] the genitals of detainees, versus allowing detainees to apply the delousing solution themselves.” Williams specifically claimed that the “delousing solution was sprayed all over her body, including into her anus when she bent over.” The district court granted the City’s motion for judgment on the pleadings and denied Williams’s motion for leave to amend her complaint based on futility of the proposed amendment.

II. *Williams I* Ruling

Williams appealed to this court, which affirmed in part and reversed in part. *Williams I*, 771 F.3d at 956. In *Williams I*, we considered a single issue: whether Williams’s proposed complaint plausibly alleged a violation of the Fourth Amendment by claiming that the City’s jail, “instead of using less invasive procedures, compelled pretrial detainees who were being processed into the facility to undress in the presence of other detainees and to have their naked genitals sprayed with delousing solution from a pressurized metal canister.” *Id.* at 947. We found that Williams’s proposed amended complaint had stated a claim for relief because it alleged facts indicating that the City conducted searches in an unreasonable manner. *See id.* at 952 (stating

that, “although *Florence* permits the jail to conduct a suspicionless search of plaintiffs upon their entrance to the jail, the search must be conducted in a manner that is reasonably related to the jail’s legitimate objectives in discovering contraband and preventing the introduction of lice to the facility” (citations omitted)). Thus, we previously concluded that, unless the City demonstrated a “good reason” for delousing inmates rather than allowing them to self-apply, such a decision would be a “needless intrusion into the detainees’ constitutional rights.” *Id.* at 955. Such a determination was left for trial or summary judgment, and we remanded Williams’s matter to the district court for further proceedings. *Id.*

III. Summary Judgment Evidence

Back in the district court, both Williams and the City moved for summary judgment. Counsel filed the deposition transcripts of Mary Bounds, David Carroll, Lieutenant Stella Clark, Reginald Flowers, Jacqueline Lewis, Lieutenant Joseph Stottner, and Lieutenant Rufus Williams. The testimony of these officials partially confirmed Williams’s experience in October 2009 and partially contradicted Williams’s account of the HOC intake procedure at that time.

According to these correctional officers, in the fall of 2009 the HOC had a policy of strip searching and delousing inmates upon arrival. Because large groups of detainees were often transported to the HOC at once, officers would sometimes conduct this procedure

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with two or three inmates at a time, in order to expedite the intake process. An officer of the same sex would bring the inmates into a shower room and instruct them to undress and put their clothing inside a lock box. The officer would then conduct a quick “visual observation” of the detainees “to ensure that contraband or anything illegal [wa]s not transformed over or transported over into a pod.” According to Acting Commissioner Bounds, the visual observation was performed “for the safety of that inmate, other inmates, and even the correction officers.” Moreover, officers checked for medical problems and health concerns.

The officer would then order the detainees to stand in a vestibule, and would spray a delousing solution on the inmates, one at a time. The delousing solution was administered via a pressurized canister, through a nozzle on the end of a hose attached to the can. The liquid was sprayed lightly, like a fine mist, from a distance of approximately three or four feet. The officer would ask the detainee to spread her legs shoulder width apart and raise her arms. After spraying the front of the detainee’s body, the officer would ask her to turn, while keeping her legs spread and arms in the air, and spray the back of the detainee’s body. Inmates were not asked to bend at the waist or to squat as part of this process. After the officer sprayed detainees with the delousing solution, they were typically permitted to shower and dry off.

The HOC’s delousing policy “was instituted for health and safety reasons” in order “to prevent lice, crabs, bugs, insects from coming in there and

spreading.” “It was brief, painless and necessary to prevent an infestation in the dormitories at the workhouse.” According to these correctional officers, inmates never objected to being deloused or to undressing in front of other inmates of the same sex.

The correctional officers stated that they did not allow detainees to self-apply the solution because they could not trust the detainees to follow the procedure properly. Inmates did not always follow instructions, and unlike an inmate’s decision not to eat or shower, an inmate’s decision not to apply the solution could “compromise the whole institution.” The correctional officers contended that, if given the opportunity to self-apply, an inmate could pour the solution down the drain, only apply the solution to part of her body, or throw the solution on the officer or other detainees.

Commissioner Lewis discontinued the HOC delousing procedure in April 2010. After suspending the delousing procedure, correctional officers at the HOC began sending infected detainees to the medical unit. Lewis questioned this decision later, after a jail manager informed her that they had experienced a few lice outbreaks. “I felt like we would have more outbreaks more often if we discontinued it,” stated Lewis, “and that has come true.” According to some of the correctional officers, this procedure had worked well thus far, as no serious cases of lice infestations had occurred. Others believed, however, that they had just “been fortunate so far.”

IV. District Court Orders

The district court granted Williams’s motion in part, awarding summary judgment to Williams on her Fourth Amendment claim challenging the manner in which the City conducted delousing and strip-search procedures. The district court acknowledged that, post-*Florence*, “there is no longer any question that individualized suspicion is unnecessary to conduct blanket strip searches and to delouse prisoners at intake.” It correctly noted, in light of our ruling in *Williams I*, that “[t]he method of the strip search and the delousing are, however, still subject to constitutional evaluation.”

The district court considered facts such as Williams’s allegation “that the delousing solution penetrated her anus” and found that the City’s delousing policy was unconstitutional. Although the City argued that its delousing procedure was justified because “corrections officers could not ‘trust’ inmates to perform the procedure properly,” the district court found that this method was not “reasonably related to the legitimate end of preventing the dissemination of lice.” In short, the district court concluded, “The application of the delousing solution in this manner is not a rational response to the jail’s legitimate interest in preserving health and well-being within the facility, given other less humiliating and invasive alternative methods to eradicate lice, such as permitting detainees to self-apply the delousing solution.”

With regard to Williams’s strip-search claim, the district court found that the City’s policy of strip

searching multiple detainees at a time “did not strike a reasonable balance between [Williams’s] privacy interests and the need to provide safety and security at the jail.” The court rejected the City’s provided justification “that the jail was ‘busy,’ and corrections officers need to strip search multiple detainees for expediency.”

The district court also issued a permanent injunction forbidding the City from conducting: (1) “the physical delousing of detainees . . . by utilizing a pressurized spray canister” except “in instances of purposeful avoidance or misapplication of a delousing solution by a detainee”; and (2) “the showering of detainees in the jail booking area absent detainees being allowed to enter and use those showers in the absence of any other detainees.” If the City chose to conduct strip searches during the intake process in groups of two or more, the district court ordered that the City “must install a privacy partition/curtain between the detainees being searched to completely preclude each detainee from seeing the other in a state of partial and/or complete undress.” If the City did not install such partitions, the strip searches had to be “conducted individually and privately.”

The City now appeals the district court’s decisions partially granting summary judgment in favor of Williams, partially denying summary judgment to the City, and issuing a permanent injunction against the City.

STANDARD OF REVIEW

We review a district court's grant of summary judgment *de novo*, utilizing the Federal Rule of Civil Procedure 56(c) standard. *V&M Star Steel v. Centimark Corp.*, 678 F.3d 459, 465 (6th Cir. 2012). Summary judgment is appropriate only when the evidence, taken in the light most favorable to the nonmoving party, establishes that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c); *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

DISCUSSION

I. Standing

Before proceeding to the merits of Williams's Fourth Amendment claim, we must first determine whether Williams had standing at the time of her complaint to request declaratory and injunctive relief. Even if the City did not raise this argument below, as argued by Williams, "constitutional standing is always a 'threshold inquir[y] which this court is obligated to consider prior to asserting jurisdiction over [an] appeal.'" *Newsome v. Batavia Local Sch. Dist.*, 842 F.2d 920, 922 (6th Cir. 1988) (quoting *Allstate Ins. Co. v. Wayne Cty.*, 760 F.2d 689, 691 (6th Cir. 1985)); *see also Adarand Constructors, Inc. v. Mineta*, 534 U.S. 103, 110 (2001) ("We are obliged to examine standing *sua sponte* where standing has erroneously been assumed below." (citation omitted)).

Standing ensures that the plaintiff has a “personal stake in the outcome of the controversy” at the outset of litigation. *Baker v. Carr*, 369 U.S. 186, 204 (1962). In order to satisfy Article III standing, Williams must show, among other things, that she “suffered an injury in fact.” *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992) (internal quotation marks and citations omitted). “[S]he must do so for each form of relief,” *Sumpter v. Wayne Cty.*, 868 F.3d 473, 491 (6th Cir. 2017) (internal citation omitted), because “standing is not dispensed in gross,” *Lewis v. Casey*, 518 U.S. 343, 358 n.6 (1996).

When seeking injunctive or declaratory relief, “a plaintiff must show that [s]he is under threat of suffering ‘injury in fact’ that is concrete and particularized,” and the “threat must be actual and imminent, not conjectural or hypothetical[.]” *Summers v. Earth Island Inst.*, 555 U.S. 488, 493 (2009) (citation omitted). “Past exposure to illegal conduct . . . unaccompanied by any continuing, present adverse effects, will not suffice to establish a present case or controversy.” *Sumpter*, 868 F.3d at 491 (internal citations, quotation marks, and brackets omitted).

