Supreme Court, U.S.
FILED
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No. 19-7373

In the Supreme Court of the United States

SANJAY TYAGI, ET AL.,

Petitioners,

v.

GEORGE SHELDON, ET AL.,

Respondents.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

This case raises important issues of public interest and circuit splits that require guidance of Supreme Court of United States.

1. Does seizure, physical examination, privacy and interrogation of minor children at public school without parental consent, exigency, or court order violate Fourth and Fourteenth Amendment Rights?

2. Do American citizen parents and their children have the Right of Medical Self-Defense to decline dangerous drugs and dangerous procedures to prevent injury?

3. Does a State Child Abuse Registry violate due process and Protected Liberty Interests if the names of parents are added to that Registry without any judicial hearings?

4. Can a seizure of a minor without warrant last longer than medically necessary?

5. Is it cruel, traumatic and unconstitutional for American children to be separated and removed from their biological American parents?

PARTIES TO THE PROCEEDING

Petitioners are Sanjay Tyagi; Alka Jagatia; and minor AT.

Respondents are George Sheldon; Marko Djurisic; Donald Jonker; Lawrence Alberg; Deanna Large; Nora Harms Pavelski; Stevie Lemon; Eraina Ross Burleson; Marisol Rubio; Sylvia Torres Stephens; Ann & Robert H Lurie Children's Hospital Of Chicago; Ann & Robert H Lurie Children's Hospital Of Chicago Foundation; Pediatrics Faculty Foundation Inc; Children's Hospital Of Chicago Medical Center; Lurie Children's Medical Group LLC; Dr. Leon Epstein; Dr. Alma Bicknese; Dr. Melissa Cirrillo; Dr. Lauren Marsillio; Dr. Rana Mafee.

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PETITION FOR A WRIT OF CERTIORARI

The petitioners respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit (Case: 18-3532)

OPINIONS BELOW

The decision of the court of appeals is unreported and did not rule on the issues raised by the Petitioners. The U.S. District Court for the Northern District of Illinois, Eastern Division also denied the issues raised by the Petitioners.

JURISDICTION

The Seventh Court of appeals issued its judgment (Case: 18-3532) in *Tyagi et al. v. Sheldon et al.*, No. 1:16-cv-11236 (United States District Court for the Northern District of Illinois, Eastern Division) on October 21, 2019. Pet. App. 1a. This Court's jurisdiction is invoked within 90 days under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Pertinent statutory provisions are set forth in the appendix to this petition.

STATEMENT

At the core of the case is whether the Plaintiffs had the right to seek second opinion from other doctors and hospitals and then decide on the course of medically proven Ketogenic Diet treatment for treating their son and decline pharmaceutical treatment with numerous toxic and life threatening side effects. Ketogenic diet has been widely researched at numerous leading medical hospitals and universities around the world.

In past, plaintiffs' minor son A.T. suffered from four provoked seizures. His CT and MRI scans have been normal. His most recent 24-hour EEG test was completely normal and did not show any seizure or epileptic activity. His Genetic Tests have not shown any gene known to cause Seizures and Epilepsy. *In last two years, Minor has been completely free from seizures on Ketogenic Diet treatment and his health is not at stake.*

Parents are religious and relied on prayer to treat their son. Plaintiffs ascribe to Hindu religion and are completely Vegans. Personal religious beliefs of our family and Hindu religion completely prohibits ingestion of any substance made from artificial substances and after killing animals.

The parents also consulted with other doctors and hospitals and then settled on the course of medically proven Ketogenic Diet treatment. Parents objected to the Lurie Hospital's and Illinois DCFS forcing them to drug their minor child during non-emergency situations at home.

Lurie Hospital called Illinois DCFS for medical neglect and confined the parents and their child to the hospital room for over thirty-six hours after they had determined that the child was doing fine. The child and parents repeatedly asked for release. The defendants told parents that there is a Police Officer waiting in the lobby and that they will come and talk to parents. Police Officer never came but Lurie continued to detain parents and minor child A.T. for more than 36 hours. The parents felt threatened that Lurie Hospital will call police anytime and felt that the parents and the minor A.T. were not free to leave. This was done when the hospital and doctors had already determined that the minor A.T. has recovered, is perfectly fine, and can go home. Lurie Hospital defendants falsified medical records and did not take informed consent of parents or the minor child. There was no court order, no exigent circumstances, no consent and no informed consent. Lurie Hospital released medical records of the child to DCFS without consent of parents.

