Docket 09-1454, 09-1478

In the Supreme Court of the United States

Bob Camreta,

Petitioner,

v.

Sarah Greene, Personally and as Next Friend for S.G., a Minor and K.G., a Minor,

Respondents,

James Alford, Deputy Sheriff, Deschutes County, Oregon,

Petitioner,

v.

Sarah Greene, Personally and as Next Friend for S.G., a Minor and K.G., a Minor,

Respondents.

On Writs of *Certiorari* to the United States Court of Appeals for the Ninth Circuit

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BRIEF OF JUVENILE LAW CENTER, *ET AL.* AS *AMICI CURIAE* IN SUPPORT OF RESPONDENTS

Mae C. Quinn
Civil Justice Clinic
Washington University in St. Louis School of Law
One Brookings Drive
St. Louis, MO 63130
314-935-6088
mquinn@wulaw.wustl.edu

Marsha Levick*
**Counsel of Record*
Jennifer Pokempner
Lourdes Rosado
Juvenile Law Center
1315 Walnut St., 4th Fl.
Philadelphia, PA 19107
215-625-0551
mlevick@jlc.org

Counsel for Amici Curiae

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Supreme Court Cases

Other Federal Cases

State Cases

State Statutes and Regulations

Other Authorities

INTEREST OF *AMICI*

Amici Juvenile Law Center et al. work on issues of child welfare, juvenile justice, and children's rights. *Amici* have particular expertise in the area of children's constitutional rights, especially with regard to children's interaction with the child welfare and juvenile justice systems and the promotion of their well being through these systems. *Amici* join to urge this Court to affirm the decision of the Ninth Circuit in this case. Affirmance of the decision below will ensure continued robust protection of children's Fourth Amendment rights without impeding investigations of suspected child abuse or endangering children's safety.[1]

[1] The consent of counsel for all parties is on file with the Court. No counsel for a party authored this brief in whole or in part. No person or entity, other than *Amici*, their members, or their counsel made a monetary contribution for the preparation or submission of this brief. A brief description of all *Amici* appears at Appendix A.

SUMMARY OF ARGUMENT

The Ninth Circuit correctly found that the seizure and questioning of nine year old S.G. by Petitioners Camreta and Alford was an unconstitutional seizure in violation of the Fourth Amendment. The Ninth Circuit's decision is narrowly crafted to address the specific circumstances of this seizure and is fully consistent with this Court's Fourth Amendment jurisprudence.

The touchstone of the Fourth Amendment is reasonableness, generally demonstrated by a warrant, probable cause or consent. Narrow exceptions to these requirements have been carved out, including exigent circumstances and special needs searches. Brief investigatory stops have also been deemed permissible without a warrant or probable cause. None of these exceptions are present here, and any divergence from a traditional Fourth Amendment analysis is unjustified. Nine year old S.G. was improperly removed from her school classroom, taken to a closed office by Petitioners without a warrant, probable cause or consent, and then asked repeatedly about the most intimate details of her private family life for two hours. S.G. was not free to terminate this encounter nor was this the type of brief and non-intrusive encounter categorized as a *Terry* stop.

First, the special needs exception to the Fourth Amendment is inapplicable. Reduced Fourth Amendment scrutiny of searches and seizures of students is permissible to further the purposes of maintaining order and discipline in the school

environment so that children can learn. School officials were not involved in S.G.'s seizure, and S.G. was suspected of no violation of school rules. Rather, the seizure was pervaded by a law enforcement purpose—the criminal investigation of S.G.'s parent. Second, neither the circumstances surrounding the seizure nor the actions of state officials subsequent to the encounter indicate that emergency action was required to safeguard S.G.'s safety and well being. No exigent circumstances were present.

Finally, consent to the seizure was neither sought from nor provided by either S.G. or her mother. While schools have some *in loco parentis* authority, the school had no authority to substitute its consent for that of S.G. or her mother here.

ARGUMENT

INTRODUCTION

The Fourth Amendment protects individuals from unreasonable searches and seizures by governmental actors, generally requiring either a warrant or probable cause before such actors may undertake a search or seizure of an individual. The Constitutional guarantees embedded in the Fourth Amendment strike a delicate balance between the rights of individuals against arbitrary or unreasonable government actions with the government's interest in investigating crime and promoting the public welfare. Over time, exceptions to the warrant requirement have been adopted by this Court, to permit law enforcement to fulfill their responsibility to promote public safety without unnecessarily trampling the rights of the individual.

Petitioners and their *Amici* seek through this case to drastically circumscribe the applicability of the Fourth Amendment to children who are seized and questioned on school property about suspected child abuse. Petitioners suggest that children in school cannot be 'seized' within the meaning of the Fourth Amendment because their freedom of movement is inherently restricted by both their minority status and the restrictions associated with compulsory school attendance. Combined with the state's interest in investigating and eliminating child abuse, Petitioners urge a new Fourth Amendment exception that would effectively foreclose challenges to the seizure and interrogation of children behind school doors.

This case thus tests the boundaries of the Fourth Amendment as it applies to children in the very institutions that play a central role in promulgating the values of our constitutional democracy through instruction as well as by example. *See e.g.*, *West Virginia State Bd. Of Education v. Barnette*, 319 U.S. 624, 637 (1943) ("That [schools] are educating the young for citizenship is reason for scrupulous protection of Constitutional freedoms of the individual, if we are not to strangle the free mind at its source and teach youth to discount important principles of our government as mere platitudes."); *Brown v. Bd. of Education of Topeka*, 347 U.S. 483, 493 (1954) ("Compulsory school attendance laws . . . demonstrate the importance of education to our democratic society. . . . It is the very foundation of good citizenship.") It is thus through the educational system that our children learn the moral, social and civic values that drive the interaction between citizens and government. While this Court has recognized that juvenile status may inform legal status, no decision from this Court suggests that school children forfeit their rights to our most fundamental constitutional guarantees merely by crossing the school threshold. No such sweeping erosion of children's Fourth Amendment rights is justified.

Amici Juvenile Law Center *et al.* thus urge this Court to uphold the Ninth Circuit's ruling that S.G.'s warrantless seizure and questioning by Petitioners Camreta and Alford violated the Fourth Amendment. The Ninth Circuit's decision is fully

consistent with this Court's jurisprudence, and will not hinder timely investigations of suspected child abuse.[2] Indeed, the Ninth Circuit decision is narrow, imposing Fourth Amendment strictures on a child abuse investigation only where the nature, scope and procedures surrounding the seizure bar Petitioners from claiming that the Fourth Amendment is inapplicable. While Oregon, like all states, provides a mechanism for prompt investigation and other action when a child's welfare reasonably appears to be in jeopardy, these statutes are not a license to seize children or traumatize them in the course of fulfilling this legislative purpose.

The specter of harm to children raised by Petitioners and their *Amici* as a consequence of the Ninth Circuit decision is both overblown and illusory. A ruling affirming the Ninth Circuit decision does not implicate routine child abuse investigations as

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[2] Oregon regulations require that a child protection "assessment" be conducted within five days upon receipt of a child abuse report where the alleged abuser is a legal parent of the child, resides in the child's home, or potentially has access to the child. Or. Admin. R. 413-015-0210(2) and (3)(2010). As part of that assessment, the DHS worker must "have face-to-face contact with and interview the alleged victim…to gather information regarding possible child abuse and neglect, assess if the children are vulnerable to identified safety threats, and assess the children's immediate safety." *Id.* at 413-015-0420(1)(a). Additionally, the juvenile court can issue a protective custody order based on the sworn affidavit of a Department of Human Services (DHS) employee "that sets forth with particularity the facts and circumstances on which the request for protective custody is based, why protective custody is in the best interests of the child and the reasonable efforts . . . made by the department to eliminate the need for protective custody of the child." Or. Rev. Stat. § 419B.150(2) (2009).

required by state and federal law. The Fourth Amendment protections *Amici* urge this Court to enforce will neither hinder those investigations nor endanger the lives of children.[3]

