

No. _____

**In the
Supreme Court of the United States**

O.W.,

Petitioner,

v.

SCHOOL BOARD OF THE CITY OF
VIRGINIA BEACH, VIRGINIA, *et al.*,
Respondents.

**On Petition for Writ of Certiorari to the
United States Court of Appeals for the Fourth
Circuit**

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether, under the Fourth Amendment, a school official may search the digital contents of a student’s cellular phone without a warrant, probable cause, or consent.
2. Whether a school and police may, through a school resource officer partnership, conduct routine criminal investigations of students — searching and interrogating them — under the relaxed standards governing school discipline, rather than the Fourth, Fifth, and Fourteenth Amendment safeguards that would apply if law enforcement acted directly.
3. Whether a court assessing the voluntariness of a thirteen-year-old’s statements must account for the child’s age under *J.D.B. v. North Carolina* and this Court’s related juvenile precedents.
4. Whether the voluntariness of a confession, and the disputed historical facts underlying it, may be resolved at summary judgment, or must be submitted to a jury under the Seventh Amendment when those facts are genuinely disputed.
5. Whether the Fourth Circuit erred in requiring a § 1983 litigant to prove civil conspiracy by (1) direct proof of an express unlawful agreement and (2) “nefarious motive” of defendants.
6. Whether a court of appeals departs from its adjudicative role, and the principle of party

presentation, when it formulates a general legal standard that no party advanced and applies it as the governing rule of decision.

PARTIES TO THE PROCEEDING

Petitioner is O.W., Plaintiff-Appellant below. When this action commenced in the district court, O.W. and other students were minors entitled to privacy protection under Fed. R. Civ. P. 5.2. In the Fourth Circuit, O.W. retained privacy protection under Fed. R. App. P. 25(a)(5). O.W. retains his anonymity in this Court under this Court's Rule 34.6.

Respondents are School Board of the City of Virginia Beach, Virginia, which operates Virginia Beach City Public Schools ("VBCPS"); Reid Baker, the former-Acting Assistant Principal at Kempsville Middle School in Virginia Beach, Virginia; City of Virginia Beach, on behalf of its police department ("VBPD"); and Marie L. Carr, a sworn officer of the VBPD when O.W. was deprived of his rights, Defendant-Appellees below.

CORPORATE DISCLOSURE STATEMENT

Petitioner is an individual. No corporate disclosure statement is required under this Court's Rule 29.6.

LIST OF DIRECTLY RELATED PROCEEDINGS

Pursuant to Rule 14.1(b)(iii), the following proceedings are directly related to this case:

- Virginia Juvenile and Domestic Relations District Court, Norfolk, Virginia; *Commonwealth v. O.W., Confidential* Juvenile delinquency proceeding; charges dismissed on August 17, 2020.

- United States District Court for the Eastern District of Virginia: *O.W. ex rel. Bass v. School Board of the City of Virginia Beach*, No. 2:21-cv-00448 (E.D. Va.). Judgment entered March 5, 2024.
- United States Court of Appeals for the Fourth Circuit: *O.W. ex rel. Bass v. School Board of the City of Virginia Beach*, No. 23-1191 (4th Cir.). Appeal dismissed as premature (January 3, 2024).
- *O.W. v. Carr, et al*, No. 24-1288 (4th Cir.). Judgment entered April 9, 2026. Rehearing and rehearing en banc denied May 5, 2026.

There are no other proceedings directly related to this case.

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PETITION FOR WRIT OF CERTIORARI

Petitioner “O.W.” respectfully petitions for a writ of certiorari to the United States Court of Appeals for the Fourth Circuit.

OPINIONS BELOW

The opinion of the district court (App. 38a) is reported at *O.W. ex rel. Bass v. Sch. Bd. of the City of Va. Beach*, 656 F. Supp. 3d 596 (E.D. Va. 2023). The panel’s opinion is published at 172 F.4th 337 (4th Cir. 2026).

JURISDICTION

The district court had jurisdiction pursuant to 28 U.S.C. § 1331. The panel entered judgment on April 9, 2026. The petition for rehearing and rehearing en banc was denied on May 5, 2026. App. 36a–37a. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The relevant constitutional and statutory provisions are reproduced in the appendix. App. 83a–84a.

INTRODUCTION

This case presents Fourth, Fifth, and Fourteenth Amendment questions of national importance the Court has never resolved. First, whether the categorical privacy interest in cellular phones recognized in *Riley*, *Chatrle*, and *Safford’s* proportionality gloss on *T.L.O.* requires a warrant, or

at least more than reasonable suspicion, before a school official may search a student's phone. Second, whether that answer changes, as *T.L.O.* reserved, when the search is conducted not to maintain discipline but in coordination with law enforcement — and whether such a joint investigation requires *Miranda* warnings and a knowing, voluntary waiver before a student's statements may be used against him. Decisions since *T.L.O.* — *Ferguson*, *Safford*, *Riley*, *Chatrle*, and *J.D.B.* — have each reshaped the landscape without being synthesized into a governing framework.

O.W. was thirteen years old when school officials, acting under a formal written school-police partnership, questioned him without *Miranda* warnings, required him to rewrite his confession until satisfactory, and searched his cellular phone without probable cause, a warrant, or consent — all before his mother was notified. That evidence was used to charge him with possession and distribution of child pornography, arrest him, and hold him overnight in juvenile detention. The charges were eventually dismissed but not before O.W. endured the full machinery of the criminal justice system on evidence that would have required probable cause, a warrant, and knowing waiver had law enforcement obtained it directly. That is the precise condition *Ferguson* held disqualifying — and the question *T.L.O.* reserved forty years ago.

The panel upheld every aspect of this investigation in a decision at war with itself: invoking *T.L.O.*'s special-needs rationale to defeat *Riley* yet refusing to test that rationale against the program's actual purpose as *Ferguson* requires and leaving

O.W.’s *Safford* proportionality argument entirely unanswered.

The consequences are stark: embed an officer in a school, require administrators to report every offense to her, and let the administrator search and interrogate — and *Miranda*, probable cause, and the warrant requirement all evaporate. The informal disciplinary process *Goss v. Lopez*, 419 U.S. 565 (1975), designed to protect students has, left unchecked for fifty years, become a vehicle for extracting mandated criminal confessions from children — a constitutional protection turned instrument of prosecution.

The phone-search question splits the circuits: the Sixth applies *Safford*’s proportionality requirement to student phone searches and the Eleventh recognizes that *Riley* may demand more than reasonable suspicion, while the decision below permits such searches on reasonable suspicion alone and never applies *Safford*’s proportionality test. Whether a search under a formal school–police partnership escapes the relaxed standard likewise divides the lower courts — some requiring probable cause once an officer participates, others applying reasonable suspicion unless police overtly direct the search. These divides leave roughly fifty million students, see National Center for Education Statistics, *Digest of Education Statistics* (2024), with uncertain constitutional protection. The panel’s holding that a thirteen-year-old’s confession was voluntary as a matter of law, without the age-sensitive totality analysis *J.D.B.* commands, conflicts with this Court’s juvenile-interrogation precedents. And the conspiracy holding — demanding direct proof of an express agreement and a “nefarious” motive — deepens a split

with the First, Second, Sixth, and Ninth Circuits and conflicts with *Adickes v. S. H. Kress & Co.*

Though framed as separate questions, they resolve together: each substantive question is one face of what *T.L.O.* reserved — whether schools and police may jointly accomplish what neither could do alone. The procedural questions show how that question was extinguished below. In its published opinion, the panel repeatedly supplied merits defenses Respondents never raised — and then, having in effect written the governing rule itself, applied it to bind every student in the Fourth Circuit.

