No. _____

In The
Supreme Court of the United States

COUNTY OF SONOMA, SONOMA COUNTY SHERIFF'S OFFICE, AND SHERIFF MARK ESSICK,

Petitioners,

vs.

RAFAEL MATEOS SANDOVAL, *et al*.,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

This petition presents three issues of first impression in this Court, all of which arise out of a judgment for damages under 42 U.S.C. § 1983 against a local municipality based on its enforcement of a vehicle impound statute enacted by the State of California. The opinion and judgment of the Ninth Circuit on these issues are of constitutional magnitude and have created a direct conflict in the Circuit Courts of Appeals regarding the scope of the Fourth Amendment to the United States Constitution relating to claims the government has over-detained lawfully seized property.

The issues presented in this petition are as follows:

1. Whether the Fourth Amendment can be violated by the government's mere continued detention of property even though its full-blown seizure satisfied the Fourth Amendment, as the Ninth Circuit held below, or whether the Fourth Amendment does not apply to such continued detentions of lawfully seized property, as the First, Second, Sixth, Seventh, and Eleventh Circuits have held.
2. Whether a municipality may rely on the State Legislature's purposes in enacting a vehicle impound statute – to deter unlawful driving and save lives – to justify its enforcement of that statute as reasonable under the Fourth Amendment.
3. Whether a municipality's reasonable misinterpretation of a State statute transmuted it into a "local policy" for the purpose of rendering the

QUESTION PRESENTED – Continued

municipality liable for its enforcement under 42 U.S.C. § 1983 and *Monell v. Dept. of Social Services,* 436 U.S. 658 (1978).

PARTIES TO THE PROCEEDINGS AND RULE 29.6 STATEMENT

The parties to the proceeding in the court whose judgment is sought to be reviewed are:

- The County of Sonoma, California, the Sonoma County Sheriff's Office, and Sonoma County Sheriff Mark Essick in his official capacity only, defendants, appellants, and cross-appellees below, and Petitioners here.
- The City of Santa Rosa, California, the Santa Rosa Police Department, and Tom Schwedhelm, defendants, appellants, and cross-appellees below, and Respondents here.
- Rafael Mateos Sandoval and Simeon Avendano Ruiz, plaintiffs, appellees, and cross-appellants below, and Respondents here.

There are no publicly held corporations involved in this proceeding.

TABLE OF CONTENTS

TABLE OF CONTENTS – Continued

TABLE OF CONTENTS – Continued

TABLE OF CONTENTS – Continued

TABLE OF CONTENTS – Continued

TABLE OF AUTHORITIES

Page

CASES

TABLE OF AUTHORITIES – Continued

TABLE OF AUTHORITIES – Continued

TABLE OF AUTHORITIES – Continued

TABLE OF AUTHORITIES – Continued

OPINIONS BELOW

The Ninth Circuit's opinion which is the subject of this petition is reported at 912 F.3d 509 (9th Cir. 2018), and is reproduced in the Appendix hereto ("App.") at pages 1-26. The Ninth Circuit's order denying rehearing, filed February 21, 2019, is reproduced in the Appendix at pages 85-87.

The district court's decisions on summary judgment declaring the impoundment of Plaintiff Rafael Mateos Sandoval's ("Sandoval's") truck violated the Fourth Amendment and finding Petitioners the County of Sonoma, the Sonoma County Sheriff's Office and the County's Sheriff ("County") liable for such violation under 42 U.S.C. § 1983 is unreported and reproduced in the Appendix at pages 31-54. That unreported district court decision relied on and incorporated the legal analysis and conclusions contained in an earlier opinion in this case reported at 72 F. Supp. 3d 997 (N.D. Cal. 2014), which is reproduced in the Appendix at pages 55-84.

BASIS FOR JURISDICTION IN THIS COURT

The Ninth Circuit entered its judgment and opinion in this case on December 21, 2019. (App. 1-26; 912 F.3d 509 (9th Cir. 2018).) After obtaining an extension of time, the County Petitioners timely filed a petition for panel and *en banc* rehearing, which the Ninth Circuit denied on February 21, 2019. (App. 85-87.)

This Court has jurisdiction to review the Ninth Circuit's decision on writ of certiorari under 28 U.S.C. § 1254(1).

Further, on January 30, 2012, the United States District Court for the Northern District of California entered an Order of Certification Pursuant to 28 U.S.C. § 2403(b), addressed to the Honorable Kamala Harris, Attorney General of the State of California. This Order provided notice that Plaintiffs in the case were challenging the constitutionality of a California statute, and directed the Clerk of the Court to serve the Order on the California Attorney General.

Accordingly, pursuant to Rule 29.4(c), County Petitioners provide notice that the constitutionality of a statute of the State of California is drawn into question in this case, and neither the State of California nor any agency, officer, or employee thereof is a party to this action. The provisions of 28 U.S.C. § 2403(b) may therefore apply to this petition.

CONSTITUTIONAL AND STATUTORY PROVISIONS AT ISSUE

Respondent Sandoval brought the underlying action under 42 U.S.C. § 1983 against Petitioners, which states:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen

> of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

Respondent Sandoval alleged Petitioners violated his rights under the United States Constitution's Fourth Amendment, which provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The impoundment of Respondent Sandoval's vehicle was made through the enforcement of California Vehicle Code section 14602.6 ("§ 14602.6"). The entirety of that statute (excluding subsequent amendments effective beginning 2016 which are not applicable to the issues in this case) is reproduced in

the Appendix at pages 88-96. The current provisions of § 14602.6 which are relevant to this case provide:

> Whenever a peace officer determines that a person was . . . driving a vehicle without ever having been issued a driver's license, the peace officer may . . . immediately arrest that person and cause the removal and seizure of that vehicle. . . . A vehicle so impounded shall be impounded for 30 days.

STATEMENT OF THE CASE

A. Factual Background

Issues of tremendous constitutional significance occasionally arise in cases with uninspiring and mundane facts, and such is the case with this lawsuit. It arose out of the vehicle impoundments of two individual plaintiffs by two different law enforcement agencies enforcing State law, California Vehicle Code section 14602.6 ("§ 14602.6").[1] Pursuant to that statute, Petitioner the Sonoma County Sheriff's Office impounded Respondent Rafael Mateos Sandoval's ("Sandoval's") vehicle for 30 days because he was a California resident and had been unlawfully driving his pickup truck without ever having been issued a California driver's license.[2]

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[1] All State law code sections refer to the California Vehicle Code, unless otherwise specified.

[2] California Vehicle Code section 14602.6 provides in relevant part:

The other Respondent-Plaintiff in this case, Simeon Avendano Ruiz ("Ruiz"), was also a California resident who was found driving his vehicle without ever having been issued a California driver's license, and the City of Santa Rosa Police Department ("City") impounded his vehicle for 30 days pursuant to § 14602.6. Because only Respondent Sandoval's claims applied against Petitioners the County of Sonoma, its Sheriff's Office and its Sheriff (collectively, the "County"), only the facts relating to his claims are addressed herein.

