No. 24-

IN THE

Supreme Court of the United States

COUNTY OF LOS ANGELES; LOS ANGELES COUNTY SHERIFF'S DEPARTMENT,

Petitioners,

v.

PETER WOODS NYARECHA, INDIVIDUALLY; ESTATE OF LEWIS NYARECHA, BY AND THROUGH PETER WOODS, SUCCESSOR IN INTEREST; JUDITH MIREMBE; LEON NYARECHA,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

ALANA H. ROTTER
Counsel of Record
GREINES, MARTIN, STEIN & RICHLAND LLP
6420 Wilshire Boulevard, Suite 1100
Los Angeles, CA 90048
(310) 859-7811
arotter@gmsr.com

IVIE MCNEILL WYATT PURCELL & DIGGS
RICKEY IVIE
444 South Flower Street, Suite 3200
Los Angeles, CA 90071

Counsel for Petitioners
County of Los Angeles; Los Angeles County Sheriff's Department

120229

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

QUESTIONS PRESENTED

The Los Angeles County Sheriff's Department's official policy requires deputy officers to regularly check inmates' cells for signs of life. It is undisputed that the Department trains deputies on that policy. But plaintiffs contend that the Department has an unwritten custom or practice of *not* looking for signs of life—i.e., of deviating from official policy and training. They sued the Department and the County of Los Angeles under 42 U.S.C. § 1983 and *Monell v. Department of Social Services*, 436 U.S. 658 (1978) on that theory. The district court granted summary judgment against them, but the Ninth Circuit reversed.

The questions presented are:

1. Whether the Ninth Circuit departed from this Court's precedent, and impermissibly expanded municipal liability, by holding that video of inmate cell checks from a single cell block on a single night is enough to establish a custom or practice subjecting a county to *Monell* liability.

2. Whether conduct by multiple deputies on a single night constitutes a "single incident" for purposes of the rule that generally, "[p]roof of a single incident of unconstitutional activity is not sufficient to impose liability under *Monell*," *City of Oklahoma City v. Tuttle*, 471 U.S. 808, 823-24 (1985).

PARTIES TO THE PROCEEDINGS AND RULE 29.6 STATEMENT

The parties to the proceeding in the Ninth Circuit are:

- Peter Woods Nyarecha, Estate of Lewis Nyarecha, Judith Mirembe, and Leon Nyarecha, plaintiffs and appellants below, and respondents here.

- County of Los Angeles and Los Angeles County Sheriff's Department, defendants and appellees below, and petitioners here.[1]

There are no publicly-held corporations involved in this proceeding.

1. Defendants Markus Cruz, Stephan Saenz, Tyler Snell, and K. Blandon are not parties to this petition, because plaintiffs did not challenge the judgment as to them in the Ninth Circuit.

RELATED PROCEEDINGS

- United States District Court, Central District of California, Case No. 2:20-cv-04474 AB-MAA, *Peter Woods Nyarecha, et al. v. County of Los Angeles, et al.*; order granting summary judgment entered July 18, 2023; judgment entered August 17, 2023.

- United States Court of Appeals for the Ninth Circuit, Case No. 23-55773; judgment entered October 17, 2024; order denying rehearing entered December 5, 2024.

TABLE OF CONTENTS

Table of Contents

Table of Contents

Table of Contents

TABLE OF APPENDICES

TABLE OF CITED AUTHORITIES

Page

CASES

Page

STATUTES

RULES

OTHER AUTHORITIES

PETITION FOR A WRIT OF CERTIORARI

Petitioners Los Angeles County and the Los Angeles County Sheriff's Department respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

OPINIONS BELOW

The Ninth Circuit's unreported memorandum opinion appears in petitioners' Appendix ("App.") at pages 1a-6a. The Ninth Circuit's December 5, 2024 order denying rehearing appears at App. 20a-21a. The district court's unreported order granting defendants' summary judgment motion appears at App. 10a-19a, and its judgment appears at App. 7a-9a.

BASIS FOR JURISDICTION IN THIS COURT

The Ninth Circuit filed the memorandum opinion at issue in this petition on October 17, 2024. App. 1a. The Ninth Circuit denied petitioners' timely rehearing petition on December 5, 2024. App. 20a-21a. The Court has jurisdiction to review the Ninth Circuit's October 17, 2024 decision on writ of certiorari under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS AT ISSUE

Respondents brought the underlying action under 42 U.S.C. § 1983, 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.

Respondents allege petitioners violated their rights secured by the United States Constitution's Fourteenth Amendment, which provides in relevant part:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

A. An inmate in a Los Angeles County Sheriff's Department facility dies after overdosing on a prescription medication.

Lewis Nyarecha (Nyarecha) was incarcerated in the Los Angeles Sheriff's Department's Twin Towers Correctional Facility. App. 2a. He was housed in moderate observation housing. *Id.* Sheriff's Department policy requires deputies to check the safety of inmates in moderate observation housing cells every 30 minutes. *Id.*

One morning in June 2018, another inmate found Nyarecha dead in his cell. App. 2a. Nyarecha had excessive levels of a prescription medication in his system, consistent with an intentional overdose. 2-ER-170; 3-ER-272-73, 395, 463-67.

B. The inmate's family sues the Sheriff's Department and the County under 42 U.S.C. § 1983, alleging a practice of deputies inadequately checking detainee cells for safety.

Nyarecha's family sued the County of Los Angeles and the Los Angeles County Sheriff's Department under 42 U.S.C. § 1983. They alleged that deputies failed to check Nyarecha's cell for signs of life in the hours before he died, and that adequate checks would have revealed his overdose in time to prevent his death. App. 3a; 2-ER-173; 3-ER-377-79; 4-ER-563-68.

Plaintiffs contended that the allegedly inadequate checks of Nyarecha's cell reflect a County and Sheriff's

Department custom of allowing inadequate safety checks. App. 3a-4a. That contention was crucial to their case, as imposing § 1983 liability on a public entity requires plaintiffs to prove that the entity had a custom or policy amounting to deliberate indifference to a constitutional right. App. 3a.

C. Defendants move for summary judgment, invoking a lack of evidence of a custom or practice of inadequate safety checks.

Defendants moved for summary judgment, presenting evidence that:

• California Code of Regulations Title 15 requires deputies to conduct safety checks of inmate cells at least once every sixty minutes. 2-ER-164. Title 15 defines "safety checks" as "direct visual observations, performed at random intervals within time frames prescribed by these regulations" to provide for the health and welfare of detainees. *Id.*

• The Sheriff's Department requires moderate observation cells to be checked every thirty minutes. 2-ER-164; 3-ER-362-63. Its written policy requires personnel conducting safety checks to "visually inspect[] each inmate's entire body" and to look for "signs of life (e.g. breathing, talking, movement, etc.). . . ." 3-ER-362.