These questions rarely reach this Court. The panel itself recognized a dearth of federal authority on student interrogation, attributing the scarcity to cases that begin and end in state juvenile proceedings. App. 26a n.15. The same channeling keeps the Fourth Amendment questions from review. This case is free of those barriers: because Baker did not plead qualified immunity, the constitutional merits are presented directly, without the immunity overlay that so often prevents review and without the mootness problem that frustrated review in *Camreta v. Greene*, 563 U.S. 692 (2011).

There will not be a cleaner opportunity. The Court should grant the Petition.

STATEMENT OF THE CASE

A. Relevant Procedural History

O.W., by his next friend and mother, sued Baker, the School Board, and other school officials under 42 U.S.C. § 1983, alleging that cellular-phone searches, interrogation, and compelled written statements violated the Fourth, Fifth, and Fourteenth

Amendments (Count I); Carr and the City for conspiracy to deprive him of those rights, reincorporating Count I's allegations (Count II); and the City and School Board under *Monell* (Counts IX–X). App. 8a–9a, 38a–39a.

The district court granted summary judgment to all Defendants and denied O.W.'s cross-motion. App. 48a–73a. It held that Baker's search satisfied both prongs of *New Jersey v. T.L.O.*, 469 U.S. 325 (1985), App. 54a–58a; that O.W.'s statements were voluntary as a matter of law, App. 58a–63a; and that O.W. showed no conspiratorial intent, expressly declining to reach whether Carr had committed an underlying violation, App. 65a. After an initial appeal was dismissed as premature, the court entered final judgment on March 5, 2024, dismissing every claim against every defendant. App. 81a–82a; O.W. timely appealed.

O.W. argued on appeal that (1) under *Ferguson v. City of Charleston*, 532 U.S. 67 (2001), a search that is the operational output of a joint criminal investigative program falls outside *T.L.O.*'s special-needs rationale; (2) *Safford Unified School District No. 1 v. Redding*, 557 U.S. 364 (2009), and *Riley v. California*, 573 U.S. 373 (2014), together require more than reasonable suspicion to search a student's phone — *Safford* supplying the proportionality requirement, *Riley* the privacy content it demands; and (3) *Wofford v. Evans*, 390 F.3d 318 (4th Cir. 2004), on which the district court relied, applied ordinary law-enforcement standards to a brief seizure, and the standard of *Terry v. Ohio*, 392 U.S. 1 (1968), which it equated with *T.L.O.*'s does not reach digital devices.

A published panel opinion affirmed. App. 1a–33a. It held *Ferguson* inapposite as limited to suspicionless

searches, App. 15a–16a, and found — for the first time on appellate review — that Baker had not searched O.W.’s phone “in conjunction with” law enforcement. App. 16a–18a. It recast O.W.’s third argument — his *Wofford*-based challenge to the district court’s ruling — as a “*Riley*-based argument” and held it waived, App. 20a n.11, while setting aside EPIC’s amicus brief as raising issues “waived by appellant” — though EPIC addressed only O.W.’s first two arguments. The panel nonetheless reached *Riley* in the alternative, holding it does not displace *T.L.O.*, App. 21a–24a, and that the search would survive a more exacting standard.

Safford appears once, in a footnote applying *T.L.O.*; O.W.’s proportionality argument went unaddressed. App. 16a n.9. The panel held voluntariness a legal question resolvable on summary judgment, App. 28a–29a, and resolved both voluntariness and the underlying historical facts against O.W. Both courts found no shared conspiratorial objective — the panel recasting that element as demanding a “nefarious” motive. App. 30a. Rehearing and rehearing en banc were denied. App. 36a–37a.

B. The Investigation of O.W., G.C., and A.F.

On March 5, 2019, thirteen-year-old O.W. was a student at Kempsville Middle School in Virginia Beach, Virginia. Months earlier, fourteen-year-old A.F. voluntarily sent O.W. a nude image of herself. *O.W. v. Carr*, 172 F.4th 337 (4th Cir. 2026); App. 1a, 5a. On March 5, other students began asking O.W. about the photograph; he succumbed to peer pressure

and showed it to other students. App. 4a. Student G.C., a twelve-year-old male, asked to use O.W.'s phone and sent the photograph to himself without permission. App. 5a.

When a teacher reported the matter, acting Assistant Principal Reid Baker bypassed security staff, counselors, and the Code of Conduct — instead first notifying School Resource Officer Marie Carr — a sworn law enforcement officer — of “possible child pornography,” a criminal offense. App. 2a; JA914. Apart from the possible crime itself, Baker did not know which disciplinary rule O.W.'s conduct might've violated, testifying that administrators “don't have any determination until we go through due process.” JA1074.

Baker detained O.W. around 2:00 p.m., first questioning him in the printing room. O.W. denied wrongdoing until Baker admonished him: “Don't lie to me.” App. 5a. Baker warned O.W. that dishonesty would itself constitute a separate punishable violation — a warning Baker confirmed was “part of our script” reflecting official VBCPS policy. App. 5a; JA1042. Baker directed O.W. to write a statement, found it insufficiently detailed, discarded it, and directed O.W. to produce a second, more detailed account. *Id.*

Baker then took O.W. to a 72 sq. ft. counselor's office inside the guidance department, App. 5a; JA0632; JA0638, where Officer Carr was.¹ JA0881. Baker took the counselor's chair, while O.W. sat

¹ O.W. testified, “They took me . . . way in the back room where Officer Carr was waiting . . . she left out with Mr. Baker and came back in . . .” JA519; *contra* App. 6a. (finding “Carr entered after the questioning began.”).

across the desk from him. JA0881. Carr, armed, in full uniform, and displaying her badge, sat or stood nearest the only door. App. 5a, 7a; JA0881; JA0632. Carr was present for one reason — “to investigate if [a crime] was committed,” JA428, and Baker confirmed he would have barred her had no crime been involved. JA1014.

O.W. had no parent, attorney, or advocate present; his mother had not been contacted; no *Miranda* warning was given. App. 7a, 43a. Baker initiated the questioning while Carr asked clarifying questions about O.W.’s suspected criminal conduct. App. 6a; JA0824; JA519. Carr told O.W., “even if you deleted something, we can still find the image on your phone.” App. 6a. Baker told O.W. “what he was telling him just didn’t make sense” in comparison to other students’ statements. JA422. O.W. was not free to terminate the encounter by leaving. JA450. Under these conditions, O.W. confessed. App. 6a–7a Carr’s contemporaneous notes show O.W. repeatedly denied knowledge before confessing. App. 6a; JA0632–633; JA420-421.

