Child Pornography and Child Molestation: One and the Same or Separate Crimes?

Kathryn A. Rigler[1]

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[1] J.D. Candidate, Seton Hall University School of Law, 2013; M.B.A. Finance, Loyola University of Maryland, 2008; B.B.A. Management, Loyola University of Maryland, 2004. I am grateful to Professor Jenny Carroll for her invaluable insight and assistance throughout the writing process. I am appreciative of the *Seton Hall Circuit Review* members for their hard work and dedication. Lastly, I give special thanks to my family and friends, for their continued love and encouragement.

I. INTRODUCTION

Congressional findings underlying the Child Pornography Prevention Act of 1996 state that child sexual abusers often use child pornography to "stimulate and whet their own sexual appetites."[2] Possession of child pornography and the act of child molestation are separate crimes; however, contemporary studies have highlighted a correlation between the principal behaviors of both.[3] Recent federal appellate court decisions have resulted in divergent holdings, some of which are inconsistent with these studies.[4] These decisions affect the federal circuit courts by blurring the threshold used to determine when probable cause under the Fourth Amendment is established in cases involving evidence of child sexual exploitation crimes.[5]

The Eighth Circuit held in *United States v. Colbert* that evidence of defendant's attempt to entice a young girl supported probable cause to search defendant's home for child pornography.[6] The court found that probable cause existed because "individuals sexually interested in children frequently utilize child pornography to reduce the inhibitions of their victims."[7] Contrary to the decision in *Colbert*, the Sixth Circuit found in *United States v. Hodson* that an affidavit, based on defendant's

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[2] Child Pornography Prevention Act of 1996, Pub. L. No. 104–208, § 121, 110 Stat. 3009–26 (1996).

[3] *See* Michael L. Bourke & Andres E. Hernandez, *The 'Butner Study' Redux: A Report of the Incidence of Hands-on Child Victimization by Child Pornography Offenders,* 24 J. Fam. Violence 183 (2009).

[4] *See, e.g.*, Dougherty v. City of Covina, 654 F.3d 892 (9th Cir. 2011); United States v. Colbert, 605 F.3d 573 (8th Cir. 2010), *cert. denied*, 131 S.Ct. 1469 (2011); United States v. Hodson, 543 F.3d 286 (6th Cir. 2008); United States v. Falso, 544 F.3d 110 (2d Cir. 2008).

[5] *Id.*

[6] *Colbert*, 605 F.3d at 577.

[7] *Id.*

online confession to an undercover officer that he had an attraction to children and that he had sexually molested a seven-year-old boy, was not sufficient to support probable cause to search the defendant's home for child pornography.[8] Similarly, the Second Circuit in *United States v. Falso* held that a search for child pornography was not supported by probable cause where the affidavit was based, in part, on evidence that the defendant had previously been arrested for sexually abusing a minor.[9] Finally, and most recently, in *Dougherty v. City of Covina*, the Ninth Circuit advanced this split among the federal appellate courts by siding with the Second and Eighth Circuits.[10] The *Dougherty* court held that although the affidavit included one allegation of attempted molestation of a student and multiple allegations of inappropriate touching of students, it did not contain any facts linking the defendant's acts as a possible child molester to his possession of child pornography.[11] Thus, a search of the defendant's home for child pornography was not supported by probable cause.[12]

These cases illustrate a pressing dilemma: the absence of a bright-line rule to determine when evidence of child molestation can be used to support probable cause to search a defendant's home for child pornography. A vague totality of the circumstances test leads to probable cause being found *in some instances*, yet not found in many other similar instances.[13] When probable cause cannot directly link the two crimes, defendants and law enforcement are faced with uncertainty and confusion. This presents a compelling problem due to the inherently dangerous nature of the two crimes. Conversely, adopting a bright-line rule that links the two crimes in the absence of direct evidence or sufficient probable cause may be problematic, given the United States Supreme Court's reluctance to invade "legitimate expectations of privacy" protected by the Fourth Amendment of the United States Constitution.[14] Grappling with and reconciling these conflicting issues is the underlying theme of this Comment.

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[8] *Hodson*, 543 F.3d at 292.

[9] *Falso*, 544 F.3d at 121–24.

[10] Dougherty v. City of Covina, 654 F.3d 892 (9th Cir. 2011).

[11] *Id.* at 898–99.

[12] *Id.* at 899.

[13] *Compare* United States v. Adkins, 169 F. App'x 961, 967 (6th Cir. 2006) ("Standing alone, a high incidence of child molestation by persons convicted of child pornography crimes may not demonstrate that a child molester is likely to possess child pornography."), *with* United States v. Haynes, 160 F. App'x 940 (11th Cir. 2005) (holding a police officer's belief that probable cause of child molestation supported a search for child pornography was objectively reasonable, based on no more than common sense).

[14] *See* United States v. Knotts, 460 U.S. 276, 285 (1983).

Law enforcement face significant obstacles in detecting child abuse crimes. Two such impediments are the growing technology of the Internet and the ever-increasing ways that child pornographers can hide images.[15] Traditional investigative techniques have become less useful at preventing the victimization of innocent children.[16] Additionally, the crime of Internet child pornography does not coincide neatly with traditional Fourth Amendment precedent. Internet child pornographers walk a fine line between enjoying individual liberties in the privacy of their home and conducting criminal activity.[17] Consequently, the best response by the judiciary to combat the societal danger of child pornography has been to engage in different forms of balancing tests.[18] As evidenced by the current circuit split, an unguided judicial balancing test that accords inconsistent weights to different types of evidence regarding child sexual exploitation crimes is too subjective to serve as a reliable decision-making formula.[19] To determine whether probable cause exists to support a search for child pornography, courts, law enforcement, and society as a whole need a more lucid standard.

The optimal solution is to emulate the broadened probable cause standard used in obtaining search warrants relating to drug crimes.[20] In certain cases, courts loosened the probable cause standard by considering the background and training of the investigating affiant, the severity of the crime, the availability of reliable statistics, and the nexus between the crime and the particular place to be searched.[21] If evidence of certain child sexual exploitation crimes may be used as evidence indicating that a suspect possesses child pornography, then search warrants may be granted on more consistent grounds. This expanded standard will serve

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[15] Kenneth V. Lanning, *Child Molesters: A Behavioral Analysis,* National Center for Missing & Exploited Children, 92 (5th Ed. 2010), *available at http://www.missingkids.com/en_US/publications/NC70.pdf* (last visited Oct. 22, 2011).

