No. 19-797

IN THE

# Supreme Court of the United States

CITY OF ST. LOUIS, MISSOURI,
AND DOC'S TOWING, INC.,

*Petitioners*,

v.

MARY MEIER,

*Respondent.*

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Eighth Circuit

## RESPONDENT'S BRIEF IN OPPOSITION


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## QUESTIONS PRESENTED

The St. Louis Metropolitan Police Department caused the warrantless seizure of a vehicle suspected of involvement in a hit-and-run accident and, with the cooperation of a private towing company, held the vehicle for six weeks to try to leverage an interview with a suspect. The owner of the vehicle brought an action under 42 U.S.C. § 1983 against the City of St. Louis and the towing company alleging that the defendants' prolonged seizure of her vehicle without a warrant violated her rights under the Fourth and Fourteenth Amendments. The questions presented are:

1. Whether a municipality with a policy of seizing vehicles without a warrant and holding them for an extended period as an investigative tool can be liable for violating the Fourth and Fourteenth Amendments.

2. Whether a municipality can be liable for constitutional violations carried out with the assistance of a non-governmental actor.

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## INTRODUCTION

Petitioners seek review of an interlocutory and fact-bound decision of the Eighth Circuit that correctly applies well-established principles governing the liability of municipalities and associated private actors for violations of constitutional rights. The Court should decline to review this case because petitioners have failed to show any compelling reason to grant the writ.

First, the petition misstates the primary issue in this case by focusing on the initial seizure of respondent's vehicle rather than its duration. The decision below does not conflict with the decisions of this Court or any other court on the issue whether an excessive delay in authorizing the return of vehicles seized without a warrant unreasonably infringes possessory interests protected by the Fourth Amendment.

Second, the Eighth Circuit articulated the correct standards for municipal liability, faithfully applied those standards to the record before it, and, drawing all reasonable inferences in plaintiff's favor, determined that a reasonable jury could find for plaintiff. Petitioners assert, at most, that the court made erroneous factual findings with respect to certain elements of municipal liability. Even if that were so, this case would not be worthy of this Court's review. *See* S. Ct. R. 10.

Finally, the Court should deny review at this stage of the litigation because the case turns on factual disputes that will be resolved at a trial set for April 20, 2020.

For each of these reasons, the petition should be denied.

## STATEMENT

In December 2015, an officer of the St. Louis Metropolitan Police Department (SLMPD) responded to a hit-and-run accident. Based on information from the victim, the officer suspected that the vehicle that left the scene was a truck registered to respondent Mary Meier. The officer instructed a SLMPD clerk to report the truck as "wanted" on the Regional Justice Information Service (REJIS) network, a computer system that allows law enforcement agencies in St. Louis County to share information. Pet. App. A-2–A-3. A wanted report operates as a request to take the vehicle into custody. *Id.* A-8.

On March 17, 2016, an officer of the Maryland Heights Police Department (MHPD) saw Ms. Meier's son, Ben Meier, and a companion sitting in the truck. The officer ran the license plate on REJIS and saw that it was wanted by SLMPD. The officer approached the truck's occupants, whom he eventually arrested for reasons unconnected to the wanted report or the hit-and-run accident. The officer arranged for the truck to be towed because of SLMPD's wanted report and because he was arresting the truck's occupants. MHPD dispatch arranged for Doc's Towing to take the truck, and the MHPD officer told the driver from Doc's Towing that the truck was wanted by SLMPD. Ms. Meier's truck was towed to Doc's Towing, where it was held. *Id.* A-3.

SLMPD was notified through REJIS that the truck had been located and taken to Doc's Towing. SLMPD responded that the owner or driver of the vehicle should be advised to contact the SLMPD detective bureau regarding release of the vehicle. *Id.* A-3–A-4.

SLMPD did not seek a warrant authorizing the continued seizure of Ms. Meier's truck.

The day after the truck was seized, Ms. Meier and her son went to Doc's Towing to get the truck. A Doc's Towing employee told them that, although MHPD had authorized release of the truck, SLMPD had a hold on it and that Doc's Towing could not release it without SLMPD's authorization. When Ben Meier contacted SLMPD to ask it to remove the hold, Detective John Russo explained that, to get the truck back, Ben would have to come in and answer questions about the accident. *Id.* A-4. Ben declined to do so, and Doc's Towing continued to retain the vehicle pursuant to SLMPD's hold. Yet SLMPD neither inspected the vehicle nor searched it for evidence related to the hit-and-run accident.

