No. 03-240

In The
Supreme Court of the United States

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 RESPONDENT

TEAM 18
COUNSEL FOR RESPONDENT
OCTOBER 21, 2016

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Julie Ham, *What's The Cost of A Rumor? A Guide to Sorting Out the Myths and Facts About Sporting Events and Trafficking*, GLOBAL ALLIANCE AGAINST TRAFFIC IN WOMEN, 2011, http://www.gaatw.org/publications/WhatstheCostofaRumour.11.15.2011.pdf 14

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QUESTIONS PRESENTED

I. Whether the special needs exception to the Fourth Amendment's warrant requirement properly applies to a local ordinance, created primarily for law enforcement and criminal prosecution purposes, that authorizes law enforcement officers to conduct invasive personal searches of public lodging facility patrons.

II. Whether W.M. properly possessed authority to consent to Officer Nelson's search of Mr. Larson's apartment at 621 Sasha Lane or the cell phone found therein.

STATEMENT OF THE CASE

On the evening of July 12, 2015, two Victoria City Police Officers detained Respondent William Larson and his sixteen-year-old female companion, W.M., in the lobby of the Stripes Motel, located in the Starwood Park neighborhood of Victoria City. R. at 3. Officers Joseph Richols and Zachary Nelson detained the two individuals pursuant to Local Ordinance 1923 ("L.O. 1923"), an ordinance that authorized law enforcement officers to engage in warrantless detentions and searches of individuals if they possessed a reasonable suspicion that they were involved in commercial sex trafficking of a minor. R. at 2. The ordinance was limited in application to a three-mile radius of Cadbury Park Stadium, including Starwood Park, and was only valid between July 11, 2015 and July 17, 2015. R. at 2.

Police detained and searched Mr. Larson's person on no greater basis than the presence of alleged gang tattoos and the youthful appearance of his counterpart. R. at 3. Accordingly, the government concedes that there was no probable cause to initiate a search of Mr. Larson, and instead rests its authority entirely on L.O. 1923. R. at 3. The officers arrested Mr. Larson after their highly invasive personal search yielded alleged evidence of his involvement in commercial sex trafficking of a minor. R. at 3-4.

After arresting Mr. Larson, Officer Nelson asked W.M. if she had a place to stay that evening. R. at 4, 29. In response, she relayed that she was staying at Mr. Larson's apartment, located at 621 Sasha Lane in Starwood Park. R. at 29. Officer Nelson continued to question W.M. about the nature of her relationship with Mr. Larson, her background, and their business dealings. R. at 29-30. Throughout this process W.M. felt "nervous" and "scared", and testified that she thought she was "shaking a little bit, but [she] was trying to hide it." R. at 36-37.

When Officer Nelson finally asked W.M. if he could search Mr. Larson's apartment, she apparently stated "something like 'yah that's fine' or 'okay.'" R. at 31. Upon searching the

apartment, the only items belonging to W.M. that Officer Nelson found were small amounts of clothing and a few personal items. R. at 33. Officer Nelson also ascertained that W.M. did not pay rent, did not have her name on any of the paperwork for the apartment, and did not have her own room. R. at 4-5, 30-31. Officer Nelson also located Mr. Larson's cellphone after searching his nightstand. R. at 5, 31-32. The cellphone was decorated with Mr. Larson's markings and was password protected. R. at 5, 31-32. W.M. claimed that she shared the phone with Mr. Larson, but admitted that she only used it for the occasional call and text message. R. at 5, 31-32.

On August 1, 2015, Mr. Larson was indicted on one count of sex trafficking of children and one count of being a felon in possession of a firearm. R. at 1. Mr. Larson moved to suppress evidence obtained during his initial arrest, including evidence obtained from the search of his apartment. R. at 13. On October 22, 2015, the United States District Court for the Western District of Victoria denied his motion. R. at 13. After a jury convicted Mr. Larson on all charges, Mr. Larson appealed his conviction and contended that the District Court erred in denying his motion to suppress. R. at 15. On February 3, 2016, the United States Court of Appeals for the Thirteenth Circuit reversed Mr. Larson's conviction and remanded his case for a new trial on the grounds that the Victoria City Police violated the Fourth Amendment. R. at 15. Petitioner appealed to the Supreme Court of the United States and this Court granted certiorari. R. at 24.

SUMMARY OF THE ARGUMENT

This Court should affirm the decision of United States Court of Appeals for the Thirteenth Circuit because the special needs exception to the Fourth Amendment's warrant requirement does not apply to searches conducted pursuant to L.O. 1923. The special needs exception only applies to searches that serve a special governmental need beyond the need for law enforcement. In order to determine whether a warrant is impractical, this Court must balance the special need to perform a warrantless search against individual privacy interests. However, a search that is performed by

law enforcement and serves the immediate purpose of criminal prosecution cannot serve a special need, regardless of that search's ultimate societal goal. Even if the government successfully demonstrated this special need, the warrant requirement is not impractical where an individual has an undiminished expectation of privacy, or where law enforcement personnel conduct a highly intrusive search.

Here, regardless of the government's ultimate goal of protecting children, the Victoria City Police Department's search of Mr. Larson is not a special need because the search had the primary purpose of gathering evidence for prosecution. Even if there was a special need to search Mr. Larson, that need did not render the warrant requirement impractical. Mr. Larson's privacy interest as a free citizen with an undiminished expectation of privacy outweighed the Victoria City Police Department's special need to conduct a highly intrusive search of his person. Finally, the government's concern lacks the necessary nature and immediacy that warrants a special needs exception because Victoria City did not adequately demonstrate that a warrantless search policy under L.O. 1923 would effectively reduce commercial sex trafficking.

