NO. 03-240

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 2016

UNITED STATES OF AMERICA,

Petitioner,

v.

WILLIAM LARSON,

Respondent.

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

BRIEF FOR PETITIONER

Attorneys for Petitioner

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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I. The special needs doctrine allows deviation from the Fourth Amendment's general warrant and probable cause requirements if a search serves a purpose separate from that of general law enforcement. Local Ordinance 1923 was enacted to provide a means for law enforcement officers to immediately remove children from suspected sex-trafficking situations. Are warrantless searches conducted pursuant this ordinance constitutional under the special needs doctrine?

II. A warrantless search is reasonable if it is initiated after consent is obtained from the owner of the property or a third party with common authority over the property. Even if a third party does not actually possess authority to consent, the search remains valid if it was objectively reasonable for the officer to believe that person possessed such authority. W.M. did not have actual authority to consent to the search of the apartment or the cell phone, but appeared to have mutual use, access, and control of both for most purposes. Under these circumstances, was Officer Nelson's reliance on W.M.'s apparent authority reasonable?

STATEMENT OF THE CASE

I. STATEMENT OF FACTS

In 2015, the Victoria City Board of Supervisors ("Board") passed Local Ordinance 1923 ("L.O. 1923") to address an expected increase in sex-trafficking activity that would result from the City's hosting of the Professional Baseball Association's All-Star Game. R. at 2, 40–41. The Board issued a press release outlining its reason for passing the ordinance, which was primarily to provide a mechanism through which officers could "protect children by removing them from dangerous [sex-trafficking] situations before they can escalate." R. at 40–41.

The ordinance was to be in effect from July 11, 2015 to July 17, 2015—the week of the game—and was limited to enforcement in the Starwood Park neighborhood, which comprised the area within a three-mile radius of the stadium where the game was to be played. R. at 2–3. L.O. 1923 authorized officers to search anyone obtaining a hotel room or similar accommodations if they had reasonable suspicion to believe that person was a minor engaging in a commercial sex act, or was facilitating the use of a minor for a commercial sex act. R. at 2. The searches were further limited in scope and duration to that which was "reasonably necessary" to determine if the individual was engaging in the prohibited conduct. R. at 2.

The Initial Search of Respondent. On July 12, 2015 Officer Richols and Officer Nelson were observing patrons checking into the Stripes Motel. R. at 3, 26. At 11:22 p.m. they noticed Respondent, William Larson, and a female enter the motel and attempt to check in. R. at 3, 36. The officers became suspicious because the female looked to be significantly younger than the other individual, her outfit "barely covered anything at all," and neither person had any luggage with them. R. at 3, 28. The officers also noticed that Respondent had tattoos indicating his

affiliation with the "Starwood Homeboyz," a local gang known to "prefer pimping" over other traditional criminal enterprises. R. at 2, 3, 28.

Based on these suspicions, the officers believed that they were authorized to search the individuals pursuant to L.O. 1923. R. at 3. The search of Respondent's jacket produced nine condoms, a butterfly knife, lube, two oxycodone pills, a list of names with corresponding allotments of time those parties had purchased, and six hundred dollars in cash. R. at 3, 28. The search of Respondent's companion produced a State of Victoria driver's license that identified her as W.M., a sixteen-year-old girl. R. at 4, 29. Officer Richols immediately arrested Respondent for sex trafficking a minor in violation of 18 U.S.C. § 1591(a)(1). R. at 4, 28.

The Search of the Apartment at 621 Sasha Lane and a Cell Phone Therein. Officer Nelson determined that W.M. was likely the victim and did not place her under arrest. R. at 4, 29. He asked if she would be willing to talk to him about the situation, and she agreed. *Id.* W.M. stated that she was in a romantic relationship with Respondent, and they were in the motel to "do business with the All-Star Game fans." R. at 29. Officer Nelson asked if she had a safe place to spend the night, and she replied that she "shared" an apartment at 621 Sasha Lane with Respondent. R. at 4. He asked additional questions and learned that W.M. had lived in the apartment for more than a year, she performed most of the household chores and upkeep, she kept all of her things there, she was not on the lease and did not pay rent, and that she had hosted friends there the night before. R. at 29, 30, 31, 38.

Based on this information, Officer Nelson believed W.M. had common authority over the apartment, and asked if she would consent to a search of it. R. at 31. W.M. agreed to the search. R. at 4. Underneath the bed, Officer Nelson found a loaded handgun with the serial number scratched off. R. at 31. He also found a cell phone on top of a nightstand in the bedroom. *Id.*

Before searching the phone, Officer Nelson asked W.M. about her relation to it. R. at 4, 31. W.M. stated that even though she did not pay the bill, she "shared" the phone with Respondent and used it to operate her multiple social media accounts and make personal texts and calls. R. at 32. When asked about a sticker on the phone's case, W.M. replied that it had been placed there by Respondent. *Id.* Additionally, the phone's lock screen displayed a picture of W.M. and Respondent, and W.M. knew the password to access the phone. R. at 4, 32.

Officer Nelson believed this information showed that W.M. had authority to consent to a search of the phone and he asked for her permission to do so. R. at 32. W.M. consented to the search. *Id.* The search of the phone produced a photo of Respondent holding the gun found under the bed, some explicit pictures of W.M., and a video depicting Respondent rapping about pimping. R. at 4, 32.