Illinois DCFS interrogated the children at school without consent of parents and subjected the children to intrusive questions and physical body examination. At plaintiffs' home, Illinois DCFS threatened parents that they will remove and put the children in state custody and foster care if they were not allowed to come inside the home. Fearing removal of their children, the parents allowed DCFS social workers to come inside where they proceeded to do physical examination of plaintiffs' children. Again, there was no court order and no exigent circumstances at school or home. Illinois DCFS added the names of parents on a child abuse registry without judicial determination

and the parents cannot work in their chosen field of employment.

Petitioners and their children continue to remain subject to authority of Illinois DCFS and Lurie Hospital. Petitioners were threatened with removal of their children into state custody and foster care. Petitioners remain fearful that Illinois DCFS and Lurie Hospital can remove children whenever they want.

REASONS FOR GRANTING THE PETITION

The questions presented involve purely legal issues on which requires guidance of Supreme Court of United States.

Without this Court's intervention and guidance, the confusion will continue to persist in different federal circuits and different federal district courts.

I. The circuits are split as to the question presented and whether Green vs Camreta controls

Review is further warranted because the circuits and lower courts are split. The Seventh Circuit's decisions conflict with Ninth Circuit's decisions. Certiorari can bring uniformity between various circuits.

In the ninth circuit, seizure, physical examination and interrogation of minor children without parental consent, exigency, or court order is unconstitutional and constitutes violation of Fourth and Fourteenth

Amendment Rights. The Seventh Circuit rejects the above.

A. *The Green vs Camreta decision*

As noted, Justice Kagan delivered the opinion of the Supreme Court. Supreme Court did not reach the Fourth Amendment question due to mootness and vacated the part of the Ninth Circuit's opinion that decided the Fourth Amendment issue.

The United States Court of Appeals for the Ninth Circuit agreed, ruling that the officials had violated the Constitution by failing to obtain a warrant to conduct the interview.

B. *Lower courts are giving confusing contradictory rulings on the issue of seizure, searches, privacy and interrogation of children at school without parental consent, exigency, or court order.*

Lower courts are giving confusing contradictory rulings and this Court's immediate review is warranted.

On October 10, 2017, Federal District Judge Hon. Roger T. Benitez of US District Court, Southern District of California, held that policy and practice that permits children to be seized and interviewed at school at any time without parental consent, exigency, or court order is unconstitutional and violates Fourth and Fourteenth Amendment Rights. (Case *Dees v.*

County of San Diego 3:14-cv-00189-BEN-DHB, Doc #165)

On September 18, 2017, Federal District Judge Hon. Thomas M. Durkin of US District Court, Northern District of Illinois, held that the reasonableness of such a search at public school is not clearly established under Seventh Circuit law; and dismissed Plaintiffs' Fourth Amendment claims with respect to the physical examination and interrogation of the petitioners' minor children at public school without parental consent, exigency, or court order; and granted qualified immunity to the social worker defendants. The plaintiffs' Fourth and Fourteenth Amendment claims with respect to the alleged physical examination of minor children at public school were dismissed. (Case *Tyagi et al v. Sheldon et al* 1:16-cv-11236, Doc # 200)

C. *Can a seizure without warrant last longer than medically necessary?*

Lower courts are giving confusing contradictory rulings and this Court's immediate review is warranted.

It has been clearly established in the ninth Circuit since 1993 at the latest (that a seizure cannot last longer than necessary, if longer need a warrant). *Mabe v. Cty of San Bernardino*, 237 F.3d 1101, 1107 (9th Cir. 2001). Citing *Stanley v. Illinois*, 405 U.S. 645 (1972).

On September 18, 2017, Federal District Judge Hon. Thomas M. Durkin of US District Court, Northern District of Illinois, held that the right not to

be held past medical necessity is not clearly established in Seventh Circuit. (Case *Tyagi et al v. Sheldon et al* 1:16-cv-11236, Dkt # 200)

II. This case raises two novel questions of legal interpretation

This case raises two novel questions of legal interpretation

A. *Right of Medical Self Defense to decline dangerous drugs and dangerous procedures to prevent injury*

The right of medical self-defense has already been supported by the long-recognized right to lethal self-defense: the right to protect your life against attack even if it means killing the attacker. The lethal self-defense right has constitutional foundations in substantive due process, in state constitutional rights to defend life and to bear arms, and perhaps in the Second Amendment. Apart from those constitutional roots, the right has long been recognized by statute and common law.

