No. 18-_____

In The
Supreme Court of the United States

N.E.L. and M.M.A.,

Petitioners,

v.

DOUGLAS COUNTY, COLORADO,
LESA ADAME, in her individual capacity and
CARL GARZA, in his individual capacity,

Respondents.

N.E.L., M.M.A. and E.M.M.,

Petitioners,

v.

MONICA GILDNER, ANGELA WEBB and
TINA ABNEY, in their individual capacities,

Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Qualified immunity, to many observers, has transmogrified into absolute immunity. Lawyers from across the ideological spectrum joined in remarkable *amici curiae* briefs[1] articulating problems with the same element of qualified immunity as is central to this case, namely, the "clearly established right" requirement.

Magnifying the importance of the question here is the fact that government employees from two states engaged in a cross-border agreement to circumvent Colorado statutes which were specifically designed to prevent summary child snatchings.

Agreements like the one here are an outrageous government encroachment upon procedural due process and warrant requirements, and upon the traditional parameters of Full Faith and Credit, the right to travel, and the Privileges and Immunities Clause. The agreement here is not unheard of,[2] but precedent "directly on point" will be unlikely in any given circuit.

The primary question, therefore, at the Rule 12(b)(6) stage of the case, is whether Petitioners' summary removal from one state (Colorado) to another (Kansas) violated clearly established rights to procedural due process, a warrant or a valid court order (rights which were also codified in Colorado's *Uniform*

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[1] *See amici* briefs in this Court's *Milling* case, No. 17-8654.

[2] *See, e.g.*, *Arkansas Dep't of Human Serv v. Cox*, 82 S.W.3d 806, 811, n. 1 (Ark. 2002) (not involving 42 U.S.C. § 1983).

QUESTIONS PRESENTED – Continued

Child Custody Jurisdiction and Enforcement Act) and the right to familial association.

The second question is whether an appellant is entitled, in its reply brief, to address the answer brief's "alternative ground" for affirming the district court or, as stated by one court, does the circuit court have "discretion" not to consider the reply brief's rebuttal argument.

The third question is whether a portion of the conspiracy case against agents from two states was improperly transferred to the transferee forum, Kansas, when the original case could not have been brought there against all defendants.

This third question is still pending on appeal in the Tenth Circuit. Under this Court's Rule 11, the issue is of "imperative public importance" because, when government officials collude from two states to conduct wrongdoing in one state, litigation in two districts upon the same facts and witnesses not only doubles the burden on the federal court system, but may also result in conflicting outcomes.

PARTIES TO THE PROCEEDINGS

Petitioners are three siblings from a family of 10 children. N.E.L. and M.M.A. began the suit in Colorado after turning 18. Petitioner E.M.M., after turning 18, intervened after a portion of the case was transferred to Kansas.

The individual Kansas Respondents are social workers Monica Gildner, Angela Webb and Tina Abney.

The Colorado Respondents are Douglas County, Colorado, and two individuals, social worker Lesa Adame and sheriff's deputy Carl Garza.

CORPORATE DISCLOSURE STATEMENT

Not applicable.

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PETITION FOR WRIT OF CERTIORARI

INTRODUCTION

Acting in concert from two states, a total of four social workers and a sheriff's deputy summarily removed Petitioners to Kansas from Colorado and separated them from their parents and grandparents for at least five days.

The government agents had agreed to circumvent Colorado's statutory safeguards against summary enforcement of out-of-state *ex parte* custody orders. A policy by Douglas County, Colorado, authorized its employees' wrongful actions via a longstanding administrative order issued by the County's Chief Judge, or so the County had argued strenuously in its district court motion to dismiss.

Even without the state statutes, however, decisional law has consistently required procedural due process and warrants for a home entry to remove a child, absent an exigency. These decisions are simply codified in the *Uniform Child Custody Jurisdiction and Enforcement Act*, C.R.S. §§ 14-13-101 *et seq*. (the "UCCJEA").

In this case, Petitioners were legally entitled to be in Colorado with their parents and grandparents. Prior to being placed into custody with the Kansas agents, the UCCJEA entitled Petitioners to procedural due

process in Colorado. They had the right to be in Colorado and to be protected by its UCCJEA.

The writ here is sought for decisions by two courts: the Tenth Circuit's (for denying clearly established law and for barring Petitioners' rebuttal argument about a judicial admission); and under this Court's Rule 11, the Kansas District Court's as to one issue (upholding a denial of specific jurisdiction in Colorado).

OPINIONS BELOW

The Tenth Circuit opinion affirming the Colorado District Court is not reported, *N.E.L. v. Douglas County, Colorado*, No. 17-1120, 2018 WL 3239239 (10th Cir. July 3, 2018), but is provided at App. 1. The Tenth Circuit's order denying a panel rehearing is provided at App. 93.

The Colorado District Court opinion by Judge Blackburn is provided at App. 32. The opinion by Colorado Magistrate Judge Shaffer is provided at App. 41.

The Kansas District Court opinion by Judge Murguia denying re-transfer to Colorado is provided at App. 90.

STATEMENT OF JURISDICTION

This Court has jurisdiction under 28 U.S.C. § 1254(1). The date of the Tenth Circuit's order on the

Colorado portion of the case was July 3, 2018. Rehearing was denied July 17, 2018.

The date of the Kansas District Court's order denying re-transfer to Colorado is March 1, 2018. Notice of Appeal to the Tenth Circuit for this Kansas portion of the case was filed March 28, 2018. App. 94. Briefing concluded on August 27, 2018.

CONSTITUTIONAL PROVISIONS INVOLVED

The Fourth Amendment to the United States Constitution provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.

The salient part of the Fourteenth Amendment provides in Section 1:

> No state shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law.

FEDERAL STATUTE INVOLVED

The federal statute is 42 U.S.C. § 1983.

STATEMENT OF THE CASE

A. Factual Background

At the outset, it is important to note that the Colorado District Court did in fact find that a "seizure" had been alleged. App. 33, n. 2. The remaining issues are, therefore, whether the right to a warrant,[1] procedural due process in Colorado and familial association were "clearly established rights." Furthermore, for a Rule 12(b)(6) dismissal, this Court takes as true the following facts in the complaint[2] and draws all inferences in favor of Petitioners. *Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984).

Petitioners, who were from Kansas at the time of these events but who have lived in Colorado since then,[3] were visiting Colorado with seven siblings and their mother.[4] The family had an unrestricted right to

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[1] App. 19: "But our inquiry is narrower than whether Adame and Deputy Garza violated the Fourth Amendment. We address only whether our precedent clearly establishes that they did."

[2] The "complaint" means the "First Amended Complaint," filed in the Colorado District Court. Allegations in the complaint are indicated by "¶" and the paragraph number(s). However, the complaint is not included in the Appendix.

[3] ¶16.

[4] ¶¶17, 108, 123.

be together, to travel to, and to be in, Colorado.[5] Even though three Kansas social workers had filed[6] an action without probable cause in Kansas to terminate the parental rights of the parents (the "CINC" case), that matter was set for a non-emergency hearing three weeks into the future.[7] Thus, the family had plenty of time to go to Colorado and be back for the hearing in Kansas.

