

# Limits on Traffic Stops: Saving Lives by Constraining Police Authority

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*This Article considers how policymakers can more effectively constrain police authority during traffic stops to reduce racial disparities and prevent unnecessary violence.*

*We begin by chronicling the power granted to police officers during traffic enforcement and the harms generated by this discretionary power. Under existing criminal procedure, police officers have considerable authority to stop motorists for any technical violation of the traffic code, even if the stated justification is a pretext for investigating an unrelated hunch or suspicion. After stopping a motorist, existing doctrine gives police the ability to question them, search their vehicles under numerous circumstances, arrest drivers for minor violations of the law, and otherwise use traffic stops as a justification for criminal fishing expeditions. This makes police traffic stops an entryway into officer misconduct and violence.*

*Moreover, the harms of police traffic enforcement are felt disproportionately by communities of color. Empirical evidence generally suggests that Black and Hispanic drivers are more likely than their white counterparts to experience traffic stops. Black and Hispanic drivers are more likely to be stopped during daylight hours relative to nighttime hours when their race is apparent to police through visual observation. And searches of Black and Hispanic motorists are less likely to produce contraband than searches of white drivers, suggesting that police may employ a less rigorous standard of probable cause when justifying vehicle searches of drivers of color.*

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*Given the growing body of literature on the harms caused by police traffic enforcement, some have called for its abolition. Short of abolition, though, this Article shows how jurisdictions across the country have already moved to limit the authority of police during traffic encounters. This approach does not seek to eliminate entirely the police from the enforcement of traffic laws. Rather, it involves state and local policymakers enacting restrictions on police power during traffic enforcement that go beyond those mandated by the U.S. Supreme Court under existing doctrine. Indeed, in recent years, states and municipalities have enacted limitations on the use of pretextual traffic stops, consent searches, and unrelated questioning of motorists after stops. Others have restricted or banned the use of quotas as a police management tool. Some prosecutors' offices have announced declination policies designed to disincentivize police from using traffic stops as a tool for the investigation of other unrelated crimes. Still other jurisdictions have explored additional reporting requirements and even technological replacements for the use of police officers in the enforcement of the traffic code.*

*Combined, we argue that this sort of criminal justice minimalism can reduce the harmful and racially disparate effects of police traffic enforcement without compromising public safety.*

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## INTRODUCTION

Ricky Cobb came to the attention of the police for the most minor of infractions; he was stopped by Minnesota State Patrol officers for driving at night without working taillights.<sup>1</sup> Despite the fact that Cobb was unarmed and had committed only a minor traffic offense, police officers shot and killed Cobb.<sup>2</sup> Though the police department's initial account of the incident suggested that the officer's conduct "very clearly meets the threshold for the use of deadly force," body camera footage later released by the department suggested otherwise.<sup>3</sup> Officers claimed that they discovered Cobb had an outstanding warrant in nearby Ramsey County for a suspected violation of a protective order involving a prior romantic partner.<sup>4</sup> During a roughly one-minute exchange, officers asked Cobb to exit the vehicle, and Cobb "repeatedly questioned why the troopers were asking him to exit his car."<sup>5</sup> The video then shows multiple officers opening the vehicle's doors in an effort to force Cobb out of the car.<sup>6</sup> At that point, the vehicle appeared to briefly move forward, likely because Cobb had shifted the vehicle to drive and removed his foot from the brake.<sup>7</sup> At this point, Trooper Londregan raised

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1. Ernesto Londoño, *Minnesota State Trooper Charged with Murder in Shooting of Motorist*, N.Y. TIMES (Jan. 24, 2024), <https://www.nytimes.com/2024/01/24/us/minnesota-ricky-cobb-shooting.html> ("Mr. Cobb, a 33-year-old Black man, was fatally shot on July 31 after state troopers including Trooper Londregan, who is white, pulled him over on Interstate 94 for driving without working taillights."); Mohamed Ibrahim, *Police Killing of Ricky Cobb II Puts Moriarty at Odds with Those Who Supported Her Election*, MINNPOST (Aug. 22, 2023), <https://www.minnpost.com/public-safety/2023/08/police-killing-of-ricky-cobb-ii-puts-moriarty-at-odds-with-those-who-supported-her-election> [<https://perma.cc/GLM9-V857>].

2. See Praveena Somasundaram, *Minn. Trooper Charged with Murder in Shooting of Driver Ricky Cobb*, WASH. POST (Jan. 24, 2024), <https://www.washingtonpost.com/nation/2024/01/24/minnesota-trooper-charged-ricky-cobb-shooting> (describing the shooting and how an officer was charged with murder for shooting Cobb "after he took his foot off the brake during a July traffic stop").

3. *Bodycam Video Shows Tense Moments as Troopers Confront, Fatally Shoot Man Along I-94*, MPR NEWS (Aug. 1, 2023), <https://www.mprnews.org/story/2023/08/01/bodycam-video-shows-tense-moments-as-troopers-confront-shoot-man-along-i94> [<https://perma.cc/V8SW-HQJW>].

4. Londoño, *supra* note 1 ("During the stop, the troopers determined that Mr. Cobb was subject to arrest over a suspected violation of a protective order involving a former romantic partner, officials said.").

5. Somasundaram, *supra* note 2.

6. *Id.*

7. *Id.*

his firearm and yelled, “Get out of the car now!” before shooting Cobb twice in the torso.<sup>8</sup> Cobb died at the scene.<sup>9</sup>

As with many police encounters that result in unarmed motorists’ deaths, the situation started innocuously but escalated quickly. This is hardly unprecedented. The nonprofit Mapping Police Violence estimates that in 2022, police killed around 1,200 people.<sup>10</sup> This is roughly consistent with similar recent estimates by other groups like *The Washington Post*,<sup>11</sup> *The Guardian*,<sup>12</sup> and *Fatal Encounters*.<sup>13</sup> Many of these killings began when police were called to the scene of a nonviolent offense or in situations where no crime was reported.<sup>14</sup> And according to one estimate, around eighty-seven of these killings in 2022 happened after police conducted a routine traffic stop.<sup>15</sup>

Families of those killed by police and civil rights activists sometimes insist that individual police officers are primarily responsible for such tragedies, warranting employment action and possible criminal charges.<sup>16</sup> Officers

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8. *Id.*

9. Steven Karnowski & Trisha Ahmed, *Minnesota Trooper Is Charged with Murder in Shooting of Ricky Cobb II During a Traffic Stop*, ASSOCIATED PRESS (Jan. 24, 2024), <https://apnews.com/article/ricky-cobb-trooper-charged-shooting-freeway-minnesota-a148e1608b6723e3563e6702f1d92fa3> [<https://perma.cc/QYR8-V4FJ>] (“The troopers caught up, pulled Cobb out and attempted lifesaving measures. Cobb was pronounced dead at the scene.”); *see also* Somasundaram, *supra* note 2 (“After Londregan fired the shots, he and the trooper next to the driver’s side door lost their footing as Cobb’s car continued moving forward, later hitting a concrete median a quarter-mile down the road.”).

10. Mapping Police Violence, Inc. is a 501(c)(3) nonprofit and independent research collaborative which aggregates data from a variety of sources with the intention of describing how police violence affects communities. *Police Violence Map*, MAPPING POLICE VIOLENCE, <https://mappingpoliceviolence.us> [<https://perma.cc/D3K3-49VA>] (Dec. 31, 2024).

11. *Fatal Force*, WASH. POST (Dec. 20, 2024), <https://www.washingtonpost.com/graphics/investigations/police-shootings-database> (providing comprehensive data on documented police killings since 2015 and identifying 1,150 individuals that have been shot by police in the last twelve months).

12. *The Counted*, GUARDIAN, <https://www.theguardian.com/us-news/ng-interactive/2015/jun/01/the-counted-police-killings-us-database> [<https://perma.cc/59M3-JKPL>] (documenting police killings of civilians in 2015 and 2016 and identifying 1,093 killings during 2016 and 1,146 in 2015).

13. FATAL ENCOUNTERS, <https://fatalencounters.org> [<https://perma.cc/N7JL-NV3D>] (providing similar data on police killings using a public database).

14. MAPPING POLICE VIOLENCE, *supra* note 10.

15. *Id.*

16. *See, e.g.*, Timothy Pratt, ‘Sadness in the Whole Forest’: Family of Cop City Activist Killed by Police Seeks Answers, GUARDIAN (Feb. 12, 2023), <https://www.theguardian.com/environment/2023/feb/12/cop-city-manuel-paez-teran-family-mourns> [<https://perma.cc/D3RK-F99W>] (describing the anguish of the family of Manuel Paez-Terán as they sought answers after he was killed by police).

involved in shootings often maintain that they were justified because they reasonably believed they were facing a risk of serious bodily injury or death—even if that fear ends up being unfounded.<sup>17</sup> However, placing blame on either side sometimes misses the greater regulatory challenge.

Police traffic stops are one of the single most common interactions between armed police officers and members of the public.<sup>18</sup> Researchers estimate that police stop more than 20 million Americans each year.<sup>19</sup> This translates to more than 50,000 police stops occurring each day.<sup>20</sup> Additionally, under existing U.S. Supreme Court doctrine, police officers have considerable authority to stop motorists for any technical violation of the traffic code, even if the stated justification is a pretext for investigating an unrelated hunch or suspicion.<sup>21</sup> Once an officer completes a traffic stop, current doctrine gives police the ability to question motorists,<sup>22</sup> search vehicles under numerous circumstances,<sup>23</sup> arrest drivers for minor violations of the law,<sup>24</sup> and otherwise use traffic stops as a justification for criminal fishing expeditions. Because of this, police enforcement of traffic laws can put armed police officers into unnecessary confrontations with motorists that escalate into civil rights violations, long-lasting humiliation, and tragic killings of civilians. Put simply, traffic stops are too often an entryway into officer misconduct and violence.

Moreover, the harms of police traffic enforcement are felt disproportionately by communities of color. Empirical evidence generally

17. See, e.g., Kimberly Kindy & Kimbriell Kelly, *Police Officers Charged in Fatal Shootings While on Duty: 54 Cases in the Past Decade*, WASH. POST (Apr. 12, 2015), <https://www.washingtonpost.com/news/post-nation/wp/2015/04/12/police-officers-charged-in-fatal-shootings-while-on-duty-54-cases-in-the-past-decade>; Jonathan Capehart, *It's Tamir Rice's Fault*, WASH. POST: POST PARTISAN (Mar. 2, 2015), <https://www.washingtonpost.com/blogs/post-partisan/wp/2015/03/02/its-tamir-rices-fault>.

18. Emma Pierson et al., *A Large-Scale Analysis of Racial Disparities in Police Stops Across the United States*, 4 NATURE HUM. BEHAV. 736, 736 (2020) (“More than 20 million Americans are stopped each year for traffic violations, making this one of the most common ways in which the public interacts with the police.”).

19. *Id.*

20. STAN. OPEN POLICING PROJECT, <https://openpolicing.stanford.edu> [<https://perma.cc/J3BF-2EPJ>] (“On a typical day in the United States, police officers make more than 50,000 traffic stops.”). It is important to note that this ongoing data collection project is the outgrowth of the work by the authors cited previously. See generally Pierson et al., *supra* note 18, at 737.

21. See *infra* Section I.A (describing the basis for the U.S. Supreme Court decision in *United States v. Whren*, 517 U.S. 806 (1996), which established this doctrine, in part).

22. See *infra* Section II.C (describing the doctrinal basis for these general rules).

23. See *infra* Section II.B (providing a summary of doctrines on searches surrounding traffic enforcement).

24. See *infra* Section I.A (situating this rule within the broader rules regulating police traffic authority and describing the case law on this issue).

suggests that Black and Hispanic drivers are more likely to be stopped during daylight hours relative to nighttime hours when their race is apparent to police through visual observation.<sup>25</sup> And searches of Black and Hispanic motorists are less likely to produce contraband than white drivers, suggesting that police may employ a less rigorous standard of probable cause when justifying vehicle searches of drivers of color.<sup>26</sup>

Given the growing body of literature on the harms caused by police traffic enforcement in the immediate aftermath of protests occurring around the country, some have called for the abolition of police traffic enforcement.<sup>27</sup> Other scholars, sometimes called “non-abolitionists” or police reformers, acknowledge that policing as it is carried out has serious problems but remain focused on reforming the police rather than doing away with the enterprise of policing.<sup>28</sup> The size and spread of the American police presence suggest that for a variety of reasons, wholesale abolition will be complicated to implement, and the public appetite for a dramatic change in policing as we

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25. See, e.g., Pierson et al., *supra* note 18, at 736–38 (conducting one of the most comprehensive studies of around 100 million traffic stops carried out by twenty-one state patrol agencies and thirty-five local police departments over around a decade and using a veil of darkness methodology to avoid broader benchmark problems; finding that this methodology reveals data consistent with the targeting of these drivers of color relative to white drivers).

26. *Id.* at 738–39 (describing the methodology used to make this determination and presenting these results).

27. See, e.g., Jordan Blair Woods, *Traffic Without the Police*, 73 STAN. L. REV. 1471, 1488–90 (2021) (broadly describing a new framework for traffic enforcement without the use of armed police officers); see also Meg O’Connor, *What Traffic Enforcement Without Police Could Look Like*, APPEAL (Jan. 13, 2021), <https://theappeal.org/traffic-enforcement-without-police> [<https://perma.cc/4C9H-FPZZ>] (describing calls for the removal of police from traffic enforcement, and including summaries of such proposals in Berkeley, California; Cambridge, Massachusetts; St. Louis Park, Minnesota; and Montgomery County, Maryland). For a broader discussion of the police abolition movement, see generally Amna A. Akbar, *An Abolitionist Horizon for (Police) Reform*, 108 CALIF. L. REV. 1781 (2020) (arguing more broadly for scholars to take seriously the dismantling of the institutions of police and prisons); Jessica M. Eaglin, *To “Defund” the Police*, 73 STAN. L. REV. ONLINE 120 (2021) (providing a broader discussion of defunding the police); ALEX S. VITALE, *THE END OF POLICING* (2017) (supporting police abolition); Jamelia Morgan, *Responding to Abolition Anxieties: A Roadmap for Legal Analysis*, 120 MICH. L. REV. 1199 (2022) (reviewing Mariame Kaba’s book and connecting it to legal scholarship); Meghan G. McDowell & Luis A. Fernandez, *‘Disband, Disempower, and Disarm’: Amplifying the Theory and Practice of Police Abolition*, 26 CRITICAL CRIMINOLOGY 373 (2018) (supporting police abolition); and Taleed El-Sabawi & Jennifer J. Carroll, *A Model for Defunding: An Evidence-Based Statute for Behavioral Health Crisis Response*, 94 TEMP. L. REV. 1 (2021) (supporting a defunding approach to police reimagination).

28. See, e.g., Corey Stoughton, *Reflections of a Non-Abolitionist Admirer of the Police Abolition Movement*, 30 WASH. & LEE J.C.R. & SOC. JUST. 227, 227 (2024) (describing the debate between abolitionists and non-abolitionists).

know it is not a firm process.<sup>29</sup> This Article shows how jurisdictions across the country have already moved to limit the authority of police during traffic encounters. While this approach does not seek to eliminate entirely the police from the enforcement of traffic laws, it *does* seek to definitively limit police authority, which some may see as a slow walk to abolition. Rather than an open assault on police power, this approach involves state and local policymakers enacting restrictions on police power during traffic enforcement that go beyond those mandated by the U.S. Supreme Court under existing doctrine. Indeed, in recent years, states and municipalities have enacted limitations on the use of pretextual traffic stops, consent searches, and unrelated questioning of motorists after stops.<sup>30</sup> Others have restricted or banned the use of quotas as a police management tool.<sup>31</sup> Some prosecutor's offices have announced declination policies designed to disincentivize police from using traffic stops as a tool for the investigation of other unrelated crimes.<sup>32</sup> Still, other jurisdictions have explored additional reporting requirements and even technological replacements for the use of police officers to enforce local traffic codes.<sup>33</sup>

We conclude by considering the available empirical evidence on the possible effect of these laws on racial bias in policing, police violence, officer safety, and traffic safety. Based on this review of the existing literature, we argue that this sort of criminal justice minimalism<sup>34</sup> can possibly reduce the harmful and racially disparate effects of police traffic enforcement without compromising public safety.

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29. See, e.g., Ben Guarino, *Few Americans Want to Abolish Police, Gallup Survey Finds*, WASH. POST (July 22, 2020), <https://www.washingtonpost.com/nation/2020/07/22/abolish-police-gallup-poll/> (citing a poll that finds that just 15% of the country in the wake of the 2020 policing protests actually supported then-prominent calls for the abolition of policing). *But cf.* David D. Kirkpatrick et al., *Cities Try to Turn the Tide on Police Traffic Stops*, N.Y. TIMES (Apr. 15, 2022), <https://www.nytimes.com/2022/04/15/us/police-traffic-stops.html> (summarizing more broadly accepted proposals to restrain police authority in traffic enforcement in a wide range of cities, including Philadelphia, Pittsburgh, Lansing, and Los Angeles).

