No. 23-972

In the Supreme Court of the United States

ANGELA GERMAINE SPENCER, BY AND THROUGH NEXT FRIEND AND MOTHER OF A.S., A MINOR
PETITIONER
v.
THE COUNTY OF HARRISON, TEXAS,
RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO THE U.S. COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITIONER'S REPLY BRIEF

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REPLY BRIEF

Respondent's brief in opposition confirms that this case presents an excellent opportunity for the Court to consider an important legal question: whether the indiscriminate shackling of detainees—especially children—in nonjury proceedings violates due process.

That is because, on the broader issue of whether due process bars indiscriminate shackling in nonjury proceedings, *see* Pet. at 15–20, Respondent's opposition merely summarizes the Second and Eleventh Circuit cases on one side of the split, BIO at 22–24, and several of the state supreme court cases on the other side, *see, e.g.*, *id.* at 17 ("In Illinois, this rule applies to both bench and jury trials."); *id.* at 27–28 (describing rule in Washington State). The County's own brief, in other words, confirms the existence of a split and acknowledges the issue's importance, thus satisfying the necessary prerequisites for certiorari.

On the narrower issue, of whether due process bars indiscriminate shackling in juvenile courtroom proceedings, Pet. at 10–14, the County concedes that "**all** juveniles" in Harrison County are "shackle[d]" during judicial proceedings, BIO at 6 (emphasis in original). That policy, Respondent further acknowledges, provides no room for an individualized assessment of whether there is a need to restrain a particular detainee. *See id.* And Respondent does not contest that an individualized assessment would have shown no need to shackle in this case. Instead, as it notes, A.S—a disabled, ten-year-old Black child, weighing seventy pounds—"had no problems with any of the detention facility staff or other juveniles during the entirety of his stay at the juvenile detention

center." *Id.* at 6. He "did not meet the criteria" for "further mental health assessment" after an initial screening, "did not receive any 'write ups' for incidents," and did not "have any instances of behavior warranting disciplinary action." *Id.* at 3, 5–6. Harrison County shackled him anyway.

At best, Respondent offers three arguments against review of its indiscriminate and blanket child shackling policy. None have merit.

First, Respondent reports that, "[a]fter a diligent search," it "has not found any cases holding" that it is "unconstitutional to leave a juvenile in shackles during a probable cause hearing or pre-determination hearing." *Id.* at 9. But the petition identified several, including decisions from the California and North Dakota Supreme Courts. *See* Pet. at 10–12 (summarizing *People v. Fierro*, 821 P.2d 1302, 1322 (Cal. 1991); *In re R.W.S.*, 728 N.W.2d 326, 331 (N.D. 2007)). Respondent's brief mentions neither case. Nor does Respondent address the numerous other jurisdictions, cited by both Petitioner and amici, that have outlawed indiscriminate child shackling, whether through judicial decision, state legislation, or administrative regulation. *See, e.g.*, Pet. at 13–14; COPAA Amici at 5–6, 17–19.

Second, Respondent argues that *Monell* liability cannot attach because Harrison County's courtroom shackling policies are set by Judge Black, the "County Court at Law Judge," who "is a state actor, not a County actor." BIO at 9. Respondent made no such argument when it moved for summary judgment. To the contrary, it described the County's Juvenile Board (which Respondent acknowledges *is* a county actor, BIO at 9) and Judge Black as working together to set policy. *See, e.g.*,

Def. MSJ at 16 ("Per departmental polices, as approved by the Juvenile Court Judge, A.S.'s legs were shackled . . . . "). State law, in any event, contradicts Respondent because, under that law, the county juvenile board both appoints and oversees the juvenile court judge. *See* Tex. Fam. Code § 51.04(b) (board shall designate county court at law judge to oversee juvenile matters); Tex. Hum. Res. Code § 152.1081(b) (juvenile court judge is chair of Harrison County juvenile board).

Respondent offers a final set of contentions, on harmless error and nominal damages. BIO at 15–16, 23. Those contentions are both irrelevant to the question presented and foreclosed by longstanding precedent. *See, e.g.*, *Carey v. Piphus*, 435 U.S. 247, 266 (1978).