Medical self-defense has already been recognized in *Roe v. Wade*, 410 U.S. 113 (1973) and *Planned Parenthood v. Casey*, 505 U.S. 833 (1992). A woman has a right to abortion as medical self-defense when pregnancy threatens a woman's life.

This court should recognize medical self-defense as a constitutional or moral right and the government should need a very good reason to substantially

burden that right, and any restrictions that do burden it should be as narrow as possible.

Our constitution respects and values self-defense rights enough that we allow lethal self-defense. A similar approach should apply to medical self-defense to decline dangerous drugs and dangerous procedures to prevent injury.

Lethal self-defense is allowed even against those who threaten your life with little or no moral fault. You may kill those who are threatening your life negligently or through an unfortunate non-negligent accident. You may kill attackers who are insane and thus not morally culpable. You may use self-defense against animals, which are inherently not morally culpable, even when such actions would otherwise violate endangered species law, gun law, animal cruelty law, or property law.

The relationship between lethal self-defense and medical self-defense is close enough. If a person can kill a human or an animal to protect his life, why shouldn't he be presumptively free to protect his life by declining dangerous drugs and dangerous procedures to prevent injury? The moral case for medical self-defense is at least as strong as the case for lethal self-defense.

Second and Ninth Amendment should recognize Right to medical self-defense.

B. *Is it cruel, traumatic and unconstitutional for American children*

to be separated and removed from their biological American parents?

This Court's immediate review is warranted on this epidemic in United States of America.

III. The decision below is in need of immediate review to save time of precious judicial resources.

Absent certiorari, it is likely that these issues will continue to consume time of precious judicial resources in numerous courts in the United States.

Congress has vested this Court with jurisdiction to review "[c]ases in the courts of appeals * * * [b]y writ of certiorari * * * before or after rendition of judgment or decree." 28 U.S.C. 1254(1) (emphasis added). "An application * * * for a writ of certiorari to review a case before judgment has been rendered in the court of appeals may be made at any time before judgment." 28 U.S.C. 2101(e). This Court will grant certiorari before judgment "only upon a showing that the case is of such imperative public importance as to justify deviation from normal appellate practice and to require immediate determination in this Court." Sup. Ct. R. 11. This case satisfies that standard.

This Court has granted certiorari in order to promptly resolve other time-sensitive disputes, and it should follow the same course here. See, *e.g.*, *Dames & Moore* v. *Regan*, 453 U.S. 654, 668 (1981); *United States* v. *Nixon*, 418 U.S. 683, 686-687 (1974); *Youngstown Sheet & Tube Co.* v. *Sawyer*, 343 U.S. 579, 584 (1952); cf. Stephen M. Shapiro et al.,

Supreme Court Practice § 4.20, at 287-288 (10th ed. 2013)

A. *Medical Kidnappings of American Children and seniors have become an epidemic in America.*

Medical kidnappings of American children and seniors have become a huge industry. American children are routinely medically kidnapped to commit fraud to get federal and Medicaid funds. American senior citizens are medically kidnapped to seize all of their assets and keep them locked up as a prisoner locked up in a mental facility, most of the time against the wishes of their family members. Medical kidnapping of children and seniors has become $500 billion and $273 billion industries respectively.

Challenges to the Medical Kidnappings and violations of parental rights by hospitals and Child Protective Services are currently pending before courts in the Second, Fourth, Ninth, Eleventh, and District of Columbia Circuits. There can be no reasonable question that, this Court's review will be warranted. Additional burdensome discovery, vast expansions of the administrative record, and privilege disputes would only burden the courts and parties without bringing any additional clarity to those issues. Only this Court can resolve the conflict in the lower courts and provide much-needed clarity. See *Mistretta* v. *United States*, 488 U.S. 361, 371 (1989) (granting certiorari before judgment where constitutionality of sentencing guidelines presented question of "'imperative public importance'" and had resulted in "disarray among the Federal District Courts") (citation omitted).

IV. The decisions of district court contravened settled rules and the Seventh Court of Appeals refused to address them.

Review is further warranted because the decisions of the district court contravened settled rules.

A. *The District Court did not satisfy United States Supreme Court guidelines while applying Collateral Estoppel to Administrative Agency determination.*

The US Supreme Court has articulated general standard for the application of Collateral Estoppel in *United States v. Utah Construction and Mining Co.*, 384 U.S. 394 (1966). Application of collateral estoppel to an administrative agency determination requires satisfaction of both the traditional elements of collateral estoppel and the elements of the Utah Construction Test.

