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CHAVEZ V. ILLINOIS STATE POLICE
251 F.3D 612 (7TH CIR. 2000).

FACTS

In November 1992, George Koutsakis, a white male, was stopped by an Illinois State Police (“ISP”) Valkyrie Officer for exceeding the speed limit.¹ Valkyrie officers are part of a drug interdiction unit trained to detect and arrest drug couriers.² When the officer pulled Koutsakis over, he noticed indications of drug trafficking such as Koutsakis’ red rental car bearing California license plates.³ Inside, the officer saw open maps, fast food wrappers and a mobile phone.⁴ Another officer arrived and walked his drug detecting dog around the car without Koutsakis’ consent.⁵ The officers discovered two hundred pounds of marijuana and arrested Koutsakis.⁶ Koutsakis’ attorney, Nancy Hollander, suspected that the ISP stopped drivers based on race or travel patterns.⁷ In order to show the ISP’s discriminatory practices, Hollander hired plaintiff Peso Chavez, a private investigator and Hispanic male, to recreate the circumstances involved in Koutsakis’ arrest.⁸ Katherine Austin, a white female, followed Chavez to witness the events.⁹

In February 1993, Larry Thomas, an Illinois State Police Valkyrie Officer, stopped and detained Chavez on Interstate 80 in Bureau County, Illinois.¹⁰ Thomas followed Chavez for thirty minutes before stopping him for a traffic violation.¹¹ As Thomas approached the car, he noticed that Chavez was nervous.¹² Chavez drove a red rental car with California license plates.¹³ He had a small suitcase, fast-food wrappers and an atlas, all of which are indicators of drug trafficking as listed in the Valkyrie training manual.¹⁴ Chavez did not consent to either a search of his vehicle or to a canine walk-around.¹⁵ Nevertheless, Thomas ignored Chavez and detained him until a canine unit arrived.¹⁶ After two walk-arounds, the dog alerted Thomas to the

1. Chavez v. Illinois State Police, 251 F.3d 612, 623 (7th Cir. 2000).

2. Chavez, 251 F.3d at 621.

3. *Id.* at 623.

4. *Id.*

5. *Id.*

6. *Id.*

7. *Id.*

8. *Id.*

9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.* at 624.

14. *Id.*

15. *Id.*

16. *Id.*

presence of drugs.¹⁷ Thomas subsequently discovered that the vehicle had made several border crossings in the past year. The officer instructed Chavez to get out of the car and proceeded to search the vehicle.¹⁸ Specifically, the officer searched the car's interior, the wheel wells, the trunk, the engine and the contents of Chavez's luggage; he did not find any contraband.¹⁹ After detaining Chavez for almost an hour, Thomas discharged him with a warning ticket indicating Chavez's failure to signal.²⁰

In August 1994, Chavez filed a civil rights class action suit individually and on behalf of other similarly situated persons in U.S. District Court against defendants Illinois State Police and several individual troopers.²¹ Chavez alleged that the ISP engages in the practice of racial profiling by using race to determine which drivers to stop and detain.²² Soon after Chavez filed his complaint, Gregory Lee, an African-American male who also claimed to have been stopped because of his race, was granted leave to join the suit.²³ Chavez charged the defendants with violations of the Equal Protection Clause of the Fourteenth Amendment, the right to travel protected by the Privileges and Immunities Clause under Article IV, the Fourth Amendment, Title VI of the Civil Rights Act, and Supervisory Liability against certain officers.²⁴ Plaintiffs seek damages and declaratory and injunctive relief.²⁵

Valkyrie Officers belong to a drug interdiction unit part of the ISP and are trained to detect and apprehend drug couriers.²⁶ The ISP training manual states that officers may stop drivers for traffic violations, but instructs them not to use race or ethnicity to decide which motorists to stop.²⁷ Officers are taught to look at all drivers equally because "drug couriers look pretty much like everyone else and it is difficult to characterize smugglers on the basis of nationality."²⁸ Typically an officer will stop a driver for a traffic violation.²⁹ After stopping a vehicle, the officer may look for outward and obvious signs of drug trafficking in plain sight; this does not involve a search of the vehicle.³⁰ Such indicators include "too little or too much luggage for the

17. *Id.*

18. *Id.*

19. *Id.*

20. *Id.*

21. *Id.*

22. *Id.* at 620.

