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VIA e-mail: sreinhar@grcity.us

Internal Affairs Unit
Grand Rapids Police Department
1 Monroe Center NW
Grand Rapids, MI 49503

RE: Complaint of [REDACTED], on behalf of [REDACTED], a Minor, of Race, National Origin, and Color Discrimination by the Grand Rapids Police Department

Dear Internal Affairs Unit,

The American Civil Liberties Union of Michigan (ACLU) hereby files this complaint on behalf of [REDACTED], on behalf of her son, [REDACTED], a minor. The Grand Rapids Police Department (GRPD) discriminated against [REDACTED] based on his race, color, and national origin on March 11, 2019, when GRPD Officer Austin Diekevers stopped [REDACTED] and his friend, who were merely walking down a residential street, and then drew his gun on the two unarmed teens. We find it extremely unlikely that such a trivial infraction as jaywalking would have resulted in white boys lying face down on the sidewalk with a gun pointed at them.

Facts

[REDACTED] is [REDACTED] years old. He is of Mexican descent, has a medium-dark complexion, and is visibly Latino. He was born and raised in Grand Rapids, Michigan. [REDACTED] has a slight build and weighs approximately 160 pounds. [REDACTED] has light facial hair that is beginning to come in, and has a youthful appearance. His friend is also a minor and is also visibly Latino.

On March 11, 2019, [REDACTED] and a friend decided to walk to a nearby barber shop so that [REDACTED] could get a haircut. As they started walking, they saw a patrol vehicle drive past in the opposite direction. The boys began walking down Lynch Street, which is a quiet residential street with speed bumps. The day was bright and clear, but cold. The temperature was approximately 32 degrees and [REDACTED] and his friend were wearing winter jackets to keep warm. While the sidewalk pavement was clear in some places, patches of the sidewalk were partially or completely covered by ice, snow, and puddles of water. The officer's police report itself notes that there was scattered ice on the south-side sidewalk. Snow was also piled up in mounds on the strips between the street and the sidewalk. There is one driveway on Lynch Street where the resident regularly parks a car, so as to block the sidewalk. [REDACTED] believes that that car was also parked across the sidewalk that day.

Shortly after the boys began walking, the GRPD patrol vehicle came back, driving up behind them towards Century Ave SW. GRPD officer Austin Diekevers, who is Caucasian, stopped them. He told the boys to take their hands out of their pockets, which they did. The officer also told them to get out of the street. Again, they complied.

█████ was surprised, confused and frustrated about why they were being stopped since all they were doing was walking down the street. He believed that he and his friend were being profiled because they were Latino, an impression reinforced by the fact that the officer approached them with his hand on his holstered gun.

The officer demanded that the teens provide their full names and addresses. █████ said that he had somewhere he needed to be. He pointed out that the officer could have just asked them to get out of the street and let them be on their way. █████ friend pointed out that portions of the sidewalk still had snow. The officer responded by pointing to parts of the sidewalk that were clearer. The officer kept insisting that they could not leave and that they had to provide their information. His friend provided his full name and █████ provided his first name. █████ friend asked whether, if █████ gave his full name, the officer would let them be on their way. Officer Diekevers responded that he would check if they had warrants.

Although frustrated, █████ eventually gave his full name, which the officer wrote down. The boys then said they had to go somewhere and began to walk away. The officer said loudly, “no you don’t, you’re staying right here.” He then ordered them to put their hands on top of their heads. Without giving the boys time to comply, the officer immediately grabbed █████ by the arm and repeated his demand for █████ to put his hands on his head. █████ pulled away from the officer’s grip. The teens repeatedly asked the officer to “chill out,” and insisted that █████ had not done anything wrong. Officer Diekevers grabbed █████ again, yelled that he was under arrest, and shouted for █████ to show his hands. Without giving █████ any time to comply, the officer drew his gun and pointed it at █████ and his friend, while shouting at them to put their hands on their heads and get down on the ground. Two other GRPD officers also arrived on the scene, one of whom pointed a taser at the boys. On the body camera video, █████ can be heard crying out in pain as he is cuffed by one of those officers.¹

The teens were handcuffed, searched, and questioned. █████ was charged with resisting or obstructing a police officer, booked at Kent County Jail and then held at the Kent County Juvenile Detention Center.

