

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE**

Jack Harrington,
Plaintiff,

v.

Jennifer Crawford, *et al.*,
Defendants.

Case No. 1:25-cv-407-JL-AJ

**MEMORANDUM OF LAW IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

Table of Contents

I. PRELIMINARY STATEMENT.....	1
II. STATEMENT OF UNDISPUTED MATERIAL FACTS	3
III. LEGAL STANDARD	23
A. Summary Judgment.....	23
B. Legal Standards Governing the Constitutionality of School Searches	24
IV. ARGUMENT	26
A. Defendants subjected Jack to an unreasonable search based solely on his exercise of a clearly established and fundamental Constitutional right.	26
B. Defendants did not have probable cause to believe that the Search would uncover evidence of a violation of the law or school rules.	27
C. Neither was the Search supported by reasonable suspicion.	30
D. Jack did not provide valid consent to the Search.	32
V. CONCLUSION	36

Table of Authorities

	Page(s)
<u>Cases</u>	
<i>Cummerlander v. Patriot Preparatory Acad. Inc.</i> , 86 F. Supp. 3d 808 (S.D. Ohio 2015)	36
<i>Alea v. Ptacek</i> , No. 24-1147-DDC, 2025 WL 3637393 (D. Kan. Dec. 16, 2025)	31
<i>Anderson v. Liberty Lobby, Inc.</i> , 477 U.S. 242 (1986)	24
<i>Bd. of Ed. of Indep. Sch. Dist. No. 92 of Pottawatomie Cty. v. Earls</i> , 536 U.S. 822 (2002)	25
<i>Cason v. Cook</i> , 810 F.2d 188 (8th Cir. 1987)	28
<i>Celotex Corp. v. Catrett</i> , 477 U.S. 317 (1986)	24
<i>Centro Medico del Turabo, Inc. v. Feliciano de Melecio</i> , 406 F.3d 1 (1st Cir. 2005).....	24
<i>Chongris v. Bd. of Appeals of Andover</i> , 811 F.2d 36 (1st Cir. 1987).....	25
<i>Cooper v. Thomson Newspapers, Inc.</i> , 6 F. Supp. 2d 109 (D.N.H. 1998)	24
<i>District of Columbia v. Heller</i> , 554 U.S. 570 (2008)	27
<i>Doran v. Contoocook Valley Sch. Dist.</i> , 616 F. Supp. 2d 184 (D.N.H. 2009)	25
<i>Ferguson v. City of Charleston</i> , 532 U.S. 67 (2001)	27
<i>Fewless ex rel. Fewless v. Bd. of Educ. of Wayland Union Schs.</i> , 208 F. Supp. 2d 806 (W.D. Mich. 2002)	36
<i>Finamore v. Miglionico</i> , 15 F.4th 52 (1st Cir. 2021)	25

<i>Gov't of Virgin Island In Int. of K.O.,</i> No. 141/2004, 2004 WL 3558508 (Terr. V.I. Dec. 14, 2004).....	31
<i>Heard v. City of Plainfield,</i> No. 2:24-cv-10293, 2025 WL 3017902 (D.N.J. Oct. 28, 2025).....	26, 28, 30, 31
<i>Heard v. City of Plainfield</i> No. 2:24-cv-10293, 2026 WL 508102 (D.N.J. Feb. 24, 2026).....	26, 28, 29
<i>Jones v. Hunt,</i> 410 F.3d 1221 (10th Cir. 2005)	28
<i>Lawson v. Creely,</i> 737 F. Supp. 3d 483 (E.D. Ky. 2024).....	35
<i>Lopera v. Town of Coventry,</i> 640 F.3d 388 (1st Cir. 2011).....	33
<i>M.K. by & through Surujnath v. City of New York,</i> No. 23-CV-6579, 2025 WL 1530577 (E.D.N.Y. May 29, 2025).....	31
<i>McDonald v. City of Chicago,</i> 561 U.S. 742 (2010)	27
<i>N.Y. State Rifle & Pistol Ass'n v. Bruen,</i> 597 U.S. 1 (2022)	27
<i>New Jersey v. T.L.O.,</i> 469 U.S. 325 (1985)	<i>Passim</i>
<i>Northrup v. City of Toledo Police Dep't,</i> 785 F.3d 1128 (6th Cir. 2015)	27
<i>Pacheco v. Hopmeier,</i> 770 F. Supp. 2d 1174 (D.N.M. 2011).....	28
<i>Picha v. Wielgos,</i> 410 F. Supp. 1214 (N.D. Ill. 1976).....	26
<i>Safford Unified Sch. Dist. #1 v. Redding,</i> 557 U.S. 364 (2009)	30, 31
<i>Schneckloth v. Bustamonte,</i> 412 U.S. 218 (1973)	32, 33

<i>Scott v. Harris</i> , 550 U.S. 372 (2007)	24
<i>Terry v. Ohio</i> , 392 U.S. 1 (1968)	26, 30
<i>Tinker v. Des Moines Indep. Cmty. Sch. Dist.</i> , 393 U.S. 503 (1969)	2
<i>United States v. Black</i> , 707 F.3d 531 (4th Cir. 2013)	27
<i>United States v. Charbonneau</i> , 979 F. Supp. 1177 (S.D. Ohio 1997)	33
<i>United States v. Hearn</i> , 496 F.2d 236 (6th Cir.1974)	33
<i>United States v. Jones</i> , 565 U.S. 400 (2012)	25
<i>United States v. Munoz</i> , 987 F. Supp. 2d 438 (E.D.N.Y. 2020)	36
<i>United States v. Smith</i> , 533 F. Supp. 2d 227 (D. Mass. 2008)	33, 34
<i>United States v. Vanvliet</i> , 542 F.3d 259 (1st Cir. 2008)	32, 33
<i>United States v. Weidul</i> , 227 F. Supp. 2d (D. Me. Aug. 7, 2022)	34
<i>United States v. Weidul</i> , 325 F.3d 50 (1st Cir. 2003)	2, 34
<i>Velazquez-Perez v. Developers Diversified Realty Corp.</i> , 753 F. 3d 265 (1st Cir. 2014)	24
<i>Vernonia Sch. Dist. v. Acton</i> , 515 U.S. 646 (1995)	25
<u>Statutes</u>	
28 U.S.C. §§ 2201 and 2202	36

42 U.S.C. 1983.....	1, 36
42 U.S.C. § 1988.....	37
N.H. Rev. Stat. Ann. § 159:12 (2023)	3
U.S. Const. amend. II.....	26
U.S. Const. amend. IV	25
U.S. Const. amend. XIV, § 1	27

Rules

Fed. R. Civ. P. 56(c)	24
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Plaintiff, Jack Harrington (“Plaintiff” or “Jack”), by his attorneys, Taylor Dykema PLLC and Lehmann Major List, PLLC, respectfully submits his Memorandum of Law in Support of his Motion for Summary Judgment.

I. PRELIMINARY STATEMENT

The material facts of this case are straightforward and undisputed. Defendants searched the private vehicle of Plaintiff Jack Harrington, then a high school student, on school property, solely upon information that he exercised his Second Amendment rights outside of school. Being a lawful firearm owner in his private capacity, in compliance with all state and federal laws cannot raise probable cause, or reasonable suspicion that he had committed any crime. Put simply, Defendants violated Jack’s rights when they searched his truck for no other reason than the fact that he was a firearm owner outside of school.

This case consists of a single claim, brought pursuant to 42 U.S.C. 1983 *et seq.* to redress violations of Jack’s Constitutional rights embodied in the Fourth and Fourteenth Amendments by Defendants, including school officials Jennifer Crawford (“Crawford”), James O’Rourke (“O’Rourke”) and Brian McGinn (“McGinn”), as well as Police Officer Michael DeTurris (“DeTurris”) (collectively “Defendants”) in conducting an unwarranted search (the “Search”) of Jack’s truck (the “Truck”) conducted at Hillsboro-Deering High School (the “School”), where Jack was a student. *See generally* ECF 1 (“Compl.”). Prior to undertaking the Search on April 24, 2025,¹ Defendants haled Jack out of class and into O’Rourke’s office, where he was questioned under duress as the Defendants attempted to obtain consent to the Search (the “Interrogation”). No such consent was ever given.

¹ Unless otherwise specified, all dates herein refer to 2025.

It is axiomatic that a student retains their constitutional rights while attending public high school. *New Jersey v. T.L.O.*, 469 U.S. 325, 334-37 (1985); *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503 506 (1969) (“[S]choolchildren do not shed their constitutional rights when they enter the schoolhouse.”). Although the less stringent standard of “reasonable suspicion” may apply to a search conducted exclusively by school officials, law enforcement involvement in that search may invoke the higher standard of probable cause. *T.L.O.*, 469 U.S. at 342 n.7. In all instances, “reasonableness” is the touchstone of assessing the constitutionality of searches by state actors, whether those actors are school officials or law enforcement officers. *Id.*

In the instant case, the involvement of a duly sworn law enforcement officer of the Hillsboro Police Department, Defendant DeTurris elevates the standard for assessing the constitutionality of the Search from reasonable suspicion to probable cause. The undisputed facts establish Defendants, including DeTurris, lacked probable cause to search Jack’s Truck. Indeed, the undisputed facts further demonstrate that Defendants lacked even reasonable suspicion to conduct the Search.