[16] *Id.*

[17] *See* Ellen S. Podgor, *Computer Crime Facts*, (2002) Encyclopedia of Crime and Justice, http://www.encyclopedia.com/topic/Computer_Crime.aspx ("The availability and dissemination of pornography is exacerbated by technology. The accessibility of pornography via the Internet is a concern of the Communications Decency Act of 1996 and the Child Pornography Prevention Act of 1996 (18 U.S.C. § 2251 et. seq., 18 U.S.C. § 2242(b)). These statutes and others have been added to the criminal code to provide additional protections to children. When reviewing these statutes, courts have the difficult task of determining the appropriate line between individual liberties, such as privacy and free speech, and criminal conduct.").

[18] *See supra* note 4.

[19] *See supra* note 4.

[20] *See* United States v. Feliz, 182 F.3d 82 (1st Cir. 1999); United States v. Pace, 955 F.2d 270 (5th Cir. 1992); United States v. Freeman, 685 F.2d 942 (5th Cir. 1982); United States v. Charest, 602 F.2d 1015 (1st Cir. 1979); *See* discussion *infra* Part IV, B.

[21] *Supra* note 20.

as a concrete guidepost for the judiciary, law enforcement personnel, and society, and has the potential to be used as prima facie proof that a questionable search is in fact reasonable under the Fourth Amendment.

This Comment proceeds in three parts. Part II details the history and growth of child pornography and sexual abuse of children. This section describes the historical development of child pornography laws, as well as the historical progression of the Fourth Amendment. Part III discusses the current debate on the correlation between child pornography and child molestation, and how this problem affects the federal circuit courts. By focusing on an in-depth analysis of recent circuit court cases, this Comment specifically targets issues in developing probable cause to search for child pornography.

Part IV identifies the ideal solution to this problem, positing that child pornography is a form of child abuse and, as such, a different, more expansive probable cause standard should be developed. This section suggests a new, expanded approach to determining probable cause in situations involving evidence of child sexual exploitation. Part IV also examines the practical ramifications of implementing the proposed broadened probable cause standard. Lastly, this section argues that by mildly conflating evidence of child sexual exploitation crimes, the proposed probable cause standard will alleviate confusion and inconsistencies when determining whether probable cause exists.

II. BACKGROUND

A. History of Pornography in General

Memoirs of a Woman of Pleasure, the first pornographic novel written in the English language, was published in 1748.[22] Notwithstanding the reserved public attitude toward sex at that time, the novel left little to the imagination by delving into racy topics, such as bisexuality, voyeurism, group sex, and masochism.[23] Pornographers were exposed to unparalleled innovation with the advent of photography in 1839.[24] Video followed a similar groundbreaking path.[25] By 1896, French filmmakers were exploring pornography in short, silent films like *Le Coucher de la Marie,* which featured a strip tease.[26] The cultural and

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[22] *The History of Pornography No More Prudish Than the Present,* FOXNEWS.COM (Oct. 13, 2010), http://www.foxnews.com/health/2010/10/13/history-pornography-prudish-present/ (last visited Nov. 7, 2012) [hereinafter *History of Pornography*].

[23] *Id.*

[24] *Id.*

[25] *Id.*

[26] *Id.*

sexual revolution of the 1960s and 1970s led to evolving social attitudes that cleared the way for more widespread screenings of explicit films.[27] The subsequent development of both the Internet and the digital camera reduced impediments to making, viewing, and distributing pornography.[28] Today, while pornography continues to inundate the Internet, the actual size of the industry remains a mystery.[29]

B. Setting the Stage for Conflict: Efforts to Criminalize Child Pornography

In 1973, the United States Supreme Court ruled that the First Amendment's guarantee of Freedom of Speech did not protect obscene material.[30] In *Miller v. California,* the Court acknowledged that because there are fundamental dangers in trying to regulate any form of expression statutes regulating obscene materials must be narrowly drawn.[31] In an attempt to set such limits, the Court defined obscene material as that which, when "taken as a whole, appeal[s] to the prurient interest in sex," is patently offensive in light of community standards, and lacks "serious literary, artistic, political, or scientific value."[32]

Congress's first step toward protecting children from child pornography occurred with the enactment of the Federal Protection of Children Against Sexual Exploitation Act in 1978.[33] This legislation prohibited showcasing children under the age of sixteen in sexually explicit material to be distributed in interstate commerce, which helped regulate the commercial exchange of child pornography.[34] Five years later, the Court in *New York v. Ferber* upheld the criminalization of the distribution and sale of non-obscene child pornography.[35] The Court found that child pornography could be banned without first being deemed "obscene" under *Miller* for five reasons: (1) the government has a compelling interest in "safeguarding the physical and psychological well-being of a minor" by preventing the sexual exploitation and abuse of children;[36] (2) child pornography distribution is intrinsically related to

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[27] *The History of Pornography*, *supra* note 22.
[28] *Id.*
[29] *Id.*
[30] Miller v. California*,* 413 U.S. 15, 23 (1973).
[31] *Id.* at 23–24.
[32] *Id.* at 24.
[33] Protection of Children Against Sexual Exploitation Act of 1977, Pub. L. No. 95-225, § 2252(a), 92 Stat. 7, 7-8 (1978) (codified as amended at 18 U.S.C. § 2252 (1994)).
[34] Amy E. Wells, Comment, *Criminal Procedure: The Fourth Amendment Collides with the Problem of Child Pornography and the Internet*, 53 OKLA. L. REV. 99, 102 (2000).
[35] New York v. Ferber, 458 U.S. 747, 756 (1982).
[36] *Id.*

child sexual abuse;[37] (3) commercializing child pornography provides economic incentive for its production;[38] (4) visual depictions of children engaged in sexual activity have negligible artistic value;[39] and (5) recognizing that child pornography falls outside the protection of the First Amendment is compatible with Supreme Court precedent.[40] Subsequently, in 1984, Congress passed the Child Protection Act,[41] which increased the legal age of a minor to eighteen and abolished the commercial transaction requirement.[42] Finally, due to emerging technologies, in 1988 Congress passed the Child Protection and Obscenity Enforcement Act,[43] which prohibited the distribution of child pornography by means of computers.[44]

Following these important legislative actions, the Supreme Court, in 1990, extended its holding in *Ferber* and upheld state criminal sanctions for the private possession of child pornography.[45] By outlawing such possession, the government sought to eliminate genuine harm to children by diminishing the market for child pornography.[46] In response to the growth of the Internet and other innovative and evolving technologies, Congress enacted the Child Pornography Prevention Act of 1996 (CPPA).[47] The CPPA's focus was on restricting child pornography on the Internet, including virtual child pornography.[48] The Ninth Circuit stated that child pornography regulation altered from defining the crime "in terms of the harm inflicted upon real children to a determination that child pornography was evil in and of itself, whether it involved real children or not."[49]

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[37] *Id.* at 759.

