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**Don't Stop Me Now:
An Analysis of Low-Level, Pretextual Traffic Stops and a Case for
Banning Them**

1. Introduction: what is pretextual policing and what is the movement against it?

In recent years, a wave of municipalities across the United States has begun reevaluating the use of low-level traffic stops as a law enforcement tactic. This trend was driven by a rousing outcry, as traffic stops for minor infractions escalated to violent altercations, some ending in death. Getting pulled over is the most common way that the general public comes into contact with the police. More than 20 million Americans are stopped each year for traffic violations alone.¹ However, data shows that traffic stops are also a common catalyst for police violence. Low-level traffic stops by law enforcement can have a disproportionate impact on individuals and communities who are already experiencing poverty and racism.

Pretextual policing has historically been used to enforce laws based on stereotypes, with police acting on implicit and explicit bias to stop and search people who “looked suspicious.”² Although the law does not allow police to stop people explicitly because of their race, it does allow them to do so if they use a race-neutral reason as a pretext for a stop. These pretextual reasons include the hundreds of

¹Emma Pierson, *A large-scale analysis of racial disparities in police stops across the United States*, *Nature Human Behavior*, May 4, 2020, at 736, <https://www.nature.com/articles/s41562-020-0858-1>.

²Justice Forward Virginia, *Success Story: Many Policing “Pretexts” Eliminated in Virginia*, <https://justiceforwardva.com/pretextual-policing>.

infractions listed in the traffic code, such as having an object (like an air freshener) hanging from the rearview mirror, dark-tinted windows, or loud exhaust. The reasons also often include minor criminal misdemeanors, such as jaywalking and possession of marijuana, or more specifically, the odor of marijuana (something nearly impossible to dispute after-the-fact). These pretextual stops have eroded public trust in the police, which can turn low-level stops into volatile situations. At least 87 US traffic stops turned deadly in 2022 alone; that is the lowest number of any year in the past five years.³ Concerns about racial profiling and discrimination in policing, as well as growing evidence that low-level traffic stops can have negative consequences for community trust, public safety, and overall justice, pushed municipalities to reevaluate their policies.⁴

Several of these municipalities have taken concrete steps to abolish or limit low-level traffic stops by law enforcement officers. Some have passed laws or used executive power to prohibit officers from stopping drivers for certain minor violations, such as broken taillights, tinted windows, or expired registration tags. Instead, officers must have a clear and articulated reason related to public safety to initiate a traffic stop. In some districts, top prosecutors have declared that they will not prosecute based on evidence found during a low-level traffic stop. Other municipalities have implemented training programs or policies that promote alternatives to low-level traffic stops, such as warning letters or educational

³ **Mapping Police Violence, Inc.**, Apr. 27, 2023, <https://mappingpoliceviolence.us/>.

⁴ Linda Poon and Marie Patino, *Rodney King to Tyre Nichols: A Timeline of U.S. Police Protests*, Bloomberg, Jun. 9, 2020, <https://www.bloomberg.com/news/articles/2020-06-09/a-history-of-protests-against-police-brutality?sref=0IejgNtz>.

programs for drivers who commit minor infractions. Still, others have created community-led oversight boards or commissions to review and evaluate law enforcement practices related to traffic stops.

The goal of these efforts is to reduce the negative impact of low-level traffic stops on communities of color and other historically marginalized groups, who have been disproportionately targeted by such stops. Low-level violations are often used as justification for pretextual stops, where police use a minor violation to stop the driver, search their car, or cite the driver for weapons or drugs. However, the data discussed later in the paper will show that the stops are rarely successful. While drivers of color are disproportionately targeted, they're not more likely to carry contraband.⁵ What the stops do accomplish is an erosion of trust between the police and the community. One recent study of traffic stops in Tampa showed that drivers who had been pulled over were less likely to turn out to the polls in the next voting cycle.⁶

The consequence of these traffic stops is more fines imposed on communities that are already struggling financially, resulting in a cycle of imposing more debt on financially insecure communities. Low-level stops can also deteriorate into more severe encounters with law enforcement, particularly for individuals who have outstanding warrants or who are unable to pay fines and fees. This can have long-

⁵Emma Pierson, *A large-scale analysis of racial disparities in police stops across the United States*, *Nature Human Behavior*, May 4, 2020, at 739, <https://www.nature.com/articles/s41562-020-0858-1>.

⁶Jonathan Ben-Menachem, *A Police Stop Is Enough to Make Someone Less Likely to Vote*, *Bolts*, Feb 1, 2023, <https://boltsmag.org/a-police-stop-is-enough-to-make-someone-less-likely-to-vote/>.

lasting consequences for individuals and their families, including loss of employment, housing instability, and further involvement with the criminal justice system.

Minor traffic stops are one area where police violence and unnecessary deaths can occur. The routine traffic stop has led to a number of tragic incidents in which police officers have used excessive force or engaged in other forms of misconduct, leading to the injury or death of both police officers and civilians. This provides reasonable context for the few municipalities prohibiting low-level stops. However, it should also not come as a surprise that many of the localities where reforms were codified were spurred into action by a local event. The assault of Lieutenant Nazario in Windsor, VA led to coverage of incidents involving pretextual stops, typically focused on the violent endings rather than the reasons for the initial stops. Virginia's governor signed a law prohibiting law enforcement from stopping drivers for minor violations in March of the following year. A similar low-level stop reform was included in a list of policing reforms that arose in Minneapolis after George Floyd's death. Philando Castile was shot and killed by a police officer after being stopped because he had a broken taillight.⁷ In Ramsey County, Minnesota. During the prior 14 years, he had been stopped 46 times.⁸ A few years after Castile's death, reforms were made in Ramsey County.