II. SUMMARY OF THE PROCEEDINGS

William Larson was subsequently indicted for one count of sex trafficking of children in violation of 18 U.S.C. § 1591(a)(1) and one count of being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g)(1). R. at 5. Before trial, he moved to suppress all evidence recovered from the initial search of his person and the subsequent search of his apartment and the cell phone found therein. *Id.* The United States District Court for the Western District of Victoria denied Mr. Larson's suppression motion in its entirety. R. at 13. On appeal, the United States Court of Appeals for the Thirteenth Circuit reversed the district court's holding. R. at 23. The United States of America petitioned this Court for relief, which granted certiorari. R. at 24.

SUMMARY OF THE ARGUMENT

I.

The Fourth Amendment only mandates that a search or seizure be reasonable. While a valid warrant issued on probable cause is usually required to show reasonableness, the Court has recognized certain exceptions where neither is necessary. One such exception is the special needs doctrine. Under this exception, the government must first establish the existence of a special need separate from that of general law enforcement. Then the invaded privacy interests are weighed against the government's legitimate interest in addressing the special need. If the public interest outweighs the private interest, a search is not unreasonable, even if it was conducted without a warrant or probable cause.

Victoria City instituted L.O. 1923 to address the special need of combating an expected increase in child sex-trafficking activity. Under the circumstances that faced the City, Respondent's privacy interests were far outweighed by the City's legitimate interest in furthering this need. Therefore, there was no Fourth Amendment violation and the evidence recovered during the search of Respondent's person should not have been subject to suppression.

II.

Similarly, the Fourth Amendment warrant and probable cause requirements can be dismissed when an individual voluntarily consents to a search. Consent can be obtained from the owner of the property, or a third party that shares common access, use, or control of the property. Even if consent is obtained from a person who claims to possess common authority, but actually does not, a search conducted in reliance on that consent is not automatically rendered unreasonable. Under the doctrine of apparent authority, an officer's reliance on an individual's consent will be upheld if it was objectively reasonable for him to do so.

Officer Nelson dutifully questioned W.M.'s relation to both the apartment at 621 Sasha Lane and the cell phone found therein, and his conclusion that W.M. possessed valid authority to consent to a search of both was reasonable. Therefore, no Fourth Amendment violation occurred and the evidence recovered from those searches should not have been suppressed.

STANDARD OF REVIEW

When reviewing a district court's decision on a motion to suppress, that court's findings of fact should be accepted unless clearly erroneous, and the evidence should be considered "in the light most favorable to the government." *United States v. Pena*, 143 F.3d 1363, 1365 (10th Cir. 1998). The district court's legal conclusions are reviewed *de novo*. *Id.*

ARGUMENT AND AUTHORITIES

I. THE OFFICERS' SEARCH OF MR. LARSON'S PERSON WAS CONSTITUTIONAL BECAUSE LOCAL ORDINANCE 1923 MEETS THE SPECIAL NEEDS EXCEPTION TO THE FOURTH AMENDMENT'S GENERAL WARRANT AND PROBABLE CAUSE REQUIREMENTS.

The Fourth Amendment 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 Warrant shall issue, but upon probable cause . . . ." U.S. Const. amend. IV. Its sole purpose is to "prevent unreasonable government intrusion" into the privacy of one's person, home, or belongings. *United States v. Calandra*, 414 U.S. 338, 354 (1974).

While the Fourth Amendment itself does not state when a warrant must be obtained, the Court has held that "generally one must be secured." *Kentucky v. King*, 563 U.S. 452, 459 (2011). However, "because the ultimate touchstone of the Fourth Amendment is 'reasonableness,' the warrant requirement is subject to certain exceptions." *Brigham City v. Stuart*, 547 U.S. 398, 403 (2006) (citing *Flippo v. West Virginia*, 528 U.S. 11, 13 (1999) (per

curiam); *Katz v. United States*, 389 U.S. 347, 357 (1967)); *see also King*, 563 U.S. at 459 ("[T]he warrant requirement is subject to certain reasonable exceptions.").

One of those exceptions is the special needs doctrine. *See Griffin v. Wisconsin*, 483 U.S. 868, 873–74 (1987) ("[S]pecial needs . . . may justify departure from the usual warrant and probable cause requirements."); *New Jersey v. T.L.O.*, 469 U.S. 325, 351 (1985) (Blackmun, J., concurring) (describing the special needs doctrine). For this exception to apply, the government must first show the existence of a special need, beyond that of normal law enforcement. *Griffin*, 483 U.S. at 873. If a special need is found, the court will then balance the government's interest in addressing that need against the invaded privacy interest to determine if the warrant and probable cause requirements are impracticable. *Nat'l Treasury Emps. Union v. Von Raab*, 489 U.S. 656, 665–66 (1989). Some of the factors a court considers when conducting this balancing are: "(1) the weight and immediacy of the government interest; (2) the nature of the privacy interest allegedly compromised by the search; (3) the character of the intrusion imposed by the search; and (4) the efficacy of the of the search in advancing the government interest." *MacWade v. Kelly*, 460 F.3d 260, 269 (2d Cir. 2006) (citations omitted) (citing *Bd. of Educ. v. Earls*, 536 U.S. 822, 830, 832, 834 (2002)). Additionally, the reasonableness of any search—as commanded by the Fourth Amendment—depends on the context and circumstances in which it takes place. *T.L.O.*, 469 U.S. at 337 ("Although the underlying commandment of the Fourth Amendment is always that searches and seizures be reasonable, what is reasonable depends on the context within which a search takes place."); *Skinner v. Ry. Labor Execs.' Ass'n*, 489 U.S. 602, 619 (1989) ("What is reasonable . . . depends on all of the circumstances surrounding the search or seizure and the nature of the search or seizure itself."). If the government interest outweighs the

invaded privacy interest, the search is deemed to be reasonable and does not conflict with the Fourth Amendment. *See Griffin*, 483 U.S. at 873.

