No. 18-1466

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

REPLY BRIEF FOR PETITIONERS

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ARGUMENT

I. RESPONDENT MISINTERPRETS THIS COURT'S FOURTH AMENDMENT JURISPRUDENCE AND THE CONFLICT IN THE CIRCUITS

Respondent Rafael Mateos Sandoval's[1] Opposition Brief contradicts itself by arguing both that the Ninth Circuit's Fourth Amendment decision in this case is justified by long-standing law, and at the same time arguing that this Court has only recently resolved the conflict in the circuits on the relevant issue in *Manuel v. City of Joliet, Ill.*, 137 S. Ct. 911 (2017) ("*Manuel*"). (Oppo. 7, 9, 10.)[2] Neither is correct, and Respondent's primary mistake lies in his conflation of cases involving alleged over detention of persons or property following *unlawful* seizures with those involving *lawful* seizures. This is at the heart of the error committed by the Ninth Circuit in this case and its predecessor *Brewster v. Beck*, 859 F.3d 1194, 1197 (9th Cir. 2017), *cert. denied sub nom. Los Angeles, Cal. v. Brewster*, 138 S. Ct. 1284 (2018) ("*Brewster*") for which review is requested.

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[1] Respondent Sandoval argues that he is the only "respondent" in this case. Yet, Supreme Court Rule 12.6 provides that "[a]ll parties other than the petitioner are considered respondents. . . ." Sup. Ct. Rule 12.6. Accordingly, the second Plaintiff, Simeon Avendano Ruiz, as well as the Santa Rosa City Defendants, are also "respondents" herein.

[2] In this Reply, Respondent's Brief in Opposition is referred to as "Oppo.," the Petition for Writ of Certiorari is referred to as "Pet.," the Appendix to the Petition is referred to as "App.," and the Excerpts of the Record Petitioners filed in the Ninth Circuit [9th Cir. Dkt. Nos. 22-1 and 22-2] are referred to as "ER."

A. Misinterpretations of This Court's Decision in *Manuel* Warrant Review in This Case

Respondent bases his Opposition primarily on *Manuel*, asserting it stands for the proposition that, even if a person was lawfully arrested, his or her ensuing detention could form the basis of a Fourth Amendment claim made under 42 U.S.C. § 1983 ("section 1983"). (Oppo. 7.)

Contrary to Respondent's assertions, *Manuel* did not address whether the Fourth Amendment applied to a continued detention of a person after a lawful arrest; instead, it addressed whether the Fourth Amendment applied to both the arrest (which was unlawful) as well as the ensuing pretrial detention (which was unjustified based on that unlawful seizure) even after the criminal court process had begun. *Manuel*, 137 S. Ct. at 918. The *Manuel* Court thus concluded the Fourth Amendment applied to Manuel's continued detention in jail because his *initial seizure was unlawful*. *Id.*, at 919-20 ("Legal process did not expunge Manuel's Fourth Amendment claim because the process he received failed to establish what that Amendment makes essential for pretrial detention – probable cause to believe he committed a crime.").

Respondent's misconstruction of *Manuel* is not surprising because the Ninth Circuit also misinterpreted it in *Brewster*. (*See* Pet. 21.) In fact, the *Brewster* Court described *Manuel* as holding "the Fourth Amendment

governed the entirety of plaintiff's 48-day detention," without reference to the fact that Manuel's initial arrest was alleged to have been unlawful and thus the Fourth Amendment had never been satisfied. *Brewster*, 859 F.3d at 1197. The Sixth Circuit similarly has misconstrued *Manuel* as standing for the proposition that the Fourth Amendment "applies to pretrial detention that occurs after the legal process has begun," while omitting any reference to the lawfulness of the underlying arrest. *Miller v. Maddox*, 866 F.3d 386, 393-94 (6th Cir. 2017), *cert. denied*, 138 S. Ct. 2622 (2018).[3]

On the other hand, two other circuits have correctly interpreted *Manuel* to apply the Fourth Amendment to claims alleging improper detention only when the arrest of the person was *unlawful*. *See Jauch v. Choctaw Cty.*, 874 F.3d 425, 429-30 (5th Cir. 2017), *cert. denied sub nom. Choctaw Cty., Miss. v. Jauch*, 139 S. Ct. 638 (2018) (explaining that *Manuel* and the Fourth Amendment are inapplicable to pretrial detainees who were properly arrested and awaiting trial, as claims for unlawful detention after a lawful seizure do not implicate the Fourth Amendment); *see also Lewis v. City of Chicago*, 914 F.3d 472, 476-77 (7th Cir. 2019) (explaining that in *Manuel*, the Fourth Amendment claim was not extinguished by formal legal process because probable cause, as required by

[3] *See also Denault v. Ahern*, 857 F.3d 76, 84 (1st Cir. 2017) (pondering whether the *Manuel* Court intended for the Fourth Amendment to continue to apply to detention of lawfully seized persons).

the Fourth Amendment, was alleged never to have existed in the first place).