¹ In addition to the GRPD body camera video, you may want to obtain copies of a bystander video, part of which are available here: <https://www.woodtv.com/news/grand-rapids/caught-on-camera-again-grpd-draws-down-on-teens/1853261879>.

Inconsistencies Between the Police Report and Body Camera Evidence

The GRPD police report for the incident conflicts with the body camera evidence. The report states that all [REDACTED] would provide was his first name. While parts of the publicly-released body camera video sound are redacted, after Officer Diekevers requests [REDACTED] last name, there is a redacted answer, and then the officer asks, “how do you spell that.” There is then another redacted moment, and the officer starts writing something down. Officer Diekevers says to another officer on the video that he arrested [REDACTED] for failure to identify, yet the redacted body camera video suggests that [REDACTED] had in fact identified himself.

The report also states that [REDACTED] was walking away when the officer first grabbed him. The body camera video shows that while he did take a few steps away from the officer, [REDACTED] had already walked back and was standing in place and talking with the officer when Officer Diekevers suddenly grabbed his arm. The police report states that Officer Diekevers informed [REDACTED] that he was under arrest and then he grabbed [REDACTED] arm. The body camera video shows that the officer did not state that [REDACTED] was under arrest until after he grabbed [REDACTED] for the second time.

The report also states that the boys were refusing commands to remove their hands from their pockets. The video shows that the boys repeatedly displayed their hands when asked to do so, although they then sometimes put their hands back in their pockets, which is unsurprising given the cold weather. The report also states that [REDACTED] hand was near his waistband and that he appeared to be holding something. While that could have happened outside of the views captured by the body camera video, what the video seems to show is [REDACTED] gesticulating with his hands in exasperation, not reaching for or holding anything.

Finally, although the police report states that the teens were walking in the street while the north sidewalk was clear, the body camera footage released by the GRPD shows several patches where the allegedly “clear” sidewalk was partially or completely covered by snow, ice, or puddles of water, particularly in the area behind where the officer was standing (i.e. the direction from which the youths had come).

Violation of the GRPD’s Impartial Policing Policy

The Grand Rapids Police Department’s Impartial Policing Policy prohibits GRPD officers from “engag[ing] in racial profiling or any other bias based law enforcement practices.” ¶ D.1 The Impartial Policing Policy further provides that GRPD officers “shall not use stereotypes about specified characteristics in making law enforcement decisions, but rather consider the unique circumstances of each individual encounter.” *Id.* at ¶ D.9.

Here, [REDACTED] was profiled by GRPD because of his race, color, and national origin. It is common knowledge that many white residents of Grand Rapids regularly jog or walk in the street without being detained by GRPD officers, especially during the winter months when the sidewalks are frequently obstructed by ice and snow. White residents, and certainly white children, who upon the request of a GRPD officer move out of the street to the sidewalk, are allowed to continue on their way, without being detained, checked for warrants, or held at gunpoint.

The circumstances here show that Officer Diekevers selectively enforced the City’s jaywalking ordinance against [REDACTED], an ordinance that is rarely if ever enforced against white residents, much

less white children. Moreover, even after █████ identified himself, the officer refused to let him leave because he wanted to see if █████ had a warrant. White children who step onto the sidewalk and identify themselves, by contrast, are not held for a warrant check. Finally, the officer's needless escalation of the encounter by drawing a gun when the youths sought to leave was discriminatory. Such discrimination violates the Impartial Policing Policy.

The Violation of the GRPD's Youth Interaction Policy

We are particularly concerned, given the history of the GRPD of pulling guns on children of color, that the GRPD leadership did not consider the fact that Officer Diekevers' treatment of █████ violated the GRPD's own Youth Interaction Policy. That policy requires officers to take age into account when interacting with youth. The Youth Interaction Policy sets out guidelines for officer interaction with youth, recognizing that "youth characteristically lack the capacity to exercise mature judgment and possess an incomplete ability to understand the world around them." Youth Interaction Policy, at ¶ B.2. Among the factors that officers must consider are "the nature of the complaint or contact" (in this case jaywalking) and the subject's cooperation (in this case the fact that the youth immediately went to the sidewalk when asked). *Id.* at ¶ D.1.a and ¶ D.1.e. "All youth are to be treated fairly regardless of race, gender, sexual orientation, ethnic and religious background, or any other specified characteristic in accordance with the Impartial Policing Policy, MOP 8-15." *Id.* at ¶ D.2.

