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## **Driving While Black And Latinx: Stops, Fines, Fees, And Unjust Debts**

New York Law School

# DRIVING WHILE BLACK AND LATINX:

Stops, Fines, Fees,  
and Unjust Debts



**EXECUTIVE SUMMARY**

February 2020

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## OVERVIEW

Between January 2016 and April 2018, New York issued almost 1.7 million driver's license suspensions for *traffic debt*—nonpayments of traffic tickets and nonappearances in traffic court.<sup>1</sup>

As this paper demonstrates, traffic debt suspensions disproportionately harm communities of color in New York. Traffic debt suspensions force people to make an impossible choice: stop driving—and lose access to work, childcare, health care, food, and other basic necessities—or keep driving, and risk criminal charges, more unaffordable fines and fees, and even incarceration. License-for-payment laws ultimately create conditions that parallel modern-day debtor's prisons.

For these reasons, the New York Law School (NYLS) Racial Justice Project urges New York lawmakers to support the Driver's License Suspension Reform Act (Senate Bill S5348A), which would end suspensions for nonpayments of traffic tickets and nonappearances in traffic court, practices which unduly target and harm communities of color.



**See the full report for detailed references.**

<sup>1</sup> See *infra* Section II.

## RESEARCH FINDINGS

**Traffic debt suspensions disproportionately harm New Yorkers of color, and will continue to do so if the current law remains unchanged.** In New York City, the driver's license suspension rate in the 10 ZIP codes with the highest concentrations of people of color is **two-and-a-half times higher** than in the ZIP codes with the most concentrated white populations. Outside of New York City, the disparity is even more extreme: The suspension rate in the 10 ZIP codes with the highest concentrations of people of color is **four times higher** than in the 10 ZIP codes with the most concentrated white populations.<sup>2</sup>

**The racial disparity in suspension rates is consistent with data demonstrating racially disproportionate traffic enforcement among communities of color.** Although statewide data is not available,<sup>3</sup> state police data compiled in seven New York counties, as well as data from Suffolk County and Buffalo, show that people of color are disproportionately stopped by law enforcement. For example, in 2017, Black individuals accounted for **31.38 percent** of the New York State Police's traffic stops in Monroe County, yet made up just **14.4 percent** of the county's population. In 2018, Black individuals accounted for **17.69 percent** of the Suffolk County Police Department's traffic stops, yet made up just **7.2 percent** of the county's population.<sup>4</sup>

New Yorkers of color are also disproportionately ticketed, arrested, charged, and convicted for traffic violations and driving on suspended licenses. For instance, drivers who reside in predominantly Black ZIP codes in Buffalo are at least **eight times as likely** to be issued multiple tickets at a single traffic stop or checkpoint than those who live in predominantly white ZIP codes. In New York City—where driving with a suspended license was the **fourth most charged crime** in 2018—76 percent of the drivers are white, yet 80 percent of those arrested for driving with a suspended license in 2018 were Black or Latinx.<sup>5</sup> Data from outside New York State corroborate these staggering racial disparities. Across the country, Black drivers are **20 percent more likely** to be pulled over than white drivers.<sup>6</sup> Similarly, between 2011 and 2016 in Washington, D.C., 80 percent of the drivers whose licenses were suspended for nonpayment of traffic tickets were Black—and there were even greater racial disparities among those who were arrested for driving with a suspended license.<sup>7</sup>

**This disproportionate traffic enforcement in communities of color is unrelated to traffic safety.** It serves to finance state and municipal operations, especially as state and local governments have become increasingly dependent on revenue generated through traffic violations.<sup>8</sup> In 2017, New York's justice courts, which primarily handle traffic violations and minor offenses, collected nearly \$250 million in revenues through fines, fees, and other exactions. Three local governments on Long Island are even more reliant on fines and fees than Ferguson, Missouri, which the U.S. Department of Justice criticized for its overreliance on ticket-related revenue.<sup>9</sup>

**The consequences of traffic debt suspensions are disastrous, entrenching people in a debt trap.** Poverty makes it difficult—if not impossible—for suspended drivers to pay off the fines and fees underlying their driver's license suspensions. Indeed, research shows that the suspension rate in New York's 10 poorest ZIP codes is nearly **nine times higher** than the suspension rate in the 10 wealthiest ZIP codes.<sup>10</sup>



<sup>2</sup> See *infra* Section II.

<sup>3</sup> See *infra* Section V.

<sup>4</sup> See *infra* Section III.a.i.

<sup>5</sup> See *infra* Section III.b.i.

<sup>6</sup> See *infra* Section III.b.ii.

<sup>7</sup> Kathryn Zickuhr, Applying a racial equity lens to fines and fees in the District of Columbia, D.C. POLICY CENTER (Apr. 22, 2019), [https://www.dcpolicycenter.org/publications/racial-equity-fines-fees/#\\_ftnref22](https://www.dcpolicycenter.org/publications/racial-equity-fines-fees/#_ftnref22). Likewise, a 2015 study showed that in Virginia, Black drivers represented nearly 50 percent of the drivers who had their license revoked for nonpayment, despite Black individuals representing only 22 percent of the population. Danielle Conley & Ariel Levinson-Waldman, Discriminatory Driver's License Suspension Schemes, ACS LAW (Mar. 19, 2019), [https://www.acslaw.org/issue\\_brief/briefs-landing/discriminatory-drivers-license-suspension-schemes/#\\_ednref42](https://www.acslaw.org/issue_brief/briefs-landing/discriminatory-drivers-license-suspension-schemes/#_ednref42).

<sup>8</sup> See *infra* Section III.a.iii.

<sup>9</sup> See *infra* Section III.a.iii.

<sup>10</sup> See *infra* Section III.c.

# DRIVING WHILE BLACK AND LATINX:

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The onslaught of excessive fines, fees, and costs threaten individuals' ability to secure and maintain employment. A New Jersey study indicated that 42 percent of people lost their jobs after their driver's licenses were suspended; nearly half of those people could not find new jobs. Of those able to secure new employment, 88 percent reported a decrease in pay. Suspensions are thus counterproductive because they render individuals even less able to pay off the fines and fees underlying their suspensions.<sup>11</sup>

**Traffic debt suspensions also senselessly entrench people in the criminal justice system. Seventy-five percent** of people with suspended licenses continue to drive because driving is essential for many New Yorkers to access basic necessities. If they are caught, they are arrested and charged with driving with a suspended license, which is one of the most common criminal charges in New York and around the country. Once arrested for driving with a suspended license, people are saddled with more fines and fees, and are often jailed for long enough to miss their rent payment or lose their job. This only serves to further exacerbate the underlying issue: financial insecurity.<sup>12</sup>

**Suspensions issued for non-safety reasons, like traffic debt, create a public safety problem. Two thirds** of all driver's license suspensions in New York are issued for traffic debt—not for dangerous driving. These suspensions increase the number of unlicensed and uninsured drivers on the road and divert law enforcement, DMV, and court resources from true public safety problems.<sup>13</sup>

**Traffic debt suspensions are an ineffective debt collection method that harms the overall economy.** Research has revealed the practice's negative ramifications for GDP, tax revenue, and employers. A study conducted in Phoenix, Arizona found that when 7,000 drivers had their licenses reinstated, GDP increased by an estimated \$149.6 million as a result, along with increases in employment and tax revenue.<sup>14</sup>

**New York's driver's license suspension law may also be vulnerable to possible legal challenges.** In fact, several lawsuits challenging driver's license suspension laws that authorize suspensions for non-safety reasons have been filed around the country.<sup>15</sup> New York's law may run afoul of "fundamental fairness," the standard that the U.S. Supreme Court has adopted to evaluate economic disparities in the justice system, and also may violate the Equal Protection Clause. The law additionally may contravene federal agency regulations that implement Title VI of the Civil Rights Act of 1964, which could jeopardize billions of dollars in federal funding for New York, its subdivisions, and its municipalities. Further, if courts were to find that the Eighth Amendment applies to traffic debt suspensions, they might also find that New York's driver's license suspension law violates the Eighth Amendment's proscription against excessive fines.<sup>16</sup>

## RECOMMENDATIONS

For these reasons, the NYLS Racial Justice Project urges New York lawmakers to support the Driver's License Suspension Reform Act (Senate Bill S5348A), which would end suspensions for nonpayments of traffic tickets and nonappearances in traffic court, practices which unduly target and harm communities of color.

<sup>11</sup> See *infra* Section IV.a.

<sup>12</sup> See *infra* Section IV.b.

<sup>13</sup> See *infra* Section IV.c.

<sup>14</sup> See *infra* Section IV.d.

<sup>15</sup> See e.g., Conley & Levinson-Waldman, *supra* note 7.

<sup>16</sup> See *infra* Section VI.





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New York Law School  
The Racial Justice Project  
Driving While Black and Latinx: Stops, Fines, Fees, and Unjust Debts  
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**Table of Contents**

- I. N.Y. Veh. & Traf. Law § 510(4-a)..... 3
  - a. Overview..... 3
  - b. Proposed Reforms ..... 4
- II. New Yorkers of Color Disproportionately Suffer from Driver’s License Suspensions ..... 5
  - a. New York City ..... 5
  - b. Upstate and Long Island ..... 6
    - i. Upstate ..... 6
    - ii. Long Island ..... 8
- III. People of Color are Disproportionately at Risk for Driver’s License Suspensions..... 9
  - a. Heavier Traffic Enforcement Among Communities of Color ..... 9
    - i. New Yorkers of Color Disproportionately Subjected to Traffic Stops .... 9
      - 1. New York State Police ..... 9
      - 2. Suffolk County Police Department .....10
      - 3. Buffalo Police Department..... 11
    - ii. People of Color Across the Country Disproportionately Subjected to Traffic Stops .....12
    - iii. Pretextual Stops Generally Used Against People of Color for Reasons Wholly Unrelated to Traffic Safety .....13
  - b. People of Color Suffer Disproportionately Harsh Outcomes Incident to Traffic Stops .....15
    - i. New Yorkers of Color Suffer Disproportionately Harsh Outcomes Incident to Traffic Stops .....16
    - ii. People of Color Across the Country Suffer Disproportionately Harsh Outcomes Incident to Traffic Stops .....17
  - c. Disproportionate Concentrations of Poverty Among Communities of Color.....19
- IV. Consequences of Driver’s License Suspensions .....20
  - a. Entrenches the Debt Trap .....21
  - b. Bloats the Criminal Justice System .....25
  - c. Endangers Public Safety .....29
  - d. Harms the Economy .....31
- V. Grave Lack of Traffic-Stop Data in New York is Problematic.....32
  - a. Lack of Data Thwarts Transparency and Accountability .....33
  - b. Availability of Data Drives Better Policing Practices.....36
- VI. New York’s Driver’s License Suspension Scheme is Vulnerable to Possible Legal Challenges .....37

- a. Fourteenth Amendment.....37
  - i. Fundamental Fairness .....38
  - ii. Equal Protection.....42
- b. Implementing Regulations of Title VI of the Civil Rights Act of 1964 .....44
  - i. New York Accepts Federal Funds.....46
  - ii. New York’s Driver’s License Suspension Scheme Discriminatorily  
Impacts People of Color.....48
- c. Eighth Amendment Proscription Against Excessive Fines .....49

Appendices.....54

- Appendix A.....54
- Appendix B.....56

## I. N.Y. Veh. & Traf. Law § 510(4-a)

### a. Overview

In New York, traffic tickets come with a deadline requiring the person ticketed to either pay the ticket or appear in court or before a traffic violations agency to contest the ticket. New York law does not allow for a reduction, waiver, or deferment of payment, a partial payment or payment plan, nor community service as an alternative to payment.<sup>1</sup>

If a person admits they are guilty or are found guilty by a judge, they are assessed a fine, and given a payment deadline. If a person does not pay by the deadline, the court or traffic violations agency notifies the New York State Department of Motor Vehicles (DMV), which sends a notice to the person seeking payment within 30 days. If the ticket remains unpaid, the DMV then suspends the person's license. This is referred to as a failure to pay (FTP) suspension. If a person contests their ticket and then does not appear, or if the ticket requires a court appearance and the person does not appear for it, the DMV sends a 30-day notice to the person. If the person does not pay or appear by the deadline, the DMV suspends the person's license.<sup>2</sup> This is referred to as a failure to appear (FTA) suspension.

Additionally, for FTA suspensions, courts generally enter automatic findings of guilt and impose fines, which if unpaid, become FTP suspensions—the result of one traffic ticket then becomes multiple driver's license suspensions.<sup>3</sup> When a driver cannot afford a traffic ticket, he or she has little incentive to come to court. Thus, poverty is a driver of both FTP and FTA suspensions. As fines and fees quickly accumulate, the reality for too many New Yorkers becomes permanent driver's license suspension because they cannot afford to pay the fines and fees required to have their licenses reinstated. Among the fines and fees that must be paid to have one's license reinstated is a \$70 suspension termination fee (STF) per suspension. To have one's license reinstated, the STF(s) must be paid along with the underlying fines and fees, in a lump sum.

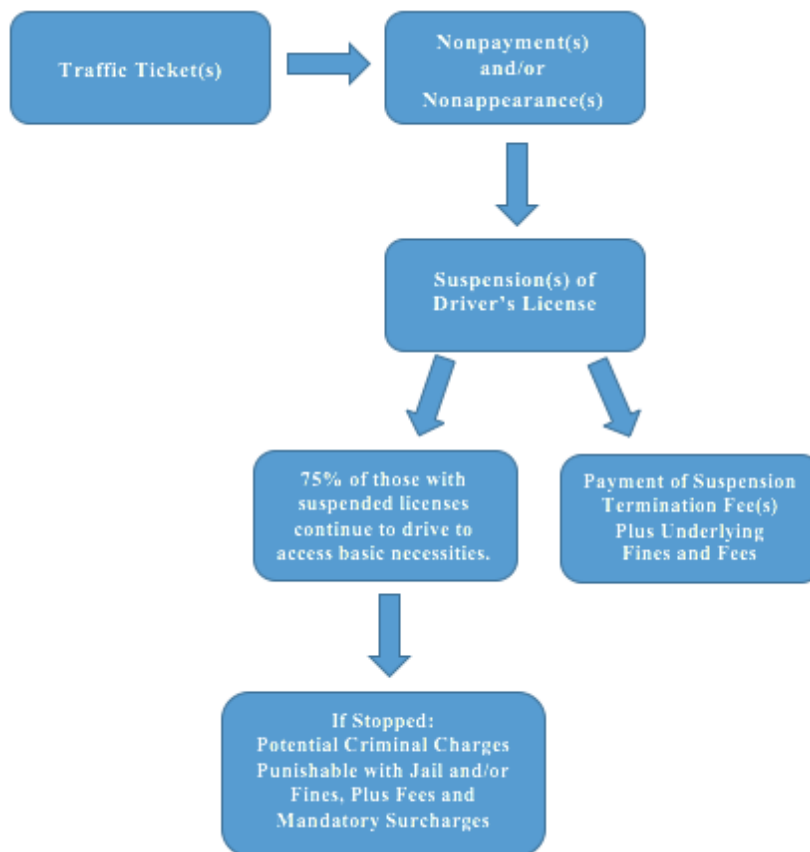
The graphic that follows depicts the process and effects promulgated by N.Y. Veh. & Traf. Law § 510(4-a):

<sup>1</sup> See N.Y. Veh. & Traf. Law § 510(4-a).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*





### b. Proposed Reforms

If enacted, the Driver's License Suspension Reform Act would implement several reforms to repair New York's broken FTP/FTA driver's license suspension scheme. The Act would:

- End suspensions for not paying or not appearing to contest traffic tickets.
- Grant courts and hearing officers the discretion to reduce or waive balances incurred as a result of traffic violations.
- Require that affordable payment plans be offered at the greater of 2% monthly income or \$10 per month.
- Provide notice of the availability of payment plans at the time the ticket is issued, at the time of sentencing, and in any communications involving the imposition or collection.
- Reinstate licenses suspended for not paying or appearing to contest a traffic ticket, waiving the \$70 STF.
- Revise and mitigate the crime of driving with a suspended license (known as aggravated unlicensed operation of a motor vehicle in New York) by repealing multiple FTP/FTA suspensions as an aggravating circumstance.

## II. New Yorkers of Color Disproportionately Suffer from Driver's License Suspensions

Between January 2016 and April 2018, New York issued almost 1.7 million driver's license suspensions for nonpayments of traffic tickets and nonappearances in traffic court (hereinafter Traffic Debt).<sup>4</sup>

Traffic Debt suspensions are strongly correlated with race. In 2016, over 679,000 driver's license suspensions for FTP/FTA were issued in New York.<sup>5</sup> Put another way, 4.35 percent of the driving-age population in New York had their driver's licenses suspended for not paying or appearing to contest traffic tickets. This 4.35 percent is comprised of a disproportionate percentage of people of color.<sup>6</sup> The disproportionate impact of suspensions is not surprising given that New Yorkers of color are disproportionately subjected to traffic stops, which helps to drive the disproportionate number of driver's license suspensions among communities of color.<sup>7</sup>

### a. New York City

In New York City, the driver's license suspension rate in the ten zip codes with the highest concentrations of people of color is two-and-a-half times higher than in the zip codes with the most concentrated white populations.<sup>8</sup> The examples that follow demonstrate a sampling of data that show people of color are disproportionately burdened with driver's license suspensions.

#### The Bronx<sup>9</sup>

| Zip Code | Percentage of Driving-Age Population, People of Color | Traffic Debt Suspensions per 1,000 People |
|----------|---|---|
| 10474    | 99.1%   | 70  |
| 10456    | 98.7%   | 61  |
| 10457    | 98.4%   | 66  |
| 10473    | 98.0%   | 64  |
| 10460    | 97.3%   | 62  |
| 10466    | 97.2%   | 68  |
| 10454    | 96.5%   | 74  |
| 10469    | 88.3%   | 54  |
| 10461    | 62.3%   | 43  |
| 10470    | 57.9%   | 46  |
| 10465    | 53.4%   | 46  |
| 10464    | 29.6%   | 31  |

<sup>4</sup> Joanna Weiss & Claudia Wilner, *Opportunity Suspended*, Drivenbyjustice.org (last visited Jan. 8, 2020) (analyzing data from the New York Dep't of Motor Vehicles 2016–2017).

<sup>5</sup> Ted Alcorn, *Handcuffed and Arrested for Not Paying a Traffic Ticket*, N.Y. TIMES (May 8, 2019), <https://www.nytimes.com/2019/05/08/nyregion/suspending-licenses-minor-offense-money.html>.

<sup>6</sup> Weiss & Wilner, *supra* note 4.

<sup>7</sup> See *infra* Section III.a.

<sup>8</sup> Weiss & Wilner, *supra* note 4.

<sup>9</sup> *Id.*

**Staten Island<sup>10</sup>**

| Zip Code | Percentage of Driving-Age Population, People of Color | Traffic Debt Suspensions per 1,000 People |
|----------|---|---|
| 10303    | 78.3%   | 135                                       |
| 10302    | 62.5%   | 98  |
| 10304    | 61.8%   | 92  |
| 10310    | 56.4%   | 79  |
| 10301    | 56.2%   | 81  |
| 10314    | 34.8%   | 43  |
| 10306    | 22.7%   | 51  |
| 10312    | 15.9%   | 42  |
| 10308    | 14.3%   | 38  |
| 10309    | 11.7%   | 48  |

**b. Upstate and Long Island**

Outside of New York City, the suspension rate in the ten zip codes with the highest concentrations of people of color is four times higher than in the ten zip codes with the most concentrated white populations.<sup>11</sup> The examples that follow demonstrate a sampling of data that show people of color are disproportionately burdened with driver's license suspensions.

**i. Upstate  
Albany and Surrounding Area<sup>12</sup>**

| Zip Code | Percentage of Driving-Age Population, People of Color | Traffic Debt Suspensions per 1,000 People |
|----------|---|---|
| 12206    | 69.9%   | 112                                       |
| 12307    | 69.7%   | 180                                       |
| 12210    | 56.7%   | 102                                       |
| 12308    | 40.6%   | 84  |
| 12305    | 35.1%   | 89  |
| 12303    | 22.8%   | 62  |
| 12205    | 17.1%   | 37  |
| 12211    | 12.2%   | 19  |
| 12009    | 6.8%  | 20  |
| 12186    | 5.6%  | 17  |
| 12158    | 4.1%  | 30  |
| 12059    | 2.3%  | 34  |
| 12193    | 0.0%  | 32  |

<sup>10</sup> Id.<sup>11</sup> Id.<sup>12</sup> Id.

**Buffalo and Surrounding Area<sup>13</sup>**

| Zip Code | Percentage of Driving-Age Population, People of Color | Traffic Debt Suspensions per 1,000 People |
|----------|---|---|
| 14208    | 89.4%   | 163                                       |
| 14215    | 86.4%   | 168                                       |
| 14204    | 85.5%   | 130                                       |
| 14211    | 84.4%   | 182                                       |
| 14203    | 63.7%   | 92  |
| 14212    | 49.9%   | 108                                       |
| 14207    | 46.8%   | 72  |
| 14216    | 25.4%   | 43  |
| 14226    | 22.0%   | 23  |
| 14222    | 21.7%   | 21  |
| 14225    | 16.8%   | 35  |
| 14220    | 11.4%   | 40  |

**Rochester and Surrounding Area<sup>14</sup>**

| Zip Code | Percentage of Driving-Age Population, People of Color | Traffic Debt Suspensions per 1,000 People |
|----------|---|---|
| 14605    | 88.5%   | 271                                       |
| 14621    | 81.4%   | 265                                       |
| 14619    | 81.2%   | 268                                       |
| 14608    | 76.3%   | 266                                       |
| 14611    | 73.6%   | 335                                       |
| 14613    | 66.4%   | 300                                       |
| 14609    | 48.6%   | 179                                       |
| 14606    | 38.6%   | 156                                       |
| 14615    | 37.3%   | 175                                       |
| 14624    | 17.8%   | 52  |
| 14618    | 16.2%   | 22  |
| 14610    | 14.8%   | 37  |
| 14617    | 11.3%   | 45  |

**Syracuse and Surrounding Area<sup>15</sup>**

| Zip Code | Percentage of Driving-Age Population, People of Color | Traffic Debt Suspensions per 1,000 People |
|----------|---|---|
| 13202    | 67.0%   | 66  |
| 13205    | 63.7%   | 104                                       |
| 13207    | 46.1%   | 96  |

<sup>13</sup> Id.<sup>14</sup> Id.<sup>15</sup> Id.

|       |       |    |
|-------|-------|----|
| 13208 | 43.0% | 67 |
| 13204 | 42.7% | 97 |
| 13203 | 42.6% | 62 |
| 13224 | 42.1% | 63 |
| 13210 | 40.5% | 44 |
| 13214 | 24.4% | 29 |
| 13078 | 14.9% | 9  |
| 13116 | 10.4% | 29 |
| 13215 | 5.8%  | 17 |

**ii. Long Island  
Nassau County<sup>16</sup>**

| Zip Code | Percentage of Driving-Age Population, People of Color | Traffic Debt Suspensions per 1,000 People |
|----------|---|---|
| 11575    | 98.3%   | 136                                       |
| 11550    | 91.9%   | 92  |
| 11553    | 91.2%   | 98  |
| 11003    | 82.4%   | 71  |
| 11520    | 73.9%   | 80  |
| 11590    | 58.8%   | 63  |
| 11510    | 55.5%   | 59  |
| 11542    | 39.6%   | 34  |
| 11558    | 28.6%   | 45  |
| 11561    | 22.1%   | 30  |
| 11554    | 19.0%   | 17  |
| 11530    | 11.1%   | 10  |

**Suffolk County<sup>17</sup>**

| Zip Code | Percentage of Driving-Age Population, People of Color | Traffic Debt Suspensions per 1,000 People |
|----------|---|---|
| 11798    | 91.1%   | 177                                       |
| 11717    | 84.5%   | 90  |
| 11722    | 76.3%   | 101                                       |
| 11701    | 64.3%   | 86  |
| 11706    | 62.2%   | 72  |
| 11749    | 51.6%   | 74  |
| 11713    | 47.1%   | 118                                       |
| 11091    | 39.3%   | 76  |
| 11932    | 38.7%   | 67  |
| 11950    | 36.4%   | 100                                       |
| 11953    | 30.6%   | 77  |

<sup>16</sup> Id.

<sup>17</sup> Id.

|       |       |    |
|-------|-------|----|
| 11944 | 26.1% | 53 |
| 11976 | 17.9% | 22 |
| 11719 | 16.4% | 35 |
| 11787 | 8.7%  | 18 |
| 11739 | 6.0%  | 11 |

### III. People of Color are Disproportionately at Risk for Driver’s License Suspensions

Nearly two thirds of all driver’s license suspensions in New York are for Traffic Debt,<sup>18</sup> and such suspensions are drastically compounded for communities of color. As people of color are disproportionately stopped, ticketed, ticketed with multiple tickets, arrested, charged, and convicted for traffic violations and driving with suspended licenses, people of color are disproportionately at risk for driver’s licenses suspensions. Exacerbating the risk are disproportionate concentrations of poverty among communities of color; as is self-evident, poverty makes it more difficult to pay Traffic Debt.