A. Local Ordinance 1923 Addresses a Special Need Separate from That of General Law Enforcement.

Local Ordinance 1923 ("L.O. 1923") is a regulation that was passed by Victoria City's Board of Supervisors to combat a drastic increase in child sex-trafficking activity that was expected to result from hosting the Professional Baseball Association All-Star Game. R. at 40–41 (containing the Board's press release concerning the passage and purpose of L.O. 1923, as well as citations to multiple studies showing the correlation between large, high-profile sporting events and a severe increase in sex-trafficking activities). The ordinance's stated purpose is to "protect the safety" of local and visiting children, by allowing law enforcement to "remove them from dangerous [sex-trafficking] situations before they can escalate." R. at 40–41.

To constitute a valid special need, the purpose of the regulation must be separate from that of general law enforcement. *Griffin*, 483 U.S. at 873 ("[The Court has] permitted exceptions when 'special needs, beyond the normal need for law enforcement, make the warrant and probable cause requirement impracticable.'" (quoting *T.L.O.*, 469 U.S. at 351)). To make this determination, the court looks to the "primary purpose" of the regulation, not its ultimate goal, purpose, or effect. *City of Indianapolis v. Edmond*, 531 U.S. 32, 44 (2000) (noting the primary purpose of the narcotics checkpoints at issue was to advance "the general interests in crime control," which precluded a finding of special need); *see Ferguson v. City of Charleston*, 532 U.S. 67, 82–83 (2001) ("While the ultimate goal of the program may well have been to get the women in question into substance abuse treatment and off of drugs, the immediate objective of the searches was to generate evidence for *law enforcement purposes* in order to reach that goal."). However, the mere fact that a stated special need has some overlap with general law

enforcement activities is not fatal to application of the special needs doctrine. *See Mich. Dep't of State Police v. Sitz*, 496 U.S. 444 (1990) (upholding suspicionless roadway sobriety checkpoints intended to remove intoxicated drivers from the road); *United States v. Martinez-Fuerte*, 428 U.S. 543 (1976) (upholding suspicionless border checkpoint stops intended to curb the flow of illegal immigrants).

In *United States v. Martinez-Fuerte*, the Court considered the constitutionality of suspicionless vehicle stops conducted at two permanent checkpoints that were less than 100 miles away from the United States–Mexico Border. 428 U.S. at 543. Noting the government's unique interest in border patrol and the "difficulty of containing illegal immigration at the border itself, " the Court held that the primary purpose of the checkpoints was sufficiently unique from that of general law enforcement and found the stops to be constitutional. *Id.* at 556. While the need to apprehend illegal aliens was certainly a general law enforcement purpose pursued by border patrol agents on a daily basis, the Court emphasized that the circumstances surrounding the checkpoints provided a sufficient basis to distinguish the stops from a general interest in crime control. *See id.* at 561–64.

Similarly, *Michigan Department of State Police v. Sitz* also demonstrates that a special need can permissively overlap with general law enforcement objectives and does not have to be wholly distinct on its own. 496 U.S. 444. There, the Court examined the constitutionality of a highway sobriety checkpoint program. *Id.* at 447. Under the program, police officers would set up roadblock checkpoints and stop each vehicle that passed through. *Id.* During these stops, an officer would examine a driver to determine if he was intoxicated. *Id.* If an officer suspected that a driver was intoxicated, he would remove them from the road for further investigation and

possible field-sobriety testing. *Id.* Motorists were subject to arrest if the sobriety test and the officer's observations indicated that they were intoxicated. *Id.*

Even though these stops were authorized without any threshold suspicion requirement on part of the law enforcement officers initiating them, the Court held that the program met the special needs exception to the general Fourth Amendment warrant and probable cause requirements. In reaching its decision, the Court noted that the immediate purpose of the regulation was to "reduce the immediate hazard posed by the presence of drunk drivers on the highways." *Edmond*, 531 U.S. at 39 (discussing the *Sitz* holding). The goal sought to be furthered by these checkpoints was almost identical to the purposes promoted by state laws that criminalize intoxicated driving, which both ultimately seek to make roads safer by preventing those that are intoxicated from operating vehicles. However, the Court found that the checkpoints served a distinct and special governmental need—the necessity of ensuring highway safety—that was separate from the state's general interest in enforcing its intoxicated-driving laws. *See Sitz*, 496 U.S. at 455; *Edmond*, 531 U.S. at 39 (discussing the *Sitz* holding: "[T]here was an obvious connection between the imperative of highway safety and the law enforcement practice at issue. The gravity of the drunk driving problem and the magnitude of the State's interest in getting drunk drivers off the road weighed heavily in [the Court's] determination that the program was constitutional.").

These cases are instructive as to the proper considerations the Court should make in this case. In both *Martinez-Fuerte* and *Sitz*, the government practices at issue shared ostensibly identical purposes and goals to those of regular law enforcement activity. The purpose of preventing illegal aliens from entering the country is seemingly no different than the goal border protection agencies seek to further on a daily basis. *See Martinez-Fuerte*, 428 U.S. at 561–64.

Similarly, removing drunk drivers from the road to promote roadway safety appears to be a goal shared by all police agencies nationwide. *See Sitz*, 496 U.S. at 451. However, as the holdings in both cases demonstrate, the Court's analysis of a claimed special government interest is more nuanced, and must be viewed with an eye toward the surrounding circumstances. *See Martinez-Fuerte*, 428 U.S. at 551–54 (highlighting the "formidable law enforcement problems" imposed by being located within 100 miles of the border); *Sitz*, 496 U.S. at 451 (noting the immediacy of the danger imposed by intoxicated drivers and the severity of the potential harm caused by them were factors that weighed heavily in the analysis of the program's constitutionality).

