



ARTICLE

## Traffic Without the Police

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**Abstract.** We are at a watershed moment in which growing national protest and public outcry over police injustice and brutality, especially against people of color, are animating new meanings of public safety and new proposals for structural police reforms. Traffic stops are the most frequent interaction between police and civilians today, and they are a persistent source of racial and economic injustice. Black and Latinx motorists in particular are disproportionately stopped, questioned, frisked, searched, cited, and arrested during traffic stops. Traffic enforcement is thus a common gateway for funneling overpoliced and marginalized communities into the criminal-justice system.

Piecemeal constitutional and statutory interventions are insufficient to address these systemic problems, which necessitate structural police reform and require a fundamental rethinking of the role of police in the traffic space. Traffic enforcement and policing are so intertwined today, however, that it is difficult to envision a world without police involvement in traffic regulation. Illustrating this point is one of the common critiques lodged against the growing movement to defund the police: “Who would enforce traffic laws?”

This Article offers a normative vision of our driving system that challenges the conventional wisdom that traffic enforcement is impossible without the police. It articulates a new legal framework that decouples traffic enforcement from police functions. This framework offers a starting point for renewed thinking about the basic structure of traffic enforcement, the role of police in traffic enforcement, and the ways in which law and policy can be used as tools to achieve fairness and equality in traffic

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enforcement. The Article provides a comprehensive analysis of the important benefits that nonpolice alternatives to traffic enforcement would create for public safety, policing, and criminal-law and criminal-justice reform, especially for people of color and other marginalized communities who are vulnerable to overpolicing and overcriminalization in today's driving regime. The Article concludes by addressing potential objections to removing the police from traffic enforcement.

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## Introduction

Traffic stops are the most common interaction between police and civilians today,<sup>1</sup> and they are a persistent source of racial and economic injustice.<sup>2</sup> Several studies show that Black and Latinx motorists in particular are disproportionately stopped by police for traffic violations and disproportionately questioned, frisked, searched, cited, and arrested during traffic stops.<sup>3</sup> Many of these stops and intrusions are pretextual, enable police mistreatment and abuse,<sup>4</sup> and cause traffic stops to be humiliating and frightening experiences for people of color.<sup>5</sup> Traffic enforcement has

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1. FRANK R. BAUMGARTNER, DEREK A. EPP & KELSEY SHOUB, SUSPECT CITIZENS: WHAT 20 MILLION TRAFFIC STOPS TELL US ABOUT POLICING AND RACE 30 (2018) (“[T]raffic stops are the most common type of encounter that Americans have with the police . . .”).
  2. A long line of scholarship documents how traffic stops, and especially pretextual stops, enable racial profiling on roads and highways and disproportionately impact people of color and the poor. *See id.* at 25-26; CHARLES R. EPP, STEVEN MAYNARD-MOODY & DONALD HAIDER-MARKEL, PULLED OVER: HOW POLICE STOPS DEFINE RACE AND CITIZENSHIP 2 (2014); Devon W. Carbado, *From Stopping Black People to Killing Black People: The Fourth Amendment Pathways to Police Violence*, 105 CALIF. L. REV. 125, 130 (2017) [hereinafter Carbado, *From Stopping*]; Devon W. Carbado, *(E)racing the Fourth Amendment*, 100 MICH. L. REV. 946, 1030-31 (2002) [hereinafter, Carbado, *(E)racing*]; Devon W. Carbado & Cheryl I. Harris, *Undocumented Criminal Procedure*, 58 UCLA L. REV. 1543, 1578-88 (2011); Angela J. Davis, *Race, Cops, and Traffic Stops*, 51 U. MIA. L. REV. 425, 427-32 (1997); Samuel R. Gross & Katherine Y. Barnes, *Road Work: Racial Profiling and Drug Interdiction on the Highway*, 101 MICH. L. REV. 651, 687-95 (2002); David A. Harris, Essay, “Driving While Black” and All Other Traffic Offenses: The Supreme Court and Pretextual Traffic Stops, 87 J. CRIM. L. & CRIMINOLOGY 544, 546 (1997); Kevin R. Johnson, Essay, *How Racial Profiling in America Became the Law of the Land: United States v. Brignoni-Ponce and Whren v. United States and the Need for Truly Rebellious Lawyering*, 98 GEO. L.J. 1005, 1047 (2010); Tracey Maclin, *Race and the Fourth Amendment*, 51 VAND. L. REV. 333, 333-36 (1998); David A. Sklansky, *Traffic Stops, Minority Motorists, and the Future of the Fourth Amendment*, 1997 SUP. CT. REV. 271, 316-17; Anthony C. Thompson, *Stopping the Usual Suspects: Race and the Fourth Amendment*, 74 N.Y.U. L. REV. 956, 957-58 (1999).
  3. *See* Pierson et al., *A Large-Scale Analysis of Racial Disparities in Police Stops Across the United States*, 4 NATURE HUM. BEHAV. 736, 738 (2020) (noting that police disproportionately search Black and Latinx drivers); Robin Shepard Engel & Jennifer M. Calnon, *Examining the Influence of Drivers’ Characteristics During Traffic Stops with Police: Results from a National Survey*, 21 JUST. Q. 49, 69-73 (2004); Wendy C. Regoeczi & Stephanie Kent, *Race, Poverty, and the Traffic Ticket Cycle: Exploring the Situational Context of the Application of Police Discretion*, 37 POLICING: INT’L J. POLICE STRATEGIES & MGMT. 190, 197 (2014) (finding that Black motorists “were less likely to receive a warning than citizens in other racial categories”); Sunghoon Roh & Matthew Robinson, *A Geographic Approach to Racial Profiling: The Microanalysis and Macroanalysis of Racial Disparity in Traffic Stops*, 12 POLICE Q. 137, 161 (2009); Stephen Rushin & Griffin Edwards, *An Empirical Assessment of Pretextual Stops and Racial Profiling*, 73 STAN. L. REV. 637, 657 (2021).
  4. *See generally* Carbado, *From Stopping*, *supra* note 2 (describing how traffic stops enable police violence against Black motorists).
  5. *See* BAUMGARTNER ET AL., *supra* note 1, at 13 (describing targeted traffic enforcement as “humiliating, frustrating, and unfair”); Jeannine Bell, Essay, *The Violence of Nosy*  
*footnote continued on next page*

historically served and still functions as a gateway for funneling civilians, and especially Black and Latinx motorists, into the criminal-justice system.<sup>6</sup> Heavy reliance on traffic-ticket revenue to fund state and local budgets, and the use of traffic-stop rates as a measure of officer performance, only encourages these injustices.<sup>7</sup>

Piecemeal constitutional and statutory interventions that attempt to limit aspects of police authority during traffic stops are insufficient to address systemic racial and economic injustices in traffic policing.<sup>8</sup> Rather, these problems necessitate structural police reform and require a fundamental rethinking of the role of police in the traffic space. Traffic enforcement and policing are so intertwined, however, that it is difficult to imagine a world of traffic without the police.<sup>9</sup> Illustrating this point is one of the common critiques lodged against the growing movement to defund the police: “Who would enforce traffic laws?”<sup>10</sup>

We are at a watershed moment in which growing national protest and public outcry over police injustice and brutality, especially against people of color, are animating new meanings of public safety and new proposals for structural police reforms.<sup>11</sup> In this environment, there is increasing momentum for rethinking police involvement in the traffic space.<sup>12</sup> This momentum has already brought about concrete changes: At least one municipality has decided to remove police from traffic enforcement. In July 2020, the city of Berkeley,

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*Questions*, 100 B.U. L. REV. 935, 945 (2020) (“For black drivers, the experience of being stopped by the police is one of lasting humiliation.”); Sklansky, *supra* note 2, at 272 (“For many motorists, particularly those who are not white, traffic stops can be not just inconvenient, but frightening, humiliating, and dangerous.”).

6. Andrea Roth, “*Spit and Acquit*”: Prosecutors as Surveillance Entrepreneurs, 107 CALIF. L. REV. 405, 429 (2019) (“[T]raffic offenses . . . can be a primary entry point into the criminal justice system for minorities in particular.”).

7. See *infra* Part II.C.2.

8. Rachel A. Harmon, *Promoting Civil Rights Through Proactive Policing Reform*, 62 STAN. L. REV. 1, 3 (2009) (recognizing that “traditional legal tools do not spur widespread change in pathological police departments”).

9. See Harris, *supra* note 2, at 560 (“[P]olice use traffic regulations to investigate many innocent citizens . . .”); Wayne R. LaFave, *The “Routine Traffic Stop” from Start to Finish: Too Much “Routine,” Not Enough Fourth Amendment*, 102 MICH. L. REV. 1843, 1847 (2004) (recognizing that “police have co-opted our traffic codes as a weapon to be used in the ‘war on drugs’”).

10. See, e.g., David Hungate, Special Report, *Long: Demonizing Police Isn’t the Answer*, ROANOKE TIMES (June 11, 2020), <https://perma.cc/NC4D-CPMC>.

11. See Farah Stockman & John Eligon, *Cities Ask If It’s Time to Defund Police and “Reimagine” Public Safety*, N.Y. TIMES (updated June 8, 2020), <https://perma.cc/7GZP-LY76>.

12. See Aaron Gordon, *We Don’t Need Cops to Enforce Traffic Laws*, VICE: MOTHERBOARD (June 11, 2020, 5:00 AM), <https://perma.cc/XLG4-DCB2>; Derek Thompson, *Unbundle the Police*, ATLANTIC (June 11, 2020), <https://perma.cc/9RLF-YFCL>.

California, voted in favor of a proposal that, as part of a comprehensive plan to achieve structural police reform, would make it the first municipality in the country to remove police from traffic stops.<sup>13</sup> Under this proposal, the city would create a department of transportation staffed by unarmed civil servants who would be in charge of enforcing traffic laws.<sup>14</sup> Other municipalities are considering similar reforms that would remove police from traffic enforcement to varying degrees.<sup>15</sup>

This Article challenges the conventional wisdom that traffic enforcement is impossible without the police and, in so doing, illustrates why the public should welcome major changes in line with Berkeley's approach. Although scholars have identified a need to rethink the role of police in the traffic domain and have discussed specific ideas for reform,<sup>16</sup> this Article makes an important contribution to the literature by articulating a sharpened and comprehensive legal framework for removing the police from traffic enforcement.<sup>17</sup> The analysis provides a starting point for renewed thinking about the basic organization of traffic enforcement, the role of police in traffic enforcement, and the means by which law and policy can be used as tools to achieve fairness and equality in traffic enforcement. As this Article explains, removing police from traffic enforcement would help to achieve this fairness

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13. Kellen Browning & Jill Cowan, *How Berkeley Could Remove the Police from Traffic Stops*, N.Y. TIMES (July 9, 2020), <https://perma.cc/AXZ6-MM5Y>; Rachel Sandler, *Berkeley Will Become 1st U.S. City to Remove Police from Traffic Stops*, FORBES (July 15, 2020, 8:22 PM EDT), <https://perma.cc/85PU-EUKP>.

14. Browning & Cowan, *supra* note 13; Sandler, *supra* note 13.

15. See, e.g., John Moroney, *Cambridge Considers Civilian Traffic Enforcement Amid Calls for Police Reform*, NBC BOS. (updated July 29, 2020, 2:38 PM), <https://perma.cc/3XF4-7VQ2>; *Cambridge Proposal: Let Unarmed City Employees Make Traffic Stops Instead of Police*, CBS BOS. (July 29, 2020, 6:00 PM), <https://perma.cc/C4XP-UL9K>; Rebecca Tan, *Should Police Be in Charge of Traffic Enforcement? In a Suburb Beset by Racial Inequities, Lawmakers Aren't Sure*, WASH. POST (Aug. 10, 2020, 6:35 AM PDT), <https://perma.cc/GGR9-KUCY> (reporting that a Montgomery County council member "has commissioned a study to figure out whether—and how—Montgomery might be able to move certain traffic enforcement functions out of the police department and into other government agencies.").

16. See, e.g., Elizabeth E. Joh, Essay, *Discretionless Policing: Technology and the Fourth Amendment*, 95 CALIF. L. REV. 199, 216-25 (2007) (discussing automating traffic enforcement to curb police discretion); SARAH A. SEO, JUST. COLLABORATIVE INST., A PATH TO NON-POLICE ENFORCEMENT OF CIVIL TRAFFIC VIOLATIONS 1 (2020), <https://perma.cc/8Y4X-HEDE> (discussing the possibility of removing civil-traffic-law enforcement from the duties of the police); Jordan Blair Woods, *Decriminalization, Police Authority, and Routine Traffic Stops*, 62 UCLA L. REV. 672, 754-59 (2015) (discussing potential directions for reform that would restrict the frequency and scope of police traffic stops, including by shifting some traffic enforcement away from police); Ekow N. Yankah, *Pretext and Justification: Republicanism, Policing, and Race*, 40 CARDOZO L. REV. 1543, 1625-28 (2019) (discussing the separation of traffic-monitoring powers from traditional police powers).

17. See *infra* Part II.

and equality, especially for people of color and other marginalized communities vulnerable to overpolicing and overcriminalization in today's driving regime.<sup>18</sup>

The core ideas in this Article connect to growing public and scholarly debates about the proper role of police and the scope of the police function.<sup>19</sup> As sociologist Alex Vitale has explained, “[t]he origins and function of the police are intimately tied to the management of inequalities of race and class.”<sup>20</sup> Society currently relies on police to perform a wide range of duties that includes conducting criminal investigations, preventing and deterring crime, conducting accident investigations, handling traffic enforcement and control, providing social services, and responding to emergency and nonemergency civilian complaints.<sup>21</sup> More often than not, police spend their time responding to incidents that do not involve violent crime.<sup>22</sup> One recent report revealed that police officers in New Orleans, Sacramento, and Montgomery County, Maryland,

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18. See *infra* Part III.

19. See, e.g., ALEX S. VITALE, *THE END OF POLICING* 27 (2017) (“[W]hat we really need is to rethink the role of police in society.”); Barry Friedman, *Disaggregating the Police Function*, 169 U. PA. L. REV. 925, 930 (2021) (“If we truly want to achieve public safety, we need to look beyond minimizing the harms of policing and focus on what it is exactly the police do daily, asking whether the police are the institution best suited to the panoply of societal needs they confront regularly.”).

20. VITALE, *supra* note 19, at 27.

21. See LARRY K. GAINES & ROGER LEROY MILLER, *CRIMINAL JUSTICE IN ACTION: THE CORE* 101-03 (9th ed. 2018) (identifying “four basic responsibilities of the police” as enforcing laws, providing services, preventing crime, and preserving the peace); DAVID H. BAYLEY, *POLICE FOR THE FUTURE* 39 (1994) (“[T]he regulation of traffic and the prevention of motor-vehicle accidents are important police responsibilities.”).

22. See, e.g., Maria Korre, Andrea Farioli, Vasileia Varvarigou, Sho Sato & Stefanos N. Kales, *A Survey of Stress Levels and Time Spent Across Law Enforcement Duties: Police Chief and Officer Agreement*, 8 *POLICING: J. POL’Y & PRAC.* 109, 115 (2014) (presenting a study of 951 frontline police officers and 93 chiefs finding “routine duties to comprise the majority of annual professional time (78% according to officers and 73% according to chiefs)”; Sam Tabachnik, *How Do Cops Spend Their Time? As Denver Debates Police Funding, These Numbers Offer an Inside Look*, DENVER POST (updated Sept. 6, 2020, 9:17 PM), <https://perma.cc/KF3Q-FEVX> (reporting that of 367,550 calls for service that the Denver police responded to between January 1 and June 30, 2020, only 14% involved violent crime); *id.* (“Denver’s patrol officers spent more than 80% of their time dealing with other less serious complaints and a wide array of community tasks.”); Gordon P. Whitaker, *What Is Patrol Work*, *POLICE STUD.*, Winter 1982, at 13, 19 (summarizing a sample of 5,688 encounters between police and civilians in which 39% of the problems the police dealt with involved crime of any type; only 4% involved violent crime specifically; 23% involved disorder, such as interpersonal disputes or nuisance; 26% involved service, such as medical aid, dependent-persons assistance, or information provision; and 26% involved traffic).

spend only about 4% of their time on violent crimes, compared to roughly 50% on noncriminal complaints, noncriminal disturbances, and traffic accidents.<sup>23</sup>

Scholars and commentators argue that society places too much responsibility on the police and vests too much power in officers to perform social functions.<sup>24</sup> In the growing movement to defund the police, advocates emphasize that successful police reform would not only entail scaling down police budgets but also require reevaluating what exactly police do.<sup>25</sup> Given the centrality of traffic in policing,<sup>26</sup> removing police from traffic enforcement is a critical part of these conversations.

Part II articulates a framework through which jurisdictions would redelegate the bulk of traffic enforcement to newly created public agencies (which I call *traffic agencies*). Traffic agencies would operate wholly independently of the police and hire their own public employees (whom I call *traffic monitors*) to conduct and oversee traffic enforcement. Traffic monitors would enforce routine traffic laws through in-person traffic stops<sup>27</sup> and handle all aspects of traffic enforcement that jurisdictions decide to automate.<sup>28</sup> To the extent that exceptions must be made, police would be allowed to conduct traffic stops only for a narrow set of serious traffic violations that clearly involve criminality or an actual or imminent threat of harm to others (for instance, driving a stolen vehicle, hit-and-run offenses, or vehicle racing).<sup>29</sup> To achieve fairness and equality in traffic enforcement, the framework includes two additional law and policy reforms: (1) reevaluating the breadth and imprecision of traffic codes so that traffic law and enforcement focuses only on driving behaviors that pose an imminent public-safety threat, and (2) reducing financial and professional incentives that contribute to aggressive and biased traffic enforcement (namely, restructuring traffic fines and fees systems and prohibiting the use of traffic-ticket issuances as a measure of professional performance).<sup>30</sup>

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23. The report specifically focused on “calls for service,” which included “calls to emergency operators, 911, alarms, police radio and nonemergency calls.” See Jeff Asher & Ben Horwitz, *How Do the Police Actually Spend Their Time?*, N.Y. TIMES (June 19, 2020), <https://perma.cc/Y3FN-Z4ZS>.

24. See *infra* Part III.A.4.

25. See Rashawn Ray, *What Does “Defund the Police” Mean and Does It Have Merit?*, BROOKINGS (June 19, 2020), <https://perma.cc/7YVX-9HG3>.

26. See sources cited *supra* note 9.

27. See *infra* Part II.B.2.

28. See *infra* Part II.B.3. As I explain in this Subpart, automating traffic enforcement is by no means a required part of the framework.

29. See *infra* Part II.A.2.

30. See *infra* Part II.C.

As Part III explains, removing police from traffic enforcement has significant potential benefits for public safety, policing, and criminal-law and criminal-justice reform. This Part examines four specific benefits for policing: (1) improving fairness and equality in policing, (2) preventing escalation during police–civilian encounters, (3) improving public perceptions of the police, and (4) increasing police effectiveness though limiting the scope of the police function.<sup>31</sup> Part III also explains how removing the police from traffic enforcement would strengthen criminal-law and criminal-justice reforms designed to address problems associated with the criminalization of traffic offenses.<sup>32</sup> These potential benefits would do much to address persistent injustices in traffic enforcement and policing that disproportionately harm communities of color and other marginalized communities vulnerable to overpolicing and overcriminalization.<sup>33</sup>

Part IV addresses potential objections. It first takes on substantive criticisms that removing the police from traffic enforcement would undermine traffic safety, criminal investigations, and criminal deterrence.<sup>34</sup> It then addresses the financial practicalities of removing the police from traffic enforcement.<sup>35</sup> Although these concerns are not entirely without merit, they do not tip the balance in favor of keeping traffic enforcement in the hands of the police.

To summarize, this Article proceeds as follows. Part I provides an overview of the state of traffic policing in the United States, which underscores the need for structural police reforms in the area of traffic enforcement. Part II articulates a new legal framework that decouples traffic enforcement from the police. Part III evaluates the benefits of removing the police from traffic enforcement for public safety, policing, and criminal-law and criminal-justice reform. Part IV discusses potential objections.

## **I. The State of Traffic Policing in the United States**

To lay the groundwork for the arguments to follow, this Part summarizes key problems with traffic policing in the United States. In short, the expansive nature of traffic codes creates a system in which people are likely to violate at

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31. *See infra* Part III.A.

32. *See infra* Part III.B.

33. *See infra* Part III.

34. *See infra* Parts IV.A–B.

35. *See infra* Part IV.C.

least one traffic law when driving from place to place.<sup>36</sup> Reliance on the police to enforce traffic laws therefore places civilians, and especially people of color, at risk for being subjected to an awesome amount of law-enforcement activity.<sup>37</sup> Neither the Constitution nor current state law fixes this problem.<sup>38</sup>

To begin, the expansive nature of traffic codes provides countless opportunities for officers to pull drivers over, especially for pretextual reasons.<sup>39</sup> State traffic codes include a wide range of moving violations (for example, speeding, failing to signal, or failing to stop at a stop sign) and nonmoving violations (for example, defective equipment, improper parking, or driving without a valid license or registration).<sup>40</sup> Some traffic violations are also open-ended (for instance, erratic or reckless driving) and thus invite

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36. Harris, *supra* note 2, at 559 (noting the “true scope of traffic codes and the limitless opportunities they give police to make pretextual stops”); David A. Harris, *The Stories, the Statistics, and the Law: Why “Driving While Black” Matters*, 84 MINN. L. REV. 265, 311 (1999) [hereinafter Harris, *The Stories*] (“[N]o one can drive for even a few blocks without committing a minor violation . . .”); Joh, *supra* note 16, at 210 (“[T]he vehicle code provides an officer with a reason to stop virtually any one [sic] . . .”).
37. BAUMGARTNER ET AL., *supra* note 1, at 31 (noting “sustained and troubling disparities in how racial groups are treated in routine traffic stops”); Carbado, *From Stopping*, *supra* note 2, at 162 (“[T]raffic stops are gateways to more intrusive and potentially violent searches and seizures.”); David A. Harris, Essay, *Car Wars: The Fourth Amendment’s Death on the Highway*, 66 GEO. WASH. L. REV. 556, 567 (1998) (“Police understand that the traffic code can be a strong ally.”); Harris, *supra* note 2, at 546 (arguing that the Supreme Court’s decision in *Whren v. United States* enables police officers to “use the traffic code to stop a hugely disproportionate number of African-Americans and Hispanics”).
38. See Monica C. Bell, Essay, *Police Reform and the Dismantling of Legal Estrangement*, 126 YALE L.J. 2054, 2057 (2017) (“Even as criminal procedure jurisprudence sets the parameters of what police may do under the law, it simultaneously leaves large swaths of American society to see themselves as anomic, subject only to the brute force of the state while excluded from its protection.”).
39. Harris, *supra* note 2, at 559; Joh, *supra* note 16, at 209-10.
40. Joh, *supra* note 16, at 210 (“Traffic offenses encompass not only ‘moving violations’ (e.g. speeding), but also ‘equipment violations’ (broken taillights) that may be ‘almost wildly hypertechnical.’” (quoting Harris, *supra* note 2, at 558)). For examples of technical traffic violations from state traffic codes, see FLA. STAT. § 316.2953 (2020) (“A sunscreening material is authorized for such windows if, when applied to and tested on the glass of such windows on the specific motor vehicle, the material has a total solar reflectance of visible light of not more than 25 percent as measured on the nonfilm side and a light transmittance of at least 28 percent in the visible light range.”); N.D. CENT. CODE § 39-21-19(1) (2019) (“Any motor vehicle may be equipped and when required under this chapter must be equipped with a stop lamp or lamps on the rear of the vehicle which shall display a red light visible from a distance of not less than three hundred feet [91.44 meters] to the rear in normal sunlight . . .”); and TEX. TRANSP. CODE ANN. § 545.104(b) (West 2019) (“An operator intending to turn a vehicle right or left shall signal continuously for not less than the last 100 feet of movement of the vehicle before the turn.”).

subjective officer judgments.<sup>41</sup> The breadth and imprecision of traffic laws create a low bar for officers to justify pulling over any driver.<sup>42</sup> At the same time, officers have vast discretion to decide both when to initiate a traffic stop and what actions to take during the stop.<sup>43</sup> This broad discretion fuels both the underenforcement of traffic laws that advantages some drivers and the selective overenforcement of traffic laws that disadvantages others.<sup>44</sup> Race and class often shape who falls into which category.<sup>45</sup>

Constitutional protections are inadequate to address these problems—and, if anything, enable them. Fourth Amendment protections have become so diluted in traffic settings that some scholars question whether the Fourth Amendment provides any meaningful protection to drivers and passengers at all.<sup>46</sup> This critique connects to a robust body of literature that examines how Fourth Amendment doctrine legitimizes racial profiling on roads and highways and creates opportunities for officers to question, seize, search, arrest, and apply force against people of color.<sup>47</sup>

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41. See Harris, *Car Wars*, *supra* note 37, at 560 (“Some of these offenses are not even clearly defined . . .”). The use of indefinite language in traffic codes is a decades-long practice. See Ben Connally, Note, *Constitutional Law—Declaring a Statute Unconstitutional Because of Indefinite Terminology*, 11 TEX. L. REV. 212, 216 (1933) (“At the present time there is a noticeable tendency to use indefinite language in legislation dealing with the operation of automobiles.”). For examples of open-ended traffic violations from state traffic codes, see OR. REV. STAT. § 811.135(1) (2020) (defining “careless driving” as when “the person drives any vehicle upon a highway or other premises described in this section in a manner that endangers or would be likely to endanger any person or property”); and TEX. TRANSP. CODE ANN. § 545.401(a) (West 2020) (defining “reckless driving” as when a “person drives a vehicle in wilful [sic] or wanton disregard for the safety of persons or property”).
42. See LaFave, *supra* note 9, at 1847 (noting that courts uphold traffic stops “by broad interpretation of the definitions of the traffic offenses involved”).
43. See Maclin, *supra* note 2, at 376 (noting “the substantial discretion officers possess in deciding which vehicles to stop for the myriad of traffic offenses they observe daily”).
44. For a comprehensive discussion of underenforcement, see generally Alexandra Natapoff, *Underenforcement*, 75 FORDHAM L. REV. 1715 (2006). For a comprehensive discussion of issues involving the selective enforcement of traffic laws against Black and Latinx drivers, see generally Harris, *supra* note 2.
45. See generally Carbado, *(E)racing*, *supra* note 2, at 1030 (“Because we all commit traffic infractions all the time, and because the police have almost unbridled discretion with respect to deciding whom to stop, traffic stops provide police officers with the perfect opportunity to engage in pretextual, race-based policing.”); Maclin, *supra* note 2, at 344 (discussing connections between police discretion and racial disparities in traffic stops).
46. Harris, *Car Wars*, *supra* note 37, at 556 (“Indeed, it is no exaggeration to say that in cases involving cars, the Fourth Amendment is all but dead.”). For a comprehensive analysis of the dilution of Fourth Amendment protections on roads and highways, see LaFave, *supra* note 9.
47. See sources cited *supra* note 3.

A brief examination of Fourth Amendment precedent illustrates these points.<sup>48</sup> After the Supreme Court's heavily criticized decision in *Whren v. United States*, the Fourth Amendment does not require that traffic enforcement be the primary motivation for a traffic stop.<sup>49</sup> In certain situations, Fourth Amendment law also leaves room for officers to justify traffic stops based on mistaken interpretations of traffic laws.<sup>50</sup>

During a traffic stop, officers can undertake additional action under their authority connected with the stop without violating the Fourth Amendment. Possibilities include ordering drivers and passengers to exit their vehicles,<sup>51</sup>

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48. Of course, many states have state constitutional equivalents to the Fourth Amendment and state courts can interpret those counterparts as providing more protection than the Fourth Amendment in traffic-stop settings. *See, e.g.*, *State v. Brown*, 39 N.E.3d 496, 502 (Ohio 2015) (holding that, in the context of a traffic stop, "Article I, Section 14 of the Ohio Constitution affords greater protection than the Fourth Amendment against searches and seizures conducted by members of law enforcement who lack authority to make an arrest"). Several state courts, however, have interpreted their state constitutional equivalents in accordance with Fourth Amendment law or rely on the Supreme Court's Fourth Amendment jurisprudence when interpreting those counterparts. *See* Jim Rossi, *Dynamic Incorporation of Federal Law*, 77 OHIO ST. L.J. 457, 459 n.2 (2016); *see, e.g.*, *Cobb v. Commonwealth*, 509 S.W.3d 705, 712 (Ky. 2017) (holding that, with regard to warrantless searches, Section 10 of the Kentucky Constitution does not provide "greater protection than the Fourth Amendment"); *State v. Daniel*, 242 P.3d 1186, 1191 (Kan. 2010) ("In the past, this court has recognized that while it could extend state constitutional protections under § 15 of the Kansas Constitution Bill of Rights beyond the federal guarantees provided by the Fourth Amendment, it has declined to do so."); *Perez v. State*, 620 So. 2d 1256, 1258 (Fla. 1993) ("[T]his Court is bound to follow the United States Supreme Court's interpretations of the Fourth Amendment and to provide no greater protection than those interpretations.").

