No. 16-1474

In The Supreme Court of the United States

PATRICK HANLON and NICHOLAS FRENCH,

Petitioners,

vs.

ERNEST JOSEPH ATENCIO, et al.,

Respondents.

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

BRIEF OF AMICI CURIAE INTERNATIONAL MUNICIPAL LAWYERS ASSOCIATION AND THE LEAGUE OF ARIZONA CITIES AND TOWNS IN SUPPORT OF PETITIONERS

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QUESTIONS PRESENTED

The Ninth Circuit's "integral participation" doctrine allows individual liability to be imposed on a defendant police officer based solely on the fact that defendant's conduct was a "but for" cause of an injury resulting from a violation of the Constitution by another officer, even where the defendant's conduct was otherwise lawful and defendant had no specific knowledge that any subsequent constitutional violation was likely to occur. The petition for writ of certiorari filed by petitioners Patrick Hanlon and Nicholas French raises the following issues:

1. Is the "integral participation" doctrine inconsistent with this Court's decision in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009) and in other cases rejecting vicarious liability and requiring that liability under 42 U.S.C. § 1983 be determined on an individual basis?

2. Is the "integral participation" doctrine inconsistent with this Court's decision in *County of Los Angeles v. Mendez*, ___ U.S. ___, 137 S. Ct. 1539 (2017), which requires courts to identify and analyze an officer's specific conduct using basic principles of proximate cause in order to impose liability under 42 U.S.C. § 1983?

3. Is the "integral participation" doctrine inconsistent with this Court's qualified immunity jurisprudence, which requires courts to identify and analyze a defendant's specific conduct for purposes of determining whether the law was clearly established in order to impose liability for such conduct?

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STATEMENT OF IDENTITY AND INTEREST OF THE AMICI CURIAE[1]

The International Municipal Lawyers Association ("IMLA") is a non-profit, non-partisan 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. IMLA serves as an international clearinghouse of legal information and cooperation on municipal legal matters.

Established in 1935, IMLA is the oldest and largest association of attorneys representing United States municipalities, counties, and special districts. 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

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[1] No counsel for a party authored the following amicus brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of the brief. No persons other than amici, their members, or their counsel made a monetary contribution to the preparation or submission of the brief.

Amici, through counsel, ensured that counsel of record for petitioners and for respondents herein received notice of the intention to file this brief more than ten days prior to the due date for the brief. All parties, through their counsel, have consented to the filing of this brief, and copies of their respective written consent are submitted to the Court concurrently with this brief.

States Supreme Court, the United States Courts of Appeals, and in state supreme and appellate courts.

The League of Arizona Cities and Towns is a voluntary association consisting of the 91 incorporated cities and towns in Arizona. The League represents their collective interests at the State Legislature, and provides advocacy, education, training, technical assistance, and information sharing for and among its municipal members. These cities and towns comprise approximately 79% of Arizona's total population, and their police departments are charged with protecting their communities.

Amici and their members have an interest in ensuring that the standards governing liability for police misconduct are clear and that liability is affixed only when appropriate. Amici have determined that the Ninth Circuit's holding in the underlying case here improperly imposes liability on police officers for conduct that does not rise to the level of a constitutional violation, and, contrary to the decisions of this Court, imposes a form of vicarious liability without analysis of proximate cause and sharply erodes the doctrine of qualified immunity. The net result is the undue complication of civil rights cases involving multiple police officer defendants, injecting great uncertainty into the day-to-day operations of police officers which might deter them from taking appropriate action to protect themselves and the public.

SUMMARY OF ARGUMENT

The Ninth Circuit's decision here is only the latest in which that court has held that an individual police officer may be held liable under what it has termed the "integral participation" doctrine. Under the "integral participation" doctrine, a police officer may be held liable merely for participating in a chain of events that ultimately led to a constitutional violation, even if that defendant's own conduct did not violate the Constitution, and even where the defendant had no reason to anticipate that another participant might violate a plaintiff's civil rights. Thus, here, the petitioners – two Phoenix police officers – who respectively applied a wrist lock and a carotid artery restraint on a resisting prisoner, face liability for the subsequent unconstitutional actions of officers from another agency, even though they had disengaged from the melee at the time the allegedly improper force was used.

