No. _____

In The
Supreme Court of the United States

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

Petitioners,

v.

MARY MEIER,

Respondent.

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Eighth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

Every year, thousands of automobiles are identified in law enforcement databases as stolen or wanted in connection with crimes. Warrants for seizure of automobiles in public places on probable cause have never been required under the Fourth Amendment – yet the judgment of the Court of Appeals here imposes liability under 42 U.S.C. §1983 on petitioners due to a warrantless seizure of a truck pursuant to a "wanted" bulletin, notwithstanding probable cause to believe that the truck was evidence or an instrumentality of crime. The Court of Appeals also held that the practice of a towing contractor of a different jurisdiction, to detain automobiles seized pursuant to "wanted" bulletins issued by a different police agency, could result in liability of a city under §1983, notwithstanding that the private actor had no contractual relationship with and was not acting at direction of petitioner City. These holdings conflict with decisions of this Court and other Circuits.

I. Whether a municipality, whose officers issued a "wanted" report supported by probable cause to believe that an automobile was an instrumentality or evidence of a crime, resulting in the seizure of an automobile by officers of another jurisdiction, can be held liable for a violation of the Fourth and Fourteenth Amendments, in an action by the vehicle's owner under 42 U.S.C. §1983 for seizure of the automobile?

II. Whether the "rigorous standards" of causation and culpability governing municipal liability under 42 U.S.C. §1983 permit such liability against a

QUESTIONS PRESENTED FOR REVIEW
– Continued

municipality to be predicated on the conduct of a non-governmental actor in retaining property seized by police, on the basis of the non-governmental actor's own policy or custom of enforcing "wanted" bulletins from law enforcement agencies, without any other connection with the municipality against which the §1983 action is brought?

PARTIES

Petitioner City of St. Louis, appellee-defendant below, is a constitutional charter city under Missouri law.

Petitioner Doc's Towing, Inc., appellee-defendant below, is a closely held Missouri corporation.

Respondent Mary Meier, appellant-plaintiff below, is an individual citizen of Missouri.

The Board of Police Commissioners of the City of St. Louis, a state agency, was initially a party defendant below but was dropped by the amended complaint; the City of St. Louis is the successor in interest to said Board.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Sup. Ct. R. 29.6, it is noted that Doc's Towing, Inc., is a closely held Missouri corporation. There is no parent or publicly held company owning 10% or more of the corporation's stock.

RELATED CASES

Meier v. City of St. Louis, et al., No. 1622-CC09903, Missouri Circuit Court, 22nd Circuit, was initiated by respondent herein and removed to the District Court, Eastern District of Missouri, becoming 4:16-CV-1549-RWS-01. After decision of the District Court to remand state claims, the Missouri Circuit Court, 22nd Circuit, reopened the cause in state court as No. 1622-CC09903-01. Following remand by the Court of

RELATED CASES – Continued

Appeals for the Eighth Circuit (No. 18-1597), the aforementioned federal cause remains pending in the District Court as to federal claims only. The federal case is now set for trial on April 20, 2020.

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

The City of St. Louis and Doc's Towing, Inc., petitioners herein, respectfully pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Eighth Circuit entered in this case.

Literally millions of crimes against persons and property occur each year in the United States. Police, unfortunately, are rarely at the scene of these crimes in time to intervene or make an immediate arrest. Unless the perpetrator is personally known to the victim, the police must rely on the reports from victims which describe the perpetrators, and on evidence that may be found at the scene to identify and apprehend the miscreants. In many cases, an automobile will figure in the crime, either as stolen property or as the means for the criminal to escape, or as the instrumentality of the offense itself, as in this case, in which the driver of a truck hit another vehicle and fled the scene. When police investigation leads to a useful description of a criminal or an automobile involved, it is essential that this information be broadcast as widely as possible, in order to locate the criminal or any automobile involved. Thus, it is commonplace for officers to file "wanted" reports or bulletins, describing persons or automobiles that are reasonably believed to have been involved in criminal activity. The National Crime Information Center database contains data on many thousands of automobiles stolen or connected to

criminal activity. This Court has recognized for many years that the Fourth Amendment is not offended when police in one jurisdiction seize a person or automobile, without a warrant, in reliance upon information provided by another jurisdiction, as long as their reliance is reasonable, and that reliance is reasonable indeed when the broadcast information is in fact solidly supported by probable cause. Further, this Court and other Circuits consistently have held that warrantless seizure of automobiles on probable cause is constitutional.

