No. 23-13253

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ERIC ANDRÉ and CLAYTON ENGLISH,

Plaintiffs-Appellants,

v.

CLAYTON COUNTY, GEORGIA; KEVIN ROBERTS, in his official capacity as Chief of the Clayton County Police Department; AIMEE BRANHAM, individually and in her official capacity as a police officer of the Clayton County Police Department; MICHAEL HOOKS, individually and in his official capacity as an investigator of the Clayton County District Attorney; TONY GRIFFIN, individually and in his official capacity as a police officer of the Clayton County Police Department; KAYIN CAMPBELL, individually and in his official capacity as a police officer of the Clayton County Police Department; and CAMERON SMITH, individually and in his official capacity as a police sergeant of the Clayton County Police Department,

Defendants-Appellees.

On Appeal From The United States District Court
For The Northern District of Georgia

BRIEF OF *AMICI CURIAE* JEAN ELIE, TYLER PERRY, JAMIE FOXX, TARAJI HENSON, STERLING K. BROWN, REGE-JEAN PAGE, YAHYA ABDUL MATEEN, MICHAEL EALY, ANTOINE FUQUA, KEMP POWERS, AND JODIE TURNER-SMITH IN SUPPORT OF APPELLANTS

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* Motion for admission *pro hac vice* pending.

No. 23-13253

Eric André v. Clayton County, Georgia

CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

Pursuant to Rules 26.1 and 29 of the Federal Rules of Appellate Procedure and Eleventh Circuit Rules 26.1-1, 26.1-2, 26.1-3, and 28-1, *amici curiae* certify that the following persons, associations of persons, or corporations may have an interest in the outcome of this case:

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52. Smith, Cameron (Defendant-Appellee)

53. Turner-Smith, Jodie (*Amicus Curiae*)

Amici Curiae certify that no publicly traded company or corporation has an interest in the outcome of the case or appeal.

DATE: January 19, 2024

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Howard S. Hogan

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TABLE OF CONTENTS

CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT C-1

TABLE OF AUTHORITIES ii

STATEMENT OF ISSUES 1

INTEREST OF *AMICI CURIAE* 2

PRELIMINARY STATEMENT 4

ARGUMENT 7

I. CCPD's Racial Profiling Inflicts Profound Dignitary Harm on Its Victims 7

A. Dignity Demands Unconditional Respect for the Intrinsic Worth of All Individuals 8

B. CCPD's Program Dehumanizes Black Passengers By Treating Them as Stereotypes, Not as Individuals 9

C. CCPD's Racial Profiling Denies Black People Their Intrinsic Social Worth 14

II. CCPD's Program Interferes With *Amici*'s Constitutional Right to Travel 18

A. The Right to Travel is a Fundamental Right 18

B. CCPD's Program is Part of a Long History of Interference with Black Individuals' Right to Travel 21

C. Our Nation Has A Compelling Interest In Preventing Racial Discrimination in Interstate Travel 23

CERTIFICATE OF COMPLIANCE 29

CERTIFICATE OF SERVICE 30

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STATEMENT OF ISSUES

I. Whether the district court erred in dismissing plaintiffs-appellants' Fourth Amendment claims against individual police officers for unlawful search and seizure.

II. Whether the district court erred in dismissing plaintiffs-appellants' Equal Protection claims against individual police officers for discrimination based on race.

III. Whether the district court erred in dismissing plaintiffs-appellants' claims against Clayton County for its policy or custom of violating travelers' constitutional rights.

INTEREST OF *AMICI CURIAE*

Amicus curiae Jean Elie is a prominent Black actor and producer. In April 2019, Mr. Elie was traveling through the Hartsfield-Jackson International Airport (the "Atlanta airport") on his way from Atlanta, Georgia to Los Angeles, California. First Am. Compl., Dkt. 24, at 32–33.[1] While on the jet bridge waiting to board his flight, Mr. Elie was approached by defendants-appellees Michael Hooks and Tony Griffin—two officers with the Clayton County Police Department ("CCPD"). *Id.* at 33. The officers stepped in front of Mr. Elie, blocked his path, and told him they needed to look through his bags. *Id.* After Mr. Elie asked the officers why they stopped him, they responded that the stop was "random." *Id.* It never occurred to Mr. Elie that he might have the right to reject the officers' instruction to hand over his bags. *Id.* at 34. And the officers never informed Mr. Elie that his consent was optional. *Id.* In fact, Mr. Elie believed that if he did not hand over his bag, he would be detained and prohibited from boarding his flight home. *Id.*

Mr. Elie waited while officers searched through his bags and asked him questions about whether he'd been arrested before, when he bought his ticket, why he was in Atlanta, how often he came to Atlanta, and more. *Id.* Fellow travelers

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[1] In citing to the record, this brief will include an abbreviation of the document being referenced, the document number on the district court's docket, and the applicable page number. *See* 11th Cir. R. 28-5.