In *Sumpter*, this court found that the plaintiff lacked standing to seek declaratory and injunctive relief because she “did not present an actual case or controversy at the time she filed her complaint.” *Id.* at 490. The plaintiff in *Sumpter* claimed that she was subjected to group strip searches while incarcerated at the county jail. But she left the jail before filing an action seeking injunctive relief, and the court could “only

speculate as to whether she will ever return.” *Id.* at 491. The court found that it had to assume the plaintiff would follow the law in the future and thus avoid exposure to future potential searches. *Id.* Moreover, the county had changed its policy to prohibit group strip searches. *Id.* Thus, the court found that the plaintiff failed to establish standing to seek injunctive and declaratory relief. Even if her complaint met exceptions to the mootness doctrine, such exceptions could not “cure lack of standing.” *Id.*

Here, Williams did not have standing to seek declaratory or injunctive relief for the same reasons that the plaintiff in *Sumpter* lacked standing. She was not in the custody of the City at the time she filed the instant action, and we must assume that she will not return to the HOC in the future. The fact that Williams returned to the HOC three times after filing the instant complaint—the most recent example being approximately four years ago—does not confer standing because the relevant inquiry is whether she had a live, actionable claim for relief at the time she filed suit. *See id.* (concluding that the plaintiff lacked standing because her “claims for injunctive and declaratory relief did not present an actual case or controversy at the time she filed her complaint”). Moreover, the City had discontinued its delousing policy by the time Williams returned to the HOC in 2011.⁶ Thus, the threat of

⁶ Williams testified that she was still strip searched in front of other detainees during her three subsequent trips to the HOC. Consequently, this factor only weighs against Williams with regard to her standing to seek declaratory and injunctive relief from

future injury against Williams is more “conjectural” and “hypothetical” than “real and immediate.” *O’Shea v. Littleton*, 414 U.S. 488, 494 (1974) (internal citations omitted).

The class action nature of Williams’s complaint also does not cure her standing dilemma. This factor could potentially solve mootness issues, but it does not affect whether Williams, as the named plaintiff, had “a live, actionable claim for injunctive relief at the time [she] filed suit.” *Sumpter*, 868 F.3d at 491; see *O’Shea*, 414 U.S. at 494 (“[I]f none of the named plaintiffs purporting to represent a class establishes the requisite of a case or controversy with the defendants, none may seek relief on behalf of himself or any other member of the class.” (citations and footnote omitted)).

The district court, therefore, erred by granting Williams’s motion for summary judgment on her third and fourth causes of action—demanding declaratory and injunctive relief—because Williams lacked standing to bring these claims. See *Grendell v. Ohio Supreme Court*, 252 F.3d 828, 832 (6th Cir. 2001) (“[P]ast injury [with] no continuing, present adverse effects . . . cannot establish standing for declaratory and injunctive relief.”). We accordingly reverse those portions of the district court’s orders.

the City’s delousing policy. The threat of future group strip searches is still insufficiently “real and immediate,” however, seeing as Williams has not been incarcerated at the HOC since 2014, and we must assume that she will act as a law-abiding citizen in the future. See *Sumpter*, 868 F.3d at 491.

II. Merits of Fourth Amendment Claim

We must now consider whether the district court erred in granting Williams summary judgment on the substance of her Fourth Amendment claim against the City. It is well-established that local governing bodies may be sued directly under 42 U.S.C. § 1983 for monetary damages. *See Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 690 (1978). However, “a local government may not be sued under § 1983 for an injury inflicted solely by its employees or agents.” *Id.* at 694. It may only be sued “when execution of a government’s policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury.” *Id.*

Here, Williams brought suit against the City of Cleveland, alleging that the City implemented strip-search and delousing policies that violated her Fourth Amendment rights, as well as the rights of other pre-trial detainees who were similarly situated.⁷ Thus, we must determine, based on the undisputed facts,

⁷ The City denies having implemented a “strip search” policy. Rather, according to the City, its officers merely visually inspected detainees while they were changing clothes during intake. The Supreme Court has stated, however, that the term “strip search” may refer to various procedures. Specifically, it “may refer simply to the instruction to remove clothing while an officer observes from a distance of, say, five feet or more; it may mean a visual inspection from a closer, more uncomfortable distance.” *Florence*, 566 U.S. at 325. We will, therefore, refer to the City’s policy of asking detainees to fully undress in the presence of corrections officers as a “strip search.”

whether the City executed a policy or custom that led to a violation of Williams’s rights.

The Fourth Amendment does not prohibit all invasive searches and seizures—only those that are “unreasonable.” *Bell v. Wolfish*, 441 U.S. 520, 558 (1979). “Whether a prison search is constitutionally reasonable depends on ‘whether the jail’s need for the particular search’ outweighs ‘the invasion of personal rights that the search entails.’” *Salem v. Mich. Dep’t of Corr.*, 643 F. App’x 526, 530 (6th Cir. 2016) (quoting *Williams I*, 771 F.3d at 950). Our Fourth Amendment analysis, therefore, involves balancing the need for the search against the privacy invasion resulting from the search. *See Bell*, 441 U.S. at 559. This inquiry can be divided into three considerations: (1) the nature of the intrusion, considering “the scope, manner, and location of the search”; (2) “the need for the search, giving due deference to the correctional officer’s exercise of her discretionary functions”; and (3) “whether the search was reasonably related to legitimate penological interests by weighing the need against the invasion.” *Stoudemire v. Mich. Dep’t of Corr.*, 705 F.3d 560, 572 (6th Cir. 2013) (citation omitted). We may also examine “obvious, easy alternatives that accommodate the inmate’s privacy interests at little cost to valid penological objectives.” *Salem*, 643 F. App’x at 530 (quoting *Williams I*, 771 F.3d at 950).

We afford significant deference to correction facilities’ decisions in implementing security measures. *See Florence*, 566 U.S. at 322-23 (“[C]ourts 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.”); *Bell*, 441 U.S. at 547 (“Prison administrators therefore should be accorded wide-ranging deference in the adoption and execution of policies and practices that in their judgment are needed to preserve internal order and discipline and to maintain institutional security.” (citations omitted)). “A prison’s regulations need only be ‘reasonably related to legitimate penological interests.’” *Stoudemire*, 705 F.3d at 571-72 (quoting *Turner v. Safley*, 482 U.S. 78, 89 (1987)).

Williams challenges both the City’s strip-search policy and its now-discontinued practice of delousing detainees. Although these challenges involve identical legal frameworks, we must separately consider each policy’s privacy implications and the City’s respective justifications.

A. Group Strip Searches

As to the City’s strip-search policy, the parties agree that the Supreme Court held in *Florence* that “detainees may be subjected to suspicionless strip searches as part of the jail’s intake process.” *Sumpter*, 868 F.3d at 478 (citing *Florence*, 566 U.S. at 328). “But it is settled that the law demands an adequate need for a strip search, and, depending on the circumstances and context, restricts the scope, manner, and place of the search.” *Stoudemire*, 705 F.3d at 574 (citing *Bell*, 441 U.S. at 559). Thus, we must decide whether the City’s manner of conducting strip searches was

reasonable. Unlike in *Williams I*, we now consider whether there exists a genuine issue of material fact after examining the record, as opposed to whether Williams’s second amended complaint stated a plausible claim for relief. *See Williams I*, 771 F.3d at 954 (“At this juncture in the analysis, the procedural posture of this case is important. To state a claim, plaintiffs were required only to plausibly allege—rather than demonstrate—that the jail acted unreasonably.” (citations omitted)).

With regard to the nature of the intrusion, “a strip search, by its very nature, constitutes an extreme intrusion upon personal privacy.” *Stoudemire*, 705 F.3d at 572 (internal citation omitted). “The wider an audience for a strip search, the more humiliating it becomes, especially when the stripped individual is exposed to bystanders who do not share the searching officers’ institutional need to view her unclothed.” *Williams I*, 771 F.3d at 953. But, as noted above, “[a]n intrusive search is not necessarily an unreasonable one, especially in the corrections setting, where an inmate’s interest in being free from privacy invasions must yield to the realities of operating a safe and effective corrections system.” *Sumpter*, 868 F.3d at 483 (citation omitted); *see Price v. Johnston*, 334 U.S. 266, 285 (1948) (“Lawful incarceration brings about the necessary withdrawal or limitation of many privileges and rights, a retraction justified by the considerations underlying our penal system.”).

Here, the undisputed facts demonstrate that at the time of Williams’s complaint, the City had in place

a long-time policy of conducting group strip searches during the intake process. It appears, however, that groups of two or three detainees were only strip searched together in circumstances when large numbers of inmates were waiting to be processed. The “need” for this particular aspect of the search procedure was, therefore, one of expediency. Large groups of inmates were often transported to the HOC at one time, as reflected in Williams’s testimony.

