No. 18-2982

THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

TAMATRICE WILLIAMS,
Plaintiff-Appellant,

v.

CITY OF SHERWOOD, ARKANSAS,
Defendant-Appellee.

Appeal from the United States District Court
for the Eastern District of Arkansas

Honorable James M. Moody Jr. District Judge

Plaintiff-Appellant's Petition for Rehearing or Rehearing En Banc

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Plaintiff-Appellant Tamatrice Williams petitions for rehearing or rehearing en banc. As shown below, this Court should grant rehearing because, in finding no municipal liability, the panel's opinion (1) overlooks a recent Arkansas Supreme Court decision on this dispositive issue of state law; (2) contravenes binding precedent of this Court; (3) conflicts with other circuits on this exceptionally important issue; and (4) ignores specific allegations of how the City of Sherwood directed nonjudicial officials to enforce its unconstitutional policies. *See* Fed. R. App. P. 35(a)(1)–(2); 40(a)(2).

INTRODUCTION

From 1997 to 2016, the City of Sherwood arrested, fined, and jailed Tamatrice Williams in a court the City created, under ordinances the City passed, and in jail cells the City owned. All this because she wrote four bad checks to pay for groceries and other necessities. Williams alleges that the City's enforcement policies and practices violated her constitutional rights.

Yet the panel erroneously concludes the City cannot be held liable because its actions occurred through state (not city) courts and because she did not allege that City policymakers directed City officials to

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behave unconstitutionally. Rehearing is necessary for four independent reasons.

First, this Court must grant rehearing because the panel overlooked a recent state supreme court decision governing a dispositive issue of state law. *See Huddleston v. Dwyer*, 322 U.S. 232, 236–37 (1944). Just days before the panel's opinion, the Arkansas Supreme Court clarified that Arkansas courts are municipal entities under Section 1983 when, at the time of the challenged conduct, they were not yet reorganized as state courts. *City of Little Rock v. Nelson*, 2020 WL 372521, *9–11 (Ark. Jan. 23, 2020). Under *Nelson*, the fact that Sherwood municipal courts are being reorganized as state courts now is irrelevant to Section 1983 liability because Williams complains of conduct from 1996 through 2017.

Second, even before the Arkansas Supreme Court's decision, this Court similarly reasoned that actions taken by Arkansas courts before being reorganized as part of the state court system could be imputed to the municipality and serve as basis for Section 1983 liability. *See Evans v. City of Helena-W. Helena, Ark.*, 912 F.3d 1145, 1146 (8th Cir. 2019). The panel failed to cite, let alone distinguish, this binding precedent.

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Third, the panel opinion conflicts with other decisions on an issue of exceptional importance—whether a municipality can be liable for unconstitutional policies it implements through its municipal courts. The Third, Fifth, and Sixth Circuits have all upheld municipal liability in analogous circumstances. The panel opinion's rule that municipalities are never liable for unconstitutional acts performed by courts conflicts with these decisions.

Finally, the panel opinion ignores allegations of how other, nonjudicial, municipal officials violated Williams's rights. Even if Sherwood cannot be held liable for policies it implemented through its court, the Complaint alleged specific policies and practices implemented by other city officials. Of note, Sherwood police pursued warrants for Williams's failure to pay fines, threatened Williams with jail if she did not pay $200 on the spot, and jailed her in Sherwood-owned and Sherwood-operated holding cells. The Complaint also alleged that Sherwood police did these things at the direction of the City Council. Thus, Williams adequately alleged that nonjudicial Sherwood officials acted under an unconstitutional policy or practice.

BACKGROUND

Williams alleged that the City of Sherwood, through its municipal court and other officials, had a policy and practice of arresting, fining, and imprisoning her because she could not afford the fines and fees she owed to the City.

I. Sherwood's Enforcement of Its Hot-Check Ordinances Put Williams into a 20-Year Cycle of Debt, Arrest, and Incarceration.

Tamatrice Williams is a working mother of five. App. 16. In early 1997, Williams "bounced" four checks due to insufficient funds. App. 16. These four bounced checks—which Williams used to buy groceries and other household necessities—ensnared her in a 20-year cycle of debt, arrest, and imprisonment directly caused by Defendant City of Sherwood's unconstitutional "hot-check" policies and practices. *See* App. 7–8, 16–18.

In early 1997, Williams was convicted of writing bad checks in Sherwood's "hot-check court." App. 16. The hot-check court, a division of Sherwood's city-established "city court," handled prosecutions for bad checks. App. 4. The City promoted hot-check proceedings to local

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businesses as an efficient way to pursue violators. App. 12. And the City derived significant revenues from these proceedings. App. 9–10.