23. *Id.* at 626.

24. *Id.* at 620.

25. *Id.*

26. *Id.* at 621.

27. *Id.*

28. *Id.*

29. *Id.*

30. *Id.*

length of the driver's trip, maps from drug source cities or states and air freshener."³¹ In addition, officers assess the demeanor of the driver and look for signs of stress, nervousness, or overly friendly behavior.³² If officers find such indicators, they may request to search the vehicle.³³

PROCEDURAL HISTORY

In February 1996, the district court dismissed Chavez's right to travel claim.³⁴ In November 1998, the district court granted summary judgment to the defendants on the equal protection and supervisory liability claims³⁵ because Chavez failed to provide sufficient evidence to support a *prima facie* case.³⁶ The court then denied Chavez's motion to certify a class of persons consisting of minorities who were previously and in the future likely to be unlawfully stopped and detained by the ISP because of their race.³⁷ The court said that the certification depended on Chavez's equal protection claim, which was not viable.³⁸ Therefore, there would be no reason to grant Chavez the certification.³⁹ The court further added that the plaintiffs could renew their motion by seeking certification of claims surviving summary judgment.⁴⁰ In addition, the court granted qualified immunity to several ISP officers against plaintiffs' Fourth Amendment claim.⁴¹

Almost a year later, Chavez motioned to certify "a class consisting of persons of Hispanic race and color who had been or would eventually be stopped and detained in violation of Title VI" of the Civil Rights Act.⁴² The district court denied Chavez's motion because plaintiffs did not show any real injury⁴³ and consequently lacked standing to seek injunctive relief under Title VI.⁴⁴ The court also denied Chavez's motion to add Christopher Jimenez, a Hispanic male who claims to have been stopped by the ISP because of his race, as another plaintiff.⁴⁵

Plaintiffs sought a permanent injunction to prevent the ISP from stopping

31. *Id.*

32. *Id.*

33. *Id.* at 622.

34. *Id.* at 626.

35. *Id.*

36. *Id.* at 648.

37. *Id.* at 626.

38. *Id.* at 629.

39. *Id.*

40. *Id.*

41. *Id.* at 626.

42. *Id.*

43. *Id.*

44. *Id.* at 653.

45. *Id.* at 627.

drivers on the basis of race.⁴⁶ Plaintiffs claimed that the ISP's practice of discrimination violated Title VI of the Civil Rights Act of 1964 and "administrative regulations of the Department of Justice effectuating Title VI."⁴⁷ The district court granted summary judgment to the defendants on a number of the plaintiffs' claims and ruled that the plaintiffs lacked standing to seek relief under Title VI.⁴⁸ As a result, in August 1999, the plaintiffs moved to voluntarily dismiss all other claims with prejudice in order to take an immediate appeal.⁴⁹ Plaintiffs sought to drop their Fourth Amendment claim, supplemental state law claims and Title VI statutory and regulatory claims.⁵⁰ The court dismissed Chavez's Title VI regulatory claim stating that a court may "take appropriate action, with respect to (1) formulation and simplification of the issues, including eliminating frivolous claims or defenses."⁵¹ The court required plaintiffs to pay reasonable costs for this dismissal.⁵² The court also granted plaintiffs' motion to voluntarily dismiss their statutory claims under Fed. R. Civ. P. 41(a)(2)^{53, 54}

Chavez moved for reconsideration of the decision to dismiss their statutory and regulatory claims and for a stay of payment pending appeal.⁵⁵ The court only allowed for a stay of payment.⁵⁶ The plaintiffs now appeal the district court's grant of summary judgment regarding their equal protection and supervisory liability claims.⁵⁷ Plaintiffs also contest the court's ruling against Chavez's right to travel claim, the finding that they lack standing under Title VI for injunctive relief, the denial of their request to include a new plaintiff (Jimenez) and the costs imposed for voluntary dismissal.⁵⁸

HOLDING

The United States Court of Appeals for the Seventh Circuit determined that the plaintiffs failed to prove that the ISP engages in racial profiling.⁵⁹ The Court of Appeals found that the District Court did not abuse its discretion with

46. *Id.* at 653.

