No. 22-1080

In The Supreme Court of the United States

CITY OF STOCKTON, STOCKTON POLICE DEPARTMENT, ERIC JONES, KEVIN JAYE HACHLER, ERIC B. HOWARD, MICHAEL GANDY, CONNER NELSON, AND JASON UNDERWOOD,

Petitioners,

v.

FRANCISCO DUARTE,

Respondent.

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

BRIEF OF *AMICI CURIAE* INTERNATIONAL MUNICIPAL LAWYERS ASSOCIATION, CALIFORNIA STATE ASSOCIATION OF COUNTIES AND LEAGUE OF CALIFORNIA CITIES IN SUPPORT OF PETITIONERS

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INTERESTS OF *AMICI CURIAE*[1]

The International Municipal Lawyers Association (IMLA) is a non-profit, non-partisan, professional organization consisting of more than 2,500 members. Membership is composed of local government entities, including cities, counties, and subdivisions thereof, as represented by their chief legal officers, state municipal leagues, and individual attorneys. IMLA's mission is to advance the responsible development of municipal law through education and advocacy by providing the collective viewpoint of local governments around the country on legal issues before the United States Supreme Court as well as state and federal appellate courts.

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.

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[1] No counsel for a party authored this brief in whole or in part, and no such counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. The parties received timely notice.

The League of California Cities (Cal Cities) is an association of 477 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. Cal Cities is advised by its Legal Advocacy Committee, 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.

As *Amici*'s memberships advise cities, counties, and local governments, they are uniquely positioned to describe the practical implications associated with the longstanding circuit split presented in the Petition. *Amici* and their members also have an interest in ensuring clarity of the law concerning imposition of liability on public entities, which allows accurate fiscal planning, avoids prolonged litigation, and promotes informed decision-making that may avoid entanglement in litigation altogether.

SUMMARY OF ARGUMENT

The Petition presents an important question that has long divided circuit courts: Whether deferred adjudication of a criminal defendant's no contest plea—that is ultimately dismissed after the defendant complies with the terms of a pretrial diversion agreement—is the functional equivalent of a sentence or

conviction under *Heck v. Humphrey*, 512 U.S. 477 (1994). The Third and Fifth Circuits have concluded that the deferral of charges following a criminal defendant's admission or acceptance of guilt qualifies as a conviction or sentence for purposes of *Heck*, notwithstanding the ultimate dismissal of those charges. In stark contrast, the Sixth, Eighth, Ninth, Tenth, and Eleventh Circuits hold that the dismissal of charges following a criminal defendant's compliance with the terms of a pretrial diversion program opens the door to a subsequent civil rights claim, and *Heck* does not apply.

The confusion in the law is grounded in a more fundamental disagreement in the Courts of Appeals about *Heck*'s purpose and rationale. One views *Heck* foremost as a Section 1983 decision, standing for "the hoary principle that civil tort actions are not appropriate vehicles for challenging the validity of outstanding criminal judgments," regardless of whether the criminal defendant remains in custody for habeas purposes. 512 U.S. at 486, 490 n.10. The other perspective, first articulated in a concurrence from Justice Souter, is that *Heck* is primarily a habeas decision and should only apply when the plaintiff has access to a habeas remedy. *Id.* at 500.

The Courts of Appeals that adopt the latter view—that *Heck*'s core concern is preventing the circumvention of habeas exhaustion requirements, including the Ninth Circuit here—use a narrower, more formalistic definition of conviction, while at the same time adopting a far looser interpretation of *Heck*'s favorable

termination requirement. The results-oriented holdings from these courts have warped *Heck*'s scope and meaning—and warrant this Court's review.

Amici respectfully submit this brief to explain the erosion of the *Heck* doctrine and the need for guidance in the federal courts. Additionally, *Amici* wish to highlight policy consequences that may arise if this Court deems a criminal defendant's compliance with the terms of a pretrial diversion program as opening the door to a subsequent Section 1983 action.

Pretrial diversion programs are increasingly used in the federal and state systems to allow criminal defendants to reduce the expense and risk of traditional prosecution. The success of these programs and their salutary effects—for criminal defendants, crowded court dockets, and overburdened prisons—will be markedly diminished if successful completion of a pretrial diversion program revives an otherwise ineligible defendant's right to bring a Section 1983 claim. Prosecutorial decisions about whether to refer a criminal defendant to a pretrial diversion program should always be made independent of any considerations regarding civil liability. *Duarte* creates the unacceptable risk that the specter of civil liability will cause these programs to contract and decrease their effectiveness.

