

No. 17-776

In The
Supreme Court of the United States

CITY OF LOS ANGELES, CALIFORNIA, et al.,

Petitioners,

v.

LAMYA BREWSTER,

Respondent.

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

**BRIEF OF THE CALIFORNIA STATE
ASSOCIATION OF COUNTIES AND
LEAGUE OF CALIFORNIA CITIES AS AMICI
CURIAE IN SUPPORT OF PETITIONERS**

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CORPORATE DISCLOSURE STATEMENT

Amici Curiae California State Association of Counties and League of California Cities are both non-profit corporations. Neither CSAC nor the League has a parent corporation nor any publicly held corporation that owns 10% or more of its stock.

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**AMICI CURIAE BRIEF IN
SUPPORT OF PETITIONERS**

The California State Association of Counties (“CSAC”) and the League of California Cities (“League”) respectfully submit this brief as amici curiae in support of Petitioners.



INTERESTS OF THE AMICI CURIAE¹

The California State Association of Counties (“CSAC”) is a non-profit corporation. The membership consists of the 58 California counties. CSAC sponsors a Litigation Coordination Program, which is administered by the County Counsels’ Association of California and is overseen by the Association’s Litigation Overview Committee, comprised of county counsels throughout the state. The Litigation Overview Committee monitors litigation of concern to counties statewide and has determined that this case is a matter affecting all counties.

The League of California Cities (“League”) is an association of 475 California cities dedicated to protecting and restoring local control to provide for the public health, safety, and welfare of their residents, and to enhance the quality of life for all Californians.

¹ The parties have consented to the filing of this brief. The parties were notified more than ten days prior to the due date of this brief of the intention to file. This brief was not authored in whole or in part by counsel for any party. No person or entity other than amici curiae made a monetary contribution to this brief’s preparation or submission.

The League is advised by its Legal Advocacy Committee, which is comprised of 24 city attorneys from all regions of the State. The Committee monitors litigation of concern to municipalities, and identifies those cases that have statewide or nationwide significance. The Committee has identified this case as having such significance.

Amici's member cities and counties have significant interest in gaining clarity as to how and when they can be found liable for Fourth Amendment violations. The Petition for Writ of Certiorari filed in this case raises issues of concern to cities and counties that amici would like to further address with this Court.

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STATEMENT OF THE CASE

Amici Curiae adopt the Statement of the Case set forth in the Petition for Writ of Certiorari.

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SUMMARY OF THE ARGUMENT

This case presents an issue of significance to cities and counties: When a municipal law enforcement officer completes a full seizure of personal property based on probable cause in full compliance with all applicable Fourth Amendment requirements, does the municipality's continued passive possession of that property constitute a Fourth Amendment violation when the agency refuses the owner's subsequent

request, days later, to return the property? The Ninth Circuit's opinion answers this question in the affirmative, and in doing so, contradicts Fourth Amendment precedent established by this Court and other Circuits, which deems that the Fourth Amendment is satisfied upon an initial finding of probable cause. Moreover, the Ninth Circuit's opinion creates far-reaching liability and implications for municipalities whose law enforcement officers are charged with enforcing California laws, including the 30-day vehicle impound statute of California Vehicle Code section 14602.6.

Accordingly, amici join in Petitioners' request for the Court to grant the petition for writ of certiorari to review this significant issue of Fourth Amendment jurisprudence based on Supreme Court Rule 10(a) (the Ninth Circuit's opinion conflicts with decisions of this Court and also creates a split in the Circuits) and Rule 10(c) (the Fourth Amendment issue should be settled by this Court).

◆

ARGUMENT

A. The Opinion Below Contradicts Fourth Amendment Jurisprudence by Concluding That a Seizure Justified by Probable Cause and Followed by Passive Possession Can Later be Transformed Into an Unreasonable Seizure.

Amici believe that the Ninth Circuit's opinion in this case is the first Circuit Court decision *in history* to

conclude that a reasonable seizure fully justified by probable cause and complying with all applicable Fourth Amendment requirements, which completely divests the owner of possession and which is followed by mere passive possession, is somehow transformed into an unreasonable seizure under the Fourth Amendment merely because the owner later asks the agency for its return and is refused. While the opinion below indicates that this is a case of “delay” in returning property, the sole cause of the “delay” was the municipality’s compliance with the 30-day impound provisions of California Vehicle Code section 14602.6. If the municipality’s compliance with that State statute at the outset of the seizure, towing, and storage of the vehicle fully complied with the Fourth Amendment (*Brewster v. Beck*, 859 F.3d 1194, 1196 (9th Cir. 2017)), then how could its mere passive possession of the vehicle transform the full-blown and reasonable seizure into an “unreasonable” seizure?

