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CAMERA-ENFORCED STREETS: CREATING AN ANTI-RACIST SYSTEM OF TRAFFIC ENFORCEMENT

KATIE O'BRIEN*

INTRODUCTION

On July 10, 2015, Sandra Bland was pulled over while driving in Prairie View, Texas, for failure to signal a lane change after moving to allow a trooper's vehicle to pass her car.¹ As the stop progressed, the trooper ordered Bland to get out of her car.² When she refused, the trooper threatened to “yank [Bland] out” of her car and “light [her] up” with his taser.³ After Bland left her vehicle, Trooper Encinia handcuffed her, wrestled her to the ground, and kneeled on her.⁴ He later falsely claimed that Bland assaulted him.⁵ Three days later, police found Bland hanging in her jail cell.⁶ Officials ruled her death to be a suicide.⁷

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¹ See Adeel Hassan, *The Sandra Bland Video: What We Know*, N.Y. TIMES (May 7, 2019), <https://www.nytimes.com/2019/05/07/us/sandra-bland-brian-encinia.html> [<https://perma.cc/GR43-BK2C>].

² See *id.* Recordings of the incident show that the order to leave the vehicle came after Bland refused to extinguish her cigarette. Trooper Encinia was charged with perjury over his testimony that he ordered Bland from the car to safely conduct the traffic stop. The charge was later dismissed for his promise never to work in law enforcement again. *Id.*

³ *Id.*

⁴ Compl. at 6, *Reed-Veal v. Encinia*, No. H-15-2232 (S.D. Tex. filed Aug. 4, 2015). The lawsuit was filed by Sandra Bland's mother, Geneva Reed-Veal, as an individual and mother, and as the administrator of Sandra Bland's estate. *Id.* at 1.

⁵ *Id.*; Hassan, *supra* note 1.

⁶ Hassan, *supra* note 1.

⁷ Compl. at 6, *Reed-Veal v. Encinia*, No. H-15-2232 (S.D. Tex. filed Aug 4, 2015). Bland was not seen by a mental health professional, hospitalized, or even put on suicide watch, despite telling the guard during intake that she felt “very depressed” in the last year, felt so at that moment, and had attempted suicide following the loss of a pregnancy the previous year. Debbie Nathan, *What Happened to Sandra Bland?*, THE NATION (Apr. 21, 2016),

Less than a year later, on July 6, 2016, in Falcon Heights, Minnesota, Officer Yanez pulled Philando Castile over as he drove his girlfriend, Diamond Reynolds, and her four-year-old daughter.⁸ Reynolds claims they were told to stop because of a broken taillight.⁹ However, over the police scanner, Officer Yanez stated he was stopping the vehicle to check Castile's ID because Castile and Reynolds looked "like people that were involved in a robbery" and Castile especially "look[ed] more like one of [the robbery] suspects, just because of the wide-set nose."¹⁰ One minute into the stop, Officer Yanez drew his weapon and shot Castile multiple times.¹¹ The officer claimed he fired his gun because he believed Castile was reaching for the gun Castile had reported having in the vehicle.¹² In the Facebook live video capturing the shooting's aftermath, Reynolds can be heard saying "You told him to get his ID sir, his driver's license. . . . He was just getting his license and registration, sir."¹³ Officials pronounced Castile dead at the hospital.¹⁴

Although only Bland and Castile's final traffic stops and tragic deaths made headlines, those stops were only two of the dozens they experienced. Police first stopped Castile when he was eighteen when he was driving with his learner's permit.¹⁵ "From there, he descended into a seemingly endless cycle of traffic stops, fines, court appearances, late fees, [driver's license] revocations

<https://www.thenation.com/article/archive/what-happened-to-sandra-bland/> [https://perma.cc/28WJ-9C4S].

⁸ Complaint at 5, ACLU of Minnesota v. City of St. Anthony Village, No. 62-CV-16-5076 (Minn. Dist. Ct. filed Sept. 1, 2016). The lawsuit sought to compel the disclosure of police video of Castile's stop. *Id.* at paragraphs 50–71.

⁹ *Id.*

¹⁰ *Id.*

¹¹ Pierre Thomas et al., *Driving while Black: ABC News Analysis of Traffic Stops Reveals Racial Disparities in Several US Cities*, ABC NEWS (Sept. 9, 2020), <https://abcnews.go.com/US/driving-black-abc-news-analysis-traffic-stops-reveals/story?id=72891419> [https://perma.cc/P2B5-YQPJ] ("Castille's final traffic stop turned tragic in less than a minute.").

¹² See Hassan, *supra* note 1.

¹³ Complaint at 6, ACLU of Minnesota v. City of St. Anthony Village, No. 62-CV-16-5076 (Minn. Dist. Ct. filed Sept. 1, 2016) (citing *Philando Castile: Transcript of Facebook Live Shooting Aftermath*, STARTRIBUNE (July 7, 2016, 4:27 PM)), <https://www.startribune.com/transcript-of-facebook-live-shooting-aftermath-video/385850431/?refresh=true> [https://perma.cc/6Y9Z-9KNC].

¹⁴ See Thomas et al., *supra* note 11.

¹⁵ See Eyder Peralta & Cheryl Corley, *The Driving Life and Death of Philando Castile*, NATIONAL PUBLIC RADIO (July 15, 2016), <https://www.npr.org/sections/thetwo-way/2016/07/15/485835272/the-driving-life-and-death-of-philando-castile> [https://perma.cc/X896-JSY8].

and reinstatements in various jurisdictions.”¹⁶ In his fourteen years of driving, police stopped Castile fifty-two times, resulting in eighty-six minor traffic offenses and \$6,588 in fines and fees.¹⁷ National Public Radio’s analysis of forty-six of Castile’s stops showed that only six of the stops were for “things a police officer would notice from outside the car — things like speeding or having a broken muffler.”¹⁸ Many of the reports listed no reason for the stop at all.¹⁹

Sandra Bland was similarly plagued with frequent traffic stops; she struggled with the debt created by traffic citations.²⁰ While driving around Houston and her nearby University, Prairie View A&M, Bland was “deluged with traffic tickets, fines, and court costs.”²¹ The cost of tickets would balloon due to the fees and surcharges Texas and localities added to the tickets.²² Some of the additional charges included “a \$25 ‘records management’ fee, a \$15 ‘judicial fund’ fee,” and fees to fund “services for people with brain and spinal-cord injuries,” and the local “juvenile-justice school.”²³ Bland’s debt to Texas became so unmanageable that she had to “sit out” her debt by serving six weeks in jail.²⁴ And when she moved to Illinois, her problems with traffic stops continued.²⁵ In 2013, a stop for speeding in Naperville, Illinois ended in \$4,000 in fines.²⁶ The fines from that stop were greater than half of her gross income that year.²⁷

¹⁶ *Id.*

¹⁷ See Complaint at 5–6, ACLU of Minnesota v. City of St. Anthony Village, No. 62-CV-16-5076 (Minn. Dist. Ct. filed Sept. 1, 2016). About half of the charges were dismissed. *Id.*

¹⁸ Peralta & Corley, *supra* note 15.

¹⁹ *See id.*

²⁰ See Nathan, *supra* note 7.

²¹ *Id.*

²² *See id.*

²³ *Id.*

²⁴ *Id.*; Tracey Swartz, *Sandra Bland Documentary: What We Learned About the Chicago-area Native and Her Mysterious Death*, THE CHICAGO TRIBUNE (Dec. 4, 2018), <https://www.chicagotribune.com/entertainment/tv/ct-ent-sandra-bland-documentary-2018-12-03-story.html> [<https://perma.cc/EEC6-YLWZ>]. While Bland’s exact debt at that time is unknown, she would have paid off only \$4,200 if she were there for a full 6 weeks for \$100 a day. *See id.*

²⁵ See Nathan, *supra* note 7.

²⁶ *Id.* (“In July 2013, Sandy got stopped in Naperville for speeding. She was also ticketed for driving without insurance and with a suspended registration and driver’s license. Her fine came to over \$4,000.”).

²⁷ *See id.* (“[I]n 2013, four years out of school, she grossed less than \$8,000.”).

Castile and Bland's histories of frequent police stops are examples of the larger problem of the increased police scrutiny faced by those "Driving While Black."²⁸ Racially-targeted police practices are part of the large legacy of American police enforcing racial caste systems—from slavery to the New Jim Crow.²⁹ Pulling over Black drivers is, in part, a method encouraged during the "war on drugs."³⁰ This was due in part to "racist profiles of supposed drug carriers."³¹ Today, studies continue to document that Black drivers are still far more likely to be pulled over than white drivers.³²

A driver's race is undeniably a factor in whom police decide to stop.³³ As a result, Black drivers have greater exposure to police contact. This exposure to the police poses a real danger to Black drivers because Black Americans are significantly more likely to suffer police brutality or be killed in police encounters than white Americans.³⁴ While existing scholarship has explored police brutality and searches and seizures, the primary focus of this Note will be the disproportionate economic harms of Driving While Black. The current traffic enforcement system economically

²⁸ See Frank R. Baumgartner et al., *Racial Disparities in Traffic Stop Outcomes*, 9 DUKE F. FOR L. & SOC. CHANGE 21, 23 (2017). Driving While Black is an ironic phrase meant to draw attention to how a Black driver's race subjects her to increased police scrutiny as if being Black was a crime. See *id.*

²⁹ See *infra* discussion on police practices and racism in Part II C 1.

³⁰ See David A. Harris, *Driving While Black: Racial Profiling On Our Nation's Highways*, An American Civil Liberties Union Special Report, American Civil Liberties Union, June 1999, <https://www.aclu.org/report/driving-while-Black-racial-profiling-our-nations-highways> [<https://perma.cc/TRM6-Y2GL>]; Baumgartner et al., *supra* note 28, at 12.

³¹ Harris, *supra* note 30.

³² See Thomas et al., *supra* note 11 (finding racial disparities in traffic stops in almost every major city examined, as of 2020. For example, Black drivers were five times more likely to be stopped than white drivers in Minneapolis, four times more likely to be stopped in Chicago and San Francisco, and three times more likely in Philadelphia and Los Angeles); *infra* Part II A 3.

³³ See Emma Pierson et al., *A Large-scale Analysis of Racial Disparities in Stops Across the United States*, 4 NATURE HUM. BEHAV. 736, 738 (July 2020) (finding Black drivers are stopped disproportionately to white drivers and the disparity lessens after dark when a driver's race would be harder to discern prior to a stop); FRANK R. BAUMGARTNER ET AL., SUSPECT CITIZENS: WHAT 20 MILLION TRAFFIC STOPS TELL US ABOUT POLICING AND RACE 76 (2018) [hereinafter *Suspect Citizens*] (finding Black drivers 63% more likely to be pulled over than white drivers, and 94% more likely when accounting for racial differences in time spent driving).

³⁴ See *Police Violence Map*, MAPPING POLICE VIOLENCE, (Updated Oct. 28, 2020) <https://mappingpoliceviolence.org/> [<https://perma.cc/T8QP-EXR9>] (finding Black people are killed by police at three times the rate of white people); ELIZABETH DAVIS ET AL., CONTACTS BETWEEN POLICE AND THE PUBLIC, 2015, 16 (Bureau of Justice Statistics, 2018) (finding Black and Hispanic Americans experienced force or threats of force in recent police encounters three times more than white Americans, 3% compared to 1%).

harms both Black and poor people. A poor white person may be trapped in the cycle of debt when they cannot immediately pay off a ticket. A wealthy Black person is harmed because he or she will likely receive more tickets than he or she would have received if he or she were white. However, those who suffer the greatest economic harm from current traffic enforcement practices are drivers who have the intersecting identities of being both Black and poor. Black Americans are more likely to be poor than white Americans.³⁵ As a result, American traffic enforcement is a system that extracts money from poor, Black Americans and places them into a cycle of perpetual debt.³⁶

Addressing this racial injustice and economic devastation will require a substantial change in how traffic policing and traffic fines operate. In this Note, I propose removing police officers from traffic enforcement and transitioning to technology through Camera-Enforced Streets. In Part I of this Note, I explore how the current system of traffic enforcement is racist and imposes insurmountable economic barriers to many trapped within it. In Part IA, I detail how systemic racism at every level of decision-making in the enforcement process ensures that Black drivers are more heavily subject to the harms of traffic policing. In Part IB, I explore how traffic fines trap individuals who cannot afford to pay in a cycle of ballooning debt that threatens their livelihoods and freedom. Finally, in Part IC, I explore why removing police from traffic enforcement is necessary to produce a truly racially equitable solution. In Part II, I put forward the model of Camera-Enforced Streets as an anti-racist system of traffic enforcement. In Part IIA, I describe what Camera-Enforced Streets would

³⁵ See John Creamer, *Inequalities Persist Despite Decline in Poverty for All Major Race and Hispanic Origin Groups*, U.S. CENSUS BUREAU (Sept. 15, 2020), <https://www.census.gov/library/stories/2020/09/poverty-rates-for-blacks-and-hispanics-reached-historic-lows-in-2019.html> [<https://perma.cc/YZ48-YXT6>]. Black Americans are 1.8 times as likely to live in poverty as non-Hispanic whites. *Id.* Black Americans are 13.2% of the population but are 23.8% of those in poverty. *Id.*

³⁶ See Brandi Blessett & Richard C. Box, *Sharecropper Finance: Using the Justice System as a Public Revenue Source*, 18 PUB. INTEGRITY 113, 113–14 (2016) (analogizing the use of fines, fees, and jail time for minor offenses to extract money from the vulnerable to the sharecropping systems of the Reconstruction Era South. Both systems use indebtedness to force the vulnerable to surrender what little they earn); Briana Hammons, *Monetary Sanctions, Racialized Wealth Extraction, and Momentum for Fines and Fees Reform* (June 18, 2020), <https://forgeorganizing.org/article/monetary-sanctions-racialized-wealth-extraction-and-momentum-fines-and-fees-reform> [<https://perma.cc/MD9V-L5QC>] (describing traffic tickets and consequences of traffic ticket debt as “inequality-producing, wealth-gouging practices”).

entail. I explore the benefits of the model in Part IIB, and address concerns the model may raise in Part IIC.