squeezed by Mr. Elie and the officers, listening to the officers interrogate Mr. Elie and gawking as the officers removed his belongings from his bags. *Id.* While the search was ongoing, Mr. Elie began filming the interaction. *Id.*[2] He repeatedly told the officers that he didn't want to answer questions, and that he just wanted to board his flight. *Id.* at 34–35. The officers did not terminate the encounter, however, and continued to interrogate him and search his bags. *Id.* at 35. Finally, they returned Mr. Elie's bags and allowed him to board his flight. *Id.* For hours, Mr. Elie sat alongside all of the passengers who had just watched him be singled out police, interrogated, and searched. *Id.*

Mr. Elie was humiliated by this experience—so much so that he continues to experience anxiety when he flies. *Id.* Mr. Elie even attempted to file a complaint with CCPD supervisor Michael O'Shields, informing Mr. O'Shields of the officers' behavior as well as Mr. Elie's belief that he was targeted because of his race. *Id.* Mr. O'Shields declined to process the complaint, however, and informed Mr. Elie that all complaints against CCPD officers must be made in person in Atlanta. *Id.* at 35–36.

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[2] The recording Mr. Elie filmed is available on YouTube. Policing Project, *Jean Elie Being Searched at ATL Airport*, YouTube (Dec. 22, 2022), https://www.youtube.com/watch?v=SjfKAoJppws.

On this brief, Mr. Elie is joined by several prominent Black professionals in the entertainment industry—Tyler Perry, Jamie Foxx, Taraji Henson, Sterling K. Brown, Rege-Jean Page, Yahya Abdul Mateen, Michael Ealy, Antoine Fuqua, Kemp Powers, and Jodie Turner-Smith—as *amici curiae*. Like Mr. Elie, *amici* regularly travel through the Atlanta airport in connection with their work in entertainment. *Amici* have a significant interest in protecting their right to travel without being subjected to the humiliation and intimidation of racial discrimination.

For these reasons, *amici* respectfully write in support of plaintiffs-appellants.

No party authored the brief in whole or in part, and no party, party's counsel, or other person—other than *amici curiae*'s counsel—contributed money that was intended to fund preparing or submitting this brief.

PRELIMINARY STATEMENT

There's nothing new about racial profiling in American policing—it's a practice that dates back to the institution of slavery, as well as the surveillance and control of newly freed Black people living in the South during Reconstruction. William M. Carter, Jr., *A Thirteenth Amendment Framework for Combating Racial Profiling*, 39 Harv. C.R.-C.L. L. Rev. 17, 56–57 (2004). Today, racial profiling receives bipartisan condemnation. *See* Emily Ekins, *Policing in America: Understanding Public Attitudes Toward the Police. Results from a National Survey*, Cato Inst. (Dec. 7, 2016) https://www.cato.org/policing-in-america/chapter-4/racial-

profiling (noting that 63% of Americans oppose racial profiling); *see also* Emily Badger, *The Long, Halting, Still-Unfinished Fight to End Racial Profiling in America*, Wash. Post (Dec. 5, 2014, 8:29 PM), https://www.washingtonpost.com/news/wonk/wp/2014/12/05/the-long-halting-still-unfinished-fight-to-end-racial-profiling-in-america/ (both George W. Bush's and Barack Obama's presidential administrations prioritized ending racial profiling in policing).

Despite almost universal consensus that racial discrimination in policing must end, it has never completely gone away. Black people are still about five times more likely than White people to report that they've been unfairly stopped and questioned by police because of their race. Drew DeSilver et al., *10 Things We Know About Race And Policing In The U.S.*, Pew Rsch. Ctr. (June 3, 2020), https://www.pewresearch.org/short-reads/2020/06/03/10-things-we-know-about-race-and-policing-in-the-u-s/. Black people are killed by police at more than twice the rate of White people. *Police Shootings Database*, Wash. Post (last updated Dec. 31, 2023), https://www.washingtonpost.com/graphics/investigations/police-shootings-database/. And on jet bridges at the Atlanta airport, Black people are significantly more likely than White people—or people of any other race—to be stopped and questioned by police at "random," despite comprising a small minority of travelers. *See* Appellants' Br. at 1–2 (citing statistics).

Individuals who are singled out by police because of their race experience fear and humiliation that extends beyond one uncomfortable experience. *See* Samuel R. Gross & Debra Livingston, *Racial Profiling Under Attack*, 102 Colum. L. Rev. 1413, 1438 (2002). Rather, the encounter carries with it "the perpetual association of their race and potential criminality" that "is more than simple individual racial prejudice." Carter, *supra* 4, at 60. Racial profiling communicates to members of the subject group that, "regardless of any actual basis for criminal suspicion, they continue to be viewed as less than fully human based upon their race." *Id.* And that is precisely the message a Black person receives when he is branded with criminal stigma before a line of gawking onlookers for no justifiable, articulable reason. It is "[t]he inescapable nature of this stigma" that "makes racial profiling a badge or incident of slavery." *Id.* at 59–60. It's no wonder, then, that an overwhelming majority of Americans—both Black and White—condemn the practice. Ekins, *supra* 4.