In the case at bar, the Court of Appeals ignored the realities of communicating information regarding automobiles involved in criminal activity, jettisoned established Fourth Amendment jurisprudence of this Court and other Circuits, and held that a municipality can be liable under §1983 when its officers broadcast a "wanted" bulletin or report, based on probable cause, seeking to locate a truck, and the truck is later seized by another jurisdiction's officers without a warrant. With equal disregard of precedent under §1983, the Court of Appeals also insisted that if the "wanted" report was acted on by anybody, including a private company under contract with a wholly independent municipality, the city whose police broadcast the report could be held liable on a theory of unconstitutional "custom," a custom created without any evidence of involvement of policymakers as defined by state law.

By creating the specter of incalculable damage to law enforcement and corresponding potential liability of local governments and non-governmental actors

such as Doc's Towing for thousands of lawful warrantless searches and seizures of automobiles, the dramatic departure from established Fourth Amendment jurisprudence by the Court of Appeals, in conflict with this Court and other Circuits, would alone warrant review by this Court. However, that Court's cavalier disregard of the "rigorous standards" of culpability and causation that are demanded in the context of municipal liability under §1983 also demands attention from this Court.

Except for a narrowly-focused issue of "failure to train" liability in *Connick v. Thompson*, 563 U.S. 51 (2011), this Court has not had occasion to expound the standards of municipal liability under §1983 since *Board of County Commissioners v. Brown*, 520 U.S. 397 (1997). In the meantime, the torrent of §1983 suits has continued unabated, and it has become routine to join municipal employers in such suits to increase settlement pressure. This routine tactic is largely due to the lower federal courts' persistent refusal to "rigorously" demand a sufficient showing of culpability and causation before subjecting municipalities to trial. In this case, the attenuated causation chain is particularly problematic: a private company, with no direct or indirect connection to petitioner City, elected to detain Ms. Meier's truck after it was lawfully seized. The towing company's conduct, however, was held sufficiently related to the practice of petitioner City's police in issuing "wanted" reports that the petitioners can be held liable for the detention of the truck, without any showing that the seizure of the truck was unconstitutional,

that any of petitioner City's officers took any action to approve or encourage the detention, or that any person with final City policymaking authority had ever been aware of or approved detention of automobiles by private third parties on account of "wanted" reports.

For §1983 liability to attach to a municipality on the basis of "custom," there must be a showing of a persistent and widespread practice having the force of law that was the "moving force" in a constitutional violation. The Court of Appeals identified a practice of broadcasting "wanted" reports resulting in warrantless seizures, without troubling to analyze the practice consonant with Fourth Amendment principles, and then proceeded to hold that such a practice caused a constitutional violation when an independent third party decided to detain the Meier truck on the strength of the "wanted" bulletin; all of this without any effort to identify the involvement of anyone with final municipal policymaking authority on the issue as a matter of state law. Thus, the Court of Appeals, as in *City of St. Louis v. Praprotnik*, 485 U.S. 112 (1988), has again misapprehended the proper analytical framework for fastening §1983 liability on a municipality, and requires guidance from this Court.

OPINIONS BELOW

The opinion and order of the District Court filed on February 21, 2018, is unreported. The opinion and judgment of the Court of Appeals, reversing the

District Court, filed on August 19, 2018, is reported at 934 F.3d 824 and is included as Appendix A to this petition. The opinion and accompanying judgment of the District Court are included as Appendix B. The order of the Court of Appeals denying rehearing is included as Appendix C.