⁷Justin Worland, *What to Know About Philando Castile's Police Shooting Death in Minnesota*, Time, (Jul. 7, 2016), <https://time.com/4396256/minnesota-shooting-philando-castile-what-know/>.

⁸Eyder Peralta and Cheryl Corley, *The Driving Life And Death Of Philando Castile*, NPR, Jul. 15, 2016, <https://www.npr.org/sections/thetwo-way/2016/07/15/485835272/the-driving-life-and-death-of-philando-castile>.

However, the movement to limit low-level traffic stops has been met with obstacles. Opponents argue that the stops are important for maintaining public safety and helping prevent more serious crimes by identifying drivers who may be under the influence of drugs or alcohol, or who may be transporting illegal substances. They argue that law enforcement can deter dangerous driving behaviors and reduce the likelihood of accidents and fatalities by stopping cars more frequently for all types of violations. Opponents also argue that by reducing the number of traffic stops, police departments may miss opportunities to identify individuals who have outstanding warrants or who are engaged in other criminal activity.

Additionally, defenders of pretextual stops also note that the Supreme Court unanimously upheld the tactic a quarter-century ago. In *Ohio v. Robinette*, the Supreme Court ruled that once the police have stopped a car for a traffic infraction, they may request the driver's permission to search the car for drugs without first informing him that the routine stop is over and that he is, in fact, free to go on his way. 519 U.S. 33, (1996). Some opponents also argue that prohibiting law enforcement from policing minor traffic violations may make it more difficult for police departments to generate revenue through fines and fees, which can be used to fund other public services.

Arguing that a Supreme Court ruling justifies the method of the stops ignores the fact that it is the states who hold the general police power and can determine the methods by which their police operate. The states are allowed to regulate the

procedures their police departments use to handle crime. Just because the Supreme Court says a certain method may be allowed, does not mean the state is required to use that method.

Additionally, the fact that these low-level traffic stops are used as a revenue stream is one of the key reasons why these stops are being banned. This paper will show that these stops hurt low socioeconomic communities the most. That these communities end up paying much higher fees and fines than higher socioeconomic communities. The greater effect these stops have is creating resentment and distrust between these communities and law enforcement officers.

Many of the arguments expressing that these stops help officers prevent more serious crime are not supported by data. These stops do not assist officers in stopping more serious crimes. A strikingly small percentage of the stops result in finding illegal contraband, as the next section of this paper shows.

2. Data shows low-level stops are both racially biased and ineffectual.

Research has found that low-level traffic stops, such as those for equipment violations or expired tags, do not necessarily improve public safety or reduce crime, but can instead contribute to racial disparities in law enforcement. The Stanford Open Policing Project was a study conducted jointly by the Stanford Journalism and Policy labs when it became clear that even though police pull over more than 50,000 drivers a day, traffic stops were not tracked in any systematic way. The project has collected and standardized over 200 million records of traffic stop and search data from across the country. It found that black drivers are more likely to be stopped

and subsequently searched by police officers than white drivers, even after controlling for factors such as driving behavior and location.⁹ Of the 35 cities included in the Stanford study, only in three cities were black drivers stopped less than white drivers. In 10 cities, black drivers were stopped 2-3 times more often than white drivers.¹⁰

These findings have been corroborated by other studies as well. Nature Human Behavior sought to assess potential bias in stop decisions by applying the “veil of darkness” test.¹¹ This test is based on the fact that the sun sets at different times throughout the year. You can examine the racial composition of drivers who are stopped at different times throughout the day. If black drivers comprise a smaller share of stopped drivers when it is dark and it is more difficult to determine a driver’s race, that suggests that black drivers were stopped during daylight hours in part because of their race. The study found that black drivers were less likely to be stopped after sunset, when a “veil of darkness” masked their race, suggesting bias in stop decisions.

Furthermore, by combining data on both search rates and hit rates, the Stanford study found that police require less suspicion to search black and Hispanic drivers than white drivers.¹² Stanford’s study also found bias in the decision to

⁹ The Stanford Open Policing Project, *Findings: “Stop Rates” and “After the Stops”*, 2023, <https://openpolicing.stanford.edu/findings/>.

¹⁰ Id.

¹¹ Emma Pierson, *A large-scale analysis of racial disparities in police stops across the United States*, Nature Human Behavior, May 4, 2020, “Main”, <https://www.nature.com/articles/s41562-020-0858-1>.

¹²The Stanford Open Policing Project, *“The threshold test”*, 2023, <https://openpolicing.stanford.edu/findings/>.

search stopped drivers for contraband.¹³ The study applied a threshold test, which incorporated the rate of searches as well as the success rate of those searches, to infer the standard of evidence applied when determining whom to search. A lower search success rate for one group is seen as evidence of bias against that group, as it suggests that a lower evidentiary bar was applied when making search decisions. When applied to the data in the Nature Human Behavior study, the threshold test indicated that black drivers were searched based on less evidence than white drivers. This causes even more concern when you take into account other studies that show that, at least in the LA Police Department, 23% of searches were not even documented.¹⁴ This suggests that search rates could be considerably higher than what the data shows.

This data shows that stops conducted by police for alleged traffic infractions - to fish for evidence of unrelated crimes - are unnecessary, unfair, and demeaning. They systematically persecute community members for “driving while Black.” Furthermore, these stops do little to reduce crime. A 2020 study of the Fayetteville, North Carolina police department found that deprioritizing investigatory stops (or pretext stops) was not associated with an increase in non-traffic crime or violent

¹³ Emma Pierson, *A large-scale analysis of racial disparities in police stops across the United States*, Nature Human Behavior, May 4, 2020, “Main”, <https://www.nature.com/articles/s41562-020-0858-1>.