Baker searched O.W.’s phone without a warrant or probable cause. App. 6a. Its full scope is not in the record: Baker could not remember holding or looking through the phone, while conceding no basis to dispute Carr’s statement that he had. JA475–476; *see* App. 6a. Unable to locate the photograph, Carr had Baker put the phone in airplane mode, power it down, and surrender it to her as criminal evidence. App. 6a. Baker directed O.W. to write a better statement, then left him alone and conferred with Carr outside. *Id.* Carr called the Commonwealth’s Attorney, who advised her to charge only the boys— O.W. and G.C. App. 6a–7a. O.W.’s mother was not notified until roughly 4:10 p.m., after the investigative objectives

were accomplished. App. 43a. Baker held O.W. after school not for discipline but because he was under investigation for felonies. JA437–439.

Carr returned to the room where O.W. sat alone. Without *Miranda* warnings, and while armed and in uniform, Carr handed O.W. his phone and in a commanding tone directed him to show her its contents. App. 7a; JA0675 (¶ 3). O.W., frightened and believing he could not refuse, complied; Carr located the photograph in his texts. App. 6a–7a. Only then did Carr administer *Miranda* warnings — at 6:10 p.m., hours after the investigation began and the photograph had already been obtained. App. 7a; JA0635. Carr arrested O.W. on charges of possession and distribution of child pornography and transported him to juvenile detention, where he and G.C. were held overnight. App. 7a.

Carr obtained O.W.’s written statement as criminal evidence, App. 7a; the next school day, Baker took statements from more student-witnesses, which Carr collected — outside the judicial process — for O.W.’s prosecution. JA441–443.

G.C. and A.F. were subjected to a similar investigative apparatus, including warrantless phone searches and the same scripted dishonesty warning — in A.F.’s case, administered by Carr herself, JA390 (¶ 50), though Carr was absent when Baker scripted O.W. App. 5a, n.1. The photograph and O.W.’s written confessions were introduced against him at trial. App. 7a–8a. The juvenile court found sufficient evidence to adjudicate O.W. guilty but deferred disposition; the case was later dismissed after O.W. completed imposed terms. *Id.*

B. The Joint School-Police Investigative Program.

These events were not aberrational but the product of a longstanding VBCPS–VBPD policy leveraging the school setting’s reduced constitutional burdens for law enforcement. VBCPS and the VBPD have operated under a written MOU since at least 2008. JA132–JA139. The MOU’s stated purpose is not school discipline or student welfare — it is to “further accomplish the mission of the City of Virginia Beach . . .,” MOU § I, JA132, with the SRO expressly responsible for ensuring that violations of the Code of Virginia “will result in the prosecution of the offender,” MOU § II.C, JA132 — the textbook definition of routine crime control. School authorities must immediately report all suspected criminal activity to the SRO. MOU § IV.B, JA134. The MOU establishes procedures for student searches, evidence collection, and arrests, MOU §§ VIII.B, VIII.D, JA136, and specifies that a criminal investigation in the school “will take precedence over the accompanying school policy violation and the investigation or action to be taken by school officials.” MOU § VII.B, JA135. It rarely, if ever, mentions school discipline independent of crime control.

As Sergeant Luis Cortes — Carr’s direct supervisor, overseeing at least seventy-two schools over his nineteen-year VBPD career — testified, school principals routinely provide SROs all the criminal evidence needed to arrest and prosecute students. JA499–JA501. Administrators detain, interrogate, and search students while SROs contemporaneously collect and preserve evidence for prosecution. JA390–JA391 (¶¶ 55–59). Carr

confirmed this division of labor, telling her supervisor she “didn’t have to interview [O.W.]; Mr. Baker did,” and testifying she “usually [doesn’t] have to take over the investigation” because administrators “conduct a good part of the investigation” for her. JA913. The VBPD internally characterized the arrangement as “parallel investigations” — but in practice the investigations were unified, the school official functioning as law enforcement’s investigative arm, unconstrained by Fourth and Fifth Amendment obligations governing direct police action.

Administrators and police use a scripted interrogation protocol warning students that dishonesty is an independent Code of Conduct violation. App. 6a; JA0881. Students must produce written confessions in their own hand. An SRO supervisor confirmed that these statements — taken on VBCPS letterhead headed “Incident Statement” — are characterized by SROs not as “due process” statements but as “witness statement[s] and statement[s] of facts” having “nothing to do with the child’s discipline,” used for crime control at the SRO’s discretion. JA449–JA450; JA677. Law enforcement jointly controls these statements and uses them to establish probable cause and as trial evidence. JA449–JA450. “It is the way it’s always been done.” *Id.*

In the 2018–2019 school year, every criminal act was *ipso facto* a Code of Conduct violation. JA391 (¶ 54). Yet no one assumed responsibility for *Miranda* warnings: Baker testified administrators “don’t do *Miranda* for school administrator purposes,” and Carr deferred to Baker’s investigation. JA391 (¶¶ 56–57). The result is a gap in constitutional accountability built into the program.

REASONS FOR GRANTING THE WRIT

I. THE DECISION BELOW DEEPENS DIVISION AMONG THE LOWER COURTS AND CONFLICTS WITH *SAFFORD*, *RILEY*, AND *CHATRIE*.

A warrantless search is presumptively unreasonable, *Katz v. United States*, 389 U.S. 347, 357 (1967), and the government bears the burden of demonstrating a recognized exception. A proportionality requirement runs through them all: permissible scope must match justification. *Safford*, 557 U.S. at 370.

T.L.O. recognized such an exception for the school setting, under which reasonable suspicion ordinarily suffices because, as Justice Blackmun’s concurrence framed it, “special needs, beyond the normal need for law enforcement, make the warrant and probable-cause requirement impracticable.” 469 U.S. at 351 (Blackmun, J., concurring in the judgment). That reduced standard rests on a specific rationale — school officials require flexibility to maintain order and discipline, *id.* at 339–40 — and the exception is coextensive with that justification. Three later decisions mark its bounds. *Safford* held that *T.L.O.*’s reasonableness inquiry demands proportionality between a search’s intrusiveness and the severity of the suspected infraction. 557 U.S. at 370–77. *Riley* held that cellular phones are categorically different from all other personal effects — repositories of “the privacies of life” implicating privacy interests distinct from anything prior cases addressed. *Id.* at 393, 403. And *Chatrie*, retroactively applicable here on direct

review,² confirmed that digital devices and the data they generate occupy a distinct place under the Fourth Amendment. The privacy interest recognized in *Riley* and deepened in *Chatrrie* does not dissolve at the schoolhouse gate — yet the panel treated a cellular phone as indistinguishable from any other object a student might carry.

**A. The Panel’s Waiver Holding
Cannot Be Reconciled with Its
Alternative Merits Ruling.**

The panel held that O.W. waived a tertiary point — that *Terry* does not reach digital devices — made to confront the district court’s misreading of circuit precedent. App. 20a, 38a. The district court read *Wofford* to hold that *T.L.O.*’s standard governs searches as well as seizures by law enforcement in schools. But *Wofford* held that an officer’s conduct in a school is governed by ordinary Fourth Amendment standards, equating *T.L.O.*’s threshold with *Terry*’s. That equivalence is a ceiling, not a license: a *Terry* frisk is limited to a pat-down for weapons and cannot justify a phone search. By mislabeling that *Wofford*-based challenge as a “*Riley*-based” argument and holding it waived, the panel misconstrued the point and endorsed the very error O.W. sought to correct.

