

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF PUERTO RICO

3 HARRY RODRÍGUEZ-RIVERO, et al.,

4 Plaintiffs,

5 v.

6 PEDRO TOLEDO-DÁVILA, et al.,

7 Defendants.

Civil No. 08-1016 (JAF)

8 **OPINION AND ORDER**

9 Plaintiffs, Harry Rodríguez-Rivero ("Rodríguez"); Linette Miró-
10 Quiñones; and their conjugal partnership, bring the present action
11 under 42 U.S.C. § 1983 against Defendants, Pedro Toledo-Dávila
12 ("Toledo") and Rafael Ramos-Vélez ("Ramos"), each in his personal
13 capacity, and an unnamed insurance company, alleging violations of
14 Rodríguez' rights under the U.S. Constitution.¹ (Docket No. 17.)
15 Plaintiffs also allege violations of their rights under Puerto Rico
16 law. (Id.) Defendants Toledo and Ramos (together, "Movants") move for
17 summary judgment pursuant to Federal Rule of Civil Procedure 56(c)
18 (Docket No. 70), and Plaintiffs oppose (Docket No. 82).

¹ Plaintiffs also sued unnamed police officers and supervisors, but said defendants were later dismissed on Toledo's motion. (See Docket Nos. 34; 37.)

I.

Factual and Procedural History

We derive the following factual and procedural summary from the parties' pleadings, motions, exhibits, and statements of uncontested facts. (Docket Nos. 17; 30; 39; 69; 70; 73; 81; 82.)

At the time of the alleged constitutional violations, Toledo was superintendent of the Puerto Rico Police Department ("PRPD"), and Ramos was a PRPD officer involved in Rodríguez' arrest.

On January 8, 2007, Rodríguez exited on foot a convenience store in San Juan, Puerto Rico. According to Rodríguez, he got into his car, which had been parked in front of the store, pulled away from the curb, and started down the road. (Docket No. 70-2 at 9-11.) Shortly thereafter, a group of men in plain clothes surrounded his car, wielding firearms and demanding that he exit the car. (Id. at 11-14, 18.) Believing himself and his car in danger, Rodríguez panicked and fled the gunmen; he reversed, running into the car behind him, then put his car into drive and sped away. (Id. at 11-15, 21.) Not far down the road, he heard police sirens and pulled over immediately. (Id. at 26.) Four marked police vehicles pulled up behind him, and police surrounded his vehicle with their weapons drawn. (Id. at 28-29.) The police threatened to kill him, pulled him out of the car, dropped him on the ground, hit his mouth, and grabbed his legs and dragged him face down on the pavement before

1 they handcuffed him and lifted him to his feet. (Id. at 29-30;
2 Docket No. 70-6 at 4-9.) At no time did Rodríguez resist the
3 officers. (Docket No. 70-6 at 7.) The officers then placed him in
4 an unmarked police vehicle and took him to the police station, where
5 they processed his arrest and held him for several hours. (See id.
6 at 9-10, 16, 23.) They tested his blood alcohol content, cited him
7 for driving under the influence, and released him. (See id. at 26.)

8 Although neither Rodríguez nor the woman whose car he hit, a
9 witness to the present action, knew it at the time, the gunmen who
10 originally approached Rodríguez' car were plain-clothed police
11 officers. (See, e.g., Docket Nos. 70-2 at 11; 81-3 at 5, 10.) Said
12 officers were all members of the PRPD drug and narcotics division,
13 deployed as if to run a drug intervention. (See Docket No. 81-6 at
14 2-3.) Nothing in the record explains why they initially approached
15 Rodríguez.

