

STATE OF MICHIGAN
IN THE SUPREME COURT

Appeal from the Michigan Court of Appeals

DENISHIO JOHNSON,

Plaintiffs-Appellant,

Supreme Court No. 160958

v

Court of Appeals No. 330536

**CURT VANDERKOOI, ELLIOT BARGAS,
and CITY OF GRAND RAPIDS,**

a Delaware corporation

Defendant-Appellees.

Trial Court No.

14-007226-NO

KEYON HARRISON,

Plaintiffs-Appellant,

Supreme Court No. 160959

v

Court of Appeals No. 330537

**CURT VANDERKOOI, ELLIOT BARGAS,
and CITY OF GRAND RAPIDS,**

a Delaware corporation

Defendant-Appellees.

Trial Court No.

14-002166-NO

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**MOTION FOR PERMISSION TO FILE BRIEF *AMICI CURIAE* ON BEHALF OF THE
PROSECUTING ATTORNEY OF WASHTENAW COUNTY, UNIVERSITY OF
MICHIGAN JUVENILE JUSTICE CLINIC, AND WASHTENAW COUNTY MY
BROTHER'S KEEPER**

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Amici Curiae, the Prosecuting Attorney of Washtenaw County, the University of Michigan Juvenile Justice Clinic, and the Washtenaw County My Brother's Keeper, move this Court pursuant to MCR 7.312 (H) and MCR 7.316, for leave to file an *Amicus Curiae* Brief in the above-captioned case. In support of this motion, *Amici* state:

1. Together, *Amici* represent three organizations and offices that are committed to rehabilitative, non-criminal interventions for youth in Washtenaw County. The Washtenaw County Prosecutor is the chief law-enforcement officer in Washtenaw County. Prosecutors, by statute, are the sole actors authorized to file delinquency petitions against a juvenile accused of violating any municipal ordinance or state or federal law. MCL 712A.11(2); MCL 712.A2. The University of Michigan Juvenile Justice Clinic represents minors charged with violations of criminal laws and works on policy and law reform projects. Washtenaw County My Brother's Keeper is a community organization focused on providing educational and economic opportunities, support, and care from an intergenerational community of men of color.
2. *Amici* offer a unique perspective on the issues presented here because each organization is dedicated to the fair treatment of youth – particularly youth of color – and desire to improve public safety by, among other interventions, building relationships between law enforcement and youth in our community.
3. In this case, the Court granted the Plaintiff's leave to appeal the November 21, 2019 judgement of the Michigan Court of Appeals. This Court has requested parties to brief three issues. *Amici* take no position in the first two issues but are particularly impacted by the Court's decision in the third issue: whether fingerprinting exceeds the scope of a permissible seizure pursuant to *Terry v. Ohio*. 392 U.S. 1, 88 S. Ct. 1868 (1968).

4. *Amici* suggest that the photograph and print (P&P) policy is constitutionally infirm under *Terry* and its progeny, regardless of the age of the person that was stopped.
5. But crucially, and where *Amici* offer a unique perspective to this Court, a photograph-and-fingerprint policy inevitably imposes disproportionate consequences on children and adolescents. Young people typically do not have government-issued identification, making them far more likely to be subjected to a P&P policy. And when young people are subjected to invasive and prolonged police stops, it destroys the trust they have in law enforcement. It subjects their developing brains to trauma. What is more, treating children like criminals can become a self-fulfilling prophecy. When children are subjected to police stops—and when such stops are unnecessarily prolonged and intensified—it makes young people *more* likely to engage in delinquent behavior. All of these adverse consequences, moreover, are particularly pronounced for young people of color.
6. In accordance with MCR 7.312(H) and MCR 7.316, *amici* respectfully request leave to file an *Amicus Curiae* Brief setting forth its views on these issues. In the interest of expediency and conservation of judicial resources, the proposed *amicus curiae* brief follows this Motion.

RELIEF REQUESTED

WHEREFORE, the Washtenaw County Prosecutor, the University of Michigan Juvenile Justice Clinic, and Washtenaw My Brother's Keeper respectfully ask this Court to grant their motion for permission to file the accompanying *Amicus Curiae* Brief in support of Plaintiff-Appellant's Application for Leave to Appeal.

Respectfully submitted,

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Dated: August 12, 2021

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PROOF OF SERVICE

I hereby certify that, on August 12, 2021, I filed the foregoing Motion of *Amici Curiae*, the Prosecuting Attorney for Washtenaw County, Washtenaw County My Brother's Keeper, and the University of Michigan Juvenile Justice Clinic, for Leave to File an *Amicus Curiae* Brief with the Clerk of Court using the electronic filing system which will serve all parties of record.

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STATEMENT OF QUESTIONS PRESENTED

(1) Whether fingerprinting constitutes a search for Fourth Amendment purposes?

Amici: Take no position.

Plaintiffs-Appellants answer: Yes.

Defendant-Appellees answer: No.

