

No. 12-215

IN THE
Supreme Court of the United States

CITY OF NEW YORK, NEW YORK, ET AL.,
Petitioners,

v.

SONNY SOUTHERLAND, SR., ET AL.,
Respondents.

On Petition for a Writ of Certiorari to the United
States Court of Appeals for the Second Circuit

**MOTION FOR LEAVE TO FILE BRIEF AS *AMICI*
CURIAE AND BRIEF FOR THE NATIONAL
ASSOCIATION OF SOCIAL WORKERS AND THE
NEW YORK PUBLIC WELFARE ASSOCIATION
AS *AMICI CURIAE* IN SUPPORT OF
PETITIONERS**

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September 17, 2012

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**Motion for Leave to File Brief as
Amici Curiae in Support of Petitioners**

Pursuant to Rule 37.2(b) of the Rules of this Court, the National Association of Social Workers and the New York Public Welfare Association respectfully move this Court for leave to file the attached brief as *amici curiae* in support of the petition for a writ of certiorari to review the judgment of the Court Appeals for the Second Circuit in *Southerland v. City of New York*, 680 F.3d 127 (2011).

Pursuant to Rule 37.1, all parties were timely notified of the intent of *amici* to file the attached brief. Petitioner and Respondents Venus Southerland; Sonny B. Southerland, Jr.; Nathaniel Southerland; Emmanuel Felix; Kiam Felix; and Elizabeth Felix consented to the filing of this brief. Letters and e-mails documenting written consent to

this filing from the Petitioner and Respondents Venus Southerland; Sonny B. Southerland, Jr.; Nathaniel Southerland; Emmanuel Felix; Kiam Felix; and Elizabeth Felix have been filed with the Clerk of Court. Respondent Sonny B. Southerland, Sr., proceeding *pro se*, did not consent to the filing of this brief.

The Second Circuit's decision expands liability under 42 U.S.C. § 1983 for caseworkers investigating reports of possible child abuse and neglect by permitting adjudicated abusers and their victims to pursue claims for money damages. This holding has significant consequences for *amici*, who represent child welfare social workers, caseworkers, and municipal social service providers, and advocate for effective protection of at-risk children. *Amici's* members are responsible for hundreds of thousands of investigations annually to ensure the welfare of children. *Amici* have a direct and unique interest in ensuring that § 1983 is not expanded to permit caseworker liability to adjudicated abusers and their victims, thereby putting millions of children at risk.

Accordingly, we respectfully request that the Court grant this motion for leave to file this brief as *amici curiae*.

Respectfully submitted,

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INTEREST OF THE *AMICI CURIAE*

The National Association of Social Workers (“NASW”) and the New York Public Welfare Association (“NYPWA”) respectfully submit this brief as *amici curiae* in support of Petitioners the City of New York and Timothy Woo.¹ Even though five judges of the Second Circuit found that Mr. Woo acted reasonably and his actions were entitled to qualified immunity, and Chief Judge Jacobs stated that he “would shake [Mr. Woo’s] hand” for the work he did to prevent child abuse, the Second Circuit’s panel decision nevertheless permits an adjudicated abuser and his victims to sue Mr. Woo for money damages under 42 U.S.C. § 1983 (2006). The NASW and the NYPWA are troubled by this expansion of § 1983 liability and the denial of qualified immunity to a caseworker who “acted as (one hopes) any dutiful child welfare worker in his position would have done.” *Southerland v. City of New York*, 681 F.3d 122, 138-39 (2d Cir. 2012) (Jacobs, C.J., dissenting).

¹ Pursuant to Supreme Court Rule 37.6, *amici curiae* aver that no counsel for any party authored this brief in whole or in part, and no entity or person, other than *amici*, their members, and their counsel, contributed financially towards the preparation and submission of this brief. Letters on file with the Clerk’s office document consent to the filing of this brief by the Petitioners and Respondents Venus Southerland; Sonny B. Southerland, Jr.; Nathaniel Southerland; Emmanuel Felix; Kiam Felix; and Elizabeth Felix. Respondent Sonny B. Southerland, Sr., proceeding *pro se*, did not consent to the filing of this brief.

