C.A. Nos. 16-16122, 16-16131, 16-16132

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

RAFAEL MATEOS-SANDOVAL, et al.,

Plaintiffs/Appellees/Cross-Appellants,

v.

COUNTY OF SONOMA, et al.,

Defendants/Appellants/Cross-Appellees.

On Appeal from the United States District Court
for the Northern District of California

Honorable Thelton E. Henderson, Presiding
(DC No. 3:11-CV-05817-TEH)

BRIEF OF AMICUS CURIAE CALIFORNIA STATE ASSOCIATION OF COUNTIES

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I

IDENTIFICATION OF PARTIES SUPPORTED AND CONSENT TO FILE [F.R.A.P. Rule 29(a)(2),(4)]

This *amicus* brief supports Appellants and Cross-Appellees (Defendants below) the County of Sonoma, Sonoma County Sheriff's Office, and Sonoma County Sheriff-Coroner Steve Freitas, in his official capacity. All parties have consented to filing of this brief.

II

STATEMENT WHETHER AFFIRMANCE OR REVERSAL SUPPORTED [F.R.A.P. Rule 29(a)(4)]

This *amicus* brief supports reversal of the District Court's final judgment.[1]

III

CORPORATE DISCLOSURE AND IDENTITY STATEMENT [F.R.A.P. Rule 29(a)(4)(A),(D)]

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

[1] County of Sonoma's Excerpts of Record Vol. 1 [1 ER] 1-3.

counties statewide, and has determined that this case is a matter affecting all counties. No publicly-held corporation owns 10% or more of stock in CSAC.

IV

STATEMENT OF AUTHORSHIP AND FINANCIAL SUPPORT [F.R.A.P. Rule 29(a)(4)(E)]

No party's counsel authored this *amicus* brief in whole or part. No party or party's counsel contributed money intended to fund preparation or submission of this *amicus* brief. No one other than *amicus* and its counsel contributed money intended to fund preparation or submission of this *amicus* brief

V

ARGUMENT [F.R.A.P. Rule 29(a)(4)(F)]

A. Summary.

The seizure of Rafael Mateos-Sandoval's truck was lawful,[2] but the District Court ruled that "the thirty-day impoundment of Mateos-Sandoval's vehicle was unreasonable and violated the Fourth Amendment."[3] The truck was towed only once. The District Court divided a single dispossession into two Fourth Amendment seizures: an *initial* reasonable seizure, followed by an unreasonable

[2] 1 ER 23:17-19; 1 ER 31:4-6; 1 ER 5:18-21.

[3] 1 ER 12:13-15. California Vehicle Code § 14602.6(a)(1) provides that when a peace officer determines that a driver has never been issued a driver's license, the peace officer may impound the vehicle, which "shall be impounded for 30 days."

seizure for holding the truck 30 days. California Vehicle Code § 14602.6(a)(1) states that an impounded vehicle "shall be impounded for 30 days."

The issue concerning *amicus curiae* CSAC is the District Court's unspoken assumption that *state* law and *county* policy may be treated as one and the same for municipal liability purposes -- an erroneous assumption that should not find its way into an opinion of this Court. If the District Court had acknowledged that 30 day impoundments mandated by state law reflect state (not county) policy, there would have been no rational basis for its ruling.

B. State Law Is Not County Policy.

The District Court found that the County of Sonoma (and its sheriff in official capacity)[4] were liable to Rafael Mateos-Sandoval for damages of $3,700 "on the claim brought under 42 U.S.C. § 1983 relating to the 30-day hold of his vehicle in impound (as distinguished from the initial seizure and towing of the vehicle) based on this Court's finding that that such 30-day hold conducted pursuant to California Vehicle Code § 14602.6 was unreasonable and accordingly violated the Fourth Amendment."[5]

The Supreme Court disapproves municipal entity liability under § 1983 except where constitutional deprivations were caused by deliberate choices made

[4] Damages were awarded against the County of Sonoma, the Sonoma County Sheriff's Office, and Sonoma County Sheriff-Coroner Steve Freitas in his official capacity only. 1 ER 1:27-2:1.
[5] 1 ER 2:1-5.

by the municipality's policymakers. "The thirty-day impoundment of Mateos-Sandoval's vehicle" in this case was the sole factual basis for the County of Sonoma's liability.[6] Counties (and their officials sued in official capacity) can rightly be liable under § 1983 only for constitutional deprivations caused by implementation of their own policies or customs. *Monell v. Department of Social Services*, 436 U.S. 658, 690 (1978). But impounding vehicles for 30 days was a policy choice of the California Legislature, which could have chosen a lesser or greater number of days, or could have chosen not to require any impoundment.