There is no question but that the Sonoma County Deputy Sheriff complied with the United States Constitution's Fourth Amendment when conducting his traffic stop of Sandoval: Sandoval's trailer hitch was blocking his truck's license plate, which was a clear violation of State law, § 5201. (2 ER 244.)[3] However, during the traffic stop conducted at 10:25 p.m. on January 27, 2011, Sandoval also admitted that he did not have a driver's license, and a records check confirmed he had never been issued a California driver's license. (2 ER 245, 279-80.)

> Whenever a peace officer determines that a person was . . . driving a vehicle without ever having been issued a driver's license, the peace officer may . . . immediately arrest that person and cause the removal and seizure of that vehicle. . . . A vehicle so impounded shall be impounded for 30 days.

Cal. Veh. Code § 14602.6(a).

[3] "ER" denotes the Excerpts of Record filed by County Petitioners in the Ninth Circuit (9th Cir. Dkt. Nos. 22-1 and 22-2).

Based on these facts, the Deputy Sheriff issued Sandoval a written citation and notice to appear in court for the infraction of an obstructed license plate as well as the misdemeanor offense of driving without a valid license. (2 ER 245, 261.) Sandoval was later convicted by the Sonoma County Superior Court of the misdemeanor offense of driving without a license under § 12500(a). (1 ER 44.)

After issuing the citation, the Deputy Sheriff decided to impound Sandoval's truck and have it towed from the scene based on numerous factors, including the fact that it was parked in a bus turnout and a "No Parking Any Time" zone, and thus created a safety hazard. (2 ER 237, 245-7.) Because Sandoval had never been issued a California driver's license, the Deputy used § 14602.6 to impound his truck, which requires impounded vehicles to be held for 30 days absent extenuating circumstances. Cal. Veh. Code § 14602.6(a).

Sandoval requested and received two administrative "tow" hearings from the Sonoma County Sheriff's Office seeking the release of his vehicle earlier than the 30 days prescribed by § 14602.6. While he argued that his expired Mexican driver's license entitled him to an early return of his vehicle, the Sheriff's Office denied his requests.[4] (2 ER 93-6, 109-12, 200.)

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[4] In its opinion, the Ninth Circuit erroneously stated that that Sandoval held "a valid driver's license from Mexico [App. 5]," as it is undisputed that Sandoval's Mexican driver's licensed had previously expired on June 13, 2009, and his sole passenger was also unlicensed. (2 ER 245, 281-2.)

Sandoval eventually recovered his vehicle at the end of the 30-day period. He then filed this lawsuit, bringing several federal claims under 42 U.S.C. § 1983 ("section 1983") as well as state law claims against the County.

B. The District Court Proceedings

Despite Sandoval's sparse and uninteresting facts, the district court proceeded to make ground-breaking law in his favor. Upon addressing multiple motions for summary adjudication, the district court concluded that even though the initial full-blown seizures and impoundments of Sandoval and Ruiz's vehicles were lawful, the agencies' continued detention of them for the 30 days prescribed by § 14602.6 violated the Fourth Amendment. In so holding, the district court expressly rejected contrary decisions reached by the Sixth and Seventh Circuit Courts of Appeals, which had ruled that such continued detentions of lawfully seized property do not implicate the Fourth Amendment. (App. 63-66.)

In fact, the district court's decision was the *first in the nation* to conclude that a government's mere continued detention of property after a full-blown and lawful seizure could implicate a property owner's Fourth Amendment rights.

After making this proclamation, the district court then proceeded to apply a fact intensive analysis to Sandoval's Fourth Amendment claim. (App. 43-45.) Finding Sandoval did not personally present a public

safety risk because he had a clean driving record (even though he drove unlawfully without a license), and because he needed his truck to get to work, the district court concluded the County lacked any justification for holding it for the 30 days prescribed by § 14602.6 and thus violated his Fourth Amendment rights. (App. 41-45.) When balancing the parties' interests, the district court refused to consider the County's reasons for impounding Sandoval's truck: to effectuate the State of California's interests in deterring unlawful driving, preventing property damage, and saving lives, which were the underlying purposes of § 14602.6. (App. 45, 71-77.)

Because Respondent-Plaintiffs' claims were brought pursuant to section 1983, the district court also was required to determine whether the municipalities were liable for the Fourth Amendment violations through application of a local policy or practice under *Monell v. Dept. of Social Services*, 436 U.S. 658 (1978) ("*Monell*"). Though none of the parties disputed the fact that both impoundments were effectuated through enforcing § 14602.6, the district court found that the statute did not apply to either of them. Specifically, the district court interpreted § 14602.6 as allowing impoundment of vehicles only if the driver had never been issued a driver's license by any jurisdiction (rather than a California driver's license), and thus concluded the impoundment of Sandoval and Ruiz's vehicles were not authorized by the statute because they previously had been issued Mexican driver's licenses. (App. 40, 72.)

Despite the fact that law enforcement agencies across the State interpreted § 14602.6 to authorize the impoundment of vehicles driven by persons who had never been issued a California driver's license, the district court found such interpretation incorrect. (App. 40.) It then concluded that the County's misinterpretation of the statute was a "local policy" sufficient to render it liable under *Monell* for the violation of Sandoval's Fourth Amendment rights. (App. 40-41.)

Upon awarding Sandoval and Ruiz summary judgment on their Fourth Amendment section 1983 claims (and rejecting their state law claims), the parties stipulated to a damages award of $3,700 for each of them and agreed to a stipulated judgment. (App. 27.) The district court entered the Judgment on May 27, 2016. (*Id*.) Pursuant to the stipulation and Judgment, Sandoval and Ruiz dismissed all un-adjudicated claims in the case, including their section 1983 claims brought under the Fourteenth Amendment's Due Process Clause. (App. 29-30.)

All parties timely filed notices of appeal from the Judgment: the municipalities appealed the district court's conclusion that the 30-day vehicle holds were separate Fourth Amendment violations for which they were liable under *Monell*, and Sandoval and Ruiz appealed the district court's denial of their class certification motions and claims brought under California's Bane Act (Cal. Civil Code § 52.1).

C. The Ninth Circuit Affirmed the District Court's Judgment

Following briefing and oral argument, the Ninth Circuit issued its decision on December 21, 2018, affirming the district court's Judgment in its entirety. (App. 1-26.)

Coincidentally, after briefing was completed but before oral argument in this case, the Ninth Circuit issued its opinion in *Brewster v. Beck*, 859 F.3d 1194 (9th Cir. 2017), *cert. denied sub nom. Los Angeles, Cal. v. Brewster*, 138 S. Ct. 1284 (2018) ("*Brewster*"). The *Brewster* case addressed the very Fourth Amendment issue present in this case: whether the government's mere continued detention of a vehicle pursuant to the 30-day impound authorized by § 14602.6 could implicate the Fourth Amendment. In deciding that question in the affirmative, the *Brewster* Court stated: "[w]e have no cases on point, but Judge Henderson of the Northern District of California has addressed the matter in a thorough and well-reasoned opinion, which we find persuasive. *See Sandoval v. County of Sonoma*, 72 F.Supp.3d 997 (N.D. Cal. 2014)." *Brewster*, 859 F.3d at 1196.

