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Brett, Sharon

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# REFORMING MONETARY SANCTIONS, REDUCING POLICE VIOLENCE

Sharon Brett

## Abstract

In the years since Officer Darren Wilson shot and killed Michael Brown in Ferguson, Missouri, policymakers and advocates have pushed for reforms to both police practices and systems of fines and fees. The connection between fines and fees enforcement tactics and police violence remains an important focus for reforms. Police play a significant role in driving up the volume and amounts of fines and fees imposed, and they play a critical role in city and state collection efforts. The use of police as debt imposers and collectors creates opportunities for police violence—both physical use of force, as well as more nuanced forms of violence through the exertion of coercion, fear, and control. In this piece, I argue that specific policing tactics used to impose and collect fines and fees, and the wide latitude given to police via Fourth Amendment jurisprudence to engage in such tactics, facilitates conditions similar to those in Ferguson and results in unnecessary and oppressive police violence. To combat this, I argue that fines and fees reforms must focus on the role of law enforcement in such systems, and how that role must be greatly limited to prevent additional violence.

## About the Author

Sharon Brett is a Senior Staff Attorney with the Criminal Justice Policy Program at Harvard Law School, and former trial attorney with the U.S. Department of Justice, Civil Rights Division, Special Litigation Section. The author extends thanks to Mitali Nagrecha, Alexes Harris, and the CJPP staff for organizing the Progressing Fines and Fees Conference at Harvard Law School. Additional thanks to Michael Banerjee, Brook Hopkins, Courtney Lollar, and Chijindu Obiofuma for their comments on earlier drafts. Finally, the author thanks the editorial staff at the *UCLA Criminal Justice Law Review*, and Taylor De Laveaga in particular, for helpful edits and thoughtful engagement with this piece.

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## Introduction

In 2014, Officer Darren Wilson of the Ferguson, Missouri Police Department (FPD) ended a routine law enforcement encounter by shooting and killing Michael Brown, an unarmed African American resident. The murder of Michael Brown set off weeks of local and national protests, and ultimately led to a federal investigation into the Department's pattern and practice of unlawful conduct.<sup>1</sup> The Department of Justice's Civil Rights Division (DOJ) concluded not only that FPD officers frequently used excessive force, but also that the Department structured its entire policing strategy in pursuit of the goal of revenue generation. FPD fulfilled its revenue-generation goals by heavily policing predominately Black and low-income communities for low-level offenses; issuing large amounts of traffic tickets and citations for violations of misdemeanor ordinances; and enforcing those tickets and citations to collect high fines and court fees (monetary sanctions).<sup>2</sup> As explained in detail in the Department of Justice's investigative report, fines and fees enforcement and predatory policing were two parts of the same system, institutionalized without regard for the life-altering (and in some cases, life-ending) consequences.<sup>3</sup> Advocates and local attorneys had been investigating and reporting on these issues prior to Michael Brown's murder,<sup>4</sup> but the DOJ investigation in Ferguson served as a national wakeup call to the symbiotic connection between the destructive wealth extraction carried out by municipal courts and the racist—and often violent—oppression carried out by police.

1. Manuel Roig-Franzia et al., *In Ferguson, three minutes—and two lives forever changed*, WASH. POST (Aug. 18, 2014), [https://www.washingtonpost.com/politics/in-ferguson-three-minutes-and-two-lives-forever-changed/2014/08/16/f28f5bc0-2588-11e4-8593-da634b334390\\_story.html](https://www.washingtonpost.com/politics/in-ferguson-three-minutes-and-two-lives-forever-changed/2014/08/16/f28f5bc0-2588-11e4-8593-da634b334390_story.html); U.S. DEP'T OF JUSTICE, INVESTIGATION OF THE FERGUSON POLICE DEPARTMENT (Mar. 4, 2015) [hereinafter DOJ FERGUSON REPORT].
2. See generally DOJ FERGUSON REPORT, *supra* note 1.
3. *Id.* at 1–6.
4. See, e.g., ARCH CITY DEFENDERS, MUNICIPAL COURTS WHITE PAPER (2014).

In the wake of the events in Ferguson, advocacy and academic scholarship digesting the events has taken two tracks: one focused on continued police violence against Black and brown bodies, and another focused on the practices of courts in imposing high fines and fees, and the court-sanctioned punitive enforcement practices aimed at collecting outstanding debts.<sup>5</sup> National attention remains on both instances of police violence<sup>6</sup> and on revenue-generating misdemeanor offenses.<sup>7</sup> But fewer projects have directly tackled the role of fines and fees in perpetuating police violence, or the need to reduce police power in order to disrupt and dismantle predatory systems of fines and fees. This Article returns the conversation on fines and fees reform to its genesis—the actions of police—and discusses how unbridled police discretion to pursue low-level crimes and collect monetary sanctions creates opportunities for violence of varying types and degrees.

Police officers are the “gatekeepers of the criminal justice system,” and thereby “hold almost exclusive authority—by way of citations, arrests, and even physical force—to enforce and regulate the law.”<sup>8</sup> They have the discretion to arrest a person, or give them a citation in lieu of arrest, or even just let them off with a warning; they have the authority to effectuate arrests, and decide when to use force to do so (and how much); and they have the authority to target particular neighborhoods for enforcement activities like traffic enforcement or quality-of-life crimes. Each of these points of discretion give the police the opportunity to police more, and to police violently.

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5. See generally SHARON BRETT & MITALI NAGRECHA, HARVARD LAW SCH. CRIM. JUSTICE POLICY PROGRAM, PROPORTIONATE FINANCIAL SANCTIONS: POLICY PRESCRIPTIONS FOR JUDICIAL REFORM (2019); MYESHA BRADEN ET AL., LAWYERS’ COMM. FOR CIVIL RIGHTS UNDER LAW, TOO POOR TO PAY: HOW ARKANSAS’ OFFENDER-FUNDED JUSTICE SYSTEM DRIVES POVERTY & MASS INCARCERATION (2019); NAT’L TASK FORCE ON FINES, FEES, & BAIL PRACTICES, NAT’L CTR. FOR STATE COURTS, PRINCIPLES ON FINES, FEES, AND BAIL PRACTICES (2018); ALICIA BANNON, REBEKAH DILLER, & MITALI NAGRECHA, BRENNAN CTR. FOR JUSTICE, CRIMINAL JUSTICE DEBT: A BARRIER TO REENTRY (2010).
  6. See, e.g., Manny Fernandez et al., *Fort Worth Police Have More Violence to Answer for, Residents Say*, N.Y. TIMES (Oct. 20, 2019), <https://www.nytimes.com/2019/10/20/us/fort-worth-shooting-jefferson-dean.html> [<https://perma.cc/AP8W-H8A7>]; Shani Saxon, *California Passes One of Nation’s Strictest Deadly Force Guidelines*, COLORLINES (Aug. 20, 2019), <https://www.colorlines.com/articles/california-passes-one-nations-strictest-deadly-force-guidelines> [<https://perma.cc/F5HK-TWJH>]; P.R. Lockhart, *Police Officer Resigns After Video Shows Him Using Excessive Force on 11-Year-Old Girl*, VOX (Oct. 24, 2019), <https://www.vox.com/identities/2019/10/24/20929397/police-officer-excessive-force-school-11-year-old-girl-new-mexico> [<https://perma.cc/KG8T-RYVR>].
  7. See, e.g., ALEXANDRA NATAPOFF, PUNISHMENT WITHOUT CRIME 113–147 (2018); Preeti Chauhan & Jeremy Travis, *Introduction to Special Issue: Misdemeanor Justice Project—A Focus on Criminal Justice System Responses to Lower Level Offenses*, 29 CRIM. JUST. POL’Y REV. 527 (2018).
  8. REBECCA NEUSTETER ET AL., VERA INST. OF JUSTICE, GATEKEEPERS: THE ROLE OF POLICE IN ENDING MASS INCARCERATION 2 (2019).

Many of these points of discretion also give police the tremendous power to extract wealth through arresting on charges or issuing citations that result in financial sanctions like fines and fees. Police can exercise their discretion in a way that gives them a tangible benefit through increased revenue and/or increased “productivity.”<sup>9</sup> Not only do police have the authority to drive up fines and fees through these types of discretionary decisions, they also have virtually unchecked discretion to collect on those fines and fees in violent and dangerous ways, such as warrant raids<sup>10</sup> and predatory traffic stops to check for outstanding warrants. Although the Fourth Amendment provides some outer boundaries on police discretion, legal doctrines such as qualified immunity and municipal liability, and the relatively forgiving standards set by the Supreme Court, mean that the tactical discretion afforded to police is both wide and forgiving.

Attempts to collect large amounts of fines and fees through traffic tickets or municipal ordinance violations and overpolicing of low-level offenses are examples of police violence in and of themselves. Such strategies by their very nature include state surveillance and the exertion of power and control. They result in police officers detaining individuals for unspecified periods of time to run warrant checks; in officers stopping and searching cars, asking intrusive and coercive questions;<sup>11</sup> and in other forms of oppression that are inherently violent and predatory, even if no *physical* violence is used.<sup>12</sup>

Overpolicing of minor offenses makes these individual instances of violence routine. They allow for more and more contact between the police and community members—contact that is experienced as violent. This, in turn, creates “circuits of violence through which the ordinary (African Americans’ vulnerability to ongoing police surveillance and contact) becomes the extraordinary (serious bodily injury and death).”<sup>13</sup> Devastatingly, many of these “routine” examples of police violence levied on Black and brown bodies turn deadly. A South Carolina police officer shot and killed Walter Scott after he was pulled over for unpaid traffic tickets.<sup>14</sup> A New York Police Department officer killed Eric Garner by using a chokehold, a procedure banned by NYPD policy, to arrest

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9. See *infra* Part I.

10. Warrant raids are described more thoroughly in Subpart III.B.

11. Jeannine Bell, *The Violence of Nosey Questions, Presentation at Beyond Bad Apples: Exploring the Legal Determinants of Police Violence*, The Annual B.U. Law Rev. Conference, (Oct. 25, 2019); (discussing the “nosey questions” police ask during traffic stops and how those are a form of police violence); see also Jeannine Bell, *The Violence of Nosey Questions*, 100 B.U. L. REV. (forthcoming 2020).

12. For more on how these “routine” interactions are forms of police violence, see *infra* Part II.

13. Devon W. Carbado, *From Stopping Black People to Killing Black People: The Fourth Amendment Pathways to Police Violence*, 105 CALIF. L. REV. 125, 128 (2017) [hereinafter Carbado, *From Stopping Black People*].

14. Alan Blinder, *Michael Slager, Officer in Walter Scott Shooting, Gets 20-Year Sentence*, N.Y. TIMES (Dec. 7, 2017), <https://www.nytimes.com/2017/12/07/us/michael-slager-sentence-walter-scott.html> [<https://perma.cc/JW7T-ZM7W>].

him for selling loose cigarettes—a misdemeanor “quality of life” crime.<sup>15</sup> Philandro Castile was caught up in an endless cycle of traffic violations and unpaid court debt, until during one such traffic stop a St. Anthony, Minnesota police officer shot and killed him.<sup>16</sup>

It is important to note that aggressive policing is so common in Black and brown communities and police have demonized Black bodies in such a way that police have shot and killed unarmed Black and brown people for no reason at all—like Bettie Jones, shot and killed by a Chicago police officer who responded to Jones’ neighbor’s apartment for a “wellness check,”<sup>17</sup> or Botham Jean, killed by a white officer in Dallas who mistakenly thought Jean’s apartment was her own,<sup>18</sup> or Atatiana Jefferson, who was at home in Ft. Worth playing video games with her nephew when a police officer responding to a nonemergency call from a neighbor shot her through her window.<sup>19</sup> In 2019, U.S. police shot and killed 1004 people,<sup>20</sup> in each of the last five years, that number has consistently been close to or above 1000.<sup>21</sup> Notably, these numbers track only people who are killed by police guns; many more die each year as the result of other police actions (or inaction), for example, through vehicle chases or in police lock-ups.<sup>22</sup> One database tracking instances of police violence reports that in 2018, there were only twenty-three days in which a police officer did not kill someone.<sup>23</sup> All of these killings are tragic and avoidable,<sup>24</sup> and many were the direct result of the outsized role that law

15. Al Baker et al., *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/5M4J-CUUX>].
16. Teresa Nelson, *Two Years After the Police Killing of Philando Castile, Justice Continues to be Denied*, ACLU (July 6, 2018), <https://www.aclu.org/blog/racial-justice/two-years-after-police-killing-philando-castile-justice-continues-be-denied> [<https://perma.cc/9RTM-3G62>].
17. Dan Hinkel, *Chicago Police Watchdog Rules 2015 Shooting of Quintonio LeGrier and Bettie Jones was Unjustified*, CHI. TRIB. (Dec. 29, 2017), <https://www.chicagotribune.com/news/breaking/ct-met-legrier-jones-shooting-unjustified-20171228-story.html> [<https://perma.cc/C3ZU-R6BK>].
18. Michael James, *Ex-Dallas Police Officer Indicted for Murder After Shooting Black Neighbor*, USA TODAY (Nov. 30, 2018), <https://www.usatoday.com/story/news/2018/11/30/dallas-cop-officer-racial-murder-indictment-guyger/2165572002> [<https://perma.cc/LTC9-FBM7>].
19. *What We Know About the Fort Worth Police Shooting of Atatiana Jefferson*, N.Y. TIMES (Oct. 15, 2019), <https://www.nytimes.com/2019/10/15/us/aaron-dean-atatiana-jefferson.html> [<https://perma.cc/2P9L-HDWM>].
20. *Fatal Force: 2019 Police Shootings Database*, WASH. POST, <https://www.washingtonpost.com/graphics/2019/national/police-shootings-2019> [<https://perma.cc/C4TR-24QX>] (last visited April 1, 2020).
21. *Id.*
22. See generally FRANKLIN E. ZIMRING, *WHEN POLICE KILL* (2017) (explaining how difficult it is to track the true number of police killings each year).
23. Samuel Sinyangwe, *Mapping Police Violence* (Apr. 3, 2020) <https://mappingpoliceviolence.org>.
24. One scholar, Michael Arjun Banerjee, suggests that these killings amount to state executions without trial or any due process that should be analyzed under

enforcement plays in the lives of those who live in Black, predominately poor, communities<sup>25</sup> where the police are enforcing low-level offenses and collecting fines and fees.

