

No. S244549

**IN THE SUPREME COURT  
OF THE STATE OF CALIFORNIA**

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IRMA RAMIREZ, Individually and as Representative,  
etc.,  
*Plaintiffs and Appellants*  
v.  
CITY OF GARDENA,  
*Defendant and Respondent.*

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**ANSWER TO PETITION FOR REVIEW**

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After a Decision by the Court of Appeal of the State of  
California, Second Appellate District, Division 1

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## ANSWER TO PETITION FOR REVIEW

**TO THE HONORABLE TANI CANTIL-SAKAUYE, CHIEF JUSTICE, AND TO THE HONORABLE ASSOCIATE JUSTICES OF THE SUPREME COURT OF CALIFORNIA:**

### INTRODUCTION

Next to use-of-force policy, vehicle pursuit policy is the most important civil liability issue facing city and county law enforcement agencies across California. This case involves an irreconcilable conflict in published opinions of two Courts of Appeal regarding requirements for the immunity provided to public agencies that adopt and promulgate vehicle pursuit policies under Vehicle Code section 17004.7.

Although Respondent prevailed in the courts below and believes that the conclusion and analysis of the Court of Appeal in this case is correct, City of Gardena nevertheless urges the Court to review the subject of the Petition for Review, the published decision of the Court of Appeal, Second Appellate District, Division 1, in *Ramirez v. City of Gardena* (2017) 14 Cal.App.4th 811, because the *Ramirez* decision is diametrically opposed to the published decision of the Fourth Appellate District, Division 1, in *Morgan v. Beaumont Police Department* (2016) 246 Cal.App.4th 144 on this important issue. The Court's intervention is needed to resolve the conflict and provide much needed guidance to law enforcement agencies and the lower courts.

## ISSUES FOR REVIEW

City of Gardena submits that review should be granted, but that Petitioner's statement of the issue for review is not appropriate for reasons that are discussed below. City of Gardena respectfully submits that the issues for review should be:

- (1) Does imposition by a public agency of a *requirement* that all its officers certify that they have read and understand the agency's vehicle pursuit policy satisfy the promulgation requirement for entity immunity under Vehicle Code section 17004.7, as the *Ramirez* court held, or is certification by *every officer* required, such that the failure of a single officer to certify precludes entity immunity, as the *Morgan* court held?
- (2) Did the Legislature intend that vehicle pursuit immunity for a public agency depend upon the actions of the agency in adopting and instituting the policy or on the actions of individual officers, whose individual immunity depends upon different conditions under different provisions of the Vehicle Code?

## DISCUSSION

### I. THE NEED TO SECURE UNIFORMITY OF DECISION

#### A. The Published *Ramirez* and *Morgan* Decisions are in Direct Conflict.

Pertinent portions of Vehicle Code section 17004.7 provide:

(a) The immunity provided by this section is in addition to any other immunity provided by law. The adoption of a vehicle pursuit policy by a public agency pursuant to this section is discretionary.

(b) (1) A public agency employing peace officers that adopts and promulgates a written policy on, and provides regular and periodic training on an annual basis for, vehicular pursuits complying with subdivisions (c) and (d) is immune from liability for civil damages for personal injury to or death of any person or damage to property resulting from the collision of a vehicle being operated by an actual or suspected violator of the law who is being, has been, or believes he or she is being or has been, pursued in a motor vehicle by a peace officer employed by the public entity.

(2) Promulgation of the written policy under paragraph (1) shall include, but is not limited to, a requirement that all peace officers of the public agency certify in writing that they have received, read, and understand the policy. The failure of an individual officer to sign a certification shall not be used to impose liability on an individual officer or a public entity.

The *Morgan* opinion holds that "an agency's vehicle pursuit policy is not 'promulgated' within the meaning of subdivision (b)(2) of section 17004.7 unless, at a minimum, 'all' of its peace officers 'certify in writing that they have received, read, and understand the policy . . . ." *Morgan* at p. 159 (emphasis in original and emphasis deleted). The court held that

certification by the "vast majority" of the agency's officers was insufficient to meet the statute's promulgation requirement.

