Nos. 09-1454 and 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,

Respondent.

JAMES ALFORD, Deschutes County Deputy Sheriff, Petitioner,
v.

SARAH GREENE, personally and as next friend for S.G., a minor, and K.G., a minor,

Respondent.

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

REPLY BRIEF FOR PETITIONER BOB CAMRETA

JOHN R. KROGER
Attorney General of Oregon
*MARY H. WILLIAMS
Solicitor General
ANNA JOYCE
Deputy Solicitor General
1162 Court Street
Salem, Oregon 97301-4096
Phone: (503) 378-4402
mary.williams@doj.state.or.us
Counsel for Petitioner
Bob Camreta

***Counsel of Record**

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INTRODUCTION

Petitioner Camreta, a protective-services caseworker, has sought this Court's review of the Ninth Circuit's ruling that, under the Fourth Amendment, government officials who seize children at school to investigate claims of child abuse cannot do so in the absence of a warrant or an exception to the warrant requirement. Before responding to the merits of Camreta's constitutional argument, respondent asserts several barriers to this Court's review of that constitutional question. But none of those barriers in fact exist, clearing the way for this Court to review the question presented: whether the traditional warrant requirement applies to in-school seizures of suspected child-abuse victims.

The Ninth Circuit deemed the circumstances of this case "straightforward" and not "too case-specific" "to aid in clarifying the law for the future." *Greene v. Camreta*, 588 F.3d 1011, 1021-22 (9th Cir. 2009). Accordingly, it addressed the Fourth Amendment question—in addition to the qualified-immunity issue—"to provide guidance to those charged with the difficult task of protecting child welfare[.]" *Id*. Despite the deliberate breadth and effect of the Ninth Circuit's constitutional ruling, respondent contends that the Ninth Circuit's decision is "not reviewable" because the court ultimately ruled in favor of petitioner Camreta on qualified-immunity grounds. But the Ninth Circuit's qualified-immunity holding does not render its Fourth Amendment holding unreviewable *dicta*. The Ninth Circuit announced an expansive rule of constitutional law, one that the Ninth Circuit delib-

erately intended to be binding not only on Camreta, but on all government officials in the circuit. That binding precedent is reviewable by this Court. Relatedly, Camreta remains one of many government officials engaged in child-abuse investigations who are now prevented from seizing suspected victims at their schools, when that is the safest means of conducting the investigation. Therefore, respondent's claims that the constitutional question is moot and that Camreta lacks standing to challenge it fail.

The Ninth Circuit's sweeping Fourth Amendment ruling not only impacts all government officials conducting child-abuse investigations, but it does so in a manner that is fundamentally inconsistent with the principles underlying the Fourth Amendment and this Court's precedent. Respondent largely ignores those principles and that precedent in arguing that the Ninth Circuit properly held that a caseworker must obtain a warrant before seizing a suspected child-abuse victim in order to conduct an investigatory interview. Yet the reasonableness of the seizure in this case—and hence, its constitutionality—must be analyzed not by applying the same standards that apply to arrests of suspected criminals, but by balancing the government's interests in the seizure against the individual's liberty interests.

ARGUMENT

A. The Ninth Circuit's Fourth Amendment holding—which binds all government officials investigating child-abuse allegations in the Ninth Circuit, including Camreta—is reviewable.

The Ninth Circuit expressly used this case as an opportunity to define the constitutional parameters of child-abuse investigations throughout the circuit and to issue a significant legal holding that respondent now argues is unreviewable by this Court. *See Greene*, 588 F.3d at 1021-22 (explicitly stating that it was addressing the merits of the constitutional question because doing so "'promotes the development of constitutional precedent'", quoting *Pearson v. Callahan*, 555 U.S.__, 129 S. Ct. 808, 818 (2009)). The Ninth Circuit emphasized that announcing that constitutional holding was particularly important in this case because "the constitutional standards governing the in-school seizure of a student who may have been abused by her parents are of great importance." *Id*. The Ninth Circuit then broadly concluded that the "general law of search warrants applie[s] to child abuse investigations" and that government officials investigating child-abuse allegations should "cease operating" on the assumption that they could dispense with traditional Fourth Amendment protections. *Greene*, 588 F.3d at 1030, 1033.