¹⁴Kevin Rector and Cindy Chang, *Racial disparities in LAPD stops fueled by failed crime-fighting strategy, audit finds*, Los Angeles Times (Oct. 24, 2020), <https://www.latimes.com/california/story/2020-10-24/racial-disparities-in-lapd-stops-fueled-by-failed-crime-fighting-strategy-audit-finds>.

crime.¹⁵ In fact, both went down after the department deprioritized pretextual stops.

Several of the municipalities banning low-level stops used similar data to support their decision. In Philadelphia, data showed that low-level traffic stops were overwhelmingly ineffective at keeping illegal items off the streets. Of the more than 300,000 traffic stops made in Philadelphia between October 2018 and September 2019, only about 1% of them turned up drugs or a gun, according to the local public defender's office.¹⁶ Despite that fact, black drivers made up 72% of those stopped, but they were still 34% less likely than white drivers to be found holding anything illegal.¹⁷ San Francisco used localized data to support its decision to ban stops. The San Francisco Police Department voted to prohibit stops for nine violations that data showed only led to gun recoveries and arrests less than 2% of the time.¹⁸

Los Angeles is the biggest city to have restricted the policing of minor violations. The catalyst for change was a 2020 report from the police department's inspector general showing that - reflecting national patterns - officers disproportionately stopped Black and Hispanic drivers, often for minor or technical

¹⁵ Fliss, M.D., Baumgartner, F., Delamater, P. et al., *Re-prioritizing traffic stops to reduce motor vehicle crash outcomes and racial disparities*, *Inj. Epidemiol.* 7, 3 (2020), <https://doi.org/10.1186/s40621-019-0227-6>.

¹⁶ Sarah Holder, *These Cities Are Limiting Traffic Stops For Minor Offenses*, Bloomberg (Feb. 2, 2023), <https://www.bloomberg.com/news/articles/2023-02-02/police-traffic-stops-face-new-scrutiny-after-tyre-nichols-death>.

¹⁷ *Id.*

¹⁸ Jacob Dennet, *San Francisco Traffic Stops*, SPUR (Dec. 2022), <https://sf.gov/sites/default/files/2022-12/PoliceCommission121422-SPUR-%20Traffic%20Stops%20in%20SF%20Presentation.pdf>

violations.¹⁹ That was especially true for officers in gang units or assigned to high-crime areas, implying that these stops were indeed pretextual stops by officers tasked with suppressing crime, using a low-level stop as an avenue to discover evidence of other crimes. Yet even in those cases, the minor stops almost never resulted in arrests for serious crimes, such as drug or gun possession. Commissioner President William Briggs of the LAPD was questioned extensively by an unhappy police union about the efficacy of the policy put forth. He stated that overall, in the Newton Division in Los Angeles in 2021, a heavy crime area, police stopped 27,075 people during the course of 20,132 stops.²⁰ Of those stopped, 64% were Latino, and 33% were Black. Less than 10% had contraband of any kind, he said, and fewer than 4% had firearms.²¹ In the entire South Bureau, which includes much of South L.A., police made 62,827 stops in 2021 involving 78,829 people, Briggs said. Of those, 58% were Black and 37% were Latino. Firearms were recovered in less than 3.5%.²² The data clearly shows that these stops are ineffective for finding weapons.

Further, it has been noted that pulling over cars results in more officer fatalities than any other activity initiated by the police, even if the risk is low at any given stop. Such stops “are a danger to law enforcement” as well as ineffective and racially discriminatory, Sarah George, the prosecutor for Chittenden County,

¹⁹Mark Smith, *Review of Stops Conducted by the Los Angeles Police Department in 2019*, Los Angeles Police Department (Oct. 27, 2020), p. 3,

https://www.oig.lacity.org/files/ugd/b2dd23_d3e88738022547acb55f3ad9dd7a1dcb.pdf.

²⁰ Kevin Rector, *New limits on ‘pretextual stops’ by LAPD officers approved, riling police union*, Los Angeles Times (March 1, 2022) <https://www.latimes.com/california/story/2022-03-01/new-limits-on-pretextual-stops-by-lapd-to-take-effect-this-summer-after-training>.

²¹ *Id.*

²² *Id.*

Vermont, wrote in a statement this year, explaining why she would “presumptively” decline to bring charges arising from minor pullovers.²³

Additionally, the fallout from these stops can be extremely harmful to the communities experiencing them. A general report by the Illinois Policy Institute on the effect of traffic fines and fees found that they can create significant financial burdens for low-income individuals.²⁴ These individuals may be unable to pay the fines and fees, or they may be forced to choose between paying the fines and fees and meeting other basic needs such as housing or healthcare. This study was not limited to low-level stops or pretextual traffic stops, but it shows the effects of the fees resulting from these stops nonetheless. The report established that traffic tickets often cost poor Chicagoans more money. Nearly half of the tickets received by low-income residents incur late fees and additional penalties before they are paid. That compares to just 17% for upper-income drivers.²⁵ Late penalties drive up the cost of tickets, turning a \$35 citation into an \$85 fine. A \$100 speeding violation can end up costing residents \$244 if their payment is late.²⁶

The fallout isn’t always economic; it can be political as well. One recent study of traffic stops in Tampa showed that drivers who had been pulled over

²³ David D. Kirkpatrick, Steve Eder and Kim Barker, *Cities Try to Turn the Tide of Police Traffic Stops* (Apr. 15, 2022), <https://www.nytimes.com/2022/04/15/us/police-traffic-stops.html>.