Amicus NASW is the largest professional membership organization of social workers in the world, representing nearly 145,000 social workers, with chapters located not only in all fifty states, the District of Columbia, the Virgin Islands, Guam, and Puerto Rico, but also internationally. The New York State and the New York City chapters of NASW together have 19,119 members. Since its inception in 1955, NASW has worked to develop and maintain high standards of professional practice, to advance sound social work policies, and to strengthen and unify the social work profession. Its activities in furtherance of these goals include promulgating professional standards, enforcing the *NASW Code of Ethics*, conducting research and publishing materials relevant to the profession, and providing continuing education. The NASW has a direct interest in protecting social workers from expanded liability under § 1983, as well as children who may suffer from reduced child protective efforts in the field if the Second Circuit's decision is allowed to stand.

Founded in 1869, *amicus* NYPWA is the oldest public welfare association in the United States and represents all 58 local social services districts in the state of New York, including New York City.² NYPWA has a direct interest in ensuring that child maltreatment investigations are performed efficiently and competently so that children in New

² Unlike in most states, social services in New York State, including child welfare issues, are administered at the county level by county social services districts.

York are protected. NYPWA also has a direct interest in protecting social services employees in New York from the threat of improper lawsuits.

If the Second Circuit's expansion of liability under § 1983 is allowed to stand, the members of NASW and employees of NYPWA's members will be directly affected in their daily work of protecting children from abuse. Every year, child protection caseworkers collectively receive an estimated 3.3 million notifications of suspected child maltreatment involving approximately 5.9 million children across the country. U.S. Dep't of Health & Human Servs., Admin. on Children, Youth and Families, *Child Maltreatment 2010 viii* (2010), *available at* <http://www.acf.hhs.gov/programs/cb/pubs/cm10/>.

The keys to determining whether a child is being abused or neglected include a face-to-face meeting between a professional caseworker and the child and an assessment of the child's home environment. In New York, caseworkers spend almost one million hours annually interviewing children, making home assessments, and taking action in cases where a child is at risk. New York State Office of Children & Family Services, *New York State Child Welfare Workload Study 4-15* (2006). Additional impediments that restrict the evaluation of a child's situation weaken a caseworker's ability to protect that child from abuse and neglect.

Even when a caseworker makes a reasonable effort to follow the procedures dictated by statute, regulation, and policy, as Mr. Woo did here, the Second Circuit's ruling would expose that caseworker to personal liability from an adjudicated abuser and the very victims the caseworker has

protected from further abuse. This potential liability not only risks making a caseworker second-guess decisions where only prompt action can prevent further abuse, but also will create barriers to the hiring and retention of caseworkers by government entities.

The NASW and the NYPWA submit this brief as *amici curiae* in support of Petitioners the City of New York and Timothy Woo, and respectfully request that this Court provide caseworkers the opportunity to protect at-risk children in line with federal and state statutes without the fear of personal liability to adjudicated abusers and their victims.

SUMMARY OF ARGUMENT

The Second Circuit's expansion of liability under § 1983 opens the courtroom doors to federal lawsuits by adjudicated abusers and abused children against caseworkers who discover and prevent abuse. Under the Second Circuit's opinion, adjudicated abusers and abused children will be able to seek money damages from caseworkers because child abuse was discovered too soon. The Supreme Court should clarify that adjudicated abusers and their victims cannot assert § 1983 claims against caseworkers who investigate reported abuse at a child's registered address, and whose efforts discover and put an end to child abuse occurring there.³

³ *Amici* adopt in full Petitioners' argument that the New York Family Court's adjudication that Mr. Southerland abused his children should foreclose any claims by Mr. Southerland or his children based on the children's removal from

Furthermore, this Court should clarify that questions of qualified immunity should ordinarily be resolved by judges early in the litigation process and, in the absence of a showing of bad faith sufficient to overcome the presumption of a caseworker's good faith, caseworkers should not face the prospect of jury trials of § 1983 claims.