Had the Ninth Circuit been able to stop at the point of its legal determination that the seizure in this case violated the Fourth Amendment, there would be no question that its Fourth Amendment

holding would be subject to review by this Court. However, because Camreta is a state employee who asserted his entitlement to qualified immunity, the Ninth Circuit necessarily proceeded to address that separate legal question. In doing so, it first acknowledged that its holding about the Fourth Amendment prohibitions on Camreta's behavior announced new law for the circuit. *Greene*, 588 F.3d at 1021 ("although other circuits have provided guidance to parents, school officials, social workers, and law enforcement personnel on the issue, we have not"). Therefore, the Ninth Circuit properly held that Camreta was entitled to qualified immunity on this one occasion. But the court made clear that the qualified-immunity holding was a narrow one that could not assist Camreta or any other government employee in future cases. That is, the court emphasized that its Fourth Amendment holding necessarily restricted the options available to Camreta—and to other government officials—in future cases involving child-abuse allegations. *Id*. at 1033 ("government officials investigating allegations of child abuse should cease operating on the assumption that a 'special need' automatically justifies dispensing with traditional Fourth Amendment protections in this context").

As a result, that constitutional ruling is subject to review. Petitioner recognizes, as he did in his petition for certiorari and opening brief, that this Court typically will not review judgments when the petitioner prevailed in the court below. *Bunting v. Mellen*, 541 U.S. 1019, 1023-24 (2004). But that general rule should not control where, as here, the lower court decision is intentionally designed to act as a prospective

limitation on government officials' actions. Lower courts no longer are obliged to rigidly adhere to the two-step sequential inquiry for qualified-immunity determinations adopted in *Saucier v. Katz*, 533 U.S. 194 (2001)—asking first whether the plaintiff has alleged a violation of a constitutional right and, second, whether the right was clearly established at the time of the defendant's conduct. In relieving lower courts of that obligation, this Court nevertheless emphasized that proceeding through both steps is "often beneficial" because it "promotes the development of constitutional precedent." *Pearson*, 129 S.Ct. at 818. The Ninth Circuit's Fourth Amendment ruling—an application of *Saucier*'s two-step procedure—indisputably is intended to have the kind of precedential effect that *Pearson* contemplated. But that constitutional precedent cannot both create clearly established law and be immune from appellate review.

And without the ability to obtain review in this case, Camreta and other protective-services caseworkers face an untenable choice. They must either comply with an arguably incorrect constitutional holding and risk being unable to investigate some child-abuse cases or ignore that holding and risk liability in order to have the constitutional ruling restated in a case that would be a more traditional vehicle for this Court's review. *Pearson*, 129 S.Ct. at 820 (government officials face the "unenviable choice" to either "comply with the lower court's" opinion or "defy the views of the lower court, adhere to practices that have been declared illegal, and thus invite new suits and potential punitive damages") (internal quotation marks, citations, and brackets omitted). That "unen-

viable choice" can—and should—be avoided by simply allowing for review of the constitutional ruling.

Respondent acknowledges that this Court previously has addressed claims from the party who prevailed in the underlying matter. Resp. Br. 25-26 (citing *Deposit Guar. Nat'l Bank v. Roper*, 445 U.S. 326 (1980); and *Electrical Fittings Corp. v. Thomas & Betts Co.*, 307 U.S. 241 (1939)). But respondent asserts that this Court has done so only where the claims are "collateral" to a ruling, and that the Ninth Circuit's broad constitutional pronouncement in this case is not sufficiently collateral to meet that test. *Id.* at 25-27. Neither assertion is supported by this Court's caselaw.