CCPD's program carries with it an additional constitutional infirmity—it interferes with Black individuals' right to travel. The right to travel "occupies a position fundamental to the concept of our Federal Union." *Shapiro v. Thompson*, 394 U.S. 618, 630 (1969) (internal quotation omitted), *overruled on other grounds by Edelman v. Jordan*, 415 U.S. 651, 670–71 (1974). But for Black people, this right was long impeded by both governmental and private actors. *See Morgan v. Virginia*, 328 U.S. 373, 381–82 (1946); *Griffin v. Breckenridge*, 403 U.S. 88, 106 (1971). The

ability to travel freely, without fear of racial discrimination or harassment, is fundamental to a free society. *See Griffin*, 403 U.S. at 105–06; *see also Aptheker v. Sec'y of State*, 378 U.S. 500, 519–20 (1964) (Douglas, J., concurring). By depriving Black travelers of "the basic rights that the law secures to all free men," CCPD's policy perpetuates the "badges and the incidents of slavery" this Nation condemned through the Thirteenth Amendment. *Griffin*, 403 U.S. at 105 (citation and quotation omitted); *accord Civil Rights Cases*, 109 U.S. 3, 39 (1883) (Burdens on the "right of locomotion" "are burdens which lay at the very foundation of the institution of slavery as it once existed.") (Harlan, J., dissenting). For any and all of these reasons, CCPD's discriminatory practice of "randomly" singling out Black travelers for interrogation and inspection must end.

ARGUMENT

I. CCPD's Racial Profiling Inflicts Profound Dignitary Harm on Its Victims

Among the many errors that plague the district court's decision, one stands out as particularly unfortunate: a failure to appreciate both the depth and nature of the harm CCPD's program inflicts on Black travelers and Black people writ large. That harm, at its core, is a dignitary harm—an assault to an individual's "basic worth or status" that belongs to all persons equally. By reducing Black travelers to stereotypes, targeting them because of their race, and treating them as less worthy of

membership in the broader community, CCPD's program denies Black travelers the equal humanity due to all people.

A. Dignity Demands Unconditional Respect for the Intrinsic Worth of All Individuals

Dignity, in its most general sense, refers to the basic "worth" that inheres in all persons *as persons*. *See* Christopher A. Bracey, *Dignity in Race Jurisprudence*, 7 U. Pa. J. Const. L. 669, 677–80 (2005). It is "the unearned worth or status that all humans share equally." Remy Debes, *Dignity* § 2, Stanford Encyclopedia of Philosophy (Feb. 18, 2023), https://plato.stanford.edu/entries/dignity/#FormDign. As such, dignity doesn't depend on an individual's merit, value, or utility. While those things may "vary . . . from situation to situation," "persons do not vary in their dignity or worth." Hugo Adam Bedau, *The Eighth Amendment, Human Dignity, and the Death Penalty*, *in* The Constitution of Rights: Human Dignity and American Values 153 (Michael J. Meyer & William A. Parent eds., 1992). As philosopher Hugo Adam Bedau explains, "dignity or worth is a kind of value that all human beings have *equally* and *essentially*." *Id.*

Because all persons have dignity, they are all "equally worthy of and owed respect." Robin S. Dillon, *Respect* § 2, Stanford Encyclopedia of Philosophy (July 2, 2022), https://plato.stanford.edu/entries/respect/. An action can by conceptualized as "express[ing] respect for dignity by communicating that a person matters, is worthy of belonging to a social group, and should not be subject to undue

exposure." Rachel Bayefsky, *Remedies and Respect: Rethinking the Role of Federal Judicial Relief*, 109 Geo. L.J. 1263, 1292 (2021). By contrast, a policy or practice expresses "disrespect for dignity" by communicating that a person is not an equally valued member of society—that they are both individually unworthy and socially disfavored. *Id.* Thus, a policy or practice inflicts dignitary harm when the policy or practice "violates [an] individual's right to be treated with the respect and concern that is due to her as a full and equally valuable human being." Rosa Ehrenreich, *Dignity and Discrimination: Toward a Pluralistic Understanding of Workplace Harassment*, 88 Geo. L.J. 1, 16 (1999). CCPD's program does just that.

