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## Revenue, Race, and the Potential Unintended Consequences of Traffic Enforcement Reform

Beth A. Colgan

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## REVENUE, RACE, AND THE POTENTIAL UNINTENDED CONSEQUENCES OF TRAFFIC ENFORCEMENT REFORM\*

BETH A. COLGAN\*\*

*In response to repeated and highly publicized killings of people at the hands of law enforcement during traffic stops, there is growing interest among distraught relatives, advocates, scholars, and lawmakers in traffic enforcement reform. These efforts have included shifts in the methods of enforcement—for example, the use of unarmed civilian units or automated enforcement devices—and restrictions on armed officers' ability to stop motorists for low-level traffic offenses. These reform initiatives have the potential to meaningfully reduce the number of traffic stops involving armed officers, and thus the number of violent incidents traffic stops routinely engender.*

*This Article considers an underexplored dimension of traffic enforcement: how its revenue-generating capacity—through traffic ticket and forfeiture revenue—complicates the ability of reform efforts to address the quantity and quality of police-citizen interactions. A focus on revenue generation exposes two key unintended consequences of proposed traffic enforcement reform initiatives that stop short of legalization. First, lawmaker pressure on armed law enforcement to raise revenue through traffic ticketing easily shifts to civilian units or automated systems, meaning that such reforms risk replicating the budgetary and racial dynamics of traditional traffic enforcement. Second, armed law enforcement's loss of its traffic enforcement capabilities may lead to rent-seeking behavior outside of the traffic context—particularly through the enforcement of public order offenses and municipal code violations and increased reliance on non-traffic-based drug interdiction tactics at airports, bus terminals, and train stations, and through street-level stop-and-frisks. This rent-seeking behavior increases opportunities for violence in these other arenas. The end result is that heavily policed—and particularly Black and Latinx communities—may experience the worst of both worlds: new methods of traffic enforcement that continue to trap people in a web of policing and punishment on the one hand,*

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\*\* Professor of Law, UCLA School of Law. My thanks to Devon Carbado, Brooke Coleman, Julia Mendoza, Andrea Roth, Joanna Schwartz, and Jordan Blair Woods for their insightful comments on early drafts of this project. This Article also benefitted from excellent research assistance from Shangching Huitzacua, Devin Montgomery, and Linda O'Connor, as well as the editorial guidance of Katie DeAngelis, Hashim Elwazir, Ian Robert Maddox, and the editorial staff of the *North Carolina Law Review*.

*and increased efforts by armed law enforcement to extract fines and forfeitures for nontraffic offenses on the other. Far from mitigating the overall exposure of marginalized communities to violence by law enforcement, the extraction of fines and forfeitures for nontraffic offenses enlarges the terrain of that exposure. These potential unintended consequences suggest that lawmakers and racial justice advocates seeking to reduce violence by law enforcement should design reforms to account for the revenue-generating economy of traffic enforcement.*

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## INTRODUCTION

### Broken head/brake/taillight

Philando Castile, age 32 (multiple gunshots, Falcon Heights, Minnesota), Jenoah Donald, age 30 (gunshot, Hazell Dell, Washington), Julian Lewis, age 60 (gunshot, Screven County, Georgia), Xander Mann, age 16 (multiple gunshots, Modesto, California), Walter Scott, age 50 (multiple gunshots, North Charleston, South Carolina) . . .<sup>1</sup>

1. Eyder Peralta & Cheryl Corley, *The Driving Life and Death of Philando Castile*, NPR (July 15, 2016, 4:51 AM), <https://www.npr.org/sections/thetwo-way/2016/07/15/485835272/the-driving-life-and-death-of-philando-castile> [<https://perma.cc/SG43-MQBN>] (noting that the officer told the vehicle's passengers that he had stopped them for a broken taillight, but scanner traffic audio of the incident indicates he actually conducted the stop to investigate a recent robbery); Troy Brynelson, *Jenoah Donald, 30-Year-Old Black Man Shot by Clark County Deputies, Has Died*, OR. PUB. BROAD., <https://www.opb.org/article/2021/02/12/jenoah-donald-clark-county-sheriffs-office-shooting-death/> [<https://perma.cc/ZJP8-53JG>] (last updated Feb. 12, 2021, 1:43 PM); Kate Brumback, *No Indictment*

## Speeding

Ralph Ennis, age 77 (slammed “face-forward” into a pickup truck, Warren County, Virginia), Monica Goods, age 11 (crash after patrol car used to ram vehicle, Ulster County, New York), Maria Asucena Carbajal Lopez, age 15, and Kandy Casterjon, age 15 (crash after patrol car used to ram vehicle, Union County, North Carolina), Jesse Jesus Quinton, age 35 (multiple gunshots, Idaho Falls, Idaho), Joshua Kyle Priest, age 33 and Anna Nicole Stephens, age 30 (crash after patrol car used to ram vehicle, Creek County, Oklahoma) . . .<sup>2</sup>

## Seat-belt violation

Mark Anthony Diaz, age 21 (gunshot, Siler City, North Carolina), Allan Feliz, age 31 (gunshot, New York, New York), Cedric Mifflin, age 27 (multiple gunshots, Phenix City, Alabama) . . .<sup>3</sup>

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for *Georgia Officer Who Killed Black Driver*, AP NEWS (June 29, 2021), <https://apnews.com/article/ga-state-wire-courts-georgia-indictments-shootings-5e647e37f86043b0b96ae1044773ec6f> [<https://perma.cc/62U7-QC6P>]; *Stanislaus Sheriff's Office Releases Bodycam Footage of Deadly Officer-Involved Shooting That Killed Modesto Teen*, CBS SACRAMENTO (May 30, 2021, 2:30 PM), <https://sacramento.cbslocal.com/2021/05/30/modesto-ois-xander-mann-killed-body-cam-released/> [<https://perma.cc/46H7-YHUK> (staff-uploaded, dark archive)]; Kevin Valine, Andrea Briseño & Lydia Gerike, *Teen Driver Shot by Stanislaus Deputy Was Trying To Surrender, Wrongful Death Claim Says*, MODESTO BEE (June 22, 2021), <https://www.modbee.com/news/local/article251907878.html> [<https://perma.cc/46H7-YHUK> (dark archive)]; Associated Press, *Ex-South Carolina Police Officer in Prison for Fatally Shooting Walter Scott Appeals 20-Year Sentence*, KTLA.COM, <https://ktla.com/news/nationworld/ex-south-carolina-police-officer-in-prison-for-fatally-shooting-walter-scott-appeals-20-year-sentence/> [<https://perma.cc/VW7K-99NJ>] (last updated Apr. 13, 2021, 4:28 PM).

2. Drew Wilder, *Body Camera Video Reveals Virginia Deputies Slammed 77-Year-Old Man into Truck, Tackled Him*, NBC WASH. (May 4, 2022, 8:58 PM), <https://www.nbcwashington.com/news/local/body-camera-video-reveals-virginia-deputies-slammed-77-year-old-man-into-truck-tackled-him/3042935/> [<https://perma.cc/7L3V-JKJQ>]; Tiffany Cussac Smith, *NY Trooper Indicted for Murder of 11-Year-Old Monica Goods in Ulster Crash*, TIMES HERALD REC., <https://www.recordonline.com/story/news/2021/10/27/ny-trooper-indicted-murder-monica-goods/8571597002/> [<https://perma.cc/HBA3-MEYY> (dark archive)] (last updated Oct. 28, 2021, 12:33 AM); Bruce Henderson, *NC Trooper Won't Face Charges After 100 MPH Chase, Crash That Killed Two Teens*, CHARLOTTE OBSERVER (Feb. 14, 2018, 7:03 AM), <https://www.wbtv.com/story/37502339/nc-trooper-wont-face-charges-after-100-mph-chase-crash-that-killed-two-teens/> [<https://perma.cc/VTS8-TCJK>]; Eric Grossarth, *Dashcam Video Shows Tense Moments Before Fatal Officer-Involved Shooting*, E. IDAHO NEWS, <https://www.eastidahonews.com/2019/02/watch-dashcam-video-shows-tense-moments-before-fatal-officer-involved-shooting/> [<https://perma.cc/FE9B-M92W>] (last updated Feb. 1, 2019, 11:14 PM); Corey Jones, *'A Look of Fear': Fatal Pursuit in Area Unfamiliar to Trooper Kills Woman with Fleeing Driver*, TULSA WORLD (July 13, 2021), [https://tulsaworld.com/news/state-and-regional/a-look-of-fear-fatal-pursuit-in-area-unfamiliar-to-trooper-kills-woman-with-fleeing/article\\_5fe7f17e-cfae-11eb-80b5-ab80eed7cbc8.html](https://tulsaworld.com/news/state-and-regional/a-look-of-fear-fatal-pursuit-in-area-unfamiliar-to-trooper-kills-woman-with-fleeing/article_5fe7f17e-cfae-11eb-80b5-ab80eed7cbc8.html) [<https://perma.cc/6G4W-7AMT> (staff-uploaded, dark archive)].

3. Cindy Bae & Joel Brown, *'It's Terrible': Family Wants Answers After Trooper Kills 21-Year-Old During Siler City Traffic Stop*, ABC11 (June 1, 2022), <https://abc11.com/deadly-shooting-siler-city-officer-involved-mark-anthony-diaz/11911326/> [<https://perma.cc/59JU-QHDE>]; Adam Kuperstein, *NYPD Releases Bodycam Footage from Fatal Police Shooting in Bronx*, NBC N.Y. (Jan. 25, 2020, 1:12 AM),

## Failure to stop at a stop sign/red light

Frederick Jeremy Atkin, age 42 (gunshot, South Ogden, Utah), Justin Battenfield, age 34 (crash after patrol car used to ram vehicle, Fort Smith, Arkansas), Hannah Fizer, age 25 (multiple gunshots, Sedalia, Missouri), Nathan Schenk, age 34 (multiple gunshots, Pasadena, California) . . .<sup>4</sup>

## Expired/cancelled/tinted registration tag

Charles Green, age 33 (taser to the head, Timmonsville, South Carolina), Jermaine Jones, Jr., age 24 (taser, unexplained “severe traumatic brain injury,” Richmond County, Georgia), Giovonn Joseph-McDade, age 20 (multiple gunshots, Kent, Washington), Daunte Wright, age 20 (gunshot, Brooklyn Center, Minnesota) . . .<sup>5</sup>

<https://www.nbcnewyork.com/news/local/nypd-releases-bodycam-footage-from-fatal-police-shooting-in-bronx/2266878/> [<https://perma.cc/9BW7-GSXQ>]; Kim Barker, Steve Eder, David D. Kirkpatrick & Arya Sundaram, *How Police Justify Killing Drivers: The Vehicle Was a Weapon*, N.Y. TIMES (Nov. 6, 2021), <https://www.nytimes.com/2021/11/06/us/police-traffic-stops-shooting.html> [<https://perma.cc/655H-GJ58> (dark archive)].

4. Pat Reavy, *Family Sues Ogden Officer Who Shot, Killed Man Following Chase*, DESERET NEWS (Aug. 11, 2020, 3:40 PM), <https://www.deseret.com/utah/2020/8/11/21363562/family-sues-south-ogden-officer-who-shot-killed-man-following-chase> [<https://perma.cc/EZ3Z-LJ8H>]; Ken Dilanian, *Since 2016 at Least 30 Fleeing Drivers Have Died After Police Performed a Pit Maneuver*, NBC NEWS (Aug. 23, 2020, 6:46 PM), <https://www.nbcnews.com/news/crime-courts/2016-least-30-fleeing-drivers-have-died-after-police-performed-n1237723> [<https://perma.cc/QEJ9-V4FH>]; Brian Dulle, *Hannah Fizer's Father Files Wrongful Death Lawsuit Against Former Pettis County Deputy Who Killed Her*, FOX4 KC (Feb. 18, 2021, 3:35 PM), <https://fox4kc.com/news/hannah-fizers-father-files-wrongful-death-lawsuit-against-pettis-county-deputy-who-killed-her/> [<https://perma.cc/LH7L-PXVT>]; Ewan Palmer, *No Gun Found in Car of Woman Shot by Police After 'Stating She Was Armed,'* NEWSWEEK (June 17, 2020, 5:52 AM), <https://www.newsweek.com/missouri-police-shooting-hannah-fizer-sedalia-1511369> [<https://perma.cc/BB96-V9ER>]; Dawn Burleigh, *Man Shot and Killed by Pasadena Police Officer After Running from the Scene of a Traffic Violation*, ORANGE LEADER (Nov. 11, 2020, 11:01 AM), <https://www.orangeleader.com/2020/11/11/man-shot-and-killed-by-pasadena-police-officer-after-running-from-the-scene-of-a-traffic-violation/> [<https://perma.cc/N385-V348>].

5. *Family Sues Timmonsville Police in Charles Green Death*, CMTY. TIMES (May 9, 2022), <https://communitytimessc.com/articles/1343/view> [<https://perma.cc/5DQS-PFMK>]; Chloe Salsameda, *Jermaine Jones Death Case Turned Over to District Attorney*, WJBF, <https://www.wjbf.com/top-stories/jermaine-jones-death-case-turned-over-to-district-attorney/> [<https://perma.cc/UV5P-Z3WH>] (last updated Dec. 21, 2021, 7:34 PM); Chloe Salsameda, *Richmond County Deputies Return to Duty Following Death of Jermaine Jones*, NEWS CHANNEL 6, <https://www.wjbf.com/csra-news/man-dies-following-tasing-incident-with-richmond-county-deputies/> [<https://perma.cc/UK4X-GJJC>] (last updated Oct. 28, 2021, 5:38 PM); Graham Johnson, *Records Released in Police Shooting of Man in Kent*, KIRO7 NEWS (July 19, 2017, 5:38 PM), <https://www.kiro7.com/news/local/records-released-in-police-shooting-of-man-in-kent/565498900/> [<https://perma.cc/USD8-5Q7F>]; David D. Kirkpatrick, Steve Eder, Kim Barker & Julie Tate, *Why Many Police Traffic Stops Turn Deadly*, N.Y. TIMES, <https://www.nytimes.com/2021/10/31/us/police-traffic-stops-killings.html> [<https://perma.cc/G9CZ-8X7E> (dark archive)] (last updated Nov. 30, 2021); *Texas Cop Indicted in Shooting Death of Black Man Driving Away from Traffic Stop*, CBS NEWS (May 2, 2019, 4:41 PM), <https://www.cbsnews.com/news/oshae-terry-shooting-texas-cop-bau-tran-indicted-in-shooting-death-of-black-man-driving-away-from-traffic-stop/> [<https://perma.cc/AGV3-LE4V>]; *What*

## Failure to signal

Zachary Gifford, age 39 (multiple gunshots, Kiowa County, Colorado) . . .<sup>6</sup>

## Missing/mismatched license plate

Debra Arbuckle, age 51 (multiple gunshots, Wichita, Kansas), Samuel DuBose, age 43 (gunshot, Cincinnati, Ohio), Patrick Lyoya, age 26 (gunshot, Grand Rapids, Michigan) . . .<sup>7</sup>

## Unspecified traffic violation

Ronald Greene, age 49 (taser, beating with a flashlight, Monroe County, Louisiana), Antonio Valenzuela, age 40 (chokehold, Las Cruces, New Mexico) . . .<sup>8</sup>

\* \* \*

Each of these people—and over 100 more every year<sup>9</sup>—were killed by law enforcement in encounters that began as traffic stops. An unknown number of

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*To Know About the Death of Daunte Wright*, N.Y. TIMES (Feb. 21, 2022), <https://www.nytimes.com/article/daunte-wright-death-minnesota.html> [<https://perma.cc/58YB-PL6G> (dark archive)] [hereinafter, *What To Know*].

6. Lanie Lee Cook, *\$9.5 Million Settlement Reached in Kiowa County Police Killing*, FOX 31 (Apr. 18, 2022, 11:17 PM), <https://kdvr.com/news/local/zachary-gifford-shooting-settlement-kiowa-county/> [<https://perma.cc/HEM4-CJHU>].

7. *Sedgwick County DA: No Charges in Death of Woman Killed in Deputy-Involved Shooting*, 12 NEWS (May 13, 2021, 4:07 PM), <https://www.kwch.com/2021/05/13/sedgwick-county-da-no-charges-in-death-of-woman-killed-in-deputy-involved-shooting> [<https://perma.cc/7K6L-RWWB>]; *Murder Charges for Officer Who Fatally Shot Driver in Traffic Stop*, CBS NEWS (July 29, 2015, 11:27 PM), <https://www.cbsnews.com/news/samuel-dubose-death-cincinnati-officer-traffic-stop-murder-charges-body-cam-video/> [<https://perma.cc/29MC-MG5Q>]; Kim Barker, Steve Eder & Julie Tate, *The Driver, the Officer and the Deadly Traffic Stop in Grand Rapids*, N.Y. TIMES, <https://www.nytimes.com/2022/04/27/us/patrick-lyoya-christopher-schurr-traffic-stop.html> [<https://perma.cc/2FNR-PBN9> (dark archive)] (last updated May 18, 2022).

8. In some cases, law enforcement refuses or otherwise does not disclose the traffic violation that purportedly justified the traffic stop. It is important to recognize these cases, however, as they can involve particularly egregious conduct by law enforcement. Jim Mustian & Jake Bleiberg, *Voice from the Grave Haunts Ronald Greene's Deadly Arrest*, AP NEWS (Mar. 30, 2022), <https://apnews.com/article/death-of-ronald-greene-louisiana-race-and-ethnicity-77a2e9f468b244db0b5244bb8f24453b> [<https://perma.cc/FQ2A-99HQ>] (regarding officers' beating of a motorist with a flashlight and fists, use of stun guns, and dragging of the motorist by shackled ankles while face down); Carma Hassan, Kay Jones & Elliott C. McLaughlin, *Las Cruces Police Officer Fired and Charged After Fatally Choking a Man During an Arrest, Police Say*, CNN (June 10, 2020, 12:59 AM), <https://www.cnn.com/2020/06/09/us/las-cruces-police-officer-choking-death/index.html> [<https://perma.cc/B769-NKX6>] (regarding an officer's use of a vascular restraint to control a suspect while saying: "If you don't f\*\*cking stop, bro, I'm going to f\*\*k you up").

9. Sam Levin, *U.S. Police Have Killed Nearly 600 People in Traffic Stops Since 2017, Data Shows*, GUARDIAN (Apr. 21, 2022, 6:00 PM), <https://www.theguardian.com/us-news/2022/apr/21/us-police->

additional people, left uncounted and largely unreported, are injured in but survive such encounters.<sup>10</sup> For good reason, anguished relatives along with advocates and scholars have called for reforms to the policing of traffic offenses in an effort to curb the frequency of this violence.<sup>11</sup>

Lawmakers are beginning to pay heed to calls to rethink traffic enforcement in the United States. Talk of—and in some cases action on—reform has centered on three primary modes. First, lawmakers in cities like Berkeley and Los Angeles, California, and Brooklyn Center, Minnesota, are considering shifting the enforcement of low-level traffic violations to unarmed civilian units.<sup>12</sup> Second, there have been calls to install or expand automated enforcement methods—such as red light or speed cameras—as a means of taking traffic “stops” out of the picture entirely.<sup>13</sup> And third, lawmakers in the states of Oregon and Virginia and the cities of Philadelphia and Pittsburgh, Pennsylvania, have prohibited armed officers from engaging in stops for certain

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violence-traffic-stop-data [https://perma.cc/85XR-KHJ7]; e.g., Amna Nawaz & David Coles, *Minnesota Enforces Curfew, Deploys National Guard After New Police Shooting Sparks Protest*, PBS (Apr. 12, 2021), https://www.pbs.org/newshour/show/minnesota-enforces-curfew-deploys-national-guard-after-new-police-shooting-sparks-protest [https://perma.cc/M3GX-KLZ2] (quoting Samuel Sinyangwe of Campaign Zero regarding an analysis of 1,127 cases involving killings by police in 2020 in which 121 cases began with a traffic stop).

10. Dilanian, *supra* note 4; Brian Howey, Wesley Lowery & Steven Rich, *The Unseen Toll of Nonfatal Police Shootings*, WASH. POST (Oct. 21, 2022, 6:30 AM), https://www.washingtonpost.com/investigations/interactive/2022/police-shootings-non-fatal/ [https://perma.cc/JRL4-9VE7 (dark archive)] (investigating nonfatal police shootings in “every department with five or more deadly police shootings from 2015 through 2020” and finding that “for every five people shot and killed by police in these departments, four others were shot and survived” and that racial disparity in nonfatal police shootings of Black people was even higher than in fatal shootings).

11. E.g., Jordan Blair Woods, *Traffic Without the Police*, 73 STAN. L. REV. 1471, 1477 & n.15 (2021) [hereinafter Woods, *Traffic Without the Police*]; SARAH A. SEO, THE JUST. COLLABORATIVE INST., A PATH TO NON-POLICE ENFORCEMENT OF CIVIL TRAFFIC VIOLATIONS 1 (2020), https://filesforprogress.org/memos/non-police-enforcement-of-civil-traffic-violations.pdf [https://perma.cc/PWA9-797R]; Bae & Brown, *supra* note 3.

12. Sam Levin, *California City Moves To Replace Police with Unarmed Civilians for Traffic Stops*, GUARDIAN (July 15, 2020, 9:48 PM), https://www.theguardian.com/us-news/2020/jul/15/berkeley-police-california-unarmed-civilians-traffic-stops [https://perma.cc/B7Z2-3ZKU] (regarding Berkeley, California); L.A. CITY COUNCIL, MOTION: AD HOC POLICE REFORM (2021), https://clkrep.lacity.org/onlinedocs/2020/20-0875\_mot\_06-30-2020.pdf [https://perma.cc/W6DY-V7C6]; BROOKLYN CENTER CITY COUNCIL, THE DAUNTE WRIGHT AND KOBE DIMOCK-HEISLER COMMUNITY SAFETY AND VIOLENCE PREVENTION ACT (2021) [hereinafter BROOKLYN CENTER ACT]. For examples of additional municipalities that have expressed interest in a shift to civilian enforcement see Woods, *Traffic Without the Police*, *supra* note 11, at 1477 & n.15.

13. See SEO, *supra* note 11; VERA INST., INVESTING IN EVIDENCE-BASED ALTERNATIVES TO POLICING: NON-POLICE RESPONSES TO TRAFFIC SAFETY 2–3 (2021), https://www.vera.org/downloads/publications/alternatives-to-policing-traffic-enforcement-fact-sheet.pdf [https://perma.cc/9HG2-XAY4].

low-level violations.<sup>14</sup> In such jurisdictions, law enforcement may still ticket for a violation, but must do so through other means, such as mailing the ticket to the motorist.<sup>15</sup>

In light of both the sheer volume of incidents in which traffic stops end in motorists' deaths or serious injuries at the hands of law enforcement and significant and growing evidence of racial disproportionality in traffic enforcement,<sup>16</sup> it is unsurprising that traffic policing has become a focus of

14. S.B. 1510, § 6, 81st Legis. Assemb. (Or. 2022); VA. CODE ANN. §§ 46.2-646(E), -810.1(C), -1003(C), -1013(B), -1014(B), -1014.1(B), -1030(F), -1049, -1052(P), -1054(B), -1094(F), -1157(E), -1300(E) (LEXIS through Ch. 22 of the 2022 Spec. Sess. I); Phila., Pa., Ordinance 210636-A (June 24, 2021); City of Pittsburgh Code of Ordinances § 503.17 (Dec. 30, 2022). Approximately a year after the Pittsburgh City Council voted to limit traffic stops, Acting Police Chief Thomas Stangrecki directed officers to reengage in enforcing minor traffic offenses, claiming that the City Council's order was no longer valid after Pennsylvania lawmakers amended a law to clarify the offense of driving with an obstructed license plate. Kiley Koscinski, *Pittsburgh Police Resume Secondary Traffic Stops Despite City Ordinance Against Them*, 90.5 WESA (Jan. 12, 2023, 12:49 PM), <https://www.wesa.fm/politics-government/2023-01-12/pittsburgh-police-resume-secondary-traffic-stops-despite-city-ordinance-against-them> [<https://perma.cc/PX28-2E29>]; see also *infra* note 180 and accompanying text (regarding Pittsburgh officers' reaction to traffic enforcement restrictions). In a limited number of jurisdictions, law enforcement agencies have adopted internal policies that limit traffic enforcement. For example, the Los Angeles Police Department has adopted a policy that restricts but does not prohibit stops for low-level offenses. LAPD officers may not engage in a traffic stop for "minor equipment violations or other infractions" unless "the officer believes that such a violation or infraction significantly interferes with public safety" or the officer can articulate facts suggesting that the person is involved in "a serious crime (i.e., a crime with potential for great bodily injury or death)." L.A. POLICE DEP'T, OFF. OF THE CHIEF OF POLICE, SPECIAL ORDER NO. 3 § 240.06, LIMITATION ON USE OF PRETEXTUAL STOPS (2022). In either case the officer's reasons for the stop should first "be articulated on body-worn video." *Id.* The policy is intended to limit the use of traffic enforcement as a pretext for enforcing other laws, a practice detailed more fully in Section I.B. See also Ram Subramanian & Leily Arzy, *Rethinking How Law Enforcement Is Deployed*, BRENNAN CTR. FOR JUST. (Nov. 17, 2022), <https://www.brennancenter.org/our-work/research-reports/rethinking-how-law-enforcement-deployed> [<https://perma.cc/55RT-XVKL>] (regarding internal policies adopted in Berkeley and Los Angeles, California, Lansing, Michigan, and Seattle, Washington).

15. E.g., Jonaki Mehta, *Why Philadelphia Has Banned Low-Level Traffic Stops*, NPR (Nov. 8, 2021, 3:35 PM), <https://www.npr.org/2021/11/08/1052957246/why-philadelphia-has-banned-low-level-traffic-stops#:~:text=Last%20Wednesday%2C%20Mayor%20Jim%20Kenney,into%20effect%20early%20next%20year> [<https://perma.cc/SB9P-UCXJ>].

16. This includes many of the jurisdictions taking a lead on traffic enforcement reform efforts. E.g., KIM SHAYO BUCHANAN, ENRIQUE POUGET & PHILLIP ATIBA GOFF, CTR. FOR POLICING EQUITY, THE SCIENCE OF JUSTICE: BERKELEY POLICE DEPARTMENT NAT'L JUSTICE DATABASE CITY REPORT 7–10 (2018), <https://berkeley-rps.org/wp-content/uploads/2021/02/Berkeley-City-Report-Center-for-Policing-Equity-May-2018.pdf> [<https://perma.cc/6PMS-N6EC>]; MARK P. SMITH, L.A. POLICE COMM'N, REVIEW OF STOPS CONDUCTED BY THE LOS ANGELES POLICE DEPARTMENT IN 2019, at 1–6 (2020), [http://www.lapdpolicecom.lacity.org/102720/BPC\\_20-0162.pdf](http://www.lapdpolicecom.lacity.org/102720/BPC_20-0162.pdf) [<https://perma.cc/W3E3-UKD2>]; Kevin Miller, *Brooklyn Center Reviews Police Stop Data*, HOMETOWN SOURCE (Sept. 23, 2020), [https://www.hometownsource.com/sun\\_post/community/brooklyncenter/brooklyn-center-reviews-police-stop-data/article\\_dc14efc2-fcf5-11ea-a853-b7a63c612438.html](https://www.hometownsource.com/sun_post/community/brooklyncenter/brooklyn-center-reviews-police-stop-data/article_dc14efc2-fcf5-11ea-a853-b7a63c612438.html) [<https://perma.cc/S277-L5KD> (staff-uploaded, dark archive)]; Maya Brown & Emma Tucker, *Philadelphia To Become First Major US City To Ban Police from Stopping Drivers for Low-Level Traffic Violations*, CNN (Oct. 30, 2021, 6:26 PM), <https://www.cnn.com/2021/10/30/us/philadelphia-driving-equality-bill/index.html> [<https://perma.cc/JSK6-T5MD>].



reform. Of course, these reforms have limitations. Proposed shifts of low-level traffic offenses typically leave authority for enforcing moving violations, such as speeding, to armed law enforcement,<sup>17</sup> keeping open the very real possibility of law enforcement violence during those stops.<sup>18</sup> And, even if not armed with guns and tasers, civilian officers could still engage in violence; patrol cars and brute physical force have proven lethal all too often.<sup>19</sup> But by reducing the number of interactions with armed law enforcement, shifting to alternative methods of enforcement has the potential to meaningfully reduce law enforcement violence in the traffic setting. It is therefore understandable that lawmakers and racial justice advocates have come to see traffic-related reforms as an important piece of the broader goal of reducing such violence.<sup>20</sup>

This Article is not intended to question the importance of traffic enforcement reform, but rather to consider the possibility of unintended consequences stemming from the relationship between the revenue-generating capacity of traffic enforcement and the racialization of traffic policing.<sup>21</sup> There is a meaningful risk that traffic enforcement reforms will lead to heavily policed communities—and particularly Black and Latinx<sup>22</sup> communities<sup>23</sup>—

17. *E.g.*, Phila., Pa., Ordinance 210636-A (June 24, 2021).

18. *E.g.*, *supra* note 2 and accompanying text.

19. *E.g.*, *supra* notes 2, 4, 8 and accompanying text.

20. *E.g.*, Robert Garrova, *LA (Finally) Will Explore Alternatives to Armed Police in Traffic Enforcement*, LAIST (Feb. 23, 2021, 2:57 PM), <https://laist.com/news/la-finally-will-explore-alternatives-to-armed-police-in-traffic-enforcement> [<https://perma.cc/R265-MW5A>] (quoting Melina Abdullah, cofounder of Black Lives Matter-L.A., as describing traffic enforcement reform as “hugely important”); *see also* Letter from PushLA to Nury Martinez, Los Angeles City Council President (Feb. 2, 2021) (on file with the North Carolina Law Review) (urging the Los Angeles City Council to pass a motion related to traffic enforcement reform).

21. This Article follows upon the work of Jordan Blair Woods, who has offered a framework for thinking through the structure and potential benefits of nonpolice alternatives to traffic enforcement. *See generally* Woods, *Traffic Without the Police*, *supra* note 11 (considering types of stops that should be prohibited and permitted; nonpolice alternatives to traffic enforcement and other reforms; and the benefits of and likely objections to traffic enforcement reform). Woods notes that structural reforms to traffic enforcement must include consideration of the revenue-generating capacity of traffic ticketing. *Id.* at 1511–15. This Article takes on that assessment.