Importantly, the Youth Interaction Policy provides that "Communication with a youth should begin with a contact, unless an officer concludes that an arrest should be made or that a stop is justifiable and appropriate." *Id.* at ¶ E.2.a. Since jaywalking is not typically an offense resulting in more than a warning, even for adults, it is unclear why the officer thought a stop or arrest of a child would be justified here.

Walking on a quiet residential street, particularly during the winter, is extremely common and not the sort of offense that should lead a youth to be arrested. Indeed, the Youth Interaction Policy specifically provides that "[w]hen interacting with juvenile offenders, officers should consider a wide range of alternatives and select the most reasonable, and least restrictive, alternative consistent with public safety, officer safety, maintenance of public order, department policy and the rights of the juvenile, including, but not limited to: a. Warning, with no enforcement action taken..." *Id.* at ¶ G.1.

Had the officer simply followed the Youth Interaction Policy, he would have issued a warning and been on his way. The entire incident could have been avoided. Instead, the officer violated the Youth Interaction Policy, and decided to detain the youth so he could get their names and check if they had warrants. It is hard to imagine white youth in wealthier neighborhoods would have been treated the same way.

Finally, the Youth Interaction Policy also specifically provides that "Officers shall not draw and display a firearm on a youth unless the officer has a fear for the safety of the officer or the safety of others." *Id.* at ¶ E.6. Nothing in the video shows any action by either youth that would have justified the officer in drawing a firearm. Officer Diekevers, instead of recognizing that "youth characteristically lack the capacity to exercise mature judgment and possess an incomplete ability to understand the world around them," *id.* at ¶ B.2, chose to needlessly escalate the situation. Anyone who has ever interacted with teenagers knows that they sometimes give adults,

particularly authority figures, a hard time when answering questions. But that is not a reason to draw a gun, especially after they have given you the information you want. Here, Officer Diekevers should have deescalated the encounter. He did the opposite, something that could have resulted in the teens' deaths, particularly because Officer Diekevers and Officer Hall gave them conflicting orders.

From the beginning, when Officer Diekevers made a huge issue of the fact that the boys were walking in the street, the officer's actions escalated rather than deescalated the situation. The whole point of the Youth Interaction Policy is to recognize that precisely because youth are less mature in interacting with police, officers must be particularly careful not to escalate a situation or draw a weapon unnecessarily.

The GRPD's Response to the Incident

The GRPD's official response to this incident is incredibly concerning. [REDACTED] arrest was filmed by a neighbor, who can be heard expressing shock that a GRPD officer would pull a gun on two teens who were obviously young and who were simply walking in the street. After the bystander's video received widespread attention, the GRPD released body camera footage of the encounter and Interim Police Chief David Kiddle held a press conference at which he praised the officer and sought to blame the incident on the youth. Chief Kiddle said that the video showed a "textbook example of how we expect our officers to conduct themselves in a professional and tactically safe manner." The Interim Chief claimed that the officer was professional, restrained and had appropriate demeanor throughout the contact. He blamed the escalation of the incident on the boys.

When we look at the video, we see something entirely different: an officer who singles out Latino youth for walking in the street, and then aggressively escalates the encounter. We have shown this video to a police consultant who is an expert on law enforcement practices. He indicated that based on the images and audio captured in the officer's body camera video, there does not appear to be any legitimate reason for the encounter to escalate as it did.

We are extremely concerned that when two unarmed children of color who are walking in the street in their neighborhood end up held at gunpoint, the response of the GRPD's leadership is to applaud the officer for model behavior, blame the children, and ignore the violation of the Youth Interaction Policy.

In sum, this traumatic experience could and should have been avoided. On behalf of our client, we ask that the Internal Affairs Unit investigate this matter.

Sincerely,

Miriam Aukerman
Senior Staff Attorney

Elaine Lewis
Legal Fellow