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

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INTRODUCTION

Respondent Okeechobee County criticizes the question presented in the petition as too "broadly" phrased, suggesting that it should be limited to the "context" of this case. Brief in Opposition for Respondent Okeechobee County (Cty. Opp. Br.) at 1. The question as the Medranos presented it already accounts for the material contextual limitation: it speaks of municipal liability under section 1983 in circumstances involving an "employee who carried out the municipal policy." Pet. at i. Because the ambiguity in this Court's jurisprudence that animates the petition does not merely affect claims that arise in cases involving the circumstances of this case, but has broad ramifications for municipal liability in a "wide range" of contexts, Pet. at 23 & n.4, the Court should reject the County's proposed reformulation of the question.

Moreover, the County's desired restatement of the question inaccurately describes the precise context of this case as "a police pursuit case." Cty. Opp. Br. at 1, 3, 8. Deputy Gracie was *not* chasing another car or a "suspected offender," *see Cty. of Sacramento v. Lewis,* 523 U.S. 833, 836 (1998), when the collision occurred; he was voluntarily providing back-up to a fellow officer on a domestic violence call located a mile or two away from Deputy Gracie. Pet. at 3. It would therefore be mistaken to frame the inquiry as arising in the context of a death that occurred "during a police officer's pursuit." Cty. Opp. Br. at i.

REASONS FOR GRANTING THE PETITION

Nothing in Respondents' briefs detracts from the reasons to grant the petition. The vague and unnecessarily broad language in *City of Los Angeles v. Heller*, 475 U.S. 796 (1986), has spawned disharmony among the circuits in their approaches to the availability of municipal liability under section 1983 in circumstances involving the implementation of a policy or custom by governmental employees.

I. The Ambiguity in *Heller* Remains.

Respondents effectively concede the point (Pet. at 12-15) of the opacity of *Heller*. The Sheriff says not a word about the case, and the County mounts no defense to Petitioners' critique of *Heller*'s language. Instead, the County looks to subsequent decisions for "*further* clarification" of *Heller*, Cty. Opp. Br. at 3 (emphasis added), an implicit concession that the decision was in need of clarification. Yet the County is wrong that this Court's subsequent opinions have clarified the fundamental uncertainty about the scope of *Heller*'s holding. The County contends that the Court addressed the ambiguity in *Heller* in *Board of County Commissioners of Bryan County v. Brown*, 520 U.S. 397 (1997). But that is plainly not the case.

The Court granted review in *Brown* to address whether a municipality could be liable under section 1983 based on a single hiring decision, 520 U.S. at 402, a question which led the parties to focus on "whether . . . a single hiring decision by a county sheriff can be a 'policy' that triggers municipal liability." *Id*. at 404. The plaintiff in *Brown* had relied heavily on *Pembaur v. Cincinnati*, 475 U.S. 469 (1986), in which the Court

found municipal liability based on a county prosecutor's single decision directing deputies to take an unconstitutional action. The Court cautioned that such reliance "blurs the distinction between § 1983 cases that present no difficult questions of fault and causation and those that do." *Id.* at 405. The Court went on to identify three functional categories of section 1983 cases, based on the type of claim: (i) those asserting that a "municipal action *itself* violates federal law," (ii) those alleging that the municipal action "directed or authorized" an employee to violate federal law, and (iii) those where an employee's "implementation of a generally applicable rule" caused the violation. *Id*. at 404-06. The third category "present[s] much more difficult problems of proof." *Id*. at 406.

In describing that third category – into which the case at bar falls – the Court did indeed speak of the plaintiff "suffer[ing] a deprivation of federal rights at the hands of a municipal employee" who had "acted culpably." *Id*. at 406-07. That, of course, is the typical scenario commonly presented in municipal-liability claims, as it was in *Brown* itself. *See id*. at 401-02. In drawing these categorical distinctions, however, the Court had no reason to address the less common circumstance of a claim against a municipality based on its own constitutional culpability for a custom or policy whose implementation resulted in the violation of constitutional rights even though the employee himself did not act with a constitutionally culpable state of mind. The Court's focus was not on prescribing a comprehensive list of potential theories of municipal liability, but on identifying broad functional categories

of claims to distinguish those that require "rigorous standards of culpability and causation." *Id*. at 405.