Respondent's opposition thus lays bare the heart of this case: That indiscriminate shackling of detainees in the courtroom, and particularly the indiscriminate shackling of children and minors, offends due process. The Court should grant review and reverse.

I. MOST JURISDICTIONS HAVE BARRED THE INDISCRIMINATE SHACKLING OF CHILDREN.

Respondent claims that it cannot find any "cases that address whether it is unconstitutional to leave a juvenile in shackles during a pre-determination hearing before a juvenile court judge." BIO at 13; *see also id.* at 9. That is so only because Respondent (1) ignores adverse authority, (2) mischaracterizes case law, and (3) attempts to distinguish relevant cases by drawing irrelevant distinctions.

To start, several key cases discussed in the petition are never mentioned in Respondent's opposition. In *People v.*

Fierro, for example, the language used by California Supreme Court was unequivocal: "[W]e hold that, as at trial, shackling should not be employed at a preliminary hearing absent some showing of necessity for their use." 821 P.2d at 1322. *Fierro* happened to involve an adult defendant, but later cases confirm that the California Supreme Court's holding applies to preliminary hearings involving juveniles, *In re DeShaun M.*, 56 Cal. Rptr. 3d 627, 630 (Ct. App. 2007), including those shackled at the sort of "uncontested pre-disposition hearing" here, *Tiffany A. v. Superior Court*, 59 Cal. Rptr. 3d 363, 366 (Ct. App. 2007). The North Dakota Supreme Court reached the same conclusion in *In re R.W.S.* "[J]uveniles," the court explained, "have the same rights as adult defendants to be free from physical restraints" and so their "due process rights" are violated if a court makes "no findings that [a juvenile] pose[s] an immediate and serious risk of dangerous or disruptive behavior" before shackling them. 728 N.W.2d at 330–31. These decisions establish that shackling a child at any hearing is presumptively unconstitutional. Respondent's brief never mentions *Fierro* or *R.W.S.*

Respondent does discuss decisions from the Washington Supreme Court and New York Court of Appeals, but it mischaracterizes them. Respondent acknowledges, for instance, that in *State v. Jackson*, 467 P.3d 97 (Wash. 2020), "the Washington State Supreme Court extended the trial protections against blanket shackling policies to pretrial proceedings as well." BIO at 27. Respondent suggests, however, that this protection does not extend to juveniles. But that gets things backward. *Jackson* simply extended the bar against indiscriminate shackling to adults in nonjury proceedings. *Jackson* did not need to separately discuss child shackling

because minors in Washington were already protected from such practices by prior judicial decision, *State v. E.J.Y.*, 55 P.3d 673, 679 (Wash. Ct. App. 2002), and court rule, Wash. Juv. Ct. R. 1.6(a) ("Juveniles shall not be brought before the court wearing any physical restraint devices . . . unless the court finds . . . that the use of restraints is necessary.") (cleaned up).

Respondent's discussion of *People v. Best*, 979 N.E.2d 1187 (N.Y. 2012), is equally off-base. Respondent asserts that *Best* involved (a) "a jury trial on the merits" for (b) "an adult defendant," seemingly making it inapposite to this case. BIO at 18. But Respondent's assertion that *Best* involved a jury trial is simply incorrect, as reflected by the opening sentence from the New York Court of Appeals' opinion: "In this appeal, we must determine whether defendant's conviction should be overturned because the trial court restrained defendant *during the course of his bench trial* without articulating a specific justification for doing so." *Best*, 979 N.E.2d at 1187 (emphasis added). Respondent's other argument—that *Best* applies only to adult defendants—is misplaced because in New York, just as in Washington, California, and North Dakota, juveniles enjoy the same protections against indiscriminate shackling as adults. *See* N.Y. Fam. Ct. Act § 162-a(a) ("[R]estraints on children under the age of twenty-one, including, but not limited to, handcuffs, chains, shackles, irons or straitjackets, are prohibited in the courtroom.").

