IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

GEORGIACARRY.ORG, INC., *et. al.*	)	
	)	CIVIL ACTION FILE NO.
v.	)	
	)	1:09-CV-594-TWT
METROPOLITAN ATLANTA	)	
RAPID TRANSIT AUTHORITY, *et. al.*	)	
	)	
Defendants	)	

PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF THEIR SECOND MOTION FOR SUMMARY JUDGMENT

Summary

Plaintiffs move for summary judgment on the remaining counts of their Complaint.[1] The primary issue in this case is whether police officers may forcibly detain a person merely to check a firearms license in the absence of any reasonable suspicion of criminal activity. Plaintiffs will show that Defendants (MARTA police officers) Sergeant Malcolm Nicholas and Terry Milton detained Raissi and temporarily seized his property with no reasonable, articulable suspicion or probable cause to do so. Plaintiffs will further show that Defendant MARTA admits that it has a practice, approved by Defendants Assistant Chief Dorsey and Chief Dunham, of detaining anyone seen carrying a firearm, even in the complete

[1] Plaintiffs earlier filed a motion for summary judgment on Count 2 – Privacy Act violations. They now seek summary judgment on Counts 1 and 3.

absence of any reasonable, articulable suspicion or probable cause. Plaintiffs also will show that both Defendants Dorsey and Dunham failed to respond to Plaintiffs' Open Records Act requests. Because there are no disputes of material facts and Plaintiffs are entitled to judgment as a matter of law, this Motion should be granted.

Background

The Detention of Plaintiff Raissi

On October 14, 2008 Defendant Nicholas[2] (a MARTA police sergeant) was patrolling on foot the south parking area of the Avondale Train Station (owned and operated by Defendant MARTA). Defendants' Response to Plaintiffs' First Discovery Requests, Interrogatory # 9 [Doc 16-3, p. 6]. Nicholas witnessed Plaintiff Raissi get out of his car, take a gun out of his car, put it in a holster in his back and then pull a shirt over it. *Id.* Nicholas followed Raissi approximately 300 yards into the station, where, joined by Defendant Milton acting as "backup," Nicholas approached Raissi and shouted, "Stop, Police." Deposition of Malcolm Nicholas, p. 21; Deposition of Christopher Raissi, pp. 12-13. Nicholas seized

[2] Defendant Nicholas was identified in the Complaint as Ofc. Doe 1 and Defendant Milton was identified in the Complaint as Ofc. Doe 2. Pursuant to the Court's Scheduling Order [Doc. 5], however, the Court adopted the Parties' Preliminary Report and Discovery Plan [Doc. 4], which on p. 4 established the correct identities of the officers and directed their correct names be used in future filings.

Raissi's firearm from its holster under Raissi's shirt and then asked Raissi for his identification and his Georgia firearms license ("GFL"), which Raissi presented. Deposition of Malcolm Nicholas, pp. 20-21; Deposition of Christopher Raissi, pp. 14-15. At the time Nicholas stopped Raissi, Raissi was approaching the station fare gate in a manner consistent with any other MARTA passenger. Deposition of Malcolm Nicholas, p. 18; Deposition of Christopher Raissi, pp. 12-13.

Nicholas called Raissi's name and social security number[3] in to the MARTA Police dispatcher, who conducted a criminal background check on Raissi through the Georgia Crime Information Center ("GCIC"). Deposition of Malcolm Nicholas, p. 22; Deposition of Christopher Raissi, p. 17. When the check came back clean, Nicholas escorted Raissi to a non-public area of the station, behind a locked door that opened onto a hallway. Inside the hallway, Nicholas returned Raissi's firearm to Raissi and directed Raissi to exit via a different door at the end of the hallway. Deposition of Christopher Raissi, p. 20; Deposition of Malcolm Nicholas, pp. 24-25.

The Open Records Requests

Raissi sent an open records request to Defendant Dunham on October 16, 2008. Doc. 16-3, p. 8; Doc. 16-2, p. 4. The request asked for materials pertaining

[3] Defendants' collection of Raissi's social security number is the subject of Plaintiffs' first Motion for Summary Judgment [Doc. 17].

to the MARTA police detention of Raissi on October 14, 2008. Doc. 16-2, p.4. He sent the request via certified mail, and it was delivered on October 17, 2008. Declaration of Christopher Raissi, ¶¶ 3--8. On October 23, 2008, representatives in the MARTA police department faxed the open records request to the MARTA legal department, apparently including some materials responsive to the request. MARTA has no further record of any action taken on the request, and no one at MARTA responded to Raissi's request. Doc. 16-2, pp. 2-3.

