

In the
Supreme Court of the United States

Tonya Udoh, Emem Udoh, Individually,
and on behalf of their minor children, K.K.W. and K.C.W.,
Petitioners,

vs.

Minnesota Department of Human Services; Charles E. Johnson;
Donothan Bartley; Ann Norton; Daniel E. Engstrom;
Catrina Blair; City of Maple Grove; City of Maple Grove Police
Department; Melissa Parker; City of Plymouth; City of Plymouth
Police Department; Molly Lynch; Kevin Pregler; Independent
School District No. 279; Joanne Wallen; Karen Wegerson;
Ann Mock; CornerHouse; Patricia Harmon; Bill Konzar;
Grace W. Ray; and Linda Thompson,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

**RESPONDENTS INDEPENDENT SCHOOL DISTRICT NO. 279,
ANN MOCK, JOANNE WALLEN, AND KAREN WEGERSON'S
BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI**

Michael J. Waldspurger
Counsel of Record
John P. Edison
Ryan P. Supple
RUPP, ANDERSON, SQUIRES
& WALDSPURGER
333 South Seventh Street, Suite 2800
Minneapolis, MN 55402
(612) 436-4300
Mick.waldspurger@raswlaw.com
John.edison@raswlaw.com
Ryan.supple@raswlaw.com

Attorneys for Respondents
Independent School District No. 279, Ann Mock, Joanne Wallen and Karen Wegerson

QUESTION PRESENTED

Whether Petitioners Emem and Tonya Udoh present compelling reasons to grant their Petition for a Writ of Certiorari in a case involving the lower courts' application of established and unified precedent in narrow, unpublished decisions that do not extend beyond the circumstances of this case.

LIST OF COUNSEL AND PARTIES

Michael J. Waldspurger
John P. Edison
Ryan P. Supple
RUPP, ANDERSON, SQUIRES &
WALDSPURGER, PA
333 South Seventh Street, Suite 2800
Minneapolis, MN 55402
(612) 436-4300
mick.waldspurger@raswlaw.com
john.edison@raswlaw.com
ryan.supple@raswlaw.com
Attorneys for Respondents
Independents School District No. 279,
Ann Mock Joanne Wallen and Karen
Wegerson

Ali P. Afsharjavan
Assistant Attorney General
OFFICE OF THE MINNESOTA
ATTORNEY GENERAL
445 Minnesota Street, Suite 1800
St. Paul, MN 55101
(651) 757-1059
Ali.afsharjavan@ag.state.mn.us
Attorneys for Respondents Minnesota
Department of Human Services and
Charles E. Johnson

John R. Marti
Lauren O. Roso
DORSEY & WHITNEY LLP
50 South Sixth Street
Suite 1500
Minneapolis, MN 55402
(612) 340-2600
Marti.john@dorsey.com
Roso.Lauren@dorsey.com
Attorneys for Respondents
CornerHouse, Patricia Harmon, Bill
Koncar, and Grace W. Ray

Paul D. Reuvers
Nathan C. Midolo
IVERSON REUVERS CONDON
9321 Ensign Avenue South
Bloomington, MN 55438
(952) 548-7200
Paul@irc-law.com
Nathan@irs-law.com
Attorneys for Respondents City of
Maple Grove, City of Maple Grove
Police Department, Melissa Parker,
City of Plymouth, City of Plymouth
Police Department, Molly Lynch, and
Kevin Pregler

Daniel D. Kaczor
Christiana M. Martenson
Assistant Hennepin County Attorneys
HENNEPIN COUNTY ATTORNEY'S
OFFICE
2000A Government Center
300 South Sixth Street
Minneapolis, MN 55487
(612) 348-8301
Daniel.kaczor@hennepin.us
Christiana.martenson@hennepin.us
Attorneys for Respondents Donothan
Bartley; Ann Norton; Daniel E.
Engstrom, Catrina Blair, and Linda
Thompson

Emem Udoh
OID No. 245042
MCF – Willow River/Moose Lake
1000 Lake Shore Drive
Moose Lake, MN 55767
Pro Se Petitioner

Tonya Udoh
P.O. Box 290264
Brooklyn Center, MN 55429
Pro Se Petitioner

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INTRODUCTION

Petitioners Tonya and Emem Udoh (“Petitioners”) present no compelling reason for this Court to grant their Petition for a Writ of Certiorari (“Petition”). This is now the third time Emem Udoh has petitioned for a writ of certiorari in a case based on the circumstances surrounding his sexual abuse conviction. *State v. Udoh*, No. A14-2181, 2016 WL 687328 (Minn. Ct. App. Feb. 22, 2016), *review denied* (Apr. 27, 2016), *cert. denied*, 137 S. Ct. 185, 196 L. Ed. 2d 151 (2016); and *Udoh v. Dooley*, Case No. 16-CV-4174 (PAM/KMM) (Doc. 19) (July 6, 2017), *review denied* (March 20, 2018), *cert. denied*, 139 S. Ct. 145 (2018). Like the first two petitions, the instant Petition should be denied.

