No. 24-1288

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

O.W.,

Plaintiff-Appellant,

v.

MARIE L. CARR, police officer in her individual and official capacities; REID BAKER, assistant principal in his individual and official capacities; SCHOOL BOARD OF THE CITY OF VIRGINIA BEACH, VIRGINIA, a body corporate; CITY OF VIRGINIA BEACH, a body politic and corporate.

Defendants-Appellees.

On Appeal from the United States District Court
for the Eastern District of Virginia
No. 2:21-cv-00448-EWH-LRL

BRIEF OF *AMICI CURIAE* JUVENILE LAW CENTER AND RISE FOR YOUTH IN SUPPORT OF PLAINTIFF-APPELLANT AND REVERSAL

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IDENTITY AND INTEREST OF *AMICI CURIAE*[1]

Juvenile Law Center fights for rights, dignity, equity, and opportunity for youth. Juvenile Law Center works to reduce the harm of the child welfare and justice systems, limit their reach, and ultimately abolish them so all young people can thrive. Founded in 1975, Juvenile Law Center is the first non-profit public interest law firm for children in the country. Juvenile Law Center's legal and policy agenda is informed by—and often conducted in collaboration with—youth, family members, and grassroots partners. Since its founding, Juvenile Law Center has filed influential *amicus* briefs in state and federal courts across the country to ensure that laws, policies, and practices affecting youth advance racial and economic equity and are consistent with children's unique developmental characteristics and human dignity.

RISE for Youth is a nonpartisan organization committed to dismantling the youth prison model and ensuring every space that impacts a young person's life encourages growth and success. RISE promotes the creation of healthy communities and community-based alternatives to youth incarceration. Our work centers youth and their communities who together challenge racial and social injustice in Virginia.

[1] Pursuant to Fed. R. App. P. 29(a)(4)(E), counsel for *amici curiae* states that no counsel for a party authored the brief in whole or in part, and no person other than *amici curiae*, their members, or their counsel made a monetary contribution to its preparation or submission. Pursuant to Fed. R. App. P. 29(a)(2), counsel for *amici curiae* states that all parties have consented to the filing of this brief.

ARGUMENT

Over 70 years ago, the United States Supreme Court asserted that "[c]hildren have a very special place in life which law should reflect." *May v. Anderson*, 345 U.S. 528, 536 (1953) (Frankfurter, J., concurring). Drawing on historical experience, common sense, and scientific research, the Court has subsequently and repeatedly affirmed that children possess developmental traits—impulsivity, difficulty weighing risks and rewards, and vulnerability to outside pressures—that distinguish them from adults. *See Roper v. Simmons*, 543 U.S. 551, 569-70 (2005); *Graham v. Florida*, 560 U.S. 48, 68 (2010); *Miller v. Alabama*, 567 U.S. 460, 471-72 (2012); *Montgomery v. Louisiana*, 577 U.S. 190, 206-08 (2016); *Jones v. Mississippi*, 141 S. Ct. 1307, 1316 (2021). Childhood has legal significance, and the Court has accordingly required consideration of the distinctive attributes of youth in a diverse array of constitutional rulings, including in school settings. *See J.D.B. v. North Carolina*, 564 U.S. 261, 275-76 (2011).

In the instant case, Mr. Baker, Kempsville Middle School vice-principal, acting with the school resource officer (SRO), Officer Carr, compelled O.W. to write a series of statements, the final of which was immediately handed over to Officer Carr and used to prosecute him in juvenile court. Despite long-standing legal recognition that children are entitled to heightened protections during interrogations, the district court rejected O.W.'s claim that Mr. Baker compelled him to make

statements that were then used against him in a juvenile court proceeding in violation of his Fifth Amendment right against self-incrimination. *Bass ex rel. O.W. v. Sch. Bd. of the City of Va. Beach*, 656 F.Supp.3d 596, 616-17 (E.D. Va. 2023). Indeed, not only did the school fail to protect O.W.'s constitutional rights, it actively participated in their violation.

