UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

ASTRID G. ESTRADA, WENDY M. ESTRADA, GUILFREDO E. MUNOZ, JOSE A. AQUINO, CRUZ F. RIVERA, CARLOS E. TAMUP, JOSE BURGOS, ABELINO M. URIZAR, ISRAEL TEBALAN, ROLANDO NORIEGA, BORIS R. CRUZ, and ELSA HERNANDEZ VILAVICENCIO,
Plaintiffs,

v. C.A. No. 07-10ML

STATE OF RHODE ISLAND, State Police Department, STEVEN M. PARE, individually and in his official capacity as Superintendent of the Rhode Island State Police; THOMAS CHABOT, individually and in his official capacity as a state trooper employed by the State of Rhode Island, JANE DOE, individually and in her official capacity as a state trooper employed by the State of Rhode Island,
Defendants

MEMORANDUM AND ORDER

This civil matter is before the Court on the Defendants' Motion for Summary Judgment as to all claims and the Plaintiffs' Motion for Partial Summary Judgment on the issue of liability for Counts II and VI. For the reasons set forth below, the Defendants' Motion for Summary Judgment is GRANTED, and the Plaintiffs' Motion for Partial Summary Judgment is DENIED.

I. Background

A number of minor factual disputes exist regarding the events of July 11, 2006. For the purposes of deciding these motions only, the Court accepts as true the facts as set forth by the

Plaintiffs and views these facts in the light most favorable to the Plaintiffs, without regard to any contrary facts advanced by the Defendants.

On the morning of July 11, 2006, Plaintiff Carlos E. Tamup ("Tamup") was driving a passenger van in a southerly direction on Interstate 95 in Rhode Island. The other Plaintiffs rode as passengers on their way to work in Westerly, Rhode Island. During the commute that morning, the van was pulled over for failing to use its turn signal by Rhode Island State Police Officer Thomas Chabot ("Chabot"). Chabot was in a marked state police cruiser. The validity of this traffic stop is not in dispute.

Tamup produced his driver's license and the van's registration upon Chabot's request. In response to questions posed by Chabot, Tamup stated that his wife owned the van and that he was driving the Plaintiffs to work in Westerly, Rhode Island. Chabot also asked the front seat passenger, Guilfredo E. Camay Munoz ("Camay"), for his name and his birth date. Camay informed Chabot that his name was Willie Camay and provided his birth date.

Chabot then asked the passengers for identification. Tamup served as a translator for this request at least in part because a number of the Plaintiffs were not fluent in English. Plaintiffs Israel Tebalan, Cruz Rivera, and Rolando Noriega produced identification cards, including Guatemalan Consular identification documents, but the remaining passenger Plaintiffs did not produce any form of identification whatsoever. After speaking with the other Plaintiffs, Tamup informed Officer Chabot that the remaining passengers were unable to produce any documentation. Because the Plaintiffs failed to proffer identification documents, Chabot then requested immigration documentation. The Plaintiffs were unable to produce any documentation regarding their immigration status. Chabot then told Tamup to exit the vehicle, asked him why

he was transporting undocumented persons, and conducted a pat-down search of him.

Chabot then returned to his vehicle and conducted a background check on Tamup. The criminal check was negative and Chabot learned that Tamup's license was valid. Chabot then contacted the Providence office of Immigration and Customs Enforcement ("ICE") to report that he had pulled over a passenger van transporting individuals whom he suspected of being present in the U.S. in violation of federal immigration law. Shortly thereafter, ICE Officer Cort Burke returned Chabot's call and requested that Chabot detain the Plaintiffs for further investigation by ICE.

