

NO. 19-1421

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT**

SETI JOHNSON; SHAREE SMOOT; MARIE BONHOMME-DICKS;  
NICHELLE YARBOROUGH, on behalf of themselves and those  
similarly situated,

Plaintiffs – Appellants,

v.

TORRE JESSUP, in his official capacity as Commissioner of the North  
Carolina Division of Motor Vehicles,

Defendant – Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

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**JOINT APPENDIX**

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Samuel Brooke  
Danielle E. Davis  
400 Washington Ave.  
Montgomery, AL 36104  
334-956-8200

Kristi L. Graunke  
Emily C.R. Early  
150 E. Ponce de Leon Ave.,  
Ste. 340  
Decatur, GA 30030  
404-221-4036

*Counsel for Plaintiffs-  
Appellants  
(continued on next page)*

Kathryne E. Hathcock  
Neil Dalton  
P.O. Box 629  
Raleigh, NC 27602  
919-716-6650

Sripriya Narasimhan  
Matthew W. Sawchak  
114 W. Edenton St.  
Raleigh, NC 27603  
919-716-6400

*Counsel for Defendant-  
Appellee*

Nusrat J. Choudhury  
R. Orion Danjuma  
125 Broad St., 18<sup>th</sup> Floor  
New York, NY 10004  
212-519-7876

Jeffrey Loperfido  
1415 W. NC Hwy 54, Ste.  
101  
Durham, NC 27707  
919-323-3380 x.161

Irena Como  
Emily Seawell  
Sneha Shah  
AMERICAN CIVIL  
LIBERTIES UNION OF  
NORTH CAROLINA  
LEGAL FOUNDATION  
3801 Barrett Drive  
Raleigh, NC 27609  
Tel.: 919-834-3466

*Counsel for Plaintiffs-  
Appellants*

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**U.S. District Court**  
**North Carolina Middle District (NCMD)**  
**CIVIL DOCKET FOR CASE #: 1:18-cv-00467-TDS-LPA**

JOHNSON, et al v. JESSUP  
Assigned to: CHIEF JUDGE THOMAS D. SCHROEDER  
Referred to: MAG/JUDGE L. PATRICK AULD  
Case in other court: 19-01421  
Cause: 42:1983 Civil Rights Act

Date Filed: 05/30/2018  
Jury Demand: Defendant  
Nature of Suit: 440 Civil Rights: Other  
Jurisdiction: Federal Question

Date Filed	#	Docket Text
05/30/2018	<u>1</u>	COMPLAINT for Declaratory and Injunctive Relief (Class Action) against Torre Jessup ( Filing fee \$ 400 receipt number 0418-2358880.), filed by Seti Johnson, Sharee Smoot. (Attachments: # <u>1</u> Civil Cover Sheet, # <u>2</u> Proposed Summons)(GRAUNKE, KRISTI) (Entered: 05/30/2018)
05/30/2018	<u>2</u>	MOTION for Preliminary Injunction by Seti Johnson, Sharee Smoot. Response to Motion due by 6/20/2018 (Attachments: # <u>1</u> Memorandum in Support)(GRAUNKE, KRISTI) (Entered: 05/30/2018)
05/30/2018	<u>3</u>	MOTION to Certify Class by Seti Johnson, Sharee Smoot. Response to Motion due by 6/20/2018 (Attachments: # <u>1</u> Memorandum in Support)(GRAUNKE, KRISTI) (Entered: 05/30/2018)
05/30/2018	<u>4</u>	DECLARATION of Seti Johnson by Plaintiff Seti Johnson. (GRAUNKE, KRISTI) (Entered: 05/30/2018)
05/30/2018	<u>5</u>	DECLARATION of Sharee Smoot by Plaintiff Sharee Smoot. (Attachments: # <u>1</u> Attachment A, # <u>2</u> Attachment B)(GRAUNKE, KRISTI) (Entered: 05/30/2018)
05/30/2018	<u>6</u>	DECLARATION of Samuel Brooke re <u>3</u> MOTION to Certify Class , <u>2</u> MOTION for Preliminary Injunction by Plaintiffs Seti Johnson, Sharee Smoot. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F, # <u>7</u> Exhibit G, # <u>8</u> Exhibit H, # <u>9</u> Exhibit I)(GRAUNKE, KRISTI) (Entered: 05/30/2018)
05/30/2018		CASE REFERRED to Mediation pursuant to Local Rule 83.9b of the Rules of Practice and Procedure of this Court. Please go to our website under Attorney Information for a list of mediators which must be served on all parties. (Coyne, Michelle) (Entered: 05/30/2018)
05/30/2018	<u>7</u>	MEMORANDUM filed by Plaintiffs SETI JOHNSON, SHAREE SMOOT re <u>2</u> MOTION for Preliminary Injunction ( <i>refiled as separate docket event per instruction by Clerk</i> ) filed by SETI JOHNSON, SHAREE SMOOT. (GRAUNKE, KRISTI) (Entered: 05/30/2018)
05/30/2018	<u>8</u>	MEMORANDUM filed by Plaintiffs SETI JOHNSON, SHAREE SMOOT re <u>3</u> MOTION to Certify Class ( <i>refiled as separate docket event per instruction by Clerk</i> ) filed by SETI JOHNSON, SHAREE SMOOT. (GRAUNKE, KRISTI) (Entered: 05/30/2018)
05/30/2018	<u>9</u>	NOTICE of Appearance by attorney CHRISTOPHER A. BROOK on behalf of Plaintiffs SETI JOHNSON, SHAREE SMOOT (BROOK, CHRISTOPHER) (Entered: 05/30/2018)
05/30/2018	<u>10</u>	NOTICE of Appearance by attorney CRISTINA M. BECKER on behalf of Plaintiffs SETI JOHNSON, SHAREE SMOOT (BECKER, CRISTINA) (Entered: 05/30/2018)
05/30/2018	<u>11</u>	NOTICE of Appearance by attorney SNEHA M. SHAH on behalf of Plaintiffs SETI JOHNSON, SHAREE SMOOT (SHAH, SNEHA) (Entered: 05/30/2018)
05/31/2018	<u>12</u>	NOTICE of Appearance by attorney SAMUEL J. BROOKE on behalf of Plaintiffs SETI JOHNSON, SHAREE SMOOT (BROOKE, SAMUEL) (Entered: 05/31/2018)

05/31/2018	<u>13</u>	NOTICE of Appearance by attorney EMILY C.R. EARLY on behalf of Plaintiffs SETI JOHNSON, SHAREE SMOOT (EARLY, EMILY) (Entered: 05/31/2018)
05/31/2018		Case ASSIGNED to CHIEF JUDGE THOMAS D. SCHROEDER and MAGISTRATE JUDGE L. PATRICK AULD. Set flag for Magistrate Judge L. Patrick Auld. (Coyné, Michelle) (Entered: 05/31/2018)
05/31/2018	<u>14</u>	Summons Issued as to TORRE JESSUP. (Coyné, Michelle) (Entered: 05/31/2018)
05/31/2018	<u>15</u>	Notice of Right to Consent. Counsel shall serve the attached form on all parties. (Attachments: # <u>1</u> consent form)(Coyné, Michelle) (Entered: 05/31/2018)
05/31/2018	<u>16</u>	NOTICE of Appearance by attorney NUSRAT J. CHOUDHURY on behalf of Plaintiffs SETI JOHNSON, SHAREE SMOOT (CHOUDHURY, NUSRAT) (Entered: 05/31/2018)
05/31/2018	<u>17</u>	NOTICE of Appearance by attorney RODKANGYIL O. DANJUMA on behalf of Plaintiffs SETI JOHNSON, SHAREE SMOOT (DANJUMA, RODKANGYIL) (Entered: 05/31/2018)
06/01/2018	<u>18</u>	Declaration of Proof of Service served on TORRE JESSUP, in his official capacity, on 06/01/2018, filed by SETI JOHNSON, SHAREE SMOOT. . (BECKER, CRISTINA) (Entered: 06/01/2018)
06/04/2018	<u>19</u>	NOTICE of Appearance by attorney KATHRYNE E. HATHCOCK on behalf of Defendant TORRE JESSUP (HATHCOCK, KATHRYNE) (Entered: 06/04/2018)
06/05/2018	<u>20</u>	NOTICE of Appearance by attorney NEIL C. DALTON on behalf of Defendant TORRE JESSUP (DALTON, NEIL) (Entered: 06/05/2018)
06/05/2018	<u>21</u>	MOTION for Hearing re <u>2</u> MOTION for Preliminary Injunction , <u>3</u> MOTION to Certify Class by SETI JOHNSON, SHAREE SMOOT. Responses due by 6/26/2018 (Attachments: # <u>1</u> Exhibit A – DMV Official Notice to Seti Johnson, # <u>2</u> Text of Proposed Order)(BROOKE, SAMUEL) (Entered: 06/05/2018)
06/06/2018		Motion Submitted to CHIEF JUDGE THOMAS D. SCHROEDER: <u>21</u> MOTION for Hearing re <u>2</u> MOTION for Preliminary Injunction and <u>3</u> MOTION to Certify Class. (Engle, Anita) (Entered: 06/06/2018)
06/06/2018	<u>22</u>	NOTICE of Appearance by attorney DANIELLE E. DAVIS on behalf of Plaintiffs SETI JOHNSON, SHAREE SMOOT (DAVIS, DANIELLE) (Entered: 06/06/2018)
06/15/2018	<u>23</u>	MOTION for Extension of Time to File Answer re <u>1</u> Complaint, by TORRE JESSUP. (Attachments: # <u>1</u> Text of Proposed Order)(HATHCOCK, KATHRYNE) (Entered: 06/15/2018)
06/15/2018	<u>24</u>	MOTION for Extension of Time to File Response/Reply as to <u>2</u> MOTION for Preliminary Injunction by TORRE JESSUP. (Attachments: # <u>1</u> Text of Proposed Order)(HATHCOCK, KATHRYNE) (Entered: 06/15/2018)
06/15/2018	<u>25</u>	MOTION for Extension of Time to File Response/Reply as to <u>3</u> MOTION to Certify Class by TORRE JESSUP. (Attachments: # <u>1</u> Text of Proposed Order)(HATHCOCK, KATHRYNE) (Entered: 06/15/2018)
06/18/2018		Motions Referred to MAG/JUDGE L. PATRICK AULD RE: <u>25</u> MOTION for Extension of Time to File Response/Reply as to <u>3</u> MOTION to Certify Class, <u>23</u> MOTION for Extension of Time to File Answer re <u>1</u> Complaint, and <u>24</u> MOTION for Extension of Time to File Response/Reply as to <u>2</u> MOTION for Preliminary Injunction. (Engle, Anita) (Entered: 06/18/2018)
06/18/2018	<u>26</u>	RESPONSE filed by Plaintiffs SETI JOHNSON, SHAREE SMOOT re <u>25</u> MOTION for Extension of Time to File Response/Reply as to <u>3</u> MOTION to Certify Class filed by TORRE JESSUP, <u>23</u> MOTION for Extension of Time to File Answer re <u>1</u> Complaint, filed by TORRE JESSUP, <u>24</u> MOTION for Extension of Time to File Response/Reply as to <u>2</u> MOTION for Preliminary Injunction filed by TORRE JESSUP filed by SETI JOHNSON, SHAREE SMOOT. (BROOK, CHRISTOPHER) (Entered: 06/18/2018)

06/20/2018	TEXT ORDER granting <u>23</u> Motion for Extension of Time to Answer or Otherwise Plead. Defendant shall answer or otherwise respond to <u>1</u> Complaint by 07/31/2018. Issued by MAG/JUDGE L. PATRICK AULD on 06/20/2018. (AULD, L.) (Entered: 06/20/2018)
06/20/2018	<p>TEXT ORDER granting <u>24</u> Motion for Extension of Time and <u>25</u> Motion for Extension of Time. Defendant shall file any response(s) to <u>2</u> Motion for Preliminary Injunction and <u>3</u> Motion for Class Certification by 07/31/2018. Three weeks ago, Plaintiffs Seti Johnson and Sharee Smoot (with — according to <u>6</u> Declaration by one of their ten attorneys — the financial backing of four different organizations) filed <u>1</u> Complaint, <u>2</u> Motion, and <u>3</u> Motion, all attacking a North Carolina driver license revocation statute, N.C. Gen. Stat. s 20–24.1. Those filings and the related memoranda, declarations, and exhibits submitted by Plaintiffs that day spanned more than 300 pages, sought three different forms of declaratory relief under at least two different clauses of the Fourteenth Amendment to the United States Constitution, demanded entry of three different injunctions, and requested certification of two different classes of putative plaintiffs. A week later, Plaintiffs filed <u>21</u> Motion to Set Hearing, asking the Court to hold a hearing on <u>2</u> Motion and <u>3</u> Motion on a date soon enough "so th[o]se Motions may be resolved prior to July 28, 2018. Plaintiffs ma[d]e th[at] request because the North Carolina Division of Motor Vehicles (the 'DMV') ha[d] notified Plaintiff Johnson that his driver's license revocation will become effective at 12:01 a.m. on July 28, 2018." Last week, Defendant filed <u>24</u> Motion and <u>25</u> Motion, seeking an extension of his deadline to respond to <u>2</u> Motion and <u>3</u> Motion until 07/31/2018. In doing so, counsel for Defendant represented as an officer of the Court that he "need[ed] additional time to properly investigate the allegations of [ <u>2</u> Motion] and to make a proper Response" and "need[ed] additional time in which to complete Defendant's Response to [ <u>3</u> Motion]," respectively. In addition, counsel for Defendant reported that he "ha[d] requested specific records and policies (if such records exist) of Defendant regarding transactions between Plaintiffs and Defendant and information regarding the proposed classes of unnamed Plaintiffs." Finally, "Defendant agree[d] to stay the suspension of Plaintiff Johnson's suspension pending resolution of [ <u>2</u> Motion]." Plaintiffs now have responded in opposition to <u>24</u> Motion and <u>25</u> Motion. In doing so, Plaintiffs offered to accept an extension for Defendant of "seven or even fourteen days," but argued that "a 39–day extension is not warranted and unjustifiably continues the irreparable injury Plaintiff Smoot and other putative class members are facing." In other words, Plaintiffs (along with the two of their attorneys who signed <u>26</u> Response) effectively charged that, by filing <u>24</u> Motion and <u>25</u> Motion and (falsely, in the view of Plaintiffs and their two signing attorneys) claiming that a legitimate need existed for an extension until 07/31/2018, Defendant and his counsel violated their obligations under Federal Rule of Civil Procedure 11(b)(1) to refrain from making filings for an "improper purpose" and to "cause unnecessary delay," as well as under Federal Rule of Civil Procedure 11(b)(2) and (3) to refrain from making filings lacking a good faith basis in law and fact. To support such serious (if implicit) allegations, Plaintiffs (and their two signing attorneys) offered inadequate support. First, Plaintiffs argued that, of their three claims, two "are challenges to the text of N.C.G.S. s 20–24.1 for which no particular records or policies are going to be germane" and the third "challenges the notice the DMV provides to drivers when their licenses are revoked," a "one–page standard notice," which "[c]ounsel for Defendant do[es] not need 39 days to obtain and understand." That line of argument raises the following question: If this case is so simple that, to resolve a preliminary injunction motion and a dual–class certification motion, one need only read a statute and a related, one–page government notice (without gathering any other documents, doing any other investigation, and conducting any other research), why did Plaintiffs enlist 10 attorneys, from four different organizations, based in four different states, to draft and to compile the hundreds of pages of documents making up and supporting <u>1</u> Complaint, <u>2</u> Motion, and <u>3</u> Motion. Notably, <u>6</u> Declaration (by one of Plaintiffs' ten attorneys) avers that Plaintiffs' attorneys are not just any attorneys, but rather highly–credentialed graduates of the most prestigious law schools in the country with years of combined federal clerkship experience, as well as highly–specialized training and experience in handling not only constitutional class action litigation, but also the precise form of impact litigation at issue in this case. Indeed, according to <u>6</u> Declaration, two of Plaintiffs' attorneys are so well–versed in this particular area that they "are currently developing litigation and advocacy to challenge such [license revocation] practices and advise state affiliates of [one of the organizations involved in this case] on how to counter such practices through litigation and legislative and policy</p>

		<p>advocacy." Additionally, <u>6</u> Declaration reports that the organizations directing this litigation on Plaintiffs' behalf have decades of experience with cases of this sort and even have gone so far as to allow Plaintiffs' ten attorneys "to consult [with] colleagues who litigated [other similar] lawsuit[s] as needed." Lastly, <u>6</u> Declaration states that the organizations behind this lawsuit "have spent substantial time and effort to investigate this case and to understand how N.C.G.S. ss 20–24.1 and 20–24.2 operate and are implemented by the state courts and the [DMV]. This includes reviewing court and DMV records, observing court proceedings, and speaking with court personnel and court defendants about court and DMV practices." If ten highly–qualified and super–specialized attorneys needed to engage in so much preparation to bring <u>2</u> Motion and <u>3</u> Motion, Plaintiffs cannot plausibly maintain that Defendant and his counsel essentially do not need to do anything but read a statute and a government notice to respond to <u>2</u> Motion and <u>3</u> Motion. Next, Plaintiffs assert that Defendant's agreement to stay further action on Plaintiff Johnson's license revocation pending resolution of <u>2</u> Motion, is irrelevant, because Plaintiffs' urgent need for resolution of <u>2</u> Motion had nothing to do with Plaintiff Johnson's (formerly) impending revocation date of 07/28/2018, but rather always had rested equally on concern about "[t]he constant and irreparable harm to [Plaintiff] Smoot and thousands of other [putative class members, which concern] weighs heavily against the lengthy 39–day extension Defendant has requested here." That contention totally ignores the fact that Plaintiffs did not request a temporary restraining order when they filed this action and did not request any particular setting of a hearing on <u>2</u> Motion, until Plaintiff Johnson received the revocation notice that Plaintiffs referenced in (and attached to) <u>21</u> Motion, which expressly requested resolution of <u>2</u> Motion in advance of the very date that Plaintiff Johnson's revocation would take effect. These circumstances strongly suggest that Plaintiffs' downplaying of the significance of Defendant's agreement to stay further action as to Plaintiff Johnson and shifting of rationales for urgent action on <u>2</u> Motion represent gamesmanship. In a related (and final) matter, the Court's preliminary research indicates that N.C. Gen. Stat. s 20–24.1 has been in effect for approximately 25 years. Plaintiffs have offered no explanation as to why after their backing organizations waited a quarter century to attack a state statute, the impact of that statute suddenly constitutes an emergency situation that warrants denying the official representative of a sovereign state a total of 60 days to prepare a response to voluminous filings compiled after extensive investigation by a four–organization, ten–attorney team of class–action specialists. For all of these reasons, the Court finds good cause under Federal Rule of Civil Procedure 6(b)(1)(A) for Defendant's extension requests in <u>24</u> Motion and <u>25</u> Motion. The Court sincerely hopes that Plaintiffs' (and their attorneys' and financing organizations') approach to the simple matter of a modest extension of time at the very inception of the case does not represent the litigation style they intend to bring to this action going forward. Issued by MAG/JUDGE L. PATRICK AULD on 06/20/2018. (AULD, L.) (Entered: 06/20/2018)</p>
06/21/2018	<u>27</u>	NOTICE of Appearance by attorney ALEXANDER MCCLURE PETERS on behalf of Defendant TORRE JESSUP (PETERS, ALEXANDER) (Entered: 06/21/2018)
07/24/2018	<u>28</u>	Suggestion of Subsequently Decided Authority re <u>2</u> MOTION for Preliminary Injunction , <u>3</u> MOTION to Certify Class by Plaintiffs SETI JOHNSON, SHAREE SMOOT. (Attachments: # <u>1</u> Exhibit A)(BROOKE, SAMUEL) (Entered: 07/24/2018)
07/27/2018	<u>29</u>	NOTICE of Appearance by attorney ANN W. MATTHEWS on behalf of Defendant TORRE JESSUP (MATTHEWS, ANN) (Entered: 07/27/2018)
07/30/2018	<u>30</u>	WITHDRAWAL of Motion by Plaintiffs SETI JOHNSON, SHAREE SMOOT re <u>3</u> MOTION to Certify Class filed by SHAREE SMOOT, SETI JOHNSON (BROOKE, SAMUEL) (Entered: 07/30/2018)
07/30/2018	<u>31</u>	WITHDRAWAL of Motion by Plaintiffs SETI JOHNSON, SHAREE SMOOT re <u>2</u> MOTION for Preliminary Injunction filed by SHAREE SMOOT, SETI JOHNSON (BROOKE, SAMUEL) (Entered: 07/30/2018)
07/30/2018	<u>32</u>	NOTICE by SETI JOHNSON, SHAREE SMOOT of Intent to File First Amended Complaint (BROOKE, SAMUEL) (Entered: 07/30/2018)
07/30/2018	<u>33</u>	MOTION for Extension of Time to File Answer re <u>1</u> Complaint, by TORRE JESSUP. (Attachments: # <u>1</u> Text of Proposed Order)(MATTHEWS, ANN) (Entered: 07/30/2018)



07/30/2018		Motion Referred to MAG/JUDGE L. PATRICK AULD RE: <u>33</u> MOTION for Extension of Time to File Answer re <u>1</u> Complaint. (Engle, Anita) (Entered: 07/30/2018)
07/31/2018	<u>34</u>	ORDER signed by MAG/JUDGE L. PATRICK AULD on 07/31/2018, that Defendant's Motion is GRANTED, and Defendant shall have up to and including August 21, 2018, or 14 days after filing and serving Plaintiffs' First Amended Complaint, whichever is later, to serve a Response to Plaintiffs' Complaint or First Amended Complaint. (Taylor, Abby) (Entered: 07/31/2018)
08/07/2018	<u>35</u>	First AMENDED COMPLAINT against defendant TORRE JESSUP, filed by SETI JOHNSON, SHAREE SMOOT.(BROOKE, SAMUEL) (Entered: 08/07/2018)
08/07/2018	<u>36</u>	Second MOTION to Certify Class by SETI JOHNSON, SHAREE SMOOT. Response to Motion due by 8/28/2018 (BROOKE, SAMUEL) (Entered: 08/07/2018)
08/07/2018	<u>37</u>	MEMORANDUM filed by Plaintiffs SETI JOHNSON, SHAREE SMOOT re <u>36</u> Second MOTION to Certify Class filed by SETI JOHNSON, SHAREE SMOOT. (BROOKE, SAMUEL) (Entered: 08/07/2018)
08/07/2018	<u>38</u>	Second MOTION for Preliminary Injunction by SETI JOHNSON, SHAREE SMOOT. Response to Motion due by 8/28/2018 (BROOKE, SAMUEL) (Entered: 08/07/2018)
08/07/2018	<u>39</u>	MEMORANDUM filed by Plaintiffs SETI JOHNSON, SHAREE SMOOT re <u>38</u> Second MOTION for Preliminary Injunction filed by SETI JOHNSON, SHAREE SMOOT. (BROOKE, SAMUEL) (Entered: 08/07/2018)
08/07/2018	<u>40</u>	DECLARATION filed by Plaintiffs SETI JOHNSON, SHAREE SMOOT re <u>38</u> Second MOTION for Preliminary Injunction , <u>36</u> Second MOTION to Certify Class of <i>Marie Bonhomme-Dicks</i> filed by SETI JOHNSON, SHAREE SMOOT. (BROOKE, SAMUEL) (Entered: 08/07/2018)
08/07/2018	<u>41</u>	DECLARATION filed by Plaintiffs SETI JOHNSON, SHAREE SMOOT re <u>38</u> Second MOTION for Preliminary Injunction , <u>36</u> Second MOTION to Certify Class of <i>Nichelle Yarborough</i> filed by SETI JOHNSON, SHAREE SMOOT. (Attachments: # <u>1</u> Exhibit A)(BROOKE, SAMUEL) (Entered: 08/07/2018)
08/10/2018	<u>42</u>	NOTICE of Appearance by attorney JEFFREY LOPERFIDO on behalf of Plaintiffs MARIE BONHOMME-DICKS, SETI JOHNSON, SHAREE SMOOT, NICHELLE YARBOROUGH (LOPERFIDO, JEFFREY) (Entered: 08/10/2018)
08/21/2018	<u>43</u>	DEFENDANT'S ANSWER to Amended Complaint by TORRE JESSUP. (DALTON, NEIL) (Entered: 08/21/2018)
08/23/2018	<u>44</u>	NOTICE of Initial Pretrial Conference Hearing: Initial Pretrial Conference Hearing set for 9/24/2018 09:30 AM in Greensboro Courtroom #1A before MAG/JUDGE L. PATRICK AULD. (Garrett, Kim) (Entered: 08/23/2018)
08/28/2018	<u>45</u>	RESPONSE in Opposition re <u>38</u> Second MOTION for Preliminary Injunction filed by SHAREE SMOOT, SETI JOHNSON filed by TORRE JESSUP. Replies due by 9/11/2018 (HATHCOCK, KATHRYNE) (Entered: 08/28/2018)
08/28/2018	<u>46</u>	MOTION for Judgment on the Pleadings by TORRE JESSUP. Response to Motion due by 9/18/2018 (HATHCOCK, KATHRYNE) (Entered: 08/28/2018)
08/28/2018	<u>47</u>	MEMORANDUM filed by Defendant TORRE JESSUP re <u>46</u> MOTION for Judgment on the Pleadings filed by TORRE JESSUP. (HATHCOCK, KATHRYNE) (Entered: 08/28/2018)
08/28/2018	<u>48</u>	RESPONSE in Opposition re <u>36</u> Second MOTION to Certify Class filed by SHAREE SMOOT, SETI JOHNSON filed by TORRE JESSUP. Replies due by 9/11/2018 (HATHCOCK, KATHRYNE) (Entered: 08/28/2018)
09/11/2018	<u>49</u>	REPLY, filed by Plaintiffs MARIE BONHOMME-DICKS, SETI JOHNSON, SHAREE SMOOT, NICHELLE YARBOROUGH, to Response to <u>38</u> Second MOTION for Preliminary Injunction filed by MARIE BONHOMME-DICKS, SETI JOHNSON, SHAREE SMOOT, NICHELLE YARBOROUGH. (BROOKE, SAMUEL) (Entered: 09/11/2018)

09/11/2018	<u>50</u>	REPLY, filed by Plaintiffs MARIE BONHOMME-DICKS, SETI JOHNSON, SHAREE SMOOT, NICHELLE YARBOROUGH, to Response to <u>36</u> Second MOTION to Certify Class filed by MARIE BONHOMME-DICKS, SETI JOHNSON, SHAREE SMOOT, NICHELLE YARBOROUGH. (DAVIS, DANIELLE) (Entered: 09/11/2018)
09/18/2018	<u>51</u>	RESPONSE in Opposition re <u>46</u> MOTION for Judgment on the Pleadings filed by TORRE JESSUP filed by MARIE BONHOMME-DICKS, SETI JOHNSON, SHAREE SMOOT, NICHELLE YARBOROUGH. Replies due by 10/2/2018 (LOPERFIDO, JEFFREY) (Entered: 09/18/2018)
09/19/2018	<u>52</u>	Rule 26(f) Report (Joint) filed by all parties by MARIE BONHOMME-DICKS, SETI JOHNSON, SHAREE SMOOT, NICHELLE YARBOROUGH. (Attachments: # <u>1</u> Text of Proposed Order)(BROOK, CHRISTOPHER) (Entered: 09/19/2018)
09/20/2018		Motions Referred: RE: <u>52</u> Rule 26(f) Report (Joint) filed by all parties, to MAG/JUDGE L. PATRICK AULD (Garrett, Kim) (Entered: 09/20/2018)
09/20/2018		<b>TEXT ORDER</b> granting the request for continuance embedded within <u>52</u> Joint Rule 26(f) Report. The Initial Pretrial Conference set for 09/24/2018, is rescheduled for 10 a.m. on 12/17/2018, in Courtroom 1A of the L. Richardson Preyer United States Courthouse in Greensboro, North Carolina. Counsel for the parties shall hold another meeting in advance of the rescheduled Initial Pretrial Conference and shall file a new joint (or new separate) reports regarding case-management and scheduling issues on or before 12/12/2018. If any dispositive motions remain pending at the time of such filing and the parties continue to disagree about whether discovery should commence during such pendency, they shall fully address such matters in their separate reports. Issued by MAG/JUDGE L. PATRICK AULD on 09/20/2018. (AULD, L.) (Entered: 09/20/2018)
09/20/2018		Reset Hearings: Initial Pretrial Conference reset for 12/17/2018 10:00 AM in Greensboro Courtroom #1A before MAG/JUDGE L. PATRICK AULD. (Garrett, Kim) (Entered: 09/20/2018)
10/03/2018		Motions Submitted to CHIEF JUDGE THOMAS D. SCHROEDER: <u>36</u> Second MOTION to Certify Class, <u>38</u> Second MOTION for Preliminary Injunction, and <u>46</u> MOTION for Judgment on the Pleadings. (Engle, Anita) (Entered: 10/03/2018)
12/12/2018	<u>53</u>	Rule 26(f) Report (Joint) filed by all parties by MARIE BONHOMME-DICKS, SETI JOHNSON, SHAREE SMOOT, NICHELLE YARBOROUGH. (Attachments: # <u>1</u> Text of Proposed Order)(BROOKE, SAMUEL) (Entered: 12/12/2018)
12/13/2018		Motions Referred: RE: <u>53</u> Rule 26(f) Report (Joint) filed by all parties, to MAG/JUDGE L. PATRICK AULD (Garrett, Kim) (Entered: 12/13/2018)
12/13/2018		<b>TEXT ORDER</b> terminating <u>53</u> Second Joint Rule 26(f) Report, re-setting the Initial Pretrial Conference for 10 a.m. on 01/28/2019 in Courtroom 1A of the L. Richardson Preyer United States Courthouse in Greensboro, North Carolina, and requiring the filing, on or before 01/23/2019, of joint or separate reports that comply with Local Rule 16.2 or 16.3 or, if one or more parties wishes to further defer such filing(s), a motion seeking such relief with a detailed account of the efforts the parties have undertaken regarding the matters identified in <u>53</u> Second Joint Rule 26(f) Report as grounds for deferring entry of a scheduling order. Issued by MAG/JUDGE L. PATRICK AULD on 12/13/2018. (AULD, L.) (Entered: 12/13/2018)
12/13/2018		Reset Hearings: Initial Pretrial Conference reset for 1/28/2019 10:00 AM in Greensboro Courtroom #1A before MAG/JUDGE L. PATRICK AULD. (Garrett, Kim) (Entered: 12/13/2018)
12/21/2018	<u>54</u>	MOTION to Withdraw as Attorney ANN W. MATTHEWS by on behalf of TORRE JESSUP. (Attachments: # <u>1</u> Text of Proposed Order)(MATTHEWS, ANN) (Entered: 12/21/2018)
12/21/2018		Motion Referred to MAG/JUDGE L. PATRICK AULD RE: <u>54</u> MOTION to Withdraw as Attorney ANN W. MATTHEWS. (Engle, Anita) (Entered: 12/21/2018)
12/21/2018		<b>TEXT ORDER</b> granting <u>54</u> Motion to Withdraw. Attorney ANN W. MATTHEWS is terminated as counsel of record for Defendant. Issued by MAG/JUDGE L. PATRICK

		AULD on 12/21/2018. (AULD, L.) (Entered: 12/21/2018)
01/23/2019	<u>55</u>	STIPULATION <i>Joint Proposed Statement of Facts</i> by MARIE BONHOMME–DICKS, SETI JOHNSON, SHAREE SMOOT, NICHELLE YARBOROUGH. (BROOKE, SAMUEL) (Entered: 01/23/2019)
01/23/2019	<u>56</u>	THIRD JOINT RULE 26(F) REPORT filed by all parties. Est. Trial Days: 2. (BROOKE, SAMUEL) Modified on 1/23/2019 to correct event to a motion. (Taylor, Abby). Modified on 1/24/2019 (Garrett, Kim). <b>Requested Amended Report with dates certain</b> (Entered: 01/23/2019)
01/23/2019	<u>57</u>	MOTION Dispense with Mediation by TORRE JESSUP. Response to Motion due by 2/13/2019 (Attachments: # <u>1</u> Text of Proposed Order)(HATHCOCK, KATHRYNE) (Entered: 01/23/2019)
01/24/2019		Motion Referred to MAG/JUDGE L. PATRICK AULD RE: <u>57</u> MOTION Dispense with Mediation. (Engle, Anita) (Entered: 01/24/2019)
01/24/2019	<u>58</u>	Joint MOTION for Extension of Time to Complete Discovery <i>and Related Deadlines</i> by MARIE BONHOMME–DICKS, SETI JOHNSON, SHAREE SMOOT, NICHELLE YARBOROUGH. (Attachments: # <u>1</u> Text of Proposed Order)(BROOKE, SAMUEL) (Entered: 01/24/2019)
01/24/2019	<u>59</u>	JOINT STATUS REPORT <i>Third Amended</i> filed by all parties. Est. Trial Days: 2. (BROOKE, SAMUEL) (Entered: 01/24/2019)
01/25/2019		Motion Referred to MAG/JUDGE L. PATRICK AULD RE: <u>58</u> Joint MOTION for Extension of Time to Complete Discovery <i>and Related Deadlines</i> . (Engle, Anita) (Entered: 01/25/2019)
01/25/2019		<b>TEXT ORDER</b> granting <u>57</u> Motion to Dispense with Mediation. The Court relieves the parties of any obligation to participate in mediation. Issued by MAG/JUDGE L. PATRICK AULD on 01/25/2019. (AULD, L.) (Entered: 01/25/2019)
01/25/2019		<b>TEXT ORDER</b> terminating <u>56</u> Third Joint Rule 26(f) Report, granting in part <u>58</u> Joint Motion for Continuance of the Discovery Commencement Date and Related Discovery and Scheduling Deadlines, re–setting the Initial Pretrial Conference for 10 a.m. on 04/29/2019 in Courtroom 1A of the L. Richardson Preyer United States Courthouse in Greensboro, North Carolina, and requiring the filing, on or before 04/24/2019, of joint or separate reports that comply with Local Rule 16.2 or 16.3. Issued by MAG/JUDGE L. PATRICK AULD on 01/25/2019. (AULD, L.) (Entered: 01/25/2019)
01/28/2019		Set/Reset Hearings: Initial Pretrial Conference set for 4/29/2019 10:00 AM in Greensboro Courtroom #1A before MAG/JUDGE L. PATRICK AULD. (Taylor, Abby) (Entered: 01/28/2019)
02/11/2019	<u>60</u>	NOTICE of Hearing: Motion Hearing set for 3/13/2019 at 02:00 PM in Winston–Salem Courtroom #2 before CHIEF JUDGE THOMAS D. SCHROEDER. (Engle, Anita) (Entered: 02/11/2019)
03/06/2019	<u>61</u>	Suggestion of Subsequently Decided Authority re <u>45</u> Response in Opposition to Motion, <u>48</u> Response in Opposition to Motion, <u>46</u> MOTION for Judgment on the Pleadings by Defendant TORRE JESSUP. (Attachments: # <u>1</u> Exhibit Exhibit A, # <u>2</u> Exhibit Exhibit B, # <u>3</u> Exhibit Exhibit C)(HATHCOCK, KATHRYNE) (Entered: 03/06/2019)
03/13/2019	<u>62</u>	AFFIDAVIT OF <i>LANEE GLASS</i> filed by Defendant TORRE JESSUP. (DALTON, NEIL) (Entered: 03/13/2019)
03/13/2019	<u>63</u>	DECLARATION filed by Plaintiffs MARIE BONHOMME–DICKS, SETI JOHNSON, SHAREE SMOOT, NICHELLE YARBOROUGH re <u>38</u> Second MOTION for Preliminary Injunction filed by MARIE BONHOMME–DICKS, SETI JOHNSON, SHAREE SMOOT, NICHELLE YARBOROUGH. (Attachments: # <u>1</u> Exhibit A)(EARLY, EMILY) (Entered: 03/13/2019)
03/13/2019		Minute Entry for proceedings held before CHIEF JUDGE THOMAS D. SCHROEDER in WS–2: Motion Hearing held on 3/13/2019 regarding <u>38</u> Second MOTION for Preliminary Injunction <u>36</u> Second MOTION to Certify Class and <u>46</u> MOTION for Judgment on the Pleadings. Attorneys Samuel Brooke and Emily Early

		present for the Plaintiffs. Attorneys Kathyne Hathcock and Neil Dalton present for the Defendants. Arguments presented. Written Order forthcoming. (Court Reporter Briana Bell.) (Engle, Anita) (Entered: 03/13/2019)
03/14/2019	<u>64</u>	SUPPLEMENT re <u>38</u> Second MOTION for Preliminary Injunction , <u>36</u> Second MOTION to Certify Class by Plaintiffs MARIE BONHOMME-DICKS, SETI JOHNSON, SHAREE SMOOT, NICHELLE YARBOROUGH. (BROOKE, SAMUEL) (Entered: 03/14/2019)
03/31/2019	<u>65</u>	<b>MEMORANDUM OPINION AND ORDER</b> signed by CHIEF JUDGE THOMAS D. SCHROEDER on 3/31/2019. IT IS ORDERED that the Commissioner's motion for judgment on the pleadings (Doc. <u>46</u> ) is GRANTED IN PART and DENIED IN PART, Plaintiffs' second motion for class certification (Doc. <u>36</u> ) is GRANTED IN PART and Plaintiffs' second motion for preliminary injunction (Doc. <u>38</u> ) is DENIED.(Engle, Anita) (Main Document <u>65</u> replaced on 4/2/2019 due to technical issue.) (Engle, Anita). (Entered: 03/31/2019)
04/03/2019	<u>66</u>	NOTICE of Appearance by attorney STEPHANIE A. BRENNAN on behalf of Defendant TORRE JESSUP (BRENNAN, STEPHANIE) (Entered: 04/03/2019)
04/17/2019	<u>67</u>	NOTICE of Appearance by attorney IVY A. JOHNSON on behalf of Plaintiffs MARIE BONHOMME-DICKS, SETI JOHNSON, SHAREE SMOOT, NICHELLE YARBOROUGH (JOHNSON, IVY) (Entered: 04/17/2019)
04/17/2019	<u>68</u>	NOTICE OF WITHDRAWAL AND SUBSTITUTION OF COUNSEL on behalf of Plaintiffs MARIE BONHOMME-DICKS, SETI JOHNSON, SHAREE SMOOT, NICHELLE YARBOROUGH. IRENA COMO is substituted as counsel for Plaintiffs. Attorney CHRISTOPHER A. BROOK terminated. (COMO, IRENA) (Entered: 04/17/2019)
04/17/2019	<u>69</u>	NOTICE OF APPEAL as to <u>65</u> Order on Motion to Certify Class, Order on Motion for Preliminary Injunction, Order on Motion for Judgment on the Pleadings by MARIE BONHOMME-DICKS, SETI JOHNSON, SHAREE SMOOT, NICHELLE YARBOROUGH. Filing fee \$ 505, receipt number 0418-2552464. (GRAUNKE, KRISTI) (Entered: 04/17/2019)
04/18/2019	<u>70</u>	Electronic Transmission of Notice of Appeal and Docket Sheet to US Court of Appeals re <u>69</u> Notice of Appeal, (Taylor, Abby) (Main Document 70 replaced on 4/18/2019 for correction in text) (Taylor, Abby). Modified on 4/18/2019 (Taylor, Abby). (Entered: 04/18/2019)
04/19/2019	<u>71</u>	NOTICE of Docketing Record on Appeal from USCA re <u>69</u> Notice of Appeal, filed by NICHELLE YARBOROUGH, MARIE BONHOMME-DICKS, SHAREE SMOOT, SETI JOHNSON. USCA Case Number 19-1421. Case Manager: Emily Borneisen. (Taylor, Abby) (Entered: 04/19/2019)
04/22/2019	<u>72</u>	Joint MOTION to Stay <i>District Court Proceedings Pending Appeal</i> by MARIE BONHOMME-DICKS, SETI JOHNSON, SHAREE SMOOT, NICHELLE YARBOROUGH. Response to Motion due by 5/13/2019 (Attachments: # <u>1</u> Text of Proposed Order)(BROOKE, SAMUEL) (Entered: 04/22/2019)
04/23/2019		Motion Submitted to CHIEF JUDGE THOMAS D. SCHROEDER: <u>72</u> Joint MOTION to Stay <i>District Court Proceedings Pending Appeal</i> . (Engle, Anita) (Entered: 04/23/2019)
04/23/2019	<u>73</u>	<b>ORDER</b> signed by CHIEF JUDGE THOMAS D. SCHROEDER on 04/23/2019, that this action is STAYED pending a decision on Plaintiffs' appeal before the U.S. Court of Appeals for the Fourth Circuit and the parties' deadline to file a joint proposed Rule 26(f) report by April 24, 2019 and the parties' Initial Pretrial Conference on April 29, 2019 (see Doc. <u>58</u> ) is CANCELLED. FURTHER that the parties are to submit a joint status report to this court within 14 days of the Fourth Circuit's issuance of its mandate in connection with Plaintiff's appeal.(Taylor, Abby) (Entered: 04/23/2019)
04/25/2019		Case Stayed. (See <u>73</u> Order) (Engle, Anita) (Entered: 04/25/2019)
04/26/2019	<u>74</u>	***FILED IN ERROR*** TRANSCRIPT REQUEST by MARIE BONHOMME-DICKS, SETI JOHNSON, SHAREE SMOOT, NICHELLE YARBOROUGH for proceedings held on 3/13/19 before Judge Thomas Schroeder, re



		<u>69</u> Notice of Appeal, Transcript due by 5/28/2019. (BROOKE, SAMUEL) Modified on 4/29/2019 to mark filed in error. (Sheets, Jamie) (Entered: 04/26/2019)
05/09/2019	<u>75</u>	NOTICE OF WITHDRAWAL AND SUBSTITUTION OF COUNSEL on behalf of Plaintiffs MARIE BONHOMME-DICKS, SETI JOHNSON, SHAREE SMOOT, NICHELLE YARBOROUGH. EMILY E. SEAWELL is substituted as counsel for Plaintiffs. Attorney CRISTINA M. BECKER terminated. (SEAWELL, EMILY) (Entered: 05/09/2019)
07/02/2019	<u>76</u>	<p>Transcript of Proceedings held on 03/13/2019, before Judge Thomas D. Schroeder. Court Reporter Briana L. Bell, Telephone number 336-734-2514. Email: brinesbit@gmail.com. Transcript may be viewed at the court public terminal or purchased through the Court Reporter before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER.</p> <p><b>NOTICE RE: REDACTION OF TRANSCRIPTS: The parties have 5 business days to file a Notice of Intent to Request Redaction and 21 calendar days to file a Redaction Request. If no notice is filed, this transcript will be made electronically available to the public without redaction after 90 calendar days. Transcript may be viewed at the court public terminal or purchased through the court reporter before the 90 day deadline. After that date it may be obtained through PACER.</b></p> <p>Redaction Request due 7/26/2019. Redacted Transcript Deadline set for 8/5/2019. Release of Transcript Restriction set for 10/3/2019. (Bell, Briana) (Main Document 76 replaced on 7/19/2019) (Contreras, Jamie). (Entered: 07/02/2019)</p>

## DECLARATION OF SETI JOHNSON

1. My name is Seti Nyheem Hasaan Johnson, and I reside in Cabarrus County, North Carolina. I am competent to give this Declaration and have personal knowledge of the following facts.
2. I have struggled to keep work partly because my driver's license was revoked at least two times in the past because I was unable to pay my traffic tickets. When I am working, I put that income towards my family's needs.
3. I currently live with my mother because I cannot afford to pay rent in my own apartment.
4. I have a valid North Carolina driver's license. I rely on my license to go to work when I have a job, get food for my family, drive my children to school and daycare, and take my family to doctor's appointments.
5. In June or July 2017, I was pulled over by the police while driving. I was surprised when the police officer told me that my driver's license had been revoked for not paying old traffic tickets. The officer took my license from me on the spot and gave me a ticket for "DWLR not impaired" (i.e., driving while license revoked).
6. To try to get my driver's license back, I called the Cabarrus County District Court (the "District Court") to ask how to pay my fines and court costs on the old tickets. The District Court said my only option was to pay the unpaid fines and court costs and any late fees in full.
7. Instead of paying my rent, I paid more than \$700 in fines, court costs, and late fees to the District Court on the old tickets. My driver's license was later reinstated by the North Carolina Department of Motor Vehicles ("DMV"). In the meantime, I fell behind on my rent payments and eventually had to move in with my mom.
8. But before I could even come up with the more than \$700 to pay the District Court, I was issued another ticket for "DWLR not impaired" in September 2017.
9. When I appeared in the District Court on April 12, 2018, on the September DWLR ticket, the prosecutor reduced the charge to "failure to notify DMV of address change," which I was convicted of.
10. The District Court sentenced me to pay a \$100 fine and \$208 in court costs. But it did not give me any option to resolve the fine and costs besides paying the total \$308 to the court. It did not conduct a hearing to ask me about or decide my ability to pay the fine and costs.

11. The District Court gave me a Bill of Costs that states "total monies owed" are due "within 40 days" and that my license will be suspended if I do not pay in full.
12. The prosecutor, however, told me that I had to pay \$100 that day or my license would be revoked. Although I had just lost my job and had less than \$300 to my name, I scraped together \$100 to pay the court that day because I was afraid to lose my license again. However, because I did not pay the full \$308 that day, the court charged me an additional \$20 "installment plan and set up fee," even though the Bill of Costs says the entire amount is due within 40 days.
13. The remaining \$228 is due May 22, 2018, but I will not be able to pay it because I do not have the money and just secured a new job through a temp agency. I worry my driver's license will soon be revoked.
14. I hope to start working soon, but I do not believe I will be able to pay off the \$228 within sixty days of May 22 because I have a lot of unpaid bills that my first paychecks will need to go to, including an overdue mechanic bill for repairs to my truck so that I can pass inspection and get insurance, cell phone bill, and approximately \$2,000 in back rent. My children also have immediate needs like diapers, clothes, and shoes.
15. The DMV has not told me anything about how to keep my driver's license.
16. If my driver's license is revoked, I will not be able to drive to work, get food for my family, take my children to school and daycare, or take my family to doctor's appointments.
17. My license has been revoked approximately two other times for failure to pay traffic tickets that I could not pay by the due date because I did not have the money. The only option I was given to get my license back was to pay the tickets. I eventually paid off the tickets after the due dates and got my license back but struggled to make the payments, and had to sacrifice things like paying my rent, and buying necessities for myself and my children.
18. I am participating in this lawsuit to stop my driver's license from being revoked simply because I cannot pay my fine and court costs. I value taking care of my responsibilities. But that is hard to do when I am required to pay hundreds of dollars in fines and court costs, and my driver's license is revoked when I do not have the money to pay. I also want to help the people in my neighborhood and community, many of whom are repeatedly pulled over and ticketed, and have ended up in a similar situation as me. No one should have to live with the burden

of their license being revoked simply because they cannot pay off their traffic tickets.

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED this 16th day of May, 2018.

Seti Johnson

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Seti Nyheem Hasaan Johnson

### DECLARATION OF SHAREE SMOOT

1. My name is Sharee Smoot, and I reside in Cabarrus County, North Carolina. I am competent to give this Declaration and have personal knowledge of the following facts.
2. I currently live with my nine-year-old daughter and grandmother. In 2017, my daughter and I moved in with my grandmother because I could no longer afford to live on my own.
3. My driver's license is currently revoked because I am unable to pay the fines, penalties, and court costs for several old traffic tickets.
4. I currently work at a call center forty-five minutes away from my home. I do not have family members who can pick me up from, and drop me off at work. So I am forced to make the difficult choice of losing my job or driving on a revoked driver's license and risking more traffic tickets.
5. In 2016, I was issued a ticket for "DWLR NOT IMPAIRED REV" (i.e., driving while license revoked). When I appeared in the Cabarrus County District Court (the "District Court"), the prosecutor reduced the charge to "failure to notify DMV of address change," which I was convicted of.
6. The District Court sentenced me to pay about \$308. I could not afford to pay this. The Court did not give me any option to resolve the fine and court costs besides paying the \$308 in full. It did not conduct a hearing to ask me about or decide my ability to pay the fine and court costs.
7. I did not pay my fine and court costs within 40 days because I did not have the money. Because I did not pay within 40 days, I was also assessed a \$50 late fee.
8. Later that year, I received a revocation notice from the North Carolina Division of Motor Vehicles (the "DMV"). A true and correct copy of the notice is attached, as Attachment A. The notice did not tell me anything about how to avoid revocation, or how to get my driver's license back after revocation, except to "comply" with my citation.
9. I did not have the money to pay the fine, penalty, and court costs and stop the revocation of my driver's license by the date on the revocation notice:
10. Around the time the money was due, I was employed at a group home, where I earned \$9 per hour. I was also receiving Supplemental Nutrition Assistance Program ("SNAP") benefits.



11. Around that same that time, my mother and my daughter lived with me. I was responsible for paying the rent, utilities, a car note, car insurance, groceries, and necessities for me, my daughter, and mother. Between my SNAP benefits and the income from my work, I had just enough money to meet our needs.
12. I started receiving overtime at work and shortly afterwards, my SNAP benefits were cancelled. But my access to overtime did not last long and without SNAP benefits, I began having difficulty meeting my family's financial needs. I often had to choose between necessities, like paying the light bill or buying groceries.
13. I was also attending school part-time at the University of North Carolina-Charlotte. But I had to stop attending because I could not afford the cost of school and my family's bills on my limited income.
14. Because of my financial limits, I could not pay the fine, penalty, and court costs, and the DMV revoked my driver's license in 2016.
15. In 2017, I was issued another ticket for "DWLR NOT IMPAIRED REV" (i.e., driving while license revoked). Later that year, I appeared in District Court, was convicted, and ordered to pay about \$235. I could not afford to pay this.
16. The District Court did not give me any option to resolve the fine and court costs besides paying the \$235 in full. It did not conduct a hearing to ask me about or decide my ability to pay the fine and court costs.
17. I did not pay my fine and court costs within 40 days because I did not have the money. Because I did not pay within 40 days, I was also assessed a \$50 late fee. Later, an "outstanding order for arrest" was issued by the District Court for my failure to "comply with ordered payment." The Court also charged me a \$5 arrest fee.
18. I received a revocation notice from the DMV in 2018. A true and correct copy of the notice is attached, as Attachment B. The notice did not tell me anything about how to avoid revocation, or how to get my driver's license back after revocation, except to "comply" with my citation.
19. Around that time, I got behind on my car payments and my rent. As a result, my car was repossessed. Because I did not have transportation to work, I lost my job, and my daughter and I had to move in with my grandmother.
20. I did not have the money to pay the fine, penalty, and court costs and stop the revocation of my driver's license by the date on the revocation notice. As a result, the DMV once again revoked my driver's license in 2018 for failure to pay.

21. I need a driver's license to go to work, get food for my daughter, go to doctor's appointments, and attend church. Without a valid driver's license, I have been forced to make the difficult choice of staying home, losing my job, and not being able to take care of necessities for me, my daughter, and my grandmother, whose bills I also help pay, or continuing to drive illegally and risk more punishment.
22. I would pay my traffic fines, penalties, and court costs if I could, but I still do not have the money to pay.
23. I currently work at a call center. However, my work hours are not consistent and are often cut to less than 40 hours per week because the call center frequently has us leave early if incoming call volume is low.
24. I worry that without my driver's license, I will not be able to continue working and caring for my family, or will continue getting more tickets for driving without a valid license, because I need to drive to support and care for myself and my family.
25. I also received two other traffic tickets in 2016 and 2017. I knew I could not pay them, and so I did not go to court. I understand that as a result, my driver's license has also been revoked because of my failures to appear. I still do not have the money for those tickets, but if I am able to get the revocations for my failures to pay cleared, I will immediately appear in court for those failure to appear tickets, as I understand that would allow me to get those revocations lifted.
26. I am participating in this lawsuit so that I can get my driver's back. Having a revoked license has hindered me from moving forward in my life. It is my hope that this lawsuit will result in a clearer path for me, and others in a similar situation, to get our driver's licenses back. It is not fair for the DMV to revoke a person's license simply because she does not have enough money to pay for a traffic ticket. I want to help so that I, and the people in my community, do not have to choose between not working and caring for family, or driving illegally and risking more traffic tickets.

EXECUTED this 25th day of May, 2018.



Sharee Smoot

## **Attachment A**

Declaration of Sharee Smoot

JA16



LDLSSUS00300

08/01/2016

SHAREE ANTONETTE SMOOT

[REDACTED]  
CONCORD NC 28025-6033OFFICIAL NOTICE  
CUSTOMER NO. [REDACTED]

WE REGRET TO INFORM YOU THAT EFFECTIVE 12:01 A.M., 09/30/2016, YOUR NC DRIVING PRIVILEGE IS SCHEDULED FOR AN INDEFINITE SUSPENSION IN ACCORDANCE WITH GENERAL STATUTE 20-24.1 FOR FAILURE TO PAY FINE AS FOLLOWS:

VIOLATION DATE: 2016-04-20 CITATION NUMBER: 0309667F  
COURT: CABARRUS COUNTY COURT PHONE: (704)262-5500

UNFORTUNATELY THE DIVISION OF MOTOR VEHICLES CANNOT ACCEPT PAYMENTS FOR FINES AND COSTS IMPOSED BY THE COURTS. PLEASE CONTACT THE COURT ABOVE TO COMPLY WITH THIS CITATION.

NOTE: PLEASE COMPLY WITH THIS CITATION PRIOR TO THE EFFECTIVE DATE IN ORDER TO AVOID THIS SUSPENSION.

IF YOU HAVE NOT COMPLIED WITH THIS CITATION BY THE EFFECTIVE DATE OF THIS ORDER, YOU WILL NEED TO MAIL YOUR CURRENT NORTH CAROLINA DRIVER LICENSE, IF APPLICABLE, TO THE DIVISION. FAILURE TO DO SO MAY RESULT IN AN ADDITIONAL \$50.00 SERVICE FEE.

REINSTATEMENT PROCEDURES:

UPON COMPLIANCE WITH THIS CITATION, YOU MAY VISIT YOUR LOCAL DRIVER LICENSE OFFICE. AT SUCH TIME PROPER IDENTIFICATION AND PROOF OF AGE WILL BE NEEDED.

A RESTORATION FEE OF \$65.00 AND THE APPROPRIATE LICENSE FEES ARE NEEDED AND HAVE TO BE PAID AT THE TIME YOUR DRIVING PRIVILEGE IS REINSTATED.

THIS ORDER IS IN ADDITION TO AND DOES NOT SUPERSEDE ANY PRIOR ORDER ISSUED BY THE DMV. IF ADDITIONAL INFORMATION CONCERNING THIS ORDER IS NEEDED, PLEASE CONTACT A REPRESENTATIVE OF THE DIVISION AT (919)715-7000.

JEFFREY R. ZIMMERMAN, Ph.D.  
DIRECTOR OF PROCESSING SERVICES

JA17

## **Attachment B**

Declaration of Sharee Smoot

JA18

LDLSSUS00300

01/10/2018

SHAREE ANTONETTE SMOOT

[REDACTED]  
CONCORD NC 28025-6033

OFFICIAL NOTICE

CUSTOMER NO. [REDACTED]

WE REGRET TO INFORM YOU THAT EFFECTIVE 12:01 A.M., 03/11/2018, YOUR NC DRIVING PRIVILEGE IS SCHEDULED FOR AN INDEFINITE SUSPENSION IN ACCORDANCE WITH GENERAL STATUTE 20-24.1 FOR FAILURE TO PAY FINE AS FOLLOWS:

VIOLATION DATE: 2017-08-02 CITATION NUMBER: 04G82989  
COURT: CABARRUS COUNTY COURT PHONE: (704)262-5500

UNFORTUNATELY THE DIVISION OF MOTOR VEHICLES CANNOT ACCEPT PAYMENTS FOR FINES AND COSTS IMPOSED BY THE COURTS. PLEASE CONTACT THE COURT ABOVE TO COMPLY WITH THIS CITATION.

NOTE: PLEASE COMPLY WITH THIS CITATION PRIOR TO THE EFFECTIVE DATE IN ORDER TO AVOID THIS SUSPENSION.

IF YOU HAVE NOT COMPLIED WITH THIS CITATION BY THE EFFECTIVE DATE OF THIS ORDER, YOU WILL NEED TO MAIL YOUR CURRENT NORTH CAROLINA DRIVER LICENSE, IF APPLICABLE, TO THE DIVISION. FAILURE TO DO SO MAY RESULT IN AN ADDITIONAL \$50.00 SERVICE FEE.

REINSTATEMENT PROCEDURES:

UPON COMPLIANCE WITH THIS CITATION, YOU MAY VISIT YOUR LOCAL DRIVER LICENSE OFFICE. AT SUCH TIME PROPER IDENTIFICATION AND PROOF OF AGE WILL BE NEEDED.

A RESTORATION FEE OF \$65.00 AND THE APPROPRIATE LICENSE FEES ARE NEEDED AND HAVE TO BE PAID AT THE TIME YOUR DRIVING PRIVILEGE IS REINSTATED.

THIS ORDER IS IN ADDITION TO AND DOES NOT SUPERSEDE ANY PRIOR ORDER ISSUED BY THE DMV. IF ADDITIONAL INFORMATION CONCERNING THIS ORDER IS NEEDED, PLEASE CONTACT A REPRESENTATIVE OF THE DIVISION AT (919)715-7000.

DIRECTOR OF PROCESSING SERVICES

JA19

### Declaration of Samuel Brooke

I, Samuel Brooke, state as follows:

1. I am a Deputy Legal Director for the Southern Poverty Law Center (the “SPLC”) and am an attorney for Plaintiffs in this matter. I have knowledge of the facts contained herein.

2. I am admitted to practice in the States of Alabama, Mississippi, Connecticut, and New York; the U.S. Courts of Appeals for the Fourth, Fifth, Sixth, and Eleventh Circuits; the U.S. Supreme Court; and various District Courts. I earned my Juris Doctor Degree, *magna cum laude*, from New York University School of Law in 2006, and was admitted to practice law in the State of Connecticut the same year. Since fall 2008, I have worked as a Fellow/Attorney, Staff Attorney, Senior Staff Attorney, and Deputy Legal Director at SPLC. I also worked as a Staff Attorney for the American Civil Liberties Union Foundation of Connecticut from the fall of 2006 to the fall of 2007; as a Law Fellow with the American Civil Liberties Union Foundation of Alabama from the Fall of 2007 to the Fall of 2008, and clerked for the Honorable Judge Joan B. Gottschall, of the U.S. District Court for the Northern District of Illinois, from the fall of 2008 to the fall of 2009.

