No. 25-1091

IN THE
Supreme Court of the United States

DAVIE COUNTY AND STOKES COUNTY,

Petitioners,

v.

JULIANA SWINK, ADMINISTRATRIX OF THE ESTATE OF DAVID RAY GUNTER; SOUTHERN HEALTH PARTNERS, INC.; JASON JUNKINS, MEDICAL DIRECTOR; FRAN JACKSON; MANUEL MALDONADO; SANDRA HUNT,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

BRIEF IN OPPOSITION

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QUESTION PRESENTED

This Court has explained that if a municipality's "lawful policymakers could insulate the government from liability simply by delegating their policymaking authority to others, § 1983 could not serve its intended purpose," *City of St. Louis v. Praprotnik*, 485 U.S. 112, 126 (1988) (plurality opinion).

The question presented is whether, as every court of appeals to have addressed the question has held, a municipality that contracts with a private company to provide medical services for all persons detained in the municipality's jails can be held directly liable under 42 U.S.C. § 1983 for injuries caused by the contracted healthcare provider's customs, policies, and practices.

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INTRODUCTION

Petitioners' two questions presented boil down to one: Can a municipality that contracts out its final policymaking authority over the provision of jail healthcare to a private company insulate itself from any resulting constitutional violations caused by the customs or policies implemented in the municipality's name by the contractor? Since this Court in *City of St. Louis v. Praprotnik*, 485 U.S. 112, 126 (1988) (plurality opinion), already explained that if a municipality's "lawful policymakers could insulate the government from liability simply by delegating their policymaking authority to others, § 1983 could not serve its intended purpose," the few circuits to have addressed this question have said no. They have all done so by following this Court's *Monell* precedent regarding how to identify a final policymaker, relying on the specific delegations at issue in each case, and being mindful to avoid imposing *respondeat superior* liability. Because there is no circuit split and this is not a particularly consequential issue, the Court should deny certiorari.

STATEMENT OF THE CASE

I. Factual Background

David Ray Gunter was diagnosed with a heart condition as an infant and as a teenager underwent open-heart surgery to replace his aortic valve with a mechanical heart valve (MHV). Pet. App. 2a. Individuals with MHVs are at a heightened risk of blood clots. *Id.* Accordingly, Mr. Gunter's physicians prescribed him Coumadin, a blood thinner, which reduces the formation of blood clots. *Id.* Mr. Gunter "faithfully and regularly" took his Coumadin daily

without incident until his arrest and pretrial detention. Pet. App. 2a-3a. He was also regularly monitored for his International Normalized Ratio (INR) range, which indicates blood thickness and clotting ability. Pet. App. 3a.

From November 7 through November 21, 2012, Mr. Gunter was detained first at Davie County Detention Center (DCDC) and then at Stokes County Detention Center (SCDC). Pet. App. 4a-8a. Both Davie County and Stokes County contracted with Southern Health Partners (SHP) to provide medical care at their detention facilities. Pet. App. 4a, 6a.

During this fifteen-day pretrial detention at DCDC and SCDC and under the care of SHP employees, Mr. Gunter was not given Coumadin for at least five of the days and was underdosed for the rest. *See* Pet. App. 5a-7a. This was despite the fact that Mr. Gunter provided his medical history and medication requirements at intake at DCDC on November 7, and his family brought medication to the jail, although he was not allowed to take it. *See* Pet. App. 5a-6a. Additionally, he received only one INR test, performed on November 13. Pet. App. 6a. The INR showed Mr. Gunter's levels at 1.07, "well below the therapeutic range," *id.*, putting him at risk of clot formation, Pet. App. 3a, 6a.

A few days after his release, Mr. Gunter developed severe abdominal pain, fever, nausea, vomiting, and diarrhea, and ultimately went to the Wake Forest Baptist Medical Center emergency room on November 29, 2012, where he was admitted for a blood clot. J.A. 746-47; Pet. App. 8a. At admission his INR was 1.7—again well below the therapeutic range—and he reported that he had been off his prescribed Coumadin

because of his detention. J.A. 747; Pet. App. 8a. The hospital conducted emergency surgery to remove the blood clot, and complications from surgery required him to be intubated for several days. J.A. 747-48; Pet. App. 8a. Mr. Gunter was ultimately discharged after nearly two weeks with an INR in the appropriate range. Pet. App. 8a. In mid-January, he was diagnosed with a second blood clot requiring surgery to resect part of his bowel. *Id.*

II. Procedural History

Mr. Gunter brought a 42 U.S.C. § 1983 action alleging, as relevant here, a Fourteenth Amendment deliberate indifference claim against SHP and various individual medical defendants and a *Monell* claim against Petitioners Davie County and Stokes County. Pet. App. 8a-9a.