Proceedings in the hot-check court were closed to the public and required defendants to waive their right to counsel before they stood in line to enter the court at 7:00 A.M. App. 6. After her hot-check convictions, Williams was forced to attend "review hearings" in which the hot-check court would review her payment of fines, fees, and court costs. App. 6–7, 16. When Williams missed paying a fine or fee, Sherwood's hot-check court would issue an arrest warrant and open a new criminal case, thereby multiplying the fines and fees Williams owed. App. 7, 16. Each new arrest warrant—sought by Sherwood officials, issued by Sherwood's court, and executed by Sherwood's police—caused another $300 in fees and costs. App. 7–8, 10–11. The hot-check court imposed these fees and costs (which city officials collected) without any inquiry into Williams's ability to pay. App. 28.

Williams did her best to pay her fines and fees, paying thousands of dollars on top of the fines, fees, costs, and restitution of her underlying hot-check convictions. App. 7–8, 17. When she fell behind on payments, Sherwood police arrested her 8 times, totaling about 160

days in jail. App. 16. Sherwood police made some of these arrests in front of her young children, including one on her daughter's birthday. App. 16. One arrest led her to spend 30 days in Sherwood's jail and Pulaski County prison over the holiday season from late December to January. App. 17. Sherwood officials threatened Williams at her job on 12 occasions, demanding that she produce $200 on the spot or be arrested. App. 17. Sherwood's threats and arrests were not merely publicly humiliating; they were financially damaging and caused Williams's employers to take disciplinary action against her. App. 17.

II. Sherwood Enforced Its Hot-Check Policies through Its Court and Law-Enforcement Officers.

Sherwood's City Council directs city officials, particularly its police officers, to seek and execute warrants to collect unpaid fines and fees to the hot-check court. App. 11.

The hot-check court was, by city ordinance, a division of the Sherwood city court. App. 4. Although the court is becoming part of the state court system (and is now called the "Sherwood District Court"), it was not, at the time of the challenged policies and practices, a state court. The Complaint challenges the City's conduct between 1996 and 2016, App. 1, during which Sherwood's court was a municipal court,

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with officials hired, paid, and under the complete control of the Sherwood City Council.

Over the past decade, Arkansas has gradually transitioned its municipal courts into state courts. Until 2011, Arkansas had municipal courts called "city courts." Municipalities could create these city courts with jurisdiction over local ordinances and judges selected by the mayor (or the judge could be the mayor). *See* Ark. Code § 16-18-112, *repealed by* S.B. 235, 86th Gen. Assemb., Reg. Sess. § 52 (Ark. 2007) [S.B. 235]. Municipalities funded these courts completely and set court officials' salaries. *Id*.

In 2007, the Arkansas General Assembly decided to consolidate city courts with the state court system, reorganizing them into "departments" of state-run trial courts called "state district courts." *See* S.B. 235; Ark. Code § 16-17-1202. Under this reorganization plan, these departments were staffed by elected state judges, with vacancies filled by the governor. Ark. Code § 16-17-132(c). During the transition period, the cities in which the departments sit still contribute up to half of the judge's salary (the state pays the other half). *Id*. § 16-17-115(a).

The City of Sherwood is in the middle of this transition. In 2011 it was part of a pilot program of changing city courts into departments of state district courts. H.B. 1869, 88th Gen. Assemb., Reg Sess. § 9 (Ark. 2011). But Sherwood continued to pay the judge's salary and the court's operating expenses. In 2021, Sherwood's court will complete its transition into a state court and the newly elected judge's salary will be paid out of the state's treasury. Ark. Code § 16-17-1113(a)(1), (a)(3), (m)(2)(e), *enacted by* H.B. 1532, 90th Gen. Assemb., Reg. Sess. § 3 (Ark. 2015) [H.B. 1532]; Ark. Code § 16-17-1106 ("The state shall pay the salary and benefits of state district court judges created under this subchapter."). But at the time of the challenged conduct, Sherwood's court was a city court, or a transitionary local district court, not a state district court.[1]

III. Procedural History

Williams sued the City of Sherwood under Section 1983, alleging that the City unconstitutionally (1) jailed her for her inability to pay

[1] At argument, the panel asked Sherwood's counsel whether Sherwood's court was a state or municipal court. *See* Oral Argument Recording at 16:19–44. Counsel responded that it was a state court. *Id*. But as explained above, this response does not accurately reflect the status of Sherwood's court at the time of the challenged conduct.

fines and fees; (2) imprisoned her without appointing counsel; (3) indefinitely and arbitrarily detained her; (4) used jail and threats of jail to collect fines and fees; and (5) issued and served invalid warrants based solely on nonpayment of these fines. App. 23–29.

