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 OKEECHOBEE COUNTY

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QUESTION PRESENTED

Respondent restates the question presented as follows:

Whether a plaintiff whose death or injury results from an automobile collision during a police officer's pursuit or response to a call for back up can state a cognizable claim for municipal liability under 42 U.S.C. §1983 for the deprivation of a citizen's substantive due process rights without alleging that that the police officer involved in the collision acted with a constitutionally culpable state of mind?

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INTRODUCTION

The Petition for Writ of Certiorari does not present a question worthy of this Court's review. Petitioners broadly ask this Court to decide whether a municipality can be liable under 42 U.S.C. § 1983 for a policy when the employee implementing the policy did not act with a constitutionally culpable state of mind. In doing so, Petitioners assert a long-standing circuit split. In asserting this split, Petitioners do not, however, distinguish between municipal liability in the context of a police pursuit case, and municipal liability in the context of other types of cases, such as wrongful detention or wrongful termination. With respect to police pursuit cases, there is not a true circuit split on municipal liability—the vast majority of courts which have addressed this issue have determined that there must be an underlying constitutional violation before municipal liability will attach.

Petitioners argue that the source of this circuit split is uncertainty over the scope of this Court's decision in *City of Los Angeles v. Heller,* 475 U.S. 796 (1986); however, there is no need for further clarification of *Heller*. Indeed, in subsequent decisions, this Court has made clear the circumstances under which municipal liability will arise. As a result, Certiorari should be denied.

STATEMENT OF THE CASE

For purposes of the Court's consideration of the Petition, Okeechobee County does not dispute the factual circumstances giving rise to the accident, as those facts are set forth in the Petition, with one exception. Specifically, contrary to Petitioners'

assertions, the subject policies are not policies of Okeechobee County and there is no legal basis for imposing liability upon Okeechobee County based upon such policies.

Pursuant to Supreme Court Rule 15, Respondent Okeechobee County, Florida ("Okeechobee County") seeks to clarify this apparent misstatement of fact in the Petition. Petitioners' case is rooted in their contention that certain policies created municipal liability upon Respondents for Hilda Medrano's death. These policies, according to Petitioners, include "conflicting Sheriff's Department policies" that (1) required a deputy to use the radio to obtain permission from a senior officer before activating the deputy's emergency lights or sirens, but (2) forbade deputies from using the radio while a fellow officer was responding to an ongoing code. Pet. for Cert., p. 5. Throughout their case, including in the Petition, Petitioners inaccurately commingle the interests of Respondents, Okeechobee County, the Sheriff individually, and the Sheriff in his official capacity together, calling them the "County Defendants," rather than including any specific factual allegations attributing the subject policies to Okeechobee County. Pet. for Cert., p. 5. Indeed, as described below, Petitioners cannot attribute the subject policies to Okeechobee County, because the subject policies are Sheriff's Department policies over which Okeechobee County has no control.

REASONS FOR DENYING THE PETITION

This Court should deny the instant Petition because this case does not present compelling reasons to grant certiorari, particularly as to Respondent Okeechobee County.

I. THE ELEVENTH CIRCUIT'S DECISION DOES NOT CONFLICT WITH THIS COURT'S DECISION IN *HELLER* INSOFAR AS OTHER CASES DECIDED BY THIS COURT HAVE CLARIFIED *HELLER'S* SCOPE

Petitioners urge this Court to find that the Eleventh Circuit's decision was based on an overly broad reading of *City of Los Angeles v. Heller*, 489 U.S. 378 (1989). Petitioners then suggest that this Court should clarify certain language in *Heller* and determine that municipal liability may attach in a police pursuit case, even if there is no underlying constitutional violation by the municipal employee.

The Petition should be denied because there is no need for further clarification of this Court's decision in *Heller*. This Court has already provided sufficient guidance as to the circumstances giving rise to municipal liability, even absent an underlying constitutional liability by the municipal employee. This Court's decisions have made clear that municipal liability will only arise where the policy itself is found to have been the direct moving force behind the constitutional deprivation.

One example of this analysis is set forth in this Court's decision in in *Bd. of Cty. Comm'rs v. Brown*, 520 U.S. 1283 (1997), which involved allegations of

inadequate screening in connection with the hiring of a Sheriff's Deputy. The Court observed as follows:

> If a program does not prevent constitutional violations, municipal decisionmakers may eventually be put on notice that a new program is called for. Their continued adherence to an approach that they know or should know has failed to prevent tortious conduct by employees may establish the conscious disregard for the consequences of their action - - the "deliberate indifference" - - necessary to trigger municipal liability.

Brown, 520 U.S. at 407. Notably, the "deliberate indifference" described in these cases arises from decisionmakers ignoring a known danger resulting from a given policy and subsequently failing to take appropriate measures to address the known dangers.