Because *Brewster* adopted the district court's legal analysis issued in this case, there was little for the Ninth Circuit panel to do but recognize that *Brewster* applied and that continued detentions of vehicles for the 30-days prescribed by § 14602.6 implicated vehicle owners' Fourth Amendment rights. (App. 11, 12.)

The Ninth Circuit then confirmed its conclusion that the only possible justification for such impoundments were the "community caretaking" factors, which vanished once a vehicle was removed from the scene. (App. 11-12.) The Ninth Circuit sided with the district court and rejected the deterrence and administrative penalty rationales underlying § 14602.6, holding the County could not rely upon them based on Ninth Circuit precedent and because no court adjudication is required to enforce the statute. (*Id*.)

The Ninth Circuit thus concluded the County had violated Sandoval's Fourth Amendment rights by continuing to hold his vehicle for the 30 days prescribed by § 14602.6. It proceeded to find the County liable under section 1983 for such violation, because it found the County had misinterpreted the statute and applied it outside its terms, which the court believed converted the County's action into a local policy sufficient to implicate its liability under *Monell*. (App. 14.)

Nevertheless, Judge Paul Watford, a member of the panels in both *Brewster* and the instant case, wrote a concurring opinion in which he acknowledged that the Fourth Amendment holding announced in *Brewster* was incorrect, and that enforcement of the 30-day impound provisions of § 14602.6 complied with the Fourth Amendment. (App. 24-26.) While Judge Watford believed § 14602.6 violated the Due Process Clause, all Fourteenth Amendment claims had been voluntarily dismissed from the case, were not part of the appeal, and had not been briefed. (App. 29-30; *see also* County's Supplemental Excerpts of the Record

filed in the Ninth Circuit, 9th Cir. Dkt. No. 56 at 373-74.)

On February 21, 2019, the Ninth Circuit rejected the County's request for panel and *en banc* rehearing of the issues raised in this petition. (App. 85.)

REASONS WHY CERTIORARI IS WARRANTED

I. REVIEW OF THIS FOURTH AMENDMENT ISSUE OF FIRST IMPRESSION IS WARRANTED BECAUSE THE NINTH CIRCUIT HAS DRAMATICALLY EXPANDED THE SCOPE OF THE FOURTH AMENDMENT AND CREATED A CONFLICT IN THE CIRCUITS

This Court has never addressed the Fourth Amendment issue presented in this case: whether the Search and Seizure Clause may prohibit the government's temporary detention of personal property after a full-blown and lawful seizure has been completed which fully satisfies the Fourth Amendment. While five Circuit Courts of Appeals have addressed this question and concluded in the negative, the Ninth Circuit has bucked the trend and decided the Fourth Amendment applies to this situation and can serve as the basis of a civil rights claim brought under section 1983.

The Ninth Circuit's decisions in this case and its predecessor *Brewster* dramatically expand the scope of Fourth Amendment jurisprudence established by this Court since the amendment's ratification over 228

years ago. In both of these cases, the Ninth Circuit concluded that a municipality's impoundment of a vehicle involves two separate and independent seizures which must both satisfy the Fourth Amendment: first, the government's initial seizure and removal of the vehicle from the scene; and second, the government's continued temporary detention of the vehicle before returning it, unharmed, to its owner. However, nothing in this Court's Fourth Amendment jurisprudence supports the Ninth Circuit's conclusion that there are two seizures of property when a government takes possession of property and then temporarily holds it, nor that the government must repeatedly satisfy the Fourth Amendment during the period it retains property lawfully seized for a non-criminal-investigatory purpose.

The Ninth Circuit's errors stem from its misinterpretation and misapplication of previous decisions of this Court regarding the scope and application of the Search and Seizure Clause of the Fourth Amendment. Five other Circuit Courts of Appeals have concluded that the Fourth Amendment is not implicated in the context of this case, but the Ninth Circuit has parted company with its sister circuits. Accordingly, addressing this issue of first impression will resolve a significant constitutional issue as well as settle a direct conflict in the Circuit Courts of Appeals.

A. This Court Should Grant Certiorari in this Case to Decide the Issue of Whether a Continuing Detention of Property After a Full-Blown and Lawful Seizure Implicates the Fourth Amendment

1. The Ninth Circuit's Conclusion that a Single Vehicle Impoundment Constituted Two Separate Seizures, Each Requiring Fourth Amendment Protection, is Contrary to Fourth Amendment Jurisprudence

Both the district court and Ninth Circuit concluded that the County's full-blown and lawful seizure of Sandoval's vehicle at some point transmuted into an unlawful seizure solely because the County continued to hold the vehicle for the 30 days prescribed by § 14602.6. The County was thus required to justify its seizure of Sandoval's vehicle for the purposes of § 14602.6 not once, but twice. The Fourth Amendment simply does not support this two-seizure theory, nor does it require governments to continually justify their holding of lawfully seized property.

The Fourth Amendment provides in relevant part that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated. . . ." U.S. Const., Amend. IV. "Different interests are implicated by a seizure than a search." *Segura v. U.S.*, 468 U.S. 796, 806 (1984). While a search affects the person's privacy interests, "[a] seizure affects only the person's possessory interests." *Id*. Thus, a "seizure" of property

occurs within the meaning of the Fourth Amendment when "there is some meaningful interference with an individual's possessory interests in that property." *Soldal v. Cook County*, 506 U.S. 56, 61 (1992). Once a seizure has been effectuated which completely divests the owner of possession, a full-blown seizure has occurred and must satisfy the Fourth Amendment.

After such a full-blown seizure, the government's mere refusal to return the property cannot be considered a "new" seizure because it has taken no action to impact another possessory interest (as the owner has already been dispossessed). *See, e.g.*, *Lee v. City of Chicago*, 330 F.3d 456, 462 (7th Cir. 2003) (The language of the Fourth Amendment "suggests a *state of being* that is protected against intrusion by unlawful government action . . . once that state has been disturbed by an act of dispossession, the individual is no longer secure in his possessory interest within the meaning of the amendment.").[5] Subsequent to a full seizure, the owner's interests are protected not by the Fourth Amendment's protection against unreasonable seizures (since that right has been satisfied), but rather by the Fourteenth Amendment's Due Process Clause, which protects persons from deprivation of "life, liberty, or property, without due process of law." *See* U.S. Const., Amend. XIV, § 1.

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[5] *See also Fox v. Van Oosterum*, 176 F.3d 342, 351 (6th Cir. 1999) ("[T]he Fourth Amendment protects an individual's interest in retaining possession of property but not the interest in regaining possession of property.").