Petitioners moved for summary judgment on the *Monell* claim, which the district court granted. Pet. App. 10a, 71a. SHP and the medical defendants—who are not petitioners here—separately moved for summary judgment on the deliberate indifference claim, which the district court also granted. Pet. App. 11a-13a; *Gunter v. S. Health Partners, Inc.*, No. 1:16-cv-262, 2021 WL 4255370 (M.D.N.C. Sept. 17, 2021).

The Fourth Circuit reversed and remanded the grant of summary judgment on both claims. Pet. App. 39a.[1] At the outset, the court of appeals concluded

[1] The Fourth Circuit also reversed the district court's dismissal of Mr. Gunter's medical malpractice claims under North Carolina law against SHP and two medical-professional defendants, Pet. App. 20a, 26a, several of the court's evidentiary rulings, Pet. App. 29a, and its ruling on a motion to strike, Pet.

that Mr. Gunter created a genuine dispute of material fact regarding whether SHP and the medical defendants were deliberately indifferent to his serious medical needs. Pet. App. 21a.[2] As to the *Monell* claim, the Fourth Circuit first noted that the contracts that Petitioners entered into with SHP expressly delegated "final authority to make decisions about inmates' medical care" to SHP. Pet. App. 24a (quotation omitted). Specifically, the court of appeals quoted the Counties' contracts with SHP "to provide for the delivery of all medical . . . services to inmates" at their respective jails. *Id.* (quoting J.A. 566; J.A. 578). That is, when the Counties had delegated their healthcare-related policymaking authority to SHP, SHP became a final policymaker on behalf of the Counties for purposes of *Monell* liability as it relates to medical care at the jails. Pet. App. 24a-25a; *see also* Pet. App. 23a (noting a municipality may be held liable "through the decisions of a person with final policymaking authority").

Reviewing the summary judgment record, the Fourth Circuit concluded that Mr. Gunter adduced evidence that SHP had a "custom and practice" of delaying dispensing medication for days, and of not providing medical care on weekends. Pet. App. 25a.[3]

App. 38a. The Fourth Circuit affirmed the district court's ruling on a motion to compel. Pet. App. 39a.

[2] SHP and the medical defendants are not petitioners in this case, and Petitioners do not challenge this ruling before this Court. *See, e.g.*, Pet. 4 (asking for reversal "as it relates to the Petitioner counties").

[3] The Fourth Circuit vacated the *Monell* claim dismissal based on SHP's policies pursuant to its delegated authority, so the court of appeals did not consider Mr. Gunter's other bases for imposing

The court of appeals also determined that a reasonable jury could find that these policies were the moving force behind the inadequate medical care Mr. Gunter received and his resulting serious injuries. *Id.* As a result, the Fourth Circuit vacated and remanded the *Monell* claim for further proceedings. Pet. App. 26a.

Judge Richardson concurred in part and dissented in part. Pet. App. 40a-69a (Richardson, J., concurring in part and dissenting in part). He disagreed with the majority's holding that Petitioners could be held liable under *Monell*, characterizing the majority's decision as applying *respondeat superior*. Pet. App. 54a. However, Judge Richardson agreed with the majority that the district court's grant of summary judgment on Mr. Gunter's § 1983 medical-care and medical malpractices claims were in error. Pet. App. 50a-51a.

Petitioners filed a petition for rehearing en banc, making the same argument as Judge Richardson on *Monell* liability. ECF 97 at 5-8. The Fourth Circuit

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direct liability upon the Counties, including policies of understaffing county jails; "transferring inmates from one detention center . . . to another . . . without adequate medical records, medications, or instructions to assure continuity of care"; "receiving inmates . . . from other detention centers . . . without adequate medical records, medication or instructions to assure continuity of care" and "without making prompt medical screening available to assess the medical condition of the incoming inmates"; failing "to recognize anticoagulation therapy as a special needs, chronic medical condition"; and "releasing inmates without adequate discharge plans and provisions for continuity of care for a period of time sufficient to permit the released inmate to arrange for post-release medical attention." ECF 48 at 44-45, 47-49; *see* Pet. App. 24a-25a.

denied the petition with no judge requesting a poll. Pet. App. 107a.

Petitioners now seek certiorari.

REASONS FOR DENYING THE PETITION

Petitioners ask this Court to weigh in on a question it has already answered, and on which all the courts of appeals to consider it agree. This Court has long held that a governmental entity with final policymaking authority cannot insulate itself from § 1983 liability by delegating that authority. And, this Court has explained, determining the entity with final policymaking authority and whether that authority was delegated requires a case-specific analysis. Consistent with this precedent, the Fourth Circuit concluded that Mr. Gunter's *Monell* claim can proceed against Petitioners because Petitioners had an obligation to provide healthcare to those detained in their jails, they delegated their final policymaking authority in this regard to SHP via contract, and Mr. Gunter adduced evidence from which a reasonable jury could find that SHP's policies caused his injury. The court of appeals did not impose liability under the *respondeat superior* doctrine—nor has any court of appeals.