Finally, Respondent tries to distinguish decisions from Illinois and other jurisdictions on the ground that these cases barred indiscriminate shackling of juveniles at a delinquency hearing. BIO at 13–16. From here, Respondent argues that any rule against shackling applies *only* to delinquency, and not to preliminary,

hearings. But no state supreme court has held that the distinction between delinquency and preliminary hearings is relevant much less dispositive. The distinction made no difference in *Fierro*, *R.W.S.*, *Jackson*, or *Best*. To be sure, in *In re Staley*, 364 N.E.2d 72 (Ill. 1977), the juvenile plaintiff was shackled at an adjudicatory hearing. But the Illinois Supreme Court did not draw some rigid separation between adjudicatory and non-adjudicatory hearings. Instead, the court pointed to the "presumption" of innocence and the detrimental impact "for an accused without clear cause to be required to stand in a courtroom in manacles or other restraints while he is being judged." *Id.* at 73. Such reasons echo this Court's language in *Deck v. Missouri*, 544 U.S. 622, 629–32 (2005), and apply equally to all judicial proceedings, including preliminary proceedings.

Respondent cites a single decision, from an intermediate state court of appeals, where the distinction between adjudicatory and preliminary hearings was raised: *State v. Doe*, 333 P.3d 858, 870 (Idaho Ct. App. 2014). But even there, the court ultimately declined to decide whether "due process prohibits routine shackling of juveniles in any juvenile proceeding, including [a] preliminary hearing," in part because the shackling issue was "moot." *Id.* at 871–72.

Attempts to distinguish between a preliminary and adjudicatory juvenile hearing elevate form over substance. That is because in practice preliminary hearings *are* adjudicatory, since nearly half of all juvenile cases are resolved at (or before) the preliminary hearing. *See* Tamar R. Birckhead, *Closing the Widening Net: The Rights of Juveniles at Intake*, 46 Texas Tech L. Rev. 157, 165 (2013). In line with that understanding, the weight of authority and guidance is clear. The American Bar

Association has urged all state and federal governments to ban the practice during all courtroom hearings, not just some of them. *See* Jim Felman & Cynthia Orr, Resolution & Report to the House of Delegates, 2015 ABA Sec. Crim. Just. 2. The recently issued Restatement on Children & the Law is of a piece: The "unreasonable use of restraints is prohibited," because the "practice of shackling a youth's hands or feet for more than a very brief period is unreasonable and offensive to human dignity." Restatement (First) of Children & the Law § 12.20 cmt (g). This case presents the Court with an excellent opportunity to affirm this emerging consensus as a matter of due process.

II. RESPONDENT CANNOT EVADE REVIEW BY SHIFTING BLAME TO AN ACTOR IT APPOINTED AND OVERSEES.

Next, Respondent asserts in its opposition that Petitioner sued the wrong defendant. Petitioner, it says, has challenged a judicial policy that all juveniles remain shackled when appearing in court. That defeats any *Monell* claim, according to Respondent, because the judge "is a state actor, not a County actor." BIO at 9.

Respondent thought differently when it moved for summary judgment. Then, it described the County's shackling practices as a product of "departmental policies" that are "approved by the Juvenile Court Judge." Def. MSJ at 16. It noted that "[s]hackling juveniles for safety and security reasons during transport and court hearings is a common practice in Counties throughout Texas." *Id.* And it further observed that the "procedure for juveniles in [Judge Black's] courtroom"

requires "shackles . . . to remain" on a child. *Id.* at 17. At no point did Respondent argue before the district court that these procedures, applied to all juveniles in all proceedings in the County, fell outside the "execution of a government's policy or custom." *Monell v. Dep't of Soc. Servs. of City of New York*, 436 U.S. 658, 694 (1978).

That argument lacks merit in any event. Respondent concedes that the County Juvenile Board is a county actor that "has policymaking authority over juvenile services, juvenile detention and juvenile probation." BIO at 29; *accord Flores v. Cameron Cnty.*, 92 F.3d 258, 264–65 (5th Cir. 1996). And this Court has long made clear that such "policymaking authority" may be "granted directly by a legislative enactment or may be delegated by an official who possesses such authority." *Pembaur v. City of Cincinnati*, 475 U.S. 469, 483 (1986). *Monell* liability attaches in either circumstance. This case, based on the existing record, falls into at least one if not both categories.

