

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' MOTION FOR ENTRY
OF FINAL JUDGMENT**

I. INTRODUCTION

Defendants' Motion for Entry of Final Judgment is actually a dispositive motion in disguise, seeking dismissal on the legal merits of Plaintiffs' Constitutional Claims. Defendants concede that "no specific judgment has yet been rendered regarding the request for declaratory relief for an alleged constitutional violation," yet attempt to procedurally leap directly to entry of final judgment before the remaining claims have been fully litigated. *See* Defendants' Motion

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1 for Entry of Final Judgment, p. 4. Accordingly, Defendants’ Motion should have been raised as
2 a motion for summary judgment under CR 56, and Plaintiffs must “be given reasonable
3 opportunity to present all material made pertinent to such a motion by rule 56,” including the
4 opportunity to fully respond to a CR 56 motion under the 28-day motion calendar required by
5 CR 56(c).¹ CR 12(c). Regardless, Defendants’ argument that Plaintiffs’ Constitutional Claims
6 should be dismissed as a matter of law fails for the very same reasons it failed when Defendants
7 raised the argument twice before. As this Court has already correctly ruled on two prior
8 occasions, dismissal of Plaintiffs’ Constitutional Claims is not warranted.
9

10 **II. BACKGROUND**

11 **A. Factual Background**

12 Defendants Jensen and Childs observed Plaintiffs shellfish-harvesting on Port Gamble
13 Bay beach in the early morning hours of February 2, 2010. Declaration of Scott Jensen in
14 Support of Defendants’ Motion for Summary Judgment Dismissal (“Jensen Decl.”), ¶¶ 10-11;
15 Declaration of Justin Childs in Support of Defendants’ Motion for Summary Judgment Dismissal
16 (“Childs Decl.”), ¶¶ 6-9. Defendants crept closer to Plaintiffs and heard them conversing in
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20 ¹ Defendants filed this Motion on May 16, 2013 and originally noted it for consideration
21 on May 24, 2013, the minimum amount of time permitted for general motions, by characterizing
22 it as a Motion for Entry of Final Judgment. Upon the request of Plaintiffs, Defendants re-noted
23 the Motion for consideration on May 31, 2013, but declined to re-note it for a later date.
24 Declaration of Karin Jones in Support of Plaintiffs’ Opposition to Defendants’ Motion for Entry
25 of Final Judgment (“Jones Decl.”), ¶ 5. Under CR 56(c), Defendants are required to file a
26 motion for summary judgment at least 28 calendar days before the hearing.

Plaintiffs are in the process of finalizing their own Motion for Summary Judgment
regarding their remaining claims, which they intend to file in the immediate future. In the event
the Court considers dismissal of Plaintiffs’ Constitutional Claims, Plaintiffs respectfully request
that the Court reserve judgment until Plaintiffs have had the opportunity to comprehensively
brief these issues under CR 56.

1 Spanish. Jensen Decl., ¶ 10; Childs Decl., ¶ 8. After Plaintiffs loaded the truck and drove away,
2 Defendant deputies activated their overhead lights and pulled over the vehicle, allegedly due to a
3 defective headlight and the deputies' suspicion of unlawful shellfish-harvesting. Jensen Decl., ¶¶
4 15-17. Defendant Jensen advised Plaintiff Samuel Ramirez-Rangel, who was the driver of the
5 vehicle, of the defective headlight, then questioned Ramirez-Rangel about the shellfish harvest.
6 *Id.* at ¶¶ 19-21. Ramirez-Rangel produced valid licenses and tags from the Department of
7 Health. *Id.* at ¶ 21; Declaration of Samuel Ramirez-Rangel in Support of Plaintiffs' Opposition
8 to Defendants' Motion for Summary Judgment ("Ramirez-Rangel Decl."), ¶ 12. At that time,
9 neither Defendants Jensen or Childs nor the Plaintiffs knew of any alleged problem with the
10 harvesting licenses that had been issued. *See* Plaintiffs' Motion for Summary Judgment
11 Dismissal ("Motion for Summary Judgment"), p. 5. Neither Defendants Jensen nor Childs
12 ticketed, cited, fined, or arrested any of the Plaintiffs or their employers for the alleged shellfish-
13 harvesting violations, which only came to light three years after the fact and have still yet to be
14 sufficiently explored to determine whether the harvest was a criminal violation and, if it was,
15 who would be criminally liable.²