In this Article, I argue that when police are tasked with the mission of imposing large amounts of fines and fees, and use punitive, oppressive enforcement tactics, police violence along the way is not only unsurprising—it is essentially inevitable.<sup>26</sup> By violence, I do not necessarily mean

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Eighth Amendment law. This framework is especially helpful in showing the true excessiveness of this type of policing and its impact on the lives and safety of entire communities, especially in the context of enforcing low-level offenses in the name of driving up fines and fees. *See Ipse Dixit: Michael Arjun Banerjee on No-Trial Execution*, (Oct. 11, 2019) <https://shows.acast.com/ipse-dixit/episodes/michael-arjun-banerjee-on-no-trial-execution>; Michael Banerjee, Police violence against civilians 30 years after Graham v. Connor, *Charlotte Post* (May 15, 2019, 1:10 PM), <http://www.thecharlottepost.com/news/2019/05/15/opinion/police-violence-against-civilians-30-years-after-graham-v-connor>.

25. Police are relied on to manage or control a variety of social problems other than criminal activity, including mental illness, poverty, democratic protest, quality-of-life issues, and substance use. NEUSTETER ET AL., *supra* note 8, at 2. More often than not, they do not have the skills or tools necessary to handle these situations; they are trained to remove the threat, incapacitate, and control—not to perform wellness checks or provide crisis counseling services. Doug Criss & Leah Asmelash, *When a Police Wellness Check Becomes a Death Sentence*, *CNN* (Oct. 19, 2019), <https://www.cnn.com/2019/10/19/us/wellness-check-police-shootings-trnd/index.html>; Aldina Mesic et al., *The Relationship Between Structural Racism and Black-White Disparities in Fatal Police Shootings at the State Level*, 110 *J. Nat'l Med. Ass'n* 106 (2018). Indeed, control is the crux of both historical and modern policing: Professor Alex S. Vitale has said that “[w]e should understand policing as the most coercive form of state power . . . and the reason is that policing has historically and inherently been at the root of reproducing fundamental inequalities of race, class, and immigration status.” Rashmee Kumar, *Envisioning an America Free from Police Violence and Control*, *THE INTERCEPT* (Oct. 15, 2017), <https://theintercept.com/2017/10/15/alex-vitale-interview-the-end-of-policing>.
26. In part, this Article builds on the work of UCLA Law Professor Devon W. Carbado, who previously wrote that “the disproportionate exposure African-Americans have to police violence derives in part from their disproportionate contact with the police.” He describes how general trends in criminal-legal enforcement, including (among others) broken windows policing and mass criminalization, coupled with racial segregation and group vulnerability, generate significant police contact with Black communities. Devon W. Carbado, *Blue-on-Black Violence: A Provisional Model of Some of the Causes*, 104 *GEO. L.J.* 1479 (2016) [hereinafter Carbado, *Blue-on-Black Violence*]. Carbado touches on the role fines and fees plays in increasing these contacts by addressing what he calls “predatory policing,” which he defines as “the direct targeting of vulnerable groups by way of arrests or the issuance of citations as sources of revenue for the city or the police department, or to effectuate promotions and pay increases for particular officers. *Id.* at 1502; *see also* Devon W. Carbado, *Predatory Policing*, 85 *UMKC L. REV.* 548 (2017) [hereinafter Carbado, *Predatory Policing*]. Predatory policing, argues Professor Carbado, “potentially facilitates police violence by increasing the frequency with which African-Americans have contact with the police.” Carbado, *Blue-on-Black Violence*, at 1504 (2016). As he points out, and I expand upon in this Article, the possibility of violence exists both during the

officer-involved shootings and deaths like the examples I list above—although those certainly do happen. Police violence can take many forms. Unjustified stops and searches (which amount to seizures of the body),<sup>27</sup> uses of force that do not result in bodily injury,<sup>28</sup> and even unrelenting police surveillance in Black communities can all be seen and experienced as types of police violence.<sup>29</sup> And the systematic oppression of Black, brown, and poor communities through a vicious cycle of enforcement, arrest, and the levying of criminal justice debt is a form of violence in and of itself.<sup>30</sup> Police brutality creates farreaching public health and economic consequences for entire communities.<sup>31</sup> In short, this type of policing violently enforces racial and socioeconomic hierarchies, and in turn excuses a longrunning governmental failure to invest in the social supports necessary to keep communities healthy and thriving: , another form of broader State violence.

Given this context, advocacy for fines and fees reforms should address the role of police in perpetuating systems of monetary sanctions. Likewise, activists pursuing justice for those shot and killed by the police are key allies in the fight to dismantle current systems of fines and fees, given the violence police inflict enforcing those systems. Reforms cannot simply target budget structures or court policies, because as I discuss in Part I, revenue generation alone does not explain police misconduct or the wide latitude police have to inflict violence on minority communities in the name of imposing or collecting fines and fees.<sup>32</sup> Many of the re-

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issuance of traffic tickets to drive up revenue, and when police enforce warrants for previously unpaid debts.

27. Susan Bandes et al., *The Mismeasure of Terry Stops: Assessing the Psychological and Emotional Harms of Stop and Frisk to Individuals and Communities*, 37 BEH. SCI. & L. 176 (2019).
28. Justin M. Feldman et al., *Temporal Trends and Racial/Ethnic Inequalities for Legal Intervention Injuries Treated in Emergency Departments: U.S. Men and Women Age 15–34 (2001–2014)*, 93 J. URBAN HEALTH 797 (2016) (53,000 people treated a year in hospitals for police-inflicted injuries).
29. Even if physical violence does not occur, “involuntary police citizen contacts” for low-level offenses or fine enforcement are “rarely gentle or neutral . . . they [are] neither pleasant nor without emotional consequences.” Jeffrey Fagan & Elliott Ash, *New Policing, New Segregation: From Ferguson to New York*, 106 GEO. L.J. ONLINE 33, 40 (2017). Later in this Article, I advocate for a more expansive definition of police violence that recognizes the myriad harms police-community enforcement interactions can create.
30. Theresa Zhen described this by writing that “the citations are the batons, the fines the weapons of financial destruction, and the fees the instruments of deprivation.” 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 177, 179 (2019).
31. See Osagie K. Obasogie & Zachary Newman, *Police Violence, Use of Force Policies, and Public Health*, 43 AM. J.L. & MED. 279, 283–84 (2017).
32. Carbedo discusses “five specific dynamics that compound the general exposure to police violence repeated police interactions create,” including stereotypes of African Americans as violent or dangerous; increased likelihood of arrest, which increases likelihood of use of force; increased incarceration rates; vulnerabilities



forms to municipal court practices aimed at curbing excessive fines and fees fail to account for the ways in which racialized, excessive policing facilitates and perpetuates those systems.<sup>33</sup> Instead, fines and fees reforms must also work to reduce the scope and involvement of law enforcement in fines and fees collection, and to significantly curtail their authority to pursue individuals who are behind on payments in order to reduce police-community contacts that could result in police violence.

In Part I, I explain the role that police play in creating a pipeline of high amounts of fines and fees, both through broken windows-based policing and revenue generation-motivated policing. In Part II, I contemplate what constitutes police violence, particularly in the context of fines and fees enforcement. In Part III, I explore specific policing tactics related to fines and fees collection, including the affirmative execution of warrants and the use of pretextual stops/searches and vehicle checkpoints for warrant enforcement. In Part IV, I argue that law enforcement's role in both feeding the fines and fees pipeline *and* pursuing aggressive collection techniques creates opportunities for police violence. Finally, I conclude by suggesting that fines and fees reform should not lose sight of the role police play in imposing and collecting monetary sanctions, and the need to reduce police involvement in those systems in order to reduce the risk of police violence.

## I. Role of the Police in Driving Up Fines and Fees

Fines and fees imposition and enforcement is a particularly pernicious method of police exertion of social control over certain communities;<sup>34</sup> one which is ripe for abuse of discretion. When cities rely on police officers to issue revenue-generating tickets and enforce warrants for failure to pay court fines and fees on these tickets, officers shift policing priorities accordingly. They become tax collectors,<sup>35</sup> omnipresent in communities where there may be the most opportunity to issue tickets with fines, or enforce outstanding warrants.<sup>36</sup> At the same time, warrants and court orders to pay fines and fees give police cover or pretext to police heavily in certain communities.

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and police insecurities created by repeated exposure; and resistance. Carbedo, *Blue-on-Black Violence*, *supra* note 26, at 1509–11.

33. See Theresa Zhen, *supra* note 30, at 180.

34. See, e.g., U.S. COMM'N ON CIVIL RIGHTS, TARGETED FINES AND FEES AGAINST COMMUNITIES OF COLOR: CIVIL RIGHTS AND CONSTITUTIONAL IMPLICATIONS 19–30 (2017).

35. Neil L. Sobol, *Charging the Poor: Criminal Justice Debt & Modern-Day Debtors' Prisons*, 75 MD. L. REV. 486, 523 (2016); BANNON ET AL., *supra* note 5, at 6–10.

36. At least 4.9 million people are jailed each year, and more than one in four of those people are jailed multiple times—nearly half of those people had individual incomes below \$10,000 per year. See ALEXI JONES & WENDY SAWYER., PRISON POLICY INITIATIVE, ARREST, RELEASE, REPEAT: HOW POLICE AND JAILS ARE MISUSED TO RESPOND TO SOCIAL PROBLEMS (2019), <https://www.prisonpolicy.org/reports/repeatarrests.html>.

Police are responsible for generating high amounts of fines and fees in at least two ways. First, according to broken windows policing, police should target low-level quality-of-life crimes in the interest of preventing the conditions of social disorder that could allow more serious criminal activity to flourish.<sup>37</sup> Broken windows policing explicitly targets individuals for the enforcement of ordinance violations or low-level crimes or in the name of preventing more serious ones. The result is that police issue citations or arrests on misdemeanors which come with significant fines and fees.<sup>38</sup> Most often, broken-windows oriented policing strategies are deliberately deployed in low-income and Black and brown communities.<sup>39</sup> This type of policing allows police to interject themselves into many different situations and all facets of everyday life—thereby driving up the frequency of police-community contact, the issuance of more tickets, and the opportunity for police violence.

The second driver of fines and fees enforcement is the criminal-legal system's direct fiscal interest in collecting fines and fees. Hundreds of jurisdictions across the country use fines and fees to fund a significant portion of their local budget.<sup>40</sup> In at least 284 local governments, fines account for more than twenty percent of the general fund.<sup>41</sup> According to one study, over 720 localities reported that fines and fees generated annual revenues that exceeded \$100 for every adult resident.<sup>42</sup>

Neither of these drivers of the fines and fees pipeline can truly be justified as beneficial to public safety—in fact, both broken windows policing and revenue generation policing can negatively impact law enforcement's ability to fight more serious crimes and improve public safety outcomes. Overpolicing of low-level crimes, even without an explicit

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37. See BERNARD E. HARCOURT, *ILLUSION OF ORDER: THE FALSE PROMISE OF BROKEN WINDOWS POLICING* (2004).