• The deputies assigned to supervise moderate observation housing during Nyarecha's incarceration were trained in Title 15 and Jail Operations, i.e., the Sheriff's Department safety check policy. 2-ER-165; 3-ER-405, 410, 414, 418, 422.

• Deputies checked Nyarecha's cell approximately every thirty minutes in the thirteen hours before another inmate found him dead. 2-ER-62-64; 3-ER-387-91, 411, 414, 419, 423.

Defendants argued that they were entitled to judgment because there was no evidence of a policy of unconstitutional safety checks. 3-ER-494-98. Defendants emphasized that *Monell* claims based on an alleged unwritten custom or practice require evidence that the practice was "'persistent and widespread'", and that the only evidence of an alleged custom or practice here was video of checks on Nyarecha's cell and the adjacent cells in the hours before he died. *Id.*

D. Plaintiffs oppose summary judgment, but present no evidence of any widespread pattern of inadequate safety checks—just video of safety checks from a single night.

Plaintiffs *agreed* that the Sheriff's Department's policy and training requires deputies to confirm signs of life before moving on to the next cell. 2-ER-164-65, 186-88. Indeed, plaintiffs' summary judgment opposition highlighted that all the deputies and the safety check sergeant on shift the night before Nyarecha was found dead were trained that deputies must confirm in each safety check that each inmate is breathing. 2-ER-88-89, 95-97, 103-05, 113-15, 121-25, 137-38.

Plaintiffs argued that the deputies *deviated from* Sheriff's Department policy and from their training here. 2-ER-193-94. Their only evidence on this point was video of safety checks of Nyarecha's cell in the 13 hours before

he was found unresponsive. 2-ER-188. Although the video shows deputies walking by Nyarecha's cell approximately every 30 minutes, plaintiffs asserted that "the deputies barely glance[d] into" the cell and did not appear to stop to determine whether he was breathing. *Id*. They argued that the video demonstrates a County and Sheriff's Department-sanctioned custom or practice of ignoring Title 15 and Sheriff's Department policy. 2-ER-196.

E. The district court grants summary judgment based on insufficient evidence of a practice or custom of inadequate safety checks.

At the hearing on the summary judgment motion, the district court opined that video of a few deputies conducting safety checks over the course of a few hours is not enough to establish "a pattern and practice," as required for *Monell* liability. 2-ER-16, 19-20. The court observed that this would "be a much stronger case" if there had been video of "a completely different day in a completely different cell block," but plaintiffs had presented no such evidence. 2-ER-20.

Plaintiffs' counsel responded that this was not an "isolated incident" because the video covers multiple hours—but he admitted he had no case law allowing *Monell* custom-or-practice liability based on possible negligence over the course of a few hours. 2-ER-18, 20.

The district court then granted summary judgment, observing that "[g]enerally, 'a single incident of unconstitutional activity is not sufficient to impose liability under *Monell*.'" App. 18a (quoting *Gordon v. Cnty. of Orange ("Gordon II")*, 6 F.4th 961, 967-68 (9th Cir. 2021)).

The court highlighted the lack of evidence of "other cases in which the deputies acted similarly, nor any evidence of inadequate safety checks over a longer duration." *Id.*[2]

The court entered judgment for defendants on August 17, 2023. App. 7a-9a.

F. The Ninth Circuit reverses, holding that video of safety checks from a single night supports an inference of a broad practice or custom allowing *Monell* liability.

The Ninth Circuit reversed summary judgment for the County and Sheriff's Department. It held that the evidence "viewed in the light most favorable to Appellants, supports an inference that the safety checks that occurred in the hours preceding Nyarecha's death represent a practice or custom capable of satisfying the standard for *Monell* liability." App. 4a-5a.

The Ninth Circuit rejected defendants' argument that 13 hours of video from a single night in a single cell block does not establish the type of well-settled, long-standing custom that is necessary under *Monell*. App. 4a. The panel reasoned that (1) the video showed that "twenty-six different safety checks each of a seven-cell area, performed by at least six officers, working two different shifts," (2) the checks were all completed "in the exact

2. Plaintiffs also sued individual deputies based on the allegedly inadequate checks. The district court granted qualified immunity on the ground that pre-trial detainees' right to adequate safety checks was not clearly established until after the events at issue here. App. 15a-16a; see *Gordon II*, 6 F.4th at 973. Plaintiffs did not challenge that ruling in the Ninth Circuit, *see* App. 2a, n.1, and it is not at issue here.

same deficient manner"—in the panel's view, without pausing to look into cells for signs of life, and (3) "[i]t is highly unlikely such consistency would have been seen if this were not the de facto policy." App. 5a-6a (footnote omitted).

The Ninth Circuit added that a sergeant's testimony that the checks in the video appeared compliant with Sheriff's Department policy "further supports the inference that safety checks in which officers do not appear to stop at an inmate's door for more than a few seconds and do not appear to look through the door to discern the inmate's condition are consistent with [Sheriff's Department] policy." *Id.*

The Ninth Circuit denied panel and en banc rehearing. App. 20a-21a.

REASONS FOR GRANTING THE PETITION

Certiorari is necessary to nip in the bud a Ninth Circuit expansion of municipal liability under 42 U.S.C. § 1983.

Section 1983 permits municipal liability only based on the municipality's *own* official acts and policies, not on *respondeat superior* liability. *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 619 (1978). Plaintiffs here rely on an alleged unwritten official custom or practice: They allege that although written policy and training require Sheriff's Department deputies to regularly check pretrial detainees for signs of life, the official *unwritten* practice is for deputies to walk by detainees' cells without checking for signs of life.

Plaintiffs' claim relies entirely on video recordings from a single cell block on a single night. They urge a factfinder to *infer* that the checks in the video reflect a broad, permanent practice with the force of law. The Ninth Circuit held this was a permissible inference, sufficient to defeat summary judgment.

The Ninth Circuit's decision contravenes the Court's rule that *Monell* custom or practice claims cannot be based on isolated conduct: It allows a claim to proceed despite no evidence that the one night of checks shown in the video reflect a practice or custom "*so persistent and widespread* as to practically have the force of law." *Connick v. Thompson*, 563 U.S. 51, 61 (2011) (emphasis added).

The Ninth Circuit's decision also improperly shifts the burden of proof from plaintiffs to defendants: Instead of requiring plaintiffs to present evidence that conduct reflects a permanent, well-settled practice, it allows the jury to *infer* a broad practice—unless defendants disprove the supposed practice. This shifted burden imposes a new evidentiary burden on defendants, and has the potential to vastly expand municipal liability. Only this Court's intervention can restore *Monell*'s guardrails.