16 Ramos participated in the foregoing events, but the extent of
17 his participation is disputed. By his own testimony, Ramos witnessed
18 Rodríguez' hit-and-run (Docket No. 81-6 at 2), which places him among
19 the officers involved in the initial intervention. Despite his sworn
20 testimony, Ramos maintains in his motion that his first involvement
21 came after Rodríguez was handcuffed. (See, e.g., Docket No. 70 at
22 17.) Undisputed is that Ramos then led Rodríguez to the car, rode in
23 the backseat with him to the station, processed his arrest paperwork,

1 and interacted with him during the course of his detention. (See,
2 e.g., Docket No. 70-6 at 17.)

3 As to Toledo's involvement, Plaintiffs allege that he was
4 charged with ensuring that PRPD officers were trained properly
5 regarding constitutional violations. (Docket No. 17.) But according
6 to Toledo, Toledo's subordinate was the one responsible for
7 organizing and executing such training. (Docket No. 81-4 at 1.) To
8 Toledo's knowledge, that training occurred monthly and without
9 problems. (Id. at 8.) Ramos, however, testified that he had never,
10 in four years at the PRPD, received this required, monthly training.
11 (Docket No. 81-2 at 10.)

12 On January 8, 2008, Plaintiffs filed suit in this court.
13 (Docket No. 1.) On July 17, 2008, they filed an amended complaint.
14 (Docket No. 17.) On November 17, 2008, under Federal Rule of Civil
15 Procedure 12(b)(6) and on Defendant Toledo's motion, this court
16 dismissed Plaintiffs' claims against Toledo in his official capacity,
17 and the 42 U.S.C. § 1983 claims of Miró and the Miró-Rodríguez
18 conjugal partnership. (Docket No. 26.) Movants moved for summary
19 judgment on October 2, 2009, as to the remaining claims against them
20 (Docket No. 70), and Plaintiffs opposed on October 29, 2009 (Docket
21 No. 82).

II.

Summary Judgment Under Rule 56(c)

We grant a motion for summary judgment "if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). A factual dispute is "genuine" if it could be resolved in favor of either party and "material" if it potentially affects the outcome of the case. Calero-Cerezo v. U.S. Dep't of Justice, 355 F.3d 6, 19 (1st Cir. 2004).

The movant carries the burden of establishing that there is no genuine issue as to any material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 325 (1986). In evaluating a motion for summary judgment, we view the record in the light most favorable to the nonmovant. Adickes v. S.H. Kress & Co., 398 U.S. 144, 157 (1970).

"Once the moving party has made a preliminary showing that no genuine issue of material fact exists, the nonmovant must 'produce specific facts, in suitable evidentiary form, to establish the presence of a trialworthy issue.'" Clifford v. Barnhart, 449 F.3d 276, 280 (1st Cir. 2006) (quoting Triangle Trading Co. v. Robroy Indus., Inc., 200 F.3d 1, 2 (1st Cir. 1999)). The nonmovant "may not rely merely on allegations or denials in its own pleading; rather,

1 its response must . . . set out specific facts showing a genuine
2 issue for trial." Fed. R. Civ. P. 56(e)(2).

3 **III.**

4 **Analysis**

5 Movants argue that they are entitled to summary judgment because
6 (1) Plaintiffs have failed to establish a cause of action under
7 § 1983 for violation of Rodríguez' Fourth and Fourteenth Amendment
8 rights; and (2) Movants are entitled to qualified immunity. (Docket
9 No. 70.) We address each argument in turn.

10 **A. Prima-Facie Case Under the Fourth and Fourteenth Amendments**

11 Section 1983 provides a civil remedy for violation of a federal
12 right by a person acting under the color of state or territorial law.
13 42 U.S.C. § 1983. In addition, under § 1983, a supervisory official
14 may be held liable for his subordinates' behavior, but only if
15 (1) his subordinates' behavior resulted in a constitutional
16 violation; and (2) the official's action or inaction was
17 affirmatively linked to that behavior such that "it could be
18 characterized as supervisory encouragement, condonation or
19 acquiescence or gross negligence amounting to deliberate
20 indifference." Pineda v. Toomey, 533 F.3d 50, 54 (1st Cir. 2008)
21 (internal quotation marks omitted) (quoting Lipsett v. Univ. of P.R.,
22 864 F.2d 881, 902 (1st Cir. 1988)).