In a tacit confession that the facts and circumstances did not support a determination of the requisite probable cause or reasonable suspicion, Defendants resolved to obtain Jack’s consent to the Search. As explained *infra*, Jack did not consent to the Search. To the extent Defendants seek to distort Jack’s words, uttered under duress, into some manipulated approximation of consent, it is indisputable that Defendants cannot meet their burden of establishing such purported “consent” was voluntary, as the constitution mandates. *United States v. Weidul*, 325 F.3d 50, 53 (1st Cir. 2003).

Because the facts surrounding the Search and Jack’s lack of valid consent thereto are undisputed such that no reasonable jury could determine that probable cause or reasonable

suspicion existed, nor that Jack’s purported consent was voluntary, summary judgment in Jack’s favor is appropriate.

II. STATEMENT OF UNDISPUTED MATERIAL FACTS

1. Jack has owned a firearm since he turned 18 on November 18, 2024. Tr. Jack Harrington Dep. (Mar. 25, 2026) (hereinafter “J. Harrington Tr.” or “Ex. A”) at 10:21-23, 11:1-2. See Tr. Thomas Harrington Dep. (Mar. 25, 2026) (hereinafter “T. Harrington Tr.” or “Ex. B”) at 8:14-17. He received a handgun for his 18th birthday. See *id.* 9:6-17, 13:21-14:5.

2. In New Hampshire, it was legal for 18-year-olds to own a handgun. N.H. Rev. Stat. Ann. § 159:12 (2023). See also Tr. Michael E. DeTurreis Dep. (May 12, 2026) (hereinafter “DeTurreis Tr.” or “Ex. C”) at 52:1-3; Tr. Brian McGinn Dep. (May 11, 2026) (hereinafter “McGinn Tr.” or “Ex. D”) at 37:5-8. It is legal for an 18-year-old to transport and store handguns in the glove box of their vehicle. See Ex. C 52:4-7, 54:13-18; Ex. D 37:9-13.

3. Jack was a student enrolled in Hillsboro-Deering High School (the “School”) when he became a firearm owner. Ex. A 11:20-23.

4. The School is part of the Hillsboro-Deering Cooperative School District and School Administrative Unit #34 (the “District”). ECF 1 (“Compl.”) ¶ 11; ECF 9 (“Answer”) ¶ 11.

5. Jack is a very mature and responsible young man, who graduated at the top of his class, does charitable work, works a full-time job starting at 5:00 a.m., and who has always gone above and beyond in helping run the family farm. See Tr. Betsianne Harrington Dep. (Mar. 25, 2026) (hereinafter “B. Harrington Tr.” or “Ex. E”) at 18:11-19:13, 20:13-21:1, 21:15-22:7; Ex. B 12:12-14:3.

6. Prior to the April 24, 2025 Interrogation, McGinn has never had a problem with Jack. See Ex. D 15:8-11.

7. Jack has never brought a firearm to School property. Ex. A 112:10-12, 12:1-21, 58:8-9; 121:12-14.

8. As of April 11, Jack owned only one firearm, a Glock 43 handgun (the “Handgun”). Ex. A 34:5-9.

9. On April 11, Jack left the School early because he was done with classes for the day. Ex. A 33:14-18.

10. After Jack left the School, he drove his Truck to his house. Ex. A 33:5-20, 34:10-18, 37:11-15.

11. Jack then drove back to the School to pick up his friend Joel. Ex. A 33:21-22.

12. Jack then drove back to his house with Joel. Ex. A 33:21-23.

13. While Jack was at his house, he retrieved the Handgun. Ex. A 34:13-17, 35:5-12.

14. Jack then left his house with Joel and drove to his friend Anthony’s house. Ex. A 31:17:22, 32:4-7, 34:1-2.

15. At or about 2:17 p.m., Jack, while driving back to his house with Joel after leaving Anthony’s house, was involved in a traffic stop by local police (the “Traffic Stop”). Ex. A 27:9-22, 32:8-11, 34:1-4, 37:7-10.

16. Jack had the Handgun in the Truck during the Traffic Stop. Ex. A 34:10-12.

17. The Handgun was in the glove box of the Truck during the Traffic Stop. Ex. A 34:18-20, 35:2-4.

18. When Jack opened the glove box, Jack told the police officer that he had the Handgun. Ex. A 38:2-17, 39:2-7.

19. After the Traffic Stop, Jack returned to his house. Ex. A 32:8-11.

20. On April 16, Jack was on a school bus with Joel with their varsity baseball teammates, the girls' softball team, and the team coaches, on the way to afterschool games. Ex. A 16:21-23, 18:1-22, 58:14-21.

21. Jack and Joel were sitting in the middle of the bus. Ex. A 58:10-12.

22. Jack discussed the Traffic Stop with Joel (the "Bus Conversation"). Ex. A 57:4-7.

23. Jack and Joel were discussing how Jack did not mention the Handgun to the police officer during the Traffic Stop until Jack opened the glove box. Ex. A 57:8-23, 58:1-9, 61:18-23, 62:1-3.

24. But Assistant Softball Coach Matt Dean ("Dean"), sitting one seat behind Jack and Joel, overheard Jack and Joel talking, and Dean thought he heard Jack say: "It's a good thing they didn't look in my glove box, because that's where I keep my gun." (the Alleged Bus Statement). Dep. Ex. 1, Hillsboro-Deering High School, Report of Incident (Apr. 24, 2025) (hereinafter "Incident Rpt." or "Ex. H"); Tr. James E. O'Rourke Jr. Dep. (May 12, 2026) (hereinafter "O'Rourke Tr." or "Ex. F") at 13:2-23, 14:1-12, 83:5-10.

25. Dean admitted that he did not hear Jack say that he ever had a gun on school property. See Tr. Matt Dean Dep. (May 20, 2026) (hereinafter "Dean Tr." or "Ex. G") at G 20:3-18, 22:2-5.

26. Although the Bus Conversation occurred on April 16, Dean did not take any action for a week, waiting until April 23 before telling anyone about the Bus Conversation. See Ex. G 18:11-19:11, 33:6-14, 36:9-38:7.

27. On April 23, Dean told Athletic Director Jay Wood ("Wood") about the Bus Conversation. Ex. F 14:11-13.

28. Ultimately, District officials attributed the Alleged Bus Statement to Jack: “It’s a good thing they didn’t look in my glove box, because that’s where I keep my gun.” (the “Alleged Bus Statement”). Ex. H.

29. Jack denies making the Alleged Bus Statement. Ex. A 57:8-23, 58:1-9, 61:18-23, 62:1-3.

30. As of April 24, Defendant Crawford was the Superintendent of the District. Compl. ¶ 11, Answer ¶ 11.

31. As of April 24, Defendant McGinn was the Assistant Principal of the School. McGinn Tr. Compl. ¶ 13, Answer ¶ 13.

32. As of April 24, Defendant Michael DeTurris (“DeTurris”) was the School Resource Officer (“SRO”) and a Police Officer with the Hillsboro Police Department. Compl. ¶ 14, Answer ¶ 14.

33. As of April 24, Defendant James O’Rourke (“O’Rourke”) was the Principal of the School. Ex. F 7:2-4. Compl. ¶ 12, Answer ¶ 12.

34. At the time of the Interrogation, Defendants, including O’Rourke and McGinn, had disciplinary authority over Jack. *See* Ex. D 71:4-6; Ex. F 7:17-20.

35. O’Rourke, as the Building Administrator answerable only to Crawford, had the unilateral authority to impose penalties and discipline up to and including 10-day suspensions. Ex. F 7:21-23, 8:1-4, 9:16-22, 54:23, 55:1-16.

36. On the morning of April 24, Wood told McGinn about the Bus Conversation and the Alleged Bus Statement. Ex. D 11:6-17; Ex. F 11:3-11, 14:14-17.

37. McGinn then called O'Rourke to his office, where O'Rourke spoke to Dean, and then O'Rourke and McGinn discussed their plan of action with Crawford, who was on the phone. Ex. D 13:14-15:7; Ex. F 10:20-23, 11:1-23, 14:18-20, 19:14-23, 20:1-3.

38. O'Rourke told Crawford of his intent to conduct a Search of the glove box of Jack's Truck for the Handgun, and she agreed. Ex. F 12:1-23.

39. On the morning of April 24, O'Rourke knew that the Alleged Bus Statement had arisen out of the Traffic Stop. Ex. F 80:9-23, 81:1-2, 81:19-23, 82:1-7, 82:16-20, 83:2-10.