Amici write to highlight the implications of increasing entanglement of law enforcement and schools, youths' unique vulnerabilities in school settings, and how these must inform the interrogation analysis under the Fifth Amendment.

I. TODAY MORE THAN EVER, SCHOOLS ARE ENTANGLED WITH LAW ENFORCEMENT, ESPECIALLY IN VIRGINIA

The number of United States schools with law enforcement officers or other school safety staff[2] has increased in recent decades. In 2019, 65 percent of schools employed law enforcement or school safety staff compared to 41.7 percent of schools in 2005. *See Digest of Education Statistics: Table 233.70*, Nat'l Ctr. for Educ. Stat., https://nces.ed.gov/programs/digest/d21/tables/dt21_233.70.asp (last visited June 6, 2024). Virginia outpaces the national average—in 2019, 72 percent of Virginia schools had school safety personnel.[3] Va. Dep't of Crim. Just. Servs.,

[2] The federal-level data on schools with security or safety personnel includes, but does not disaggregate, data on the percentage of schools with sworn law enforcement officers and the percentage of schools with other types of security personnel.

[3] Virginia schools have two primary types of school safety personnel. School Resource Officers (SROs) who are law enforcement officers employed by the local

2020 Virginia School and Division Safety Survey Results 10 (2021), https://www.dcjs.virginia.gov/sites/dcjs.virginia.gov/files/2020_virginia_school_and_division_safety_survey_results.pdf. While 81 percent of middle schools across the country had some school safety personnel during the 2019 school year, *see Digest of Education Statistics*, *supra*, 97 percent of Virginia middle schools had School Resource Officers (SROs)—members of law enforcement employed by local law enforcement authorities, Va. Dep't of Crim. Just. Servs., *supra,* at 10-11.

In Virginia Beach, SROs are present in every middle and high school and are intended to "create safe, secure schools while developing and maintaining a successful working relationship between police, school administrators, staff, parents, and students." *School Resource Officer Program*, Va. Beach Police Dep't, https://police.virginiabeach.gov/your-vbpd/explore-the-department/sro (last visited June 6, 2024). Virginia Beach SROs "retain all of the duties and responsibilities of a sworn police officers, but have willingly taken on the responsibility of being a friend, coach, educator, mentor and roll model [sic] for students." *Id.* However, scholars have observed that while SROs may have roles outside those traditionally associated with law enforcement, "their primary function is to further law

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law enforcement agency and placed in schools and school security officers (SSOs) who are employed by schools. Va. Code Ann. § 9.1-101. Schools may have both SROs and SSOs or one or the other. For this reason, and because Officer Carr was an SRO, the analysis for Virginia schools primarily focuses on SROs.

enforcement goals." Michael Pinard, *From the Classroom to the Courtroom: Reassessing Fourth Amendment Standards in Public School Searches Involving Law Enforcement Authorities*, 45 Ariz. L. Rev. 1067, 1077-78 (2003).

As a result of this greater SRO presence in schools, school administrators have "altered their activities to collaborate with police officers." Paul Holland, *Schooling* Miranda*: Policing Interrogation in the Twenty-First Century Schoolhouse*, 52 Loy. L. Rev. 39, 39 (2006). In some states, the alignment between law enforcement and school administrators includes administrators being trained to use police interrogation methods, including the Reid Technique. *See* Douglas Starr, *Why Are Educators Learning How to Interrogate Their Students?*, New Yorker (Mar. 25, 2016), https://www.newyorker.com/news/news-desk/why-are-educators-learning-how-to-interrogate-their-students. The Reid Technique is a law enforcement interrogation method that uses psychological pressure and questionable behavior analysis to obtain confessions. *Id.* The Technique's use on children and youth has been called into question because it exploits young people's vulnerability. *Id.* The need for greater application of constitutional protections in schools is urgent as school administrators are effectively using law enforcement tactics on their students.

Data on school referrals to law enforcement and school-related arrests illustrate the consequences of the school-law enforcement relationship. Nationally, school referrals to law enforcement have increased over the last decade. *See* U.S.