ARGUMENT

I. CIRCUIT COURTS ARE DEEPLY DIVIDED REGARDING *HECK*'S SCOPE AND MEANING.

Roy Heck, imprisoned for voluntary manslaughter for murdering his wife, filed a 42 U.S.C. § 1983 claim alleging that the police officers and prosecutors involved in his case had destroyed exculpatory evidence and violated his constitutional rights. *Heck*, 512 U.S. at 478-79. This Court was asked to resolve "whether a state prisoner may challenge the constitutionality of his conviction in a suit for damages under 42 U.S.C. § 1983." *Id*. at 478.

Standing at the intersection of "the two most fertile sources of federal-court prisoner litigation," Section 1983 and the federal habeas corpus statute, this Court analogized plaintiff's damages action, and others like it that challenged the lawfulness of a conviction or confinement, to common law tort actions for malicious prosecution. 512 U.S. at 480. Relying on the principle that civil tort actions are not appropriate vehicles to challenge the validity of a criminal judgment, *Heck* decided that, to pursue Section 1983 relief, a plaintiff must first prove his "conviction or sentence has been [1] reversed on direct appeal, [2] expunged by executive order, [3] declared invalid by a state tribunal authorized to make such determination, or [4] called into question by a federal court's issuance of a writ of habeas corpus." *Id.* at 486-87 (in the absence of one of these four terminations, a claim for damages is "not cognizable under § 1983").

These four paths are referred to as *Heck*'s favorable termination requirement and have spawned significant confusion in the law. By way of example, the Courts of Appeals have come to conflicting conclusions as to whether *Heck* precludes plaintiffs from bringing a Section 1983 claim where the underlying conviction is not reversed or invalidated, but is instead (1) vacated pursuant to settlement,[2] (2) subject to a later pardon,[3] or (3) as here, deferred under the terms of a diversion agreement. There is likewise persistent confusion in the law as to what qualifies as a sentence or conviction in the first place for purposes of *Heck*.[4]

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[2] *See Roberts v. City of Fairbanks*, 947 F.3d 1191, 1198, 1203 (9th Cir. 2020) (vacatur by settlement is the same as a conviction that is declared invalid by a state tribunal). The opinion drew a sharp dissent, and a dissent from rehearing en banc, comparing vacatur by settlement to pretrial diversion programs and underscoring that the "mere neutral termination of a conviction" should not overcome the *Heck* bar. *Roberts v. City of Fairbanks*, 962 F.3d 1165, 1173-75 (9th Cir. 2020) (mem.) (*Roberts II*) (Van Dyke, J., dissenting) (criticizing the Ninth Circuit's *Heck* jurisprudence as requiring "judicial gymnastics to determine whether a § 1983 plaintiff may" proceed).

[3] *See Carr v. Louisville-Jefferson County*, 37 F.4th 389, 393 (6th Cir. 2022) (Section 1983 claim was not *Heck*-barred, following the granting of a pardon over a decade after conviction, even though plaintiff pled guilty and the pardon did not relieve plaintiff of the legal consequences of her conviction under Kentucky law). Like the vacatur of conviction by settlement, pardons are not included in the list of invalidating events set forth in *Heck*, though they certainly could have been if it were intended.

[4] For instance, some courts have determined that the *Heck* bar applies to juvenile delinquency adjudications, while others have found *Heck* does not apply because juvenile adjudication does not amount to a conviction under state law. *See Morris v. City of Detroit*, 211 F. App'x 409, 411 (6th Cir. 2006) ("while a

Heck's application to pretrial diversion programs implicates—and amplifies—the discord in the law in both areas.

A. The Circuit Split Reflects Disagreement Regarding *Heck*'s Favorable Termination Requirement And Even More Fundamentally, What Qualifies As A Sentence Or Conviction For Purposes of *Heck*.

As the Petition ably articulates, there is a longstanding circuit split on pretrial diversion programs under *Heck*. The Courts of Appeals' reasoning is also highly splintered.