47. *Id.*

48. *Id.* at 627.

49. *Id.*

50. *Id.*

51. FED. R. CIV. P. 16(c).

52. *Chavez*, 251 F.3d at 627.

53. FED. R. CIV. P. 41(a)(2).

54. *Chavez*, 251 F.3d at 654.

55. *Id.* at 627.

56. *Id.* at 628.

57. *Id.* at 621.

58. *Id.*

59. *Id.*

respect to the District Court's procedural decisions that denied plaintiffs' class certification⁶⁰ and motion to add a new plaintiff.⁶¹ The Court affirmed the District Court's grant of summary judgment in favor of the defendants with regard to plaintiffs' equal protection and supervisory liability claims.⁶² The court also approved the dismissal of Chavez's right to travel claim.⁶³ Further, it upheld the District Court's dismissal of plaintiffs' Title VI claims, stating that plaintiffs did not have standing for equitable relief.⁶⁴ Lastly, the court sustained the District Court's imposition of costs on plaintiffs as a result of their voluntary dismissal.⁶⁵

ANALYSIS

The Court of Appeals affirmed the District Court's rulings after finding that the District Court did not abuse its discretion.⁶⁶ In its analysis, the Court of Appeals first looked at the District Court's procedural rulings.⁶⁷ It then focused on the plaintiffs' substantive claims, followed by the District Court's granting of summary judgment on supervisory liability and plaintiffs' "challenges to the resolution of their Title VI claims."⁶⁸ Lastly, the court addressed the fees imposed on the plaintiffs resulting from their voluntary dismissal.⁶⁹

A. Procedural Rulings

The Court of Appeals agreed with the District Court's decision to deny plaintiffs' first motion for class certification.⁷⁰ The Court, however, noted that "as soon as practicable after the commencement of an action brought as a class action, the court shall determine whether it is to be so maintained."⁷¹ The Court of Appeals preferred this procedure because the outcome of a case depends on the merits and not class certification.⁷² Further, "a quick

60. *Id.* at 630.

61. *Id.* at 633.

62. *Id.* at 612.

63. *Id.* at 630.

64. *Id.* at 656.

65. *Id.*

66. *Id.* at 655.

67. *Id.* at 628.

68. *Id.*

69. *Id.*

70. *Id.* at 630.

71. *Id.* (referring to FED. R. CIV. P. 23(c)).

72. *Id.*

disposition on the merits is often not possible.”⁷³ Nevertheless, the District Court’s procedural methods merely amount to harmless error because the plaintiffs’ underlying claims lack merit.⁷⁴ The plaintiffs’ second motion for class certification rested on their Title VI claims.⁷⁵ The Court of Appeals did not address this issue because the District Court granted the plaintiffs’ motion to dismiss their own Title VI claims.⁷⁶

Next, the Court of Appeals addressed the District Court’s refusal to allow the plaintiffs to amend their complaint by adding Christopher Jimenez as a class representative.⁷⁷ Jimenez, a Hispanic male, claimed that the ISP stopped him on the basis of his race.⁷⁸ Both the Appellate and District courts agreed that Jimenez could be properly joined under Fed. R. Civ. P. 20.^{79, 80} A court, however, has discretion to deny leave to amend if it finds there would be undue delay or prejudice to the opposing party.⁸¹ The District Court found that the plaintiffs knew about Jimenez’s claims for almost three years before filing this motion.⁸² Moreover, plaintiffs submitted this motion after the discovery deadline and only five months before trial.⁸³ The District Court determined that granting this motion would delay the trial and place undue prejudice upon the defendants.⁸⁴ The Court of Appeals affirmed, stating that the District Court did not abuse its discretion.⁸⁵

B. Plaintiffs’ Substantive Claims

To establish a prima facie case under the equal protection clause, the plaintiffs must show that the defendants’ behavior had a discriminatory effect and that they acted with a discriminatory purpose.⁸⁶ The Court of Appeals affirmed the District Court’s grant of summary judgment but did not agree with all of the District Court’s analysis.⁸⁷ Chavez proved that the ISP’s acts had a discriminatory effect on him, but the remaining plaintiffs did not.⁸⁸

73. *Id.*

74. *Id.*

75. *Id.* at 627.