3. My colleague and co-counsel Emily Early earned her Juris Doctor degree from Howard University School of Law in 2010, and was admitted to practice law in the State of Georgia the same year and in the State of Alabama in 2017. She is admitted to practice in the U.S. Courts of Appeals for the Tenth and Eleventh Circuits, the Northern and Middle Districts of Georgia, the Eastern and Middle Districts of Louisiana, the Northern District of Alabama, and various other federal district courts. She has worked as

a staff attorney at the SPLC since Spring of 2016. Before joining SPLC, Ms. Early practiced commercial litigation with the law firm Baker Donelson Bearman Caldwell and Berkowitz, P.C., from Fall 2012 to Spring 2016. She also clerked for the Honorable Judge W. Louis Sands of the U.S. District Court for the Middle District of Georgia from Fall 2010 to Fall 2012.

4. My colleague and co-counsel Danielle Davis earned her Juris Doctor degree from Howard University School of Law in 2009, and was admitted to practice law in the State of Maryland the same year. She was admitted to practice law in the District of Columbia in 2010, and in the State of Louisiana in 2018. She has worked as a staff attorney at SPLC since Fall of 2017. Before joining SPLC, Ms. Davis practiced law at a civil rights non-profit, Advancement Project, from Fall 2015 to Summer 2017. She also practiced law as a two-year law fellow and later as an associate at the law firm of Mehri & Skalet PLLC. Ms. Davis also clerked for the Honorable Brian A. Jackson of the U.S. District Court for the Middle District of Louisiana and the Honorable Karen Wells Roby of the U.S. District Court for Eastern District of Louisiana.

5. My colleague and local counsel Kristi Graunke earned her Juris Doctor degree from Yale Law School in 2002. She was admitted to practice law in Georgia in 2003 and North Carolina in 2016. She is a member of the bar of all federal district courts in Georgia and North Carolina, the U.S. District Court for the Northern District of Florida, and the bar of the U.S. Courts of Appeals for the Fourth, Fifth, Sixth, Eighth, Ninth, and Eleventh Circuits. From 2002-2003, she clerked for Judge Marsha S. Berzon of the United States Court of Appeals for the Ninth Circuit. From 2003 to 2005, she worked as a

fellowship attorney at the Farmworker Division of Georgia Legal Services. In 2005, she joined SPLC a staff attorney. She was promoted to senior staff attorney in 2009, and promoted again to senior supervising attorney in 2011.

6. My co-counsel, Nusrat Choudhury, is a senior staff attorney in the American Civil Liberties Union Foundation (“ACLU”) Racial Justice Program. Ms. Choudhury earned her Juris Doctor degree from Yale Law School in 2006 and was admitted to practice law in the State of New York in 2008. She is admitted to practice in the following federal courts: the U.S. District Courts for the Southern District of New York, the Eastern District of New York, and the Eastern District of Wisconsin; the U.S. Courts of Appeals for the Third, Sixth, and Ninth Circuits; and the United States Supreme Court. From 2006 to 2007, Ms. Choudhury served as a law clerk to the Honorable Denis Cote in the U.S. District Court for the Southern District of New York. From 2007 to 2008, she served as a law clerk to the Honorable Barrington D. Parker of the U.S. Court of Appeals for the Second Circuit. Since fall 2008, Ms. Choudhury has worked at the ACLU as a Marvin M. Karpatkin Fellow/Attorney, Staff Attorney, and Senior Staff Attorney.

7. My co-counsel, R. Orion Danjuma, is a staff attorney in the ACLU Racial Justice Program. Mr. Danjuma earned his Juris Doctor degree from Stanford Law School in 2010 and was admitted to practice law in the State of New York in 2011 and in the State of California in 2013. He is admitted to practice in the following federal courts: the U.S. District Courts for the Eastern District of Michigan, Central District of California, and Southern District of New York; the U.S. Courts of Appeals for the First, Seventh, Ninth, and Tenth Circuits; and the United States Supreme Court. From 2010 to 2011, Mr.

Danjuma served as a law clerk to the Honorable Myron H. Thompson in the U.S. District Court for the Middle District of Alabama. From 2011 to 2012, he worked as a law clerk to the Honorable Ann Claire Williams in the U.S. Court of Appeals for the Seventh Circuit. From 2012 to 2014, Mr. Danjuma was a Skadden Fellow with the ACLU Immigrants' Rights Project. From 2014 to 2015, he worked as an associate at Emery Celli Brinckerhoff & Abady LLP in New York City. Since 2015, Mr. Danjuma has worked as a staff attorney at the ACLU.

8. My co-counsel, Christopher A. Brook, has served as the Legal Director of the ACLU of North Carolina since 2012. Mr. Brook earned his Juris Doctor degree from the University of North Carolina at Chapel Hill in 2005 and was admitted to practice law in the State of North Carolina that same year. He is admitted to practice in the following federal courts: the U.S. District Courts for the Eastern, Middle and Western Districts of North Carolina; the U.S. Court of Appeals for the Fourth Circuit; and the United States Supreme Court. From 2005 to 2008, Mr. Brook worked as an associate at the Raleigh, North Carolina law firm of Cranfill, Sumner and Hartzog. From 2008 to 2012, he was a staff attorney at the Southern Coalition for Social Justice in Durham, North Carolina.

9. My co-counsel, Cristina Becker, has worked as the Criminal Justice Debt Fellow at the ACLU of North Carolina since 2016. Ms. Becker earned her Juris Doctor degree from Washington and Lee University School of Law in 2013 and was admitted to practice law in the State of North Carolina in 2014. She is admitted to practice in the U.S. District Court for the Middle District of North Carolina. From 2013 to 2016, Ms. Becker

was an Assistant Public Defender for the State of North Carolina 26th Defender District in Charlotte.

10. My co-counsel, Sneha Shah, has worked a Staff Attorney at the ACLU of North Carolina since 2018. Ms. Shah earned her Juris Doctor degree from Duke University in 2014. She was admitted to practice law in the State of New York in 2015. From 2014 to 2015, she was the Exploitation Intervention Project Law Fellow at the Legal Aid Society of New York. From 2015 to 2018, she was a Staff Attorney at the Center for Family Representation in Queens, New York.

11. During my time with SPLC, I have served as lead counsel or co-counsel for my firm on federal civil rights cases brought by plaintiffs challenging state laws and policies or practices in Alabama, Georgia, Louisiana, Tennessee, South Carolina, and California. This work includes challenges to various practices related to collection of fees and fines without a proper ability to pay assessment in cases captioned Cook v. Black, No. 2:16-cv-11024 (E.D. La. filed June 21, 2016) (class-wide injunctive and damages claims settled), in which Ms. Early was also class counsel; Foster v. City of Alexander City, No. 3:15-cv-00647 (M.D. Ala. filed 2015) (injunctive and class-wide damages claim settled and approved by court); and Cleveland v. City of Montgomery, No. 2:13-cv-00732 (M.D. Ala.) (declaratory claims settled). I also served as lead counsel in a challenge to the use of private probation companies in relation to the operation of municipal courts, in a case captioned Reynolds v. Judicial Correction Services, Inc., No. 2:15-cv-00161 (M.D. Ala.) (settled). I am also counsel in two federal putative class actions challenging the post-arrest detention processes of two state court systems in Alabama, in cases captioned Edwards v.



Cofield, et al., No. 3:17-cv-00321 (M.D. Ala. filed May 18, 2017) and Schultz v. Alabama., No. 5:17-cv-270 (N.D. Ala., motion to intervene granted Mar. 8, 2018 on behalf of plaintiff-intervenor Mr. Hester).

12. I am lead class counsel for a certified class under Rule 23(b)(2) in the matter of Wilson v. Gordon, No. 3:14-CV-01492, 2014 WL 4347585 (M.D. Tenn. Sept. 2, 2014), in which my colleague Ms. Early is also class counsel. Along with another SPLC colleague, I was also lead class counsel for the Rule 23(b)(3) settlement class in the Foster matter. I have also served as class counsel for a certified class under Rule 23(b)(3) in the matter of Mairi Nunag Tanedo, et al. v. East Baton Rouge Parish School Board, et al., No. 8:10-cv-01172 (C.D. Cal. Dec. 12, 2011) (Dkt. No. 232), under the direction of James Knoepp, who is my colleague and was at the time my supervisor at SPLC, and was the lead attorney on the Nunag Tanedo matter. I have also been lead counsel in three cases where certification was sought under Rule 23(b)(2), but these cases were resolved without the need for a ruling on the class certification motions. See Cent. Ala. Fair Housing Ctr., et al. v. Magee, et al., No. 11-cv-982 (M.D. Ala.); Charlene Loder v. Reese McKinney, Jr., No. 11-cv-979 (M.D. Ala.), Reynolds v. Judicial Correction Services, Inc., No. 2:15-cv-00161 (M.D. Ala.).

13. Ms. Early also serves as co-counsel in Harper, et al. v. City of Gardendale, et al. 2:17-CV-1791 (N.D. Ala. 2017)—which originally sought certification of a Rule 23(b)(2) class of persons challenging unconstitutional private probation practices that was resolved through settlement and which currently seeks certification of a Rule 23(b)(3) class, and Ayo, et al. v. Dunn, et al., No. 3:17-cv-526 (M.D. Ala. 2016), which seeks

certification of a Rule 23(b)(3) class of persons challenging unconstitutional pre-trial supervision practices.

14. My firm, SPLC, has been deemed adequate class counsel in more than twenty cases, including: Alexander v. Sandoval, 532 U.S. 275 (2001); Paradise v. Allen, 480 U.S. 149 (1987); Dothard v. Rawlinson, 433 U.S. 321 (1977); Rosiles-Perez v. Superior Forestry Serv., 250 F.R.D. 332 (M.D. Tenn. 2008); Escolastico De Leon-Granados v. Eller & Sons Trees, 2006 U.S. Dist. LEXIS 73781 (N.D. Ga., Sept. 28, 2006); Recinos-Recinos v. Express Forestry, Inc., 233 F.R.D. 472 (E.D. La. 2006); and Salinas-Rodriguez v. Alpha Services, LLC, No. 3:05 CV 440 WHB-AGN (S.D. Miss. 2005); Gaddis v. Campbell, 03-T-390-N (M.D. Ala. 2003); Baker v. Campbell, CV-03-1114-M (N.D. Ala. 2003); S.S. v. Wood, No. 01-M-224-N (M.D. Ala. 2001); Brown v. James, No. 98-T-663-N (M.D. Ala. 1998); Austin v. James, 15 F.Supp.2d 1220 (M.D. Ala. 1998); Harris v. James, 94-1422-N (M.D. Ala. 1994); Southern Christian Leadership Conference v. Evans, 785 F.Supp. 1469 (M.D. Ala. 1992); Bradley v. Haley, No. 92-A-70-N (M.D. Ala. 1992); R.C. v. Fuller, 88-D-1170-N (M.D. Ala. 1988); Nowak v. Foster, 84-0057-P (W.D. Ky. 1984); Pugh v. Locke, 559 F.2d 283 (11<sup>th</sup> Cir. 1977); Smith v. YMCA, 462 F.2d 634 (5<sup>th</sup> Cir. 1972); Wyatt v. Sawyer, CV-70-3195 (M.D. Ala. 1970); Nixon v. Brewer, CV-3017-N (M.D. Ala. 1970). I was not counsel in these cases, but many of my colleagues at SPLC were, and these colleagues remain available to consult and assist as needed.

15. Ms. Choudhury of the ACLU has served as lead counsel or co-counsel on federal civil rights cases brought by plaintiffs challenging federal policies and practices, as well as state and local laws and policies or practices in Georgia, Mississippi, New York,

South Carolina, Washington, and Wisconsin. This work includes challenges to various practices related to collection of court-imposed fees and fines without a proper ability to pay assessment in cases captioned: Fuentes v. Benton County, Washington, No. 15-2-02976-1 (Yakima County Super. Ct., filed Wash. Oct. 5, 2016) (class-wide prospective-relief and damages claims settled and approved by court); Brown v. Lexington County, No. 3:17-cv-01426-MBS-SVH (D.S.C., filed Jun. 1, 2017) (proposed class action for prospective relief and damages); Kennedy v. Biloxi, No. 1:15-cv-348 (S.D. Miss., filed Oct. 21, 2015) (proposed class action, prospective-relief and damages claims settled); and Thompson v. DeKalb County, Georgia, No. 15-cv-00280 (N.D. Ga., filed Jan. 29, 2015) (damages claims settled). Ms. Choudhury is also currently a lead counsel in Collins v. City of Milwaukee, No. 2:17-cv-00234-KPS-DEJ (E.D. Wis., filed Feb. 20, 2017), an ongoing, putative class action lawsuit in federal court challenging unlawful stops and frisks by Milwaukee police.

16. Ms. Choudhury currently serves as class counsel for two classes certified under Rule 23(b)(2) in Fuentes v. Benton County, Washington, No. 15-2-02976-1 (Yakima County Super. Ct., Wash. Oct. 5, 2016). She also currently serves as lead counsel in two matters in which class certification has been sought and remains pending. See Brown v. Lexington County, No. 3:17-cv-01426-MBS-SVH (D.S.C., filed Jun. 1, 2017); and Collins v. City of Milwaukee, No. 2:17-cv-00234-KPS-DEJ (E.D. Wis., filed Feb. 20, 2017). Ms. Choudhury has served as lead counsel in one case where certification was sought under Rule 23(b)(2), but the case was resolved without the need for a ruling on the class

certification motions. See Kennedy v. Biloxi, No. 1:15-cv-348 (S.D. Miss., filed Oct. 21, 2015).

17. Mr. Danjuma has served as counsel in federal civil rights cases brought by plaintiffs challenging federal policies and practices, as well as state or local laws, policies, and practices in Arizona, Nebraska, Rhode Island, California, New York, Kansas, Arkansas, and Kentucky. He has worked on Dade v. City of Sherwood, Arkansas, No. 4:16-CV-602 (E.D. Ark. Aug. 23, 2016), a proposed class-action lawsuit challenging practices related to collection of court-imposed fees and fines without a proper ability to pay assessment.

18. Mr. Danjuma has served as counsel for certified or proposed classes in the following actions: Fish v. Kobach, Case No. 16-2105-JAR-JPO (D. Kan. 2016); Roy v. Cty. of Los Angeles, No. CV1209012, 2016 WL 5219468 (C.D. Cal. Sept. 9, 2016) (consolidated with Gonzalez v. Immigration & Customs Enf't, No. 13-cv-04416-BRO-FFM).

19. The ACLU has been deemed adequate class counsel in numerous cases, including: Fuentes v. Benton County, Washington, No. 15-2-02976-1 (Yakima County Super. Ct., Wash. Oct. 5, 2016); Roy v. Cty. of Los Angeles, No. CV1209012, 2016 WL 5219468 (C.D. Cal. Sept. 9, 2016); Ortega-Melendres v. Arpaio, 836 F. Supp. 2d 959, 989–90 (D. Ariz. 2011). Ms. Choudhury and Mr. Danjuma were counsel in all of these cases with the exception of Ortega-Melendres, and they are able to consult to colleagues who litigated that lawsuit as needed.

20. The SPLC has significant experience related to the constitutionality of statutes that revoke or suspend licenses due to a failure to pay fees or fines. As noted above, we are currently litigating similar issues related to other practices to collect unpaid fees and fines, and although we are not actively litigating another license suspension case, I negotiated a settlement with the State of Mississippi on this same issue, which was resolved without litigation and resulted in the State of Mississippi agreeing to cease suspending licenses for non-payment where no pre-deprivation willfulness hearing was conducted. The State of Mississippi is also restoring licenses previously suspended where no such hearing was conducted.

21. The ACLU also has significant experience related to the constitutionality of statutes that revoke or suspend licenses due to a failure to pay fees or fines. Ms. Choudhury and Mr. Danjuma are currently investigating constitutional violations stemming from state practices that involve the widespread revocation of driver's licenses to collect unpaid court fees and fines in states other than North Carolina. Ms. Choudhury and Mr. Danjuma are currently developing litigation and advocacy to challenge such practices and advise state affiliates of the ACLU on how to counter such practices through litigation and legislative and policy advocacy.

22. The SPLC, ACLU, ACLU-NC, and SCSJ have spent substantial time and effort to investigate this case and to understand how N.C.G.S. §§ 20-24.1 and 20-24.2 operate and are implemented by the state courts and the North Carolina Division of Motor Vehicles ("DMV"). This includes reviewing court and DMV records, observing court

proceedings, and speaking with court personnel and court defendants about court and DMV practices.

23. The SPLC, along with the American Civil Liberties Union, American Civil Liberties Union of North Carolina, and Southern Coalition for Social Justice, have sufficient funds available to litigate this case. Plaintiffs' counsel have paid for all costs associated with this litigation to date, and will continue to do so.

24. Attached as **Exhibit A** is a true and correct copy of the United States Census Bureau's website *Quick Facts North Carolina*, as it was accessed on May 29, 2018. This exhibit is also available at <https://www.census.gov/quickfacts/NC>.

25. Attached as **Exhibit B** is a true and correct copy of the web version of Alana Samuel's June 15, 2016 article in *The Atlantic* entitled "No Driver's License, No Job." This exhibit is also available at <https://goo.gl/xQjyLj>.

26. Attached as **Exhibit C** is a true and correct copy of a 2016 report prepared by Stephen Bingham and colleagues for Back On The Road California entitled "Stopped, Fined, Arrested: Racial Bias in Policing and Traffic Courts in California." This exhibit is also available at <https://goo.gl/uLhFfL>.

27. Attached as **Exhibit D** is a true and correct copy of the United States Department of Transportation Bureau of Transportation Statistics publication "NORTH CAROLINA Transportation by the Numbers," published in 2016. This exhibit is also available at <https://goo.gl/eM6NWy>.

28. Attached as **Exhibit E** is a true and correct copy of a November 2012 article by Tazra Mitchell entitled "Connecting Workers to Jobs Through Reliable and Accessible

Public Transport,” part of a “Policy & Progress” series produced by the North Carolina Justice Center. This exhibit is also available at <https://goo.gl/qOF0S>.

29. Attached as **Exhibit F** is a true and correct copy of a 2012 Southern Environmental Law Center report, “Beyond the Bypass: Addressing Rural North Carolinians Most Important Transportation Needs,” prepared by Chandra T. Taylor and J. David Farren. This exhibit is also available at <https://goo.gl/nUVHjG>.

30. Attached as **Exhibit G** is a true and correct copy of the American Association of Motor Vehicle Administrators’ 2013 publication “Best Practices Guide to Reducing Suspended Drivers.” This exhibit is also available at <https://goo.gl/2jtka7>.

31. Attached as **Exhibit H** is a true and correct copy of the Statement of Interest of the United States filed in *Stinnie v. Holcomb*, No. 3:16-cv-00044 (W.D. Va. Nov. 7, 2016). This exhibit is also available at <https://goo.gl/vQWoLY>.

32. Attached as **Exhibit I** is a true and correct copy of an email dated September 26, 2017, from John Brockwell, Communications Director, North Carolina Department of Transportation Division of Motor Vehicles, with subject line “failure to pay.”

I swear under penalty of perjury that the information in this affidavit is true to the best of my memory, knowledge and belief.

EXECUTED on May 30, 2018.



---

Samuel Brooke

## **Exhibit A**

Declaration of Samuel Brooke

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**QuickFacts**  
North Carolina

QuickFacts provides statistics for all states and counties, and for cities and towns with a *population of 5,000 or more*.

**Table**

All Topics	North Carolina
<b>Population estimates, July 1, 2017, (V2017)</b>	<b>10,273,419</b>
<b>PEOPLE</b>	
<b>Population</b>	
<b>Population estimates, July 1, 2017, (V2017)</b>	<b>10,273,419</b>
Population estimates, July 1, 2016, (V2016)	10,146,788
Population estimates base, April 1, 2010, (V2017)	9,535,721
Population estimates base, April 1, 2010, (V2016)	9,535,688
Population, percent change - April 1, 2010 (estimates base) to July 1, 2017, (V2017)	7.7%
Population, percent change - April 1, 2010 (estimates base) to July 1, 2016, (V2016)	6.4%
Population, Census, April 1, 2010	9,535,483
<b>Age and Sex</b>	
Persons under 5 years, percent	▲ 6.0%
Persons under 18 years, percent	▲ 22.7%
Persons 65 years and over, percent	▲ 15.5%
Female persons, percent	▲ 51.4%
<b>Race and Hispanic Origin</b>	
White alone, percent (a)	▲ 71.0%
Black or African American alone, percent (a)	▲ 22.2%
American Indian and Alaska Native alone, percent (a)	▲ 1.6%
Asian alone, percent (a)	▲ 2.9%
Native Hawaiian and Other Pacific Islander alone, percent (a)	▲ 0.1%
Two or More Races, percent	▲ 2.2%
Hispanic or Latino, percent (b)	▲ 9.2%
White alone, not Hispanic or Latino, percent	▲ 63.5%
<b>Population Characteristics</b>	
Veterans, 2012-2016	683,221
Foreign born persons, percent, 2012-2016	7.7%

Is this page helpful? **X**

Yes No

**Housing**

Housing units, July 1, 2017, (V2017)	4,622,575
Owner-occupied housing unit rate, 2012-2016	64.8%
Median value of owner-occupied housing units, 2012-2016	\$157,100
Median selected monthly owner costs -with a mortgage, 2012-2016	\$1,243
Median selected monthly owner costs -without a mortgage, 2012-2016	\$376
Median gross rent, 2012-2016	\$816
Building permits, 2017	67,047

**Families & Living Arrangements**

Households, 2012-2016	3,815,392
Persons per household, 2012-2016	2.54
Living in same house 1 year ago, percent of persons age 1 year+, 2012-2016	84.7%
Language other than English spoken at home, percent of persons age 5 years+, 2012-2016	11.3%

**Education**

High school graduate or higher, percent of persons age 25 years+, 2012-2016	86.3%
Bachelor's degree or higher, percent of persons age 25 years+, 2012-2016	29.0%

**Health**

With a disability, under age 65 years, percent, 2012-2016	9.7%
Persons without health insurance, under age 65 years, percent	▲ 12.2%

**Economy**

In civilian labor force, total, percent of population age 16 years+, 2012-2016	61.5%
In civilian labor force, female, percent of population age 16 years+, 2012-2016	57.4%
Total accommodation and food services sales, 2012 (\$1,000) (c)	18,622,258
Total health care and social assistance receipts/revenue, 2012 (\$1,000) (c)	55,227,505
Total manufacturers shipments, 2012 (\$1,000) (c)	202,344,646
Total merchant wholesaler sales, 2012 (\$1,000) (c)	105,275,586
Total retail sales, 2012 (\$1,000) (c)	120,691,007
Total retail sales per capita, 2012 (c)	\$12,376

**Transportation**

Mean travel time to work (minutes), workers age 16 years+, 2012-2016	24.1
--	------

**Income & Poverty**

Median household income (in 2016 dollars), 2012-2016	\$48,256
Per capita income in past 12 months (in 2016 dollars), 2012-2016	\$26,779
Persons in poverty, percent	▲ 15.4%

**BUSINESSES****Businesses**

Total employer establishments, 2016	227,347 <sup>1</sup>
Total employment, 2016	3,794,926 <sup>1</sup>
Total annual payroll, 2016 (\$1,000)	170,980,033 <sup>1</sup>


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Total employment, percent change, 2015-2016	3.4% <sup>1</sup>
Total nonemployer establishments, 2015	722,639
All firms, 2012	805,985
Men-owned firms, 2012	435,677
Women-owned firms, 2012	287,058
Minority-owned firms, 2012	183,380
Nonminority-owned firms, 2012	603,182
Veteran-owned firms, 2012	86,571
Nonveteran-owned firms, 2012	684,743
 <b>GEOGRAPHY</b>	
<b>Geography</b>	
Population per square mile, 2010	196.1
Land area in square miles, 2010	48,617.91
FIPS Code	37

**Value Notes**

- 1. Includes data not distributed by county.

▲ Estimates are not comparable to other geographic levels due to methodology differences that may exist between different data sources. Some estimates presented here come from sample data, and thus have sampling errors that may render some apparent differences between geographies statistically indistinguishable. Click the Quick Info  icon to the left of each row in TABLE view to learn about sampling error.

The vintage year (e.g., V2017) refers to the final year of the series (2010 thru 2017). *Different vintage years of estimates are not comparable.*

**Fact Notes**

- (a) Includes persons reporting only one race
- (b) Hispanics may be of any race, so also are included in applicable race categories
- (c) Economic Census - Puerto Rico data are not comparable to U.S. Economic Census data

**Value Flags**

- Either no or too few sample observations were available to compute an estimate, or a ratio of medians cannot be calculated because one or both of the median estimates falls in the lowest or upper interval of an open ended distribution.
- D** Suppressed to avoid disclosure of confidential information
- F** Fewer than 25 firms
- FN** Footnote on this item in place of data
- NA** Not available
- S** Suppressed; does not meet publication standards
- X** Not applicable
- Z** Value greater than zero but less than half unit of measure shown

QuickFacts data are derived from: Population Estimates, American Community Survey, Census of Population and Housing, Current Population Survey, Small Area Health Insurance Estimates, Small Area Income and Poverty Estimates, State and County Housing Unit Estimates, County Business Patterns, Nonemployer Statistics, Economic Census, Survey of Business Owners, Building Permits.

## **Exhibit B**

Declaration of Samuel Brooke

JA37

# The Atlantic

## No Driver's License, No Job

For years, conservative policymakers have urged those in need to get work. But for those without driver's licenses—who are by and large people of color—that's not such an easy task.



Paul Sancya / AP

ALANA SEMUELS

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MILWAUKEE—Ask conservatives what the poor need to do to get out of poverty, and the answer usually involves something like, “Get a job.” That was the crux of the anti-poverty plan Paul Ryan [revealed last week](#) to shrugs, and has been the gist of [many anti-poverty](#) efforts over the past two decades.

But for many people, there is one very specific—and often overlooked—reason why that's not so easy: They don't have a driver's license.

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Not all jobs require a driver's license, particularly those that pay very low wages. But having one is a very common requirement for the sorts of job that can actually lift people out of poverty—those in construction, manufacturing, security, and unions jobs including electricians and plumbers, says Mark Kessenich, who runs WRTP Big Step, a Milwaukee center that trains low-income workers to enter jobs in construction and manufacturing that pay a starting wage of \$15 and up.

“Not having driver's license and access to reliable transportation is a big issue for us with the industries—utilities, construction, manufacturing,” he told me.

Sometimes, licenses are required because employers know the jobs will be at sites across a region, and need employees to be able to get there reliably and on time. Other times, licenses are required because employees may need to move cars—a listing for an auto detailer requires a license, for example—or move trucks, at construction sites.

Other times, though, the reasons for requiring a driver's license are a little harder to understand. A quick scan of jobs listed in Milwaukee's Craigslist emphasizes the point. Valid driver's licenses are a prerequisite for positions including a [retail security officer](#) (pay \$10.55 an hour), a [caregiver](#) for the disabled (\$10 an hour), an [eye-care associate](#), an [administrative assistant](#), and a [deli clerk](#). Licenses, to employers, signal responsibility.

“These days, positions use a driver's license as a proxy for whether you're employable,” says Julie Kerksick, who is a senior policy advocate at Public Policy Institute of Community Advocates in Milwaukee. “It means that there's fewer and fewer people in the pool of unemployed who can actually qualify.”

Driver's license requirements affect many low-income people trying to get into the labor market. But they disproportionately affect people of color. That's both because minorities are much less likely to have driver's licenses in the first place and, advocates say, they are also more likely to have their licenses taken away.

The result is that many minority job-seekers are disqualified before they even send in an application. According to the Employment and Training Institute at the

University of Wisconsin-Milwaukee, 75 percent of white 18-year-olds in Wisconsin had driver's licenses as of January 1, 2016, while just 34 percent of African Americans 18-year-olds did and 33 percent of Hispanics of that age did. (ETI only tracked 18-year-olds because that is the group whose they were able to access.)

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**“What we’re doing is making driver’s licensing about whether you can pay a fine based on middle-class incomes, not because of how well you drive.”**

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Why do so many minorities lack licenses? Nationally, many public schools don't offer driver's education courses as part of the curriculum, and the fees for private lessons are prohibitively high for low-income families. Today, just 15 percent of eligible students take driver's ed at school, compared to 95 percent in the 1970s, yet most states require students to take a course before they take their driving test. In 2004 Wisconsin cut its funding for high-school driver's ed because of the state's fiscal concerns. Many people living in poverty or near poverty don't have a car to practice on and fail their tests. But the biggest problem, civil-rights activists say, is that the poor frequently get their licenses revoked for failing to pay tickets for minor infractions.

For instance, in Wisconsin, failing to pay a traffic ticket—even for something small like a burnt-out taillight—can mean a 12-month license suspension. That's much longer than the half-month suspension a person would get for speeding 25 miles-per-hour-or-more over the limit, or the six months someone would receive if he or she got a ticket for reckless driving. In fact, 60 percent of license suspensions in Wisconsin are for “failure to pay forfeitures”—not paying a traffic ticket—rather than for unsafe driving itself.

**For obvious reasons, this means that poor people get their licenses suspended much more often than those with means, as they don't have the cash to pay a parking ticket, said Molly Gena, an attorney with Legal Action of Wisconsin. Sometimes, police issue a number of tickets at a traffic stop—for drivers that don't have their insurance information on them and who also have a headlight out, for example—and drivers can't pay the sum of the tickets.**

“What we're doing is making driver's licensing about whether you can pay a fine based on middle-class incomes, not because of how well you drive,” says Nichole Yunk-Todd, who is the director of policy and research for Wisconsin Community Services, a group that advocates for the poor.

It's not just finding a job that becomes more difficult without a driver's license. Without a license (and access to a car), families often struggle to get to good grocery stores, they can't, in some states, even [vote in elections](#).

Sometimes, license suspension isn't about driving at all. In Milwaukee, adolescents can have their licenses suspended before they even get them if they fail to pay

citations for things like violating curfew (Milwaukee has a legally enforced curfew for people under the age of 17) or disorderly conduct. Between 2008 and 2011, more than 3,055 people under the age of 18 were issued suspensions for failing to pay court fees and forfeitures, according to the [Employment and Training Institute](#). Statewide, young black males had 10 times as many failures to pay forfeiture suspensions as whites.

The results are skewed heavily by race. “This is the situation as young people reach adulthood: The majority of whites in the state have a driver’s license, and the majority of African Americans do not,” said Lois Quinn, a researcher at the Employment and Training Institute. In Milwaukee, where the sheriff, David A. Clarke Jr., is an African American and vocal [Trump supporter](#), a black driver is seven times as likely to be stopped by police as a white driver, according to [an investigation](#) by the *Milwaukee Journal-Sentinel*. “There are a million and one different traffic infractions that a police officer could lawfully pull you over for,” said Jason Williamson, a senior staff attorney with the American Civil Liberties Union’s Criminal Law Reform Project.

“Our broken-windows enforcement is stopping cars,” Quinn said, referring to the policing approach in which police aggressively pursue small, public infractions.

The Milwaukee Police Department focuses its efforts on the areas with the highest crime, and those areas are the ones with the highest concentration of African Americans, said Timothy Gauerke, a police spokesman. Research shows that traffic stops reduce crime, he said. And not everybody who is stopped is issued a citation—citations were issued in just 17 percent of traffic stops citywide last year, he said.

Racial profiling extends far beyond Milwaukee. “This is happening by and large in communities of color and happening to people who don’t necessarily have the income to pay those tickets,” Williamson said. In every jurisdiction the ACLU has investigated, a disproportionate number of people of color are being stopped, according to Williamson.

Milwaukee Sheriff David Clarke Jr. testifies on Capitol Hill (Jacquelyn Martin / AP)

In many cases, “it becomes this cycle of poverty, you lose your license because you couldn’t pay the ticket, and you can’t get a job because you don’t have a license,” says Gena, the Legal Action attorney. She says suspensions of licenses related to poverty should be eliminated completely. If the state is going to suspend a driver’s license, she says, it should do so because a person is a danger on the roads.

Some states have made it harder to take away licenses for violations unrelated to driving. In Wisconsin in 2010, it became law that municipal courts allow low-income, indigent defendants the opportunity to get on a reasonable payment plan based on their income, according to Yunk-Todd. But oftentimes, the amount required in the payment plan is still a challenge. At least [seven states](#) have dropped mandatory driver’s license suspensions for minor drug-related offenses. Idaho is revisiting a law that charges people with a crime for driving with a suspended license, according to Williamson. And in Wisconsin recently, after years of advocacy, the state passed a law saying that failure to pay traffic tickets would lead to license suspensions for 12 months, rather than 24.

Yunk-Todd says that advocates wanted to lower the duration even further, but that wasn't palatable for Wisconsin's conservative legislature. It's ironic, then, that Wisconsin was one of the [first states](#) to emphasize getting a job as a solution for poverty, but the state and others like it are, in some ways, standing in the way of the poor doing just that.

“We can spend all our time talking about and debating anti-poverty programs,” Yunk-Todd said, “But often it comes down to these policies that need to be fixed.”

#### ABOUT THE AUTHOR

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**ALANA SEMUELS** is a staff writer at *The Atlantic*. She was previously a national correspondent for the *Los Angeles Times*.

 [Twitter](#)



## **Exhibit C**

Declaration of Samuel Brooke

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# ACTION TAKEN

<input type="checkbox"/>	Suspended	<input type="checkbox"/>	Revoked
<input type="checkbox"/>	Suspended	<input type="checkbox"/>	Revoked
<input type="checkbox"/>	Suspended	<input type="checkbox"/>	Revoked

# STOPPED, FINED, ARRESTED

## Racial Bias in Policing and Traffic Courts in California



# Acknowledgements

## Contributors

**Stephen Bingham,**  
*Staff Attorney, Bay Area Legal Aid, retired*

**Mari Castaldi,**  
*Program Coordinator, EBCLC*

**Elisa Della-Piana,**  
*Legal Director, LCCR*

**Meredith Desautels,**  
*Staff Attorney, LCCR*

**Antionette Dozier,**  
*Senior Attorney, WCLP*

**Kristina Harootun,**  
*Ford Foundation Fellow, LCCR*

**Michael Herald,**  
*Policy Advocate, WCLP*

**Dana Isaac,**  
*Thurgood Marshall Fellow, LCCR*

**Alex Kaplan,**  
*Law and Public Policy Student, EBCLC*

**Brittany Stonesifer,**  
*Staff Attorney, LSPC*

**Theresa Zhen,**  
*Skadden Fellow, ANWOL*

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Building Men of Color  
Contra Costa County  
Public Defender

Debt Free SF  
Voices for Civil Justice

Mercy Albaran  
Ashley Artmann  
Cynthia Anderson Barker  
Melissa Colon  
Bo Ericsson  
Sofia Espinoza  
Meredith Fenton

Stephanie Flores  
Anisha Gandhi  
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All the clients and advocates  
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# Executive Summary

Across the country, low-income people who commit minor offenses are saddled with fines, fees and penalties that pile up, driving them deeper into poverty. What's worse, they are arrested and jailed for nonpayment, increasing the risk of losing their jobs or their homes.

*Stopped, Fined, Arrested - Racial Bias in Policing and Traffic Courts in California* brings to light a disturbing truth that remains ever present in the lives of Californians: **there are dramatic racial and socioeconomic disparities in driver's license suspensions and arrests related to unpaid traffic fines and fees.**

Public records from the California Department of Motor Vehicles and U.S. Census data demonstrate that in primarily Black and Latino communities, driver's license suspension rates range as high as five times the state average. Moreover, data collected from 15 police and sheriff's departments across California show that Black motorists are far more likely to be arrested for driving with a suspended license for failure to pay an infraction citation than White motorists. Never before has this volume of data been available for the public to analyze.

This new data and interactive maps show:

- Rates of driver's license suspensions due to a failure to appear or pay a ticket are directly correlated with poverty indicators and with race. The highest suspension rates are found in neighborhoods with high poverty rates and high percentages of Black or Latino residents.
  - The Bay View/Hunter's Point neighborhood in San Francisco, zip code 94124, has a relatively high rate of poverty (23.5%), the highest percentage of Black residents in San Francisco (35.8%) and a suspension rate of 6.7%, more than three times the state average. Neighboring zip code 94123, which includes the Marina District, has a substantially lower poverty rate (5.9%), a low percentage of Black residents (1.5%) and a suspension rate five times below the state average (0.4%).
- Black and Latino motorists are disproportionately arrested for driving with a suspended license and for warrants for failure to appear or pay on an infraction citation.
  - In the City and County of San Francisco, the population is 5.8% Black, yet 48.7% of arrests for a "failure to appear/pay" traffic court warrant are of Black drivers (over-represented by 8.4x). White people are 41.2% of San Francisco's residents, yet only 22.7% of those arrested for driving with a suspended license (under-represented by 0.6x).
  - In Los Angeles County, Black people are 9.2% of the population yet 33% of those arrested for driving with a suspended license (over-represented by 3.6x). White people are 26.8% of the county's residents, yet only 14.8% of those arrested for driving with a suspended license (under-represented by 0.6x).



In April 2015, member organizations of Back on the Road California<sup>1</sup> released *Not Just a Ferguson Problem: How Traffic Courts Drive Inequality in California*. The report detailed how revenue collection incentives have turned California traffic courts into a two-tiered system that works for people who have money and fails those without. It showed that significantly increased fines and penalties, combined with policies that required full payment of all fines and fees before the validity of a citation could be challenged, resulted in over 4.2 million suspended driver's licenses simply because people could not afford to pay or fight an infraction ticket.

*Not Just a Ferguson Problem* attracted wide national attention to the ways that citations and license suspensions disparately impact low-income individuals and families in California. In response to the mounting public pressure, California's Governor Jerry Brown spearheaded the creation of a time-limited Statewide Traffic Ticket Amnesty Program, making it easier for many Californians to seek reduction of their traffic fines and reinstatement of their licenses. The state's Chief Justice, Tani G. Cantil-Sakauye, also put issues of court access on the forefront of the state's judicial planning agenda.

While these actions represent significant progress, they fail to adequately address the underlying racial and economic injustices of California's debt collection and license suspensions policies and traffic court practices.

In California, it remains a misdemeanor offense to drive with a suspended license, even if the sole reason for the suspension is an inability to pay a citation fine. Judicial officers can issue bench warrants for the individual's failure to appear or pay an infraction citation. Individuals who cannot afford to pay an infraction citation are being arrested, jailed, and prosecuted, and are losing their licenses and their livelihoods. The communities impacted by these policies are disproportionately communities of color.

From the initial traffic stop to the driver's license suspension for failure to pay an infraction ticket, and finally to the arrest for driving with a suspended license, our new data shows statistically significant racial and socioeconomic disparities. There is growing understanding that both implicit and explicit bias in the policies and practices of the police and courts contribute significantly to systemic racial inequities.<sup>2</sup>

*Stopped, Fined, Arrested* situates license suspensions and arrests in the broader context of systemic racial bias in policing and courts, and builds upon the findings of our first report, which showed the harsher impacts that low-income people face in California's "pay-to-play" justice system.

*Stopped, Fined, Arrested* also highlights the immediate and long-lasting detrimental impacts of these current policies and practices on California's residents, families, communities, economy and public trust in law enforcement and the courts. From income and job loss to reduced health, psychological harm and family separation, arrests and incarceration due to unpaid infraction debt carries significant collateral consequences that burden California's economy and judicial system while doing very little to further public safety or the interests of justice.

Over-policing, license suspensions and the subsequent arrests due to inability to pay come at a great cost to our state's resources, to public safety, to the fair administration of justice and, as this report documents, to people and communities across the state. These great costs demand comprehensive changes to California's court system and policing policies.

This is a problem we can solve in California. Our recommendations:

- 1. License suspensions must be used only to protect public safety, not to punish people for being unable to pay fines.** State law must prohibit courts from referring licenses to the DMV for suspension because of failure to pay or appear on infraction violations, and must restore driver's licenses for people who only have suspensions because they could not pay or appear. This change would significantly mitigate the racial disparities in suspensions and arrests for traffic or infraction debt. It would also eliminate both the financial cost and societal harm of police officers and courts acting as debt collection agents by arresting and punishing people—disproportionately people of color—for driving without paying a ticket.
- 2. Police agencies must cease making arrests solely based on warrants for failure to pay or appear, or for driving with a suspended license for a failure to appear or pay.** Furthermore, courts must not issue arrest warrants for failure to appear or failure to pay infraction fines. Where the underlying issue is debt collection rather than public safety, it is counterproductive to divert public safety resources to these types of arrests.
- 3. California courts must protect access to justice and ensure that access does not depend on income. Courts must adopt processes to meaningfully assess an individual's ability to pay for infraction violations.** Total fine amounts should be reduced. The back-door regressive tax of add-on fees and penalty assessments to infraction citations must be cut, in part by changing state law. Prior infraction debts for people on public assistance should be forgiven.
- 4. Law enforcement agencies must take steps to curtail the over-policing of poor communities and communities of color.** Policies must be implemented to reduce bias and its impact on police behavior. There must be a focus on community protection, with full data transparency and a requirement that officers obtain written consent before conducting a search, particularly in zip codes with particularly high license suspension disparities. Finally, there must be a reduction of non-safety related citations in low-income communities of color, especially of "quality of life" violations that are disparately given to homeless people and people of color.

# I. The Problem: Racial Disparities in License Suspensions and Traffic Arrests

## A. Overview of Previous Research on Traffic Stops and Traffic Courts in California

*Not Just a Ferguson Problem: How Traffic Courts Drive Inequality in California* showed the high costs of the state's traffic court system for millions of Californians. With the nation's highest number of motorists,<sup>3</sup> it is not surprising that California also has a high number of traffic citations issued each year. However, what can be a minor hassle for one driver can have devastating and lasting consequences for another. As this report highlights, too often the difference in the impact of traffic citations comes down to race and class.

In order to understand the stark racial disparities in rates of suspensions and arrests for driving with a suspended license, this report starts further “upstream” with data on traffic enforcement stops and searches in jurisdictions throughout California. When considered in the context of racially disproportionate traffic stops and searches, it becomes clearer why there are significant racial disparities in driver's license suspensions and arrests for driving with a suspended license.

### Inequality in Traffic Stops and Searches

In 2015, Governor Jerry Brown signed AB 953, a bill that standardized and expanded police data collection practices for police stops. At the time of publication of this report, statewide data on race and ethnicity for traffic stops and searches is not yet available.<sup>4</sup> However, there are local reports from Fresno County,<sup>5</sup> Sacramento,<sup>6</sup> San Diego,<sup>7</sup> Oakland,<sup>8</sup> Berkeley,<sup>9</sup> San Jose,<sup>10</sup> and Los Angeles.<sup>11</sup> Analysis of data from these reports shows that in cities across California:

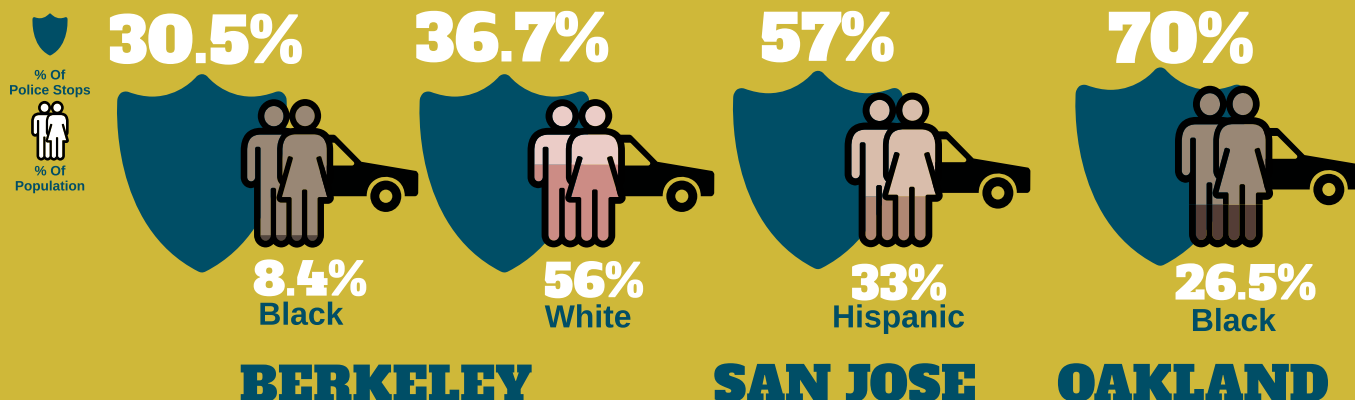
- Black and Latino<sup>12</sup> drivers are pulled over more often by police, and White drivers are pulled over less, each at rates that are disproportionate to their shares of the population.<sup>13</sup>
- Black and Latino drivers are disproportionately pulled over without a good reason, as evidenced by the rate of citations for non-observable offenses.<sup>14</sup>
- Black and Latino drivers are disproportionately searched during traffic stops.<sup>15</sup>
- Police are less likely to find contraband or other illegal activity in searches of Black and Latino drivers.<sup>16</sup>

### REAL LIFE STORY: Clifton

Clifton is a resident of South Los Angeles (zip code 90047), which is 66% Black. Clifton is frequently stopped by the Los Angeles Police Department for reasons that are often unclear, or described by police as “routine traffic stops.” Clifton describes “being asked to get out of his car, put in handcuffs and placed in the back of the police car or seated on the curb while the officers search my vehicle. After completing the search and turning up nothing, the police will unusually cite me for a minor traffic violation.” Clifton has acquired over 10 traffic tickets from this pattern of being stopped and searched. He owes over \$9,000 in fines and fees that he cannot afford to pay. His driver's license was suspended as a result.

**Although no comprehensive studies have analyzed statewide data about police stops, highlights from several studies from across California show:**

**1.** Black and Latino drivers are disproportionately pulled over more by police, and White drivers are pulled over less.



**2.** Black and Latino drivers are disproportionately pulled over without a good reason.

A 2014 study by the ACLU found that in Fresno, Hispanic drivers were **4.3 times** more likely to be pulled over with “probable cause” as the sole reason.

**3.** Black and Latino drivers are disproportionately searched during traffic stops

In the first quarter of 2014, San Diego Police Department was **3 times** more likely to search a Black suspect and **2 times** more likely to search a Hispanic suspect than a White suspect.

**4.** Police are less likely to find contraband or other illegal activity in searches of Black and Latino drivers

*In one Los Angeles study, police who searched African Americans were*



*than when they searched White individuals.*

Quantitative data regarding the different treatment of drivers depending on their race, ethnicity or neighborhood is also reflected in the qualitative data – the lived experiences of drivers stopped for minor traffic violations. Both statistics and stories illustrate that the experiences of Black and Latino drivers pulled over by police often differ from those of White drivers.

### REAL LIFE STORY: Krista

Krista, a young White woman in Alameda County, was caught driving with a suspended license, with no proof of insurance or registration. She was cited, but not arrested. Her car was not towed. She had the money to pay to get her license back, then brought the proof of license, insurance, and registration to court to ask for mercy on the over \$1500 worth of fines. The judge told her good work, and forgave all the fines except a \$40 processing fee. In contrast, the person whose case was called right before hers was a young Latino man, who had similar but less serious charges, and also had current license and registration. The judge told him this was an important lesson, and assessed him the full fine amount, over \$1000. After Krista had her fines forgiven, she walked past a long row of people of color on the court bench who had not received fine reductions for their traffic tickets, one of whom said to her, “That’s lucky.”

## B. New Data Shows Disproportionate License Suspension and Arrest Rates for Low-Income People of Color

The new data described and depicted in the following pages was obtained through forty California Public Record Act requests submitted to the California Department of Motor Vehicles and various county sheriff and police departments.<sup>17</sup> This data paints a demonstrably stark picture of the intersection between license suspensions and the criminal justice system: the dramatic racial and economic discrepancies do not disappear after the initial police encounter, but also figure prominently into the rates by which licenses are suspended due to unresolved tickets and subsequent arrests for driving with suspended licenses and traffic court warrants.

In California, it is a misdemeanor offense to fail to appear (“FTA”) in court or fail to pay (“FTP”) an infraction ticket. Courts may issue a bench warrant for these misdemeanor offenses, which gives a law enforcement officer authority to arrest a person.<sup>18</sup> Additionally, a person’s license may be suspended upon a failure to appear or failure to pay under California Vehicle Code section 13365.

When a person drives with a suspended license, even when the suspension occurred because of the person’s inability to pay a ticket (even if those citations are wholly unrelated to driving), he or she is committing a misdemeanor.<sup>19</sup> This misdemeanor is codified under California Vehicle Code section 14601.1(a).<sup>20</sup> Depending on the county and the police department, law enforcement agents have the power under state law to arrest, book, and jail people for traffic court warrants or the criminal misdemeanor offense of driving with a suspended license – all because those individuals cannot afford the fine on an underlying ticket.

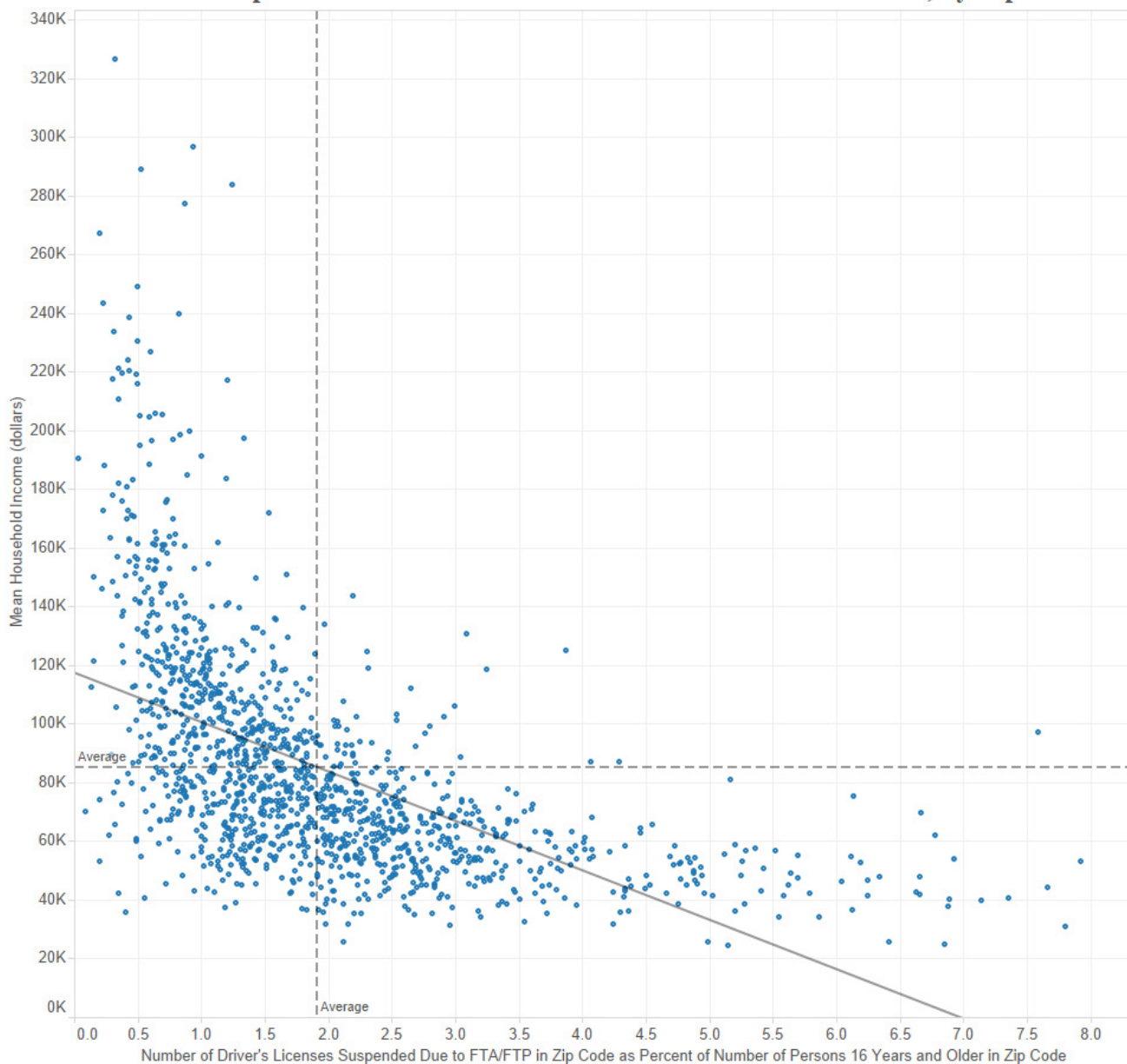
Below, **Section 1 depicts how the rates of driver’s license suspensions based on failure to appear or pay are strongly correlated** with mean household income and percent Black population by zip code. It uses U.S. Census data and information from the California DMV. The charts show that almost all zip codes with high suspension rates are those with mean household income levels far lower than the average, and that almost every zip code with a percentage of Black residents above 20% has a license suspension rate above the average.

# 1. License Suspensions based on FTA/FTP, correlated with household income and race (Dataset A)

## i. License suspension rate and mean household income

In California zip codes, the mean household income is highly correlated with the rate of license suspensions due to Failure to Appear (“FTA”) or Failure to Pay (“FTP”). The scatterplot below, in which every dot represents a California zip code, speaks volumes about the relationship between license suspension and income level. Of the zip codes with suspension rates higher than the average, 92% have household income levels lower than the average.

**Driver's License Suspensions due to FTA/FTP and Mean Household Income, by Zip Code**

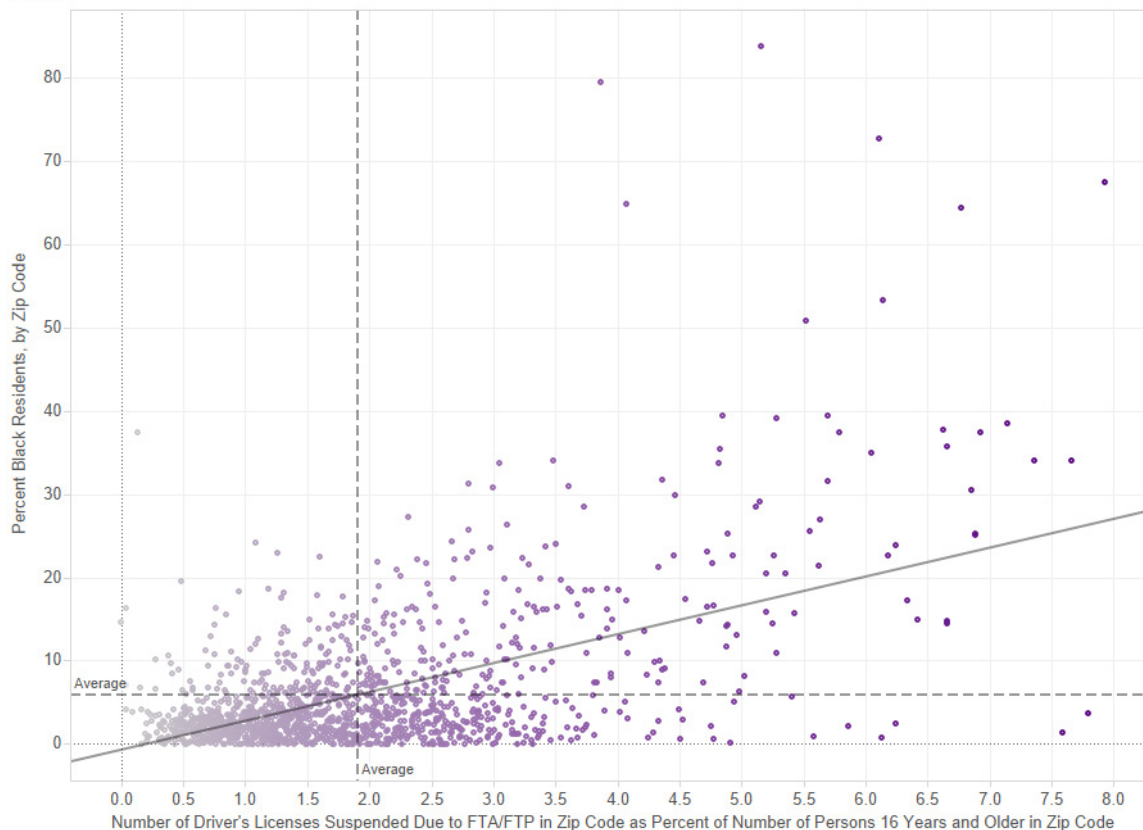




*ii. License suspension rate and percent Black population*

Moreover, the percentage of Black residents living in a California zip code is positively correlated with the zip code's rate of license suspension due to FTA/FTP.

**Driver's License Suspensions due to FTA/FTP and Percent Black Residents, by Zip Code**



In the scatterplot below, 95% of the 75 zip codes with a percentage of Black residents above 20% have a license suspension rate above the average. Almost all zip codes with a suspension rate above 6% – three times the average – have a high proportion of Black residents.

## 2. County Case Studies (Datasets B and C)

The following sections present case studies of Los Angeles, San Francisco, and San Joaquin Counties, respectively.

For Los Angeles and San Francisco Counties (subsections A and B), zip code maps are used to display the same California DMV suspension rate data employed above in Section 1 against maps displaying U.S. Census zip code information on poverty rate, percent Black population, and percent Latino population. These visual comparisons show a clear relationship between such variables and the rate of license suspension based on a failure to appear or pay for a ticket.

The below charts and maps in the Los Angeles County and San Francisco County case studies display the severe disparity between the proportion of White and Black individuals within the county population and the rate at which they experience arrests for both FTA/FTP warrants and driving with a suspended license.<sup>21</sup> For example, White individuals in the City and County of San Francisco make up 41.2% of the population, but account for only 22.7% of the arrests for FTA/FTP warrants (under-representation at a rate of 0.6x). In contrast, Black

individuals make up 5.8% of the population, but account for an astounding 48.7% of such arrests (overrepresentation at a rate of 8.4x). And from 2013 to 2015, the Los Angeles Sheriff's Department arrested and charged nearly 20,000 individuals for driving with a suspended license, the vast majority (85%) of whom were drivers of color.

Moreover, these sections present a disturbing visual analysis of the *locations* of arrests for driving with a suspended license and FTA/FTP warrants in Los Angeles and San Francisco Counties. Not only do these maps demonstrate how heavily Latino and Black populations bear the burden of arrests for these poverty-driven offenses, they are concentrated in areas where the poverty rate is high, household income is low, and unemployment rates are highest in the counties.