First, establishing that a ruling is "collateral" is not a necessary predicate to review. In *Deposit Guaranty National Bank*, this Court held that the plaintiffs—who prevailed on the merits of their claim—could appeal the denial of the motion to certify the class. 445 U.S. at 340. This Court noted that, although the general rule prohibits a prevailing party from appealing, "[t]he rule is one of federal appellate practice * * * derived from the statutes granting appellate jurisdiction and the historic practices of appellate courts; it does not have its source in the jurisdictional limitations of Art. III." *Id.* at 333-34. Consequently, "[i]n an appropriate case, appeal may be permitted from an adverse ruling collateral to the judgment on the merits at the behest of the party who has prevailed on the merits, so long as that party retains a stake in the appeal satisfying the requirements of Art. III." *Id.* at 334. Because "the denial of

class certification stands as an adjudication of one of the issues litigated" and because the respondents asserted a continuing stake in the outcome of the appeal, the respondents were entitled to have the denial of the class certification reviewed. *Id*. at 336; *see also Electrical Fittings Corporation*, 307 U.S. at 242 (the defendants in a patent infringement case could obtain review of a lower court's ruling that the patent was valid—notwithstanding the lower court's conclusion that the defendants had not infringed upon it—because the patent infringement decree "purports to adjudge the validity of [the patent], and though the adjudication was immaterial to the disposition of the cause, it stands as an adjudication of one of the issues litigated.").

To be sure, this Court described the ruling in *Deposit Guaranty National Bank* as collateral to the ultimate ruling. 445 U.S. at 336. But rather than serving as a prerequisite to review, this Court was simply describing the particular ruling at issue in that case. The fundamental point that emerges from *Deposit Guaranty National Bank* is that an otherwise prevailing party can obtain review of a non-dispositive ruling so long as the ruling is an adjudication of one of the issues litigated and the party retains an Article III interest in the case. The Ninth Circuit's ruling here easily meets that standard. The Ninth Circuit created clearly established law in the jurisdiction when it held that protective-services caseworkers must obtain warrants before seizing children at their schools to interview them about child-abuse allegations. That ruling is binding against Camreta now, and in future child-abuse investigations. Accordingly, notwith-

standing that the Ninth Circuit ruled in Camreta's favor on qualified-immunity grounds, the Fourth Amendment question stands as one of the issues litigated and decided, and Camreta retains the ability to appeal from that ruling.

Second, even if respondent is correct that petitioner must affirmatively demonstrate that the ruling is "collateral" in order to obtain review, petitioner has done so here. Whether Camreta violated the Fourth Amendment and whether Camreta was entitled to qualified immunity are distinct legal issues. In fact, the separation between the merits of the constitutional question and whether the constitutional right was clearly established is what enabled this Court, in *Pearson*, to free courts from the obligation to address the two questions in a particular order. Here, the Ninth Circuit was not required to address the question whether Camreta violated S.G.'s constitutional rights. The court simply could have held that the law—regardless of what it is—was not clearly established at the time of the interview. But it opted to address the constitutional question to provide what it viewed as much-needed guidance for those conducting child-abuse investigations in the circuit. That substantive ruling was unnecessary—and thus collateral—to the Ninth Circuit's final judgment.

In short, the Ninth Circuit's holding was intentionally designed to serve as a constitutional guidepost for future child-abuse investigations. If that holding is unreviewable, government officials—including Camreta—complying with the ruling are unable to investigate some child-abuse allegations.

Those who defy the ruling risk new lawsuits and punitive damages. This Court should relieve petitioner of that unenviable choice and review the Ninth Circuit's Fourth Amendment holding.

B. Because the Ninth Circuit's ruling affects Camreta's ability to carry out his job as a government official investigating allegations of child abuse, this case presents an Article III case or controversy.