The Second Circuit's decision, combined with Supreme Court precedent, creates a perverse incentive structure for caseworkers to err on the side of permitting abuse to continue. Since a caseworker cannot face § 1983 liability for a *failure* to act, *DeShaney v. Winnebago Cnty. Dep't of Soc. Servs.*, 489 U.S. 189 (1989), the Second Circuit's ruling means that failing to act to protect a child is a safer course of action for a caseworker than actually protecting a child from abuse, which may lead to liability to the abuser or victims. This result frustrates the express federal policy of protecting children from abuse. *See* 42 U.S.C. § 5101(9) (2010) (“[S]ubstantial reductions in the prevalence and incidence of child abuse and neglect and the alleviation of its consequences are matters of the highest national priority.”).

Qualified immunity is critical to states' ability to implement the child protection structure envisioned by the federal Child Abuse Prevention and Treatment Act (“CAPTA”). 42 U.S.C. § 5101 *et seq* (2010). In 2010, when CAPTA was most recently

Mr. Southerland's custody. *See* Petition for Writ of *Certiorari*, *City of New York, et al., v. Sonny Southerland, Sr., et al.*, 19-24 (Aug. 15, 2012) (No. 12-215).

reauthorized and amended, Congress found that child abuse is a national epidemic, afflicting hundreds of thousands of victims annually. CAPTA Reauthorization Act of 2010, Pub. L. No. 111-320 (2010). In 2010 (the latest year for which the U.S. Department of Health and Human Services has published statistics), an estimated 695,000 children were victims of maltreatment. Child Maltreatment 2010 at 22.⁴ Seeking a “comprehensive approach” to

⁴ An estimated 1,560 children died due to abuse and neglect in 2010. Child Maltreatment 2010 at x. In New York in 2010, there were 170,224 reports of abuse and neglect involving 223,340 children. Of these reports, abuse or neglect was indicated in 51,701 cases involving 79,668 children. New York Statistics Statewide (2010), *available at* <http://www.preventchildabuseny.org/resources/about-child-abuse/facts-and-statistics/>. Of this population of abused children in New York, 114 children died as a result of abuse or neglect. *Id.* Survivors of child abuse experience life-long impairments, with corresponding social costs:

Child abuse and neglect have known detrimental effects on the physical, psychological, cognitive, and behavioral development of children. These consequences range from minor to severe and include physical injuries, brain damage, chronic low self-esteem, problems with bonding and forming relationships, developmental delays, learning disorders, and aggressive behavior. Clinical conditions associated with abuse and neglect include depression, post-traumatic stress disorder, and conduct disorders. Beyond the trauma inflicted on individual children, child maltreatment also has been linked with long-term, negative societal consequences. For example, studies associate child maltreatment with increased risk of low academic achievement, drug use, teen pregnancy, juvenile delinquency, and adult criminality. Further, these consequences cost society by expanding the need for mental health and substance abuse treatment programs, police and

this travesty, Congress acted to establish a national framework for child protective efforts that places heavy reliance on the efforts of state and local officials and employees. CAPTA Reauthorization Act of 2010 § 2.6. The Second Circuit's expansion of liability for caseworkers places this framework in jeopardy and offends principles of federalism. Should every discovery of abuse by state employees be subject to full factual review in the context of § 1983 claims by adjudicated abusers and victims, the federal courts would be overwhelmed by matters best left to the state-level experts and would improperly intrude upon the states' regulation of the health and welfare of their children.

The Second Circuit's decision could also have a chilling effect on tens of thousands of professionals who are required to investigate potential child abuse. Caseworkers are first responders on the front lines of efforts to protect children. If, despite acting reasonably and adhering to the statutory procedures for investigations, caseworkers can nevertheless be sued by adjudicated abusers and their victims, potential caseworkers will balk at entering the profession, and municipalities will be unable to

court interventions, correctional facilities, and public assistance programs, and by causing losses in productivity. Calculation of the total financial cost of child maltreatment must account for both the direct costs as well as the indirect costs of its long-term consequences.