#### a. Heavier Traffic Enforcement Among Communities of Color

Communities of color are disproportionately policed. Correspondingly, people of color are disproportionately stopped, ticketed, arrested, charged, and punished. Therefore, driver’s license suspensions—and the associated fines, fees, and costs—disproportionately target and harm communities of color.

#### i. New Yorkers of Color Disproportionately Subjected to Traffic Stops

Racial disparities in traffic stops are a pervasive problem in New York State, as they are across the country. This helps drive the disproportionate share of driver’s license suspensions that New Yorkers of color endure.

The data that follow demonstrate that various law enforcement agencies in New York disproportionately stop people of color.

#### 1. New York State Police

In response to the Stanford Open Policing Project’s request for traffic-stop data, the New York State Police provided limited information regarding 7,962,169 traffic stops they conducted between December 2009 and December 2017. The charts below summarize pertinent available traffic-stop data from the 2017 calendar year across seven counties, and compare the data to the relevant 2017 population demographics.<sup>19</sup>

<sup>18</sup> Alcorn, *supra* note 5.

<sup>19</sup> Data retrieved from Emma Pierson et al., *A Large-Scale Analysis of Racial Disparities in Police Stops Across the United States*, Stanford Computational Policy Lab (Mar. 2019), <https://openpolicing.stanford.edu/data/> and DATAUSA, <https://datausa.io> (last visited Dec. 31, 2019). As discussed at length below, New York law does not mandate the collection and analysis of traffic-stop data. See *infra* Section V.

| <b>Albany County</b> | percentage of population | percentage of total stops |
|----------------------|--------------------------|---------------------------|
| white drivers        | 71.8%                    | 66.17%                    |
| Black drivers        | 12.1%                    | 20.53%                    |
| Latinx drivers       | 5.96%                    | 5.81%                     |

| <b>Broome County</b> | percentage of population | percentage of total stops |
|----------------------|--------------------------|---------------------------|
| white drivers        | 84.0%                    | 68.78%                    |
| Black drivers        | 5.06%                    | 14.25%                    |
| Latinx drivers       | 3.99%                    | 6.01%                     |

| <b>Erie County</b> | percentage of population | percentage of total stops |
|--------------------|--------------------------|---------------------------|
| white drivers      | 75.3%                    | 71.21%                    |
| Black drivers      | 12.7%                    | 16.97%                    |
| Latinx drivers     | 5.47%                    | 3.84%                     |

| <b>Monroe County</b> | percentage of population | percentage of total stops |
|----------------------|--------------------------|---------------------------|
| white drivers        | 70.3%                    | 53.58%                    |
| Black drivers        | 14.4%                    | 31.38%                    |
| Latinx drivers       | 8.79%                    | 10.55%                    |

| <b>Nassau County</b> | percentage of population | percentage of total stops |
|----------------------|--------------------------|---------------------------|
| white drivers        | 59.6%                    | 36.91%                    |
| Black drivers        | 11.1%                    | 24.59%                    |
| Latinx drivers       | 17.2%                    | 17.89%                    |

| <b>Onondaga County</b> | percentage of population | percentage of total stops |
|------------------------|--------------------------|---------------------------|
| white drivers          | 76.5%                    | 70.76%                    |
| Black drivers          | 11.0%                    | 19.81%                    |
| Latinx drivers         | 4.88%                    | 3.57%                     |

| <b>Suffolk County</b> | percentage of population | percentage of total stops |
|-----------------------|--------------------------|---------------------------|
| white drivers         | 67.1%                    | 48.81%                    |
| Black drivers         | 7.35%                    | 14.83%                    |
| Latinx drivers        | 19.5%                    | 27.40%                    |

## 2. Suffolk County Police Department

Pursuant to a settlement agreement between the U.S. Department of Justice (DOJ) and the Suffolk County Police Department (SCPD), the SCPD is required to collect data regarding traffic stops.<sup>20</sup> Traffic-stop data is produced quarterly and is available to the public.<sup>21</sup>

<sup>20</sup> Agreement Between the United States Department of Justice and Suffolk County Police Department (Jan. 2014), [https://www.justice.gov/sites/default/files/crt/legacy/2014/01/23/suffolk\\_agreement\\_1-13-14.pdf](https://www.justice.gov/sites/default/files/crt/legacy/2014/01/23/suffolk_agreement_1-13-14.pdf).

<sup>21</sup> Suffolk County Police Department Historical Stop Data, <https://suffolkpd.org/HistoricalTrafficStopData.aspx>. Although the SCPD has achieved partial

The most recent data available estimates that the total population of Suffolk County is approximately 1,497,595 people, about seventy-eight percent of which is of driving age.<sup>22</sup> An analysis of the 2018 traffic-stop data reveals that the SCPD engaged in 166,739 traffic stops in 2018. The chart below summarizes pertinent available traffic-stop data from the 2018 calendar year, and compares the data to the most recent available population demographic estimates.

|                | percentage of population | percentage of total stops |
|----------------|--------------------------|---------------------------|
| white drivers  | 68.5%                    | 56.22%                    |
| Black drivers  | 7.2%                     | 17.69%                    |
| Latinx drivers | 18.6%                    | 19.55%                    |

Relative to the percentage of the population that Black individuals make up, it is clear that they are disproportionately subjected to traffic stops by the SCPD.<sup>23</sup>

### 3. Buffalo Police Department

According to data obtained from the Buffalo Police Department (BPD) by attorneys representing clients in litigation that alleges unconstitutional law enforcement practices, the BPD's Strike Force conducted more than 1,700 checkpoints between January 2013 and October 2017.<sup>24</sup> The data shows that nearly forty percent of the checkpoints conducted between January 2013 and June 2017 were conducted in three of Buffalo's seventy-seven census tracts, in which the Black or Latinx populations exceeded eighty-six percent.<sup>25</sup> The map below illustrates the concentration of checkpoints in low-income communities of color.<sup>26</sup>

compliance with the agreement, it has yet to come into full compliance with the traffic-stop data practices mandated by its agreement with the DOJ. See U.S. DEPT OF JUSTICE, SEVENTH REPORT ASSESSING SETTLEMENT AGREEMENT COMPLIANCE BY SUFFOLK CTY. POLICE DEPT 6-7 (Oct. 11, 2018), <https://www.justice.gov/file/1103156/download>.

<sup>22</sup> U.S. Census Bureau, 2013-2017 American Community Survey 5-Year Estimates (on file with authors). Note, the seventy-eight percent only accounts for individuals eighteen years of age and over. This estimate is therefore likely under inclusive as it does not account for individuals that are seventeen years of age, who are legally permitted to drive in New York State.

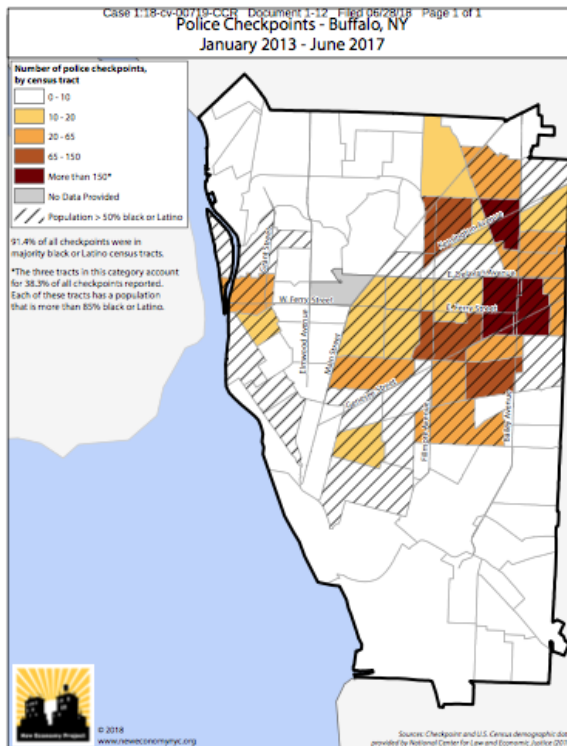
<sup>23</sup> Given that only seventy-eight percent of the population is of driving age, the disproportionate impact on Black and Latinx individuals is likely even more drastic than these statistics indicate. If Black individuals account for 7.2 percent of the driving-age population (as they do for the general population), only about 5.62 percent of the driving-age population would be comprised of Black individuals. If Latinx individuals account for 18.6 percent of the driving-age population (as they do for the general population), only about 14.51 percent of the driving-age population would be comprised of Latinx individuals.

<sup>24</sup> Complaint ¶¶ 66-68, *Black Love Resists et al v. City of Buffalo et al*, Docket No. 1:18-cv-00719 (W.D.N.Y. June 28, 2018) (based on data from the BPD listing Strike Force Checkpoint locations by Census tract from January 2013 to October 2017).

<sup>25</sup> Complaint, *supra* note 24 ¶ 68.

<sup>26</sup> Complaint, *supra* note 24 app. A (based on data from the BPD listing Strike Force Checkpoint locations by Census tract from January 2013 to October 2017 and U.S. Census demographic data provided by the National Center for Law and Economic Justice).





Further, social scientists examined sixty of the Strike Force checkpoints conducted in forty-six different locations from April to May 2013 and found that of the sixty checkpoints examined, fifty-three—or eighty-seven percent of them—took place in predominantly Black or Latinx neighborhoods.<sup>27</sup>

**ii. People of Color Across the Country Disproportionately Subjected to Traffic Stops**

New York is not alone. “Racial disparities in traffic stops are large, ubiquitous across the nation, and troubling.”<sup>28</sup> A DOJ report revealed that in 2011 Black drivers were thirty-one percent more likely to be pulled over than white drivers.<sup>29</sup> More recently, the Stanford Open Policing Project examined about 93 million traffic stops conducted from 2011 to 2017 across twenty-one state patrol agencies, including New York, and twenty-nine municipal police departments. The study concluded that Black drivers are twenty

<sup>27</sup> Andrew Wheeler & Scott Phillips, *A Quasi-Experimental Evaluation Using Roadblocks and Automatic License Plate Readers to Reduce Crime in Buffalo, NY* (May 17, 2016), <http://ssrn.com/abstract=2781126>.

<sup>28</sup> Frank R. Baumgartner et al., *Racial Disparities in Traffic Stop Outcomes*, 9 DUKE FORUM FOR LAW & SOCIAL CHANGE 21, 22 (2017).

<sup>29</sup> U.S. DEP’T OF JUSTICE OFFICE OF JUSTICE PROGRAMS, BUREAU OF JUSTICE STATISTICS, No. NCJ 242937, *POLICE BEHAVIOR DURING TRAFFIC AND STREET STOPS, 2011* (2013); Christopher Ingraham, *You really can get pulled over for driving while black, federal statistics show*, WASH. POST (Sept. 9, 2014, 2:44PM), <https://www.washingtonpost.com/news/wonk/wp/2014/09/09/you-really-can-get-pulled-over-for-driving-while-Black-federal-statistics-show/>.

percent more likely to get pulled over than white drivers.<sup>30</sup> It further indicated that among both municipal police and state patrol stops, Black drivers, on average, are more likely to be stopped than white drivers.<sup>31</sup>

The DOJ's landmark Ferguson Report revealed similarly troubling and racialized policing practices there. Between October 2012 and October 2014, the Ferguson Police Department (FPD) reported 11,610 traffic stops. Although Black individuals accounted for only sixty-seven percent of the population, they accounted for 9,875—eighty-five percent—of those stops.<sup>32</sup> Moreover, Missouri's attorney general recently released a report demonstrating that Black drivers across the entire state of Missouri are ninety-one percent more likely than white drivers to be pulled over by police.<sup>33</sup> Data from other jurisdictions further confirming that people of color are disproportionately subjected to traffic stops are appended to this paper as an appendix.

### iii. **Pretextual Stops Generally Used Against People of Color for Reasons Wholly Unrelated to Traffic Safety**

Pretextual stops are increasingly used for the purpose of generating fines and fees revenue, and have little (if anything) to do with traffic safety. Indeed, there are 1,246 town and village justice courts which the State and its subdivisions use to raise millions in revenue,<sup>34</sup> so much so that six of New York's municipalities rank in the top 100 nationally in terms of revenue generated from fines.<sup>35</sup> In 2017, New York's justice courts

<sup>30</sup> Emma Pierson et al., *A Large-Scale Analysis of Racial Disparities in Police Stops Across the United States*, Stanford Computational Policy Lab, (Mar. 13, 2019); AJ Willingham, *Researchers studied nearly 100 million traffic stops and found black motorists are more likely to be pulled over*, CNN (Mar. 21, 2019, 12:54 PM), <https://www.cnn.com/2019/03/21/us/police-stops-race-stanford-study-trnd/index.html>; Sarah Ruiz-Grossman, *Study Finds Racial Bias In Police Traffic Stops And Searches*, HUFFINGTON POST (Mar. 19, 2019, 7:00PM), [https://www.huffpost.com/entry/White-Black-drivers-police-stops-searches-racial-bias\\_n\\_5c916558e4b0f7ed945d4ba3](https://www.huffpost.com/entry/White-Black-drivers-police-stops-searches-racial-bias_n_5c916558e4b0f7ed945d4ba3); Erik Ortiz, *Inside 100 million police traffic stops: New evidence of racial bias*, NBC NEWS (Mar. 13, 2019, 1:00PM), <https://www.nbcnews.com/news/us-news/inside-100-million-police-traffic-stops-new-evidence-racial-bias-n980556>.

<sup>31</sup> Pierson, *supra* note 30 at 3-4. Though the statistics that informed this conclusion “do not account for possible race-specific differences in driving behavior, including amount of time spent on the road and adherence to traffic laws,” the study authors employed a statistical approach known as the “veil of darkness test” (i.e., the examination of stops conducted at times when it would be difficult for an officer to view a motorist's race prior to the stop) to mitigate the “benchmarking problem.” *Id.* at 4. The results after implementing the technique similarly suggested that racial discrimination against black drivers informs police officers' stop decisions. *Id.* at 4-5.

<sup>32</sup> U.S. DEP'T OF JUSTICE CIVIL RIGHTS DIV., *INVESTIGATION OF THE FERGUSON POLICE DEP'T 64* (Mar. 4, 2015). The Report acknowledged the limitations to using basic population data as a benchmark to evaluate traffic stops, but found that the data was sufficiently reliable because “black drivers might account for less of the driving pool than would be expected from overall population rates because a lower proportion of blacks than whites is at or above the minimum driving age.” *Id.* at 64 n. 39 (emphasis in original).

<sup>33</sup> Summer Ballentine, *Black Missouri drivers 91% more likely to be stopped, state attorney general finds*, PBS (June 10, 2019, 2:11PM), <https://www.pbs.org/newshour/nation/black-missouri-drivers-91-more-likely-to-be-stopped-state-attorney-general-finds>.

<sup>34</sup> OFFICE OF THE STATE CONTROLLER DIVISION OF LOCAL GOVERNMENT AND SCHOOL ACCOUNTABILITY, *REPORT ON JUSTICE COURT FUND 1* (Aug. 2010), <https://osc.state.ny.us/localgov/pubs/research/justicecourtreport2010.pdf>.

<sup>35</sup> Dan Kopf, *The Fining of Black America*, PRICEONOMICS (June 24, 2016), <https://priceonomics.com/the-fining-of-black-america>.

collected nearly \$250 million in revenues through fines, fees, and other exactions.<sup>36</sup> In Nassau and Suffolk County, traffic court fines and fees totaled \$146 million in 2017, up about \$104 million from five years prior.<sup>37</sup> The fifty upstate town and village courts that collected the most fines for traffic tickets and other violations in 2017 collected a total of \$171 million in 2017.<sup>38</sup>

Although the revenue generated by justice courts are shared between the State and relevant jurisdiction, the funds allocated to the jurisdiction are a critical source of funding for town and village government operations, supporting “budgets for police protection, sanitation, road maintenance, and other key municipal functions.”<sup>39</sup> And disturbingly, research shows that cities, towns, and villages with larger concentrations of people of color fine residents more on a per capita basis and are more reliant on fines revenue.<sup>40</sup> An analysis of data from 9,000 U.S. cities revealed that cities with higher Black populations are more likely to use fines as a revenue source than cities with lower Black populations, suggesting that fine revenue-generating practices unduly target communities of color.<sup>41</sup>

The Investigative Post of Buffalo reported that pretextual stops in Buffalo were used to generate revenue and unduly targeted communities of color. After the City of Buffalo entered into an arrangement with the State that allowed it to retain most of the money generated by traffic tickets issued by the Buffalo police—via the creation of the Buffalo Traffic Violations Agency (BTVA)—the issuance of tickets, and revenue collected therefrom, soared. Despite the increase in revenue—which exceeded \$2 million—the City subsequently imposed thirteen new fees that collectively added at least \$100 to virtually all traffic cases.<sup>42</sup> The investigation uncovered that since the BTVA was established, police write far more tickets for tinted windows—an equipment violation—than for speeding or running red lights and stop signs, moving violations that involve true driving safety issues.<sup>43</sup> In fact, “tinted windows accounted for [seventeen] percent of

<sup>36</sup> OFFICE OF THE N.Y. STATE COMPTROLLER, JUSTICE COURT FUND TOWN AND VILLAGE COURT REVENUE REPORT (2017).

<sup>37</sup> Craig Schneider, Long Island finds a cash cow: Traffic tickets, NEWSDAY (Dec. 2, 2018, 7:15 PM), <https://www.newsday.com/long-island/traffic-revenue-1.24081944>.

<sup>38</sup> Michelle Breidenbach, 50 Upstate NY towns that collect most fines for speeding, traffic violations, NEW YORK UPSTATE, <https://www.newyorkupstate.com/news/erry-2018/07/ab2e7d572e1626/50-upstate-ny-towns-that-colle.html> (last visited Jan. 6, 2020).

<sup>39</sup> THE FUND FOR MODERN COURTS, Fines and Fees and Jail Time in New York Town and Village Justice Courts: The Unseen Violation of Constitutional and State Law (Apr. 3, 2019), <http://moderncourts.org/wp-content/uploads/2019/04/Fines-and-Fees-and-Jail-Time-in-New-York-Town-and-Village-Justice-Courts-The-Unseen-Violation-of-Constitutional-and-State-Law.pdf>.

<sup>40</sup> See, e.g., Akheil Singla, Charlotte Kirschner & Samuel B. Stone, Race, Representation, and Revenue: Reliance on Fines and Forfeitures in City Governments, URBAN AFFAIRS REVIEW (2019), <https://journals.sagepub.com/doi/full/10.1177/1078087419834632?journalCode=uarb>; Mike Maciag, Addicted to Fines, GOVERNING (Sept. 2019), <https://www.governing.com/topics/finance/gov-addicted-to-fines.html>; Michael Sances & Hye Young You, Who Pays for Government? Descriptive Representation and Exploitative Revenue Sources (Sept. 12, 2016), <https://pdfs.semanticscholar.org/49a1/4a1ed2448a788cb11f70c3c4bd91f790c1ca.pdf>.

<sup>41</sup> Sances & You, *supra* note 40.

<sup>42</sup> Marsha McLeod, City Hall cashing in on traffic tickets, INVESTIGATIVE POST (Feb. 27, 2019), <http://www.investigativepost.org/2019/02/27/city-hall-cashing-in-on-traffic-tickets/>.

<sup>43</sup> *Id.*

the department's tickets issued, more than any other violation."<sup>44</sup> The investigation also noted that Black and Latinx neighborhoods were targeted for traffic enforcement. These pretextual stops, used for revenue generation rather than traffic safety, disproportionately burdened communities of color.

Further corroborating this disturbing and pervasive trend of government reliance on fines and fees revenue is the DOJ's investigation, which found that the City of Ferguson's focus on revenue generation had substantial and comprehensive negative impacts. It concluded that although the City was "aware for years about the impact its focus on revenue had on lawful police action and the fair administration of justice" and "[the City] disregarded those concerns—even concerns raised from within the City government—to avoid disturbing the court's ability to optimize revenue generation."<sup>45</sup> Three local governments on Long Island are even more reliant on fines and fees than the City of Ferguson, which the DOJ intently criticized for "pressur[ing] officers to write citations, independent of any public safety need, and rely[ing] on citation productivity to fund the City budget."<sup>46</sup>

Notwithstanding patent racial disparities among the people most impacted by ticket-related fines and fees, and the fact that the use of vehicle codes for revenue generation have proven to be an inefficient use of law enforcement resources,<sup>47</sup> pretextual stops continue to be employed against people of color for reasons that cannot be explained by any legitimate law enforcement purpose.

#### **b. People of Color Suffer Disproportionately Harsh Outcomes Incident to Traffic Stops**

Not only are people of color more likely to be subjected to traffic stops by law enforcement, they are more likely to be ticketed and to receive multiple tickets than

<sup>44</sup> *Id.* This percent appears strikingly high given that tinted windows accounted for less than three percent of the tickets issued in Rochester, Amherst, and Cheektowaga. Further, half a dozen motorists reported to the Investigative Post that when cited for tinted windows, they were given four tickets—one for each window. *Id.*

<sup>45</sup> U.S. DEP'T OF JUSTICE CIVIL RIGHTS DIV., *supra* note 32 at 15.

<sup>46</sup> Kopf, *supra* note 35; U.S. DEP'T OF JUSTICE CIVIL RIGHTS DIV., *supra* note 32 at 64.

<sup>47</sup> If not used for fines and fees revenue, pretextual stops are typically used for general investigatory purposes, not to ensure traffic safety. When police officers effectuate traffic stops as a general law enforcement strategy, the stops "have little (if anything) to do with traffic safety and everything to do with who looks suspicious." Frank R. Baumgartner et al., *Racial Disparities in Traffic Stop Outcomes*, 9 DUKE FORUM FOR LAW & SOCIAL CHANGE 21, 25 (2017). Unsurprisingly, racial disparities often ensue from these "investigatory stops," and may also bear a strong relation to poverty. Frank R. Baumgartner et al., *Racial Disparities in Traffic Stop Outcomes*, 9 DUKE FORUM FOR LAW & SOCIAL CHANGE 21, 25 (2017). Correspondingly, racial disparities in traffic stops are lower for agencies who conduct traffic stops mainly for reasons of safety, rather than for reasons such as broken tail lights or expired tags—offenses that are generally disproportionately enforced against people of color. FRANK R. BAUMGARTNER, DEREK A. EPP & KELSEY SHOUB, *SUSPECT CITIZENS WHAT 20 MILLION TRAFFIC STOPS TELL US ABOUT POLICING AND RACE* (Cambridge University Press 2018) (demonstrates through a study of twenty million traffic stops in North Carolina that the use of vehicle code for criminal investigation is extremely inefficient as it leads to very few contraband hits—throughout the fifteen-year period the study authors examined, only twelve percent of individuals were arrested after a search incident to a traffic stop, and explains that racially disparate search practices seem to happen because police tend to hold unwarranted suspicions about young men of color).

white people. Because they are also more likely to experience poverty than white people, they are less likely to be able to pay traffic-related fines and fees. Accordingly, people of color are disproportionately at risk for driver's license suspensions and charges for driving with a suspended license (which depending upon the circumstances can be either a misdemeanor or felony in New York). This is the case in New York and across the country.

**i. New Yorkers of Color Suffer Disproportionately Harsh Outcomes Incident to Traffic Stops**

As an initial matter, because New Yorkers of color are more likely to be stopped by law enforcement,<sup>48</sup> they are also more likely to be ticketed and charged with driving with a suspended license (known as Aggravated Unlicensed Operation (AUO) in New York) because once an officer has stopped an individual, the officer will inevitably run a check on the individual's driver's license. Since New Yorkers of color disproportionately experience Traffic Debt suspensions, New Yorkers of color run a disproportionate risk of being ticketed and charged for driving with a suspended license.

Despite the limited availability of information regarding the outcomes of traffic stops in New York State,<sup>49</sup> it is well documented that people of color are disproportionately represented in the State's criminal justice system: Black individuals comprise forty-three percent, and Latinx individuals account for nineteen percent, of the State's jail population.<sup>50</sup> Further, Black individuals are incarcerated in jails at 4.9 times the rate of white individuals. Likewise, Black individuals comprise forty-eight percent, and Latinx individuals account for twenty-four percent, of the State's prison population. And Black individuals are incarcerated in prisons at 7.1 times the rate of white individuals.<sup>51</sup> Consistent with what we know about racial disparities in New York's criminal justice system, and what we know about the racial disparities in traffic-stop outcomes in jurisdictions across the country,<sup>52</sup> there is no reason to think racial disparities in the traffic violation enforcement context do not also exist in New York.