(2) If it does, whether fingerprinting based on no more than a reasonable suspicion of criminal activity, as authorized by the Grand Rapids Police Department’s “photograph and print” policy, is unreasonable under the Fourth Amendment?

Amici: Take no position.

Plaintiffs-Appellants answer: Yes.

Defendant-Appellees answer: No.

(3) Whether fingerprinting exceeds the scope of a permissible seizure pursuant to *Terry v. Ohio*, 392 US 1 (1968)?

Amici answers: Yes.

Plaintiffs-Appellants answer: Yes.

Defendant-Appellees answer: No.

INTRODUCTION AND INTEREST OF *AMICI CURIAE*

Pursuant to Mich. Ct. R. 7.312(H), the Washtenaw County Prosecutor’s Office, the University of Michigan Juvenile Justice Clinic, and Washtenaw County My Brother’s Keeper respectfully submit this brief *amicus curiae* in support of Plaintiffs-Appellants.¹

The Washtenaw County Prosecutor is the chief elected attorney in Washtenaw County. The Washtenaw County Prosecutor’s Office is committed to providing its perspective in cases involving issues impacting the safety, health, and well-being of Washtenaw residents. Prosecutors, by statute, are charged with appearing in “all prosecutions, suits, applications and motions, whether civil or criminal, in which the state or county may be a party or interested.” MCL 49.153.

The Juvenile Justice Clinic (JJC) is a law school clinic at the University of Michigan Law School which advocates for youth charged with criminal offenses and strives to develop student lawyers who meet the highest standards of professional representation. The JJC represents youth in trial and appellate courts in Michigan, and engages in public education, training, and study of best practices in youth justice, both nationally and in Michigan. The JJC does not speak for or represent the views of any entity with which it is affiliated.

Washtenaw County My Brother’s Keeper (WMBK) is a community organization that strives to empower boys and young men of color throughout Washtenaw County. WMBK launched in 2015 as an official affiliate of President Barack Obama’s My Brother’s Keeper initiative and continues to bring together intergenerational groups of young men for mentorship, arts programming, and career development.

¹ Pursuant to MCR 7.312(H)(4), Movants state as follows: No party and no counsel for a party has authored this Brief in whole or in part, nor has any party or counsel for a party or anyone else made a monetary contribution intended to fund the preparation or submission of this Brief.

Amici take no position on the first two questions presented in this case: (1) whether fingerprinting constitutes a “search” under the Fourth Amendment, and (2) whether, if so, the procedures at issue in this case constituted an unreasonable search. Irrespective of the answer to those questions, however, prolonging a *Terry* stop to conduct fingerprinting and photographing—for reasons unmoored from the original basis for the stop—violates the Fourth Amendment. What is more, such prolonged stops, targeting those who do not have driver’s licenses, disproportionately affect youth (particularly youth of color), erode trust in law enforcement, and ultimately adversely impact public safety.

ARGUMENT

Time and again, the United States Supreme Court has highlighted “that children are constitutionally different from adults.” *Miller v. Alabama*, 567 U.S. 460, 471 (2012). That foundational understanding rests “not only on common sense—on what ‘any parent knows’—but on science and social science as well.” *Id.* “[D]evelopments in psychology and brain science,” the Court has emphasized, “continue to show fundamental differences between juvenile and adult minds.” *Id.* at 471-72 (quoting *Graham v. Florida*, 560 U.S. 48, 68 (2010)).

Put simply: children’s brains are different than adults’. For that reason, the Court has held that the death penalty is categorically unconstitutional when applied to young people. *Roper v. Simmons*, 543 U.S. 551 (2005). It has held that courts cannot sentence young people to life in prison for non-homicide offenses, *Graham*, 560 U.S. at 48, and that life without parole is unconstitutional for youth whose crimes, even when homicide, reflect transient immaturity. *Miller*, 567 U.S. 460, *see also Montgomery v. Louisiana*, 577 U.S. 190, 195 (2016) (“lifetime in prison is a disproportionate sentence for all but the rarest of children.”). In non-criminal contexts too, the Court has recognized that children are “special”—emphasizing, for example, that barring undocumented children from public schools is obnoxious to “fundamental conceptions of justice.” *Plyler v. Doe*, 457 U.S. 202, 220 (1982).

The “photograph and fingerprint” policy (“P&P”) at issue in this case disproportionately affects children, and thus warrants particular constitutional scrutiny. *Cf. Plyler*, 457 U.S. at 223. Under the P&P policy, police officers photographed and fingerprinted people who were not carrying identification—even when no evidence of criminal activity was uncovered. Predictably, that policy was used regularly on children and adolescents, who often lack driver’s licenses and thus do not carry state-issued identification.