²⁴ Patrick Andriesen, *Chicago’s \$1 Million-plus Speed Cameras Hurting Low-Income Areas*, Illinois Policy (Jan. 10, 2022), <https://www.illinoispolicy.org/chicagos-1-million-plus-speed-cameras-hurting-low-income-areas/>.

²⁵ *Id.*

²⁶ *Id.*

were less likely to turn out to the polls in the next voting cycle.²⁷ These low-level stops aren't only affecting suffering communities economically, but they are also undercutting them democratically.

As established earlier, it is clear that some believe that low-level traffic stops are necessary. They see these stops as a tool for public safety and a necessary step in sussing out other crimes that may be occurring. However, that gut feeling is not supported by the data. The data clearly shows that these stops are racially biased and, even so, are ineffective in finding guns and drugs. Overall, the evidence suggests that low-level traffic stops are not an effective or equitable law enforcement strategy, and that alternative approaches may be necessary to improve public safety and reduce racial disparities in law enforcement.

3. A survey of passed reforms.

Only a few of America's more than 19,000 municipalities have taken steps to abolish low-level traffic stops: some through legislation, others through council votes, or executive power. While some of the country's largest cities are in the mix, Virginia and Oregon are the only states to do so. By limiting the use of pretextual stops, the laws aim to promote fairness and equity in law enforcement, while still allowing officers to enforce traffic laws and ensure public safety. However, the extent of reforms passed in each locale differs greatly. The below sections

²⁷ Jonathan Ben-Menachem, *A Police Stop Is Enough to Make Someone Less Likely to Vote*, Bolts (Feb. 11, 2023), <https://boltsmag.org/a-police-stop-is-enough-to-make-someone-less-likely-to-vote/>.

outline noteworthy reforms that have been passed and their significant features.

A. State Legislation:

In March 2021, Virginia Governor Ralph Northam signed into law amendments to the Code of Virginia that prohibit law enforcement officers from stopping drivers for minor violations.²⁸ Under Virginia's law, police officers are no longer allowed to stop drivers for certain minor traffic violations, such as having a broken taillight, loud exhaust, an expired inspection sticker, or tinted windows. Instead, officers must have a clear and articulated reason related to public safety to initiate a traffic stop. Notably, Virginia's law also provides that no law enforcement officer may lawfully stop, search, or seize any person, place, or thing solely on the basis of the odor of marijuana. Stopping someone because of the smell of marijuana has been seen by many as a practice of racial profiling. A smell is subjective and cannot be verified later, providing a ready-made excuse if nothing is found during the search.²⁹ Virginia was the first state to pass a ban on low-level stops, and it sets the standard for those who choose to follow.

Additionally, in 2022, Oregon passed a limited law prohibiting police officers from initiating traffic stops based solely on specified traffic violations: faulty

²⁸ VA LEGIS 1SS 45 (2020), 2020 Virginia Laws 1st Sp. Sess. Ch. 45 (H.B. 5058) (codified as amended in scattered sections of §46 of the Code of Virginia).

²⁹Eric Westervelt, *Cities Looking To Reform Police traffic Stops to Combat 'Fishing Expeditions'*, National Public Radio (April 16, 2021), <https://www.npr.org/2021/04/16/988200868/cities-looking-to-reform-police-traffic-stops-to-combat-fishing-expeditions>.

brake lights, headlights, or license plate lights.³⁰ These infractions would still be grounds for a ticket if the driver is pulled over for another reason. This is a far more limited list of banned infractions than many of the other laws that have passed. However, the law includes an additional provision requiring officers to inform a driver whom they have pulled over of their right to refuse consent to a search and to obtain written or recorded documentation that the driver consented to a search. While many low-level traffic stops will still be permitted in Oregon, the addition of the affirmative requirement to explain rights to drivers is a huge step. Many people have no idea what their rights are when they are pulled over by police officers. In these events, ignorance can be costly and can lead to additional charges or even arrest. By requiring consent to be made in writing or at least recorded on the officer's body camera, the everyday driver will now be able to make an informed decision, and there will be far less uncertainty after the fact about whether the search was legal.

B. Local Municipal Reforms:

Some municipalities have made changes to their policing policies through local ordinances rather than state legislative action. Several municipalities in Minnesota and California make up the bulk of the localities reforming their policing methods. Philadelphia also recently added itself to the list.

³⁰ ORS Enrolled Senate Bill 1510 (2022), (codified as amended in scattered sections of ORS 131.615, 137.540, 144.102, 181A.530 and 810.410 and sections 8, 12, 33, 38, 53, 56 and 60, chapter 649, Oregon Laws 2013, and section 7, chapter 98, Oregon Laws 2018; and declaring an emergency).

Philadelphia's reforms are some of the most expansive across the country and serve as a good example of a city carefully considering all angles of the issue. Philadelphia passed the Driving Equity Law in December 2021. While the law had several aims, it seeks to promote greater equity and access to transportation in Philadelphia, where low-income drivers have been disproportionately burdened with fines and fees associated with driving. The law created categories for motor vehicle violations: public safety violations were categorized as "primary violations," and allowed the driver to be pulled over. "Secondary violations" are non-safety-related traffic violations, such as expired registration or city stickers, tinted windows, failure to wear a seatbelt, or driving with a single broken taillight, that do not meet the criteria for a lawful traffic stop. Philadelphia's list of secondary violations is more extensive than most of the laws passed. While these low-level offenses no longer qualify for an in-transit stop, such infractions are still ticketable by officers observing parked cars on the street. However, the law also reduces fines and fees for secondary violations for drivers who qualify for the city's low-income assistance programs. This is a feature of Philadelphia's law that is not present in other stop reforms and directly combats the socioeconomic impacts of low-level stops on poverty-stricken communities. Notably, the law also aims to improve transparency and accountability by requiring the city to report annually on the revenue generated from fines and fees, as well as the demographics of drivers who are impacted. The Philadelphia Police Department was part of a coalition of stakeholders who helped draft the legislation. Philadelphia's Driving Equity law

really looks at the ramifications these stops have and addresses racial equity, as well as economic equity. It also shows a great example of increasing transparency to promote the objectives of the law.