I. BACKGROUND

A. Traffic Policing and Race: Systemic Racism All the Way Down

Traffic policing is a racial justice issue. In this section, I detail how Black drivers are disadvantaged by systemic racism at every level of traffic enforcement. Localities with higher Black populations rely more heavily on fines and forfeitures for their budgets, whether because of racial bias or financial need.³⁷ Black drivers are subject to traffic stops at disproportionately high rates compared to white drivers.³⁸ After being pulled over, Black drivers are also more likely than white drivers to receive tickets.³⁹ Racial economic inequality means that tickets are more likely to be unaffordable for Black drivers.⁴⁰ When drivers cannot pay, they may be forced into crushing debt that can result in incarceration.⁴¹

³⁷ See Phil Hernandez et al., *Set Up to Fail: How Court Fines and Fees Punish Poverty and Harm Black Communities in Virginia*, THE COMMONWEALTH INSTITUTE 1, 1–2 (2021) <https://www.thecommonwealthinstitute.org/wp-content/uploads/2021/01/Set-Up-to-Fail-How-Court-Fines-Fees-Punish-Poverty-and-Harm-Black-Communities-in-Virginia.pdf> [<https://perma.cc/BQ4C-VVET>] (summarizing prior research that established the area of Virginia with the highest fines and fees are those with the largest portion of Black residents); Josh Pacewicz & John N. Robinson III, *Pocketbook Policing: How Race Shapes Municipal Reliance on Punitive Fines and Fees in the Chicago Suburbs*, 19 SOC.-ECON. R. 975, 999 (2021).

³⁸ See, e.g., Pierson et al., *supra* note 33.

³⁹ See, e.g., Stacia Gillard-Matthews, *Intersectional Race Effects on Citizen-Reported Traffic Ticket Decisions by Police in 1999 and 2008*, 7 RACE AND JUST. 299, 311 (2016).

⁴⁰ See *infra* Part I A 6.

⁴¹ See *infra* Part I B.

i. More Tickets are Issued in Predominantly Black Localities

The use of fine and forfeiture revenue to fund municipal governments has greatly expanded in the past two decades.⁴² While such revenue made up what was effectively 0% of city revenues in 2002, it had increased to 2.24% by 2012.⁴³ A study examining jurisdictions across the U.S. making \$100,000 or more in fines or court revenue, found that nearly 600 jurisdictions in the United States derive at least 10% of their budgets from fines.⁴⁴ In over 720 localities, the collected fines and forfeitures were the equivalent of \$100 from every adult resident.⁴⁵ Traffic citations make up a large portion of revenue from fines and forfeitures.⁴⁶

Communities with higher Black populations often rely on fines and forfeitures for government funding.⁴⁷ In Chicago's higher and middle-income, majority-Black suburbs, local governments disproportionately rely on fine-based revenue compared to white suburbs of similar affluence.⁴⁸ The study found that these racial divides in local government funding came about because "racism is baked into seemingly 'colorblind' processes of municipal governance."⁴⁹ All of the suburbs reviewed in the study considered revenue from businesses and sales taxes, "other people's money," to be "good" revenue or preferred sources of revenue.⁵⁰ However, because of the legacy racial barriers facing Black communities, these communities were less able to attract the types of commercial business that "[w]hite suburbs easily attract."⁵¹ For example, commercial investors consider demographics when

⁴² Akheil Singla et al., *Race, Representation, and Revenue: Reliance on Fines and Forfeitures in City Governments*, 56 URB. AFF. R. 1132, 1133 (2019).

⁴³ *Id.*

⁴⁴ Mike Maciag, *Addicted to Fines: A Special Report*, GOVERNING: THE FUTURE OF STATES AND LOCALITIES (Aug. 16, 2019), <https://www.governing.com/archive/fine-fee-revenues-special-report.html> [<https://perma.cc/ZXP4-GEGQ>].

⁴⁵ *Id.*

⁴⁶ See Torie Atkinson, *A Fine Scheme: How Municipal Fines Become Crushing Debt in the Shadow of New Debtor's Prisons*, 51 HARV. CIV. RTS.- CIV. LIBERTIES L. R. 189, 196 (2016).

⁴⁷ See Hernandez et al., *supra* note 37; Pacewicz & Robinson, *supra* note 37, at 23.

⁴⁸ See Pacewicz & Robinson, *supra* note 37, at 23.

⁴⁹ *Id.*

⁵⁰ *Id.* at 16, 23.

⁵¹ *Id.* at 23.

making location decisions and prefer to stay away from the low-income Black suburbs that, as a legacy of historic red-lining, often abut or surround middle-income Black suburbs.⁵²

Not all governments that extract high amounts through fines and forfeitures do so solely because of economic need. In fact, the racial makeup of a municipality is a better indicator of how much revenue will be raised through fines.⁵³ In the fifty U.S. cities that derive the highest portion of their revenue from fines, “the median African American population—on a percentage basis—is more than five times greater than the national median.”⁵⁴ In their analysis of Californian city governments’ reliance on fine and forfeiture revenue, Dr. Singla et al. found that such reliance was not driven by budgetary or safety needs but was “associated with the race of the community and the racial representativeness of law enforcement.”⁵⁵ When Black or Asian residents composed a higher portion of a city’s population, that city was more likely to have higher revenue from fines and forfeitures.⁵⁶ This pattern was exacerbated when whites were overrepresented in law enforcement agencies.⁵⁷ This study concluded that racial bias influences choices in how heavily a locality relies upon fines to fund its government—and reliance on fines in Black communities is higher even when controlling for other socioeconomic variables.⁵⁸

A clear and harrowing example of a locality that came to view its Black residents as a revenue source is Ferguson, Missouri.⁵⁹ Ferguson police were assessed based on their “productivity,” which

⁵² See *id.* at 17–18.

⁵³ See Singla et al., *supra* note 42, at 1153; Dan Kopf, *The Fining of Black America*, PRICEECONOMICS, (June 24, 2016), <https://priceconomics.com/the-fining-of-black-america/> [<https://perma.cc/6U5H-78HL>] (“Our analysis indicates that the use of fines as a source of revenue is not a socioeconomic problem, but a racial one. The cities most likely to exploit residents for fine revenue are those with the most African Americans.”).

⁵⁴ Kopf *supra* note 53.

⁵⁵ Singla et al., *supra* note 42, at 1155. The study measured a city’s economic need by looking at its “ability to meet its obligations of a variety of time horizons (i.e., its solvency).” *Id.* at 1142. Singla et al. examined the cities’ current assets, liabilities, revenues, and expenditures. *Id.* (Table 3). A city’s public safety needs were determined by analyzing four variables: “the number of law enforcement officers employed by the jurisdiction, the violent crime rate, the property crime rate, and population density.” *Id.* at 1143.

⁵⁶ See *id.* at 1153.

⁵⁷ See *id.*

⁵⁸ See *id.* at 1154–55.

⁵⁹ See U.S. DEP’T OF JUSTICE CIVIL RIGHTS DIV., INVESTIGATION OF THE FERUGSON POLICE DEP’T 2, 3–4 (2015) [hereinafter *Ferguson Report*]; Atkinson, *supra* note 46, at 197.

was defined by the volume of tickets they issued.⁶⁰ The city laid out explicit goals to increase the revenue it extracted from residents through fines and evaluated what steps it could take to “increase efficiencies and maximize collection.”⁶¹ As a result of the city government and police department’s priorities and culture, “many officers appear to see some residents, especially those who live in Ferguson’s predominantly African American neighborhoods, less as constituents to be protected than as potential offenders and sources of revenue.”⁶² When confronted with the disparate racial impact of the city’s practices, Ferguson officials continued to cite a racist stereotype by blaming disparities on the African-American community’s lack of personal responsibility.⁶³

ii. Police are More Likely to Pull Over Black Drivers

Studies also demonstrate that individual police officers stop Black drivers at rates that are disproportionate to the population of Black people living in a jurisdiction.⁶⁴ The study conducted by Professor Pierson et al., analyzed traffic stop data from around 95 million stops, including data “from 21 state patrol agencies and 35 municipal police departments.”⁶⁵ Compared to the racial makeup of the residential areas, Black drivers were 43% more likely to be stopped by both state patrols and municipal police than white

⁶⁰ *Ferguson Report*, *supra* note 59, at 2.

⁶¹ *Id.* at 9–10.

⁶² *Id.* at 2.

⁶³ *See id.* at 74. At the same time, court records and emails show city officials routinely made fines issued against themselves, friends, colleagues, and acquaintances disappear. *Id.* at 74–75. Email communication among police and court supervisors revealed direct evidence of racial bias in racist attempts at humor. *Id.* at 72. For example, A November 2008 email stated that President Barack Obama would not be President for very long because “what Black man holds a steady job for four years.” *Id.*

⁶⁴ *See* Jennifer L. Eberhardt, *Strategies for Change; Research Initiatives and Recommendations to Improve Police-Community Relations in Oakland, Calif.*, Stanford University, SPARQ: Social Psychological Answers to Real-world Questions, at 5 (2016) (finding 60% of traffic stops Oakland, California, were of African American drivers, while African Americans only made up 28% of Oakland residents); Pierson et al., *supra* note 33, at 736–37.

⁶⁵ Pierson et al., *supra* note 33, at 736–37 (explaining that although the study reviewed data from 255 million traffic stop records from 33 state patrol and 56 municipal police agencies, the analysis only including those stops with adequate records concerning race).

drivers.⁶⁶ Out of the 1.4 million traffic stops conducted in North Carolina in 2010, *Suspect Citizens* found that Black drivers were 63% more likely to be stopped than white drivers.⁶⁷

While disparities in per-capita stop rates provide some evidence of racial discrimination in traffic stops, such disparities provide only an imperfect and oversimplified baseline.⁶⁸ Per-capita estimates compare stops to an area's residents but not its driving population.⁶⁹ An obvious problem is that per-capita rates do not distinguish between those of driving age and those too young to drive.⁷⁰ This weakness may lead to an underestimate of the actual racial disparities in traffic stops because of the differences in racial profiles between generations.⁷¹ As of 2019, non-Hispanic whites were 49.95% of the population under the driving age of 16, despite being 60.1% of the overall population.⁷² Black North Carolinians were 13.7% of the population below driving age and 12.5% of the population overall.⁷³ Even among those old enough to drive, households differ in who owns cars and the amount of time spent on the road.⁷⁴ As of 2017, only 6% of white households, compared to 19% of Black households, lacked access to a car.⁷⁵ Of those who

⁶⁶ Pierson et al., *A Large Scale Analysis of Racial Disparities in Police Stops Across the United States*, NATURE HUMAN BEHAVIOUR, at 737 (finding state patrols stopped Black drivers at a rate of 0.10 per capita, as compared to 0.07 for white drivers, and municipal police stopped Black drivers at a rate of 0.20 per capita and white drivers at 0.14 per capita).

⁶⁷ SUSPECT CITIZENS, *supra* note 33, at 68–69.

⁶⁸ *See id.* at 74; Pierson et al., *supra* note 33, at 737.

⁶⁹ *See* SUSPECT CITIZENS, *supra* note 33, at 74.

⁷⁰ *See id.*

⁷¹ *See* William H. Frey, *What the 2020 Census Will Reveal About America: Stagnating Growth, an Aging Population, and Youthful Diversity*, BROOKINGS INSTITUTION (Jan. 11, 2021), <https://www.brookings.edu/research/what-the-2020-census-will-reveal-about-america-stagnating-growth-an-aging-population-and-youthful-diversity/> [<https://perma.cc/C2KX-67B5>] (showing changes in racial profiles in the U.S. between generations. While non-Hispanic whites make up 71.6% of the Boomer generation, 1946-1964, they only account for 49.6% of Post-Gen Z, 2013-present).

⁷² William H. Frey, *The Nation is Diversifying Even Faster than Predicted, According to New Census Data*, BROOKINGS INSTITUTION, (July 1, 2020), <https://www.brookings.edu/research/new-census-data-shows-the-nation-is-diversifying-even-faster-than-predicted/> [<https://perma.cc/Z4SH-YDVW>].

⁷³ *Id.* Large growths in the portion of the population are occurring with respect to the population that is Latino or Hispanic (18.5% overall but 25.8% under 16) and the population that is 2 or more races (2.2% overall but 4.5% under 16). *Id.*

⁷⁴ *See* SUSPECT CITIZENS, *supra* note 33, at 74–75.

⁷⁵ *See* *Car Access: Everyone Needs Reliable Transportation Access and in Most American Communities that Means a Car*, NATIONAL EQUITY ATLAS, https://nationalequityatlas.org/indicators/Car_access#/?breakdown=2 [<https://perma.cc/WFL9-ZNXC>]; SUSPECT CITIZENS, *supra* note 33, at 75 (finding that in 2009, 83% of whites, and only 51% of Blacks, owned a vehicle).

can drive, Black drivers spend 10-20% less time on the road than white drivers.⁷⁶ By accounting for driving time, *Suspect Citizens* found the disparity in 2010 traffic stops increased from Black drivers being 63% to 94% more likely to be stopped than white drivers.⁷⁷

Even after adjusting the baseline to a more accurate depiction of who drives in an area, “per-capita stop rates do not account for possible race-specific differences in driving behaviour [sic], including . . . adherence to traffic laws.”⁷⁸ Could it be that Black drivers are simply worse at driving? To determine whether race-specific differences in traffic law compliance lead to the racial disparity in traffic stops, statisticians developed what they call the veil-of-darkness test.⁷⁹ This test compares the rate at which Black drivers are stopped in the evening immediately before and after daylight savings time to see if the rate of stops changes when it is dark.⁸⁰ Based on data from 112,938 stops by state patrols and municipal departments, the veil-of-darkness test showed that fewer Black drivers were pulled over when it was dark.⁸¹ In each tested time window, the share of Black drivers stopped dropped around 3 to 5 percentage points as compared to white drivers stopped.⁸² These results suggest racial discrimination motivates traffic stop decisions.⁸³

iii. Black Drivers are More Likely to be Targeted for Investigatory Stops

An even clearer way to rule out a racial difference in driving behavior as the cause of higher-stop rates is to examine why police report pulling a driver over.⁸⁴ Traffic stops can be broken down

⁷⁶ SUSPECT CITIZENS, *supra* note 33, at 76.