38. These arrests and citations also have several downstream personal and economic consequences because they create a criminal record that can be difficult to expunge, and that can impact job opportunities, access to education and benefits, and more. See generally NATAPOFF, *supra* note 7, at 28–32.

39. See, e.g. U.S. DEP'T OF JUST., CIVIL RIGHTS DIV., *INVESTIGATION OF THE NEWARK POLICE DEPARTMENT 21* (2014) (describing how Newark Police Department officers would focus on issuing citations in public housing projects because they were “convenient targets” for citations for quality of life issues.); Jeffrey Fagan & Garth Davies, *Street Stops and Broken Windows: Terry, Race, and Disorder in New York City*, 28 *FORDHAM URB. L.J.* 457 (2000); U.S. COMM'N ON CIVIL RIGHTS, *THE CIVIL RIGHTS IMPLICATIONS OF “BROKEN WINDOWS” POLICING IN NYC AND GENERAL NYPD ACCOUNTABILITY TO THE PUBLIC 11* (2018), <https://www.usccr.gov/pubs/2018/03-22-NYSAC.pdf>; Sarah Childress, *The Problem with “Broken Windows” Policing*, PBS: FRONTLINE (June 28, 2016), <https://www.pbs.org/wgbh/frontline/article/the-problem-with-broken-windows-policing>.

40. Mike Maciag, *Addicted to Fines*, *GOVERNING: THE FUTURE OF STATES AND LOCALITIES* (Aug. 21, 2019), <https://www.governing.com/topics/finance/gov-addicted-to-fines.html>.

41. *Id.*

42. *Id.*

revenue generation goal, is not an effective deterrent.<sup>43</sup> Researchers have concluded that pursuing this strategy in an attempt to reduce the level of social or physical disorder in a neighborhood is actually *not* an effective or optimal use of policing resources from the standpoint of preventing more serious crimes.<sup>44</sup> Additionally, overreliance on low-level crimes or enforcement strategies that generate revenue affects police departments' ability to engage in other law enforcement activities. A recent study found that police departments in cities that collect a greater share of revenue from fees solve property and violent crimes at a lower rate than those departments that do not collect a high share of revenue from fees.<sup>45</sup> Instead of making communities safer, broken windows policing and revenue generation policing consume large amounts of police resources, generating heavy fines for minor offenses and disproportionately targeting the poor.<sup>46</sup>

When cities rely on heavy fines and fees to sustain and fund government functions, police “see the people they’re supposed to be serving not as citizens with rights, but as potential sources of revenue, as lawbreakers to be caught.”<sup>47</sup> Although the full scope of law enforcement’s power to extract money from community members, including through civil asset forfeiture,<sup>48</sup> is beyond the scope of this Article, targeted policing of low level crimes for the purposes of revenue generation ensures that police are active participants in the criminal-legal system’s extraction of money from poor, predominately Black communities.

To be clear, police managers, including Chiefs, deputy chiefs, and other high-level decisionmakers, are choosing to enforce low-level crimes and traffic ordinances for a reason. Police enjoy a tremendous amount of

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43. See generally HARCOURT, *supra* note 37; Bernard Harcourt, *Reflecting on the Subject: A Critique of the Social Influence Conception of Deterrence, the Broken Windows Theory, and Order-Maintenance Policing New York Style*, 97 MICH. L. REV. 291, 308–09 (1998) (explaining the deterrence theory of broken windows policing and how evidence does not support that theory).

44. See Bernard E. Harcourt & Jens Ludwig, *Broken Windows: New Evidence from New York City and a Five-City Social Experiment*, 73 U. CHI. L. REV. 271 (2006) (analyzing studies and concluding that evidence does not support the concept behind broken windows policing, and that order-maintenance policing or measures designed to reduce the level of social and physical disorder in a community do not adequately serve their purported public safety goals).

45. Rebecca Goldstein et al., *Exploitative Revenues, Law Enforcement, and the Quality of Government Service*, 56 URB. AFF. REV. 5 (2020).

46. Rose Hackman, *Bratton-Style Policing Means More Fines and Arrests for Black Residents of Detroit*, GUARDIAN (Sept. 7, 2014, 12:00 PM), <https://www.theguardian.com/money/2014/sep/07/safer-detroit-fines-racial-profiling-black-resident> [<https://perma.cc/B9KJ-9M45>].

47. Radley Balko, *Why We Need to Fix St. Louis County*, WASH. POST (Oct. 16 2014), <https://www.washingtonpost.com/news/the-watch/wp/2014/10/16/why-we-need-to-fix-st-louis> [<https://perma.cc/VBR3-72GN>].

48. See Carbado, *Predatory Policing*, *supra* note 26, at 556–558, for a sound discussion of the way civil asset forfeiture connects to the issues discussed in this Article.

discretion to police how they see fit, due in part to the power they hold<sup>49</sup> and the generous protections afforded to them by Fourth Amendment law and the doctrine of qualified immunity.<sup>50</sup> Police can decide *where* and *how* to police. They can target particular neighborhoods for aggressive traffic enforcement; they can prioritize arrests for certain low-level crimes. Law enforcement priorities are typically set by the Chief of Police or her command staff.<sup>51</sup> But the Chief is appointed by the executive branch—and may therefore be accountable to local politicians and subject to the budgeting decisions of the mayor and local legislators. Political pressures directly impact police strategy and behavior.<sup>52</sup>

Police also have an obligation to enforce the law, including by executing outstanding warrants issued by the courts for failure to appear or pay fines and fees. When directives come from the executive or judicial branches to enforce fines and fees, as they did in Ferguson,<sup>53</sup> law enforcement and other government actors fall in line.<sup>54</sup> In the case of Ferguson, emails from the city's Finance Director instructed law enforcement to "fill the revenue pipeline" by issuing more tickets, and city officials enforced the use of aggressive collection efforts, praising those efforts that resulted in increased collections.<sup>55</sup>

The more successful a police department is at bringing in revenue for a city through fines and fees, the more funding that department will likely receive in the next budgetary cycle. With more money in the city's budget, there will be more to distribute, and the police will be seen as having done their job well, and therefore in need of more resources to bring in even more revenue in the next fiscal cycle. Data suggest that most police departments derive direct revenue benefits from fines and fees enforcement, either through earmarked fees specifically designated to the department or through budgeting allocation from the general fund.<sup>56</sup> Those funds can be used to increase the department's revenue

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49. NEUSTETER ET AL., *supra* note 8, at 2 ("Police officers, as gatekeepers of the criminal justice system, hold almost exclusive authority—by way of citations, arrests, and even physical force—to enforce and regulate the law.”).

50. Charlie Gerstein & J.J. Prescott, *Process Costs and Police Discretion*, 128 HARV. L. REV. F. 268, 276 (2015).

51. See NEUSTETER ET AL., *supra* note 8, at 23–25.

52. See U.S. DEP'T OF JUST., COMMUNITY RELATIONS SERVICES TOOLKIT FOR POLICING: POLICING 101, at 6; see generally NEUSTETER ET AL., *supra* note 8, at 23–25.

53. DOJ FERGUSON REPORT, *supra* note 1, at 10.

54. See Beth A. Colgan, *Lessons from Ferguson on Individual Defense Representation as a Tool of Systemic Reform*, 58 WM. & MARY L. REV. 1171, 1187–90 (2017).

55. DOJ FERGUSON REPORT, *supra* note 1, at 12–14.

56. Rebecca Goldstein, Michael W. Sances, & Hye Young You, *Exploitative Revenues, Law Enforcement, and the Quality of Government Service*, 56 URB. AFF. REV. 5 (2018); Michael W. Sances & Hye Young You, *Who Pays for Government? Descriptive Representation and Exploitative Revenue Sources*, 79 J. OF POL. 1090, 1090 (2017) (according to Census of Governments data from 2012, 80 percent of American cities obtain at least some revenue from fees, fines, and asset forfeitures, and about 6 percent of cities collect more than 10 percent of their revenue through these revenue streams).

extraction reach through hiring additional officers or the acquisition of new policing technologies.

But even where police do not gain a direct fiscal benefit from enforcing fines and fees, they can still drive up the amount of fines and fees imposed when they use their discretion to set their own enforcement priorities. Police may be motivated to issue large numbers of citations or aggressively target certain neighborhoods even without a revenue interest, due to tough-on-crime policies, a general desire to exert social control and minimize disorder,<sup>57</sup> or even unchecked racism. Or police chiefs may (formally or informally) require arrest or ticket quotas from their officers to demonstrate productivity, and these metrics are often used in evaluating officers for promotions or more plum beat or shift assignments.<sup>58</sup> This has a self-sustaining effect: chiefs may use these stats to justify requests for additional resources, which can then fund efforts to hire more officers who can continue deploying these tactics. Individual officers may also be motivated to arrest more people on low level charges because doing so allows them to work more hours processing and booking those arrests, which results in overtime pay.<sup>59</sup> And even if police do not directly benefit from each ticket issued in terms of a percentage of the fine distributed to the department's budget, "high-performing" departments and units may receive ancillary benefits, such as higher performance-based budgeting awards. Policing in this way still drives up the amount of fines and fees owed, even if there is no direct conflict of interest like there was in Ferguson.

Often, broken windows policing and for-profit policing operate in tandem. The Ferguson report made this scheme clear. There, the city's police force targeted Black residents for low-level "quality of life" offenses, such as not adequately maintaining their lawn or "manner of walking in roadway."<sup>60</sup> These ordinances were on the books—and enforced—allegedly for public safety reasons. These offenses came with heavy fines and mandatory court fees, which were imposed against people without any regard for their ability to pay,<sup>61</sup> when individuals failed to pay or appear, many because of their poverty, warrants were issued for their arrest.<sup>62</sup> These

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57. Gerstein & Prescott, *supra* note 50 (discussing how quality-of-life policing is entirely within the discretion of the police).

58. NEUSTETER ET AL., *supra* note 8, at 23–25; *see also* Saki Knafo, *How Aggressive Policing Affects Police Officers Themselves*, ATLANTIC (July 13, 2015), <https://www.theatlantic.com/business/archive/2015/07/aggressive-policing-quotas/398165> [<https://perma.cc/J575-7UCJ>]; Shaun Ossei-Owusu, *Race and the Tragedy of Quota-Based Policing*, AM. PROSPECT (Nov. 3, 2016), <https://prospect.org/justice/race-tragedy-quota-based-policing> [<https://perma.cc/28FW-Y2C7>].

59. Alan Feuer & Joseph Goldstein, *The Arrest Was a Bust. The Officers Got Overtime Anyway*, N.Y. TIMES (Feb. 19, 2018), <https://www.nytimes.com/2018/02/19/nyregion/new-york-police-overtime-pay-trial.html> [<https://perma.cc/J4CW-QRQ4>]; NEUSTETER ET AL., *supra* note 8, at 27.

60. DOJ FERGUSON REPORT, *supra* note 1, at 4, 52.

61. *Id.* at 52–53.

62. *Id.* at 55.

warrants carried additional charges (and fines and fees),<sup>63</sup> compounding people's outstanding debt. Community members reported hiding from the outside world, foregoing participating in public life, essentially afraid to go outdoors due to unpaid court debt and outstanding warrants.<sup>64</sup>

These dual tracks feeding the fines and fees pipeline require managers to make policing decisions that force officers to police in a way that generates the biggest return on investment, and bring in as much revenue as they can. Directing resources to police low-level and traffic offenses in Black, brown, and poor communities for the purpose of issuing tickets or enforcing outstanding warrants for unpaid court debt will, as Professor Devon Carbado asserts, "open[] the door to more intrusive, potentially violence-producing . . . encounters with the police."<sup>65</sup> The issuing of a citation to drive up revenue is the "primary" market for police interaction and therefore violence, but a "secondary" market is created when individuals are unable to pay their fines and are subjected to outstanding warrants and the collection tactics described above; each of these "are police contact events that can culminate in arrest, incarceration, and violence."<sup>66</sup>

## II. An Expansive View of Police Violence

As alluded to in the Introduction, police violence can take many forms and is inherently more complex than mere use of force or physical control. Professor Micol Seigel reminds us that "violence exists in a great continuum from the most immediate *thunk* of an impact to the most attenuated inflictions of discursive, epistemic, symbolic, psychic, and economic injury[.]"<sup>67</sup> Violence can be episodic and immediate, and it can also be structural and institutional. Although this Article points to examples of extraordinary police violence, including police-involved deaths, it is important to remember that fines and fees enforcement results in violence in many different forms.<sup>68</sup> When thinking about how to reform systems of fines and fees, and eliminate cycles of punishment and brutality in general, we must use this expansive framework to consider what constitutes police violence, and the ways in which police exert social control and power over certain communities every day in inherently violent ways, even when these interactions do not result in bodily injury or death.<sup>69</sup>

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63. *Id.* at 59–61.