18 After reviewing the commercial shellfish-harvesting licenses and tags, Defendants Jensen
19 and Childs began to question Plaintiffs about their immigration status, asked the passengers for
20 identification, prolonged the initial traffic stop or investigation regarding potential shellfish-
21 harvesting violations, and eventually directed Plaintiffs to remain in the truck with the windows
22 open for approximately two hours while Defendants waited for Border Patrol to arrive. *See*

25 ² Although the Court found the *post-hoc* probable cause argument raised by Defendants
26 sufficient to defend against tort liability for false arrest, Defendants have not proven that
Plaintiffs would be liable for shellfish-harvesting violations.

1 Jensen Decl.; Ramirez-Rangel Decl. It is undisputed, according to Defendants’ own evidence,
2 that Defendants’ suspicions regarding Plaintiffs’ citizenship status motivated their unlawfully-
3 prolonged detention and interrogation of Plaintiffs. *See* Jensen Decl., ¶ 23; Childs Decl., ¶ 18. It
4 is undisputed that there were no arrest warrants for Plaintiffs, that no citations issued for any
5 violation, and that Defendants did, in fact, continue the detention to engage in immigration
6 questioning.
7

8 **B. Procedural Background**

9 In January 2012, Plaintiffs filed this lawsuit alleging the following two causes of action:
10 (a) violations of the Washington State Constitution, Article I, Section 7 (“Plaintiffs’
11 Constitutional Claims”); and (b) the tort of false arrest (“Plaintiffs’ False Arrest Claims”). *See*
12 Complaint for Damages and Declaratory Relief (“Complaint”).
13

14 On July 5, 2012, Defendants filed a Motion for Partial Dismissal Pursuant to CR 12(c)
15 (“Motion for Partial Dismissal”). In their Motion for Partial Dismissal, Defendants sought to
16 dismiss a non-existent claim for monetary damages arising from Plaintiffs’ cause of action for
17 violations of Article 1, Section 7. Motion for Partial Dismissal, p. 2 (“Because no cause of
18 action exists for damages based upon state constitutional violations, the Plaintiffs’ cause of
19 action for monetary damages under Article 1, § 7, Constitution of the State of Washington must
20 be dismissed.”) However, Plaintiffs never sought monetary damages for the violations of their
21 constitutional rights. *See* Opposition to Defendants’ Motion for Partial Dismissal Pursuant to
22 CR 12(c) (“Opposition to Motion for Partial Dismissal”), p. 2. Instead, the form of relief sought
23 for the constitutional violations has always been declaratory relief. *Id.* The Court issued an
24 Order which clarified that declaratory judgment was the appropriate relief available for
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1 Plaintiffs' claims of constitutional violations and that money damages for those same violations
2 were not available. *See* Order Granting Defendants' Motion for Partial Dismissal Pursuant to
3 CR 12(c) ("Order re Motion for Partial Dismissal").

4 Defendants additionally misconstrued Plaintiffs' tort claims and petitioned this Court to
5 dismiss the "cause of action" for respondeat superior. Motion for Partial Dismissal, p. 3.
6 However, Plaintiffs never pursued an independent claim of nor sought independent relief for
7 respondeat superior. Instead, Plaintiffs simply intended to invoke the legal doctrine of
8 respondeat superior. Plaintiffs clarified this in responsive briefing to Defendants' Motion to
9 Dismiss. Opposition to Motion for Partial Dismissal, p. 5. Subsequently, the Court affirmed that
10 Plaintiffs could pursue claims against Kitsap County under the legal theory of respondeat
11 superior for the unlawful actions of its deputies but that an independent claim for respondeat
12 superior was not appropriate.

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15 The Order provided that:

16 any/all claims for damages for Violation of Washington
17 Constitution Art. I, Section 7, and claims for Respondeat Superior
18 (as an independent cause of action) are dismissed with prejudice;
19 Plaintiffs' request for Declaratory judgment pursuant to Art. I, § 7
20 of WA Const. and claim for false arrest against all named
21 defendants including under the doctrine of Respondeat Superior,
22 which are not included in Defendants' CR 12(c) Motion for Partial
23 Dismissal, are not addressed by this Order and accordingly, are not
24 hereby dismissed.

