No. 09-1454

In The
Supreme Court of the United States

BOB CAMRETA,

Petitioner,

vs.

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

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

AMICUS CURIAE BRIEF OF THE ARIZONA PROSECUTING ATTORNEYS' ADVISORY COUNCIL IN SUPPORT OF PETITIONER

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QUESTIONS PRESENTED

1. Is the in-school interview of a public school student by a child protection worker and law enforcement officer properly characterized as a seizure subject to the Fourth Amendment?

2. Even assuming a seizure, do the traditional Fourth Amendment probable cause and warrant requirements apply to an in-school interview by a child protection worker and law enforcement officer of a public school student suspected of being sexually abused by her father or should the reasonableness of the interview be assessed under the balancing test of *Terry* and *T.L.O.*?

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AMICUS CURIAE BRIEF OF THE ARIZONA PROSECUTING ATTORNEYS' ADVISORY COUNCIL

The Arizona Prosecuting Attorneys' Advisory Council ("APAAC") respectfully submits this *amicus curiae* brief on behalf of itself and its members, in support of Petitioner Camreta.[1]

IDENTITY AND INTEREST OF *AMICUS CURIAE*

APAAC is comprised of the elected county attorneys from Arizona's fifteen counties, in addition to the Arizona Attorney General, and several head city court prosecutors. This state entity is responsible for representing prosecution interests at the state legislature, as well as training prosecutors across Arizona on subjects ranging from basic trial skills to death penalty issues.

[1] Pursuant to Supreme Court Rule 37.2(a), communication indicating APAAC's intent to file this *amicus curiae* brief was received by counsel of record for all parties at least 10 days prior to the due date of this brief and all parties consented to the filing of this *amicus* brief in support of Petitioner Camreta. Finally, pursuant to Supreme Court Rule 37.6, APAAC affirms that no counsel for a party authored this brief in whole or in part and that no party, person, or entity made a monetary contribution specifically for the preparation or submission of this brief.

APAAC's interest in this case arises from its commitment to protect children from child abuse and prosecute the perpetrators of such crimes. The Ninth Circuit's decision in *Greene v. Camreta*, 588 F.3d 1011 (9th Cir. 2009) that the traditional Fourth Amendment warrant and probable cause requirements used to assess the constitutionality of seizures of suspected criminals apply to the in-school interviews of suspected child abuse victims hampers the efforts of child protection agencies, law enforcement officers, and hence prosecutors, to promptly and effectively investigate and prosecute child abuse and most importantly, to protect the children. Because the Ninth Circuit decision defeats these goals, APAAC urges this Court to accept certiorari and render needed guidance on these vital issues.

ARGUMENT

I. THIS COURT SHOULD GRANT REVIEW BECAUSE THE NINTH CIRCUIT'S HOLDING IN *GREENE* ERRONEOUSLY ASSUMES THAT THE MERE PRESENCE OF A LAW ENFORCEMENT OFFICER AT AN IN-SCHOOL INTERVIEW OF A PUBLIC SCHOOL STUDENT SUSPECTED OF BEING SEXUALLY ABUSED BY HER FATHER RENDERS THE INTERVIEW A SEIZURE.

Nimrod Greene was arrested for the sexual abuse of a seven-year-old neighbor boy, F.S. During the

ensuing investigation, F.S.'s mother reported that Nimrod's wife, Sarah, told her she did not like the way Nimrod made her two young daughters (S.G. and K.G.) sleep in his bed when he was drunk and she also did not like the way Nimrod behaved when the girls sat on his lap. Nimrod also informed F.S.'s father that Sarah was accusing him of molesting their daughters. *Greene v. Camreta*, 588 F.3d 1011, 1016 (9th Cir. 2009).