These confusing and contradictory interpretations of *Manuel* with respect to continuing detentions after lawful seizures, and *Manuel's* applicability in this case, in and of themselves warrant granting review.[4]

B. Respondent's Argument That *Manuel* and *Rodriguez* Have Resolved the Conflict in the Circuits is Unjustified

The Ninth Circuit's decision regarding the scope of the Fourth Amendment in *Brewster* and the instant case directly conflicts with the established precedent of five other Circuit Courts of Appeals. (*See* Pet. 22-24.) In his Opposition, Respondent argues that this Court resolved the conflict via its decisions in *Manuel* and *Rodriguez*, and that all of those conflicting circuit court decisions have been effectively reversed. (Oppo. 10.) In fact, Respondent goes so far as to assert that "*Manuel's* reasoning rejects th[e] contention that the Fourth Amendment is satisfied based on an initial lawful seizure no matter what happens after." (Oppo. 12.)

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[4] Respondent's other proffered authorities, *Rodriguez v. United States*, 135 S. Ct. 1609 (2015) ("*Rodriguez*") and *United States v. Place*, 462 U.S. 696, 703 (1983), similarly fail to support his claim that the Ninth Circuit's holding in this case comports with this Court's precedent. Specifically, those cases are distinguishable because they addressed a temporary *Terry*-style stop (justified under reasonable suspicion alone) for the purpose of investigating criminal activity, rather than the type of full-blown, non-evidentiary seizure at issue in this case. (*See* Pet. 19-20.)

To make such an argument, Respondent improperly conflates cases such as *Manuel*, involving an *unlawful* seizure followed by a prolonged detention (which implicates the Fourth Amendment because it was never satisfied), with cases involving a *lawful* and full-blown seizure followed by a prolonged detention (which implicates only the Due Process Clause because the Fourth Amendment was satisfied).[5] This is a critical distinction, as the decision in *Manuel* was based on the allegation that the Fourth Amendment had never been satisfied in the first place, and thus was implicated by the initial unlawful seizure as well as the ensuing detention as a fluid construct.

Moreover, there is not a single opinion by the First, Second, Sixth, Seventh, or Eleventh Circuits which repudiates their prior holdings on the subject Fourth Amendment issue based on *Manuel or Rodriguez*. To the contrary, two circuit court opinions issued after *Manuel* have declined to repudiate prior precedent holding the

[5] Respondent relies on the following unlawful seizure cases: *Miller*, 866 F.3d at 394 (involving a claim of unlawful arrest followed by a detention); *Alcocer v. Mills*, 906 F.3d 944, 953 (11th Cir. 2018) (involving a claim challenging a person's detention on an immigration hold not based on an initial finding of probable cause); and *Lewis*, 914 F.3d at 476-77 (involving a claim that the initial arrest was unlawful because it was based on falsified police reports). Respondent also cites two out of three of the Second Circuit's *Krimstock* cases (Oppo. 11), neither of which addressed a Fourth Amendment claim based on a lawful full-blown seizure followed by an allegedly unlawful detention.

Fourth Amendment inapplicable to allegedly unlawful detentions after lawful seizures.[6]

Respondent's further attempts to argue away the conflict in the circuits by asserting they address different Fourth Amendment issues fall flat.[7] The Ninth Circuit in *Brewster* recognized this conflict and expressly rejected Seventh Circuit precedent to reach a contrary result. *Brewster*, 859 F.3d at 1197. This is precisely the type of significant conflict in the circuits warranting review.

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[6] *See Denault*, 857 F.3d 76 (concluding that, despite *Manuel's* potential applicability to detentions of lawfully seized persons, the Fourth Amendment did not apply to detentions of lawfully seized personal property); *see also Alcocer*, 906 F.3d at 953 (citing to its decision in *Case v. Eslinger*, 555 F.3d 1317 (11th Cir. 2009), which rejected a Fourth Amendment claim based on an alleged over detention after a lawful arrest).

[7] Respondent's arguments respecting the conflicting circuit court decisions are either incorrect or immaterial. For example, Respondent argues that *Shaul v. Cherry Valley-Springfield Cent. Sch. Dist.*, 363 F.3d 177 (2nd Cir. 2004) is irrelevant because it involved a claim of negligence which did not implicate the Fourth Amendment. (Oppo. 11.) Yet, the *Shaul* Court addressed negligence only in connection with Shaul's due process claim, after definitively rejecting his Fourth Amendment claim because, "[if] an initial seizure of property was reasonable, defendants' failure to return the items does not, by itself, state a separate Fourth Amendment claim of unreasonable seizure." *Shaul*, 363 F.3d at 187.