40. On the morning of April 24, O'Rourke knew that the Traffic Stop did not occur on School or District grounds. Ex. F 88:15-23, 89:1-4, 90:5-13.

41. On the morning of April 24, O'Rourke had no evidence that Jack had a firearm on School property and was relying solely on the Alleged Bus Statement. Ex. F 91:13-23, 92:1-15, 101:7-17.

42. On the morning of April 24, nobody had told O'Rourke that Jack had a firearm on District or School property. Ex. F 93:3-8.

43. On the morning of April 24, O'Rourke's belief that he had reasonable suspicion to search the glove box of the Truck was based solely on the fact that Jack had possessed the Handgun in the glove box during the off-campus Traffic Stop that occurred nearly two weeks prior. Ex. F 93:11-23, 94:1-23, 98:19-23, 99:1-16.

44. On the morning of April 24, O'Rourke and McGinn were aware that 18-year-olds in New Hampshire were allowed to own and possess firearms. Ex. D 37:5-8; Ex. F 95:7-16.

45. On the morning of April 24, O'Rourke and McGinn were aware that 18-year-olds in New Hampshire were allowed to store and transport firearms in the glove boxes of vehicles. Ex. D 38:5-7; Ex. F 95:17-12-23, 96:1-2.

46. On the morning of April 24, O'Rourke was aware that Jack was a lawful gun owner. Ex. F 96:9-16, 97:17-20.

47. On the morning of April 24, O'Rourke was aware that Jack lawfully and legally possessed the Handgun. Ex. F 96:12-22, 97:17-20.

48. On the morning of April 24, O'Rourke was aware that Jack lawfully and legally possessed the Handgun in the glove box of the Truck during the Traffic Stop. Ex. F 96:17-22, 97:21-23, 98:1.

49. On the morning of April 24, O'Rourke was aware that the conduct described in the Alleged Bus Statement, as conveyed to O'Rourke and McGinn, was one hundred percent legal. Ex. F 133:12-20.

50. On the morning of April 24, O'Rourke was aware that the Alleged Bus Statement, as conveyed to O'Rourke and McGinn, described possession of a handgun in a glove box off campus during a traffic stop, which was one-hundred percent legal conduct. Ex. F 133:21-23, 134:1-5.

51. On the morning of April 24, O'Rourke had no suspicion that Jack had engaged in any illegal conduct off School campus. Ex. F 135:12-15, 135:20-23, 136:10-14.

52. On the morning of April 24, O'Rourke had no suspicion that Jack had engaged in any illegal conduct on School campus. Ex. F 135:16-19, 136:1-9, 136:10-14.

53. On the morning of April 24, O'Rourke and McGinn had no indication of illegal conduct by Jack anywhere, whether on or off campus. Ex. D 107:6-18; Ex. F 135:16-19, 136:1-9, 136:10-14.

54. Nonetheless, O'Rourke guessed that because Jack had a handgun in his glove box off campus on a different date, that the Handgun could or would be in the glove box of the Truck on April 24 on campus. Ex. F 99:2-16, 101:1-6, 137:1-23.

55. O'Rourke's decision to conduct the Search was based entirely on his speculation and guessing. Ex. F 137:22-23, 138:1-5.

56. On the morning of April 24, there had been no credible report that Jack brought the Handgun or any other firearm onto the School campus on April 24. Ex. F 99:18-23, 100:1-23, 101:1-6.

57. O'Rourke had no specific, credible information that gave him suspicion that Jack had brought the Handgun onto School campus on April 24. Ex. F 133:3-9.

58. The only knowledge O'Rourke had was that Jack had a firearm off campus on a different date. Ex. F 101:1-6.

59. On the morning of April 24, O'Rourke knew that Jack was a firsthand source of information, as the owner of the Handgun and the Truck, whereas Wood was at best a thirdhand source of knowledge, having only relayed the Alleged Bus Statement from Dean. Ex. F 139:7-23, 140:1-23, 141:1-23, 142:1-23, 142:1-23, 143:1-22.

60. On the morning of April 24, at the School, Jack was attending his second-period English class. Ex. A 67:9-11, 67:22-23, 68:1-3; Ex. F 15:21-23.

61. At that time, around 9:00 a.m., McGinn, acting on instructions from O'Rourke, entered the classroom and waved Jack out of the room. Ex. A 68:10-21; Ex. D 15:15-16:8; Ex. F 15:10-20; 16:2-7.

62. McGinn walked to his office with Jack, where O’Rourke and DeTurris were waiting to begin the Interrogation of Jack as a prelude to the Search. Ex. A 69:6-12, 71:22-23, 72:1:6; Ex. D 6:14-7:2, 18:3-17.

63. As of April 24, O’Rourke considered Jack to be a well-mannered individual and a good student. Ex. F 17:3-8.

64. As of April 24, O’Rourke knew that Jack had never made any threats of violence or any other kind of threats. Ex. F 18:5-11, 80:6-8.

65. As of April 24, O’Rourke knew that Jack had never gotten into any fights at school. Ex. F 18:12-14.

66. As of April 24, O’Rourke knew that Jack was not disruptive to the school. Ex. F 18:15-17.

67. School official Defendants Crawford, O’Rourke and McGinn made no effort to contact Joel or Dean prior to the Interrogation, even though Joel was a School student and Dean was a School coach. Ex. D 12:20-13:11; Ex. F 19:4-8, 82:13-15.

68. O’Rourke conducted no further investigation and simply relied on what Wood told him. Ex. F 19:9-13, 20:9-13.

69. On April 24, after the Interrogation and the Search, O’Rourke wrote a one-page incident report on School letterhead that he and McGinn signed (the “Incident Report”). Ex. H; Ex. D 31:21-32:8; Ex. F 38:12-22.

70. O’Rourke confirms the authenticity of the Incident report and endorses it in full. Ex. F 38:19-23, 39:1-7.

71. DeTurris has been employed as a police officer since December 2018. *See* Ex. C 6:5-10. He was a corrections officer for 3.5 years prior to that. *See id.* 6:20-7:2.

72. McGinn asked DeTurris to participate in the April 24, 2025 questioning of Jack. See Ex. C 10:10-20; Ex. D 87:14-18.

73. DeTurris, McGinn and O'Rourke were present during the questioning of Jack. Ex. C 11:15-18; Ex. D 6:14-21.

74. McGinn escorted Jack to the Interrogation where he was questioned. See Ex. C 11:19-12:3; Ex. D 18:3-10.

75. When McGinn walked Jack into the office, with DeTurris and O'Rourke already present. Ex. A 69:6-12, 71:22-23, 72:1:6, 129:23, 130:1-3; Ex. D 18:8-17.

76. The Interrogation took place in McGinn's office. Ex. A 116:6-11.

77. Throughout the Interrogation in McGinn's office, the individuals present were Jack, O'Rourke, McGinn, and DeTurris. Ex. A 72:2-6, 120:4-9; Ex. F 24:8-20, 73:22-23, 74:1-12.

78. The Interrogation featured one police officer, DeTurris, visually armed with a handgun, and two adults who had disciplinary authority over Jack. Ex. F 74:8-13; Ex. D 9:23-10:2, 85:9-18.

79. Although Jack was 18 years old, O'Rourke viewed Jack as a student without regard to his age. Ex. F 39:10-20.

80. After Jack called his parents, the door to the office was closed and remained so throughout the Interrogation. Ex. A 72:23, 73:1-7, 130:6-11; Ex. F 21:11-23, 22:1-11, 23:6-23, 34:12-15.

81. Jack knew that DeTurris was a police officer with the Hillsboro Police Department assigned as a SRO. Ex. A 115:19-23, 116:1-5, 116:12-23, 117:1-5.

82. As per District and School policy described by O'Rourke, SROs, including DeTurris, are only brought into student interrogations when there is a safety concern and a concern

that a weapon could be present, or where contraband might be present. Ex. F 44:15-23, 45:14-23, 46:1-23, 47:1-2; Ex. C 33:2-34:5.

83. As per District and School policy described by O'Rourke, the only other circumstance in which an SRO would be brought into a student interrogation would be if School officials searched a bag and found alcohol or drugs that they had to turn over to the officer. Ex. F 45:2-10, 46:1-23, 47:1-2.

84. As per District and School policy described by O'Rourke, when there is no consideration that a weapon may be present and no contraband considerations, pre-search questioning is conducted without an SRO present. Ex. F 46:8-13.

85. As per District and School policy described by O'Rourke, the key consideration in deciding whether to bring an SRO to an interrogation is whether a student could have access to a weapon during the interrogation, thereby impacting the safety of the student and the questioning school officials. Ex. F 47:3-20; Ex. C 33:2-34:5.

86. Jack did not have a weapon on him, in his backpack, or otherwise accessible, yet O'Rourke asked SRO DeTurris to be present. Ex. F 48:3-23, 49:1-23, 50:1-3.