The Ninth Circuit's "integral participation" doctrine simply cannot be squared with the controlling decisions of this Court and, hence, amici submit that the Court should grant the petition for writ of certiorari and summarily reverse, or grant plenary review.

The "integral participation" doctrine effectively allows the imposition of vicarious liability on an individual police officer, despite this Court's repeated rejection of such a doctrine in § 1983 cases. As this Court observed in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009) ("*Iqbal*"), in a § 1983 action, each individual defendant's conduct must be identified and analyzed for purposes

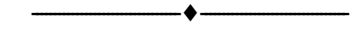
of determining whether it caused a constitutional violation and, if so, whether liability will be imposed. In *Iqbal*, this Court rejected the use of the term "supervisor liability" to shortcut basic principles of causation and immunity, and here it should similarly reject the Ninth Circuit's invocation of the "integral participation" doctrine as a means to sidestep identification and analysis of particular conduct by a defendant as purportedly causing constitutional injury.

In *County of Los Angeles v. Mendez*, ___ U.S. ___, 137 S. Ct. 1539 (2017) ("*Mendez*"), this Court rejected the Ninth Circuit's "provocation rule" which imposed liability on police officers for an otherwise lawful use of force based on antecedent unconstitutional conduct, without applying basic principles of proximate cause. The Ninth Circuit's "integral participation" doctrine is similarly flawed because it subjects individual police officers to potential liability without identifying or analyzing an officer's specific conduct using a proximate cause analysis.

This Court has repeatedly emphasized that the important doctrine of qualified immunity requires federal courts to analyze a defendant's conduct at a highly specific level, and has rejected mere invocations of general constitutional standards as constituting "clearly established" law for purposes of overcoming the immunity. *White v. Pauly*, ___ U.S. ___, 137 S. Ct. 548, 551-52 (2017) ("*White*") ("In the last five years, this Court has issued a number of opinions reversing federal courts in qualified immunity cases" and noting that "it

is again necessary to reiterate the longstanding principle that 'clearly established law' should not be defined 'at a high level of generality.'"). The Ninth Circuit's "integral participation" doctrine undermines, if not entirely eliminates, qualified immunity in circumstances where multiple officers may be involved in a single incident, or chain of events. That is because the doctrine does not require a court to identify, let alone analyze, the particular conduct of a defendant for purposes of qualified immunity. This Court's qualified immunity jurisprudence does not countenance such a result.

The Ninth Circuit's "integral participation" doctrine burdens courts and litigants by unnecessarily complicating already complex multi-officer lawsuits by assuring that tangential defendants stay in for the duration of suits, thus increasing the expenditure of public, private, and judicial resources in litigating such claims. The doctrine also inflicts a crippling injury on day-to-day police decision making by creating uncertainty with respect to potential liability officers may face for otherwise plainly lawful actions. Given that policing often involves teamwork, officers may well be hesitant to cooperate with other agencies, or even with officers of their own agency, when faced with potential liability under the "integral participation" doctrine. The "integral participation" doctrine is bad law, and worse policy, and it is essential that this Court grant review to address the Ninth Circuit's departure from the controlling decisions of this Court.



REASONS WHY CERTIORARI IS WARRANTED

THE NINTH CIRCUIT'S "INTEGRAL PARTICIPATION" DOCTRINE IS INCONSISTENT WITH THIS COURT'S DECISIONS WHICH REJECT VICARIOUS LIABILITY IN § 1983 CLAIMS, REQUIRE PROXIMATE CAUSATION TO BE ESTABLISHED IN SUCH SUITS, AND COMMAND COURTS TO IDENTIFY CLEARLY ESTABLISHED LAW WITH PARTICULARITY IN RULING ON QUALIFIED IMMUNITY CLAIMS.

A. The Ninth Circuit's "Integral Participation" Doctrine.

Ironically, the Ninth Circuit's "integral participation" doctrine began as an attempt to constrain liability of police officers for the actions of others. In *Chuman v. Wright*, 76 F.3d 292 (9th Cir. 1996) ("*Chuman*"), the court reversed a jury verdict against a police officer for damages arising from the allegedly unlawful execution of a warrant by a team of police officers. The Ninth Circuit held that the court had improperly instructed the jury that where the violation of rights was a result of a team effort, all members of the "team" could be held liable. *Id*. at 294. In so holding, the court noted that the district court had misinterpreted the Fifth Circuit's decision in *Melear v. Spears*, 862 F.2d 1177 (5th Cir. 1989) ("*Melear*"), which held that both officers could be held liable for executing an invalid warrant, because each officer was a "'full, active participant in the search, not a mere bystander.'"