On June 20, 2008, Plaintiff's counsel sent Defendant Dorsey an email requesting "As we discussed, please send me your policy regarding encounters with people carrying firearms on the MARTA system after you develop one for the post-July 1, 2008 world."[4] Deposition of Joseph Dorsey, Exhibit 1. Dorsey acknowledges receipt of the email, but denies that it constitutes a request under the Open Records Act. Deposition of Joseph Dorsey, p. 17. Dorsey admits that he did not respond to the email. *Id.*, pp. 17-19.

Jurisdiction

This Court has jurisdiction over the claim at issue in this Motion because the principal cause of action is a federal question, violations of the Fourth and Fourteenth Amendment rights to be free from unreasonable searches and seizures.

[4] July 1, 2008 was the date a new law took effect that allowed people with firearms licenses to carry firearms "in public transportation," including MARTA.

28 U.S.C. § 1331. This Court has jurisdiction of the related state law claim, violation of the Georgia Open Records Act pursuant to 28 U.S.C. § 1367[5].

Argument

Summary judgment is appropriate where there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. Rule 56, Fed. Rules Civ. Proc. In the present case, there are no disputed issues of material fact and Plaintiffs will show below that they are entitled to judgment as a matter of law.

I. Detention of Plaintiff Raissi

IA. Raissi Was "Seized" for Fourth Amendment Purposes

"The mere approach and questioning of a willing person in a public place [that] involves no coercion and detention … is outside the domain of the Fourth Amendment." *United States v. Thompson*, 712 F.2d 1356, 1359 (11th Cir. 1983). On the other hand, "Fourth Amendment safeguards come into play where there is a show of official authority such that a reasonable person would have believed he was not free to leave." *Id.*

> "A police intervention may be a seizure if, 'taking into account all of the circumstances surrounding the encounter, the police conduct would have communicated to a reasonable person that he was not at

[5] The Court's jurisdiction over the state law claims is the subject of a separate Defense Motion to Dismiss [Doc. 10].

> liberty to ignore the police presence and go about his business.'" *United States v. Packer*, 15 F.3d. 654, 657 (7th Cir. 1994) (quoting *Florida v. Bostick*, 111 S.Ct. 2382, 2387 (1991). Facts relevant to this assessment include "the threatening presence of several officers, the display of a weapon by an officer, some physical touching of the person of the citizen, or the use of language or tone of voice indicating that compliance with the officer's request might be compelled," *United States v. Mendenhall*, 446 U.S. 544, 554-55 (1980), as well as the location of the encounter (public versus private location) and whether the officers informed the suspects they were free to leave.

United States v. Dudley, 854 F.Supp. 570 (S.D.Ind. 1994). Examples where people have been found ***not*** free to leave include: 1) police retaining a person's property such that the person would have to abandon it in order to leave, *Thompson*, 712 F.2d at 1359*;* 2) police retaining a person's identification (originally obtained by consent) longer than necessary to confirm identity, such as by doing a warrants check on the person while retaining the identification, *United States v. Lopez*, 443 F.3d 1280, 1286 (10th Cir. 2006); 3) the officer calling out, "Come here, police officer," *Johnson v. United States*, 468 A.2d 1325, 1327 (D.C. Ct. App. 1983), *overturned on other grounds.*

"[S]ome mere inchoate and unparticularized suspicion or 'hunch', without more, is simply not enough to justify an investigatory stop. In short, the Government failed to establish by a preponderance of the evidence that some reasonable suspicion of criminal activity, based on articulable facts, justified this seizure. And, if the stop itself is unlawful, neither *Terry* nor *Michigan v. Long*

authorize the police to search the suspects or the suspect's vehicle for weapons, ***even if the officers reasonably fear for their safety***. *United States v. Dudley*, 854 F.Supp. 570 (S.D.Ind. 1994) (citation and punctuation omitted) (emphasis added). A firearm may not be seized, even temporarily, unless the officer is "entitled to make a forcible stop." *Adams v. Williams*, 407 U.S. 143, 146 (1972). Thus, the seizure of Raissi's firearm was either *per se* unconstitutional (if Defendants' dubious claim that they did not "detain" Raissi is to be believed), or it aptly demonstrates that Defendants made a forcible stop without justification, as Plaintiffs will show below.