This Court should also affirm the Court of Appeals' finding that W.M. lacked the authority to consent to Officer Nelson's search of Mr. Larson's apartment and cellphone. It was objectively unreasonable for Petitioner to rely upon the consent of W.M. for the search of Mr. Larson's apartment and cellphone. For third party consent to be valid under the apparent authority doctrine, Petitioner most show that it was reasonable to believe that the consenting party had common authority. In this case, the consenting party was only sixteen years old and had limited belongings in the apartment. Furthermore, her status as a potential sex-trafficking victim cast doubt on her assertions of co-habitation with the Respondent. Accordingly, it was unreasonable for Petitioner to take her assertions of common authority seriously.

STANDARD OF REVIEW

This Court reviews questions of law de novo. *Pierce v. Underwood*, 487 U.S. 552, 558 (1988).

ARGUMENT

I. THIS COURT SHOULD AFFIRM THE JUDGMENT OF THE COURT OF APPEALS FOR THE THIRTEENTH CIRCUIT BECAUSE THE SPECIAL NEEDS EXCEPTION TO THE FOURTH AMENDMENT DOES NOT APPLY TO SEARCHES CONDUCTED PURSUANT TO L.O. 1923.

Searches conducted pursuant to L.O. 1923 violate the Fourth Amendment, which protects "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. CONST. amend. IV. A warrantless search is presumptively unreasonable absent a showing that the search in question fell within one of the few "specifically established and well delineated exceptions." *Katz v. United States*, 389 U.S. 347, 356-357 (1967). Petitioner erroneously argues that the "special needs doctrine," among the most highly scrutinized of these exceptions, justifies the warrantless search of Mr. Larson. R. at 3-4; *Ferguson v. City of Charleston*, 532 U.S. 67, 74-75 (2001). For a warrantless search to satisfy the special needs doctrine, the Government must first show that the intrusion "serves a special governmental need, beyond the normal need for law enforcement." *National Treasury Employees Union v. Von Raab*, 489 U.S. 656, 665-66 (1989). Where the immediate purpose of a search is to gather evidence for criminal prosecution, that search cannot serve a special need beyond the normal need for law enforcement. *Ferguson*, 532 U.S. at 83-84.

If the government demonstrates a special need, this Court must "balance the individual's privacy expectations against the Government's interest to determine whether it is impractical to require a warrant . . . ." *National Treasury Employees Union,* 489 U.S. at 665-66. The warrant requirement is not impractical where an individual does not have an inherently reduced expectation

of privacy based on his legal relationship with the state, or where law enforcement personnel conduct a highly intrusive search. *See generally Ferguson*, 532 U.S. at 67. This Court should only substitute its own balancing test for the warrant requirement in "exceptional circumstances." *New Jersey v. T.L.O.*, 469 U.S. 325, 351 (1985) (Blackmun, J., concurring).

Here, Petitioner failed to satisfy its heavy burden and demonstrate that the special needs doctrine justified the warrantless search of Mr. Larson. There can be no special need beyond the normal need for law enforcement where a search has the immediate goal of gathering evidence for the prosecution of commercial sex trafficking, despite the government's ultimate goal of protecting children. *Ferguson*, 532 U.S. at 82-84. Furthermore, searches carried out "in conjunction with or at the behest of law enforcement agencies" cannot satisfy the special needs requirement because the Government's broader societal interest cannot be "divorced from the state's general interest in law enforcement." *Id.* at 79, n.15, 82 (citing *T.L.O.*, 469 U.S. at 341 n.7). Even if this court determines that the search at issue served a special need beyond the normal need for law enforcement, Mr. Larson's privacy expectation outweighed the Government's special need to conduct a warrantless search. The Victoria City Police Department's highly intrusive search of Mr. Larson's person is not the type of search that would render a warrant requirement impractical. Therefore, this Court should affirm the Court of Appeals and ensure that the fruits of Petitioner's unreasonable search and seizure remain suppressed.

A. L.O. 1923 Does Not Serve A Special Need Beyond The Normal Need For Law Enforcement Because Its Primary Purpose Is To Gather Evidence For Criminal Prosecution.

In order for a government search to satisfy a special need beyond the normal need for law enforcement, the search's purpose must be "divorced from the [s]tate's general interest in law enforcement." *Id.* at 79, n.15, 82 (citing *T.L.O.*, 469 U.S. at 341 n.7). Where a search has a dual purpose, in that the search's immediate purpose is gathering evidence for criminal prosecution, or

that search is performed by or with the assistance of law enforcement, the special needs exception cannot apply. Adam Pié, Note, *The Monster Under the Bed: The Imaginary Circuit Split and The Nightmares Created in The Special Needs Doctrine's Application to Child Abuse*, 65 VAND. L. REV. 563, 574 (2012) (citing *Ferguson*, 532 U.S. at 79).