Texas law provides that "the county's juvenile board shall designate one or more district, criminal district, domestic relations, juvenile, or county courts or county courts at law as the [judge of the] juvenile court." Tex. Fam. Code § 51.04(b). Consistent with that law, Harrison County "designate[d]" Judge Black to serve as the county's "Juvenile Court Judge," thereby delegating policymaking authority to him. *See id.*; BIO at 19; *Pembaur*, 475 U.S. at 483. Moreover, as the County's designated juvenile judge, Judge Black not only sits on the County's Juvenile Board—he is also its chairman and chief administrative officer. Tex. Hum. Res. Code § 152.1081(b). It follows that the County can be held liable under *Monell* (1) because its County Juvenile Board

delegated policymaking authority to Judge Black, who thereafter established a blanket courtroom shackling policy, or (2) because Judge Black is himself a part of (indeed the head of) the County Juvenile Board.

For these reasons, Respondent's tardy contentions about *Monell* are no barrier to review. After all, as Respondent acknowledges "**all** juveniles who are taken to juvenile court to see the Juvenile Court Judge" in Harrison County are "shackle[d]." BIO at 6. What is at stake here is whether such a policy violates due process. Whether a judge who chairs the County Juvenile Board, is appointed to oversee juvenile matters by the County Board, and exercises policymaking authority on behalf of the County is a county actor is a separate question better resolved (if properly preserved) on remand. *See, e.g.*, *Collins v. City of Harker Heights*, 503 U.S. 115, 124 (1992) (assuming "for the purpose of decision that the allegations in the complaint are sufficient to provide a substitute for the doctrine of *respondeat superior* as a basis for imposing liability on [a municipality]"); *Tolan v. Cotton*, 572 U.S. 650, 651 (2014) (at summary judgment, facts are viewed in light most favorable to Petitioner, with reasonable inferences drawn in Petitioner's favor).

III. RESPONDENT'S HARMLESS ERROR AND DAMAGES ARGUMENTS ARE UNFOUNDED.

Respondent briefly notes that some courts have applied a harmless-error analysis when faced with a shackling challenge. *See* BIO at 14, 18. Alternatively, Respondent asserts that Petitioner can at most obtain only nominal damages, and cannot recover such damages

here because "Petitioner did not testify or present any evidence of any injury or damage." *Id.* at 15–16.

These are quintessentially questions of fact (whether any constitutional error was harmless; whether and how much damage A.S. suffered as a result of being shackled) that have little bearing on the legal question at issue. They are unfounded in any event.

Courts apply harmless error analysis in criminal and habeas matters. *See, e.g., Arizona v. Fulminante*, 499 U.S. 279, 307–08 (1991) ("[T]he harmless-error doctrine is essential to preserve the principle that the central purpose of a criminal trial is to decide the factual question of the defendant's guilt or innocence.") (internal quotation marks omitted). A different framework applies in § 1983 cases. In such cases, when a plaintiff's rights are infringed, a civil "suit for damages" may proceed even if the underlying conviction or sentence is left untouched because of criminal law "doctrines like independent source and inevitable discovery, and especially harmless error." *Heck v. Humphrey*, 512 U.S. 477, 487 n.7 (1994) (cleaned up). In other words, what matters in § 1983 is whether an individual's constitutional rights have been violated. Harmless error simply does not apply.

Respondent's argument about nominal damages has likewise been asked and answered. Even *if* A.S. could not show actual injury, "courts traditionally have vindicated deprivations of certain 'absolute' rights that are not shown to have caused actual injury through the award of a nominal sum of money." *Carey v. Piphus*, 435 U.S. 247, 266 (1978). That includes "nominal damages for the deprivation of due process." *Memphis Cmty. Sch. Dist. v. Stachura*, 477 U.S. 299, 308 n.11 (1986). When such "a right is violated, that violation imports damage in the

nature of it and the party injured is entitled to a verdict for nominal damages." *Uzuegbunam v. Preczewski*, 141 S. Ct. 792, 800 (2021) (internal quotation marks omitted).

Nor has the Court required that a § 1983 plaintiff specifically plead nominal damages. To the contrary, nominal damages are "awarded by default until the plaintiff establishes entitlement to some other form of damages, such as compensatory or statutory damages." *Id.* The complaint here easily clears that bar, by asking for a "judgment for damages" and any "other further relief as the Court may deem just and proper." App. 56a. None of Respondent's arguments, in short, hold water; none preclude review by this Court of the important legal issue at hand.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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