As emphasized in the principal briefs, the P&P policy exceeds the permissible parameters of a *Terry* stop, whose scope and duration must be “strictly tied to and justified by” the original basis for the stop. *Terry v. Ohio*, 392 U.S. 1, 19, 30 (1968), *see* Pls./Appellants’ Br. at 29-41. The P&P policy is thus constitutionally infirm under *Terry* and its progeny, regardless of the age of the person that was stopped. But crucially, a photograph-and-fingerprint policy inevitably imposes disproportionate consequences on children and adolescents. Young people typically do not have government-issued identification, making them far more likely to be subjected to a P&P policy. And when young people are subjected to invasive and prolonged police stops, it destroys the trust they have in law enforcement. It subjects their developing brains to trauma. What is more, treating children like criminals can become a self-fulfilling prophecy. When children are subjected to police stops—and when such stops are unnecessarily prolonged and intensified—it makes young people *more* likely to engage in delinquent behavior. All of these adverse consequences, moreover, are particularly pronounced for young people of color.

A *Terry* stop is constitutional only if it is “carefully restricted.” *Id.* at 30. Its scope and duration must be limited to what is necessary to ensure safety, and to “verify or dispel the officer’s suspicion in a short period of time.” *Florida v. Royer*, 460 U.S. 491, 500 (1983). *Terry* stops, therefore, cannot be used to subject people to prolonged seizures once suspicion of a crime has been dispelled, and there are no apparent threats to officer safety. And though those constitutional protections apply regardless of the age of a detained individual, they are particularly important for young people—who stand to suffer significant cascading consequences arising from an unconstitutionally prolonged *Terry* stop.

I. “PHOTOGRAPH AND PRINT” POLICIES DISPROPORTIONATELY IMPACT YOUNG PEOPLE, INCREASE JUVENILE DELINQUENCY, AND ERODE YOUNG PEOPLE’S TRUST IN POLICE.

The Grand Rapids Police Department (GRPD) maintained a standard policy for over 30 years of taking photographs and fingerprints whenever officers stopped people who were not carrying valid identification. (Pls./Appellants’ Br. at 8). Police officers would photograph and fingerprint such people even when the stopped individuals were not arrested and even when no evidence of criminal activity was found. *Id.*

Although GRPD has largely discontinued its P&P policy, plaintiffs—both young Black boys—were subjected to it, and seek remedies for the alleged constitutional violations they experienced. Bryce Huffman, *GRPD Says it Won't Go Back to Old "Photos and Prints" Policy Despite Favorable Court Ruling*, MICHIGAN RADIO (Nov. 25, 2019) <https://www.michiganradio.org/post/grpd-says-it-wont-go-back-old-photos-and-prints-policy-despite-favorable-court-ruling>. Four particular points bear emphasis about the policy. *First*, P&P policies disproportionately impact youth, especially youth of color. *Second*, young people suffer significant negative ramifications when stopped by police. These consequences are more pronounced when the police stop is prolonged and intrusive. *Third*, when young people are subjected to unnecessarily prolonged and intrusive police stops, it erodes their trust in law enforcement. That, in turn, makes it less likely that crimes will be reported; that young people will serve as witnesses in cases; and that serious crimes can be successfully prosecuted. *Fourth*, in a sadly ironic twist, treating children as criminals can actually increase delinquent behavior. Research demonstrates that when young people are subjected to police stops, the likelihood of juvenile delinquency increases—even when a young person had not engaged in prior delinquent behavior.

In the long term, then, P&P policies—carried out in the name of “safety,” *see Terry*, 392 U.S. at 30—ultimately *erode* public safety, as well as the trust law enforcement must enjoy to adequately protect the public. Such policies violate the Fourth Amendment.

a. **“Photograph and Print” Policies Disproportionately Affect Young People, Especially Young People of Color.**

A P&P policy based on a person’s lack of identification disproportionately affects young people. Three facets of driver’s license ownership—age restrictions, recent trendlines, and racial disparities in ownership—demonstrate that young people, particularly Black youth, are least likely to have identification and therefore more likely to be subjected to a P&P.

First, and most obviously, younger people are disproportionately unlikely to have government-issued ID. Many (if not most) people obtain their first identification card only once they learn to drive, and are thus eligible for a driver’s license. But under Michigan law, a person must be at least 16 years old to obtain a driver’s license, and at least 17 years old to obtain a driver’s license with no restrictions.² Teen and Novice Drivers, GOVERNORS HIGHWAY SAFETY ASSOCIATION <https://www.ghsa.org/state-laws/issues/teen%20and%20novice%20drivers> (last visited June 24, 2021). And although a Michigan State ID Card is an alternate option, the application process is cumbersome — young people need a parent to apply on their behalf and

² At age 16 a teen can obtain a restricted driver’s license that imposes a curfew. Those restrictions expire when they turn 17. Michigan Secretary of State, Driver’s License and State ID-Children, https://www.michigan.gov/sos/0,4670,7-127-1627_8668_53359_53361-213203--,00.html (last visited June 24, 2021).