87. None of the Defendants feared or suspected that Jack had access to a weapon during the Interrogation. Ex. F 49:20-23, 50:1-23, 51:1-3.

88. It would have been impossible for Jack to access a weapon during the Interrogation in McGinn's office. Ex. F 50:1-12, 52:9-23, 53:1-4.

89. O'Rourke could have safely conducted the Interrogation without SRO DeTurris. Ex. F 54:2-17.

90. O'Rourke and McGinn were safe during the Interrogation without DeTurris because Jack did not have a weapon. Ex. F 56:3-15.

91. DeTurrís's presence during the Interrogations served no safety purpose. Ex. F 56:16-20.

92. Jack did not have access to weapon during the Interrogation, there were no weapons other than DeTurrís's weapons in the office during the Interrogation, and DeTurrís did not feel threatened by Jack and did not feel that Jack was a threat to himself or others during the search. Ex. C 30:14-22, 31:5-32:6, 33:5-36:6.

93. O'Rourke made the decision to conduct the Search before they conducted the Interrogation. Ex. F 58:11-23, 59:1-23, 60:1-18 Ex. F 62:2-22.

94. Prior to the Interrogation, O'Rourke spoke with DeTurrís and told him that they would be searching the glove box of the Truck for a firearm. Ex. F 56:22-23, 57:1-23, 58:1-20.

95. O'Rourke told Jack that they had already decided the Search was going to happen. Ex. F 58:11-23, 59:1-23, 60:1-18, 61:3-23, 62:1-11, 62:2-22, 76:7-10.

96. O'Rourke presented the situation to Jack as that the Search was going to happen no matter what, and they were merely explaining the situation to Jack. Ex. F 64:12-20.

97. During the Interrogation, McGinn was sitting across from Jack angled to Jack's left, O'Rourke was seated across from Jack angled to Jack's right, and DeTurrís was to Jack's left. Ex. D26:9-20; Ex. F 25:4-12, 27:5-14.

98. Throughout the Interrogation, DeTurrís was wearing his Hillsboro Police Department uniform emblazoned "police" on the front of the uniform, including his badge, handcuffs, Taser, and Glock .45 handgun. *See* Ex. C 12:4-13:5; Ex. D 9:18-10:2; Ex. A 117:6-18; Ex. F 30:23, 31:1-6, 31:13-15, 42:16. The gun was clearly visible throughout the Interrogation. *See id.* 12:18-22, 13:14-19; Ex. A 117:15-22; Ex. D 9:23-10:2; Ex. F 31:7-12, 74:8-11.

99. Although Jack, McGinn, and O'Rourke were mostly seated during the Interrogation, DeTurrís remained standing throughout. Ex. F 25:13-16.

100. Throughout the Interrogation at which Jack was questioned, the door was closed and DeTurrís was standing near the door. See Ex. C 14:11-17; Ex. D 7:15-16, 9:6-8, 18:8-10, 29:6-10.

101. DeTurrís was standing against a file cabinet to Jack's left and to the right of the door. Ex. F 25:13-16, 27:11-14, 29:20-23, 30:1-22.

102. The file cabinet was against a wall, and the door was in front of the file cabinet. Ex. F 30:4-9.

103. DeTurrís was positioned to the left of the file cabinet on the left side of the room and in the general area of the door. Ex. F 30:10-22.

104. O'Rourke, McGinn, and DeTurrís roughly formed a triangle surrounding Jack. Ex. F 25:13-19.

105. The door was to Jack's left and a wall was behind him. Ex. F 25:20-23, 26:1.

106. Jack had no means of exiting McGinn's office other than the door. Ex. F 25:20-23, 26:2-5.

107. DeTurrís was located approximately 5 feet from Jack throughout the Interrogation. See Ex. C 14:17-15:1.

108. O'Rourke asked Jack if he carries a firearm, to which Jack responded that he does sometimes carry a firearm, but does not bring it to school because that would be illegal. Ex. A 69:13-23, 70:1-2, 77:11-20.

109. O'Rourke then asked Jack whether the Handgun was in the Truck, to which Jack responded that he does not carry his gun to school. Ex. A 77:23, 78:1-4; Ex. F 76:3-19.

110. Jack explicitly told O'Rourke during the Interrogation that he did not have a gun on campus. Ex. A 77:23, 78:1-4; Ex. F 76:3-19, 90:5-13; Ex. D 43:17-44:1, 66:11-67:3.

111. O'Rourke then said that he believed Jack had a firearm in his Truck but did not provide the basis for this belief. Ex. A 70:3-8, 78:5-7.

112. Jack then became upset and reiterated that he did not bring any firearms onto School property, whether in his Truck or otherwise. Ex. A 70:9-13, 78:8-11.

113. O'Rourke then told Jack that they wanted to search the Truck. Ex. A 78:10-11.

114. Defendants knew that they needed Jack's consent to search his Truck. Ex. D 47:14-48:8.

115. Jack then said that he did not want them to search his Truck and did not consent to the Search. Ex. A 78:12-14; Ex. D 60:18-61:14, 65:20-66:10.

116. O'Rourke then said again that they wanted to search the Truck to make sure there was not a firearm in the Truck. Ex. A 78:15-18.

117. Jack said again that he did not consent to a search. Ex. A 78:19-20.

118. Jack asked O'Rourke what right he had to search the Truck. *See* Ex. C 28:11-17.

119. Defendants were aware that Jack did not consent to the Search. *See* Ex. D 61:2-14, 65:10-19, 66:8-10, 74:4-75:16.

120. The Interrogation continued despite Jack's refusal to the Search. *See* Ex. C 67:5-21.

121. Defendants had already determined that they were going to search the Truck for a gun regardless of what Jack had to say. *See* Ex. D 45:15-47:13.

122. O'Rourke again said that they would search Jack's Truck no matter what. Ex. A 78:22-23.

123. Once again, Jack repeated that he did not consent to a search. Ex. A 79:1-3.

124. O'Rourke reiterated that Defendants would search Jack's Truck no matter what. Ex. A 79:4-7.

125. Visibly distraught, Jack again affirmatively stated that he did not consent, while O'Rourke reiterated that he believed Jack had a gun. Ex. A 79:8-18.

126. O'Rourke and Jack argued about whether O'Rourke, McGinn, and DeTurris had the right to search the Truck, and O'Rourke told Jack that they would search the Truck no matter what. Ex. A 70:14-19, 79:22-23, 80:1-23, 81:1-2; Ex. D 89:7-20.

127. Jack continued to argue with O'Rourke and McGinn about whether they had the right to search Jack's Truck. Ex. A 70:20-23, 71:1-7, 85:15-17, 121:2-5.

128. During the argument, Jack repeatedly told O'Rourke and McGinn that he did not consent to any search of the Truck. Ex. A 70:20-23, 71:1-7.

129. Jack used the phrase "I am not going to let you guys search my [T]ruck" or variations thereof, to express his lack of consent to the Search, throughout the Interrogation. Ex. H; Ex. A 78:12-14, 78:19-20, 79:1-3, 79:8-18, 87:16-18; Ex. F 71:6-23, 72:1-19.

130. As O'Rourke admitted, Jack used the words "I am not going to let you guys search my [T]ruck" or variations thereof, to express his lack of consent to the Search, four or five times during the Interrogation. Ex. H; Ex. A 78:12-14, 78:19-20, 79:1-3, 79:8-18, 87:16-18; Ex. F 71:6-23, 72:1-19.

131. As O'Rourke admitted, the typical pattern would be that Jack would express lack of consent, Jack would then say variations of "what right do you have?" and "why do you have a right to do this?" and then O'Rourke would continue the Interrogation. Ex. F 71:6-23, 72:1-19, 73:1-3.

132. As O'Rourke admitted, he understood all the instances in which Jack said "I am not going to let you guys search my [T]ruck" to be a lack of consent. Ex. F 71:13-23, 72:1-19.

133. As O'Rourke admitted, he understood that Jack was opposed to the Search based on Jack's statements during the Interrogation. Ex. F 71:13-23, 72:1-19.

134. During the Interrogation, Jack repeatedly told O'Rourke and McGinn that there was no reason to search the Truck because he did not have a firearm at the School. Ex. A 70:20-23, 71:1-7.

135. Jack then called his parents; the call that lasted between one and five minutes. Ex. A 81:1-23, 82:1-23, 83:1-23, 84:1-18; Ex. F 22:12-18.

136. O'Rourke and McGinn heard Jack ask his parents if he should refuse the Search. Ex. H.

137. The Truck belonged to Jack's parents. See Ex. B 41:2-3.

138. Jack's parents stated they did not consent to a search of his Truck. Ex. A 83:2-16.

139. Jack's father, Tom Harrington, told McGinn that he was on the way to the School and that McGinn did not have the right to search the Truck. Ex. A 83:17-21.

140. When Jack hung up the phone, he reiterated that he would not let O'Rourke, McGinn, and DeTurris search the Truck. Ex. H.

