No. 18-1466

In The
Supreme Court of the United States

COUNTY OF SONOMA, CALIFORNIA, et al.,

Petitioners,

v.

RAFAEL MATEOS SANDOVAL, et al.,

Respondents.

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

BRIEF OF THE CALIFORNIA STATE ASSOCIATION OF COUNTIES AS AMICUS CURIAE IN SUPPORT OF PETITIONERS

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BRIEF OF THE CALIFORNIA STATE ASSOCIATION OF COUNTIES AS AMICUS CURIAE IN SUPPORT OF PETITIONERS

The California State Association of Counties ("CSAC") respectfully submits this brief as amicus curiae in support of Petitioner.

INTEREST OF THE AMICUS CURIAE[1]

CSAC's membership consists of the 58 California counties. CSAC sponsors a Litigation Coordination Program, which is administered by the County Counsels' Association of California and is overseen by the Association's Litigation Overview Committee, comprised of county counsels throughout the State. The Litigation Overview Committee monitors litigation of concern to counties statewide and has determined that this case is a matter affecting all counties.

STATEMENT OF THE CASE

CSAC joins in and refers to the Statement of the Facts found in Petitioner's Petition for Writ of Certiorari ("Writ Petition" at pp. 4-12).

[1] The parties have consented to the filing of this brief. The parties were notified more than ten days prior to the due date of this brief of the intention to file. This brief was not authored in whole or in part by counsel for any party. No person or entity other than amicus curiae made a monetary contribution to this brief's preparation or submission.

SUMMARY OF THE ARGUMENT

CSAC urges this Court to grant Petitioners' Petition for Writ of Certiorari for two main reasons. First, the question of whether and how the Fourth Amendment applies to a subsequent hold following an initial lawful seizure of property is of significant, nationwide importance, and is an issue on which the Ninth Circuit has created conflicting and somewhat illogical precedent. While other circuits have found the Fourth Amendment inapplicable to subsequent holds following a lawful seizure, the Ninth Circuit has twice concluded that a 30-day vehicle hold following the lawful seizure of a vehicle for driving without a license is subject to the Fourth Amendment, and that such a hold is an unreasonable seizure since the length of the detention cannot be justified by the community caretaker exception to warrantless seizures. *Brewster v. Beck*, 859 F.3d 1194 (9th Cir. 2017); *Mateos-Sandoval v. County of Sonoma*, 912 F.3d 509 (9th Cir. 2018). Not only does this contravene opinions in all other circuits to have considered the issue, but the position adopted by the Ninth Circuit on this issue means that vehicles receive greater Fourth Amendment protection than persons who are constitutionally seized and subsequently held in detention. This absurdity alone warrants this Court's review.

Second, the Petition should be granted to consider when a local governmental agency can be held responsible for enforcing State law under *Monell v. Department of Social Services*, 436 U.S. 658 (1978) if it has reasonably misinterpreted that State law. The Ninth

Circuit acknowledges in its opinion, as it must, that a city or county cannot be held vicariously liable under 42 U.S.C. § 1983 for actions of their officers in the absence of an adopted policy. *Mateos-Sandoval v. County of Sonoma*, 912 F.3d 509, 517 (9th Cir. 2018). The court goes on to find, however, that Sonoma County's misinterpretation of State law in this case was, in effect, the adoption of a local policy that rendered the County Defendants liable under 42 U.S.C. § 1983. *Ibid.*

However, misinterpreting a State law is not the equivalent of adopting and acting under a local policy. The underlying policy determination involved here – a mandatory 30-day vehicle hold absent satisfaction of one of the exceptions for early release – is one that was made by the State of California. That the County may have misinterpreted the type of license to which the relevant code provision applies did not convert the County into a final policymaker. Rather, the State has concluded that its policy goal of deterring driving without a license is furthered by the impoundment statute. The County cannot be held liable under *Monell* for implementing that policy determination, even if it misinterpreted the statute. Municipal actors are not liable for Fourth Amendment violations for reasonable mistakes regarding what the law requires (*Heien v. North Carolina*, 135 S.Ct. 530, 534 (2014)), and municipalities similarly cannot be found to be final policymakers for purposes of *Monell* liability for those same mistakes.

ARGUMENT

I. The Ninth Circuit's majority opinion conflicts with existing precedent and leads to the absurd result of protecting possession of property more broadly than personal liberty.