Dep't of Educ., Off. for Civ. Rts., *Referrals to Law Enforcement and School-Related Arrests in U.S. Public Schools* (2023), https://ocrdata.ed.gov/assets/downloads/Referrals_and_Arrests_Part5.pdf (schools referred 195,219 students to law enforcement during the 2013 school year and 229,470 students during the 2017 school year). Virginia schools refer more students to law enforcement than any other state—over 18,000 or 1.4 percent of Virginia students were referred to law enforcement during the 2017 school year, while the national average was 0.45 percent.[4] That school year, 12 percent of school referrals to law enforcement in Virginia resulted in an arrest.

Schools are more likely to refer Black students to law enforcement and law enforcement officers disproportionately arrest Black students for school-related activities. A 2015 report found that Virginia had the greatest racial disparities in school referrals to law enforcement in the country. *See* Susan Ferriss, *Virginia Tops Nation in Sentencing Students to Cops, Courts: Where Does Your State Rank?*, Ctr. for Pub. Integrity (Apr. 10, 2015), https://publicintegrity.org/education/virginia-tops-nation-in-sending-students-to-cops-courts-where-does-your-state-rank/. The report found that 25.3 percent of students referred to law enforcement were Black. *Id.* Data from 2017 show racial disparities increased. While Black students were 22.4

[4] Unless otherwise noted, school referral and school-related arrest data analysis was completed by Juvenile Law Center based on data obtained from *2017-18 State and National Estimations*, Civ. Rts. Data Collection, https://ocrdata.ed.gov/estimations/2017-2018 (last visited June 6, 2024).

percent of students in Virginia schools, they accounted for 40.5 percent of the students referred to law enforcement from school. Indeed, Virginia schools referred Black students to law enforcement at more than twice the rate of white students (2.5 percent and 1.1 percent respectively). Black students accounted for an even greater portion of students subjected to a school related arrest in Virginia—55.4 percent of students with school-related arrests during the 2017 school year were Black. That same year, in the Virginia Beach public school district, where O.W. was a student, 36.9 percent of students referred to law enforcement were Black while only 23.8 percent of students in the district were Black.[5] As a Black student, O.W. was among those most likely to be targeted by school law enforcement and have his conduct treated not just as a matter of school discipline but as a criminal matter.

While not every school referral to law enforcement results in juvenile or criminal sanctions, expanded police presence in schools leads to greater student contact with the criminal and juvenile legal systems and to children facing criminal sanctions for offenses that would have historically been handled by teachers and school officials. Maryam Ahranjani, *The Prisonization of America's Public Schools*, 45 Hofstra L. Rev. 1097, 1101-02 (2017). The racial disparities present in school referrals to law enforcement are amplified as youth move through the juvenile and

[5] District-level analysis based on data obtained from *VA Beach City Pblc Schs, 2017-18*, Civ. Rts. Data Collection, https://civilrightsdata.ed.gov/profile/us/va/va_beach_city_pblc_schs?surveyYear=2017&nces=5103840 (last visited June 6, 2024).

criminal legal systems. Black youth are more likely than white youth to be arrested, formally tried in the juvenile legal system, placed in detention, and tried as adults. *See Racial and Ethnic Disparity in Juvenile Justice Processing*, Off. of Juv. Just. & Delinq. Prevention (Mar. 2022), https://ojjdp.ojp.gov/model-programs-guide/literature-reviews/racial-and-ethnic-disparity#2. As such, constitutional protections for students in schools are vital safeguards against juvenile and criminal system involvement generally and to guard against the disproportionate referrals and involvement of Black students in particular.

The proliferation of law enforcement officers in schools and training of administrators in law enforcement interrogation techniques has blurred the distinctions between interrogations by law enforcement and interrogations by school administrators. Establishing the rights of youth undergoing administrator-led interrogations at school is necessary to safeguard youths' Fifth Amendment rights. Establishing such protections will not prevent school administrators from investigating student misconduct at school and enforcing school rules. It would, however, prevent law enforcement from circumventing the Fifth Amendment by engaging school administrators to conduct criminal investigations under the guise of school discipline investigations thereby contributing to the disproportionate referrals of Black youth to the juvenile and criminal legal system.