[38] *Id*. at 761.

[39] *Id.* at 762.

[40] *Id.* at 763.

[41] Child Protection Act of 1984, Pub. L. No. 98-292, 98 Stat. 204 (codified as amended at 18 U.S.C. §§ 2251-2253 (1994 & Supp. IV 1998)).

[42] Wade T. Anderson, *Criminalizing "Virtual" Child Pornography Under the Child Pornography Prevention Act: Is It Really What It "Appears to Be?"* 35 U. RICH. L. REV. 393, 396 (2001).

[43] Pub. L. No. 100–690, 102 Stat. 4485 (codified as amended at 18 U.S.C. §§ 2251A-2252 (1994 & Supp. IV 1998)).

[44] Anderson, *supra* note 42, at 397.

[45] Osborne v. Ohio, 495 U.S. 103, 111 (1990).

[46] *Id.* at 141–43.

[47] Child Pornography Prevention Act of 1996, Pub. L. No. 104-208, § 121(1), 110 Stat. 3009–26 (codified at 18 U.S.C. § 2251 (Supp. IV 1998)); *see also* Anderson, *supra* note 42, at 403.

[48] Anderson, *supra* note 42, at 403–04; *see also* 18 U.S.C. § 2252A (Supp. V 1999).

[49] Free Speech Coalition v. Reno, 198 F.3d 1083, 1089 (9th Cir. 1999), *cert. granted sub nom.* Holder v. Free Speech Coalition, 121 S. Ct. 876 (2001).

Recent legislative and judicial responses to the proliferation of child pornography have been strict.[50] Criminal penalties for possessing child pornography have also increased considerably.[51] The underlying dialogue pushing for increased sentences suggests that there is a negligible difference between those who possess child pornography and those who actually molest children.[52] A fundamental thread throughout this discourse is that regardless of the differences in penalties for child pornography and child molestation, these two crimes are highly intertwined based on the inherent danger both crimes present to innocent children.[53] Finally, advancing forms of technology make it easier for child pornographers to avoid detection.[54] Law enforcement personnel face a formidable challenge when this opportunity for secrecy intersects with individual liberties, such as privacy, which are protected by the Fourth Amendment. This issue can be resolved by mildly conflating the crimes of child molestation and child pornography. By doing so, the ability to establish probable cause would be slightly expanded without infringing on an individual's Fourth Amendment rights.

C. Evolution of the Fourth Amendment

The Fourth Amendment protects a citizen from unreasonable searches and seizures.[55] It reads:

> 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 Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.[56]

Over the course of the past century, the United States saw a major evolution of the Fourth Amendment and, more specifically, the probable cause standard. The overarching theme of the Fourth Amendment requires that a neutral magistrate be the one to draw evidentiary inferences as opposed to a police officer "engaged in the often competitive enterprise of ferretting out crime."[57] Beginning in 1933, the Court announced that mere suspicion is not enough to support probable

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[50] Carissa Byrne Hessick, *Disentangling Child Pornography from Child Sex Abuse*, 88 WASH. U. L. REV. 853, 855 (2011) (discussing the rhetoric surrounding the link between the crimes of child pornography and child sexual abuse).

[51] *Id.*

[52] *Id.*

[53] *Id.*

[54] *Id*. at 854.

[55] U.S. Const. amend. IV.

[56] *Id*.

[57] Johnson v. United States, 333 U.S. 10, 13–14 (1948).

cause to obtain a warrant to search a private dwelling.[58] The Court required greater proof to protect individuals from overzealous law enforcement agents entering a home without sufficient probable cause.[59]

In *Illinois v. Gates*, the Court stated that reviewing magistrates are tasked with the responsibility of making "a practical, common-sense decision whether, given all the circumstances set forth in the affidavit . . . there is a fair probability that contraband or evidence of a crime will be found in a particular place."[60] Supreme Court precedent establishes that the probable cause standard is not rigid. Rather, probable cause is an imprecise concept that focuses on the realities "of everyday life on which reasonable and prudent men, not legal technicians act."[61] Because the probable cause standard is fluid and nebulous, it can lead to a multitude of problems in trying to obtain a search warrant.[62] Inconsistency and uncertainty abound when a law enforcement agent can submit an affidavit to one magistrate judge and obtain a search warrant, yet be denied a search warrant by a different magistrate judge evaluating the same affidavit.

III. ANALYSIS

A. Intersection of Child Molestation and Child Pornography

A legal debate exists as to whether there is simply a correlation between child molestation and child pornography or whether there is actual causation between the two crimes.[63] This Comment seeks to determine whether this debate is meaningless; even without evidence supporting causation, if these two crimes are so highly correlated that they are almost one and the same, should not evidence of one support probable cause to locate evidence of the other? The Department of Justice has suggested that, "[s]etting aside whether there is a causal connection or even a correlation between child pornography and child

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[58] Nathanson v. United States, 290 U.S. 41, 47 (1933).

[59] *Johnson*, 333 U.S. at 13–14.

[60] Illinois v. Gates, 462 U.S. 213, 238 (1983).

[61] *Id.* at 241 (citing Brinegar v. United States, 338 U.S. 160, 175 (1949)).

[62] *Compare Colbert*, 605 F.3d at 577 (8th Cir. 2010) (reasonably approving a search of defendant's home in order to locate child pornography when there was evidence the defendant attempted to entice a young girl), *with Falso*, 544 F.3d at 124 (2d Cir. 2008) (holding search for child pornography was not supported by probable cause where the affidavit was based in part on evidence that defendant had previously been arrested for sexually abusing a minor).