If the Court had intended to convey that such claims could not exist and that "there must first be an underlying constitutional violation by th[e municipal] employee before municipal liability may arise," Cty. Opp. Br. at 7, then it could easily have stated such a proposition and cited *Heller* as support. But the Court did neither, and it is odd to suggest that an opinion resolves an ambiguity in an earlier opinion without so much as citing it or adverting to the issue. The persistence, post-*Brown*, of divisions among the circuits on how to interpret the rule from *Heller* calls for further clarification.

II. The Circuit Split Presented Is Undeniable, No Matter How It Is Viewed.

Respondents erroneously suggest that there is no "true" split of authority on the issue of whether a municipality may be constitutionally culpable under section 1983 where no individual employee is proven to have acted with the requisite constitutionally culpable state of mind. *See* Cty. Opp. Br. at 8; Brief in Opposition for Respondent Paul C. May (May Opp. Br.) at 3. Not only is there demonstrable conflict among the circuits on the application of *Heller* as it relates to the availability of municipal liability in the absence of individual culpability, but multiple courts have for years acknowledged that schism.[1]

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[1] *See, e.g., Brown v. Penn. Dep't of Health Emergency Med. Servs. Training Inst.*, 318 F.3d 473, 482 n.3 (3d Cir. 2003) (noting the split and listing cases); *Trigalet v. City of Tulsa*, 239 F.3d 1150, 1155 n.4 (10th Cir. 2001) (same); *Best v. Cobb Cty.*, 239 F. App'x

None of Respondents' efforts to minimize this cleavage is persuasive. First, the scope of the playing field cannot be limited, artificially, just to "police pursuit cases," as the County would like. Cty. Opp. Br. at 8. There *is* "dispute," contrary to the County's assertion, "that the underlying case involved a police pursuit." *Id*. As noted earlier, Deputy Gracie was *not* chasing anyone when he crashed into the car in which Hilda Medrano was riding. He was dutifully following Respondents' policy regarding non-use of lights and sirens while driving toward the scene of a call as back-up.

In any event, the circuits have not tethered their rulings on the availability of municipal liability (based on their interpretation of *Heller*) to the nature of the case at issue. Rather, the conflict spiders across a range of contexts. Some circuits have recognized that a claim for municipal liability can exist where no individual employee is constitutionally culpable under circumstances involving police vehicle pursuits,[2] wrongful pretrial detention,[3] wrongful termination,[4]

501, 504 (11th Cir. 2007) (same); *Bustos v. Martini Club Inc.,* 599 F.3d 458, 467, n.51 (5th Cir. 2010) (citing decisions from the Second and Seventh circuits as recognizing municipal liability in the absence of individual liability); *Gray v. City of Detroit*, 399 F.3d 612, 617 (6th Cir. 2005) (noting the conflict).

[2] *Fagan v. City of Vineland*, 22 F.3d 1283, 1292 (3d Cir. 1994).

[3] *Fairley v. Luman*, 281 F.3d 913, 917 (9th Cir. 2002).

[4] *Barrett v. Orange Cty. Human Rights Comm'n*, 194 F.3d 341, 350 (2d. Cir. 1999); *Speer v. City of Wynne*, 276 F.3d 980, 986 (8th Cir. 2002).

and disregard of a detainee's serious medical needs.[5] *See* Pet. at 16-22. Yet others have barred such liability under those same and other circumstances. *See, e.g., Trigalet,* 239 F.3d at 1151 (police chase) *Rooney v. Watson*, 101 F.3d 1378, 1379 (11th Cir. 1996) (reckless operation of a police vehicle); *Young v. City of Mt. Ranier*, 238 F.3d 567, 574 (4th Cir. 2001) (use of physical restraint and pepper spray).

Second, the decisions regarding the availability of municipal liability absent individual-officer culpability are not "dependant [sic] on the constitutional right at issue." May Opp. Br. at 3. The cleavage between the circuits extends beyond the Fourteenth Amendment. *Compare Thomas*, 604 F.3d at 305 (permitting municipal liability for disregard of detainee's medical needs under Eighth Amendment) *with Hardin v. Hayes*, 52 F.3d 934, 939 n.8 (11th Cir. 1995) (precluding municipal liability for disregard of inmate's mental health needs under Eighth Amendment).