Although it was possible to conduct individual searches, that would have caused significant delays in the intake process. This is no minor concern. As noted by this court in *Sumpter*, “Conducting individual searches in [busy, time-pressed] circumstances not only impeded the facility’s interest in expeditiously processing incoming inmates, it compromised the health and safety of those inmates caught up in the delay.” 868 F.3d at 484. It is undisputed that officers conducted strip searches of detainees not only to find contraband but to identify medical issues. It was in the best interest of the City and the detainees to treat such health problems as quickly as possible. *See id.* (outlining the health and safety implications of a delay in intake procedures at a facility similar to the one at issue).

Williams has not provided evidence questioning the legitimacy of the City’s proffered justification. *See id.* Indeed, processing detainees in groups of two or three during high-volume hours would presumptively speed up the intake process. We find that the City’s policy of allowing strip searches to be conducted in groups

of two or three during busy periods, such as Williams's time of intake, was reasonably related to the City's legitimate penological interest of expediting the intake procedure. *See Stoudemire*, 705 F.3d at 572.

B. Delousing

Next, we must balance the intrusive nature of the City's prior delousing policy against its stated penological justification. As to the nature of the intrusion, there is no doubt that being sprayed with a liquid dispersed from a pressurized canister, while nude in front of a correctional officer and other inmates, is a serious intrusion of privacy. As we noted in *Williams I*, "courts have uniformly recognized that a search in which officers intentionally contact a naked detainee causes still deeper injury to personal dignity and individual privacy." 771 F.3d at 952 (citations omitted).

Viewing the facts in the light most favorable to Williams, as required when deciding the City's motion for summary judgment, we must also accept that she was ordered to "squat" during the delousing and that the solution "penetrated [her] anus." Like in *Sumpter*, however, Williams has failed to submit evidence that the circumstances of her search—i.e., the solution's penetration of her anus—was not an isolated incident. 868 F.3d at 489. Indeed, she admittedly was unaware of whether everyone who underwent the intake process was asked to squat while being deloused, and Williams submitted no evidence demonstrating that the

City customarily asked detainees to squat during the delousing process.

Thus, even accepting Williams's testimony as true, the City's official policy and customs are undisputed. Officers sprayed detainees from head to toe with a delousing solution while the detainees were nude and standing about one foot apart. Two to three detainees were sometimes deloused in the same room. The solution was administered through a pressurized dispenser from a distance of between six inches and four feet. The spray was a light mist and did not hit detainees with substantial force.

With regard to the City's justification for spraying detainees with the delousing solution in this manner, *Florence* observed that "[t]he danger of introducing lice or contagious infections . . . is well documented," 566 U.S. at 330-31 (citations omitted), and in *Williams I* this court observed "that a correctional facility's adoption of uniform delousing procedures is an acceptable prophylactic measure that may be administered even in the absence of individualized suspicion that any particular detainee is infected with lice." *Williams I*, 771 F.3d at 951 (citing *Florence*, 566 U.S. at 330-31). The City argues that it chose to spray the delousing solution on detainees rather than allow the detainees to self-apply the solution because they could not trust the inmates to follow instructions, and any failure to comply would potentially lead to community infestations. Although the City may not disregard "obvious, easy alternatives" if such alternatives accommodate inmates' rights "at *de minimis* cost' to the institution's valid

penological interest underlying the search in the first place,” *id.* at 954 (citation omitted), it need not ignore reasonable risks posed by alternative policies.

We conclude that, based on the undisputed facts, the City’s delousing policy did not violate Williams’s Fourth Amendment rights. The City’s decision to delouse detainees with a fine mist was reasonably related to its interest in maintaining the cleanliness and habitability of the HOC. *See Stoudemire*, 705 F.3d at 572. The need for delousing outweighed the admittedly substantial invasion of personal rights that resulted from the policy. The City has set forth “good reasons” for its decision to delouse detainees at the HOC with a fine mist—and consequently, its delousing procedure was not “a needless intrusion into the detainees’ constitutional rights.” *See Williams I*, 771 F.3d at 955 (“In the final analysis, of course, the jail may have had good reasons for conducting these procedures in the particular manner in which it did. But that is a matter for resolution either at trial or on summary judgment, not on the pleadings.” (internal citation omitted)).

Accordingly, we reverse the district court’s partial grant of summary judgment in favor of Williams on her Fourth Amendment claim. We remand with instructions for the district court to grant summary judgment in favor of the City on all counts and to vacate the permanent injunction order.

REVERSED and REMANDED.

**CONCURRING IN PART AND
DISSENTING IN PART**

HELENE N. WHITE, Circuit Judge (concurring in part, dissenting in part). I agree with my colleagues that *Sumpter v. Wayne County*, 868 F.3d 473, 479, 490–91 (6th Cir. 2017), dictates that Williams’s claims for declaratory and injunctive relief be dismissed.

I respectfully dissent from the reversal of the district court’s rulings on count I of Williams’s complaint asserting claims for monetary damages based on violations of the Fourth Amendment. This court’s repeated iterations of Supreme Court precedent are clear: “[C]ourts 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.” *Sumpter*, 868 F.3d at 481 (quoting *Florence v. Bd. of Chosen Freeholders of Burlington*, 566 U.S. 318, 322–23 (2012)). In *Williams v. City of Cleveland*, 771 F.3d 945, 950 (6th Cir. 2014) (*Williams I*), we observed:

[W]here a particular search or seizure involves significant intrusion into a detainee’s privacy interests, the existence of “obvious, easy alternatives . . . that fully accommodate[] the prisoner’s rights at *de minimis* cost to valid penological interests” suggests that the institution’s need to proceed in its chosen manner does not outweigh the burdens it

imposes upon the detainee and is therefore unreasonable.

Williams I (quoting *Turner v. Safley*, 482 U.S. 78, 90-91 (1987)). Indeed, this is the law applied by this court to Williams’s complaint in *Williams I*, and this is the law applied by the district court in deciding the case on remand.

After reviewing the evidence submitted by the parties, the district court found that Williams established through substantial evidence that there are obvious, easy alternatives to HOC’s policy of strip-searching detainees in the presence of other female detainees and its mandatory “hose treatment” delousing policy, and that these alternatives can be accommodated at *de minimis* cost to HOC’s asserted penological interests. These findings are amply supported by the testimony, and the majority does not assert or support that they are clearly erroneous. Further, the district court applied the correct legal analysis to these findings.

A. Group Strip-Search Policy

In determining the constitutionality of HOC’s group strip-search policy, the district court weighed HOC’s penological interest in expediency against Williams’s privacy interests and concluded that installing modesty panels or curtains would protect the latter at *de minimis* cost to the former:

The justification put forward by Defendant for requiring detainees to disrobe in each other’s

presence is that the jail was “busy,” and corrections officers need to strip search multiple detainees for expediency. However, Lt. Clark admitted that, while it may “slow things down just a little bit,” detainees could easily be strip searched individually versus as part of a group. Evidence of the regulation’s impropriety exists when “there are ready alternatives available to the regulations in question that fully accommodate the prisoner’s rights at *de minimis* cost to valid penological interests,” that go untapped. *Spies v. Voinovich*, 173 F.3d 398, 404 (6th Cir. 1999).

The State of Ohio recommends the use of modesty panels. The Ohio Corrections Officer Basic Training Manual provides, in pertinent part:

2. Based on several lawsuits on these kinds of cases, there are some general rules
 - c. Search area should provide privacy from outside observation
 1. Modesty panels are inexpensive and effective
 2. Use of these panels demonstrates good faith of a department to conduct searches in a constitutional manner.

The City does not explain how the installation of modesty panels in the Clothing Room at the jail could not be accomplished should there be

a legitimate need for strip searching multiple detainees.

Upon examining the evidence, the Court finds that, under the particular circumstances at the [HOC], the corrections officers implementing the group strip searches did not strike a reasonable balance between Plaintiff's privacy interests and the need to provide safety and security at the jail. Therefore, the Court finds the visual strip search at the jail violated Plaintiffs' constitutional rights. Defendant can perform searches one at a time or in multiples with appropriate privacy partitions to allow detainees to remove their clothing without being viewed by other detainees, while still being observed by a corrections officer.

Williams v. City of Cleveland, 210 F. Supp. 3d 897, 907–08 (N.D. Ohio 2016); PID 2070-71/Dist. Ct. Op. Sept. 28, 2016 (internal citations omitted). As the district court noted, Lieutenant Joseph Stottner, Jail Manager from 2007 to 2010 and now Supervisor, agreed at deposition that HOC could install privacy partitions [or modesty panels or curtains] that would permit corrections officers to view several individual detainees while being strip searched, while still allowing them privacy. *Id.* at 908 n.18; PID 2071 n.18 (citing PID 1334-37 (R. 107/Stottner Dep.) and PID 1660 (R. 111-32, photo of room where strip-searches occur, with Plaintiff's counsel's drawing of modesty panel or curtain superimposed)).

The district court's decision is therefore well supported and I would affirm.