30. See *infra* Sections II.A–C (summarizing some such proposals and legislative enactments).

31. See *infra* Section II.D.

32. See *infra* Section II.E.

33. See *infra* Section II.F.

34. For discussions on the definition of criminal justice minimalism, see Benjamin Levin, *Criminal Law Minimalisms*, 101 WASH. U. L. REV. 1771, 1785–86 (2024) (“Such a project might emphasize reducing the actual number of police or on reducing their footprint.”); and Máximo Langer, *What Is Penal Minimalism?*, 101 WASH. U. L. REV. 2031, 2033 (2024) (“For minimalist accounts of the criminal legal system, a penal system that has armed public law enforcement and punishment is necessary to deal with certain types of social harms or wrongs. But this penal system should be fair and humane, and should be used only exceptionally when there are no other means of preventing and dealing with these social harms or wrongs.”).

This Article proceeds in three parts. Part I lays out the justifications for limiting police authority. These reasons include concerns that police and municipalities are using stops to generate income, as well as concerns about the racially disparate consequences of police traffic enforcement and the prevalence of police violence. Part II then surveys the wide range of approaches that cities and states have taken in limiting police authority during traffic stops. Finally, Part III considers the empirical evidence on the effect of these legislative changes on officer safety, traffic safety, racial bias, and police violence.

### I. THE NEED TO LIMIT POLICE TRAFFIC STOP AUTHORITY

Because of their prevalence, police stops are one of the primary mechanisms for contact between the police and members of the public. As mentioned earlier, the Stanford Open Policing Project estimates that police make more than 50,000 traffic stops on a typical day.<sup>35</sup> This translates to more than 20 million stops annually,<sup>36</sup> some of which end tragically. According to the Vera Institute's study of traffic stops, between 2016 and 2021, more than 400 people—drivers or passengers who were unarmed and not suspected of violent criminal activity—were shot after being stopped by police.<sup>37</sup>

Given the danger to citizens, why do police continue the practice of stopping so many motorists? Admittedly, much of police traffic enforcement action is motivated by a genuine effort by law enforcement to reduce dangerous driving behaviors that pose public safety risks. However, at least some appreciable number of traffic stops appear to be motivated by other law enforcement goals, like the generation of revenue and the use of traffic stops as pretexts to investigate other suspected criminal behavior. Existing criminal procedure doctrines facilitate police officers in using traffic stops to investigate other crimes. In part because of these realities, as well as the broad existence of explicit and implicit bias among police officers, there is considerable evidence of racial bias in traffic enforcement in the United States. The following Sections consider these points in turn.

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35. STAN. OPEN POLICING PROJECT, *supra* note 20 (navigate to “Findings”).

36. *Id.*

37. Sam McCann, *Low Level Traffic Stops Are Ineffective—and Sometimes Deadly. Why Are They Still Happening?*, VERA (Mar. 29, 2023), <https://www.vera.org/news/low-level-traffic-stops-are-ineffective-and-sometimes-deadly-why-are-they-still-happening> [https://perma.cc/5UAW-9GQ2].



*A. Traffic Enforcement as Pretext for Unrelated Criminal Investigations*

A substantial number of police stops are motivated by a desire to immediately remedy a traffic violation, such as speeding, changing lanes without properly signaling, running red lights, or failing to stop at stop signs. Police, after all, are the primary government institution responsible for enforcing traffic codes in the United States.<sup>38</sup> And enforcing these traffic codes is important for public safety. Each year, there are over 6 million traffic accidents in the United States, an estimated 40,000 of which are fatal.<sup>39</sup> This makes automobile accidents one of the most common causes of death in the United States.<sup>40</sup> No doubt, there is a clear and compelling government interest in establishing traffic codes to encourage safe driving and enforcing these codes in hopes of reducing injuries and fatalities.

There is also evidence that predictable and rigorous enforcement of traffic codes can help reduce injuries and deaths.<sup>41</sup> Multiple studies have attempted to examine unique factual circumstances where financial distress,<sup>42</sup> mass layoffs of state patrol officers,<sup>43</sup> or changes in management priorities have influenced police enforcement of traffic codes.<sup>44</sup> These studies generally find

38. Libby Doyle & Susan Nembhard, *Police Traffic Stops Have Little to Do with Public Safety*, URB. INST. (Apr. 26, 2021), <https://www.urban.org/urban-wire/police-traffic-stops-have-little-do-public-safety> [https://perma.cc/SK7Q-WCPE] (“Traffic enforcement has been a responsibility of policing since the invention and wide use of automobiles and other vehicles.”).

39. See Timothy Moore & Heidi Gollub, *Fatal Car Crash Statistics 2024*, USA TODAY (Jan. 16, 2024), <https://www.usatoday.com/money/blueprint/auto-insurance/fatal-car-crash-statistics> [https://perma.cc/3X2H-4RSN] (providing statistics, including the recent increase in the number of fatal car crashes between 2018 and 2022 from 36,835 to 42,795; and also estimating that there were 6,102,936 car crashes in 2021).

40. *Id.* (“Car crashes are the leading cause of death in the United States for people ages 1 to 54.”).

41. Stephen Rushin, *The Importance of Policing*, 76 S.C. L. REV. 133, 162–63 (2024) (“Prior research has consistently shown that, despite its potential risk for attendant harms, police traffic enforcement can reduce harmful driving behavior, leading to fewer injuries and possibly fewer deaths.”).

42. Michael D. Makowsky & Thomas Stratmann, *More Tickets, Fewer Accidents: How Cash-Strapped Towns Make for Safer Roads*, 54 J.L. & ECON. 863, 864–66 (2011) (finding that financial distress causing officers to issue more tickets was associated with a reduction in traffic accidents and injuries).

43. Gregory DeAngelo & Benjamin Hansen, *Life and Death in the Fast Lane: Police Enforcement and Traffic Fatalities*, AM. ECON. J., May 2014, at 231, 241–51 (detailing findings that suggest that when Oregon was forced to engage in mass layoffs of its state highway patrol, the decreased traffic enforcement was associated with a significant increase in injuries and deaths from traffic accidents).

44. Rushin, *supra* note 41, at 163 (citing two studies—one a meta-analysis by Bates, Soole, and Watson, and the other an examination of traffic enforcement in Australia—which combined suggest that greater enforcement of traffic codes by police are associated with likely reductions in accidents and subsequent harm to motorists).

that when police more rigorously enforce traffic safety rules—like prohibitions on speeding—communities experience statistically significant decreases in traffic accidents, injuries, and fatalities.<sup>45</sup> Importantly, though, none of these studies seem to find that armed police enforcement is necessary to achieve these increases in public safety. Rather, it is the deterrent effect of regular and predictable enforcement that likely results in drivers engaging in safer behavior.

At the same time, while enforcement of traffic laws deters harmful driving behavior that can endanger public safety, police do not use traffic enforcement for this purpose alone. Because police are empowered to enforce traffic codes as well as the broader criminal law, there is a strong body of evidence that police agencies across the country have trained officers to use traffic enforcement as a tool for identifying and investigating suspicions of other non-vehicular criminal conduct.<sup>46</sup> There is also considerable evidence that, perhaps in large part because of their intermingled responsibilities, police carry out their traffic enforcement duties in a manner that disproportionately harms individuals of color who are more likely to be the targets of criminal investigations.<sup>47</sup>

Maybe the most significant U.S. Supreme Court decision that reinforced this reality is *Whren v. United States*.<sup>48</sup> In that case, police stopped a vehicle with two Black men inside after officers purportedly observed the vehicle waiting at a stop sign for an unusually long period of time, then turned without signaling and drove away at a high speed.<sup>49</sup> When the officers approached the vehicle after completing the traffic stop, the officers claimed to immediately see two plastic bags filled with drugs in the hands of the passenger, Michael Whren, leading officers to arrest both men.<sup>50</sup> Whren and the driver, James Brown, later attempted to suppress this drug evidence by arguing that the traffic stop violated the Fourth Amendment as it was

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45. *Id.* (“The overall body of empirical evidence strongly suggests that police enforcement of traffic laws is associated with a decreased probability of traffic accidents and associated harm.”).

46. See, e.g., Stephen Rushin & Griffin Edwards, *An Empirical Assessment of Pretextual Stops and Racial Profiling*, 73 STAN. L. REV. 637, 665–667 (2021) (discussing Washington’s police training program).

47. See NAZGOL GHANDNOOSH & CELESTE BARRY, SENT’G PROJECT, ONE IN FIVE: DISPARITIES IN CRIME AND POLICING (2023), <https://www.sentencingproject.org/app/uploads/2023/11/One-in-Five-Disparities-in-Crime-and-Policing.pdf> [https://perma.cc/N5SQ-89GR].

48. 517 U.S. 806 (1996).

49. *Id.* at 808.

50. *Id.* at 809 (further explaining that after arrest “quantities of several types of illegal drugs were retrieved from the vehicle”).

pretextual in nature.<sup>51</sup> They argued that the stated justifications for the stop, including the failure to signal and the high speed at which the car left the stop sign, were mere pretextual justifications to hide the officers' real reason for the stop—the investigation of an unsubstantiated hunch that the defendants were engaged in some sort of drug crimes.<sup>52</sup> The defendants argued that the officers' actual, subjective reason for the traffic stop did not satisfy the Fourth Amendment.<sup>53</sup> But in a unanimous decision, the U.S. Supreme Court held that pretextual traffic stops do not violate the Fourth Amendment.<sup>54</sup> So long as officers can identify some objective violation of the traffic code, they may lawfully conduct a traffic stop, even if the officer's actual reason for conducting the stop was to investigate an unsubstantiated hunch or suspicion.<sup>55</sup> This decision led to widespread concern among legal scholars that police could use the *Whren* standard to justify stopping almost any vehicle of interest.<sup>56</sup> After all, if officers follow a vehicle long enough, they will inevitably uncover some technical violation of the law (e.g., driving 1 MPH over the speed limit, failing to fully signal throughout a lane change, or failing to stop completely at a stop sign).<sup>57</sup>

Further, the Court has also held that police may lawfully conduct an arrest during a traffic stop for any violation of the criminal law, even if that violation could not ordinarily result in any sort of imprisonment under state law. In *Atwater v. Lago Vista*, a police officer conducted a routine traffic stop of a motorist for a seatbelt violation, driving without a license, failing to secure her children in the vehicle, and an insurance violation.<sup>58</sup> But rather than simply issuing a citation to the motorist, the officer made the unusual choice

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51. *Id.*

52. *Id.* (further describing the procedural history of the case on appeal).

53. *Id.*

54. *Id.* at 818–19 (“[W]e are aware of no principle that would allow us to decide at what point a code of law becomes so expansive and so commonly violated that infraction itself can no longer be the ordinary measure of the lawfulness of enforcement.”).

55. *Id.* at 819 (“Here the District Court found that the officers had probable cause to believe that petitioners had violated the traffic code. That rendered the stop reasonable under the Fourth Amendment, the evidence thereby discovered admissible, and the upholding of the convictions by the Court of Appeals for the District of Columbia Circuit correct.”).

56. See, e.g., David A. Harris, “*Driving While Black*” and *All Other Traffic Offenses: The Supreme Court and Pretextual Traffic Stops*, 87 J. CRIM. L. & CRIMINOLOGY 544, 545 (1997) (stating that if an officer were to follow a motorist long enough, the officer could inevitably observe the driver “violating *some* traffic law,” meaning that “any citizen” could be “fair game for a stop, almost any time, anywhere, virtually at the whim of police”).

57. *Id.*

58. 532 U.S. 318, 323–24 (2001).

to arrest the driver, Ms. Gail Atwater.<sup>59</sup> Under Texas code, these violations were criminal offenses, but not ones that could result in a punishment that involved imprisonment.<sup>60</sup> After her arrest, Atwater was processed in the local jail and detained in a jail cell for about an hour before having to appear before a magistrate judge.<sup>61</sup> In response to this incident, Atwater filed a lawsuit alleging a violation of her Fourth Amendment rights.<sup>62</sup> The Court, though, held that the officer did not violate Atwater's constitutional rights. Instead, it held that police may complete an arrest for the violation of any criminal law that occurs in an officer's presence, including those that do not involve imprisonment as a possible punishment.<sup>63</sup>

Scholars have hypothesized that police can use the permissive *Whren* doctrine alongside other existing court decisions like *Atwater* (as well as the Court's previously permissive standard for searches of vehicles incident to arrest established in *New York v. Belton*,<sup>64</sup> which was later narrowed in *Arizona v. Gant*<sup>65</sup>) to justify the use of traffic stops to investigate other types of criminal conduct, like drug trafficking.<sup>66</sup> And various scholars have pointed out that this risk is more than merely theoretical. As Justin Driver has observed, police have "built upon" the existence of these doctrines that have

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59. *Id.* at 324 (describing the officer approaching the vehicle, recognizing Ms. Atwater, and yelling, "[w]e've met before" and declaring "[y]ou're going to jail" before completing the arrest).

60. *Id.* at 323.

61. *Id.* at 324.

62. *Id.* at 325.

63. *Id.* at 354 (ultimately concluding that the arrest was constitutionally permissible in the eyes of five of the nine justices).

64. See 453 U.S. 454, 460 (1981) (holding generally that if an officer conducts an arrest of a vehicle occupant, the officer may search the car, including compartments and items inside the car, incident to the arrest).

65. 556 U.S. 332, 347 (2009) (narrowing the scope of *Belton* and concluding that such a broad reading of police authority for searches of vehicles incident to arrest would not necessarily "further law enforcement interests and justify a substantial intrusion on individuals' privacy").

66. Michael C. Gizzi & Craig Curtis, *The Impact of Arizona v. Gant on Search and Seizure Law as Applied to Vehicle Searches*, 1 U. DENV. CRIM. L. REV. 30, 30 (2011) ("Police have used *Belton* searches in conjunction with arrests for minor traffic offenses as a key strategy in ferreting out drugs. Officers observe a vehicle that they suspect may be involved in drugs. They might have a hunch, or they may be relying on intelligence about the vehicle. They follow the vehicle and then establish a pretext for pulling it over, often relying on minor traffic violations. When officers pull over a vehicle, they speak with the driver, use their senses to look for any criminal evidence in plain view, and ask the driver for his license, registration, and proof of insurance. If the driver is unable to produce any of these three things, an officer may place him under arrest and may search the vehicle's passenger compartment." (footnotes omitted)).

“enabled them to conduct exploratory searches of almost any moving vehicle.”<sup>67</sup>

This sort of mixed-incentive structure means that police agencies often have dual interests in conducting traffic stops. On one hand, departments have strong incentives to enforce traffic laws with a knowledge that such enforcement can reduce accidents, injuries, and fatalities. At the same time, police are simultaneously empowered to enforce other criminal prohibitions beyond the traffic code, meaning that they have a separate incentive to use traffic stops as a tool for investigations of other suspected criminal offenses.

This reality has led to frequent speculation that some traffic stops, particularly of drivers of color, are motivated not by the need to promote safety on the roads, but instead an intent to investigate hunches that the driver may be engaged in some other type of crime. These accusations have emerged after numerous high-profile traffic stops for minor offenses that ultimately resulted in police use of serious, deadly force or otherwise were associated with harm to the drivers, like those of Sandra Bland,<sup>68</sup> Philando Castile,<sup>69</sup> Walter Scott,<sup>70</sup> and others. This reality has also contributed to claims that some drivers are victimized by traffic stops for “driving while Black,” a reference to the fact that officers’ implicit or explicit bias may cause them to target Black drivers, as well as other drivers of color, for more frequent traffic stops, particularly pretextual stops.<sup>71</sup> Indeed, these suspicions are seemingly well founded, as numerous large scale and smaller scale studies have found

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67. Justin Driver, *The Supreme Court as Bad Teacher*, 169 U. PA. L. REV. 1365, 1409 (2021).

68. Rushin & Edwards, *supra* note 46, at 645 n.27 (citing claims that Sandra Bland may have been targeted for a pretextual traffic stops according to various news outlets).

69. Max Carter-Oberstone, *America’s Traffic Laws Give Police Way Too Much Power*, TIME (May 11, 2022), <https://time.com/6175852/pretextual-traffic-stops> [<https://perma.cc/ZXY5-6QD4>] (“The traffic stop is just a pretext for [the police officer’s] true motivation. This is exactly what happened to Philando Castile.”).

70. David A. Graham, *The Shockingly Familiar Killing of Walter Scott*, ATLANTIC (Apr. 8, 2015), <https://www.theatlantic.com/national/archive/2015/04/the-shockingly-familiar-killing-of-walter-scott/390006> [<https://perma.cc/2CHT-R9MW>] (“Scott was stopped for having a tail light out, the sort of minimal issue that advocates say is often used as a pretext to harass black citizens and to search for other violations.”).