In this instance, Petitioners assert frivolous claims against virtually every person and entity involved in the child abuse investigation leading to Mr. Udoh’s conviction. (Pet. App. 7.) Respondents Independent School District No. 279, Joanne Wallen, Karen Wegerson, and Ann Mock (“School District Respondents”) played a small role in the investigation and acted in accordance with mandatory obligations under state law. The district court properly dismissed all claims against the School District Respondents, and the court of appeals affirmed on all grounds. Petitioners fail to present any valid reason why the decisions below warrant further review.

STATEMENT OF THE CASE

I. Factual Background

Given the number of parties involved in this dispute, the School District Respondents will limit their Statement of the Case to a discussion of the Petitioners’

claims specifically against them.¹ On September 19, 2016, Petitioners filed a lengthy Complaint, along with 145 pages of exhibits, asserting numerous claims against the School District Respondents and other defendants (“Complaint”). The concrete factual allegations involving the School District Respondents are extremely limited.

On or about February 19, 2013, Ms. Wallen, a school social worker, received a report that a student, K.K.W., was the victim of abuse. (Pet. App. 18.) Upon receiving the report, Ms. Wallen met with K.K.W. at school and asked her about the report. (*Id.*) Ms. Wallen then notified Melissa Parker, a police officer employed by the City of Maple Grove, of the suspected abuse.² (*Id.*) Ms. Parker, who is not a School District employee, then met with K.K.W. to discuss the abuse allegations. (*Id.*) The report was eventually referred to the City of Plymouth Police Department and Hennepin County’s Child Protective Services Division. (*Id.*)

On February 21, 2013, Donothan Bartley, a Hennepin County social worker, went to K.K.W.’s school. (Pet. App. 18.) Ms. Wegerson, a secretary at K.K.W.’s school, retrieved K.K.W. from class and brought her to meet with Mr. Bartley. (*Id.*) K.K.W. told Mr. Bartley during the interview that Mr. Udoh had sexually abused her and her younger sister K.C.W. (*Id.*) Mr. Bartley then went to K.C.W.’s school. (*Id.*) Ms.

¹ Since Petitioners’ claims against the School District Respondents were dismissed following a motion for judgment on the Pleadings pursuant to Rule 12(c) of the Federal Rules of Civil Procedure, the factual allegations in the Complaint are presumed to be true. This factual summary is based on the concrete factual allegations asserted in the Complaint and Petition. In the unlikely event this Court grants the Petition, the School District Respondents reserve the right to contest Petitioners’ characterization of the facts.

² Ms. Wallen was acting pursuant to her obligation under Minn. Stat. § 626.556, subd. 3(a), which imposes mandatory reporting obligations on school officials, and Minn. Stat. § 626.556, subd. 6, which imposes a criminal sanction for failure to submit a mandatory report. Both of these provisions were in effect when the events giving rise to this lawsuit occurred and remain in effect today.

Mock, who is a principal at K.C.W.'s school, retrieved K.C.W. from class and brought her to meet with Mr. Bartley.³ (*Id.*) K.C.W. initially denied being abused by Mr. Udoh. (*Id.* at 19)

The information reported by K.K.W. led to a child abuse investigation by Hennepin County and law enforcement, which ultimately led to Mr. Udoh's criminal conviction. (Pet. App. 17–19.) Mr. Udoh has since engaged in serial litigation in an attempt to challenge the events leading to his conviction. (Pet. App. 7.)

II. Procedural Background

Petitioners' Complaint purports to assert myriad claims based on state and federal law both on behalf of themselves and on behalf of K.K.W. and K.C.W. (*See, e.g.,* Pet.App. at 20–21.) Neither Mrs. Udoh nor Mr. Udoh had legal custody of K.C.W. or K.K.W. at the time they brought this lawsuit and attempted to assert claims on behalf of the two minors. (*Id.* at 25 n.11.) After answering the Complaint, the School District Respondents filed a motion for judgment on the pleadings under Rule 12(c) of the Federal Rules of Civil Procedure seeking the dismissal of all claims against them.⁴ (Pet. App. 2.) While the motion for judgment on the pleadings was pending, Petitioners attempted to amend their Complaint on two occasions. (*Id.* at 21.) On July 25, 2017, Magistrate Judge Steven E. Rau issued a Report and Recommendation ("R&R") recommending the district court grant the School District Respondents'

³ Both Ms. Wegerson and Ms. Mock acted in accordance with Minn. Stat. § 626.556, subd. 10, which requires schools and school officials to allow investigators to interview students on school grounds upon receipt of written notification of intent to interview. *See* Minn. Stat. § 626.556, subd. 10(c), (d) (2012) (these requirements are currently codified at Minn. Stat. § 626.556, subd. 10(d), (e)).