On the next school day after Nimrod was released from jail, Camreta, a caseworker, accompanied by Alford, a deputy, went to nine-year-old S.G.'s public school to interview her. Camreta chose the school as the site of the interview because he believed it to be a place where S.G. would feel safe and be away from the potential influence of her parents, one of whom allegedly perpetrated the abuse, and the other who knew about it and did nothing. *Id.*

The interview lasted between one and two hours and was not recorded. Although the interview was conducted by Camreta in Alford's presence, the deputy, who was in uniform, asked no questions. *Id.* at 1017. During the interview, S.G. made several detailed disclosures of sexual abuse by her father including that he tried to touch her on her private parts when he drank, the touching started when she was three years old and had most recently occurred a week earlier, her mother knew about it, and it was "one of our secrets" with her little sister, K.G. *Id.*

S.G. subsequently recanted her disclosures of abuse. On the same date that Nimrod was indicted on

charges arising from the reports of F.S. and S.G., Sarah Greene hired an attorney to defend her husband against the allegations, which she characterized as "lies." The attorney informed Camreta that no one could meet with any member of the Greene family, including the children, without counsel present. *Id.* at 1018.

In Sarah's action for the violation of her daughters' civil rights, the district court held that while S.G. had been "seized" for Fourth Amendment purposes when she was taken from her classroom and interviewed by Camreta and Alford, the seizure was "objectively reasonable under the facts and circumstances of this case." *Greene*, 588 F.3d at 1020. While neither Camreta nor Alford specifically contested this finding, the Ninth Circuit did consider and affirm it. *Id.* at 1022.

Acknowledging that it did not need to reach the constitutional issue in the context of the civil rights action, the Ninth Circuit did so anyway, seeking, it said, "to provide guidance to those charged with the difficult task of protecting child welfare within the confines of the Fourth Amendment." *Id.* at 1022. Unfortunately, the court abysmally failed at the task of protecting child welfare. It likewise did not succeed in interpreting the Fourth Amendment to provide a workable standard applicable to the in-school interview of a suspected victim of child abuse – a child suspected of being abused by one of that child's own parents. Indeed, the court inexplicably applied the same standards used to assess the constitutionality of

the seizures of suspected criminals to child abuse victims.

It is certainly not a self-evident conclusion that the public school interview of a possible child abuse victim constitutes a seizure triggering Fourth Amendment requirements. Quite the contrary. While students do not shed their constitutional rights . . . "at the schoolhouse gate," *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969), this Court has never held that "the full panoply of constitutional rules applies with the same force and effect in the schoolhouse as it does in the enforcement of criminal laws." *New Jersey v. T.L.O.*, 469 U.S. 325, 350 (1985) (Powell, J., concurring).

The traditional Fourth Amendment rule states that a seizure does not occur so long as a reasonable person would feel free "to disregard the police and go about his business." *California v. Hodari D.*, 499 U.S. 621, 628 (1991). However, as this Court has repeatedly held, "this is not an accurate measure of the coercive effect" in certain encounters in which the individual's freedom is *already* restricted by facts independent of police conduct.

INS v. Delgado, 466 U.S. 210 (1984), involved the INS' practice of visiting factories at random and questioning employees to determine whether any of them were illegal aliens. Some INS agents would stand at the factory exits while other agents questioned workers. This Court acknowledged that the workers may not have been free to leave, but

explained that this was not the result of police activity. "Ordinarily, 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. Likewise, the bus passengers in *Florida v. Bostick*, 501 U.S. 429 (1991) and *United States v. Drayton*, 536 U.S. 194 (2002) were not seized merely because their movements were restricted while they were being questioned by police:

> A passenger may not want to get off a bus if there is a risk it will depart before the opportunity to reboard. A bus rider's movements are confined in this sense, but this is the natural result of choosing to take the bus; it says nothing about whether the police conduct is coercive. The proper inquiry "is whether a reasonable person would feel free to decline the officers' requests or otherwise terminate the encounter."

Drayton, 543 U.S. at 200-02 (quoting *Bostick*, 501 U.S. at 436).