No dispute exists that if Camreta were to receive a report of child abuse today, the manner in which he investigated those allegations would be significantly constrained by the Ninth Circuit's Fourth Amendment ruling. Respondent nevertheless asserts that this case presents no Article III case or controversy. [1] Respondent maintains that Camreta has asserted no personal stake in this appeal because Camreta will likely never interview this particular victim again. Additionally, respondent declares that petitioner has "effectively concede[d]" that point, as evidenced by its

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[1] Respondent raises these claims for the first time in her brief on the merits. Although Article III concerns may be raised at any time, in considering the weight to accord to respondent's contentions that the case is moot, the Court should be "influenced by [respondent's] failure, despite [her] obligation to the Court, to mention a word about the potential mootness issue in [her] brief in opposition to the petition for writ of certiorari." *City of Erie v. Pap's A.M.*, 529 U.S. 277, 288 (2000); *see also Adams v. Robertson*, 520 U.S. 83, 91 n.5 (1997) (parties are "obliged to [the Supreme] Court (not to mention their clients) to raise such threshold issues in their briefs in opposition").

focus on the harm that the Ninth Circuit ruling causes the government as a whole, rather than on Camreta individually. Resp. Br. 31. Respondent is wrong on both points. Camreta retains the personal stake in this appeal that Article III contemplates. The Ninth Circuit's ruling has an enduring impact on Camreta's ability to do his job, an impact that, in turn, leaves little question that there remains a live case or controversy. And although the State has an obvious interest in the resolution of the constitutional question presented here, Camreta does not rely on that interest to establish his own Article III interest.

1. Because the Ninth Circuit's opinion prevents Camreta from ever again using a formerly routine child-abuse investigation technique, whether he will conduct another interview with S.G. is immaterial for Article III purposes.

Article III, section 2 of the United States Constitution limits federal judicial authority to "cases" and "controversies." That constitutional limitation underlies the Court's standing and mootness jurisprudence. *Friends of the Earth, Inc. v. Laidlaw Environmental Services (TOC), Inc.*, 528 U.S. 167, 180 (2000). To satisfy Article III, any litigant seeking appellate review must have a personal stake in the appeal. *Deposit Guar. Nat'l Bank*, 445 U.S. at 336 ("Federal appellate jurisdiction is limited by the appellant's personal stake in the appeal.").

Respondent rests her Article III arguments upon a fundamental premise: because little likelihood exists that Camreta will ever interview the victim again,

there is no live case or controversy. Resp. Br. 30-31. But respondent's narrow focus on the events that occurred between Camreta and the victim—or on events that might occur in the future between those two individuals—entirely misses the practical import of the Ninth Circuit's decision. Its decision was not, as explained above, limited to Camreta's single interview of the victim. Instead, the Ninth Circuit deliberately used this case to announce a new constitutional rule that applies to all child-abuse investigations in the circuit. Accordingly, every time that Camreta is called upon to conduct a child-abuse investigation at school and the interview is elevated to a seizure, the Ninth Circuit's decision will prevent him from using standard investigative techniques he otherwise might use. The Ninth Circuit's ruling thus operates as the functional equivalent of an injunction or declaratory judgment that prospectively prevents Camreta from carrying out his job duties in this manner. So framed, the Ninth Circuit's ruling creates a very live case or controversy that this Court can, and should, resolve.

Moreover, respondent's Article III argument is squarely at odds with this Court's caselaw. This Court has deemed Article III's requirements satisfied where, as here, a lower court's decision will have a *future* impact on the otherwise prevailing party. For instance, in *Electrical Fittings*, the prevailing petitioners' concern that "their success in some unspecified future litigation would be impaired by *stare decisis* or collateral-estoppel application of the District Court's ruling. . . . supplied the personal stake in the appeal required by Art[icle] III." *Deposit Guar. Nat'l Bank*, 445 U.S. at 337 (discussing holding in *Electri-*

cal Fittings). The same is true here: the Ninth Circuit's Fourth Amendment ruling affects Camreta's future conduct in his job. Indeed, the consequences of the Ninth Circuit's Fourth Amendment ruling here is substantially more certain than the concerns about "unspecified future litigation" asserted in *Electrical Fittings*.