The district court dismissed the Complaint under *Heck v. Humphrey*, 517 U.S. 477 (1994), finding that Williams should have had her prior convictions vacated before suing under Section 1983. Williams appealed, and the panel affirmed on different grounds.

The panel concluded that Williams failed to state a claim because (1) "the judicial decisions of a duly elected judge" do not "expose municipalities to Section 1983 liability" and (2) the Complaint failed to "identify an ordinance or other municipal action whereby the city directs someone to commit an act that is a constitutional violation or . . . directs someone to take an action that leads to a violation of constitutional rights." Op. 4–5.

After obtaining new counsel, Williams moved for an extension of time to petition for rehearing, which this Court granted.

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ARGUMENT

The panel erred in concluding that the Complaint failed to plausibly allege that the City of Sherwood is liable for actions taken by the city judge and other city officials in Sherwood's hot-check court proceedings.

A municipality is liable under Section 1983 for policies that cause constitutional torts. *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 694 (1978). Municipal liability may be based on (1) an express policy, such as an ordinance, regulation, or policy statement; (2) a widespread practice or custom; or (3) a single decision by a municipal official with final policymaking authority. *City of St. Louis v. Praprotnik*, 485 U.S. 112, 123 (1988); *Pembaur v. City of Cincinnati*, 475 U.S. 469, 480 (1986).[2] Whether an official is a state or municipal policymaker is determined by reference to state law. *See McMillian v. Monroe Cty.*, 520 U.S. 781, 786 (1997); *Dean v. Cty. of Gage*, 807 F.3d 931, 942 (8th Cir. 2015).

[2] The panel opinion states that Williams's counsel clarified at oral argument that Williams was neither challenging a custom or practice (only a policy) nor alleging that the hot-check judge was a final policymaker. Op. 4. Based on the audio recording, counsel for Williams made no such concessions.

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The panel opinion should be vacated because it (1) overlooks binding state law governing when municipalities are liable for actions of their court officials; (2) contravenes prior decisions by this Court; (3) conflicts with decisions in other circuits on the exceptionally important issue of municipal liability; and (4) ignores the Complaint's allegations specifying the role of other, nonjudicial, city officials in the constitutional violations.

I. The Panel Opinion Overlooks a Recent Arkansas State Supreme Court Decision on a Dispositive Issue of State Law.

In concluding that Sherwood's city court was a division of the state courts, the panel overlooked a recent decision by the Arkansas Supreme Court governing this dispositive issue of state law.

Just days before the panel issued its opinion, the Supreme Court of Arkansas held, as "a matter of first impression," that "the employment status of a district court judge [in Arkansas] turns on whether, at the time of the alleged wrongdoing, the district court had been reorganized as a state district court." *City of Little Rock v. Nelson*, 2020 WL 372521 at *10–11 (Ark. Jan. 23, 2020). This state supreme court decision on a dispositive issue of state law "creates a duty on this

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Court" to rehear this case. *See Huddleston v. Dwyer*, 322 U.S. 232, 236 (1944) (holding courts of appeals must grant petitions for rehearing where a recent state supreme court decision "has at least raised such doubt as to the applicable [state] law").

In *Nelson*, the Supreme Court of Arkansas affirmed a judgment against the City of Little Rock for violating due process when a Little Rock judge assessed total installment fees at the outset of a proceeding rather than charging the defendant monthly. *Nelson*, 2020 WL 372521 at *2. This practice made the defendant pay installment fees for the full plan even though the fine was paid off early. *Id.*

The Arkansas Supreme Court rejected Little Rock's argument (like the one City of Sherwood makes here) that it could not be held liable for the judge's actions. *Id.* at *1. It ruled that "[b]ecause the Little Rock District Court ***had not yet been reorganized*** as a state district court at the times relevant to this case, [the judge] was an employee of the City. The due process violation arising from his installment fee policy may therefore be imputed to the City." *Id.* at *11 (emphasis added).

Similarly, the Sherwood court had not yet been reorganized at the times relevant to the Complaint. As the Complaint alleges, from "1996 to approximately August 25, 2016," Williams was arrested around 8 times and spent about 160 days in jail because of the challenged practices of the Sherwood hot-check court. App. 1, 16. Thus, even if the earliest date of January 1, 2011—the date at which Sherwood's court nominally became a "District Court" overseen by the state court system—is deemed the date of reorganization, the court was still a municipal entity for 15 years of the challenged conduct. Under controlling Arkansas law, the actions of the Sherwood court, before its reorganization into the state court system, can be imputed to the City of Sherwood.