Nat'l Clearinghouse on Child Abuse & Neglect Info., Prevention Pays: The Costs of Not Preventing Child Abuse and Neglect, U.S. Dep't of Health & Human Servs. (2003) (internal citations omitted).

attract and retain the qualified candidates required to carry out CAPTA's objectives. At-risk children are already an underserved population; the Supreme Court should not accept further endangerment of children by permitting the Second Circuit's ruling to stand.

ARGUMENT

I. IN COMBINATION, THE SECOND CIRCUIT'S DECISION AND THIS COURT'S HOLDING IN *DESHANEY* CREATE PERVERSE DISINCENTIVES TO PREVENT CHILD ABUSE.

In *DeShaney v. Winnebago Cnty. Dept. of Soc. Servs.*, 489 U.S. 189 (1989), this Court established that caseworkers who fail to act to protect children from maltreatment cannot be sued for money damages under § 1983. The Second Circuit's ruling in this case, however, does permit an adjudicated abuser and his victims to seek money damages under § 1983 from a caseworker who has protected those same children from abuse. These cases together create a perverse incentive for caseworkers to refrain from acting to prevent child abuse.

In *DeShaney*, this Court granted *certiorari* and recognized that the subject of liability for child abuse investigations was of considerable "importance" for "the administration of state and local governments." 489 U.S. at 194. On the merits, this Court held that a county social services provider in Wisconsin could not be held liable under § 1983 for failing to act to prevent the severe beating and consequent permanent, disabling injury of a four-year-old boy at the hands of his father, despite

extensive evidence of abuse provided to child protective services. *Id.* at 203.

In combination, *DeShaney* and the Second Circuit's ruling in this case inappropriately encourage caseworkers to err on the side of permitting child abuse to continue. Pursuant to *DeShaney*, caseworkers are free from liability for recklessly failing to prevent a four-year old boy from being bludgeoned into a permanent vegetative state by his father. *See id.* at 192-93, 203. Pursuant to the Second Circuit's holding, caseworkers are subject to liability for saving children from sexual and physical abuse and neglect "too soon." *See id.* at 203. The Second Circuit's ruling therefore places children at heightened risk for further abuse. At-risk children already are an underserved population. Only one-third of children who experience abuse or neglect actually received the benefit of an investigation from child protective services. Andrew J. Sedlak, et al., Fourth National Incidence Study of Child Abuse and Neglect (NIS-4): Report to Congress, U.S. Dep't of Health & Human Servs., Admin. For Children & Families (2010), *available at* http://www.acf.hhs.gov/programs/opre/abuse_neglect/natl_incid/reports/natl_incid/nis4_report_congress_full_pdf_jan2010.pdf. Compounding this problem, the Second Circuit's decision discourages reasonable investigative efforts and actions that actually detect and deter maltreatment of children, thus undermining Congress's efforts to protect children from abuse. This Court should act to resolve the perverse disincentives created by the Second Circuit's decision by clarifying that, if caseworkers cannot be liable under § 1983 for failing to prevent

abuse, they also cannot be liable to adjudicated abusers and the victims protected by caseworkers' actions.

In *DeShaney*, the Court noted that the State of Wisconsin was free to amend its tort statutes to provide a cause of action for failures by state social services providers to prevent abuse, but opined that such an expansion of liability was not something that the people of Wisconsin should have "thrust upon them" by the Court's expansion of § 1983 liability. 489 U.S. at 203. The Second Circuit has now thrust upon the people of New York a judicially-created scheme that permits adjudicated abusers and their victims to seek money damages from caseworkers whose actions detect and put an end to child abuse. Following the logic of *DeShaney*, any such expansion of caseworker liability should be left to the people of New York acting "in accordance with the regular lawmaking process." *Id.*

II. QUALIFIED IMMUNITY FROM SECTION 1983 LIABILITY FOR CASEWORKERS WHO DISCOVER ABUSE IS ESSENTIAL TO STATES' IMPLEMENTATION OF THE CHILD ABUSE PREVENTION AND TREATMENT ACT.

A. The Statutory Scheme For Protecting Children Depends Upon Rapid Responses From Caseworkers Based On Limited Information Gathered From Imperfect Sources.