64. *Id.* at 79.

65. Carbado, *From Stopping Black People*, *supra* note 13, at 130.

66. Carbado, *Predatory Policing*, *supra* note 26, at 561–62.

67. MICOL SEIGEL, *VIOLENCE WORK* 11 (2018).

68. Naomi Murakawa, *Weaponized Empathy*, in CHARLES OGLETTREE, JR. AND AUSTIN SARAT, *RACIAL RECONCILIATION AND THE HEALING OF A NATION: BEYOND LAW AND RIGHTS* 104 (N.Y.U. Press 2017) ("With our eyes locked on the bloodletting of 'extreme' police force, we might miss the death by a thousand cuts through paradigmatic policing, namely the policing of misdemeanors.").

69. See Ekow N. Yankah, *Pretext and Justification: Republicanism, Policing, and Race*, 40 *CARDOZO L. REV.* 1543, 1569–70 (2019) ("persistent contact with police officers consistently produces humiliating exchanges in which the police—embodying state power—casually insult, use racial epithets, and roughly

Arrests and *Terry* stops are a form of police violence, even when no true “force” is used or pain inflicted.<sup>70</sup> *Terry* searches, as recognized by the Supreme Court, are “as serious intrusion upon the sanctity of a person, which may inflict a great indignity and arouse strong resentment.”<sup>71</sup> Stop and frisks “cause injury more like police brutality than racial microaggression” and the methods used to search “are frequently experienced as sexual touchings.”<sup>72</sup> Stop and frisk is therefore a form of police violence.

Arrests are clearly seizures of the body, and even investigatory *Terry* stops involve a short-term seizure.<sup>73</sup> Punitive enforcement of fines and fees through these seizures, either in the levying of the fine or the response to nonpayment, have costs. Each is a denial of liberty and a curtailment of freedom, however temporary.<sup>74</sup> Both can be frightening and humiliating. Arrests create records that may impact employment prospects and come with additional costs, such as booking fees. This, of course, is to say nothing of the violence that a person might endure during transport following the arrest,<sup>75</sup> or once he is booked into jail on the outstanding warrant.<sup>76</sup>

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manhandle . . . [and] one cannot ignore the volatile tinder these interactions create, resulting in the most spectacular and tragic explosions.”)

70. *United States v. Drayton*, 536 U.S. 194, 201 (2002) (a person is “seized” within the meaning of the Fourth Amendment when a reasonable person would not feel free to disregard the officer and leave). The decision to arrest also increases the opportunity for traditional violence in the form of the officer’s use of force. See Rachel Harmon, *Why Arrest?*, 115 MICH. L. REV. 307, 315–16 (2016) (describing officer-involved deaths, including the death of Eric Garner, which began as routine encounters but turned deadly after the officer decided to arrest, and used force to effectuate that arrest).
71. *Terry v. Ohio*, 392 U.S. 1, 16–17 (1968).
72. PAUL BUTLER, *CHOKEHOLD: POLICING BLACK MEN* 97 (The New Press, 2017).
73. *Terry v. Ohio*, 392 U.S. 1, 16–20 (1968) (an investigatory stop amounts to a seizure “whenever a police officer accosts an individual and restrains his freedom to walk away.”); *United States v. Mendenhall*, 446 U.S. 544, 554 (1980) (“a person has been ‘seized’ within the meaning of the Fourth Amendment only if, in view of all the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave”).
74. Harmon, *supra* note 70, at 313.
75. Freddie Gray was arrested in Baltimore because he ran from an officer and once apprehended, the officer allegedly found a switchblade in Mr. Gray’s pants. State prosecutors and the police commissioner questioned the legality of the arrest. Once arrested, Mr. Gray was handcuffed, placed in the back of a police van for transport to the police station for booking. Officers denied Mr. Gray medical treatment despite several requests. Officers also failed to restrain Mr. Gray with a seat belt in the transport van, even though his arms and legs were shackled, making it difficult for him to brace himself for any impact during the ride. Police documents indicate that Mr. Gray suffered a “medical emergency” during the transport. Mr. Gray arrived at the hospital for treatment in critical condition, with his spine “80% severed at the neck.” He died shortly thereafter. *Freddie Gray’s Death in Police Custody—What We Know*, BBC NEWS (May 23, 2016), <https://www.bbc.com/news/world-us-canada-32400497> [<https://perma.cc/FUW8-PCSL>].
76. Individuals may experience additional law enforcement violence when they are incarcerated, in the form of harassment, degrading living conditions, excessive

More abstractly, police enforcement of fines and fees is violent in that it works to further oppress Black, brown, and poor communities, re-enforce racial and socioeconomic divisions, and entangle more people in the criminal-legal system. This in and of itself is a form of police violence against those communities. Punitive enforcement of fines and fees creates an “arrest feedback” loop, wherein people originally cited for minor offenses end up arrested and often incarcerated on outstanding warrants, even for small periods of time, even though they couldn’t have been subjected to incarceration for the underlying offense. Even short stays in jail can have devastating consequences, personally,<sup>77</sup> professionally,<sup>78</sup> and for peoples’ families.

The constant fear of arrest and incarceration due to unpaid fines and fees is also violence. Again, the work of Micol Seigel is illuminating: “the violence of police is often latent or withheld, but it is functional precisely because it is suspended. It often need not be made manifest, because people fear it and grant it legitimacy[.]”<sup>79</sup> When individuals owe outstanding fines and fees and know that they can be arrested for

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force, denial of medical or mental health care, or—in the most extreme, but unfortunately not uncommon cases—death in custody. For example, Sandra Bland was arrested following a traffic stop for failure to signal during a lane change, and died in police custody three days later. Adeel Hassan, *The Sandra Bland Video: What We Know*, N.Y. TIMES (May 7, 2019), <https://www.nytimes.com/2019/05/07/us/sandra-bland-brian-encinia.html> [<https://perma.cc/8S8W-7GF7>]. In Meridian, Mississippi, Robert Wayne Johnson was incarcerated for failure to pay court debt. He was supposed to spend only two days in jail, even though he lacked the ability to pay his fines. Fifty-four days later, he remained incarcerated—and committed suicide. Kim Bellware, *How One Man’s Jail Suicide Underscores Mississippi’s Mental Health Crisis*, WASH. POST (Oct. 16, 2019), <https://www.washingtonpost.com/nation/2019/10/16/sentenced-days-held-how-one-mans-jail-suicide-underscores-mississippis-mental-health-care-crisis> [<https://perma.cc/4EBN-9TYF>].

77. Paul Heaton et al., *The Downstream Consequences of Misdemeanor Pretrial Detention*, 69 STAN. L. REV. 711, 713 (2017) (people detained pretrial, even for only a few days, can lose their job, housing, or custody of their children); Shane Shifflett et al., *Since Sandra* (Database), July 16, 2016, <http://data.huffingtonpost.com/2016/jail-deaths> [<https://perma.cc/RCK5-J5H2>] (documenting 815 people who died in jail in one year, many of whom died within just three days of incarceration).
78. BRUCE WESTERN & BECKY PETTIT, THE PEW CHARITABLE TRUSTS, COLLATERAL COSTS: INCARCERATION’S EFFECT ON ECONOMIC MOBILITY (2010), [https://www.pewtrusts.org/~media/legacy/uploadedfiles/pcs\\_assets/2010/collateral\\_costs1pdf.pdf](https://www.pewtrusts.org/~media/legacy/uploadedfiles/pcs_assets/2010/collateral_costs1pdf.pdf) [<https://perma.cc/F8D2-NPA6>] (finding that being in jail reduces future wages by 11 percent, cuts average future annual employment by nine weeks, and cuts future yearly earnings by 40 percent); see also ALEXANDER M. HOLSINGER, CRIME AND JUSTICE INST., ANALYZING BOND SUPERVISION SURVEY DATA: THE EFFECTS OF PRETRIAL DETENTION ON SELF-REPORTED OUTCOMES (2016), [http://www.crj.org/assets/2017/07/13\\_bond\\_supervision\\_report\\_R3.pdf](http://www.crj.org/assets/2017/07/13_bond_supervision_report_R3.pdf) [<https://perma.cc/7ZGF-WXMH>] (finding that spending less than 3 days in jail caused job loss in 4.7 percent of cases and spending more than three days in jail caused job loss in 14 percent of cases).
79. SEIGEL, *supra* note 67.



nonpayment at any time, they become even more fearful of police and the State at large—a form of “violence suspended” that can be as life-altering as physical violence itself. People may stop driving because they fear being pulled over and arrested for outstanding traffic tickets; and because they no longer drive, they are no longer able to work. This latent violence essentially traps people and prevents them from getting out of debt.

A final form of police violence through targeted enforcement of fines and fees is the havoc such policing wreaks in already economically disadvantaged communities. Fines and fees enforcement further compounds poverty and depresses economic mobility in those communities.<sup>80</sup> It also builds upon generations of laws, policies, and systems designed to exclude Black and brown individuals from full public participation. Policing has historically been a system of social control and alienation of marginalized communities, with roots in the subjugation of Black people through slavery continued through the policing of Black bodies in the Jim Crow era and into the modern day.<sup>81</sup> Heavy fines and fees, inability to pay, and the constant threat of arrest, incarceration, or additional punishment, is a manifestation of this continued social control: it prevents individuals from escaping the cycle of poverty and criminal justice involvement in which they are trapped.<sup>82</sup> This in turn may generate additional criminogenic behavior in an attempt to pay off fines and fees,<sup>83</sup> the

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80. See ALEXES HARRIS, *A POUND OF FLESH: MONETARY SANCTIONS AS A PERMANENT PUNISHMENT FOR POOR PEOPLE* (2016); Fagan & Ash, *supra* note 29; ELLA BAKER CENTER FOR HUMAN RIGHTS ET AL., *WHO PAYS? THE TRUE COST OF INCARCERATION ON FAMILIES* (Sept. 2015), <https://ellabakercenter.org/sites/default/files/downloads/who-pays.pdf> [<https://perma.cc/8PUJ-J978>].

81. See generally KHALIL GIBRAN MUHAMMAD, *THE CONDEMNATION OF BLACKNESS: RACE CRIME, AND THE MAKING OF MODERN URBAN AMERICA* (2011); SALLY HADDEN, *SLAVE PATROLS: LAW AND VIOLENCE IN VIRGINIA AND THE CAROLINAS* (2001); ELIZABETH HINTON, *FROM THE WAR ON POVERTY TO THE WAR ON CRIME: THE MAKING OF MASS INCARCERATION IN AMERICA* (2017).

82. See Murakawa, *supra* note 68 (“Fees and fines for misdemeanor offenses are seemingly small burdens that tend to compound over time, sometimes bringing inescapable debt and heightened surveillance that makes new arrests all the more likely.”).

83. A prime example of this are state policies that allow for automatic suspension of drivers’ licenses for unpaid court debt, and subsequent prosecutions of individuals for driving on a suspended license. Many of those individuals live in systems without reliable public transit, and rely on their licenses to drive to their jobs, which they must do to earn enough money to pay off their court debt and regain their drivers’ licenses. See generally BRET & NAGRECHA, *supra* note 5. But individuals may turn to criminal behavior to pay off fines and fees in other ways as well. For example, research done by the Alabama Appleseed Center for Law and Justice found that 38 percent of survey respondents who owed outstanding court debt reported committing crimes to pay off their court debts, including selling drugs or their bodies. See ALA. APPLESEED CNTR. FOR LAW & JUSTICE, *UNDER PRESSURE: HOW FINES AND FEES HURT PEOPLE, UNDERMINE PUBLIC SAFETY, AND DRIVE ALABAMA’S RACIAL WEALTH DIVIDE* (2019), <https://www.alabamaappleseed.org/wp-content/uploads/2018/10/aa1240-finesandfees-10-10-final.pdf> [<https://perma.cc/7ZJT-ZWGZ>].

policing of which creates additional opportunities for police interaction and violence.<sup>84</sup>

As discussed in the next Part, the tactics police use to serve these goals can be violent in and of themselves, but police also rely on saturation of particular communities—most often Black, brown, or poor—thereby driving up police contacts in those neighborhoods where relationships with law enforcement are already fraught, many of which inevitably end in police violence.