22. Throughout this Article, I generally use the term “Latinx” unless referencing a study that uses the term “Hispanic.” *See* Luz E. Herrera & Pilar Margarita Hernández Escontrías, *The Network for Justice: Pursuing a Latinx Civil Rights Agenda*, 21 HARV. LATINX L. REV. 165, 165 n.1 (2018) (explaining that the use of Latinx “is both gender-neutral and does not exclusively honor Spanish origin”). For a discussion of the historical complexities regarding this terminology, *see* LAURA E. GOMEZ, *INVENTING LATINOS: A NEW STORY OF AMERICAN RACISM* 1–18 (2020).

23. While the bulk of the literature on abuses related to economic sanctions and racialized policing generally and in the traffic context have focused on Black and Latinx communities, there is increasing evidence that Native Americans are also disproportionately affected by these practices. *E.g.*, Robert Stewart, Brianna Watters, Veronica Horowitz, Ryan P. Larson, Brian Sargent & Christopher Uggen, *Native Americans and Monetary Sanctions*, 8 RUSSELL SAGE FOUND. J. SOC. SCIS. 137, 148–50 (2022); KIM SHAYO BUCHANAN, KAREN JARSKY, DAVID MARTIN, MATTHEW GRAHAM, TRACY KAWABATA, CURTIS SKINNER, SARAH DANG, JANIE SCHUTZ, LUCY ODIGIE-TURLEY, NINA

experiencing the worst of both worlds: new methods of traffic enforcement that continue to trap people in a web of policing and punishment on the one hand, and increased efforts by armed law enforcement to extract fines and forfeitures for nontraffic offenses on the other. Far from mitigating the overall exposure of marginalized communities to violence by law enforcement, the extraction of fines and forfeitures for nontraffic offenses enlarges the terrain of that exposure.

The Article begins in Part I by describing the revenue-generating economy of traffic enforcement. My prior work details how economic sanctions figure as routine features of criminal legal systems.<sup>24</sup> That work includes an

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CRANE, KERRY MULLIGAN, JOHN TINDEL, HILARY RAU, KRISTA DUNN & PHILLIP ATIBA GOFF, CTR. FOR POLICING EQUITY, THE SCIENCE OF JUSTICE: SEATTLE POLICE DEPARTMENT NATIONAL JUSTICE CITY DATABASE CITY REPORT 3–4 (2021), <https://herbold.seattle.gov/wp-content/uploads/2021/07/Science-of-Justice-report-released-7-15-21-on-SPD-blotter.pdf> [<https://perma.cc/DN3D-7V3V>]. Additionally, while generally underrepresented in traffic stops, in at least one California community, Asian motorists appear to be targeted for traffic enforcement. *E.g.*, Bob Egelko & Dustin Gardiner, *Officers in Northern California County Stop Asian Drivers at 12 Times the Rate of Other Drivers*, *Lawsuit Claims*, S.F. CHRON. (Aug. 8, 2022), <https://www.sfchronicle.com/bayarea/article/Officers-in-this-Northern-California-county-stop-17360062.php> [<https://perma.cc/YSA8-7UHR> (staff-uploaded, dark archive)].

24. See generally Beth A. Colgan, *The Burdens of the Excessive Fines Clause*, 63 WM. & MARY L. REV. 407 (2021) [hereinafter Colgan, *Burdens*] (detailing practices related to and harms caused by economic sanctions in relation to setting the burdens of raising an Excessive Fines Clause claim, of production, and of persuasion); Beth A. Colgan & Nicholas M. McLean, *Financial Hardship and the Excessive Fines Clause: Assessing the Severity of Property Forfeitures After Timbs*, 129 YALE L.J. F. 430 (2020) (offering a multifactor approach to assessing the excessiveness of automobile forfeitures considering loss of employment and educational access, interference with basic human needs, interruptions of family and social stability, and difficulties satisfying other legal obligations); Beth A. Colgan, *Wealth-Based Penal Disenfranchisement*, 72 VAND. L. REV. 55 (2019) (analyzing state statutory restrictions on voting due to inability to pay economic sanctions and a potential constitutional challenge to those practices); Beth A. Colgan, *The Excessive Fines Clause: Challenging the Modern Debtors' Prison*, 65 UCLA L. REV. 2 (2018) (documenting the use and privatization of fines and surcharges, fees, and restitution and analyzing the incompatibility of economic sanctions practices with principles animating the Supreme Court's Eighth Amendment jurisprudence); Beth A. Colgan, *Lessons from Ferguson on Individual Defense Representation as a Tool of Systemic Reform*, 58 WM. & MARY L. REV. 1171 (2017) (using municipal court practices in Ferguson, Missouri, as a case study and positing that the provision of individual defense counsel could spur systemic reform); Beth A. Colgan, *Reviving the Excessive Fines Clause*, 102 CALIF. L. REV. 277 (2014) (describing the scope and collateral consequences of contemporary economic sanctions as foregrounding for critiquing the Court's use of historical evidence to restrict Excessive Fines Clause protections). Along with other articles cited herein, other recent scholarship regarding the use of economic sanctions includes, for example, Amy Kimpel, *Paying for a Clean Record*, 112 J. CRIM. L. & CRIMINOLOGY 439 (2022) (regarding limitations on access to diversion and expungement programs for people with limited ability to pay economic sanctions); Ebony L. Ruhland, Amber A. Petkus, Nathan W. Link, Jordan M. Hyatt, Bryan Holmes & Symone Pate, *Monetary Sanctions in Community Corrections: Law, Policy, and Their Alignment with Correctional Goals*, 37 J. CONTEMP. CRIM. JUST. 108 (2021) (analyzing and comparing assessment, waiver, and collections practices across six states); Cortney E. Lollar, *Eliminating the Criminal Debt Exception for Debtors' Prisons*, 98 N.C. L. REV. 427 (2020) (regarding incarceration for nonpayment of economic sanctions); Sarah Shannon, Beth M. Huebner, Alexes Harris, Karin Martin, Mary Pattillo, Becky Pettit, Bryan Sykes & Christopher Uggen, *The Broad Scope and Variation of Monetary Sanctions: Evidence from Eight States*, 4

examination of reforms centered on those who stand to lose—people with limited ability to pay or absorb the loss of fines, surcharges, fees, and forfeitures<sup>25</sup>—and how such attempts to ameliorate those losses—particularly through the graduation of those economic sanctions to account for a person’s financial circumstances—may result in unintended consequences by reinforcing structures through which economic sanctions are imposed.<sup>26</sup> This Article examines proposed traffic enforcement reforms by focusing on those who stand to gain—government entities, including law enforcement who obtain revenue from economic sanctions—and the way revenue generation may undercut the violence-prevention goals of traffic enforcement reform. To do so, Part I identifies two key features of the revenue-generating economy of traffic enforcement. The first feature is one of *debt enforcement*. The problem here is that enforcement mechanisms for nonpayment of traffic tickets, such as increasing financial penalties, driver’s license suspensions, and arrest warrants, create avenues for making future traffic enforcement—and further revenue from new tickets—more likely by providing additional justifications for law enforcement to engage in traffic stops. The second feature is one of *pretextual financing*. The problem this time is that pretextual policing, by which law enforcement use traffic violations as justification for stopping motorists to investigate nontraffic offenses, opens the door to revenue generation via forfeitures of cash or property. To illustrate how, Part I documents the rise in traffic-based drug interdiction efforts by federal, state, and local governments,

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UCLA CRIM. J. L. REV. 269 (2020) (detailing practices related to fines, surcharges, and fees across California, Georgia, Illinois, Minnesota, Missouri, New York, Texas, and Washington); Jeffrey Selbin, *Juvenile Fee Abolition in California: Early Lessons and Challenges for the Debt-Free Justice Movement*, 98 N.C. L. REV. 401 (2020) (regarding reform efforts related to economic sanctions in juvenile courts); Nathan W. Link, *Criminal Justice Debt During the Prisoner Reintegration Process: Who Has It and How Much?*, 46 J. CRIM. JUST. & BEHAV. 154 (2019) (analyzing the prevalence of debt from economic sanctions owed by people returning from prison).

25. See generally Beth A. Colgan, *Graduating Economic Sanctions According to Ability To Pay*, 103 IOWA L. REV. 53 (2017) [hereinafter Colgan, *Graduating Economic Sanctions*] (documenting American experiments with day fines and exploring key considerations for designing a graduation system); BETH A. COLGAN, BROOKINGS INST. HAMILTON PROJECT, ADDRESSING MODERN DEBTORS’ PRISONS WITH GRADUATED ECONOMIC SANCTIONS THAT DEPEND ON ABILITY TO PAY (2019), [https://www.brookings.edu/wp-content/uploads/2019/03/Colgan\\_PP\\_201903014.pdf](https://www.brookings.edu/wp-content/uploads/2019/03/Colgan_PP_201903014.pdf) [<https://perma.cc/HD5K-GXSF>] (detailing a policy proposal to create a system of graduating economic sanctions according to ability to pay).

26. Beth A. Colgan, *Beyond Graduation: Economic Sanctions and Structural Reform*, 69 DUKE L.J. 1529 (2020) [hereinafter Colgan, *Beyond Graduation*] (identifying ways in which the graduation of economic sanctions is in conflict with the abolitionist goals of reducing the carceral state and of transformative justice, and offering complementary reforms that would better align graduation with structural reform efforts). For an additional critique of ability to pay analyses, see generally Theresa Zhen, *(Color)Blind Reform: How Ability-To-Pay Determinations Are Inadequate To Transform a Racialized System of Penal Debt*, 43 N.Y.U. REV. L. & SOC. CHANGE 175 (2019) (cautioning reformers to more critically assess ability to pay determinations due to the invasive nature of the inquiries, their underinclusive understanding of poverty, and their potential to inculcate implicit and explicit racial bias).

spurred on by the expansion of law enforcement's ability to secure such forfeitures during traffic stops and retain the proceeds for their own use. Foregrounding these two features of revenue generation exposes a troubling law enforcement reality: lawmakers (with the help of the Supreme Court) have created a plethora of opportunities for law enforcement to use traffic codes to generate revenue through economic sanctions and, in doing so, have expanded the context in which law enforcement violence can occur.

Problems created by the revenue-generating economy detailed in Part I are even worse when one considers how revenue generation and race intertwine to influence law enforcement practices, the subject of Part II.<sup>27</sup> Scholars have long examined the relationship between race and traffic enforcement<sup>28</sup> and there

27. This Article focuses on law enforcement—police officers, sheriffs, federal agents, and prosecutors—as well as elected public officials traditionally understood to have budgetary responsibilities for a jurisdiction. While outside the scope of this Article, it is important to note, however, that in some jurisdictions judges also play a critical role in creating or responding to pressure to generate revenue through economic sanctions for their own benefit or the benefit of their jurisdiction. RAM SUBRAMANIAN, JACKIE FIELDING, LAUREN-BROOKE EISEN, HERNANDEZ STROUD & TAYLOR KING, BRENNAN CTR. FOR JUST., *REVENUE OVER PUBLIC SAFETY: HOW PERVERSE FINANCIAL INCENTIVES WARP THE CRIMINAL JUSTICE SYSTEM* 12–14 (2022) [hereinafter SUBRAMANIAN ET AL., *REVENUE OVER PUBLIC SAFETY*], <https://www.brennancenter.org/media/9813/download> [https://perma.cc/92JS-466L] (regarding the role of judges in Louisiana, Michigan, New York, Utah, and Washington).

28. The literature on race and traffic enforcement is so expansive that it is impossible to properly summarize it here, but see, for example, FRANK R. BAUMGARTNER, DEREK A. EPP & KELSEY SHOUB, *SUSPECT CITIZENS: WHAT 20 MILLION TRAFFIC STOPS TELL US ABOUT POLICING AND RACE* (2018) (analyzing traffic stops in North Carolina between 2002 and 2016); CHARLES R. EPP, STEVEN MAYNARD-MOODY & DONALD HAIDER-MARKEL, *PULLED OVER: HOW POLICE STOPS DEFINE RACE AND CITIZENSHIP* (2014) (examining the historical development of pretextual traffic stops); Allison P. Harris, Elliott Ash & Jeffrey Fagan, *Fiscal Pressures and Discriminatory Policing: Evidence from Traffic Stops in Missouri*, 5 J. RACE ETHNICITY & POLS. 450 (2020) (using data from traffic enforcement in Missouri between 2001 and 2012 to examine the relationship between budget stress, race, and citation rates); Devon W. Carbado, *From Stopping Black People to Killing Black People: The Fourth Amendment Pathways to Police Violence*, 105 CALIF. L. REV. 125 (2017) (analyzing the legalization of racial profiling in traffic and other settings); Angela J. Davis, *Race, Cops, and Traffic Stops*, 51 U. MIA. L. REV. 425 (1997) (regarding the Supreme Court's failure to provide a meaningful remedy for racialized pretextual traffic policing); Samuel R. Gross & Katherine Y. Barnes, *Road Work: Racial Profiling and Drug Interdiction on the Highway*, 101 MICH. L. REV. 651 (2002) (using data from the Maryland State Patrol to examine the role of race in highway drug interdiction programs); Emma Pierson, Camelia Simoiu, Jan Overgoor, Sam Corbett-Davies, Daniel Jenson, Amy Shoemaker, Vignesh Ramachandran, Phoebe Barghouty, Cheryl Phillips, Ravi Shroff & Sharad Goel, *A Large-Scale Analysis of Racial Disparities in Police Stops Across the United States*, 4 NATURE HUM. BEHAV. 736 (2020) (employing a data set of nearly 100 million traffic stops nationally to examine racial disproportionality with respect to stops, searches, and arrests); Stephen Rushin & Griffin Edwards, *An Empirical Assessment of Pretextual Stops and Racial Profiling*, 73 STAN. L. REV. 637 (2021) (examining over eight million traffic stops by the Washington State Patrol to examine the increased probability of racial profiling resulting from changes in state law easing restrictions on the ability to use pretextual traffic stops). Additional works are cited in what follows. For a historical overview of policing of the automobile, see generally SARAH A. SEO, *POLICING THE OPEN ROAD: HOW CARS TRANSFORMED AMERICAN FREEDOM* (2019) (tracing the historical relationship between the introduction of the automobile and the expansion of police power).

is increasing scholarly attention to the role of economic sanctions in crime policy, including in shaping law enforcement behavior.<sup>29</sup> Part II builds on these efforts and an array of investigative reports to tell a particular story about revenue generation, race, and traffic enforcement that bears directly on the efficacy of reform initiatives. Part II shows how revenue goals and racially discriminatory treatment push and pull against each other in ways that shape who is subject to enforcement, what crimes are enforced, and how enforcement occurs. Part II then argues that both lawmakers and law enforcement are likely to respond to traffic enforcement reforms in ways that protect their ability to use economic sanctions as a revenue source to the disproportionate detriment of communities of color.

Part III of this Article then explores potential problematic implications of a shift to alternative methods of traffic enforcement. Shifts to civilian units or automated enforcement do not preclude the replication of budgetary and racial dynamics by which lawmakers have pressured law enforcement to ticket or that incentivize law enforcement to engage in pretextual policing to generate forfeiture revenues for their own use. And both alternative methods, as well as restrictions on the ability to conduct traffic stops for minor violations, may encourage armed law enforcement to engage in rent-seeking behavior. They may do so by increasing ticketing of public order offenses and municipal code violations, which are also subject to fines, in order to prove their worth to lawmakers who hold the purse strings. In addition, limiting armed law enforcement's ability to use traffic stops pretextually to generate forfeiture revenues may push drug interdiction efforts to other arenas that have also historically been the subjects of racialized enforcement, such as mass transit sites and street-level stop and frisks. In advancing those concerns, I am not suggesting that reformers give up on their efforts to curtail the scope of police power to conduct traffic stops. Rather, I am urging that in proffering interventions, they consider additional reforms necessitated by the revenue-generating economy this Article describes.

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29. E.g., Devon W. Carbado, *Predatory Policing*, 85 UMKC L. REV. 545, 552–65 (2017) [hereinafter Carbado, *Predatory Policing*]; Thomas A. Garrett & Gary A. Wagner, *Red Ink in the Rearview Mirror: Local Fiscal Conditions and the Issuance of Traffic Tickets*, 52 J.L. & ECON. 71, 83–88 (2009); Rebecca Goldstein, Michael W. Sances & Hye Young You, *Exploitative Revenues, Law Enforcement, and the Quality of Government Service*, 56 URB. AFFS. REV. 5, 15–22 (2020); Brian D. Kelly & Maureen Kole, *The Effects of Asset Forfeiture on Policing: A Panel Approach*, 54 ECON. INQUIRY 558, 567–73 (2016); Akheil Singla, Charlotte Kirschner & Samuel B. Stone, *Race, Representation, and Revenue: Reliance on Fines and Forfeitures in City Governments*, 56 URB. AFFS. REV. 1132, 1146–56 (2020).

## I. THE REVENUE-GENERATING ECONOMY OF TRAFFIC ENFORCEMENT

Traffic stops by armed officers are the most common form of police-citizen interaction,<sup>30</sup> involving nearly twenty-five million motorists and their passengers each year.<sup>31</sup> For many people subjected to “routine” stops (and not lucky enough to receive only a warning),<sup>32</sup> the experience involves being issued a ticket to pay a fine for one or more offenses, such as speeding, failure to stop at a stop sign, or the failure to obey one of any number of offenses that make it difficult, if not impossible, to ever drive in full compliance of the law. What follows maps how traffic tickets not only serve as a form of punishment but also, for those unable to pay immediately, how methods of debt enforcement beget further traffic stops and ticketing. The mapping effort continues by examining pretextual traffic enforcement, in which officers use a traffic violation as an entrée to investigating non-traffic-based offenses. This opens the door to pretextual financing, and in particular to drug interdiction efforts within which law enforcement may engage in the forfeiture of vehicles, cash, and other property that can be used to fund further law enforcement efforts.

A. *Traffic Ticket Debt Enforcement*

Law enforcement has wide-ranging authority for engaging in traffic stops through a variety of avenues grounded in the Supreme Court’s Fourth Amendment jurisprudence.<sup>33</sup> The Court has authorized law enforcement to detain any motorist so long as a reasonable officer would have probable cause that the motorist committed an offense.<sup>34</sup> While probable cause requires only a fair probability that an offense has occurred,<sup>35</sup> an even lower standard—reasonable suspicion—allows an officer to conduct a traffic stop for ongoing traffic violations.<sup>36</sup>

30. See Jordan Blair Woods, *Policing, Danger Narratives, and Routine Traffic Stops*, 117 MICH. L. REV. 635, 637 (2019) [hereinafter Woods, *Policing*].

31. ERIKA HARRELL & ELIZABETH DAVIS, U.S. DEP’T OF JUST., CONTACTS BETWEEN POLICE AND THE PUBLIC, 2018 – STATISTICAL TABLES 4 tbl.2 (2020), <https://bjs.ojp.gov/content/pub/pdf/cbpp18st.pdf> [<https://perma.cc/Y72Q-AMDP>]; see also Pierson et al., *supra* note 28, at 736.

32. Survey results suggest that thirty-six percent of traffic stops resulted in a warning in 2015. ELIZABETH DAVIS, ANTHONY WHYDE & LYNN LANGTON, U.S. DEP’T OF JUST., CONTACTS BETWEEN POLICE AND THE PUBLIC, 2015, at 12 (2018), <https://bjs.ojp.gov/content/pub/pdf/cpp15.pdf> [<https://perma.cc/LDF6-2RCK>].

33. See generally David A. Sklansky, *Traffic Stops, Minority Motorists, and the Future of the Fourth Amendment*, 1997 SUP. CT. REV. 271 (1997) (discussing the role of the Fourth Amendment in regard to vehicle stops and positing that the Court’s “largely unspoken understandings . . . strongly favor law enforcement and, more troublingly, disregard the distinctive grievances and concerns of minority motorists stopped by the police,” which “over the long term . . . limits the protection the Amendment provides to all of us”).

34. *Whren v. United States*, 517 U.S. 806, 810 (1996).

35. *Illinois v. Gates*, 462 U.S. 213, 238 (1983).

36. *Navarette v. California*, 572 U.S. 393, 396–97 (2014).

Satisfying the Court's evidentiary standards for a traffic stop through officer observation is remarkably easy. Look at any jurisdiction's traffic code and you will find a labyrinth of state and local laws that, taken together, make it essentially impossible for any driver to spend more than a few minutes in a vehicle without committing some violation.<sup>37</sup> As one instructor providing training to police academy recruits explained: "If you are following a car for more than three blocks and you haven't found a violation to stop it for, then you just aren't looking."<sup>38</sup> While the majority of traffic tickets are issued for speeding,<sup>39</sup> traffic laws also require adherence to rules related to vehicle registration,<sup>40</sup> maintenance (e.g., working headlights and taillights),<sup>41</sup> operation (e.g., seat belt requirements),<sup>42</sup> and amenability to surveillance (e.g., limitations on window tinting).<sup>43</sup> Any time an officer observes one of these violations, the choice to engage in a traffic stop is constitutionally valid.

But traffic enforcement is not limited to officer observations of an offense. Traffic codes also contain requirements less amenable to immediate visual inspection, such as the requirement that a driver have a valid license<sup>44</sup> or carry insurance.<sup>45</sup> If an officer conducts a license plate check and determines that the person listed as the registered owner of the car does not have a valid license, the officer may pull the motorist over—whether that motorist is the owner of the vehicle or not—so long as "the officer lacks information negating an inference that the owner is the driver of the vehicle."<sup>46</sup> This kind of enforcement is becoming increasingly easy, as departments equip patrol cars with automated

37. DEVON W. CARBADO, UNREASONABLE: BLACK LIVES, POLICE POWER, AND THE FOURTH AMENDMENT 82 (2002) [hereinafter CARBADO, UNREASONABLE] (listing examples).

38. Randy Petersen, *Let's Reconsider Traffic Reinforcement*, RIGHT ON CRIME (Jan. 17, 2019), <http://rightoncrime.com/2019/01/lets-reconsider-traffic-enforcement/> [<https://perma.cc/62XF-4PS5>]; see also Gross & Barnes, *supra* note 28, at 671 (quoting a California Highway Patrol officer: "The vehicle code gives me fifteen hundred reasons to pull you over"); Nathaniel Cary, *Inside Look: How SC Cops Swarm I-85 and I-26, Looking for 'Bad Guys,'* GREENVILLE NEWS, <https://www.greenvilleonline.com/in-depth/news/2019/02/03/operation-rolling-thunder-sc-civil-forfeiture-interstate-95-interstate-26/2458314002/> [<https://perma.cc/4C6F-93ZV>] (last updated Apr. 22, 2020, 6:32 PM) [hereinafter Cary, *Inside Look*] ("'Nearly everyone does something illegal if you follow them long enough,' a deputy explains as he points out small violations while driving his unmarked car along I-85.").

39. CHRISTINE EITH & MATTHEW R. DUROSE, U.S. DEP'T OF JUST., CONTACTS BETWEEN POLICE AND THE PUBLIC, 2008, at 8 tbl.10 (2011), <https://bjs.ojp.gov/content/pub/pdf/cpp08.pdf> [<https://perma.cc/UQG3-HQEC>].

40. *E.g.*, CAL. VEH. CODE § 4000(a)(1) (Westlaw through urgency legislation through Ch. 1 of 2023 Reg. Sess.).

41. *E.g.*, NEB. REV. STAT. § 60-6.219 (2022).

42. *E.g.*, WASH. REV. CODE § 46.61.688 (2022).

43. *E.g.*, FLA. STAT. § 316.2953 (2022).

44. *E.g.*, OHIO REV. CODE § 4510.12 (LEXIS through File 1 of the 135th Gen. Assemb. (2023–2024)).

45. *E.g.*, 23 VT. STAT. ANN. § 800 (LEXIS through Act No. 10 and Municipal Act No. M-1 of the 2023 Sess.).

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

license plate scanners that can more quickly and easily scan each license plate an officer passes.<sup>47</sup>

Whether due to an observed violation or another form of surveillance, once stopped, the officer has the authority to issue a ticket for the offense that triggered the stop and any other violations noticed during the course of the stop.<sup>48</sup> For example, in the case of Daunte Wright—who was shot and killed during a traffic stop in Brooklyn Center, Minnesota—the officer first noticed that he had failed to display vehicle registration tabs on his car, and then upon approaching the car noticed a separate violation for having an air freshener hanging from his rearview mirror, both of which were offenses that could be ticketed.<sup>49</sup>

Whether for one offense or many, traffic ticket “fines” are frequently made up of multiple components: base fines, surcharges, and fees.<sup>50</sup> Base fines for minor traffic offenses typically range between \$25 and \$500,<sup>51</sup> though they can be in the thousands of dollars for more serious offenses, such as intoxicated driving.<sup>52</sup> In some jurisdictions, base fines can be subject to multipliers for repeat offenses.<sup>53</sup> In many states, lawmakers have added one or more surcharges (also frequently called assessments) on to traffic ticketing in an effort to raise funds for programs that often have little to do with the underlying traffic

47. Ella Fassler, *Oklahoma Quietly Launches a Mass Surveillance Program To Track Uninsured Drivers*, ONEZERO (Apr. 7, 2021), <https://onezero.medium.com/oklahoma-quietly-launched-a-mass-surveillance-program-to-track-uninsured-drivers-471bb4e5701a> [<https://perma.cc/V5LC-MW5B>].

48. Woods, *Policing*, *supra* note 30, at 676–77.

49. See *What To Know*, *supra* note 5 and accompanying text; MINN. STAT. § 169.71 (2022) (prohibiting hanging items from a rearview mirror); *id.* § 169.79 (prohibiting driving a vehicle without displaying valid registration tabs).

50. Economic sanctions are at times difficult to categorize as either a fine, surcharge, or fee. For example, Georgia imposes a “Super Speeder Fee” for those who drive eighty-five miles per hour or more on a road or highway or seventy-five miles per hour or more on a two-lane road or highway in the amount of \$200 in addition to other fines. GA. CODE ANN. § 40-6-189(b) (LEXIS through Acts 2023, No. 23-20 of the 2023 Sess.). Despite its nominal designation, there is no meaningful distinction between that “fee” and a base fine imposed for the act of speeding. Economic sanctions also include forfeiture, which is discussed separately *infra* Section I.B.

51. *E.g.*, MINN. JUD. BRANCH, 2021 STATE PAYABLES LIST: TRAFFIC/CRIMINAL 17 (2021), [https://www.mncourts.gov/mncourtsgov/media/scao\\_library/Statewide%20Payables/2021-Traffic-Criminal-Payables-List.pdf](https://www.mncourts.gov/mncourtsgov/media/scao_library/Statewide%20Payables/2021-Traffic-Criminal-Payables-List.pdf) [<https://perma.cc/N85X-C5Z5>]; MINN. STAT. § 260B.235(4) (limiting fines for juvenile cases to \$100); MINN. STAT. § 169.999 (setting the penalty for certain administrative violations at \$60); GA. CODE ANN. § 40-6-1 (LEXIS) (setting speeding fines at up to \$500).

52. *E.g.*, MINN. STAT. § 169A.276(a) (setting the maximum fine for first degree driving while impaired at \$14,000). *But see* GA. CODE ANN. § 40-6-10(b) (LEXIS) (setting fine for failure to provide proof of insurance up to \$1,000).

53. *E.g.*, DIV. OF MOTOR VEHICLES, N.H. DEP’T OF SAFETY, UNIFORM FINE SCHEDULE 1–2 (2019), <https://www.dmv.nh.gov/sites/g/files/ehbemt416/files/inline-documents/dsmv428.pdf> [<https://perma.cc/JAV2-GQZ5>] (showing that fines and assessments double for a second offense in most cases); 625 ILL. COMP. STAT. ANN. 5/11-501(c)–(d) (Westlaw P.A. 103-1 of the 2023 Reg. Sess.) (setting fines ranging from \$500 to \$25,000 depending on the number of prior driving while intoxicated offenses and whether or not a child was in the vehicle).



violation.<sup>54</sup> Like base fines, surcharges can range from a few dollars into the thousands,<sup>55</sup> or may serve as a multiplier for base fines, and therefore often significantly elevate the overall fine amount. For example, had officers ticketed Wright for the failure to display registration tabs, his base fine would have been \$30 and the air freshener violation would have carried a separate \$40 base fine.<sup>56</sup> But he would have also been required to pay an additional \$75 as a flat surcharge for his offenses, more than doubling the amount of the two base fines.<sup>57</sup> Further, lawmakers in many jurisdictions have also added a wide variety of administrative fees. While those subjected to pay such fees experience them as punishment, fees are nominally designed to recoup system costs for investigating, prosecuting, or punishing a case—things like courts costs,<sup>58</sup> indigent defense fees,<sup>59</sup> traffic education programs,<sup>60</sup> or the ongoing use of ignition interlock devices.<sup>61</sup>

For those who can pay the base fines, surcharges, and fees when imposed, the story of traffic ticketing ends here; for those who cannot, a system of debt enforcement kicks in, setting the stage for future traffic enforcement. If a person is unable to pay in full at the initial due date, jurisdictions often impose interest, collections costs, or periodic payment processing fees incurred for each effort made to extract oneself from traffic ticket debt.<sup>62</sup> Additional fees for late or missed payments can again expand, and in some jurisdictions double or more, existing debt.<sup>63</sup> People may be sentenced to probation if they cannot pay

54. *E.g.*, *Filing Fees and Court Costs*, NEB. JUD. BRANCH (July 1, 2022), <https://supremecourt.nebraska.gov/rules/administrative-policies-schedules/fees> [<https://perma.cc/Y5MC-DCDQ>] (detailing a variety of fees added to traffic tickets to fund judicial retirement, civil legal aid and indigent defense, law enforcement training, and a variety of court costs).

55. *E.g.*, MINN. STAT. § 169A.285 (allowing up to \$1,000 in penalty assessments for driving under the influence offenses).

56. MINN. JUD. BRANCH, *supra* note 51, at 2, 17 (regarding violations of MINN. STAT. §§ 169.71 and 169.79); *supra* note 49 and accompanying text.

57. *See* MINN. JUD. BRANCH, *supra* note 51, at 1; MINN. STAT. § 357.021(6)(a) (mandating the imposition of a \$75 surcharge in all criminal and traffic cases and a \$12 surcharge in all parking cases).

58. *E.g.*, WIS. STAT. § 977.075 (2021–2022).

59. *See* Peralta & Corley, *supra* note 1 (documenting a \$75 copay charged to Philando Castile for applying for a public defender on August 10, 2011).

60. *E.g.*, 625 ILL. COMP. STAT. ANN. 5/11-208.3(g) (Westlaw through P.A. 103-1 of the 2023 Reg. Sess.) (imposing a \$25 traffic education program fee).