⁴ All other Defendants in this action also brought similar Rule 12 motions.

motion for judgment on the pleadings on several grounds and deny Petitioners' motion to amend their Complaint because the proposed amendments would be futile. (*Id.* at 23–34, 37–39, 50–56.) On September 12, 2017, District Court Judge Patrick J. Schiltz issued an Order adopting the R&R with minor modifications. (*Id.* at 12–13.)

Together Magistrate Rau and Judge Schiltz determined the *pro se* Petitioners may not bring claims on behalf of K.K.W. and K.C.W. in federal court. (*Id.* at 8–9, 24–25.) For that reason, the district court dismissed without prejudice all claims asserted on behalf of the minor girls. (*Id.* at 8.) To the extent Petitioners were trying to bring a Fourth Amendment claim on their own behalf, the district court interpreted their claim as one of substantive due process because it essentially involved alleged interference with their interest in the care and custody of their children. (*Id.* at 10–11, 25–26.)

Adopting the Magistrate's R&R, the district court determined Petitioners failed to establish a substantive due process violation because they did not identify how the statutes they challenged caused a constitutional deprivation and they did not identify any action by the School District Respondents that impermissibly interfered with their right to the care and custody of their children in light of the State's compelling interest in protecting children from abuse. (Pet. App. 9–10, 27–31, 37–39.) Both Magistrate Rau and Judge Schiltz ruled the School District Respondents' actions, as alleged by Petitioners, were reasonable based on the information that had been reported at school by KKW and another student. (*Id.*)

Likewise, the district court determined that Petitioners failed to show the School District as an entity was liable because it was acting in accordance with state law and Petitioners failed to identify any School District customs, policies, or procedures that caused a constitutional violation, which is required for liability under *Monell v. Department of Social Services of City of New York*, 436 U.S. 658 (1978). (Pet. App. 29–31 n.15.)

The district court also rejected the procedural due process claims because Petitioners failed to identify any procedural protection outlined in the Minnesota statutes they challenge that was not provided to them. (Pet. App. 31–33.) Instead, Petitioners baldly alleged the statutes did not provide procedural due process protection, without explaining how or why and without acknowledging that the Minnesota Supreme Court and the Eighth Circuit already determined these statutes comport with procedural due process requirements. (*Id.*) The district court further determined that the individual School District Respondents were entitled to qualified immunity based on their compliance with mandatory obligations imposed by Minnesota law and Eighth Circuit case law holding that qualified immunity generally protects those who are acting pursuant to a reasonable suspicion of abuse. (*Id.* at 9–10, 33–34, 37–39.) Having disposed of all the constitutional claims, the district court determined that the conspiracy claims must fail because Petitioners failed to state any underlying constitutional violation. (*Id.* at 50–51.) Likewise, because all the federal questions were dispensed with, the district court declined to exercise supplemental jurisdiction over Petitioners’ state law claims. (Pet. App. 54–55.)

Petitioners appealed to the United States Court of Appeals for the Eighth Circuit. (Pet. App. 2.) On August 30, 2018, the Eighth Circuit filed an unpublished *per curiam* decision affirming the district court order on all grounds. (Pet. App. 1–5.) This Petition followed.⁵ Petitioners now ask this Court to review numerous issues generally grouped into ten broad categories.

REASONS FOR DENYING THE PETITION

I. The Petition Should be Denied Because Petitioners Present No Valid Reason for this Court to Reconsider its Well-Established Pleading Standards and the Narrow Decisions Below Do Not Extend Beyond the Unique Facts of this Case.

In the first question Petitioners present for review, they seek this Court’s review of pleading standards as applied to *pro se* parties. This core issue encompasses all of the other issues Petitioners propose for review because their claims were dismissed on the pleadings. Petitioners do not provide any valid reason for this Court to revisit well-established pleading standards.

“A petition for a writ of certiorari is rarely granted when the asserted error consists of . . . the misapplication of a properly stated rule of law.” U.S. Sup. Ct. R. 10. Here, the district court properly stated the well-established pleading standards this Court has recently set out in *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007) and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), and the district court did not misapply them.

⁵ Although Petitioners’ Certificate of Service states they served the Petition and Appendix on January 17, 2019, it was postmarked on January 25, 2019, and School District Respondents did not receive the Petition until January 28, 2019, and never received a copy of the Appendix from Petitioners.

(Pet. App. 21–23, 26, 29–33, 37–39.)⁶ The court of appeals affirmed. (Pet. App. 2–3.)