76. *Id.* at 629.

77. *Id.* at 630.

78. *Id.*

79. FED. R. CIV. P. 20.

80. *Id.* at 632.

81. *Id.* (discussing to Fed. R. Civ. P. 15(a)).

82. *Id.* at 633.

83. *Id.*

84. *Id.*

85. *Id.*

86. *Id.* at 635.

87. *Id.* at 645.

88. *Id.*

Moreover, neither Chavez nor the plaintiffs could show discriminatory intent.⁸⁹

In order to show that the defendants' actions had a discriminatory effect, the plaintiffs must prove "they are members of a protected class, that they are similarly situated to members of the unprotected class and that plaintiffs were treated differently than the members of the unprotected class."⁹⁰ The District Court rejected Chavez's contention that Katherine Austin, a white female, was similarly situated to him because of the gender difference between the two drivers, the difference in the cars they drove, and the difference in the contents of the cars.⁹¹ The Court of Appeals disagreed.⁹² First, both were driving on the same highway at the same time without committing any traffic violations.⁹³ Second, officers cannot stop drivers based on either gender or race.⁹⁴ Third, Thomas did not stop Chavez because of the type of car he drove.⁹⁵ Fourth, Thomas did not stop Chavez based on the contents of Chavez's car because Thomas could not see inside until he pulled over.⁹⁶ Lastly, Thomas followed both cars and chose to stop Chavez instead of Austin.⁹⁷ The Court of Appeals determined that Austin is a "similarly situated individual part of an unprotected class who was treated differently from Chavez," which shows that defendants' action had a discriminatory effect on him.⁹⁸

Plaintiffs contend that African-American and Hispanic drivers are targeted for stops more often than white drivers.⁹⁹ The plaintiffs primarily relied on Valkyrie field reports and the citations and warnings database.¹⁰⁰ Valkyrie reports allow the ISP to indicate the race of the motorist, but officers do not always include this information.¹⁰¹ The reports are used in limited circumstances such as arrests, discovery of drugs and other Valkyrie matters.¹⁰² The citations and warnings database accounts for all the citations and warnings issued, but does not keep a records of the race of each driver stopped.¹⁰³ In fact, the ISP does not have record of all motorists stopped.¹⁰⁴ The Court of Appeals said the reports were unreliable, and not enough to constitute an

89. *Id.* at 648.

90. *Id.* at 636.

91. *Id.*

92. *Id.* at 637.

93. *Id.*

94. *Id.*

95. *Id.*

96. *Id.*

97. *Id.*

98. *Id.* at 645.

99. *Id.*

100. *Id.* at 642.

101. *Id.* at 625.

102. *Id.*

103. *Id.* at 643.

104. *Id.* at 642.

adequate sample.¹⁰⁵

The plaintiffs also compared the number of white, African-American and Hispanic drivers stopped with the amount of people that make up these races in the Illinois population and on the Illinois roads.¹⁰⁶ The plaintiffs compared the 1990 census reports to the Valkyrie reports.¹⁰⁷ The court, however, noted that census reports tend to undercount the number of African-Americans and Hispanics.¹⁰⁸ The 1990 census may not have accurately reflected the amount of African-Americans and Hispanics living in Illinois during the relevant period.¹⁰⁹ Consequently, the court ruled that these statistics were unreliable and failed to show a discriminatory effect.¹¹⁰