To determine whether a warrantless search serves special needs beyond the normal need for law enforcement, this Court must examine both the ultimate goal and immediate purpose of the policy or statute at issue. *Ferguson*, 532 U.S. at 82-84. In *Ferguson*, this Court struck down a state hospital's policy that authorized staff to collect and test urine samples of expectant mothers for the presence of illegal drugs, then forward the results of those tests to police and local prosecutors. *Id.* at 70-73. The initial revision of the policy authorized hospital staff to send positive urine tests to the police without the mother's consent, and called for the mother's prompt arrest. *Id.* at 72-73. A subsequent revision of the policy allowed a mother to avoid arrest by submitting to substance abuse treatment. *Id*. Although the City argued that the broad purpose of this policy was to protect the health and safety of the mother and child from the effects of illegal drugs, they acknowledged that the policy's explicit threat of law enforcement intervention and prosecution provided "the necessary leverage [t]o make the policy effective." *Id.*

In striking down the policy, this Court held that the state could not divorce the authorized search's ultimate goal of health and safety from the search's immediate objective of generating evidence for law enforcement purposes. *Id.* at 82-83. In distinguishing between the ultimate and immediate purpose of the search, the *Ferguson* court sought to limit the ability of a government actor to justify warrantless searches by a mere invocation of a broader societal need. This Court noted that "[b]ecause law enforcement involvement always serves some broader social purpose or objective, under [the government's] view, virtually any nonconsensual suspicionless search could

be immunized under the special needs doctrine by defining the search solely in terms of its ultimate, rather than immediate purpose." *Id.*

The use or involvement of law enforcement officials in a search excludes that search from special needs doctrine protection. The *Ferguson* court considered the extensive involvement of police and prosecutors in the day-to-day administration of the hospital's policy as highly probative in their finding that the policy's purpose failed to extend beyond the normal needs of law enforcement. *Id.* at 82. After acknowledging this distinction, the *Ferguson* court distinguished their holding from prior special needs cases that neither directly involved law enforcement officials nor resulted in prosecution. *See National Treasury Employees Union,* 489 U.S. 656 (holding federal agency's drug testing policy with general purpose of deterring employee drug use satisfied special needs exception because policy forbid agency from forwarding test results to prosecutors without employee consent).

Here, the government's search of Mr. Larson pursuant to L.O. 1923 does not satisfy a special need beyond the general need for law enforcement. Similar to the state hospital's written policy in *Ferguson*, the Victoria City Board of Supervisors' press release regarding L.O. 1923 is demonstrative of the Ordinance's dual purpose in authorizing warrantless searches. R. at 40-41. While the ultimate goal may be to protect children from being victimized by human trafficking, the Ordinance would accomplish this end with the immediate purpose of "giving Victoria City's finest the tools they need" to gather evidence of child sex trafficking that would later be used to prosecute a pimp or john. R. at 41. In explicitly granting "an authorized law enforcement officer" the ability to conduct warrantless searches based on reasonable suspicion alone, Victoria City created a foregone conclusion that any search pursuant to the Ordinance would involve gathering evidence for criminal prosecution and the direct entanglement of law enforcement. L.O. 1923. R.

at 19. Indeed, two Victoria City police officers searched Mr. Larson and unlawfully seized evidence that directly contributed to Mr. Larson's arrest and eventual conviction. R. at 3-4.

Victoria City could have crafted any number of policies that addressed the goal of protecting child sex trafficking victims and simultaneously preserving the Fourth Amendment's basic protections. *See generally* Jazmine Ulloa, *State Lawmakers' Competing Ideas On How To Stop Human Trafficking Prevent Steps Forward, Critics Say*, L.A. TIMES (Aug. 2, 2016), http://www.latimes.com/politics/la-pol-sac-human-trafficking-legislation-20160802-snap-story.html (describing alternative, community driven approaches to combat human trafficking and prostitution). Instead, Victoria City chose expediency over compliance and crafted a warrantless search regime with a purpose "ultimately indistinguishable from the general interest in crime control." *City of Indianapolis v. Edmond*, 531 U.S. 32, 44 (2000). Accordingly, this Court must affirm the Court of Appeals and forbid Petitioner from profiting off of Victoria City's unreasonable search and seizure.

B. Even If L.O. 1923 Serves A Special Need, That Special Need Does Not Make The Warrant Requirement Impractical, and Mr. Larson's Privacy Interest Outweighs The Government's Need for a Warrantless Intrusion.

In substituting its own balancing test for that of the Fourth Amendment, this Court must determine whether the government's special need for warrantless intrusion, weighed against the privacy interest of the individual to be searched, makes "the warrant and probable cause requirement impracticable." *T.L.O.*, 469 U.S. at 351 (Blackmun, J., concurring). This Court should rely on three factors in its balancing test: the nature of the privacy interest intruded upon, the character of that intrusion, and the nature and immediacy of the government concern at issue. *Vernonia School District 47J v. Acton*, 515 U.S. 646, 654-61 (1995). In light of these factors, this Court should affirm the Court of Appeals because Mr. Larson's privacy interest outweighs the Government's interest in a warrantless intrusion.

1. The special needs exception does not apply because Mr. Larson had an undiminished expectation of privacy.

This Court's past special needs exception jurisprudence relied on the inherently reduced expectation of privacy among certain classes of individuals to justify the impracticality of a warrant or probable cause requirement. In *Vernonia School District*, this Court held that a public school administrator's mandatory random drug-testing program for prospective student athletes satisfied the special needs exception. 515 U.S. at 666. This Court concluded that the students possessed a reduced expectation of privacy that weighed in favor of a special needs search because of their legal relationship to the state and their enhanced supervision. *Id.* at 654. In light of compulsory education laws, this Court held that a school's exertion of power over a student is "custodial and tutelary, permitting a degree of supervision and control that could not be exercised over free adults . . . . [T]he 'reasonableness' inquiry cannot disregard the school's custodial and tutelary responsibility for children." *Id.* at 655-56. *See also T.L.O.*, 469 U.S. at 348 (Powell, J. concurring) ("students within their school environment have a lesser expectation of privacy than members of the population generally."). This rationale follows a similar line of cases that relied upon the either the individual's legal relationship with the state or the level of control that a particular environment exerted on that individual. *See, e.g., O'Conner v. Ortega*, 480 U.S. 709 (1987) (citing government employee's inherently reduced expectation of privacy as primary factor in determining special need). *See also Griffin v. Wisconsin*, 483 U.S. 868 (1987) (holding probationers inherently reduced expectation of privacy weighs in favor of granting special needs search exception to state probation officers).

