
In the Supreme Court of the United States

EDMUND G. BROWN JR., ET AL., *Petitioners*,

v.

JOHN ARMSTRONG, ET AL., *Respondents*.

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

**REPLY BRIEF IN SUPPORT OF
PETITION FOR A WRIT OF CERTIORARI**

KAMALA D. HARRIS
Attorney General of California
EDWARD C. DUMONT
Solicitor General
KATHLEEN A. KENEALY
Chief Assistant Attorney General
JONATHAN L. WOLFF
Senior Assistant Attorney General
THOMAS S. PATTERSON
Supervising Deputy Attorney General
Counsel of Record
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 703-5727
Thomas.Patterson@doj.ca.gov
Counsel for Petitioners

TABLE OF CONTENTS

	Page
Reply Brief in Support of the Petition for a Writ of Certiorari.....	1
I. The Ninth Circuit’s Decision Disregards Important Federalism Principles and This Court’s Precedent.....	2
II. This Court Should Resolve the Circuit Conflict Regarding Whether Officials at One Level of Government Can Be Held Liable for Title II Violations by Officials in Another Level of Government.	7
Conclusion.....	8

TABLE OF AUTHORITIES

	Page
 CASES	
<i>Ashcroft v. Iqbal</i>	
556 U.S. 662 (2009)	6
<i>Bacon v. City of Richmond</i>	
475 F.3d 633 (4th Cir. 2007)	7
<i>Gomillion v. Lightfoot</i>	
364 U.S. 339 (1960)	5
<i>Griffin v. County School Board of Prince Edward County</i>	
377 U.S. 218 (1964)	5
<i>Jett v. Dallas Indep. Sch. Dist.</i>	
491 U.S. 701 (1989)	4
<i>McMillian v. Monroe Cnty., Ala.</i>	
520 U.S. 781 (1997)	2, 4
<i>Miliken v. Bradley</i>	
433 U.S. 267 (1977)	4
<i>Monell v. Dep't of Soc. Servs. of City of N.Y.</i>	
436 U.S. 658 (1978)	4
<i>Tennessee v. Lane</i>	
541 U.S. 509 (2004)	6
<i>Valdivia v. Brown</i>	
956 F.Supp.2d 1125 (E.D. Cal. 2013)	3
 STATUTES	
Americans with Disabilities Act (ADA) passim	
California Penal Code	
§ 3056(a)	6, 7

TABLE OF AUTHORITIES
(continued)

Page

CONSTITUTIONAL PROVISIONS

United States Constitution

Tenth Amendment	1
Fourteenth Amendment.....	6

**REPLY BRIEF IN SUPPORT OF THE
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The Ninth Circuit’s decision sets a dangerous and sweeping precedent that effectively nullifies the states’ Tenth Amendment right to delegate powers to local governments. It holds that when a court deems a local government function to serve “state purposes,” state officials are liable for any local government violations of federal law. Here, the Ninth Circuit held state officials liable for alleged ADA violations in the county jails because the counties’ confinement of parole violators serves a state purpose. This holding offends federalism principles, runs counter to this Court’s governmental-liability precedent, and creates a circuit conflict.

Plaintiffs argue that because the state plays a role in the overall parole system, state officials are responsible for anything that happens under the umbrella of that system. But this argument ignores that state law apportions to the counties and the state separate duties concerning parole. Although state officials have some responsibilities related to the parole-revocation *process* (such as initiating revocation charges), the counties alone are responsible for *confinement* of parole violators. Since plaintiffs’ ADA claims are based on their conditions of confinement, only the counties can be liable for any federal violations related to the confinement. What the Ninth Circuit espouses, by contrast, is straightforward strict liability—holding state officials responsible for something that they neither operate nor control.

This Court should grant certiorari to resolve these important legal issues.

I. The Ninth Circuit's Decision Disregards Important Federalism Principles and This Court's Precedent.

As this Court has explained, states have “wide authority to set up their state and local governments as they wish.” *McMillian v. Monroe Cnty., Ala.*, 520 U.S. 781, 795 (1997). But the Ninth Circuit’s decision effectively divests states of that authority. By holding state officials liable for alleged ADA violations in county jails—when these officials have no jurisdiction or control over jail conditions as a matter of state law—the lower court’s holding overrides the express will of the state to apportion parole and criminal justice responsibilities between different governmental entities. The open-ended and ill-defined nature of the court’s ruling demonstrates its dangerousness: so long as a court finds that the delegated authority serves “state purposes,” state officials become the guarantors of local compliance with federal law. App. 12.