61. *E.g.*, *id.* 5/11-501.01(e) (Westlaw) (requiring the use of ignition interlock for no less than five years at \$30 per month); *see also id.* 5/11-501.01(j) (imposing a \$500 fee for each blood test required following a conviction for driving under the influence).

62. *E.g.*, Emily Reina Dindial & Ronald J. Lampard, *When a Traffic Ticket Costs \$13,000*, N.Y. TIMES (May 27, 2019), <https://www.nytimes.com/2019/05/27/opinion/drivers-license-suspension-fees.html> [<https://perma.cc/MEM9-HT9E> (dark archive)] (describing the case of Leah Jackson, who received a \$135 ticket for turning left at a red light, but due to additional penalties imposed over time stemming from an inability to pay ultimately owed economic sanctions totaling \$13,000).

63. *See* John D. Harden, *D.C. Parking, Traffic Tickets Snowball into Financial Hardships*, WASH. POST (Aug. 6, 2021, 8:00 AM), <https://www.washingtonpost.com/dc-md-va/2021/08/06/dc-traffic-parking-tickets-black-neighborhoods/> [<https://perma.cc/SN3V-NF8N> (dark archive)].

immediately, adding on supervision and a host of other fees.<sup>64</sup> Some jurisdictions add to the pressure by impounding vehicles in response to nonpayment, which can both add hundreds or even thousands of dollars in related fees and increase the fiscal instability of debtors suddenly without transportation.<sup>65</sup>

Importantly, this ongoing and expanding debt, and collections practices related to it, creates what Devon Carbado has called a “secondary market” for ticketing—and law enforcement violence—by creating opportunities for additional traffic stops against those unable to pay in full.<sup>66</sup>

First, many jurisdictions respond to nonpayment of economic sanctions by suspending the debtor’s driver’s license,<sup>67</sup> a policy resulting in license suspensions for approximately eleven million people as of 2021.<sup>68</sup> If a person drives during that period of suspension—which many people must in order to reach employment, take their children to school, attend medical appointments, and the like<sup>69</sup>—that driving opens the motorist up to new opportunities for an officer to detain them in a new traffic stop and ticket for the new offense of driving with a suspended license.<sup>70</sup>

For an exemplar of how the loss of a license can lead to a cycle of traffic stops→economic sanctions→more traffic stops, one need look no farther than Philando Castile. An analysis of court records by NPR shows that Minneapolis

64. See Nick Barber, *In Small-Town Georgia, a Broken Taillight Can Lead to Spiraling Debt*, IN THESE TIMES (July 18, 2022), <https://inthesetimes.com/article/small-town-georgia-predatory-private-probation-debt> [<https://perma.cc/83J7-SDXP>].

65. See, e.g., BRIAN D. KELLY, INST. FOR JUST., DOES FORFEITURE WORK?: EVIDENCE FROM THE STATES 6–7 (2021) (describing a Michigan case in which towing and impoundment fees reached \$1,800); John Archibald, *Police in This Tiny Alabama Town Suck Drivers into Legal ‘Black Hole,’* ADVANCE LOCAL, <https://www.al.com/news/2022/01/police-in-this-tiny-alabama-town-suck-drivers-into-legal-black-hole.html> [<https://perma.cc/3HWQ-24HQ>] (last updated Jan. 20, 2022, 3:00 PM) (regarding Brookside, Alabama, police significantly increasing—by 1,478 percent in two years—the use of towing and impoundment to generate revenues); see also Anne Nordberg, Jaya B. Davis, Sara R. Leat, Stephen Mattingly, Craig Keaton & Michael B. Mitchell, *Transportation Barriers to Successful Reentry Among Returning Citizens: A Qualitative Interpretive Meta-Synthesis*, 101(4) PRISON J. 488, 489–91, 496–502 (2021).

66. Carbado, *Predatory Policing*, *supra* note 29, at 561–62.

67. Veronica Goodman, *Driver’s License Suspensions and the Debt Trap*, GOVERNING (June 1, 2021), <https://www.governing.com/now/drivers-license-suspensions-and-the-debt-trap> [<https://perma.cc/WEE4-EDU6>] (reporting that at the time of publication, thirty-five states and Washington, D.C., suspended drivers licenses over unpaid economic sanctions).

68. Joni Hirsch & Priya S. Jones, *Driver’s License Suspension for Unpaid Fines and Fees: The Movement for Reform*, 54 U. MICH. J.L. REFORM 875, 876 (2021).

69. See Sarah Stillman, *Get Out of Jail, Inc.*, NEW YORKER (June 16, 2014), <https://www.newyorker.com/magazine/2014/06/23/get-out-of-jail-inc> [<https://perma.cc/6NR5-AGUK>].

70. *Driving While Revoked, Suspended, or Otherwise Unlicensed: Penalties by State*, NAT’L CONF. STATE LEGISLATURES (July 7, 2021), <https://www.ncsl.org/research/transportation/driving-while-revoked-suspended-or-otherwise-unli.aspx> [<https://perma.cc/E67F-WQ48>]; see *supra* notes 44–47 (regarding methods for stopping unlicensed motorists).

police stopped Castile on July 15, 2002, for a violation of his learner's permit, for which his license was suspended.<sup>71</sup> Over the course of the next six years, police stopped Castile for driving with a suspended or revoked license at least ten times.<sup>72</sup> While in some cases those charges were dismissed, for those offenses and other minor traffic violations (police stopped him at least forty-six times in total), Castile ultimately paid thousands of dollars in economic sanctions before an officer shot him to death during yet another traffic stop.<sup>73</sup>

Second, nonpayment of economic sanctions stemming from traffic tickets may trigger another justification for detaining a motorist: the existence of an arrest warrant.<sup>74</sup> Courts may issue arrest warrants for the failure to pay traffic tickets,<sup>75</sup> or for the failure to appear in court in relation to unpaid tickets—which one may do for a variety of reasons, including that an impounded vehicle or suspended driver's license has left them without a means of getting to the court house<sup>76</sup> or out of fear of arrest for nonpayment.<sup>77</sup> There is no publicly-available comprehensive national database that tracks the number of warrants issued for nonpayment of economic sanctions,<sup>78</sup> but existing analyses of certain jurisdictions suggest that the practice may be widespread, affecting millions of Americans.<sup>79</sup> Further, the execution of an arrest warrant may carry with it

71. Peralta & Corley, *supra* note 1.

72. *Id.*

73. *Id.*

74. *Cf.* Utah v. Strieff, 136 S. Ct. 2056, 2060 (2016).

75. See Sharon Brett, *Reforming Monetary Sanctions, Reducing Police Violence*, 4 UCLA CRIM. JUST. L. REV. 17, 36–42 (2020). The issuance of arrest warrants for nonpayment is arguably unconstitutional. See Beck v. Elmore Cnty. Magis. Ct., 489 P.3d 820, 831–36 (Idaho 2021) (granting a writ of prohibition for the issuance of a warrant for nonpayment of fines on the grounds that the court clerk's affidavit did not establish probable cause of willful nonpayment in violation of the Fourth Amendment and that the failure to conduct an ability to pay analysis in advance violated due process, among other reasons).

76. *E.g.*, Elizabeth Flock, *How Driver's License Suspensions in New Mexico Drive People Deeper into Debt*, PBS (Jan. 29, 2021, 4:11 PM), <https://www.pbs.org/newshour/nation/how-drivers-license-suspensions-in-new-mexico-drive-people-deeper-into-debt> [<https://perma.cc/QH5N-RJYW>].

77. Michele Cadigan & Gabriela Kirk, *On Thin Ice: Bureaucratic Processes of Monetary Sanctions and Job Insecurity*, 6 RUSSELL SAGE FOUND. J. SOC. SCIS. 113, 124 (2020).

78. Even some states lack databases sufficient to track the issuance of warrants within those jurisdictions. See Woods, *Traffic Without the Police*, *supra* note 11, at 1533–34 & n.331.

79. *E.g.*, TEX. APPLESEED & TEX. FAIR DEF. PROJECT, END JAIL TIME FOR UNPAID FINES IN TEXAS 1 (2017), [https://www.texasappleseed.org/sites/default/files/Infographic\\_EndJailTimeFines\\_2017.pdf](https://www.texasappleseed.org/sites/default/files/Infographic_EndJailTimeFines_2017.pdf) [<https://perma.cc/FS4K-MAAV>] (finding that in 2015, Texas courts issued 754,000 arrest warrants related to nonpayment); see also CIV. RIGHTS DIV., U.S. DEP'T OF JUST., INVESTIGATION OF THE NEW ORLEANS POLICE DEPARTMENT 29 (2011), [https://www.justice.gov/sites/default/files/crt/legacy/2011/03/17/nopd\\_report.pdf](https://www.justice.gov/sites/default/files/crt/legacy/2011/03/17/nopd_report.pdf) [<https://perma.cc/8W3Y-GDYS>] (finding that in 2009, the New Orleans Police Department “made nearly 60,000 arrests, of which about 20,000 were of people with outstanding traffic or misdemeanor warrants from neighboring parishes for infractions such as unpaid tickets”).

additional fees, which, added on to the preexisting debt, make full payment less likely and increase the risk of future traffic ticketing.<sup>80</sup>

### B. *Pretextual Financing*

Understanding the potential consequences of moving away from traditional approaches to traffic enforcement requires an examination of pretextual policing and the opportunities for revenue generation it creates.<sup>81</sup> Both pretextual traffic enforcement and forfeiture practices—by which law enforcement seize and seek to retain cash or property—vary across jurisdictions, or even amongst law enforcement agencies within a given jurisdiction, but it is clear that traffic-based forfeitures are prevalent. For example, investigative reporters reviewed cases filed in 2016 from four Texas counties under its state forfeiture statutes, finding that approximately two out of every five cases began with a traffic stop.<sup>82</sup> Further, while traffic stops may be used as a pretext for investigating any number of offenses, the focus here will be on how law enforcement has made the traffic code a weapon in and key financing mechanism for the war on drugs.<sup>83</sup>

The mid-1980s serve as a keystone for law enforcement’s use of pretextual traffic stops as a drug interdiction method. First, the Drug Enforcement Administration (“DEA”) launched Operation Pipeline, through which it enlisted state and local law enforcement to serve on the frontlines of its drug

80. For example, in Pennsylvania the fee for the execution of an arrest warrant is \$25 for each docket number, a \$2.50 return of service fee, plus the cost of the law enforcement officer’s mileage. 44 PA. COM. STAT. § 7161(g)(1) (2022). If the person is able to pay off any overdue economic sanctions in full at the moment the warrant is executed, the matter is resolved; if not, the officer is directed to take the person immediately to the court for a bench warrant hearing. PA. COURT RULE 431(C). That results in an additional fee of \$5 for taking the person into custody, \$5 for conveying the person to the courthouse, and \$13 for the hearing itself. 44 PA. COM STAT. § 7161(g)(2)–(4).

81. See Woods, *Traffic Without the Police*, *supra* note 11, at 1491–92 (explaining the importance of pretextual policing to understanding the transfer of traffic enforcement to civilian units).

82. Jolie McCullough, Acacia Coronado & Chris Essig, *Texas Police Can Seize Money and Property with Little Transparency. So We Got the Data Ourselves.*, TEX. TRIB. (June 7, 2019), <https://apps.texastribune.org/features/2019/texas-civil-asset-forfeiture-counties-harris-webb-reeves-smith/> [https://perma.cc/3NE7-G7L6].

83. Forfeitures are not the only economic sanctions that can result from drug interdiction efforts beginning with pretextual traffic stops. A conviction for an offense discovered during the course of the stop may result in its own fines, surcharges, and fees, which can run into the thousands, or even millions, of dollars. *E.g.*, 21 U.S.C. §§ 841(b), 844(a), 860(a). But the imposition of such economic sanctions requires a criminal conviction and comes with no guarantee of collection, unlike civil forfeiture in which the cash or property is already under government control. Additionally, forfeitures may be a component of traffic code enforcement—attorneys for the state of Indiana recently contended that forfeiture of a vehicle would be appropriate for the offense of speeding. Transcript of Oral Argument at 43–44, *Timbs v. Indiana*, 139 S. Ct. 682 (2019) (No. 17-1091). In the traffic code enforcement context, however, forfeitures of vehicles are primarily employed for serious traffic offenses, such as driving while intoxicated. *E.g.*, MICH. COMP. LAWS § 257.625n (2022).

interdiction efforts.<sup>84</sup> A key component of the program involved training officers across the country to use detentions for minor traffic violations as opportunities to develop suspicion and obtain evidence of drug-related (and other) crimes.<sup>85</sup>

At the same time the DEA began its traffic-based collaboration with state and local law enforcement, Congress magnified law enforcement power during such interactions by significantly expanding the ability to forfeit cash and property associated with purported drug offenses. Though the use of forfeitures dates back to the earliest federal laws,<sup>86</sup> in a series of laws passed beginning in 1970<sup>87</sup> and culminating with the Comprehensive Drug Abuse Prevention and Control Act of 1984, Congress continually expanded law enforcement authority to forfeit direct crime proceeds (money obtained through criminal activity), indirect crime proceeds (property purchased with direct crime proceeds), and instrumentalities (personal or real property used in conjunction with criminal activity, such as a vehicle used to transport drugs) without the prerequisite of a conviction.<sup>88</sup> These forfeiture methods, seen by lawmakers and law enforcement as important weapons in the drug war, were shortly thereafter mimicked or revived in local and state statutes.<sup>89</sup>

These enhanced options for civil forfeitures (also frequently called “civil asset forfeitures” or “administrative forfeitures”) rest on the legal fiction that it is the *rem*—in other words, the cash or property itself—that is the wrongdoer.<sup>90</sup> This fiction results in an inversion of normal criminal processes. In criminal

84. See DRUG ENFORCEMENT ADMINISTRATION, A TRADITION OF EXCELLENCE 1973–2008, at 51 (2008); see also Gross & Barnes, *supra* note 28, at 671–72.

85. See David A. Harris, *Driving While Black: Racial Profiling on Our Nation's Highways*, ACLU (June 1999), <https://www.aclu.org/report/driving-while-black-racial-profiling-our-nations-highways> [<https://perma.cc/XCN2-XEEF>]; see also Charles R. Epp, Steven Maynard-Moody & Donald Haider-Markel, *Beyond Profiling: The Institutional Sources of Racial Disparities in Policing*, 77 PUB. ADMIN. REV. 168, 171 (2017); Robert O'Harrow, Michael Sallah & Steven Rich, *Police Intelligence Targets Cash: Reports on Drivers, Training by Firm Fueled by Law Enforcement Aggressiveness*, WASH. POST (Sept. 7, 2014), <https://www.washingtonpost.com/sf/investigative/2014/09/07/police-intelligence-targets-cash/> [<https://perma.cc/J9SV-A6GP> (dark archive)] [hereinafter O'Harrow et al., *Police Intelligence Targets Cash*].

86. *E.g.*, Act of July 31, 1789, ch. 5, § 36, 1 Stat. 29, 47–48.

87. Comprehensive Drug Abuse Prevention and Control Act of 1970, Pub. L. No. 91-513, 84 Stat. 1236 (codified as amended in scattered sections of 21 and 42 U.S.C.); Psychotropic Substances Act of 1978, Pub. L. No. 95-633, 92 Stat. 3768 (codified as amended in scattered sections of 21 and 42 U.S.C.).

88. See 21 U.S.C. § 881(a) (1984). These expansions of federal civil forfeiture power were passed as amendments to the Comprehensive Crime Control Act, see *United States v. Dana Ave.*, 239 F.3d 78, 83 n.4 (1st Cir. 2001), and the Comprehensive Drug Abuse Prevention Act, see *United States v. Coleman Com. Carrier, Inc.*, 232 F. Supp. 2d 201, 203 n.4 (S.D.N.Y. 2002); see also Eric Blumenson & Eva Nilsen, *Policing for Profit: The Drug War's Hidden Economic Agenda*, 65 U. CHI. L. REV. 35, 44–56 (1998) (describing the development of modern civil forfeiture laws and practices).

89. See Bruce L. Benson, *Escalating the War on Drugs: Causes and Unintended Consequences*, 20 STAN. L. & POL'Y REV. 293, 293–94 (2009).

90. *E.g.*, *United States v. 154 Manley Rd.*, 4 F. Supp. 2d 65, 67–68 (D.R.I. 1998) (discussing the *in rem* fiction).

matters, the government must prove guilt beyond a reasonable doubt.<sup>91</sup> In civil forfeiture cases, the standard for proving the relationship between a seized item and alleged criminal activity is in most jurisdictions a mere preponderance of the evidence.<sup>92</sup> And in the majority of states and at the federal level, when the government meets that reduced standard, the burden shifts to the property owner to prove that the money or property is not forfeitable or that the owner is “innocent” of the alleged criminal activity.<sup>93</sup>

In addition to expanding the power of federal law enforcement to employ civil forfeitures, lawmakers also increased law enforcement’s ability to directly profit from such activities. In 1986, the U.S. Department of Justice created the Equitable Sharing program, under which the federal government may “adopt” seizures of cash or property made by local and state law enforcement officers. An adoption may occur if the alleged criminal offense could have been charged under federal law or if state or local law enforcement assists with a seizure while participating in a federal operation.<sup>94</sup> The benefit of the program to the federal government is that it retains a percentage of the value of the forfeited items.<sup>95</sup> The benefit to state and local law enforcement officials is that the procedural requirements of the federal program are often more favorable to the ability of

91. *In re Winship*, 397 U.S. 358, 364 (1970).

92. 18 U.S.C. § 983(c). A majority of states employ a preponderance standard, e.g., IND. CODE § 34-24-1-4(a) (2022), though standards of proof vary, e.g., FLA. STAT. § 932.704(8) (2022) (beyond a reasonable doubt); MASS GEN. LAWS. ch. 94C, § 47(d) (Westlaw through Chs. 1, 3 and 4 of the 2023 1st Ann. Sess.) (probable cause); NEV. REV. STAT. § 179.1173(4) (2022) (clear and convincing). Four states—Maine, Nebraska, New Mexico, and North Carolina—require that forfeitures be subject to full protections of criminal proceedings. Nick Sibilla, *Maine Becomes Fourth State To End Civil Forfeiture*, INST. FOR JUST. (July 13, 2021), <https://ij.org/press-release/maine-becomes-fourth-state-to-end-civil-forfeiture/> [<https://perma.cc/M65F-ZQF2>].

93. Opportunities to challenge forfeitures vary across jurisdictions. Typically, “innocent” ownership centers on questions around the property owner’s knowledge of or consent to the alleged criminal activity or whether the owner took reasonable steps to prevent the property’s use in the criminal act. E.g., KY. REV. STAT. ANN. § 218A.410(1)(j) (Westlaw through laws effective Apr. 4, 2023 and the Nov. 8, 2022 election); 18 U.S.C. § 983(c)–(d). Though much rarer, forfeiture systems may also include consideration of whether forfeited cash or property is disproportionate to the extent to which it is used in the underlying offense. 18 U.S.C. § 983(g) (placing the burden on claimant to show disproportionality); UTAH CODE ANN. § 24-4-113 (LEXIS through 2022 Third Spec. Sess. of the 64th Leg.) (placing the burden on the prosecution to demonstrate proportionality). I have previously written about the constitutional issues involved in setting burdens to raise a claim, of production, and of persuasion, in relation to the Eighth Amendment’s Excessive Fines Clause. See generally Colgan, *Burdens*, *supra* note 24.

94. E.g., 18 U.S.C. § 981(e)(2); 21 U.S.C. § 881(e)(1)(A), (e)(3); OFFICE OF THE ATT’Y GEN., U.S. DEP’T OF JUST., ORDER NO. 3946-2017, FEDERAL FORFEITURE OF PROPERTY SEIZED BY STATE AND LOCAL LAW ENFORCEMENT AGENCIES (2017), <https://www.justice.gov/criminal-mlars/file/985631/download> [<https://perma.cc/HC42-E46A>].

95. Originally, the federal government retained up to ten percent of the forfeited cash or property’s value, but the statute was later amended to allow it to retain up to twenty percent. See U.S. DEP’T OF JUST. & U.S. DEP’T OF THE TREAS., GUIDE TO EQUITABLE SHARING FOR STATE, LOCAL, AND TRIBAL LAW ENFORCEMENT AGENCIES 9 (2018), <https://www.justice.gov/criminal-afmls/file/794696/download> [<https://perma.cc/25LW-SJ8F>].

the government to complete the forfeiture than under state or local law.<sup>96</sup> Further, though today in the majority of jurisdictions law enforcement agencies are allowed to keep for themselves all or most revenue from civil forfeitures, in some jurisdictions, forfeitures accrue to a state's general fund or other specialized account.<sup>97</sup> But because the federal government mandates that the proceeds of all forfeitures processed through the Equitable Sharing program be returned to the participating law enforcement agencies for their own use, the program also benefits state and local law enforcement by providing a means to circumvent their jurisdiction's budgeting restrictions.<sup>98</sup>

The design of the federal-state-local drug interdiction effort was self-perpetuating in a variety of ways. Though joint drug task forces predate Operation Pipeline and the federal expansion of forfeiture availability,<sup>99</sup> forfeiture revenues returned to state and local agencies provided the ability to cover operational costs associated with task force participation, including the weapons, vehicles, and military-grade equipment frequently used in interdiction efforts.<sup>100</sup> Further, training programs for traffic-based drug interdiction were not only offered directly by the federal government, but also through the development of a cottage industry of private contractors who trained tens of thousands of officers, many of whom went on to become trainers themselves, an ongoing ripple effect that continues today.<sup>101</sup>

Unsurprisingly, by the late 1980s and early 1990s, aided by the breadth of traffic codes and the forgiving nature of the Supreme Court's Fourth Amendment doctrine, law enforcement officers across the country were trained

96. Benson, *supra* note 89, at 302–05.

97. Compare, e.g., ALA. CODE § 20-2-93(s) (Westlaw through Acts 2023-1 through 2023-3 of the 2023 First Spec. Sess.; through Acts 2023-43 through 2023-52 and Acts 2023-83 through 2023-86 of the 2023 Reg. Sess.) (requiring forfeiture revenue be distributed to law enforcement), with OR. REV. STAT. § 131A.365(3) (2021) (distributing a portion of forfeiture funds to the Department of Early Learning and Care Fund and a college tuition savings program), and N.M. STAT. ANN. § 22-8-32(A)(1) (Westlaw through Ch. 3 of the 2023 First Reg. Sess. of the 56th Leg. (2023)) (requiring all forfeiture revenue to be placed in the state's school fund).

98. For a discussion of how the retention of forfeiture proceeds is “accountability-depleting” because it allows law enforcement to self-fund outside of the constraints of budget setting by state and local executive bodies, see Rachel A. Harmon, *Federal Programs and the Real Costs of Policing*, 90 N.Y.U. L. REV. 870, 951–52, 955 (2015).

99. *State & Local Task Forces*, U.S. DRUG ENF'T ADMIN., <https://www.dea.gov/operations/state-and-local-task-forces> [<https://perma.cc/S8YR-KMG4>] (describing a pilot task force with state and local law enforcement in New York).

100. E.g., Harmon, *supra* note 98, at 951–52; see also *infra* notes 385–86 and accompanying text (regarding purchases made with forfeiture revenues).

101. E.g., John Burnett, *Deputy Has Midas Touch in Asset Seizures*, NPR (June 17, 2008, 11:46 AM), <https://www.npr.org/templates/story/story.php?storyId=91582619> [<https://perma.cc/ACJ2-DK2U>] [hereinafter Burnett, *Deputy Has Midas Touch*] (regarding Barbour County, Alabama Deputy Sheriff Eddie Ingram, who holds training academies in which he has trained approximately 15,000 to 20,000 officers); O'Harrow et al., *Police Intelligence Targets Cash*, *supra* note 85 (describing the private company, Desert Snow, which trained approximately 25,000 officers).

to convert minor traffic offenses into drug investigations that may yield forfeiture proceeds. As noted above, traffic codes are so all-encompassing that it is effectively impossible to drive for even a short distance without violating the law.<sup>102</sup> The Court has blessed the use of those myriad traffic violations as pretext for drug interdiction,<sup>103</sup> and therefore so long as the officer has probable cause (again, a fair probability) that a traffic offense has occurred, or reasonable suspicion (less than probable cause) that a traffic offense is ongoing,<sup>104</sup> the officer effectively has a license to go “fishing.”<sup>105</sup> As one popular drug interdiction training book, published just before the Court affirmatively approved of pretextual stops, explained:

On-view crime is great, if you have it. But *usually* you’ll establish PC in the most common and dependable way for Criminal Patrol: Whether you’re initially suspicious about the vehicle you’ve spotted or not, you’ll use a *traffic infraction* or *equipment violation* as your legal basis for pulling it over. This will be your humble but vital justification for making contact to see what more might be developed. . . .

[T]he Court sanctioned your becoming suspicious about a vehicle first . . . and then finding another unrelated but legal reason to stop it. If your actions are objectively valid—in other words, if you have probable cause to believe that a traffic or other violation has actually taken place—your true motivation for wanting to effect a stop doesn’t matter.<sup>106</sup>

Once stopped, drug interdiction officers are trained to visually observe the vehicle and its occupants for anything suspicious, to engage in a dialogue with the occupants to develop further suspicion, and to search the vehicle and its

102. See *supra* notes 37–45 and accompanying text. Ironically, officers might become suspicious upon noticing that a driver is exhibiting “scrupulous obedience to traffic laws,” suggesting an attempt not to draw attention. See Harris, *supra* note 85; see also Burnett, *Deputy Has Midas Touch*, *supra* note 101 (regarding a drug interdiction officer who looks for people driving at or below the speed limit).

103. Whren v. United States, 517 U.S. 806, 808–09 (1996) (holding that even if officers stopped a vehicle on a hunch that its occupants were involved in drug crimes, the stop was in keeping with the Fourth Amendment so long as a reasonable officer in the circumstances would have probable cause of a traffic violation).

104. See *supra* notes 34–36 and accompanying text.

105. Cary, *Inside Look*, *supra* note 38 (quoting Spartanburg, South Carolina, Sheriff’s Corporal Danny Blackwell describing the highway interdiction program, Operation Rolling Thunder: “Kinda like fishing”); State v. Robinette, 653 N.E.2d 695, 699 (Ohio 1995), *overruled by* Ohio v. Robinette, 519 U.S. 33, 40 (1996) (“While the legality of consensual encounters between police and citizens should be preserved, we do not believe that this legality should be used by police officers to turn a routine traffic stop into a fishing expedition for unrelated criminal activity.”).

106. CHARLES REMSBERG, TACTICS FOR CRIMINAL PATROL: VEHICLE STOPS, DRUG DISCOVERY & OFFICER SURVIVAL 68 (1995) (emphasis in original); see also CARBADO, UNREASONABLE, *supra* note 37, at 83 (quoting a California Highway Patrol Officer as stating: “After [the Supreme Court approved pretextual traffic stops] the game was over. We won”); *id.* (quoting a representative of the International Association of Chiefs of Police as describing traffic stops as a “valuable tool” for “sniff[ing] out” other crime).



occupants for evidence of drug crimes<sup>107</sup>—which, again, the Court has given them wide authority to do. During a traffic stop officers may check the driver’s license, registration, and proof of insurance, and—for reasons the Court has never fully explained—run a warrants check.<sup>108</sup> Officers also may order the vehicle’s occupants out of the car.<sup>109</sup> If the officer has reasonable suspicion that any person is armed with a weapon, the officer may conduct a pat-down of the person,<sup>110</sup> as well as areas in the vehicle within the person’s reach.<sup>111</sup> So long as an encounter remains “consensual,” officers need not tell motorists they have the right to leave,<sup>112</sup> may ask motorists questions,<sup>113</sup> and may use drug-sniffing dogs.<sup>114</sup> Officers may also seek consent to search a vehicle or its occupants without having to inform motorists they can decline,<sup>115</sup> making consent to search likely.<sup>116</sup>

If consent to search the vehicle is not forthcoming, the Court has created a multitude of other ways for interdiction officers to get to that “magic moment.”<sup>117</sup> If the officer has probable cause to believe there is evidence of drug crimes in the vehicle—more on the ease of meeting that standard below—then the officer may search the vehicle and its contents, including a purse, backpack, or the like, whether such items belong to the driver or a passenger of the

107. *E.g.*, REMSBERG, *supra* note 106, at 165–210.

108. *Rodriguez v. United States*, 575 U.S. 348, 355–57 (2015) (holding that the detention of a person during a traffic stop after its processing in order to bring in a drug dog violated the Fourth Amendment); *see also id.* at 363–64 (Thomas, J., dissenting) (questioning the majority’s approval of running a warrants check during a traffic stop and waiting for a drug dog given that both extend the length of the stop and neither are related to the traffic violation). Protections against warrants checks may exist in some jurisdictions. *See* Chelsia Rose Marcus, *Police Officers May No Longer Hold People To Check for Warrants*, N.Y. TIMES (Dec. 16, 2022), <https://www.nytimes.com/2022/12/16/nyregion/nypd-warrant-settlement.html> [<https://perma.cc/4V7Q-U38V> (dark archive)] (regarding the settlement of a civil rights suit, which prohibits New York City police officers from prolonging a stop to conduct a warrants check).

109. *See Maryland v. Wilson*, 519 U.S. 408, 414–15 (1997); *Pennsylvania v. Mimms*, 434 U.S. 106, 111 (1977).

110. *See Arizona v. Johnson*, 555 U.S. 323, 327 (2009).

111. *See Michigan v. Long*, 463 U.S. 1032, 1049–51 (1983).

112. *Ohio v. Robinette*, 519 U.S. 33, 35, 39–40 (1996).

113. *Cf. Florida v. Royer*, 460 U.S. 491, 497–98 (1983) (plurality opinion).

114. *Illinois v. Caballes*, 543 U.S. 405, 408–09 (2005).

115. *See Schneckloth v. Bustamonte*, 412 U.S. 218, 231–33, 247 (1973). State constitutions may provide greater protections. *See State v. Arreola-Botello*, 451 P.3d 939, 949–50 (Or. 2019) (en banc) (holding that requests for consent to search are not reasonably related to traffic stops and so unconstitutionally delay the detention).

116. *See* CHRISTINE EITH & MATTHEW R. DUROSE, U.S. DEP’T OF JUST., NCJ 234599, CONTACTS BETWEEN POLICE AND THE PUBLIC, 2008, at 10 tbl.15 (2011), <https://bjs.ojp.gov/content/pub/pdf/cpp08.pdf> [<https://perma.cc/T5YJ-XPEX>] (finding that during traffic stops occurring in 2008, 57.7% of searches of the driver only, 60.0% of searches of the vehicle only, and 50.8% of searches involving both driver and vehicle were based on consent).