25 Order re Motion for Partial Dismissal (emphasis added).

26 Defendants subsequently filed their Motion for Summary Judgment Dismissal ("Motion
for Summary Judgment"). On March 29, 2013, this Court held oral argument on Defendants'
Motion for Summary Judgment and denied the motion, holding that there were facts in dispute
and, as such, summary judgment was inappropriate:

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1 I'm not going to grant summary judgment. I do think there are
2 issues in material fact with respect to the timing of the
3 identification questions, principally. But since I'm not going to
grant summary judgment, I don't need to explain all the reasons
why. I just have to find one material fact that's in dispute.

4 ... [T]he material fact as to the timing of the identification
5 checking and identification questions is a material fact in going
6 forward with Plaintiffs' case, and so summary judgment isn't
appropriate at this juncture.

7 Declaration of Karin Jones in Support of Plaintiffs' Opposition to Defendants' Motion for Entry
8 of Final Judgment ("Jones Decl."), Ex. B ("03/29/13 Tr."), 37: 9-22; *see also* Order Denying
9 Defendants' Motion for Summary Judgment Dismissal ("Order re Motion for Summary
10 Judgment").

11 Defendants then filed a Motion for Reconsideration of the Court's Order Denying
12 Defendants' Motion for Summary Judgment Dismissal ("Motion for Reconsideration"), seeking
13 reconsideration on the narrow issue of whether the alleged existence of probable cause precluded
14 Plaintiffs' False Arrest tort claims. On April 19, 2013, the Court held that Defendants had
15 probable cause to arrest Plaintiffs for an unidentified crime and, as such, had an absolute defense
16 against tort liability for false arrest. The Court granted Defendants' Motion for Reconsideration
17 only as to Plaintiffs' False Arrest Claims but did not dismiss Plaintiffs' claims for constitutional
18 violations. Jones Decl., Ex. C ("04/19/13 Tr."), 24:19-23; Order Granting Motion for
19 Reconsideration and Granting Motion for Summary Judgment Dismissal of False Arrest Claim
20 ("Order re Motion for Reconsideration").
21

22 Defendants have already sought dismissal of Plaintiffs' claims for constitutional
23 violations as a matter of law—not once, but *twice*. As discussed below, nothing has changed
24 with respect to Plaintiffs' Constitutional Claims that would suddenly warrant a change to this
25 Court's previous two denials of dismissal of Plaintiffs' Constitutional Claims as a matter of law.
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III. ARGUMENT

A. Entry of Final Judgment is Inappropriate Where Plaintiffs Have Live Claims Yet to Be Adjudicated.

Defendants’ Motion for Entry of Final Judgment is, at heart, another motion for summary judgment that Defendants treat as a CR 12(c) motion for judgment on the pleadings. Dismissal of Plaintiffs’ remaining claims under CR 12(c) is not supported in fact or law, and entry of final judgment is not appropriate where, as here, viable claims remain. Accordingly, Plaintiffs respectfully request that this Court deny Defendants’ Motion.

1. Standard of Review

The standard for CR 12(c) dismissal is extremely strict: “A dismissal under CR 12(c) “is appropriate only if it is beyond doubt that the plaintiff cannot prove any set of facts to justify recovery. In making this determination, a trial court must presume that the plaintiff’s allegations are true[.]” *P.E. Sys., LLC v. CPI Corp.*, 176 Wn.2d 195, 210-11, 289 P.3d 638 (2012) (quoting *Parmelee v. O’Neel*, 145 Wn. App. 223, 232, 186 P.3d 1094 (2008)); see also *M.H. v. Corp. of the Catholic Archbishop of Seattle*, 162 Wn. App. 183, 189, 252 P.3d 914 (2011). For purposes of a CR 12(c) motion, “the plaintiff[s]’ allegations are presumed to be true” and dismissal is justified ‘only in the unusual case in which plaintiff[s] include[] allegations that show on the face of the complaint that there is some insuperable bar to relief.’” *M.H.*, 162 Wn. App. at 189 (quoting *Tenore v. AT&T Wireless Servs.*, 136 Wn.2d 322, 330, 962 P.2d 104 (1998)). Further, a motion to dismiss that requires a court to consider matters outside the pleadings should be treated as a motion for summary judgment under CR 56, and the opposing party is entitled to a reasonable opportunity to present pertinent material in response thereto. *Bly v. Pilchuck Tribe No. 42*, 5 Wn. App. 606, 607, 489 P.2d 937 (1971).