JURISDICTION

The order of the Court of Appeals denying rehearing was filed on September 25, 2019, and this petition is filed within 90 days of that date. 28 U.S.C. §2101(c); Sup.Ct.R. 13.3. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S.Const., Amend. IV provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S.Const., Amend. XIV, §1, provides:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. 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.

Section 1 of the Civil Rights Act of 1871, 17 Stat. 13, 42 U.S.C. §1983, provides in pertinent part:

> 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. . . .

Mo.Rev.Stat. §577.060 provides in pertinent part:

> Leaving the scene of an accident – penalties. – 1. A person commits the offense of leaving the scene of an accident when:
>
> (1) Being the operator of a vehicle or a vessel involved in an accident resulting in injury or death or damage to property of another person; and
>
> (2) Having knowledge of such accident he or she leaves the place of the injury, damage or accident without stopping and giving the following information to the other party or to a law enforcement officer, or if no law enforcement officer is in the vicinity, then to the nearest law enforcement agency:
>
> (a) His or her name;
>
> (b) His or her residence, including city and street number;
>
> (c) The registration or license number for his or her vehicle or vessel; and
>
> (d) His or her operator's license number, if any.

STATEMENT OF THE CASE

The Court of Appeals acted on an appeal from the grant of summary judgment. Because petitioners believe that the questions presented do not turn on any disputed facts, petitioners proceed on the facts as

stated by the lower courts, reserving the right to contest certain material facts in the event of further proceedings below.[1]

Mary Meier, plaintiff below and respondent here, owned a truck. Her son was driving the truck when it collided with another car. Her son fled without complying with state law in regard to providing information at accident scenes and so violated state law. St. Louis police officers were summoned to the accident scene. Upon arrival, they obtained information regarding the accident, including information enabling them to identify the truck and its owner. The officers, in accordance with standard practice, filed a "wanted" report with a multi-jurisdictional law enforcement database known as REJIS, identifying the truck and its connection to the crime of leaving the scene.

Some months after the accident involving the Meier truck occurred and the "wanted" report was filed, officers of a suburban municipality encountered the son and the truck in suspicious circumstances. In the course of investigating the truck and its occupants, the suburban officers learned of the "wanted." At least in part on account of the "wanted," the suburban officers arranged for their jurisdiction's contractor (Doc's Towing) to tow and impound the truck. Notice was

[1] For example, there was a dispute as to whether the "wanted" filed by St. Louis police was supposed to be a request for location information on the truck in question, rather than a request to "hold" or seize the truck. For purposes of this petition, it is assumed that the seizure of the truck was a foreseeable result of the "wanted" when the truck was located by law enforcement.

given to Ms. Meier as to the location and custody of the truck. St. Louis police were also notified and requested that the suburban police direct the truck's owner to contact St. Louis police concerning the truck. When Ms. Meier sought release of the truck, a Doc's Towing employee told her that the truck would not be released without approval of the St. Louis police, although Doc's Towing had had no communication with St. Louis police. When contacted by Ms. Meier's son about release of the truck, St. Louis police told him to come to a police station to discuss the accident. He did not do so. After further delay, an attorney for Ms. Meier secured a release order signed by a St. Louis detective on a form directed to a St. Louis agency and not Doc's Towing.

Thanks to the St. Louis release order, Ms. Meier regained possession of the truck, but it was in a damaged condition and had been treated as abandoned by Doc's Towing. The title to the truck has not yet been cleared. Ms. Meier's son is now imprisoned on unrelated charges. St. Louis police never pursued charges for leaving the scene of the accident.

Ms. Meier filed suit in Missouri Circuit Court, asserting claims under 42 U.S.C. §1983 and state law on account of the seizure and detention of the truck. The cause was removed to federal court due to the §1983 claims. Ms. Meier subsequently filed an amended complaint (Appendix D hereto), and, after discovery, all parties moved for summary judgment.