Los Angeles is currently the biggest city to have adopted a policy banning low-level traffic stops.³¹ In the spring of 2021, the Los Angeles Police Department implemented a new policy that requires police officers to record themselves on body cameras stating their reason for stopping a car. Minor violations are no longer an accepted reason. The officer must have cause to suspect a more serious crime is being committed. Additionally, officers who fail to follow this new policy will first be required to undergo training, and will then face increasingly serious discipline for continued violations of the policy. This is the one and only law that requires officer compliance by threat of discipline. The LAPD believes this policy is a middle ground, limiting the stops without eliminating them entirely. The limit is that pretextual stops are allowed only if an officer has “articulable information ... regarding a serious crime” before making them.³² Unfortunately, the policy provides a workaround for officers. The policy states that officers who do not have a reason to suspect a more serious crime is afoot should not make the stop unless the violation “significantly interferes with public safety.”³³ However, the policy neglects to define what types of violations would “significantly interfere with public safety.” By adding

³¹Michel R. Moore, Special Order No. 3: Policy- Limitation on Use of Pretextual Stops- Established, Office of the Chief of Police of the Los Angeles Police Department (Mar. 9, 2022), https://lapdonlinestrgeacc.blob.core.usgovcloudapi.net/lapdonlinemedia/2022/03/3_9_22_SO_No.3_Policy_Limitation_on_Use_of_Pretextual_Stops_Established.pdf.

³² *Id.*

³³ *Id.*

in these terms that have no real definition or substance, there is always the fear that they can become loopholes for officers who do not change their current behavior.³⁴ If an officer can merely state that he thought the violation “significantly interfered with public safety,” it is unlikely there will be any significant change in the level of low-level stops or their impact on the community.

San Francisco’s Police Commission approved a new policy limiting police officers from stopping drivers for minor offenses.³⁵ The police commission voted to bar stops for nine traffic offenses, which fell far short of the 18 originally proposed. Instead, officers are only allowed to make traffic stops for violations that pose an immediate threat to public safety, such as reckless driving or running a red light. In comparison to Philadelphia’s law, San Francisco’s lacks teeth. The language in San Francisco’s policy, similar to the one in Los Angeles, “limit[s]” officers from stopping drivers for the nine traffic offenses. All language “banning” the stops was removed as a compromise during the voting process.³⁶ San Francisco’s new policy also limits the circumstances under which officers can conduct pretext stops more broadly by explicitly requiring reasonable suspicion or probable cause for a criminal offense

³⁴ Kevin Rector, *New limits on ‘pretextual stops’ by LAPD officers approved, riling police union*, Los Angeles Times (March 1, 2022), <https://www.latimes.com/california/story/2022-03-01/new-limits-on-pretextual-stops-by-lapd-to-take-effect-this-summer-after-training>.

³⁵ San Francisco Police Department, *Curtailing the Use of Pretext Stops*, General Order (Jan. 11, 2023), [https://sf.gov/sites/default/files/2023-01/DGO%209.07 01.11.23_redlinevs12.28version FINAL.pdf](https://sf.gov/sites/default/files/2023-01/DGO%209.07%201.11.23_redlinevs12.28version_FINAL.pdf).

³⁶ Michael Barba, *SF Decides to Ban Low-Level Traffic Stops in Close Police Commission Vote*, The San Francisco Standard (Jan. 11, 2023), <https://sfstandard.com/criminal-justice/sf-police-watchdogs-set-to-decide-ban-on-cops-pulling-over-drivers-for-low-level-traffic-offenses/>.

and requires data collection and reporting.³⁷ The police commission hopes that limiting stops will “redirect resources and time to more effective public safety strategies, including prioritizing traffic safety to reduce injuries and fatalities, while also helping to fulfill its obligation to accord every person equal treatment under the law.”³⁸ This justification puts into context the differentiations between San Francisco’s and Philadelphia’s laws. Philadelphia’s stated purpose was “to provide for the fair and transparent administration of traffic violations, prevent racial disparities, and protect public safety.”³⁹ San Francisco’s compromises in the voting process led to a law that may “help in fulfill[ing] its obligation” to racial equity. Whereas Philadelphia’s law’s sole purpose was to prevent racial disparities.

The city of Berkeley, California, passed a package of police reforms that *prohibits* police officers from making traffic stops for minor violations.⁴⁰ The law, which went into effect in September 2021, allows police officers to make traffic stops only if they have probable cause to believe that a driver has committed a serious traffic violation or if the driver is posing a danger to others on the road. The law also requires that any traffic stops made be documented and reported to the city's

³⁷ Sarah Holder, *These Cities Are Limiting Traffic Stops for Minor Offenses*, Bloomberg, (Fe. 2, 2023), <https://www.bloomberg.com/news/articles/2023-02-02/police-traffic-stops-face-new-scrutiny-after-tyre-nichols-death>.

³⁸ San Francisco Police Department, *Curtailing the Use of Pretext Stops*, General Order (Jan. 11, 2023), https://sf.gov/sites/default/files/2023-01/DGO%209.07_01.11.23_redlinevs12.28version_FINAL.pdf.