This Court has previously explained that a seizure under the Fourth Amendment is a single act, not a continuous fact which the government must repeatedly justify as reasonable. *See Thompson v. Whitman*, 85 U.S. 457, 471 (1873) ("A seizure is a single act, and not a continuous fact. Possession, which follows seizure, is continuous.");[6] *see also California v. Hodari D.*, 499 U.S. 621, 625 (1991) (A seizure of a person is a single, not continuous, act.). As this Court explained in *Hodari D.*, "[f]rom the time of the founding to the present, the word 'seizure' has meant a 'taking possession.'" *Hodari D.*, 499 U.S. at 624 (citations omitted). Once the government has taken possession of the property without any further ado (such as the intent to secure a search warrant), the seizure is complete and, if it was reasonable, the Fourth Amendment has been fully satisfied.

This Court's interpretation of the Fourth Amendment thus cannot be construed to support the Ninth Circuit's conclusion that, once a full-blown seizure of property which completely divests the owner of

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[6] In *Thompson*, a county sheriff had seized a vessel for illegal clam raking and gathering off the New Jersey coast. While a state statute allowed a sheriff to seize and condemn a vessel for such violations within the county, the sheriff had actually seized the vessel outside of the county and then transported it into the county. *Thompson*, 85 U.S. at 470. In defending his actions, the sheriff argued the seizure was "continuous in its character" and became a new seizure in his county once the vessel was carried inside county limits. This Court rejected the sheriff's argument as untenable, holding that a "seizure" under the Fourth Amendment occurred when he initially took the vessel, and that the continuous possession of it could not be used to justify the initial seizure. *Id.*, at 471.

possession has been deemed lawful under the Fourth Amendment, the government's continued possession of it is a separate "seizure" entitled to additional Fourth Amendment protection. (App. 10 [relying on *Brewster*, 859 F.3d 1196-97].)

The Ninth Circuit's decisions in this case and *Brewster* are even inconsistent with its own precedent interpreting the Fourth Amendment in connection with the seizure of persons. Relying on *Baker v. McCollan*, 443 U.S. 137, 145 (1979),[7] the Ninth Circuit has issued three opinions holding that the Fourth Amendment does not apply to section 1983 claims based on over-detention of lawfully seized persons, including: *Rivera v. Cnty. of Los Angeles*, 745 F.3d 384 (9th Cir. 2014) *cert. denied*, 135 S. Ct. 870 (2014); *Tatum v. Moody*, 768 F.3d 806 (9th Cir. 2014) *cert. denied*, 135 S. Ct. 2312 (2015); and *Gant v. Cnty. of Los Angeles*, 772 F.3d 608 (9th Cir. 2014). In each of these three cases, the plaintiffs had argued that their detentions in jail violated their Fourth and Fourteenth Amendment rights because they had been mistakenly arrested on warrants. The Ninth Circuit, however, rejected their Fourth Amendment claims by concluding that "post-arrest incarceration is analyzed under the Fourteenth Amendment *alone*." *Rivera*, 745 F.3d at

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[7] The Ninth Circuit relied on *Baker* for the proposition that "mere detention pursuant to a valid warrant but in the face of repeated protests of innocence will after the lapse of a certain amount of time deprive the accused of 'liberty . . . without due process of law.' " *Rivera*, 745 F.3d at 389-90 (quoting *Baker*).

389-90 (emphasis added); *see also Tatum*, 768 F.3d at 815; *see also Gant*, 772 F.3d at 621.

In disregarding its own precedent interpreting the Fourth Amendment in the context of the seizure of persons, the Ninth Circuit has now created a world in which the Fourth Amendment protects seizures of *property* far more than it protects seizures of *persons*. Though California is admittedly a car culture, protecting vehicles more than persons is untenable. It is also contrary to the express language of the Fourth Amendment, which protects against unreasonable seizures of property and persons equally. *See Payton v. New York*, 445 U.S. 573, 585 (1980) ("The simple language of the Amendment applies equally to seizures of persons and to seizures of property.").

Simply put, once a seizure fully satisfies the Fourth Amendment, the government's continued retention of that property implicates only due process rights. The Due Process Clause was created for this very purpose, and cases interpreting it were expressly designed to aid courts in balancing the competing interests involved in the return of property held by the government. *See Lee*, 330 F.3d at 466. Review is accordingly warranted on this issue of tremendous constitutional significance.

2. The Ninth Circuit's Decision Expanding the Scope of the Fourth Amendment is Not Supported by this Court's Fourth Amendment Jurisprudence

To create its new Fourth Amendment rule in *Brewster* and this case, the Ninth Circuit misinterpreted and misapplied Fourth Amendment decisions of this Court addressing three unrelated circumstances: (i) prolonged detentions after *Terry* stops;[8] (ii) damage or destruction of lawfully seized property; and (iii) an unlawful seizure followed by a prolonged detention. The Ninth Circuit's analysis veered off track because these unrelated circumstances are inapplicable in the context of the type of seizure present in this case, for the following reasons.

First, the district court and the Ninth Circuit's erred in failing to appreciate the difference between a brief *Terry* stop (justifiable by only reasonable suspicion) and a full-blown seizure (justifiable by probable cause). (App. 10, 41-42, 60-66; *see also Brewster*, 859 F.3d at 1196 [citing *United States v. Place*, 462 U.S. 696 (1983)].) Yet, nothing in the *Terry* stop cases stand for the proposition that the government must continually justify its detention of property under the Fourth Amendment after the probable cause requirement has been satisfied in full. *See United States v. Place*, 462 U.S. 696 (1983) (Holding that when an initial seizure of property is not justified by probable cause, the government is required to show that its prolonged

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[8] *See Terry v. Ohio*, 392 U.S. 1 (1968).

detention is reasonable under the Fourth Amendment.); *see also Farm Labor Org. Comm. v. Ohio State Highway Patrol*, 308 F.3d 523, 548 (6th Cir. 2002) (Under *Place*, a relatively brief investigative detention, justified by mere reasonable suspicion, can after a length of time become "a full-blown seizure requiring probable cause.").[9]

Second, the Ninth Circuit improperly utilized this Court's decision in *United States v. Jacobsen*, 466 U.S. 109 (1984) for the proposition that "a seizure lawful at its inception can nevertheless violate the Fourth Amendment because its manner of execution unreasonably infringes possessory interests." *Brewster*, 859 F.3d at 1196 (quoting *Jacobsen*, 466 U.S. at 124 & n.25). Yet, the particular issue confronting the *Jacobsen* Court was whether *destruction* of seized property could violate the Fourth Amendment, as the government had "converted what had been only a temporary deprivation of possessory interests into a permanent one." *Jacobsen*, 466 U.S. at 124-25. In light of the fact that the County returned Sandoval's vehicle to him undamaged, the Fourth Amendment issue in *Jacobsen* is simply absent from this type of vehicle impound case.