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[3] *Amici* for the Petitioners California State Association of Counties cite *People v. Assad*, 189 Cal. App. 4th 187 (Cal. App. 3d Dist. 2010), for the proposition that imposing Fourth Amendment requirements on child interviews at school would undermine child protection investigations. *See* Brief for California State Ass'n of Counties et al. as Amici Curiae Supporting Petitioners at 28, *Camreta v. Greene*, 2010 WL 2665553 (No. 09-1454). Their reliance on *Assad* is misplaced. Under California law, once the child protection agency receives a report of suspected child abuse from a school, a worker is authorized to interview the child at his school and visually confirm the child's physical injuries. Cal. Penal Code § 11174.3(a) (West 2001) ("Whenever a representative of a government agency investigating suspected child abuse or neglect or the State Department of Social Services deems it necessary, a suspected victim of child abuse or neglect may be interviewed during school hours, on school premises. . .") The worker does not need a court order to interview the child. Based on his or her experience and expertise, the worker could conclude that a child's explanation of how he was injured did not adequately explain the injuries, giving rise to reasonable cause to suspect that the child was abused and at further risk of abuse if there is no state intervention. If the worker reaches this conclusion, California law plainly authorizes law enforcement to take the child into protective custody. Cal. Welf. & Inst. Code § 305(a) (West 2010). In Oregon the worker is likewise authorized to take custody of the child. Or. Rev. Stat. § 419.150(1) (2009).

I. S.G. WAS SEIZED WHEN SHE WAS USHERED FROM HER CLASSROOM TO A CLOSED ROOM WHERE SHE WAS QUESTIONED BY A SOCIAL WORKER AND LAW ENFORCEMENT OFFICER FOR TWO HOURS

Petitioners conceded below and do not contest here the district court's finding that S.G.'s two hour interview was a seizure within the meaning of the Fourth Amendment. *Greene v. Camreta*, 588 F.3d 1011, 1022 (9th Cir. 2009). Several of Petitioners' *Amici* nevertheless suggest that S.G.'s questioning was not a seizure under the Fourth Amendment and have effectively asked this Court to issue an advisory opinion on this issue. *See, e.g.,* Brief for Cal. State Ass'n of Counties et al. as Amici Curiae Supporting Petitioners at 3; Brief for Nat'l School Bds. Ass'n et al. as Amici Curiae Supporting Petitioners at 5, *Camreta v. Greene,* 2010 WL 5168881 (No. 09-1454, 09-1478). Petitioners' *Amici* misstate the applicable law.

A seizure occurs when, "in view of all the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave." *United States v. Mendenhall*, 446 U.S. 544, 554 (1980); *see also Michigan v. Chesternut,* 486 U.S. 567, 573 (1988) (A seizure occurs for Fourth Amendment purposes when "a reasonable person would have believed that he was not free to leave.") In this case, nine year old S.G. was taken from her class to a private, closed office where she was questioned about intimate details of her family life for approximately two hours by an unfamiliar DHS

worker and law enforcement officer. Because no reasonable nine year old would have felt free to either leave the office or refuse to speak with these two public officials, she was "seized" subject to Fourth Amendment requirements.

Certain *Amici* for Petitioners argue that, because a child's liberty is already substantially limited in school, the Fourth Amendment is not implicated unless law enforcement's actions restrict movement more than the restrictions created by everyday compulsory school attendance. *See, e.g.,* Brief for Solicitor Gen. as Amicus Curiae Supporting Petitioners at 30-31, *Camreta v. Greene,* 2010 WL 5168879 (No. 09-1454, 09-1478); Brief for Cal. State Ass'n of Counties at 16-19; Brief for Nat'l School Bds. Ass'n at 6. However, S.G.'s enrollment in school is only one part of the analysis. As this Court has said, "[w]here the encounter takes place is *one factor*, but it is not the only one." *Florida v. Bostick*, 501 U.S. 429, 437 (1991) (emphasis added). Plainly, some locations, including schools, inherently restrict movement, but this does not preclude a determination that a seizure has nevertheless taken place. *Florida v. Bostick* and *I.N.S. v. Delgado*, 466 U.S. 210 (1984), relied upon by Petitioners' *Amici*, are readily distinguishable.

In *Bostick*, an encounter with law enforcement "in the cramped confines of a bus" where "there is little room to move around" did not automatically transform that encounter into a seizure. *Bostick*, 501 U.S at 435. Similarly, in *Delgado*, this Court held that a raid by immigration officials at a factory is not a seizure simply because it occurs in a confined place

where one works. As the Court noted, "[o]rdinarily, when people are at work their freedom to move about has been meaningfully restricted, not by the actions of law enforcement officials, but by the workers' voluntary obligations to their employers." *Delgado*, 466 U.S. at 218. In such situations, where movement is restricted by the nature of the location, the Court has held that the "the appropriate inquiry is whether a reasonable person would feel free to decline the officers' requests or otherwise terminate the encounter." *Bostick*, 501 U.S. at 436. Applying this test here, nine year old S.G., taken from her classroom by a DHS worker and a uniformed, armed law enforcement officer was subject to restraint beyond that associated with simply attending school.

Moreover, the *Bostick* bus passenger and *Delgado* factory workers were adults who chose to be in the locations where their freedom of movement was restricted. The fact that nine year old S.G. was required to attend school and involuntarily subjected to certain inherent restrictions on her freedom of movement plainly distinguishes the instant case from the reasoning of *Bostick* and *Delgado*. For much of their minority, children are compelled to attend school and their physical movement is limited by school officials throughout the structured school day. *See Couture v. Bd. of Educ. of Albuquerque Pub. Sch.*, 535 F.3d 1243, 1250-51 (10th Cir. 2008) ("We must think about seizures differently in the school context, as students are generally not at liberty to leave the school building when they wish.") As this Court has recognized, "unemancipated minors lack some of the most fundamental rights of self-determination - including even the right of liberty in

its narrow sense, i.e., the right to come and go at will. They are subject, even as to their physical freedom, to the control of their parents or guardians." *Vernonia Sch. Dist. 47J v. Acton*, 515 U.S. 646, 654 (1995). However, the restrictions on the movement of students within the school setting do not render the protections of the Fourth Amendment inapposite. Where a reasonable person even in school would not feel free to leave or terminate the encounter, courts have found violations of the Fourth Amendment. *See id.* at 1251 (holding that a seizure occurred when school officials placed a student in a separate room alone for varying times); *Shuman ex rel. Shertzer v. Penn Manor Sch. Dist.*, 422 F.3d 141, 147 (3d Cir. 2005) (student who was told to remain in conference room by school officials for several hours was seized); *Wofford v. Evans,* 390 F.3d 318, 325 (4th Cir. 2004) (student who was removed from class by school officials and questioned by the principal and others on two occasions was seized).

Unlike the adults in *Bostick* and *Delgado*, S.G. was not questioned in a location to which she had "voluntarily" taken herself but rather was taken from her regular classroom to a "private office," *Camreta*, 588 F. 3d at 1017, where she was questioned for two hours by non-school personnel about private, non school-related matters. Under these circumstances, S.G. was seized. A contrary conclusion would nullify the Fourth Amendment's protections for schoolchildren. Indeed, the circumstances of S. G.'s seizure are indistinguishable from those found in *Doe v. Heck*:

> [The child] was escorted from class by Principal Bond, the defendant caseworkers, and a uniformed police officer, into the church's nursery (which was empty). He was then questioned by [two child welfare caseworkers], with the uniformed police officer present, for twenty minutes about intimate details of his family life. Under these circumstances, we conclude that John Jr. was "seized" with the meaning of the Fourth Amendment because no reasonable child would have believed that he was free to leave the nursery.

327 F.3d 492, 510 (7th Cir. 2003). Because the nine year old S.G. felt neither free to leave the office nor to terminate the encounter with Alford and Camreta, she was undeniably seized.