The decisions underlying the Ninth Circuit’s faulty opinion that continued and passive retention of property can implicate Fourth Amendment rights are patently distinguishable because they involved facts not found in the present case, among which are: (1) an initial unreasonable seizure;² (2) an initial seizure justified only by reasonable suspicion short of probable

² While not cited by the Ninth Circuit, the case of *Manuel v. City of Joliet*, 137 S.Ct. 911 (2017) demonstrates that an initial failure to comply with the Fourth Amendment in seizing a person renders his/her subsequent detention also unlawful.

cause (*Terry v. Ohio*, 392 U.S. 1 (1968));³ and/or (3) a post-seizure affirmative governmental action affecting the property that went beyond mere passive possession.⁴

This case involves none of these scenarios. First, it is undisputed that the initial seizure of the vehicle was reasonable under the Fourth Amendment and its legality is not at issue in the case. *Brewster*, 859 F.3d at 1196. Second, the vehicle seizure was not merely based on *Terry*-type reasonable suspicion, justifying only a brief interrogative detention, but rather was based on un rebutted probable cause; the municipality cannot be faulted for any delay in taking additional investigative action to render the seizure justified under probable cause, because there was nothing more for it to do to satisfy the 30-day impound statute. Finally, the agency which retained possession of the vehicle did no more than passively maintain possession; continued possession was not a pretext for anything further, such as a drug search, to take a sample of it, or to intentionally change or damage it.

³ See *United States v. Place*, 462 U.S. 696 (1983) (A *Terry*-type reasonable suspicion detention, coupled with a further investigation that went beyond mere passive possession, deemed unreasonable.); see also *United States v. Dass*, 849 F.2d 414 (9th Cir. 1998) (The initial seizure was justified by less than probable cause, and was followed by possession that was more than merely passive.).

⁴ See *United States v. Jacobsen*, 466 U.S. 109 (1984) (After reasonably seizing a package, testing and destruction of suspected contraband found inside the package was deemed unreasonable without a warrant.).

Further, the Ninth Circuit’s focus on “exigency” circumstances as the basis for its Fourth Amendment analysis for the vehicle impound in this case was improper. Specifically, its opinion states: “The exigency that justified the seizure vanished once the vehicle arrived in impound and Brewster showed up with proof of ownership and a valid driver’s license.” *Brewster*, 859 F.3d at 1196. By focusing on exigency, the Ninth Circuit framed the question as whether the Fourth Amendment requires a warrant or some other authority to hold a vehicle for thirty days. But this focus is misplaced, as the exigency doctrine excuses the need to get a warrant in an urgent situation; it does not follow that a warrant is later needed, or that continued possession of seized property becomes unreasonable, once the exigency no longer exists.

A hypothetical outside of the vehicle seizure context illustrates the point. Suppose an officer arrests an armed robber caught in the act of the crime. Continued impoundment of the robber’s gun does not become an unreasonable seizure because the robber later possesses paperwork showing that he is the legal owner of the gun and has a permit to carry the gun. Whether (or when) the robber gets his gun back would be a proper subject for a post-seizure hearing (like the one Brewster received here), but if the hearing officer declines to order the gun returned, the robber’s remedies would be governed by due process principles, not the Fourth Amendment. The fact that the gun was seized under exigent circumstances, and the exigency later lapses, does not create a Fourth Amendment claim.

B. The Ninth Circuit’s Opinion Has Broad Ramifications for Other State Impoundment and Forfeiture Statutes.

The California Legislature’s justification for adopting California Vehicle Code section 14602.6 to require the impoundment of vehicles for thirty days is highway public safety.⁵ If such impoundment violates the Fourth Amendment here (where there was unquestionably probable cause at the time of the seizure and no allegations of a failure to provide due process), then enforcement of all similar statutes in other states would also result in Fourth Amendment violations.