⁷⁷ *See id.*

⁷⁸ Pierson et al., *supra* note 33, at 737.

⁷⁹ *See id.*

⁸⁰ *See id.*

⁸¹ *Id.*

⁸² *Id.*

⁸³ *See id.*

⁸⁴ *See* Baumgartner et al., *supra* note 28, at 21, 25.

into two main categories: safety stops and investigatory stops.⁸⁵ Safety stops are meant to make the roads safer by enforcing rules against inherently dangerous driving acts.⁸⁶ Investigatory stops, on the other hand, “have little (if anything) to do with traffic safety and everything to do with who looks suspicious.”⁸⁷ These stops are a legacy of the War on Drugs and crime crack-downs of the 1980s and 1990s.⁸⁸ Investigatory stops occur when police pull a driver over for minor violations such as driving too slowly, failing to use a turn signal, failing to wear a seat belt, or equipment violations.⁸⁹ The purpose of an investigatory stop is not punishment or deterrence of these minor violations but the remote chance that police will uncover evidence of more serious crimes during the stop.⁹⁰ Investigatory stops require a massive volume of stops in the hopes of a single hit: “You’ve got to kiss a lot of frogs before you find a prince.”⁹¹ Significantly, it is in these highly discretionary investigatory stops where almost all racial disparity in stop rates occurs.⁹² Evidence of this can be seen in the 20 million stops studied in *Suspect Citizens*.⁹³ While white drivers were more likely to be pulled over for a safety stop than an investigatory stop (55.74% to 43.28%), the reverse was true for Black drivers (46.98% to 51.85%).⁹⁴

⁸⁵ See *id.*; Marco Conner, *Traffic Justice: Achieving Effective and Equitable Traffic Enforcement in the Age of Vision Zero*, 44 FORDHAM URB. L. J. 969, 981–82 (2017) (referring to investigatory stops primarily as “discretionary stops”).

⁸⁶ See Baumgartner et al., *supra* note 28, at 24–25; Roach et al., *At the Intersection: Race, Gender and Discretion in Police Traffic Stop Outcomes*, forthcoming issue of J. OF RACE ETHNICITY AND POL. *1, 3; Conner, *supra* note 85, at 981 (listing “texting while driving, drunk driving, and failing to yield to a vulnerable road user” as inherently dangerous violations).

⁸⁷ Baumgartner et al., *supra* note 28, at 25.

⁸⁸ *Id.*; Roach et al., *supra* note 86, at 4.

⁸⁹ See Conner, *supra* note 85, at 982 (noting that these stops are based on violations “like driving too slowly or failing to signal a vehicle’s turn, or for when drivers fit a certain profile or otherwise raise the suspicion of a police officer”); SUSPECT CITIZENS, *supra* note 33, at 54 (classifying stops for vehicle equipment, vehicle regulatory, seat belt, investigation, and other vehicle issues as investigatory stops).

⁹⁰ See Baumgartner et al., *supra* note 28, at 25.

⁹¹ *Id.* at 25–26; MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* [hereinafter *The New Jim Crow*] 68–70 (2010); Roach et al., *supra* note 86, at 3, 5 (“[In] high discretion situations, individuals often rely on implicit biases and/or institutional training that inculcates criminal profiles into decision making.”).

⁹² See Roach et al., *supra* note 86, at 3.

⁹³ See SUSPECT CITIZENS, *supra* note 33, at 54.

⁹⁴ *Id.* The remaining 0.97 and 1.17% of stops were for white and Black drivers at checkpoints, respectively. *Id.*

Due to the disproportionate rate of investigatory stops, it is not surprising that Black drivers are more likely to be allowed to proceed with no enforcement action at all.⁹⁵ Although this may first appear to be a positive outcome, it is evidence that the reason for the stop may be pretextual or even that there was no legal basis for the stop.⁹⁶ These stops are not harmless and the resulting impression of baseless police suspicion can take a significant psychological toll on Black drivers.⁹⁷ Drivers allowed to proceed with no enforcement action are more likely to believe the police acted inappropriately than those who receive warnings.⁹⁸

iv. Police are More Likely to Search Black Drivers

Black drivers are also more likely to be searched during a traffic stop.⁹⁹ The “purpose of a police search is to identify unlawful activity and where possible, to seize illegal contraband.”¹⁰⁰ Police are more likely to search Black drivers than white drivers.¹⁰¹ In an analysis of 16 states, Baumgartner et al. found Black drivers were 2.51 times more likely to be searched than white drivers.¹⁰² This disparity is even more pronounced in investigatory stops.¹⁰³ While Black drivers in North Carolina were 49% more likely than white drivers to be searched during a safety stop, Black drivers

⁹⁵ See Lynn Langton & Matthew Durose, POLICE BEHAVIOR DURING TRAFFIC AND STREET STOPS, 2011, BUREAU OF JUSTICE STATISTICS (Revised Oct. 27, 2016), at 7 (finding 2.1% of Blacks and 1.4% of whites reported being allowed to proceed from a traffic stop with no enforcement action in their most recent contact with police); SUSPECT CITIZENS, *supra* note 33, at 57 (finding Black drivers received no action in 3.32% of stops, as opposed to white and Hispanic drivers' rates of 2.96 and 2.56%).

⁹⁶ See SUSPECT CITIZENS, *supra* note 33, at 57.

⁹⁷ See Roach et al., *supra* note 86, at 20 (finding those who experience unfair interactions with the police experience “alienation, anger and withdrawal”).

⁹⁸ Langton & Durose, *supra* note 95, at 7; Brian Withrow, *Driving While Different: A Potential Theoretical Explanation for Race-Based Policing*, 15 CRIM. JUSTICE POL'Y R. 344, 348–49 (2004) (finding many of those who did not receive a citation during stops concluded the stop was pretextual).

⁹⁹ See Roach et al., *supra* note 86, at 17.

¹⁰⁰ Joshua Chanin et al., *Traffic Enforcement Through the Lens of Race: A Sequential Analysis of Post-Stop Outcomes in San Diego*, CAL. CRIM. JUSTICE POL'Y R. 561, 565 (2018).

¹⁰¹ See Pierson et al., *supra* note 33, at 738–39 (finding Black drivers were twice as likely to be searched as white drivers); Chanin et al., *supra* note 100, at 570; Roach et al., *supra* note 86, at 13; Baumgartner et al., *supra* note 28, at 26, 37.

¹⁰² Baumgartner et al., *supra* note 28, at 37.

¹⁰³ See Roach et al., *supra* note 86, at 17.

were 170% more likely to be searched than white drivers during investigatory stops.¹⁰⁴

Ironically, while Black drivers are more likely to be searched, they are less likely to be found with contraband.¹⁰⁵ The term “hit rate” refers to the frequency at which the search successfully uncovers contraband.¹⁰⁶ If the higher search rates of Black drivers corresponded with higher (or even equal) hit rates as searches of white drivers, one could conclude the searches were justified.¹⁰⁷ However, searches of Black drivers are less successful than searches performed on white drivers.¹⁰⁸ For example, among the searches conducted by the San Diego Police Department, contraband was found in 7.9% of the searches conducted on Black drivers, but found in 12.4% of searches on white drivers.¹⁰⁹ “In other words, SDPD officers had to search nearly twice as many Black drivers as they did white drivers to discover the same amount of contraband.”¹¹⁰ Lower hit rates indicate that police decide to search Black drivers with less evidence than white drivers.¹¹¹

v. Police Conduct During the Stops Involving Black Drivers: From Disrespect to Brutality

Police are more likely to create tension in traffic stops with Black drivers by speaking to the drivers significantly more disrespectfully than white drivers.¹¹² Analysis of body camera footage shows that police use more disrespectful language when

¹⁰⁴ SUSPECT CITIZENS, *supra* note 33, at 86.

¹⁰⁵ See Pierson et al., *supra* note 33, at 736; Chanin et al., *supra* note 100, at 570 (“In other words [the police department] officers had to search nearly twice as many Black drivers as they did matched. White drivers to discover the same amount of contraband.”).

¹⁰⁶ See Chanin et al., *supra* note 100, at 565.

¹⁰⁷ See Roach et al., *supra* note 86, at 17, 19.

¹⁰⁸ See Chanin et al., *supra* note 100, at 570; Roach et al., *supra* note 86, at 18–19 (finding that although the reviewed states had mixed results, searches of Black drivers were generally less successful than those of white drivers); Pierson et al., *supra* note 33, at 739 (finding “more ambiguous” evidence of a difference in comparing white and Black hit rates 2.6%, than in comparing white and Hispanic hit rates, which were 7.6% different).

¹⁰⁹ Chanin et al., *supra* note 100, at 570.

¹¹⁰ *Id.*

¹¹¹ Pierson et al., *supra* note 33, at 739.

¹¹² Rob Voigt et al., *Language From Police Body Camera Footage Shows Racial Disparities in Officer Respect*, 114 PROC. OF NAT'L ACAD. OF SCI. 6521, 6521 (2017).

addressing Black drivers regardless of the reason for the stop, stop location, stop outcome, or race of the officer.¹¹³ For example, Black drivers were more likely to be addressed with disrespectful, informal titles, such as “dude,” “son,” or “sista,” while white drivers were more likely to receive respectful, formal titles, such as “ma’am,” “mister,” or “miss.”¹¹⁴ Overall, Black drivers “are 61% more likely to hear an officer say one of the least respectful utterances” and white drivers “are 57% more likely to hear an officer say one of the most respectful utterances.”¹¹⁵

Another significant difference is that police are more likely to issue commands to Black drivers, such as a command to put “hands on the wheel.”¹¹⁶ The fact that Black drivers are disproportionately issued commands means Black drivers have a greater opportunity to be perceived as disobeying commands by police. This can result in additional tickets and lead to police violence.¹¹⁷ Studies have shown that police are more likely to resort to violence when the officer feels his or her dominant social status is threatened.¹¹⁸ In Ferguson, Black citizens who were perceived as disobeying police faced the punitive or retaliatory use of force and arrest.¹¹⁹ The local independent offense of “Failure to Obey” was used almost exclusively against Black citizens—even for failures to comply with orders Ferguson police had no authority

¹¹³ *Id.* (“Police officers speak significantly less respectfully to Black than to white community members in everyday traffic stops, even after controlling for officer race, infraction severity, stop location, and stop outcome.”).

¹¹⁴ *Id.* at 6523, Fig. 2; Rob Voigt et al., *Supplemental Material for “Language From Police Body Camera Footage Shows Racial Disparities in Officer Respect,”* [hereinafter *Voigt et al. Supplemental Materials*] 114 PROC. OF NAT’L ACAD. OF SCI. at *1, 9–10.

¹¹⁵ Voigt et al., *supra* note 114, at 6524.

¹¹⁶ Voigt et al., *supra* note 114, 6523; Voigt, et al. *Supplemental Materials supra* note 114, at 9–10.

¹¹⁷ See *Ferguson Report*, *supra* note 59, at 28–31, 34–35 (describing the use of the charge “Failure to Obey” and use of police dogs and tasers as a retaliatory measure for citizens perceived to disobey police commands); Devon W. Carbado & Patrick Rock, *What Exposes African Americans to Police Violence?*, 51 HARV. CIV. RTS.-CIV. LIBERTIES L. R. 159, 177–78 (2016) (Police may react with violence when they feel their authority is questioned, which may occur where a Black driver asserts his rights or fails to comply with a police request).

¹¹⁸ See *id.* (“In other words, social dominance policing is predicated upon police/civilian encounters in which the police and the suspect know who is in charge, know where power and vulnerability reside, and know how to conduct themselves in ways that affirm and reinscribe this hierarchy.”).

¹¹⁹ *Ferguson Report*, *supra* note 59, at 28–31, 34–35.

to make.¹²⁰ Sandra Bland's arrest illustrates this phenomenon.¹²¹ When Bland did not immediately obey the command to extinguish her cigarette and did not exit her vehicle, Trooper Encinia threatened to use his Taser and used actual force to pull her out of the car, even though these commands were unnecessary for the safety of the stop.¹²²

The repeated exposure of Black drivers to police created by traffic policing and traffic debt can result in violence and death at the hands of police.¹²³ Black and Hispanic individuals are more than twice as likely to experience the threat of force or actual use of nonlethal force in police encounters than whites.¹²⁴ Black individuals are three times more likely to be killed by police than whites and are 1.3 times more likely to be killed while unarmed.¹²⁵ Traffic policing is a major racial justice concern because the more often a vulnerable group comes into contact with police, "the greater the exposure to possible police violence."¹²⁶ Studies have demonstrated that Black drivers are more likely than white drivers to experience the actual use of non-deadly force.¹²⁷ In 2015, the Washington Post's police shootings database found that 1 in 3 drivers killed in traffic stops was Black.¹²⁸

¹²⁰ *Id.* at 34–35, 62 (finding African Americans accounted for 89% of all "Failure to Obey" charges).

¹²¹ See Hassan, *supra* note 1.

¹²² See Reed-Veal v. Encinia, Pl's 3d Amm'd Compl. at 12–14, No. H-15-2232 (S.D. Tex. filed Aug. 4, 2015).

¹²³ See Nathan, *supra* note 7; Peralta & Corley, *supra* note 15.

¹²⁴ See Davis, *supra* note 34, at 16.