B. Pre-April 2010 Mandatory Delousing Policy

Regarding the mandatory “hose treatment” delousing policy, which HOC suspended in April 2010, the district court took direction from our *Williams I* opinion where we explained:

Because the focus must be on the jail's interest in carrying out the search and seizure in the particular manner that it chose, *see Florence*, 132 S. Ct. at 1516, the analysis in this case must balance the detainees' privacy rights against the jail's specific interest in spraying them with delousing agent from a pressurized canister while they crouched naked in the presence of other detainees instead of using less invasive procedures to achieve the same end.

Williams I, 771 F.3d at 952.

The district court took into account HOC's claim that delousing with the canister treatment, rather than letting the detainees self-apply the solution, was necessary because detainees follow directions only 50% of the time, as well as the testimony supporting that assertion. The district court assessed that justification in light of “the testimony of other corrections officials, who admitted that their instructions were nearly always followed by detainees in both the

Shower Room and Clothing Room, even when they were using the ‘hose method.’” 210 F. Supp. 3d at 905; PID 2065.

The district court also acknowledged the Middle District of Pennsylvania case cited by Defendants, *Logory v. County of Susquehanna*, 277 F.R.D. 135 (M.D. Penn. 2011), which rejected an asserted distinction between the self-application method involved in *Florence* and the canister method at issue here. The district court responded to that case by stating that this court in *Williams I* “determined that permitting self-application of a delousing solution like that which was used in *Florence* ‘could be readily implemented at the jail without compromising the jail’s interest in preventing lice infestations.’” 210 F. Supp. 3d at 906 (quoting *Williams I*, 771 F.3d at 955); PID 2067. However, this court in fact stated that plaintiffs had “identified an alternative delousing regimen that is much less invasive than the ‘hose treatment’ and have plausibly alleged that it could be readily implemented at the jail without compromising the jail’s interest in preventing lice infestations.” *Williams I*, 771 F.3d at 955. It is unclear whether the district court thought this court had made a finding of fact, or whether it quoted this language in support of its rejection of the *Logory* case as relevant authority on the basis that this court had already rejected the notion that the difference between delousing by jail officials using a pressurized container and self-application by the detainees themselves is *de minimis*. The former proposition is incorrect; the latter sound. *Williams I* made no factual determinations; it did not

determine that HOC could readily permit detainees to self-apply delousing solution without compromising its penological interest in preventing lice infestations. That is a factual determination left open by *Williams I*. However, *Williams I* clearly differentiated between the two methods, finding potential constitutional significance depending on the justification for the more invasive canister method.¹

At most, this ambiguity in the district court’s reasoning would support a remand on this issue, not a reversal. Williams presented evidence that permitting

¹ As we observed in *Williams I*:

[T]here is no question that permitting self-application of the delousing solution would be less humiliating and invasive than the “hose treatment.” Not only would such a policy avoid officers’ intentional physical touching of a detainee’s intimate body parts, but it would also preserve a detainee’s ability to exercise one of the most basic of human qualities: the faculty of choice. Giving a detainee the opportunity to self-apply the delousing agent permits her to weigh the alternatives and choose the option that enables her to comply with the delousing requirement while protecting her self-dignity. Simply spraying the detainee with a hose as if she was an object or an animal treats her as if she does not have the capacity to make that choice.

. . . .

Whether the particular manner in which the jail conducted the searches and seizures at issue here was “justified” depends on the facts, such as “whether any exigent circumstances compelled [the officers] to strip search [plaintiffs] in view of other inmates” or to disallow plaintiffs an opportunity to apply the delousing solution to themselves. *Stoudemire*, 705 F.3d at 573–74.

771 F.3d at 955.

detainees to self-apply a delousing solution was an alternative to the hose treatment that HOC could implement at *de minimis* cost to its penological interest in preventing lice outbreaks. In addition to the testimony that detainees nearly always follow directions, Lieutenant Flowers, HOC Jail Manager since September 2011, testified at deposition that the current system of sending detainees who have lice to the medical unit, which provides delousing solution to detainees for them to self-apply, works well and that no lice outbreaks have occurred:

Q. And that's been working out fine for you at the house of corrections?

A. Yes.

Q. No major infestations?

A. None.

Q. They haven't had to like cord off like a whole housing unit and fumigate it or anything like that?

A. No.

Q. Have they had the problem with everyone in the housing unit getting it?

A. No.

Q. You would agree with me that the method that's being used now, it's a good method, isn't it, because it's working out?

A. Yes, it's working.

PID 1162/Flowers Dep. In light of Lieutenant Flowers's testimony that the current delousing procedure is successful at preventing lice outbreaks, the majority's reversal of the district court on the basis of testimony that detainees cannot be trusted to self-apply delousing solution, Maj. Op. at 15–16, is questionable.

Given the conflicting testimony regarding alternatives to HOC's group strip-search policy and mandatory "hose treatment" delousing policy, the majority's determination that Cleveland is entitled to summary judgment is unjustified. At most, the matter should be remanded to the district court.

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Nos. 16-4237/17-3508

TYNISA WILLIAMS, individually and on
behalf of a class of others similarly situated,

Plaintiff - Appellee,

v.

CITY OF CLEVELAND,

Defendant - Appellant.

Before: SILER, COOK, and WHITE, Circuit Judges.

JUDGMENT

(Filed Nov. 2, 2018)

On Appeal from the United States District Court
for the Northern District of Ohio at Cleveland.

THIS CAUSE was heard on the record from the
district court and was argued by counsel.

IN CONSIDERATION THEREOF, it is OR-
DERED that the district court's partial grant of sum-
mary judgment in favor of Tynisa Williams on her
Fourth Amendment claim is REVERSED, and the case
is REMANDED with instructions for the district court
to grant summary judgment in favor of the City of

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Cleveland on all counts and to vacate the permanent injunction order.

**ENTERED BY ORDER OF
THE COURT**

/s/ Deborah S. Hunt

Deborah S. Hunt, Clerk

PEARSON, J.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

TYNISA WILLIAMS, <i>etc.</i>,	)	CASE NO.
Plaintiff,	)	1:09CV2991
v.	)	JUDGE BENITA Y.
THE CITY OF CLEVELAND,	)	PEARSON
Defendant.	)	<u>MEMORANDUM</u>
	)	<u>OF OPINION</u>
	)	<u>AND ORDER</u>
	)	[Resolving ECF
	)	Nos. 110 and 118]
	)	(Filed Sep. 28, 2016)

Plaintiff Tynisa Williams (“Plaintiff”) brought this putative class action under 42 U.S.C. § 1983 against Defendant City of Cleveland (the “City” or “Defendant”) alleging compulsory physical delousing and group strip search claims. These claims are now before the Court upon cross-motions for summary judgment (ECF Nos. 110 and 118). Plaintiff moves the Court for an Order providing a permanent injunction enjoining the City from continuing to physically delouse detainees at the City’s House of Correction, also known as the Workhouse (the “jail”), and from continuing to strip search detainees in groups in the absence of appropriate privacy partitions/curtains. ECF No. 110 at PageID

#: 1542.¹ The Court has been advised, having reviewed the record, the parties' briefs, and the applicable law. After an examination of the record, the Court determines that oral argument is not needed. For the reasons set forth below, the motions are granted in part and denied in part.

I. Background

A.

As a preliminary matter, the Court notes that the Order (ECF No. 97), entered on October 26, 2015, provides, in pertinent part:

Lead counsel of record are granted leave to confer with one another by telephone in order to prepare written stipulations as to all uncontested facts to be presented by the cross-motions for summary judgment. The stipulations shall be filed with the Court on or before November 2, 2015.

ECF No. 97 at PageID #: 795. No stipulations were filed.

B.

This case involves booking procedures at the jail that Plaintiff contends are unconstitutional. In July 2011, the Court granted Defendant's motion to stay the

¹ Inmates are incarcerated at the jail as pretrial detainees, civil commitments or for misdemeanors with sentences that cannot be more than one year.

case until *Florence v. Bd. of Chosen Freeholders of Cnty. of Burlington*, 132 S.Ct. 1510 (2012), was resolved. See Memorandum of Opinion and Order (ECF No. 52). The *Florence* decision was handed down by the United States Supreme Court in April 2012. Shortly after *Florence* was decided, the Court lifted the stay and instructed Plaintiff to file an amended complaint that added Shawn Bealer as an additional class representative. See Order (ECF No. 58). After filing an answer to the amended complaint, the City moved for judgment on the pleadings. The Court subsequently denied Plaintiffs² motion for leave to file a second amended complaint and entered judgment on the pleadings in the City's favor. *Williams v. City of Cleveland*, No. 1:09CV2991, 2013 WL 5519403 (N.D. Ohio Sept. 30, 2013) (Pearson, J.) (ECF No. 79). Plaintiffs appealed.