1 Plaintiffs allege Ramos' direct violation both of Rodríguez'
2 Fourth Amendment rights, in arresting Rodríguez without probable
3 cause and in using excessive force while effecting that arrest, and
4 of Rodríguez' substantive due process rights under the Fourteenth
5 Amendment, in originally approaching Rodríguez in the manner
6 described above in Part I. (See Docket Nos. 17; 82 at 8.) Plaintiffs
7 also allege Toledo's supervisory liability for said violations.
8 (Docket No. 17.) We examine each alleged violation, in turn, and then
9 discuss Movants' involvement in same.

10 1. Fourth Amendment

11 The Fourth Amendment prohibits "unreasonable searches and
12 seizures." U.S. Const. amend. IV. If a crime is committed in an
13 officer's presence, the ensuing arrest is considered a reasonable
14 seizure of the offender. See Atwater v. City of Lago Vista, 532 U.S.
15 318, 354 (2001). Indeed, "[i]f an officer has probable cause to
16 believe that an individual has committed even a very minor criminal
17 offense in his presence, he may, without violating the Fourth
18 Amendment, arrest the offender." Id.

19 In the present case, the PRPD officers arrested Rodríguez after
20 he, in their presence, impacted another car and sped away from the
21 accident site. Rodríguez' behavior constitutes a misdemeanor under
22 Puerto Rico law. See 27 L.P.R.A. §§ 5101-5102 (2006). Thus, the
23 officers did not violate the Fourth Amendment in arresting Rodríguez.

1 Nevertheless, the Fourth Amendment also prohibits the use of
2 excessive force in effecting arrests. See Morelli v. Webster, 552
3 F.3d 12, 23 (1st Cir. 2009). Excessive force is “force that was
4 unreasonable under all the circumstances.” Id. (citing Graham v.
5 Connor, 490 U.S. 386, 397 (1989)). To determine whether the force
6 applied was unreasonable, we look to certain criteria, including “the
7 severity of the crime at issue[;] the extent (if any) to which the
8 suspect poses an immediate threat to the safety of the officers or
9 others; and whether the suspect is actively resisting arrest or
10 attempting to evade arrest by flight.” Id. (internal quotation marks
11 omitted) (quoting Graham, 490 U.S. at 396).

12 The evidence on the record in the present case suggests that the
13 force used against Rodríguez during his arrest was excessive.²
14 According to Ramos’ testimony, Rodríguez was arrested for a hit-and-
15 run. There is no evidence that Rodríguez was “resisting arrest or
16 attempting to evade arrest by flight,” as no one claims that the
17 officers who initially approached Rodríguez were attempting to arrest
18 him. In fact, when he first heard police sirens, Rodríguez

² Movants argue that “[t]he force used during the arrest was . . . reasonable, specially [sic] given the circumstances of the case in which plaintiff Rodríguez had tried to escape and also the fact that he was drunk.” (Docket No. 70 at 15.) But no evidence shows that the initial approach was an attempted arrest from which Rodríguez tried to “escape”; indeed, no one offers any explanation whatsoever as to the character of that approach. Furthermore, Ramos testified that the officers did not know Rodríguez was drunk until after they interviewed him at the police station. (Docket No. 81-2 at 3; see also Docket No. 81-3 at 14.)

1 immediately pulled over and fully cooperated with the police at all
2 times thereafter. While arguably Rodríguez' apparently reckless
3 driving posed "an immediate threat" to public safety, a reasonable
4 jury could find that the arrest described above in Part I was,
5 nevertheless, excessively forceful under the circumstances.