76 F.3d at 294 (quoting *Melear*, 862 F.2d at 1186). According to the Ninth Circuit, the "problem with the instruction as given is that it deviated from the 'integral participation' standard in *Melear* and it was expanded to include liability based on team effort alone. We doubt that the *Melear* court intended such an expansive holding." 76 F.3d at 294-95.

In *Jones v. Williams*, 297 F.3d 930 (9th Cir. 2002) ("*Jones*"), the Ninth Circuit again invoked the "integral participation" doctrine as a limitation on officer liability in the context of group activities. The court cited *Chuman* with approval in rejecting the plaintiff's contention that the district court should have given a "team liability" instruction which would have allowed a jury to impose liability on all members of a law enforcement team participating in the execution of a warrant:

> We decline to require an instruction that would invite a jury to find all of the officers liable for an alleged constitutional violation merely for being present at the scene of an alleged unlawful act. Contrary to our decision in *Chuman*, Jones's proposed instruction would have permitted the jury to find the individual officers liable for merely being present at the scene of the search.

Id. at 936.

The Ninth Circuit continued:

> Nothing in Jones's proposed instruction requires the jury to find that the officers personally participated in the search, or that they were integral to the search in order to find them individually liable. In *Chuman*, we stated that either integral participation or personal involvement was required before a jury could find officers liable.

Id.

Significantly, the *Jones* court did not explain any material difference between "integral participation" or "personal involvement" in the activity causing a constitutional violation, although it does suggest that these are separate inquiries.

In *Boyd v. Benton County*, 374 F.3d 773 (9th Cir. 2004) ("*Boyd*"), the court articulated a purported distinction between the two types of conduct, suggesting that "personal involvement" indicates that the defendant directly engaged in unconstitutional conduct, and that "integral participation" simply meant that the defendant understood and acquiesced in the unconstitutional actions of others. In *Boyd*, a team of officers executed a warrant on a residence, during which a flash-bang grenade was purportedly improperly deployed. The court rejected the contention that only the officer who threw the flash-bang grenade could be held liable:

> Defendants improperly construe *Chuman* as precluding liability under the circumstances

> of this case. Specifically, "integral participation" does not require that each officer's actions themselves rise to the level of a constitutional violation.

Id. at 780.

Rather, the Ninth Circuit noted that the "integral participation" doctrine applied here because:

> First . . . the officers in this case stood armed behind Ellison while he reached into the doorway and deployed the flash-bang. Second, the use of the flash-bang was part of the search operation in which every officer participated in some meaningful way. Third, every officer was aware of the decision to use the flash-bang, did not object to it, and participated in the search operation knowing the flash-bang was to be deployed.

Id.

Thus, under *Boyd*, a purported distinction was drawn between an officer who actually committed a constitutional violation directly and those officers who somehow merely participated in the violation but somehow did not violate any constitutional right themselves. Even as to the latter, *Boyd* suggests some limitation on liability in that officers must actually be aware of, and acquiesce in, the unconstitutional action.

In *Blankenhorn v. City of Orange*, 485 F.3d 463 (9th Cir. 2007) ("*Blankenhorn*"), the court further expanded "integral participation" liability by doing away

with *Boyd*'s suggestion that "integral participation" at least required officers to be aware of, and actively participate in, unconstitutional conduct by other officers. In *Blankenhorn*, the court reversed summary judgment for defendants in a suit arising from a melee in which numerous officers attempted to subdue the plaintiff following his arrest. Among the contentions was that certain individual defendants had improperly placed hobble restraints on the plaintiff. Citing *Chuman*, the court held that officers who had initially tackled the plaintiff, as well as officers who had properly handcuffed the plaintiff, could be held liable for another officer's ultimate application of hobble restraints, noting that the "integral participation" doctrine requires "some fundamental involvement in the conduct that allegedly caused the violation." 485 F.3d at 481 n.12. The court observed:

> Kayano's help in handcuffing the prone Blankenhorn was, of course, meaningful participation in the arrest. It is true that Blankenhorn does not claim Kayano used excessive force in handcuffing him, and Ross, not Kayano, placed the ripp-hobbles on Blankenhorn's wrists and ankles. But Kayano's own declaration indicates that his help in handcuffing Blankenhorn was instrumental in the officers' gaining control of Blankenhorn, which culminated in Ross's application of hobble restraints. Therefore, Kayano's participation was integral to the use of the hobble restraints.