Michigan youth who are at least 14 years and 8 months and pass the Segment 1 driver education course are eligible for a Graduated Driver’s License (GDL) Level 1, which permits driving with restrictions. However, until March 2021, such student drivers received only a piece of paper as their Level 1 license, and not a Michigan driver’s license with a picture. Starting in March 2021 student drivers are issued a “photo license hard card” for a GDL Level 1 license, instead of a paper license. Michigan Secretary of State, Graduated Driver Licensing Eligibility and Documentation Requirements, https://www.michigan.gov/sos/0,4670,7-127-1627_60169_60175_84272-269642--,00.html (last visited July 12, 2021).

must pay a fee, prove U.S. citizenship, and prove Michigan residency. Michigan Secretary of State, Eligibility Requirements, <https://www.michigan.gov/sos> (follow “State Identification Card” hyperlink under “Driver’s License and State ID”) (last visited July 2, 2021).

What is more, there is very little incentive for a child or younger teenager to obtain a Michigan State ID card. That card does not grant driving privileges. *Id.* It cannot be used to purchase age-restricted products, as products like alcohol, nicotine, and marijuana are available only to those over the age of 21.³ Michigan’s voting age is 18, so a state ID card for people younger than 18 cannot be used to facilitate voting. U.S. Const. Amend. XVI §§ 1-2; MCL 168.758a(1). Indeed, for most minors, a Michigan State ID card cannot even be used to gain entrance to an R-rated movie, as theatres require children under the age of 17 to be accompanied by a parent or guardian to watch such a film. *See, e.g.,* Atom, AMC Safety & Age Policy, <https://www.atomtickets.com/help/entry/amc-age-policy> (last visited July 2, 2021) (requiring that children under 17 be accompanied by a parent or guardian to attend R rated movies). Given all of this, few teenagers are likely to clamor for a Michigan State ID card that confers virtually no tangible benefits. And it would be rarer still for a teenager to carry that card around at all times.

Put simply: almost nobody under the age of 16 is likely to have a government-issued ID. Accordingly, when police opt to photograph and fingerprint anyone who lacks identification, nearly *every* person under 16 years old (as well as older adolescents without driver’s licenses) will be photographed and fingerprinted when stopped by police.

³ Enforcement Information, DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS, https://www.michigan.gov/lara/0,4601,7-154-89334_10570_16941-40917--,00.html (last visited July 2, 2021) (age to purchase alcohol is 21 year old); Malachi Barrett, *You Must be 21 to Buy Cigarettes, Tobacco Products in Michigan*, MLIVE, (Dec. 30, 2019) <https://www.mlive.com/public-interest/2019/12/you-must-be-21-to-buy-cigarettes-tobacco-products-in-michigan.html> (age to purchase tobacco products in 21 years old); Amy Biolchini, *A Beginner’s Guide to Legal Marijuana in Michigan*, MLIVE, (Aug. 11, 2019) <https://www.mlive.com/news/2019/08/a-beginners-guide-to-legal-marijuana-in-michigan.html> (age to purchase marijuana is 21 years old).

Second, even young people who are *over* the age of 16 are increasingly unlikely to have a government ID. Recent trendlines reveal steadily decreasing ownership rates of driver's licenses among young people. Nationally, between 1983 and 2014, driver's license ownership rates decreased from 46% to 24% for 16-year-olds, 69% to 45% for 17-year-olds, and 80% to 60% for 18-year-olds. MICHAEL SIVAK & BRANDON SCHOETTLE, RECENT DECREASES IN THE PROPORTIONS OF PERSONS WITH DRIVER'S LICENSE ACROSS ALL AGE GROUPS 5 (2016). Indeed, even younger *adults* are increasingly unlikely to have a driver's license. In 1983, 92% of 20-to-24-year-olds had a driver's license, but by 2014, that number plummeted to 77%. *Id.* State and local data mirror these national trends. In Kent County (home to Grand Rapids) 26% of 16-to-20-year-olds do not have a driver's license. Julie Mack, *Fewer Young People in Michigan are Driving, and 5 Other Facts*, MLIVE (Jan. 19, 2019) https://www.mlive.com/news/2016/06/number_of_young_michigan_drive.html. Statewide, an even larger percentage (40%) of 16-to-19-year-olds do not have driver's licenses. *Id.*

Third, driver's license ownership rates vary significantly between white people and people of color. A 2006 University of Wisconsin-Milwaukee study found that "[m]inorities are much less likely to have a driver's license." John Pawasarat, *The Driver License Statute of the Voting Age Population in Wisconsin*, 68 ETI PUBLICATIONS 1, 1-2 (2005). This discrepancy was particularly true for younger people in more densely populated areas. For example, just 26% of African Americans and 34% of Hispanics in Milwaukee County aged 18 to 24 had a valid license, compared with 71% of white young adults statewide. *Id.* Although the Wisconsin study focused on voting access, and therefore included only young people 18 and above, the national trendlines noted above strongly suggest similar disparities exist for people of color under the age of 18.

But questions of driver’s license ownership only tell part of the story about why P&P policies have a disproportionate impact on young people, particularly Black youth.