B. CCPD's Program Dehumanizes Black Passengers By Treating Them as Stereotypes, Not as Individuals

The first indignity inflicted by CCPD's program is that it treats race as a mark of potential criminality, which justifies treating Black passengers "as flawed, compromised, and somehow less than fully human." John F. Dovidio et al., *Stigma: Introduction and Overview*, *in* The Social Psychology of Stigma 3 (Todd F. Heatherton et al., eds., 2003). That treatment reflects the "deeply entrenched" stereotype that depicts Black people as inherently violent and prone to crime—a stereotype that "has been continuous throughout American history." Carter, *supra* 4, at 25, 58. This "Black criminal stereotype," in turn, "can unconsciously and automatically influence what police officers see when they encounter Black citizens, how officers interpret what they see, and how they decide to act in response."

Cynthia J. Najdowski et al., *Stereotype Threat and Racial Differences in Citizens' Experience of Police Encounters*, 39 L. Hum. Behav. 463, 463 (2015). And that's precisely why CCPD's purportedly "random" stop-and-search program is anything but—given the deeply embedded association of blackness with criminality, CCPD profiles and targets Black passengers for questioning at wildly disproportionate rates compared to White passengers. *See* First Am. Compl., Dkt. 24, at 26–27, 29; Appellants' Br. at 37, 40. The result is that *amici*, and other Black passengers, must suffer the indignity of criminal suspicion based on nothing more than the stigmatizing presumption that their race lacks the same moral capacity for law-abiding behavior as other groups.

This dignitary harm cuts deep. Racial profiling practices like CCPD's "den[y] the essential humanity and individuality of those subjected to [them]." Carter, *supra* 4, at 25. These practices "erase the identities of black people as individual human beings and instead define them, on the basis of their race, as potential criminals." Dorothy E. Roberts, *Crime, Race and Reproduction*, 67 Tul. L. Rev. 1945, 1952 (1993). And they echo shameful periods in our country's history—slavery, Black Codes, Jim Crow, and de jure segregation—that have subordinated Black people since the nation's founding. As legal scholar William M. Carter, Jr. notes, "[W]hen an African American is singled out for criminal suspicion because of her race, she is degraded and dehumanized in a way that others subjected to similar treatment are

not, due to the unique history of African American enslavement and officially sanctioned discrimination." Carter, *supra* 4, at 34. In this vein, CCPD's program is not just a program with a disparate numerical impact on Black people; it's a reminder to its Black victims that "they continue to be viewed as less than fully human based upon their race." *Id.* at 60.

As Plaintiffs' and *amici*'s own experiences make clear, to endure racial profiling is to suffer a profound humiliation. First Am. Compl., Dkt. 24, at 15, 18, 35; Gross & Livingston, *supra* 6, at 1438 (describing racial profiling as "humiliating to the targeted group"). Racially selective policing like CCPD's program "render[s] its targets public spectacles, something exhibited to view; . . . a remarkable or noteworthy sight; an object of curiosity or contempt." Devon W. Carbado & Jonathan Feingold, *Rewriting* Whren v. United States, 68 UCLA L. Rev. 1678, 1686 (2022) (quotation marks omitted). Victims of racial profiling often equate the experience to a "form of public shaming," particularly given that they are usually stopped, questioned, and searched in front of other people. *Id.* Mr. André, Mr. English, and Mr. Elie's experiences are illustrative: all were singled out in front of other passengers, audibly questioned about illegal drug possession or their criminal history, and, in the case of Mr. English and Mr. Elie, searched. First Am. Compl., Dkt. 24, at 11–14, 16–18, 33–35. Unsurprisingly, many passengers stopped and "gawked" at the men while the police treated them like criminal suspects. *Id.* at 13,

18, 35. The result was a humiliating and degrading experience, *see id.* at 13, 15, 18, 35—a disorienting and intense mix of shock, embarrassment, and shame at being treated like a common criminal. Gross & Livingston, *supra* 6, at 1427 ("Short of imprisonment, intimidation, or physical abuse, most of the pain of racial profiling is caused by treating law abiding people like criminals."). For victims of racial profiling, this indignity is a common one. *Racial Profiling Within Law Enforcement Agencies: Hearing Before the Subcomm. on the Constitution, Federalism, and Property Rights of the S. Comm. on Judiciary*, 106th Cong. 4 (2001) (statement of Sen. Russell Feingold) ("[V]ictims of racial profiling are forced to endure an incredibly humiliating experience."); *see also* Department of Justice, *Fact Sheet: Racial Profiling* (June 17, 2003), https://www.justice.gov/archive/opa/pr/2003/June/racial_profiling_fact_sheet.pdf ("Racial profiling sends the dehumanizing message to our citizens that they are judged by the color of their skin."); *cf.* George W. Bush, *Address of the President to the Joint Session of Congress*, White House (Feb. 27, 2001), https://georgewbush-whitehouse.archives.gov/news/releases/2001/02/20010228.html (declaring that racial profiling is "wrong and we will end it in America").