II. RESPONDENT MISTAKENLY RELIES UPON THE "COMMUNITY CARETAKING" DOCTRINE TO SUPPORT THE NINTH CIRCUIT'S REJECTION OF THE ADMINISTRATIVE PENALTY EFFECTUATED BY § 14602.6

Respondent mistakenly interprets the Petition as being founded on an argument that the 30-day impound provisions of California Vehicle Code § 14602.6 ("§ 14602.6") comply with the Fourth Amendment because they are justified under the "community caretaking" doctrine. (Oppo. 13.) Respondent argues that because deterrence of unlawful conduct can never satisfy the "community caretaking" doctrine, impounding vehicles for 30 days under § 14602.6 can never satisfy the Fourth Amendment.

Respondent's interpretation of the issue is exactly the opposite of Petitioners'[8] position: the "community caretaking" factors are inapplicable to impoundments under § 14602.6. That statute was not designed simply to remove a vehicle from the scene for "community caretaking" reasons, but rather to divest the owner of

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[8] The three Petitioners in this case are the County of Sonoma, the Sonoma County Sheriff's Office, and its current Sheriff Mark Essick in his official capacity only. These entities are all one and the same. *See Kentucky v. Graham*, 473 U.S. 159, 166 (1985). Contrary to Respondent's arguments, he named all of them as defendants, and the Judgment was entered against all of them. (2 ER 288, ¶¶ 8, 9; App. 23.) However, Sheriff Mark Essick was automatically substituted into the case after Judgment was entered in the place of former Sheriff Steve Freitas for the official capacity claims. *See* Federal Rule of Civil Procedure 25(d).

possession for 30 days as an administrative penalty to deter and punish unlawful driving. (*See* Pet. 33-34.)

The Ninth Circuit's refusal to consider deterrence of unlawful driving as a justification to satisfy the Fourth Amendment for the impoundment of Respondent's vehicle under § 14602.6 was based on the fact that the "community caretaking" doctrine precludes such consideration. (App. 11-12.) Petitioners submit the "community caretaking" factors are inapplicable because they are unrelated to the purpose underlying the 30-day impoundment and fail to account for Petitioners' intent to effectuate the purpose of § 14602.6: to prevent traffic accidents and save lives.

Respondent also argues that § 14602.6's administrative penalty, imposing a temporary civil *in rem* forfeiture, is improper because it is "*sua sponte* punishment by a police officer." (Oppo. 14.) This argument played no part in either of the lower court opinions. Regardless, it ignores the fact that "*in rem* forfeitures [are] not considered punishment against the individual for an offense" because they are directed against the "'guilty property,' rather than against the offender himself." *United States v. Bajakajian*, 524 U.S. 321, 330-31 (1998). Forfeitures may permissibly serve both a punitive and deterrent purpose, separate and apart from any criminal wrongdoing by the owner. *See Bennis v. Michigan*, 516 U.S. 442, 452 (1996) (abatement and forfeiture of innocent wife's interest in car used in a crime were permissible).

The Ninth Circuit erred in refusing to consider the "legitimate governmental interests" underlying § 14602.6 to justify Petitioners' impoundment of Respondent's

vehicle after he had been lawfully arrested for the misdemeanor offense of unlawful driving.[9] *See Skinner v. Ry. Labor Executives' Ass'n*, 489 U.S. 602, 619 (1989). Review is warranted to determine whether a categorical analysis, which takes into account the State of California's interest in enacting § 14602.6, is required in the context of this case.

III. WHETHER *MONELL* PERMITS HOLDING LOCAL MUNICIPALITIES LIABLE UNDER SECTION 1983 WHEN APPLYING STATE LAW BASED ON A REASONABLE MISINTERPRETATION IS A SIGNIFICANT FEDERAL LAW ISSUE WARRANTING REVIEW

Respondent's Opposition highlights the significant *Monell* liability issue presented in this case: whether a local municipality can be liable under section 1983 for applying State law even when a Court later finds its interpretation of that law to have been mistaken. *See Monell v. Dept. of Social Services*, 436 U.S. 658 (1978) ("*Monell*").[10] Respondent's arguments against granting review on this issue miss the mark.