Absent any inherently reduced expectation of privacy, the average free citizen has a heightened expectation of privacy in his own person. The Fourth Amendment protects an individual's personal security as strongly as it protects one's security within his home. U.S. CONST.

amend. IV. The security of one's own person belongs "as much to the citizen on the streets of our cities as to the homeowner closeted in his study . . . ." *Terry v. Ohio*, 392 U.S. 1, 8-9 (1968). When a person puts something in his pocket, he has "the right to know it will be secured from an unreasonable search or unreasonable seizure." *Hoffa v. United States*, 385 U.S. 293, 301 (1966). When police seize a person for purposes of the Fourth Amendment, protection of the police officer and others nearby is the only justification for a search of that person, and any search of that person must be limited to the discovery of weapons. *Terry*, 392 U.S. at 29. Moreover, police may only seize contraband found during that search if the object's identity is immediately apparent upon an initial pat-down of the outer clothing. *Minnesota v. Dickerson*, 508 U.S. 366, 374-75 (1993).

Here, Mr. Larson did not have a reduced expectation of privacy relative to his location, legal status, or his legal relationship to the state. If anything, Mr. Larson had a heightened expectation of privacy with respect to his personal security. Mr. Larson was merely a potential patron in a public motel and an otherwise free citizen when Officers Nelson and Richols conducted an unreasonable search of his person. R. at 3-4. Petitioner here has no choice but to rely on a special needs exception because the Victoria City Police's seizure of the allegedly incriminating list of names does not fall under either of this Court's articulated exceptions in *Terry* or *Dickerson*. R. at 4. Accordingly, because Mr. Larson is not a member of any specific class of individuals with an inherently reduced expectation of privacy, this Court must afford him the maximum level of protection against unreasonable searches and seizure allowed under the Fourth Amendment. Thus, the nature of the privacy interest intruded upon weighs in favor of requiring a warrant.

2. The invasiveness of the Victoria City Police Department's search weighs heavily in favor of requiring a warrant.

A primary function of the special needs exception is to grant leniency to non-law enforcement individuals that may not be as familiar with the probable cause standard or the warrant

requirement. Pié, *supra* at 595-96. In *T.L.O.*, this Court upheld a public school official's warrantless search of a student's purse as a special needs search. 469 U.S. at 328. In weighing the student's expectation of privacy against the school's interest in maintaining discipline, this Court found that the warrant requirement would "unduly interfere with the maintenance of the swift and informal disciplinary proceedings needed in the schools." *Id.* at 340. Moreover, this Court found it dispositive that school teachers, rather than police, were conducting searches, and that those teachers would not be as familiar with the probable cause standard. *Id.* at 343. A special needs exception under those particular circumstances would spare school teachers "the necessity of schooling themselves in the niceties of probable cause and permit them to regulate their conduct according to the dictates of reason and common sense." *Id.* Subsequently, Federal Circuit Courts followed the "special needs beyond the normal need for law enforcement" requirement of Justice Blackmun's concurrence and declined to extend the *T.L.O.* majority's lenient probable cause requirement to searches conducted by police. *See, e.g., Franz v. Lytle*, 997 F.2d 784 (10th Cir. 1993) (holding social worker's lenient probable cause standard when investigating child abuse does not extend to police officers); *T.L.O.*, 469 U.S. at 351 (Blackmun, J., concurring).

A secondary function of the special needs exception is to eliminate the need for a neutral and detached magistrate where that magistrate will unduly impede the function of a non-law enforcement searching authority. In *Griffin*, this Court upheld a policy that authorized a probation officer to perform warrantless searches of state probationers' homes as a special needs search. 483 U.S. at 872. While the court's holding primarily relied on the state probationer's inherently reduced expectation of privacy, the court compared the probation officer's role to that of the school teacher in *T.L.O.*, and reasoned that a warrant requirement would "interfere to an appreciable degree with the probation system, setting up a magistrate rather than the probation officer as the judge of how

close a supervision the probationer requires." *Id.* at 876. In comparing a probation officer to a similar "custodial authority[1]," the court reasoned that a probation officer, similar to a teacher, "is not an impartial magistrate, neither is he the police officer who normally conducts searches against the ordinary citizen . . . . In such a setting, we think it is reasonable to dispense with the warrant requirement." *Id.* at 876-77. This explicit distinction between a police officer and a probation officer endorses *T.L.O.*'s holding that police searches must remain subject to judicial review, and may not receive the same leniency as their administrative and custodial counterparts.