### III. Fines and Fees Enforcement Tactics

Once the “fines and fees pipeline” is fed through enforcement decisions that target low-level offenses or support revenue-generation goals, there is still a question of *how* police carry out those policing priorities. Police officers make a variety of choices when carrying out their law enforcement obligations, both in general and specifically with regard to collecting fines and fees. The strategies they choose, including where to target enforcement efforts (geographic decisions), the personnel to use (deployment and staffing decisions), and the specific tactics for enforcement (e.g., stop and frisk, the use of specialized units for warrant enforcement, sweeps, or vehicle checkpoints), are all possible touchpoints for unnecessarily punitive contact between law enforcement and members of the community. Some of these tactics are inherently violent. But even when encounters begin as “routine” (and in some communities, “routine” means openly hostile or antagonistic), they can quickly become physically aggressive or even dangerous, especially when they deployed with regular frequency in Black, brown, and poor communities.

In this Part, I address how current law allows the police wide latitude to enforce low-level high-fine crimes and outstanding warrants for failure to pay fines and fees. I then discuss how a few common tactical choices,<sup>85</sup> including proactive warrant enforcement, traffic stops, and vehicle checkpoints, are used to impose or enforce fines and fees, and how these can create negative interactions, which can escalate into violent—if not deadly—encounters.

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84. See Alexes Harris, Heather Evans, & Katherine Beckett, *Drawing Blood from Stones: Legal Debt and Social Inequality in the Contemporary United States*, 15 *Am. J. Soc.* 1753, 1761 (2010) (“ . . . if the imposition of monetary sanctions is also considered, the impact of penal expansion on the stratification system may be far greater than these studies suggest, and the mechanisms by which poverty and inequality are reproduced are even more numerous.”).

85. Other tactical choices and policing techniques undoubtedly contribute to this dynamic as well. For example, field interviews and other types of “consensual” contacts with community members could yield information necessary to search for outstanding warrants for failure to pay fines and fees. Such procedures, without reasonable suspicion or probable cause to initially stop and detain, constitute an illegal seizure; but these practices are commonly deployed regardless.

### A. *Constitutionally Permissible Fines and Fees Enforcement*

Our current expansive criminal code, combined with relatively deferential Fourth Amendment doctrine, allows for police to engage in widespread enforcement of fines and fees using tactics that unquestionably harmful, yet perfectly constitutional.

There are an astoundingly large number of low-level offenses on the books in each city and state, resulting in roughly 13 million misdemeanor cases being filed in the United States in 2015 alone.<sup>86</sup> This may not even include all traffic offenses, which in some places are not misdemeanors but instead labeled as civil infractions.<sup>87</sup> Each of these offenses come with fines and fees.<sup>88</sup> Of course, it is “perfectly legal to impose fines and fees for misdemeanors and minor violations, even on people who cannot afford to pay them.”<sup>89</sup> The Constitution does not protect against the overpolicing of low-level offenses and the imposition of large amounts of fines. Police are constitutionally permitted to stop, search, cite, or arrest people for a whole host of commonplace, relatively innocuous behaviors like speeding or jaywalking or littering, simply because those behaviors are, in many jurisdictions, criminalized.

Moreover, Fourth Amendment doctrine makes police violence in the name of fines and fees enforcement possible; perhaps even encouraging it.<sup>90</sup> Officers have wide latitude under the Fourth Amendment to enforce warrants, including through proactive warrant efforts such as sweeps and raids,<sup>91</sup> and through vehicle stops.<sup>92</sup> When a warrant has been issued for an individual’s arrest, whether for serious conduct such as suspicion of involvement in a murder or minor conduct such as failure to make a timely payment towards fines and fees, police are permitted to act. This includes affirmatively executing the warrant under the plain language of the Fourth Amendment, and arresting someone through the course of an investigatory encounter once they discover the outstanding warrant exists. Fourth Amendment doctrine allows police to enforce those warrants in a variety of ways, constitutional or otherwise, without much protection for individuals owing court debt. This is because the presence of a warrant cures all sorts of police misconduct; where a warrant exists, it doesn’t much matter whether the officer’s conduct that precipitated the discovery of the warrant was constitutional. The Fourth Amendment’s typical exclusionary remedy suddenly becomes out of reach.<sup>93</sup>

Police are constitutionally permitted to stop any individual or vehicle provided there is “reasonable suspicion” that a crime has or is about to

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86. See NATAPOFF, *supra* note 7, at 41.

87. *Id.* at 44–45.

88. *Id.* at 115 *et. seq.*

89. *Id.* at 137.

90. See generally Carbadó, *From Stopping Black People*, *supra* note 13.

91. See Subpart III.B.

92. See Subpart III.C.

93. See Nirej Sekhon, *Dangerous Warrants*, 93 WASH. L. REV. 967, 983, 994 (2018).

occur.<sup>94</sup> *Whren v. United States* taught us that the police have the authority to stop a car whenever any traffic violation has occurred, even if the real reason the police were interested in that vehicle in the first place was because of a hunch that its occupants were involved in another crime.<sup>95</sup> Given the litany of vehicle infractions that would provide enough reasonable suspicion or even probable cause for a stop,<sup>96</sup> this is not a difficult hurdle to surmount.<sup>97</sup> Police may—and indeed do—direct their traffic patrol efforts in communities with a large number of outstanding warrants, under the guise of important traffic safety enforcement but with the intended additional effect of enforcing outstanding warrants.<sup>98</sup> Although police would not be allowed to stop each car passing by to check for outstanding warrants without some reasonable suspicion of either criminal activity or that an outstanding warrant exists,<sup>99</sup> they could stop any car engaged in a minor driving infraction—even something as small as driving three miles over the speed limit. The ability to stop for such minor infractions means that traffic enforcement is an appealing tactic for police departments to search for outstanding warrants and arrest for prior failures to pay.

Current Fourth Amendment law also makes it perfectly legal for police to bootstrap a search of a person from an illegal stop so long as there is an outstanding warrant, even if that warrant is only for failure to pay fines and fees on a traffic ticket. This can further entrench individuals in the criminal legal system. In *Utah v. Strieff*, an officer made an unconstitutional stop of a vehicle, but during the course of the stop,

94. *Terry v. Ohio*, 392 U.S. 1 (1968); *Florida v. J.L.*, 529 U.S. 266, 272 (2000).

95. *Whren v. United States*, 517 U.S. 806 (1996). Professor Paul Butler argues that this is one of law enforcement's "superpowers:" the ability, granted by Fourth Amendment doctrine, to stop motorists without a truly valid reason for doing so. BUTLER, *supra* note 72.

96. For example, in Fort Worth, Texas, the following (among many, many others) are all traffic violations that would provide justification for a traffic stop: changing lanes without signal; turn at private driveway without signal; turn from parked without signal; unsafe backing; fail to yield right of way to pedestrian—private drive; into private drive—no signal; fail to yield right of way from alley; fail to yield right of way—yield sign; no turn signal—stop vehicle; U-turn on crest/hill; fail to yield right of way at green light; license plates—switched; unclean license plate; and unlawful riding. FORT WORTH MUNICIPAL COURT FINE SCHEDULE, CITY OF FORT WORTH, TEXAS (Jan. 1, 2020), <http://fortworthtexas.gov/files/b71e28bf-f231-445f-a984-892a6d83b7f7.pdf> [<https://perma.cc/Q723-3GZH>].

97. See David A. Harris, *Driving While Black and All Other Traffic Offenses: The Supreme Court and Pretextual Traffic Stops*, 87 J. CRIM. L. & CRIMINOLOGY 544, 545 (1997) (arguing that the "comprehensive scope of state traffic codes makes them extremely powerful tools under *Whren*").

98. See generally Jordan Blair Woods, *Decriminalization, Police Authority, and Routine Traffic Stops*, 62 UCLA L. REV. 672, 748–49 (2015) (discussing how noncriminal traffic enforcement can be used as a tool for criminal enforcement of other laws under a public safety justification that may be misapplied).

99. *Delaware v. Prouse*, 440 U.S. 648, 663 (1979) (holding that the state's interest in conducting checks for outstanding warrants of motorists does not outweigh the intrusion on privacy for individuals who are detained).

discovered that there was an outstanding warrant for the driver's arrest.<sup>100</sup> The officer then conducted a search incident to arrest on the outstanding warrant, during which the officer found narcotics—and charged the individual with a new offense for drug possession.<sup>101</sup> The Court held that the exclusionary rule did not apply and would therefore not bar admission of the narcotics discovered in the search incident to arrest, because although the original *stop* was unconstitutional, the *search* was incident to a valid arrest warrant.<sup>102</sup> The exclusionary rule did not apply because the connection between the unconstitutional conduct (the stop) and the discovery of the evidence incident to arrest was sufficiently attenuated, due to the valid outstanding warrant.<sup>103</sup> *Streiff* could therefore be convicted of a new crime, despite the initial unconstitutional stop.

Under that case, police officers are free to target motorists (or individuals more generally) for stops in order to check for outstanding warrants. They might even get lucky and during the stop and search incident to arrest on the warrant find evidence sufficient to charge the motorist with a new crime, potentially collecting more fines or fees. Although the majority in *Streiff* left open the possibility of a remedy if a defendant could show that a police department was engaging in a pattern or practice of unconstitutional stops for the purposes of finding outstanding arrest warrants, scholars have pointed out that it is unlikely that an individual defendant would be able to make such a showing.<sup>104</sup> Proving a pattern or practice of police misconduct is inordinately difficult,<sup>105</sup> even more so in the context of traffic stops, where officers have wide discretion to effectuate stops and searches and subsequently enforce outstanding warrants.

## **B. *Affirmative Enforcement of Warrants for Outstanding Fines and Fees***

When a person is sentenced to pay fines and fees, and fails to pay in full or misses an installment payment, courts across the country will issue a bench warrant allowing police to arrest that person and bring them

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100. *Utah v. Strieff*, 136 S. Ct. 2056 (2016).

101. *Id.* at 2060.

102. *Id.* at 2063.

103. *Id.* at 2063–64.

104. *See, e.g.*, Sekhon, *supra* note 93.

105. *See generally* Rachel A. Harmon, *Legal Remedies for Police Misconduct*, in 2 REFORMING CRIMINAL JUSTICE: POLICING 27 (Erik Luna ed., 2017), [https://law.asu.edu/sites/default/files/pdf/academy\\_for\\_justice/2\\_Reforming-Criminal-Justice\\_Vol\\_2\\_Legal-Remedies-for-Police-Misconduct.pdf](https://law.asu.edu/sites/default/files/pdf/academy_for_justice/2_Reforming-Criminal-Justice_Vol_2_Legal-Remedies-for-Police-Misconduct.pdf) [<https://perma.cc/ZW4K-J3EX>]; CIVIL RIGHTS DIV., U.S. DEP'T OF JUSTICE, THE CIVIL RIGHTS DIVISION'S PATTERN AND PRACTICE POLICE REFORM WORK: 1994–PRESENT (2017), <https://www.justice.gov/crt/file/922421/download> [<https://perma.cc/KQ4T-PP2F>].

before the court to explain their failure to pay.<sup>106</sup> Many people will not even know that a warrant is out for their arrest.<sup>107</sup>

Warrants are an extreme reaction to missed payments; they suddenly subject an individual to arrest and incarceration, and all the attendant consequences.<sup>108</sup> Yet, even following reforms in several jurisdictions, including Missouri, warrants are still an enforcement option to compel payment, even if less punitive intermediate steps must be taken first.<sup>109</sup> The police serve as the arm of the court to find, arrest, and bring the person before the court to answer for the “offense” of noncompliance with the prior court order.