About six weeks after the truck was seized, Ms. Meier's lawyer obtained a release order from SLMPD that rescinded the March 17 hold order on the truck. Pursuant to the release order, Doc's Towing allowed Ms. Meier to retrieve the truck after paying a tow fee and a separate storage fee. The truck had been damaged during its time in storage, however, and an employee of Doc's Towing had applied for salvage title, interfering with Ms. Meier's ability to regain clean title for the truck. *Id.*

Ms. Meier sued the City of St. Louis and Doc's Towing under 42 U.S.C. § 1983, alleging, among other things, that defendants' prolonged seizure of her vehicle violated her rights under the Fourth and Fourteenth Amendments.[1] Specifically, Ms. Meier alleged

[1] Ms. Meier's complaint also alleges a deprivation of property without due process and two state law claims, none of which were considered by the court below.

that SLMPD lacked probable cause to continue the seizure of her vehicle for six weeks, and that Doc's Towing held her vehicle under color of law because it did so as a willful participant in SLMPD's policy of using wanted reports to seize vehicles for extended periods. Pet. App. A-31–A-34.

The district court granted summary judgment to defendants based on two facts that the court characterized as "undisputed." *Id.* A-16. First, the district court found that MHPD, and not SLMPD, made the initial seizure, and that Doc's Towing had not acted in concert with SLMPD when it retained the truck pending SLMPD's authorization to release it. *Id.* A-16. Because the court found that the actions of MHPD and Doc's Towing could not be imputed to SLMPD, it held that neither defendant could be liable on the § 1983 claims as a matter of law. *Id.* A-19, A-21. The district court did not "address the issue of whether [Ms. Meier] established underlying constitutional violations in connection with the deprivation of her property." *Id.* A-19.

The Court of Appeals for the Eighth Circuit reversed. In a unanimous decision, the court found that Ms. Meier had adduced sufficient evidence to preclude summary judgment for defendants and remanded the case for further proceedings. *Id.* A-2.

With regard to establishing municipal liability based on an unwritten policy or custom, the court explained that Ms. Meier would need to show "(1) the existence of a continuing, widespread, persistent pattern of unconstitutional misconduct by the municipality's employees; (2) deliberate indifference to or tacit authorization of such conduct by the municipality's policymaking officials after notice to the officials of

that misconduct; and (3) that she was injured by acts pursuant to the municipality's custom, i.e., that the custom was a moving force behind the constitutional violation." *Id.* A-5–A-6 (cleaned up and citations omitted). The court held that Ms. Meier had adduced evidence from which a reasonable juror could find each of these three elements. First, the court noted that Ms. Meier had presented evidence that SLMPD employees "regularly" engaged in a "continuing, widespread, persistent practice of using wanted reports to seize vehicles without a warrant as an investigative tool." *Id.* A-6–A-7. Second, the court found that because two of the witnesses whose testimony established the existence of the pattern of unconstitutional misconduct were policymaking officials, "their statements also demonstrate that SLMPD's policymaking officials are aware of this practice." *Id.* A-7. Third, the court held that SLMPD's custom of using wanted reports and resulting hold orders to seize and retain vehicles without a warrant caused the violation of Ms. Meier's constitutional rights.[2] Thus, the court concluded that "a reasonable jury could find that Meier's truck was towed and held pursuant to SLMPD's unwritten but widespread and persistent policy of reporting vehicles as wanted for the purpose of detaining them without a warrant." *Id.* A-8.

Next, with regard to whether Doc's Towing could be held liable under § 1983, the court of appeals explained that a private party can act under color of law

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[2] Whether the warrantless seizure and its duration violated the Fourth Amendment turns on whether it was reasonable, which entails the weighing of various factors. Below, defendants did not dispute, and the court therefore assumed, "that the seizure of Meier's truck violated her constitutional rights." Pet. App. A-9.

where it is a willful participant in joint activity with the governmental entity and there is a close nexus between the government and the private party, as well as between the government and the alleged deprivation. *Id.* A-9. The court held that a jury could find such a nexus in this case because "SLMPD intended Doc's Towing to detain Meier's truck until it obtained the information it was looking for and authorized the truck's release" and "Doc's Towing understood SLMPD's intent and acted accordingly." *Id.* A-10. Indeed, the president of Doc's Towing testified that SLMPD's wanted report instructed Doc's Towing to hold the truck until SLMPD released it. Thus, the court concluded that "SLMPD and Doc's Towing shared a mutual understanding concerning the truck and that Doc's Towing willfully participated in SLMPD's policy." *Id.*

Petitioners sought rehearing en banc, which was denied. *Id.* A-25. Trial is set for April 20, 2020.

## REASONS FOR DENYING THE WRIT

### I. The decision below does not conflict with the decision of any other court.

Petitioners' first question presented asks whether Ms. Meier suffered a violation of her constitutional rights if SLMPD had probable cause for the initial seizure of her truck. Below, however, the district court did not "address the issue of whether plaintiff established underlying constitutional violations in connection with the deprivation of her property," Pet. App. A-19, and the Eighth Circuit "assum[ed] that the seizure of Meier's truck violated her constitutional rights—an assumption that [SLMPD] [did] not dispute" on appeal. *Id.* A-9. Because the question was not

decided by either court below, the Court should decline to consider it for the first time here.