Law enforcement involvement in a search weighs against granting a special needs exception to the warrant requirement regardless of the degree or location of the intrusion. *Compare Roe v. Texas Dep't of Protective Services and Regulatory Services*, 299 F.3d 395 (5th Cir. 2002) (rejecting special needs exception to strip search of alleged child abuse victim where child protective services agent working jointly with law enforcement performed the strip search) *with Green v. Camreta*, 588 F.3d 1011 (9th Cir. 2009), *vacated as moot*, 563 U.S. 692 (2011), *and vacated in part*, 661 F.3d 1201 (9th Cir. 2011) (rejecting special needs exception to in-school interview of minor conducted by Department of Human Services investigator and Deputy Sheriff) *but see Doe v. Bagan*, 41 F.3d 571 (10th Cir. 1994) (applying special needs exception to social services agent's interview of alleged juvenile child abuse perpetrator in public school without police assistance). Accordingly, the direct participation of law enforcement officers in a search or seizure will exclude that search or seizure from the special needs exception.

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[1] In distinguishing a probation officer from a police officer, the court noted that a probation officer is an employee of the State Department of Health and Social Services, and had the dual role of protecting the public interest while simultaneously ensuring the welfare of the probationer, also referred to as "clients," by providing individualized counseling and progress evaluation. *Id.* at 877.

Here, the character of the intrusion that Mr. Larson suffered should support a finding that the special needs exception cannot apply to his warrantless search. Unlike the school teachers in *T.L.O.* or the probation officers in *Griffin*, members of the Victoria City Police Department cannot benefit from a more lenient probable cause requirement under the special needs exception for lack of knowledge. Society expects law enforcement personnel, unlike school teachers, to avail themselves of the proper training and experience necessary to decide questions of probable cause. Moreover, the Victoria City Police Department cannot claim the same expediency and undue interference exception to the warrant requirement as public school teachers or social services agents. While obtaining a warrant to facilitate school searches may legitimately interfere with a school's disciplinary proceedings, law enforcement officers cannot justify lack of a warrant absent "specifically established and well delineated exceptions." *Katz,* 389 U.S at 356-57. While review by a neutral and detached magistrate may be unnecessary or burdensome for administrative or custodial searches conducted by non-police, judicial review is a necessary and effective mechanism to prevent police from conducting unreasonable searches and seizures. *See United States v. U.S. Dist. Court for E. Dist. of Mich., S. Div.,* 407 U.S. 297, 318 (1972) ("Prior review by a neutral and detached magistrate is the time-tested means of effectuating Fourth Amendment rights"). Finally, the highly invasive nature of the search involving Mr. Larson's person should weigh in favor of excluding the search from the special needs exception. R. at 3-4.

3. Victoria City's interest in curtailing commercial sex trafficking lacks the nature and immediacy that would render a warrant requirement impractical.

This court must consider the nature and immediacy of the government's concern at issue, as well as the "efficacy of this [search regime] for meeting it." *Vernonia School District*, 515 U.S. at 660. It is not enough, however, for the government to merely demonstrate a compelling interest in the search, but rather a compelling interest that "*appears important* enough to justify the

particular search at hand, in light of other factors that show the search to be relatively intrusive upon a genuine expectation of privacy." *Id.* at 661. This Court strongly favors empirical data that would indicate a search policy's effectiveness in achieving its stated goal. *See Michigan Dept. of State Police v. Sitz*, 496 U.S. 444 (1990) (citing importance of empirical data on effectiveness of warrantless search policy). Where the government has not presented empirical data to the contrary, this Court may presume a warrantless search regime's ineffective at achieving the stated purpose. *See Delaware v. Prouse*, 440 U.S. 648 (1979) (assuming state's warrantless vehicle search regime targeting unlicensed drivers is ineffective absent empirical data to the contrary).

Here, Victoria City has failed to demonstrate that the nature and immediacy of fighting commercial sex trafficking justifies the type of intrusive search regime that L.O. 1923 authorizes. Victoria City cites a study by Arizona State University that purports to correlate the rise in online sex services postings during large sporting events with an increase in child commercial sex trafficking. R. at 41. However, anti-human trafficking organizations and researchers have debunked this claim. *See* Julie Ham, *What's The Cost of A Rumor? A Guide to Sorting Out the Myths and Facts About Sporting Events and Trafficking*, GLOBAL ALLIANCE AGAINST TRAFFIC IN WOMEN, 2011, http://www.gaatw.org/publications/WhatstheCostofaRumour.11.15.2011.pdf ("There is no empirical evidence that trafficking for prostitutes increases around large sporting events [and there is] no empirical evidence that the demand for paid sex increases dramatically during international sporting events."); *See also* Pete Kotz, *The Super Bowl Prostitution Hoax*, HOUS. PRESS (Feb. 2, 2012), http://www.houstonpress.com/news/the-super-bowl-prostitution-hoax-6592361 ("Tampa Police spokeswoman [said] after the 2009 Super Bowl: "We didn't see a huge influx of prostitutes coming into Tampa. The arrests were not a lot higher. They were almost the same."). Furthermore, the Court of Appeals for the Thirteenth Circuit correctly noted that

human sex trafficking occurs "every single night of the year, and not just during the week of the All-Star Game." R. at 18. Thus, Petitioner essentially wishes to benefit from two incompatible positions. Petitioner cites commercial sex trafficking's grave and immediate public dangers to justify a highly intrusive warrantless search regime. At the same time, Petitioner chooses to combat this danger for only seven days in a given year and within a geographic area of only three miles. R. at 2, 45. This Court must reject Petitioner's paradoxical attempt to buttress the nature and immediacy of Victoria City's special need to perform warrantless searches. Accordingly, the nature and immediacy of Petitioner's concern at issue is not strong enough to justify L.O. 1923's invasive and warrantless search regime.