[63] Alexandra Gelber, *Response to* "A Reluctant Rebellion," U.S. Dep't of Justice, 6 (2009), *available at* http://www.ussc.gov/Education_and_Training/Annual_National_Training_Seminar/2010/009c_Reluctant_Rebellion_Response.pdf (last visited Nov. 7, 2012).

molestation, those who collect child pornography exploit and victimize the children in those images, and create a demand for the production of more child pornography . . . ."[64]

Further, a study conducted by Michael L. Bourke, of the United States Marshals Service, and Andres E. Hernandez, of the Federal Correction Institution located in Butner, North Carolina, gathered further empirical evidence of the debate over the link between these two categories of crime.[65] The study analyzed two types of offenders: child pornographers with no known "hands-on" sexual abuse history and child pornographers known to have sexually abused at least one child victim.[66] The objective of the study was to determine the likelihood of a child pornographer engaging in child molestation.[67] This was accomplished by investigating what percentage of child pornographers were also undetected child sexual abusers.[68]

The study's findings revealed that the child pornographers were "*significantly more likely than not* to have sexually abused a child."[69] This study also reported a 2,369% increase in the number of sexual abuse offenses admitted by the subjects from the time of their sentencing to the time of the study.[70] This staggering percentage challenges the notion that child pornographers only involve themselves with pictures and images of children.[71] Of the subjects who entered treatment with no known history of sexual abuse offenses, less than two percent actually turned out to be strictly child pornographers.[72]

The Butner Study calls into question whether it is realistic or useful to distinguish child pornographers and child abusers.[73] The authors of the study believe that an intricate, shared relationship between these two crimes exists.[74] Further, the results of the study suggest that our society may be faced with a new category of offenders: child pornographers "may be undetected child molesters and . . . their use of child pornography is indicative of their paraphilic orientation."[75]

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[64] *Id.; see also* Mark Hansen, *A Reluctant Rebellion*, A.B.A. J. (2009), *available at* http://www.abajournal.com/magazine/article/a_reluctant_rebellion/ (last visited Nov. 7, 2012).

[65] Bourke & Hernandez, *supra* note 3.

[66] *Id.* at 183.

[67] *Id.*

[68] *Id.*

[69] *Id.* (emphasis added).

[70] *Id.* at 188.

[71] Bourke & Hernandez, *supra* note 3, at 188.

[72] *Id.*

[73] *Id*.

[74] *Id.* at 189.

[75] *Id.* at 190.

B. How This Problem Affects the Federal Circuits

Three leading cases sought to determine whether evidence of child molestation could support probable cause to obtain a search warrant to locate child pornography.[76] They were all decided upon wholly different factual foundations.[77] Nevertheless, there is a common theme throughout all three cases: each federal appellate court attempted to delicately balance the critical need to protect innocent minors against the revered privacy rights of the accused.[78] The uncertainty of this imprecise balancing test creates confusion among the circuit courts, of which clarity is desperately needed.

1. *United States v. Colbert* – Eighth Circuit

In *United States v. Colbert*,[79] detectives investigated a complaint of suspicious activity at a park when a young girl's uncle witnessed an older man speaking with his niece and became concerned.[80] A description of the man's vehicle was relayed to the police who conducted a traffic stop of the defendant.[81] The defendant consented to a search of his car and detectives discovered a police scanner, handcuffs, and a "New York PD" hat.[82] To explain these possessions, the defendant stated that he had previously worked as a security guard.[83] He then admitted that he had been talking to the young girl at the park about movies that he had at his apartment.[84]

Subsequently, a search warrant affidavit was prepared to search the defendant's residence for evidence of child pornography.[85] All of the facts relating to the incident in the park, as well as the detectives' interaction with the defendant were summarized in the warrant application.[86] A search warrant for the apartment was granted by the magistrate and a search located children's movies, a computer, and numerous compact discs containing child pornography.[87] The

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[76] *See* cases cited *supra* note 4.
[77] *See* cases cited *supra* note 4.
[78] *See* cases cited *supra* note 4.
[79] 605 F.3d 573 (8th Cir. 2010) *cert. denied*, 131 S.Ct. 1469 (2011).
[80] *Id.* at 575.
[81] *Id.*
[82] *Id*.
[83] *Id.*
[84] *Id.*
[85] *Colbert*, 605 F.3d at 575.
[86] *Id.* at 575–76.
[87] *Id.* at 576.

defendant's motion to suppress the evidence discovered in his home was denied and he subsequently appealed.[88]

The district court addressed whether the facts set forth in the affidavit, detailing the alleged enticement of a young girl, established a link supporting probable cause to search the defendant's home to locate child pornography.[89] The court determined that the affidavit did in fact establish probable cause to search the home for child pornography because "individuals sexually interested in children frequently utilize child pornography to reduce the inhibitions of their victims."[90] More specifically, the court asserted that child pornography was logically related to child enticement, particularly when a defendant had specifically referred to movies and videos that he wanted the child to view.[91]

The district court found that the reviewing magistrate reasonably concluded the search of Colbert's home was justified, notwithstanding the affidavit's lack of detail.[92] The Eighth Circuit Court of Appeals affirmed this holding, rationalizing that an intuitive relationship exists between child molestation or enticement and possession of child pornography.[93] The circuit court explained that child pornography possession is a logical precursor to child molestation and that this relationship is worsened due to the ubiquitous nature of child pornography on the Internet.[94] The easy access to Internet child pornography creates a discrete way for child molesters to secretly satisfy their pedophilic desires.[95]

The dissenting opinion was concerned about the majority's reliance on what it called a "dangerous assumption" in affirming the validity of the search warrant.[96] The dissent believed that the affidavit strictly supported probable cause regarding child enticement and not possession of child pornography.[97] The dissent also noted the magistrate judge's deduction of a nexus between child enticement and child pornography, without additional evidence supporting that inference, was

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[88] *Id.*
[89] *Id.* at 576–77.
[90] *Id.* at 577.
[91] *Id.*
[92] *Id.*
[93] *Id.* at 577–78.
[94] *Id.* at 578.
[95] *Id.*
[96] *Id.* at 579 (Gibson, J., dissenting).
[97] *Id.* at 580.

unreasonable.[98] The dissent primarily relied on two cases: *United States v. Hodson*[99] and *United States v. Falso.*[100]

2. *United States v. Hodson* – Sixth Circuit

On October 7, 2005, a police detective conducted a search for online sexual predators by signing on to the Internet under the alias "kidlatino12" and pretending to be a twelve year-old boy.[101] The detective encountered another user under the alias "WhopperDaddy" who confided to the detective that he was a forty-one year-old married father of two sons.[102] "WhopperDaddy" also confessed that he was a homosexual with a preference for young boys, that he enjoyed seeing his sons naked, and that he had sex with his seven year-old nephew.[103] Next, "WhopperDaddy" told the twelve-year-old male alias that he was interested in performing oral sex on him.[104] America Online ("AOL") identification records revealed that the 'WhopperDaddy' screen name was registered to Michael Hodson.[105]

