

**STATE OF MICHIGAN
IN THE SUPREME COURT**
Appeal from the Court of Appeals

DENISHIO JOHNSON,

Plaintiff-Appellant,

v

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

Defendants-Appellees.

MSC No. 160958
COA No. 330536
Trial Court No. 14-007226-NO

_____ /

KEYON HARRISON,

Plaintiff-Appellant,

v

CURT VANDERKOOI and CITY OF
GRAND RAPIDS,

Defendants-Appellees.

MSC No. 160959
COA No. 330537
Trial Court No. 14-002166-NO

_____ /

**MOTION OF THE NAACP LEGAL DEFENSE AND EDUCATIONAL
FUND, INC. FOR LEAVE TO FILE AMICUS CURIAE BRIEF**

Mahogane D. Reed*
NAACP LEGAL DEFENSE &
EDUCATIONAL FUND, INC.
700 14th St. NW, Ste. 600
Washington, D.C. 20005
(202) 682-1300
mreed@naacpldf.org

Janey J. Lamar (P82160)
The Lamar Law Firm, P.L.L.C.
120 N. Michigan Ave. #204
Saginaw, MI 48602
(989) 395-1276
janey@jjlamarlaw.com

Counsel for Amicus Curiae
*Pro hac vice application pending

Counsel of Record

Pursuant to Subchapter 7.00 of the Michigan Court Rules of 1985, amicus curiae NAACP Legal Defense and Educational Fund, Inc. (“LDF”), respectfully moves for leave to file a brief in support of Appellants.

The NAACP Legal Defense & Educational Fund, Inc. (“LDF”) is the nation’s first and foremost civil rights law organization. Since its incorporation in 1940, LDF has fought to eliminate the arbitrary role of race in the administration of the criminal justice system by challenging laws, policies, and practices that discriminate against Black people and other people of color. LDF’s advocacy includes serving as counsel in cases like *Davis v City of New York*, 959 F Supp 2d 324 (SDNY, 2013), which challenges the NYPD’s unlawful trespass enforcement practices and targeted searches and seizures of Black and Latino New Yorkers, in New York City Housing Authority residences. LDF has also submitted amicus briefs in state and federal courts challenging the discriminatory application and enforcement of criminal laws. *See, e.g., United States v Weaver*, 975 F3d 94 (CA 2, 2020).

This case concerns the City of Grand Rapids Police Department’s policy of photographing and fingerprinting any person who is stopped and who lacks photo identification (“P&P Policy”). As the Appellants explain, the P&P Policy effects an unreasonable search and an unreasonable seizure when applied during an investigative stop under *Terry v Ohio*, 392 US 1; 88 S Ct 1868; 20 L Ed 2d 889 (1968). The Court of Appeals erred by holding that the policy falls completely outside the Fourth Amendment’s reach.

Amicus curiae writes separately to explain that the Grand Rapids Police Department’s P&P Policy represents a widespread and disturbing denial of full citizenship to the City’s Black residents. The Fourth Amendment’s prohibition against “unreasonable searches and seizures” was intended to serve as a bulwark against arbitrary and oppressive police action. *See Carpenter v.*

United States, __ US __, __; 138 S Ct 2206, 2213; 201 L Ed 2d 507 (2018) (“The ‘basic purpose of this Amendment,’ our cases have recognized, ‘is to safeguard the privacy and security of individuals against arbitrary invasions by governmental officials.’”) (citation omitted). The Michigan Constitution contains a similar provision that protects people from “unreasonable searches and seizures.” Const 1963, art 1, § 11. These constitutional protections are especially important for Black people and other people of color, who are regularly and disproportionately the subject of abusive police practices and whose Fourth Amendment rights are often encroached upon by law enforcement.

The Grand Rapids Police Department’s P&P Policy represents one such unconstitutional encroachment. Black people have been subject to the intrusive Policy—having their fingerprints and photographs solely because they lacked identification and even when they’ve done nothing wrong—at rates that are starkly disproportionate to their percentage of the population. This troubling disparity suggests racial profiling in searches and seizures, with officers collecting fingerprints and photographs of Black residents to add to their database in anticipation of future criminality.

A rule embracing the decision of the court below would permit officers to continue to engage in the unfettered collection of who will primarily be Black people or other people of color—and especially Black youth, who risk being targeted for heightened police scrutiny and who are less likely to possess photo identification than their white counterparts. This would result in the denial of full citizenship to Black people and other people of color, would undermine trust between law enforcement and communities of color, and would erode public confidence in the rule of law. This Court should reverse.

Amicus curiae respectfully asks that this Court grant leave to file their brief in support of the Appellants.

Dated: August 12, 2021

Respectfully submitted,

/s/ Janey J. Lamar

Janey J. Lamar
The Lamar Law Firm, P.L.L.C.
120 N. Michigan Ave. #204
Saginaw, MI 48602
(989) 395-1276
janey@jjlamarlaw.com

Counsel of Record

Mahogane D. Reed
NAACP LEGAL DEFENSE &
EDUCATIONAL FUND, INC.
700 14th St. NW, Ste. 600
Washington, D.C. 20005
(202) 682-1300
mreed@naacpldf.org

*Counsel for Amicus Curiae NAACP Legal
Defense & Educational Fund, Inc.*