Even more so than employees at work and passengers on a bus, students have a lesser expectation of privacy and less right to unrestricted movement in the public school setting. *Veronia Sch. Dist. v. Acton,* 515 U.S. 646, 656-57 (1995). "Teachers and administrators control their movements from the moment they arrive at school; for example students cannot simply walk out of a classroom. Nor can they

walk out of a principal's or vice-principal's office in the middle of any official conference." *Milligan v. City of Slidell*, 226 F.3d 652, 655-56 (5th Cir. 2000). Thus, the fact that a child may not "feel free to leave" an in-school interview may be more a function of the admittedly custodial role of the public school than to any coercive authority of the questioners.

Since at the time of the interview, police were investigating allegations of child sexual abuse against S.G.'s father and a police officer (Alford) was present at the interview, the court held that the full protections of the Fourth Amendment applied. Indeed, it was not the reason for or even the length of the interview that so troubled the Ninth Circuit – it was the fact that Alford was *present at all*. "[T]he decision to have Alford accompany Camreta to the interview constituted sufficient entanglement with law enforcement to trigger the traditional Fourth Amendment prerequisites to seizure of a person." *Id.* at 1028.

According to this language, even if a law enforcement officer simply asks to speak to a student and the child is called out of the classroom, a "seizure" triggering traditional Fourth Amendment probable cause and warrant requirements has occurred. The Ninth Circuit's *per se* rule ignores this Court's Fourth Amendment precedent that holds that a person subjected to the questioning of law enforcement is not seized for purposes of the Fourth Amendment if their movements and liberty are already constrained for reasons completely unrelated to law enforcement. That is the case here.

II. THIS COURT SHOULD GRANT REVIEW BECAUSE EVEN ASSUMING THERE WAS A SEIZURE, THE FOURTH AMENDMENT DOES NOT MANDATE A WARRANT, PROBABLE CAUSE, A COURT ORDER, EXIGENT CIRCUMSTANCES, OR PARENTAL CONSENT BEFORE A CHILD PROTECTION WORKER AND LAW ENFORCEMENT OFFICER CAN INTERVIEW A SUSPECTED VICTIM OF CHILD ABUSE AT THE CHILD'S PUBLIC SCHOOL.

A. The Only Fourth Amendment Standard That Makes Sense in the Child Abuse Context – Assessing the Reasonableness of an In-school Seizure of a Suspected Victim of Child Abuse With a *Terry/T.L.O.* Balancing Test – Was Erroneously Rejected by the Ninth Circuit

Even assuming the Fourth Amendment does apply to the in-school interview in this case – and that it did constitute a seizure – the question remains whether that seizure was nevertheless reasonable. "The basic purpose of the [Fourth] Amendment as recognized in countless decisions of this Court is to safeguard the privacy and security of individuals against arbitrary invasions by government officials." *Camara v. Municipal Court*, 387 U.S. 523, 528 (1967). But the touchstone of the Amendment is reasonableness and reasonableness depends upon the particular circumstances of the case. *See Terry v. Ohio*, 392 U.S. 1, 19 (1968).

That the child was a victim and not a criminal suspect as well as the public school setting itself must also inform the analysis of whether – even if it was a seizure – it was reasonable. As this Court recognized in *New Jersey v. T.L.O.*, 469 U.S. 325 (1985), "students within the school environment have a lesser expectation of privacy than members of the population generally." *T.L.O.*, 469 U.S. at 348 (Powell, J., concurring). This led the Court to conclude that "[i]t is evident that the school setting requires some easing of [Fourth Amendment] restrictions. . . . The warrant requirement, in particular, is unsuited to the school environment." *Id.* at 340.

In *T.L.O.*, this Court considered the constitutionality of searches of public school students conducted by school officials. *Id.* at 328. The Court explained that the "fundamental command" of the Fourth Amendment is that searches and seizures are reasonable and that, depending on the circumstances, reasonableness does not always entail probable cause and a warrant:

> Thus, we have in a number of cases recognized the legality of searches and seizures based on suspicions that, although "reasonable" do not rise to the level of probable cause. . . . Where a careful balancing of governmental and private interests suggests that the public interest is best served by a Fourth Amendment standard of reasonableness that stops short of probable

> cause, we have not hesitated to adopt such a standard.