Here, the Victoria City Board of Supervisors passed L.O. 1923 in response to an expected increase in sex-trafficking activity that would result from hosting the Professional Baseball Association All-Star Game. R. at 40–41. The goal of the regulation was to protect children from the dangers of sex trafficking, and provide a way for law enforcement officers to immediately remove affected children from those types of situations before any further harm could befall them. *Id.* Because this ordinance served a distinct government purpose that was separate from that of general law enforcement, the court of appeals erred by holding that the special needs exception did not apply and suppressing evidence found during the search of Mr. Larson. Accordingly, its holding should be reversed and the district court's should be reinstated.

The United States Court of Appeals for the Thirteenth Circuit held that the immediate purpose of L.O. 1923 was not separate from that of regular law enforcement, and therefore did not qualify for the special needs exception. R. at 16. In reaching this conclusion, the court of appeals primarily relied on this Court's opinion in *Ferguson v. City of Charleston*. *Id.* at 17.

In *Ferguson*, this Court addressed the constitutionality of a state-run hospital policy that allowed hospital staff to test pregnant women for evidence of drug use, and then forward those

results to the police. 532 U.S. at 69–73 (outlining the policy and its operation). Apparently, this policy was designed to "use the threat of arrest and prosecution in order to force women into [drug rehabilitation] treatment." *Id.* at 84. While the hospital maintained that the ultimate purpose of the policy was to "protect[] the health of both mother and child," the Court was not persuaded. *Id.* at 81. It stated that "[w]hile the ultimate goals of the program may well have been to get the women in question into substance abuse treatment and off of drugs, the immediate objective of the searches was to generate evidence *for law enforcement purposes* in order to reach that goal." *Id.* at 82–83. The Court also noted that the "extensive involvement" of law enforcement officials at all stages of the policy's implementation weighed in favor of finding no special need. *Id.* at 84.

The Thirteenth Circuit found the *Ferguson* discussion concerning the policy's ultimate/immediate purpose and the level of law enforcement involvement to be particularly instructive. R. at 17. But, in doing so, the court failed to consider L.O. 1923's immediate purpose and overemphasized the fact that law enforcement officers conducted the searches authorized by the regulation. *Id.* ("Use of these [law enforcement] resources demonstrated that the central purpose of the statute was to gather evidence . . . .").

The level of law enforcement involvement in *Ferguson* was markedly different than that in this case. There, the hospital policy at issue was drafted by law enforcement officials and they were involved in every step of the process, from its inception to its daily enforcement.[1] However,

[1] The *Ferguson* Court went into great detail outlining the extensive involvement of law enforcement officials at every step of the process leading up to institution of the hospital policy. 532 U.S. at 70–73. When the policy was just a fledgling idea, the hospital's general counsel contacted the Charleston Solicitor's Office to offer the hospital's cooperation in "prosecuting mothers whose children tested positive for drugs at birth." *Id.* at 70–71. The Charleston Solicitor then set up a "task force" to develop the policy, which included members of the hospital, the city's police officers, the County Substance Abuse Commission, and the Department of Social

the *Ferguson* Court's focus on the level of police involvement did not mandate a blanket proscription that any such involvement would automatically preclude the existence of a special need. It was the "pervasive involvement of law enforcement," coupled with the policy's general law enforcement purpose, that ultimately weighed against finding a special need in that case. *Ferguson*, 532 U.S. at 84–85. The court of appeals' misunderstanding of police involvement and misapplication of the *Ferguson* holding directly conflicts with this Court's precedent upholding the constitutionality of other police-led searches through application of the special needs doctrine. *Compare* R. at 18 ("If the Board truly meant only to protect victims without a significant interest in prosecuting those responsible, then they could have found ways to do so that did not involve a comprehensive search by police."), *with Sitz*, 496 U.S. 444 (upholding suspicionless roadway sobriety checkpoint stops *conducted by police*), *and Martinez-Fuerte*, 428 U.S. 543 (upholding suspicionless illegal immigration checkpoint stops *conducted by police*).

The record does not indicate the existence of any improper law enforcement influence in the drafting or enacting of L.O. 1923. *See* R. at 40–41. The only police involvement cited by the court of appeals is that Victoria City police officers conducted the searches. R. at 17–18. Because this Court's decisions clearly show that the mere fact a search was conducted by police officers is not dispositive, the court of appeals wrongly decided that L.O. 1923 failed to qualify for the special needs exception on that basis and its holding should be reversed.

The court of appeals also stated that the similarity between the hospital's alleged need in *Ferguson* and that of the Board of Supervisors here furthered its conclusion that L.O. 1923 does

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Services. *Id.* at 71. Upon completion, the policy included chain of custody procedures (so the evidence could be properly used at later criminal proceedings), instructions for police officers performing an arrest of a hospital patient, and various charging guidelines outlining precise offenses a patient could be charged with, based on the stage of her pregnancy. *Id.* at 71–73. The Court specifically noted that "the policy made no mention of any change in the prenatal care of such patients, nor did it prescribe any special treatment for the newborns." *Id.* at 73.

not serve a special need separate from that of general law enforcement. R. at 16–18. Once again, the court of appeals has failed to properly conceptualize the *Ferguson* holding. The hospital policy in *Ferguson* failed to meet the requirements of the special needs exception because its immediate purpose was "ultimately indistinguishable from the general interest in crime control." 532 U.S. at 81. While the "ultimate goal" of the policy may have been to provide assistance to drug addicted mothers, the "immediate objective" of the searches was to generate evidence for subsequent criminal prosecutions. *Id.* at 82–83.