Id.

Notably absent in *Blankenhorn* is any discussion of the defendant officers' purported knowledge of, or acquiescence in, the use of the hobble restraints. And, by introducing the vague concept of "fundamental involvement," it further muddied the water on an already rapidly diminishing standard for imposing liability. *Id*.

The Ninth Circuit's decision here is a culmination of this expanding circle of liability premised upon invocation of a shorthand phrase – "integral participation" – in lieu of specific analysis of why a particular defendant's conduct could be validly deemed culpable for purposes of imposing liability under § 1983 based on the standards announced by this Court. There is no indication here that the petitioners were aware of, or indeed could have anticipated the use of, excessive force by other defendants. They, in fact, were no longer actively participating in plaintiff's restraint – they had broken off contact. Rather, petitioners are being held liable as "integral participants" based solely on the fact that they set in motion an event – the restraint of the plaintiff – that eventually culminated in the alleged use of excessive force by someone else. Such a result cannot be squared with the controlling decisions of this Court, and adversely impacts day-to-day law enforcement activity and litigation of claims arising from that activity.

B. The "Integral Participation" Doctrine Is Inconsistent With This Court's Decision In *Ashcroft v. Iqbal* And In Other Cases Establishing That A Defendant In A § 1983 Action May Only Be Held Liable For His Or Her Actions That Constitute Misconduct Under The Constitution Or Other Federal Laws.

As noted, the Ninth Circuit's "integral participation" doctrine allows a defendant to be held liable even if that defendant's own conduct does not rise to the level of a constitutional violation; rather, it is sufficient that the defendant participated in the unconstitutional actions of another defendant in some sort of "integral" manner. And, as underscored in this case, such liability can be imposed even if the defendant had no reason to anticipate the subsequent allegedly unconstitutional action. It is enough that the defendant set in motion a series of events that ultimately culminated in a constitutional violation independent of whether his or her own actions could be "culpable" or constitute "misconduct" in a legal sense.

The Ninth Circuit's "integral participation" doctrine improperly divorces a defendant's specific conduct from ultimate liability and directly runs afoul of this Court's repeated admonishment that there is no vicarious liability under § 1983, and that liability may only be imposed based upon a defendant's individual acts of misconduct.

In *Iqbal*, plaintiffs sued various federal officials, including the former Attorney General, asserting that

they had been improperly detained on the basis of race, religion, and national origin following the September 11 attacks. 556 U.S. at 666. The defendants moved to dismiss the action, asserting that the allegations were insufficient to state a claim and that any liability was barred by qualified immunity. *Id*. The district court denied the motion and the Second Circuit affirmed.

This Court reversed, noting that the complaint failed to allege specific credible facts to support liability in that the complaint could not credibly allege that the former Attorney General and other supervisory officials personally intended to discriminate against the plaintiffs. *Id*. at 682-83. In so holding, the Court noted that it had repeatedly held that government officials could not be held liable for the unconstitutional conduct of their subordinates. *Id*. at 676 (citing *Monell v. New York City Dept. of Social Servs.*, 436 U.S. 658, 691 (1978); *Dunlop v. Munroe*, 7 Cranch 242, 269 (1812); *Robertson v. Sichel*, 127 U.S. 507, 515-16 (1888)). As the Court observed:

> Because vicarious liability is inapplicable to *Bivens* and § 1983 suits, a plaintiff must plead that each Government-official defendant, through the official's *own individual actions*, has violated the Constitution.

Id. at 676 (emphasis added).