Third, the County attempts to distinguish some of the cases that have read *Heller* narrowly to downplay the depth of the circuit split. *See* Cty. Opp. Br. at 9-12. The petition acknowledges that the split between the circuits on the meaning of *Heller* is not clean cut, but a ragged edge: even within the circuits that have issued opinions construing *Heller* narrowly, there are frayed doctrinal strands, leading to apertures for municipal liability pointing in different directions depending upon

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[5] *Thomas v. Cook Cty. Sheriff's Dep't*, 604 F.3d 293, 305 (7th Cir. 2009); *Glisson v. Ind. Dep't of Corrs.,* 849 F.3d 372, 378 (7th Cir. 2017) (en banc), *cert. denied sub nom. Corr. Med. Srvs., Inc. v. Glisson*, 2017 WL 2289613 (U.S. Oct. 2, 2017).

the nature of the claim or the number of actors involved. *See* Pet. at 18-22.[6] Rather than demonstrating the absence of a "true" circuit split, Cty. Opp. Br. at 8, which undeniably exists, this cacophony underscores the need for this Court's definitive guidance.

To be sure, *Barrett* and *Speer* did not involve the implementation of a general policy. But both the Second and Eighth Circuits recognized the broad principle that municipal liability may lie under section 1983 irrespective of the absence of an individually culpable employee. *Barrett*, 194 F.3d at 350; *Speer*, 276 F.3d at 986. *Thomas*, by contrast, did involve the implementation of a policy or custom, 604 F.3d at 303, and the County proffers no meaningful way to distinguish the Seventh Circuit's narrow reading of *Heller* in that case.

Relatedly, the Sheriff points to *Anderson v. City of Atlanta*, 778 F.2d 678 (11th Cir. 1985), as evidence that the Medranos have "overstate[d] the division between the Circuits," finding it "especially curious" that the petition did not mention the case. May Opp. Br. at 2

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[6] The County also cites to *Sitzes v. City of W. Memphis Ark.,* 606 F.3d 461 (8th Cir. 2010), *Quintanilla v. City of Downey,* 84 F.3d 353 (9th Cir. 1996), and *Scott v. Heinrich*, 39 F.3d 912 (9th Cir. 1994), to suggest that there is no conflict. Cty. Opp. Br at 11-12. The Petition, however, acknowledges the Second, Seventh, and Eighth circuits have applied *Heller* to preclude *Monell* liability in the limited context of a failure-to-train theory. Pet. at 18, 19, 21. The *Sitzes* case is merely another iteration of that distinction. Likewise, *Quintanilla* and *Scott* are excessive force cases to which, as the Petition recognizes (at 22), the Ninth Circuit has applied *Heller*.

(capitalization altered). This curiosity is misplaced. While *Anderson* did, indeed, recognize that there are circumstances in which municipal liability may attach even absent the culpability of an individual officer, 778 F.2d at 686, the Eleventh Circuit's subsequent adoption of a broad view of *Heller* foreclosed *Anderson*'s logic within the Circuit. *See Rooney*, 101 F.3d at 1381.[7]

Last, while not denying that the opinion below plainly conflicts with the Third Circuit's decision in *Fagan*, the County denigrates *Fagan* as "widely criticized" and of "question[able]" "validity." Cty. Opp. Br. at 8 & n.2; *see also* May Opp. Br. at 4. That critique is overstated and neglects the force of the *Fagan* court's reasoning. *See* Pet. at 16-18. Apart from the fact that another Third Circuit panel questioned *Fagan*, *see Mark v. Borough of Hatboro,* 51 F.3d 1137, 1153 n.13 (3d Cir. 1995), the County provides no basis to suggest that *Fagan*'s holding on municipal liability is not good law within the Third Circuit. To begin with, *Fagan* premised its holding on the pre-existence of "binding [circuit] precedent for the principle that a municipality's liability under section 1983 for a substantive due process violation does not depend upon an individual officer's liability." *Fagan*, 22 F.3d at 1293 (citing *Simmons v. City of Philadelphia*, 947 F.2d 1042 (3d Cir. 1991)). *See* Pet. at 16-17. Moreover, the *Mark* court's aside that it "appears" that *Fagan*'s