³⁹ City of Philadelphia Enacted Bill No. 210636-A, 202, (codified as Amending Title 12 of The Philadelphia Code, entitled “Traffic Code”).

⁴⁰ Mayor Jesse Arreguín and Councilmember Kate Harrison, *Report and Recommendations From Mayor’s Fair and Impartial Policing Working Group*, City of Berkeley Office of the Mayor (Feb. 23, 2021) <https://newspack-berkeleyside-cityside.s3.amazonaws.com/wp-content/uploads/2021/02/2021-02-23-Special-Item-01-Report-and-Recommendations.pdf>.

Police Review Commission for added transparency. Berkeley’s law rises to the level of “elimitat[ing] stops for low-level offenses” and requests, at minimum, quarterly progress reports from the Police Accountability Board.⁴¹

In December 2021, Minneapolis Mayor Jacob Frey's 2022 budget proposal, which was approved by the City Council, included a policy stating that the city's police officers will no longer conduct pretextual traffic stops for low-level offenses.⁴² The policy was included in the approved budget as part of a broader effort to reform policing practices in the city and increase accountability and transparency in law enforcement. Mayor Frey's policy aligns with the recommendations of a recent report by the Minnesota Department of Human Rights, which found that Black drivers were three times more likely to be pulled over than white drivers in Minneapolis, and that pretextual stops disproportionately affected communities of color.⁴³ The policy is part of a broader effort by the city of Minneapolis to reform its policing practices and increase accountability and transparency in law enforcement, following the death of George Floyd in the summer of 2020.

In August 2021, the City Council of Brooklyn Center, Minnesota, passed an ordinance that requires police officers to adopt a “citation only” approach to low-

⁴¹ Id. at 1.

⁴² Samatha Fischer, *Minneapolis Mayor Frey Delivers 2022 Budget Address Focusing on Safety, Housing*, Kare 11 (Aug. 13, 2021) <https://www.kare11.com/article/news/local/minneapolis-mayor-frey-delivers-2022-budget-address-focusing-safety-housing/89-a3ad0734-6697-4a72-983c-fd2be4b8c239>.

⁴³ Commissioner Rebecca Lucero, *Investigation into the City of Minneapolis and the Minneapolis Police Department*, Minnesota Department of Human Rights, 20-22, https://mn.gov/mdhr/assets/Investigation%20into%20the%20City%20of%20Minneapolis%20and%20the%20Minneapolis%20Police%20Department_tcm1061-526417.pdf.

level violations.⁴⁴ The ordinance, which went into effect immediately, is part of a larger effort by the city to reform policing practices and address racial disparities in law enforcement after the police killing of Daunte Wright. Under the new law, police officers are only allowed to issue citations for low-level traffic stops. Officers may not arrest or search any drivers stopped for these violations. Notably different from other laws passed, the law also requires officers to provide a written explanation of the reason for any traffic stop, and it prohibits officers from using minor traffic violations as a pretext to search a vehicle or its occupants.

Pittsburgh has implemented several reforms in recent years aimed at reducing the number of traffic stops for minor offenses and addressing issues of racial bias in policing. In 2021, Pittsburgh passed a city ordinance directing the city's police department that secondary violations are no longer grounds for pulling over a driver.⁴⁵ In addition, the Pittsburgh Bureau of Police has been working to implement a new system for collecting and analyzing data on traffic stops, which will allow for better monitoring of potential biases and disparities in enforcement. The department has also been providing training to officers on implicit bias and cultural sensitivity to help them better understand and serve the diverse communities they serve.

In 1999, Washington's Supreme Court found that pretextual traffic stops were an unconstitutional abuse of police authority to conduct a warrantless search or

⁴⁴ The Daunte Wright and Kobe Dimock-Heiler Community Safety and Violence Prevention Act, Resolution No. 2021-73, (May 15, 2021).

⁴⁵ Julia Felton, *Pittsburgh Bans Traffic Stops for Minor Violations*, Pittsburgh Tribune, (Dec. 28, 2021), <https://triblive.com/local/pittsburgh-bans-traffic-stops-for-minor-violations/>.

seizure, and any evidence unearthed during such a stop must be suppressed. *State v. Ladson*, 138 Wash. 2d 343 (1999). The court outlawed pretextual traffic stops, finding that police cannot pull someone over on the pretext of a traffic violation when they are really trying to fish for evidence of some other crime. *Id.* Now, almost 25 years later, legislators in Washington are considering a bill to ban low-level stops altogether.⁴⁶ The bill is expected to be voted on this session.

C. State prosecutors are also implementing public policies that detail a refusal to prosecute infractions that arise from pretextual stops.

In July 2021, both Ramsey County, Minnesota's County Attorney's office and Ingham County, Michigan's Prosecutor's office put forth new policies that prosecutors would no longer pursue cases against people who were unfairly targeted and detained during non-public safety stops.⁴⁷ A non-public safety stop is a traffic stop initiated by law enforcement for a minor traffic violation or equipment violation, rather than for a clear public safety reason. Under the new policies, if a driver is stopped for a non-public safety reason and subsequently detained or arrested for an unrelated offense, such as possession of drugs or a firearm, prosecutors will review the case to determine if the initial stop was discriminatory or racially motivated. If the prosecutor determines that the stop was unfair or

⁴⁶ Melissa Santos, *Bill Would Limit Traffic Stops to Try To Prevent Police Killings*, Axios Seattle, (Feb. 1, 2023), <https://www.axios.com/local/seattle/2023/02/01/traffic-stops-limits-police-washington-state>.