For San Joaquin County (subsection C), the data show that 40% of the 1,717 arrests made pursuant to Vehicle Code § 14601.1(a) or Vehicle Code § 40508(a) between January 1, 2013 through March 8, 2016 had no incidental booking charges that are serious offenses (felonies or serious misdemeanors involving acts that reasonably endangered public safety). The average jail time incurred due to such arrests was 1.1 day. 58 individuals spent more than three days in jail for such arrests, and 17 individuals spent more than ten days in jail for such arrests.

The 223 individuals (13% of total arrests) that were booked *only* for the charge of driving on a suspended license spent an average of 0.85 days in jail. However, disturbing outliers exist: 3 persons spent between ten and thirteen days in jail, and one person spent 21 days in jail - all for this singular offense.

## REAL LIFE STORY: Marisol

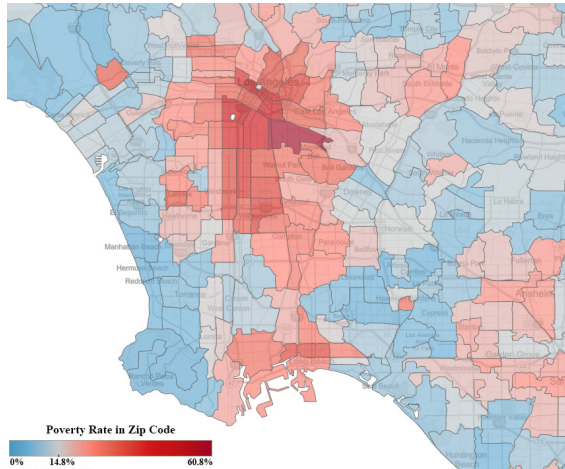
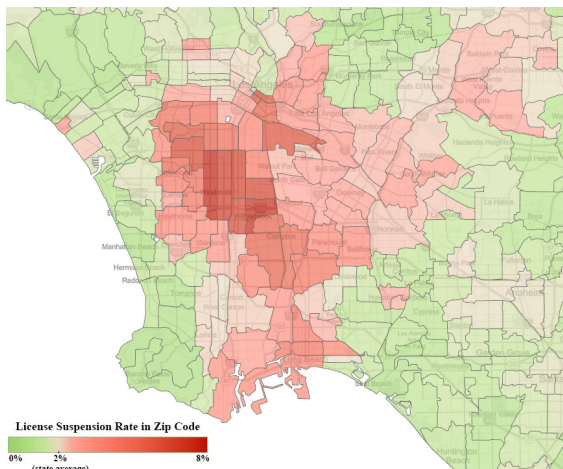
Although statewide data on jail time for driving on a suspended license was not available at the time of this report release, anecdotal evidence beyond San Joaquin County shows that some Californians are spending significant time in jail for being too poor to pay a ticket and driving. In one case in Contra Costa County, Marisol was arrested for driving on a suspended license after she could not pay her traffic tickets, but needed to get to work. The judge sentenced her to 90 days in jail as a result of this, her first offense.

### A. LOS ANGELES COUNTY

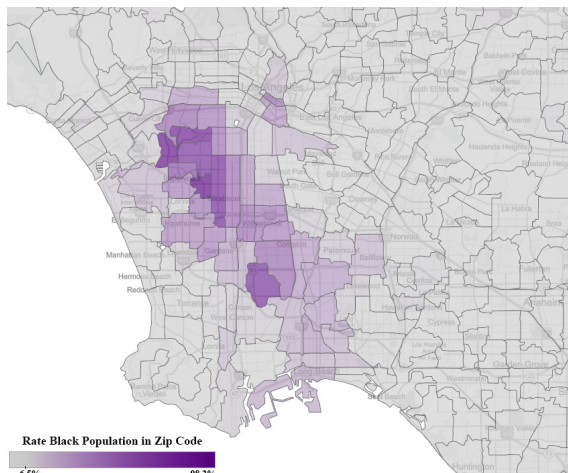
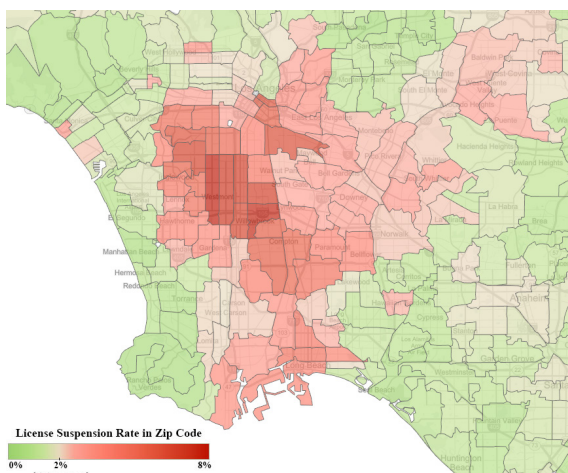
#### a. Zip code maps comparing rate of license suspension to U.S. Census data

The maps below depict Los Angeles County zip codes. The left map (license suspension rate) uses the same zip code data shown in the previous scatterplots, while the maps on the right use U.S. Census data.

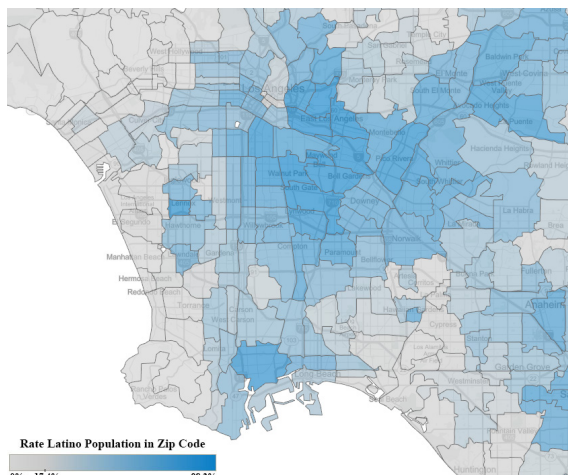
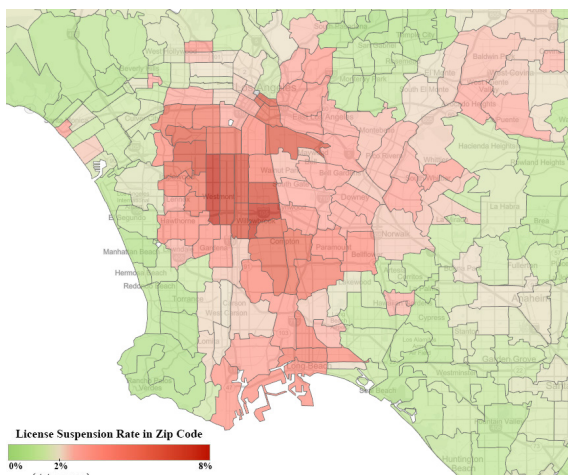
#### LICENSE SUSPENSION RATE AND POVERTY RATE



#### LICENSE SUSPENSION RATE AND PERCENT BLACK POPULATION



#### LICENSE SUSPENSION RATE AND PERCENT LATINO POPULATION



*b. Arrest location maps by race of arrestee*

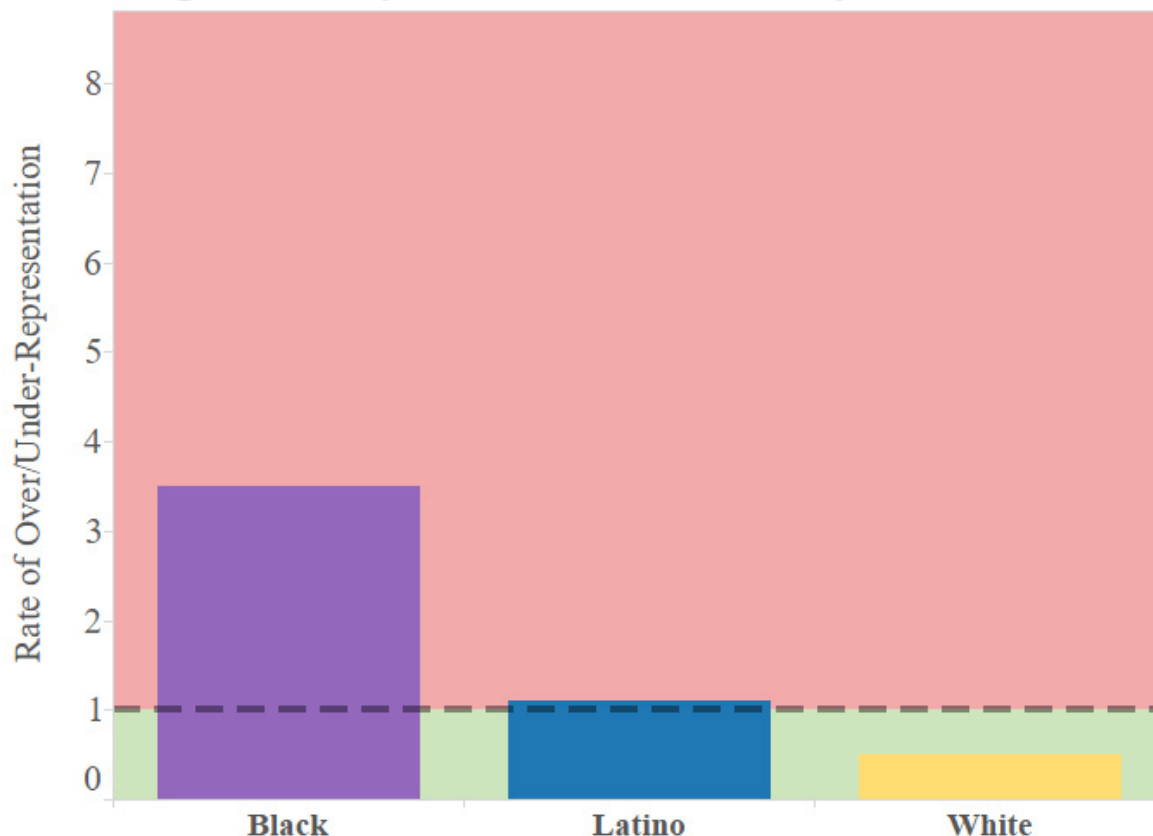
### FTA/FTP warrants (Vehicle Code 40508)

In 2013-2015, the Los Angeles Sheriff's Department effectuated 4,391 arrests pursuant to a warrant issued under Vehicle Code § 40508(a) or 40508(b) for a Failure to Appear in court on a traffic infraction or a Failure to Pay a traffic or infraction fine. Not everyone who is found with a warrant for this reason is arrested. The data below describes all arrests in which a violation of Vehicle Code § 40508 was one of the arresting charges.

The data demonstrates that Black and Latino people make up an overwhelming proportion of total arrests in Los Angeles County for FTA/FTP. Although Black persons are only 9.2% of the population, they comprise 32.5% of the arrests (over-representation at a rate of 3.5x). A similar yet less severe over-representation is seen in Latinos. Although Latinos are 48.4% of the population, they comprise 55.2% of the arrests (over-representation at a rate of 1.1x). However, while Whites are 26.8% of the population, they make up only 12.3% of arrests (under-representation at a rate of 0.5x).

The following chart depicts the rate of over-representation or under-representation of arrestees by race (Black, Latino, and White). A bar equal to the high of the dotted line (1 on the Y-axis) would signify perfect representation (a situation in which the rate of arrestees of a certain race matched the percent makeup of that race in the county population). Bars ending in the green section (below perfect representation) signify that the race is under-represented in the arrest data, and bars ending in the red section signify that the race is over-represented.

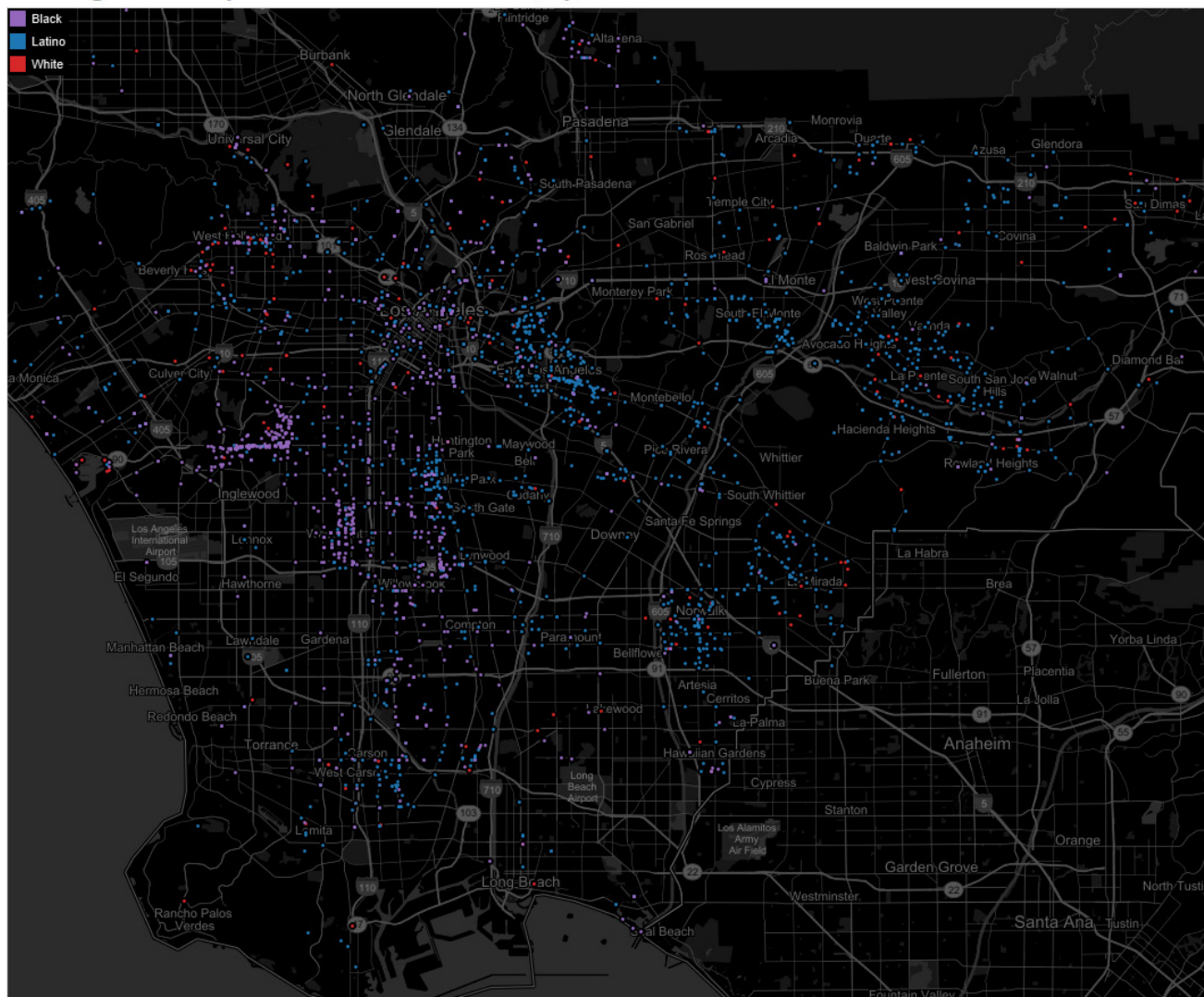
### Rate of Over/Under-Representation in Los Angeles County Arrests for VC 40508, by Race





This over and under-representation can be seen in the map below, which shows locations of arrests involving warrants for FTA/FTP by race in central Los Angeles. While arrests of White individuals (shown in red) are scattered throughout the city and show no discernible concentration in a single neighborhood, arrests of Black and Latino individuals primarily occur in the neighborhoods with high poverty rates, low household incomes, and low unemployment rates.

Los Angeles County Arrests Under VC 40508, by Race



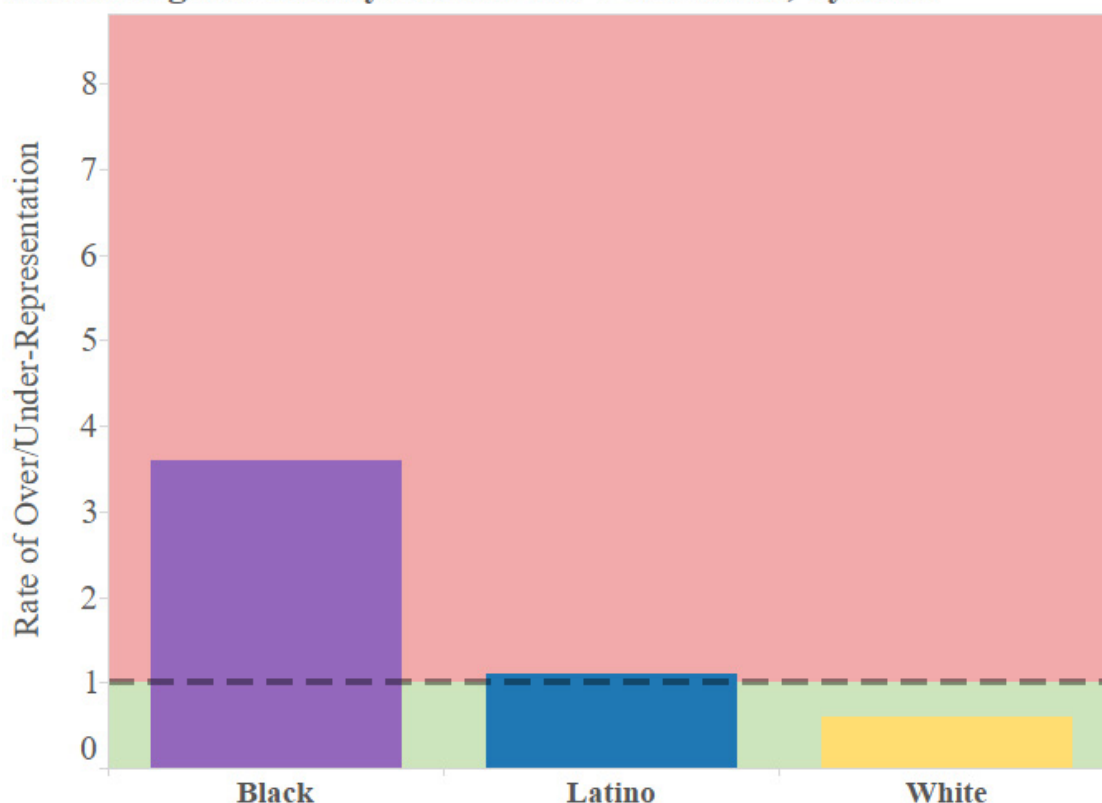
### Driving with a suspended license (Vehicle Code 14601.1)

In 2013-2015, the Los Angeles Sheriff's Department effectuated 19,108 arrests involving Vehicle Code § 14601.1 for driving on a suspended license. Driver's licenses are typically suspended under this section for a number of minor reasons, the most common being a Failure to Appear in court on a traffic infraction or Failure to Pay a traffic fine. This section explicitly excludes a suspended license for a public safety reason such as a prior DUI or a previous charge of reckless driving. Not everyone who is found driving on a suspended license is arrested; officers use discretion to warn, cite, or arrest. The data below describes all arrests in which a violation of Vehicle Code § 14601.1 was one of the arresting charges.

The following chart depicts the race of arrestee compared to their share of the population. The data demonstrates that Black and Latino people make up an overwhelming proportion of total arrests in San Francisco County involving driving on a suspended license. Although Black persons are only 9.2% of the population, they comprise 33% of the arrests (over-representation at a rate of 3.6x). A similar yet less severe over-representation is seen in Latinos. Although Latinos are 48.4% of the population, they comprise 52.2% of the arrests (over-representation at a rate of 1.1x). However, while Whites are 26.8% of the population, they make up only 14.8% of arrests (under-representation at a rate of 0.6x).

The following chart depicts the rate of over-representation or under-representation of arrestees by race (Black, Latino, and White). A bar equal to the high of the dotted line (1 on the Y-axis) would signify perfect representation (a situation in which the rate of arrestees of a certain race matched the percent makeup of that race in the county population). Bars ending in the green section (below perfect representation) signify that the race is under-represented in the arrest data, and bars ending in the red section signify that the race is over-represented.

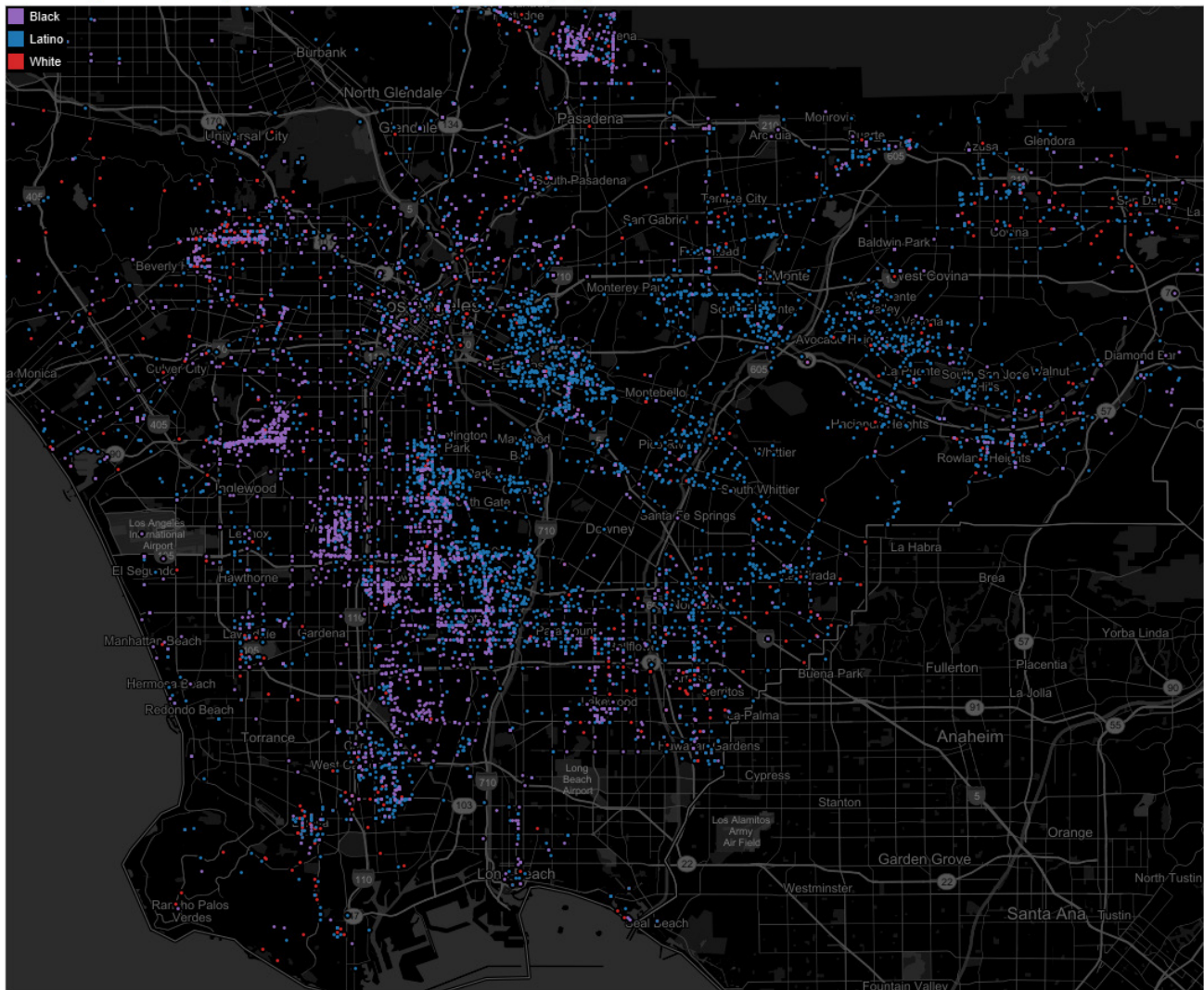
### Rate of Over/Under-Representation in Los Angeles County Arrests for VC 14601.1, by Race





This over and under-representation can be seen in the map below, which shows locations of arrests involving Vehicle Code § 14601.1 for driving on a suspended license by race in central Los Angeles. Like the arrests for FTA/FTP, arrests of White individuals (shown in red) are scattered throughout the city and show no discernible concentration in a single neighborhood. Meanwhile, arrests of Black and Latino individuals occur in the neighborhoods that have high poverty rates, low household incomes, and low unemployment rates. These neighborhoods include South Central Los Angeles (Watts and Compton) and Inglewood.

Los Angeles County Arrests Under VC 14601.1, by Race

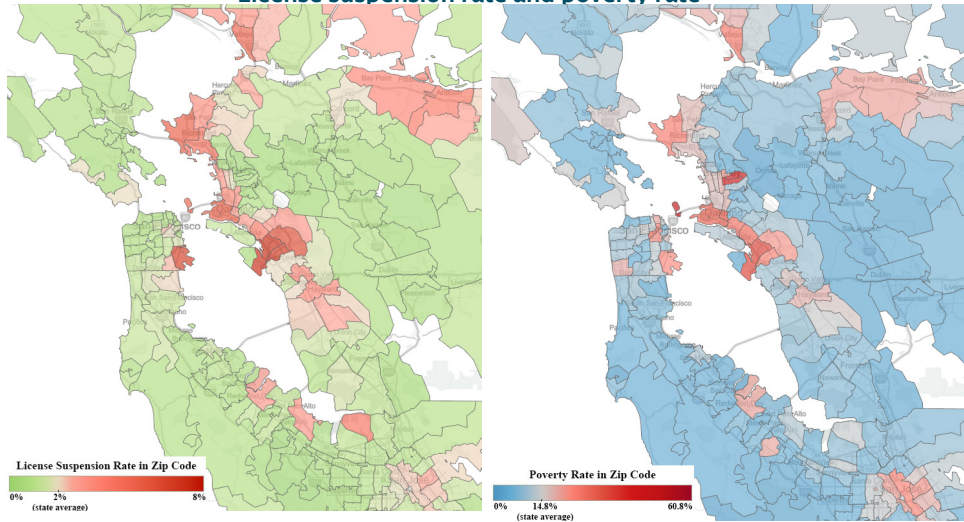


### B. SAN FRANCISCO COUNTY

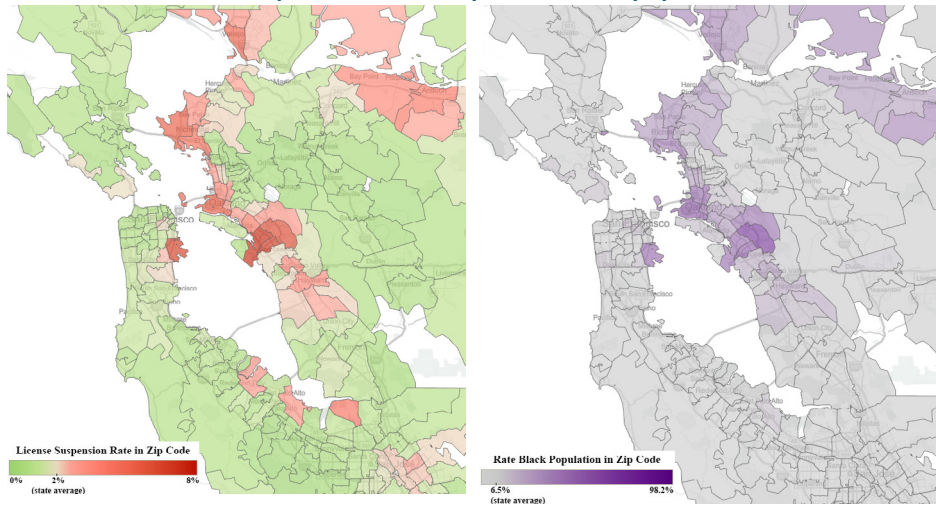
a. Zip code maps comparing rate of license suspension to US Census data

The maps below include San Francisco County zip codes. The left map (license suspension rate) uses the same zip code data shown in the previous scatterplots, while the maps on the right use US Census data.

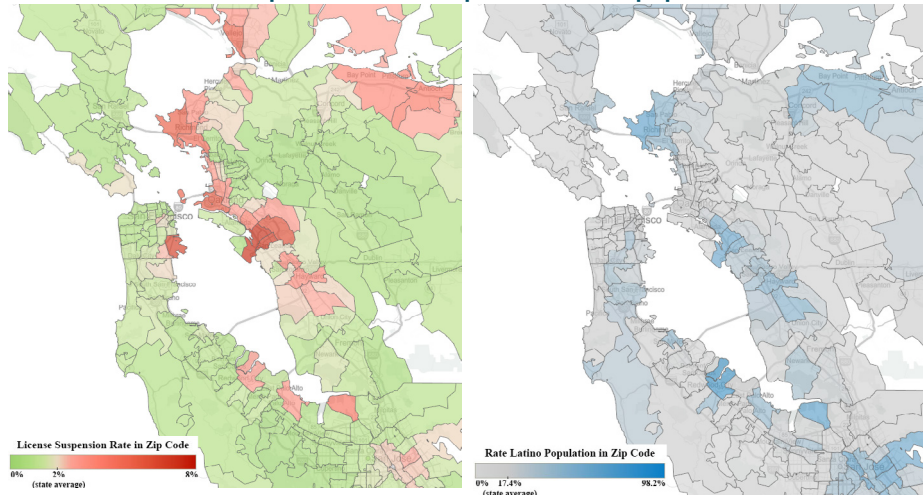
**License suspension rate and poverty rate**



**License suspension rate and percent Black population**



**License suspension rate and percent Latino population**



*b. Arrest location maps by race of arrestee*

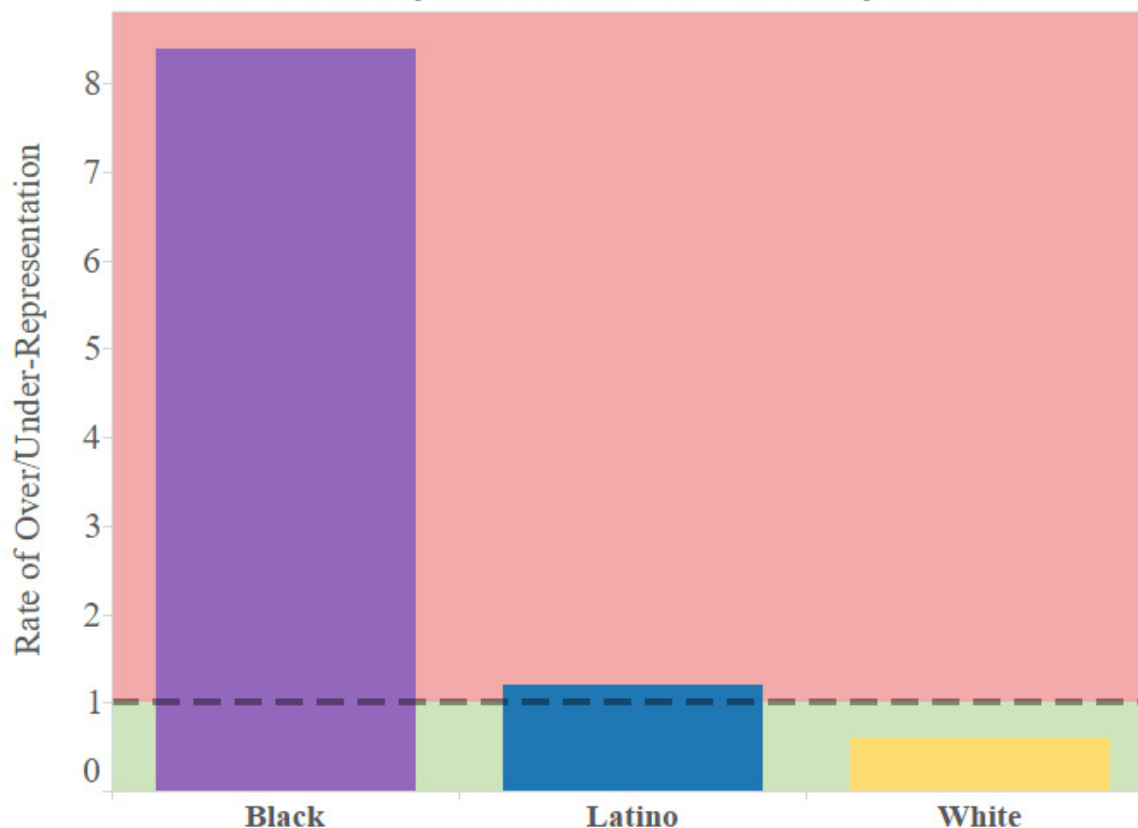
### FTA/FTP warrants (Vehicle Code 40508)

In 2013-2015, the San Francisco Sheriff's Department effectuated 855 arrests pursuant to a warrant issued under Vehicle Code § 40508(a) or 40508(b) for a Failure to Appear in court on a traffic infraction or a Failure to Pay a traffic or infraction fine. Not everyone who is found with a warrant for this reason is arrested. The data below describes all arrests in which a violation of Vehicle Code § 40508 was one of the arresting charges.

The following chart depicts the location of arrest and race of arrestee. The data demonstrates that Black and Latino individuals make up an overwhelming proportion of total arrests in San Francisco for FTA/FTP. Although Black persons are only 5.8% of the population, they comprise 48.7% of the arrests (over-representation at a rate of 8.4x). A similar yet less severe over-representation is seen in Latinos. Although Latinos are 15.3% of the population, they comprise 18.8% of the arrests (over-representation at a rate of 1.2x). However, while Whites are 41.2% of the population, they make up only 22.7% of arrests (under-representation at a rate of 0.6x).

The following chart depicts the rate of over-representation or under-representation of arrestees by race (Black, Latino, and White). A bar equal to the high of the dotted line (1 on the Y-axis) would signify perfect representation (a situation in which the rate of arrestees of a certain race matched the percent makeup of that race in the county population). Bars ending in the green section (below perfect representation) signify that the race is under-represented in the arrest data, and bars ending in the red section signify that the race is over-represented.

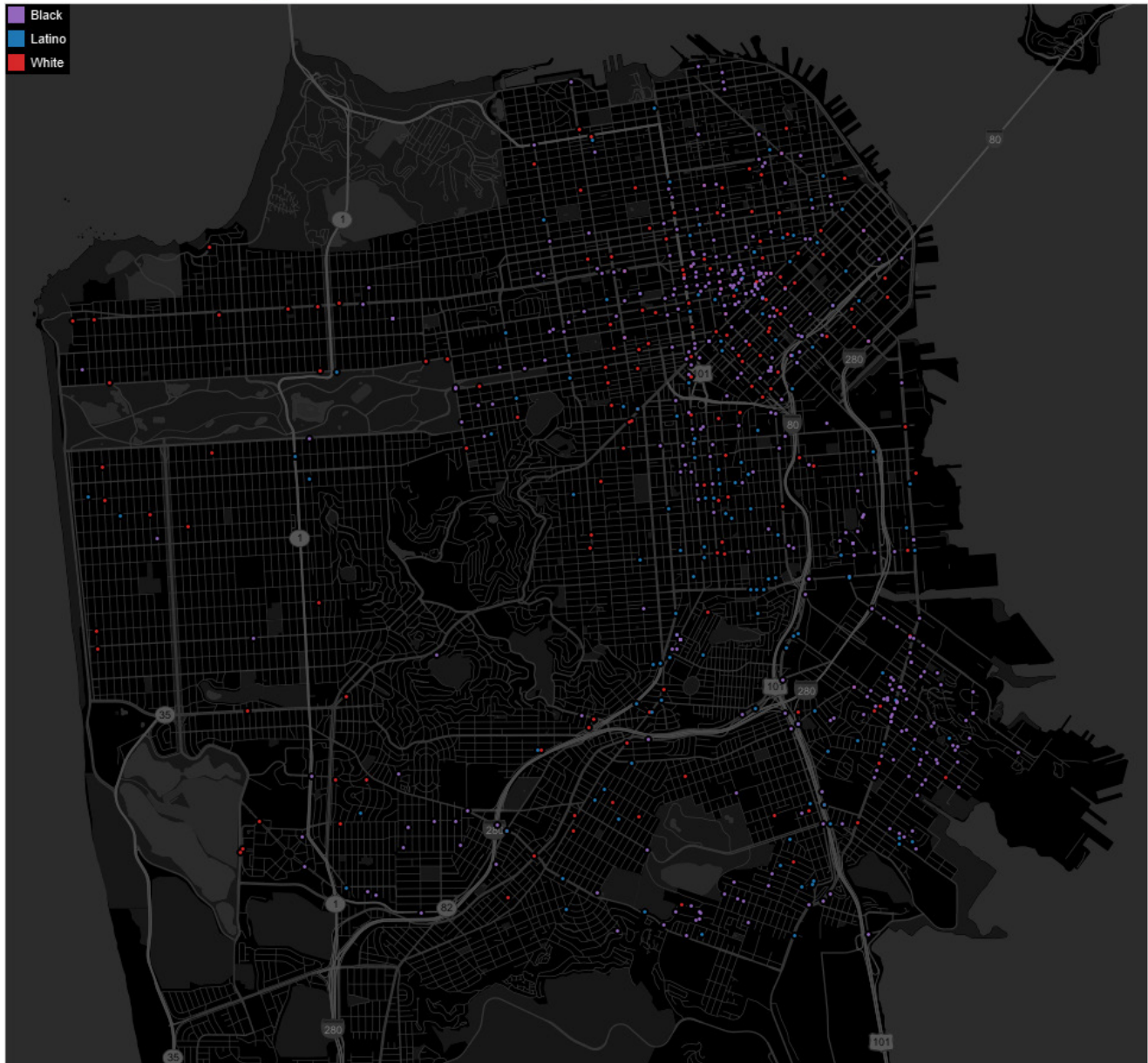
### Rate of Over/Under-Representation in San Francisco County Arrests for VC 40508, by Race





This over and under-representation can be seen in the map below, which shows locations of arrests involving warrants for FTA/FTP by race in San Francisco. While arrests of White individuals (shown in red) are not concentrated in a single neighborhood, arrests of Black and Latino individuals primarily occur in the neighborhoods that have high poverty rates, low household incomes, and low unemployment rates. These neighborhoods include the Tenderloin, the Mission, and Bayview-Hunters Point.

### San Francisco County Arrests Under VC 40508, by Race



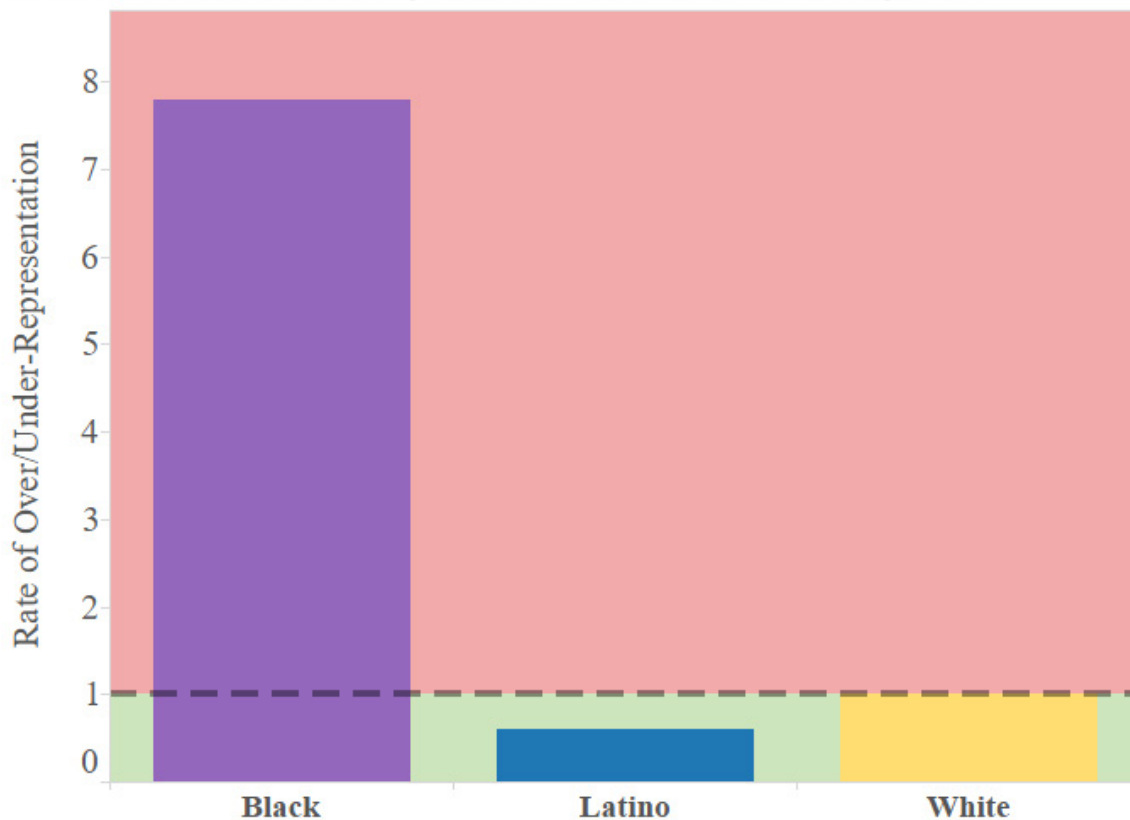
### Driving with a suspended license (Vehicle Code 14601.1)

In 2013-2015, the San Francisco Sheriff's Department effectuated 9,312 arrests pursuant to Vehicle Code § 14601.1 for driving on a suspended license. Driver's licenses are typically suspended under this section for a number of minor reasons, the most common being a Failure to Appear in court on a traffic infraction or Failure to Pay a traffic fine. This section explicitly excludes a suspended license for a public safety reason such as a prior DUI or a previous charge of reckless driving. Not everyone who is found driving on a suspended license is arrested; officers can choose to warn or cite instead. The data below describes all arrests in which a violation of Vehicle Code § 14601.1 was one of the arresting charges.

The following chart depicts the location of arrest and race of arrestee. The data demonstrates that Black and Latino individuals make up an overwhelming proportion of total arrests in San Francisco County for driving on a suspended license. Although Black persons are only 5.8% of the population, they comprise 45.4% of the arrests (over-representation at a rate of 7.8x). Arrests for driving on a suspended license in San Francisco County are the only data variable discussed in this report where Latinos are under-represented. Although Latinos are 15.3% of the population, they comprise 9.7% of the arrests (under-representation at a rate of 0.6x). Whites are 41.2% of the population, and 39.7% of arrests (near perfect representation).

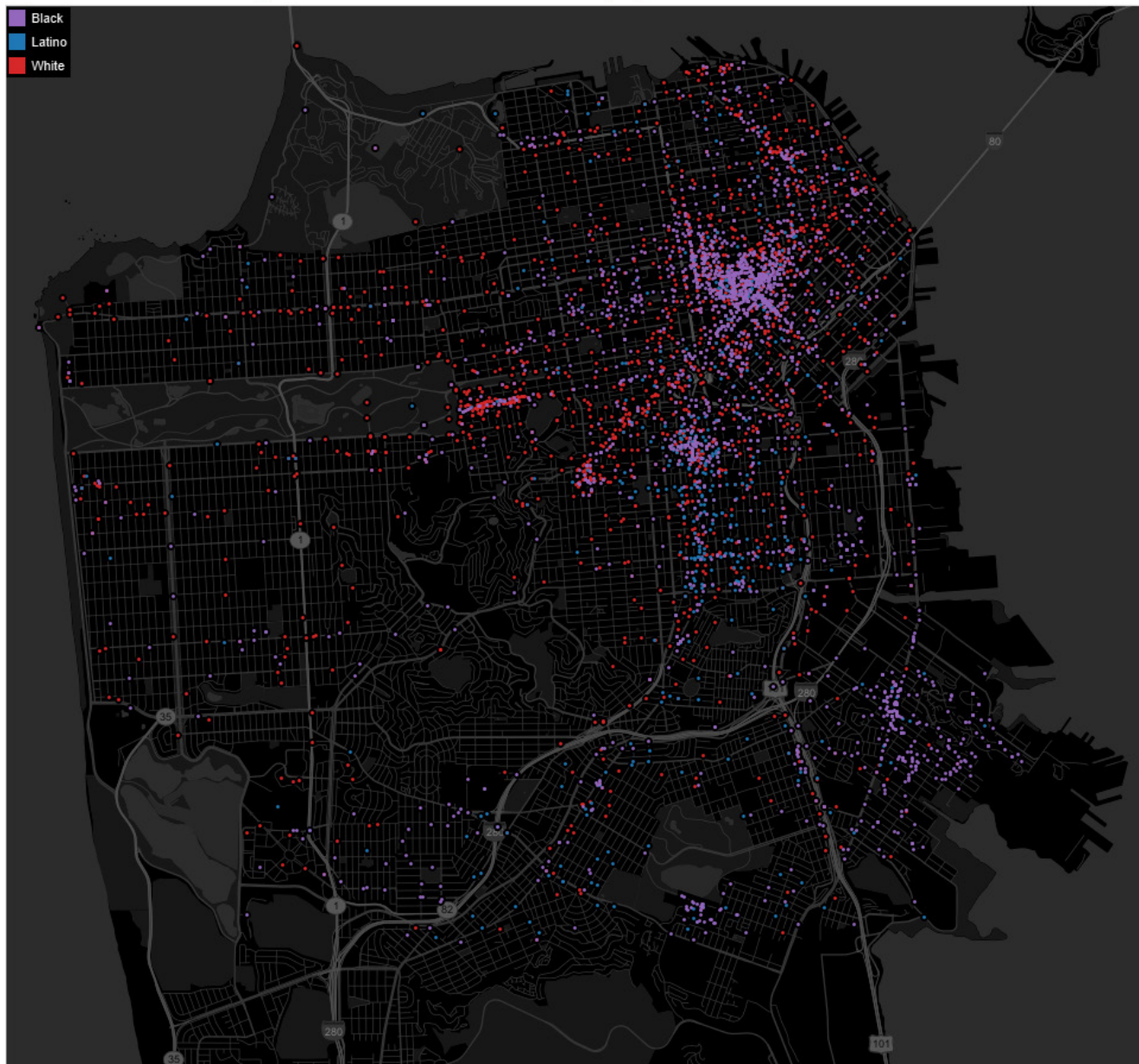
The following chart depicts the rate of over-representation or under-representation of arrestees by race (Black, Latino, and White). A bar equal to the high of the dotted line (1 on the Y-axis) would signify perfect representation (a situation in which the rate of arrestees of a certain race matched the percent makeup of that race in the county population). Bars ending in the green section (below perfect representation) signify that the race is under-represented in the arrest data, and bars ending in the red section signify that the race is over-represented.

### Rate of Over/Under-Representation in San Francisco County Arrests for VC 14601.1, by Race



This over and under-representation can be seen in the map below, which shows locations of arrests involving Vehicle Code § 14601.1 for driving on a suspended license by race in San Francisco. Like the arrests for FTA/FTP, arrests of White individuals (shown in red) are plentiful yet not concentrated in a single neighborhood. Meanwhile, arrests of Black and Latino individuals occur in the neighborhoods that have high poverty rates, low household incomes, and low unemployment rates. These neighborhoods include the Tenderloin, the Mission, and Bayview-Hunters Point.

### San Francisco County Arrests Under VC 14601.1, by Race





### C. SAN JOAQUIN COUNTY

Unlike the Los Angeles County and San Francisco County data described above, the data from San Joaquin County did not provide the location of the arrest or the race of the arrestee. However, it did list the various “booking charges” for each of the 1,717 unique arrests made pursuant to Vehicle Code § 14601.1(a) or Vehicle Code § 40508(a) between January 1, 2013 through March 8, 2016 (most arrests had multiple booking charges). 223 arrests listed a booking charge for driving on a suspended license (Vehicle Code Section 14601.1(a)) as the *only* booking charge (13% of all arrests).

When booking charges were filtered to determine whether or not each arrest included at least one charge that was deemed a “serious offense” (including felonies and serious misdemeanors involving acts that reasonably endangered public safety, and not including infractions and a limited number of low-level misdemeanors), the result showed that 693 arrests (40% of total) had no booking charges that were deemed serious offenses. The average jail time incurred due to such arrests was 1.1 day. 58 individuals spent more than three days in jail for such arrests, and 17 individuals spent more than ten days in jail for such arrests.

The 223 individuals (13% of total arrests) that were booked *only* for the charge of driving on a suspended license spent an average of 0.85 days in jail. However, disturbing outliers exist: 3 persons spent between ten and thirteen days in jail, and one person spent 21 days in jail - all for this singular offense.

#### REAL LIFE STORY: Velia

Velia, a young Latina living between Bakersfield and Los Angeles, was just a teenager when she got a couple of truancy tickets for missing school. At the time, she was helping her single mother raise her and her three siblings, surviving on just few hundred dollars a month of public assistance. The fines for the tickets amount to over \$1,000, and Velia never had enough extra money to pay them. As a result, the court suspended her driver’s license. Now a 25-year-old single mother of two, herself a welfare recipient, Velia’s tickets and suspended license have followed her, causing her endless strife. Her stepdad is a truck driver and wants to hire her, but cannot because of her suspended license. She struggles to get her daughters to school and medical appointments, and relies on her disabled mother to help. She was recently arrested for driving with a suspended license and sentenced to 39 days in jail, causing her to be separated from her children. Velia is afraid to drive for fear of being taken away from her children again, but she does not have access to reliable public transportation in Bakersfield.

## II. The Data Explained

### A. Inequality in Policing: The Role of Implicit and Explicit Bias

The overrepresentation of license suspensions in Black and Latino communities is no mere coincidence. There is growing understanding that some of the inequality in traffic and infraction enforcement can be explained by the operation of implicit and explicit racial bias. For example, research with many groups of people, including police officers, shows an association between Black people and crime that is automatic, or “not subject to intentional control.”<sup>22</sup> Especially in widespread police practices such as the “investigatory” traffic stop, which is based not on an observable traffic violation but rather as a tool intended to catch people in the midst of committing more serious crimes, these biases clearly play a role in *who* is stopped.

Many studies support the conclusion that implicit bias plays a role in the racialized outcomes of certain police practices. Additional research even supports the idea that police officers may be more likely than the average person to perceive guilt and deceptiveness based on race than average people.<sup>23</sup> In another example, an experiment found that police officers were much more likely than other people to perceive evidence of guilt in the ambiguous actions of Black individuals than their White counterparts.<sup>24</sup>

In addition to the troubling operation of these implicit biases in every day police encounters, there are also examples of more explicit or intentional discrimination in enforcement, where people or communities of color are specifically targeted. For example, a former police officer Matt Francois recently filed suit against the San Diego Police Department, alleging that his supervisors instructed him to treat San Diego communities differently based on race, including discouraging him from enforcing stop sign violations in a predominantly White community: “Officer Francois was told ‘citizens of Northeastern deserved to be treated better than citizens of Southeastern or Mid City,’ the suit alleges. The supervisor went on to say citizens there ‘actually voted,’ favored police and were influential ‘like City Council members.’”<sup>25</sup>

### B. Inequality in Policing Leads to Unequal Debt Burden for Families of Color

In 2013 and 2014, 4.9 million traffic and non-traffic infractions were filed in the state’s traffic courts. This is *four times* the number of felony and misdemeanor filings in the same time period.<sup>27</sup> When certain groups are implicitly or explicitly targeted for traffic and other investigatory stops, those groups are also disproportionately issued citations.

The troubling result is that this kind of intensified policing and racial profiling of people of color means Black and Latino people are more likely than White people to get traffic citations despite the fact that there is no documented difference in driving behavior.

Los Angeles is a good example. A study on racial bias in traffic stops found: “While the conditional probability of being cited favored stopped African Americans relative to stopped Whites, African Americans<sup>28</sup> were so much more likely to be stopped that the unconditional probability that African Americans would be cited was substantially higher. Indeed, we find that the citations per 10,000 residents were 1,300 citations higher for African American residents and 140 citations higher for Hispanic residents than for White residents.”<sup>29</sup> This means that when Black and Latino people are stopped, they are less likely to be cited or arrested than their White counterparts.

The same is true of Berkeley. According to the data set, even though Blacks are much more likely than Whites to be stopped and searched by Berkeley cops, they are actually no more likely to be arrested, and much less likely to be cited for **any kind of infraction**.<sup>30</sup>

When the cited individuals are unable to pay their citations due to financial hardship or do not attend court appearances for fear of being arrested by the same officers who searched their bodies and their personal possessions, they suffer a permanent consequence: a suspended driver's license.<sup>31</sup> A racially skewed system of traffic stops appears to be producing a racially skewed demography of suspended driver's licenses.

Criminal prosecution for driving with a suspended license can lead to stiff monetary penalties. In addition to the statutory fines, a conviction can result in two points on a person's DMV record, which can result in higher insurance premiums.<sup>32</sup> These monetary sanctions, when disproportionately imposed on low-income Blacks and Latinos, operate to increase the debt burden on and displace wealth from already struggling communities.

In addition to the increased debt burden, Black and Latino drivers are more likely to have their vehicles towed. When someone is cited or arrested for driving with a suspended license, a tow is discretionary, as long as there is a safe and legal place for the driver to park the vehicle. However, several studies have found that police are more likely to order cars of Black and Latino drivers towed, which for families without money, often means losing the vehicle because they cannot afford the very high tow and storage fees required to get it back.<sup>33</sup> In Fresno County, Latino drivers comprise roughly 50% of the population, but were issued 89% of the citations for driving without a license that resulted in car impoundment.<sup>34</sup>

### REAL LIFE STORY: Kacey

Kacey (resident of Los Angeles) had his car towed and impounded three times since 2008 after receiving three Driving with a Suspended License citations. His daughter was born premature and requires an independent source of oxygen. For emergency purposes, he needed to drive with a suspended license and with inexpensive vehicles he would purchase used, knowing that if he was stopped, his vehicle would be impounded. One time, he was going to the store to pick up medical supplies for his daughter's pneumonia. When he arrived at the store's parking lot, the officers cited him for Driving with a Suspended License and impounded his vehicle. He had to walk two miles back to his daughter while holding the car seat, diaper bag, and medical supplies.

## C. Inequality in Court: Current Fees and Court Procedures Compound Racial Disparities

Once they receive tickets, Californians are told that they must pay the ticket or go to court. In California, traffic courts have jurisdiction over both traffic and non-traffic infractions.<sup>35</sup> Traffic courts can process a variety of offenses, from traffic infractions such as having an expired license plate<sup>36</sup> or not wearing a seatbelt<sup>37</sup> to non-traffic infractions such as loitering<sup>38</sup> or not paying bus fare.<sup>39</sup>

Due to the rapidly increasing number of state-mandated court fees, the cost of an infraction citation within the jurisdiction of California traffic court has become steeper and more complex over time.<sup>40</sup> For those Californians who are able to pay the fines, an infraction citation is nothing more than a mere inconvenience. However, for many others who do not pay these fines and fees on time or miss their court dates, traffic courts respond swiftly. As documented extensively in *Not Just a Ferguson Problem: How Traffic Courts Drive Inequality in California* (2015), the ensuing consequences are severe. The court may promptly (within 10 days) issue a misdemeanor bench warrant for "Failure to Appear" (FTA) or "Failure to Pay" (FTP).<sup>41</sup> If it does not issue a warrant, a \$300 civil assessment fee is automatically added to the fine amount.<sup>42</sup> Upon the issuance of a FTA/FTP, some courts also send the case to a private collections agency to recover the past due balance.<sup>43</sup> And, most importantly, the court will notify the Department of Motor Vehicles to indefinitely suspend the person's driver's license.<sup>44</sup>

### Cost of an Infraction Citation in California Traffic Court, 2015

STATUTE	ASSESSMENT	AMOUNT OWED
BASE FINE (example)	\$100	\$100
State penalty assessment (Penal Code (PC) § 1464)	\$10 for every \$10 base fine	+\$100
State criminal surcharge (PC § 1465.7)	20% surcharge on base fine	+\$20
Court operations assessment (PC § 1465.8)	\$40 fee per fine	+\$40
Court construction (Government Code (GC) § 70372)	\$5 for every \$10 in base fine	+\$50
County fund (GC § 76000)	\$7 for every \$10 in base fine	+\$70
DNA Fund (GC § 76104.6 and § 76104.7)	\$5 for every \$10 in base fine	+\$50
Emergency Medical Air Trans. Fee (GC § 76000.010)	\$4 fee per fine	+\$4
EMS Fund (GC § 76000.5)	\$2 for every \$10 in fine	+\$20
Conviction assessment (GC § 703.73)	\$35 fee per fine	+\$35
Night court assessment (GC § 42006)	\$1 per fine	+\$1
<b>ACTUAL COST OF CITATION</b>		<b>\$490</b>
DMV warrant/hold assessment fee (Vehicle Code (VC) § 40508.6)	\$10 fee	+\$10
Fee for failing to appear (VC § 40508.5)	\$15 fee	+\$15
Civil assessment for failure to appear/pay (PC § 1214.1)	\$300 fee	+\$300
<b>COST OF CITATION IF INITIAL DEADLINE IS MISSED</b>		<b>\$815</b>

Source: California Vehicle Code, California Judicial Council

When a person fails to appear or pay, the court notifies the DMV, which suspends the person's driver's license.<sup>45</sup> Aside from the limited remedies offered by California's time-restricted traffic amnesty program, there is no process in place to lift the suspension and restore the license until *after* the court notifies the DMV that the fine has been fully paid. From 2006-2013, the DMV initiated suspension actions for nearly 4.2 million driver's licenses (17% of all CA driver's licenses) for this very reason.<sup>46</sup> Furthermore, the penalty assessments and add-on fees are extraordinarily high. Most courts do not have systems in place to evaluate each defendant's financial circumstances. Finally, there is no right to counsel in an infraction case, so even drivers who make it to court when they cannot afford to pay have little idea about their rights at any stage of the process, from arraignment to trial to sentencing.

## REAL LIFE STORY: Sabas

Sabas, a street vendor in Los Angeles, was cited for vending without a permit. He was sentenced by a traffic court judge to pay \$306. He was able to pay \$256 before an illness required hospitalization. Because his sole income comes from monies earned while vending, his hospitalization prevented him from earning the requisite funds to pay the remaining \$50. In Los Angeles, as in most counties, a failure to pay a fine results in an automatic civil assessment fee of \$300. This fee is imposed without a hearing and without a determination of the reasons for why the person did not pay on time. Sabas now owes \$350, which grossly outweighs the original fine despite his best efforts to pay.

