NO. 24-1288

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

O.W.,

Plaintiff-Appellant,

v.

MARIE L. CARR, ET AL.,

Defendants-Appellees.

On Appeal from the United States District Court
for the Eastern District of Virginia at Norfolk

BRIEF OF *AMICUS CURIAE* NATIONAL POLICE ACCOUNTABILITY PROJECT FOR PLAINTIFF-APPELLANT

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UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

DISCLOSURE STATEMENT

- In civil, agency, bankruptcy, and mandamus cases, a disclosure statement must be filed by **all** parties, with the following exceptions: (1) the United States is not required to file a disclosure statement; (2) an indigent party is not required to file a disclosure statement; and (3) a state or local government is not required to file a disclosure statement in pro se cases. (All parties to the action in the district court are considered parties to a mandamus case.)
- In criminal and post-conviction cases, a corporate defendant must file a disclosure statement.
- In criminal cases, the United States must file a disclosure statement if there was an organizational victim of the alleged criminal activity. (See question 7.)
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National Police Accountability Project
(name of party/amicus)

who is Amicus Curiae, makes the following disclosure:
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity? ☐ YES ☑ NO

2. Does party/amicus have any parent corporations? ☐ YES ☑ NO
If yes, identify all parent corporations, including all generations of parent corporations:

3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity? ☐ YES ☑ NO
If yes, identify all such owners:

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation? ☐YES ☑NO
If yes, identify entity and nature of interest:

5. Is party a trade association? (amici curiae do not complete this question) ☐YES ☐NO
If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

6. Does this case arise out of a bankruptcy proceeding? ☐YES ☑NO
If yes, the debtor, the trustee, or the appellant (if neither the debtor nor the trustee is a party) must list (1) the members of any creditors' committee, (2) each debtor (if not in the caption), and (3) if a debtor is a corporation, the parent corporation and any publicly held corporation that owns 10% or more of the stock of the debtor.

7. Is this a criminal case in which there was an organizational victim? ☐YES ☑NO
If yes, the United States, absent good cause shown, must list (1) each organizational victim of the criminal activity and (2) if an organizational victim is a corporation, the parent corporation and any publicly held corporation that owns 10% or more of the stock of victim, to the extent that information can be obtained through due diligence.

Signature: /s/ Keisha James Date: June 18, 2024

Counsel for: National Police Accountability Project

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INTEREST OF AMICUS CURIAE[1]

The National Police Accountability Project (NPAP) was founded in 1999 by members of the National Lawyers Guild to address misconduct by law enforcement officers through coordinating and assisting civil rights lawyers. NPAP has approximately 550 attorney members practicing in every region of the United States, including a number of members who represent young clients who experience police abuse in educational settings.

Every year, NPAP members litigate the thousands of egregious cases of law enforcement abuse that do not make news headlines as well as the high-profile cases that capture national attention. NPAP provides training and support for these attorneys and resources for non-profit organizations and community groups working on police and corrections officer accountability issues. NPAP also advocates for legislation to increase police accountability and appears regularly as *amicus curiae* in cases, such as this one, presenting issues of particular importance for its members and their clients.

[1] Pursuant to Rule 29 of the Federal Rules of Appellate Procedure, *amicus curiae* states that no party's counsel authored this brief in whole or in part, no party or party's counsel contributed money intended to fund preparing or submitting this brief, and no person other than *amicus curiae*, their members, or their counsel contributed money intended to fund preparing or submitting this brief. Fed. R. App. P. 29. All parties consent to *amicus curiae* filing this brief.

ARGUMENT

I. Neither Section 1983 Nor Common Law Conspiracy Claims Include an Intent Requirement. The District Court Erred in Holding Plaintiff-Appellant Was Required to Show Defendants Shared an Intent to Deprive Him of His Constitutional Rights.

Parties to a conspiracy do not need to intend to violate a plaintiff's constitutional rights. They simply must have a shared conspiratorial objective to engage in the conduct that causes the deprivation of rights. The only time co-conspirator defendants must share an intent to violate the plaintiff's rights is when the defendant's intent is an element of the underlying claim, such as Fourteenth Amendment equal protection claims. However, the District Court repeatedly held that O.W. must provide evidence that the members of the alleged conspiracy shared an intent to deprive him of his constitutional rights. JA1149-1151. This additional element deviates from this Court's prima facie elements for Section 1983 conspiracy claims and is incongruent with the well-established principle that specific intent is not required to establish liability for the deprivation of federal rights.