Buffalo demonstrates that racially disparate traffic violation outcomes very much exist in New York. Data from the New York State DMV suggests that drivers who reside in predominantly Black zip codes in Buffalo are at least eight times as likely to be issued multiple tickets at a single traffic stop or checkpoint than those who live in predominantly white zip codes.<sup>53</sup> The data likewise reveals that "drivers from predominately Black zip codes are more than four times as likely to have their driver's licenses suspended because they cannot pay their traffic tickets than those who live in predominately white zip codes."<sup>54</sup> The implication is clear: drivers of color in Buffalo are

<sup>48</sup> See *supra* Section III.a.i–ii.

<sup>49</sup> See *infra* Section V.

<sup>50</sup> VERA INSTITUTE OF JUSTICE, INCARCERATION TRENDS IN NEW YORK (Dec. 2019), <https://www.vera.org/downloads/pdfdownloads/state-incarceration-trends-new-york.pdf>.

<sup>51</sup> *Id.*

<sup>52</sup> See *infra* Section III.b.ii and app. B.

<sup>53</sup> Complaint, *supra* note 24 ¶ 85 (based on BMHA and DMV data).

<sup>54</sup> Complaint, *supra* note 24 ¶ 86 (based on BMHA and DMV data).



disproportionately charged and punished with traffic violations as well as for their inability to pay the fines and fees that underlie such violations.

A BPD partnership between its Strike Force and its Housing Unit further underscores these disturbing realities. In 2017 alone, the nineteen officers on the BPD Housing Unit issued 14,853 traffic tickets and made 3,278 misdemeanor traffic arrests on or near BMHA properties.<sup>55</sup> The racial and socioeconomic demographics of the BMHA properties where the Housing Unit spent the bulk of its time<sup>56</sup> compel the conclusion that it is more likely than not that the great majority of the people cited or arrested were low-income people of color.

**ii. People of Color Across the Country Suffer Disproportionately Harsh Outcomes Incident to Traffic Stops**

The data analyzed by the Stanford Open Policing Project demonstrate that police ticket and arrest Black and Latinx drivers more often than white drivers.<sup>57</sup> For instance, the researchers specifically found that when stopped for speeding, Black drivers are twenty percent more likely, and Latinx drivers are thirty percent more likely, to get a ticket (as opposed to a warning) than white drivers.<sup>58</sup>

Moreover, the DOJ's investigation of the Ferguson Police Department (FPD) discovered statistically significant racial disparities in the outcomes people received after they are subjected to a traffic stop. The investigation uncovered that while 8,987—or ninety-one percent of—stopped Black drivers received citations, only 1,501—or eighty-seven percent of—stopped white drivers received a citation. Similarly, while 891—or ten percent of—stopped Black drivers were arrested as a result of the stop, only sixty-three—or four percent of—stopped white drivers were arrested. The investigation noted that this disparity could largely be explained by the high number of Black individuals “arrested for outstanding municipal warrants issued for missed court payments and appearances,” which are often the precise circumstances that give rise to the driver's license suspensions at issue in New York.<sup>59</sup> Even after using a regression analysis to control for non-race-based variables, the DOJ investigation concluded that Black individuals in Ferguson were two times as likely to receive a citation incident to a traffic stop.<sup>60</sup>

Additional findings reinforce the DOJ investigation's conclusion that Black individuals disproportionately receive unfair and harsh post-traffic stop outcomes: In 2013, while more than fifty percent of all cited Black individuals received multiple citations during a

<sup>55</sup> Complaint, *supra* note 24 ¶ 83 (based on BMHA and DMV data). BMHA's population is about seventy-four percent Black and seventeen percent Latino; ninety-six percent of BMHA households are classified as very low income. About thirty-five percent are under the age of eighteen, and thus are largely not of driving age. Complaint, *supra* note 24 ¶ 79 (based on BMHA and DMV data).

<sup>56</sup> Complaint, *supra* note 24 ¶¶ 80–82 (based on BMHA and DMV data).

<sup>57</sup> Pierson, *supra* note 30.

<sup>58</sup> Pierson, *supra* note 30.

<sup>59</sup> U.S. DEP'T OF JUSTICE CIVIL RIGHTS DIV., *supra* note 32 at 64–66.

<sup>60</sup> This data “is not dependent on population data or on assumption about differential offending rates by race; instead the enforcement actions imposed against stopped black drivers are compared directly to the enforcement actions imposed against stopped white drivers.” *Id.* at 64.

single police encounter, only twenty-six percent of non-Black individuals received more than one citation. And as the number of citations issued increased beyond two, the racial disparities grew starker. From October 2012 to July 2014, Black individuals accounted for eighty-five percent of the 35,871 total charges (traffic citations, summonses, and arrests) brought by the FPD. Further, the disparity in speeding tickets between Black individuals and non-Black individuals “is [forty-eight percent] larger when citations are issued not on the basis of radar or laser, but by some other method, such as the officer own visual assessment.” Of the 460 individuals the FPD arrested during a traffic stop solely because the person had an outstanding warrant, forty-four—or ninety-six percent—of the individuals were Black.<sup>61</sup> Similar to these findings:

- “In 2015, the Las Vegas Review-Journal investigated law enforcement data and found that residents living in the seven poorest, statistically [Black and Latinx] zip codes account for nearly two-thirds of traffic citations.”<sup>62</sup>
- Between 2009 and 2011, seven in ten people arrested for traffic offenses in Washington D.C. were Black, and there were even greater racial disparities among those who were arrested for driving with a suspended license.<sup>63</sup>
- In Nebraska, where Black people make up roughly four percent of the population, they accounted for nearly eight percent of the traffic stops and were arrested incident to those traffic stops 16.9 percent of the time, compared with just 2.6 percent for the general population.<sup>64</sup>
- In Illinois, while citation rates across the state are mixed, there is “a large number of law enforcement agencies citing [drivers of color] at significantly higher rates than white drivers.”<sup>65</sup>
- A 2016 review of traffic stops in Bloomfield, New Jersey revealed that although the city is about sixty percent white, seventy-eight percent of ticketed motorists were Black or Latinx.<sup>66</sup>
- An analysis of one million traffic stops in Montgomery County, Maryland beginning in 2012 confirms these same problems exist there as well—that

<sup>61</sup> *Id.* at 66–67.

<sup>62</sup> Advisory Paper from Nev. State Advisory Comm. on Municipal Fines and Fees in State of Nev. to the U.S. Comm’n on Civil Rights 6 (June 13, 2017) (citing James DeHaven, Poor Residents Take Brunt of Planned Vegas Muni Court Payments, L.V. REV. J. (June 15, 2015), <https://www.reviewjournal.com/local/local-las-vegas/poor-residents-take-brunt-of-planned-vegas-muni-courtpayments>).

<sup>63</sup> Kathryn Zickuhr, Applying a racial equity lens to fines and fees in the District of Columbia, D.C. POLICY CENTER (Apr. 22, 2019), [https://www.dcpolicycenter.org/publications/racial-equity-fines-fees/#\\_ftnref22](https://www.dcpolicycenter.org/publications/racial-equity-fines-fees/#_ftnref22).

<sup>64</sup> Darrell Fisher et al., 2016 Traffic Stops in Nebraska: A Report to the Governor and the Legislature on Data Submitted by Law Enforcement, NEB. COMM’N ON LAW ENFORCEMENT AND CRIM. JUST. (Mar. 31, 2017), [http://ncc.nebraska.gov/sites/ncc.nebraska.gov/files/doc/traf%20fic\\_stops\\_in\\_nebraska\\_complete\\_final\\_0.pdf](http://ncc.nebraska.gov/sites/ncc.nebraska.gov/files/doc/traf%20fic_stops_in_nebraska_complete_final_0.pdf).

<sup>65</sup> ILLINOIS TRAFFIC STOPS, <https://illinoistrafficstops.com> (last visited Dec. 20, 2019).

<sup>66</sup> Mark Denbeaux, Kelley Kearns & Michael Ricciardelli, Racial Profiling Report: Bloomfield Police and Bloomfield Municipal Court (Apr. 7, 2016), <http://dx.doi.org/10.2139/ssrn.2760382>.

analysis found that Latinx individuals are significantly more likely (and Latino men even more likely) to receive tickets than white or Black individuals.<sup>67</sup>

- An Oregon analysis of twelve police departments found disparate outcomes (i.e., citation, search, and/or arrest) for Latinx individuals.<sup>68</sup>
- A 2014–2015 report issued by the Tucson Police Department found a noticeable disparity in the issuance of traffic citations for Black drivers: while Black drivers only represented 4.9 percent of the city’s residents, they received 6.5 percent of all traffic citations. To a similar extent, other minority drivers, including Latinx drivers “received traffic tickets at a rate slightly less than the percentage of each ethnicity’s population in Tucson.”<sup>69</sup>

Data from other jurisdictions further underscoring that people of color across the country receive disproportionately harsh outcomes following traffic stops are appended to this paper as an appendix.

### c. Disproportionate Concentrations of Poverty Among Communities of Color

People of color make up a disproportionate share of the two thirds of all driver’s license suspended for Traffic Debt in New York.<sup>70</sup> As there is a strong correlation between poverty and Traffic Debt suspension rates, this is likely in part attributable to the disproportionately high concentrations of poverty within communities of color.<sup>71</sup>

Black individuals are three times as likely, and Latinx individuals are twice as likely, to experience poverty than white individuals.<sup>72</sup> In 2016, twenty-two percent of Black people lived in poverty though Black people represented only about 13.4 percent of the U.S. population; by contrast, approximately nine percent of white people lived in poverty, but

<sup>67</sup> THE ECONOMIST, *Measuring racial bias in police forces* (June 22, 2017), <https://www.economist.com/united-states/2017/06/22/measuring-racial-bias-in-police-forces>.

<sup>68</sup> OREGON CRIMINAL JUSTICE COMM’N, STATISTICAL TRANSPARENCY OF POLICING REPORT PER HOUSE BILL 2355 (2017) (Nov. 25, 2019), [https://www.oregon.gov/cjc/CJC%20Document%20Library/STOP\\_Report\\_Final.pdf](https://www.oregon.gov/cjc/CJC%20Document%20Library/STOP_Report_Final.pdf).

<sup>69</sup> Amanda Le Claire, *Police Ticket Disproportionate Number of Blacks in Tucson*, ARIZONA PUBLIC MEDIA (July 30, 2015, 5:07 PM), <https://www.azpm.org/s/32764-tpd-releases-report-on-traffic-citations-and-race/>.

<sup>70</sup> This is consistent with the data presented in this paper above, as well as with data from other jurisdictions.

[R]ecent data from California show a strong positive correlation by zip code between black populations and driver’s license suspension for nonpayment or nonappearance at related court hearings. In Virginia, too, data suggest black people disproportionately suffer driver’s license suspension for nonpayment. This group also appears to suffer a disproportionate rate of convictions for driving with a suspended license when the underlying suspension is due to nonpayment. Similar disparities have been documented in Wisconsin.

Mario Salas & Angela Ciolfi, *Driven by Dollars: A State-By-State Analysis of Driver’s License Suspension Laws for Failure to Pay Court Debt*, LEGAL AID JUSTICE CENTER 4–5 (Fall 2017), <https://www.justice4all.org/wp-content/uploads/2017/09/Driven-by-Dollars.pdf>.

<sup>71</sup> Weiss & Wilner, *supra* note 4.

<sup>72</sup> SHRIVER CENTER ON POVERTY LAW, <https://myemail.constantcontact.com/Let-s-talk-about-poverty-and-race.html?soid=1102452077294&aid=AtLAyFKnGvM> (last visited Nov. 25, 2019).



represented about 76.5 percent of the U.S. population.<sup>73</sup> Further, “Black and Latinx families [are] less likely than white families to have significant wealth and other assets that can provide a cushion in lean times, [and] are also disproportionately more likely to be experiencing debt, another consequence of poverty with long-term and far-reaching effects.”<sup>74</sup> Such debt exacerbates financial instability and personal stress and curtails future employment and housing opportunities through long-term effects on credit scores and background checks.<sup>75</sup>

This unfortunate reality suggests that people of color are disproportionately at risk for driver’s license suspensions issued for Traffic Debt.<sup>76</sup> It likewise indicates that they are disproportionately less likely to be able to take off work, find childcare, and/or retain representation to ensure their appearance in court.<sup>77</sup> Moreover, if one is unable to pay a traffic fine, there is little incentive for them to appear in court, particularly given that they risk “sitting out” their fine in jail for their inevitable inability to pay the fine; this accelerates the risk of driver’s license suspension, which of course entails significant additional and unaffordable financial obligations. Indeed, throughout New York, the driver’s license suspension rate in the ten poorest zip codes is nearly nine times higher than the suspension rate in the ten wealthiest zip codes.<sup>78</sup>

#### IV. Consequences of Driver’s License Suspensions

Laws that permit Traffic Debt suspensions without requiring consideration of individuals’ ability to pay have far-reaching ramifications. Not only do such laws negatively impact the individuals whose licenses are suspended and their families, they also harm our communities, public safety, and economy. Traffic Debt suspensions seriously impede individuals’ ability to maintain their livelihoods, needlessly expose individuals to the criminal justice system, perilously divert law enforcement efforts from true public safety threats, and senselessly hamper the economy at large. Furthermore, Traffic Debt suspensions are entirely counterproductive in that they make it more difficult to collect debt from people who are too impoverished to be able to pay it. In short, the consequences of driver’s license suspensions are deleterious for all.

<sup>73</sup> Elizabeth Hinton et al., *An Unjust Burden: The Disparate Treatment of Black Americans in the Criminal Justice System*, VERA INSTITUTE 10 (May 2018), <https://www.vera.org/downloads/publications/for-the-record-unjust-burden-racial-disparities.pdf>; U.S. CENSUS BUREAU, *QuickFacts*, <https://www.census.gov/quickfacts/fact/table/US/RHI225218> (last visited Dec. 23, 2019).

<sup>74</sup> Zickuhr, *supra* note 63.

<sup>75</sup> *Id.*

<sup>76</sup> Salas & Ciolfi, *supra* note 70 at 3 (“People in this group have fewer available resources to divert to paying court debt, and are therefore at greater risk of losing their licenses for nonpayment. While wealthier drivers have little difficulty covering court debt, people living paycheck-to-paycheck with little or no savings and families to support may not be able to pay in a lump sum or consistently make payments on installment plans.”).

<sup>77</sup> *Id.* at 3–4.

<sup>78</sup> Weiss & Wilner, *supra* note 4.

### a. Entrenches the Debt Trap

For New Yorkers living below the poverty line, driver’s license suspension is all but inevitable when faced with traffic fines, fees, and related costs. A full-time minimum wage worker, in most areas of New York, grosses \$472 per week, amounting to \$24,544 per year; this indicates an average full-time minimum wage worker in most areas of New York nets approximately \$338 per week, amounting to about \$17,576 per year.<sup>79</sup> In 2017, 14.1 percent of New Yorkers—over 2.72 million people—had incomes below the poverty line (\$24,860 or less for a family of four).<sup>80</sup> But it is not only people below the poverty line who struggle to pay traffic-related fines and fees. Given that forty percent of Americans cannot cover an unexpected \$400 expense, a substantial share of the population likely cannot cover an unexpected traffic ticket and the related expenses.<sup>81</sup>

The fines that trigger Traffic Debt suspensions in New York can range from \$45 to well over \$1,000, not including the fees and mandatory surcharge that attach.<sup>82</sup> And, because multiple tickets and multiple suspensions can result from one single traffic stop—and disproportionately do for people of color—many drivers suspended for FTP/FTA face thousands of dollars of debt that they cannot afford to pay.<sup>83</sup> In addition to fines, New York law prescribes a mandatory surcharge that must be assessed for traffic convictions;

<sup>79</sup> *New York Minimum Wage for 2018, 2019*, <https://www.minimum-wage.org/new-york> (last visited Dec. 26, 2019). This is based on New York’s state minimum wage. In Long Island and Westchester, minimum wage is \$13 per hour. In New York City, minimum wage is \$15 per hour. The net estimates were calculated using the federal income tax rate, twenty-two percent, and the New York State income tax rate for the relevant bracket, 6.33 percent.

<sup>80</sup> CENTER FOR AMERICAN PROGRESS, *NEW YORK 2018 REPORT*, <https://talkpoverty.org/state-year-report/new-york-2018-report>.

<sup>81</sup> FEDERAL RESERVE, *REPORT ON THE ECONOMIC WELL-BEING OF U.S. HOUSEHOLDS IN 2017 2* (May 2018), <https://www.federalreserve.gov/publications/files/2017-report-economic-well-being-us-households-201805.pdf>.

<sup>82</sup> *See, e.g.*, N.Y. Veh. & Traf. Law § 1800; N.Y. Veh. & Traf. Law § 1809; N.Y. Veh. & Traf. Law § 1225-c; N.Y. Veh. & Traf. Law § 1174.

<sup>83</sup> *See, e.g.*, Alcorn, *supra* note 5 (“Russell Pleasant, a lifelong resident of Staten Island, is facing a \$3,295 judgment stemming from unpaid tickets issued on three occasions in the mid-1990s that snowballed into [seventeen] license suspensions. Arrested in February, he was ordered to pay the debt completely or accept a misdemeanor conviction. At age 57, it would be his first. To earn that amount, Mr. Pleasant would need to work five weeks at the Ikea warehouse where he is now a forklift operator, a job he said he retrained for this winter after the house his family was living in burned down.”); Complaint, *supra* note 24 ¶ 7 (“[O]ne class member was issued four separate tickets for having four tinted windows, costing him \$720 (\$180 per window). Furthermore, in an effort to secure additional payment, the issuing officer offered that class member a choice: jail or the immediate impoundment of his car. The class member chose impoundment, and thus had to pay an additional \$125 fee the next day to retrieve his vehicle, which he needed for his livelihood.”); Complaint, *supra* note 24 ¶¶ 214–22 (“Defendant Thomas . . . issued Ms. Doe four tickets: three seat belt violations and a violation for driving on a learner’s permit. . . . Ms. Doe contested the tickets and eventually had a hearing before . . . the BTVA [which] sent Ms. Doe a letter finding her guilty of all four violations and assessing eight points on her driver’s license and \$446 in fines. As a result of this incident, Ms. Doe also owed a Driver Responsibility Assessment in the amount of \$450. At the time of hearing, Ms. Doe was attending school full-time and had no income. Ms. Doe could not afford to pay her tickets and surcharges in one lump sum. Ms. Doe sought a payment plan from the BTVA. The BTVA refused to provide a payment plan or accept partial payments. Because she could not have a payment plan, Ms. Doe could not pay at all. The NYS Department of Motor Vehicles suspended Ms. Doe’ learner’s permit because she could not pay the tickets and surcharges.”).

for certain traffic convictions, the surcharge is as high as \$88–\$93.<sup>84</sup> Further, driver responsibility assessments are imposed on drivers who accumulate more than six points on their license within eighteen months; the assessment is \$300 over three years for six points, and an additional \$75 for every point in excess of six points, payable over three years.<sup>85</sup> Additionally, in some jurisdictions such as Buffalo and Long Island, there are about \$100 in additional fees per traffic ticket.<sup>86</sup>

Drivers suspended for Traffic Debt in New York must pay a \$70 STF along with the underlying fines and fees in a lump sum, to get their license reinstated; if a driver has multiple suspensions, they must pay the \$70 STF for each suspension prior to reinstatement.<sup>87</sup> If an individual has multiple FTP/FTA suspensions, fees of up to \$400 may also be imposed.<sup>88</sup>

It is all but obvious that fines, fees, and other costs quickly cascade and become prohibitively expensive for people who could not afford what very likely began as a simple traffic ticket. For many New Yorkers, coming up with these sums to pay the traffic-related fines, fees, and costs before the payment deadline is an impossible feat. People are forced to choose between paying the traffic-related fines, fees, and costs and purchasing basic necessities for themselves and their families, which really is no choice at all. Thus, Traffic Debt suspensions become inescapable and further entrench people in an already insurmountable debt trap.

The loss of the ability to drive seriously threatens individuals' economic security. Without the ability to legally drive, individuals are impeded from meeting basic needs of their families—they are precluded from legally driving to jobs, schools, medical appointments, places of worship, grocery stores, etc.<sup>89</sup> The irony of New York's license-for-payment scheme is that those who lose their licenses for their inability to pay traffic-related debt are thrust deeper into poverty due to the financial consequences flowing from the suspensions of their driver's licenses. It therefore perpetuates the already intractable cycle of poverty that too many New Yorkers endure. The U.S. Court of Appeals for the Ninth Circuit has recognized the financial consequences that inevitably flow from government attempts to extract wealth from individuals charged with violations such as those that underlie suspensions for FTP/FTA:

<sup>84</sup> N.Y. Veh. & Traf. Law § 1809; Increases In The Cost Of Traffic Tickets In New York, ROSENBLUM LAW (May 6, 2013), <https://newyorkspeedingfines.com/increases-cost-traffic-tickets-york/>. The law does cap the surcharge that can be assessed per incident at \$196. NEW YORK STATE OFFICE OF THE STATE COMPTROLLER, ACCOUNTABILITY FOR TRAFFIC TICKET SURCHARGES 5 (Aug. 2015), <https://osc.state.ny.us/audits/allaudits/093015/14s26.pdf>

<sup>85</sup> N.Y. STATE DEP'T OF MOTOR VEHICLES, How to pay a driver responsibility assessment, <https://dmv.ny.gov/tickets/how-pay-driver-responsibility-assessment> (last visited Dec. 26, 2019).

<sup>86</sup> McLeod, *supra* note 42; Schneider, *supra* note 37.

<sup>87</sup> N.Y. Veh. & Traf. Law § 503(j-1)(i); N.Y. STATE DEP'T OF MOTOR VEHICLES, A Guide to Suspension & Revocation of Driving Privileges in New York State, <https://dmv.ny.gov/brochure/c-12.pdf> (last visited Dec. 23, 2019).

<sup>88</sup> N.Y. Veh. & Traf. Law § 503(j-1)(i).

<sup>89</sup> U.S. COMM'N ON CIVIL RIGHTS, TARGETED FINES AND FEES AGAINST CMTYS OF COLOR: CIVIL RIGHTS & CONSTITUTIONAL IMPLICATIONS 35 (Sept. 2017); Salas & Ciolfi, *supra* note 70.

Raising money for government through law enforcement whatever the source . . . can lay a debt trap for the poor. When a minor offense produces a debt, that debt, along with the attendant court appearances, can lead to loss of employment or shelter, compounding interest, yet more legal action, and an ever-expanding financial burden—a cycle as predictable and counterproductive as it is intractable.<sup>90</sup>

Indeed, the California Legislature, “[i]n recognition of the counterproductive nature of [the license-for-payment scheme] and its tendency to enmesh indigent defendants in a cycle of repeated violations and escalating debt. . . amended several statutes to prohibit the courts and the [DMV] from suspending a driver’s license because of an unpaid traffic citation”<sup>91</sup>

Once a driver’s license is issued, it “become[s] essential [to] the pursuit of a livelihood,” thereby rendering the suspension of driver’s licenses incredibly harmful to individuals and their families.<sup>92</sup> It is therefore unsurprising that there is a strong correlation between driver’s license suspension and job loss as well as missed job opportunities.<sup>93</sup> For instance, a New Jersey study indicated that forty-two percent of people lost their jobs after their driver’s licenses were suspended; nearly half of those people could not find new jobs.<sup>94</sup> Of those able to find new employment, eighty-eight percent reported a decrease in pay.<sup>95</sup> Similarly, a study conducted in Phoenix, Arizona demonstrated that 28.3 percent of individuals lost a job immediately after their driver’s license was suspended; 52.9 percent of those whose license was suspended for more than three months reported losing a job as a direct consequence of their suspended license. The median annual income loss as a result of license suspensions was \$36,800.<sup>96</sup>

Driver’s license suspensions thus trap people who are poor in an impossible predicament. They often cannot work without their driver’s license because they lose their method of commuting or because their job requires a valid driver’s license; however, they also cannot afford to pay what is required to have their license reinstated without steady employment. The bottom line is that for many New Yorkers, the

<sup>90</sup> *Rivera v. Orange Cty. Prob. Dep’t*, 832 F.3d 1103, 1112 n.7 (9th Cir. 2016).

<sup>91</sup> *People v. Duenas*, 30 Cal. App. 5th 1157, 1164, n.1 (Ct. App. 2019), [review denied](#) (Mar. 27, 2019).

<sup>92</sup> *Bell v. Burson*, 402 U.S. 535, 539 (1971).

<sup>93</sup> U.S. COMM’N ON CIVIL RIGHTS, [supra](#) note 89 at 36; Salas & Cioffi, [supra](#) note 70 at 3; Emily Reina Dindial & Ronald J. Lampard, Opinion, [When a Traffic Ticket Costs \\$13,000](#), N.Y. TIMES (May 27, 2019), <https://www.nytimes.com/2019/05/27/opinion/drivers-license-suspension-fees.html>.