1. The Ninth Circuit’s Opinion Impliedly Finds That All Similar State Statutes Violate the Fourth Amendment.

The 30-day impoundment period in California Vehicle Code section 14602.6 is an administrative penalty for driving a vehicle without a license, and it serves as a deterrent for unlawful conduct. The statute accordingly “provides unquestionably clear notice that a person who drives without a license may be arrested, that the car driven by an unlicensed driver may be seized by a law enforcement officer, and that a seized vehicle will be impounded for no longer than 30 days.” *Samples v. Brown*, 53 Cal. Rptr. 3d 216 (Cal. Ct. App. 2007). The provision is part of a legislative scheme for vehicle impounds and forfeitures the California Legislature designed to combat significant problems caused

⁵ See, e.g., Cal. Vehicle Code § 14607.4.

by persons driving unlicensed or with suspended or revoked licenses. *See, e.g.*, Cal. Vehicle Code § 14607.4(f).

The California Legislature is not the only one to have enacted such a deterrent. In Arizona, “a vehicle that is removed and either immobilized or impounded” for driving without a license “shall be immobilized or impounded for thirty days.” Ariz. Rev. Statutes § 28-3511. Similarly, a State of Washington statute provides if a vehicle is impounded because the operator is driving with an invalidated license, the vehicle can be held for up to thirty days, or even sixty or ninety days for multiple infractions. Wash. Rev. Code § 46.55.120. Finally, in Virginia, when a person is found driving on a license that is suspended or revoked, “[t]he impoundment or immobilization . . . shall be for a period of 30 days.” Va. Code Ann. § 46.2-301.1.

The panel opinion here implies that enforcement of all of these state laws, passed with public safety in mind, would result in Fourth Amendment violations regardless of whether the seizing officer had fully complied with all applicable Fourth Amendment requirements in the first place. In a similar fashion, enforcement of other forfeiture laws intended to serve as administrative penalties to deter unlawful conduct (such as drug asset forfeitures) could result in Fourth Amendment liability. Granting the petition in this case is therefore warranted to clarify the application of the Fourth Amendment to these administrative penalties, given the breadth of statutes potentially impacted by the Ninth Circuit’s opinion.

**2. California Vehicle Code Section 14602.6
Can be Constitutionally Enforced Based
on its Purpose in Preventing Traffic Ac-
cidents and Highway Deaths.**

The Ninth Circuit's opinion discusses exigency as if a warrant should have been obtained for the vehicle impoundment after the exigency dissipated. Yet, even assuming the Fourth Amendment could apply to this scenario, the proper analysis would require consideration of whether prolonged detentions of vehicles intended to deter unlawful driving should be subject to a categorical exemption of the Fourth Amendment's warrant requirement. Indeed, in some circumstances, a case-by-case Fourth Amendment analysis is required (i.e., analyzing the specific facts of each case), while in other scenarios, courts should employ a categorical inquiry (i.e., balancing the needs of the government against the intrusion on the individual). *See Hudson v. Palmer*, 468 U.S. 517, 537 (1984) (O'Connor, J. concurring); *see also Bull v. City & County of San Francisco*, 595 F.3d 964, 977 (9th Cir. 2010).

Hence, if the Fourth Amendment applies at all in the context of this case, at most it should require a categorical analysis of the 30-day impoundment requirement of California Vehicle Code section 14602.6 given the legislative intent of the statute. When such analysis is applied, the balancing weighs in favor of the State's interest in deterring unlawful driving through the use of administrative penalties. This concern is based on a significant and legitimate public safety interest in preventing vehicle accidents disproportionately

caused by unlicensed drivers, which result in property damage, injury, and death. A vehicle owner's private interest (temporarily being deprived of a less expensive or more convenient means of transportation) appears minor by comparison. "The private interests here are financial and personal convenience: the availability of personal transportation, and the cost of fees, towing and storage required to redeem one's vehicle after the impound." *Alviso v. Sonoma County Sheriff's Dept.*, 111 Cal. Rptr. 3d 775, 784 (Cal. Ct. App. 2010).

In considering the impact on private interests, it is also worth noting that where an agency's continued passive possession is wrongful, the property owner has well-established due process remedies enforceable under 42 U.S.C. § 1983 ("§ 1983") that potentially provide full compensation, not to mention additional state law remedies.⁶ See *Payton v. New York*, 445 U.S. 573, 585 (1980); *Rivera v. County of Los Angeles*, 745 F.3d 384 (9th Cir. 2014); *Tatum v. Moody*, 768 F.3d 806 (9th Cir. 2014); *Gant v. County of Los Angeles*, 772 F.3d 608 (9th Cir. 2014). There is no practical need for an additional remedy on Fourth Amendment grounds for mere post-seizure continued passive possession of a lawfully-seized item of personal property.