In response to the tragic prevalence and under-treatment of child abuse nationwide, Congress enacted CAPTA in 1974. In its findings, Congress noted that, while the epidemic of child maltreatment

demanded “leadership” from the federal government, the sensitivities of the topic demanded a “community-based” solution, spearheaded by the states. 42 U.S.C. § 5101, Notes 13, 15. Therefore, Congress intended to allow state and local officials to take the lead in determining how best to accomplish CAPTA’s goal of preventing abuse. *See* 42 U.S.C. § 5101, Note 14 (“[T]he Federal government should assist States and communities with the fiscal, human, and technical resources necessary to develop and implement a successful and comprehensive child and family protection strategy”). Notably, CAPTA makes certain funding to states conditional upon, among other things, rapid responses to reports of child abuse. 42 U.S.C. § 67 (2006).

New York has implemented CAPTA’s call in its Social Services Law.⁵ By statute, reports of

⁵ The procedure in New York for the investigation of a child maltreatment report is contained in New York’s State Social Services Law, and is further detailed in New York’s State Rules and Regulations and in policy directives issued by the state Office of Children and Family Services. N.Y. SOC. SERV. LAW §§ 421 and 424 describe the response that local social services must make to reports of suspected child abuse. N.Y. SOC. SERV. LAW § 421(3)(a) requires that the investigating caseworker must have “personal contact” with the child named in the report as well as with “any other children in the same household,” and specifies that this contact is to include “interviewing such child or children absent the subject of the report whenever possible and appropriate.” N.Y. SOC. SERV. LAW § 417(1)(a) requires child protective workers, among others, to “take all appropriate measures to protect a child’s life and health,” including taking the child into protective custody without the consent of the parent if the child is assessed to be in “imminent danger.”

suspected mistreatment must be responded to quickly. In particular, child protective workers must commence an investigation within 24 hours of receiving the report from the state, including making “an evaluation of the environment of the child named in the report and any other children in the same home” and a “determination of the risk to such children if they continue to remain in the existing home environment.” N.Y. SOC. SERV. LAW § 424(6)(a) (McKinney 2010).

These New York statutory requirements reflect the essential role that home visits by trained caseworkers play in protecting children. Abuse occurs most commonly in the home and at the hands of a family member. More than 80% of repeat perpetrators of child abuse and neglect are parents. Child Maltreatment 2010 at x. In order to assess if a child is at risk, the child’s home environment must be carefully examined. In New York, hundreds of caseworkers make thousands of home visits a year to assess whether children are safe in their homes. When the caseworkers make such visits, New York law requires them to speak to the children, to see the home personally, and to make an assessment of the home environment. Should a parent refuse to allow the caseworker access to the home, New York State Family Court Act § 1034(b) provides procedures for a Family Court Judge to issue an order granting a caseworker access to the home of a child in order to make an assessment of the child’s safety. Under current law and regulation, a caseworker who has not been permitted to see the child sufficiently to assess the child’s safety must immediately consult with a supervisor to discuss seeking a court access

order. New York Family Court Act § 1034 (2) (McKinney 2010), 18 N.Y. COMP. CODE RULES AND REGULATIONS § 432.2(b)(3)(ii) (2011).

Prompt investigations by caseworkers are essential to achieving CAPTA's goal of preventing child abuse. Caseworker home visits are critical not only for assessing the merit of abuse allegations, but also for ensuring that children are not left in homes that leave them at risk for future abuse. Child Maltreatment 2010 at 88 ("The mandate of child protection is not solely to assess if an allegation of maltreatment has merit or not, but also to provide for the safety of children."). In performing these dual functions, caseworkers often start with limited information from reporters of suspected child abuse.