T.L.O., 469 U.S. at 340-41.

The *T.L.O.* Court concluded that balancing the somewhat limited privacy interests of public school children against the substantial need of teachers and administrators to maintain order in the schools "does not require strict adherence to the requirement that searches be based on probable cause to believe that the subject of the search has violated or is violating the law." *Id.* at 341. Rather, the legality of the search of a student should rest simply on the reasonableness, under all of the circumstances, of the search. Citing the dual test for determining reasonableness short of probable cause of *Terry v. Ohio,* the Court found that first one must consider "whether the . . . action was justified at its inception." Second, one must determine whether the action "was reasonably related in scope to the circumstances which justified the interference in the first place." *Id.* at 340 (quoting *Terry*, 392 U.S. at 20).

Moreover, *T.L.O.* explains that the determination of what standard of reasonableness governs a particular class of searches and seizures requires the balancing of the need for the action against the invasion which that action entails. *See Camara*, 387 U.S. at 536-37. In particular, the Court noted the special circumstances of the school environment that must be considered for each side, teachers and students:

> Against the child's interests in privacy must be set the substantial interest of teachers and administrators in maintaining discipline in the classroom and on school grounds.

T.L.O., 469 U.S. at 339.

Although *T.L.O.* involved a search by school officials, its balancing test has been applied to seizures in the school setting even where law enforcement has been involved. In *Cason v. Cook*, 810 F.2d 188 (8th Cir. 1987), a public school student brought a civil rights action alleging that she was subjected to an unconstitutional search and seizure when, after some school lockers were broken into, she was removed from the classroom, questioned, and her possessions were searched by both a school official and police. No attempt was made to contact the girl's mother before the questioning or the search. The court, applying the balancing test of *T.L.O.*, found the search and seizure reasonable under all of the circumstances. *Cason*, 810 F.2d at 189-92.

The Fourth Circuit considered a similar issue in *Wofford v. Evans*, 390 F.3d 318 (4th Cir. 2004), in which the parents of a ten-year-old public school student sued, claiming that the in-school questioning of their daughter about whether she had brought a gun to school violated the child's Fourth Amendment rights to be free from unreasonable seizures. The court held the seizure legal under the reasonable suspicion standard of *Terry* as applied to searches and seizures of students by *T.L.O. Wofford*, 390 F.3d at

321-22, 327. According to the *Wofford* court, the constitutional standards governing police action in *Terry* are exactly those regulating the searches and seizures of public school students in *T.L.O. Id.* at 326.

In *Milligan v. City of Slidell*, 226 F.3d 652 (5th Cir. 2000), the Fifth Circuit found that police officers' in-school questioning of high school students about a rumored after-school fight did not violate the students' Fourth Amendment protections against unreasonable searches and seizures because such protections must be evaluated in accordance with the public school environment. Applying the balancing test in *Terry*, the court found that any limited privacy or liberty interest that the students had in attending classes unhindered was outweighed by the school's interests in protecting its students and deterring possible violence. *Milligan*, 226 F.3d at 653-56.

More recently, the Fifth Circuit addressed the constitutional implications of seizing possible victims in a child abuse investigation. *Gates v. Texas Dep't of Protective & Regulatory Servs.*, 537 F.3d 404 (5th Cir. 2008). The court first explained the concerns at stake:

> [T]here is no doubt that child abuse is a heinous crime, and the government's interest in stopping and removing children from abusive situations is paramount. . . . [S]eizures due to allegations of child abuse present a unique dynamic in Fourth Amendment jurisprudence which cannot be ignored. Deciding what is reasonable under the

> Fourth Amendment will require an assessment of the fact that the courts are dealing with a child who likely resides in the same house as, and is under the control of, the alleged abuser.