The parents' custody was not limited in any way prior to the non-emergency hearing.[8] And the social workers had no reason to believe the children were in any danger at any time.[9] In short, as the complaint alleged, and as must be taken as true, there was no "exigency" requiring a warrantless seizure of the children.[10]

Despite these facts, the Kansas social workers, upon learning that the family was in Colorado, fraudulently obtained[11] *ex parte* orders from the CINC court. The *ex parte* orders, however, mainly consisted of boiler plate.[12] Importantly, as the Colorado magistrate judge

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[5] ¶¶88-89, 91, 107, 118a.

[6] ¶¶74-87, 115-16, 118.

[7] ¶92.

[8] ¶91.

[9] ¶¶23, 26a, 83, 93, 96, 99, 103, 112, 114, 116c, 116e, 118d, 118e, 118f, 120, 122, 141, 142, 171, 178, 180, 182, 185, 186, 197.

[10] ¶¶113, 114, 117.

[11] ¶¶113-18.

[12] Complaint, Ex. A (redacted, example copy of *ex parte* orders).

agreed, App. 54, those orders were so facially defective that they did not actually authorize anyone to do anything.[13]

But the Kansas agents reached out across the state line anyway, provided the defective,[14] fraudulently-obtained *ex parte* orders to the Colorado agents, solicited assistance from the Colorado agents, and guided them by telephone during the warrantless invasion of a private home as they conducted the seizure in Colorado.[15] The Colorado agents went to the Douglas County home "at the instigation" of the Kansas agents,[16] stated they had been contacted by the Kansas agents,[17] and that they had orders from Kansas.[18] Inside the home, the Colorado agents issued verbal orders in cooperation and agreement with the Kansas agents.[19] Moreover, the complaint expressly alleges that the Kansas *ex parte* orders had no validity in Colorado without registration with a Colorado court, which the agents were required to have filed.[20]

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[13] ¶¶119-20. Also ¶155: "Adame's written and verbal orders were outside the scope of the Kansas *Ex Parte* Orders."

[14] ¶¶172-73.

[15] ¶¶125, 132-33, 194, 197, 205. Note: this Petition seeks a writ on the Kansas District Court finding that Kansas officials' conduct in Colorado was "too slight" for specific jurisdiction. App. 92.

[16] ¶125.

[17] ¶133.

[18] ¶132.

[19] ¶154.

[20] ¶¶177-88.

Once inside the home, the Colorado agents saw for themselves and the Kansas agents that there was no emergency threatening the children's physical safety.[21] At that point, the Colorado agents could no longer claim to rely on the invalid *ex parte* orders or the CJO to conduct a warrantless seizure. The complaint alleges, and the inference in Petitioners' favor is, that the Kansas agents, as well, knew that no exigency existed and were in phone contact with the Colorado agents.[22] Despite the lack of any exigency, the agents collectively agreed, *sua sponte*, to issue a written, so-called "safety plan"[23] and issue verbal orders, without notice and hearing, probable cause, and without a warrant or an order from a Colorado court.[24]

According to Douglas County's written assertion to the Colorado District Court in the case at bar,[25] the Colorado agents were acting with authority from a standing administrative order issued years earlier by the County's Chief Judge (the "CJO").

The complaint alleges that the group of agents agreed and coordinated their actions in executing upon the facially defective, invalid Kansas *ex parte* orders.[26] On the basis of their agreement and the County's CJO,

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[21] ¶141.

[22] ¶¶154, 194.

[23] Complaint, Ex. B (redacted copy of so-called "safety plan.")

[24] ¶¶134-36, 144, 146.

[25] Motion to Dismiss Amended Complaint, pp. 1-2, 7, filed May 12, 2016 (not included in the Appendix).

[26] ¶194.

the group violated Colorado's UCCJEA requiring domestication of the Kansas *ex parte* orders, service of process on the parents, testimony, a warrant for a home entry, notice and hearing.[27]

It must be taken as true that the warrantless seizure was based on the invalid *ex parte* orders and the County's CJO, which Petitioners have contended was judicially admitted as authorizing the seizure. The County's policy was corroborated by the Colorado agents' statement that they "do this all the time."[28]

The group of agents had reached an agreement over the phone and by other electronic means on the logistics and conditions of the seizure in Colorado and on the children's transport back to Kansas.[29] Petitioners and their siblings were held in Kansas foster care for five days, *incommunicado* from their parents and grandparents.[30] By the time the case was dismissed against their parents, Petitioners had suffered lasting trauma from the seizure, the separation from their parents, the removal to Kansas and lengthy detention in foster care.[31]

Petitioners specifically pleaded and argued that the seizure lacked procedural due process by

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[27] ¶¶177, 188-89, 192.

[28] ¶137.

[29] ¶194.

[30] ¶187.

[31] ¶¶158, 160, 163, 166, 168-70, 187.

repeatedly alleging[32] and pointing to the violations of the UCCJEA.[33] Also, on appeal, in their opening brief to the Tenth Circuit,[34] Petitioners emphasized they had been denied even a post-deprivation hearing required by the Tenth Circuit's own precedent. "Importantly, even when such a pre-hearing seizure is justified, the state must act promptly to provide a post-removal hearing." *Gomes v. Wood*, 451 F.3d 1122, 1128 (10th Cir. 2006).

Again, in their Reply Brief, Petitioners cited *Gomes* as requiring prior notice and hearing,[35] or at least a post-removal hearing for child removals. Petitioners also argued: "The government's generic interest in protecting children from known danger does not suspend the constitution and the [UCCJEA] on the facts in this case, where no reasonable suspicion of immediate danger existed, and no warrant and no exigency existed."[36]

Finally, on their effort at a rehearing,[37] Petitioners again argued that procedural due process was a clearly established right under *Gomes*, and emphasized that

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[32] ¶¶1, 146, 197, 188.

[33] ¶¶1, 177, 188, 189, 192, 197, 216-18.

[34] Appellants' Opening Brief, p. 24-25, 32 (not included in the Appendix).

[35] Appellants' Reply Brief, p. 16 (not included in the Appendix).

[36] *Id.*, p. 25.

[37] Petition for Panel Rehearing, pp. 13-15 (not included in the Appendix).

Gomes had relied on decisions from the Fourth, Eighth, Seventh and Ninth Circuits.

B. Procedural Background

Suit was filed originally against all defendants (including the County of Douglas, Colorado, and the individual co-conspirators from both states) in the United States District Court for the District of Colorado. Suit could not have been brought against all of the defendants in a Kansas forum. *See Hoffman v. Blaski*, 363 U.S. 335 (1960) (mandamus will lie if transfer has been ordered to a district in which suit could not have been brought). Moreover, Petitioners have been Colorado residents since soon after their seizure.[38]

The court for the District of Colorado dismissed Douglas County and the Colorado agents under Rule 12(b)(6), and transferred the rest of the claims to the District of Kansas. In the appeal from the Colorado District Court, the Tenth Circuit affirmed the dismissal, but the transfer order itself was non-appealable and thus, not ruled upon. *See F.D.I.C. v. McGlamery*, 74 F.3d 218, 221 (10th Cir. 1996) (stating, "[c]ourts have almost universally agreed that transfer orders fall outside the scope of the collateral order exception").