B. *The District Court has made a wrong determination in declining to exercise supplemental Jurisdiction to review Illinois DCFS Administrative determinations.*

The district court did not address the merits of Tyagi's petition for review of Illinois DCFS Administrative agency decision. *See City of Chicago v.Int'l Coll. of Surgeons*, 522 U.S. 156, 168-69 (1997) (supplemental jurisdiction under 28 U.S.C. § 1367 extends to review of state administrative agency determinations).

C. *The District Court incorrectly decided that the right not to be held past medical necessity is not clearly established*

It has been clearly established in the ninth Circuit since 1993 at the latest (that a seizure cannot last longer than necessary, if longer need a warrant). *Mabe v. Cty of San Bernardino*, 237 F.3d 1101, 1107 (9th Cir. 2001). Citing *Stanley v. Illinois*, 405 U.S. 645 (1972).

In any event, it was a question for the jury to decide if a reasonable physician / hospital staff could conclude that keeping a child for 36 hours after it was no longer medically necessary to keep the child in the medical facility was not a violation of the constitution.

D. *The District Court abused its discretion in not allowing plaintiffs to file amended complaint and the Seventh Court of Appeals did not rectify it.*

The district court repeatedly denied plaintiffs the right to file first amended complaint. Numerous attempts by plaintiffs to file amended complaint were striken sua sponte. *See Foman v. Davis,* 371 U.S. 178 (1962) (Federal Rule of Civil Procedure 15(a) declares that leave to amend "shall be freely given when justice so requires," and denial of the motion without any apparent justifying reason was an abuse of discretion). See *U.S. v. Corinthian Colleges*, 655 F.3d 984, 995 ("[D]ismissal without leave to amend is improper unless it is clear, upon de novo review, that the complaint could not be saved by any amendment." (internal citation and quotation marks omitted)).

E. *The District Court improperly striked the first amended complaint filed pursuant to Fed. R. Civ. P. 15(a)(1)(b) within 21 days in response to Rule 12(b)(6) motion.*

The district court improperly striked the first amended complaint that was filed within 21 days in response to Rule 12(b)(6) motion. The Seventh Court of Appeals did not rectify this legal error.

The filing of the amended complaint supercedes the original and renders it a nullity. See, e.g., *Purkey v. Marberry*, 2010 U.S. App. LEXIS 14362 (7th Cir. 2010); *Drake v. City of Detroit*, 266 F.App'x 444, 448 (6th Cir. 2008); *Klyce v. Ramirez*, 852 F.2d 568 (6th Cir. 1988); *Barnes v. Birds Eye Foods LLC*, 2010 U.S. Dist. LEXIS 69579, *2-3 (W.D. MI. 2010) (amended complaint, filed of right within 21 days of service of motion under 12(b), "supercedes the original complaint, which becomes a nullity.").

> "**Rule 15. Amended and Supplemental Pleadings**
> (a) Amendments Before Trial.
> (1) Amending as a Matter of Course. A party may amend its pleading once as a matter of course within:
>
> (A) 21 days after serving it, or
> (B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier."

F. *The District Court misstated facts and refused to correct its understanding after rebuttal.*

The district court misstated facts to improperly arrive at its decisions.

V. This case constitutes issues of high public importance and emergency.

This issue arises in a highly charged context and constitutes issues of high public importance and emergency. Petitioners continue to live under the fear that State of Illinois can any day remove and separate their children and put them in foster care. These issues affect almost all the parents living under Seventh Court of Appeals and under other circuits in United States.

The statistics (reported by the states agencies) show that the children reared by the state tend to be unproductive citizens. They are more likely not to finish high school, or go to college. Prisons are filled with a disproportionate number of former foster and state kids and make up the bulk of our homeless population. Additionally, these children being taken are from the general American parents and it can happen to any one of us. Removing children from their parents should be a last resort to protect the safety of the child, and not for small or manufactured false infractions.

Statistically, children separated by Illinois DCFS and other child protection services (CPS) are more

likely to be homeless, less likely to have and keep jobs, more likely to be teen parents, more likely to be arrested. They are more likely to have serious mental health and physical health problems. Interestingly, almost all serial killers in the U.S. had one thing in common - they had spent some time in foster care.