Waiver of that subsidiary point disposes of nothing more. O.W. relied on *Safford* and *Riley* in his opening brief, arguing that a phone search must be based on more than reasonable suspicion. Those first two arguments were O.W.’s actual *Riley* challenges — and

² *Harper v. Virginia Dep’t of Taxation*, 509 U.S. 86, 97 (1993).

the panel answered neither on its own terms, defeating the first only through the *T.L.O.* special-needs rationale that *Ferguson* undermines, and leaving the *Safford* proportionality argument entirely unanswered. Respondents never discussed *Riley* or *Safford* at all (App. 89a–90a), and EPIC supported only O.W.’s first two arguments — not the one the panel deemed waived.

Riley is not a claim to be waived; it is controlling law binding on every court whenever a phone search is at issue. O.W. argued that Baker’s search violated the Fourth Amendment given the categorical privacy interest a phone search implicates. *Riley* functions here as *Payton v. New York*, 445 U.S. 573 (1980), functions in home-search cases: later decisions treat the phone’s heightened protection as settled doctrine to be applied, not re-derived. Cf. *Carpenter v. United States*, 585 U.S. 296 (2018) (declining to mechanically apply old doctrines to new digital contexts without renewed analysis). As it relates to a cellular phone search, *Riley* is a premise rather than a question to be asked anew.

The panel held, in the alternative, that even under a “more exacting standard” the search would survive, App. 24a n.12, the same proportionality inquiry *Safford* supplies— while never acknowledging O.W. and EPIC pressed *Safford* by name. This confirms the question presented is properly before this Court. See *Caldwell v. Mississippi*, 472 U.S. 320, 327 (1985); *Virginia Bankshares v. Sandberg*, 501 U.S. 1083 (1991).

**B. *Safford*'s Proportionality
Requirement — Never Contested,
Never Claimed to Be Waived, and
Never Answered.**

Safford supplies the framework that exposes the panel's error. The panel cited it once, in a footnote, for an unremarkable proposition, without engaging the proportionality argument O.W. actually made. A search whose scope cannot be established is a search whose proportionality cannot be verified, and the government's burden to justify a warrantless search cannot be met with silence. Even if the waiver holding were correct, *Safford* alone requires reversal.

The alternative holding in footnote 12 fares no better. Scope discovered in hindsight cannot substitute for the required justification: a search's narrowness is "more a practical benefit to the government than a limit on its intrusive powers." *Chatrue*, slip op. at 21. Where the record does not establish what Baker searched, the panel's characterization of the search as "narrowly tailored" rests on no evidentiary foundation — and even a demonstrated narrow scope would not cure the absence of the heightened justification *Riley* and *Safford*.

Though holding that *T.L.O.* squarely applies, the panel did not apply it — conducting an ad hoc balancing untethered to any recognized exception. A decision that neither applies the governing standard nor identifies a successor does not resolve the constitutional question but evades it.

C. The Question Is Important and Recurring, and *T.L.O.* Cannot Answer It.

Under *Riley*, an officer arresting an adult for a serious felony may not search his phone without a warrant. Under the panel's decision, a school official suspecting a thirteen-year-old of a rule violation may search his phone without a warrant, consent, or any engagement with the privacy interests *Riley* and *Chatrie* identified — even when the fruits are destined for criminal proceedings. The adult felon retains *Riley*'s full protection; the student, whose entire social world may sit in a single device, retains none. The anomaly comes from applying a 1985 precedent to a 2019 search without asking whether *Safford*, *Riley*, and — retroactively — *Chatrie* demanded a different analysis.

Courts are already divided. The Sixth Circuit in *G.C. v. Owensboro Public Schools*, 711 F.3d 623 (6th Cir. 2013), applied *Safford*'s proportionality test to a student phone search and found it exceeded permissible scope — directly engaging the question the panel here ignored. The Eleventh Circuit in *Jackson v. McCurry*, 762 F. App'x 919 (11th Cir. 2019), acknowledged that *Riley* “treats cell phone searches as especially intrusive” and that a student phone search “might require a more compelling justification” than reasonable suspicion, though it resolved the case on qualified immunity. Courts following the panel's approach, by contrast, permit warrantless, consentless searches on reasonable suspicion alone, without engaging *Riley* or *Safford*.

The panel's reliance on the school's electronic device policy as a basis for diminished privacy

expectations is wrong on its own terms — compulsory attendance laws cannot reduce a person’s expectation of privacy³ — and cannot survive *Chatrie* in any event. This Court has twice rejected the government’s attempt to convert a required affirmative act into voluntary relinquishment of Fourth Amendment protection — in *Carpenter*, and again in *Chatrie*,⁴ which held that an “affirmative act” cannot defeat protection because “[p]retty much everything a person does on a smartphone requires some kind of opt-in.” *Chatrie*, slip op. at 26–28. If an opt-in to an optional phone feature cannot extinguish Fourth Amendment protection, a signature *required* as a condition of compulsory school attendance — disclosing nothing about warrantless searches conducted in coordination with law enforcement — cannot do so either. The panel’s reasoning revives precisely the assumption-of-risk logic *T.L.O.* forecloses.

**D. *Chatrie* Confirms This Court’s
Digital-Privacy Trajectory and
Compounds the Error Below.**

Chatrie traces a deliberate progression from *United States v. Knotts*, 460 U.S. 276 (1983), through

³ Virginia Code § 22.1-279.3(C) confirms what common sense requires: mandated acknowledgment of school policy reflects notice of rules — not a waiver of constitutional rights or diminished expectation of privacy.

⁴ While this appeal was pending, each member of the panel below joined a concurrence in *United States v. Chatrie*, 136 F.4th 100, 1__ (4th Cir. 2025) (en banc) (Richardson, J., concurring); *id.* at 109 (Wilkinson, J., concurring).

United States v. Jones, 565 U.S. 400 (2012), and *Carpenter* — observing, “[f]or the third time, we reach the same conclusion today.” *Chatrie*, at 22. The panel’s treatment of *Riley* as confined to its 2014 facts is precisely the static reading this trajectory forecloses.

Chatrie reaffirms *Riley*’s observation that smartphones are “a pervasive and insistent part of daily life,” noting that ownership has risen from 56% of Americans in 2013 to more than 91% today. *Id.* at 2. *T.L.O.* was not written for a world where nine in ten students carry a device holding their entire personal, social, and academic lives.

Chatrie also forecloses any suggestion that *Riley* is confined to law enforcement acting alone. What drove each result was the nature of the information at stake, not the actor accessing it. A school official coordinating with a sworn officer to extract phone data is no more entitled to escape that analysis than a private company turning over location data. And *Chatrie*’s warning that unfettered government access to digital data “arms it with ‘a virtual panopticon with which to scrutinize its citizens’ activities,” *id.* at ____ (Jackson, J., concurring) (quoting majority at 21)), speaks directly to the VBCPS/VBPD program — applied across at least seventy-two schools over nineteen years and structured so the school official conducts what the SRO could not lawfully conduct alone. The constitutional harm is the predictable output of a program designed to produce such searches routinely.