6 **2. Fourteenth Amendment**

7 Generally, we apply Fourth Amendment analysis to claims of
8 unlawful seizures. But we find that some of the alleged behavior in
9 this case requires analysis under Fourteenth Amendment substantive
10 due process instead. This is because the unexplained behavior of the
11 officers, that initial approach that startled Rodríguez into his
12 flight, did not constitute a "seizure" in the constitutional sense.
13 See County of Sacramento v. Lewis, 523 U.S. 833, 843-44 (1998)
14 (citing California v. Hodari D., 499 U.S. 621, 626 (1991))
15 (discussing Court's holding that a mere attempt to seize "does not
16 amount to a 'seizure' within the meaning of the Fourth Amendment").
17 Thus the behavior surrounding that approach is not governed by the
18 Fourth Amendment, and we must turn instead to the Fourteenth
19 Amendment.

20 The Fourteenth Amendment prohibits the deprivation of a person's
21 life, liberty, or property by a state or territory without due
22 process of law. U.S. Const. amend. XIV, § 1; see Exam'g Bd. of
23 Eng'rs, Architects & Surveyors v. Flores de Otero, 426 U.S. 572, 586

1 (1976) (applying Due Process Clause to U.S. territories). "The
2 touchstone of due process is protection of the individual against
3 arbitrary action of the government" County of Sacramento,
4 523 U.S. at 845-46 (quoting Wolff v. McDonnell, 418 U.S. 539, 558
5 (1974)).

6 "Fourteenth Amendment substantive due process claims often turn
7 on whether the alleged misconduct 'shocks the conscience.'" Maldonado v. Fontanes, 568 F.3d 262, 272 (1st Cir. 2009). And "the
8 official conduct 'most likely to rise to conscience-shocking level'
9 is 'conduct intended to injure in some way unjustifiable by any
10 government interest.'" Id. at 273 (citing Chavez v. Martinez, 538
11 U.S. 760, 775 (2003)).

12
13 The record in this case reveals no justification whatsoever for
14 the officers' initial approach. Rodríguez' hit-and-run provided the
15 only justification for interacting with Rodríguez at all, and that
16 event transpired only after the initial approach. Toledo and Ramos
17 ignore this glaring omission, deeming it immaterial by maintaining
18 that Ramos was not present at that initial approach. (See Docket No.
19 70 at 8 ("Ramos arrived to the scene for the first time, once
20 [Rodríguez'] arrest had taken place.")) We find this argument
21 untenable, as Ramos himself testified that he had witnessed the hit-
22 and-run. (See Docket No 81-6 at 2.) Without any explanation as to
23 the government's intent or interest, and with evidence from
24 Plaintiffs suggesting that Rodríguez was approached for no legally-

1 cognizable reason, we cannot but consider the government's conduct
2 arbitrary. And, given the understandable distress said behavior
3 caused Rodríguez, a reasonable jury could certainly find that said
4 arbitrary conduct shocks the conscience.

5 **3. Movants' Involvement**

6 As to Ramos' involvement in the alleged Fourth Amendment
7 violation, we need only note his testimony that he was "the person
8 who effected the arrest." (Docket No. 81-2 at 8; see also id. at 11
9 ("Q: Could you tell us who was the person who restrained [Rodríguez]?
10 A: Myself.")) As to his involvement in the alleged Fourteenth
11 Amendment violation, we again need only note his testimony that he
12 was present for the hit-and-run, which was the site of the initial
13 approach. (See Docket No. 81-6 at 2.) These facts satisfy us that
14 a reasonable jury could find that Ramos was directly involved in both
15 of the alleged constitutional violations.

16 As to Toledo's involvement, we must inquire as to whether his
17 conduct "could be characterized as supervisory encouragement,
18 condonation or acquiescence or gross negligence amounting to
19 deliberate indifference." See Pineda, 533 F.3d at 54; see also supra
20 (discussing standard for supervisory liability). For his behavior to
21 amount to at least deliberate indifference, we must find that Toledo
22 knew of the risk of constitutional violations to people in Rodríguez'

1 position but failed to take reasonable steps to abate that risk.
2 Cf. Burrell v. Hampshire County, 307 F.3d 1, 7-8 (1st Cir. 2002).