The Sixth, Ninth, Tenth, and Eleventh Circuits conclude that—regardless of whether a pretrial diversion program constitutes a favorable termination—the *Heck* bar does not apply because pretrial diversion does not qualify as a conviction or sentence, but each has slightly different reasons for coming to this conclusion.

- *Duarte v. City of Stockton*, 60 F.4th 566, 571-72 (9th Cir. 2023), relies on *Black's Law Dictionary*'s definition of "conviction" and

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juvenile adjudication is not a criminal proceeding" under Michigan law, it was the "functional equivalent"); *Johnson v. Bd. of Sch. Comm'rs of the City of Indianapolis*, 2010 WL 3927753, at *3 (S.D. Ind. Oct. 1, 2010) (*Heck* does not apply to adjudication of juvenile delinquency).

"abeyance" to conclude respondent was never convicted.[5]

- *Vazquez Arroyo v. Starks*, 589 F.3d 1091, 1095 (10th Cir. 2009), likens pretrial diversion to "*an anticipated future conviction*," relying on *Wallace v. Kato*, 549 U.S. 384, 393 (2007), to assert the "*Heck* bar comes into play only when there is an actual conviction."
- *McClish v. Nugent*, 483 F.3d 1231, 1251 (11th Cir. 2007), submits that a Section 1983 suit, following completion of a pretrial diversion program, is "not collateral to anything" and that to dismiss a claim because of a potential conflict between civil and criminal disposition that the courts "know now with certainty will never materialize would stretch *Heck* beyond the limits of its reasoning."
- *S.E. v. Grant County Board of Education*, 544 F.3d 633, 639 (6th Cir. 2008), places more focus on eligibility for habeas relief, concluding *Heck* is inapplicable where a plaintiff is "habeas-ineligible" and was neither convicted, nor sentenced.

The Courts of Appeals that have decided participation in a pretrial diversion program *does* trigger

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[5] *Roberts* did something similar, relying on the *Black's Law Dictionary* definition of "vacate" to work around *Heck*. 947 F.3d at 1198, 1210 (Ikuta, J., dissenting) (criticizing the majority for asserting "there is no difference between vacatur of a conviction by settlement and a declaration that a conviction is invalid because a dictionary defines 'vacate' to mean 'invalidate' ").

Heck have similarly come to this conclusion for different reasons.

- The Fifth Circuit has determined that an order deferring adjudication, though not formally a conviction or sentence, is its "functional equivalent in light of *Heck*'s rationale," concluding pretrial diversion is "one stage in an ongoing state criminal proceeding." *DeLeon v. City of Corpus Christi*, 488 F.3d 649, 654-56 (5th Cir. 2007).
- The Third Circuit has decided that plaintiff's completion of a pretrial diversion program is not a favorable termination sufficient to bring a subsequent civil suit, and characterizes pretrial diversion as a "court-supervised compromise" that "imposes several burdens upon the criminal defendant not consistent with innocence" and "judicially imposed limitations on freedom." *Gilles v. Davis*, 427 F.3d 197, 210-12 (3d Cir. 2005) (citation omitted).

B. Under Multiple Federal Statutes, Participation In A Pretrial Diversion Program, Following A Guilty Plea, Qualifies As A Conviction.

Under several federal laws, completion of a pretrial diversion program, following a guilty plea, qualifies as a conviction. In federal immigration law, for example, participation in a pretrial diversion program—where there has been a plea of nolo contendere and "the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be

imposed"—qualifies as a conviction, regardless of state law. 8 U.S.C. § 1101(a)(48)(A)(ii); *Matter of Mohamed*, 27 I&N Dec. 92, 96-97 (BIA 2017) (sworn admission of guilt brought "pretrial intervention agreement within the definition of a conviction" even though the "'adjudication of guilt has been withheld'").

The same is true under the federal Fair Credit Reporting Act (FCRA) and other federal statutes. The term "conviction" under FCRA broadly includes any disposition involving a guilty plea, even if the charges are dismissed pursuant to a diversionary program with no resulting conviction under state law. *Aldaco v. RentGrow, Inc.*, 921 F.3d 685, 689 (7th Cir. 2019) (for purposes of FCRA, plaintiff's guilty plea and sentence to six months' supervision, a diversionary disposition under Illinois law, qualified as a conviction).