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[9] *See also Lee v. City of Chicago*, 330 F.3d 456, 464 (7th Cir. 2003) (*Place* explains that a *Terry* stop regarding detention of property after a period of time "*becomes a full-blown seizure*" requiring probable cause.); *see also United States v. Alpert*, 816 F.2d 958, 960 (4th Cir. 1987) ("A *Terry*-stop falls between a full-blown seizure requiring probable cause and a consensual encounter not implicating the Fourth Amendment, and is justified on less than probable cause because it is substantially less intrusive than a traditional arrest.").

Third, the Ninth Circuit claimed this Court in *Manuel v. City of Joliet, Ill.*, 137 S. Ct. 911 (2017) held that the Fourth Amendment governs the entirety of a person's detention which justified applying it throughout the 30-day impound period of § 14602.6. (App. 10 [relying on *Brewster*, 859 F.2d at 1196-97].) This interpretation of *Manuel* is patently incorrect. *Manuel* involved a claim in which Manuel's *initial* seizure was unlawful, and this Court concluded the Fourth Amendment covered both his initial wrongful seizure as well as his subsequent detention which followed from it. *Manuel*, 137 S. Ct. at 919. The Ninth Circuit's misinterpretation of *Manuel* as standing for the proposition that an initial full-blown and lawful seizure can later mutate into an unlawful seizure by virtue of a continued detention is egregious and corrupts Fourth Amendment jurisprudence.

The impact of the Ninth Circuit's decision in this case and *Brewster*, both of which expand the Fourth Amendment to cover continued detentions of lawfully seized property, are dramatic. Not only are law enforcement agencies forced to abandon enforcing § 14602.6,[10] but the legality of every lawfully seized property held for longer than a brief period has now become questionable and subjects government entities to liability

[10] In addition to California, there are at least three other states which have enacted similar 30-day impound provisions, including Arizona, Washington, and Virginia. *See* Ariz. Rev. Statutes § 28-3511; Wash. Rev. Code § 46.55.120; and Va. Code § 46.2-301.1.

under section 1983. Review of this Fourth Amendment issue of first impression is accordingly warranted.

B. This Court Should Grant Certiorari to Resolve a Split Among the Circuits as to Whether the Fourth Amendment Applies to the Government's Mere Continued Detention of Property After a Full-Blown and Lawful Seizure

The district court and Ninth Circuit expressly rejected contrary decisions of other circuits which held that the continued detention of lawfully seized property does not implicate the Fourth Amendment. (App. 10 [citing *Brewster*, 859 F.3d at 1196-97], 63-65.) In fact, the Ninth Circuit's decisions in this case and *Brewster* are the only circuit opinions *in the nation* holding that the government can violate a person's Fourth Amendment rights merely by continuing to hold property after a full-blown and lawful seizure.

The five Circuit Courts of Appeals which have ruled that a continued possession of lawfully seized property does not implicate the Fourth Amendment are as follows:

- **First Circuit**: *Denault v. Ahern*, 857 F.3d 76, 83-84 (1st Cir. 2017). In this section 1983 case challenging the government's continued retention of a vehicle after a lawful initial seizure, the First Circuit ruled the plaintiff's claim could not be based on the Fourth Amendment.

- **Second Circuit**: *United States v. Jakobetz*, 955 F.2d 786, 802 (2d Cir. 1992), *partially abrogated by statute on unrelated grounds*; *Shaul v. Cherry Valley-Springfield Cent. Sch. Dist.*, 363 F.3d 177, 187 (2d Cir. 2004); and *Ahlers v. Rabinowitz*, 684 F.3d 53, 62 (2d Cir. 2012). In these cases, the Second Circuit concluded that if the initial full-blown seizure of property satisfied the Fourth Amendment, then the government's continued detention of that property did not further implicate it.

- **Sixth Circuit**: *Fox v. Van Oosterum*, 176 F.3d 342 (6th Cir. 1999). The Sixth Circuit in *Fox* ruled that, if an initial and full-blown seizure is lawful, then no additional seizure occurs simply because the government refuses to return the property, which forecloses a Fourth Amendment claim.

- **Seventh Circuit**: *Lee v. City of Chicago*, 330 F.3d 456 (7th Cir. 2003); and *Bell v. City of Chicago*, 835 F.3d 736 (7th Cir. 2016). In both of these cases, the Seventh Circuit concluded that if an initial and complete seizure of a vehicle is lawful, then the government's continued retention of that vehicle cannot violate the Fourth Amendment.

- **Eleventh Circuit**: *Case v. Eslinger*, 555 F.3d 1317 (11th Cir. 2009). In this case, the Eleventh Circuit ruled that the

> police's continued retention of a Peterbuilt tractor lawfully seized could not violate the Fourth Amendment, as it had been fully satisfied by the initial seizure.

Accordingly, *Brewster* and the Ninth Circuit panel majority's opinion in this case regarding the Fourth Amendment are contrary to every other circuit to have considered the issue and run afoul of this Court's precedent. Review of the Ninth Circuit's decision in this case is necessary to resolve this direct conflict in the circuits on an issue of constitutional significance.

II. THIS COURT SHOULD GRANT CERTIORARI TO RESOLVE AN AMBIGUITY IN FOURTH AMENDMENT JURISPRUDENCE WHICH ALLOWED THE NINTH CIRCUIT TO REJECT THE LEGISLATIVE PURPOSE UNDERLYING A STATE STATUTE TO JUSTIFY A MUNICIPALITY'S ENFORCEMENT OF THAT STATUTE AS REASONABLE

The Ninth Circuit's conclusion that a single vehicle impoundment for 30 days under § 14602.6 constituted two separate seizures (an initial seizure and the continued detention), which must both independently satisfy the Fourth Amendment based on a fact intensive case-by-case analysis, is based on two faulty premises.

First, the Ninth Circuit erroneously concluded that every time the government impounds a vehicle for non-criminal-investigatory purposes, it must satisfy the "community caretaking" doctrine, which does not

allow a consideration of *deterrence of unlawful driving* as a legitimate governmental objective of an impoundment under § 14602.6.

Second, the Ninth Circuit incorrectly applied a fact intensive case-by-case inquiry to the Fourth Amendment claims in this case, rather than a categorical inquiry balancing the California Legislature's legitimate governmental interests in enacting § 14602.6 versus its intrusion on private rights.