A. This Court Does Not Require Plaintiffs to Prove Shared Willful Intent to Establish a Section 1983 Conspiracy Claim.

The Fourth Circuit's test for a Section 1983 conspiracy is whether defendants shared a conspiratorial objective to engage in conduct that causes the deprivation of a right, not whether they shared a conspiratorial objective to violate

a plaintiff's rights. *Hinkle v. City of Clarksburg*, 81 F.3d 416, 421 (4th Cir. 1996); *Hafner v. Brown*, 983 F.2d 570, 576-77 (4th Cir. 1992); *Everette-Oates v. Chapman*, No. 20-1093, 2021 U.S. App. LEXIS 21770 at *17 (4th Cir. Jul. 22, 2021) (inquiry was whether "the various defendants acted in concert with the conspiratorial objective of causing Chapman to testify falsely to the grand jury," not whether they had a conspiratorial objective to violate Fourth Amendment rights to not have evidence fabricated or concealed).

The only exception is in cases where state of mind is an element of the underlying constitutional claim. *Gooden v. Howard Co.*, 954 F.2d 960, 969-70 (4th Cir. 1992) (distinguishing conspiracy claims that involve an intent element and 1985(3) from typical 1983 conspiracy claims). The prima facie elements for a Section 1983 conspiracy claim are that the defendants: (1) "acted jointly in concert" and (2) performed an overt act (3) "in furtherance of the conspiracy" that (4) resulted in the deprivation of a constitutional right. *See Hinkle*, 81 F.3d at 421. Jury instructions on the existence of a civil conspiracy have been equally silent on the issue of willful intent. MICHAEL AVERY, DAVID RUDOVSKY, KAREN BLUM, & JENNIFER LAURIN, POLICE MISCONDUCT: LAW AND LITIGATION §§ 12:32, 12:33, 12:34 & 12:44 (3d ed. 2022) (model jury instructions for § 1983 conspiracy claims). For instance, in *Hafner*, a case where the plaintiff sought to prove a

Section 1983 conspiracy to violate his Fourth Amendment rights against excessive force, the proper jury instructions provided:

> "*[I]f you find two or more of the Defendants witnessed the beating inflicted upon the Plaintiff by any of the other Defendants either individually or jointly and did nothing to prevent it, then you must find that the Defendants participated in a civil conspiracy to deprive Plaintiff of his constitutional rights*."

983 F.2d at 577. Nowhere in its recitation of prima facie elements or jury instructions is there a requirement that a plaintiff show conspirator defendants share an objective to violate his rights. The district court seemingly pulled the requirement from dicta in *Hinkle* that faults plaintiffs for failing to prove that "any member of this alleged conspiracy possessed an intent to commit an unlawful objective." *Hinkle*, 81 F.3d at 422. However, the alleged conspiracy in *Hinkle* was premised on a violation of the plaintiffs' right to access courts because the defendants destroyed evidence critical to their wrongful death case. *Id.* Denial of access claims of this nature require the plaintiff to prove that the defendant deliberately or intentionally tried to interfere with their right to bring a lawsuit. *See Christopher v. Harbury*, 536 U.S. 403, 415 n.12 (2002); *Iko v. Galley*, No. DKC 2004-3731, 2006 U.S. Dist. LEXIS 106584 at *28 (D. Md. Jun. 16, 2006). Accordingly, while the requirement of shared intent to violate a plaintiff's rights makes sense within the context of the underlying claim in

Hinkle, it is inapplicable here where Plaintiff-Appellant's claims are all of general intent.