## D. Inequality in Arrests for Driving with A Suspended License

As evidenced by the data, there are stark racial and socioeconomic disparities in license suspensions and related arrests. The maps additionally show significant concentrations of both suspensions and arrests in predominantly Black and Latino working class communities across California. Collectively analyzed, these maps paint a picture of the pipeline effect from the infraction citation to a driver's license suspension to arrest. One conclusion that can be drawn from the data is that Blacks and Latinos are bearing the brunt of this police-as-debt-collector scheme. When minority communities experience overexposure to tickets due to allocation of police resources or implicit/explicit bias, they are more vulnerable to driver's license suspensions for failure to appear/pay. It makes sense then that arrests for driving with a suspended license would be concentrated by and large in those minority communities and in neighborhoods that are historically racially segregated and economically stressed. Even assuming that police resources are equally distributed by location and there is no measurable difference in enforcement of laws by race, the glaring reality is that motorists of color in low-income racially segregated neighborhoods, as a class of people, are still disproportionately represented in the arrest data. The broader context of systemic racial bias in policing and courts is implicated in this these disproportionate arrests and enforcement of infraction citation debt.

## REAL LIFE STORY: Prentiss

Prentiss was cited for fare evasion at an Oakland BART train station. Although Prentiss had actually paid his fare, he is blind and was unable to locate his ticket stub or find the kiosk to insert his ticket, which was over 10 yards away from the disabled elevator. Prentiss went by himself to court, determined to challenge the ticket since he did not commit the violation. The judge in the courtroom expressed doubt that Prentiss was truly vision impaired, found him guilty of the violation, and sentenced him to the maximum fine. With only \$890 in Social Security disability as his monthly income, Prentiss found himself unable to pay. He asked the court clerk for a payment plan, but was told the minimum amount he could pay was \$50 up front, which he could not afford without risking his housing or going hungry.

# Matt Francois

was a San Diego Police Department (“SDPD”) officer who rotated between different divisions in San Diego as part of his training. He was first placed in SDPD’s Southeastern Division, which is located geographically south of the I-8 freeway in San Diego. Demographically, the Southeastern Division is made up predominantly of minority residents, with Whites comprising about 18% of the population, and Blacks and Latinos making up 62% of the population. About 23% of the households in Southeastern live in poverty. Mr. Francois was trained in a consistent and standardized manner to run criminal background checks and “max out” on tickets on all motorists. Mr. Francois was later moved to SDPD’s Northeastern Division, which is located north of the I-8 freeway. Northeastern is 60% White, with Blacks and Latinos comprising only 17% of the population. Only 10% of the population in Northeastern lives below the poverty line. When making a traffic stop, Mr. Francois’s training officer, Mr. Messineo, criticized him for running an “inquiry” (record search with a dispatcher) on a White driver. Mr. Messineo further said that inquiries should only be run on people who “looked like criminals.” When asked later what a “criminal” looked like, Mr. Messineo responded that criminals had tattoos, “gave lip,” and had multiple failures to appear on their record. In that same traffic stop, Mr. Messineo took the ticket that Mr. Francois had written, crossed out the additional infraction, and commented that the White driver’s vehicle had a decal that suggested he was a business owner. When Mr. Francois was later transferred to Rancho Bernardo, a neighborhood in the White and affluent Northeastern division, he cited drivers who were habitually running the stop sign at a particular intersection. Mr. Francois’s supervisor, Lieutenant Peterson, reprimanded him, stating that the citizens of Northeastern deserve to be treated better than Southeastern. Lt. Peterson told Mr. Francois that he should not be writing so many traffic tickets because, unlike the divisions south of the I-8, the citizens in Northeastern “actually voted,” were “pro-police,” and were influential in the community (like “City Council members”), and their complaints could impact SDPD salaries.<sup>26</sup>





# III. The Impact: Suspended Licenses

## A. Persistent and Ongoing Barriers to Employment

Driver's license suspensions shut people out of employment opportunities in four major ways. The data shows that these impacts are most severe in neighborhoods where there are high concentrations of low-income people and people of color. (1) A driver's license is needed for transportation to and from work. (2) Increasingly, a driver's license is needed to obtain full time, steady employment and to qualify for job-training programs. (3) Driver's licenses are becoming crucial for non-traditional jobs. (4) Private employers often screen out applicants who do not have driver's licenses.

Individuals with suspended driver's licenses experience great difficulty finding steady and sustainable employment. Lack of employment can send individuals and families into long cycles of poverty that are extremely difficult to break. Increasingly, the loss of the ability to drive is a serious threat to economic security.

### 1. Transportation To and From Work

Transportation to and from work is the most obvious way a driver's license relates to employment. People who are able to travel farther distances inherently have access to a greater number of job opportunities in different locations.<sup>47</sup> Where gentrification has displaced people of color from urban centers, the ability to travel to work is crucial to the survival of these individuals.

The widespread gentrification and housing crisis in the Bay Area, especially in San Francisco and Oakland, has forced people to move further and further away from their job locations.<sup>48</sup> Displacement out of urban centers has most impacted low-income communities of color; in San Francisco, displacement has disproportionately impacted Black and Latino individuals and families. In 1970, Black residents comprised 13% of the city's population. Today, Black residents now comprise only 6% of San Francisco's population, yet constitute 29% of the Eviction Defense Collaborative clients in ejectment proceedings.<sup>49</sup> By 2040, the city's Latino population is predicted to shrink from 15% to 12%.<sup>50</sup> As people move further away from major job centers, driver's licenses become crucial for their long-term employment. In turn, license suspensions most severely impact people of color who have been displaced.

### 2. Job-Training Programs and Non-Traditional Jobs Require a Driver's License

Job-training programs are crucial to creating more employment opportunities. These programs, however, often require a driver's license as part of their eligibility criteria. The City of San Francisco's CityBuild Academy offers an 18-week pre-apprenticeship and construction skills training program where participants can earn up to 15 college credits while learning the skills necessary to enter the construction trade. Like the pre-apprenticeship training program, most construction programs throughout California require a valid driver's license. Similarly, becoming EMT certified, paramedic licensed, or firefighter trained each requires a valid driver's license.<sup>51</sup> Many union construction, transportation or service jobs require valid driver's licenses just to become a member.

#### REAL LIFE STORY: Greg

After a string of non-steady jobs, Greg was excited to enter a job training program in construction, which would allow to him to have steady employment. While he was not trained to operate moving vehicles, Greg learned that his options were limited because all construction jobs required a driver's license- he needed to be able to drive a golf cart when working on larger sites.

## REAL LIFE STORY: Jabarri

Jabarri saved up some money to be able to pay enough to get his driver's license back after his fines were reduced through the Traffic Amnesty Program in 2015, after it had been suspended for several years due to unpaid tickets. As soon as he got his license, he was able to take a promotion at his job and went from making \$12/hour to \$25/hour.

Having a suspended driver's license essentially forecloses important job training opportunities for low-income people of color who are working hard to remove themselves from poverty and create better lives for themselves and their families.

Driver's licenses are critical to many other non-traditional jobs. As nursing homes become more expensive, and as seniors and people who are ill prefer to stay in their homes, in-home health workers have become more in demand. These jobs offer steady work at stable, hourly pay and are a good alternative for people who have spent time working in the care industry. Working as an in-home health aid – a steady job that does not require a college degree – typically requires a driver's license.<sup>52</sup> A health aid is required to drive to the client's home to provide care and often must drive the client to the grocery store, appointments, or the pharmacy.

## REAL LIFE STORY: Tom

Tom, a Black resident of San Francisco living on Treasure Island, had several tickets that resulted in a suspended driver's license. He was waking up at 5am to make sure that he could get to San Francisco in time for his various commitments, and then taking the bus back, resulting in hours of commute time. He found stable work providing in-home care for an elderly woman, who needed help at home, but also needed someone to drive her around and run her errands. Because of his suspended license, Tom was not able to complete all tasks of his job, and was in danger of losing his job.

### 3. Private Employers Screen Out Applicants Who Do Not Have Driver's Licenses

Finally, even if a job does not necessarily require driving, private employers under the misapprehension that individuals with driver's license issues would not make good employees increasingly ask for a driver's license number on job applications.<sup>53</sup>

## REAL LIFE STORY: Marco

Marco is homeless, and is desperately looking for work to eventually be able to rent an apartment or Single Room Occupancy ("SRO"). He was shocked to learn that his license was suspended when he went to renew his license. Despite having a suspended license, he has continued to look for work. He has been discouraged since every application asks for a driver's license number. He has yet to find work, and is still homeless.

Because low-income people of color disproportionately face driver's license issues, they are further excluded from employment opportunities by this employment practice because employers are permitted to ask about a driver's license on job applications, even if the job does not require driving.<sup>54</sup> Structural discrimination, including in employment disparities<sup>55</sup> and over-representation in the criminal justice system, already makes it more difficult for low-income people of color to obtain and maintain steady employment. As a result, entire communities are blocked from employment opportunities and are forced into long term cycles of poverty.

## **B. Individual Loss of Liberty and Erosion of Community Trust in Law Enforcement**

The harm of disproportionate discretionary arrests extends far beyond employment, and is experienced both individually and community-wide. For the person who experiences it, arrest and jail time is a significant life disruption, and can have serious financial, practical, and psychological impacts.<sup>56</sup> For communities, disparate policing erodes trust in the police and undermines a sense of belonging and security in certain communities. Lastly, there are real budget costs to California, which include the price of incarcerating individuals for owing traffic debt and the diversion of police and criminal justice resources away from public safety to this police-enforced debt collection system.

### **1. Individual Impact of Discretionary Arrests**

Though they run the risk of being stopped, cited, and arrested for driving with a suspended license, many individuals with suspended licenses continue to drive because their survival depends on it. They may need to transport a sick loved one to a hospital or travel to a job in an area with inadequate public transit. In contrast to DUI convictions, where the DMV can issue a "restricted license" to allow an individual to drive to work, school, or medical appointments, the penalties for inability to afford one's traffic fines lead to an indefinite suspension, with no opportunity for even a restricted license.<sup>57</sup> Drivers without any license are, of course, more vulnerable to arrest and prosecution for driving with a suspended license.

#### **REAL LIFE STORY: Norris**

Norris had a suspended license because he was unable to pay a traffic ticket. Norris's wife was diagnosed with cancer in 2009, requiring him to drive her to chemotherapy treatment three to four times per week. In a span of a couple months, Norris received four tickets in Palmdale for driving with a suspended license while taking his wife to treatment. Because of his inability to pay these citations, Norris was eventually arrested, pursuant to a bench warrant, and sentenced to 180 days in jail, one year of probation, and \$2,600 in administrative fines and fees. Despite doing the time, Norris has been unable to pay off the additional fines. His ability to pay is further compromised because Norris now has a criminal record. Norris is currently unemployed, and having a hard time finding work with a suspended driver's license and a criminal record.

Upon arrest, people are frequently handcuffed for hours at the scene of arrest and through the booking process. Once they are booked, they are detained, sometimes for days, awaiting a hearing by a judge. A person may wait as long as 48 hours (the constitutional limit) after arrest to be seen by a judge. But sometimes, administrative or bureaucratic errors can undermine the timeliness by which an arrestee avails himself of this fundamental constitutional right.

Arrests are not planned, and can cause people to miss work, lose jobs, go without needed medicine or medical care, and be unable to pick up their kids: the results of being pulled out of your daily life responsibilities unexpectedly can be grave.

Even after someone is released, the process continues to be punishing. A person who is arrested for driving with a suspended license is required to navigate a confusing and complex court process, pay attorney's fees<sup>58</sup> and court fees, and decide whether to plead guilty to a misdemeanor offense of driving with a suspended license, which comes with a litany of additional penalties.

The first conviction for driving with a suspended license can mean six months of county jail time, several years of probation, and a maximum penalty of \$1000 (plus penalty assessments).<sup>59</sup> If there is a second conviction, the penalties are even more severe. In addition, driving with a suspended license will result in higher insurance premiums, and add points to a person's driving record.

## REAL LIFE STORY: Ms. Strong

Ms. Strong was arrested approximately five months following a traffic violation in Torrance. Because she failed to pay for the Torrance violation and had two other unpaid tickets, the judge produced an arrest warrant for her with a \$50,000 bond. She was booked on a Saturday, and the following Tuesday, while she was in court, she requested to do additional time in lieu of the fines, thinking that staying in jail could clear the outstanding balance on the tickets. She spent fifteen days in jail for three citations. After serving the extra time, she discovered that she still had fines associated with each of these three charges in traffic court.<sup>60</sup>

Arrest and incarceration have profound material, psychological, and emotional impacts on individuals and their families.<sup>61</sup> Studies show that incarceration is correlated with overall diminished income,<sup>62</sup> which in turn is associated with lower levels of mental well-being, physical health, social attachments, and a lower life expectancy.<sup>63</sup> Compounded by the stigma and disenfranchisement, these psychological impacts can persist long after the arrest and detention. Even short-term jail sentences can damage a person's emotional health permanently. Psychological studies demonstrate that Black people subjected to intrusive police stops experience heightened levels of psychological stress.<sup>64</sup>

Finally, suspending driver's licenses for failure to pay, and then arresting people for driving is creating a gateway to jail, probation, additional fines, and a criminal record for some of the most vulnerable Californians. It is also swelling our jail system, at a time that California needs to drastically reduce its jail population. In the long term, because pleading guilty to a misdemeanor creates a criminal record, it can permanently foreclose an individual's eligibility for certain jobs and benefits. Entire families are affected materially and emotionally.

*In 2015, The United States Department of Justice (DOJ) held a national convening related to the assessment and collection of court-ordered fines and fees in Washington D.C. On March 14, 2015, they sent a correspondence to court administrators calling on courts to adjust their policies and practices to ensure that no person is jailed as a result of inability to pay court fines. The DOJ also announced the availability of \$2.5 million in competitive grants to state and local governments who want to take action to change how their fines and fees are assessed and collected.<sup>65</sup>*

## 2. Community Impacts of Disproportionate Arrests for Driving with a Suspended License

Research finds that the personal experiences of arrest—particularly experiences of police disrespect and frequent stops—directly erode trust in the police. Nearly one in four Black men under age 30 reports feeling uncomfortable calling the police if they need help. While White people’s comfort in calling the police increases dramatically with age, for Black people it does not.<sup>66</sup>

Furthermore, Black people report being talked down to and disrespected by police officers during traffic encounters.<sup>67</sup> This type of denigration alienates people and undermines the sense of belonging and security for many community members.<sup>68</sup>

### REAL LIFE STORY: Cain

Cain, a 28-year-old Black man, lives in South Central Los Angeles. In 2015, he made a police report after witnessing a neighbor’s domestic violence incident. When the police came, they arrested Cain on a bench warrant from a 2009 ticket for failing to pay a \$1.50 Metro fare. Cain was handcuffed by the arresting officers and humiliated in front of his family and neighborhood. After spending two days and one night in jail, Cain returned home to find that his employer had fired him due to his absence at work. Despite doing jail time, he still had to go to court for the ticket for Metro fare evasion and contest the \$889 fine.

Today, Cain has a heightened sense of fear when he sees a police car. He says, “It was extremely embarrassing to be detained and handcuffed while the officers probed me for information for information unrelated to my warrant. They profiled me as a gang member, which I have no record of. After being detained, isolated, handcuffed for several hours, I was finally placed under arrest. I had to ask the officers would I be read my Miranda rights, in which he responded ‘I’m sure you know them.’ I spent the night in jail only to be released with a ticket for the exact same warrant I was arrested for, and a notice to appear in court. I left the jail feeling deflated, sick, hurt, unhuman.”

Frequent, disproportionate stops and subsequent investigatory searches can make people of color feel that police officers pull them over not because of criminal activity but because the officers have implicit stereotypes linking race and criminality. The impression that officers are using the stops to intimidate them or search their private property undermines faith in both officers and the government, and thereby limits the public safety role police are supposed to serve. The belief that arrests are racially disproportionate is borne out by available data showing more frequent stops and searches of Black and Latino drivers that yield no findings of a crime.<sup>69</sup>

When this overexposure to traffic stops also leads to more infraction citations and, subsequently, more court debt, it can be perceived that police officers are not interested in genuinely protecting and serving the public, but rather are more concerned with issuing minor citations and generating fines, regardless of the permanent consequences those citations and fines can have on an individual and his family.<sup>70</sup>

## 3. Cost to the Public

The price of incarcerating tens of thousands of individuals for what is essentially a crime of poverty is enormous. Not only is the cost of incarceration per person high, it may be exacerbating jail overcrowding and putting enormous strains on staff and other personnel at sheriff’s stations, jails, and lock-up facilities.

At a time when California is investing significant resources in reducing its prison and jail populations, the policy of incarcerating people for driving with poverty-based suspended licenses is out of sync.<sup>71</sup>

## IV. RECOMMENDATIONS

In the year since the release of our first report, several of the suggestions put forth in our solutions sections have been initiated. The Judicial Council adopted a rule partially addressing the requirement that one had to pay “bail” as a prerequisite to scheduling a hearing in traffic court.<sup>72</sup> The Statewide Traffic Amnesty Program took effect in October 2015; despite its shortcomings, its income-responsive design has resulted in greater participation in just the first three months of the program than the total who participated in the last amnesty program in 2012.

However, the policies and practices described in the preceding sections of this report remain extremely problematic despite progress made in the past nine months. This section details an array of possible solutions for consideration by Californians, legislators, policy makers, courts, law enforcement and other government agencies. The complexity and problems of the current systems will require inter-agency collaboration to create short- and long-term solutions to the cycle of criminalization and poverty caused by citations, fines and fees, license suspensions, and related arrests.

### **RECOMMENDATION #1**

#### ***Abolish the Use of Driver’s License Suspension as a Court-Ordered Debt Collection Tool***

**License suspensions should be used only to protect public safety, not to punish people for their inability to pay fines.**<sup>73</sup> California’s current use of license suspensions for failure to pay or appear is both bad public policy and of questionable constitutionality. Driver’s licenses are so necessary for participation in the job market that the U.S. Supreme Court held nearly 40 years ago that licenses are “essential in the pursuit of livelihood” and their suspension requires due procedural protections.<sup>74</sup> In a recent letter sent to state court leaders across the country, the United States Department of Justice affirmed this, recommending that courts place a moratorium on the use of license suspension to collect court debt absent clear due process.<sup>75</sup> The American Association of Motor Vehicles has said that suspending licenses for failure to pay or appear is not a good use of resources, and undermines public safety.<sup>76</sup>

SB 881, authored by Senator Hertzberg and currently before the California legislature, is co-sponsored by members of the Back on the Road CA Coalition, and would repeal the authority of the DMV to suspend licenses when notified by courts of a failure to appear (FTA) or failure to pay (FTP). The bill would restore driver’s licenses to people with existing license suspensions due to an FTA or FTP. The bill would preserve the other debt collection tools available to the state, including wage garnishment or tax return intercept by the State Franchise Tax Board. State legislators should take this opportunity to support SB 881’s passage.

### **RECOMMENDATION #2**

#### ***Stop the Criminalization of People Who Cannot Afford to Pay Fines and Fees***

County-level law enforcement agencies and local courts throughout California have an urgent responsibility to curtail the unfair criminalization of the most impacted communities. They should:



1. Stop the issuance of arrest warrants for failures to appear and pay in traffic court.
2. Reclassify a violation of VC 14601.1(a) [driving with suspended license for a failure to appear or pay] as an infraction rather than a misdemeanor.
3. Abolish the use of bail in any case where a person is arrested due to an underlying charge related to a failure to pay court fines and fees.

### **RECOMMENDATION #3**

#### ***Reduce Fines, Fees and Assessments for Low-Income People and Ensure Equal Access to Justice***

Under the current system in California, there is no formal, standardized court process to consider a person's ability to pay fines. No notice is given to inform someone of alternative ways of satisfying court fines and fees than simply paying upfront the total amount due. Notices say nothing about the possibility of setting up an installment payment plan or performing community service. Hundreds of thousands of people across the state are still barred from getting into court because they cannot afford to pay the full citation up front after missing a payment.

Appendix 2 details a number of specific policies and procedures that could be improved in order to ensure that due procedure requirements are met, and that access to court services is not tied to ability to pay fines and fees. Broadly summarized, the proposals include:

1. Ensure that access to the courts and due process do not depend on income.
2. Require all courts and counties to use a state-mandated payment plan formula that is tied to a person's current income, and allow requests for modification if a person's financial circumstances change.
  - o Reduce the burden of exorbitant fines, fees, and assessments on low- and middle-income people.
  - o Offer additional opportunities for low-income individuals to utilize community service as an alternative to monetary payment of court-ordered debt.
  - o Monitor private debt collection companies contracted to collect court-ordered debt to ensure compliance with the law.
3. Extend and improve the current Traffic Amnesty Program to make it more accessible to low-income people<sup>77</sup>
4. Automate procedures to reinstate suspended licenses after a certain period of time or after the court has discharged the underlying debt.
5. Provide more funding for civil legal aid and workable self-help services to help people navigate traffic court, including better online information about accessing the current amnesty program. Create and fund a right to counsel to those facing license suspension. Under current law, someone charged with a traffic offense is not guaranteed an attorney despite the fact that failure to appear or to pay fines and fees can result in a future arrest and incarceration. Furthermore, the conviction may

stay on one's driving record for years, with significant negative consequences. Poor defendants should be provided with an attorney to zealously defend their statutory and constitutional rights in traffic court.

Adopting some combination of the aforementioned solutions is vital to protect fair access to justice in California. However, as legal advocates, the members of Back on the Road California are cognizant of the significant funding challenges facing courts in California. We strongly support adequate court funding to ensure fair access to justice for all members of our community, regardless of income.

Funding court operations from the collection of court fees is an unstable source of revenue for the courts. Such a practice also presents a conflict of interest for the courts, as judicial officers' decisions directly affect the amount of funds available to pay court expenses, including judges' own salaries. We must finance court operations differently, decoupling court debt collection from court funding. We suggest funding from the State General Fund and also from an increase in the court filing fee schedule for inter-corporate and complex litigation to ensure that the full costs of such litigation are not borne by the taxpayers. A new source of revenue could come from the collection of a small percentage of any court-monitored settlement or verdict above \$100,000.

## **RECOMMENDATION #4**

### ***End the Over-Policing of Communities of Color and Low-Income Communities***

Explicit bias in law enforcement,<sup>78</sup> compounded by mounting evidence of implicit bias in policing, suggests that racism and discrimination are major issues confronting law enforcement. Black Lives Matter activists and other groups across the country have put forth aggressive proposals to increase accountability for police-involved killings. Measures to curtail discriminatory practices should be developed in collaboration with the communities most impacted by such policing practices. Many high profile police killings in the past few years began with a traffic stop or an investigatory "stop-and-frisk" pedestrian stop. As such, Recommendation #4 is intended to contribute to the larger national dialogue about police accountability and law enforcement reform.

Based on our findings, we recommend the following:

1. End the failed practice of investigatory police stops.
2. Increase transparency around police stops.<sup>79</sup>
3. Implement measures to reduce bias and its impact on police behavior.<sup>80</sup>
4. Require written consent before any search of a person or vehicle during a police stop.<sup>81</sup>
5. Reduce non-safety related citations in low-income communities of color, especially of "quality of life" violations that are disparately given to homeless people and people of color.<sup>82</sup>

## CONCLUSION

The police and court practices described in this report have had and continue to have a grave impact on California's communities. Driven by implicit and explicit biases within courts and law enforcement, there is clear disparate impact of these harms on low-income people and especially on whole communities of color. As demonstrated by data from various public sources, driver's license suspensions and related arrests saddle people with long-lasting criminal records simply because they cannot afford to pay an infraction ticket.

If the state of California is committed to eradicating institutional racism and promoting justice and fairness in our communities, it must halt this ongoing harm. Addressing these problems successfully will require multiple strategies. Our Back of the Road California Coalition stands ready to participate in finding creative solutions to a problem affecting millions of Californians, especially those who are poor and particularly poor people of color.

## APPENDIX 1: Methodology

### Dataset A – DMV records regarding license suspension rates due to FTA/FTP

The core of Dataset A is a dataset provided by the California Department of Motor Vehicles detailing the number of active driver's license suspensions due to Failure to Appear or Failure to Pay on July 14, 2014 (snapshot in time), by zip code. Total number of zip codes was 2,427.

This core dataset was supplemented with ZIP Code Tabulation Areas-specific U.S. Census data from the 2014 American Community Survey (5-year estimates). Because zip codes represent United States Postal Service service areas and are subject to change, the U.S. Census builds ZIP Code Tabulation Areas (ZCTAs) using census blocks to approximate zip code. The U.S. Census describes ZCTAs as “generalized areal representations” of zip codes, and a description of the conversion process can be read online.<sup>83</sup> The U.S. Census datasets used are as follow:

From dataset DP05 DEMOGRAPHIC AND HOUSING ESTIMATES:

- HCo3\_VC79: Percent; RACE - Race alone or in combination with one or more other races - Total population - Black or African American
- HCo3\_VC81: Percent; RACE - Race alone or in combination with one or more other races - Total population - Asian
- HCo3\_VC88: Percent; HISPANIC OR LATINO AND RACE - Total population - Hispanic or Latino (of any race)
- HCo3\_VC94: Percent; HISPANIC OR LATINO AND RACE - Total population - Not Hispanic or Latino - White alone

From dataset DP03 SELECTED ECONOMIC CHARACTERISTICS:

- HCo1\_VCo3: Estimate; EMPLOYMENT STATUS - Population 16 years and over
- HCo1\_VC86: Estimate; INCOME AND BENEFITS (IN 2014 INFLATION-ADJUSTED DOLLARS) - Total households - Mean household income (dollars)
- HCo3\_VC171: Percent; PERCENTAGE OF FAMILIES AND PEOPLE WHOSE INCOME IN THE PAST 12 MONTHS IS BELOW THE POVERTY LEVEL - All people

The Microsoft Excel “VLOOKUP” function was used to match the above Census ZCTA information with the zip codes from the DMV core dataset. Because the Census's zip code-to-ZCTA conversion process combines some very small zip codes into larger ZCTAs, 690 zip codes did not match with Census data and were therefore discarded. Then, the remaining 371 zip codes with populations (16 years and older) under 1,000 residents were discarded. This left 1,366 zip codes with matched ZCTA information.

Finally, an Excel formula was used to create a variable describing the FTA/FTP suspension rate as a percent of the ZCTA population of residents 16 years and older (used as a proxy for the number of residents eligible for a driver's license). The resulting variable showed suspension rates in zip codes ranging from near zero to a high of 7.9%. (One extreme outlier, zip code 95113, was dropped from the dataset because of a 17.5% suspension rate).

## **Dataset B – Los Angeles County and San Francisco County arrest location and race data**

Dataset B compiles non-identifying data acquired from Los Angeles and San Francisco Counties through Public Records Act Requests. The data detail the locations of arrests and race of the arrestee made pursuant to California Vehicle Code section 40508 (failure to appear or failure to pay) and Vehicle Code section 14601.1(a) (driving on a suspended license). Below paragraphs describe the data received as a result of these requests.

### **LOS ANGELES COUNTY**

Public Records Act requests were sent to the Los Angeles County Sheriff's Department between October 2015 and February 2016. The data received represents all arrests made between September 30, 2013 and September 30, 2015. Section 14601.1(a) arrests totaled 19,108. Section 40508 arrests totaled 4,391.

### **SAN FRANCISCO COUNTY**

A Public Records Act request was sent to San Francisco County Sheriff's Department on December 17, 2015. The data received represents all arrests made between the two-year period of January 1, 2014 through December 31, 2015. Section 14601.1(a) arrests totaled 9,312. Section 40508 arrests totaled 855.

### **ARREST LOCATION MAPS METHODOLOGY**

In order to create maps showing arrest locations, the data received from both counties required extensive "cleaning" due to poor data integrity. For example, many arrest locations could not be "geocoded" for latitude and longitude coordinates without fixing typographical errors, and some data points did not contain useful location information. If typographical errors could not be fixed ("cleaned"), or if the location data did not provide meaningful or definitive location information, the rows were not included in the dataset used to make the arrest location maps. Moreover, some arrest locations were listed at county jails or booking center and therefore were not included in the maps. After such cleaning, the San Francisco County dataset contained 8,415 Section 14601.1(a) arrests and 779 Section 40508 arrests; the Los Angeles County dataset contained 17,444 Section 14601.1(a) arrests and 4,113 Section 40508 arrests. The service geocod.io was used to find latitude and longitude coordinates for arrest locations.

### **DATASET B LIMITATIONS DISCUSSION**

There are certain limitations to the data regarding arrest locations. The data from the Sheriff's Departments only contains information about stops that ultimately ended in arrests and bookings for Vehicle Code §§ 14601.1(a) and 40508(a) violations. The data does not account for any stops that ended in a verbal or written warning, or a citation. This limitation in data necessitates that there are likely many more stops and citations for Driving with a Suspended License and Failure to Appear/Pay than are represented in the data disclosed by the Department. Certainly, the data does not capture the times when motorists are stopped, searched, and subsequently released. It also does not account for the times when an invasive investigatory search was effectuated and the motorist was not booked or arrested. As a result, this analysis undercounts the number of times a person who has a suspended driver's license has been stopped, temporarily detained and penalized for failure to pay a traffic fine.

The second limitation is that in each County dataset, there may be other charges incident to each arrest for Vehicle Code § 14601.1 and 40508(a). This implies that any arrestee might have had additional charges beyond driving with a suspended license or a bench warrant for FTA/FTP. At the time of the publication of

this report, neither the San Francisco nor Los Angeles Counties responded to a follow-up request for additional booking charges for every arrest. Nonetheless, we know from anecdotal evidence and from Dataset C that arrests occur for alleged violations of Vehicle Code §§ 14601.1 and 40508(a) alone. We also know from such evidence that arrests are effectuated when there are alleged violations of misdemeanor violations of Vehicle Code §§ 14601.1 and 40508(a) and one or more minor infractions for which incarceration is not legally permitted.

The third limitation is that a driver's license may be suspended under Vehicle Code § 14601.1 for a number of reasons, not merely for an infraction citation. It is our information and belief, upon conversations with public defenders in Los Angeles county and around the state, that the most common observed reason for a license suspension when a defendant faces a charge of Vehicle Code § 14601.1(a) is a Failure to Appear in court on a traffic ticket or Failure to Pay an infraction ticket.

### **Dataset C – San Joaquin County arrest data**

A Public Records Act request was sent to San Joaquin County Counsel on March 2, 2016. The dataset received in response, presented in comma separated values format, represents all arrests made pursuant to Vehicle Code § 14601.1(a) or Vehicle Code § 40508(a) between January 1, 2013 through March 8, 2016, and totaled 1,717 unique arrests. Unlike the data in Dataset B, the San Joaquin dataset did not provide the location of the arrest or the race of the arrestee. However, it listed the various “booking charges” for each arrest (most arrests had multiple booking charges), and we identified roughly 850 unique booking charges. 223 arrests listed a booking charge for driving on a suspended license (Vehicle Code Section 14601.1(a)) as the *only* booking charge (13% of all arrests). We then categorized the hundreds of booking charges into two categories: 1) “serious offenses,” including felonies and serious misdemeanors involving acts that reasonably endangered public safety, and 2) “non-serious” offenses, including infractions and a limited number of low-level misdemeanors.

An Excel formula was then used to filter the list of booking charges for each arrest by whether or not it included at least one “serious offense” charge. The result showed that 693 arrests (40% of total) had no booking charges that were deemed serious offenses. The average jail time incurred due to such arrests was 1.1 day. 58 individuals spent more than three days in jail for such arrests, and 17 individuals spent more than ten days in jail for such arrests.

The 223 individuals (13% of total arrests) that were booked *only* for the charge of driving on a suspended license spent an average of 0.85 days in jail. However, disturbing outliers exist: 3 persons spent between ten and thirteen days in jail, and one person spent 21 days in jail - all for this singular offense.



## APPENDIX 2: Full list of court-based solutions

Note: Many of the solutions below were first presented in April 2015 in *Not Just a Ferguson Problem: How Traffic Courts Drive Inequality in California*. The list below has been adjusted to incorporate changes to the law since that first report was released, and also includes new ideas brought to light by the data in this report. Some of these solutions would not be necessary if license suspension is definitively de-linked from FTA's, FTP's, all infractions and all non-safety misdemeanor convictions.

### A. Ensure that access to the courts and due process do not depend on income.

- Prohibit courts from requiring advance payment of a civil assessment when an individual is seeking to demonstrate a “good cause” basis for vacating the civil assessment under the statute.
- Extend the window during which an individual can cure a failure to pay or failure to appear from 10 days to 60 days, and longer if the good cause reason for the delay extends beyond the 60 days.
- Allow individuals to seek a reduction of the civil assessment amount, based on inability to pay.

### B. Standardize payment plans

- Require that counties and courts offer individuals the option of setting up a payment plan to satisfy court-ordered debt. The plan must conform to State guidelines. Dictate that payment plans may be established at any time, but would not go into effect until a person's income exceeds a threshold amount equal to the earnings of 40 hours of work per week at the state minimum wage.
- Once a person's income meets the minimum threshold, payments under the plan could not exceed 10% of a person's income if the income is less than the federal poverty level, 20% if their income is less than 200% of the federal poverty level, and 25% on higher incomes.
- Establish a process for individuals at any time to request adjustments of their payment plans based on a change of financial circumstances.
- Require that court-approved payment plans be accepted by any private debt collection agency
- Amend CCP 706.051 (a) to expand its protections to include court debt collected by a private collections agency.
- Require that all citation notices and court courtesy notices indicate that there is an income-based payment plan option and a community service option
- For defendants with debts in multiple counties, require that the first county to receive a defendant's Amnesty application notify any other counties to which debt is owed by

the defendant and thereafter create a unified multi-county payment plan providing that payments are to be made to that county which will then distribute the funds to the other respective counties under a State distribution formula to be established.

### **C. Reduce the financial burden of citation fines and court fees for low-income people based on their “ability to pay.”**

- Reduce by 50% all existing add-on penalty assessments, and prohibit the imposition of any new assessments.
- Allow persons who are low-income to request a waiver of a portion of fines, fees, and civil assessments owed, based on proof of indigence, calculated by a standardized income schedule. This opportunity for waiver should apply to any debt that has been adjudicated, regardless of which entity is currently charged with collecting the debt.
- Allow people to work off traffic fines and fees, including civil assessment penalties, through performing community service hours that are credited at a rate of at least 150% of the state minimum wage or 100% of an applicable local living wage.
- Permit individuals to request community service as an alternative to payment even if they are paying under an installment payment plan, if their financial circumstances change and they are unable to pay the agreed-upon monthly amount.
- Require that all citation notices and court courtesy notices indicate that there is an option to request community service.

### **D. Extend and improve the current Traffic Amnesty Program to make it more accessible to low-income people<sup>84</sup>**

- The Amnesty cut-off date should be extended to January 1, 2016
- Allow those with fines due after January 1, 2013 to have a reduction in the amount owed according to the current guidelines.
- Standardize an income-based repayment schedule to be used across the state.
- Restore the driver’s license after the first payment is made.
- Include an opportunity to complete community service of the reduced amount, in lieu of payment, if the individual is below 250% of the federal poverty level.
- Waive the \$50 participation fee for those who qualify for an 80% reduction in fees.
- All administrative fees should be waived for low-income people.
- Courts should permit the performance of community service in lieu of payment under the Amnesty Program.
- The restrictions on victim restitution and open warrants should be eliminated.

- Collections agencies should not be permitted to ask any Amnesty Program participant about any other court-ordered debt.

### **E. Automate procedures to reinstate suspended licenses after a certain period of time or after the court has discharged the underlying debt.**

Under current law, court-ordered debt may be discharged, subject to certain conditions. Upon discharge, the debt is no longer actively being collected.<sup>85</sup> Once debt is discharged, counties and courts should be required to direct the DMV to release all license suspensions related to the collection of that debt. Any county or court establishing a “discharge of debt” plan must incorporate into that plan a policy of releasing any license suspension that is based on discharged debt.

- Under current law, Vehicle Code § 12808(c), the DMV may remove a failure to appear or pay notice and issue a license after five years. This law should be amended to require the DMV to take this action and reduce the term to three years.

### **F. Redirect the revenue from civil assessment penalties to the state general fund to eliminate conflict of interest.**

- As the direct recipient of the revenue collected from civil assessment penalties, courts are incentivized to impose the full \$300 fee each time, despite the statutory requirement under Vehicle Code § 42003 to consider a defendant’s ability to pay. These funds should not become a revenue stream for the courts but should go directly into the State General Fund to eliminate this conflict of interest. These new General Fund dollars could help finance the State programs currently funded by add-on fees to base fines. The courts could also seek additional funding from the General Fund to cover their funding short-fall caused by no longer receiving fees and assessments.

### **G. Reduce the burden of license suspensions for people being released from jail or prison who are struggling towards successful community reentry.**

- Establish an explicit statutory prohibition on the use of license suspensions for collection of court-ordered fines and fees related to a criminal conviction as a counter-productive barrier to reentry.
- Expand Vehicle Code § 41500, which allows the dismissal of outstanding traffic citations for people serving a sentence in state prison, to include people serving a county jail sentence.

# Endnotes

- 1 This coalition includes: A New Way of Life Re-Entry Project, The East Bay Community Law Center, Lawyer's Committee for Civil Rights of the San Francisco Bay Area, Legal Services for Prisoners with Children, and the Western Center on Law and Poverty.
- 2 See Lawyers' Committee for Civil Rights of the Bay Area et al., Not Just a Ferguson Problem: How Traffic Courts Drive Inequality in California (2015), available at <http://www.lccr.com/wp-content/uploads/Not-Just-a-Ferguson-Problem-How-Traffic-Courts-Drive-Inequality-in-California-4.20.15.pdf>. Not Just a Ferguson Problem came on the heels of similar findings across the country that show racial disparities in traffic stops, starting with the U.S. Department of Justice's investigation of the Police Department in Ferguson, Missouri. See Civil Rights Div., U.S. Dep't of Justice, Investigation of the Ferguson Police Dep't (2015), available at [http://www.justice.gov/crt/about/spl/documents/ferguson\\_findings\\_3-4-15.pdf](http://www.justice.gov/crt/about/spl/documents/ferguson_findings_3-4-15.pdf).
- 3 See Highway Statistics Series, Licensed Total Drivers by Age, Sheet 5 of 6, U.S. Dep't of Transportation Federal Highway Administration (Sept. 2011).
- 4 See Cal. Gov't Code § 12525.5; Cal. Penal Code §§ 13012, 13519.4.
- 5 See Am. Civil Liberties Union of N. Cal., CHP Records Reveal a Pattern of Stopping Latinos to Impound Vehicles: A Case Study from Fresno County (2014), available at [https://www.aclunc.org/sites/default/files/caruthers\\_chp\\_case\\_study.pdf](https://www.aclunc.org/sites/default/files/caruthers_chp_case_study.pdf).
- 6 See Howard P. Greenwald, U. of S. Cal., Race and Vehicle Stops by the Sacramento County Sheriff's Department (2011), available at [http://www.oig.saccounty.net/Documents/sac\\_o3o847.pdf](http://www.oig.saccounty.net/Documents/sac_o3o847.pdf). Note that the author of this study has been criticized for justifying racial profiling within the Sacramento police department in his 2001 report analysis. Michelle Alexander, Am. Civil Liberties Union Foundation of N. Cal., The California DWB Report: A Report from the Highways, Trenches and Halls of Power in California 49 (2002).
- 7 See Shelly Zimmerman, City of San Diego Police Department, Report to the City Council: No: 15-016 (2015), available at <http://www.sandiegouniontribune.com/documents/2015/feb/25/san-diego-police-traffic-stops-report>. See also Megan Burks, What SDPD's Racial Data Can Tell Us—and What it Can't, Voice of S.D., May 19, 2014, available at <http://www.voiceofsandiego.org/racial-profiling-2/what-sdps-racial-data-can-tell-us-and-what-it-cant/>.
- 8 See Joaquin Palomino, Black Oakland Residents Stopped, Searched with Vague Legal Tactic, S.F. Chron., Nov. 28, 2015, available at <http://www.sfchronicle.com/bayarea/article/Black-Oakland-residents-stopped-searched-with-6662485.php>.
- 9 Darwin BondGraham, Data Shows Disproportionate Stops and Searches of Blacks and Latinos by Berkeley Cops, E. Bay Express, September 28, 2015, available at <http://www.eastbayexpress.com/SevenDays/archives/2015/09/28/data-shows-disproportionate-stops-and-searches-of-blacks-and-latinos-by-berkeley-cops>.
- 10 Tracey Kaplan et al., SJPD Data Show San Jose Cops Detained Greater Percentage of Blacks, Latinos, Santa Cruz Sentinel, May 10, 2015, available at <http://www.santacruzsentinel.com/article/NE/20150510/NEWS/150519972>.
- 11 Ian Ayres & Jonathan Borowsky, A Study of Racially Disparate Outcomes in the Los Angeles Police Department (2008), available at <http://islandia.law.yale.edu/ayres/Ayres%20LAPD%20Report.pdf>.
- 12 This report uses the term "Latino" in all instances even when the data source (e.g., U.S. Census or law enforcement data) says "Hispanic."
- 13 For example, in Berkeley during the first eight months of 2015, 30.5% of all traffic stops were of Black drivers, but Black people make up only 8.4% of Berkeley's total population. White people are 56% of Berkeley's total population, but were only 36.7% of those stopped by the police. BondGraham, supra note 9. See also Charles R. Epp, Pulled Over:

- How Police Stops Define Race and Citizenship (University Of Chicago Press 2014). In San Jose, a city where Black and Latino people are slightly more than a third of the population, those groups made up nearly two-thirds of all traffic stops. Black drivers were 8% of the stops, compared with 3% of the population, and Latino drivers were 57% of the stops, but only 33% of the population. Kaplan et al., supra note 10. In Oakland, from September 2014 to September 2015, more than 34,000 people were stopped by Oakland police. About 70% were Black, even though just 26.5% of all Oakland residents are Black. Palomino, supra note 8.
- 14 In Fresno, Latino drivers are pulled over more often than White drivers for “investigatory” stops, based on non-observable offenses. In a 2014 study, Latino drivers were 4.3 times more likely than non-Latino drivers to receive a citation for driving without a license as the sole offense without any other infraction, with “probable cause” noted as justification for the initial stop, instead of a concrete traffic violation. Am. Civil Liberties Union of N. Cal., supra note 5. Similarly, in Berkeley, 66.2% of Black people pulled over were released without an arrest or citation, with Hispanics/Latinos close behind at 56.4%. Only 38.1% of White people stopped by Berkeley police were eventually released without being either arrested or cited, indicating that while police were stopping Black and Latino drivers more frequently, they were not finding justification for the stops at nearly the same rate. Emilie Raguso, Berkeley Coalition Says Policy Stops Show Racial Bias, *Berkeleyside*, Sept. 29, 2015, available at <http://www.berkeleyside.com/2015/09/29/berkeley-coalition-says-police-stops-show-racial-bias/>.
- 15 During a 12-month period in Oakland, more than half of all people stopped for traffic violations were Black, and the driver was searched in 1 of 5 of those stops. White motorists were four times less likely to be pulled over, and those who were stopped were nearly six times less likely to be searched. Palomino, supra note 8. In San Diego, Black drivers were searched three times more than White drivers following traffic stops, and Latino drivers were searched twice as many times as White drivers. Burks, supra note 7.
- 16 In Los Angeles, searched African Americans were 37% less likely than searched Whites to be found with weapons, 24% less likely to be found with drugs, and 25% less likely to be found with other contraband. Ayres, supra note 11, at 7. Despite the highly disproportionate search rates for Black and Latino drivers in San Diego, searches were less likely to result in an arrest for Black and Latino residents, and in more than 90% of all vehicle searches, officers found no drugs or contraband of any kind. Burks, supra note 7.
- 17 Please reference Appendix 1 for an explanation of methodology for obtaining and interpreting the data.
- 18 If a person misses a court appearance for a traffic violation or fails to pay a traffic or infraction ticket, he or she is issued a Failure to Appear (FTA) or a Failure to Pay (FTP). The power to issue that arrest warrant is given by California Vehicle Code section 40508 and California Penal Code section 853.7. While in Los Angeles County, traffic courts treat a Failure to Appear or Failure to Pay as infractions added to an individual’s initial traffic infraction(s), the California Legislature has classified both Failure to Appear and Failure to Pay as misdemeanors, and not infractions, thereby affecting an individual’s criminal record. Cal. Veh. Code § 40000.25. Additionally, the California Penal Code states that willful failures to appear constitute misdemeanors, “regardless of the disposition of the charge upon which he or she was originally arrested.” Cal. Penal Code § 853.7.
- 19 See Cal. Veh. Code § 14601.1(a).
- 20 In conversations with public defenders across the state, the most common reason for a license suspension when a defendant faces a charge of Veh. Code § 14601.1(a) is a Failure to Appear in court on a traffic ticket or Failure to Pay a traffic ticket. Other reasons include insurance lapses or medical conditions commonly recognized as dangerous for drivers. See Interview with Theresa Zhen, Skadden Fellow, A New Way of Life Reentry Project, Los Angeles, Cal. (March 15, 2016.)
- 21 The data from the Sheriff’s Departments only contains information about arrests and charges for Veh. Code §§ 14601.1(a) and 40508(a) violations.

The data does not account for stops and that did not result in an arrest or booking. This limitation in data means that we are undercounting the number of times California residents have been stopped, searched, issued a verbal or written warning or issued a citation. As a result, there are likely many more stops and citations for Driving with a Suspended License and Failure to Appear/Pay than are represented here.

- 22 Jennifer L. Eberhardt et al., *Seeing Black: Race, Crime, and Visual Processing*, 87 *J. Pers. & Soc. Psychol.* 876. Social science research provides helps explain why law enforcement disproportionately targets these neighborhoods. This research shows that explicit and implicit biases create a belief that how one is racially assigned signifies one's degree of criminality. Additionally, a male police officer who stereotypes black males as hypermasculine may feel a threat to his own sense of his own masculinity, triggering a more aggressive response to Black male drivers. These types of biases, the research indicates, lead police officers to use traffic stops to deter Black or brown drivers from engaging in what officers assume to be criminal conduct. See also Epp, *supra* note 13, at xv.
- 23 C.L. Ruby & John C. Brigham, *A Criminal Schema: The Role Of Chronicity, Race and Socioeconomic Status in Law Enforcement Officials' Perceptions of Other*, 26 *J. Appl. Soc. Psychol.* 95 (1996).
- 24 Phillip Atiba Goff et al., *The Essence of Innocence: Consequences of Dehumanizing Black Children*, 106 *J. Pers. & Soc. Psychol.* 526 (2014).
- 25 Greg Moran, *Lawsuit Claims 'North of 8' Favoritism at SDPD, S.D. Union Trib.*, Feb. 15, 2016, available at <http://www.sandiegouniontribune.com/news/2016/feb/15/sdpd-bias-lawsuit/?Watchdog>.
- 26 *Id.*
- 27 See Judicial Council of Cal., *Court Statistics Report xv-xi* (2015), available at <http://www.courts.ca.gov/documents/2015-Court-Statistics-Report-Introduction.pdf>.
- 28 While this report uses the terms "Black" and "Latino", in this instance the terms "African-American" and "Hispanic" have been used to keep consistent with the report cited.
- 29 The study emphasized that "[i]n interpreting the citation disparities, however, it is important to keep in mind the difference between the conditional and unconditional liability of being cited. While Table 9 shows that the citation likelihood conditional on being stopped is less for African Americans than whites, Table 6 shows the unconditional likelihood of African Americans being cited was significantly higher than that of whites. Even after controlling for the local crime rate, African Americans are so much more likely to be stopped than whites, that their probability of being cited is higher." Ayres, *supra* note 11, at 7.
- 30 BondGraham, *supra* note 9.
- 31 Racial disparities in liquid assets are compounded when one encounters a racially skewed justice system. A recent study in Los Angeles showed that Black families only had \$200 in liquid asserts, Mexicans had only \$0, other Latinos had only \$7. Malany De La Cruz-Viesca et al., *The Color of Wealth in Los Angeles* 25 (2016), available at [http://www.aasc.ucla.edu/besol/Color\\_of\\_Wealth\\_Report.pdf](http://www.aasc.ucla.edu/besol/Color_of_Wealth_Report.pdf).
- 32 See, e.g., *DMV Point System in California*, Cal. Dep't of Motor Veh., <http://www.dmv.org/ca-california/point-system.php>.
- 33 Farida Jhabvala Romero, *Driving with Suspended License Top Crime in Menlo Park, Many Lose Cars*, Peninsula Press, June 17, 2015, available at <http://peninsulapress.com/2015/06/17/driving-suspended-license-top-crime-in-menlo-park-california/>.
- 34 Am. Civil Liberties Union of N. Cal., *supra* note 5, at 4.
- 35 California is comprised of 58 counties, each with its own traffic court. Each county has between 1 and 46 branches of the superior court, adding up to nearly 500 different courthouses in the state. Each county has one or more law enforcement agencies that are empowered to issue traffic citations. The California Highway Patrol is a state-wide agency that has jurisdiction to issue traffic citations anywhere in the state. Within the 58 counties,



- there are 482 municipalities. Each city has its own municipal code, its own police force, and its own authority to prosecute infractions. See generally Judicial Council of Cal., *supra* note 27.
- 36 See Cal. Veh. Code § 5204(a).
- 37 *Id.* § 273159(a).
- 38 See Cal. Penal Code §§ 653.20-653.28.
- 39 *Id.* § 640(c)(1).
- 40 Californians are no longer faced with merely the base fine, but are now responsible for penalty assessments and surcharges that more than triple the original fine. On top of those fees, there are add-on fees for numerous state and county funds. See Lawyers' Committee for Civil Rights of the Bay Area et al., *supra* note 2, at 9.
- 41 See Cal. Veh. Code § 40508(a).
- 42 Cal. Penal Code § 1214.1.1
- 43 In California, third party collections agencies like GC Services or Alliance One are known to provide misleading information about debt. Press Release, Attorney General Kamala D. Harris Issues Consumer Alert on Debt Collectors Misleading Consumers about Traffic Tickets and Infractions Amnesty Program (Oct. 28, 2015), available at <https://oag.ca.gov/news/press-releases/attorney-general-kamala-d-harris-issues-consumer-alert-debt-collectors>.
- 44 See Cal. Veh. Code § 40509.5.
- 45 *Id.*
- 46 See Lawyers' Committee for Civil Rights of the Bay Area et al., *supra* note 2, at 13. Typically, someone will find out about the FTA/FTP when he or she gets a notice in the mail saying that his or her driver's license has been suspended. At that point, to lift the license suspension, the person can pay the full balance on the ticket or, in some counties, set a "court date" (arraignment) to be seen by a judge. To contest the ticket at the arraignment, he must pay the entire fine up front. In either situation, he or she must pay the entire amount owed to get his or her license reinstated. *Id.* at 12.
- 47 See generally Adie Tomer et al., Brookings Institute, Missed Opportunity: Transit and Jobs in Metropolitan American (2011), available at [http://www.brookings.edu/~media/research/files/reports/2011/5/12-jobs-and-transit/0512\\_jobs\\_transit.pdf](http://www.brookings.edu/~media/research/files/reports/2011/5/12-jobs-and-transit/0512_jobs_transit.pdf).
- 48 See Tanvi Misra, Mapping Gentrification and Displacement in San Francisco, The Atlantic: City Lab (Aug. 31, 2015), available at <http://www.citylab.com/housing/2015/08/mapping-gentrification-and-displacement-in-san-francisco/402559/>.
- 49 Daniel Everett, San Francisco Housing Squeeze Disparately Impacts African-Americans, S.F. Bay View (Feb. 21, 2014), available at <http://sfbayview.com/2014/02/san-francisco-housing-squeeze-disparately-impacts-african-americans/>.
- 50 PolicyLink & U. of S. Cal. Program for Env. and Regional Equity, An Equity Profile in the San Francisco Bay Area 23 (2015), available at [http://www.policylink.org/sites/default/files/documents/bay-area-profile/BayAreaProfile\\_21April2015\\_Final.pdf](http://www.policylink.org/sites/default/files/documents/bay-area-profile/BayAreaProfile_21April2015_Final.pdf).
- 51 See, e.g., Cal. Veh. Code § 12527.
- 52 See, e.g., Becoming an IHSS Provider, Cal. Ass'n of Public Authorities for In-Home Supportive Services, <http://www.capaihss.org/faqs.htm#become>.
- 53 See Lawyers' Committee for Civil Rights of the Bay Area et al., *supra* note 2.
- 54 It would only be unlawful if the applicant had a physical disability and was otherwise able to work, which would constitute disability discrimination.
- 55 A study by the National Bureau of Economic Research found that in a controlled experiment where identical resumes were sent out to prospective employers, some with names that were stereotypically "Black" names and others with stereotypically "White" names, those with

- Black-sounding names were 50% less likely to get a call back from employers. Marianne Bertrand & Sendhil Mullainathan, Nat'l Bureau of Econ. Research, Are Emily and Greg More Employable than Lakisha and Jamal? A Field Experiment on Labor Market Discrimination (2003), available at <http://www.nber.org/digest/sep03/w9873.html>.
- 56 Vera Institute of Justice, *Incarceration's Front Door: The Misuse of Jails in America* (2015).
- 57 Cal. Veh. Code §§ 13352(a)(4), 13352.4(c).
- 58 See, e.g., Cal. Penal Code § 987.5.
- 59 Cal. Veh. Code § 14601.1(b)(1).
- 60 Cal. Veh. Code § 42003(a) allows a driver to pay off traffic fines by doing jail time, but does not mention the substantial add-on fees that come with every ticket. Some courts do not allow people to pay fees through jail time, yet do not make it clear to defendants that the fees will remain after he or she spends time in jail.
- 61 A body of literature concludes that the psychological effect of incarceration is substantial, even among those experiencing relatively short-term confinement in a jail. See, e.g., Mika'il DeVeaux, The Trauma of the Incarceration Experience, 48 Harv. C.R.-C.L. L. Rev. 257, 258 (2013); Hans Toch, Men in Crisis: Human Breakdowns in Prison 149 (2007).
- 62 See, e.g., Bruce Western, The Impact of Incarceration on Wage Mobility and Inequality, 67 Am. Soc. Rev. 526 (2002).
- 63 See, e.g., Julian P. Cristia, Rising Mortality and Life Expectancy Differentials by Lifetime Earnings in the United States (2009).
- 64 Epp, supra note 13, at 135.
- 65 The Associated Press, *Justice Department: States Should Not Jail Poor People Over Fine Nonpayment*, NBC News, March 14, 2016, available at <http://www.nbcnews.com/news/us-news/department-justice-states-should-not-jailed-over-fine-nonpayment-n537796>.
- 66 Epp, supra note 13, at 140.
- 67 U.S. Dep't of Justice, supra note 2, at 17.
- 68 Jack Glaser, *The Efficacy and Effect of Racial Profiling: A Mathematical Modeling Approach* 33 (2004), available at [http://ist-socrates.berkeley.edu/~glaserj/glaser\\_profiling\\_math\\_model\\_o61504.pdf](http://ist-socrates.berkeley.edu/~glaserj/glaser_profiling_math_model_o61504.pdf).
- 69 See supra note 16; supra note 8. Black and Latino drivers are more likely than White drivers to be patted down, frisked, searched, and told to exit their vehicles after they are stopped. See Geoffrey P. Alpert et al., *Los Angeles Pedestrian and Motor Vehicle Post-Stop Data Analysis Report* (2006), available at [http://www.analysisgroup.com/uploadedfiles/content/insights/cases/lapd\\_data\\_analysis\\_report\\_07-5-06.pdf](http://www.analysisgroup.com/uploadedfiles/content/insights/cases/lapd_data_analysis_report_07-5-06.pdf).
- 70 U.S. Dep't of Justice, supra note 2, at 17.
- 71 See Lagos, Marisa, S.F. Supervisors' Analyst Recommends Smaller, Cheaper Jail, SFGate.com (Jan. 23, 2014), available at <http://www.sfgate.com/politics/article/S-F-supervisors-analyst-recommends-smaller-5167447.php>. See also Eaglin, Jessica, *California Quietly Continues to Reduce Mass Incarceration*, Brennan Center for Justice (Feb. 17, 2015), available at <https://www.brennancenter.org/blog/california-quietly-continues-reduce-mass-incarceration> (describing California's shifting tide away from mass incarceration in the state).
- 72 See Judicial Council, *California Rules of Court 4.105* (adopted Jun. 8, 2015), available at [http://www.courts.ca.gov/documents/2015-07-08\\_2015-06-08\\_mtg\\_rule-4\\_105.pdf](http://www.courts.ca.gov/documents/2015-07-08_2015-06-08_mtg_rule-4_105.pdf).
- 73 While this section discusses license suspensions due to failures to appear in traffic court or pay fines and fees, license suspensions are also used to collect other court debt, such as child support. See Family Code §17520. Also, while license suspension may be appropriate when ordered

- by a court ruling on a safety-related Vehicle Code violation resulting in a car accident, license suspension should not be imposed on low-income people who are simply unable to pay for property or personal damages arising from an accident
- 74 Dixon v. Love, 431 US 105, 113-14 (1977).
- 75 Civil Rights Div., U.S. Dep't of Justice, Dear Colleague Letter (March 14, 2016), available at <https://www.justice.gov/crt/file/832461/download>.
- 76 Suspended/revoked working group, american association of motor vehicle administrators (aamva), best practices guide to reducing suspended drivers 4 (Feb. 2013), available at <http://www.aamva.org/WorkArea/DownloadAsset.aspx?id=3723>.
- 77 The debt relief portion of the Amnesty Program is currently restricted to those with fines incurred before January 1, 2013 and who have never made a payment on their debt. Many counties require a payment to apply for amnesty, effectively shutting out many low-income people living hand-to-mouth with income of only 30-40% of the Federal Poverty Line. In some counties, the Amnesty program is managed by private collections agencies, often employing questionable, even illegal, collection methods. As described in Appendix 2, the Amnesty cut-off date should be extended to January 1, 2016 to account for the large number of people who have gotten their licenses suspended in the last three years. All administrative fees should be waived for low-income people. Courts should permit the performance of community service in lieu of payment under the Amnesty Program. The restrictions on victim restitution and open warrants should be eliminated. Lastly, collections agencies should not be permitted to ask any Amnesty Program participant about any other court-ordered debt.
- 78 See Moran, supra note 25.
- 79 One example of this is the Southern Coalition for Social Justice, a North Carolina-based civil rights nonprofit, which launched a website drawing on public records to publish up-to-date stop, search, and use-of-force data – broken down by race and ethnicity. Ian A. Mance, SCSJ Launches Searchable Website of NC Police Data, <https://www.southerncoalition.org/scsj-launches-searchable-website-of-nc-police-data/>.
- 80 This is in line with recommendations made by the U.S. Department of Justice in its report on Ferguson. U.S. Dep't of Justice, supra note 2, at 90. Measures to reduce bias can include (1) requiring police departments to provide an implicit bias training, (2) requiring police departments to develop a racial impact statement to analyze policies, procedures and practices, and (3) requiring departments to develop plans with targets.
- 81 The City of Durham, North Carolina adopted a written consent-only search policy in late 2014 in response to data which showed “racial bias and racial profiling” in their policing practices. A neighboring city, Fayetteville, adopted a similar policy and found traffic stops reduced by 50% and searches went down by 60%. Jorge Valencia, Can Vehicle Search Consent Forms Diminish Racial Bias? Ask Fayetteville, NC, WUNC, Sept. 18, 2014, available at <http://wunc.org/post/can-vehicle-search-consent-forms-diminish-racial-bias-ask-fayetteville-nc#stream/o>.
- 82 It is not novel to require that an agency achieve threshold reductions. For example, California was ordered by a federal court to reduce the state's prison population. See Respa, Robin, California prison reforms have reduced inmate numbers, not costs, Reuters.com, Jan. 6, 2016, available at <http://www.reuters.com/article/us-california-prison-budget-insight-idUSKBN0UK0J520160106>.
- 83 ZIP Code Tabulation Areas, U.S. Census, <https://www.census.gov/geo/reference/zctas.html>.
- 84 Note that not all the recommendations under this section would not be necessary if the Legislature retroactively applies a new policy to end all use of license suspension for collection of court-ordered debt, pursuant to Recommendation A.1, above.
- 85 See Cal. Gov't Code §§ 25257-25259.95.



