

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR PIERCE COUNTY

SAMUEL RAMIREZ-RANGEL, LETICIA
GONZALES-SANTIAGO, and JOSE
SOLIS-LEON,

Plaintiffs,

v.

KITSAP COUNTY, JUSTIN T. CHILDS,
in his official capacity as a Kitsap County
Sheriff's Deputy, and SCOTT C. JENSEN,
in his official capacity as a Kitsap County
Sheriff's Deputy,

Defendants.

No. 12-2-09594-4

**PLAINTIFFS' OPPOSITION TO
DEFENDANTS' CR 56 MOTION FOR
ENTRY OF FINAL JUDGMENT AND
PLAINTIFFS' CROSS-MOTION FOR
SUMMARY JUDGMENT**

I. INTRODUCTION

At the hearing on May 31, 2013, this Court held that Defendants' Motion for Entry of Final Judgment ("Defendants' Motion") is a dispositive motion pursuant to CR 56 and, as such, the due process protections of a twenty-eight day noting schedule applied. The Court ordered a new briefing schedule affording Plaintiffs the opportunity to submit additional briefing in

¹ Defendants' CR 56 Motion for Entry of Final Judgment is noted for hearing on June 28, 2013. Plaintiffs' Cross-Motion for Summary Judgment is noted for hearing on August 2, 2013.

1 response to Defendants' inappropriately-noted dispositive motion. In addition, Plaintiffs hereby
2 cross-move for judgment as a matter of law under CR 56. Because the issues presented in
3 Defendants' Motion and in Plaintiffs' Cross-Motion for Summary Judgment significantly
4 overlap, they are addressed together in this memorandum.²

5 II. BACKGROUND³

6 On the night and early morning of February 1-2, 2010, Plaintiff Samuel Ramirez-Rangel
7 drove Plaintiffs Leticia Gonzalez-Santiago and Jose Solis-Leon to a beach at Gamble Bay to
8 engage in the commercial gathering of oysters, pursuant to a valid commercial license.
9 Unbeknownst to Plaintiffs, Defendants Childs and Jensen conducted surveillance on them as
10 they gathered shellfish. As Defendants Childs and Jensen observed Plaintiffs, they noted that
11 Plaintiffs were speaking fluent Spanish. Declaration of Justin T. Childs [in Support of
12 Defendants' Motion for Summary Judgment] ("Childs Decl."), p. 3:1; Declaration of Scott C.
13 Jensen [in Support of Defendants' Motion for Summary Judgment] ("Jensen Decl."), p. 3:23.
14 Defendants would later use this fact as partial justification for their suspicions regarding
15 Plaintiffs' immigration status and for prolonging the detention of the Plaintiffs. See Jensen
16 Decl., p. 6:12-15; Childs Decl., p. 5:6-9.

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21 ² Pursuant to CR 56, Plaintiffs are precluded from noting their Cross-Motion for
22 Summary Judgment for the same date on which Defendants' Motion will be heard. To conserve
23 judicial resources, Plaintiffs requested that Defendants agree to an expedited briefing schedule.
24 However, Defendants declined Plaintiffs' proposal, and therefore Plaintiffs have noted their
25 Cross-Motion for Summary Judgment for this Court's consideration on August 2, 2013. Given
26 that the same issues are presented in both Motions, Plaintiffs have consolidated the briefing on
the two Motions into this brief.

³ The facts delineated in this memorandum are supported by the declarations of
Defendants Justin Childs and Scott Jensen filed on February 15, 2013, as cited in the
Background section. In addition, Plaintiffs' Cross-Motion for Summary Judgment is further
supported by the declarations of Samuel Ramirez-Rangel, Jose Solis-Leon, and Skylee Robinson
filed on March 18, 2013.