Undoubtedly, the patent issue in *Electrical Fittings* was of ongoing significance to the *non-appealing* party as well as to the appealing party. And, as respondent notes, she has not appealed the Ninth Circuit's ruling. But any significance to the non-appealing party played no part in this Court's conclusion that Article III's requirements were satisfied. And this Court's caselaw is replete with examples of cases in which the non-appealing party had little or no interest in defending the lower court's judgment. *See* Brief for the United States at 18, citing cases. Thus, that respondent claims to have no on-going interest in the case is not dispositive of the Article III question.

2. The State's interest in the outcome does not somehow deprive Camreta of a live Article III interest.

Respondent also maintains that because petitioner focuses "exclusively on harm that might come to the State," and because the State is not a party to the case, it lacks standing to appeal. Resp. Br. 31. Respondent's premise is incorrect. To be sure, Camreta urged this Court to grant certiorari to consider the additional interests of the State of Oregon, in light of the unique impact qualified-immunity cases are de-

signed to have on state actors. But Camreta's argument that the State's interests should be considered *alongside* his own does not somehow divest him of a personal interest in the outcome of this appeal. Camreta still has an "individual interest" that "may be satisfied fully" by a favorable ruling from this Court. *Id*. Consequently, his interests easily satisfy Article III's requirements.[2]

3. If this case did present an Article III problem, this Court should vacate the Ninth Circuit's constitutional holding.

Respondent—after asking this Court to find that this case is moot or that Camreta lacks standing—has one last request: dismiss this appeal, but leave the Ninth Circuit's Fourth Amendment holding intact. Resp. Br. 41-43. If an insurmountable Article III problem does exist, this Court should reject that request. That is, if this Court concludes that the Ninth Circuit's Fourth Amendment ruling is unreviewable, that ruling should not also carry with it the same *stare decisis* effect that a reviewable holding would carry. As Justice Scalia noted in his dissent in *Bunting*, "in the unusual situation such as this where lack of standing precludes appeal, resolution of the constitutional question does not have *stare decisis* effect." 541 U.S. at 1025 n.*. Respondent should not be able to have it both ways: either the constitutional

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[2] Respondent does not really contend otherwise. In other words, respondent does not appear to argue that Camreta *himself* lacks standing, only that if the State were substituting its own interests, the State would lack standing.

ruling is reviewable, or it is not. But if the constitutional ruling is not reviewable, it cannot carry with it the force of law in future cases.

C. Where a protective-services caseworker seizes a child at school to determine whether she is a victim of abuse, the Fourth Amendment does not require the caseworker to first obtain a warrant.

1. The seizure must be assessed under this Court's reasonableness balancing test.

The fundamental principle underlying the Fourth Amendment is that any seizure must be "reasonable." That determination, in turn, is shaped by the context of the particular seizure and requires a balancing of the government's interest against the intrusion on the individual's interests. *See* Pet. Br. 14-15; *see also* Brief for the United States 20-23. Yet respondent asserts that an interview of a suspected child-abuse victim at her school should not be assessed under a reasonableness standard. Resp. Br. 49-50. In respondent's view, such an interview requires a warrant based on probable cause. But in so arguing, respondent ignores the fundamental principle underlying the Fourth Amendment, namely, that a seizure is lawful so long as it is "reasonable."

Respondent's legal analysis, as far as it goes, accurately describes the law that pre-dated *Terry v. Ohio*, 392 U.S. 1 (1968). Prior to that time, the term "'arrest' was synonymous with those seizures governed by the Fourth Amendment." *Dunaway v. New York*, 442 U.S. 200, 208 (1979). Warrants were not required

for every seizure, but the probable cause requirement was "absolute." *Id*. That was true simply because, at that time, the probable cause standard struck the proper balance between government and individual interests without having to balance those interests in each case. *Id*.