Chabot returned to the van, where he conducted another pat-down search of Tamup. Rhode Island State Police Officer Heather Donahue ("Donahue") then arrived to assist Chabot. Chabot told Tamup that it was Tamup's responsibility to follow his police car to the Providence ICE office. Three plaintiffs, Tamup, Astrid Estrada Cabrera, and Wendy Estrada Cabrera, testified at their depositions that Chabot stated that, if anyone tried to get out of the van, he would shoot them or that they would lose their lives.[1] (Tamup Dep. 21:24-22:5; 23:5-11, Mar. 31, 2008; Astrid Estrada Cabrera Dep. 27:12-15, Mar. 31, 2008; Wendy Estrada Cabrera Dep. 15:1-8, Mar. 31, 2008.) Chabot denies making any such statement. (Chabot Dep. 31:25-32:8 Oct. 29, 2007). Chabot, driving in front of the van, and Donahue, driving behind the van, escorted the van to the Providence ICE office, after making a brief stop at an exit off of Interstate 95 to reverse direction and to allow Chabot to check the locks on the van doors. After arriving at the office, ICE agents escorted the Plaintiffs into the building and detained them. Tamup received a ticket for changing lanes without signaling from Officer Chabot. Tamup subsequently

[1]Again, for purposes of deciding these motions, the Court credits Plaintiffs' accounts.

paid the fine.

Plaintiffs filed a seven-count complaint against the Defendants on January 8, 2007. Plaintiffs make claims arising under federal law including unreasonable search and seizure; unlawful discrimination; and deprivation of civil rights. They also make claims arising under state law including negligence; unreasonable search and seizure; unlawful discrimination; and unlawful racial profiling. Plaintiffs seek a declaratory judgment as well as monetary damages.

Defendants have moved for summary judgment on the grounds that reasonable suspicion supported Chabot's conduct and thus it was not unlawful. Defendants also invoke the doctrine of qualified immunity.

Plaintiffs, in turn, have moved for partial summary judgment on the issue of the Defendants' liability on Count II (Unreasonable Search and Seizure in violation of 42 U.S.C. § 1983) and Count VI (Unreasonable Search and Seizure in violation of Article 1, § 6 of the Rhode Island Constitution), contending that the pat-down searches of Tamup and/or the seizure of the Plaintiffs were without legal justification. They further contend that they are entitled to judgment as a matter of law on the claim of failure to train on unreasonable seizures.

Both parties have complied with this Court's Local Rules, requiring that a motion for summary judgment "shall be accompanied by a Statement of Undisputed Facts that concisely sets forth all facts that the movant contends are undisputed and entitle the movant to judgment as a matter of law." D.R.I. Civ. R. 56(a)(1).

II. Standard of Review

Summary judgment is appropriate "if the pleadings, the discovery and disclosure

materials on file, and any affidavits show that there is no genuine issue as to any material fact and [] the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). An issue is "genuine" if the relevant evidence is such that a rational factfinder could resolve the issue in favor of either party, and a fact is "material" if it "has the capacity to sway the outcome of the litigation under the applicable law." Nat'l Amusements, Inc. v. Town of Dedham, 43 F.3d 731, 735 (1st Cir. 1995).

In a case where parties have filed cross-motions for summary judgment, the Court must "determine whether either of the parties deserves judgment as a matter of law on facts that are not disputed." Barnes v. Fleet Nat'l Bank, N.A., 370 F.3d 164, 170 (1st Cir. 2004) (quoting Wightman v. Springfield Terminal Ry. Co., 100 F.3d 228, 230 (1st Cir. 1996)). In such a case, the Court "must rule on each party's motion on an individual and separate basis, determining, for each side, whether a judgment may be entered in accordance with the Rule 56 standard." Bienkowski v. Northeastern Univ., 285 F.3d 138, 140 (1st Cir. 2002) (internal quotation marks and citation omitted). In so doing, the Court views all facts and draws all reasonable inferences in the light most favorable to the nonmoving party. Cont'l Cas. Co. v. Canadian Universal Ins. Co., 924 F.2d 370, 373 (1st Cir. 1991). However, on issues where the nonmovant bears the ultimate burden of proof, the nonmoving party must present affirmative evidence to rebut the motion and to support the complaint. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 256-57 (1986).

III. Analysis

The Court considers Defendants' motion first, viewing the facts and drawing appropriate

inferences in favor of the Plaintiffs.