1 After observing Plaintiffs for an undisclosed period of time, Defendants Childs and
2 Jensen returned to their patrol cars and waited for Plaintiffs return to the pickup truck. Childs
3 Decl., p. 4:5-9; Jensen Decl., p. 4:27-28. Plaintiffs eventually returned to the pickup truck with
4 the oysters they had collected and drove away. As the truck passed Defendant Jensen's patrol
5 car, he noted that one of the headlights of the truck was defective. Jensen Decl., p. 5:6-7.
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7 Defendant Jensen relied on the defective headlight as a basis to stop and investigate
8 Plaintiffs, and he seized Plaintiffs by conducting a traffic stop in his "fully marked [Kitsap
9 County Sheriff's Office] patrol car." Jensen Decl., p. 5:17. When Plaintiffs pulled over and
10 stopped in response to Defendants' show of Kitsap County police authority, Defendant Jensen
11 made contact with the driver, Plaintiff Ramirez-Rangel. *Id.* at 5:17-18. Defendant Jensen
12 advised Plaintiff Ramirez-Rangel that the headlight on the truck was defective, *id.*, yet he made
13 sure to note both that Plaintiff Ramirez-Rangel's response was "[i]n broken English," and that
14 "[a]ll [four of the vehicle's occupants] appeared to be Hispanic." *Id.* at 5:17-21. Despite this
15 alleged purpose for stopping the vehicle, Defendant Jensen did not issue a citation for the
16 defective headlight (or even initiate the process for issuing a citation for the headlight) at that
17 point nor at any later point in time. Nevertheless, Defendant Jensen did not release Plaintiff
18 Ramirez-Rangel and the passengers in the truck after "investigating" the headlight to
19 Defendants' satisfaction. *See, generally*, Jensen Decl.; Childs Decl.
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22 Instead of issuing a citation for a defective headlight or even waiting to receive Mr.
23 Ramirez-Rangel's identification, Defendant Jensen instead asked Plaintiff Solis-Leon, who was
24 sitting in the rear passenger seat on the driver's side of the truck, for identification. Jensen Decl.,
25 p. 5:22-27. Plaintiff Solis-Leon did not have his identification with him, but he verbally
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1 identified himself by his name and birth date. *Id.* After Defendant Jensen asked Plaintiff Solis-
2 Leon for his identification, Defendant Jensen examined Plaintiff Ramirez-Rangel driver's
3 license, which Plaintiff Ramirez-Rangel had produced along with a commercial shellfishing
4 license. *Id.* at 5:26-6:1. Plaintiff Ramirez-Rangel explained to Defendant Jensen that Plaintiffs
5 were harvesting oysters on the beach, and he showed Defendant Jensen the commercial tags on
6 the bags of shellfish that Plaintiffs collected. *Id.* at 5:28-6:4.

8 At the time Defendant Jensen examined Plaintiff Ramirez-Rangel's commercial
9 shellfishing license, he observed that it "appeared to be in order." *Id.* Defendant Jensen was also
10 aware at that time that "commercial oyster harvesting rules require that bags be marked or tagged
11 in some manner," and he had the opportunity to examine Plaintiffs' commercial shellfish tags
12 within the bags of oysters they had collected. *Id.* Upon concluding this alleged "poaching"
13 investigation, Defendants did not issue a citation for any alleged shellfishing infraction (or even
14 initiate the process for issuing a citation for any alleged shellfishing infraction) at that point nor
15 at any later point in time. Nevertheless, Defendants did not release Plaintiff Ramirez-Rangel and
16 the passengers in the truck after "investigating" the alleged "poaching" to Defendants'
17 satisfaction. *See, generally*, Jensen Decl.; Childs Decl.

19 While Defendant Jensen questioned Plaintiff Ramirez-Rangel, Defendant Childs
20 interrogated Plaintiff Gonzalez-Santiago about his identity. Childs Decl., p. 4:21-5:2. Defendant
21 Jensen ran a background search on both the driver, Plaintiff Ramirez-Rangel, and a passenger,
22 Plaintiff Solis-Leon. Jensen Decl., p. 6:6-11. Neither of these background checks returned a
23 warrant. *Id.* Defendant Childs ran a background search on another passenger, Plaintiff
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1 Gonzalez-Santiago. Childs Decl., p. 4:26-5:6. Neither of their background checks returned a
2 warrant. *Id.*

3 After Defendants Childs and Jensen completed the background searches of the Plaintiffs
4 and other passenger and concluded their investigations regarding the headlight and shellfish to
5 Defendants' satisfaction, Defendants immediately turned their questioning to Plaintiffs'
6 immigration status. Both Defendant Jensen and Defendant Childs explicitly proclaimed:
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8 Based upon the lack of identification, the lack of record, the
9 obvious fact that English was not the primary language of any of
10 the individuals, and the covert manner in which the oysters had
been harvested, *I began to suspect that the occupants were not
U.S. citizens.*

11 Jensen Decl., 6:12-15 (emphasis added); Childs Decl., p. 5:6-8 (emphasis added).

12 Acting on his suspicions that Plaintiffs were not U.S. citizens, Defendant Jensen
13 segregated Plaintiff Ramirez-Rangel from his colleagues and asked him questions about his
14 immigration status. Jensen Decl., p. 6:15-21. Defendant Jensen specifically inquired into
15 Plaintiff Ramirez-Rangel's citizenship, as well as whether he had a "green card" or "work visa."
16 *Id.* Defendant Childs similarly acted on his "suspicions that Plaintiffs were not U.S. citizens" by
17 questioning Plaintiffs Gonzalez-Santiago and Solis-Leon about their immigration status. Childs
18 Decl., p. 5:8-14. Defendant Childs specifically inquired into Plaintiffs Gonzalez-Santiago's and
19 Solis-Leon's citizenship, as well as whether they had "green cards." *Id.*