117. REMSBERG, *supra* note 106, at 213.

vehicle.<sup>118</sup> If an officer is concerned that there is insufficient evidence to establish probable cause of drug crimes, the officer has the option of placing the person under arrest for the underlying traffic offense, no matter how minor,<sup>119</sup> and then relying on one of several other exceptions to the warrant requirement to search the vehicle and its occupants.<sup>120</sup>

With a search conducted, officers can now initiate the forfeiture process, seizing cash and property within the vehicle or found on the motorist or passenger—or even the vehicle itself—so long as they have enough evidence to establish probable cause that the seized items are related to criminal activity.<sup>121</sup> If the search uncovers drugs or other contraband—even a miniscule amount of marijuana<sup>122</sup>—then interdiction officers regularly treat the probable cause requirement as satisfied.

The probable cause requirement for seizure to initiate forfeiture proceedings is such a low bar that drug interdiction officers feel empowered to seize cash, property, or vehicles even if no drugs or contraband are found.<sup>123</sup> And in the traffic context, what officers point to as evidence of drug activity for the purposes of establishing probable cause is surprisingly easy to come by.

Officers are trained to look for signs of drug trafficking even before a traffic violation occurs. Officers take into consideration the motorist's route; traveling along a known drug corridor—which is effectively any point between

118. See *California v. Acevedo*, 500 U.S. 565, 579–80 (1991); *Wyoming v. Houghton*, 526 U.S. 295, 307 (1999).

119. See *Atwater v. City of Lago Vista*, 532 U.S. 318, 354–55 (2001) (upholding arrest for a seat belt violation).

120. These exceptions include the search-incident-to lawful-arrest exception, which allows officers to search a vehicle so long as either the arrestee could reasonably gain access to the vehicle during the search or if there is reasonable suspicion that evidence of the crime of arrest is in the vehicle, see *Arizona v. Gant*, 556 U.S. 332, 351 (2009), the inventory exception, which allows the search of an impounded vehicle following arrest, *South Dakota v. Opperman*, 428 U.S. 364, 373–76 (1976), and the forfeiture exception, which allows the search of a vehicle seized to initiate forfeiture proceedings, see *Cooper v. California*, 386 U.S. 58, 60–62 (1967).

121. E.g., KANS. STAT. ANN. § 60-4107 (Westlaw through laws enacted during the 2023 Reg. Sess. of the Kan. Leg. effective on Mar. 16, 2023).

122. E.g., John Burnett, *Cash Seizures by Police Prompt Court Fights*, NPR (June 16, 2008, 2:04 PM), <https://www.npr.org/templates/story/story.php?storyId=91555835> [<https://perma.cc/7LWN-5VAJ>] [hereinafter Burnett, *Cash Seizures*] (describing a case in which a deputy claimed to smell marijuana and to have “observed ‘an untestable’ amount of what appeared to be marijuana on the floorboard” of the car).

123. E.g., EVALUATION & INSPECTIONS DIV. 17-02, U.S. DEP’T OF JUST., REVIEW OF THE DEPARTMENT’S OVERSIGHT OF CASH SEIZURE AND FORFEITURE ACTIVITIES 20–21 (2017) [hereinafter EVALUATION & INSPECTIONS DIV. 17-02], <https://oig.justice.gov/reports/2017/e1702.pdf> [<https://perma.cc/2VYE-H599>] (analyzing a judgmental sample of DEA cases deemed high risk because forfeitures occurred despite the absence of illicit narcotics).

two cities—is suspicious.<sup>124</sup> Further, the Court has approved officers treating as suspicious that a stop occurs in a high crime neighborhood.<sup>125</sup> Therefore, if officers have found drugs during traffic stops in the same area in the past, that serves as a source of suspicion for *any* driver in the area.<sup>126</sup> Further, officers may also radio in a registration check or run a license plate through on-board computer systems in patrol vehicles to determine where the registered owner lives; whether or not the owner is involved in drug crime, living in a neighborhood where drug crimes have occurred renders them suspicious no matter where they are driving at the time of the stop.<sup>127</sup>

Officer suspicion may also be piqued even before a traffic violation in what are known as “whisper stops,” in which an officer relies on a tip from another law enforcement officer who had previously stopped a driver, perhaps even in a different state, with the hopes that the motorist had picked up drugs or cash in the intervening time.<sup>128</sup> In recent years, the private drug interdiction training firm, Desert Snow, has created an online portal known as “Black Asphalt,” upon which officers (who may join for just \$19.95) may post such suspicions for other subscribers to view.<sup>129</sup>

When deciding who to stop, interdiction officers have also long been trained to consider motorists’ race. Dating back to the initiation of the Operation Pipeline training program, officers were explicitly and implicitly trained to treat people of color as appropriate targets for drug-interdiction. Operation Pipeline trainees were told to look for people who wore their hair in

124. See Robert O’Harrow, Jr., Michael Sallah & Steven Rich, *They Fought the Law: Who Won?*, WASH. POST (Sept. 8, 2014), <https://www.washingtonpost.com/sf/investigative/2014/09/08/they-fought-the-law-who-won/> [<https://perma.cc/3S7S-ZUXQ> (dark archive)] [hereinafter O’Harrow et al., *They Fought the Law*]; see also Gross & Barnes, *supra* note 28, at 662 (explaining that law enforcement considers a section of I-95 in Maryland to be a drug pipeline because it captures the flow of drugs and cash between “New York, which is believed to be the national center for importing heroin and a regional center for distributing cocaine, to Baltimore and Washington, D.C., where these drugs are consumed”).

125. See *Illinois v. Wardlow*, 528 U.S. 119, 124 (2000).

126. *United States v. Yang*, 39 F.4th 893, 901–02 (7th Cir. 2022).

127. *United States v. Arvizu*, 534 U.S. 266, 271, 277 (2002) (regarding an officer determining that a vehicle “was registered to an address . . . in an area notorious for alien and narcotics smuggling”); Interview by Sergeant Carleton A. Small with Trooper John Darcy, Maine State Police, Off. of Pro. Standards (Apr. 13, 2021) (on file with the North Carolina Law Review) [hereinafter, Small Interview].

128. See Gross & Barnes, *supra* note 28, at 677–78.

129. O’Harrow et al., *Police Intelligence Targets Cash*, *supra* note 85; Michael Sallah, Robert O’Harrow, Jr., Steven Rich & Gabe Silverman, *Stop and Seize: Aggressive Police Take Hundreds of Millions of Dollars from Motorists Not Charged with Crimes*, WASH. POST (Sept. 6, 2014), <https://www.washingtonpost.com/sf/investigative/2014/09/06/stop-and-seize/> [<https://perma.cc/4SJD-8MZD> (dark archive)] (regarding an example of an officer detaining a motorist, finding nothing to justify a seizure, and posting the motorist’s information on Black Asphalt with the note: “Happy Hunting!”).

dreadlocks or cars in which two Latinx males were traveling.<sup>130</sup> A training memo for New Jersey’s drug interdiction officers listed likely drug couriers as including “Columbian males, Hispanic males, a Hispanic male and a [B]lack male together, or a Hispanic male and female posing as a couple.”<sup>131</sup> A drug courier profile used by the Florida highway patrol in the late 1980s directed officers to be suspicious of “drivers wearing ‘lots of gold,’ or who do not ‘fit the vehicle,’ and ‘ethnic groups associated with the drug trade.’”<sup>132</sup> Dating at least through the late 1990s, DEA training videos routinely included only suspects of color or with Spanish surnames.<sup>133</sup>

While some training guides warn that anyone could be a drug trafficker, regardless of race,<sup>134</sup> and while law enforcement officials insist that they do not engage in racial profiling during drug interdiction efforts,<sup>135</sup> empirical evidence belies the claim.<sup>136</sup> In a study focused on drug interdiction practices on Maryland’s I-95 corridor, Samuel Gross and Katherine Barnes found significant evidence of racialized enforcement.<sup>137</sup> The study took advantage of data the Maryland State Police were mandated to collect as part of a settlement between January 1995 and June 2000.<sup>138</sup> The data showed that troopers were almost twice as likely to stop Black motorists as compared to White motorists.<sup>139</sup> Further, once stopped, troopers were three times as likely to search Black motorists, and

130. David Kocieniewski, *New Jersey Argues That the U.S. Wrote the Book on Race Profiling*, N.Y. TIMES (Nov. 29, 2000), <https://www.nytimes.com/2000/11/29/nyregion/new-jersey-argues-that-the-us-wrote-the-book-on-race-profiling.html> [<https://perma.cc/3G59-8ZND> (dark archive)]; see also Gross & Barnes, *supra* note 28, at 670–72, 657 n.20 (regarding the role of Operation Pipeline training in racial profiling during drug interdiction in California, Colorado, Georgia, and New Jersey).

131. Kocieniewski, *supra* note 130.

132. Harris, *supra* note 85.

133. Kocieniewski, *supra* note 130.

134. REMSBERG, *supra* note 106, at 45–48. This same training manual also warns officers not to mention race in their reports even if it is the reason the officer pulled over a motorist. See *id.* at 66–67 (“Never use red-flag buzzwords like ‘profile’ and ‘profiling’ to explain in your report or testimony why you became suspicious or stopped a given driver. . . . Likewise, don’t cite race or ethnicity as a major factor in your decision to make a stop.” (emphasis in original)).

135. E.g., Cary, *Inside Look*, *supra* note 38 (quoting Spartanburg County, South Carolina, Sheriff Charles Wright: “We profile for bad guys, but we don’t profile for color. . . . A lot of people think we pick on them. No, we can pick on you if we want to, we just don’t”); Megan Gray, *Court Documents Show a Special Team of State Troopers Uses Methods Vulnerable to Racial Bias*, PRESS HERALD (Jan. 23, 2022), <https://www.pressherald.com/2022/01/23/court-documents-show-a-special-team-of-state-troopers-uses-methods-vulnerable-to-racial-bias/> [<https://perma.cc/P6A8-QVYX> (staff-uploaded, dark archive)] (reporting that officers provided training slides regarding policies prohibiting racial profiling but redacting slides entitled “Things to look for as you approach” and “Criminal Indicators”).

136. For additional studies providing empirical evidence of racialized traffic enforcement, see *infra* notes 192–98 and accompanying text.

137. See generally Gross & Barnes, *supra* note 28 (concluding that between January 1995 and June 2000, Maryland State Police engaged in racial profiling during traffic stops and searches on I-95).

138. *Id.* at 658–59.

139. *Id.* at 670, 687. Due to a lack of data, the authors were unable to analyze the percentage of stops of Hispanic drivers as compared to White drivers. *Id.*

seven times more likely to search Hispanic motorists than White motorists.<sup>140</sup> And so while overall troopers rarely found evidence of involvement in the drug trade,<sup>141</sup> it is unsurprising that Black motorists were nearly three-and-a-half times more likely and Hispanic motorists two times as likely as White motorists to be implicated in the very rare cases in which significant quantities of drugs were found.<sup>142</sup> In turn, those hits led to a problematic cycle in which troopers searched Black and Hispanic drivers even more frequently “not because they are more likely than [White drivers] to be drug offenders (which they are not) but because”—in the troopers’ experience—“they are members of ethnic or racial groups that include most of the tiny portion of drivers who are major drug traffickers.”<sup>143</sup>

Regardless of why any given officer decides to pull over a vehicle, the gathering of evidence to support a forfeiture continues after the motorist is stopped. Officers may take into account that the vehicle is a rental car or that there is trash in the car, such as energy drink bottles or snack containers, that may suggest an attempt to stop only infrequently.<sup>144</sup> A favorite of drug interdiction officers is the presence of an air freshener hanging from a rearview mirror that may be present to mask the smell of drugs—what one interdiction specialist calls a “felony forest.”<sup>145</sup> The motorist and passengers also may prove to be a source of suspicion. During the period of “consensual questioning,” officers ask about the person’s destination and purpose in traveling in an attempt to reveal that the person has an unlikely or inconsistent story.<sup>146</sup> Officers also are trained to look for nervous behavior, including the pulsing of the carotid artery—some even physically take the motorist’s pulse<sup>147</sup>—or the

140. *See id.* at 670, 687, 693, 708.

141. In 66.7% of searches troopers found no drugs and of those cases in which drugs were located, 84% involved only trace amounts or small amounts indicative of personal use. *Id.* at 667, 695–97.

142. *See id.* at 703.

143. *Id.* at 705–10.

144. *See* Sallah et al., *supra* note 129.

145. *See* William H. Freivogel, *Meet the Master of Asset Forfeiture, a Phelps County Sergeant*, ST. LOUIS PUB. RADIO (Feb. 18, 2019, 10:54 AM), <https://news.stlpublicradio.org/government-politics-issues/2019-02-18/meet-the-master-of-asset-forfeiture-a-phelps-county-sergeant> [<https://perma.cc/5S3N-6AD9>].

146. Rachel Lippmann, *St. Charles County Law Enforcement Reaps Benefits of I-70 Cash Seizures*, ST. LOUIS PUB. RADIO (Feb. 18, 2019, 10:55 AM), <https://news.stlpublicradio.org/government-politics-issues/2019-02-18/st-charles-county-law-enforcement-reaps-benefits-of-i-70-cash-seizures> [<https://perma.cc/N8KH-JSCV>] (quoting Missouri State Representative and former police officer Justin Hill: “We’d ask easy questions like, ‘Where are you going? Why are you going? Who are you meeting there? Where did you leave?’ and they trip all over themselves”).

147. CAL. STATE ASSEMB. J. LEGIS. TASK FORCE ON GOV’T OVERSIGHT, OPERATION PIPELINE 13–14 (1999) (on file with the North Carolina Law Review).

catch-22 of being a driver who is “too talkative, or too quiet.”<sup>148</sup> Aware that a judge may believe it reasonable for a person to display nervousness during a traffic stop, officers are trained to testify along the lines of the following:

While it is true that most people are nervous when stopped by law enforcement, my training and experience has shown that once persons who are not engaged in serious criminal activities learn what type of enforcement action is being taken, their nervousness subsides.<sup>149</sup>

Adding to the myriad sources of suspicion an officer may point to is the claimed existence of the scent of drugs emanating from the vehicle. For the officer attempting to establish probable cause, ideally the scent is detected by a trained drug-sniffing dog. Despite significant evidence that drug dogs frequently alert when drugs are not present,<sup>150</sup> if the dog alerts to the vehicle, its contents, or a person traveling within it, courts typically treat probable cause as established.<sup>151</sup> And while drug dogs are a key tool in drug interdiction,<sup>152</sup> even if no dog is available, officers frequently claim that they themselves can smell drugs—including even small quantities of unburnt marijuana<sup>153</sup> or powder cocaine.<sup>154</sup> While the lower courts are now starting to question these accounts, for years these claims have been used to establish probable cause.<sup>155</sup>

Another key item officers look for that is frequently carried by many motorists—but which officers treat as suspicious—is the presence of cash. Cash may be seized on the theory that it is the direct proceeds of drug sales or other crimes.<sup>156</sup> Carrying a large quantity of cash may lend itself toward suspicion of illicit activity, though there is evidence that law enforcement pushes the limits of the concept. For example, a Department of Justice Office of the Inspector

148. O’Harrow et al., *Police Intelligence Targets Cash*, *supra* note 85; *see also* Small Interview, *supra* note 127, at 4–7 (containing testimony that an officer does not include “pre-stop indicators” in his traffic stop reports in part due to recognition that what he finds suspicious—including that a person looks at him for too long or not at all—may seem contradictory).

149. O’Harrow et al., *Police Intelligence Targets Cash*, *supra* note 85.

150. *See* Illinois v. Caballes, 543 U.S. 405, 410–12 (2005) (Souter, J., dissenting).

151. *See* Florida v. Harris, 568 U.S. 237, 246–47 (2013).

152. *E.g.*, EVALUATION & INSPECTIONS DIV. 17-02, *supra* note 123, at 23 (reviewing eighty-five drug interdiction seizures and finding that drug dogs were used in more than ninety percent of the cases).

153. United States v. Gray, 548 F. Supp. 3d 807, 813 (S.D. Ind. 2021).

154. O’Harrow et al., *Police Intelligence Targets Cash*, *supra* note 85 (describing an interdiction officer nicknamed “Canine” who claimed he could smell cocaine even if the drugs were masked with other odors).

155. *E.g.*, Gray, 548 F. Supp. 3d at 813–14 (regarding the implausibility of smelling unburnt marijuana stored in resealable plastic baggies from a moving vehicle while in a patrol cruiser); United States v. Clark, No. 20-CR-30048-SMY, 2021 WL 2554592 (S.D. Ill. June 22, 2021), *appeal dismissed*, No. 21-2355, 2021 WL 6617381 (7th Cir. Aug. 24, 2021) (rejecting officer’s claim of identifying the smell of marijuana from fruit-flavored edible marijuana “in a closed container located in the bag” inside a vehicle).

156. *See supra* note 88 and accompanying text.

General audit of forfeiture activities found that while cash can present as suspicious—for example when it is “wrapped in carbon paper to deter x-ray scanners and/or dryer sheets to obscure the odor of narcotics”—agents also treated cash as suspicious if it “appeared ‘worn from street use.’”<sup>157</sup>

There are, of course, numerous innocent explanations for why people may be carrying both large and small quantities of cash,<sup>158</sup> which often break along class and racial lines. People in the service economy in which cash transactions predominate—restaurant owners and employees,<sup>159</sup> for example—are among those who have been subject to law enforcement seizures stemming from traffic stops. Further, as of 2019, approximately 7.1 million households in the United States were unbanked—meaning that no one in the household has an available bank account.<sup>160</sup> Without a bank account and access to credit, people must carry cash, and so are particularly at risk in forfeiture operations.<sup>161</sup> The lack of access

157. EVALUATION & INSPECTIONS DIV. 17-02, *supra* note 123, at 24.

158. *E.g.*, Burnett, *Cash Seizures*, *supra* note 122 (regarding a seizure of \$10,032 from a motorist on his way to buy a car and a gravestone for a dying aunt); Sallah et al., *supra* note 129 (regarding a seizure of \$18,000 from a motorist on the way to purchase a used vehicle).

159. *E.g.*, O’Harrow et al., *They Fought the Law*, *supra* note 124 (describing a seizure of \$17,550 from a restaurant owner who was carrying the cash on his way to purchase supplies and equipment); Anna Lee, Nathaniel Cary & Mike Ellis, *TAKEN: How Police Departments Make Millions by Seizing Property*, GREENVILLE NEWS, <https://www.greenvilleonline.com/in-depth/news/taken/2019/01/27/civil-forfeiture-south-carolina-police-property-seizures-taken-exclusive-investigation/2457838002/> [https://perma.cc/LJE9-S2ZV] (last updated Apr. 22, 2020, 7:34 PM) [hereinafter Lee et al., *TAKEN*] (regarding a seizure of \$4,670 in wages and tips from a waitress); Anna Lee, Nathaniel Cary & Mike Ellis, *How Civil Forfeiture Errors, Delays Enrich SC Police, Hurt People*, GREENVILLE NEWS, <https://www.greenvilleonline.com/in-depth/news/taken/2019/01/29/civil-forfeiture-south-carolina-errors-delays-property-seizures-exclusive-investigation/2460107002/> [https://perma.cc/AJ8H-5MAH] (last updated Apr. 22, 2020, 7:34 PM) [hereinafter Lee et al., *Civil Forfeiture*] (regarding the seizure of over \$427 in tips and wages from a pizza delivery driver).

160. FED. DEPOSIT INS. CORP., *HOW AMERICA BANKS: HOUSEHOLD USE OF BANKING AND FINANCIAL SERVICES* 12 (2019). For a discussion of the lack of access to banking in communities of color, see Mehrsa Baradaran, *It’s Time for Postal Banking*, 127 HARV. L. REV. F. 165, 166–69 (2014).

161. *E.g.*, Lee et al., *TAKEN*, *supra* note 159 (regarding a seizure from a waitress who was unbanked); Nathaniel Cary, *Police Can Seize Cash in the Mail. An Innocent Man Found Out the Hard Way.*, GREENVILLE NEWS (last updated Apr. 22, 2020, 6:32 PM), <https://www.greenvilleonline.com/in-depth/news/taken/2019/02/10/sc-asset-forfeiture-cash-mailed-shipped-subject-seizure/2458124002/> [https://perma.cc/LY6D-L579] (describing the frequency by which service workers are unbanked and that fifty-five percent of Black people in South Carolina either do not have or rarely use bank accounts).

to banking is acute for Black and Latinx people,<sup>162</sup> the very people likely targeted in drug interdiction practices in the first instance.<sup>163</sup>

There is one more practice used by many law enforcement officers in traffic-based drug interdiction as a hedge against the possibility that probable cause is lacking: obtaining waivers from motorists by which the person gives up the opportunity to later challenge the forfeiture's legality.<sup>164</sup> Motorists who have been subject to these practices describe being pressured to sign waivers or face arrest for charges ranging from drug trafficking,<sup>165</sup> to money laundering,<sup>166</sup> to child endangerment.<sup>167</sup> Upon signing a waiver, law enforcement allow motorists to drive away, leaving their cash or property behind.<sup>168</sup> In these circumstances, there is no arrest for the alleged criminal activity and no follow-up investigation, just an intake in revenue and a document that can be used to protect it from challenge.<sup>169</sup>

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As detailed above, whether through enforcement of the traffic code in combination with debt enforcement mechanisms or through the use of traffic stops as pretext for drug interdiction and pretextual financing, lawmakers, with the help of the Supreme Court, have created myriad avenues to generate revenue through fines, surcharges, fees, and forfeitures. The question becomes whether the revenue-generating economy of traffic enforcement influences lawmaker and law enforcement behavior in order to understand the potential consequences of traffic enforcement reforms.

162. See FED. DEPOSIT INS. CORP., *supra* note 160, at 12–14 (reporting that, in 2019, 13.8% of Black and 12.2% of Hispanic households were unbanked, as compared to 2.5% of White households). Native American households are the most likely to be unbanked at 16.3%. *Id.* Traffic-based drug interdiction operations also occur near and around tribal lands. *Interior Department Law Enforcement Seizes \$2.3 Million in Illegal Drugs on Southern Border*, U.S. DEP'T INTERIOR, <https://www.doi.gov/pressreleases/interior-department-law-enforcement-seizes-23-million-illegal-drugs-southern-border> [<https://perma.cc/D8XC-VU9Q>] (last updated Sept. 29, 2021). Additional research is needed regarding the implications of forfeiture practices as they relate to Native Americans. See also *supra* note 23.

163. See *supra* notes 130–43 and accompanying text; see also *infra* notes 192–98.

164. Waivers may also be employed by prosecutors later in the process. For example, when officers in DeKalb County, Georgia stopped José Cristobal Guerrero and seized the \$13,630 he was carrying on his way to purchase a parcel of land, he challenged the forfeiture; eventually the government agreed to give back the cash if he would sign a waiver agreeing not to sue for constitutional violations. O'Harrow et al., *They Fought the Law*, *supra* note 124.

165. *E.g.*, Sallah et al., *supra* note 129 (describing a video showing an officer asking a motorist five times over the course of an hour to sign a waiver or face arrest).

166. *E.g.*, Burnett, *Cash Seizures*, *supra* note 122.

167. *E.g.*, Sarah Stillman, *Taken*, NEW YORKER (Aug. 5, 2013), <https://www.newyorker.com/magazine/2013/08/12/taken> [<https://perma.cc/WJ6F-6RG4> (dark archive)] [hereinafter Stillman, *Taken*].

168. *E.g.*, Burnett, *Cash Seizures*, *supra* note 122.

169. See Carbado, *Predatory Policing*, *supra* note 29, at 554–55.



## II. THE INFLUENCE OF REVENUE AND RACE ON LAW ENFORCEMENT BEHAVIOR

There is substantial evidence that law enforcement practices are motivated by the revenue-generating capacity of economic sanctions, but that revenue and race push and pull those behaviors depending on the specific conditions of the jurisdiction—in particular, the racial makeup and political strength of the citizenry, the jurisdiction’s fiscal health, and the extent to which law enforcement has successfully engaged in forfeiture activities in the past. Evidence of influence can be seen in the patterns of enforcement—who is subject to it and what offenses are enforced—as well as how enforcement occurs.

To be clear, I do not claim that the influence of revenue is universal. It is true that the revenue-generating capacity of economic sanctions can be substantial. Nationally, traffic ticket revenue is a multibillion dollar industry each year,<sup>170</sup> a figure that does not include additional revenues from collections, towing and impoundment, license suspension fees, and fees related to the issuance and processing of warrants.<sup>171</sup> And though forfeiture revenues are difficult to ascertain given the lack of transparency in many jurisdictions,<sup>172</sup> and these figures include all forfeitures rather than just those stemming from traffic stops, an accounting of available data by the Institute for Justice found that “in 2018 alone, 42 states, the District of Columbia, and the U.S. departments of Justice and the Treasury forfeited over \$3 billion.”<sup>173</sup> An analysis of highway interdiction practices conducted by a group of investigative journalists at the *Washington Post* found that under the Equitable Sharing program alone—which makes up only three percent of total forfeiture activities nationally—the government seized \$2.5 billion worth of cash and property in a ten-year period.<sup>174</sup> But jurisdictional dependence on these revenues can vary widely, with economic sanctions making up a small percentage of the overall budget in some, and a substantial portion of the total budget in others.<sup>175</sup> Similarly, law

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170. See Michael Maciag, *Special Report: How Autonomous Vehicles Could Constrain City Budgets*, GOVERNING (July 28, 2017), <https://www.governing.com/archive/gov-how-autonomous-vehicles-could-effect-city-budgets.html> [<https://perma.cc/P23R-PFCL>] (surveying the twenty-five largest U.S. cities and finding that they took in \$593 million from traffic tickets in Fiscal Year 2016, and noting that smaller cities are far more reliant on, and potentially aggressive regarding, traffic ticketing).

171. See *supra* notes 62–80 and accompanying text.

172. See *infra* notes 186–88 and accompanying text.

173. LISA KNEPPER, JENNIFER McDONALD, KATHY SANCHEZ & ELYSE SMITH POHL, INST. FOR JUST., *POLICING FOR PROFIT: THE ABUSE OF CIVIL ASSET FORFEITURE* 5 (3d ed. 2020).

174. Sallah et al., *supra* note 129.

175. See Daryl James, *In These Louisiana Towns, Ticket Revenue Climbed Even as Traffic Dwindled*, LA. ILLUMINATOR (July 29, 2022, 1:40 PM), <https://lailluminator.com/2022/07/29/in-these-louisiana-towns-ticket-revenue-climbed-even-as-traffic-dwindled/> [<https://perma.cc/X26Z-HHSC>]; Michael Maciag, *Addicted to Fines*, GOVERNING (Aug. 19, 2019), <https://www.governing.com/archive/gov-addicted-to-fines.html> [<https://perma.cc/82V6-HH72>]; Michael Maciag, *Local Government Fine*

enforcement dependence on economic sanction revenue varies as well; while in 2012 only fifteen percent of law enforcement budgets came from fines and fees, one in ten agencies relied on these revenues for a third or more of their budgets.<sup>176</sup> Further, some drug task forces are funded entirely by forfeiture dollars.<sup>177</sup>

I also do not claim that either revenue or race are the only motivating factors for lawmakers and law enforcement. While there are reasons to dispute the public safety value of many traffic offenses,<sup>178</sup> and some question whether officials use traffic safety as a guise,<sup>179</sup> any given system actor may have a genuinely held belief that traffic enforcement is a necessary public safety measure. For example, when Acting Chief of Police Thomas Strangrecki announced he was directing officers to continue to engage in minor traffic stops despite reforms prohibiting such stops put in place by Pittsburgh's City Council, he stated he was doing it in part due to flagging morale for officers who felt the ordinance was "preventing them from doing their jobs."<sup>180</sup> Similarly, as to pretextual traffic stops, any given officer engaging in such practices may believe in the value of the drug war as a means of addressing

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*Revenues by State*, GOVERNING (Aug. 20, 2019), <https://www.governing.com/archive/local-governments-high-fine-revenues-by-state.html> [<https://perma.cc/LPN9-YFBQ>]; Patrick Sisson, *How the Municipal Court Money Machine Burdens City Residents*, CURBED (May 24, 2018, 8:37 AM), <https://www.curbed.com/2018/5/24/17382120/tickets-fees-fines-criminal-justice-ferguson> [<https://perma.cc/4AUE-2K6Q>].

176. See MICHAEL MAKOWSKY, THE HAMILTON PROJECT, A PROPOSAL TO END REGRESSIVE TAXATION THROUGH LAW ENFORCEMENT 6 (2019); see also Archibald, *supra* note 65 (describing how Brookside, Alabama, increased its revenue stemming from traffic stops between 2018 and 2020 by 640%, accounting for over one-half of the city's total revenues, much of which supported a 560% increase in police spending).

177. John Burnett, *Seized Drug Assets Pad Police Budgets*, NPR (June 16, 2008, 12:01 AM), <https://www.npr.org/templates/story/story.php?storyId=91490480> [<https://perma.cc/67PH-H4JH>] [hereinafter Burnett, *Seized Drug Assets*] (noting that forfeiture revenues make up the entire budget of at least four Texas drug task forces); McCullough et al., *supra* note 82 (describing how traffic stops of four vehicles resulted in cash seizures of more than one quarter of the sheriff's annual budget and six times more than the annual prosecutor budget); Sallah et al., *supra* note 129 (reviewing the budgets of 298 police departments and 210 drug task forces and finding that forfeiture revenues collectively accounted for twenty percent or more of their budgets).

178. See *infra* notes 401–03 and accompanying text.

179. Petersen, *supra* note 38 ("Lest anyone complain, the response that 'it is for traffic safety' shrouds the politician in an unimpeachable blanket of righteousness by looking out for our families, especially our children. We need a law against that crack in your windshield so that we might save just one child." (emphasis in original)).

180. Koscinski, *supra* note 14 (quoting Chief Strangrecki as stating: "The officers who are employed here come here for a reason, and that's to enforce the law. . . . I thought it was imperative that I send out some strong messaging to the officers that are still here on this police force that you can do your job, you can enforce the law").

community safety.<sup>181</sup> And while some in law enforcement recognize that drug interdiction likely does little to disincentivize those involved in the drug trade,<sup>182</sup> others may understand forfeiture revenue as a mechanism for both depriving drug enterprises of the financial benefit of their crimes and providing a source of funding for continued interdiction efforts.<sup>183</sup> Regardless, these positions are compatible with a desire to take advantage of the revenue-generating capacity of economic sanctions and the racialized nature of enforcement.