Alternatively, certiorari is necessary to provide guidance on how the rule that "[p]roof of a single incident of unconstitutional activity is not sufficient to impose liability under *Monell*" when multiple municipal employees are involved in an incident. *City of Oklahoma City v. Tuttle*, 471 U.S. 808, 823-24 (1985).

The Ninth Circuit held that multiple employees' actions on a single night can prove an official practice, without any evidence from other days or locations. The First and Fifth Circuits have reached similar conclusions. But that approach eviscerates the Court's dictate that a practice must be persistent, permanent, and widespread to trigger *Monell* liability. *Connick*, 563 U.S. at 61; *City of St. Louis v. Praprotnik*, 485 U.S. 112, 127 (1988). This case presents an opportunity for the Court to examine and clarify this area of section 1983 jurisprudence.

A. The Ninth Circuit's decision erroneously expands municipal liability by allowing a *Monell* custom/practice claim based on evidence of an isolated incident.

1. *Monell* permits municipal liability only based on policies or customs that represent official policy.

Public entities "cannot be held liable under § 1983 on a *respondeat superior* theory," i.e., solely because they employ a tortfeasor. *Monell*, 436 U.S. at 691. Rather, § 1983 renders public entities liable only for injuries inflicted by a policy or custom "made by [the entity's] lawmakers or by those whose edicts or acts may fairly be said to represent official policy. . . ." *Id.* at 694.

Consistent with this limitation, plaintiffs must prove that a "municipal 'custom' or 'policy'" caused their injury. *Tuttle*, 471 U.S. at 818. Or, put another way, a "municipal policy must be 'the moving force of the constitutional violation.'" *Id.* at 820.

A qualifying policy is one that "the municipality has officially sanctioned or ordered." *Pembaur v. City of Cincinnati*, 475 U.S. 469, 480, 483 (1986). This encompasses "[1] the decisions of a government's lawmakers, [2] the acts of its policymaking officials, and [3] practices *so persistent and widespread* as to practically have the force of law." *Connick*, 563 U.S. at 61 (emphasis added).

2. This Court's precedent dictates that a *Monell* claim based on unwritten custom or practice cannot be based on isolated incidents—the custom must be widespread and permanent.

Plaintiffs here have not pointed to any express municipal policy or action by a final decisionmaker. Just the opposite: They *concede* that Sheriff's Department written policy and training require deputies to check inmates' cells for signs of life. 2-ER-88-89, 95-97, 103-05, 113-15, 121-25, 137-38, 164-65, 186-88.

Instead, plaintiffs rely on an alleged custom or practice that deviates from the written practice and training—specifically, they contend that the *unwritten* practice is for deputies to not actually assess inmates' condition during cell checks. *See* App. 4a.

This Court has held that *Monell* custom or practice liability cannot be predicated on isolated incidents: The custom or practice must be so "widespread" and "'so permanent and well settled as to constitute a "custom or usage" with the force of law.'" *Praprotnik*, 485 U.S. 112, 127 (1988). It follows that "[p]roof of a single incident of unconstitutional activity is not sufficient to impose

liability under *Monell*, unless proof of the incident includes proof that it was caused by an existing, unconstitutional municipal policy, which policy can be attributed to a municipal policymaker." *Tuttle*, 471 U.S. at 823-24.

3. The Ninth Circuit's decision runs afoul of the Court's precedent by allowing a factfinder to infer a municipal custom based on video of safety checks by deputies on a single night in a single cell block.

The Ninth Circuit began by reciting that *Monell* liability must be based on a "'longstanding'" practice and cannot be based on isolated incidents. App. 3a-4a. But it then vastly lowered the bar for proving a longstanding practice: It held that a factfinder can *infer* a longstanding practice based on the actions of low-level sheriff's deputies on a single night. App. 4a-5a. That was clear error, and an expansion of municipal liability beyond what this Court's precedent allows.

A few deputies' conduct on a single night is not evidence that the conduct has become municipal policy. That all the checks in the video were conducted the same way (App. 5a) establishes only that six deputies in one cell block were consistent throughout one night. That is not a significant data point in the context of a sprawling detention center overseen by the largest sheriff's department in the nation. And it is the *only* data point: As the district court pointed out, plaintiffs "did not submit evidence of other cases in which the deputies acted similarly, nor any evidence of inadequate safety checks over a longer duration." App. 18a.

As the district court recognized (2-ER-20), it is pure speculation that other deputies conduct checks the same way, and that this reflects a "practice[] so persistent and widespread as to practically have the force of law," *Connick*, 563 U.S. at 61. There is no evidence that the checks in the video reflect a *widespread* practice: These six deputies may perform checks differently on other shifts, and there is no evidence that they are a representative sample of all deputies. Nor is there evidence that the checks in the video reflect a *persistent* or *longstanding* practice: To the extent the checks deviate from written policy and training, that deviation may be recent, and therefore not yet fairly attributable to County and Sheriff's Department final policymakers.

The Ninth Circuit's willingness to *infer* a County and Sheriff's Department practice from such limited evidence conflicts with its own rule that "[w]hen one must resort to inference, conjecture and speculation to explain events, the challenged practice is not of sufficient duration, frequency and consistency to constitute an actionable policy or custom." *Trevino v. Gates*, 99 F.3d 911, 920 (9th Cir. 1996).

The decision here will open the door to a flood of plaintiffs pursuing *Monell* claims based on inferences from the type of isolated incidents that, until now, have been insufficient to establish municipal liability. It flips the burden on *Monell* claims, allowing plaintiffs to argue that evidence from a single night reflects a custom unless defendants can *disprove* the inference by presenting evidence from other officers, times, and locations. And, by allowing liability without evidence of a longstanding custom, it effectively exposes municipalities to the

respondeat superior liability that *Monell* bars. *Monell*, 436 U.S. at 691.

Plaintiffs understood the Ninth Circuit's broad expansion of *Monell* liability, and requested publication (albeit unsuccessfully) for precisely that reason. Their own characterization of the Ninth Circuit decision highlights what is to come: They describe it as (1) "clarif[ying] a significant question as to what sort of conduct evidences the required 'longstanding' practice and custom," (2) "clarif[ying] that evidence of a consistent practice may establish the requisite custom/practice despite the conduct taking place over a relatively short period of time," (3) "clarifying that a 'longstanding practice or custom' need not be shown by examples of conduct over a long period of time," and (4) "refin[ing] the analysis of the 'longstanding practice or custom' to steer the analysis away from a strictly temporal assessment of the time over which the conduct took place. . . ." Ninth Cir. Dkt. 43, at 2-3. Litigants in other cases will surely use the decision in the same way—that is, as an end run around having to provide actual evidence of a longstanding, pervasive policy, and a way to hold municipalities liable for isolated constitutional violations by low-level employees.