It was subsequently discovered that Hodson was the father of only one son and had no nephews.[106] An affidavit to search Hodson's residence was prepared based on the AOL identification information and the Internet conversation.[107] The affidavit requested a search for evidence of child pornography; however, the statement of probable cause failed to allege any involvement by the defendant in child pornography other than the Internet communications.[108] Likewise, there was no evidence supporting the notion that child molesters are also likely to possess child pornography.[109] Nonetheless, a warrant was issued and Hodson's residence was searched by law enforcement.[110] Police located numerous pictures of child pornography buried in the hard drives of Hodson's computer, but did not discover or seize any evidence to support a charge of child molestation against Hodson.[111]

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98 *Id.* at 580–81 (citing *Hodson*, 543 F.3d at 293 (6th Cir. 2008)).
99 543 F.3d 286 (6th Cir. 2008).
100 544 F.3d 110 (2d Cir. 2008).
101 *Hodson*, 543 F.3d at 287.
102 *Id.*
103 *Id.*
104 *Id.*
105 *Id.*
106 *Id.*
107 *Hodson,* 543 F.3d at 287.
108 *Id.* at 288–289.
109 *Id.* at 289.
110 *Id.*
111 *Id.*

Hodson was indicted for receiving and possessing child pornography and subsequently filed a motion to suppress the evidence seized during the search.[112] The reviewing magistrate judge focused on the "molestation-pornography nexus," and concluded there was a lack of evidence linking Hodson to child pornography.[113] The magistrate determined there was a weak inference that Hodson viewed child pornography solely based on the fact that he allegedly enjoyed seeing his children unclothed.[114] The magistrate judge declared that to infer that Hodson possessed child pornography would require an assumption that suspected child molesters always possess child pornography.[115]

The magistrate declined to make that assumption because he was not persuaded that Hodson possessed child pornography based solely on evidence that he was an alleged child molester.[116] The magistrate judge was influenced by dicta in *United States v. Adkins*[117] in concluding that the online conversation, although repugnant, did not create a link between child molestation and pornography possession.[118] The magistrate added, however, that had the detective included her expertise on the nexus between the two crimes in the affidavit, such an empirical link might have been reached.[119]

With regard to the government's argument that the officer's reliance on the search warrant was made in good faith, the magistrate found that while the detective's failure to provide evidence supporting the critical link undercut the warrant, it was not made in bad faith.[120] Further, the magistrate held that the validity of the warrant was not completely destroyed by the lack of a nexus between the two crimes because both the conduct described and the evidence sought involved sexual exploitation of minors.[121]

The district court conducted a hearing based on both parties' objections to the magistrate's findings.[122] Because the detective did not include the necessary expertise to establish a link between child molestation and child pornography possession, the district court found

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[112] *Id.*
[113] *Hodson*, 543 F.3d at 290.
[114] *Id.*
[115] *Id.*
[116] *Id.*
[117] United States v. Adkins, 169 F. App'x 961, 967 (6th Cir. 2006) ("Standing alone, a high incidence of child molestation by persons convicted of child pornography crimes may not demonstrate that a child molester is likely to possess child pornography.").
[118] *Hodson*, 543 F.3d at 290–91.
[119] *Id*. at 291.
[120] *Hodson*, 543 F.3d at 291.
[121] *Id.*
[122] *Id.*

the warrant defective for lack of probable cause.[123] Next, the court applied the *Leon* good faith exception and concluded that the affidavit contained information demonstrating that the defendant was engaged in child molestation and illicit online activity.[124] Both of these activities involve sexual exploitation of minors and, as such, are closely linked to possession of child pornography.[125] Therefore, the district court denied the motion to suppress and Hodson subsequently appealed.[126]

The Sixth Circuit Court of Appeals, relying heavily on *Adkins* concluded that it was unreasonable for the magistrate judge to infer the nexus between child pornography and child molestation without additional evidence.[127] Further, the court of appeals, unlike the district court, did not adhere to the *Leon* good faith exception, stating that it was also unreasonable for the police officer to infer the nexus herself or to rely on her own subjective knowledge of the nexus between the two crimes.[128] Thus, the district court's denial of the motion to suppress was reversed, Hodson's conviction was vacated, and the case was remanded.[129]

3. *United States v. Falso* – Second Circuit

United States v. Falso[130] is yet another circuit court case that blurs the probable cause standard in relation to child molestation and child pornography. The defendant moved to suppress evidence of child pornography seized from his home on the grounds that probable cause for the search did not exist.[131] The lower court denied this motion, finding that probable cause existed and that the "good-faith" exception applied.[132] The issue presented on appeal was whether the lower court's finding of probable cause existed when it was based on a search warrant stating that the defendant may have attempted to gain access to a child pornography website.[133] The search warrant affidavit also noted that the defendant had an eighteen year-old conviction for sexual abuse of a minor.[134] The Second Circuit found that although the defendant did try

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123 *Id.*
124 *Id*. at 291–92.
125 *Id.* at 292.
126 *Hodson,* 543 F.3d at 292.
127 *Id*.
128 *Id*. at 293.
129 *Id.* at 293–94.
130 544 F.3d 110 (2d Cir. 2008).
131 *Id*. at 112.
132 *Id*.
133 *Id*.
134 *Id*.

to gain access to the child pornography website, he was not a registered member of the site.[135] Therefore, the question on appeal hinged on whether the defendant's eighteen year-old conviction for sexual abuse of a minor could support a belief that evidence of child pornography would be found in his home.[136] The court held that probable cause was lacking, but that the good-faith exception applied.[137]

In evaluating whether the affidavit supported probable cause in this case, the Second Circuit first looked to the illustrated nexus between child pornography and child molestation.[138] The Second Circuit believed that the line of reasoning asserted in the affidavit, that the majority of child pornography possessors are persons who are sexually attracted to children, was illogical.[139] Relying on the dissenting opinion in *United States v. Martin*[140] the court concluded that "it is an inferential fallacy of ancient standing to conclude that, because members of group A (those who collect child pornography) are likely to be members of group B (those attracted to children), then group B is entirely, or even largely composed of, members of group A."[141] Thus, the court held that even though the lower court was understandably concerned with public safety, an individual's Fourth Amendment right cannot be destroyed because of illogical inferences drawn from unsupported facts.[142]