B. *The Lower Court's Requirement of Willful Intent is at Odds With Section 1983's General Intent Liability Framework.*

Section 1983 does not require plaintiffs to prove that defendants intend for their actions to violate the Constitution. *Daniels v. Williams*, 474 U.S. 327 (1986); *Davidson v. Cannon*, 474 U.S. 344 (1986). The Court rejected a specific intent requirement for Section 1983 claims because the statute is "read against the background of tort liability that makes a man responsible for the natural consequences of his actions." *Monroe v. Pape*, 365 U.S. 167, 187 (1961). Intent to interfere with common law protections is not an element of even intentional torts[2] and accordingly should not be an element of a Section 1983 claim. It is worth noting that courts have rejected subjective state of mind requirements in part because it would allow government officials to escape liability by merely claiming ignorance of the law. *See Campbell v. Sherman*, 35 Wis. 103, 110 (Wis. 1874) (rejecting sheriff's argument that he should not be liable for seizure because he did not know a seizure was unconstitutional, as accepting that argument would lead to ignorance of law being alleged in every case). Moreover, common law conspiracy similarly does not require a plaintiff to demonstrate that

[2] RESTATEMENT (2D) OF TORTS § 8A (1965).

any party to a conspiracy intended to break the law. *See, e.g.*, RESTATEMENT (2D) OF TORTS § 876 (1965). Because willful intent is not a requirement for any underlying common law torts or common law conspiracy, there would be no basis for importing such a requirement into Section 1983. Imposing such a requirement would create an escape hatch for defendants in most civil conspiracies, which the policy underlying the development of the common law sought to avoid.

C. *Practically Speaking, Express Agreements to Violate a Plaintiff's Constitutional Rights Are Rare and Not Required to Establish a Claim.*

It is exceedingly rare for a civil rights defendant to purposely design an unconstitutional practice or policy to harm the public. Myriam E. Gilles, *Breaking the Code of Silence: Rediscovering "Custom" in Section 1983 Municipal Liability*, 80 B.U. L. REV. 17, 36-37 (2000) ("Rarely (one assumes) will modern-day policymakers be found sitting in a smoke-filled backroom discussing whether to direct local officials to trammel the constitutional rights of the citizenry."); Joanna Schwartz, *Municipal Immunity*, at 18-19.[3] Accordingly, it is very unlikely that *two* defendants will come together and jointly decide to create a plan that violates the Constitution. The district court's requirement that a plaintiff demonstrate a meeting of the minds to violate the Constitution—even through circumstantial evidence—is a virtually insurmountable practical barrier. Even if

[3] Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4324582.

there is no evidence that Defendants-Appellees had a front-end agreement to break the law together and violate the Fifth and Fourteenth Amendments, the impact of Defendants-Appellees' joint program to interrogate children for the purpose of criminally prosecuting them has made the constitutional infirmities evident.

II. The Outcomes of Virginia Beach City Public Schools' Partnership With Virginia Beach Police Department Indicate a Conspiratorial Agreement to Deprive Students of Their Constitutional Rights.

Across the country, school administrators employ interrogation tactics to elicit confessions from students and gather evidence that can be shared with school resource officers ("SROs") and law enforcement officers. Bryce Wilson Stucki, *Teacher, May I Plead the Fifth?*, The American Prospect (July 22, 2013).[4] The Virginia Beach City Public Schools' ("school district") harmful partnership with the Virginia Beach Police Department ("VBPD") results in the deprivation of students' Fourth and Fifth Amendment rights even though the memorandum of understanding ("MOU") between the school district and VBPD, on its face, might not state an express agreement to violate any constitutional rights. As a result of the agreement between the school district and VBPD, school administrators are able to question students in relation to potential criminal conduct in the presence of law enforcement officers, creating a coercive environment; direct students to

[4] Available at: https://prospect.org/power/teacher-may-plead-fifth/.

produce written statements about their conduct to be turned over to law enforcement and used as confessions; and conduct searches of students and gather evidence to be turned over to law enforcement and used against students in a later prosecution. Despite the MOU dictating that school administrators notify law enforcement of criminal activity and permitting SROs to conduct investigations, school administrators can conduct investigations into potential criminal activity alongside or on the behalf of SROs.

The purported purpose of SROs in Virginia Beach—uniformed VBPD officers assigned to middle and high schools—is to maintain a relationship between police and students. *See* VIRGINIA BEACH POLICE DEPARTMENT (VBPD) GENERAL ORDER 9.02 – SCHOOL RESOURCE OFFICERS. SROs are responsible for investigating crimes and enforcing the ordinances of the City of Virginia Beach and the Criminal and Traffic Codes of Virginia. *See* CITY OF VIRGINIA BEACH, SCHOOL RESOURCE OFFICER FAQ, *Why are SROs Needed in Schools?*.[5] School administrators are expected to cooperate with SROs carrying out their investigative and enforcement duties. GENERAL ORDER 9.02, *supra*, at 1. The MOU states, however, that SROs "will not encourage or request a school official to act as the SRO's agent in conducting searches of students[] [or] their property." JA137. Yet, school administrators can question students, gather evidence, and

[5] Available at https://www.vbgov.com/government/departments/police/opsdiv/Pages/SRO-FAQ.aspx.

elicit confessions—all of which can then be used to support students' arrests, detentions, and prosecutions—in the presence of SROs without first giving a *Miranda* warning. *See* Stucki, *supra*. The partnership between SROs and school administrators allows law enforcement officers to bypass the constitutional safeguards intended to protect children from self-incrimination and use school administrators as a shield to accountability.