JA96

## **Exhibit D**

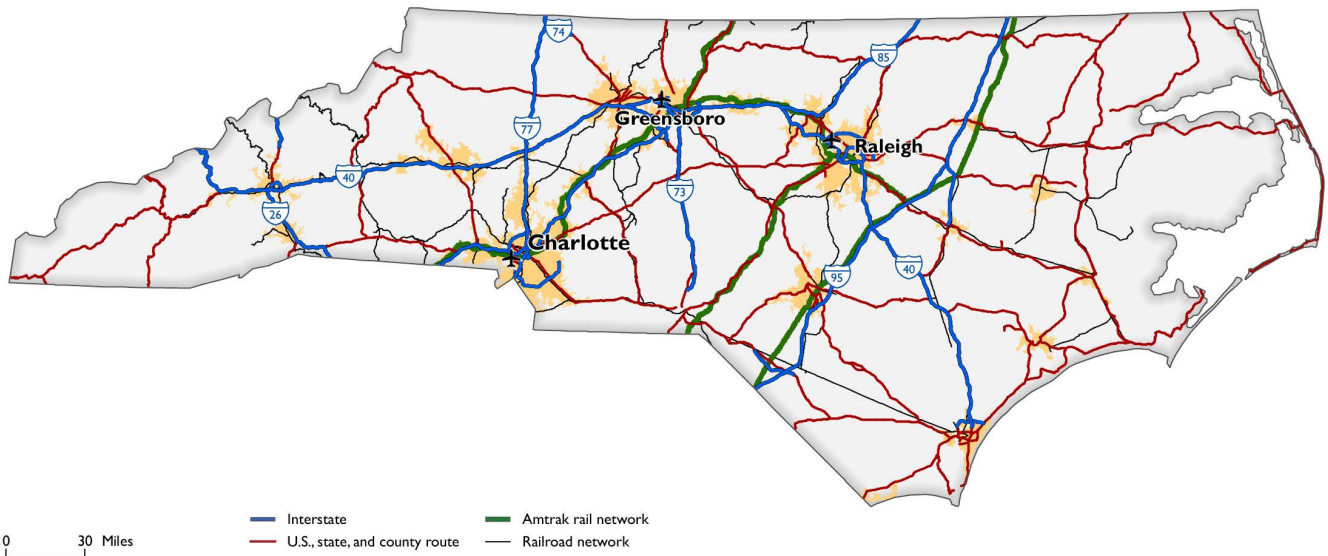
Declaration of Samuel Brooke

JA97

# NORTH CAROLINA

## TRANSPORTATION BY THE NUMBERS

### TRANSPORTATION INFRASTRUCTURE



#### MILES OF PUBLIC ROAD

**106,202**

Roads with acceptable pavement ride quality based on International Roughness Index, 2013:

North Carolina	89.1%
United States	80.4%

#### BRIDGES

**18,097**

Bridges classified as functionally obsolete, 2013:

North Carolina	17.3%
United States	13.7%

Bridges classified as structurally deficient, 2013:

North Carolina	12.2%
United States	10.1%

#### MAJOR AIRPORTS

**15**

Includes Federal Aviation Administration Part-139 public use airports.

Charlotte Douglas International Airport was the 8th busiest airport in the United States in 2013.

#### MAJOR WATER PORTS

**2**

Morehead City  
Wilmington

Includes ports ranked in the top 150 ports by tonnage in 2013.

#### MILES OF FREIGHT RAILROAD

**3,258**

#### NUMBER OF MPOs

**18**

#### MILES OF WATERWAY

**1,150**





**POPULATION**

**9.8m** ▲ 16.9%  
2013 2003-2013

**EMPLOYMENT**

**3.4m** ▲ 2.5%  
2013 2003-2013

**LICENSED DRIVERS**

**6.8m** ▲ 13.4%  
2013 2003-2013

**REGISTERED VEHICLES**

**7.8m** ▲ 27.7%  
2013 2003-2013

**TRANSIT RIDERSHIP**

**73.3m** ▲ 76.9%  
2013 2003-2013

**AIR CARRIER ENPLANEMENTS**

**28.0m** ▲ 61.5%  
2013 2003-2013

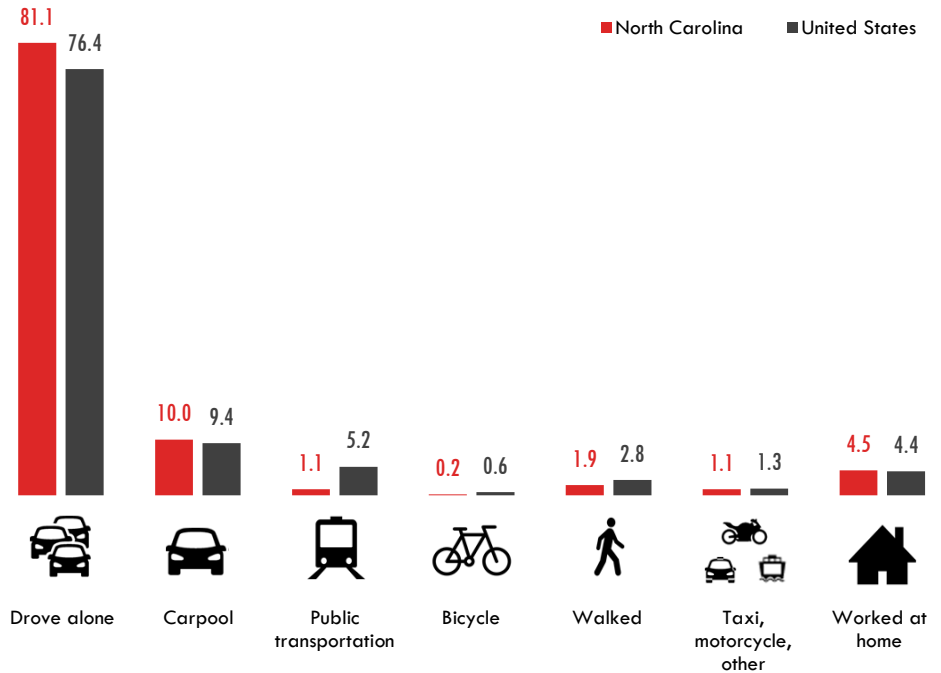
**HIGHWAY TRAVEL**

Billions of vehicle miles traveled, 2003-2013



**HOW RESIDENTS GET TO WORK**

Percentage of workers over age 16, 2013



**AVERAGE DAILY PERSON MILES**

Miles per person per day, 2009



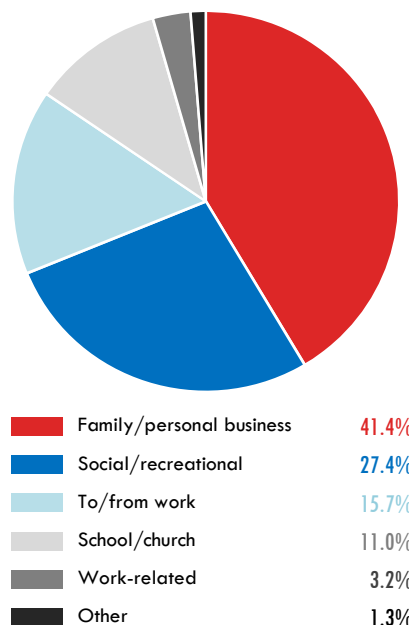
**AVERAGE DAILY PERSON TRIPS**

Trips per person per day, 2009



**PASSENGER TRAVEL BY TRIP PURPOSE**

Percentage of annual person trips, 2009



**TRANSPORTATION INDUSTRY JOBS**

**107,649** ▼ -4.5%  
2013 2003-2013

Truck transportation **40,340** ▼ -21.1%

Couriers and messengers **13,721** ▲ 2.5%

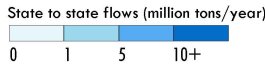
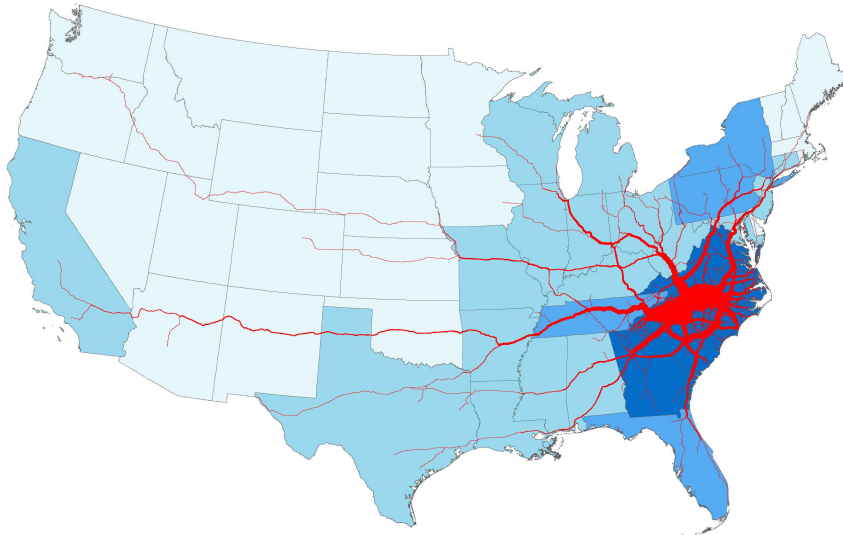
Support activities for transportation **12,219** ▲ 15.9%

Transit and ground passenger transportation **4,551** ▼ -0.2%

JA99

NORTH CAROLINA TRANSPORTATION BY THE NUMBERS

### MAJOR TRUCK FREIGHT FLOWS TO, FROM, AND WITHIN NORTH CAROLINA, 2010



### VALUE OF FREIGHT FLOW

**\$711.5b** ▲ 5.4%  
 Current dollars, 2013 2007-2013

### TONS OF FREIGHT FLOW

**569.2m** ▲ 5.4%  
 2013 2007-2013

### TON-MILES OF FREIGHT FLOW

**169.9b** ▲ 4.9%  
 2013 2007-2013

### STATE GROSS DOMESTIC PRODUCT

**\$467.1b** ▲ 28.4%  
 Current dollars, 2013 2003-2013

### TOP COMMODITIES SHIPPED FROM NORTH CAROLINA

By value moved in billions of current dollars, 2013

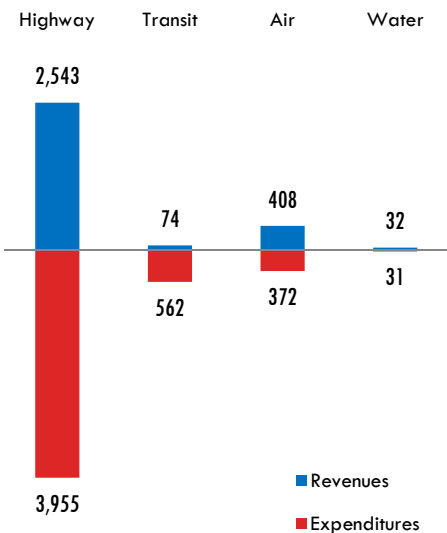
By weight moved in millions of tons, 2013

Textiles/leather	\$28.3
Pharmaceuticals	\$27.5
Chemical prods.	\$19.5
Electronics	\$18.0
Motorized vehicles	\$17.2

Wood prods.	9.3
Nonmetal min. prods.	7.3
Plastics/rubber	6.1
Live animals/fish	6.1
Basic chemicals	5.2

### STATE AND LOCAL GOVERNMENT TRANSPORTATION REVENUES AND EXPENDITURES

Millions of current dollars, 2012



### TOP COMMODITIES SHIPPED TO NORTH CAROLINA

By value moved in billions of current dollars, 2013

By weight moved in millions of tons, 2013

Electronics	\$30.2
Textiles/leather	\$21.3
Machinery	\$19.3
Motorized vehicles	\$19.2
Pharmaceuticals	\$17.7

Coal	30.2
Nonmetal min. prods.	12.0
Basic chemicals	7.6
Coal-n.e.c.	7.4
Wood prods.	6.8

### TOP COMMODITIES SHIPPED WITHIN NORTH CAROLINA

By value moved in billions of current dollars, 2013

By weight moved in millions of tons, 2013

Machinery	\$29.1
Mixed freight	\$24.0
Tobacco prods.	\$23.6
Pharmaceuticals	\$12.2
Textiles/leather	\$11.2

Gravel	84.7
Nonmetal min. prods.	35.3
Logs	33.2
Waste/scrap	27.3
Gasoline	12.8

JA100

NORTH CAROLINA TRANSPORTATION BY THE NUMBERS

### RAIL FATALITIES

**25** ▲ 19.0%  
2013 2003-2013

### TRANSIT FATALITIES

**2** — 0.0%  
2013 2003-2013

### RECREATIONAL BOAT FATALITIES

**16** ▼ -11.1%  
2013 2003-2013

### HIGHWAY FATALITIES

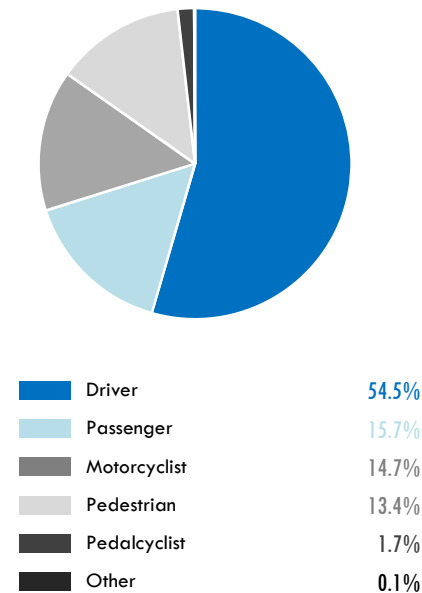
**1,289** ▼ -17.0%  
2013 2003-2013

### HIGHWAY FATALITY RATE

Fatalities per 100 million vehicle miles traveled, 2013

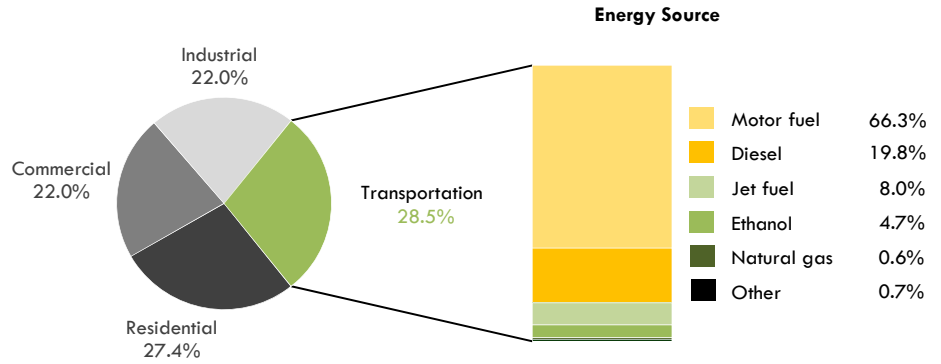


### HIGHWAY FATALITIES BY PERSON



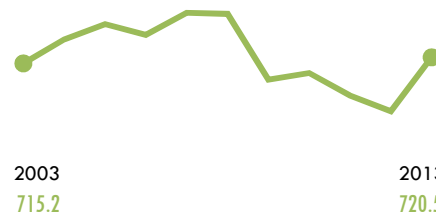
### ENERGY USE BY SECTOR

Percent of Btu consumed, 2013



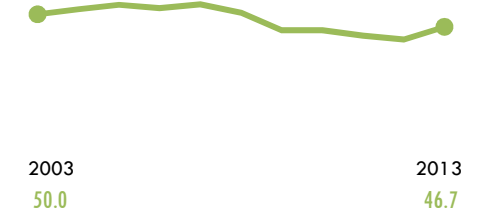
### TRANSPORTATION ENERGY USE

Trillion Btu consumed, 2003-2013



### TRANSPORTATION EMISSIONS

Million metric tons of CO<sub>2</sub>, 2003-2013



### TRANSPORTATION ENERGY USE PER CAPITA

Million Btu per capita, 2013



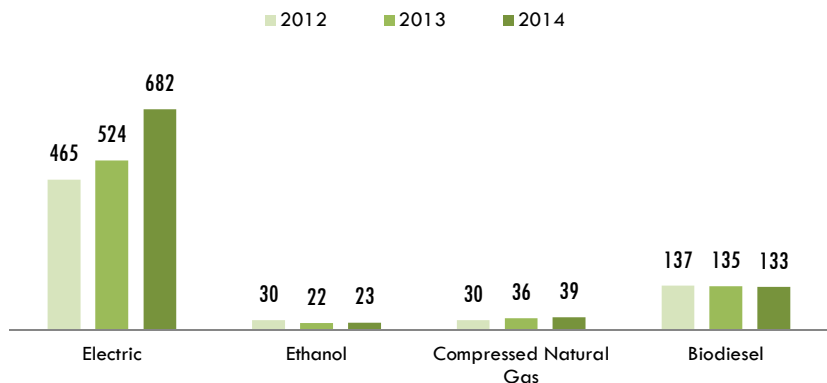
### MOTOR FUEL USE PER CAPITA

Gallons per capita, 2013



### ALTERNATIVE FUEL STATIONS

Number of stations, 2012-2014



SOURCES: Infrastructure map, water ports, border ports—U.S. Department of Transportation, Bureau of Transportation Statistics, *National Transportation Atlas Database 2014*. Airports—U.S. Department of Transportation, Federal Aviation Administration, *Administrator's Fact Book*. Employment—U.S. Census Bureau, County Business Patterns. Passenger travel by trip purpose, average daily travel—U.S. Department of Transportation, National Household Travel Survey. Freight map and data—U.S. Department of Transportation, Federal Highway Administration, Freight Analysis Framework. State GDP—U.S. Department of Commerce, Bureau of Economic Analysis. Highway fatalities—U.S. Department of Transportation, National Highway Traffic Safety Administration. All other data—As cited in U.S. Department of Transportation, *State Transportation Statistics 2015*, available at [www.bts.gov](http://www.bts.gov).

## **Exhibit E**

Declaration of Samuel Brooke

JA102

## Connecting Workers to Jobs through Reliable and Accessible Public Transit



By **Tazra Mitchell**

Fellow at the NC Justice Center's Budget & Tax Center

NOVEMBER 2012 — Historically, North Carolina has favored road and highway investments over public transit. Only 3 percent of the state transportation budget goes to public transit.

But there is an increasing need for public transit to connect workers to job opportunities. The lack of public transit limits the ability of workers—especially those living outside of cities—to find and keep jobs.

Research by the UNC School of Social Work shows that a lack of transportation is one of the most common barriers to obtaining and maintaining employment. Commuting from home to job interviews, work, or work-related activities and back again is a challenge for many North Carolinians.

For some, owning a car is cost-prohibitive. Expenses related to car ownership—the cost of a vehicle, insurance premiums, maintenance and operating expenses—account for the second largest share of expenditures for the typical household. Public transit provides a more affordable option to jobless and lower-income individuals.

North Carolinians traveling to work by means of public transportation are disproportionately people with lower incomes, according to the latest Census Bureau data. In 2011, 67 percent of public-transit riders had incomes of \$25,000 or less, up 11 percent from 2010. And public-transit users were more likely to work in educational services, health care, and social assistance jobs—occupations that heavily contribute to local communities' well-being.

### Home to Work and Back Again

Public transit is only helpful to low-income workers if it connects where they live to where the jobs are available. This means transportation and affordable housing plans need to be coordinated.

Affordable housing is less available in urban areas than in rural areas. But, according to the Center on Labor Technology, any housing-related savings from living far from urban centers are often erased by higher transportation expenses due to longer commutes.

This makes public transit important for people living outside of urban centers. Unfortunately, turning to public transit is simply not an option for many non-urban residents.

Public transit is scarce in rural areas, sometimes available only on a first-serve basis with certain eligibility restrictions. Fixed-route services often bypass all or a significant portion of areas outside of urban centers, leaving many transit-dependent residents without a reliable method of getting to work.

This is particularly problematic because, increasingly, rural North Carolinians must look to the metropolitan region to access jobs. Ninety-eight percent of the state's job growth during the official economic recovery has been in metropolitan areas. Rural areas lost jobs during this time period, compounding the geographic disadvantage faced by rural residents and reinforcing the need for stronger and more flexible public transit services.

Even public-transit services in urban areas provide only limited access to jobs: the Brookings

Connecting Workers to Jobs through Accessible and Reliable Public Transit *(continued)*



Institution found the typical metropolitan resident in the state can only reach 30 percent of jobs via transit within 90 minutes. And service hours do not always match up well with the needs of low-wage workers who are more likely to have night and weekend jobs.

### Targeted Expansion of Public Transit

Due to budgetary constraints and individual preferences, it is not feasible or necessary for public transit to be available in every neighborhood or within reach of every job. Indeed, the optimal level of public transit varies from community to community based on need and efficiency.

And while public transit is not the only response to increasing job accessibility, addressing the existing public transit coverage

gaps in neighborhoods where jobs and opportunity are lacking is vital to supporting workers and the recovery.

Investing in expanded public-transit options—by sending buses into underserved areas or upping evening and weekend services, for example—is one way to remove transportation barriers and support the extension of opportunity to disadvantaged communities.

But in order to truly improve the chances of successful employment outcomes, policymakers must work across multiple policy silos—like housing, transit, and jobs—to enable social and economic inclusion, accessibility, and mobility across the state.

Contact Tazra at [tazra@ncjustice.org](mailto:tazra@ncjustice.org).



north carolina

**JUSTICE CENTER**

**The North Carolina Justice Center is the state's preeminent voice for economic, social and political justice. We work to ensure that every household in North Carolina has access to the opportunity, resources and fair treatment it needs to achieve economic security.**

#### JUSTICE CENTER PROJECTS

- Budget & Tax Center
- Workers' Rights Project
- Education & Law Project
- Consumer Protections & Housing Project
- Immigrant & Refugee Rights Project
- Health Access Coalition
- NC Policy Watch



@ncjustice  
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 @ncbudgetandtax  
 @ncpolicywatch  
 @ncworkersrights  
 @nchealthaccess  
 @togethernc



/ncjustice  
 /ncpolicywatch  
 /nchealthaccess



## **Exhibit F**

Declaration of Samuel Brooke

JA105



# BEYOND THE BYPASS:

Addressing Rural  
North Carolina's  
Most Important  
Transportation  
Needs



The Southern Environmental Law Center is a nonprofit organization dedicated to protecting natural resources and public health in the South. SELC works with more than 100 local, state and national groups, providing legal and policy expertise on issues related to transportation, land use, air quality, water quality, forests and wetlands. This report is part of SELC's Land and Community Project, which promotes smart growth, transportation choice, community revitalization, open space conservation and reduction of motor vehicle pollution, including greenhouse gas emissions.

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Southern Environmental Law Center  
Chapel Hill Office  
601 West Rosemary Street, Suite 220  
Chapel Hill, NC 27516-2356  
Phone 919-967-1450  
Fax 919-929-9421  
SouthernEnvironment.org

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Design and Layout: Ami Somers  
Cover photo of country road © Robert Llewellyn

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# BEYOND THE BYPASS:

Addressing Rural  
North Carolina's  
Most Important  
Transportation  
Needs



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Making Safety the Top Priority	2
Focusing Highway Spending on Maintenance and Repair	4
Moving Beyond the Bypass	6
Envisioning Enhanced Mobility in Rural Areas	8
Summary	10
Endnotes	11

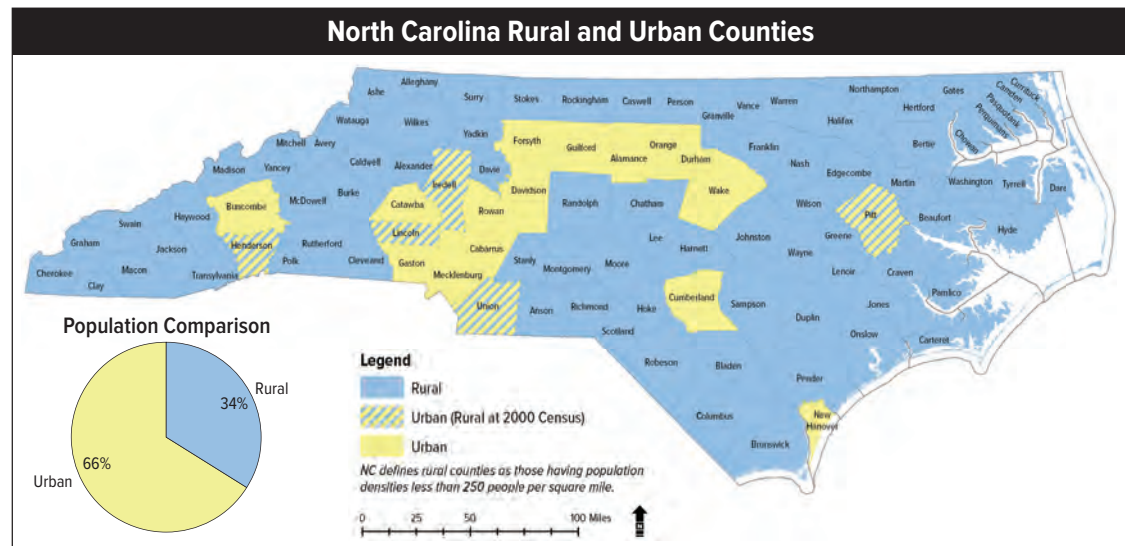
# INTRODUCTION

Rural North Carolina is home to more than a third of the State's population<sup>1</sup> and is vital to our overall economy and quality of life.<sup>2</sup> Unfortunately, decades of transportation spending priorities have failed to meet the needs of our rural areas, or North Carolina as a whole. Rural communities have not been well served by the traditional emphasis on building new road capacity, including four-lane highways and bypasses, often where there is almost no demonstrated transportation need or economic payoff from those investments.

## An Opportunity to Refocus

Now is a particularly good time to revisit rural transportation policy in North Carolina. The latest draft of North Carolina's Long Range Transportation Plan—the first update since 2004<sup>3</sup>—has just been released for public review. The draft plan suggests spending in the range of \$94 billion to \$160 billion over the next 30 years,<sup>4</sup> but anticipated revenue is significantly less, only \$54 billion in available funds.<sup>5</sup> It is no secret that rural North Carolina has struggled in recent years to develop new economic opportunity, and transportation investments have been a major part of that discussion. But with only a small fraction of the dollars needed to build all the proposed projects across the State, how do we make the best use of available funding?

According to recent NCDOT transportation performance measures, our existing roads are not safe enough or in good enough condition.<sup>6</sup> Still, the State continues to spend more on new capacity than keeping our existing infrastructure safe and in good repair.<sup>7</sup> New road capacity is not needed for most of our rural areas and small towns. Bypasses, in particular, do not meet the needs of these areas and are often harmful. Rather, North Carolina should make rural safety a priority, focus highway spending on maintenance and repair, move beyond building new highways and bypasses, and provide

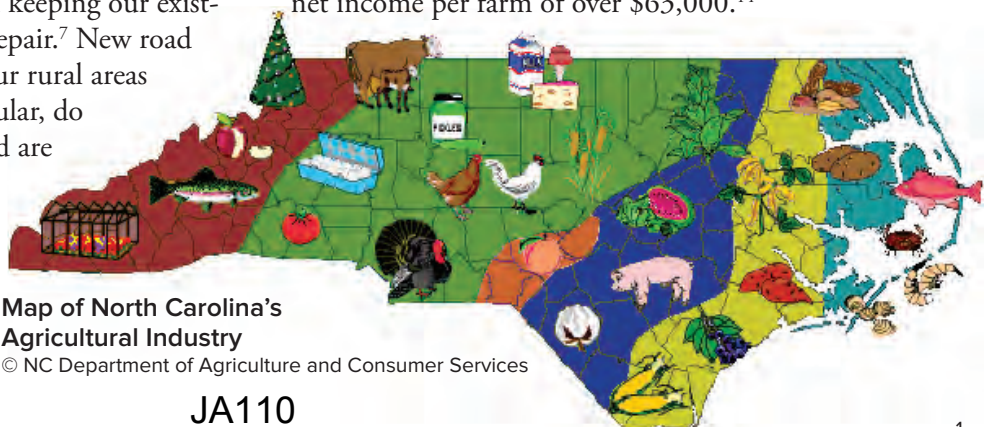


enhanced local and long-distance mobility. Each of the topics outlined above are discussed in the following four sections of this report.

## Profile of Rural North Carolina

To put the report in context, a brief overview of rural North Carolina is in order. The one-third of North Carolinians who continue to reside in rural areas<sup>8</sup> is two times the average for the United States as a whole.<sup>9, 10</sup> And, while five of our counties lost their "rural" status in the last census, the vast majority of our counties remain rural.<sup>11</sup>

Rural North Carolina is well known for the number of important commodities it produces. The State's farms are a significant source of the food, energy and fiber that help drive the North Carolina economy.<sup>12</sup> According to the North Carolina Department of Agriculture and Consumer Services, "North Carolina's agricultural industry, including food, fiber and forestry, contributes \$70 billion annually to the State's economy, and accounts for 18% of the State's income, and employs over 17% of the work force."<sup>13</sup> The State ranks high in the nation for farm profits, with a net farm income of \$3.3 billion and a net income per farm of over \$63,000.<sup>14</sup>





# MAKING SAFETY THE TOP PRIORITY

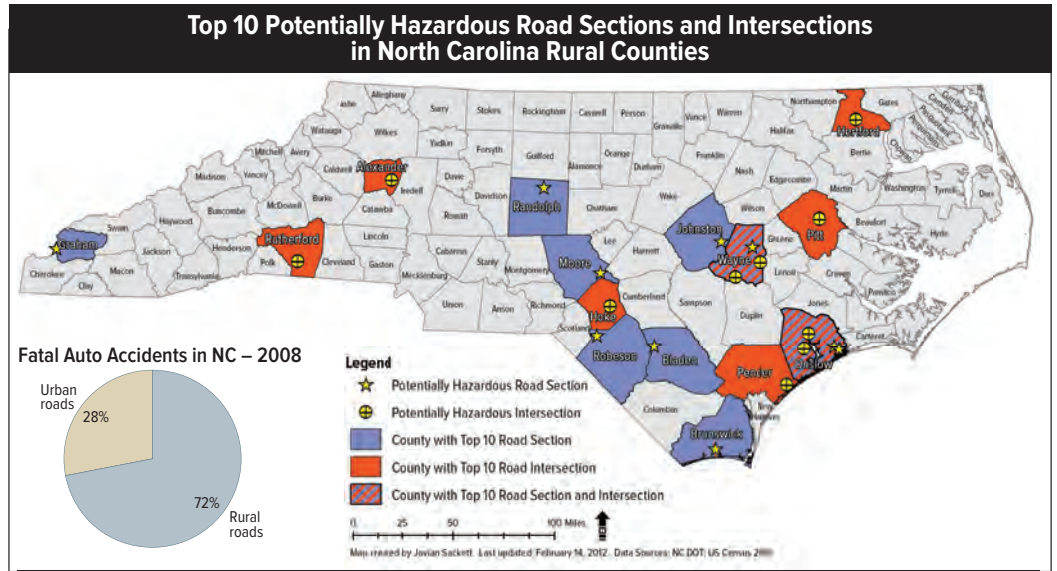
## Dangerous Rural Roads Necessitate a Pragmatic Safety Agenda

In its 2009 report to the General Assembly, the 21st Century Transportation Committee recommended coordinated efforts to reduce the frequency and severity of accidents and injury on North Carolina's secondary rural roads.<sup>15</sup> At the time, accidents on these roads accounted for 34% of all fatal accidents in the State.<sup>16</sup> The number is even more alarming if all rural roads are included. While rural residents account for only a third of our population, almost three quarters of fatal accidents in North Carolina occur on rural roads.<sup>17</sup>

More recently, as a part of the Highway Safety Improvement Program, NCDOT ranked the 200 most hazardous road sections and intersections in North Carolina based on a variety of factors.<sup>18</sup> More than half were rural.<sup>19</sup> The map above shows where the top ten most hazardous rural road sections and intersections are located.<sup>20</sup>

## Rural Accidents Causes and Solutions

A recent AAA study reported that motor vehicle crashes remain the single largest cause of death of people between the ages of 5-34.<sup>21</sup> Each year, law enforcement reports that motor vehicle crashes result in thousands of deaths and millions of injuries.<sup>22</sup> In addition to human lives lost, the cost of crashes per person is even larger for smaller populations.<sup>23</sup>

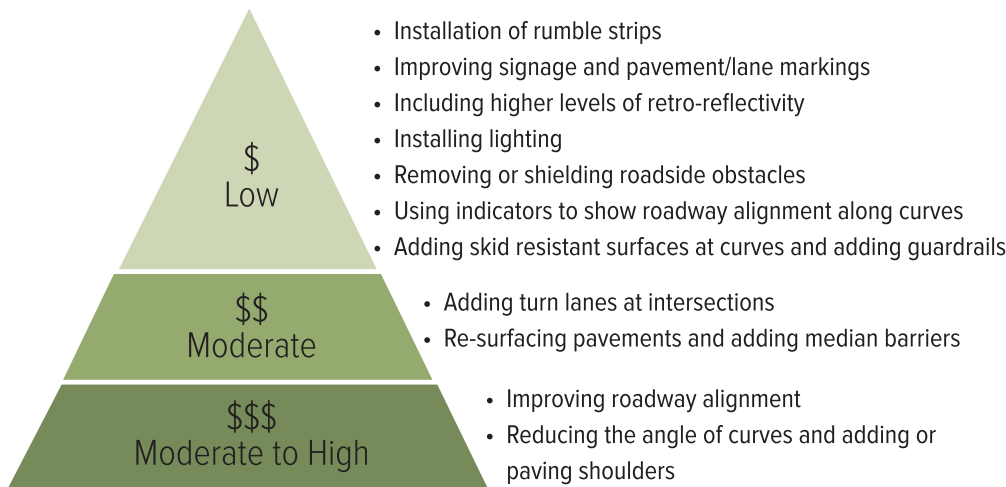


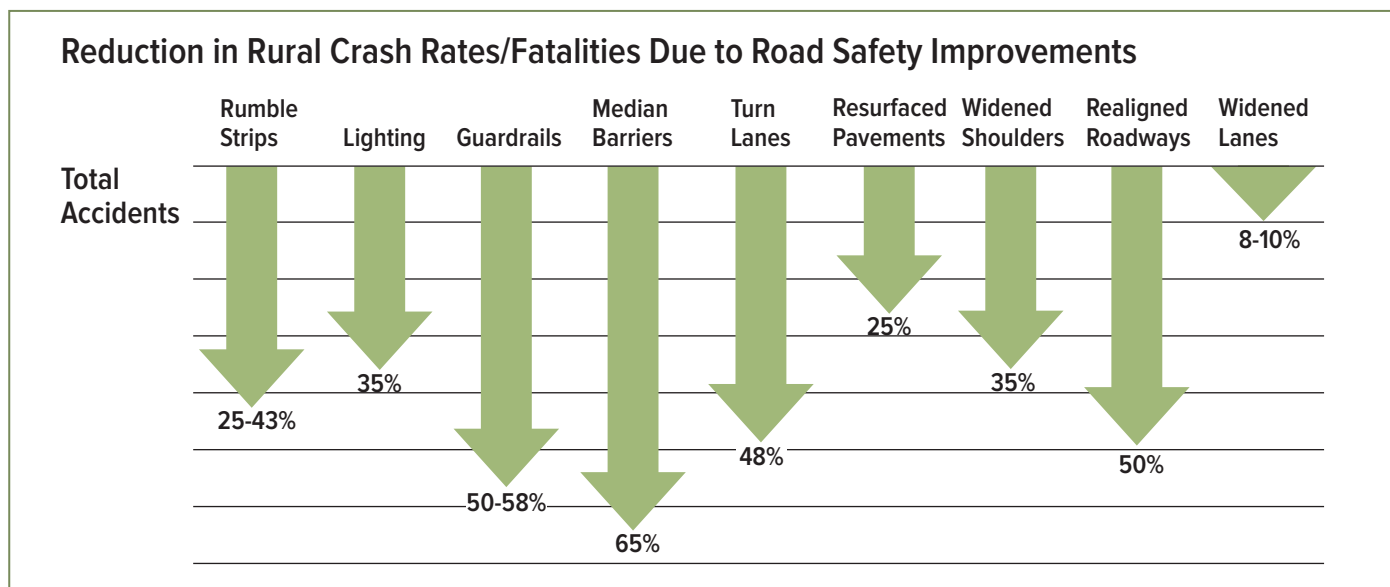
The reasons for higher fatalities on rural roads are varied.<sup>24</sup> Regardless of cause, simply building a bypass in the vicinity of a hazardous rural road does not result in an increase in safety on the existing route, which will remain in use by the local population.<sup>25</sup> And while fatality rates from accidents are declining across the country, they are not declining as quickly for rural areas.<sup>26</sup>

Many rural roads still lack appropriate safety features and experience crash rates far higher than all other roads and highways.<sup>27</sup> Rural roads' higher traffic fatality rates are due to inadequate roadway safety design, including narrow lanes, limited shoulders, sharp curves, exposed hazards, pavement drop-offs, steep slopes and limited clear zones along roadsides.<sup>28</sup> Additional factors include longer emergency response times and higher rates of speeds traveled on rural roads.<sup>29</sup>

## Cost of Safety Improvements

Many safety improvements are inexpensive, especially relative to new highways, but save a great deal in costs to society. In a recent study of improving signage for curves on local roads, one rural county spent \$79,260 to upgrade signs and estimated a savings of \$12 million to \$23 million in avoided accidents.<sup>30</sup> In a cost-benefit





analysis of adding median barriers to reduce crossover crashes, the net societal benefit of adding the barrier was determined to be \$420,000 annually.<sup>31</sup> Fortunately, design improvements like these come at several price points.

Relatively inexpensive improvements run in the hundreds to thousands of dollars range per location. They include installation of rumble strips along the center-line and sides of roads, improving signage, improving pavement/lane markings,<sup>32</sup> increasing levels of retro-reflectivity,<sup>33</sup> installing lighting, removing or shielding roadside obstacles, using indicators to show roadway alignment along curves,<sup>34</sup> adding skid resistant surfaces at curves and adding guardrails.<sup>35, 36</sup>

Moderate to high cost improvements run in the thousands to hundreds of thousands dollars range at each site. They include adding turn lanes at intersections, resurfacing pavements<sup>37</sup> and adding median barriers.<sup>38, 39</sup> Other somewhat more expensive improvements include improving roadway alignment,<sup>40</sup> reducing the angle of curves and adding or paving shoulders.<sup>41</sup>

All these upgrades can significantly lower crash and fatality rates.<sup>42</sup>

### The State Should Prioritize Safety Improvements over Costly New Construction

In addition to saving lives, safety improvements are great investments because they are far less costly than new construction projects. To make all identified highway safety improvements for the next 30 years,

N.C. would only need to spend \$2.5 billion,<sup>43</sup> which is less than the current operating budget of the DOT for a single year. In contrast, the current plan is to spend three to four times as much on costly expansions of uncongested roads in our rural areas.<sup>44</sup>

# FOCUSING HIGHWAY SPENDING ON MAINTENANCE AND REPAIR

## Prioritize Infrastructure Health Through Maintenance of Existing Roads

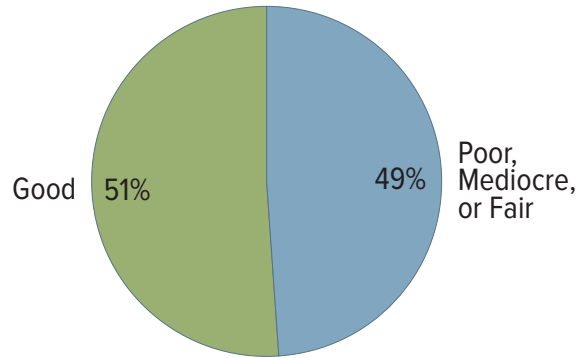
There are many more rural road miles to maintain than urban road miles in North Carolina.<sup>45</sup> In fact, North Carolina has the second largest state road network in the country,<sup>46, 47</sup> just smaller than Texas. Unfortunately, rural roads in North Carolina are not in the best condition, with 49% rating as fair, mediocre or poor.<sup>48</sup> There are two major cost savings that can be achieved by placing a greater emphasis on maintenance: first, we avoid the much higher long-term cost to the DOT of deferring maintenance, and second, we avoid the costs to consumers from wear and tear on vehicles.

Reconstructing roads is far more expensive than maintaining the ones we have.<sup>49</sup> In fact, one study suggests that rebuilding a road is four to ten times the cost of keeping the road in good repair.<sup>50</sup> With limited funding, it is particularly unwise to let our current roads and bridges fall into disrepair. We should not use scarce resources on unneeded new capacity when the existing infrastructure can be maintained at far less cost.

Also, poorly maintained roads cost North Carolina drivers an estimated \$1.7 billion each year in extra vehicle repairs and operating costs. This is about two times the current NCDOT annual maintenance budget.<sup>51</sup> The annual spending necessary to bring all roads up to par over the next 30 years would pay for itself in deferred vehicle maintenance alone.<sup>52</sup>

To see the enormity of the funding distribution issue, we can look to North Carolina’s modal needs assessment for the 30-year planning period. Transportation modes are evaluated for how well they are doing in terms of mobility, safety and health across modes, on statewide and regional tiers. The chart on the top of the next page shows that the only areas currently performing at a high level of service<sup>53</sup> are highway expansions for some categories.

Condition of Rural Roads



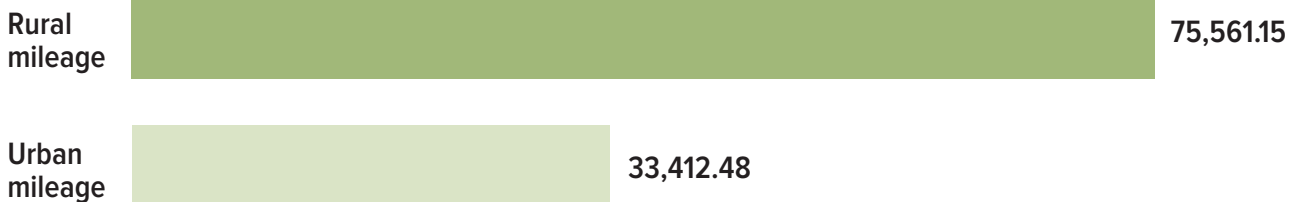
ries. New highway capacity is already performing more than adequately, but safety and infrastructure health are suffering.<sup>54</sup> While the entire State would benefit from a shift in spending away from highway expansion and toward safety and maintenance of our infrastructure, this is particularly true for rural areas.

## Prioritize Infrastructure Health Through Bridge Maintenance and Repair

Even if the useful life of bridges can be extended by performing routine maintenance, more costly repairs will be needed later for bridges to remain operable.<sup>55</sup> North Carolina already ranks high in the nation for deficient rural bridges<sup>56</sup> and, as the “Deficient Bridges in North Carolina” map illustrates, many of North Carolina’s rural counties have a significant number of bridges that are in very poor condition.<sup>57</sup> As the State maintains almost all of our bridges, the majority of which are rural, increased focus on maintenance and repair can result in safer bridges in rural areas in particular.<sup>58</sup>

Keeping bridges in good repair in rural areas will promote both safety and getting crops to market. Deficient bridges reduce agricultural efficiencies, as heavy equip-

### Comparison of NC Rural Road Mileage to Urban Road Mileage

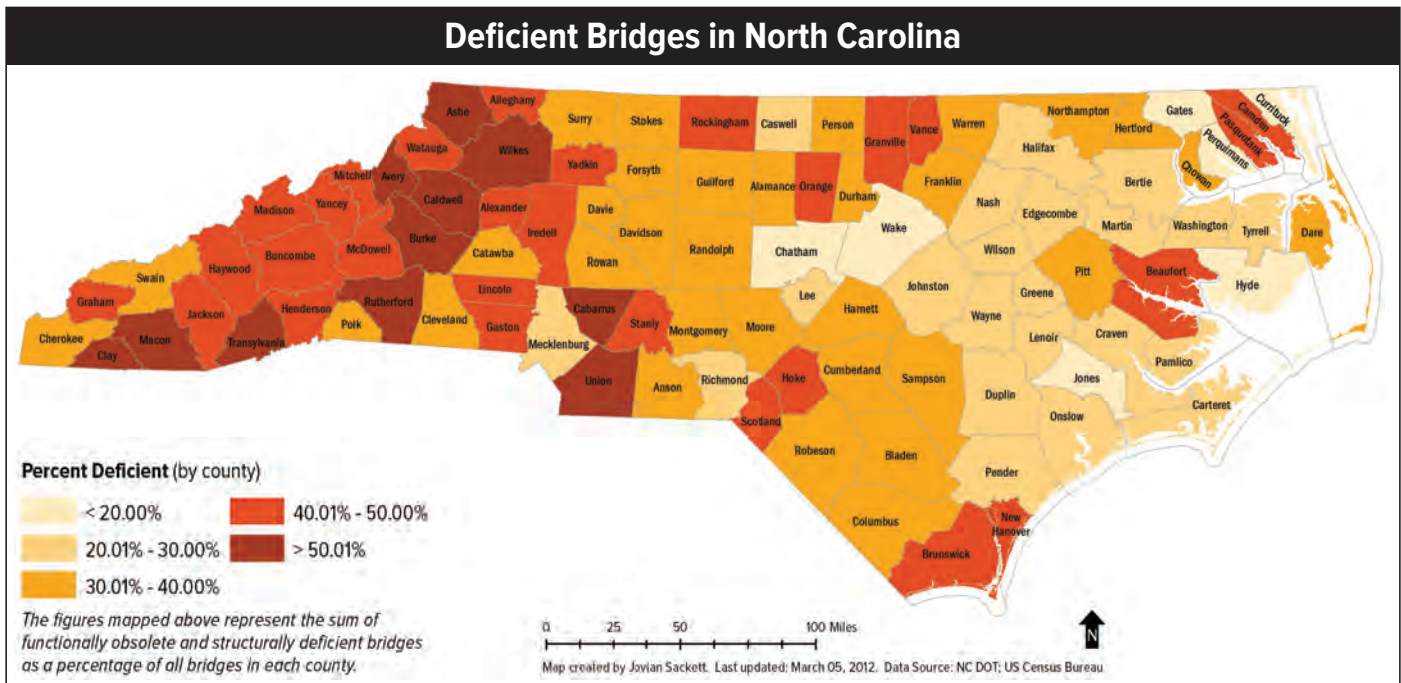


### 2011 North Carolina Highway Performance Rating

■ Highway operating at Level of Service A  
■ Highway operating at Level of Service B  
■ Highway operating at Level of Service C  
■ Highway operating at Level of Service D

Mode/Sub-Mode	Investment Goal	NCMIN Tier	LOS A	LOS B	LOS C	LOS D
Highways – Bridges	Health	Statewide				
		Regional				
		Subregional				
Highways – Pavement	Health	Statewide				
		Regional				
		Subregional				
Highways – Roadway Maintenance	Health	Statewide				
		Regional				
		Subregional				
Highways – Safety	Safety	Statewide				
		Regional				
		Subregional				
Highways – Modernization	Health	Statewide				
		Regional				
		Subregional				
Highways – Expansion (Nonmetro)	Mobility	Statewide				
		Regional				
		Subregional				
Highways – Expansion (Metro)	Mobility	Statewide				
		Regional				
		Subregional				
Highways – ITS	Mobility	Statewide				
		Regional				
	Health	Statewide				
		Regional				

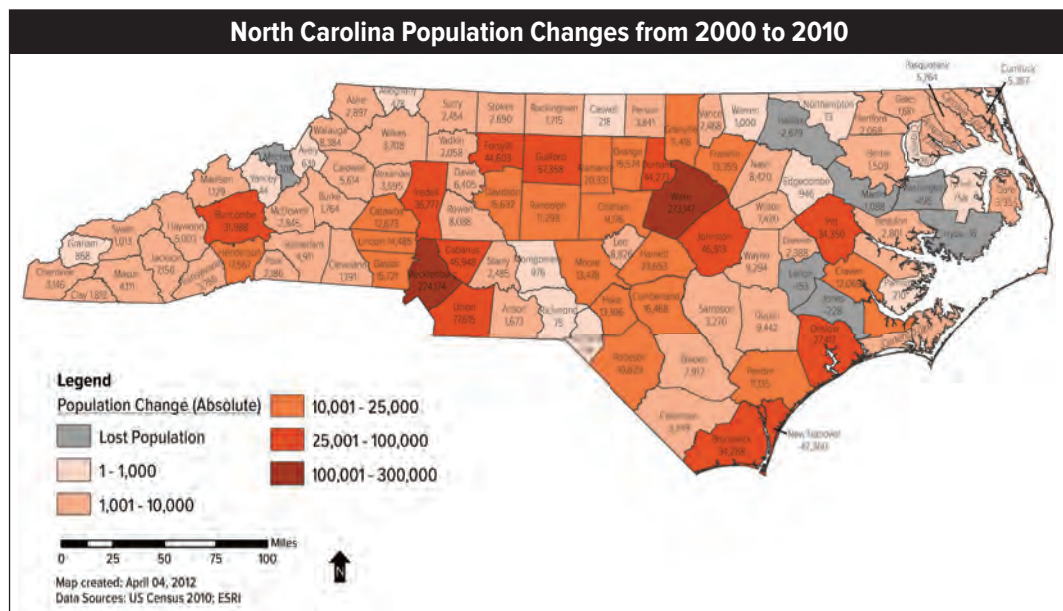
ment may need to be rerouted to avoid bridges with weight restrictions. A recent report by the USDA found that an effective transportation system supports rural economies, reducing the price farmers pay for seeds and fertilizers, and raising the value of crops.<sup>59</sup>





# MOVING BEYOND THE BYPASS

In shifting spending toward safety, maintenance and repair, North Carolina must reconsider how much it can afford to spend on four-lane highways and bypasses in rural areas. Bypasses have been promoted for rural areas as infrastructure projects that can enhance mobility,<sup>60</sup> improve economic growth<sup>61</sup> and increase safety.<sup>62</sup> But transportation studies that analyze the effects on communities being bypassed<sup>63</sup> show that, for rural areas, bypass construction more often impedes each of these desired goals or is usually neutral, at best. Influenced by the Highway Trust Fund project list,<sup>64</sup> North Carolina is poised to spend \$8.4 billion on bypasses and other four-lane highways in rural North Carolina over the next 30 years.<sup>65</sup> These projects should be reconsidered on a case-by-case basis.



## Congestion Levels Do Not Justify the Expense of Bypasses

Bypasses are often recommended for the stated purpose of enhancing mobility through congestion reduction. But congestion is not a significant issue for most of North Carolina. Already, 88% of roads in North Carolina's strategic corridor system have little or no recurring congestion.<sup>66</sup> Also, the rate of population growth in rural North Carolina is far less than that of urban areas, with several rural counties even losing population.<sup>67</sup> Expensive new-capacity bypasses are not needed to provide congestion relief in the vast majority of our rural areas.

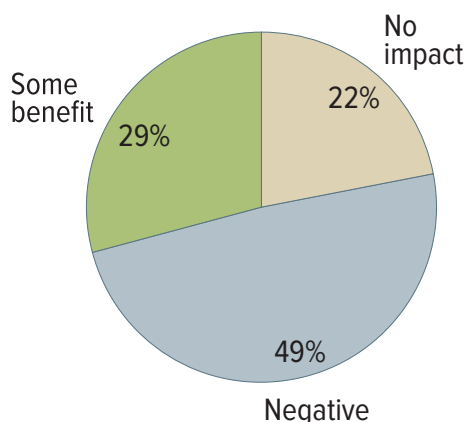
## Negative or Neutral Economic Impact of Bypasses

The often-stated expectation of economic benefit is not borne out by studies on bypasses. In a national survey of businesses that rely on drive-by customers, 49 percent of

the firms reported negative impacts from bypass construction and 22 percent reported neither positive nor negative net benefits.<sup>68</sup> On average, retail sales decrease when a bypass is built around a community.<sup>69</sup> A National Cooperative Highway Research Program (NCHRP) study of DOTs in 47 states amplifies the potential for economic harm to rural areas, showing traffic-serving businesses along the bypassed route were most likely to be hurt by a bypass.<sup>70</sup> Retail businesses that cater to pass-through traffic, such as gas stations and fast food restaurants, are the most likely to be affected by reduced traffic.<sup>71</sup>

The distance from the bypass to the downtown of the bypassed community is an important factor in measuring negative implications of these projects. Generally, studies show that bypasses farther away from existing downtowns make it hard for travelers to see and access existing businesses.<sup>72</sup> Understandably, public opposition to bypasses correspondingly increases the greater the distance the bypass is from downtown.<sup>73</sup>

**Survey of Bypass Impacts on Traffic-Serving Business**



Whether or not the bypass is part of a high-speed freeway is also a factor in the economic harm associated with these roads. A recent study has shown that it

is especially difficult to divert traffic from a bypass to a downtown area from high-speed routes.<sup>74</sup>

Smaller towns are far more likely to be hurt by bypasses<sup>75</sup> and find it harder to jump through the extensive hoops necessary to protect existing businesses, which are unlikely to relocate along the new route.<sup>76</sup> To address this issue, many communities are encouraged to extend their political boundaries to include the land near a new bypass. This may necessitate providing adequate water, sewer and additional roadway structure for development near the bypass.<sup>77</sup> If they fail to do this, they will be forced to restrict development along the bypass while their downtown businesses suffer from the loss of pass-through traffic, resulting in reduced income. Moving away from bypass construction in rural and small-town North Carolina will avoid this economic Catch-22.

### **Minimal Safety Improvements from Bypasses**

The safety justification of bypasses is also often unwarranted. Researchers found that accidents on bypassed routes, after going down for a short time, actually increased, and did not decrease to pre-existing levels or below until four or five years had passed.<sup>78</sup> In that same study, residents surveyed believed that local pedestrian safety was improved by bypass construction, but the data did not show an actual improvement in pedestrian safety due to the bypass construction.<sup>79</sup>

#### **Expecting big safety improvements from a bypass? Not likely.**

Rather than concentrate on a bypass for safety outcomes, a much more cost-efficient and results oriented approach is providing spot safety improvements in the most dangerous areas of the corridor. In the 2011 NCDOT study of the US 70, Havelock Bypass in eastern North Carolina, S.T.I.P. ID No. R-1015, one of the proposed goals of the project is to improve safety. The bypass, however, has not been shown to significantly advance that purpose relative to other potential investments. It would only remedy one of the four most dangerous intersections along US 70 in the county. The other three intersections would remain unaddressed.

Already, the DOT plans to create a flyover at the Slocum Road intersection of US 70. This area tops the list of dangerous intersections in the county. The problems there can be mitigated by the proposed flyover at a cost of \$15.6 million, far less than the \$157 million Havelock Bypass.



# ENVISIONING ENHANCED MOBILITY IN RURAL AREAS

Rural North Carolina continues to struggle with unmet mobility and economic development needs. Some have suggested commuting across multiple counties by car, for rural residents to access jobs. Studies show, however, that roads alone do not result in greater economic opportunity for those residents.<sup>80</sup> Since providing additional road capacity for rural areas is not necessary for congestion or useful as a driver of economic development, limited transportation resources should be spent on other needs.

## Unmet Mobility and Access to Economic Opportunity Needs in Rural Areas

Expanding affordable mobility options in rural North Carolina can make a difference for these citizens in getting, and keeping, employment.<sup>81</sup> Rural residents are more likely to face longer commutes to work.<sup>82</sup> Rural residents also make less money<sup>83</sup> than urban dwellers and thus have less money to spend on gas.<sup>84</sup> Lack of affordable transportation, then, becomes a barrier to work access<sup>85</sup> and prosperity.

In addition, rural areas have large elderly and minority populations, who are most likely to be negatively impacted by lack of mobility options.<sup>86</sup> Elderly residents, in particular, are less likely to spend time with others or to get the medical and social services they need without alternatives to solo driving.<sup>87</sup>

Also, walking and biking infrastructure is less prevalent in rural communities compared to the urban centers, despite a strong local demand for these facilities.<sup>88</sup> In addition to enhancing mobility, biking, walking and trail infrastructure projects create more jobs per dollar than highway projects.<sup>89</sup>

Increasing affordable transportation choices in our rural communities can give residents better access to jobs, health care and provide incentives for economic development.<sup>90</sup> Expanded mobility options, such as commuter bus, local transit, para-transit,<sup>91</sup> small scale transportation enhancement projects and broadband can all help to create greater prosperity and an improved quality of life for rural residents.