But respondent largely overlooks the principles articulated in *Terry v. Ohio* and subsequent decisions: the Fourth Amendment does not impose an "irreducible requirement" of probable cause or a warrant. *United States v. Martinez-Fuerte*, 428 U.S. 543, 561 (1976). Instead, the reasonableness, or constitutionality, of any seizure must be assessed by balancing the governmental and individual interests at stake. Stated another way, in determining the constitutional prerequisites for the seizure at issue—a warrant, probable cause, reasonable suspicion, or something else—courts must balance the seizure's intrusion on the individual's privacy and liberty interests against its promotion of legitimate governmental interests. In *Terry*, that balancing resulted in the "reasonable suspicion" standard for a stop and frisk. 392 U.S. at 27. In *Illinois v. Lidster*, 540 U.S. 419 (2004), that balancing test—when applied to brief stops of motorists to determine whether they witnessed a crime—resulted in a determination that such stops can be reasonable even absent any suspicion at all. Here, as explained in petitioner's opening brief, the seizure was reasonable at its inception because the government's interest in protecting a child from abuse is substantial, particularly when balanced against the child's reduced privacy and liberty interests at school.

In short, respondent discounts the context-dependent balancing test that this Court has used consistently over the past 40 years. Adopting respondent's proposition would create uncertainty about the continued vitality of this Court's recent Fourth Amendment caselaw. In addition, it would render many reports of child abuse impossible to investigate. *See generally* States' Amici Brief; *see also* Frank E. Vandervort, *Videotaping Investigative Interviews of Children in Cases of Child Sexual Abuse: One Community's Approach*, 96 J. Crim. L. & Criminology 1353, 1354 (2006) ("Because of a lack of physical or medical evidence in most cases, and because [sexual-abuse] offenses by their nature typically take place in private, often the statements of the child who is the alleged victim are critically important, and perhaps the only, evidence"). Indeed, respondent acknowledges as much. *See* Resp. Br. 60 ("'there may be circumstances in which the law of warrant and probable cause established in the criminal setting does not work effectively in the child removal…context'") (citing *Tenenbaum v. Williams*, 193 F.3d 581, 604 (2d Cir. 1999)). In respondent's view, however, the difficulty in any given case of investigating a child-abuse allegation cannot define the constitutional rule. Resp. Br. 52-53.

That much is true. Petitioner does not, of course, suggest that the challenges inherent in investigating child-abuse allegations render the Fourth Amendment inapplicable to those investigations. But the nature of child abuse—and the manner in which allegations of child abuse must be investigated—very much informs the assessment of the government's interest

in a particular investigative technique, which in turn informs the constitutional analysis. Child abuse—and in particular, child sexual abuse—is a crime that most frequently occurs with the knowledge only of the abuser and the victim. The government frequently will not have the quantum of evidence needed to obtain a warrant before talking with the victim about whether the abuse occurred. Delaying talking with the victim until further investigation can be completed—investigation which may or may not lead to enough evidence to obtain a warrant—means leaving the victim unprotected from additional abuse. Each of these considerations influences the government's interests in detecting and preventing child abuse.

Nor should this Court accept respondent's assertions that the duration of a seizure dictates the constitutionality and that brevity is central to what the Fourth Amendment permits the government to do in carrying out a significant interest.[3] Resp. Br. 64 ("*Lidster* expressly relied on the brevity of the stops in question . . . . Nor is *Lidster* the only case to consider the importance of the length of a detention."). While respondent accurately conveys that the short duration of the stops at issue in *Lidster* played a significant role in this Court's analysis, this Court has never held that brevity is a constitutional mandate. Instead, the reasonableness of any seizure must be

[3] Respondent's argument on this point focuses on the reasonableness of the scope of the seizure, rather than on the reasonableness of the seizure at its inception. As explained in more detail below, the scope of the seizure of S.G. is not a question that this Court need decide.

considered in its context. That, in turn, means that the amount of time that a seizure takes is not, in and of itself, dispositive of its constitutionality. The limited duration of the seizure in *Lidster* was important because the roadside stop of motorists to determine whether any had been witness to a recent crime did not exceed what was necessary to obtain that information.