⁴⁷ Amir Vera and Christina Carrega, *Minnesota County Attorney to Stop Prosecuting Non-Public Safety Traffic Stops in Honor of Philando Castile*, CNN, (Sept. 9, 2021), <https://www.cnn.com/2021/09/09/us/minnesota-prosecutor-traffic-stop-prosecutions/index.html>; Tony Carcia, *Local Prosecutor's Approach to Equity? Stop Charging People With Crimes*, WLNS, (Jul.27 2021), <https://www.wlns.com/news/local-prosecutors-approach-to-equity-stop-charging-people-with-crimes/>.

discriminatory, they will no longer pursue charges related to the arrest or detention. The new policy comes five years after former St. Anthony Police Department officer Jeronimo Yanez fatally shot Philando Castile seven times during a traffic stop in 2016 over a broken taillight.⁴⁸

4. There have been many attempts to reverse the reforms that have been passed, including well-funded campaigns by police unions.

While there are many reasons to support the passage of policing reforms, including the ban of low-level stops, not everyone supports these measures. Many municipalities that have successfully passed reforms are dealing with pushback from police unions and interest groups. Some municipalities faced enforcement problems once the laws or policies were put in place. Other areas have been met with outright hostility from parties attempting to repeal the policies altogether.

After Virginia's trailblazing law was enacted in 2021, there has been an ongoing battle to keep the law in place. A bipartisan group of Virginia lawmakers voted to reinstate noisy exhaust pipes as a reason to pull someone over last year.⁴⁹ Additionally, a coalition of police associations, local police chiefs, and Republican officials, including the attorney general, fought a losing campaign to get rid of the ban on minor stops that had been passed by Democrats before losing full control of

⁴⁸ Ralph Ellis and Bill Kirkos, *Officer Who Shot Philando Castile Found Not Guilty On All Counts*, CNN, (Jun. 16, 2017), <https://www.cnn.com/2017/06/16/us/philando-castile-trial-verdict/index.html>.

⁴⁹ Graham Moomaw, *Easing New Limits on Police Powers, Virginia is Cracking Back Down on Noisy Cars*, Virginia Mercury, (Apr. 1, 2022), <https://www.virginiamercury.com/2022/04/01/easing-new-limits-on-police-powers-virginia-is-cracking-back-down-on-noisy-cars/>.

the state House. The Republican-controlled House voted to repeal the law. However, a Democrat-controlled Senate voted to keep the current rules intact.⁵⁰

Likewise, in Pittsburgh, resistance is coming from the police department. Last month, the police chief issued an order to police officers to continue with the normal stopping practices from before their law prohibiting low-level stops was enacted. As a result, the police started enforcing minor violations again.⁵¹ A spokesperson for Pittsburgh's public safety department said the acting chief is planning to revise the training officers receive on the ordinance to "provide more clarity to officers - and to the public - on what the ordinance entails."⁵² However, the police have effectively nullified the new law by deciding not to enforce it.

Pittsburgh is not the only locality facing pushback from police as an obstacle to enforcement. After Ingham County's prosecutor declared she would not prosecute based on evidence obtained in a low-level search, she spoke realistically about the uphill battle she was facing against the local police force. "It's a positive step forward, but the implementation of [the new policy] is going to be the issue. Is LPD going to fudge the paperwork? That's what we're dealing with right now."⁵³ The next few years will likely show whether or not the prosecutor's

⁵⁰Sarah Holder, *These Cities Are Limiting Traffic Stops for Minor Offenses*, Bloomberg, (Fe. 2, 2023), <https://www.bloomberg.com/news/articles/2023-02-02/police-traffic-stops-face-new-scrutiny-after-tyre-nichols-death>.

⁵¹ Rick Earle, *Pittsburgh Police Officers Told Not to Follow Controversial Traffic Stop Policy*, WPXI News, (Jan. 4, 2023), <https://www.wpxi.com/news/local/target-11-exclusive-pittsburgh-police-officers-told-not-follow-controversial-traffic-stop-policy/2GUXF32YTZE33MB77SFQG4H4PE/>.

⁵² *Id.*

⁵³ Tony Carcia, *Local Prosecutor's Approach to Equity? Stop Charging People With Crimes*, WLNS, (Jul.27 2021), <https://www.wlns.com/news/local-prosecutors-approach-to-equity-stop-charging-people-with-crimes/>.

office will be able to actually effect any change while working closely with a hostile police force. Unfortunately, while the local prosecutor can choose not to prosecute evidence from low-level stops, this does not stop police officers from still making the stops. While this may mean a lessening of some of the economic or criminal effects of these stops, other harms, such as violence and community tension, will still be present so long as the stops are still taking place.

Despite being one of the most comprehensive policies, Philadelphia's policy has not been immune to challenges. Even though the Philadelphia Police Department was instrumental in the creation and drafting of the Driving Equality Law, the Philadelphia Lodge of the Fraternal Order of Police filed a lawsuit against city officials, arguing that the local ordinance oversteps state law and hinders police work.⁵⁴ The lawsuit is still making its way through the system.

This pushback shows the importance of the police department cooperating with the legislature or enacting body. While laws can be passed, if the enforcers refuse to comply, then future progress will be limited at best. While police officers typically have a lot of discretion in executing their job responsibilities, in this case, that discretion is being used to continue enforcing laws that have been shown to negatively affect communities that are already struggling.

5. There are alternative policing methods for minor violations available that would reduce the harms present in low-level stops.

⁵⁴ Claudia Lauer, *Police Union Sues Over Philadelphia Ban on Low-Level Stops*, AP News, (Feb. 25, 2022), <https://apnews.com/article/police-lawsuits-philadelphia-fraternal-order-of-police-4fd349899b312b3897f64f1c212632f1>.

