No. 18-735

In the Supreme Court of the United States

MARICOPA COUNTY, ARIZONA, PETITIONER

v.

MANUEL DE JESUS ORTEGA MELENDRES, ET AL.

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether Arizona sheriffs are final policymakers for their counties concerning law enforcement in light of Arizona's constitution, statutes, and case law.

2. Whether petitioner is not obligated to fund certain remedies ordered by the district court on the theory that Arizona law bars petitioner from funding remedies for willful or intentional misconduct.

3. Whether the district court abused its discretion in entering the injunctive relief in this case.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 4-15) is reported at 897 F.3d 1217. The order of the district court (Pet. App. 20-236) is not published in the Federal Supplement but is available at 2016 WL 2783715. The district court's second amended second supplemental permanent injunction (Pet. App. 237-318) is not published in the Federal Supplement but is available at 2016 WL 3996453. The district court's order regarding victim compensation (Pet. App. 319-336) is not published in the Federal Supplement but is available at 2016 WL 4415038.

JURISDICTION

The judgment of the court of appeals was entered on July 31, 2018. A petition for rehearing was denied on September 7, 2018 (Pet. App. 16-17). The petition for a writ of certiorari was filed on December 6, 2018. The

jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. In 2007, private parties brought this class action against petitioner, then-Sheriff Joseph Arpaio, and the Maricopa County Sheriff's Office (MCSO) under 42 U.S.C. 1983, alleging that the defendants had engaged in discriminatory policing against Latinos in violation of the Fourth and Fourteenth Amendments. Pet. App. 6. The district court later granted the United States' unopposed motion to intervene. See D. Ct. Doc. 1239 (Aug. 13, 2015).

The defendants moved to dismiss MCSO from the case on the ground that MCSO did not have a legal existence separate from petitioner. D. Ct. Doc. 39, at 19-20 (Sept. 29, 2008). The district court denied the motion, noting that Arizona law was unsettled on whether county police forces have separate legal existences from the counties that they serve. 598 F. Supp. 2d 1025, 1039.

In 2009, with petitioner's consent, the plaintiffs filed a joint motion and stipulation to dismiss petitioner from the lawsuit without prejudice. The motion stated that "Defendant Maricopa County [wa]s not a necessary party at th[at] juncture for obtaining the complete relief sought," but that the dismissal was "without prejudice to rejoining" petitioner as a defendant at a later time "if doing so becomes necessary to obtain complete relief." Pet. App. 344.

The district court entered a preliminary injunction against the remaining defendants in December 2011, 836 F. Supp. 2d 959, 994, and the court of appeals affirmed, 695 F.3d 990, 1002-1003 (*Melendres I*). In doing so, the court of appeals found no clear error in the district court's determination that the named plaintiffs had

shown a sufficient likelihood that they would be seized in violation of the Fourth Amendment to establish standing for purposes of seeking a preliminary injunction. *Id.* at 997-999.

2. The district court conducted a bench trial, and held MCSO and Arpaio liable for constitutional violations. 989 F. Supp. 2d 822. The court found that MCSO had conducted pretextual traffic stops to determine whether vehicle occupants were authorized to be in the country, had used Hispanic ancestry or race as part of the evidence to establish reasonable suspicion for suspected state-law immigration violations, and had conducted other discriminatory traffic stops. *Id.* at 860-879, 895-905.[*]

The district court enjoined MCSO from continuing its unlawful practices, and explained that "after consultation with the parties" it would "order additional steps that may be necessary to effectuate the merited relief." 989 F. Supp. 2d at 827-828. The parties submitted a joint report identifying terms for a consent decree on which they agreed and terms on which they had not agreed. See D. Ct. Doc. 592 (Aug. 16, 2013).