II. O.W. WAS ENTITLED TO FIFTH AMENDMENT PROTECTIONS DURING MR. BAKER'S QUESTIONING

The Fifth Amendment protects a child's right against self-incrimination. U.S. Const. amend. V. Its safeguards are necessary "to assure that admissions or confessions are reasonably trustworthy, that they are not the mere fruits of fear or coercion, but are reliable expressions of the truth." *In re Gault*, 387 U.S. 1, 47 (1967). The Supreme Court has long recognized the need to construe the Fifth Amendment self-incrimination clause broadly "in favor of the right which it was intended to secure." *Counselman v. Hitchcock*, 142 U.S. 547, 562 (1892), *overruled on different grounds by Kastigar v. United States*, 406 U.S. 441 (1972); *see also Maness v. Meyers*, 419 U.S. 449, 461 (1975) ("This Court has always broadly construed [the Fifth Amendment's] protection to assure that an individual is not compelled to produce evidence which later may be used against him as an accused in a criminal action.").

While the protections of the Fifth Amendment apply where there is "police conduct causally related to the confession," *Colorado v. Connelly*, 479 U.S. 157, 164 (1986), broad construction of the Fifth Amendment recognizes that an interrogation may include both express questioning by police and its "functional equivalent," *Rhode Island v. Innis*, 446 U.S. 291, 300-01 (1980). "Interrogation" includes any "practice that the police should know is reasonably likely to evoke an incriminating response from a suspect." *Id*. at 301; *see also Mathis v. United States*,

391 U.S. 1, 4-5 (1968) (holding that an IRS agent's questioning of an incarcerated person amounted to "interrogation" because the agent's investigations "frequently lead to criminal prosecutions").

The increased police presence in schools and resulting cooperation between law enforcement and school administrators have led courts to examine whether interrogations by school administrators are custodial interrogations requiring *Miranda* warnings. *See Miranda v. Arizona*, 384 U.S. 436, 444 (1966). Many courts that have examined whether questioning by a school administrator amounted to a custodial interrogation look for direct law enforcement involvement. *See, e.g.*, *B.A. v. Indiana*, 100 N.E.3d 225, 233-34 (Ind. 2018) (holding a student was subject to custodial interrogation when law enforcement escorted the student to the vice principal's office and stood between him and the door during the vice principal's questioning); *In re D.A.H.*, 857 S.E.2d 771, 782 (N.C. Ct. App. 2021) (holding that a child was subject to a custodial interrogation when he was questioned by the school principal in the presence of an SRO even though the SRO did not speak); *In re T.A.G.*, 663 S.E.2d 392, 396 (Ga. Ct. App. 2008) (upholding suppression of a statement to an administrator where the juvenile court found that the SRO "was involved in the [interrogation] process and that the administrator acted on his behalf").

Other courts recognize that Fifth Amendment protections apply when youth are questioned by school personnel investigating potential student criminal activity any time information from the school investigation could be used in a juvenile or criminal investigation. This is true regardless of law enforcement's direct involvement. *See, e.g.*, *N.C. v. Kentucky*, 396 S.W.3d 852, 865 (Ky. 2013) (holding that unless students receive and validly waive their *Miranda* rights, statements they make during a school investigation for school discipline or safety cannot be "a basis for a criminal charge when law enforcement is involved or if the principal is working in concert with law enforcement in obtaining incriminating statements").