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[9] Though Respondent was convicted of driving without a valid license, his Opposition incorrectly states that he "had a valid Mexican driver's license" at the time his vehicle was impounded. (Oppo. at 1.) In fact, Respondent's Mexican driver's license had expired on June 13, 2009, about 1.5 years prior to the impoundment which occurred on January 27, 2011. (*See* 2 ER 243-5, 281-2.) Further, at the time of the impoundment, Respondent neither informed the Sheriff's Deputy that he had an expired Mexican driver's license nor showed it to him. (2 ER 245, 279-80, 283-85.)

[10] Contrary to Respondent's assertion, while Petitioners acknowledge the Ninth Circuit's error in refusing to consider the

Respondent filed this lawsuit based on his claim that Petitioners' interpretation of § 14602.6 as applied to drivers who had never been issued a California driver's license "arise out of a statewide policy, custom, pattern and practice." (2 ER 8, ¶ 34.) In fact, numerous lawsuits have been filed across the State of California challenging different law enforcement agencies' identical interpretation of § 14602.6.[11] Undisputed evidence in this case demonstrated that, at the time of the 2011 incident, all but one sheriff's office in the State of California interpreted § 14602.6 in the same fashion as Petitioners. (2 ER 212-3.) While Respondent argues that Petitioners should have known that this statewide interpretation was incorrect, the consistency of that interpretation (and lack of a contrary interpretation by any court or other authority) demonstrates it was reasonable at the time.

"deliberate indifference" requirement is not by itself worthy of review, the underlying *Monell* issue presented – whether a local municipality should be held liable under section 1983 for a reasonable mistake in enforcing State law – is significant and appears without precedent.

[11] *See, e.g.*, *Salazar v. City of Maywood*, 414 F. App'x 73, 75 (9th Cir. 2011) (Cities of Maywood, Los Angeles, Escondido, Long Beach, Ontario, Riverside, and County of Los Angeles); *see also Miranda v. Bonner*, No. CV 08-03178 SJO VBKX, 2013 WL 794059, at *8 (C.D. Cal. Mar. 4, 2013) (City of Los Angeles); *Thompson v. City of Petaluma*, 231 Cal. App. 4th 101, 109 (2014) (City of Petaluma). In addition, Respondent the City of Santa Rosa's interpretation of § 14602.6 was the same as Petitioners'. (App. 14.)

Moreover, California State Courts had broadly described the scope of § 14602.6 to cover Petitioners' interpretation. *See People v. Torres*, 188 Cal. App. 4th 775, 781 (2010) (describing § 14602.6 as "authorizing impoundment of vehicles being driven by unlicensed drivers"); *see also Samples v. Brown*, 146 Cal. App. 4th 787, 796 (2007) (stating that § 14602.6 allows impoundment "if a person is driving a vehicle without a valid license or in violation of a driving restriction"). Indeed, there are many reasons to believe that the lower courts' interpretation of § 14602.6 in this case is incorrect, and that Petitioners' and the statewide interpretation of it was not in error. (*See* 9th Cir. Dkt. No. 17; DC Dkt. Nos. 62-63.)

Regardless of the actual scope of § 14602.6, there was no authority holding that Petitioners' interpretation of it was incorrect at the time of the incident, and their alleged misinterpretation of § 14602.6 was unintentional, reasonable, and should not have formed the basis of their *Monell* liability in this case. *See Heien v. North Carolina*, 35 S. Ct. 530, 534, 539 (2014).[12] Moreover, the interpretation of § 14602.6 had no relevance

[12] Respondent's attempts to distinguish *Heien* are unavailing, as that case did not turn either on a finding that only the individual officer misinterpreted the law or that he interpreted it on the spot (his agency more than likely trained him in the law). Moreover, there is nothing in the instant case indicating that Petitioners had either hindsight or legal advice regarding their interpretation of § 14602.6 prior to the incident, and the district court's interpretation of it was the first notice they could have had that the statewide interpretation of § 14602.6 they employed may have been incorrect.

to the Fourth Amendment analysis applied in this case (which was based solely on Respondent's personal driving record and threat to public safety), and thus could not have been the "moving force" behind the constitutional violation as required by *Monell* to impose section 1983 liability on a municipality. *See Monell*, 436 U.S. at 694.

There is no question but that the 30-day impound provisions of § 14602.6 represent the policy decision of the State of California, not Petitioners or any other local municipality. *See, e.g.*, Cal. Veh. Code § 14607.4; *see also Samples,* 146 Cal. App. 4th at 805 (§ 14602.6 contains "several directives . . . which together comprise the mechanism for implementing the legislative policy decision to deter and punish unlicensed driving."). Respondent's argument, and the Ninth Circuit's holding herein, that a misinterpretation of State law magically converts that law into a local municipal policy sufficient to invoke *Monell* liability warrants review by this Court.

CONCLUSION

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

Respectfully submitted,

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