## Meeting Rural Mobility Needs

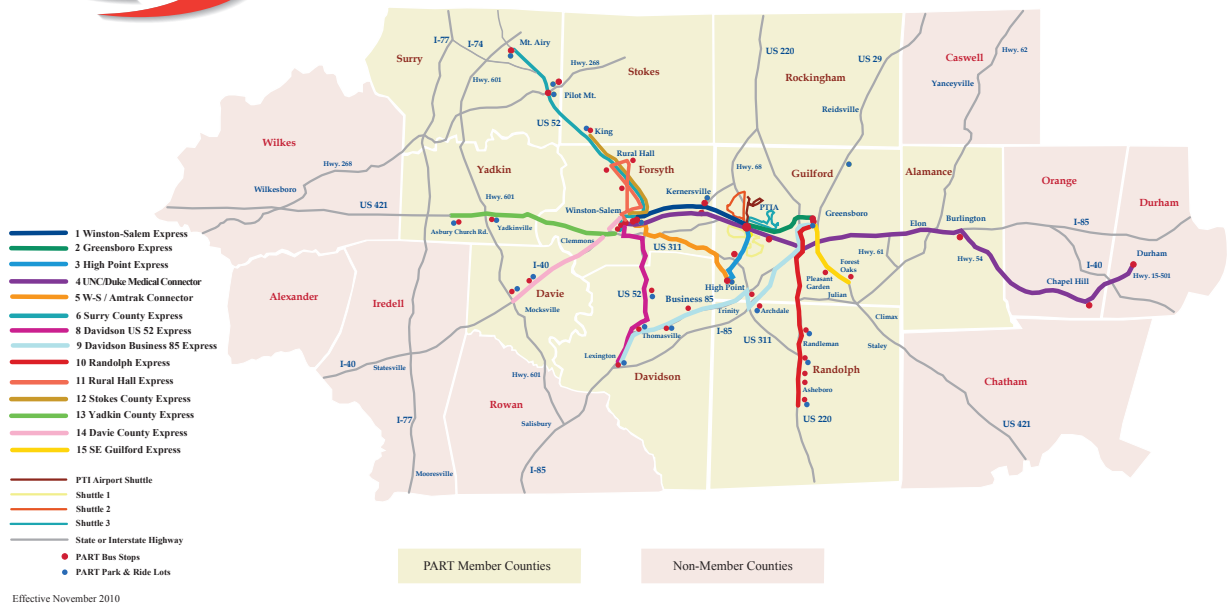
Regional Planning Organizations<sup>92</sup> (RPOs) and the DOT can place increased emphasis on meeting unmet transit needs rather than continued highway expansion.<sup>93</sup> In 2007, NCDOT itself recommended a 124% increase in its rural public transportation system service.<sup>94</sup> Instead of building costly bypasses, North Carolina should make it a higher priority to provide additional funding for rural transit which can match available federal and local funds. Localities can also choose to raise revenue specifically for transit through use of the transit tax measure that was codified as a part of the State's 2009 Intermodal bill.

## Commuter Bus Service

Transit funding can support expanding commuter bus service from rural areas to urban area employment



## PART Regional System Map



centers. Commuter bus service provides much needed, less costly transportation to employment for workers who do not have access to a personal vehicle or who live too far from industry centers to make traveling alone cost-effective. Successful services such as those provided by the Piedmont Authority for Regional Transportation (PART) offer valuable transportation options to the residents of the Piedmont Triad area. In 2009, the PART Express bus system supplied 544,061 passenger trips<sup>95</sup> to workers, including those in rural areas, and has been growing in use since its establishment in 1997.<sup>96</sup> PART has a broad reach throughout central North Carolina, serving 18 counties spanning a distance of 85 miles north to south and almost 170 miles west to east.

### Para-transit

Transit expansion also should include para-transit, in particular because the growth of the elderly population is pronounced in rural North Carolina.<sup>97</sup> Used for social services access and daily living needs, para-transit is primarily intended to serve the disabled and older adults. It provides the affordability of transit, the convenience of a taxi and specialized accessibility features to accommodate wheelchairs and physical disabilities. Advancements in technology have made scheduling trips more efficient and have improved driver knowledge of passenger needs.<sup>98</sup>

**Rural Broadband Service.** Broadband service for rural North Carolina can enhance the use of para-transit and transit, as well as provide additional benefits of supporting e-commerce and telecommuting. To realize the benefits of broadband in rural areas, the NCDOT should support changes to state and federal laws to allow transportation spending flexibility to include broadband as part of the mix. NCDOT can also encourage rural and small towns to seek grant funding toward acquiring broadband service.

**Community Transportation Enhancements.** Transportation enhancements are transportation projects including, but not limited to, biking and walking facilities, acquiring scenic or historic sites, historic preservation and rehabilitation or operation of historic transportation buildings, structures or facilities.<sup>99</sup> These projects, designed to maximize the potential of transportation to enhance communities,<sup>100</sup> efficiently move

people, improve local economies and tourism, enhance the environment and create community gathering places.<sup>101</sup>

Already, rural communities receive twice the amount of federal funds as urban areas receive for these types of transportation enhancements.<sup>102</sup> North Carolina can capitalize on the demand for more walkable, bikeable rural communities by providing enhancements to support those activities. To continue meeting that demand, North Carolina should specifically set out to plan for more sidewalks, bike lanes and trails in rural areas to support locals and tourists alike.



## SUMMARY

New highway capacity in our rural areas is seldom a formula to attract new industry in a 21st century global economy, and 20th century funding priorities must be revisited. North Carolina cannot afford to spend billions on unneeded new highways and bypasses with so many unmet, more pressing rural needs for mobility and access to opportunity. By coordination on both the regional and statewide levels, we can better satisfy the interests of both urban and rural residents.<sup>103</sup>

Rather than spending hundreds of millions on projects like widening US 64 in rural Dare County (see text box), a new vision is called for to meet the unique transportation needs of rural North Carolina. Safety improvements, highway maintenance and bridge repair should be the primary transportation priorities for rural areas. The needs of rural residents, including a disproportionate portion of our elderly, less affluent, and minority populations also would be better served by expanding commuter bus, para-transit, broadband to support these services and investing in community transportation enhancements.

### **Small Communities Threatened By Expensive, Unnecessary Highway Projects**

A proposed highway widening in rural eastern North Carolina (US 64 Improvement Project, Dare County, NC, TIP Project No. R-2544 and R-2545), illustrates the distorted funding priorities that result from North Carolina's Highway Trust Fund project list. NCDOT intends to spend over \$350 million on a project that serves no demonstrated purpose other than completing a plan conceived in 1989 to construct a massive network of four-lane highways and bypasses throughout the State. Understandably, the small community of East Lake is alarmed at "being wiped off the map" by the project.

"Widening US 64 threatens the East Lake community" by Catherine Kozak, Island Free Press, March 28, 2012. <http://islandfreepress.org/2012Archives/03.28.2012-WideningUS64ThreatensTheEastLakeCommunity>

### **Summary of recommendations:**

- As the highest priority, North Carolina should address the compelling safety needs on our rural roads by devoting \$2.5 billion to complete a range of relatively low-cost safety improvements over the next decade.
- The second highest priority is to ensure adequate funding—doubling current spending—to maintain our rural roads and bridges, which will save money for both the DOT and consumers in the long run.
- We must reconsider proposals from a generation ago to spend over \$8 billion on expensive rural and small town four-lane highways and bypasses, which often lack a demonstrated transportation need and hurt local businesses.
- We can improve local mobility and long distance access to economic opportunity for rural areas by investing in commuter bus, para-transit, broadband and community transportation enhancements to meet the unique transportation needs of rural North Carolina.

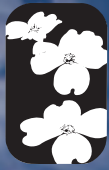


# ENDNOTES

- <sup>1</sup> American Association of State Highway and Transportation Officials (AASHTO). *Transportation Reboot: Connecting Rural and Urban America*. Aug. 2010. p. 4. [http://expandingcapacity.transportation.org/connecting\\_communities/images/Connecting\\_Communities\\_0810.pdf](http://expandingcapacity.transportation.org/connecting_communities/images/Connecting_Communities_0810.pdf).
- <sup>2</sup> Vanderberry, Herb. *North Carolina Agriculture Overview*. NC Dept. of Agriculture & Consumer Services, Agricultural Statistics Division, 13 Sept. 2011. <http://www.ncagr.gov/stats/general/overview.htm>.
- <sup>3</sup> Atkins. *North Carolina Statewide Transportation Plan: 2040 Plan Report*. Draft Version 2. NCDOT, Mar. 2012. pp. 1, 30, 34. [http://www.ncdot.gov/download/performance/2040\\_DRAFTPlan.pdf](http://www.ncdot.gov/download/performance/2040_DRAFTPlan.pdf).
- <sup>4</sup> *Ibid.* (\$94.13 billion is required to maintain the system at current level of service (LOS) C, \$130.39 billion is required to reach LOS B, and 159.53 billion is required to reach LOS A.)
- <sup>5</sup> *Ibid.*, p. 23.
- <sup>6</sup> Atkins. *North Carolina Statewide Transportation Plan: System Inventory and Modal Needs*. Draft Report. NCDOT, Dec. 2011. Executive Summary, Table ES-2, p. x. Print.
- <sup>7</sup> NCDOT, Finance and Budget page, accessed April 23, 2012. <http://www.ncdot.gov/about/finance/>.
- <sup>8</sup> AASHTO, p. 4. (In fact, as many as 3.2 million people, or up to 34% of the population, are rural.)
- <sup>9</sup> TRIP: A National Transportation Research Group. *Rural Connections: Challenges and Opportunities in America's Heartland*. National Information and Reports. Sept. 2011. Executive Summary, p. 1.
- <sup>10</sup> AASHTO, p. i. (Approximately 50 to 60 million Americans living in small communities and rural areas account for 17% to 20% of the United States population.)
- <sup>11</sup> Gray, Jason. "North Carolina Rural Data Bank: Custom Data Search." *NC Rural Economic Development Center, Inc.* Select: Rural/Urban; Rural; Add; All; Land Area; Add; Submit Data Search. (Most of the state's 100 counties, 85 at the time of the 2000 census, 80 at the time of the 2010 census, are rural, and at least 41,485 of North Carolina's 48,711 square miles of total land area are considered rural.)
- <sup>12</sup> *North Carolina Agriculture Overview*.
- <sup>13</sup> *Ibid.*
- <sup>14</sup> *Ibid.*
- <sup>15</sup> 21st Century Transportation Committee (21CTC). *Final Report to the 2009 General Assembly of North Carolina. 21st Century Transportation Committee – 2007*. North Carolina General Assembly, 10 Dec. 2008. p. 10. Print.
- <sup>16</sup> *Ibid.*
- <sup>17</sup> TRIP, p. 5. (North Carolina ranks third in nation in the total number of rural non-Interstate traffic deaths in 2009.)
- <sup>18</sup> Lowry, Stephen, et al. *2011 North Carolina Highway Safety Improvement Program*. HSIP Detailed Reports. NCDOT, June 2011. Print.
- <sup>19</sup> NCDOT, DMV, and Traffic Records Branch. *North Carolina 2008 Traffic Crash Facts*. 2010. p. 195. [http://www.ncdot.gov/download/dmv/2008\\_Crashfacts.pdf](http://www.ncdot.gov/download/dmv/2008_Crashfacts.pdf). (Roads are classified as rural if they are located in an unincorporated area or a municipality with a population of less than 5,000.)
- <sup>20</sup> Table with map data on file at Southern Environmental Law Center (SELCL).
- <sup>21</sup> Cambridge Systematics, Inc. *Crashes vs. Congestion—What's the Cost to Society*. AAA, Nov. 2011. Executive Summary, p. ES-1. [www.camsys.com/pubs/2011\\_AAA\\_CrashvCongUpd.pdf](http://www.camsys.com/pubs/2011_AAA_CrashvCongUpd.pdf).
- <sup>22</sup> *Ibid.*, p. 1. (Each year, traffic motor vehicle crashes result in over 30,000 deaths and two million injuries in the United States.)
- <sup>23</sup> *Ibid.*, p. 10.
- <sup>24</sup> Center for Excellence in Rural Safety. Mid-Term Report. Hubert H. Humphrey Institute of Public Affairs at the University of Minnesota, July 2008. p. 1. <http://www.ruralsafety.umn.edu/publications/documents/CERSmidtermreport.pdf>. (A number of factors contribute to rural road fatalities, including inexperience, driver behavior, failure to use seat belts, alcohol use and importantly, road condition and design. While alcohol maybe involved in some accidents, it's not the leading cause.)
- <sup>25</sup> System Metrics Group Inc., Cambridge Systematics, Inc., Economic Development Research Group, Inc., HLB Decision Economics, Inc., and Judd Associates. *California Bypass Study: The Economic Impacts of Bypasses*. Final Report, Vol. 1. CA Dept. of Transportation, Transportation Economics, May 2006. p. 48. Print.
- <sup>26</sup> TRIP, p. 4. (The fatality rate on all roads declined from 2000 – 2009 by 28%, while the rate on non-Interstate rural roads declined by only 13%.)
- <sup>27</sup> *Ibid.*, p. 1.
- <sup>28</sup> *Ibid.*, p. 6.
- <sup>29</sup> *Ibid.*, p. 23.
- <sup>30</sup> The American Traffic Safety Services Association (ATSSA). *Low Cost Local Road Safety Solutions*. March 2006. p. 2. Print.
- <sup>31</sup> ATSSA, p. 31.
- <sup>32</sup> *Ibid.*, pp. 5, 15, 18, 20. (Installation of rumble strips along the centerline and sides of roads costs \$0.25 - \$1.50 per linear foot, improving signage costs \$200-\$300 per sign, and improving pavement/lane markings cost \$2-\$9 for each raised pavement marker.)
- <sup>33</sup> USDOT, FHWA, and FHWA Office of Safety. "Nighttime Visibility." Accessed April 25, 2012. [http://safety.fhwa.dot.gov/roadway\\_dept/night\\_visib/](http://safety.fhwa.dot.gov/roadway_dept/night_visib/). ("Adequately maintained retroreflective signs and pavement markings improve highway safety and prevent roadway departure crashes by bouncing light from vehicle headlights back toward the vehicle and the driver's eyes, making the signs and markings appear brighter and easier to see and read.")
- <sup>34</sup> ATSSA, p. 5. (Using indicators to show roadway alignment along curves costs \$200-\$300 per sign.)
- <sup>35</sup> TRIP, p. 8.
- <sup>36</sup> ATSSA, p. 29. (Adding guardrails costs \$8/ft - \$35/ft.)
- <sup>37</sup> United States Dept. of Transportation, Federal Highway Administration, the Office of Research, Development, and Technology, Office of Safety, and RDT. Summary Report. *Safety Evaluation of the Safety Edge Treatment*. Jan. 2011. <http://www.fhwa.dot.gov/publications/research/safety/hsis/11025/>. (Resurfacing pavements costs \$96,000 per sq. mile.)
- <sup>38</sup> TRIP, p. 8.
- <sup>39</sup> ATSSA, p. 31. (Adding median barriers costs \$44,000 per mile.)
- <sup>40</sup> USDOT, FHWA, and the FHWA Office of Safety. *North Carolina's 2009 Highway Safety Improvement Report & Five Percent Report*. Highway Safety Improvement Program (HSIP). 26 Aug. 2009. <http://safety.fhwa.dot.gov/hsip/five-percent/2009/index.cfm?state=nc> (Improving roadway alignment costs \$30,000-\$200,000+.)
- <sup>41</sup> TRIP, p. 8.
- <sup>42</sup> See graph: Reduction in Rural Crash Rates/Fatalities due to Road Safety Improvements.
- <sup>43</sup> Atkins. *North Carolina Statewide Transportation Plan: System Inventory and Modal Needs*. Draft Technical Report: Version 2. NCDOT, March 2012. Executive Summary, Table ES-3, p. ES-11. Print.
- <sup>44</sup> See note 65.
- <sup>45</sup> NC Dept. of Transportation, NCDOT State Road Maintenance Unit, Road Inventory Information Section, and et al. *2008 Highway and Road Mileage*. State Mapping Resources: Inventory and Assessment Reports. Sept. 2009. p. 12. [http://www.ncdot.gov/travel/statemapping/download/highwayroadmileage\\_2008.pdf](http://www.ncdot.gov/travel/statemapping/download/highwayroadmileage_2008.pdf).
- <sup>46</sup> USDOT, FHWA. *Transportation Asset Management: Beyond the Short Term*. Beyond the Short Term: Transportation Asset Management for Long-Term Sustainability, Accountability and Performance. *FOCUS: Accelerating Infrastructure Innovations*. July 2010. <http://www.fhwa.dot.gov/publications/focus/10jul/01.cfm>.
- <sup>47</sup> Patel, Alpesh G., NCDOT Board of Transportation, et al. *Charting a New Direction for NCDOT: North Carolina's Long-Range Statewide Multimodal Transportation Plan*. Sept. 2004. p. 7. Print.
- <sup>48</sup> Frankel, Jake. *New Report Finds North Carolina Rural Roads Among Nation's Deadliest*. Mountain Xpress, 9 Feb. 2011. Print.
- <sup>49</sup> TRIP, p. 30.
- <sup>50</sup> Marshall, Alex. *Why Does U.S. Build Roads If It Can't Pay to Fix Them?* Bloomberg, 5 April 2012. <http://www.bloomberg.com/news/2012-04-05/why-does-u-s-build-roads-if-it-can-t-pay-to-fix-them.html>. ("Every dollar spent in keeping a good road good precludes spending \$6 to \$14 to rebuild one that has deteriorated.")
- <sup>51</sup> NCDOT. Uses of Funding. "Finance and Budget." <http://www.ncdot.gov/about/finance/>. (Current DOT annual maintenance budget is \$957 million.)
- <sup>52</sup> Atkins. *North Carolina Statewide Transportation Plan: System Inventory and Modal Needs*. Draft Technical Report: Version 2. NCDOT, Mar. 2012. Executive Summary, Table ES-3, p. ES-11. Print. (Currently, projected maintenance needs for highways through 2040 are almost \$58 billion.)

- <sup>53</sup> Atkins. *North Carolina Statewide Transportation Plan: 2040 Plan Report*. Draft Version 2. NCDOT, Mar. 2012. p. 14. [http://www.ncdot.gov/download/performance/2040\\_DRAFTPlan.pdf](http://www.ncdot.gov/download/performance/2040_DRAFTPlan.pdf). (Level of Service is a term used in the grading system that NCDOT developed for each transportation mode that defines how well that mode meets public needs. The level of performance for each mode is ranked similar to a school report card, LOS A, B, C, D, and F); Atkins. Dec. 2011. p. x.
- <sup>54</sup> Atkins. *North Carolina Statewide Transportation Plan: System Inventory and Modal Needs*. Draft Report. NCDOT, Dec. 2011. Executive Summary, Table ES-2. p. x. Print.
- <sup>55</sup> TRIP, p. 32.
- <sup>56</sup> *Ibid.*, p. 31. (NC is number 14 in the nation on the list of deficient bridges.)
- <sup>57</sup> NCDOT. *Bridge & Culvert Stats, Download. NCDOT: Bridge Stats & Structure Maps*. pp.1-2. <http://www.ncdot.gov/projects/ncbridges/maps.html>. (31 rural counties have over 40% of their bridges that meet the criteria for being structurally deficient or functionally obsolete.)
- <sup>58</sup> TRIP, p. 31. (North Carolina has 18,007 bridges, 13,982 which are rural.)
- <sup>59</sup> *Ibid.*, p. 2.
- <sup>60</sup> System Metrics Group Inc., p. 11.
- <sup>61</sup> Atkins. *North Carolina Statewide Transportation Plan: Challenges and Opportunities. NCDOT 2040 Plan*. NCDOT, Sept. 2011. p. 33. [http://www.ncdot.gov/download/performance/2040\\_ChallengeOpp.pdf](http://www.ncdot.gov/download/performance/2040_ChallengeOpp.pdf).
- <sup>62</sup> System Metrics Group Inc., p. 11.
- <sup>63</sup> *Ibid.*, p. 12.
- <sup>64</sup> N.C.G.S. § 136-179.
- <sup>65</sup> NCDOT Cost to Complete Intrastate System Calculation and System Map on file at SELC.
- <sup>66</sup> Atkins. *North Carolina Statewide Transportation Plan: Challenges and Opportunities. NCDOT 2040 Plan*. NC Dept. of Transportation, Sept. 2011. p. 26. [http://www.ncdot.gov/download/performance/2040\\_ChallengeOpp.pdf](http://www.ncdot.gov/download/performance/2040_ChallengeOpp.pdf).
- <sup>67</sup> United States Census Bureau.
- <sup>68</sup> System Metrics Group Inc., p. 25.
- <sup>69</sup> Thompson, Eric, et al. *The Impact of a New Bypass Route on the Local Economy and Quality of Life*. Kentucky Transportation Center, University of Kentucky: Coll. of Engineering, June 2011. p. ii. Print.
- <sup>70</sup> System Metrics Group Inc., p. 15.
- <sup>71</sup> *Ibid.*
- <sup>72</sup> Otto, Daniel and Connie Anderson. *The Economic Impact of Rural Highway Bypasses: Iowa and Minnesota Case Studies Final Report*. Midwest Transportation Center, Iowa State University, Jan. 1995. p. 16. [http://www.intrans.iastate.edu/reports/rural\\_bypasses.pdf](http://www.intrans.iastate.edu/reports/rural_bypasses.pdf).
- <sup>73</sup> *Ibid.*, p. 17.
- <sup>74</sup> System Metrics Group Inc., p. 21.
- <sup>75</sup> *Ibid.*, p. 15. (Where negative impacts of ten bypassed communities were found, seven of those ten communities were small towns.)
- <sup>76</sup> *Ibid.*, p. 9.
- <sup>77</sup> *Ibid.*, p. 23.
- <sup>78</sup> *Ibid.*, p. 48. (For the bypasses studied, “the number of collisions increased on the routes that were bypassed after an initial, marginal decline. After about four or five years, the number of collisions fell to or below pre-existing levels.” The authors theorize that new traffic patterns confused drivers and resulted in more collisions.)
- <sup>79</sup> *Ibid.*, p. 37.
- <sup>80</sup> Partridge, Mark D. et al., *Rural-to-Urban Commuting: Three Degrees of Integration*. Steven Deller and Tom Leinbach, eds. Ohio State University, Dept. of Agricultural Environmental and Development Economics, 17 Feb. 2010. p. 5. [http://aede.osu.edu/sites/drupal-aede.web/files/Partridge\\_et\\_al\\_Out-commuting2\\_paper-feb18.pdf](http://aede.osu.edu/sites/drupal-aede.web/files/Partridge_et_al_Out-commuting2_paper-feb18.pdf).
- <sup>81</sup> Hall, Billy Ray. *Poverty's Enduring Tradition in Rural North Carolina: How Do We Respond?* Popular Government, Spring/Summer 2003. p. 29. Print.
- <sup>82</sup> *Profiles of Innovative Rural Vanpool Programs*, June 2009, Introduction. Print. (Rural residents have faced disproportionate job loss in the current economic downturn, and some are facing longer commutes when they return to work.)
- <sup>83</sup> <http://www.raconline.org/states/northcarolina.php> (Estimates from 2010 indicate a poverty rate of 20.3% exists in rural North Carolina, compared to 16.2% in urban areas of the state.)
- <sup>84</sup> Hall, Billy Ray. p. 25.
- <sup>85</sup> *Ibid.*, p. 25.
- <sup>86</sup> Atkins. Sept. 2011. p. A-19.
- <sup>87</sup> Rutkowski, Charles A. and Pamela Friedman. *Transportation*. Rural Assistance Center: Rural Transportation Resources. <http://www.raconline.org/topics/transportation/>.
- <sup>88</sup> Rails-To-Trails Conservancy, *Active Transportation Beyond Urban Centers; Walking and Bicycling in Small Towns and Rural America*. <http://www.railstotrails.org/ourWork/reports/beyondurbancenters.html>.
- <sup>89</sup> *Ibid.*, p. 3.
- <sup>90</sup> TRIP, p. 2. (Citing Ray LaHood blog post.)
- <sup>91</sup> Para-transit is an alternative flexible public transportation mode that does not follow fixed routes or schedules, and often has features to make travel easier for disabled people.
- <sup>92</sup> N.C.G.S. § 136-210-213
- <sup>93</sup> Draft report on file with Tri-State Transportation Campaign. (In a 2012 study of state-by-state new capacity spending, North Carolina ranked number one in spending for the 2008-2018 planning period.)
- <sup>94</sup> AASHTO, p. 10.
- <sup>95</sup> Kochanski, Brooke. *What is PART? Provision of Part Programs*. Piedmont Authority for Regional Transportation: The Transportation Solution. PART, <http://www.partnc.org/whatisPART.html>.
- <sup>96</sup> Piedmont Authority for Regional Transportation. *The History of PART*. Piedmont Authority for Regional Transportation: The Transportation Solution. PART, <http://www.partnc.org/history.html>.
- <sup>97</sup> Atkins. Sept. 2011. p. A-19. (In a survey of where elderly North Carolinians reside, the highest percentages after the urban retirement destinations of Wilmington and Asheville are in rural North Carolina.)
- <sup>98</sup> Sulek, Joanne. *Fail-Safe Methods for Para-Transit Safety*, p. 67. Print.
- <sup>99</sup> FHWA Guidance: Transportation Enhancement Activities. US Department of Transportation, Federal Highway Administration. March 2010. p. 4. Print.
- <sup>100</sup> Fields, Billy. *Enhancing America's Communities: A Guide To Transportation Enhancements*. 3rd Ed. National Transportation Enhancements Clearinghouse. March 2007. p. 1, Print.
- <sup>101</sup> *Ibid.*, p. 1.
- <sup>102</sup> Rails-To-Trails Conservancy, p. 3.
- <sup>103</sup> Partridge, Mark D., p. 5.





Southern  
Environmental  
Law Center

Chapel Hill Office  
601 West Rosemary Street,  
Suite 220  
Chapel Hill, NC 27516  
Phone 919-967-1450  
SouthernEnvironment.org





## **Exhibit G**

Declaration of Samuel Brooke

JA123

# 2013



American Association of  
Motor Vehicle Administrators

## Best Practices Guide to Reducing Suspended Drivers



Suspended/Revoked  
Working Group

February, 2013

JA124

While this publication was funded by the National Highway Traffic Safety Administration, an operating administration of the U.S. Department of Transportation, under a cooperative agreement, the opinions, findings and conclusions expressed in this publication are those of the author(s) and not necessarily those of the U.S. Department of Transportation or the National Highway Traffic Safety Administration. The United States Government assumes no liability for its content or use thereof.

JA125

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# Executive Summary

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The suspension of driving privileges has been used for decades to address poor driving behavior, and research has proven that it can be effective in reducing traffic crashes. However, what was originally intended as a sanction to address poor driving behavior is now used as a mechanism to gain compliance with non-highway safety, or social non-conformance, reasons. Across the country, at any given time, approximately seven percent of drivers are suspended. In 2002, drivers suspended for social non-conformance reasons represented 29 percent of all suspended drivers. By 2006, this group represented 39 percent of all suspended drivers. Drivers are now commonly suspended for reasons such as bounced checks, fuel theft, truancy, vandalism and many more.

Some studies<sup>1</sup> have shown that suspending driving privileges for non-highway safety related reasons is not effective. The costs of arresting, processing, administering, and enforcing social non-conformance related driver license suspensions create a significant strain on budgets and other resources and detract from highway and public safety priorities.

When licenses are suspended for social non-conformance reasons, the suspension is “watered down” in value; it becomes less serious in the minds of law enforcement, the courts and the public. It was estimated that as many as three-fourths of suspended or revoked drivers continue to drive. This fact indicates that driver license suspension is no longer the solution to force compliance. Data shows that drivers suspended for traffic safety related reasons are three times more likely to be involved in a crash than drivers suspended for social non-conformance reasons; therefore, our limited resources should be focused on dangerous drivers. To best serve the community, the penalties for social non-conformance violations should not include the suspension of an individual’s driving privileges.

Eliminating driver license suspensions for non-highway safety violations will significantly reduce the burden on departments of motor vehicles (DMV’s), law enforcement, the courts and society. DMV’s for example, incur exorbitant costs to create, program systems and process these newly legislated suspension types.

When a law enforcement officer encounters a suspended driver, their ability to help ensure the safety of drivers on the roadways and their availability to respond to calls for service are reduced. The officer must take appropriate action for the violation and later appear in court for adjudication of the ticket(s). While the officer is in court, there may be little or no enforcement presence in their patrol area. Officers are made unavailable for 911



*It is the recommendation of the Suspended / Revoked Working Group that legislatures repeal laws requiring the suspension of driving privileges for non-highway safety related violations.*

<sup>1</sup> See [http://apps.dmv.ca.gov/about/profile/rd/r\\_d\\_report/Section\\_6/S6-238.pdf](http://apps.dmv.ca.gov/about/profile/rd/r_d_report/Section_6/S6-238.pdf)



responses, crash investigation, criminal interdiction, and other enforcement activities, potentially increasing the threat to public safety.

Eliminating 39 percent of suspended drivers will result in fewer citations for driving while under suspension and partially alleviate clogged court dockets. Individuals whose offense is unrelated to highway safety will retain their driving privileges, their ability to earn a living, and their ability to contribute to the economy.

Whereas government has a legitimate interest in seeking methods to gain social compliance in a wide variety of areas, this report provides analysis and alternatives to driver license sanctioning. These alternatives pose significantly less burden on the entities charged with safeguarding highway safety while still meeting the needs of our communities.

It is the recommendation of the Suspended/Revoked Working Group that legislatures repeal state laws requiring the suspension of driving privileges for non-highway safety related violations.


# 1.0 Introduction

---

When license suspensions were first instituted, there were three primary goals for suspending driving privileges; to remove dangerous drivers from the road, to change driving behavior, and to punish unsafe drivers. A fourth goal subsequently emerged- to change non-highway safety related, sometimes referred to as social non-conformance, behavior. Examples of social non-conformance violations include fuel piracy/theft, failure to pay taxes, minor in possession of alcohol, false public alarm, illegal solid waste burning, vandalism, failure to pay alimony, selling alcohol to a minor, truancy, unlawful possession of firearms, prostitution, and many more (a complete list may be found in Section 4). However, there is no empirical evidence which indicates that suspending a person's driving privilege for social non-conformance reasons is effective in gaining compliance with the reason for the original non-driving suspension. Research indicates that approximately 75 percent of all suspended drivers continue to drive. The addition of suspensions for social non-conformance reasons has however, dramatically increased the number of suspended drivers on our roads resulting in a tremendous burden on law enforcement, departments of motor vehicles, the courts, and local communities.

## Suspension Related to Traffic Safety

Most people would agree that driving, and the possession of a valid driver license is vitally important to almost everyone. The common belief that a driver license suspension provides effective, sustainable motivation to encourage individuals to comply with court ordered or legislated mandates to avoid suspension is not supported by empirical evidence. Throughout the U.S. and Canada, on an increasingly frequent basis, driver licenses are suspended for indeterminate periods of time for social non-conformance violations. In other words, the suspension remains in place until proof of compliance is provided. Once suspended, the individual is required to not only satisfy the original obligation to the court, but must also fulfill additional requirements mandated by the DMV before driving privileges are reinstated (*e.g., pay a reinstatement fee*).



*The common belief that a driver license suspension provides effective, sustainable motivation to encourage individuals to comply with court ordered or legislated mandates to avoid suspension is not supported by empirical evidence.*

Under the auspices of the AAMVA Suspended and Revoked Working Group (herein after referred to as the Working Group) a research study titled, "Enhanced Analysis of Suspended / Revoked Drivers Related to Crashes"<sup>2</sup> was commissioned in 2005 to analyze driver record data from eight (8) geographically and demographically diverse states.

<sup>2</sup> Robert Eger III, Ph.D. "Enhanced Analyses of Suspended/Revoked Drivers Related to Crashes." Florida State University. 2011.

A total of 114,626 driver records were analyzed for highway safety and non-highway safety related suspensions. The research identified significant driving behavior differences between drivers suspended as a result of driving offenses, and those suspended for social non-conformance reasons. Despite the seriousness of failure to comply and/or driving while suspended consequences, individuals do in fact continue to drive while suspended.

*Drivers suspended for highway safety related reasons are almost three times more likely to be involved in a crash than drivers suspended for social non-conformance reasons.*

The study validated the fact that violation recidivism and crash involvement varies between the two groups, and that driving violations after suspension are more pronounced for individuals suspended for driving reasons. Taking suspension action for dangerous driving behavior is appropriate. The research indicates the premise that imposing a driver license suspension as a penalty for non-highway safety related offenses is ineffective.<sup>3</sup>

Currently, all 50 states, the District of Columbia, as well as many Canadian provinces, have laws that either require, or permit the courts to withdraw driving privileges for social non-conformance reasons. In order to determine the prevalence of these suspensions, AAMVA completed a survey of their members in the summer of 2011. Forty-three jurisdictions responded. All indicated that they suspend for social non-conformance reasons. Table 1-1 shows the most common social non-conformance reasons for suspension/revocation of a person's driver license.

### Increased Suspension for Social Non-Conformance Violations

Each year state and provincial legislatures impose new mandates for the suspension of driving privileges for individuals who fail to comply with non-highway safety violations. Many of these suspensions have no relationship to an individual's ability to drive, their moving violation history, or any other factors related to the operation of a motor vehicle.

A significant increase in legislated social non-conformance suspensions has diluted the effectiveness of driving sanctions, and increased the burden on law enforcement, driver licensing authorities, and the criminal justice system. Unfortunately, the dramatic increase in suspensions has led to changes

in public perception of the seriousness of this action. Consequently, law enforcement, courts and society in general view suspensions less seriously<sup>4</sup>. As a result, the system is less effective in keeping dangerous drivers off the road, which was the original intent of driver license suspensions.

Reason for Suspension	# of jurisdictions who suspend for reason (out of 43 respondents)
Failure to comply with a child support order	43
Minor - alcohol possession/consumption	26
Fuel piracy / theft	23
Failure to pay a non-moving violation	21
Fraud / Misuse of a Driver License	21
Truancy / fail to attend school	15
Controlled substances	14

Table 1-1

<sup>3</sup> Eger III, Robert, Ph.D., Florida State University, 2011

<sup>4</sup> National Cooperative Highway Research Program, Report 500, Volume 2

## Current Status of the Suspended / Revoked Driver Problem

Drivers who have been suspended for social non-conformance related offenses are often trapped within the system. Some cannot afford to pay the original fines, and may lose their ability to legally get to and from work as a result of the suspension. Many make the decision to drive while suspended. The suspension results in increased financial obligations through new requirements such as reinstatement fees, court costs and other penalties.<sup>4</sup>

While there is a clear societal interest in keeping those who are unfit to drive off the roads, broadly restricting licenses for violations unrelated to an individual's ability to drive safely may do more harm than good. This is especially true in areas of the country that lack alternative means of transportation. For those individuals, a valid driver license can be a means to survive. Local communities, employers and employees all experience negative consequences as a result of social non-conformity suspensions, including unemployment, lower wages, fewer employment opportunities and hiring choices, and increased insurance costs.<sup>5</sup> People who are able to legally drive are more likely to have stable employment.<sup>6</sup>

A report, authored by the Motor Vehicles Affordability and Fairness Task Force, which was created by New Jersey statute to study the impact of social non-conformance related suspension of driving privileges, substantiates these negative economic effects. In New Jersey, 42% of drivers lost their job after their driving privilege was suspended. Of those drivers, 45% were unable to find new employment. Of those that were able to find another job, 88% reported a decrease in income.<sup>7</sup>

One out of five traffic fatalities nationally involves a driver who is operating a motor vehicle while suspended or who has no license at all, according to the Transportation Research Board of the National Academies.<sup>8</sup>

*Local communities, employers and employees all experience negative consequences as a result of social non-conformity suspensions . . . People who are able to legally drive are more likely to have stable employment.*

Nationally, more than 3.1% of licensed drivers are involved in a crash, while 19% of drivers with a suspended license for traffic safety reasons are involved in a crash. This represents a six fold increase in crash occurrence.<sup>9</sup> Drivers suspended for traffic related reasons are many times more likely to be involved in a crash than those drivers who are not suspended.

<sup>5</sup> Alan M. Voorhees Transportation Center. *Motor Vehicles Affordability and Fairness Task Force: Final Report*. Edward J. Bloustein School of Planning and Public Policy, Rutgers University and New Jersey Motor Vehicle Commission, 2006.

<sup>6</sup> Margy Waller. "High Cost or High Opportunity Cost? Transportation and Family Economic Success." *The Brookings Institution Policy Brief*, Center on Children and Families, no. 35, December 2005.

<sup>7</sup> Alan M. Voorhees, Transportation Center, 2006.

<sup>8</sup> National Cooperative Highway Research Program, Report 500, Volume 2

<sup>9</sup> Eger III, Robert, Ph.D., Florida State University, 2011

## Impacts on Highway Safety

It is estimated that as many as three-fourths of suspended or revoked drivers continue to drive.<sup>10</sup> The Enhanced Analysis of Suspended / Revoked Drivers Related to Crashes shows that approximately 34 percent of drivers suspended for highway safety related reasons commit a moving violation while under suspension.<sup>11</sup> That compares to approximately 7 percent of drivers suspended for social non-conformance related reasons who commit a moving violation while under suspension for driving related reasons. Almost 19 percent of drivers suspended for highway safety related reasons are involved in a crash, compared to less than 7 percent of drivers suspended for social non-conformance related reasons who are involved in a crash.<sup>12</sup> Drivers suspended for highway safety related reasons are almost three times more likely to be involved in a crash than drivers suspended for non-highway safety related reasons.<sup>13</sup> Findings show drivers suspended for bad driving are indeed bad drivers. However, not all suspended drivers behave the same and therefore can, and perhaps should, be treated differently by driver licensing authorities, law enforcement, and the courts.

*"Public policy should weigh the public safety risks prior to including non-traffic offenses as a method of directing behavior."*

**Rob Mikell, Georgia  
DDS Commissioner**

According to Rob Mikell, Commissioner of the Georgia Department of Driver Services, "Across the nation, suspending a driver's license for non-traffic offenses has become far-reaching. The spectrum of offenses ranges from the violation of local ordinances to the failure to pay child support. In many cases, these violations are cascading and result in confusion by the driver. Most people place a high value on their driving privilege. However, the multitude of suspend able offenses has resulted in the devaluing of the license which in turn causes additional violations of driving with suspended license. Public policy should weigh the public safety risks prior to including non-traffic offenses as a method of directing behavior."

*"Reducing law enforcement roadside encounters with suspended drivers by up to 39% would result in significant time savings allowing officers to be available for calls for service and other proactive activities".*

**Chief John Batiste,  
Washington State Patrol**

Chief John Batiste of the Washington State Patrol provided his expert opinion, "A roadside encounter with a suspended driver is a time consuming endeavor for officers. Drivers suspended for non-driving reasons represent 39% of all suspended drivers, and are not the threat to the motoring public as other suspended drivers. Reducing law enforcement roadside encounters with suspended drivers by up to 39% would result in significant time savings allowing officers to be available for calls for service and other proactive highway safety activities."

<sup>10</sup> National Cooperative Highway Research Program, Report 500, Volume 2

<sup>11</sup> Eger III, Robert, Ph.D., Florida State University, 2011

<sup>12</sup> Eger III, Robert, Ph.D., Florida State University, 2011

<sup>13</sup> Eger III, Robert, Ph.D., Florida State University, 2011



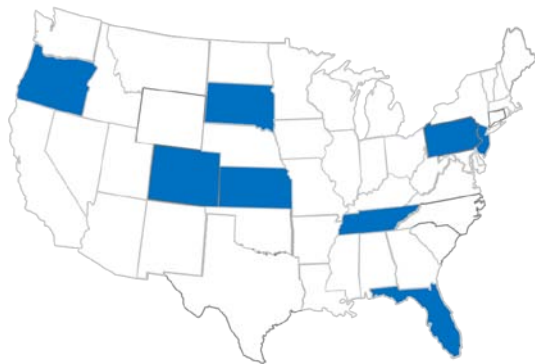
*A Burden to Law Enforcement and Motor Vehicle Agencies*

The dramatic increase in social non-conformance suspensions creates a burden for law enforcement, driver licensing authorities, and courts. The impact of non-highway safety violations on these entities are discussed in detail in Sections 3 and 4. Law enforcement, the courts and the DMVs could better focus on drivers arrested for impaired driving, aggressive driving, serious traffic violations, and other risky behavior if they were not required to take action against individuals suspended for social non-conformance related offenses.

## 2.0 Research

### Introduction

In 2005, the Working Group commissioned Robert Eger III, PhD, Florida State University, to analyze driver record data from six (6) states. In 2011, two states were added to provide validation of the findings. The research focused on driver license suspensions, categorized by highway safety related and non-highway safety related violations, and subsequent driving behavior. The research analyzed post-suspension activity to determine whether driver license suspension is effective in achieving compliance with non-highway safety violations.



*Researchers reviewed nearly 115,000 driver records from eight (8) geographically and demographically representative states.*

Driver records from Florida, New Jersey, Colorado, Tennessee, Kansas, South Dakota, Oregon and Pennsylvania were analyzed. The eight (8) states were geographically and demographically representative of the entire nation.

Researchers applied the AAMVA Code Dictionary (ACD) to provide consistent category definitions of all driver record violations. The ACD provides guidelines for the uniform exchange of violation information between state motor vehicle agencies.

The outcome revealed that the two groups of suspended drivers – those suspended for highway safety related violations and those suspended for social non-conformity violations - differ from the national percentage of licensed drivers involved in crashes.

Those suspended for highway safety reasons have a much higher percentage of crashes than drivers suspended for social non-conformity violations. The two groups also differ in the length of driver license suspension and the relationship between the length of suspension and the frequency of crashes. These results validate the finding that the two groups of suspended drivers appear to behave differently and thus should not be treated as a homogenous group in regard to highway safety policy. It follows that less traffic enforcement of highway safety violations occur as suspensions for social non-compliance increase. These analyses support a repeated call for suspended driver policy options that address the differences between the two groups. See Appendix B for the full study.

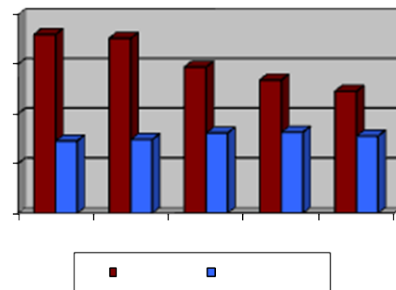


Table 2-1

Data from 2002 to 2006 was analyzed to assess activities of drivers whose licenses had been suspended. The total number of suspended drivers during the study period decreased from approximately 25,000 in 2002 to approximately 20,000 in 2006. (See Table 2-1) This represents a 21 percent decrease over the time period. A concurrent result of the downward trend in suspensions over the analysis period was an increasing proportion of drivers suspended for social non-conformance violations.

*Both groups of suspended drivers (highway safety and social non-conformance) negatively affect highway safety, but clearly those suspended for highway safety reasons are the more dangerous group.*

In 2002, drivers suspended for social non-conformance reasons represented 29 percent of all suspended drivers. By 2006, this group represented 39 percent of all suspended drivers.

Findings indicate that 75,948 drivers, or about 66 percent of the sample population, were suspended for highway safety reasons while 38,678 of drivers, or about 34 percent of the sample were suspended for non-highway safety reasons. (See Table 2-2) More than one-third of the drivers with suspended licenses lost their driving privileges for reasons that were completely unrelated to driving.

Of those suspended for highway safety reasons, 9.2 percent commit a subsequent non-highway safety related offense compared to 24.2 percent of drivers suspended for social non-conformity reasons. This shows that more drivers suspended for social non-conformity reasons commit subsequent non-driving offenses than those suspended for highway safety reasons. The fact that 24.2 percent of drivers with a suspended license commit a subsequent non-highway safety offense indicates that suspending their license does not make social violators comply. (See Table 2-2)

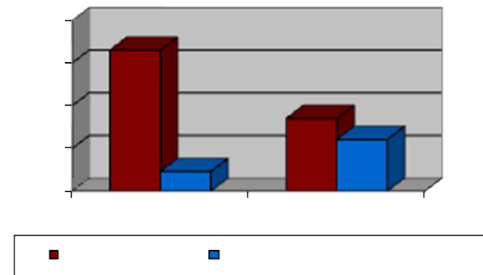


Table 2-2

Regarding crashes, study results show that 18.9 percent of drivers (14,318 of 75,948) suspended for highway safety related reasons are involved in a crash during the suspension period, while 6.9 percent of drivers (2,669 of 38,678) suspended for social non-compliance reason are involved in a crash. When looking at repeat offenders, the results show that 44.2 percent of drivers (11,786 of 26,689) suspended for highway safety related reasons are involved in a crash, while 21.1 percent of drivers (2,427 of 11,499) suspended for a social non-conformance reasons are involved in a crash (See Table 2-3). Bottom line - drivers suspended for driving related reasons are involved in more crashes. If after reviewing this document policy makers agree that there should be a direct nexus between license suspensions and traffic safety, and then state laws requiring suspensions for non-traffic safety reasons should be repealed. To explore

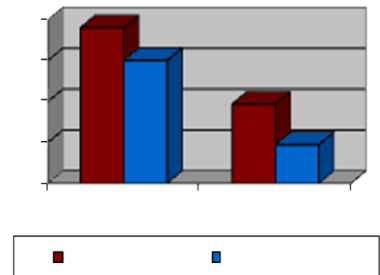


Table 2-3


the relationship between suspended driver crashes and crashes involving all drivers, the number of crashes was analyzed.

More than 3.1 percent of licensed drivers were involved in a crash during the study period. The number of drivers suspended for highway safety reasons involved in a crash was 19 percent: six (6) times the rate of crash involvement of all drivers. The percentage of drivers suspended for non-highway safety reasons who were involved in a crash was 6.9 percent; more than double the crash involvement rate of drivers suspended for highway safety reasons. Both groups of suspended drivers appear to negatively affect highway safety, but clearly those suspended for highway safety reasons are the more dangerous group.

### Supporting Research

A new California Department of Motor Vehicles (DMV) study found that suspended/revoked drivers are much more hazardous than validly licensed drivers and nearly three times more likely to cause a fatal crash.

The study, entitled *Fatal Crash Rates for Suspended/Revoked and Unlicensed Drivers*<sup>14</sup>, used crash data over a 23-year period and looked at two-vehicle fatal crashes where only one driver was at fault.



*If policy makers agree that there should be a direct nexus between license suspensions and traffic safety, then licenses should be suspended only for driving related reasons.*

### Conclusions

The outcome of this research indicates that driver license suspension for non-highway safety related reasons is ineffective in achieving compliance with non-highway safety violations. Study results verify that the two groups should not be treated as a homogenous group in regard to traffic safety policy. These analyses support a repeated call for a suspended/revoked driver policy that strongly emphasizes suspensions for driver behavior violations.

<sup>14</sup> See [http://apps.dmv.ca.gov/about/profile/rd/r\\_d\\_report/Section\\_6/S6-238.pdf](http://apps.dmv.ca.gov/about/profile/rd/r_d_report/Section_6/S6-238.pdf)

## 3.0 Impact to the Criminal Justice System

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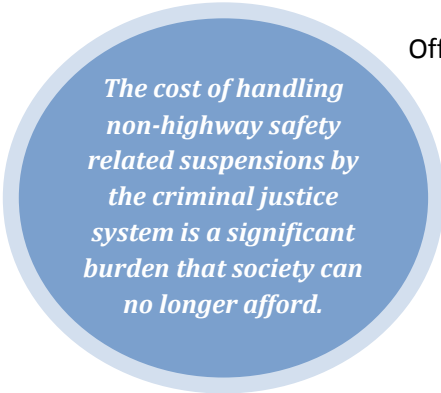
### Introduction

The cost of handling non-highway safety related suspensions by the criminal justice system is a significant burden that society can no longer afford. Untold hours of personnel time and other resources could be saved if these types of suspensions are eliminated. In addition to the cost of the law enforcement officer's time - jailers, corrections officers, judges, judicial clerks, bailiffs, prosecutors, support staff, and defense attorneys are all potentially involved in the process and could potentially benefit from the elimination of social non-conformance suspensions. Statistics from 2006 found that 39 percent of suspended drivers lost their license for a social non-conformance related reason. Eliminating 39 percent of suspended drivers will result in fewer citations for driving while under suspension and help alleviate already clogged court dockets.

### The Impact on Law Enforcement

In most jurisdictions, actions taken by law enforcement for individuals caught driving while suspended or revoked do not differ based upon the underlying reason for the suspension. A driver caught driving while suspended, whether suspended for impaired driving or littering, receives a ticket and may be arrested according to the laws of the jurisdiction. The officer may impound the vehicle if allowed or required by law or policy. Found guilty, the person's driving privilege is suspended or revoked a second or subsequent time.

And there are unintended consequences. In Orange County, Florida, the number of unlicensed drivers on local roads has doubled. The Florida Department of Highway Safety and Motor Vehicles reports more than 100,000 drivers out of a licensed driving population of 876,077 are under suspension in Orange County alone and law enforcement has seen a significant increase in hit and run crashes by individuals who do not have a valid license. If a driver is suspended and involved in a collision, whether they are at fault or not, they are usually not inclined to await a police response. In 2010, there were 25 hit and runs every day in the Orlando area. That number is double what it was the previous year.



*The cost of handling non-highway safety related suspensions by the criminal justice system is a significant burden that society can no longer afford.*

Officer safety is also of primary concern. In the U.S. in 2011, 166 law enforcement officers were killed or died as a result of injuries received in the line of duty.<sup>15</sup> According to the National Law Enforcement Officers Memorial Fund, a nonprofit that tracks police deaths, 2010 statistics show that traffic fatalities were the leading cause of officer deaths, with 73 officers killed. Each time an officer stops a driver who is suspended; it increases the officer's exposure and increases the possibility of an incident that may lead to injury or death.

<sup>15</sup> *Thousands On Local Roads Without License*, WFTV News, Orange County, Florida, December 23, 2010



The fact that a driver may be suspended for a non-highway safety related violation makes no difference in the action taken by the officer. When a law enforcement officer encounters a suspended driver, their ability to help ensure the safety of drivers on the roadways and their availability to respond to calls for service are reduced. The officer must take appropriate action for the violation and later appear in court for adjudication of the ticket(s). While the officer is in court, there may be little or no enforcement presence in their patrol area. Officers are made unavailable for 911 responses, crash investigation, criminal interdiction, and other enforcement activities, potentially increasing the threat to public safety.

*The fact that highly trained law enforcement officers must routinely deal with social non-conformance violations takes valuable time and resources away from other traffic and public safety efforts.*

There is significant and increasing frustration in the law enforcement community as a result of the increased administrative workload and time and energy required for non-driving related offenses.<sup>16</sup> Law enforcement agencies throughout the country are facing significant resource challenges as a result of budget reductions. Law enforcement agencies must make difficult choices about where to best focus limited resources. In order to ensure time is spent productively, officers often use their discretion and issue warnings instead of traffic tickets, choose not to impound a vehicle, and/or arrest the suspended driver, further de-valuing the overall impact of driver license suspensions in their entirety.

Technology is contributing to the increased workload caused by the suspended driver population. The increased use of automated license plate readers (ALPRs) for example, has resulted in another method of detection, and an increase in traffic stops involving suspended drivers. ALPR technology allows officers to detect drivers who do not have valid driving privileges without having to observe another violation. As they become more widely used, ALPRs will continue to increase the burden on enforcement officers as they encounter drivers who continue to operate motor vehicles in violation of non-traffic safety related suspensions.

### The Impact on Prosecutors and Courts

*Court dockets are already overwhelmed with too many cases for the available number of judges.*

Traffic offenses represent the largest number of charges prosecuted in many state and local courts. According to the National Center for State Courts, Court Statistics Project, there were 58,264,848 traffic violations reported by state courts in 2009.

Traffic offenses are generally seen as less serious than other crimes. They do not receive an equal degree of focus despite the greater risk of a crash resulting in injuries or death than those received as the victim of other crimes. Charges involving driving while suspended are seen as even less important.

<sup>16</sup> Sandra Gustitus, Melody Simmons, and Margy Waller. "Access to Driving and License Suspension Policies for the Twenty-First Century Economy." The Mobility Agenda, 2008.

In many cases, prosecutors discretion in determining whether to pursue charges against a suspended driver, and if so, what charges are appropriate. Rather than further punish a person suspended for financial reasons, a prosecutor may request the court to give the defendant time to satisfy the obligation. Prosecutors and judges must continue to have the discretion to impose appropriate sanctions based on the underlying offense.

State and local courts are entrusted with the administration of justice involving a wide variety of offenses in both felony and misdemeanor categories. Court dockets are overwhelmed with too many cases for the available number of judges. Adding cases for driving while suspended as a result of a non-driving violation simply adds to that burden.

Suspended license cases also have a significant impact on the courts. According to Judge John Pickrel, Presiding Judge of the Dayton Ohio Municipal Court, "If we could streamline things, we wouldn't see the same people coming back again and again. It would free up resources and allow people to keep working without running the risk of getting arrested." Judge Pickrel suggests "giving judges the authority to require drivers entangled in fines, court costs and reinstatement fees to complete a specified number of hours of community service, agree to an installment or payment plan, or limit his/her driving privileges." Judges would then have more time to focus on truly dangerous drivers, and as a result, roadway safety would be improved."<sup>17</sup>

### **Fiscal Impact to the Criminal Justice System**

Law enforcement agencies spend millions of dollars and lose thousands of personnel hours each year in the administration of social non-conformance related suspensions. Eliminating these non-highway safety suspensions, will result in significant cost savings to the criminal justice system. In Union County, Ohio for example, it takes an average of nine (9) hours to arrest and prosecute an individual for Driving Under Suspension (DUS).

Entity	Approximate Time Required	Activities
Officer	7hours	roadside stop, tow truck wait time, transport to jail, paperwork, court appearance
Corrections officer	30 minutes	booking process
Prosecutor	1 hour	prepare and present case
Judge	30 minutes	hear and/or adjudicate case


*Driving While Suspended violations cost Union County Ohio nine (9) hours of officer and court time.*

To provide further context, another example is extrapolated from data provided by the Washington State Patrol. In 2011, State Patrol troopers issued 22,519 citations for Driving While Suspended or Revoked. Applying a national average of 39 percent of all suspensions being for social non-

<sup>17</sup> McCall and Page, 2011

conformance, 8,782 drivers were suspended for non-highway safety related reasons in the state. Using the nine (9) hours as the case/time multiplier, more than 79,041 personnel hours are expended every year in the arrest and adjudication of drivers caught driving while suspended for non-highway safety related reasons.

The number of cases and the time estimate associated with each case will vary by jurisdiction, but without a doubt, a tremendous amount of time and resources are expended by state and local entities to deal with and process non-highway safety related suspensions. Significant state and local government cost savings could be realized by utilizing alternatives to suspending drivers for non-highway safety related reasons.



*The Washington State Patrol  
expends nearly 80,000 hours  
/year dealing with drivers  
suspended for non-highway  
safety related reasons.  
Eliminating social non-  
conformance violations  
would allow resources to be  
better focused on highway  
safety efforts.*

## 4.0 Impact to Motor Vehicle Agencies

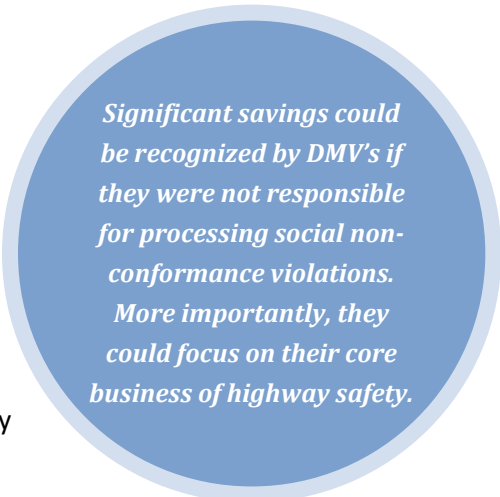
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### Introduction

A critical mission of every department of motor vehicles (DMV) is to help ensure the safety of the nation's roads and highways. To that end, they are charged with ensuring that individuals behind the wheel of a motor vehicle know the driving laws of the state and that they qualify for a driver license by demonstrating their ability to safely operate a motor vehicle. When an individual fails to follow the rules of the road, s/he may lose their privilege to drive.

Since passage of federal child support enforcement laws, DMVs have assumed responsibility for an ever increasing burden beyond their highway safety mission. For decades, state legislatures have looked to the driver license to help solve social issues. Driver license suspensions have become the answer – an ineffective one – to a variety of social ills. Many believe that suspension will result in conformance. The reality however, is quite different.

When new laws are passed requiring suspension action, DMV business units must develop business rules. IT staff writes system design specifications, develops source code, and completes a variety of system testing before moving the new code to production. Field, call center and central office staff must be trained to process suspensions and reinstatements and to respond to inquiries. Forms creation or revision may be needed. In addition to staff time, additional expenses include mainframe processing costs, stakeholder training, increased postage, and supply costs.



*Significant savings could be recognized by DMV's if they were not responsible for processing social non-conformance violations. More importantly, they could focus on their core business of highway safety.*

eDriver license suspension is not the universal remedy that legislators and others often believe it to be. Drivers do not immediately comply with the original violation simply because they've lost their privilege to drive. Many suspended individuals not only fail to comply, but continue to drive while under suspension.

Significant savings could be recognized by DMV's if they were not responsible for processing social non-conformance violations. Perhaps more importantly, they could focus all of their energies on their core business of highway safety.

### Background

Today all 50 states, the District of Columbia, and many Canadian provinces have laws that require the withdrawal of driving privileges for non-highway safety related reasons. The reasons for which a person's driving privilege may be suspended for social related violation increases during each legislative session.

As a result, the entities responsible for administering suspensions and enforcing subsequent actions – the courts, law enforcement and the DMVs – are increasingly burdened with non-driving compliance actions.

What was originally intended as a sanction to address poor driving behavior eventually came to be used for compliance with social non-conformance. The first case of this is a federal law related to child support enforcement. In 1975, the Congress established a national child support enforcement program to ensure that noncustodial parents financially support their children. The act required states to have laws requiring procedures to suspend, withhold, or restrict the driver licenses of noncustodial parents who are delinquent in child support payments.