The Ninth Circuit's refusal to consider the very governmental purpose underlying § 14602.6 to justify the County's enforcement of it undercuts the State of California Legislature's legitimate objective in enacting the statute over four decades ago. (App. 96; 2 ER 149.) The decision in this case and *Brewster* have thus made it virtually impossible to impound vehicles under § 14602.6 and at the same time satisfy the Fourth Amendment, rendering the statute unconstitutional for all intent and purposes. Indeed, law enforcement agencies across California are no longer enforcing the statute because it is virtually impossible to comply with the Fourth Amendment standard the Ninth Circuit has established. (9th Cir. Dkt. No. 104 at 18.)[11]

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[11] Sandoval's counsel has declared that as a direct result of the rulings in *Brewster* and this case, all law enforcement agencies across the State of California have ceased impounding vehicles under § 14602.6. (*See* 9th Cir. Dkt. No. 104 at 18.) Hence, while the Los Angeles Police Department alone had been averaging nearly 10,000 impounds under § 14602.6 per year, that number is now zero. *Id.*

A. Certiorari Should Be Granted to Correct the Ninth Circuit's Misinterpretation and Misapplication of the "Community Caretaking" Doctrine Established by This Court

The Ninth Circuit has created an entire body of law under the rubric of the "community caretaking" doctrine, which it applies in every instance the government impounds a vehicle for a non-criminal-investigatory purpose, beginning with the case of *Miranda v. City of Cornelius*, 429 F.3d 858 (9th Cir. 2005). (App. 11.) Relying on this Court's opinion in *South Dakota v. Opperman*, 428 U.S. 364, 368-69 (1976),[12] the Ninth Circuit in *Miranda* concluded that to be entitled to an exception under the Fourth Amendment's warrant requirement for seizing a vehicle, the government must satisfy the "community caretaking" doctrine for every single vehicle impounded for non-criminal purposes. (App. 11; *see also Miranda*, 429 F.3d at 863-66.)

In *Miranda*, the Ninth Circuit interpreted the "community caretaking" doctrine to allow law enforcement officers to "impound vehicles that 'jeopardize public safety and the efficient movement of vehicular traffic.'" *Miranda*, 429 F.3d at 894 (citing *Opperman*, 428 U.S. at 368-69). Whether this purpose is furthered by an impoundment depends upon the particular facts of the case, including "the location of the vehicle and

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[12] As stated in *Opperman*, "[t]he authority of police to seize and remove from the streets vehicles impeding traffic or threatening public safety and convenience is beyond challenge." *Opperman*, 428 U.S. at 368-69.

the police officers' duty to prevent it from creating a hazard to other drivers or being a target for vandalism or theft." *Id.* Yet, *Miranda* construed the doctrine to prohibit consideration of *deterrence of unlawful driving* as a legitimate governmental interest to justify an impoundment. *Id.*, at 866. *Miranda* thus improperly prohibits the government from relying on any other justification aside from caretaking to satisfy the Fourth Amendment when impounding vehicles.

The Ninth Circuit's error in *Miranda* is magnified in this case. In its decision herein, the Ninth Circuit held the State's only interests "in keeping unlicensed drivers off the road" were reflected in the "community caretaking" factors. (App. 12.) Of course, once a vehicle is removed from the scene, those factors no longer apply and thus could never justify a 30-day impoundment. (App. 12.)

Nothing in this Court's Fourth Amendment jurisprudence supports the Ninth Circuit's decision that the "community caretaking" doctrine must be satisfied every time a vehicle is seized for a non-criminal-investigatory purpose, for the entire length of the time a vehicle is detained. In so holding, the Ninth Circuit has dramatically expanded Fourth Amendment rights and prohibited the County from relying on the very governmental purposes for which § 14602.6 was enacted to justify its impoundment of Sandoval's vehicle: to deter unlawful driving.

There was only one seizure in this case, and it was for the purpose of impounding Sandoval's vehicle for

30 days under § 14602.6. That seizure should have been analyzed not under the "community caretaking" doctrine, but under a categorical review of the statute and whether its purpose and intent complied with the Fourth Amendment.

B. Review is Warranted to Correct the Ninth Circuit's Error in Applying a Fact Intensive Case-by-Case Analysis, Rather than a Categorical Analysis, to a Fourth Amendment Claim Challenging Enforcement of a Vehicle Impound Statute Designed to Protect Public Safety

1. The Ninth Circuit's Rejection of the Public Safety Deterrence Rationale Underlying § 14602.6 to Justify Vehicle Impoundments Undermines Fourth Amendment Jurisprudence

The crux of the Ninth Circuit's error in applying the Fourth Amendment lies in its unqualified refusal to consider the legislative purposes underlying § 14602.6 to support the County's 30-day impoundment of Sandoval's vehicle under that statute. (App. 10-12.) Relying on *Brewster*, the panel majority held that whether a municipality's continued detention of a vehicle for 30 days was reasonable under the Fourth Amendment required a case-by-case analysis of the specific facts, and precluded consideration of the statute's underlying deterrence rationale. (*Id.*) Based on this pronouncement of Fourth Amendment law, it then proceeded to consider only whether Sandoval was a

public safety risk (based on his individual driving record) to justify the County's retention of his vehicle for 30 days under § 14602.6. (App. 11-13.) Since Sandoval did not have a poor driving record, the Ninth Circuit affirmed the district court's ruling that the County's 30-day hold of his vehicle under that statute violated the Fourth Amendment. (App. 12.)

Yet, Sandoval's individual driving record is irrelevant to the effectuation of the legislative policy decisions underlying § 14602.6. The California Legislature enacted that statute to deter unlawful driving to prevent traffic accidents for the purpose of avoiding property damage and *saving lives*. (2 ER 149.) The Legislature's enforcement mechanism for this policy decision is the administrative penalty of temporarily removing vehicles from unlawful drivers for 30 days. Under this deterrence and administrative penalty scheme, there is no need for the particular unlawful driver to present an individual public safety risk, as that is irrelevant to effectuate § 14602.6's policy mandates.[13] Instead, the deterred safety risk is attributed to the public as a whole, and deterrence benefits society at large regardless of whether a particular unlawful driver presents a special public safety risk.

The County based its decision to impound Sandoval's vehicle for 30 days on the legislative policy

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[13] *See Illinois v. Lidster*, 540 U.S. 419, 424-25 (2004) (Certain forms of police activity, such as crowd control, public safety, or information-seeking stops, are "not the kind of event[s] that involve[ ] suspicion, or lack of suspicion, of the relevant individual.").

mandates, deterrence joined with an administrative penalty, underlying § 14602.6.[14] The Ninth Circuit's rejection of these reasons to support the County's impoundment of Sandoval's vehicle is fundamentally at odds with Fourth Amendment jurisprudence. Indeed, in rejecting the governmental interests underlying § 14602.6, the Ninth Circuit ignored the policy decisions of the State of California in enacting the statute.

Review is warranted to correct the Ninth Circuit's dramatic deviation from Fourth Amendment jurisprudence. Municipalities should be entitled to rely on the legislature's legitimate governmental interests in enacting public safety statutes to support and justify their actions when enforcing those statutes. Rather than utilizing the fact intensive case-by-case inquiry the Ninth Circuit mandated in this case, a categorical review of the reasonableness of the statute is the only proper Fourth Amendment analysis to apply in this context. *See Hudson v. Palmer*, 468 U.S. 517, 537 (1984) (O'Conner, J., concurring) ("In some contexts, . . . the Court has rejected the case-by-case approach to the 'reasonableness' inquiry in favor of an approach that determines the reasonableness of contested practices in a categorical fashion.").