After a hearing, the district court entered a Supplemental Permanent Injunction. 2013 WL 5498218 (Oct. 2, 2013). The order directed MCSO to promulgate policies prohibiting racial profiling, policies to ensure bias-

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[*] As relevant to standing, the district court concluded at trial that the lead plaintiff had been injured by the defendants' past conduct. 989 F. Supp. 2d at 891. It further concluded that the plaintiffs were entitled to injunctive relief "to the extent that [the challenged] practices violate the constitutional rights of the plaintiff class," *id.* at 890, without making findings there that the lead plaintiff or another individual plaintiff had shown a likelihood that they would be subjected to the challenged practices again. Petitioner has pressed no argument regarding standing before this Court.

free traffic enforcement, detentions, and arrests, and policies clarifying that state officers could not arrest or detain individuals based on suspected unlawful presence in the United States. *Id.* at *8-*10. The court required MCSO to provide additional training to officers. *Id.* at *13-*17. And it appointed an independent monitor and established other mechanisms to monitor compliance. *Id.* at *17-*22, *30-*35. In addition, the court directed changes to MCSO's processes for supervising employees and handling misconduct and complaints. *Id.* at *25-*28.

3. The court of appeals affirmed the district court's findings and virtually all of the injunctive relief. 784 F.3d 1254, 1265-1267 (*Melendres II*). It vacated a portion of the remedial order addressing metrics for internal investigations and officer misconduct, finding that the metrics were flawed insofar as they directed the monitor to assess officer misconduct "unrelated to the constitutional violations found by the district court." *Id.* at 1267.

In addition, the court of appeals concluded that the MCSO was not in fact a separate legal entity from petitioner. 784 F.3d at 1260. The court relied on an intervening decision of the Arizona Court of Appeals, *Braillard* v. *Maricopa County*, 232 P.3d 1263, 1260 (2010), cert. denied, 563 U.S. 1008 (2011), which had held that MCSO was not a separate legal entity from petitioner and concluded that MCSO could not be sued in its own right. 784 F.3d at 1260. The court of appeals dismissed MCSO from the case and substituted petitioner in its place. *Ibid.*

4. Petitioner sought a writ of certiorari. It argued that the court of appeals had erred in substituting petitioner as a defendant, because petitioner could not be

held liable for the actions of Sheriff Arpaio under the principles of policymaker liability set forth in *McMillian* v. *Monroe County*, 520 U.S. 781 (1997). It argued that under *McMillian*, Arizona sheriffs are policymakers for the State, not their respective counties, in the area of law enforcement. See Pet. at 11-19, *Maricopa Cnty.* v. *Melendres*, 136 S. Ct. 799 (2016) (No. 15-376); Pet. Cert. Reply Br. at 4-9, *Melendres*, *supra* (No. 15-376). This Court denied the petition. 136 S. Ct. at 799.

5. Petitioner then filed a second notice of appeal in the court of appeals, from the same district court orders that Arpaio and MCSO had "appealed from previously in *Melendres II*." 815 F.3d 645, 647 (*Melendres III*). The court of appeals dismissed the appeal as untimely. *Id.* at 649. The court found that it lacked authority to create an equitable exception to the timing requirements and that, in any event, there had been "no unfairness" in the substitution of petitioner for MCSO. *Id.* at 650. The court relied on petitioner's stipulation that it would be rejoined as a defendant "if doing so bec[ame] necessary to obtain complete relief." *Ibid.* The court also reiterated its conclusion that petitioner could be held liable for the actions of its sheriff under *McMillian* because Arizona sheriffs are policymakers for their counties in the area of law enforcement. *Ibid.*

6. In 2014, MCSO revealed to the district court that it had discovered a substantial amount of evidence that it had failed previously to disclose to the plaintiffs. The undisclosed evidence included drivers' licenses, identification cards, passports, and other property belonging to members of the plaintiff class, as well as video recordings of traffic stops. Pet. App. 64-73, 85-89. The district court entered an Order to Show Cause why MCSO, the sheriff, and certain senior MCSO officials should not be

held in civil contempt for violating pretrial discovery orders and failing to take steps necessary to ensure MCSO's compliance with the preliminary injunction. D. Ct. Doc. 880, at 8, 12 (Feb. 12, 2015).