Gates, 537 F.3d at 429.

In two of the seizures at issue in *Gates*, child protection workers, on the basis of anonymous tips, removed two siblings from school to interview them at a child advocacy center ("CAC"). While the court ultimately found the removals based solely on anonymous tips improper without corroboration by at least an in-school screening interview of the children, in assessing the reasonableness of the seizures, it balanced the nature and quality of the intrusion on the children's Fourth Amendment interests against the importance of the governmental interests that justified the intrusion:

> Temporarily seizing a child from a public school in order to interview him in a safe place is decidedly different than seizing a child from his home for the purpose of removing him from allegedly abusive parents. To begin with, the rights of children to freely move about, especially within a public school, are not as extensive as adults' rights. . . . Consequently, 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. Next, the nature and scope of the intrusion into the child's rights is relatively small. The

> seizures in this case were for the purpose of interviewing the children for their own protection. As described above, the CAC was created with the purpose of reducing trauma to the possible victims of child abuse by coordinating child abuse investigations among the various branches of government.

Gates, 537 F.3d at 432.

The *Gates* court also recognized that while some corroboration of an anonymous report of abuse was necessary before removing the children from school to interview them, a demonstration of exigent circumstances was not required. *Id.* at 433. Where the tip was not anonymous, the *Gates* court found a screening interview of two of the children suspected of being abused reasonable, despite the fact that the interview was undertaken by police who took the children into a separate room while they were at the YMCA and questioned them. *Id.* at 434.

Here, applying the balancing test of *Terry* and *T.L.O.*, it is clear that even assuming the interview of S.G. was a seizure, it was justified at its inception and reasonable in scope under the circumstances. The vital governmental interest in protecting children from abuse far outweighs the limited liberty and privacy interests enjoyed by a child attending public school. Both of F.S.'s parents provided credible information garnered from Nimrod and Sarah Greene themselves, that Nimrod was sexually abusing his daughters. Camreta interviewed S.G. at school and away from the influence of her parents. Alford

observed the interview and did not ask any questions. The purpose of the interview was to protect S.G. – to determine whether she was in any danger and whether her father should be prosecuted for sexually abusing her. Since there were reasonable grounds for suspecting criminal activity, the interview was amply justified at its inception. Moreover, given the fact that S.G. made detailed admissions regarding her father's abuse, the duration of the interview was not unreasonable, nor did it unduly interfere with S.G.'s already circumscribed freedom of movement at school.

The Ninth Circuit in *Greene*, however, rejected the argument that it should apply the legal standards of *T.L.O.*, finding *T.L.O.* limited to searches or seizures by school officials that were justified by the need for a speedy and informal disciplinary procedure in public schools to maintain order. Since S.G. was not suspected of having violated any school rule and her seizure was not shown to be necessary to maintain school discipline, the court concluded that it could not rely on the balancing of interests in *T.L.O.* to assess the reasonableness of Camreta and Alford's decision to interview S.G. *Greene*, 588 F.3d at 1023-25. Under this reasoning, the Ninth Circuit gave less weight to the governmental interest in protecting children from child abuse than it would have given if S.G. was disciplined by school officials for running with scissors or talking in class.

In addition to the school setting, another area in which a *Terry*-type balancing test has been applied by

this Court relevant to the circumstances in this case is in the detention of a possible witness to a crime. In *Illinois v. Lidster*, 540 U.S. 419 (2004), police stopped motorists at a highway checkpoint seeking information about a recent fatal hit-and-run at the same location. The defendant nearly ran over one of the police officers and was subsequently investigated and arrested for driving drunk. He challenged the lawfulness of his arrest and conviction, contending that the checkpoint stop violated his Fourth Amendment rights. *Lidster*, 540 U.S. at 421-23. This Court distinguished the checkpoint stop found unconstitutional in *Indianapolis v. Edmond*, 531 U.S. 32 (2000), since rather than looking for a crime suspect in the vehicles they were stopping, the police were looking for witnesses or information about the hit-and-run:

> The checkpoint stop here differs significantly from that in Edmond. The stop's primary law enforcement purpose was *not* to determine whether a vehicle's occupants were committing a crime, but to ask vehicle occupants, as members of the public, for their help in providing information about a crime in all likelihood committed by others. The police expected the information elicited to help them apprehend, not the vehicle's occupants, but other individuals.