Petitioners present no legitimate reason for this Court to review the lower courts’ application of established precedent. They identify no circuit split and no decision from this Court that conflicts with the decisions below. Instead, Petitioners simply cite cases that preceded *Twombly* and *Iqbal*, and cases from lower courts that have generally allowed a more liberal construction of *pro se* pleadings. (Pet. 10–12.) The “no set of facts” language Petitioners rely on from *Haines v. Kerner*, 404 U.S. 519 (1972) was expressly dispensed with in *Twombly*. 550 U.S. 544, 562–63 (2007) (stating that the “no set of facts” standard has earned its retirement). Additionally, none of the other cases Petitioners cite provide that simply invoking legal terms or stating legal conclusions is sufficient to survive a motion to dismiss, even for *pro se* litigants. Therefore, Petitioners fail to present any valid reason the Court should revisit its recent, well-established pleading standards.⁷

⁶ The district court properly afforded Petitioners’ allegations a liberal construction in accordance with this Court’s guidance in , *Erickson v. Pardus*, 551 U.S. 89 (2007), even though the district court observed certain claims appeared “farfetched” and contradicted records attached to the Complaint. (Pet. App. 10.)

⁷ Petitioners also seek review of the decision below denying their motion to amend their Complaint. While leave to amend is to be freely granted, *see* Fed. R. Civ. P. 15(a), a plaintiff does not have an absolute or automatic right to amend. *See, e.g., U.S. ex rel. Lee v. Fairview Health Sys.*, 413 F.3d 748, 749 (8th Cir. 2005). Futility is a valid basis for denying leave to amend. *Id.* Petitioners twice attempted to amend their Complaint to assert general and conclusory allegations accusing Respondents of failing to give *Miranda* and *Tennesen* warnings, creating recordings of child abuse investigation interviews, and failing to train their employees. (Pet. App. 52–54.) However, in a thoughtful and well-reasoned decision, the district court denied these proposed amendments on the basis that they either failed to state a claim or were futile. (*Id.*) There is no reason for this Court to review the district court’s discretionary application of established procedural standards for amending a complaint.

The remainder of the Petition also does not warrant certiorari review because the decisions below lack any type of broad importance that extends beyond the unique circumstances of this case. The court of appeals decision has no effect beyond the parties to this case because the decision was unpublished, and “[u]npublished opinions...are not precedent.” CTA8 Rule 32.1A. In addition, the narrow decisions below were predicated on applying the law to the unique facts as plead in Petitioners’ Complaint. On the School District Respondents’ motion for judgment on the pleadings, the lower courts were only reviewing whether the Complaint contained sufficient facts, accepted as true, to state a claim to relief that is plausible on its face. (Pet. App. 21–22.) The facts alleged in Petitioners’ Complaint are highly specific to the manner in which Petitioners and their minor daughters were allegedly treated by the various Respondents. The lower courts’ determination that the alleged facts failed to state a legal claim has no broader impact beyond the unique circumstances of these Petitioners and what they specifically alleged in their Complaint. (Pet. App. 2–3, 21–39.)

In the final analysis, this Court is not an error-correcting court and it generally does not disturb an application by a district court of the Rules of Civil Procedure when affirmed by the court of appeals, especially when the application of procedural rules concerns the district court’s judgment as to how the rules apply to a specific set of facts. *Appalachian Power Co. v. Am. Inst. of C.P.A.*, 80 S. Ct. 16, 18 (1959). The Petition should be denied because Petitioners do not present a valid reason for this

Court to reconsider its pleading standards, and the narrow, unpublished decision below does not reach beyond the specific facts of this case.

II. The Petition Should be Denied Because it Attempts to Raise Numerous Issues Not Addressed on the Merits in the Proceedings Below.

Petitioners ask the Court to review the merits of the claims they brought on behalf of K.K.W. and K.C.W, and to review the merits of their state law claims. However, this Court “ordinarily do[es] not decide in the first instance issues not decided below.” *See Cooper Indus., Inc. v. Aviall Servs., Inc.*, 543 U.S. 157, 168–69, (2004) (internal quotation marks omitted); *see also Jennings v. Rodriguez*, 138 S. Ct. 830, 851 (2018); *Byrd v. United States*, 138 S. Ct. 1518, 1527 (2018); *Nat’l Collegiate Athletic Ass’n v. Smith*, 525 U.S. 459, 470 (1999); *Lytle v. Household Mfg., Inc.*, 494 U.S. 545, 552, n. 3 (1990); *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388, 397–98 (1971). Therefore, the Court should decline to exercise certiorari review over claims not decided on the merits below.