The Court of Appeals determined that the plaintiffs did not prove that the defendants acted with discriminatory intent.¹¹¹ Chavez asserted that the officer who searched his car admitted that race is something that officers keep in mind.¹¹² But, Chavez later told Hollander that the officer's remark did not seem racially motivated.¹¹³ Further, Thomas' field report indicated that Chavez was white.¹¹⁴ Although officers have admitted they are not precluded from using race to decide which drivers to stop,¹¹⁵ plaintiffs argue that the ISP will not investigate cases involving racial claims.¹¹⁶ Plaintiffs also assert that Valkyrie training manuals state that Hispanics are frequently found to be drug transporters.¹¹⁷ Additionally, between the years 1990-1994, statistics revealed that Hispanics and African-Americans accounted for over sixty percent of drivers detained and searched in the sixth district of Illinois.¹¹⁸ Despite these allegations, the court discovered evidence to the contrary.¹¹⁹ The court found that the training materials never approved the use of race as an indicator, but instead condemned officers who did.¹²⁰

Plaintiffs claimed that during officers' training sessions, Michael Snyders, the former statewide Valkyrie coordinator, taught officers to use race to decide

105. *Id.* at 644.

106. *Id.* at 643.

107. *Id.*

108. *Id.*

109. *Id.* at 644.

110. *Id.* at 641.

111. *Id.* at 648.

112. *Id.* at 646.

113. *Id.*

114. *Id.* at 645-646.

115. *Id.*

116. *Id.* at 645.

117. *Id.*

118. *Id.* at 646.

119. *Id.*

120. *Id.*

which drivers to stop.¹²¹ More specifically, plaintiffs contend that Snyders made “references to drug distribution by Hispanics.”¹²² However, neither the training manuals and tapes nor such comments show that officers were taught to stop drivers because of their race.¹²³ Further, the court stated that to hold Snyders liable, plaintiffs would have to show he was in a supervisory position, aware of the officers’ conduct and failed to intervene to prevent discriminatory or unconstitutional behavior.¹²⁴ The Court of Appeals found that the act of training officers does not constitute such a position.¹²⁵ “The fact that a student allegedly discriminates does not necessarily mean the student’s former teacher taught the student to discriminate.”¹²⁶ After reviewing the plaintiffs’ evidence regarding their supervisory liability claim, the Court of Appeals affirmed the grant of summary judgment.¹²⁷

Even though the Court of Appeals affirmed the dismissal of Chavez’s right to travel claims, its reasons differed from the District Court.¹²⁸ The District Court determined that Chavez’s claims only dealt with intrastate travel, not interstate travel.¹²⁹ It refused to equate interstate travel rights with intrastate rights and therefore dismissed Chavez’s claim.¹³⁰ The Court of Appeals disagreed with this analysis stating that the right to travel “embraces different components” such as the right of out of state residents to enter and leave other states and the right to be treated as a “welcome visitor.”¹³¹ The Court of Appeals, however, determined that the ISP did not preclude Chavez from either entering or exiting the state.¹³² Stopping someone because of their race does not establish a right to travel claim.¹³³ Moreover, the court explained that the privileges and immunities clause is used to prevent discrimination toward out of state residents.¹³⁴ The court further stated that it does not apply to Chavez because his complaint failed to allege discrimination against out of state residents.¹³⁵ Instead, he claims that the ISP discriminates against all African-Americans and Hispanics regardless of their state citizenship.¹³⁶

121. *Id.* at 652.

122. *Id.*

123. *Id.* at 652-653.

124. *Id.* at 651-652.

125. *Id.* at 651.

126. *Id.* at 653.

127. *Id.*

128. *Id.* at 648.

129. *Id.*

130. *Id.* at 653.

131. *Id.*

132. *Id.* at 649.

133. *Id.*

134. *Id.*

135. *Id.*

136. *Id.*

Based on the given facts, the Court of Appeals found no support for Chavez's claims.¹³⁷