⁶ The State of California provides a process through which persons aggrieved by agency decisions may challenge them in Court, via a Petition for Writ of Administrative Mandamus. See Cal. Code Civ. Proc. § 1094.5.

C. Granting the Petition is Warranted Because the Opinion Below Fails to Provide a Basis for the City’s Liability Given That the City was Implementing State Law and Not City Policy.

The Ninth Circuit’s opinion reversed the district court order granting Petitioners’ motion to dismiss, but it did so without addressing the lack of a potentially-culpable defendant. A Fourth Amendment violation is not directly or independently actionable; rather, § 1983 is the enabling statute which allows a plaintiff to bring a civil action based on a Fourth Amendment violation. *See Graham v. Connor*, 490 U.S. 386, 393-94 (1989). To hold the City of Los Angeles as a municipal entity liable for one of its official’s conduct that allegedly violates the Fourth Amendment, such conduct must be traceable to a policy or custom implemented by the City. *See Monell v. Dept. of Social Services*, 436 U.S. 658, 690 (1978).

Indeed, this Court has repeatedly disapproved of municipal entity liability under § 1983 except where constitutional deprivations were caused by deliberate choices made by the municipality’s policymakers. *Id.* As such, municipal liability under § 1983 is limited to instances where “the action that is alleged to be unconstitutional implements or executes a policy statement, ordinance, regulation, or decision officially adopted and promulgated by that body’s officer.” *Id.* The official policy or custom must be the “moving force” of the violation – there must be a “direct causal link” to “closely related” conduct, and the official policy or custom must

have “actually caused” the violation. *City of Canton v. Harris*, 489 U.S. 378, 385-91 (1989).

In the present case, there is no causal link between the police officer who initially seized the vehicle (and who did not violate the Fourth Amendment since the seizure was based on probable cause and complied with all Fourth Amendment requirements) and any unnamed agency officials who passively retained the post-seizure possession. In other words, § 1983 liability is not possible here because the seizing officer did nothing wrong, and the continued possession was not based on municipal policy, but rather on implementation of a California Vehicle Code statute.

Specifically, the police officer seized and held the vehicle pursuant to California Vehicle Code section 14602.6(a)(1), which states that an impounded vehicle “shall be impounded for 30 days.” “Shall” is a mandatory term, allowing no choice. Cal. Vehicle Code § 15 [shall is mandatory; may is permissive]; *see California Highway Patrol v. Superior Court*, 76 Cal. Rptr. 3d 578, 581 (Cal. Ct. App. 2002); *see also* 95 Ops.Cal.Atty.Gen. 1, at p. 3 (May 3, 2012) (“[I]f an officer chooses to impound a vehicle under the authority of section 14602.6, then the presumptive period of impoundment for the ‘vehicle so impounded’ is 30 days.”). Though the Ninth Circuit’s opinion notes that LAPD policy mirrors California Vehicle Code section 14602.6 (which requires the 30-day hold at issue in this case), it concludes by holding that the Fourth Amendment problem in this case is caused by California Vehicle Code section 14602.6, making no reference to any local policy or

custom that actually caused the alleged violation. *Brewster*, 859 F.3d at 1197.

The Ninth Circuit's decision thus improperly infers that California Vehicle Code section 14602.6 is facially unconstitutional, and that municipalities will be liable under § 1983 for relying on and enforcing that State statute. The decision is accordingly contrary to *Monell* and its progeny issued by this Court over the last several decades.

D. The Ninth Circuit's Opinion Will Have a Significant and Negative Adverse Impact on Cities and Counties Due to Their Enforcement of State Impound Laws.

The Ninth Circuit's opinion has far reaching implications for counties and cities within California, and will create substantial liability for them, based on their application of the 30-day impound mandates of California Vehicle Code section 14602.6. As noted above, this impact will not be limited to California since several other states have similar vehicle impound statutes, and because the legal principles apply to other impound statutes as well, such as those related to drug asset impoundments. If cities' and counties' mere continued, passive possession of a vehicle is *de facto* unlawful under the Fourth Amendment because all exigency for seizing the vehicle has evaporated once it has been towed from the scene, then under the Ninth Circuit's rationale all enforcement of that State

statute necessarily implicates municipal liability under § 1983.