Federal Claims

Section 1983 Claims (Counts II and III)

Government officers may be held liable pursuant to 42 U.S.C. § 1983 ("§ 1983") "for infringing on the constitutional rights of private parties." Hatch v. Dep't for Children, Youth and Their Families, 274 F.3d 12, 19 (1st Cir. 2001). Section 1983 creates a private cause of action for individuals denied a federally protected right. Baker v. McCollan, 443 U.S. 137, 146 (1979).

Count II

In Count II, Plaintiffs contend that the Defendants violated § 1983 by conducting an illegal search and seizure, thereby depriving the Plaintiffs of rights guaranteed by the Fourth and Fourteenth Amendments to the United States Constitution. The Plaintiffs contend that Officer Chabot lacked reasonable suspicion to question them regarding their immigration status, to contact ICE, and to transport them to ICE's office, in violation of their Fourth Amendment right to be free from unreasonable searches and seizures. Plaintiffs further argue that their Fourth Amendment rights were violated when Chabot conducted multiple pat-down searches of Tamup. Plaintiffs do not contend that the initial stop, the request for Tamup's license and registration, and the request for identification from the passengers were improper. Instead, they argue that Chabot unlawfully prolonged the traffic stop beyond the scope of the original justification for the stop.

The Fourth Amendment guarantees "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV. "Temporary detention of individuals during the stop of an automobile by the police, even if only for a brief period and for a limited purpose, constitutes a 'seizure' of 'persons' within the meaning of this provision." Whren v. United States, 517 U.S. 806, 809-10 (1996). As a result, a traffic stop entails a seizure of the driver as well as the passengers in the car, "'even though the purpose of the stop is limited and the resulting detention quite brief.'" Brendlin v. California, 127 S.Ct. 2400, 2406 (2007) (quoting Delaware v. Prouse, 440 U.S. 648, 653 (1979)). To comport with constitutional requirements, a seizure must be grounded by reasonable suspicion with a basis in "specific and articulable facts." United States v. Espinoza, 490 F.3d 41, 46-47 (1st Cir. 2007) (quoting United States v. Hensley, 469 U.S. 221, 229 (1985)). The reasonable suspicion analysis is a mixed question of law and fact, and requires an assessment of the "totality of the circumstances, on a case-specific basis, in order to ascertain whether the officer had a particularized, objectively reasonable basis for suspecting wrongdoing." Espinoza, 490 F.3d at 46 (quoting United States v. Coplin, 463 F.3d 96, 100 (1st Cir. 2006)).

During an investigative stop, a police officer may permissibly request an individual to identify him or herself. Hiibel v. Sixth Judicial Dist. Court of Nevada, 542 U.S. 177, 185 (2004). "Asking questions is an essential part of police investigations." Id. Even if officers have no reason to suspect an individual, "they may generally ask questions of that individual; ask to examine the individual's identification; and request consent to search his or her luggage" without implicating the Fourth Amendment. Florida v. Bostick, 501 U.S. 429, 434-35 (1991).

In Muehler v. Mena, the Supreme Court held that an officer did not need independent

reasonable suspicion to question an individual about her immigration status during the execution of a search warrant. Muehler v. Mena, 544 U.S. 93 (2005). Relying in part on Bostick, the Court found that the Fourth Amendment was not triggered by questioning the individual on her name, date and place of birth, or immigration status, because that line of questioning does not generally constitute a seizure and because the inquiry did not prolong the detention. Id., at 101.

Chabot's initial request for identification is unchallenged by the Plaintiffs; it is well-established that a request for identification from a vehicle's passengers is not generally beyond the scope of a valid stop and therefore is within the parameters of the Fourth Amendment. See Immigration and Naturalization Serv. v. Delgado, 466 U.S. 210, 216 (1984) (holding that questioning "relating to one's identity or a request for identification by the police does not, by itself, constitute a Fourth Amendment seizure"); see also United States v. Soriano-Jarquin, 492 F.3d 495, 500 (4th Cir. 2007) ("We believe a simple request for identification from passengers falls within the purview of a lawful traffic stop and does not constitute a separate Fourth Amendment event.").