Plaintiffs claimed that the ISP's practice of stopping and detaining drivers based on their race violated Title VI of the Civil Rights Act and the administrative regulations effectuating Title VI.¹³⁸ Plaintiffs sought prospective relief and an injunction to impede the ISP from maintaining such discriminatory practices.¹³⁹ The District Court, however, determined that the plaintiffs did not have standing for equitable relief due to a lack of any "real and immediate threat of injury."¹⁴⁰ As a result, plaintiffs moved to voluntarily dismiss their Title VI regulatory and statutory claims pursuant to Fed. R. Civ. P. 41(a)(2) with prejudice to simplify the issues remaining for adjudication.¹⁴¹ The District Court granted this motion and imposed costs upon the plaintiffs.¹⁴² On appeal, however, plaintiffs requested the Court of Appeals to reinstate their Title VI claims arguing that the District Court erred by ruling they lacked standing for injunctive relief.¹⁴³ "When a District Court grants voluntary dismissal under Fed. R. Civ. P. 41(a),¹⁴⁴ a plaintiff has neither the reason nor right to appeal the dismissal because the plaintiff received the relief requested."¹⁴⁵ The Court of Appeals said that it could not reinstate claims that were voluntarily dismissed and therefore declined to review this matter.¹⁴⁶ Further, the Court of Appeals affirmed the imposition of costs on the plaintiffs.¹⁴⁷ It noted that a court may order whatever "terms and conditions" it considers appropriate to grant a voluntary dismissal.¹⁴⁸

CONCLUSION

The Court of Appeals affirmed the District Court's rulings because the plaintiffs were unable to prove that Valkyrie officers stop and detain drivers on the basis of racial or ethnic profiling.¹⁴⁹ More specifically, the field reports and citations and warnings database, which plaintiffs relied on, did not identify the race of each driver and thus does not allow for an inference of

137. *Id.* at 650.

138. *Id.* at 653.

139. *Id.*

140. *Id.*

141. *Id.* at 654.

142. *Id.*

143. *Id.* at 654.

144. FED. R. CIV. P. 41(a)(2).

145. *Id.*

146. *Id.*

147. *Id.* at 655.

148. *Id.* (referring to FED. R. CIV. P. 41(a)(2)).

149. *Chavez*, 251 F.3d at 656.

discrimination.¹⁵⁰ Furthermore, the court ruled that the plaintiffs failed to provide sufficient evidence showing that officers are taught to use race to determine which drivers to stop.¹⁵¹

In *State of New Jersey v. Soto*¹⁵² the court granted plaintiffs' motion to suppress evidence after establishing a *prima facie* case of selective enforcement.¹⁵³ The court based its decision partially on statistics presented by the defendants that showed the presence of racism within the state police.¹⁵⁴ Unlike the statistics presented by Chavez, the defendants here were able to identify the race of a substantial number of drivers.¹⁵⁵ For two weeks the defense counted over 42,000 vehicles at four designated sites on the New Jersey turnpike to determine the number African-Americans who were either driving or in the passenger seat.¹⁵⁶ 13.5% of the vehicles were found to have an African-American occupant.¹⁵⁷ The defense counted the number of vehicles committing traffic violations and found little disparity between blacks and whites.¹⁵⁸ They then inspected arrest reports, patrol charts, traffic tickets and radio logs and found that 39.6% constituted race identified stops.¹⁵⁹ The defendants compared the numbers and found that 46.2% of the stops were of African-American drivers.¹⁶⁰ After further examination, the defendants calculated that African-Americans were 4.85 times as likely as whites to be stopped in the designated areas.¹⁶¹ The statistics offered by Chavez were insufficient because the sample pool was too small, the ISP maintained poor records and were thus unable to make such comparisons as the defense did in *Soto*.¹⁶²

Statistics showing that a disproportionate amount of minorities were stopped by officers cannot alone prove discrimination. However, such statistics allow a court to infer that officers may have engaged in racial profiling, and establishes a *prima facie* case.¹⁶³ Without having to provide detailed reports about each driver, officers may abuse their discretion when

150. *Id.* at 612.

151. *Id.*

152. *State of New Jersey v. Soto*, 734 A.2d 350 (1996).

153. *Soto*, 734 A.2d at 360, 361.

154. *Id.* at 360.

155. *Id.* at 352.

156. *Id.*

157. *Id.*

158. *Id.* at 353.

159. *Id.* at 352.

160. *Id.* at 353.

161. *Id.*

162. *Chavez*, 251 F.3d at 641-645.