The District Court granted summary judgment on the federal claims and remanded the state law claims

against Doc's Towing. Appendix B, pp. A-22-A-24. The District Court focused on the causation issue, concluding that Meier's federal claims failed because of two undisputed facts: the truck was seized by officers of another jurisdiction, and "whatever actions Doc's took, it did not act in concert with the City of St. Louis." *Id.*, p. A-16. Thus, there was "simply no evidence in this case that would permit a reasonable fact finder to conclude that the City of St. Louis was the moving force behind the deprivation of plaintiff's property." *Id.*, p. A-18.

On appeal, the Court of Appeals for the Eighth Circuit reversed. In its reading of the record, the Court paid no attention to the issue of probable cause for seizure of the truck in the first place. Instead, the Court focused on what it perceived to be the petitioner City's "custom," which it concluded consisted of City police "employees' continuing, widespread, persistent practice of using wanted reports to seize vehicles without a warrant as an investigative tool." Appendix A, pp. A-6-A-7. In reaching this conclusion, the Court also decided that two testifying witnesses, one not employed by petitioner City and one merely a Rule 30(b)(6) designee, were "policymaking officials," wholly without reference to state law on the matter of who had authority to set policy for petitioner City. *Id.*

On the issue of causation, the Court of Appeals found evidence in the record that City police had advised the suburban police department to instruct the truck owner or driver to go to a St. Louis police station "regarding release of the truck." From this, the Court concluded, "A reasonable jury could find that Meier's

truck was towed and held pursuant to [petitioner's] unwritten but widespread and persistent policy of reporting vehicles as wanted for the purpose of detaining them without a warrant." *Id.*, p. A-8.

REASONS FOR GRANTING THE PETITION FOR WRIT OF CERTIORARI

I. The petition should be granted because the questions presented are questions of serious national importance for law enforcement and for local governments, in that, if left undisturbed, the judgment of the Court of Appeals will impair the ability of law enforcement to seize vehicles in public places on probable cause, without a warrant, and will entail incalculable potential liability for local governments in such situations.

In this case, it is undisputed that respondent's truck was involved in a hit and run, a City police officer directly obtained information from the victim, including a photograph of the truck license plate, and entered the vehicle as "wanted" in REJIS, an information sharing system utilized by law enforcement agencies in the St. Louis metropolitan area. This same process occurs in a national level database as well. The National Crime Information Center ("NCIC"), an electronic clearinghouse of crime data, has been referred to as the lifeline of law enforcement. See National Crime Information Center (NCIC), 2016, Dept. of Justice Criminal Justice Information Services Division, https://www.fbi.

gov/services/cjis/ncic. The NCIC database includes twenty-one folders, one of which is titled "vehicle file." *Id.* The vehicle file includes records on stolen vehicles, vehicles involved in the commission of crimes (such as the case here), or vehicles that may be seized based on a federally issued court order. *Id.* NCIC can be accessed by virtually every criminal justice agency nationwide, twenty-four hours a day, 365 days a year. Since its inception, NCIC has operated under a shared management concept between the FBI and federal, state, local, and tribal criminal justice users. *Id.* Using databases like NCIC and REJIS, law enforcement agencies across the country communicate about automobiles using designations such as "wanteds" or "hot sheets."

In this case, respondent's truck was involved in the crime of leaving the scene of an accident, also known as a hit and run. Mo.Rev.Stat. §577.060. According to the AAA Foundation for Traffic Safety, one hit and run crash occurs every minute on U.S. roads with an average of 682,000 hit and run crashes occurring each year since 2006. See "Hit-and-Run Deaths Hit Record High," AAA, April 26, 2018, https://newsroom.aaa.com/2018/04/hit-run-deaths-hit-record-high/. As law enforcement often has little more than a license plate number and description of a vehicle in seeking to apprehend a hit and run motorist, entering the vehicle as "wanted" based on probable cause is usually the only way to track down the vehicle and offender involved. Given the prevalence of hit and run incidents, and the nationwide utilization of information databases by law enforcement agencies to run checks on vehicles

detained in investigative stops, it requires no stretch of the imagination to infer that countless automobiles are stopped, if not seized, pursuant to "wanted" reports of theft or hit and run, not to mention other criminal activity.