As an initial matter, young people are acutely vulnerable to pressure from adults in positions of authority. Megan Crane et al., *The Truth About Juvenile False Confessions*, 16 INSIGHTS ON L. AND SOC’Y 1 (2016). Thus, even a P&P policy that is purportedly “voluntary”—that is, one that technically allows people to terminate the police encounter before being photographed and fingerprinted—is not voluntary in any meaningful sense for young people. *Cf.* Def/Appellee’s Answer in Opp’n. to Leave to Appeal at 11 (noting GRPD Captain Kurt VanderKooi’s claim that 16-year-old plaintiff Keyon Harrison “was free to leave the encounter and could have left without having his picture taken.”). Indeed, decades of brain research demonstrate that young people are particularly unlikely to feel free to terminate a police encounter. Young people are vulnerable to adult suggestibility and are less able to weigh appropriately the long-term consequences of their actions. *The Truth About Juvenile False Confessions*, INSIGHTS ON L. AND SOC’Y at 2. In practice, then, young people may acquiesce more readily to police suggestions during questioning because “lower-status individuals [i.e., children] are more likely to defer to the authority of higher-status individuals [i.e., a uniformed adult police officer].” Barbara Kaban & Ann E. Tobey, *When Police Question Children, Are Protections Adequate?*, 1 J. CENTER CHILD & CTS 151, 155 (1999).

What is more, Black children are disproportionately likely to be subjected to police stops, because—put bluntly—Black children are less likely to be *perceived* as children. Studies have demonstrated that actors in the criminal-justice system “viewed [B]lack boys as older and less innocent than white boys . . . beginning when youth were ten years old.” National Juvenile Justice Network, *Implicit Bias Snapshot*, (September 2017), <http://www.njjn.org/our->

work/implicitbias-snapshot. Another study demonstrated that, “[b]eginning as early as five years old, participants viewed [B]lack girls as behaving and seeming older than their stated age.” *Id.* Black girls were also seen “as needing less participation and nurturing than white girls.” *Id.* These studies “lend support to the theory that decision makers” in the criminal justice system “may treat youth of color more harshly than white youth in part because” they “ignore developmental immaturity in youth of color.” *Id.* Thus, not only are Black youth disproportionately unlikely to have identification when stopped by the police, they are disproportionately likely to be stopped by the police in the first instance. *See also, e.g.,* Def/Appellee’s Br. at 7 (initial 911 caller describing 15-year-old Denishio Johnson as “approximately twenty years old”), *id.* at 9 (describing GRPD Sergeant Elliott Bargas’ skepticism that Johnson was fifteen, because “Bargas thought Johnson looked older than fifteen given his stature and that he had tattoos on his arms.”). All of this exacerbates the disparate impact P&P policies have on youth of color.

b. Unnecessarily Intrusive Police Stops Traumatize Young People, and Disrupt Normative Adolescent Development.

Not only are young people disproportionately likely to be subject to a P&P policy, they are disproportionately likely to be adversely affected by it. Of course, no two young people will have the same experience when stopped by law enforcement. Nevertheless, data reveals deeply troubling shared experiences. Intrusive law enforcement practices “have negative impacts on normative adolescence trajectories.” Nikki Jones, “*The Regular Routine*”: *Proactive Policing and Adolescent Development Among Young, Poor Black Men*, 143 NEW DIRECTIONS CHILD AND ADOLESCENT DEV. 33 (2014). Black youth, in particular, experience feelings of “hopelessness” and “dehumanization” during police stops. Ronald Weitzer, *Police Relations With Black and White Youths in Different Urban Neighborhoods*, 44 URBAN AFFAIRS REV. 858 (2009). What is

more, police stops, especially intrusive police stops, “are associated with sleep deprivation and low sleep quality among youth.” Dylan B. Jackson et al., *Police Stops and Sleep Behaviors Among At-Risk Youth*, J NAT. SLEEP FOUNDATION 435 (2020).

And when police stops are prolonged or intrusive, the likelihood that a young person will experience lasting effects is magnified. A 2019 study of 900 youth stopped by police—39% of whom experienced their first police stop when they were 13 years of age or younger—concluded that “officer intrusiveness was the most robust predictor of” emotional distress during the stop. Dylan B. Jackson et al., *Police Stops Among At-Risk Youth: Repercussions for Mental Health*, 65 J. OF ADOLESCENT HEALTH 627 (2019). The intrusiveness of the stop, moreover, was the most robust predictor of social stigma and posttraumatic stress *after* the stop. *Id.*

Similarly, a study of 1,200 18-to-26-year-olds in New York City found that higher levels of intrusiveness during a police encounter were associated with higher rates of trauma and anxiety symptoms thereafter. Amanda Geller et. al., *Aggressive Policing and the Mental Health of Young Urban Men*, 12 AM. J. PUBLIC HEALTH 2321, 2324 (2014). That study specifically included “asking for identification” as a measurable form of “intrusiveness.” *Id.* at 2322. Of course, a stop made under a P&P policy is necessarily more intrusive than one in which an officer merely asks for ID. After all, a P&P policy involves not just asking for identification, but prolonging the stop—and photographing and fingerprinting—if a person lacks ID. If merely asking for identification qualifies as an “intrusive” stop that is likely to traumatize young people, a P&P policy, *a fortiori*, is likely to impose those harms.