It makes no difference that the decision is unpublished. A Circuit panel is not free to depart from clear limitations on section 1983 liability set by this court via a memorandum disposition any more than it may do so in a published opinion. *See City of Escondido v. Emmons*, 586 U.S. 38 (2019) (per curiam) (reversing Ninth Circuit memorandum disposition denying qualified immunity to officer in section 1983 action). Moreover, unpublished Ninth Circuit decisions are citable (9th Cir. R. 36-3(b)),

and district courts routinely rely on them, so invocation of the errant decision, and resulting protracted litigation on the scope of municipal liability, is not simply likely, but inevitable. The Court should grant certiorari to halt this unwarranted and unsupported expansion of *Monell* liability at the outset.

4. The Ninth Circuit's decision significantly expands liability beyond the sole case it cites as allowing *Monell* custom claims based on isolated incidents.

In rejecting defendants' argument that video from a single night cannot establish a municipal practice or custom, the Ninth Circuit cited *Menotti v. City of Seattle*, 409 F.3d 1113 (9th Cir. 2005) for the proposition that *Monell* liability can be based on events occurring "in quick succession over a relatively short period. . . ." App. 4a. *Menotti* does not support the result here.

Menotti involved an emergency order that the City of Seattle adopted during violent protests at the 1999 World Trade Organization (WTO) conference. 409 F.3d at 1124. The order prohibited the public from entering a restricted zone around the conference venue unless they were (1) authorized conference participants, (2) employees, owners, or customers of businesses within the restricted area, or (3) emergency and safety personnel. *Id*. at 1125.

The *Menotti* plaintiffs contended that in implementing the emergency exclusion order, the City violated the First Amendment by adopting a policy of excluding anti-WTO protestors. *Id.* at 1146. *Menotti* found a genuine issue of material fact as to whether the City had such a policy,

based on (1) declarations from at least five people who the police barred from entering unless they removed anti-WTO buttons or stickers, and (2) testimony from a City final policymaker that the City's implementation of the emergency order "'prohibit[ed] any demonstrations within that core area for the remainder of the week.'" *Id.* at 1447-48; *see also id.* at 1126 (police chief testified that the order's purpose was to exclude protestors from entering the restricted zone).

The Ninth Circuit here emphasized that all of the alleged constitutional violations in *Menotti* occurred on a single day. App. 4a. That ignores important context: The emergency order in *Menotti* was only in effect for three days, and the final policymaker *acknowledged* a policy of excluding protestors. 409 F.3d at p. 1124, 1126.

The alleged practice here is not based on a short-term emergency order governing a single convention: plaintiffs allege a "*permanent*" practice of inadequate cell checks. E.g., Ninth Cir. Dkt. 11 at 17; Ninth Cir. Dkt. 22 at 2 (emphasis added). They must establish that the alleged practice is so "widespread" and "'so permanent and well settled'" as to have acquired the "'force of law.'" *Praprotnik*, 485 U.S. at 127. That is a far different showing than how a three-day emergency order is enforced.

Nor, unlike in *Menotti*, did any official with final policymaking authority confirm the alleged custom or practice here. The Ninth Circuit cited a sergeant's testimony that the checks in the video were compliant with Sheriff's Department policy. App. 5a-6a. But there is no evidence that the sergeant is a final policymaker with authority to make decisions for the Department or County.

Moreover, the sergeant testified specifically that the checks were compliant "with Title 15 and [Sheriff's Department] policy." 3-ER-426-27. It is undisputed that Title 15 and Sheriff's Department policy require "direct visual observations of inmates" and looking for "signs of life (e.g. breathing, talking, movement, etc.). . . ." 2-ER-164; 3-ER-362. The sergeant, thus, could only have meant that he perceived that the deputies *were* looking into cells to check for signs of life—not that failing to look into cells reflects the Sheriff's Department's official practice.

The bottom line: Nothing in *Menotti* permits inferring an inadequate-cell-check practice "so persistent and widespread as to practically have the force of law," *Connick*, 563 U.S. at 61, from video of one night of checks on one cell block. While the emergency order enforcement policy in *Menotti* may have had the force of law, there was no equivalent showing here. Rather, the decision expands liability well beyond *Menotti*, and violates the Court's rule that "[p]roof of a single incident of unconstitutional activity" generally is insufficient for municipal liability. *Tuttle*, 471 U.S. at 823-24.

B. Alternatively, certiorari is necessary to clarify whether multiple deputies' conduct on the same night constitutes a "single incident" for purposes of this Court's rule that proof of a single incident is generally insufficient to impose *Monell* liability.

As just shown, the Ninth Circuit decision is clearly erroneous. But the error highlights an area that warrants further guidance from the Court: the parameters of the rule that "[p]roof of a single incident of unconstitutional

activity is not sufficient to impose liability under *Monell*, unless proof of the incident includes proof that it was caused by an existing, unconstitutional municipal policy, which policy can be attributed to a municipal policymaker." *Tuttle*, 471 U.S. at 823-24.

Justices O'Connor and Brennan previously cautioned that to infer municipal policy "'from the isolated misconduct of a single, low-level officer, and then to hold the city liable on the basis of that policy, would amount to permitting precisely the theory of strict *respondeat superior* liability rejected in *Monell*.'" *City of Canton v. Harris*, 489 U.S. 378, 399-400 (1989) (O'Connor, J., concurring in part and dissenting in part) (quoting *Tuttle*, 471 U.S. at 831 (Brennan, J., concurring in part)).

But what about when multiple officers are involved in a single incident? Do their actions constitute a "single incident" insufficient on its own to impose liability under *Monell*, or does the involvement of multiple officers support an inference of a widespread, longstanding practice with the force of law?

The Court granted certiorari to review two variations on this question shortly after deciding *Tuttle*, in *City of Springfield, v. Kibbe*, 480 U.S. 257 (1987). Specifically, it agreed to decide (1) whether *Tuttle*'s "'single incident' rule" "is limited in application to one act by one officer," and (2) whether an inadequate-training policy "may be inferred from the conduct of several police officers during a single incident absent evidence of prior misconduct in the department or a conscious decision by policymakers." *Id.* at 258 & n.†.

The Court ultimately dismissed certiorari in *Kibbe* as improvidently granted, because it determined that the petitioner had forfeited a third issue below and that the single-incident questions did not warrant independent review. *Id.* at 258-59. The time is ripe to clarify the single-incident rule now.