The district court held 21 days of contempt hearings, Pet. App. 20, 227-228, and then issued findings of fact regarding civil contempt, *id.* at 20-236. The court found that the sheriff and several of his command staff intentionally had failed to implement the preliminary injunction. *Id.* at 23-64. The court also determined that MCSO had violated its discovery obligations by failing to turn over "considerable evidence of misconduct" relevant to plaintiffs' claims. *Id.* at 227; see *id.* at 64-114. In addition, the court concluded that MCSO's investigation of the undisclosed evidence confirmed that MCSO had "manipulat[ed]" its investigations and disciplinary procedures to avoid accountability for its constitutional violations. *Id.* at 229; see *id.* at 114-225. Based on these findings, the court held the sheriff and several of MCSO's command staff in civil contempt. *Id.* at 235. The court invited the parties to make submissions on the appropriate relief. *Id.* at 21.

After considering the parties' submissions, the district court entered a Second Amended Second Supplemental Permanent Injunction (Second Supplemental Injunction). Pet. App. 237. The Second Supplemental Injunction "revised MCSO's disciplinary matrix, conflict of interest and whistleblower policies, training requirements for internal affairs staff, and complaint intake and tracking procedures." *Id.* at 8. It "vested the independent monitor with the authority to supervise and direct internal investigations related to the Plaintiff class and to inquire and report on other internal investigations." *Ibid.* It also directed the appointment of an

"independent investigator with disciplinary authority to investigate and decide discipline for internal investigations deemed invalid by the court." *Ibid.* And it directed the creation of a victim compensation fund. *Ibid.*

The district court explained that the injunction was tailored to address the "particularly egregious and extraordinary" facts of the case and the broad scope of the constitutional violations, which "involve[d MCSO's] highest ranking command staff, and flow[ed] into its management of internal affairs investigations." Pet. App. 238-239. The court recognized that "[a]ppropriate consideration must be given to principles of federalism in determining the availability and scope of equitable relief." *Id.* at 246 (quoting *Rizzo* v. *Goode*, 423 U.S. 362, 379 (1976)). But it explained that its ordered relief was warranted because previous remedies had "not [been] effective due to Defendants' deliberate failures and manipulations." *Id.* at 249.

7. The court of appeals affirmed. Pet. App. 4-15.

The court of appeals explained that district courts have "broad discretion to fashion injunctive relief," and exceed that discretion only if such relief is "aimed at eliminating a condition that does not violate the Constitution or does not flow from such a violation." Pet. App. 9 (quoting *Milliken* v. *Bradley*, 433 U.S. 267, 282 (1977)). It further explained that "where the enjoined party has a 'history of noncompliance with prior orders,' and particularly where the trial judge has 'years of experience with the case at hand,'" a district court should have a "'great deal of flexibility and discretion in choosing the remedy best suited to curing the violation.'" *Id.* at 9-10 (quoting 784 F.3d at 1265).

Applying those principles, the court of appeals determined that the district court had not abused its discretion in the Second Supplemental Injunction. It held that the challenged provisions "flow from MCSO's violations of court orders, constitutional violations, or both." Pet. App. 11. The court rejected petitioner's argument that the Second Supplemental Injunction was contrary to *Rizzo*, *supra*, explaining that *Rizzo* did not involve a pattern of police misconduct. Pet. App. 12. The court further determined that the remedies were "necessary to ensure MCSO's compliance with court orders" in light of the defendants' "'deliberate failures and manipulations.'" *Id.* at 13 (citation omitted). The court acknowledged petitioner's argument that the election of a new sheriff might render some of the injunctive relief unnecessary, but noted that the district court had "offered to modify its prior orders, where appropriate, to accommodate these changed circumstances." *Ibid.*

The court of appeals also rejected petitioner's contention that it could not be liable for the sheriff's actions because the sheriff was not a final policymaker for the county. Pet. App. 13-14. The court explained that it had "already—thrice—rejected this argument," *id.* at 13, in decisions that were binding on the panel, *id.* at 14 (discussing *Melendres II*, *Melendres III*, and *United States* v. *County of Maricopa*, 889 F.3d 648, 651 (9th Cir. 2018), cert. denied, No. 18-498 (Mar. 25, 2019)).