<sup>94</sup> U.S. COMM’N ON CIVIL RIGHTS, [supra](#) note 89 at 36; Henry Grabar, [Too Broke to Drive: States have trapped millions of Americans in crippling debt by taking away their driver’s licenses. Can the damage be undone?](#), SLATE (Sept. 27, 2017), <https://slate.com/business/2017/09/state-lawmakers-have-trapped-millions-of-americans-in-debt-by-taking-their-licenses.html>; Joshua Aiken, [Reinstating Common Sense: How Driver’s License Suspensions for Drug Offenses Unrelated to Driving Are Falling out of Favor](#), PRISON POLICY INITIATIVE (Dec. 12, 2016), <https://www.prisonpolicy.org/driving/national.html>.

<sup>95</sup> Aiken, [supra](#) note 94.

<sup>96</sup> L. WILLIAM SEIDMAN RESEARCH INSTITUTE, ARIZONA STATE UNIVERSITY, THE CITY OF PHOENIX MUNICIPAL COURT’S COMPLIANCE ASSISTANCE PROGRAM, 2016: AN ECONOMIC ASSESSMENT (June 2, 2017), <https://www.azcourts.gov/Portals/74/TFFAIR/Resources/SeidmanResearchInstituteReport2017.pdf>.

suspension of their driver's license necessarily results in the deprivation of their livelihoods because, in many instances, it robs them of their right to work for a living.<sup>97</sup>

As a practical matter, most individuals rely on driver's licenses to travel to work and maintain employment.<sup>98</sup> “[A] license is often needed for commuting, particularly as jobs are increasingly located outside of inner-city areas.”<sup>99</sup> Although public transportation may be a commuting solution for some, for those working or living outside of major metropolitan areas, public transportation is generally not a viable option. Outside of New York City, in places such as Rochester, Syracuse, and Long Island where public transportation is scarcer, people are critically dependent upon their ability to drive to maintain their jobs. Even if commuting via public transit is a theoretical option for those living in metropolitan areas, there are often numerous obstacles, such as the substantial additional time it takes to get to work using public transit<sup>100</sup> as well as the “long headways, limited service hours, costs, difficulty using transit to make multiple stops on the way to or from work[,] and safety issues after dark,”<sup>101</sup> that those commuting by public transit face.

Further, a driver's license “is a very common requirement for the sorts of job that can actually lift people out of poverty—those in construction, manufacturing, security, and union jobs including electricians and plumbers [as well as jobs in home health care, motor vehicle sales and services, and delivery services].”<sup>102</sup> In addition, “[m]any jobs require driving as part of the work responsibilities; and even for non-driving jobs, employers often require applicants to have a valid driver's license as an indicator of reliability or responsibility.”<sup>103</sup> The result is that for people with a suspended driver's license, the pool of job opportunities is limited. These limited job prospects, in turn, make the debt trap, and poverty, even more difficult to escape.

<sup>97</sup> *Conn v. Gabbert*, 526 U.S. 286, 291–92 (1999) (pursuit of an occupation or profession is a liberty interest protected by the Due Process Clause); *Greene v. McElroy*, 360 U.S. 474, 492 (1959) (“the right to hold specific private employment and to follow a chosen profession free from unreasonable governmental interference comes within the ‘liberty’ and ‘property’ concepts of [Due Process]”); *Truax v. Raich*, 239 U.S. 33, 41 (1915) (“the right to work for a living in the common occupations of the community is of the very essence of the personal freedom and opportunity that it was the purpose of the [Fourteenth] Amendment to secure”).

<sup>98</sup> Danielle Conley & Ariel Levinson-Waldman, *Discriminatory Driver's License Suspension Schemes*, ACS LAW (Mar. 19, 2019), [https://www.acslaw.org/issue\\_brief/briefs-landing/discriminatory-drivers-license-suspension-schemes/#\\_ednref42](https://www.acslaw.org/issue_brief/briefs-landing/discriminatory-drivers-license-suspension-schemes/#_ednref42).

<sup>99</sup> Alex Bender, et al., *Not Just a Ferguson Problem: How Traffic Courts Drive Inequality in California*, LAWYERS' COMM. FOR CIVIL RIGHTS OF THE SAN FRANCISCO BAY AREA 17 (2015), <http://www.lccr.com/wp-content/uploads/Not-Just-a-Ferguson-Problem-How-Traffic-Courts-Drive-Inequality-in-California-4.8.15.pdf>.

<sup>100</sup> Mike Maciag, *Riding Transit Takes Almost Twice as Long as Driving*, GOVERNING (Feb. 2017), <https://www.governing.com/topics/transportation-infrastructure/gov-transit-driving-times.html>.

<sup>101</sup> Evelyn Blumenberg & Daniel Baldwin Hess, *Measuring the Role of Transportation in Facilitating the Welfare-to-Work Transition: Evidence from Three California Counties*, J. OF THE TRANSP. RESEARCH BD 1859 (2003), <https://escholarship.org/uc/item/2ww4c93w>.

<sup>102</sup> Alana Semuels, *No Driver's License, No Job*, ATLANTIC (June 15, 2016), <https://www.theatlantic.com/business/archive/2016/06/no-drivers-license-no-job/486653/>; Bender, *supra* note 99 at 17–18.

<sup>103</sup> Bender, *supra* note 99 at 17.



In sum, driver's license suspensions further entrench the debt trap by impeding employment opportunities. They foreclose people from employment because a license is often needed for transportation to and from work and is increasingly required for certain jobs, even jobs for jobs for which driving is not a job function. As people of color disproportionately suffer from driver's license suspensions, they correspondingly and disproportionately face an additional barrier to the job market—the lack of a driver's license. As a result of this employment barrier, the individual now has a decreased ability to pay what is required to get their license reinstated, which serves only to further compound the debt trap.

#### **b. Bloats the Criminal Justice System**

Of equal concern, Traffic Debt suspensions needlessly expand the scope of the criminal justice system, inducting staggering numbers of New Yorkers into the criminal justice system on the basis of race and poverty, and fueling mass incarceration.

Since the ability to drive is crucial to daily life and the livelihoods of individuals, about seventy-five percent of people with suspended licenses continue to drive.<sup>104</sup> If they are caught, they are arrested—establishing a means by which individuals are thrust into the criminal justice system because of their inability to pay. In addition to making important life responsibilities much tougher (and even impossible) to go about, Traffic Debt suspensions paradoxically make it increasingly difficult for individuals to meet subsequent court obligations.<sup>105</sup> This can result in added FTA charges for individuals who, in part as a result of their suspension, lack the resources and/or transportation to make court appearances. Thus, many individuals continue to drive, even though they run the risk of being stopped, ticketed, arrested, and charged for driving with a suspended license because their survival depends on it.

More than seven million Americans have had their driver's license suspended for Traffic Debt.<sup>106</sup> Between 2016 and 2018, New York issued nearly 1.7 million driver's license suspensions for Traffic Debt.<sup>107</sup> As so many suspended drivers have no choice but to continue driving to meet their families' basic needs, it follows that driving with a suspended license is one of the most common criminal charges in New York and around the country:

- According to DMV data, New York issued more than 108,000 tickets for driving with a suspended license in 2018. Suffolk County issued the most tickets for driving with a suspended license in 2018, handing out nearly 21,000 tickets. Nassau County issued the next most tickets, totaling almost 8,500, with Erie

<sup>104</sup> OFFICE OF THE NEW YORK CITY CONTROLLER SCOTT M. STRINGER, FEES, FINES AND FAIRNESS: HOW MONETARY CHARGES DRIVE INEQUITY IN NEW YORK CITY'S CRIMINAL JUSTICE SYSTEM 36 (Sept. 2019); AM. ASS'N OF MOTOR VEHICLE ADM'RS, Best Practices Guide to Reducing Suspended Drivers 4 (Feb. 2013), <https://www.aamva.org/Suspended-and-Revoked-Drivers-Working-Group/>.

<sup>105</sup> U.S. DEP'T OF JUSTICE CIVIL RIGHTS DIV., supra note 32 at 50.

<sup>106</sup> Justin Wm. Moyer, More than 7 Million People May Have Lost Driver's Licenses Because of Traffic Debt, WASH. POST (May 19, 2018) ("The total number nationwide could be much higher based on the population of states that did not or could not provide data.").

<sup>107</sup> Weiss & Wilner, supra note 4.

County and Onondaga County following next, issuing 7,310 tickets and 6,320 tickets, respectively.<sup>108</sup>

- Between 2014 and 2017 in Erie County, police charged a staggering 33,000 individuals with driving with a suspended license—in Buffalo alone, more than 14,000 individuals were charged with driving with a suspended license. Between January 2014 and October 2018, “more than 900 drivers charged with these offenses were shipped to the Erie County Holding Center . . . presumably after being unable to post bail.” Of these 900 individuals, nearly seventy-five percent were Black, though Black individuals make up just thirty-seven percent of Buffalo’s population.<sup>109</sup>
- In New York City, where substantially fewer people drive than in most places, the fourth most charged crime in 2018 was driving with a suspended license. Eighty percent of those arrested for driving with a suspended license in New York City are Black or Latinx.<sup>110</sup>
- In Michigan, the third most frequent charge leading to jail admission is driving without a valid license.<sup>111</sup> And, between 2008 and 2018, seventeen percent of those jailed for driving without a valid license in Michigan were jailed for at least one week.<sup>112</sup>
- In Illinois, police made over 43,400 arrests in 2016 for driving with a suspended license—half the arrests were of Black drivers.<sup>113</sup>
- In Florida, law enforcement issued over 232,000 citations for driving with a suspended or revoked license in 2017—more than five times as many citations as were issued for driving under the influence. Convictions resulted from 53,000 of these citations, amounting to over 600 new offenses each day across the state, and 98 per day in Miami-Dade County alone.<sup>114</sup>
- Between 2013 and 2015, the Los Angeles Sherriff’s Department arrested and charged 19,108 people for driving with a license that had been suspended for a reason other than driving safety. People of color made up an overwhelming

<sup>108</sup> DMV data obtained by Rosenblum Law and on file with authors. For additional historical data and analysis, see Adam Rosenblum, *Driving with a Suspended Driver’s License in New York*, ROSENBLUM LAW, <https://traffictickets.com/new-york/criminal-charges/driving-with-a-suspended-license> (last updated Aug. 9, 2019).

<sup>109</sup> Marsha McLeod, *Suspended Driver’s Licenses Snare New York’s Poorest Citizens*, THE CRIME REPORT (May 23, 2019), <https://thecrimereport.org/2019/05/23/535223>.

<sup>110</sup> N.Y. CITY COUNCIL FIX THE SYSTEM, *New York City Council Speaker Corey Johnson is Committed to Criminal Justice Reform*, <https://council.nyc.gov/data/fix-the-system/> (last visited Dec. 23, 2019).

<sup>111</sup> David Guenther & David Safavian, *The next frontier of criminal justice reform: County jails*, THE HILL (Dec. 13, 2019, 7:00AM), <https://thehill.com/opinion/criminal-justice/474213-the-next-frontier-of-criminal-justice-reform-county-jails>.

<sup>112</sup> Ted Roelofs, *Michigan jails filled with unlicensed drivers, people who miss court dates*, BRIDGE (Sept. 20, 2019), <https://www.bridgemi.com/michigan-government/michigan-jails-filled-unlicensed-drivers-people-who-miss-court-dates>.

<sup>113</sup> Melissa Sanchez, *Some States No Longer Suspend Driver’s Licenses for Unpaid Fines. Will Illinois Join Them?*, PROPUBLICA (Mar. 15, 2018, 4:00AM), <https://www.propublica.org/article/illinois-license-suspensions>.

<sup>114</sup> Carson Whitelemons, Ashley Thomas & Sarah Couture, *Florida’s Counterproductive and Costly Driver’s License Suspension Practices*, FINES & FEES JUSTICE CENTER (Oct. 2019), <https://finesandfeesjusticecenter.org/content/uploads/2019/11/florida-fines-fees-drivers-license-suspension-driving-on-empty.pdf>.

proportion of these arrests—Black people were overrepresented at a rate of 3.6x; Latinx people were overrepresented at a rate of 1.1x. White people were underrepresented at a rate of 0.6x for these arrests. (During this timeframe, the Los Angeles Sherriff's Department also effectuated 4,391 arrests pursuant to a warrant issued for FTP/FTA. People of color were also disproportionately overrepresented for these arrests)<sup>115</sup>

- Between 2013 and 2015, the San Francisco Sherriff's Department effectuated 9,312 arrests for driving with a license that had been suspended for a reason other than driving safety. Black people made up an overwhelming proportion of these arrests—they were overrepresented at a rate of 7.8x. (During this timeframe, the San Francisco Sherriff's Department also effectuated 855 arrests pursuant to a warrant issued for FTP/FTA. People of color were also disproportionately overrepresented for these arrests)<sup>116</sup>
- Between January 2013 and March 2016 in San Joaquin County, California, 1,717 arrests were made for FTP/FTA and driving with a suspended license. Most arrests had multiple booking charges, but forty percent—or 693—of these arrests had no booking charges that were deemed serious offenses, i.e. acts that reasonably endangered public safety. While the average jail time for these arrests was 1.1 days, fifty-eight individuals spent more than three days in jail and seventeen individuals spent more than ten days in jail for such arrests. 223 individuals, accounting for thirteen percent of the total arrests, were booked solely on the charge of driving with a suspended license. These individuals spent an average of 0.85 days—approximately 20 hours—in jail; however, three people spent between ten and thirteen days in jail, and one individual spent twenty-one days in jail, all for the singular offense of driving with a suspended license, where the license was suspended for a reason that did not pose a threat to public safety.<sup>117</sup>

If an individual is caught driving with a suspended license, which people of color disproportionately are, they are charged with aggravated unlicensed operation of a motor vehicle (AUO), which entails an onslaught of even more additional fines, fees, surcharges, and costs as well as possible imprisonment.<sup>118</sup>

<sup>115</sup> BACK ON THE ROAD CALIFORNIA, *Stopped, Fined, Arrested – Racial Bias in Policing and Traffic Courts in California* 13 (Apr. 2016), [https://ebclc.org/wp-content/uploads/2016/04/Stopped\\_Fined\\_Arrested\\_BO'TRCA.pdf](https://ebclc.org/wp-content/uploads/2016/04/Stopped_Fined_Arrested_BO'TRCA.pdf). Please note, there appears to be a typo in this source. The data following the text on page 13 demonstrates rates of over and under-representation for arrests made for driving with a suspended license in Los Angeles County, but the text preceding the data mistakenly refers to “San Francisco County” in the second paragraph.

<sup>116</sup> *Id.* at 16–18.

<sup>117</sup> *Id.* at 20.

<sup>118</sup> When people are arrested for driving with a suspended license, they are often handcuffed for hours, and once detained may wait as long as forty-eight hours—the constitutional limit—to be seen by a judge. BACK ON THE ROAD CALIFORNIA, *supra* note 115 at 28. However, sometimes, “administrative or bureaucratic errors can undermine the timeliness by which an arrestee avails himself of this fundamental constitutional right.” *Id.* These police detentions have negative psychological impacts on individuals that can last long beyond the arrest and detention. Further, as arrests are unplanned, they pull people from their daily responsibilities and therefore cause people to miss work, lose their jobs, go without needed medical treatment or care, and also render them unable to tend to their children. Even once a person is



For AUO in the third degree, the charge for a first offense, New York law assesses a fine between \$200–\$500, or imposes up to thirty days’ imprisonment; it also allows for both the fine and imprisonment.<sup>119</sup> For AUO in the second degree, which a person is charged with if they committed an AUO in the preceding eighteen months or have three or more FTP/FTA suspensions,<sup>120</sup> New York law assesses a fine of at least \$500 and also requires a term of imprisonment or probation.<sup>121</sup> Because AUO in the third and second degree are misdemeanors, a mandatory \$175 surcharge and \$25 crime victim assistance fee are also assessed—the court has no discretion to waive the surcharges or fees.<sup>122</sup> For AUO in the first degree, the charge if a person commits an AUO in the third degree and has ten or more FTP/FTA suspensions,<sup>123</sup> New York law assesses a fine between \$500–\$5,000 and requires a term of imprisonment or probation.<sup>124</sup> This is a felony and so a \$300 mandatory surcharge and \$25 crime victim assistance fee are also assessed.<sup>125</sup>

Not only do AUO charges related to FTP/FTA suspensions needlessly incarcerate people for their poverty, they also serve to entrench the debt trap, as discussed above.<sup>126</sup> The fines, fees, and surcharges are then compounded by the higher insurance premiums one will have to pay if they are found guilty of driving with a suspended license.<sup>127</sup>

In short, suspensions for non-driving safety reasons needlessly lead to AUO pleas and convictions that generate criminal records that most otherwise would not have. By virtue of AUOs producing a criminal record, Traffic Debt suspensions serve to foreclose even more employment opportunities, further exacerbating the financial impact of a driver’s license suspension. Traffic Debt suspensions essentially create a “gateway to jail, probation, additional fines, and a criminal record for some of [New York’s] most vulnerable.”<sup>128</sup>

released from detainment, they are then compelled “to navigate a confusing and complex court process, pay attorney’s fees and court fees, and decide whether to plead guilty to a misdemeanor offense of driving with a suspended license, which comes with a litany of additional penalties.” *Id.* at 29. (Note, in New York, AUO in the first degree is a felony offense.) Jail time and hefty fines attach if one pleads guilty to driving with a suspended license in New York, even for a first offense.

<sup>119</sup> N.Y. Veh. & Traf. Law § 511(1)(b).

<sup>120</sup> N.Y. Veh. & Traf. Law § 511(2)(a)(i), (iv).

<sup>121</sup> N.Y. Veh. & Traf. Law § 511(2)(b). If a person is charged with AUO in the second degree for committing an AUO in the preceding eighteen months, a term of imprisonment must be imposed and it must not exceed 180 days. If a person is charged with AUO in the second degree because they have three or more FTP/FTA suspensions, the term of imprisonment must be at least seven days, but is also capped at 180 days. *Id.*

<sup>122</sup> N.Y. Penal Law § 60.35(1)(a)(ii); *People v. Jones*, 26 N.Y.3d 730, 47 N.E.3d 710 (2016).

<sup>123</sup> N.Y. Veh. & Traf. Law § 511(3)(a)(ii).

<sup>124</sup> N.Y. Veh. & Traf. Law § 511(3)(b).

<sup>125</sup> N.Y. Penal Law § 60.35(1)(a)(i).

<sup>126</sup> See *supra* Section IV.a.

<sup>127</sup> BACK ON THE ROAD CALIFORNIA, *supra* note 115 at 29.

<sup>128</sup> *Id.*

### c. Endangers Public Safety

When driver's licenses are suspended for non-safety reasons, such as Traffic Debt suspensions, public safety is at risk. Such suspensions reduce the number of insured drivers on the road and divert significant public safety resources.

Traffic Debt suspensions unnecessarily increase the number of unlicensed and uninsured drivers on the road, thereby jeopardizing public safety. This is the case because many suspended drivers must drive despite their license suspension to get to work and medical appointments, drop their kids off at school, and make their court dates, and people convicted of driving with a suspended license often lose their insurance coverage. Further, for reinstated drivers, insurance premiums often become cost prohibitive as they are higher for previously suspended drivers, regardless of the underlying reason for the suspension (as driving records do not always distinguish between suspensions due to unsafe driving behaviors and other reasons).<sup>129</sup>

Traffic Debt suspensions also divert already limited law enforcement, DMV, and court resources from drivers that pose a true threat to public safety.<sup>130</sup> The only logical reason to suspend an individual's driver's license is if that individual poses a threat to public safety—i.e., if they are a dangerous driver. In fact, driver's license suspensions were first instituted for the purposes of removing dangerous drivers from the road, changing risky driving behaviors, and punishing unsafe drivers.<sup>131</sup> Though social nonconformance related suspensions<sup>132</sup> were later introduced in an effort “to change non-highway safety related” behaviors, “no empirical evidence . . . indicates that suspending a person's driving privilege for social nonconformance reasons is effective in gaining compliance with the reason for the original non-driving suspension.”<sup>133</sup> According to the American Association of Motor Vehicle Administrators, these social nonconformance related suspensions are ineffective and counterproductive: they have “dramatically increased the number of suspended drivers on our roads” and created “a tremendous burden on law enforcement, [DMVs], the courts, and local communities.”<sup>134</sup>

Traffic Debt suspensions are not for dangerous driving; they are for nonpayments and nonappearances. Given that drivers suspended for non-safety reasons represent the vast majority of all suspended drivers in New York<sup>135</sup> and that “most drivers with suspended licenses pose no more of a threat to public safety than validly licensed drivers,”<sup>136</sup> this misallocation of resources is the true public safety threat with which we should be

<sup>129</sup> Aiken, *supra* note 94.

<sup>130</sup> U.S. COMM'N ON CIVIL RIGHTS, *supra* note 89 at 36–38.

<sup>131</sup> AM. ASS'N OF MOTOR VEHICLE ADM'RS, *supra* note 104 at 4.

<sup>132</sup> “Examples of social non-conformance violations include fuel piracy/theft, failure to pay taxes, minor in possession of alcohol, false public alarm, illegal solid waste burning, vandalism, failure to pay alimony, selling alcohol to a minor, truancy, unlawful possession of firearms, prostitution, and many more.” *Id.*

<sup>133</sup> *Id.*

<sup>134</sup> *Id.*

<sup>135</sup> Alcorn, *supra* note 5.

<sup>136</sup> Brief for Fines and Fees Justice Center et al. as Amici Curiae Supporting Respondents, *Kansas v. Glover*, 139 S. Ct. 1445, 203 L. Ed. 2d 680 (2019) (No. 18-1556), 2019 WL 4302286.

concerned.<sup>137</sup> This is particularly so in New York because we know two thirds of all driver’s license suspensions are issued for FTP/FTA—reasons wholly unrelated to driver dangerousness.<sup>138</sup>

Indeed, when an already overburdened police force must use finite resources and expend significant staff hours to pull over, transport, often jail, and attend court dates with safe drivers who have been driving with a suspended license, it decreases public safety. Judges, defense lawyers[,] and prosecutors are placed in a similar situation. The time they spend dealing with otherwise safe drivers inevitably eats into time that could be spent monitoring the roads for reckless drivers and punishing those who could do the public serious harm.<sup>139</sup>

Law enforcement agencies expend millions of dollars and personnel hours each year to administer suspensions issued for reasons unrelated to driving.<sup>140</sup> For example:

- In Union County, Ohio it takes an average of nine hours to arrest and prosecute an individual for driving with a suspended license.<sup>141</sup>
- It is estimated that Washington County State Patrol troopers expend over 79,041 personnel hours each year “in the arrest and adjudication of drivers caught driving while suspended for non-highway safety related reasons.”<sup>142</sup>

The financial and personnel costs to DMVs are also substantial and cause them to “operate outside their core mission of ensuring highway safety.”<sup>143</sup> For instance:

- The Colorado DMV estimated it would expend 8,566 manual employee hours—equating to 4.22 full time employees—to process social nonconformance related suspensions, and 10,080 hearing officer hours—equating to 4.84 full time hearing officers—to hold hearings and issue findings in social nonconformance related suspension cases.<sup>144</sup>

Courts are likewise already overburdened with more cases for the number of judges available; the addition of cases for driving while suspended as a result of a non-safety violation simply compounds that burden.<sup>145</sup> Similarly, non-safety suspension cases take up a substantial amount of public defenders’ time. For instance, in 2017, low-level

<sup>137</sup> “Law enforcement, the courts and the DMVs could better focus on drivers arrested for impaired driving, aggressive driving, serious traffic violations, and other risky behavior if they were not required to take action against individuals suspended for social nonconformance related offenses.” AM. ASS’N OF MOTOR VEHICLE ADM’RS, *supra* note 104 at 8.

<sup>138</sup> Alcorn, *supra* note 5.

<sup>139</sup> Ewan Watt, *Common Sense on Crime and Driver’s Licenses: Column*, USA TODAY (Mar. 2, 2017), <https://www.usatoday.com/story/opinion/2017/03/02/dont-suspend-drivers-licenses-for-no-good-reason-column/98481984>.

<sup>140</sup> AM. ASS’N OF MOTOR VEHICLE ADM’RS, *supra* note 104 at 14.

<sup>141</sup> *Id.*

<sup>142</sup> *Id.* at 14–15.

<sup>143</sup> *Id.* at 16–22.

<sup>144</sup> *Id.* at 18.