49. 517 U.S. 806, 811-13, 819 (1996) (holding that traffic stops based on a showing of probable cause of a traffic violation do not violate the Fourth Amendment, regardless of the officer's subjective intent in conducting the stop).

50. *See Heien v. North Carolina*, 574 U.S. 54, 57 (2014) (holding that traffic stops are lawful under the Fourth Amendment when based on an officer's reasonable mistake of law). Scholars have warned that the Court has yet to provide much guidance as to when an officer's mistake of law is reasonable, allowing lower courts to extend the reasonable-mistake-of-law doctrine to justify other police conduct during traffic stops that would typically require probable cause, including arrests and searches. *See* Kit Kinports, *Heien's Mistake of Law*, 68 ALA. L. REV. 121, 157 (2016) (noting that the Court in *Heien* "offered little guidance as to what constitutes a reasonable mistake of law"); *id.* at 155 ("Lower courts have therefore concluded that police who made reasonable mistakes of law nevertheless had probable cause not only to conduct a traffic stop but also to arrest and to search." (footnotes omitted)); Wayne A. Logan, *Cutting Cops Too Much Slack*, 104 GEO. L.J. ONLINE 87, 92 (2015) ("*Heien's* reasoning will likely be applied beyond the context of investigative stops."); *see, e.g.*, *Rodrigues v. County of Hawaii*, No. 18-cv-00027, 2018 WL 6070336, at \*8 (D. Haw. Nov. 20, 2018) ("The Ninth Circuit has recognized, in several unpublished cases, the applicability of *Heien* in the arena of probable cause for arrest.").

51. *See Pennsylvania v. Mimms*, 434 U.S. 106, 111 (1977) (per curiam) (holding that officers may routinely order drivers out of vehicles during lawful vehicle stops); *Maryland v.*

*footnote continued on next page*

frisking drivers and passengers,<sup>52</sup> conducting protective searches of certain areas of the vehicle interior,<sup>53</sup> conducting dog sniffs,<sup>54</sup> and making custodial arrests for even minor traffic violations.<sup>55</sup> Even after an initial traffic stop reaches the limits of its legal scope and duration, officers can take certain additional actions without violating the Fourth Amendment. For instance, officers can ask drivers for consent to search their person or vehicle.<sup>56</sup>

State law does not offer much help in addressing these problems. Most states do not have laws that ban pretextual traffic stops or consent searches during traffic stops.<sup>57</sup> Rather, if state laws address racial profiling in traffic

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Wilson, 519 U.S. 408, 414-15 (1997) (extending *Mimms* to hold that officers are permitted to routinely order *passengers* out of vehicles during lawful vehicle stops).

52. See *Arizona v. Johnson*, 555 U.S. 323, 327 (2009) (holding that the Fourth Amendment does not forbid officers from routinely frisking drivers or passengers who are ordered out of vehicles during lawful traffic stops and who the officers reasonably suspect are armed and dangerous).
53. See *Michigan v. Long*, 463 U.S. 1032, 1049, 1051 (1983) (holding that upon “specific and articulable facts” showing that a stopped motorist is dangerous and may gain control of weapons, an officer may conduct a protective search of the areas of the vehicle in the detained suspect’s reach (quoting *Terry v. Ohio*, 392 U.S. 1, 21 (1968))).
54. See *Florida v. Harris*, 568 U.S. 237, 246-47 (2013) (holding that a positive alert from a properly certified or trained drug-sniffing dog is sufficient to establish probable cause to conduct a search); *Illinois v. Caballes*, 543 U.S. 405, 408-10 (2005) (holding that the Fourth Amendment does not forbid using a drug-sniffing dog to sniff around the exterior of a stopped vehicle during a traffic stop, so long the dog’s use does not improperly prolong the length of the stop).
55. See *Atwater v. City of Lago Vista*, 532 U.S. 318, 354 (2001) (holding that a custodial arrest is lawful under the Fourth Amendment “[i]f an officer has probable cause to believe that an individual has committed a criminal offense in [the officer’s] presence,” no matter how minor).
56. Under current Fourth Amendment law, a person’s consent to a search can be deemed voluntary even if the person being searched did not know or was not informed of their right to refuse consent. See *Schneckloth v. Bustamonte*, 412 U.S. 218, 248-49 (1973). In *Bustamonte*, the Court stressed that valid consent under the Fourth Amendment requires that consent be given voluntarily and not as a result of duress or coercion. *Id.* at 248. It further stressed that although a person’s lack of knowledge of the right to refuse consent can be considered as one factor in determining voluntariness, lack of knowledge itself is not determinative. *Id.* at 249.
57. See NAT’L ASS’N FOR THE ADVANCEMENT OF COLORED PEOPLE, BORN SUSPECT: STOP-AND-FRISK ABUSES & THE CONTINUED FIGHT TO END RACIAL PROFILING IN AMERICA 19 (2014), <https://perma.cc/7VVY-V97Z> (noting that seventeen states have laws that ban pretextual traffic stops). Rhode Island provides a meaningful counterexample. In 2004, Rhode Island enacted sweeping legislative reforms in response to findings from a legislatively mandated, multiyear traffic study reporting that Black and Hispanic motorists in Rhode Island were stopped, searched, and arrested at disproportionate rates compared to white motorists. See R.I. AFFILIATE, ACLU, THE PERSISTENCE OF RACIAL PROFILING IN RHODE ISLAND: A CALL FOR ACTION 5 (2007), <https://perma.cc/92JJ-K3YP>. See generally AMY FARRELL, JACK McDEVITT, SHEA CRONIN & ERICA PIERCE, NE. UNIV. INST. ON RACE & JUST., RHODE ISLAND TRAFFIC STOP STATISTICS ACT: FINAL REPORT (2003),  
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settings, they largely center on data collection and dissemination.<sup>58</sup>

If anything, state laws exacerbate these injustices by creating additional justifications for police to invoke their authority in traffic-stop settings. For instance, failure to obey or comply with a police officer is illegal across states and is typically criminalized as a misdemeanor.<sup>59</sup> “Lawful order” statutes provide justification for law-enforcement officers to invoke police powers, including the power to arrest, whenever they view the actions of motorists as merely disobedient.<sup>60</sup>

The facts surrounding the traffic stop and subsequent arrest of Sandra Bland vividly illustrate the various harms that lawful-order statutes encourage in traffic-stop settings.<sup>61</sup>

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<https://perma.cc/85SL-VA3D> (presenting findings from the Rhode Island traffic-stop study that supported the 2004 legislative reforms). Among other things, the new legislative reforms banned practices of racial profiling and specifically prohibited officers from asking for consent to search a vehicle or conducting dog sniffs without independent reasonable suspicion of nontraffic crime. 31 R.I. GEN. LAWS § 31-21.2-3 (2020) (racial profiling); *id.* § 31-21.2-5(b) (consent searches); *id.* § 31-21.2-5(a) (dog sniffs).

58. *It's Time to Start Collecting Stop Data: A Case for Comprehensive Statewide Legislation*, N.Y.U. SCH. L.: POLICING PROJECT (Sept. 30, 2019), <https://perma.cc/AXP8-LMMV> (“Currently there are 19 states that (for the most part) mandate collection of data on every law enforcement initiated traffic stop . . . .”); NAT’L CONF. OF STATE LEGISLATURES, *Law Enforcement Overview* (June 19, 2016), <https://perma.cc/EQ5C-QT2R> (“At least 21 states collect demographic information for person[s] whose vehicles are stopped by police.”).
59. See James Mooney, Comment, *The Power of Police Officers to Give “Lawful Orders,”* 129 YALE L.J. 1568, 1574 (2020) (“At least forty-four states and the District of Columbia make it a crime to disobey the police.”). For a comprehensive analysis of variations in current “lawful order” statutes, see *id.* at 1574-81. In addition to general lawful-order statutes, many states also have specific statutes outlawing the failure to obey or comply with officers who have traffic-related powers. See *id.* at 1578 (“[T]wenty-seven states and the District of Columbia provide that people must obey commands from officers with traffic-control powers.”); *id.* at 1578 & n.46 (documenting state statutes that require civilians to obey officers with traffic-control powers).
60. Jason Mazzone & Stephen Rushin, *From Selma to Ferguson: The Voting Rights Act as a Blueprint for Police Reform*, 105 CALIF. L. REV. 263, 306 (2017) (“High numbers of arrests in failure-to-comply and related offenses suggest that the police are arresting people who are not doing anything illegal.”); Margaret Raymond, *The Right to Refuse and the Obligation to Comply: Challenging the Gamesmanship Model of Criminal Procedure*, 54 BUFF. L. REV. 1483, 1520-21 (2007) (“Often police view the failure to comply with their direction—whether authorized or not—as sufficient to justify arrest.”).
61. The facts to follow surrounding the traffic stop and subsequent arrest of Sandra Bland were captured on a released dashcam video. See *Dashcam Footage of Sandra Bland’s Arrest During a Traffic Stop Before Her Death in Police Custody—Video*, GUARDIAN (July 21, 2015, 9:40 PM EDT), <https://perma.cc/FHE3-EJV3> (to view the video, click “View the live page”); see also Raoul Ranoa, Priya Krishnakumar, Lorena Elebee & Christina Littlefield, *Sandra Bland’s Arrest Video: What It Shows*, L.A. TIMES (July 22, 2015), <https://perma.cc/5HK5-FCQU>. For a critical analysis of issues surrounding “lawful orders” in the Sandra Bland traffic stop, see Belén V. Lowrey-Kinberg & Grace Sullivan  
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Bland—a [28-year-old] black woman—was pulled over in the middle of the day by a . . . male Texas state trooper for failing to signal during a lane change. The trooper asked Bland for her driver’s license and registration and walked to his patrol car with the documents. Several minutes later, the trooper—intending to give Bland a warning—approached the driver’s window. Sensing that Bland was irritated, the trooper asked if she was okay. Bland responded that she was unhappy about being pulled over. After Bland explained why she was upset, the trooper asked, “are you done[?],” and then requested she put out her cigarette. Bland responded, “I’m in my car, why do I have to put out my cigarette?”

. . . The trooper, irritated that Bland would not [comply], ordered her out of the car. Bland refused, expressing that she did not have to step out. The trooper opened the driver’s door and tried to pull Bland from the car. Bland refused to get out of the car and [expressed that she] did not want to talk to the [trooper] other than to identify herself for the purposes of the traffic ticket. The [trooper] then grabbed Bland, after which she screamed “Don’t touch me, I’m not under arrest.” The trooper then yelled that she was under arrest. Bland asked, “For what?” The trooper continued to order her out of the car, yelling “I will light you up!” while pointing a Taser. Bland yelled, “You’re doing all of this for a failure to signal?” After [Bland exited] the car, the trooper put her hands behind her back, handcuffed her, slammed her head on the ground, and told her that she was being arrested for failure to comply. The trooper told Bland that he was initially going to give her a warning but was now throwing her in jail. Three days later, Bland was found hanging from a plastic bag in her jail cell in an apparent suicide.<sup>62</sup>

It should be no surprise that a robust body of empirical research documents how people of color are not only disproportionately stopped, but also disproportionately questioned, searched, arrested, and subjected to force during traffic stops.<sup>63</sup> A recent study conducted by researchers affiliated with the Stanford Open Policing Project illustrates the current extent of these problems. The researchers investigated approximately 95 million traffic stops conducted between 2011 and 2018 by twenty-one state-patrol agencies and thirty-five municipal police departments.<sup>64</sup> Their findings revealed widespread racial disparities in stop and search rates between white and nonwhite drivers. Specifically, the data showed that “Black drivers were, on average, stopped more often than white drivers” for both state-patrol stops<sup>65</sup>

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Buker, “I’m Giving You a Lawful Order”: *Dialogic Legitimacy in Sandra Bland’s Traffic Stop*, 51 LAW & SOC’Y REV. 379, 400-02 (2017).

62. Jordan Blair Woods, *Policing, Danger Narratives, and Routine Traffic Stops*, 117 MICH. L. REV. 635, 700-01 (2019) (footnotes omitted).

63. See sources cited *supra* note 3.

64. Pierson et al., *supra* note 3, at 737.

65. *Id.* (“[T]he annual per-capita stop rate for black drivers was 0.10 compared to 0.07 for white drivers . . .”).

and municipal-police stops.<sup>66</sup> On average, Black and Hispanic<sup>67</sup> drivers were also searched about twice as often as white drivers.<sup>68</sup> In the evaluated state-patrol agencies, the search rates were 4.3% for Black drivers, 4.1% for Hispanic drivers, and 1.9% for white drivers.<sup>69</sup> In the evaluated municipal police departments, the search rates were 9.5% for Black drivers, 7.2% for Hispanic drivers, and 3.9% for white drivers.<sup>70</sup>

The researchers recognized that these disparities do not necessarily reflect racial bias in policing.<sup>71</sup> Accordingly, the study used two additional statistical tests to test for racial bias. The first test—the outcome test—focuses on the proportion of searches in which officers find contraband (the “hit rate”).<sup>72</sup> That test revealed that searches of Hispanic and Black drivers were less successful in finding contraband than searches of white drivers for both state-patrol and municipal-police stops.<sup>73</sup> During state-patrol stops, officers found contraband in 32.0% of searches of white drivers compared to 24.3% of searches of Hispanic drivers and 29.4% of searches of Black drivers.<sup>74</sup> During municipal-police stops, officers found contraband in 18.2% of searches of white drivers compared to 11.0% of searches of Hispanic drivers and 13.9% of searches of Black drivers.<sup>75</sup> The second test—the threshold test—estimates the thresholds at which officers search drivers of specific races.<sup>76</sup> That test revealed that “the bar for searching black and Hispanic drivers is generally lower than that for searching white drivers” for both state-patrol and municipal-police stops.<sup>77</sup> Specifically, “across cities, the inferred threshold for white drivers is 10.0% compared to 5.0 and 4.6% for black and Hispanic drivers, respectively”; “across states, the threshold

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66. *Id.* (“[T]he annual per-capita stop rate for black drivers was 0.20 compared to 0.14 for white drivers.”). The study found that Hispanic drivers were stopped at lower rates than white drivers by both state patrols (0.05 and 0.07, respectively) and municipal police (0.09 and 0.14, respectively). *Id.*

67. The term “Hispanic” is used in the study.

68. Pierson et al., *supra* note 3, at 739. To examine racial disparities in searches, the researchers considered search rates for Black, Hispanic, and white drivers in eight state-patrol agencies and six municipal police departments. *Id.* at 738.

69. *Id.* at 738.

70. *Id.*

71. *Id.* (noting that, “as with differences in stop rates, the disparities we see in search rates are not necessarily the product of discrimination”).

72. *Id.* at 739.

73. *Id.*

74. *Id.*

75. *Id.*

76. *Id.*

77. *Id.*

is 20.9% for white drivers compared to 16.0% for black drivers and 13.9% for Hispanic drivers.”<sup>78</sup>

Thus, achieving fairness and equality in traffic enforcement requires deeper reforms that reorient the role of police in the traffic space. In line with this goal, the next Part advances a new normative vision of our driving system and illuminates how traffic enforcement is possible without the police.

## II. A New Framework for Traffic Enforcement

The history of police involvement in traffic enforcement is a useful starting point for reimagining the role of police in the traffic domain. Sarah Seo’s work illustrates how police became increasingly involved in traffic-law enforcement a century ago, with the rise of the mass production of the automobile.<sup>79</sup> The proliferation of traffic laws as a response to growing public-safety concerns invited greater reliance on police to maintain order and public safety on roads and highways.<sup>80</sup>

This historical account demonstrates that police do not have an inherent role in traffic enforcement. Rather, police assumed this role when significant changes in our driving system caused motor vehicles to pose a more widespread public-safety threat.<sup>81</sup> This justification for relying on police to enforce traffic laws, however, loses force if traffic enforcement is possible through nonpolice alternatives.<sup>82</sup>

Consistent with that possibility, this Part advances a different normative vision of our driving system, one in which police-initiated traffic enforcement is replaced by nonpolice alternatives. To summarize the framework, jurisdictions would redelegate the bulk of traffic enforcement to newly created traffic agencies.<sup>83</sup> Traffic agencies would operate wholly independently of the police and would hire their own traffic monitors to conduct and oversee traffic enforcement. Traffic monitors would enforce traffic laws through in-person traffic stops<sup>84</sup> and handle aspects of traffic enforcement that jurisdictions decided to automate from start to finish.<sup>85</sup> To the extent that exceptions must

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78. *Id.*

79. See generally SARAH A. SEO, *POLICING THE OPEN ROAD: HOW CARS TRANSFORMED AMERICAN FREEDOM* (2019) (providing a comprehensive legal and historical analysis of how the mass production and growth of the automobile had transformative effects on policing, criminal procedure, and American freedom).

80. *Id.* at 26-27, 58.

81. See *id.* at 30-31.

82. For a more thorough discussion of traffic safety issues, see Part IV.A below.

83. See *infra* Part II.B.1.

84. See *infra* Part II.B.2.

85. See *infra* Part II.B.3.

be made, police would be allowed to conduct traffic stops only for a narrow set of serious traffic violations that clearly involve criminality or an actual or imminent threat of harm to others (for instance, driving a stolen vehicle, hit-and-run, or vehicle racing). To achieve fairness and equality in traffic enforcement, the framework includes two additional law and policy reforms: (1) reevaluating the breadth and imprecision of traffic codes so that traffic law and enforcement focuses only on driving behaviors that pose an imminent public-safety threat, and (2) reducing financial and professional incentives that contribute to aggressive and biased traffic enforcement (namely, restructuring traffic fines and fees systems and prohibiting traffic-ticket issuances as a measure of professional performance).<sup>86</sup>

This framework provides a model for top-down lawmaking at the state and local levels to remove the police from traffic enforcement.<sup>87</sup> In this regard, the framework presumes that the decision to stop or significantly curb police-involvement in traffic enforcement should not be left to the discretion of law-enforcement agencies and individual officers.

To illustrate this point, consider recent events in the Oakland, California. In 2016, researchers affiliated with the Stanford Open Policing Project released a report finding that Oakland Police Department officers stopped, searched, handcuffed, and arrested Black motorists at significantly higher rates than

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86. See *infra* Part II.C.

87. See Keith A. Findley, *Implementing the Lessons from Wrongful Convictions: An Empirical Analysis of Eyewitness Identification Reform Strategies*, 81 MO. L. REV. 377, 384 (2016) (“Top-down approaches typically involve legislation or judicial decisions demanding compliance with best practices and defining for police the content of those best practices.”); Jeffrey J. Rachlinski, *Bottom-Up Versus Top-Down Lawmaking*, 73 U. CHI. L. REV. 933, 934 (2006) (explaining that “[l]egislation builds law from the top down by creating general principles that cover future disputes”). This top-down approach mirrors current federal attempts to achieve police reform in local police departments. See, e.g., Kami Chavis Simmons, *New Governance and the “New Paradigm” of Police Accountability: A Democratic Approach to Police Reform*, 59 CATH. U. L. REV. 373, 416 (2010) (“The current federal police-reform process is reminiscent of top-down command-and-control regulation as opposed to a bottom-up approach that considers the viewpoints of a wide range of potential stakeholders.”). As scholars have noted, at times top-down approaches may be necessary or useful to achieve police reform. See, e.g., Harmon, *supra* note 8, at 4 (proposing a new approach to 42 U.S.C. § 14141 enforcement that “induce[s] departmental reform as well as compel[s] it” (emphasis omitted)); Stephen Rushin, *Using Data to Reduce Police Violence*, 57 B.C. L. REV. 117, 154 (2016) (“Top-down reform, initiated by the federal government, may be necessary to bring about reform in some police departments.”). It is important to note, however, that some scholars have described shortcomings of top-down approaches to police reform. See, e.g., Mark Bevir & Ben Krupicka, *Police Reform, Governance, and Democracy*, in POLICE OCCUPATIONAL CULTURE: NEW DEBATES AND DIRECTIONS 153, 173 (Megan O’Neill, Monique Marks & Anne-Marie Singh eds., 2007) (“The top-down view of the police process held by many reformers means that local police departments and rank and file officers are often only cursorily consulted about reform programs.”).

white motorists.<sup>88</sup> The Oakland Police Department responded by encouraging officers to significantly reduce traffic stops for minor traffic violations (for instance, rolling through a stop sign or driving with a broken windshield or taillight) that posed no safety threat at the time of occurrence.<sup>89</sup> After the change, traffic stops of Black drivers decreased from 61% in 2017 (19,185 of 31,528 stops), to 55% in 2018 (10,874 of 19,900 stops),<sup>90</sup> and to 51% in 2019 (7,516 of 14,644 stops).<sup>91</sup> Nonetheless, major disparities in traffic-stop and arrest rates between Black and white drivers in Oakland persisted.<sup>92</sup> In spite of the department's effort to curb racial disparities in traffic enforcement, over four times as many Black drivers as white drivers were stopped in 2018 (10,874 versus 2,277) and in 2019 (7,516 versus 1,701).<sup>93</sup>

The remainder of this Part outlines what these top-down reforms to traffic enforcement would look like more concretely. Subpart A discusses structural reforms that would remove the police from traffic enforcement. Subpart B explores structural reforms that would create nonpolice alternatives for traffic enforcement. Subpart C then explores additional law and policy reforms to help achieve fairness and equality in traffic enforcement.

#### A. Removing Police from Traffic Enforcement

This Subpart illustrates what removing the police from traffic enforcement would look like. It first discusses which police-initiated traffic stops would be prohibited, including routine traffic stops based on minor traffic violations and pretextual traffic stops. It then discusses which police-initiated vehicle stops would be permitted, including stops based on outstanding felony warrants, felony vehicle stops, and stops based on a narrow set of serious traffic offenses.

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88. Social Psychological Answers to Real-World Questions, Stanford Univ., Executive Summary: The Stanford Reports on Improving Police-Community Relations in Oakland, California 2 (2016), <https://perma.cc/N5BT-JKQ3>.

89. Rachel Swan, *To Curb Racial Bias, Oakland Police Are Pulling Fewer People Over. Will It Work?*, S.F. CHRON. (Nov. 16, 2019, 5:12 PM), <https://perma.cc/PM6D-3UMX>.

90. *Id.* For more detailed data from 2016 to 2018, see OFF. OF CHIEF OF POLICE, OAKLAND POLICE DEP'T, 2016-2018 RACIAL IMPACT REPORT 4 (2019), <https://perma.cc/M573-6CQQ> [hereinafter RACIAL IMPACT REPORT].

91. For more detailed data from 2019, see OFF. OF CHIEF OF POLICE, OAKLAND POLICE DEP'T, 2019 ANNUAL STOP DATA REPORT 4-5 (2020), <https://perma.cc/ANJ4-SMKE> [hereinafter 2019 ANNUAL STOP DATA REPORT].

92. See *Racial Disparity in Oakland Traffic Stops Remains Despite Police Department Changes*, CBS SF BAYAREA (Nov. 18, 2019, 6:52 PM), <https://perma.cc/GV3G-C3BD>.

93. See RACIAL IMPACT REPORT, *supra* note 91, at 4; 2019 ANNUAL STOP DATA REPORT, *supra* note 91, at 4.

1. Prohibited stops

a. Routine traffic stops based on minor traffic violations

Police officers would no longer be able to conduct routine traffic stops based on minor traffic violations (for instance, speeding, failing to maintain a lane, running a red light, or failing to obey a traffic device).<sup>94</sup> Those traffic violations would instead be enforced exclusively through nonpolice agencies and actors, as detailed in Part III.<sup>95</sup> This change would produce a monumental shift in traffic regulation, as millions of traffic stops conducted each year are based on minor traffic violations.<sup>96</sup>

b. Pretextual traffic stops

Removing the police from minor traffic-violation enforcement would also mean that law-enforcement officers could no longer conduct pretextual vehicle stops based on minor traffic violations. Pretextual traffic stops are an institutionalized practice across U.S. police departments and enable officers to initiate contact with motorists to peruse for evidence of nontraffic crime without reasonable suspicion or probable cause.<sup>97</sup>

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94. See Harris, *The Stories*, *supra* note 36, at 311 (listing examples of “minor” traffic violations as “speeding, failing to signal or make a complete stop, touching a lane or center line, or driving with a defective piece of vehicle equipment”).

95. See *infra* Part II.B.2.a.

96. See, e.g., BAUMGARTNER ET AL., *supra* note 1, at 31 (“In North Carolina alone, millions have been pulled over for minor violations . . .”). Justice Stevens recognized this point in his dissent in *Maryland v. Wilson*, 519 U.S. 408, 417-18 (1997) (Stevens, J., dissenting) (“Most traffic stops involve otherwise law-abiding citizens who have committed minor traffic offenses.”). See also Jenna Daly, *Traffic Stop Statistics in Connecticut*, CTDATA COLLABORATIVE (Nov. 9, 2017), <https://perma.cc/Q788-SSPN> (reporting data from 2013 to 2016 showing that over 580,000 traffic stops are conducted in Connecticut each year and that nine in every ten of those stops involve a motor-vehicle violation (for example, speeding, cell-phone violations, registration violations, stop-sign violations, seat-belt violations, and signal violations)); POLICING PROJECT, NYU SCH. OF L., AN ASSESSMENT OF TRAFFIC STOPS AND POLICING STRATEGIES IN NASHVILLE 7 (2018), <https://perma.cc/3C8D-AWBK> (“In 2017, [Metro Nashville Police Department] conducted approximately 250,000 traffic stops . . . [N]early half (45%) were for non-moving violations, which mostly consist of equipment or registration violations (e.g. broken tail lights, broken headlights, expired tags).”).

97. Carbado, *From Stopping*, *supra* note 2, at 156 (“*Whren* is problematic not only because it creates an incentive for police officers to engage in pretextual stops, but also because it legalizes those stops, which helps make them an institutional practice.”); Harris, *supra* note 2, at 576; William J. Stuntz, *The Uneasy Relationship Between Criminal Procedure and Criminal Justice*, 107 YALE L.J. 1, 7 (1997) (discussing how traffic-violation stops allow “arrests and searches of suspected drug dealers without any ex ante support for the suspicion, the very thing the probable cause standard is supposed to forbid”).

Illustrating this point, the Supreme Court of Oregon has acknowledged the role of the traffic code in enabling police officers to engage in fishing expeditions during traffic stops.<sup>98</sup> That case, *State v. Arreola-Botello*, involved an officer who conducted a lawful traffic stop on a driver for failing to signal before turning and changing lanes.<sup>99</sup> While the driver was “searching for his registration and proof of insurance, the officer asked him about the presence of guns and drugs in the vehicle,” and after requesting and obtaining the driver’s consent to search the vehicle, the officer found drugs.<sup>100</sup> The Oregon high court held that the officer’s questioning about drugs and request to search the vehicle violated the Oregon state constitution because those activities were not reasonably related to the investigation of the traffic violations at issue and thus exceeded the lawful scope of the traffic stop.<sup>101</sup> The court stressed that if during a traffic stop “an officer may inquire into criminal activity without reasonable suspicion of a specific crime, an officer will have less of an incentive to develop the requisite reasonable suspicion of that crime which ordinarily would be required.”<sup>102</sup> As discussed later in this Article, eliminating pretextual traffic stops, including the police fishing expeditions that they foster, has considerable benefits for policing fairness and equality.<sup>103</sup>

## 2. Permitted stops

### a. Stops based on outstanding felony warrants

Removing police from traffic enforcement would not eliminate all police-initiated vehicle stops. Police would still have the authority to pull over vehicles based on knowledge that a driver or passenger had an outstanding warrant for a felony offense. Since one of the key goals of this new traffic-enforcement framework is to reduce the overpolicing and overcriminalization of traffic, jurisdictions should distinguish between warrants for violent and nonviolent crimes.<sup>104</sup> As discussed later, this distinction would further the goals of criminal-law and criminal-justice reform, especially given that a majority of warrants are for nonviolent offenses, including traffic violations.<sup>105</sup>

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98. *State v. Arreola-Botello*, 451 P.3d 939, 949 (Or. 2019) (en banc).

99. *Id.* at 941.

100. *Id.*

101. *Id.* at 949-50.

102. *Id.* at 949.

103. See *infra* Part III.A.1.

104. David M. Bierie, *Fugitives in the United States*, 42 J. CRIM. JUST. 327, 328 (2014) (explaining how warrants may be grouped in different ways, including “violent versus non-violent offenses”).