163. See *Casteneda v. Partida*, 430 U.S. 482 (1977) ("The District judge found that Partida had made out a bare *prima facie* case of invidious discrimination based on a statistical showing." The Supreme Court reviewed the statistics and found that Partida established a *prima facie* case.).

stopping drivers. In 1997, Representative John Conyers of Michigan introduced a bill that would require the Department of Justice to analyze data, including the race of the driver, on all traffic stops nationwide.¹⁶⁴ The National Organization of Police Organizations opposed the bill stating that officers resented having to collect such data.¹⁶⁵ Consequently, the bill did not pass.¹⁶⁶ Nevertheless, this creates the presumption that racial profiling occurs quite often.

Forcing officers to keep detailed records, however, may provide some deterrence against racial profiling. For example, in Maryland, officers must keep record of all vehicles stopped, the driver's race, time, location and if the officer searched the car.¹⁶⁷ New Jersey entered into a consent decree with the Department of Justice to prevent racial profiling.¹⁶⁸ The decree mandates that the state create a management awareness program to "identify and modify problematic behavior and promote best practices."¹⁶⁹ The police must keep detailed records such as the gender/race of the driver, if a ticket was issued, if there was a request to search the vehicle and for what reason, if the driver was subject to force, etc.¹⁷⁰ A number of states including Connecticut, North Carolina, Oklahoma, Virginia and Arkansas are making efforts to address racial profiling by introducing bills modeled after Representative Conyers' bill.¹⁷¹

Officers have discretion to stop drivers for traffic violations. To detain a driver for a suspected crime, the officer must have reasonable suspicion based on "specific and articulable facts."¹⁷² Race should not determine whether an officer decides to search a car. Officers in *Chavez*, however, admit they are not precluded from using race as a factor to determine whether to stop a driver.¹⁷³ Further, in *Soto*, Brian Caffrey, the assistant supervisor of the drug interdiction unit, testified that "ethnicity is something to keep in mind," when stopping drivers.¹⁷⁴ Caffrey also testified that attendees of state police training

164. David A. Harris, *The Stories, The Statistics And The Law: Why "Driving While Black" Matters*, 84 MINN. L. REV. 265, 276 (1999).

165. *Id.* at 276.

166. *See id.*

167. Kathleen M. Oday, *Comments: Pretextual Traffic Stops: Protecting Our Streets or Racist Police Tactics?* 23 U. DAYTON L. REV. 313, 333. (1998).

168. *White v. Williams*, 2002 U.S. Dist. LEXIS 216, *19.

169. *Williams*, 2002 U.S. Dist. LEXIS at *20.

170. *Id.* at *20.

171. *See supra* note 193, at 321.

172. Oday, *supra* note 167, at 323 (citing *Terry v. Ohio*, 392 U.S. 1, 9-10 (1968) ("The Supreme Court emphasized that the demand for specificity in the information upon which police action is predicated is the central teaching of Fourth Amendment jurisprudence."))

173. *Chavez*, 251 F.3d at 645.

174. *Soto*, 734 A.2d at 358.

sessions are taught that Hispanics are mainly involved in drug trafficking.¹⁷⁵ In addition, films depicting blacks and Hispanics as those who are mainly arrested for drug trafficking were shown at the training sessions.¹⁷⁶ Such training methods encourage officers to target blacks and Hispanics and may produce racist cops. Nevertheless, the Supreme Court stated that “reasonable suspicion should be based on the totality of the circumstances.”¹⁷⁷ This increases an officer’s discretion and may enable them to use traffic violations as an excuse to stop drivers based on race.¹⁷⁸ We should also consider whether evidence of open maps and fast food wrappers found in vehicles justify a search by the ISP. These items can be found in many vehicles, which may enable the ISP to hide behind these factors to promote racist motives. It is difficult to determine an officer’s subjective intent. However, if officers are forced to keep better records and provide detailed reports, officers may think twice before randomly stopping a driver based on race.

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Philip Adelman

175. *Id.*

176. *Id.*

177. Oday, *supra* note 167, at 322-323 (citing *United States v. Cortez*, 449 U.S. 411 (1981) “Reasonable suspicion should be based on the totality of the circumstances. Now, because courts look at the totality of the circumstances, police officers’ possible racial prejudice may be easily hidden.”).

178. *Id.*