141. After Jack ended the call with his parents, O'Rourke reiterated multiple times that no matter how long it took, they would search the Truck. Ex. A 85:18-23, 87:8-15.

142. Jack reiterated that he did not consent to a search of the Truck. Ex. A 87:16-18; Ex. F 72:5-13.

143. Specifically, Jack said, as he had said multiple other times during the Interrogation, “I am not going to let you guys search my [T]ruck.” Ex. H; Ex. A 87:16-18; Ex. F 71:6-23, 72:5-13.

144. Jack was very loud at this point and was using profanity. Ex. H.

145. Jack explained that he carried a gun in the glove box of the Truck when he was not in school. Ex. D 66:11-21; Ex. H.

146. O’Rourke continued to tell Jack that they would search Jack’s Truck no matter what Jack did or said. Ex. A 73:23, 74:1-20, 88:19-23, 88:1-7.

147. Throughout the Interrogation, Jack was agitated, angry, frustrated, and using profanity due to O’Rourke’s insistence that they were going to search the Truck no matter what Jack did or said. Ex. A 71:8-14, 72:20-21; Ex. C 20:8-13; Ex. D 19:4-15, 21:11-23; Ex. F 33:14-20, 62:23, 63:1-23, 64:1-3, 65:12-23, 66:1-15, 73:13-16, 101:18-23, 102:1-14; Ex. H.

148. Jack refused to consent to the search of his Truck and was loud and argumentative in doing so. See Ex. C 26:7-20, 41:3-20; Ex. D 19:4-15, 21:11-23, 31:17-20, 66:2-10.

149. During the Interrogation, in a raised voice DeTurris instructed Jack to “calm down.” See Ex. C 19:10-19.

150. Eventually, after O’Rourke and McGinn refused to take “no” for an answer, and specifically in response to O’Rourke continuing to say that they would search the Truck no matter what, Jack then said “okay” with no additional words, not to provide consent, but to convey that he was upset. Ex. A 88:8-22, 88:23, 89:1-10, 97:14 -23, 98:1-6122:11-20, 123:5-23, 124:1-18, 126:1-15. Ex. F 104:5-9-23, 105:1-18.

151. Jack, O’Rourke, McGinn and DeTurris then left the office and walked out to the Truck in the School parking lot. Ex. A 89:21-23, 90:1-8; Ex. D 77:12-16.

152. At this point, following the Interrogation, the only material information that O'Rourke, McGinn, and DeTurrís had was the Alleged Bus Statement as relayed by Wood and Jack's assertion that he did not have a gun on campus. Ex. F 78:6-23, 79:1-23, 80:1-5, 90:5-13.

153. When Jack, O'Rourke, McGinn, and DeTurrís reached the Truck, Jack opened the door to the Truck, then McGinn opened the glove box and took a picture. Ex. A 92:22-23, 93:1-12, 125:4-10; Ex. F 107:13-19, 108:7-11.

154. DeTurrís was present for the entire Search, armed and in uniform. Ex. F 108:18-23.

155. The Search confirmed there was no firearm in Jack's Truck. Ex. H; Ex. F 53:2-4.

156. Defendants failed to identify any illegal conduct by Jack on April 24. Ex. F 109:2-23.

157. The entire Interrogation and Search combined lasted for as long as 40 minutes. Ex. A 94:11-19.

158. Once in the School parking lot after the Interrogation in the office concluded, O'Rourke and McGinn did not ask for Jack's consent to search the Truck. Ex. A 127:11-16.

159. Jack believed that he was not free to leave the Interrogation. Ex. A 98:21-23, 99:1-17.

160. Jack believed that if he left the Interrogation, he would be disciplined. Ex. A 98:21-23, 99:1-17.

161. Jack was not told that he was free to leave the Interrogation. Ex. D 81:2-4; Ex. F 34:15-17, 67:2-6, 67:12-15.

162. Jack was not told that he was free to decline to answer questions. Ex. D 81:5-8; Ex. F 34:18-21.

163. Jack was never told that he was free to leave, that he was free to refuse consent to the search, or that he was free to refuse to answer questions. *See* Ex. C 28:10-29:6, 29:22-30:4; Ex. D 80:18-81:16.

164. O'Rourke never told Jack that he could remain silent. Ex. F 34:22-23, 35:1-2.

165. O'Rourke never told Jack that he could consult with an attorney. Ex. F 35:3-7.

166. O'Rourke never told Jack about rights or options under the District's policies and procedures pertaining to school searches. Ex. F 35:12-16, 36:13-21.

167. Jack was not told that there was any option for the Truck to not be searched. Ex. D 80:13-91:1; Ex. F 64:5-8.

168. O'Rourke never told Jack that there was any option for the glove box of the Truck to not be searched. Ex. F 64:9-11.

169. O'Rourke never told Jack that he had the right to decline consent to the Search. Ex. F 67:12-15.

170. McGinn never advised Jack of any rights he possessed regarding the Interrogation or Search. Ex. D 81:9-13.

171. As O'Rourke admitted, Jack would have been disciplined had he declined consent to the Search or if he had left the Interrogation. Ex. F 68:10-23, 69:1-16.

172. The School has previously suspended Jack after falsely accusing him of inappropriate behavior and rude statements to the Assistant Principle, only to apologize for their untruthful statements after security videos were reviewed. *See, e.g.,* Ex. B 22:7-22; Ex. E 11:5-15:13.

173. If Jack continued to refuse to allow the search of his Truck, he would have been subjected to an automatic suspension. *See* Ex. D 99:5-100:5.

174. McGinn testified that if a gun had been found in Jack's Truck during the Search, it would have been a crime. Ex. D 70:8-10.

175. O'Rourke told Jack at least four or five times that no matter what happened, they would eventually search the Truck. Ex. A 118:5-23, 119:1-10.

176. During the Interrogation, Jack said that he wanted to leave, but O'Rourke told Jack that he did not want Jack to leave. Ex. A 73:10-23, 74:1-20, 100:4-14.

177. Jack emailed McGinn from his School email account shortly after the Search, at 9:58 a.m. on April 24 to express his lack of consent and disagreement with the Interrogation and Search (the "April 24 Email"). Ex. A 101:6-18; Dep. Ex. 3, Email from Jack to Brian McGinn (Apr. 24, 2025) (hereinafter "Email" or "Ex. I").

178. In the April 24 Email, Jack wrote, *inter alia*: "I just wanted to say that this whole thing that happened today really bothers me." Ex. I.

179. In the April 24 Email, Jack wrote, *inter alia*: "It's wrong that my [T]ruck had to get searched. I didn't do anything wrong to constitute that." Ex. I.

180. In the April 24 Email, Jack wrote, *inter alia*: "I just hope you understand why things like this anger me so much. It's because it's wrong." Ex. I.

181. At no time on April 24, did Jack consent to any search of his Truck. Ex. A 121:15-23, 122:1-5, 127:8-10.

182. As of April 24, the District and the School maintained a document called "Hillsborough-Deering School District Policy, Student Searches and Their Property" together with an Appendix JIH-R called "Search of Students Procedures" (collectively the "Student Search Policy"). Dep. Ex. 2, Hillsboro-Deering High School District Policy, JIH-R, "Student Searches and Their Property" (Jan. 22, 2013 Rev.) (hereinafter "Student Search Policy" or "Ex. J").

183. On April 24, O'Rourke was familiar with the Student Search Policy. Ex. F 111:17-18.

184. According to the Student Search Policy: "Authorized personnel may conduct a search of the student's belongings, as noted above, whenever a student freely and voluntarily consents to such a search. Consent obtained through threats or coercion is not considered to be freely and voluntarily given." Ex. J.

185. The Student Search Policy does not define "freely and voluntarily," "consent," "threats," or "coercion." Ex. J; Ex. F 112:7-19.

186. The Student Search Policy does not explain what makes an environment coercive. Ex. J; Ex. F 112:20-23.

187. O'Rourke admits that there was a power imbalance during the Interrogation and the Search due to the presence of an armed, uniformed police officer and two School officials with disciplinary authority over Jack. Ex. F 122:7-23, 123:1-8.

188. O'Rourke admits that even with this power imbalance and Jack throwing up multiple stop signs, O'Rourke decided to continue the Interrogation. Ex. F 124:1-9.

189. O'Rourke admits that he continued the Interrogation until he got what he believed was consent, even after Jack said "no" multiple times. Ex. F 126:12-23.

190. The Student Search Policy provides: "In conducting searches of students and property, school officials should consult with legal counsel and law enforcement authorities to be aware of circumstances when involvement of the police is advisable and/or necessary." Ex. J; Ex. F 127:4-10.

191. O'Rourke did not consult with legal counsel before conducting the Interrogation and the Search; he only consulted with Crawford, who is not an attorney. Ex. F 127:6-19.

