Nos. 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,

*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 Petition For Writs Of Certiorari To The United States Court Of Appeals For The Ninth Circuit**

## BRIEF IN OPPOSITION

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## QUESTION PRESENTED

Does the fact that students have a reduced right to be free from unreasonable search and seizure by school officials, lead to the conclusion that the students' rights are reduced regardless of who or why they are being searched as long as they are still on the school grounds?

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## STATEMENT OF THE CASE

### Facts

This case concerns the claims of a Mother, Sarah Greene, and her two daughters, S.G. and K.G. against a state child protective services worker (Camreta) and a deputy sheriff (Alford). At the time of the incidents involved in this matter, S.G. was nine years old. This family became involved with child protective services when Nimrod Greene, Sarah's husband and the father of S.G. and K.G., was accused of touching F.S., a seven-year-old boy, on his private parts, on the outside of his pants. The mother of the boy said that Sarah Greene had commented about being uncomfortable with some interactions between Nimrod and his daughters, and the boy's father said that Nimrod had mentioned that his wife was accusing him of abusing his daughters. Based on these allegations, the state child protective services worker, accompanied by the deputy sheriff, went to S.G.'s school and had school personnel remove her from her classroom. S.G. was placed in a separate room and kept there for two hours while she was questioned by Camreta. The deputy sheriff, Alford, was in the room the whole time but asked few questions.

### Procedure

S.G. filed this claim pursuant to the Fourth Amendment and 42 U.S.C. § 1983, claiming that the seizure at the school was unreasonable. The District Court found that S.G. was seized, but that the seizure

was reasonable. The Ninth Circuit panel found that S.G. was seized, and the seizure was unreasonable, but that the actors were entitled to qualified immunity. The Ninth Circuit found that in order for the seizure of S.G. to be reasonable it must be based on either a court order, probable cause and exigent circumstances, or parental consent.

## MISSTATEMENTS OF FACT

Respondent believes the following items are misstatements of fact:

a. by Bob Camreta, Case No. 09-1454

1) At the bottom of page 1 of Petitioner's Petition for Writ of Certiorari in his opening statement of reasons for this Court to take review, Camreta claims that obtaining parental consent for an interview of the child is "unfeasible when one of the suspected perpetrators is a parent." To the best of Respondents recollection there is no proof of this assertion in the record.

There was evidence to the contrary before the Court. The only basis for suspecting Nimrod of abusing his daughters was the claim by the parents of the young boy that both Nimrod and Respondent Sarah Greene had made admissions to them – an indication that Sarah Greene was not hiding from the issue.

2) In footnote 1 on page 5, the Petitioner refers to his appeal of the grant of summary judgment to

Respondent. This appears to be a clerical error. The Respondent appealed the grant of Summary Judgment to Petitioners.

b. by Deputy Alford, case No. 09-1478

On page 6 in the statement of facts, Petitioner claims that the young boy F.S. alleged that Nimrod "sexually assaulted" him. This is not an accurate representation of the facts, but is an accurate representation of the assumption made by Camreta and Alford.

The Respondents believe the evidence would show that the young boy first complained that he was mad at Nimrod because he had tied the young boy's shoelaces together. Only after questioning by the child's concerned mother did the child say that Nimrod had touched him on the outside of his pants over his private parts. There was no evidence of any intentional sexual purpose to the contact. After police involvement and additional questioning, the young boy remembered a prior similar incident at some unspecified time in the past. There were insufficient facts to believe that sexual assault had occurred.

## REASONS FOR DENYING THE PETITION

The Petitioners urge the Court to believe that the decision by the Ninth Circuit in this case is an aberration and not in line with either precedent of this Court or decisions in other Circuits. Camreta and

Alford ask that this Court deny S.G. the full protection of the Fourth Amendment and that a balancing test be applied. Petitioners argue that because interviewing children at school is such an important investigatory tool, the Court should limit the children's protections against unreasonable search and seizures. Application of a balancing test would not change the outcome of this case.