71. See, e.g., Patricia Warren et al., *Driving While Black: Bias Processes and Racial Disparity in Police Stops*, 44 CRIMINOLOGY 709, 710 (2006) (“Minority citizens have long suspected that their risk of a traffic stop is not proportionate to either their driving infractions or presence on our nation’s roads and highways. . . . Indeed, some scholars have argued that this practice is so pervasive that it should be referred to as the crime of ‘Driving While Black.’” (citations omitted)). For a discussion of the roots of this practice in contemporary policing, see Jeannine Bell, *Dead Canaries in the Coal Mines: The Symbolic Assailant Revisited*, 34 GA. ST. U. L. REV. 513 (2018) (describing the officers’ use of Blackness as a marker of suspicion, rather than specific crime markers).

evidence that drivers of color may be targeted more frequently for traffic stops than their rate of traffic stop violations would otherwise predict.<sup>72</sup>

Perhaps one of the most prominent studies to reach such a conclusion was conducted by the Stanford Open Policing Project.<sup>73</sup> There, researchers compiled one of the largest datasets to date on police traffic stops from dozens of jurisdictions across the country, including state highway patrols and municipal agencies.<sup>74</sup> Across this comprehensive dataset of over 100 million stops, they found that Black drivers were more likely to be stopped by police officers during daytime hours, suggesting that racial bias may be playing a role in traffic stop decisions, as the race of passing drivers is more easily detected during daylight.<sup>75</sup> They also found that searches incident to stops of Black and particularly Hispanic drivers were less likely to produce contraband than searches of white drivers, suggesting that officers may be employing a lower standard of suspicion in deciding to use their discretionary authority to search these drivers of color compared to their white counterparts.<sup>76</sup> And they further found that while the legalization of marijuana in Colorado and Washington somewhat reduced the racial search gap between white drivers and Black and Hispanic drivers, Black and Hispanic drivers remained more likely to be searched than their comparable white counterparts post-legalization.<sup>77</sup> This study is unique in its depth and breadth, allowing it to draw somewhat generalizable conclusions about patterns that appear to exist not just in one agency, but across dozens of agencies and multiple states. However, its results are broadly consistent with prior evaluations of relevant literature, intensive studies of individual jurisdictions, and theoretical predictions of how existing doctrine may combine with implicit and explicit bias to generate disparate outcomes for drivers of color.<sup>78</sup>

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72. Pierson et al., *supra* note 18, at 736–39.

73. *Id.*

74. *Id.* at 736 (describing the dataset as including twenty-one state highway patrols, thirty-five municipal police agencies, and including around 100 million stop records).

75. *Id.* at 737 (describing this “veil of darkness” methodology as an attempt to overcome the baseline problem that plagues many other studies of racial bias in traffic stops).

76. *Id.* at 738–39 (presenting these results and findings).

77. *Id.* at 740.

78. See, e.g., CHARLES R. EPP ET AL., *PULLED OVER: HOW POLICE STOPS DEFINE RACE AND CITIZENSHIP* 22 (2014). In their book on traffic stops in Kansas City, Professors Charles Epp, Stephen Maynard-Moody, and Donald Haider-Markel tightly summarized their research on racial disparities in police stops:

Numerous studies have found racial disparities in police stops throughout the country: in the dense multiracial and multiethnic coastal cities of Los Angeles and New York City, but also the large Midwestern sprawls of Wichita, Kansas,

This reality has also received particular attention in recent years as civil rights activists and academics have paid greater attention to the harms created by police violence.<sup>79</sup> For much of American history, neither the federal government nor any private organization has kept comprehensive records on the number of individuals killed or injured by police violence.<sup>80</sup> This reality became painfully evident after protests in Ferguson, Missouri led to a national conversation on better documenting police violence and the development of multiple private datasets aiming to fill this important gap in public knowledge.<sup>81</sup> Many of these datasets built on the work of publicly available resources like the *Fatal Encounters* dataset, which itself relied on Google News alerts and public reports of police killings from local media outlets.<sup>82</sup> In the years since, efforts by Mapping Police Violence,<sup>83</sup> *The Washington Post*,<sup>84</sup> and *The Guardian*,<sup>85</sup> among others, have shed new light on the number of individuals killed each year by police, the demographics of those killed, and the circumstances surrounding many of their deaths. While each organization that collects and reports this data uses somewhat different methodological approaches, the overall body of research has produced

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and St. Louis, Missouri; in progressive, reform-oriented police departments like those in some of the Kansas City jurisdictions, but also traditional ‘political’ departments like that of Boston; on major interstate highways in Maryland and New Jersey but also rural highways in Louisiana.

*Id.*

79. See, e.g., Sirry Alang et al., *Police Brutality and Black Health: Setting the Agenda for Public Health Scholars*, 107 AM. J. PUB. HEALTH 662 (2017).

80. See, e.g., Trymaine Lee & Safia Samee Ali, *Why Doesn’t the Government Track Nationwide Police Use of Force?*, NBC NEWS (Nov. 14, 2016), <https://www.nbcnews.com/news/us-news/why-doesn-t-government-track-nationwide-police-use-force-n682626> [<https://perma.cc/9MTA-YFY2>] (chronicling the persistent failure of police agencies to report accurate use of force data and the lack of accurate national statistics, leading organizations like *The Guardian* and *The Washington Post* to develop their own publicly available datasets because “there is no accurate national comprehensive figure beyond that”).

81. See Meg Anderson, *10 Years After Michael Brown’s Death, Police Killings Are Not Going Down*, NPR (Aug. 10, 2024), <https://www.npr.org/2024/08/09/nx-s1-5053165/ferguson-michael-brown-10-years-police> [<https://perma.cc/GP27-QT2X>].

82. *Methodology*, FATAL ENCOUNTERS, <https://fatalencounters.org/methodology> [<https://perma.cc/2NTE-QLD7>] (discussing the history of the project and its use of crowdsourcing and Google alerts).

83. MAPPING POLICE VIOLENCE, *supra* note 10 (providing details on this ongoing project).

84. WASH. POST, *supra* note 11 (navigate to “Read Our Methodology” to see a description of this project, its focus specifically on police shootings rather than all killings by police, and other clarifying details).

85. *About The Counted*, GUARDIAN, <https://www.theguardian.com/us-news/ng-interactive/2015/jun/01/about-the-counted> [<https://perma.cc/DJQ4-QKL2>] (discussing a broader description of the project, its history, and methodology).

relatively consistent results.<sup>86</sup> They all find that police likely kill somewhere around 1,200 or more individuals annually.<sup>87</sup> Most of these individuals are reported by local law enforcement to be armed with a weapon at the time of their death, but a not insignificant number of these individuals are reported to be unarmed when killed by police.<sup>88</sup> Black and Hispanic individuals are disproportionately represented among the dead, when controlling for the national population of each race relative to white individuals.<sup>89</sup> Individuals living with mental illness or otherwise experiencing a mental health crisis are not uncommon in the datasets.<sup>90</sup> And perhaps most importantly for the scope of this Article, a subset of these killings occurred after a police officer completed a routine traffic stop. One dataset estimates that around 87 police killings a year begin with a traffic stop.<sup>91</sup> Compared to the total 1,200 police killings annually, this is an admittedly small number.

Nevertheless, this does not capture the millions of other times where police conduct a routine traffic stop that does not result in the loss of life, or the thousands of searches, uses of non-deadly force against civilians, arrests, and other dignitary harms stemming from routine traffic stops. As previously discussed, the best available evidence suggests that the discretionary use of these tactics disproportionately falls on individuals of color, specifically Black and Hispanic drivers.

In addition to the scholarly research in this area, there is anecdotal evidence stemming from minority officer accounts of their experiences. Charles Epp, Stephen Maynard Moody, and Donald Haider Markel

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86. As an example of this general consistency, *The Guardian* identified around 1,093 police killings in 2016 and 1,146 in 2015. GUARDIAN, *supra* note 12. *The Washington Post*, which focuses specifically on police shootings of civilians rather than all killings, registered 995 deaths in 2015, 959 deaths in 2016, and 984 in 2017. WASH. POST, *supra* note 11. This is predictably lower than *The Guardian* because of their narrower methodological focus. *Mapping Police Violence*, which uses a broader methodology, documented 1,101 police killings in 2015, 1,065 killings in 2016, and 1,089 in 2017. MAPPING POLICE VIOLENCE, *supra* note 10.

87. For example, *Mapping Police Violence* pegs this number at 1,248 in 2023, MAPPING POLICE VIOLENCE, *supra* note 10, and *The Washington Post* puts it at 1,164 using a narrower methodology. WASH. POST, *supra* note 11. For further discussion of this data, see *supra* notes 82–86 and associated links.

88. WASH. POST, *supra* note 11 (navigate to bottom of page to “Explore the data,” filter results for “Victim armed/unarmed,” then select “armed” to see that 83% of victims in dataset since 2015 were coded as armed at the time of their deaths).

89. *Id.* (showing that Black individuals experience police killings at a rate of 6.0 per million per year, relative to Hispanics at a rate of 2.7 per million per year, and 2.4 per million per year for white individuals).

90. *Id.* (navigate to bottom of page to “Explore the data” and select “yes” for the category “Mental illness crisis” to show that 20% are coded as including this characteristic at the time of their death).

91. MAPPING POLICE VIOLENCE, *supra* note 10.



interviewed police officers and surveyed more than 2000 citizens in Kansas City about their traffic stops.<sup>92</sup> One officer, who described himself as “working speed” told the following story about a car that he first observed with only one headlight working properly (a violation)<sup>93</sup>:

I pulled her over and walked up to the vehicle, and it happened to be an African American female. And when I told her I stopped for speeding, she assumed that I stopped her because of her race. And she goes, “Why didn’t you get the vehicle next to me?” And I said “Well, you drew attention to yourself because you only have one working headlight.” She didn’t believe me. I said, “Well, if you don’t believe me turn on your headlights.” And I walked to the car and I pointed to it and said, “That one right there is not working. If you don’t believe me, you can get out and look at it.”<sup>94</sup>

There are several signs that the stop described above may have been a pretextual stop. In *Whren*,<sup>95</sup> when the plainclothes narcotics officers were prohibited by D.C. regulations from making ordinary stops, the plaintiff argued that this was a sign that the stop was pretextual.<sup>96</sup> Similarly, the objective reason for the stop in this story is that one of the motorist’s headlights was out, despite the fact that the officer was only “working speed.”<sup>97</sup> The officer being interviewed indicated that he did not know how fast the driver was going.<sup>98</sup> He ultimately tells her that he stopped her for not having a working headlight, a nonserious equipment violation.<sup>99</sup>

This particular account also dramatizes the wide gulf between the officer’s belief that his action is justifiable and what Black motorists feel when they are stopped for minor violations. The end of the officer’s account suggests that when the difficulty is pointed out to the woman, she is penitent. The officer’s account in the interview continues:

And so, I went back and she saw it, and it was like, “Whoops,” you know.

And I walked back to my car, wrote her a ticket for the speeding and said, “Sign here by the ‘X’, the city will send you the fine, blah, blah, blah.”

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92. EPP ET AL., *supra* note 78, at 22.

93. *Id.* at 55.

94. *Id.*

95. *Whren v. United States*, 517 U.S. 806 (1996).

96. *Id.* at 809.

97. EPP ET AL., *supra* note 78, at 55.

98. *Id.*

99. *Id.*

And that was it. She pulled off.<sup>100</sup>

As the researchers noted, we do not know whether it was the burned-out headlight or the woman's race that attracted the attention of the officer.<sup>101</sup> We also do not know whether the woman believed she had been stopped because of her race despite the burned-out headlight. This assumption that Black individuals are more likely to be stopped than white individuals, despite not speeding any more than whites, has repeatedly been supported by numerous empirical studies evaluating police behavior.<sup>102</sup>

Moreover, the wide reach of existing court doctrine coupled with implicit and explicit bias is not the only explanation for harmful conduct by police during traffic encounters. As the next Section explains, the harms of police traffic stops also stem from the incentives created by local taxing and funding structures, as well as management tools like quotas that may push officers to engage in traffic enforcement for reasons unconnected to public safety.

### B. Revenue Generation and Quotas

There is considerable evidence that some jurisdictions use police enforcement of traffic code not to advance road safety, but instead to generate local government revenue.<sup>103</sup> One large-scale examination by Mike McIntire and Michael H. Keller with *The New York Times* found that at least 730 communities in the United States rely on traffic fines and fees to fund at least 10% of their local budgets.<sup>104</sup> This seems to bolster bipartisan concern that some police departments use police tickets to generate significant funds for municipalities.<sup>105</sup> Concerns about police using traffic offenses and other low-

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100. *Id.*

101. Though the officer may have felt better because he identified what the Court in *Whren* calls an objectively verifiable reason for the stop, he may have actually done the driver a disservice by not stopping her for speeding. Being stopped for having a headlight out, rather than for the more serious crime of speeding, may feel like racial profiling to the motorist.

102. See, e.g., EPP ET AL., *supra* note 78, at 64–65 (showing Black individuals are more likely to be subjected to investigatory stops than whites).

103. Griffin Edwards & Stephen Rushin, *The Effect of Police Quota Laws*, 109 IOWA L. REV. 2127, 2136–37 (2024).

104. Mike McIntire & Michael H. Keller, *The Demand for Money Behind Many Police Traffic Stops*, N.Y. TIMES (Nov. 2, 2021), <https://www.nytimes.com/2021/10/31/us/police-ticket-quotas-money-funding.html>.

105. The Tax Policy Center estimates that in 2021, “state and local governments collected a combined \$12.9 billion in revenue from fines, fees, and forfeitures.” *How Do State and Local Revenues from Fines, Fees and Forfeitures Work?*, TAX POL’Y CTR., <https://taxpolicycenter.org/briefing-book/how-do-state-and-local-revenues-fines-fees-and-forfeitures-work> [https://

level enforcement to generate revenue became a topic of national conversation after the events in Ferguson, Missouri, and the subsequent investigation by the U.S. Department of Justice (“DOJ”) into whether the Ferguson Police Department was in violation of 34 U.S.C. § 12601 (formerly 42 U.S.C. § 14141).<sup>106</sup> That statute gives the U.S. Attorney General the authority to seek equitable relief against state and local police departments engaged in patterns or practices of unlawful misconduct.<sup>107</sup> While the DOJ initiated its investigation in response to the killing of Michael Brown by a Ferguson police officer in 2014 and the subsequent widespread protests, the findings revealed a somewhat unexpected type of misconduct that was prevalent among the department—the use of policing for unlawful revenue generation purposes.<sup>108</sup>

Then-Attorney General Eric Holder announced the findings of this far-reaching investigation in March 2015.<sup>109</sup> In his public remarks and in the accompanying 102-page report, the DOJ documented in painful detail how Ferguson city leaders pressured the Ferguson Police Department to “maximize revenue at every stage of the [criminal and traffic] enforcement process.”<sup>110</sup> Police supervisors regularly communicated with lower-level officers about the need to increase productivity in the enforcement of traffic

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perma.cc/X2B5-EAPF] (Jan. 2024). This was approximately 0.3% of state and local general revenue. *Id.* State governments collected \$5.1 billion (0.2% of state general revenue), and local governments collected \$7.7 billion (0.4% of local general revenue overall). *See id.*

106. Matt Apuzzo & Manny Fernandez, *Justice Dept. Inquiry to Focus on Practices of Police in Ferguson*, N.Y. TIMES (Sept. 3, 2014), <https://www.nytimes.com/2014/09/04/us/politics/justice-dept-to-investigate-ferguson-police-practices.html> (describing the initiation of this formal investigation into the Ferguson Police Department).

107. 34 U.S.C. § 12601 (stating that “[i]t shall be unlawful” for any local or state law enforcement agency to engage in a “pattern or practice of conduct” that violates the laws of the United States or the Constitution and providing the Attorney General with the ability to seek equitable relief in such circumstances). For more information on the history of this statute, see Stephen Rushin, *Federal Enforcement of Police Reform*, 82 FORDHAM L. REV. 3189, 3209–18 (2014).

108. Mark Berman & Wesley Lowery, *The 12 Key Highlights from the DOJ’s Scathing Ferguson Report*, WASH. POST (Mar. 4, 2015), <https://www.washingtonpost.com/news/post-nation/wp/2015/03/04/the-12-key-highlights-from-the-doj-s-scathing-ferguson-report> (identifying the focus on revenue generation as one of the key findings of the report immediately after its release).

109. Matt Apuzzo & John Eligon, *Ferguson Tainted by Bias, Justice Department Says*, N.Y. TIMES (Mar. 4, 2015), <https://www.nytimes.com/2015/03/05/us/us-calls-on-ferguson-to-overhaul-criminal-justice-system.html> (describing Holder’s press conference to announce the DOJ’s findings from Ferguson); *see also* U.S. DEP’T. OF JUST., INVESTIGATION OF THE FERGUSON POLICE DEPARTMENT (2015), [https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson\\_police\\_department\\_report.pdf](https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf) [https://perma.cc/6HHF-KKVN] [hereinafter FERGUSON REPORT].