105. David M. Bierie, *National Public Registry of Active-Warrants: A Policy Proposal*, FED. PROB., June 2015, at 27, 28 (“[T]he majority of warrants are for nonviolent or traffic  
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b. Felony vehicle stops

Police could also conduct felony vehicle stops based on sufficient evidence of involvement in nontraffic felonies (for instance, robbing a bank or burglarizing a home).<sup>106</sup> Under current Fourth Amendment doctrine, officers would be required to establish, at a minimum, reasonable suspicion of involvement in a nontraffic felony to justify the stop itself, although a higher standard of probable cause would be required if an officer's use of weapons or confinement transformed the felony stop into a custodial arrest.<sup>107</sup> Under this framework, however, the police could not use minor traffic violations to justify pulling over and initiating contact with felony suspects.

c. Stops based on a narrow set of serious traffic offenses

To the extent that police officers retain any power to conduct stops based on traffic violations and exceptions must be made, that power would be limited to a very narrow set of serious traffic violations that more clearly involve criminality or an actual or imminent threat of harm to others. Examples include driving a stolen vehicle, hit-and-run offenses, and vehicle racing.

Admittedly, defining this narrow set is not an easy task, and jurisdictions might disagree over which serious traffic offenses should be included in this set. History, however, holds some important lessons. Many states engaged in a

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offenses.”); RANDALL GUYNES & RUSSELL WOLFF, UN-SERVED ARREST WARRANTS: AN EXPLORATORY STUDY 28 (2004), <https://perma.cc/7L3D-74YF> (“The bulk of the warrants are for non-violent offenses. The large group of bench warrants for failure to appear contains primarily underlying charges for traffic and non-violent misdemeanors.”); SHANNON TOMASCAK, PREETI CHAUHAN & ALLIE MEIZLISH, DATA COLLABORATIVE FOR JUST., JOHN JAY COLL. CRIM. JUST., TRENDS IN ISSUANCE OF CRIMINAL SUMMONSES IN NEW YORK CITY, 2003-2019, at 21 (2020), <https://perma.cc/555D-UJKT> (showing that of the warrants issued in New York City in 2019, 18.0% involved marijuana possession, 12.7% involved disorderly conduct, 10.7% involved other administrative-code offenses, 8.2% involved public consumption of alcohol, 8.1% involved other vehicle and traffic offenses, 7.8% involved violations of transit rules, and 7.7% involved registration suspensions). A more comprehensive discussion of this issue is provided in Part III.B.4 below.

106. *See, e.g.*, Lexington, Ky., Police Dep’t, G.O. 1992-02G, Traffic Law Enforcement § IV.D(1)(a) (Sept. 12, 2016), <https://perma.cc/XL8G-32LN> (describing a “[f]elony stop” as “[a] traffic stop in which an occupant(s) of a vehicle are sought for the commission of a felony offense, or the stopped vehicle accurately matches the description of a suspect vehicle for any serious offense or for being a stolen vehicle”).

107. *Compare* United States v. Gomez, 623 F.3d 265, 269-71 (5th Cir. 2010) (applying the reasonable-suspicion standard to determine the reasonableness of a felony vehicle stop under the Fourth Amendment), *with* United States v. Melendez-Garcia, 28 F.3d 1046, 1050, 1052-53 (10th Cir. 1994) (holding that a felony vehicle stop constituted an arrest requiring probable cause under the Fourth Amendment where, immediately after the stop, officers drew their guns, handcuffed the vehicle occupants, and secured the occupants in separate police vehicles).

similar endeavor when decriminalizing minor traffic offenses in the 1970s and 1980s.<sup>108</sup> During that period, over twenty states decriminalized minor traffic violations by removing criminal sanctions, reclassifying the violations as noncriminal offenses, and streamlining their adjudication through administrative processes.<sup>109</sup> In those jurisdictions, certain serious traffic violations remained criminalized.<sup>110</sup> Common examples included “(1) driving under the influence, (2) driving without, with a revoked, or with a suspended, driver’s license or vehicle registration, (3) reckless driving, (4) failure to stop at the direction of, or eluding, a police officer, (5) vehicle racing, and (6) excessive speeding (over 30 mph above the speed limit).”<sup>111</sup>

To be clear, I am not arguing that these serious traffic violations should remain in the hands of the police. As discussed later in this Article, there are growing calls to decriminalize or reduce the criminal consequences that attach to driver’s license offenses (for example, driving with no driver’s license, without a valid driver’s license, or with a suspended or revoked driver’s license) and driving under the influence (DUI).<sup>112</sup> The analysis explains how enforcing both of these serious traffic offenses through nonpolice alternatives could strengthen the underlying goals of such criminal-law and criminal-justice reforms.<sup>113</sup>

Rather, the key point here is to show that, in the past, lawmakers in several states successfully carved out a narrow set of serious traffic offenses when executing broader traffic reforms. This lends support to the idea that it would be possible for lawmakers to do the same if exceptions must be made when removing police from traffic enforcement.

## B. Nonpolice Alternatives to Traffic Enforcement

This Subpart sketches nonpolice alternatives to enforce traffic laws under the proposed framework. It first discusses how jurisdictions would redelegate most traffic-enforcement duties to newly created nonpolice agencies (which I call *traffic agencies*) that hire nonpolice employees (whom I call *traffic monitors*) to handle traffic enforcement. The analysis then considers how traffic monitors would handle in-person traffic stops and automated traffic enforcement. Finally, issues involving training and oversight are discussed.

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108. Woods, *supra* note 16, at 696-700 (providing an overview of traffic decriminalization across states).

109. *Id.* at 698-99.

110. *Id.* at 699.

111. *Id.* at 699-700 (citations omitted).

112. See *infra* Parts III.B.2-.3.

113. See *id.*

1. The creation of traffic agencies and traffic monitors

Under this new traffic-enforcement framework, jurisdictions would redelegate traffic-enforcement duties to newly created traffic agencies.<sup>114</sup> These agencies would operate wholly independently of the police and hire their own traffic monitors to conduct and oversee traffic enforcement. As detailed below, traffic monitors would enforce traffic laws through in-person traffic stops<sup>115</sup> and handle all aspects of traffic enforcement that jurisdictions decided to automate.<sup>116</sup>

The function of traffic monitors would be strictly limited to traffic-law enforcement, not criminal investigations. Traffic monitors would not be vested with typical police powers to detain, search, or arrest.<sup>117</sup> They also would not be armed. Rather, their authority would be limited to initiating traffic stops for traffic-law violations, requesting documentation, and issuing traffic citations.<sup>118</sup> With regard to documentation, traffic monitors could ask

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114. JELLE HEIDSTRA, CHARLES GOLDENBELD, CHRISTHARD GELAU, TAPANI MÄKINEN, MARIE-CHANTAL JAYET & CLAUDIA EVERS, *ESCAPE*, RO-98-RS.3047, *TRAFFIC LAW ENFORCEMENT BY NON-POLICE BODIES* 11 (2000), <https://perma.cc/B4UD-VAKW> (“Non-police-based enforcement may . . . be fully government-controlled.”). In theory, governments could also create public-private partnerships under which traffic-enforcement tasks are transferred to private organizations. *Id.* (“Non-police-based enforcement may . . . be a public-private conjunction.”). I am highly skeptical of these public-private partnerships given the scholarly and popular critiques of the ways in which public-private partnerships function in correctional contexts, such as prisons and probation, and exacerbate injustices and race- and class-based inequality in the criminal-justice system. *See, e.g.*, Sharon Dolovich, *State Punishment and Private Prisons*, 55 *DUKE L.J.* 437, 444-46 (2005) (applying a liberal-legitimacy lens to unearth “the extent to which punishments served in private prisons fall short of society’s obligations to those it incarcerates—and why they do so”); Alexandra Natapoff, *Misdemeanor Decriminalization*, 68 *VAND. L. REV.* 1055, 1100 (2015) (discussing privatization and probation); Christopher Petrella & Josh Begley, *The Color of Corporate Corrections: The Overrepresentation of People of Color in the For-Profit Corrections Industry*, *RADICAL CRIMINOLOGY*, Fall 2013, at 139, 140-42 (discussing the overrepresentation of people of color in private prisons).

115. *See infra* Part II.B.2.

116. *See infra* Part II.B.3.

117. This is similar to the scope of duties for nonsworn (that is, civilian) law-enforcement positions in the United States today. JOHN S. DEMPSEY, LINDA S. FORST & STEVEN B. CARTER, *AN INTRODUCTION TO POLICING* 290 (9th ed. 2019) (“[T]raffic stops are one of the primary tasks of patrol officers . . .”); *id.* at 86 (“Nonsworn (civilian) members of police departments are not given traditional police powers and can exercise only the very limited arrest power given to ordinary citizens.”); Ross Wolf & Thomas Bryer, *Applying an Outcomes-Based Categorisation to Non-warranted/Non-sworn Volunteers in United States Policing*, 93 *POLICE J.: THEORY PRAC. & PROC.* 42, 44, 46-47 (2020) (comparing traffic monitors to volunteer police who do not have enforcement power).

118. HEIDSTRA ET AL., *supra* note 114, at 31 (explaining that the “model for parking enforcement could be apt to other (mass) and low contact traffic offences that would allow for a standardized and routine enforcement procedure as well”).

for driver documents (for instance, driver's licenses, registration, and proof of insurance); run DMV checks to determine the current status of a driver's license or registration; and inspect the VIN on the vehicle dash. Traffic monitors would not be authorized, however, to run criminal background checks, and traffic agencies would not have access to that information.

2. In-person traffic stops

a. Routine traffic stops based on minor traffic violations

Rather than relying on police officers, jurisdictions would rely on traffic monitors to conduct routine traffic stops based on minor traffic violations. To reiterate, this would mean that nonpolice actors would handle the overwhelming majority of traffic enforcement under this new framework.<sup>119</sup> This reform would also eliminate opportunities for police to initiate pretextual vehicle stops based on minor traffic violations.

b. More difficult traffic stops that could allow police collaboration

Collaboration between traffic monitors and the police during traffic stops would be allowed only in limited circumstances. Typically, those circumstances would exist when a traffic monitor was faced with a more serious traffic offense (perhaps driving a stolen vehicle, driver's license offenses, or DUI).<sup>120</sup> Traffic monitors would process the minor traffic violations and, when necessary, request police assistance to handle the more serious traffic offense.<sup>121</sup> One possible approach is to authorize traffic monitors to contact police dispatch through a specialized channel on the mobile radios that traffic monitors would carry, similar to how parking-enforcement officers in some jurisdictions today request police assistance in situations involving a problem tow (namely, when drivers attempt to leave prior to the completion of a tow) or the recovery of a stolen vehicle.<sup>122</sup>

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119. *See, e.g.*, BAUMGARTNER ET AL., *supra* note 1, at 5 (summarizing survey data from the U.S. Department of Justice showing that routine traffic stops are “by far the most common source of all police contact”).

120. *See* HEIDSTRA ET AL., *supra* note 114, at 11 (noting that with nonpolice-based enforcement “the police organization may still have an advising, supervising or otherwise important role in the whole process of enforcement”).

121. *Id.* at 24 (“In such a multiple offence case, the competence of a non-police authority who detected it, is limited to one of the offences; for processing the other, police assistance must be requested.”).

122. *See, e.g.*, PARKING ENF'T UNIT, BERKELEY POLICE DEP'T, PARKING ENFORCEMENT OPERATIONS MANUAL 22 (2016), <https://perma.cc/G8ZM-L2W9> (“When a problem tow is concerned, a PEO may request police officer assistance through dispatch when requesting the tow.”); *id.* at 60 (“If the vehicle is confirmed to be stolen through the  
*footnote continued on next page*”).

As noted above, there are growing calls to decriminalize or to reduce the criminal consequences that attach to two types of serious traffic violations: (1) driver's license violations,<sup>123</sup> and (2) DUI.<sup>124</sup> The next Part will describe how limiting police-initiated traffic stops for both types of serious traffic offenses could help to achieve public safety while serving the goals of those criminal-law and criminal-justice reforms.<sup>125</sup> The analysis here merely explains the practicalities of how traffic monitors could be a useful intervention to achieve those goals by serving as first responders to enforce both traffic offenses.

Consider a traffic monitor who pulls over a vehicle for a minor traffic violation (for instance, speeding or running a red light) and, after requesting relevant documentation, discovers that the driver does not have a valid driver's license. The traffic monitor would process the minor traffic violation (for instance, speeding or running a red light) and request police assistance to process the driver's license violation only if necessary.

Recent legislative reforms support the idea that it would be possible for traffic monitors to enforce many types of driver's license offenses without police assistance. For instance, in 2018, Idaho decriminalized many driver's license violations, reclassifying them as civil infractions punishable by a fine.<sup>126</sup> The legislation reclassified driving on an expired noncommercial license as a civil infraction punishable by a maximum \$150 fine on the first offense and a maximum \$300 fine on the second offense.<sup>127</sup> The legislation also reclassified driving on a license that was suspended for not paying fines or for certain low-level offenses (for instance, a minor in possession of alcohol) as a civil infraction with similar maximum fines for first-time offenses.<sup>128</sup>

If states can reclassify these driver's license offenses as civil infractions, then they can also assign primary responsibility for enforcing those infractions to traffic monitors. Police stops for traffic violations would be necessary only

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records check, the PEO shall provide dispatch with the location, make, model, color, and license plate/VIN.”).

123. *See infra* Part III.B.2.

124. *See infra* Part III.B.3.

125. *See infra* Part III.B.

126. IDAHO CODE § 49-301(8) (2020).

127. *Id.* Third offense violations within a five-year period of the first conviction remained criminalized as a misdemeanor punishable by a maximum fine of \$1,000, six-months imprisonment in county jail, or both. *Id.*

128. *Id.* § 18-8001(1)(b).

to remove unlicensed drivers with dangerous driving histories from the road.<sup>129</sup>

Traffic monitors could also strengthen reform efforts that intend to address DUIs through the administrative process as opposed to the criminal framework. For instance, some Canadian provinces have instituted reforms that allow officers to impose roadside administrative penalties on first-time offenders caught driving under the influence, as long as the drivers have not caused injury or property damage.<sup>130</sup> The administrative sanction comprises a ninety-day license restriction, a substantial fine, required enrollment in a responsible-driver and ignition-interlock program, and vehicle impoundment.<sup>131</sup>

Through the lens of these reforms, consider a traffic monitor who pulls over a vehicle for a minor traffic violation (for instance, speeding or running a red light) or erratic driving consistent with DUI. After approaching the stopped vehicle, the traffic monitor observes signs of intoxication (for instance, the smell of alcohol emanating from inside the vehicle or the driver's breath, slurred speech, glassy eyes, uncoordinated conduct, or open containers inside the vehicle).<sup>132</sup> The traffic monitor could conduct a DUI investigation or request assistance from traffic monitors with specialized training to conduct DUI investigations. If sufficient evidence of DUI exists, then traffic monitors could issue citations and assign administrative sanctions for eligible DUI offenders. Police assistance would be necessary only for situations involving intoxicated drivers who are ineligible for administrative sanctions (perhaps repeat DUI offenders).

This approach also makes administrative sense given that most DUI offenses are detected after police initiate a traffic stop based on traffic

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129. See HEIDSTRA ET AL., *supra* note 114, at 40 (“The expertise of the police could be best used for violations that definitively require a complex monitoring process and stopping the driver . . .”).

130. See *Should Ontario Overhaul How It Charges Drunk Drivers?*, CBC NEWS (Jan. 5, 2018, 9:00 AM ET), <https://perma.cc/SJS5-CJQH> (discussing DUI reforms in British Columbia); Bill Kaufmann, *Alberta to Decriminalize Some Impaired Driving but Issue Stiffer Penalties*, CALGARY HERALD (June 5, 2020), <https://perma.cc/KXM5-SZ6P> (discussing DUI reforms in Alberta).

131. *Should Ontario Overhaul How It Charges Drunk Drivers?*, *supra* note 130; Kaufmann, *supra* note 130.

132. Woods, *supra* note 62, at 688 (listing common cues of intoxication during traffic stops).

violations.<sup>133</sup> Moreover, many of the approximately 1.5 million arrests for DUI in the United States each year involve first-time offenders.<sup>134</sup>

c. Stops involving nontraffic crime

A true normative commitment to removing police from traffic enforcement would mean that traffic monitors could not serve as eyes for the police (or as mere substitutes that stand in place of the police) to detect and investigate nontraffic crime.<sup>135</sup> Accordingly, traffic monitors would be authorized to request police assistance for only a very limited subset of nontraffic criminal matters involving violence or an imminent threat of violence (for instance, kidnapping or aggravated battery or assault). Requesting police assistance for other nonviolent, nontraffic offenses (for example, drug offenses) would be beyond the scope of a traffic monitor's duties and authority. This would be the case even when a traffic monitor sees evidence of nonviolent, nontraffic crime in plain view during a traffic stop.

As discussed later in more detail, although undermining drug policing is an arguable cost,<sup>136</sup> this committed approach would put a major dent in the ability of the police to use traffic enforcement as a tool in the failed "war on drugs," which facilitates and encourages racial profiling on roads and highways.<sup>137</sup>

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133. See Stephen D. Mastrofski, R. Richard Ritti & Jeffrey B. Snipes, *Expectancy Theory and Police Productivity in DUI Enforcement*, 28 LAW & SOC'Y REV. 113, 114 (1994) ("Most DUI offenses are detected as a result of officers' direct observation of suspicious or illegal driving, not reported accidents.").

134. LEANNE FIFTAL ALARID, COMMUNITY-BASED CORRECTIONS 143 (11th ed. 2017); see also Press Release, Minn. Dep't of Pub. Safety, Impaired-Related Traffic Deaths Decline in 2014: More Drivers Making Smart Choices as Trend Continues (Sept. 24, 2015), <https://perma.cc/VY2M-9APQ> ("The pattern in recent years is 40 percent of drivers arrested for DWI are repeat offenders and about 60 percent do not have any arrests on record.").

135. On this issue, important lessons can be learned from scholarship documenting how both the welfare system and the child-welfare system have become tools of law enforcement. These systems' ties to law enforcement have exacerbated the criminalization of marginalized groups through collaboration and information sharing between civil servants in those systems and traditional police and criminal-justice actors. See KAARYN S. GUSTAFSON, CHEATING WELFARE: PUBLIC ASSISTANCE AND THE CRIMINALIZATION OF POVERTY 52-56 (2011) (discussing how the welfare system has become a tool of law enforcement through information exchange); Dorothy E. Roberts, *The Social and Moral Cost of Mass Incarceration in African American Communities*, 56 STAN. L. REV. 1271, 1285 (2004) ("The criminal justice system works with the child welfare system to take custody of an inordinate number of black children, especially in neighborhoods where both systems are concentrated.").

136. See *infra* Part IV.B.

137. See *id.*; Johnson, *supra* note 2, at 1047 ("Racial profiling of young African-American and Latino men in traffic stops on the American roads and highways emerged as a central law enforcement tool in the 'war on drugs.'"); Tracey L. Meares, *Social Organization and*  
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And, as David Harris has put it, “[t]raffic stops must again become just that—traffic stops.”<sup>138</sup>

d. Driver noncompliance

Traffic monitors are likely to encounter noncompliant drivers at some point on the job. Examples of noncompliance include aggression or hostility, refusal to stop, attempting to flee, or physical violence toward traffic monitors.<sup>139</sup> Although it is impossible to know with a high degree of certainty the risk that traffic monitors will experience violence, some advocates have argued that the risk is low<sup>140</sup> and the overwhelming majority of police-initiated traffic stops today do not escalate into violence against police officers.<sup>141</sup> Nonetheless, parking-enforcement officers in multiple localities have complained of verbal abuse and physical violence they have faced on the job.<sup>142</sup>

De-escalation should be the primary goal when traffic monitors encounter driver noncompliance. As discussed later, basic training of traffic monitors would include violence prevention, verbal de-escalation tactics, and self-

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*Drug Law Enforcement*, 35 AM. CRIM. L. REV. 191, 192 (1998) (“One undisputed consequence of the War on Drugs is the fact that disproportionate numbers of African Americans (poor African Americans in particular) have been convicted and imprisoned for drug offending.”).

138. Harris, *supra* note 46, at 585.

139. See Dean Scoville, *The Hazards of Traffic Stops*, POLICE (Oct. 19, 2010), <https://perma.cc/6KLL-MG5A> (discussing the hazards of traffic stops to police officers).

140. A former staff engineer in the New York City Traffic Department who worked as part of a 1973 experiment to civilianize many traffic-enforcement functions views it as crucial that the NYPD not be a part of traffic enforcement in the city, and he supports the notion that there was not overwhelming violence against civilian traffic agents. See Sam Schwartz, *A Job the NYPD Shouldn't Do: Return Traffic and Parking Enforcement to DOT*, N.Y. DAILY NEWS (July 27, 2020, 5:00 AM), <https://perma.cc/X7DR-Y5UV> (“Our agents were not beloved. They were cursed at, spat upon and occasionally assaulted. It was a problem but not out-of-hand.”).

141. Woods, *supra* note 62, at 668-84 (presenting a study on violence against the police during traffic stops, which estimated that an officer was feloniously killed at a rate of one in every 6.5 million stops; seriously injured from an assault at a rate of one in every 361,111 stops; and assaulted, whether it resulted in injury or not, at a rate of one in every 6,959 stops).

142. See, e.g., Joe Fitzgerald Rodriguez, *Parking Control Officers Protest Assaults on Ticket-Writers*, S.F. EXAM'R (May 5, 2019, 1:30 AM), <https://perma.cc/ZJB9-359M> (discussing complaints of parking-control officers being “punched and attacked by angry drivers”); Matt Stout, *Drivers Clocking Boston Meter Maids*, BOS. HERALD (updated Nov. 17, 2018), <https://perma.cc/384T-762U> (reporting that between 2011 and 2012, nearly two dozen parking-enforcement officers had “come under attack . . . by fuming motorists who have cursed, spat at, punched and even rammed defenseless parking enforcers with their cars”).

defense strategies.<sup>143</sup> Given their limited role and authority, traffic monitors would not be authorized to detain, arrest, or chase noncompliant drivers.<sup>144</sup>

More concretely, when nonviolent, noncompliant drivers refuse to stop or flee after stopping, it would be unnecessary to involve the police or pursue the driver. Traffic monitors would simply use license-plate information to mail a traffic citation to the vehicle owner.<sup>145</sup> In situations involving drivers who physically attack, use, or attempt to use weapons against traffic monitors (including the motor vehicle itself), traffic monitors would have the option to radio for emergency police assistance through a specialized channel.<sup>146</sup> Police would then treat those situations as cases involving such crimes as reckless endangerment, assault, or battery.<sup>147</sup>

There are additional strategies that jurisdictions could use to minimize the risk of driver noncompliance and, in particular, the risk that encounters would escalate into violence against traffic monitors. Traffic monitors should drive vehicles and wear uniforms that are unique and distinct from police so that civilians can quickly and clearly distinguish traffic monitors from police

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143. *See infra* Part II.B.4.

144. *See supra* Part II.B.1. These limitations are similar to the limitations that some jurisdictions impose on civilian community-service officers. *See, e.g.*, NEWPORT, OR., POLICE DEP'T, NEWPORT PD POLICY MANUAL 317 (2020), <https://perma.cc/98R4-N4TT> (“CSOs are not sworn officers, do not make custody arrests, and shall not detain any person.”).

145. Some jurisdictions adopt a similar approach for when parking-enforcement officers encounter fleeing drivers. *See, e.g.*, BERKELEY POLICE DEP'T, *supra* note 122, at 15 (providing that if a driver drives away before a parking-enforcement officer completes a citation or attaches it to a vehicle, then the completed citation will be mailed to the registered owner of the vehicle).

146. This approach is similar to how some jurisdictions guide parking-enforcement officers to approach situations in which they are threatened with bodily harm. *See, e.g.*, PARKING ENF'T MGMT. ADMIN., WASH., D.C., DEP'T OF PUB. WORKS, STANDARD OPERATING PROCEDURES FOR PARKING OFFICERS AND SUPERVISORY PARKING OFFICERS § 16.4 (2011), <https://perma.cc/T54E-LTSS> (“POs [parking officers] will radio for assistance when threatened with bodily harm or where an unusual intense persistent reaction by the public exists to the enforcement of parking violations.”).

147. *See, e.g.*, Steve J. Beck, *Del. Woman Charged with Striking Parking Officer with Vehicle*, CBS PHILA. (Feb. 14, 2011, 11:40 AM), <https://perma.cc/AW6Y-E3JK> (describing how a driver who fled from and attempted to hit a parking-enforcement officer with her car in Newark, Delaware, was later arrested and charged with reckless endangering in the first degree and the possession of a deadly weapon during the commission of a felony (vehicle as weapon)); Bob D'Angelo, *Two Men Accused in Assault of Milwaukee Parking Enforcement Officer*, HAMILTON J.-NEWS (Apr. 8, 2019), <https://perma.cc/S5ZK-H45K> (describing how one civilian was charged with first-degree reckless injury with use of a dangerous weapon after stabbing a Milwaukee parking-enforcement officer who placed a ticket on his cousin's vehicle).

officers.<sup>148</sup> Traffic agencies also could equip traffic monitors with body-worn cameras to prevent traffic stops from escalating into violence against traffic monitors.<sup>149</sup> Notably, jurisdictions have adopted these strategies to help prevent violence against parking-enforcement officers and nonsworn civilian officers.<sup>150</sup>

### 3. Automated traffic enforcement

To the extent that jurisdictions automate aspects of traffic enforcement, nonpolice alternatives could remove associated tasks from the police as well. Automation is by no means required to enforce traffic laws, and some scholars have identified several potential objections to automated traffic enforcement.<sup>151</sup> Recognizing its limitations, however, some scholars have hailed the potential of automated traffic enforcement to reduce pretextual traffic stops and other forms of racial profiling exacerbated by police-initiated

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148. This is similar to how many jurisdictions approach uniforms for parking-enforcement and nonsworn civilian community-service officers. *See* NEWPORT, OR., POLICE DEPT, *supra* note 144, at 318 (“The design of the uniform [for community service officers] shall be distinctly different from uniforms worn by sworn members.”); N.J. STAT. ANN. § 40A:9-154.12(a) (West 2020) (“The uniform shall be distinct in color from the uniform of a regular police officer or special law enforcement officer.”); Fairfax Cnty., Va., Police Dep’t, General Order No. 530.5, § III(C) (Aug. 1, 2016) <https://perma.cc/U5GF-CXG8> (“Parking Enforcement officials are issued uniforms which distinguish them from police officers.”).

149. Some jurisdictions currently equip parking-enforcement officers with body-worn cameras to help de-escalate and diffuse encounters with civilians. *See* Jessica Lipscomb, *Miami Beach Fits Police, Parking and Code Enforcement Officers with Body Cameras*, MIA. NEW TIMES (Apr. 17, 2017, 1:20 PM), <https://perma.cc/3MK5-EQYA> (discussing how Miami Beach began equipping civilian parking-enforcement officers with body-worn cameras); Chris Yigit, *Tackling Parking Officer Abuse with Unified Evidence*, SEC. TODAY (Sept. 1, 2018), <https://perma.cc/8JBZ-4CN9> (discussing how body-worn cameras can help to de-escalate encounters between parking-enforcement officers and civilians).

150. *See, e.g.*, Lipscomb, *supra* note 149 (summarizing the views of Miami Beach Commissioner Michael Grieco that an initiative equipping parking-enforcement officers with body-worn cameras would “give some level of protection to employees”).