This Court should deny the petition.

I. There is no circuit split.

1. There is no circuit split over "the proper standards to use" for *Monell* liability when a municipality contracts out total responsibility for the provision of medical care to jail detainees. Pet. 24. Contrary to Petitioners' view, *all* the circuits "correctly apply *Monell* and the Supreme Court's policymaker framework." *Id.* Indeed, no court of

appeals has acknowledged a division of authority, nor did Petitioners even attempt to show one in their petition for rehearing en banc. *See generally* ECF 97.

Let's start with the circuits on the alleged "completely disregard Supreme Court precedent" side of the purported split. Pet. 25. Petitioners claim that the Eleventh, Seventh, and Fourth Circuits "mandat[e] that the mere action of hiring a private healthcare provider to provide for inmate medical care automatically makes the governmental entity liable." *Id.* That is incorrect.

In *Ancata v. Prison Health Services, Inc.*, 769 F.2d 700 (11th Cir. 1985), the Eleventh Circuit began with the uncontroversial premise that the *Monell* defendants in the case were "ultimately responsible for providing medical care to those incarcerated in Broward County." *Id.* at 703; *see also id.* at 705 ("The federal courts have consistently ruled that governments, state and local, have an obligation to provide medical care to incarcerated individuals."). Indeed, Broward County had "a duty to provide adequate medical care both under the United States Constitution and under Florida law." *Id.* at 705 n.9; *see also id.* at 705 n.7. The court characterized this duty as "non-delegable," since the county could not "absolve[]" itself of this duty simply by contracting it out to a private entity. *Id.* at 705. And because the "governmental entity delegate[d] the final authority to make decisions," "those decisions necessarily represent[ed] official policy." *Id.* at 705 n.9. Under these circumstances, the Eleventh Circuit held that the government defendants could be potentially liable under *Monell* because of their "actions and policies" that "affect[ed] in various ways the health care received by Mr. Ancata." *Id.* at 704 n.6.

However, contrary to Petitioners' claim, the Eleventh Circuit did not "make the county automatically liable under Section 1983 for the constitutional torts of the healthcare provider." Pet. 26. Indeed, the court of appeals specifically noted that "the county would *not* be liable" for any tort committed by employees of the healthcare provider that "was not a result of the policy or custom." *Ancata*, 769 F.2d at 705 n.8 (emphasis added). *That* type of liability, the court observed, "would be based upon respondeat superior," and so would "not [be] actionable against the county under § 1983." *Id.* And in the years since *Ancata*, the Eleventh Circuit has reaffirmed again and again that municipal liability cannot lie on a *respondeat superior* theory. *See, e.g.*, *Craig v. Floyd County*, 643 F.3d 1306, 1319 (11th Cir. 2011) (noting *Monell* liability "may not be based on the doctrine of respondeat superior" and rejecting *Monell* claim where plaintiff proffered no proof of policy or custom); *Ireland v. Prummell*, 53 F.4th 1274, 1288-89 (11th Cir. 2022) (similar); *Smothers v. Childers*, 159 F.4th 922, 931-33 (11th Cir. 2025) (noting need "to avoid" imposing "*respondeat superior* liability").

The Seventh Circuit has also eschewed the specter of *respondeat superior* liability in such cases. *Contra* Pet. 26. In *King v. Kramer*, 680 F.3d 1013 (7th Cir. 2012), the court of appeals set that rule out up front. *See id.* at 1020 ("It is not enough to assert that the municipality is responsible under a theory of *respondeat superior*."). But it also recognized that a "[c]ounty cannot shield itself from § 1983 liability by contracting out its duty to provide medical services." *Id.* Under this framework, the court of appeals looked to "the particulars" of the "the County's express policies as embodied in the contract" and found that

the County "entrust[ed] final decision-making authority to [the healthcare contractor] over inmates' access to physicians and medications." *Id.* at 1021. Because of this delegation, and because the plaintiff adduced "significant evidence" that the healthcare provider's practices caused his injury, the Seventh Circuit concluded that the plaintiff could present his claim to a jury. *See id.* at 1020-21.