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[7] It was precisely because of this discordance within the Eleventh Circuit that the Medranos sought en banc review in the first instance, urging the Court of Appeals to overrule the *Rooney* court's overbroad interpretation of *Heller*. The full court refused to take up the issue, App. 13-14, and the panel simply followed *Rooney* in upholding the dismissal of the claim, App. 2.

reference to "deliberate indifference" confused the statutory prong of municipal liability for the constitutional standard, *Mark,* 51 F.3d at 1153 n.13, pays too little heed to the language and context of the *Fagan* decision. The opinion itself unambiguously held that an "underlying *constitutional tort* can still exist even if no individual police officer violated the Constitution," provided the city's policymakers acted with "deliberate indifference" in implementing the policies. *Fagan,* 22 F.3d at 1292 (emphasis added). The court plainly was addressing the constitutional dimension.[8] Further, the court issued this holding in the context of a parallel en banc decision in the same case, issued the same day, which exclusively addressed the question of the constitutional *scienter* standard necessary to find "government employees" liable for a violation of substantive due process rights. *Fagan v. City of Vineland*, 22 F.3d 1296, 1303 (3d Cir. 1994) (en banc). The panel opinion in question was reissued as "edited to conform to the new in banc result." *Id.* at 1302. In this context, it seems improbable the *Fagan* panel was oblivious to the constitutional nature of the standard they were articulating.

This case squarely presents a circuit split for the Court's resolution.

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[8] Indeed, in a claim against a municipality directly, there is no statutory *scienter* dimension: "[s]ection 1983 itself 'contains no state-of-mind requirement independent of that necessary to state a violation' of the underlying federal right." *Brown,* 520 U.S. at 405 (quoting *Daniels v. Williams*, 474 U.S. 327, 330 (1986)).

III. This Case Offers a Good Vehicle for Resolving the Circuit Split.

Arising as it does on a ruling on a motion to dismiss, this case presents a clean opportunity for the Court to address an impactful doctrinal question without the complication of a detailed factual record. The several arguments Respondents raise against selecting this case as the vessel for clarifying the law of municipal liability under section 1983 are unpersuasive.

The Sheriff argues that "this case presents a poor vehicle" because the Medranos' "cause of action would fail anyway," May Opp. Br. at 4, for lack of "allegations of a wide spread [sic] practice or custom," *id*. at 8. This argument fails for two reasons. First, it mischaracterizes the complaint as asserting merely an "unofficial custom/practice," *id.* The complaint speaks of both "*policies* and/or customs." App. 18, ¶¶ 14-16; 22, ¶ 28 (emphasis added). The pleading adequately identifies the official policy predicating municipal liability. *See Monell v. New York City Dep't of Soc. Servs.*, 436 U.S. 658, 690, 694 (1978). Second, the parallel allegations regarding a resulting "custom" plausibly satisfy the "persisten[ce]" and "widespread" nature requirements of a custom that has the "force of law," *id.* at 690-91. It pleads that the policy of seeking permission to use emergency equipment had been in place since 2010, App. 18, and the one prohibiting backup officers from using the radio had been in place "for years," App. 34. There is no heightened pleading standard for municipal liability under section 1983. *Leatherman v. Tarrant Cty. Narcotics Intel. and Coord. Unit*, 507 U.S. 163, 167 (1993).

The County claims to be an improper defendant because the policies are not attributable to it. Cty. Opp. Br. at 2, 12-14. The amended complaint, however, alleges that the policies are attributable to both Respondents. *See* App. 18-19, 22-23 (¶¶ 14-16, 32). Moreover, the state law question underpinning that attribution issue, *see McMillan v. Monroe Cty.*, 520 U.S. 781, 786 (1997), is not nearly so clear as the County would have it, and though the parties briefed the question in both the district court and the Eleventh Circuit, neither court reached it. This issue is immaterial to the distinct issue presented to this Court, and thus best left for resolution below.

CONCLUSION

This case raises a recurrent doctrinal question within the knotty jurisprudence of municipal liability under section 1983. Respondents fail to counter the core uncertainty regarding the meaning of *Heller* and its implication for a case like this one. Their scattered arguments only underscore the need for definitive guidance in this important area of the law.

Respectfully submitted,

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