The default is that federal rather than state law defines "conviction" for purposes of federal statutes. *See United States v. Gomez*, 24 F.3d 924, 927-28, 930 (7th Cir. 1994) ("prior conviction" under the Controlled Substances Act includes a plea to a "diversionary sentence" of probation that does not result in a final adjudication of guilt); *Harmon v. Teamsters, Chauffeurs & Helpers Local Union 371*, 832 F.2d 976, 978-80 (7th Cir. 1987) (the "word 'conviction' is a chameleon"; guilty plea followed by sentence of probation with no judgment of conviction, was a "conviction" for purposes of the Labor-Management Reporting and Disclosure Act).

C. This Court's Decision In *Thompson v. Clark* Further Confuses *Heck* Jurisprudence.

Duarte does not mention this Court's decision in *Thompson v. Clark*, 142 S. Ct. 1332 (2022), but as the Court's most recent exposition on the favorable termination requirement in the malicious prosecution context, it adds a layer of complexity and confusion to the existing circuit split.

Thompson held that to demonstrate the favorable termination of a criminal prosecution for purposes of a Section 1983 claim for malicious prosecution, a plaintiff only needs to show that his prosecution ended without a conviction, as opposed to some affirmative indication of his innocence. 142 S. Ct. at 1341. This Court characterized its decision in *Thompson* as resolving a "narrow dispute" regarding "one element" of plaintiff's claim and did not decide whether, and if so how, its decision impacts *Heck*'s analogous but distinct favorable termination requirement. *Id.* at 1337.

This has not stopped courts from jumping to unwarranted conclusions, applying *Thompson*'s "fundamental reasoning" to further erode the *Heck* doctrine. *See*, *e.g.*, *Alter by & through Alter v. County of San Diego*, ___ F. Supp. 3d ___, 2022 WL 10756705, at *5 (S.D. Cal. Oct. 18, 2022) (dismissal of petition for extension of involuntary commitment, without explaining basis for decision, satisfied *Heck*'s favorable termination requirement).

During oral argument in *Thompson*, this Court also recognized that prosecutors dismiss charges for many reasons, such as part of a cooperation agreement, as an act of mercy, or out of prosecutorial case load concerns. (Transcript of Oral Argument at 24-26, *Thompson*, 142 S. Ct. 1332 (No. 20-659).) Justice Breyer introduced the concept of pretrial diversion with the example of Jean Valjean, who stole bread to feed his "starving children," and questioned whether Valjean should be permitted to bring a malicious prosecution claim after a prosecutor dismissed charges against him as an "act of mercy." (*Id.* at 25-26.) *Thompson* was more narrowly concerned with whether there could be a viable claim for malicious prosecution in these circumstances. But equally, if not more compelling, is the question whether *Heck* should bar such individuals from bringing a Section 1983 claim for any number of constitutional violations they may claim. This important, unanswered question demands this Court's attention.

II. REVIEW IS NECESSARY BECAUSE THE LACK OF CLARITY REGARDING *HECK*'S SCOPE CREATES COSTLY UNCERTAINTY FOR LOCAL GOVERNMENTS TO THE DETRIMENT OF CONSTITUENCIES WHO BENEFIT FROM PRETRIAL DIVERSION PROGRAMS.

The rationale for prosecutorial alternatives to conviction and sentencing is clear—not on behalf of those who have clearly exhibited an intent or pattern in

committing criminal acts that upend society, but for those at the margin, with no history of recent or material criminal behavior and where leniency may result in restoration to the community. In those cases where prosecutorial alternatives may keep a wrongdoer from further self-destruction, the entry of a conviction and sentence of incarceration can undermine broader societal interests. Forward-thinking leadership at the federal, state, and local levels that evaluates mechanisms to avoid that impairment is justifiable.

But as *Duarte* demonstrates, particularly at the local level, those decision-makers face a growing dilemma. Prosecutorial leniency, whether exhibited when charging an arrestee, through diversion programs, or even long after, through pardons or some other means, is increasingly exposing local governments to civil suit—from the very recipients of such accommodation.