In November 2014, the Sixth Circuit reversed and remanded the case for further proceedings. *Williams v. City of Cleveland*, 771 F.3d 945 (6th Cir. 2014). The Court of Appeals stated that this Court, “which opined that delousing naked inmates in a group ‘is justified,’ jumped the gun.” *Id.* at 955. The Sixth Circuit “held that a complaint ‘plausibly allege[s] a violation of the Fourth Amendment’ ‘when it alleges that defendant’s jail, instead of using less invasive procedures, compelled pretrial detainees who were being processed into the facility to undress in the presence of other

² On December 15, 2015, the Court agreed with Defendant’s unopposed suggestion that Plaintiff-Intervenor Shawn Bealer is not suitable to proceed as a class representative in this case. See Order (ECF No. 120).

detainees and to have their naked genitals sprayed with delousing solution from a pressurized metal canister.” *Id.* at 947. It stated this Court was mistaken in concluding that the particular manner in which Plaintiffs alleged they were seized and searched differed in only insignificant ways from the practices that were upheld in *Florence*. *Id.* at 949. Pretrial detainees enjoy the Fourth Amendment’s guarantee of “reasonable expectations of privacy.” *Id.* at 950 (citing *Stoudemire v. Michigan Dept. of Corrections*, 705 F.3d 560, 572 (6th Cir. 2013)). “Given the significant incursion into plaintiffs’ privacy rights caused by the jail’s preferred method of searching and delousing them, the jail’s need to perform the searches in this particular manner must be unusually dire before it can outbalance the affront to plaintiffs’ privacy.” *Id.* at 954 (citing *Florence*, 132 S.Ct. at 1516).

After considering the parties’ Status Report and Stipulation (ECF No. 89), the Court scheduled (1) a date for Plaintiffs to serve and file a Second Amended Class Action Complaint, (2) a cutoff date to amend pleadings and add parties, (3) a cutoff date for the parties to serve supplemental initial disclosures, (4) a discovery cutoff date, and (5) dates for the filing of cross-motions for summary judgment. *See* Order (ECF No. 92). The parties agree that the issue of municipal liability in the case at bar can be resolved by a decision on cross-motions for summary judgment. *See* Affirmation in Support (ECF No. 111) at PageID #: 1549-50, ¶ 7. *See also* ECF No. 89 at PageID #: 740, ¶ 4; ECF No. 92 at PageID #: 769, ¶ 5.

Plaintiff is the purported representative for the class of all persons incarcerated at the jail between December 26, 2007³ and April 14, 2010.⁴ According to the Second Amended Class Action Complaint (ECF No. 90), the City has a policy of strip searching and delousing each person who enters the custody of the jail, regardless of whether jail officials have a reasonable suspicion that the detainee has lice. Detainees must remove their clothing in the presence of a corrections officer, who then sprays delousing solution⁵ from a pressurized metal canister on the detainee's naked body, including on the detainee's exposed genitals. City officials nicknamed this procedure the "hose method." Memorandum in Support (ECF No. 118) at PageID #: 1939; Email Message, dated June 15, 2010, from Kathy Raleigh (ECF No. 111-14).

Plaintiff was arrested in October 2009 on a non-felony charge of driving with a suspended license. Her license had been suspended because she failed to pay a traffic ticket. Deposition of Tynisa Williams (ECF No. 109) at PageID #: 1471. After Plaintiff made arrangements with authorities to pay her traffic ticket and fines, she was processed into the jail on October 28, 2009. There, she was instructed to undress and briefly

³ This is the date alleged in the Second Amended Class Action Complaint (ECF No. 90), which is two years before the filing of the original complaint. ECF No. 90 at PageID #: 747, ¶ 7.

⁴ The City stopped delousing detainees utilizing the "hose method" on this date. *See* Email Message, dated April 14, 2010, from Commissioner Jacqueline Lewis (ECF No. 111-15).

⁵ A brand of pediculicide called Liceall was used.

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shower in the presence of not only a corrections officer but also two other female detainees. ECF No. 109 at PageID #: 1486,1492.⁶ All three detainees could see each other by virtue of being in the Clothing Room with no privacy partitions/curtains of any kind. ECF No. 109 at PageID #: 1492-93.⁷ The compulsory physical delousing occurred in the shower area that is adjacent to the Clothing Room. Deposition of Lt. Joseph Stottner (ECF No. 107) at PageID #: 1326-27. This shower area has three shower stalls, and the delousing occurred in front of those shower stalls in the middle of the room near a drain. ECF No. 107 at PageID #: 1269-72.⁸ In the presence of the other detainees, who were standing side-by-side, Plaintiff was subjected to a visual body cavity search, during which she was instructed to squat down.⁹ A corrections officer misted her with delousing solution from an exterminator can all over her naked body, including into her anus. ECF

⁶ ECF Nos. 111-35, 111-38, and 111-41 are photographs of the Shower Room. ECF No. 111-35 shows the separate stalls with complete privacy partitions.

⁷ Defendant argues that while it would be possible to install a partition in the Clothing Room, that partition poses a security risk and limits the view of the corrections officers. ECF No. 118 at PageID #: 1949-50.

⁸ ECF No. 111-42 is a diagram of the Shower Room, including measurements, prepared by Plaintiff's counsel.

⁹ According to Defendant, "[t]he Sixth Circuit's opinion in this matter, though informative, was not based on the facts that have been developed in this record." ECF No. 118 at PageID #: 1959. Plaintiff alleges that she was instructed to spread her buttocks. ECF No. 90 at PageID #: 754, ¶ 36. According to Defendant, Plaintiff does not state in her deposition that she was asked to spread her buttocks. ECF No. 118 at PageID #: 1941.

No. 109 at PageID #: 1496-99. Given the layout of the shower area, Detainees could see one another. ECF No. 107 at PageID #: 1269-72. There was no indication that Plaintiff was harboring lice. Deposition Jacqueline Lewis (ECF No. 105) at PageID #: 1215-1216; ECF No. 107 at PageID #: 1299-1300. Plaintiff was released from the jail the same day. ECF No. 109 at PageID #: 1507-10.

Based on these allegations, Plaintiff asserts four claims requesting damages as well as declaratory and injunctive relief under § 1983. The First Cause of Action is for unreasonable search and seizure under the Fourth Amendment related to strip searches and the “compulsory delousing of individuals arrested for misdemeanors or violations absent some particularized suspicion that the individual in question has either contraband or weapons.” ECF 90 at PageID #: 757, ¶ 51. The Second Cause of Action is brought pursuant to the Fourth and Fourteenth Amendments (in part) for the alleged imposition of unnecessary medical treatment in reference to the compulsory delousing procedure.¹⁰ The Third and Fourth Causes of Action

¹⁰ The Sixth Circuit footnoted that “Plaintiffs appear to have abandoned any argument with respect to the second cause of action noted in their proposed second amended complaint.” *Williams*, 771 F.3d at 956 n. 1. Plaintiff declares in her Reply Memorandum that her claim for involuntary medical treatment is withdrawn. ECF No. 121 at PageID #: 2038. The pre-filing written exchange required by the Court’s prior Orders (ECF No. 92 at PageID #: 769, ¶ 5 and ECF No. 97 at PageID #: 793) should have obviated the need for the Court’s attention to be drawn to an unopposed argument.

seek declaratory judgment and a preliminary and permanent injunction based on the facts in the First and Second Causes of Action.

II. Standard of Review

Summary judgment is appropriately granted when the pleadings, the discovery and disclosure materials on file, and any affidavits show “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); *see also Johnson v. Karnes*, 398 F.3d 868, 873 (6th Cir. 2005). The moving party is not required to file affidavits or other similar materials negating a claim on which its opponent bears the burden of proof, so long as the movant relies upon the absence of the essential element in the pleadings, depositions, answers to interrogatories, and admissions on file.

Because Plaintiff failed to meet her burden in opposing summary judgment on her claim for the alleged imposition of unnecessary medical treatment in reference to the compulsory delousing procedure, Plaintiff has abandoned this claim and waived any argument concerning dismissal of such claim. *Hicks v. Concorde Career Coll.*, 449 Fed.Appx. 484, 487 (6th Cir. 2011) (finding that “[t]he district court properly declined to consider the merits of [plaintiff’s] claim because [plaintiff] failed to address it in . . . his response to the summary judgment motion”); *see also, e.g., Hadi v. State Farm Ins. Cos.*, 2:07-CV-0060, 2008 WL 4877766, at *13 (S.D. Ohio Nov. 12, 2008) (finding plaintiff’s failure to respond with any evidence supporting his negligent infliction of emotional distress claim “apparently concedes that summary judgment is proper on this count.”). Therefore, Defendant’s Motion for Summary Judgment (ECF No. 118) with respect to this claim is granted for the reasons articulated by Defendant. *See* ECF No. 118 at PageID #: 1956-59.

Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). The moving party must “show that the non-moving party has failed to establish an essential element of his case upon which he would bear the ultimate burden of proof at trial.” *Guarino v. Brookfield Twp. Trustees.*, 980 F.2d 399, 403 (6th Cir. 1992).

