20-56140

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

A.B. et. al.,
Plaintiffs and Appellants

vs.

COUNTY OF SAN DIEGO,
Defendants and Appellees

On Appeal from the United States District Court for the Southern District of California
Case No. 3:18-cv-01541-MMA-LL
The Honorable Michael M. Anello, United States District Judge

BRIEF FOR THE NATIONAL POLICE ACCOUNTABILITY PROJECT (NPAP) AS *AMICUS CURIAE* IN SUPPORT OF THE PETITIONER

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, the undersigned counsel for amicus curiae respectfully submits *Amicus Curiae* National Police Accountability Project (NPAP) states that it is a non-profit organization, that it has no parent corporation, and that no publicly held corporation owns ten percent or more of its stock because it has no stock.

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INTEREST OF *AMICUS CURIAE*[1]

The National Police Accountability Project (NPAP) was founded in 1999 by members of the National Lawyers Guild to address misconduct by law enforcement officers through coordinating and assisting civil rights lawyers. NPAP has approximately 550 attorney members practicing in every region of the United States, including a number of members who represent clients who have been falsely arrested or wrongfully convicted.

Every year, NPAP members litigate the thousands of egregious cases of law enforcement abuse that do not make news headlines as well as the high-profile cases that capture national attention. NPAP provides training and support for these attorneys and resources for non-profit organizations and community groups working on police and correction officer accountability issues. NPAP also advocates for legislation to increase police accountability and appears regularly as amicus curiae in cases, such as this one, presenting issues of particular importance for its members and their clients. The crisis of police violence in our country

[1] Pursuant to Federal Rule of Appellate Procedure 29(c)(5), amicus curiae state that no party's counsel authored this brief in whole or in part, no party or party's counsel contributed money intended to fund preparing or submitting this brief, and no person other than amicus curiae, their members, or their counsel contributed money intended to fund preparing or submitting this brief. All parties consented to the National Police Accountability Project's participation as amicus curiae in this case.

cannot be explained away as the actions of "a few bad apples." Instead, it is a product of the institutional practices of police departments. Preserving plaintiff access to *Monell* claims—including failure-to-train claims—is essential for holding police departments accountable and changing their harmful tactics.

SUMMARY OF THE ARGUMENT

The panel's decision below misapplied precedent from both the Ninth Circuit and the Supreme Court of the United States in determining Petitioners needed to show a pattern of similar constitutional violations to prevail on their failure-to-train claim. Plaintiffs have never been required to show a trail of constitutional violations where the need for training is so obvious that the failure to provide training amounts to deliberate indifference. The prone-restraint hold used by the officers in this case poses an obvious danger, yet the San Diego Sheriff's Department failed to offer any training on the proper methods for using such restraint. This failure to train amounts to deliberate indifference. In deciding otherwise, the panel's decision flouts the precedent of this Court and conflicts with the decisions of other circuit courts.

In addition to misapplying the relevant precedent, the panel's decision runs contrary to sound policy considerations. Requiring plaintiffs to show a pattern of similar constitutional violations to prevail on their failure-to-train claims

undermines the purpose of *Monell* suits and places the public at risk of dangerous policing practices.

ARGUMENT

I. A Trail of Constitutional Violations Has Never Been Required to Prove Deliberate Indifference to Training Needs of Police Officers.

Training deficiencies can serve as a basis for *Monell* liability even if they have yet to result in multiple documented incidents of police abuse. *Canton v. Harris*, 489 U.S. 378, 390 (1989); *Kirkpatrick v. County of Washoe*, 843 F.3d 784, 796-97 (9th Cir. 2016) (en banc). A law enforcement agency can be deliberately indifferent to the need to train absent previous constitutional violations where: (1) the department knows that its officers are going to have to engage in certain duties; (2) there is an obvious risk of harm attendant to carrying out those duties; and (3) the department provides no training, or the training that is provided is incongruent with widely accepted standards as evidenced by expert testimony, or multiple officers do not know or understand the materials they were purportedly trained on. There is significant evidence in the summary judgment record that Respondent San Diego County met all three criteria of deliberate indifference to inadequate training. The panel failed to consider this evidence and wholly ignored the well-established single incident analysis for failure-to-train claims. This Court should grant a rehearing to correct this error.

A. The Need to Train Police Officers On How To Detain A Noncompliant Suspect and the Lethal Risk of Positional Asphyxia is Obvious.

