No. 19-797

In The Supreme Court of the United States

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

Petitioners,

v.

MARY MEIER,

Respondent.

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

REPLY BRIEF OF PETITIONERS

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INTRODUCTION

Respondent Meier's bob and weave approach to this case is of a piece with the approach taken by the Court of Appeals, and casts in sharp relief the need for intervention by this Court to correct the lower court's potentially catastrophic Fourth Amendment innovation, and to reexamine the standards governing municipal liability under 42 U.S.C. §1983.

First, respondent now concedes that the seizure of her truck was lawful, and insists that her claim was and is based entirely on the *duration* of detention of the truck due to a "policy" of petitioner City of St. Louis. Brief Opp.Cert. 7. Like the Court of Appeals, she piles concessions on top of assumptions[1] to try to torture this case into fitting the mold of *Monell v. Dept. of Social Services*, 436 U.S. 658 (1978). In the process, respondent ignores her own amended complaint, which attacks

[1] The "assumption" below that petitioner City did not dispute that seizure of the truck violated respondent's constitutional rights, Pet.Cert. A-9, is an exercise in bootstrapping, especially in light of that Court's own recitation of the record showing probable cause to believe that the truck was an instrumentality of a crime, *id.*, A-2, see also A-12 (district court finding); however, the questions presented here are worthy of review even if this "assumption" is accepted, because the petitioners' questions turn on the standards for holding a municipality liable for a "policy" or "practice," and the "practice" at issue was defined as using wanted reports to secure the warrantless seizure of automobiles for purposes of investigation. The Court of Appeals *had* to make this assumption so as to elide the central weakness of its rationale that the City's unconstitutional "practice" caused a constitutional deprivation. If the seizure of respondent's truck was lawful – which it was – the Court's rationale for holding the City liable collapses.

not only the detention, but the seizure as well. Pet.Cert.App. A-34-A-35.

Second, respondent does not dispute that the opinion of the Court of Appeals has implications for law enforcement nationally. Rather, respondent insists that review by this Court is unwarranted, because petitioners' claim only erroneous factual findings and misapplication of a rule of law by the Court of Appeals.

Petitioners' questions presented do not depend on factual error. Petitioners have expressed their acceptance of the version of the record presented by the courts below. Pet.Cert. 7-8. While petitioners on remand, if it comes to that,[2] will litigate issues that the Court of Appeals wrongly took as conceded or assumed, the thrust of the petition for certiorari is the importance of the questions presented *even if* the record stood as described by the Court of Appeals. The Court of Appeals held that *both* the seizure *and* the detention of respondent's truck were manifestations of an unconstitutional "policy" of petitioner City. Petitioners urge this Court to reexamine the rule governing municipal liability under §1983, not just to correct the Court of Appeals but to restate the rule in a manner that once and for all compels the lower courts to impose municipal liability only in cases where the identified "policy" truly has the force of law, i.e., such as the custom

[2] Trial in this case is set for April 20, 2020, but petitioners understand that the trial setting is subject to the disposition of the petition for certiorari.

contemplated by *Adickes v. S.H. Kress & Co.*, 398 U.S. 144 (1970).

Finally, the conflict between the judgment below and other courts, including this Court, is real, for the Court of Appeals broadly attacked the use of wanted reports to effect seizure of automobiles involved in crime as violative of the Fourth Amendment, regardless of the duration of the detention. Neither this Court nor any other court has defined a categorical limit on how long lawfully seized evidence of a crime may be retained by law enforcement. Moreover, this Court has held that an officer's subjective motivation is irrelevant to the constitutional calculus of reasonableness under the Fourth Amendment. So how can a city be liable for a "policy" of seizing automobiles in public places on probable cause, "as an investigative tool"? Seizing evidence of crime is the most basic "investigative tool" imaginable. This Court has itself held that officers lawfully seizing property do not have any obligation to inform the owner of anything but the seizure and the identity of the seizing agency. Yet the court below held that petitioners could be liable for detention of a seized automobile regardless of probable cause for the seizure and without addressing what, if anything, due process requires for continuation of the detention.

The issues presented in this case are well within the realm of Sup.Ct.R. 10, and certiorari should be granted.

ARGUMENT

I. Respondent's own distorted formulation of the questions presented demonstrates that review by this Court is warranted, because "a policy of seizing vehicles without a warrant and holding them for an extended period as an investigative tool" is not in contravention of Fourth Amendment standards for seizing vehicles with probable cause, and the opinion of the Court of Appeals holding otherwise conflicts with decisions of this Court and of other Courts of Appeals, and presents a significant issue of national importance regarding liability of municipalities for automobile seizures under §1983.