151. *See, e.g.*, Joh, *supra* note 16, at 226-33 (discussing potential objections to automated traffic enforcement, including (1) the legality of automated law enforcement, (2) the inevitability of discretion, (3) public reliance on partial enforcement, and (4) the political and social values of police discretion). These potential objections fit into a broader scholarly conversation about how sophisticated technology can erode transparency in policing. SEO, *supra* note 16, at 5 (“[T]he public is divided in their views about automated enforcement, and those opposed have been increasingly successful in persuading several state legislatures to ban traffic cameras.”); Jordan Blair Woods, *Key Challenges for Automated Traffic Enforcement to Succeed as a Measure of Police Reform*, APPEAL (June 7, 2021), <https://perma.cc/VVG9-LX4R> (discussing challenges that could prevent automated traffic enforcement from being a successful measure of police reform). *See generally* Hannah Bloch-Wehba, *Visible Policing: Technology, Transparency, and Democratic Control*, 109 CALIF. L. REV. (forthcoming 2021), <https://perma.cc/2JZG-PEV4> (discussing connections between modern police technologies and principles of government transparency and democratic governance).

traffic stops.<sup>152</sup> Many municipalities also view automation as a useful tool to enhance traffic safety,<sup>153</sup> and hundreds of municipalities in over twenty states currently use red-light or speed cameras to enforce traffic laws.<sup>154</sup>

Automation itself, however, does not necessarily remove police from traffic-law enforcement. In many localities, police agencies are primarily responsible for operating automated traffic-enforcement programs.<sup>155</sup> To reduce costs and ease police workload, many municipalities currently rely on private third-party vendors or trained civilian (nonsworn) officers to initially review and sort information from red-light or speed-radar cameras.<sup>156</sup> The

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152. See I. Bennett Capers, Commentary, *Techno-policing*, 15 OHIO ST. J. CRIM. L. 495, 499 (2018) (discussing the possibility that red-light cameras will “lead to a reduction in pretextual stops”); Marco Conner, *Traffic Justice: Achieving Effective and Equitable Traffic Enforcement in the Age of Vision Zero*, 44 FORDHAM URB. L.J. 969, 998 (2017) (“Enforcement cameras wholly avoid interaction between the driver and officer, which can benefit all parties, and they can be operated in ways that eliminate any possibility of racialized bias or targeting.”); Joh, *supra* note 16, at 234 (arguing that the introduction of automated highways and automated traffic enforcement systems “provides us with a different potential response to pretextual traffic stops”); Frank Pasquale, *A Rule of Persons, Not Machines: The Limits of Legal Automation*, 87 GEO. WASH. L. REV. 1, 14 (2019) (“Camera-driven enforcement can be less likely to be racially biased than traffic stops by police officers.”); Robert J. Eger III, C. Kevin Fortner & Catherine P. Slade, *The Policy of Enforcement: Red Light Cameras and Racial Profiling*, 18 POLICE Q. 397, 411 (2015) (“Our research would suggest that, in addition to using red light cameras to mitigate dangerous driving in certain intersections, it might be possible to use the cameras to address complaints of racial profiling behavior in certain neighborhoods or communities.”); SEO, *supra* note 16, at 2 (“By replacing traffic stops, automation eliminates police discretion, which can be exercised to enforce traffic laws selectively and discriminatorily.”).
153. See, e.g., N.Y.C. DEP’T OF TRANSP., NEW YORK CITY RED LIGHT CAMERA PROGRAM: PROGRAM REVIEW, 1994-2017, at 2 (2018), <https://perma.cc/N8RV-U332> (noting that New York City’s red-light-camera program “has proven to be a valuable tool for deterring law-breaking and protecting New Yorkers at signalized intersections”).
154. *Speed and Red Light Cameras*, GOVERNOR’S HIGHWAY SAFETY ASS’N, <https://perma.cc/A7ZP-VGTA> (archived May 5, 2021) (noting that nineteen states and the District of Columbia have laws that permit the use of speed cameras and twenty-one states and the District of Columbia have laws that permit the use of red-light cameras); *U.S. Communities Using Red Light Cameras*, IIHS-HLDI, <https://perma.cc/Y82J-2HY4> (last updated May 2021) (noting that as of May 2021, 340 U.S. communities are using red-light cameras for traffic enforcement); *U.S. Communities Using Speed Cameras*, IIHS-HLDI, <https://perma.cc/5GHR-EQTK> (last updated May 2021) (noting that as of May 2021, 159 U.S. communities are using speed cameras for traffic enforcement); see also SEO, *supra* note 16, at 5 (“Numerous jurisdictions already use traffic cameras to issue citations for speeding and running red lights, two of the most common traffic violations.”).
155. See, e.g., Mohamed M. Ahmed & Mohamed Abdel-Aty, *Evaluation and Spatial Analysis of Automated Red-Light Running Enforcement Cameras*, 50 TRANSP. RSCH. PART C: EMERGING TECHS. 130, 132 (2015) (“In the State of Florida, the photo enforcement programs are typically operated by city police departments.”).
156. See, e.g., TRACY ANDERSON, CHRISTOPHER CUNNINGHAM & DANIEL FINDLEY, INST. FOR TRANSP. RSCH. & EDUC., N.C. ST. UNIV., THE 2019-2020 NORTH CAROLINA SURVEY OF AUTOMATED TRAFFIC ENFORCEMENT SYSTEMS: FINAL REPORT 4, 5 (2020),  
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images are then sent back to law-enforcement agencies for officers to determine whether sufficient evidence of a traffic violation exists and whether a traffic citation should be issued.<sup>157</sup>

In the proposed framework, structural reforms to traffic enforcement would go even further to remove the police from the management and control of automated traffic-enforcement programs. Traffic agencies, operating wholly independently of the police, would handle automated traffic enforcement entirely. Rather than relying on police (whether active or retired), traffic monitors would review footage and handle the entire citation process from initial review to the issuance of a traffic ticket. Ideally, salaried employees in traffic agencies would perform these tasks rather than relying on third-party vendors.

Once automated traffic enforcement is delegated to traffic monitors, the process would be very similar to how automated traffic enforcement works today. The technology would detect traffic violations and identify traffic violators. A citation notice would then be mailed to the registered owner of the vehicle with details of the alleged violation along with copies of relevant evidence.<sup>158</sup> The notice would explain how vehicle owners could pay the applicable traffic fine or contest the citation.<sup>159</sup>

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<https://perma.cc/F7TN-MPJV> (noting that in Greenville, North Carolina, the city contracts or leases automated traffic enforcement to a private vendor, but a sworn law-enforcement officer reviews and signs the citations); *Red Light Enforcement*, AURORA, ILL.: POLICE DEP'T, <https://perma.cc/7EFE-CURE> (archived May 5, 2021) ("Potential violations undergo a 3 phase review process by trained technicians prior to being securely transmitted to authorized City of Aurora Police Reviewers. These sworn officers will review both the still images and video clip of the cited vehicle, verifying all pertinent information relating to the vehicle's license plate is correct, prior to determining if a violation notice should be issued."); *Automated Photo Enforcement Program—Red Light Cameras*, SEATTLE POLICE DEP'T, <https://perma.cc/T67J-9SJE> (archived May 5, 2021) (describing that the City of Seattle contracts with a red-light-camera vendor and that "[e]vents that appear to be a violation are forwarded to trained officers in the SPD Traffic Section, who authorize issuance of citations for those deemed in violation, review events that appear to meet SPD criteria").

157. See *supra* note 156 and accompanying text.

158. KIMBERLY A. ECCLES, REBECCA FIEDLER, BHAGWANT PERSAUD, CRAIG LYON & GLENN HANSEN, TRANSP. RSCH. BD., NCHRP REPORT 729, AUTOMATED ENFORCEMENT FOR SPEEDING AND RED LIGHT RUNNING 20-21 (2012) (providing guidelines for automated traffic-enforcement systems).

159. *Id.* at 11.

#### 4. Training and oversight

Independence from the police does not shield traffic agencies and traffic monitors from social ills that contribute to aggressive and biased policing.<sup>160</sup> To address these issues, training could play an important role. In addition to learning relevant traffic laws and citation-issuance procedures, basic training for traffic monitors should include two components. First, traffic monitors should receive initial and continual training in violence prevention, verbal de-escalation tactics, and self-defense strategies.<sup>161</sup> As explained above, such training prioritizes de-escalation as a fundamental goal when traffic monitors encounter noncompliant drivers.<sup>162</sup> Second, traffic monitors and supervisors should receive initial and continual training in implicit bias and procedural justice.<sup>163</sup> Such training can help traffic monitors and supervisors recognize

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160. See Frank Rudy Cooper, *A Genealogy of Programmatic Stop and Frisk: The Discourse-to-Practice-Circuit*, 73 U. MIA. L. REV. 1, 40 (2018) (“[I]n the broad sense, police racial targeting traces its roots to a macro-level discourse arguing that there is or ought to be a racial hierarchy.”).

161. The approach of Milwaukee, Wisconsin, to training parking-enforcement officers provides one potential model. To help parking-enforcement officers diffuse situations and defend themselves against physical harm, in 2017 Milwaukee partnered with Vistelar, a training and consulting institute that focuses on human conflict, and the International Parking & Mobility Institute (IMPI). Kim Fernandez, *Out of Danger*, PARKING & MOBILITY, Nov. 2019, at 20, 21-22. Through the partnership, parking-enforcement officers receive sixteen hours of initial training classes and continuous training throughout the year. *Id.* at 22. Training focuses on how to engage with civilians in nonconfrontational and nondefensive ways, active listening skills, and self-defense and escape tactics. *Id.* at 22-23.

162. See *supra* Part II.B.2.d (discussing driver noncompliance).

163. This recommendation is consistent with the pillars of the final report of President Obama’s Task Force on 21st Century Policing. See FINAL REPORT OF THE PRESIDENT’S TASK FORCE ON 21ST CENTURY POLICING 51-60 (2015), <https://perma.cc/A92V-AEBX> (discussing the training and education of law-enforcement officers, including by recommending training in bias awareness and procedural justice and impartial policing). It is important to note, however, that scholars have emphasized the limitations and mixed results of officer training, including implicit-bias training, as a means to combat racial bias in policing. See, e.g., Barbara E. Armacost, *Police Shootings: Is Accountability the Enemy of Prevention?*, 80 OHIO STATE L.J. 907, 972 (2019) (“Some police departments have initiated programs to address implicit racial bias through educational training, with mixed success for lasting change.”); Renée J. Mitchell & Lois James, *Addressing the Elephant in the Room: The Need to Evaluate Implicit Bias Training Effectiveness for Improving Fairness in Police Officer Decision-making*, POLICE CHIEF (Nov. 28, 2018), <https://perma.cc/ZD9U-V35H>; L. Song Richardson, *Arrest Efficiency and the Fourth Amendment*, 95 MINN. L. REV. 2035, 2085 (2011) (“[B]oth training officers to consider race and instructing officers to avoid considerations of race can increase arbitrary policing by augmenting the effect of implicit biases on judgment.”); ROBERT E. WORDEN, SARAH J. MCLEAN, ROBIN S. ENGEL, HANNAH COCHRAN, NICHOLAS CORSARO, DANIELLE REYNOLDS, CYNTHIA J. NAJDOWSKI & GABRIELLE T. ISAZA, *THE IMPACTS OF IMPLICIT BIAS AWARENESS TRAINING IN THE NYPD*, at vi (2020), <https://perma.cc/M2GU-225V> (presenting the results of a study on implicit bias training for New York City police officers that finding  
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their own implicit biases and help to improve the relationship between traffic agencies and the communities they serve.<sup>164</sup>

To enhance transparency and accountability, oversight is also necessary at both agency and individual levels. At the agency level, traffic agencies should implement data-collection systems to address concerns about racial profiling and other forms of discrimination.<sup>165</sup> At a minimum, traffic agencies should gather data on the identification numbers of traffic monitors who conduct stops, the demographic characteristics of stopped drivers (for instance, race, gender, and age), the basis for the stop, stop location, disposition (for instance, warning or citation issued), and whether and why traffic monitors requested assistance from law enforcement.<sup>166</sup> At the individual level, supervisors should regularly review data for their units as a whole and individual traffic monitors under their supervision in order to identify and address possible instances of racial profiling and unequal traffic enforcement patterns involving people of color and members of other marginalized communities.<sup>167</sup> In addition to internal oversight mechanisms, the establishment of external civilian

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“insufficient evidence to conclude that racial and ethnic disparities in police enforcement actions were reduced as a result of the training”).

164. See FINAL REPORT OF THE PRESIDENT’S TASK FORCE ON 21ST CENTURY POLICING, *supra* note 163, at 11 (“To achieve legitimacy, mitigating implicit bias should be a part of training at all levels of a law enforcement organization to increase awareness and ensure respectful encounters both inside the organization and with communities.”); see also WORDEN ET AL., *supra* note 163, at 83 (“If the training has effects, its most immediate effects are on officers’ awareness of and knowledge about implicit bias, their motivation to minimize the consequences of implicit bias, and their understanding of bias-management strategies.”).

165. This is consistent with calls to require data collection on police-initiated traffic stops in order to address racial profiling. See, e.g., POLICING PROJECT, *supra* note 58 (discussing the importance of traffic-stop data for documenting racially discriminatory practices and other injustices in the traffic space).

166. These variables are generally consistent with the types of variables captured in traffic-stop-data laws in different states. See *id.* (discussing the requirements imposed by a sample of traffic-stop-data laws).

167. For instance, in its recommendations for systems that collect traffic-stop data, the Department of Justice has stressed:

Departments should consider a procedure that requires the officer’s identity to be recorded but uses the data primarily for training and support. Officers identified as engaging in any unusual pattern of vehicle stops would review the information with their immediate supervisors. If this pattern (or a similarly unusual pattern) persists, the behavior would be brought to the attention of the human resources unit of the department, and assistance/training would be offered to the officer. If these two steps are followed and the officer still behaves in a disturbing manner in traffic-stops, the matter should be dealt with using the department’s normal disciplinary procedures.

DEBORAH RAMIREZ, JACK MCDEVITT & AMY FARRELL, DEP’T OF JUST., NCJ 184768, A RESOURCE GUIDE ON RACIAL PROFILING DATA COLLECTION SYSTEMS: PROMISING PRACTICES AND LESSONS LEARNED 46-47 (2000), <https://perma.cc/FSX6-KNUN>.

oversight mechanisms within the communities that traffic agencies serve should be encouraged.<sup>168</sup>

### C. Additional Reforms

The nonpolice alternatives discussed above hold the key benefit of dramatically reducing civilian contact with the police through traffic enforcement. At the same time, these nonpolice alternatives are not perfect, and their shortcomings underscore a need for structural reforms to push even further to achieve fairness and equality in traffic enforcement.

For instance, traffic monitors who conduct in-person traffic stops might harbor their own biases that lead them to conduct traffic stops and issue traffic citations in unequal and biased ways. Redelegating traffic enforcement to traffic agencies might also worsen revenue-generating incentives for traffic monitors to issue tickets as a means of funding state and local budgets, as opposed to ensuring traffic safety.<sup>169</sup> Similar critiques on both fronts have been raised in municipalities where nonsworn personnel currently handle parking enforcement.<sup>170</sup>

Automated traffic enforcement has similar shortcomings. Studies have found that communities of color bear the brunt of current automated traffic-enforcement programs.<sup>171</sup> Potential factors driving these unequal outcomes include the disproportionate placement of red-light and speed cameras in neighborhoods of color as well as the possibility that camera operators are

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168. Here, I recognize that the optimal structure of external police oversight might differ in each community. See *What Does Police Oversight Look Like?*, N.Y.U. SCH. L.: POLICING PROJECT, <https://perma.cc/DX6M-5JWP> (last updated July 1, 2020) (outlining different models of police oversight and emphasizing that “[h]ow best to structure an oversight body is a question that each community must ultimately answer for itself based on its needs”).

169. See HEIDSTRA ET AL., *supra* note 114, at 4 (recognizing the concern of “municipalities making traffic safety objectives subordinate to the financial gain that can be generated by enforcement efforts”).

170. See, e.g., Noli Brazil, *The Unequal Spatial Distribution of City Government Fines: The Case of Parking Tickets in Los Angeles*, 56 URB. AFFS. REV. 823, 849 (2020) (presenting findings showing that “parking ticket rates are higher in neighborhoods with a larger presence of renters, young adults, and Black residents”); Editorial, *Chicago Parking Enforcement Must Be Fair and Equitable to All*, CHI. SUN TIMES (June 13, 2019, 5:29 PM CDT), <https://perma.cc/W8DY-NWW5> (discussing racial disparities in Chicago’s parking enforcement); Melissa Sanchez & Sandhya Kambhampati, *How Does Chicago Make \$200 Million a Year on Parking Tickets? By Bankrupting Thousands of Drivers.*, MOTHER JONES (Feb. 27, 2018), <https://perma.cc/3TAU-MFPE>.

171. See, e.g., William Farrell, *Predominately Black Neighborhoods in D.C. Bear the Brunt of Automated Traffic Enforcement*, D.C. POL’Y CTR. (June 28, 2018), <https://perma.cc/8XUD-83E3> (discussing racial disparities in red-light-camera enforcement in Washington, D.C.).

disproportionately targeting the driving behaviors of people of color for closer scrutiny.<sup>172</sup>

Thus, additional reforms will be needed to prevent nonpolice alternatives to traffic-law enforcement from exacerbating racial and economic injustice in traffic enforcement and further widening the net of the criminal-justice system through unpaid traffic debt.<sup>173</sup> The next Subpart examines two additional law and policy reforms to accomplish these goals: (1) reevaluating the breadth and imprecision of traffic codes so that traffic law and enforcement focuses only on driving behaviors that pose an imminent public-safety threat,<sup>174</sup> and (2) reducing financial and professional incentives that contribute to aggressive and biased traffic enforcement (namely, restructuring traffic fines and fees systems and prohibiting traffic-ticket issuances as a measure of professional performance).<sup>175</sup>

### 1. Reevaluating traffic codes

The breadth and imprecision of traffic laws enable vast police discretion in traffic-stop settings that is exercised to harm communities of color and economically vulnerable communities.<sup>176</sup> In a world of traffic without the police, traffic codes could be reexamined in two distinct ways to better achieve fairness and equality in traffic enforcement. First, states and localities could trim traffic codes to include only traffic violations that put motorists or pedestrians at risk of imminent danger. Second, traffic codes could limit the circumstances under which traffic laws are enforced to only those situations that put motorists or pedestrians at risk of imminent danger.

The Driving Equality Bill, introduced in the Philadelphia City Council in October 2020, offers an instructive example of how lawmaking bodies might reevaluate the scope of their traffic codes.<sup>177</sup> Lawmakers introduced the bill in response to statistics showing that Black drivers were disproportionately stopped and searched during motor-vehicle stops in Philadelphia.<sup>178</sup> Although

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172. LAUREN NOLAN, WOODSTOCK INST., *THE DEBT SPIRAL: HOW CHICAGO'S VEHICLE TICKETING PRACTICES UNFAIRLY BURDEN LOW-INCOME AND MINORITY COMMUNITIES* 7 (2018), <https://perma.cc/47NZ-8T8R> (identifying the “spatial location of red light and speed cameras” as one factor that could be influencing racial disparities in ticketing trends).

173. See Natapoff, *supra* note 114, at 1094-102 (discussing decriminalization and the net-widening of the criminal-justice system through revenue traps).

174. See *infra* Part II.C.1.

175. See *infra* Part II.C.2.

176. See *supra* Part I.

177. Phila., Pa., City Council Bill No. 200603 (Oct. 29, 2020), <https://perma.cc/8BUV-4RGQ>.

178. Michael D’Onofrio, *City Lawmaker Aims to Curb “Driving While Black” with Proposed Ban on Some Traffic Stops*, PHILA. TRIB. (Oct. 29, 2020), <https://perma.cc/UR43-R8EB>.  
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the bill keeps traffic enforcement in the hands of the police, the proposal prohibits police officers from stopping vehicles for traffic violations that do not pose an imminent “public safety risk”<sup>179</sup> and requires officers to mail vehicle owners violation notices or warnings instead.<sup>180</sup> Public-safety risk is defined as “an imminent and articulable risk of bodily injury to a specific person or damage to private or public property or actual bodily injury to a specific person or damage to public or private property.”<sup>181</sup> More concretely, the proposal prohibits police officers from conducting in-person traffic stops for registration and inspection violations, lighting-equipment violations, and illegally tinted windows.<sup>182</sup> In addition, “[u]nless the totality of the circumstances present[s] a wanton or willful disregard for the actual safety of people or property,” the proposal directs officers to refrain from conducting traffic stops for traffic violations that involve obeying traffic signals, stop signs and no-turn signs, turning without a signal, and traffic-control devices.<sup>183</sup> Illustrating the potential for the proposal to scale back police–civilian interactions, statistics show that between October 2018 and September 2019, “88% of all police-initiated motor vehicle stops in the city were due to light [equipment violations] (more than 130,000 stops), stop sign violations (50,000 stops), illegally tinted windows (nearly 45,000 stops), illegal turns or signals (approximately 25,000 stops), and issues related to registration and inspection (more than 20,000 stops).”<sup>184</sup> Moreover, “approximately 90% of the motor vehicle stops for suspected violations did not result in a police officer issuing a ticket.”<sup>185</sup>

Reevaluating the scope of traffic codes would also help to curb pretextual stops. Consider the following example. In September 2019, Phillip Colbert, a

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Specifically, “[b]etween October 2018 and September 2019, nearly 72% of drivers stopped for motor vehicle violations were Black” even though “Black Philadelphians make up 43% of the city’s population.” *Id.* In addition, Black drivers were “twice as likely to be searched as white drivers, but 34% less likely to be found with contraband during the same time period.” *Id.*

179. Phila., Pa., City Council Bill No. 200603, § 12-201(2) (“A police or other authorized law enforcement officer shall not initiate a motor vehicle stop for a suspected violation of any provision of this Title or the Motor Vehicle Code unless the violation presents an imminent public safety risk as defined by 12-102(15.1) or is an exception delineated in subsection (3), (4)(b) or (5) of this section.”).

180. *Id.* § 12-201(2)(b)(1) (“In lieu of a motor vehicle stop, police or other authorized law enforcement officer shall issue a warning or notice of violation to the owner of the vehicle observed to be in violation of this Title or the Motor Vehicle Code.”).

181. *Id.* § 12-102(15.1) (defining “public safety risk”).

182. *Id.* § 12-201(4)(a).

183. *Id.* § 12-201(4)(b).

184. D’Onofrio, *supra* note 178.

185. *Id.*

twenty-two-year-old Black man, was driving on an Arizona interstate to visit his father.<sup>186</sup> According to Colbert, a sheriff's deputy followed him closely for ten minutes.<sup>187</sup> At some point before the deputy initiated the traffic stop, Colbert began recording the encounter because he thought it strange that he was being followed despite having done nothing wrong.<sup>188</sup> The deputy eventually pulled Colbert over for hanging a tree-shaped air freshener from his rear-view mirror, which obstructed his driver's view "in violation of state law."<sup>189</sup> The deputy repeatedly asked Colbert if he smoked marijuana or had any cocaine or heroin, which Colbert denied.<sup>190</sup> The deputy then asked Colbert to step out of the car and, after Colbert complied, accused him of being deceptive because he appeared nervous.<sup>191</sup> The deputy then asked for Colbert's consent to conduct a field sobriety test and to search his vehicle, which Colbert refused.<sup>192</sup> After forty minutes, the deputy let Colbert go without citing or arresting him.<sup>193</sup>

Now imagine the same traffic stop through the lens of the two traffic-code reforms described in this Subpart. The first reform—limiting traffic violations to those that put motorists or pedestrians at risk of imminent danger—would redefine the traffic code to exclude trivial obstruction violations. As a result, the driver would not be violating any traffic laws, which would eliminate any traffic justification for traffic monitors to stop the driver. There would also be no legal grounds for traffic monitors or automated systems to cite the driver for the trivial obstruction violation. Under the second reform—limiting enforcement of traffic codes to only those situations that put motorists or pedestrians at risk of imminent danger—even if the trivial obstruction violation remained in the traffic code, traffic monitors would not be justified in initiating a traffic stop. There would also be no legal grounds for traffic monitors or automated systems to cite the driver for the trivial obstruction violation, because it did not pose an imminent threat to drivers or pedestrians.

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186. For the facts of the traffic stop on Phillip Colbert, see Dave Biscobing, *Man Speaks to ABC15 After Being Pulled Over for "The Little Tree in [His Car] Window,"* ABC15 (updated Oct. 10, 2019, 9:55 AM), <https://perma.cc/TE3K-JEMR>; John Gutekunst, *Sheriff's Office Investigating Traffic Stop over an Air Freshener*, PARKER PIONEER (Nov. 6, 2019), <https://perma.cc/Y3DF-GE84>; and Meg O'Connor, *La Paz Cop Who Pulled Over Black Man for Air Freshener Is Fired*, PHX. NEW TIMES (Mar. 5, 2020, 1:31 PM), <https://perma.cc/FP2J-CSLM>.

187. Gutekunst, *supra* note 186.

188. *Id.*

189. *Id.*

190. *Id.*; O'Connor, *supra* note 186.

191. Biscobing, *supra* note 186; Gutekunst, *supra* note 186.

192. Gutekunst, *supra* note 186.

193. *Id.*

In sum, the current breadth and imprecision of traffic codes enable biased and pretextual stops like those discussed above. Trimming traffic codes or narrowing the circumstances when traffic monitors are allowed to enforce traffic laws would help to achieve fairness and equality in traffic enforcement in a world of traffic without the police.<sup>194</sup>

2. Reducing financial and professional incentives for biased and aggressive traffic enforcement

Structural reforms to traffic enforcement must also account for the financial and professional incentives that encourage aggressive and biased traffic enforcement.

a. Financial incentives

State and local governments benefit from aggressive and biased traffic enforcement by using traffic-ticket revenue, including court fines and fees, to fund their respective budgets.<sup>195</sup> For instance, a recent report revealed that officers in Washington, D.C., alone issued over \$1 billion in traffic and parking tickets between 2017 and 2019, which generated hundreds of millions of dollars in revenue.<sup>196</sup> And multiple studies have shown that traffic-ticket practices increase in times when municipal tax revenues are lower or in times of municipal fiscal distress.<sup>197</sup>

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194. Of course, these reforms could also have fairness and equality benefits in both traffic enforcement and policing even within the current driving regime in which police enforce traffic laws.

195. Beth A. Colgan, *Beyond Graduation: Economic Sanctions and Structural Reform*, 69 DUKE L.J. 1529, 1552-53 (2020) (“[R]esearchers have linked increased traffic ticketing to both budgetary shortfalls and statutory limitations on other mechanisms for generating revenue such as property tax caps.” (footnote omitted)); Thomas A. Garrett & Gary A. Wagner, *Red Ink in the Rearview Mirror: Local Fiscal Conditions and the Issuance of Traffic Tickets*, 52 J.L. & ECON. 71, 88 (2009) (presenting anecdotal evidence supporting the view that “local governments use traffic tickets as a means of generating revenue, implying that traffic law enforcement may be motivated by political interests as well as by public safety interests”).

196. Michael O’Connell, *DC Issues Record Number of Traffic, Parking Tickets*, PATCH: WASH. D.C. (updated Feb. 27, 2020, 5:52 PM ET), <https://perma.cc/2T8G-FKGV>.

197. See, e.g., Garrett & Wagner, *supra* note 195, at 86 (finding that “negative changes in local revenue from the previous fiscal year are significantly correlated with the change in the number of tickets issued”); Michael D. Makowsky & Thomas Stratmann, *More Tickets, Fewer Accidents: How Cash-Strapped Towns Make for Safer Roads*, 54 J.L. & ECON. 863, 865 (2011) (“When towns are in fiscal distress, government officials have an incentive to seek extra revenues not only through an increase in property taxes but also by increasing fines. One potential source of fines is traffic tickets.”); Min Su, Research Article, *Taxation by Citation? Exploring Local Governments’ Revenue Motive for Traffic Fines*, 80 PUB. ADMIN. REV. 36, 42 (2020) (presenting a study using California’s  
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The consequences of traffic tickets often disproportionately fall on poor people and communities of color. Traffic debt traps low-income people, and especially low-income people of color, in a vicious cycle of poverty and criminal-justice involvement.<sup>198</sup> Today, the average total cost of a speeding ticket (including court fees) is \$150, although maximum fines for speeding can top \$2,000 in some states.<sup>199</sup> For many people living in poverty, the cost of a single traffic ticket is beyond their living means.<sup>200</sup> In addition to arrest and incarceration, unpaid traffic debt or failure to appear in court for a traffic ticket can result in hundreds of dollars of additional financial penalties, loss of a driver's license, and garnished wages.<sup>201</sup> These consequences perpetuate a

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county-level data over a twelve-year period finding that “[h]olding all other variables constant, a 10 percentage point tax revenue loss in the previous year is associated with a 40 to 42 cent increase in per capita traffic fines in the current year”).

