No. 17-601

In the Supreme Court of the United States

RICARDO MEDRANO-ARZATE, EVA CHAVEZ-MEDRANO,
as Personal Representative of the
ESTATE OF HILDA MEDRANO, Deceased,
Petitioners,

v.

PAUL C. MAY, individually and as SHERIFF OF
OKEECHOBEE COUNTY, FLORIDA,
and OKEECHOBEE COUNTY, FLORIDA,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

BRIEF IN OPPOSITION FOR RESPONDENT PAUL C. MAY

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QUESTION PRESENTED

Respondent restates the Question Presented as follows:

Whether this Court should grant review when the claimed difference among the Circuits, which is the asserted jurisdictional basis for review, regarding the issue of whether a municipality can be liable under Section 1983, in the absence of individual liability, is overstated and immaterial.

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RESTATEMENT OF THE CASE

Respondent recognizes that due to the procedural posture of this case, in that it was dismissed at the pleading stage, this Court is bound to accept as true the factual allegations of the Complaint. That being said, Respondent needs to address the factual contention that Deputy Gracie was obeying Sheriff's Department policies on the night of the subject incident. (Petitioners' brief at pg. 4).

In this litigation, Petitioners have advanced the theory that the Sheriff violated the Decedent's constitutional rights by allegedly implementing two competing and conflicting policies which Petitioners further allege resulted in a custom exhibiting deliberate indifference. The first policy at issue allegedly required deputies to seek approval from a supervisor via the radio before utilizing emergency lights and sirens during emergency vehicle operations. The second policy at issue allegedly prevented deputies from making radio transmissions during an emergency to prevent "chatter." Finally, Petitioners allege that as a result of those agency policies, a custom/practice evolved whereby deputies responding as back-up to an emergency operating their patrol vehicles never utilize their emergency lights and sirens. There has never been an allegation that the Sheriff enacted a policy which explicitly required deputies responding as backup to exceed the speed limit while not using their emergency lights and sirens. Instead, Petitioners' theory involves a conclusory consequence of two facially lawful policies. Just as plausible a consequence of the two facially constitutional policies is that a deputy will never respond as back-up, at least in a way which

necessitates the use of emergency lights and sirens. Respondent will address this issue in the substantive portion of the brief however Respondent felt it necessary to clarify the factual underpinnings of the claim.

REASONS TO DENY THE PETITION

I. The Petitioners Overstate the Division Between the Circuits Regarding the Issue of Whether Municipal Liability under Section 1983 Can Inhere Absent a Constitutionally Culpable Act by the Individual Employee.

Petitioners devote a significant portion of their brief engaging in an analysis of this Court's holdings in *City of Canton v. Harris,* 489 U.S. 378 (1989) and *Collins v. Harker Heights*, 503 U.S. 115 (1992), asserting that these two cases implicitly recognize that a municipality can be liable under section 1983 in the absence of individual liability. (Petitioners' brief at 10-12). Respondent does not disagree with this general proposition, and neither does the Eleventh Circuit, despite Plaintiff's suggestion to the contrary. *See Anderson v. City of Atlanta*, 778 F.2d 678 (11th Cir. 1985) (recognizing a governmental entity can be liable for deliberate indifference to a pretrial detainee's serious medical needs [a constitutional claim], in the absence of individual liability). The fact that Petitioners' brief omits referencing *Anderson* is especially curious considering Petitioners' heavy reliance on *Anderson* when they appealed the trial court's ruling to the Court of Appeals for Eleventh Circuit. Further, *Anderson's* holding is nearly identical to the case of *Thomas v. Cook County Sheriff's Department*, 604 F.3d 293 (7th Cir. 2009), the Seventh

Circuit case which Petitioners now hold out as an example of the split between the Circuits.

When analyzing the issue correctly, there is no conflict between the Circuits justifying review. The proper question is not whether a municipality can be held liable in the absence of individual liability, but rather under what circumstances it can be held liable in the absence of individual liability. When the question is framed properly, the Eleventh Circuit's jurisprudence is in line with this Court's precedent which "requires [the reviewing court] to separate two different issues when a § 1983 claim is asserted against a municipality: (1) whether the plaintiff's harm was caused by a constitutional violation, and (2) if so, whether the [municipal defendant] is responsible for that violation." *Collins*, 503 U.S. at 120. Thus the question of whether a municipality can be liable in the absence of individual liability is very much dependant on the constitutional right at issue. Where, as here, the constitutional right at issue involves a citizen's substantive due process rights (of which this Court has consistently emphasized the importance of caution and restraint against expansion[1]), the analysis of whether a municipality can be liable in the absence of individual liability is much different than in a case like *Anderson* where the constitutional violation (deliberate indifference to an inmate's serious medical needs) is more clearly defined.

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[1] *Regents of Univ. of Mich. v. Ewing*, 474 U.S. 214, 229, 106 S.Ct. 507, 88 L.Ed.2d 525 (1985) (Powell, J., concurring)) ("the history of substantive due process counsels caution and restraint").

The Petitioners in their appeal to the Eleventh Circuit and in their petition to this Court heavily relied and continue to rely on *Fagan v. City of Vineland*, 22 F.3d 1283 (3d Cir. 1994).Yet, even the Third Circuit has expressed concerns regarding the propriety of its decision in *Fagan*. *See Mark v. Hatboro,* 51 F.3d 1137, 1153 n. 13 (3d Cir. 1995) ("It appears that, by focusing almost exclusively on the "deliberate indifference" prong of the *Collins* test, the panel opinion did not apply the first prong-establishing an underlying constitutional violation.").