¹²⁵ *Police Violence Map*, MAPPING POLICE VIOLENCE, (Updated Oct. 28, 2020) <https://mappingpoliceviolence.org/>

¹²⁶ See Carbado & Rock, *supra* note 117, at 167 ("We should be concerned about predatory policing, then, not just because it trades on and compounds the marginalization of an already marginalized group, but also because predatory policing potentially facilitates police violence by increasing the frequency with which African-Americans have contact with the police.").

¹²⁷ Shelley Hyland et al., POLICE USE OF NONFATAL FORCE, 2002-11, U.S. DEPARTMENT OF JUSTICE, BUREAU OF JUSTICE STATISTICS 4 (2015) ("Blacks (2.5%) were slightly more likely than whites (0.8%) to experience the use of force during traffic stops.").

¹²⁸ Wesley Lowery, *A Disproportionate Number of Black Victims in Fatal Traffic Stops*, THE WASHINGTON POST, (Dec. 24, 2015), https://www.washingtonpost.com/national/a-disproportionate-number-of-black-victims-in-fatal-traffic-stops/2015/12/24/c29717e2-a344-11e5-9c4e-be37f66848bb_story.html [<https://perma.cc/F28F-XQ6K>].

vi. Traffic Stops of Black Drivers are More Likely to Result in Harsher Enforcement Outcomes

When stopped drivers are subject to enforcement actions, Black drivers face more severe enforcement than white drivers.¹²⁹ Black drivers are more likely to receive tickets than white drivers.¹³⁰ For example, in Cleveland, Ohio, Black residents were 38.4% of the estimated driving population but received 59% of the city's traffic tickets.¹³¹ A Black driver was 2.55 times as likely to be ticketed as a white driver.¹³² Similarly in Shaker Heights, Ohio, Black residents were 35% of the driving population but received 62% of the city's traffic tickets.¹³³ Black drivers were 2.86 times as likely to be ticketed as white drivers.¹³⁴

Black drivers are more likely to receive tickets for nonmoving violations.¹³⁵ Dunn's analysis of Ohio cities found that Black drivers were more likely to receive tickets for the nonmoving offenses of not wearing a seatbelt or driving with a suspended license; these offenses would not be readily observable by police.¹³⁶ A study from a city in the Pacific Northwest similarly found that Black drivers were less likely than white drivers to be ticketed for moving violations and more likely to get citations for "insurance or license-related infractions, especially for having no valid driver's license."¹³⁷

¹²⁹ See Gillard-Matthews, *supra* note 39, 311; Richard G. Greenleaf, et al., *Race-Based Decisions: Traffic Citations and Municipal Court Dispositions*, 8 JUST. AND POL'Y J. *1, 16 (2011).

¹³⁰ See Gillard-Matthews, *supra* note 39, 311 (finding Black drivers reported receiving tickets 47% more than whites in 1999 and 34% more in 2008, which is a less significant disparity than of Latinos drivers in 1999 and of Latino and Other drivers in 2008); Langton & Durose, *supra* note 95, at 7 (finding 7.0% of Black drivers were given traffic tickets in their most recent police encounter as opposed to 4.8% of whites); *but see* SUSPECT CITIZENS, *supra* note 33, at 86–87 (finding Black drivers were 7% less likely to receive citations. However, this did not account for those drivers who were both arrested and cited).

¹³¹ Ronnie Dunn, *Whren at Twenty: Systemic Racial Bias and the Criminal Justice System: Racial Profiling: A Persistent Civil Rights Challenge Even in the Twenty-First Century*, 66 CASE W. RES. 957, 973 (2016).

¹³² *Id.*

¹³³ *Id.* at 980.

¹³⁴ *Id.* However, in the cities of Brook Park and Westlake, which had comparatively much smaller Black driving populations of 16% and 10% respectively, Black drivers were proportionally underrepresented in traffic tickets. *Id.* at 983, 985.

¹³⁵ See Greenleaf et al., *supra* note 129, at 16.

¹³⁶ Dunn, *supra* note 131, 986–88.

¹³⁷ See Greenleaf et al., *supra* note 129, at 16 (finding Black drivers higher chance of receiving tickets for driving without a valid driver's license accounted for the disparity in

Traffic stops of Black drivers are more likely to result in arrests. *Suspect Citizens* found that Black drivers in North Carolina were 68% more likely than white drivers to be arrested during a traffic stop.¹³⁸ Similarly in Ferguson, “African Americans are more likely to be cited and arrested following a stop regardless of why the stop was initiated.”¹³⁹ In an examination of Missouri traffic stops, Black drivers were twice as likely to be arrested.¹⁴⁰ The study hypothesized that this difference may in part reflect Black drivers having more outstanding arrest warrants, which could be due to unpaid ticket debt.¹⁴¹

vii. Racial Economic Inequality Makes Tickets More Burdensome for Black Drivers

Black drivers are more likely to find traffic tickets and traffic debt more burdensome than white drivers. Not all drivers feel the same economic sting from the fines and fees.¹⁴² Traffic tickets and debt are more burdensome on poor people than they are on the wealthy.¹⁴³ A family living in poverty may have to choose to use their limited income to either pay off fines and debt or “buy basic necessities such as food, hygiene and shelter.”¹⁴⁴ In the United States, economic inequality is deeply tied to race.¹⁴⁵ Black families have substantially less net wealth and income than white

criminal tickets, where Black drivers were twice as likely to receive criminal citations than white drivers and three times as likely than Asian drivers).

¹³⁸ *SUSPECT CITIZENS*, *supra* note 33, at 87. This study also found that Hispanic drivers were 129% more likely than white drivers to be arrested in a traffic stop. *Id.* However, unlike Black drivers, Hispanic drivers were less likely than white drivers to be allowed to proceed with no action or a warning. *Id.*

¹³⁹ *Ferguson Report*, *supra* note 59, at 4.

¹⁴⁰ Jeff Rojek et al., *The Influence of Driver's Race on Traffic Stops in Missouri*, 7 *POLICE QUARTERLY* 126, 139 (finding Black and Hispanic drivers were searched and arrested at twice the rate of white drivers).

¹⁴¹ *See id.* at 144; *infra* discussion on warrants relating to unpaid ticket debt in Section I.B.3.

¹⁴² *See infra* Part I.B.1.

¹⁴³ *See* Beth A. Colgan, *Reviving the Excessive Fines Clause*, 102 *CAL. L. REV.* 277, 293 (describing how those in debt with limited incomes are forced to choose between paying for “basic necessities such as food, hygiene and housing” and making payments on debt).

¹⁴⁴ *Id.*

¹⁴⁵ *See Racial Economic Inequality*, INSTITUTE FOR POLICY STUDIES, <https://inequality.org/facts/racial-inequality/>.

families.¹⁴⁶ As of 2016, the median net worth of Black families (\$17,600) was “less than 15-percent of that of [non-Hispanic] white families” (\$171,000).¹⁴⁷ 37% of Black families have zero or negative wealth.¹⁴⁸ There is also a vast racial inequality in income.¹⁴⁹ The threshold for entry into the top 10% of white income earners is \$117,986, whereas the threshold for the top 10% of Black income earners is \$60,502.¹⁵⁰ As a result, Black Americans experience poverty at a higher rate than white or Hispanic Americans.¹⁵¹

B. Disproportionate Economic Effects of Traffic Stops: If You Cannot Afford to Pay, It Will Cost You

While a traffic ticket may be a minor inconvenience to a wealthy driver, drivers unable to afford to immediately pay off the ticket see that ticket balloon into an insurmountable debt, many times the original amount.¹⁵² In this section, I show how fines for traffic tickets are set at amounts that are unaffordable to many people.¹⁵³ States and local governments then make the fees even more insurmountable by attaching fees and surcharges.¹⁵⁴ If a person

¹⁴⁶ *See id.*

¹⁴⁷ Lisa J. Dettling et al., *Recent Trends in Wealth-Holding by Race and Ethnicity: Evidence from the Survey of Consumer Finances*, FEDERAL RESERVE, (Sept. 27, 2017), <https://www.federalreserve.gov/econres/notes/feds-notes/recent-trends-in-wealth-holding-by-race-and-ethnicity-evidence-from-the-survey-of-consumer-finances-20170927.htm> [<https://perma.cc/KXM8-SENQ>] (“Net worth is defined as the difference between families’ gross assets and their liabilities.”).

¹⁴⁸ *Id.* This inequality has only grown in the last three decades. *See Racial Economic Inequality*, *supra* note 145. The median Black family had less wealth in 2016 than it did in 1983. *Id.* (Finding the median net wealth of a Black family in 1983 was \$7,323 while it shrunk to \$3,557 in 2016).

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ John Creamer, *Inequalities Persist Despite Decline in Poverty For All Major Race and Hispanic Origin Groups*, United States Census Bureau (Sept. 15, 2020), <https://www.census.gov/library/stories/2020/09/poverty-rates-for-Blacks-and-hispanics-reached-historic-lows-in-2019.html> [<https://perma.cc/PCV3-BKST>]. While only 13.2% of the population is Black, Black Americans account for 23.8% of all those living in poverty. *Id.* Black unemployment has consistently been higher than white unemployment including following the Great Recession and during the COVID-19 pandemic. *See Racial Economic Inequality*, *supra* note 145.

¹⁵² *See* Atkinson, *supra* note 46, at 202.

¹⁵³ *See infra* Part I.B.1.

¹⁵⁴ *See id.*

is unable to pay the fee, they often enter unaffordable payment plans while interest grows.¹⁵⁵ When a person misses a payment, they face additional financial penalties and may have their license suspended and warrants issued for their arrest.¹⁵⁶ Loss of a license, incarceration, or active arrest warrants often leads to loss of employment and difficulty finding new work.¹⁵⁷ If the driver is unable to work, the debt is only harder to pay off.

i. A Single Traffic Ticket Can Balloon into Insurmountable Debt

In the United States, fines for traffic offenses are usually imposed according to the offense without any consideration of the financial situation of the driver.¹⁵⁸ An initial traffic fine can cost hundreds to thousands of dollars.¹⁵⁹ Many states and localities automatically add fees or surcharges to traffic tickets.¹⁶⁰ While fines are intended as a punishment and a deterrent, fees and surcharges are designed to generate revenue and reimburse government operations.¹⁶¹ While courts have some discretion to reduce or waive fines, the discretion to waive fees is far more limited.¹⁶² The average cost of a speeding ticket and court fees is \$150, but it can reach over \$2,000 in some states.¹⁶³ Due to the

¹⁵⁵ *See id.*

¹⁵⁶ *See id.*; *infra* Part I.B-C.

¹⁵⁷ *See id.*

¹⁵⁸ *See* Alec Schierenbeck, *The Constitutionality of Income-Based Fines*, 85 U. CHICAGO L. REV. 1869, 1873 (2018).

¹⁵⁹ *See* Atkinson, *supra* note 46, at 202.

¹⁶⁰ *See* Adam H. Rosenblum, *Speeding Tickets in New York State*, TRAFFICTICKETS.COM, June 8, 2020, <https://traffictickets.com/new-york/traffic-tickets/speeding-tickets/#:~:text=Surcharges%3A%20New%20York%20automatically%20imposes,fine%20of%20the%20speeding%20ticket> [https://perma.cc/PN8P-3S2H] (explaining how speeding tickets in New York come with a mandatory surcharge of \$88 or \$93); *see also* *Pay or Stay: The High Cost of Jailing Texans for Fines & Fees*, Texas Appleseed and Texas Fair Defense Project, Feb. 2017, at 5 (describing how Texas automatically charges court costs, from \$60 to \$110, for any traffic ticket that is issued).

¹⁶¹ Phil Hernandez et al., *Set Up to Fail: How Court Fines & Fees Punish Poverty and Harm Black Communities in Virginia*, The Commonwealth Institute (Jan. 2021), at 1; Chris Mai & Maria Rafael, *The High Price of Using Justice Fines and Fees to Fund Government in Florida*, Vera Institute of Justice, at 2.

¹⁶² *See* Hernandez et al., *supra* note 37, at 1.

¹⁶³ Jordan Blair Woods, *Traffic Without the Police*, 73 STAN. L. REV. 1471, 1512 (June 2021).

vast differences in wealth and income among American drivers, fines and fees of the same amount weigh much more heavily on some drivers than on others.¹⁶⁴

While many localities offer payment plans to help drivers pay off debt, the plans have terms that make them unreasonable for many drivers.¹⁶⁵ To enter into a payment plan, most districts require down payments, which may be a percentage of the ticket debt or a flat fee.¹⁶⁶ The down payments may be relatively low, but some can be unreasonably high.¹⁶⁷ In Chicago, debtors are required to put down 25% of their total debt or \$1,000, whichever is lower.¹⁶⁸ Even after beginning a plan, high monthly installments can cause a debtor to default.¹⁶⁹ Once on a payment plan, a single missed payment can lead to late fees and even arrest warrants.¹⁷⁰ Late fees can be a single flat fine, a flat fine for each ticket, or a percentage of the overall debt.¹⁷¹ In many states and

¹⁶⁴ See Beth A. Colgan, *Reviving the Excessive Fines Clause*, 102 CAL. L. REV. 277, 293; Woods, *supra* note 163, at 1512 (“For many people living in poverty, the cost of a single traffic ticket is beyond their living means.”).

¹⁶⁵ See Atkinson, *supra* note 46, at 206; Melissa Sanchez & Sandhya Kambhampati, *How Chicago Ticket Debt Sends Black Motorists Into Bankruptcy*, PROPUBLICA, Feb. 27, 2018, <https://features.propublica.org/driven-into-debt/chicago-ticket-debt-bankruptcy/> [<https://perma.cc/6R92-AR6N>] (describing how Chicago drivers are filing for Chapter 13 bankruptcy due to the unaffordability of payment plans, and the ability to regain access to their vehicles).

¹⁶⁶ See *id.*

¹⁶⁷ See *id.* (“Some fees [to enter into a payment plan] are modest—\$10 in Virginia—but others are much higher, such as \$25 (or, alternately, \$5 per month) in Florida and \$100 in New Orleans.”); *Pay or Stay: The High Cost of Jailing Texans for Fines & Fees*, TEXAS APPLESEED AND TEXAS FAIR DEFENSE PROJECT 6 (2017) [hereinafter *Pay or Stay*] (describing how Texan payment plans require a down payment of \$25 for each ticket).