II. THE DECISION BELOW CONFLICTS WITH *FERGUSON* AND ANSWERS AGAINST STUDENTS THE QUESTION *T.L.O.* EXPRESSLY RESERVED FOR THIS COURT.

The special-needs doctrine takes its name from Justice Blackmun’s *T.L.O.* concurrence, 469 U.S. at 351, and operates in two steps. A court asks first whether a special need “beyond the normal need for law enforcement” makes the warrant and probable-cause requirements impracticable; only then does it balance private against governmental interests to fix what quantum of individualized suspicion, if any, is required. This Court reserved the threshold question in *T.L.O.*, declining to decide “the appropriate standard for assessing the legality of searches conducted by school officials in conjunction with or at the behest of law enforcement agencies” — an acknowledgment that the rationale has no force where a search is designed to generate evidence. *Id.* at 341 n.7.

The Court’s later special-needs cases each tied the relaxed standard to a governmental interest genuinely distinct from ordinary crime control — workplace efficiency, *O’Connor v. Ortega*, 480 U.S. 709 (1987); supervision of probationers, *Griffin v. Wisconsin*, 483 U.S. 868 (1987); *Nat’l Treasury Emps. Union v. Von Raab*, 489 U.S. 656 (1989); *Skinner v. Ry. Labor Execs.’ Ass’n*, 489 U.S. 602 (1989)⁵; and

⁵ In *Skinner*, this Court reserved “the question whether routine use in criminal prosecutions of evidence obtained pursuant to the administrative scheme would give rise to an inference of pretext, or otherwise impugn the

detering student drug use, *Vernonia Sch. Dist. 47J v. Acton*, 515 U.S. 646 (1995), and *Bd. of Educ. v. Earls*, 536 U.S. 822 (2002). In each, the special need was administrative or custodial, not investigative. The limit follows: where the government’s immediate purpose is to generate evidence for law enforcement, the exception does not apply. *Ferguson*, 532 U.S. at 82–84; *City of Indianapolis v. Edmond*, 531 U.S. 32 (2000). *T.L.O.*’s footnote 7 is that same limit applied to the school setting.

**A. Search Conducted Under a
Formal School-Police
Partnership is Subject to Full
Fourth Amendment Scrutiny.**

The panel’s treatment of *T.L.O.*’s reservation reveals a contradiction. To defeat *Riley*, the panel invoked *T.L.O.*’s special-needs rationale — holding that the school’s interest in order and discipline remains intact and *Riley*’s categorical analysis adds nothing. But when *Ferguson*’s primary-purpose rule required asking whether that rationale applied to a joint criminal investigation, the panel declined to ask. A rationale strong enough to displace *Riley* must be strong enough to withstand *Ferguson*’s inquiry into whether the search served school discipline or criminal prosecution. By invoking the rationale selectively, the panel employed the special-needs doctrine to authorize precisely the search *T.L.O.*

administrative nature of the . . . program.” 489 U.S. at 621 n.5. This Court invoked that reserved question in *Ferguson*. 532 U.S. at 78.

reserved — answering the question against students without ever engaging it.

Ferguson forecloses every escape route. There, a public hospital, in partnership with police, drug tested expectant mothers suspected of drug use and turned the results over for prosecution. This Court held that the special-needs doctrine cannot justify a search whose primary purpose is to generate evidence for law enforcement, even when non-law-enforcement actors physically conduct it. 532 U.S. at 83–84. The inquiry is not who holds the instrument of the search but why it is conducted — an objective, legal question resolved from the design and structure of the program, not the subjective intentions of any individual actor. *Id.* at 81–84.

The panel avoided *Ferguson* through two errors. It held *Ferguson* limited to suspicionless search programs⁶ — a limitation nowhere in the opinion. And it converted *Ferguson*’s legal, program-level inquiry into a factual, search-level one: asking not whether the VBCPS/VBPD program was designed to generate criminal evidence, but whether Officer Carr was sufficiently proximate to the phone when Baker searched it. App. 16a–17a. That substitution rejects

⁶ The suspicionless-search characterization misapprehends *Ferguson*. Respondents there argued belatedly that the searches were not wholly suspicionless, but could not show any of the nine criteria more likely caused by cocaine than by malnutrition, illness, or indigency. 532 U.S. at 77 n.10. The Court resolved the case on the broadest ground: neither warrantless nor suspicionless searches survive the special-needs doctrine where law enforcement is extensively entangled in the program’s design and operation. *Id.* at 83–84.

Ferguson's framework rather than applying it. And even on the panel's own "in conjunction with" framing — adopted for the first time on appellate review — the facts qualify: Carr was involved before the search began and participated at every stage, from inception to arrest. Treating contemporaneous police involvement the same as after-the-fact receipt of evidence would render *T.L.O.*'s reservation a dead letter.

Nor is the program saved by characterizing its aim as encouraging compliance with school rules. Special-needs cases waive the warrant and probable-cause requirements only on the assumption that the evidence will not be used for law enforcement. 532 U.S. at 88 (Kennedy, J., concurring in the judgment). That assumption fails here as it failed in *Ferguson*: the program was designed from the outset to obtain criminal evidence from students.

B. Courts are Divided and the Issue is Pressing.

Two conflicts warrant review. First, courts divide over the standard itself. Most apply reasonable suspicion unless police "direct, control, or otherwise initiate or influence" the search. *Commonwealth v. Ira I.*, 439 Mass. 805 (2003); *Cason v. Cook*, 810 F.2d 188, 192 (8th Cir. 1987); *In re J.F.M.*, 607 S.E.2d 304, 307 (N.C. Ct. App. 2005); *A.J.M. v. State*, 617 So. 2d 1137 (Fla. 1st DCA 1993). Others hold that direction is not the test. *State v. Heirtzler*, 147 N.H. 344, 789 A.2d 634 (2001), required probable cause where the officer gave no direction, resting on his silent understanding with staff to gather evidence he could not obtain himself. *State v. Meneese*, 174 Wn.2d 937, 282 P.3d 83, 88

(2012), required probable cause where, given “overwhelming indicia of police action,” the search occurred after the officer had arrested and handcuffed the student and “the focus of the investigation was no longer on informal school discipline.” On O.W.’s facts these lines yield opposite results.

The framework also rests on a foundation this Court has removed. Both lines descend from *People v. Dilworth*, 661 N.E.2d 310 (Ill. 1996), decided five years before *Ferguson*. *Dilworth* grounded its holding in the special-needs clearance this Court granted to the suspicionless drug-testing program in *Vernonia*. But *Dilworth* itself overlooked that *Vernonia*’s clearance depended on the results being “not turned over to law enforcement authorities or used for any internal disciplinary function,” and the program’s purpose being divorced from law enforcement. 515 U.S. at 658; *see Earls*, 536 U.S. at 833. Separation from law enforcement was the premise of *Vernonia*’s holding, not an incident of it.

Ferguson corrected *Dilworth*’s error five years later, and yet courts applying *Dilworth*, implicitly or explicitly — including the panel below — have failed to confront it. Though it never said so, the panel applied a variation of *Dilworth*’s inquiry, asking only whether Carr “solicited or directed” Baker’s search— a rule narrower than the permissive line which generally allows a court to consider an officer’s “influence.” App. 17a. *Ferguson* closes every road back to *Dilworth*. If the program there could not be saved — where law enforcement did not itself perform the tests — one that seats an armed officer in the room and mandates evidence-sharing cannot be either. Courts have escaped *Ferguson* only by confining it to suspicionless programs: a curious limitation

considering the framework traces through *Dilworth* to *Vernonia*, itself a suspicionless program.