The *Brown* case further recognized that municipal liability appears to arise "only where the evidence that the municipality had acted and that the plaintiff had suffered a deprivation of federal rights also proved fault and causation." *Brown*, 520 U.S. at 405. These cases typically involve prisoner detention or custody cases, as in *Brown*,[1] or procedural or administrative

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[1] Another example is *City of Canton, Ohio v. Harris*, 489 U.S. 378, 390 (1989), which found that a municipality may be liable for failure to provide medical attention based upon inadequate training where "the need for more or different training is so obvious, and the inadequacy so likely to result in the violation of constitutional rights, that the policymakers of the city can reasonably be said to have been deliberately indifferent to the need."

matters where the municipality, acting as a body, directly violates civil rights. For example, in *Owen v. Independence*, 445 U.S. 622 (1980), the municipality, a city council, was alleged to have censured and discharged an employee without a hearing. Similarly, in *Newport v. Fact Concerts, Inc.*, 453 U.S. 247 (1981), the city council was alleged to have cancelled a concert license. As explained by the Court in *Brown*, "neither decision reflected implementation of a generally applicable rule." *Id.* at 406. Rather, the cases involved a situation where "each decision, duly promulgated by city lawmakers, could trigger municipal liability if the decision itself were found to be unconstitutional." *Brown* at 406. (emphasis added).

In short, the *Brown* court acknowledged that municipal liability may exist where the unconstitutional action of a municipality directly causes a deprivation of rights, and the plaintiff demonstrates fault and causation. *Brown*, 520 U.S. at 405. However, those cases must be distinguished from cases involving "implementation of a generally applicable rule," like the policies involved in the instant case. *Id.* at 406.

The balance of the Court's analysis in *Brown* addressed the standard for establishing municipal liability following a deprivation of constitutional rights by a municipal employee. *Id.* at 406-07. Indeed, the following language demonstrates that the Court is contemplating a scenario where there has been an underlying constitutional violation by a municipal employee, rather than a situation involving only the implementation of a generally applicable rule:

> 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.
>
> * * *
>
> [A] plaintiff seeking to establish municipal liability on the theory that a facially lawful municipal action has led an employee to violate a plaintiff's rights must demonstrate that the municipal action was taken with "deliberate indifference" as to its known or obvious consequences."

Id. (Emphasis in original).

This Court's decision in *Collins v. City of Harker Heights, Tex.*, 503 U.S. 115, 120 (1992) provides guidance as to circumstances in which municipal liability is alleged to arise out of municipal policy making functions. In *Collins*, the decedent, a city sanitation employee, died of asphyxia while working on city sewer lines. The plaintiff alleged municipal liability based upon theories of failure to properly train or warn its employees. The Court first reiterated the applicable standard for analyzing municipal liability: "(1) whether plaintiff's harm was cause by a constitutional violation, and (2) if so, whether the city is responsible for that violation." *Id.* at 120 (citing *Oklahoma City v. Tuttle*, 471 U.S. 808, 817 (1985)). Determining that no liability existed, the Court observed that "[d]ecisions concerning the allocation of resources to individual programs . . . such as training

and compensation of employees, involve a host of policy choices that must be made by locally elected representatives, rather than by federal judges interpreting the basic charter of Government for the entire country." *Id.* at 128-29. The Court also distinguished claims arising out of policy-making functions from those involving prisoner detention or custody claims: "It is quite different from the constitutional claim advanced by plaintiffs in several of our prior cases who argued that the State owes a duty to take care of those who have already been deprived of their liberty . . . the Due Process Clause of its own force requires that conditions of conferment satisfy certain minimal standards for pretrial detainees." *Id.* at 127.

Claims arising out of police pursuit or emergency response simply do not fit within the spectrum of municipal liability for the simple fact that these cases are premised on the independent conduct of the responding or pursuing officer, rather than upon the municipality's policy. *See Collins*, 503 U.S. at 123 ("a municipality can be found liable under §1983 only where the municipality itself causes the constitutional violation at issue." (quoting *Springfield v. Kibbe*, 480 U.S. 257, 267 (1987)). Simply put, if the claim against the municipality is premised upon action taken by a municipal employee (even if such action is done pursuant to a municipal policy), there must first be an underlying constitutional violation by that employee before municipal liability may arise.

In light of the foregoing decisions from this Court, the circuit courts have almost uniformly[2] determined that municipal liability will not arise in a police pursuit/emergency response case absent an underlying constitutional violation by the acting officer. As such, there is no need for further clarification on the rule of law by this Court.