198. Emily Reina Dindial & Ronald J. Lampard, Opinion, *When a Traffic Ticket Costs \$13,000*, N.Y. TIMES (May 27, 2019), <https://perma.cc/346Y-8AYH> (“The criminal justice system too often produces a self-perpetuating cycle, particularly for the poorest people, who can’t pay fines or hire lawyers to make charges go away.”); Veryl Pow, Comment, *Rebellious Social Movement Lawyering Against Traffic Court Debt*, 64 UCLA L. REV. 1770, 1774 (2017) (“[T]he failure to pay off traffic court debt can result in arrest and incarceration . . . .”); Steven Mello, *Speed Trap or Poverty Trap? Fines, Fees, and Financial Well Being* (2018) (unpublished manuscript), <https://perma.cc/2EVC-QMD7> (finding that the imposition of traffic fines can induce disproportionate financial distress on poor communities); Regoeczi & Kent, *supra* note 3, at 201 (discussing the cycle between race, poverty, and traffic tickets). Some studies have found that counties with higher poverty rates rely more heavily on traffic fines. *See, e.g.,* Su, *supra* note 197, at 42 (finding that “[h]olding other variables constant, a 1 percentage point increase in the poverty rate raises per capita traffic fines by 16 to 17 cents”).
199. Heidi Wallis, *Speeding Tickets: Where Does Your State Rank?*, ESURANCE, <https://perma.cc/376K-LAJG> (archived June 7, 2020) (“The total cost of the average speeding ticket is \$150, but maximum fines for speeding vary by more than \$2,400 between states”); Sebastian Toma, *Speeding Fines in the U.S.—The Worst Places to Go Over the Limit in America*, AUTOEVOLUTION (Nov. 3, 2016, 4:30 PM UTC), <https://perma.cc/DUJ5-QLSF> (“[T]he Nation-wide average speeding ticket is \$150, but the difference between the smallest and largest standard maximum penalty exceeds \$2,400 between states.”).
200. *See* LAWYERS’ COMM. FOR C.R. OF THE S.F. BAY AREA ET AL., NOT JUST A FERGUSON PROBLEM: HOW TRAFFIC COURTS DRIVE INEQUALITY IN CALIFORNIA 6 (n.d.), <https://perma.cc/LW96-TR7M> (“As the fees have gone up . . . fewer people can afford to pay their tickets.”); Jon Schuppe, *In Nevada, Drivers Can Be Arrested for Unpaid Tickets. Activists Are Fighting to Change That*, NBC NEWS (May 8, 2020, 1:30 AM PDT), <https://perma.cc/WU69-TGEH> (discussing the case of Jessica Washington, a single mother who struggled to pay “dozens of tickets totaling about \$4,431, a debt that ballooned to more than \$20,000 with additional fines and fees”); BAUMGARTNER ET AL., *supra* note 1, at 13 (“[P]overty keeps many from paying the initial fine [from a traffic ticket], leading to accumulating court sanctions, fees, and penalties.”).
201. *Id.* at 6 (discussing the various hardships that people living in poverty can suffer when their driver’s licenses are suspended for inability to pay a traffic ticket or failure to appear in traffic court); Heidi Groover, *ACLU Sues over Washington Suspending Licenses of People Who Can’t Pay Traffic Fines*, SEATTLE TIMES (updated Oct. 7, 2020, 5:36 PM), *footnote continued on next page*

harmful cycle because many financially and economically vulnerable people need a driver's license to get to work, and without work they cannot afford to pay fines, fees, and other traffic debt.<sup>202</sup>

Calls for structural police reform in traffic enforcement must connect to the unfolding scholarly and public dialogue about the need to reform fines, fees, and other systems of economic sanctions in traffic contexts and beyond.<sup>203</sup> Advocates are currently employing both litigation and nonlitigation tools to challenge fines, fees, and other economic sanctions that disproportionately harm low-income people.<sup>204</sup> Scholars and reformers have addressed how fines and fees are assessed and collected (for instance, requiring consideration of a defendant's ability to pay and the graduation of economic sanctions) as well as how to reduce the collateral consequences that attach to unpaid fines and fees (for instance, loss of a driver's license).<sup>205</sup> Scholars have further explored the possibility of requiring revenue derived from economic sanctions to be redistributed to

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<https://perma.cc/G8KT-BXLF> (describing how one woman's traffic-ticket debt "ended up at a collections agency that garnished her wages"); Pow, *supra* note 198, at 1774 (noting "arrest and incarceration" as consequences of failure to pay off traffic court debt); *see also Pay a Traffic Ticket*, SUPER. CT. CAL.: CNTY. SAN BERNARDINO, <https://perma.cc/2JV4-ADRW> (archived May 5, 2021) ("[I]f your account is referred to a collection agency, you may be subject to wage garnishments.").

202. LAWYERS' COMM. FOR C.R. OF THE S.F. BAY AREA ET AL., *supra* note 201, at 6 ("[M]any who cannot pay lose their jobs because they need a license to work."); *id.* ("When people cannot work, they cannot pay traffic fines."). For a more comprehensive discussion explaining how "substantive laws and enforcement patterns have criminalized and reproduced poverty in the United States," *see* Monica Bell, Stephanie Garlock & Alexander Nabavi-Noori, *Toward a Demosprudence of Poverty*, 69 DUKE L.J. 1473, 1478-96 (2020).
203. *See generally* Colgan, *supra* note 195 (using an abolition lens to discuss economic sanctions and structural criminal-justice reform); Beth A. Colgan, *Graduating Economic Sanctions According to Ability to Pay*, 103 IOWA L. REV. 53, 73-101 (2017) (discussing graduated reforms to economic sanctions); CRIM. JUST. POL'Y PROGRAM, HARVARD L. SCH., *CONFRONTING CRIMINAL JUSTICE DEBT: A GUIDE FOR POLICY REFORM* (2016), <https://perma.cc/L853-72TX>; *see also* MATTHEW MENENDEZ, MICHAEL F. CROWLEY, LAUREN-BROOKE EISEN & NOAH ATCHISON, BRENNAN CTR. FOR JUST., *THE STEEP COSTS OF CRIMINAL JUSTICE FEES AND FINES: A FISCAL ANALYSIS OF THREE STATES AND TEN COUNTIES* 11-13 (2019), <https://perma.cc/52E9-TVZJ> (discussing recommendations for reform to fines and fees structures).
204. *See* Brandon L. Garrett, Sara S. Greene & Marin K. Levy, Foreword, *Fees, Fines, Bail, and the Destitution Pipeline*, 69 DUKE L.J. 1463, 1465 (2020) ("Today, constitutional litigation, new policies and rulemaking by state supreme courts and bar associations, and legislation have increasingly addressed the problem of fines, fees, and bail as they affect civil and criminal litigants." (footnotes omitted)); *The Clearinghouse*, FINES & FEES JUST. CTR., <https://perma.cc/7KVQ-3V88> (archived May 8, 2021) (to locate, click "View the live page") (listing litigation and legislative efforts to reform fines and fees in the legal system).
205. *See* Neil L. Sobol, Griffin v. Illinois: *Justice Independent of Wealth?*, 49 STETSON L. REV. 399, 427-29 (2020) (summarizing current reforms involving fines and fees).

community-investment programs in overpoliced and overcriminalized communities in order to achieve structural criminal-justice reform.<sup>206</sup> These reforms would reduce the perverse economic incentives in traffic enforcement that fall hardest on low-income and minority communities.

b. Professional incentives

Law and policy reforms are also needed to address professional incentives that encourage aggressive and biased traffic enforcement. Although illegal in several states, most states have not banned traffic-ticket quotas.<sup>207</sup> Moreover, evidence suggests that even in states that ban traffic-ticket quotas, police departments have unspoken directives to use traffic-stop and traffic-ticket rates as indicators of officer performance.<sup>208</sup>

In a world of traffic without the police, state or local laws prohibiting traffic agencies from instituting traffic-ticket quotas are a good first step. More must be done, however, to discourage traffic agencies or supervisors from using traffic-stop and citation rates as indicators of professional performance. In addition to state and local laws, traffic agencies could adopt internal policies and review processes to ensure that traffic-stop and citation rates are not used as measures to evaluate an agency's or individual traffic monitor's productivity.<sup>209</sup>

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206. See Colgan, *supra* note 195, at 1571-77.

207. States that have banned traffic ticket quotas include California, Connecticut, Florida, Illinois, Minnesota, Missouri, Nebraska, New Jersey, North Carolina, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, and Wisconsin. See CAL. VEH. CODE § 41602 (West 2020); CONN. GEN. STAT. § 7-282d (2019); FLA. STAT. § 316.640(8)(b) (2020); 65 ILL. COMP. STAT. 5/11-1-12 (2019); MINN. STAT. § 169.985 (2020); MO. REV. STAT. § 575.320.1(6) (2019); NEB. REV. STAT. § 48-235 (2020); N.J. STAT. ANN. § 40A:14-181.2(a) (West 2020); N.C. GEN. STAT. § 20-187.3(a) (2020); 71 PA. STAT. AND CONS. STAT. § 2001 (West 2020); 31 R.I. GEN. LAWS § 31-27-25(a) (2020); S.C. CODE ANN. § 23-1-245(A) (2020); TENN. CODE ANN. § 39-16-516 (2021); TEX. TRANSP. CODE ANN. § 720.002(a)-(b) (West 2020); WIS. STAT. § 349.025 (2021). For a broader discussion of police quotas and their consequences for criminal law and criminal procedure, see generally Shaun Ossei-Owusu, *Police Quotas*, 96 N.Y.U. L. REV. 529 (2021). See also *id.* at 533 (“[M]ore than twenty states have statutory prohibitions on police quotas.”).

208. See WESLEY G. SKOGAN, SUSAN M. HARTNETT, JILL DUBOIS, JENNIFER T. COMEY, MARIANNE KAISER & JUSTINE H. LOVIG, ON THE BEAT: POLICE AND COMMUNITY PROBLEM SOLVING 51 (1999) (“[T]he success of traffic enforcement is usually measured by the number of tickets written.”); Garrett & Wagner, *supra* note 195, at 74 (noting that even in jurisdictions that have outlawed ticket quotas “[t]here is evidence that some jurisdictions have linked police performance and pay to the number of tickets that officers issue”); George Joseph, *NYPD Commander's Text Messages Show How the Quota System Persists*, APPEAL (Dec. 12, 2018), <https://perma.cc/GM74-NBEQ>.

209. Policing scholars have raised similar points regarding the development of law-enforcement-agency policies to improve fairness in policing. Cf. Rachel A. Harmon, *The Problem of Policing*, 110 MICH. L. REV. 761, 812 (2012) (noting that “develop[ing] better policies” is one way that “[p]olice departments and local governments could do more to protect civil rights than they do now”).

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Pushing against the conventional wisdom that police are necessary to enforce traffic laws, the framework articulated above demonstrates that a different approach to traffic enforcement is possible. The remainder of this Article now turns to exploring the benefits and drawbacks of embracing nonpolice alternatives to traffic enforcement in law and policy.

### III. The Benefits of Traffic Enforcement Without the Police

This Part explores the potential benefits of removing police from traffic enforcement for public safety, policing, and criminal-law and criminal-justice reform. The analysis places primacy on the ways in which benefits relate to the experiences of Black, Latinx, and other marginalized communities that are vulnerable to overpolicing and overcriminalization in today's driving regime. Subpart A examines four significant areas of benefits for policing: (1) improving fairness and equality in policing,<sup>210</sup> (2) preventing escalation of police–civilian encounters,<sup>211</sup> (3) improving public perceptions of the police,<sup>212</sup> and (4) increasing police effectiveness by limiting the scope of the police function.<sup>213</sup> Subpart B then discusses how removing police from traffic enforcement strengthens prior and unfolding criminal-law and criminal-justice reforms surrounding the criminalization of traffic offenses.<sup>214</sup>

#### A. Policing

##### 1. Fairness and equality in policing

First and foremost, removing police from traffic enforcement would, in powerful ways, increase fairness and equality in policing along the lines of race and class. Exclusively relying on nonpolice actors to enforce minor traffic violations would drastically decrease civilian contact with the police through traffic enforcement. As discussed above, an overwhelming majority of the tens of millions of traffic stops conducted each year involve minor traffic violations.<sup>215</sup> Studies show that police disproportionately stop people of color and subject them to additional, intrusive police activity through the police power to question, search, cite, arrest, and apply force during traffic stops.<sup>216</sup>

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210. *See infra* Part III.A.1.

211. *See infra* Part III.A.2.

212. *See infra* Part III.A.3.

213. *See infra* Part III.A.4.

214. *See infra* Part III.B.

215. *See supra* Part II.A.1.a.

216. *See sources cited supra* note 2.

These structural reforms would also eliminate opportunities for police to use traffic violations as pretexts to initiate contact with motorists, particularly people of color, in order to peruse for evidence of nontraffic crime absent reasonable suspicion or probable cause.<sup>217</sup> This would in turn reduce possibilities for pretextual traffic stops to escalate into police violence against drivers and passengers.<sup>218</sup> In our current driving regime, where traffic enforcement and policing are intertwined, people of color and economically marginalized communities bear the brunt of these injustices.<sup>219</sup>

## 2. Escalation during police–civilian encounters

A second potential benefit of decoupling traffic enforcement from the police involves reducing escalation during police–civilian encounters. When traffic stops escalate, the encounters jeopardize the safety of both stopped motorists and law-enforcement officers.<sup>220</sup> The dominant narrative that routine traffic stops are especially dangerous settings for police, especially when combined with issues involving racial biases, stereotype threat, and racial anxieties,<sup>221</sup> encourages conditions that lead officers to prematurely use force and take adversarial approaches in traffic-stop settings.<sup>222</sup>

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217. See Harris, *supra* note 2, at 573-76; Stuntz, *supra* note 97, at 7 (discussing how traffic-violation stops allow “arrests and searches of suspected drug dealers without any ex ante support for the suspicion, the very thing the probable cause standard is supposed to forbid”).

218. Carbado, *From Stopping*, *supra* note 2, at 151-52 (describing an officer’s “decision . . . to use the traffic infraction as [a] pretext” as one of many decisions that “reveal[s] the discretion police officers have to practice racial profiling in ways that heighten black vulnerability to police surveillance and violence”).

219. See *supra* Part I.

220. Woods, *supra* note 62, at 642 (noting that “danger narrative[s] may instigate avoidable and unnecessary conflicts during routine traffic stops that undermine both officer and civilian safety”).

221. Zackory T. Burns & Sachiko V. Donley, *Social Evaluative Mechanisms: A Potential Psychological Mechanism Coloring Police–Public Encounters*, 8 U.C. IRVINE L. REV. 1, 3 (2018) (identifying “racial bias, stereotype threat, and racial anxiety” as “among the most highly cited” “psychological mechanisms that contribute to racially biased policing and increased racial violence”); Rachel D. Godsil & L. Song Richardson, *Racial Anxiety*, 102 IOWA L. REV. 2235, 2253 (2017) (“In sum, prior to any interaction, racial anxieties can cause officers and people of color to view each other with suspicion. During an interaction, these anxieties can cause each to interpret the other’s ambiguous behaviors through a biased lens.”); L. Song Richardson, *Police Racial Violence: Lessons from Social Psychology*, 83 FORDHAM L. REV. 2961, 2972 (2015) (“The influence of implicit racial biases, stereotype threat, and masculinity threat on police behavior explains why racial violence is inevitable and overdetermined even in the absence of conscious racial animus.”).

222. Woods, *supra* note 62, at 695 (“It should be further expected that officers may respond to perceptions of danger during routine traffic stops in hyperaggressive ways that  
*footnote continued on next page*”)

Available statistics on officer use of force are a useful starting point. Police use of force is a leading cause of death for young men of color, and especially Black men.<sup>223</sup> According to a recent study, Black men face a one in 1,000 chance of being killed by police and are 2.5 times more likely than white men to be killed by a police officer.<sup>224</sup> The Bureau of Justice Statistics (BJS) reported that, in 2015 (the most recent year for which data are available), one million (or nearly 2%) of the almost 53.5 million people who had contact with the police in the United States during the prior twelve months experienced nonfatal threats or use of force.<sup>225</sup> Of the civilians who had contact with the police during this period, only about 1% of white civilians experienced nonfatal threats or use of force, compared to approximately 3% of both Black and Hispanic civilians.<sup>226</sup>

National data from BJS provides more detailed insight into the use of force during traffic stops. In 2011 (the latest available annual data from the BJS), approximately 6% of drivers pulled over in traffic stops experienced some type of officer force, ranging from shouting to physical force, and 1.5% specifically experienced physical force.<sup>227</sup> Although the BJS did not break down the data in terms of race, smaller-scale studies have found that traffic stops are a common policing context in which officers use force, especially against people of color.<sup>228</sup> Recent high-profile officer killings of Black men during traffic stops, including Philando Castile, Samuel Dubose, Walter Scott, and Daunte Wright, among

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instigate escalation, and as a result, potentially undermine both officer and civilian safety.”).

223. Frank Edwards, Hedwig Lee & Michael Esposito, *Risk of Being Killed by Police Use of Force in the United States by Age, Race-Ethnicity, and Sex*, 116 PNAS 16793, 16796 (2019) (“Police violence is a leading cause of death for young men, and young men of color face exceptionally high risk of being killed by police.”); *id.* at 16794 (“Among all groups, black men and boys face the highest life-time risk of being killed by police.”).
224. *Id.* at 16794.
225. ELIZABETH DAVIS, ANTHONY WHYDE & LYNN LANGTON, BUREAU OF JUST. STAT., U.S. DEP’T OF JUST., NCJ 251145, CONTACTS BETWEEN POLICE AND THE PUBLIC, 2015, at 12, 16 (2018), <https://perma.cc/46A7-K3S6>. However, researchers have discussed the lack of accurate and comprehensive national data on officer use of force. See Joel H. Garner, Matthew J. Hickman, Runald W. Malega & Christopher D. Maxwell, *Progress Toward National Estimates of Police Use of Force*, 13 PLOS ONE 1, 2, 21, 23 (2018) (discussing limitations of national estimates of police use of force).
226. DAVIS ET AL., *supra* note 225, at 16.
227. LYNN LANGTON & MATTHEW DUROSE, BUREAU OF JUST. STAT., U.S. DEP’T OF JUST., NCJ 242937, POLICE BEHAVIOR DURING TRAFFIC AND STREET STOPS, 2011, at 10 (2013), <https://perma.cc/PS2F-T64N>.
228. See, e.g., Engel & Calnon, *supra* note 3, at 69 (presenting study findings that “2.7% of whites reported having force used against them, compared [to] 6.7% of blacks, 5.4% of Hispanics, and 1.7% of drivers of other races and ethnicities”).

many others, illustrate the tragic ways in which traffic stops can escalate and result in lethal force against Black and Latinx drivers and passengers.<sup>229</sup>

Of course, officers also experience violence during traffic stops. For instance, the most recent annual data from the Federal Bureau of Investigation's Law Enforcement Officers Killed & Assaulted (LEOKA) Program reported that six of the forty-eight law-enforcement officers who were feloniously killed in the line of duty in 2019 were conducting traffic-violation stops.<sup>230</sup> Beyond statistics, routine traffic stops are commonly described in law-enforcement circles, courts, and society at large as especially dangerous encounters for police.<sup>231</sup> For instance, during officer training, police academies use videos of extreme cases of officers being randomly shot during traffic stops that otherwise appear entirely routine. These videos are designed to stress the importance of not becoming complacent on the scene or hesitating to use force.<sup>232</sup>

Research not only challenges these dominant officer danger narratives but also offers insight into how escalation relates to the ways in which officers themselves invoke police powers during traffic stops.<sup>233</sup> In other work, I

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229. Mitch Smith, *Video of Police Killing of Philando Castile Is Publicly Released*, N.Y. TIMES (Jun. 20, 2017), <https://perma.cc/7DBX-RULD> (discussing the fatal traffic stop of Philando Castile); Katie Rogers, *Questions After Unarmed Ohio Man Is Killed in Traffic Stop*, N.Y. TIMES (July 22, 2015), <https://perma.cc/B94G-2HPC> (discussing the fatal traffic stop of Samuel Dubose); Editorial, *The Walter Scott Murder*, N.Y. TIMES (Apr. 8, 2015), <https://perma.cc/M3HK-3MYW> (discussing the fatal traffic stop of Walter Scott); *What to Know About the Death of Daunte Wright*, N.Y. TIMES (Apr. 23, 2021), <https://perma.cc/39UH-W5UK> (discussing the fatal traffic stop of Daunte Wright).

230. *Table 24: Law Enforcement Officers Feloniously Killed—Circumstance Encountered by Victim Officer upon Arrival at Scene of Incident, 2015–2019*, FED. BUREAU INVESTIGATION: UNIFORM CRIME REPORTING, <https://perma.cc/DP6G-L42Q> (archived May 5, 2021). LEOKA data involving nonfatal assaults against officers for 2019 are not yet available, but in 2018, 4,809 (or 8.17%) of the 58,866 officers who were assaulted in the line of duty were conducting traffic stops or pursuits. *Table 84: Law Enforcement Officers Assaulted—Circumstance at Scene of Incident by Type of Assignment and Percent Distribution, 2018*, FED. BUREAU INVESTIGATION: UNIFORM CRIME REPORTING, <https://perma.cc/H8TD-K3JE> (archived May 5, 2021). That statistic, however, captures violence against officers that occurred not only during traffic-violation stops, but also during vehicle pursuits for nontraffic crime.

231. Woods, *supra* note 62, at 637.

232. *Id.* at 695; Seth W. Stoughton, *Police Body-Worn Cameras*, 96 N.C. L. REV. 1363, 1397-98 (2018) (discussing “officer survival” videos, which attempt to remind officers of the dangers of complacency by showing officers being brutally attacked, disarmed, or killed”); *id.* at 1397 & nn.137-41, 1398 & nn.142-44 (providing examples of “officer survival videos”).

233. Woods, *supra* note 62, at 668-76, 684-86 (presenting findings challenging the notion that routine traffic stops are especially dangerous police encounters); *see also* Illya D. Lichtenberg & Alisa Smith, *How Dangerous Are Routine Police–Citizen Traffic Stops? A Research Note*, 29 J. CRIM. JUST. 419 (2001) (same).

presented findings from an empirical study—which is the most comprehensive empirical study on violence against the police during traffic stops to date—that showed how violence against officers is rare and that incidents that do involve such violence are typically low-risk and do not involve weapons.<sup>234</sup> Specifically, using a conservative estimate, “the rate for a felonious killing of an officer during a routine traffic stop was 1 in every 6.5 million stops,” “[t]he rate for an assault that results in serious injury to an officer was only 1 in every 361,111 stops,” and “the rate for an assault [whether it results in injury or not] was only 1 in every 6,959 stops.”<sup>235</sup> The study findings further revealed that a common precursor to traffic stops escalating into violence against officers was the invocation of police authority in some way during the stop beyond asking for basic information, requesting documentation, or running a records check.<sup>236</sup> Common examples included ordering motorists out of vehicles, touching or handcuffing drivers or passengers, reaching inside vehicles, telling drivers or passengers that they were under arrest, and asking for permission to search vehicles or their occupants.<sup>237</sup>

Under the model I am proposing, traffic monitors would not be vested with authority to take these additional actions.<sup>238</sup> If traffic stops were just about traffic safety, and not criminal investigation, then such invocations of police authority would no longer be necessary to effectuate the purpose of the stops. In this regard, removing police from traffic enforcement would reduce possibilities for traffic stops to escalate in ways that jeopardize civilian as well as officer safety.

### 3. Public perceptions of police

A third potential benefit of decoupling traffic enforcement from the police is improving public perceptions of the police. Public attitudes toward the police are important on several levels. They reflect whether civilians trust and view police as legitimate actors, opinions which in turn can shape how civilians interact with law enforcement and legal institutions more generally.<sup>239</sup> Public attitudes

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234. Woods, *supra* note 62, at 668-72.

235. *Id.* at 681-84.

236. *Id.* at 690.

237. *Id.*

238. *See supra* Part II.B.1.

239. *See* Jocelyn Simonson, *Police Reform Through a Power Lens*, 130 YALE L.J. 778, 797 (2021) (“The social science guiding the legitimacy approach demonstrates that when people perceive police as legitimate, they are more likely to comply with the law, cooperate with the police, and support their police departments.”); *see also* Tracey L. Meares, *The Path Forward: Improving the Dynamics of Community–Police Relationships to Achieve Effective Law Enforcement Policies*, 117 COLUM. L. REV. 1355, 1360-63 (2017) (describing social-science research on perceptions of fairness and citizen engagement with police);  
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toward police can also influence police effectiveness and accountability.<sup>240</sup>

A robust body of empirical literature shows that people of color, and Black and Latinx civilians in particular, have more negative attitudes toward law enforcement than white civilians do.<sup>241</sup> Some studies have also found that lower-income individuals have more negative attitudes toward the police.<sup>242</sup> As traffic stops are the most common interaction between police and civilians today, several studies in this body of research have treated traffic stops as the quintessential police–civilian encounter and used traffic stops as a lens to examine civilian attitudes toward police.<sup>243</sup>

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Tom R. Tyler & Jeffrey Fagan, *Legitimacy and Cooperation: Why Do People Help the Police Fight Crime in Their Communities?*, 6 OHIO ST. J. CRIM. L. 231, 262 (2008) (presenting study findings showing that “legitimacy will influence people’s willingness to cooperate with the police to fight crime in their communities”).

240. See, e.g., Jihong Solomon Zhao, Chi-Fang Tsai, Ling Ren & Yung-Lien Lai, *Public Satisfaction with Police Control of Disorder Crime: Does the Public Hold Police Accountable?*, 31 JUST. Q. 394, 398-400 (2014) (describing the “accountability model of public satisfaction with the police” (capitalization altered)); Justice Tankebe, *Viewing Things Differently: The Dimensions of Public Perceptions of Police Legitimacy*, 51 CRIMINOLOGY 103, 117, 125-27 (2013) (testing the “hypothesis that the dimensions of public perceptions of police legitimacy comprise perceived police lawfulness, procedural fairness, distributive fairness, and effectiveness” and finding that “legitimacy has both a direct and an indirect influence on people’s willingness to cooperate with the police”).
241. See Robin Shepard Engel, *Citizens’ Perceptions of Distributive and Procedural Injustice During Traffic Stops with Police*, 42 J. RSCH. CRIME & DELINQ. 445, 450 (2005) (collecting prior studies which have “generally found that African American and Hispanic citizens have more negative attitudes compared to White citizens” toward police). See generally Jennifer H. Peck, *Minority Perceptions of the Police: A State-of-the-Art Review*, 38 POLICING: INT’L J. POLICE STRATEGIES & MGMT. 173 (2015) (reviewing literature on minority perceptions of the police).
242. See, e.g., NANCY LA VIGNE, JOCELYN FONTAINE & ANAMIKA DWIVEDI, *URB. INST., HOW DO PEOPLE IN HIGH-CRIME, LOW-INCOME COMMUNITIES VIEW THE POLICE?* 2 (2017), <https://perma.cc/2DYS-QXS7> (presenting findings based on a study of community–police relations in high-crime, high-poverty neighborhoods showing that “respondents’ perceptions of police across measures of legitimacy, procedural justice, racial bias, relatability to police, and applied principles of community policing, on average, are extremely negative”); Liquin Cao, James Frank & Francis T. Cullen, *Race, Community Context, and Confidence in the Police*, 15 AM. J. POLICE, no. 1, 1996, at 3, 10-11 (presenting study findings showing that, in addition to race, “gender, age and income were statistically significant determinants of confidence in the police. . . . Income level was . . . positively related to confidence in the police.”).
243. See, e.g., Joselyne L. Chenane, Emily M. Wright & Chris L. Gibson, *Traffic Stops, Race, and Perceptions of Fairness*, 30 POLICING & SOC’Y 720, 720-23 (2020) (examining connections between traffic stops, race, and perceptions of fairness); Engel, *supra* note 241, at 473-74 (examining people’s perceptions of injustice after experiencing traffic stops by the police); Chris L. Gibson, Samuel Walker, Wesley G. Jennings & J. Mitchell Miller, *The Impact of Traffic Stops on Calling the Police for Help*, 21 CRIM. JUST. POL’Y REV. 139, 143-44 (2010) (considering how experiencing traffic stops affects the likelihood that people of different races will contact the police for services).

Researchers, however, have reached very different conclusions about which factors have the largest role in shaping civilian attitudes toward police.<sup>244</sup> At least three major perspectives in the literature can be identified. First, some researchers have concluded that individual characteristics, and most notably race and ethnicity, are the strongest predictors of civilian attitudes toward police.<sup>245</sup> Second, other researchers have concluded that instead of individual characteristics (for instance, race and ethnicity), neighborhood context (for instance, poverty and crime rates) are better predictors of civilian attitudes toward police.<sup>246</sup> Third, another set of researchers has concluded that civilian perceptions of fairness surrounding the procedures used during police–civilian encounters has the most influence on civilian attitudes toward police.<sup>247</sup>

Removing police from traffic enforcement could potentially improve public perceptions of law enforcement in ways that are relevant to all three perspectives.<sup>248</sup> For instance, researchers who focus on race and ethnicity as predictors of negative attitudes on the police have argued that the extent to which people of color are stopped by the police affects how people of color come to view the police.<sup>249</sup> The structural reforms discussed above would scale back one major source of police-initiated stops.<sup>250</sup> With regard to neighborhood

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244. Engel, *supra* note 241, at 450-53 (summarizing different perspectives on factors that shape civilian perceptions of police).

245. See, e.g., Vincent J. Webb & Chris E. Marshall, *The Relative Importance of Race and Ethnicity on Citizen Attitudes Toward the Police*, 14 AM. J. POLICE 45, 58 (1995) (“[O]ur findings show that . . . race and ethnicity has a far greater impact upon [attitudes toward the police] than do neighborhood differences such as neighborhood composition.”).

246. Ronald Weitzer, *Citizens’ Perceptions of Police Misconduct: Race and Neighborhood Context*, 16 JUST. Q. 819, 821-22 (1999).