The Ninth Circuit's decision here highlights confusion over how *Tuttle*'s single-incident rule applies to multiple officers' conduct within a short time. The Ninth Circuit began by acknowledging *Tuttle*'s rule. App. 4a. It also acknowledged Ninth Circuit precedent that *Monell* liability cannot rest on "'isolated or sporadic incidents.'" *Id.*, quoting *Sabra v. Maricopa Cnty. Cmty. Coll. Dist.*, 44 F.4th 867, 884 (9th Cir. 2022). Yet the decision interpreted another Ninth Circuit decision, *Menotti*, 409 F.3d at 1147-49, as permitting it to infer a municipal practice based on isolated incidents—namely, conduct "occur[ing] in quick succession over a relatively short period of time"—because multiple deputies acted consistently within that short time. App. 4a.

The First and Fifth Circuits have reached similar conclusions in excessive force cases involving single incidents with multiple officers. *See*, *e.g.*, *Kibbe v. City of Springfield*, 777 F.2d 801, 805 (1st Cir. 1985) (distinguishing *Tuttle* as involving "only one officer who fired one shot," whereas "this case involves at least ten officers and three separate shooting incidents" on a single evening); *Bordanaro v. McLeod*, 871 F.2d 1151, 1156-57 (1st Cir. 1989) (holding that the "single incident" rule does not apply where the incident "involves the concerted action of a large contingent of individual municipal employees"); *Grandstaff v. City of Borger*, 767 F.2d 161, 171 (5th Cir.

1985) (distinguishing *Tuttle*, where there were "repeated acts of abuse on [one] night, by several officers in several episodes" as officers sought a fugitive).

These courts' approach excuses plaintiffs from presenting evidence that a practice is "so persistent and widespread as to practically have the force of law." *Connick*, 563 U.S. at 61. Instead, juries will be invited to *infer* that an isolated act represents official practice, just because multiple officers were involved—without any evidence that the conduct is longstanding, that it is widespread among other employees, or that municipal authorities knew about it and approved it.

Permitting juries to infer a longstanding custom or practice from isolated conduct on a single night creates exactly the risk that Justices O'Connor and Brennan warned of: collapsing *Monell* liability into *respondeat superior* liability. *City of Canton*, 489 U.S. at 399-400 (O'Connor, J., concurring in part and dissenting in part); *Tuttle*, 471 U.S. at 831 (Brennan, J., concurring in part). This Court's guidance on how the single-incident rule applies to incidents involving multiple officers over a short period of time is necessary to gird the boundary between *Monell* and *respondeat superior* liability.

CONCLUSION

The Ninth Circuit's decision vastly expands *Monell* custom and practice liability beyond permissible bounds. The Court should grant certiorari to reverse the Ninth Circuit's clear error, or in the alternative, to clarify how *Tuttle*'s single-incident rule applies to multiple low-level officers' conduct over a single short period of time.

Respectfully submitted,

ALANA H. ROTTER
Counsel of Record
GREINES, MARTIN, STEIN & RICHLAND LLP
6420 Wilshire Boulevard, Suite 1100
Los Angeles, CA 90048
(310) 859-7811
arotter@gmsr.com

IVIE MCNEILL WYATT PURCELL & DIGGS
RICKEY IVIE
444 South Flower Street, Suite 3200
Los Angeles, CA 90071

Counsel for Petitioners
County of Los Angeles; Los Angeles County Sheriff's Department

APPENDIX

TABLE OF APPENDICES

APPENDIX A — MEMORANDUM OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, FILED OCTOBER 17, 2024

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 23-55773

D.C. No. 2:20-cv-04474-WLH-MAA

PETER WOODS NYARECHA, INDIVIDUALLY; ESTATE OF LEWIS NYARECHA, BY AND THROUGH PETER WOODS, SUCCESSOR IN INTEREST,

Plaintiffs-Appellants,

JUDITH MIREMBE,

Intervenor-Plaintiff-Appellant,

and

LEON NYARECHA,

Intervenor-Plaintiff,

v.

COUNTY OF LOS ANGELES; *et al.*,

Defendants-Appellees.

Appeal from the United States District Court
for the Central District of California
Wesley L. Hsu, District Judge, Presiding

Argued and Submitted September 13, 2024
Pasadena, California

Appendix A

Before: FRIEDLAND and DESAI, Circuit Judges, and SCHREIER,* District Judge.

MEMORANDUM**

Appellants, Peter Woods Nyarecha, on behalf of both himself and his son Lewis Nyarecha's estate, and Judith Mirembe, appeal the district court's grant of summary judgment on their *Monell* 42 U.S.C. § 1983 claim in favor of Los Angeles County and the Los Angeles County Sherriff's Department (LASD).[1] We have jurisdiction under 28 U.S.C. § 1291 and we reverse and remand.

In March 2018, Lewis Nyarecha (Nyarecha) was arrested and placed in the custody of the LASD at the Twin Towers Correctional Facility in Los Angeles. Because of a medical diagnosis, Nyarecha was housed in moderate observation housing (MOH).

On June 6, 2018, Nyarecha was found dead in his cell by an inmate trustee at 11:17 am. Although LASD policy requires cells designated as MOH to be subject to safety checks every 30 minutes, in the thirteen hours prior to Nyarecha being found, the officers completing the checks of Nyarecha's cell block did not assess Nyarecha's condition.

---

* The Honorable Karen E. Schreier, United States District Judge for the District of South Dakota, sitting by designation.

** This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

1. Appellants do not appeal the district court's grant of summary judgment in favor of the individual defendants.

Appendix A

We review a district court's grant of summary judgment de novo, viewing all evidence in the light most favorable to the nonmoving party and drawing all reasonable inferences in that party's favor. *Herrera v. Los Angeles Unified Sch. Dist.*, 18 F.4th 1156, 1158 (9th Cir. 2021). To impose *Monell* liability under 42 U.S.C. § 1983 on a municipality or governmental entity, plaintiffs "must prove: [that] (1) [plaintiff] had a constitutional right of which he was deprived; (2) the municipality had a policy [or custom]; (3) the policy [or custom] amounts to deliberate indifference to his constitutional right; and (4) the policy [or custom] is the moving force behind the constitutional violation."[2] *Gordon v. County of Orange*, 6 F.4th 961, 973 (9th Cir. 2021) (citation omitted).

Appellants brought their action under the "custom or policy" theory of liability. A governmental policy or custom is "a deliberate choice to follow a course of action . . . 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, 106 S. Ct. 1292, 89 L. Ed. 2d 452 (1986). Under *Monell*, one way a plaintiff may establish a policy or custom is by showing that the alleged constitutional violation was done in accordance with the governmental body's "longstanding practice or custom." *Gordon*, 6 F.4th at 973 (citation omitted). Generally,

2. It is undisputed that Nyarecha had a constitutional right to adequate safety checks. *See Gordon v. County of Orange*, 6 F.4th 961, 973 (9th Cir. 2021) ("We [] hold that pre-trial detainees do have a [constitutional] right to direct-view safety checks sufficient to determine whether their presentation indicates the need for medical treatment.").