II. THIS COURT SHOULD AFFIRM THE JUDGMENT OF THE COURT OF APPEALS FOR THE THIRTEENTH CIRCUIT AND FIND THAT THE WARRANTLESS SEARCHES OF MR. LARSON'S APARTMENT AND CELL PHONE WERE UNCONSTITUTIONAL.

The Fourth Amendment stands for the powerful proposition that an individual has the right to ". . . retreat into their own home and be free from government intrusion." *Silverman v. United States*, 81 S. Ct. 679, 683 (1961). It is thus axiomatic that a search conducted without a warrant is "per se unreasonable . . . subject only to a few specifically established and well-delineated exceptions." *Schneckloth v. Bustamonte*, 412 U.S. 218, 227 (1973) (citing *Katz v. United States*, 389 U.S. 347, 356 (1967)). Accordingly, a warrantless search must fall under one of the narrow exceptions permitted by the Fourth Amendment and must be strongly supported by the evidence. *Bustamonte*, 412 U.S. at 222. Therefore, when circumventing the warrant process by relying on the voluntary consent of a third party the government ". . . always bears the burden of establishing the existence of effective consent." *United States v. Impink*, 728 F.2d 1228, 1232 (9th Cir. 1984); *Fla. v. Royer*, 103 S. Ct. 1319, 1324 (1983).

For effective consent to exist in the context of an apparent authority exception, as is the case here, the government must demonstrate that an objectively reasonable belief exists as to the common authority of the third party and the other individual over the property. *Ill. v. Rodriguez*, 110 S. Ct. 2793, 2797 (1990). This reasonable belief rests on whether it could be believed that the consenting party had common authority, which depends on showing at a minimum that there was ". . . mutual use of the property by persons generally having joint access or control for most purposes." *Id.* at 2797. Further, where the apparent authority of a minor is at issue the core question to be answered ". . . is whether a reasonable person would believe the child could invite others into the home." *United States v. Belt*, 609 F. App'x 745, 750 (4th Cir. 2015).

Here, the government has engaged in a transparent effort to circumvent the warrant process by exploiting a frightened sixteen-year-old girl in order to gain consent to a search. R. at 4-5, 36-37. Any reasonable law enforcement officer should have known that a child and suspected sex-trafficking victim would not have the kind of common authority required by *Rodriguez* to authorize a search of Mr. Larson's apartment. R. at 5; *Rodriguez*, 497 U.S. at 181. Similarly, any reasonable officer would also have realized that the mere assertion by a child that they occasionally surfed the web or used an app on another adult's phone did not grant them the common authority or appearance of common authority to consent to a search. Accordingly, this Court should uphold the decision of the Court of Appeals and suppress the search of the Respondent's apartment and cell phone.

A. This Court should find that it was objectively unreasonable for the officers to conclude that W.M. had apparent authority to consent to a search of Mr. Larson's apartment.

It is a fundamental tenant of constitutional law that searches ". . . conducted outside the judicial process, without prior approval by judge or magistrate, are per se unreasonable under the Fourth Amendment." *Coolidge v. N.H.*, 91 S. Ct. 2022, 2032 (1971). This rule is subject to ". . .

only to a few specifically established and well-delineated exceptions." *Id.* These exceptions are not frivolous and have been "jealously and carefully drawn" to avoid abuse. *Jones v. U.S.*, 78 S. Ct. 1253, 1257 (1958). Similarly, the third-party consent exception relied upon by the government is tightly circumscribed, and limited to those who possess common authority over the premises. *Rodriguez*, 110 S. Ct. at 2797. In the case at bar it was objectively unreasonable for an officer to conclude that W.M. had the common authority necessary to consent under the apparent authority doctrine.

The state has the burden of proving the existence of a third party's common authority by showing, at a minimum, that the individual enjoyed ". . . mutual use of the property [and] having joint access or control for most purposes." *Id.* at 2797. This reference to "mutual use" and "joint access" has a more nuanced meaning than mere access to a key, or the occasional use of the property. *Georgia v. Randolph*, 547 U.S. 103, 111 (2006). Instead, this Court has held that common authority is analogous to an evaluation of social expectations that are ". . . naturally enough influenced by the law of property, but not controlled by its rules." *Id.* at 111. The police bear the burden of evaluating the reasonableness of an individual's claim that they may consent to the search of a third party's property. Accordingly, even ". . . when the invitation is accompanied by an explicit assertion that the person lives there, the surrounding circumstances could conceivably be such that a reasonable person would doubt its truth and not act upon it without further inquiry." *Rodriguez*, 110 S. Ct. at 2801.

An officer's belief that an individual has common authority over property is unreasonable if other rational individuals in the same situation would have found it to be suspect and/or unsupportable. *Id*. To wit, several circuits have concluded that the apparent authority doctrine only applies to an officer's mistake of fact, not a mistake of law. *United States v. Whitfield*, 939 F.2d

1071, 1074 (D.C. Cir. 1991); *United States v. Dearing*, 9 F.3d 1428, 1429 (9th Cir. 1993); *United States v. Salinas-Cano*, 959 F.2d 861, 865 (10th Cir. 1992). The court in *Whitfield* held that where a situation is unclear the officer ". . . must make further inquiries before engaging in warrantless searches. If the information gleaned from those inquiries is insufficient to establish apparent authority, the Fourth Amendment demands that the agents procure a warrant." *Whitfield*, 939 F.2d at 1075. Accordingly, officers cannot rely upon the apparent authority doctrine where they lack a sufficient factual basis to conclude that the third party had the authority to consent. *United States v. Corral*, 339 F. Supp. 2d 781, 794 (W.D. Tex. 2004).