In *J.D.B.*, when confronted with an interrogation in a school setting, the Court warned against bright line rules that "enable the police to circumvent the constraints on custodial interrogations established by *Miranda*." 564 U.S. at 280 (quoting *Berkemer v. McCarty*, 468 U.S. 420, 441 (1984)); *see also New Hampshire v. Heirtzler*, 789 A.2d 634, 640-41 (N.H. 2001) (finding two assistant principals' search of a student unconstitutional because of an agency relationship where there was a "silent understanding" between the police officer and school officials that the school would collect evidence in situations "inaccessible to [the officer] due to constitutional restraints"). In *Missouri v. Seibert*, the Supreme Court held unconstitutional the police practice of administering *Miranda* warnings midway through an interrogation after obtaining the suspect's confession. 542 U.S 600, 604,

617 (2004). It explained that "the reason that question-first is catching on [with law enforcement] is as obvious as its manifest purpose, which is to get a confession the suspect would not make if he understood his rights at the outset; the sensible underlying assumption is that with one confession in hand before the warnings, the interrogator can count on getting its duplicate, with trifling additional trouble." *Id.* at 613. Having a school administrator conduct the investigation into a criminal matter in lieu of law enforcement or to prime students to more readily confess when questioned by law enforcement is undoubtedly a comparable effort to circumvent the protections of the Fifth Amendment.

The evidence in this case shows that Mr. Baker and Officer Carr worked together to obtain incriminating evidence from O.W. When Mr. Baker learned that O.W. might possess sexually explicit photos of another student, he consulted with Officer Carr, informing her that he would be investigating O.W. for "possible child pornography." (Br. of Appellant 8). Though O.W.'s possession and potential distribution of the photo could result in criminal charges and Mr. Baker did not know which school rule O.W. may have violated, Mr. Baker led the investigation. (*Id.* at 8-13). During the investigation, Mr. Baker warned O.W. that lying violated the student code of conduct and forced him to write multiple confessions. (*Id.* at 9-11). Officer Carr was involved throughout most of O.W.'s interrogation—she sat or stood by the guidance office door while Mr. Baker questioned O.W., directed Mr.

Baker on how to handle O.W.'s phone once Mr. Baker forced O.W. to show him the photo at issue, and she forced O.W. to unlock his phone and show her the photo before she arrested him. (*Id.* at 8-13). Once Mr. Baker obtained a confession statement he felt was satisfactorily incriminating, he handed it over to Officer Carr as part of regular procedure to serve in Officer Carr's criminal investigation. (*Id.* at 5-7, 13). Officer Carr administered *Miranda* warnings to O.W. only after receiving all the incriminating evidence necessary to prosecute him. (*Id.* at 13). Following school district practice. Mr. Baker conducted the investigation into potential student criminal activity under the guise of investigating administrative violations of the student code of conduct. (*Id.* at 5-6). However, he then provided the evidence collected to law enforcement for the purpose of prosecution. (*Id.* at 13). This was a clear effort to circumvent the requirements of the Fifth Amendment.

III. O.W.'S STATEMENTS WERE OBTAINED IN VIOLATION OF THE FIFTH AMENDMENT

As explained above, the Fifth Amendment protections applied to O.W. throughout the interrogation by Mr. Baker and Officer Carr. Because O.W. was not free to leave, (Br. of Appellant 12), and was subject to an interrogation, he was entitled to *Miranda* warnings. *See Oregon v. Elstad*, 470 U.S. 298, 306-07 (1985). O.W. was not *Mirandized* until after Officer Carr had obtained all the evidence she needed and that "[f]ailure to administer *Miranda* warnings creates a presumption of compulsion." *Id.* at 307. Even in the absence of a requirement that O.W. receive

Miranda warnings, the evidence is sufficient for this Court to find that Mr. Baker and Officer Carr unconstitutionally compelled O.W.'s incriminating statements. The pressures created by the school environment amplify the factors relevant to both the custody analysis and the compelled statement analysis.

A. The School Setting Made O.W. More Vulnerable To Adult Pressure

The Supreme Court has noted young people's susceptibility to coercion in school settings in a variety of circumstances. In *Lee v. Weisman*, the Court held that, under the First Amendment, primary and secondary school students should not be made to choose between participating in a school prayer or protesting, even though such a choice may be acceptable for mature adults. 505 U.S. 577, 592-93 (1992). The Court explained that "there are heightened concerns with protecting freedom of conscience from subtle coercive pressure in the elementary and secondary public schools." *Id.* at 592; *see also Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 312 (2000) (finding that where a prayer was delivered before school football games, the school created a coercive situation in which students were unconstitutionally forced to choose between ignoring the pressure to attend the game or facing a personally offensive religious ritual); *Edwards v. Aguillard*, 482 U.S. 578, 583-84, 596 (1987) (finding a Louisiana law proscribing the teaching of creationism along with evolution in public schools unconstitutional, because "[s]tudents in such institutions are impressionable and their attendance is involuntary"); *cf. Kennedy v. Bremerton*

Sch. Dist., 142 S. Ct. 2407, 2422, 2424 (2022) (finding that a football coach's brief prayers on the football field after games were not made to a captive audience and were private, not government, speech).