247. See, e.g., Tom R. Tyler, *Public Trust and Confidence in Legal Authorities: What Do Majority and Minority Group Members Want from the Law and Legal Institutions?*, 19 BEHAV. SCI. & L. 215, 233 (2001) (noting that “people evaluate the police and the courts in terms of the fairness of the treatment that they feel people receive from those authorities”).

248. See Daniel P. Mears, Miltonette O. Craig, Eric A. Stewart & Patricia Y. Warren, *Thinking Fast, Not Slow: How Cognitive Biases May Contribute to Racial Disparities in the Use of Force in Police-Citizen Encounters*, 53 J. CRIM. JUST. 12, 20 (2017) (“Efforts to improve interactions with citizens in traffic encounters and everyday contact may hold the potential for altering perceptions about the police as unfair or discriminatory.”).

249. See, e.g., Webb & Marshall, *supra* note 245, at 59 (“Two significant effects on [attitudes toward the police] for contact with police were detected, and both of those concerned stops by the police.” (emphasis omitted)).

250. Of course, traffic stops are not the only type of police-initiated stop that falls hardest on communities of color. A robust body of literature describes how people of color historically have been, and are still, disproportionately subjected to stop-and-frisk tactics. Courts have acknowledged these injustices. See, e.g., Monica C. Bell, *Anti-segregation Policing*, 95 N.Y.U. L. REV. 650, 691 (2020) (“In the much-discussed 2013 New York City Police Department (NYPD) case, *Floyd v. City of New York*, the Southern District of New York

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context, the previous discussion explained how aggressive and discriminatory traffic policing in communities of color and other economically vulnerable communities creates and perpetuates poverty in those communities.<sup>251</sup> The structural reforms discussed above could undercut the ability of traffic policing to contribute to the criminalization of poverty, especially if jurisdictions focus only on enforcing traffic-law violations that pose imminent threats to public safety.<sup>252</sup> Finally, regarding procedural justice, traffic stops enable police discretion and vast police authority in ways that can cause drivers and passengers to view police actions and stops themselves as procedurally unfair.<sup>253</sup> Removing police from traffic enforcement can structurally and significantly curb possibilities for police to exercise discretion and invoke their authority in traffic-stop settings.<sup>254</sup>

Although it is difficult to make comparative judgments, and future research will be necessary, one prior study lends some support to the notion that delegating traffic enforcement to nonpolice actors could improve public perceptions of the police. Between 1936 and 1992, New Zealand created and maintained a nonpolice governmental agency that was responsible for the bulk of traffic enforcement, including nonmoving violations and minor moving violations.<sup>255</sup> Under this new framework, police were primarily concerned with investigating traffic accidents that resulted in injury and with enforcing

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York held that the NYPD's stop-and-frisk policies and practices violated the Fourth and Fourteenth Amendment rights of Black and Latinx New Yorkers."); Devon W. Carbado, *From Stop and Frisk to Shoot and Kill: Terry v. Ohio's Pathway to Police Violence*, 64 UCLA L. REV. 1508, 1537 (2017) ("*Terry v. Ohio* facilitates the 'wholesale harassment' of African Americans . . ."); Harris, *supra* note 36, at 309 ("[T]he Supreme Court [in *Terry*] candidly acknowledged that police had often used stop and frisk tactics to control and harass black communities."); Maclin, *supra* note 2, at 368 ("The *Terry* Court acknowledged the racial impact and tensions caused by stop and frisk practices."); Tracey L. Meares, *The Law and Social Science of Stop and Frisk*, 10 ANN. REV. L. SOC. SCI. 335, 337 (2014) ("[T]here has been a great deal written regarding the concerns of many with respect to the racial dynamics of policing relying on this procedure."); *see also* Floyd v. City of New York, 959 F. Supp. 2d 540 (S.D.N.Y. 2013); *Terry v. Ohio*, 392 U.S. 1 (1968).

251. *See supra* Parts I, II.C.2.a.

252. *See supra* Part II.C.

253. *See* Engel, *supra* note 241, at 474 (presenting study findings "suggest[ing] that citizens' perceptions of injustice are not based solely on the favorableness of the outcomes of traffic stops, but rather, are also based on citizens' perceptions of inequalities and unfair procedures disproportionately used by police during traffic stops").

254. *See supra* Part II.A.

255. *See* BAYLEY, *supra* note 21, at 135; P.R. Wilson & D. Chappell, *The Effects of Police Withdrawal from Traffic Control: A Comparative Study*, 61 J. CRIM. L. CRIMINOLOGY & POLICE SCI. 567, 568 (1971). The reasons why traffic enforcement reverted back to police in New Zealand are discussed in Part IV.C below.

drunk-driving laws.<sup>256</sup> One study conducted in the late 1960s compared New Zealand's traffic-enforcement approach with Australia's traditional approach, in which police were exclusively responsible for run-of-the-mill traffic enforcement.<sup>257</sup> The findings supported the conclusion that public respect for the police is likely to be adversely affected when police have a more dominant role in traffic enforcement.<sup>258</sup>

#### 4. Scope of the police function

A fourth benefit of removing police from traffic enforcement involves increasing police effectiveness by limiting the scope of the police function. Scholars and commentators have argued that society has grown to place too much responsibility on the police and vests too much power in officers to perform social functions.<sup>259</sup> Today, police perform a wide range of duties that includes conducting criminal investigations, preventing and deterring crime, conducting accident investigations, handling traffic enforcement and control, providing social services, and responding to emergency and nonemergency civilian complaints.<sup>260</sup>

More often than not, police spend their time responding to incidents that do not involve violent crime. One recent report revealed that police officers in New Orleans, Sacramento, and Montgomery County, Maryland, spend approximately 4% of their time responding to violent crimes.<sup>261</sup> Recent data from several city police departments show that approximately 1% of calls for service involve violent crime, with minor and noncriminal incidents (including traffic matters) making up a much larger percentage of calls.<sup>262</sup>

In the growing movement to defund the police, advocates have emphasized that successful police reform entails not only scaling down police

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256. Wilson & Chappell, *supra* note 255, at 568. A key difference between the framework proposed in this Article and New Zealand's approach is that in New Zealand, the police did not lose authority to enforce traffic laws. *Id.* In practice, however, nonpolice traffic officers "detected and prosecuted almost all non-moving traffic violations, and the majority of minor moving violations." *Id.*

257. *Id.* at 568-69 (presenting a comparative study between New Zealand and Australia on the effects of police withdrawal from traffic control on police-public relations).

258. *Id.* at 571.

259. See sources cited *supra* note 19.

260. See *supra* note 21 and accompanying text.

261. See Asher & Horwitz, *supra* note 23. The analysis was based on the Federal Bureau of Investigation (FBI) definition of "violent crime" in the Uniform Crime Report, which includes homicide, robbery, rape, and aggravated assault. *Id.*

262. *Id.*

budgets but also reevaluating what exactly police do.<sup>263</sup> As sociologist Alex Vitale has explained, “[t]he origins and function of the police are intimately tied to the management of inequalities of race and class.”<sup>264</sup> Rethinking the role of police in the traffic space is a critical part of these conversations.

Traffic stops are typically low-visibility police work, meaning that officers have vast discretion to invoke their authority and that their decisions are seldom subject to review—a combination that too often gives effect to officers’ conscious and unconscious biases about race and class.<sup>265</sup> Given the overlap between traffic enforcement and policing today,<sup>266</sup> the stakes are especially high for communities of color and other marginalized communities that are vulnerable to overpolicing and overcriminalization on roads and highways.<sup>267</sup> Reimagining public safety by investing in nonpolice alternatives to enforce traffic laws, and laws involving minor traffic violations in particular, would eliminate a major and unnecessary source of harmful low-visibility policing.<sup>268</sup>

Criticisms of the broad scope of the police function, however, have also been lodged from a law-enforcement perspective.<sup>269</sup> Police already worry that

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263. See Rashawn Ray, *What Does “Defund the Police” Mean and Does It Have Merit?*, BROOKINGS (June 19, 2020), <https://perma.cc/YJ82-3M9D>.

264. VITALE, *supra* note 19, at 27.

265. Gross & Barnes, *supra* note 2, at 655 (“Racial profiling depends on police discretion in choosing suspects.”); Harris, *supra* note 36, at 302 (“[P]olice have nearly complete discretion to decide who to stop.”); Johnson, *supra* note 2, at 1076 (“[D]iscretion has exacerbated problems with racial profiling in law enforcement.”); Maclin, *supra* note 2, at 356, 376 (noting the low-visibility discretion that traffic stops afford officers as well as the substantial discretion that officers have in traffic-stop settings); P.A.J. Waddington, Kevin Stenson & David Don, *In Proportion: Race, and Police Stop and Search*, 44 BRIT. J. CRIMINOLOGY 889, 891 (2004) (“[A]bstention [from stopping and searching] can be selective and create a pattern in which some sections of the population suffer the intrusions of the police more than others.”); Min Su, Research Article, *Discretion in Traffic Stops: The Influence of Budget Cuts on Traffic Citations*, 81 PUB. ADMIN. REV. 446, 447 (2021) (identifying residential instability and poverty as factors that influence officer decisionmaking in issuing traffic citations).

266. See sources cited *supra* note 9.

267. See *supra* note 6 and accompanying text.

268. See Simone Weichselbaum & Nicole Lewis, *Support for Defunding the Police Department Is Growing. Here’s Why It’s Not a Silver Bullet*, MARSHALL PROJECT (June 9, 2020, 6:00 AM), <https://perma.cc/MWU8-F9ZK> (“One of the main ideas [behind defunding the police] is that police departments are often the only agency to respond to problems—even if the problems are not criminal in nature. . . . Advocates of defunding the police argue that many of these functions would be better left to other professionals . . .”).

269. See Brady Dennis, Mark Berman & Elahe Izadi, *Dallas Police Chief Says “We’re Asking Cops to Do Too Much in This Country,”* WASH. POST (July 11, 2016, 7:56 PM PDT), <https://perma.cc/R7SN-L56X>; Booker Hodges, *2 Reasons Cops Should Not Respond to Non-violent Mental Health Calls*, POLICE1 (Sept. 22, 2017), <https://perma.cc/3JCJ-ZMM3> (“[W]e are asking cops to do too much, especially in the area of mental health

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society has come to place too much responsibility on law enforcement.<sup>270</sup> For instance, one police chief recently explained that being an officer “in 2020 means being a part-time therapist, drug addiction counselor, landlord-tenant arbitrator, homelessness advocate, private security guard, traffic controller, parking attendant, family counselor and animal control officer.”<sup>271</sup>

Law-enforcement advocates have argued that the breadth of the police function today places great stress on officers, which undermines their ability to make split-second decisions on the job.<sup>272</sup> Many officers do not view traffic enforcement as “real police work.”<sup>273</sup> Moreover, dominant danger narratives that reinforce the contested idea that traffic stops are especially dangerous encounters for police can make traffic stops stressful experiences for officers.<sup>274</sup> Structural reforms that remove the police from traffic enforcement respond to these concerns.

## B. Criminal-Law and Criminal-Justice Reform

Removing police from traffic enforcement also strengthens prior and unfolding criminal-law and criminal-justice reforms intended to address injustices that stem from the criminalization of traffic offenses. This Subpart examines how the structural reforms to traffic enforcement discussed above can strengthen criminal-law and criminal-justice reforms to decriminalize or reduce the criminal consequences that attach to (1) minor traffic offenses, (2) driver’s license offenses, (3) DUI, and (4) outstanding warrants for nonviolent offenses.

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response.”); E. Tammy Kim, *What to Do About the Police?*, NATION (Mar. 29, 2018), <https://perma.cc/WB93-EV9N> (noting that “the police do too much” has emerged as a collective creed, the only perspective shared by officers, Black Lives Matter activists, and criminologists alike”).

270. See Meares, *supra* note 239, at 1365 (“Police already worry and complain that the public views them as social workers and expects them to respond to every problem that makes life in urban America difficult.”).

271. Alfonso Morales, Opinion, *I’m Milwaukee’s Police Chief. Here’s What “Defunding the Police” Might Mean.*, MILWAUKEE J. SENTINEL (updated July 14, 2020, 9:20 PM CT), <https://perma.cc/96LK-9799>.

272. E.g., Leischen Stelter, *Officer Overload: Are Too Many Responsibilities Compromising Officer Safety?*, IN PUBLIC SAFETY (Feb. 14, 2017), <https://perma.cc/7Y4U-L8HM> (noting that increasing responsibilities and “high levels of pressure” lead officers to “make poor split-second decisions”).

273. David Giacomassi & David R. Forde, *Broken Windows, Crumpled Fenders, and Crime*, 28 J. CRIM. JUST. 397, 403 (2000) (“From the perspective of many officers, enforcing traffic laws is not real police work . . . .”); P.A.J. WADDINGTON, *POLICING CITIZENS: AUTHORITY AND RIGHTS* 10 (1999) (“Yet, traffic policing is regarded by police and public alike as a marginal police responsibility, almost a distraction from ‘real police work’ . . . .”).

274. See Woods, *supra* note 62, at 639 (discussing officer danger narratives surrounding routine traffic stops and noting that “[t]he narrative that routine traffic stops are fraught with danger to the police is longstanding.”).

1. Decriminalization of minor traffic offenses

Over the past few decades, many states have decriminalized minor traffic violations as civil traffic violations.<sup>275</sup> These reforms reflected legislative and public judgments that traffic violations did not deserve the significant penalty of the criminal law, especially since most drivers have committed traffic violations at some point.<sup>276</sup> Most traffic decriminalization reforms occurred during the 1970s and 1980s, when over twenty states removed criminal penalties for traffic violations, reclassified the violations as noncriminal offenses, and streamlined their adjudication to the administrative realm.<sup>277</sup> Proposals to decriminalize minor traffic violations, however, are still being introduced today in states where traffic violations technically constitute low-level crimes.<sup>278</sup>

In a previous article, I described how traffic decriminalization reform has largely centered on modifying the sanctions that attach to minor traffic violations without restricting police authority and discretion in traffic-stop settings.<sup>279</sup> I argued that if a true goal of traffic decriminalization is to prevent traffic violators from being funneled into the criminal-justice system, then it is normatively inconsistent to remove criminal sanctions from traffic violations while keeping police authority and discretion in traffic-stop settings intact.<sup>280</sup> The state retains access to an expansive set of crime-fighting tools in traffic-stop settings through police powers to stop, question, search, and arrest, even

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275. Darryl K. Brown, *Democracy and Decriminalization*, 86 TEX. L. REV. 223, 239 (2007) (“Another class of low-level crimes that some legislatures abandoned over the last two decades is minor traffic offenses; several states have rewritten those offenses as civil infractions instead of misdemeanors . . . .”); Woods, *supra* note 16, at 679-80 (“Since 1970, twenty-two state legislatures have decriminalized minor traffic offenses by removing them from the criminal framework and eliminating the criminal sanctions that once attached to them.”).

276. Brown, *supra* note 275, at 239 (noting that traffic decriminalization “is surely an example of decriminalization with broad (but probably weak) popular support because it involves offenses that most people commit”); Woods, *supra* note 16, at 734-35 (noting that traffic decriminalization reform was in part based on judgments that traffic violations “do not pose a serious enough threat to warrant the significant penalty of the criminal law”).

277. Woods, *supra* note 16, at 696-700 (providing an overview of traffic decriminalization starting in the 1970s).

278. See, e.g., Riley Snyder, *Move by Key Democrat to Decriminalize Minor Traffic Violations Opposed by Police, Local Governments*, NEV. INDEP. (Apr. 5, 2019, 2:00 AM), <https://perma.cc/JP2U-5NXT> (discussing the introduction of a bill in Nevada that “would move the vast majority of traffic violations from a criminal misdemeanor to a civil offense”).

279. Woods, *supra* note 16, at 680-81.

280. *Id.* at 681.

when the stops are based on noncriminal traffic conduct.<sup>281</sup> I concluded that effective decriminalization requires not only restricting state power on the back end of the criminal process (imposing sanctions), but also restricting state power on the front end of the criminal process (policing conduct).<sup>282</sup>

Embracing nonpolice approaches to traffic enforcement would bring it in line with the true purpose of decriminalizing minor traffic violations. This reform would limit the state's access to the expansive set of crime-fighting tools available through traffic policing, which, as described later in this Article, is neither effective nor efficient in furthering crime-control efforts.<sup>283</sup> Even in states where traffic offenses are technically classified as low-level crimes, removing police from traffic enforcement would more proportionately reflect the low severity of those offenses in the criminal framework.

## 2. Driver's license offenses

Nonpolice alternatives to traffic enforcement also strengthen currently unfolding criminal-law and criminal-justice reform efforts involving the criminalization of driver's license offenses (for example, driving with no driver's license, without a valid driver's license, or with a suspended or revoked driver's license). Loss of a driver's license is a common collateral consequence of a criminal conviction<sup>284</sup> and is often a sanction for failure to pay court or administrative debt (for example, fines, fees, or restitution).<sup>285</sup> Currently, forty-three states suspend licenses for unpaid court or administrative debt.<sup>286</sup> More than seven million people nationwide may have lost their driver's licenses for failure to pay such debt.<sup>287</sup>

Recent studies illustrate the racial and economic injustice surrounding the criminalization of driver's license offenses. One study from Michigan reported

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281. *See id.*

282. *Id.* at 682.

283. *See infra* Part IV.B.

284. *See, e.g.*, 23 U.S.C. § 159 (requiring states to revoke or suspend driver's licenses of individuals convicted of drug offenses in order not to lose federal highway funds); *see also* Gabriel J. Chin, *The New Civil Death: Rethinking Punishment in the Era of Mass Conviction*, 160 U. PA. L. REV. 1789, 1801 (2012) ("Those convicted of certain crimes may lose the right to drive a car.").

285. Beth A. Colgan, *The Excessive Fines Clause: Challenging the Modern Debtors' Prison*, 65 UCLA L. REV. 2, 7-8 (2018); MARIO SALAS & ANGELA CIOLFI, LEGAL AID JUST. CTR., *DRIVEN BY DOLLARS: A STATE-BY-STATE ANALYSIS OF DRIVER'S LICENSE SUSPENSION LAWS FOR FAILURE TO PAY COURT DEBT 2* (2017), <https://perma.cc/TS4C-CU6R>.

286. SALAS & CIOLFI, *supra* note 285, at 7-8.

287. *See* Justin Wm. Moyer, *More than 7 Million People May Have Lost Driver's Licenses Because of Traffic Debt*, WASH. POST (May 19, 2018, 1:18 PM PDT), <https://perma.cc/G4NL-DR5V>.

that “[t]raffic offenses accounted for half of [the state’s] criminal court cases in 2018.”<sup>288</sup> Driving without a valid license was the third most common offense that led to jail sentences in the state.<sup>289</sup> The study further reported that Black individuals were more likely to go to jail for driving without a valid license than white individuals.<sup>290</sup>

Another report found that between 2015 and 2017, more than 3.5 million license suspension notices were issued to Florida drivers for unpaid court debt.<sup>291</sup> “75% percent of driver’s licenses suspended in 2016 remained suspended two years later.”<sup>292</sup> Suspension rates were highest in areas with larger populations of people of color and low-income people, and Black drivers in particular had their licenses suspended on average at 1.5 times the rate of the rest of the population.<sup>293</sup> In 2017, law-enforcement officers in Florida issued over 232,000 citations for driving with a suspended license.<sup>294</sup>

To address these problems, several states have introduced or enacted legislation that decriminalizes or reduces the punishment for driver’s license offenses.<sup>295</sup> For example, recently enacted Virginia legislation (1) prohibits

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288. MICH. JOINT TASK FORCE ON JAIL AND PRETRIAL INCARCERATION: REPORT AND RECOMMENDATIONS 10 (2020), <https://perma.cc/LLR4-SSQF>. The Michigan study “examined 10 years of arrest data gathered from more than 600 law enforcement agencies across the state, 10 years of court data collected from nearly 200 district and circuit courts, and three years of individual-level admission data from a diverse sample of 20 county jails.” *Id.* at 6.

289. *Id.* at 10.

290. *Id.* at 8.

291. CARSON WHITELEMONS, ASHLEY THOMAS & SARAH COUTURE, FINES & FEES JUST. CTR., DRIVING ON EMPTY: FLORIDA’S COUNTERPRODUCTIVE AND COSTLY DRIVER’S LICENSE SUSPENSION PRACTICES 3 (2019), <https://perma.cc/2WSH-LNEE>.

292. *Id.* at 4.

293. *Id.*

294. *Id.*

295. New legislation or polices have been enacted in California, Illinois, Maine, Mississippi, Montana, New York, Texas, and Virginia. *See* Press Release, Cal. Dep’t of Motor Vehicles, DMV Removes Driving Suspensions for Failure to Pay Fines (Mar. 15, 2018), <https://perma.cc/88SA-SS27>; Dan Petrella, *Illinois to Reinstate 55,000 Driver’s Licenses Suspended over Unpaid Parking Tickets*, CHI. TRIB. (Jan. 17, 2020), <https://perma.cc/KF5K-7XZT>; Press Release, ACLU of Me., Legislature Overrides Veto of Bill to End Automatic License Suspensions for Unpaid Fines (July 9, 2018), <https://perma.cc/L4JX-GNCE>; *SPLC Reaches Agreement with Mississippi to Reinstate Over 100,000 Driver’s Licenses Suspended for Non-Payment of Fines*, S. POVERTY L. CTR. (Dec. 19, 2017), <https://perma.cc/S7HR-5SLL>; Press Release, ACLU of Mont., Governor Bullock Signs HB 217 into Law (May 8, 2019, 9:30 AM), <https://perma.cc/TD9E-GVYA>; Jonathan Ben-Menachem, Political Report, *New York Ends a Punishment That Traps People in Poverty*, APPEAL (Jan. 5, 2021), <https://perma.cc/VM5S-VLPQ>; Troy Closson, *Texas’ Driver Responsibility Program Ends Next Month. Here’s What That Means for You.*, TEX. TRIB. (Aug. 20, 2019, 12:00 AM CT), <https://perma.cc/6TD2-KNMN>; Justin Wm. Moyer, *Va. Driver’s Licenses, Suspended for*  
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state courts from suspending a person's driver's license solely for failure to pay court fines and costs, and (2) renders anyone whose driver's license had been suspended solely for failure to pay court fines and costs eligible to have their driver's license reinstated without owing a reinstatement fee.<sup>296</sup> As noted above, in 2018, Idaho also decriminalized many driver's license offenses as infractions punishable by a fine only for first- and second-time offenses.<sup>297</sup> Cases are also pending in several states that challenge the constitutionality of driver's license suspensions for failure to pay fines and fees.<sup>298</sup>

To date, these criminal-law and criminal-justice reforms have not focused on curbing police authority to enforce driver's license laws. Policing, however, is a critical element that contributes to the funneling of drivers into the criminal-justice system for driver's license offenses. To illustrate this point, consider the facts of the Supreme Court's heavily criticized decision in *Atwater v. City of Lago Vista*,<sup>299</sup> which held that a custodial arrest is lawful under the Fourth

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*Unpaid Court Debt, to Be Reinstated July 1*, WASH. POST (June 3, 2019, 10:37 AM PDT), <https://perma.cc/R6LJ-BYHX>.

Legislation has been introduced in Colorado, Florida, Ohio, Oregon, and West Virginia. See Alex Burness, *Bills Seek to Reduce Colorado Driver's License Suspensions*, DENVER POST (Jan. 28, 2020, 6:00 AM), <https://perma.cc/HY6Q-LFVL>; Mary Ellen Klas, *Driving While Poor No More? Florida Lawmakers Consider Overhaul of License Suspensions.*, TAMPA BAY TIMES (Jan. 21, 2020), <https://perma.cc/EE8A-9TSL>; Lynn Hulsey, *Changes Sought as Ohio Driver Suspensions Pile Up*, DAYTON DAILY NEWS (Dec. 4, 2018), <https://perma.cc/24HB-BD52>; Dirk VanderHart, *Oregon Considers Ditching Driving Suspensions for Unpaid Tickets*, OR. PUB. BROAD. (Feb. 5, 2020, 4:12 PM), <https://perma.cc/AD8H-E28M>; Brittany Ward, *Bill Introduce to End Driver's License Suspension for Unpaid Fines*, CBS FOX 59 (Jan. 31, 2020, 5:12 PM EST), <https://perma.cc/CP94-TC2U>.

296. 2020 Va. Acts. ch. 964 (codified in scattered sections of VA. CODE ANN. tits. 19-2 and 46-2).

297. IDAHO CODE §§ 18-8001, 49-301 (2020); see also *supra* note 126 and accompanying text.

298. Brandon L. Garrett, *Wealth, Equal Protection, and Due Process*, 61 WM. & MARY L. REV. 397, 429-31 (2019) ("Litigation challenging driver's license suspension for failure to pay fines and fees has been recently brought, or is pending, in a range of states, including California, North Carolina, Michigan, Mississippi, Montana, Oregon, Tennessee, Virginia, and Washington." (footnotes omitted)). For an overview of the constitutional arguments in pending cases challenging driver's license suspensions for failure to pay fines and fees, see *id.* at 428-37.

299. 532 U.S. 318 (2001). For a critique of *Atwater's* historical analysis, see Thomas Y. Davies, *The Fictional Character of Law-and-Order Originalism: A Case Study of the Distortions and Evasions of Framing-Era Arrest Doctrine in Atwater v. Lago Vista*, 37 WAKE FOREST L. REV. 239 (2002). For additional criticism of the case, see Richard S. Frase, *What Were They Thinking? Fourth Amendment Unreasonableness in Atwater v. City of Lago Vista*, 71 FORDHAM L. REV. 329, 331 (2002) ("The decision in *Atwater* has been widely criticized, even by conservatives, and with good reason." (footnote omitted)); Wayne A. Logan, *Street Legal: The Court Affords Police Constitutional Carte Blanche*, 77 IND. L.J. 419, 422 (2002) (noting that an important practical effect of *Atwater* was "affording police 'constitutional carte blanche' to execute warrantless arrests" (footnote omitted)).

Amendment if an arrested person commits a criminal offense in the officer's presence, no matter how minor.<sup>300</sup>

*Atwater* involved the traffic stop of Gail Atwater, who was driving “with her 3-year-old-son and 5-year-old daughter in the front seat.”<sup>301</sup> The three of them were not wearing seatbelts.<sup>302</sup> The officer had previously stopped Atwater for a seatbelt violation involving her son but ultimately issued a verbal warning after it became clear during the stop that the child was wearing a seat belt.<sup>303</sup> As subsequent descriptions of *Atwater* typically stress, rather than issuing a citation for the seatbelt violation at issue in the case, the officer decided to arrest, handcuff, and transport Atwater to the police station.<sup>304</sup>

Less often discussed is that before arresting Gail Atwater, the officer also asked to see her driver's license and insurance documentation.<sup>305</sup> Atwater told the officer that they were in her purse, which had been stolen from her the day before.<sup>306</sup> But Atwater was able to produce a checkbook with her driver's license number and home address on it, and the officer confirmed that Atwater was a licensed driver.<sup>307</sup> Nonetheless, state law required Atwater to carry her driver's license and proof of insurance.<sup>308</sup> Atwater was arrested and charged not only for the seatbelt violations, but also for driving without a license and failing to show proof of insurance.<sup>309</sup> “She ultimately pleaded no contest to the misdemeanor seatbelt offenses and paid a \$50 fine; the other charges were dismissed.”<sup>310</sup> Nonetheless, the driver's license offense was still a basis for the arrest and subsequent charges.<sup>311</sup>

Now reimagine the facts of *Atwater* through the lens of the nonpolice enforcement alternatives proposed above. The traffic monitor would not have

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300. 532 U.S. at 323, 354.

301. *Id.* at 323-24.

302. *Id.*

303. *Id.* at 324 n.1.

304. *Id.* at 324; see e.g., Davies, *supra* note 299 at 266 (“Officer Turek of the Lago Vista police department arrested Gail Atwater for driving without a seat belt (including not having her children in seat belts), put her in handcuffs, and took her to the police station.”); Ayesha Bell Hardaway, *The Supreme Court and the Illegitimacy of Lawless Fourth Amendment Policing*, 100 B.U. L. REV. 1193, 1203 (2020) (“In *Atwater*, Officer Turek decided to arrest Gail Atwater for failing to wear a seatbelt and to secure her children in their seatbelts while she was driving.”).

305. 532 U.S. at 324.

306. *Id.*

307. *Atwater v. City of Lago Vista*, 195 F.3d 242, 248 (5th Cir. 1999) (Wiener, J., dissenting).

308. 532 U.S. at 324.

309. *Id.*

310. *Id.*

311. *Id.*

had the authority to arrest Gail Atwater for the driver's license violation or the seatbelt or insurance violations.<sup>312</sup> At most, the traffic monitor would have been authorized to issue citations for the traffic violations.<sup>313</sup> Reimagining *Atwater* in this way shows how limiting police-initiated traffic stops based on certain driver's license offenses, and relying on nonpolice enforcement alternatives instead, strengthens unfolding criminal-law and criminal-justice reforms that are intended to reduce the criminal consequences that attach to driver's license offenses.