II. THERE IS NOT A TRUE CIRCUIT SPLIT ON THIS ISSUE

There is no split of authority among the circuit courts on this issue. As acknowledged by Petitioners, the vast majority of circuits which have addressed this issue in the context of a police pursuit cases have determined that there must be an underlying constitutional violation before municipal liability will attach. Here, there is no dispute that the underlying case involved a police pursuit, as opposed to other types of underlying cases, such as wrongful detention or wrongful termination.

The Third Circuit's decision in *Fagan v. City of Vineland*, 22 F.3d 1283 (3d Cir. 1984), appears to be the primary exception to this rule, but the decision has been widely criticized and its validity has been called into question—even by a subsequent panel of the Third Circuit. *See Trigalet v. City of Tulsa, Okl.*, 239 F.3d 1150, 1155 (10th Cir. 2001) (concluding that a municipality cannot be held liable for the actions of its employees if those actions do not constitute a violation

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[2] As discussed in further detail below, *Fagan v. City of Vineland*, 22 F.3d 1283 (3d Cir. 1984), appears to be the primary exception to this rule, but the decision has been widely criticized and its validity has repeatedly been called into question.

of a plaintiff's constitutional rights). Indeed, the *Trigalet* court specifically pointed out that the Third Circuit Court of Appeals "has questioned the *Fagan* panel's analysis" on this issue. *Id*. at 1156, n. 4 (citing *Mark v. Borough of Hatboro*, 51 F.3d 1137, 1153 n. 13 (3d Cir. 1995)).

The remaining cases relied upon by Petitioners are easily distinguished. *Barrett v. Orange Cty. Human Rights Com'n*, 194 F.3d 341 (2d Cir. 1999) arises out of the firing of the plaintiff, Barrett, who had been the Executive Director of the Orange County Human Rights Commission. Suit was filed against the County, the Commission, and two of the individual Commissioners, Lee and Colonna. The plaintiff alleged that the defendants improperly terminated Barrett in retaliation for exercising his First Amendment Rights. The jury returned a verdict finding that Lee and Colonna had no liability, and judgment was subsequently entered in favor of all defendants. At issue was whether liability of the municipality was dependent upon a finding against Lee and Colonna. The court held that it was not, and in doing so, cited *Monell* for the proposition that municipal liability may exist absent individual liability "at least so long as the injuries complained of are not solely attributable to the actions of the named individual defendants." *Id.* at 350. The court further explained that municipal liability may exist under the circumstances because, although Lee and Colonna "may have been the most prominent figures in Barrett's termination . . . the Commission is a multi-member body that makes its determinations as a group, and many of the adverse employment actions complained of by Barrett . . . were

taken by the Commission as a whole, not by Lee and Colonna themselves." *Id.*

The decision is consistent with this Court's decisions in *Brown* and *Owen*, because the case did not involve the implementation of a generally applicable rule or injuries resulting from the actions of a specific individual, but instead involved a situation where the decision of the Commission itself could be found unconstitutional. Thus, the *Barrett* case does not create a basis for conflict.[3]

The Seventh Circuit's decision in *Thomas v. Cook Cty. Sheriff's Dept.,* 604 F.3d 293 (7th Cir. 2010) is a wrongful death case involving allegations of a pre-trial detainee failing to receive appropriate medical care. The court determined that the County may have liability based upon its inadequate policies even if the individual employees did not commit a constitutional violation. This determination was premised upon the concept that the detainee's death may have been result of "the well-documented breakdowns in the County's policies for retrieving medical request forms" rather than the deliberate indifference of any County employee. *Id*. at 305. Once, again, there is no conflict because the County's policy in *Thomas* could be the "moving force" necessary to impose liability, as addressed in this Court's decision in *Harris*.

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[3] A 2008 case from the Northern District of New York suggests that the rule of law in the Second Circuit is consistent with the rule followed by the Eleventh Circuit. *See Krzykowski v. Town of Coeymans*, 2008 WL 5113784 (N.D. N.Y. 2008) (in case involving police pursuit, no *Monell* liability would attach to municipal defendants based on pursuit policy where the pursuing officer was found to have committed no constitutional violation).

The Eighth Circuit's decision in *Speer v. City of Wynee, Arkansas*, 276 F.3d 980 (8th Cir. 2002) does not conflict with the general rule. *Speer* involved the termination of a police officer, which appeared to result from statements attributed to the mayor. The potential for municipal liability, however, could arise if a city official refused to provide the terminated officer with an opportunity to clear his name. Thus, liability would be premised upon the city's official conduct as it related to the terminated officer, rather than arising out of the mayor's conduct. Once again, this holding is consistent with this Court's decisions recognizing the potential for liability based on the conduct of the municipal entity rather than the employee. *See Owen*, 445 U.S. at 631 (noting that "[i]t is when execution of a government's policy or custom, whether made by its law makers or by those whose edicts or acts may fairly be said to represent official policy, inflicts injury that the government as an entity is responsible under §1983.").