Finally, the court of appeals rejected petitioner's argument that it could not be required to fund compliance with the injunction because Arizona law did not authorize funding remedies for willful misconduct. Pet. App. 14-15. The court explained that petitioner's argument

was "premised entirely on a state law * * * that permits payment from insurance or self-insurance funds for employee conduct 'within the scope of employment or authority.'" *Id.* at 14 (quoting Ariz. Rev. Stat. Ann. § 11-981(A)(2) (2012)). It noted that petitioner argued that, "[b]y negative inference," that statute disallowed payments for "employee conduct *outside* the scope of employment." *Ibid.* The court concluded that, "even assuming, without deciding, that this reading were correct, and assuming without deciding that the acts of MCSO's employees were outside the scope of employment or authority," petitioner's argument would fail because "[a] state statute prohibiting payment for valid federal court-ordered remedies does not excuse a defendant from complying with those remedies." *Ibid.* In any event, the court reasoned, "the statute that [petitioner] cites would, at most, prevent payment from insurance or self-insurance funds," not payment from other sources, including those the county "uses to fund its normal operations." *Id.* at 15. Finally, the court concluded, petitioner's argument was barred because it was contrary to petitioner's concession in *Melendres III* that it was required under state law to fund compliance with the district court's injunctive orders. *Ibid.*

ARGUMENT

Petitioner seeks this Court's review of whether Arizona sheriffs are final policymakers for their counties on matters of law enforcement (Pet. 18-28), whether petitioner is immune from funding relief here on the theory that Arizona law bars funding remedies for willful or intentional misconduct (Pet. 28-32), and whether the district court abused its discretion in ordering the relief in the Second Supplemental Injunction (Pet. 32-35). The court of appeals' disposition of these claims does

not conflict with any decision of this Court or another court of appeals. Further review is not warranted.

1. Certiorari is not warranted to review the court of appeals' conclusion that Arizona sheriffs are policymakers for their counties concerning law enforcement. This Court denied review of that state-law-specific issue in an earlier decision in this case. 136 S. Ct. 799. It also denied review of that question in *United States* v. *County of Maricopa*, 889 F.3d 648, 651 (9th Cir. 2018), No. 18-498 (Mar. 25, 2019). The same result is appropriate here.

a. The court of appeals' determination of the policymaker status of Arizona sheriffs reflects a correct application of *McMillian* v. *Monroe County*, 520 U.S. 781 (1997). In *McMillian*, a Section 1983 case, the Court assessed whether Alabama sheriffs were policymakers for the State or for their respective counties in the area of law enforcement by examining the Alabama Constitution, the Alabama Code, and relevant case law. In concluding that sheriffs were officers of the State, the Court found "especially important" the designation of sheriffs as state officers under Alabama's Constitution. *Id.* at 787. The Court also relied in part on the Alabama Supreme Court's conclusion "that sheriffs are state officers, and that tort claims brought against sheriffs based on their official acts therefore constitute suits against the State." *Id.* at 789. In addition, the Court viewed the State's responsibility for judgments against sheriffs as "strong evidence in favor of the * * * conclusion that sheriffs act on behalf of the State." *Ibid.* Because Alabama was under the jurisdiction of the Eleventh Circuit, the Court also "defer[red] considerably to" the court of appeals' "expertise in interpreting Alabama law." *Id.* at 786.

In reaching its conclusion with respect to Alabama sheriffs, this Court emphasized that it was not setting forth a uniform rule for all sheriffs. See *McMillian*, 520 U.S. at 795. It explained that while such approach "might [make it] easier to decide cases," it "would ignore a crucial axiom of our government: the States have wide authority to set up their state and local governments as they wish." *Ibid.* Given States' authority over their own governments, the Court concluded, it was "entirely natural that both the role of sheriffs and the importance of counties vary from State to State, [and] there is no inconsistency created by court decisions that declare sheriffs to be county officers in one State, and not in another." *Ibid.*

The court of appeals correctly determined in *Melendres III* and *County of Maricopa* that Arizona sheriffs are policymakers on matters of law enforcement for their counties, not for the State, under the principles in *McMillian*. The court relied on the Arizona Constitution, which designates the office of the sheriff as "created in and for each organized county of the state," and provisions of Arizona law "explicitly stat[ing] that sheriffs are 'officers of the county.'" *County of Maricopa*, 889 F.3d at 651 (citations and emphasis omitted). It also properly took into account provisions of Arizona law authorizing the county board of supervisors to supervise sheriffs' performance of their duties and requiring each county to pay its sheriff's expenses, including expenses incurred in complying with injunctive relief against the sheriff and his office. *Ibid.* Finally, it properly determined that the most pertinent state court decision also signaled that sheriffs are county policymakers with respect to law enforcement. *Ibid.* (discussing *Flanders* v. *Maricopa Cnty.*, 54 P.3d 837 (Ariz. Ct. App. 2002)).