110. FERGUSON REPORT, *supra* note 109, at 9–10.

laws, with the goal of ultimately increasing revenue.<sup>111</sup> Supervisors emphasized productivity metrics, like requirements that officers “maintain an average” of around “[twenty-eight tickets] per month.”<sup>112</sup> Coupled with a weak accountability system, this laser focus on revenue generation “sent a potent message to officers that their violations of law and policy will be tolerated, provided that officers continue to be ‘productive’ in making arrests and writing citations.”<sup>113</sup> Ferguson officers allegedly sought out opportunities to issue citations by engaging in unlawful stops, arresting individuals without probable cause, and using unlawful amounts of physical force.<sup>114</sup> The report provided numerous anecdotes of officers making unlawful stops, claiming to utilize many of the broad court doctrines previously described,<sup>115</sup> and escalating the encounters unnecessarily in a manner that ultimately resulted in more serious law enforcement action, like numerous criminal charges.<sup>116</sup>

This combination of extensive discretion and a focus on revenue generation disproportionately harmed the Black residents of Ferguson, whom the DOJ argued experienced a “disparate impact in nearly every aspect of Ferguson’s law enforcement system.”<sup>117</sup> The example from Ferguson is only one example of many where a locality’s use of policing for revenue generation has potentially resulted in racially disparate outcomes.<sup>118</sup>

Incentivizing ticket generation not only separates officers from the core purpose of policing but also poisons officers’ relationship with the community. In areas where officers are rewarded for writing tickets, citizens’ only contact with officers is one where officers subject them to fines and fees. For working-class and poor communities of color, which often have strained relationships with the police anyway, law enforcement’s emphasis on revenue generation is especially alienating. An encounter with police over a minor traffic violation could introduce financial hardship. The scenario may work something like this:

[W]hen police begin to realize that their job is dependent on handing out enough tickets in a given month, they are going to make sure they find offenses, especially among those least able to fight back. Inevitably this “taxation by citation” increases the number of

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111. *Id.* at 11.

112. *Id.* at 12.

113. *Id.* at 11–12.

114. *Id.* at 15.

115. *See supra* Section I.A.

116. FERGUSON REPORT, *supra* note 109, at 11, 15.

117. *Id.* at 62.

118. Edwards & Rushin, *supra* note 103, at 2137–38 (providing other examples from New Brunswick, New Jersey; Cranston, Rhode Island; and the Michigan State Police).

confrontations between police and citizens, leading to more public frustration and less trust between the police and the people they are meant to protect and serve.<sup>119</sup>

The Ferguson Report highlighted the dramatic way the Ferguson Police Department made up for budget shortfalls with taxation by citation. But of course, Ferguson is hardly the only jurisdiction to experience these kinds of harms by focusing on revenue generation in police enforcement. In Chicago, a 2019 joint investigation by public radio station *WBEZ* and the nonprofit investigative newsroom *ProPublica* examined more than 54 million parking, standing, and vehicle compliance tickets issued by Chicago police between January 1, 1996 and May 14, 2018.<sup>120</sup> The researchers then assigned each ticket to wards across the city.<sup>121</sup> The number of tickets in Chicago was staggering—54.4 million tickets issued, \$2.8 billion paid to the city of Chicago, yielding a staggering \$1.8 billion in outstanding debt.<sup>122</sup>

As in Ferguson, the large number of tickets in Chicago was driven by policy coming directly from the need to raise revenue for the city. In 2012, with the unanimous approval of the Chicago City Council, then-Mayor Rahm Emanuel collaborated with Susana Mendoza, the former City Clerk, to increase the fine for not having the required municipal vehicle sticker from \$120 to \$200.<sup>123</sup> In advocating for the change, Mendoza had told alderpeople that the ticket increase would add \$16 million a year to the city's coffers.<sup>124</sup> Though it failed to do this, it nevertheless had a “devastating” effect on thousands of Chicago's poorest residents, many of whom were residents of predominantly Black neighborhoods.<sup>125</sup> Though the downtown area had the highest number of tickets and most debt, “[t]he next eight wards with the largest outstanding debts for parking tickets are majority [B]lack.”<sup>126</sup> Ultimately combined with long-standing racialized policing practices, the

119. Andrew Wilmer, *Policing Should Not Be About Generating Profit*, FORBES (June 15, 2020), <https://www.forbes.com/sites/instituteforjustice/2020/06/12/policing-should-not-be-about-generating-profit> [https://perma.cc/ZG2D-QE7X].

120. David Eads & Melissa Sanchez, *The Ticket Trap: About Our Data*, PROPUBLICA, <https://projects.propublica.org/chicago-tickets/about> [https://perma.cc/GS9J-V95F].

121. *Id.*

122. David Eads & Melissa Sanchez, *The Ticket Trap*, PROPUBLICA (July 31, 2019), <https://projects.propublica.org/chicago-tickets> [https://perma.cc/T9PU-5H5M].

123. Melissa Sanchez & Elliott Ramos, *Chicago Hiked the Cost of Vehicle City Sticker Violations to Boost Revenue. But It's Driven More Low-Income, Black Motorists into Debt*, PROPUBLICA (July 26, 2018), <https://www.propublica.org/article/chicago-vehicle-sticker-law-ticket-price-hike-black-drivers-debt> [https://perma.cc/2WEW-36QJ].

124. *Id.*

125. *Id.*

126. Eads & Sanchez, *supra* note 122.

higher fine had disastrous effects on many of Chicago's Black residents. "The penalty increase—coupled with a pattern of racial disparities in sticker ticketing—has exacerbated a uniquely Chicago phenomenon: Thousands of mostly [B]lack drivers filing for bankruptcy to cope with ticket debt."<sup>127</sup>

It is not just the cost of tickets. In addition to the financial toll that tickets have on citizens, for marginalized communities with poor relationships with the police, being ticketed for petty offenses exacerbates an already troubled relationship. Consider the experience of Harold Brown, a Black security guard who was stopped at 1:30 a.m. in Valley Brook, Oklahoma, for having his license plate light out.<sup>128</sup> "You pulled me over for that? Come on, man," Mr. Brown said to the officer.<sup>129</sup> This incensed the officer, who then shouted at Mr. Brown and later violently arrested him.<sup>130</sup> In addition to being brutally treated and injured, Mr. Brown incurred \$800 in fines and fees.<sup>131</sup> This was no accident. Valley Brook had only 870 residents, yet the town nonetheless collected approximately \$1 million a year from traffic violations.<sup>132</sup>

Part of the problem with raising revenue through ticketing is the unfair burden that it places on people of color. Though many studies show that minorities are not more likely to engage in traffic offenses than whites, police practices end up targeting them as lawbreakers.<sup>133</sup> In both Valley Brook, Oklahoma, and Ferguson, Missouri, it was minorities who shouldered more than their share of the burden of the desire to raise revenue for the city. If law enforcement officers are faced with a new directive to increase the number of tickets that they must write, then they turn to enforce the law against the most vulnerable—those they may see as the most frequent violators of the law or those least likely to effectively complain. There is significant evidence that law enforcement officers see Black Americans as frequent violators of the law.<sup>134</sup> This is the argument with respect to racial profiling. Black

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127. Sanchez & Ramos, *supra* note 123.

128. McIntire & Keller, *supra* note 102.

129. *Id.*

130. *Id.*

131. *Id.*

132. *Id.*

133. See, e.g., EPP ET AL., *supra* note 78, at 57 (describing survey responses revealing that Black Americans do not typically violate traffic laws more than whites); see also Donald Tomaskovic-Devey et al., *Self-Reports of Police Speeding Stops by Race: Results from the North Carolina Reverse Record Check Survey*, 22 J. QUANTITATIVE CRIMINOLOGY 279 (2006) (revealing that Black Americans were not more likely to speed than white individuals, based on self-reports of drivers who had been stopped for speeding).

134. See, e.g., Renée McDonald Hutchins, *Racial Profiling: The Law, the Policy, and the Practice*, in POLICING THE BLACK MAN 95, 103–07 (2017) (detailing numerous empirical studies describing the use of racial profiling by police departments throughout the United States).

Americans are targeted because police think they are likely to be violating the law.

Experiences of minorities in Valley Brook mirrored that in hundreds of other communities around the country where Black Americans are targeted by police. Law enforcement officers have wide authority under the law to make traffic stops. There is substantial evidence to suggest that police officers use this discretion to make race-based stops. When officers' use of pretext was challenged in *Whren v. United States*,<sup>135</sup> the Supreme Court acknowledged that police are not allowed to make race-based stops.<sup>136</sup> Though it noted that the Constitution prohibits race-based stops, the plaintiffs lost because the Court insisted any race-based challenges to officers' stops need to be brought under the Equal Protection Clause.<sup>137</sup> Some police saw *Whren* as a green light to continue engaging in racial profiling.<sup>138</sup>

Additionally, managerial systems that establish ticket quotas for officers can further contribute to the harms generated by police enforcement of traffic codes. As Shaun Ossei-Owusu has described in great detail in his seminal article on the subject, ticket quota systems describe "formal and informal measures that require law enforcement to have a certain number of contacts with individuals or issue a certain number of citations or arrests."<sup>139</sup> According to Ossei-Owusu, most quotas are characterized by at least some level of formality, some measurement of a quantifiable level of acceptable behavior, some requirement to satisfy this threshold, and some possibility of negative employment action in response to this failure to satisfy the quota.<sup>140</sup> As he notes, there appears to be widespread dislike of quota systems, regardless of political affiliation.<sup>141</sup> But police administrators have argued

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135. 517 U.S. 806 (1996).

136. *Id.* at 813.

137. *Id.* Because of the widely acknowledged difficulty of bringing race-based challenges under the Equal Protection Clause, the Court's decision in *Whren* effectively ended any chance of bringing most lawsuits alleging racial discrimination in an officer's decision to stop a motorist. Kevin R. Johnson, *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, 1066, 1068–70 (2010).

138. In its discussion of the Court's decision, *Police Chief* magazine noted that *Whren* "preserve[s] officers' ability to use traffic stops to uncover criminal activities." EPP ET AL., *supra* note 78, at 35 (quoting Roy Caldwell Kime, *U.S. Supreme Court Rules on Asset Forfeiture and Traffic Stop Evidence*, POLICE CHIEF, Aug. 1996, at 10). A California Highway Patrol training officer bragged that "after *Whren* the game was over. We won." *Id.* (quoting Gary Webb, *DWB: Tracking Unspoken Law Enforcement Racism*, ESQUIRE, Apr. 1999, at 118).

139. Shaun Ossei-Owusu, *Police Quotas*, 96 N.Y.U. L. REV. 529, 537 (2021).

140. *Id.*; see also Edwards & Rushin, *supra* note 103, at 2134 (citing this same definition provided by Ossei-Owusu's important work).

141. Ossei-Owusu, *supra* note 139, at 546.

that some sort of quota or equivalent metric may be an important component of broader managerial systems for overseeing officers and ensuring that, throughout their shifts, they are engaged in adequately productive behavior that advances the needs of the agency.<sup>142</sup> Even so, the potential harms of quotas are numerous. They can help facilitate revenue-generation-focused policing strategies, as described above.<sup>143</sup> They may motivate officers to make traffic enforcement decisions for reasons that are “unrelated to public safety or law enforcement need.”<sup>144</sup> And they may lead to a form of policing that disproportionately impacts communities of color, specifically Black and Hispanic individuals.<sup>145</sup>

Indeed, ticket quotas and other incentives to raise revenue increase the likelihood that police officers have to hunt for reasons to stop motorists. Such incentives mean that some individuals will be stopped for minor violations, thus increasing the number of stops in any jurisdiction and likely leading to a poor relationship between minorities and the police. Racial and ethnic minorities—similar to white drivers—know that police behavior is discretionary. Officers choose to stop some violators but not others. Choosing whom to stop and when is one of the hallmarks of police discretion.<sup>146</sup> No doubt, the belief that police have used their discretion in discriminatory ways is often in the minds of minorities when police stop them for insignificant matters.

Even without personal physical injury or monetary sanction, discriminatory selection by the police is traumatizing to the point of crushing.<sup>147</sup> Beyond increasing the likelihood of sanctions, it can compound

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142. Edwards & Rushin, *supra* note 103, at 2144 (describing the position taken by the Illinois Association of Chiefs of Police in the *Policemen’s Benevolent Labor Committee v. City of Sparta* litigation before the Illinois Supreme Court, 181 N.E.3d 848 (Ill. 2020), and their argument that a quasi-quota system involving the allocation of points to officers for the completion of various job responsibilities is necessary to “maintain accountability for officer duty performance” (quoting Amicus Curiae Brief of the Ill. Ass’n of Chiefs of Police at \*2, *Policemen’s Benevolent Lab. Comm.*, 181 N.E.3d 848 (No. 125508))).

143. *Id.* at 2136–37.

144. *Id.* at 2135–36.

145. *Id.* at 2137–38 (providing several examples and a theoretical argument for how quotas may disproportionately impact individuals of color).

146. See generally Joseph Goldstein, *Police Discretion Not to Invoke the Criminal Process: Low-Visibility Decisions in the Administration of Justice*, 69 YALE L.J. 543 (1960) (providing an early, seminal framework on the link between discretion and policing).

147. See, e.g., Devon W. Carbado, UNREASONABLE: BLACK LIVES, POLICE POWER, AND THE FOURTH AMENDMENT 1–8 (2022) (describing the trauma of being stopped by police as a young man); Rod K. Brunson & Jody Miller, *Young Black Men and Urban Policing in the United States*, 46 BRIT. J. CRIMINOLOGY 613, 614 (2006) (describing stops by the police causing significant mistrust amongst the young men stopped).



Black motorists' daily inconvenience, especially for those who are regularly stopped by police.<sup>148</sup> As previously noted, research has shown that police officers disproportionately stop Black and Hispanic drivers. A preference for sanctioning individuals by race constitutes discrimination, which health researchers have linked to psychological harm.<sup>149</sup> Given the correlation between discrimination and negative impacts on health, it is unsurprising that researchers have documented negative health effects associated with being stopped by the police.<sup>150</sup>

The impact of police discrimination in stops is even more far-reaching. Simply living in a neighborhood where police violence occurs has been shown to have a negative effect on residents' health, even if they have not personally been targeted by police violence.<sup>151</sup> Researchers compared the health outcomes of residents in neighborhoods in New York City where police had killed residents with those where there had not been police violence.<sup>152</sup> In neighborhoods where police have shot and killed someone, residents face a larger risk of obesity and high blood pressure than those living in neighborhoods with fewer police shootings, holding all else constant.<sup>153</sup>

### C. Pushes for Abolition of Police Traffic Enforcement

Understandably, given the potential for police violence and the confluence of harmful incentives created by police criminal investigative responsibilities, revenue demands, and quotas, some prominent voices have called for the abolition of policing from the enforcement of the traffic code. Perhaps most notably, Jordan Blair Woods has written a series of articles laying out a thoughtful case for the surprisingly limited danger that police face in traffic enforcement and the possibility of fully removing armed officers from this responsibility. First, in 2019, Woods conducted a comprehensive study on the empirical risk faced by police in conducting

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148. See, e.g., EPP ET AL., *supra* note 78, at 62–63 (detailing a respondent who reported being followed home by police for two weeks).

149. See Nancy Krieger & Stephen Sidney, *Racial Discrimination and Blood Pressure: The CARDIA Study of Young Black and White Adults*, 86 AM. J. PUB. HEALTH 1370, 1372–73, 1375 (1996).

150. See Amber J. Landers et al., *Police Contacts and Stress Among African American College Students*, 81 AM. J. ORTHOPSYCHIATRY 72, 75–79 (2011).

151. Alyasah Ali Sewell et al., *Illness Spillovers of Lethal Police Violence: The Significance of Gendered Marginalization*, 44 ETHNIC & RACIAL STUD. 1089, 1098–1105 (2021).

152. *Id.*

153. *Id.*

traffic stops.<sup>154</sup> While all of his findings cannot be fully summarized here, his topline finding was jarring: using his most conservative estimates, officers in his dataset faced a risk of dying via a felonious killing during a traffic stop, around 1 in every 6.5 million stops.<sup>155</sup> Officers faced a rate of assault resulting in serious injuries in only 1 out of every 361,111 stops,<sup>156</sup> and officers experienced some sort of assault in 1 out of every 6,959 stops.<sup>157</sup> Other estimates suggested that these conservative statistics may actually significantly overstate the already low risk that police in the dataset likely faced.<sup>158</sup> No matter how you parse the available data, Woods concluded that the so-called “danger narrative” that trains officers to believe that routine traffic stops are “highly dangerous settings” is not supported by the empirical data.<sup>159</sup> His study provides potentially compelling evidence that one of the primary motivations for police officers taking on the responsibility of traffic enforcement—the purported dangerousness of the work, and by extension the need for armed officers—may be based on empirically faulty assumptions. However, as important as Woods’s study may be, it cannot discount the possibility that part of the reason that police face minimal risk of physical injury or death during traffic encounters is *because* they are armed and trained to handle possible physical confrontations with noncompliant or armed motorists.

Second, based in part on his earlier findings on the minimal danger faced by police in enforcing traffic laws, Woods proposed in 2021 a far-reaching policy prescription—the removal of police entirely from the enforcement of traffic laws.<sup>160</sup> Woods justified this proposal on several grounds, including the expansive nature of the traffic code and doctrine on police discretion during these traffic stops,<sup>161</sup> the inevitable way that racism creeps into police enforcement of traffic law,<sup>162</sup> the weakness of existing constitutional remedies for violations of constitutional rights during traffic stops at the

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154. Jordan Blair Woods, *Policing, Danger Narratives, and Routine Traffic Stops*, 117 MICH. L. REV. 635, 660–67 (2019) (describing the methodology and scope of the project).