¹⁶⁸ See *Living in Suspension*, CHICAGO JOBS COUNCIL (Feb. 2018), at 6; Sanchez & Kambhampati, *supra* note 165.

¹⁶⁹ See Mariah Woodson, *Driving on the Edge: How Municipal Fines for Traffic Violations Negatively Affect Marginalized Communities*, 24 PUB. INT. L. REP. 87, 93 (2018) (“[Chicago] does not offer reasonable payment terms that enable low-income individuals to stay current with payments.”); *Living in Suspension*, *supra* note 168, at 6 (providing accounts of survey respondents who were unable to keep up with the set monthly payments); *Ferguson Report*, *supra* note 59, at 53 (“Ferguson’s standard payment plan requires payments of \$100 per month, which remains a difficult amount for many to pay.”).

¹⁷⁰ See Atkinson, *supra* note 46, at 206; *Ferguson Report*, *supra* note 59, at 53 (explaining how a single late fee would result in Ferguson issuing an arrest warrant for the driver); Dir. Brett Story & Todd Chandler, *A Debtors’ Prison: Debilitating Cycles of Incarceration in the US*, Aeon Video, YOUTUBE, (Mar 27, 2018), https://www.youtube.com/watch?v=9RfOnp1kVbc&feature=emb_imp_woyt&ab_channel=AeonVideo [<https://perma.cc/R6AX-VT7R>] (interviewing Samantha Jenkins who had a warrant issued for her arrest after missing a payment on a \$100 payment plan).

¹⁷¹ See Atkinson, *supra* note 46, at 207 (“California charges a flat late fee of \$300, while parts of Florida charge \$10 or \$20 for each missed payment. Michigan charges a proportional fee: 20% after 56 days of nonpayment.”); *Pay or Stay*, *supra* note 167, at 6 (describing how missed payments on plans in Texas add a \$50 late fee per ticket).

localities, interest also accrues continuously on unpaid debt until all of it is paid off.¹⁷²

If a district contracts with private debt collectors, the debt may grow even more rapidly. Debt collectors are often permitted to charge high collection fees.¹⁷³ These fees can be as high as 30 to 40% of the principal debt.¹⁷⁴ These private collection companies' interests in maximizing profit create perverse incentives to keep debtors on the payment plans for as long as possible.¹⁷⁵ As an example of how fine debt can begin to balloon through late fees and collections, one can look at what would happen if a driver could not pay a \$150 speeding ticket received in Washington D.C. In D.C., traffic tickets double if they are late by 30 days.¹⁷⁶ After 90 days, the debt is sent to collections where a 20% collection surcharge can be added.¹⁷⁷ If a driver cannot afford to pay off a \$150 ticket in 30 days, they will owe \$300.¹⁷⁸ If they cannot pay off the \$300 in 60 additional days, they will owe \$360.¹⁷⁹ At this point, the city may tow the driver's vehicle and the driver will be required to pay the \$360 plus any additional towing fees to secure the release of the vehicle.¹⁸⁰

ii. Traffic Tickets, License Suspensions, and Job Loss

One devastating harm that can come from unpaid traffic tickets is the suspension of driver's licenses. In 33 states and Washington

¹⁷² See *id.* (detailing how interest accrues on unpaid fines at a rate of 9% in Illinois and 12% in Washington, which charges an additional \$100 collection fee per year).

¹⁷³ See Atkinson, *supra* note 46, at 206.

¹⁷⁴ See *id.* at 207; Colgan, *supra* note 143, at 289 (describing how collection fees can be up to 30% in Alabama and Texas; 33% in Kansas; the lesser of \$50,000 or 35% in Nevada; 40% in Florida).

¹⁷⁵ See *US: For-Profit Probation Tramples Rights of Poor*, HUM. RTS. WATCH (Feb. 4, 2014, 12:00 AM), <https://www.hrw.org/news/2014/02/05/us-profit-probation-tramples-rights-poor> [<https://perma.cc/TQ34-HHQC>]. This is similar to how for-profit probation services have a financial interest in prolonging the probation as nonpayment or partial payments can prove more lucrative than full payment. See *id.*

¹⁷⁶ See Kathryn Zickuhr, *Applying a Racial Equity Lens to Fines and Fees in the District of Columbia*, D.C. POL'Y CTR. (Apr. 22, 2019), <https://www.dcpolicycenter.org/publications/racial-equity-fines-fees/> [<https://perma.cc/QGT5-UKUR>].

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

¹⁸⁰ *Id.* After 90 days, the Department of Motor Vehicles can also ask the Office of Tax and Revenue to withhold tax returns to cover the debt. *Id.*

D.C., unpaid fines and court debt can lead to the suspension or revocation of a person's driver's license.¹⁸¹ Nationwide, there are an estimated 11 million debt-related license suspensions.¹⁸² In states that allow such suspensions, unpaid debt and failure to appear suspensions account for a large portion, if not a majority, of license suspensions.¹⁸³ For example, in New Jersey, 32% of all suspensions were due to a failure to appear in court, 28% were due to failure to pay an insurance surcharge, and 8% were for failure to make court-ordered payments or otherwise comply with court orders.¹⁸⁴ Moreover, suspensions for unpaid tickets are longer than suspensions for more serious offenses like hit-and-runs and drunk driving.¹⁸⁵ In Wisconsin, debt-based suspensions last for 2 years, while hit-and-run suspensions last 1 year, and drinking-while-driving suspensions last only 9 months.¹⁸⁶ As a result, systems of license suspensions punish debtors even more than reckless drivers.¹⁸⁷

The suspension of a driver's license is an extreme and perverse measure that frequently threatens a driver's ability to earn income and, thus, their ability to pay off their traffic debt. The ability to

¹⁸¹ *Poverty Should Never Determine Who is Free to Drive*, FINES & FEES JUSTICE CTR., <https://finesandfeesjusticecenter.org/campaigns/national-drivers-license-suspension-campaign-free-to-drive/>. Since 2017, 14 states and D.C. have passed legislation reforming or limiting debt-based suspensions; *14 States. Millions of Lives Restored*, FINES & FEES JUSTICE CTR. (Mar. 1, 2021), https://www.freetodrive.org/wp-content/uploads/2021/02/14-States_Millions-of-Lives_Restored_Powerpoint.pdf [<https://perma.cc/BC6Y-UUWF>].

¹⁸² *See Poverty Should Never Determine Who is Free to Drive*, *supra* note 181. While this figure is not limited to suspensions based on traffic debt but includes all debt from unpaid traffic, toll, misdemeanor, and felony fines and fees, it may still greatly underestimate the actual number of suspensions as only a few states actually track license suspensions and there is no national standard for data collection. *Id.*

¹⁸³ *See* Alex Bender et al., *Not Just A Ferguson Problem: How Traffic Courts Drive Inequality in California*, 1 *LAWYER COMM. C.R.* 1, 13 (2015) ("In an 8-year span, California brought over 4.2 million license suspension actions for failure to pay or appear."). 28% of New Jersey license suspensions were over failure to pay an insurance surcharge, 32% were due to failure to appear in court, and 8% were for failure to make court-ordered payments. Jon A. Carnegie et al., *Driver's License Suspensions, Impacts and Fairness Study*, NJDOT (Aug. 2007), at 33 (Table 9). In contrast, only 3% are due to the accumulation of points awarded for bad driving offenses, 3% were for driving under the influence, and only 1% were for serious driving offenses. *See id.*; 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> [<https://perma.cc/JG2S-8AQW>] ("[M]ore often than not, licenses are suspended for outstanding debt.").

¹⁸⁴ Carnegie et al., *supra* note 183, at 33 (Table 9). Only 3% are due to the accumulation of points awarded for bad driving offenses, 3% were for driving under the influence, and only 1% were for serious driving offenses. *Id.*

¹⁸⁵ *See* Atkinson, *supra* note 46, at 219.

¹⁸⁶ *Id.*

¹⁸⁷ *See id.*

drive is important both to gain and retain employment.¹⁸⁸ “86% of Americans drive to work.”¹⁸⁹ A study in New Jersey found 42% of drivers whose licenses were suspended lost their jobs.¹⁹⁰ Only 45% of those were able to find new jobs, in which 88% had to accept reduced wages.¹⁹¹ Suspensions pose a heavier burden on those living in high-poverty neighborhoods as people within such neighborhoods frequently must travel farther than others to get to work.¹⁹² The loss of a license also immediately diminishes the pool of available work.¹⁹³ Jobs such as construction, delivery, home health care, motor vehicle sales, and services all require employees to have valid licenses.¹⁹⁴

With the high costs of not driving, it should not be surprising that 75% of drivers with suspended licenses continue to drive unlawfully.¹⁹⁵ When a vehicle’s driver has a suspended license, the vehicle’s registration may be placed on hold, and the vehicle becomes almost impossible to insure.¹⁹⁶ As a result, a driver pulled over “will most likely receive at least three tickets for that one stop: one for not having a valid license, one for expired registration, and one for driving without insurance.”¹⁹⁷ An example is Sandra Bland’s story when a single stop resulted in multiple tickets adding up to over \$4,000.¹⁹⁸ Even if a driver obeys all other traffic rules, police can easily and legally stop them for not displaying their registration.¹⁹⁹ A car with an expired registration is often easy to spot as many states require registration tags to be visible on the license plate, making it an

¹⁸⁸ See Carnegie et al., *supra* note 183, at 56; Atkinson, *supra* note 46, at 219.

¹⁸⁹ *Free to Drive: National Campaign to End Debt-Based License Restrictions*, FINES & FEES JUSTICE CTR., <https://finesandfeesjusticecenter.org/campaigns/national-drivers-license-suspension-campaign-free-to-drive/> [https://perma.cc/224T-3Y83].

¹⁹⁰ See Carnegie et al., *supra* note 183, at 56; Atkinson, *supra* note 46, at 219.

¹⁹¹ See Carnegie et al., *supra* note 183, at 56; Atkinson, *supra* note 46, at 219.

¹⁹² Spencer K. Schneider, *Wheels on the Bus: The Statutory Schemes that Turn Traffic Tickets into Financial Crises*, NAT’L L. GUILD REV. 81, 99 (2020).

¹⁹³ See Bender *supra* note 183, at 17.

¹⁹⁴ See *id.*

¹⁹⁵ Schneider, *supra* note 192, at 99.

¹⁹⁶ *Pay or Stay*, *supra* note 160, at 6, 23.

¹⁹⁷ *Id.* at 6.

¹⁹⁸ See Nathan, *supra* note 7.

¹⁹⁹ See *DMV Registration Renewal, Lost Tags, and Getting Pulled Over with Expired Tags*, IDRIVESAFELY, <https://www.idrivesafely.com/defensive-driving/trending/dmv-registration-renewal-lost-tags-and-getting-pulled-over-expired-tags> [https://perma.cc/976K-VU28] (last viewed Jan. 23, 2022).

easy target for police.²⁰⁰ Police can also easily discover if the owner of a vehicle has a suspended license by running the plates against a database.²⁰¹

iii. Unpaid Tickets, Warrants, and Incarceration

If a person does not appear in court, fails to pay their ticket, or even if they miss a single planned payment, a warrant can be issued for their arrest.²⁰² A person can be imprisoned multiple times for the same underlying debt.²⁰³ In Ferguson, Missouri almost every warrant issued by the municipal court was based on missed court appearances or missed fine payments by drivers.²⁰⁴ Arrest warrants became the “primary tool for collecting outstanding fines for municipal code violations.”²⁰⁵ Although Ferguson had so many active arrest warrants that it was equivalent to 75% of its residents, Ferguson’s numbers paled in comparison to the neighboring towns of Pine Lawn, which had 7.3 warrants *per* resident, and Club Hills, which had 26 warrants *per* resident.²⁰⁶ During 2015, over “95-percent of all arrest warrants issued in the state of Texas were for fine-only misdemeanor offenses.”²⁰⁷

An outstanding arrest warrant is likely to trigger even more economic hardship. The most direct harm is that many jurisdictions will tack on an additional fee for the production of the

²⁰⁰ *See id.*

²⁰¹ *See* Dunn, *supra* note 131, at 988; Glenn Blain, *Police in New York Can Run License Plate Numbers Without Probable Cause, Appeals Court Rules*, N.Y. DAILY NEWS (May 4, 2017, 3:39 PM), <https://www.nydailynews.com/new-york/new-york-cops-run-license-plates-reason-court-rules-article-1.3137088> [<https://perma.cc/WL87-LD2X>] (“[T]he Court of Appeals rules that license plate checks are permissible even when an officer does not suspect any wrongdoing on the part of the driver.”).

²⁰² *See* Atkinson, *supra* note 46, at 203–04 (identifying missed court appearances and nonpayment as reasons warrants are issued for drivers’ arrests); *Pay or Stay*, *supra* note 160, at 7 (explaining that a person may not show up for court because they lack transportation, they cannot take time off of work, they do not understand the court system or what will happen if they do not appear, or they fear arrest from existing warrants).

²⁰³ *See* Story & Chandler, *supra* note 170 (“Samantha Jenkins has been jailed 19 times over the span of 15 years for her inability to pay court fines.”).

²⁰⁴ *See Ferguson Report*, *supra* note 59, at 55.

²⁰⁵ *Id.*

²⁰⁶ *See* Atkinson, *supra* note 46, at 206.