II. THE SEIZURE AND INTERROGATION OF S.G. AT SCHOOL WITHOUT A WARRANT OR PROBABLE CAUSE VIOLATED THE FOURTH AMENDMENT

S.G.'s seizure violated the Fourth Amendment.[4]

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[4] Petitioners and their *Amici* come dangerously close to implying that the Fourth Amendment protects only those accused of crimes by emphasizing that S.G. was not suspected of wrongdoing and was only interviewed as a potential witness and victim to a crime. *See, e.g.,* Petition for Writ of Certiorari, *Camreta v. Greene*, 2010 WL 2190432 at *1 (No. 09-1454) ("The Ninth Circuit thus imported the standard used to evaluate the constitutionality of seizures of suspected criminals and imposed it on interviews of potential witnesses."); Brief for Cal. State

As a general matter, a search or seizure must be supported by a warrant, probable cause, or one of the warrant exceptions, such as exigent circumstance, consent, or a special needs search, to be deemed reasonable under the Fourth Amendment. As described in detail below, S.G.'s seizure met none of the exceptions to the Fourth Amendment's warrant/probable cause requirements. Nor can the seizure be characterized as a brief investigatory stop. Finally, even if this Court were to find the warrant/probable cause requirement inapplicable to the instant case, this Court's special needs exception

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Ass'n of Counties at 5; Brief for Nat'l Assn of Soc. Workers et al. as Amici Curiae Supporting Petitioners at 7, *Camreta v. Greene*, 2010 WL 5168877 (No. 09-1454, 09-1478) ("The Ninth Circuit standard . . . was designed to protect the rights of criminal suspects . . ."). However, the Fourth Amendment protects the rights of all citizens, not only those who are accused of crimes. Of course, criminal defendants may seek the exclusion at trial of any statements or evidence obtained in violation of the Fourth Amendment. "Because of the exclusionary sanction, the Fourth Amendment is more commonly thought of as a limitation on the power of police to search for and seize evidence, instrumentalities, and fruits of crime. However, *the Amendment also protects the 'right of the people to be secure in their persons*,' and it is clear that an illegal arrest *or other unreasonable seizure of the person is itself a violation of the Fourth Amendment*." 3 Wayne R. Lafave, Search & Seizure § 5.1 (4th ed. 2010) (emphasis added) (citing *Terry v. Ohio*, 392 U.S. 1 (1968); *Henry v. United States*, 361 U.S. 98 (1959). Indeed, this Court has rejected "the notions that the Fourth Amendment does not come into play at all as a limitation upon police conduct if the officers stop short of something called a 'technical arrest' or a 'full-blown search.'" *Terry*, 392 U.S. at 19. For these individuals, the remedy for a violation of his/her Fourth Amendment rights is a civil rights action, as was undertaken in this case.

is also inapplicable, as it was neither justified at its inception nor reasonable in its scope. *N.J. v. T.L.O.*, 469 U.S. 325, 342 (1985).

A. Law Enforcement Requires a Warrant or Probable Cause to Seize and Question a Child in School

The Ninth Circuit correctly held that seizure of a nine year old child at school by an armed police officer accompanying a state child welfare agent for two hours of questioning – absent a warrant, court order, exigent circumstances, or consent – was unconstitutional under the Fourth Amendment. *Camreta,* 588 F.3d at 1030. The question before this Court is "whether an in-school seizure and interrogation of a suspected child abuse victim is always permissible under the Fourth Amendment without probable cause and a warrant or the equivalent of a warrant," *id.* at 1022, *when there is "direct law enforcement purpose" and "involvement of law enforcement personnel."* *Id.* at 1027 n.12 (emphasis added). The application of the Fourth Amendment to administrative child abuse investigations generally is *not* before the Court.

The Fourth Amendment requires that all searches and seizures be reasonable; generally, probable cause or a warrant is required to demonstrate reasonableness. *Katz v. U.S.*, 389 U.S. 347, 357 (1967). In only a few exceptional situations has this Court found a search valid under the Fourth Amendment by law enforcement absent a warrant or

probable cause. These exceptions constitute a "closely guarded category" that this Court will not expand without great caution. *Chandler v. Miller*, 520 U.S. 305, 309 (1997). Special needs, administrative searches of limited scope in highly regulated industries, and stops or searches of motorists in certain specific situations, particularly when related to border enforcement, *see e.g.*, *City of Indianapolis v. Edmond*, 531 U.S. 32, 37-38 (2000), fall within this "closely guarded category." As discussed in further detail below, the two-hour seizure of nine year old S.G. by Petitioners does not fit any of the narrow exceptions recognized by this Court.

B. Petitioners Fail to Demonstrate That Any of the Exceptions to the Fourth Amendment Requirements Were Present

1. S.G.'s seizure by law enforcement was not a special needs search and seizure conducted by school personnel acting alone to maintain school discipline and order.

Searches and seizures by school officials for the purpose of maintaining order and discipline in the schools fall within this Court's "special needs" exception to the Fourth Amendment. *T.L.O.*, 469 U.S. at 351; *Bd. of Educ. of Indep. Sch. Dist. No. 92 of Pottawatomie County v. Earls*, 536 U.S. 822, 829-30 (2002); *Vernonia*, 515 U.S. at 653. However, this Court's special needs jurisprudence does not wholly

insulate governmental searches and seizures on school property from Fourth Amendment requirements. The special needs exception does not create a Constitution-free zone once the school threshold is crossed.

At its core, the special needs exception aids school officials in their efforts to implement the legitimate state goal of preserving order to create a positive learning environment for students. It provides school officials with a "certain degree of flexibility *in school disciplinary procedures*" so that they can root out "conduct [that] is destructive of school order or of a proper educational environment." *T.L.O.*, 469 U.S. at 340 (emphasis added). Key to this exception is the Court's finding that the needs of teachers and administrators to uphold order and discipline justify relaxing the usual warrant requirement. *Vernonia*, 515 U.S. at 653 (citing *T.L.O.*, 469 U.S. at 340-41) (Rigid application of the warrant requirement "'would unduly interfere with the maintenance of the swift and informal disciplinary procedures [that are] needed,' and 'strict adherence to the requirement that searches be based upon probable cause' would undercut 'the substantial need of teachers and administrators for freedom to maintain order in the schools.'")

The application of the special needs doctrine to searches by school officials is inextricably intertwined with "the broad authority of school administrators over *student behavior, school safety, and the learning environment*." *In re Randy G.*, 28 P.3d 239, 241 (Cal. 2001) (emphasis added). This authority to consider student safety and well-being is

what drives the relaxed Fourth Amendment requirements rather than where the search or seizure occurs. Here, where the seizure of nine year old S.G. by non-school personnel was divorced from any effort to uphold order and discipline at S.G.'s school, the applicable strictures of the Fourth Amendment cannot be ignored.

Jones v. Hunt, 410 F.3d 1221, 1228 (10th Cir. 2005), aptly articulates this critical distinction. As here, *Jones* involved the two hour seizure of a child by a social worker and deputy sheriff concerning a custody and domestic violence dispute; there were no allegations that the child violated school rules or engaged in wrongdoing. *Id.* The Tenth Circuit held that the lower court erred when it "concluded that the relaxed Fourth Amendment standard announced in *T.L.O.* should apply to this case" simply because the seizure of the child "took place on public school property." *Id.* "Because the case before us does not involve efforts by school administrators to preserve order on school property, it does not implicate the policy concerns addressed in *T.L.O*," and therefore does "not merit application of the *T.L.O.* standard." *Id*. The Ninth Circuit properly applied the same analysis to this case.

2. The seizure and interrogation of S.G. was directly related to law enforcement purposes and thus does not qualify as a special needs search under this Court's jurisprudence.