A further caveat is necessary with respect to the study of forfeiture practices. Forfeitures are difficult to study empirically because of the heterogeneity of local, state, and federal forfeiture laws and because such practices may shift over time.<sup>184</sup> Studies often exclude rural areas from review,<sup>185</sup> which would cut out rural departments that benefit from forfeitures through cooperation in drug task forces. Studies also often rely on the Law Enforcement Management and Administrative Statistics (“LEMAS”) survey, which, in addition to being limited to departments of 100 or more sworn officers, is also based on self-reporting.<sup>186</sup> Self-reporting by law enforcement is potentially problematic because many entities that benefit from forfeiture revenues—particularly drug task forces—often take pains to restrict transparency into their practices by, for example, refusing to comply with reporting obligations, public disclosure requests, court orders, or other oversight mechanisms, including by

181. *E.g.*, Cody Jorgenson, *Badges and Bongs: Police Officers' Attitudes Toward Drugs*, SAGE, Oct.–Dec. 2018, at 1, 6–11 (surveying law enforcement officers and finding they often hold punitive attitudes regarding drug offenses); Burnett, *Deputy Has Midas Touch*, *supra* note 101 (quoting Barbour County, Alabama, Chief Deputy Eddie Ingram, whose ex-wife died in a drug-related car accident: “If anybody faults me getting out here and trying to make a difference, they can kiss my tail . . . That boy you met this morning? His mother’s dead on account of drugs. I hate drugs, I put three of my first cousins and my brother-in-law in prison, and I’ll put yours in prison”).

182. *E.g.*, John Burnett, *Sheriff Under Scrutiny Over Drug Money Spending*, NPR (June 18, 2008, 12:49 PM), <https://www.npr.org/templates/story/story.php?storyId=91638378> [<https://perma.cc/42KP-K2UX>] [hereinafter Burnett, *Sheriff Under Scrutiny*] (quoting Fidel Gonzalez, commander of a drug task force in South Texas: “For every \$2 million that gets seized on highways it’ll fit in a pinhead. You’re making a dent on the cartel organization, but it’s chump change for them”); *id.* (quoting Don Senesky, the DEA’s Chief of Financial Investigations: “You’re not solving anything by taking the cash and declaring victory”).

183. *See supra* notes 86–89 and accompanying text.

184. *See* Stephen A. Bishopp & John L. Worrall, *Do State Asset Forfeiture Laws Explain the Upward Trend in Drug Arrests?*, 32 J. CRIME & JUST. 117, 119 (2009) (regarding distinctions in revenue distribution practices); *supra* notes 91–93 (regarding procedural differences in forfeiture practices).

185. *E.g.*, Charles K. Coe & Deborah Lamm Wiesel, *Police Budgeting: Winning Strategies*, 61 PUB. ADMIN. REV. 718, 718 (2001) (studying cities greater than 50,000); John L. Worrall & Tomislav V. Kovandzic, *Is Policing for Profit? Answers from Asset Forfeiture*, 7 CRIMINOLOGY & PUB. POL’Y 219, 228 (2008) (limiting study to areas with populations greater than 25,000).

186. *E.g.*, Bishopp & Worrall, *supra* note 184, at 124–25; Worrall & Kovandzic, *supra* note 185, at 228.

miscoding the race of motorists.<sup>187</sup> Additionally, in many cases, law enforcement simply do not collect data necessary for full evaluation of forfeiture programs.<sup>188</sup> And, by looking at states as a whole, rather than at the departmental level, some studies may lack necessary nuance as to the financial circumstances of different law enforcement enterprises.<sup>189</sup> A finding that forfeitures have little influence on enforcement practices in a department with a secure budget that relies little, if at all, on forfeiture revenues is unsurprising,<sup>190</sup> and if combined with other more active departments in the same state, would dilute evidence of dependency.<sup>191</sup> In light of these various limitations, one might reasonably assume that analyses of forfeiture practices would underestimate the extent to which law enforcement is motivated by the possibility of forfeiture revenue. Even without that assumption, however, existing studies tend to support the contention that forfeiture revenue does influence law enforcement behavior.

#### A. *Who Is Subject to Enforcement*

Though the nature of disproportionate enforcement can vary across jurisdictions, departments, and time, a wealth of studies document racial

187. *E.g.*, Gross & Barnes, *supra* note 28, at 678–82 (describing incidents of intentional and possibly accidental misrepresentation of suspect race during drug interdiction stops, which would undercut evidence of racially disproportionate enforcement, and result in missing data required to be reported as a component of settlement orders); William H. Freivogel, *No Drugs, No Crime and Just Pennies for School: How Police Use Civil Asset Forfeiture*, ST. LOUIS PUB. RADIO (Feb. 18, 2019, 5:00 AM), <https://news.stpublicradio.org/government-politics-issues/2019-02-18/no-drugs-no-crime-and-just-pennies-for-school-how-police-use-civil-asset-forfeiture> [https://perma.cc/5ZVZ-GHKD] [hereinafter Freivogel, *No Drugs, No Crime*] (reporting that law enforcement in Washington, D.C., refused to provide required data for three years and Kentucky law enforcement for four years, and that some drug task forces claim to be exempt from public disclosure laws); Mimi Wright, *'Cowboy' Tactics, Limited Oversight: How Missouri's Drug Task Forces Avoid Accountability*, ST. LOUIS PUB. RADIO (Dec. 31, 2019, 5:17 AM), <https://news.stpublicradio.org/government-politics-issues/2019-12-31/cowboy-tactics-limited-oversight-how-missouris-drug-task-forces-avoid-accountability> [https://perma.cc/NQ45-QLY2] (describing Missouri drug task forces' refusal to comply with oversight laws, public meeting requirements, or records requests).

188. *E.g.*, EVALUATION & INSPECTIONS DIV. 17-02, *supra* note 123, at 16–18; *id.* app. 4 at 4–6.

189. *E.g.*, Bishopp & Worrall, *supra* note 184, at 130–31 (relying on drug arrest practices in nineteen states as a whole rather than at the departmental level).

190. *E.g.*, James C. Clinger, Jason Hecker & Sue Madsen, *Asset Forfeiture and Police Priorities: The Impact of Program Design on Law Enforcement Activities*, 16 CRIM. JUST. POL'Y REV. 319, 327, 334 n.1 (2005) (studying the Greater Cincinnati area, including Kentucky and Ohio, in which all but one departments' forfeitures made up less than five percent of the total budget and finding no “statistically discernable relationship between the change in asset values and the priority placed on the enforcement of drug laws,” but also noting that drug task forces frequently rely on forfeiture revenue for a substantial portion of their budgets).

191. *See* KNEPPER ET AL., *supra* note 173, at 94 (reporting that in 2019, Kentucky law enforcement generated \$18,236,079 in forfeiture revenues overall); *id.* at 130 (reporting that in 2019, Ohio generated \$7,576,853 in forfeiture revenues through the Equitable Sharing program and an unknown amount through state and local forfeitures).

disproportionality in both general and pretextual traffic enforcement.<sup>192</sup> This research indicates racialized traffic enforcement begins with the stop itself.<sup>193</sup> Numerous studies, including the analysis of the Maryland Highway Patrol noted above,<sup>194</sup> also support the conclusion that racial disproportionality is entrenched in the pretextual traffic enforcement that opens the door for drug interdiction efforts. A survey of motorists looking to officer justification for stops concluded that Black motorists were 2.7 times more likely to be stopped than White motorists for the type of *de minimus* violations—such as driving two miles or less over the speed limit—that are used pretextually.<sup>195</sup> Once stopped, Black and Latinx drivers are also significantly more likely to be searched and

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192. See Rushin & Edwards, *supra* note 28, at 657–58 (compiling studies by academics, government agencies, and nonprofit organizations); David Rudovsky, *Law Enforcement by Stereotypes and Serendipity: Racial Profiling and Stops and Searches Without Cause*, 3 J. CONST. L. 296, 301–03 (2001) (compiling studies showing racially disproportionate traffic stops in Boston, New York, and Philadelphia); see *supra* note 16 and accompanying text (regarding assessments of racially disproportionate policing in several jurisdictions contemplating traffic enforcement reform).

193. BAUMGARTNER ET AL., *supra* note 28, at 64–77 (examining 20 million traffic stops in North Carolina and finding that Black motorists were sixty-three percent more likely and Latinx motorists two percent more likely to be pulled over than White motorists); Harris, *supra* note 85 (regarding an analysis of Illinois State Patrol practices that found that Hispanic motorists take less than three percent of automobile trips in the state but made up approximately thirty percent of trooper stops); Sunghoon Roh & Matthew Robinson, *A Geographic Approach to Racial Profiling: The Microanalysis and Macroanalysis of Racial Disparity in Traffic Stops*, 12 POLICE Q. 137, 145, 151–60 (2009) (examining 333,760 traffic stops by the Houston Police Department and finding that Black motorists were overrepresented in traffic stops, and particularly pretextual stops, and that the likelihood a motorist was stopped, searched, arrested, or charged was greater in Black and Hispanic neighborhoods where greater numbers of officers were deployed); Rushin & Edwards, *supra* note 28, at 683–93 (finding that the allowance of pretextual enforcement increased the number of traffic stops of drivers of color as compared to White drivers, with the most significant relative increases among Hispanic drivers, along with “a significant uptick in the number of stops of Black drivers relative to [W]hite drivers,” and that racial disproportionality was greatest during daylight hours when it would be easiest for an officer to discern a driver’s race); MAGNUS LOFSTROM, JOSEPH HAYES, BRANDON MARTIN & DEEPAK PREMKUMAR, PUB. POL’Y INST. OF CALIF., RACIAL DISPARITIES IN TRAFFIC STOPS 3, 20–23 (2022), <https://www.ppic.org/?show-pdf=true&docraptor=true&url=https%3A%2F%2Fwww.ppic.org%2Fpublication%2Fracial-disparities-in-traffic-stops%2F> [<https://perma.cc/8S5B-FTP4>] (finding decreases in the number of stops of both Black and Latinx drivers after dusk conducted by local law enforcement in California and of Latinx drivers for stops conducted by the California Highway Patrol).

194. See *supra* notes 137–43 and accompanying text.

195. Epp et al., *supra* note 85, at 173–74.

arrested,<sup>196</sup> which can be crucial to forfeiture practices.<sup>197</sup> Those findings are consistent with reviews of forfeiture case filings in various jurisdictions, which show that forfeitures are disproportionately pursued against Black and Latinx people.<sup>198</sup>

With such overwhelming evidence of racially disproportionate traffic enforcement, the question then becomes: How does the revenue-generating economy of traffic enforcement intersect with racially disproportionate enforcement? For both traffic ticketing and forfeiture activities, the answer may depend on both the financial stability and racial makeup of the jurisdiction at issue.

### 1. Traffic Ticketing

First, with respect to traffic ticketing, we know that in many jurisdictions, lawmakers see traffic ticket revenue as an important budgeting tool.<sup>199</sup> It is not unusual for municipal officials to include predictions on traffic ticket revenue in projected budgets, literally banking on a perpetuation of, or even an increase

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196. *E.g.*, Harris et al., *supra* note 28, at 11–14 (studying law enforcement behavior in Missouri and finding that Black and Latinx drivers were searched and arrested at higher rates than White motorists); Jeffrey Fagan & Amanda Geller, *Profiling and Consent: Stops, Searches, and Seizures After Soto*, 27 VA. J. SOC. POL'Y & L. 17, 39 (2020) (analyzing 257,000 vehicle stops between 2005 and 2007 on the New Jersey Turnpike and finding that Black drivers were more than three times as likely to be searched and Hispanic drivers were more than twice as likely to be searched as compared to White drivers); Pierson et al., *supra* note 28, at 738–39, 740 fig.3 (analyzing 834,396 searches by eight state patrol agencies and six municipal police departments and finding that law enforcement used a lower bar for searching Hispanic motorists as compared to White motorists); *id.* (finding only a slightly higher contraband hit rate for White as compared to Black drivers but that the threshold for searching Black motorists in the first place was lower); Samantha Max, *About 90% of Drivers Searched or Arrested by the NYPD in 2022 Were Black or Latino*, GOTHAMIST (Feb. 23, 2023), <https://gothamist.com/news/about-90-of-drivers-searched-or-arrested-by-the-nypd-in-2022-were-black-or-latino> [<https://perma.cc/XV65-AZHJ>] (reporting that in 2022, approximately ninety percent of searches and arrests conducted by the New York Police Department during traffic stops were Black or Latinx motorists).

197. *See supra* notes 107–20 and accompanying text.

198. *E.g.*, Clifton Adcock, *Most Police Seizures of Cash Come from Blacks, Hispanics*, OKLA. WATCH, <https://oklahomawatch.org/2015/10/07/most-police-seizures-of-cash-come-from-blacks-hispanics/> [<https://perma.cc/P9CQ-ZWJG>] (last updated Oct. 28, 2019) (examining state level forfeitures in ten Oklahoma counties involving seizures of \$5,000 or more and finding that sixty-five percent of cases involved forfeitures against people of color, with twenty-nine percent of proceedings instituted against Hispanic people and thirty-one percent against Black people); Lee et al., *TAKEN*, *supra* note 159 (finding that while Black men make up only thirteen percent of South Carolina's population, they were subject to sixty-five percent of the state's forfeiture cases).

199. In what may be an extreme example, Castleberry, Alabama, established its law enforcement and municipal court system for the express purpose of generating revenue from traffic-based stops. *See* Christopher Harress, *Castleberry, An Alabama Speed Trap Town, May Soon Resolve Lawsuit*, AL.COM, <https://www.al.com/news/2018/11/castleberry-an-alabama-speed-trap-town-may-soon-resolve-lawsuit.html> [<https://perma.cc/T8E3-47L3>] (last updated Nov. 26, 2018, 4:57 PM).

in, traffic violations to fill in budgetary gaps.<sup>200</sup> From a fiscal standpoint, this reliance is sensible because revenue generated from traffic tickets serves a dual purpose: not only can it fill in revenue gaps to maintain municipal services, but cities can also use those funds to improve credit scores by exploiting the revenue to secure public debt.<sup>201</sup>

Second, lawmakers respond to budgeting downturns by increased reliance on economic sanctions. Though lawmaker reliance on traffic ticket revenue dates back at least a century,<sup>202</sup> in the boom years of the early 2000s, the average U.S. city had almost no reliance on fines (including traffic tickets as well as other fines accruing to municipalities).<sup>203</sup> But, as the housing market bubble began to burst in 2006, the average reliance on fines for municipal revenues jumped to 1.46%, and increased again to 2.24% by 2012.<sup>204</sup> The actual reliance in any given community could be significantly higher, with some jurisdictions depending on economic sanctions to generate a significant portion, or even a majority, of municipal or departmental funding.<sup>205</sup> Even when focusing only on traffic ticket revenue, studies have found increased reliance following periods

200. See Garrett & Wagner, *supra* note 29, at 72 (regarding ticket revenue projections in Houston, TX, Nashville, TN, and Washington, D.C.); SUBRAMANIAN ET AL., REVENUE OVER PUBLIC SAFETY, *supra* note 27, at 12 (regarding New York City officials' plans to make up revenue lost during the COVID-19 pandemic through fines and fees); Robert O'Harrow, Jr. & Steven Rich, *D.C. Police Plan for Future Seizure Proceeds Years in Advance in City Budget Documents*, WASH. POST (Nov. 15, 2014), [https://www.washingtonpost.com/investigations/dc-police-plan-for-future-seizure-proceeds-years-in-advance-in-city-budget-documents/2014/11/15/7025edd2-6b76-11e4-b053-65cea7903f2e\\_story.html](https://www.washingtonpost.com/investigations/dc-police-plan-for-future-seizure-proceeds-years-in-advance-in-city-budget-documents/2014/11/15/7025edd2-6b76-11e4-b053-65cea7903f2e_story.html) [https://perma.cc/DES3-M7WE (dark archive)] (describing Washington D.C.'s FY2015 budget proposal predicting \$2.7 million in revenue from civil forfeitures that had not yet occurred); Petersen, *supra* note 38 (describing how a municipal accountant used traffic ticketing in budget forecasting); Elliott Ramos, *Chicago Police Impound 250,000 Vehicles Since 2010. Here's Why City Hall's Rethinking That*, WBEZ CHI. (July 13, 2020, 6:00 AM), <https://www.wbez.org/stories/chicago-police-impounded-250000-vehicles-since-2010-heres-why-city-halls-rethinking-that/a085f94b-4a87-437b-837a-d5b4501a9168> [https://perma.cc/N3W3-W75N] [hereinafter Ramos, *Chicago Police*] (regarding former Chicago Mayor Rahm Emmanuel's push to increase traffic enforcement to make up for budget losses from the 2008 housing market collapse).

201. See Daniel Hummel, *Traffic Tickets: Public Safety Concerns or Budget Building Tools*, 47 ADMIN. & SOC'Y 298, 311–12 (2015).

202. See, e.g., *Motorists Warned of Rockton Speed Trap' By Placards*, JANESVILLE DAILY GAZETTE (July 16, 1929) (on file with the North Carolina Law Review) (regarding Rockton, Illinois's use of traffic tickets to generate revenue).

203. See Singla et al., *supra* note 29, at 1133 (citing U.S. CENSUS BUREAU, 2012 CENSUS OF GOVERNMENTS). The Census of Governments reports data on local government's collections of fines and fees (not limited to traffic violations), as well as "forfeits of deposits held for performance guarantees or against loss or damage (such as forfeited bail and collateral)," which are distinct from the forfeitures of cash and property discussed in this Article. *Government Finance and Employment Classification Manual*, U.S. CENSUS BUREAU (Apr. 25, 2001), <https://www2.census.gov/govs/class/classfull.pdf> [https://perma.cc/E7X8-VHFQ].

204. *Id.*

205. See *supra* notes 175–77 and accompanying text.

of fiscal distress, suggesting ticket revenue is used by lawmakers as a budgetary backstop made possible through law enforcement.<sup>206</sup>

Third, with the exception of retained forfeiture dollars (addressed further below), lawmakers have budgeting authority over law enforcement, which raises the risk that lawmakers will implicitly or explicitly place pressure on law enforcement to ticket.<sup>207</sup> Lawmakers may see ticketing as a way of securing grant revenue, particularly from the National Highway Transportation Safety Agency (“NHTSA”).<sup>208</sup> An analysis conducted by the *New York Times* found that at least twenty states receiving NHTSA funds evaluate program compliance based on the number of traffic stops officers conduct each hour, and further investigation into practices in Oklahoma, Ohio, and Virginia indicated official pressure on law enforcement to ticket in relation to the program.<sup>209</sup> Lawmakers may also see ticketing as a means of generating direct revenue through the fines, surcharges, and fees imposed.

Lawmaker pressure to ticket is evident in the use of what are effectively ticket quotas.<sup>210</sup> For example, in 2014, Edmundson, Missouri, Mayor John Gwaltney sent a memo to the city’s sergeants and patrolmen noting alarm at “a marked downturn in traffic and other tickets.”<sup>211</sup> After emphasizing that the city had “no quotas,” Mayor Gwaltney went on to state both that “we do have a record of your past performance to compare to your current performance and the picture I see is a very disappointing one,” and that he “wish[ed] to take this opportunity to remind you that the tickets you write do add to the revenue on which the P.D. budget is established and will directly affect pay adjustments at

206. *E.g.*, Garrett & Wagner, *supra* note 29, at 86–88.

207. Harmon, *supra* note 98, at 876 (“Though local political processes are far from perfect, the public often pressures local public officials when policing’s nonbudgetary costs become extreme, salient, or widespread. Those public officials exert political control over police chiefs and department budgets.”).

208. For an examination of NHTSA’s role in encouraging pretextual traffic stops through funding and training, see Farhang Heydari, *The Invisible Driver of Pretextual Policing* 20–29 (unpublished manuscript) (on file with the North Carolina Law Review).

209. 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> [<https://perma.cc/DX3W-RAE3> (staff-uploaded, dark archive)] (quoting an email from Windsor, Virginia, Chief of Police Rodney Riddle to his officers noting “you are required to write a minimum of two tickets per hour while on grant time and there is zero tolerance”).

210. See Shaun Ossei-Owusu, *Police Quotas*, 96 N.Y.U. L. REV. 529, 573–75 (2021); SUBRAMANIAN ET AL., REVENUE OVER PUBLIC SAFETY, *supra* note 27, at 25–29.

211. Harris et al., *supra* note 28, app. A, fig.3, available at <https://static.cambridge.org/content/id/urn:cambridge.org:id:article:S2056608520000100/resource/name/S2056608520000100sup001.pdf> [<https://perma.cc/9SE6-HZJZ>] (Memo from Edmundson Mayor John Gwaltney to Edmundson P.D. – Sergeants & Patrolmen (Apr. 18, 2014)).



budget time.”<sup>212</sup> Similarly, after a November 2018 email from Bratenahl, Ohio, Mayor John Licastro to Chief of Police Richard Dolbow, warned that employee salaries could be affected due to a downturn in traffic ticket revenue, Chief Dolbow emailed his officers: “I will be looking at stats and scheduling to see what I should do to motivate the badge wearing slugs that have fallen short on the promise and jeopardized our financial raises that we have worked so hard to maintain.”<sup>213</sup> Individual officers in other jurisdictions also recount stories of being pressured by managers (who had in turn been pressured by city officials) to increase ticket writing.<sup>214</sup> These accounts are bolstered by a national survey of police chiefs, who reported that having a “harmonious working relationship” with municipal lawmakers and budget staff was essential to ensuring the maintenance or increase of police department budgets,<sup>215</sup> as well as a study that found that state officers—whose budgets are not controlled by municipal lawmakers—were less likely to issue tickets than municipal police officers—whose budgets are so controlled—when the revenue from tickets accrued to the municipality experiencing fiscal distress.<sup>216</sup>

And fourth, raising revenue through ticketing is politically risky for lawmakers and law enforcement, which studies suggest pushes such practices toward groups that lack political power in the jurisdiction. Several studies, for example, have shown that law enforcement officers are more likely to impose traffic tickets at all and in higher amounts against out-of-jurisdiction drivers who have little or no political power (and who may be less likely to challenge tickets).<sup>217</sup>

212. *Id.*; see also C.R. DIV., U.S. DEP’T OF JUST., INVESTIGATION OF THE FERGUSON POLICE DEPARTMENT 10 (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/G3T4-2ZUA] (regarding March 2010 email communications between the City of Ferguson’s Finance Director and its Chief of Police regarding the need to increase ticketing in order to make up for an anticipated sales tax shortfall).

213. McIntire & Keller, *supra* note 209. For more detail on traffic policing in Bratenahl, including concerns that traffic enforcement is targeted at Black motorists traveling through from Cleveland and other nearby areas, see Mark Puente, Stan Donaldson, Jr. & Cid Standifer, *How a Wealthy Cleveland Suburb Profits from Ticketing Black Drivers*, MARSHALL PROJECT (Nov. 21, 2022, 6:00 AM), <https://www.themarshallproject.org/2022/11/21/ohio-cleveland-traffic-tickets-black-drivers-bratenahl> [https://perma.cc/C79B-KFAZ].

214. See Petersen, *supra* note 38 (“Having been in management staff meetings on more than a few occasions, where the chief would express concern over a decline in citation productivity . . . it was always clear that ticket-writing was a measure of an officer’s productivity.”).

215. See Coe & Wiesel, *supra* note 185, at 718–19, 725–26.

216. See Michael D. Makowsky & Thomas Stratmann, *Political Economy at Any Speed: What Determines Traffic Citations?*, 99 AM. ECON. REV. 509, 511–13, 515–16, 518–19 (2009) [hereinafter Makowsky & Stratmann, *Political Economy*].

217. See Garrett & Wagner, *supra* note 29, at 83–86 (finding a correlation between increased ticketing and tourism spending, which may be explained either by congestion caused by increased tourism or by targeting of tourists); Min Su, *Taxation by Citation?: Exploring Local Governments’ Revenue*

Taken together, the revenue-generating capacity of economic sanctions creates a dynamic in which lawmakers may pressure law enforcement to target people who are politically vulnerable for traffic enforcement. While one study found that an increase in the percentage of registered voters, rather than the percentage of a jurisdiction's minority population, was negatively correlated to reductions in ticketing,<sup>218</sup> recent studies suggest a more complicated picture.

For jurisdictions that are financially stable, three recent studies suggest that race plays a key role in explaining the scope of enforcement of offenses that generate fines, surcharges, and fees. Using a stratified random sample of ninety-three California municipalities with stable fiscal conditions, researchers found that the higher the percentage of Black people within the city's population, the more cities relied on fines and fees.<sup>219</sup> Similarly, a study of 9,000 cities nationally found that budgetary reliance on fines and fees increased along with the percentage of the Black population, though again that disproportionality declined in cities in which at least some elected officials were Black.<sup>220</sup> A third study found: "On average, monetary punishment increases by \$34,864 per 100,000 residents for every 1% increase in the [B]lack population," and that

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*Motive for Traffic Fines*, 80 PUB. ADMIN. REV. 36, 43 (2020) (finding that one percentage point increase in California counties' reliance on hotel taxes for local revenue raised per capita traffic fines by thirty-eight to forty-two cents); Brian Rowe, Discretion and Ulterior Motives in Traffic Stops: The Detection of Other Crimes and the Revenue from Tickets, Bureau of Economics 11–12, 17–19 (Apr. 2020) (unpublished manuscript) (on file with the North Carolina Law Review) (finding that out-of-town motorists were ticketed for speeding more often than local motorists, with the out-of-town penalty shrinking for more serious violations). The targeting of out-of-town drivers may become politically infeasible, however, if doing so is seen by local business owners—who have more political clout—as undermining the ability to benefit from tourist spending. *E.g.*, Makowsky & Stratmann, *Political Economy*, *supra* note 216, at 516–18, 520, 523–24, 526 (finding that the likelihood of a ticket and the fine amount increased the farther away from the court of jurisdiction the motorist was from but that fines "are less likely when a municipality's dependence on tourism-related business increases"); *Motorists Warned of Rockton Speed Trap' by Placards*, *supra* note 202 (regarding business owners placing signs warning motorists that they were entering a "speed trap" "because of the damage they claim this condition has done their business" and with the hopes the signs would "adjust conditions 'before summer business is entirely ruined'").

218. See Garrett & Wagner, *supra* note 29, at 86.

219. Singla et al., *supra* note 29, at 1146–47. The study also suggested that cities were more reliant on fines and fees as the percentage of Asian people in the population increased, but the authors concluded that the result may be explained by the limited sample size. *Id.* at 1153. The study further found that municipalities with large Black populations were particularly reliant on fines and fees when "served by law enforcement agencies overrepresentative of their White population" and that "extreme overrepresentation of the White population in law enforcement is associated with increased fines and forfeitures." *Id.* at 1151–54. The study's authors noted, however, that these findings may be limited because the median city in their sample had a Black population of less than three percent. *Id.* at 1154.

220. Michael W. Sances & Hye Young You, *Who Pays for Government? Descriptive Representation and Exploitative Revenue Sources*, 79 J. POL. 1090, 1090–93 (2017).

“when the share of noncitizens increases by 1%, rates of monetary punishment increase by \$53,112 . . . when crime is held constant.”<sup>221</sup>

The story of revenue, race, and traffic ticketing may invert, however, when a jurisdiction experiences a period of fiscal distress.<sup>222</sup> An examination of traffic ticketing practices in 700 Missouri counties and cities found that a decrease in overall government revenue one year prior resulted in increased citation and arrest rates of White drivers, with no effect on rates for Black or Latinx drivers.<sup>223</sup> Though additional study would be necessary to ascertain officer understanding of relative income levels within the community, modeling accounting for income disparities between White and Black motorists supports the conclusion that—under increased pressure to bring in revenue—officers shifted from targeting people seen as more politically vulnerable (Black motorists) to those seen as more able to pay fines, surcharges, and fees quickly (White motorists).<sup>224</sup>

Yet another study raises concerns that, even if fiscal downturns moderate racially disproportionate enforcement, in the long term the increase in ticketing will ultimately be borne by people of color. An examination of California counties found that “a 10 percentage point tax revenue loss in the previous year is associated with a 40 to 42 cent increase in per capita traffic fines in the current year.”<sup>225</sup> But that shift appears to operate as a one-way ratchet: the author also found that improved fiscal conditions did not affect the subsequent year’s level of ticketing.<sup>226</sup> That suggests that a potential outcome of a fiscal downturn and recovery would be an increase in ticketing overall with moderated racial disproportionality, followed by a continuation of higher ticketing levels but a

221. Kasey Henricks & Daina Cheyenne Harvey, *Not One but Many: Monetary Punishment and the Fergusons of America*, 32 SOC. F. 930, 939–40 (2017); see also *id.* at 939 (“[C]ommunities with higher levels of income inequality generate more money from fines and fees than those communities that are more egalitarian.”).

222. At least one study did not find support for the theory that fiscal distress motivates the use of economic sanctions, but the authors “caution[ed] against dismissing this explanation altogether” due to time-sensitivities not captured in their study. *Id.* at 941. For a study of the relationship between fiscal distress and reliance on economic sanctions generally, rather than in the traffic setting, see Josh Pacewicz & John N. Robinson III, *Pocketbook Policing: How Race Shapes Municipal Reliance on Punitive Fines and Fees in the Chicago Suburbs*, 19 SOCIO-ECON. REV. 975, 977 (2021) (finding substantial reliance on “punitive revenue” in middle-class Black suburbs which had “difficulty attracting commercial investment and hence ‘good’ revenues”).

223. Harris et al., *supra* note 28, at 16–22.

224. *Id.* at 22–27. For another examination of changes in ticketing during periods of fiscal distress, see Makowsky & Stratmann, *Political Economy*, *supra* note 216, at 520 (examining ticketing practices in Massachusetts cities in periods of fiscal distress and finding “that Hispanics are more likely to be fined, while the data do not show any discrimination against [Black motorists],” but surmising that the results as to Black motorists “may be that police officers could have been aware of the data collection effort by the state, and thus were especially careful not to discriminate against [B]lack drivers”).

225. Su, *supra* note 217, at 42.

226. See *id.*

reduction in political pressure and return to disproportionate enforcement against communities of color.