The court then discussed whether the defendant's prior sex-crime conviction was relevant to the probable cause analysis.[143] The court determined that because there was no evidence of ongoing impropriety, the temporal gap was not bridged between the eighteen year-old conviction and the current alleged child pornography offense.[144] Further, the court stated, although the prior conviction involved the sexual abuse of a minor, it was not a conviction for possession of child pornography.[145] The court demanded that it is not enough that the law criminalizes both of the aforementioned crimes; the two misconducts are

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135 *Id.* at 113.
136 *Falso,* 544 F.3d at 113.
137 *Id*.
138 *Id*. at 117–20.
139 *Id*. at 122.
140 426 F.3d 82 (2d Cir. 2005).
141 *Falso*, 544 F.3d at 122 (quoting *Martin*, 426 F.3d at 82 (Pooler, J., dissenting) (criticizing the majority's inference that because collectors of child pornography are likely to be subscribers of e-groups, the inverse also is true: namely, that subscribers are likely to collect child pornography)).
142 *Falso*, 544 F.3d at 122.
143 *Id*. at 122–123.
144 *Id*. at 123.
145 *Id*.

separate crimes.[146] Because the search warrant did not provide the needed correlation between a person's inclinations to commit both types of crimes, the Second Circuit found that probable cause did not exist.[147]

IV. OPTIMAL SOLUTION

A. Expanded Probable Cause Standard Limited to Child Sexual Exploitation Situations

In order to resolve the disagreement among the federal circuit courts on this issue, the Supreme Court should develop an expanded probable cause standard limited to child sexual exploitation situations when certain requirements are met. This type of expansion would not be novel, as it is already used consistently and analogously in cases where law enforcement seek to find evidence in the home of an individual suspected of association with drugs.[148] Therefore, because of the severity of crimes dealing with child endangerment, an expanded probable cause standard, allowing evidence of certain child sexual exploitation crimes to support probable cause for a search for child pornography, is warranted by societal norms.

B. Existing Judicial Precedent of Probable Cause Standard as a Foundation

The analysis of this new standard should not be undertaken without context and reviewing magistrates should continue to take into account judicial precedent when determining whether the probable cause standard has been met. One important aspect that cannot be overlooked is the notion, developed in *Johnson v. United States*,[149] that evidentiary inferences should be drawn by a "neutral and detached magistrate," as opposed to a law enforcement "officer engaged in the often competitive enterprise of ferreting out crime."[150] This requirement does not deny law enforcement the benefit of reasonable inferences; it simply places that control in the hands of an impartial magistrate as opposed to a potentially zealous police officer.[151]

Additionally, magistrates should continue to abide by the "totality of the circumstances" approach developed in *Gates* to determine when

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146 *Id.*
147 *Id.* at 124.
148 *See supra* note 20; *see* discussion *infra* Part IV, B.
149 333 U.S. 10 (1948).
150 *Id*. at 14.
151 *Id.* at 13–14.

probable cause exists.[152] By rejecting the rigid *Aguilar-Spinelli*[153] two-pronged test, the Supreme Court in *Gates* adopted an all-encompassing "totality of the circumstances" standard.[154] The standard states that the issuing magistrate's task is to "make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit before him, there is a fair probability that . . . evidence of a crime will be found in a particular place."[155] The Supreme Court hoped that this flexible and functional standard would better achieve the equilibrium of "public and private interests that the Fourth Amendment requires."[156]

C. Analogous Situations of an Expansion of the Probable Cause Standard

There are many examples of situations in which courts allow a loose interpretation of the probable cause standard in evaluating affidavits related to crimes involving drugs.[157] The Sixth Circuit declared that depending on the crime being investigated, evidence sought, and the opportunity for concealment of evidence, a magistrate judge may deduce a link between a suspect and a location to be searched.[158] Many circuits have also held that judges may infer that suspected criminals are likely to retain evidence of their crimes in their homes.[159]

An example of this loosened probable cause interpretation is evident in *United States v. Pace*, where police officers observed marijuana plants growing inside a barn located on the defendant Pace's

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[152] Illinois v. Gates, 462 U.S. 213 (1983) ("The rigid 'two-pronged test' under Aguilar [v. Texas, 378 U.S. 108 (1964)] and Spinelli [v. United States, 393 U.S. 410 (1969)] for determining whether an informant's tip establishes probable cause for issuance of a warrant is abandoned, and the 'totality of the circumstances' approach that traditionally has informed probable-cause determinations is substituted in its place.").

[153] Aguilar v. Texas , 378 U.S. 108 (1964) *abrogated by* Illinois v. Gates, 462 U.S. 213 (1983) ("Although an affidavit . . . need not reflect the direct personal observations of the affiant . . . the magistrate must be informed of some of the underlying circumstances from which the informant concluded that the [evidence was] where he claimed [it was], and some of the underlying circumstances from which the officer concluded that the informant, whose identity need not be disclosed . . . was 'credible' or his information 'reliable.'"); and Spinelli v. United States, 393 U.S. 410 (1969) *abrogated by* Illinois v. Gates, 462 U.S. 213 (1983).

[154] *Gates*, 462 U.S. at 238.

[155] *Id.*

[156] *Id.* at 239.

[157] *See supra* note 20.

[158] United States v. Williams, 544 F.3d 683, 687 (2008) (citing United States v. Savoca, 761 F.2d 292, 298 (6th Cir. 1985)).

[159] *Id*. at 688 (citing United States v. Jones, 994 F.2d 1051, 1056 (3d Cir. 1993); United States v. Anderson, 851 F.2d 727, 729 (4th Cir. 1988), *cert. denied*, 488 U.S. 1031 (1989)).

property.[160] Based on the information obtained from a legal search of the barn, additional warrants were issued for Pace's residences.[161] The search warrant affidavit stated that people who grow marijuana often keep contraband, proceeds, and records hidden in their homes to prevent police detection.[162] Subsequent searches of the residences revealed a plethora of documents relating to drug transactions, as well as certain drug paraphernalia, including marijuana and cash.[163] Pace was subsequently indicted for conspiracy to possess marijuana with intent to distribute.[164]

The Fifth Circuit analyzed the holding of *United States v. Freeman*,[165] which stated, that search warrant affidavits must contain facts establishing a "nexus between the house to be searched and the evidence sought."[166] The court expounded that while the affidavit must link the location to be searched with the alleged illegal activity, the connection could be founded on ordinary "inferences as to where the sought out evidence would normally be located."[167] The *Pace* court concluded that probable cause was supported to search the defendant's home based on the fact that a link was established between the illegal activity and the belief that certain evidence would be located at the defendant's home.[168] This case illustrates the importance of expressly explaining and clearly delineating the connection between the specific, alleged criminal activity and the likelihood of locating evidence of a separate criminal activity in a particular location.