<sup>145</sup> *Id.* at 14.

suspension cases made up about fifteen percent of the Legal Aid Bureau of Buffalo's total caseload.<sup>146</sup>

These costs incurred by law enforcement, DMVs, judges, and lawyers are without any benefits. Drivers whose license are suspended for unpaid debt are not unsafe drivers, and non-driving safety related suspensions have proven to be ineffective in achieving their purposes.<sup>147</sup> In brief, “[t]he costs of arresting, processing, administering, and enforcing social nonconformance related driver license suspensions create a significant strain on budgets and other resources and detract from highway and public safety priorities.”<sup>148</sup> Traffic Debt suspensions therefore imprudently divert law enforcement to handle issues involving poverty, rather than focusing on true safety issues such as dangerous driving and serious crime.

#### **d. Harms the Economy**

Not only do driver's license suspensions threaten individual financial stability, they also have ramifications for the economy at large. Job losses flowing from driver's license suspensions have a profoundly negative impact on both GDP and tax revenue. And as driver's license suspensions are an ineffective collections tactic, they likely do nothing to offset these negative impacts. Furthermore, driver's license suspensions harm employers, which in turn also contributes to decreased GDP and tax revenue.

A study of a driver's license reinstatement program in Phoenix, Arizona found that the median annual income loss as a result of driver's license suspensions was \$36,800. This resulted in decreased GDP and tax revenue as there are positive correlations between low unemployment and GDP and tax revenue. To this end, the study further found that after the driver's licenses of the 7,000 program participants were reinstated, they collectively gained 1,904 job years of employment<sup>149</sup> and \$87 million in labor income, which, due to individuals' reinstated ability to earn and spend money, resulted in a \$149.6 million increase in GDP. Likewise, the \$87 million in labor income positively impacted state income tax revenue given the positive correlation between low unemployment rates and tax revenue.<sup>150</sup>

Moreover, driver's license suspensions are an ineffective collections tactic and therefore do nothing to benefit the government's fiscal coffers or offset the economic harm of Traffic Debt suspensions. Because people who do not have the money to pay simply cannot pay it, nearly half of suspensions issued in 2016 in New York remained in effect one year later.<sup>151</sup> By way of further example, Tulsa County state courts have levied \$209.3 million in fines and court costs on individuals for traffic, misdemeanor, and felony cases since 2008. Yet, as of mid-2019, \$157.8 million—about three quarters of the original amount levied—is still owed. It is hardly a coincidence that residents living in the zip

<sup>146</sup> McLeod, *supra* note 109..

<sup>147</sup> See *infra* Section IV.d.

<sup>148</sup> AM. ASS'N OF MOTOR VEHICLE ADM'RS, *supra* note 104 at 2.

<sup>149</sup> One job year is defined as the employment of one person for twelve consecutive months. L. WILLIAM SEIDMAN RESEARCH INSTITUTE, *supra* note 96 at 5 n.3.

<sup>150</sup> L. WILLIAM SEIDMAN RESEARCH INSTITUTE, *supra* note 96.

<sup>151</sup> Weiss & Wilner, *supra* note 4.

codes that owe the most in court fines and fees are comprised of some of the poorest residents in the county and are largely communities of color.<sup>152</sup>

Employers too are harmed when driver's licenses are suspended because they are forced to "hire and train new workers every time an employee is fired because he or she is unable to drive to work."<sup>153</sup> Hiring and re-training a new person for a job that was being performed well by someone else entails a cost in and of itself.<sup>154</sup> Losing a qualified, productive employee results in a financial loss to the employer as the resources and training the employer invested in the employee become a sunk cost if the employee is no longer able to perform job duties due to their driver's license suspension. Moreover, non-safety suspensions unnecessarily diminish the available labor force, making certain jobs unnecessarily difficult for employers to fill. For example, a driver's license is often a prerequisite for employment in industries such as construction, home health care, motor vehicle sales and services, and delivery services.<sup>155</sup> As a consequence of Traffic Debt suspensions, these industries suffer in terms of productivity for they cannot fill open positions due to the needlessly narrowed labor pool, as do the governments that benefit from taxable revenue and the constituents these industries serve.

In sum, Traffic Debt suspensions strike a hard and wide-reaching economic blow to the economy, governments, and employers alike.

## V. Grave Lack of Traffic-Stop Data in New York is Problematic

The lack of available traffic-stop data is problematic and, in many ways, hinders effective policing.<sup>156</sup> Currently, New York law does not require law enforcement agencies to collect and maintain data with respect to traffic stops and persons patted down, frisked, and searched.<sup>157</sup> Although a Senate bill from the 2017-2018 Legislative Session, highlighting New York legislators' concern for racially discriminatory policing practices, would have required the collection and publication of data on traffic stops, the bill regrettably did not make it out of Committee. The justification for the bill read as follows:

<sup>152</sup> Curtis Killman & Tim Stanley, Unpaid court fees disproportionately impact north Tulsa leaving residents 'entrapped' in debt, analysis shows, TULSA WORLD (Dec. 4, 2019),

[https://www.tulsaworld.com/news/specialreports-databases/unpaid-court-fees-disproportionately-impacts-north-tulsa-leaving-residents-entrapped/article\\_fa02e372-25ef-512e-829f-742f12979e7d.html](https://www.tulsaworld.com/news/specialreports-databases/unpaid-court-fees-disproportionately-impacts-north-tulsa-leaving-residents-entrapped/article_fa02e372-25ef-512e-829f-742f12979e7d.html).

<sup>153</sup> Harmann Singh, Challenging Unconstitutional Driver's License Suspensions, U. OF PENN. CAREY L. SCH. (Mar. 19, 2018), <https://www.law.upenn.edu/live/news/7910-challenging-unconstitutional-drivers-license>.

<sup>154</sup> Bender, *supra* note 99 at 18.

<sup>155</sup> *Id.* at 17–18.

<sup>156</sup> See, e.g., POLICING PROJECT, N.Y.U., It's Time to Start Collecting Stop Data: A Case for Comprehensive Statewide Legislation (Sept. 30, 2019), <https://www.policingproject.org/news-main/2019/9/27/its-time-to-start-collecting-stop-data-a-case-for-comprehensive-statewide-legislation>.

<sup>157</sup> The New York State Police did, however, comply with the Stanford Open Policing Project's request for traffic-stop data. It reported 7,962,169 stops from December 2009 through December 2017, and included limited data, such as the drivers' race. Pierson, *supra* note 30.



Blacks [sic], Hispanics and other minority groups have long been victims of biased and unjustified vehicle stops, searches and frisks by law enforcement officers. The arguably unconstitutional use of race or ethnicity as a criterion [sic] has become the focus of many civil and human rights groups. The practice is commonly known as "racial profiling." The use of racial profiling has consequently had a corrosive effect on the relations between police and tile minority communities. This practice deprives minorities of their Fourth Amendment right to be [sic] free from unreasonable searches and seizures, and their right to be free from discriminations based on race guaranteed under the Fourteenth Amendment to the [U.S.] Constitution.<sup>158</sup>

As at least some New York legislators have evidently recognized, data regarding racial profiling in traffic stops are limited.<sup>159</sup> As of September 2019, nineteen states required the collection of data on every law enforcement initiated traffic stop.<sup>160</sup> When traffic-stop data are available, society at large benefits from increased transparency and accountability, which in turn also promotes better policing.

#### a. Lack of Data Thwarts Transparency and Accountability

The U.S. Supreme Court's 1996 decision that held police could use any traffic offense as a reason to stop motorists (i.e., pretextual stops) effectively gave law enforcement the green light to disproportionately stop people of color.<sup>161</sup> The N.Y. Court of Appeals has acknowledged that racial disparities exist in law enforcement stop practices and has pronounced that "[d]iscriminatory law enforcement has no place in our law."<sup>162</sup> Yet,

<sup>158</sup> S. 2146, An act to amend the executive law, in relation to ethnic or racial profiling, 2017–2018 Reg. Sess. New York City Council member Donovan Richards has also proposed a bill that would require the NYPD to issue a quarterly report on all vehicle stops. Int 1671-2019, A Local Law to amend the administrative code of the city of New York, in relation to requiring the police department to report on traffic encounters, 2019 Reg. Sess.

<sup>159</sup> Indeed, in a 2014 report the NAACP noted:

Since the 2004 AIUSA poll on racial profiling and the 2011 DOJ survey of traffic and pedestrian stops, no new data on profiling on a nationwide level exists. Many police departments, either voluntarily or to meet specific legislative mandates or other legal obligations, collect data on racial profiling. However, this data is not always readily available to the public and it is not compiled to offer national statistics. Often, these numbers can be accessed on a local level—usually through years of advocacy and submissions of Freedom of Information Act requests. The fight to end racial profiling in New York City, in fact, was based on the data that advocates were able to access on stop-and-frisk numbers spanning over a decade.

NATIONAL ASS'N FOR THE ADVANCEMENT OF COLORED PEOPLE, Born Suspect: Stop-and-Frisk Abuses & the Continued Fight to End Racial Profiling in America 9 (Sept. 2014), [https://www.prisonpolicy.org/scans/naacp/Born\\_Suspect\\_Report\\_final\\_web.pdf](https://www.prisonpolicy.org/scans/naacp/Born_Suspect_Report_final_web.pdf).

<sup>160</sup> POLICING PROJECT, N.Y.U, *supra* note 156.

<sup>161</sup> Whren v. United States, 571 U.S. 896 (1996); Kevin R. Johnson, Doubling Down on Racial Discrimination: The Racially Disparate Impacts of Crime-Based Removals, 66 CASE W. RES. L. REV. 993, 1005–06 (2016) (“[T]he decision in effect authorizes racial profiling in run-of-the-mill traffic stops, a common modern law-enforcement technique. By many accounts, racial profiling currently is routine among state and local police in jurisdictions across the United States. It has become an integral tool employed in the much-maligned, yet nevertheless aggressively enforced, ‘war on drugs.’”)

<sup>162</sup> People v. Robinson, 97 N.Y.2d 341, 352 (2001).

We are not unmindful of studies, some of which are cited by defendants and the amici, which show that certain racial and ethnic groups are disproportionately stopped by police officers, and

racial data on traffic stops are seldom collected and these practices continue to persist, at least in part, due to the lack of transparency and accountability.

Transparency—and the collection and analysis of data—is key to understanding how policing works in all of our communities. It promotes accountability, and in turn fosters policing that serves all members of our communities effectively—i.e., good law enforcement. The DOJ has recognized this in its evaluations of the Suffolk County Police Department (SCPD). In an assessment of the SCPD’s compliance with the parties’ settlement agreement, it noted that the “collection of meaningful and accurate traffic stop data” is critical to “ensuring that policing services are delivered in a manner free from bias.”<sup>163</sup> The DOJ has further explained:

By collecting the necessary data, and periodically analyzing that data, the [DOJ] will be able to ensure that [the SCPD] is conducting traffic stops in a race-neutral and non-discriminatory manner. A robust bias-free training for all officers and recruits is also necessary to train them to better identify implicit biases and to incorporate the principles of procedural justice in interactions with the diverse communities they serve. . . . [T]hese requirements are fundamental to the continued delivery of bias-free policing. . . .<sup>164</sup>

Similarly, data that a court compelled the New York Police Department (NYPD) to turn over as a result of the settlement agreement in *Daniels et al. v. City of New York* revealed significant racial disparities in pedestrian-stop context—eighty-five percent of those subjected to stops by the NYPD were Black or Latinx, while only ten percent were white—and resulted in the *Floyd* litigation.<sup>165</sup> In *Floyd*, the court ultimately found that

that those stops do not end in the discovery of a higher proportion of contraband than in the cars of other groups. The fact that such disparities exist is cause for both vigilance and concern about the protections given by the New York State Constitution. Discriminatory law enforcement has no place in our law.

*Id.* at 351–52 (citations omitted).

<sup>163</sup> See, e.g., U.S. DEP’T OF JUSTICE, THIRD REPORT ASSESSING SETTLEMENT AGREEMENT COMPLIANCE BY SUFFOLK CTY. POLICE DEPARTMENT 7 (Apr. 18, 2016), <https://www.justice.gov/file/1103156/download>.

<sup>164</sup> U.S. DEP’T OF JUSTICE, SIXTH REPORT ASSESSING SETTLEMENT AGREEMENT COMPLIANCE BY SUFFOLK CTY. POLICE DEPT 6 (Mar. 13, 2018), <https://www.justice.gov/file/1103156/download>. Without doubt, bias-free policing is more effective policing. Removing bias from policing benefits both the citizenry and law enforcement. Sunita Patel, *Toward Democratic Police Reform: A Vision for "Community Engagement" Provisions in Doj Consent Decrees*, 51 WAKE FOREST L. REV. 793, 802 (2016) (“when police processes are perceived as procedurally just, communities are more likely to cooperate with the police, and policing, in turn, is more effective”). Not only is bias-free policing a much better use of limited public resources because it ensures law enforcement focuses its efforts on true public safety threats, it also fosters trust and relationships between the police and the communities they serve. Christopher N. Lasch et. al., *Understanding "Sanctuary Cities"*, 59 B.C. L. REV. 1703, 1761 (2018) (“Community trust is critical for effective policing programs.”). It protects citizens against unconstitutional government encroachments while allowing for more effective crime prevention. Thus, the availability of data also stimulates better law enforcement practices, which in turn bolstering the public’s faith in our law enforcement institutions.

<sup>165</sup> CATALYSTS FOR COLLABORATION, *Case Study: Floyd v. City of New York*, <https://catalystsforcollaboration.org/casestudy/nycfloyd.html> (last visited Jan 2., 2020).

the NYPD's stop and frisk practices were violative of the Equal Protection Clause.<sup>166</sup> The plaintiffs were able to prove that the City, through the NYPD, had a policy of racial profiling by relying on data that demonstrated that: “the NYPD carries out more stops where there are more [B]lack and Hispanic residents, even when other relevant variables are held constant,” “NYPD officers are more likely to stop [B]lacks and Hispanics than whites within precincts and census tracts, even after controlling for other relevant variables” and “are more likely to use force against blacks and Hispanics than whites, after controlling for other relevant variables, and that “NYPD officers stop [B]lacks and Hispanics with less justification than whites.”<sup>167</sup> But for the data that compelled these factual findings, it is hard to say whether the court would have reached the conclusion it ultimately came to,<sup>168</sup> and ordered the reforms that it did.<sup>169</sup>

In short, the role of data in *Floyd* cannot be understated. The patent racial disparities the *Floyd* litigation uncovered in the pedestrian-stop context evince the need for analogous data in the traffic-stop context, not only for the sake of transparency and accountability, but also to ensure effective policing. It is incumbent upon New York policymakers to utilize the lessons learned from Ferguson and *Floyd*—and across the nation—and require the collection and analysis of data with respect to all police stops. It should not take lawsuits and settlement agreements for law enforcement to be transparent and held to account. Relevant data should be made publicly available and law enforcement should be analyzing and engaging with such data in a manner that fosters better and more just law enforcement practices.<sup>170</sup>

<sup>166</sup> *Floyd v. City of New York*, 959 F. Supp. 2d 540 (S.D.N.Y. 2013).

<sup>167</sup> *Floyd*, 959 F. Supp. 2d at 661 (emphasis in original).

<sup>168</sup>

The Equal Protection Clause does not sanction treating similarly situated members of different racial groups differently based on racial disparities in crime data. Indeed, such treatment would eviscerate the core guarantees of the Equal Protection Clause. If equal protection means anything, it means that individuals may not be punished or rewarded based on the government's views regarding their racial group, regardless of the source of those views. . . . The Equal Protection Clause's prohibition on selective enforcement means that suspicious [B]lacks and Hispanics may not be treated differently by the police than equally suspicious whites. Individuals of all races engage in suspicious behavior and break the law. Equal protection guarantees that similarly situated individuals of these races will be held to account equally.

*Id.* at 667.

<sup>169</sup> *Floyd* resulted in a host of policing reforms. Among other things, the court: (1) ordered the NYPD to institute a pilot program that required “officers on patrol in one precinct per borough—specifically the precinct with the highest number of stops during 2012” to wear body cameras to record street encounters as a potential tool for accountability; (2) appointed an independent monitor to engage in direct oversight of the reform process; and (3) initiated a joint remedial process to solicit additional solutions from various impacted stakeholders on how the NYPD should further reform its policing practices. *Floyd v. City of New York*, 959 F. Supp. 2d 668, 676, 685–87 (S.D.N.Y. 2013).

<sup>170</sup> See, e.g., SOUTHERN POVERTY LAW CENTER, *Police and Data Collection: Why Louisiana Needs Reform* (Nov. 15, 2018), <https://www.splcenter.org/20181115/police-and-data-collection-why-louisiana-needs-reform>.

Good governance is just as dependent on data. Governments constantly collect, analyze, and disseminate data to keep the public informed about everything from economic trends to the projected paths of hurricanes, from comparisons of student loan options to the spread of infectious diseases. If government policies are not data-driven, it is hard for government to be effective. It is no surprise, then, that data are just as important to policing as they are to the rest of daily life. . . . Providing public access to data also increases transparency and helps build trust



### b. Availability of Data Drives Better Policing Practices

There is also real evidence that proves that when data are made available, better policing practices follow:

As a result of the traffic-stop data collection practices mandated by the SCPD's settlement agreement with the DOJ, its bias-free policing practices have improved considerably, though there is still much more that must be done.<sup>171</sup> Similarly, as discussed above, after the settlement agreement in *Daniels* required the NYPD to provide stop-and-frisk data on a quarterly basis from 2003 to 2007, the significant racial disparities uncovered led to the commencement of *Floyd*, which ultimately resulted in court-ordered "NYPD reform practices and policies related to stop and frisk to conform with the requirements of the [U.S.] Constitution."<sup>172</sup>

Likewise, in Maryland, when the state police, pursuant to a settlement agreement, were required to maintain statistics on the race and ethnicity of drivers stopped, racial disparities in traffic stops were cut in half.<sup>173</sup> In Illinois, where law enforcement agencies have been required to document and report traffic stops to the Illinois Department of Transportation since 2004, law enforcement agencies are able to assess the effectiveness and unintended consequences of their strategies, and compare themselves to each other to improve practices.<sup>174</sup> A consent decree between New Jersey and the DOJ, which required "the design and implementation of management information system to compile data on the patterns of enforcement and the outcomes of vehicle stops and searches," led to extensive reforms in the training and supervision of state police troopers.<sup>175</sup> However, because of data, we know that there is still much work to be done as despite seven years under the consent decree, data has shown that the New Jersey State Police

with the communities served by law enforcement, which is important for developing collaborative solutions to reduce crime. . . . In contrast, when police do not make data available, this frustrates public accountability and effective police work. As a former FBI director put it in 2015 when responding to a question from a member of Congress about police uses of force, "[W]e can't have an informed discussion because we don't have data. People have data about who went to a movie last weekend or how many books were sold or how many cases of the flu walked into an emergency room, and I cannot tell you how many people were shot by police in the United States last month, last year, or anything about the demographics, and that's a very bad place to be."

*Id.*

<sup>171</sup> Compare U.S. DEP'T OF JUSTICE, THIRD REPORT ASSESSING SETTLEMENT AGREEMENT COMPLIANCE BY SUFFOLK CTY, POLICE DEP'T (April 18, 2016), <https://www.justice.gov/file/1103156/download> with U.S. DEP'T OF JUSTICE, SEVENTH REPORT ASSESSING SETTLEMENT AGREEMENT COMPLIANCE BY SUFFOLK CTY, POLICE DEP'T (Oct. 11, 2018), <https://www.justice.gov/file/1103156/download>.

<sup>172</sup> *Floyd v. City of New York*, 959 F. Supp. 2d at 671; CATALYSTS FOR COLLABORATION, *Case Study: Floyd v. City of New York*, <https://catalystsforcollaboration.org/casestudy/nycfloyd.html> (last visited Jan. 2, 2020).

<sup>173</sup> Michael A. Fletcher, *The Stop: Racial profiling of drivers leaves legacy of anger and fear*, THE UNDEFEATED, <https://theundefeated.com/features/the-stop-national-geographic-anquan-boldin-racial-profiling-of-drivers-leaves-legacy-of-anger> (last visited Dec. 6, 2019). Note, the racial disparities were cut in half after a second lawsuit which compelled the police to revamp their complaint system. *Id.*

<sup>174</sup> ILLINOIS TRAFFIC STOPS, <https://illinoistrfficstops.com/> (last visited Dec. 20, 2019).

<sup>175</sup> J. Fagan & A.B. Geller, *Profiling and Consent: Stops, Searches and Seizures after Soto*, Presented at the Conference on Empirical Legal Studies (Oct. 2010), <http://ssrn.com/abstract=1641326>.

were still involved in a pattern and practice of racially selective enforcement on the New Jersey Turnpike and other nearby state highways.<sup>176</sup> In Los Angeles, where a report revealed that from 2015 to 2018, the LAPD’s Metropolitan Division stopped Black drivers “at a rate more than five times their share of the city’s population,”<sup>177</sup> the Mayor, in response to the data in the report, ordered the LAPD to scale back traffic stops—the LAPD scaled back by about eleven percent, and its Metropolitan Division by about forty-five percent.<sup>178</sup>

In the legislative context, North Carolina was the first state in the nation to mandate the collection of traffic-stop data. As a result of that law, researchers were able to validate the racial profiling concerns of the lawmakers who enacted it: “two-to-one search rates; two-to-one increased likelihood of being pulled over if you are nonwhite.”<sup>179</sup> A number of reforms have been implemented in large part based on the analysis of data that law enforcement agencies are statutorily required to produce.<sup>180</sup>

These examples of data serving as an impetus for better policing practices make a compelling case for New York to mandate the collection and analysis of stop data.

## VI. New York’s Driver’s License Suspension Scheme is Vulnerable to Possible Legal Challenges

### a. Fourteenth Amendment<sup>181</sup>

New York’s driver’s license suspension scheme punishes individuals for Traffic Debt—in other words, it punishes people for poverty. It also disproportionately impacts people of color. Such a practice presents serious constitutional issues.

<sup>176</sup> *Id.*

<sup>177</sup> Ben Poston & Cindy Chang, ‘Stop-and-frisk in a car.’ Elite LAPD unit disproportionately stopped black drivers, data show, L.A. TIMES (Jan. 24, 2019 11:05 AM), <https://www.latimes.com/local/lanow/la-me-lapd-traffic-stops-20190124-story.html>.

<sup>178</sup> Ben Poston & Cindy Chang, LAPD searches blacks and Latinos more. But they’re less likely to have contraband than whites., L.A. TIMES (Oct. 8, 2019, 3:52 PM), <https://www.latimes.com/local/lanow/la-me-lapd-searches-20190605-story.html>; Cindy Chang & Ben Boston, Garcetti orders LAPD to scale back vehicle stops amid concerns over black drivers being targeted, L.A. TIMES (Feb. 6, 2019, 9:30 PM), <https://www.latimes.com/local/lanow/la-me-ln-garcetti-lapd-metro-20190206-story.html>.

<sup>179</sup> Isidoro Rodriguez, Why Traffic Stops Don’t Stop Crime, CENTER ON MEDIA CRIME AND JUSTICE AT JOHN JAY COLLEGE (July 17, 2018), <https://thecrimereport.org/2018/07/17/why-traffic-stops-dont-stop-crime/>.

<sup>180</sup> *See, e.g.*, THE UNIVERSITY OF NORTH CAROLINA AT CHAPEL HILL, NC Traffic Stops, <https://fbaum.unc.edu/traffic.htm> (last visited Dec. 6, 2019). For example, as a result of the North Carolina law mandating the collection of traffic-stop data, “several jurisdictions revised their practices . . . including requiring officers to obtain written consent before searching a car during a traffic stop.” POLICING PROJECT, N.Y.U, *supra* note 156.

<sup>181</sup> It should be noted that following lawsuits challenging the constitutionality of license-for-payment laws, several jurisdictions changed their laws. These jurisdictions include California, Montana, and Virginia. *See, e.g.*, Hernandez v. Cal. Dep’t of Motor Vehicles, No. RG16836460 (Super. Ct. of Alameda Cnty., filed Oct. 25, 2016) (California); DiFrancesco v. Bullock, No. CV-17-66-BU-SEH (D. Mont., filed Aug. 31, 2017) (Montana); Stinnie v. Holcomb, No. 3:16-cv-44 (W.D. Va., filed July 6, 2016) (Virginia).

### i. Fundamental Fairness

“All people . . . must, so far as the law is concerned, stand on an equality before the bar of justice. . . .”<sup>182</sup> Indeed, punishing a person “simply because he could not pay [a] fine, without considering the reasons for the inability to pay or the propriety of reducing the fine or extending the time for payments or making alternative orders,” is “little more than punishing a person for his poverty.”<sup>183</sup> In a long line of cases in which the U.S. Supreme Court has evaluated the impact of money in the justice system, it has eschewed the application of the traditional due process and equal protection tiered approach, and has instead adopted the more nuanced doctrine of fundamental fairness—a convergence of due process and equal protection principles.<sup>184</sup>

The Court’s fundamental fairness doctrine does not tolerate laws that punish people for their inability to pay.<sup>185</sup> When considering economic disparities in the justice system, the Court’s fundamental fairness approach requires an inquiry into: (1) the nature of the individual interest affected and the extent to which it is affected; (2) the rationality of the connection between legislative means and purpose; and (3) the existence of alternative means for effectuating the purpose.<sup>186</sup> This paper analyzes these considerations, as applied to New York’s driver’s license suspension scheme, in turn.