As this Court has previously determined, when an *initial* seizure of a *person* does not violate the Fourth Amendment, the length of subsequent detention is ordinarily analyzed under the Fourteenth Amendment's Due Process Clause. *See Baker v. McCollan*, 433 U.S. 137, 145 (1979) ("The Fourteenth Amendment does not protect against all deprivations of liberty. It protects only against deprivations of liberty accomplished 'without due process of law.' "). Less than a week after Respondent Sandoval's truck was seized, he sought and received a post-seizure hearing, but was unsuccessful. Due Process, however, does not guarantee a right to win at a post-seizure hearing, and there were no claims of Due Process before the Ninth Circuit.[2]

In *United States v. James Daniel Good Real Property*, 510 U.S. 43, 51-52 (1993), the Supreme Court rejected the proposition "that the Fourth Amendment is the beginning and end of the constitutional inquiry whenever a seizure occurs," stating that when the

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[2] Though the concurring opinion below agreed that Due Process, rather than the Fourth Amendment, is the relevant lens through which to view this case, the concurrence would have found the post-seizure hearing lacking in Due Process. That issue, however, was not before the court based on Respondent's voluntary dismissal with prejudice of his Due Process claims.

government asserts "ownership and control" over property, its conduct must comport with Due Process. Other circuits have rejected arguments that a Fourth Amendment unreasonable seizure claim can be based on post-dispossession retention of a vehicle (or other property) when the *initial* seizure was lawful. For example, the Seventh Circuit held that:

> Once an individual has been meaningfully dispossessed, the seizure of the property is complete, and once justified by probable cause, that seizure is reasonable. The [fourth] amendment then cannot be invoked by the dispossessed owner to regain his property. The search [of plaintiff's car] was completed after ten days. Conditioning the car's release upon payment of towing and storage fees after the search was completed neither continued the initial seizure nor began another.

Lee v. City of Chicago, 330 F.3d 456, 466 (7th Cir. 2003). The Eleventh Circuit likewise held: "A complaint of continued retention of legally seized property raises an issue of procedural due process." *Case v. Eslinger*, 555 F.3d 1317, 1330 (11th Cir. 2009). Courts have applied this same standard to the seizure and detention of persons, finding that if a person is lawfully seized under a valid warrant for Fourth Amendment purposes, any challenges to a subsequent detention would arise not under the Fourth Amendment, but the Due Process Clause of the Fourteenth Amendment. *Jauch v. Choctaw County*, 874 F.3d 425, 429 (5th Cir. 2017); *see also Rivera v. County 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 *Jauch*, the court specifically noted that its rationale was consistent with the Supreme Court's decision in *Manuel v. City of Joliet*, 137 S.Ct. 911 (2017), which did allow a Fourth Amendment claim for damages related to a subsequent detention, but only when the initial seizure did not comply with the Fourth Amendment.

The Ninth Circuit's opinion below does little to justify these conflicts beyond its reliance on its earlier decision in *Brewster v. Beck*, 859 F.3d 1194 (9th Cir. 2017), which the concurrence (and a member of the *Brewster* panel) believes was wrongly decided. Just prior to *Brewster*, the First Circuit reached precisely the opposite conclusion, finding that the Fourth Amendment does not apply to continued possession of lawfully seized vehicles. *Denault v. Ahern*, 857 F.3d 76, 83-84 (1st Cir. 2017). Yet, neither the *Brewster* opinion, nor the opinion in the present case, made mention of this conflict.

Granting review would therefore provide this Court not only with the opportunity to address the conflict between the circuits on this issue, but would also allow this Court to address the absurdity of vehicles receiving greater Fourth Amendment protection than persons, which certainly cannot be an outcome warranted by the Fourth Amendment.

Further, the question of whether the Fourth Amendment applies to retention of property after a

lawful seizure is a recurring legal issue that goes well beyond vehicle impoundments. It can arise in the government's seizure of allegedly stolen property (*Case v. Eslinger*, 555 F.3d 1317, 1330 (11th Cir. 2009)), weapons carried without the proper permits (*see, e.g.*, Mich. Comp. Laws § 28.425f), personal property related to illegal gambling operations (*see, e.g.*, Wash. Rev. Code § 9.46.231), dogs found to be running at large (*see, e.g.*, La. Stat. Ann. § 3:2773), and so many other types of property that might be lawfully seized with a warrant or under an exception to the warrant requirement. The conflicting circuit court opinions on this issue therefore have broad potential to create confusion and disparate results in cases where property of any type is lawfully seized and subsequently held by the government.

II. The opinion did not identify a local policy for *Monell* purposes, and the County cannot be liable merely for enforcing State law.