"[p]roof of a single incident of unconstitutional activity is not sufficient." *City of Oklahoma City v. Tuttle*, 471 U.S. 808, 823-24, 105 S. Ct. 2427, 85 L. Ed. 2d 791 (1985) (plurality opinion). A plaintiff's claim cannot be based on "isolated or sporadic incidents; [liability] must be founded upon practices of sufficient duration, frequency and consistency that the conduct has become a traditional method of carrying out policy." *Sabra v. Maricopa Cnty. Cmty. Coll. Dist.*, 44 F.4th 867, 884 (9th Cir. 2022) (alteration in original) (quoting *Trevino v. Gates*, 99 F.3d 911, 918 (9th Cir. 1996)).

Appellants argue that the twenty-six checks that occurred before Nyarecha was found dead are sufficient to show that LASD had a custom or policy of not actually assessing the condition of detainees during checks. The district court rejected this argument and characterized the thirteen-hour period as a single incident, holding that it was not of sufficient duration to evidence a custom or policy under *Monell*. We disagree. The fact that the constitutionally inadequate checks occurred in quick succession over a relatively short period of time does not bar *Monell* liability. *See, e.g., Menotti v. City of Seattle*, 409 F.3d 1113, 1147-49 (9th Cir. 2005) (holding that a series of constitutional violations committed by multiple officers during the course of a single day was sufficient to create a genuine issue of fact as to whether the city had an unconstitutional custom or policy).

Here, the evidence in the record, viewed in the light most favorable to Appellants, supports an inference that the safety checks that occurred in the hours preceding

Nyarecha's death represent a practice or custom capable of satisfying the standard for *Monell* liability. Unlike in *Gordon*, where the plaintiff specifically challenged two deficient safety checks carried out by the same officer, and where at most three other deficient safety checks had occurred, 6 F.4th at 966, the record here shows that twenty-six different safety checks each of a seven-cell area, performed by at least six officers,[3] working two different shifts, were *all* constitutionally deficient. During those checks, none of the officers stopped outside of Nyarecha's cell or the cells of the other detained inmates. Instead, the officers consistently completed their checks of Nyarecha's seven-cell area in under twenty seconds, without breaking stride or pausing to look into the cells. And at no point did any officer attempt to elicit a response from Nyarecha or any other inmate. Moreover, the officers each completed their checks independently, and completed them in the exact same deficient manner, indicating that the behavior exhibited during the twenty-six checks is indeed the norm. It is highly unlikely such consistency would have been seen if this were not the de facto policy.

Additionally, Sergeant Gary Kellum, the safety check sergeant charged with supervising officers who conduct safety checks, asserted that, after reviewing video footage of the checks that occurred on the morning of Nyarecha's death, he believed the checks were compliant with LASD policy. Kellum's statement further supports the inference that safety checks in which officers do not appear to stop

3. It is unclear exactly how many officers are shown in the video, but at least six officers (Nieves, Blandon, Snell, Cruz, Saenz, and Zhu) completed checks of Nyarecha's cell.

at an inmate's door for more than a few seconds and do not appear to look through the door to discern the inmate's condition are consistent with LASD's policy.

Thus, we reverse and remand to the district court for consideration consistent with this decision.

REVERSED AND REMANDED

APPENDIX B — JUDGMENT FOLLOWING ORDER OF THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA, FILED AUGUST 17, 2023

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Case No. 20-cv-04474 AB-MAA

PETER WOODS NYARECHA, INDIVIDUALLY; ESTATE OF LEWIS NYARECHA, BY AND THROUGH PETER WOODS, SUCCESSOR IN INTEREST,

Plaintiffs,

v.

COUNTY OF LOS ANGELES, LOS ANGELES COUNTY SHERIFF'S DEPARTMENT, DEPUTY MARKUS CRUZ, DEPUTY STEPHAN SAENZ, DEPUTY TYLER SNELL, AND DEPUTY K. BLANDON,

Defendants.

JUDGMENT FOLLOWING ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT [150]

This action came on for hearing before the Court on the above-stated date, Hon. Wesley L. Hsu, District Court Judge Presiding, on a Motion for Summary Judgment filed by Defendants COUNTY OF LOS ANGELES, LOS ANGELES COUNTY SHERIFF'S DEPARTMENT,

Appendix B

DEPUTY MARKUS CRUZ, DEPUTY STEPHAN SAENZ, DEPUTY TYLER SNELL, and DEPUTY K. BLANDON. The evidence presented having been fully considered, the issues having been duly heard and a decision having been duly rendered, **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that:

1. Judgment shall be entered in favor of Defendants on all claims asserted in this action by Plaintiffs Peter Woods Nyarecha and Estate of Lewis Nyarecha, by and through Peter Woods.

2. Plaintiffs shall take nothing in this action.

3. Defendant shall not recover costs because it did not specify its costs request in its Motion for Summary Judgment and because it has not overcome the presumption against awarding costs to defendants in civil rights cases. *See, e.g.*, *Patton v. Cnty. of Kings*, 857 F.2d 1379, 1381 (9th Cir. 1988) ("A prevailing civil rights defendant should be awarded attorney's fees not routinely, not simply because he succeeds, but only where the action brought is found to be unreasonable, frivolous, meritless or vexatious.").

4. The trial set to begin on September 26, 2023, and all other pretrial dates are vacated.

IT IS SO ORDERED.

Appendix B

Dated: August 17, 2023

/s/ Wesley L. Hsu
HON. WESLEY L. HSU
UNITED STATES DISTRICT JUDGE

APPENDIX C — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA, FILED JULY 18, 2023

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Case No. 2:20-cv-04474-WLH-MAA

PETER WOODS NYARECHA, INDIVIDUALLY; ESTATE OF LEWIS NYARECHA, BY AND THROUGH PETER WOODS, SUCCESSOR IN INTEREST,

Plaintiffs,

v.

COUNTY OF LOS ANGELES, LOS ANGELES COUNTY SHERRIFF'S DEPARTMENT, DEPUTY MARKUS CRUZ, DEPUTY STEPHAN SAENZ, DEPUTY TYLER SNELL, AND DEPUTY K. BLANDON,

Defendants.

