

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X		:	
		:	
HAROLD GATES,		:	
	Plaintiff,	:	
		:	20-CV-3186 (JPC)
-v-		:	
		:	<u>ORDER</u>
		:	
CITY OF NEW YORK et al.,		:	
	Defendants	:	
		:	
-----X			

JOHN P. CRONAN, United States District Judge:

The Court will hold argument on Defendants’ motion to dismiss, Dkt. 28, on July 29, 2021 at 11:00 a.m. in Courtroom 12D of the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, New York, New York 10007. The parties should be prepared to discuss all issues in the pending motion to dismiss, but the Court intends to specifically address the following issues at argument:

- The Defendants have moved to dismiss the Plaintiff’s ADA claims on, among other grounds, that he has failed to sufficiently allege disability discrimination under the ADA. The ADA defines “disability” as “(A) a physical or mental impairment that substantially limits one or more major life activities of such individual; (B) a record of such an impairment; or (C) *being regarded as having such an impairment.*” 42 U.S.C. § 12102 (emphasis added). The parties should be prepared to address whether the Plaintiff has alleged facts that would allow the Court to infer that any Defendants actually perceived him as disabled or discriminated against him on the basis of a perceived disability. In particular, the parties should be prepared to address the Complaint’s allegation that Defendant Deputy Inspector Tania Kinsella “created a disability that [that plaintiff] was suicidal,” Complaint

¶ 36, which would appear to suggest that at least she did not actually perceive the Plaintiff as suicidal. *See Capobianco v. City of New York*, 422 F.3d 47, 57 (2d Cir. 2005) (explaining to state a claim under the ADA, the employer “must regard the employee as disabled within the meaning of the ADA” (internal quotation marks omitted)).

- The Plaintiff’s counsel should be prepared to indicate what additional facts the Plaintiff would allege in an amended complaint. *See Porat v. Lincoln Towers Cmty. Ass’n*, 464 F.3d 274, 276 (2d Cir. 2006).

SO ORDERED.

Dated: July 16, 2021
New York, New York



JOHN P. CRONAN
United States District Judge