The *Dilworth* standard cannot serve as a national rule: its questions are malleable, without a limiting principle, and may yield opposite results on identical facts.

Review is urgently needed. As school-police partnerships and digital searches proliferate, students face not discipline but criminal records — a result *T.L.O.* never contemplated. Only this Court can restore coherence to a body of federal law governing fifty million children.

**C. The Decision Below Affords
Schoolchildren Less Protection
Than Convicts or Public
Employees.**

Courts applying *Dilworth* have preserved its test while forgetting its foundation. *Dilworth* at least tied its analysis to the special-needs doctrine and *Vernonia*'s clearance. Those following it kept the framework but treated it as a freestanding rule about police involvement, never revisiting it as this Court's special-needs doctrine developed. Untethered from its premises, the test now produces anomalies.

In *Griffin*, *United States v. Knights*, 534 U.S. 112 (2001), and *Samson v. California*, 547 U.S. 843 (2006), diminished privacy expectations flowed from a single source: the subject's status as a convicted offender who, as a condition of release, accepted reduced constitutional protections. O.W. was a thirteen-year-old fulfilling a state-imposed obligation to attend school. He had not been convicted of anything, accepted no search condition, and waived no rights.

T.L.O. itself foreclosed the panel's path — cautioning against importing the reduced standards for prisoners and probationers into an environment where children are compelled by law to be present. 469 U.S. at 338–39. The decision below does precisely that — placing public school students in a constitutional category *beneath* convicted offenders.

Treating *T.L.O.* as a freestanding rule produces another anomaly: schoolchildren lose the constitutional floor the special-needs framework provides, their supervising employees remain governed by *O'Connor*. The state's duty to children in its custody far exceeds any duty to shield adult employees from one another.

That is not constitutional balancing; it is a failure of it.

III. THE PANEL'S VOLUNTARINESS RULING CONFLICTS WITH THIS COURT'S PRECEDENTS PROTECTING JUVENILES.

The Fifth Amendment, applied to the States through the Fourteenth, protects against compelled self-incrimination. In a § 1983 damages action, the question is whether, under the totality of the circumstances, state action overbore the plaintiff's will and critically impaired his capacity for self-determination. *Schneckloth v. Bustamonte*, 412 U.S. 218 (1973). Psychological coercion suffices — implicit threats, exploitation of vulnerability, or circumstances deliberately built to overbear resistance; physical compulsion is not required. *Arizona v. Fulminante*, 499 U.S. 279 (1991); *Lynumn v. Illinois*, 372 U.S. 528 (1963). The Fourteenth

Amendment’s due process standard converges on the same inquiry, assessed from the perspective of the person interrogated. *Moran v. Burbine*, 475 U.S. 412 (1986); see also *Vega v. Tekoh*, 597 U.S. 134 (2022).

J.D.B. v. North Carolina adds a mandatory dimension when the subject is a child: juvenile status is an unavoidable input into the constitutional calculus, requiring courts to account for juveniles’ heightened susceptibility to authority, inexperience with legal processes, and diminished capacity to understand the consequences of speaking or remaining silent. 564 U.S. 261 (2011). *Gallegos v. Colorado* held that a fourteen-year-old’s statements, obtained without parents, counsel, or a friendly adult, are constitutionally suspect — not because the interrogation was physically brutal, but because the child “cannot be compared with an adult in full possession of his senses and knowledgeable of the consequences of his admissions.” 370 U.S. 49, 54 (1962). *J.D.B.* constitutionalized that principle.

A. The Panel’s Holding Conflicts with *J.D.B.* and *Connelly*.

Rather than evaluating compulsion through the lens *J.D.B.* requires, the panel minimized each coercive factor, disaggregating the interrogation into individually characterized moments — precisely what the totality-of-circumstances standard forbids.

Under *Colorado v. Connelly*, 479 U.S. 157 (1986), the inquiry is whether state action produced coercion, not whether extreme or physical pressure was applied. Viewed favorably to O.W., the record reflects a continuous, escalating interrogation: a thirteen-year-old isolated in a 72-square-foot room; told that

dishonesty would be a separate punishable violation, *see Moore v. Ballone*, 658 F.2d 218 (4th Cir. 1981); required to rewrite his statement until it satisfied his interrogator; questioned by an armed officer who claimed evidence could be recovered regardless of his answers; and left alone with that officer, without a parent, counsel, or *Miranda* warnings — unaware he could refuse or that his words would be used against him. The panel treated each circumstance as individually insufficient. Under *J.D.B.*, that is backwards: for a child, the combined authority of school officials and police, where compliance is a condition of daily existence, is uniquely coercive. 564 U.S. at 272. Whether that pressure overbore O.W.’s will was not the panel’s question but the jury’s. *See infra* Part IV.B.

The panel aggravated the error by calling the setting “familiar” and therefore less coercive, App. 27a — inverting *J.D.B.*’s core teaching that school is precisely where children are compelled to be, conditioned to comply, and penalized for refusal. A counselor’s office reassures only because a counselor is in it; here, there was none. JA518–519. Their offices were repurposed as interrogation rooms for the students slated to be charged — O.W. in one, G.C. in another — with Baker in the counselor’s chair beside an armed, uniformed officer.

The panel also treated the scripted dishonesty warning as merely a “truthful statement” of O.W.’s predicament notwithstanding *Moore*’s holding that precisely this threat compels a statement. And it assessed Officer Carr’s evidence-recovery statement without asking how a thirteen-year-old alone with an armed officer blocking the only exit would have understood it. Each characterization resolved a

disputed, material, fact-bound question against the non-moving party; none was the panel's to resolve.

J.D.B. recognizes that custodial pressure “can induce a frighteningly high percentage of people to confess to crimes they never committed” — and that children are more susceptible, not less. 564 U.S. at 269, 272. The panel's response was that “even a boy as young as 13 can choose between truth and falsehood . . .” App. 28a. That sentence is the clearest possible statement of the error *J.D.B.* forbids: reducing a mandatory age-sensitive constitutional analysis to the observation that children can distinguish truth from lies.⁷ *J.D.B.* does not ask whether a child can tell the truth; it asks whether, from the perspective of a reasonable person of the child's age, the pressure made a rational decision to remain silent impossible. That question was never asked, and will recur unasked wherever school-police interrogation is coordinated.

IV. THE DECISION BELOW WITHDREW GENUINELY DISPUTED FACTUAL QUESTIONS FROM THE JURY.

The Seventh Amendment preserves the jury-trial right in suits at common law and forbids courts from taking genuinely disputed facts from the jury. The panel recited the Rule 56 standard, then violated it — resolving disputed historical facts, drawing dispositive inferences for the movants, and

⁷ This assesses credibility, not coercion. Reliability “has nothing to do with” voluntariness, and coercion “must be determined without regard to the truth or falsity of the confession.” 378 U.S. at 376–77, 385–86.

recharacterizing contested factual questions as legal ones. The error is structural and recurring: courts across the circuits invoke *Miller v. Fenton*’s classification of voluntariness as a “legal question” to resolve coercion facts at summary judgment, 474 U.S. 104 (1985), bypassing the jury exactly where its function matters most.

