No. 24-956

IN THE

Supreme Court of the United States

LOS ANGELES COUNTY, CALIFORNIA, *et al.*,

Petitioners,

v.

PETER WOODS NYARECHA, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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

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INTEREST OF AMICI CURIAE[1]

The International Municipal Lawyers Association (IMLA) is a non-profit, nonpartisan professional organization consisting of more than 2,500 members. The membership is comprised of local government entities, including cities, counties and subdivisions thereof, as represented by their chief legal officers, state municipal leagues, and individual attorneys. Established in 1935, 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, the United States Courts of Appeals, and in state supreme and appellate courts.

The California State Association of Counties (CSAC) represents county governments in California. CSAC provides essential services to California's 58 counties through advocacy, education, and research.

This case presents an important question: under what circumstances may a local government be found liable for a federal pattern and practice claim under Section 1983. *Amici* have an interest in preserving local autonomy and control without unwarranted federal oversight. This Court should grant certiorari to provide clarity on the legal standard for interpreting *Monell* liability based on pattern and practice claims. The Ninth Circuit's decision

1. This brief was not authored in whole or in part by counsel for any party and no person or entity other than *amici* or their counsel has made a monetary contribution toward the brief's preparation or submission. Counsel of record for all parties received timely notice of the intent of *amici* to file this brief.

expands *Monell* to the breaking point, introducing federal oversight of local government's affairs in contravention of *Monell's* admonition that there is no *respondeat superior* liability. Given the importance of preserving the Constitution's federalist structure, the Court should intervene and grant certiorari to address this issue.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

The Los Angeles County Sheriff's Department (LASD) is the largest in the United States, numbering more than 18,000 sworn and professional staff.[2] It operates one of the larger jail systems in the world, housing more than 11,000 inmates at seven facilities spread across a 4,000 square mile territory.[3] Against those facts, an inference that video from a single cellblock of a single jail on a single night constitutes an LASD "policy or custom" is beyond illogical. More damaging, that inference--which imputes responsibility to the County for isolated acts by six rank and file employees in contravention of LASD official policy and training--contravenes nearly fifty years of Supreme Court precedent rejecting *respondeat superior* liability for America's local governments. If allowed to stand, the Ninth Circuit's holding will eviscerate that principle and open localities to potentially unlimited attack.

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2. https.lasd.org; nearly 30% of this total is deployed in the LASD jail system. *Los Angeles County Jail System by the Numbers-Update for 2024*, Los Angeles Almanac, https://www.laalmanac.com/crime/cr25b.php (last accessed Mar. 30, 2025).

3. Los Angeles Sheriff's Department, *Correctional Services Daily Briefing*, https://lasd.org/wp-content/uploads/2025/03/Transparency_Custody_Division_Daily_Briefing_032825.pdf (last accessed Mar. 29, 2025).

At the heart of this Court's refusal to subject local governments to *respondeat superior* liability is a recognition that not every miscue by governmental actors amounts to a Constitutional issue requiring resolution before the federal judiciary. Principles of federalism require that states and localities must be allowed to apply their own laws where appropriate. To ensure the Constitution's federalist structure remains intact, local governments can be held liable for constitutional violations under 42 U.S.C. §1983 only when they themselves inflict such violations; they cannot be held liable for the isolated acts of their employees on a *respondeat superior* theory. *See Monell v. Dept. of Soc. Serv.*, 436 U.S. 658, 691-95 (1978). This Court's review of the Ninth Circuit's opinion below is critically needed to reaffirm these principles, avoid a split among the circuits, and preserve that essential federalist structure.

It is textbook law that to establish a *Monell* claim based on an unwritten practice or policy, a plaintiff must establish that the alleged practice is so widespread and "so permanent and well settled as to constitute a custom or usage' with the force of law." *City of St. Louis v. Praprotnik*, 485 U.S. 112, 127 (1988). Diverting from this fundamental principle, the Ninth Circuit found that six LASD deputies' actions in one night, in one cell block of one jail, established a widespread and permanent custom sufficient to hold the County liable under *Monell*. That finding is based on "an inference that the safety checks that occurred in the hours preceding Nyarecha's death represent a practice or custom capable of satisfying the standard for *Monell* liability." App. 4a-5a.