The Complaint therefore plausibly alleged that the City of Sherwood, through its municipal court, violated due process and is subject to Section 1983 liability. The panel's opinion to the contrary requires rehearing.

II. The Panel Opinion Contravenes Binding Authority By This Court.

Even before the recent Arkansas decision in *Nelson*, this Court already held that Arkansas municipalities, whose courts were not yet

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reorganized, could be liable for actions committed by their city courts, but that upon reorganization the courts became state entities. *Compare Evans v. City of Helena-W. Helena, Arkansas*, 912 F.3d 1145, 1146 (8th Cir. 2019) (finding city could be liable for actions of Phillips County District Court which had not been reorganized at the time of the alleged wrongdoing), *with Justice Network, Inc. v. Craighead County*, 931 F.3d 753, 765 (8th Cir. 2019) (finding city could not be liable for actions of Craighead County District Court which had been reorganized at the time of the alleged wrongdoing).

In *Evans*, the plaintiff alleged that the clerk's office in the Phillips County District Court failed to document that she paid certain fines, leading to her arrest and impoundment of her car. 912 F.3d at 1146. Because Phillips County was not reorganized until after the events alleged in the complaint, this Court found that Phillips County judges and judicial employees were employees of the city. *Id.* at 1147. Accordingly, this Court reversed the dismissal, "conclud[ing] that the complaint states at least a plausible claim that the clerk was a city official at the time of the alleged wrongdoing, in which case the City

could be accountable for the actions of the clerk that establish or carry out an unconstitutional policy or custom of the municipality." *Id.*

In ruling to the contrary, the panel here mistakenly relied on *Granda v. City of St. Louis*, 472 F.3d 565, 569 (8th Cir. 2007), for the proposition that "[t]he municipal court is a division of the state circuit court." But the panel ignored that the issue is controlled by state law. Thus, this Court's ruling in *Granda* concerning Missouri's court system does not control the analysis of Arkansas courts.[3]

III. The Panel Opinion Conflicts with Cases in Other Circuits on an Issue of Exceptional Importance.

The panel decision also conflicts with other circuit decisions that hold municipalities liable for implementing unconstitutional policies through their municipal courts. The panel opinion ruled that—no matter what state law was at the time of the alleged events—Sherwood could never be liable for policies it implements through its municipal court. That holding directly contradicts cases of other circuits. And this issue is one of exceptional importance: Immunizing municipalities from

[3] As this Court noted in *Granda*, 472 F.3d at 569, a municipal court judge can be a final municipal policymaker when making nonjudicial decisions. *See also Williams v. Butler*, 863 F.2d 1398, 1403 (8th Cir. 1988).

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suit whenever they use municipal courts to inflict constitutional harm would strip many of their only recourse for unconstitutional municipal conduct.

In *DePiero v. City of Macedonia*, the Sixth Circuit found that a municipality could be held liable under Section 1983 for acts it committed through its municipal court. 180 F.3d 770, 787 (6th Cir. 1999). There, the municipal court was created by the city and—just as in Arkansas before the city courts' reorganization into state courts—the judge could have been the mayor. *Id.* at 786. The Sixth Circuit held that "we do not agree that [the mayor-judge's] judicial role encompassed the discretionary decision whether to operate a mayor's court and whether to appoint a magistrate to hear its cases." *Id.* at 787. In other words, even if a judge is not making municipal policy while performing a judicial role, the city's creation of the court and its procedures was a municipal policy, not a judicial one, for which it could be held liable.

Likewise, the Third Circuit has held that a municipality can be liable under Section 1983 even when its officials acted under municipal court orders. *Anela v. City of Wildwood*, 790 F.2d 1063, 1067 (3d Cir. 1986). The plaintiffs in *Anela* challenged the constitutionality of their

arrests and confinement. *Id.* at 1064–65. The court held that "issuance of a bail schedule by the municipal court does not excuse City officials from complying with" other constitutional requirements. *Id.* at 1067.