1 Defendants also seek entry of final judgment, dismissing this case. However, entry of
2 final judgment is reserved for those instances where all of the merits of the case have been
3 adjudicated. CR 54(a)(1) clarifies that “[a] judgment is the final determination of the rights of
4 the parties in the action,” and entry of final judgment as to fewer than all the claims in an action
5 is seldom warranted. CR 54.³
6

7 **2. Plaintiffs’ Cause of Action for Constitutional Violations Has Not Been**
8 **Dismissed**

9 Defendants seek “Entry of Final Judgment in this action, thereby terminating all further
10 proceedings in the . . . case.” Motion for Entry of Final Judgment, p. 1. In support of their
11 Motion, Defendants erroneously argue that “[a]ll claims in this cause [sic] have effectively been
12 terminated . . .” and “[w]hat remains of the plaintiffs’ action is nothing more than a request for
13 relief for causes of action which have been dismissed and/or nullified by the rulings of this
14 court.” *Id.* at 2.

15 Contrary to Defendants’ characterization, this Court has not dismissed Plaintiffs’ First
16 Cause of Action for constitutional violations. *See* Jones Decl., Ex A (“08/03/12 Tr.”)
17 (Defendants clarifying that they did not seek to dismiss Plaintiffs’ Constitutional Claims for
18 declaratory relief); Order re Motion for Partial Dismissal (clarifying that Plaintiffs’
19 Constitutional Claims for declaratory relief were not being dismissed); Order re Motion for
20 Summary Judgment; 04/19/13 Tr. (granting summary judgment dismissal only as to Plaintiffs’
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23 ³ “When more than one claim for relief is presented in an action, . . . the court may direct
24 the entry of a final judgment as to one or more but fewer than all of the claims or parties only
25 upon an express determination in the judgment, supported by written findings, that there is no
26 just reason for delay and upon an express direction for the entry of judgment. . . . In the absence
of such findings, determination and direction, any order or other form of decision, however
designated, which adjudicates fewer than all the claims . . . shall not terminate the action as to
any of the claims or parties . . .” CR 54(b).

1 False Arrest Claims); Order re Motion for Reconsideration (same). And Defendants’ assertion
2 that the Court only found “that a question of fact existed regarding the False Arrest Claim . . .
3 without specifically addressing the motion for dismissal of declaratory relief” is not supported by
4 the record. Motion for Entry of Final Judgment, p. 3. The Court did not expressly indicate for
5 which cause of action, if not both, the material issue of fact regarding the timing of the
6 questioning of passengers precluded summary judgment. Further, Defendants’ argument that the
7 timing of the questioning of the passengers only related to the False Arrest Claims is not
8 supported by the facts or law. First, the Court did not actually make this determination during its
9 ruling. Second, the timing of the request for identification and the subsequent questioning of
10 Plaintiffs regarding their immigration status is one of many facts in this matter that support
11 Plaintiffs’ claims that Defendants violated the constitutional rights guaranteed by Article 1,
12 Section 7. *See State v. Rankin*, 151 Wn.2d 698, 700, 92 P.3d 202 (2004); 03/29/13 Tr.: 37:9-22.
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15 Plaintiffs’ cause of action alleging violations of Article I, Section 7 of the Washington
16 State Constitution – for which Plaintiffs seek declaratory relief – is just as alive now as it was
17 when Plaintiffs first filed their Complaint.