The Ninth Circuit's reasoning gives courts discretion to *assume* that a massive governmental entity, comprising

thousands of employees across multiple facilities, has adopted a widespread pattern and practice based solely on the actions of a handful of actors in a very compressed timeframe. That decision deviates from the application of *Monell* in other circuits, ignoring obvious statistical and temporal incongruities and providing no analysis as to which circumstances might justify a court inferring a widespread policy under such insubstantial evidence. Left unchecked, the decision's implications for local government liability are unlimited. This Court's review is urgently required to clarify whether the inference of a custom or policy is cognizable under the *Monell* standard, and if so, what quantum of factual support is required to allow such an inference. *Amici curiae* also urge the Court to consider the obvious implications of the Ninth Circuit's holding: the inference of an actionable custom or policy based on threadbare facts will necessarily lead lower courts in the Ninth Circuit's jurisdiction and sister Circuit courts to build upon the decision and dramatically expand municipal liability.

ARGUMENT

I. Allowing courts to infer a policy based on a few officers' actions in one night stretches *Monell* liability back to *respondeat superior*.

The Ninth Circuit's decision ("the Opinion") allows a court to hold public entities liable under *Monell* when a plaintiff focuses on a few events reflected in the record, and asks the court to infer numerous additional events sufficient to conclude a cognizable custom or practice exists under *Monell*. But one swallow does not a summer make. The Opinion allows courts to make dangerous

generalizations about the existence of a widespread custom or policy when the evidence shows the actions of only a few employees in a short time period. Holding public entities liable for the actions of a few employees reverts *Monell* liability back to *respondeat superior*.

This Court has already rejected this type of leap in the context of a failure to train *Monell* claim:

> We think this inference unwarranted; first, in its assumption that the act at issue arose from inadequate training, and second, in its further assumption concerning the state of mind of the municipal policymakers. But more importantly, the inference allows a § 1983 plaintiff to establish municipal liability without submitting proof of a single action taken by a municipal policymaker. The foregoing discussion of the origins of *Monell* 's "policy or custom" requirement should make clear that, at the least, that requirement was intended to prevent the imposition of municipal liability under circumstances where no wrong could be ascribed to municipal decisionmakers. Presumably, here the jury could draw the stated inference even in the face of uncontradicted evidence that the municipality scrutinized each police applicant and met the highest training standards imaginable. To impose liability under those circumstances would be to impose it simply because the municipality hired one "bad apple."

City of Oklahoma City v. Tuttle, 471 U.S. 808, 821 (1985).

The Court should grant certiorari to close the door to the use of inferences in the custom and practice setting as well. The published reports are replete with cases faithfully applying *Monell,* but the decision below risks injecting uncertainty into this area of the law and undermining important federalism principles.

II. The Ninth Circuit's decision conflicts with the requirements in other circuits that a custom claim provide numerous other specific instances of similar conduct.

The Opinion's conclusion that courts may infer a widespread practice based on a single incident sharply contrasts with the approach other circuits take to custom and practice liability under *Monell*. For example, the Fifth Circuit recently held that a pretrial detainee failed to establish *Monell* liability by use of "[m]ere improbable inferences and unsupported speculation" when he submitted a log sheet from the jail facility showing the use of a restraint chair, but the log sheet failed to provide any context for why the chair was used. *See Reynolds v. Wood Cnty., Texas,* No. 22-40381, 2023 WL 3175467, at *6–7 (5th Cir. May 1, 2023). The Fifth Circuit explained that proving a custom and practice claim under *Monell* "requires sufficiently numerous prior incidents, as opposed to isolated instances" and those "[p]rior incidents must be similar and specific." *Id.* at *6. Here by contrast, the Ninth Circuit not only did not require any other prior incidents, but its use of inferences directly conflicts with the Fifth Circuit's requirement that the incidents be specific. When there are no other incidents, they are certainly not sufficiently similar or specific under the Fifth Circuit's test.

In the Seventh Circuit, plaintiffs brought a class action suit against the City of Chicago based on their vehicles being towed to and impounded at "Lot 6." *Gable v. City of Chicago*, 296 F.3d 531 (7th Cir. 2002). Based on three prior incidents in the last four years, the plaintiffs claimed that the city had a "custom of erroneously denying to vehicle owners that their vehicles were at Lot 6." *Id.* at 538. The Seventh Circuit affirmed the lower court's grant of summary judgment in favor of the city. The court held, "we have no problem concluding that of the 181,911 vehicles that were towed to Lot 6, the three incidents where vehicle owners were erroneously told that their vehicles were not at Lot 6 do not amount to a persistent and widespread practice.'" *Id.* at 538.