The special needs exception also has been applied to certain searches and seizures where an important state-articulated need would otherwise be thwarted by application of traditional warrant/probable cause requirements. *Griffin v. Wisconsin*, 483 U.S. 868, 873 (1987) (A search unsupported by probable cause can be constitutional if it involves "special needs, beyond the normal need for law enforcement, [that] make the warrant and probable-cause requirement impracticable."). The governmental purpose must arise from a concrete issue or problem that is within the proper purview of the entity conducting the search. *Cf. Chandler*, 520 U.S. at 320 (mandatory drug testing of candidates running for state offices violated Fourth Amendment where there was no demonstration of drug abuse among elected officials or that "ordinary law enforcement methods would not suffice to apprehend such addicted individuals.") However, "extensive entanglement of law enforcement cannot be justified by reference to legitimate needs." *Ferguson v. City of Charleston*, 532 U.S 67, 84 n.20 (2001). Similarly, a "benign" motive cannot "justify a departure from Fourth Amendment protections, given the pervasive involvement of law enforcement" with a particular search or seizure. *Id.* at 85. Without these limiting parameters, most governmental functions and programs with important, legitimate goals could

routinely insulate themselves from Fourth Amendment requirements.

Moreover, "special needs" cases generally involve searches performed by state actors who are not law enforcement officials to further their agency's discrete goals and *not* for the purposes of detecting or investigating criminal activity. *See, e.g., Skinner v. Railway Labor Executives' Assn.,* 489 U.S. 602, 621 (1989) (drug testing of railroad employees constitutional as drug and alcohol use was related to increases in railway accidents and fatalities, and ensuring railway safety was important governmental interest); *Nat'l Treasury Employees Union v. Von Raab*, 489 U.S. 656, 666 (1989) (purposes of drug testing program "are to deter drug use among those eligible for promotion to sensitive positions within the [Customs] Service and to prevent the promotion of drug users to those positions. . . ."). The special needs exception has generally rested on either the lack of an association with law enforcement or restrictions on the use of the information obtained in the prosecution of a crime. *See Ferguson,* 532 U.S. at 79 (the "critical" marker of "a valid "special need" is that the objective is "divorced from the State's general interest in law enforcement.").

In the instant case, law enforcement played a central role in the seizure and questioning of S.G., and sought information in aid of prosecution of alleged criminal activity. As a consequence of the interrogation, S.G.'s father, already a suspect in the sexual abuse of another child, was rearrested and indicted for sexual assault of the other child and S.G. *Camreta*, 588 F.3d at 1016, 1018. In this key respect,

S.G.'s seizure is more analogous to the search in *Ferguson*, where the hospital's drug testing program for pregnant women, developed in concert with law enforcement officials, could result in criminal charges being filed against the women. *See Ferguson*, 532 U.S at 86 (drug testing scheme pervaded by a law enforcement purpose found to be unreasonable and not a special needs search). In contrast to the goals of the drug testing in *Earls*, *Von Raab*, and *Skinner*, "the central and indispensable feature of the [*Ferguson*] policy from its inception was the use of law enforcement to coerce the patients into substance abuse treatment," the threat of prosecution was "essential to the program's success, and "the immediate objective of the searches was to generate evidence for law enforcement purposes." *Id.* at 80, 82-83, 72.[5] Similarly, in the instant case, there was a direct law enforcement involvement and purpose in the seizure and interrogation of S.G., *Camreta,* 588 F.3d at 1027 n. 12, and a key objective of the state intrusion was to generate evidence to arrest and prosecute another individual.[6]

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[5] The mere presence of a law enforcement official in searches and seizures related to child abuse investigations can be *per se* coercive. *See, e.g., Calabretta v. Floyd,* 189 F. 3d 808, 813 (9th Cir. 1999) (police officer who did not play an active role in interrogation of child abuse suspect was present at request of child welfare agency to intimidate suspect to open door and allow entrance into home when such action was not supported by probable cause or a warrant.)

[6] Another key rationale for upholding certain special needs searches by non-law enforcement officers is their lack of familiarity with the legal requirements for warrants and probable cause. *See Skinner*, 489 U.S. at 623 ("Railroad supervisors, like school officials and hospital administrators are not in the business of investigating violations of the criminal laws or enforcing administrative codes, and otherwise have

While the investigation and prevention of child abuse is an important government responsibility, this legitimate state objective does not transform a seizure and interrogation of a nine year old child into a special needs case. As this Court has said, "the gravity of the threat alone cannot be dispositive of the questions concerning what means law enforcement officers may employ to pursue a given purpose." *Edmond*, 531 U.S. at 42. "Identifying the goal of protecting a child's welfare and removing him from an abusive home is easy; disentangling that goal from general law enforcement purposes is difficult." *Roe v. Tex. Dept. of Protective and Regulatory Servs.*, 299 F. 3d 395, 406-407 (5th Cir. 2002). Here the entanglement of law enforcement is pronounced; departure from the Fourth Amendment's warrant and probable cause requirements is not appropriate simply because it would make their job easier. The special needs exception cannot circumvent otherwise applicable mandates of the Fourth Amendment to law enforcement in the investigation of crimes. While any criminal investigation might be expedited by excusing fidelity to Fourth Amendment protections, where "ordinary law enforcement methods" would suffice to address the target problem, *see Chandler*, 520 U.S. at 320, even the most laudatory goal does not transform a search or seizure into a special needs

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little occasion to become familiar with the intricacies of this Court's Fourth Amendment jurisprudence.") (citing *T.L.O.*, 469 U.S. at 339-40 and *O'Connor v. Ortega,* 480 U.S. 709, 722 (1987)(plurality opinion). Obviously, the law enforcement officer involved in S.G.'s interrogation had such knowledge and expertise.

search. Petitioners offer no credible reason as to why the law enforcement official here could not obtain a warrant, or indeed why law enforcement had to be involved in S.G.'s interrogation at all.

3. Law enforcement officials lacked consent to seize and interrogate nine year old S.G.

Obtaining voluntary consent is another exception to the traditional warrant requirement. *Schneckloth v. Bustamonte*, 412 U.S. 218, 222 (1973); *Florida v. Royer*, 460 U.S. 491, 497 (1983); *see also U.S. v. Mendenhall*, 446 U.S. 544, 557-58 (applying *Schneckloth*'s voluntary consent standard to seizures). School officials may not consent on behalf of school children to seizures by law enforcement or other state investigative agents. Therefore, any implied consent on the part of the school in this case -- by retrieving S.G. from her classroom and escorting her to a room where she would be interrogated by non-school officials – does not satisfy Fourth Amendment requirements. A Fourth Amendment right is personal and the totality of the facts and circumstances must be examined to determine if lawful consent was provided for a seizure. Here, there was no attempt to obtain a rights waiver from S.G. or her mother prior to her custodial interrogation involving an armed, uniformed sheriff.

a. Under the totality of the circumstances, no lawful, voluntary consent was provided for S.G.'s seizure and interrogation.

In the context of Fourth Amendment searches and seizures, "the State has the burden of proving that the necessary consent was obtained and that it was freely and voluntarily given, a burden that is not satisfied by showing a mere submission to a claim of lawful authority." *Royer*, 460 U.S. at 497. A court must consider the totality of the circumstances to determine whether such a burden is satisfied. *Bustamonte,* 412 U.S. at 226; *Mendenhall*, 446 U.S. at 557. No valid, voluntary consent was given for S.G.'s seizure for an extended, traumatizing custodial interrogation. *Camreta*, 588 F.3d at 1030.

First, neither Petitioner made any attempt to seek express consent from S.G.'s mother, Sarah Greene, to allow for her seizure, removal from her classroom or questioning in a two-hour long interrogation session in the middle of her school day. *Greene v. Camreta* (*Greene I*), No. Civ. 05-6047-AA, 2006 WL 758547, at *1 (D. Or. March 23, 2006). Rather, the trial court expressly found that Camreta "did not seek or obtain parental consent for the interview." *Id.* Without ever contacting the Greenes, the state officials had a counselor at the elementary school remove S.G. from her class and place her in a small, unfamiliar office where Camreta and Sheriff Alford, who was armed and uniformed, questioned her at length in an effort to obtain incriminating information about her father. *Id.* Under the totality

of *these* circumstances, the Ninth Circuit was correct in its finding that no valid consent was given.