### 3. Driving under the influence

Nonpolice alternatives to traffic enforcement also create space to explore different enforcement approaches to address DUI enforcement. Today, every state has criminal laws prohibiting DUI, although those laws vary from state to state.<sup>314</sup> Public safety is the traditional justification for handling DUI within the criminal framework.<sup>315</sup> Lending support to this view, 10,511 fatalities involved alcohol-impaired driving in 2018 (the latest available annual data).<sup>316</sup> This totaled 29% of all traffic fatalities that year.<sup>317</sup>

At the same time, scholars have critiqued the effectiveness of criminalizing DUI in deterring drunk driving and achieving public safety.<sup>318</sup> Supporting this idea, some empirical studies have found no relationship or a nonlinear

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312. See *supra* Parts II.B.1-.2.

313. See *supra* Parts II.B.1-.2.

314. Richard J. Stringer, *Policing the Drunk Driving Problem: A Longitudinal Examination of DUI Enforcement and Alcohol Related Crashes in the U.S. (1985-2015)*, 44 AM. J. CRIM. JUST. 474, 481 (2019) (“[S]tate laws related to DUI and traffic safety vary across time and state.”).

315. Andrea Roth, *The Uneasy Case for Marijuana as Chemical Impairment Under a Science-Based Jurisprudence of Dangerousness*, 103 CALIF. L. REV. 841, 848 (2015).

316. NAT'L HIGHWAY TRAFFIC SAFETY ADMIN., U.S. DEP'T OF TRANSP., DOT HS 812 864, TRAFFIC SAFETY FACTS—2018 DATA: ALCOHOL-IMPAIRED DRIVING 1 (2019), <https://perma.cc/X4ZP-94PJ>.

317. *Id.*

318. See, e.g., H. Laurence Ross, *Decriminalizing Drunk Driving: A Means to Effective Punishment*, 24 J. APPLIED BEH. ANALYSIS 89, 89 (1991) (arguing that criminalizing DUI “fails to deliver punishment to drunk drivers with sufficient certainty and swiftness to support the credibility of the deterrent threat”); James D. Stuart, *Deterrence, Desert, and Drunk Driving*, PUB. AFFS. Q., Jan. 1989, at 105, 105 (arguing that “increases in penalties for DWI offenses are not justified from the deterrence perspective”). Scholars have also called attention to the lack of criminological focus on DUI crime, which prompts meaningful questions about whether evidence-based knowledge supports DUI criminalization. See, e.g., James B. Jacobs, *Researching and Conceptualizing Drunk Driving: An Invitation to Criminologists and Criminal Law Scholars*, in THE CRIMINOLOGY OF CRIMINAL LAW 53-69 (William S. Laufer & Freda Adler eds., 1999); JAMES B. JACOBS, DRUNK DRIVING: AN AMERICAN DILEMMA, at xx-xxii (1989) (discussing the lack of criminological research on DUI).

relationship between DUI arrest activity and DUI-related crashes.<sup>319</sup> Scholars have further critiqued criminalizing DUI on retributive grounds.<sup>320</sup> Informed by these critiques, some scholars have advocated for decriminalizing DUI and addressing it through administrative procedures and penalties, including immediate driver's license restrictions.<sup>321</sup>

As noted above, jurisdictions outside of the United States are already moving in this direction. In 2010, British Columbia, Canada, enacted legislation that gives officers discretion to offer roadside administrative penalties to first-time offenders caught driving under the influence, as long as the drivers have not caused injury or property damage.<sup>322</sup> The administrative sanction comprises a ninety-day license restriction, \$500 fine, required enrollment in a responsible driver and ignition interlock program, and a thirty-day vehicle impound.<sup>323</sup> Although more research is necessary, one study reported a statistically significant decrease in alcohol-related collisions since the policy took effect, and more specifically, a 40.4% decline in fatal collisions, a 23.4% decline for injury collisions, and a 19.5% decline for property-damage-only collisions.<sup>324</sup> Similar partial-decriminalization reforms, which have even garnered support from the CEO of Mothers Against Drunk Driving Canada, have been enacted or are being introduced in other Canadian provinces.<sup>325</sup>

Similar to decriminalization reforms involving minor traffic violations, these partial-decriminalization reforms involving DUI focus on sanctions. Such reforms replace criminal sanctions with the option of administrative

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319. See, e.g., Chris S. Dula, William O. Dwyer & Gilbert LeVerne, *Police the Drunk Driver: Measuring Law Enforcement Involvement in Reducing Alcohol-Impaired Driving*, 38 J. SAFETY RSCH. 267, 269 (2007) (finding no significant relationship between DUI arrests and DUI crashes in a study based on 95 counties in Tennessee); Stringer, *supra* note 314, at 490 (“[A]t some point increasing DUI enforcement may be a futile effort to reduce fatal alcohol related crashes and may actually contribute to them.”).

320. See Stuart, *supra* note 318 at 112-13 (“[I]t is difficult to show that DWI, from a deserts viewpoint, is a serious criminal offense.”); *id.* at 113 (“If we cannot show that DWI is a serious criminal offense, then from a deserts perspective, we cannot justify severe penalties for it.”).

321. See, e.g., Ross, *supra* note 318 at 89 (arguing that DUI should be decriminalized and that criminal punishment “should be replaced with punishment based on administrative procedures”).

322. See *Should Ontario Overhaul How It Charges Drunk Drivers?*, *supra* note 130.

323. *Id.*

324. See Scott Macdonald, Jinhui Zhao, Gina Martin, Jeff Brubacher, Tim Stockwell, Neil Arason, Susanne Steinmetz & Herbert Chan, *The Impact on Alcohol-Related Collisions of the Partial Decriminalization of Impaired Driving in British Columbia, Canada*, 59 ACCIDENT ANALYSIS & PREVENTION 200, 203 (2013).

325. See, e.g., Leyland Cecco, *One for the Road? Canada Province Considers Decriminalizing Drunk Driving*, GUARDIAN (Mar. 13, 2020, 5:00 EDT), <https://perma.cc/9SFK-69GZ>; see also Kaufmann, *supra* note 130 (discussing DUI reforms in Alberta).

sanctions, while police involvement in DUI enforcement remains the same. As a result, these reforms overlook the extent to which police-initiated stops on suspicion of DUI are sites of police intrusion and gateways for funneling civilians into the criminal-justice system.

Many stops on suspicion of DUI never result in a DUI arrest.<sup>326</sup> Nonetheless, such stops allow police to access a vast set of crime-fighting tools to peruse for evidence of non-DUI crime. The wide latitude that officers have to pull over vehicles for suspicion of DUI enables these problems. For instance, in *Navarette v. California*, the Supreme Court held that a mere anonymous tip that a driver had recently run the tipster off the road was sufficient under the circumstances to give officers reasonable suspicion to stop the driver for DUI.<sup>327</sup>

Nonpolice enforcement alternatives could serve as useful interventions to strengthen criminal-law and criminal-justice reforms involving DUI. Rather than relying on police officers, traffic monitors could handle DUI investigations and assign administrative penalties for first-time DUI offenders without having to get the police involved.<sup>328</sup> Traffic monitors could request police assistance for situations involving intoxicated drivers who are ineligible for administrative sanctions (for instance, repeat DUI offenders).<sup>329</sup> The benefits of curbing the net-widening of the criminal-justice system would be significant because many of the approximately 1.5 million people arrested for DUI in the United States each year are first-time offenders.<sup>330</sup>

#### 4. Outstanding warrants for nonviolent offenses

Nonpolice alternatives to traffic enforcement also strengthen criminal-justice reforms that address outstanding warrants for nonviolent offenses. Although national data is limited,<sup>331</sup> available research shows that a significant

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326. See, e.g., *McKeown v. State*, 16 So. 3d 247, 248 (Fla. Dist. Ct. App. 2009) (discussing a police officer's testimony that he arrests only half of the DUI suspects that he investigates).

327. 572 U.S. 393, 403-04 (2014).

328. See *supra* Part II.B.2.b.

329. See *supra* Part II.B.2.b.

330. See ALARID, *supra* note 134, at 143; see also Press Release, Minn. Dep't of Pub. Safety, *supra* note 134 ("The pattern in recent years is 40 percent of drivers arrested for DWI are repeat offenders and about 60 percent do not have any arrests on record.").

331. Some states lack a statewide warrant-tracking system and law-enforcement agencies inconsistently enter warrants into state and national tracking systems, such as the Law Enforcement Automated Data System (LEADS) and the National Crime Information Center (NCIC). See, e.g., THE OHIO GOVERNOR'S WARRANT TASK FORCE REPORT 6 (2019), <https://perma.cc/ZFP6-CMT8> ("Ohio lacks a statewide warrant tracking system."); *id.* at 8 ("Although many Ohio law enforcement agencies use LEADS and NCIC, there are no mandates or uniform guidelines for the entry of active warrants into these systems."); JESSICA L. CORTES, COMPARATIVE ANALYSIS OF ARREST WARRANT ISSUANCE

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number of warrants involve nonviolent offenses, including traffic offenses.<sup>332</sup> For instance, a recent study discovered more than 5.7 million open arrest warrants in twenty-seven states.<sup>333</sup> Only 240,000 cases with open arrest warrants (just over 4%) involved violent crime, weapons, or sexual misconduct.<sup>334</sup> Over 1.2 million open arrest warrants involved nonviolent offenses, including not paying a traffic or parking ticket.<sup>335</sup> Open warrants for nonviolent offenses also disproportionately affected low-income communities of color.<sup>336</sup>

To address these issues, advocates and policymakers are pursuing various reforms. For instance, in July 2020 the city of Columbus, Ohio, adopted a permanent policy not to arrest most individuals with open warrants for nonviolent crimes.<sup>337</sup> Instead, individuals will either receive a second summons or be ordered to appear in front of a judge.<sup>338</sup> Municipalities are also implementing “safe surrender” or “amnesty” programs, which provide individuals with outstanding nonviolent warrants an opportunity to have their warrants reviewed and resolved without facing arrest.<sup>339</sup>

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AND ENFORCEMENT 43 (2014), <https://perma.cc/64G3-T6AU> (reporting the results of a study on Arizona courts finding that “courts do not all report FTP or FTC warrants to the Arizona Criminal Justice Information System (ACJIS) and the National Crime Information Center (NCIC”).

332. See *supra* note 105 and accompanying text.

333. Mike Wagner, Doug Caruso, Daphne Chen & John Fuddy, *Tens of Thousands of Warrants Go Unfilled in Ohio*, COLUMBUS DISPATCH (Dec. 2, 2018, 12:01 AM), <https://perma.cc/C6HS-S9QB>.

334. *Id.*

335. *Id.*

336. *Id.*

337. Megan Henry, *Columbus Makes Permanent Its Policy to Not Arrest Non-violent Defendants with Warrants*, COLUMBUS DISPATCH (July 16, 2020, 12:27 PM ET), <https://perma.cc/6K9Z-UCKP>.

338. *Id.*

339. See generally Daniel J. Flannery & Jeff M. Kretschmar, *Fugitive Safe Surrender: Program Description, Initial Findings, and Policy Implications*, 11 CRIMINOLOGY & PUB. POL’Y 437, 438 (2012) (discussing the Fugitive Safe Surrender Program, which “was established in 2005 by the U.S. Marshals Service (USMS) to provide a neutral place for fugitives with outstanding nonviolent felony or misdemeanor warrants to surrender in a nonconfrontational, safe setting”); *Fugitive Safe Surrender*, U.S. MARSHALS SERV., <https://perma.cc/SP24-Z3K5> (archived May 5, 2021) (listing twenty cities that have established Fugitive Safe Surrender programs); Nicholas J.C. Pistor, *St. Louis to Forgive About 220,000 Warrants for Nonviolent Municipal Offenses*, ST. LOUIS POST-DISPATCH (Oct. 1, 2014), <https://perma.cc/6TYL-GSAD> (discussing a program started in St. Louis in 2014 under which municipal courts “automatically clear outstanding warrants for nonviolent traffic violations and allow offenders to reset the court dates without a fee so long as they act by year’s end”); Bryce Gray, *St. Louis Wraps Up “Amnesty” Program for Those with Outstanding Warrants, Minor Offenses*, ST. LOUIS POST-DISPATCH (Feb. 28, 2020), <https://perma.cc/93MM-BMDC> (discussing a four-day initiative in February  
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Removing the police from traffic enforcement and narrowing the scope and applicability of traffic codes promotes the goals of these criminal-justice reforms. The traffic stop is a significant tool for police officers to arrest individuals with outstanding warrants for nonviolent offenses.<sup>340</sup> Traffic monitors, however, would not have the authority to run criminal history checks or detain or arrest drivers with outstanding warrants.<sup>341</sup> As one would expect, traffic stops are also the primary means by which individuals receive citations for traffic violations.<sup>342</sup> If traffic monitors issued citations only when traffic violations put motorists or pedestrians at risk of imminent danger, then there would be fewer opportunities to execute outstanding warrants.

#### IV. Potential Objections

This Part addresses potential objections to removing the police from traffic enforcement. Subpart A discusses potential objections involving traffic safety. Subpart B examines two potential objections involving policing: (1) undermining

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2020 as part of the St. Louis Municipal Courts Amnesty Program, which cancelled approximately 7,504 warrants for 1,609 defendants, over half of which involved traffic cases).

340. Wagner et al., *supra* note 333 (“Often, it takes a routine traffic stop for the warrant to lead to an arrest.”).
341. It is important to note that the growing use of automatic license-plate readers (ALPRs) in law enforcement could undermine this potential progress. See Ángel Díaz & Rachel Levinson-Waldman, Report, *Automatic License Plate Readers: Legal Status and Policy Recommendations for Law Enforcement Use*, BRENNAN CTR. FOR JUST. (2020), <https://perma.cc/FT6Z-EN3A> (noting the “growing use of automatic license plate readers (ALPRs)” in law enforcement). Although law-enforcement agencies initially used ALPRs to locate stolen vehicles, their use has expanded significantly, including to flag a registered vehicle owner’s open warrants. See AXON AI & POLICING TECH. ETHICS BD., AUTOMATED LICENSE PLATE READERS 14 (2019), <https://perma.cc/MC9X-SCS5> (“Today, ALPRs can connect to external databases to learn more about the license plate or the vehicle’s registered owner, alert an officer to a vehicle’s unpaid traffic tickets or expired insurance, or flag the registered owner’s open warrants, unpaid property taxes, sex-offender status, or supposed gang affiliation.”). This underscores a need for policy and design reforms that restrict the circumstances under which law-enforcement agencies use ALPRs, especially to initiate arrests for outstanding warrants for nonviolent crimes. See *id.* at 32 (“Axon should design its technology with default settings to encourage ALPR use in ways that avoid some of the more serious concerns expressed here, including over-enforcement of civil infractions, offenses enforceable by citations, or outstanding warrants arising from a failure to pay fines and fees.”).
342. It is important to note, however, that many traffic stops do not result in traffic citations. Although there is regional variability, accepted scholarly estimates suggest that citations are issued in one in every two to three traffic stops. See, e.g., Lichtenberg & Smith, *supra* note 233, at 423; see also BAYLEY, *supra* note 21, at 30 (offering one scholarly estimate that one in every two traffic stops results in a citation); MICHAEL K. BROWN, WORKING THE STREET: POLICE DISCRETION AND THE DILEMMAS OF REFORM 227 (1981) (offering one scholarly estimate that one in every three traffic stops results in a citation).

criminal investigations, and (2) undermining criminal deterrence. Subpart C then discusses financial considerations. Finally, Subpart D discusses the potential objections of police unions. Although they are not entirely without merit, this Part explains why these objections do not justify keeping traffic enforcement and policing intertwined.

#### A. Traffic Safety

Imagining a world of traffic without the police sets up a critical dialogue about whether police-initiated traffic stops are necessary to achieve traffic safety. This dialogue matters because traffic safety is a critical reason why the police became involved in traffic enforcement in the first place.<sup>343</sup>

Several studies have reported an association between increased traffic enforcement and decreases in traffic crashes and injuries from motor-vehicle accidents.<sup>344</sup> What is less clear from this research, however, is whether the purported public-safety benefits of increased traffic enforcement require police officers to conduct in-person traffic stops. If traffic safety is the true goal, then states and localities might reap comparable or even better traffic safety benefits through nonpolice alternatives to traffic enforcement.

A strong indicator that it is possible to remove police from traffic enforcement without compromising traffic safety is the fact that New Zealand followed this approach for almost six decades, between 1936 and 1992.<sup>345</sup> During that period, New Zealand created and maintained a nonpolice governmental agency that was responsible for the bulk of traffic enforcement, including nonmoving violations and minor moving violations.<sup>346</sup> As Subpart C will

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343. SEO, *supra* note 79, at 109-12.

344. See, e.g., Gregory DeAngelo & Benjamin Hansen, *Life and Death in the Fast Lane: Police Enforcement and Traffic Fatalities*, AM. ECON. J.: ECON. POL'Y, May 2014, at 231, 252-53 (presenting findings showing that "a decrease in enforcement is associated with an increase in injuries and deaths on Oregon highways"); James C. Fell, Geetha Waehrer, Robert B. Voas, Amy Auld-Owens, Katie Carr & Karen Pell, *Effects of Enforcement Intensity on Alcohol Impaired Driving Crashes*, 73 ACCIDENT ANALYSIS & PREVENTION 181, 185 (2014) (finding that "a 10% increase in the DUI arrest rate was associated with a modest 1% reduction in the impaired driving crash rate"); Dara Lee Luca, *Do Traffic Tickets Reduce Motor Vehicle Accidents? Evidence from a Natural Experiment*, 34 J. POL'Y ANALYSIS & MGMT. 85, 104 (2015) (presenting findings that traffic tickets reduce motor-vehicle crashes and nonfatal injuries from motor vehicle crashes); Makowsky & Stratmann, *supra* note 197, at 866 (finding that issuing tickets reduces the number of car crashes and injuries associated with traffic accidents); Mohammad Mahdi Rezapour Mashhadi, Promotes Saha & Khaled Ksaibati, *Impact of Traffic Enforcement on Traffic Safety*, 19 INT'L J. POLICE SCI. & MGMT. 238, 244 (2017) (concluding based on study findings that "speeding citations, for monthly analysis, and seat belt citations, for mileage analysis, reduce the number of [motor-vehicle crashes]").

345. BAYLEY, *supra* note 21, at 135.

346. Wilson & Chappell, *supra* note 255, at 568.

discuss in greater detail, financial considerations, not traffic safety concerns, led to the end of New Zealand's alternative traffic-enforcement regime.<sup>347</sup>

Empirical studies and anecdotal evidence on the traffic-safety benefits of speed and red-light cameras lend some additional support to the idea that traffic safety is not contingent on police-initiated traffic stops.<sup>348</sup> For instance, several studies have found that red-light cameras are associated with a reduction in crashes related to red-light-running violations (for instance, right angle crashes).<sup>349</sup> Studies have also reported more pronounced reductions across different crash types for cameras that combine speed and red-light enforcement.<sup>350</sup>

In sum, there is ample space to explore nonpolice enforcement alternatives to achieve traffic safety goals.

## B. Policing

### 1. Discovering evidence of crime and apprehending criminal suspects

One potential objection to removing police from traffic enforcement is that doing so could undermine the ability of law-enforcement officers to discover evidence of nontraffic crime and apprehend criminal suspects. Justified by the failed war on drugs and other crime-control measures, traffic stops are hailed in law-enforcement circles as a cost-effective tool for investigating nontraffic crime.<sup>351</sup> Pretextual traffic stops in particular allow officers to use a minor traffic violation as legal justification to stop motorists and then investigate for nontraffic crimes about which the officers have neither probable cause nor reasonable suspicion.<sup>352</sup>

Empirical and anecdotal evidence lend some support to these points. Several high-profile offenders, including serial killer Ted Bundy and Oklahoma City bomber Timothy McVeigh, were initially apprehended during

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347. *See infra* Part IV.C.

348. *Cf.* SEO, *supra* note 16, at 5 (“[A]utomated traffic enforcement offers a significant improvement over police enforcement in promoting road safety.”).

349. This body of research, however, also suggests that red-light cameras are associated with an increase in rear-end crashes. *See generally* Charles Goldenbeld, Stijn Daniels & Govert Schermers, *Red Light Cameras Revisited. Recent Evidence on Red Light Camera Safety Effects*, 128 ACCIDENT ANALYSIS & PREVENTION 139 (2019) (providing a comprehensive review of eighteen studies conducted between 2013 and 2017 on the effects of red-light and speed cameras on traffic crashes).

350. *Id.* at 145-46.

351. Woods, *supra* note 16, at 737.

352. Harris, *supra* note 2, at 576; Stuntz, *supra* note 97, at 7.

traffic stops.<sup>353</sup> Although data from the Bureau of Justice Statistics (BJS) shows that only 8.4% of searches of a vehicle, driver, or both during traffic stops led to evidence of crime (for instance, drugs, illegal weapons, or open containers of alcohol),<sup>354</sup> one could still view those stops as increasing the number of cases in which police discover evidence of crime and apprehend criminal suspects.

At the same time, scholars have argued that traffic stops are an inefficient and ineffective criminal investigatory tool, especially when considering the various harms that traffic stops impose on marginalized and overpoliced communities.<sup>355</sup> In 2015 (the most recent year for which national data are available), the BJS reported that about 4% of all traffic stops led to a search or an arrest.<sup>356</sup> This is consistent with nationwide BJS data from 2008, which reported that about 5% of all traffic stops led to a search and 2.6% led to an arrest.<sup>357</sup> The BJS also reported that in 2008 only 8.4% of searches of a vehicle, driver, or both led to evidence of crime (for instance, drugs, illegal weapons, or open containers of alcohol).<sup>358</sup>

More localized empirical studies offer additional support for the notion that traffic enforcement is a relatively ineffective criminal investigatory tool. One study, conducted by New York University School of Law's Policing Project in collaboration with the Stanford Computational Policy Lab, examined the costs and benefits of using traffic stops to address crime in Nashville, Tennessee.<sup>359</sup> The study found that "[t]raffic stops do not appear to have a significant impact on long-term crime trends" or crime "in the short term."<sup>360</sup> The study further reported that traffic stops based on nonmoving

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353. See Dean Scoville, *Killer Stops*, POLICE (June 1, 2006), <https://perma.cc/6WRX-A32Y> (discussing examples of traffic officers helping to apprehend high-profile killers in the United States).

354. CHRISTINE EITH & MATTHEW R. DUROSE, BUREAU OF JUST. STAT., U.S. DEP'T OF JUST., NCJ 234599, CONTACTS BETWEEN POLICE AND THE PUBLIC, 2008, at 11 (2011), <https://perma.cc/3JQS-S6PY>.

355. See BAUMGARTNER ET AL., *supra* note 1, at 3 ("[T]he aggressive use of traffic stops as a tool to investigate possible criminal behavior, though justified as part of the war on crime, is surprisingly inefficient . . ."); Engel & Calnon, *supra* note 3, at 85 (noting "findings from empirical studies that have demonstrated that the generalized targeting of minority drivers, in an effort to disrupt the flow of drug trafficking and/or to confiscate weapons, is an ineffective and inefficient use of police resources").

356. DAVIS ET AL., *supra* note 225, at 12.

357. EITH & DUROSE, *supra* note 354, at 8-10.

358. *Id.* at 11.

359. POLICING PROJECT, *supra* note 96, at 3.

360. Regarding long-term crime trends, the study found that as "the number of traffic stops declined between 2012 and 2017, crime rates remained quite flat." *Id.* at 10. Regarding crime in the short term, the study reported that as officers increased the number of stops in a particular area over the course of a few weeks, sometimes crime increased, decreased, or stayed the same. *Id.*

violations rarely led to an arrest or to the recovery of drugs or weapons.<sup>361</sup> Specifically, “[f]or every 1,000 nonmoving violation stops, just over 2% (or 21) resulted in an arrest, or the recovery of drugs or other contraband.”<sup>362</sup> Along with this, “[a]n additional 61 stops (6.1%) resulted in a misdemeanor citation for a non-drug-related charge. The vast majority of these citations (89%) were for driving with a revoked or suspended license.”<sup>363</sup>

A recent study conducted by the Office of the Inspector General of the Los Angeles Police Commission reached similar conclusions.<sup>364</sup> That study examined stops conducted by the Los Angeles Police Department (LAPD) during 2019.<sup>365</sup> The study found that 14% of stops for traffic violations resulted in a search, with Black males being more than four times as likely to be searched (28%), and Hispanic males being more than three times as likely to be searched (19%), compared to white males (6%).<sup>366</sup> No evidence of contraband was discovered in 83.5% of the searches conducted during stops for traffic violations.<sup>367</sup> Drugs or narcotics were discovered in 8.9%, and drug paraphernalia was discovered in an additional 1.1%, of traffic-violation stops with searches.<sup>368</sup> Moreover, firearms were found in only 1.3%, and other weapons were discovered in only 1.8%, of traffic-violation stops with searches.<sup>369</sup> Only 2% of people who were stopped for a traffic-violation were arrested,<sup>370</sup> and violent crimes made up only about 2% of all arrests made

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361. *Id.*

362. *Id.*

363. *Id.* (citations omitted). It is important to note that the study reported “notably higher” racial disparities for traffic stops based on non-moving traffic violations than stops based on moving traffic violations. *Id.* at 7. The investigators explained that because of those trends “and because non-moving violation stops are arguably less important for traffic safety,” they focused “much of [their] analysis on non-moving violation stops.” *Id.*

364. See OFF. OF THE INSPECTOR GEN., L.A. POLICE COMM’N, REVIEW OF STOPS CONDUCTED BY THE LOS ANGELES POLICE DEPARTMENT IN 2019, at 2-4 (2020), <https://perma.cc/9FJX-WGTN>.

365. *Id.* at 1.

366. *Id.* at 31 fig.18.

367. *Id.* at 36 fig.23.

368. *Id.* As a caveat, the data on contraband discovery rates were based on the most serious type of evidence discovered for each search. In order of seriousness, contraband types were ranked as follows: firearm(s), other weapons, suspected stolen property, drugs/narcotics, drug paraphernalia, alcohol, and other. *Id.* Therefore, an unknown percentage of the 8.9% of drugs/narcotics cases also involved drug paraphernalia. Moreover, an unknown percentage of the 1.3% firearm(s) cases, 1.8% other weapons cases, and 0.3% stolen property cases involved drugs/narcotics. *Id.*

369. *Id.*

370. *Id.* at 41.

during traffic stops.<sup>371</sup> Based on its findings, the report recommended that the LAPD “refocus its crime prevention efforts away from conducting pretextual stops, which appear to have a disparate impact on certain racial groups, and which also appear to be relatively ineffective in identifying more serious crimes.”<sup>372</sup>

Although undermining drug policing is a potential cost of removing the police from traffic enforcement, doing so would bring existing law and policy closer toward ending our decades-long and failed war on drugs.<sup>373</sup> As scholars have described, police have relied on traffic enforcement as a central tool to further crime-control strategies informed by the war on drugs.<sup>374</sup> The Constitution and state law have not been effective in preventing traffic stops from being used as a drug enforcement tool,<sup>375</sup> in spite of data showing that traffic stops are an ineffective and inefficient means of detecting more serious crimes.<sup>376</sup> The more effective path moving ahead is to remove traffic stops from the police toolbox.

## 2. Criminal deterrence

Another potential objection to decoupling traffic enforcement from the police is that it would undermine criminal deterrence. Policing strategies across U.S. law-enforcement agencies operationalize the idea that traffic enforcement can deter crime. Consider the Data-Driven Approaches to Crime and Traffic Safety (DDACTS) strategy, which is an operational policing model supported through collaboration between the National Highway Traffic Safety Administration (NHTSA) and the Department of Justice.<sup>377</sup> DDACTS uses crime and motor-vehicle-accident mapping to identify places where the two

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371. *Id.* at 42. The study reported that the most frequent reasons for arrests during traffic stops “were DUI-related charges, drug violations, firearm violations, probation and parole violations, and theft.” *Id.*

372. *Id.* at 47.

373. See Benjamin Levin, *Guns and Drugs*, 84 FORDHAM L. REV. 2173, 2176 (2016) (noting the “trenchant critiques leveled against the failed War on Drugs”).

374. See Johnson, *supra* note 2, at 1047 (describing pretextual traffic stops “as a central law enforcement tool in the ‘war on drugs’”). Scholars have also described the role of the war on drugs in shaping criminal constitutional procedure. See, e.g., William J. Stuntz, Essay, *Local Policing After the Terror*, 111 YALE L.J. 2137, 2140 (2002) (“One cannot read Fourth Amendment cases from the 1980s without sensing judicial attention to the pros and cons of the war on drugs—even when the cases did not involve drug crime.”).