*A GAO report found that some noncustodial parents were not concerned about losing their driver license.*

A GAO study found that driver license suspension alone, or a suspension in conjunction with other enforcement actions, does lead some noncustodial parents with past-due support to make their child support payments. However, the GAO report also identified circumstances in which driver license suspension was not effective in motivating noncustodial parents to pay the support they owe. The most common circumstance cited by officials for suspension not being effective was that some noncustodial parents were not concerned about losing their driver licenses.

### **A Growing Problem**

Since the implementation of driver license suspensions for child support enforcement, the number of non-traffic safety suspension programs continues to grow each year, increasing the challenge to already burdened agencies and budgets even further.

There are many challenges facing DMVs related to the suspension of driver licenses for non-highway safety related violations. A core responsibility of the DMV is to issue driver licenses to individuals who have proven their understanding of the rules of the road and to impose sanctions against those who are unsafe drivers. The forced focus on non-highway safety violations takes attention away from the DMVs core mission.

Over the past decade, DMVs have been burdened by the dramatic and continued increase in non-highway safety suspensions. Significant dollars and employee hours are spent each year in the administration and enforcement of non-highway safety suspensions. Research shows individuals continue to drive while suspended, meaning they are not complying with the original violation.

### **Fiscal Impact to DMV's to Impose a New Suspension**

When new laws are passed requiring suspension action, it results in significant fiscal impact to DMV's. Following are examples of the various costs required by motor vehicle agencies. It should be noted that only one example contains the total cost of processing non-driving suspensions.



### Colorado

The Colorado Motor Vehicle Division (MVD) completed an analysis of their cost to create and administer a new non-driving suspension code. The MVD projected that 8,566 hours of manual employee processing time is needed on an annual basis to process 16,800 anticipated suspensions. That equates to 4.22 full time employees (FTE). A breakdown of required effort follows.

Administrative Processing Task	FTE Hours / Year
analyze and data enter the documents	480
reinstate the suspension	2,244
answer telephone inquiries	1,680
respond to subpoenas	1,232
mail verifications	60
issue probationary license	2,856
document scanning	14
<i>Total Hours</i>	8,566
<i>FTE</i>	4.2197

In addition to processing staff, Colorado projected that 10,080 hours of hearing officer time would be needed on an annual basis to hold hearings and issue findings. That total is based on the assumption that 60 percent of suspended drivers will request a hearing and that each hearing is an hour in length. That equates to 4.84 hearing officers.

Information technology staff is required to enhance the driver license computer system to create the new suspension action and accommodate data entry, data access, and forms generation. It is estimated that 200 hours of IT staff time is required to create the action.

DMVs do not always receive the funding necessary to implement and support new suspensions. Even when funded, these costs pose a significant burden on the state. Suspending licenses for non-driver related reasons is a problem that extends beyond motor vehicle departments.

### Missouri

The Missouri Department of Revenue Drivers License Bureau employs two full-time staff to process non-traffic related suspensions. Processing responsibilities include examination of the non-compliance documents, keying information into the computer system, mailing information, processing reinstatements, and handling phone calls and written inquiries. In addition to staff salaries and supervisory support, the Department spends \$21,000 each year on postage, envelopes, and paper to communicate with drivers suspended for social non-conformance violations.

### Arkansas

The Arkansas Department of Finance and Administration processed nearly 42,000 suspensions for non-highway safety related violations in 2010. Nearly four FTEs were required to process related paperwork and more than \$20,000 was spent in postage alone.

***Oregon***

The Oregon Department of Motor Vehicles employs 1.66 persons, and spends an average of \$12,525 a year on forms and postage costs for communication with suspended drivers for non-highway safety related suspensions.

***Florida***

Florida spent \$72,314 in 2010 on paper, envelopes and postage to communicate with drivers suspended for non-highway safety reasons.

***Quebec***

In Quebec, there were 289,919 unpaid fines in 2009, including parking violations, for which a suspension was issued. The cost to the province is \$22 for each suspension resulting in a total cost of \$6,378,218.

***New Jersey***

In 2010, New Jersey had 6.1 million drivers of which 289,600 were suspended drivers. Non-highway safety related suspensions represent 75-80% of all suspension orders in New Jersey, equating to 173,760 drivers suspended for non-highway safety related reasons.

**Non-Highway Safety / Administrative Suspensions Survey Data**

Currently, all 50 U.S. states, the District of Columbia as well as all 13 Canadian jurisdictions have laws that permit the motor vehicle agency and/or the courts to withdraw driving privileges for at least some non-highway safety reasons. A survey was conducted by the AAMVA Suspended/Revoked Working Group in November 2011 to determine the reasons for which jurisdictions suspend or revoke driving privileges for non-highway safety violation(s). Forty-three (out of 64) jurisdictions responded to the survey. The table below summarize the reasons states suspend driver licenses for non-driving related reasons. For the sake of brevity, suspension types were often combined, so the chart below should not be viewed as a detailed and comprehensive list of the reasons driver licenses are suspended for non-highway safety related reasons.

The chart includes a general description of the reason for the suspension, the total number of jurisdictions who suspend for that reason and a list of jurisdictions who suspended for each violation.

Non-Moving Violation	#	Suspending Jurisdictions
Abandoned Vehicle	1	NY
Advocate Overthrow of Government	1	NY
Altering, Defacing Signs/Signals	1	SC
Assaulting a Traffic Officer	1	NY
Assembling / Operating Amusement Park Ride While Intoxicated	1	TX
Auto / Cargo Theft	3	CA, GA, MN
Boating While Intoxicated	1	TX

Non-Moving Violation	#	Suspending Jurisdictions
Bomb Threat/Volatile Chemical	3	MI, NY, TX
Bounced / Bad Check	11	AR, CO, FL, LA, ME, MD, MN, NB, RI, UT, VT
Buy/Sell Liquor without a License	1	AZ
Child in Need of Services	1	NH
Controlled Substances	14	AR, GA, IN, IA, MI, MN, MT, NY,OR, PA, TN,TX, UT, VA
Department of Health Overpayment	1	TX
Dispensing Gas to a Dirt Bike	1	MD
Failure to Appear / Comply / Pay (non moving violations)	21	AZ, AR, CT, FL, HI, ID, IA, LA, ME, MI, MT, NB, NH, NF, OR, SK, TX, UT, VA, WI, WV
Failure to Complete Education Program	4	CT, SC, TX, VT
Failure to Obtain Hack License	1	NY
Failure to Pay Alimony	1	NE
Failure to Pay Child Support	43	AZ, AR, CA, CO, CT, FL, GA, HI, ID, IL, IN, IA, LA, ME, MD, MI, MN, MO, MT, NB, NH, NM, NY, NF, ND, OH, ON, NT, NE, OR, PA, SK, SD, TN, TX, UT, VT, SC, VA, WA, WI, WY, WV
Failure to Pay Parking Violation(s)	4	IL, MI, MN, RI
Failure to Pay Tax	3	LA, OR, SC, VT
Failure to Pay Tolls	2	IL, ME
Failure to Submit to Genetic Test	1	FL
False Public Alarm	1	VT
Felony	1	MT
Fictitious Plate/Registration/Inspection	2	CT, TX
Flying While Intoxicated	1	TX
Fraud / Misuse of a Driver License	21	AR, CA, CO, FL, GA, ID, LA, MI, MN, MT, NB, ND, OR, PA, RI, SK, SD, UT, WA, WI, WV
Fuel Piracy / Theft	23	AR, CO, FL, GA, IL, IN, IA,LA, MD, MI, MN, MO, MT ND, OH, OR, PA, SC, TN, TX, UT, WA, WV
Handicap Space / Placard Violation	2	AR, IL
Immigration / VISA Expiration	2	MN, TX
Identity Theft	1	CT
Littering / from a Motor Vehicle	2	AR, OR
Minor - Alcohol Possession / Consumption	26	AR, CA, CO, CT, GA, ID, IN, IA, MD, MI, MT, NH, NM, OH, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WI
Minor - Controlled Substances	3	CA, IA, WA
Minor – Using False ID to Purchase Alcohol	8	IN, MD, MI, NY, TN, TX, VT, VA
Minor – Possession of a Firearm	5	AZ, CA, FL, VA, WA

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Non-Moving Violation	#	Suspending Jurisdictions
Minor – Tobacco Violation	3	OR, TX, VT
Minor in a Bar	1	UT
Open Container / Possession - Passenger	5	FL, IL, MI, MN, NM
Outstanding US District Court Citation	1	MD
Parental Withdrawal	11	CO, GA, IA, MN, ND, TX, VT, MO, MT, SC, UT
Perjury	1	OH
Prostitution/Solicitation/FTA John School	3	CA, FL, SK
Providing False Info to Law Enforcement	1	MI
Public Intoxication / Consumption	2	IA, TX
Sell/Buy Alcohol to/for a Minor	6	MN, SD, TX, VT, VA, WY
Sex Offender Violation	2	NH, TX
Soliciting with HIV	1	OH
Solid Waste Burning	1	VT
Theft	1	FL
Tow Truck Driver Graft	1	CA
Truancy / Failure to Attend School	16	AZ, CA, FL, GA, ID, IL, IA, LA, NM, OH, OR, PA, TX, VA, WI, WV
Unattended Child in a Running Auto	1	WA
Unpaid College / Student Loan	2	IA, MT
Unruly Child / Juvenile Suspension	1	OH
Use of MV to Distribute Tobacco	2	ON, QB
Vandalism / Graffiti	3	CA, FL, TX
Weapon / Threat in School	8	AR, IN, IA, OH, OR, PA, TN, VA

*Information in this table was derived from responses to a survey of DMVs.*

Several agencies were able to provide totals on the number of suspensions imposed for 2010 by suspension type. It was not uncommon for a jurisdiction to report very low volumes, or even zero, suspensions for a particular violation.

Once the legislature passes the requirement for driver license suspension for a non-moving violation, the motor vehicle agency must prepare for receipt of said violations. The fact that the suspensions are not being utilized makes the process even more cumbersome and costly. Let's look at fuel theft/piracy for example. Twenty-three jurisdictions reported having such a requirement. Fourteen were able to provide counts on the number of suspensions imposed for the violation. Those 14 reported imposing 258 total suspensions for fuel piracy in 2010. Four jurisdictions reported zero suspensions for the year. Extrapolating the Colorado numbers for development of a new suspension type, the 14 states spent 2,800 hours of developer staff time suspend 258 drivers for fuel piracy. That equates to 10 hours of developer time per suspension. The fact that entities are not utilizing driver license suspension for non-

moving violations, even though they have the ability to do so, is yet another reason to eliminate suspensions for social non-conformance reasons.

### Summary

The creation and implementation of suspensions for non-highway safety related reasons generates unnecessary costs to the jurisdiction and creates a burden on driver licensing authorities, the courts and law enforcement through financial limitations and expenditures of resources. The cost to create the suspension in the agencies computer system, as well as the cost in personnel time and supplies is an expense that is not justified by the end result.

The costs to the jurisdiction for processing suspensions for non-highway safety related reasons should be examined to determine the financial feasibility and effectiveness of the suspension. A significant cost saving to the state could be realized by utilizing alternatives to suspending drivers for non-highway safety related reasons. The overall economic value, by ensuring continued employment of drivers, is a significant factor that must be considered. Suspending for non-traffic safety related reasons requires the driver licensing authority to operate outside of their core mission of ensuring highway safety.

# 5.0 Alternatives to Driver License Suspension

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## Introduction

In order to reduce the number of suspended drivers on our roadways, states are encouraged to revise current laws to more appropriately consider the traffic risks of the offenders to whom they apply. Toward that end, the SRWG assembled a legislative subcommittee to draft sample legislation for jurisdiction specific legislative proposals and is not intended for the repeal of any federal laws. Eliminating driver license suspensions for non-highway safety violations will significantly reduce the burden on state driver licensing authorities, law enforcement and the courts. This section provides examples of alternative solutions that may be considered by states in lieu of suspension.

## Legislative Action Needed

Sanctioning drivers with non-traffic safety related suspensions poses a significant administrative and fiscal burden to prosecutors, courts, driver licensing authorities and law enforcement. Research verifies that drivers suspended for social non-conformance reasons pose a comparatively lower safety risk compared to those who are suspended for driving related reasons.<sup>18</sup>

State legislatures are encouraged to reconsider the value of license suspensions for non-traffic safety related reasons. There are an increasing number of drivers who are suspended or revoked each year for non-driving related reasons. From 2002 to 2006 from a sample population of eight states, approximately 115,000 drivers were suspended. Thirty-four percent of the sample population was suspended for non-traffic safety reasons.<sup>19</sup> As many as three-fourths of them continue to drive, threatening the integrity of the licensing system.<sup>20</sup> Of the drivers suspended for non-highway safety reasons, about 43% are subsequently convicted of a violation while their driving privileges are suspended compared to 47% of drivers who were suspended for highway safety reasons.<sup>21</sup> This finding indicates that driver license suspension is not an effective sanction for gaining compliance.

<sup>18</sup> Michael A. Gebers and David J. DeYoung. *"An Examination of the Characteristics and Traffic Risk of Drivers Suspended/Revoked for Different Reasons."* California Department of Motor Vehicles, 2002.

<sup>19</sup> Robert Eger III, Ph.D., Robert. "Enhanced Analyses of Suspended/Revoked Drivers Related to Crashes." Florida State University. 2011

<sup>20</sup> Neuman, Pfefer, Slack, Kelly Kennedy Hardy, and Patricia Waller. *"National Cooperative Highway Research Program Report 500: Guidance for Implementation of the American Association of State Highway Officials (AASHTO) Strategic Highway Safety Plan, Volume 2: A Guide for Addressing Collisions Involving Unlicensed Drivers and Drivers with Suspended or Revoked Licenses."* Transportation Research Board, 2003.

<sup>21</sup> Eger III, Ph.D., Florida State University, 2011.



In order to increase compliance with social non-conformance offenses and to reduce the burden on state driver licensing authorities, law enforcement and the courts, states should revise current laws to more appropriately reflect the traffic risks of the offenders to whom they apply. Social non-conformance offenses such as vandalism, truancy, theft of gasoline, and the purchase of tobacco by a minor unduly burden state driver licensing authorities and the criminal justice system. Suspension of driver licenses should only be imposed for highway safety related offenses. The multitude of state specific laws that require driver license suspension for non-highway safety related offenses should be modified to eliminate license suspensions and instead, alternative solutions should be adopted.

*In order to reduce the number of suspended drivers, states are encouraged to revise laws to more appropriately consider the traffic risks of the offenders to whom they apply.*

It should be noted that many of the practices described in this section have not been scientifically validated as part of this project. Therefore, considerations should be given before adopting any of the practices listed herein. States considering implementing any of the alternatives described may wish to contact the appropriate entity for recommendations on implementation.

### **Alternative Solutions**

The following pages describe alternative solutions to the suspension or revocation of driver licenses for social non-conformance violations.

#### ***Garnishment of Wages in Lieu of Driver License Suspension***

Wage garnishment occurs when an employer is legally obligated to withhold a portion of an individual's earnings for the payment of a debt. By implementing garnishment of wages, collection of the debt is guaranteed. The driver is held accountable while being allowed to legally drive, and the burden on the state driver licensing authority and law enforcement is eliminated.

Examples of garnishment programs follow.

#### **California Delinquent Vehicle Registration Collections – Bank Account/Wage Garnishment**

The California Department of Motor Vehicles (DMV) mails an annual renewal notice to the last known registered vehicle owner approximately 60 days prior to the vehicle registration expiration date. If the vehicle owner fails to pay the amount due by the expiration date, the DMV sends an additional notice when the registration is 30 days delinquent. That notice advises the owner that the unpaid account has been referred to the Franchise Tax Board (FTB) for collection action. FTB is the income tax agency for California and serves as a collection agent for a host of state and local entities. They have access to tax refunds, bank accounts, and wage garnishments as collection tools.

By the time the FTB receives an account referral, the debt is generally 90 days delinquent. FTB issues a Demand for Payment Notice to the registered owner. If the debtor does not respond to the notice within 10 days, the FTB begins involuntary collection actions, including bank and wage levies.

Once a bank or wage levy is issued, FTB provides the debtor 10 days from the notice date to pay the debt. After 10 days, the bank automatically forwards funds from the individuals account to the FTB or before the debtor's employer begins withholding up to 25 percent of the debtor's disposable income. As DMV's collection agent, FTB forwards all funds collected to the DMV. DMV then makes the appropriate disbursements to various state and county agencies and updates the vehicle registration record to reflect payment.

Throughout the collection process, DMV retains responsibility for all referred accounts. When the registration is up to date, the account is removed from collection. Both DMV and FTB maintain call centers to resolve disputes. Customers may also deal directly with their local DMV field office if that is their preference.

#### **Texas Office of the Attorney General's Child Support Division Wage Withholding Program**

Under this program, employers are required to withhold a portion of an employee's pay for payment of child support. Upon receipt of an order/notice from a court to withhold income, an employer must begin withholding income from the employee named and remit the amount withheld. To comply with the order/notice, an employer will:

- begin withholding for child support no later than the first pay period that occurs after the date the order/notice is received,
- deduct child support on the regular pay dates, similar to deductions for federal income tax withholding,
- mail payments to the address specified in the order/notice on the pay date or for payments made by electronic funds transfer or electronic data exchange, transmit payments no later than the second business day after the pay date, and
- withhold according to the terms of the order/notice until otherwise notified.

The Texas Family Code limits the amount of garnishment for child support to 50% of an employee's "disposable earnings." Disposable earnings are defined as remaining earnings after deductions from any amount required by law to be withheld (e.g., federal taxes), retirement contributions, and medical, hospitalization, and disability insurance coverage.

Income withholding has become the most successful and efficient tool for collecting child support. Today, employers withholding employees' wages constitutes over 80 percent of all collections in cases enforced by the Office of the Attorney General's Child Support Division.

#### **New York Wage Garnishment of Scofflaw City Workers for Non-Payment of Parking Tickets**

New York City hall pursued municipal employees who did not pay their parking tickets. More than 4,600 individuals had 12,000 outstanding tickets that were worth a total of \$1.6 million.

Warning memos were sent to employees advising that their wages could be seized and bank accounts frozen if they did not pay the fines. The warning letters recovered \$600,000 in outstanding fines from 2,600 workers who paid 5,600 tickets, but fines still remained. The city turned to the New York City Finance Department to garnish the wages of city employees who failed to heed the warnings to pay their fines.

### **Chicago Wage Garnishment of Scofflaw City Workers for Non-Payment of Parking Tickets**

The city of Chicago cracked down on city employees who owed more than \$2 million in unpaid parking tickets and water bills. More than 10,000 city employees were facing wage garnishment, work suspension and possible termination for failing to pay \$2.4 million owed to the Department of Revenue. The department collected more than \$3 million from employee scofflaws. More than 3,300 city employees had their wages garnished.

Wage garnishment has been the most effective means of collecting delinquent payments since most employees submit payment as soon as they receive a notice because individuals do not want to jeopardize their employment because of a relatively minor debt. The city collected more than \$15 million in the first five years of this program. The city also started booting the vehicles of employees in city-owned lots in an effort to increase collections.

### ***Monetary Programs in Lieu of Driver License Suspension***

Through implementation of any of the programs described below, the driver is allowed to continue to legally drive and earn wages enabling the individual to earn a living enabling child support payments. These approaches eliminate the burden on the state driver licensing authority and law enforcement is eliminated.

### **Suspension Exemptions for Federal Child Support Mandate**

A report released by the Government Accountability Office (GAO) entitled, *“License Suspensions for Non-driving Offenses: Practices in Four States that May Ease the Financial Impact on Low-Income Individuals”* support practices in Washington, Maryland and New Jersey in which individuals are exempt from driver license suspension for non-payment of child support if such suspension is found to be an impediment to employment.<sup>22</sup>

- **Washington Rev. Code § 74.20A.322(4) Noncompliance with a Child Support Order, License Renewal and Reinstatement**
  - This Washington law provides that licenses of non-custodial parents will not be suspended if it is determined that it places a burden on the person and if at a hearing they demonstrate a good faith effort to comply with the support order. The determination of a good faith effort to comply is made by the administrative law judge based on the responsible parent’s payment history, ability to pay, and efforts to find and maintain gainful employment. The administrative law judge creates a payment schedule for the individual.

<sup>22</sup> Government Accountability Office, License Suspensions for Non-Driving Offenses: Practices that May Ease the Financial Impact for Low-Income Individuals

- **Maryland Code Ann., Fam. Law § 10-119(c)(4) Suspension of Driving Privileges for Arrearages**
  - This Maryland law states that the Child Support Enforcement Administration of the Department of Human Resources sends written notice to an individual who is 60 days or more non-compliant with child support payments. The individual is provided the right to request an investigation because suspension of his/her driver license would be an impediment to current or potential employment or would place an undue hardship on the individual because of documented disability resulting in a verified inability to work or inability to comply with the court order.
  - After the Child Support Enforcement Administration receives a request for investigation, an investigation is completed to determine if undue hardship would exist as a result of the license suspension. Upon completion of the investigation, the Child Support Enforcement Administration will notify the individual of the results and their right to further appeal. If grounds do exist, the Child Support Enforcement Administration will not send a suspension request to the Motor Vehicle Administration. The Child Support Enforcement Administration attempts to reach an agreement with the individual to create a payment schedule.
- **New Jersey Statute Ann. §2C:35-16 – Forfeiture or Postponement of Driving Privileges**
  - This New Jersey law states that licenses of individuals who are non-compliant with child support requirements will not be suspended if the suspension of the individual's license will result in extreme hardship and if alternative means of transportation are not available.
- **Ohio's Revised Child Support Laws**

Ohio made changes to state child support laws to discontinue the practice of suspending the driver or professional licenses of an individual who fails to pay child support if the parent pays at least half of their court-ordered financial support.

Another provision lets parents remove past child support-related suspensions from their driving record. The measure is aimed at encouraging parents to work. The majority of child support is owed by parents who are unable, not unwilling, to pay. Two-thirds of the money is owed by people who earn less than \$10,000 a year.

County child-support enforcement agencies must look back 90 days to see if at least 50% of child support obligations have been paid. If the requirement hasn't been met, officials will send a pre-suspension notice, which gives parents another chance to pay. A parent who fails to do so could lose his or her driver license. To have it reinstated, a parent must pay in full or prove that employment has been found.

Of those who lost a driver license, they collectively paid only 19 percent of their court-ordered child support. About 60 percent paid nothing.

Efforts have changed because the recession is making it harder for many parents to provide financial support.

**Arizona Tax Intercept Program for Non-Payment of Debts**

Arizona law allows refunds from income tax and earned credit property taxes to be used to pay debts the taxpayer owes to the state or the court. The agency or court can intercept the refund which is then used to pay the individual's debt. The agency or court must notify the taxpayer by mail of their intention to pay the debt using the tax refund and advise the individual of their right to appeal or to request a review within thirty days of the mailing of the notice. If there is no appeal, the agency will draw and deliver a warrant in the amount of the available refund up to the amount of the debt and notify the taxpayer of the action by mail.

***Amnesty Programs***

In March 2012, DMV offices in South Carolina hosted a Driver Suspension Eligibility Week. Drivers who have lost their driving privileges for suspensions included in the program were given the ability to reduce or clear the remaining time of their suspension. The program assisted the following types of suspended drivers: Underage drivers suspended for excessive points; those suspended for operating an unlicensed taxi or vehicle; drivers suspended for operating an uninsured vehicle that they did not own; those suspended for operating or allowing operation of an uninsured vehicle; drivers suspended for driving under suspension, excluding alcohol or drug related convictions. To qualify, drivers must meet all of the conditions of their suspensions. All fees must be paid and SR-22 insurance must be filed, if required. If a driver had more than one suspension, DMV recalculated the suspension time. Drivers with suspensions not covered by the program will still need to serve that suspension. Drivers with a clear record could apply for a driver's license. Depending on the type of suspension, they may be required to take the vision, knowledge and road skills tests before getting a new driver's license

***Diversion Programs*****Community Service (in lieu of suspension, not in lieu of payment)**

By requiring community service instead of a license suspension, the individual is allowed to legally drive, and the burden on the state driver licensing authority and law enforcement is eliminated. Following is an example of a successful diversion program.

- **City of Lake Mills Municipal Court Wisconsin**
  - The Municipal Court has jurisdiction over persons between 12 and 17 years of age. If a juvenile is found guilty of a traffic violation and fails to pay the fine within 60 days, his/her driver's license may be suspended for up to two (2) years. If the juvenile is found guilty of a non-traffic ordinance violation, a fine is imposed with an alternative number of community service hours. The length of community service required is based on the severity of the offense and the amount of the fine, if one is imposed.

***Other Programs*****Opt Out Program for Federal Drug Offenses**

Federal law, 23CFR 192 – Drug Offenders Driver's License Suspension

Federal law requires states to suspend or revoke the driver licenses of anyone convicted of a violation of the Controlled Substance Act or any drug offense.

States can “opt out” of this requirement by submitting a certified statement by the Governor opposing enactment or enforcement of the law and a resolution by the State legislature expressing opposition to such a law. Ten states have passed resolutions in opposition to the Act. In addition, numerous states modified their laws to allow for restrictive licenses. However, this legislation created another opportunity for people with addiction histories to suffer an additional collateral consequence of their conviction.<sup>23</sup>

By opting out of the Federal Drug Offenders Suspension Act instead of imposing a license suspension, individuals convicted of drug offenses are allowed to legally drive, which permits them to continue to earn a living and ease their burden. The violation was not based on the individual’s ability to drive safely and the burden to state driver licensing authority and law enforcement is eliminated. Following are examples of opt-out programs.

- **Wisconsin Act 8**
  - In April 2009, the state legislature passed Wisconsin Act 8, which changed the federally-imposed six-month suspension of a driver license for a non-driving related drug conviction from mandatory to discretionary by the sentencing judge. This change eliminated 11,000 non-driving related suspensions each year among mostly low-income drivers.
  
- **Maryland Code: 16-205. Alcohol or Drug Offenses; Revocation**
  - Maryland’s statute authorizes the suspension or revocation of licenses only when the offense is related to the ability to drive safely. It limits the length of suspension or revocation to not more than 60 days for a first offense and not more than 120 days for two or more offenses.

#### **West Virginia Court Costs, Fines and Restitution**

50-3-2a (b). Payment plan (prior to suspension or other action). May collect a portion of any costs, fines, fees, forfeitures, restitution or penalties using payment plan. (If not paid within 180 days, then referred for suspension of driver’s license). 50-3-2a (f). Abstract of judgment and record as lien if not paid within 180 days.

<sup>23</sup> Vaughn, Becky and Gabrielle de la Gueronniere Memo to Karen Richardson, Obama Administration Transition Team, State Associations of Addiction Services and National Policy at the Legal Action Center, Washington, D.C.. 14 Jan. 2009.



# 6.0 Appendices

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## Appendix A – Sample Legislation

### Introduction

The following Sample Law was prepared by the SRWG Model Legislation Subcommittee for Jurisdictions to use as a starting template for drafting their jurisdiction specific legislative proposal.

#### PREAMBLE / DECLARATIONS

1. Traffic safety is the primary goal of driver licensing and sanctioning laws of this state.
2. Suspending or revoking a driving privilege is an effective deterrent and enforcement tool for compliance with traffic safety laws and regulations.
3. Historically, suspending or revoking a driving privilege has also been used as an enforcement tool for compliance with non-traffic related laws and regulations.
4. The increase in legislated non-highway safety suspensions or revocations has diluted the effectiveness of driving sanctions, created inefficiencies and inequities, and increased the burden on law enforcement, driver licensing authorities and the criminal justice system.
5. Of all license suspensions, approximately 39 percent are for non-traffic reasons.
6. Drivers suspended for traffic related reasons are three times more likely to be involved in a crash than a driver suspended for non-traffic reasons.
7. Maintaining full valid driving privileges should be contingent on compliance with traffic safety related laws.
8. The suspending or revoking of driving privileges for civil, criminal, or administrative offenses that involve neither the operation of a motor vehicle, nor the knowledge, skills, or physical qualifications to drive, is not related to traffic safety.
9. To best serve traffic safety, the penalties for non-traffic safety violations should not include the suspension or revocation of driving privileges.
10. Alternatives exist to suspension or revocation of driving privileges for non-traffic safety related violations.

#### DEFINITIONS

“Traffic safety laws and regulations” shall refer to those laws and regulations relating directly to the operation of a motor vehicle, the knowledge, skills or physical qualifications to safely operate a motor vehicle, the financial responsibility required for the operation of a motor vehicle, and the failure to appear in court or otherwise respond to a charge relating directly to the operation of motor vehicle.

“Withheld Non-Compliant” shall refer to licensing sanctions for non-traffic safety related offenses.

LICENSING SANCTIONS<sup>24</sup>

1. The state driver licensing authority shall:
  - a. Review each driver license sanction authorized by the laws and regulations of this state and shall define each as either traffic safety related or as not related to traffic safety.
  - b. Promulgate rules adopting the definition scheme authorized by this section.
  - c. Create a separate driver privilege status for all sanctions determined to be non-traffic safety related. Said status shall be reported as “Withheld Non-Compliant”.
  - d. Not issue or renew any driver license to an individual whose privilege to drive in this state is sanctioned either for traffic safety related or for non-traffic safety related reasons.
  - e. Not report individuals whose privilege to drive is sanctioned only as “Withheld Non-Compliant” to the National Driver Register, the Problem Driver Pointer System, or the Commercial Driver License Information System. The exception is reporting of suspensions for federally mandated suspensions such as child support.
  
2. Withheld Non-Compliant<sup>25</sup>:
  - a. Notwithstanding any provision of the law to the contrary, [insert penalty]<sup>26</sup>
  - b. No violator shall be subject to any further administrative, civil or criminal sanction for violation of this paragraph.
  - c. It shall be unlawful for any local jurisdiction to impose sanctions not authorized by this paragraph.

<sup>24</sup> Jurisdiction should reference or incorporate existing penalties or other sanctions as now exist, or as may be deemed appropriate, for violation of licensing provisions relating to traffic safety laws and regulations.

<sup>25</sup> NOTE – requires creation of new definition of “withheld non-compliant” rather than having to change existing laws and regulations and language.

<sup>26</sup> Jurisdiction should insert or reference existing or appropriate sanctions of withheld non-compliant violations.

## Appendix B – Full Research Report

### Introduction

The SRWG commissioned Robert Eger III, PhD, Florida State University, to analyze driver record data from six (6) states. In 2011, two states were added to provide validation of the findings. The research focused on driver license suspensions, categorized by highway safety related and non-highway safety related violations, and subsequent driving behavior. Robert J. Eger III, Ph.D. acknowledges Spencer Brien for his exemplary research assistance and data analysis.

This report is composed of four sections adding to the prior research found in DOT HS 811 092. In the first section, the AAMVA Code Dictionary (ACD) is applied to non-commercial vehicles found in DOT HS 811 092. A re-evaluation of all the outcomes found in DOT HS 811 092 using the ACD application is presented. In section two, Pennsylvania and Oregon are added to the suspended/revoked data to complete the representative sample of states within the contiguous United States. After adding the two states, a complete analysis of suspended/revoked drivers in the eight representative states is undertaken. The third section assesses suspended/revoked drivers using the length of initial suspension/revocation for drivers within the eight states, which is followed by section four which provides an enhanced analysis based on a non-sampled data set of suspended/revoked drivers.

All four sections of analyses follow the DOT HS 811 092 methodology by separating suspended/revoked drivers into two categories. The two categories are defined as “highway safety related” and “non-highway safety related” following the descriptions of “highway safety” and “non-highway safety” articulated in the ACD Manual, Release 3.0.0, June 2008 (Effective November 3, 2008). This provides consistent category definitions of all data to the metrics offered in the ACD manual. This report begins with an overview of the prior research found in DOT HS 811 092, “Reasons for Drivers License Suspension, Recidivism and Crash Involvement among Suspended/Revoked Drivers”.

### Enhanced Analyses of Suspended/Revoked Drivers Related to Crashes

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This report incorporates four analyses that advance understanding into the effects of suspended/revoked drivers on highway safety issues in a nationally representative sample of eight states. Section one identifies and applies the AAMVA Code Dictionary (ACD) to the prior results found in DOT HS 811 092, “Reasons for Drivers License Suspension, Recidivism and Crash Involvement among Suspended/Revoked Drivers”. This is followed by section two which adds two states to the DOT HS 811 092 data and then evaluates the outcomes found in DOT HS 811 092. Section three investigates the representative sample states through an evaluation of crash occurrences and the number of days (length) of suspension/revocation. Section four provides an enhancement and robustness test for the length of suspension and crashes by examining a large data set of suspended/revoked drivers.

The results of these analyses are summarized as follows:

- Recoding of the data from DOT HS 811 092 into ACD codes indicates that prior conclusions from the DOT HS 811 092 are consistent across the ACD coding, however they are not

identical. The ACD coding has improved measurement of all traffic safety events since the coding is consistent across all states.

- Applying the ACD coding to the DOT HS 811 092 crash data indicates that about 13.1% of drivers suspended for highway safety related reasons are involved in a crash while 1.9% of drivers suspended for a non-highway safety reason are involved in a crash. This differs from the results found in the DOT HS 811 092 report that indicated the percentages at 3.4% and 0.9%. The resulting outcome indicates that the ACD coding provides for a more refined outcome allowing an improved focus on crashes.
- Adding the two states to complete the representative sample of states, the results show that about 18.9% of drivers suspended for highway safety related reasons are involved in a crash while 6.9% of drivers suspended for a non-highway safety reason are involved in a crash. As noted in DOT HS 811 092 the lack of data available from states linking crash data to drivers' licenses information provided a caution due to crash reporting differences (some states report all crash involvement regardless of fault determination). The additional data incorporating all eight states has increased the crash data compared to the DOT HS 811 092 report. The result is an enhanced linking of the suspended driver's license to the improved data across the eight states. This should provide a better picture of the crash behavior of suspended drivers. The states added to the report are consistent in linking crash, regardless of fault, to the driver's licensure information, however caution is repeated regarding at fault crash behavior since at fault is not determined in many states.
- Using data available from the Federal Highways Administration (FHWA), the data indicate that nationally over 3.1% of licensed drivers are involved in a crash during the time period 2002-2006. Comparing this national percentage of crashes to the suspended drivers for the representative states, the percentage of drivers suspended for highway safety reasons and involved in a crash is approximately 19%. Therefore, the percentage of drivers involved in a crash who are suspended for highway safety reasons is over 6 times the percentage of national drivers involved in a crash for this time period.
- Turning attention to drivers suspended for non-highway safety reasons in the representative states, about 6.9% of these drivers are involved in a crash during the time period. When compared to the national percentage of drivers involved in a crash, the percentage of drivers suspended for non-highway safety reasons that are involved in a crash is about 2.2 times that of the national average.
- Using the initial suspension date to the restoration date, the result shows that drivers suspended for highway safety reasons have longer average suspension lengths in days. This outcome is further evidenced by looking at the percentage differences between the two suspended driver groups where 60% of drivers suspended for highway safety reasons have restoration dates of one year or less while 69% of drivers suspended for non-highway safety reasons have restoration dates of one year or less.
- The suspension category, 30 days or less, has a higher crash percentage for non-highway safety suspended drivers than those suspended for highway safety reasons, which may indicate a short term behavioral response to driving by those suspended for highway safety reasons.

- There are crash trends observed for drivers suspended for highway safety reasons and length of initial suspension in days. The first trend is that the percentage of crashes associated with drivers suspended for highway safety reasons increases as the length of suspension increases for suspension lengths up to a 180 days. This trend ends at suspension length of 181-210 days and then is repeated in the 211 through 300 day suspension length. A suspension in excess of 301 days through four years (1460 days) indicates a constant crash percentage for highway safety related suspensions. Suspension length beyond four years indicates a precipitous increase in the percentage of crashes for this group's drivers.
- Drivers suspended for non-highway safety reasons see a decline in the percentage of crashes for the first 180 days of suspension. This group's trend is a constant percentage of crashes through 300 day suspensions, with an increase occurring from 366 days of suspension through four years, with a precipitous decline in the percentage of crashes for suspensions exceeding four years.
- The overall outcome is that the two groups of suspended drivers differ from the national percentage of licensed drivers who are involved in a crash. The two groups have large differences in their crash percentages indicating that the two groups have differing effects on traffic safety issues. Those suspended for highway safety reasons have a much higher percentage of crashes than drivers suspended for non-highway safety reasons. The two groups differ in length of suspensions and the relationship between length of suspension and crashes. These results support the findings in DOT HS 811 092 that the two groups of suspended drivers appear to behave differently and thus should not be treated as a homogenous group with regard to traffic safety policy. These analyses support a repeated call for suspended/revoked driver policy options that address the differences between the two groups.

### Overview of Prior Research in DOT HS 811 092

In DOT HS 811 092, "Reasons for Drivers License Suspension, Recidivism and Crash Involvement among Suspended/Revoked Drivers", the objectives focused on the number of drivers that are suspended<sup>27</sup> under state laws allowing a driver's license to be suspended for non-driving offenses, determining the number of suspended drivers that are subsequently cited for driving while suspended, determining the extent of crash involvement by those drivers, and exploring the relationship between driving behavior and violations of suspended driver laws. The analysis focused on six states in the contiguous United States providing 78,123 individual driver's records based on each state's motor vehicle coding. The data were then separated into two groups, driver's suspended for driving reasons and driver's suspended for non-driving reasons. The coding of the groups was based on the research team's review of suspension reasons in each of the six jurisdictions and interpretation of the description of the suspensions recorded for each driver.

<sup>27</sup> Similar to DOT HS 811 092, for convenience suspended is used to indicate both suspended and revoked drivers within the data analysis.

The results indicated that 53,875 drivers, or about 69% of the sample, were suspended for driving reasons while 24,248 drivers, or about 31% of the sample, were suspended for non-driving reasons. In the suspended for driving reasons group, about 42 percent (22,424) of the drivers were subsequently convicted of a driving or non-driving violation while their driving privileges were suspended. This was compared to drivers suspended for non-driving reasons of which about 38 percent (9,288) were subsequently convicted of a driving or non-driving violation while their driving privileges were suspended. The two groups were compared with regard to moving violations in which the results indicated that approximately 30 percent of drivers suspended for driving reasons (15,850 of 53,875) commit a moving violation while under suspension compared to approximately 15 percent of drivers suspended for non-driving reasons (3,613 of 24,248).

Two additional comparisons were assessed in DOT HS 811 092, driving on a suspended license and crashes. The findings show that approximately 3.4 percent of drivers suspended for driving reasons (1,832 of 53,875) are convicted of driving while suspended compared to 2.7 percent of drivers suspended for non-driving reasons (656 of 24,288). Regarding crashes, the results are that less than one percent (0.90%) of drivers suspended for non-driving reasons (218 of 24,248) are involved in a crash while their driver's license is suspended compared to over three percent (3.4%) of drivers suspended for driving reasons (1,835 of 53,875).

Recidivism for the two groups was assessed by observing the number of days until a crash, a moving violation, a non-moving violation, or a driving while suspended offense. The outcome was that differences were found between the two groups except for the number of days until a crash. The results of the analysis indicated that the two groups were different, thus raising the policy question of whether or not the two groups should be treated the same with regard to traffic safety policy.

This section re-evaluates the analyses prepared for DOT HS 811 092 to assess the application of the AAMVA Code Dictionary (ACD) regarding non-commercial vehicles. The application of ACD codes begins by comparing the ACD coding to the description provided in DOT HS 811 092.

This report follows the DOT HS 811 092 report methodology separating suspended/revoked drivers into two categories, highway safety related and non-highway safety related. To define highway safety related and non-highway safety related, this report uses the descriptions found in the AAMVA Code Dictionary (ACD) Manual, Release 3.0.0, June 2008 (Effective November 3, 2008).

### **Comparing DOT HS 811 092 and ACD Application**

Comparing the ACD coding to the description provided in DOT HS 811 092 finds that many of the ACD code definitions are applicable or identical to the wording in the six states descriptions contained in the DOT HS 811 092 data.

The first non-comparison that arises is that crashes, not identified within the Hit & Run Behavior after crashes (HRB) Group of the ACD codes, lack enough information to assess the underlying violation to



allow identification within the ACD codes. The effect is that only 12 percent of vehicle crashes within the database can be coded using the ACD coding. This issue is addressed by considering all crashes highway safety related following the same definition as found in DOT HS 811 092.

The next non-comparison that arises is for failure to appear (FTA) and failure to pay a fine (FTP). In DOT HS 811 092, FTA and FTP were considered driving offenses if the data indicated that the FTA or FTP was related to a traffic violation. This was accomplished by looking at the description of the driver's history. The ACD codes look at the FTA/FTP differently. Since the ACD codes require further detail, this analysis codes the violation preceding the FTA/FTP offense as the violation related to the FTA/FTP, thereby providing an indicator of the FTA/FTP violation.

The next non-comparisons that arise are for ACD code B41, possess or provide counterfeit or altered driver license (includes DL, CDL, ID, and Instruction Permit) and D16, show or use improperly – driver license (includes DL, CDL, and Instruction Permit). In DOT HS 811 092, obtaining driver's license by fraud and improper use of DL or ID card were considered a non-driving offense. The ACD codes allow for a more detailed classification.

## Re-Evaluation of Results

Table A1.1 shows the total number of suspended drivers by year in the sample population and the proportion of total suspended drivers by suspension type for the years 2002-2006. As shown in the table, the total number of suspended drivers decreases over the analysis period from approximately 19,000 in 2002 to approximately 14,000 in 2004-2006. This represents a 26 percent decrease over the time period. A concurrent result of the downward trend in suspensions over the analysis period is the increasing proportion of drivers suspended for non-highway safety reasons in the population of all suspended drivers over the time period. In 2002, drivers suspended for non-highway safety reasons represented 21 percent of all suspended drivers. By 2006, they represented 29 percent of all suspended drivers. This outcome is very similar to outcome for Table 9 in the DOT HS 811 092 report.

Differences are noted between the DOT HS 811 092 report in the number of drivers, an increase from 78,123 as found in DOT HS 811 092 to 78,984 in this report. The difference in the number of drivers found in the DOT HS 811 092 report is due to updates of the dataset by several states since the 2009 report and a proportional change due to the ACD coding of highway safety vs. non-highway safety suspensions. This change in categories is particularly noted in the driver's license, vehicle registration & title, miscellaneous duties (DRM), misrepresentations (MIS), financial responsibility and insurance other than filing (FRI) and failure to appear or pay (FTAP) groups of which several categories in the DOT HS 811 092 report were considered non-driving suspension and are considered highway safety suspensions using the ACD coding.

Table A2.1: Highway Safety vs. Non-Highway Safety Suspensions

Year	Total Suspended Driver Records In Sample	Suspended For Highway Safety Reasons		Suspended For Non-Highway Safety Reasons	
		Number	% of total	Number	% of total
2002	19,104	15,014	79%	4,090	21%
2003	17,669	13,872	79%	3,797	21%
2004	14,262	10,946	77%	3,316	23%
2005	13,764	10,197	74%	3,567	26%
2006	14,095	10,030	71%	4,065	29%
Total	78,894	60,059	76%	18,835	24%

After grouping the events into highway safety and non-highway safety based on the ACD manual, the analyses examined the driving records of suspended drivers over the period of time to document how frequently the four types of events, crash, moving violation, non-highway safety, and driving after withdrawal (DAW), occurred for each suspended driver's record. The database consists of 60,059 drivers suspended for highway safety reasons of which about 42 percent (25,073) are subsequently convicted of a violation while their driving privileges are suspended. Of the 18,835 drivers suspended for non-highway safety reasons, about 33 percent (6,181) are subsequently convicted of a violation while their driving privileges are suspended. This outcome of the ACD coding is consistent with the DOT HS 811 092 report.

As shown in table A2.2, the total number of events entered on suspended driver records is relatively higher for highway safety related suspensions when compared to non-highway safety suspended drivers. On average, over the five year time period, drivers suspended for highway safety reasons logged 2.9 events, while drivers suspended for non-highway safety reasons logged 2.1 events. This outcome differs from the DOT HS 811 092 report which found that the suspended for driving reasons group was 2.7 and the non-driving reasons group was 2.6. This is due to the changes provided within the ACD coding in which highway safety codes differ from the suspended for driving or non-driving reasons in the DOT HS 811 092 report.

Table A2.2: Average Number of Times Drivers are Observed during Their Period of Suspension

Type of Suspended Driver	Average Times Observed in Database
Suspended for Highway Safety Reason (N=60,059)	2.9
Suspended for Non-Highway Safety Reason (N=18,835)	2.1

Table A2.3 shows the mean and median number of days until an event is recorded in the database. Drivers suspended for highway safety reasons receive a moving violation within 8 months (259 days) compared to over 1 year (381 days) for drivers suspended for non-highway safety reasons. Those suspended for highway safety reasons were involved in a subsequent crash within about 10 months (10.1 months or 312 days) while drivers suspended for non-highway safety reasons were involved in a crash within about 11 months of suspension (11.4 months or 351 days). Drivers who were suspended for highway safety reasons were subsequently convicted of driving while suspended within about 13 months (13.4 or 411 days) compared to about 11 months (11.2 months or 344 days) for drivers suspended non-highway safety reasons. The two groups differ when considering the number of days until the moving violation, non-driving offense, and driving while suspended events. This table is consistent with the results found in the DOT HS 811 092 report.

Table A2.3: Days to Event Occurrence among Suspended Drivers

Type of Event	Drivers Suspended for Highway Safety Reasons			Drivers Suspended for Non-Highway Safety Reasons		
	Mean	Median	95% Confidence Interval	Mean	Median	95% Confidence Interval
Crash	312	213	(298, 326)	351	283	(297, 406)
Moving violation	259	129	(254, 263)	381	248	(367, 395)
Non-driving offense	411	301	(398, 424)	354	270	(342, 366)
DAW	401	303	(388, 414 )	344	240	(314, 373)

Examining violation recidivism among drivers suspended for highway safety reasons versus those suspended for non-highway safety reasons, table A2.4 shows both the number of events and the percentage of events occurring after the initial drivers' suspension during the period of study. As shown in the table, moving violations are committed by 29.3 percent of drivers suspended for highway safety reasons after their initial suspension while 14.5 percent of those suspended for non-highway safety reasons commit a moving violation after their initial suspension. Looking at non-driving offenses, we see that 15.3 percent of drivers suspended for non-highway safety reasons commit a subsequent non-driving offense compared to 5.1 percent of those suspended for highway safety reasons. When considering driving on a suspended license, 4.4 percent of drivers suspended for highway safety reasons are convicted of this offense while 2.3 percent of drivers suspended for non-highway safety reasons are convicted of this offense. This table is consistent with the results found in the DOT HS 811 092 report.

Table A2.4: Drivers Subsequently Convicted of an Event during Their Suspension Period

Type of Event	Drivers DAW for Highway Safety Reasons (N=60,059)		Drivers DAW for Non-Highway Safety Reasons (N=18,835)	
	Number of events	Percentage	Number of events	Percentage
Moving Violation	17,595	29.3	2,735	14.5
Non-Driving Offense	3,067	5.1	2,884	15.3
DAW	2,641	4.4	432	2.3

The final table, table A2.5, examines crash involvement among suspended drivers to determine if patterns of crash involvement differed between drivers suspended for highway safety vs. non-highway safety reasons. Table A2.5 shows that about 13.1% of drivers suspended for highway safety related reasons are involved in a crash while 1.9% of drivers suspended for a non-highway safety reason are involved in a crash. Focusing on only those that have been involved in any of the events after suspension of their driver's license, the results are that about 9.1% of drivers suspended for a non-highway safety reason are involved in a crash while 33.5% of drivers suspended for highway safety related reasons are involved in a crash. This table differs with the results found in the DOT HS 811 092 report, indicating that the ACD coding provides for a more refined outcome.

Table A2.5: Suspended Drivers Involved in a Crash during Their Suspension Period

Type Of Suspended Driver	Repeat Offenders			All Suspended Drivers		
	N	Number of events	Percentage	N	Number of events	Percentage
Suspended for Highway Safety Reason	17,907	6,006	33.5	60,059	7,842	13.1
Suspended for Non-Highway Safety Reason	3,775	342	9.1	18,835	361	1.9

## Re-Evaluation Conclusion

Results using the recoding of the data from DOT HS 811 092 into ACD codes indicates that prior conclusions from the DOT HS 811 092 are consistent across the ACD coding, however they are not identical. The ACD coding has improved measurement of all traffic safety events since the coding is consistent across all states.

As offered in the DOT HS 811 092 report, the state case study groupings are derived by AAMVA regions. In DOT HS 811 092, only one (1) state was analyzed from Region I, two (2) states were analyzed from Region II, two (2) states were analyzed from Region III, and one (1) state was analyzed from Region IV. The under-representation from both Regions I and IV were noted in DOT HS 811 092. To address this limitation, data were requested from the states of Pennsylvania and Oregon following the identical methodology as presented in DOT HS 811 092. These analyses add to the prior analyses as found in Section 1 of this report while incorporating the additional states of Pennsylvania and Oregon. Adding these two states allows for an assessment of the suspended driver data and provides for full representation of AAMVA's four regions with each region represented by two states. Table 1 identifies each state used in this analysis. Bolded states in table A2.6 indicate those states added in this report to those analyzed in DOT HS 811 092.

Table A2.6: Suspended/Revoked Jurisdictions

Region I	Region II	Region III	Region IV
New Jersey (large)	Florida (large)	Kansas (medium)	Colorado (medium)
<b>Pennsylvania (large)</b>	Tennessee (medium)	South Dakota (small)	<b>Oregon (medium)</b>

### Additional States Results

Table A2.7 shows the total number of suspended drivers by year in the sample population and the proportion of total suspended drivers by suspension type for all eight states for the time period 2002-2006. The states of Pennsylvania and Oregon provided samples of 20,000 suspended drivers, following the methodology presented in DOT HS 811 092. Of the 40,000 sampled, about 36,000 records were usable. The unusable records were distributed equally among the two states and were found to lack the initial identification of why the original suspension occurred or the data were incomplete within the records.

As shown in table A2.7, the total number of suspended drivers decreases over the analysis period from approximately 25,000 in 2002 to approximately 20,000 in 2006. This represents a 21 percent decrease over the time period. A concurrent result of the downward trend in suspensions over the analysis period is the increasing proportion of drivers suspended for non-highway safety reasons in the population of all

suspended drivers. In 2002, drivers suspended for non-highway safety reasons represented 29 percent of all suspended drivers. By 2006, they represented 39 percent of all suspended drivers.

Differences are noted between the DOT HS 811 092 report and this analyses in the proportional change in the two groupings. This is due to the ACD coding of highway safety vs. non-highway safety suspensions.

This change in categories is particularly noted in the driver's license, vehicle registration & title, miscellaneous duties (DRM), misrepresentations (MIS), financial responsibility and insurance other than filing (FRI) and failure to appear or pay (FTAP) groups of which several categories in the DOT HS 811 092 report were considered non-driving suspensions and are considered highway safety suspensions using the ACD coding. This outcome is similar to table A2.1 in this report.

Table A2.7: Highway Safety vs. Non-Highway Safety Suspensions

Year	Total Suspended Driver Records In Sample	Suspended For Highway Safety Reasons		Suspended For Non-Highway Safety Reasons	
		Number	% of total	Number	% of total
2002	25,249	17,978	71%	7,271	29%
2003	25,015	17,597	70%	7,418	30%
2004	22,780	14,709	65%	8,071	35%
2005	21,543	13,396	62%	8,147	38%
2006	20,039	12,268	61%	7,771	39%
Total	114,626	75,948	66%	38,678	34%

After grouping the events into highway safety and non-highway safety based on the ACD manual, the analyses examined the driving records of suspended drivers over the period of time to document how frequently any of the four types of events, crash, moving violation, non-highway safety, and driving after withdrawal (DAW) occurred for each suspended driver's record. The database consists of 75,948 drivers suspended for highway safety reasons of which about 47 percent (35,362) are subsequently convicted of a violation while their driving privileges are suspended. Of the 38,678 drivers suspended for non-highway safety reasons, about 43 percent (16,729) are subsequently convicted of a violation while their driving privileges are suspended. This outcome of the ACD coding is consistent with the DOT HS 811 092 report.

As shown in Table A2.8, the total number of events entered on suspended driver records is relatively higher for highway safety related suspensions when compared to non-highway safety suspended drivers. On average over the five year time period, drivers suspended for highway safety reasons logged



3.4 events, while drivers suspended for non-highway safety reasons logged 2.8 events. This outcome differs from the DOT HS 811 092 report which found that the suspended for non-driving reasons group was 2.6 and the driving reasons group was 2.7, while it is a consistent outcome for table A2.2. This is due to the changes provided within the ACD coding in which highway safety codes differ from the suspended for driving or non-driving reasons in the DOT HS 811 092 report.

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Table A2.8: Average Number of Times Drivers are Observed during Their Period of Suspension

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Type of Suspended Driver	Average Times Observed in Database
Suspended for Highway Safety Reason (N=75,948)	3.4
Suspended for Non-Highway Safety Reason (N=38,678)	2.8

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Exploring the number of days until an event occurs, table A2.9 shows the mean and median number of days until an event is recorded in the database. Drivers suspended for highway safety reasons receive a moving violation within 8 months (254 days) compared to over 10 months (301 days) for drivers suspended for non-highway safety reasons. Both groups were in a subsequent crash within about 10 months (10.3 months or 313 days for those suspended for highway safety reasons vs. 10.9 months or 330 days for drivers suspended for non-highway safety reasons). Drivers who were suspended for highway safety reasons were subsequently convicted of driving while suspended within 12.8 months (389 days) compared to 10.9 months (332 days) for drivers suspended for non-highway safety reasons. The two groups differ when considering the number of days until the moving violation, non-driving offense, and driving while suspended events. This table is consistent with the results found in the DOT HS 811 092 and table A2.3.

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Table A2.9: Days to Event Occurrence among Suspended Drivers

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Type of Event	Drivers Suspended for Highway Safety Reasons			Drivers Suspended for Non-Highway Safety Reasons		
	Mean	Median	95% Confidence Interval	Mean	Median	95% Confidence Interval
Crash	313	211	(302, 325)	330	236	(304, 355)
Moving violation	254	120	(250, 258)	301	173	(293, 310)
Non-driving offense	337	185	(328, 346)	273	178	(267, 279)
DAW	389	297	(375, 404)	332	218	(302, 361)

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Examining violation recidivism among drivers suspended for highway safety reasons versus those suspended for non-highway safety reasons, table A2.10 shows both the number of events and the percentage of events occurring after the initial drivers' suspension during the period of study. As shown in the table, moving violations are committed by 33.7 percent of drivers suspended for highway safety reasons after their initial suspension while 16.7 percent of those suspended for non-highway safety reasons commit a moving violation after their initial suspension. Looking at non-driving offenses, we see that 9.2 percent of those suspended for highway safety reasons commit a subsequent non-driving offense compared to 24.2 percent of drivers suspended for non-highway safety reasons. When considering driving on a suspended license, 3.8 percent of drivers suspended for highway safety reasons are convicted of this offense while 2.4 percent of drivers suspended for non-highway safety reasons are convicted of this offense. This table is consistent with the results found in the DOT HS 811 092 and table A2.4.

Table A2.10: Drivers Subsequently Convicted of an Event during Their Suspension Period

Type of Event	Drivers DAW for Highway Safety Reasons (N=75,948)		Drivers DAW for Non-Highway Safety Reasons (N=38,678)	
	Number of events	Percentage	Number of events	Percentage
Moving Violation	25,528	33.7	6,458	16.7
Non-Driving Offense	6,930	9.2	9,342	24.2
DAW	2,904	3.8	929	2.4

The final table, table A2.11, examines crash involvement among suspended drivers to determine if patterns of crash involvement differed between drivers suspended for highway safety vs. non-highway safety reasons. Table A2.11 shows that about 18.9% of drivers suspended for highway safety related reasons are involved in a crash while 6.9% of drivers suspended for a non-highway safety reason are involved in a crash. Focusing on only those that have been involved in any of the events after suspension of their driver's license, that is the driver is driving after withdrawal of their driver's license, the results are that about 44.2% of drivers suspended for highway safety related reasons are involved in a crash while 21.1% of drivers suspended for a non-highway safety reason are involved in a crash. As noted in DOT HS 811 092 the lack of data available from states linking crash data to drivers' licenses information provided a caution due to crash reporting differences (some states report all crash involvement regardless of fault determination). The enhanced data in this analysis section has increased the crash data compared to the DOT HS 811 092 report. Table A2.11 differs with the results found in both the DOT HS 811 092 report and table A2.5 due to enhanced linking of the suspended driver's

license and data base improvements across the eight states. This should provide an improved picture of the crash behavior of suspended drivers. The states added to the report are consistent in linking crash, regardless of fault, to the driver's licensure information, however caution is repeated regarding at fault crash behavior since at fault is not determined in many states.

Table A2.11: Suspended Drivers Involved in a Crash during the Period of Suspension

Type Of Suspended Driver	Repeat Offenders			All Suspended Drivers		
	N	Number of events	Percentage	N	Number of events	Percentage
Suspended for Highway Safety Reason	26,689	11,786	44.2	75,948	14,318	18.9
Suspended for Non-Highway Safety Reason	11,499	2,427	21.1	38,678	2,669	6.9

### Overview Estimating National Crashes

To explore the relationship between suspended drivers crashes and crashes across the nation, the analysis estimates the percentage of licensed drivers who have crashed during the time period 2002-2006. Using data available from the Federal Highway Administration's (FHWA) Highway Statistics Table DL1C, table A2.7 offers the total number of crashes nationally as a percentage of the number of licensed drivers nationally. To provide a similar context, data are analyzed for the same time period. Caution must be observed since this aggregate data is estimated not observed; a licensed driver may be involved in more than one crash per year and the number of licensed drivers varies across the year while the count is a point in time during the year. Moreover, the state data incorporated in this report is assumed as representative of the 48 contiguous states, while the national data includes all 50 states.

### Comparing Suspended Driver Crashes to National Crashes

Given the caution presented regarding the estimates of national crashes over the time period, table A2.7 indicates that nationally over 3.1% of licensed drivers are involved in a crash during the time period. Comparing this to the suspended drivers, the percentage of drivers suspended for highway safety reasons involved in a crash is approximately 19%. Therefore, the percentage of drivers involved in a crash who are suspended for highway safety reasons is over 6 times the percentage of national drivers involved in a crash for this time period. Turning attention to drivers suspended for non-highway safety reasons, about 6.9% of these drivers are involved in a crash during the time period. When compared to the national percentage of drivers involved in a crash, the percentage of drivers suspended

for non-highway safety reasons that are involved in a crash is about 2.2 times that of the national average. Thus both groups of suspended drivers appear to negatively affect highway safety, however their impacts differ.