Thus, the City's policy of reporting vehicles as "wanted" when officers have probable cause to believe that the vehicle is the instrumentality of a crime, such as a hit and run, is far from unique. Numerous municipalities across the country have similar policies and procedures. For example, the Chicago Police Department allows officers to request a tow after first establishing "if the vehicle is stolen or wanted for investigation in connection with a crime and is needed for further investigation by requesting a vehicle check." Vehicle Towing and Relocation Operations, Directives.chicagopolice.org (2019), http://directives.chicagopolice.org/directives/data/a7a57bf0-12cf02e7-7b112-cf05-8178a29c2a3f9355.html. Similar policies to impound a vehicle as evidence without a warrant, on probable cause, exist in other municipalities. See, e.g., City of Westminster Police Department Policies, Westminstermd.gov (2019), http://www.westminstermd.gov/DocumentCenter/View/1507/City-of-Westminster-Police-Department-Policiespdf (allowing an officer to authorize the tow of a vehicle when there is probable cause to believe that the vehicle was involved in a criminal or serious motor vehicle offense and it contains instrumentalities or evidence of a crime, or the vehicle is an instrumentality of the offense and may be used as evidence); Vehicle Impounds, Lancaster-tx.com (2019), https://

www.lancaster-tx.com/DocumentCenter/View/11308/7_03_1 – Vehicle-Impounds (allowing an officer to impound as evidence a vehicle without a warrant from a public place when there is probable cause to believe that the vehicle has been used in the commission of a crime, excluding minor traffic offenses); 2008 Code of Ordinances and Resolutions of the Unified Government of Wyandotte County/Kansas City, Kansas Sec. 35-196(9) (authorizing a police officer to tow a vehicle if there is" probable cause to believe the vehicle has been used in the commission of a crime and that its retention as evidence is necessary"). Given the prevalence of these policies, a conclusion that a "custom" of utilizing "wanted" reports to seize automobiles without a warrant, on probable cause, is unconstitutional has profound implications for law enforcement nationwide.

The Fourth Amendment has never been construed to forbid warrantless seizures of automobiles in public places, on probable cause to believe that the automobile itself is forfeitable or simply evidence of a crime. On the contrary, such seizures are well within the "automobile exception" to the warrant requirement of the Fourth Amendment. Indeed, it is entirely proper, when police have probable cause to search an automobile, to seize it at least temporarily and remove it to another location to conduct the search. *Florida v. White*, 526 U.S. 559 (1999); *G.M. Leasing Corp. v. United States*, 429 U.S. 338 (1977); *Texas v. Brown*, 460 U.S. 730 (1983); *Chambers v. Maroney*, 399 U.S. 42 (1970); cf. *Warden v. Hayden*, 387 U.S. 294 (1967). Furthermore, it is well established that officers may rely on "wanted"

reports from other jurisdictions in detaining or arresting a person; *a fortiori,* reliance on a "wanted" report to seize a vehicle is entirely proper under the Fourth Amendment. See *United States v. Hensley*, 469 U.S. 221 (1985); *United States v. Conlan*, 786 F.3d 380 (5th Cir. 2015); *United States v. Noster*, 590 F.3d 624 (9th Cir. 2009), *cert. denied*, 559 U.S. 1054 (2010).

Thus, the Court of Appeals has seriously misconstrued the constitutionality of a warrantless seizure of an automobile on probable cause, due to a "wanted" report, and this misconstruction raises the specter of enormous potential liability for local governments and contractors such as petitioner Doc's Towing under §1983. Of even greater consequence, the Eighth Circuit's mistaken view of the Fourth Amendment will practically foreclose reliance on "wanted" reports in seeking to apprehend not only hit and run motorists but all manner of other criminals whose automobiles may be the only evidence linking them to serious crimes. See, e.g., *United States v. Pleasant*, 2017 U.S.Dist.LEXIS 181393 (E.D.Pa. 2017), for a particularly apt example of the use of a "wanted" to find and seize a vehicle in connection with a robbery. The petition ought to be granted because the questions presented herein are of serious national importance and must be settled by this Court.