Lidster, 540 U.S. at 423 (emphasis in original).

As opposed to the stop of a suspected criminal, "an information-seeking stop is not the kind of event

that involves suspicion, or lack of suspicion, of the relevant individual." *Id.* at 425. Moreover, the interviewing of witnesses "is undoubtedly an essential tool in law enforcement." *Id.* (quoting *Haynes v. Washington*, 373 U.S. 503, 515 (1963)).

Following the holding in *Brown v. Texas*, 443 U.S. 47, 51 (1979), in judging the reasonableness of the seizure in *Lidster*, this Court looked to "the gravity of the public concerns served by the seizure, the degree to which the seizure advances the public interest, and the severity of the interference with individual liberty." *Lidster*, 540 U.S. at 426-27:

> The relevant public concern was grave. Police were investigating a crime that had resulted in a human death. No one denies the police's need to obtain more information at that time. And the stop's objective was to find the perpetrator of a specific and known crime, not of unknown crimes of a general sort. The stop advanced this grave public concern to a significant degree. The police appropriately tailored their checkpoint stops to fit important criminal investigatory needs. . . . More importantly, the stops interfered only minimally with liberty of the sort the Fourth Amendment seeks to protect.

Id. at 427.

Like *Lidster*, in this case a student was detained at a public school for the purpose of gathering information about a crime committed by someone else – her father. Thus the mere fact that S.G.'s interview

had a law enforcement purpose did not convert the interview into the type of a seizure triggering the Fourth Amendment's warrant and probable cause requirements.

Here too, as in *Lidster*, the relevant public concern was grave. In child abuse investigations, a balancing of the interests has to do more than give lip service to the right of the child to be free from physical and sexual abuse and neglect. The Ninth Circuit's decision fails to balance the nature and quality of the intrusion on the child's Fourth Amendment interests against the importance of the governmental interests that justify the intrusion. The intrusion of an interview at the child's public school is minimal since a student's freedom of movement and privacy are already circumscribed by the custodial nature of the public school environment. In contrast, the interest of the government in protecting children by promptly identifying victims of abuse is significant and compelling. *See New York v. Ferber*, 458 U.S. 747, 757 (1982) (the government's interest in "safeguarding the physical and psychological well being of a minor" is compelling); *Wyman v. James*, 400 U.S. 309, 318 (1971) (stating of children, "[t]here is no more worthy object of the public's concern.")

B. The Ninth Circuit Rule Applying the Traditional Fourth Amendment Probable Cause and Warrant Requirements Ignores the Realities of Child Abuse Investigations and is Both Unworkable and Dangerous.

In concluding that Camreta and Alford violated the Fourth Amendment by interviewing S.G. at her school about suspected sexual abuse by her father without a warrant, probable cause, a court order, exigent circumstances, or parental consent, the Ninth Circuit also failed to recognize the unique aspects and realities of child abuse investigations and prosecutions, particularly when one or both parents is the alleged perpetrator of the abuse. That lack of understanding allowed the court to adopt a standard that is totally unworkable and frankly dangerous. It is a standard that leaves a whole segment of children suspected of being abused completely unprotected.