The *Ramirez* court disagreed with the *Morgan* court's analysis, declaring, "We respectfully disagree with the interpretation of the statutory promulgation requirement that the court adopted in *Morgan*." The *Ramirez* court held, correctly in the opinion of City of Gardena, that "section 17004.7, subdivision (b)(2) does not require proof of compliance by every officer with the written certification requirement as a prerequisite to immunity." The *Ramirez* court concluded, "'[p]romulgation' in section 17004.7, subdivision (b)(2) means that, to obtain immunity, a public agency must *require* its peace officers to certify in writing 'that they have received, read, and understand' the agency's pursuit policy. However, if the agency actually imposes such a requirement, complete compliance with the requirement [by every individual officer] is not a prerequisite for immunity to apply." *Ramirez* at p. 825 (emphasis in original) (bracketed material added). These conflicting published opinions pose a direct conflict that cannot be harmonized.

**B. The Conflict Leaves Law Enforcement Agencies and the Courts Without Guidance as to the Requirements for Immunity.**

The published conflict between the Second and Fourth District cases leaves the hundreds of law enforcement agencies in cities and counties

throughout the state without guidance as to what is required in order to secure the immunity the Legislature provided entities whose officers are involved in vehicle pursuits. Without uniformity of decision regarding the requirements for securing the immunity, the intended function of the statute to motivate public agencies to adopt and implement pursuit policies that meet certain guidelines will be significantly undermined. The practical effect of the *Morgan* court's opinion requiring certification by every officer is so administratively difficult as to be almost impossible for agencies of any size, which significantly erodes the intended motivation to entities to adopt and implement vehicle pursuit policies.

Moreover, until the issue is resolved by the Supreme Court the trial courts will be left in confusion as to which of the two published conflicting district court opinions they should follow, and appellate courts will lack clear guidance on the issue, giving rise to confusion and uncertainty in the courts. Application of the immunity statute will be unpredictable and uncertain, and parties will be required to engage in protracted litigation to determine which precedent the trial court, and even the appellate court, will follow in every case in which an agency seeking immunity has obtained less than 100% officer compliance with its certification mandate.

## II. THE NEED TO SETTLE IMPORTANT ISSUES OF LAW

The published conflict between the *Ramirez* opinion and the *Morgan* opinion raises important questions of law.

### A. **Which Interpretation Effectuates the Purpose of the Immunity Statute to Motivate Entity Conduct?**

The holdings of the *Ramirez* and *Morgan* opinions grow out of fundamentally different views of the basis for and object of entity immunity. Accordingly, one important question of law to be settled by the Supreme Court is which interpretation of the Vehicle Code statute is consistent with the Legislature's scheme for entity immunity and effectuates its purpose to motivate entity conduct.

The Legislature created separate schemes for entity immunity and individual officer immunity from liability for vehicle pursuits. Entity immunity is governed by Vehicle Code section 17004.7 and depends upon and motivates *entity* conduct, while individual officer immunity is governed by Vehicle Code section 17004 which depends upon the duty being performed by the individual officer (an officer is not liable if he or she is responding to an emergency call or in the immediate pursuit of an actual or suspected violator of the law). In support of its view that entity immunity must depend upon entity conduct, not officer conduct, the *Ramirez* court noted that before amending section 17004.7 to add the current training and

promulgation/certification provisions,<sup>1</sup> the Legislature rejected various bills that would have made immunity dependent on the conduct of individual officers, including whether the individual officers involved actually complied with their agency's pursuit policy, whether the individual officers acted in bad faith, and whether the individual officers had a reasonable suspicion that the fleeing suspect had committed a violent felony. (*Ramirez* at p. 824.) In addition, the Senate Analysis of Senate Bill 719 amending section 17004.7, stated that immunity under *this bill* also was not to depend upon the conduct of individual officers. The Senate Analysis stated, "This bill would enact the measures suggested by law enforcement groups, attaching immunity when public entities adopt and promulgate appropriate policies and institute sufficient training requirements, *regardless of officers' behavior in a particular pursuit.*" (Sen. Com. on Judiciary, Analysis of Sen. Bill No. 719 (2005-2006 Reg. Sess.) May 10, 2005, pp. 7-8, (italics added).)