The average police officer will likely engage in a core set of law enforcement functions in the course of their career, including responding to individuals in mental health crisis, detaining individuals who may require assistance, and apprehending civilians suspected of engaging in criminal wrongdoing. *See e.g.*, Amos Irwin and Betsy Pearl, *The Community Responder Model,* CENTER FOR AMERICAN PROGRESS (Oct. 28, 2020), https://www.americanprogress.org/issues/criminaljustice/reports/2020/10/28/492492/community-responder-model/ (finding that over half of police calls involve responding to individuals in mental health crisis or struggling with substance abuse issues); SETH STOUGHTON ET. AL., EVALUATING POLICE USE OF FORCE 25 (2020) (explaining that detaining and arresting individuals suspected of crimes is a common policing duty). In light of these uniform responsibilities, police departments know to "a moral certainty" that their officers will have to undertake certain tasks to fulfill these core functions. *Newman v. San Joaquin Delta Comty. Coll. Dist.*, 814 F. Supp. 2d 967, 978 (E.D. Cal. 2011) (moral certainty with respect to mental health calls); *Kirby v. City of E. Wenatchee*, No. 12-0190, 2013 WL 1497343, at *14 (E.D. Wash. Apr. 10, 2013) (denying summary judgment on plaintiff's failure-to-train claim given "large body of municipal liability jurisprudence shedding light on the issue of deliberate indifference in the context

of tragic encounters between police officers and mentally ill individuals"); *Estate of Roman v. City of Newark*, 914 F.3d 789, 800 (3d Cir. 2019) (search and seizure); *Ouza v. City of Dearborn Heights*, 969 F.3d 265 (6th Cir. 2020) (probable cause determinations and handcuffing); *Flores v. City of South Bend*, 997 F.3d 725, 733 (7th Cir. 2021) (officer reckless driving).

The Supreme Court has consistently found that police departments are responsible for knowing the inherent risks associated with policing tasks and training their officers to abate those risks. *See Canton*, 489 U.S. at 390 n.10; *Board of County Commissioners v. Brown*, 520 U.S. 397, 409 (1997) ("[A] violation of federal rights [is] a highly predictable consequence of a failure to equip law enforcement officers with specific tools to handle recurring situations."). In *Canton*, the Court charged the city with knowing its officers would have to use force to arrest fleeing suspects evidenced by the fact that it "armed its officers with firearms, in part to allow them to accomplish this task." 489 U.S. at 390 n.10. Because the city knew its officers would be using force to make an arrest, "the need to train officers in the constitutional limitations on the use of deadly force [] can be said to be 'so obvious,' that failure to do so could properly be characterized as 'deliberate indifference' to constitutional rights." *Id.*

The need for robust, detailed training on the use of force is not limited to the proper use of firearms. Courts have found Fourth Amendment violations are a

predictable consequence of failure to train officers on how to use other means to effect a detention or arrest. *Brown v. Chapman*, 814 F.3d 447, 465 (6th Cir. 2016) (the need for taser training was obvious where death was a foreseeable result of improper use of weapon); *Brown v. Bryan County*, 219 F.3d 450, 463 (5th Cir. 2000) (need to train on use of force in detentions where arm-bar takedown was used); *Bordanaro v. McLeod*, 871 F.2d 1151, 1160 (1st Cir. 1989) (failure to train on use of force in course of hot pursuit amounted to deliberate indifference); *Nelson v. City of Albuquerque*, No. 10-553, 2012 U.S. Dist. LEXIS 198954 (D.N.M. Apr. 12, 2012) (finding failure to train officers on use of wooden batons, bean bag rounds, and a service dog could amount to deliberate indifference).

The dangers of lethal detention methods—including prone restraint holds—and the need for a city to train officers on their use are especially obvious. *See e.g., Connick v. Thompson*, 563 U.S. 51, 52 (2011) (finding need to train officers on deadly force is obvious as there is no other way for officers to obtain the knowledge they require); *id.* at 105 (Ginsburg, J., dissenting) (noting *Canton* held that a municipality "[u]nquestionably" needs to train its officers on the constitutional limits of deadly force); *Thomas v. Cumberland County*, 749 F.3d 217, 223, 225-27 (3d Cir. 2014); *Chamberlain v. City of White Plains*, 986 F. Supp. 2d 363, 391-92 (S.D.N.Y. 2013) (collecting cases distinguishing failure to train prosecutors in *Connick* from failure to train police on the use of deadly force);

Shenequa L. Grey, *There's A Better Way: Why the United States Supreme Court's* Connick v. Thompson *Decision is Not Absolutely Outrageous*, 13 LOY. J. PUB. INT. L. 469, 488 (2012) (distinguishing deadly force training for police officers from other government instruction).