The Kansas District Court denied Petitioners' motion to re-transfer the case to Colorado. App. 90. In a separate order, it dismissed the constitutional claims

[38] ¶¶4, 16.

against the Kansas agents under Rule 12(b)(6).[39] Those rulings, both appealable, are now pending in the Tenth Circuit, but the writ sought here for the Kansas District Court's decision is only for its denial of specific jurisdiction in Colorado, inasmuch as a common scheme existed in Colorado with common actors. *See*, *e.g.*, *Mistretta v. United States*, 488 U.S. 361 (1989) (granting petitions for writ of certiorari prior to judgment).

The Tenth Circuit incorrectly limited a "clearly established right" to "a case directly on point from the Supreme Court or our circuit." App. 18. This rationale failed to apprehend that, by violating the UCCJEA, the group of conspirators also violated the Fourteenth Amendment's procedural due process requirements and Fourth Amendment warrant requirement. *See*, *e.g.*, *Zinermon v. Burch*, 494 U.S. 113 (1990) (reversing 12(b)(6) dismissal where government employees violated state statutes requiring procedural due process to guard against involuntary commitments). In the case at bar, the deprivation of procedural due process was the requisite trigger for a deprivation under 42 U.S.C. § 1983.

Petitioners contend that the procedural due process denied to them was required to take place in Colorado under Colorado's UCCJEA, prior to Petitioners' placement into the Kansas agents' custody via the

[39] The dismissals of the Kansas social workers are not included as part of this Petition, inasmuch as this Court's review of "clearly established law" may resolve the qualified immunity issues still pending on appeal from the Kansas District Court.

so-called "safety plan." The effect of the Tenth Circuit ruling, as it stands now, is that defective, local *ex parte* orders in child dependency cases have multi-state enforceability beyond state lines, notwithstanding longstanding, black-letter laws to the contrary in state statutes, state decisional law, the Restatement (2d) of Conflicts, *see infra*, the limitations of Full Faith and Credit, the right to travel,[40] and the Privileges and Immunities Clause.

REASONS FOR GRANTING THE WRIT

I. The Tenth Circuit Decided an Important Federal Question about Procedural Due Process Involving Child Removal that Conflicts with Relevant Decisions of this Court.

Colorado adopted the UCCJEA [the "Act"] in 2000, and its provisions apply to child dependency and neglect orders from other states. *People ex rel. M.S.*, 413 P.3d 287, 289 (Colo. App. Div. 5, 2017). The Act's national significance in terms of this Court's "clearly established rights" analysis is that: (1) the UCCJEA has been adopted by 49 of the 50 states, *In the Interest of A.A.*, 354 P.3d 1205, 1211 (Kan. App. 2015), and (2) the Act sets forth specific warrant, notice and hearing

[40] A claim for the deprivation of Petitioners' right to travel is not included in this Petition, but is pending on appeal in the Tenth Circuit.

procedures required in cross-jurisdictional custody disputes such as the case at bar.

Because Petitioners were the subjects of the Kansas *ex parte* orders while visiting friends in Colorado, if an actual emergency had threatened their physical safety, the UCCJEA granted a Colorado court (not individuals such as a rogue deputy or a rogue social worker) temporary emergency jurisdiction to take physical custody under C.R.S. § 14-13-204(1):

> A court of this state has temporary emergency jurisdiction if the child is present in this state and the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse.

The UCCJEA also provides that a Colorado court "shall recognize and enforce, but may not modify, except in accordance with part 2 of this article, a registered child-custody determination of another state." C.R.S. § 14-13-306. The operative word in this section is the word "registered," because, in the case at bar, the group of agents failed to submit the Kansas *ex parte* orders to the Colorado judicial system at all. App. 9.

Instead, in self-help fashion, the group of agents simply followed Douglas County's policy or practice under the CJO to enforce *ex parte* orders from other states, disregarding judicial supervision and state law prohibiting execution upon such orders. App. 9. The UCCJEA prohibits government agents from *ex parte*,

cross-border child snatchings such as happened here. When a foreign state's court order is registered with a Colorado court under C.R.S. § 14-13-305(b)(1), notice must be served upon the parents under C.R.S. § 14-13-305(b)(2). If a child is "immediately likely to suffer serious physical harm," a verified petition must be filed to seek the issuance of a warrant under C.R.S. § 14-13-311(1). The application for a warrant must contain certain specific factual representations. C.R.S. § 14-13-308(2). Then, provided the court hears testimony and finds that the child is imminently likely to suffer serious physical harm, the court may issue a warrant to take physical custody. *Id*.

The warrant to take physical custody may not rest on mere conclusions, as were contained in the Kansas *ex parte* orders. Rather, the warrant must recite the "facts upon which a conclusion of imminent serious physical harm" is based. It must also direct law enforcement to take physical custody of the child immediately, and provide for placement of the child pending final relief. C.R.S. § 14-13-311(3)(a) through (c). If a warrant is issued, parents are entitled to service of process, i.e., a copy of the petition, the warrant and the court order. This service is required immediately after the child is taken into physical custody. C.R.S. § 14-13-311(4). The petition must be heard on the "next judicial day after the warrant is executed unless that date is impossible," or on "the first judicial day possible." C.R.S. § 14-13-311(2). The court may, on the basis of testimony, authorize law enforcement to enter private property to take physical custody of the child, or if

required by exigent circumstances, to make a forcible entry at any hour. C.R.S. § 14-13-311(5).

The operative facts in this case are that the group of agents flagrantly jettisoned all of the above procedural and jurisdictional safeguards contained in the UCCJEA.

At this Rule 12(b)(6) stage of analysis, a court must presume that the Colorado UCCJEA's warrant, notice and hearing requirements would have prevented Petitioners' abrupt and lengthy separation from their parents and grandparents, especially since, after the seizure and detention, the Kansas CINC judge found "no probable cause" for the seizure, and later terminated the CINC case on the merits in the family's favor. Procedural due process requires an opportunity to be heard in a meaningful way, at a meaningful time, in a meaningful manner. *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976).

A. The Procedural Due Process Violation

Using an analysis akin to that in *Hope v. Pelzer*, 536 U.S. 730, 739-40 (2002), government agents have "fair notice" of the right to procedural due process in child removal cases, even apart from the UCCJEA. After all, this Court has repeatedly upheld the fundamental rights of parents and children to be free from government intrusion unless upon notice and hearing prior to child removal, or at least post-removal. *See Troxel v. Granville*, 530 U.S. 57, 65 (2000); *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542 (1985);

Santosky v. Kramer, 455 U.S. 745, 753, 760, n. 10 (1982); *Stanley v. Illinois*, 405 U.S. 645, 651, 657-58 (1972); *Pierce v. Soc. of Sisters*, 268 U.S. 510, 534-35 (1925). It was also clearly established that children enjoy the right to be free from the improper removal from their home. *See J.B. v. Washington County*, 127 F.3d 919, 928-29 (10th Cir. 1997).