Conversely, any subsequent criminal proceeding based on evidence discovered during a search authorized by L.O. 1923 is an incidental and secondary outcome. While the regulation might ultimately uncover evidence that is used to later prosecute an individual involved in sex trafficking, that outcome is not its immediate purpose. The stated goal of L.O. 1923 is to provide a mechanism for removing children from dangerous sex-trafficking situations before they suffer any harm. R. at 41. Because the Ferguson policy and L.O. 1923 are not analogous, the court of appeals wrongly decided that L.O. 1923 failed to meet the requirements of the special needs exception on that basis and its ruling should be reversed.

Like the Court in *Sitz*, the court of appeals should have made the immediacy of danger and the gravity of harm resulting from sex trafficking a central feature of its calculus when determining whether the special needs exception applied to L.O. 1923. Certainly, no one can deny the severe physical and mental harm suffered by victims of sex trafficking. R. at 40–41 (noting the "devastating" impacts sex trafficking can have on victims). Even the court of appeals acknowledged the "parade of horrors" that surrounds human trafficking. R. at 18.

The cases analyzed above demonstrate that something that is generally a normal law enforcement activity—policing the road for drunk drivers or enforcing immigration laws—can

rise to the level of a special need, depending on the specific circumstances of the case. *See Sitz*, 496 U.S. 444; *Martinez-Fuerte*, 428 U.S. 543. In *Sitz*, the gravity of the drunk driving issue and the importance of the state's interest in removing those drivers from the road weighed in favor of finding a special interest. In *Martinez-Fuerte*, the checkpoints were designed to deal with specific difficulties faced by border patrol agents due to their proximity to the border and the difficulty of containing immigration at the border itself. Similarly, L.O. 1923 was enacted in response to a specific set of triggering circumstances facing Victoria City: an increase in the amount of sex-trafficking activity resulting from an influx of visitors for the All-Star Game. R. at 40–41.

The court of appeals failed to fully consider the gravity of this problem and the severity of its potential harms *in light of the surrounding circumstances*. It should have taken into account the immediate danger and harm of sex trafficking, not just in a general day-to-day view, but in the specific context of the All-Star Game. Victoria City was expected to host an influx of "tens of thousands" of additional people that were attending the game. R. at 2. The Board's press release cited multiple studies that showed a drastic increase in the amount of sex-trafficking activity that takes place in a host city during a large, high profile sporting event. R. at 40–41. Under these circumstances, the problems facing local law enforcement (and the dangers imposed on local and visiting children) were exponentially greater during the week of the All-Star Game than any other time of the year. When analyzed in conjunction with the severe harm suffered by victims of sex trafficking, the searches authorized by L.O. 1923 are analogous to the checkpoints in *Sitz* and *Martinez-Fuerte*. The searches were authorized in response to a specific anticipated need related to the difficulty of dealing with an exponential increase in sex-trafficking activity, and sought to prevent immediate and severe injuries from befalling child victims.

Because the surrounding circumstances establish that L.O. 1923 served an immediate purpose separate from that of general law enforcement, the court of appeals erred in concluding that the special needs doctrine did not apply and its opinion should be reversed.

B. Because Local Ordinance 1923 Addresses a Special Need, Mr. Larson's Privacy Expectations Must Be Balanced Against the Government's Legitimate Interest in Furthering That Need.

As shown above, L.O. 1923 served a particular special need separate from that of general law enforcement. The court of appeals should have next balanced the search's intrusion upon Mr. Larson's privacy expectations against its furtherance of the government interest in removing children from dangerous sex-trafficking situations. *Von Raab*, 489 U.S. at 656–66; *see also T.L.O.*, 469 U.S. at 337. Because the government's legitimate interest outweighed Mr. Larson's privacy interests, and it was impracticable to require a warrant in such a scenario, the court of appeals erred by holding that the special needs exception did not apply. R. at 16, 18. Therefore, the court of appeals' ruling should be reversed and the holding of the district court should be reinstated.

After a special need is shown to exist, the court conducts a balancing test to determine whether the search or seizure was reasonable under the circumstances. *MacWade*, 460 F.3d at 269. While the "fundamental command" of the Fourth Amendment is reasonableness and the warrant and probable cause requirements relate to the reasonableness of any particular search, the Court has recognized that there are certain circumstances "where neither is required." *T.L.O.*, 469 U.S. at 340. Where a careful balancing of the government and private interests at stake suggest that the "public interest is best served" by a reasonable standard that is less stringent than the general warrant and probable cause requirements, "[the Court has] not hesitated to adopt such a standard." *Id.* at 341. Some of the factors the court considers when conducting this balancing

test are: (1) "the gravity of the public concerns served by the seizure;" (2) "the degree to which the seizure advances the public interest;" and (3) "the severity of the interference with individual liberty." *Illinois v. Lidster*, 540 U.S. 419, 426–27 (2004) (quoting *Brown v. Texas*, 443 U.S. 47, 51 (1979)).