Respondent has been forced to acknowledge that the formulation of the supposedly illegal "policy" in this case by the Court of Appeals is fatally flawed. See Brief Opp.Cert. 1, 7. So respondent focuses instead on an alternative formulation of the "policy" as relating to the "detention"of her truck. Whereas the Court of Appeals stated that respondent's truck was held due to a "policy of reporting vehicles as wanted for the purpose of detaining them without a warrant," and that violated the Fourth Amendment, respondent re-states the question as whether "a policy of seizing vehicles without a warrant and holding them for an extended period as an investigative tool" contravenes the Fourth and Fourteenth Amendments. Compare Brief Opp.Cert. i with Pet.Cert.App. A-8. However, any formulation of

the "policy" at issue raises equally troubling questions of the scope of municipal liability under §1983.

Respondent also ignores the national implications of the opinion of the Court of Appeals condemning the use of wanted reports to secure the warrantless seizure of automobiles. But this Court cannot be so cavalier. It has been settled law for a century that automobiles are treated differently for Fourth Amendment purposes, and this Court has repeatedly held that no warrant is required to seize them, on probable cause, in public places. See *Carroll v. United States*, 267 U.S. 132 (1925); see also *Cardwell v. Lewis*, 417 U.S. 583 (1974). Yet the Court of Appeals simply ignored this settled law in its eagerness to construct an actionable municipal policy or practice to fasten §1983 liability on petitioners.

This Court has never addressed directly the issue of the duration of a detention of property lawfully seized as evidence. Cases cited by respondent, e.g., *United States v. Place*, 462 U.S. 696 (1983), are inapposite, as they involved investigative detentions of items other than vehicles pending application for a warrant. Some cases say that a constitutional violation arises if the owner or possessor is not accorded some form of notice or there is no reasonably timely judicial determination of the need for the detention. See *Krimstock v. Kelly*, 464 F.3d 246 (2d Cir. 2006). In this case, however, the Court of Appeals did not bother to consider available remedies to secure return of the property. That Court simply stopped at absence of a warrant and never addressed respondent's due process claim as

pleaded – clearly a consequence of ignoring this Court's commands for "rigorous" analysis of culpability and causation.

This Court has repeatedly taken lower courts to task for failing to follow its Fourth Amendment precepts in the qualified immunity context under §1983. E.g., *City of Escondido v. Emmons*, 139 S.Ct. 500 (2019). It is time to apply similar medicine to lower courts' failure to apply "rigorous" standards of causation and culpability in the context of municipal liability under §1983.

It is noteworthy that respondent ignores *City of West Covina v. Perkins*, 524 U.S. 234 (1999), in which a property owner – not a party to the criminal case – claimed that a seizing police agency was liable under §1983 for failing to notify the party that seized property was subject to certain remedies to seek its return. In circumstances similar to the case at bar, the property had been lawfully seized and the owner applied to the police for its release, but the police insisted on a court order. The plaintiff then sued the city claiming violations of the Fourth and Fourteenth Amendments. "What is at issue is the obligation of the State to provide fair procedures to ensure return of the property *when the State no longer has a lawful right to retain it*." 524 U.S. at 240 (emphasis added). This Court held that when property is lawfully seized, due process requires only reasonable steps to give notice that the property has been taken so that the owner can pursue readily available and ascertainable remedies for its return. Due process does not require notice of what those

remedies are, so long as the state law can be found in public sources, i.e., statutes. This Court clearly recognized that the property could be retained so long as there was a legitimate need for it in connection with a prosecution.

In the case at bar, as in *City of West Covina*, the respondent was given notice of the seizure, knew who had the truck, knew that it was held in connection with her son's criminal action, and personally demanded its return. Moreover, there were and are state remedies available to secure its return. Mo.Rev.Stat. §542.301. Nevertheless, the Court of Appeals ignored *West Covina* in holding that petitioners could be liable under §1983, due to the "policy of reporting vehicles as wanted for the purpose of detaining them without a warrant." Pet.Cert. A-8. Respondent attempts to deflect the petition for certiorari by characterizing her claim as one "for excessive delay in authorizing the return of vehicles seized without a warrant." Brief Opp. Cert. 1. Yet neither formulation justifies imposition of §1983 liability on petitioners. Only this Court can act to clarify and settle the law in regard to municipal liability for seizures such as that involved here.

II. Respondent, in attempting to recharacterize her claim and selectively restate the opinion below, wholly fails to address the importance of the erroneous linchpin of that opinion, i.e., that petitioner City's "policy" of using wanted reports to effectuate the warrantless seizure of automobiles, in investigating crimes, is somehow in contravention of the Fourth Amendment even if there is probable cause.

Respondent seeks to recast the nature of her claims to escape the manifest error of the Court of Appeals in holding illegal the use of wanted reports to effect the seizure of vehicles as instrumentalities or evidence of crime on probable cause. Respondent's is a too-clever-by-half effort to evade both the serious national repercussions likely if the Court of Appeals' opinion stands and also that opinion's clear departure from Fourth Amendment principles.