Although the Fourth Amendment right to privacy is generally personal, *see Alderman v. U.S.* , 394 U.S. 165, 174 (1968), since S.G. was only nine years old the Ninth Circuit correctly considered her mother's role in providing consent. When children are of such a "tender age," parental opinion on the question of a rights waiver is likely dispositive. *See, e.g., Dubbs v. Head Start,* 336 F.3d 1194 (10th Cir. 2003) (parental consent necessary under the Fourth Amendment for school official medical examination of pre-school age children); *Doe*, 327 F.3d at 499 (it is appropriate to look to the wishes of the parents for Fourth Amendment consent for elementary school age children); *Heck*, 299 F.3d at 407-08 (to conduct body cavity search of six year old girl, state "social worker must demonstrate probable cause and obtain a court order, obtain parental consent, or act under exigent circumstances").[7]

Moreover, while adult input into a child's decision to waive constitutional rights is generally seen as essential to voluntary, knowing, and intelligent choice, s*ee, e.g., Gallegos v. Colo.*, 370 U.S. 49, 53-54 (1962) (confession inadmissible where it

[7] Several factors may be evaluated in determining voluntariness of Fourth Amendment consent, including the person's youth and education and intelligence level, as well as whether the person was advised of their rights. *Bustamonte*, 412 U.S. at 226; *see also Mendenhall*, 446 U.S. at 557-58 (noting that the length of questioning, age, education level and gender may impact determinations of whether individual voluntarily consented to a seizure).

was obtained during five day period when 14-year-old detained child was not permitted to talk with his mother or an attorney), the record is also clear that neither Camreta nor Alford made any effort to obtain consent from S.G. S.G. was not told that she could refuse to participate in the interview, that she could confer with her mother, or that she had any rights at all. Instead, S.G. was physically ushered into a private office to talk with investigators. There she was repeatedly questioned behind closed doors by Camreta, who "[f]or over an hour, . . . kept asking [her] the same questions, just in different ways, trying to get [her] to change her answers." *Camreta*, 588 F.3d at 1017. The environment was so coercive that "[f]inally, [S.G.] just started saying yes to whatever he said," ultimately being released after the two hour ordeal. *Id.; see also Tarter v. Raybuck,* 742 F.2d 977 (6th Cir. 1984) (rejecting district court's finding that high school junior voluntarily consented to seizure and search at school because no indication child was ever made aware of his right to protest and "acquiesce[nce]…does not necessarily demonstrate the relinquishment of his rights"); *Hunt*, 410 F. 3d at 1226 (noting that circumstances needed to be viewed from the eyes of a reasonable 16-year old to determine if a seizure is consensual). Thus, even considering S.G.'s own interactions with the police investigative team and her "subjective understanding," no lawful, voluntary consent can be found in this case. *See Bustamonte,* 412 U.S. at 230.

b. School officials may not consent to a student's seizure and questioning by government officials conducting an investigation.

Schools have special duties and responsibilities for students in their care who have a lesser expectation of privacy within the institution's four walls. *Vernonia*, 515 U.S. 646 (1995). However, students are individuals who do not "shed their constitutional rights . . . at the schoolhouse gate." *Tinker v. DesMoines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969). Thus, this Court has carefully circumscribed the powers of school administrators over their students, prohibiting educators from taking actions inconsistent with their rights and those of their guardians. *See Washington v. Glucksberg*, 521 U.S. 702 (1997); *Santosky v. Kramer*, 455 U. S. 745, 753 (1982); *Wis. v. Yoder*, 406 U. S. 205, 232 (1972).

Given the conflicting roles held by school officials -- serving both as temporary caretakers for children as well as state agents -- this Court has rejected their ability to serve *in loco parentis* for Fourth Amendment purposes. *T.L.O.,* 469 U.S. 325, 336-37 (1985); *Vernonia,* 515 U.S. at 654-55; *Safford Unified Sch. Dist. 1 v. Redding,* 129 S. Ct. 2633, 2643 (2009) (majority implicitly declines to adopt Justice Thomas's call to return to the more robust common law understanding of *in loco parentis* for school officials by requiring that a search by a school official be reasonable at its inception and in its scope); *see also Picha v. Wielgos***,** 410 F. Supp. 1214 (N.D. Ill.

1976) ("it is evident that the *in loco parentis* authority of a school official cannot transcend constitutional rights"). The Court has never allowed schools to make unilateral decisions on behalf of students and their families regarding private, non-educational matters, including consenting to law enforcement seizures and custodial interrogations.

This case provides no basis for altering this long-held view. Adopting such a rule would open the door to arbitrary abdication to third parties of important fundamental rights ordinarily held by students and their parents. *See Tenenbaum v. Williams,* 193 F.3d 581, 594 n.9 (2d Cir. 1999) (granting schools the same abilities as parents *vis a vis* students would permit them to consent to their own infringements on the students' rights); *Horton v. Goose Creek Indep. Sch. Dist.,* 690 F.2d 470, 481 n.18 (5th Cir. 1982) (rejecting broad *in loco parentis* powers of school administrators whose "duties . . . are not always exercised with only the child who is being disciplined or searched in mind"). School officials should not, therefore, be permitted to consent to police access to youth in their limited care. *Tenenbaum,* 193 F.3d at 594 n.9 ("The handing over of a child from a public school teacher to another State official, then, is not the equivalent of the consent of the parents."); *see also Dubbs,* 336 F. 3d at 1207 (noting that if school had obtained parental consent to search the pre-school children, there would be no Fourth Amendment violation).

In addition, voluntariness is the touchstone for consent in Fourth Amendment case law. *Schneckloth,* 412 U.S. at 222; *Mendenhall*, 446 U.S.

at 558; *see also Royer*, 460 U.S. at 497 ("the State has the burden of proving that the necessary consent was obtained and that it was freely and voluntarily given, a burden that is not satisfied by showing a mere submission to a claim of lawful authority"). The compulsory nature of our education system, therefore, further prohibits expansion of an *in loco parentis* rule that would allow school officials to consent to seizure of school children by outside agents. Children are required to attend school. *See Ingraham v. Wright*, 430 U.S. 651, 660 n.14 (1977) (noting that compulsory school attendance laws have been in force in all states since 1918). If they do not, they face the prospect of prosecution in our juvenile court system. *See* Dean Hill Rivkin, *Truancy Prosecutions and the Right [to] Education*, Duke Forum for L. & Soc. Change (forthcoming Spring 2011). Their movements within school are highly restricted. *See Bend-La Pine Sch. Dist. Policy on Student Conduct and Discipline* (Jan 8, 2007), *http://www.bend.k12.or.us/education/components/docmgr/default.php?sectiondetailid=747&fileitem=1149&catfilter=146&PHPSESSID=2a3ee96e596f0ddcdc3baadcbfb9cadc* (warning students that "disobedience" or "defiance" on school grounds may result in discipline). Their parents may face separate allegations for educational neglect. *See, e.g., In re Jamol F.*, 24 Misc. 3d 772 (N.Y. Fam. Ct. 2009). To ensure that voluntariness remains key under the Fourth Amendment, school officials may not unilaterally require that students forced to attend their schools must also meet with state investigators at the school's discretion. *See Horton,* 690 F.2d at 481 ("in a compulsory education system . . . the parent does not voluntarily yield his authority over

the child to the school, so the concept of delegated authority is of little use."). A rule to the contrary would gut decades of Fourth Amendment voluntariness jurisprudence. *Schneckloth, supra.*

4. No exigent circumstances justified S.G.'s seizure and interrogation.

The warrant and probable requirements may be waived in certain situations where exigent circumstances make it impracticable to obtain a warrant: "The Fourth Amendment does not require police officers to delay in the course of an investigation if to do so would gravely endanger their lives or the lives of others." *Warden Md. Penitentiary v. Hayden,* 387 U.S. 294, 298-99 (1967). Petitioners have failed to present any facts to support their contention that obtaining a warrant would have caused injury to S.G. or any other person.