The Plaintiffs do, however, challenge Chabot's subsequent action of requesting information regarding their immigration status. At the point that Chabot made this inquiry, all but four of the Plaintiffs had failed to provide any identification and Chabot's suspicions reasonably escalated. See United States v. Sakyi, 160 F.3d 164, 169 (4th Cir. 1998); United States v. Hooper, 935 F.2d 484, 493-94 (2d Cir. 1991). Furthermore, under Mena and Bostick, it is permissible for officers to inquire into the immigration status of individuals without triggering the Fourth Amendment or requiring independent reasonable suspicion. Therefore, Chabot did not violate the Fourth Amendment rights of the Plaintiffs by asking for immigration

documentation.

According to the facts set forth by the Plaintiffs, Chabot contacted ICE only after learning that the majority of the passengers lacked identification or immigration documentation and that they were going to work. It was thus with reasonable and articulable suspicion that Officer Chabot contacted ICE for guidance. Based on how events unfolded, Officer Chabot's attention and his suspicion shifted from the original traffic citation to other concerns, namely to potential violations of federal immigration law. Such a shift in focus is neither unusual nor impermissible. See United States v. Sowers, 136 F.3d 24, 27 (1st Cir. 1998). Chabot's actions were founded on reasonable suspicion and thus the Plaintiffs' Fourth Amendment right to be free from unreasonable seizures was not violated.

Regarding the pat-down searches of Tamup, Defendants correctly argue that the other Plaintiffs do not have standing to bring this challenge, because the violation of an individual's rights cannot generally serve as the basis for another individual's constitutional challenge. See Sowers, 136 F.3d at 28-29 (holding that a pat-down search could not be challenged on Fourth Amendment grounds by an individual who was not himself subjected to the pat-down search).

Therefore, only Tamup has standing to challenge the pat-down search of his person by Chabot. A pat-down search is appropriate in a valid Terry stop if "the officer is justified in believing that the person is armed and dangerous to the officer or others." United States v. McKoy, 428 F.3d 38, 39 (1st Cir. 2005) (internal quotation and citation omitted). The inquiry requires a consideration of "the totality of the circumstances to see whether the officer had a particularized, objective basis for his or her suspicion." McKoy, 428 F.3d at 39 (citing United States v. Arvizu, 534 U.S. 266, 273 (2002)). As discussed above, Chabot had reasonable

suspicion to believe that the Plaintiffs had violated federal immigration law. There was a van with at least twelve passengers, and Officer Chabot made a number of trips between the van and his own vehicle. In his deposition, Chabot testified that, "once Mr. Tamup [was] in the van and he [came] out of the van, I [had] no idea what he might have brought with him from the van, whether it be a knife, whether it be a weapon of some sort, so for my safety I conducted a Terry pat." (Chabot Dep. 23:16-21.) Chabot was in his cruiser, contacting ICE, and did not have visual contact with the Plaintiffs for a period of time. Due to the lack of identification proffered, Officer Chabot could not conduct criminal background checks on the passenger Plaintiffs, further supporting his escalated reasonable suspicion. The First Circuit has repeatedly held that, in the context of a Terry stop, "officers may take necessary steps to protect themselves if the circumstances reasonably warrant such measures." Flowers v. Fiore, 359 F.3d 24, 30 (1st Cir. 2004) (citing United States v. Lee, 317 F.3d 26, 31-32 (1st Cir. 2003); United States v. Acosta-Colon, 157 F.3d 9, 18 (1st Cir. 1998); United States v. Trullo, 809 F.2d 108, 113 (1st Cir. 1987)). Under the totality of the circumstances that confronted him, Chabot's pat-down searches of Tamup were justified and therefore pass constitutional muster.

Chabot's request for identification documents and for immigration status from the Plaintiffs was permissible under Bostick and Mena. Having received no identification documents or information regarding the immigration status of most of the Plaintiffs, Chabot was justified in detaining the Plaintiffs for further investigation. Therefore, the Defendants' Motion for Summary Judgment as it pertains to Count II is granted.