192. O’Rourke admits that he is a School official and that DeTurrís is a police officer, and that O’Rourke involved DeTurrís in the Interrogation out of claimed necessity, yet he also admits that he did not consult an attorney as suggested by the Student Search Policy. Ex. F 128:7-23, 129:1-7.

193. Defendants failed to follow the school policy requiring them to notify Jack’s parents of the search. *See* Ex. B 42:17-43:11, 47:19-48:14; *see also* Ex. J, ¶ D Conducting the Search.”

194. During the Interrogation with O’Rourke, McGinn, and DeTurrís and prior to them searching his Truck, Jack denied the allegation that there was a gun in the glove box. Ex. D 22:3-23:8.

195. The reported statement that Jack Harrington felt lucky that the police officer at his traffic stop did not look in his glove box because that’s where he keeps his gun—which Defendants did not verify—was the only basis for his questioning by O’Rourke, McGinn, and DeTurrís and for the search of his Truck. *See* Ex. D 32:14-34:14.

196. The only behavior that Defendants believed justified the questioning and the search was the statement that Jack sometimes had a gun in his glove box—legal behavior for an 18-year-old in New Hampshire. *See* Ex. D 101:2-102:16, 103:17-107:11.

197. In assessing whether a search was necessary, Defendants evaluated “reasonable suspicion” to be any amount of suspicion above zero percent. *See* Ex. D 120:20-23, 121:9-123:1, 127:7-129:15.

III. LEGAL STANDARD

A. Summary Judgment

Summary judgment is appropriate where the “pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no

genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” *Cooper v. Thomson Newspapers, Inc.*, 6 F. Supp. 2d 109, 112 (D.N.H. 1998). *See also* FED. R. CIV. P. 56(c). “At the summary judgment stage, facts must be viewed in the light most favorable to the nonmoving party only if there is a ‘genuine’ dispute as to those facts.” *Scott v. Harris*, 550 U.S. 372, 380 (2007) (citing FED. R. CIV. P. 56(c)).

“A dispute is ‘genuine’ if a reasonable jury, drawing favorable inferences, could resolve it in favor of the nonmoving party.” *Velazquez-Perez v. Developers Diversified Realty Corp.*, 753 F. 3d 265, 170 (1st Cir. 2014). The moving party bears the initial burden of showing an absence of genuine issues of material fact, but once that burden is met, the nonmoving party must set forth specific facts showing that there is a genuine issue for trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323-24 (1986).

“‘[T]he mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine* issue of *material* fact.’” *Scott v. Harris*, 550 U.S. 372, 380 (2007) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247–248 (1986)). “When opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment.” *Id.*

B. Legal Standards Governing the Constitutionality of School Searches

“Section 1983 creates a private action for redressing abridgments of deprivations of federally assured rights.” *Centro Medico del Turabo, Inc. v. Feliciano de Melecio*, 406 F.3d 1, 6 (1st Cir. 2005) (internal citations omitted). “The two essential elements of an action under section 1983 are . . . (i) that the conduct complained of has been committed under color of state law, and

(ii) that this conduct worked a denial of rights secured by the Constitution or laws of the United States.” *Finamore v. Miglionico*, 15 F.4th 52, 58 (1st Cir. 2021) (cleaned up) (citing *Chongris v. Bd. of Appeals of Andover*, 811 F.2d 36, 40 (1st Cir. 1987)).

The Fourth Amendment protects “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures . . .” U.S. CONST. Amend. IV. “The United States Supreme Court has held this protection is applicable to searches and seizures conducted by state actors, including public school officials, via the Fourteenth Amendment.” *Doran v. Contoocook Valley Sch. Dist.*, 616 F. Supp. 2d 184, 191 (D.N.H. 2009) (citing *Vernonia Sch. Dist. v. Acton*, 515 U.S. 646, 652 (1995); *T.L.O.*, 469 U.S. at 336-37) (“Equally indisputable is the proposition that the Fourteenth Amendment protects the rights of students against encroachment by public school officials”). “A search occurs when the government ‘physically occu[pies] private property for the purpose of obtaining information.” *United States v. Jones*, 565 U.S. 400, 404 (2012).

“Reasonableness . . . is the touchstone of the constitutionality of a governmental search.” *Bd. of Ed. of Indep. Sch. Dist. No. 92 of Pottawatomie Cty. v. Earls*, 536 U.S. 822, 828 (2002). “Ordinarily, a search . . . must be based upon ‘probable cause’ to believe that a violation of the law has occurred.” *T.L.O.*, 469 U.S. at 340 (internal citations omitted). “Reasonableness is the touchstone in any assessment of the constitutionality of a search of seizure, and while, in most cases, reasonableness demands a warrant and a showing of probable cause, such is not necessarily the case in the public school context.” *Doran v. Contoocook Valley Sch. Dist.*, 616 F. Supp. 2d 184, 191 (D.N.H. 2009) (citing *Bd. of Educ. of Indep. Sch. Dist. v. Earls*, 536 U.S. 822, 828-29 (2002)).

The constitutionality of a school search depends upon the “reasonableness under all the circumstances of the search.” *T.L.O.*, 469 U.S. at 341. “Determining the reasonableness of any

search involves a two-fold inquiry: first, one must consider ‘whether the action was justified at its inception,’ and second, ‘whether the search actually conducted ‘was reasonably related in scope to the circumstances which justified the interference in the first place.’” *Id.* (quoting *Terry v. Ohio*, 392 U.S. 1, 20 (1968)). “[T]he reasonableness standard should ensure that the interests of students will be invaded no more than is necessary to achieve the legitimate end of preserving order in the schools.” *T.L.O.*, 469 U.S. at 343.

In *T.L.O.*, the Supreme Court left open “the question of the appropriate standard for assessing the legality of searches conducted by school officials in conjunction with or at the behest of law enforcement agencies.” *T.L.O.*, 469 U.S. at 341 n. 7 (citing *Picha v. Wielgos*, 410 F. Supp. 1214, 1219-21 (N.D. Ill. 1976)). As one district court recently recognized, “the balancing is necessarily different when law enforcement is substantially involved with seizures or searches, requiring a higher standard of probable cause.” *Heard v. City of Plainfield*, No. 2:24-cv-10293, 2025 WL 3017902, at *23 n.10 (D.N.J. Oct. 28, 2025), *motion for reconsideration denied*, 2026 WL 508102 (D.N.J. Feb. 24, 2026) (collecting cases and noting contrary authority).

IV. ARGUMENT

A. Defendants subjected Jack to an unreasonable search based solely on his exercise of a clearly established and fundamental Constitutional right.

Regardless of whether probable cause or reasonable suspicion applies in this case, this case comes down to one simple and undeniable fact: Defendants subjected Jack to an unreasonable search based solely on his exercise of a clearly established and fundamental Constitutional right—the right to keep and bear arms. This, Defendants may not do—full stop. The Second Amendment to the U.S. Constitution (U.S. CONST. amend. II), as incorporated against state and local governments through the Due Process Clause of the Fourteenth Amendment (U.S. CONST. amend. XIV, § 1; *McDonald v. City of Chicago*, 561 U.S. 742 (2010)) guarantees “an individual

right to keep and bear arms,” *District of Columbia v. Heller*, 554 U.S. 570, 595 (2008), which is “a fundamental constitutional right guaranteed to the people,” *id.*, and has always been key to “our scheme of ordered liberty.” *McDonald*, 561 U.S. at 767-68; *see also N.Y. State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1 (2022).

Because Defendants targeted Jack for a Search based on his lawful exercise of his Second Amendment rights reasonable suspicion was not established. *See United States v. Black*, 707 F.3d 531, 540 (4th Cir. 2013) (holding “where a state permits individuals to openly carry firearms, the exercise of this right, without more, cannot justify an investigatory detention”); *Northrup v. City of Toledo Police Dep’t*, 785 F.3d 1128, 1131 (6th Cir. 2015) (finding reasonable suspicion standard not met when based on open possession of a firearm because “Ohio law permits the open carry of firearms”). As multiple Circuits have recognized, “[p]ermitting such a justification would eviscerate Fourth Amendment protections for lawfully armed individuals in those states.” *Black*, 707 F.3d at 540.

B. Defendants did not have probable cause to believe that the Search would uncover evidence of a violation of the law or school rules.

Because it is undisputed that DeTurris, a Hillsboro police officer, played a crucial role in the Search, including in the Interrogation immediately preceding the Search, Defendants cannot rely on the relaxed standard applicable to searches conducted by school officials alone. *See T.L.O.*, 469 U.S. at 341 n.7. Post-*T.L.O.*, cases involving constitutional challenges to school searches that involve law enforcement have held that where, as here, the officer played a significant role in the challenged activity, probable cause may be required. *See, e.g., Ferguson v. City of Charleston*, 532 U.S. 67, 83 n.20 (2001) (search by nurses at public hospital did not fall under the special needs exception because of “extensive entanglement” with police); *Heard v. City of Plainfield*, No. 2:24-CV-10293, 2025 WL 3017902, at *8 (D.N.J. Oct. 28, 2025), *motion for reconsideration denied*,

No. 2:24-CV-10293, 2026 WL 508102 (D.N.J. Feb. 24, 2026) (similar). By contrast, where an officer's presence is merely perfunctory, and the search is not designed to lead to criminal charges, school searches remain subject to *T.L.O.*'s reasonable suspicion standard. *See, e.g., Cason v. Cook*, 810 F.2d 188, 193 (8th Cir. 1987).