**A. Voluntariness Is a Jury Question;
Miller and *Fulminante* Govern
 Only Review of a Completed
 Record.**

**i. Respondents Waived
 Any Defense that *Miller*
 and *Fulminante* Alter
 the Analysis.**

O.W. argued from the outset that voluntariness is a question of fact — the position *Schneckloth* itself articulates, 412 U.S. at 227, and the common law sustained for two centuries. Across 35 pages of appellate briefing, Respondents never argued that *Miller* or *Fulminante* reclassifies voluntariness as a legal question, or alters the analysis, resolvable at summary judgment, and never engaged the fact/law character of the inquiry at all. App. 89a–93a.

The panel thus supplied Respondents’ defense as it supplied their other arguments below — a departure addressed in Part VI. The principle that licensed supplying *Miller* and *Fulminante* for Respondents equally obligated applying *Riley* for O.W.

ii. Voluntariness is a Jury Question.

Citing *Fulminante*, 499 U.S. at 287, the panel argued that while “voluntariness is a fact-specific inquiry, it is not, at bottom, a factual question,” and that courts may “rule on the voluntariness issue as a matter of law when, as here, the undisputed facts allow for only one conclusion.” It then decided both subsidiary historical facts and voluntariness at summary judgment.

Jackson v. Denno, 378 U.S. 368 (1964), *Schneekloth*, *Miller*, and *Fulminante* address different stages of adjudication; read together, they preserve the factual nature of voluntariness at trial and reserve independent federal review for the ultimate constitutional characterization on a complete record. *Schneekloth*’s characterization of voluntariness as a question of fact is confession law: the Court adopted its “totality of all the surrounding circumstances” test directly from *Culombe v. Connecticut*, 367 U.S. 568 (1961) — “the only clearly established test in Anglo-American courts for two hundred years” — importing confession doctrine into the consent context, not the reverse. 412 U.S. at 223–26. There is no doctrinal daylight for the panel to exploit; there is one test.

Miller and *Fulminante* do not disturb that conclusion. *Miller* held that a federal habeas court owes no deference to a state court’s voluntariness determination *after* a full suppression hearing and conviction. 474 U.S. at 112. *Fulminante* extended that principle to direct appellate review. 499 U.S. at 287. Both presupposed a completed factual record and expressly preserved the jury’s role: “subsidiary questions, such as the length and circumstances of the

interrogation” remain matters of historical fact entitled to the factfinder’s traditional deference. *Miller*, 474 U.S. at 112. Neither authorized trial courts to establish those facts themselves. And although *Miller* characterized ultimate voluntariness as a mixed question for habeas purposes, it never displaced *Denno*’s historical analysis, which found no common-law rule giving judges exclusive authority over the ultimate question — American practice included the Massachusetts Rule, under which the jury independently determined voluntariness even after the judge admitted the confession.⁸

Miller, moreover, addressed the standard of review for an already-completed voluntariness determination. It borrowed the independent-review rule from *Bose Corp. v. Consumers Union*, 466 U.S. 485 (1984), which assigns judges a responsibility performed *after* “the factfinding function [is] performed in the particular case by a jury or by a trial judge.” *Id.* at 501. *Miller* says as much: “an issue does not lose its factual character merely because its resolution is dispositive of the ultimate constitutional question.” 474 U.S. at 113. The panel used a rule about appellate deference to eliminate the antecedent

⁸ Analogous common-law actions — trespass vi et armis for false imprisonment, and debt or covenant where duress was pleaded to avoid liability on a bond — were tried to a jury in 1791 and the early Republic. See 3 W. Blackstone, Commentaries *127–*138. Whether a plaintiff’s will was overbore was a jury question. The panel erased the “common law distinction between the province of the court and that of the jury.” *Baltimore & Carolina Line, Inc. v. Redman*, 295 U.S. 654, 657 (1935).

factfinding role the rule itself presupposes — the precise error *Bose* warned against.

Certiorari should issue to confirm that *Miller* and *Fulminante* govern appellate characterization of a completed record and do not license courts to resolve disputed coercion facts at summary judgment. *Beacon Theatres, Inc. v. Westover*, 359 U.S. 500 (1959) (legal issues may not be resolved by a court in a manner that forecloses the jury’s right to find the underlying facts on which those issues depend).

**B. The Panel Resolved Disputed
Facts, Weighed the Evidence, and
Drew Every Inference Against
O.W.**

The presence of any evidence of coercion precludes summary judgment because the totality test requires weighing coercive against non-coercive circumstances — the jury’s function. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986); *Miller*, 474 U.S. at 112 (noting coercion facts often require reconciling conflicting testimonies). The Rule 56 question must be answered before *Miller* or *Fulminante* have any application, and the answer here is not close: the circumstances catalogued above are documented by the defendants’ own testimony and compounded by the panel’s concession that the duration of the un-Mirandized interrogation was “unclear” (App. 27a n.16). That is not an undisputed record devoid of coercion.

Miranda warnings exist to inform a suspect of rights he would not otherwise know he has. Their absence is not a technicality — it is evidence of the informational asymmetry that made the interrogation

coercive. *Ferguson* confirms this asymmetry is structural: joint law enforcement programs operating through non-law-enforcement actors deprive subjects of the procedural safeguards — including knowing and voluntary waiver requirements — that would apply if law enforcement acted directly. 532 U.S. at 83–84. A knowing waiver requires awareness of both the nature of the right and the consequences of abandoning it. *Miranda v. Arizona*, 384 U.S. 436, 444 (1966); *Burbine*, 475 U.S. at 421. O.W. waived nothing knowingly because he was told nothing.

The same error infected the phone search. The panel concluded the “only reasonable inference” was that Baker merely navigated to O.W.’s photo gallery — while acknowledging the record lacked admissible evidence establishing the search’s actual scope. Transforming an acknowledged evidentiary gap into an affirmative finding sufficient to defeat O.W.’s Fourth Amendment claim inverts the summary judgment standard and independently mandates reversal.

V. THE PANEL’S CONSPIRACY RULING CONFLICTS WITH THIS COURT’S § 1983 PRECEDENTS.

A § 1983 conspiracy claim requires a meeting of the minds to accomplish an unlawful deprivation of constitutional rights under color of state law. *Adickes v. S. H. Kress & Co.*, 398 U.S. 144 (1970); *Dennis v. Sparks*, 449 U.S. 24 (1980); *Tower v. Glover*, 467 U.S. 914 (1984). Its elements — joint action, an overt act in furtherance, and a resulting deprivation — require only knowing participation in concerted action toward an unlawful end.

A § 1983 conspiracy count is not merely a theory of attribution but an independent cause of action holding each co-conspirator liable for deprivations committed in furtherance of the conspiracy, including those he did not personally commit. *Hafner v. Brown*, 983 F.2d 570 (4th Cir. 1992). Nothing in § 1983's text or this Court's interpretations requires a plaintiff to plead a defendant's violations in a standalone count rather than through conspiracy. *Tower*, 467 U.S. at 920. O.W.'s conspiracy count was simultaneously the vehicle for *Monell* liability for Carr's conduct, the mechanism placing Carr's commanded phone examination before the court, and the structure connecting the joint program to O.W.'s specific deprivations.