Heck attempted to put some common-sense parameters around Section 1983. It protects against unrestrained use of Section 1983 by ambitious plaintiffs' counsel who might otherwise seek to extract damages and attorney's fees from local governments for civil rights violations allegedly arising out of the very facts where a conviction or sentence was obtained. But when well-intentioned courts and prosecutors avoid convicting or sentencing offenders—who greatly benefit from an alternative approach—*Heck*'s protections have grown increasingly ephemeral. As now construed in some circuits, *Heck* does nothing to prevent the beneficiaries of such prosecutorial leniency, who may plead guilty but avoid conviction and sentencing, from wielding Section

1983 against local governments to recover damages and legal fees.

A prosecutor's decision to refer a criminal defendant to a pretrial diversion program should not turn on considerations of civil liability. But that is the unacceptable risk that *Duarte* creates. There is also a perverse incentive to reduce the use of pretrial diversion programs that have proven to be highly effective and beneficial for prosecutors, local and state governments, and criminal defendants alike. Prosecutors may not be willing to offer pretrial diversion to defendants—like Respondent—who are convicted of delaying, restricting, or obstructing an officer because the risks of follow-on Section 1983 litigation are simply too great. And municipalities may be forced to taper and/or tailor their pretrial diversion programs to account for litigation risk. The harms that will result to offenders, local governments, and courts are well documented.

A. The Ninth Circuit's Decision Has Harmful Collateral Consequences For Criminal Defendants.

There is a longstanding history of the effective use of diversion agreements in the United States. Initially introduced in the 1940s in the context of juvenile probation, diversion was expanded in the 1960s to address the root causes of arrests by adult criminal defendants and reduce recidivism. The use of diversion programs then rose after a 1965 congressional address by President Lyndon B. Johnson announcing crime as a

national issue, with successful federally-funded diversion pilot programs appearing shortly thereafter.[6]

Diversion evolved into a national strategy for crime control in the 1970s, with mention in the Controlled Substances Act of 1970 and a recommendation by the National Advisory Commission on Criminal Justice Standards and Goals that pretrial diversion programs should be implemented nationwide.[7] A 1979 survey documented at least 127 known pretrial diversion programs in the U.S.; by 2010, this figure rose to almost 300 programs.[8]

These programs have many well-documented benefits for criminal defendants. In addition to the immediate and obvious benefit of avoiding incarceration, offenders are able to avoid the collateral consequences that attach to having a criminal record.[9] The crippling

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[6] *No Entry: A National Survey of Criminal Diversion Programs and Initiatives*, CENTER FOR HEALTH & JUSTICE (Dec. 2013), https://www.centerforhealthandjustice.org/tascblog/Images/documents/Publications/CHJ%20Diversion%20Report_web.pdf.; *see also* Thomas E. Ulrich, *Pretrial Diversion in the Federal Court System*, FEDERAL PROBATION (Dec. 2002), https://www.uscourts.gov/sites/default/files/66_3_5_0.pdf.

[7] Cory R. Lepage & Jeff D. May, *The Anchorage, Alaska Municipal Pretrial Diversion Program: An Initial Assessment*, 34 ALASKA L. REV. 1, 6 (2017).

[8] *See No Entry: A National Survey of Criminal Diversion Programs and Initiatives, supra* note 6, at 17.

[9] *Diversion 101: Do Diversion Options Put Public Safety at Risk?*, THE CENTER FOR EFFECTIVE PUBLIC POLICY (2019), https://cepp.com/wp-content/uploads/2021/04/Diversion-101-Do-Diversion-Options-Put-Public-Safety-at-Risk-2019.pdf [*Diversion 101: Public Safety at Risk*].

detriment of a criminal record is well-documented and includes challenges to employment, housing, credit, and myriad other touchstones of participation in society.[10]

And beyond such practical barriers, convictions also result in social stigma against offenders—and potentially their family and friends—undermining their standing in society.[11] It is therefore unsurprising that researchers have documented increased mental health and treatment outcomes for diversion program participants compared to individuals who were similarly eligible for diversion but did not participate in diversion programs.[12]

Pretrial diversion programs also have positive outcomes on reducing recidivism.[13] The National Institute of Justice's 2018 case study reported that, in four of the five programs studied, participation "reduced

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[10] *See*, *e.g.*, Cameron Kimble & Ames Grawert, *Collateral Consequences and the Enduring Nature of Punishment*, BRENNAN CENTER FOR JUSTICE (June 21, 2021) (discussing "more than 45,000 state and local laws and regulations" that deny formerly incarcerated persons "jobs, housing, and fundamental participation in our political, economic, and cultural life"), https://www.brennancenter.org/ourwork/analysis-opinion/collateral-consequences-and-enduring-nature-punishment.