Count III

In Count III, Plaintiffs contend that the Defendants violated § 1983 by engaging in racial discrimination and profiling in violation of the Fourteenth Amendment. In their Motion for Summary Judgment, Defendants assume that Count III is an equal protection claim, requiring proof that Chabot exercised discretion to enforce the law in a race-based manner and that the Plaintiffs were treated differently than similarly-situated individuals who were not part of their protected class. Defendants argue that Plaintiffs have failed to produce any evidence of such unlawful discrimination.

Plaintiffs, in their Response to the Defendants' Motion for Summary Judgment, concede that they have not brought an equal protection claim, but fail to further address Count III. This Court finds that the Plaintiffs' claim is unclear and that the Plaintiffs have failed to develop any argument to clarify and/or support this claim in response to the Defendants' Motion for Summary Judgment. Accordingly, the Defendant's Motion for Summary Judgment is granted as it pertains to Count III. See Cody v. United States, 249 F.3d 47, 53 n.6 (1st Cir. 2001) (stating that failure to develop a claim waives an issue).

Failure to Train Claim

The Plaintiffs contend that the Defendants are liable for failing "to properly select, train, instruct, supervise and discipline officers" of the Rhode Island State Police, "relative to the proper manner in which to effectuate a lawful search, seizure, detention, and motor vehicle stop." (Compl. ¶ 39.) In their Objection to Defendants' Motion for Summary Judgment, the Plaintiffs discuss this allegation as part of their negligence claim. (Pls.' Objection to Defs.' Mot. for

Summ. J., at 15.) Yet in their Motion for Partial Summary Judgment, the Plaintiffs' discuss a claim brought under § 1983 for failure to adequately train police officers. In either case, because this Court has determined that no constitutional violation occurred, the Plaintiffs' claim of failure "to properly select, train, instruct, supervise and discipline officers" necessarily fails. See Rivera v. Rhode Island, 402 F.3d 27, 38-39 (1st Cir. 2005) ("Since the plaintiff has failed to state a constitutional claim at all, her claims against the other defendants for supervisory liability and for failure to train fail.") (citing City of Canton v. Harris, 489 U.S. 378, 391 (1989) and Maldonado-Denis v. Castillo-Rodriguez, 23 F.3d 576, 581-82 (1st Cir. 1994)).

Qualified Immunity for Section 1983 Claims

The Defendants have invoked the doctrine of qualified immunity as to the § 1983 claims (Counts II and III). The doctrine of qualified immunity may shield government officials "performing discretionary functions . . . from civil damages liability as long as their actions could reasonably have been thought consistent with the rights they are alleged to have violated." Anderson v. Creighton, 483 U.S. 635, 638 (1987). Qualified immunity "is a question of law, [and it] is an issue that is appropriately decided by the court during the early stages of the proceedings." Tatro v. Kervin, 41 F.3d 9, 15 (1st Cir. 1994).

Having concluded that no constitutional violation occurred, this Court need not address the issue of qualified immunity for the § 1983 claims. See Flowers, 359 F.3d at 34 ("If no constitutional right would have been violated were the allegations established, there is no necessity for further inquiries concerning qualified immunity.") (quoting Saucier v. Katz, 533 U.S. 194, 201 (2001)).

Section 1981 Claim (Count IV)

Plaintiffs have brought one claim under section 1981 of Title 42 of the United States Code ("§ 1981"), alleging that Defendants illegally searched and seized them and unlawfully discriminated against them on the basis of their race. Section 1981 guarantees that all persons enjoy "the full and equal benefit of all laws . . ." and "be subject to like punishments" regardless of race. 42 U.S.C. § 1981(a). This provision is intended to "proscribe the misuse of governmental power motivated by racial animus." Wiggins v. Rhode Island, 326 F. Supp. 2d 297, 310 (D.R.I. 2004) (citing Alexis v. McDonald's Restaurants of Massachusetts, Inc., 67 F.3d 341, 348 (1st Cir. 1995)). Plaintiffs, in support of their § 1981 claim, must demonstrate: "(1) that [they are] member[s] of a racial minority, (2) that the defendant[s] discriminated against [them] on the basis of [their] race; and (3) that the discrimination implicated one or more of the activities enumerated in the statute." Wiggins, 326 F. Supp. 2d at 310 (citing Garrett v. Tandy Corp., 295 F.3d 94, 98 (1st Cir. 2002)).