155. *Id.* at 683 (presenting this data in the text of the article and in Table 12).

156. *Id.*

157. *Id.*

158. *Id.* (providing, for example, other estimates for the risk of police officers being killed at anywhere from 1 in 8.14 million to 1 in 27.6 million).

159. *Id.* at 683–84.

160. *See generally* Woods, *supra* note 27 (advancing this as the central argument of his paper).

161. *Id.* at 1481 (“To begin, the expansive nature of traffic codes provides countless opportunities for officers to pull drivers over, especially for pretextual reasons.”).

162. *Id.* at 1482 (“Race and class often shape who falls into which category.”).

hands of police,<sup>163</sup> and the general lack of state action to curb police discretion during these stops.<sup>164</sup> Thus, Woods imagines a solution whereby jurisdictions would remove police entirely from most routine minor traffic stops, while leaving some room for police to continue to enforce stops involving felony warrants, other felony stops, and a narrow set of more serious traffic situations.<sup>165</sup>

Woods proposal fits within a broader landscape where some civil rights activists and scholars have proposed abolition of some or all policing responsibilities, the reinvestment of these resources in other social services, and the reimagination of public safety as an alternative to traditional police reform efforts.<sup>166</sup> Despite the increased public awareness of and interest in abolition among some political constituencies, there appears to be little public appetite for large scale police abolition or defunding.<sup>167</sup> Jurisdictions that considered or even passed measures to go down these paths have largely reversed course in the months and years since then.<sup>168</sup> And thus far, only one midsize municipality has taken steps to remove police completely from the enforcement of some substantial number of traffic laws.<sup>169</sup> However, within this political landscape, there appears to be some broader support for tailored measures to narrow police discretion in traffic stops. Short of full abolition, there are numerous steps that states and localities can take to reduce the likelihood of police officers using traffic stops as a tool for discretionary enforcement of other criminal laws in a manner that disproportionately harm

163. *Id.* (“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.”).

164. *Id.* 1484–85 (explaining, “[s]tate law does not offer much help in addressing these problems” and providing further follow-up explanation and examples).

165. *Id.* at 1488–94 (describing the scope of his proposal).

166. *See, e.g.,* Mariame Kaba, Opinion, *Yes, We Mean Literally Abolish the Police*, N.Y. TIMES (June 12, 2020), <https://www.nytimes.com/2020/06/12/opinion/sunday/floyd-abolish-defund-police.html>; Maya Dukmasova, *Abolish the Police? Organizers Say It’s Less Crazy than It Sounds.*, CHI. READER (Aug. 25, 2016), <https://chicagoreader.com/news/abolish-the-police-organizers-say-its-less-crazy-than-it-sounds> [<https://perma.cc/42GV-33KB>].

167. Guarino, *supra* note 29 (finding that only 15% of Americans support police abolition in one poll).

168. *See, e.g.,* J. David Goodman, *A Year After ‘Defund,’ Police Departments Get Their Money Back*, N.Y. TIMES (Oct. 10, 2021), <https://www.nytimes.com/2021/10/10/us/dallas-police-defund.html>; Zusha Elinson et al., *Cities Reverse Defunding the Police Amid Rising Crime*, WALL ST. J. (May 26, 2021), <https://www.wsj.com/articles/cities-reverse-defunding-the-police-amid-rising-crime-11622066307>.

169. Jill Cowan, *Berkeley Moves Closer to Ending Police Traffic Stops*, N.Y. TIMES (Feb. 24, 2021), <https://www.nytimes.com/2021/02/24/us/berkeley-police.html> (“Berkeley became what was believed to be the first city in the nation to plan to prohibit police officers from conducting traffic stops and shift that responsibility to unarmed members of a department of transportation.”).

communities of color. These steps may also be a sort of slow walk towards the greater goal of police abolition—depending on how various commentators define the term. The next Part surveys some of the ways that jurisdictions across the country have begun experimenting with such limitations on police authority in traffic enforcement.

## II. TYPES OF LIMITATIONS ON POLICE TRAFFIC AUTHORITY

This Part considers the various ways that states and localities have acted in recent years to limit police authority during traffic stops. Through a review of media accounts and legislative history, we found at least seven recurring examples of how policymakers have sought to restrain traffic police authority. Both state and local governments have banned or significantly limited the use of so-called pretextual traffic stops, which are otherwise permitted under the U.S. Supreme Court decision in *Whren v. United States*.<sup>170</sup> Some localities have limited the manner that police may question drivers or passengers after a traffic stop. Policymakers in some locales have barred police from requesting consent to search vehicles without a warrant, or otherwise established regulations of such consent requests. Some jurisdictions have acted to limit the use of quotas, which many policymakers believe incentivize harmful policing tactics. In some places, prosecutors have acted unilaterally to announce plans to decline to prosecute cases where police engage in objectionable, albeit legal behavior in the process of traffic enforcement. Still other jurisdictions have mandated additional recordkeeping and documentation of police traffic enforcement. And some states have even moved towards more technological replacements for police enforcement of traffic laws.

Combined, these examples illustrate the numerous approaches taken by policymakers interested in limiting the authority of traffic police. While these approaches fall well short of a complete abolition of police officers from the traffic enforcement space, they are each consistent with an approach to criminal justice that emphasizes minimalism.

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170. 517 U.S. 806, 818–19 (1996).

*A. Pretextual Stops*

The Fourth Amendment protects individuals from unreasonable searches and seizures.<sup>171</sup> Because they involve briefly detaining a person, traffic stops constitute a seizure under the Fourth Amendment.<sup>172</sup> Thus, all traffic stops must be reasonable to be permitted under the Fourth Amendment. Generally, traffic stops are considered reasonable for Fourth Amendment purposes if the officer witnesses a violation of the traffic code or has reasonable suspicion that a crime is ongoing.<sup>173</sup>

Recall that the U.S. Supreme Court has held in *Whren v. United States* that, as long as an officer can identify some objective violation of the traffic code, they are allowed to conduct a motor vehicle stop—even if the true, subjective motivation for the traffic stop is to investigate a hunch or suspicion that by itself does not constitute reasonable suspicion or probable cause.<sup>174</sup> Thus, for example, an officer working in a drug interdiction unit can lawfully identify drivers that they *suspect* may be trafficking narcotics. They can then lawfully follow these drivers until they observe any technical violation of the traffic code (e.g., failure to signal when changing lanes, traveling as little as 1 MPH over the speed limit). Thereafter, the officer can conduct a traffic stop purportedly to address the technical traffic violation, even if their actual motivation for the traffic stop is to further investigate their unsubstantiated hunch or suspicion.<sup>175</sup>

Critics of pretextual traffic stops worry that they give police too much power.<sup>176</sup> Nearly all motorists will at some point engage in numerous

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171. U.S. CONST. amend. IV (“The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated . . .”).

172. *Brendlin v. California*, 551 U.S. 249, 254 (2007) (explaining that a stop constitutes a seizure if, under a totality of the circumstances, the officer restrains the freedom of movement or makes an individual feel unable to leave through a use of force or some other sort of use of authority).

173. *Rushin & Edwards*, *supra* note 46, at 646 (“A traffic stop is ordinarily considered reasonable for Fourth Amendment purposes when a police officer witnesses a traffic infraction and thus has probable cause to believe a traffic infraction has occurred or when a police officer has reasonable suspicion based on articulable facts that a criminal act is ongoing.” (footnotes omitted)).

174. 517 U.S. at 809, 812–13.

175. *Id.* at 813 (“Subjective intentions play no role in ordinary, probable-cause Fourth Amendment analysis.”).

176. *See, e.g.*, David A. Harris, “*Driving While Black*” and *All Other Traffic Offenses: The Supreme Court and Pretextual Traffic Stops*, 87 J. CRIM. L. & CRIMINOLOGY 544, 545–46 (1997) (calling the decision “profoundly dangerous,” in part because it may permit law enforcement to “use the traffic code to stop a hugely disproportionate number of African-Americans and Hispanics”).

technical violations of traffic code.<sup>177</sup> Thus, critics worry that *Whren* amounted to a license for police to stop virtually any driver at any time.<sup>178</sup> Further, numerous critics worried that *Whren* facilitated racial profiling, as it allowed officers to act on unsubstantiated hunches.<sup>179</sup> Because officers harbor implicit bias like all people, civil rights activists have worried that officers will use their authority to disproportionately target drivers of color.<sup>180</sup> Indeed, as we discuss in more detail in Part III, some of the limited empirical evidence suggests that laws permitting pretextual traffic stops may contribute to higher rates of stops for drivers of color relative to white drivers, particularly during the daytime when officers can more easily ascertain the race of passing drivers through visual observation.<sup>181</sup>

In part because of this concern, numerous states and localities have acted to explicitly ban or limit the use of pretextual traffic stops. The Los Angeles Police Department issued a special order in March of 2022, establishing a new policy that limits the use of pretextual traffic stops in the city.<sup>182</sup> The

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177. The appellant in *Whren* made this same argument, explaining that if an officer followed any driver long enough, they would “invariably” be able to identify at least some “technical violation” of the traffic code. *Whren*, 517 U.S. at 810.

178. Margaret M. Lawton, *State Responses to the Whren Decision*, 66 CASE W. RES. L. REV. 1039, 1044 (2016) (describing how the decision gave officers considerable discretion, such that they could tail a vehicle until they view a technical violation of the traffic code to justify a stop).

179. See, e.g., David A. Sklansky, *Traffic Stops, Minority Motorists, and the Future of the Fourth Amendment*, 1997 SUP. CT. REV. 271, 278–79, 308–16 (considering the unique harms that *Whren* poses for racial minorities); Tracey Maclin, *Race and the Fourth Amendment*, 51 VAND. L. REV. 333, 344–45 (1998) (arguing for a possible link between *Whren* and racial profiling); I. Bennett Capers, *Rethinking the Fourth Amendment: Race, Citizenship, and the Equality Principle*, 46 HARV. C.R.-C.L. L. REV. 1, 33–34 (2011) (stating that *Whren* effectively gave officers permission “to use race as an ‘unofficial’ proxy for suspicion”).

180. Anthony C. Thompson, *Stopping the Usual Suspects: Race and the Fourth Amendment*, 74 N.Y.U. L. REV. 956, 983–91 (1999) (providing a summary of the social science literature on categorizations, schemas, and stereotyping, and then applying this framework to predict racially imbalanced effects of the *Whren* decision).

181. Rushin & Edwards, *supra* note 46, at 673–92 (finding that the introduction of a state supreme court decision in Washington permitted a form of pretextual traffic stops was associated with a statistically significant increase in the stopping of non-white drivers relative to white drivers, particularly during the daytime when officers could theoretically more easily identify the race of a passing driver).

182. L.A. Police Dep’t, Special Order No. 3, Policy—Limitation on Use of Pretextual Stops (Mar. 9, 2022), [https://lapdonlinestrgeacc.blob.core.usgovcloudapi.net/lapdonlinemedia/2022/03/3\\_9\\_22\\_SO\\_No\\_3\\_Policy\\_Limitation\\_on\\_Use\\_of\\_Pretextual\\_Stops\\_Established.pdf](https://lapdonlinestrgeacc.blob.core.usgovcloudapi.net/lapdonlinemedia/2022/03/3_9_22_SO_No_3_Policy_Limitation_on_Use_of_Pretextual_Stops_Established.pdf) [perma.cc/UJ6K-F495]; see also 1 L.A. POLICE DEP’T, DEPARTMENT MANUAL: POLICY § 240.06 (2024), <https://lapdonlinestrgeacc.blob.core.usgovcloudapi.net/lapdonlinemedia/1-67080ba6d9e14.pdf> [https://perma.cc/4AW8-CM4T] (implementing Special Order No. 3). The Los Angeles

order fell short of banning all pretextual traffic stops, as it carved out an exception for circumstances where an officer was “acting upon articulable information in addition to the traffic violation, which may or may not amount to reasonable suspicion, regarding a serious crime (i.e., a crime with a potential for great bodily injury or death).”<sup>183</sup> The order also states that a pretextual traffic stop cannot be based on a “mere hunch or on generalized characteristics such as a person’s race gender, age, homeless circumstance, or presence in a high-crime location.”<sup>184</sup> If an officer takes advantage of this exception to the general ban on pretextual traffic stops, the officer must audibly articulate the reason for the stop on their body-worn camera.<sup>185</sup>

The State of Virginia passed a state-wide measure to prohibit traffic stops that purportedly originate from minor, possibly pretextual, bases.<sup>186</sup> The Virginia law bans police from making traffic stops based on the odor of marijuana;<sup>187</sup> violations of learner’s permit requirements;<sup>188</sup> expired registration;<sup>189</sup> jaywalking on highways;<sup>190</sup> insufficiently illuminated license plate;<sup>191</sup> defective brake lights;<sup>192</sup> failure to use headlights;<sup>193</sup> unauthorized

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City Council has since signaled their interest in further scaling back police enforcement of minor traffic violations. Libor Jany, *Los Angeles City Council OKs Study of Removing Police From Traffic Enforcement*, L.A. TIMES (June 13, 2024), <https://www.latimes.com/california/story/2024-06-13/los-angeles-council-oks-study-of-removing-police-from-traffic-enforcement>.

183. 1 L.A. POLICE DEP’T, *supra* note 182, § 240.06.

184. *Id.*

185. *Id.* (“The public safety reason for all traffic/pedestrian stops, citations and warnings should be articulated on body-worn video (BWV) and should include an officer’s response to any questions posted by the individual stopped.”).

186. 2020 Va. Acts 1st Spec. Sess. 111 (codified as amended in scattered sections of VA. CODE ANN. tit. 15.2, 18.2, and 46.2).

187. VA. CODE ANN. § 4.1-1302(A) (2024) (“No law-enforcement officer, as defined in § 9.1-101, may lawfully stop, search, or seize any person, place, or thing and no search warrant may be issued solely on the basis of the odor of marijuana and no evidence discovered or obtained pursuant to a violation of this subsection, including evidence discovered or obtained with the person’s consent, shall be admissible in any trial, hearing, or other proceeding.”).

188. *Id.* § 46.2-334.01(F) (stating that “[n]o law-enforcement officer shall stop a motor vehicle for a violation of this section” related to learner’s permits).

189. *Id.* § 46.2-646(E) (“No law-enforcement officer shall stop a motor vehicle due to an expired registration sticker prior to the first day of the fourth month after the original expiration date.”).

190. *Id.* § 46.2-923(C) (“No law-enforcement officer shall stop a pedestrian for a violation of this section.”).

191. *Id.* § 46.2-1013(B).

192. *Id.* § 46.2-1014(B) (noting that officers may still “stop a vehicle if it displays *no* brake lights that meet the requirements” (emphasis added)).

193. *Id.* § 46.2-1030(F) (noting that officers may still “stop a vehicle if it displays *no* lighted headlights” at night or during low-visibility weather (emphasis added)).

signs, decals, or window tinting;<sup>194</sup> failure to wear a seatbelt;<sup>195</sup> and expired inspections.<sup>196</sup>

The Seattle Police Department has committed to no longer conducting traffic stops primarily based on expired vehicle registration, improper display of registration plates, bicycle helmet violations, or other technical automobile violations (e.g., items hanging from rear-view mirror or cracks in windshields).<sup>197</sup> The San Francisco Police Department similarly states as a matter of policy in their general orders that “[p]retext stops produce little if any public safety benefits, while imposing substantial fiscal and societal costs. They may only be used in a manner that is consistent with this policy.”<sup>198</sup> The policy then lists nine, relatively minor offenses that cannot serve as the basis of a traffic stop—presumably under the belief that these minor justifications for traffic stops are often pretextual in nature.<sup>199</sup>

Meanwhile, Pittsburgh, Pennsylvania, divides traffic offenses into “primary” and “secondary” violations.<sup>200</sup> So-called *secondary violations* include failure to properly register a vehicle; failure to display temporary registration; failure to display registration plates; defective headlights, taillights, or brake lights; bumper violations; violation of inspection requirements; or violation of emissions testing requirements.<sup>201</sup> By contrast, *primary violations* include all other traffic infractions.<sup>202</sup> The Pittsburgh law then permits police only to make stops for primary violations.<sup>203</sup> Enforcement

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194. VA. CODE ANN. § 46.2-1052(P) (2024).

195. *Id.* § 46.2-1094 (F).

196. *Id.* § 46.2-1157(E) (“No law-enforcement officer shall stop a motor vehicle due to an expired vehicle inspection sticker until the first day of the fourth month after the original expiration date.”).

197. Letter from Adrian Z. Diaz, Seattle Police Chief, to Lisa Judge, Inspector General for Public Safety (Jan. 14, 2022), <https://spdblotter.seattle.gov/wp-content/uploads/sites/11/2022/01/UPDATED-Letter-to-OIG-Traffic-011422.pdf> [<https://perma.cc/P7RZ-AQXA>] (communicating the Seattle Police Department’s intent to abide by the Seattle Inspector General’s recommendations on internal reforms to traffic stop policies and listing these circumstances).