The number of jail cell safety checks at issue here are minute in proportion to those that regularly occur among the more than 11,000 inmates housed in LASD facilities. Yet the Ninth Circuit determined that the six officers' bed checks in a single night were sufficient to infer a widespread and pervasive policy such that *Monell* liability could attach to the county. The court should grant certiorari to emphasize that such a limited number of alleged infractions is insufficient to establish a pattern and practice under *Monell*.

Similarly, in *Flores v. City of South Bend*, the plaintiff brought a *Monell* claim against the city alleging a policy of encouraging police officers to drive excessively fast after a police officer killed someone while speeding through a red light. 997 F.3d 725 (7th Cir. 2021). The Seventh Circuit found that plaintiff could not establish a *Monell* claim based on a de facto policy of encouraging reckless driving. The court held "[a]llegations that officers sometimes drive

at high rates of speed do not show a sufficiently specific pattern of conduct to 'support the general allegation of a custom or policy.' *[citation omitted]*. Finding otherwise would stretch the law too far, opening municipalities to liability for noncodified customs in all but the rarest of occasions, as long as a plaintiff can find a few sporadic examples of an improper behavior." *Id.* at 733.

And, in the Eighth Circuit, a pretrial detainee at the Pulaski County Regional Detention Facility in Arkansas sued for municipal liability under Section 1983 claiming that the County had an unofficial custom of refusing to help him with his medical needs on a daily basis. *Hall v. Higgins*, 77 F.4th 1171, 1176 (8th Cir. 2023). During his five weeks of confinement at the jail, he had daily difficulties accessing his bed, showering, using the restroom and getting clean afterwards due to his bowel incontinence and paralysis from the waist down. *Id*. at 1176-77. While the jail's medical professionals offered him care during medical examinations, plaintiff claimed that multiple jail staff members refused to help him on a daily basis with bathing and cleaning himself. *Id*.

The Eighth Circuit affirmed summary judgment on the 1983 claim in favor of the county. Even though plaintiff claimed that multiple jail staff members refused to help him on a daily basis, the court found Hall could not establish that his "experience was the consequence of a 'pervasive and widespread' custom or practice at the Jail, and his bare assertions of such a custom are insufficient to impose municipal liability on Pulaski County." *Id.* at 1180. Had the Eighth Circuit applied the Ninth Circuit's "inference" rule at issue here, it too may have conjectured that a county policy was responsible for the multiple jail

staff members' actions. The *Hall* plaintiff's experience was not based on one night, but on daily refusals of assistance spanning five weeks, involving various staff members. Still, the Eighth Circuit did not infer, and much less hold, that these employees' actions evidenced a widespread policy of refusing personal care to inmates. Instead of allowing an inference of a custom as the Ninth Circuit did, the Eighth Circuit emphasized that the inmate's "bare assertions of such a custom are insufficient to impose municipal liability" on the county. *Id.*

Prior to this decision, the Ninth Circuit has also held that a few incidents are not enough to establish a custom. *See Meehan v. Los Angeles County*, 856 F.2d 102 (9th Cir.1988), holding two incidents not sufficient to establish a custom. While this principle has been consistently affirmed, as seen below, the Opinion invites courts to reconsider whether a few incidents are sufficient to infer that a widespread pattern or practice exists beyond the evidence provided.

District courts within the Ninth Circuit also have understood that a custom is not established based only on a few incidents. Three examples follow, which would have potentially different outcomes if they applied the Opinion below.

After police shot Alfred Olango, an unarmed man, a series of protests, rallies and vigils occurred in San Diego and continued for several weeks. *Bidwell v. County of San Diego*, 607 F. Supp. 3d 1084, 1089 (S.D. Cal. 2022), aff'd, No. 22-55680, 2023 WL 7381462 (9th Cir. Nov. 8, 2023). Officers declared one night's protest of over 200 people an unlawful assembly after hearing an agitated man state he

was going to get his gun. *Id*. Plaintiffs brought a *Monell* claim against the City and County of San Diego, alleging the entities had a "pattern and practice of declaring peaceful assemblies to be unlawful based on their own convenience." *Id*. at *1103*. As evidence of the custom, they identified two other unrelated unlawful assembly declarations which occurred in the subsequent days. *Id*. at 1103-04. The court granted the public entities' motions for summary judgment on the *Monell* claim, holding "the fact that three unlawful assembly declarations occurred over the span of a four-day time period during a weeks-long demonstration of varying sizes and characteristics is not, under *Monell* jurisprudence, 'widespread,' 'permanent and well-settled as to constitute a custom or usage with the force of law,' 'standard operating procedure,' or the 'traditional method of carrying out policy.'" *Id.* at 1104.

