

Section 10 Seizures (Child Removals)

Police officers or social workers may not "pick up" a child without an investigation or court order, absent an emergency.

Parental consent is required to take children for medical exams, or an overriding order from the court after parents have been heard. *Wallis v. Spencer*, (9th Cir 1999)

Child removals are "seizures" under the Fourth Amendment. Seizure is unconstitutional without court order or exigent circumstances. Court order obtained based on knowingly false information violates Fourth Amendment. *Brokaw v. Mercer County*, (7th Cir. 2000)

The defendant should have investigated further prior to ordering seizure of children based on information he had overheard. *Hurlman v. rice*, (2nd Cir. 1991)

Police officer and social worker may not conduct a warrantless search or seizure in a suspected abuse case absent exigent circumstances. Defendants must have reason to believe that life or limb is in immediate jeopardy and that the intrusion is reasonably necessary to alleviate the threat. Searches and seizures in investigation of a child neglect or child abuse case at a home are governed by the same principles as other searches and seizures at a home. *Good v. Dauphin County Social Services*, (3rd Cir. 1989)

Defendants could not lawfully seize child without a warrant or the existence of probable cause to believe child was in imminent danger of harm. Where police were not informed of any abuse of the child prior to arriving at caretaker's home and found no evidence of abuse while there, seizure of the child was not objectively reasonable and violated the clearly established Fourth Amendment rights of the child. *Wooley v. City of Baton Rouge*, (5th Cir. 2000)

For purposes of the Fourth Amendment, a "seizure" of a person is a situation in which a reasonable person would feel that he is not free to leave, and also either actually yields to a show of authority from police or social workers or is physically touched by police. Persons may not be "seized" without a court order or being placed under arrest. *California v. Hodari*, 499 U.S. 621 (1991)

Where the standard for a seizure or search is probable cause, then there must be particularized information with respect to a specific person. This requirement cannot be undercut or avoided simply by pointing to the fact that coincidentally there exists probable cause to arrest or to search or to seize another person or to search a place where the person may happen to be. *Yabarra v. Illinois*, 44 U.S. 85 (1979)

An officer who obtains a warrant through material false statements, which result in an unconstitutional seizure, may be held liable personally for his actions under § 1983. *Aponte Matos v. Toledo Davilla*, 1st Cir. 1998)