21 Defendants Childs and Jensen directed Plaintiff Ramirez-Rangel to return to the truck and
22 then directed all the Plaintiffs to remain in the truck's cab. Declaration of Samuel Ramirez-
23 Rangel in Support of Plaintiffs' Opposition to Defendants' Motion for Summary Judgment
24 ("Ramirez Decl."). Defendants Childs and Jensen enforced detention of the Plaintiffs by
25 confiscating both the keys to the truck and Plaintiff Ramirez-Rangel's valid driver's license.
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1 Defendants Childs and Jensen also threatened the Plaintiffs with arrest by telling Plaintiffs:
2 “Don’t move. If you try to get out, we’ll arrest you.” *Id.* at ¶ 15.

3 Defendant Jensen then called U.S. Customs and Border Patrol and informed it that he had
4 stopped individuals whom he suspected might have immigration issues. Childs Decl., p. 5:15-
5 21; Jensen Decl., p. 6:25-26. Defendant Jensen also assured Border Patrol that Defendants
6 Jensen and Childs would detain the Plaintiffs until a Border Patrol official arrived at the scene.
7 Jensen Decl., p. 6:25-7:8. Defendant Childs additionally requested other law enforcement
8 officers to assist. Two officers from the Suquamish and Port Gamble law enforcement agencies
9 responded. The officers were armed and in marked cars. Plaintiffs were then surrounded by four
10 marked patrol cars and four armed police officers. *Id.*; Childs Decl., p. 5:15-21.

12 Defendants Jensen and Childs detained Plaintiffs in the truck for more than an hour, until
13 a Border Patrol official arrived at the scene. Jensen Decl., p. 6:25-7:8. During the time that
14 Plaintiffs remained detained in the truck and under threat of arrest, Defendants Jensen and
15 Childs, assisted by the other officers, kept the truck surrounded at all times by at least four armed
16 police officers. Ramirez Decl., ¶ 17. Defendants Jensen and Childs also ordered Plaintiffs to
17 remain in their vehicle with their windows down and without any heat during this time. *Id.* at ¶
18 15. Even years after this event, Defendants recall that particular evening was “very cold.” *Id.*;
19 Jensen Decl., p. 2:26; Childs Decl., p. 2:10-11 and 3:7.

22 III. EVIDENCE RELIED UPON

23 In support of this Opposition to Defendants’ CR 56 Motion for Entry of Final Judgment
24 and Cross-Motion for Summary Judgment, Plaintiffs rely upon the following declarations and
25 their attachments: Declaration of Justin T. Childs (filed February 15, 2013); Declaration of Scott
26 C. Jensen (filed February 15, 2013); Declaration of Jose Luis Solis-Leon in Support of Plaintiffs’

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1 Opposition to Defendants' Motion for Summary Judgment (filed March 18, 2013); Declaration
2 of Samuel Ramirez-Rangel in Support of Plaintiffs' Opposition to Defendants' Motion for
3 Summary Judgment (filed March 18, 2013); Declaration of Skylee Robinson in Support of
4 Plaintiffs' Opposition to Defendants' Motion for Summary Judgment (filed March 18, 2013);
5 and Declaration of Karin Jones in Support of Plaintiffs' Opposition to Defendants' Motion for
6 Entry of Final Judgment (filed May 29, 2013).

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8 **IV. ARGUMENT IN OPPOSITION TO DEFENDANTS' CR 56 (CR 12)**
9 **MOTION FOR JUDGMENT AS A MATTER OF LAW**

10 Defendants have twice previously sought dismissal of Plaintiffs' Constitutional Claims as
11 a matter of law. *See* Defendants' Motion for Partial Dismissal; Defendants' 02/15/13 Motion for
12 Summary Judgment. The Court denied these motions. *See* Order Denying Defendants' Motion
13 for Partial Dismissal; Order Denying Defendants' Motion for Summary Judgment. Nothing has
14 changed with respect to Plaintiffs' constitutional claims that warrants a reversal of this Court's
15 previous rulings.