Child Protection Services (CPS) present a clear and present danger to mental, physical and emotional health of all children falsely removed from parents as well as the parents and other family members. Due to their misuse of authority and lack of accountability, they continue to violate every CPS guideline and the civil, parental and child rights of everyone involved. They indulge in human and child trafficking to foster care and constitute inhuman punishment to a minor, obstruction of Justice, evidence tampering, and crimes against humanity.

VI. This case is an ideal vehicle to reaffirm guidance on parental rights.

This case is therefore the ideal vehicle to reaffirm guidance on parental rights. These issues recur frequently and consume substantial judicial resources.

A. *The Supreme Court has zealously guarded parents' constitutional rights to make decisions for their children for almost a century.*

Parents' interest in the care, custody, and control of their children is among the most venerable of the

liberty interests protected by the Constitution. The United States Supreme Court has described the right to raise one's children by one's own lights rather than the government's as "essential", {*Meyer v. Nebraska*, 262 U.S. 390, 399 (1923)} "one of the basic civil rights of man" {*Skinner v. Oklahoma*, 316 U.S. 535, 541 (1942)} and "far more precious . . . than property rights." {*May v. Anderson*, 345 U.S. 528, 533 (1953)}. This constitutional guarantee rests upon the nation's "strong tradition of parental concern for the nurture and upbringing of their children." parents' rights to choose which physician and medical care plan they believe best serves the interests of their child. State interference in the child's medical care in these cases constitutes a gross violation of parents' fundamental rights. It also disserves the interests of children, which, our constitutional system recognizes, are best served by allowing their parents the discretion to make such choices.

The Supreme Court has zealously guarded parents' constitutional rights to make decisions for their children for almost a century. In the 1923 case of *Meyer v. Nebraska*, and again in *Pierce v. Society of Sisters* two years later, the Court overturned state statutes on the ground that they "unreasonably interfere[d] with the liberty of parents . . . to direct the upbringing and education of [their] children." {*Pierce v. Soc'y of Sisters*, 268 U.S. 510, 534 (1925)}. In the Court's words, "[t]he fundamental theory of liberty . . . excludes any general power of the state to standardize its children. . .. The child is not the mere creature of the state; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations." A generation later, the Court stated

again that "[I]t is cardinal with us that the custody, care and nurture of the child reside first in the parents." {(*Prince v. Massachusetts*, 321 U.S. 158, 166 (1944)}

The Courts have made clear that parents' constitutionally protected authority over their children includes the right to make decisions regarding health care. {*Parham v. J.R.*, 442 U.S. 584, 602 (1977)}. Further, the presumption that fit parents act in the best interests of their children also extends to medical decision making. Parents' right to determine medical care is not, of course, absolute. The boundary between parents' medical decision-making rights and the state's right to intervene based on dependency law is one vulnerable to incursion. Accordingly, parents' rights require careful protection in abuse and neglect cases to ensure that they are not eroded by the state. To safeguard parents' decision-making rights, courts have declared that "[s]tate intervention is justifiable only under compelling conditions." {*In re Storar*, 420 N.E.2d 64, 73 (N.Y. 1981); *In re Hofbauer*, 393 N.E.2d 1009, 1014 (N.Y. 1979)}. In the case of *in re Hofbauer*, the New York Court of Appeals refused to declare a child with Hodgkin's disease a neglected child although his parents declined the standard treatment of radiation and chemotherapy, instead placing him on nutritional therapy and injections of laetrile. {In re Hofbauer, 393 N.E. 2d at 1015}. According to the Court, "great deference must be accorded a parent's choice as to the mode of medical treatment to be undertaken and the physician selected to administer the same. The most significant factor in determining whether a child is being deprived of adequate medical care, and, thus, a neglected child within the meaning of that statute is

whether the parents have provided an acceptable course of medical treatment for their child in light of all the surrounding circumstances. This inquiry cannot be posed in terms of whether the parent has made a "right" or "wrong" decision, for the present state of the practice of medicine, despite its vast advances, very seldom permits such definitive conclusions. Nor can a court assume the role of a surrogate parent and establish as the objective criteria with which to evaluate a parent's decision its own judgment as to the exact method or degree of medical treatment which should be provided, for such standard is fraught with subjectivity."

B. *The questions presented are important and recurring.*

This Petition presents important and recurring questions of federal law.

CONCLUSION

The petition for a writ of certiorari before judgment should be granted.

Dated: January 16, 2020

Respectfully submitted,

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