²⁰⁷ *Pay or Stay*, *supra* note 160, at 9.

warrant.²⁰⁸ Warrants are also likely to show up on background checks, and “many employers will not hire somebody with an active warrant, even if it is only for a minor ticket such as a moving violation.”²⁰⁹ Once a person is incarcerated on an arrest warrant, the fees and consequences only continue to multiply. Additional fees can be charged, such as booking fees and “pay-to-stay” fees where the incarcerated are given fees for the privilege of staying in the jail.²¹⁰ Finally, a person forced to spend multiple days in jail may miss work and lose their job.²¹¹

iv. Ticket Debt Begets More Tickets

Police technology allows police to target drivers with unpaid ticket debt, suspended licenses, or ticket debt-based arrest warrants.²¹² One type of technology police use to do this is automated license plate readers (ALPRs).²¹³ ALPRs are camera systems that “automatically capture all license plate numbers that come into view, along with the location, date and time . . . [and] photographs of the vehicle and sometimes its driver and passengers.”²¹⁴ This data is uploaded into a server and compared with designated “hot lists.”²¹⁵ Vehicles may be on the hot lists for reasons ranging from AMBER Alerts to unpaid parking tickets.²¹⁶ ALPRs can be placed on police vehicles or posted in stationary locations.²¹⁷ The use of ALPRs is already widespread.²¹⁸ As of

²⁰⁸ See *id.* at 5 (explaining that Texas charges debtors a \$50 warrant fee).

²⁰⁹ *Id.* at 8, 13.

²¹⁰ See *In for a Penny: The Rise of America's New Debtor's Prisons*, AM. CIVIL LIBERTIES UNION (Oct. 2010), at 10.

²¹¹ See *Pay or Stay*, *supra* note 160, at 27.

²¹² See Angel Diaz & Rachel Levinson-Waldman, *Automatic License Plate Readers: Legal Status and Policy Recommendations for Law Enforcement Use*, BRENNAN CTR. FOR JUSTICE (Sept. 10, 2020), <https://www.brennancenter.org/our-work/research-reports/automatic-license-plate-readers-legal-status-and-policy-recommendations> [<https://perma.cc/AF3T-9F86>].

²¹³ See *Automated License Plate Readers (ALPRs)*, ELEC. FRONTIER FOUND., <https://www.eff.org/pages/automated-license-plate-readers-alpr> [<https://perma.cc/8D6S-T3A4>] (last updated Aug. 28, 2017).

²¹⁴ *Id.*

²¹⁵ See Diaz & Levinson-Waldman, *supra* note 212.

²¹⁶ See *id.*

²¹⁷ See *id.*

²¹⁸ See *id.*; Brian A. Reaves, *Local Police Departments, 2013: Equipment and*

2013, a majority of police departments with over 49,999 residents used ALPRs, and 93% of cities with populations of 1 million or more used them.²¹⁹

Police can discover similar information about vehicles even without high-tech ALPRs.²²⁰ In Ohio, police can perform “rolling checks” by requesting a dispatcher look up information about the likely driver by using the social security number associated with the license plate.²²¹ In New York, police may also manually run a car’s license plates.²²² The U.S. Supreme Court upheld the practice of stopping a vehicle solely based on the vehicle being owned by a person with an expired license as constitutional in *Kansas v. Glover*.²²³ Even if the vehicle is otherwise obeying all traffic laws, it is constitutional for police to conduct a stop solely because the registered owner of the vehicle has a suspended license.²²⁴ Once targeted for being on hot lists, drivers will face additional tickets and fines, often much harsher than the fines that placed them into debt in the first place.²²⁵

C. How Existing Solutions Fall Short

Recent decades, and particularly the last ten years, have brought new attention to racial injustices in policing.²²⁶ Analyses of the history of policing in America show that racism is a

Technology, U.S. DEP’T JUST., (July 2015) at 4 (estimating that “[a]bout 1 in 6 departments used automated license plate readers” in 2013).

²¹⁹ See *id.* at 2.

²²⁰ See Dunn, *supra* note 131, at 987–88 (“Speeding, on the other hand, is a moving violation which can be readily observed whether with the naked eye or with a radar or laser speed detection device.”).

²²¹ See *id.* at 988–89 (noting how the disproportionate number of tickets Black drivers receive for driving under license suspension raises questions about whether the police are racially biased in their discretionary requests for rolling checks).

²²² See *People v. Bushey*, 29 N.Y.3d 158, 163–64 (2017); Blain, *supra* note 201.

²²³ *Kansas v. Glover*, 140 S. Ct. 1183, 1186 (2020).

²²⁴ *Id.* at 1188.

²²⁵ See Atkinson, *supra* note 46, at 204; *Automated License Plate Readers (ALPRs)*, *supra* note 213 (describing how a person can be added to a police hot list for a mere low-level traffic offense).

²²⁶ See Harris, *supra* note 30 (highlighting the fact that “driving while Black” has been a decades-long issue, and now is the time to act to make a change by lobbying the Justice Department, law enforcement agencies, and state and federal legislators); Conner, *supra* note 85, at 1002 (describing how despite early lawsuits challenging the NYPD’s “stop and frisk” policy, the number of stops “exploded” for years to come).

fundamental bedrock of policing.²²⁷ Some reforms were put in place by legislatures or as terms of lawsuit settlements long enough ago that the reforms can be analyzed to determine their merits and pitfalls. While “changes to police training, policies, and oversight” have led to positive results in some jurisdictions, “[t]here is strong evidence, however, that such changes will be insufficient to address those problems.”²²⁸ For instance, hiring more Black police officers does little to change the force’s culture regarding race, and Black officers are more likely to find themselves assuming this dominant, racist culture to become part of the force.²²⁹ Federal oversight and settlements have helped collect the data necessary to diagnose the problem of racial profiling, but they have had far less success in eliminating it.²³⁰ Overall, the tools that are currently being used to address racial profiling are not up to the task of eliminating it.

²²⁷ See K.B. Turner et al., *Ignoring the Past: Coverage of Slavery and Slave Patrols in Criminal Justice Texts*, 17 J. CRIM. JUST. EDUC. 181, 186 (Apr. 2006) (“[T]he review of the literature clearly establishes that a legally sanctioned law enforcement system existed in America before the Civil War for the express purpose of controlling the slave population and protecting the interests of slave owners. . . . Hence, the slave patrol should be considered a forerunner of modern American law enforcement.”).

²²⁸ Conner, *supra* note 85, at 1002.

²²⁹ See David Alan Sklansky, *Not Your Father’s Police Department: Making Sense of the New Demographics of Law Enforcement*, 96 J. CRIM. L. & CRIMINOLOGY, 1209, 1224–25 (2006); Vicky M. Wilkins & Brian N. Williams, *Black or Blue: Racial Profiling and Representative Bureaucracy*, 68 PUB. ADMIN. REV. 654, 660 (2008).

²³⁰ See Stephanie Sierra et al., *Black Men are 8 Times More Likely to be Stopped by Oakland Police Than White Men, Data Shows*, ABC7 NEWS (Sept. 9, 2020), <https://abc7news.com/oakland-police-opd-racial-profiling-traffic-stops/6414305/> [<https://perma.cc/5QCQ-CRHX>] (stating that efforts have been made to collect and analyze data—including partnering with professors at universities—but questioning whether this will translate to a real[] change [in] policing on the streets”); Alice Speri, *Stop-and-Frisks Never Really Ended. Now It’s Gone Digital*, INTERCEPT (Oct. 13, 2020, 8:21 AM), <https://theintercept.com/2020/10/13/nypd-stop-frisk-warrants-lawsuit/> [<https://perma.cc/BKA5-AYTQ>] (illustrating that although data indicates that police stops were down overall, “racial disparities [in police stops] remain rampant”); Jon Schuppe, *Bloomberg Says He Nearly Eliminated Stop-and-Frisk as Mayor. But He Fought for it to the End.*, NBC NEWS (Feb. 27, 2020, 3:50 PM), <https://www.nbcnews.com/politics/2020-election/bloomberg-says-he-nearly-eliminated-stop-frisk-mayor-he-fought-n1144266> [<https://perma.cc/Y67L-C7HJ>] (highlighting the fact that even though the data indicated a decrease in stop and frisks, shortly thereafter, the number of stop and frisks rose by more than 20%); *but see* ANNE E. KIRKPATRICK, 2016-2018 RACIAL IMPACT REPORT 8 (Oakland Police Dep’t) (illustrating how data collection can be used to help police behave in a less discriminatory manner such as leading to a decrease in African American and Hispanic stops).

i. Racism is Deeply Embedded in the Institution of Police

Throughout the nation's history, American police have acted to maintain a racist caste system and enforce racialized economic exploitation.²³¹ The creation and proliferation of police in the United States are, in large part, due to racial chattel slavery.²³² The first police organizations in the United States were slave patrols.²³³ These patrols were necessary to protect what in some states a white minority's interest in maintaining the South's slavery-dependent economic system and in protecting whites from enslaved people's righteous rebellion.²³⁴ Following the Civil War, the Black Codes were imposed to maintain the racial hierarchy and replicate a system as close to slavery as possible.²³⁵ The Black Codes imposed "draconian fines for violating broad proscriptions of 'vagrancy' and other dubious offenses."²³⁶ When Black individuals were unable to pay, "States often demanded involuntary labor instead."²³⁷ Although the Black Codes were overturned, the convict laws persisted throughout the Jim Crow period.²³⁸ During Jim Crow, tens of thousands of Black Americans

²³¹ See THE NEW JIM CROW *supra* note 91 at 28, 54–55 (discussing the racial caste system at different times, including Black codes post-slavery and mass incarceration created by legislation and carried out by the police); Micol Seigel, *The Dilemma of 'Racial Profiling': An Abolitionist Police History*, 20 CONTEMP. JUST. REV. 474, 481 (2017).

²³² "[T]he law of slavery and law enforcement under slaver are important as precursors of modern law and law enforcement." See Turner et al., *supra* note 227, at 186; Seigel, *supra* note 231, at 483. The story more commonly taught of the development of American police is that police developed in northern cities based upon models created in Britain. See Turner et al., *supra* note 227, at 185; Seigel, *supra* note 231, at 477. However, even these accounts of history neglect the racialized foundation of English policing, which itself was modeled on the British Empire's colonial. See Seigel, *supra* note 231 at 478.

²³³ See Seigel, *supra* note 231, at 477–79 (explaining how slave patrols began in the 1780s, predating police in northern U.S. cities); *but see* Turner et al., *supra* note 227, at 185 (finding the first slave patrols began in South Carolina in 1704). The first urban police force in the North was created in Massachusetts in 1838. See Jill Lepore, *The Invention of the Police*, NEW YORKER (July 13, 2020) <https://www.newyorker.com/magazine/2020/07/20/the-invention-of-the-police> [<https://perma.cc/3J92-PBVK>].

²³⁴ See Turner et al., *supra* note 227, at 184–86.

²³⁵ See THE NEW JIM CROW, *supra* note 91, at 28 ("Clearly, the purpose of the Black codes in general and the vagrancy laws in particular was to establish another system of forced labor."); *Timbs v. Indiana*, 139 S. Ct. 682, 697 (2019) (Thomas, J., concurring).

²³⁶ *Timbs*, 139 S. Ct. at 688.

²³⁷ *Id.* Such forced labor fit into the legal carve out permitted in the 13th Amendment which prohibited slavery and involuntary servitude "except as a punishment for crime whereof the party shall have been duly convicted . . ." U.S. CONST. amend. XIII § 1 (emphasis added).

²³⁸ See THE NEW JIM CROW, *supra* note 91, at 31.

were arrested and forced to perform labor as slaves of the state.²³⁹ Police also enforced Jim Crow segregation, which ostracized Black Americans and limited their economic opportunities.²⁴⁰ During this same period, police ignored, permitted, or assisted white Americans in committing violent crimes of terror against Blacks.²⁴¹ When Jim Crow laws were overturned, proponents of a racial hierarchy turned to a new method to maintain superiority: mass incarceration.²⁴² Police once again played a major role in arresting criminals in the War on Drugs, leading to the explosion of the prisoner population from 300,000 to 2 million.²⁴³

The role of police in upholding racial hierarchies and economic exploitation is not a matter confined to the history books but an ongoing problem. Racism in modern traffic policing cannot be understood separately from the War on Drugs.²⁴⁴ Racially disproportionate investigatory traffic stops seeking evidence of drugs is still ongoing.²⁴⁵ The system of traffic fines disproportionately targets Black drivers to produce revenue.²⁴⁶ Racism in traffic policing is not an aberration that can be easily excised because racism has been part and parcel of American policing since its creation.²⁴⁷

²³⁹ See *id.*

²⁴⁰ See *id.* at 35.

²⁴¹ See Elona Neal, *A History of Police Violence in America*, STACKER (Oct. 6, 2021), <https://stacker.com/stories/4365/history-police-violence-america> [<https://perma.cc/UFK8-9SLQ>] (featuring “a list of 50 chronological events showing the history of police violence in the United States”).

²⁴² See THE NEW JIM CROW, *supra* note 91, at 55–58.

²⁴³ See *id.* at 6.

²⁴⁴ See Harris, *supra* note 30; Baumgartner et al., *supra* note 28, at 26.

²⁴⁵ See Roach et al., *supra* note 86, at 3–4 (discussing that “racial disparities in traffic stop outcomes are widespread and well documented” and that police are encouraged to use “investigatory” traffic stops to pull over Black male drivers in order to fight the war on drugs).

²⁴⁶ See Blessett & Box, *supra* note 36, at 118–19 (suggesting that law enforcement use arrest warrants to facilitate the collection of fines and fees, and that the police “target African Americans systematically for economic gain because of their marginalized status in American society”); Turner et al., *supra* note 227, at 183, 186 (describing a general overrepresentation of African Americans in crime, which is “disproportionate even when compared to other minorities”); Seigel, *supra* note 231, at 474 (discussing how a case involving police targeting African American drivers who were convicted of drug possession was dismissed after finding that the stops were a result of bias).