The Eighth Circuit's decision in *Sitzes v. City of Memphis Arkansas*, 606 F.3d 461 (8th Cir. 2010) is more closely aligned with the facts of the current case and reveals there is no conflict. *Sitzes* was a wrongful death case involving a motorist who was struck by a police car responding to a call. After determining that the officer had committed no constitutional deprivation, the court concluded summary judgment was properly entered in favor of the municipal defendants because "such claims could not be sustained absent an underlying constitutional violation by the officer." *Id*. at 470-71.

Fairley v. Luman, 281 F.3d 913 (9th Cir. 2002) is a wrongful detention case where the "constitutional

depravations were not suffered as a result of the actions of the individual officers, but as a result of the collective inaction of the Long Beach Police Department." *Id.* at 917. Thus, the basis for municipal liability was independent of the conduct of the individual officers. Notably, the Ninth Circuit specifically distinguished (and therefore did not perceive a conflict with) two of its prior decisions which are more closely related to the facts of our case: *Quintanilla v. City of Downey*, 84 F.3d 353 (9th Cir. 1996) (rejecting claim of *Monell* liability based upon policy involving police dogs where arresting officers were found to have committed no constitutional violation); *Scott v. Henrich*, 39 F.3d 912 (9th Cir. 1994) (in case involving claim of excessive force by arresting officers, municipal defendants could not be liable where arresting officers committed no constitutional violation).

As set forth above and as acknowledged by Petitioners, the overwhelming weight of authority confirms that municipal liability will not exist in the context of injuries or death arising out of police pursuit or emergency response.

III. THE POLICIES THAT FORM THE BASIS OF PETITIONERS' CLAIM WERE NOT OKEECHOBEE COUNTY'S POLICIES

As noted in the Statement of the Case, Petitioners lump Okeechobee County in with the Sheriff in pointing fingers for liability allegedly as a result of the subject policies. Other than simply grouping the respondents together, no underlying allegation and no supporting documentation identifies a policy, practice or custom of Okeechobee County or an Okeechobee

County agent, servant, or employee as a final decision maker having policymaking authority in connection with any policy, practice, or custom allegedly giving rise to a violation of constitutional rights. A county may not be held liable under §1983 based upon respondeat superior. Instead, it can only be liable for execution of its own policies, practices, or customs. *Monell v. Dep't of Soc. Servs.,* 436 U.S. 658, 694, 98 S.Ct. 2018, 56 (1978). Similarly, liability cannot be imposed upon a county for the acts of officials over whom it has no authority or control. *Turquitt v. Jefferson County,* 137 F.3d 1285, 1292 (11th Cir. 1998).

In determining whether Florida law provides counties with authority or control over a Sheriff, the label "County Sheriff" is not determinative. *See McMillan v. Monroe County. Ala.,* 520 U.S. 781, 786, 117 S.Ct. 1734 (1997). Florida Sheriffs are independently elected officials whose powers, rights, and duties are established by statute, including § 30.15 Florida Statutes. Sheriffs are charged to be "conservators of the peace in their counties," *Section 30.15 (1)(d) & (d*). While the county in which a Sheriff operates may have some role in determining the Sheriff's budget it has no ability to control the specific expenditures made by the Sheriff, nor does it have the ability to discipline or suspend a Sheriff from office. *See Florida Statute § 30.49; Fla. Const. Art. IV § 7(a),* Florida law does not identify law enforcement as a statutory function of counties. *See Fla. Stat. § 125.01*. Additionally, under Florida law Sheriffs are distinct governmental officers responsible for the actions of their deputies. *See Fla. Stat. § 30.07*. Nothing in Florida law provides counties with rights or duties in connection with the training or supervision of the

Sheriff's deputies. The mere fact that the county funds the operation of the Sheriff is insufficient to demonstrate authority or control over the Sheriff. *McMillan,* 520 U.S. at 791. This Circuit has expressly identified the Sheriff as the final policymaker with control over the actions and discipline imposed upon a deputy. *See Lucas v. O'Loughlin*, 831 F.2d 232, 235 (11th Cir. 1987).

At his deposition, and as reflected in the excerpt attached to the Amended Complaint as Exhibit B, Anthony Gracie testified that the policies were the Sheriff's Department's policies, not Okeechobee County's. Pet. App. 29–30. Despite the vague manner in which the Amended Complaint attributes policies to "Defendants" generally, the specific policies described therein, as well as the exhibits, make it abundantly clear that the policies at issue are those of the Sheriff of Okeechobee County, and not Okeechobee County.

CONCLUSION

For the foregoing reasons, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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