Child abuse cases, and child sexual abuse cases in particular, are already difficult to investigate and prosecute. The abuse occurs in secret, away from potential eyewitnesses so there is often little or no corroborative evidence. Karla-Dee Clark, *Innocent Victims and Blind Justice: Children's Rights to be Free From Child Sexual Abuse*, 7 N.Y.L. Sch. J. Hum. Rights 214, 225 (Spring 1990). The perpetrator is often a member of the victim's family. Indeed, the most recent report of the U.S. Department of Health and Human Services states that 83.8% of child abuse

is committed by parents or other members of the child's household.[2]

Sexual abusers of children also often leave little or no physical evidence of their crime. Joyce A. Adams, M.D., Katherine Harper, PA-C, Sandra Knudson, PNP, Juliette Revilla, FNP, *Examination Findings in Legally Confirmed Child Sexual Abuse: It's Normal to be Normal*, 94 Pediatrics 310-17 (Sept. 1994) ("the majority of children with legally confirmed sexual abuse will have normal or nonspecific genital findings); Nancy D. Kellogg, M.D., Shirley W. Menard, R.N., Ph.D., Annette Santos, R.N., *Genital Anatomy in Pregnant Adolescents*, 113 Pediatrics 67-69 (Jan. 2004) (only 2 out of 36 (7%) of pregnant adolescents had definitive findings of penetration). Delays in reporting the abuse and recantation by the child also occur:

> Delay and recantation are particularly common in cases of intra-family abuse. In these situations, the delay may be encouraged by long-standing active or passive family collusion and support aimed at avoiding disclosure for fear that public revelation of the abuse will result in social rejection, economic disaster, a general

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[2] *See* http://www.acf.hhs.gov/programs/cb/pubs/cm08/chapter5.htm, U.S. Department of Health and Human Services Administration for Children and Families, Child Maltreatment Report (2008).

> breakdown of the family unit, or the incarceration of the accused.

Dara Loren Steele, Note, *Expert Testimony: Seeking an Appropriate Admissibility Standard for Behavioral Science in Child Sex Abuse Prosecutions*, 48 Duke L.J. 933, 938-39 (1999).

A close relationship between the child victim of sexual abuse and the perpetrator may lead to delayed disclosure as will a child's fears that his or her other parent or caregiver (who are themselves close to the perpetrator) will react negatively. Studies have demonstrated that "children abused by a parent figure were more likely to recant as were children whose nonoffending caregivers were unsupportive." Lindsay C. Malloy, M.A., Thomas D. Lyon, J.D., Ph.D., and Jodi Quas, Ph.D., *Filial Dependency and Recantation of Child Sexual Abuse Allegations,* 46 J. Am. Acad. Child Adolesc. Psychiatry 162, 163, 166 (February 2007). One variable strongly associated with a mother's reaction to her child's report of sexual abuse is a history of alcohol abuse by the offender: " A mother who tolerates alcohol abuse in the family may more actively deny problems and therefore be predisposed to not believing her child, or her dependency needs may outweigh her child's needs." Elizabeth A. Sirles, Ph.D., and Pamela J. Franke, M.S.W., *Factors Influencing Mothers' Reactions to Intrafamily Sexual Abuse*, 13 Child Abuse & Neglect 131, 135 (1989).

In *Greene*, S.G.'s mother, Sarah, knew of S.G.'s allegations against Nimrod, S.G.'s father and Sarah's husband. Most of the incidents described were alleged to have occurred in connection with Nimrod being drunk. Sarah hired a lawyer and characterized the allegations against Nimrod as "lies." *Greene*, 588 F.3d at 1018. Not surprisingly then, Camreta and Alford did not ask Sarah's or Nimrod Greene's permission before they interviewed S.G. Yet the Ninth Circuit made such parental permission one of the Fourth Amendment prerequisites of S.G.'s in-school interview.

The idea that parental consent can be obtained in this type of situation is nothing less than absurd. Under what circumstances would a suspect ever consent to the interview of his own victim about his crime? Add to that the fact that the parents already have control over the child victim at home. The *Greene* court did perform a balancing of sorts but unfortunately the interests of S.G. herself were never placed on the scale:

> [R]esolving the constitutional claims at issue in this case involves a delicate balancing of competing interests. On one hand, society has a compelling interest in protecting its most vulnerable members from abuse within their home. . . . On the other hand, parents have an exceedingly strong interest in directing the upbringing of their children, as well as in protecting both themselves and their children from the embarrassment and

> social stigmatization attached to child abuse investigations.