The District Court did *not* deal with potential Fourth Amendment liability of the individual peace officer who actually ordered impoundment. The Supreme Court has held that when a person has suffered no Fourth Amendment injury at the hands of an individual peace officer, "the fact that the departmental regulations might have *authorized* [Fourth Amendment violations] is quite beside the point." *City of Los Angeles v. Heller*, 475 U.S. 796, 799 (1986) (Italics in original). In this case, there was even less justification for liability than in *Heller*, because no departmental regulation set 30 days as the impoundment duration.

The Supreme Court has limited municipal liability under § 1983 to instances where "the action that is alleged to be unconstitutional implements or executes a policy statement, ordinance, regulation, or decision officially adopted and

[6] 1 ER 14:17-18.

promulgated by that body's officers." *Monell*, 436 U.S. at 690. 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, Ohio v. Harris*, 489 U.S. 378, 385-91 (1989). The only kind of official policy or custom that would have made a difference after *initial* seizure of a vehicle would have been a policy preventing a post-seizure hearing to seek its release. But in this case, there was at least one post-seizure hearing.[7] No policy thwarted due process.

In a case arising from allegedly-unconstitutional vehicle impoundment, this Court held:

> Neither the City of Hillsborough nor its Police Chief Key can be held liable under 42 U.S.C. § 1983 on a theory of *respondeat superior* even if Sergeant Musser violated Scofield's constitutional right to a post-towing hearing. [Citation.] In order for a municipality to be liable for a section 1983 violation the action alleged to be unconstitutional must implement a policy officially adopted by the municipality. [Citation.] There is nothing in the record which suggests that the City of Hillsborough followed a policy which denied Scofield a post-towing hearing.

Scofield v. City of Hillsborough, 862 F.2d 759, 765 (9th Cir. 1988). This case should have terminated the same way, with a ruling that no official policy denied a post-towing hearing to seek vehicle release.

[7] 1 ER 13:17-26. The record shows that two post-seizure hearings were held. 2 ER 93, 95, 110, 112.

The District Court found "the policy" in this case to be Sheriff-Coroner Freitas' interpretation of California Vehicle Code §14602.6 "to authorize impoundment for vehicles driven by a driver who previously had been issued a license in a foreign jurisdiction."[8] Such a "policy" might have caused an unreasonable *initial* seizure of Rafael Mateos-Sandoval's truck, but as noted above, the initial seizure was lawful,[9] and the individual seizing officer was not a target of liability. The District Court ruled that *Monell* liability was *not* based on the *initial* seizure, but ruled that "the thirty-day impoundment of Mateos-Sandoval's vehicle was unreasonable and violated the Fourth Amendment."[10]

The *sole* source of the 30 day impoundment in this case was California Vehicle Code §14602.6(a)(1), which states that an impounded vehicle "shall be impounded for 30 days." "Shall" is a mandatory term, allowing no choice. (California Vehicle Code § 15 states that "'[s]hall' is mandatory and 'may' is permissive.") The Supreme Court has held that "municipal liability under § 1983 attaches where -- and only where -- a deliberate choice to follow a course of action is made from among various alternatives by the official or officials responsible for establishing final policy with respect to the subject matter in question." *Pembaur v. City of Cincinnati,* 475 U.S. 469, 483 (1986). Counties cannot choose "from

[8] 1 ER 9:20-27.
[9] 1 ER 23:17-18; 1 ER 31:4-5; 1 ER 5:18-21.
[10] 1 ER 12:13-15.

among various alternatives" -- as *Pembaur* requires -- when California law gives county policymakers no choice between 30 days impoundment, versus some longer or shorter impoundment duration.

In *Board of County Commissioners of Bryan County, Oklahoma v. Brown*, 520 U.S. 397, 404-05 (1997), the Supreme Court explained that it is not enough for a § 1983 plaintiff merely to identify conduct properly attributable to a municipal entity such as a county. The plaintiff must also demonstrate that, through its deliberate conduct, the municipal entity was the "moving force" behind the injury alleged. That is, a plaintiff must show that the municipal action was taken with the requisite degree of culpability and must demonstrate a direct causal link between the municipal action and the deprivation of federal rights. Here, the "moving force" behind the 30 day impoundment of Rafael Mateos-Sandoval's truck was a state statute (not a county policy) mandating 30 days as the impoundment period.

Thirty day impoundments under California Vehicle Code § 14602.6(a)(1) have been judicially upheld because "the government has a strong interest in keeping unlicensed drivers off the roads, both by temporarily impounding their vehicles and by deterring them from driving on suspended or revoked licenses in the first place." *Alviso v. Sonoma Cty. Sheriff's Dep't*, 186 Cal. App. 4th 198, 214 (2010). Under Supreme Court authority, counties may not be held liable for money damages merely for enforcing state law they cannot choose to change.