A. The Lower Courts Did Not Reach the Merits of Any of the Claims Brought on Behalf of the Minors.

The district court determined the Petitioners cannot bring claims on behalf of K.K.W. and K.C.W., and therefore dismissed those claims without prejudice and without considering them on the merits. (Pet. App. 8–9, 24–25.) The basis for this ruling was two-fold. First, Petitioners are not attorneys. Second, the record showed Mrs. Udoh did not have physical or legal custody of K.K.W. and K.C.W. at the time they brought the claims and there is no indication Mr. Udoh ever had custody rights. (*Id.*) The court of appeals affirmed relying on *Myers v. Loudoun Cty. Pub. Schs.*, 418

F.3d 395, 401 (4th Cir. 2005) to join a “vast majority of circuit courts in holding that non-attorney parents generally may not litigate claims of their minor children in federal court pro se.” (Pet. App. 2–3, 8–9.) Petitioners argue this result is wrong by citing inapposite cases that carve out a very narrow exception to this general rule for administrative appeals of social security decisions. (Pet. 30.) The main reason for this exception is that in public assistance cases a Parent’s interests are uniquely aligned with those of his or her child. *See Adams ex rel. D.J.W. v. Astrue*, 659 F.3d 1297, 1300–01 (10th Cir. 2011). This reasoning is certainly not true in this case, where a convicted sex offender is attempting to bring civil claims on behalf of his victims. Petitioners fail to present any reason for this Court to disturb the dismissal without prejudice of claims brought on behalf of K.K.W. and K.C.W. or to review the merits of these claims for the first time.

B. The Lower Courts Did Not Reach the Merits of Any of the State Law Claims.

Similarly, the merits of Petitioners’ state law claims were not addressed below. They were dismissed without prejudice after the district court declined to exercise supplemental jurisdiction over them. (Pet. App. 54–55.) The court of appeals affirmed this decision, with both courts properly citing the district court’s discretionary authority under 28 U.S.C. § 1367(c)(3) not to exercise supplemental jurisdiction over a claim if district court has dismissed all claims over which it has original jurisdiction. Petitioners do not argue the district court abused its discretion relative to this issue and fail to provide any reason for this Court to review the merits for the first time of claims that do not raise any federal questions.

III. The Petition Should be Denied Because the Narrow Decisions Below Do Not Implicate Any Circuit Split or Conflict with Any Decision of this Court.

Among the issues the lower courts did consider, Petitioners have not identified any conflict between circuits or with holdings of this Court.⁸

A. The Lower Courts Properly Concluded the School District Respondents are Entitled to Qualified Immunity.

The Petition provides no reason for this Court to review the dismissal of Petitioners' claims against the individual School District Respondents on qualified immunity grounds. The lower courts both held the individual School District Respondents were entitled to qualified immunity because they were acting in accordance with mandatory obligations under Minnesota's child abuse reporting laws.⁹ (Pet. App. 3, 9–11, 33–34, 37–39) Each of the individual School District Respondents was a mandated reporter of suspected abuse. Minn. Stat. § 626.556, subd. 3(a)(1) (2012). Further, Minnesota law required Ms. Mock and Ms. Wegerson to allow Mr. Bartley to interview K.K.W. and K.C.W. on school grounds. Minn. Stat. § 626.556, subd. 10(c), (d) (2012).

⁸ The district court noted that the “Udohs’ objection [to the Magistrate Judge’s R&R] largely consists of unexplained string citations to inapposite cases.” (Pet. App. 8.) Similarly, the Petition cites many inapposite cases and mischaracterizes the holdings of numerous cases, sometimes asserting the opposite of what the cases actually state. This occurs so frequently that, in the interest of brevity, the School District Respondents will generally object to Petitioners’ characterizations of case law without further elaboration at this stage.

⁹ With respect to the School District as an entity, the School District Respondents object to Petitioners’ characterization that the lower courts applied qualified immunity to the government entities. (Pet. ii (proposed question four).) This is mistaken. Petitioners’ proposed question four is based on the district court’s determination that “the defendants’ actions in interviewing and removing both girls are clearly protected by qualified immunity.” (Pet. App. 10.) However, in that instance, the district court was referring to the individual Respondents, not the government entities. (*Id.*) The district court explicitly separates its analysis for the individual-capacity claims from the claims against the School District. (Pet. App. 37–39.) Petitioners’ proposed question four seeks review of a determination the lower courts did not make.

The Eighth Circuit recognizes qualified immunity for those who act in accordance with child abuse reporting requirements. *See K.D. v. Cty. of Crow Wing*, 434 F.3d 1051, 1055–56 (8th Cir. 2006) (“when a state official takes an action that would otherwise disrupt familial integrity he or she is entitled to qualified immunity if the action is properly founded upon a reasonable suspicion of child abuse.”); *Thomason v. SCAN Volunteer Servs., Inc.*, 85 F.3d 1365, 1370-71 (8th Cir. 1996); *Doe v. Hennepin Cty.*, 858 F.2d 1325, 1329-30 (8th Cir. 1988)). Other circuits are in agreement with the Eighth Circuit’s analysis of this issue. *See, e.g., Terebesi v. Torres*, 764 F.3d 217 (2d Cir. 2014); *Lojuk v. Johnson*, 770 F.2d 619 (7th Cir. 1985); *Ghandi v. Police Dept. of City of Detroit*, 747 F.2d 338 (6th Cir. 1984); *see also Meyers v. Contra Costa Cty. Dep’t of Soc. Servs.*, 812 F.2d 1154, 1157 (9th Cir. 1987).