Exigent circumstances may exist in circumstances where there is probable cause to arrest and at least one of three conditions exist: (1) pursuit of a fleeing suspect ("hot pursuit" exception);[8] (2) the immediate risk of the destruction of evidence;[9]

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[8] *See, e.g., Warden*, 387 U.S. at 298 (exigent circumstances justified warrantless entry into dwelling and search for suspect who was seen entering the dwelling minutes after a reported robbery); *U.S. v. Santana*, 427 U.S. 38, 42-43 (1976) (exigent circumstances when law enforcement was in pursuit of a fleeing felon).

[9] *Cupp v. Murphy*, 412 U.S. 291, 294-96 (1973) (exigent circumstances justified warrantless search of fingernails for skin, blood cells, and fabric because police had probable cause to arrest and feared destruction of evidence); *see also Schmerber v. Cal.*, 384 U.S. 757, 761-77 (1966) (exigent circumstances

and (3) where the safety of law enforcement or the public is immediately threatened.[10] As with all exceptions to the warrant requirement, these categories are narrow and exacting. No exigent circumstances justified the warrantless seizure and interrogation of S.G. S.G. was neither suspected of wrongdoing herself nor in flight and, therefore, no "hot pursuit" exception applied in this case. S.G.'s whereabouts were known to the child welfare agency and there was no indication that her parents were blocking access to S.G. Moreover, there was no imminent risk of destruction of evidence; indeed, S.G. was not even searched to preserve any physical evidence that might degrade with time. Finally, S.G.'s warrantless seizure was not necessitated by an imminent threat of harm to S.G. or law enforcement. S.G. was seized and interrogated *three days after* petitioners learned of her father's release from jail. Moreover, S.G. was not taken into custody following the interrogation and was in fact allowed to return home even when there was evidence that her father may be in contact with S.G. If there had been a fear of imminent danger, state officials would surely have acted differently.

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justified warrantless seizure of blood sample to test alcohol level because police had probable cause to arrest and feared destruction of evidence by dissipation of alcohol in blood).

[10] *Mich. v. Tyler*, 436 U.S. 499 (1978)(exigent circumstances justified warrantless entry to home to fight and investigate a fire); *Brigham City, Utah v. Stuart*, 547 U.S. 398, 403 (2006)(exigent circumstances existed to enter a home without a warrant where an occupant was at risk of imminent injury).

C. The Reasonableness Test Applied by this Court in *Illinois v. Lidster* Cannot Be Applied to The Targeted Two Hour Seizure of S.G.

Petitioners urge the Court to apply the reasonableness test in *Illinois v. Lidster*, 540 U.S. 419 (2004) to the instant seizure to evade their Fourth Amendment obligations. This analogy fails.

Lidster involved "a highway checkpoint where police stopped motorists to ask them for information about a recent hit-and-run accident." *Lidster*, 540 U.S. at 421. All cars traveling past the checkpoint were stopped "for 10 to 15 seconds" and asked if they had seen anything related to the traffic accident the prior week and handed a flyer, requesting help in identifying the driver of the car who killed the victim. *Id*. As a "brief…information seeking stop," not targeted at any particular individual, and seeking only "voluntary cooperation," the Court held that this type of checkpoint stop was not per se unconstitutional, and that weighing its reasonableness would sufficiently ensure compliance with the Fourth Amendment. *Id.* at 425-26.

Lidster follows the reasoning of *Terry v. Ohio*, 392 U.S. 1 (1968), where the Court held that very brief and limited intrusions by police officers trigger a reasonableness analysis rather than a strict probable cause or warrant requirement. *See also United States v. Place*, 462 U.S. 696, 708 (1983); *Dunaway v. New York*, 442 U.S. 200, 210 (1979) (*Terry* "defined a special category of Fourth Amendment *'seizures' so substantially less intrusive*

than arrests that the general rule requiring probable cause to make Fourth Amendment 'seizures' reasonable could be replaced by a balancing test.") (emphasis added). However, the *Terry* exception is narrow. "*Terry* and its progeny nevertheless created only limited exceptions to the general rule that seizures of the person require probable cause to arrest. Detentions may be 'investigative' yet violative of the Fourth Amendment absent probable cause." *Royer,* 460 U.S. at 499. In addition, "an investigative detention must be temporary and last no longer than is necessary to effectuate the purpose of the stop." *Id*. at 500. Because S.G.'s seizure and subsequent questioning lasted well beyond "a temporary stop," a warrant or probable cause for the seizure of S.G. was required.

Indeed, the seizure and questioning of S.G. bear none of the indicia of the brief information-gathering stop in *Lidster,* nor can it seriously be characterized as a "seizure so substantially less intrusive than arrest," *Dunaway*, 442 U.S. at 210, as seen in the *Terry* line of cases. While Camreta contends that S.G. was a potential witness rather than a crime suspect, this fact alone does not justify the application of *Lidster's* reasonableness test. Nothing in the text or interpretation of the Fourth Amendment suggests this narrowing principle. *See* 4 Wayne R. LaFave, Search & Seizure § 9.2 (4th ed. 2010). A closed door two hour questioning of a nine year old child by a social worker in the presence of a visibly armed law enforcement officer about the most private and intimate aspects of her family life can hardly be compared to a voluntary, 10-15 second checkpoint stop. This Court's Fourth Amendment

jurisprudence mandates that law enforcement have a warrant or probable cause to justify a seizure of such magnitude.

D. Even If The Court Categorizes The Seizure Of S.G. As A Special Needs Seizure Or A Limited Stop, The Seizure Was Neither Justified At Its Inception Nor Reasonable In Its Scope

Under either the special needs or investigatory stop exceptions to the Fourth Amendment warrant requirements, the Court must still consider whether the state action was reasonable, balancing the individual's privacy expectations against the government's interests. *Von Raab*, 489 U.S. at 665-666. As this Court has held, "[d]etermining the reasonableness of any search involves a twofold inquiry: first, one must consider 'whether the ... action was justified at its inception,' second, one must determine whether the search as actually conducted 'was reasonably related in scope to the circumstances which justified the interference in the first place.'" *T.L.O.*, 469 U.S. at 341 (quoting *Terry*, 392 U.S. at 20). Applying this test, S.G.'s seizure was unreasonable.

In *T.L.O.,* where the special needs search exception was applied, the Court weighed whether the search properly balanced "the schoolchild's legitimate expectations of privacy and the school's equally legitimate need to maintain an environment in which learning can take place[.]" *Id*.at 340. The Court explained that "a search of a student by a teacher or other school official will be 'justified at its

inception' when there are reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school." *Id.* at 341-42. In this case, there were no allegations that S.G. had engaged in any wrongdoing or broken any school rules.

Even if this Court characterizes S.G.'s seizure as an investigatory seizure of a witness or victim of a crime, it was no less unjustified. As this Court found in *Lidster*, the motorist stops were reasonable because they a) merely sought general information from possible witnesses to a crime (rather than targeting a suspect), b) were brief in time, and c) were minimally intrusive and unlikely to provoke anxiety. *Lidster*, 540 U.S. at 424-26. In contrast, S.G.'s seizure was an intrusion targeted solely at S.G. for purposes which included collecting evidence of criminal activity by S.G.'s father. At the outset, Petitioners knew that the seizure would entail an intimidating and likely traumatic questioning of a nine year old child who was herself not suspected of any wrongdoing. S.G.'s seizure was not reasonable at its inception.