There are alternative policing methods for minor traffic violations that can reduce the negative impacts of low-level traffic stops and improve trust between law enforcement and the community. One alternative method is to use traffic cameras and other automated enforcement tools to identify and penalize violations without requiring direct police intervention. State agencies could bill by mail for an expired registration. These tools can be used to enforce traffic laws in a more consistent and impartial manner and can reduce the likelihood of racial disparities in enforcement or violence occurring during an actual stop.

Another alternative method is to use community-based traffic enforcement programs that involve residents in identifying and reporting traffic violations. Some communities, including Berkeley, California and Brooklyn Center, Minnesota, are considering training unarmed civilians to conduct such stops.⁵⁵ These programs can help build trust between law enforcement and the community and can be particularly effective in low-income neighborhoods where residents may feel underserved by traditional law enforcement. Brooklyn Center officials intend to create a civilian Traffic Enforcement Department to enforce non-moving violations, according to a resolution adopted in May 2021 by the City Council.⁵⁶ The resolution also sets up new departments for other reforms, such as community response to mental health calls.

⁵⁵ Rigel Robinson and Ben Gerhardstein, *How Berkeley is De-Policing Traffic Enforcement*, Medium (Oct. 19, 2021), <https://medium.com/vision-zero-cities-journal/how-berkeley-is-de-policing-traffic-enforcement-ab218f6ee80d>.

⁵⁶ The Daunte Wright and Kobe Dimock-Heiler Community Safety and Violence Prevention Act, Resolution No. 2021-73, (May 15, 2021).

Police departments can also prioritize traffic enforcement efforts based on data and analysis of traffic patterns and accident rates, rather than relying on individual officer discretion. This can help ensure that traffic enforcement efforts are focused on areas with the greatest need and can reduce the likelihood of racial disparities in enforcement.

The overarching problem with these alternative policing methods is that they do not address one of the underlying issues: economic burden. Automated enforcement, such as red light cameras, perpetuates a system of using traffic fines as revenue generators that affect those who can least afford it. Some municipalities are looking at alternative methods of solving the root issues of these stops, such as faulty hardware. Lights On!, a Minneapolis nonprofit, has begun working with police and auto repair shops to offer motorists free car repairs rather than traffic tickets.⁵⁷ Drivers can receive up to \$250 to fix such things as taillights. This removes the harmful element of fines and solves the root problem: dangers that can arise when lights aren't functioning properly. People receiving a voucher are hopefully having a less intense or destructive conversation with the police, and instead, the community gains something from that interaction.

Overall, alternative policing methods for minor traffic violations can help reduce the negative impacts of low-level traffic stops on communities, improve public safety, and build trust between law enforcement and the community. However, it is

⁵⁷ Emily Haavik and Kent Erdahl, *Hennepin County Deputies to Hand Out Repair Vouchers, Not Tickets*, Kare 11, (Jan. 29, 2020), <https://www.kare11.com/article/news/local/hennepin-county-deputies-to-hand-out-repair-vouchers-not-tickets/89-69e1cc94-5622-404d-bb68-094704dc0890>.

important to look at these alternatives from the lens of the community can be better served, rather than how the municipality can still receive the revenue that used to be generated from these harmful stops.

6. Conclusion.

While some municipalities have moved in the direction of banning low-level stops on their own, many are spurred into action by death or violent altercations with police officers. There is no reason to wait for death or violence to ban these stops. The evidence shows that low-level traffic stops are racially biased. Only 1-2% of them lead to the discovery of contraband. Importantly, they disproportionately impact low-income areas and build distrust between those communities and police officers. These reasons should be enough to show that low-level traffic stops are not worth the effort put into conducting them.

However, if more information is needed for a state to ban low-level stops, there is preliminary data from some of the municipalities that have implemented bans, which show they are having a positive effect. Just four months after Virginia's ban took effect, an NBC News investigation found that the number of Black drivers searched dropped by 40%, even as overall stops increased slightly.⁵⁸ This data indicates that the new procedures are working to address the racial disparity in stops, but also that police officers are now stopping the correct drivers more often.

⁵⁸ Simone Weichselbaum, Emily R. Siegel, and Andrew Blankstein, *Police Face a 'Crisis of Trust' with Black Motorists. One State's Surprising Policy May Help*, NBC News, (Oct. 7, 2021), <https://www.nbcnews.com/news/us-news/traffic-stops-are-flashpoint-policing-america-reformers-are-winning-big-n1280594>.

Likewise, in Philadelphia, the Driving Equity Law went into effect one year ago. Preliminary data from the first year of implementation shows that overall traffic stops are down significantly. More importantly, there is an increase in the likelihood of finding weapons during those stops.⁵⁹ Unfortunately, while the effectiveness of the stops has improved, the data also shows that Black people are still disproportionately being pulled over.⁶⁰

It is likely that the full effect of these bans will become clearer in the years to come, as police training increases and is perfected over time. However, the preliminary data gives us reason to hope that these changes will improve driving equity in the municipalities that have implemented them, and hopefully show others that they can do so without risking the safety of their citizens. Municipalities considering adopting these bans should do so without waiting for a violent incident that forces their hand. There is no reason for these stops to continue escalating tension between communities and the police force when the data shows that these stops are not effective in stopping crimes or getting guns and drugs off the streets.

⁵⁹Sarah Holder, *These Cities Are Limiting Traffic Stops for Minor Offenses*, Bloomberg, (Fe. 2, 2023), <https://www.bloomberg.com/news/articles/2023-02-02/police-traffic-stops-face-new-scrutiny-after-tyre-nichols-death>.

⁶⁰ *Id.*