First, driver’s licenses are a property right protected by the U.S. Constitution.<sup>187</sup> Further, “driving an automobile [is] a virtual necessity for most Americans,”<sup>188</sup> and thus the nature of an individual’s interest in their driver’s license and the extent to which the interest is affected could not be more sweeping. In fact, the Supreme Court has held that “the right to work for a living in the common occupations of the community is of the very essence of the personal freedom and opportunity which it was the purpose of the [Fourteenth] Amendment to secure.”<sup>189</sup> The ability to drive is essential for many people to go about their lives and earn a living. When one’s license is suspended for FTP/FTA, the individual is outright prohibited from driving and is therefore precluded from going about their daily activities and obligations, particularly if they reside in an area with

<sup>182</sup> *Griffin v. Illinois*, 351 U.S. 12, 17 (1956). The principles from *Griffin* and its progeny extend beyond instances in which a defendant is subject to imprisonment. *M.L.B. v. S.L.J.*, 519 U.S. 102, 111 (1996).

<sup>183</sup> *Bearden v. Georgia*, 461 U.S. 660, 671, 674 (1983). Indeed, unpaid fines and fees often result in civil judgments, which entail significant human and financial consequences for those who cannot pay because of their poverty and therefore blamelessly fail to pay the judgments. *People v. Duenas*, 30 Cal. App. 5th 1157, 1167–68 (Ct. App. 2019), *review denied* (Mar. 27, 2019). The consequences of driver’s license suspensions are analogous to, and as serious and punitive as, the consequences that flow from civil judgments. Therefore, Traffic Debt suspensions should be analyzed within the same framework as unpaid fines and fees that result in civil judgments.

<sup>184</sup> See, e.g., *M.L.B.*, 519 U.S. 102; *Bearden*, 461 U.S. 660; *Griffin*, 351 U.S. 12; *Williams v. Illinois*, 399 U.S. 235, 259–266 (1970) (Harlan, J., concurring).

<sup>185</sup> *Bearden*, 461 U.S. at 666–67, 670–71; *Duenas*, 30 Cal. App. 5th at 1164.

<sup>186</sup> *Bearden*, 461 U.S. at 666–67 (citing *Williams*, 399 U.S. at 260 (Harlan, J., concurring)).

<sup>187</sup> *Bell v. Burson*, 402 U.S. 535, 539 (1971) (“Suspension of issued licenses thus involves state action that adjudicates important interests of the licensees. In such cases the licenses are not to be taken away without that procedural due process required by the Fourteenth Amendment.”) The Court also recognized that the continued possession of a driver’s license can be “essential in the pursuit of a livelihood.” *Id.* at 539.

<sup>188</sup> *Wooley v. Maynard*, 430 U.S. 705, 715 (1977).

<sup>189</sup> *Truax v. Raich*, 239 U.S. 33, 41 (1915). See also *Conn v. Gabbert*, 526 U.S. 286, 291–92 (1999).

limited public transportation options.<sup>190</sup> Moreover, a choice between paying a fine which one cannot afford to pay and having one's driver license—which is integral to go about one's life and earn a livelihood—suspended is really no choice at all.<sup>191</sup> As one court has explained:

[T]he ability to drive is crucial to the debtor's ability to actually establish the economic self-sufficiency that is necessary to be able to pay the relevant obligations. . . . [O]ne needs only to observe the details of ordinary life to understand that an individual who cannot drive is at an extraordinary disadvantage in both earning and maintaining material resources. Suspending a driver's license is therefore not merely out of proportion to the underlying purpose of ensuring payment, but affirmatively destructive of that end."<sup>192</sup>

Considering that New York's law can completely deprive people of the judicially recognized vital property interest in their driver's licenses, the nature of the interest and the extent to which it is affected indicate that the law should be held to be fundamentally unfair.

Second, New York's license-for-payment law is wholly irrational. The State might argue two grounds for rationality—that the law enables it to collect outstanding debt and helps to ensure the safety of roads—neither of which would hold up in a rationality analysis.

The fact that nearly half of the Traffic Debt suspensions issued in New York in 2016 remained in effect one year later<sup>193</sup> compels the conclusion that it is impossible, and therefore irrational, to expect that the suspending someone's driver's license will coerce one who cannot afford to pay to do so.<sup>194</sup> Save for a sudden and unlikely change in financial circumstances, the draconian threat of driver's license suspension does not suddenly give someone who lacks the ability to pay the ability to pay.<sup>195</sup> What the Court said in *Bearden* with respect to revoking the probation of indigent defendants is highly

<sup>190</sup> See *supra* Section IV.a.

<sup>191</sup>

The “choice” of paying \$100 fine or spending 30 days in jail is really no choice at all to the person who cannot raise \$100. The resulting imprisonment is no more or no less than imprisonment for being poor. To put it in another way and in the context of the present case, when a fine in the same amount is imposed upon codefendants deemed equally culpable with the added provision for their imprisonment in the event of its nonpayment, an option is given to the rich defendant but denied to the poor one. While the poor man has the “right” to obtain his release by payment of the fine, in actuality the “right” is meaningless to him.

*In re Antazo*, 3 Cal. 3d 100, 108 (1970). This case was approvingly cited by the *Bearden* Court. *Bearden*, 461 U.S. at 664–69 n.6, n.10.

<sup>192</sup> *Robinson v. Purkey*, No. 3:17-CV-1263, 2017 WL 4418134, at \*9 (M.D. Tenn. Oct. 5, 2017).

<sup>193</sup> Weiss & Wilner, *supra* note 4.

<sup>194</sup> Suspending a driver's license is “affirmatively destructive” to the purpose of ensuring payment. *Robinson*, 2017 WL 4418134, at \*9.; *People v. Duenas*, 30 Cal. App. 5th 1157, 1164 (Ct. App. 2019), *review denied* (Mar. 27, 2019) (“The laws, moreover, are irrational: they raise no money because people who cannot pay do not pay.”).

<sup>195</sup> See, e.g., *Robinson*, 2017 WL 4418134, at \*8 (“No person, however, can be threatened or coerced into doing the impossible, and no person can be threatened or coerced into paying money that she does not have and cannot get.”).

applicable here.<sup>196</sup> While punishment, such as imprisonment or driver’s license suspension

may indeed spur [individuals] to try hard to pay, . . . [s]uch a goal is fully served . . . by [suspending a license] only for persons who have not made sufficient bona fide efforts to pay. [Suspending the driver’s license] of someone who through no fault of his own is unable to make [payments] will not make [payments] suddenly forthcoming. Indeed, such a policy may have the perverse effect of inducing the [individual] to use illegal means [such as driving with a suspended license] to acquire funds to pay in order to avoid [permanent suspension].<sup>197</sup>

Rather than facilitating the collection of outstanding debt, New York’s driver’s license suspension scheme effectively leaves impoverished individuals—who are disproportionately people of color—with no choice but to continue driving despite the suspension of their license and thus risk getting arrested, charged, and convicted for driving with a suspended license. This is counterproductive in that it results in the accumulation of more unpayable and uncollectable outstanding traffic-related debt, as well as criminal justice debt.<sup>198</sup> As one court put it, “taking an individual’s driver’s license away to try to make her more likely to pay a fine is not using a shotgun to do the job of a rifle: it is using a shotgun to treat a broken arm. There is no rational basis for that.”<sup>199</sup> Although collecting outstanding debt may very well be a legitimate state purpose, a law that is so plainly counterproductive to achieving said purpose is not rational.

Further, the law authorizing Traffic Debt suspensions is not rationally related to any legitimate state interest in ensuring the safety of roadways. For it to be rationally related to such interest, the “underlying law[] would have to draw some distinction based on actual expectation of safety risk, such as, for example, a distinction based on the severity or numerousness of the underlying offenses.”<sup>200</sup> N.Y. Veh. & Traf. Law § 510(4-a) authorize suspensions for nonpayments of traffic tickets and nonappearances in traffic court—reasons that have absolutely no correlation with driver dangerousness.<sup>201</sup> There is zero evidence to suggest that drivers who cannot pay traffic tickets and related costs pose any more of a risk to drivers around them than drivers who can afford to pay such tickets and related costs. In fact, if the law’s purpose is to ensure the safety of roadways, the law actually frustrates its own purpose: it makes roadways less safe insofar as it inevitably increases the number of unlicensed and uninsured drivers on the road, and also makes it much more difficult for drivers who have their license reinstated to procure insurance.<sup>202</sup>

<sup>196</sup> *Bearden v. Georgia*, 461 U.S. 660, 670–71 (1983).

<sup>197</sup> *Id.*

<sup>198</sup> See *supra* Section IV.a–b.

<sup>199</sup> *Robinson v. Purkey*, No. 3:17-CV-1263, 2017 WL 4418134, at \*9 (M.D. Tenn. Oct. 5, 2017).

<sup>200</sup> *Id.* at \*8.

<sup>201</sup> See, e.g., *Amunrud v. Bd. of Appeals*, 158 Wn. 2d 208, 231 (Wash. 2006) (Sanders, J., dissenting) (stating that “revocation of a driver’s license for a reason completely unrelated to the only legitimate police power justification [(to promote highway safety)] for the license in the first place violates due process” and “the legitimate end of licensing drivers to promote highway safety does not justify the means of revoking a driver’s license to deter delinquency in child support”).

<sup>202</sup> See *supra* Section III.c.



The law’s lack of a rational relation to the State’s interests in collecting outstanding debt and ensuring the safety of roadways counsels that the law should be found fundamentally unfair.

Third, several alternative—and more effective—means exist to effectuate the purpose of collecting outstanding debt. However, New York’s current statutory framework is devoid of options that might make it feasible for low-income individuals to pay the fines and fees imposed upon them.

Only if alternate measures are not adequate to meet the State's interests . . . may the court [punish an indigent individual] who has made sufficient bona fide efforts to pay. To do otherwise would deprive the [individual] of his . . . freedom simply because, through no fault of his own, he cannot pay the fine. Such a deprivation would be contrary to the fundamental fairness required by the Fourteenth Amendment.<sup>203</sup>

New York law could allow for reduced, waived, or deferred payments for traffic tickets, for instance. Similarly, it could allow for partial payments or payment plans, or community service or other alternatives. These options are much more likely to result in payment than driver’s license suspensions, especially because such alternatives do not necessarily result in the additional financial impediments that suspensions entail.

The existence of ample means for the State to effectuate its purpose further confirms that New Yorker’s driver’s license suspension scheme for Traffic Debt should be held to be fundamentally unfair.

Moreover, New York courts have recognized the importance of the fundamental fairness doctrine, and have applied it robustly to avoid punishing people for their poverty.<sup>204</sup> Specifically, the N.Y. Court of Appeals has held that a judge’s failure to conduct an ability to pay analysis prior to issuing an arrest warrant for an unpaid speeding ticket violates the Supreme Court’s holding in *Bearden*.<sup>205</sup> Similarly premised on *Bearden*, a New York trial court recently found that “when imposing bail the court must consider the defendant's ability to pay and whether there [are] any less restrictive means to achieve the State's interest.”<sup>206</sup>

For these reasons, it can hardly be considered just, let alone constitutional, that New York law permits indefinite Traffic Debt suspensions as punishment for “the crime of being poor.” The infliction of punishment on individuals solely because of their poverty

<sup>203</sup> *Bearden v. Georgia*, 461 U.S. 660, 672–73 (1983).

<sup>204</sup> California courts have done the same. In January 2019, a California appellate court held that imposing fines and fees “upon indigent defendants without a determination that they have the present ability to pay . . . [is] fundamentally unfair.” *People v. Duenas*, 30 Cal. App. 5th 1157, 1169 (Ct. App. 2019), review denied (Mar. 27, 2019).

<sup>205</sup> *Matter of Hamel*, 88 N.Y.2d 317 (1996).

<sup>206</sup> *People ex rel. Desgranges On Behalf of Kunkeli v. Anderson*, 59 Misc. 3d 238, 243 (Sup. Ct. 2018).

is not tolerated by the courts.<sup>207</sup> As this is precisely what New York’s Traffic Debt suspension law does,<sup>208</sup> it should be found fundamentally unfair

## ii. Equal Protection

Although the fundamental fairness doctrine—which the Supreme Court developed and adopted to evaluate economic disparities in the justice system—should control the inquiry, some courts have instead employed a more traditional equal protection analysis. If a court were to analyze New York’s Traffic Debt suspension law using the tiered equal protection approach, the law would likely be found unconstitutional.<sup>209</sup>

The Equal Protection Clause of the Fourteenth Amendment commands that no State shall “deny to any person within its jurisdiction the equal protection of the laws.”<sup>210</sup> N.Y. Veh. & Traf. Law § 510(4-a) could be found to violate the Equal Protection Clause for at least two reasons. First, a court could find that there is a clear pattern, unexplainable on grounds other than race, of a disproportionate impact on people of color, giving rise to a strict scrutiny analysis. Second, a court could find that the law treats people who are willing but unable to pay more harshly than people who are willing and able to pay, when the only difference between such people is their poverty, giving rise to a rational basis review analysis.

### Strict Scrutiny

While intent is generally required for a cognizable equal protection claim, “discriminatory purpose may be proven through statistics alone”<sup>211</sup> where a “clear pattern, unexplainable on grounds other than race, emerges from the effect of the state action even when the governing legislation appears neutral on its face.”<sup>212</sup> Inadequate remedial efforts may also demonstrate a discriminatory purpose.<sup>213</sup>

If a court finds the data presented here sufficiently compelling,<sup>214</sup> it likely can serve as the foundation for an equal protection claim premised on race. Further, when viewed against the backdrop of the long history of unequal treatment that people of color have endured in New York and throughout the United States,<sup>215</sup> the data presented at the outset of this

<sup>207</sup> See e.g., *Bearden*, 461 U.S. 660.

<sup>208</sup> See *supra* Section IV.a–b.

<sup>209</sup> See, e.g., *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 449–50 (1985) (while a city can in some cases validly deny a permit to a proposed group home if the home would be too big, there was no logical connection between that principle and the City’s actions, and thus the Court found that the law did not survive rational basis review); *Zobel v. Williams*, 457 U.S. 55, 56–58 (1982) (struck down a program that distributed oil money to residents based on length of state residency because the asserted rationales did not logically support the law);

<sup>210</sup> U.S. CONST. amend XIV, § 1.

<sup>211</sup> *Floyd v. City of New York*, 813 F. Supp. 2d 417, 452 (S.D.N.Y. 2011), *on reconsideration*, 813 F. Supp. 2d 457 (S.D.N.Y. 2011).

<sup>212</sup> *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 266 (1977) (citing *Gomillion v. Lightfoot*, 364 U.S. 339 (1960); *Lane v. Wilson*, 307 U.S. 268 (1939); *Guinn v. United States*, 238 U.S. 347 (1915); *Yick Wo v. Hopkins*, 118 U.S. 356 (1886)).

<sup>213</sup> *Floyd*, 813 F. Supp. at 452–53.

<sup>214</sup> See *supra* Section II.

<sup>215</sup> See *infra* Section VI.c for a discussion on the historical use of fines as an abusive practice to subjugate people of color.



paper raises significant questions as to whether N.Y. Veh. & Traf. Law § 510(4-a) could survive an equal protection challenge.<sup>216</sup>

### **Rational Basis Review**

Even if a court were to apply the most deferential standard—rational basis review—N.Y. Veh. & Traf. Law § 510(4-a) is likely vulnerable to a judicial finding that it is unconstitutional because the law treats similarly situated individuals differently on the basis of poverty, and the different treatment fails to rationally further a legitimate government interest.

The Equal Protection Clause has been interpreted to mean that “all persons similarly circumstanced shall be treated alike.”<sup>217</sup> If a law treats similarly situated individuals differently, and the different treatment is not rationally related to a legitimate state interest, the law is violative of the Equal Protection Clause.<sup>218</sup> The Court’s well-established line of precedent dictates that a statute which penalizes defendants based solely on their nonpayment of money, without providing for an exception if the defendants are willing but unable to pay, is the “constitutional equivalent of a statute that specifically imposes a harsher sanction on indigent defendants than on non-indigent defendants.”<sup>219</sup> Thus, despite judicial reluctance “to overturn governmental action on the ground that it denies equal protection of the laws,” when reviewing legislation for a rational basis,<sup>220</sup> the Court’s precedent indicates that the presumption of rationality does not stretch far enough to allow for the disparate treatment of indigent defendants if the only goal of the challenged law is to ensure payment and the harsher punishment inflicted upon indigent defendants (relative to non-indigent defendants) makes it substantially more difficult for indigent defendants to make payment.<sup>221</sup>

In *James v. Strange*, for example, the Court found that a state recoupment statute for legal defense fees expended for the benefit of indigent defendants failed to evenly treat indigent criminal defendants with other classes of debtors and discriminatorily “blight[ed]” “the hopes of indigents for self-sufficiency and self-respect.”<sup>222</sup> It therefore found that the law “embodie[d] elements of punitiveness and discrimination which violate[d] the rights of citizens to equal treatment under the law,” and thus upheld the injunction enjoining the law’s enforcement.<sup>223</sup>

<sup>216</sup> “It is deeply troubling if thousands of New Yorkers are being stopped each year without reasonable suspicion, and even more troubling if African–American and Latino New Yorkers are being singled out for such treatment.” *Floyd*, 813 F. Supp. at 423.

<sup>217</sup> *U.S. Dep’t of Agric. v. Moreno*, 413 U.S. 528 (1973); *Hayden v. Paterson*, 594 F.3d 150, 169 (2d Cir. 2010) (quoting *Plyler v. Doe*, 457 U.S. 202, 216 (1982)).

<sup>218</sup> *Moreno*, 413 U.S. at 533.

<sup>219</sup> *Bearden v. Georgia*, 461 U.S. 660 (1983); *Tate v. Short*, 401 U.S. 395 (1971); *Mayer v. City of Chicago*, 404 U.S. 189 (1971); *Williams v. Illinois*, 399 U.S. 235 (1970); *Roberts v. LaVallee*, 389 U.S. 40 (1967); *Douglas v. California*, 372 U.S. 353 (1963); *Griffin v. Illinois*, 351 U.S. 12 (1956).

<sup>220</sup> *Hayden*, 594 F.3d at 170 (quoting *Gregory v. Ashcroft*, 501 U.S. 452, 470–71 (1991)).

<sup>221</sup> See *Bearden*, 461 U.S. 660; *Tate*, 401 U.S. 395; *Mayer*, 404 U.S. 189; *Williams*, 399 U.S. 235; *Roberts*, 389 U.S. 40; *Douglas*, 372 U.S. 353; *Griffin*, 351 U.S. 12.

<sup>222</sup> 407 U.S. 128, 141–42 (1972).

<sup>223</sup> *Id.* at 142.

N.Y. Veh. & Traf. Law § 510(4-a) should be found to violate the Equal Protection Clause because it treats similarly situated people—people with outstanding traffic-related debt—differently based on their ability to pay. More specifically, it punishes poor people with the suspension of their driver’s license and the consequences that ensue therefrom, but does not inflict such unduly harsh punishment on those with the means to pay. As explained throughout this paper, N.Y. Veh. & Traf. Law § 510(4-a) permits suspensions for FTP/FTA, but does not permit inquiry into the reasons for the nonpayment/nonappearance, consideration of whether the requirement to repay will deprive an individual and their family of their livelihood, nor the imposition of alternatives. The loss of a driver’s license results in a cascade of hardship—whether it be job loss, additional fines, fees, and costs, or a conviction for driving with a suspended license, for example<sup>224</sup>—that people of means completely avoid by paying traffic tickets and related costs in full. This kind of discriminatory treatment of similarly situated people is proscribed by the Constitution when the treatment does not rationally further a legitimate government interest.<sup>225</sup>

As discussed in depth above, the law should be found to not rationally further any legitimate government interest because it does not result in the collection of outstanding debt—it is actually counterproductive in that it impedes individuals’ ability to pay the fines and fees underlying their Traffic Debt suspensions. Likewise, it does not make roads safer; indeed, it actually has the perverse effect of making highways less safe.<sup>226</sup> Therefore, because N.Y. Veh. & Traf. Law § 510(4-a) discriminates between similarly situated people, and such discriminatory treatment does not rationally further any legitimate government interest, the law should not survive an Equal Protection challenge.

#### **b. Implementing Regulations of Title VI of the Civil Rights Act of 1964**

Title VI provides that “[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving [f]ederal financial assistance.”<sup>227</sup> A crucial purpose for which Title VI was enacted was to prevent indirect, but nonetheless invidious, discrimination through the use of federal funds.<sup>228</sup> Federal agencies that are empowered to provide federal financial assistance are authorized and directed to effectuate Title VI by issuing rules, regulations, and orders of general applicability.<sup>229</sup> Federal grants, cooperative agreements, loans, and arrangements to use federal property all qualify as federal assistance within the meaning of Title VI.<sup>230</sup> If a recipient of federal funds fails to comply with any requirement adopted by an agency pursuant to 42 U.S.C. § 2000d-1, the agency must first inform the recipient of their

<sup>224</sup> See *supra* Section IV. a–b.

<sup>225</sup> Moreover, any plausible public benefit derived from the law is significantly outweighed by the demonstrable harm. This also counsels that the law fails the rational basis test. See *Allegheny Pittsburgh Coal Co. v. County Commission*, 488 U.S. 336, 343–46 (1989); *Plyler v. Doe*, 457 U.S. 202, 207 (1982).

<sup>226</sup> See *supra* Section VI.a.ii.

<sup>227</sup> 42 U.S.C. § 2000d.

<sup>228</sup> See H.R. Misc. Doc. No. 124, 88th Cong., 1st Sess. 3, 12 (1963); 110 Cong. Rec. 6544 (Statement of Sen. Humphrey); 110 Cong. Rec. 2468 (1964); 10 Cong. Rec. 7054 (1964) (Statement by Sen. Pastore).

<sup>229</sup> 42 U.S.C. § 2000d-1.

<sup>230</sup> 28 C.F.R. § 42.102(c); 28 C.F.R. § 42.105.

failure to comply and seek their compliance by voluntary means.<sup>231</sup> If the recipient fails to comply, the agency is then empowered to seek compliance through the termination of assistance or refusal to grant continued assistance, or enforcement proceedings through the courts.<sup>232</sup>

“Most [f]ederal agencies have adopted regulations that prohibit recipients of [f]ederal funds from using criteria or methods of administering their programs that have the effect of subjecting individuals to discrimination based on race, color, or national origin.”<sup>233</sup> Such regulations permissibly prohibit practices that have a disparate impact on protected groups, even if the practices are not intentionally discriminatory,<sup>234</sup> and carry the full force and effect of law.<sup>235</sup>

Disparate impact is established by demonstrating, by a preponderance of the evidence, that a facially neutral policy has a disparate impact on a protected group, in violation of federal agency regulations, without a “substantial legitimate justification.”<sup>236</sup> The

<sup>231</sup> 42 U.S.C. § 2000d-1.

<sup>232</sup> *Id.* See, e.g., *Brown v. Weinberger*, 417 F. Supp. 1215, 1221–22 (D.D.C. 1976).

<sup>233</sup> U.S. DEP’T OF JUSTICE, *Title VI Legal Manual* (Jan. 11, 2001), <https://www.justice.gov/crt/fcs/Title-6-Manual> (emphasis in original).

<sup>234</sup> *Id.* “[R]egulations [promulgated under 42 U.S.C. § 2000d-1] may validly prohibit practices having a disparate impact on protected groups, even if the actions or practices are not intentionally discriminatory. *Id.* (citing *Guardians Ass’n v. Civil Serv. Comm’n*, 463 U.S. 582 (1983); *Alexander v. Choate*, 469 U.S. at 287, 292–94 (1985); *Elston v. Talladega County Bd. of Educ.*, 997 F.2d 1394, 1406 (11th Cir.), reh’g denied, 7 F.3d 242 (11th Cir. 1993)).

<sup>235</sup> *Blackshear Residents Org. v. Hous. Auth. of City of Austin*, 347 F. Supp. 1138, 1146 (W.D. Tex. 1971) (U.S. Department of Housing and Urban Development regulation governing site selection for public housing projects has force and effect of law, and constitutes a presumptively valid interpretation of requirements of Title VI of Civil Rights Act of 1964) (citing *Thorpe v. Housing Authority of the City of Durham*, 393 U.S. 268 (1969)); *Lee v. Macon Cty. Bd. of Ed.*, 270 F. Supp. 859 (M.D. Ala. 1967) (Regulation of U.S. Department of Health, Education and Welfare in carrying out obligation to see that federal funds do not go to state supported programs in which there is discrimination based on race or color has the force and effect of law).