Some departments or jurisdictions do not actively enforce these warrants, but rather track them in electronic systems and use them to arrest individuals who come into police contact by other means, for example, through traffic stops. In this way, “outstanding warrants create opportunities for police leniency and severity, both at the institutional and individual levels.”<sup>110</sup>

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106. See ARIZ. REV. STAT. ANN. § 13-810 (2020) (“[If] a defendant who is sentenced to pay a fine, a surcharge, a fee, an assessment or incarceration costs defaults in the payment of the fine, surcharge, fee, assessment or incarceration costs or of any installment as ordered, the court, on motion of the prosecuting attorney or on its own motion, shall require the defendant to show cause why the defendant’s default should not be treated as contempt and may issue a summons or a warrant of arrest for the defendant’s appearance.”); MISS. CODE ANN. § 99-37-7 (2020) (“Subject to the provisions of section 99-19-20.1, when a defendant sentenced to pay a fine or to make restitution defaults in the payment thereof or of any installment, the court, on motion of the district attorney, or upon its own motion, may require him to show cause why his default should not be treated as contempt of court, and may issue a show cause citation or a warrant of arrest for his appearance.”); N.M. STAT. ANN. § 31-12-3 (2019) (“When a defendant sentenced to pay a fine in installments or ordered to pay fees or costs defaults in payment, the court, upon motion of the prosecutor or upon its own motion, may require the defendant to show cause why his default should not be treated as contumacious and may issue a summons or a warrant of arrest for his appearance.”); OHIO REV. CODE ANN. § 2947.14 (LexisNexis 2020) (“If the court or magistrate has found the offender able to pay a fine at a hearing conducted in compliance with divisions (A) and (B) of this section, and the offender fails to pay the fine, a warrant may be issued for the arrest of the offender.”); UTAH CODE ANN. § 78B-6-317 (LexisNexis 2020) (allowing the court to issue an arrest warrant to compel the person to appear at the show cause hearing if it appears to the court that the individual is not likely to appear).
107. See, e.g., DOJ FERGUSON REPORT, *supra* note 1, at 47 (describing how DOJ investigators spoke with several individuals in Ferguson who were arrested without ever knowing that there was a warrant out for their arrest).
108. BRETT & NAGRECHA, *supra* note 5, at 36–37; Letter from Vanita Gupta, Principal Deputy Attorney General, U.S. Dep’t of Justice Civil Rights Div., & Lisa Foster, Director, U.S. Dep’t of Justice Office for Access to Justice, to Colleague 6 (Mar. 14, 2016), <https://www.courts.wa.gov/subsite/mjc/docs/DOJDearColleague.pdf> [<https://perma.cc/RSY2-6JTD>].
109. Mo. SUP. CT. R. 37.65 (requiring that the court first attempt to use show cause orders rather than arrest warrants to secure appearance upon nonpayment).
110. Sekhon, *supra* note 93.

Yet, departments can—and many do—affirmatively and openly enforce noncompliance warrants through specific policing tactics. One such tactic is the use of “warrant sweeps,”<sup>111</sup> where police saturate a specific geographic location (such as a housing complex or neighborhood) to attempt to serve and enforce as many outstanding warrants as possible. In Detroit, the police chief led a raid in 2013 of a public housing complex as part of a largescale operation entitled “Operation Clean Sweep,” which law enforcement claimed was necessary to reduce violence.<sup>112</sup> Swat team officers “bust[ed] in doors with firearms drawn and arrested large numbers of people with outstanding warrants. Thirty people were arrested that day, twenty-one of which were taken into custody for unpaid traffic tickets.”<sup>113</sup>

These types of raids are not necessarily just for enforcement of unpaid fines and fees—raids are often justified as necessary to “clean up” outstanding warrants (some of which may be for felony conduct), “keep the criminal justice system moving smoothly[,]” and “maintain[] respect for the authority of the judicial system.”<sup>114</sup> But because of the large number of warrants issued solely for failure to pay fines and fees or failure to appear (FTA), individuals who owe monetary sanctions—but perhaps only for low level offenses—might get swept up in the raids all the same.<sup>115</sup> And given the catalogue of abuses and mistakes that can occur during such raids,<sup>116</sup> using this tactic to clear outstanding warrants—including warrants for failure to pay—creates additional opportunities for police

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111. See, e.g., Barbara Miller, *Warrant ‘Sweep’ Rounds up 56 Who Owed Court Fines in York County*, PENNLIVE.COM (Aug. 2, 2016), [https://www.pennlive.com/news/2016/08/warrant\\_sweep\\_rounds\\_up\\_56\\_who.html](https://www.pennlive.com/news/2016/08/warrant_sweep_rounds_up_56_who.html) [https://perma.cc/4VB5-72L4]; see also City News Service, *Police Arrest 36 People in East County Warrant Sweep*, Fox5 KSWB-TV (June 15, 2019), <https://fox5sandiego.com/2019/06/15/police-arrest-36-people-in-east-county-warrant-sweep> [https://perma.cc/EQH6-J69L]; Kim Crawford, *Court Announces Amnesty Program for Warrants, Tickets*, MLIVE.COM (June 28, 2006), [https://www.mlive.com/flintjournal/newsnow/2006/06/court\\_announces\\_amnesty\\_progra.html](https://www.mlive.com/flintjournal/newsnow/2006/06/court_announces_amnesty_progra.html) [https://perma.cc/N4RS-KLDQ]; Amy Greene, *Del City Clearing Warrants Offenders Paying Fines to Avoid Arrest*, OKLAHOMAN (Mar. 8, 1999), <https://oklahoman.com/article/2645354/del-city-clearing-warrants-offenders-paying-fines-to-avoid-arrest> [https://perma.cc/EWK8-LZS9].
  112. Ryan Felton, *Operation: Restore Public Relations*, DET. METRO TIMES (Apr. 15, 2015), <https://www.metrotimes.com/detroit/operation-restore-public-relations/Content?oid=2334953&showFullText=true> [https://perma.cc/7WQ2-E7CG].
  113. *Id.*
  114. Jon Kelvey, *Police Arrest More than 20 During Warrant Sweep*, BALTIMORE SUN (Sept. 28, 2015), <https://www.baltimoresun.com/maryland/carroll/news/crime/ph-cc-warrant-sweep-092815-20150928-story.html> [https://perma.cc/9HHE-ZAWN].
  115. E.g., Thomas J. Prohaska, *Niagara County Police Agencies Rack up 112 Arrests in Warrant Sweep* (Sept. 19, 2019), <https://buffalonews.com/2019/09/19/niagara-county-police-agencies-rack-up-112-arrests-in-warrant-sweep> [https://perma.cc/FR3Q-76J2] (describing a warrant sweep that resulted in arrests on warrants for 43 felony charges, 64 misdemeanors, and 21 “violations,” including warrants for individuals who skipped court dates).
  116. See RADLEY BALKO, *OVERKILL: THE RISE OF PARAMILITARY POLICE RAIDS IN AMERICA* (2006).

violence.<sup>117</sup> Police raids in other contexts, such as for drug enforcement, are known to be violent and dangerous for all involved.<sup>118</sup> These types of paramilitary raids “escalate provocation and bring unnecessary violence to what would otherwise be a routine, nonviolent police procedure.”<sup>119</sup> The same is to be said of warrant raids: using raids to collect old court debt or ensure people’s appearance in court escalates these low-level compliance cases into something much more hostile and perilous.

The “demographic and geographic distribution of warrants will likely reflect (and reinforce) police enforcement patterns.”<sup>120</sup> Because low-income, Black, and brown community members are more likely to be stopped, searched, and arrested or charged,<sup>121</sup> they make up a larger percentage of the pool of individuals who owe fines and fees, and therefore, who may have court debt outstanding and have a warrant out for nonpayment.<sup>122</sup> Police are therefore more likely to target those communities for warrant enforcement in order to collect from those who could not afford to pay those monetary sanctions in the first place.

Courts essentially give the police the authority and the tools to exercise their discretion to police heavily in certain communities in the name of enforcing these noncompliance warrants. Under current Fourth Amendment law, as noted in Subpart III.A, police have wide latitude to stop, search, and cite individuals for a large range of low-level but high-fine offenses. The cycle then becomes self-perpetuating. Low-income and minority communities are targeted for law enforcement activity; that activity results in low-level charges and traffic tickets; individuals cannot pay the monetary sanctions associated with such offenses; warrants will

117. Even former law enforcement officials recognized that this operation had unintended harmful consequences. Stephen Downing, a former deputy chief of the Los Angeles Police Department, was quoted as saying that this type of raid “feeds the spiral of violence and crime, and it also feeds the breakdown of families.” Felton, *supra* note 112.

118. See, e.g., Elisha Anderson, *Detroit Settles Case of 7-Year-Old Girl Shot During Police Raid for \$8.25 Million*, DET. FREE PRESS (Apr. 4, 2019), <https://www.freep.com/story/news/local/michigan/detroit/2019/04/04/aiyana-stanley-jones-settlement-civil/3365796002> [<https://perma.cc/ZK4T-D2EA>]; Leif Reigstad, *A No-Knock Raid in Houston Led to Deaths and Police Injuries. Should Police Rethink the Practice?*, TEX. MONTHLY (Feb. 1, 2019), <https://www.texasmonthly.com/news/a-no-knock-raid-in-houston-led-to-deaths-and-police-injuries-should-police-rethink-the-practice> [<https://perma.cc/YC4E-NFRH>]; Steve Vockrodt, *KCPD Settles Lawsuit over ‘Plainly Incompetent’ Raid on Home with Flash-Bang Grenade*, KANSAS CITY STAR (Oct. 28, 2019), <https://www.kansascity.com/news/local/crime/article236664783.html> [<https://perma.cc/2DNF-G8M4>].

119. BALKO, *supra* note 116.

120. Sekhon, *supra* note 93, at 990.

121. See generally BUTLER, *supra* note 72 (collecting studies showing disparities in stop rates and arrest rates between Black and brown community members and white community members, relative to their portion of the total population); THE LEADERSHIP CONFERENCE, RESTORING A NATIONAL CONSENSUS: THE NEED TO END RACIAL PROFILING IN AMERICA 9 (2011) (discussing quantitative data regarding racial profiling).

122. Sekhon, *supra* note 93, at 990–92.



issue in large numbers, often automatically, when those individuals fail to pay; and those warrants will result in an increased overall police presence *and* targeted operations to enforce those warrants and collect the debt owed, leading to more police interactions.<sup>123</sup> Added to this is the fact that in many jurisdictions, warrants for failure to pay or appear can come with additional fines or fees.<sup>124</sup> When individuals are unable to pay the fines and fees, the cycle starts all over again.

### C. *Warrant Enforcement Through Traffic Enforcement*

Even if police departments do not engage in the sort of obvious proactive warrant enforcement efforts described above, most departments will still engage in ancillary policing tactics that are intended to (and successfully do) execute outstanding warrants. A prime example of this is patrol officers' use of traffic stops and vehicle checkpoints, which are generally justified by vague appeals to "public safety" or "drug enforcement." Once the individual is stopped or pulled over, the police are able to run a search for any outstanding warrants and arrest accordingly.<sup>125</sup> Although the initial police encounter is not, at least on the surface, intended to act as a warrant sweep, that is nonetheless the effect—and it is why such tactics are frequently used by departments that hope to enforce and collect outstanding fines and fees.

Naturally, police will focus these efforts in particular communities. Much has been written about the frequency of police targeting Black, brown, and poor motorists.<sup>126</sup> In Ferguson, officers targeted Black neighborhoods for traffic and citation enforcement, and in the process, were able to arrest individuals on outstanding warrants for old municipal and traffic citations.<sup>127</sup> Even though specific warrant data are unavailable in many jurisdictions, it is not a stretch to conclude that Black people will be overrepresented in the pool of individuals with outstanding non-compliance warrants,<sup>128</sup> so directing police resources to things like traffic

123. See Harris et al., *supra* note 84; see also U.S. COMM'N ON CIVIL RIGHTS, *supra* note 34.

124. BRETT & NAGRECHA, *supra* note 5.

125. See generally Rodriguez v. United States, 135 S. Ct. 1609 (2015) (checking a driver's license and determining whether there are outstanding warrants against the driver are ordinary inquiries that are a legitimate part of a traffic stop on a traffic violation); see also Jeff Welty, *May an Officer Run a Motorist's Criminal Record During a Traffic Stop?*, NORTH CAROLINA CRIMINAL LAW (Apr. 25, 2017, 8:07 AM), <https://nccriminallaw.sog.unc.edu/may-officer-run-motorists-criminal-record-traffic-stop> [https://perma.cc/5KUC-P9YF].

126. See, e.g., Camelia Simoiu et al., *Testing for Racial Discrimination in Police Searches of Motor Vehicles*, SSRN ELECTRONIC J. (2016); see also David A. Harris, *The Stories, the Statistics, and the Law: Why "Driving While Black" Matters*, 84 MINN. L. REV. 265 (1999); Adero S. Jernigan, *Driving While Black: Racial Profiling in America*, 24 L. & PSYCHOL. REV. 127 (2000); Kathryn K. Russell, "Driving While Black": *Corollary Phenomena and Collateral Consequences*, 40 B.C. L. REV. 717 (1999).