In their Responses to Plaintiffs' Interrogatories, Defendants denied that Raissi was detained. The evidence, however, demonstrates that Mr. Raissi was forcibly stopped. Defendant Nicholas testified that he called out, "Police" to stop Raissi. Deposition of Malcolm Nicholas, pp. 18-19; Deposition of Christopher Raissi, p. 13. He then forcibly removed Rassi's handgun from its holster and retained it throughout the encounter. Deposition of Malcolm Nicholas, pp. 19-20; Deposition of Christopher Raissi, p. 15. He obtained Raissi's driver's license and Georgia firearms license and retained them while he called in a GCIC (the Georgia Crime Information Center) check on Raissi. Deposition of Malcolm Nicholas, pp. 22-23; Deposition of Christopher Raissi, pp. 15-16.

A reasonable person in Raissi's position would not have felt free to leave. Raissi was halted by a uniformed police officer wearing a badge and a gun shouting "Police" while a second, back up officer approached. Raissi was surrounded by the two officers, with one at his back and one in front of him, effectively blocking his movements. Deposition of Christopher Raissi, p. 25. The officers seized Raissi's firearm from him without his consent, and they retained it during the entire encounter. The officers also held his driver's license and firearms license while they conducted a warrants check.

Lastly, Defendant Nicholas did not return Raissi's gun to him until after Nicholas had escorted Rassi from the public area of the Avondale station to a locked area that is off-limits to the public. Doc. 35, pp. 23-25. A person whose property is in the hands of the police cannot conceivably feel free to leave until after the police return the property. Raissi had no choice but to accompany Defendant Nicholas into the locked, non-public area. The inescapable conclusion is that Defendants detained Raissi within the meaning of the Fourth Amendment's protections against unreasonable seizures even though Defendants admit they had no reasonable suspicion of any criminal activity. We turn now to the issue of whether that detention was lawful.

IB. The Detention of Raissi Was Unlawful

In order for a detention to be valid, it must be supported by "objective reasonable suspicion of unlawful activity." *Thompson,* 712 F.2d at 1359. Defendant Nicholas admitted in his deposition that he had no reason to believe Raissi was committing or about to commit any crime, but rather that he stopped Raissi just to see if Raissi had a firearms license:

> Q. Did you have reason to believe at the time that you saw [Raissi] armed with a gun that he had committed a crime?
> A. At that point he did not commit a crime but I had stopped him in order to verify that if he had a permit or not.
> …
> Q. Did you have any reason to believe that he was about to commit a crime?
> …
> A. That he was about to commit a crime?
> Q. Yes.
> A. From – no. Other than unknown if he had a permit or not.
> Q. Okay. Just to distill it down then. Is it fair to say you stopped him because you knew he was carrying a gun and you didn't know if he had a license?
> A. Yes.

Doc. 35, pp. 42-44. Likewise, Defendant Milton, who acted as Nicholas' backup, did not have reasonable suspicion of a crime:

> Q. Before Mr. Raissi was stopped and checked out, did you have any reason to believe he had committed a crime?
> A. Did I have any reason –
> Q. Yes
> A. – to believe that he committed a crime?
> Q. Yes.

> A. No, sir.
> …
> Q. So, does it boil down to you had information that he was carrying a gun, you didn't know if he had a license, so he might have been committing the crime of carrying a pistol without a license?
> A. We wanted to check and see, yes sir.

Doc. 34, pp. 28-30. It is a violation of the Fourth Amendment to detain a citizen in the United States merely because a police officer feels a capricious or whimsical urge to "check and see." As noted above, detaining a person absent objective, reasonable suspicion of unlawful activity is unreasonable. Because Defendants did not have any reason to believe Raissi had committed or was about to commit a crime, there was no valid basis for the detention.

The Supreme Court has ruled that it is not proper to stop a motorist just to see if he has a valid driver's license and registration:

> [E]xcept in those situations in which there is at least articulable and reasonable suspicion that a motorist is unlicensed or that an automobile is not registered, or that either the vehicle or an occupant is otherwise subject to seizure for violation of the law, stopping an automobile and detaining the driver in order to check his driver's license and the registration of the automobile are unreasonable under the Fourth Amendment.