In fact, this Court has repeatedly used a categorical approach to Fourth Amendment cases addressing

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[14] Under California law, "[d]riving a motor vehicle on the public streets and highways is a privilege, not a right." Cal. Veh. Code § 14607.4(a). Driving without a valid license is a violation of § 12500(a), and violation of that statute is a misdemeanor. Cal. Veh. Code § 40000.11(b).

the reasonableness of vehicle stops at checkpoints or via spot checks, rather than an individualized fact-based analysis. *See, e.g.*, *Delaware v. Prouse*, 440 U.S. 648, 654-55 (1979) ("[T]he permissibility of a particular law enforcement practice is judged by balancing its intrusion on the individual's Fourth Amendment interests against its promotion of legitimate governmental interests.).[15] Similar to vehicle checkpoint cases, the State of California's public safety interest in adopting § 14602.6 – deterring unlawful driving, preventing traffic accidents, avoiding property damage, and saving lives – are weighty and legitimate governmental interests which must be balanced against the minimal intrusion of a 30-day vehicle impound in any Fourth Amendment case challenging the practice.

Moreover, the Ninth Circuit panel majority opined that the County could not rely on the deterrence rationale underlying § 14602.6 to justify holding

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[15] *See also Michigan Dep't of State Police v. Sitz*, 496 U.S. 444, 455 (1990) ("In sum, the balance of the State's interest in preventing drunken driving, the extent to which this system can reasonably be said to advance that interest, and the degree of intrusion upon individual motorists who are briefly stopped [at vehicle checkpoints], weighs in favor of the state program."); *see also United States v. Martinez-Fuerte*, 428 U.S. 543, 557 (1976) (Balancing the government's interest in making routine checkpoint stops versus the consequent intrusion on Fourth Amendment interests.); *see also City of Indianapolis v. Edmond*, 531 U.S. 32, 41 (2000) (Taken together, "each of the checkpoint programs that we have approved was designed primarily to serve purposes closely related to the problems of policing the border or the necessity of ensuring roadway safety," which were found to have outweighed the public's Fourth Amendment interests in preventing the practices.).

Sandoval's vehicle for 30 days because such rationale was applicable only in the forfeiture context "where a court approves the deprivation." (App. 12 [citing *Bennis v. Michigan*, 516 U.S. 442, 452 (1996)].) Yet, the Ninth Circuit's reliance on its analogy to the permanent forfeiture of property at issue in *Bennis* is unsupportable in this temporary forfeiture case, particularly in light of the fact that most forfeiture statutes allow warrantless seizures of property and continued possession for far more than 30 days prior to any court adjudication. *See, e.g.*, Cal. Health & Safety Code § 11488.4(b) (The government must file a petition of forfeiture "as soon as practicable, but in any case within one year of the seizure of the property which is subject to forfeiture. . . ."); *see also* 18 U.S.C. § 983 (Generally requires a notice to be served or a forfeiture complaint to be filed no later than 60 days after a warrantless seizure of property.

The County's utilization of § 14602.6 to impound Sandoval's vehicle should thus have triggered a categorical Fourth Amendment analysis permitting the County to rely upon California's legitimate public safety interests in enacting the statute to justify its actions. The Ninth Circuit's refusal to engage in this analysis warrants review by this Court.

2. The Fourth Amendment Requires a Balancing of the State of California's Legitimate Public Safety Interest Underlying § 14602.6 Against the Private Intrusion Created by the 30-Day Vehicle Impound

The Ninth Circuit erred in this case by refusing to apply the Fourth Amendment through a categorical analysis, which required it to review the 30-day impound provisions of § 14602.6 by "balancing its intrusion on the individual's Fourth Amendment interests against its promotion of legitimate governmental interests." *See Prouse*, 440 U.S. at 654-55. Had it applied this categorical analysis, the County would have been vindicated because the interests promoted by § 14602.6 far outweigh the intrusion actuated by a 30-day vehicle impound.

Specifically, the legislative intent underlying § 14602.6 "was to deter unlicensed, suspended or revoked drivers from operating a vehicle by removing the vehicle for 30 days." (2 ER 149.)[16] The public safety purpose behind the deterrence was to prevent vehicle accidents, thus preventing property damage and *saving lives*. *See* Cal. Veh. Code § 14607.4(b) ("Of all drivers involved in fatal accidents, more than 20 percent are not licensed to drive."); *see also Alviso v. Sonoma County Sheriff's Dept.*, 186 Cal. App. 4th 198, 206 (2010), *review denied*, 2010 Cal. Lexis 10198 (Oct. 13,

[16] California law also provides for notice and an administrative hearing process through which an owner may contest an impoundment under § 14602.6. *See* §§ 14602.6(a)(2) and (b), 22852.

2010) ("In recognition of the disproportionate number of serious accidents caused by unlicensed drivers, the Legislature enacted section 14602.6 to protect Californians from the harm they cause and the associated destruction of lives and property.").

In fact, the 30-day impound requirement of § 14602.6 has served its public safety purpose, as it has been proven to significantly reduce traffic collisions for those unlicensed drivers who had their vehicles impounded versus those who did not (a 25% reduction in collisions for first time offenders, and a 38% reduction for repeat offenders). (2 ER 150.) California's governmental interest in deterring unlawful driving through use of an administrative penalty – i.e., a temporary forfeiture of a vehicle driven unlawfully – is thus a significant and legitimate public safety interest. *See Bennis*, 516 U.S. at 452 (Forfeiture and similar statutes serve "legitimate state interests in deterring unlawful driving."); *see also Prouse*, 440 U.S. at 654-55 (States have a "vital interest" as part of a highway safety program "in ensuring that only those qualified to do so are permitted to operate motor vehicles. . . .").

On the other hand, vehicle owners' private interests in preventing 30-day impoundments of their unlawfully driven vehicles appear negligible. "The private interests [involved in applying § 14602.6] are financial and personal convenience: the availability of personal transportation, and the cost of fees, towing and storage required to redeem one's vehicle after the impound." *Alviso*, 186 Cal. App. 4th at 206. However, where a vehicle owner was not lawfully permitted to

drive during the period of impoundment, his or her "only legitimate interest, and that at stake in the 'generality of cases,' is in the monetary cost of the impoundment." *Id*.

These negligible private interests are outweighed by the State's interests in deterring unlawful driving and the resulting concomitant harms. As discussed in his concurring opinion herein, Ninth Circuit Judge Paul Watford concluded that § 14602.6 satisfied the Fourth Amendment because: (a) its underlying purpose, to deter unlawful driving, is a permissible and rational objective of forfeiture statutes; (b) there is a tight nexus between the property to be forfeited and the underlying wrongdoing; (c) the nature of the deprivation, dispossession for 30 days, is not disproportionate to the seriousness of the underlying wrongdoing; and (d) the statute has built-in protections which allow "innocent owners" to reclaim their vehicles to avoid suffering the 30-day impound. (App. 24-26.)