Nor was S.G.'s seizure and interrogation reasonable in its scope.[11]

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[11] As this Court noted in *Lidster,* the stops were a "brief wait in line -- a very few minutes at most. Contact with the police lasted only a few seconds." *Lidster*, 540 U.S. at 427. In contrast, S.G. was seized and questioned for two hours. While the Court has been reluctant to set a maximum time for a permissible stop, it is clear that a two hour seizure exceeds what is lawful. *See Place* 462 U.S. at 709-10 ("[A]lthough we decline to adopt any outside time limitation for a permissible

"[A] search will be permissible in its scope when the measures adopted are reasonably related to the objectives of the search and not excessively intrusive in light of the age and sex of the student and the nature of the infraction." *T.L.O.*, 469 U.S. at 341-42. In *Lidster* the interaction between police and the motorists was an exceptionally brief stop entailing nothing more than "a request for information and the distribution of a flyer." *Lidster*, 540 U.S. at 428. Rather than lasting 10-15 seconds, S.G.'s seizure stretched to two hours and was conducted in such a way as to cause unnecessary anxiety to S.G. Confining S.G. in a closed room with only the social worker and an armed law enforcement officer for approximately two hours, with no parent or other supportive adult present, hardly compares to the voluntary motorist stop in *Lidster*. Also unlike the *Lidster* stops, S.G.s seizure and questioning was likely to, and did, "provoke anxiety [and prove] intrusive." *Lidster*, 540 U.S. at 425. It was not "minimally intrusive of the individual's Fourth Amendment interests…" and therefore cannot be justified on less than probable cause or a warrant. *Place,* 462 US. at 703.

Petitioners and their *Amici* also argue that in assessing the reasonableness of S.G.'s seizure, the Court must balance a child's right to be safe with a child's right to familial relationships. *See, e.g.,* Brief for Cal. State Ass'n of Counties at 23-25. While children surely have a right to be safe, there was no

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Terry stop, we have never approved a seizure of the person for the prolonged 90-minute period involved here.")

urgent safety need here. Thus, any so-called safety concern is outweighed by other important interests at stake. Certainly, a child's right to be free from unfettered state intrusion into their daily lives is an equally if not more compelling value. In holding that a police officer's warrantless body inspection of a toddler who was a suspected abuse victim violated the Fourth Amendment, the Tenth Circuit pointed out that there are other important interests at stake in such seizures:

> [w]e must observe our judgment does not overlook or minimize the serious problems of child abuse and neglect and the emotionally charged arena in which they arise. Neither do we depreciate the defendant's expressed concern for the child nor doubt the sincerity of that concern. However, we must be sensitive to the fact that society's interest in the protection of children is, indeed, multifaceted, composed not only with concerns about the safety and welfare of children from the community's point of view, but also with the *child's psychological well-being, autonomy, and relationship to the family or caretaker setting*.

Franz v. Lytle, 997 F.2d 784, 792-93 (10th Cir. 1993) (citations omitted) (emphasis added). When viewed in light of *all* the interests that a child has, including his/her psychological well-being, autonomy, and family relations, in light of the specific facts of this case, S.G.'s seizure must be found unreasonable.

CONCLUSION

Law enforcement officials may not enter schools and, along with child protection workers, remove children from their classrooms for questioning without some outside check on that authority. The Fourth Amendment provides that check, proscribing such state action in the absence of a warrant or the establishment of one of the narrowly delineated exceptions to the warrant requirement. Because none of the exceptions to the strictures of the Fourth Amendment can be met here, *Amici* respectfully request that this Court affirm the Ninth Circuit's holding.

Respectfully submitted,

Marsha Levick*
**Counsel of Record*
Jennifer Pokempner
Lourdes Rosado
Juvenile Law Center
1315 Walnut St., Suite 400
Philadelphia, PA 19107
215-625-0551
mlevick@jlc.org

Mae C. Quinn
Civil Justice Clinic
Washington University in
St. Louis School of Law
One Brookings Drive
St. Louis, MO 63130
314-935-6088
mquinn@wulaw.wustl.edu

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Appendix A

Table of Contents

Appendix A

Collected Statements of Interest

Organizations

The **Center for Children's Advocacy (CCA)** is a non-profit organization based at the University of Connecticut Law School and is dedicated to the promotion and protection of the legal rights of poor children. The children represented by CCA are dependent on a variety of Connecticut state systems, including judicial, health, child welfare, mental health, education and juvenile justice. CCA engages in systemic advocacy focusing on important legal issues that affect a large number of children, helping to improve conditions for abused and neglected children in the state's welfare system as well as in the juvenile justice system. CCA works to ensure that children's voices are heard and that children are afforded legal protections everywhere – community, foster placements, educational institutions, justice system and child welfare.

The **Center on Children and Families** (CCF) at Fredric G. Levin College of Law is based at University of Florida, the state's flagship university. CCF's mission is to promote the highest quality teaching, research and advocacy for children and their families. CCF's directors and associate directors are experts in children's law, constitutional law, criminal law, family law, and juvenile justice, as

well as related areas such as psychology and psychiatry. CCF supports interdisciplinary research in areas of importance to children, youth and families, and promotes child-centered, evidence-based policies and practices in dependency and juvenile justice systems. Its faculty has many decades of experience in advocacy for children and youth in a variety of settings, including the Virgil Hawkins Civil Clinic and Gator TeamChild juvenile law clinic.

Mae C. Quinn is a Professor of Law at Washington University School of Law, where she co-directs its **Civil Justice Clinic (CJC).** Upon joining the Washington University faculty in 2009, she helped establish the CJC's Youth and Family Advocacy Project. Through this new Project, students provide direct representation to youth and families in a variety of legal proceedings, focusing in particular on Juvenile Court matters in the St. Louis region. Approaching such work holistically, CJC's representation extends beyond the confines and conclusion of individual legal cases, extending to educational and other forms of advocacy, both for clients in the community and placed with Missouri's Division of Youth Services. Prior to teaching at Washington University, Professor Quinn was an Associate Professor at the University of Tennessee School of Law, where her classroom and clinical teaching focused on juvenile and criminal law. Former Chair of the Tennessee Association of

Criminal Defense Lawyers' Juvenile Justice Committee, Quinn helped build and share juvenile defense expertise across that state by planning trainings and serving on the faculty of its continuing legal education programs. Her prior experience also includes practicing for several years as New York City Public Defender and serving as an E. Barrett Prettyman Fellow with Georgetown University's Criminal Justice Clinic. On the international front, Quinn has traveled to Honduras as a Fulbright grant recipient teach clinical law faculty and students about United States juvenile and criminal defense advocacy practices. Holding an LL.M. from Georgetown University Law Center, a J.D. from the University of Texas School of Law, and a B.A. from SUNY-Albany, Quinn has written extensively about legal and ethical issues facing indigent defense counsel, criminal court and juvenile justice practices, and the problem-solving court movement.

The **Education Law Center - PA** is a public-interest organization dedicated to ensuring that all Pennsylvania children have access to a quality public education. Founded in 1975, ELC-PA focuses primarily on the needs of poor children, children in the child welfare or juvenile justice system, children with disabilities, English language learners, and others who are often at a disadvantage in the public education system. ELC-PA has worked to improve the quality of public education for Pennsylvania students through the provision of

advice, training, publications, technical assistance to attorneys and advocates, and representation of families in the courts and before administrative and legislative bodies. As advocates for students in the public school system, ELC-PA seeks to participate as amicus curiae in this case to prevent inappropriate custodial interrogations in schools in violation of the Fourth Amendment.

Juvenile Law Center, founded in 1975, is the oldest multi-issue public interest law firm for children in the United States. Juvenile Law Center advocates on behalf of youth in the child welfare and criminal and juvenile justice systems to promote fairness, prevent harm, and ensure access to appropriate services. Recognizing the critical developmental differences between youth and adults, Juvenile Law Center works to ensure that the child welfare, juvenile justice, and other public systems provide vulnerable children with the protection and services they need to become healthy and productive adults.