The Court rejected the plaintiff's assertion that under a theory of "supervisory liability" defendants

could be held liable insofar as they knew that their subordinates were engaging in intentionally discriminatory conduct:

> Respondent's conception of "supervisory liability" is inconsistent with his accurate stipulation that petitioners may not be held accountable for the misdeeds of their agents. In a § 1983 suit or a *Bivens* action – where masters do not answer for the torts of their servants – the term "supervisory liability" is a misnomer. Absent vicarious liability, each Government official, his or her title notwithstanding, is only liable for his or her *own misconduct*.

Id. at 677 (emphasis added).

Just as "supervisory liability" was a misnomer in *Iqbal*, so too is the Ninth Circuit's concept of "integral participation," and for the same reason – it allows imposition of liability based not upon a defendant's actual "misconduct" (*Iqbal*, 556 U.S. at 677), but rather the individual defendant's purported link to the unconstitutional conduct of others. The Ninth Circuit's "integral participation" doctrine is flatly inconsistent with the uniform decisions of this Court rejecting vicarious liability, and repeatedly emphasizing that a defendant may only be held liable for his or her own specific acts of misconduct. The Ninth Circuit's departure from this basic principle of liability established by this Court in and of itself warrants review and summary reversal for proper application of this Court's precedents, and

repudiation of an erroneous doctrine that has become firmly established in Ninth Circuit jurisprudence.

C. The Ninth Circuit's "Integral Participation" Doctrine Is Inconsistent With This Court's Recent Decision In *County Of Los Angeles v. Mendez*, As Well As Other Decisions Establishing That A Defendant May Only Be Held Liable Under § 1983 Where His Or Her Conduct Is A Legal, I.e., Proximate Cause Of Injury.

As noted, the Ninth Circuit concluded that the "integral participation" doctrine allowed liability to be potentially imposed against petitioners here based upon the fact that their actions in initially restraining the decedent culminated in the use of alleged excessive force by other defendants. (*See* App. at 6 ("We cannot say that the district court erred in applying the integral participation doctrine to Officer Hanlon for his wrist lock of Atencio, because his wrist lock was instrumental in controlling Atencio, which allowed the other officers to commit the excessive force against him.").) In so holding, the court acknowledged that "Hanlon could not have reasonably foreseen that his use of a wristlock would cause or would trigger events ultimately leading to Atencio's death." (App. at 7.) Nonetheless, the Ninth Circuit held that liability could be imposed against Hanlon because his use of the wrist lock was a "but for" cause of the eventual use of alleged excessive force by others.

Yet, just this term, this Court unanimously repudiated a similar Ninth Circuit "rule" that allowed liability to be imposed where a defendant's actions simply "contributed" to an injury without the need to engage in formal proximate, i.e., legal cause analysis. In *Mendez*, 137 S. Ct. 1539, this Court addressed the Ninth Circuit's "provocation rule" which allowed liability to be imposed on police officers where the officers' use of force was "judged to be reasonable based on a consideration of the circumstances relevant to that determination," but where the officers "committed a separate Fourth Amendment violation that contributed" to the need to use force in the first place. *Id*. at 1543.

In *Mendez*, officers received a tip from a confidential informant that an armed and dangerous individual for whom they had an arrest warrant was seen on a bicycle outside a residence. The officers went to the residence, asked for and were initially denied entrance by the owner, but eventually entered and searched the premises without finding the suspect. *Id*. at 1544. Other officers searched the grounds and came upon various outbuildings, including a one-room shack. *Id*. Unbeknownst to the officers, Mr. Mendez was sleeping on a futon on the floor with his wife, with a BB gun across his lap. *Id*. The officers entered without giving "knock notice." As a result, when the officers entered, Mr. Mendez thought it was the owner of the house and picked up the BB gun so he could stand up, which the officers perceived as a threat, thus causing them to shoot Mendez and his wife. *Id*. at 1544-45.

Following a bench trial, the district court found that the officers had reasonably perceived a threat to their safety and, therefore, the force employed was reasonable under *Graham v. Connor*, 490 U.S. 386 (1989) ("*Graham*"). *Id*. at 1545. However, the district court found that defendants could still be liable for excessive force because defendants' search of the shack independently violated the Fourth Amendment due to the absence of a warrant and the failure to give "knock notice." In so holding, the district court applied the Ninth Circuit's "provocation rule" which provided that an officer's otherwise reasonable and lawful defensive use of force could be unreasonable as a matter of law if the officer intentionally or recklessly provoked a violent response and that provocation was an independent constitutional violation. *Id*.