Delaware v. Prouse, 440 U.S. 648, 673 (1979). The Supreme Court also has determined that there is no "firearms exception" to Fourth Amendment analysis. *Florida v. J.L.*, 529 U.S. 266, 273 (2000). Therefore, the mere act of carrying a firearm, without more, does not open one up to arbitrary detention any more than

the mere act of driving a car, which is an extensively regulated activity. While driving a car may be protected behavior under some provision in the Constitution (as part of the unenumerated right to travel), carrying a firearm is explicitly protected in the Second Amendment as a "fundamental" right. *District of Columbia v. Heller*, 128 S.Ct. 2783, 2798 (2008) ("By the time of the founding, the right to have arms had become fundamental for English subjects.") It is inconceivable that the Fourth Amendment does not permit stopping someone on a mere hunch to see if they are licensed to engage in an arguably protected activity, while it permits stopping someone on a mere hunch to see if they are licensed to engage in the exercise of a protected fundamental right. Just as it is unlawful to drive without a license, it is unlawful in Georgia to carry a firearm without a license. O.C.G.A. §§ 16-11-126 and 128. Just as police in Georgia are prohibited by the Constitution from stopping a motorist merely to see if he is unlicensed, the police may not stop an armed pedestrian merely to see if he is unlicensed.

If anything, the public need to check driver's licenses is greater than the need to check GFLs. According the Centers for Disease Control and Prevention[6], in 2006 there were 43,664 accidental deaths from motor vehicle traffic in the United States. In the same year, there were 16,883 deaths from firearms by

[6] http://www.cdc.gov/injury/wisqars/LeadingCauses.html. Plaintiffs are attaching a copy of the chart from this URL as Exhibit A for the Court's convenience.

homicide (not counting suicides, of which there were 16,883[7]). Unintentional deaths by firearms are so infrequent that they did not make the top 10 causes of violent death in the CDC's statistics. Even if firearm suicides and accidental deaths are included, however, motor vehicle accidents still outnumber firearms deaths in the United States. There simply is no basis for asserting that checking for firearms licenses is somehow a greater public concern that checking for driver's licenses.

Moreover, an officer may not stop someone known to have a gun out of some generalized suspicion that the possession of the gun might be illegal:

> [Officer] Martin's impetus to investigate the Dudleys was a radio call alerting him to the presence of two people at the truck stop in possession of some guns. Of course the possession of firearms is not, generally speaking, a crime unless you happen to be a convicted felon, the firearms are otherwise illegal, or you are not licensed to possess the gun. Martin, presumably not clairvoyant, could not have known, and did not know, the Dudleys and their guns met all three of these criteria. In fact he testified he had absolutely no knowledge, or suspicion, that the Dudleys were engaged in any criminal activity until he discovered the first sawed-off shotgun. A telephone report of citizens possessing guns or merely engaging in "suspicious" activity, standing alone, cannot amount to reasonable suspicion of crime.

[7] Plaintiffs omit suicide deaths on the assumption that Defendants cannot seriously believe that significant numbers of people without GFLs are out roaming MARTA with firearms looking for suitable locations to commit suicide.

United States v. Dudley, 854 F.Supp. 570, 580 (S.D.Ind. 1994). Like Ofc. Martin in *Dudley*, Defendants Nicholas and Milton cannot base reasonable suspicion of a crime on their knowledge that Raissi was armed – (legally, it turns out, as opposed to the Dudleys).

As another example of how knowledge that someone is armed is insufficient reason to stop the person, the Third Circuit Court of Appeals, with Northern District of Georgia Judge O'Kelley sitting by designation, unanimously held that a tip that a celebrant at a festival was carrying a pistol was not sufficient to justify a stop of the celebrant. *See United States v. Ubiles*, 224 F.3d 213 (3rd Cir. 2000). "For all the officers knew, even assuming the reliability of the tip that Ubiles possessed a gun, Ubiles was another celebrant lawfully exercising his right under Virgin Island law to possess a gun in public." *Id*. at 218.