II. The petition should be granted because the questions presented are questions of serious national importance in regard to defining the dimensions of municipal liability under 42 U.S.C. §1983, which are in urgent need of reexamination by this Court, in that the opinion of the Court of Appeals exemplifies a systemic failure of the lower federal courts to apply "rigorous standards" of culpability and causation in §1983 actions premised on municipal "custom."

The late Justice SCALIA, in another context, lamented, "The §1983 that the Court created in 1961 bears scant resemblance to what Congress enacted almost a century earlier. . . . *Monroe [v. Pape]* changed a statute that had generated 21 cases in the first 50 years of its existence into one that pours into the federal courts tens of thousands of suits each year, and engages this Court in a losing struggle to prevent the Constitution from degenerating into a general tort law." *Crawford-El v. Britton*, 523 U.S. 574, 611 (1998) (dissenting opinion). Similarly, the standard of municipal liability under §1983 as applied by the Court of Appeals in this case bears little resemblance to the "rigorous standards of culpability and causation" demanded by this Court in *Board of County Commissioners v. Brown*, 520 U.S. 397 (1997). Likewise, the Court of Appeals' analysis flies in the face of *City of St. Louis v. Praprotnik*, 485 U.S. 112 (1988) and kindred cases in its casual identification of persons having policymaking authority sufficient to approve a purportedly unconstitutional "custom."

It cannot be gainsaid that §1983 makes actionable a deprivation of federally protected rights on the basis of "custom." However, it is significant that, in its original delineation of municipal liability under §1983, this Court adverted to *Adickes v. S.H. Kress & Co.*, 398 U.S. 144 (1970). See *Monell v. Dept. of Social Services*, 436 U.S. 658, 690-91 (1978). The *Adickes* case, of course, involved a custom of using facially neutral laws to enforce racial segregation in public restaurants – a custom that had the *force of law.* This "force of law" theme recurs throughout this Court's cases applying §1983 based on claims of unconstitutional "custom." However, the decision of the Court of Appeals in this case demonstrates just how far the lower courts have departed from this essential requirement to fasten liability on municipalities (or at least subject them to trial) for practices that are never shown to be unconstitutional or, more importantly, never shown to be known to and approved of by true municipal policymakers.

In this case, neither the District Court nor the Court of Appeals adverted to any evidence that any policymaker of the City knew of and approved an unconstitutional custom of seizing vehicles without a warrant. It is well established that the issue of who are municipal policymakers is a question of law, not fact, and the answer to the question must be found in state law. *St. Louis v. Praprotnik*, supra; see also *McMillian v. Monroe County*, 520 U.S. 781 (1997); *Jett v. Dallas Ind. Sch. Dist.*, 491 U.S. 701, 737 (1989). The Court of Appeals asserted that petitioner City did not "contest"

the policymaking status of two witnesses, App. A, p. A-7, but that was incorrect, and the Court never troubled to make any inquiry into the witnesses' status as a matter of state law. Regardless, the Court overlooked the basic question of whether the "custom" of using "wanteds" to secure warrantless seizures was known to any policymaker as ever having previously resulted in an unconstitutional seizure.

For a municipality to be liable on the strength of a custom, the custom must have the *force of law.* It must, therefore, be such an entrenched, persistent and widespread practice that officers of a municipality will always and everywhere observe it. Cf. *City of Los Angeles v. Lyons*, 461 U.S. 95 (1983). The use of "wanteds" in this case evinces no such force of law. There is no parallel to *Adickes*. There is no showing that petitioner City's officers ever routinely used "wanteds" as an arbitrary means to harass citizens and deprive them of their property for no good reason, or as a way to evade established warrant requirements. The kind of custom that Congress was aiming at was the sort of thing that led to the enactment of Reconstruction legislation in the first place: deliberate government practices designed and deliberately implemented to deprive citizens of their rights.