The circumstances of a seizure to ask a child whether her father is sexually abusing her are far different. Interviews of that nature cannot reasonably be expected to be completed in a matter of moments. To avoid further traumatizing the child, the interviewer must establish a rapport, assess the child's level of functioning and ability to communicate, and then broach a tremendously sensitive, private, and potentially volatile subject. That process takes far longer than asking a witness whether he or she was witness to a fatal car crash. But the fact that a warrantless interview of that nature may take a significant amount of time does not, as respondent suggests, render it unconstitutional. Rather, the duration of the seizure must be considered in light of the reasons for that seizure, bearing in mind that the ultimate inquiry is whether the seizure is reasonable.

2. History does not establish that the Framers contemplated that seizures of the type here be affected only upon a warrant.

Respondent claims that the historical record clearly establishes that, in the absence of a warrant or court order, the Framers would have disapproved of a protective-services caseworker and a police officer

interviewing a student in a public school to investigate a report of child abuse. Resp. Br. 46-48. Yet respondent simply is wrong in her contention that history—particularly that of magistrates requiring recognizances—answers the issue presented here.

As petitioner explained in his opening brief, there was no founding-era practice of protective-services caseworkers conducting interviews to investigate child-abuse reports. *See Vernonia School District 47J v. Acton*, 515 U.S. 646 (1995) (no founding-era practice of random drug-testing of student athletes to resolve the legal question presented). More generally, there was an absence of any comparable form of criminal investigations. When the Founders adopted the Bill of Rights, police departments and professional law-enforcement officers did not exist. Thomas Y. Davies, *Recovering the Original Fourth Amendment*, 98 Mich. L. Rev. 547, 620 (1999). The peace officer was most commonly a constable whose role was to protect order. *Id*. at 620-21. The constable's authority and duties did not involve "ferreting out crime" and the type of modern pre-charge investigation that police officers commonly perform today. *Id*. at 621-23, 620 n 194, 621 n 196; Thomas Y. Davies, *The Fictional Character of Law-and-Order Originalism: A Case Study of the Distortions and Evasions of Framing-Era Arrest Doctrine in Atwater v. Lago Vista*, 37 Wake Forest L. Rev. 239, 423-25 (2002). The initiation of a criminal case largely hinged on an aggrieved private party stepping forward and making a complaint. Davies, 98 Mich. L. Rev. at 622. In short, at the time the Founders adopted the Fourth Amendment, law-enforcement officers simply would not have

been involved in an interview of the kind that occurred here. And because officers were not routinely engaged in this type of investigation, the constitutionality of seizures of this kind is "judged by balancing its intrusion on the individual's Fourth Amendment interests against its promotion of legitimate governmental interests." *Vernonia*, 515 U.S. at 652-53 (internal quotation marks and citations omitted).

Respondent points to the fact that, under common law and under an early congressional act in this country, magistrates could require recognizances from material witnesses to ensure their appearance at trials. Resp. Br. 46-48. That historical analogy is not apt. In-school child interviews and witnesses testifying at criminal trials are, on their face, different "practices" involving very different locations, considerations, and circumstances. An in-school child-abuse interview to substantiate or refute a report of child abuse is an early step—and often the first step—in an investigation to determine whether a crime was even committed. In contrast, the material witness warrant protected the Framer's interests in ensuring the integrity, accuracy, and fairness of trials. There is no historical evidence that the Framers would have countenanced a similar warrant process in the investigatory phase of a case, such as the interview at issue here.