Once the movant makes a properly supported motion, the burden shifts to the non-moving party to demonstrate the existence of a genuine dispute. An opposing party may not simply rely on its pleadings; rather, it must “produce evidence that results in a conflict of material fact to be resolved by a jury.” *Cox v. Ky. Dep’t. of Transp.*, 53 F.3d 146, 150 (6th Cir. 1995). The non-moving party must, to defeat the motion, “show that there is doubt as to the material facts and that the record, taken as a whole, does not lead to a judgment for the movant.” *Guarino*, 980 F.2d at 403. In reviewing a motion for summary judgment, the court must view the evidence in the light most favorable to the non-moving party when deciding whether a genuine issue of material fact exists. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587-88 (1986); *Adickes v. S.H. Kress & Co.*, 398 U.S. 144 (1970).

The United States Supreme Court, in deciding *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986), stated that in order for a motion for summary judgment to be granted, there must be no genuine issue of material fact. *Id.* at 248. The existence of some mere factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment. *Scott v. Harris*, 550 U.S. 372, 380 (2007). A fact is

“material” only if its resolution will affect the outcome of the lawsuit. In determining whether a factual issue is “genuine,” the court must decide whether the evidence is such that reasonable jurors could find that the non-moving party is entitled to a verdict. *Id.* Summary judgment “will not lie . . . if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *Id.* To withstand summary judgment, the non-movant must show sufficient evidence to create a genuine issue of material fact. *Klepper v. First Am. Bank*, 916 F.2d 337, 342 (6th Cir. 1990). The existence of a mere scintilla of evidence in support of the non-moving party’s position ordinarily will not be sufficient to defeat a motion for summary judgment. *Id.* This standard of review does not differ when reviewing cross-motions for summary judgment versus a motion filed by only one party. *U.S. SEC v. Sierra Brokerage Servs., Inc.*, 712 F.3d 321, 327 (6th Cir. 2013).

III. Analysis

Under *Florence*, there is no longer any question that individualized suspicion is unnecessary to conduct blanket strip searches and to delouse prisoners at intake. 132 S.Ct. at 1518. The method of the strip search and the delousing are, however, still subject to constitutional evaluation. In answering the question of whether a blanket policy of strip searching incoming inmates was constitutionally sound, *Florence* answered by holding that the “undoubted 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.” *Id.*

A. Physical Delousing Claim

Plaintiff “not only complain[s] about the use of delousing on all detainees, but also about the manner in which the delousing occurs.” ECF No. 90 at PageID #: 745. In particular, Plaintiff alleges that the City violated detainees’ constitutional rights by spraying delousing solution all over their naked bodies, “specifically aim[ing]” it at the face and genitals, instead of using less invasive delousing methods, such as permitting detainees to apply the delousing solution to themselves. ECF No. 90 at PageID #: 749, ¶ 12. Several other penological facilities permit the self-application of delousing solution in the manner that Plaintiff requests. *See e.g., Florence*, 132 S.Ct. at 1514; *Russell v. Richards*, 384 F.3d 444, 446 (7th Cir. 2004). Plaintiff also alleges that her strip search and delousing were unreasonable because it was conducted in the presence of two female detainees. ECF No. 90 at PageID #: 758, ¶ 54. Thus, Plaintiff alleges not only that the jail lacked justification for the search and seizure in the first place, but also that the particular manner in which the jail conducted its compulsory delousing regime was unreasonable, “given more dignified alternatives.” ECF No. 90 at PageID #: 753, ¶ 30. In *Florence*, the Supreme Court stated that “[t]he danger of introducing lice or contagious infections . . . is well documented.” 132 S.Ct. at 1518 (citations omitted). In the

case at bar, the Sixth Circuit declared “the pertinent question is not whether the jail has a general need to prevent the introduction of lice into its facility (obviously, it does) but whether the jail’s selection of the particular procedures to which it subjected plaintiffs is reasonably related to that legitimate end.” *Williams*, 771 F.3d at 954 (citing *Stoudemire*, 705 F.3d at 573).

According to the Sixth Circuit,

[b]ecause the focus must be on the jail’s interest in carrying out the search and seizure in the particular manner that it chose, *see Florence*, 132 S.Ct. at 1516, the analysis in this case must balance the detainees’ privacy rights against the jail’s specific interest in spraying them with delousing agent from a pressurized canister while they crouched naked in the presence of other detainees instead of using less invasive procedures to achieve the same end.

Id. at 952. Defendant recounts the “hose method” as not involving physical touching by corrections officers themselves. ECF No. 118 at PageID #: 1940. The Sixth Circuit found “the distinction is unconvincing.” *Id.* Contrary to paragraphs 12 and 25 of the Second Amended Class Action Complaint (ECF No. 90),¹¹

¹¹ 12. . . . The City employs the “hose treatment,” where detainees are forcibly sprayed with delousing solution from the hose [of] an exterminator can. The effluent from the “hose treatment” is specifically aimed at the face and genitals of detainees. . . .

25. Furthermore, the City’s method of delousing detainees, the “hose treatment,” is both offensive

Plaintiff testified in deposition that the delousing was a light spray, like a body mist that only lasted a few seconds. ECF No. 109 at PageID #: 1519, 1492. Defendant compares the procedure to the application of bug spray, perfume or a spray tan. ECF No. 118 at PageID #: 1940.

Plaintiff also alleges that the delousing solution penetrated her anus. ECF No. 90 at PageID #: 755, ¶ 36. Defendant argues that while there is little doubt that the delousing liquid ran down Plaintiff's buttocks and likely over her anus, it is very hard to believe that the solution managed to actually penetrate her body because she testified as follows:

Q You said that the delousing solution was like a body mist. Was it a light mist like that?

A Yes.

Q So it didn't hit you with any kind of force?

A No.

Q Okay. Did you feel it hitting you?

A Yes.

Q Did you feel it just because it was a liquid and cold?

A Liquid and it was cold.

ECF No. 109 at PageID #: 1519.

and absurd. Forcibly spraying the genitals of detainees, versus allowing detainees to apply the delousing solution themselves, is the hallmark of an abusive and unnecessary jail policy. . . .

The City admits that until April 14, 2010 it required physical delousing of all detainees admitted to the custody of the jail as a matter of municipal policy. ECF No. 118 at PageID #: 1938; Deposition of Lt. Stella Clark (ECF No. 101) at PageID #: 1006-1007; ECF No. 105 at PageID #: 1215-16.¹² At the time of this writing, there is no blanket procedure for delousing inmates. Deposition of David Carroll (ECF No. 99) at PageID #: 968. A new less intrusive policy regimen was employed following the cessation of delousing. Now, corrections officers immediately send detainees, who are suspected of having lice, to the Workhouse medical unit for assistance. Deposition Lt. Reginald Flowers (ECF No. 103) at PageID #: 1148-49; Divisional Notice Regarding Intake Delousing (ECF No. 111-13). Plaintiff is only asking the Court to require the City to follow its current policies, and not revert back to the older, offensive practices. Memorandum in Support (ECF No. 112) at PageID #: 1698.¹³

¹² This compulsory physical delousing regimen was also reflected in the City's written policies. *See* Workhouse Post Order (ECF No. 111-8) at PageID #: 1619 (corrections officer "[a]ssures that inmates shower and are sprayed with appropriate antiseptic or are referred to the medical staff for delousing prior to putting on institutional clothing."); Workhouse Hygiene and Clothing Policy (ECF No. 111-12) at PageID #: 1635 ("Showering and delousing is required prior to being issued institutional clothing.").

¹³ Jacqueline Lewis, a former supervisor of the jail, the City's Rule 30(b)(6) deponent, indicated that she believes the former physical delousing policy to be fine, and would consider reinstituting it at the end of this litigation. ECF No. 105 at PageID #: 1215.

Defendant asserts the delousing solution was applied to Plaintiff by a nozzled hose affixed to a pressurized canister that resembled an exterminator's can because it is the experience of the officials at the jail that inmates only follow orders 50% of the time and spraying a delousing agent will likely be more effective and will result in fewer altercations with inmates than allowing the inmate to apply a delousing solution themselves. ECF No. 118 at PageID #: 1952. David Carroll testified:

Q. . . . Do you feel in your experience as the acting commissioner for the department of corrections over the past four years that in general when you give inmates instructions, they listen to you?

MS. DINEHART: Objection.

A. Somewhat. It's probably 50/50.

ECF No. 99 at PageID #: 938. Defendant's justification for physically delousing detainees, as opposed to allowing them to apply delousing solution to themselves is that corrections officers could not "trust" inmates to perform the procedure properly. ECF No. 101 at PageID #: 1067 ECF No. 105 at PageID #: 1202-1203. But, "[s]imply spraying the detainee with a hose as if she was an object or an animal treats her as if she does not have the capacity to make [the] choice" to self-apply the solution. *Williams*, 771 F.3d at 955.¹⁴ Moreover,

¹⁴ Defendant argues that in *Williams*, the Sixth Circuit exhibited "a bizarre misunderstanding of the importance of sanitation within a jail facility and in fact the entire purpose behind

the City's argument regarding an alleged lack of compliance by detainees as a justification for the delousing regimen is contradicted by the testimony of other corrections officials, who admitted that their instructions were nearly always followed by detainees in both the Shower Room and Clothing Room, even when they were using the "hose method." *See, e.g.*, Deposition of Rufus Williams (ECF No. 108) at PageID #: 1416-18, 1446.