Defendants contend that the Plaintiffs' claim of racial discrimination is wholly unsupported by evidence. Defendants argue, and Plaintiffs concede, that the initial stop was lawful and not racially motivated. Defendants further contend that Plaintiffs have failed to proffer any evidence of discrimination as to the requests for identification or for the pat-down searches of Tamup.

The first prong of the test is met, as each of the Plaintiffs identifies as Hispanic. However, to succeed on the second and third prongs, the Plaintiffs must sufficiently demonstrate that Chabot discriminated against them *because* they are Hispanic. A finding of discriminatory

intent "implies that the decisionmaker . . . selected . . . a particular course of action at least in part 'because of,' not merely 'in spite of,' its adverse effects upon an identifiable group.'" Coyne v. City of Somerville, 972 F.2d 440, 445 (1st Cir. 1992) (quoting Pers. Adm'r of Mass. v. Feeney, 442 U.S. 256, 279 (1979)). Here, Plaintiffs contend that Chabot "contacted ICE and questioned the Plaintiffs about their immigration status *because* he identified them as Hispanics." (Pls.' Objection to Defs.' Mot. for Summ. J., at 14 (emphasis added).) However, they do not point to any specific acts or statements by Chabot to support this conclusory allegation. To reiterate the facts above, Chabot properly asked the passengers for identification, and, after the majority of the Plaintiffs failed to proffer any, questioned the Plaintiffs about their immigration status and contacted ICE. These actions are permissible under well-established case law. This Court, making all reasonable inferences in favor of the Plaintiffs as non-moving parties, does not find any competent evidence of intentional race-based discrimination. Therefore, Defendants' Motion for Summary Judgment as it pertains to Count IV is granted.

State Law Claims

Negligence (Count I)

Plaintiffs bring one count of negligence against the Defendants for breaching their duty of care owed to the Plaintiffs. As part of this claim, Plaintiffs allege that the State is liable under the doctrine of *respondeat superior* for the negligent acts of Defendants Chabot and Doe.[2]

[2] The Complaint lists Jane Doe, individually and in her official capacity as a state trooper employed by the State of Rhode Island. The Complaint alleges that "Defendant Doe arrived at the scene and conferred with Defendant Chabot," after Chabot had requested identification information and immigration documentation and after he had conducted a pat-down search of Tamup. Compl ¶ 34. The complaint also indicates that Doe assisted Chabot in escorting the

To support a claim of negligence under Rhode Island law, a plaintiff must demonstrate the following: "a legally cognizable duty owed by a defendant to a plaintiff, a breach of that duty, proximate causation between the conduct and the resulting injury, and the actual loss or damage." Mills v. State Sales, Inc., 824 A.2d 461, 467 (R.I. 2003) (quoting Jenard v. Halpin, 567 A.2d 368, 370 (R.I. 1989)). The state of Rhode Island may be held liable for an employee's negligence under *respondeat superior*, subject to the monetary limitation set forth in Section 9-31-2 of the R.I. Gen. Laws. Saunders v. State, 446 A.2d 748, 751-52 (R.I. 1982).

The Plaintiffs fail to point with specificity to any acts or omissions of the Defendants that would constitute a breach of duty, nor do they allege which, if any, duties were breached. The Plaintiffs have failed to set forth any facts that would establish the essential elements of a general negligence claim or a negligence claim under a theory of *respondeat superior*. See Acosta v. Ames Dep't Stores, Inc., 386 F.3d 5, 12 (1st Cir. 2004). Accordingly, Defendants' Motion for Summary Judgment as it pertains to Count I is granted.