Furthermore, petitioners rest much of their argument for review of their first question on a misstatement of the conduct challenged by Ms. Meier. Contrary to petitioners' repeated assertion, Ms. Meier does not claim that the Fourth Amendment forbids the warrantless seizure of an automobile in a public place based on probable cause to believe that the vehicle was involved in a hit-and-run accident. Rather, Ms. Meier alleges a violation of her constitutional rights based on the *duration* of the warrantless seizure.

Petitioners complain that the Eighth Circuit "paid no attention to the issue of probable cause for seizure of the truck in the first place," Pet. 10, and instead focused on SLMPD's policy of using wanted reports to seize and hold vehicles without a warrant "as an investigative tool" to leverage interviews with suspects. Pet. App. A-6–A-7; *see id.* A-7 (finding that a SLMPD detective stated that Ms. Meier's son would have to answer SLMPD's questions about the accident to get the truck back). The Eighth Circuit had good reason to focus on that policy, because it is the focus of Ms. Meier's claim. And this Court has long recognized that "a seizure lawful at its inception can nevertheless violate the Fourth Amendment because its manner of execution unreasonably infringes possessory interests protected by the Fourth Amendment's prohibition on 'unreasonable seizures.'" *United States v. Jacobsen*, 466 U.S. 109, 124 (1984) (citing *United States v. Place,* 462 U.S. 696, 709–10 (1983) (holding that although the initial seizure of property was reasonable, the seizure became unreasonable because its duration unduly intruded upon constitutionally protected interests)); *see Rodriguez* v. *United States*, 135 S. Ct. 1609,

1612–14 (2015) (holding that a lawfully initiated seizure violates the Fourth Amendment if its duration exceeds the time reasonably necessary to complete the tasks that justified the warrantless seizure); *Segura v. United States*, 468 U.S. 796, 812 (1984) ("Of course, a seizure reasonable at its inception because based upon probable cause may become unreasonable as a result of its duration or for other reasons.").

Because the constitutional violation at issue here arises from the prolonged duration of the seizure, petitioners err in asserting that the decision below conflicts with four decisions of this Court addressing the automobile exception to the warrant requirement of the Fourth Amendment. *See* Pet. 14, 22. None of the decisions that petitioners cite addresses the issue of excessive delay in releasing a seized vehicle. *See Florida v. White*, 526 U.S. 559, 566 (1999) (holding that the Fourth Amendment does not require the police to obtain a warrant before seizing an automobile from a public place when they have probable cause to believe that it is forfeitable contraband); *Texas v. Brown*, 460 U.S. 730, 741–44 (1983) (holding that the "plain view" doctrine justified a warrantless seizure of evidence from an automobile where the evidence was lawfully viewed and the police had probable cause to believe the property was illegal drugs); *G.M. Leasing Corp. v. United States*, 429 U.S. 338, 351–52 (1977) (holding that the warrantless seizure of automobiles from a public place to satisfy tax assessments did not violate the Fourth Amendment and finding that the owner had already lost any possessory interest in the property); *Chambers v. Maroney*, 399 U.S. 42, 52 (1970) (holding that police with probable cause to conduct a warrantless search of an automobile may move the car to another location before conducting the search).

Similarly, none of the three circuit court decisions cited by petitioners conflicts with the decision below. *See* Pet. 22–23. *United States v. Noster*, 590 F.3d 624 (9th Cir. 2009), involved the seizure of a truck that had been listed as stolen in a statewide database. After police located the truck parked on a public street, it was impounded and taken to a tow yard, where a search led to the discovery of an illegal pipe bomb and, ultimately, to the conviction of the person who had possessed the truck. *Id.* at 628–29. That person challenged his conviction based on the theory that the officer who entered the stolen vehicle report into the database lacked probable cause to believe that the truck was stolen. The Ninth Circuit held that there was no Fourth Amendment violation because the officer who entered the stolen vehicle report into the database had probable cause to believe the truck was stolen and the officers who seized the truck reasonably relied on the stolen vehicle database. *Id.* at 630–33. The court noted that the plaintiff did not argue that the "continued retention of [the truck] was in any way improper." *Id.* at 634. Here, in contrast, Ms. Meier does not argue that entering a description of her truck into the database was improper or that the officer who had her truck towed acted unreasonably. Rather, she challenges the continued retention of her truck for an improper purpose: to leverage an interview with a suspect.

*Bell v. City of Chicago*, 835 F.3d 736 (7th Cir. 2016), also cited by petitioners, likewise poses no conflict. *Bell* was a facial challenge under the Fourth Amendment to a city ordinance that authorized the police to impound a vehicle if the police had probable cause to believe that the vehicle was used in connection with illegal drug activity. The court upheld the ordinance because it did not authorize warrantless

seizures beyond those deemed constitutional because based on probable cause. *Id.* at 740. The decision in *Bell* has no application here, because Ms. Meier challenges the continued retention of her truck, not its initial seizure.