In this case, a school administrator confiscated a student's phone and turned it over to law enforcement in an evidence bag. JA1131. That same administrator then directed the student to write statements detailing an incident that was later turned over to law enforcement. JA1131-1132. Further, the student's parent was not informed of the investigation until hours after the questioning began. JA1133. Even the lower court stated that "it does not condone the investigatory techniques practiced by the City and the School Board" and noted that the MOU required parents and guardians to be notified when law enforcement questioned students, which did not happen here. JA1149. The school district and VBPD use their partnership to skirt constitutional protections for students, resulting in students being interrogated, searched, and coerced into making incriminating statements.

III. Police Presence in Schools Exposes Children to Greater Risk of Harm.

Partnerships between police departments and school districts do far more harm than good. Although these partnerships are intended to improve school safety, they have proven ineffective at preventing gun violence at schools and actually make students feel less safe. Students who attend schools with SROs are also far more likely than their peers at schools without SROs to experience harsher disciplinary practices—including arrests and referrals to the juvenile justice system for the mere violation of school rules. These harsh disciplinary practices are disproportionately used against Black students and students with disabilities. SROs also expose children to greater risk of constitutional harm, as SROs regularly search, interrogate, and use force against students.

A. Police Officers Do Not Improve School Safety and Denigrate the Quality of the Learning Environment.

Some schools have housed SROs since the 1950s, but the partnerships between police departments and schools that exist today primarily stem from the tough-on-crime legislation of the mid- to late-1990s. Chelsea Connery, *The Prevalence and the Price of Police in Schools*, UCONN NEAG SCHOOL OF EDUCATION (Oct. 27, 2020).[6] In 1998, in the wake of several high-profile school shootings, Congress formally allocated funding for SROs for the first time,

[6] Available at: https://education.uconn.edu/2020/10/27/the-prevalence-and-the-price-of-police-in-schools/.

causing the numbers of SROs to skyrocket. AMERICAN CIVIL LIBERTIES UNION, BULLIES IN BLUE 8 (Apr. 2017).[7] Despite their purported objective of curbing serious school-based violence, SROs have failed to prevent school shootings and other gun-related offenses. Lucy C. Sorensen, et al., *The Thin Blue Line in Schools: New Evidence on School-Based Policing Across the U.S.* 5 (Oct. 2021).[8]

A recent study examining the impact of SROs on school violence suggests that although police presence in schools may decrease certain non-firearm-related offenses, it *increases* the likelihood of a school shooting by one percentage point. Sorensen, *supra*, at 24. Another study examining 133 school shootings between 1980 and 2019 found "no association between having an armed officer and deterrence of violence" and adds that often, "the presence of a weapon increases aggression." Jillian Peterson, et al., *Presence of Armed School Officials and Fatal and Nonfatal Gunshot Injuries During Mass School Shootings, United States, 1980-2019*, JAMA NETWORK (Feb. 16, 2021).[9] *See also* Madison Czopek, *Armed campus police do not prevent school shootings, research shows*, POYNTER.ORG (Jun. 1, 2022).[10]

Far from making schools safer for children, SROs unnecessarily expose students to excessive police force. For example, three SROs in Houston tackled a

[7] Available at: www.aclu.org/wp-content/uploads/legal-documents/aclu_bullies_in_blue_4_11_17_final.pdf.
[8] Available at: https://www.edworkingpapers.com/ai21-476.
[9] Available at: https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2776515.
[10] Available at: https://www.poynter.org/fact-checking/2022/do-armed-school-police-officers-prevent-shootings/.