Petitioners greatly exaggerate the split between the Circuits regarding this issue. This case does not present a special or important issue for review.

II. Petitioners' Complaint Based On An Unofficial Custom of the Sheriff Without any allegations of a widespread practice sufficient to impose liability on the Sheriff Would Not Survive In Any Circuit.

Even if there was a Circuit split deserving of this Court's attention, this case presents a poor vehicle to review it. The differences among the Circuits are immaterial because Petitioners' cause of action would fail anyway under this Court's precedent.

It is well settled that a government entity is not liable for the actions of its subordinates or employees in a cause of action brought pursuant to 42 U.S.C. § 1983 by operation of the concept of respondeat superior/vicarious liability. *City of Canton v. Harris*, 489 U.S. 378, 385 (1989). Therefore, before liability can attach there must be both allegations and proof of a custom, policy, practice or procedure that provided the

moving force behind, and the direct cause of, the alleged constitutional violation. *See Monell v. Dept. of Social Services*, 436 U.S. 658 (1978).

There is a distinction between a custom, practice or procedure and an official policy. In the case of a formal, official policy that clearly authorizes unconstitutional behavior, a single incident of the unconstitutional behavior by a subordinate of the official policy-making authority is sufficient to bring a § 1983 cause of action. *See e.g. Monell, supra*. However, the law is more stringent in its requirement of proof in the typical § 1983 case where the custom, practice or procedure is not an officially promulgated policy and rather is based upon some other theory that is not directly related to the actual unconstitutional act. Generally, in a case where the "policy of the governmental entity" is argued to exist through such an informal custom or practice, a single or isolated incident of a constitutional violation by an employee is insufficient to establish such an informal custom or practice. *See City of Oklahoma v. Tuttle*, 471 U.S. 808 (1985).

The Sheriff's two official policies at issue in this case (requiring supervisory permission before "running code" and minimizing radio traffic during an emergency) clearly do not violate the Constitution. Petitioners' theory seems to be that the unofficial custom/practice of deputies responding as backup to emergencies without their lights and sirens, which allegedly and presumably came about as an alleged consequence of two official policies of the Sheriff, is sufficient to state a Federal claim against the Sheriff. It isn't.

In *Bd. of County Comm'rs of Bryan County, Oklahoma v. Jill Brown*, 520 U.S. 397, 404-15 (1997), this Court held:

> As our §1983 municipal liability jurisprudence illustrates, however, it is not enough for a §1983 plaintiff merely to identify conduct properly attributable to the municipality. The plaintiff must also demonstrate that, through its deliberate conduct, the municipality was the moving force behind the injury alleged. That is, a plaintiff must show that the municipal action was taken with the requisite degree of culpability and must demonstrate a direct causal link between the municipal action and the deprivation of federal rights.
>
> Where a plaintiff claims that a particular municipal action itself violates federal law or directs an employee to do so, resolving these issues of fault and causation is straight-forward. Section 1983 itself contains no state-of-mind requirement independent of that necessary to state a violation of the underlying right. In any §1983 suit, however, the plaintiff must establish the state-of-mind of the underlying violation. Accordingly, proof that a municipality's legislative body or authorized decision-maker has intentionally deprived the plaintiff of a federally protected right necessarily establishes that the municipality acted culpably. Similarly, the conclusion that the action taken or directed by the municipality or its authorized decision-maker itself violates federal law will also determine that the municipal action was the

> moving force behind the injury of which the plaintiff complains....
>
> Where a plaintiff claims that the municipality has not directly inflicted an injury, but nonetheless has caused an employee to do so, rigorous standards of culpability and causation must be applied to ensure that the municipality is not held liable solely for the actions of its employee....
>
> Claims not involving an allegation that the municipal action itself violated the law, or directed or authorized the deprivation of federal rights, present much more difficult problems of proof. That a plaintiff has suffered a deprivation of federal rights at the hands of a municipal employee will not alone permit an inference of municipal culpability and causation; the plaintiff will simply have shown that the employee acted culpably....
>
> Where a court fails to adhere to rigorous requirements of culpability and causation, municipal liability collapses into respondeat superior liability. As we recognized in Monell and have repeatedly reaffirmed, Congress did not intend municipalities to be held liable unless deliberate action attributable to the municipality directly caused a deprivation of federal rights.

(internal quotes and citations omitted.)

To establish the existence of a custom or practice that directly caused a violation of the Plaintiff's constitutional rights, it is necessary to allege and prove

a persistent and wide-spread practice of the allegedly unconstitutional behavior (deputies responding to emergencies without activating their emergency equipment resulting in fatal accidents) that existed before the incident that occurred on December 1, 2013 and which amounted to the practice or custom of the agency as of that date. Moreover, knowledge of such a custom must be attributable to the Sheriff in his official capacity as a policy level-making official for the agency. Only when it can be said that the governmental entity "officially sanctioned or ordered" the unconstitutional conduct can liability attach to a government agency. *Pembaur v. City of Cincinnati*, 475 U.S. 469, 480 (1986), and *Monell*, 436 U.S. at 691.

In this case there have never been any allegations of a wide spread practice or custom of deputies responding as back-up to emergencies without utilizing their lights and sirens which resulted in harm to community residents. Although this issue was not addressed by the Eleventh Circuit in its opinion affirming the trial court's order of dismissal (it was raised by the Respondent), the lack of any allegation of a widespread practice sufficient to satisfy this Court's requirements for liability to attach to a governmental agency based on an unofficial custom/practice is fatal to this claim anyway.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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