In addition to the structure of the entity/individual immunity scheme, perhaps the most telling evidence that the Legislature did not intend entity immunity to rest on officer action or inaction with respect to certification is the provision at section 17004.7(b)(2) that "The failure of an individual officer to sign a certification shall not be used to impose liability on an

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<sup>1</sup> The Legislature amended former section 17004.7 (Stats. 2005, ch 485, § 11, p. 3825) in 2005. It became operative on July 1, 2007.

individual officer or a public entity." Under section 17004.7 immunity does not depend upon officer conduct; it depends upon entity conduct.

Recognizing this principle underlying the immunity statute, the *Ramirez* court declared, "Conditioning an agency's entitlement to immunity on the behavior of particular officers is inconsistent with the approach that the Legislature adopted in amending section 17004.7 to ensure that agencies took appropriate steps to implement their pursuit policies." (*Id.*)<sup>2</sup> The *Morgan* court, however, adopted an interpretation of the promulgation provision that depends upon certification by every individual officer, thereby precluding entity immunity based upon officer, not entity, conduct; while the *Ramirez* court adopted an interpretation that depends upon imposition of a certification requirement by the entity. It is the position of City of Gardena that only the *Ramirez* opinion correctly bases entity immunity on entity conduct by requiring action that is within the entity's control, consistent with the dichotomy deemed appropriate by the Legislature.

**B. Which Interpretation Avoids an Onerous and Unfair Burden on Law Enforcement?**

A second important question of law is which analysis avoids an onerous and administratively unworkable burden on law enforcement

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<sup>2</sup> The *Morgan* court also noted that the Legislature rejected a proposed amendment that would have conditioned entity immunity on proof that the officers were obeying the entity's pursuit policy. *Morgan* at p. 158.

entities and a potentially absurd result, which City of Gardena asserts the Legislature cannot have intended. City of Gardena agrees that adoption and implementation of pursuit policies is important. Vehicle pursuit policy is one of the most important issues facing City of Gardena police department.<sup>3</sup> City of Gardena has a vehicle pursuit policy that has been determined by the trial and appellate courts to comply with requirements as to its content. It trains its officers on its policy on at least an annual basis. All of its officers are required to read and understand the policy and certify that they have done so. City of Gardena asserts that the imposition of the *Morgan* requirement that immunity is precluded if a single officer fails to certify is so extreme that it undercuts rather than fosters the purpose of the statute to encourage law enforcement entities to adopt and promulgate vehicle pursuit policies and to provide immunity to those entities that do so. Absent a realistic opportunity for an entity to qualify for immunity, the statute will be ineffective in its intended purpose of encouraging law enforcement entities to adopt and promulgate vehicle pursuit policies so as to reduce collisions and injuries.

The *Ramirez* court compared the effect of the two interpretations on the purposes of the statute, when it observed, "The City's interpretation would fulfill the Legislature's goal of motivating a public agency to

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<sup>3</sup> City of Gardena has been informed that various organizations are intending to file amicus letters requesting that the Court grant review.

implement its pursuit policy – including by *requiring* its officers to certify their receipt and understanding of that policy in writing - even if a few officers fail to full that requirement. On the other hand, requiring 100 percent compliance as a condition of immunity could potentially result in the absurd circumstance that the failure of a single officer to complete a written certification in an agency employing thousands could undermine the agency's ability to claim immunity, even though the agency conscientiously implemented its pursuit policy." *Ramirez* at p. 823.

In many situations, through no fault of its own, an entity will not be able to obtain certifications from every individual officer. An officer might be away on family medical leave or military duty or he or she may have been hired shortly before a vehicle pursuit incident occurred and not yet received training. In addition to imposing an exceedingly difficult burden on law enforcement entities, the *Morgan* court interpretation creates the potential for abuse. It affords a single disgruntled officer an opportunity to inflict serious economic injury on a law enforcement agency by foreclosing immunity that would otherwise be available to the entity and it affords a single manipulative officer an opportunity to pressure an entity for favorable treatment in exchange for certification.