In some states, mandatory reporters are prohibited from personally investigating their suspicions.⁶ See Steven J. Singley, Failure to Report

⁶ Although this submission focuses on the effects on the Second Circuit's decision on investigators of abuse, the decision may have implications for mandatory reporters of abuse as well. In furtherance of federal and state legislative attempts to protect children from abuse, New York law grants immunity to hundreds of thousands of professionals, including doctors, teachers, social workers, and police officers, designated as mandatory reporters, who act in "good faith" when making reports of suspected abuse. N.Y. SOC. SERV. LAW § 419 (McKinney 2010) (providing immunity for those who participate in good faith in "the making of a report, the taking of photographs, [or] the removal or keeping of a child pursuant to this title"). Such immunity provides needed assurance to professionals who are required to report suspected abuse or neglect, even though the actual existence of abuse or neglect may be uncertain. If liability under § 1983 is extended to caseworkers who take reasonable steps to prevent abuse and

Suspected Child Abuse: Civil Liability of Mandated Reporters, 19 J. JUV. L. 236, 243-44 (1998). Sometimes the individual who reports suspected child maltreatment to child protective services may not know the names of the children, how many children are in the home, or the identity of the children's caretakers. Although imperfections in the report are common, and must be investigated when possible, the caseworker's primary responsibility under the statutory scheme is to protect the child. *See, e.g.*, N.Y. SOC. SERV. LAW § 424(6)(a) (primary responsibility in investigation is to see "to the safety of the child or children"). For example, should a caseworker discover an infant alone and uncared for, he or she must take immediate action to protect the child—even though he or she may not know the child's name or the names of the infant's parents. While child abuse investigations involve the routine gathering of such information, it is not unusual for a caseworker to need to protect the child before all information is known about the family.

As the investigation proceeds, caseworkers are often confronted with "conflicting, ambiguous, and incomplete evidence," in the face of which they "must exercise their professional judgment in deciding whether abuse exists in any given case." Timothy J. Courville, Notes, Government Liability for Failure to Prevent Child Abuse: A Rationale for Absolute Immunity, 27 B.C. L. REV. 949, 978 (1985-1986)

who in fact discover abuse, mandatory reporters who misstate the children's names or locations, or make other reasonable errors, may themselves be subject to a weakened standard for immunity as well.

(citing Douglas J. Besharov, *Child Protection: Past Progress, Present Problems, and Future Directions*, 17 FAM. L.Q. 151, 163 (1983); James L. Jenkins et al., *Child Protective Services: A Guide for Workers* 47, 48 (U.S. DHEW 1979)). The covert nature of child abuse makes obtaining dispositive information difficult:

[B]ecause child abuse frequently occurs in the privacy of the family home, there are often no independent witnesses to question. Furthermore, abusing families often conceal information from child protection workers during child abuse investigations. Due to the lack of conclusive evidence available during child abuse investigations, child protection workers face difficult decisions in determining whether children actually have suffered abuse. The child protection worker must weigh the available evidence and based on professional judgment, make a determination as to whether or not a child has been abused.

If a child protection worker determines that a child has been abused, the worker again must exercise judgment in determining what method of intervention into the family will be appropriate to protect the child from further abuse.

Courville at 981. The caseworker's assessment of the appropriate intervention is further complicated by the reality "that the child's home situation may deteriorate rapidly without any warning to the child protection worker" *Id.* (citing Besharov at 163).

In short, CAPTA and the New York statutory scheme implementing its directives rely on

caseworkers to respond quickly to reports of abuse, and to exercise judgment, often in the face of inconclusive information, as to what actions are necessary to protect children from future abuse and neglect. What we as a society ask of caseworkers is no less important than what we ask of police, firefighters, and emergency medical staff: enter into unfamiliar situations, gather information, and quickly assess and act to address the risk of serious harm.

B. Expanding Section 1983 Liability To Caseworkers Who Discover Abuse Frustrates CAPTA.

The Second Circuit has broadened the scope of liability under § 1983 for caseworkers who discover abuse, such that adjudicated abusers and children who have been victims of abuse can now seek monetary recovery from the caseworkers who discover and put a stop to that abuse. This expansion of § 1983 liability undermines the carefully crafted statutory scheme for protecting children from abuse.