18 **3. Defendants Are Not Entitled to Judgment as a Matter of Law Under**
19 **CR 12(c)**

20 Defendants attempt to mask the critical, dispositive nature of this motion by
21 inappropriately characterizing entry of final judgment as a mere formality. Instead, this Motion
22 deserves careful consideration as a dispositive motion seeking dismissal of Plaintiffs’ remaining
23 claims on the merits. Given the constitutional nature of Plaintiffs’ First Cause of Action, and the
24 strong public interest in careful evaluation of constitutional questions, Defendants’ motion for a
25 rushed dismissal on the merits should not be granted.
26

1 After the pleadings are closed but within such time as not to delay
2 the trial, any party may move for judgment on the pleadings. If, on
3 a motion for judgment on the pleadings, matters outside the
4 pleadings are presented to and not excluded by the court, the
5 motion shall be treated as one for summary judgment and disposed
6 of as provided in rule 56, and all parties shall be given reasonable
7 opportunity to present all material made pertinent to such a motion
8 by rule 56.⁴

9 CR 12(c).

10 Defendants' CR 12(c) motion rests on the mistaken premise that Plaintiffs' claims for
11 constitutional violations are "rendered moot by the Court's ruling that there was probable cause
12 for the detention of the Plaintiffs," a ruling this Court made in connection with Plaintiffs' False
13 Arrest Claims only. Motion for Entry of Final Judgment, p. 4; *see also* 04/19/13 Tr.; Order re
14 Motion for Reconsideration. That premise is simply inaccurate. First, while the Court found that
15 there was probable cause for an undetermined crime sufficient to serve as a defense to the tort of
16 false arrest, that alone does not invalidate constitutional claims. This is because Plaintiffs'
17 Constitutional Claims are separate and distinct from Plaintiffs' tort claims. Defendants even
18 indicated this in their Motion for Reconsideration briefing.⁵ Motion for Entry of Final Judgment,
19 p. 5.⁶ Plaintiffs' claims of constitutional violations stem from Defendants infringing on their

20 ⁴ As discussed in more detail below, Defendants' Motion relies on facts outside the
21 Complaint and Second Amended Answer and therefore must be treated as a CR 56 motion. *See*
22 CR 12(c). Defendants' Motion was not noted on the 28-day motion calendar for CR 56 motions,
23 depriving Plaintiffs of the requisite period of time to formulate their response to this critical
24 motion. *See* CR 56(c); CR 12(c).

25 ⁵ Indeed, Defendants specifically noted in their Motion for Reconsideration that
26 constitutional claims arising from "[i]ssues of immigration status are not part of the probable
cause calculus" and not part of the Motion for Reconsideration. As such, Plaintiffs' cause of
action for constitutional violations could not have been dismissed pursuant to the ruling on the
Motion for Reconsideration.

⁶ Defendants claim that a post-hoc basis for probable cause to arrest, which was not
known or asserted until three years after the incident, supports dismissal of their False Arrest
Claims. However, courts have consistently found that in order to successfully invoke probable
cause as a defense against tort liability for false arrest, probable cause is determined by what the
officer knew at the time. *Youker v. Douglas Cnty.*, 162 Wn. App. 448, 466, 258 P.3d 60, 69

1 privacy and/or liberty by detaining Plaintiffs to engage in immigration questioning that was
2 unrelated to the basis for the initial detention. *See* Complaint, ¶¶ 34-39. These claims stand
3 regardless of whether there was reasonable suspicion or probable cause to stop Plaintiffs,
4 because there is no crime that Defendants are authorized to enforce that would allow for
5 continued detention to investigate immigration status or to allow Defendants to detain Plaintiffs
6 until federal immigration agents arrive. Alleged probable cause for an undetermined state law
7 violation does not strip Plaintiffs of their constitutional rights.

8
9 The Court’s finding that there was reasonable suspicion or probable cause to arrest for
10 alleged shellfish-harvesting violations does not immunize Defendants from claims of
11 constitutional violations that arise after the stop and/or after the reasonable suspicion or probable
12 cause for arrest for shellfish-harvesting violations dissipated. *State v. Henry*, 80 Wn. App. 544,
13 551–53, 910 P.2d 1290 (1995) (holding that although initial stop was justified, officer’s
14 expansion of stop’s scope into a general drug investigation without an objective basis for doing
15 so was improper); *State v. Williams*, 102 Wn.2d 733, 739, 689 P.2d 1065, 1069 (1984) (“Our
16 disagreement with the Court of Appeals is not over the initial interference with petitioner’s
17 freedom. We assume that that intrusion was valid under the facts of this case. It is the intensity
18 and scope of the intrusion which we find improper.”); *see also State v. Acrey*, 148 Wn.2d 738,
19 746-48, 64 P.3d 594, 598-99 (2003) (holding that once the purpose of the stop is addressed,
20 continued detention violates Article I, Section 7); *State v. Smith*, 115 Wn.2d 775, 785, 801 P.2d
21 975 (1990).