Young people's vulnerability to coercive pressures at school is a necessary part of the interrogation analysis. In *J.D.B.*, the Court noted that "[a] student—whose presence at school is compulsory and whose disobedience at school is cause for disciplinary action—is in a far different position than, say, a parent volunteer on school grounds to chaperone an event, or an adult from the community on school grounds to attend a basketball game." 564 U.S. at 276. It further reasoned that "[w]ithout asking whether the person 'questioned in school' is a 'minor,' the coercive effect of the schoolhouse setting is unknowable." *Id.* (quoting *id.* at 297 (Alito, J., dissenting)).

As *J.D.B.* made clear, age is relevant to evaluation of the circumstances in which a young person is interrogated. *Id.* Youth are more suggestible than adults, s*ee* Fiona Jack et al., *Age-Related Differences in the Free-Recall Accounts of Child, Adolescent, and Adult Witnesses*, 28 Applied Cognitive Psych. 30, 30 (2014), and have "a much stronger tendency . . . to make choices in compliance with the perceived desires of authority figures," Elizabeth Cauffman & Laurence Steinberg, *Emerging Findings from Research on Adolescent Development and Juvenile Justice*, 7 Victims & Offenders 428, 440 (2012) (citing Thomas Grisso et al., *Juveniles'*

Competence to Stand Trial: A Comparison of Adolescents' and Adults' Capacities as Trial Defendants, 27 L. & Hum. Behav. 333 (2003)). In *J.D.B.*, the Supreme Court emphasized that children are uniquely susceptible to coercion during interrogations, noting that "[e]ven for an adult, the physical and psychological isolation of custodial interrogation can 'undermine the individual's will to resist and . . . compel him to speak where he would not otherwise do so freely.'" 564 U.S. at 269 (second alteration in original) (quoting *Miranda*, 384 U.S. at 467). The Court explained "that children 'generally are less mature and responsible than adults,' . . . 'lack the experience, perspective, and judgment to avoid choices that could be detrimental to them,' . . . [and] 'are more vulnerable or susceptible to . . . outside pressures' than adults." *Id.* at 272 (fourth alteration in original) (first quoting *Eddings v. Oklahoma*, 455 U.S. 104, 115-116 (1982); then quoting *Bellotti v. Baird*, 443 U.S. 622, 635 (1979); and then quoting *Roper*, 543 U.S. at 569).

Research confirms that adolescents ages 15 and under are more compliant with adults than are older adolescents and young adults. Grisso et al., *supra*, at 353. Their eagerness to please adults and obey adults' perceived desires contributes to this compliance. *See* Naomi E.S. Goldstein, Emily Haney-Caron, Marsha Levick & Danielle Whiteman, *Waving Good-Bye to Waiver: A Developmental Argument Against Youth's Waiver of* Miranda *Rights*, 21 N.Y.U. J. Legis. & Pub. Pol'y 1, 26-27 (2018).

B. Mr. Baker And Officer Carr Held O.W. In Custody And Compelled His Incriminating Statements

In *J.D.B.*, the Supreme Court clarified that a child is in "custody" when "a reasonable child" would feel "pressured to submit" to questioning under the circumstances surrounding the interrogation. 564 U.S. at 272. Relevant circumstances include "any circumstance that 'would have affected how a reasonable person' in the suspect's position 'would perceive his or her freedom to leave,'" including the child's age. *Id.* at 271-72 (quoting *Stansbury v. California*, 511 U.S. 318, 325 (1994)). Children are *more* likely to be in custody during an interrogation in a schoolhouse setting where attendance "is compulsory and . . . disobedience . . . is cause for disciplinary action." *Id.* at 276.