²⁴⁷ See Seigel, *supra* note 231, at 481 (“The police charged with keeping this social and political order are not incidentally racist, but formed and functioned—and continue to function—precisely via the technologies of race.”).

ii. A More Diverse Police Force Will Not Stop Racial Profiling

One commonly proposed solution to racial bias in the police is to make the police force more racially representative of the communities they serve. However, studies on whether Black officers are actually less influenced by racial prejudice have come to mixed results.²⁴⁸ Overall, researchers have arrived at the consensus that the evidence does not show that Black and white officers behave differently.²⁴⁹ Scholars examining this lack of appreciable difference have settled on an explanation first introduced in the mid-1970s that “the pressures for conformity are so strong that the new [Black] officer will either be forced into the police subculture, with the values and orientation of the larger group replacing his own, or his life will be made so unpleasant that he will decide to resign.”²⁵⁰ One study examining racial profiling by the race of the officer as measured by racially disproportionate traffic stops found that racial disparities in traffic stops actually increased when a police force had higher percentages of Black officers.²⁵¹ These results, paired with interviews of Black officers, suggested: “that the pressure to conform to the organization . . . weighs heavily on [B]lack officers and affects their attitudes and ultimately their behavior.”²⁵² In the Department of Justice’s report on the Ferguson police department, it recommended diversifying the police force but noted that diversification alone would be insufficient and would have to be part of a broader reform of the department’s culture and priorities.²⁵³

²⁴⁸ See Sklansky, *supra* note 229, at 1225 (describing how some studies found that Black officers use force and arrest Black citizens at similar rates to white officers and are as likely or more likely to be the subject of citizen complaints and disciplinary action, while other studies have found Black officers are less prejudiced and less likely to arrest Black citizens).

²⁴⁹ See *id.* at 1225.

²⁵⁰ *Id.* at 1225–26.

²⁵¹ See Wilkins & Williams, *supra* note 229, at 660 (“[A]s the presence of Black police officers increases, so does the racial disparity in vehicle stops in that division.”).

²⁵² *Id.* at 660–61.

²⁵³ See *Ferguson Report*, *supra* note 59, at 89 (suggesting that recruitment efforts focus on “attracting qualified candidates of *all* demographics . . .”) (emphasis added).

iii. The Limits of Data Collection, Supervision, and Settlements

While data collection has been important in helping prove the problem of Driving While Black, it does not always lead to substantial reform. In the late 1990s and early 2000s, many jurisdictions began to collect data on traffic stop demographics.²⁵⁴ In 1999, North Carolina became the first state to require demographic information to be collected during traffic stops.²⁵⁵ At the time the law was passed, evidence of Driving While Black was primarily anecdotal, and legislatures thought the data would either prove the phenomenon or exonerate police.²⁵⁶ However, the state has never created a report on the data or even publicly taken a position on whether the data indicates that racial profiling is a problem.²⁵⁷

Even when a jurisdiction tries to use the data to reduce racial disparities, it can fall short of achieving equity. In 2003, the Oakland Police Department agreed to a settlement that placed the department under federal supervision and required the collection of police stop data.²⁵⁸ Over fifteen years later, the police department continues to have disproportionate stop rates for Black residents.²⁵⁹ Beginning in 2016, police were required to answer whether the stop was led by intelligence that the driver “had been involved in specific criminal activity” before pulling the vehicle over.²⁶⁰ While intelligence-led policing led to a large reduction in the amount of traffic stops by 2018, racial disparities persisted.²⁶¹ Even though only 23% of the local population was

²⁵⁴ See Baumgartner et al., *supra* note 28, at 23.

²⁵⁵ See SUSPECT CITIZENS, *supra* note 33, at 31.

²⁵⁶ See *id.* at 50.

²⁵⁷ See *id.*

²⁵⁸ Eric Westervelt, *In Oakland, More Data Hasn't Meant Less Racial Disparity During Police Stops*, NAT'L PUB. RADIO (Aug. 8, 2018, 7:17 AM), <https://www.npr.org/2018/08/08/636319870/in-oakland-more-data-hasnt-meant-less-racial-disparity-during-police-stops> [<https://perma.cc/3BAK-YNWZ>].

²⁵⁹ See *id.*

²⁶⁰ It is designed to slow officers down and make them evaluate the reason for the stop. Lara O'Reilly, *How Oakland Police Cut Traffic Stop Numbers by 40% With a Simple Checkbox*, YAHOO! FIN. (July 1, 2019), <https://www.yahoo.com/now/how-the-oakland-police-cut-traffic-stop-numbers-by-40-with-a-simple-checkbox-070000004.html> [<https://perma.cc/EW7N-AAGR>].

²⁶¹ See Sierra et al., *supra* note 230.

Black, 55% of drivers involved in traffic stops were Black.²⁶² In particular, Black men were still eight times as likely as white men to be stopped by police.²⁶³

The example that best illustrates how settlements have only a limited ability to change police practices of racial profiling is the history of New York City's stop-and-frisk policy. The high-profile police killing of an unarmed African immigrant, Amadou Diallo, in February 1999 brought attention to the NYPD's Street Crime Unit, a unit of plainclothes officers who patrolled the streets in unmarked vehicles.²⁶⁴ After data was released on the unit's stop-and-frisks, which revealed the disparate racial impact of the policy, a class of plaintiffs filed suit in *Daniels v. the City of New York*.²⁶⁵ In 2003, the parties reached a settlement where NYPD agreed to maintain records of its stop-and-frisks; perform audits to see "to what extent the stop-and-frisks are based on reasonable suspicion"; and train its officers about "the legal and factual bases for conducting and documenting stop, question, and frisk activity" and in "cultural diversity and integrity and ethics."²⁶⁶ However, following the settlement, the number of stop-and-frisks massively increased with even higher racial disparities than before.²⁶⁷ "After significant non-compliance with the consent decree," a class of affected plaintiffs filed a new lawsuit, *Floyd v. the City of New York*.²⁶⁸ *Floyd* focused more heavily on the racial disparities in the targets of stop-and-frisks.²⁶⁹ In 2013, the court found that the NYPD engaged in a pattern of unreasonable and racially discriminatory searches.²⁷⁰ The court appointed an independent

²⁶² See Sierra et al., *supra* note 230; Kirkpatrick, *supra* note 230, at 8 (Table 1); O'Reilly, *supra* note 260 (finding a 40% decrease in Oakland traffic stops from 2017 to 2018).

²⁶³ See Sierra et al., *supra* note 230; Kirkpatrick, *supra* note 230, at 8 (Table 1).

²⁶⁴ *Daniels, et al. v. the City of New York*, CTR. FOR CONST. RTS., <https://ccrjustice.org/home/what-we-do/our-cases/daniels-et-al-v-city-new-york> [https://perma.cc/6S3M-Q7HF] (last modified Oct. 1, 2012).

²⁶⁵ While the case was pending the NYPD dissolved the Street Crimes Unit. *Id.*

²⁶⁶ See Stipulation of Settlement at 7, *Daniels et al. v. New York*, 99-cv-1695 (SAS), (S.D.N.Y. July 16, 2007); Conner, *supra* note 85, at 1002.

²⁶⁷ See Conner, *supra* note 85, at 1002 (explaining that "the number of stop and frisks exploded from 97,296 in 2002 . . . to a high of 685,724 in 2011").

²⁶⁸ *Daniels, et al. v. the City of New York*, *supra* note 264.

²⁶⁹ See *Floyd, et al. v. City of New York, et al.*, CTR. FOR CONST. RTS., <https://ccrjustice.org/ourcases/current-cases/floyd-et-al> [https://perma.cc/S972-GTLS] (last modified Sept. 1, 2021).

²⁷⁰ Amended Complaint & Jury Demand at 5, *Belle v. the City of New York*, 19-cv-2673 (VEC) (S.D.N.Y. filed Jan. 3, 2020).

monitor to oversee the immediate reform of the stop-and-frisk policy.²⁷¹ Even following the settlement of *Floyd*, stop-and-frisks have not completely ended, and Black and Latino New Yorkers continue to be subjected to unreasonable searches.²⁷² The persistence of the stop-and-frisk policy and its disparate racial impact, through the disbanding of its initial police unit, a lawsuit settlement, and a court-ordered resolution demonstrates how difficult it is to reform the police.

II. AN ANTI-RACIST MODEL OF TRAFFIC ENFORCEMENT

The current system of traffic enforcement is racist and traps poor Black drivers in inescapable debt. There are no historical models of successful reforms of police eliminating racially discriminatory practices. If we wish to eliminate the role of racial bias in traffic enforcement, we must look for solutions that do not involve the police. In this section, I propose the model of Camera-Enforced Streets. This model would eliminate racial bias in decisions about who should be subject to enforcement action.²⁷³ It would also eliminate investigatory traffic stops where most racial disparities in stops occur.²⁷⁴ It would prevent traffic enforcers from targeting those with existing traffic debt and related license suspensions and warrants.²⁷⁵ Camera-Enforced Streets are not a foolproof model to eliminate disparate racial effects.²⁷⁶ Clear legislative guidance and review processes would be necessary to

²⁷¹ Summary of Remedial Opinion and Order in *Floyd, et al. v. City of New York, 08-cv-1034 (SAS)*, CTR. FOR CONST. RTS. at 1, <https://ccrjustice.org/files/Remedy%20Decision%20Summary%20-%20Final.pdf> [<https://perma.cc/DQ24-WQYX>].

²⁷² See Schuppe, *supra* note 230 (explaining how police reported 13,459 stop-and-frisks in 2019, which was over 20% more than in 2018); Speri, *supra* note 230; Class Action Complaint & Jury Demand at 4–6, *Belle v. the City of New York*, 19-CV-2673 (VEC) (S.D.N.Y. filed Jan. 3, 2020) (describing the stop-and-frisks Terron Belle and William Rios experienced).

²⁷³ See LORIE A. FRIDELL, BY THE NUMBERS: A GUIDE FOR ANALYZING RACE DATA FROM VEHICLE STOPS, POLICE EXEC. RESEARCH FORUM 1, 123 (2004) (“Enforcement using red light cameras is blind because traffic law violators are detected and ‘ticketed’ in a manner that does not allow for the intrusion of bias.”).

²⁷⁴ See Conner, *supra* note 85, at 982 (“Virtually all of the wide racial disparity in police traffic enforcement is concentrated in one scope of stops: discretionary stops for minor violations of the law.”).

²⁷⁵ See *supra* Part I.B.4.

²⁷⁶ See *infra* Part II.C.1–2.

ensure camera placement does not target Black drivers and that any collected data cannot be used to target individuals.²⁷⁷

A. What Are Camera-Enforced Streets?

Camera-Enforced Streets are a model of traffic enforcement where police are phased out and replaced by red light cameras and speed cameras. Speed cameras detect speeding vehicles “using detectors embedded into the road surface or radar technology.”²⁷⁸ In addition to speeding, red-light cameras “detect vehicles traveling over the stop line or entering the intersection after the lights have turned red.”²⁷⁹ If either type of camera detects violators, the camera takes a photo of the vehicle.²⁸⁰ Once a traffic violation is captured, the ticket should be issued to the vehicle’s owner based on the vehicle’s license plate number. Unlike how traffic cameras are currently used, these tickets would not supplement existing human traffic policing but replace it.

Camera-Enforced Streets would be only one step in a larger overhaul of traffic enforcement that is necessary to achieve an anti-racist system. While this model addresses certain safety violations, a different solution may be necessary to deal with other violations like driving under the influence.²⁸¹ This model also deals primarily with stopping drivers from getting into debt in the first place rather than solving the financial harms to which a driver is subject once they are indebted. This Note does not focus on other necessary reforms such as amending traffic codes to include only violations necessary for road safety,²⁸² considering a

²⁷⁷ See *id.*

²⁷⁸ *How do They Work?*, NEW S. WALES GOV'T: CTR. FOR RD SAFETY, https://roadsafety.transport.nsw.gov.au/speeding/speedcameras/howdo_theywork.html [<https://perma.cc/5FNQ-3AE6>] (last updated June 27, 2019).

²⁷⁹ *Id.*

²⁸⁰ See *id.* The proposed model does not use automatic license plate readers that would capture all plates that come into view and is then run through search lists. See Diaz & Levinson-Waldman, *supra* note 212.

²⁸¹ See Conner, *supra* note 85, at 990, 993 (arguing for the need of widespread, visible checkpoints to reduce traffic fatalities from drivers under the influence).

²⁸² See Woods, *supra* note 163, at 1471–72, 1508 (proposing “a new legal framework that decouples traffic enforcement from police functions”).

driver's economic situation when apportioning fines,²⁸³ or eliminating driver's license revocations for unpaid traffic debt.²⁸⁴

B. The Benefits of Camera-Enforced Streets

i. Camera-Enforced Streets Would Remove Racial Bias in Traffic Enforcement

Camera enforcement would limit racism in traffic policing by removing the human bias and subjectivity of the police when an officer chooses whom to stop.²⁸⁵ Traffic cameras are “blind”; the cameras react *solely* to the movement of a vehicle and do “not allow for the intrusion of bias.”²⁸⁶ A study conducted by Sarah Marx Quintanar provides evidence that traffic cameras reduce the role of human bias in traffic tickets.²⁸⁷ The study compared speeding tickets issued by police and by automated cameras in Lafayette, Louisiana.²⁸⁸ During daylight hours, tickets issued by police were somewhat more likely to be issued to female drivers than tickets issued by a speed camera.²⁸⁹ However, during dark hours the drivers issued tickets by automated cameras and police were very

²⁸³ See Colgan, *supra* note 143, at 278, 346 (advocating for a reinterpretation of the excessive fines clause to consider “the nature of the offense, the offender’s characteristics and the [fine’s] effect on the offender”); Nicholas M. McLean, *Livelihood, Ability to Pay, and the Original Meaning of the Excessive Fines Clause*, 40 HASTINGS CONST. L.Q. 832, 837–38, 901 (2013) (arguing the original meaning of the Excessive Fines Clause included consideration of an individual’s personal economic circumstances). For a consideration of a transition to income-based fines see Schierenbeck, *supra* note 158, at 1870–72.

²⁸⁴ See Schneider, *supra* note 192, at 82.

²⁸⁵ See Conner, *supra* note 85, at 998.