The fact that no amount of professional accomplishment can shield Black people from racial profiling betrays the perniciousness of the Black criminal stereotype. *See* Carter, *supra* 4, at 25 (noting that the racial stigma associating

blackness with criminality "remains one that African Americans cannot escape, regardless of their individual circumstances"); *Washington v. Lambert*, 98 F.3d 1181, 1188 (9th Cir. 1996) (observing that racial profiling is a common experience for not only "African-American males who are young and poor," but also "those who are professionals—lawyers, doctors, businessmen, and academics"). Mr. Elie is an internationally respected actor and producer, none of which prevented CCPD officers from profiling and humiliating him in front of the public. *See* First Am. Compl., Dkt. 24, at 32–35. Black professionals in other industries have been subjected to equally degrading treatment.

For example, NBA player John Henson, a Black man, was stopped and questioned by police in 2015 for visiting a high-end jewelry store to purchase a watch. Scott Cacciola, *'It Gives Me Chills': An N.B.A. Player Talks Profiling and Protests*, N.Y. Times (Aug. 27, 2020), https://www.nytimes.com/2020/08/27/sports/basketball/bucks-john-henson.html. The store owner, believing that Henson was not a "legitimate customer[]," pretended that the store was closed, hid in a back office, and called 911. *Id.* Henson was devastated by the experience, explaining, "[w]hen I got back to my car, I cried." *Id.*

Even the Honorable Robert Wilkins—now a judge on the United States Court of Appeals for the D.C. Circuit—has experienced racial profiling. In one incident before he took the bench, Judge Wilkins was pulled over by Maryland State Police

while traveling with relatives, based on suspicion that he and his relatives, as Black people, were more likely to be trafficking drugs. *See Racial Profiling Within Law Enforcement Agencies*, *supra* 12, at 16–21 (Statement of Robert L. Wilkins). Judge Wilkins and his relatives had no drugs, of course, but the police treated them as criminal suspects regardless—they were forced to "[s]tand[] outside the car in the rain, lined up along the road, with police lights flashing, officers standing guard, and a German Shepherd jumping on top of, underneath, and sniffing every inch of [their] vehicle." *Id.* at 19. All of this took place while other cars drove by the scene witnessing a "spectacle" of police activity and "black people standing along the road." *Id.* at 20. Like Plaintiffs here, Judge Wilkins characterized the experience as "humiliating and degrading." *Id.*

These and countless other accounts of racial profiling in policing communicate a clear message to Black people—"[n]o matter how hard you've worked, no matter what you do, no matter how diligently [you've] pursued the American dream, you're treated like a common criminal." Carter, *supra* 4, at 26.

C. CCPD's Racial Profiling Denies Black People Their Intrinsic Social Worth

CCPD's program inflicts a second dignitary harm: it effectively relegates Black people to second-class social status. This harm is distinct from, but related to, the indignity of not being treated with the respect due to an individual "as a full and equally valuable human being." Ehrenreich, *supra* 9, at 16. Instead, this aspect of

dignitary harm implicates "dignity at the communal level"—that is, the "universal and undifferentiated respect for [an individual's] social value." Bracey, *supra* 8, at 680; *see also* Bayefsky, *supra* 9, at 1290; Gross & Livingston, *supra* 6, at 1427 ("To be treated as a criminal is a basic insult to a person's self image *and to his position in society*.") (emphasis added).

"To treat another with dignity is to consider another presumptively worthy of integration into community membership." Bracey, *supra* 8, at 680. CCPD's program, however, does the opposite: it assumes that Black people, by virtue of their race, are more prone to criminal behavior, and therefore less entitled to the basic freedom of movement and presumption of law-abiding behavior afforded other travelers. On this view, Black people cannot enjoy the same social standing as other groups because their group is the "loci of criminality" within the broader, generally law-abiding, society. Trevor G. Gardner, *Racial Profiling as Collective Definition*, 2 Soc. Inclusion 52, 58 (2014).

This is evident in both the purpose and effect of CCPD's profiling. CCPD singles out Black travelers for certain treatment—seizing their personal identification, peppering them with questions about illegal drugs, searching their belongings—sending the unmistakable message to the broader public that Black travelers do not enjoy the same "social value" as White travelers. *Id.* at 57 (describing racial profiling as a form of "social closure" for Black people because it

hardens society's collective understanding of race and criminality). Members of the "community" get to board the plane unimpeded; Black travelers are pulled aside as criminal suspects. In effect, society is told that Black people are a discredited group that does not "command[] respectful treatment from others in the community." Debes, *supra* 8, at § 2.

Notably, the timing and location of CCPD's encounters with Black travelers bolsters the perception that Black people are not "full members of society." Bayefsky, *supra* 9, at 1292. For instance, CCPD stops Black travelers *after* all travelers have already been subjected to rigorous TSA security screening, including body scans, luggage inspection by x-ray, and, at times, pat-downs. *See* First Am. Compl., Dkt. 24, 9–10, 20–21. By subjecting Black people to an *additional* stop-and-search beyond the already exhaustive, federally mandated inspection process, CCPD sends the message that a detained Black traveler must have done something wrong—otherwise, there would be no reason to single out that individual for an *additional* stop. What's more, Black travelers are detained mere steps away from the aircraft, a last minute interdiction that no doubt suggests to observers that the individual must have been up to something particularly nefarious, especially when officers proceed to question the individual (as they did Mr. Elie) about their criminal history and their "reasons for traveling." *Id.* at 34–35.