Prone restraint holds—when an officer restrains an individual in a face-down position for an extended period of time causing disruption of the flow of oxygen and creating a strong likelihood that the restrained individual will lose consciousness and possibly fall into cardiac arrest[2]—unquestionably pose a risk of grievous injury and death. *See e.g., Drummond v. City of Anaheim*, 343 F.3d 1052, 1057 (9th Cir. 2003) (noting severity of force of prone restraint holds capable of causing death); *Abdullahi v. City of Madison*, 423 F.3d 763, 770-71 (7th Cir. 2005); *Weigel v. Broad*, 544 F.3d 1143, 1155 (10th Cir. 2008); *Meyers v. Baltimore County*, 713 F.3d 723, 734 (4th Cir. 2013). The maximal restraint technique authorized by San Diego County for which officers are issued hobble straps—where an individual is held prone face-down on pavement with his hands cuffed behind his back and his legs restrained, bent at the knees, and crossed against his buttocks—creates an acute risk of asphyxiation. *See Estate of Aguirre v.*

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[2] Mary E. Helander and Austin McNeil Brown, *The Public Health Crisis of Law Enforcement's Over-Use of Force*, LERNER CENTER FOR PUBLIC HEALTH PROMOTION (July 28, 2020), https://surface.syr.edu/cgi/viewcontent.cgi?article=1023&context=lerner.

City of San Antonio, 995 F.3d 395 (5th Cir. 2021). Leaders in the law enforcement community have espoused the dangers of prone restraint holds for decades, producing training guidelines on a range of risks related to restraint holds, including how to recognize medical distress. *See e.g.*, U.S. DEP'T OF JUSTICE, *Nat'l Law Enforcement Tech. Ctr. Bulletin: Positional Asphyxia—Sudden Death* 2 (June 1995), https://www.ncjrs.gov/pdffiles/posasph.pdf; IACP, *The Prone Restraint—Still A Bad Idea,* 10 Pol'y Rev. 1 (1998); IACP, *Training Key No. 429, Custody Death Syndrome* (1993).

The Supreme Court acknowledged the wealth of "well-known police guidance" on positional asphyxia and prone-restraint holds in *Lombardo v. City of St. Louis*, 141 S. Ct. 2239, 2241 (2021). Because prolonged prone-restraint holds carry an obvious threat of suffocation, it is unreasonable for an officer to use such a hold solely because a suspect was resisting. *Id.* at 2241-42. Instead, the full context of a particular struggle must be evaluated to determine whether such extreme force is justified. *Id.* Ultimately, the Court found that the Eighth Circuit's failure to analyze the obvious lethal risks of prone restraint holds in its Fourth Amendment assessment warranted a remand. *Id.* at 2242.

Given the deadly risks of positional asphyxia and municipalities' unquestionable obligation to train officers on the limits of deadly force, a number of courts have found police departments should be on notice of the need to train

their officers on the use of prone-restraint holds. *Alves v. Riverside Cty.*, No. 19-2083 JGB, 2021 U.S. Dist. LEXIS 169354, at *29 (C.D. Cal. Aug. 5, 2021) (denying summary judgment on single-incident, failure-to-train claim where officers were taught that prone position was the safest method of restraint); *Wroth v. City of Rohnert Park*, No. 17-cv-05339-JST, 2019 U.S. Dist. LEXIS 68068, at *43 (N.D. Cal. Apr. 22, 2019); *Neuroth v. Mendocino County*, No. 15-cv-03226-RS, 2018 U.S. Dist. LEXIS 149492, at *17 (N.D. Cal. Aug. 31, 2018); *Johnson v. City of Cincinnati*, 34 F. Supp. 2d 1013, 1020 (S.D. Ohio 1999) (holding a reasonable jury could find the city was deliberately indifferent in failing to train officers on obvious dangers of holding detainee in prone position); *Cruz v. City of Laramie*, 239 F.3d 1183, 1191 (10th Cir. 2001) (finding deliberate indifference on failure to train where "the City failed to train its officers on the use of hobble restraints and . . . the City put such restraints in its police cars").