10th grader to the ground and handcuffed her, with one SRO using his knee to pin the girl's face to the floor, simply because the young girl had broken a school rule by using her cellphone to call her mother. Kevin Reece, *Student tackled by officers over cell phone tells her side of the story*, KHOU 11 (Sep. 3, 2014).[11] In another instance, an SRO punched a student in the face simply because the student was in the hallway without a hall pass. Steve Almasy, *Oklahoma school resource officer charged with misdemeanor assault*, CNN (Oct. 30, 2015).[12] Police placed a kindergartener in handcuffs and arrested her after she kicked a school staff member during a "tantrum." Mihir Zaveri, *Body Camera Footage Shows Arrest by Orlando Police of 6-Year-Old at School*, THE NEW YORK TIMES (Feb. 27, 2020).[13] There are countless additional instances of SRO use of excessive force, both reported and unreported.

SROs transform schools into tense and hostile environments, with many students reporting that they feel more anxious and unsafe in the presence of SROs. *See, e.g.*, Suzanne E. Perumean-Chaney and Lindsay M. Sutton, *Students and Perceived School Safety: The Impact of School Security Measures*, 38 AM. J. OF CRIM. JUST. 570 (2013); Molly Castle Work, *Students Feel Unsafe and*

[11] Available at: https://www.khou.com/article/news/local/neighborhood/student-tackled-by-officers-over-cell-phone-tells-her-side-of-the-story/285-259158623.
[12] Available at: https://www.cnn.com/2015/10/29/us/oklahoma-school-resource-officer-charged/.
[13] Available at: https://www.nytimes.com/2020/02/27/us/orlando-6-year-old-arrested.html.

Anxious With Police in Schools, MYMCMEDIA (May 13, 2021).[14] Moreover, the zero-tolerance, highly punitive disciplinary approach of SROs does not help students address the root causes of their conflicts with peers or school staff. Thus, police presence does not resolve the underlying issues leading to school violence and instead enables repeated cycles of conflict.

B. SROs Contribute to and Perpetuate the School-to-Prison Pipeline.

When students attend schools staffed with SROs, they become acutely vulnerable to the web of the criminal legal system. Although SROs are not trained nor intended to act as school disciplinarians, they regularly become involved in disciplinary matters. As a result, typical child and adolescent behavior that may violate school rules but not any criminal law, which might typically land a child in the principal's office, can instead quickly escalate to a citation or even an arrest. *See, e.g.*, Mahsa Jafarian and Vidhya Ananthakrishnan, *Just Kids: When Misbehaving is a Crime*, VERA INSTITUTE FOR JUSTICE (Aug. 2017).[15] The Commonwealth of Virginia has historically had notoriously high levels of arrests and referrals to the juvenile justice system. In 2015, "Virginia schools in a single year referred students to law enforcement agencies at a rate nearly three times the national rate. . . . In Virginia, some of the individual schools with highest rates of

[14] Available at: https://www.mymcmedia.org/students-feel-unsafe-and-anxious-with-police-in-schools/.
[15] Available at: https://www.vera.org/when-misbehaving-is-a-crime.

referral — in one case 228 per 1,000 — were middle schools, whose students are usually from 11 to 14 years old." Susan Ferriss, *Virginia tops nation in sending students to cops, courts: Where does your state rank?*, THE CENTER FOR PUBLIC INTEGRITY (Apr. 10, 2015).[16] In more recent years, the number of referrals have varied, but remain higher than the national average. In 2018, an average of 14 of every 1,000 students enrolled in school were referred to law enforcement, more than three times the national average of 4.5 students per 1,000. VIRGINIA BOARD FOR PEOPLE WITH DISABILITIES, ASSESSMENT OF VIRGINIA'S DISABILITY SERVICES SYSTEM: THE SCHOOL TO PRISON PIPELINE 9 (2022).[17] The rate was even higher for students with disabilities; an average of 30.1 students with disabilities per 1,000 were referred to law enforcement—over six times the national average for all students. *Id*. During the 2017-2018 school year, 574 students in Virginia Beach schools were referred to law enforcement; 37% of the students were Black even though Black students only make up 24% of the student body. CIVIL RIGHTS DATA COLLECTION, DISCIPLINE REPORT AND SUMMARY, VIRGINIA BEACH, VIRGINIA (2017).[18] In that same year, there were 38 students in Virginia Beach schools with school-related arrests. *Id.* According to the Virginia Department of

[16] Available at: https://publicintegrity.org/education/virginia-tops-nation-in-sending-students-to-cops-courts-where-does-your-state-rank/.
[17] Available at: https://www.vbpd.virginia.gov/downloads/S2P%20Pipeline%20Assessment_WEB.pdf.
[18] Available at: https://ocrdata.ed.gov/profile/9/district/32563/disciplinereport; https://ocrdata.ed.gov/profile/9/district/32563/summary.