As Petitioners even recognize, the Seventh Circuit explained that its "underlying rationale is *not* based on *respondeat superior*, but rather on the fact that the private company's policy becomes that of the County if the County delegates final decision-making authority to it." *King*, 680 F.3d at 1020 (emphasis added); Pet. 26-27. That is not the same thing as making the County "automatically liable," Pet. 26, for any torts committed by the contracted party, since the plaintiffs must still "present evidence demonstrating the existence of an official policy, widespread custom, or deliberate act of a county decision-maker," and prove "that the official policy or custom caused his constitutional violation." *King*, 680 F.3d at 1020. In fact, the Seventh Circuit has continued to reject arguments like Petitioners' that seek to recast this precedent "by invoking *respondeat superior*." *Lee v. Milwaukee County*, 175 F.4th 877, 884 (7th Cir. 2026).

Likewise, in this case, the Fourth Circuit concluded that Mr. Gunter's *Monell* suit against Petitioners could proceed because their "express policies as embodied in their contracts with SHP show that the Counties delegated to SHP final authority to make decisions about inmates' medical care." Pet. App. 24a (quoting *King*, 680 F.3d at 1021 (cleaned up)). The court found that Petitioners were vested with final policymaking authority to furnish medical

care to those in County jails and prisons. *Id.*[4] Therefore, because Petitioners "contracted out their authority and obligation to provide adequate medical care to inmates at their jails," they "may be held responsible" for SHP's policies or customs that resulted in a constitutional violation when it comes to medical care. Pet. App. 24a-26a. Accordingly, just like the Eleventh and Seventh Circuits, the Fourth Circuit did not impose *respondeat superior* liability, but instead undertook a fact-specific inquiry to identify the individual or entity vested with final policymaking authority for purposes of *Monell*. *Accord, e.g.*, *Wright v. Collins*, 766 F.2d 841, 850 (4th Cir. 1985) (rejecting "a theory of *respondeat superior*").

2. Now to the "other side" of the would-be split. *See* Pet. 28. Far from "reject[ing]" the notion that a municipality can ever be held responsible for the policies and customs of a delegee, *id.*, the Sixth Circuit has long held that government entities "retain[]

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[4] When evaluating Mr. Gunter's medical malpractice claim against SHP, the Fourth Circuit also determined that North Carolina caselaw made the duty to provide medical care for detained individuals "nondelegable." Pet. App. 27a (citing *Medley v. N.C. Dep't of Corr.*, 330 N.C. 837, 841 (1992)). This is also how the Eleventh Circuit characterized Broward County's duty under Florida law in *Ancata*. *See* 769 F.2d at 705. Regardless of the particular nomenclature, describing a duty as "nondelegable" is just another way of saying that a contract can functionally turn an entity into a county policymaker—a type of *direct* liability (i.e., not *respondeat superior*). *See* Restatement (3d) of Agency § 7.03(1)(c) ("A principal is subject to direct liability to a third party harmed by an agent's conduct when . . . the principal delegates performance of a duty to use care to protect other persons . . . who fails to perform that duty."); *id.* § 7.06 ("A principal required by . . . law to protect another cannot avoid liability by delegating performance of the duty.").

responsibility despite having contracted out the medical care of [their] prisoners," *Leach v. Shelby County*, 891 F.2d 1241, 1250 (6th Cir. 1989); *accord Carl v. Muskegon County*, 763 F.3d 592, 596 (6th Cir. 2014) (same); *Phillips v. Tangilag*, 14 F.4th 524, 533 (6th Cir. 2021) (same); *see also Kent v. Collin County*, No. 4:21-cv-412, 2022 WL 949963, at *6 (E.D. Tex. Mar. 29, 2022) (observing a "robust consensus" of agreement among the Sixth, Seventh, and Eleventh Circuits). Indeed, the Sixth Circuit has explained that furnishing medical care to detainees is one of "a few public functions" that "cannot be delegated to private parties . . . without the Constitution's limits accompanying the delegation." *Phillips*, 14 F.4th at 532; *cf. Ancata*, 769 F.2d at 705 (county "remain[ed] liable for any constitutional deprivations caused by the policies or customs" of its contracted healthcare provider in such a situation).[5]

None of the three cases Petitioners cite are to the contrary. *Miller v. Calhoun County*, 408 F.3d 803 (6th

[5] Although the Sixth Circuit has not had the opportunity to squarely hold that a county is potentially liable under *Monell* in this precise circumstance, it has explained such delegations make the contracted healthcare provider a "state actor" that can face liability under *Monell*. *See, e.g.*, *Carl*, 763 F.3d at 595; *accord* Pet. App. 27a ("[P]roviding medical care to those incarcerated in county jails is a nondelegable duty of the county, and thus, any independent contractor hired to perform that duty is an agent of the state as a matter of law."). And judges on that court have recognized that a municipality cannot "escape its constitutional duties by hiring a contractor to provide a fundamental service," such as healthcare to detainees, "without supervision." *Payne v. Servier County*, 681 F. App'x 443, 448 (6th Cir. 2017) (Donald, J., concurring). In any event, and contrary to Petitioners' characterization, the Sixth Circuit has not rejected the approach taken by the Fourth, Seventh, and Eleventh Circuits.