B. San Diego County Was on Notice That Its Use-of-Force Training Was Constitutionally Deficient.

Just as patterns of misconduct are not necessary to notify departments of a general need to provide training, a police department does not need multiple incidents of constitutional violations to be on notice that it needs to provide proper training. Most notably, police departments know that their training is deficient where they choose to provide no content in their use-of-force curriculum on how to use dangerous equipment or maneuvers. *Mason v. Davis County*, 927 F.2d 1473,

1483 (9th Cir. 1991); *Brown v. Bryan County*, 219 F.3d 450, 453-54 (5th Cir. 2000) (no training on force during vehicle pursuits was objectively deficient); *Favors v. City of Atlanta*, 849 Fed. Appx. 813, 820 (11th Cir. 2021) (reversing summary judgment in favor of city where department failed to provide any training on shooting into a fleeing vehicle).

Courts have found institutional defendants can be on notice of the need for additional or different instruction based on the quality of training exercises without prior incidents of misconduct. For instance, training programs are often deemed deficient on their face where the department does not assess or evaluate an officer's mastery of the content, even in the absence of multiple prior incidents. *See e.g.*, *Wright v. City of Euclid*, 962 F.3d 852, 881 (6th Cir. 2020) (noting municipality recklessly disregarded need for additional training where training consisted of reading use-of-force policy and scenario-based training where officer performance was not evaluated); *Davis v. Mason County*, 927 F.2d 1473, 1482-83 (9th Cir. 1991) (lack of tests, reports, and reviews of use-of-force field training); *Zuchel v. City and County of Denver, Colo.*, 997 F.2d 730 (10th Cir. 1993) (failure to implement live "shoot-don't shoot" exercise in use-of-force training constituted deliberate indifference). Evolving national guidance on the proper use of force can also supply municipalities and departments with notice of a training deficiency before a constitutional violation occurs. *See e.g., Brown v.*

Chapman, 814 F.3d 447, 465 (6th Cir. 2016) (Taser's updated warning and guidance on use put city on notice that its electronic control device training was deficient).

To the extent a municipal defendant argues that its training is sufficient notwithstanding its failure to include instructions on specific topics in its curriculum or evaluations of an officer's mastery of training, courts have relied on the testimony of experts and individual officers to resolve the dispute. An officer's confusion or incorrect perception about best practices and constitutional rules has been relied upon as evidence of deficient training. *See e.g., Henry v. Cty. of Shasta*, 132 F.3d 512, 521 (9th Cir. 1997) (employees working in concert and independently to participate in the "flagrant violation" of plaintiff's constitutional rights supported finding of inadequate training); *Okin v. Vill. of Cornwall-on-Hudson Police Dep't*, 577 F.3d 415, 440 (2d Cir. 2009) (finding evidence of training deficiency where officer responsible for training on domestic violence incidents improperly handled issues himself and subordinate officers had a "sketchy" understanding of protocols); *Gregory v. City of Louisville*, 444 F.3d 725, 754 (6th Cir. 2006) (officer did not know about duty to disclose exculpatory evidence during depositions); *Shadrick v. Hopkins Cnty.*, 805 F.3d 724, 740-41 (6th Cir. 2015) (finding "professed ignorance of the written medical treatment protocols and policies" was sufficient evidence of training deficiency). Courts will

rely on expert assessments of the quality of the training to determine deficiencies as well. *Menjivar v. City of Santa Monica*, No. 95-56702, 1997 U.S. App. LEXIS 5683, at *5 (9th Cir. Mar. 25, 1997) (finding expert testimony provided evidence of inadequacies in training on canine and baton use); *Vineyard v. Cty. of Murray*, 990 F.2d 1207, 1212 (11th Cir. 1993); *Russo v. City of Cincinnati*, 953 F.2d 1036, 1045 (6th Cir. 1992) ("Especially in the context of a failure-to-train claim, expert testimony may prove the sole avenue available to plaintiffs to call into question the adequacy of . . . training procedures."); *Martin v. City of Broadview Heights*, 712 F.3d 951, 956 (6th Cir. 2013) (expert evaluated city's training on prone restraint holds).

Respondent San Diego County's 30(b)(6) designee admitted that its use-of-force curriculum did not include the dangers of prone-restraint holds or the Fourth Amendment's limitations on the use of such a hold. To the extent any instruction was provided on prone-restraint holds, it contravened well-known national guidance and the County failed to evaluate officers' use of the hold. In all, the obvious weaknesses in Respondent's use-of-force training should have placed it on notice that whatever little guidance it had provided to officers on prone-restraint holds was constitutionally deficient. Continuing to provide deficient training unequivocally amounts to deliberate indifference. Moreover, Petitioner produced

ample evidence that the training was deficient in the summary judgment record through the testimony of their experts and statements of the County's own officers.