Plaintiff testified that she was not allowed to shower after the application of the delousing solution. ECF No. 109 at PageID #: 1507. Nevertheless, the record does not reveal that the delousing inspired a need to shower. Despite being released shortly after processing was completed, Plaintiff did not shower for hours. She took her son trick-or-treating, put her son to bed, and showered as she normally did before bed. ECF No. 109 at PageID #: 1511. Plaintiff testified to having a vaginal infection that she treated at the hospital a couple of days after release. ECF No. 109 at PageID #: 1512. She has no proof the infection was related to the delousing. ECF No. 109 at PageID #: 1499-1501. Plaintiff has not submitted any documentation linking the delousing solution to her infection. She has suffered from these infections at other times. ECF No. 109 at PageID #: 1512-13.

Defendant argues that the inmates were instructed to shower after the delousing agent was

compulsory delousing, of the type deemed a valid penological interest in *Florence*." ECF No. 118 at PageID #: 1953.

applied. ECF No. 101 at PageID #: 1028; ECF No. 107 at PageID #: 1277. Defendant declares that “[t]here are material issues of fact in this suit, but asserts that [its Cross-Motion for Summary Judgment] can be determined based on Plaintiff’s telling of her experience at the House of Corrections.” ECF No. 118 at PageID #: 1939.

Defendant cites a reported case from a district court in Pennsylvania in its discussion of alternatives to the “hose method.” In *Logory v. Cnty. of Susquehanna*, 277 F.R.D. 135, (M.D.Penn. 2011), the district court deferred to the discretion of jail administrators and found that a delousing spray was not so different from a facility using a lice shampoo. Quoting the Third Circuit opinion in *Florence*,¹⁵ *Logory* stated:

Florence held explicitly that “the strip search procedures . . . at [the Prisons] are reasonable.” *Id.* at 311. As those procedures explicitly included a delousing, it is curious as to how Plaintiff could maintain a class premised on an alleged Fourth Amendment violation that involv[es] the very same procedures. Plaintiff attempts to play up the differences between the two procedures, that *Florence* utilized a self-applied shampoo followed by a supervised shower while the instant case concerns a delousing spray followed by an unsupervised shower. It is true that Fourth Amendment reasonableness is a fact-specific inquiry, “not capable of precise definition or mechanical

¹⁵ 621 F.3d 296 (3rd Cir. 2010).

application.” *Id.* at 301 (citing *Bell v. Wolfish*, 441 U.S. 520, 559, 99 S.Ct. 1861, 60 L.Ed.2d 447 (1979)). However, the Court agrees with the Defendant that these are *de minimis* differences that do not materially alter the Fourth Amendment analysis.

Id. at 142. As a result, in *Logory*, the court found that the plaintiff could not sustain a class action for a Fourth Amendment violation. *Id.*

The Sixth Circuit has determined that permitting self-application of a delousing solution like that which was used in *Florence* “could be readily implemented at the jail without compromising the jail’s interest in preventing lice infestations.” *Williams*, 771 F.3d at 955. Therefore, the jail’s employment of the “hose method,” to which Plaintiff was subjected, is not reasonably related to the legitimate end of preventing the dissemination of lice in its facility. This delousing procedure employed until April 14, 2010 does not pass constitutional muster. The application of the delousing solution in this manner is not a rational response to the jail’s legitimate interest in preserving health and well-being within the facility, given other less humiliating and invasive alternative methods to eradicate lice, such as permitting detainees to self-apply a delousing solution. The “hose method” may be reserved for instances where individual detainees misapply or refuse to properly apply the provided solution. *Id.* at 954.

B. Group Strip Search Claim¹⁶

“The same analysis applies to the jail’s decision to strip search and delouse plaintiffs in full view of other detainees.” *Williams*, 771 F.3d at 955. “Whether the particular manner in which the jail conducted the searches and seizures at issue here was ‘justified’ depends on the facts, such as ‘whether any exigent circumstances compelled [the officers] to strip search [plaintiffs] in view of other inmates.’” *Id.* (quoting *Stoudemire*, 705 F.3d at 573-74). As stated by the Sixth Circuit in *Salem v. Michigan Dept. of Corrections*, 643 Fed.Appx. 526 (6th Cir. 2016):

Whether a prison search is constitutionally reasonable depends on “whether the jail’s ‘need for the particular search’ outweighs ‘the invasion of personal rights that the search entails.’” *Williams*, 771 F.3d at 950 (quoting *Bell v. Wolfish*, 441 U.S. 520, 559, 99 S.Ct. 1861, 60 L.Ed.2d 447 (1979); *Stoudemire*, 705 F.3d at 572). In making this determination, we “consider the scope of the particular intrusion, the

¹⁶ The Second Amended Class Action Complaint (ECF No. 90) does not mention group strip searches in the proposed class definition. See ECF No. 90 at PageID #: 747, ¶ 7. Paragraph 54 of the Second Amended Class Action Complaint states, however, that “Plaintiffs’ rights were [] violated because their strip searches *and* delousing occurred in the presence of other detainees.” ECF No. 90 at PageID #: 758 (emphasis added). Plaintiff will, however, seek to address group strip searches when she moves the Court for class certification. ECF No. 121 at PageID #: 2034. See *Robidoux v. Celani*, 987 F.2d 931, 937 (2d Cir. 1993) (“A court is not bound by the class definition proposed in the complaint.”).

manner in which it is conducted, the justification for initiating it, and the place in which it is conducted,” *id.* (quoting *Bell*, 441 U.S. at 559, 99 S.Ct. 1861), while also examining “obvious, easy alternatives” that accommodate the inmate’s privacy interests at little cost to valid penological objectives, *id.* (quoting *Turner v. Safley*, 482 U.S. 78, 90-91, 107 S.Ct. 2254, 96 L.Ed.2d 64 (1987)).

... searches conducted in view of other inmates—who “do not share the searching officers’ institutional need to view [another prisoner] unclothed”—are exceedingly intrusive. *Williams*, 771 F.3d at 953. . . .

Id. at 530. “Applying this test, the [Sixth Circuit] has held that strip searches performed in view of other inmates without a legitimate penological justification violate inmates’ clearly established Fourth Amendment rights.” *Salem*, 643 Fed.Appx. at 530 (citing *Williams*, 771 F.3d at 952-56; *Stoudemire*, 705 F.3d at 572-75).

On the other hand, “[p]rison administrators . . . should be accorded wide-ranging deference in the adoption and execution of policies and practices that in their judgment are needed to preserve internal order and discipline and to maintain institutional security.” *Bell*, 441 U.S. at 547. “[W]here a particular search or seizure involves significant intrusion into a detainee’s privacy interests, the existence of ‘obvious, easy alternatives . . . that fully accommodate[] the prisoner’s rights at *de minimis* cost to valid penological interests’ suggests that the institution’s need to proceed in its

chosen manner does not outweigh the burdens it imposes upon the detainee and is therefore unreasonable.” *Williams*, 771 F.3d at 950 (quoting *Turner*, 482 U.S. at 90-91). Defendant argues it has good reasons for conducting the blanket group strip searches in the jail in the particular manner in which it does, instead of strip searching one detainee at a time. Administrative convenience is among the reasons. ECF No. 118 at PageID #: 1949.

Plaintiff was required to submit to a strip search in the presence of two other female detainees. ECF No. 109 at PageID #: 1486, 1492. She was required to remove her clothing, including her underclothes and brassiere while under the visual observation of a female corrections officer, for the specific purpose of detecting contraband. ECF No. 109 at PageID #: 1486, 1492; Deposition of Mary Bounds (ECF No. 98) at PageID #: 850, 852-53. The City contends that Plaintiff and the two other inmates were standing side-by-side in the private Clothing Room¹⁷ during the search (ECF No. 109 at PageID #: 1494-96, 1497), but squatted one-by-one while still in line so that the inmates were not able to see each other’s genitalia without taking effort to move out of the position in which they were placed by the corrections officer, effort that Plaintiff does not recall having been taken by another inmate during her

¹⁷ ECF Nos. 111-26, 111-28, and 111-29 are photographs of the Clothing Room. ECF No. 111-33 is a diagram of the Clothing Room, including measurements, prepared by Plaintiff’s counsel.

search (ECF No. 109 at PageID #: 1516). ECF No. 118 at PageID #: 1942.

The justification put forward by Defendant for requiring detainees to disrobe in each other's presence is that the jail was "busy," and corrections officers need to strip search multiple detainees for expediency. ECF No. 108 at PageID #: 1381, 1384. However, Lt. Clark admitted that, while it may "slow things down just a little bit," detainees could easily be strip searched individually versus as part of a group. ECF No. 101 at PageID #: 1066-67. Evidence of the regulation's impropriety exists when "there are ready alternatives available to the regulations in question that fully accommodate the prisoner's rights at *de minimis* cost to valid penological interests," that go untapped. *Spies v. Voinovich*, 173 F.3d 398, 404 (6th Cir. 1999).