Cir. 2005), was a fact-specific ruling in which the Sixth Circuit declined to hold the county-defendant liable because the plaintiff failed to show the county delegated its final policymaking authority. *See id.* at 814 (explaining that the plaintiff "advance[d] no argument and proffer[ed] no evidence" that the sheriff delegated his policymaking authority). And, indeed, in *Miller* the court of appeals *recognized* that, under some circumstances, "it is true that final policymaking authority may be delegated." *Id.* The Sixth Circuit's decision in *Winkler v. Madison County*, 893 F.3d 877 (6th Cir. 2019), is even further afield. Rather than argue that the county contractually *delegated* its final policymaking authority, the plaintiff argued "that the County's policy of contracting with a private medical provider for healthcare services at the Detention Center was facially unconstitutional." *Id.* at 901. Lastly, the claim in *Graham ex rel. Estate of Graham v. County of Washtenaw*, 358 F.3d 377 (6th Cir. 2004), failed for lack of causation, not because the County contracting out its healthcare services somehow insulated it from liability. *Id.* at 385.

Finally, in an effort to place the Fifth Circuit in a different "camp[]" from the Fourth, Seventh, and Eleventh Circuits, Pet. 24, Petitioners rely on an unpublished district court opinion—which, of course, is not binding circuit law. *See* Pet. 29-30 (citing *Robinson v. Midland County*, No. 21-cv-111, 2022 WL 20653429 (W.D. Tex. Apr. 2, 2022)). That the Fifth Circuit's affirmance on other grounds "did not disturb" the district court's ruling does not somehow turn that ruling into part of the circuit caselaw, Pet. 30 (citing *Robinson v. Midland County*, 80 F.4th 704 (5th Cir. 2023)), especially since the Fifth Circuit

expressly noted it was *declining* to reach the issue. *Robinson*, 80 F.4th at 710 n.4.

In short, there is no circuit split. No court of appeals—including the Fourth Circuit below—has invoked *respondeat superior* to hold a governmental entity automatically liable for the tortious conduct of its contracted healthcare provider. Rather, the few appellate courts that have reached this issue have uniformly acknowledged that governmental entities *can* potentially remain on the hook when they delegate final policymaking authority to private healthcare providers and such providers' policies, customs, or practices result in injuries to detainees. That some cases have found potential *Monell* liability and others have not does not evidence a split, as Petitioners would have it, but is the natural result of the courts of appeals asking the same question and coming out different ways based on the individual facts of each case.

II. The Fourth Circuit's decision is consistent with this Court's precedent.

1. In addition to not being the subject of a circuit split, certiorari is also unwarranted because the Fourth Circuit's decision was faithful to this Court's *Monell* precedent. "It is well established that in a § 1983 case a city or local governmental entity cannot be subject to liability unless the harm was caused by the implementation of 'official municipal policy.'" *Lozman v. Riviera Beach*, 585 U.S. 87, 95 (2018) (quoting *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 691 (1978)). As such, § 1983 does not permit *respondeat superior* liability, so "a municipality cannot be held liable *solely* because it employs a tortfeasor." *Monell*, 436 U.S. at 691. Rather, a

municipality is only liable for injuries resulting from the "execution of a government's policy or custom." *Id.* at 694.

Monell therefore requires a plaintiff to "identify a municipal 'policy' or 'custom' that caused their injury." *Bd. of Cnty. Com'rs of Bryan Cnty. v. Brown*, 520 U.S. 397, 403 (1997). This Court clarified several principles that define the scope of a municipal "policy" giving rise to § 1983 liability.

To begin, this Court explained that the key question relates to who has municipal policymaking authority. Because "not every decision by municipal officers automatically subjects the municipality to § 1983 liability[, m]unicipal liability attaches only where the decisionmaker possesses final authority to establish municipal policy with respect to the action ordered." *Pembaur v. City of Cincinnati*, 475 U.S. 469, 481 (1986) (plurality opinion). To have "final policymaking authority," *id.* at 483, an individual or entity's decisions must be neither "constrained by policies not of that official's making," nor "subject to review by the municipality's authorized policymakers," *City of St. Louis v. Praprotnik*, 485 U.S. 112, 127 (1988) (plurality opinion).