C. The Panel Opinion Diverges from Supreme Court and Ninth Circuit Precedent and the Jurisprudence of a Majority of Other Circuits.

This case presents a quintessential use-of-force training deficiency that fits squarely within the *Canton v. Harris* exception to the usual requirement that a pattern of constitutional violations be shown to establish deliberate indifference. However, the panel opinion entirely omits any analysis of the single-incident liability recognized by the Supreme Court in *Canton,* the Ninth Circuit in *Kirkpatrick v. Washoe*, and every other circuit to analyze failure-to-train claims over the last three decades. *See* Nancy Leong, *Municipal Failures*, 180 CORNELL L. REV. 1, 38 (forthcoming 2023).[3] Despite the obvious dangers of prone-restraint holds and Respondent's admission that it does not provide any proper training on the maneuver, the panel did not even consider whether the Petitioner could establish deliberate indifference under an "obviousness" theory. Had the panel actually evaluated Petitioner's claims under *Canton*, it would have found the summary judgment record was replete with evidence that Respondent was deliberately indifferent to the training needs of its officers. In light of the panel opinion's clear departure from the prevailing precedent of recognizing single-

[3] https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4058331.

incident liability where a department completely fails to train its officers, this Court should grant rehearing to ensure municipal liability can be fully considered.

II. Limiting Failure to Train Claims to Cases Where Dozens of People Have Suffered Rights Violations Will Undermine Improvements in Policing and Public Safety.

A. Accountability for Institutional Actors is Critical to Improving Policing Practices.

Municipal liability serves two coinciding purposes: compensating the individuals harmed by police misconduct and improving policing standards, practices, and trainings. *Estate of McIntosh v. City of Chicago*, No. 15 C 1920, 2015 U.S. Dist. LEXIS 116780 (N.D. Ill. Sept. 2, 2015). Civil liability creates an unparalleled incentive for police departments to make improvements because departments, through their insurers, are motivated to keep monetary damages low. *Monell* liability is the most powerful device for deterring law enforcement misconduct—more so than other tools such as consent decrees and the exclusion of evidence obtained in violation of the Fourth and Fifth Amendments. Candace McCoy, *How Civil Rights Lawsuits Improve American Policing*, *in* HOLDING POLICE ACCOUNTABLE 157, 164-66, 213 (Candace McCoy ed., 2010).

In the first decade after *Monell* became law, police departments across the country began adopting formal, standardized policies for the first time, seeking to avoid civil liability under the new precedent. *Id*. at 181. The departments "trained officers well to follow [the policies] and constantly supervised them so as to assure

compliance." *Id*. at 182. Departments also sought insurance coverage to protect themselves in case of suit, and insurance companies required departments to align their policies and trainings with constitutional standards before entering coverage agreements. *Id*. at 209-10. In this way, the threat of civil liability has been effective in encouraging police departments to raise their standards.

The importance of departmental liability as a tool for improving policing practices is particularly salient considering the limitations of civil suits against individual police officers. Most notably, the doctrine of qualified immunity prevents countless plaintiffs from litigating the merits of their claims against individual officers, even if the officers' actions violated the constitution. *See Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982) (holding individual officers immune from suit unless their actions violated "clearly established" law); *see also Ashcroft v. al-Kidd*, 563 U.S. 731, 741 (2011) (explaining that for law to be "clearly established," "existing precedent must have placed the statutory or constitutional question beyond debate"). By contrast, qualified immunity does not block suits against police departments, making *Monell* liability a critical pathway to accountability. Additionally, because individual officers are typically indemnified by their employers, "a civil suit has no financial impact on them" and they "have no economic incentive to change their behavior." Alison L. Patton, *The Endless Cycle of Abuse: Why 42 U.S.C. § 1983 Is Ineffective in Deterring Police*

Brutality, 44 HASTINGS L.J. 753, 771 (1993). Suits against individual officers also enable police departments to dismiss the individual officer as a uniquely "bad apple." A lawsuit challenging the policies or practices of an entire police department does not provide departments with the same cover. Departmental exposure to liability thus accomplishes what isolated suits against individual officers often cannot—department-wide commitment to constitutional policies and practices.