Juvenile Justice ("DJJ"), SROs in Virginia Beach were responsible for submitting 80 juvenile intake reports in 2017, 50 in 2018, 30 in 2019, and 48 in 2020. VIRGINIA DEPARTMENT OF JUVENILE JUSTICE, STATEWIDE JUVENILE INTAKE COMPLAINTS FROM SCHOOL RESOURCE OFFICERS (SROS), FY 2017-2021 at 5. [19]

Not every disciplinary incident escalates to an arrest or a citation because of an SRO's presence, but research still shows that schools with SROs are more likely to mete out harsher disciplinary consequences than schools without SROs. Studies have found that "SROs increase the incidence of in-school suspension, out-of-school suspension, [and] expulsion." Sorensen, *supra*, at 24. These exclusionary discipline practices carry heavy consequences; research shows that students who are suspended have an increased risk of dropping out of school and becoming entangled in the juvenile justice system. Elizabeth M. Chu and Douglas D. Ready, *Exclusion and Urban Public High Schools: Short- and Long-Term Consequences of School Suspensions*, 124 AM. J. OF EDUC. (2018).

Finally, SROs exacerbate existing inequities between students, as punitive disciplinary practices are disproportionately used against students of color and students with disabilities. U.S. Government Accountability Office, *K-12 Education: Discipline Disparities for Black Students, Boys, and Students with*

[19] Available at: https://www.djj.virginia.gov/documents/policy/data-research/publications/2021%20SRO%20Report.pdf.

Disabilities (Mar. 22, 2018).[20] Nationwide, Black students are more than twice as likely to be referred to law enforcement than their white peers. Corey Mitchell, Joe Yerardi, and Susan Ferriss, *When schools call police on kids*, THE CENTER FOR PUBLIC INTEGRITY (Sep. 8, 2021).[21] These disparities most frequently stem from arrests for vague infractions like "disorderly conduct" or "disorder"—infractions that rely heavily on officer discretion. *Id.* In other words, Black students are overrepresented in school discipline data not because they misbehave more frequently than their white peers, but because their conduct is more frequently misperceived to be misbehavior. In Virginia, the presence of SROs "increases arrests for nonviolent, behavior-based offenses" and results in a "higher arrest rate for disorderly conduct." VIRGINIA BOARD FOR PEOPLE WITH DISABILITIES, *supra*, at 21. Students with disabilities, especially Black students with disabilities, are "disproportionately charged with subjective offenses," placing them at the highest risk of arrest. *Id*. Black students with disabilities are particularly in danger of receiving exclusionary discipline, getting referred to law enforcement, and being incarcerated in juvenile correctional centers. *Id*. at 1. Across the state, complaints from SROs submitted to DJJ tended to be for non-felony offenses and disproportionately targeted Black children. *Id*.

[20] Available at: https://www.gao.gov/products/gao-18-258.
[21] Available at: https://publicintegrity.org/education/criminalizing-kids/police-in-schools-disparities/.

CONCLUSION

For the foregoing reasons, *amicus curiae* the National Police Accountability Project respectfully requests the Court reverse the District Court's grant of summary judgment to Defendants-Appellants.

Dated: June 18, 2024

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CERTIFICATE OF COMPLIANCE

I am an attorney for *amicus curiae*. This brief contains 3,525 words, excluding the items exempted by Fed. R. App. P. 32(f). This brief's type size and typeface comply with Fed. R. App. P. 32(a)(5) and (6). I certify that this brief complies with the word limit of Fed. R. App. P. 29(5).

Dated: June 18, 2024

/s/ Keisha James
Keisha James

Counsel for Amicus Curiae

CERTIFICATE OF SERVICE

I, Keisha James, hereby certify that I filed the foregoing Brief of *Amicus Curiae* National Police Accountability Project on June 18, 2024, via the Court's CM/ECF system, which delivered an electronic copy to all counsel of record for all parties.

Dated: June 18, 2024

/s/ Keisha James
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