Plaintiffs downplay the ruling’s broad effect by claiming that here, it requires only information sharing and reporting. Br. Opp’n 14. Plaintiffs misstate the actual impact of the ruling. The injunction mandates that in 200 county jails spread across 58 counties, state agents must meet with every parole violator promptly after incarceration (of which there were 26,197 in just the last six months of 2013) to assess whether they have a disability that is not being accommodated, provide a grievance system

that interfaces with each county, help parole violators fill out their grievances, investigate alleged deficiencies, and develop plans to remedy any actual deficiencies. App. 43-55.

Moreover, plaintiffs ignore other intrusive terms that the district court included in its initial injunction, but later omitted only because plaintiffs chose not to “enforce” them at the time. App. 40. Initially, the district court had ordered that if the state officials became aware of an ADA violation in the county jails, they would be required to take immediate steps to “ensure” that accommodations were promptly provided or else transfer the affected class members to other facilities. *Id.* Since plaintiffs continue to assert that the state officials have the responsibility to “prevent[] violations in the jails or ensure[] they are properly addressed,” Br. Opp’n. 14, it is easy to anticipate that they will press for these or other similarly burdensome requirements again. And under the Ninth Circuit’s open-ended decision, there is arguably no restriction against the District Court imposing more onerous terms again.

Plaintiffs try to justify the Ninth Circuit’s decision by claiming that state officials are liable because they may control the initiation of some revocation proceedings. Br. Opp’n 17-18 (citing App. 11-12, 14, 16). This argument ignores the fundamental restructuring of the state’s parole system brought about by Realignment. *See Valdivia v. Brown*, 956 F.Supp.2d 1125, 1135 (E.D. Cal. 2013) (describing shift of core parole responsibilities to local jurisdictions and terminating federal civil rights case as moot in light of substantial changes to state law);

Pet. 5 n.1. Under Plaintiffs' flawed reasoning, if a local sheriff arrested a person for a crime and the offender was convicted and sent to state prison, the sheriff would be ultimately responsible for the inmate's conditions of confinement in state prison because the sheriff "maintains control" over enforcement of criminal laws. See Br. Opp'n 13.

This is precisely the type of result that this Court warned against when it held that judicial decrees should not be "imposed upon governmental units that were neither involved in nor affected by the constitutional violation." *Miliken v. Bradley*, 433 U.S. 267, 282 (1977); see also *McMillian v. Monroe Cnty., Ala.*, 520 U.S. 781, 784-85 (1997) (quoting *Jett v. Dallas Indep. Sch. Dist.*, 491 U.S. 701, 737 (1989)).¹ If the violation is one that concerns confinement conditions, then those who are directly in charge of the conditions must be held liable for

¹ The petition cited *McMillian* and *Jett* for the fundamental principle that only "those officials or governmental bodies who speak with final policymaking authority" may ultimately be held responsible for a federal policy violation. Pet. 10; *McMillian*, 520 U.S. at 784-85 (internal quotation marks omitted). Plaintiffs criticize the citation merely because the decisions come from *Monell* municipal-liability cases. Br. Opp'n 16; *Monell v. Dep't of Soc. Servs. of City of N.Y.*, 436 U.S. 658 (1978). But the legal principle cited is as applicable in cases against state officials as it is against municipal defendants, even as shown by the quote above from *Miliken*, which concerned the liability of state officials. *Miliken*, 433 U.S. at 281 (citing *Miliken v. Bradley*, 418 U.S. 717, 722, 751 (1974) (noting that there was no evidence linking the state officials' conduct to the relevant school-segregation issues)).

remedying them, not officials who lack such responsibility.

Further, contrary to plaintiffs' contention, liability against the state officials cannot be justified by this Court's precedent barring states from using their powers to affirmatively violate federal rights. Br. Opp'n 18. This Court has condemned the use of state power that itself repudiates federal rights, not the mere delegation of power. For instance, in *Gomillion v. Lightfoot*, 364 U.S. 339 (1960), the plaintiffs alleged that city boundaries had been redrawn to exclude nearly all African Americans from voting in a city election. In that context, the Court held that otherwise lawful acts "may become unlawful when done to accomplish an unlawful end." *Id.* at 347. And in *Griffin v. County School Board of Prince Edward County*, 377 U.S. 218, 231 (1964), the record was clear that the defendant school board had closed public schools and instead provided assistance to private schools simply to ensure that Caucasian and African American children would not go to the same school. This Court therefore affirmed the district court's order that the public schools could "not be closed to avoid the effect of the law of the land." *Id.* at 233. No such action is at issue here, where a state statute has merely delegated to the counties responsibility to confine parole violators. There was no evidence below that the delegation itself repudiated parole violators' ADA rights.