R.I. Constitutional Claims (Counts V and VI)

Count V

Plaintiffs to the ICE office. Id. at ¶ 36. The Plaintiffs have not filed an amended complaint, naming Jane Doe. Furthermore, the Plaintiffs have failed to serve this defendant pursuant to Fed. R. Civ. P. 4. Therefore, any claims against Defendant Doe are dismissed. See Tardiff v. Knox County, 567 F. Supp. 2d 201, 207 (D. Me. 2008) (dismissing a claim against an individual corrections officer, Jane Doe, under 42 U.S.C. § 1983 for lack of prosecution when the plaintiff failed to name the defendant); see also Ensey v. Culhane, 727 A.2d 687, 690 (R.I. 1999) ("[U]nless these John Doe defendants are named and served with process within a reasonable time after their identities become known, they may not be considered parties to the case.").

The Plaintiffs bring a claim of unlawful discrimination in violation of Article 1, Section 2 of the Rhode Island Constitution. This constitutional provision provides, in relevant part, that:

> No person shall be deprived of life, liberty or property without due process of law, nor shall any person be denied equal protection of the laws. No otherwise qualified person shall, solely by reason of race, gender or handicap be subject to discrimination by the state, its agents or any person or entity doing business with the state.

R.I. Const. Art. 1, § 2. This claim is analogous to Plaintiffs' Count III claim, brought under the Fourteenth Amendment of the U.S. Constitution. These provisions provide similar protection, and thus "a separate analysis is unnecessary." Rhode Island Insurers' Insolvency Fund v. Leviton Mfg. Co., Inc., 716 A.2d 730, 734 (R.I. 1998). The same result applies: the Plaintiffs have not sufficiently demonstrated unlawful discrimination under the Rhode Island Constitution. Accordingly, the Defendants' Motion for Summary Judgment as it pertains to Count V is granted.

Count VI

In Count VI, the Plaintiffs claim that Chabot's conduct constituted a violation of their rights guaranteed by Article 1, Section 6 of the Rhode Island Constitution. This provision protects an individual's right to be free from "unreasonable searches and seizures," R.I. Const. Art. 1, § 6, and is coextensive with the Fourth Amendment of the United States Constitution. Brousseau By and Through Brousseau v. Town of Westerly By and Through Perri, 11 F. Supp. 2d 177, 183 (D.R.I. 1998). Having determined that the seizure was justified by reasonable suspicion for purposes of the Fourth Amendment, the Court similarly disposes of the Plaintiffs'

claim under the analogous state constitutional provision. Accordingly, the Defendants' Motion for Summary Judgment as it relates to Count VI is granted.

Discrimination in Violation of the R.I. Racial Profiling Prevention Act (Count VII)

Plaintiffs' Count VII claim is brought pursuant to the Rhode Island Racial Profiling Prevention Act of 2004 ("the Act"). This claim is one of first impression for the Court, thus meriting a discussion of the purposes of this statute and its history.

In July of 2000, the Rhode Island General Assembly enacted the Traffic Stops Statistics Act, R.I. Gen. Laws §§ 31-21.1-1 *et seq.*, which required state and local police departments to collect certain prescribed data for all traffic stops. A final report for the two-year statistical study was released in January of 2004. The study revealed that non-white drivers are more likely to be searched and more likely to be arrested than white drivers as the result of a traffic stop. Northeastern Univ. Inst. on Race and Justice, Rhode Island Traffic Stop Statistics Act Final Report, at 174 (June 30, 2003). In response to the findings of the study, the Rhode Island General Assembly enacted the Racial Profiling Prevention Act of 2004. R.I. Gen. Laws §§ 31-21.2-1 *et seq*.

The preamble of the Act discusses the integral role played by law enforcement in protecting the public, acknowledging that "[t]he vast majority of police officers discharge their duties professionally and without bias." R.I. Gen. Laws § 31-21.2-2(a). However, the Act states that "[i]n many communities nonwhite drivers in Rhode Island, subjected to discretionary searches, are twice as likely as whites to be searched." Id. at 2(c). Calling for a comprehensive solution, the statute explains that racial profiling "harms individuals subjected to it because they

experience fear, anxiety, humiliation, anger, resentment and cynicism when they are unjustifiably treated as criminal suspects." Id. at 2(e). Furthermore, racial profiling "damages law enforcement and the criminal justice system as a whole by undermining public confidence and trust . . . and thereby undermining law enforcement efforts and ability to solve and reduce crime." Id. at 2(f).