198. S.F. POLICE DEP’T, GEN. ORD. 9.07: RESTRICTING THE USE OF PRETEXT STOPS § 9.07.03(A) (Mar. 7, 2024), [https://www.sanfranciscopolice.org/sites/default/files/2024-07/SFPD\\_DGO\\_9\\_07\\_20240719.pdf](https://www.sanfranciscopolice.org/sites/default/files/2024-07/SFPD_DGO_9_07_20240719.pdf) [<https://perma.cc/C3E3-WEY2>].

199. *Id.* § 9.07.04(A).

200. PITTSBURGH, PA., CODE OF ORDINANCES tit. 5, art. 1, § 503.17(b) (2023) (providing definitions of these terms).

201. *Id.* § 503.17(b)(2).

202. *Id.* § 503.17(b)(1) (defining “primary violation” as “[a] violation of the Pennsylvania Vehicle Code, 75 Pa.C.S. Section 101, et. seq., observed within the City of Pittsburgh, that does not constitute a secondary offense”).

203. *Id.* § 503.17(c)(3) (“[A] police officer or other law enforcement officer may initiate a motor vehicle stop for a secondary violation, enumerated in Section 503.17(b)(2), observed within



of secondary violations is limited to circumstances where an officer concurrently observes a primary violation.<sup>204</sup>

Although Oregon did not explicitly limit the use of pretextual traffic stops, the state did prohibit traffic stops based on “failure to use lights” and other minor headlight, taillight, and brake light violations.<sup>205</sup> Officers in Oregon may still give citations for these kinds of violations, but only if they are uncovered in the process of a traffic stop for another “separate traffic violation.”<sup>206</sup> These recent efforts to regulate pretextual traffic stops add onto other prior state rules that established more restrictive approaches than *Whren*. As Margaret M. Lawton has previously observed, Washington, New Mexico, and Alaska have previously enacted rules that restrict pretextual stops in some manner<sup>207</sup>—although Washington has significantly walked back this rule in the years since.<sup>208</sup>

### B. Consent Searches

Generally, in order for police officers to conduct a warrantless search of a vehicle after a traffic stop, officers need probable cause of a crime<sup>209</sup> by, for example, seeing evidence of a crime in plain view.<sup>210</sup> In the alternative, officers may also conduct a warrantless search of a vehicle if they need to arrest an occupant of the car and also have a reasonable belief that a search is

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the City of Pittsburgh only where there is a simultaneously-observed primary violation for which an officer, at their discretion, could issue a citation.”).

204. *Id.*

205. Act of Mar. 23, 2022, ch. 78, § 6(1), 2022 Or. Laws 2651, 2652 (codified at OR. REV. STAT. § 810.412 (2024)).

206. *Id.* § 6(2).

207. Lawton, *supra* note 178, at 1040–41 (describing how courts in New Mexico and Washington have found that some types of pretextual stops violate their state constitutions, and that courts in Alaska have seemingly installed some sort of further limitation on pretextual stops above and beyond *Whren*).

208. *Id.* at 1054–57 (describing the shifting doctrinal approach in Washington).

209. For a summary of the progression of vehicle searches in U.S. Supreme Court doctrine, see Brian R. Gallini, *Suspects, Cars & Police Dogs: A Complicated Relationship*, 95 WASH. L. REV. 1725, 1731–34 (2020). See also *Carroll v. United States*, 267 U.S. 132, 154–56 (1925) (holding that police may search a vehicle without a warrant as long as they have probable cause to believe the vehicle has contraband inside it); *United States v. Ross*, 456 U.S. 798, 825 (1982) (“If probable cause justifies the search of a lawfully stopped vehicle, it justifies the search of every part of the vehicle and its contents that may conceal the object of the search.”); *Wyoming v. Houghton*, 526 U.S. 295, 303 (1999) (further holding that when a police officer engages in a warrantless search of a vehicle based on probable cause, “the balancing of the relative interests weighs decidedly in favor of allowing searches of a passenger’s belongings” as well).

210. *Horton v. California*, 496 U.S. 128, 133 (1990) (“If an article is already in plain view, neither its observation nor its seizure would involve any invasion of privacy.”).

necessary to protect their own safety or secure evidence inside the car related to the purpose of the occupant's arrest.<sup>211</sup> Outside of these circumstances, though, police are also generally permitted to conduct a warrantless search of a vehicle if the driver gives their consent to the search.<sup>212</sup> In some cases, civil rights advocates have worried that drivers do not feel comfortable denying an officer's request to engage in a consent search or are even aware that they can deny such a request.<sup>213</sup> Advocates have also worried that because of racial bias, officers may be more prone to request permission to engage in consent searches of vehicles driven by individuals of color than white individuals.<sup>214</sup>

To begin addressing some of these possible issues, states and localities have passed a variety of measures designed to reign in police authority to conduct consent searches. In 2022, Oregon passed a measure to restrict the use of consensual searches.<sup>215</sup> While the law still permits officers to obtain consent to search a vehicle pursuant to a traffic stop, officers must first inform the person of their right to refuse the search, and the officer must obtain affirmative consent in writing or via recording.<sup>216</sup> Presumably, this measure

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211. *Arizona v. Gant*, 556 U.S. 332, 351 (2009) ("Police may search a vehicle incident to a recent occupant's arrest only if the arrestee is within reaching distance of the passenger compartment at the time of the search or it is reasonable to believe the vehicle contains evidence of the offense of arrest.").

212. *Schneckloth v. Bustamonte*, 412 U.S. 218, 248 (1973) ("We hold only that when the subject of a search is not in custody and the State attempts to justify a search on the basis of his consent, the Fourth and Fourteenth Amendments require that it demonstrate that the consent was in fact voluntarily given, and not the result of duress or coercion, express or implied."); *Florida v. Jimeno*, 500 U.S. 248, 251 (1991) (explaining that the standard to determine voluntariness of a consent search is an objective test that asks whether a reasonable person would have understood the exchange to have granted the consent in question; further holding that if a person grants an officer consent to search a vehicle, this consent extends to an examination of a paper bag lying on the floor of the car).

213. Justin Peters, *How About a Friendly Frisk?: The Myth of the "Consensual" Police Encounter*, SLATE (Nov. 30, 2012), <https://slate.com/news-and-politics/2012/11/stop-and-frisk-florida-is-there-such-thing-as-a-consensual-police-encounter.html> [https://perma.cc/6N9L-PVRW] (detailing, in part, how there is a "vast gulf between legal and practical definitions of the word *consensual*" and further providing examples of how an ordinary person may not feel able to decline a police officer request for a "consensual" search); *see also* Janice Nadler & J.D. Trout, *The Language of Consent in Police Encounters*, in *THE OXFORD HANDBOOK OF LANGUAGE AND LAW* 326 (Peter M. Tiersma & Lawrence M. Solan eds., 2012) (further presenting empirical evidence that individuals do not feel comfortable declining requests from a police officer to "consent" to a search).

214. Susan Bandes, *Police Accountability and the Problem of Regulating Consent Searches*, 2018 U. ILL. L. REV. 1759, 1768 (citing evidence of the racially disparate impact of consent searches in states like Illinois and New Jersey).

215. Act of Mar. 23, 2022, ch. 78, § 1(4), 2022 Or. Laws. 2651, 2652 (codified as amended at OR. REV. STAT. § 131.615 (2024)).

216. *Id.*

responds directly to the concern that motorists may not be aware of their ability to decline a consent search. By making drivers affirmatively aware of their ability to deny a consent search, this measure tries to ensure that consent searches are just that—consensual. Further, by requiring the consent be obtained in writing, it deters officers from interpreting ambiguous or non-committal answers as giving them permission to engage in a vehicle search. It also seems likely that some number of drivers that would have otherwise given verbal permission to engage in a consent search will rethink this response when faced with a written explanation and requirement of written permission. This may, in total, result in fewer consent searches.

By contrast, two localities have gone even further than Oregon. Legislators in both San Francisco, California,<sup>217</sup> and Montgomery County, Maryland,<sup>218</sup> have either proposed or passed measures to prohibit officers from even asking for consent to search a vehicle unless reasonable suspicion or probable cause of a crime emerges during the traffic stop. These represent more complete prohibitions on consent searches, as they are designed to prevent officers from engaging in fishing expeditions without some articulable evidence that the driver or vehicle occupants may be engaged in criminal activity. In doing so, these prohibitions prevent police from using police traffic stops as invitations for broader invasions of personal privacy for secondary investigative purposes.

Before these recent moves to further regulate consent searches, at least one state had already enacted more stringent requirements than those established by the U.S. Supreme Court in *Schneckloth v. Bustamonte*.<sup>219</sup> In New Jersey, the state supreme court held in *State v. Carty* that their state constitution's version of the Fourth Amendment effectively prohibited the kind of consent

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217. S.F. POLICE DEP'T, *supra* note 198, § 9.07.05(A) (“[M]embers shall only ask for permission to conduct a consent search of a person or vehicle where the member has reasonable suspicion or probable cause that a criminal offense has occurred, *is occurring*, or is about to occur.”).

218. Safety and Traffic Equity in Policing (STEP) Act, Bill No. 12-23, at 5 (Montgomery, Md. Cnty. Council 2023), [https://www.montgomerycountymd.gov/council/Resources/Files/agenda/col/2023/20230228/20230228\\_2B.pdf](https://www.montgomerycountymd.gov/council/Resources/Files/agenda/col/2023/20230228/20230228_2B.pdf) [<https://perma.cc/6BAA-557C>] (“A police officer must only ask for permission to conduct a consent search of a person or vehicle if reasonable suspicion or probable cause for a criminal offense arises during the stop.”). This bill was later withdrawn. *See* MONTGOMERY CNTY. COUNCIL, COUNCIL AND COMMITTEE SESSION SUMMARY 3 (2024), [https://montgomerycountymd.granicus.com/DocumentViewer.php?file=montgomerycountymd\\_eef288b4a31649aca6426db370098454.pdf&view=1](https://montgomerycountymd.granicus.com/DocumentViewer.php?file=montgomerycountymd_eef288b4a31649aca6426db370098454.pdf&view=1) [<https://perma.cc/UV3Q-DZ8H>].

219. 412 U.S. 218, 248 (1973) (concluding that the voluntariness of the consent search is determined by a totality of the circumstances and does not necessarily require the state to demonstrate a defendant's knowledge of their ability to withhold consent for the search).

searches used in other parts of the country.<sup>220</sup> Instead, that court held that an officer must have reasonable suspicion before asking a motorist for consent for a search of their vehicle—in part because of a concern that even a warning would do little to address the inherent coerciveness involved in many consent requests.<sup>221</sup>

### C. Questioning During Stops

Another way that police have historically expanded their traffic enforcement authority to assist with other criminal investigations is by questioning drivers during a stop. The U.S. Supreme Court has “held repeatedly that mere police questioning does not constitute a seizure.”<sup>222</sup> This means that even if a police officer has no reasonable suspicion to believe someone is involved in criminal activity, they remain free to ask the person questions, ask for identification, or ask for consent to conduct a search of their property.<sup>223</sup> As long as an officer’s behavior during a traffic stop does not unnecessarily extend the length of the traffic stop beyond that necessary to issue a ticket or conduct ordinary inquiries, it does not constitute a cognizable violation of the Fourth Amendment.<sup>224</sup> Thus, police have the discretion to question motorists during a traffic stop, even if the topic of that question goes beyond the basis for the traffic stop.<sup>225</sup>

Nevertheless, by providing police with significant discretion to question drivers during otherwise lawful traffic stops, the Court may be inviting police to engage in fishing expeditions for crimes unrelated to the basis for the stop. And much like consent searches and pretextual stops, police may

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220. 790 A.2d 903, 912 (N.J. 2002) (“We agree with the Appellate Division that consent searches following a lawful stop of a motor vehicle should not be deemed valid under *Johnson* unless there is reasonable and articulable suspicion to believe that an errant motorist or passenger has engaged in, or is about to engage in, criminal activity.”).

221. *Id.* at 914.

222. *Florida v. Bostick*, 501 U.S. 429, 434 (1991).

223. *Id.* at 434–35.

224. *Illinois v. Caballes*, 543 U.S. 405, 409–10 (2005) (further holding that a dog sniff on the exterior of the car that does not lengthen the time of the stop poses no Fourth Amendment issue).

225. *Muehler v. Mena*, 544 U.S. 93, 101–02 (2005) (finding that questioning a motorist about her immigration status during an otherwise lawful traffic stop and search does not violate the Fourth Amendment provided it does not extend the time that the person was detained); *Arizona v. Johnson*, 555 U.S. 323, 333 (2009) (“An officer’s inquiries into matters unrelated to the justification for the traffic stop, this Court has made plain, do not convert the encounter into something other than a lawful seizure, so long as the inquiries do not measurably extend the stop’s duration.”).

disproportionately use this discretionary authority against drivers of color, a practice that motorists of color find humiliating.<sup>226</sup>

Despite the U.S. Supreme Court's relatively lax approach to permitting police questioning during traffic stops, numerous communities have acted to restrict this police power. For example, Los Angeles limits the officer to questioning individuals about the "original legal basis of the stop."<sup>227</sup> Thus, if a traffic stop originated to address a speeding violation, this rule would prevent police from then questioning the driver about unrelated crimes, like immigration or possession offenses. This approach is roughly mirrored in multiple recent proposals or enacted municipal policies. For instance, San Francisco similarly prohibits questioning of individuals during traffic stops except that officers may "ask investigatory questions regarding criminal activity where the belief that criminal activity *is occurring*, has occurred, or is about to occur is supported by reasonable suspicion or probable cause."<sup>228</sup> As in Los Angeles, this rule attempts to narrow the authority of police discretion during traffic stops by only permitting questioning to information gathering about the original basis of the stop, absent some additional articulable facts that separately provide the officer with a reasonable belief of some other criminal behavior.

Still other jurisdictions have focused on the length of time that passes when police engage in supplemental questioning during a traffic stop. In *State v. Arreola-Botello* the Oregon Supreme Court ruled that an officer's questions during a stop must be reasonably related to the reason for the stop.<sup>229</sup> Similarly, a proposed ordinance in Montgomery County, Maryland, would establish that a "police officer must not extend the duration of a traffic stop longer than needed to address the original purpose of the stop unless" the officer has identified articulable suspicion of a crime.<sup>230</sup>

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226. 2021 *Illinois Traffic Stop Data Shows Continued Racial Inequities in Stops, Searches*, ACLU ILL. (July 28, 2022), <https://www.aclu-il.org/en/press-releases/2021-illinois-traffic-stop-data-shows-continued-racial-inequities-stops-searches> [<https://perma.cc/SLU7-3FVE>] ("Because Black and Latinx drivers are more likely to be stopped by police, they are more likely to experience invasive questioning, searches, humiliation, and, all too often, tragic violence at the hands of police."). For a discussion of the negative effect of additional questioning on minority drivers, see Jeannine Bell, *The Violence of Nosey Questions*, 100 B.U. L. REV. 935 (2020) (describing the nosy questions that provoked outrage during Sandra Bland's stop).

227. 1 L.A. POLICE DEP'T, *supra* note 182, § 240.06.

228. S.F. POLICE DEP'T, *supra* note 198, § 9.07.05(A).

229. 451 P.3d 939, 949 (Or. 2019) (en banc).

230. Safety and Traffic Equity in Policing (STEP) Act, Bill No. 12-23, at 5 (Montgomery, Md. Cnty. Council 2023), [https://www.montgomerycountymd.gov/council/Resources/Files/agenda/col/2023/20230228/20230228\\_2B.pdf](https://www.montgomerycountymd.gov/council/Resources/Files/agenda/col/2023/20230228/20230228_2B.pdf) [<https://perma.cc/6BAA-557C>].

*D. Quotas*

As discussed previously, police traffic quotas “describe the establishment of a predetermined number of stops, citations, or arrests that officers must complete within a particular time period.”<sup>231</sup> As Professor Ossei-Owusu has explained, “The existence of bipartisan and multi-constituent opposition to quotas is apparent from the widespread enactment of these statutory prohibitions.”<sup>232</sup> At least twenty-two states have acted to limit or bar the use of police traffic quotas, including some in recent years.<sup>233</sup> These state laws restricting so-called quotas have taken numerous different forms. Some of these laws prohibit the establishment of quota systems based on the number of tickets or citations issued by officers.<sup>234</sup> Others prohibit arrest quotas.<sup>235</sup> Some states have more expansive quota prohibitions that include multiple categories of coercive behavior.<sup>236</sup>

Quota laws also vary in the method of enforcement articulated by state law. In most states, enforcement of quota laws may only happen through action taken by an aggrieved officer or a police union,<sup>237</sup> while one state (Tennessee) makes the establishment of a quota system a criminal offense.<sup>238</sup> States also vary considerably in the kinds of exceptions they have permitted to these state prohibitions. Multiple states permit the use of quotas, provided they are not the “sole” or “exclusive” means of evaluating officer productivity.<sup>239</sup>

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231. Edwards & Rushin, *supra* note 103, at 2128.

232. Ossei-Owusu, *supra* note 139, at 546.

233. Edwards & Rushin, *supra* note 103, at 2129 & n.6 (citing both the Ossei-Owusu survey and the more recent passage of such a law in Virginia).