Additionally, this Court has been clear that a governmental entity remains liable when it delegates "final policymaking authority." *Pembaur*, 475 U.S. at 483 (plurality opinion). Again, though, this only occurs when the delegated power is not "constrained by policies not of the [delegated] official's making." *Praprotnik*, 485 U.S. at 127. But "[i]f the decision to adopt that particular course of action is properly made by that government's authorized decisionmakers, it surely represents an act of official government

'policy,'" so the municipality remains "actually responsible" for the plaintiff's harm. *Pembaur*, 475 U.S. at 479-81 (majority opinion). In such a situation, "it is for the jury to determine whether *their* decisions have caused the deprivation of rights at issue." *Jett v. Dall. Indep. Sch. Dist.*, 491 U.S. 701, 737 (1989). Accordingly, this Court has repeatedly emphasized that the government cannot "insulate" itself "from liability simply by delegating [] policymaking authority to others." *Praprotnik*, 485 U.S. at 126. To allow otherwise would mean that "§ 1983 could not serve its intended purpose." *Id.*

2. The decision below—like the robust consensus of appellate courts on this question, *supra* at 11—is consistent with these precedents. This is because, as the Fourth Circuit concluded, (1) Petitioners had the "authority and obligation to provide adequate medical care to inmates at their jails"; but (2) they "contracted out" this authority to SHP, making SHP a municipal policymaker when it comes to healthcare; and so (3) they remain liable for injuries caused by SHP's customs and policies. Pet. App. 23a-25a.

Throughout its analysis, the Fourth Circuit adhered to this Court's framework. After identifying Petitioners as final policymakers, which Petitioners acknowledge, *see* Pet. 19, the Fourth Circuit determined that they expressly *delegated* this authority to SHP via their respective contractual agreements, *see* Pet. App. 23a-24a. The court reached this conclusion by citing specific provisions of Petitioners' contracts with SHP—both of which delegated "the delivery of all medical and dental services to inmates" in their jails, Pet. App. 24a, and provided that SHP is "engaged to provide medical care to inmates at the Jail under the direction of SHP

management," J.A. 575 (Davie County); J.A. 589-90 (Stokes County); *accord* Pet. App. 24a; *see also* N.C. Gen. Stat. Ann. § 153A-225(a) ("Each [county] that operates a local confinement facility shall develop a plan for providing medical care for prisoners in the facility."). Consistent with *Pembaur*, *Praprotnik*, and *Jett*, the Fourth Circuit correctly found that Petitioners delegated policymaking authority to SHP for "all" healthcare services, without any meaningful review from the respective counties. Pet. App. 24a; *Praprotnik*, 485 U.S. at 127.[6] In other words, the Counties, through their contracts, bestowed upon SHP final policymaking authority.

Consequently, the Fourth Circuit correctly found that given Petitioners' contracts with SHP, Petitioners remain liable for actions made pursuant to SHP's policies, practices, and customs. *See* Pet. App. 24a. As this Court has noted, "[c]ontracting out prison medical care does not relieve the State of its constitutional duty to provide adequate medical treatment to those in its custody." *West v. Atkins*, 487 U.S. 42, 56 (1988). Because Petitioners "delegated that function" to SHP, *id.*, they cannot rely on this delegation to "insulate [themselves] from liability," *Praprotnik*, 485 U.S. at 126. In all, the Fourth

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[6] The contracts provide that SHP would operate the Jails' medical care systems pursuant to "written operating policies and procedures employed by SHP" which "are proprietary in nature and will remain in the property of SHP." J.A. 571; J.A. 584. Nothing in the contracts requires SHP to conform to any county policies. *See generally* J.A. 565-77; J.A. 578-92. The only provision at all related to supervision pertains to the County's theoretical dissatisfaction with a particular SHP-employed caregiver. J.A. 569; J.A. 582.

Circuit's opinion is consistent with this Court's precedents.

3. Petitioners' arguments to the contrary are off-base. The Fourth Circuit did not, as Petitioners urge, create a "*per se* rule" to "automatically" create § 1983 liability when a governmental entity "hire[s] [a healthcare provider] to make 'decisions' about inmate healthcare." Pet. 19; *see also* Pet. 13 ("solely because it hires a tortfeasor").

First, as explained above, rather than a "*per se* rule," Pet. 19, or some categorical "all or nothing" approach, *McMillian v. Monroe County*, 520 U.S. 781, 785 (1997), the Fourth Circuit's analysis aligned with this Court's prescription to undertake a fact-specific inquiry of the delegated authority and the context within which the challenged action occurred. *See supra* at 13-16. The court of appeals did so by considering the specific provisions of contracts between Petitioners and SHP. *See* Pet. App. 24a; *cf. King*, 680 F.3d at 1020 ("The evidence presented for summary judgment purposes shows that the County's policy was to entrust final decision-making authority to [private healthcare provider] over inmates' access to physicians and medications.").