127. DOJ FERGUSON REPORT, *supra* note 1, at 65.

128. Sekhon, *supra* note 93.

enforcement and quality-of-life patrol in Black, brown, and poor communities will return a greater “hit rate” on those warrants. This risk is not hypothetical. Given how many jurisdictions have a history of over-policing minority communities, Fourth Amendment jurisprudence provides a gaping loophole that allows marginalized community members to be subjected to arrests on outstanding warrants that begin originally as illegal stops or seizures. If the stop does not return a “hit,” the officer can send the person on his way, with little repercussion for the officer.<sup>129</sup>

The use of vehicle checkpoints to enforce warrants in Black, brown, and poor neighborhoods is all of the above, on steroids. The constitutionality of this specific tactic is untested, but checkpoint doctrine is unlikely to reign in such practices, at least for now. Sobriety checkpoints are constitutional.<sup>130</sup> So are vehicle checkpoints to assist with border control.<sup>131</sup> And checkpoints carried out in order to request information from motorists about a previously-committed crime are constitutional under the Fourth Amendment.<sup>132</sup> Although completely suspicion-less checkpoints conducted for general crime control purposes are *not* constitutional,<sup>133</sup> it is unclear how the Court would treat checkpoints set up in communities with a high number of outstanding warrants for unpaid court debt. Such checkpoints would essentially be a warrant enforcement raid as described in Subpart III.B, above. Alternatively, checkpoints could be set up under the guise of DUI or other constitutionally permissible enforcement efforts, but used in practice to trap individuals with outstanding warrants.

And suspicion-less checkpoints still occur, despite being constitutionally impermissible. For example, ongoing litigation against the city of Buffalo, NY alleges that the Buffalo Police Department’s “Strike Force Unit” set up vehicle checkpoints in predominately poor, Black neighborhoods on Buffalo’s East Side.<sup>134</sup> The Strike Force’s aim was to provide “high visibility, high saturation” in these neighborhoods. The checkpoints were purportedly to enforce traffic laws and increase public safety, but plaintiffs argue that the enforcement tactic was used merely to raise revenue through traffic tickets levied against minority motorists.<sup>135</sup> As a result, the city arrested motorists, impounded their vehicles, and

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129. Individuals subjected to these types of warrant checks have little recourse. It is expensive and timely to sue, and, as discussed above, officers are frequently able to justify the stops, even pretextually. But the stop itself can have a profound impact on the individual stopped; it can be humiliating, degrading, or traumatizing. *Bandes et al.*, *supra* note 27.

130. *Mich. Dep’t of State Police v. Sitz*, 496 U.S. 444 (1990).

131. *United States v. Martinez-Fuerte*, 428 U.S. 543 (1976).

132. *Illinois v. Lidster*, 520 U.S. 419 (2004).

133. *City of Indianapolis v. Edmond*, 531 U.S. 32 (2000).

134. Complaint at 10–15, *Black Love Resists in the Rust v. City of Buffalo*, (W.D.N.Y. 2018) (No. 1:18-CV-00719), <https://ccrjustice.org/sites/default/files/attach/2018/06/BLRR-v-Buffalo-Complaint-June-28-2018.pdf> [<https://perma.cc/2983-9L53>].

135. *Id.*

suspended their drivers licenses.<sup>136</sup> The case is currently in discovery and remains ongoing.

These are just two examples of tactics that police officers have at their disposal to obtain and enforce fines and fees. In the following Part, I discuss how these tactics increase the risk of exposure to police violence for the Black, brown, and poor communities.

#### IV. Opportunities for Police Violence

On October 17, 2019, a police sergeant and two officers in the Bronx, NY pulled over a driver in an SUV because the driver was not wearing a seatbelt. During the course of the traffic stop, the sergeant discovered that the driver had outstanding warrants for failure to pay fines on previous violations, including a ticket for littering.<sup>137</sup> The officers told the man they were arresting him for the outstanding fines and ordered him out of the car. The officers claim that, once outside the car, the man “initiated a violent struggle” and reentered the car and tried to drive away. The sergeant, who was in the passenger side of the vehicle when this occurred, shot and killed the man. The entire struggle lasted a minute and a half.<sup>138</sup> This was the third time in three days that Bronx police officers had fired their guns at a suspect.<sup>139</sup>

When police are tasked with enforcing fines and fees, and given wide discretion to do so, this type of interaction and tragic result is not unsurprising. In general, using police to collect fines and fees is “part of a larger trend of thinking about government through the logic of business.”<sup>140</sup> Police are seen as revenue generators, a piece of the larger bureaucratic machine that needs to essentially turn a profit to be viewed as successful. But as the tragic example above shows, there are profound social and human costs to deploying the police and other government entities in this way.

Policing of low-level crimes often becomes inherently violent, both physically and structurally. For example, New York Governor Andrew Cuomo and New York City Mayor Bill de Blasio have recently pushed for greater enforcement of fare evasion in New York City.<sup>141</sup> Fare evasion

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136. *Id.* The Strike Force’s aim was to provide “high visibility, high saturation” in these neighborhoods.

137. Ed Shanahan & Edgar Sandoval, *Bronx Shooting: Officer Kills Man in 2nd Deadly Police Encounter in Three Days*, N.Y. TIMES (Oct. 17, 2019), <https://www.nytimes.com/2019/10/17/nyregion/police-bronx-shooting.html> [<https://perma.cc/6CDL-QZZX>].

138. *Id.*

139. *Id.*

140. *Policing and Profit*, 128 HARV. L. REV. 1723, 1733 (2015).

141. Azi Paybarah, *How Cuomo Plans to Crack Down on Subway Fare Evasion*, N.Y. TIMES (June 19, 2019), <https://www.nytimes.com/2019/06/19/nyregion/newyorktoday/nyc-subway-fare-evasion.html> [<https://perma.cc/J5W6-LER2>]; Dana Rubenstein, *Cuomo and de Blasio Announce Joint Crackdown on Fare Evasion, Separately*, POLITICO (June 16, 2019, 4:11 PM), <https://www.politico.com/states/new-york/albany/story/2019/06/17/cuomo-and-de-blasio-announce-joint-crackdown-on-fare-evasion-separately-1064222> [<https://perma.cc/6E4M-CLYY>].

is a citation-only offense that is often a crime of necessity for those who cannot afford to pay for the subway but who rely on public transportation to get to work, medical appointments, court, or attend to other daily needs.<sup>142</sup> Over the summer of 2019, Governor Cuomo announced the deployment of 500 additional uniformed officers to combat fare evasion in subway and bus stations, in the hopes of deterring people from trying to board transit without paying, which was costing the city and state money.<sup>143</sup> In announcing these plans, public officials were adamant that the additional police was just for deterrent effect and people would only be issued tickets for failing to pay their fare.<sup>144</sup> Yet that fall, images and videos circulated of NYPD officers violently arresting people—all Black or brown—in subway cars and stations for fare evasion.<sup>145</sup> In one incident, officers deployed their Taser and arrested two teenagers for fare evasion.<sup>146</sup> In another, caught on video, officers on a subway platform drew and pointed their guns at a young Black man who sat in a parked subway car with his arms raised; as the doors opened, eight officers stormed the car and tackled the man, violently arresting him.<sup>147</sup> Officers claimed they were following up on a tip that the man had a gun, but no gun was found—in the end, they charged the man with criminal fare evasion. The damage of the incident extended beyond that one man's arrest: one woman posted on Twitter that her young sons were riding in the car, and came home “inconsolable” after seeing the arrest, having been exposed to the brutality of the police and the trauma it inflicts.<sup>148</sup>

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142. See Nick Martin, *The Class War of Fare-Dodging Crackdowns*, NEW REPUBLIC (Oct. 31, 2019), <https://newrepublic.com/article/155540/class-war-fare-dodging-crackdowns> [<https://perma.cc/ARH4-BKN2>]; Mitali Nagrecha, *Flush with Revenue, MTA Must Stop Punishing Farebeaters*, CRAIN'S N.Y. BUS. (Apr. 24, 2019, 12:00 AM), <https://www.crainsnewyork.com/op-ed/flush-revenue-mta-must-stop-punishing-farebeaters> [<https://perma.cc/N37M-UJMH>].
143. Paybarah, *supra* note 141. Notably, according to the Wall Street Journal, fare evasion has actually increased since the deployment of these additional officers. Paul Berger & Leslie Brody, *Police Haven't Slowed New Yorkers' Subway Fare Evasion*, WALL ST. J. (Oct. 21, 2019, 6:37 PM), <https://www.wsj.com/articles/police-havent-slowed-new-yorkers-subway-fare-evasion-11571697440> [<https://perma.cc/9N4E-LXRH>]; Terry Nguyen, *Fare evasion costs cities millions. But will cracking down on it solve anything?*, VOX (Nov. 15, 2019, 12:58 PM), <https://www.vox.com/the-goods/2019/11/12/20959914/fare-evasion-costs-cities-millions>.
144. See Rubenstein, *supra* note 141. Notably, reports have shown that NYPD's fare evasion enforcement has been targeted in stations that are near poor, Black neighborhoods. HAROLD STOLPER & JEFF JONES, *THE CRIME OF BEING SHORT \$2.75: POLICING COMMUNITIES OF COLOR AT THE TURNSTILE* (2017), [https://sm-http-ssl-58547.nexcesscdn.net/nycss/images/uploads/pubs/Fare\\_Evasion\\_FINAL\\_10\\_6\\_17\\_smaller.pdf](https://sm-http-ssl-58547.nexcesscdn.net/nycss/images/uploads/pubs/Fare_Evasion_FINAL_10_6_17_smaller.pdf) [<https://perma.cc/89RZ-TVFG>].
145. E.g., Katie Shepherd, *'Putting Dozens of Lives at Risk over \$2.75': NYPD Slammed for Pulling Guns on Fare-Hopping Teen*, WASH. POST (Oct. 28, 2019, 4:09 AM), <https://www.washingtonpost.com/nation/2019/10/28/nypd-video-guns-pointed-subway-train-unarmed-fare-hopper> [<https://perma.cc/7VUJ-32D9>].
146. Martin, *supra* note 142.
147. *Id.*; Shepherd, *supra* note 145.
148. Yolanda Sangweni (@YoliZama), TWITTER (Oct. 26, 2019, 10:03 AM), <https://twitter.com/YoliZama>.

These fare evasion arrests in NYC are just one way in which enforcement encounters are often in and of themselves violent acts. But more broadly, even when enforcement encounters do not *start off* that way, the historical oppression of Black, brown, and poor communities by the police means that such interactions can turn violent rather quickly.<sup>149</sup> Many police killings begin as ordinary police interactions that escalate into deadly encounters. Research shows that unarmed Black men are shot and killed at disproportionately high rates,<sup>150</sup> and officers may be biased in how they perceive threats from Black versus white individuals.<sup>151</sup> And we know that law enforcement feels like an “occupying force” in many low-income, minority communities.<sup>152</sup> As discussed in Part II, living under perpetual surveillance for new tickets or infractions, and the constant threat of punishment for outstanding fines and fees, is violence in and of itself. Moreover, the unrelenting presence of police in these communities allows for frequent, often hostile, interactions that turn physically violent as well. Police-related death rates are highest in neighborhoods with the greatest concentrations of low-income residents.<sup>153</sup> Perhaps some of this can be explained by the correlation between crime rates and poverty in many neighborhoods, but the more likely explanation is that police tend to use their discretion to police *more* and *more harshly* in these communities.

The killing of Walter Scott in North Charleston, SC is a clear example. A North Charleston police officer shot and killed Mr. Scott in an encounter that stemmed from a traffic stop for a minor vehicle infraction. During the course of the stop, the officer ordered Mr. Scott out of his car. Mr. Scott ran from the officer, and the officer shot him in the back. Mr. Scott’s family speculated that he ran from the officer because he was afraid of being arrested on a warrant for outstanding child support.<sup>154</sup> He was not running from the police because he was dangerous,

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com/YoliZama/status/1188139071316615169 [https://perma.cc/39NS-5K3Z].

149. See Carbado, *Predatory Policing*, *supra* note 26 and accompanying text.

150. Christopher Ingraham, *Police Shootings Are a Leading Cause of Death for Young American Men, New Research Shows*, WASH. POST (Aug. 8, 2019, 4:14 AM), <https://www.washingtonpost.com/business/2019/08/08/police-shootings-are-leading-cause-death-young-american-men-new-research-shows> [https://perma.cc/6X-DG-XQL2].

151. See Justin Nix et al., *A Bird’s Eye View of Civilians Killed by Police in 2015*, 16 CRIM. & PUB. POL’Y 309, 324–26 (2017).

152. See David A. Love, *For Black America, Law Enforcement Is an Occupying Force*, PROGRESSIVE (Nov. 26, 2014), <https://progressive.org/op-eds/black-america-law-enforcement-occupying-force> [https://perma.cc/MCF4-5YSC].

153. See Bandes, *supra* note 27; Justin M. Feldman et al., *Police-Related Deaths and Neighborhood Economic and Racial/Ethnic Polarization, United States, 2015–2016*, 109 AM. J. PUB. HEALTH 458 (2019); William Terrill & Michael D. Reisig, *Neighborhood Context and Police Use of Force*, 40 J. RES. CRIME & DELINQ. 291, 292 (2003).