ORDER RE DEFENDANTS' MOTION FOR SUMMARY JUDGMENT [132]

I. BACKGROUND

This case stems from a tragedy. On March 10, 2018, decedent Lewis Nyarecha ("Nyarecha"), a 22-year-old man, was arrested for attempted bank robbery under Cal. Penal Code sections 664/211. (Separate Statement of Undisputed Facts ("SSUF"), Docket No. 144 ¶ 3). After his

arrest, Nyarecha was placed in the custody of Defendant Los Angeles County Sheriff's Department (the "Sheriff's Department") and held on bond at the Twin Towers Correctional Facility in Los Angeles. (*Id.* ¶ 4). On March 15, 2018, Nyarecha received a psychiatric assessment and described hearing voices in his sleep. (*Id.* ¶ 5). Nyarecha indicated that he had taken a medication called Seroquel in the past with success. (*Id.*) A doctor prescribed Nyarecha a daily dose of Seroquel. (*Id.*)

Nyarecha was housed in Moderate Observation Housing, C Pod, in cell #5. (*Id.* ¶ 19). Under California law, jail personnel must conduct inmate safety checks at least once every hour "through direct visual observation." Cal. Code Regs. Tit. 15, § 1027.5. In Moderate Observation Housing, personnel are required by Sheriff's Department policy to conduct these safety checks every 30 minutes. (SSUF ¶ 21).

Nyarecha received intermittent psychiatric evaluation throughout his stay at the Twin Towers Correctional Facility, and his prescribed dose of Seroquel was adjusted accordingly. (*Id.* ¶ 12). Dr. Kavaita Khajuria performed Nyarecha's last psychiatric assessment, on May 22, 2018. (*Id.* ¶ 13). Based on that assessment, Dr. Khajuria did not believe that Nyarecha was at a heightened risk of suicide. (*Id.* ¶ 16).

At approximately 11:00 a.m. on June 6, 2018, an inmate trustee discovered Nyarecha unresponsive in his cell. (*Id.* ¶ 31). The trustee reported down to Deputy Jonathan Steele, who responded, along with Defendant

Deputy Markus Cruz, to Nyarecha's cell. (*Id.* ¶¶ 32-33). The deputies removed Nyarecha from his bunk and performed CPR on him until they were relieved by nursing personnel. (*Id.* ¶¶ 35, 37). Nyarecha was pronounced dead by paramedics at 11:32 a.m. (*Id.* ¶ 38). The Department of the Medical Examiner-Coroner found that Nyarecha had died of Seroquel toxicity and classified Nyarecha's death as a suicide. (*Id.* ¶¶ 9, 41).

On May 18, 2020, Plaintiff Peter Woods, Nyarecha's father, brought this suit on behalf of himself and as representative of Nyarecha's estate. (Compl., Docket No. 1). On May 28, 2021, Woods filed the operative Third Amended Complaint. (Third Am. Compl. ("TAC"), Docket No. 45). The crux of Woods's claims is that the deputies assigned to perform safety checks on Nyarecha every half hour did not do so in the hours before Nyarecha's death, thereby missing signs that Nyarecha had overdosed and, ultimately, failing to prevent Nyarecha's death. (*Id.*).

Woods alleges four causes of action, all under 42 U.S.C. § 1983, against the County of Los Angeles, the Sheriff's Department (collectively, the "County Defendants"), and Deputies Cruz, Stephen Saenz, Tyler Snell, and K. Blandon (collectively, the "Individual Defendants"). (TAC). Woods brings 1) a claim for failure to protect from harm in violation of the Fourteenth Amendment against the Individual Defendants (the "First Claim"); 2) a claim for deliberate indifference to serious medical and mental health needs in violation of the Fourteenth Amendment against the Individual Defendants (the "Second Claim"); 3) a claim under *Monell* against the County Defendants

(the "Third Claim"); and 4) a claim for interference with familial association in violation of the Fourteenth Amendment against all Defendants (the "Fourth Claim"). Defendants move for summary judgment on all four claims. (Mot. for Summ. J., Docket No. 132).

II. LEGAL STANDARD

A motion for summary judgment must be granted when "the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986). The moving party bears the initial burden of identifying the elements of the claim or defense and evidence that it believes demonstrates the absence of an issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986).

Where the nonmoving party will have the burden of proof at trial, as here, the movant can prevail by pointing out that there is an absence of evidence to support the nonmoving party's case. *Id.* The moving party may do so in one of two ways: by either "produc[ing] evidence negating an essential element of the nonmoving party's case, or... show[ing] that the nonmoving party does not have enough evidence of an essential element of its claim or defense to carry its ultimate burden of persuasion at trial." *Nissan Fire & Marine Ins. Co. v. Fritz Companies, Inc.*, 210 F.3d 1099, 1106 (9th Cir. 2000) (citing *Celotex*,

477 U.S. 317; *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 90 S. Ct. 1598, 26 L. Ed. 2d 142 (1986)). The nonmoving party then "must set forth specific facts showing that there is a genuine issue for trial." *Anderson*, 477 U.S. at 248. The Court must draw all reasonable inferences in the light most favorable to the nonmoving party. *In re Oracle Corp. Sec. Litig.*, 627 F.3d 376, 387 (9th Cir. 2010) (citing *Anderson*, 477 U.S. at 255). Where, taken in that light, the record "could not lead a rational trier of fact to find for the nonmoving party, there is no 'genuine issue for trial,'" and the court must grant summary judgment. *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587, 106 S. Ct. 1348, 89 L. Ed. 2d 538 (1986).

III. DISCUSSION

For the reasons below, the Court **GRANTS** Defendants' Motion for Summary Judgment on all claims.

A. Evidentiary Objections

Defendants objected to portions of the declaration of Woods's expert, Dr. Martin E. Lutz, on the grounds that it lacks foundation, it is argumentative, and it presents improper expert opinion. (Defs.' Objs. to Pls.' Evid., Docket No. 145). The Court finds that Dr. Lutz provides foundation for his expert opinion in his report and that his opinion is not argumentative under Federal Rule of Evidence 403. The objections on those bases are therefore overruled. While some of Dr. Lutz's declaration is objectionable in that it presents legal conclusions, the Court did not consider those conclusions in ruling on the

Motion. The objections based on improper expert opinion are therefore overruled as moot.

B. The Individual Defendants

The Fourteenth Amendment underpins each of Woods's First, Second, and Fourth Claims against the Individual Defendants. *See, e.g.*, *Castro v. Cnty. of Los Angeles*, 833 F.3d 1060, 1070 (9th Cir. 2016) (discussing standard for "failure-to-protect claims brought by pretrial detainees against individual defendants under the Fourteenth Amendment"); *Sandoval v. Cnty. of San Diego*, 985 F.3d 657, 667 (9th Cir. 2021), *cert. denied sub nom. San Diego Cnty. v. Sandoval*, 142 S. Ct. 711, 211 L. Ed. 2d 400 (2021) (pretrial detainees' right to medical treatment "arise[s] under the Fourteenth Amendment's Due Process Clause"); *Wilkinson v. Torres*, 610 F.3d 546, 554 (9th Cir. 2010) ("[P]arents have a Fourteenth Amendment liberty interest in the companionship and society of their children.")