Unlike excessive force questions, which likely involve highly particularized facts, *see*, *e.g.*, *White v. Pauly*, 137 S. Ct. 548 (2017), a violation of procedural due process in child removal cases is a yes or no proposition. Notice and hearing were either provided or they were not. Any reasonable social worker and sheriff's deputy, doing child removals "all the time,"[41] App. 10, should know that procedural due process is a constitutional right, if not from the enactment of the UCCJEA, then from this Court's precedent, the Tenth Circuit's precedent, and from the universal and "robust consensus of persuasive authority." *See*, *e.g.*, Annotation, *Right of Parents to Notice and Hearing Before Being Deprived of Custody of Child*, 76 A.L.R. 242 (2018).

The deprivation of notice and hearing has long violated clearly established law in child removal cases. "[W]e held in *Hollingsworth v. Hill*, 110 F.3d 733, 739-40 (10th Cir. 1997), that deprivation of a parent's interest in care and custody of a child without notice and hearing, in violation of state custody law, violated law clearly established in January 1993." *Malik v. Arapahoe County Department of Social Services*, 191 F.3d

[41] ¶137.

1306, n. 4 (10th Cir. 1999); *see also Gomes v. Wood*, 451 F.3d 1122, 1130 (10th Cir. 2006) (child removal requires prior notice and hearing except upon reasonable suspicion of an immediate threat to the safety of the child), cert. denied, 127 S. Ct. 676 (2006).

Importantly, even if a pre-hearing child removal is justified, the state must act promptly to provide a post-removal hearing. *Gomes*, 451 F.3d. at 1128, *citing Brokaw v. Mercer County*, 235 F.3d 1000, 1020 (7th Cir. 2000); *Campbell v. Burt*, 141 F.3d 927, 929 (9th Cir. 1998) and *Weller v. Dep't of Soc. Servs. for City of Baltimore*, 901 F.2d 387, 396 (4th Cir. 1990). *Gomes* also held that "the mere possibility of danger" does not justify a warrantless removal. *Gomes*, 451 F.3d at 1129 (cites omitted). Only "emergency circumstances which pose an immediate threat to the safety of a child" may do so. *Id.*, 1130 (cites omitted).

Petitioners also argued, in briefs and oral argument, that *Hope v. Pelzer*'s "fair notice" doctrine had not been overruled. The panel below, however, deemed "fair notice" to have "fallen out of favor." App. 17, n. 18. The panel rejected its own Tenth Circuit procedural due process precedent in *Gomes.* App. 23, n. 21, and by implication also rejected the cases that *Gomes* cited from the Seventh, Eighth, Ninth and Fourth Circuits requiring a post-deprivation hearing. *See also Smith v. Williams-Ash*, 173 Fed. Appx. 363, 366 (6th Cir. 2005) (denying qualified immunity because parents' right to post-removal hearing was clearly established); *B.S. v. Somerset County*, 704 F.3d 250 (3d Cir. 2013) (due process guarantees a post-removal hearing).

In sum, despite the litany of decisional law and despite the UCCJEA, the panel below found that a post-deprivation hearing is only a broad concept, not clearly established for the facts here. "[B]roadly, a parent has a right to a post-deprivation hearing," but "*Gomes* isn't particularized to this case's facts and doesn't clearly establish" a violation of the Fourteenth Amendment's Due Process Clause. App. 23, n. 21.

The question lingers: "But didn't the belated CINC hearing in Kansas satisfy the Constitution?" The answer is no, because Petitioners had a right to Colorado's privileges and immunities, meaning a right to the UCCJEA's warrant, notice and hearing protections in Colorado before being placed, summarily, into the legal custody of the Kansas agents. These rights were so clearly established by decisional law that they were codified into the law of the 49 states that adopted the UCCJEA.

In another case, the Tenth Circuit denied qualified immunity based on an analysis akin to "fair notice." A case "directly on point" was not needed. Specifically, an officer was not entitled to qualified immunity where, during off-duty hours, he used his patrol car's emergency lights and sped through intersections until he crashed and killed another driver. *Browder v. Albuquerque*, 787 F.3d 1076 (10th Cir. 2015).

In *Browder*, common law would not have afforded immunity to the off-duty officer. *Id.* at 1080. State statutes prohibited officers' use of emergency lights and sirens for personal use. "Indeed it would be remarkable

if the most obviously unconstitutional conduct should be the most immune from liability only because it is so flagrantly unlawful that few dare its attempt." *Id*. at 1082-83. Likewise, in *Wilson v. Layne*, 526 U.S. 603, 621 (1999), Justice Stevens, dissenting, had made the same point. "A lack of precedent on point may simply reflect the fact that no official previously had the hardihood to engage in such blatantly unconstitutional conduct or defend its constitutionality."

Nevertheless, the ruling below not only conflicts with Tenth Circuit precedent, it also conflicts with the Ninth Circuit. As recently as January 2017, the Ninth Circuit fully relied on the doctrine of "fair notice" to deny qualified immunity to social workers who had falsified evidence and suppressed exculpatory evidence in a child removal case. *Hardwick v. County of Orange*, 844 F.3d 1112 (9th Cir. 2017). *Hardwick* considered the obvious fact that perjury is a crime under state law, and it took into account a state law barring social workers from immunity for the very acts that the *Hardwick* social workers were accused of doing. Thus, the Ninth Circuit denied qualified immunity without requiring a case "directly on point." Likewise here, the Colorado UCCJEA prohibits the very procedural and warrant deprivations for which Petitioners seek damages.

This Court is well aware that the test for determining a "clearly established right" is the subject of many criticisms. *See*, *e.g*., Blum, *Qualified Immunity: Time to Change the Message*, 93 Notre Dame L. Rev. 1887 (July 2018); Baude, *Is Qualified Immunity*

Unlawful? 106 California L. Rev. 45 (2018). The premise behind this element – that government officials need the particularity of a criminal statute to be held civilly liable – is politely described as "counterintuitive" in "supposing that constitutional law itself can be unconstitutionally vague, or that government officials, of all people, need not know it." Baude, at 72.

The decision in this case also conflicts with the highest state court to have examined a similar violation of the UCCJEA's due process protections. Although the case did not involve a claim under 42 U.S.C. § 1983, the Arkansas Supreme Court held: "Under the UCCJEA, no child custody determination order may be enforced in a foreign state if there was no notice and opportunity to be heard when the child custody determination was issued in the rendering state." *Arkansas Dep't of Human Serv. v. Cox*, 82 S.W.3d 806, 811, n. 1 (Ark. 2002). The Arkansas court cited a Minnesota case refusing to enforce a South Dakota child-custody determination. *Stone v. Stone*, 636 N.W.2d 594 (Minn. Ct. App. 2001) (holding foreign custody orders must be registered under the UCCJEA); *compare Yount v. Millington*, 869 P.2d 283 (N.M. App. 1993) (prior to the UCCJEA, execution upon out-of-state *ex parte* custody orders was not a violation of clearly established law).