Greene, 588 F.3d at 1015-16. The Ninth Circuit's assumption that the child's best interests are also served by avoiding the "embarrassment" and "social stigmatization" of a child abuse investigation leaves a truly victimized child out in the cold. It also places the offending parent in the position of a fox guarding the henhouse.

By virtue of the nature of the crime of child abuse, including the lack of corroborating evidence or witnesses and incomplete or delayed disclosure, investigative interviews of the suspected victim of child abuse will almost always be conducted before there is probable cause to believe that child abuse has occurred – the standard necessary to obtain a warrant.

An even more dangerous product of the Ninth Circuit's decision is the adverse effect it will have on law enforcement interviews and joint child protection/law enforcement interviews of suspected child abuse victims at a time and place such an interview is the most neutral and appropriate. The Ninth Circuit basically mandated that any time law enforcement is involved in a child abuse investigation, the traditional Fourth Amendment warrant requirement applies. In examining the Oregon statutory scheme, the court found that it was designed to encourage broad collaboration between law enforcement and child protection workers in the

state's investigation of child abuse. This fact alone, according to the court, was enough to trigger the traditional Fourth Amendment warrant and probable cause requirements:

> It may be that fostering coordination and collaboration between caseworkers and law enforcement officers is an effective way both to protect children and to arrest and prosecute child abusers – each of course, governmental activity of the highest importance. But we do hold that state officials using such a policy cannot thereby forge an exception to traditional Fourth Amendment protections for the criminal investigation of child sexual abuse, as they seek to do here.

Greene, 588 F.3d at 1029.

What the Ninth Circuit failed to recognize is that many states not only encourage but require child protection and law enforcement agencies to work together in investigating and prosecuting child abuse. In fact, the federal government explicitly supports, and even funds, such cooperation. The Child Abuse and Treatment Act ("CAPTA") awards grants to "programs of collaborative partnerships" including child protective service and law enforcement agencies. 42 U.S.C. § 5106(a)(2). CAPTA assists states in "creating and improving the use of multidisciplinary teams and interagency protocols to enhance investigation. 42 U.S.C. § 5106a(a)(2)(A). In order to be eligible for a CAPTA grant, a state plan must

demonstrate "the cooperation of state law enforcement officials, courts of competent jurisdiction, and appropriate state agencies providing human services in the investigation, assessment, prosecution, and treatment of child abuse or neglect." 42 U.S.C. § 5106a(b)(2)(A)(xi).

In Arizona, the legislature required the Department of Economic Security to develop and implement protocols with law enforcement for investigating and sharing information regarding reports of child abuse. The protocols must include standards for interdisciplinary investigations of abuse and neglect and procedures for the coordination of screening, response, and investigation with other professional disciplines. Ariz. Rev. Stat. § 8-817(B).

The Ninth Circuit ruling will necessarily have a chilling effect on school interviews of suspected child abuse victims, particularly where a law enforcement officer is involved or even merely present during the interview. The decision has the dangerous effect of compelling officers to avoid in-school interviews of suspected child abuse victims altogether lest they risk the suppression of evidence gathered or civil liability for seizing the children. Officers should not have to simply walk away from investigating child abuse crimes, leaving children unprotected. As this Court stated, [the] Fourth Amendment does not require a policeman who lacks the precise level of information necessary for probable cause to arrest to simply shrug his shoulders and allow a crime to occur

or a criminal to escape." *Adams v. Williams*, 407 U.S. 143, 145 (1972).

CONCLUSION

Based on the foregoing authorities and arguments, *Amicus Curiae* APAAC respectfully requests this Court to grant Camreta's Petition for Writ of Certiorari and hear the case on the merits.

Respectfully submitted by:

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