<sup>236</sup> *Sandoval v. Hagan*, 197 F.3d 484, 509 (11th Cir. 1999), *rev’d sub nom. on other grounds Alexander v. Sandoval*, 532 U.S. 275, (2001) (citing *Burton v. City of Belle Glade*, 178 F.3d 1175, 1202 (11th Cir. 1999)) (internal quotation marks omitted); *New York Urban League, Inc. v. State of N.Y.*, 71 F.3d 1031, 1038 (2d Cir. 1995). In *Sandoval*, the court determined that the Alabama Department of Public Safety’s official policy of administering its driver’s license examination only in the English language had a disparate impact on basis of national origin, in violation of Title VI of Civil Rights Act of 1964. It further found that the policy adversely affected individuals in form of lost opportunities, social services, and other quality of life pursuits and that the vast majority of residents who could not obtain licenses because they were not sufficiently fluent in English were from countries other than the United States. *Id.* at 508–11. While the Supreme Court reversed the Eleventh Circuit’s decision to the extent that it held that there is no private right of action to enforce disparate-impact regulations promulgated under 42 U.S.C. § 2000d-1, it did not address “whether the DOJ regulation was authorized by [42 U.S.C. § 2000d-1], or whether the [lower] courts . . . were correct to hold that the English-only policy had the effect of discriminating on the basis of national origin.” *Alexander v. Sandoval*, 532 U.S. 275, 279, 293 (2001). Further, the DOJ itself has explained that

although *Sandoval* foreclosed private judicial enforcement of Title VI disparate impact regulations, it did not undermine the validity of those regulations or otherwise limit the authority and responsibility of Federal grant agencies to enforce their own implementing regulations. Therefore, the agencies’ disparate impact regulations continue to be a vital administrative enforcement mechanism.

consequences of the allegedly discriminatory practice, rather than the motivations for it, are the focus of disparate impact inquiry.<sup>237</sup>

**i. New York Accepts Federal Funds**

New York State, its subdivisions, and its municipalities receive federal funding; thus, they must comply with funding agency regulations that implement Title VI. If they do not comply, complaints may be filed with the relevant funding agencies, which then investigate the complaints and take appropriate action to ensure compliance.

In 2019, New York, its subdivisions, and its municipalities were collectively awarded \$180.1 billion in prime awards from federal agencies.<sup>238</sup> Notably and relevant to driver's license suspensions, well over \$65 billion of those funds were awarded by the U.S. Department of Transportation (DOT).<sup>239</sup> In 2019, DOT issued more than 3,600 grants totaling over \$995 million to New York, its subdivisions, and its municipalities.<sup>240</sup> The New York State DMV received a \$647,500 prime award,<sup>241</sup> and six sub-awards totaling over \$27 million<sup>242</sup> from the National Highway Traffic Safety Administration in 2019.<sup>243</sup> Moreover, the Governor's Traffic Safety Committee (GTSC), which serves as a liaison with federal government agencies on highway safety programs and policies, receives federal funds which it appropriates to the DMV: in 2019, the GTSC received just south of \$20.5 million in federal funding, in addition to seventeen federally funded full-time employees.<sup>244</sup> Further, the DOJ issued eighteen Edward Byrne Memorial Justice Assistance Grant Program (Byrne JAG)<sup>245</sup> awards totaling \$13,502,275 to entities within

U.S. DEP'T OF JUSTICE, *supra* note 233.

<sup>237</sup> U.S. DEP'T OF JUSTICE, *supra* note 233 (citing *Lau v. Nichols*, 414 U.S. 563, 568 (1974)).

<sup>238</sup> USASPENDING NEW YORK FY 2019, <https://www.usaspending.gov/#/state/36> (last visited Dec. 9, 2019).

<sup>239</sup> USASPENDING DEPARTMENT OF TRANSPORTATION AMOUNTS OBLIGATED TO NEW YORK FY 2019, <https://www.usaspending.gov/#/search/93e04a4292ba460900986f18bc0b5594> (last visited Dec. 9, 2019).

<sup>240</sup> USASPENDING DEPARTMENT OF TRANSPORTATION AMOUNTS OBLIGATED TO NEW YORK FY 2019, [https://files.usaspending.gov/generated\\_downloads/all\\_prime\\_awards\\_subawards\\_20191210135844811405.zip](https://files.usaspending.gov/generated_downloads/all_prime_awards_subawards_20191210135844811405.zip) (last visited Dec. 10, 2019) (on file with authors).

<sup>241</sup> Award ID Fain No. DTNH2217H00108.

<sup>242</sup> Award ID Fain Nos. 18X920405bNY17; 18X920405cNY16; 18X920405fNY15; 18X920405hNY17; 69A37518300004020NY0; 69A3751830000405dNYL. It is worth mention that Award ID Fain Nos.

18X920405cNY16 and 69A3751830000405dNY collectively include \$578,763 in sub-awards to the New York Office of Court Administration "to assist the courts in fulfilling their obligation to efficiently adjudicate traffic infractions and misdemeanors" and to "address the issues of timeliness, accuracy and completeness of traffic records." USASPENDING DEPARTMENT OF TRANSPORTATION AMOUNTS OBLIGATED TO NEW YORK FY 2019,

[https://files.usaspending.gov/generated\\_downloads/all\\_prime\\_awards\\_subawards\\_20191210135844811405.zip](https://files.usaspending.gov/generated_downloads/all_prime_awards_subawards_20191210135844811405.zip) (last visited Dec. 10, 2019) (on file with authors).

<sup>243</sup> USASPENDING DEPARTMENT OF TRANSPORTATION AMOUNTS OBLIGATED TO NEW YORK FY 2019, [https://files.usaspending.gov/generated\\_downloads/all\\_prime\\_awards\\_subawards\\_20191210135844811405.zip](https://files.usaspending.gov/generated_downloads/all_prime_awards_subawards_20191210135844811405.zip) (last visited Dec. 10, 2019) (on file with authors).

<sup>244</sup> N.Y. STATE BUDGET,

<https://www.budget.ny.gov/pubs/archive/fy20/exec/agencies/appropData/MotorVehiclesDepartmentof.html> (last visited Dec. 9, 2019).

<sup>245</sup>

Under the Byrne JAG program, states and localities may apply for funds to support criminal justice programs in a variety of categories, including law enforcement, prosecution, crime prevention, corrections, drug treatment, technology, victim and witness services, and mental

New York.<sup>246</sup> The New York State Division of Criminal Justice Services received \$8,576,883, with the remaining \$4,925,392 going to various localities and their respective agencies.<sup>247</sup>

As New York State, as well as its subdivisions and municipalities, accept these funds from the DOT and DOJ, they are required to abide by the agencies' regulations regarding nondiscrimination in federally assisted programs. Per the DOT and DOJ regulations that implement Title VI of the Civil Rights Act of 1964, funding recipients may not, among other discriminatory actions:

- (i) Deny an individual any disposition, service, financial aid, or benefit provided under the program;
- (ii) Provide any disposition, service, financial aid, or benefit to an individual which is different, or is provided in a different manner, from that provided to others under the program;
- (iii) Subject an individual to segregation or separate treatment in any matter related to his receipt of any disposition, service, financial aid, or benefit under the program;
- (iv) Restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any disposition, service, financial aid, or benefit under the program;
- (v) Treat an individual differently from others in determining whether he satisfies any admission, enrollment, quota, eligibility, membership, or other requirement or condition which individuals must meet in order to be provided any disposition, service, financial aid, function or benefit provided under the program; or
- (vi) Deny an individual an opportunity to participate in the program through the provision of services or otherwise or afford him an opportunity to do so which is different from that afforded others under the program (including the opportunity to participate in the program as an employee but only to the extent set forth in paragraph (c) of this section).

health. 34 U.S.C. §§ 10152(a)(1), 10153(a). The funds are disbursed according to a formula based on the particular jurisdiction's population and violent crime statistics. *Id.* § 10156. Grantees may also make subgrants to localities or community organizations, *id.* § 10152(b), and some state funds are set aside for subgrants to localities, *id.* § 10156(c)(2).

*States of New York v. Dep't of Justice*, 343 F. Supp. 3d 213, 221 (S.D.N.Y. 2018).

<sup>246</sup> U.S. DEP'T OF JUSTICE OFFICE OF JUSTICE PROGRAMS, Awards Made for BJA FY 19 Edward Byrne Memorial Justice Assistance Grant (JAG) Program - State Solicitation, [https://external.ojp.usdoj.gov/selector/title?solicitationTitle=BJA%20FY%2019%20Edward%20Byrne%20Memorial%20Justice%20Assistance%20Grant%20\(JAG\)%20Program%20-%20State%20Solicitation&po=All](https://external.ojp.usdoj.gov/selector/title?solicitationTitle=BJA%20FY%2019%20Edward%20Byrne%20Memorial%20Justice%20Assistance%20Grant%20(JAG)%20Program%20-%20State%20Solicitation&po=All) (last visited Dec. 9, 2019); U.S. DEP'T OF JUSTICE OFFICE OF JUSTICE PROGRAMS, Awards Made for Solicitation BJA FY 19 Edward Byrne Memorial Justice Assistance Grant (JAG) Program - Local Solicitation, [https://external.ojp.usdoj.gov/SelectorServer/awards/pdf/solicitation/BJA%20FY%2019%20Edward%20Byrne%20Memorial%20Justice%20Assistance%20Grant%20\(JAG\)%20Program%20-%20Local%20Solicitation](https://external.ojp.usdoj.gov/SelectorServer/awards/pdf/solicitation/BJA%20FY%2019%20Edward%20Byrne%20Memorial%20Justice%20Assistance%20Grant%20(JAG)%20Program%20-%20Local%20Solicitation) (last visited Dec. 9, 2019).

<sup>247</sup> *Id.*



(vii) Deny a person the opportunity to participate as a member of a planning or advisory body which is an integral part of the program.<sup>248</sup>

Further, funding recipients may not “utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of a particular race, color, or national origin.”<sup>249</sup>

## ii. New York’s Driver’s License Suspension Scheme Discriminatorily Impacts People of Color

To establish that a law violates Title VI regulations, it must be demonstrated that the law entails a program, policy, or practice that has a “discriminatory impact.”<sup>250</sup> “Once such a showing has been made, the burden shifts to the [proponent of the law] to demonstrate the existence of ‘a substantial legitimate justification’ for the allegedly discriminatory practice.”<sup>251</sup> If that burden is sustained, the challenger “may still prove his case by demonstrating that other less discriminatory means would serve the same objective.”<sup>252</sup>

The data presented at the outset of this paper demonstrate that New Yorkers of color are discriminatorily impacted by N.Y. Veh. & Traf. Law § 510(4-a).<sup>253</sup> To recap: in New York City, the driver’s license suspension rate in the ten zip codes with the highest concentrations of people of color is two-and-a-half times higher than in the zip codes with the most concentrated white populations; outside of New York City, the suspension rate in the ten zip codes with the highest concentration of people of color is four times higher than in the ten zip codes with the most concentrated white populations.<sup>254</sup> And, no substantial legitimate justification exists for this discriminatory impact imposed by the law. The law is ineffective in collecting outstanding Traffic Debt, and also jeopardizes public safety.<sup>255</sup> It is therefore devoid of any legitimate justification, let alone a substantial one, for the disparate impact it has on people of color. Finally, there are several less discriminatory means that would serve the objective of N.Y. Veh. &

<sup>248</sup> 49 C.F.R. § 21.5(b)(1); 28 C.F.R. § 42.104(b)(1). “The enumeration of specific forms of prohibited discrimination in this paragraph and in paragraph (c) of this section does not limit the generality of the prohibition in paragraph (a) of this section.” 28 C.F.R. § 42.104(b)(5)

<sup>249</sup> 49 C.F.R. § 21.5(b)(2) (emphasis added); 28 C.F.R. § 42.104(b)(2) (emphasis added). The purpose of the regulations is to ensure that “no person in the United States shall, on the ground of race, color, or national origin, [is] excluded from participation in, . . . denied the benefits of, or otherwise be subjected to discrimination under any program or activity receiving Federal financial assistance from the Department of Justice.” 49 C.F.R. § 21.1; 28 C.F.R. § 42.101. They apply “to any program for which Federal financial assistance is authorized under a law administered by the Department.” 49 C.F.R. § 21.3; 28 C.F.R. § 42.103.

<sup>250</sup> *New York Urban League, Inc. v. State of New York*, 71 F.3d 1031, 1036 (2d Cir. 1995) (citing *Georgia State Conference of Branches of NAACP v. Georgia*, 775 F.2d 1403, 1417 (11th Cir.1985)); *Larry P. By Lucille P. v. Riles*, 793 F.2d 969, 982 (9th Cir. 1984) (citing *Board of Education of New York v. Harris*, 444 U.S. 130, 151 (1979)).

<sup>251</sup> *New York Urban League, Inc.*, 71 F.3d at 1036 (citing *Georgia State Conference*, 775 F.2d at 1417).

<sup>252</sup> *Id.* (citing *Georgia State Conference*, 775 F.2d at 1417; *Larry P.*, 793 F.2d at 982 n. 10).

<sup>253</sup> See *supra* Section II.

<sup>254</sup> Weiss & Wilner, *supra* note 4.

<sup>255</sup> See *supra* Section IV.c–d.



Traf. Law § 510(4-a): the law could allow for reduced, waived, or deferred payments, partial payments, payment plans, community service, or other alternatives.<sup>256</sup> These means would also more effectively serve to collecting outstanding debt.

For these reasons, N.Y. Veh. & Traf. Law § 510(4-a) likely violates 49 C.F.R. § 21.5(b) and 28 C.F.R. § 42.104(b). DOT and the DOJ have affirmative duties under 42 U.S.C. § 2000d-1 to investigate discriminatory activities that receive federal funds and take appropriate enforcement actions to ensure Title VI's mandate is given effect.<sup>257</sup> Therefore, if New York fails to bring N.Y. Veh. & Traf. Law § 510(4-a) into compliance with these regulations, the State, as well as its subdivisions, municipalities, and law enforcement agencies stand to lose substantial DOT and DOJ funding and/or face enforcement action in court.

### c. Eighth Amendment Proscription Against Excessive Fines

The Excessive Fines Clause limits the government's power to extract payments, whether in cash or in kind, ‘as punishment for some offense,’” and applies to, among other things, civil in rem forfeiture proceedings.<sup>258</sup> “[B]oth the Eighth Amendment and § 10 of the English Bill of Rights of 1689, from which it derives, were intended to prevent the government from abusing its power to punish.”<sup>259</sup> Thus, the determinative question for purposes of whether the Excessive Fines Clause applies is whether the government action in question, at least in part, constitutes punishment.<sup>260</sup>

The U.S. Supreme Court “consistently has recognized that forfeiture serves, at least in part, to punish the owner.”<sup>261</sup> Like forfeitures, N.Y. Veh. & Traf. Law § 510(4-a) serves to punish drivers for Traffic Debt. Although the State may aver that the law is a collection tool rather than a punishment, research demonstrates that it does not operate as a collection tool,<sup>262</sup> and actually punishes people with suspending their driving privileges (and the consequences that flow from not having a valid license) for nonpayment.<sup>263</sup> Indeed, that driver’s license suspensions were first introduced, in part, for the purpose of “punishing unsafe drivers” evinces that driver’s licenses are, in fact, intended to be punitive.<sup>264</sup> Even if the law were found to be a collection tool, a court could find that it simultaneously serves as punishment (as it does), which renders the

<sup>256</sup> See *supra* Section VI.a.ii.

<sup>257</sup> *Brown v. Weinberger*, 417 F. Supp. 1215, 1221 (D.D.C. 1976) (citing *Adams v. Richardson*, 480 F.2d 1159, 1162 (D.C. Cir. 1973)).

<sup>258</sup> *Austin v. United States*, 509 U.S. 602, 610–11 (1993) (quoting *Browning–Ferris Industries of Vt., Inc. v. Kelco Disposal, Inc.*, 492 U.S. 257, 265 (1989)).

<sup>259</sup> *Id.* at 607 (citing *Browning–Ferris Industries of Vt., Inc.*, 492 U.S. at 266–67).

<sup>260</sup> *Id.* at 610. “It is commonly understood that civil proceedings may advance punitive as well as remedial goals.” *Id.* (citation omitted).

<sup>261</sup> *Id.* at 618.

<sup>262</sup> In New York, nearly half of the traffic suspensions issued in 2016 remained in effect one year later, indicating that suspensions do not serve the purpose of collecting outstanding traffic debt. Weiss & Wilner, *supra* note 4.

<sup>263</sup> See *supra* Section IV.a–b.

<sup>264</sup> AM. ASS’N OF MOTOR VEHICLE ADM’RS, *supra* note 104 at 4.

Excessive Fines Clause applicable.<sup>265</sup> Further, the law undoubtedly serves a deterrent penal purpose, which gives rise to the inference that it is punitive, because it effectively uses driver’s license suspensions as a means to deter people from not paying or appearing to contest traffic tickets.<sup>266</sup> Moreover, a driver’s license is a property right protected by the U.S. Constitution,<sup>267</sup> which is essentially forfeited upon the suspension of a driver’s license. Thus, at a minimum, driver’s license suspensions are analogous to civil forfeitures, thereby warranting the same Eighth Amendment protections against government encroachment.<sup>268</sup>

In February 2019, the Supreme Court unanimously incorporated the Eighth Amendment’s Excessive Fine Clause, making it applicable to states and their subdivisions.<sup>269</sup> The Court determined that “[p]rotection against excessive punitive economic sanctions secured by the Clause is, . . . both ‘fundamental to our scheme of ordered liberty’ and ‘deeply rooted in this Nation’s history and tradition.’”<sup>270</sup> In reaching its determination to incorporate the Excessive Fines Clause, the Court traced back the roots of the Clause to Magna Carta, which required “that economic sanctions ‘be proportioned to the wrong’ and ‘not be so large as to deprive [an offender] of his livelihood.’”<sup>271</sup> Furthermore, the Court suggested that courts ought to pay particularly close attention when evaluating whether punishments used to generate revenue for state and local government are excessive.<sup>272</sup> It explained that “[e]xorbitant [fines] undermine other constitutional liberties,” and are sometimes employed by governments “‘in a measure out of accord with the penal goals of retribution and deterrence,’ for ‘fines are a source of revenue,’ while other forms of punishment ‘cost a State money.’”<sup>273</sup>

As an initial matter, Traffic Debt suspensions too often result in the deprivation of peoples’ livelihoods. As discussed above, research shows that suspensions lead to job loss and lost job opportunities.<sup>274</sup> Further, New York’s driver’s license suspension scheme makes it exceedingly difficult for many to regain their livelihoods post-suspension for it makes it practically cost prohibitive, relative to the resources of those who are issued Traffic Debt suspensions, for many people to get their licenses reinstated. In addition to the costly underlying fines, fees, and surcharges, there is a \$70 per suspension STF, which must be paid in a lump sum along with the underlying fines to

<sup>265</sup> *Austin*, 509 U.S. at 610 (“[S]anctions frequently serve more than one purpose. We need not exclude the possibility that a forfeiture serves remedial purposes to conclude that it is subject to the limitations of the Excessive Fines Clause.”).

<sup>266</sup> *Timbs v. Indiana*, 139 S. Ct. 682, 689 (2019) (noting that deterrence is a penal goal).

<sup>267</sup> *Bell v. Burson*, 402 U.S. 535, 539 (1971).

<sup>268</sup> See *State v. Timbs*, 134 N.E.3d 12, 21 (Ind. 2019) (“When a civil forfeiture is even partly punitive, it implicates the Eighth Amendment’s protection against excessive fines.”).

<sup>269</sup> *Timbs*, 139 S. Ct. 682 (citations omitted). However, the Court did not unanimously agree upon the vehicle through which the Clause should be incorporated.

<sup>270</sup> *Id.* at 689 (citation omitted).

<sup>271</sup> *Id.* at 688 (citation omitted).

<sup>272</sup> *Id.* (citing *Harmelin v. Michigan*, 501 U.S. 957, 979, n. 9 (1991) (opinion of Scalia, J.) (“it makes sense to scrutinize governmental action more closely when the State stands to benefit”).

<sup>273</sup> *Id.*

<sup>274</sup> See *supra* Section IV.a. See also *Conn. v. Gabbert*, 526 U.S. 286, 291–92 (1999) (pursuit of an occupation or profession is a liberty interest protected by the Due Process Clause); *Truax v. Raich*, 239 U.S. 33, 41 (1915).

have one’s license reinstated.<sup>275</sup> The law’s effect of depriving individuals of their livelihood suggests an Excessive Fines Clause violation.

The Court, in its historical analysis, elucidated that even though thirty-five out of thirty-seven states had ratified excessive fines provisions in their constitutions by 1868, abuses still continued:

Following the Civil War, Southern States enacted Black Codes to subjugate newly freed slaves and maintain the prewar racial hierarchy. Among these laws’ provisions were draconian fines for violating broad proscriptions on ‘vagrancy’ and other dubious offenses. When newly freed slaves were unable to pay imposed fines, States often demanded involuntary labor instead.<sup>276</sup>

Black Codes used fines to subject people of color to involuntary servitude.<sup>277</sup> The use of fines to coerce involuntary labor was discussed at length during congressional debates over the Civil Rights Act of 1866, the Fourteenth Amendment, and other similar measures.<sup>278</sup> The modern-day practice of punishing people for Traffic Debt bears a disturbing resemblance to the use of Black Codes,<sup>279</sup> which have long been held unconstitutional.<sup>280</sup> The data presented<sup>281</sup> and consequences of driver’s license suspensions discussed earlier in this paper<sup>282</sup> evince the existence of a coercive Traffic Debt suspensions infrastructure that unduly subjugates people of color. Given the importance the architects of our constitutional framework have assigned to the prohibition of excessive fines throughout the development of our democracy, and their use against people of color in the post-Reconstruction Era, a scheme that disproportionately (and excessively) punishes people of color, and does so for their inability to pay, should not survive constitutional muster, assuming of course that a court finds that the Excessive Fines Clause applies.

<sup>275</sup> See *supra* Section I and IV.a.

<sup>276</sup> *Timbs*, 139 S. Ct. at 688–89, (2019) (internal citations omitted).

<sup>277</sup> Justice Thomas explained the “centerpiece” of the Black Codes “was their ‘attempt to stabilize the black work force and limit its economic options apart from plantation labor.’” *Id.* at 697 (Thomas, J., concurring in judgment) (citation omitted).

<sup>278</sup> *Id.* at 689 (citations omitted).

<sup>279</sup> For instance, a Mississippi law imposed \$50 in fines and ten days’ imprisonment on “freedmen, free negroes and mulattoes” “without lawful employment” convicted of vagrancy. If those convicted did not pay within five days, “they would be arrested and leased to ‘any person who [would], for the shortest period of service, pay said fine and forfeiture and all costs.” *Id.* at 697 (Thomas, J., concurring in judgment) (citation omitted.) An Alabama law was criticized for “almost reenacting slavery” by, “among other harsh inflictions” imposing a \$50 fine and [six] months’ imprisonment on any servant or laborer who loitered away his time or was stubborn or refractory. *Id.* at 697–98 (citation omitted). A Florida vagrancy law afforded judges the discretion to punish those convicted with a fine of up to \$500 and imprisonment for up to twelve months, or “by being sold for a term not exceeding twelve months.” *Id.* at 698 (citation omitted).

<sup>280</sup> See, e.g., *Loving v. Virginia*, 388 U.S. 1 (1967); *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954); *Strauder v. West Virginia*, 100 U.S. 303 (1880). Such practices were also outlawed by the Civil Rights Act of 1866.

<sup>281</sup> See *supra* Section II.

<sup>282</sup> See *supra* Section IV.a–b.

Once the U.S. Supreme Court determined that the Excessive Fine Clause was an incorporated protection applicable to the states, it remanded the case to the Indiana Supreme Court. The Indiana Supreme Court had to determine, among other things, the proper standard by which courts should assess whether *in rem* forfeitures are excessive. To do so, the court analyzed the U.S. Supreme Court's prior precedent,<sup>283</sup> which led it to conclude that gross proportionality is the proper standard to apply to determine whether an *in rem* forfeiture is excessive.<sup>284</sup> Though only useful as persuasive authority outside of Indiana, the court explained:

To conduct a proportionality analysis at all, we need to consider the punishment's magnitude. And the owner's economic means—relative to the property's value [or fine]—is an appropriate consideration for determining that magnitude. To hold the opposite would generate a new fiction: that taking away the same piece of property [or demanding the same fine] from a billionaire and from someone who owns nothing else punishes each person equally.<sup>285</sup>

The court elaborated that the “historical roots of the Excessive Fines Clause” command a focus on the economic effects a fine has on the punished individual. “Magna Carta—from which the [Excessive Fines] Clause derives—specifically contemplated an economic sanction's effect on the wrongdoer, requiring ‘that [fines] be proportioned to the offense and that they should not deprive a wrongdoer of his livelihood.’”<sup>286</sup> The court therefore concluded that to determine if a forfeiture is excessive, the effect of the forfeiture on the owner must be considered.<sup>287</sup>

The N.Y. Court of Appeals has agreed with the Indiana Supreme Court's interpretation. When considering whether a punitive forfeiture is grossly disproportional so as to violate the Excessive Fines Clause, the Court considers, among other things, both “the seriousness of the crime [or violation] . . . [and] the economic circumstances of the defendant.”<sup>288</sup> Furthermore, the Court has explicitly stated that “the forfeiture of an automobile for a minor traffic infraction such as driving with a broken taillight or failing to signal would surely be ‘grossly disproportional to the gravity of a defendant's offense.’”<sup>289</sup> The Court continued: “By encompassing many minor and technical violations that could not justify forfeiture, the ordinance, as enacted, risks violation of

<sup>283</sup> *United States v. Bajakajian*, 524 U.S. 321 (1998); *Austin v. United States*, 509 U.S. 602 (1993).