In *Lien v. City of San Diego*, plaintiffs filed a *Monell* claim against the City of San Diego alleging the city had a policy of enforcing anti-Trump viewpoint discrimination after the city declared an unlawful assembly and dispersed the anti-Trump demonstrators but not the pro-Trump group. No. 21-CV-224-MMA (WVG) 2021 WL 2072385 at *3 (S.D. Cal. May 24, 2021). To establish the alleged discriminatory policy, plaintiffs also cited to the city's unlawful assembly declaration during a 2016 anti-Trump protest and an undated Women's March. The court dismissed the Section 1983 *Monell* claim, finding "Plaintiffs' proffered two prior incidents are insufficient to state a plausible longstanding custom." *Id.* at *5.

Similarly, in *Sanderlin v. City of San Jose*, plaintiffs attempted to establish a *Monell* claim based on an alleged City of San Jose policy of using excessive force against protestors. No. 20-CV-04824-BLF 2022 WL 913055 (N.D.

Cal., Mar. 29, 2022). The plaintiffs had participated in protests over several days following the killing of George Floyd. *Id.* at *1. The court dismissed the *Monell* claim, holding plaintiffs had "not established that the policies or customs were 'so persistent and widespread that [they] constitute[ ] a permanent and well settled city policy'" when the only evidence they provided came from the protests which they participated in and not prior incidents. *Id.* at *15.

These cases avoid trammeling on principles of federalism by holding that alleging a few incidents is insufficient to establish a widespread pattern and practice such that *Monell* liability attaches. Yet in the wake of the Opinion, any of these cases could have decided that the few incidents in the record warranted an inference that an unseen and widespread custom lurks beneath the surface. The Opinion's new rationale undermines the longstanding rule that a few incidents cannot establish a widespread custom, and sows uncertainty for localities within the Ninth Circuit on how they can avoid custom and practice liability. The Opinion also sharply contrasts with the approach of the Fifth, Seventh, and Eighth Circuits and certiorari is therefore warranted.

III. Establishing a more lenient test will impact *Monell* liability in countless contexts.

The Ninth Circuit Opinion provides no parameters as to the circumstances in which courts might infer a widespread and permanent custom. This Court's guidance is needed as to when, if ever, a small amount of evidence may be used to draw an inference of a longstanding and widespread custom to establish *Monell* liability. Otherwise, the Opinion allows courts to infer a custom

with limited evidence where they previously would not have found one.

As the cases cited above indicate, that expansion of liability will have profound effects across a wide array of law enforcement functions. The danger is obvious in the context of incarceration. Although the LASD jail system is the largest in the United States, local governments operate numerous massive jail complexes across the nation. These include Rikers Island, New York City; Harris County, Texas; Maricopa County, Arizona; Curran-Fromhold, Philadelphia; Metro-West, Miami-Dade, Florida; Cook County, Illinois; Orange County, California; and Dallas County, Texas, each of which house many thousands of inmates.[4] Applying the Ninth Circuit's inferential reasoning to actions by a minute fraction of the workforce in a single night at these huge facilities will clearly lead to open-ended Section 1983 litigation and liability.

The unwarranted expansion of governmental liability in the context of jails and in the decisions cited above are only a narrow glimpse of the types of cases that may be set adrift from *Monell's* moorings should this Court leave intact the Ninth Circuit's relaxation of the *Monell* standard. Under the new lower standard, a court could infer that a public entity has a widespread policy of pushing fentanyl if a few of its "bad apple" personnel are discovered dealing drugs. Or, courts could infer a public entity has a custom of using excessive force against sports fans if officers have to break up multiple riots one night following a Super Bowl parade.

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4. Doug Carlin, *Top 12 Prisons in the US,* USA by #umbers (Jan. 12, 2023), https://usabynumbers.com/largest-prisons-in-the-us/, (last accessed Mar. 30, 2025).

This Court has consistently held that plaintiffs must establish that an alleged practice is so widespread and "so permanent and well settled as to constitute a 'custom or usage' with the force of law." *City of St. Louis v. Praprotnik*, 485 U.S. 112, 127 (1988). Leaving the Ninth Circuit's Opinion undisturbed would invite lower courts to erode the "widespread policy" bedrock under *Monell* to the point it crumbles entirely.

CONCLUSION

The Ninth Circuit's decision expands municipal liability under *Monell*, introducing uncertainty into the law and undermining principles of federalism by expanding federal oversight into local government operations. The Court should grant certiorari and clarify this issue.

Respectfully submitted,

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