Petitioner's contrary arguments lack merit. Petitioner invokes (Pet. 21-22) several unpublished district court decisions and an intermediate state court decision declining to find counties liable under principles of respondeat superior for tortious conduct by sheriff's office employees in performing particular duties. But as petitioner acknowledges, whether a sheriff is a policymaker for the county or the State under Section 1983 turns on a separate legal inquiry from whether a county is liable in tort for actions of sheriff's office employees under principles of respondeat superior. See Pet. 21 (acknowledging that "*respondeat superior* liability plays no role in § 1983 jurisprudence"). Petitioner also relies on *McMillian*'s statement that "[a]s the basic forms of English government were transplanted in our country, it also became the common understanding here" that sheriffs are state officers. Pet. 22 (quoting *McMillian*, 520 U.S. at 794). But this Court went on to observe that "the importance of counties and the nature of county government have varied historically from region to region, and from State to State," and it recognized that, as a result, courts would reach different conclusions regarding whether sheriffs in particular States were officers of the county or the State. *McMillian*, 520 U.S. at 795.

b. The court of appeals' conclusion regarding the status of Arizona sheriffs does not present any conflict warranting this Court's intervention. As this Court explained in *McMillian*, the classification of officials as policymakers for the State or the county "is dependent on an analysis of state law." 520 U.S. at 786. Because no other court of appeals appears to have considered whether Arizona sheriffs are county or state officials on

matters of law enforcement policy, the application of *McMillian* to Arizona sheriffs implicates no conflict.

Petitioner is mistaken in asserting (Pet. 27-28) a conflict between the decision below and decisions that considered the status of sheriffs under distinct state-law schemes. *Grech* v. *Clayton County*, 335 F.3d 1326 (11th Cir. 2003) (en banc), held that a Georgia sheriff was not acting on behalf of the county when he maintained a policy permitting invalid arrest warrants to remain in a state database. Six judges concluded that Georgia sheriffs are final policymakers for the State in the area of law enforcement, *id.* at 1330-1348 (plurality opinion), but six other judges disagreed, *id.* at 1349-1364. Accordingly, the court did not adopt any categorical holding on the status of Georgia sheriffs. *Id.* at 1347 n.46 (plurality opinion). In any event, the plurality's conclusion that Georgia sheriffs were state policymakers rested on provisions of Georgia law that differ from the corresponding provisions of Arizona law. For example, whereas Georgia courts had held that county commissions cannot influence how sheriffs spend their funds, *id.* at 1339, Arizona law provides for counties to "[s]upervise the official conduct of" all county officers, including the sheriff, to ensure that they "faithfully perform their duties and direct prosecutions for delinquencies," Ariz. Rev. Stat. Ann. § 11-251(1) (Supp. 2018).

The decision below likewise does not conflict with *Franklin* v. *Zaruba*, 150 F.3d 682 (7th Cir. 1998), cert. denied, 525 U.S. 1141 (1999), or *Knight* v. *C.D. Vernon*, 214 F.3d 544 (4th Cir. 2000). *Franklin*, a sovereign immunity case, held that sheriffs in Illinois were not state officials for purposes of the Eleventh Amendment. 150 F.3d at 684-685. In doing so, the court relied in part on *Scott* v. *O'Grady*, 975 F.2d 366 (7th Cir. 1992),

cert. denied, 508 U.S. 942 (1993), in which the court had held that sheriffs generally act on behalf of Illinois counties when executing law enforcement duties. *Franklin*, 150 F.3d at 684-685. *O'Grady*, in turn, rested on an examination of Illinois law. 975 F.2d at 370-372. *Knight* similarly held that North Carolina sheriffs were not policymakers for their counties when making sheriff's office personnel decisions, based on an analysis of North Carolina law. 214 F.3d at 552-553. Those state-specific rulings do not conflict with the Ninth Circuit's analysis of the status of sheriffs under Arizona law.