When applying these factors to the circumstances of this case, the balance weighs heavily in favor of the government interest in protecting children from the dangers of sex trafficking and removing them from probable sex-trafficking situations. First, the harm that the government seeks to prevent—the severe mental and emotional trauma suffered by victims of child sex-trafficking—is "substantial and real." *Chandler v. Miller*, 520 U.S. 305, 322–23 (1997). When the "possible harm against which the [g]overnment seeks to guard is substantial, the need to prevent its occurrence furnishes an ample justification for reasonable searches calculated to advance the [g]overnment's goals." *Von Raab*, 489 U.S. at 674–75. Notably, the Court has repeatedly recognized the gravity of the "government['s] concern in preventing drug use by schoolchildren" and the need to prevent the substantial harm caused by childhood drug use. *Earls*, 536 U.S. at 834, 836. If the Court deems the dangers of childhood drug use as sufficient justification for departure from the general warrant and probable cause requirements of the Fourth Amendment, it follows that the severe mental and emotional injuries caused by child sex-trafficking would justify a similar departure. Because L.O. 1923 addresses a highly important public concern, the first factor for determining reasonableness weighs in favor of the government and the ordinance's ultimate constitutionality.

Next, the Court should consider the degree to which L.O. 1923 advances the government interest in preventing the harms caused by sex trafficking by removing children from those kinds of situations. *See Lidster*, 540 U.S. at 426–27. In making this determination, the Court only

needs to decide whether the policy at issue is "*a* reasonably effective means of addressing the government interest," because "reasonableness under the Fourth Amendment does not require employing the *least* intrusive means." *Earls*, 536 U.S. at 837 (emphasis added). The searches authorized by L.O. 1923 were specifically limited in scope, in an attempt to provide protection in those areas the Board believed would see the most increase in sex-trafficking activities. *See MacWade*, 460 F.3d at 274 ("[W]e must consider the [efficacy of a p]rogram at the level of its design." (citing *Skinner*, 489 U.S. at 629)). The ordinance only authorized searches if: (1) the individual subject to the search was obtaining a room in a hotel, motel, or similar public lodging facility; and (2) the officer conducting the search had reasonable suspicion to believe that person was either a minor engaging committing a commercial sex act, or an adult facilitating the use of a minor for a commercial sex act. R. at 2. L.O. 1923 was further limited by the short length of time it was in effect and the relatively small area that it covered. *Id.* (stating that the ordinance was only valid within the Starwood Park neighborhood for the three days before and three days after the All-Star Game). The Board of Supervisors specifically noted that the intention behind placing these limitations on L.O. 1923 was to narrow its applicability to the areas "most likely to be hardest hit." R. at 41. These preconditions were logically related to advancing the purpose of the ordinance. The Board believed that the influx of people to the city would cause a drastic spike in the demand for sex-related services. *Id.* at 40–41. These visitors were not residents and would have to stay in hotels, and because they would be visiting the city for the All-Star game most of them would likely stay near the stadium. The inclusion of these limitations is a clear attempt by the City to further its goal of removing children from dangerous sex-trafficking situations, and is similar to other decisions by the Court where specific limitations were found to advance public concerns to a "significant degree." *See Lidster*, 540 U.S. at 427 (in holding the

police checkpoints as constitutional, the Court noted they had been "appropriately tailored" in time and location to fit the specific need and therefore advanced the public concern at issue to a "significant degree"). L.O. 1923 was specifically enacted for the purpose of protecting children from the dangers of increased sex-trafficking activity resulting from an influx of visitors for the All-Star Game. Because L.O. 1923 provided a reasonably effective means of furthering this purpose, the second factor also weighs in favor of the government and the ordinance's overall constitutionality.

Finally, the Court should determine the severity of L.O. 1923's interference with individual privacy. *See Lidster*, 540 U.S. at 426–27. Similar to the analysis of the previous factor, the scope of a particular policy weighs into this consideration. *See MacWade*, 460 F.3d at 273 (noting that courts tend to hold programs that are "narrowly tailored to achieve [their] purpose" as minimally intrusive on individual privacy interests). L.O. 1923's applicability was specifically limited to the area that was logically anticipated to be "hit the hardest" by increased sex-trafficking activity. R. at 41. Its administration was also purposely narrowed to hotels or similar businesses, was only effective for the days surrounding the All-Star Game, required reasonable suspicion that the person was engaged in sex trafficking, and limited the scope and duration of any search to only that which was reasonably necessary to determine whether that person was actually engaged in sex trafficking. R. at 2. Because the searches authorized by L.O. 1923 were "narrowly tailored" to further the ordinance's purpose, the search of Mr. Larson's person was not a significant enough intrusion of his privacy to violate the Fourth Amendment and render the ordinance unconstitutional.

Additionally, while not always required, the circumstances of this case and the purpose of the government interest involved render the usual Fourth Amendment warrant requirement

impracticable. *Nicholas v. Goord*, 430 F.3d 652, 672 (2d Cir. 2005) ("[I]n applying the special needs exception in other cases, the Supreme Court has not always required an express finding that obtaining a warrant would be impracticable." (citing *Lidster*, 540 U.S. at 427–28; *Earls*, 536 U.S. at 829–37)). The government has the strongest interest in eliminating the warrant requirement when "the burden of obtaining a warrant is likely to frustrate the governmental purpose behind the search." *Skinner*, 489 U.S. at 623 (quoting *Camara v. Mun. Court of S.F.*, 387 U.S. 523, 533 (1967)).

If all searches conducted pursuant to L.O. 1923 required a warrant, the entire purpose for which the ordinance was enacted would be defeated. The goal of the ordinance was to provide a mechanism that would be effective for immediately removing children from dangerous sex-trafficking situations before they could suffer any harm. R. at 41. If a warrant requirement were introduced, L.O. 1923 would be useless for achieving that goal. By the time the officers could return with a warrant, the suspected individuals may no longer be at the hotel, or worse, the child may already have been subjected to the "parade of horrors" that surrounds sex trafficking. R. at 18. Because the inclusion of a warrant requirement would be impracticable under these circumstances and render L.O. 1923 pointless, the warrantless search of Mr. Larson's person was constitutional.