²⁸⁶ See FRIDELL, *supra* note 273, at 123; Greg Ridgeway & John MacDonald, *Methods for Assessing Racially Biased Policing*, RESEARCH & DEV. CORP. (2010), at 6, available at <https://www.rand.org/pubs/reprints/RP1427.html> [<https://perma.cc/X559-NPFM>] (explaining that the advantage of photographic stoplight enforcement cameras and aerial patrols “is that they are truly race-blind and measure some form of traffic violation”); *How do They Work?*, *supra* note 278 (describing how traffic cameras detect violations).

²⁸⁷ See Sarah Marx Quintanar, *Man vs. Machine: An Investigation of Speeding Ticket Disparities Based on Gender and Race*, 20 J. APPLIED ECON. 1, 1 (2017) (arguing “that police use . . . race as a determining factor in issuing a speeding ticket”).

²⁸⁸ See *id.* at 7. Lafayette, Louisiana has a population of 120,623 and is about 64% white and 31% Black. See *id.* at 4–5.

²⁸⁹ See *id.* at 20. Gender was inferred from the two photographs of the driver taken by the traffic cameras and included in the ticket. See *id.* at 7.

similar.²⁹⁰ Although the study did not find that there was a statistically significant difference in tickets issued to Black drivers in this city, the study does show how automated enforcement removes the human bias present when police can see the driver before deciding to perform a stop.²⁹¹

A second-way Camera-Enforced Streets reduce racial bias is by eliminating investigatory stops.²⁹² Red-light and speed cameras only issue tickets for major safety violations and not for minor violations that are characteristic of investigatory stops.²⁹³ Transitioning toward a model that focuses on safety stops would reduce racial disparity because much of the disparity in traffic stops comes from investigatory stops.²⁹⁴ By focusing on speeding and red-light camera violations, traffic enforcement would be strictly a tool for safety.

A recent poll of New York City voters demonstrates Black support for the use of traffic cameras for traffic enforcement.²⁹⁵ A poll in New York City found a 59% majority of voters support “relying on speed safety cameras, rather than NYPD officers, for traffic enforcement.”²⁹⁶ Strong support exists among nonwhite voters with 65% support from Black voters and 74% support from Hispanic and Latino voters.²⁹⁷

²⁹⁰ See *id.* at 23.

²⁹¹ See *id.* (“Since th[e] difference [between tickets issued by automated camera and police] only arises when there is visibility of drivers, this implies that police are using some subjective criteria once observing the speeding driver to determine whether or not to issue a ticket.”).

²⁹² See Woods, *supra* note 163, at 1502–03; Conner, *supra* note 85, at 999.

²⁹³ See Diaz & Levinson-Waldman, *supra* note 212 (explaining how ALPRs actively look for major violations, including “stolen cars,” “cars associated with AMBER Alerts for abducted children[,]” and vehicles with “unpaid parking tickets or inclusion in a gang database”); Conner, *supra* note 85, at 981–82 (“Discretionary stops are typically police stops for relatively minor violations like driving too slow or failing to signal a vehicle’s turn, or for when drivers fit a certain profile or otherwise raise the suspicion of a police officer.”).

²⁹⁴ See Conner, *supra* note 85, at 982; Roach et al., *supra* note 86, at 3.

²⁹⁵ See *New Poll Reveals New York City Voters Support Automated Enforcement to Make Streets Safer*, TRANSP. ALTS. (Mar. 24, 2021), <https://www.transalt.org/press-releases/new-poll-reveals-new-york-city-voters-support-automated-enforcement-to-make-streets-safer> [<https://perma.cc/6AVH-TH9V>] (explaining how 65% of Black voters “favor[] automated enforcement”).

²⁹⁶ *Id.*

²⁹⁷ See Julianne Cuba, *Strong Majority Supports Adding Cameras Over Cops: TransAlt*, STREETS (Mar. 24, 2021), <https://nyc.streetsblog.org/2021/03/24/strong-majority-supports-adding-cameras-over-cops-transalt/> [<https://perma.cc/MPW9-7ETA>].

ii. Camera-Enforced Streets Would Substantially Reduce the Targeting of Those Already Caught in Traffic Fine Debt

A transition to Camera-Enforced Streets would be a substantial step in limiting the economic harm of traffic enforcement. Camera-Enforced Streets would eliminate the police's ability to target vehicles whose drivers are struggling with traffic ticket debt. The current system allows police to use tools like ALPRs or rolling checks to target those in debt, or who have license suspensions or arrest warrants due to their inability to pay ticket debt.²⁹⁸ Camera-Enforced Streets cannot discriminate between drivers with debt, suspensions, or warrants and those without. This would avoid burying those already unable to pay their debt under a deluge of new fines.

iii. Camera-Enforced Streets Would Make Roads Safer

Traffic cameras are also beneficial because they are more effective in producing safe roads.²⁹⁹ Deterrence relies on individuals deciding that the risks of acting outweigh the benefits of the action.³⁰⁰ “[E]mpirical research shows that perceived ‘certainty of apprehension [and legal consequences], not the severity of the ensuing legal consequence, is the more effective deterrent.’”³⁰¹ The constant, visible presence of traffic cameras or dummy cameras makes traffic cameras very effective tools of deterrence.³⁰² An example of traffic cameras succeeding in deterring violations can be seen in New York City's Red Light Camera Program.³⁰³ The city has seen a 78% decrease in recorded

²⁹⁸ See *Kansas v. Glover*, 140 S. Ct. 1183, 1188, 1190 (2020) (providing an example of when an officer used an ALPR); Diaz & Levinson-Waldman, *supra* note 212 (describing the concerns that arise as use ALPR).

²⁹⁹ See Conner, *supra* note 85, at 994, 996; Woods, *supra* note 163, at 1537.

³⁰⁰ See Conner, *supra* note 85, at 989–90.

³⁰¹ *Id.* at 990.

³⁰² See *id.* at 996–98.

³⁰³ See N.Y.C. DEP'T TRANSP., NEW YORK CITY RED LIGHT CAMERA PROGRAM: 2018 REPORT, at 2, 5, 8 (2018) (“[T]he average daily number of red light running violations issued at each camera location has declined by over 75 percent.”).

violations from the year the program began in 1994 to 2017.³⁰⁴ Throughout the city, right-angle crashes in intersections reduced by 71% and rear-end collisions have been reduced by 41%.³⁰⁵ Another important element of deterrence is how fair and just the public views a particular policy to be.³⁰⁶ Traffic cameras are ideal for this because a person knows that they are receiving a ticket based on how their vehicle was moving and that all violators would have received a ticket for the same actions.

C. Cautions of Camera-Enforced Streets Model

i. Privacy: What Data Is Captured and How is it Used?

One major concern that exists in any proposal that deals with large amounts of digital data are how the data will be used. One complaint from those opposed to traffic cameras is that the cameras will exacerbate what is already a Big-Brother surveillance state.³⁰⁷ However, traffic cameras are far less of a threat to privacy than currently used methods of traffic policing, such as APLRs. ALPR data is used to predict the vehicle's future locations, and to monitor the movements of certain groups.³⁰⁸ For example, following the police killings of George Floyd and Breonna Taylor, law enforcement used ALPRs to monitor protestors.³⁰⁹ Immigration and Customs Enforcement (ICE) has also been able

³⁰⁴ *See id.* at 5.

³⁰⁵ *See id.* at 8. Right angle crashes are common in intersections where the front of a vehicle often hits the side of another vehicle at a 90-degree angle. *See id.* at 7. "Right angle crashes are particularly dangerous because the sides of vehicles have relatively little space to absorb the force of impact and shield occupants, unlike the fronts and rears of vehicles, which have substantial crumple zones." *Id.*

³⁰⁶ *See* Conner, *supra* note 85, at 991 ("[A] powerful predictor of compliance with a policy is whether such measure is viewed as legitimate.")

³⁰⁷ *See* Victor D. Lopez & Eugene T. Maccarone, *Traffic Enforcement by Camera: Privacy and Due Process in the Age of Big Brother*, 5 L. J. SOC. JUST. 120, 126–27 (2015); Clarence Page, *Beware of Big Brother at Traffic Lights; it's Only a Start*, BALT. SUN (July 12, 2001), <https://www.baltimoresun.com/news/bs-xpm-2001-07-12-0107120124-story.html> [<https://perma.cc/ZZ3J-7S6D>].

³⁰⁸ *See* Diaz & Levinson-Waldman, *supra* note 212.

³⁰⁹ *See id.*

to gain access to ALPR data to track undocumented individuals.³¹⁰ In contrast, Camera-Enforced Streets would not involve the collection of data from persons not violating stop lights or speed limits and would be used to search for any information on the vehicle owner, apart from determining where to send the ticket.

Even though the data collected in the Camera-Enforced Streets model would be limited, it is still very important to ensure the data is tightly controlled. To protect the privacy of the data collected when the cameras are triggered, the data should not be permitted to be shareable or sellable.³¹¹ Ideally, the camera programs would be run by a government agency that is responsive to the public and at least somewhat less driven by profit motives. If permitted to contract with private camera companies, the contracts should clearly bar the sale of any collected data and should impose liability if the companies allow personal data to be stolen or otherwise made publicly available.³¹² These protections should be written into the authorizing statute. Further protections could include how the data can be used, how and where it must be stored, and policies over when and if data would be erased.

ii. Preventing Bias in Operation

For Camera-Enforced Streets to be a truly anti-racist model, additional measures will be required to prevent racial bias from re-entering traffic enforcement decisions. One of the primary ways traffic cameras replicate racist traffic enforcement is when the cameras are placed primarily in majority-Black neighborhoods.³¹³ While cameras in Washington D.C. are spread more evenly across districts, cameras in Black neighborhoods

³¹⁰ See Vasudha Tall, *Documents Reveal ICE Using Driver Location from Local Police for Deportations*, ACLU (Mar. 13, 2019, 11:00 AM), <https://www.aclu.org/blog/immigrants-rights/ice-and-border-patrol-abuses/documents-reveal-ice-using-driver-location-data> [<https://perma.cc/ZK5P-EYVY>].

³¹¹ See Travis Madsen & Phineas Baxandall, *Caution: Red Light Cameras Ahead: The Risks of Privatizing Traffic Law Enforcement and How to Protect the Public*, U.S. PIRG EDUC. FUND (OCT. 2011), at 1.

³¹² See *id.* at 32.

³¹³ See Charles D. Ellison, *Not All Speed Cameras Are Created Equal*, PHILA. CITIZEN (Jan. 17, 2020), <https://thephiladelphiacitizen.org/speed-cameras-roosevelt-boulevard/> [<https://perma.cc/2EYQ-LVK5>] (finding Philadelphia's camera placements in communities with Black and Latino residents experiencing poverty).

issue more tickets than those in white neighborhoods.³¹⁴ This difference may not reflect different driving behaviors, but instead, be the result of “unsafe street designs that do not discourage speeding.”³¹⁵

To ensure equitable camera placement, state authorization of Auto-Enforced Streets could require a review of the proposed camera placement. The statute should contain provisions requiring camera placement decisions to be based on evidence of where accidents occur.³¹⁶ The use of dummy cameras, nonfunctional cameras that appear to be normal functioning cameras, could also help in deterrence without resulting in disproportionate outcomes.³¹⁷ Finally, the statutes should require the government to analyze if the road section could be improved to reduce accidents or discourage speeding before adding new traffic cameras.³¹⁸

CONCLUSION

A radical transformation of traffic enforcement is necessary to create a system of anti-racist traffic enforcement. Systemic racism plays a role at every step of the process: in jurisdictions’ reliance on fines, racially motivated decisions to extract fines from Black populations, police department policies on fine collection, racially motivated decisions of individual officers deciding whom to pull over, and officers choosing what kind of enforcement action to

³¹⁴ See William Farrell, *Predominately Black Neighborhoods in D.C. Bear the Brunt of Automated Traffic Enforcement*, D.C. POLICY CTR. (June 28, 2018), <https://www.depolicycenter.org/publications/predominately-Black-neighborhoods-in-d-c-bear-the-brunt-of-automated-traffic-enforcement/> [<https://perma.cc/Z5V7-5TNH>] (discussing how even after removing outlying cameras, Black areas received 19 to 29% more fines than white neighborhoods).

³¹⁵ *Id.*

³¹⁶ However, there is a risk that this may still result in higher placements in minority-majority communities due to disparities in road safety engineering. For example, while 89% of high-income communities have sidewalks, only 49% of low-income communities do. Conner, *supra* note 85, at 979.

³¹⁷ See Danielle Fufaro, *The City is Moving Red Light Cameras to Nab More Drivers*, N.Y. POST (Oct. 7, 2015, 11:36 PM), <https://nypost.com/2015/10/07/the-city-is-moving-red-light-cameras-to-nab-more-drivers/> [<https://perma.cc/8BDH-QRXV>] (discussing how New York City is installing fake or dummy cameras to trick motorists and encourage them to obey traffic laws).

³¹⁸ See Madsen & Baxandall, *supra* note 311, at 1.

take. The system of current traffic enforcement criminalizes Driving While Black, placing Black drivers under increased scrutiny. It creates frequent, unnecessary interactions with police where Black drivers face a real physical threat. These interactions not only pose a real physical threat to Black drivers but create large economic burdens for Black drivers with tickets for minor violations. When tickets are unaffordable to a driver, massive economic fallout is possible. It may lead to the suspension of licenses, the loss of jobs, and even incarceration. All throughout this process, the debt only grows, and the fallout of job loss, license suspensions, and incarceration can repeat again and again.

An anti-racist model of traffic enforcement requires as much removal from the influence of human bias as possible. Humans, both police officers and civilians, both white and Black, are influenced by racial biases. The existing legal remedies have failed time and time again to bring about the change necessary to make the system just. Camera-Enforced Streets are the ideal solution because they eliminate discretionary stops and enforce safety laws without any reference to the race of the driver or vehicle owner. This model has the potential to transform traffic enforcement into a truly just system.