And such harms may reach far beyond the young people who were directly subjected to an intrusive police stop. Friends and family members who witness a stop may be subject to vicarious trauma. Daniel K. Price et al., *A Neglected Problem: Understanding the Effects of*

Personal and Vicarious Trauma on African American's Attitudes Towards the Police, J. CRIM. JUST. AND BEHAV. 1 (2021). An interview with a 16-year-old recounted the moment four years earlier when he witnessed his older sister stopped and frisked in New York City: “My sister got kind of scared. She started crying. And then I felt kind of bad, seeing my sister cry, so I started crying too. I was 12. They told me that if I don't stop crying, they're going to put me in cuffs and take me in too.” Center for Constitutional Rights, *Stop and Frisk: The Human Impact* at 9 (July 2012), <https://ccrjustice.org/sites/default/files/attach/2015/08/the-human-impact-report.pdf>.

Young people, then, are more likely to experience trauma and health outcomes as a result of intrusive police stops. But these cascading consequences do not end with the child. Instead, they radiate outwards—adversely impacting the health and well-being of entire communities.

c. Unnecessarily Intrusive Police Stops Erode Public Safety by Undermining Community Trust in Law Enforcement

Just as troublingly, unnecessarily intrusive police encounters erode communities' trust in law enforcement. When young people feel that they have been unfairly stopped and questioned (to say nothing of being unfairly photographed and fingerprinted), their trust in law enforcement may be permanently damaged. A P&P policy thus can damage the community confidence that is necessary for the effective, legitimate exercise of law-enforcement authority.

For people of all ages, police interactions that are perceived as invasive or unjust can erode trust in law enforcement. Though “many Americans have been stopped for speeding or jaywalking, few may realize how degrading a stop can be when the officer is looking for more.” *Utah v. Strieff*, 136 S. Ct. 2056, 2069 (2016) (Sotomayor, J., dissenting). A prolonged or invasive police stop can lead to feelings of “indignity” and cascading “humiliations.” *Id.* And because “most people have only infrequent contact with police,” just a single negative interaction carries the potential to “become especially influential in shaping perceptions and attitudes.” Brad A.

Myrstol & Shila René Hawk-Tourtelot, *In Search of Respect: Examining Arrestee Satisfaction with Police*, 36 AM. J. CRIM. JUST. 371, 373 (2011). In turn, these individual “perceptions and attitudes” can undermine the very legitimacy of the criminal justice system. After all, the legitimacy of the legal system is “intimately bound up with the perception that [police] actions are consistent with prevailing views of what is right and just.” *Id.*

Young people are particularly prone to long-term loss of trust stemming from intrusive police interactions. To begin with, young people’s baseline attitudes towards law enforcement are more negative than other age groups. Elisabeth J. Leroux & Kelly McShane, *Changing Youth Attitudes Toward the Police Through Community Policing Programming*, 45 J. COMMUNITY PSYCH. 810, 810 (2017). A 2013 survey from the Vera Institute of Justice found that 61% of young people agreed with the statement, “The way the police acted toward me was influenced by my age.” JENNIFER FRATELLO ET AL., COMING OF AGE WITH STOP AND FRISK: EXPERIENCES, SELF-PERCEPTIONS, AND PUBLIC SAFETY IMPLICATIONS 6 (2013). Two related reasons explain why young people maintain those attitudes. First, “youth are disproportionately more likely to be subject to negative police contact and arrest.” *Changing Youth Attitudes Toward the Police*, J. COMMUNITY PSYCH. at 810. Second, more so than other age groups, “[a]dolescents experience more police-initiated contacts resulting from relatively minor infractions” and those interactions “often do not result in notable legal consequences for youth.” *Id.*

Crucially, unnecessarily *intrusive* police stops exacerbate young people’s distrust of law enforcement. A 2019 study of 2,400 young people across 20 major U.S. cities found that “stops that involved higher levels of intrusion and lower levels of procedural justice were associated with higher levels of legal cynicism.” Meret S. Hofer et al., *An Examination of Procedurally Just Strategies on Legal Cynicism Among Urban Youth Experiencing Police Contact*, 48 J.

COMMUNITY PSYCHOL. 104, 113 (2019). Just a single negative interaction with law enforcement “may have long-term consequences for adolescent perceptions of the justice system.” *Id.* And a policy that requires photographing and fingerprinting for nearly every young person stopped by the police leads to a multiplicity of negative interactions. This case provides prime examples: After being photographed and fingerprinted by the police, Keyon Harrison was forced to fend off rumors that “he was involved in drugs, a robbery, or even that he had shot someone,” (Pls./Appellants’ Br.’ at 27), and his mother had to drive him to school for the next two weeks “because he was too scared to walk to school after the incident,” (Def/Appellee’s Answer in Opp’n. to Leave to Appeal at 11).