The court of appeals erred by refusing to apply the special needs exception and suppressing the evidence discovered during the search of Mr. Larson's person. The special needs doctrine is applicable to this case because L.O. 1923 was enacted to serve a public need separate from that of general law enforcement, and the government's compelling interest in furthering that need outweighed Mr. Larson's privacy concerns. Further, it would be impracticable to require a warrant in this case because the ordinance would then be stripped of its effectiveness in

advancing the special need. For these reasons, the court of appeals' judgment suppressing the evidence resulting from the search of Mr. Larson's person should be reversed and that of the district court should be reinstated.

II. THE SEARCHES OF THE APARTMENT AND THE CELL PHONE THEREIN WERE CONSTITUTIONAL BECAUSE W.M. POSSESSED APPARENT AUTHORITY TO CONSENT TO BOTH.

Generally, warrantless searches and seizures conducted within a home are presumptively unreasonable. *King*, 563 U.S. at 459. However, "because the ultimate touchstone of the Fourth Amendment is 'reasonableness,' the warrant requirement is subject to certain exceptions." *Brigham City*, 547 U.S. at 403 (citations omitted); *see also King*, 563 U.S. at 462 ("[W]arrantless searches are allowed when the circumstances make it reasonable, within the meaning of the Fourth Amendment, to dispense with the warrant requirement.").

One such exception arises when the warrantless search is initiated after police have received voluntary consent from the owner of the property to be searched, or a third party who shares common authority over the property to be searched. *United States v. Matlock*, 415 U.S. 164, 170–71 (1974). This exception has since been broadened, and remains in effect even if the third party purporting to give consent does not actually possess any authority to do so—as long as the officers are reasonable in their belief that such authority exists. *Heien v. North Carolina*, 135 S. Ct. 530, 536 (2014) ("The warrantless search of a home, . . . remains lawful when officers obtain the consent of someone who reasonably appears to be but is not in fact a resident." (citing *Illinois v. Rodriguez*, 497 U.S. 177, 183–86 (1990))).

The reasonableness of an officer's determination that a party is authorized to consent to a search is judged by an objective standard: "[W]ould the facts available to the officer at the moment . . . warrant a man of reasonable caution in the belief that the consenting party had

authority over the premises?" *Rodriguez*, 497 U.S. at 188 (alteration in original) (quoting *Terry v. Ohio*, 392 U.S. 1, 21–22 (1968)). If the officer's belief in the consenting party's authority is reasonable, then the search is valid and any evidence recovered is not subject to suppression. *See id.* at 189; *Heien*, 135 S. Ct. at 536 ("To be reasonable is not to be perfect, and so the Fourth Amendment allows for some mistakes on the part of government officials . . . .").

Here, it was reasonable for Officer Nelson to believe that W.M. possessed the authority to consent to the search of the apartment and the cell phone based on the facts and circumstances that were present to him at the time. Therefore, there was no Fourth Amendment violation and the court of appeals wrongly suppressed the evidence recovered from those searches. Because of this, its opinion should be reversed and the district court's original opinion denying suppression should be reinstated.

A. Officer Nelson Reasonably Believed That W.M. Possessed Authority to Consent to the Search of the Apartment.

Common authority over property, including the authority for either party to consent to a search of that property, can be established by "mutual use of the property by persons having joint access or control for most purposes . . . ." *Matlock*, 415 U.S. at 171 n.7. As long as an officer is objectively reasonable in his belief that the consenting party has authority over the property, the search is valid and lawful regardless of whether or not the person actually has such authority. *See Rodriguez*, 497 U.S. at 188–89. Courts have considered a variety of factors to determine whether a person has apparent authority over property, including:

> (1) possession of a key to the premises; (2) a person's admission that she lives at the residence in question; (3) possession of a driver's license listing the residence as the driver's legal address; (4) receiving mail and bills at that residence; (5) keeping clothing at the residence; (6) having one's children reside at that address; (7) keeping personal belongings such as a diary or a pet at that residence; (8) performing household chores at the home; (9) being on the lease for the premises and/or paying rent; and (10) being allowed into the home when the owner is not present.

United States v. Groves, 470 F.3d 311, 319 (7th Cir. 2006) (citations omitted).

The court of appeals acknowledged the existence of the apparent authority exception, but determined that it was "abundantly clear" that W.M. did not have actual authority, and Officer Nelson "could not reasonably have concluded that W.M. maintained joint access and control of the apartment." R. at 20. Consequently, it refused to apply the exception and held that the evidence recovered from the search of the apartment required suppression. R. at 21.

To reach its conclusion, the court of appeals relied on the following facts to show that Officer Nelson's belief that W.M. had common authority over the apartment was unreasonable: (1) W.M.'s use of the apartment was restricted to only those areas that benefitted Mr. Larson; (2) W.M. was not given her own bedroom; (3) W.M. did not pay rent; (4) W.M. did not join the lease; (5) W.M. did not bring more than a duffel bag's worth of possessions to the apartment; (6) Mr. Larson forced W.M. to do excessive housework and may have used physical force with W.M.; (7) W.M. needed a spare key to open the apartment; (8) W.M. was likely being deceived about the nature of her relationship with Mr. Larson, and the officer was aware of this; and (9) W.M. was sixteen. R. at 20–21. However, court did not consider all of the operative facts in the record, and mischaracterized which party they favored.