In addition, the lower courts’ application of qualified immunity is fully consistent with this Court’s guidance. *See, e.g., Camreta v. Greene*, 563 U.S. 692, 705 (2011) (“officials may claim qualified immunity; so long as they have not violated a ‘clearly established’ right, they are shielded from personal liability.”); *Ashcroft v. al-Kidd*, 563 U.S. 731, 743, 131 S. Ct. 2074, 2085 (2011) (“Qualified immunity gives government officials breathing room to make reasonable but mistaken judgments about open legal questions. When properly applied, it protects all but the plainly incompetent or those who knowingly violate the law.” (internal quotation marks omitted)). Petitioners fail to present any authority that indicates there is a circuit split or conflicting case from this Court that would warrant certiorari review of the qualified immunity issue.

B. The Lower Courts Properly Rejected Petitioners' Fourth Amendment Claims.

The courts below properly held that Petitioners' attempt to assert Fourth Amendment claims on behalf of themselves should be viewed as substantive due process claims. Petitioners' Fourth Amendment claims are based on the allegations that Respondents searched and seized K.K.W. and K.C.W. (Pet. App. 10, 25.) However, as explained above, the courts below properly ruled the *pro se* Petitioners cannot bring claims on behalf of the two girls. The district court correctly notes that Petitioners do not allege a separate Fourth Amendment injury to themselves. (Pet. App. 26.) Instead, Petitioners allege that Respondents interfered with their interests in the custody and care of their children, which is the same as their Fourteenth Amendment substantive due process claim. (*Id.*) (citing *J.B. v. Washington County*, 127 F.3d 919, 928 (10th Cir. 1997); *Kia P. v. McIntyre*, 235 F.3d 749, 757-78 (2d Cir. 2000); *Tenenbaum v. Williams*, 193 F.3d 581, 600 (2d Cir. 1999)). The district court did not err in considering Petitioners' Fourth Amendment claim under the due process standards. Petitioners do not point to any facts that would implicate their own Fourth Amendment rights and the decisions below are fully consistent with this Court's prior holding that Fourth Amendment rights are individual rights that cannot be vicariously asserted. *Alderman v. United States*, 394 U.S. 165, 174 (1969).

C. The Lower Courts Properly Concluded Petitioners Failed to Allege Viable Substantive and Procedural Due Process Claims.

To the extent the Petition seeks review of the dismissal of Petitioners' due process claims, the decisions below are consistent with long-standing precedent and should not be disturbed.

1. Substantive Due Process Standard.

The district court correctly states that to “establish a substantive due process violation, [a plaintiff] must demonstrate that a fundamental right was violated and that the conduct *shocks the conscience*.” (Pet. App. 27.) (*quoting Akins v. Epperly*, 588 F.3d 1178, 1183 (8th Cir. 2009) (emphasis added)). Both the district court and the court of appeals relied on *Schmidt v. Des Moines Public Schools*, 655 F.3d 811, 819 (8th Cir. 2011), which provides that a substantive due process violation is extraordinary and egregious, while an interpretation that is reasonable, but erroneous, does not constitute a substantive due process violation. (Pet. App. 3, 28.) In addition, both courts relied on *Dornheini v. Sholes*, 430 F.3d 919, 925-26 (8th Cir. 2005) for the proposition that the “right to family integrity clearly does not include a constitutional right to be free from child abuse investigations, as the state has a strong interest in protecting the safety and welfare of minor children, particularly where protection is considered necessary as against the parents themselves.” (Pet. App. 3, 27.) These Eighth Circuit cases are consistent with the long-standing precedent of this Court. *See, e.g., County of Sacramento v. Lewis*, 523 U.S. 833, 846–47 (1998) (providing that for half a century the Court has relied on the “shocks the conscience” standard from *Rochin v. California*, 342 U.S. 165, 209–10 (1952) to determine whether governmental action violates substantive due process).

2. Petitioners Failed to Allege Any Viable Substantive Due Process Claims Against Individual School District Respondents.

Petitioners have alleged no conduct by the School District Respondents that would rise anywhere near the extraordinary and egregious level to “shock the

conscience.” The district court properly concluded that Petitioners’ factual allegations showed the School District Respondents’ involvement was extremely limited in complying with the requirements outlined in Minnesota Statutes Section 626.556. (Pet. App. 37–39.) Ms. Wallen’s involvement was limited to following up with K.K.W. after school officials became aware that she may be the victim of abuse and then notifying law enforcement after K.K.W. confirmed the abuse. Ms. Wallen was a mandatory reporter pursuant to Minnesota law. Minn. Stat. § 626.556, subds. 3(a) & 6 (2012). Ms. Mock and Ms. Wegerson were even less involved. They did nothing more than allow a Hennepin County representative to interview K.K.W. and K.C.W. at school as required by Minnesota law. Minn. Stat. § 626.556, subd. 10(c), (d) (2012). Petitioners fail to explain how these actions caused a constitutional injury.