2. Certiorari is also not warranted to review petitioner's contention (Pet. 28-32) that it cannot be required to fund the relief in this case on the theory that Arizona law bars funding remedies for willful or intentional misconduct.

a. As the court of appeals explained, petitioner's contention is flawed in numerous respects. First, petitioner draws a negative implication from a provision of state law that authorizes "payment from insurance or self-insurance funds" for employee conduct "'within the scope of employment or authority.'" Pet. App. 14 (quoting Ariz. Rev. Stat. Ann. § 11-981(A)(2) (2012)). As the court of appeals explained, petitioner's negative-implication argument would "at most" support the conclusion that payments from *insurance funds* could not be used to compensate for employee conduct outside the scope of employment or authority. *Id.* at 15. That provision does not suggest any limitation on the use of other county funds. *Ibid.* In any event, as the government explained below, an employee's conduct does not fall outside the scope of employment simply because it involves intentional or willful misconduct. See *State* v. *Schallock*, 941 P.2d 1275, 1284 (Ariz. 1997) (intentional

misconduct may be within scope of employment, including when the misconduct was "incidental to [the employee's] position and authority as" an agent of the employer); see also Restatement (Third) of Agency § 7.07 cmt. c (2006) ("Intentional torts and other intentional wrongdoing may be within the scope of employment.").

Second, as the court of appeals held, "[a] state statute prohibiting payment for valid federal court-ordered remedies does not excuse a defendant from complying with those remedies." Pet. App. 14. Under our federal system, "state policy must give way when it operates to hinder vindication of federal constitutional guarantees." *North Carolina State Bd. of Educ.* v. *Swann*, 402 U.S. 43, 45 (1971); see *Stone* v. *City & County of San Francisco*, 968 F.2d 850, 862 (9th Cir. 1992) ("[O]therwise valid state laws * * * cannot stand in the way of a federal court's remedial scheme if the action is essential to enforce the scheme."), cert. denied, 506 U.S. 1081 (1993). If a federal court properly adjudicates a violation of, and orders a remedy authorized by, federal law, a State may not frustrate federal law by restricting its political subdivision's ability to provide the funding necessary for compliance.

Third, in any event, petitioner waived any argument that it is not required to fund the injunctive relief in this case when it conceded that Arizona law required it to "bear the financial costs associated with complying with the district court's [previous] injunction[s]," which were also aimed at remedying willful misconduct. 815 F.3d at 650. See, *e.g.*, D. Ct. Doc. 579, at 125 (May 24, 2013) (finding that "MCSO['s] discrimination against Hispanics was intentional"). As the court of appeals explained, after having made that concession, petitioner "cannot change its position now." Pet. App. 15.

b. The decision below does not conflict with any decision of this Court or any other court. Petitioner identifies no decision holding that a government can avoid its remedial obligations under federal law by enacting a statute prohibiting the expenditure of governmental funds to cover the costs of compliance. And in any event, the court of appeals' decision is independently supported by alternative grounds. The court below separately concluded that petitioner misunderstood Ariz. Rev. Stat. Ann. § 11-981(A)(2) (2012). Pet. App. 14-15. That state-law holding does not implicate any conflict, and this Court has held that certiorari is generally unwarranted to review a court of appeals' interpretation of state law. *Elk Grove Unified Sch. Dist.* v. *Newdow*, 542 U.S. 1, 16 (2004); see *Leavitt* v. *Jane L.*, 518 U.S. 137, 144 (1996) (per curiam). The court's case-specific waiver holding, see Pet. App. 15, is also sufficient to support the judgment below, and does not implicate any conflict.

3. Finally, petitioner's argument that the Second Supplemental Injunction constituted an abuse of discretion (Pet. 32-35) does not warrant this Court's review. This case involves a uniquely intrusive injunction directed at a state law-enforcement agency. The court ordered changes to the supervision of deputies, required additional training, directed the promulgation of new conflict-of-interest and whistleblower policies, and placed additional responsibilities under the supervision of an independent monitor. Pet. App. 8. That extensive federal oversight of state law-enforcement operations raises serious federalism concerns.