The undisputed facts that were incorporated into the district court's opinion, as well as those in the suppression hearing transcripts, furnished ample evidence to establish that it was reasonable for Officer Nelson to believe that W.M. had authority to consent to a search of the apartment. *See* R. at 4, 26–38.[2] Additionally, Officer Nelson did not immediately rely on W.M.'s

[2] The facts that show the reasonableness of Officer Nelson's belief include: W.M. stated that her and Mr. Larson were in a romantic relationship, they lived together at the apartment, and that they "shared everything"; W.M. stated that she had lived at the apartment continuously for over a year; W.M. kept everything she owned at the apartment (even though that only amounted to

consent to search the apartment. R. at 29–31. Before acting, he inquired further about the nature of W.M.'s relationship with Mr. Larson and asked an additional series of questions about her connection to the apartment. R. at 29–31. Once he was satisfied that W.M. had proper authority to consent, Officer Nelson entered the apartment and began to conduct the search. R. at 31.

A reasonable officer presented with these facts in a similar situation would reach the same conclusion Officer Nelson did—that W.M. had authority to consent to the search of the apartment. While there are some factors that weigh against finding apparent authority, such as W.M.'s lack of presence on the lease and the fact that she didn't have her own key, the overwhelming majority of the information available to Officer Nelson at the time weighs in favor of his conclusion being reasonable. Additionally, the fact that W.M. was sixteen years old does not preclude her from having authority to consent, and has little effect on the ultimate outcome of the reasonableness analysis. *See United States v. Gutierrez-Hermosillo*, 142 F.3d 1225, 1231 (10th Cir. 1998) ("[M]inority does not, per se, bar a finding of . . . authority to grant third-party consent to entry."); *United States v. Clutter*, 914 F.2d 775, 778 (6th Cir. 1990) (holding that a twelve- and fourteen-year-old had the capacity to consent to a search of their home).

Because there was more than enough evidence to show that Officer Nelson reasonably formed his belief about W.M.'s authority to consent to the search, there was no Fourth Amendment violation and the court of appeals improperly suppressed the evidence found in the apartment.

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about a "duffel bag's worth"); W.M. received medical bills and other personal mail at the apartment; W.M. had knowledge of a hidden spare key; W.M. had her own section of the bedroom closet where she stored her clothes; W.M. stated that she slept with Mr. Larson, so she did not need her own room; W.M. performed almost all of the chores around the apartment, and substantially contributed to its upkeep; and W.M. told Officer Nelson that she had hosted friends the night before.

B. Officer Nelson Reasonably Believed That W.M. Possessed Authority to Consent to the Search of the Cell Phone.

The Court has recognized that cell phones implicate greater privacy concerns than a traditional search of a person's pockets or bag, because the scope of data they can store and access is so vast in comparison. *See Riley v. California*, 134 S. Ct. 2473, 2488–89 (2014). However, this does not render all of the Fourth Amendment exceptions inapplicable. *Id.* at 2494 ("[C]ase-specific exceptions may still justify a warrantless search of a particular phone.").

Accordingly, an analysis similar to that conducted for the search of the apartment should be applied to Officer Nelson's search of the cell phone. When an officer seeks to search particular object based on the consent of a third party, a proper review will address that party's relationship with the object. *Matlock*, 415 U.S. at 171.

The court of appeals found that it was unreasonable for Office Nelson to believe that W.M. had joint access or use of the phone, because the circumstances created an ambiguity that required further inquiry on his part. R. at 22–23.[3] However, the order in which Officer Nelson learned the facts concerning W.M.'s use of the phone is relevant in determining whether or not he acted reasonably. After locating the phone, he asked W.M. if it was hers and she stated that her and Mr. Larson "shared" it. R. at 31. This likely created an ambiguity—requiring further inquiry—but Officer Nelson followed up with additional questions before acting on the information. R. at 32. He asked whether the sticker on the phone was hers, and W.M. replied that Mr. Larson chose it. R. at 32. He then asked whether W.M. paid the bill, and learned that she did not. R. at 32. Finally, Officer Larson asked W.M. what she used the phone for. R. at 32. W.M.

[3] The court of appeals found the following facts concerning the phone to be dispositive: it was located on Mr. Larson's nightstand; it was marked with a sticker depicting Mr. Larson's gang affiliation; the password was a series of numbers related to Mr. Larson's gang affiliation; and W.M. did not pay any of the expenses of the phone.

stated that she used the phone to operate her multiple social media accounts, as well as to make personal texts and phone calls. R. at 32. It was only at this point Officer Nelson believed W.M. had sufficient joint access to or control over the phone to have authority to consent to a search of it. *See Matlock*, 415 U.S. at 171 n.7 (noting common authority can be established by "mutual use of the property by persons having joint access or control for most purposes").

Based on the evidence available to Officer Nelson at the time he decided W.M. had authority to consent to a search of the phone, he acted in the same manner as any reasonable officer would under similar circumstances. Because Officer Nelson acted reasonably in searching the cell phone, there was no Fourth Amendment violation and the court of appeals wrongly suppressed the evidence that resulted from the search. Accordingly, the holding of the court of appeals should be reversed and that of the district court should be reinstated.

CONCLUSION

For the above reasons, this Court should reverse the judgment of the United States Court of Appeals for the Thirteenth Circuit and reinstate the judgment of the United Stated District Court for the Western District of Victoria denying suppression of the evidence recovered during the searches of Respondent's person, the apartment at 621 Sasha Lane, and the cell phone therein.

Respectfully submitted,

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ATTORNEYS FOR PETITIONER