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25 (2011) (“Probable cause that will defeat a claim for false arrest is proved by demonstrating the
26 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).

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1 Plaintiffs' claims for constitutional violations arose after Defendants stopped Plaintiffs'
2 vehicle and after the initial investigation into the defective headlight and shellfish-harvesting
3 ceased. One critical example of an Article I, Section 7 violation at issue here is Defendants'
4 questioning of passengers regarding their identity after the decision that the shellfish-harvesting
5 license was sufficiently in order at the time of the stop. Article I, Section 7 "prohibits law
6 enforcement officers from requesting identification from passengers for investigative purposes
7 unless there is an independent reason that justifies the request." *See Rankin*, 151 Wn.2d at 700;
8 *State v. Brown*, 154 Wn.2d 787, 117 P.3d 336 (2005) (holding that officer's request that a
9 passenger identify himself for a warrants check was an unconstitutional seizure); *State v. Allen*,
10 138 Wn. App. 463, 470-71, 157 P.3d 893, 898 (2007). Accordingly, as this Court properly
11 recognized, Defendants' prolonged detention of Plaintiffs to demand identification from the
12 passengers precluded summary judgment on Plaintiffs' claims of constitutional violations.
13 Neither the facts nor the law have changed in a manner that would warrant a dismissal of
14 Plaintiffs' Constitutional Claims, as there is still a question of fact regarding the timing and
15 questioning of Plaintiffs, including the Plaintiffs who were passengers in the vehicle, and its
16 lawfulness under Article I, Section 7.
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19 Another example of a constitutional violation at issue in this matter is Defendants'
20 questioning of Plaintiffs regarding their immigration status. Such questioning directly violates
21 Article I, Section 7 by prolonging the detention and causing an unjustified intrusion upon
22 Plaintiffs' privacy. *See, e.g., State v. Allen*, 138 Wn. App. 463, 157 P.3d 893 (2007) (limiting the
23 scope of questioning in which an officer may engage during a stop to the purpose of the stop);
24 *Henry*, 80 Wn. App. 544 (1995) (same); *see also Arizona v. U.S.*, 132 S. Ct. 2492, 2509 (U.S.
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1 2012) (holding, under the Fourth Amendment of the U.S. Constitution, that “[d]etaining
2 individuals solely to verify their immigration status would raise constitutional concerns”).
3 Specifically, Plaintiffs contend that the Sheriff’s deputies’ questions were not related to the scope
4 of the stop and that there was no legal basis providing reasonable suspicion for further
5 investigation. *See, e.g., id.*⁷
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7 Furthermore, none of the Defendants’ recent claims that the detention was retroactively
8 justified based on gathering shellfish in closed waters provide any justification for the prolonged
9 detention to engage in immigration questioning. Defendants offer no valid legal authority for the
10 immigration questioning and certainly have not demonstrated its validity as a matter of law,
11 compelling denial of their motion for final judgment. As such, Defendants’ 12(c) Motion to
12 Dismiss must fail.
13

14 **4. Plaintiffs’ Claims for Constitutional Violations are a Justiciable
15 Controversy.**

16 The Uniform Declaratory Judgments Act, RCW 7.24, which is the basis for the remedy
17 Plaintiffs seek in their First Cause of Action, has been interpreted as follows:
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19 ⁷ It is noteworthy that in *Arizona v. U.S.*, the Supreme Court made clear that extending a
20 stop to investigate the immigration status of the occupants of a car would be unlawful, even
21 though the State of Arizona had introduced a statutory scheme authorizing state law enforcement
22 officials to participate in immigration enforcement. It is even clearer that it is unlawful to extend
23 a stop to investigate immigration status in Washington, as there is no statutory framework
24 providing local law enforcement with authority to participate in immigration enforcement. To
25 the contrary, there is no lawful basis to inquire into immigration status (regardless of whether it
26 extends the stop), as it is beyond the scope of any legitimate enforcement action for law
enforcement officials in Washington State. *See Melendres v. Arpaio*, 695 F.3d 990, 1001 (9th
Cir. 2012) (“While the seizures of the named plaintiffs based on traffic violations may have been
supported by reasonable suspicion, any extension of their detention must be supported by
additional suspicion of criminality. Unlawful presence is not criminal.”)