> This situation is no different than if Lockhart had told the officers that Ubiles possessed a wallet, a perfectly legal act in the Virgin Islands, and the authorities had stopped him for this reason. Though a search of that wallet may have revealed counterfeit bills-the possession of which is a crime under United States law, see 18 U.S.C. §§ 471-72-the officers would have had no justification to stop Ubiles based merely on information that he possessed a wallet, and the seized bills would have to be suppressed. . . .
>
> As with the case of the hypothetical wallet holder, the authorities here had no reason to know that Ubiles's gun was unregistered or that the serial number had been altered. Moreover, they did not testify that it is common for people who carry guns in crowds-or crowds of drunken

> people-to either alter or fail to register their guns, or to use them to commit further crimes-all of which would be additional evidence giving rise to the inference that Ubiles may have illegally possessed his gun or that criminal activity was afoot. Therefore, as with the wallet holder, the authorities in this case had no reason to believe that Ubiles was engaged in or planning or preparing to engage in illegal activity due to his possession of a gun. Accordingly, ***in stopping him and subsequently searching him, the authorities infringed on Ubiles's Fourth Amendment rights***.

Id. at 218 (emphasis added).

As in both *Dudley* and *Ubiles*, Raissi in this case was stopped merely for possessing a firearm. Defendant Nicholas was not in possession of any facts that would lead him to believe that Raissi was committing or about to commit a crime, and Nicholas was not aware of any facts that would tend to indicate that Plaintiff was carrying the firearm or possessing the firearm unlawfully. There was nothing in Raissi's conduct that would lead an officer reasonably to suspect that criminal activity was afoot at the time Nicholas stopped Raissi. The detention was an unreasonable seizure.

IC. MARTA Has a Practice of Detaining Anyone Seen Carrying a Firearm

Defendant Dorsey is the Assistant Chief of the MARTA Police Department, with responsibility over all operations. Deposition of Joseph Dorsey, p. 5. He admitted in his deposition that MARTA has a practice of stopping everyone on MARTA property seen with a firearm. *Id.*, pp. 6-8. If such a person does not

engage the MARTA officer voluntarily, then the officer orders the person to stop under force of law. *Id.* The person is required to produce a photo ID and a firearms license or be ejected from the property. *Id.*, p. 10. This practice was approved by both Defendant Dorsey and Defendant Dunham (who is the Chief of the MARTA Police Department). *Id.*, p. 14.

As noted above in Section IB, it is a violation of the Fourth Amendment right to be free from unreasonable seizures for the police to stop a person carrying a firearm, without more, just to see if the person has a firearms license. By establishing the practice described above, MARTA has put in place an official policy or practice of detaining people, under force of law, with no reasonable, articulable suspicion or probable cause. This practice is unconstitutional.

II. Open Records Act

IIA. Defendant Dunham Violated the Open Records Act

Defendants have not raised any issues on this claim, other than that they have filed a Motion to Dismiss the claim on the grounds that the Court should not exercise supplemental jurisdiction over it. Doc. 10. That Motion is fully briefed

and need not be discussed again here.[8] Defendants have not made any assertions that they did not receive the request or that they were not obligated to respond to it.

The Georgia Open Records Act allows no more than three business days for an entity subject to the Act to determine if the records requested are subject to public access. O.C.G.A. § 50-18-70(f). Thus, even if an entity claims some exemption, it must report this fact to the requestor within three days. Where a plaintiff shows that he made a request for identifiable public records within the possession of the defendant, the burden shifts to the defendant to explain why the records should not be furnished. *Brown v. Minter*, 243 Ga. 397 (1979).

> If the person or agency having custody of the records fails to affirmatively respond to an open records request within three business days by notifying the requesting party of the determination as to whether access will be granted, the Open Records Act has been violated…. [U]nder such circumstances, the person or agency has necessarily failed to grant reasonable access to the files in the person or agency's custody.

Benefit Support, Inc. v. Hall County, 218 Ga. App. 825, 833 (2006). An action to enforce a violation of the Open Records Act may be brought by "any person, firm, corporation, or other entity." O.C.G.A. § 50-18-73(a). And, "All provisions of general law applicable to the records and documents of counties and municipalities

[8] Plaintiffs note, however, that it would be particularly wasteful for the Court to decline to exercise jurisdiction over these claims at this point in the litigation, now that the parties have completed discovery and are filing their dispositive motions.

and public access thereto shall be fully applicable to the records and documents of [MARTA]. 1965 Ga. Laws 2243, 2273.