In *United States v. Raspberry* officers relied on a woman's insistence that she was the defendant's live-in girlfriend, in addition to the presence of several toiletries, some clothing, and a month old letter, to conclude that she had mutual use of the lodging and could thus consent to a search. *United States v. Raspberry*, 307 F. Supp. 2d 84, 87 (D.D.C. 2004). The court in *Raspberry* found this conclusion to be "objectively unreasonable" and that the officer should have asked for mail, a drivers license, or any other information that would have affirmed the live-in girlfriend's assertion. *Raspberry*, 307 F. Supp. 2d at 87. Similarly, in *United States v. Salinas-Cano*, the court found that reliance on an apartment owner's consent to search a briefcase to be unreasonable in the absence of any other corroborating evidence. *Salinas-Cano*, 959 F.2d at 865 (finding the "mere incantation" of apparent authority, in the absence of evidence of reasonableness, is insufficient justification).

Only a few circuits have touched on the issue of how minority may affect the ability to consent to a third party search. The Tenth, Eleventh, and Sixth Circuits have held that minority is not, per se, a bar to giving consent under the apparent authority doctrine. *United States v. Sanchez*, 608 F.3d 685, 690 (10th Cir. 2010) (holding that a teenager could consent to a search of her own

home); *Lenz v. Winburn*, 51 F.3d 1540, 1548 (11th Cir. 1995) (holding that minors may consent to searches); *United States v. Clutter*, 914 F.2d 775, 778 (6th Cir. 1990) (holding that children may consent to a search of their own home). However, there is dissension among these courts as some, like the Tenth Circuit, have recognized that age is a factor that should be weighed against the surrounding circumstances. *United States v. Gutierrez-Hermosillo*, 142 F.3d 1225, 1231 (10th Cir. 1998) (holding that minority is "a factor" to be considered). Other courts have looked on minority consent with extreme skepticism. For example, in *Abdella v. O'Toole*, the court held that a ten-year-old could not possibly authorize a broad search of her parents' home due to her immaturity and the risk of police pressure. *Abdella v. O'Toole*, 343 F. Supp. 2d 129, 138 (D. Conn. 2004). Likewise, in *United States v. Barkovitz* the court found a twelve-year-old could not consent due to his immaturity and his attendant susceptibility to police pressure. *United States v. Barkovitz*, 29 F. Supp. 2d 411, 415 (E.D. Mich. 1998).

No precedent adequately captures the scenario presented by the instant case. As this is an issue of first impression, this Court should employ an analysis of the surrounding circumstances and find that it was unreasonable for an officer to conclude that a sixteen-year-old girl in W.M.'s position had apparent authority to consent to a search. The case with the greatest superficial similarity to the one at bar is *Fernandez v. California* where the defendant was lawfully arrested and removed from his apartment, whereupon police acquired consent for a search of the apartment from the defendant's live-in girlfriend. 134 S. Ct. 1126, 1128 (2014). This Court held that an individual who had been lawfully removed from the scene could not object to the search of the premises he shared with his co-habitant. *Id*.

This is similar to the instant case where Mr. Larson was arrested prior to the search of his apartment at W.M.'s consent. However, in *Fernandez* it was not substantially contested that

consenting party was in fact a co-habitant with common authority; instead the defendant contested her ability to consent in the context of his forcible removal from the apartment. *Id*. at 1136. Here, Mr. Larson freely grants that a lawfully removed individual may not veto a search authorized by a co-habitant with sufficient common authority to consent to a search. Instead, Mr. Larson fiercely contests that it was reasonable to assume that W.M. was a co-habitant with any common authority at all.

This Court should hew to the guiding principles articulated in *Rodriguez* and look to the "surrounding circumstances" of this case in order to render its decision. *Rodriguez*, 110 S. Ct. at 2801. As noted by the Thirteenth Circuit, the officer should have been alarmed that the consenting party was a sixteen-year-old girl that he already suspected of being a sex trafficking victim. Indeed, the officer should have been alerted to the probability that she would not have common authority over her alleged trafficker's property due to the asymmetry of the relationship and likelihood that she was not a true co-habitant. The absence of anything more of W.M.'s than a duffle bag of clothing and a few personal items should have been a red flag to the officer, just as the court articulated under similar circumstances in *Raspberry*. 307 F. Supp. 2d at 87. In *Raspberry*, the court made clear that the officer should have asked for more corroborating evidence, or sought a warrant. *Id*. The uncertainty and unique facts presented to the officer in this case cries out for the kind of further inquiries demanded by the *Whitfield* court. *Whitfield*, 939 F.2d at 1075.

Further, this Court should consider W.M.'s age and risk of police pressure in light of the circumstances presented in the record. While not determinative, courts have held that age can be a factor. *Gutierrez-Hermosillo*, 142 F.3d at 1231. Here, it is evident that W.M. was intimidated by the officer since she said ". . . obviously I was scared" and "I think I was even shaking . . ." and that this contributed to her willingness to consent to the search. R. at 36-37. These circumstances

raise the precise concerns of the *Abdella* and *Barkovitz* courts that a child's immaturity makes them both uniquely susceptible to police pressures, and unable to appreciate the implications of granting consent. *Abdella*, 343 F. Supp. 2d at 138; *Barkovitz*, 29 F. Supp. 2d at 415.