The Ninth Circuit affirmed, finding that although the officers were entitled to qualified immunity on the knock-and-announce claim, nonetheless, the warrantless entry of the shack violated clearly established law and under the "provocation rule" they could, therefore, be liable for excessive force. *Id*.

In a unanimous opinion, this Court reversed, holding that the "provocation rule" improperly conflated two independent Fourth Amendment claims – an unreasonable seizure for purposes of excessive force, and unreasonable search. *Id*. at 1546-47. The Court noted that the "provocation rule" "is an unwarranted and illogical expansion of *Graham*." *Id*. at 1548. Significantly, the Court also observed that the "provocation rule" was improper because:

> [T]he rule includes a vague causal standard. It applies when a prior constitutional violation "created a situation which led to" the use of force. The rule does not incorporate the familiar proximate cause standard. Indeed, it is not clear what causal standard is being applied.

Id.

In remanding, the Court noted that an unlawful search might give rise to liability for a subsequent use of force by officers, but that such claims had to be analyzed using basic concepts of proximate cause. *Id*. at 1548 ("[I]f the plaintiffs in this case cannot recover on their excessive force claim, that will not foreclose recovery for injuries proximately caused *by the warrantless entry*."). Although the Ninth Circuit indicated that it had found that the unlawful entry had proximately caused the shooting, nonetheless, its analysis was not clear and, on remand, it would be necessary to apply established standards of proximate cause:

> [T]he court apparently concluded that the shooting was proximately caused by the deputies' warrantless entry of the shack. Proper analysis of this proximate cause question required consideration of the "foreseeability or the scope of the risk created by the predicate conduct," and required the court to conclude that there was "some direct relation between the injury asserted and the injurious conduct alleged."

Id. at 1548-49 (citing *Paroline v. United States*, 572 U.S. ___, 134 S. Ct. 1710, 1719 (2014)).

The key failing of the Ninth Circuit's proximate cause analysis was that the court suggested that it was likely the officers' violation of the knock-and-announce rule – for which they were qualifiedly immune – prompted the use of force as opposed to the mere warrantless entry. The Court noted:

> [T]he Court of Appeals did not identify the foreseeable risks associated with the *relevant* constitutional violation (the warrantless entry); nor did it explain how, on these facts, respondents' injuries were proximately caused by the warrantless entry. In other words, the Court of Appeals' proximate cause analysis, like the provocation rule, conflated distinct Fourth Amendment claims and required only a murky causal link between the warrantless entry and the injuries attributed to it. On remand, the court should revisit the question whether proximate cause permits respondents to recover damages for their shooting injuries based on the deputies' failure to secure a warrant at the outset.

Id. at 1549 (emphasis in original).

The Ninth Circuit's "integral participation" doctrine suffers from the very same "vague causal standard" as the "provocation rule," as it similarly requires "only a murky causal link" between a defendant's conduct and the resulting constitutional injury. *Id.* at 1548-49. Like the "provocation rule," the "integral participation" doctrine allows liability to be imposed without requiring a court to focus on the specific conduct of the defendant and to evaluate that conduct in light of

accepted principles of proximate cause. Liability may be imposed on a police officer based solely upon a court's declaration that the officer's participation was "integral" to the subsequent constitutional violation, untethered to any meaningful standard for determining culpability.

Yet, courts cannot sidestep the rigorous and essential proximate cause analysis. It was improper when the Ninth Circuit employed the "provocation rule" for this purpose, and it is similarly improper when the "integral participation" doctrine is applied to the same end. This Court should therefore grant review and summarily reverse with directions to apply the proximate cause principles set forth in *Mendez*, or grant plenary review to expressly repudiate the "integral participation" doctrine and underscore the need for courts to apply clear rules of proximate cause in analyzing claims under § 1983.

D. The "Integral Participation" Doctrine Is Inconsistent With This Court's Qualified Immunity Jurisprudence, Which Requires Courts To Identify And Analyze A Defendant's Specific Conduct For Purposes Of Determining Clearly Established Law.