Although prolonged and intrusive police stops adversely impact young people’s trust in law enforcement *writ large*, that dynamic is particularly pronounced for young people of color. Young people of color consistently report more negative interactions with law enforcement—and, correspondingly, maintain higher levels of distrust than their white peers. In 2015, the Black Youth Project compiled data collected from government sources, and 10 years of public opinion survey data, to create a nationally representative samples of Black youth from 15 to 25 years old. JON C. ROGOWSKI & CATHY J. COHEN, BLACK MILLENNIALS IN AMERICA 21 (2015). Black youth reported the highest rates of harassment or violence from the police, and experienced it at nearly twice the rate of other young people. *Id.* More than half of Black youth said that either they or someone they know was harassed or experienced violence from the police, compared with a third of white youth and a quarter of Latino youth. *Id.* In a survey of 500 young people who were 18 to 25 years old in highly patrolled areas of New York City, half of Black survey participants agreed with the statement, “I was treated worse than others in a similar situation because of my race/ethnicity.” *Coming of Age with Stop and Frisk* at 15.

These widespread beliefs undermine the legitimacy that the justice system must strive to maintain. “Justice,” after all, “must satisfy the appearance of justice,” *In re Murchison*, 349 U.S. 133, 136 (1955), and a system in which young people of color feel disproportionately targeted by law enforcement hardly qualifies as the “appearance of justice.”

More concretely, a lack of community trust in law enforcement adversely impacts public safety. A 2019 study of 1,200 young men ages 18 through 26 found that a person’s likelihood to cooperate with criminal investigations is driven largely by the degree to which they perceive law enforcement as “legitimate.” *Street Stops and Police Legitimacy: Teachable Moments in Young Urban Men’s Legal Socialization*, 11 J. OF EMPIRICAL LEGAL STUDIES at 751. “[M]ore intrusive police contact was associated with more negative evaluations in terms of [police] legitimacy” which in turn decreased willingness to both cooperate with police and serve on a jury. *Id.* at 765, 773. Perhaps more disturbingly, when people lose trust in law enforcement, they are less likely to report crimes or to serve as a witness in a case. *Id.* at 751.

For Black boys specifically, negative personal experiences with law enforcement “not only undermine their perceptions of the police, but also decrease their willingness to cooperate with the law and increase the likelihood of their own arrest and abuse at the hands of police.” Kristin Henning, *Boys to Men: The Role of Policing in the Socialization of Black Boys*, in POLICING THE BLACK MAN 57, 86 (Angela J. Davis ed., 2017). Researchers from the 2019 study cautioned that any policies which inadvertently undermine police legitimacy impose a “not-so-hidden cost to the long-term success of policing efforts.” *Street Stops and Police Legitimacy*, 11 J. OF EMPIRICAL LEGAL STUDIES at 753.

Conversely, when the public perceives the police as legitimate, community members are more likely to report crimes, and cooperate as witnesses in investigations. *Id.* Increased

legitimacy has also been linked to “acceptance of police authority as an alternative to private violence” and “heightened compliance with the law.” *Id.* This positive relationship applies to young people as well. “The more youth perceive police to behave fairly, the more likely they are to view the police as legitimate, the less cynical they are likely to be about the laws, and the more likely they are to comply with the rules.” *Boys to Men* at 64.

These are hardly abstract issues. When people are unwilling to cooperate with law enforcement—and unwilling to report crime—public safety is meaningfully eroded. Indeed, the most vexing challenge in the American criminal legal system is not an inability to identify criminal actors. It is not an inability to “solve” cases. Rather, the most pronounced and persistent issue in the American criminal system is that *most crimes are never reported*. In 2015, just “42 percent of violent crimes and 36 percent of property crimes were reported to the police,” Jeff Asher, *Why We Can’t Be Sure If Violent Crime Is On The Rise*, 538.COM (Dec. 7, 2017), <https://fivethirtyeight.com/features/why-we-cant-be-sure-if-violent-crime-is-on-the-rise/>, and non-reporting rates have only increased in subsequent years. U.S. Dep’t of Justice, *Criminal Victimization*, 2019, at 9 (Sept. 2020), <https://bjs.ojp.gov/content/pub/pdf/cv19.pdf>. Photograph-and-fingerprint policies may well be adopted with an eye towards protecting public safety. But if public safety is their goal, they are pyrrhic policies indeed. By eroding community trust (particularly among young people of color), P&P policies ultimately have the counterproductive effect of making serious crime less likely to be reported—and less likely to culminate in a conviction.

d. Unnecessary Police Interactions Increase Juvenile Delinquency, Regardless of a Young Person’s Past Delinquent Behavior.

In addition to eroding trust in the community, unnecessarily invasive police stops can directly increase the likelihood of future delinquent behavior. Thus, once again, such policies threaten to make communities *less* safe, by unintentionally increasing juvenile delinquency.