<sup>284</sup> *State v. Timbs*, 134 N.E.3d 12, 35 (Ind. 2019).

<sup>285</sup> *Id.* at 36.

<sup>286</sup> *Id.* at 37 (quoting *Bajakajian*, 524 U.S. at 335). “[N]o man shall have a larger amercement imposed upon him, than his circumstances or personal estate will bear. . . .” *Timbs v. Indiana*, 139 S. Ct. 682, 694 (2019) (quoting 4 W. Blackstone, *Commentaries on the Laws of England* 372 (1769)). “[N]o man shall be amerced even to the full extent of his means. . . .” *Id.* at 688 (Thomas, J., concurring in judgment) (quoting 2 Henry Hallam, *The Constitutional History of England from the Accession of Henry VII to the Death of George II* 46–47 (2d ed. 1829)).

<sup>287</sup> *Id.*

<sup>288</sup> *Cty. of Nassau v. Canavan*, 1 N.Y.3d 134, 140 (2003) (citing *Bajakajian*, 524 U.S. at 334). Additionally, New York courts consider “the severity of the harm caused and of the potential harm had the defendant not been caught, the relative value of the forfeited property and the maximum punishment to which defendant could have been subject for the crimes charged.” *Id.*

<sup>289</sup> *Id.* (citing *Bajakajian*, 524 U.S. at 334).

the Excessive Fines Clause.”<sup>290</sup> Considering that the effect of an automobile forfeiture and the suspension of a driver’s license is in essence the same—the impacted individual is deprived of the ability to drive—it follows that a New York court would likely find that the suspension of a driver’s license for a nonappearance or nonpayment related to “a minor traffic infraction such as driving with a broken taillight or failing to signal” violates the Excessive Fines Clause.

New York law currently requires neither a determination regarding whether payment would deprive an individual of their livelihood, nor a determination of an individual’s ability to pay in any stage that leads to a Traffic Debt suspension. Therefore, the proportionality of the punishment relative to the individual is never assessed. If it were, in many instances, the suspension of a driver’s license would likely be found excessive. This is obviously problematic, particularly given that throughout New York, the driver’s license suspension rate in the ten poorest zip codes is nearly nine times higher than the suspension rate in the ten wealthiest zip codes.<sup>291</sup> The gravity of this issue is compounded particularly for low-income people because the practical effect of their driver’s license suspension is permanent suspension due to the mass accumulation of fines, fees, surcharges, and other costs that attach thereto, which they will unlikely be able to pay. If a court were to find the Excessive Fines Clause applicable, the current law is also problematic to the extent that it punishes people without consideration of their economic circumstances, contrary to New York jurisprudence.<sup>292</sup> Likewise, it fails to account for the lack of serious circumstances that underlie Traffic Debt suspensions. Surely, driving while intoxicated is more serious than not paying a traffic ticket or appearing in court to contest it, yet they are both punishable with license suspensions.

In brief, it is difficult (if not impossible) to conceive of a world in which indefinite driver’s license suspension could be found a proportional punishment for Traffic Debt, which people—through no fault of their own—lack the means to pay. Similarly, it is difficult (if not impossible) to justify that people of means, relative to their resources, suffer little to no harm when faced with traffic tickets and related costs, whereas low-income people face a cascading snowball effect that results in a mountain of debt and permanent driver’s license suspension. Because New York law does not require consideration of an individual’s economic circumstances prior to suspension, if a court were to find the Excessive Fines Clause applicable, it should also find that many driver’s license suspensions are an excessive punishment.

<sup>290</sup> *Id.*

<sup>291</sup> Weiss & Wilner, *supra* note 4.

<sup>292</sup> *Canavan*, 1 N.Y.3d at 140.



## Appendices

Disturbingly, disproportionate traffic stops and traffic-stop outcomes for people of color have been the reality in too many localities and states throughout the nation for decades. For instance, a 1999 study conducted in Akron, Columbus, Dayton, and Toledo, Ohio concluded that Black drivers were about twice as likely to get tickets as those who are not Black.<sup>293</sup> Similarly, a study exposing egregious racial disparities conducted in New Jersey between 1988 and 1991 led a court to conclude that there was un rebutted statistical evidence of disproportionate traffic stops against Black motorists, which established a *de facto* policy of targeting Black motorists for investigation and arrest, thus proving selective enforcement violative of the Due Process and Equal Protection Clauses.<sup>294</sup> A lawsuit brought in Maryland predicated on very similar and troubling data, such as the fact Black people made up over seventy percent of all of those stopped and searched even though Black people made up just seventeen percent of the driving population on the relevant highway,<sup>295</sup> settled in favor of plaintiffs.<sup>296</sup> The appendices that follow detail more recent data from various jurisdictions that highlight racial disparities in traffic stops and traffic-stop outcomes.

### Appendix A

**People of color across the country are disproportionately subjected to traffic stops by law enforcement.**

#### Greensboro, North Carolina

The New York Times analyzed tens of thousands of traffic stops conducted from 2010 to 2015 in Greensboro, North Carolina. Despite making up just thirty-nine percent of the driving-age population, Black drivers constituted fifty-four percent of the drivers pulled over. Further, most of that fifty-four percent were stopped for regulatory or equipment violations, offenses which police officers have discretion to ignore.<sup>297</sup>

Furthermore, an analysis of data collected from twenty million traffic stops throughout the entire state of North Carolina confirmed that on a state-wide level, Black drivers are about ninety-five percent more likely than white drivers to be stopped.<sup>298</sup>

<sup>293</sup> David A. Harris, *The Stories, the Statistics, and the Law: Why "Driving While Black" Matters*, 84 MINN. L. REV. 265 (1999).

<sup>294</sup> *State v. Soto*, 324 N.J. Super. 66, 734 A.2d 350 (Law. Div. 1996); David A. Harris, *The Reality of Racial Disparity in Criminal Justice: The Significance of Data Collection*, 66 LAW & CONTEMP. PROBS. 71, 85 (Summer 2003).

<sup>295</sup> David A. Harris, *The Reality of Racial Disparity in Criminal Justice: The Significance of Data Collection*, 66 LAW & CONTEMP. PROBS. 71, 77–78 (Summer 2003).

<sup>296</sup> See *Wilkins v. Maryland State Police*, No. MJG-93-468 (D. Md. 1996) (resulting in a consent decree that required a halt to an alleged practice of racial profiling on I-95 and data collection in all traffic stops).

<sup>297</sup> Sharon LaFraniere & Andrew W. Lehren, *The Disproportionate Risks of Driving While Black*, N.Y. TIMES (Oct. 24, 2015), <https://www.nytimes.com/2015/10/25/us/racial-disparity-traffic-stops-driving-black.html>.

<sup>298</sup> FRANK R. BAUMGARTNER, DEREK A. EPP & KELSEY SHOUB, *SUSPECT CITIZENS WHAT 20 MILLION TRAFFIC STOPS TELL US ABOUT POLICING AND RACE* (Cambridge University Press 2018). The authors found similarly troubling stop patterns in Illinois, Maryland, and Connecticut.



### Los Angeles, California

In Los Angeles, about nine percent of the population is Black; yet, of the 385,000+ drivers and passengers pulled over by the Los Angeles Police Department (LAPD) from July 2018 through April 2019, twenty-seven percent were Black. In sharp contrast, about twenty-eight percent of the City is white and only eighteen percent of those subjected to LAPD traffic stops were white. A telling indicator of pretextual stops being used against people of color for reasons unrelated to traffic safety, an equipment violation was listed as the reason for the stop for over twenty percent of the traffic stops involving Black and Latinx people, but only for eleven percent of the traffic stops involving white people.<sup>299</sup>

An earlier report by the Los Angeles Times revealed that from 2015 to 2018, the LAPD's Metropolitan Division stopped Black drivers "at a rate more than five times their share of the city's population." In South Los Angeles, in which approximately thirty-one of the population is Black, sixty-five percent of the Metropolitan Division's stops were of Black drivers.<sup>300</sup>

Further, a California Department of Justice report recently revealed that throughout the state, Black individuals accounted for about fifteen percent of the stops examined, while accounting for only six percent of the state population.<sup>301</sup>

### Minneapolis, Minnesota

In 2018, Minneapolis police officers stopped 7,195 cars for equipment violations. Although the Black population in Minneapolis is 18.8 percent, 54.8 percent (or 3,940) of those drivers stopped were Black.<sup>302</sup> This is one indicator that pretextual stops are used against people of color not as means to promote public safety, but rather simply on the basis of race.

<sup>299</sup> Ben Poston & Cindy Chang, LAPD searches blacks and Latinos more. But they're less likely to have contraband than whites., L.A. TIMES (Oct. 8, 2019, 3:52 PM), <https://www.latimes.com/local/lanow/la-me-lapd-searches-20190605-story.html>.

<sup>300</sup> Ben Poston & Cindy Chang, 'Stop-and-frisk in a car': Elite LAPD unit disproportionately stopped black drivers, data show, L.A. TIMES (Jan. 24, 2019 11:05 AM), <https://www.latimes.com/local/lanow/la-me-lapd-traffic-stops-20190124-story.html>. To the Mayor of Los Angeles' credit, in response this reporting highlighting racial disparities, he ordered the LAPD to scale back traffic stops—the LAPD scaled back by about eleven percent, and its Metropolitan Division by about forty-five percent. Ben Poston & Cindy Chang, LAPD searches blacks and Latinos more. But they're less likely to have contraband than whites., L.A. TIMES (Oct. 8, 2019, 3:52 PM), <https://www.latimes.com/local/lanow/la-me-lapd-searches-20190605-story.html>; Cindy Chang & Ben Boston, Garcetti orders LAPD to scale back vehicle stops amid concerns over black drivers being targeted, L.A. TIMES (Feb. 6, 2019, 9:30 PM), <https://www.latimes.com/local/lanow/la-me-ln-garcetti-lapd-metro-20190206-story.html>.

<sup>301</sup> Anita Chabria, Black drivers face more police stops in California, state analysis shows, L.A. TIMES (Jan. 2, 2020, 4:48PM), [https://www.latimes.com/california/story/2020-01-02/black-drivers-face-more-police-stops-in-california-new-state-data-show?utm\\_source=Today%27s+Headlines&utm\\_campaign=0598e861be-EMAIL\\_CAMPAIGN\\_2016\\_12\\_12\\_COPY\\_01&utm\\_medium=email&utm\\_term=0\\_b04355194f-0598e861be-81947937](https://www.latimes.com/california/story/2020-01-02/black-drivers-face-more-police-stops-in-california-new-state-data-show?utm_source=Today%27s+Headlines&utm_campaign=0598e861be-EMAIL_CAMPAIGN_2016_12_12_COPY_01&utm_medium=email&utm_term=0_b04355194f-0598e861be-81947937).

<sup>302</sup> Mary F. Moriarty, Traffic stops as criminal investigations: Pretext stops should be disallowed in Minnesota, MINNPOST (June 6, 2019), <https://www.minnpost.com/community-voices/2019/06/traffic-stops-as-criminal-investigations-pretext-stops-should-be-disallowed-in-minnesota>.

### **Illinois**

Illinois law enforcement agencies conducted 2,272,384 traffic stops involving Black, Latinx, Asian, and white drivers. While Black individuals made up about fourteen percent of the populations, they accounted for twenty-four percent of these traffic stops. Conversely, white drivers were not disproportionately stopped relative to their share of the population: they make up about sixty-four percent of the population, and accounted for fifty-eight percent of the stops.<sup>303</sup> This means that about 30.12 percent of the Black population in Illinois experienced a traffic stop in 2017, while only about 16.26 percent of the white population in Illinois was subjected to a traffic stop. Also, interestingly, traffic stops in Chicago more than tripled from 2015 to 2017 and Black drivers account for the majority of this substantial increase in traffic stops.<sup>304</sup> Between 2016 and 2017, Black drivers accounted for almost two thirds of Chicago’s traffic stops.<sup>305</sup>

### **Nashville, Tennessee**

Between 2011 and 2015, the Metropolitan Nashville Police Department stopped an average of 1,122 per 1,000 Black drivers—this amounts to more Black drivers than even lived within the county during the relevant timeframe. Black drivers made up just 27.6 percent of the total driving-age population but accounted for 39.3 of traffic stops, whereas white drivers, who accounted for 63.8 percent of the driving-age population, accounted for only 55.5 of all traffic stops. Thus, Black drivers in Nashville were stopped at 1.6 times the rate of white drivers. Furthermore, between 2015 and 2016, Black drivers were 113 percent more likely than white drivers to be stopped two and five times. Even more troubling, Black drivers were 374 percent more likely than white drivers to be stopped between six and ten times between 2015 and 2016.<sup>306</sup> This evinces the existence of significantly heavier policing in communities of color.

### **Appendix B**

**People of color across the country disproportionately suffer disproportionately harsh outcomes incident to traffic stops.**

#### **Kansas City, Missouri**

An analysis of traffic tickets issued in 2017 by the Kansas City Police Department processed by the Kansas City Municipal Court demonstrated significant racial disparities. While Black individuals made up just thirty percent of the population, they received sixty percent of the traffic tickets, while white individuals, who make up fifty-nine percent of the population, received just thirty-seven percent of the tickets. Moreover, a single Kansas City zip code—where ninety-one percent of the population is —“is the most

<sup>303</sup> ILLINOIS TRAFFIC STOPS, <https://illinoistrafficstops.com/> (last visited Dec. 20, 2019). Other races were excluded from the study “because the counts reported for these races were mostly too small to check for any sort of significance.” *Id.*

<sup>304</sup> *New ACLU Report Shows Continued Racial Disparities in Illinois Traffic Stops*, ACLU ILLINOIS (Jan. 14, 2019), <https://www.aclu-il.org/en/press-releases/new-aclu-report-shows-continued-racial-disparities-illinois-traffic-stops>.

<sup>305</sup> *Id.*

<sup>306</sup> DRIVING WHILE BLACK NASHVILLE, A REPORT ON RACIAL PROFILING IN METRO NASHVILLE POLICE DEPARTMENT TRAFFIC STOPS 34, 38–39 (Oct. 25, 2016), <https://drivingwhileblacknashville.files.wordpress.com/2016/10/driving-while-black-gideons-army.pdf>.

common home zip code [in the City] for Kansas Citians receiving tickets.” Finally, the top traffic ticket charges for Black individuals in Kansas City are poverty-related offenses, such as the not having insurance and having expired tags.<sup>307</sup>

### Connecticut

Connecticut law requires the analysis of all traffic stops for all police departments within the state.<sup>308</sup> An analysis published in 2015 demonstrated that Black and Latinx motorists are eleven to forty-one percent more likely to be ticketed than white offenders for the most common moving violations—speeding, traffic-light violations, and stop-sign violations—even when stopped for the same offense. It also showed that racial disparities also exist for equipment violations, such as defective lights, license-plate problems, and tinted windows: While Black motorists were ticketed in fifteen percent of these stops and Latinx motorists ticketed in eighteen percent of these stops, white motorists were only ticketed in nine percent of these stops.<sup>309</sup>

An analysis of 2017 Connecticut police department data found strong, statistically significant disparities in how people of color were treated following a traffic stop.<sup>310</sup> There was strong evidence that motorists of color were treated differently than their white non-Latinx counterparts across the state, even when stopped for the same reason.<sup>311</sup> This evidence included that police disproportionately pull over Black and Latinx drivers during daylight hours, when officers can more easily see who is behind the wheel.

Further, the 2017 data for City of Derby and Town of Fairfield demonstrate that in both places, people of color are more likely to receive a misdemeanor summons—a much harsher outcome when compared to the alternatives of an infraction or a warning—as a percentage of their total stops.<sup>312</sup> In Derby, Black and Latinx drivers were more than twice as likely to be issued a misdemeanor summons following a traffic stop than white drivers: 23.22 percent of Black drivers stopped and 19.49 percent of Latinx drivers

<sup>307</sup> Aaron Randle & Kelsey Ryan, Black KC drivers get more tickets than whites. Race is only part of the problem, THE KANSAS CITY STAR (May 20, 2018, 5:30 AM), <https://www.kansascity.com/news/local/article210495169.html>.

<sup>308</sup> CT Gen Stat § 54-1m. Notably, the National Highway Traffic and Safety Administration provided financial resources to assist in carrying out the racial profiling studies mandated by Connecticut law. This suggests that funding may very well be available for New York too if it were to undertake measures similar to those employed by Connecticut. See INSTITUTE FOR MUNICIPAL AND REGIONAL POLICY AT CENTRAL CONNECTICUT STATE UNIVERSITY, STATE OF CONNECTICUT TRAFFIC STOP DATA ANALYSIS AND FINDINGS, 2017 (June 2019), <http://ctrp3.org/wp-content/uploads/PDF/2017-Connecticut-Racial-Profiling-Report.pdf>.

<sup>309</sup> Matthew Kauffman, Blacks, Hispanics More Likely To Be Ticketed After Traffic Stops, COURANT (May 10, 2015, 8:04 AM), <https://www.courant.com/news/connecticut/hc-racial-profiling-ticket-no-ticket-p-20150510-story.html> (“All of the racial and ethnic differences for moving and equipment violations were highly statistically significant, with less than a 1 percent likelihood that any of the disparities was due to chance.”).

<sup>310</sup> INSTITUTE FOR MUN. AND REG’L POLICY AT CENT. CONNECTICUT STATE UNIV., STATE OF CONNECTICUT TRAFFIC STOP DATA ANALYSIS AND FINDINGS, 2017 (June 2019), <http://ctrp3.org/wp-content/uploads/PDF/2017-Connecticut-Racial-Profiling-Report.pdf>.

<sup>311</sup> *Id.* at 34–37.

<sup>312</sup> *Id.* at 64, 84.

stopped received a misdemeanor summons as a result of the stop, whereas only 9.49 percent of white drivers stopped received a misdemeanor summons.<sup>313</sup> In Fairfield, 12.20 percent of Black drivers stopped and 11.23 percent of Latinx drivers stopped received a misdemeanor summons as a result of the stop, whereas only 2.7 percent of white drivers stopped received a misdemeanor summons.<sup>314</sup> And, almost forty-one percent of the misdemeanor summons issued were for operation of a vehicle with a suspended or revoked license; ninety-two percent of all misdemeanor summons issued were for offenses that are often inextricably connected to poverty.<sup>315</sup>

### California

A 2016 study of traffic violations in California's Bay Area counties concluded that Black and Latinx drivers were significantly more likely to be jailed for failure to pay an infraction ticket.<sup>316</sup> It found that white drivers were, on average, half as likely to be booked for failure to pay, while black drivers were four to sixteen times more likely to be jailed for failure to pay traffic fines.<sup>317</sup>

Between 2013 and 2015, Black individuals accounted for thirty-three percent of those arrested on FTP/FTA warrants in Los Angeles County, yet made up only 9.2 percent of the population. During that time period, 20,000 people were arrested and charged by the L.A. County Sheriff's Department for FTP/FTA; eighty-five percent of those 20,000 people arrested were Black and Latinx. Also during that time frame in San Francisco, when 5.8 percent of the population was Black, Black individuals accounted for 48.7 percent of the FTP/FTA arrests; this stands in stark contrast to the fact that whites, who accounted for 41.2 percent of San Francisco's population, constituted only 22.7 percent of the arrests for traffic warrants.<sup>318</sup>

### Cleveland, Ohio

A 2009 study of traffic citations in Cleveland, Ohio demonstrated that while Black individuals represented 38.4 percent of the driving population, they disproportionately shouldered fifty-nine percent of the traffic citations issued that year. Black motorists were 2.55 times as likely, and motorists of other racial groups 1.8 times as likely, to be ticketed by police as white motorists. Black motorists received seventy-nine percent of the citations issued for driving with a suspended license, and sixty-one percent of the citations issued for seatbelt violations. Based on their proportion of the driving population, this made Black motorists 7.63 times as likely to be ticketed for driving with

<sup>313</sup> *Id.* at 64–65.

<sup>314</sup> *Id.* at 84–86.

<sup>315</sup> *Id.* at 85. Thirty-one percent of misdemeanor summons were issued for misuse of motor vehicle plates or vehicle registration, and twenty-one percent of misdemeanors summons were issued for violations of minimum motor vehicle insurance requirements. *Id.*

<sup>316</sup> Bender, *supra* note 99 at 11.

<sup>317</sup> *Id.*

<sup>318</sup> BACK ON THE ROAD CALIFORNIA, *supra* note 115; Maura Donlan, [A disproportionate share of blacks and Latinos lose their driver's licenses because of unpaid tickets, study finds](https://www.latimes.com/local/california/la-me-license-suspensions-bias-20160411-story.html), L.A. TIMES (Apr. 11, 2016, 12:30 AM), <https://www.latimes.com/local/california/la-me-license-suspensions-bias-20160411-story.html>.

a suspended license and 2.77 times as likely to be ticketed for a seatbelt violation than white motorists.<sup>319</sup>

### **Nashville, Tennessee**

An analysis of 2015 traffic-stop outcomes in Nashville, Tennessee concluded that Black drivers are overrepresented in all traffic-stop outcomes: though representing only 27.8 percent of the driving-age population, Black drivers accounted for forty to fifty-six percent of all warnings, traffic tickets, state citations, and arrests following traffic stops. Further, the risk of receiving a state citation was 8.4 times greater for Latinx drivers and 3.1 greater for Black drivers than white drivers, and the majority of state citations issued to Latinx drivers were related to driving without a license.<sup>320</sup>

### **Iowa**

Studies of traffic stops in Iowa have found that Black individuals are disproportionately ticketed and arrested, and much less likely than their white counterparts to have a stop end with a warning. In Linn County, Black drivers are twenty-five percent more likely than white drivers to receive a citation, rather than a warning, when stopped for a traffic violation. In Scott County, Black drivers are twice as likely than white drivers to be arrested after stopped for a traffic violation. In the City of Waterloo, Black drivers are substantially more likely to be arrested incident to a traffic stop, and substantially less likely to receive a mere warning, than white drivers.<sup>321</sup>

### **Chicago, Illinois**

A ProPublica report found that thousands of mostly black drivers are filing for bankruptcy to cope with Traffic Debt. The report found that the issuance of tickets for failing to have a required vehicle sticker disproportionately impacted Black communities: the ten Chicago communities with the highest rates of sticker ticketing between 2011 and 2015 are more than eighty percent Black. It further found that duplicate tickets for sticker violations were disproportionately issued in Black neighborhoods—“more citations were issued, per household, in low-income [B]lack neighborhoods than anywhere else.” Inferentially then, Black individuals represent a disproportionate share of the roughly \$275 million owed for sticker tickets issued between 2012 and 2018.<sup>322</sup>

<sup>319</sup> Ronnie A. Dunn, *Racial Profiling: A Persistent Civil Rights Challenge Even in the Twenty-First Century*, 66 CASE W. RES. L. REV. 957, 973–75, 986–89 (2016).

<sup>320</sup> DRIVING WHILE BLACK NASHVILLE, A REPORT ON RACIAL PROFILING IN METRO NASHVILLE POLICE DEPARTMENT TRAFFIC STOPS 62–63 (Oct. 25, 2016), <https://drivingwhileblacknashville.files.wordpress.com/2016/10/driving-while-black-gideons-army.pdf>.

<sup>321</sup> *Let's Stop Racist "Pretextual" Traffic Stops*, ACLU IOWA (Nov. 30, 2017, 12:00 PM), <https://www.aclu-ia.org/en/news/lets-stop-racist-pretextual-traffic-stops>.

<sup>322</sup> Melissa Sanchez & Elliot Ramos, *Chicago Hiked the Cost of Vehicle City Sticker Violations to Boost Revenue. But It's Driven More Low-Income, Black Motorists Into Debt*, PROPUBLICA (July 26, 2018, 6:00AM), <https://www.propublica.org/article/chicago-vehicle-sticker-law-ticket-price-hike-black-drivers-debt>.