A police officer is entitled to qualified immunity if "a reasonable officer could have believed [his actions] lawful, in light of clearly established law and the information the . . . officer[] possessed." *Anderson v.*

Creighton, 483 U.S. 635, 641 (1987). This Court has admonished that, to be clearly established, "[t]he contours of [a] right must be sufficiently clear that a reasonable [officer] would understand that what he is doing violates that right." *Id*. at 640. In other words, "existing precedent must have placed the . . . constitutional question beyond debate." *Ashcroft v. al-Kidd*, 563 U.S. 731, 741 (2011). Moreover, clearly established law must be determined "'in light of the specific context of the case, not as a broad general proposition.'" *Brosseau v. Haugen*, 543 U.S. 194, 198 (2004).

As a result, this Court has repeatedly reversed decisions denying qualified immunity because the lower courts improperly defined the rights and conduct at issue at too high a level of generality. *Carroll v. Carman*, ___ U.S. ___, 135 S. Ct. 348, 349-50 (2014) (officers entitled to qualified immunity from Fourth Amendment claim based on alleged unlawful entry into side yard of residence to speak with resident at side door because law was not clearly established whether officers may conduct "knock and talk" at any entrance open to visitors or only front doors); *Wood v. Moss*, ___ U.S. ___, 134 S. Ct. 2056, 2067-68 (2014) (Secret Service agents entitled to qualified immunity for moving protesters to less favorable location than that of other protesters in light of security concerns in protecting President and absence of clearly established law concerning obligation to assure comparable positions for all protesting groups); *Plumhoff v. Rickard*, ___ U.S. ___, 134 S. Ct. 2012, 2023-24 (2014) (police officers entitled to qualified immunity for use of deadly force to terminate

pursuit of fleeing vehicle when at time of incident no case law would have put officers on notice of parameters of use of force in that situation); *Mullenix v. Luna*, ___ U.S. ___, 136 S. Ct. 305 (2015) (same); *Stanton v. Sims*, ___ U.S. ___, 134 S. Ct. 3 (2013) (police officer entitled to qualified immunity for hot pursuit of misdemeanor suspect into curtilage); *Ryburn v. Huff*, 565 U.S. 469, 474 (2012) (officers are entitled to qualified immunity for entering residence without warrant because "[n]o decision of this Court has found a Fourth Amendment violation on facts even roughly comparable to those present in this case. On the contrary, some of our opinions may be read as pointing in the opposite direction"); *Ashcroft v. al-Kidd*, 563 U.S. at 741 (Attorney General entitled to qualified immunity for invoking material witness warrant procedure as pretext for another investigation; at time of events, "not a single judicial opinion had held that pretext could render an objectively reasonable arrest pursuant to a material-witness warrant unconstitutional"); *White*, 137 S. Ct. at 552 (*Graham* standards too general to put officer on notice that use of force in unique circumstances could result in liability: "Today, it is again necessary to reiterate the longstanding principle that 'clearly established law' should not be defined 'at a high level of generality.' ").

The Ninth Circuit's "integral participation" rule undermines qualified immunity because it allows courts to sidestep the obligation to look at specific conduct in assessing whether an officer would know that his or her particular actions could result in a violation

of the Constitution. For example, here, how would Officer Hanlon have reason to know that his specific use of reasonable force – a wrist lock – could give rise to liability for the decedent's death based on the subsequent use of excessive force by other officers after he had disengaged from the struggle? Significantly, the only legal authority cited by the Ninth Circuit as "clearly established" law – *Lolli v. County of Orange*, 351 F.3d 410 (9th Cir. 2003) – simply holds that use of force against a passive, unresisting detainee may violate the Fourth Amendment. However, that general principle does nothing to put Hanlon on notice that his minor use of non-deadly force could somehow trigger liability for a detainee's death as a result of force employed by other officers.

Nor can the "integral participation" cases be rationally viewed as creating any sort of "clearly established" law, because the entire rule, particularly as applied here, is premised on a defendant's general participation in an event, as opposed to specific actions. At most, the cases tell police officers that any time they take collective action they may be subject to potential liability based upon even the unanticipated use of excessive force by others, no matter how reasonable their own conduct might be. If so, the message is a sobering and destructive one, as what rational officer would join others in undertaking even the most necessary law enforcement activities if he or she faces liability based on circumstances beyond their control, and indeed, beyond those that are reasonably foreseeable?