A 2019 longitudinal study of 1,400 ninth and tenth graders studied the increase in juvenile delinquency that followed police stops. Researchers observed that procedures which compel officers to make contact with boys “may impose a terrible cost” — adolescent boys stopped by police reported more frequent engagement in delinquent behavior 6, 12, and 18 months later, independent of prior delinquency. Juan Del Toro et al, *The Criminogenic and Psychological Effects of Police Stops on Adolescent Black and Latino Boys* 116 PNAS 1, 1 (2019). Put simply: even boys who had *not* previously been engaged in delinquent behavior are more likely to engage in delinquency once stopped by the police, suggesting that unnecessary engagement with police actually *increases* the risk of juvenile delinquency. *Id.* at 1,7. This research is consistent with decades of data finding that, even for “non delinquent black and Latino boys,” experience with “police surveillance” is “likely to induce criminal behavior.” *Id.* at 7.

Further, the same 2019 study suggested that the younger a boy is at the time of his first police stop, the greater the observed increase in subsequent delinquent behavior within six months. *Id.* Thus, while police stops lead to harmful outcomes for youth of all ages, police stops “may be even more harmful when they occur earlier in boys’ lives.” *Id.* And for many young people who are stopped by the police, the first interaction tends to be quite early in life. Among the ninth and tenth graders in the 2019 study, 76% experienced their first stop in the ninth grade. *Id.* Because ninth graders are normally 14 or 15 years old—and thus, too young to obtain a

Michigan driver's license—any interaction between a ninth grader and a police department with a P&P policy carries the risk of not only an unconstitutionally prolonged *Terry* stop, but an increased risk of future delinquency.

A 2013 study found similar results for even younger children. Looking at 2,100 middle school students across seven cities, researchers concluded that “simply being stopped by the police has negative ramifications for youth,” and the effect on delinquency “is significant and relatively substantial in magnitude.” Stephanie Ann Wiley et. al, *The Unintended Consequences of Being Stopped or Arrested: An Exploration of the Labeling Mechanisms Through Which Police Contact Leads to Subsequent Delinquency*, 51 CRIMINOLOGY 927, 956-58 (2013). Similar to the “terrible cost” noted by researchers in the aforementioned study, researchers concluded that for middle schoolers, “police practices of engaging in high rates of stops”—particularly those that are “‘unproductive’ or ‘innocent,’”—“may be counterproductive.” *Id.* at 956.

Indeed, counterproductive may be an understatement. Earlier involvement in the criminal justice system increases the possibility of more severe criminal behavior later in life. When young people are treated as “offenders” at a young age, they are more likely to have criminal behavior persist into adulthood and are more likely to have serious, violent, and chronic offending careers. *Id.* Involvement in the criminal justice system at ages 6 through 12 is also a risk factor for gang membership. JAMES C. HOWELL, PREVENTING AND REDUCING JUVENILE DELINQUENCY: A COMPREHENSIVE FRAMEWORK 248 (2009). A sociological survey of eighth graders in Seattle found that “Black respondents who experience contact with the police by the eighth grade have eleven times greater odds of being arrested when they are 20 years old than their White counterparts.” Anne McGlynn Wright et. al, *The Usual, Racialized, Suspects: The*

Consequence of Police Contacts with Black and White Youth on Adult Arrest, SOCIAL PROBLEMS 1, 9 (2020).

In light of the above research, all of this is sadly unsurprising. Unnecessarily intrusive police stops can disrupt “normative adolescent trajectories,” and subject young people to trauma and emotional distress. *See supra* pp. 11-13. Such stops also undermine trust in law enforcement as an “alternative to private violence,” meaning that young people subjected to such stops may be more likely to resolve conflicts through unlawful means. *See supra* pp. 17. Given all of that, it is perhaps no surprise that intrusive police stops are associated with increased rates of juvenile delinquency.

But though these outcomes are unsurprising, they are also unsettling. The best evidence suggests that unnecessary police interactions with young people makes it *more* likely that a young person will engage in future delinquent behavior. That is true even if the young person had not previously engaged in such behavior.

* * *

Over fifty years ago, the Supreme Court held in *Terry v. Ohio* that officers may engage in circumscribed, “minimally necessary” seizures of a person where there is reasonable suspicion of criminal activity. 392 U.S. at 30. An officer may also conduct “carefully limited” actions during that seizure to ensure the officer’s safety and the safety of others. *Id.* at 30. But nothing in *Terry* or its progeny suggests that officers have *carte blanche* to fingerprint and photograph anyone who is not carrying a government-issued ID. Such policies impose cascading adverse consequences on young people, particularly youth of color. They significantly erode community trust, and can have criminogenic effects. If *Terry* were interpreted to permit such activity, it would transmogrify a limited license to ensure public “safety” into a broad mandate to engage in

intrusive practices that disproportionately affect a “special class” of young people, *see Plyler*, 457 U.S. at 223—ultimately making communities less safe. That cannot be what the Constitution provides.

CONCLUSION

For the foregoing reasons, and the reasons in Plaintiffs-Appellants’ pleadings before this Court, *Amici curiae* respectfully request that this Court reverse the decision of the Court of Appeals, and hold that a P&P policy of the type at issue here runs afoul of the permissible scope of a seizure under *Terry v. Ohio*, 392 US 1 (1968).

Respectfully submitted,

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