Similarly, in *Nobby Lobby, Inc. v. City of Dallas*, the Fifth Circuit held that a municipality could be liable under Section 1983 for unconstitutional arrests and seizures authorized by its municipal court. 970 F.2d 82, 93 (5th Cir. 1992). The court so held even though "the Dallas police first obtained a search warrant from a municipal court magistrate, which commanded the police to seize the listed property." *Id.* at 92. And in *Familias Unidas v. Briscoe*, 619 F.2d 391, 404 (5th Cir. 1980), the court held that county judges, even though duly elected officers under Texas law, still can be county policymakers when presiding over county commissioners or working to prepare the county's budget.[4]

[4] The panel cites a nonprecedential Fifth Circuit decision for the proposition that Sherwood's court was independent of the City's officials. Op. 4 (citing *DeLeon v. City of Haltom City*, 106 F. App'x 909 (5th Cir. 2004)); 5th Cir. R. 47.5.4 ("Unpublished opinions issued on or after January 1, 1996, are not precedent . . . ."). But in *DeLeon*, the judge "was not a subordinate of the city council and city council members had no authority to control [the judge's] judicial actions." 106 F. App'x at 911. However, as shown in Part I, Sherwood's city court, during the time relevant to Williams's Complaint, was a creature of the City, could be abolished by the City, was staffed by a judge and clerk directly in the City's employ, and ultimately under Arkansas law was a municipal policymaker.

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Whether a municipality can be liable for acts it commits through, or under order of, its municipal court is an issue of exceptional importance. As the above examples showcase, cities can use municipal courts to boost municipal revenues (*DePiero*), authorize unconstitutional bail conditions (*Anela*), issue unconstitutional warrants (*Nobby Lobby*), or unconstitutionally perform other municipal tasks (*Familias Unidas*). Municipalities cannot escape their constitutional duties simply by claiming it was their courts, rather than other, nonjudicial officials, that implemented their unconstitutional policies or practices.

IV. The Panel Opinion Overlooks Specific Allegations Concerning Nonjudicial Municipal Officials.

Finally, rehearing is warranted because the panel opinion incorrectly held that the Complaint "merely speculates vaguely and conclusorily that" city officials "had developed unconstitutional policies." Op. 5. The panel misstates that "[c]ritically, at no point does Williams identify an ordinance or other municipal action where-by the city directs someone to commit an act that is a constitutional violation

or . . . directs someone to take an action that leads to a violation of constitutional rights." *Id.*[5]

The panel ignores specific allegations that the City of Sherwood directed nonjudicial officials to take actions that brought Williams into debt and incarceration and violated her constitutional rights. Specifically, the panel overlooked allegations that:

(1) the City Council created the hot-check court and passed ordinances authorizing unconstitutional arrests, App. 4, 11;

(2) the City Council specifically directed the police department to implement hot-check debt collection procedures, including jailing indigent defendants, App. 11;

(3) the City Council directed the police department to seek arrest warrants, track down individuals, and demand payment on the spot under the threat of incarceration or hold people in jail to coerce payment, App. 11;

(4) the police department owned and operated the jail cells it used to coerce payment from individuals, App. 11.

[5] In so holding, the panel erroneously relies on cases decided on a full record at summary judgment. *See* Op. 5 (citing *Hollingsworth v. City of St. Ann*, 800 F.3d 985, 992 (8th Cir. 2015); *Szabla v. City of Brooklyn Park*, 486 F.3d 385, 390 (8th Cir. 2007) (en banc)).

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These allegations show that the Complaint not only challenges the actions of court officials, but also other municipal officials. All these nonjudicial decisions were performed by city employees under city policy authorized by city ordinance, and the Plaintiff had no opportunity to "appeal" any of them to a state court. Thus, even if the decisions of the Sherwood court are immune from attack, the City is liable for the acts of its nonjudicial actors.

Taken together, the above allegations sufficiently allege an unconstitutional municipal policy or practice. *See Leatherman v. Tarrant Cty. Narcotics Intelligence & Coordination Unit*, 507 U.S. 163, 168 (1993) (rejecting "heightened" pleading requirements for municipal liability claims).

CONCLUSION

For all these reasons, the petition for rehearing or rehearing en banc should be granted.

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Dated: February 25, 2020.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on February 25, 2020, I caused the foregoing Plaintiff-Appellant's Petition for Rehearing or Rehearing En Banc to be electronically filed with the Clerk of the Court using the Court's CM/ECF system, which will send notice of this filing to all registered CM/ECF users.

/s/ Michael J. Laux
Counsel for Plaintiff-Appellant

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CERTIFICATE OF COMPLIANCE

1. This document complies with the word limit of Fed. R. App. P. 40(b)(1) because this document contains 3884 words, excluding the parts of the document exempted by Fed. R. App. P. 32(f).

2. This document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this document has been prepared using Microsoft Word for Office 365 in 14-point Century Schoolbook with 12-point Century Schoolbook footnotes.

Dated: February 25, 2020

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