## 2. Forfeiture Practices

Similar patterns and risks are evident regarding forfeitures. With respect to racialized enforcement, one study has found that “the share of [the] Black population in a county is a positive, statistically significant predictor of civil and total (but not criminal) asset seizure.”<sup>227</sup> Another study analyzing 2,278 municipal police departments over a fourteen-year period found a statistically significant relationship between increased forfeiture revenues and the percentage of a community that is Black or Hispanic.<sup>228</sup> The study suggests, however, that forfeiture rates are moderated in cities where minority populations are rapidly increasing—suggesting a swift shift in political power—as well as when Black and, to a lesser extent, Hispanic representation in law enforcement increases.<sup>229</sup>

As with fines, fiscal distress has been shown to alter forfeiture rates. A 2021 analysis of forfeiture practices in five states found that a one percent increase in unemployment rates—a sign of fiscal distress—was associated with an eleven to twelve percent increase in forfeiture proceeds.<sup>230</sup> The idea that fiscal distress may lead lawmakers to pressure law enforcement to engage in traffic ticketing at higher rates or even to increase forfeitures where proceeds accrue to state or local governments generally makes intuitive sense. But budgetary pressure seems unlikely in jurisdictions in which forfeiture proceeds are retained by law enforcement, including in the five states in the study. The study’s results may be explained, however, by the relationship between forfeiture intake and lawmakers’ willingness to fund law enforcement budgets or not. Law enforcement officials report that lawmakers often decline to budget money for new patrol vehicles, weapons and ammunition, drug detection dogs, law enforcement training activities, and capital projects, such as the construction of jail facilities—and that the lack of funding support leads law

227. Siân Mughan, Danyao Li & Sean Nicholson-Crotty, *When Law Enforcement Pays: Costs and Benefits for Elected Versus Appointed Administrators Engaged in Asset Forfeiture*, 50 AM. REV. PUB. ADMIN. 297, 305–06 (2020); see also DANIEL HONCHARIW, NEV. POL’Y RSCH. INST., WHO DOES CIVIL ASSET FORFEITURE TARGET MOST?: A REVIEW OF THE LAS VEGAS METROPOLITAN POLICE DEPARTMENT’S FORFEITURE ACTIVITIES FOR FISCAL YEAR 2016, at 3 (2017) (finding that forfeitures in Las Vegas, Nevada, were more likely to occur in areas with high poverty rates and large minority populations).

228. Sean Nicholson-Crotty, Jill Nicholson-Crotty, Danyao Li & Siân Mughan, *Race, Representation, and Assets Forfeiture*, 24 INT’L PUB. MGMT. J. 47, 48, 57–61 (2021).

229. *Id.*

230. KELLY, *supra* note 65, at 21. *But see* Mughan et al., *supra* note 227, at 305–06 (finding a statistically significant positive association between criminal, but not civil, forfeiture and departmental budget and own source revenue, which suggests that wealthier rather than cash-strapped agencies are more likely to engage in criminal forfeiture practices).

enforcement officials to see an intake in forfeiture revenues as critical.<sup>231</sup> In some jurisdictions, lawmakers propose budget cuts along with the suggestion that law enforcement use forfeiture funds to cover those budgetary shortfalls.<sup>232</sup> In one study in which 1,400 municipal and county law enforcement officers were surveyed, forty percent of respondents said that they were dependent on forfeiture revenues as necessary for their budgets.<sup>233</sup> And, like fines, there is evidence that the relationship between fiscal downturns and forfeiture activities are one-directional. For example, the five-state study noted above concluded that when income rose in a state—suggesting a financial upturn—rather than forfeiture practices receding, forfeiture ticked up even farther.<sup>234</sup>

Less scholarly attention has been paid to the dual role between fiscal health and racially discriminatory enforcement as it relates to traffic-based forfeiture practices but, while further study is needed, some insight can be drawn from the literature. As noted above, one study has found that a fiscal downturn may lead to increased targeting of White drivers for traffic enforcement through

231. *E.g.*, Katherine Baicker & Mireille Jacobson, *Finders Keepers: Forfeiture Laws, Policing Incentives, and Local Budgets*, 91 J. PUB. ECON. 2113, 2117 (2007) (regarding a response by city officials in San Jose, California, denying a request for an increased budget for equipment by noting the police department could use the prior year's forfeiture proceeds); Burnett, *Deputy Has Midas Touch*, *supra* note 101 (quoting Barbour County, Alabama Sheriff Leroy Upshaw: "The county commission don't . . . allow us any money for equipment. So we use seized drug money to buy basic items that should be provided to us, such as bullet proof vests, gun belts, guns. Nine out of 14 cars been brought with drug money"); Burnett, *Seized Drug Assets*, *supra* note 177 (quoting Kleberg County, Texas Sheriff Ed Mata regarding the response received when he asked for money for new vehicles: "They said, 'Well, there ain't no money, use your assets'"); William H. Freivogel, *For Phelps County, Seizing Suspects' Assets Is 'Like Pennies from Heaven'*, ST. LOUIS PUB. RADIO (Feb. 21, 2019, 12:05 AM), <https://news.stlpublicradio.org/government-politics-issues/2019-02-21/for-phelps-county-seizing-suspects-assets-is-like-pennies-from-heaven> [<https://perma.cc/C4V7-8BDS>] (quoting Phelps County, Missouri Sheriff Richard L. Lisenbe, who has used forfeiture funds to purchase ammunition, new cars, and the renovation of a county jail, as stating that forfeiture is "the only thing that keeps our head above water"); Lee et al., *TAKEN*, *supra* note 159 (noting that Clemson, South Carolina, Police Chief Jimmy Dixon reported he would have to shut down the agency's K-9 unit without forfeiture revenues); Lippmann, *supra* note 146 (quoting St. Charles County, Missouri Police Captain Chris Hunt: "I really can't put a number on it—how many days or months or years it would take for us to acquire those funds from the general fund—but it would have a significant impact on other areas of our department"); Robert O'Harrow, Jr., Steven Rich & Shelly Tan, *Asset Seizures Fuel Police Spending*, WASH. POST (Oct. 11, 2014), <https://www.washingtonpost.com/sf/investigative/2014/10/11/asset-seizures-fuel-police-spending/> [<https://perma.cc/BNP3-BHNT> (dark archive)] [hereinafter O'Harrow et al., *Asset Seizures*] (quoting Prince George's County, Maryland Police Department spokesperson Julie Parker: "In tight budget periods, and even in times of budget surpluses, using asset forfeiture dollars to purchase equipment and training to stay current with the ever-changing trends in crime fighting helps serve and protect the citizens").

232. *See, e.g.*, Isaiah Thompson, *The Cash Machine*, MY CITY PAPER (Nov. 28, 2012), <https://mycitypaper.com/The-Cash-Machine/> [<https://perma.cc/RD86-KDZB>] (reporting that, in 2009, Philadelphia Mayor Michael Nutter proposed budget cuts for the District Attorney along with a statement that forfeiture funds could be used to make up the difference).

233. John L. Worrall, *Addicted to the Drug War: The Role of Civil Asset Forfeiture as a Budgetary Necessity in Contemporary Law Enforcement*, 29 J. CRIM. JUST. 171, 179, 182 (2001).

234. KELLY, *supra* note 65, at 21.

which forfeiture activities might be launched.<sup>235</sup> And yet, there is a risk that this may still lead to greater use of pretextual traffic enforcement against Black and Latinx motorists. With traffic enforcement officers focused on raising revenues through the ticketing of White drivers, there would be less capacity to “fish” for forfeiture opportunities through pretextual stops of Black and Latinx drivers. When such stops do occur, they may be more likely to be based on actual evidence of involvement in the drug trade rather than mere hunches, with each stop therefore being more likely to result in the probable cause needed for a drug-related arrest.<sup>236</sup> One possible downstream consequence of this scenario is that after the fiscal downturn recedes, the inaccurate lesson learned for law enforcement may be that Black and Latinx drivers are more likely overall to be involved in the drug trade—which is not the case—and so law enforcement may be even more likely to view innocent drivers as suspicious and subject them to pretextual stops going forward.<sup>237</sup>

#### B. *What Laws Are Enforced*

The relevance of revenue to law enforcement behavior is not only evident with regard to who is subject to law enforcement, but also as to what laws are enforced. A growing body of research suggests that in many departments, revenues may push law enforcement away from investigation of violent and property offenses and toward traffic enforcement and drug interdiction.

Why might that be? Unlike traffic offenses, which allow for a high volume of low-level ticketing, investigating violent and property offenses takes substantial time and resources per case that then cannot be spent on ticketing. Further, in a violent crime, such as a homicide or sex offense, it would be unusual for there to be anything to forfeit. There typically would be no direct, and therefore no indirect, crime proceeds, nor would there likely be any instrumentalities of the crime short of any weapon used. Even in property crimes, such as a robbery or burglary, the items stolen, or the value thereof, would not accrue to the government, but be returned to the victim. In sharp contrast, drug offenses include not only the money exchanged in the sale of drugs, but any assets purchased with that money, and any instrumentalities—such as an automobile used to transport the drugs—would be subject to forfeiture as well.<sup>238</sup>

Studies regarding the effects of revenue generation on policing of serious violent and property offenses are mixed, and suggest that effects may depend on the size and structure of the agency. Larger agencies tend to be more

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235. See *supra* notes 222–24 and accompanying text.

236. Cf. Gross & Barnes, *supra* note 28, at 705–10.

237. *Id.*; see *supra* notes 137–43 and accompanying text.

238. See *supra* note 88 and accompanying text.

compartmentalized—for example, having a homicide squad distinct from its traffic enforcement unit.<sup>239</sup> Though it is not impossible to shift officers from unit to unit, doing so is more onerous than in a smaller agency where officers are more likely to be generalists rather than specialists.<sup>240</sup> One study focusing solely on forfeiture revenues in large police departments found that increases in such revenues have a statistically significant positive effect on clearance rates for some serious violent or property crimes, though “the effect is very small” and so “cannot be considered sufficient to support an argument that forfeiture funds have a material impact in the battle against serious crime.”<sup>241</sup> In contrast, another recent study focused on revenue from fines and fees concluded that a one percent increase in the percentage of a municipality’s budget generated through such revenues “is associated with a statistically and substantively significant 6.1 percentage point decrease in the violent crime clearance rate and 8.3 percentage point decrease in the property crime clearance rate” at the county level.<sup>242</sup> The study further found a 4.8 percentage point decrease in violent crime clearance rates and 8.3 percentage point decrease in property crime clearance rates when accounting for increased traffic ticket revenue that may be generated as average commute times increase within a given county.<sup>243</sup> These results were driven largely by small municipalities where police departments are less compartmentalized and so better able to shift policing to enforcement of traffic and other offenses likely to generate fine and fee revenue.<sup>244</sup> That said, there is anecdotal information that even large agencies can design policing around revenue generation in ways that undermine public safety. For example, in 2014 the Oakland, California, police department announced that it made no attempt to investigate eighty percent of reported robberies and ninety-seven percent of reported burglaries, while at the same time dedicating significant resources to traffic enforcement.<sup>245</sup>

Turning specifically to drug enforcement, numerous studies support the conclusion that law enforcement’s ability to retain forfeiture revenue has helped motivate the drug war. As noted above, in the mid-1980s, federal—and shortly thereafter, state and local—forfeiture laws were revised to allow law enforcement agencies to retain revenues from forfeitures in which they

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239. Goldstein et al., *supra* note 29, at 8.

240. *Id.*; see also Kelly & Kole, *supra* note 29, at 564 (noting agencies may “not be able to alter patterns of policing significantly [in response to forfeiture revenues] . . . due to structural rigidities”).

241. Kelly & Kole, *supra* note 29, at 567–70.

242. Goldstein et al., *supra* note 29, at 7–8. While forfeitures are mentioned in this study, it is based on data from the U.S. Census Bureau’s Census of Governments, which focuses on fines and fees, rather than forfeitures of cash or property. See *supra* note 203.

243. Goldstein et al., *supra* note 29, at 17.

244. *Id.* at 7, 17, 21.

245. Robert Gammon, *Why Oakland Police Can’t Solve Crime*, E. BAY EXPRESS (May 20, 2015), <https://www.eastbayexpress.com/oakland/why-oakland-police-cant-solve-crime/Content?oid=4288948> [<https://perma.cc/Z6R5-VKFF>].

participated.<sup>246</sup> While one study concluded that focusing enforcement on areas of concentrated disadvantage, rather than retention policies, explain increased drug arrest rates,<sup>247</sup> others have found an eighteen<sup>248</sup> to thirty-seven<sup>249</sup> percent uptick in drug arrests in the period after retention became possible. Another study of forfeiture practices between 2000 and 2008 suggests that, while the shift toward drug policing remains statistically significant, it is now small, perhaps because current practices primarily sustain the early boom in drug enforcement.<sup>250</sup> Further studies indicate that the more generous state and local laws are with respect to revenue retention by law enforcement, the less likely law enforcement will seek federal adoption of forfeitures through the Equitable Sharing program.<sup>251</sup> One of these studies found that where local governments offset forfeiture proceeds, so long as the net result (proceeds minus offsets) is positive, and law enforcement is allowed to retain those net proceeds, agencies “devot[e] substantially more of their effort to anti-drug policing.”<sup>252</sup>

Studies also indicate that successful drug interdiction practices motivate future forfeiture activities. While one study found no clear pattern showing that drug arrest rates increased in jurisdictions who had prior forfeiture success,<sup>253</sup> that result may be explained in part by practices in which, rather than engage in arrests, officers seize cash or other property and then allow people to leave the scene.<sup>254</sup> Further, a survey and interviews of municipal and county law enforcement officials indicates that a department’s past success in obtaining

246. See *supra* notes 94–98 and accompanying text.

247. Bishopp & Worrall, *supra* note 184, at 128–30, 133.

248. E.g., Brent D. Mast, Bruce L. Benson & David W. Rasmussen, *Entrepreneurial Police and Drug Enforcement Policy*, 104 PUB. CHOICE 285, 301–03 (2000).

249. E.g., Shawn Kantor, Carl Kitchens & Steven Pawlowski, *Civil Asset Forfeiture, Crime, and Police Incentives: Evidence from the Comprehensive Crime Control Act of 1984*, at 6, 36 (Nat’l Bureau of Econ. Rsch., Working Paper No. 23873, 2017) (analyzing data from thirty-eight states).

250. See Kelly & Kole, *supra* note 29, at 573–74; cf. Mughan et al., *supra* note 227, at 306 (finding that municipal police departments allowed to keep one-hundred percent of forfeiture proceeds seize twenty-three percent more than departments that retain only one-fifth of those proceeds).

251. See, e.g., Jefferson E. Holcomb, Marian R. Williams, William D. Hicks, Tomislav V. Kovandzic & Michele Bisaccia Meitl, *Civil Asset Forfeiture Laws and Equitable Sharing Activity by the Police*, 17 CRIMINOLOGY & PUB. POL’Y 101, 114–15 (2018) (finding that in states where laws are more restrictive on revenue retention by law enforcement, participation in Equitable Sharing increases); Jefferson E. Holcomb, Tomislav V. Kovandzic & Marian R. Williams, *Civil Asset Forfeiture, Equitable Sharing, and Policing for Profit in the United States*, 39 J. CRIM. JUST. 273, 282 (2011) (same); Worrall & Kovandzic, *supra* note 185, at 232–39 (finding “that significantly fewer equitable-sharing payments are collected in generous forfeiture states”); see also EVALUATION & INSPECTIONS DIV. 17-02, *supra* note 123, at 36 (describing interviews with law enforcement officials in Nebraska who report relying on the Equitable Sharing program following a 1999 Nebraska Supreme Court ruling outlawing pursuit of civil forfeiture in addition to a criminal prosecution).

252. Baicker & Jacobson, *supra* note 231, at 2115 (evaluating a portion of assets seized in Arizona, California, Florida, New York, and Pennsylvania during the 1990s).

253. Bishopp & Worrall, *supra* note 184, at 129–32 (finding no clear pattern showing that jurisdictions who had prior forfeiture success resulted in an increase in drug arrests).

254. See *supra* notes 164–69 and accompanying text.



forfeiture revenues increased the officials' perceived dependence on forfeiture activities.<sup>255</sup> Because forfeiture revenues may be used to purchase equipment and training that support forfeiture practices, law enforcement see the loss of such revenues as something that would "drastically handicap[] law enforcement capabilities," particularly as to its efforts in the "war on drugs."<sup>256</sup>

Law enforcement activism, which has often involved efforts to protect the ability to retain forfeiture proceeds,<sup>257</sup> also supports the conclusion that forfeiture revenues push law enforcement toward drug interdiction. For example, a proposal was raised in 1988 to reform the Equitable Sharing program by requiring that funds be distributed in the same manner as that required by state or local law, eliminating the requirement that all shared funds be distributed directly to the law enforcement entities involved in the seizure.<sup>258</sup> Because many state and local governments had not yet shifted to law enforcement retention, for many agencies this would have meant that revenues would be sent to a state's general fund or other funds outside of the control of law enforcement.<sup>259</sup> Law enforcement beat back those reform efforts by arguing that if they were no longer able to retain forfeiture revenues, then those revenues would dry up, suggesting that they would shift away from enforcement that resulted in forfeitures.<sup>260</sup> So too at the state and local level. For example, in 2018, a bill was introduced to require forfeiture revenues to be placed in Alabama's general fund.<sup>261</sup> The Alabama District Attorneys Association and Alabama Sheriffs Association quickly and publicly responded, with the presidents of the two organizations authoring an op-ed stating that with the

255. See Worrall, *supra* note 233, at 180–81.

256. Kelly & Kole, *supra* note 29, at 561 n.9 (quoting a 1999 letter from the National Association of Police Organizations to the U.S. Senate); see also *supra* note 233 and accompanying text.

257. Though law enforcement agencies often lobby on these issues publicly, in some cases they are able to end legislative reform efforts through private meetings with lawmakers. *E.g.*, Mimi Wright, *How a Quiet Police Lobbying Campaign Killed Civil Asset Forfeiture Reform in Missouri*, ST. LOUIS PUB. RADIO (Dec. 30, 2019, 7:38 AM), <https://news.stpublicradio.org/government-politics-issues/2019-12-30/how-a-quiet-police-lobbying-campaign-killed-civil-asset-forfeiture-reform-in-missouri> [<https://perma.cc/Z3GD-MKT6>] [hereinafter Wright, *Quiet Police Lobbying*] (reporting on a Missouri bill that would have ended the ability of officers to participate in the Equitable Sharing program in most cases and noting that law enforcement was able to kill the bill without testifying on it publicly).

258. See Benson, *supra* note 89, at 306.

259. *Id.* at 301–02.

260. See *id.* at 306 (“[I]f local and state law enforcement agencies cannot share, the assets will in all likelihood not be seized and forfeited” (quoting *Hearing on Federal Drug Forfeiture Activities Before the Subcomm. on Crime of the H. Comm. on the Judiciary*, 101st Congress, 166 (1990) [hereinafter *Hearing on Federal Drug Forfeiture Activities*]); *id.* at 306–07 (“Drug agents would have much less incentive to follow through on the assets potentially held by drug traffickers, since there would be no reward for such efforts and would concentrate their time and resources on the criminal prosecution” (quoting *Hearing on Federal Drug Forfeiture Activities, supra*, at 26)).

261. See Brian McVeigh & Dave Sutton, Opinion, *Don't Gut Civil Asset Forfeiture*, AL.COM (Feb. 12, 2018, 12:40 PM), [https://www.al.com/opinion/2018/02/dont\\_gut\\_civil\\_asset\\_forfeiture.html](https://www.al.com/opinion/2018/02/dont_gut_civil_asset_forfeiture.html) [<https://perma.cc/622D-3S27>].

change, “What incentive would local police and sheriffs have to invest manpower, resources and time in these operations if they don’t receive proceeds to cover their costs?”<sup>262</sup> The op-ed threatened that if the bill passed, law enforcement would refrain from enforcing drug offenses.<sup>263</sup> Likewise, when lawmakers in Wisconsin considered reforming state law to require all forfeiture revenue accrue to the state’s School Fund, Eau Claire County Sheriff Ron Cramer argued: “We already give 50% to the School [F]und under current law. What is the money used for in the School [F]und? What advantage is there for the District Attorney or Law Enforcement to make any seizures that all the proceeds revert to another agency?”<sup>264</sup>

Lobbying efforts have also included pushing back against procedural reforms that would improve the odds that people might successfully challenge civil forfeitures. For example, when touting the value of civil forfeiture for denying crime proceeds to drug dealers, St. Charles County, Missouri prosecutor Timothy Lohmar claimed that when their officers seize cash, “we can prove without a doubt that the person is involved in criminal activity.”<sup>265</sup> But when lobbying against a reform bill in Missouri’s legislature that would have required a criminal conviction to proceed with forfeiture, he argued that prosecutors would be unable to meet the burden of proof and thus have to return seized cash and property.<sup>266</sup> Massachusetts provides another recent example. There is no Sixth Amendment right to counsel in forfeiture cases,<sup>267</sup> and so the person whose property is seized is forced to retain counsel or face highly complicated proceedings without assistance.<sup>268</sup> Attorney’s fees can run into the thousands of dollars, often a sizeable percentage or in excess of the value of the cash or property at issue.<sup>269</sup> For many, retaining counsel makes no financial

262. *Id.*

263. *See id.*

264. Ron Cramer, Eau Claire County Sheriff, Comments Related to State Forfeiture Bill AB 537 / SB 521 (transcript available with the North Carolina Law Review); *cf.* EVALUATION & INSPECTIONS DIV. 17-02, *supra* note 123, at 36 (interviewing law enforcement in the DEA, Nebraska, and North Carolina who stated that limitations on Equitable Sharing adoptions could result in reduced cooperation between state and federal law enforcement).

265. William H. Freivogel, *St. Charles County Police Pressured Suspects in Private Tow Lot To Hand Over \$10,000 in Cash*, ST. LOUIS PUB. RADIO (Dec. 29, 2019, 7:41 AM), <https://news.stlpublicradio.org/show/st-louis-on-the-air/2019-12-29/st-charles-county-police-pressure-d-suspects-in-private-tow-lot-to-hand-over-10-000-in-cash> [<https://perma.cc/C8W6-BHWW>] [hereinafter Freivogel, *St. Charles County*].

266. *See* Wright, *Quiet Police Lobbying*, *supra* note 257.

267. *See* Scott v. Illinois, 440 U.S. 367, 373–74 (1979) (limiting the Sixth Amendment right to counsel to cases in which a person is actually imprisoned as part of the sentence).

268. *E.g.*, Stillman, *Taken*, *supra* note 167.

269. *E.g.*, Burnett, *Cash Seizures*, *supra* note 122 (describing a case in which an attorney charged \$12,000 for a forfeiture challenge); O’Harrow et al., *They Fought the Law*, *supra* note 124 (agreeing to settle case for a return of half of the \$32,000 seized, but only receiving back about \$7,000 due to legal

sense and so such forfeitures—including those grounded on facts that may fall short of meeting even reduced standards of proof—go unchallenged.<sup>270</sup> Yet, when Massachusetts lawmakers introduced legislation that would use forfeiture revenues to fund public defenders to provide representation in civil forfeiture cases, a local District Attorney pushed back, arguing that the reform was an “affront to taxpayers.”<sup>271</sup>

Further, as with the relationship between official or unofficial ticketing quotas and career advancement,<sup>272</sup> individual officers may be motivated to engage in drug interdiction by personal benefits that accrue from forfeiture activities. Forfeiture dollars fund overtime pay for forfeiture-related work.<sup>273</sup> Officers known for success in obtaining forfeitures also may find supplemental income by providing forfeiture trainings.<sup>274</sup> They and their families may be provided opportunities to purchase forfeited assets for personal use.<sup>275</sup> Elected prosecutors or sheriffs can generate positive press by using forfeiture revenues to gift items to, or provide financial support for, community organizations.<sup>276</sup> Officers may be feted at annual competitions and banquets funded with forfeiture revenues, with trophies or weapons gifted to those who had the

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fees of \$9,000); *id.* (obtaining a return of \$2,400 seized, but receiving only \$1,130.56 after paying \$1,269.44 in legal costs); Sallah et al., *supra* note 129 (regarding people spending thousands of dollars to challenge a \$75,000 forfeiture). The dollar value of many forfeitures is sufficiently low that they would necessarily be less than attorney’s fees to seek their return. *See infra* notes 363–66. In some jurisdictions, property owners must also pay fees to intervene in the case, which may cost hundreds or even thousands of dollars. *E.g.*, HAW. REV. STAT. § 712A-10(9) (requiring fees that are the higher of \$2,500 or ten percent of the property value).

270. *E.g.*, Benson, *supra* note 89, at 315–16; McCullough et al., *supra* note 82 (reporting that almost sixty percent of civil forfeiture cases analyzed in four Texas counties went unchallenged).

271. Jim Kinney, ‘An Affront to Taxpayers’: Hampden DA Anthony Gulluni Decries Civil Forfeiture Reform Measure, MASSLIVE (June 23, 2022, 5:06 PM), <https://www.masslive.com/news/2022/06/an-affront-to-taxpayers-hampden-da-anthony-gulluni-decries-civil-forfeiture-reform-measure.html> [<https://perma.cc/8DKS-NUT6> (staff-uploaded archive)].

272. *See supra* notes 210–16 and accompanying text.

273. *See, e.g.*, Megan O’Matz, *Sunrise Police Penalized by Feds Over Drug Stings*, S. FLA. SUNSENTINEL (Nov. 21, 2014, 10:42 AM), <https://www.sun-sentinel.com/news/florida/fl-sunrise-forfeiture-audit-20141120-story.html> [<https://perma.cc/K3KA-Y5NC> (dark archive)] (describing a federal audit that took no issue with the use of nearly \$1 million in forfeiture revenues to fund overtime pay for a police department that helped generate approximately \$6 million in forfeiture funds over two years).

274. *See, e.g.*, O’Harrow et al., *Police Intelligence Targets Cash*, *supra* note 85 (reporting that Desert Snow hires officers to conduct trainings); *see also supra* note 101 and accompanying text.

275. *See, e.g.*, SUBRAMANIAN ET AL., REVENUE OVER PUBLIC SAFETY, *supra* note 27, at 10 (regarding Minnesota’s Metro Gang Strike Task Force).

276. *See, e.g.*, Saurabh Datar & Shannon Dooling, *It’s Easy for Police to Seize Money. Worcester’s District Attorney Makes It Hard To Get It Back*, WBUR (Aug. 18, 2021), <https://www.wbur.org/news/2021/08/18/civil-forfeiture-police-money-massachusetts-worcester-joseph-h-early> [<https://perma.cc/B23A-E5DE>] (regarding District Attorney Joseph D. Early, Jr.’s posting of photos of him handing out checks to support community sports programs, funded by forfeitures).

highest quantity or dollar value of forfeitures.<sup>277</sup> Some jurisdictions use forfeiture revenues to pay for college tuition for their officers,<sup>278</sup> commemorative gear for drug interdiction operations,<sup>279</sup> tickets to sporting events,<sup>280</sup> athletic equipment and facilities,<sup>281</sup> and staff parties—including the use of forfeiture funds for alcohol, kegs of beer, and a margarita machine used by the Montgomery County, Texas District Attorney’s Office for an employee barbeque cookoff that was parodied by comedian John Oliver as “literally using this money as their own personal slush fund.”<sup>282</sup>

### C. *How Enforcement Occurs*

Additional evidence that the revenue-generating potential of economic sanctions motivates law enforcement behavior is also seen by looking at enforcement methods. Drug interdiction programs could interrupt the drug trade either by seizing drugs prior to purchase or by seizing cash after purchase; in either case, people involved in the drug trade do not obtain the fiscal benefit of the crime, though only the former method intercepts drugs before they reach the community. By the mid-1980s, Congress’s decision to supercharge civil forfeiture<sup>283</sup> led to a policy change whereby, according to then New York City Police Commissioner Patrick Murphy, law enforcement would “impose

277. See, e.g., Burnett, *Sheriff Under Scrutiny*, *supra* note 182 (regarding the purchase of knives by the Colorado State Patrol for use as incentive awards and an over \$12,000 expenditure for an awards banquet by the Austin, Texas, Police Department); Cary, *Inside Look*, *supra* note 38 (regarding trophies provided for the best unit and best individual officer); O’Harrow et al., *Police Intelligence Targets Cash*, *supra* note 85 (regarding annual banquets put on by Desert Snow, a for-profit corporation that provides drug interdiction training to officers nationwide, which includes the issuance of numerous awards, including the top honor, which carries the title “Royal Knight”); O’Harrow et al., *Asset Seizures*, *supra* note 231 (regarding the expenditure of \$4,600 for an awards banquet in New Mexico).

278. See, e.g., Burnett, *Sheriff Under Scrutiny*, *supra* note 182 (regarding the expenditure of \$144,689 for college courses for officers in the St. Louis County Police Department).

279. See, e.g., *id.* (regarding the purchase of bomber jackets, embroidered polo shirts, and fleece vests for the Colorado State Patrol); Cary, *Inside Look*, *supra* note 38 (regarding commemorative baseball caps for the Operation Rolling Thunder drug interdiction program).

280. E.g., Burnett, *Sheriff Under Scrutiny*, *supra* note 182 (regarding the purchase of college football tickets for use by the Fulton County, Georgia District Attorney’s Office and minor league baseball tickets by the Colorado State Patrol).

281. E.g., *id.* (regarding the use of over \$5,200 on gear and a race clock for the Austin, Texas, Police Department’s running team); Last Week Tonight, *Civil Forfeiture: Last Week Tonight with John Oliver (HBO)*, YOUTUBE, at 10:05 (Oct. 5, 2014), <https://www.youtube.com/watch?v=3kEpZWGgJks> [<https://perma.cc/CT6H-AP2D>] (on file with the North Carolina Law Review) (regarding the purchase of a Zamboni by the Worcester County, Massachusetts District Attorney’s Office); Tamara Diaz, *Turning Crime into a Recruitment Tool: Asset Forfeitures Fund \$15K Sheriff’s Office Gym*, VICTORIA ADVOC. (Sept. 3, 2022), [https://www.victoriaadvocate.com/premium/turning-crime-into-a-recruitment-tool-asset-forfeitures-fund-15k-sheriffs-office-gym/article\\_a3f2c05e-2982-11ed-a6f7-e77f6cfd1ac5.html](https://www.victoriaadvocate.com/premium/turning-crime-into-a-recruitment-tool-asset-forfeitures-fund-15k-sheriffs-office-gym/article_a3f2c05e-2982-11ed-a6f7-e77f6cfd1ac5.html) [<https://perma.cc/4NYG-4FPM>] (regarding funding for a private gym).

282. Last Week Tonight, *supra* note 281, at 10:33 to 11:14; see also Burnett, *Sheriff Under Scrutiny*, *supra* note 182.