Not only would obtaining immunity under a 100% certification requirement be onerous and administratively challenging in the extreme, it would depend upon conduct that is out of the entity's control, and therefore

does not and cannot motivate entity conduct. An entity can adopt a pursuit policy; it can circulate the policy to its officers, it can train its officers on the policy; it can institute a requirement that all officers certify that they have received, read and understand the policy, and it can discipline officers who do not certify; but it cannot force an absentee or recalcitrant officer to certify. The Legislature cannot be deemed to have intended a result that would render the requirements for immunity so difficult as to seriously undermine its purpose in offering immunity to law enforcement agencies that adopt and promulgate pursuit policies.

**C. Which Interpretation Harmonizes the Statute Internally?**

A third important question of law raised by the conflict between the *Ramirez* and *Morgan* cases is which interpretation harmonizes the statute internally and gives meaning to all parts of the statute. The *Morgan* court's analysis requiring that all officers must certify or the entity does not qualify for immunity conflicts with the statutory provision, also quoted above, that "The failure of an individual officer to sign a certification shall not be used to impose liability on an individual officer or a public entity." Furthermore, the *Morgan* analysis effectively requires training on an almost daily basis to ensure that every officer, on any given day when an incident may occur, has been trained so that he or she can certify by that day, which requirement is over and above the statutory requirement which calls for training "on an annual basis." (Veh. Code § 7004.7 (b)(1).)

**III. PETITIONER'S PROPOSED STATEMENT OF ISSUE FAILS TO ARTICULATE THE ISSUE THE COURT SHOULD REVIEW.**

Petitioner proposes the following issue for review:

"Has a public agency proffered sufficient evidence of 'promulgation' of a vehicular pursuit policy within the meaning of Section 17004.7(b)(2) and POST's minimum guidelines to be granted immunity from civil liability for an incident of personal injury or death arising from a high-speed police pursuit if that agency has not produced any signed attestation forms from any of their peace officers certifying in writing that [they] have received, read, and understand the policy at the time of an incident?"

City of Gardena submits that this case is appropriate for review, but that Petitioner does not state the appropriate issue for review. Petitioner's proposed statement of issue is inappropriate for each of the following reasons: (1) the proposed issue is not presented by the facts of the case below because City of Gardena did, in fact, produce attestation forms signed by many of its officers, including all of the officers involved in the subject pursuit, certifying that they received, read, and understood the policy;<sup>4</sup> (2) the proposed issue is focused on a secondary evidentiary question of the manner by which proof of certification must be made, rather

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<sup>4</sup> City of Gardena submitted POST attestation forms from 2009 and 2010 for 65 of the approximately 92 active-duty officers who were employed on the date of the 2015 incident, including forms signed by each of the officers involved in the pursuit. [IAA, Tab 11 at pp. 216-283 (POST attestation forms).] City of Gardena also submitted other evidence that its officers certified in writing that they received, read, and understood the City's policy.

than on the primary and more fundamental question of the requirements for certification; (3) the question of whether there must be written certification by "any" officer is not the basis of the conflict between *Ramirez* and *Morgan* (both courts would undoubtedly agree that at least some officers must certify to demonstrate that the entity did, in fact, impose a certification requirement); rather the conflict is whether the statute requires that "all" officers must certify in order for the entity to qualify for immunity. The appropriate questions for consideration by the Court, as stated above, are whether the statute's promulgation requirement is satisfied when a public entity imposes a certification requirement on all its officers or whether immunity is precluded unless every officer complies with the entity's certification requirement and whether the Legislature intended vehicle pursuit immunity for a public agency to depend upon the actions of the agency in adopting and instituting the policy or on the actions of individual officers, whose immunity is addressed in a different code section.

## CONCLUSION

For the reasons discussed above, Respondent City of Gardena urges the Court to grant review and adopt City of Gardena's formulation of the issues for review.

Dated: October 16, 2017

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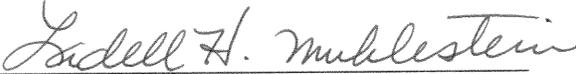
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Pursuant to California Rules of Court, rule 8.504(d)(1), I hereby certify that this Answer to Petition for Review was produced using Word and that the body of the brief contains 2,958 words, based on the Word word count.

October 16, 2017

  
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Supreme Court of California

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