Similarly, the third case on which petitioners rely to show a purported conflict, *United States v. Cooper*, 949 F.2d 737 (5th Cir. 1991), does not address the issue raised by Ms. Meier's challenge. *Id.* at 747 (holding that "the police may seize a car from a public place without a warrant when they have probable cause to believe that the car itself is an instrument or evidence of crime").

Because the courts below have not decided the first question raised by petitioner and because the decision below poses no conflict with a decision of this Court or of the other courts of appeals, the petition should be denied.

## II. The Eighth Circuit's determination that the City of St. Louis might be liable under *Monell* does not warrant review.

The Eighth Circuit applied the correct analytical framework when it determined that Ms. Meier adduced sufficient evidence to allow her *Monell* claim to go to trial. The court stated that the City could be held liable only if the alleged constitutional violation was caused by action taken pursuant to municipal policy. Pet. App. A-5. That standard flows directly from *Monell v. Department of Social Services of City of New York*, 436 U.S. 658, 690–91 (1978). The Eighth Circuit next stated that, to establish the existence of an unwritten policy, Ms. Meier would have to demonstrate "(1) the existence of a continuing, widespread, persistent pattern of unconstitutional misconduct by the

municipality's employees; (2) deliberate indifference to or tacit authorization of such conduct by the municipality's policymaking officials after notice to the officials of that misconduct; and (3) that she was injured by acts pursuant to the municipality's custom, i.e., that the custom was a moving force behind the constitutional violation." Pet. App. A-5–A-6 (cleaned up and citations omitted). Again, the standard applied by the court below is faithful to *Monell*, 436 U.S. at 694 (discussing municipal liability for policy informally adopted by custom that is the moving force behind the constitutional violation).

Petitioners do not dispute that the Eighth Circuit articulated the correct standards for municipal liability. Rather, they challenge the court's determination that the facts, viewed in Ms. Meier's favor, are sufficient to allow a reasonable jury to return a verdict for Ms. Meier. Even if the court had erred in making those factual findings, this case would not be worthy of this Court's review. *See* S. Ct. R. 10 ("A petition for certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law."). But the court did not err.

Petitioners assert that the court of appeals mistakenly attributed policymaking authority to two of the City's witnesses: the training officer who testified that wanted reports entered into REJIS cause vehicles to be seized and held for the originating agency, and the witness designated to testify for SLMPD under Federal Rule of Civil Procedure 30(b)(6), who stated that entering a wanted report into REJIS is a request that the vehicle be seized without a warrant and held for SLMPD. *See* Pet. App. A-6. According to petitioners, the Eighth Circuit erred because it did not cite state

law establishing that such individuals have policymaking authority. The court did not need to further analyze that issue, however, because *the City conceded the point*. *Id.* 7 ("St. Louis does not contest that [the two witnesses] are policymaking officials."). For this reason, the decision below does not conflict with *City of St. Louis v. Praprotnik*, 485 U.S. 112, 124 (1988) (holding that the identification of policymaking officials is a question of state law).

Petitioners also assert that the Eighth Circuit erred when it found that Ms. Meier had adduced sufficient facts to show that SLMPD had a custom of using wanted reports to seize vehicles without a warrant and to hold them until the driver or owner appeared and answered police questions. Although petitioners argue that the evidence was insufficient to show that such action was routine, the court relied on testimony establishing that SLMPD "regularly" engages in such action. Pet. App. A-6. Thus, petitioners' assertion that municipal liability based on custom "cannot be predicated on a single incident of unconstitutional conduct" is inapposite. Pet. 20 (citing *City of Oklahoma City v. Tuttle*, 471 U.S. 808 (1985)).

Finally, petitioners claim that the Eighth Circuit erred in finding a causal link between SLMPD's custom and the unreasonably prolonged seizure of Ms. Meier's truck because Doc's Towing, rather than SLMPD, held the truck pursuant to SLMPD's wanted report and did not release the truck until it received authorization to do so from SLMPD. Contrary to petitioners' assertion, the involvement of Doc's Towing did not break the causal chain because SLMPD knew that Doc's Towing had the truck and was honoring SLMPD's hold. Rather than seek a warrant or authorize Doc's Towing to immediately release the truck,

SLMPD prolonged the warrantless seizure as a tactic to leverage an interview with a suspect. Thus, SLMPD's action was the moving force behind the violation of Ms. Meier's rights, and the Eighth Circuit correctly held that a municipality can be liable for constitutional violations carried out with the cooperation of a private actor. *See* Pet. App. A-9–A-11.

## CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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