Plaintiffs and the Ninth Circuit also improperly blame the state officials for the alleged ADA violations within the county jails. Br. Opp'n 12 (citing App. 12, 14-17), 17 (citing App. 10-14, 90-91).

As a matter of law, state officials have no authority or responsibility over the parole violators' conditions of confinement. Cal. Penal Code § 3056(a) (West Supp. 2014). The Realignment statute clearly states that the parole violators are in the "sole legal custody and jurisdiction" of the county jails. *Id.*²

Finally, plaintiffs contend that there is no "actual conflict" with this Court's vicarious-liability law. Br. Opp'n 19-20. But they provide no rationale for their conclusion. This Court holds that "vicarious liability is inapplicable" to constitutional claims against governmental defendants. *Ashcroft v. Iqbal*, 556 U.S. 662, 676 (2009). And since the congressional authority for Title II of the ADA is derived from the Fourteenth Amendment's Enforcement Clause, *Tennessee v. Lane*, 541 U.S. 509, 533-34 (2004), there can be no vicarious liability under the ADA either. Plaintiffs' only response to this logical syllogism is to call it a "strained analogy." Br. Opp'n 19. But merely attaching this label does not make it so.

² Aside from whether the state officials themselves violated the parolees' rights, even the county jails' purported violations were based only on plaintiffs' untested evidence. Plaintiffs fault the state officials for not undertaking broad-ranging and expensive discovery across the various county jails to contradict their allegations about county-jail conditions. Br. Opp'n 7 n.2. But considering the Realignment statute's explicit delegation of all responsibility to the county jails for parole violators' confinement, the state officials rightly expected that it would be up to the jails to defend their own conduct, based on information readily available to them, if the plaintiffs were to bring some legal proceeding against the jails.

II. This Court Should Resolve the Circuit Conflict Regarding Whether Officials at One Level of Government Can Be Held Liable for Title II Violations by Officials in Another Level of Government.

By holding that one governmental official can be held liable for duties that are delegated to another official, the Ninth Circuit has created a circuit conflict with the Fourth Circuit's precedent in *Bacon v. City of Richmond*, 475 F.3d 633, 638-42 (4th Cir. 2007). There, the Fourth Circuit held that Title II cannot "impose strict liability on public entities that neither caused plaintiffs to be excluded nor discriminated against them." *Id.* at 639.

Plaintiffs incorrectly contend that there is no circuit split under the theory that *Bacon* would permit liability here, where the state officials purportedly violated the parolees' rights within the jails. Br. Opp'n 20. But as argued above, the assumption that state officials committed such violations disregards the Realignment statute, which says that the county jails are solely responsible for the parole violators. Cal. Penal Code § 3056(a). And it ignores that the Ninth Circuit's decision directly conflicts with *Bacon* by permitting strict liability against a public defendant that did not cause the violation.

Finally, the Ninth Circuit's decision attempted to distinguish *Bacon*, where the injunction imposed *financial* responsibility for ADA violations, since the injunction here does "not require the state to fund ADA accommodations generally, but only to facilitate the counties' provision of disability accommodations

through services.” App. 13. But as Plaintiffs agree, any attempted distinction between direct and indirect costs is “false.” Br. Opp’n 21 (denying that the Ninth Circuit relied on such a distinction). Granting certiorari here would allow the Court to correct this misapplication of law and resolve the conflict between the circuits, thereby restoring the states’ power to effectively delegate responsibilities to local governments.

CONCLUSION

The petition for a writ of certiorari should be granted.

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Respectfully submitted

KAMALA D. HARRIS
Attorney General of California
EDWARD C. DUMONT
Solicitor General
KATHLEEN A. KENEALY
Chief Assistant Attorney General
JONATHAN L. WOLFF
Senior Assistant Attorney General
THOMAS S. PATTERSON
Supervising Deputy Attorney General
Counsel of Record
Counsel for Petitioners