The result is not just an assault on Black travelers' individual dignity, but also an assault to their presumptive "social worth." Bracey, *supra* 8, at 671. Black travelers stopped as part of CCPD's program effectively become "a disfavored or dishonored individual in the eyes of society, a kind of social outcast whose stigmatized attribute [race] stands as a barrier to full acceptance into the wider community." R.A. Lenhardt, *Understanding the Mark: Race, Stigma, and Equality in Context*, 70 N.Y.U. L. Rev. 803, 809 (2004). And with the "Black criminal" stereotype confirmed before their eyes, members of the public who witness CCPD encounters with Black travelers walk away with an explicit social cue to suspect, disrespect, and treat Black Americans with contempt in other areas of life. *See* Carbado & Feingold, *supra* 11, at 1687 ("When police use racial stereotypes to guide and justify their investigation practices, they reinforce the stereotypes' perceived descriptive accuracy and moral acceptability: Police are more likely to engage African Americans, and in turn, the police and public are more likely to view African Americans as criminally suspect."); Gardner, *supra* 15, at 55 ("The profiling act itself informs the collective definition of race by articulating racial group characteristics and, by logical extension, racial group relations and relative racial group standing."). In this way, a single jet bridge encounter reverberates to deny Black people standing as equally valuable members of the community—a social indignity that contributes to the marginalization of Black people well beyond a

particular jet bridge in the Atlanta airport. *Id.* at 58 (explaining that racial profiling "primes the public to expect criminal acts from a specific category of persons, and in the process informs and exacerbates a form of social marginalization that has burdened the U.S. since its very inception"); *cf.* Thomas Healy, *Stigmatic Harm and Standing*, 92 Iowa L. Rev. 417, 452 (2007) ("[l]aw contributes to stigma" by "signal[ing] what behavior is appropriate toward certain groups").

II. CCPD's Program Interferes With *Amici*'s Constitutional Right to Travel

Black Americans have long faced racial discrimination while exercising their constitutional right to travel. During Jim Crow, Black travelers faced legal and social barriers that made exercising this right a problematic and even dangerous experience. Far too often, they endured humiliation, threats, or worse at the hands of state and private actors, simply for traveling from one state to another. By selectively targeting travelers due to their race, CCPD's program continues this shameful legacy of racial animus, endangering Black individuals' right to travel.

A. The Right to Travel is a Fundamental Right

"The constitutional right to travel from one State to another . . . occupies a position fundamental to the concept of our Federal Union." *Shapiro*, 394 U.S. at 630 (internal quotation omitted). Indeed, "freedom of movement is the very essence of our free society, setting us apart. Like the right of assembly and the right of

association, it often makes all other rights meaningful." *Aptheker*, 378 U.S. at 520 (Douglas, J. concurring).

The fundamental right to travel "has been firmly established and repeatedly recognized." *United States v. Guest*, 383 U.S. 745, 757–58 (1966) (collecting cases). This right is also secured against both governmental and private interference. *Id.* at 759 n.17. The Constitution protects individuals from "statutes, rules, or regulations which unreasonably burden or restrict" their freedom of movement. *Shapiro*, 394 U.S. at 629. A state law implicates the right to travel when it actually deters travel, when impeding travel is its primary objective, or when it uses a classification that serves to penalize the exercise of the right. *Att'y Gen. of N.Y. v. Soto-Lopez*, 476 U.S. 898, 903 (1986).

The right to travel includes "the right of a citizen of one State to enter and to leave another State." *Saenz v. Roe*, 526 U.S. 489, 500 (1999). "The right to move freely from State to State is an incident of national citizenship protected by the privileges and immunities clause of the Fourteenth Amendment against state interference." *Edwards v. California*, 314 U.S. 160, 178 (1941) (Douglas, J., concurring). "If national citizenship means less than this, it means nothing." *Id.* at 183 (Jackson, J., concurring).