In *Cox*, Arkansas agents executed upon *ex parte* orders from Florida to seize a baby born in Arkansas. Finding the Arkansas agents' conduct to be "deeply disturbing," the court noted:

> Full faith and credit is not a complex or obscure legal principle. It requires the involvement of the courts of this state in enforcement of foreign judgments. [State officials are] utterly without authority to execute an order from a foreign jurisdiction on its own. [They are] not empowered to take custody of children except pursuant to the limited circumstances set out in the statutes, which requires immediate judicial review, or pursuant to an order of a court of this state.

Id. at 817.

Likewise, in the case at bar, the group of agents were "utterly without authority to execute" in Colorado upon the foreign *ex parte* orders from Kansas.

B. The Warrant and Due Process Violation

Again, the only issue, at this early stage, is whether, under Rule 12(b)(6), the complaint states a plausible claim for a violation of a clearly established right to a warrant for the search and seizure of Petitioners at a private home. The complaint alleges that (1) there was no warrant, (2) the Kansas *ex parte* orders were void in Colorado, (3) the Kansas *ex parte* orders (even if they were not void), facially did not authorize the agents to take any of the actions they took, (4) the *ex parte* orders did not identify Petitioners' parents and grandparents as dangerous to the children, and (5) the agents visually confirmed that no exigent circumstances existed because, after entering the

home, the agents saw with their own eyes that the children were not in imminent danger of bodily harm.

These facts, taken as true for Rule 12(b)(6) analysis, negate any justification for a warrantless entry and removal. Not only was the entry itself without probable cause, but also inside, having seen no imminent danger, and having no valid court order from a Colorado court, the agents were required to turn around and leave (and should have politely apologized). The seizure here violated the Tenth Circuit's own explicit pronouncement in 2003: "[H]enceforth, the law is **now clearly established that, absent probable cause and a warrant or exigent circumstances**, social workers may not enter an individual's home for the purpose of taking a child into protective custody." *Roska v. Peterson*, 328 F.3d 1230, 1250 n. 23 (10th Cir. 2003) (emphasis added).

The Tenth Circuit does not "look to state law in determining the scope of federal rights," but the state law's close correspondence to the Fourth Amendment "is indicative of the degree to which the Fourth Amendment limit was established." *Halley v. Huckaby*, 902 F.3d 1136, 1159 (10th Cir. 2018).

In particular, it was Oklahoma state law in *Halley* that put a defendant child welfare specialist "on notice that her conduct would violate [the child's] constitutional rights." *Id*. at 1149. A conflict exists within the Tenth Circuit itself, because the *Halley* panel did not regard *Hope* as "falling out of favor," as did the panel in the case at bar.

In the circuits, cases that do not involve the UCCJEA are in conflict. Here, the pleaded facts, which must be taken as true, show that the Colorado agents had plenty of time to obtain a warrant because they visually confirmed there was no imminent danger to the children and the Kansas *ex parte* orders were unenforceable.

The Second Circuit's position is the most respectful of the Fourth Amendment, stating:

> It cannot be said that the requirement of obtaining the equivalent of a warrant where practicable imposes intolerable burdens on the government officer or the courts, or would prevent such an officer from taking necessary action.

Tenenbaum v. Williams, 193 F.3d 581, 604 (2d Cir. 1999).

The Eleventh Circuit rejected *Tenenbaum*'s strict requirement to show lack of time to obtain a warrant. *Doe v. Kearney*, 329 F.3d 1286 (11th Cir. 2003). The Tenth Circuit has held that the practicability of obtaining a warrant should not be the single factor, but recognized that due process can be eroded without such a requirement. *Gomes*, 451 F.3d 1131-32.

Indeed, the concept of an "exigency" rests on a premise that obtaining a warrant would result in some imminent harm. Inasmuch as a warrantless entry into a home is presumptively unreasonable under *Payton v. New York*, 445 U.S. 573 (1980), it stands to reason that the Second Circuit is correct to require a government

official to overcome *Payton*'s presumption with the burden of proof to show that the warrant was unobtainable in light of the alleged imminent harm. *See Welsh v. Wisconsin*, 466 U.S. 740, 749 (1984) (exceptions to the warrant requirement are few in number and carefully delineated). Ordinarily, the burden is on the government to establish exigency. *Armijo ex rel. Armijo Sanchez v. Peterson*, 601 F.3d 1065, 1070 (10th Cir. 2010). In any event, the Colorado agents did not argue that an exigency justified their actions, therefore they waived the defense.[42] Moreover, the operative facts in the complaint negate any exigency to justify the warrantless entry and seizure. Specifically, the allegations in the case at bar comport with existing Tenth Circuit precedent denying the "exigency" exception: *See Roska v. Peterson*, 328 F.3d 1230, 1240, 1245-46 (10th Cir. 2006) (child's health and safety were in no immediate danger where mother was suspected of Munchausen Syndrome by Proxy); *Malik v. Arapahoe County*, 191 F.3d 1306 (10th Cir. 1999) (child in no immediate danger from nude photos taken five months earlier by out-of-town relative); *Hollingsworth v. Hill*, 110 F.3d 733 (10th Cir. 1997) (no evidence that plaintiff was an actual danger to the child). Similar to *Hollingsworth*, the invalid *ex parte* orders in the case at bar did not identify Petitioners' parents and grandparents as presenting any danger, but only referred to "the home." However, Petitioners' seizure was not in "the home" in Kansas. Similar to *Malik*, the reported abuse in the

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[42] Reply Brief of Plaintiffs-Appellants, p. 21 (not included in the Appendix).

case at bar was three years prior to the seizure in Colorado by a relative who had had no further contact with the family since that time.

Even if *Roska*'s ruling did not make the warrant requirement "clearly established," and even if the complaint did not negate any exigency, and even if the agents had not waived the "exigency defense," Colorado's UCCJEA imparts "fair notice" to officials (especially those who claim to remove children "all the time") that they must obtain a warrant under the state's statutory procedures prior to removing a child.

Moreover, the warrant requirement is "beyond debate" because, under C.R.S. § 14-13-311, a warrant is expressly required. At the very least, a post-removal hearing is required. C.R.S. § 14-13-311(2).