The sequence of events in this case is such that it was objectively unreasonable for a reasonable officer to have believed that W.M. could consent to a search of Mr. Larson's apartment. The officer knew, by virtue of having checked her ID, that the consenting party was only sixteen years old, that she had only limited belongings in the apartment, and that as a potential sex-trafficking victim her assertions that she was a co-habitant should have been viewed with skepticism. For the foregoing reasons this Court should find that it was objectively unreasonable to rely on W.M.'s consent to search Mr. Larson's apartment.

B. This Court should find that it was objectively unreasonable for the officers to conclude that W.M. had apparent authority to consent to a search of Mr. Larson's cell phone.

The government's search of Mr. Larson's cell phone was an even more egregious breach of his Fourth Amendment rights than the search of his apartment. Even if this Court were to find that W.M. could consent to the search of Mr. Larson's apartment ". . . consent to a search of the home may not be effective consent to a search of a closed object inside the home." *United States v. Karo*, 468 U.S. 705, 725 (1984). Instead, consent can only be offered ". . . when given by one with common authority over or other sufficient relationship to the premises or effects sought to be inspected." This Court has held that "[t]he constant element in assessing Fourth Amendment reasonableness in consent cases . . . is the great significance given to widely shared social expectations." *Randolph*, 126 S. Ct. at 1521. In consideration of these social expectations this Court recognized that cell phones differ in a "quantitative and a qualitative sense" from other objects because of their capacity to store ". . . millions of pages of text, thousands of pictures, or hundreds of videos." *Riley v. California*, 134 S. Ct. 2473, 2478 (2014). Accordingly, this Court

should find that it was unreasonable for a police officer to assume that a sixteen-year-old girl had common authority over Mr. Larson's cell phone.

The touchstone case regarding this issue is *United States v. Karo* wherein this Court dealt with an individual who had common authority over a car, but not over a closed container within that car. *Karo*, 468 U.S at 710. In a widely cited concurrence, Justice Ginsburg articulated that this is because the social expectations within the shared space of a home or car do not necessarily extend to every single object within that space. *Id*. at 725. Instead, the test for all searches, even those within a shared space, is whether or not the individual has common authority over that object. *Id*. This common authority rests ". . . on mutual use of the property by persons generally having joint access or control for most purposes." *United States v. Matlock*, 415 U.S. 164, 171 n.7 (1974).

When investigating whether an individual has the common authority necessary to consent to a search of a particular object hinges on an analysis of the surrounding circumstances to determine reasonableness. *United States v. Trejo*, No. 09-cr-20404, 2010 U.S. Dist. LEXIS 22909, at *9 (E.D. Mich. Mar. 12, 2010). This inquiry has generally relied heavily on whether a container or other personal object ". . . is physically locked." *United States v. Andrus*, 483 F.3d 711, 718 (10th Cir. 2007). Accordingly, when dealing with computers, courts often look to whether or not officers had ". . . knowledge about password protection." *Id.* at 719. However, the lack of password protection, or even mutual access to a password, is often not sufficient in and of itself to justify a claim of apparent authority. *Trejo*, 2010 U.S. Dist. LEXIS 22909 at 10. The fact that an individual allows general access to a computer does not ". . . completely diminish his expectation that the contents of the computer would be kept private, at least among his family members and friends of his father's who used the computer from time to time." *Id*.

Courts should also consider the consenting party's lack of interest in an item, definitive markings on the object, or any other intention to restrict access to the container. *United States v. Aaron*, 33 F. App'x 180, 184 (6th Cir. 2002); *Salinas-Cano*, 959 F.2d at 864; *United States v. Basinski*, 226 F.3d 829, 835 (7th Cir. 2000). For example, in *United States v. Aaron* the court found that a live-in-girlfriend had common authority when a computer that was not password protected, was located in a common area of the home, and where no other measures had been taken to restrict access. *United States v. Aaron*, 33 F. App'x 180, 184 (6th Cir. 2002). Similarly, in *United States v. Smith* the court found a live-in-girlfriend had common authority where (1) the computer was in a common area; (2) there were objects near the computer indicating familial access; (3) there was no effort to restrict her access; (4) the computer was not password protected. *United States v. Smith*, 27 F. Supp. 2d 1111, 1115 (C.D. Ill. 1998). Likewise, in *United States v. Morgan* the determinative issue was not that the defendant's wife installed applications on his computer, it was that the computer was not password protected, was in a common area, and the defendant made no effort to restrict access. *United States v. Morgan*, 435 F.3d 660, 663-65 (6th Cir. 2006).

The case at bar is distinguishable in that Mr. Larson took several steps in order to indicate his unique ownership and personal control over the device. R. at 4-5, 31-32, 34. The phone was located in his personal nightstand, was password protected, and bore his own personal markings. R. at 4-5, 31-32, 34. This stands in contrast to *Aaron*, *Smith*, and *Morgan* where the computer was located in a common area, was not password protected, and no effort had been made to restrict access or assert unique ownership. *Aaron*, 33 F. App'x at 184; *Smith*, 27 F. Supp. 2d at 1115. Likewise, in *United States v. Buckner* the controlling factor was that the police were not aware that the computer was password protected and thus had no reason to doubt the consenting party's apparent authority. *United States v. Buckner*, 473 F.3d 551, 555 (4th Cir. 2007). Here, the record

shows that the officer was well aware that Mr. Larson's phone was password protected. R. at 4, 31-32, 34. Accordingly, this Court should find that it was objectively unreasonable to rely on W.M.'s consent to search Mr. Larson's cellphone.

CONCLUSION

For the reasons above, Respondent respectfully requests that this Court affirm the judgment of the United States Court of Appeals for the Thirteenth Circuit.

Respectfully Submitted,

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