Second, the Fourth Circuit did not hold that "hiring" the private company—or even hiring them to "make 'decisions'" was enough to trigger *Monell* liability. Pet. 19. Critically, SHP was not just allowed to make "discretionary decisions" that were "constrained by policies" set out by the Counties or "subject to review by the municipality's authorized policymakers." *Praprotnik*, 485 U.S. at 127. That would not have been enough for potential liability under this Court's precedents. Rather, the Fourth

Circuit determined that the contracts gave SHP "the authority to make *final* policy" when it comes to the provision of healthcare at the jails. *Id.*; Pet. App. 24a. As such, the Counties could remain potentially liable. Pet. App. 24a (citing *West*, 487 U.S. at 56).[7]

Third, Petitioners argue that the court of appeals's conclusion that the Counties had delegated their policymaking authority to SHP is somehow in conflict with state law. Pet. 20. There is no question that state law vests official policymaking authority regarding detainee healthcare to Petitioners. Pet. 19. But the question then becomes: Can they delegate the duty away and wash their hands of any custom-or-policy-based constitutional violations that occur at the Jails? This Court's caselaw answers this question. *Praprotnik*, 485 U.S. at 124 ("Authority to make municipal policy . . . may be delegated by an official who possesses such authority."); *id.* at 126 ("If . . . a city's lawful policymakers could insulate the government from liability simply by delegating their policymaking authority to others, § 1983 could not serve its intended purpose.").

Finally, Petitioners attempt to avoid potential liability by claiming they did not "promulgate[] a policy of providing unconstitutional medical

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[7] The Fourth Circuit did not rely on *West* to "suggest[] that governmental entities must be held strictly liable for unconstitutional decisions of hired providers," as Petitioners claim. Pet. 21. But *West* does say that "[c]ontracting out prison medical care does not relieve the State of its constitutional duty to provide adequate medical treatment to those in its custody." 487 U.S. at 56. And this statement is consistent with *Praprotnik*'s conclusion that a governmental entity cannot "insulate" itself "from liability simply by delegating [] policymaking authority to others." 485 U.S. at 126.

treatment to inmates." Pet. 14. But the point is that they did not promulgate *any* policies relating to medical treatment—they delegated that job to SHP. Pet. App. 24a.

"*Monell* is a case about responsibility." *Pembaur*, 475 U.S. at 478 (majority opinion). The Fourth Circuit properly held that because Petitioners delegated their final policymaking authority to SHP, they remain liable under § 1983 for injuries resulting from those customs and policies. This is not the same thing as making them "automatically liable" "for a single or isolated unconstitutional action of a healthcare provider." Pet. 17. This Court should "decline to accept [Petitioners'] invitation to overlook this delegation of authority" and deny certiorari. *Pembaur*, 475 U.S. at 485 (majority opinion).

III. The issue presented does not warrant review, and this case is a poor vehicle.

1. The Fourth Circuit's decision does not present an important question worthy of this Court's review—for several reasons. To start, Petitioners claim certiorari is warranted because "governmental entities around this nation . . . are entitled to know whether they will be held *strictly liable* under Section 1983 for simply hiring a tortfeasor." Pet. 34 (emphasis added). But, as explained above, this Court has already provided a clear answer, which the Fourth Circuit adhered to: No. *See supra* at 13-17.

And although Petitioners say the issues in this case "are recurring and frequent," they do not even attempt to argue that the circuits they believe adopted a theory of *respondeat superior* liability have seen an explosion of these sorts of claims. *See* Pet. 34. In fact,

contrary to Petitioners' suggestion, cases involving these issues represent an infinitesimal percentage of the federal docket. Less than 8% of federal cases filed last year were "other" civil rights cases—that is, cases focused on issues other than voting, employment, housing, welfare, disability, or education.[8] An even smaller percentage of such cases include *Monell* claims. Smaller still is the percentage of such cases filed against governmental entities based on constitutional violations wrought by the policies and customs of contracted healthcare providers. It is no surprise, then, that in the 40-plus years since *Ancata*, only a small handful of circuits appears to have squarely addressed the issue.

Moreover, governmental entities rarely face any actual liability under *Monell* because of the various procedural and substantive hurdles through which plaintiffs must pass. Indeed, multiple recent studies have found that most *Monell* claims are discarded at the motion to dismiss stage. *See, e.g.*, Joanna Schwartz, Monell*'s Untapped Potential*, 125 COLUM. L. REV. 925, 942-93 (2025) (explaining it is "difficult for plaintiffs to get past a motion to dismiss" stage in *Monell* suits); Nancy Leong et al., *Pleading Failures in* Monell *Litigation*, 73 EMORY L.J. 801, 819-20 & tbl.2 (2024) ("[O]nly 43.5% of plaintiffs successfully satisfied all the elements of at least one theory of *Monell* liability.").