Further, a youth's confession must not be "coerced or suggested," nor the product "of adolescent fantasy, fright, or despair." *Gault*, 387 U.S. at 55. Decades of precedent mandate the "greatest care" when children are subject to interrogation. *See id.*; *see also Haley v. Ohio*, 332 U.S. 596, 599, 600 (1948); *Gallegos v. Colorado*, 370 U.S. 49, 54 (1962); *Fare v. Michael C.*, 442 U.S. 707, 725 (1979). In *Gallegos*, the Court held unconstitutional the confession of a fourteen-year-old, noting that a teenager "cannot be compared with an adult in full possession of his senses and knowledgeable of the consequences of his admissions." 370 U.S. at 54-55. The *Gallegos* Court adopted the reasoning of *Haley v. Ohio*, in which a plurality of the Court held that age was the crucial factor in determining the voluntariness of a

confession. *Id.* at 53; *Haley*, 332 U.S. at 599-601 ("That which would leave a man cold and unimpressed can overawe and overwhelm a lad in his early teens."); *see also J.D.B.*, 564 U.S. at 272 (identifying the "commonsense conclusions" about youths' vulnerabilities).

In *In re Gault*—the seminal Supreme Court case on children's due process protections—the Court emphasized that "the greatest care must be taken to assure" that any admission by a child was truly voluntary. 387 U.S. at 55. The *J.D.B.* Court highlighted a dangerous consequence of youth's vulnerability during interrogations, noting that empirical studies "illustrate the heightened risk of false confessions from youth." *See* 564 U.S. at 269 (quoting Brief for Center on Wrongful Convictions of Youth et al., as *Amici Curiae* at 21-22, *J.D.B.*, 564 U.S. 261 (No. 09-11121)); *see also* Steven A. Drizin & Richard A. Leo, *The Problem of False Confessions in the Post-DNA World*, 82 N.C. L. Rev. 891, 944 (2004) (noting that because children and adolescents are "less equipped to cope with stressful police interrogation and less likely to possess the psychological resources to resist the pressures of accusatorial police questioning," they are grossly over-represented among proven cases of false confession).

O.W. was a 13-year-old seventh grader when Mr. Baker pulled him out of class, secluded him first in the printing room and then in the guidance counselor's office where Officer Carr was waiting, and questioned him extensively. (Br. of

Appellant 8-13). Both Mr. Baker and Officer Carr testified that O.W. was *not permitted* to leave and prevented him from riding home on the bus as he normally did. (*Id.* at 12). While O.W. was in custody, Mr. Baker threatened him with discipline if he lied and forced him to write multiple statements when he was unsatisfied with the information O.W. wrote in his first confession. (*Id.* at 8-12). Officer Carr then obtained a copy of O.W.'s statement solely to use as evidence against O.W. in a juvenile trial. (*Id.* at 13).

Under these circumstances, a reasonable 13-year-old would not feel free to terminate the interrogation and leave and is therefore in custody. *See J.D.B.*, 564 U.S. at 272. Further, no child would feel free to refuse to answer questions, write out incriminating statements, or hand over his phone for evidence, especially when told that they were violating the student code of conduct. O.W.'s resignation to questioning and inability to resist is demonstrated by his willingness to show Officer Carr the explicit photo on his phone and answer her questions after showing the photo to and writing the statements for Mr. Baker. (Br. of Appellant 12-13). Considering the totality of the circumstances, including his age, O.W.'s confession was not the product of free and deliberate choice.

CONCLUSION

For the foregoing reasons, *Amici Curiae* respectfully request the Court reverse the district court's Order dismissing O.W.'s claims, provide all relief it deems

necessary, and remand the case with further instructions consistent with its judgement.

Respectfully submitted, this 14th day of June, 2024.

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/s/ Booth Marcus Ripke
Booth Marcus Ripke

Counsel for Amici Curiae

Dated: June 14, 2024