Individual Defendants argue that they are entitled to qualified immunity on each of these claims. "In evaluating a grant of qualified immunity, a court considers whether (1) the state actor's conduct violated a constitutional right and (2) the right was clearly established at the time of the alleged misconduct." *Gordon v. Cnty. of Orange* ("*Gordon II*"), 6 F.4th 961, 967-68 (9th Cir. 2021). In *Gordon II*, the Ninth Circuit considered a case brought by the mother of an inmate who died of an overdose while incarcerated. *Id.* The defendant officer admitted that his safety checks in the hours leading up to the inmate's death did not comply with

Title 15 in that he could not discern whether the inmate "was breathing, alive, sweating profusely, drooling, or had any potential indicators of a physical problem." *Id.* at 967. The Ninth Circuit found that while the officer had violated the inmate's constitutional right to safety checks, the right had not been clearly established at the time. *Id.* at 973. The court held for the first time "that pre-trial detainees do have a right to direct-view safety checks sufficient to determine whether their presentation indicates the need for medical treatment." *Id.* The court further warned that "law enforcement and prison personnel should heed this warning because the recognition of this constitutional right will protect future detainees." *Id.*

Nyarecha died in 2018, three years before *Gordon II*. Pre-trial detainees' constitutional right to safety checks had not yet been clearly established. Thus, the Individual Defendants are entitled to qualified immunity.

The Court **GRANTS** summary judgment as to the First and Second Claims, as well as to the Fourth Claim against the Individual Defendants.

C. *Monell* Claims

Under *Monell*, a municipality may be held liable under § 1983. *Monell*, 436 U.S. at 690. "[A] local government may not be sued under § 1983 for an injury inflicted solely by its employees or agents," however. *Id.* at 694. Rather, to establish municipal liability, the plaintiff must show "(1) that he possessed a constitutional right of which he was deprived; (2) that the municipality had a policy; (3) that

this policy 'amounts to deliberate indifference' to the plaintiff's constitutional right; and (4) that the policy is the 'moving force behind the constitutional violation.'" *Oviatt By & Through Waugh v. Pearce*, 954 F.2d 1470, 1474 (9th Cir. 1992) (quoting *City of Canton v. Harris*, 489 U.S. 378, 389-91, 109 S. Ct. 1197, 103 L. Ed. 2d 412 (1989)). For the purposes of prongs two through four, a plaintiff may establish a municipal policy by showing his injuries were caused by either "an expressly adopted official policy, a long-standing practice or custom, or the decision of a 'final policymaker.'" *Ellins v. City of Sierra Madre*, 710 F.3d 1049, 1066 (9th Cir. 2013).

As discussed above, Nyarecha had a constitutional right to direct-view safety checks. At issue, then, is whether the County Defendants have a policy of conducting safety checks inadequately. Woods alleges that they do. (TAC ¶¶ 68-79). To support his claim that inadequate safety checks are a "long-standing practice or custom" of the Sheriff's Department, Woods points to excerpted depositions from this case, in which deputies explain their methods for conducting cell checks. (*See* Decl. of Arnoldo Casillas, Docket No. 140). For example, Deputy Steele explained in his deposition that when an inmate has a sheet over his body—as Nyarecha did when he was found—"there are times when it's very difficult to determine" whether the inmate is breathing, but deputies do not always try to elicit a response from inmates in those instances. (Pls.' Exh. 5). In contrast, in his deposition, Sergeant Gary Kellum stated that "[i]f a blanket is over an inmate, the deputy stands there to see if they are breathing, see if the chest is rising up and down."

(Pls.' Exh. 7). If a deputy is not able to ascertain whether the inmate is breathing, according to Sergeant Kellum, the deputy is required to "call the sergeant, additional personnel, and then... go in and do a welfare check." (*Id.*). Woods also offers videos of two shifts' worth of safety checks conducted in Nyarecha's cell block on the night of June 5, 2018, and the morning of June 6, 2018. (Mot., Exh. 18A-E). In those videos, it does not appear that deputies stopped in front of the cells in Nyarecha's block to look in. (*Id.*). It is unclear whether the deputies would have been able to ascertain Nyarecha's breathing in the amount of time they took to conduct checks of his cell.

There is a lack of evidence in the record, however, showing similarly inadequate safety checks at other times. Generally, "a single incident of unconstitutional activity is not sufficient to impose liability under *Monell*." *Gordon II*, 6 F.4th at 974. Woods did not submit evidence of other cases in which the deputies acted similarly, nor any evidence of inadequate safety checks over a longer duration. Instead, Woods relies on the conduct of the deputies in this specific case over the course of less than 12 hours, but Woods has not cited—and the Court has not found—any cases stating that conduct over two shifts (or a similar duration) is enough to establish municipal liability under *Monell*. The Court therefore must **GRANT** summary judgment with regard to the County Defendants.

IV. CONCLUSION

The Court **GRANTS** summary judgment for Defendants on all claims.

IT IS SO ORDERED.

Dated: July 18, 2023

/s/ Wesley L. Hsu
HON. WESLEY L. HSU
UNITED STATES DISTRICT JUDGE

APPENDIX D — DENIAL OF REHEARING OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, FILED DECEMBER 5, 2024

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 23-55773 D.C.
No. 2:20-cv-04474-WLH-MAA
Central District of California, Los Angeles

PETER WOODS NYARECHA, INDIVIDUALLY; ESTATE OF LEWIS NYARECHA, BY AND THROUGH PETER WOODS, SUCCESSOR IN INTEREST,

Plaintiffs-Appellants,

JUDITH MIREMBE,

Intervenor-Plaintiff-Appellant,

and

LEON NYARECHA,

Intervenor-Plaintiff,

v.

COUNTY OF LOS ANGELES; *et al.*,

Defendants-Appellees.

Before: FRIEDLAND and DESAI, Circuit Judges, and SCHREIER,* District Judge.

* The Honorable Karen E. Schreier, United States District Judge for the District of South Dakota, sitting by designation.

Appendix D

The panel has unanimously voted to deny Appellees' petition for panel rehearing. Judge Friedland and Judge Desai voted to deny the petition for rehearing en banc, and Judge Schreier so recommends. The full court has been advised of the petition for rehearing en banc, and no judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 40.

The petitions for panel rehearing and rehearing en banc are DENIED.