The panel's dismissal of the count therefore did double harm. First, it eliminated the claim without analyzing whether Carr's conduct independently violated O.W.'s rights; the panel held not that her conduct was lawful, but that the conspiracy was unproven. Second, conflating those conclusions allowed the panel to dispose of the most serious violations in the record without examining them, converting a legitimate pleading choice into a procedural bar. Nor does Carr's qualified immunity defense alter the analysis: immunity may bear on her personal liability for individual acts, but it does not protect the act of conspiring. If the conspiracy count fails, Carr's constitutional violations do not disappear — they simply go unaddressed.

Having correctly quoted the governing standard — whether defendants “positively or tacitly came to a mutual understanding to try to accomplish a common and unlawful plan” — the panel immediately recast the inquiry, asking instead whether the coordination

constituted a “nefarious ‘agreement to deprive [O.W.] of his constitutional rights.’” App. 30a–31a. By making the absence of nefariousness dispositive, the panel imported a freestanding subjective-intent element this Court has never recognized and § 1983’s text does not support — and converted a circumstantial-inference standard into a direct-evidence requirement. An agreement to accomplish what *Ferguson* forbids is unlawful regardless of how the participants characterized their motives, and a standard requiring plaintiffs to prove their deprivors knew themselves to be villains will defeat every § 1983 conspiracy claim brought against officials operating under facially lawful institutional arrangements.

Section 1983 “contains no state-of-mind requirement independent of that necessary to state a violation of the underlying constitutional right.” *Daniels v. Williams*, 474 U.S. 327, 330 (1986); *accord Bd. of Cnty. Comm’rs v. Brown*, 520 U.S. 397 (1997). The mental state comes from the right, not the statute. Neither right here supplies one: Fourth Amendment reasonableness is objective, *Whren v. United States*, 517 U.S. 806, 813 (1996), and the Self-Incrimination Clause turns on compulsion and use in a criminal proceeding, not personal malice, *Chavez v. Martinez*, 538 U.S. 760, 766–73 (2003) (Thomas, J., plurality op.).⁹ A conspiracy to commit violations that require no improper motive cannot itself demand one. The word “tacitly” in the governing standard is itself

⁹ *County of Sacramento v. Lewis*, 523 U.S. 833, 849 (1998) (noting the “conscience shocking” test has intent to injure component); see also *Chavez*, 538 U.S. at 775 (drawing this distinction).

dispositive — a tacit agreement is never explicitly stated, and a standard demanding direct proof of agreement renders the word surplusage. The nefariousness requirement grants de facto immunity to precisely the conspiracies § 1983 was designed to reach.

Even if unlawful subjective intent were required, conspiracy may be proven through circumstantial evidence and reasonable inferences from the participants' conduct. *Adickes*, 398 U.S. at 157–59. The First, Second, Sixth, and Ninth Circuits recognize that coordinated conduct, patterns of communication,¹⁰ and suspicious timing may establish the agreement element, and the panel's own standard reflects this: *Hinkle v. City of Clarksburg*, 81 F.3d 416, 421 (4th Cir. 1996), requires only “specific circumstantial evidence” permitting the inference of a mutual understanding.

At oral argument, Respondents admitted the structural mechanics of the arrangement — acknowledging that school officials could conduct the very style of interrogation that officers, bound by *Miranda*, could not conduct themselves. That admission is the conspiracy claim stated in a single sentence: school officials and police exploited the gap

¹⁰ *Earle v. Benoit*, 850 F.2d 836(1st Cir. 1988) (express agreement unnecessary; circumstantial record sufficient); *Pangburn v. Culbertson*, 200 F.3d 65(2d Cir. 1999) (conspiracies are secretive by nature and may be proven circumstantially); *Spadafore v. Gardner*, 330 F.3d 849 (6th Cir. 2003) (direct evidence rare; circumstantial proof adequate); *Mendocino Envtl. Ctr. v. Mendocino Cnty.*, 192 F.3d 1283 (9th Cir. 1999) (agreement inferred from circumstantial evidence or joint action).

between their legal authorities, accomplishing through coordination what neither could alone. *Cf. Heirtzler*, 789 A.2d at 637 (school officials gathered “evidence otherwise inaccessible to [the officer] due to constitutional restraints”). The panel’s dismissal of this evidence as mere parallel conduct is unsupported. The question is not whether each participant could point to a separate institutional justification, but whether the record as a whole would permit a reasonable jury to infer a mutual understanding to accomplish a common unlawful plan. On this record, it plainly would.

This conflict is squarely presented and outcome-determinative. The panel’s direct-proof and nefarious-motive standard cannot be reconciled with this Court’s decision in *Adickes*, and it deepens the existing split. The Court should grant certiorari to resolve that conflict.

VI. THE COURT OF APPEALS DEPARTED FROM THE PRINCIPLE OF PARTY PRESENTATION BY SUPPLYING AND DECIDING ARGUMENTS NO PARTY RAISED.

The panel did not decide the case the parties presented; it reconstructed the case and then decided the one it built. It did so at least four times, each time to O.W.’s disadvantage.

First, it invoked waiver *sua sponte*. No respondent argued that O.W. waived his tertiary *Wofford*-theory; the panel raised waiver on its own and applied it. App. 20a, n.11. Waiver is an argument for a party to press, not a ground for a court to supply. *United States v. Sineneng-Smith*, 590 U.S. 371 (2020).

Second, Respondents—well-resourced government parties represented by seven attorneys— didn’t cite *Riley* or *Safford* at all. The panel nonetheless constructed a *Riley* merits response to cure that default. App. 21a–24a. It did so while setting aside the amicus brief supporting O.W. on his actual *Riley*-based arguments — declining adversarial testing, then supplying its own analysis in its place. App. 20a n.11.

Third, and as discussed *supra* Part IV(A)(i), the panel raised *Miller* and *Fulminante* for Respondents, who had never cited either—affording O.W. no opportunity to respond.¹¹

Fourth, the panel devised the “in conjunction with” standard governing when a school search implicates law enforcement. App. 16a–17a. No party proposed that standard. The panel formulated it, then applied it as the rule of decision. App. 17a.

These are not isolated lapses. In each instance the panel supplied what one side needed and disregarded what favored the other. A court that repeatedly assumes the advocate’s role forfeits the neutrality the adversarial system depends on. This Court has insisted that courts remain “essentially passive instruments,” deciding “only questions presented by the parties.” *Sineneng-Smith*, 590 U.S. at 375–76 (citation omitted). The panel here did the opposite at every turn.

¹¹ *E.g.*, *Nelson v. Adams USA, Inc.*, 529 U.S. 460 (2000) (due process requires an opportunity to dispositive, court-initiated ground); *Pitchford v. Cain*, 608 U.S. ___, ___ (2026) (slip op., at 8–9).

CONCLUSION

The Court should grant the petition for certiorari, summarily reverse and/or vacate the judgment below and remand for consistent proceedings.

Respectfully Submitted,

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