JLC employs multiple strategies on behalf of vulnerable children. We have represented children in child abuse and neglect proceedings in Philadelphia for the last 35 years. We routinely conduct trainings for child-serving professionals -- including but not limited to health care practitioners, social workers, case managers, family planning providers, juvenile justice staff and school-based professionals -- on the legal reporting requirements for child abuse and neglect in Pennsylvania. And our publication, *Child Abuse and the Law*, which is now

in its seventh edition, is the leading comprehensive manual on Pennsylvania abuse reporting requirements—it has been circulated to tens of thousands of child-serving professionals, attorneys, and judges since its first publication in 1977. Juvenile Law Center has been, is, and always will be committed to protecting children from all forms of abuse.

Juvenile Law Center participates as *amicus curiae* in state and federal courts throughout the country, including the United States Supreme Court, in cases addressing the rights and interests of children. Juvenile Law Center writes as *amicus curiae* in this case to urge the Court to continue to recognize the important constitutional guarantees that protect children's liberty interests, in particular when they come into contact with law enforcement officials as well as at all stages of juvenile court proceedings and in all proceedings affecting their liberty interests.

The **Juvenile Rights Project (JRP)** is Oregon's leading champion for children and youth in the courtroom and the community. JRP attorneys are appointed by the juvenile court to represent approximately 1,700 children per year in delinquency, dependency, and termination of parental rights cases at the trial and appellate level. In addition to court-appointed representation, JRP advocates for children in a variety of other ways. After identifying system-wide problems, JRP works with partners throughout Oregon to implement policy-level solutions. JRP provides information, individual class representation, administrative and

legislative advocacy, technical assistance and training throughout the state. JRP understands both the importance of a zealous advocate for children and youth and the importance of allowing children and youth access to the courts to cure state violations of their rights.

The **National Juvenile Defender Center** was created to ensure excellence in juvenile defense and promote justice for all children. The National Juvenile Defender Center responds to the critical need to build the capacity of the juvenile defense bar in order to improve access to counsel and quality of representation for children in the justice system. The National Juvenile Defender Center gives juvenile defense attorneys a more permanent capacity to address important practice and policy issues, improve advocacy skills, build partnerships, exchange information, and participate in the national debate over juvenile justice.

The National Juvenile Defender Center provides support to public defenders, appointed counsel, child advocates, law school clinical programs and non-profit law centers to ensure quality representation and justice for youth in urban, suburban, rural and tribal areas. The National Juvenile Defender Center also offers a wide range of integrated services to juvenile defenders and advocates, including training, technical assistance, advocacy, networking, collaboration, capacity building and coordination.

Individuals

Tamar Birckhead is an assistant professor of law at the University of North Carolina at Chapel Hill where she teaches the Juvenile Justice Clinic and the criminal lawyering process. Her research interests focus on issues related to juvenile justice policy and reform, criminal law and procedure, and indigent criminal defense. Licensed to practice in North Carolina, New York and Massachusetts, Professor Birckhead has been a frequent lecturer at continuing legal education programs across the United States as well as a faculty member at the Trial Advocacy Workshop at Harvard Law School. She is vice president of the board for the North Carolina Center on Actual Innocence and has been appointed to the executive council of the Juvenile Justice and Children's Rights Section of the North Carolina Bar Association. Professor Birckhead received her B.A. degree in English literature with honors from Yale University and her J.D. with honors from Harvard Law School, where she served as Recent Developments Editor of the Harvard Women's Law Journal. She regularly consults on matters within the scope of her scholarly expertise, including issues related to juvenile justice policy and reform, criminal law and procedure, indigent criminal defense, and clinical legal education. She is frequently asked to assist litigants, advocates, and scholars with amicus briefs, policy papers, and expert

testimony, as well as specific questions relating to juvenile court and delinquency.

Professor Kristin Henning joined the faculty of the Georgetown Law Center in 1995 as a Stuart-Stiller Fellow in the Criminal and Juvenile Justice Clinics. As a Fellow she represented adults and children in the D.C. Superior Court, while supervising law students in the Juvenile Justice Clinic. In 1997, Professor Henning joined the staff of the Public Defender Service (PDS) for the District of Columbia where she continued to represent clients and helped to organize a Juvenile Unit designed to meet the multi-disciplinary needs of children in the juvenile justice system. Professor Henning served as Lead Attorney for the Juvenile Unit from 1998 until she left the Public Defender Service to return to Georgetown in 2001. As lead attorney, she represented juveniles in serious cases, supervised and trained new PDS attorneys, and coordinated and conducted training for court-appointed attorneys representing juveniles.

Professor Henning has been active in local, regional and national juvenile justice reform, serving on the Board of the Mid-Atlantic Juvenile Defender Center, the D.C. Department of Youth Rehabilitation Services Advisory Board and Oversight Committee, and on local D.C. Superior Court committees such as the Delinquency Working Group and the Family Court Training Committee. She has published a

number of law review articles on the role of child's counsel, the role of parents in delinquency cases, confidentiality in juvenile courts, and therapeutic jurisprudence in the juvenile justice system. She is also a lead contributor to the *Juvenile Law and Practice* chapter of the District of Columbia Bar Practice Manual and has participated as an investigator in eight state assessments of the access to counsel and quality of representation for juveniles.

Kris Henning received her undergraduate degree from Duke University, a J.D. from Yale Law School in 1995, and an LL.M. degree from Georgetown University Law Center in 2002. In 2005, Kris was selected as a Fellow in the Emerging Leaders Program of the Duke University Terry Sanford Institute of Public Policy and the Graduate School of Business at the University of Cape Town, South Africa. Professor Henning also traveled to Liberia in 2006 and 2007 to aid the country in juvenile justice reform and was awarded the 2008 Shanara Gilbert Award by the Clinical Section of the Association of American Law Schools in May for her commitment to social justice, service to the cause of clinical legal education, and an interest in international clinical legal education.

Barry Krisberg is currently the Research and Policy Director of the Chief Justice Earl Warren Institute on Law and Social Policy at the University of California, Berkeley Law School. He is also a

Lecturer in Residence at in the Juris Doctor Program at Berkeley Law and was recently a Visiting Scholar at John Jay College in New York City.

He is known nationally for his research and expertise on juvenile justice issues and is often called upon as a resource for professionals, foundations, and the media.

Dr. Krisberg received his master's degree in criminology and a doctorate in sociology, both from the University of Pennsylvania.

Dr. Krisberg was appointed by the legislature to serve on the California Blue Ribbon Commission on Inmate Population Management. He has served on almost all major statewide task forces on CA corrections issues over the past 20 years. He is past president and fellow of the Western Society of Criminology and was the Chair of the California Attorney General's Research Advisory Committee.

In 1993 he was the recipient of the August Vollmer Award, the American Society of Criminology's most prestigious award. The Jessie Ball duPont Fund named him the 1999 Grantee of the Year for his outstanding commitment and expertise in the area of juvenile justice and delinquency prevention. In 2009, He received special recognition by the Annie E. Casey Foundation for his contributions to the Juvenile Detention Alternatives Initiative.

Dr. Krisberg was appointed to chair an Expert Panel to investigate the conditions in the California youth prisons. In 2004, he was named in a consent decree to help develop remedial plans and to monitor many of the mandated reforms in the California Division of Juvenile Justice. He has also assisted the Special Litigation Branch of the USDOJ on CRIPA investigations. He has been retained by the New York State Office of Children and Family Services to assist in juvenile justice reforms.

Wallace Mlyniec is the former Associate Dean of Clinical Education and Public Service Programs, and currently the Lupo-Ricci Professor of Clinical Legal Studies, and Director of the Juvenile Justice Clinic at Georgetown University Law Center. He teaches courses in family law and children's rights and assists with the training of criminal defense and juvenile defense fellows in the Prettyman Legal Internship Program. He is the author of numerous books and articles concerning criminal law and the law relating to children and families. Wallace Mlyniec received a Bicentennial Fellowship from the Swedish government of study their child welfare system, the Stuart Stiller Award for public service, and the William Pincus award for contributions to clinical education. He holds his B.S. from Northwestern University and his J.D. from Georgetown University. He is the Vice Chair of the Board of Directors of the National Juvenile Defender

Center and former chair of the American Bar Association Juvenile Justice Committee.