234. *See, e.g.*, CONN. GEN. STAT. § 7-282d (2024) (using a definition of quotas that applies to “summonses for motor vehicle violations to be issued within a specific period of time”); FLA. STAT. § 316.640 (2024) (forbidding police from “establish[ing] a traffic citation quota”); MINN. STAT. § 169.985 (2024) (banning any “quota for issuance of traffic citations”).

235. *See, e.g.*, ARK. CODE ANN. § 12-6-302 (2024) (prohibiting any “arrest quota”); CAL. VEH. CODE § 41602 (West 2024) (“No state or local agency . . . may establish . . . an arrest quota.”).

236. *See, e.g.*, N.J. STAT. ANN. § 40A:14-181.2 (West 2024) (noting that police agencies “shall not establish any quotas for arrests or citations”).

237. Edwards & Rushin, *supra* note 103, at 2135 (describing the generally weak available enforcement mechanisms).

238. TENN. CODE ANN. § 39-16-516 (2024) (a class B misdemeanor).

239. *See, e.g.*, 31 R.I. GEN. LAWS § 31-27-25 (2024) (only barring quotas that are the “exclusive” means of evaluating an officer); CONN. GEN. STAT. § 7-282d (2024) (“Nothing in this section shall prohibit such department from using data concerning the issuance of such citations or summonses in the evaluation of an individual’s work performance provided that such data is not the exclusive means of evaluating such performance.”).

Indeed, even among the minority of states that prohibit the use of some types of quotas, the definition, enforcement, and exceptions in these laws vary widely.

### *E. Prosecutorial Declination Policies*

Numerous prosecutor's offices have enacted their own efforts to limit potentially harmful or overly broad policing tactics. Prosecutors have largely unreviewable authority to decide which cases they will charge and, by extension, which criminal cases they will decline to prosecute.<sup>240</sup> And as local elected officials, prosecutors can generally enact these sorts of internal policies on enforcement without having to navigate the local or state legislative process. In the wake of national calls for police reform, numerous county prosecutors have acted unilaterally to decline certain categories of cases. While this may lead to broader questions about the rule of law, these declination policies can serve as significant disincentives for police to engage in the behavior targeted by the order.

For example, the State's Attorney's Office in Chittenden County, Vermont, has made it their office's policy to "not proceed with charges resulting from non-public safety stops to help alleviate implicit racial bias, help restore the community's faith in local institutions, and improve safety within our community."<sup>241</sup> To accomplish these goals, the office now gives "heightened scrutiny" to all traffic stops to identify cases that may involve the use of pretextual traffic stops.<sup>242</sup> If the office finds evidence was acquired through pretextual "fishing" by an officer, the office "may decline to proceed with charges."<sup>243</sup> The office also presumptively declines charges in cases originating from traffic stops for "non-public safety violations."<sup>244</sup> These "non-public safety" circumstances involve a single broken taillight or brake light, failure to signal a lane change, driving too slow, expired inspections,

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240. Austin Sarat & Conor Clarke, *Beyond Discretion: Prosecution, the Logic of Sovereignty, and the Limits of Law*, 33 LAW & SOC. INQUIRY 387, 390–91 (2008) (describing the discretionary powers of prosecutors as "substantially uncontrolled" and providing other analysis consistent with the claim that prosecutors have substantial discretion in the cases they choose to bring and not bring).

241. Memorandum from Sarah F. George, State's Att'y, Office of the Chittenden County State's Attorney, Non-Public Safety Stop Policy 4 (Jan. 7, 2022), <https://www.documentcloud.org/documents/21177955-sarah-george-memo> [https://perma.cc/9UAX-WDYA].

242. *Id.*

243. *Id.*

244. *Id.* (defining this term and then using it throughout).

expired registration, overly tinted windows, prolonged vehicle idling, objects hanging from rearview mirrors, excessively loud mufflers, and more.<sup>245</sup>

*F. Technological Replacements for Police Enforcement*

Finally, another option to reduce discretion during traffic enforcement and eliminate the possibility of officers using traffic enforcement to pursue unrelated fishing expeditions is to replace some police enforcement with automated enforcement technologies. Once unimaginable, technology now allows jurisdictions to hand over some traffic enforcement to technological tools like red light cameras and speed cameras. A report by the Insurance Institute of Highway Safety estimates that at least 500 communities across the United States already use automated cameras to enforce some types of traffic laws.<sup>246</sup> States are also increasingly passing laws to authorize or encourage this kind of automated enforcement of traffic laws. At least eleven states have recently passed or are actively considering legislation promoting automated traffic enforcement technologies.<sup>247</sup>

Some of these laws are intended to modify existing prohibitions or limitations on automated camera enforcement of traffic violations. For example, in Connecticut and Colorado, state law previously only authorized the use of automated cameras in construction zones.<sup>248</sup> And in Washington, automated speed cameras have historically only been permitted near schools, parks, hospitals, and other areas of concern.<sup>249</sup> Several of these new laws are designed to increase the number of locations where these technologies may be employed.

Other states like California have considered legislation to permit the use of speed enforcement cameras for the first time.<sup>250</sup> Delaware recently passed

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245. *Id.* at 5 (providing a detailed list of items included in this term).

246. Keith Goble, *Action on Ticket Cameras Pursued in 15 States*, LANDLINE (Mar. 2, 2022), <https://landline.media/action-on-ticket-cameras-pursued-in-15-states> [https://perma.cc/57P2-XB8T] (“More than 500 communities around the country employ the use of red-light and/or speed cameras to nab drivers who disobey traffic rules, the Insurance Institute of Highway Safety reports.”).

247. Keith Goble, *Ticket Camera Rules Approved, Advance in 11 Statehouses*, LANDLINE (July 7, 2023), <https://landline.media/ticket-camera-rules-approved-advance-in-11-statehouses> [https://perma.cc/TJ65-N4WD] (listing pending and recently passed measures in states across the country).

248. *Id.* (further clarifying that in Colorado, an officer had to be present when the speed camera was in use; in Connecticut, municipalities would be required to adopt their own authorizing legislation that complies with the new state law).

249. *Id.* (continuing that the new law allows “ticketing in highway work zones”).

250. *Id.* (discussing a five-year pilot program).



a five-year pilot program to permit speed cameras for the first time.<sup>251</sup> Other states like Pennsylvania,<sup>252</sup> Oregon,<sup>253</sup> and Michigan<sup>254</sup> have either considered new automated enforcement technology implementation or an expansion of existing programs with some limitations.

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Admittedly, this review of recent legislation does not cover the full breadth of ways that jurisdictions can limit police authority during traffic encounters. We may add to this list reporting requirements,<sup>255</sup> limitations on the warrantless use of drug-sniffing dogs, the ability of police to order occupants out of cars during routine traffic stops, and more. However, this review of recent legislative efforts demonstrates how, short of the abolition of police from traffic enforcement, jurisdictions have made serious efforts to reduce the footprint of policing in traffic enforcement. In doing so, communities have attempted to limit the harms that can inevitably flow from the enforcement of traffic codes by armed police officers.

### III. EVIDENCE ON EFFECTS OF LIMITING POLICE TRAFFIC STOPS

A growing number of studies have attempted to examine the effects of limiting police authority in the context of traffic stops. These studies frequently take advantage of jurisdictional variation in legal rules on police authority during traffic stops to determine how changes in law impact some outcome variable—often, the amount of coercive behavior by police, racial disparities, traffic safety, officer safety, and more. While these studies differ

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251. *Id.*

252. *Id.* (renewing and expanding program in Philadelphia area).

253. *Id.* (focused on photographic radar machines to detect speeding).

254. *Id.* (permitting automated speed enforcement in construction areas).

255. As an example, the Montgomery County, Maryland proposal requires officers to collect data above and beyond that required under Maryland law, including the initial reason justifying the traffic stop, and requires the Chief of Police to issue annual reports on this data. Safety and Traffic Equity in Policing (STEP) Act, Bill No. 12-23, at 6 (Montgomery, Md. Cnty. Council 2023), [https://www.montgomerycountymd.gov/council/Resources/Files/agenda/col/2023/20230228/20230228\\_2B.pdf](https://www.montgomerycountymd.gov/council/Resources/Files/agenda/col/2023/20230228/20230228_2B.pdf) [<https://perma.cc/6BAA-557C>] (stating in Part 35-28(a) that “a police officer must collect data and information for each traffic stop that describes the initial reason justifying the stop”; and stating in Part 35-28(b) that “[b]y July 1 of each year, the Chief of Police must submit [the report] to the County Executive and the County Council and publish on its website,” as well as providing further details on what would be included in that report). San Francisco similarly requires officers to document the purpose of all traffic stops and any circumstances justifying a consent search or further investigatory questioning, which should be reviewed by supervisors and made publicly available. S.F. POLICE DEP’T, *supra* note 198, § 9.07.06.

in methodology, they have generally reached similar conclusions. Reasonable limitations on police authority during traffic stops generally do not impair officer and public safety, but they likely do play a meaningful role in reducing racial disparities in policing. The subparts that follow recount several of these studies, explaining their methodologies and findings.

#### *A. Racial Disparities and Police Aggressiveness*

First, multiple studies have attempted to measure the impact of restrictions on pretextual stops on racial disparities in policing outcomes. Recall that the Court's decision in *Whren* made it harder to challenge pretextual stops, seemingly giving police departments a green light to use pretextual stops to investigate minority drivers for more serious offenses, despite evidence suggesting that minorities had contraband at the same or lower degree as whites.<sup>256</sup>

One study attempted to examine the effect of a city's attempt to restrict pretextual stops above and beyond the *Whren* standard. The Los Angeles Police Department ("LAPD") was one department that acknowledged that Black and Latino residents were disproportionately subjected to "fishing expeditions."<sup>257</sup> As previously mentioned, in March 2022 the LAPD enacted a policy requiring that officers have a reason to suspect the driver is engaged in more serious crime before stopping a car for pretextual reasons.<sup>258</sup> More importantly, perhaps to avoid officers changing their story after finding contraband, the policy also required officers to record their reasoning on a body camera before the stop.<sup>259</sup> In November 2022, the *Los Angeles Times* analyzed LAPD records spanning several months after the policy went into effect and found that the number of individuals stopped for "insignificant nonmoving and equipment violations"—like expired registration or an air freshener hanging from rearview mirror—had substantially declined.<sup>260</sup> Prior to implementing the policy, low-level pretextual-type stops were 21% of all

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256. See Pierson et al., *supra* note 18, at 739 (describing lower hit rates in finding contraband when the cars of Blacks and Latinos were searched than when the cars of whites were searched by the police). Another survey by the *Los Angeles Times* in 2019 revealed that Black and Latino motorists were searched more often than white drivers despite having had less contraband than white drivers. Libor Jany & Ben Poston, *Minor Police Encounters Plummet After LAPD Puts Limits on Stopping Drivers and Pedestrians*, L.A. TIMES (Nov. 14, 2022), <https://www.latimes.com/california/story/2022-11-14/minor-traffic-stops-plummet-in-months-after-lapd-policy-change>.

257. Jany & Poston, *supra* note 256.

258. *Id.*

259. *Id.*

260. *Id.*

stops from April to August 2021.<sup>261</sup> After implementing the policy in March 2022, low-level pretextual stops comprised just 12% of all traffic and pedestrian stops from April 2022 through the end of August 2022.<sup>262</sup>

The change in policy had significant downstream effects on officers' consent searches and, ultimately, even the ways in which officers approached which drivers were suspicious. First, the number of consent searches dropped. Since Black Americans were overrepresented in consent searches, that meant that fewer of them were subjected to such stops.<sup>263</sup> Second, and more importantly, officers' methods of doing consent searches changed. As that study explained, "Officers are now much less likely to rely on consent from drivers to conduct searches, which is a common tactic police use when they don't have evidence to legally justify a search."<sup>264</sup>

By forcing officers to justify their searches, they seemed less likely to rely on stereotypes and were ultimately more successful in recovering contraband during searches. According to a *Los Angeles Times* report, police recovered items that were illegal in 26% of the searches conducted under the new policy.<sup>265</sup> This was a slight increase compared to searches conducted under the old policy.<sup>266</sup> As Officer Batiste explained:

What we're doing is we're explaining ourselves more and identifying the reasoning behind it, instead of, "Well, I just had a hunch. I saw the guy and he looked like he might have been doing something. He gave me that look," . . . That's not enough. We got to make sure that we're appropriately criminally profiling. We don't do racial profiling. We do criminal profiling.<sup>267</sup>

Rejecting racial profiling had a significant effect on the city's Black community. Race-based selection of Black drivers for minor equipment and nonmoving violations—which accounted for 25% of all stops of Black drivers—fell by 10% after the policy was enacted.<sup>268</sup> Police were also making fewer consent searches after the policy went into effect.<sup>269</sup>

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261. *Id.*

262. *Id.*

263. *Id.*

264. *Id.*

265. *Id.*

266. *Id.*

267. *Id.*

268. *Id.*

269. *Id.*

Another study similarly attempted to examine the effect of rules restricting pretextual stops in the state of Washington.<sup>270</sup> That study exploited a unique series of court opinions in Washington that outlawed pretextual traffic stops from 1999 to 2012.<sup>271</sup> Using a dataset of millions of traffic stops conducted by the Washington State Patrol, this study found that when the Washington Supreme Court re-introduced a form of lawful pretextual stops in late 2012, the number of stops involving drivers of color—specifically Black and Hispanic drivers—increased relative to the number of stops of white drivers.<sup>272</sup> This effect was particularly present during the daylight hours, when officers could theoretically more easily ascertain the race of passing drivers through visual observation.<sup>273</sup> The effect largely diminished during nighttime hours.<sup>274</sup> This study further examined both the date of the policy introduction and the date that officers were trained in the application of this new rule.<sup>275</sup>

Second, and relatedly, at least one study has uncovered some empirical evidence to suggest that rules restricting searches incident to arrest may disproportionately benefit drivers of color.<sup>276</sup> That study examined variation in state laws on vehicle searches incident to arrest, as well as the circumstances surrounding the U.S. Supreme Court’s narrowing of the *Belton* doctrine in *Arizona v. Gant* in 2009.<sup>277</sup> It found that, on the whole, there was no statistically significant change in policing behavior associated with this narrowing of police authority in searches incident to arrest when focusing on all traffic stops regardless of the reported race of the driver.<sup>278</sup> However, when focused specifically on drivers broken down by race, the study found that the narrowing of police authority seemed to result in a statistically significant reduction in the targeting of drivers of color relative to their white

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270. Rushin & Edwards, *supra* note 46, at 665–67 (describing methodology to attempt to answer this empirical question).

271. *Id.* at 665, 665–73 (describing dataset and time window studied). Washington’s prohibition on pretextual stops eased in December 2012 when the Washington Supreme Court authorized a form of mixed-motive stops in *State v. Arreola*, 290 P.3d 983 (Wash. 2012).

272. Rushin & Edwards, *supra* note 46, at 683–90 (presenting this primary result).

273. *Id.* at 690–93 (discussing the results from a veil of darkness analysis, common in the racial profiling literature as a way to avoid the baseline problem).

274. *Id.*

275. *Id.* at 717–21 (showing these alternative models assuming delayed effect in the training on the new doctrine).

276. Griffin Edwards & Stephen Rushin, *Police Vehicle Searches and Racial Profiling: An Empirical Study*, 91 FORDHAM L. REV. 1, 33–40 (2022).

277. *Id.* at 10–13, 20–29 (describing these two decisions and the jurisdictional variation among states that facilitated this study’s methodology).

278. *Id.* at 36–37 (showing no consistent, statistically significant result across different models in Table 2).

counterparts.<sup>279</sup> While far from definitive, this finding could be consistent with the predictions that broad discretion in traffic enforcement was disproportionately used to target drivers of color. And when the courts or policymakers move to restrain this discretionary authority somewhat, drivers of color particularly benefit from experiencing lower rates of police targeting. This would seem to lend support to policy proposals seeking to restrain discretion in police authority in traffic enforcement out of concern for racial profiling.

Third, some recent empirical work has provided compelling evidence linking consent searches to racial bias and ineffective policing. One study examining nearly a million searches from twenty-five agencies in five different states found that consent searches were around 30% less likely to result in the discovery of contraband as compared to probable cause searches.<sup>280</sup> Agencies that relied on consent searches appeared to conduct more searches overall, but were no more effective at controlling violent crime than agencies that relied on fewer consent searches.<sup>281</sup> And although the use of consent searches was more common for Black individuals, these searches were less likely to produce contraband when targeting Black individuals.<sup>282</sup> These findings are particularly concerning when understood in relation to a recent experimental study demonstrating that individuals were far more likely to comply with a requested consent search than what other survey individuals had predicted.<sup>283</sup> Indeed, that study found that “the vast majority” of subjects complied with consent search requests.<sup>284</sup> Combined, this series of studies could provide persuasive evidence for policymakers interested in better regulating consent searches. It may suggest that consent searches are sometimes not consensual in the way that some observers assume, produce minimal public safety benefit or collection of contraband, and are disproportionately targeted at individuals of color, specifically Black individuals.