There have been multiple lawsuits over the years challenging the application of California Vehicle Code section 14602.6, the legality of which has been previously upheld by both State and Federal Courts. *See, e.g., Alviso*, 111 Cal. Rptr. 3d at 784; *Samples v. Brown*, 53 Cal. Rptr. 3d 216, 232 (Cal. Ct. App. 2007); *Miranda v. Bonner*, No. CV 08-03178 SJO VBKX, 2013 WL 794059 (C.D. Cal. Mar. 4, 2013). However, beginning with the District Court decision in *Sandoval v. County of Sonoma*, 72 F. Supp. 3d 997 (N.D. Cal. 2014),⁷ California District Courts took the lead in holding *for the first time* that municipalities may be liable under § 1983 for violating the Fourth Amendment by retaining vehicles in impound after a full-blown and lawful seizure,⁸ and now the Ninth Circuit has followed suit.

The extent of the liability the Ninth Circuit's opinion has created for cities and counties is tremendous. For example, in the *Sandoval* case, the District Court noted that 2,816 vehicles were impounded by the Santa Rosa Police Department under California

⁷ The *Sandoval* case is currently on appeal in the Ninth Circuit, but is being held in abeyance pending the resolution of the instant case. *See Sandoval, et al. v. County of Sonoma, et al.*, Ninth Circuit Court of Appeals Nos. 16-16122, 16-16131, and 16-16132, Docket No. 76, entered December 8, 2017.

⁸ *See, e.g. Avendano-Ruiz v. City of Sebastopol*, No. 15-CV-03371-RS, 2016 WL 5765746, at *4 (N.D. Cal. Oct. 4, 2016); *Avendano-Ruiz v. City of Sebastopol*, No. 15-CV-03371-RS, 2016 WL 3017534, at *6 (N.D. Cal. May 26, 2016), *reconsideration denied*, No. 15-CV-03371-RS, 2016 WL 3476098 (N.D. Cal. June 27, 2016).

Vehicle Code section 14602.6 between September of 2009 and June of 2014. *See Sandoval v. County of Sonoma*, No. 11-CV-05817-TEH, 2015 WL 468460, at *2 (N.D. Cal. Feb. 3, 2015).⁹ The Ninth Circuit’s opinion implicates liability for the city for *each and every one* of these impoundments, even if the city police officers lawfully seized the vehicle under the Fourth Amendment. Cities and counties across the nation have impounded tens of thousands of vehicles pursuant to statutes similar to California Vehicle Code section 14602.6 over the years, for which the Ninth Circuit’s opinion appears to subject them to liability (if within the statute of limitations) under § 1983.

Amici submit that the Fourth Amendment should not be stretched out of shape to cover a municipality’s continued passive possession of a vehicle, particularly when the vehicle was fully and lawfully seized under the Fourth Amendment in the first place. Accordingly, the Ninth Circuit’s opinion in the instant case should not be permitted to stand.



⁹ As of July 1, 2016, the City of Santa Rosa had an estimated population of 175,155. *See* <https://www.census.gov/quickfacts/fact/table/santarosacitycalifornia/PST045216>. Accordingly, larger California cities, such as the City of Los Angeles with an estimated population of 3,976,322, will have dramatically more impoundments under Vehicle Code section 14602.6. *See* <https://www.census.gov/quickfacts/fact/table/losangelescitycalifornia,santarosacitycalifornia/PST045216>.

CONCLUSION

There are ample reasons to grant the petition for writ of certiorari in this case. Because the Ninth Circuit's opinion below diverges from precedent to conclude that a Fourth Amendment violation can result solely from an agency's continued passive possession of property that was seized with probable cause and in full conformity with applicable Fourth Amendment requirements, granting the petition is warranted. Beyond that, the petition should be granted to address issues related to whether municipal liability could be found for any such Fourth Amendment violation under 42 U.S.C. § 1983, to consider a categorical analysis of the respective interests at stake, and to address the tremendous breadth of the impact of the decision. Amici therefore respectfully request the Court grant the petition for writ of certiorari filed herein.

Dated: January 10, 2018 Respectfully submitted,

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