1. There was No Valid Colorado Court Order

Petitioners were removed with no valid court order by any court, let alone by a Colorado court. App. 12, 19. The Tenth Circuit panel in the case at bar misstated or misapprehended, App. 20-21, the significance of the factual allegation that the Colorado agents had entered the home without a Colorado court order. On the contrary, once they were inside the home, the Colorado agents self-issued their own written and verbal

orders,[43] in consultation with the Kansas agents.[44] None of the verbal and written orders by the Colorado agents were authorized by a Colorado court, or even by the invalid Kansas *ex parte* orders, which authorized nothing (as the Colorado magistrate judge noted in this case). The complaint alleges that all of the agents' actions were, therefore, outside the scope of the *ex parte* orders.[45]

2. Full Faith and Credit Does Not Apply to Foreign *Ex Parte* Orders

The rule that bars enforcement of foreign *ex parte* orders is universal, black-letter law. Restatement (Second) of Conflict of Laws § 107, Non-Final Judgments (ALI 1971). The Tenth Circuit, upholding the use of the Kansas *ex parte* orders in a seizure in Colorado, disregarded this universal rule, which is implicit in the basis for enacting the UCCJEA procedures. The rule is expressly part of the Colorado Supreme Court's

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[43] ¶134: "The Colorado Agents did not possess an order from a Colorado court authorizing their actions at the G.'s home;" and ¶146: "The Colorado Agents issued summary orders inside the G.'s house, both written and verbal, without a supporting court order, without prior notice, hearing or probable cause, which the G's, Mrs. Doe and the Doe children were forced to obey by virtue of the Colorado Agents' threats of force, intimidation and false claims of legal authority;" and ¶147: "Inside the G.'s house, Adame signed a hand-written document, a redacted copy of which is attached as Exhibit 2 (the "Colorado Order")."

[44] ¶154: "Adame's additional verbal orders were issued in cooperation and agreement with Gildner, Abney and/or Webb."

[45] ¶155, 157.

decisional law. *Gutierrez v. District Court*, 516 P.2d 647 (Colo. 1973). The Tenth Circuit decision here also conflicts with this Court's rulings that child custody orders, being non-final, are not entitled to full faith and credit. *New York ex rel. Halvey v. Halvey*, 330 U.S. 610 (1947) (modifiable Florida decree was not binding on New York court); *Kovacs v. Brewer*, 356 U.S. 604 (1958) (New York custody decree was not binding on North Carolina court); *Ford v. Ford*, 371 U.S. 187 (1962) (Virginia custody order was not binding on South Carolina court).

C. Deprivation of Familial Association

The complaint also alleges a deprivation of the right of familial association. The Tenth Circuit had long ago held, in the specific context of child removal: "[W]e agree that it was clearly established law that, except in extraordinary circumstances, a parent has a liberty interest in familial association and privacy that cannot be violated without adequate pre-deprivation procedures. . . . An *ex parte* hearing based on misrepresentation and omission does not constitute notice and an opportunity to be heard." *Malik*, 191 F.3d 1306, 1315 (10th Cir. 1999), *citing Santosky v. Kramer*, 455 U.S. 745, 753-54 (1982) and *Spielman v. Hildebrand*, 873 F.2d 1377, 1385 (10th Cir. 1989).

Malik's straightforward, declarative language could not be more "clearly established" in the Tenth Circuit. The operative facts here are that the *ex parte*

orders were retaliatory and based on misrepresentation and omission,[46] the seizure lacked any prior or post-removal hearing in Colorado, and the agents had "specific intent" to separate Petitioners from their parents and grandparents,[47] which separation, indeed, lasted for at least five days. Under *Malik*, these facts violate the right of familial association.

Yet, the Tenth Circuit faulted Petitioners for relying on *Gomes*, which had in turn relied on *Malik*. *Gomes*, 451 F.3d at 1138. Qualified immunity should not have been granted simply because Petitioners cited *Gomes*. An appellate court may consider all relevant precedents, not simply those cited to or discovered by the district court. *Elder v. Holloway*, 510 U.S. 510, 512 (1994).

After the decision in this case, the Tenth Circuit ruled in *Halley, supra*, that a claim for deprivation of familial association must "shock the conscience." *Id*. at 1155. Petitioners meet this recently-enunciated requirement. They were entitled to the notice, hearing and warrant requirements by Colorado's UCCJEA. Defying the UCCJEA was an arbitrary and outrageous abuse of the agents' authority. *Id.* Petitioners had an unrestricted right to be with their parents at a private home of friends in Colorado. Yet they were ripped away without probable cause or due process and kept

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[46] ¶¶84-85, 112, 115-18, 121-22.

[47] ¶205: "Gildner, Abney, Webb, Adame and Garza had specific intent to separate Plaintiffs from their parents, siblings and grandparents as evidenced by [a litany of actions alleged in the complaint]."

incommunicado from their parents and grandparents for five days. The separation in the case at bar did not involve the "brevity" of the seizure in *Halley*. Nor did *Halley* involve a seizure from a private home in another state, as in the case at bar.

Ironically, *Gomes* also had relied on *Hope v. Pelzer* in stating: "The salient question . . . is whether the state of the law [at the time of the incident] gave the [defendants] fair warning that their conduct was unconstitutional." *Id*. at 1136, *citing Hope*, 536 U.S. at 741. In the case at bar, no safety concerns existed for the children because the parents and grandparents were never suspects in the abuse that was reported three years earlier. Also, the invalid *ex parte* orders made no mention of the parents or grandparents whatsoever. In fact, the Kansas social workers did not believe any abuse had occurred at all,[48] although they had made that conclusion baselessly, without conferring with the children's therapists[49] who would have validated the reports.

II. A Conflict or Uncertainty Exists in the Circuits on an Appellant's Right, in a Reply Brief, to Respond to an Alternative Point Raised in the Answer Brief.

A. The Appellate Procedural Question

The issue is whether an appellant, in a reply brief, is entitled to respond to the appellee's argument for

[48] ¶¶42, 80.

[49] ¶43.

"alternative grounds" to affirm the district court. *United States v. Brown*, 348 F.3d 1200, 1213 (10th Cir. 2003) (rejecting receiver's argument that opponent had no right to respond in reply brief to alternate grounds for affirming district court). On the other hand, does the appellate court have "discretion" to consider only the appellee's argument? *See Intern'l Brotherhood of Teamsters, Airline Div. v. Allegiant Air*, *LLC*, 788 F.3d 1080 (9th Cir. 2015) (holding that the court had discretion to consider appellant's rebuttal but rejecting the rebuttal for other reasons).

The context for this procedural question is important and not uncommon. An appellant is not allowed to include arguments about "alternative grounds" in its opening brief, due to the fact that the only proper issues on appeal are the issues actually decided by the district court. *See*, *e.g.*, *Western Watersheds Project v. Michael*, 869 F.3d 1189 (10th Cir. 2017) (as a general rule, "we do not consider an issue not passed upon below"). On the contrary, the appellee's answer brief is not so restricted. In fact, "[i]t is settled law that a prevailing party may defend the judgment below on any basis supported by the record whether or not the district court relied on it." Magnuson and Herr, *Federal Appeals: Jurisdiction and Practice* § 12:15, n. 7; § 12:17 (Thomson Reuters 2018); *see also United Fire & Cas. Co. v. Boulder Plaza Residential, LLC*, 633 F.3d 951, 958 (10th Cir. 2011); *Hartford Courant Co. v. Pellegrino*, 380 F.3d 83, 90 (2d Cir. 2004) (asserting authority to decide issues that were argued in, but not decided by, the district court).