After examining the extent of the seizure imposed on S.G. and the amount of law enforcement purpose involved, the Court found that S.G. was entitled to the full protection of the Fourth Amendment of the U.S. Constitution. The circumstances of the seizure of the child in this case justify the requirement that the Petitioners have probable cause and exigent circumstances, or obtain a court order or parental consent.

## Not in Conflict with Precedent

### A. *Illinois v. Lidster*, 540 U.S. 419 (2004)

Alford and Camreta claim the decision in this case (*Greene*) is in conflict with *Illinois v. Lidster,* 540 U.S. 419 (2004). *Lidster* involved law enforcement briefly stopping motor vehicles to ask if perhaps the driver or any passengers had witnessed a hit and run incident that occurred on the same road at the same time of day a few days earlier. Petitioners cite this case for the proposition that when the state is looking for witnesses they are free to use a lesser standard than probable cause for seizing witnesses.

In finding that the stop of individuals in *Lidster* was reasonable, the Court focused on the minimal interference with the liberty interest that the Fourth Amendment was meant to protect. The seizure consisted of a brief wait in line and a few seconds of contact with the police. The Court determined that this stop was only for information-seeking and the questions asked were not designed to elicit self-incriminating information and therefore was not likely to cause anxiety. There was no intent of gathering information that pertained to the person stopped. The circumstances that allowed the Court to find that the stop in *Lidster* was reasonable are not found in this case.

Camreta and Alford went to the school with the specific intent of interviewing S.G. The interview was not brief, was focused specifically on S.G. and her family, and was much more than a minimal interference with her personal liberty. The circumstances in this case clearly would have caused anxiety in a nine-year-old child.

### B. *New Jersey v. T.L.O.*, 469 U.S. 325 (1985)

Alford and Camreta also each claim that the "special needs" doctrine discussed in *T.L.O.*, which allows school officials to search and seize students on less than probable cause, should be applicable in this case. *T.L.O.* involved a search by a school official who was acting to maintain discipline on the school

grounds. The Court has continuously found that school officials have a "special need" to protect the students that have been entrusted to their care, and as such the school officials may search students and their possessions when they reasonably suspect a threat to the well-being of the school environment or the students themselves.

As the Ninth Circuit found in this case: "The 'special need' animating the Court's decision in *T.L.O.* is therefore entirely absent." *Greene v. Camreta,* 588 F.3d 1011, 1025 (9th Cir. 2009). Camreta and Alford were not interviewing S.G. because of any threat to the school environment. Instead, Camreta and Alford want to claim the same "special need" to seize S.G. as a school officer would have, yet their seizure of S.G. is not at all related to the school environment or student safety.

**Not in Conflict with Other Circuits**

While the Fifth Circuit does appear to have adopted a different standard for interviewing children at a public school, the application of that rule to this case would result in the same outcome. *Gates v. Texas Dept. of Protective and Regulatory Services*, 537 F.3d 404 (5th Cir. 2008). The Court in *Gates* finds that "seizing a child from a public school is a lesser intrusion into the freedoms the child would otherwise enjoy, as those freedoms have already been limited." (537 F.3d at 432). The Court went on to determine

that a "social worker must have a reasonable belief that the child has been abused and probably will suffer further abuse upon his return home at the end of the school day." (537 F.3d at 433). This is a reduced standard from that found by the Ninth Circuit, but would lead to the same result when applied to the facts of this case.

There were no allegations that S.G. had been abused, only allegations that S.G.'s mother was uncomfortable because she felt some interactions between S.G. and Nimrod were inappropriate, and Nimrod being upset because the mother was upset. With no evidence of abuse or reason to believe the child would be abused if returned home, the seizure would have been unreasonable under even a reduced standard.

## CONCLUSION

The Court should deny the Petition for Writs of Certiorari because the Ninth Circuit has correctly stated the law. While school officials may have a "special need" to use only reasonable suspicion to protect the school, a child's right to be free from unreasonable

search and seizure is not lost just because law enforcement is able to seize her on school grounds.

Respectfully submitted,

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