If left undisturbed, the panel's decision in this case would undermine the efficacy of the *Monell* suit. By enabling municipalities to repeatedly escape accountability for harmful practices, the panel's decision would eliminate key incentives for police departments to improve their practices. The erosion of police standards will, in turn, erode public safety.

B. Requiring Plaintiffs to Show Numerous Past Violations to Prove Deliberate Indifference Will Put the Public at Risk of Dangerous Policing Tactics

There are numerous hurdles to identifying and documenting patterns of police brutality within a police department. First, civilian-initiated complaints are rarely filed due to public disillusionment with internal affairs processes and active discouragement from police departments. *See e.g.,* Susan Bandes, *Patterns of Injustice: Police Brutality in the Courts*, 47 BUFF. L. REV. 1275, 1279 (1999). Moreover, fear of retaliation dissuades many civilians from formally documenting

officer misconduct that they witness. DEP'T OF JUSTICE, *Investigation of the Chicago Police Department* 47, 50 (2017), https://www.justice.gov/opa/file/925846/download. Second, even when a complaint is filed by a civilian, it is often only retained for a short period of time due to the expungements and purges permitted under union contracts and Law Enforcement Officers Bill of Rights laws. *Id.* at 1279-80; Mike Riggs, *Why Firing A Cop is Damn Near Impossible*, REASON (Oct. 19, 2012), https://reason.com/2012/10/19/how-special-rights-for-law-enforcement-m/.

Prior lawsuits also paint an underinclusive picture of the breadth of past incidents of government misconduct. Lack of access to attorneys and the need to pay costs bar many victims of constitutional violations from filing a lawsuit. Irving Joyner, *Litigating Police Misconduct Claims in North Carolina,* 19 N.C. CENT. L.J. 113, 143 (1991) (noting costs and attorney capacity cause many people to not pursue police abuse cases). Accordingly, the past constitutional violations captured through litigation likely represent only a portion of past similar incidents that have occurred. Media reports on a police department's conduct also are unlikely to adequately document the scope of prior similar bad acts. Where a victim of police violence lacks witnesses, an advocate, or corroborating video evidence, press outlets often adopt wholesale a sanitized or misleading report on an incident that is being forwarded by the law enforcement agency in question. For instance, a

number of news outlets published the Minneapolis Police Department's account of George Floyd's murder without question until viral video footage contradicting the police narrative surfaced. *See* Eric Levenson, *How Minneapolis Police first described the murder of George Floyd and what we know now*, CNN (Apr. 21, 2021), https: // www.cnn.com/2021 / 04 /21 I us /minneapolis-police-george-floyd-death/index.html (last visited Nov. 6, 2021).

Police defendants often lack decent records of their prior bad acts because they simply do not internally record when they engage in constitutional violations. Police officers rarely report themselves or each other when they use excessive force or otherwise break the law. *see* JAMES SKOLNICK & JAMES J. FYFE, ABOVE THE LAW: POLICE AND THE EXCESSIVE USE OF FORCE 3 (1993) ("the failure of police personnel to log complaints against their colleagues is a common problem, and one cause of the lack of data on police wrongdoing."). All of these factors often lead to limited documentation of police misconduct, even where it is pervasive.

In all, failing to analyze *Canton*'s single-incident liability vehicle for deliberate indifference will shield police departments from accountability as they will have little incentive to improve training and policies until a number of individuals have sustained constitutional violations. Requiring proof of mounting

dead bodies before improving obvious training deficiencies is contrary to the very purpose of *Monell* claims.

CONCLUSION

For the foregoing reasons, *amicus curiae* National Police Accountability Project supports Petitioners' request for a rehearing *en banc*.

CERTIFICATE OF COMPLIANCE

I am an attorney for amicus curiae. This brief contains 4,174 words, excluding the items exempted by Fed. R. App. P. 32(f) and Cir. R. 32(f). This brief's type size and typeface comply with Fed. R. App. P. 32(a)(5) and (6). I certify that this brief complies with the word limit of Cir. R. 29-2(c)(2).

Dated: May 16, 2022

/s/ Julia Yoo
Attorney for Amicus Curiae

CERTIFICATE OF SERVICE

I, Julia Yoo, hereby certify that I filed the foregoing Brief of Amicus Curiae National Police Accountability Project on May 16, 2022, via the Court's CM/ECF system, which delivered an electronic copy to all counsel of record for all parties.

Dated: May 16, 2022

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