In sum, given the absence of any analogous founding-era proactive criminal investigations, much less in-school child-abuse interviews, this Court must look beyond history for the answer to whether this type of seizure violated the Fourth Amendment. The reason-

ableness must instead be judged by balancing the government's interests against the individual's liberty interests. *Vernonia*, 515 U.S. at 652-53.

3. This Court need not address the scope of the seizure because the Ninth Circuit did not address that question.

Evaluating the constitutionality of any seizure entails a two-part inquiry: whether the seizure was justified at its inception and whether it was justified in its scope. *Terry*, 392 U.S. at 19-20 (balancing involves a dual reasonableness inquiry: "whether the officer's action was justified at its inception, and whether it was reasonably related in scope to the circumstances which justified the interference in the first place."). According to respondent, petitioner has urged this Court to "disregard" the question whether the seizure's scope was justified. Resp. Br. 94. It appears that respondent misunderstands petitioner's argument. Petitioner simply asks this Court to review the only question that the Ninth Circuit reached: whether the seizure was justified at its inception.

Because the Ninth Circuit concluded that the seizure's inception was unconstitutional, it did not address the question whether the scope of the seizure was also unconstitutional. *Greene*, 588 F.3d at 1030. Thus, petitioner does not suggest that this Court ignore the scope question. Rather, based on the procedural posture of this case, this Court simply does not

have before it the question whether the seizure was justified in its scope.[4]

4. This Court has before it only a single question of S.G.'s Fourth Amendment rights; it should not consider any rights that Greene now raises on her own behalf.

Finally, it bears noting the parameters of the specific Fourth Amendment claim at issue here. The only issue for review is whether Camreta and Alford violated S.G.'s Fourth Amendment rights. Greene, on behalf of S.G., filed a host of other claims in district court, including claims that Camreta had violated Greene's due-process rights under the Fourteenth Amendment. *Greene*, 588 F.3d at 1020. Those claims have been remanded to the district court. *Id*. at 1037. Although respondent and various *amici* emphasize Greene's constitutional rights as a parent, those rights are not at issue here and are not before this Court.

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[4] For this same reason, this Court should not consider respondent's argument that Camreta failed to follow Oregon Interview Guidelines for interviewing children suspected of having been abused. That is, what transpired during the interview encompasses questions relating to the scope of the interview, not whether the interview was reasonable at its inception. In all events, petitioner does not concede that Camreta failed to follow the guidelines in conducting his interview of the victim here.

If what respondent means to argue is that the Fourth Amendment itself requires consideration of parents' rights, then respondent is improperly injecting into the Fourth Amendment analysis a parent's Fourteenth Amendment right of control over his or her children. The assessment whether a child's *personal* Fourth Amendment rights are violated when a government official temporarily seizes the child in conducting the interview is not affected by a separate constitutional right that belongs to the parent only. Stated differently, the intrusion on parental rights that may result from the subject matter of the interview has no bearing on the determination whether the restraint on the child's freedom of movement violates the child's constitutional right to be free from unreasonable seizures—a right that is personal to the child and whose scope is not dependent on a parent's separate constitutional right.

CONCLUSION

The Ninth Circuit concluded that when a protective-services caseworker seizes a child at her school to determine whether she is being abused, the caseworker first must obtain a warrant. That far-reaching constitutional holding—on an issue of first impression in the circuit that is binding on any future similar investigations going forward—is reviewable by this Court. And guided by the salient Fourth Amendment principle that all seizures be "reasonable," and balancing the government's strong interests in protecting children from abuse against the child's lesser liberty interests, this Court should conclude that the in-

terview here was reasonable and therefore constitutional.

Respectfully submitted,

JOHN R. KROGER
Attorney General of Oregon
MARY H. WILLIAMS
Solicitor General
ANNA JOYCE
Deputy Solicitor General
Counsel for Bob Camreta