The State of Ohio recommends the use of modesty panels. The Ohio Corrections Officer Basic Training Manual provides, in pertinent part:

2. Based on several lawsuits on these kinds of cases, there are some general rules

* * *

- c. Search area should provide privacy from outside observation
 1. Modesty panels are inexpensive and effective

2. Use of these panels demonstrates good faith of a department to conduct searches in a constitutional manner

ECF No. 111-18 at PageID #: 1646. The City does not explain how the installation of modesty panels in the Clothing Room at the jail could not be accomplished should there be a legitimate need for strip searching multiple detainees.

Upon examining the evidence, the Court finds that, under the particular circumstances at the City's House of Correction, the corrections officers implementing the group strip searches did not strike a reasonable balance between Plaintiff's privacy interests and the need to provide safety and security at the jail. Therefore, the Court finds the visual strip search at the jail violated Plaintiff's constitutional rights. Defendant can perform searches one at a time or in multiples with appropriate privacy partitions to allow detainees to remove their clothing without being viewed by other detainees, while still being observed by a corrections officer.¹⁸

C. Injunction

Four factors must be considered when deciding whether to grant an injunction: (1) whether the

¹⁸ During his deposition, Former Jail Manager Joseph Stottner, agreed to this scheme when shown a photograph (ECF No. 111-32) of Plaintiff's counsel's rendering of where a privacy partition could be installed. ECF No. 107 at PageID #: 1334-37.

movant has a strong likelihood of success on the merits; (2) whether there is a threat of irreparable harm to the movant; (3) whether others will suffer substantial harm as a result of the injunction, should it issue; and (4) whether the public interest will be served by the injunction. See *Rock & Roll Hall of Fame and Museum, Inc. v. Gentile Prods.*, 134 F.3d 749, 753 (6th Cir. 1998). In the prison litigation context, the Prison Litigation Reform Act (“PLRA”) requires that the injunctive relief requested must be narrowly drawn, and be the least intrusive means to correct the violation. *Hadix v. Caruso*, 420 Fed.Appx. 480, 481-82 (6th Cir. 2011) (citing 18 U.S.C. § 3626(a)(1)(A)). “[A] defendant’s voluntary cessation of a challenged practice does not deprive a federal court of its power to determine the legality of the practice.” *Deja Vu of Nashville, Inc. v. Metro. Gov’t of Nashville & Davidson Cnty., Tennessee*, 274 F.3d 377, 387 (6th Cir. 2001) (quoting *City of Mesquite v. Aladdin’s Castle, Inc.*, 455 U.S. 283, 289 (1982)). This is especially so where the defendant has expressed the possibility of reenacting the challenged policy. *Id.*

Plaintiff requests that the Court grant her request for a permanent injunction. In the alternative, should the Court believe that there are disputed issues of fact precluding Plaintiff’s entitlement to summary judgment, she requests that the Court grant her a preliminary injunction so that Defendant’s “abhorrent” policies can be held in abeyance until this matter is tried before the Court. ECF No. 112 at PageID #: 1698. In view of the above, the Court finds Plaintiff has demonstrated all of the factors that a court must

consider when deciding whether to issue an injunction. Plaintiff is, therefore, entitled to a permanent injunction enjoining the City from (1) reinstituting the “hose method” and (2) conducting group strip searches in the Clothing Room without the installation of appropriate privacy partitions to obstruct the view by other inmates of another unclothed inmate.

IV. Conclusion

Viewing the probative evidence and all reasonable inferences drawn therefrom,

Plaintiff’s Motion for Summary Judgment and Permanent Injunction (ECF No. 110) is granted in part and denied in part; and

Defendant’s Motion for Summary Judgment (ECF No. 118) is granted in part and denied in part.

The issue of municipal liability in the case at bar is hereby resolved by the within decision. The cross-motions for summary judgment are denied in part due to the fact that they were filed prior to the Court’s determination that Plaintiff-Intervenor Shawn Bealer is not suitable to proceed as a class representative in this case.

Defendant’s Motion for Summary Judgment (ECF No. 118) is granted with respect to the alleged imposition of unnecessary medical treatment in reference to the compulsory delousing procedure as set forth in the Second Cause of Action.

The claim and factual assertions in the Second Amended Class Action Complaint that a Workhouse inmate sprayed Shawn Bealer with delousing solution and directed him to shower is dismissed. *See* ECF No. 90 at PageID #: 756, ¶ 47.

The parties shall settle on the form of the permanent injunction forthwith. In the absence of agreement on form, Plaintiff shall present a form of injunction to the Court, in not later than fourteen (14) days from the date of this Order.

IT IS SO ORDERED.

September 28, 2016
Date

/s/ Benita Y. Pearson
Benita Y. Pearson
United States District Judge

PEARSON, J.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

TYNISA WILLIAMS, <i>etc.</i>,	)	CASE NO. 1:09CV2991
Plaintiff,)	
	)	JUDGE BENITA Y.
v.	)	PEARSON
THE CITY OF CLEVELAND,	)	<u>ORDER GRANTING</u>
Defendant.	)	<u>PERMANENT</u>
	)	<u>INJUNCTION</u>
	)	[Resolving ECF No. 130]
)	
	)	(Filed May 5, 2017)

The Court of Appeals for the Sixth Circuit granted Defendant City of Cleveland's (the "City" or "Defendant") motion for a limited remand to permit this Court to rule on Defendant's Objections to Plaintiff Tynisa Williams' Proposed Order Granting Permanent Injunction (ECF No. 130). *Williams v. City of Cleveland*, No. 16-4237 (6th Cir. filed Feb. 28, 2017).

The Court, after having granted Plaintiff a Permanent Injunction, hereby orders that the City is permanently enjoined as follows:

1. The City is forbidden from conducting the physical delousing of detainees admitted into the custody of the City's House of Correction, also known as the Workhouse (the "jail") by utilizing a pressurized spray canister, which involves applying delousing

solution to detainees in a physical manner. The City may, however, utilize a pressurized spray cannister in instances of purposeful avoidance or misapplication of a delousing solution by a detainee. This order expressly forbids the City from reinstituting the “hose method” detailed in deposition testimony before the Court. The City may, should it choose to do so, delouse detainees upon admission by providing them with delousing products or solution, and allowing the detainees to apply the solution to themselves. The City, however, is not hereby prohibited from utilizing another delousing method that is in its best penological interests that is not forbidden by the within Order.

2. The City is forbidden from conducting the showering of detainees in the jail booking area absent detainees being allowed to enter and use those showers in the absence of any other detainees, given the small size of the shower area and the lack of privacy afforded detainees in those showers. A corrections officer will be allowed to visually observe the detainees while they shower.

3. Should Defendant endeavor to conduct the strip and visual cavity searches (collectively, “strip searches”) of detainees during the City’s initial booking process in groups of two or more, the City must install a privacy partition/curtain between the detainees being searched to completely preclude each detainee from seeing the other in a state of partial and/or complete undress. This privacy partition/curtain can allow for the visual observation of each detainee, individually, by a corrections officer as they are strip searched

upon admission to the jail, but will not allow the detainees to see each other.

4. Should the City not install privacy partitions/curtains, all strip searches of detainees conducted as part of the booking process at the jail shall be conducted individually and privately, with the detainee being provided with reasonable protections from being viewed by any other detainee while they are disrobing or are otherwise in a state of undress. A corrections officer will be allowed to visually observe the detainees while they undress for purposes of strip searching them upon admission to the jail.

5. Plaintiff's counsel will be provided with reasonable access to the booking area of the jail to confirm the City's compliance with this order. Plaintiff's counsel, however, will not be allowed to view the booking process. At a minimum, Plaintiff's counsel must provide the City with twenty-four hours written notice before inspecting the booking area, and must do so at reasonable intervals if repeat visits to the jail are necessary.

6. This order is without prejudice to any party's rights going forward, including, but not limited to, the right to appeal, the right to seek class certification, or the right of Plaintiff's counsel to seek an interim fee award.

App. 65

IT IS SO ORDERED.

May 5, 2017
Date

/s/ Benita Y. Pearson
Benita Y. Pearson
United States District Judge

App. 66

No. 16-4237/17-3508

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

TYNISA WILLIAMS,)	
INDIVIDUALLY AND ON)	
BEHALF OF A CLASS OF)	
OTHERS SIMILARLY)	
SITUATED,	)	ORDER
Plaintiff-Appellee,	)	(Filed Dec. 7, 2018)
v.)	
THE CITY OF CLEVELAND,)	
Defendant-Appellant.)	

BEFORE: SILER, COOK, and WHITE, Circuit Judges.

The court received a petition for rehearing en banc. The original panel has reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the cases. The petition then was circulated to the full court. No judge has requested a vote on the suggestion for rehearing en banc.

Therefore, the petition is denied.

**ENTERED BY ORDER OF
THE COURT**

/s/ Deborah S. Hunt
Deborah S. Hunt, Clerk