But for Black Americans, the right to travel has been consistently endangered by racial animus.[3] Indeed, much of the Supreme Court's right-to-travel jurisprudence developed from cases in which White individuals conspired to "injure, oppress, threaten, and intimidate [Black] citizens of the United States" who attempted to travel to, between, or within Southern states. *See Guest*, 383 U.S. at 747 n.1. Time after time, the Supreme Court has discussed how these conspiracies interfered with "[Black] citizens' rights and privileges secured by the Constitution and the laws of the United States," *id.*, including the "right to travel freely to and from" Southern states "and to use highway facilities and other instrumentalities of interstate commerce within the [states]." *Id.* at 757; *see also*, *e.g.*, *Griffin*, 403 U.S. at 105–06; *Civil Rights Cases*, 109 U.S. at 39–40 (Harlan, J., dissenting) (citing Blackstone for the proposition that "the power of locomotion" establishes "[p]ersonal liberty"). For example, in *Griffin*, the Supreme Court held that the right to travel was threatened by a conspiracy among White people in Mississippi to stop and assault a suspected civil-rights worker from another state while he and other

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[3] In 1936, New York City mailman Victor Hugo Green began publishing "The Negro Motorist Green-book." *The Negro Motorist Green-book*, Library of Congress, https://www.loc.gov/item/2016298176/ (last visited Jan. 18, 2024). Known as "the bible of black travel," this guide identified services and places relatively friendly to Black people so they could find accommodations that would serve them. *Id.* While the Green-book helped ameliorate the risk associated with interstate travel for Black people, the practice of racial discrimination in travel persisted.

Black travelers were driving along the highway. 403 U.S. at 105–06. This kind of conduct, the Court said, unquestioningly implicated the plaintiffs' "right to pass freely from state to state." *Id.* 106.[4]

As these cases demonstrate, racial discrimination, harassment, and intimidation unquestioningly interferes with the right to travel. But regardless of how these rights were vindicated in the courts, racial discrimination in travel persisted.

B. CCPD's Program is Part of a Long History of Interference with Black Individuals' Right to Travel

CCPD's program flies in the face of the fundamental right to travel by targeting Black individuals traveling through the Atlanta airport. This program is not an incidental or negligible inconvenience—it is an unreasonable burden on Black individuals' right to travel because it forces them to endure a significant psychological toll for flying out of the Atlanta airport. Mr. Elie knows that harm firsthand—since CCPD singled him out for public humiliation in April 2019, Mr.

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[4] The *Griffin* Court also held that this conduct implicated the Thirteenth Amendment, which empowers Congress to pass legislation to eliminate the "badges and incidents" of slavery as part of the nation's promise "that the former slaves and their descendants should be forever free." *Id.* at 105. That freedom was seriously infringed by a conspiracy to prevent Black people from "seeking the equal protection of the laws and from enjoying the equal rights, privileges and immunities of citizens under the laws of the United States and the State of Mississippi." *Id.* at 90.

Elie experiences anxiety every time he has to fly, which he does frequently for work. First Am. Compl., Dkt. 24, at 35. The humiliation and stigma resulting from racial discrimination are too high a price to pay for exercising one's right to interstate travel.

While CCPD's program purports to combat drug trafficking, it actually abrogates citizens' rights without materially improving security. As discussed above, CCPD's program disproportionally and overwhelmingly targets Black travelers for interdiction. Officers corner unsuspecting travelers on jet bridges, commandeer their IDs and boarding passes, and interrogate them about the purpose for their travel and whether they are transporting any drugs. In some instances, the officers rifle through the travelers' luggage—which has already been screened by TSA—and confiscate any cash they find. Because these interdictions occur on jet bridges, travelers are subjected to the humiliation and indignity of being interrogated about criminal activity while other travelers gawk and attempt to squeeze by.

The pain, humiliation, and stigmatization of these jet bridge interactions deprive the (disproportionately Black) selected travelers of their personal dignity by publicly branding them with criminal stigma and the specter of increased suspicion. The effect this program has on Black travelers in particular—a whole class of people who have historically been branded with criminal stigma as a means of perpetuating white supremacy and control—is uniquely harmful and traumatizing. For Plaintiffs

and *amici*, the specter of programmatic discrimination presents an intimidating barrier to interstate travel, and thus, has a chilling effect on their right to travel.

C. Our Nation Has A Compelling Interest In Preventing Racial Discrimination in Interstate Travel

America has a compelling interest in preventing racial discrimination in interstate travel, which directly affects interstate commerce. In passing the Civil Rights Act of 1964, Congress took brave steps toward ending the deprivation of human dignity that accompanied discrimination in public accommodations. Indeed, as Justice Goldberg's famous concurrence in *Heart of Atlanta Motel* observed, the Senate Commerce Committee made it clear that "[d]iscrimination is not simply dollars and cents, hamburgers and movies; it is the humiliation, frustration, and embarrassment that a person must surely feel when he is told that he is unacceptable as a member of the public because of his race or color." *Heart of Atlanta Motel, Inc. v. United States*, 379 U.S. 241, 291–92 (1964) (Goldberg, J., concurring) (quotation marks omitted).

During Jim Crow, Black travelers were routinely denied access to essential accommodations like food, gas, restrooms and lodgings. *See* Library of Congress, *supra* n.3. Naturally, racial discrimination in these places of public accommodation discouraged Black people from traveling and participating in interstate commerce. Unable to accept this abhorrent status quo, Black people across the country mobilized.