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279. *Id.* at 38–40 (showing more consistent, statistically significant declines in the targeting of non-white drivers after the tightening of rules around officer discretion in searches incident to arrest).

280. Megan Dias et al., *Consent Searches: Evaluating the Usefulness of a Common and Highly Discretionary Police Practice*, 21 J. EMPIRICAL LEGAL STUD. 35, 36 (2024).

281. *Id.* at 36–37.

282. *Id.* at 37.

283. Roseanna Sommers & Vanessa K. Bohns, *Consent Searches and Underestimation of Compliance: Robustness to Type of Search, Consequences of Search, and Demographic Sample*, 21 J. EMPIRICAL LEGAL STUD. 4, 14–15 (2023) (showing subjects’ predictions of willingness to comply with such a request as compared to other subjects’ actual willingness when facing such a request).

284. *Id.* at 13.

Fourth, multiple studies have found that increasing the number of steps officers must undertake before engaging in searches or stops may decrease the number of stops of drivers of color. In Philadelphia, after a city law was passed in March 2022 that limited police ability to pull people over, the number of Black men pulled over for minor vehicle violations fell by 54%.<sup>285</sup> City officials in Fayetteville, North Carolina saw similar results in 2012 when their city council required officers to obtain written permission for consent searches.<sup>286</sup> At the time, Black individuals were searched at more than twice the rate of white individuals, but contraband was found on them less frequently than it was found on white individuals.<sup>287</sup> In the wake of that change, the number of consent searches plummeted to roughly one per week.<sup>288</sup> In addition to the city council change, Harold Medlock became the city's police chief in 2013 and directed his officers to stop pulling drivers over for violations that did not pose a safety threat.<sup>289</sup>

The goal of taking discretion out of the hands of officers is not just to make policing more equitable but may also be to improve the relationship between the police and members of the Black community. The ability of any policy changes to make inroads with the Black community most likely depends on how damaging previous police procedures have been to the community. For instance, in Watts—a predominantly Black and Latino neighborhood in Los Angeles that saw the greatest drop in police stops following the policy change in March 2022—residents still distrusted the police.<sup>290</sup> Though the numbers of stops had declined overall, resident LaTonya Harrison insisted that “officers still too often treat members of the community with outright hostility.”<sup>291</sup>

Finally, not all studies have found that the kind of restrictions mentioned in this Article would necessarily result in reductions in police aggressiveness. At least one study attempted to examine the effects of state laws that banned

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285. Sammy Caiola, *Data Shows Philly Traffic Stops Involving Black Men Are Down 54%*, WHYY (Mar. 6, 2023), <https://whyy.org/articles/philadelphiadriving-equality-act-data-traffic-stops-black-men-reduction> [https://perma.cc/T73U-79QH].

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

287. *Id.*

288. *Id.*

289. McCann, *supra* note 37.

290. Jany & Poston, *supra* note 256.

291. *Id.*

or restricted the use of police ticket quotas.<sup>292</sup> That study looked at a number of states that introduced state laws prohibiting a form of police quotas based on traffic citations and the effects of these laws on citation-issuance rates.<sup>293</sup> Perhaps somewhat surprisingly, the study revealed that restrictions on police ticket quotas did not result in any decrease in tickets issued by officers.<sup>294</sup> If anything, these restrictions were associated with a slight *increase* in the number of tickets issued by officers in affected jurisdictions.<sup>295</sup> There are a few possible explanations for this result. For one, ticket quota laws are often vaguely worded and narrow in their focus, with few enforcement mechanisms to ensure compliance; this might explain their lack of an immediate downward effect on police aggressiveness.<sup>296</sup> Additionally, quotas—for all their potential problems—may have an anchoring effect on police behavior. Management may use them as tools to drive up the least productive officers; but in the process, they may establish a floor of acceptable productivity that also drives down aggressiveness among other officers. By removing this anchor, quota prohibitions may unintentionally cause officers to therefore increase aggressiveness overall.<sup>297</sup>

All of this suggests that officials regulating police traffic stops must be careful to avoid the creation of unintended incentives. Regulations may be most effective when highly specified and paired with adequate data reporting and/or enforcement mechanisms. And any package of regulations should be empirically tested to ensure it is having the intended effect on officer behavior.

In this regard, for jurisdictions that have already made changes to control police discretion, Chicago's experience attempting to regulate officers' discretion to make stops may suggest the importance of evaluating (and reevaluating) whether reforms are having their intended effects. While several comparable cities like New York have seen the number of police stops fall, the per capita number of stops made in Chicago remained stubbornly high despite multiple measures to restrict officers' behavior—such as a 2003 state law requiring officers to record the race of people they stop, as well as

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292. See Edwards & Rushin, *supra* note 103, at 2131; see also *id.* at 2145–55 (describing this study's methodology, which involved examining data from the Stanford Open Policing Project for jurisdictions with varied laws on police quotas over time).

293. *Id.*

294. *Id.* at 2156–63 (showing the results from multiple different models, none of which find that restrictions on ticket quotas result in officers subsequently issuing fewer citations).

295. *Id.* at 2156–59 (showing this apparent increase in Figure 3 and Tables 1 and 2).

296. *Id.* at 2168–72, 2175–76 (considering narrowness of existing quota bans and lack of adequate enforcement mechanisms as possible explanations for the statistical trends observed).

297. See *id.* at 2172–75 (explaining and evaluating this possibility).

a federal consent decree entered in 2019 mandating that Chicago police officers collect data at every traffic stop they make.<sup>298</sup> Though official data suggested that the number of police stops was falling, an analysis of stops made by the nonprofit newsroom *Injustice Watch* revealed that Chicago Police had secretly pulled over as many as 20,000 more people per month than had been publicly reported in official data.<sup>299</sup> Jurisdictions that truly wish to limit police discretion by regulatorily changing officers' discretion should check and recheck what police are actually doing on the road.

### B. Traffic and Officer Safety

Critics may worry that limiting traffic stops could make a jurisdiction less safe. But the evidence on this is mixed. Studies out of Fayetteville, North Carolina, one of the first jurisdictions to implement traffic stop reforms, suggests that these reforms can be safely implemented.<sup>300</sup> In addition to racial disparities in traffic stops falling in Fayetteville, the number of crashes and traffic fatalities declined as well.<sup>301</sup> And it wasn't just traffic-related crime that declined: the overall crime rate for non-traffic crimes dropped or remained static, too.<sup>302</sup> This provides a counter to critics' argument that stopping cars and searching them supports public safety.

The results from Fayetteville occurred prior to the COVID-19 pandemic and before the murder of George Floyd by Minneapolis Police officer Derek Chauvin in 2020.<sup>303</sup> The pandemic and the aftermath of George Floyd's murder may have changed the landscape for the safety impact of fewer police stops in two key ways. First, police began making fewer traffic stops during the pandemic because there were fewer drivers as millions of Americans stayed at home.<sup>304</sup> Second, in response to the protests that occurred after

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298. Pascal Sabino, *Chicago Police Made Nearly 200,000 Secret Traffic Stops Last Year*, INJUSTICE WATCH (Aug. 21, 2024), <https://www.injusticewatch.org/criminal-courts/police/2024/chicago-police-traffic-stops-off-the-books> [<https://perma.cc/87D5-5ZN7>].

299. *Id.*

300. Mike Dolan Fliss et al., *Re-prioritizing Traffic Stops to Reduce Motor Vehicle Crash Outcomes and Racial Disparities*, INJ. EPIDEMIOLOGY, 7:3, at 13 (Jan. 20, 2020), <https://injepijournal.biomedcentral.com/articles/10.1186/s40621-019-0227-6> [<https://perma.cc/42CF-6GDS>]; see also McCann, *supra* note 37.

301. See McCann, *supra* note 37.

302. See *id.*

303. See generally Fliss et al., *supra* note 300.

304. Emily Badger & Ben Blatt, *Traffic Enforcement Dwindled in the Pandemic. In Many Places, It Hasn't Come Back*, N.Y. TIMES (July 29, 2024), <https://www.nytimes.com/interactive/2024/07/29/upshot/traffic-enforcement-dwindled.html> (describing the effect of



Derek Chauvin, a police officer, murdered George Floyd on May 25, 2020, police then began a type of counterprotest by refusing to enforce traffic laws.<sup>305</sup> Unsurprisingly, fewer police engaged in controlling traffic led to a rise in the number of traffic fatalities.<sup>306</sup>

Another study attempted to examine the effects of traffic enforcement regulation on officer safety.<sup>307</sup> In 2009, the U.S. Supreme Court in *Arizona v. Gant*<sup>308</sup> overruled its previous holding in *New York v. Belton*.<sup>309</sup> In that prior *Belton* decision, the Court had held that police officers could engage in searches virtually anywhere inside of a vehicle incident to the arrest of an occupant of a vehicle.<sup>310</sup> This resulted in police departments across the country being trained in how to use arrests of vehicle occupants as a backdoor to justify searches of vehicles in situations where the officers would otherwise lack the legal justification to do so.<sup>311</sup> In *Gant*, the Court substantially narrowed the *Belton* doctrine, holding that police could only search vehicles incident to arrest in a smaller number of circumstances—where such searches could be justified based upon the need to preserve evidence related to the crime of arrest or imminent and articulable concerns for officer safety.<sup>312</sup> In his dissenting opinion in *Gant*, Justice Samuel Alito expressed concern that this new rule constraining officer discretion would put officer safety at risk.<sup>313</sup> To test this hypothesis, one study used data from the Law Enforcement Officers Killed and Assaulted (“LEOKA”) database to examine whether the shift from *Belton* to *Gant* was associated with any

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“police withdrawal” and understaffing in the months following George Floyd’s murder and noting that officers “retreat[ed] from interactions with the public that are essentially discretionary” like traffic enforcement).

305. *Id.*

306. *See id.*

307. Edwards & Rushin, *supra* note 276, at 20 (conducting an empirical study using a dataset of millions of traffic stops across multiple states and individual agencies to explore this question, among others).

308. 556 U.S. 332 (2009).

309. 453 U.S. 454 (1981).

310. *Id.* at 460–63; Edwards & Rushin, *supra* note 276, at 11 (“Thus, *Belton* almost immediately stood for the proposition that, after arresting an occupant of a car, police have largely unfettered discretion to conduct warrantless searches of a vehicle—including compartments, bags, clothing, and other items found inside the vehicle—without violating the Fourth Amendment.”).

311. Edwards & Rushin, *supra* note 276, at 13 (“During the twenty-eight years after *Belton*, police academies across the country widely taught officers that they could search any part of a vehicle if they arrested an occupant of that vehicle.”).

312. 556 U.S. at 346–47.

313. *Id.* at 362 (stating that the majority’s new rule would “create a perverse incentive for an arresting officer to prolong the period during which the arrestee is kept in an area where he could pose a danger to the officer”).

change in the number of officers killed or assaulted during traffic stops, relative to jurisdictions that had already employed such a rule at the state level prior to *Gant*.<sup>314</sup> The study results indicated that the shift from the generous *Belton* rule to a more restrictive *Gant* rule had no statistically significant impact on officer safety as measured by assaults and deaths of officers during traffic stops.<sup>315</sup> This suggests that some arguments supporting the expansion of officer discretion during traffic encounters may not be justified on officer-safety grounds.

As a final note, there is at least some reason to believe that reducing police discretion and authority in traffic encounters may also be beneficial for officers' mental health. For example, requiring officers to meet quotas for traffic stops may force some officers into unwelcomed and unnecessary hostile interactions with members of the public—interactions that officers have been trained to believe, through their academy and in-service training, are fraught with danger.<sup>316</sup> The data on mental health and law enforcement suggest that increasing the demands on law enforcement officers may exacerbate the mental health crisis that officers are currently experiencing. Police officers are more likely to die by suicide than in the line of duty.<sup>317</sup> Congress recognized the problem of law enforcement suicide by attempting to gain firm data on precise numbers. In 2020 Congress passed—and President Donald Trump signed into law—the Law Enforcement Suicide Data Collection Act.<sup>318</sup> This legislation was an attempt to collect statistics on officer suicides on a voluntary basis.<sup>319</sup>

Data from the Chicago Police Department (“CPD”) helps illustrate the mental health challenges facing many police officers. In their 2017 investigation of the CPD pursuant to 34 U.S.C. § 12601, the DOJ found that the CPD experienced a record number of suicides. That report found that the

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314. Edwards & Rushin, *supra* note 276, at 23–24 (describing the use of this dataset and the methodology).

315. *Id.* at 30–33 (applying different statistical approaches, with each finding no effect of *Gant* on officer safety as measured by assaults and deaths during traffic stops).

316. For a comprehensive study on the imbedding of these danger imperatives into the culture of police agencies, see generally Michael Sierra-Arévalo, *American Policing and the Danger Imperative*, 55 LAW & SOC'Y REV. 70 (2021).

317. NAT'L OFFICER SAFETY INITIATIVES, THE NATIONAL CONSORTIUM ON PREVENTING LAW ENFORCEMENT SUICIDE, <https://www.edc.org/sites/default/files/uploads/NOSI-Flyer.pdf> [<https://perma.cc/7YSV-JVFE>].

318. Tara Perine, *The Law Enforcement Suicide Data Collection: The FBI's New Data Collection on Officer Suicide and Attempted Suicide*, POLICE CHIEF MAG. (May 26, 2021), <https://www.policechiefmagazine.org/the-le-suicide-data-collection> [<https://perma.cc/WF2W-5G3E>].

319. *Id.*

CPD suicide rate was 60% higher than the national average.<sup>320</sup> A different report, this time by the City of Chicago's Inspector General, noted that more than a dozen Chicago police officers died by suicide between 2018 and 2022.<sup>321</sup>

While the precise underlying causes of officer suicide in Chicago are not known, there are speculations that the demands of work may affect officers' mental health. In a separate report, the Inspector General found that law enforcement officers shoulder heavy workloads with few breaks. For instance, one report revealed that roughly 1,200 officers had to work at least eleven straight days without days off during the previous year.<sup>322</sup>

Many of the policing tactics and potentially harmful managerial tools that this Article seeks to limit are the same ones that may force officers into these frequent and hostile interactions with members of the public. While these hypotheses are, admittedly, mostly just theoretical, they may provide some basis for policymakers to argue that limitations on police not only protect the public and historically marginalized minorities without seriously compromising public safety—they may also make the job of frontline officers more palatable and improve officer mental health.

Of course, no study, no matter how compellingly constructed or seemingly definitive the findings, can prove that the measures discussed in this Article will meaningfully improve traffic enforcement and reduce racial disparities. Each study is only one data point, which must be interpreted in light of the broader literature. It should also go without saying that this brief summary can only scratch the surface of the broader literature on police regulation, racial profiling, and public safety. Nevertheless, this brief review of recent studies should provide policymakers with at least some reassurance of the empirical and theoretical support for these nascent proposals. Over time, though, more research will be needed to fully understand the implications of these kinds of changes in law.

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320. Matthew Hendrickson, *Despite Troubling Rise in Suicides, CPD Falling Short on Getting Help for Officers, Inspector General Finds*, CHI. SUN-TIMES (Feb. 6, 2023), <https://chicago.suntimes.com/2023/2/6/23572734/police-suicides-cpd-officers-mental-health-department-carrie-steiner-fraternal-order-police-fop> [<https://perma.cc/B776-TYKZ>]; see also Timothy McLaughlin, *Chicago Police's No-Notes Counseling Policy Raises Concerns*, REUTERS (June 30, 2017), <https://www.reuters.com/article/us-chicago-police-counseling/chicago-polices-no-notes-counseling-policy-raises-concerns-idUSKBN19L1AU> [<https://perma.cc/P4FZ-D8R7>] (noting the CPD's problem with suicides and officer mental health).

321. Hendrickson, *supra* note 320.

322. *Id.*

#### IV. CONCLUSION

Despite some advocacy by civil rights advocates and police abolitionists, it appears unlikely that American jurisdictions will fully strip police of their authority to enforce traffic codes in the near future. However, short of fully removing police from traffic enforcement, communities across the country have made significant strides in reducing the scope of police authority in this space. Jurisdictions have narrowed police authority to make traffic stops, conduct searches of vehicles, and question drivers and vehicle occupants. States have also moved to limit or bar the use of some types of police quotas. And jurisdictions have experimented with technological replacements for some police traffic enforcement, as well as various types of reporting requirements.

The available evidence suggests that some of these measures may reduce racial bias, police violence, and civil rights violations. Moreover, we argue that reasonable limits on police authority are unlikely to harm public safety. The available empirical evidence suggests that reasonable restrictions on police authority do not increase the risk of violence against police officers, nor do they likely increase the risk of traffic injuries or fatalities.

Moreover, the emerging jurisdictional variations in police authority during traffic stops, coupled with greater publicly available data, will present new opportunities for empirical inquiry in the future. For example, to what extent have these new restrictions on police traffic authority meaningfully influenced the rate of traffic stops and searches of drivers of color relative to white drivers? Have these changes in law been associated with reductions in uses of force by police officers? And what, if any, effects have these laws had on traffic safety? The potential success of these measures in reducing racial bias and minimizing police violence without reducing traffic safety may provide compelling evidence for their expansion across the country soon.