The Act prohibits "racial profiling" by law enforcement officers or agencies, defining the term to mean:

> the detention, interdiction or other disparate treatment of an individual on the basis, in whole or in part, of the racial or ethnic status of such individual, except when such status is used in combination with other identifying factors seeking to apprehend a specific suspect whose racial or ethnic status is part of the description of the suspect, which description is timely and reliable.

R.I. Gen. Laws § 31-21.2-3. A private cause of action for damages and equitable relief is statutorily provided for victims of racial profiling. R.I. Gen. Laws § 31-21.2-4. The statute mandates that, in the context of a traffic stop, no vehicle "shall be detained beyond the time needed to address the violation," unless "there exists reasonable suspicion or probable cause of criminal activity." R.I. Gen. Laws § 31-21.2-5.

If a law enforcement officer possesses a reasonable suspicion of criminal activity, the traffic stop does not trigger the Act or constitute a violation of the statute. R.I. Gen. Laws § 31-21.2-5. The Act does not define "reasonable suspicion," nor has the term been judicially construed under this statute. For purposes of Article 1, Section 6 of the Rhode Island Constitution and the Fourth Amendment to the United States Constitution, the Rhode Island Supreme Court has held that an assessment of "reasonable suspicion" must be "based upon all of the circumstances," which should be analyzed "as understood by those versed in the field of law

enforcement." State v. Foster, 842 A.2d 1047, 1051 (R.I. 2004) (quoting United States v. Cortez, 449 U.S. 411, 418 (1981)). Reasonable suspicion "means the detaining authority can 'point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant'" the brief detention of an individual. State v. Bjerke, 697 A.2d 1069, 1071 (R.I. 1997) (quoting Terry v. Ohio, 392 U.S. 1, 21 (1968)).

This Court assumes that the Rhode Island General Assembly intended the term "reasonable suspicion" in the Racial Profiling Prevention Act to have the same meaning as the standard developed under the Rhode Island Constitution. Having determined that Officer Chabot had reasonable suspicion to take the actions that he did, Plaintiffs' statutory claims pursuant to the Act must fail.

State Law Claims and Qualified Immunity

This Court has held that qualified immunity may be available to government officials for claims under Rhode Island law, including negligence. See Hopkins v. Rhode Island, 491 F. Supp. 2d 266, 275-76 (D.R.I. 2007); see also Hatch v. Town of Middletown, 311 F.3d 83, 89-90 (1st Cir. 2002). This doctrine under state law is analogous to the federal doctrine of qualified immunity. Hopkins, 491 F. Supp. 2d at 276. Again, having determined that no constitutional violation occurred, this Court need not consider the issue of qualified immunity for the Plaintiffs' state law claims.

Plaintiffs' Motion for Partial Summary Judgment

Plaintiffs submitted a Motion for Partial Summary Judgment against the Defendants on

the issue of liability on Count II (Unreasonable Search and Seizure in violation of § 1983) and Count VI (Unreasonable Search and Seizure in violation of R.I. Const. Art 1, § 6). Plaintiffs argue that Chabot did not have reasonable suspicion to conduct pat-down searches of Tamup or to seize the Plaintiffs and transport them to ICE. Plaintiffs also contend that they are entitled to a judgment regarding the failure to properly train and supervise as it relates to Counts II and VI.

Plaintiffs argue that there is no genuine issue of material fact regarding liability on Counts II and VI, and that they are entitled to a judgment on that issue as a matter of law. As outlined above, the Court has determined that the Defendants are entitled to a judgment as a matter of law on each count, because Chabot's conduct was not unlawful in any respect. Accordingly, Plaintiffs' Motion for Partial Summary Judgment is denied.

IV. Conclusion

For the reasons set forth herein, the Defendants' Motion for Summary Judgment is GRANTED. The Plaintiffs' Motion for Partial Summary Judgment is DENIED.

SO ORDERED.

Mary M. Lisi
Chief United States District Judge
December 30, 2008