Simply put, "there is no justification for easing the usual requirement of probable cause and instead applying the *T.L.O.* reasonableness standard when the police are involved in a [search] that is not designed to maintain school order or security." *Pacheco v. Hopmeier*, 770 F. Supp. 2d 1174, 1183 (D.N.M. 2011) (citing *Jones v. Hunt*, 410 F.3d 1221, 1228 (10th Cir. 2005)). In *Jones*, the Tenth Circuit held that "the relevant Fourth Amendment standard is not the *T.L.O.* standard where a joint police officer-school administrator seizure is not for the purpose of maintaining order on school property." 410 F.3d at 1228. There, the defendants did not "claim that the [school official] had reason to believe that [the student] was acting disruptively or had violated a school rule or law when he ordered [the student] removed from class." *Id.*

Similarly, as established by the testimony of Defendants in this case, including Officer DeTurris, the school officials did not believe that Jack was acting in a threatening or disruptive manner, and therefore seizing Jack for the Interrogation and conducting the Search "did not help maintain security or order." *Id.* Thus, due to the involvement of law enforcement in the Search, probable cause is the proper standard to determine whether the Search violated the Fourth Amendment. DeTurris is a duly sworn law enforcement officer for the Hillsboro Police Department. SUMF ¶¶ 32, 81. Playing an active role in the Interrogation and Search, DeTurris was present at all relevant times. SUMF ¶¶ 62, 75-78, 151-54. Donning his full uniform, including a visible badge and holstered gun, DeTurris was present in Principal O'Rourke's office throughout the Interrogation. SUMF ¶¶ 98. DeTurris testified that he was standing near the door of the office,

that the door was closed and that Jack was never told that he was free to leave. SUMF ¶¶ 80, 100-03, 159-63. Once Defendants moved on from the Interrogation to the Search, DeTurrís stood sentinel during the Search, watching as it was conducted, prepared to take over as McGinn conducted the Search, should a gun have been discovered in the Search. SUMF ¶¶ 82, 85. Finally, McGinn confirmed that, had the Search uncovered the Handgun in Jack’s Truck, it would have been a crime. SUMF ¶ 174. Moreover, both O’Rourke and McGinn confirmed that had Jack continued to withhold consent or if he had left the Interrogation, that he would have been disciplined. SUMF ¶¶ 173-175.

In addition, DeTurrís’ presence, by his own testimony and the testimony of O’Rourke, did not accord with the School’s typical practices, which call for the Officer’s presence only when there an actual threat of safety is perceived or where contraband might be present. SUMF ¶ 82. Here, Officer DeTurrís testified that such requisite safety threat was not present in the Interrogation of Jack. SUMF ¶ 92; *see also* SUMF ¶ 91. Officer DeTurrís further testified that he “did not feel threatened by Jack” and he “did not” “feel that Jack presented danger to himself or others.” SUMF ¶ 92. Indeed, Officer DeTurrís’ testimony confirms that Jack “did not have access to a weapon” during the Interrogation and his “understanding . . . with Principal O’Rourke and AP McGinn, prior to coming into the interrogation room, was that there was no weapon in that office.” *Id.* Thus, DeTurrís’ testimony establishes that his presence was not for school safety purposes, but rather as part of law enforcement investigation to uncover potential criminal wrongdoing. SUMF ¶¶ 91-92. Thus, probable cause was required to justify the Search. *Heard*, 2026 WL 508102, at *6 (requiring probable cause because “it appear[ed] that a criminal investigation was contemplated and that there was a cooperative effort with law enforcement”).

Without question, Defendants cannot meet the probable cause standard to justify the Search. Constitutionally protected lawful conduct, particularly lawful conduct with nothing further, cannot form the basis for probable cause. *Heard*, 2025 WL 3017902, at *8 (“[M]erely witnessing some harmless activity alone is not enough to establish probable cause.”). Here, Defendants’ testimony establishes that the only justification for the Search related to Jack’s lawful exercise of his Second Amendment rights. SUMF ¶¶ 152, 195-96.

C. Neither was the Search supported by reasonable suspicion.

Under *T.L.O.*, a school search conducted solely by school administrators and without law enforcement involvement requires “reasonable suspicion.” *Safford Unified Sch. Dist. #1 v. Redding*, 557 U.S. 364, 370 (2009) (citing *T.L.O.*, 469 U.S. at 342, 345). Even assuming, *arguendo*, that the relaxed standard of reasonable suspicion applies notwithstanding Officer DeTurris’ involvement in the Search, Defendants fail meet the reasonable suspicion standard.

Under *T.L.O.*, school search based on particularized suspicion that a law or school rule has been violated is reasonable if: (1) the search is “justified at its inception”; *and* (2) the search as actually conducted is “reasonably related in scope to the circumstances which justified the interference in the first place.” *T.L.O.*, 469 U.S. at 341 (quoting *Terry*, 392 U.S. at 20) (internal quotation marks omitted). “A search of a student by a teacher or other school official will be ‘justified at its inception’ when there are reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school.” *Id.*

Although the reasonable suspicion standard “stops short of probable cause, it is no rubber stamp. If probable cause requires a ‘substantial chance’ of wrongdoing, reasonable suspicion still requires a ‘moderate chance.’” *M.K. by & through Surujnath v. City of New York*, No. 23-CV-

6579, 2025 WL 1530577, at *2 (E.D.N.Y. May 29, 2025), *reconsideration denied*, No. 23-CV-6579, 2025 WL 3265194 (E.D.N.Y. Nov. 24, 2025) (quoting *Safford*, 557 U.S. at 370).

In this case, the evidence upon which Defendants relied in conducting the Search was grossly insufficient. Defendants relied upon a week-old, stale report of a single comment made by Jack and overheard by an assistant coach (Dean) relating to Jack’s storage of his lawfully possessed Handgun in the glove box of his Truck outside of School—indisputably legal and constitutionally protected conduct. SUMF ¶¶ 26, 43, 58-59, 152, 195-96. At no point during the Interrogation, the Search or at any time since, have Defendants brought forth a single shred of evidence of unlawful conduct by Jack. *See generally* SUMF; Answer. Moreover, Defendants confirmed that they did not view Jack as a threat to school safety; they did not believe Jack had a weapon on his person during the Interrogation; and Jack had no previous disciplinary issues. SUMF ¶¶ 6, 64, 86-92. Indeed, had Jack posed a threat to school safety, one would have expected Dean to report the Alleged Bus Conversation sooner than a full week after having overheard it. SUMF ¶¶ 26, 43.

Distilling the Alleged Bus Conversation to its core, it reveals nothing more than the lawful conduct of Jack in exercising his Second Amendment rights in full compliance with New Hampshire and Federal law. Such lawful conduct cannot, as a matter of law, standing alone form the basis for reasonable suspicion. *Alea v. Ptacek*, No. 24-1147-DDC, 2025 WL 3637393, at *9 (D. Kan. Dec. 16, 2025) (“legally innocuous behavior doesn’t generate reasonable suspicion”); *Heard*, 2025 WL 3017902, at *8, *10 (school search unconstitutional where “reasonable suspicions” were based on “nothing more than an innocuous activity”). *Gov’t of Virgin Island In Int. of K.O.*, No. 141/2004, 2004 WL 3558508, at *6 (Terr. V.I. Dec. 14, 2004) (finding no reasonable suspicion where the student had not “engaged in any unlawful conduct or threatening behavior when he was searched”).

Without doubt, Jack’s constitutionally protected and lawful exercise of his Second Amendment rights could not be the basis of reasonable suspicion to justify the Search. Therefore, the Search was unconstitutional.

D. Jack did not provide valid consent to the Search.

The undisputed facts confirm that Jack repeatedly refused to consent to the Search. To the extent that Defendants’ may attempt to contort statements he made after repeated refusals—while outnumbered in a closed room surrounded by adult school officials *and law enforcement*—into consent, well established caselaw concludes that such “consent” was not voluntary.

Valid consent freely given to a search is an exception to the constitutional requirement that a search be supported by probable cause, or, in limited circumstances in a school context, reasonable suspicion. *T.L.O.*, 469 U.S. at 343. “But the Fourth and Fourteenth Amendments require that consent not be coerced, by explicit or implicit means, by implied threat or covert force. For, no matter how subtly the coercion was applied, the resulting ‘consent’ would be no more than a pretext for the unjustified police intrusion against which the Fourth Amendment is directed.” *Schneckloth v. Bustamonte*, 412 U.S. 218, 228 (1973).