283. See *supra* notes 84–98 and accompanying text.

roadblocks on the southbound lanes of I-95, which carry the cash to make drug buys, rather than the northbound lanes, which carry the drugs.”<sup>284</sup> Today, drug interdiction efforts frequently focus primarily or exclusively on cash interception.<sup>285</sup> As Barbour County, Alabama Chief Deputy Sheriff Eddie Ingram has more recently explained: “If I come in here and bring [the sheriff] \$100,000, he gon’ be jumping up and down? Absolutely. If I bring him 4 or 5 kilos, is he gon’ be jumping up and down? Not as high.”<sup>286</sup>

Beyond a shift to focusing on seizures of cash rather than the interception of drugs before they reach the community, the failure to make arrests for purported drug (or other) crimes discovered during traffic stops also supports the conclusion that some law enforcement entities are motivated by forfeiture revenues.<sup>287</sup> This is not to say that drug interdiction officers never make arrests during traffic stops in which evidence of drug crimes is uncovered; some arrests do occur.<sup>288</sup> But motorists are also often released after cash or property is seized.<sup>289</sup>

Arrests trigger criminal processes and protections. An arrest carries with it the requirement of a probable cause hearing in short order, for which defense counsel who can assist in challenging the evidence law enforcement claim establishes probable cause may be appointed.<sup>290</sup> A determination at such a hearing that probable cause does not in fact exist would undermine the government’s ability to forfeit seized cash or property. And even if the quite low probable cause standard is met, the ability of counsel to develop evidence of innocence during criminal proceedings would assist a motorist in undermining the government’s ability to meet its burden of proof in related civil forfeiture proceedings.<sup>291</sup>

284. Blumenson & Nilsen, *supra* note 88, at 68; *see also id.* at 68–69, 78–79 (describing Department of Justice policies that diverted prosecutorial resources away from other offenses and toward forfeiture in order to increase resources); *see also infra* notes 375–77 and accompanying text (regarding a similar shift in tactics in street-level buy-bust operations).

285. *E.g.*, Benson, *supra* note 89, at 315–16 (documenting how law enforcement in Volusia County, Florida focus drug interdiction efforts on post-sale cash intercepts); Burnett, *Cash Seizures*, *supra* note 122 (explaining how Texas sheriffs focus on cash returning south toward Mexico rather than drugs going north into the United States); Freivogel, *No Drugs, No Crime*, *supra* note 187 (describing drug interdiction of cash in Missouri and Tennessee); Freivogel, *St. Charles County*, *supra* note 265 (quoting St. Charles County, South Carolina prosecutor Timothy Lohmar: “We don’t seize anything but cash”).

286. Burnett, *Deputy Has Midas Touch*, *supra* note 101.

287. *See* EVALUATION & INSPECTIONS DIV. 17-02, *supra* note 123, at 24–25, 60–61 (questioning the DEA’s inability to verify that seizures were made to advance ongoing investigations or otherwise led to arrest or prosecution).

288. *E.g.*, Cary, *Inside Look*, *supra* note 38 (describing a five-day drug interdiction program in which officers stopped one out of every five vehicles (hundreds total) and made forty arrests).

289. *E.g.*, *supra* notes 164–69 and accompanying text.

290. *See* County of Riverside v. McLaughlin, 500 U.S. 44, 55 (1991).

291. *See supra* notes 90–93 and accompanying text.

In contrast, without an arrest, motorists are left to navigate highly complex civil forfeiture proceedings on their own.<sup>292</sup> As noted above, there is no constitutional right to counsel to aid in developing the record, and retaining counsel is often more expensive than the value of the seized items.<sup>293</sup> This matters. An investigative report by the *Washington Post* found that between September 2001 and September 2014, nearly 62,000 seizures made through highway-interdiction and other programs were processed through the Equitable Sharing Program at a value of \$2.5 billion.<sup>294</sup> Only approximately sixteen percent of those seizures were challenged, in many cases due to the expense and complexity of the proceedings.<sup>295</sup> But of those cases where there was a challenge, the government agreed to return the money forty-one percent of the time, though it “often required owners of the cash to sign agreements not to sue police over the seizures” as part of the settlement.<sup>296</sup>

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In sum, there is substantial empirical and anecdotal evidence suggesting that lawmaker and law enforcement behaviors are influenced by the revenue-generating economy of traffic enforcement. Periods of fiscal distress have resulted in increased reliance on ticketing and forfeitures in ways that appear to temporarily moderate racial disparity in traffic enforcement but over the long-term risk entrenching and exacerbating racialized enforcement. The potential boon of revenue retention appears to steer law enforcement toward traffic ticketing and drug interdiction efforts, and the revenue-generating qualities of economic sanctions overall may undermine the enforcement of serious violent and property offenses. Economic sanction revenues have even been tied to changed methods of enforcement, with officers focused on collecting cash rather than intercepting drugs on their way into the community and declining to arrest those they claim are involved in drug and other serious crimes. This evidence suggests that both lawmakers and law enforcement will respond to traffic enforcement reforms in ways that protect their ability to use economic sanctions as a revenue source. The possible downstream consequences of that behavior as it relates to traffic enforcement reforms are addressed below.

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292. Stillman, *Taken*, *supra* note 167; Leonard v. Texas, 137 S. Ct. 847, 848 (2017) (Thomas, J., statement respecting the denial of certiorari) (remarking that “forfeiture operations frequently target the poor and other groups least able to defend their interests in forfeiture proceedings”).

293. *See supra* notes 267–70 and accompanying text.

294. *See* Sallah et al., *supra* note 129.

295. *See id.*

296. *Id.*

## III. POTENTIAL CONSEQUENCES AND ADDITIONAL REFORMS

Traffic enforcement reforms have significant potential to support the goal of reducing law enforcement violence in the traffic space, but standing alone, they simultaneously raise two key risks. First, shifts to alternative methods of traffic enforcement risk replicating the budgetary and racial dynamics of traditional traffic enforcement. Second, armed law enforcement's loss of its traffic enforcement capabilities may lead to rent-seeking behavior—particularly through the enforcement of public order offenses and municipal code violations as well as increased reliance on non-traffic-based drug interdiction tactics—thereby increasing opportunities for violence in those other arenas.

A. *Replication of Budgetary and Racial Dynamics*

Whether a ticket is issued by an armed officer, a civilian officer, or a machine, a fine is a fine, a surcharge is a surcharge, a fee is a fee. And for those who cannot pay immediately, the fact the ticket is issued by a civilian officer or an automated system does nothing to prevent the debt enforcement penalties for nonpayment that can generate additional fee revenues. In other words, the potential fiscal benefits of these practices to the government remain.

Shifting traffic enforcement to civilian units does not preclude lawmakers from engaging in the same types of pressure to ticket—through formal and informal quotas and budgeting power—as it has employed with respect to armed law enforcement, and does not prevent those units from engaging in more or less racially disproportionate enforcement as a jurisdiction's fiscal strength ebbs and flows.<sup>297</sup> This is not to say that the budgetary and racial dynamics would be identical between civilian and armed departments. In particular, so long as civilian units are precluded from engaging in pretextual policing, which may lead to internal budgetary pressures to raise forfeiture revenues, civilian units may avoid the type of racialized enforcement practices embedded within and reenforced by drug interdiction.<sup>298</sup> As Jordan Blair Woods has explained, this is why, as a matter of institutional design, prohibiting civilian units from searching vehicles or engaging in other forms of nontraffic investigation is critical to the reform's efficacy.<sup>299</sup> But even with that design in place, pressure from lawmakers to raise revenue—which has fallen hardest on politically vulnerable, and particularly Black and Latinx, communities—is easily replicated with respect to civilian units.

A shift to automated enforcement also is more susceptible to budgetary and racial dynamics than may be apparent at first glance. Automated enforcement risks increasing lawmaker dependence on ticket revenue. Take, for

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297. See *supra* Section II.A.

298. See *supra* notes 130–43 and accompanying text.

299. Woods, *Traffic Without the Police*, *supra* note 11, at 1499–1500.

example, red light or speeding cameras. Unlike law enforcement officers (whether armed or civilian units) who can only stop so many motorists, an automated camera captures all motorists who commit the offense for which it is programmed within the camera's view. The installation of such cameras has resulted in an explosion in the number of tickets issued.<sup>300</sup> Further, cameras once designed for a single use—say, for red-light violations or speeding—now can be converted to include license plate scanning technology that allows jurisdictions to use the cameras to enforce a wide range of traffic code violations, such as vehicle registration and insurance mandates.<sup>301</sup> A significant increase in tickets that can be generated could lead lawmakers to become myopic as to the necessity or desirability of such enforcement.<sup>302</sup> And while political pushback to automation has been successful in some communities,<sup>303</sup> the risk that automation—like traditional traffic enforcement—will be employed disproportionately in the most politically vulnerable communities remains high.<sup>304</sup> Therefore, even though automated enforcement methods create the possibility of reducing racialized policing by eliminating officer discretion in assessing tickets,<sup>305</sup> they can exacerbate the extent to which traffic enforcement is made a tool of financial extraction from communities of color.

Though far from alone,<sup>306</sup> Chicago provides an example of how traffic cameras maintain, and can even exacerbate, the revenue and racial dynamics of traffic enforcement. In 2011, in an attempt to extricate the cash-strapped city from the fiscal crisis brought on by the collapse of the housing market, then-Mayor Rahm Emmanuel's administration aggressively turned toward fines as a

300. Marco Conner, *Traffic Justice: Achieving Effective and Equitable Traffic Enforcement in the Age of Vision Zero*, 44 FORDHAM URB. L.J. 969, 997 (2017).

301. Fassler, *supra* note 47.

302. See Karin D. Martin, *Monetary Myopia: An Examination of Institutional Response to Revenue from Monetary Sanctions for Misdemeanors*, 29 CRIM. JUST. POL'Y REV. 630, 633 (2018) (defining "monetary myopia" as "a short-sighted focus on revenue at the expense of considering other important, competing concerns").

303. E.g., Bellingham, *Washington Ends Photo Ticketing Contract*, THE NEWSPAPER.COM (Mar. 28, 2012), <https://www.thenewspaper.com/news/37/3751.asp> [<https://perma.cc/JZC3-27SK>].

304. E.g., William Farrell, *Predominantly Black Neighborhoods in D.C. Bear the Brunt of Automated Traffic Enforcement*, D.C. POL'Y CTR. (June 28, 2018), <https://www.dcpolicycenter.org/publications/predominately-black-neighborhoods-in-d-c-bear-the-brunt-of-automated-traffic-enforcement/> [<https://perma.cc/43UN-JVL9>].

305. Robert J. Eger III, C. Kevin Fortner & Catherine P. Slade, *The Policy of Enforcement: Red Light Cameras and Racial Profiling*, 18 POLICE Q. 397, 409–11 (2015), [https://journals.sagepub.com/doi/pdf/10.1177/1098611115586174?casa\\_token=syVD5f7DtcEAAAAA:FcNgl2XD0b8U-5bgtZWkwjFiY1\\_ECVUyP\\_HN31CGC9\\_HH2Mwa8O1P64ZiY4j2lByjGLki3X\\_9y6YNg](https://journals.sagepub.com/doi/pdf/10.1177/1098611115586174?casa_token=syVD5f7DtcEAAAAA:FcNgl2XD0b8U-5bgtZWkwjFiY1_ECVUyP_HN31CGC9_HH2Mwa8O1P64ZiY4j2lByjGLki3X_9y6YNg) [<https://perma.cc/96MB-35Bj>] (staff-uploaded archive)].

306. E.g., Harden, *supra* note 63 (reporting that in 2020 Washington, D.C., traffic cameras "issued more than \$110 million in tickets in neighborhoods where Black residents made up 70 percent of the population, and \$24 million where the residents were mostly White").



source of revenue.<sup>307</sup> Though traffic cameras had been in place in Chicago for two decades,<sup>308</sup> Mayor Emmanuel's plan included the addition of more red-light cameras to increase ticketing rates while also boosting the dollar value of traffic ticket fines (and fines for other low-level offenses such as littering) in an effort to generate more revenue per ticket.<sup>309</sup> The cameras caused the number of tickets issued to grow significantly.<sup>310</sup> This led to a boom in driver's license suspensions for unpaid tickets, which in turn led to a massive uptick in vehicle impoundments.<sup>311</sup> The city also equipped vans with license plate scanners, which would drive around the city looking for vehicles associated with unpaid tickets.<sup>312</sup> Once located, city workers placed a boot on the vehicles, making them undriveable, and giving the owner twenty-four hours to pay a \$100 fee and all outstanding ticket debt to remove the boot; if payment was not forthcoming, the city would tow the car and impose a \$150 towing fee instead.<sup>313</sup> Impounded vehicles—nearly 300,000 of them in an approximately six year period<sup>314</sup>—racked up daily storage fees until the owner paid off all fees as well as the original traffic ticket amounts.<sup>315</sup> This was exacerbated by the fact that the Emmanuel administration raised caps on the storage fees, allowing many to accrue to thousands of dollars.<sup>316</sup>

Chicago's traffic-camera-related ticketing boon disproportionately affected Black and Latinx neighborhoods. An investigation by ProPublica found

307. Ramos, *Chicago Police*, *supra* note 200; C.J. Ciaramella, *Chicago Is Trying To Pay Down Its Debt by Impounding Innocent People's Cars*, REASON (Apr. 25, 2018, 8:15 AM), <https://reason.com/2018/04/25/chicago-debt-impound-cars-innocent/> [<https://perma.cc/G5SA-XH67>].

308. Emily Hopkins & Melissa Sanchez, *Chicago's "Race-Neutral" Traffic Cameras Ticket Black and Latino Drivers the Most*, PROPUBLICA (Jan. 11, 2022, 5:00 AM), <https://www.propublica.org/article/chicagos-race-neutral-traffic-cameras-ticket-black-and-latino-drivers-the-most> [<https://perma.cc/KY49-Y4UR>].

309. Ramos, *Chicago Police*, *supra* note 200; Ciaramella, *supra* note 307.

310. Hopkins & Sanchez, *supra* note 308.

311. Ramos, *Chicago Police*, *supra* note 200.

312. Melissa Sanchez & Sandhya Kambhampati, *How Chicago Ticket Debt Sends Black Motorists into Bankruptcy*, PROPUBLICA (Feb. 27, 2018), <https://features.propublica.org/driven-into-debt/chicago-ticket-debt-bankruptcy/> [<https://perma.cc/3S8U-NZR5>].

313. Elliott Ramos, *Chicago Seized and Sold Nearly 50,000 Cars Over Tickets Since 2011, Sticking Owners with Debt*, WBEZ CHI. (Jan. 7, 2019, 5:01 AM), <https://www.wbez.org/stories/chicago-seized-and-sold-nearly-50000-cars-over-tickets-since-2011-sticking-owners-with-debt/1d73d0c1-0ed2-4939-a5b2-1431c4cbf1dd> [<https://perma.cc/7U5A-SUPQ> (staff-uploaded archive)] [hereinafter Ramos, *Chicago Seized and Sold*]; Sanchez & Kambhampati, *supra* note 312.

314. Ramos, *Chicago Seized and Sold*, *supra* note 313 (regarding nearly 50,000 impounded vehicles through the boot-and-ticket program); Ramos, *Chicago Police*, *supra* note 200 (regarding 250,000 impounded vehicles through the city's Vehicle Impoundment Program).

315. Ramos, *Chicago Police*, *supra* note 200; Ramos, *Chicago Seized and Sold*, *supra* note 313.

316. Elliott Ramos, *Chicago City Council Approves Reforms to Vehicle Impoundment Program*, WBEZ CHI. (July 22, 2020, 12:49 PM), <https://www.wbez.org/stories/chicago-city-council-approves-reforms-to-vehicle-impoundment-program/cbd354e9-a037-403c-b547-2bc683d2607a> [<https://perma.cc/M7Z3-JEFV> (staff-uploaded archive)] [hereinafter Ramos, *Chicago City Council*].

that between 2015 and 2019, the city’s cameras triggered 3.1 million tickets; “[t]he highest share, or about 38%, of those tickets went to motorists from majority-Black ZIP codes . . . [which] account for 27% of households” and 19% of tickets went to “majority-Hispanic ZIP codes, which account for . . . 16% of households.”<sup>317</sup> While one explanation may be that people in those neighborhoods are committing a greater number of offenses, roadway infrastructure may play a critical role. Both the ProPublica investigation and a separate study of tickets issued by Chicago’s traffic cameras between 2016 and 2019 found that ticketing levels increase the closer the camera is placed to a freeway, and that those cameras are disproportionately located in Black neighborhoods.<sup>318</sup>

When Mayor Lori Lightfoot took office, she made the issuance of tickets through traffic cameras even more lucrative. The Lightfoot administration engaged in some reforms, including disentangling impoundments from driver’s license suspensions, capping storage fees for impounded vehicles at \$1,000, and making it easier for Chicagoans to seek hardship reductions of traffic fines.<sup>319</sup> But a key component of Mayor Lightfoot’s 2021 annual budget included reducing the rate of speed that would trigger ticketing by the city’s traffic cameras, with the new program imposing \$35 tickets to people driving six to ten miles over the speed limit and \$100 tickets for higher speeds.<sup>320</sup> In 2021, cameras triggered 1.4 million tickets for the low-level speed violation, “more citations of that kind than it had issued in the combined previous eight years of the program’s existence.”<sup>321</sup>

#### B. *Rent-Seeking and the Expansion of Nontraffic Enforcement*

Traffic enforcement reforms offer a meaningful opportunity to restrict the number of interactions that armed officers have with the public with an eye toward reducing law enforcement violence.<sup>322</sup> Given the sheer volume of traffic stops in the United States, even a modest shift to civilian units or automated

317. Hopkins & Sanchez, *supra* note 308.

318. STACEY SUTTON & NEBIYOU TILAHUN, UNIV. OF ILL. CHI., RED-LIGHT AND SPEED CAMERAS: ANALYZING THE EQUITY AND EFFICACY OF CHICAGO’S AUTOMATED CAMERA ENFORCEMENT PROGRAM 6 (2022), [https://www.chicago.gov/content/dam/city/depts/cdot/Red%20Light%20Cameras/2022/Sutton+Tilahun\\_Chicago-Camera-Ticket\\_Exec%20Summary-Final-Jan10.pdf](https://www.chicago.gov/content/dam/city/depts/cdot/Red%20Light%20Cameras/2022/Sutton+Tilahun_Chicago-Camera-Ticket_Exec%20Summary-Final-Jan10.pdf) [<https://perma.cc/L584-7GBT>]; Hopkins & Sanchez, *supra* note 308. The University of Illinois Chicago study also found that speeding ticket rates were lower in Latinx neighborhoods but explained that was to be expected given that school safety cameras in those neighborhoods operate for fewer hours. SUTTON & TILAHUN, *supra*, at 6.

319. Ramos, *Chicago City Council*, *supra* note 316; Hopkins & Sanchez, *supra* note 308.

320. Hopkins & Sanchez, *supra* note 308.

321. *Id.*

322. *E.g.*, BROOKLYN CENTER ACT, *supra* note 12.

enforcement could significantly shrink the opportunities for armed officers to kill or injure motorists or their passengers.<sup>323</sup>

But traffic enforcement is not the only—or even the primary—space in which violence by law enforcement occurs. Roughly ten percent of law enforcement killings occur during traffic stops.<sup>324</sup> Eric Garner was choked to death by Staten Island police officers after being stopped for selling loose cigarettes.<sup>325</sup> Michael Brown was shot to death by an officer who stopped him for jaywalking.<sup>326</sup> Oscar Grant was shot and killed by an officer on the Fruitvale Station metro platform who picked Grant out of a crowd of train passengers with little evidence he had committed any offense at all.<sup>327</sup>

Because a shift to civilian units or automated enforcement transfers the revenue-generating capacity of traffic-based economic sanctions away from armed law enforcement, and because those reforms and others restricting law enforcement from stopping motorists for minor violations removes the ability to conduct pretextual traffic enforcement, the reforms risk creating a macabre game of Whac-a-Mole,<sup>328</sup> in which the problems reformers seek to reduce in the traffic setting are pushed into other arenas.

Beginning with fines—whether through a shift to civilian units or automated enforcement—the loss of their revenue-generating capacity may lead traditional departments to engage in rent-seeking behavior to prove their worth to lawmakers.<sup>329</sup> Given the breadth of the substantive criminal law, there are numerous avenues for law enforcement to use nontraffic offenses to fill

323. See Elizabeth E. Joh, *Discretionless Policing: Technology and the Fourth Amendment*, 95 CALIF. L. REV. 199, 223 (2007).

324. Nawaz & Coles, *supra* note 9.

325. Al Baker, J. David Goodman & Benjamin Mueller, *Beyond the Chokehold: The Path to Eric Garner's Death*, N.Y. TIMES (June 13, 2015), <https://www.nytimes.com/2015/06/14/nyregion/eric-garner-police-chokehold-staten-island.html> [<https://perma.cc/2C2V-XFTG> (staff-uploaded, dark archive)].

326. Max Ehrenfreund, *The Risks of Walking While Black in Ferguson*, WASH. POST (Mar. 4, 2015, 3:33 PM), <https://www.washingtonpost.com/news/wonk/wp/2015/03/04/95-percent-of-people-arrested-for-jaywalking-in-ferguson-were-black/> [<https://perma.cc/S7XU-VNFW> (dark archive)].

327. The officer who shot and killed Oscar Grant had been called to the BART station about reports of a fight on the train, but apart from Grant being on the train, at the time of the shooting the officer had no evidence of Grant's involvement in the fight. See Sukey Lewis, Sandhya Dirks, Alex Emslie & Dan Brekke, 'On Our Watch' Litigation Reveals New Details in Police Shooting of Oscar Grant, NPR (July 8, 2021, 4:00 AM), <https://www.npr.org/2021/06/23/1009486885/on-our-watch-litigation-reveals-new-details-in-police-shooting-of-oscar-grant> [<https://perma.cc/D9A6-WZUG>]. Eyewitness reports gathered after the shooting varied, with some saying Grant was involved in the fight, others saying he was not involved, and still others saying he helped break up the fight. Aisha Harris, *How Accurate Is Fruitvale Station*, SLATE (July 12, 2013), <https://slate.com/culture/2013/07/fruitvale-station-true-story-fact-and-fiction-in-movie-about-bart-train-shooting-of-oscar-grant.html> [<https://perma.cc/PU44-3B9J>].

328. Whac-a-Mole is an arcade game in which robotic moles pop up and down in a series of holes on the game's surface while the player attempts to hit them with a mallet.

329. See *supra* notes 199–218 and accompanying text.

governmental coffers. Like traffic laws, low-level public order and municipal code offenses—laws designed to enforce restrictions on people who are unhoused, such as sit-and-lie laws and prohibitions against digging in the trash for food or recyclables, jaywalking, unmown lawns, and metro transit token enforcement just to name a few—are particularly easy to enforce because an officer’s observation of an offense is not only enough to justify stopping a person but is effectively conclusive evidence of guilt.<sup>330</sup>

Like traffic tickets, lawmakers in many jurisdictions have expanded the dollar value of ticketing for public order and municipal code offenses both directly and in terms of debt enforcement mechanisms in response to nonpayment. They have done so by supplementing base fines with surcharges and fees.<sup>331</sup> Likewise, nonpayment of economic sanctions for nontraffic offenses may lead to driver’s license suspensions, the issuance of warrants for nonpayment, and towing and impoundment.<sup>332</sup> In other words, public order offenses and municipal code violations are well-designed to stand in for traffic ticketing.

Insight into how public order and municipal code violations could be used by law enforcement to make up for an agency’s loss of traffic ticketing power is evident in how cash-strapped municipalities in St. Louis County, Missouri responded to the loss of traffic ticket revenue after national attention was brought to bear on law enforcement and municipal court practices in Ferguson

330. *E.g.*, ELISA DELLA-PIANA, TIFANEI RESSL-MOYER, TORI LARSON, CECILIA BERMUDEZ, KIANA HEROLD, KHALID SAMARRAE & SAM LEW, LAWS’ COMM. FOR CIV. RTS. OF THE S.F. BAY AREA, CITED FOR BEING IN PLAIN SIGHT: HOW CALIFORNIA POLICES BEING BLACK, BROWN, AND UNHOUSED IN PUBLIC 14–26 (2020), [https://lccrsf.org/wp-content/uploads/LCCR\\_CA\\_Infraction\\_report\\_4WEB-1.pdf](https://lccrsf.org/wp-content/uploads/LCCR_CA_Infraction_report_4WEB-1.pdf) [<https://perma.cc/qgw7-czel>] (detailing the most common offenses for citation in several California communities); *see supra* notes 34–36 and accompanying text (regarding the probable cause and reasonable suspicion standards for stops); *see also* ISSA KOHLER-HAUSMANN, MISDEMEANORLAND: CRIMINAL COURTS AND SOCIAL CONTROL IN AN AGE OF BROKEN WINDOWS POLICING 25–32, 42–59 (2018). The ease by which law enforcement can quickly shift to heavier enforcement of public order offenses is evident in New York City’s rapid return to such policing tactics following the election of Mayor Eric Adams. Fola Akinnibi, *Arrests for Low-Level Crimes Climb Under NYC Mayor Eric Adams*, BLOOMBERG (Aug. 30, 2022, 9:00 AM), <https://www.bloomberg.com/news/articles/2022-08-30/nyc-s-rise-of-low-level-arrests-worry-critics-of-broken-windows-era> [<https://perma.cc/BEE6-RDL3>] (reporting, for example, that “arrests for jumping subway turnstiles [were] increasing by more than 100% year-over-year”). For a discussion of the processing of minor offenses in municipal courts, *see* Alexandra Natapoff, *Criminal Municipal Courts*, 134 HARV. L. REV. 964 (2021); KOHLER-HAUSMANN, *supra*, at 60–98.

331. *E.g.*, FINES & FEES JUSTICE CENTER, ASSESSMENTS & SURCHARGES: A 50-STATE SURVEY OF SUPPLEMENTAL FEES 8–24 (2022), <https://finesandfeesjusticecenter.org/content/uploads/2022/12/Assessments-Surcharges-2.pdf> [<https://perma.cc/9S37-F6KK>].

332. *E.g.*, *supra* notes 65, 67–80, 311–19 and accompanying text.

after the police killing of Michael Brown.<sup>333</sup> Following public outcry, state officials began enforcing a longstanding statutory cap on the percentage of municipal revenue from traffic fines.<sup>334</sup> The city of Pagedale, which had previously been highly dependent on traffic fine revenue, began ticketing for nontraffic ordinance violations, such as unmown grass or having toys in one's front yard.<sup>335</sup> While city officials claimed that the loss of traffic ticket revenue was not a motivating factor, in short order, ticketing for nontraffic violations skyrocketed by 500 percent.<sup>336</sup> Similar increases were seen in other St. Louis County municipalities suddenly subject to the same restriction on traffic-ticket revenue.<sup>337</sup>

As with traffic enforcement, the enforcement of public order and municipal code offenses disproportionately impacts communities of color.<sup>338</sup> For example, a 2020 analysis of data collected under California's Racial Identity and Profiling Act, which requires the state's fifteen largest law enforcement agencies to collect data on stops, found that across the agencies, law enforcement was between 1.5 and 9.7 times more likely to issue a nontraffic citation to a Black adult, and between 0.3 and 5.8 times more likely to issue a nontraffic citation to a Latinx adult as compared to citations issued to White adults.<sup>339</sup> Even offenses as minor as parking violations<sup>340</sup> and jaywalking<sup>341</sup> are in many jurisdictions disproportionately enforced in communities of color. And while rates of disproportionate enforcement may, like in the traffic context, decline in periods of significant fiscal distress, any overall uptick in enforcement for these low-level offenses is most likely to be borne by people of color.<sup>342</sup>

333. Jennifer S. Mann, *Municipalities Ticket for Trees and Toys, as Traffic Revenue Declines*, ST. LOUIS POST-DISPATCH (May 24, 2015), [https://www.stltoday.com/news/local/crime-and-courts/municipalities-ticket-for-trees-and-toys-as-traffic-revenue-declines/article\\_42739be7-afd1-5f66-b325-e1f654ba9625.html](https://www.stltoday.com/news/local/crime-and-courts/municipalities-ticket-for-trees-and-toys-as-traffic-revenue-declines/article_42739be7-afd1-5f66-b325-e1f654ba9625.html) [<https://perma.cc/W63R-WZZ9> (staff-uploaded, dark archive)].

334. *Id.*

335. *Id.*

336. *Id.*

337. *Id.*; see also DICK M. CARPENTER II, KYLE SWEETLAND & JENNIFER McDONALD, INST. FOR JUST., *THE PRICE OF TAXATION BY CITATION: CASE STUDIES OF THREE GEORGIA CITIES THAT RELY HEAVILY ON FINES AND FEES* 18–19 (2019), <https://ij.org/wp-content/uploads/2019/10/Taxation-by-Citation-FINAL-USE.pdf> [<https://perma.cc/B8DE-VKLB>] (regarding similar practices in Georgia).

338. *E.g.*, N.Y. ADVISORY COMM. TO THE U.S. COMM'N ON CIV. RTS., *THE CIVIL RIGHTS IMPLICATIONS OF "BROKEN WINDOWS" POLICING IN NYC AND GENERAL NYPD ACCOUNTABILITY TO THE PUBLIC* 11–15 (2018), <https://www.usccr.gov/files/pubs/2018/03-22-NYSAC.pdf> [<https://perma.cc/s26v-phjs>]; DELLA-PIANA ET AL., *supra* note 330, at 14–26.

339. *E.g.*, DELLA-PIANA ET AL., *supra* note 330, at 12.

340. Noli Brazil, *The Unequal Spatial Distribution of City Government Fines: The Case of Parking Tickets in Los Angeles*, 56 URB. AFFS. REV. 823, 841–48 (2020) (finding that parking ticket rates were higher in Black communities, as well as communities with a greater percentage of renter-occupied housing and residents aged twenty to thirty-five years old).

341. *E.g.*, C.R. DIV., U.S. DEP'T OF JUST., *supra* note 212, at 62–63.

342. See *supra* notes 219–26 and accompanying text.

Turning to forfeitures, at first glance, it may appear that a shift to alternative methods of traffic enforcement (to civilian units or automated systems), or the imposition of restrictions on stops for minor offenses, may interrupt drug interdiction efforts—thereby reducing opportunities for violence—because of the more limited prospects for pretextual traffic stops.<sup>343</sup> After all, if law enforcement has no justification for stopping a vehicle, then there will be no occasion to notice the presence of energy drinks, a person’s carotid artery pulsing, or any of the other myriad justifications law enforcement claim establish probable cause during traffic-based interdiction.<sup>344</sup> The potential consequences of such a shift are, however, much more complex because traffic stops are only one of several arenas in which drug interdiction is pursued. Therefore, a potential outcome of traffic enforcement reforms is that law enforcement will simply recalibrate their drug-interdiction efforts to other arenas in order to preserve forfeitures as a revenue stream.