Far from shocking the conscience, both Magistrate Rau and Judge Schiltz ruled the School District Respondents’ specific actions as alleged by Petitioners were reasonable based on the information that had been reported at school by K.K.W. and another student. (Pet. App. 9–10, 27–31, 37–39.) In addition, the fact that the individual School District Respondents were complying with state law underscores the reasonableness of their actions. *See Mountain Pure, LLC v. Roberts*, 814 F.3d 928, 933 (8th Cir. 2016) (“reliance on an official policy that explicitly sanctioned the conduct in question is a relevant factor in considering the objective legal reasonableness of an official's action” (alternations, quotations, and omissions omitted)).

Petitioners attempt to circumvent these facts by arguing the Minnesota Statutes Section 626.556, and another statute permitting a peace officer to take a child into custody when a child's health or welfare is endangered, Minn. Stat. § 260C.175, subdiv. 1(2)(ii), are facially unconstitutional. The courts below properly rejected these arguments because Petitioners did not explain how these statutes were unconstitutional, and the statutes have previously withstood constitutional scrutiny. (Pet. App. 3, 30, 39) (*citing R.S. v. State*, 459 N.W.2d 680, 690 (Minn. 1990) (providing that that statutory authorization for an interview of reported child-abuse victim without parental notice and consent when the alleged perpetrator is unknown does not violate a parent's right to familial privacy); *K.D. v. Cty. of Crow Wing*, 434 F.3d 1051, 1056, 1058 (8th Cir. 2006) (providing that Minnesota Statutes Section 260C.175, subdivision 1 does not violate a parent's substantive due process rights where a custodial parent threatens a child's welfare.) Petitioners provide no valid reason why this Court should subject these state laws to further constitutional review.

3. Petitioners Failed to Allege Any Viable Substantive Due Process Claims Against the School District as an Entity.

Petitioners also seek this Court's review of the dismissal of their substantive due process claims against the School District as an entity. A municipality, including a school district, may not be held liable for a constitutional violation unless the acts by government employees are performed as a result of executing an unconstitutional policy or custom. *Monell v. Dept. of Social Servs. of New York*, 436 U.S. 658, 694 (1978); *see also Doe v. Washington County*, 150 F.3d 920, 922 (8th Cir. 1998). *Monell*

liability ensures that a municipality is only liable for “constitutional deprivations ‘resulting from the decisions of its duly constituted legislative body or those officials whose acts may fairly be said to be those of the municipality.’” *Springdale Educ. Ass’n v. Springdale Sch. Dist.*, 133 F.3d 649, 651 (8th Cir. 1998) (quoting *Bd. of Comm’rs of Bryan City v. Brown*, 520, US 397, 403-404 (1997)). Alternatively, a party may allege that the unconstitutional action was taken “pursuant to a municipal ‘custom’ not formally approved by an authorized decisionmaker” if “the relevant practice is so widespread as to have the force of law.” *Id.* (internal quotations omitted).

Petitioners fail to allege more than a mere boilerplate recitation of the elements of *Monell* liability without providing any specific facts identifying any policy language or custom that is problematic. To survive a motion to dismiss, a complaint alleging a *Monell* claim must at the least “allege facts which would support the existence of an unconstitutional policy or custom.” *Doe v. Sch. Dist. of City of Norfolk*, 340 F.3d 605, 614 (8th Cir. 2003). Moreover, a “mere invocation of the words ‘policies’ and ‘customs’ is insufficient to plead a *Monell* claim” absent “*specific facts . . . that would tend to demonstrate the actual existence of any such custom, pattern, policy, or practice.*” *Rickmyer v. Browne*, 995 F.Supp.2d 989, 1030 (D. Minn. 2014) (emphasis in original). Petitioners’ vague references to alleged policies and customs are insufficient to plead *Monell* liability.

To the extent Petitioners purport to challenge the School District’s policies and procedures, the district court properly concluded they do not identify any specific

concerns that set the School District's policies and procedures apart from what is mandated by state law. (Pet. App. 29–31.) The district court properly concluded that *Monell* liability does not attach to a municipality that is acting pursuant to a state law. (*Id.*) (see *Slaven v. Engstrom*, 710 F.3d 772, 781 (8th Cir. 2013) (declining to extend *Monell* liability to a county acting in furtherance of Minnesota law and a judge's application of the law); *Vives v. City of New York*, 524 F.3d 346, 353 (2d Cir. 2008) (holding that a municipality cannot be held liable under *Monell* for enforcing a state law)). Similarly, insofar as Petitioners are claiming the problematic School District policy or custom was the general practice of enforcing state law, this argument also fails. See *Surplus Store & Exchange, Inc. v. City of Delphi*, 928 F.2d 788, 791 (7th Cir. 1991) ("It is difficult to imagine a municipal policy more innocuous and constitutionally permissible, and whose causal connection to the alleged violation is more attenuated, than the 'policy' of enforcing state law."). Moreover, Petitioners contradictorily claim that Respondents were both following and violating the same statutes. (Pet. 27–28.)