The burden lies with the government to establish by a preponderance of the evidence that valid, voluntary consent was given. *United States v. Vanvliet*, 542 F.3d 259, 264 (1st Cir. 2008). The First Circuit has explained the test for determining whether valid consent occurred as follows: “[i]f under all the circumstances it has appeared that the consent was not given voluntarily—that it was coerced by threats or force, or granted only in submission to a claim of lawful authority—then we have found the consent invalid and the search unreasonable.” *Id.* (internal quotations and brackets omitted).

“Further, the evidence of voluntary consent must be ‘proved by clear and positive testimony’ and ‘must be unequivocal, specific, and intelligently given, uncontaminated by any duress or coercion.’” *United States v. Charbonneau*, 979 F. Supp. 1177, 1186 (S.D. Ohio 1997) (quoting *United States v. Hearn*, 496 F.2d 236, 243-44 (6th Cir.1974)). “The Supreme Court has explained that subtle and polite coercion is just as objectionable as more obvious browbeating.” *Lopera v. Town of Coventry*, 640 F.3d 388, 406 (1st Cir. 2011) (Thompson, J., dissenting in part) (citing *Schneckloth*, 412 U.S. at 228). “The First Circuit has made clear that acquiescence in response to a show of authority is not the equivalent to consent.” *United States v. Smith*, 533 F. Supp. 2d 227, 232 (D. Mass. 2008).

Here, Defendants cannot meet their burden of establishing that Jack voluntarily consented to the Search. The record is replete with Defendants’ admissions that Jack repeatedly and vocally stated that he refused to consent to the Search. SUMF ¶¶ 115-19, 124-28, 138, 140, 142, 148, 158. Undeterred by Jack’s affirmative refusal to consent, Defendants continued the Interrogation, repeatedly informing Jack that the Search of his Truck would occur, regardless of whether he provided consent. SUMF ¶¶ 96, 122, 124-26, 141, 146-47, 150, 175. Throughout the Interrogation, Officer DeTurris, in full uniform and visibly armed, stood posted in close proximity to the only door in the office where the Interrogation occurred. SUMF ¶¶ 98, 100-07. Defendants observed Jack’s distressed emotional state during the Interrogation, but they continued trying to obtain Jack’s “consent” to the Search. SUMF ¶¶ 125, 144, 147-49. Jack continued to affirmatively state his opposition to the Search and refused to provide consent. SUMF ¶¶ 115-19, 124-28, 138, 140, 142, 148, 158. Defendants remained relentless—again informing Jack that the Search was happening without regard for his consent, or unequivocal lack thereof. SUMF ¶¶ 96, 122, 124-26, 141, 146-47, 150, 175. Finally, after O’Rourke stated, yet again, that the Search would be

conducted notwithstanding Jack’s persistent, vociferous objections and visible distress, Jack uttered a single word, “okay.” SUMF ¶¶ 150. Seizing upon this utterance, Defendants led Jack to the parking lot where Jack’s Truck was parked. SUMF ¶¶ 151.

While Defendants have contended that they obtained consent, any purported consent by Jack is, without doubt, invalid. *See* ECF 9 (“Answer”) Aff. Def. C. The First Circuit has squarely rejected Defendants’ argument that a simple “okay” is sufficient to waive one’s Fourth Amendment rights, especially when its utterance is preceded by unequivocal refusals. As the First Circuit explained, “uttering of *the word ‘okay’ . . . was not a consent to search*—it was a simple acquiescence to what any reasonable person would have perceived, under the circumstances, as police conduct tantamount to a claim of lawful authority to search.” *United States v. Weidul*, 325 F.3d 50, 54 (1st Cir. 2003) (quoting *United States v. Weidul*, 227 F. Supp. 2d at 161, 167-68 (D. Me. Aug. 7, 2022)) (emphasis added). *Accord United States v. Smith*, 533 F. Supp. 2d 227, 232 (D. Mass. 2008) (“A simple response of ‘okay’ to an officer's claim of authority to search is not voluntary consent.”).

In *Smith*, the court recognized that where the party whose property was subject to a search “was not at all initially receptive to a police search of her home” and “was distraught,” saying “okay” in response to officer announcing the search would commence, did not constitute consent. *Id.* Accordingly, muttering “okay” in the face of O’Rourke’s persistent representation that the Search would occur with or without his consent did not vitiate Jack’s repeated refusals to consent and could not, as a matter of law, effectuate valid consent to the Search. *Weidul*, 325 F.3d at 54; *Smith*, 533 F. Supp. 2d at 232.

Moreover, any purported consent based on the undisputed facts in this case would be invalid as the operative circumstances establish coercion. The operative—and coercive—

circumstances underpinning the Interrogation and the Search include the following undisputed facts: (1) Jack was not told that he was free to—leave O’Rourke’s office; refuse to answer questions; or refuse to consent to the Search, SUMF ¶¶ 161-70; (2) Despite hearing Jack’s father deny consent and state that he was on his way to the School, Defendants continued the Interrogation, SUMF ¶¶ 135-40; (3) Notwithstanding Jack’s unequivocal denials of consent, Defendants persisted in their efforts to coerce consent, SUMF ¶¶ 96, 115-19, 122, 124-28, 138, 140, 141, 142, 144, 146-49, 150, 158, 175; (4) Jack believed that he would be subject to disciplinary action if he did not consent and Defendants’ testimony confirms he would have been subject to suspension had he effectively prevented the Search, SUMF ¶¶ 160, 171-73; (5) Jack was distressed and upset during the Interrogation, SUMF ¶¶ 125, 144, 147-49; (6) the office was small, with only a single method of egress, which was, in effect, blocked by a uniformed and armed law enforcement officer, SUMF ¶¶ 98-107; and (7) Defendants repeatedly misrepresented to Jack that they did not need his consent and the Search would proceed regardless, SUMF ¶¶ 96, 122, 124-26, 141, 146-47, 150, 175.

Each of the preceding factors bespeaks the coercive nature of the Interrogation, and taken together, they compel only one conclusion—any purported consent rendered under these circumstances was not voluntary, and thus invalid. For example, courts recognize that “the presence of armed law enforcement in the closed-door setting adds something more—it communicates to a reasonable person that he is not at liberty to ignore the police presence and go about his business.” *Lawson v. Creely*, 737 F. Supp. 3d 483, 505 (E.D. Ky. 2024), *aff’d*, 137 F.4th 404 (6th Cir. 2025) (internal quotations and brackets omitted). In addition, Defendants’ false insistence that they could legally conduct the Search regardless of whether Jack consented—because there was no reasonable suspicion, they could not—provides further indicia of coercion.

C.f., United States v. Munoz, 987 F. Supp. 2d 438, 444-45 (E.D.N.Y. 2020) (holding consent to search invalid where law enforcement represented that they would obtain an order, when a warrant would not be obtainable). Court have held that consent by a student to a school search is not valid when given under the threat of significant punishment; such was the case here, where Jack was facing suspension. *Cummerlander v. Patriot Prep. Academy Inc.*, 86 F. Supp. 3d 808, 816 (S.D. Ohio 2015) (holding a student's consent to search invalid when given under threat of expulsion).

"Court[s] should consider the details of any detention, including length and nature of detention." *Fewless ex rel. Fewless v. Bd. of Educ. of Wayland Union Schs.*, 208 F. Supp. 2d 806, 813 (W.D. Mich. 2002). Here, where Jack was haled into a small office, with three adult men, including an armed and uniformed officer, and two school officials with disciplinary authority over him, the details of the Interrogation establish coercion, rendering any consent invalid.

V. CONCLUSION

For all the foregoing reasons, no genuine issue of disputed material fact exists and no reasonable jury could resolve Plaintiff's claim in favor of the Defendants. Accordingly, summary judgment in Jack's favor is appropriate.

WHEREFORE, the Plaintiff, Jack Harrington, respectfully prays this Honorable Court:

A. Enter judgment in Plaintiff's favor and against the Defendants on Count One as follows:

(1) Issuing a Declaratory Judgment pursuant to 28 U.S.C. §§ 2201 and 2202 finding Defendants liable pursuant to 42 U.S.C. § 1983 for violation of Plaintiff's constitutional rights under the Fourth and Fourteenth Amendments to the U.S. Constitution;

(2) Awarding Plaintiff nominal damages;

(3) Awarding Plaintiff his reasonable attorneys' fees and costs associated with this action pursuant to 42 U.S.C. § 1988;

(4) Awarding Plaintiff prejudgment and post-judgment interest; and

(5) Granting Plaintiff such other and further relief as the Court deems just and proper.

B. Enter judgment in Plaintiff's favor and against the Defendants on Defendants' affirmative defense of consent.

Respectfully Submitted,
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing filing was electronically served through ECF to all counsel of record on this date.

/s/ Matthew St. Hilaire
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