Moreover, if a court determines that a person lacked substantial justification in not complying with the Open Records Act, that person shall be assessed the reasonable litigation costs of the other party, including reasonable attorney's fees. O.C.G.A. § 50-18-73(b). It is not clear to Plaintiffs why Defendants failed to respond to Raissi in any way. Given that the burden has shifted to Defendants to explain their failure to act, Plaintiffs anticipate that Defendants may wish to explain their failure in their response to this Motion. What is clear is that Defendants received the request, sought legal advice on it six days after receipt of it (already beyond the statutory deadline), and did nothing more with it. Outright failure to follow through on the request cannot constitute substantial justification.

IIB. Defendant Dorsey Violated the Open Records Act

As noted in the Background section above, Dorsey asserts that the Plaintiffs' counsel's email did not constitute a request under the Open Records Act. His position is based on his belief that an open records request cannot be sent via email and must state that it is made pursuant to the Open Records Act. Deposition of Joseph Dorsey, p. 20.

There is no particular form or format specified in the Open Records Act for a request. It has been established, however, that oral requests are permitted and requests need not be in writing to be enforced. *Howard v. Sumter Free Press*, 272 Ga. 521, 522 (2000). Given that an oral request is sufficient, it is difficult to understand how a written request, sent via email and admittedly received, is insufficient.

Dorsey admits that he did not respond to the email (or the original oral request referenced in the email):

> Q. Okay. So you didn't provide a substantive response to the initial request?
> A. No.
> Q. Okay. Any particular reason why not?
> A. Well, what kind of confused me was the -- in the second response where it talks about formulating a policy, I didn't recall a reference in our discussion talking about formulating a policy. Because, basically, on all the laws, we more or less don't formulate a policy. We go off the law itself and formulate a training bulletin.
> Q. Okay. So just to make sure I understand, you're saying you didn't respond because you didn't think there was such a policy?
> A. Right.

Deposition of Joseph Dorsey, p. 18. Dorsey did not bother to respond to the request at all, instead relying on the artificial distinction he draws between a "policy" (which he denies having) and a "procedure" (which he admits to having). Deposition of Joseph Dorsey, p. 6. Nor did Dorsey respond to either of two more

emails sent as a follow-up to the original request (*Id.,* pp. 17-18), thus constituting a total of four separate violations.

III. GeorgiaCarry.Org's Standing

Defendants indicated in their Answer that Plaintiff GeorgiaCarry.Org, Inc. ("GCO") lacks "jurisdiction." Plaintiffs take that assertion to be an attack on GCO's standing in this case so they will address GCO's standing here.

Standing to sue requires 1) injury that is actual or imminent and not conjectural or hypothetical; 2) causation by Defendants; and 3) redressability by the Court. *Lujan v. Defenders of Wildlife,* 504 U.S. 555, 560 (1992). An organization has standing to sue when its members would otherwise have standing, the interests it seeks to protect are germane to the organization's purpose, and the case does not require participation of the members. *Hunt v. Washington State Apple Advertising Commission,* 432 U.S. 333, 343 (1977); *Georgia Hospital Association v. Department of Medical Assistance,* 528 F. Supp. 1348, 1352 (N.D. Ga. 1982). In the instant case, GCO meets all the elements of both tests.

IIIA. GCO Members Have Standing

GCO has members that use and would like to use the MARTA system. Declaration of Edward Stone, ¶ 3. They have firearms licenses and would like to carry their firearms when using the MARTA system. *Id.*, ¶4. They are fearful of

being persecuted, harassed, and detained by Defendants on account of their carrying of firearms. *Id.* Thus, they meet the test of suffering an imminent injury. Because MARTA's practice has been implemented against at least two GCO members, *id.*, ¶ 5, the threat of being detained is real and not hypothetical or conjectural. It is clear the harm is caused by Defendants, as it is their current and continuing practice that calls for firearms carriers to be detained, and it is their officers that implement that practice. Finally, the harm is redressable via a suitable declaration and injunction.