Petitioners fail to present any authority indicating there is a circuit split or conflicting case from this Court that would warrant certiorari review of the substantive due process claims against the School District as an entity.

4. Petitioners Failed to Allege Any Viable Procedural Due Process Claims.

The exact nature of the Petitioners' attempt to assert a procedural due process claim against the School District Respondents has never been clear. They appear to claim that entities other than the School District Respondents violated their

procedural due process rights by not providing an appropriate opportunity to be heard in the course of the child abuse investigation and the removal of K.K.W. and K.C.W. from their residence. (Pet. 26–27, 35–36.) The School District Respondents were not involved in making any decisions with respect to the child abuse investigation or the removal of K.K.W. and K.C.W. from the Udoh residence.

To state a viable procedural due process claim, Petitioners must (1) establish a protected liberty or property interest is at stake and (2) prove the School District Respondents deprived them of such an interest without due process of law. *See, e.g., Schmidt v. Des Moines Pub. Sch.*, 655 F.3d 811, 817 (8th Cir. 2011); *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (“the fundamental requirement of due process is the opportunity to be heard ‘at a meaningful time and in a meaningful manner.’”) Since Petitioners do not have a constitutionally protected interest in being free from child abuse investigations, *see, e.g., Thomason v. SCAN Volunteer Servs., Inc.*, 85 F.3d 1365, 1371 (8th Cir. 1996), the district Court correctly determined the School District Respondents did not engage in any conduct that deprived Petitioners of a liberty interest in their familial relations. (Pet. App. 31–33.)

To the extent Petitioners claim Minnesota’s child abuse reporting and investigation statutes generally violate notions of procedural due process, the district court properly recognized that the Eighth Circuit already ruled that Minnesota’s statutory framework affords ample procedural protections. (Pet. App. 32.) (*citing Bohn v. Dakota Cty.*, 772 F.2d. 1433, 1436 (8th Cir. 1985)); *see also* Minn. Stat. § 626.556, subd. 10i (2012) (outlining opportunity for hearing to contest maltreatment

determinations); Minn. Stat. § 256.045 (2012) (describing administrative and judicial review procedures applicable to findings of maltreatment); Minn. Stat. §§ 245C.27-28 (2012) (discussing due process protections for individuals who face adverse human services licensing consequences based on a finding of maltreatment).

With respect to the removal of K.K.W. and K.C.W. from the Udohs' home, Petitioners do not plead any plausible facts to support a finding that the School District Respondents were involved. But even if the School District Respondents had been involved in the removal process, the district court correctly determined the temporary removal of a child from a parent's custody pursuant to Minnesota Statutes Section 260C.175 does not violate a parent's constitutional rights if the child is found to be in conditions which endanger the child's health or welfare. (Pet. App. 30.) (*citing K.D. v. Cty. of Crow Wing*, 434 F.3d 1051, 1056 (8th Cir. 2006)). In light of the public record of Mr. Udoh's criminal convictions, there can be no question that K.K.W. and K.C.W. were in need of protection from conditions that endangered their health and welfare.

Petitioners fail to present any authority to indicate there is a circuit split or conflicting case from this Court that would warrant certiorari review of their procedural due process claims.¹⁰

¹⁰ Since Petitioners fail to provide any reason for this Court to review their constitutional claims, it follows that there is no reason for this Court to review their civil conspiracy claim asserted under 42 U.S.C. § 1985. The district court correctly determined that Section 1985 "does not provide any substantive right." (Pet. App. 50.) (*quoting United Bhd. of Carpenters & Joiners of Am., Local 610, AFL-CIO v. Scott*, 463 U.S. 825, 833 (1983).)

CONCLUSION

The Petition for a writ of certiorari should be denied.

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Respectfully submitted,

/s/ Michael J. Waldspurger

Michael J. Waldspurger,
Counsel of Record

John P. Edison

Ryan P. Supple

Rupp, Anderson, Squires &
Waldspurger, P.A.

333 South Seventh Street

Suite 2800

Minneapolis, Minnesota 55402

612-436-4300

mick.waldspurger@raswlaw.com

john.edison@raswlaw.com

ryan.supple@raswlaw.com

*Attorneys for Respondents Independent
School District No. 279, Joanne Wallen,
Karen Wegerson, and Ann Mock*