United States v. Feliz[169] presents another analogous situation in which a court employed an expanded probable cause standard to find a nexus between alleged criminal activity and evidence to be found at the particular location. In *Feliz,* officers submitted an affidavit containing detailed information demonstrating that the defendant was involved in illegal drug trafficking.[170] The defendant argued that the drug sales did not occur at or near his apartment and moreover, that the police officer's extensive experience in drug trafficking activity was inadequate to supply the required nexus to support probable cause.[171] The First Circuit

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160 United States v. Pace, 955 F.2d 270, 272 (5th Cir.1992).
161 *Id*.
162 *Id.* at 277.
163 *Id.* at 272.
164 *Id.*
165 685 F.2d 942 (5th Cir. 1982).
166 *Id.* at 276 (quoting United States v. Freeman, 685 F.2d 942, 949 (5th Cir. 1982).
167 *Pace*, 955 F.2d at 277.
168 *Id*.
169 182 F.3d 82, 86 (1999).
170 *Id*. at 87.
171 *Id*.

Court of Appeals disagreed with this contention.[172] The court stated that by analyzing an affidavit using a commonsense and realistic approach, probable cause could be inferred that criminal objects may be located in a particular place even when not linked by direct evidence.[173] Ultimately, the court held that it was reasonable for the judge to rely on her commonsense, along with the affiant's professional law enforcement opinion, to determine that it was likely that defendant would have evidence of drug trafficking transactions at his home.[174]

Last, in *United States v. Nance*,[175] a suspect purchased drugs from an undercover police officer. After he was arrested, a search warrant was obtained to search his home for drug paraphernalia, money, and weapons.[176] Firearms were indeed located in the defendant's home.[177] The defendant filed a motion to suppress the evidence claiming that it was illegally seized based on lack of probable cause.[178] While the underlying affidavit contained information wholly regarding defendant's criminal drug activity, the final sentence added that based on the law enforcement officer's professional experience and opinion, drug dealers keep *weapons* in their homes.[179] Based on this, the Ninth Circuit held that the affidavit established probable cause to support the warrant.[180]

The preceding cases demonstrate that courts have loosely interpreted the probable cause standard in certain situations relating to drug crimes. The magistrates involved issued warrants to locate evidence of a crime without any direct proof that the evidence would be located in the defendants' homes. Subjective testimony from law enforcement officials based on their experience and training, as well as, common sense inferences made by the neutral and detached magistrates allowed for these search warrants to be approved.[181] If the probable cause standard can be broadened to account for these specific drug related crimes, it should also be broadened for inherently dangerous crimes involving child sexual exploitation.

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172 *Id.*
173 *Id.* at 88 (quoting United States v. Ventresca, 380 U.S. 102, 108 (1965)).
174 *Feliz,* 182 F.3d at 88.
175 United States v. Nance, 962 F.2d 860, 862 (9th Cir. 1992).
176 *Id*.
177 *Id*.
178 *Id*. at 864.
179 *Id*. (emphasis added).
180 *Id.*
181 *See supra* note 20.

D. The Uniqueness of Child Pornography Offenders and Why the Probable Cause Standard Should be Broadened in Relation to Child Sexual Exploitation Crimes

The effect of sweeping technological advances on modern American society has forced the law to adapt.[182] It is imperative that criminal laws also evolve to maintain pace with progressing technology.[183] While the child pornography industry is not new, the emergence of the Internet and advancements in computer technology have transformed it into a global industry.[184] The anonymity of the Internet only exacerbates the problem of child pornography.[185] On one hand, law enforcement officials' success in locating and arresting child pornographers depends on their ability to remain informed of innovative technological advances.[186] On the other hand, legislative and judicial decisions also tend to dictate the efficacy of law enforcement officials in apprehending and prosecuting possessors of Internet child pornography.[187] Thus, all three branches of government must take great efforts to ensure the equilibrium between sacred individual privacy interests and concerns surrounding dangerous crimes of sexual exploitation and abuse of innocent children.

Typically, defendants who engage in child pornography present a complex and unique barrier to law enforcement discovery. Child pornographers go to great lengths to hide their crimes, thereby making detection of child pornography immensely difficult.[188] Often, it is not until after an individual is arrested for the more severe crime of child

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[182] Amy E. Wells, *Criminal Procedure: The Fourth Amendment Collides with the Problem of Child Pornography and the Internet,* 53 OKLA. L. REV. 99, 99 (2000); *see generally* Randolph S. Sergent, *A Fourth Amendment Model for Computer Networks and Data Privacy*, 81 VA. L. REV. 1181 (1995) (focusing on how "the development of modern communications technology forces [society] . . . to [reestablish] the balance between individual privacy and society's need for information").

[183] Wells, 53 OKLA. L. REV. at 100.

[184] *Id*.

[185] *Id*. at 101 (citing Jennifer Stewart, *If This Is the Global Community, We Must Be on the Bad Side of Town: International Policing of Child Pornography on the Internet*, 20 HOUS. J. INT'L L. 205, 215 (1997) ("A person can establish a bulletin board, and use it to exchange sexual interests in children, without a license or registration.") and John R. Levine et al., *The Internet for Dummies*, 218, 225 (5th ed. 1998) ("A person can reroute e-mail and graphic images through multiple nations so that the origin of the file is virtually undetectable.")).

[186] Wells, 53 OKLA. L. REV. at 107.

[187] *Id.*

[188] Dr. Tory J. Caeti, Ph.D., *Sex Crimes, Part I: Child Pornography*, 18, Law Enforcement Training Network (2009), *available at* http://www.twlk.com/law/tests/letn1640102ct.pdf (last visited Nov. 7, 2012).

sexual abuse, that possession of child pornography is discovered.[189] In this way, law enforcement efforts are reactive as opposed to proactive about responding to this evolving social crisis.