The Second Circuit's decision raises the prospect of federal courts' review of numerous cases in which abuse has been discovered and established in state court proceedings, to determine whether a procedural error was involved in the discovery of the abuse. As Chief Judge Jacobs noted in his dissent from the decision to deny rehearing *en banc*, "[t]he panel would send Mr. Woo to a jury for an assessment of his liability and the damages he should pay," *Southerland v. City of New York*, 681 F.3d 122, 139 (2d Cir. 2012) (Jacobs, C.J., dissenting), despite an evidentiary record

demonstrating that Mr. Woo “conducted himself as a reasonable and conscientious child services worker.” *Id.* at 135. In so doing, the panel ignored the long line of Supreme Court opinions that “repeatedly have stressed the importance of resolving immunity questions at the earliest possible stage in litigation.” *Hunter v. Bryant*, 502 U.S. 224, 227 (1991) (collecting cases).

Routine federal court intervention into cases in which abuse was found will frustrate the goals of CAPTA, which explicitly relies upon state actors to shoulder the primary responsibility to prevent child abuse. Allowing federal judicial intervention through examination of the factual circumstances of each visit that results in an adjudication of abuse would impose unwarranted burdens not only on the states’ implementation of federal and state statutes, but also on the federal judiciary.

As this Court has recognized, qualified immunity works to protect government workers in the exercise of their duties by allowing courts to determine freedom from liability “long before trial.” *Hunter*, 502 U.S. at 228. In cases of adjudicated abuse, qualified immunity ensures that caseworkers are protected from improper lawsuits by abusers and victims when they act reasonably in difficult contexts to protect, and in fact do protect, the interests of children.

Lack of immunity for reasonable investigation and removal decisions that result in an adjudication of abuse and protection of adjudicated victims undermines CAPTA by adding additional barriers to preventing abuse. For child protection efforts to be rapid and effective, caseworkers must be free from

the threat of personal liability to adjudicated abusers and their victims when, acting with imperfect information to protect at-risk children, they discover and put an end to abuse.

III. ALLOWING THE SECOND CIRCUIT’S RULING TO STAND WOULD CHILL CHILD PROTECTION IN THE FIELD.

Rendering caseworkers liable to adjudicated abusers and their victims under § 1983 risks causing caseworkers to choose the safer course of inaction, or even the safest course of all – leaving their profession, placing at-risk children in greater danger of abuse.

The threat of personal liability to adjudicated abusers and their victims risks creating significant financial disincentives for caseworkers to act in the best interests of children. For the vast majority of caseworkers, the prospect of potential liability outweighs the income derived from their occupation.⁷ Given this disparity, the threat of liability to adjudicated abusers and their victims “likely will deter child protection workers from exercising their

⁷ The national average starting salary for a caseworker is \$28,000. GAO-03-357, *Child Welfare: HHS Could Play A Greater Role In Helping Child Welfare Agencies Recruit and Retain Staff* 11 (Mar. 2003), *available at* <http://www.cwla.org/programs/workforce/gaohhs.pdf>. The median salary for a social services agency employee with a bachelor’s degree in social work is \$41,300. NASW Center for Workforce Studies & Social Work Practice, *Social Workers in Social Services Agencies* 4 (2011), *available at* <http://workforce.socialworkers.org/studies/profiles/Social%20Services.pdf>.

best professional judgment in child abuse investigations.” Courville at 951; see Eric P. Gifford, 42 U.S.C. § 1983 and Social Worker Immunity: A Cause of Action Denied, 26 TEX. TECH L. REV. 1013,1030 (1995) (quoting Courville at 985) (“For social workers, the potential exposure to large damage awards for the consequences of their decisions will serve to chill the exercise of their professional judgment in determining how to respond most effectively to cases of suspected abuse.”).⁸

Moreover, if caseworkers face § 1983 liability to adjudicated abusers and their victims, then fewer individuals may find it financially feasible to remain in the profession, or to enter it in the first place. Caseworkers already function in a work environment of low pay and high safety risks, contributing to increased staff turnover and poor outcomes for children. See “Preventing Child Deaths Due to Maltreatment,” 112th Cong. Hearing on “Child Deaths Due to Maltreatment,” (July 12, 2011) (testimony by Elizabeth J. Clark and Joan Levy Zlotnik, to House Subcommittee on Human Resources Committee on Ways and Means), *available at* http://waysandmeans.house.gov/uploadedfiles/national_association_of_social_workers