IIIB. GCO Has Standing

GCO meets each prong of the *Hunt* test for organizational standing. As shown above in Section IIIA, GCO's members have standing. Fostering the rights of its members to carry firearms is one of the stated goals of GCO and one of the central aspects of GCO's purpose. *Id.*, ¶ 6. Finally, individual member participation is not necessary in this case. Plaintiff Raissi is one of GCO's members. While a GCO officer is expected to be available to testify at trial if needed, no further participation is needed or desirable. Discovery has closed without Defendants' seeking the deposition of any GCO members besides Raissi. GCO refused to provide a membership list to Defendants when requested, and Defendants did not pursue the matter. It is clear Defendants do not view GCO

member participation as a requirement. Because GCO has met each of the tests from *Lujan* and *Hunt*, GCO has standing in this case.

IV. Qualified Immunity

Defendants Nicholas and Milton have raised the issue of qualified immunity. In evaluating claims of qualified immunity, the Eleventh Circuit applies the two-part test set forth by the Supreme Court in *Saucier v. Katz*, 533 U.S. 194, 201, 121 S. Ct. 2151, 2156, 150 L.Ed.2d 272 (2001): "(1) As a threshold question, a court must ask, taken in the light most favorable to the party asserting the injury, do the facts alleged show the officer's conduct violated a constitutional right?; and (2) If a constitutional right would have been violated under the plaintiff's version of the facts, the court must then determine whether the right was clearly established." *Durruthy v. Pastor*, 351 F.3d 1080, 1093 (2003)(*citing Saucier*, 533 U.S. at 201, 121 S.Ct. at 2156)(internal quotations omitted).

Fourth Amendment illegal search and seizure cases focus on the existence of "'arguable' reasonable suspicion" or "'arguable' probable cause" when determining whether an officer violating the Fourth Amendment nevertheless is qualifiedly immune from suit. *Brent v. Ashley*, 247 F.3d 1294, 1303 (2001). "The issue is not whether reasonable suspicion existed in fact, but whether the officer had 'arguable' reasonable suspicion." *Id.* The test is whether reasonable officers

in the same circumstances and possessing the same knowledge as the defendants could have believed that reasonable suspicion existed. *Young v. Eslinger*, 244 Fed. Appx. 278, 279 (2007).

As noted earlier, both officers testified that the sole basis for their detention of Raissi was that they knew Raissi to be armed, and they did not know if Raissi had a GFL. In other words, they simply wanted to "check and see." Neither officer testified that he even suspected that Raissi did not have a GFL. Thus, there was nothing particularized about Raissi that either officer articulated that would give a reasonable officer in the same circumstances a reasonable suspicion that Raissi was committing a crime. Contrary to the holding in *Delaware v. Prouse*, 440 U.S. 648, 673 (1979), Defendants detained Raissi to see if he had a license, with no separate suspicion that criminal activity was afoot. Under these circumstances, Defendants' detention of Raissi was unreasonable and they are not entitled to qualified immunity.

Remedies

Plaintiffs seek a declaration that Defendants Nicholas and Milton violated Raissi's right to be free from unreasonable searches and seizures when they detained him and seized his firearm with no reasonable, articulable suspicion that Raissi had committed or was about to commit a crime. Because Nicholas and

Milton were acting in accordance with MARTA policy or practice, and such policy or practice ***requires*** detention of anyone seen carrying a firearm, Plaintiffs also seek a declaration that such policy or practice is illegal. Plaintiffs further seek a declaration that merely carrying a firearm, without more, is not reasonable, articulable suspicion sufficient to perform an investigatory stop. Plaintiffs further request an injunction prohibiting Defendants' practice of detaining anyone seen carrying a firearm for the purpose of determining if such person has a firearms license.

As to the Open Records Act claims, Plaintiffs seek a declaration that Defendant Dunham violated the Open Records Act, together with the costs of litigation, including reasonable attorney's fees. Plaintiffs further seek a declaration that Defendant Dorsey violated the Open Records Act, together with the costs of litigation, including reasonable attorney's fees.

Finally, Plaintiffs seek an award of attorney's fees under 42 U.S.C. § 1988, in an amount to be determined pursuant to a motion for such fees in accordance with the procedures established in this Court for fee awards.

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Local Rule 7.1D Certification

The undersigned counsel certifies that the foregoing was prepared using Times New Roman 14 point, a font and point selection approved in LR 5.1B.

/s/ John R. Monroe
John R. Monroe

CERTIFICATE OF SERVICE

I certify that on September 5, 2009, I filed the foregoing using the ECF system, which automatically will email a coy to:

Ms. Paula M. Nash
pmnash@itsmarta.com

/s/ John R. Monroe
John R. Monroe