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

11 *Diversified Indus. Dev. Corp. v. Ripley*, 82 Wn.2d 811, 814-15, 514 P.2d 137, 139 (1973)
12 (emphasis added) (citing *Kahin v. Lewis*, 42 Wn.2d 897, 259 P.2d 420 (1953)).

13 Under *Diversified*, Plaintiffs' remaining claim for constitutional violations is justiciable.
14 *First*, there is an "actual, present and existing dispute" regarding whether the detention to which
15 Defendants subjected Plaintiffs and the questioning of Plaintiffs regarding their immigration
16 status was an unlawful invasion of Plaintiffs' private affairs and therefore violative of Article I,
17 Section 7. Plaintiffs have already suffered injury to their constitutional rights and infringement
18 on their privacy caused by the prolonged detention and questioning, the issue at hand here.
19 Therefore, the issue presented to the Court for declaratory judgment is not possible, dormant,
20 hypothetical, speculative, or moot disagreement. Instead, it is a live question regarding an injury
21 already inflicted. It is indeed a mature seed that has already come to fruition and that may occur
22 again without guidance from this Court.

23 *Second*, the parties here have genuine and opposing interests. Defendants have not
24 alleged otherwise. Indeed, Plaintiffs seek declaratory relief limiting Defendants' use of
25 prolonged detention to engage in questioning regarding federal immigration laws that they have
26 no authority to enforce, while Defendants seek to defeat this request for declaratory relief by
claiming that prolonged, indefinite detentions are an appropriate use of deputies' authority

1 whenever someone has committed an infraction that could result in an arrest, even if the deputies
2 have no intention of arresting them. These two approaches to the issues at hand in this litigation
3 clearly indicate that the parties have genuine and opposing interests.

4 *Third*, the interests in this matter are direct and substantial. This lawsuit is meant to
5 ensure that individuals who deputies think may not be American-born citizens (either because of
6 their skin color, language, or accents, as was the case here) are not subjected to arbitrary stops
7 and detentions so that police can engage in fishing expeditions regarding citizenship. This is a
8 direct and substantial matter that is not theoretical or hypothetical. Defendants have stopped,
9 detained, and questioned more individuals than just Plaintiffs. And, absent direction from the
10 Court, they may continue to do so. Plaintiffs' claims for constitutional violations meet all four
11 justiciability requirements, and their claims for declaratory judgment should proceed.
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14 Further, Defendants misrepresent what the Court held in its Motion for Reconsideration.
15 Defendants argue that there is no remaining justiciable controversy, claiming that the Court
16 "ruled that the detention was lawful upon the uncontroverted finding of the existence of probable
17 cause." Motion for Entry of Final Judgment, p. 6:17-20. However, the Court did not hold that
18 the detention was lawful. Instead, the Court found that Defendants' *post-hoc* probable cause
19 rationale was sufficient to serve as a defense against tort liability for false arrest. The Court
20 made no ruling regarding the constitutionality of the detention. As Plaintiffs are able to prove
21 the four elements of a justiciable controversy, Plaintiffs' Constitutional Claims must stand.
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23 However, even if there was some fault in Plaintiffs' showing regarding one of the four
24 elements, the claims for declaratory judgment should proceed. The Washington State Supreme
25 Court has held that "[t]he presence of issues of 'broad overriding import'" may justify "a court['s
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1 [...] exercise [of] its discretion in favor of reaching an issue which is otherwise not justiciable.”
2 *Snohomish Cnty. v. Anderson*, 124 Wn.2d 834, 840–41, 881 P.2d 240 (1994). To determine
3 whether there is an issue of public importance sufficient to overcome the justiciable controversy
4 requirement, courts look to ...“the extent to which public interest would be enhanced by
5 reviewing the case.” *Kitsap Cnty. v. Smith*, 143 Wn. App. 893, 907-09, 180 P.3d 834, 842-43
6 (2008) (citing *Anderson*, 124 Wn.2d at 841). Indeed, Division II of the Court of Appeals held
7 that clarification of an issue that will enhance Kitsap County’s ability to properly advise its
8 employees and establish policies ensuring protection of all persons’ privacy rights was of
9 sufficiently broad overriding public import to warrant that the court issue a declaratory judgment.
10
11 *Id.* at 907-09.