375. See *supra* Part I.

376. See, e.g., POLICING PROJECT, *supra* note 96, at 10; OFF. OF THE INSPECTOR GEN., *supra* note 364, at 47.

377. *Data-Driven Approaches to Crime and Traffic Safety (DDACTS)*, NAT’L HIGHWAY TRAFFIC SAFETY ADMIN., <https://perma.cc/8LVC-ZRYN> (archived May 5, 2021).

overlap, and then uses high-visibility traffic enforcement in those places in an attempt to reduce crime, motor-vehicle crashes, and traffic violations.<sup>378</sup> Since first piloted in 2009, hundreds of U.S. law-enforcement agencies have received technical training to implement the DDACTS model and many have adopted the model.<sup>379</sup>

Empirical evidence on the connection between police-initiated traffic stops and criminal deterrence, however, is mixed.<sup>380</sup> Some studies have found an association between increased traffic enforcement and lower crime rates, leading researchers to conclude that traffic enforcement increases criminal deterrence by increasing police visibility in communities.<sup>381</sup> Other studies have found correlations between proactive policing through increased traffic enforcement and lower rates of specific crime types, including robbery, drunk driving, motor-vehicle theft, and gun violence.<sup>382</sup>

Some studies, however, have not found significant relationships between increased traffic enforcement and reductions in general crime rates or rates involving specific crime types.<sup>383</sup> These studies fit into a broader body of

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378. Jason Rydberg, Edmund F. McGarrell, Alexis Norris & Giovanni Circo, *A Quasi-Experimental Synthetic Control Evaluation of a Place-Based Police-Directed Patrol Intervention on Violent Crime*, 14 J. EXPERIMENTAL CRIMINOLOGY 83, 85 (2018).
379. John Coyle & Shannon Purdy, *DDACTS: Traffic Safety by the Numbers—Early Successes in Region 2*, NAT'L L. ENF'T LIAISON PROGRAM, <https://perma.cc/YZP9-Z7L4> (archived May 5, 2021) (“[S]everal hundred agencies seeking to adopt the model have undergone formal training. Many of those agencies are actively applying the model today.”).
380. Xiaoyun Wu & Cynthia Lum, *The Practice of Proactive Traffic Stops*, 43 POLICING: INT'L J. 229, 231 (2020) (noting the “mixed evidence on the effectiveness of traffic enforcement on crime”).
381. See, e.g., Edmund F. McGarrell, Steven Chermak, Alexander Weiss & Jeremy Wilson, *Reducing Firearms Violence Through Directed Police Patrol*, 1 CRIMINOLOGY & PUB. POL'Y 119, 120 (2001) (“Traffic stops are hypothesized to provide a deterrent effect through visible increased police presence and the increased number of contacts between police and citizens in a particular area.”).
382. Robert J. Sampson & Jacqueline Cohen, *Deterrent Effects of the Police on Crime: A Replication and Theoretical Extension*, 22 LAW & SOC'Y REV. 163, 169, 184 (1988) (robbery); Charis E. Kubrin, Steven F. Messner, Glenn Deane, Kelly McGeever & Thomas D. Stucky, *Proactive Policing and Robbery Rates Across U.S. Cities*, 48 CRIMINOLOGY 57, 82-83 (2010) (robbery); James Q. Wilson & Barbara Boland, *The Effects of the Police on Crime: A Response to Jacob and Rich*, 16 LAW & SOC'Y REV. 163, 164, 169 (1981-1982) (robbery); Jacqueline Cohen & Jens Ludwig, *Policing Crime Guns*, in EVALUATING GUN POLICY: EFFECTS ON CRIME AND VIOLENCE 217, 219, 221, 238 (Jens Ludwig & Phillip J. Cook eds., 2003) (gun violence); McGarrell et al., *supra* note 381, at 142 (gun violence); James C. Fell, *The Effects of Increased Traffic Enforcement on Other Crime* 5-6 (2013) (conference paper), <https://perma.cc/QE7X-YZRQ> (drunk driving, burglary, car theft, and robbery).
383. See, e.g., Don A. Josi, Michael E. Donahue & Robert Magnus, *Conducting Blue Light Specials or Drilling Holes in the Sky: Are Increased Traffic Stops Better than Routine Patrol in Taking a Bite Out of Crime?*, 1 POLICE PRAC. & RSCH. 477, 504 (2000) (finding inconclusive evidence on the link between aggressive traffic enforcement and crime); Alexander  
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literature that questions connections between order-maintenance policing<sup>384</sup> and criminal deterrence.<sup>385</sup> More recent research has examined traffic-enforcement patterns in the context of the so-called Ferguson Effect: increased crime rates resulting from law-enforcement decisions to reduce proactive-policing activities in the wake of social protests against police violence after the deadly police shooting of Michael Brown.<sup>386</sup> Several studies in this line of research found that reduced traffic enforcement did not lead to increases in crime, casting doubt over the Ferguson Effect and increasing support for the idea that traffic is currently overpoliced for reasons related to crime control.<sup>387</sup> Accordingly, empirical evidence supporting the objection that decoupling traffic enforcement from the police would undermine criminal deterrence is mixed at best.

### C. Financial Considerations

The keenest practical objection to removing the police from traffic enforcement involves financial costs. Critics may argue that keeping traffic

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Weiss & Sally Freels, *The Effects of Aggressive Policing: The Dayton Traffic Enforcement Experiment*, 15 AM. J. POLICE, no. 3, 1996, at 45, 57-58 (finding no evidence that increased traffic enforcement reduced the incidence of robbery or auto theft offenses).

384. Bernard E. Harcourt, *Reflecting on the Subject: A Critique of the Social Influence Conception of Deterrence, the Broken Windows Theory, and Order-Maintenance Policing New York Style*, 97 MICH. L. REV. 291, 301 (1998) (“Order-maintenance policing is a law-enforcement strategy that seeks to create public order by aggressively enforcing laws against public drunkenness, loitering, vandalism, littering, public urination, panhandling, prostitution, and other minor misdemeanors.”).
385. See, e.g., *id.* at 387 (noting “the lack of empirical evidence supporting the claim of deterrence” with regard to order-maintenance policing); Dorothy E. Roberts, Foreword, *Race, Vagueness, and the Social Meaning of Order-Maintenance Policing*, 89 J. CRIM. L. & CRIMINOLOGY 775, 796-799 (1999) (discussing critiques of empirical evidence supporting a connection between order-maintenance policing and deterrence).
386. Justin Nix & Scott E. Wolfe, *Sensitivity to the Ferguson Effect: The Role of Managerial Organizational Justice*, 47 J. CRIM. JUST. 12, 12 (2016) (“[T]he so-called ‘Ferguson Effect’ . . . holds that in response to heightened scrutiny of police following the fatal shooting of unarmed Michael Brown in Ferguson, Missouri in August 2014, officers are less motivated to aggressively perform their duties and are pulling back from proactive strategies.”).
387. See, e.g., John A. Shjarback, David C. Pyrooz, Scott E. Wolfe & Scott H. Decker, *De-policing and Crime in the Wake of Ferguson: Racialized Changes in the Quantity and Quality of Policing Among Missouri Police Departments*, 50 J. CRIM. JUST. 42, 51 (2017) (“For now, we find no support for the de-policing-crime component of the Ferguson Effect argument in our sample of police agencies.”); Mike Dolan Fliss, Frank Baumgartner, Paul Delamater, Steve Marshall, Charles Poole & Whitney Robinson, *Re-prioritizing Traffic Stops to Reduce Motor Vehicle Crash Outcomes and Racial Disparities*, 7 INJ. EPIDEMIOLOGY, no. 3, 2020, at 1, 13 (“Conventional logics, such as the Ferguson Effect belief that de-prioritizing investigatory stops is associated with increases in violent crime, may not hold up to critical scrutiny.”).

enforcement and policing intertwined is more economically efficient. Police leaders have already raised this criticism in response to the recent decision by Berkeley, California, to remove traffic-enforcement duties from the police.<sup>388</sup> The basic critique is that municipalities would have to hire separate public employees (a traffic monitor and a police officer) to handle tasks (traffic enforcement and policing) that could be handled by one police officer. Critics might stress that the overwhelming bulk of spending on police goes toward personnel costs.<sup>389</sup> For instance, state and local governments spent \$115 billion on police budgets in 2017 (the latest available year of data on state and local expenditures), and 96% of police spending was dedicated to operational costs, such as salaries and benefits.<sup>390</sup>

Critics might also interpret the end of New Zealand's nonpolice approach to traffic enforcement as further anecdotal support for the view that removing the police from traffic enforcement is financially impractical. In 1992, financial considerations led the New Zealand government to revert back to having police handle traffic enforcement after six decades of maintaining a nonpolice government agency that handled those tasks.<sup>391</sup> Scholars have noted that this

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388. See, e.g., Sandler, *supra* note 13 (paraphrasing a sheriff's office spokesperson as saying that "the idea may be too costly for a smaller city like Berkeley").

389. Rachel A. Harmon, *Federal Programs and the Real Costs of Policing*, 90 N.Y.U. L. REV. 870, 949 (2015) ("The most significant cost in any police department's budget, often comprising 80% or more of the budget, is personnel costs, including salaries, overtime, wages, and fringe benefits for uniformed officers and nonuniformed employees.").

390. *Criminal Justice Expenditures: Police, Corrections, and Courts*, URB. INST., <https://perma.cc/6ZNN-DFHE> (archived May 5, 2021).

391. See BAYLEY, *supra* note 21, at 135. The merger of the New Zealand Ministry of Transport and the New Zealand Police occurred as part of a broader restructuring of New Zealand's public sector in response to mounting fiscal pressures during the early 1980s. See Graham Scott, Ian Ball & Tony Dale, *New Zealand's Public Sector Management Reform: Implications for the United States*, 16 J. POL'Y ANAL. & MGMT. 357, 357-59 (1997) (discussing the fiscal policy crisis that occurred in New Zealand during the 1980s and how the fiscal crisis motivated new approaches to government management and spending starting in the late 1980s). The push to merge the Ministry of Transport and the New Zealand Police was part of the governing National Party's broader agenda on fiscal reform. The National Party rose to power in New Zealand in 1990. *Id.* at 359 (noting that the election of a National Party government in 1990 strengthened the "push to change the role of the state, especially in social policy areas, and to eliminate the fiscal deficit"); N.Z. Off. of the Minister of State Servs., *Cabinet Paper: Review of the Costs and Benefits of De-merging Traffic Enforcement From Police*, TE KAWA MATAAHO PUB. SERV. COMM'N (July 31, 2007), <https://perma.cc/E5AZ-EYFJ> ("The Ministry of Transport's Traffic Safety Service was merged with Police in 1992, following a 1991 review commissioned by the Government of the day."). For a broader discussion of reforms in New Zealand's public sector during the 1980s and early 1990s in response to the country's fiscal crisis, see Lewis Evans, Arthur Grimes, Bryce Wilkinson & David Teece, *Economic Reform in New Zealand 1984-95: The Pursuit of Efficiency*, 34 J. ECON. LIT. 1856, 1872-77 (1996).

reversion was due to concerns that the nonpolice traffic agency did not produce any savings for the New Zealand government.<sup>392</sup> Because the nonpolice traffic agency was primarily staffed by transferred police officers, the government was simply redirecting resources from one public agency to another.<sup>393</sup>

But in this regard, New Zealand could be viewed as a success story from the perspective of the growing movement to defund the police. The demise of New Zealand's alternative traffic-enforcement regime stemmed from its perceived inability to generate savings.<sup>394</sup> If public safety, and not savings, is the intended goal, then the New Zealand story illustrates that it is possible for a society to reimagine public safety on roads and highways by redirecting resources from police budgets to invest in nonpolicing solutions.<sup>395</sup> Whether the government ultimately spends the same on personnel costs after this resource diversion is less important, especially given the various benefits that removing the police from traffic enforcement could achieve for racial and economic justice in policing and criminal-law and criminal-justice reform in the United States.<sup>396</sup>

Transportation law and policy could potentially alleviate cost concerns. Reframing traffic enforcement as a transportation safety and not a policing problem opens space to explore creative ways that transportation law and policy could assist in removing the police from traffic enforcement. In this regard, the burden of embracing a different normative vision of traffic enforcement need not fall on states and localities alone. Transportation groups are increasingly calling on the transportation industry, including transportation agencies at all levels of government, to confront its history in enabling racism and racial subordination.<sup>397</sup> In this regard, removing the police from traffic enforcement could fit within a broader national transportation safety strategy that is informed by an antiracist lens and that pools resources in a different way.

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392. BAYLEY, *supra* note 21, at 135 (noting that New Zealand reverted back to a police-initiated traffic-enforcement system in 1992 because its alternative regime was staffed by transferred police officers, and therefore, did not cut down costs).

393. *Id.*

394. *Id.*; *supra* note 391.

395. See Editorial, "Defund the Police" Is as Much About Reimagining Public Safety as It Is About Money, WASH. POST (July 16, 2020, 6:29 PM EDT), <https://perma.cc/AG2V-6VX4> ("Budgets reflect community priorities, and where non-policing solutions are chronically underfunded, it makes sense to invest more in those.").

396. See *supra* Part III.

397. See, e.g., NACTO Stands in Solidarity and Commitment with the #BlackLivesMatter Movement, NAT'L ASS'N CITY TRANSP. OFFS. (June 1, 2020), <https://perma.cc/6VVW-AKEB> ("For those of us in the transportation industry, especially those in leadership positions, this moment requires us to take special pause and self-reflection.").

For instance, federal grants such as those administered by NHTSA could serve as incentives for states to remove police powers from state highway patrols and help states work with local governments and municipalities to implement nonpolice solutions to traffic enforcement. The President's 2020 budget requested \$84 billion to fund programs within the U.S. Department of Transportation.<sup>398</sup> And \$923.3 million was specifically requested to fund the initiatives of NHTSA.<sup>399</sup> In 2020, NHTSA administered over \$663 million in federal grants to fund programs administered by U.S. states, tribes, and territories.<sup>400</sup>

Notably, a considerable amount of federal transportation grant money is awarded to support Selective Traffic Enforcement Programs (STEPS). Under the program, federal money is awarded to state transportation departments and then diverted to local police agencies to cover travel expenses and overtime pay for officers who enforce traffic laws during high-visibility enforcement campaigns.<sup>401</sup> Illustrating the scale of these funds, in FY 2020 the Texas Department of Transportation reported that local law-enforcement agencies across the state were eligible to receive more than \$20 million in STEP grant reimbursements, including \$1 million to Houston, \$857,000 to Dallas, and \$810,000 to Austin.<sup>402</sup>

As another example, Los Angeles received \$5 million in STEP funds to cover the period between October 1, 2019 and September 30, 2020.<sup>403</sup> Over \$4.5 million was appropriated to cover overtime pay for sworn officers to conduct traffic enforcement.<sup>404</sup> If federal transportation grants are awarded to support

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398. U.S. DEP'T OF TRANSP., FISCAL YEAR 2020 BUDGET HIGHLIGHTS 1 (2019), <https://perma.cc/QK4E-G8PJ>.

399. *Id.* at 47.

400. Off. of Grants Mgmt. & Operations, Nat'l Highway Traffic Safety Admin., FY 2020 S. 402, 405, 1906, and 154/164 Authorized Grant Amounts 2 (2020), <https://perma.cc/GK26-ZLKP>.

401. *See, e.g.,* Alejandra Martinez, *Dallas City Council Votes to Approve Traffic Enforcement Program*, KERA NEWS (Sept. 9, 2020, 5:00 PM CDT), <https://perma.cc/KX8M-A4HP> ("The money from STEP comes from the U.S. Department of Transportation. It is passed to the Texas Department of Transportation and then to DPD [Dallas Police Department]."); TRAFFIC SAFETY SECTION, TEX. DEP'T OF TRANSP., TRAFFIC SAFETY PROGRAM REQUEST FOR PROPOSALS: FY 2021 STEP GRANTS 7 (2019), <https://perma.cc/ZQ2D-L8NE> ("STEP enforcement activities should prioritize crash reduction by conducting mobile, high-visibility enforcement in high-crash areas within the law enforcement agency's jurisdiction.").

402. TEX. DEP'T OF TRANSP., *supra* note 401, at 21-23. The \$20 million amount is based on the sum of dollar amounts listed in the "Qualified-COMP" column for each listed jurisdiction. *Id.* at 21-23.

403. Memorandum from Chief of Police, L.A. Police Dep't, to Bd. of Police Comm'rs, L.A. Police Dep't 1 (Aug. 15, 2019), <https://perma.cc/HAH3-R9U7>.

404. *Id.* at 2.

police-initiated traffic enforcement in the interest of traffic safety,<sup>405</sup> then federal transportation grants could be awarded to support nonpolice alternatives to achieve traffic safety.

In addition to federal grants, motor fuel taxes and highway toll revenue are major sources of funding for transportation-related spending at the state and local levels.<sup>406</sup> Reimagining traffic enforcement as a transportation-safety problem, rather than a policing problem, could create new opportunities to rely on and expand these funding sources to help states and localities restructure their traffic-enforcement systems.

#### D. Police Unions

Police unions are another possible impediment to structural reforms that remove police from traffic enforcement. Similar to other labor organizations, police unions push for better salary and benefits for officers and fight for job protections.<sup>407</sup> Police unions, however, have also emerged in the political arena as a powerful roadblock to implementing police reforms that address racially biased and discriminatory policing.<sup>408</sup> Research reveals that police unions are

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405. FED. MOTOR CARRIER SAFETY ADMIN., U.S. DEP'T OF TRANSP., DOT HS 810 851, GUIDELINES FOR DEVELOPING A HIGH-VISIBILITY ENFORCEMENT CAMPAIGN TO REDUCE UNSAFE DRIVING BEHAVIORS AMONG DRIVERS OF PASSENGER AND COMMERCIAL MOTOR VEHICLES 1 (2007), <https://perma.cc/J34V-4FMR> (“The goal of the Selective Traffic Enforcement Programs (STEPs) is to induce motorists to drive safely.”).

406. Kathleen Quinn, *State Highway Patrol Funding and the State Highway Fund*, NAT'L CONF. ST. LEGISLATURES (Jan. 2017), <https://perma.cc/4CUT-P9KH> (summarizing trends in funding for state highway patrols); *Highway and Road Expenditures*, URB. INST., <https://perma.cc/V2NL-NU6K> (archived May 5, 2021) (“Both state and local governments dedicate motor fuel tax revenue and highway toll revenue to transportation spending.”).

407. RON DELORD & RON YORK, LAW ENFORCEMENT, POLICE UNIONS, AND THE FUTURE: EDUCATING POLICE MANAGEMENT AND UNIONS ABOUT THE CHALLENGES AHEAD 11 (2017) (noting that police unions “organize around mutual protection, improving wages, benefits and working conditions, gaining collective bargaining rights and obtaining professional standards”); Eli Hager & Weihua Li, *A Major Obstacle to Police Reform: The Whiteness of the Union Bosses*, MARSHALL PROJECT (June 10, 2020), <https://perma.cc/PUQ2-8U8X> (“Like other labor organizations, many police unions negotiate salaries and benefits for officers as well as fight for job protections.”). For a comprehensive discussion on how police unions are and are not representative of public-sector unions generally, see Benjamin Levin, Essay, *What's Wrong With Police Unions?*, 120 COLUM. L. REV. 1333, 1356-86 (2020).

408. See Catherine L. Fisk & L. Song Richardson, *Police Unions*, 85 GEO. WASH. L. REV. 712, 747-58 (2017) (examining how and why police unions have been obstacles to police reform); Noam Scheiber, Farah Stockman & J. David Goodman, *How Police Unions Became Such Powerful Opponents to Reform Efforts*, N.Y. TIMES (updated April 2, 2021), <https://perma.cc/46AW-TLXP> (“Over the past five years . . . police unions have emerged as one of the most significant roadblocks to change.”).

politically powerful, that they lean conservative, and that their leadership is overwhelmingly white.<sup>409</sup>

Perhaps the strongest potential objections of police unions to removing the police from traffic enforcement involve protecting the jobs of police officers who conduct traffic enforcement.<sup>410</sup> It is important to distinguish between officers whose primary duties are not traffic enforcement (meaning that traffic stops are only one part of an officer's general patrol or police function) and those whose primary function is traffic enforcement (for instance, officers who are part of specialized traffic units).

When traffic enforcement is ancillary to an officer's job, removing the police from traffic enforcement simply restricts how officers can invoke their authority on the job. With regard to these officers, eliminating police-initiated traffic stops is no different from other legal measures that constrain police from invoking their authority in a particular way (for instance, restrictions on engaging in pretextual traffic stops or using chokeholds to restrain civilians).<sup>411</sup> Taking the traffic stop out of these officers' toolboxes neither eliminates their positions nor requires them to transfer to another police unit.

The situation is arguably more complicated when traffic enforcement is the primary or core function of an officer's job duties. For these officers, removing the police from traffic enforcement would result in the disbandment of police traffic units and require officers to be transferred to other police units or nontraffic positions. The extent to which these results are subject to legal challenge would likely depend on the specifics of police unions' collective bargaining agreements.<sup>412</sup> It is not uncommon, however, for police contracts

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409. Levin, *supra* note 407, at 1346 ("Police unions often represent a conservative or reactionary vision of the criminal system and race relations in the United States."); Stephen Rushin, *Police Union Contracts*, 66 DUKE L.J. 1191, 1215-16 (2017) ("Police unions are also a powerful political constituency."); Hager & Li, *supra* note 407 ("In many cities, police officers are more likely to be white than the people they are sworn to protect and serve. But this is especially true of the presidents of their unions . . .").

410. Daniel DiSalvo, *The Trouble with Police Unions*, NAT'L AFFS. (Fall 2020), <https://perma.cc/3NYV-ZSKF> ("Labor unions are largely in the business of protecting members' job security and winning members better salaries and benefits.").

411. See, e.g., Laura Vozzella, *Ban on Chokeholds, No-Knock Warrants Among Bills Northam Signed into Law*, WASH. POST (Oct. 28, 2020, 5:55 PM EDT), <https://perma.cc/BB2T-ZC4N> (discussing Virginia laws that prohibit law-enforcement officers from using chokeholds); see *supra* note 57 and accompanying text (discussing laws that prohibit pretextual traffic stops).

412. Robert Iafolla, *Defunding Is One Place Police Unions See Vaunted Powers Limited*, BLOOMBERG L. (June 12, 2020, 11:15 AM), <https://perma.cc/GDY6-WENY> ("Police defunding measures that take certain duties away from cops could run into a legal obstacle depending on the specificity of a police union's collective-bargaining agreement."). Currently, police unions in thirty-nine states have collective bargaining agreements. *Id.* It is important to note, however, that the bargaining rights of police officers vary widely across jurisdictions. *Id.* For a large database of dozens of police

*footnote continued on next page*

to include provisions that allow officers to request voluntary transfers to other police units or positions, particularly in light of departmental changes that affect their positions.<sup>413</sup> Moreover, police contracts typically include rules for involuntary transfers in light of departmental changes, including the reduction or disbandment of specialized units.<sup>414</sup>

As noted above, police unions are powerfully positioned in the political arena to block police reforms.<sup>415</sup> Nonetheless, jurisdictions have disbanded

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contracts, see *Police Contracts Database*, POLICE UNION CONTRACT PROJECT, <https://perma.cc/NK8N-76B8> (archived May 5, 2021).

413. See, e.g., Labor Agreement Between the Portland Police Association and the City of Portland: November 11, 2016 Through June 30, 2020, at 10 (n.d.), <https://perma.cc/749H-J2V2> (“If an officer accepts a voluntary transfer, the Bureau shall attempt to accommodate, to the extent possible, the officer’s preselected vacation times.”); Memorandum of Understanding Between the City of Long Beach and the Long Beach Police Officers’ Association: October 1, 2009 to September 30, 2014, at 35 (Sept. 24, 2009), <https://perma.cc/96R2-JBAZ>; San Jose Police Dep’t, Officers’ Transfer Policy 8 (rev. 2017), <https://perma.cc/JT9M-AR3T> (“In the event of a partial disestablishment, the Department shall first solicit volunteers to leave the unit.”); Memorandum of Agreement: City of San José & San José Police Officers’ Association, January 1, 2017 - June 30, 2020, at 28 (Jan. 12, 2017), <https://perma.cc/H9VA-BXEC> (“Specialized assignment transfers of Police Officers shall be governed by the Police Officer Transfer Policy . . . which is hereby incorporated by this reference.”).
414. See, e.g., City of Albuquerque and Albuquerque Police Officers Association Collective Bargaining Agreement: Effective July 16, 2014 to July 16, 2015, at 20 (n.d.), <https://perma.cc/4F35-CTK9> (“When section cut backs occur, the mandatory transfers between units should be made in such a way as to maximize the efficiency and effectiveness of the Police Department.”); Collective Bargaining Agreement Between Government of the District of Columbia Metropolitan Police Department and the D.C. Police Union (Fraternal Order of Police MPD Labor Committee), Compensation Unit 3: Effective April 1, 2013 Through September 30, 2017, at 15 (Apr. 20, 2017), <https://perma.cc/K972-3ZGB> (“Employee(s) may be transferred from one Division or District to another Division or District for the efficiency of the service of the Department.”); Agreement by and Between the City of Seattle and Seattle Police Officers’ Guild: Effective Through December 31, 2020, at 42 (n.d.), <https://perma.cc/7RLW-F9RN> (“When an involuntary transfer is required as a result of a reduction in the number of available positions within a unit, it shall be accomplished by inverse unit seniority.”); Agreement Between the City of Rochester and Rochester Police Locust Club, Inc.: July 1, 2013 to June 30, 2016, at 25 (n.d.), <https://perma.cc/NYV5-B4XF> (“The Chief of Police, or his designee, shall maintain the right to transfer employees when necessary to meet the legitimate operating needs of the Department.”); Memorandum of Understanding: City of Phoenix and Phoenix Law Enforcement Association, 2016-2019, at 5 (rev. Sept. 21, 2016), <https://perma.cc/C362-3SFA> (“The City and Chief of Police shall have the right to transfer employees within the Police Department in a manner most advantageous to the City.”); 2016-2017 Labor Agreement Between the Syracuse Police Benevolent Association, Inc. and the City of Syracuse 45 (n.d.), <https://perma.cc/29HB-MRQ6> (“When a unit is downsized, eliminated or disbanded, members shall be transferred from the unit based on seniority, with the least senior member being the first to be transferred in the event of downsizing, elimination or the disbanding of a unit.”).
415. See *supra* note 408 and accompanying text.

police units over the strong objections of police unions.<sup>416</sup> For instance, in June 2020, the New York City Police Commissioner announced the disbandment of the plainclothes anticrime units of the New York Police Department (NYPD).<sup>417</sup> The president of the city's largest police union expressed public disapproval of the change.<sup>418</sup> Nonetheless, the Police Commissioner described the units as a “vestige” of the NYPD's controversial era of prioritizing “stop-and-frisk” tactics,<sup>419</sup> which a federal district court judge ruled were unconstitutional under the Fourth and Fourteenth Amendments.<sup>420</sup> As a result of the change, approximately 600 officers who served in the anticrime units were immediately reassigned, including to the detective bureau and the NYPD's neighborhood policing initiative.<sup>421</sup> Potential police-union opposition is not an insurmountable challenge for initiatives that remove police from traffic enforcement.

### Conclusion

The conventional wisdom that police are needed to enforce traffic laws poses a major obstacle to achieving structural police reform in this important moment for policing in the United States. This obstacle is especially problematic because that traffic policing is a persistent source of race- and class-based injustice.<sup>422</sup> This Article challenged the conventional wisdom that traffic laws cannot be enforced without police. It sketched a new normative vision of our driving system in which traffic enforcement is decoupled from policing. In offering this new framework for traffic enforcement, this Article provided a needed starting point for renewed thinking about the basic organization of traffic enforcement, the role of police in traffic enforcement, and the means by which law and policy can be used as tools to achieve racial and economic fairness and equality in traffic enforcement moving ahead.

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416. For a more comprehensive discussion of normative and prudential considerations in disbanding police agencies, including potential objections from police unions, see generally Anthony O'Rourke, Rick Su & Guyora Binder, Essay, *Disbanding Police Agencies*, 121 COLUM. L. REV. 1327 (2021).

417. Ali Watkins, *N.Y.P.D. Disbands Plainclothes Units Involved in Many Shootings*, N.Y. TIMES (June 15, 2020), <https://perma.cc/GD3D-5ZGU>.

418. *Id.* (“Shooting and murders are both climbing steadily upward, but our city leaders have clearly decided that proactive policing isn't a priority anymore.” (quoting the president of the Police Benevolent Association)).

419. *Id.*

420. *Floyd v. City of New York*, 959 F. Supp. 2d 540, 556, 562 (S.D.N.Y. 2013).

421. Watkins, *supra* note 417.

422. See sources cited *supra* note 2.