16 **A. Standard of Review**

17 Summary judgment is warranted "if the pleadings, affidavits, and depositions establish
18 that there is no genuine issue of material fact and that the moving party is entitled to judgment as
19 a matter of law." CR 56(c); *Am. Safety Cas. Ins. Co. v. City of Olympia*, 162 Wn.2d 762, 768,
20 174 P.3d 54 (2007). "The burden is on the party moving for summary judgment to demonstrate
21 that there are no genuine issues of material fact." *Pac. Nw. Shooting Park Ass'n v. City of*
22 *Sequim*, 158 Wn.2d 342, 350, 144 P.3d 276 (2006). "All facts and reasonable inferences are
23 considered in a light most favorable to the nonmoving party." *Munich v. Skagit Emergency*
24 *Communications Ctr.*, 175 Wn.2d 871, 877, 288 P.3d 328 (2012).

1 **B. Defendants' Attempt to Dismiss Plaintiffs' Constitutional Claims Must Fail Because**
2 **Defendants' Prolonged Detention and Immigration Questioning Violated Article I,**
3 **Section 7.**

4 Defendants stopped Plaintiffs to investigate a defective headlight and/or potential
5 shellfish harvest violations. During the stop, Defendants obtained sufficient information from
6 Mr. Ramirez-Rangel to dispel their immediate concerns of criminal activity concerning shellfish
7 harvesting. Even though all suspicion of criminal activity was resolved, Defendants questioned
8 Plaintiffs about their immigration status and proceeded to detain Plaintiffs for approximately two
9 hours until Border Patrol agents arrived at the scene. These actions constituted violations of
10 Article I, Section 7 of the Washington State Constitution and are the bases for Plaintiffs'
11 constitutional claims. *See* Complaint, ¶¶ 34-39; Ramirez Decl.; Solis Decl..

12 “[A] seizure occurs, under article I, section 7, when considering all the circumstances, an
13 individual's freedom of movement is restrained and the individual would not believe he or she is
14 free to leave or decline a request due to an officer's use of force or display of authority.” *State v.*
15 *Rankin*, 151 Wn.2d 689, 695, 92 P.3d 202, 205 (2004). Washington law directs law enforcement
16 officers to discontinue a seizure once the purported reasons for the seizure are exhausted. *See*
17 *State v. Santacruz*, 132 Wn. App. 615, 619, 133 P.3d 484 (2009) (“To detain beyond what the
18 initial stop demanded, the officer must be able to articulate specific facts from which it could
19 reasonably be suspected that the person was engaged in criminal activity.”) (internal quotation
20 marks and citation omitted); *State v. Acrey*, 148 Wn.2d 738, 746-48, 64 P.3d 594, 598-99 (2003);
21 *State v. Duncan*, 146 Wn.2d 166, 179, 43 P.3d 513 (2002); *State v. Smith*, 115 Wn.2d 775, 785,
22 801 P.2d 975 (1990); *State v. Williams*, 102 Wn.2d 733, 739, 689 P.2d 1065, 1069 (1984) (“Our
23 disagreement with the Court of Appeals is not over the initial interference with petitioner's
24 freedom. . . . It is the intensity and scope of the intrusion [that] we find improper.”).

25 Even under the Fourth Amendment to the U.S. Constitution, which is less protective than
26 Washington's Constitution, it is a constitutional violation to prolong a detention, without further

1 indicia of criminal activity, after the basis for the stop is resolved.⁴ See *Melendres v. Arpaio*, 695
2 F.3d 990, 1000 (9th Cir. 2012) (“While the seizures of the [individuals] based on traffic
3 violations may have been supported by reasonable suspicion, any extension of their detention
4 must be supported by additional suspicion of criminality[, and] [u]nlawful presence is not
5 criminal.”). Further, courts have cautioned law enforcement officers that questioning individuals
6 beyond the scope of the stop runs afoul of constitutional protections. *State v. Allen*, 138 Wn.
7 App. 463, 157 P.3d 893 (2007) (limiting the scope of questioning an officer may engage in
8 during a stop to the purpose of the stop); *State v. Henry*, 80 Wn. App. 544, 910 P.2d 1290 (1995)
9 (holding that although initial stop was justified, officer’s expansion of stop’s scope into a general
10 drug investigation without an independent objective basis for doing so was improper).

11 Here, however, Defendants did not abide by these constitutional directives. Defendants
12 stopped Plaintiffs because of a defective headlight and/or to investigate potential shellfish
13 poaching. The Defendants’ own evidence demonstrates that they completed their questioning
14 about these matters quickly, as Mr. Ramirez-Rangel readily admitted to the defective headlight
15 and showed Jensen commercial tags for the oysters. Jensen Decl. ¶¶ 19-23. Yet without
16 another source of reasonable suspicion or probable cause of criminal activity, Defendants
17 prolonged their detention of Plaintiffs to investigate immigration matters that are not criminal
18 violations and that Defendants are not authorized to enforce. Defendants’ 02/15/13 Motion for
19 Summary Judgment, p. 17; Jensen Decl., ¶¶ 23-24; Childs Decl., ¶ 18; Ramirez Decl.; Solis
20 Decl.; Robinson Decl., Exs. 13-31.