On the morning of July 16, 1944, Irene Morgan left her mother's house in Gloucester County, Virginia to ride the bus to Baltimore, Maryland to see her doctor. Virginia Changemakers, *Irene Amos Morgan (1917 – 2007)*, Library of Virginia, https://edu.lva.virginia.gov/changemakers/items/show/44 (last visited Jan. 18, 2024). After refusing to give up her seat to White passengers, Irene was arrested and accused of violating a Virginia law that required segregation of both intrastate and interstate bus passengers. *Morgan*, 328 U.S. at 374–75. The Supreme Court found the Virginia statute unconstitutional because it placed an undue burden on interstate commerce. *Id.* at 385–86. Irene's attorney, future Supreme Court Justice Thurgood Marshall, declared that this victory was "a decisive blow to the evil of segregation and all that it stands for." Virginia Changemakers, *supra*.

However, Virginia and other southern states refused to desegregate their buses. This led to the Congress of Racial Equity ("CORE") and the Fellowship of Reconciliation sponsoring the Journey of Reconciliation in an attempt to make the *Morgan* decision a reality. *Congress of Racial Equality Organizes Journey of Reconciliation*, SNCC Digital Gateway, https://snccdigital.org/events/cores-journey-of-reconciliation/ (last visited Jan. 18, 2024). During this Journey of Reconciliation, a group of eight Black and eight White men undertook a two-week journey during which they made twenty-six tests of segregated seating arrangements. *Id.* The Journey of Reconciliation created publicity and helped

popularize the idea of nonviolent direct action. *Id.* Fifteen years later, CORE sponsored the Freedom Rides. *Id.*

The first Freedom Rides began in May 1961, and were launched in response to *Boynton v. Virginia*, which held that buses and trains should be desegregated and ordered that interstate passengers have equal access to any facilities served by buses and trains. 364 U.S. 454, 463–64 (1960). The Freedom Riders were met with violence, including fire bombs and mob attacks by the Ku Klux Klan. *Nashville Students and SNCC Pick Up Freedom Rides*, SNCC Digital Gateway, https://snccdigital.org/events/freedom-rides/ (last visited Jan. 18, 2024). Nevertheless, the Riders persisted and completed more than sixty trips across the south. *Id.* These rides helped bring nationwide attention to the disregard for federal law and the violence used to enforce segregation in interstate travel in the South.

Hoping to address the moral and social wrong of racial discrimination in interstate travel, Congress enacted the Civil Rights Act of 1964. Indeed, the Senate Commerce Committee recognized that the "uncertainty stemming from racial discrimination had the effect of discouraging travel on the part of a substantial portion of the [Black] community." *Heart of Atlanta Motel*, 379 U.S. at 253. With this landmark law recognizing the evils of racial discrimination in interstate travel, and our nation's compelling interest in eliminating such discrimination, Congress vindicated the countless hours of sacrifice made by Black activists across the

country. *See id.* at 291–92 (noting that the primary purpose of the Civil Rights Act of 1964 is "the vindication of human dignity") (Goldberg, J., concurring).

While no law and no movement has completely eradicated racial discrimination in interstate travel, this country has a long history of working to end the practice. CCPD's programmatic discrimination against Black travelers flies in the face of this work by making the Atlanta airport a place where Black travelers can be singled out, intimidated, humiliated, and interrogated for no reason whatsoever.

* * *

The fight to eliminate racial discrimination in policing and interstate travel is woefully incomplete, as evidenced by CCPD's program. These encounters are intimidating enough for anyone, but they are uniquely harmful for Black individuals, who have suffered suspicion, harassment, violence, and criminal stigma throughout our nation's history. To make matters worse, CCPD's own records reveal that this legacy continues, as an enormously disproportionate number of these purportedly random encounters involve Black travelers, even though harassing Black travelers—or, for that matter, any traveler—has failed to fulfill *any* legitimate law-enforcement purpose. This program must end, not only because it is demonstrably ineffective, but also because it assaults the personal dignity and constitutional rights of law-abiding Black individuals attempting to travel through the Atlanta airport.

CONCLUSION

For all the foregoing reasons, this Court should vacate the district court's dismissal of Plaintiffs-Appellants' Complaint.

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Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume requirement of Federal Rule of Appellate Procedure 32(a)(7)(B) and [amicus rule], because this brief contains 5,944 words, as determined by the word-count function of Microsoft Word 2019, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(a)(7)(B)(iii) and 11th Cir. R. 32-4; and

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CERTIFICATE OF SERVICE

I hereby certify that on January 19, 2024, an electronic copy of the foregoing brief was filed with the Clerk of Court for the United States Court of Appeals for the Eleventh Circuit using the Court's CM/ECF system and was served electronically by the Notice of Docket Activity upon registered CM/ECF participants.

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