If an appellee's answer brief asserts that "alternative grounds" support the district court's judgment, "[a] reply brief is the best vehicle for narrowing [the] issues and is especially important and called for when a new point or issue is raised in the appellee's brief." 2A *Federal Procedures Lawyers Edition*, Appeal, Certiorari and Review, § 3:714 (Thomson Reuters 2014), *citing U.S. v. Rodriguez*, 15 F.3d 408, n. 7 (5th Cir. 1994); *see also Hussein v. Oshkosh Motor Truck Co*., 816 F.2d 348, 359 (7th Cir. 1987) ("An appellant is not required to anticipate and rebut in his opening brief every possible ground for affirmance that the defendant might (or might not) raise. . . . It is enough if the appellant contests the grounds on which the district court actually decided the case against him.") (Posner, J., dissenting). On the contrary, the Ninth Circuit held that it has "discretion" to consider (and therefore, to disregard) the appellant's arguments offered in a reply brief that rebut "alternative grounds" raised in the appellee's brief. *Intern'l Brotherhood, supra*.

The Ninth Circuit's ruling that an appellant's rebuttal is "discretionary" raises a serious issue of fundamental fairness and due process in appellate procedures. In the case at bar, the Tenth Circuit simply made a "waiver" ruling against Petitioners, despite the fact that the district court had not decided whether the County had judicially admitted that its CJO was the moving force for Petitioners' seizure. Specifically, in the Colorado District Court, the County's motion to dismiss strenuously argued that the County Chief Judge's CJO authorized Petitioners' seizure. Petitioners answered

that the County's motion had judicially admitted that the CJO was the "county policy."[50] The Colorado District Court did not rule on the issue of the "judicial admission." Rather, it dismissed Douglas County on an improper ruling that the County could not be liable since its employees had been dismissed for qualified immunity. App. 77-78.

In the Tenth Circuit, Petitioners appealed, among other issues, the ruling that dismissed the County based solely on the employees' qualified immunity.[51] However, Douglas County's answer brief asserted what was an "alternative ground" for affirming the County's dismissal, i.e., contending again that the complaint failed to allege that a County policy was the moving force behind the seizure.[52]

To rebut the County's "alternative ground" to uphold the district court, Petitioners' reply brief argued again that the County had judicially admitted in its motion to dismiss that the CJO was the moving force for the seizure.

Therefore, the County's dismissal depends on Petitioners' right to raise, in their reply brief, the County's

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[50] Response to Douglas Defendant's Motion to Dismiss, p. 22.

[51] Brief of Plaintiffs-Appellants, p. 34 (not included in the Appendix), *citing Myers v. Oklahoma Bd. of County Commr's*, 151 F.3d 1313, 1317 (10th Cir. 1998).

[52] Appellee's Answer Brief, p. 43: The complaint is "devoid of any allegations that would plausibly impose liability on the County . . . " (not included in the Appendix).

judicial admission that the CJO was its policy, custom or practice. The Tenth Circuit ruled that Petitioners had "waived" their argument of the judicial admission by not raising it in their opening brief.

B. Judicial Admissions Contained in Briefs

A judicial admission concedes a fact, "removing that fact from any further possible dispute," and obviating "any need for the opposing party to prove the fact admitted." E. Roman, "*Your Honor, What I Meant to Say Was . . .*," 22 Pepperdine L. Rev. 981, 984 (1995). The question left open by this Court in 1961 is whether an admission contained in a memorandum of law will be binding on the party. *Id*. at 1001, *citing United States v. Fruehauf*, 365 U.S. 146 (1961) (leaving undecided whether statements in a brief can be judicial admissions). The article's author contends: "[I]t is only logical that statements in memoranda of law, which have been written out and reviewed by counsel, should in most cases have the same binding effect and also be considered judicial admissions." *Id.* at 1005.

Certainly in this case, Douglas County should not be dismissed as a defendant in light of its judicial admission that its agents were following the County's policy contained in the CJO.

III. An Issue of Imperative Public Importance Requiring Immediate Determination in this Court is Whether Colorado has Specific Jurisdiction over Kansas Officials Acting in Concert with Colorado Officials to Circumvent Petitioners' Clearly Established Fourth and Fourteenth Amendment Rights.

Child-seizures occur on a daily basis throughout the nation, and such cases deserve a national priority. When government officials ignore fundamental constitutional rights by reaching across state lines to self-execute upon facially defective, invalid orders, they should expect that they can be "haled into court" in the same foreign jurisdiction out of which they unlawfully "haled" their victims. In this context, the Tenth Circuit ruling in the case at bar conflicts with the Ninth Circuit. *See Lake v. Lake*, 817 F.2d 1416 (9th Cir. 1987) (Idaho had personal jurisdiction over a California attorney who unlawfully executed in Idaho upon a California *ex parte* order).

The ruling here also conflicts with this Court's test for the sufficiency of conspiracy allegations in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007) (allegations of mere parallel, independent practices insufficient to allege an agreement).

Here the clear error of the transfer order to Kansas is intertwined with the Colorado District Court's clear error in denying specific jurisdiction in Colorado over the Kansas co-conspirators. "Today, courts are uniform in requiring that the transferee have personal

jurisdiction over the defendant. . . ." Wright & Miller, 15 Fed. Prac. & Proc., Jurisdiction § 3845 (4th ed.). The Colorado District Court's transfer to the Kansas District Court was not appealable until the latter denied Petitioners' motion to re-transfer back to Colorado. The transfer to Kansas was improper because, as the transferee forum, Kansas did not have personal jurisdiction over Douglas County and the individual Colorado agents. Transfer under Sec. 1404(a) is proper only to a judicial district where the transferee court has jurisdiction over the defendants. *Hoffman*, *supra*.

The transfer also conflicts with *Calder v. Jones*, 465 U.S. 783 (1984) (upholding specific jurisdiction for purposefully reaching out to cause a tort in another state). Here, specific jurisdiction was wrongly denied by Colorado. Kansas officials purposefully reached out to Colorado agents by transmitting copies of the worthless *ex parte* orders (which the Colorado agents touted as authority to demand entry into the home), providing Colorado agents with the address for the seizure, making arrangements by phone and other electronic means,[53] consulting real-time by phone on the logistics of the seizure, and arranging with the Colorado agents for transport to Kansas and taking Petitioners into custody. These facts show an agreement. They are a far

[53] ¶194: "By working together either in meetings and over the phone and by other means of electronic communication, Defendants Gildner, Abney, Webb, Adame and Garza conspired and agreed to deprive Plaintiffs of their rights as set forth above."

cry from the independent, "parallel practices" alleged in *Twombly*.

The Kansas District Court erred in failing to find clear error by the Colorado court's finding that Colorado lacked specific jurisdiction over the Kansas social workers. App. 92. This Court's re-consolidation of the cases is urgently needed to avoid the duplication of two lawsuits with possibly inconsistent rulings. Clear error or manifest injustice is always grounds for a trial court to correct erroneous decisions. *F.D.I.C. v. McGlamery*, *supra*. The "law of the case" did not deprive the transferee court of the power to correct a clearly erroneous decision. *Id*. at 221; *see also Rimbert v. Eli Lilly Co*., 647 F.3d 1247 (10th Cir. 2011).