This Court disapproves of municipal entity liability under Section 1983 except where constitutional deprivations were caused by deliberate choices made by the municipality's policymakers. Counties (and their officials sued in their official capacity) can rightly be liable under Section 1983 only for constitutional deprivations caused by implementation of their own policies or customs. *Monell v. Dep't of Social Services*, 436 U.S. 658, 690 (1978). But impounding vehicles for 30 days was a policy choice of the California Legislature, which could have chosen a lesser or greater

number of days, or could have chosen not to authorize any impoundment.

Municipal liability is limited under Section 1983 to instances where "the action that is alleged to be unconstitutional implements or executes a policy statement, ordinance, regulation, or decision officially adopted and promulgated by that body's officers." *Monell*, 436 U.S. at 690. The official policy or custom must be the "moving force" of the violation – there must be a "direct causal link" to "closely related" conduct, and the official policy or custom must have "actually caused" the violation. *City of Canton, Ohio v. Harris*, 489 U.S. 378, 385-91 (1989).

The Ninth Circuit's rationale for imposing liability under *Monell* fails to meet that test. Even if it is true that the County misinterpreted Vehicle Code section 14602.6 as permitting an impoundment if a driver had never been issued a California driver's license,[3] and even if such interpretation could be considered a municipal policy, there would be no "direct causal link" between that policy and the constitutional violation of

[3] Municipal actors are not liable for Fourth Amendment violations for reasonable mistakes regarding what the law requires. *Heien v. North Carolina*, 135 S.Ct. 530, 534 (2014). The reasonableness of the County's interpretation of the statute in this case is supported by the fact that the statute was consistently interpreted and applied by other jurisdictions throughout the State in the same manner as Sonoma County's interpretation and application here. *Salazar v. City of Maywood*, 414 Fed. Appx. 73, 75 (9th Cir. 2011) (noting that the numerous defendant jurisdictions in the case applied the statute to persons who had a driver's license "issued by a different jurisdiction").

holding the vehicle for 30 days – as that period was mandated by the State of California. There is no question but that the initial seizure of Respondent's vehicle satisfied the Fourth Amendment; it was only the length of the 30-day hold the Court found to be contrary to the Fourth Amendment, and that length was mandated by the State of California. Indeed, California Vehicle Code section 14602.6 states that an impounded vehicle "shall be impounded for 30 days." "Shall" is a mandatory term, allowing no choice. (California Vehicle Code section 15 states that "'[s]hall' is mandatory and 'may' is permissive.")

"[M]unicipal liability under § 1983 attaches where – and only where – a deliberate choice to follow a course of action is made from among various alternatives by the official or officials responsible for establishing final policy with respect to the subject matter in question." *Pembaur v. City of Cincinnati*, 475 U.S. 469, 483 (1986). Municipalities cannot choose "from among various alternatives" – as *Pembaur* requires – when California law gives local policymakers no choice between 30 days impoundment versus some longer or shorter impoundment duration.

In *Board of County Commissioners of Bryan County, Oklahoma v. Brown*, 520 U.S. 397, 404-05 (1997), this Court explained that it is not enough for a Section 1983 plaintiff merely to identify conduct properly attributable to a municipal entity. The plaintiff must also demonstrate that, through its deliberate conduct, the municipal entity was the "moving force" behind the injury that is alleged. That is, a plaintiff

must show that the municipal action was taken with the requisite degree of culpability and must demonstrate a direct causal link between the municipal action and the deprivation of federal rights. Here, the "moving force" behind the 30-day impoundment of Respondent Sandoval's vehicle was a State statute (not a county policy) mandating 30 days as the impoundment period. Even if the County misinterpreted the statute to authorize impoundment of Sandoval's vehicle, such interpretation did not magically convert the State law into a municipal policy, as municipalities must interpret all State laws in order to enforce them.

Thirty day impoundments under California Vehicle Code section 14602.6 have been judicially upheld because "the government has a strong interest in keeping unlicensed drivers off the roads, both by temporarily impounding their vehicles and by deterring them from driving on suspended or revoked licenses in the first place." *Alviso v. Sonoma County Sheriff's Dep't*, 186 Cal.App.4th 198, 214 (2010). Municipalities may not be held liable for money damages merely for enforcing State law they cannot choose to change. Holding the County liable for enforcing presumptively constitutional State laws fails to satisfy the responsibility and culpability requirements of *Monell* and thwarts its fundamental underpinnings.

These liability questions are critical for municipalities in California and nationwide, and warrant further review by this Court.

CONCLUSION

Amicus therefore respectfully request that the Court grant the Petition filed herein.

Dated: June 21, 2019

Respectfully submitted,

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