No matter how respondent reformulates the issues, it remains pellucid that there is nothing constitutionally infirm about a "policy" of using wanted reports to effectuate the warrantless seizure of a vehicle in a public place as evidence of crime, on probable cause. The fact that the police are motivated by a desire to use wanted reports and vehicle seizures as an "investigatory tool" does not affect the analysis. The evaluation of the constitutionality of a seizure is an objective one, and does not depend on the subjective motivation of police officers, but on the facts and

circumstances known at the time. Cf. *Nieves v. Bartlett*, 139 S.Ct. 1715 (2019).

Furthermore, it is proper for police to seek, by lawful means or stratagems, to induce wrongdoers to surrender themselves or otherwise cooperate in the investigation of crime. See, e.g., *Grimm v. United States*, 156 U.S. 604 (1895). The use of wanted reports to produce a lawful seizure that "leverages" an interview with a suspect affords no basis to conclude that an unconstitutional "policy" is at play. This Court should intervene not just because the Court of Appeals erred, but rather because the error presents a clear and present danger that the use of wanted reports in the thousands by police across the land will not only be deterred, but will also provoke a cascade of suits under §1983 by persons whose vehicles have been seized as evidence or instrumentalities of crime. Certiorari is accordingly warranted.

III. Respondent overlooks that the petitioners do not seek to relitigate facts found below, but assert that the opinion of the Court of Appeals, paying only lip service to the standard of municipal liability under 42 U.S.C. §1983, demonstrates the urgent need for intervention by this Court to reexamine and reinforce the "rigorous" standards of culpability and causation for municipal liability in such cases.

This petition does not rest on factual errors by the lower court. Pet.Cert. App. A-7-A-8. The idea that decisions

of low-level line employees (or, in this case, a non-employee) can amount to an official City policy is risible, but the Court of Appeals' assertion that petitioner City "conceded" the status of such persons as policymakers does not affect the propriety of certiorari. Nor does the Court of Appeals' facile assumption that seizure of respondent's truck violated her constitutional rights. *Id.*, A-8-A-9. What is at stake here is the meaning of this Court's direction that, in imposing municipal liability for the conduct of a municipal employee, whether on a "policy" or "custom" theory, the lower courts must observe "rigorous" standards both of culpability and causation. *Board of County Commissioners v. Brown*, 520 U.S. 397, 405 (1997). The Court of Appeals exhibited no rigor in analyzing respondent's claim. Instead, that Court concocted municipal liability out of (a) a (constitutionally valid) practice of using wanted reports to effect warrantless seizures of vehicles on probable cause, (b) a "concession" of policymaking status of employees without any reference to state law, (c) an "assumption" that the seizure of the truck was unconstitutional, and (d) a conclusion that a non-governmental actor (petitioner Doc's) was caused to detain respondent's truck by the City's wanted report, without any connection or communication between the non-governmental actor and any City officer or employee.

Having concluded that the City's wanted report "policy" reflected a decision of a municipal policymaker, the Court of Appeals did not ask the next question: how that "policy" caused petitioner Doc's Towing to detain

respondent's truck. While it is true that a single decision of a municipal policymaker can establish municipal policy, it does not follow that an independent decision of someone not employed by the municipality to interfere with someone's property establishes the "policy" as the cause of a constitutional violation. In this case, neither the Court of Appeals nor the respondent could show that petitioner Doc's retention of the truck was subject to the City's control or review. That was why the district court granted summary judgment. Pet.Cert. A-17-A-18.

The situation in this case is the obverse of *City of St. Louis v. Praprotnik*, 485 U.S. 112 (1988), in which a supervisory employee allegedly violated Praprotnik's constitutional rights in firing him, but that supervisory employee was not the final decisionmaker as a matter of law, and so there was no municipal liability. Here, by contrast, the party actually detaining respondent's truck and so interfering with respondent's property rights had no direct or indirect connection with the City. To overcome this hurdle for respondent, the Court of Appeals decided that a jury could find that petitioners shared a "mutual understanding" about the truck. Pet.Cert. A-10. But the "policymakers" identified by the Court of Appeals had nothing whatever to do with the decision to detain the truck – unlike the situation in *Pembaur v. City of Cincinnati*, 475 U.S. 469 (1986), where the government policymaker actually instructed officers to commit the constitutional tort. So how can a "mutual understanding" of the sort identified by the Court of Appeals suffice to support municipal liability for the detention?

That respondent's claim in this case was held to show an actionable "policy" or practice, causing an unconstitutional detention of respondent's truck, illustrates the crying need for this Court to reexamine the standards of municipal liability under §1983.

CONCLUSION

In light of the foregoing, petitioners submit that certiorari should issue to review and correct the judgment below.

Respectfully submitted,

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