23 ⁴ The Washington Supreme Court has “repeatedly held that article I, Section 7 provides
24 greater protection of individual privacy than the Fourth Amendment.” *State v. Morse*, 156
25 Wn.2d 1, 10, 123 P.3d 832 (2005) (emphasis added). “The inquiry under article I, section 7 is
26 broader than under the Fourth Amendment to the United States Constitution, and focuses on
those ‘privacy interests which citizens of this state have held, and should be entitled to hold, safe
from governmental trespass.’” *State v. Jackson*, 150 Wn.2d 251, 259, 76 P.3d 217 (2003)
(quoting *State v. Myrick*, 102 Wn.2d 506, 511, 688 P.2d 151 (1984)).

1 This violation of Article I, Section 7 is in no way remedied by this Court's finding that
2 Defendants' *post-hoc* rationalizations, made three years after the fact, were sufficient to warrant
3 a defense against tort liability for False Arrest.⁵ Having reasonable suspicion or probable cause
4 to support the initial stop does not bear on Plaintiffs' constitutional claims, which arise from
5 Defendants' conduct after any purportedly legitimate bases for the stop were resolved and all
6 reasonable suspicion and/or probable cause that allegedly justified the detention had dissipated.

7 For the reasons above, Defendants violated Article I, Section 7 as a matter of law, and
8 Defendants' CR 56 Motion must fail.

9 **C. Plaintiffs' Constitutional Claims Are Justiciable.**

10 Defendants argue that Plaintiffs' constitutional claims do not present a justiciable
11 controversy. However, this argument fails now, just as it failed the first time Defendants raised
12 it. *See* Defendants' 02/15/13 Motion for Summary Judgment.⁶ Defendants' attempted second
13 bite at the apple should be rejected.

14 This case involves a very real, justiciable controversy between the parties, stemming
15 from an unlawful detention, and is not merely a vehicle for determination of abstract rights. As
16 such, declaratory relief is entirely proper. *See Reeder v. King Cnty.*, 57 Wn.2d 563, 564, 358
17 P.2d 810 (1961) ("The declaratory judgment act should be liberally interpreted in order to
18 facilitate its socially desirable objective of providing remedies not previously countenanced by
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21 ⁵ Defendants claim that a *post-hoc* basis for probable cause to arrest, which was not
22 known or asserted until three years after the incident, supports dismissal of their False Arrest
23 Claims. However, courts have consistently found that in order to successfully invoke probable
24 cause as a defense against tort liability for false arrest, probable cause is determined by what the
25 officer knew at the time. *Youker v. Douglas Cnty.*, 162 Wn. App. 448, 466, 258 P.3d 60, 69
26 (2011) ("Probable cause that will defeat a claim for false arrest is proved by demonstrating the
officer's knowledge of facts and circumstances that would lead a reasonable officer to believe a
crime has been committed."); *see also Bishop v. City of Spokane*, 142 Wn. App. 165, 170, 173
P.3d 318 (2007).

⁶ The Court's denial of Defendants' Motion for Summary Judgment as to Plaintiffs' Constitutional Claims was not overturned on reconsideration. *See* Order re Motion for Reconsideration; Jones Decl., Exs. B, C.

1 our law.”); *Kitsap Cnty. v. Smith*, 143 Wn. App. 898, 902-03, 180 P.3d 834 (2008) (“A
2 declaratory judgment is peculiarly well-suited to a judicial determination of controversies
3 concerning constitutional rights.”).⁷

4 The Uniform Declaratory Judgments Act, RCW 7.24 (“UDJA”), which is the basis for
5 the remedy Plaintiffs seek in relation to their constitutional claims, has been interpreted as
6 follows:

7 [I]n the absence of the intrusion of issues of broad overriding
8 public import, ... before the jurisdiction of a court may be invoked
9 under the act, there must be a justiciable controversy: (1) which is
10 an actual, present and existing dispute, or the mature seeds of one,
11 as distinguished from a possible, dormant, hypothetical,
12 speculative, or moot disagreement, (2) between parties having
genuine and opposing interests, (3) which involves interests that
must be direct and substantial, rather than potential, theoretical,
abstract or academic, and (4) a judicial determination of which will
be final and conclusive.