Furthermore, liability based on "custom" requires the additional showing that the custom was the "moving force" in a constitutional violation. This raises the issue of causation; another issue on which the Court of Appeals went badly astray. The District Court quite correctly held that respondent Meier wholly failed to

make the causal connection between petitioner City's conduct and the seizure and detention of the Meier truck. App. B, p. A-16. The Court of Appeals seems to have applied a simplistic and entirely incorrect notion of *post hoc ergo propter hoc* causation: petitioner City's officers issued a "wanted," and petitioner Doc's Towing detained the truck, so the City's "custom" caused deprivation of the truck. In the process, the Court of Appeals ignored the conduct of the suburban officers who seized the truck and the decision of Doc's Towing not to release it, despite having no communication with St. Louis officers. If this causation analysis passes muster, then a municipality can be liable for the conduct of third parties everywhere, so long as a plaintiff can identify some municipal practice that the third party decided to take as its guide in infringing someone's property interests.

Of course, the causation analysis of the Court of Appeals ignored another salient point: the "custom" it identified was neither unconstitutional nor was any policymaker (even the two straw men identified by the Court of Appeals) shown to have known that it was causing any constitutional violations.[2] As long ago as *City of Oklahoma City v. Tuttle*, 471 U.S. 808 (1985), this Court made it clear that §1983 liability on a

[2] This case does not involve the issue of application of the exclusionary rule in a situation where officers mistakenly rely on erroneous information, although even reliance on erroneous information may not result in a Fourth Amendment violation. Cf. *Herring v. United States*, 555 U.S. 135 (2009). However, there is no dispute here that the information underlying the "wanted" was accurate and accurately reported.

"custom" theory cannot be predicated on a single incident of unconstitutional conduct of a government employee. Furthermore, this Court has tried to make it clear that municipal liability based on unofficial policy or custom must be based on clear proof of a deliberate choice by municipal policymakers. *Board of County Commissioners v. Brown*, 520 U.S. at 400, 405. In this case, the claim is not that petitioner City itself inflicted injury, but that its custom caused others – not its employees and not even governmental officers – to do so. In this context, the Court of Appeals simply failed to apply the rigorous standards of culpability and causation that this Court deems essential to liability.[3]

Because of the expansive scope and broad application of §1983, it long ago became, in the words of Justice POWELL, the "most explosive source of Federal jurisdiction." Lewis F. Powell, "Are the Federal Courts Becoming Bureaucracies?," 68 A.B.A. J. 1370, 1372 (No. 1982). Government employees commit torts every day. If a pattern of careless driving is enough to show an actionable custom under §1983 to deprive persons of property without due process, Justice SCALIA'S lament will have become more than a lament: it will have

[3] This is so even if the "custom" in question was the detention of the truck and not the seizure alone. There is nothing in the opinions of the District Court or the Court of Appeals to suggest that the record shows any repeated detentions of seized vehicles for prolonged periods by either petitioner City or petitioner Doc's Towing. In any event, respondent had a remedy to secure return of the truck under state law. Mo.Rev.Stat. §542.301. However, it is clear that the "custom" found by the Court of Appeals related to the warrantless seizure pursuant to a "wanted."

become a prophecy fulfilled. In 2018 alone, the federal courts saw a six percent increase in civil rights filings. Federal Judicial Caseload Statistics 2018, ADMINISTRATIVE OFFICE OF THE U.S. COURTS, https://www.uscourts.gov/statistics-reports/federal-judicial-caseload-statistics-2018. There can be little doubt that the opinion of the Court of Appeals in this case, with its almost dilettantish approach to the analysis of custom and causation under §1983, should not be left uncorrected by this Court so as to further exacerbate the boundless expansion of liability of municipalities (or non-governmental actors) under that statute.