As with traffic-based interdiction,<sup>345</sup> a variety of other drug interdiction efforts extend back decades. In 1975, the DEA created an airport-interdiction program known as Operation Jetway in the Detroit Metropolitan Airport.<sup>346</sup> The program—which, like highway interdiction, involved federal, state, and local law enforcement—was later expanded not only to other airports, but also to the nation’s bus terminals and train stations, as well as parcel interdiction through collaboration with commercial shipping companies.<sup>347</sup> Then, as the DEA’s Operation Pipeline program began training law enforcement nationally on traffic-based drug interdiction,<sup>348</sup> additional programs—Operation Clean Sweep in Chicago and Operation Hammer in Los Angeles, for example—were focusing on street-level enforcement.<sup>349</sup>

Whether at an airport, bus terminal, train station, or sidewalk, law enforcement engaged in drug interdiction have at their disposal many of the same tools to stop people as they do in the traffic-based interdiction setting.<sup>350</sup> Law enforcement need only have reasonable suspicion a crime is occurring or

343. See generally I. Bennett Capers, *Techno-Policing*, 15 OHIO ST. J. CRIM. L. 495, 499 (2018) (hypothesizing that automated traffic enforcement combined with databases containing motorist information might lead to a decrease in racialized pretextual stops).

344. See *supra* notes 144–63 and accompanying text.

345. See *supra* notes 84–101 and accompanying text.

346. EVALUATION & INSPECTIONS DIV. 15-3, U.S. DEP’T OF JUST., REVIEW OF THE DRUG ENFORCEMENT ADMINISTRATION’S USE OF COLD CONSENT ENCOUNTERS AT MASS TRANSPORTATION FACILITIES 4–5 (2015) [hereinafter EVALUATION & INSPECTIONS DIV. 15-3], <https://www.oversight.gov/sites/default/files/oig-reports/e153.pdf> [<https://perma.cc/VD3S-KAUM>].

347. *Id.* at 6–8; Harris, *supra* note 85; see also *United States v. Drayton*, 231 F.3d 787, 790–91 (11th Cir. 2000) (regarding an officer who had boarded over 800 buses to conduct consent searches of luggage and passengers), *rev’d*, 536 U.S. 194 (2002).

348. See *supra* notes 84–85, 99–169 and accompanying text.

349. Harris, *supra* note 85.

350. *E.g.*, *supra* notes 102–23, 146–69 and accompanying text.

about to occur, or probable cause of a person's involvement in an offense<sup>351</sup>—meaning that officer observation of the vast array of public order and municipal offenses noted above can serve as justification for a stop.<sup>352</sup> But even without observation of an offense, law enforcement's capacious treatment of what constitutes suspicious behavior has the same “chameleon-like way of adapting to any particular set of observations” as is seen in the traffic-based interdiction arena.<sup>353</sup> This includes being the first off the plane, last off the plane, or deplaning from the middle,<sup>354</sup> traveling with or without luggage,<sup>355</sup> traveling to or from a source city,<sup>356</sup> or simply being present in or associated with a “high crime” neighborhood.<sup>357</sup> Law enforcement may question the person once stopped,<sup>358</sup> ask their consent to search their belongings or their person without informing them they may decline,<sup>359</sup> frisk them even without consent if there is reasonable suspicion to believe they are carrying a weapon,<sup>360</sup> or place them under arrest for a minor offense and conduct a search incident to lawful arrest.<sup>361</sup> And law enforcement can use waivers to try to protect a seizure that may fall short of probable cause.<sup>362</sup>

There is increasing evidence that these stop-question-frisk/search practices provide prime opportunities for cash forfeitures. In Washington, D.C., for example, of 12,000 seizures reviewed by the *Washington Post*, “[h]alf of the more than \$5.5 million in cash seizures were for \$141 or less, with more than a thousand for less than \$20.”<sup>363</sup> Likewise, a review of Philadelphia court files conducted by the ACLU led to an estimation that half of all cash seizures

351. *United States v. Watson*, 423 U.S. 411, 417–24 (1976) (probable cause); *Utah v. Strieff*, 579 U.S. 232, 242–43 (2016) (reasonable suspicion).

352. *See supra* note 330 and accompanying text.

353. *United States v. Sokolow*, 490 U.S. 1, 13 (1989) (Marshall, J., dissenting).

354. *See id.*

355. *See id.* at 14.

356. *See United States v. Montoya de Hernandez*, 473 U.S. 531, 533, 541–42 (1985).

357. *Illinois v. Wardlow*, 528 U.S. 119, 124 (2000); *United States v. Arvizu*, 534 U.S. 266, 271–77 (2002).

358. *Florida v. Bostick*, 501 U.S. 429, 434 (1991); *United States v. Mendenhall*, 446 U.S. 544, 554–55 (1980).

359. *United States v. Drayton*, 536 U.S. 194, 207 (2002).

360. *Terry v. Ohio*, 392 U.S. 1, 27 (1968).

361. *Chimel v. California*, 395 U.S. 752, 762–63 (1969).

362. George F. Will, Opinion, *Police Thought His Cash Was Suspicious. So They Took It. And They Won't Give It Back.*, WASH. POST (Dec. 2, 2022), <https://www.washingtonpost.com/opinions/2022/12/02/arizona-civil-forfeiture-nightmare/> [<https://perma.cc/69QW-FG3D> (dark archive)] (regarding the seizure of \$39,500 in cash at the Phoenix Sky Harbor International Airport—which the owner intended to use to purchase a used truck for his trucking business—after officers claimed the currency smelled of marijuana but found none).

363. O'Harrow & Rich, *supra* note 200; *see also* Lee et al., *TAKEN*, *supra* note 159 (finding that more than fifty-five percent of cash seizures in South Carolina were of less than \$1,000); Lee et al., *Civil Forfeiture*, *supra* note 159 (finding that one-third of cash seizures in South Carolina were \$500 or less, and that some forfeitures were as low as “\$18 or \$27 or \$40”).

involved less than \$192.<sup>364</sup> An assessment of forfeitures by the Las Vegas Metropolitan Police Department in Nevada found a seizure as low as \$0.74.<sup>365</sup> What these low dollar value seizures suggest is that officers are seizing small amounts of cash—even just pocket change—from people they stop on the street. Law enforcement justifies even these small street-level cash seizures on the same grounds as those recovered in highway interdiction. As Worcester, Massachusetts, District Attorney Joseph D. Early, Jr., explained, no matter how small, that money spends, “[i]f I can get \$5 or \$10, \$20, \$50, \$200, \$50,000, or \$100,000, it’s all going into my prevention efforts.”<sup>366</sup>

But cash is not all that is up for the taking; street-level drug interdiction efforts have also allowed law enforcement to go after high-value items, including real estate. In some cases, officers claim forfeiture of a home is justified as the result of a drug transaction occurring on the premises.<sup>367</sup> These forfeitures may occur after officers discover evidence of significant drug operations—large quantities of illicit drugs and guns, for example.<sup>368</sup> But in other cases, officers seize homes on much shakier grounds, including upon evidence of only personal use—such as a single gram of marijuana<sup>369</sup>—or based on a low-level drug sale on the property—such as a forty-dollar sale to an undercover officer by a homeowner’s son without the homeowners’ knowledge.<sup>370</sup> Law enforcement have, in some jurisdictions, even pursued home forfeitures without any evidence that any person associated with the home is involved with drugs or other crime. Such cases proceed on a nuisance theory; in other words, because the homeowner did not stop other people from committing a crime on or in front of their property, the home must be forfeited.<sup>371</sup> For example, law enforcement in South Carolina twice attempted to forfeit the home of Ella Bromell, a seventy-two-year-old widow, on the

364. SCOTT KELLY, ACLU OF PA., GUILTY PROPERTY: HOW LAW ENFORCEMENT TAKES \$1 MILLION IN CASH FROM INNOCENT PHILADELPHIANS EVERY YEAR—AND GETS AWAY WITH IT 7 (2015), <https://www.aclupa.org/en/publications/guilty-property-how-law-enforcement-takes-1-million-cash-innocent-philadelphians-every> [<https://perma.cc/R4V6-TG8H> (staff-uploaded archive)] (click “Guilty Property Report.pdf”).

365. HONCHARIW, *supra* note 227, at 3 (finding that fifty-six percent of seizures were below \$1,000).

366. Datar & Dooling, *supra* note 276; *see also* McCullough et al., *supra* note 82 (quoting Angela Beavers, lead civil forfeiture prosecutor for Harris County, Texas when asked about low-dollar value cash forfeitures: “Why would we allow the street level dealers to profit from their crimes? These are dealers that ruin communities and their families”).

367. *E.g.*, Ryan Briggs, *Inside the Philadelphia DA’s Side Hustle—Selling Seized Homes to Speculators and Cops*, WHYY (Dec. 10, 2018), <https://whyy.org/articles/inside-the-philadelphia-das-side-hustle-selling-seized-homes-to-speculators-and-cops/> [<https://perma.cc/LPK3-BV3L>].

368. *Id.* (discussing a case in which a house was seized for forfeiture after a drug raid in which significant quantities of drugs and guns were found).

369. *Id.*

370. *Id.*

371. *E.g.*, Lee et al., *TAKEN*, *supra* note 159.



grounds that she did not take sufficient steps to stop young men from dealing drugs on the sidewalk in front of her home and in her front yard during the night.<sup>372</sup>

Street-level interdiction efforts may also lead to vehicle forfeitures. In addition to vehicles purchased with crime proceeds,<sup>373</sup> the ability to seize instrumentalities of a drug offense opens the door to vehicle seizures under a wide variety of circumstances. For example, when Stephanie Wilson agreed to drive her ex-boyfriend and the father of her children—who was struggling with homelessness and addiction—to his mother’s home, Detroit police officers seized her vehicle at the gas station where she went to pick him up, claiming that the car was an instrumentality of alleged drug crimes despite finding no drugs in the car.<sup>374</sup> Her ex-boyfriend’s mere presence in the car was all it took; no pretextual traffic stop was needed.

Further, just as with enforcement on the nation’s roadways, there is evidence that law enforcement tactics are influenced by the possibility of revenue generation in nontraffic interdiction practices.<sup>375</sup> Take, for example, buy-bust activities. A traditional drug buy-bust would involve the use of an undercover officer posing as a person interested in buying illegal drugs; following the exchange, law enforcement would seize the drugs and therefore remove them from circulation.<sup>376</sup> With the introduction of the revenue retention incentive of forfeiture laws, however, law enforcement came to rely more heavily on the “reverse sting,” under which undercover officers pose as a dealer rather than a buyer, so that upon conclusion of the transaction they can seize the cash brought for the purchase by the suspect.<sup>377</sup>

As in the traffic context, each of these drug interdiction practices have long been racialized. Historically, as these mass transit and street-level enforcement efforts got off the ground, law enforcement officers operating in these spaces often relied upon the same, explicitly racialized, drug courier profiles as were used by highway-interdiction officers.<sup>378</sup> Today, as with highway-interdiction, law enforcement officials insist that they do not engage in racial profiling,<sup>379</sup> but rely instead on considerations, such as whether the person is traveling to or from a source city, traveling with a large amount of money found during consent

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372. *Id.*

373. *See supra* note 88 and accompanying text.

374. KELLY, *supra* note 65, at 6.

375. *See supra* notes 283–86 and accompanying text.

376. *See* Blumenson & Nilsen, *supra* note 88, at 67–68.

377. *Id.* at 67; O’Matz, *supra* note 273 (regarding the use of reverse stings by police in Sunrise, Florida, which “drew drug buyers from far outside Sunrise into the city” for operations that “often went down at family restaurants”).

378. Harris, *supra* note 85; *see supra* notes 130–33 and accompanying text.

379. *See supra* notes 134–35 and accompanying text.

searches, or whose luggage carries the smell of marijuana.<sup>380</sup> Though the DEA declines to collect demographic information about its stops, a 2015 review of DEA practices by the Department of Justice Office of the Inspector General raised concerns that drug interdiction at these locations remains targeted at people of color despite official policies prohibiting racial profiling.<sup>381</sup> Along with other formal complaints, this report detailed a lawsuit, which the DEA settled out of court after it lost a motion for summary judgment, in which it was alleged that in a twelve-month period, eighty-eight percent of the passengers stopped for questioning without prior suspicion at the Minneapolis-St. Paul airport were Black.<sup>382</sup> Similarly, a review of thousands of court records by investigators at the *Houston Chronicle* found that law enforcement “regularly seized significant amounts of cash from people while surveilling bus terminals in east Houston and stopping what they described in their reports as suspicious or nervous-looking Hispanic people.”<sup>383</sup> And, of course, a wealth of data supports the conclusion that in many jurisdictions, stop-and-frisk practices are often targeted at Black and Hispanic pedestrians.<sup>384</sup>

Finally, even when violence does not arise during a forfeiture sting itself, forfeiture practices have significant implications for rates of violence perpetrated by law enforcement. Retained forfeiture revenues are frequently used by law enforcement to purchase weapons, ammunition, and military-grade equipment, including “[h]umvees, automatic weapons, gas grenades, night-vision scopes and sniper gear”<sup>385</sup> as well as the Ballistic Engineered Armored

380. Joline Gutierrez Krueger, *DEA to Traveler: Thanks, I'll Take That Cash*, ALBUQUERQUE J. (May 6, 2015, 12:05 AM), <https://www.abqjournal.com/580107/dea-agents-seize-16000-from-aspiring-music-video-producer.html> [<https://perma.cc/869Q-TTVN>] (quoting DEA Agent in Charge Sean Waite, who disputed that race played a role in the seizure of \$16,000—still in a bank envelope—from a twenty-two-year-old Black man traveling to Los Angeles via Amtrak train to begin a career in music video production); Nick Sibilla, *How the DEA Seized a College Student's Entire Life Savings, Without Charging Him with a Drug Crime*, FORBES (June 19, 2015, 8:55 AM), <https://www.forbes.com/sites/instituteforjustice/2015/06/19/how-the-dea-seized-a-college-students-entire-life-savings-without-charging-him-with-a-drug-crime/?sh=25631a724c05> [<https://perma.cc/P46W-7VVH> (staff-uploaded, dark archive)] (regarding the seizure of \$11,000, which was made up of “money from odd jobs, financial aid, family gifts and benefits from his mother being an injured Army veteran,” from a twenty-four-year-old Black man traveling through the Cincinnati/Northern Kentucky airport on the basis that a ticket agent smelled marijuana, though no drugs were found).

381. EVALUATION & INSPECTIONS DIV. 15-3, *supra* note 346, at 12–17.

382. *Id.* at 20–21.

383. McCullough et al., *supra* note 82.

384. *E.g.*, Andrew Gelman, Jeffrey Fagan & Alex Kiss, *An Analysis of the New York City Police Department's "Stop-and-Frisk" Policy in the Context of Claims of Racial Bias*, 102 J. AM. STAT. ASS'N 813, 815–22 (2007).

385. *E.g.*, O'Harrow et al., *Asset Seizures*, *supra* note 231 (describing further law enforcement purchases of helicopters and armored personnel carriers); *see also* Burnett, *Cash Seizures*, *supra* note 122 (regarding the purchase of “guns, high-powered rifles”); Burnett, *Seized Drug Assets*, *supra* note 177 (describing a Texas town of 25,000 people with a low crime rate in which law enforcement purchased “military-style assault rifles” and “sniper rifles” for its SWAT team).

Response tactical vehicle—essentially a tank—used by the St. Louis Police Department during the protests following the police killing of Michael Brown in Ferguson.<sup>386</sup> In other words, these revenues feed directly into episodes of violence that those seeking a shift of traffic enforcement hope to address.

#### CONCLUSION

Traffic enforcement creates opportunities for law enforcement violence. It also creates opportunities for revenue generation through ticketing that bolsters governmental budgets and forfeitures that often accrue to law enforcement itself. Both that violence and the stripping of revenue are borne disproportionately by heavily policed communities of color. Shifting traffic enforcement away from armed law enforcement likely will reduce violence in the traffic setting, making it an important and worthy reform. But as this Article has shown, the transferability of revenue generating activities to other traffic enforcement mechanisms and the breadth and malleability of other codes—public order, municipal, and drug laws in particular—allows lawmakers and law enforcement to find new opportunities to satisfy their hunger for fines, surcharges, fees, and forfeitures. Civilian units and automated cameras enforcing traffic codes can easily strip money from overpoliced communities. And in those communities, armed law enforcement can easily find cash and property to forfeit through nontraffic interdiction—and violence in those spaces can easily continue.

While placing traffic enforcement reforms within the broader context of its revenue generating economy, the analysis presented in this Article does not counsel against a shift to civilian units or automated enforcement or restrictions on armed enforcement's ability to stop motorists for minor offenses, but does make clear the need to think more expansively about systemic change.

For example, lawmakers could act to eliminate or restrict paths to revenue to temper the perverse incentives those dollars can create. That may include elimination of surcharges and fees and nonpayment penalties such as towing and impoundment programs, driver's license suspension, and the use of arrest warrants.<sup>387</sup> A likely objection is that surcharges and fees recoup system costs made necessary by offending motorists, and that nonpayment penalties serve as tools to motivate people to make payment when ticketed. The idea that offending motorists are responsible for system costs is tinged with notions of personal responsibility and obligation that are undercut by the fact that the

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386. Freivogel, *No Drugs, No Crime*, *supra* note 187.

387. *E.g.*, Jordyn Bruns, *Michigan Secretary of State Changes Law That Will Lift Driver's License Suspensions for Thousands*, ABC12, [https://www.abc12.com/news/michigan-secretary-of-state-changes-law-that-will-lift-driver-s-license-suspensions-for-thousands/article\\_5151def6-324a-536e-be79-317eea87f3fe.html](https://www.abc12.com/news/michigan-secretary-of-state-changes-law-that-will-lift-driver-s-license-suspensions-for-thousands/article_5151def6-324a-536e-be79-317eea87f3fe.html) [<https://perma.cc/EM8P-VFLR>] (last updated June 21, 2022).

traffic code is so broad that no one can drive without violating it,<sup>388</sup> but that it is Black and Latinx motorists who are disproportionately targeted with enforcement<sup>389</sup> and then subjected to economic sanctions and structures used to collect them that render completion of payment illusory.<sup>390</sup> Further, these enforcement structures may actually be counterproductive. Studies suggest that if economic sanctions are made more, rather than less, manageable, people are more likely to pay toward the elimination of the debt and ultimately to pay in full.<sup>391</sup> But even if the result is that some people do not pay, lawmakers should take seriously the notion that such a result is less costly than the harms created by the current system.<sup>392</sup> Allowing people to remain in possession of their vehicles, licensed, and out of jail not only make payment of traffic tickets more likely, they can also be important means of promoting fiscal stability<sup>393</sup> and sociopolitical inclusion<sup>394</sup> in communities who have been subject to racialized traffic enforcement for far too long.

Lawmakers could also increase procedural protections that put sand in the gears for using law enforcement as a means of tax avoidance. Lawmakers could afford a statutory right to counsel in cases involving fines and forfeitures,<sup>395</sup> adopt an evidentiary presumption against waiver validity,<sup>396</sup> and require a criminal conviction prior to forfeiture in nearly all cases.<sup>397</sup>

Reforms could also focus on the budgetary authority of administrative officials. Lawmakers could protect against encroachment on that authority by

388. See *supra* notes 37–45 and accompanying text.

389. See *supra* notes 130–43, 192–98 and accompanying text.

390. See *supra* notes 62–80 and accompanying text.

391. See Colgan, *Graduating Economic Sanctions*, *supra* note 25, at 65–69.

392. Cf. Brendan D. Roediger, *Abolish Municipal Courts: A Response to Professor Natapoff*, 134 HARV. L. REV. 213, 221–25 (2021) (regarding the cost-benefits of municipal court systems).

393. E.g., Nordberg et al., *supra* note 65, at 499–500.

394. A recent study of voter turnout in Hillsborough County, Florida has found that registered voters subjected to traffic stops were less likely to vote, with effects on Black voter turnout higher than non-Black voters if the stop occurred within six months of the election, but lower than average if the stop occurred between six months and two years of the election. Jonathan Ben-Menachem & Kevin T. Morris, *Ticketing and Turnout: The Participatory Consequences of Low-Level Police Contact*, AM. POL. SCI. REV. 1, 2, 6–10 (2022). For further analyses of how both direct interactions with law enforcement and living within heavily policed communities lead to socio-political exclusion, see generally, AMY E. LERMAN & VESLA M. WEAVER, *ARRESTING CITIZENSHIP: THE DEMOCRATIC CONSEQUENCES OF CRIME CONTROL* (2014); Monica C. Bell, *Police Reform and the Dismantling of Legal Estrangement*, 126 YALE L.J. 2054 (2017).

395. See *supra* notes 267–70 and accompanying text.

396. See *supra* notes 164–69, 362 and accompanying text. I do not recommend a prohibition against the use of waivers because in some cases signing a waiver in order to leave may be the safest way for people to extricate themselves from an otherwise volatile situation. In all cases, however, waiver receipts must clearly state that the waiver is contestable.

397. Civil forfeiture proceedings may be appropriate in a narrow subset of circumstances, such as when cash or property is located without any means of determining its ownership and over which no claim of ownership is made or when the owner cannot be made subject to criminal prosecution due, for example, to death or limits on extradition.

supporting the elimination of the federal Equitable Sharing program<sup>398</sup> or passing laws that prohibit participation in the program.<sup>399</sup> At the same time, lawmakers could limit their own ability to use their authority to pressure law enforcement to generate revenues by setting budgets for both armed law enforcement and civilian units that are not dependent on ticketing rates and forfeiture intake and by ensuring that performance evaluations are based on outcomes other than the number of tickets issued.<sup>400</sup> The public safety benefits of doing so may extend beyond traffic enforcement. For example, when then-Commander of the West Precinct of the Birmingham, Alabama, Police Department Jerry Wiley directed officers to stop focusing on ticketing and instead to “patrol more, engage the community more, visit businesses more, drive alleys more, be visible”—and protected them from negative evaluations for doing so—the number of burglaries in the precinct dropped precipitously.<sup>401</sup> And, perhaps most importantly, lawmakers could reduce their own and law enforcement’s dependence on these revenues by directing them elsewhere, including to targeted community-reinvestment projects aimed at restoring resiliency to traditionally heavily policed communities.<sup>402</sup> For example, lawmakers could preserve the safety benefits of automated speed cameras while warding off their disproportionate impact on communities of color by investing revenues in traffic calming measures—speed humps, raised crosswalks, traffic circles, and the like—which have been shown to reduce unsafe driving and increase traffic and pedestrian safety.<sup>403</sup>

But perhaps most fundamentally, lawmakers could use this opportunity to more fully assess whether the costs of the expansive traffic, public order, municipal, and drug codes outweigh their benefits. While studies suggest that traffic ticketing generally—including, importantly, various forms of reckless driving, such as high rates of speeding—may result in a reduction in traffic-

398. See Fifth Amendment Integrity Restoration Act of 2021, H.R. 2857, 117th Cong. (2021) (proposing a house bill seeking to abolish equitable sharing); *supra* notes 94–98, 251–52 and accompanying text.

399. *E.g.*, N.M. STAT. ANN. § 31-27-9 (Westlaw through Ch. 3 of the 2023 First Reg. Sess. of the 56th Leg. (2023)) (mandating that all forfeiture dollars be deposited in the state’s general fund, effectively prohibiting state and local law enforcement from participating in the Equitable Sharing program given the program’s requirement that all forfeiture revenues be awarded to law enforcement).

400. See *supra* notes 207–16, 230–34 and accompanying text.

401. *E.g.*, Jerry Wiley, *Traffic Stops Make Poverty a Crime, Retired Birmingham Police Captain Says*, AL.COM (Mar. 31, 2021, 6:30 AM), <https://www.al.com/opinion/2021/03/traffic-stops-make-poverty-a-crime-retired-birmingham-police-captain-says.html> [<https://perma.cc/22KA-WUKW>]; see also *supra* notes 238–45 and accompanying text (regarding how revenue dependence undermines clearance rates for violent and property offenses).

402. See Colgan, *Beyond Graduation*, *supra* note 26, at 1571–81.

403. *Effects of Traffic Calming Measures on Motor Vehicle Speed and Volume*, FED. HIGHWAY ADMIN., [https://safety.fhwa.dot.gov/speedmgt/ePrimer\\_modules/module4.cfm#mod41](https://safety.fhwa.dot.gov/speedmgt/ePrimer_modules/module4.cfm#mod41) [<https://perma.cc/B287-E8QC>] (last updated Feb. 13, 2017).

related injuries,<sup>404</sup> the same cannot be said for minor traffic offenses, such as registration requirements<sup>405</sup> that have more to do with the motorist's financial precarity than driver safety.<sup>406</sup> Legalization of nonsafety related code provisions may even improve traffic safety. When a North Carolina city instituted a new policy by which officers would not stop motorists for minor violations, officers were freed up to enforce speeding violations and traffic fatalities dropped.<sup>407</sup> Likewise, many public order and municipal offenses—such as jaywalking—go unenforced in many communities without significant consequences, suggesting that they could be eliminated in heavily policed communities without undermining public safety as well (particularly in conjunction with the traffic calming measures noted above).<sup>408</sup> For other public order offenses, it is hard to argue that criminalization is the most effective response. For example, the idea that enforcing a ban against searching through the garbage to find food<sup>409</sup> through the imposition of fines, surcharges, and fees the person has no realistic ability to pay, is somehow better policy—both fiscally and normatively—than

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404. Michael D. Makowsky & Thomas Stratmann, *More Tickets, Fewer Accidents: How Cash-Strapped Towns Make for Safer Roads*, 54 J.L. & ECON. 863, 882 (2011) (finding that an increase in traffic ticketing reduces traffic-related injuries, with inconclusive effects as to fatalities); see also Gregory DeAngelo & Benjamin Hansen, *Life and Death in the Fast Lane: Police Enforcement and Traffic Fatalities*, 6 AM. ECON. J. 231, 231, 233 (2014) (noting that a thirty-five percent reduction in highway patrol capacity in Oregon was correlated with twelve to twenty-nine percent increase in traffic related injuries and fatalities); cf. Hummel, *supra* note 201, at 300–01 (collecting studies offering mixed results as to whether traffic ticketing results in either specific or general deterrence of traffic violations).

405. See Garrett & Wagner, *supra* note 29, at 73 (collecting studies). In over two decades of investigating over 1,000 traffic accidents, a police officer explained,

I never found an expired registration sticker to be the cause of an accident. I never found a driver waiting to signal until 90 feet before a turn, instead of the required 100 feet, was the cause of an accident. I never found an air freshener dangling from a rearview mirror to be the cause of highway carnage.

Petersen, *supra* note 38.

406. E.g., Harden, *supra* note 63.

407. Ahmed Jallow, *Taking Cops Out of Traffic Stops: Would It Make a Difference? North Carolina Examples Offer a Clue*, TIMES-NEWS, <https://www.thetimesnews.com/in-depth/news/2021/03/22/police-reform-fayetteville-burlington-nc-traffic-stops-policing/4622232001/> [<https://perma.cc/8RLY-E8HR>] (last updated Apr. 22, 2021).

408. See DELLA-PIANA ET AL., *supra* note 330, at 39 (“For the most part, doing nothing will work just fine. That is what happens for most people who have dogs without going through a City bureaucracy to get a license, to most people who stand or sit for a long while in public, to most people who cross the street. Most of the time, the proper amount of state action is none.”). In recent years, California, Nevada, and Virginia, as well as Kansas City, legalized all or most jaywalking. McKenna Oxenden, *Soon, Jaywalking Will No Longer Be a Crime in California*, N.Y. TIMES (Oct. 26, 2022), <https://www.nytimes.com/2022/10/26/us/california-jaywalking-decriminalized.html> [<https://perma.cc/2J43-K8GU>] (staff-uploaded, dark archive).

409. See DELLA-PIANA ET AL., *supra* note 330, at 22.

social service interventions is hard to countenance.<sup>410</sup> With respect to assessing the costs and benefits of reform as it relates to more serious offenses, it is true that pretextual traffic stops can serve purposes beyond drug interdiction. For example, though such seizures are relatively rare, stops for minor traffic offenses can lead to the interception of illegally possessed firearms.<sup>411</sup> But as detailed herein, the primary use of pretextual traffic stops is tied to drug interdiction. And though drug legalization raises complex issues involving the availability of public health responses to addiction, the creation of safe-injection sites, the increased risk of overdose caused by the introduction of fentanyl, and more, lawmakers serious about both reducing law enforcement violence and misguided financial incentives related to traffic stops must seriously consider the implications of the drug war within the context of contemplated reforms.

In short, traffic enforcement provides an example of how deeply and intricately intertwined seemingly divergent aspects of the substantive criminal law, punishment, and law enforcement are—and the need to consider the way both revenue and race mold who is subject to enforcement, what laws are enforced, and how, when engaging in any reform effort. By attending to those relationships, lawmakers and reformers can protect against the ways the revenue-generating economy of law enforcement may entrench racially disproportionate policing and drive lawmakers and law enforcement to behave in ways contrary to public safety and community well-being.

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410. See generally MATTHEW MENENDEZ, MICHAEL F. CROWLEY, LAUREN-BROOKE EISEN & NOAH ATCHISON, BRENNAN CTR. FOR JUST., *THE STEEP COSTS OF CRIMINAL JUSTICE FEES AND FINES: A FISCAL ANALYSIS OF THREE STATES AND TEN COUNTIES* (2019), [https://www.brennancenter.org/sites/default/files/2020-07/2019\\_10\\_Fees%26Fines\\_Final.pdf](https://www.brennancenter.org/sites/default/files/2020-07/2019_10_Fees%26Fines_Final.pdf) [<https://perma.cc/M8ER-W8F7>] (documenting how even in jurisdictions in which lawmakers see economic sanctions as revenue generators, they may actually amount to bad fiscal policy).

411. E.g., LOFSTROM ET AL., *supra* note 193, at 3, 9, 25 (explaining that California Highway Patrol officers confiscated firearms in 905 out of 3.4 million traffic stops and that fifty-one percent of stops in which firearms were seized were conducted for nonmoving violations); Max, *supra* note 196 (reporting that out of over 670,000 traffic stops conducted in 2022, the New York Police Department made 631 arrests for second degree criminal possession of a loaded weapon). Given the Supreme Court's recent ruling limiting lawmaker power to criminalize the possession of firearms, the ability of law enforcement to seize firearms should decrease. *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111, 2126 (2022) (striking down a firearm permit system under an inquiry whereby any individual conduct falling within the plain text of the Second Amendment is presumed constitutional unless the government meets the burden of "demonstrat[ing] that the regulation is consistent with this Nation's historical tradition of firearm regulation").