Granting review in this case would allow this Court to correct the Ninth Circuit's egregious misapplication of Fourth Amendment law and permit proper consideration of the governmental interests underlying the 30-day impound statute versus its intrusion on private interests.

III. CERTIORARI SHOULD BE GRANTED TO CORRECT THE NINTH CIRCUIT'S ERROR IN HOLDING A LOCAL MUNICIPALITY LIABLE UNDER SECTION 1983 AND *MONELL* FOR ENFORCING LAW ENACTED BY THE STATE OF CALIFORNIA BASED ON THE STATE'S POLICY DECISIONS

To hold the County liable under section 1983 and *Monell* for violating Sandoval's Fourth Amendment rights, the Ninth Circuit committed two significant errors. First, it erroneously concluded the County was liable for carrying out its own "policy" when it had, in the Ninth Circuit's opinion, misinterpreted and misapplied § 14602.6 to impound Sandoval's vehicle. (App. 15-16.) Second, the Ninth Circuit erred in refusing to consider the core "deliberate indifference" standard mandated by *Monell*. (App. 16.) Because the Ninth Circuit's conclusions expand the scope of section 1983 and deprive the County of the protections this Court provided to local agencies in *Monell* and its progeny, review is warranted, as discussed below.

A. Review is Warranted to Correct the Ninth Circuit's Misapplication of *Monell* and its Conclusion that a Municipality Can Be Held Liable Under Section 1983 for a Reasonable Misinterpretation of State Law

Monell and its progeny set a high bar for imposing section 1983 liability on counties and other local

municipalities. Specifically, municipalities cannot be held vicariously liable for the actions of their employees under a theory of *respondeat superior*; rather, they can be held liable only for those constitutional violations caused by their own official policies or customs. *Monell*, 436 U.S. at 694.

Moreover, municipalities must be the "final policymaker" of the policy at issue, and such policy must have been the "moving force" of the constitutional violation. *Id.*; *McMillian v. Monroe Cty., Ala.*, 520 U.S. 781, 785 (1997) (*Monell* requires consideration of whether the county is the "final policymaker[ ] for the local government in a particular area, on a particular issue.").

There is no question but that the 30-day impound provisions of § 14602.6 are State law, and that the California Legislature is the "final policymaker" of that law rather than the County. Nevertheless, the district court and Ninth Circuit concluded that the County had a local "policy" sufficient to render it the "final policymaker" for its enforcement of § 14602.6 because it decided the County and City had misinterpreted that law by applying it to persons who had previously been issued a driver's license by a foreign jurisdiction. (App. 14, 39-41.)

Yet, it is of no import in a *Monell* analysis whether the County properly, or improperly, interpreted a State law such as §14602.6, because the County is not the "final policymaker" for that State law in either event. Indeed, when the Sheriff's Office enforces § 14602.6, it is effectuating the policy of the *State of California* to

deter and punish unlicensed driving – not the policy of the *County*. In fact, the State of California has expressly preempted the field of vehicle impoundments, further reinforcing its role as the final policymaker over all vehicle impoundments. *See* Cal. Veh. Code § 21; *see also O'Connell v. City of Stockton*, 41 Cal. 4th 1061, 1073-74 (2007) (§ 21 "precludes local regulation of 'matters covered' by the Vehicle Code, absent express legislative authorization.").

Moreover, it is uncontroverted in this case that the County and City's interpretation of § 14602.6 – allowing for impoundments of vehicles driven by persons if they had never been issued a California driver's license – was applied by virtually every law enforcement agency in the State of California. (2 ER 212-3, 333; 9th Cir. Dkt. Entry No. 104 at 18.) Such "statewide" application is inconsistent with the panel's holding that the County's application of § 14602.6 was its own local "policy" under *Monell*.

Further, the County's mistaken interpretation of the scope of § 14602.6 does not render its impoundment of Sandoval's vehicle unreasonable under the Fourth Amendment. *See Heien v. North Carolina*, 135 S. Ct. 530, 534, 539 (2014) (Holding that an officer's reasonable mistake of law was sufficient to uphold a seizure under the Fourth Amendment.). Indeed, as the *Heien* Court stated, "[t]o be reasonable is not to be perfect, and so the Fourth Amendment allows for some mistakes on the part of government officials, giving them fair leeway for enforcing the law in the

community's protection." *Id*., at 536 (quotation marks and citation omitted).

The Ninth Circuit's decision in this case ignored *Heien* and misapplied *Monell* in holding that the County's application of § 14602.6 was a local policy which justified a damages award against it under section 1983. Review is accordingly warranted to consider these issues of substantial significance to local municipalities.

B. Review is Warranted to Correct the Ninth Circuit's Error in Refusing to Consider the "Deliberate Indifference" Factor Required to Impose Section 1983 Liability on a Municipality

This is a *Monell* case involving a policy of inaction: that is, Sandoval argued the County unlawfully failed to release his vehicle prior to expiration of the 30 days prescribed by § 14602.6. In such a case, *Monell* requires Sandoval to have established the existence of a County "policy" by demonstrating that its failure to act was the result of a *deliberate* or conscious choice by its policymakers. *See City of Canton v. Harris*, 489 U.S. 378 (1989). "Deliberate indifference" is a stringent standard of fault, "requiring proof that a municipal actor disregarded a known or obvious consequence of his action." *Bd. of Cty. Comm'rs of Bryan Cty., Okl. v. Brown*, 520 U.S. 397, 410 (1997).

The district court did not rule on the County's argument that it was not deliberately indifferent to

Sandoval's Fourth Amendment rights when enforcing § 14602.6. This is despite the fact that the district court acknowledged that a Sonoma County Superior Court opinion supported the City and County's interpretation of the statute to allow for the impoundments in this case. (App. 69.)

The Ninth Circuit also refused to consider *Monell's* deliberate indifference requirement because it found the County had not presented the argument in the district court and thus had forfeited it. (App. 16.) Yet, the County in its summary judgment motion papers had repeatedly raised *Monell*'s deliberate indifference requirement [App. 99-100], had argued that it had no deliberate policy regarding vehicle impoundments (aside from a general policy to enforce state law), and claimed its enforcement of § 14602.6 could not have constituted "a *conscious or deliberate disregard* of [Sandoval's] rights." (App. 101 [emphasis added]; *see also* App. 100.)

While the Ninth Circuit's failure to address *Monell's* deliberate indifference requirement may not be constitutionally significant, it nevertheless demonstrates the length to which the Ninth Circuit went to hold the County liable under the Fourth Amendment and section 1983 for enforcing the 30-day impound provisions of § 14602.6.

CONCLUSION

For the foregoing reasons, County Petitioners request their petition for writ of certiorari be granted.

Respectfully submitted,

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