⁸ In the matter before the Court, the local social services district – New York City’s Administration for Children’s Services – is indemnifying and defending Mr. Woo. Not all municipalities, however, can afford to indemnify and defend caseworkers against costly lawsuits, especially during times of increasingly tight state and municipal budgets in which many services are being scaled back or eliminated.

submissions712.pdf. A GAO study found that low pay, risk of violence, staff shortages, high caseloads, and administrative burdens are causes for caseworker turnover and that municipalities are consequently facing staffing shortages under existing conditions. GAO-03-0357, *Child Welfare: HHS Could Play a Greater Role in Helping Child Welfare Agencies Recruit and Retain Staff*, highlights, 3-5, 11, 14 (2003), *available at* <http://www.cwla.org/programs/workforce/gaohhs.pdf>. Adding the burden of potential caseworker liability under § 1983 to adjudicated abusers and abuse victims would exacerbate the existing strains on the system of vigorous child protection envisioned by CAPTA.

IV. CASEWORKERS' DISCRETIONARY JUDGMENTS THAT PROTECT CHILDREN FROM ABUSE SHOULD NOT BE SECOND GUESSED IN SECTION 1983 LAWSUITS BY ADJUDICATED ABUSERS AND VICTIMS.

To perform their duties effectively, caseworkers investigating reports of abuse or neglect must be confident that the professional judgments they exercise in the field to protect children from abuse and neglect will not expose them to § 1983 claims by child abusers and abused children. The Second Circuit's decision to permit such claims both disregards established qualified immunity law under § 1983 and undermines New York's determination that caseworkers in particular must be permitted to make discretionary decisions without fear of liability.

This Court's § 1983 jurisprudence recognizes that, absent extraordinary circumstances, state

actors should be permitted to perform their duties without the threat of personal liability. As this Court stated in *Hunter*, “[t]he qualified immunity standard gives ample room for mistaken judgments by protecting all but the plainly incompetent or those who knowingly violate the law. This accommodation for reasonable error exists because officials should not err always on the side of caution because they fear being sued.” 502 U.S. at 537 (citing *Malley v. Briggs*, 475 U.S. 341, 343 (1986); *Davis v. Scherer*, 468 U.S. 183, 196 (1984)) (internal citations and punctuation omitted). In this matter, five judges of the Second Circuit found Mr. Woo’s conduct reasonable under the circumstances, with Chief Judge Jacobs expressing a desire to “shake his hand.” *Southerland*, 681 F.3d at 139. Those findings belie any possible ruling that Mr. Woo was “plainly incompetent or . . . knowingly violate[d] the law,” and thus can be subject to potential § 1983 liability to an adjudicated child abuser and his victims. *See Hunter*, 502 U.S. at 537.

Further, in the specific context of child protection, New York has made the legislative determination to give caseworkers wide latitude in carrying out the important function assigned to them by exercising discretion without fear of personal liability. New York’s Social Services Law provides for immunity, as well as a presumption of caseworker good faith in any proceeding, provided that the worker was acting within the scope of his or her duties and the liability did not result from willful misconduct or gross negligence. N.Y. SOC. SERV. LAW § 419. The Second Circuit’s expansion of caseworker liability under § 1983, a general federal

statute that applies in numerous contexts, intrudes upon New York's considered decision to afford caseworkers who act reasonably in the interests of child protection a presumption of good faith and immunity from personal liability.

CONCLUSION

The Second Circuit's decision to permit adjudicated abusers and their victims to seek damages from the caseworkers who discover and put an end to abuse is an unwarranted expansion of § 1983. If permitted to stand, the decision will frustrate CAPTA's goal of preventing the abuse and neglect of children, as well as undermine the role that CAPTA gives the states in designing and implementing effective strategies for child protection. The decision will have a chilling effect on tens of thousands of child abuse investigators in the field, thus putting children across the country at risk of further abuse and neglect. For these reasons, *amici* respectfully submit that this Court should grant the Petitioners' writ of *certiorari* and take the Second Circuit's decision under review.

Respectfully submitted,

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