As this Court recently emphasized in *White*, the qualified immunity inquiry demands that courts examine the facts as known by an officer at the time of his or her specific actions. In *White*, the Court observed that:

> Clearly established federal law does not prohibit a reasonable officer who arrives late to an ongoing police action in circumstances like this from assuming that proper procedures, such as officer identification, have already been followed.

137 S. Ct. at 552.

Similarly, in circumstances like the present case, petitioners should be able to assume that other officers will *subsequently* follow "proper procedures" with respect to using force. Application of qualified immunity must be determined with respect to petitioners' specific conduct at the time it occurred. Because the "integral participation" doctrine focuses on a series of actions by defendants without need to analyze the specific actions of each defendant for purposes of qualified immunity, it is contrary to the decisions of this Court and defeats the important purposes underlying the immunity inquiry. Thus, as in *White*, the Ninth Circuit's decision requires this Court's intervention. *Id*. at 551-52 (Noting the Court's numerous opinions reversing denial of qualified immunity: "The Court has found this necessary both because qualified immunity is important to 'society as a whole,'" and "because as 'an immunity from suit,' qualified immunity 'is effectively lost if a case is erroneously permitted to go to trial.'").

E. Review Is Warranted Because The "Integral Participation" Doctrine Adversely Impacts Basic Police Operations And Unnecessarily Complicates Litigation Of § 1983 Cases.

The "integral participation" doctrine's stark departure from this Court's case law setting strict limits on § 1983 claims in and of itself warrants review and correction by this Court. Yet, this Court's intervention is made all the more critical by the adverse impact the doctrine has on daily decision-making by law enforcement officers and the litigation of already complex multiparty civil rights suits.

As the scenario before this Court in its decision this term in *White* underscores, police officers are routinely called upon to work together in performing basic law enforcement tasks. The Ninth Circuit's "integral participation" rule, with its blurring of the lines between individual and vicarious liability, murky standards of causation, and highly generalized analysis of what constitutes clearly established law for purposes of qualified immunity, creates chaos for officers assessing potential liability when faced with a decision whether to undertake collaborative law enforcement activities. As noted, a rational officer might well hesitate to call for the assistance of other officers, or join a collaborative effort to secure a suspect or enter a residence in execution of a warrant, if the officer is uncertain whether he or she might be responsible for the misconduct of fellow officers – misconduct which the officer could neither anticipate nor prevent.

Collaborative action by law enforcement is a fundamental aspect of modern policing that cannot be subject to vague standards of liability, lest officers hesitate to undertake action that is vital to secure the safety of the general public, and of the officers themselves. It is therefore critical that this Court grant review to repudiate the ill-conceived "integral participation" doctrine and set forth clear guidelines for future cases.

This Court's intervention is also required because the "integral participation" doctrine as applied by the Ninth Circuit needlessly complicates litigation of civil rights suits. Multi-officer cases are already extremely complex, with multiple defendants, each of whom may require separate counsel with the attendant costs. The loose standards for imposing liability under the "integral participation" doctrine assures that even the most marginal defendant stays in the action for the long-haul, even where his or her actions are largely tangential, if not entirely unrelated to, a constitutional violation committed by another defendant. In sum, the "integral participation" doctrine adds layers of complexity and cost to already complicated and expensive litigation, and to no real purpose. By granting review, repudiating the "integral participation" doctrine, and setting clear standards concerning the necessity to show individual liability, proximate cause, and violation of clearly established law in order to impose liability under § 1983, the Court will assure that cases are litigated expeditiously and efficiently, and that legal accountability is affixed in a rational manner.

The Ninth Circuit's "integral participation" doctrine is no more valid than the concept of "supervisory liability" or the "provocation rule" and should similarly be rejected by this Court. Empty labels are not a substitute for application of clear and firmly established legal standards. It is essential that the Court grant review in this case.

CONCLUSION

For the foregoing reasons, amici curiae, International Municipal Lawyers Association and the League of Arizona Cities and Towns, respectfully submits that the petition for writ of certiorari should be granted.

Respectfully submitted,

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