154. Frances Robles & Shaila Dewan, *Skip Child Support. Go to Jail. Lose Job. Repeat*, N.Y. TIMES (Apr. 19, 2015), <https://www.nytimes.com/2015/04/20/us/skip-child-support-go-to-jail-lose-job-repeat.html> [https://perma.cc/K7VU-AXQY].

or attempting to commit additional crimes—he was running out of fear of the consequences that stemmed from his failure to pay. Specifically targeting motorists in minority communities for the purposes of warrant enforcement will create many more similarly tragic opportunities for police violence.

Police violence is also particularly acute for Black women<sup>155</sup> as well as transgender people of color.<sup>156</sup> Studies suggest that these groups endure violence from the hands of police not only through routine police encounters, but also through coercive sexual harassment, extortion, and forcible sexual violence.<sup>157</sup> When fines and fees enforcement increases police interactions with these vulnerable groups, so too does increase the opportunity for police to perpetuate such violence.<sup>158</sup>

Police violence in both physical and nonphysical forms also has profound effects on the safety and security of entire communities. The occupying force of police in some neighborhoods affects political behavior and perceptions of police legitimacy, which may allow police violence to continue. Street-level police generate “political experiences of government,” and police officers are “one of the most visible and proximate instantiations of state power in many citizens’ lives.”<sup>159</sup> For this reason, people look to their direct experiences with the police . . . as they [seek] to ground their explanations of how government works, what political

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155. See, e.g., ANDREA J. RITCHIE, *INVISIBLE NO MORE: POLICE VIOLENCE AGAINST BLACK WOMEN AND WOMEN OF COLOR* (2017); Michelle S. Jacobs, *The Violent State: Black Women's Invisible Struggle Against Police Violence*, 24 WM. & MARY J. WOMEN & L. 39 (2017).
156. See generally NAT'L CTR. FOR TRANSGENDER EQUAL., *A BLUEPRINT FOR EQUALITY: A FEDERAL AGENDA FOR TRANSGENDER PEOPLE* 24–26 (2015), [https://www.transequality.org/sites/default/files/docs/resources/NCTE\\_Blueprint\\_June2015.pdf](https://www.transequality.org/sites/default/files/docs/resources/NCTE_Blueprint_June2015.pdf) [<https://perma.cc/3AXM-QBQU>].
157. See Carbado, *Predatory Policing*, *supra* note 26, at 566–70 and accompanying text; Jacobs, *supra* note 155; Philip M. Stinson et. al, *Police Sexual Misconduct: A National Scale Study of Arrested Officers*, 30 CRIM. JUST. FAC. PUBLICATIONS (2014), [https://scholarworks.bgsu.edu/cgi/viewcontent.cgi?article=1029&context=crim\\_just\\_pub](https://scholarworks.bgsu.edu/cgi/viewcontent.cgi?article=1029&context=crim_just_pub) [<https://perma.cc/AXQ9-9LX4>]; Andrea J. Ritchie, *How Some Cops Use the Badge to Commit Sex Crimes*, WASH. POST (Jan. 12, 2018), [https://www.washingtonpost.com/outlook/how-some-cops-use-the-badge-to-commit-sex-crimes/2018/01/11/5606fb26-eff3-11e7-b390-a36dc3fa2842\\_story.html](https://www.washingtonpost.com/outlook/how-some-cops-use-the-badge-to-commit-sex-crimes/2018/01/11/5606fb26-eff3-11e7-b390-a36dc3fa2842_story.html) [<https://perma.cc/D5UM-J5H8>].
158. The case of former Oklahoma City Police Officer Daniel Holtzclaw is a prime example of this. Holtzclaw was convicted of raping thirteen women while on duty; he targeted women he believed to be vulnerable, often following more routine interactions such as traffic stops. Sarah Larimer, *Disgraced Ex-Cop Daniel Holtzclaw Sentenced to 263 Years for On-Duty Rapes, Sexual Assaults*, WASH. POST (Jan. 22, 2016, 4:08 AM), <https://www.washingtonpost.com/news/post-nation/wp/2016/01/21/disgraced-ex-officer-daniel-holtzclaw-to-be-sentenced-after-sex-crimes-conviction> [<https://perma.cc/J68P-75JA>].
159. Joe Soss & Vesla Weaver, *Police Are Our Government: Politics, Political Science, and the Policing of Race-Class Subjugated Communities*, 20 ANN. REV. POL. SCI. 656, 574 (2017).

life is like for them, and how they understand their own political identities.”<sup>160</sup> Moreover, as noted by Vesla Weaver, Gwen Prose, and Spencer Piston, “[i]nvoluntary police interventions incentivize broader, strategic retreat from engagement with the state.”<sup>161</sup> Their groundbreaking work,<sup>162</sup> which created “portals” for community members to come together and discuss their interactions with police, found that overpolicing creates an “ethics of aversion” that promotes nonengagement with civil life, and instead, pushes people in “race-class subjugated communities” to develop deep interpersonal and community connections that are exclusive of the police.<sup>163</sup>

Relatedly, repeated punitive enforcement of fines and fees contributes to “legal estrangement,” a concept coined by Monica Bell that suggests the problem of policing is that “at both an interactional and structural level, current regimes can operate to effectively banish whole communities from the body politic.”<sup>164</sup> Overpolicing of minor offenses and the use of punitive enforcement mechanisms to collect fines and fees can result in entire communities feeling ostracized and entirely outside of the protection and benefits of the law.<sup>165</sup> This is what the residents of Ferguson expressed to the Department of Justice—that the focus on revenue collection and low-level crimes was “designed to bring a black man down”<sup>166</sup> and that the police were not there to help them with their problems.<sup>167</sup> These offenses are often so minor, superfluous, and attenuated from any legitimate public safety rationale that those subjected to their enforcement feel nothing short of exploited. Because “legal estrangement is born of the cumulative, collective experience of procedural and substantive injustice,”<sup>168</sup> negative police-community relationships exacerbated by prolonged overenforcement of fines and fees can have powerful and enduring effects, causing individuals to retreat from public discourse and participation.<sup>169</sup> This feeling of otherness, and the resulting separation, is its own form of violence and oppression.

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160. *Id.* (internal citations omitted).

161. Vesla Weaver et al., *Withdrawing and Drawing In: Political Discourse in Policed Communities*, J. RACE, ETHNICITY, & POL. (2020).

162. It is worthwhile to note that none of the portals in this project were located in the southeastern United States—an area with a unique history of racial violence by the State. It is unclear whether portals in southeastern cities, such as Charleston or Atlanta, would produce similar narratives to those in other parts of the country.

163. Weaver et al., *supra* note 161.

164. Monica Bell, *Police Reform and the Dismantling of Legal Estrangement*, 126 YALE L.J. 2054, 2067 (2017).

165. *Id.*

166. DOJ FERGUSON REPORT, *supra* note 1, at 79.

167. *Id.* at 80.

168. Bell, *supra* note 164, at 2105.

169. See Brie McLemore, *Procedural Justice, Legal Estrangement, and the Black People's Grand Jury*, 105 VA. L. REV. 371, 373 (2019) (arguing that courts are “important and central actors that produce and legitimize police misconduct, thus contributing to a sense of exclusion for communities of color”).

Estrangement can also be direct and intentional. In many jurisdictions, continued punitive enforcement of fines and fees by police results in voter disenfranchisement—another abstract form of violence against low-income and minority communities.<sup>170</sup> Fines and fees create an “economic caste system” where the poor are excluded from democratic participation and subject to a “new peonage” based on their inability to pay.<sup>171</sup> This was on display recently in Florida, where voters passed a referendum restoring voting rights to individuals who had previously been convicted of felonies, but state legislators later made that restoration contingent on full repayment of all fines and fees.<sup>172</sup> Democratic estrangement, a form of legal estrangement, denies these individuals a voice in reform of the government structures and systems they must endure, thereby preventing them from being able to address or prevent future continued police oppression and violence.

### Conclusion

Reducing exposure to police violence requires reforms to the role that police currently play in systems of monetary sanctions. Leaders in the fight to end police brutality are organizing, rallying, and demanding reduction in the overall size and scope of police in American society<sup>173</sup>—and rightly so. Fines and fees reformers should contribute to this effort by actively pushing for a dismantling of the role that law enforcement currently plays in imposing and collecting fines and fees.

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170. See Beth Colgan, *Wealth-Based Penal Disenfranchisement*, 72 VAND. L. REV. 55 (2019).
171. See generally Tamar R. Birckhead, *The New Peonage*, 72 WASH. & LEE L. REV. 1595, 1659–60 (2015).
172. Lawrence Mower, *DeSantis Signs Bill Requiring Felons to Pay Fines, Fees, Restoration Before Voting*, MIAMI HERALD (June 28, 2019), <https://www.miamiherald.com/news/politics-government/state-politics/article232088952.html> [<https://perma.cc/W3NT-TTYD>]. Based on the voter referendum that passed, roughly 1.4 million Floridians believed that the state would restore their right to vote; the passage of Senate Bill 7066, making restoration of voting rights contingent on payment of court debt, meant that over 80 percent of those 1.4 million people remained disenfranchised. See Expert Report of Daniel A. Smith at 5, *Jones v. DeSantis*, 410 F. Supp. 3d 1284 (N.D. Fla. 2019) (No. 19-CV-00300-RH-MJF), [https://www.aclu.org/sites/default/files/field\\_document/gruver\\_v\\_barton\\_-\\_expert\\_report\\_of\\_daniel\\_a.\\_smith\\_ph.d.pdf](https://www.aclu.org/sites/default/files/field_document/gruver_v_barton_-_expert_report_of_daniel_a._smith_ph.d.pdf) [<https://perma.cc/4DDS-EHAN>].
173. See, e.g., Derecka Purnell & Marbre Stahly-Butts, *The Police Can't Solve the Problem. They Are the Problem*, N.Y. TIMES (Sept. 26, 2019), <https://www.nytimes.com/2019/09/26/opinion/the-police-cant-solve-the-problem-they-are-the-problem.html> [<https://perma.cc/HR5F-5WQ2>]. Police abolition has also gained traction as both a framework and a goal for reforms. See Amna Akbar, *Toward a Radical Imagination of Law*, 93 N.Y.U. L. REV. 405 (2018); V. Noah Gimbel & Craig Muhammad, *Are Police Obsolete? Breaking Cycles of Violence Through Abolition Democracy*, 40 CARDOZO L. REV. 1453 (2019); Maya Dukmasova, *Abolish the Police? Organizers Say It's Less Crazy than It Sounds*, CHI. READER (Aug. 25, 2016), <https://www.chicagoreader.com/chicago/police-abolitionist-movement-alternatives-cops-chicago/Content?oid=23289710> [<https://perma.cc/VE6W-BZTV>].



Some police leaders are beginning to recognize the problems of engaging in revenue-driven policing. Officials in Dallas, TX directed policing resources away from petty offense enforcement for the purposes of fine collection, and over a period of four years, decreased the number of traffic tickets issued by more than half.<sup>174</sup> Dallas' Police Chief explicitly rejected the fines and fees enforcement push that was pervasive throughout the state, saying on the record that “[w]e [the Dallas Police Department] don’t believe the citizens of Dallas want its police department writing citations to raise revenues.”<sup>175</sup>

But this is not enough. Truly reforming fines and fees and reducing the potential for deadly police interactions will also require addressing policing tactics, motivations, and discretion head on. Even where cities eliminate the direct link between policing and revenue generation, or publicly renounce using citations to raise revenue, additional reforms will still be necessary to minimize the use of police as debt collectors and the resultant opportunities for police violence.

This Article does the work of identifying the touchpoints of the problem. A full evaluation of policy solutions to reduce these touchpoints is the subject of another article. At a minimum, however, jurisdictions clearly must both eliminate the use of warrants to collect unpaid court debt, and reduce the occupying presence that law enforcement serves in communities of color by restricting policing strategies like stop and frisk, broken windows policing, and pretextual vehicle searches or vehicle checkpoints to search for outstanding warrants. Such reforms, coupled with a more widescale effort to decriminalize minor offenses or eliminate unduly harsh municipal code offenses from the books, could go a long way to reduce the opportunity for police violence against poor, Black, and brown community members in the name of fines and fees enforcement.

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174. Radley Balko, *What the Dallas Police Department Does Right—and Why Doing Those Things Could Now Be More Difficult*, WASH. POST (July 8, 2016), <https://www.washingtonpost.com/news/the-watch/wp/2016/07/08/what-dallas-pd-does-right-and-why-doing-those-things-could-now-be-more-difficult> [https://perma.cc/6XNX-EGU2].

175. *Id.*