12
13 The same broad issues of public import are at play in this instance, including the need to
14 ensure appropriate training of Kitsap County employees to defend against encroachments of
15 individual constitutional rights. Here, Plaintiffs ask the Court to determine whether Kitsap
16 County Deputies have the authority to stop, detain, and question individuals for federal
17 immigration violations, which the deputies are not authorized to enforce, and whether they may
18 do so pursuant to facts that do not rise to the level of reasonable suspicion or probable cause of
19 immigration violations under federal law. This is a broad, pressing public concern. Washington
20 State’s citizens deserve to know what their rights are in regards to prolonged detentions for
21 immigration questioning, and Kitsap County needs to know how to train, manage, and advise its
22 deputies. As such, this Court should find either that this matter is justiciable or that the broad
23 public import of this issue is sufficient to warrant issuance of a declaratory judgment.
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1 **5. Defendants’ Reliance on Evidence External to the Pleadings Demands**
2 **that Defendants’ 12(c) Motion Must Either Fail or Be Converted to a**
3 **CR 56 Motion.**

4 Contrary to case law, Defendants, by relying upon this Court’s factual finding of
5 probable cause related to the tort claims, argue that CR 12 dismissal is warranted here. Motion
6 for Entry of Final Judgment, pp. 3-5. However, it has long been true that a motion to dismiss
7 that requires a court to consider matters outside the pleadings should be treated as a motion for
8 summary judgment under CR 56. As such, the opposing party is entitled to a reasonable
9 opportunity to present pertinent material in response thereto, and “[a]ll of the usual rules
10 associated with summary judgment” are applicable to the motion. *Bly*, 5 Wn. App. at 607;
11 Tegland, Karl B., Washington Practice: Rules Practice, *CR 12* (6th ed. 2004). Here, the crux of
12 Defendants’ argument in moving to dismiss under 12 (c) is that the Court’s factual determination
13 regarding probable cause as a defense to the false arrest tort claims serves to extinguish
14 Plaintiffs’ Constitutional Claims. However, the Court’s factual determination relied upon a long
15 list of documents, declarations, and briefing on matters outside the pleadings in this matter: the
16 Complaint and the Second Amended Answer. *See* CR 12(c); Motion for Summary Judgment;
17 Opposition to Motion for Summary Judgment; Order re Motion for Summary Judgment; Motion
18 for Reconsideration; Opposition to Motion for Reconsideration; Order re Motion for
19 Reconsideration. As such, Defendants’ 12(c) motion to dismiss must either fail or it must be
20 treated as a motion for summary judgment, and Plaintiffs should be given the full 28 days to
21 respond.
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IV. CONCLUSION

For the reasons set forth above, Plaintiffs respectfully request that this Court deny Defendants' Motion for Entry of Final Judgment and Defendants' request for dismissal of Plaintiffs' Constitutional Claims as a matter of law.

DATED: May 29, 2013.

STOEL RIVES LLP

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1 **CERTIFICATION OF SERVICE**

2 I, Juli Waldschmidt, declare under penalty of perjury under the laws of the state of
3 Washington that the following is true and correct. I am employed by the law firm of Stoel Rives
4 LLP.

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

8 I hereby certify that on May 29, 2013, I caused a true and correct copy of the foregoing
9 document to be served on the following individuals as indicated below:

10 Neil R. Wachter
11 Ione S. George
12 Kitsap County Prosecutor's Office
13 614 Division Street, MS-35A
14 Port Orchard, WA 98366
15 *Via Email*

16 DATED: May 29, 2013, at Seattle, Washington.

17 /s/ Juli Waldschmidt
18 Juli Waldschmidt, Legal Practice Assistant