Nevertheless, the petition should be denied. As an initial matter, petitioner does not make any targeted

challenge to particular provisions of the Second Supplemental Injunction it regards as outside the district court's discretion. Rather, petitioner lists (Pet. 32-35) various provisions of the injunction and then asserts that the injunction should be vacated in its entirety. But the parties were in agreement on many of the terms of the injunction. For example, the parties agreed on changes to deputies' supervision, Pet. App. 294, and on the appointment of an independent investigator to investigate and, if appropriate, impose discipline based on particular types of misconduct, *id.* at 302-318. Petitioner has neither developed a focused challenge to particular provisions of the court's order nor offered a basis to conclude that the entire decree is deficient. And to the extent that petitioner has concerns directed at particular provisions of the decree, as the court of appeals noted, "the district court has offered to modify its prior orders, where appropriate, to accommodate * * * changed circumstances," including the election of a new sheriff and other personnel changes, and has already granted some requests for modifications. *Id.* at 13. Moreover, although the district court's injunction is unusually intrusive, the court found that injunction appropriate because of "particularly egregious and extraordinary facts," including constitutional violations that involved MCSO's "highest ranking command staff, and flow[ed] into its management of internal affairs investigations." *Id.* at 238-239.

b. The court of appeals' conclusion that the district court did not abuse its discretion with respect to injunctive relief on the facts of this case does not conflict with any decision of this Court. Contrary to petitioner's suggestion (Pet. 34-35), the decision below does not conflict with *Rizzo* v. *Goode*, 423 U.S. 362 (1976), in which this

Court determined that an injunction against a police department that mandated specific procedures for handling civilian complaints and internal discipline failed to account for federalism concerns. In concluding that the injunction in *Rizzo* was unduly intrusive, this Court relied on the fact that the district court "found that the evidence did not establish the existence of any policy on the part of the named petitioners to violate the legal and constitutional rights of the plaintiff classes." *Id.* at 368; see *id.* at 371-377. In contrast, the district court here found that "the Defendants were systematically violating the Fourth and Fourteenth Amendment rights of the Plaintiff class in several different respects including the adoption of unconstitutional policies." Pet. App. 248; see *id.* at 238-239 (finding "constitutional violations [that] are broad in scope, involve [MCSO's] highest ranking command staff, and flow into its management of internal affairs investigations"). Moreover, much of the remedial order in this case—unlike in *Rizzo*—was imposed only after the district court found "persistent disregard for the [court's] orders" on the part of the defendants as well as "an intention to violate and manipulate the laws and policies regulating their conduct." *Id.* at 22. This Court's holding in *Rizzo* thus does not establish that the district court abused its discretion under the materially distinct circumstances of this case.

Lewis v. *Casey*, 518 U.S. 343 (1996), is similarly inapposite. In *Lewis*, a class of plaintiffs alleged that the Arizona Department of Corrections had failed to provide access to adequate legal research facilities, depriving them of their right of access to the courts. *Id.* at 346. The district court found only two instances of actual harm to plaintiffs, yet imposed a broad injunction that effected "sweeping changes" to the department's

practices. *Id.* at 347. This Court held that the "two instances [of harm] were a patently inadequate basis for a conclusion of systemwide violation and imposition of systemwide relief." *Id.* at 359. Additionally, the Court held that the injunction was improper because it "was developed through a process that failed to give adequate consideration to the views of state prison authorities." *Id.* at 362. In contrast, the district court here specifically found systemic violations, see, *e.g.*, Pet. App. 62-63, 238, and consistently gave county authorities the opportunity to investigate alleged misconduct and to provide input into appropriate remedies. The court of appeals' case-specific conclusion that the district court did not abuse its discretion in its injunctive order thus does not conflict with this Court's prior decisions rejecting different injunctions, or otherwise present any conflict warranting further review.

CONCLUSION

The petition for writ of certiorari should be denied.

Respectfully submitted.

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