13 *Diversified Indus. Dev. Corp. v. Ripley*, 82 Wn.2d 811, 814-15, 514 P.2d 137, 139 (1973)
14 (emphasis added). Plaintiffs’ constitutional claims meet all the elements of a justiciable
15 controversy.

16 **1. Plaintiffs’ Claim for Declaratory Judgment is Justiciable.**

17 First, there is an “actual, present and existing dispute” regarding whether the Defendants’
18 conduct was an unlawful invasion of Plaintiffs’ private affairs in violation of Article I, Section 7.
19 *Id.* Plaintiffs suffered a constitutional injury and an infringement of their privacy by the
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21 ⁷ Defendants misrepresent this Court’s holding in its Motion for Reconsideration, arguing
22 that there is no remaining justiciable controversy and claiming that the Court “ruled that the
23 detention was lawful upon the uncontroverted finding of the existence of probable cause.”
24 Motion for Entry of Final Judgment, p. 6. However, as the Court confirmed at the hearing on
25 May 31, 2013, the Court did not hold that the detention was lawful. Instead, the Court found that
26 Defendants’ *post-hoc* probable cause rationale was sufficient to serve as a defense against tort
liability for false arrest. The Court made no ruling regarding the constitutionality of the
detention. See Order re Motion for Reconsideration; Jones Decl., Ex. C. As Plaintiffs have
proven the four elements of a justiciable controversy, Plaintiffs’ constitutional claims must stand.

1 Defendants' prolonged detention and questioning. Furthermore, this is an injury that Defendants
2 are likely to cause again in the future to either Plaintiffs or others without guidance from this
3 Court.

4 Second, the parties here have "genuine and opposing interests." *Id.* Plaintiffs seek
5 declaratory relief confirming that it is unconstitutional for Defendants, without appropriate
6 authorization from the federal government, to prolong a detention to enforce federal civil
7 immigration law. On the contrary, Defendants argue that law enforcement officers may prolong
8 a detention indefinitely to question individuals suspected of federal civil immigration violations
9 and to deliver individuals into federal immigration custody, even without appropriate judicial or
10 statutory authority.

11 Third, the interests in this matter are "direct and substantial, rather than potential,
12 theoretical, abstract or academic." *Id.* Everyone has a fundamental right to be free from
13 unlawful government disturbance in their private affairs. State and local law enforcement
14 officers cannot indefinitely detain people they suspect are non-citizens because of their skin
15 color, accent, or language to ask questions relevant only to the enforcement of federal civil
16 immigration law, which they are not authorized to enforce. The existence of a constitutional
17 injury makes this issue direct and substantial rather than merely theoretical.⁸

18 Finally, a judicial determination of this matter will be "final and conclusive." *Id.*
19 Defendants' only argument to the contrary is that "the judgment requested would bear upon only
20 one of at least six law enforcement agencies who have jurisdiction within the boundaries of
21 Kitsap County." Reply in Support of Motion for Entry of Final Judgment, filed 05/30/13, p. 6.
22 Plaintiffs have brought this action against Defendants Kitsap County, Jensen, and Childs,
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24 ⁸ Of further direct, pressing, and substantial concern is Defendants' vehement defense of
25 their detention to question Plaintiffs about their immigration status for purposes of enforcing
26 federal immigration law. This essentially argues *sub silencio* that state and local law
enforcement may detain and interrogate anyone, at any time, when they have "reasonable
suspicion" that a person may not be lawfully present in the United States.

1 because Defendants are the actors who engaged in the unlawful conduct at issue. Defendants
2 cannot avoid liability simply because the action does not extend to other entities that did not
3 engage in any conduct affecting Plaintiffs. Nor do Defendants point to any authority for their
4 illogical proposition that declaratory relief should fail against the proper Defendants because it
5 would not also extend to other actors who were not engaged in the unlawful conduct.

6 **2. Even if Plaintiffs' Claims Are Not Justiciable, Declaratory Relief is Appropriate.**

7 Even if this matter did not meet the four elements of a justiciable controversy, Plaintiffs'
8 claims for declaratory judgment should proceed. The Washington State Supreme Court has held
9 that "[t]he presence of issues of 'broad overriding import'" may justify "a court['s ...] exercise
10 [of] its discretion in favor of reaching an issue which is otherwise not justiciable." *Snohomish*
11 *Cnty. v. Anderson*, 124 Wn.2d 834, 840–41, 881 P.2d 240 (1994). To determine whether there is
12 an issue of public importance sufficient to overcome the justiciable controversy requirement,
13 courts look to "the extent to which public interest would be enhanced by reviewing the case."
14 *Smith*, 143 Wn. App. at 907-09 (citing *Anderson*, 124 Wn.2d at 841).