The judiciary's willingness to adopt a broadened probable cause standard in drug-related crimes might be a result of the amorphous "War on Drugs" and law enforcement efforts to reduce the illegal drug trade.[190] While reducing and eliminating the illegal drug trade is of great importance, there is no reason why its expanded probable cause standard cannot be extended to crimes involving child sexual exploitation. The historical development of child pornography laws demonstrates that mainstream society consider crimes involving child sexual exploitation to be abhorrent and dangerous.[191] Moreover, the most unique characteristic of child molesters is their gripping interest in child pornography.[192] Thus, for many child molesters, child pornography serves as a facilitator to commit child molestation.[193]

The two competing interests in this debate are: the sanctity of the individual's privacy in the home versus the overwhelming concern for the protection of children. This is an arduous balancing act due to the high value United States citizens place on individualized privacy interests; the privacy of one's home is considered sacrosanct.[194] In considering these two competing interests, the judiciary's decisions should favor protecting children. Child pornography presents a severe threat to children, who are inherently incapable of protecting themselves.

This proposed expanded probable cause standard would not provide carte blanche freedom to law enforcement officials in obtaining search warrants. Affidavits must include specific, detailed criteria, such as: (1) a clear history, including examples, of training and experience of the affiant in establishing and determining probable cause; (2) a detailed description of reliable statistical data reflecting the strong correlation between specific child sexual exploitation crimes; and (3) a clear, delineated nexus between the first two elements and the particular place to be searched. The inclusion of these specific details combined with a common sense, practical application by a neutral and detached magistrate will provide sufficient probable cause to search for child pornography in an individual's home with or without direct evidence.

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189 *Id.*

190 *Timeline: America's War on Drugs*, NAT'L PUB. RADIO (Apr. 2, 2007), http://www.npr.org/templates/story/story.php?storyId=9252490 (last visited Nov. 7, 2012).

191 *See* discussion *infra* Part II.

192 Caeti, *Sex Crimes, Part I: Child Pornography*, at 6.

193 *Id.* at 9.

194 *See generally*, Kyllo v. United States, 533 U.S. 27, 37–40 (2001).

E. Practical Ramifications of Implementing a Broadened Probable Cause Standard

Implementing this broadened standard has the potential to create more efficiency within the law enforcement arena, as well as, provide a more manageable standard to combat a highly secretive and extremely dangerous crime. Because of the exceptionally high level of danger child molesters and child pornographers pose to our society, this expansion is appropriate. Courts are not unaccustomed to altering and expanding the probable cause standard. For example, in *Terry v. Ohio*, the Supreme Court denounced the suggestion of a "rigid, all-or-nothing model of justification and regulation under the [Fourth] Amendment."[195]

The *Terry* court declared that there is no clear definition for what constitutes a reasonable search, but rather that the need for the search must be weighed against the invasion of the search.[196] In order to justify the imposition, law enforcement must have precise and articulable facts to reasonably warrant the intrusion.[197] The Court stated that an inflexible approach "obscures the utility of limitations upon the scope . . . of police action as a means of constitutional regulation."[198] Thus, *Terry* announced a new standard allowing "a reasonable search for weapons for the protection of the police officer, where he has reason to believe that he is dealing with an armed and dangerous individual, regardless of whether he has probable cause to arrest the individual for a crime."[199] The Court focused on the notion that law enforcement officers are entitled to draw specific, reasonable inferences from certain facts in light of their experiences.[200] The "reasonableness" concept pronounced in *Terry* supports a mild expansion of the probable cause standard in narrow circumstances involving child sexual exploitation.

In contrast, the potential danger of this broadened approach is that it could open the floodgates to similar treatment of other crimes. Giving certain crimes more weight based on the societal interest in preventing that crime could result in a weakening of the safeguards envisioned by the framers of the Fourth Amendment. This issue could be exacerbated if the respective weights are determined by over-zealous, though perhaps well-intentioned, police officers instead of a neutral and detached magistrate judge. Nevertheless, if the expanded probable cause standard is safeguarded in harmony with the Supreme Court's consistent refusal to

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195 Terry v. Ohio, 392 U.S. 1, 17 (1968).
196 *Id.*
197 *Id.*
198 *Id.*
199 *Id.* at 28.
200 *Terry*, 392 U.S. at 27.

intrude upon constitutionally guaranteed rights, then a limited expansion for inherently dangerous child sexual exploitation crimes is warranted.

V. CONCLUSION

While it remains true that child molestation and child pornography are two separate crimes, and that the seriousness of one crime should never be *primarily* based on evidence of the other, there is overwhelming evidence that these two types of crimes are *strongly* correlated. One detective in the Los Angeles, California police department estimated that more than half of the roughly 700 child molesters he had arrested possessed child pornography at the time of arrest.[201] Additionally, then-Senator Joe Biden stated during a congressional hearing that the heart of this discussion boils down to a very candid notion: children used in the production of child pornography are sexual abuse victims at the hands of the pornographers.[202] Further, the growing capabilities of the Internet and the novel ways that child pornography possessors can hide images and deceive law enforcement creates an impossibly difficult issue; traditional investigative techniques are becoming less useful in preventing the victimization of innocent children.

Thus, while child pornographers do not fit precisely into any existing, traditional Fourth Amendment category, a response by the judiciary in formulating a broadened probable cause standard in order to search for child pornography is the United States' best attempt at combating the societal danger created by this type of crime. The expanded probable cause standard is by no means attempting to unconstitutionally interfere with sexual activity between two consenting adults in the privacy of their own home.[203] On the contrary, this expanded standard applies to a unique area of law where society has clearly drawn special, protective boundaries in order to safeguard innocent child victims. While this modest expansion of the probable cause standard may appear to conflict with Fourth Amendment jurisprudence, the Supreme Court constantly attempts to strike a balance between compelling government interests and individual privacy rights.[204] Inevitably, with every valid search based on probable cause,

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[201] Michael Reagan, *Child Porn is Child Abuse. I Know Because it Happened to Me*, (Dec. 9, 2010), *available at* http://www.foxnews.com/opinion/2010/12/09/michael-reagan-child-pornography-child-abuse-know-happened/#ixzz1Zeyr1pEG (last visited Nov. 7, 2012).

[202] 142 Cong. Rec. S-11900 (daily ed. Sept. 30, 1996) (statement of Sen. Biden).

[203] *See* Lawrence v. Texas, 539 U.S. 558 (2003) (overruling Bowers v. Hardwick, 478 U.S. 186 (1986) and holding that a Texas statute banning same sex sodomy was unconstitutional).

[204] *See Kyllo*, 533 U.S. 27 (2001).

there is the possibility of a slight invasion of privacy; however, in order to combat inherently dangerous crimes involving child sexual exploitation, this limited expansion is the fair and just result. By emulating the existing expansion of the probable cause standard for drug-related crimes, the judiciary can create an efficient and more uniform conception of determining probable cause for crimes relating to child sexual exploitation.


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