3 The record shows that Toledo regularly received reports
4 regarding complaints against officers (Docket No. 81-4 at 2); this
5 supplies the requisite showing that Toledo knew of the risk to the
6 constitutional rights of people like Ramos. The record also shows
7 that Toledo, through his subordinates, required constitutional-
8 compliance training for officers like Ramos but failed to ensure that
9 this training took place (see Docket Nos. 81-4 at 4, 6; 81-2 at 10);
10 this supplies the requisite showing that Toledo failed to take
11 reasonable steps to abate said risk. Thus, Plaintiffs have provided
12 sufficient evidence to survive summary judgment on the issue of
13 Toledo's supervisory involvement in the constitutional violations at
14 issue in this case.

15 **B. Qualified Immunity**

16 Movants argue that they are entitled to qualified immunity
17 because Ramos' actions did not violate Rodríguez' constitutional
18 rights. (Docket No. 70 at 17-18.)

19 Qualified immunity protects state officials from the burden of
20 standing trial or facing other onerous aspects of litigation.
21 Saucier v. Katz, 533 U.S. 194, 200 (2001). To determine whether
22 Movants are entitled to qualified immunity, we must ask "(1) whether
23 the facts alleged or shown by the plaintiff make out a violation of

1 a constitutional right; and (2) if so, whether the right at issue was
2 'clearly established' at the time of the defendant's alleged
3 violation." Maldonado v. Fontañes, 568 F.3d 263, 268-69 (1st Cir.
4 2009) (citing Pearson v. Callahan, 129 S. Ct. 808, 815-16 (2009)).
5 The second prong of the Pearson analysis entails two separate
6 inquiries: First, whether the right at issue was sufficiently clear;
7 and second, whether under the facts of the particular case, a
8 reasonable defendant would have known that his conduct violated that
9 right. Id. at 269 (citing Brousseau v. Haugen, 543 U.S. 194, 198
10 (2004); Anderson v. Creighton, 483 U.S. 635, 640 (1987)).

11 We already determined that Plaintiffs proffered sufficient
12 evidence to establish violations of Rodríguez' Fourth and Fourteenth
13 Amendment rights, supra Part III.A.1-2, and, accordingly, we find the
14 first prong satisfied. We also find that both the Fourth Amendment
15 right to be free from excessive use of force and the Fourteenth
16 Amendment right to be free from arbitrary, injurious government
17 action are clearly established. See supra Part III.A.1-2.

18 _____Further, for the reasons stated above, supra Part III.A.1, a
19 reasonable officer in Ramos' position would have known that the force
20 used in Rodríguez' arrest was excessive under the circumstances.
21 Similarly, on this record, a reasonable officer in Ramos' position
22 would have known that the intervention with Rodríguez was arbitrary,
23 injurious government conduct. See supra Part III.A.2. As to Toledo,
24 a reasonable officer in his position would have known that the

1 failure to adequately train officers like Ramos as to constitutional
2 compliance directly contributes to the perpetration of constitutional
3 violations by such officers. See supra Part III.A.3. Given the above
4 conclusions, we find that Movants are not entitled to qualified
5 immunity, and we strongly urge the parties to settle this case.

6 **IV.**

7 **Conclusion**

8 For the reasons stated herein, we **GRANT IN PART** and **DENY IN PART**
9 Movants' motion for summary judgment (Docket No. 70). We **DISMISS**
10 Plaintiffs' Fourth Amendment claim that Rodríguez was arrested
11 without probable cause, but we **RETAIN** all other claims.

12 **IT IS SO ORDERED.**

13 San Juan, Puerto Rico, this 5th day of November, 2009.

14 s/José Antonio Fusté
15 JOSE ANTONIO FUSTE
16 Chief U.S. District Judge