15 In *Smith*, the court held that clarification of an issue that would enhance the County's
16 ability to properly advise its employees and establish policies ensuring protection of all persons'
17 privacy rights was of sufficiently broad overriding public import to warrant that the court issue a
18 declaratory judgment. *Id.* at 909. Here, Plaintiffs ask the Court to declare whether Kitsap
19 County Deputies lack the authority to stop, detain, and question individuals for federal
20 immigration violations that the deputies are not authorized to enforce. The enforcement of the
21 State Constitution presents a question of pressing public concern, and Kitsap County needs to
22 know how to train, manage, and advise its deputies to comply with the Constitution. Therefore,
23 even if this matter were not justiciable, the broad public import of this issue is sufficient to
24 justify a declaratory judgment. *Id.*

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1 request.” *State v. Rankin*, 151 Wn.2d 689, 695, 92 P.3d 202 (2004) (“[P]assengers are
2 unconstitutionally detained when an officer requests identification ‘unless other circumstances
3 give the police independent cause to question the passengers.’”); *see also State v. Allen*, 138 Wn.
4 App. 463, 470-71, 157 P.3d 893, 898 (2007); *State v. Brown*, 154 Wn.2d 787, 117 P.3d 336
5 (2005) (holding that officer’s request that a passenger, who was in a car stopped on suspicion of
6 an illegal trip permit, to identify himself for a warrants check was an unconstitutional seizure).

7 Here, Defendants unlawfully requested identification from those Plaintiffs who were
8 passengers in the vehicle without any independent, lawful basis to do so. *See Ramirez Decl.*,
9 *Solis Decl.*; *Jensen Decl.*, ¶¶ 20, 22; *Childs Decl.*, ¶¶ 16-18. Although Defendants now claim
10 that they requested this information pursuant to an investigation into the shellfish harvesting
11 issue, the Defendants did not ask anyone other than Mr. Ramirez-Rangel, the driver, for
12 information regarding the shellfish harvest. Moreover, at least one of the Defendants sought
13 identifying information from the passengers after Mr. Ramirez-Rangel was questioned and any
14 reasonable suspicion or probable cause regarding the shellfish harvest had dissipated. The
15 Defendants also proceeded to run the passengers’ names for wants and warrants long after
16 determining, at the time of the incident, that Plaintiffs were not engaged in poaching but were
17 harvesting with commercial licenses.

18 **2. Defendants’ Investigation into Plaintiffs’ Immigration Status Violated Article I,** 19 **Section 7.**

20 Defendants lacked any lawful basis to detain Plaintiffs to inquire into immigration status,
21 as doing so was: (1) beyond the scope of any matter for which Defendants had enforcement
22 authority; (2) unrelated to any suspicion of criminal activity; and (3) well beyond the scope of
23 the purported reasons for the traffic stop.

24 First, Defendants are not authorized to enforce federal civil immigration law, and
25 therefore they had no authority to detain or question Plaintiffs regarding their immigration status
26 or to detain them while Border Patrol agents travelled to the scene. *See Pl. Opposition to*

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1 Defendants' Motion for Summary Judgment, p. 16-20. Local law enforcement agencies are not
2 authorized to enforce federal immigration law without entering into an agreement with the
3 United States Attorney General pursuant to 8 U.S.C. § 1357(g)(1) which requires, among other
4 things, "a written certification that the officers or employees performing the function under the
5 agreement have received adequate training regarding the enforcement of relevant Federal
6 immigration laws." 8 U.S.C. § 1357(g)(2). This secures federalist principles that would be
7 violated if "state officers [were] in the position of holding aliens in custody for possible unlawful
8 presence without federal direction and supervision." *Arizona v. United States*, __ U.S. __, 132
9 S.Ct. 2492, 2509 (2012). As neither Kitsap County, nor any other agency in Washington State,
10 has entered into a Section 1357(g) agreement, and Washington State has no statutory framework
11 authorizing state and local law enforcement agents to enforce federal immigration law,
12 Defendants lacked the authority to detain Defendants for suspected violations of federal
13 immigration law. Doing so constituted a prolonged seizure of Plaintiffs' persons that violated
14 Plaintiffs' constitutional rights to privacy under Article I, Section 7.