Colorado was the situs of the seizure, of a meeting of the minds to conduct the seizure by skirting Colorado's UCCJEA, and to deprive Petitioners on-the-spot of familial association. As there was no evidentiary hearing on the issue of specific jurisdiction, both district courts were "bound to resolve all factual disputes in favor" of Petitioners. *A.S.T. Sports Science, Inc. v. CLS Distrib. Ltd.*, 514 F.3d 1054, 1057 (10th Cir. 2008). Defendants who purposefully direct their activities at the forum state can defeat personal jurisdiction only by presenting a compelling case that the presence of some other considerations would render jurisdiction unreasonable. *Niemi v. Lasshofer*, 770 F.3d 1331 (10th Cir. 2014). The Kansas agents offered no evidence whatsoever, merely their counsel's argument.

Jurisdiction in Colorado is required on the multiple grounds set forth below:

1. The long-arm statute, C.R.S. § 13-1-124 (1)(b), confers maximum personal jurisdiction for torts committed in Colorado. *Niemi*, 770 F.3d at 1348, *quoting Trujillo v. Williams*, 465 F.3d 1210, 1217 (10th Cir. 2006) and *Dudnikov v. Chalk & Vermilion Fine Arts, Inc*., 514 F.3d 1063, 1070 (10th Cir. 2008).

2. The commission of a tort, by itself, establishes specific jurisdiction. *See Found. for Know. v. Inter. Des. Cons.*, 234 P.3d 673, 681 (Colo. 2010). "Even a single act can sometimes support specific jurisdiction." *First Horizon Merch. Servs. v. Wellspring Cap. Mgmt*., *LLC*, 166 P.3d 166, 173 (Colo. App. Div. 2 2007). "In the tort context, the issue is whether the nonresident defendant 'purposefully directed' its activities at the forum state." *Dudnikov, supra*, p. 1070. Here, the Kansas social workers only contacted the Colorado agents because they knew that Petitioners were with their mother in Douglas County, Colorado, quite intentionally, not fortuitously.[54]

3. Causing a minor to leave a parent's custody confers specific jurisdiction. *D & D Fuller CATV Const., Inc. v. Pace*, 780 P.2d 520 (Colo. 1989) (specific jurisdiction existed over grandparents in N. Carolina who interfered with the Colorado mother's custody).

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[54] ¶¶104-10, 112, 123-24, 131-32, 171, 187.

4. "But for" the defendants' contacts with Colorado, Petitioners would not have been seized. *See Ziegler v. Indian River County*, 64 F.3d 470 (9th Cir. 1995). It cannot be argued that Petitioners suffered little or no injury in Colorado since they suffered the shock of the seizure and separation there, and they have lived with the ramifications since 2009, when their family moved to Colorado shortly after the seizure.

5. The Kansas social workers' conduct meets the "minimum contacts" requirements for due process based on an *ad hoc* analysis. *Goettman v. North Fork Valley Rest*., 176 P.3d 60, 71 (Colo. 2007). *Goettman* is significant because the plaintiff was never a Colorado resident, meaning Petitioners' residency at the time they were seized is not the test.

6. The Kansas social workers' tortious conduct was not merely the "seeking of the *ex parte* orders." On the contrary, the Kansas social workers' wrongdoing was the conspiracy and seizure subsequent to seeking the *ex parte* orders.

7. The Kansas social workers cannot meet their burden to show that the exercise of jurisdiction by Colorado is unreasonable, as set forth below:

a. Courts are mindful that modern transportation and communication have lessened the burden of litigating in distant jurisdictions. *Pro Axess, Inc. v. Orlux Distribution, Inc.*, 428 F.3d 1270, 1280 (10th Cir. 2005). The Kansas social workers cannot show that litigating in Colorado is prohibitively burdensome. They

are represented by the Kansas Attorney General's office, whose 2016 budget was more than $21 million and SRS/DCF's budget was more than $642 million, per the state's budget website. The dramatic disparity of a state's financial resources against these private, youthful Petitioners weighs in favor of Petitioners. *See Newsome, supra*; *A.S.T. Sports Science, Inc. v. CLF Distrib. Ltd*, 514 F.3d 1054 (10th Cir. 2008).

b. Social worker Gildner no longer lives in Kansas, so a transfer to Kansas benefits only two out of the total of six defendants originally sued in Colorado. Any claim that "many witnesses are located in Kansas" would ignore the fact that Petitioners' family alone, combined with Dr. and Mrs. G., total fourteen.

c. A serious protectable interest for Colorado exists because the Kansas social workers conspired with Colorado governmental employees, and one Colorado defendant is a political subdivision. In *Goettman*, *supra*, the court found a substantial state interest exists in traveler safety on Colorado roads. Even more important is Coloradoans' interest in how child-snatchings are carried out in Colorado homes. Furthermore, inasmuch as Plaintiffs have been Colorado residents since 2009,[55] Colorado has an interest in remedies for its citizens, particularly because Colorado statutes were violated, including C.R.S. §§ 14-11-101(4), 14-13-301, 18-3-304, 19-3-401, 19-3-405.[56]

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[55] ¶16.

[56] ¶¶176, 179-83.

d. To litigate in Kansas would "practically foreclose" Petitioners' recovery from the Colorado defendants, for whom jurisdiction would not exist. Colorado is obviously the "most efficient" forum to litigate the dispute. Obviously, too, "piecemeal litigation" will occur by denying the re-transfer to Colorado where all defendants can be tried together. *OMI Holdings, Inc. v. Royal Ins. Co. of Canada*, 149 F.3d 1086, 1097 (10th Cir. 1998).

e. Colorado has an equal or greater social policy interest in child seizures conducted within its boundaries, especially ones based on out-of-state orders, and/or defective orders.

f. The complaint copiously alleges the requisite "affirmative link" between Webb's and Abney's authorization, approval and cooperation in Gildner's unconstitutional acts and in conspiracy with the Colorado Agents. *Dodds v. Richardson*, 614 F.3d 1185, 1200-01 (10th Cir. 2010), *quoting Rizzo v. Goode*, 423 U.S. 362, 371 (1976). No heightened pleading requirements exist for § 1983 actions. *Currier v. Duran*, 242 F.3d 905 (10th Cir. 2001) (noting it was unfair to require plaintiffs to assert more facts "in light of stay of discovery").

CONCLUSION

Petitioners' argument was not waived when they responded to the County's answer brief that its CJO judicially admitted its policy. Colorado has specific jurisdiction over defendants who purposefully directed

their actions to Colorado. The rights to procedural due process, familial association and to a warrant prior to seizure were clearly established by decisional law and Colorado's UCCJEA. For these reasons, Petitioners pray that the Court will grant their Petition for a Writ of Certiorari.

Respectfully submitted,

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