And in any event, Petitioners' request for certiorari boils down to a disagreement with the Fourth

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[8] *See* Admin. Off. U.S. Cts., *Table C-2: U.S. District Courts—Civil Cases Commenced* 2 (last visited July 6, 2026), https://www.uscourts.gov/sites/default/files/document/stfj_c2_1231.2025.xlsx.

Circuit's interpretation of Petitioners' contracts with SHP. Because the Fourth Circuit conformed to this Court's *Monell* framework when analyzing the two contracts in question, this case involves only a specific issue of contract interpretation—not some grand pronouncement about the scope of liability under § 1983. *See, e.g.*, Pet. App. 24a.

2. At any rate, this case is not a good vehicle for review because the issue Petitioners now raise was not considered by the district court or appellate panel, nor will it prevent this case from proceeding to trial.

Although Petitioners now ask this Court to allow it to contract away its duties without consequence by using the hobgoblin of *respondeat superior*, this argument is a late-breaking addition to the case. Of course, Mr. Gunter has never argued that Petitioners could be held liable via *Monell* under a *respondeat superior* theory. And Petitioners did not frame their potential liability as such in the district court or before the appellate panel. *See generally* D. Ct. Doc. 28; D. Ct. Doc. 33; ECF 47; ECF 97. Nor, unsurprisingly given this history, did the Fourth Circuit majority discuss or apply *respondeat superior* liability when it comes to *Monell*. *See* Pet. App. 23a-25a; *supra* at 13-17.[9] Rather, Petitioners first raised their *respondeat superior* argument in a petition for rehearing en banc. *See* ECF 97 at 13. And the Fourth Circuit summarily denied this petition. *See* Pet. App. 107a.

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[9] Notably, in a joint response brief with SHP before the Fourth Circuit, Petitioners raised a *respondeat superior* argument with respect to *SHP*'s liability, but not as to their own liability. *See* ECF 47 at 42-45.

"Federal courts adhere to the principle of party presentation," which is "the 'rule that points not argued will not be considered." *Margolin v. Nat'l Ass'n of Immigr. Judges*, 146 S. Ct. 1285, 1288 (2026) (per curiam) (quoting *United States v. Burke*, 504 U.S. 229, 246 (1992)). "Because courts are 'passive instruments of the government,'" they "rely on the parties to 'frame the issues for decision.'" *Id.* (quoting *United States v. Sineneng-Smith*, 590 U.S. 371, 375-76 (2020)). Here, neither party framed the *Monell* claim as an issue of *respondeat superior* liability before the district court or appellate panel. But Petitioners now seize on a couple of lines from the dissent to inject the issue into the case. In doing so, Petitioners fail to explain why the party presentation principle should be excused here, or why this case presents an "extraordinary circumstance[]" to justify departing from it. *Sineneng-Smith*, 590 U.S. at 379. It does not—for all the reasons articulated above. *See generally* Sections I & II.

In addition to Petitioners' belated argument, this case presents a poor vehicle because the question presented will make little-to-no difference in how this case proceeds. Petitioners do not contest the court of appeals's conclusions (1) that genuine issues of material fact exist as to Mr. Gunter's deliberate indifference claim, Pet. App. 21a; and (2) that SHP had one or more customs and practices; (3) that a reasonable jury could find was a "moving force" behind Mr. Gunter's constitutional injury, Pet. App. 25a. They just grumble (incorrectly) about being held "automatically liable" for these constitutional claims.

As a result, this case is proceeding to trial against SHP regardless of the outcome of this petition. The court of appeals reversed not only the district court's grant of summary judgment on Mr. Gunter's

deliberate indifference claim, but also his state law claims against SHP—and remanded for further proceedings. *See* Pet. App. 39a. SHP is not a petitioner here, and the County Petitioners do not take issue with the Fourth Circuit's rulings on that front. *See* Pet. 4. This Court's intervention will not even spare the district court a trial. The question—at most—relates to how many defendants there will be.

And even as to the Petitioners, it remains to be seen whether they will in fact face any actual liability in this case. *Contra, e.g.*, Pet. 3, 4, 12, 13, 17, 22, 25 (decrying they are being held "automatically liable"). Neither the district court nor the Fourth Circuit resolved causation and Petitioners' assertions of qualified, government, and public-officer immunity. The court of appeals remanded to the district court to address the former, *see* Pet. App. 25a-26a, and the latter remain as-yet unlitigated questions in the case, *see* Pet. App. 9a, 91a-92a n.8 (district court declining to reach Petitioners' immunity arguments). As such, Petitioners' liability does not necessarily rise and fall with the sole question of whether they can be a defendant when they contractually delegated their duty to provide healthcare to SHP.

In all, this Court should not spend its limited resources adjudicating an issue upon which the courts of appeals agree and faithfully adhere to this Court's precedent. That is particularly so given the nature of the issues in this case and its posture.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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