15 Second, Defendants may detain individuals only if there is reasonable suspicion and/or
16 probable cause that the individuals are engaged in specific criminal activity. "To detain beyond
17 what the initial stop demanded the officer must be able to articulate specific facts from which it
18 could reasonably be suspected that the person was engaged in criminal activity." *Santacruz*, 132
19 Wn. App. at 619; *see also Duncan*, 146 Wn.2d 166 (holding that local law enforcement officers
20 in Washington State are not authorized to detain individuals they suspect of mere civil
21 violations); *Gonzales v. Peoria*, 722 F.2d 468 (9th Cir. 1999).

22 Here, Defendants not only lacked legal authority to detain and question Plaintiffs for
23 immigration enforcement because the federal government has not authorized them to do so, *see*
24 *above*, Defendants also lacked legal authority to engage in immigration enforcement because the
25 alleged immigration violation of being unlawfully present in the United States is a civil, not
26

**PLAINTIFFS' OPPOSITION TO DEFENDANTS' CR 56 MOTION FOR ENTRY OF FINAL
JUDGMENT AND PLAINTIFFS' CROSS-MOTION FOR SUMMARY JUDGMENT - 16**

1 criminal, violation. *See Melendres v. Arpaio*, 695 F.3d 990, 1000 (9th Cir. 2012) (“Unlawful
2 presence is not criminal.”); *Gonzales*, 722 F.2d at 476-77 (“Unlawful presence in the United
3 States is “only a civil violation” under federal law.”). Thus, Defendants’ suspicion that Plaintiffs
4 were not lawfully present in the country—the undisputed motivation for their continued
5 detention of Plaintiffs and questioning regarding Plaintiffs’ immigration status--did not constitute
6 a reasonable suspicion of criminal activity, and the subsequent immigration questioning and
7 prolonged detention therefore violated Article I, Section 7. *See Santacruz*, 132 Wn. App. at
8 619; *Duncan*, 146 Wn.2d at 179.

9 Third, Defendants’ questioning of Plaintiffs regarding their immigration status was far
10 outside the scope of the basis for the stop. Once the purpose of a stop is addressed, continued
11 detention without a basis for reasonable suspicion or probable cause of specific criminal activity
12 violates Article I, Section 7. *See, e.g., Allen*, 138 Wn. App. 463 (limiting the scope of
13 questioning in which an officer may engage during a stop to the purpose of the stop); *Henry*, 80
14 Wn. App. 544 (1995) (same). Here, Defendants do not dispute that they continued to detain
15 Plaintiffs after the initial purpose of the stop and investigation were satisfactorily completed in
16 order to question them about their immigration status, an issue that was utterly unrelated to the
17 purported reasons for the traffic stop or the investigation into potential shellfish harvesting
18 violations. As such, Defendants’ questioning about immigration status constitutes a separate and
19 independent violation of Article I, Section 7.

20 Defendants’ prolonged detention and immigration questioning of Plaintiffs
21 unquestionably violated Plaintiffs’ constitutional privacy rights. Article I, Section 7 exists
22 precisely to prevent this type of egregious intrusion by the Government. Plaintiffs are entitled to
23 judgment as a matter of law as to their constitutional claims and therefore respectfully request
24 that the Court issue the declaratory relief sought in their Complaint: (1) a declaration that
25 Defendants are not authorized to enforce federal immigration law; and (2) a declaration that
26

**PLAINTIFFS’ OPPOSITION TO DEFENDANTS’ CR 56 MOTION FOR ENTRY OF FINAL
JUDGMENT AND PLAINTIFFS’ CROSS-MOTION FOR SUMMARY JUDGMENT - 17**

1 Defendants do not have the authority to prolong a detention in order to engage in questioning
2 regarding immigration status.

3
4 **IV. CONCLUSION**

5 For the reasons set forth above, Plaintiffs request that this Court deny Defendants' CR 56
6 Motion for Entry of Final Judgment and grant Plaintiffs' request for judgment as a matter of law,
7 pursuant to CR 56.

8 DATED: June 14, 2013.

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CERTIFICATION OF SERVICE

I, Melissa Wood, declare under penalty of perjury under the laws of the state of Washington that the following is true and correct. I am employed by the law firm of Stoel Rives LLP.

At all times hereinafter mentioned, I was and am a citizen of the United States of America, a resident of the State of Washington, and over the age of 18 years, not a party to the above-entitled action, and competent to be a witness herein.

I hereby certify that on June 14, 2013, I caused a true and correct copy of the foregoing document to be served on the following individuals as indicated below:

Neil R. Wachter
Ione S. George
Kitsap County Prosecutor's Office
614 Division Street, MS-35A
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Via Email

DATED: June 14, 2013, at Seattle, Washington.

/s/ Melissa Wood
Melissa Wood, Legal Practice Assistant