C. The Fourth Amendment Should Not Be Interpreted To Protect Possession Of Property More Broadly Than Personal Liberty.

The District Court chided the County of Sonoma for citing "recent Ninth Circuit cases [that] only considered seizures of the person, not seizures of property"[11] But when *initial* seizure of a *person* does not violate the Fourth Amendment, the length of subsequent detention is ordinarily analyzed under the Fourteenth Amendment's Due Process Clause. See *Baker v. McCollan*, 443 U.S. 137, 145 (1979) ("The Fourteenth Amendment does not protect against all deprivations of liberty. It protects only against deprivations of liberty accomplished 'without due process of law'."). Less than a week after Rafael Mateos-Sandoval's truck was seized, he sought and received a post-seizure hearing.[12] Due process does not guarantee a right to win at a post-seizure hearing.

In *United States v. James Daniel Good Real Prop.*, 510 U.S. 43, 51–52 (1993), the Supreme Court rejected the proposition "that the Fourth Amendment is the beginning and end of the constitutional inquiry whenever a seizure occurs," stating that when the government asserts "ownership and control" over property, its conduct must comport with due process. Other circuits have rejected arguments that a Fourth Amendment unreasonable seizure claim can be based on post-

[11] 1 ER 11:16-18.
[12] 1 ER 13:17-26.

dispossession retention of a vehicle (or other property) when the *initial* seizure was lawful. For example, the Seventh Circuit held that:

> Once an individual has been meaningfully dispossessed, the seizure of the property is complete, and once justified by probable cause, that seizure is reasonable. The [fourth] amendment then cannot be invoked by the dispossessed owner to regain his property. The search [of the plaintiff's car] was completed after ten days. Conditioning the car's release upon payment of towing and storage fees after the search was completed neither continued the initial seizure nor began another.

Lee v. City of Chicago, 330 F.3d 456, 466 (7th Cir. 2003). The Eleventh Circuit likewise held: "A complaint of continued retention of legally seized property raises an issue of procedural due process." *Case v. Eslinger*, 555 F.3d 1317, 1330 (11th Cir. 2009). Although procedural due process claims were originally part of this case, the District Court dismissed them with prejudice, along with all other alleged claims not otherwise ruled upon.[13]

The Fourth Amendment should not protect trucks from 30 day impoundment more than it would protect an arrestee from 30 day imprisonment; in other words, it should not be interpreted to protect possession of property more broadly than it protects personal liberty.

[13] 1 ER 3:1-2; 1 ER 72:15-16; 2 ER 76:4-6.

VI

CONCLUSION

Hypothetically, if the District Court had deemed the *initial* seizure of Rafael Mateos-Sandoval's truck unreasonable under the Fourth Amendment, this would be a different case. But the District Court based its ruling on the subsequent length of impoundment -- 30 days -- citing sheriff's policies that, at most, might have rendered the truck's *initial* seizure unreasonable. That was error.

Also hypothetically, if Rafael Mateos-Sandoval had been driving with a suspended license (instead of a foreign one), his truck would still have been held for 30 days under California Vehicle Code § 14602.6(a)(1) unless he prevailed at a post-seizure due process hearing. The District Court's rationale in this case would have provided no remedy in that scenario, even though the critical 30 day length of impoundment would have been exactly the same in either scenario.

CSAC's member counties should not be held liable for money damages under § 1983 for simply holding lawfully-seized vehicles for 30 days as dictated by California Vehicle Code § 14602.6(a)(1). If that statute provided that a vehicle "shall" be impounded for 30 minutes or 30 hours instead of 30 days, CSAC's membership would have no quarrel. Imposing § 1983 policy liability on a county, when not based on choices made by those vested with policymaking authority for that county, is contrary to Supreme Court authority. It imposes liability without

fault; it fails to address the actual cause of 30 day impoundments, and it fails to address or deter 30 day impoundments elsewhere within the State of California. For these reasons, CSAC supports the County of Sonoma's appeal.

DATED: 11/30/2016 Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION, TYPEFACE REQUIREMENTS, AND TYPE STYLE REQUIREMENTS

I certify as follows:

1. The foregoing *amicus* brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because it contains 2,231 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii); and

2. The foregoing *amicus* brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2010, in font size 14, and font style Times new Roman.

DATED: 11/30/2016 THOMAS E. MONTGOMERY, County Counsel

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STATEMENT OF RELATED CASES

Undersigned *amicus* counsel is not aware of any related case, but does not disagree with the statements of related cases set forth by counsel for the parties to this case.

DATED: 11/30/2016 THOMAS E. MONTGOMERY, County Counsel

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Rafael Mateos-Sandoval, et al. v. County of Sonoma, et al.;
Ninth Circuit Case Nos.: 16-16122, 16-16131, 16-16132

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the following document(s): **Brief Of Amicus Curiae California State Association Of Counties** with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on November 30, 2016.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system:

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