[11] *See Diversion 101: Public Safety at Risk, supra* note 9, at 2.

[12] Catherine Camiletti, *Pretrial Diversion Programs: Research Summary*, BUREAU OF JUSTICE ASSISTANCE (U.S. DEPARTMENT OF JUSTICE) (Oct. 25, 2010), https://bja.ojp.gov/sites/g/files/xyckuh186/files/media/document/PretrialDiversionResearchSummary.pdf.

[13] *See* Camiletti, *supra* note 12, at 4.

the likelihood of re-arrest at two years from program enrollment."[14] Similarly, a 2018 case study of a pretrial diversion program in Harris County, Texas found that "diversion leads to a dramatic reduction in reoffending," with the "total number of future convictions" falling "by 75% over a 10-year follow-up period."[15]

B. The Lack Of Clarity Over When *Heck* Applies Creates Uncertainty That Imposes Significant Burdens On Local Governments.

The practical implications of the Ninth Circuit's decision are also contrary to the orderly administration of justice by local governments.

Pretrial diversion programs promote efficiency in criminal prosecution and sentencing in significant ways. They also critically reduce strain on overcrowded prisons, lessening the costs of incarceration—estimated between $56,200 and $66,800 per individual per year.[16]

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[14] Michael Rempel et al., *NIJ's Multisite Evaluation of Prosecutor-Led Diversion Programs: Strategies, Impacts, and Cost-Effectiveness*, CENTER FOR COURT INNOVATION (Apr. 2018), at vii, https://www.innovatingjustice.org/sites/default/files/media/document/2017/Pretrial_Diversion_Overview_ProvRel.pdf.

[15] Michael Mueller-Smith & Kevin Schnepel, *Second chance: the social benefits of diversion in the criminal justice system*, MICROECONOMIC INSIGHTS (Mar. 16, 2021), https://microeconomicinsights.org/second-chance-the-social-benefits-of-diversion-in-the-criminal-justice-system/.

[16] Akhi Johnson & Mustafa Ali-Smith, *Diversion Programs, Explained*, VERA (Apr. 28, 2022), https://www.vera.org/diversion-programs-explained.

A 2018 case study by the National Institute of Justice of five high-volume diversion programs in major cities found that, "where a cost evaluation was conducted, diversion cases involved a lesser resource investment than similar comparison cases."[17]

Pretrial diversion programs also allow prosecutors to focus resources on more serious criminal defendants while still maintaining accountability in the justice system for offenders of low-level crimes.[18] Prosecutors may refer criminal defendants to pretrial diversion programs based on concerns about the purpose and efficacy of criminal punishment in a given case and the avoidance of waste of government resources on purposeless or even harmful prosecutions. Those decisions should not be influenced by the perceived risk of Section 1983 litigation.

The documented successes of pretrial diversion programs must be considered in any ruling by this Court that could risk disincentivizing prosecutors from offering diversion in plea agreements and creating litigation risk that may force local governments to reduce or shut down such programs. As *Roesch v. Otarola*, 980 F.2d 850, 853 (2d Cir. 1992) recognized over thirty years ago, if courts "permit a criminal defendant to maintain a section 1983 action" after taking advantage of a pretrial diversion program, it will "become less desirable for the State to retain" such programs and "less

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[17] *See* Rempel et al., *supra* note 14, at vii-viii.

[18] *See No Entry: A National Survey of Criminal Diversion Programs and Initiatives, supra* note 6, at 17.

desirable for the courts to use" them because any saved "resources from dismissing the criminal proceeding" will be subsumed, if not exceeded, by the cost of resolving follow-on constitutional claims. These practical ramifications underscore the importance of the issue in this case and weigh heavily in favor of this Court granting review and providing much-needed clarity and guidance.

CONCLUSION

For the foregoing reasons, *Amici Curiae* International Municipal Lawyers Association, the California State Association of Counties, and the League of California Cities submit that the petition for a writ of certiorari should be granted.

Respectfully submitted,

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