The opinion of the Court of Appeals encourages litigants to attempt to hold a municipality responsible for actions of a third party over which the municipality has had no direct or even indirect control, and absent evidence that municipal policymakers had any reason to know that a constitutional violation could have been taking place. The time has come for this Court to further refine the standards of municipal liability under §1983, and insist that claims against a municipality on the basis of "custom or usage" cannot proceed unless there is adequate proof of the sort of custom identified in *Adickes*, supra; i.e., a custom or usage that is not only unconstitutional but that impels governmental employees always or nearly always to act in a certain way with regard to a specific constitutional injury, and that exists with notice to identifiable policymakers that such injuries have occurred, will continue to occur, and that the policymakers consciously chose not to undo. The City of St. Louis in 2019 is not Hattiesburg,

Mississippi, in 1964. This Court can and should act to review the judgment in this case and clarify standards of municipal liability in this critical area of federal law.

III. The petition should be granted because the judgment of the Court of Appeals is in direct conflict with decisions of this Court, of other Courts of Appeals, and of state courts in the matter of warrantless seizure of automobiles in public places, on probable cause, and the lower court's error can only be corrected by this Court.

Petitioners have already alluded to the direct conflict between the opinion of the Court of Appeals in this case and controlling precedent from this Court. *Florida v. White, G.M. Leasing Corp. v. United States, Texas v. Brown, Chambers v. Maroney*, all supra. If that were not enough to warrant review (and perhaps even summary reversal), the Eighth Circuit has created a direct conflict between itself and at least three other Circuits as well.

In *United States v. Noster*, supra, the Ninth Circuit rejected a claim of violation of the Fourth Amendment when officers relied on a stolen truck report, based on probable cause, in a law enforcement database in seizing and searching a truck. In *Bell v. City of Chicago*, 835 F.3d 736 (7th Cir. 2016), *cert. denied*, 137 S.Ct. 1231 (2017), the Seventh Circuit rejected a Fourth Amendment challenge to a city ordinance (not a "custom") that authorized seizure and impoundment of vehicles, without a warrant, on probable cause to believe

they contained a controlled substance or were used in illegal drug transactions. In so holding, the Seventh Circuit read *Florida v. White* to support the proposition that there is no constitutional difference between an immediate search based on actual knowledge that the vehicle contains contraband and a discretionary seizure based on a reasonable belief that the vehicle at some past time had been used to assist in illegal activity. 835 F.3d at 740. Similarly, in *United States v. Cooper*, 949 F.2d 737 (5th Cir. 1991), a case in which police acted on a reported description of a car as involved in a robbery, the Fifth Circuit stated plainly, "We believe that probable cause alone also suffices to justify seizing a vehicle on a public street as evidence or instrument of crime. As a warrant is not required when the police have probable cause to believe that the car contains evidence of crime, there is little sense in requiring a warrant before seizing a car when the police have probable cause to believe the car itself is such evidence or is an instrument of crime." 949 F.2d at 747. There is also conflict with the decisions of various state courts. See *Lum v. Donohue*, 101 Haw. 422, 70 P.3d 648 (2003); *Lagaite v. State*, 995 S.W.2d 860 (Tex.App.1999); *State v. Brereton*, 345 Wis.2d 563, 826 N.W.2d 369 (2013).

Finally, the Eighth Circuit's apparent alternative pronouncement that petitioner's "unwritten but widespread and persistent policy of reporting vehicles as wanted for the purpose of detaining them without a warrant" amounts to a constitutional violation is also in conflict with this Court's decision in *City of West Covina v. Perkins*, 525 U.S. 234 (1999). In that case, this

Court held that there was no Fourteenth Amendment violation when police lawfully seized property of someone not a party to a crime, so long as notice of the seizure and identity of the seizing entity were provided to the owner, even though no notice of available remedies for return of the property was given. In the case at bar, respondent owner had notice of seizure and could have invoked readily available remedies to seek the truck's return under state law, Mo.Rev.Stat. §542.301. Thus, the Eighth Circuit's opinion conflicts with the jurisprudence of this Court under both the Fourth and Fourteenth Amendments.

Certiorari is warranted in this case to resolve the conflicts with the cases of this Court and of other Circuits and state courts, created by the Eighth Circuit's opinion.

CONCLUSION

For the foregoing reasons, certiorari should issue to the Court of Appeals for the Eighth Circuit so that this Honorable Court may review and correct the decision below.

Respectfully submitted,

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