Table A2.7: Estimated National Crashes and Licensed Drivers from 2002-2006

Year	Fatal	Injury	Property Damage Only	Total Crashes	Total Licensed Drivers	Percentage of Licensed Drivers in Crashes
2002	38,491	1,929,000	4,348,000	6,315,491	194,295,633	3.25%
2003	38,477	1,925,000	4,365,000	6,328,477	196,165,666	3.23%
2004	38,444	1,862,000	4,281,000	6,181,444	198,888,912	3.11%
2005	39,252	1,816,000	4,304,000	6,159,252	200,548,922	3.07%
<u>2006</u>	<u>38,588</u>	<u>1,746,000</u>	<u>4,189,000</u>	<u>5,973,588</u>	<u>202,810,438</u>	<u>2.95%</u>
Total	193,252	9,278,000	21,487,000	30,958,252	992,709,571	3.12%

Data Source: Crash data from DOT HS 810 819, January 2008; Driver's License Data from Federal Highway Administration, Highway Statistics, Table DL1C, for each year.

### Additional States Conclusion

In this analysis two states are added to provide for a representative and balanced sample based on AAMVA regions. The outcome of the analyses have resulted in few changes outside the crash data outcomes when compared to DOT HS 811 092 or the ACD coding analyses presented in Analysis 1. Concerning are the changes found in the crash data, which are extremely important in traffic safety. Given the changes and the reporting propensity of the states (some provide no crash data, some provide at-fault crash data, and some provide crash data regardless of fault), similar to that found in DOT HS 811 092, caution in interpreting the crash data is appropriate here. Crash data can be misconstrued due to differentials in reporting across states. Since states define at-fault differently, with some states not determining fault, crash data are suspect. It appears, regardless of reporting style by the states that those suspended for highway safety reasons are involved in crashes at a much higher rate than drivers suspended for non-highway safety reasons. Although this conclusion is consistent across reports, drivers suspended for non-highway safety reasons appear to be involved in crashes at a high percentage when compared to the percentage of licensed drivers involved in crashes across the United States. In this analysis the focus is on the length of individual suspensions not the aggregate time of suspension as offered in DOT HS 811 092, Analysis 1, and Analysis 2 in this report. This analysis uses the initial suspension to explore crashes based on the provided restoration date. All data are for initial suspension with subsequent suspensions for drivers over the 2002-2006 time-period removed. Methodologically, the two groups are not the same as in the prior analyses offered in DOT HS 811 092, Analysis 1, and Analysis 2. This is due to the fact that restoration dates are not provided consistently among states.

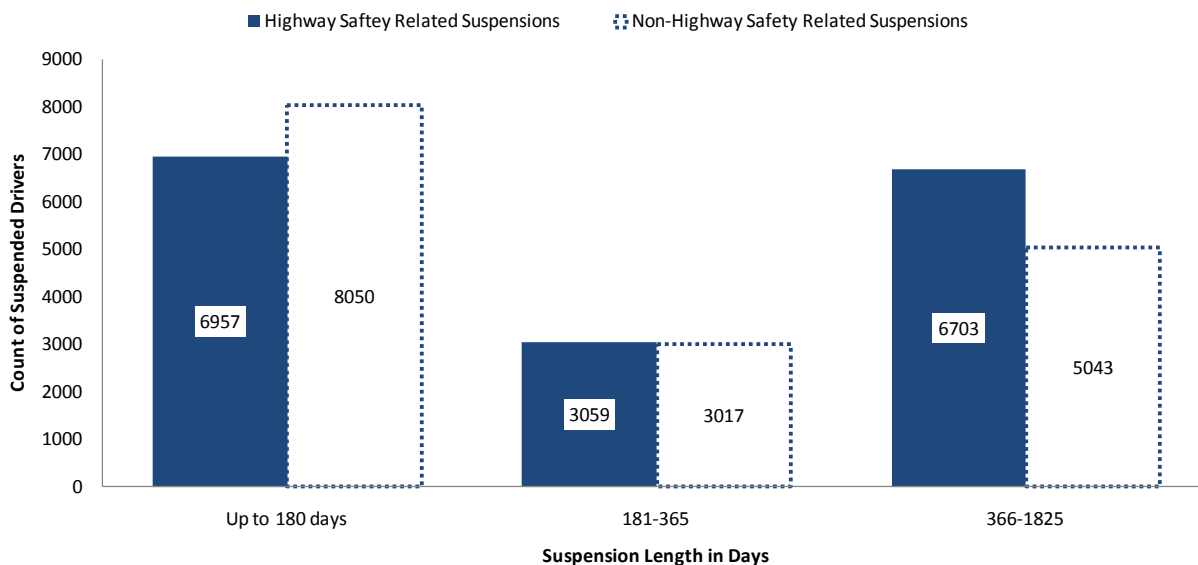
Some states offer an exact day of the restoration, some states offer a month only, and some states do not provide the restoration date (the suspended driver exits the data base in that year). In this analysis the focus is on the two groups of drivers in which the exact day of restoration is present in the data bases. Although the percentage of driver's who crash is provided, the focus is to look at the pattern associated with the crash percentages and not the percentage itself. This differs from the previous analyses which focused on the percentage and numerical outcomes specifically.

### **Length of Suspension by Suspension Group**

To begin the analysis, this section looks specifically at the initial length of suspension for the two groups, highway safety related suspended drivers and non-highway safety related suspended drivers. Figure A2.1 provides the numerical count of drivers within each of the three lengths of suspension categories, up to 180 days, from 181 to 365 days, and from 366 days to 1825 days. The first observation is that of the two groups, highway safety related suspended drivers (N=16,719) and non-highway safety related suspended drivers (N=16,110) have about the same number of represented drivers. This differs from the previous analyses in which the highway safety suspended drivers were approximately 66% of the total observations. Next observe that although the groups are about equal in size, there are more non-highway safety suspended drivers in the up to 180 day category and less non-highway safety suspended drivers in the 366-1825 day category, indicating that drivers suspended for highway safety reasons have longer suspensions. This outcome is further evidenced by looking at the percentage differences between the two suspended driver groups where 60% of drivers suspended for highway safety reasons have restoration dates of one year or less while 69% of drivers suspended for non-highway safety reasons have restoration dates of one year or less.

To provide insight into the different number of drivers within the suspension length categories, Figure A2.2 and figure A2.3 break down each suspension length category into 30 day periods. The findings indicate that the two suspended driver groups are similar in days to restoration in the up to 30 day category, accounting for about twelve (12) percent of the total drivers in each of the suspension groups. The two suspended driving groups differ in both lengths of suspension categories 61-90 days and 91-120 days which incorporate about 20% of the entire group of suspended drivers for non-highway safety reasons. Figure A2.2 indicates a downward trend in the number of drivers suspended for highway safety reasons as the length of suspension increases to 180 days.

**Figure A2.1: Suspended Drivers with Restoration Dates by Suspension Length in Days**



**Figure A2.2: Suspended Drivers with Restoration Dates within 180 Days**

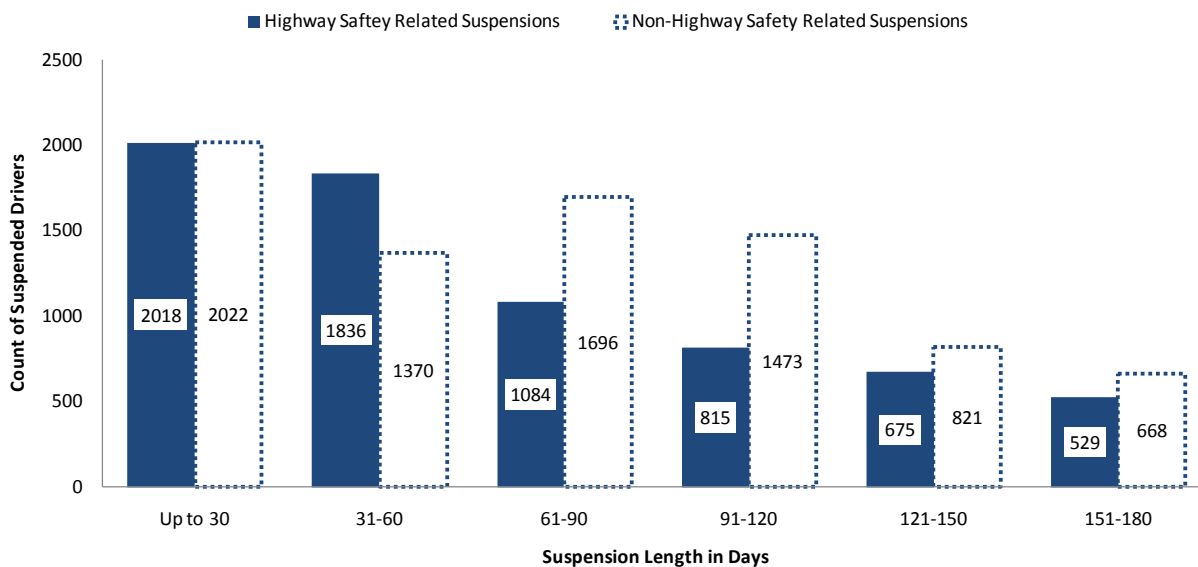


Figure A2.3 shows that for those suspended for a period of 181 days through 1 year (365 days), about one-third (32.4%) are drivers suspended for highway safety reasons in the category of suspension length between 181 day and 210 days. Figure A2.4 shows a similar result to figure A3.2 and figure A2.3 indicating that the beginning of these lengths of suspension categories incorporates the largest number of drivers suspended for highway safety reasons or non-highway safety reasons.



**Figure A2.3: Suspended Drivers with Restoration Dates between 181 Days and One Year**

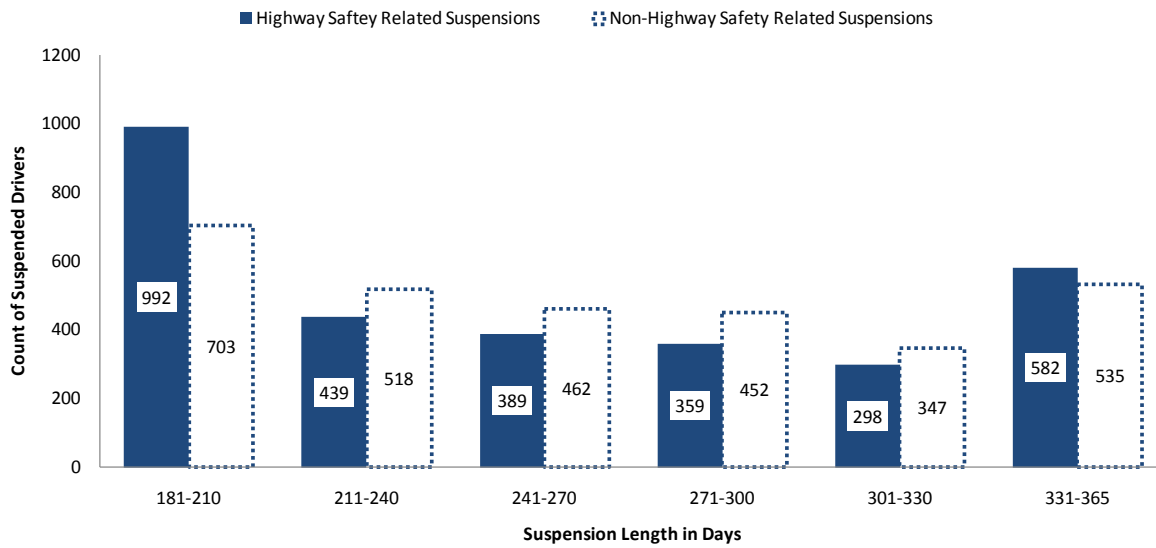
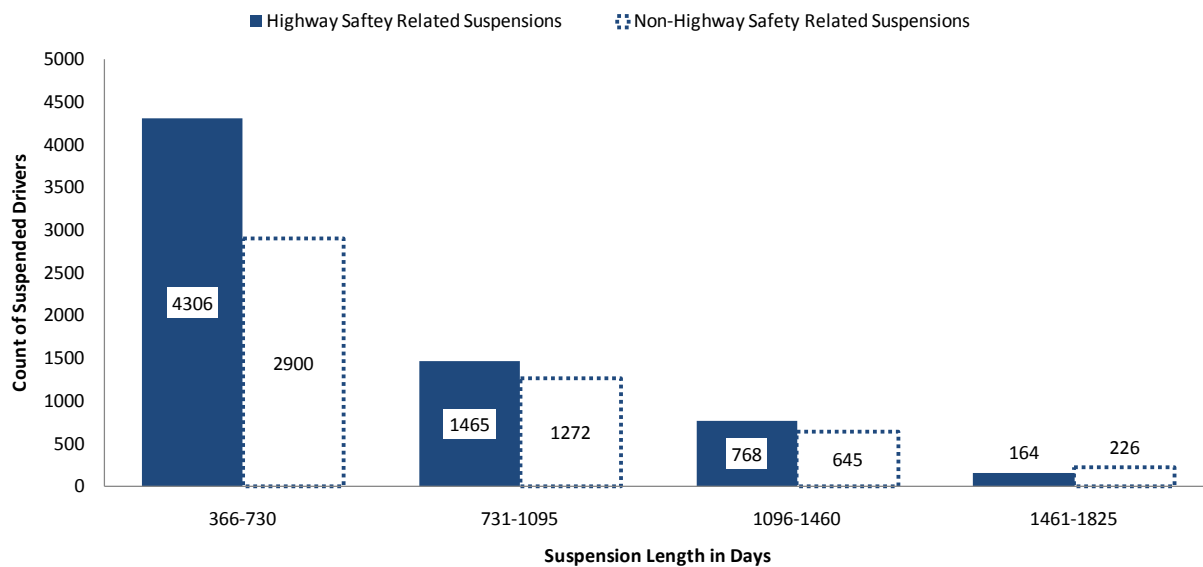


Figure A2.4 changes from a 30 day length of suspension into 360 day categories. Looking at suspensions exceeding one year until restoration, figure A2.4 illustrates that over 57% of the driver suspensions exceeding one year are for the category 366-730 days with a large drop for suspension 366 days through 1460 days. A very small fraction of total suspended drivers, about 0.1%, are suspended for more than 1460 days (4 years).

**Figure A2.4: Suspended Drivers with Restoration Dates between 366 Days and Five Years**



## Length of Suspension and Traffic Crashes

This analysis focuses on the percentage trend in crashes as suspension length changes between the two groups, highway safety suspended drivers and non-highway safety suspended drivers. Figure A2.5 indicates that over suspension lengths of up to 180 days, the percentage of crashes associated with non-highway safety related suspended drivers decrease as suspension length increases. The opposite is observed for drivers suspended for highway safety reasons where increases in the length of suspension in days leads to an increase in the percentage of crashes involving this group of suspended drivers.

**Figure A2.5: Percentage of Suspended Drivers Involved in Crashes with Restoration Dates within 180 Days**

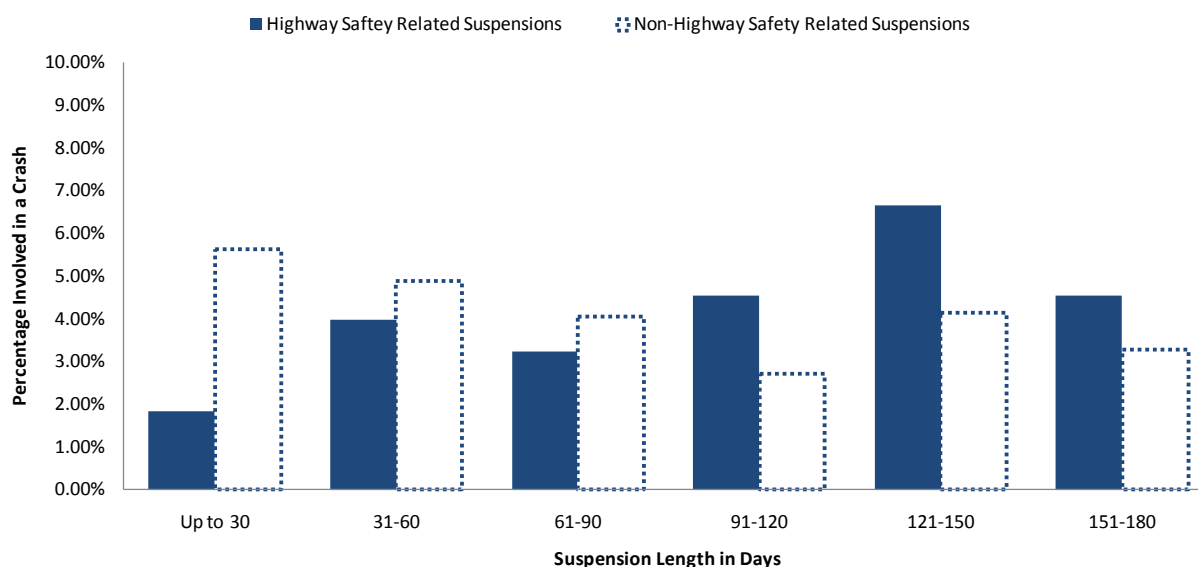
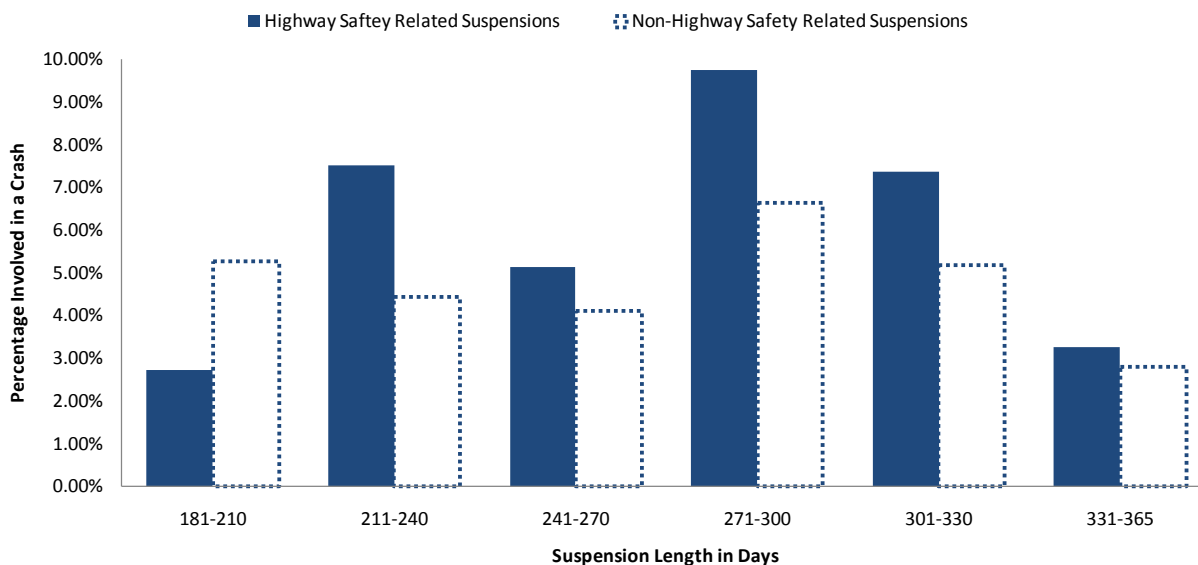


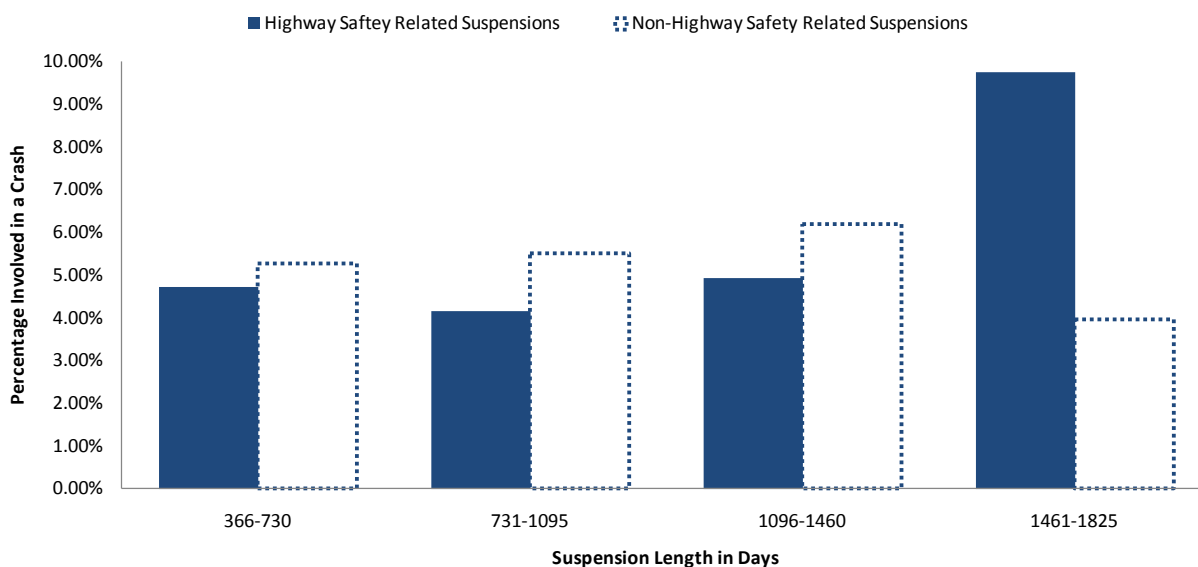
Figure A2.6 offers a different interpretation from the suspended drivers found in figure A2.5. Figure A2.6 indicates that the percentage of crashes by drivers suspended for highway safety reasons continue to increase until 300 days and then fall as a percentage from 331 days through 365 days. The percentage of crashes by drivers suspended for non-highway safety reasons stay relatively flat for suspension lengths of 181 days through 330 days, and then decline rather dramatically in the 331-365 days category. A large increase, or spike, is found in suspension lengths of 271 days through 300 days for both suspended driver groups for the length of suspension period 181 days through 365 days (one year). Looking at the raw number of drivers associated with this suspension length, figure A2.3 indicates that the number of drivers in each group is relatively similar between suspension lengths of 211 days and 330 days, thus the number of drivers does not appear to be motivating the outcome.

**Figure A2.6: Percentage of Suspended Drivers Involved in Crashes with Restoration Dates between 181 Days and One Year**



The final figure, figure A2.7, focuses on suspended drivers with restore dates greater than one year. Note that in both suspension groups there is little variation in the percentage of crashes by suspended drivers until the suspension period exceeds 1460 days (four years) in which a spike indicating a positive increase in the percentage of crashes occurs for drivers suspended for highway safety reason. Simultaneously in the 1461 days through 1825 days (five years) category a precipitous decline in the percentage of crashes associated with drivers suspended for non-highway safety reasons is observed.

**Figure A2.7: Percentage of Suspended Drivers Involved in Crashes with Restoration Dates between 366 Days and Five Years**



## Length of Suspension and Traffic Crashes Conclusion

This analysis has focused on the initial suspension, in days, for the two suspended driver groups, those suspended for highway safety reasons and those suspended for non-highway safety reasons. The data in this analysis is limited in that the two groups are roughly represented by the same number of suspended drivers. The findings lead to the conclusion that the percentages of suspended drivers who crash differ between the two groups based on the length of suspension. There is a trend found that as the length of suspension increases from up to 180 days of suspension, the percentage of crashes associated with drivers suspended for highway safety reasons also increases. This trend is repeated through 300 days of suspension for this group. The percentage of crashes for highway safety suspended drivers' declines until the end of 1460 days (four years) in which a precipitous increase is noted in the percentage in crashes as the suspended period exceeds four years. The opposite outcome is found for drivers suspended for non-highway safety reasons for the first 180 days of suspension and then this group's trend is a constant percentage of crashes through 300 day suspensions, with an increase occurring from 366 days of suspension through four years, with a precipitous decline for suspensions exceeding four years. The final outcome is that support is found for the findings in DOT HS 811 092 and Analyses 1 and 2 in this report that the two groups of suspended drivers appear to behave differently and thus should not be treated as a homogenous group.

This analysis enhances the prior analyses by departing from the sampled data used in DOT HS 811 092, Analysis 1, Analysis 2, and Analysis 3, focusing instead on all data collected for the period 2002-2006. This data is not restricted to the equal sampling process used in DOT HS 811 092 and the subsequent Analyses 1-3. Within this large data set, the number of observations differs by state with some states contributing 20,000 suspended drivers while other states provide more than the 20,000 suspended driver samples. The analysis graphically explores whether or not the relationship presented in Analysis 3 is robust across the entire data set.

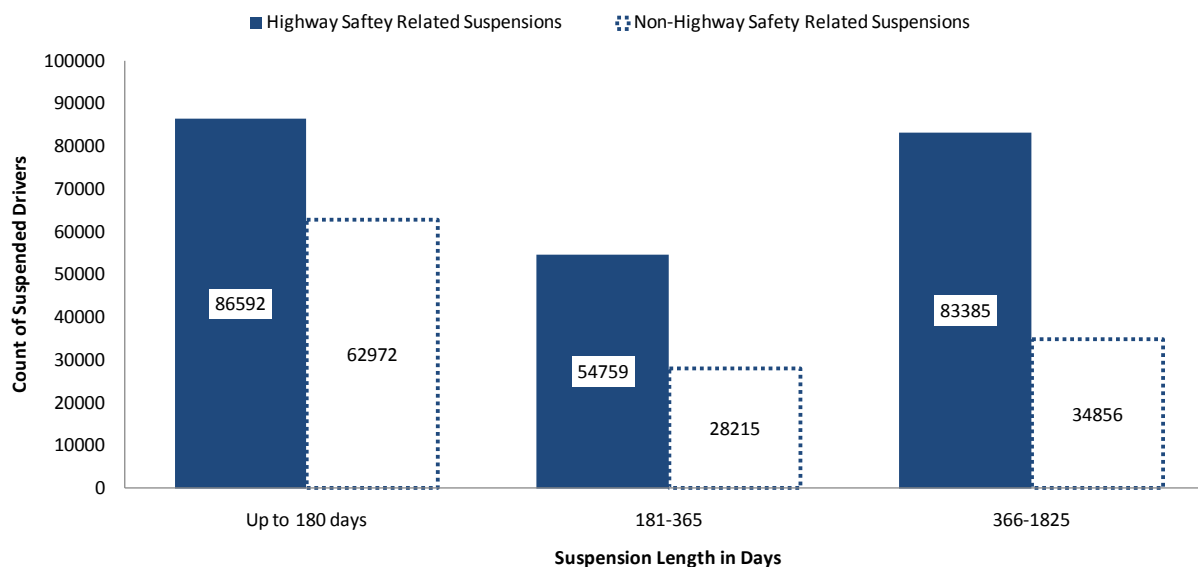
The data set consists of 350,779 initial suspended drivers whose restoration date is complete. This includes restoration month, day, and year. The data is coded identically to that found in Analysis 2 where all suspended drivers are placed into two groups based on ACD coding. The two groups are identified as drivers suspended for highway safety reasons and drivers suspended for non-highway safety reasons. There are 224,736 suspended drivers whose driver's license was suspended for highway safety reasons and 126,043 suspended drivers whose driver's license was suspended for non-highway safety reasons. The result is that 64% of the observed drivers are suspended for highway safety reasons, reflecting a similar composition of the data as found in DOT HS 811 092 and the subsequent Analyses 1 and 2.

## Length of Suspension by Suspension Group

To begin the analysis, the initial length of suspension for the two groups, highway safety related suspended drivers and non-highway safety related suspended drivers, is offered. Figure A4.1 provides the numerical count of drivers within each of the three lengths of suspension categories, up to 180 days, from 181 to 365 days, and from 366 days to 1825 days (over 1 year to 5 years). The first observation is that about 39% of highway safety related suspended drivers are suspended for 180 days or less while about 50% of non-highway safety related suspended drivers are suspended for 180 days or less. This 11% difference is similar to the 9% difference in this category found in figure A2.8. About 37% of

highway safety related suspended drivers are suspended for 366 days or more compared to 28% of non-highway safety related suspended drivers that are suspended for 366 days or more, supporting the prior outcome indicating that those suspended for highway safety reasons have a longer average suspension period. Suspended drivers in both groups have about the same number of represented drivers in the suspension length of 181-365 days. The grouping, by percentage, in the suspension length of 181 days through 365 days is very similar to figure A2.8 in the prior analysis. The shorter suspension length and the longer suspension length follow each groups overall percentage of the total observations.

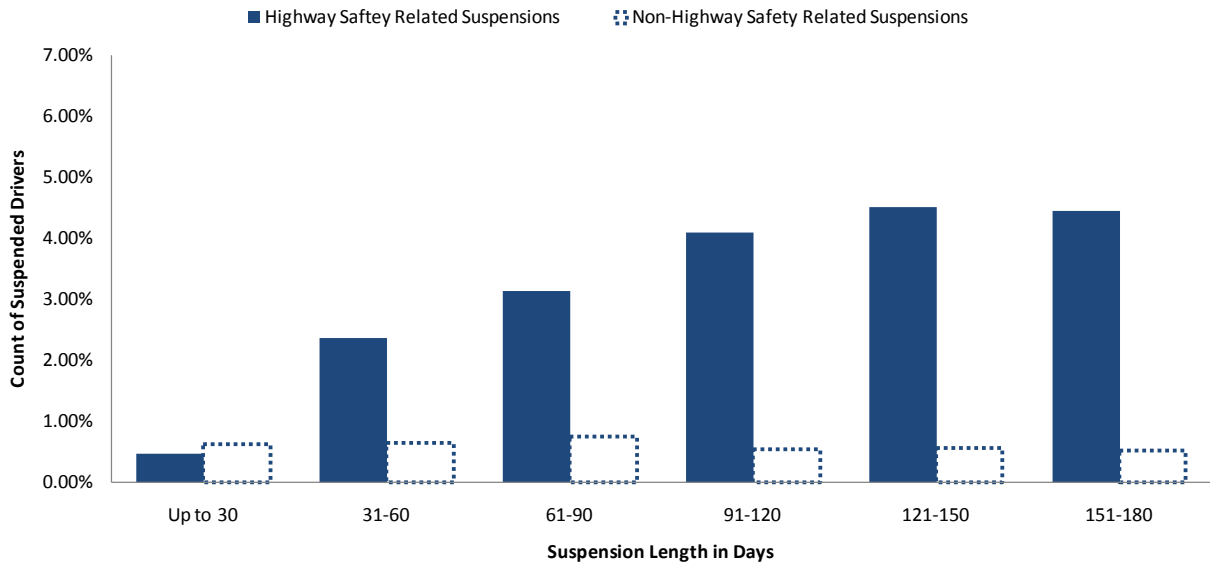
**Figure A2.8: Suspended Drivers with Restoration Dates by Suspension Length in Days**



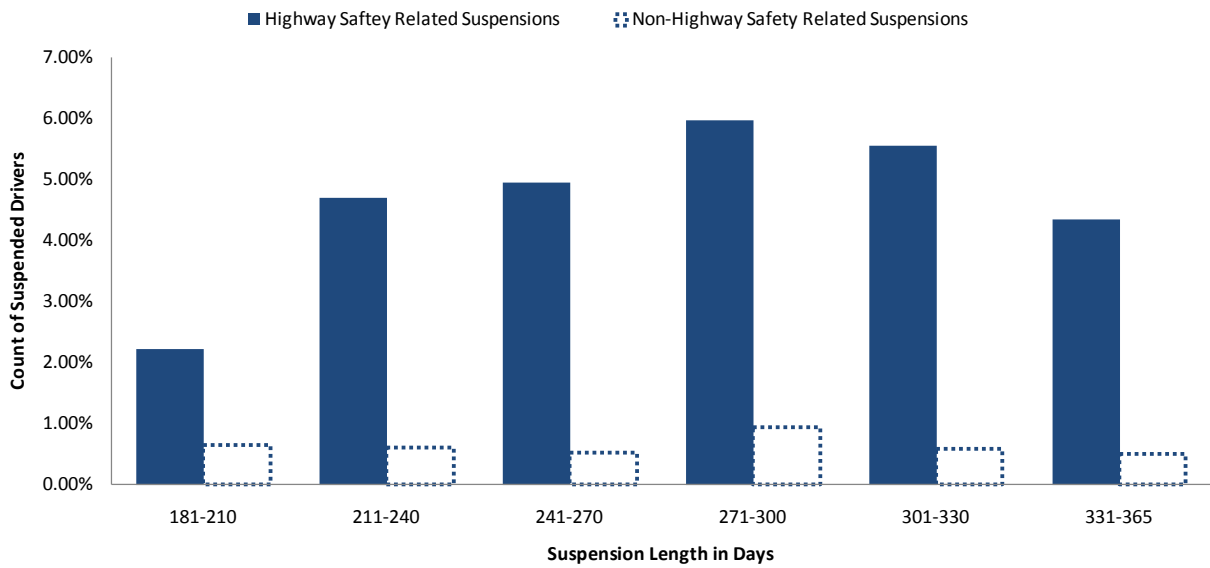
### Length of Suspension and Traffic Crashes

This analysis, similar to the prior analysis, focuses on the percentage trend in crashes as suspension length changes between highway safety and non-highway safety suspended driver groupings. The outcomes, although more pronounced in this analysis, support the outcomes presented in Analysis 3 indicating that Analysis 3 is robust when the data are changed. Figures A2.9, A2.10, and A2.11 follow a similar outcome as that found in figures A2.5 through figure A2.7. Driver suspension lengths affect the two groups differently. For lengths of suspension up to 180 days (6 months) the percentage of crashes associated with drivers suspended for highway safety reasons increase across the 180 day suspension period. The suspension category, 30 days or less, has a higher crash percentage for non-highway safety suspended drivers than those suspended for highway safety reasons, which could indicate a short term behavioral response to driving by those suspended for highway safety reasons. Again a peak is found at suspension lengths of 271 days through 300 days for both suspension groups. A drop for the percentage of crashes for both groups is noted at 331 days through 365 days of suspension length. A crash percentage increase is noted for drivers suspended for highway safety reasons whose suspension length is beyond four years while the opposite, that is a noted decline in the percentage of crashes, is associated with drivers whose driving privilege was suspended for non-highway safety reasons at the same suspension length.

**Figure A2.9: Percentage of Suspended Drivers Involved in Crashes with Restoration Dates within 180 Days**

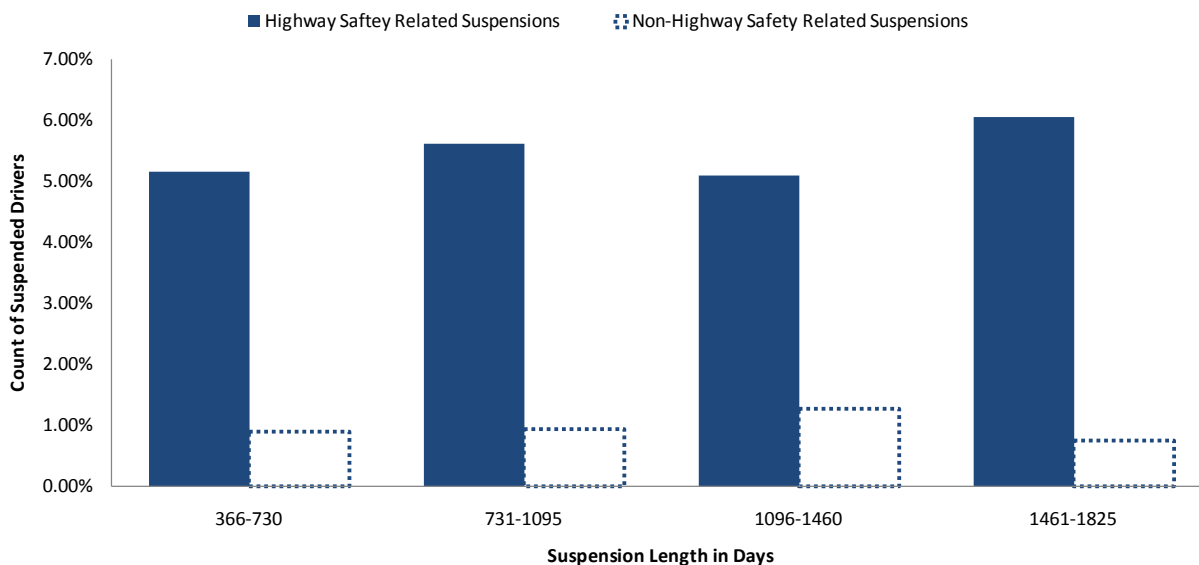


**Figure A2.10: Percentage of Suspended Drivers Involved in Crashes with Restoration Dates between 181 Days and One Year**





**Figure A2.11: Percentage of Suspended Drivers Involved in Crashes with Restoration Dates between 366 Days and Five Years**



### Enhancement Conclusion

This analysis indicates robust support for the outcomes of Analysis 3. The findings lead to the conclusion that the percentages of suspended drivers who crash differ between the two groups based on the length of suspension. There is a trend found that as the length of suspension increases for the suspension length of up to 180 days, the percentage of crashes associated with drivers suspended for highway safety reasons also increases.

This trend is repeated through 300 days of suspension for this group at which time the percentage of crashes for highway safety suspended drivers' declines until the end of a four year suspension time period. A noted increase in the percentage of crashes for highway safety suspended drivers is observed for the suspension period exceeding four years. The opposite outcome is found for drivers suspended for non-highway safety reasons for the first 180 days of suspension, with an increase occurring from 366 days of suspension through four years, followed by a noted decline in the percentage of crashes for the suspension period exceeding four years. The final outcome is that the robustness enhancement provides support for the findings in DOT HS 811 092 and Analyses 1, 2, and 3 in this report that the two groups of suspended drivers appear to behave differently and thus should not be treated as a homogenous group with regard to traffic safety policy.

## Appendix C – Jurisdiction Survey Results

### Introduction

A survey was conducted on behalf of the Suspended and Revoked Working Group was issued to gather information on violations for which DMVs suspend driver licenses for non-highway safety violations. The compilation of results was completed in December 2011.

Jurisdiction	Non-Highway Safety Violation	Explanation	Length of suspension	# of Suspensions Issued in 2010
Arizona	Child Support Arrearage	Pursuant to A.R.S. § 25-516, when a person obligated to pay child support is in arrears for an amount equal to two months child support, a Child Support Arrearage Lien may be filed. A Child Support Arrearage Lien may be filed by the Department of Economic Security (DES) or Child Support Services of Arizona.	Indefinite	
	Failure to appear	When a person fails to pay a civil penalty or fails to appear as directed for a scheduled court appearance, the Division shall promptly suspend the person's driving privilege until the civil penalty is paid or a bond is forfeited.	Indefinite	
	Failure to pay a Civil Penalty	When a person fails to pay a civil penalty or fails to appear as directed for a scheduled court appearance, the Division shall promptly suspend the person's driving privilege until the civil penalty is paid or a bond is forfeited.	Indefinite	
	Buying for resale, selling or dealing spirituous liquor without a license	None		
	Juvenile - Curfew, truancy, damage to property, purchase or possession of tobacco, possession or consumption of spirituous liquor	§ 13-1602(A)(1); § 13-1602(A)(5); or § 13-1604(A) Under 18 and convicted, graffiti/ criminal damage or purchase of graffiti materials	Suspended until the person's 18 <sup>th</sup> birthday	
	Minor - Possession of or carrying a firearm			

Jurisdiction	Non-Highway Safety Violation	Explanation	Length of suspension	# of Suspensions Issued in 2010
<b>Arkansas</b>	Insufficient funds (not check payment for driver license or vehicle tags.)			345
	Fail to attend school			89
	Possession of fraudulent ID or DL			
	Possession of alcohol (minors)			800
	Theft of motor fuel			13
	Parking in handicap space			0
	Child support			6,062
	Possession of illegal or controlled substance (drugs)			4,620
	Weapon in school			0
	Littering out of a motor vehicle			0
	FTA for non-moving violations			29,541
	Minor in possession of alcohol in vehicle	Minors may not have an alcoholic beverage in their possession while in a vehicle. (CVC §23224)	The court shall suspend the offender for 1 year, or require DMV to delay the issuance of an offender's first license for up to one year, if he/she is not already licensed. The court may impose restrictions in lieu of suspension based on critical need.	1,010
	Vandalism/Graffiti	Courts can suspend the driver license for two years of a person convicted of engaging in vandalism, including graffiti. If a person is convicted and does not have a license, the courts can delay the issuance of a license for up to three years from the date he/she is legally eligible to drive. (convictions of Penal Code §594) (CVC §13202.6)	Suspension for up to 2 years, or if an offender is unlicensed, the court shall order DMV to delay the issuance of a license for 1-3 years after that person becomes legally eligible to drive. Suspension or delay of license may be reduced by community service if specific	1,806

Jurisdiction	Non-Highway Safety Violation	Explanation	Length of suspension	# of Suspensions Issued in 2010
California, continued	Vandalism/Graffiti, continued		eligibility criteria are met. Reduction is 1 day for each day of community service performed.	
	Unlawful use of firearms	The court may suspend any minor convicted of possessing a concealable weapon or live ammunition, or impose driver license sanctions for minors convicted of misdemeanors involving firearms. (CVC §13202.4)	5-year suspension, or if an offender is unlicensed, the court may order DMV to delay the issuance of a license for 5 years after that person becomes legally eligible to drive. Suspension or delay of license may be reduced by community service if specific eligibility criteria are met. Reduction is 1 day for each hour of community service performed.	69
	Habitual truancy	The court may sanction an individual (age 13 to 18) convicted of being a habitual truant from school. (CVC §13202.7)	The court may suspend the driving privilege for one year or require DMV to delay the issuance of his/her first license for up to one year, if an individual is not already licensed. Additional offenses can result in additional 1-year suspension or delay of license after eligibility is reached.	2,802
	Prostitution	A court may suspend a person convicted of prostitution under Penal Code §647(a) or (b) if the offense occurs within 1,000 feet of a private residence and involves the use of a vehicle. (CVC §13201.5)	Suspension up to 30 days, or up to 6 months restriction	0
	Auto Theft	Upon recommendation from the court, DMV suspends or revokes an individual who is convicted of auto theft, in violation of CVC 10851, 13357)	6-month suspension or 1-year revocation, per court recommendation	0 169
	Failure to pay child support	DMV imposes suspension based upon notice from the Department of Child Support Services (DCSS) that a person is in arrears in family support payments or has dropped out	Indefinite, until clearance is provided by the County Family Support Agency	0 94,152

Jurisdiction	Non-Highway Safety Violation	Explanation	Length of suspension	# of Suspensions Issued in 2010
<b>California,</b> <i>continued</i>		of compliance after initially clearing support stops (California Family Code §17520)		
	Gratuity Suspensions	A tow truck driver convicted of accepting a gratuity in exchange for a delivery or arranging a delivery of a vehicle for storage or repair when the vehicle is not owned by the repair shop or towing service will be suspended. (CVC §§12110(d)(1), (d)(2), and 13351.85	1 <sup>st</sup> conviction=4-month suspension 2 <sup>nd</sup> or subsequent conviction = 1-year suspension	0
<b>Colorado</b>	Cancel for misuse of license	Used when an individual is caught using their DL inappropriately or for fraudulent purposes.	Indefinite	43
	Revoke for minor buy/possess	Used when a minor is convicted of buying or possessing alcohol.	1 <sup>st</sup> offense 90 days, 2nd offense 6 months, 3 <sup>rd</sup> offense 1 year	1,470
	Suspend for child support		indefinite	17,234
	Suspend for fuel piracy	Used when an individual is convicted for not paying for gasoline.	6 months	0
<b>Florida</b>	Failure to pay child support	Person who fail to pay the required payments for support.	indefinite	125,464 Suspensions
	Failure to submit to genetic testing (child support)	Person who fails to show up for court ordered genetic testing for child support cases	indefinite	486 Suspensions
	Truancy, under 18	15 unexcused absences from a public or private school in a period of 90 calendar days	indefinite	6,519 Suspensions
	Failure to pay court financial obligation	Persons who fail to pay court cost associated with Criminal/Felony cases.	indefinite	123,825 Suspensions
	Graffiti/criminal mischief	Persons convicted of willfully or maliciously damaging property belonging to another	Up to One year	1 Suspensions
	Tobacco (under 18) Possession; use; or misrepresent age to purchase	Child that fails to appear in court, fulfill community service, or pay the fine for Tobacco violations	30 – 90 days	791 Suspensions
	Passing worthless checks	Person who fails to appear in court on the charge of "Passing Worthless Bank Checks"	indefinite	3,441 Suspensions

Jurisdiction	Non-Highway Safety Violation	Explanation	Length of suspension	# of Suspensions Issued in 2010	
<b>Florida, continued</b>	Petit theft of gas	Persons conviction of driving away from a gas pump without paying	6 months - 1 year	13 Suspensions	
	Alcohol (under 21)	Persons under 21 years of age convicted of offense related to alcoholic beverages	6 months – 2 years	25 Revocation	
	Possession; use; or misrepresent age to purchase			47 Suspensions	
	Selling/providing alcohol to minor	Sell and giving alcohol to persons under 21 years of age	6 months – 2 years	2 Revocations	
	Theft	Persons convicted of stealing merchandise or property that belongs to another	6 months – 1 year	288 Revocations	
	Solicitation	Persons convicted of soliciting a prostitute in a motor vehicle	1 year	21 Revocations	
	Possession of drugs (Adults)	Persons convicted of possession of drugs	2 years	23,415 Revocations	
	Possession of drugs (Minors)	Persons convicted of possession of drugs	6 months – 2 years	1,017 Suspensions	
	Perjury	Persons convicted of providing false information on a driver license or identification application	1 year	19 Revocations	
	Contempt of Court (minors)	Minors that fail to comply with the directives of the Juvenile Courts	3 months or more	5 Suspensions	
	Juveniles	Persons that have committed a crime and the Juvenile Court Judge has determined to suspend or revoke the driving privileges	Any period ordered by the court	1,304 Suspensions	
	<b>Georgia</b>	Controlled substance offenses	Suspension imposed on individuals convicted of drug offenses	180 days to 5 years	
		Driving off without paying for gasoline	Suspension imposed on individuals convicted of failing to pay for gasoline	6 months to 1 year	
		Underage purchase of alcohol, attempting to purchase alcohol, or possession of alcohol while operating a	Suspension imposed on teens for illegal alcohol possession	120 days to 1 year	



Jurisdiction	Non-Highway Safety Violation	Explanation	Length of suspension	# of Suspensions Issued in 2010
<b>Georgia, continued</b>	motor vehicle			
	School attendance, withdrawal, or conduct violations	Suspension imposed for teens who drop out of school, miss school, or misbehave at school	1 year or until age 18, whichever is shorter	
	Parental requested revocation (under age 18)	Parents can revoke permission given for child to be licensed	At least 90 days	
	Failure to pay child support	Suspension imposed for unpaid child support	Indefinite	
	Commercial vehicle theft or commercial cargo theft	Suspension imposed on individuals convicted of stealing trucks or cargo	120 days to 5 years	
	Fraudulent use of a license or fraudulent application for a license	Suspension imposed on individuals convicted of license fraud	120 days to 5 years	
	Nonpayment of certain civil fines	Statutes allow driver license and motor vehicle registration suspensions for uncollected civil fines assessed for zoning code violations.	Until the fine is paid.	Approximately 50 per year of which approximately 35 DL and/or MVR matches are found.
	Failure to pay child support		indefinite	Unknown
	Failure to attend school	Applies to those under age 18 who drop out of school.	Until 18 or compliance before then.	82
	Family responsibility	Failure to pay child support	Indefinite	2,657
	Infraction non/late payment of court fines		90 days (or less if fine and reinstatement fees are paid)	23,741
	Alcohol/age violation	Underage possession of alcohol	Up to one year (first time) up to two years (second time)	1,929
<b>Illinois</b>	Failure to pay child support		Indefinite – Suspension remains in effect until the person has paid the delinquent support in full or has arranged for payment and the court notifies the Secretary of State	22,683

Jurisdiction	Non-Highway Safety Violation	Explanation	Length of suspension	# of Suspensions Issued in 2010
Illinois, <i>continued</i>	Dropping out of school before the age of 18	Legislation to affect this sanction has been passed, but due to federal limitations, has not been implemented. We are in the process of amending Illinois statute to comply with the federal requirements.	Indefinite – Until the student complies with attendance or turns 18, whichever comes first.	N/A
	Improper use of DL/ID card – non-traffic safety related		1 <sup>st</sup> Offense – 12-month suspension; 1 <sup>st</sup> Offense (with open or pending revocation) – revocation; 2 <sup>nd</sup> or subsequent offense – revocation.	806
	Failure to pay fines or penalties for 10 or more parking violations		Suspend until the person pays the fine to the municipality and the municipality notifies the Secretary of State of such payment.	6,525
	Petty theft of gas		1 <sup>st</sup> Conviction – 6-month suspension; 2 <sup>nd</sup> or subsequent conviction – 12-month suspension. A conviction for theft of motor fuel may be considered with prior convictions only if the arrest date falls within seven years after any previous conviction for theft of motor fuel.	8
	Possession of alcohol by a non-driver		1 <sup>st</sup> conviction – 6-month suspension; 1 <sup>st</sup> conviction (with open or pending revocation) – revocation; 2 <sup>nd</sup> conviction – 12-month suspension; 2 <sup>nd</sup> conviction (with open or pending revocation) – revocation; 3 <sup>rd</sup> or subsequent conviction – revocation.	3,820
	Fictitious or Unlawfully Altered Disability License Plate or Parking Decal or Device or Fraudulent Disability License Plate or Parking Decal or Device		1 <sup>st</sup> offense – 12-month suspension; 1 <sup>st</sup> offense (with open or pending revocation) – revocation; 2 <sup>nd</sup> or subsequent offense – revocation.	9

Jurisdiction	Non-Highway Safety Violation	Explanation	Length of suspension	# of Suspensions Issued in 2010
<b>Illinois, continued</b>	Failure to pay fines or penalties for five or more toll violations or evasions.		Suspend until the person pays the fine to the municipality and the municipality notifies the Secretary of State of such payment.	0
	Failure to pay fines or penalties for five offenses for automated traffic violations as defined in Sec. 11-208.6		Suspend until the person pays the fine to the municipality and the municipality notifies the Secretary of State of such payment.	1,343
	Failure to pay child support	If a court finds that a person is delinquent as a result of an intentional violation of an order for support, the court shall issue an order to the bureau of motor vehicles to suspend the driving privileges of the person.	indefinite	8,099
<b>Indiana</b>	Fuel theft	Upon receiving an order issued by a court concerning a person convicted of fuel theft, the bureau shall suspend the driving privileges of the person who is the subject of the order.	30 days	19
	Upon notification from a school that a driver < 18 is a habitual truant, is suspended or has been expelled from school	If a person is less than eighteen (18) years of age and is a habitual truant, is under a suspension or an expulsion or has withdrawn from school, the bureau shall, upon notification by the person's principal, invalidate the person's license or permit.	Varies; invalidated until the earliest of the following: (1) The person becomes 18 years of age. (2) One hundred twenty (120) days after the person is suspended, or the end of a semester during which the person returns to school, whichever is longer. (3) The suspension, expulsion, or exclusion is reversed after the person has had a hearing.	2,565
	Withdrawal of parent's consent	Parent withdraws consent of minor child to have license.	18 <sup>th</sup> birthday	23
<b>Iowa</b>	Drug/drug related conviction	Conviction for a drug or drug related offense.	180 days	4056
	Imminent hazard	FMCSA notifies us if driver is an imminent hazard.	Indefinite	0

Jurisdiction	Non-Highway Safety Violation	Explanation	Length of suspension	# of Suspensions Issued in 2010
<b>Iowa, continued</b>	Default in payment for accident	Defaulting of an agreement entered into and accepted by the department concerning security filed for an accident.	One year	85
	Failure to pay Iowa or out of state fine	Clerk of the court reports a customer has failed to pay a fine, penalty, surcharge or court costs.	Indefinite	83682
	Failure to attend school	School authority notifies us that the customer (under 18 years old) does not attend school.	18 <sup>th</sup> birthday	229
	Purchase or attempt to purchase alcohol	Court order advising the juvenile purchased or attempted to purchase alcohol.	Court ordered	0
	Possession of a controlled substance	Court order advising the juvenile had possession of a controlled substance.	Court ordered	0
	Public intoxication or public consumption	Court order advising the juvenile was adjudicated for public intoxication or public consumption.	Court ordered	0
	Possession of alcohol under legal age	Court order advising a 2 <sup>nd</sup> or subsequent possession of alcohol.	Court ordered	66
	Failure to pay child support	Customer has not paid his/her child support.	Indefinite	14944
	Unpaid college loans	Customer has not paid their college student aid loan.	Indefinite	150
	Juvenile weapons or assault at school	Court order advising juvenile had weapons at school or was involved in an assault at school.	Court ordered	0
	Theft of motor fuel	Court order advising a 2 <sup>nd</sup> or subsequent conviction for stealing motor fuel.	Court ordered	0
	Failure to pay child support	Outstanding child support	Indefinite/until compliance recv'd	1452
	Failure to pay tolls	Turnpike toll evasion	Indefinite/until compliance recv'd	364
	Protested check collection	Insufficient funds/closed accounts	Indefinite/until fees paid	98
Failure to pay/appear contempt (non-traffic related violations)	Failure to satisfy any outstanding court issue which is not traffic related, i.e. dog running at large, drug paraphernalia	Indefinite/until fees paid	6658	
<b>Maine</b>				

Jurisdiction	Non-Highway Safety Violation	Explanation	Length of suspension	# of Suspensions Issued in 2010
Maryland	Failure to pay Child Support			
	Outstanding Arrest Warrant			
	Possession of alcohol by a minor			
	Failure to pay for gasoline			
	Dispensing gasoline from a pump directly into a dirt bike in Baltimore City			
	Improper use of a DL/ID card or facsimile of a DL/ID card by a minor to obtain alcohol			
	Worthless Check			
	Outstanding US District Court Citation-non-traffic related charge			
	Open Intoxicants –Passenger		1 <sup>st</sup> -0 2 <sup>nd</sup> – 30 day susp/60 day restricted 3 <sup>rd</sup> – 60 day susp/305 day restricted	2169
	Transport/Possess Alcohol – Passenger		1 <sup>st</sup> -0 2 <sup>nd</sup> – 30 day susp/60 day restricted 3 <sup>rd</sup> – 60 day susp/305 day restricted	123
Person Under 21 Used Fraudulent Identification to Purchase Liquor		90 day suspension	14	
Purchase/Consume/Possess Liquor		1 <sup>st</sup> -0 2 <sup>nd</sup> – 30 day susp/60 day restricted 3 <sup>rd</sup> – 60 day susp/305 day restricted	17,184	
Unlawful Display of License		1 <sup>st</sup> – 90 day suspended 2 <sup>nd</sup> – 1 year suspended	304	
Michigan				

Jurisdiction	Non-Highway Safety Violation	Explanation	Length of suspension	# of Suspensions Issued in 2010
Michigan, <i>continued</i>	Gave False Information to Police Officer		1 <sup>st</sup> – 90 day suspended 2 <sup>nd</sup> – 1 year suspended	210
	False Certification Under Vehicle Code (Perjury)		1 <sup>st</sup> – 90 day suspended 2 <sup>nd</sup> & 3 <sup>rd</sup> – 1 year suspended	18
	Alter/Forge Vehicle Document or License Plate		1 year suspended	51
	Fraudulent Change of Address		1 <sup>st</sup> – 180 day suspended 2 <sup>nd</sup> – revocation	2
	Drug Crime		1 <sup>st</sup> – 6 month suspended 2 <sup>nd</sup> – 1 year suspended	26,459
	False School Bomb Threat		<b>If Licensed:</b> 14 yrs. Old through Age 20: Suspend 1 year/730 days restrictions <b>Unlicensed:</b> 14 yrs. Old through Age 20: No Graduated Training or License for 3 years Younger than 14 yrs. Old: No Graduated Training Until 16/No License Until 17 yrs.	15
	Failure to Pay Child Support		Indefinite	3,194
	Non-Sufficient Funds Check Financial		Indefinite until payment made	872
	Theft of Motor Vehicle Fuel		1 <sup>st</sup> – 180 day suspended 2 <sup>nd</sup> – 1 year suspended	73
	Failure To Pay/Failure To Appear		Indefinite until payment made.	397,826



Jurisdiction	Non-Highway Safety Violation	Explanation	Length of suspension	# of Suspensions Issued in 2010
<b>Michigan,</b> <i>continued</i>	6 or More Unpaid Parking Tickets		Hold on license renewal activity until paid	27,870
<b>Minnesota</b>	Failure to pay child support	Documents received from DHS indicating that child support is not current.	Indefinite	12,047
	Improper use of a DL/ID card – non-traffic safety related	NA	NA	NA
	Failure to pay parking violations	Documents received from courts for not paying fines	Indefinite	10,217
	Petty theft of gas	Documents received from courts after convicted	30 Days	77
	Possession of alcohol by a non-driver	NA	NA	NA
	Theft of a motor vehicle	Documents received from courts after convicted	1 Year	361
	Juvenile Purchase/Allow Juvenile Purchase of alcohol or tobacco	Documents received from court after convicted	1 <sup>st</sup> 90 days 2 <sup>nd</sup> or more 365 days	0
	Sold/possessed controlled substance	Documents received from court after convicted	30 days	1,762
	Parental Consent Withdrawn	Documents are submitted by consenting parent	Indefinite-until the minor turns 18yrs old/or until the parent asked for them to be reinstated.	48
	Failure to submit out state reinstatement	NA	NA	NA
<b>New Brunswick</b>	Failure to pay child support		Indefinite	183
	Failure to pay court financial obligation – due to non-traffic related violation		Indefinite	15
	Improper use of a DL/ID card – non-traffic safety related (only if suspected fraud)		Not Applicable	No Suspensions Recorded

Jurisdiction	Non-Highway Safety Violation	Explanation	Length of suspension	# of Suspensions Issued in 2010	
<b>New Brunswick,</b> <i>continued</i>	Failure to pay parking violations		Indefinite	Information on # of suspensions is not available	
	Open container		None for first offense; Second offense 90 days; Third and subsequent offenses 1 year	171 revocations	
<b>New Mexico</b>	Child support (non-payment)		indefinite	5,741 suspensions	
	Truancy	We have no statute requiring license suspension or revocation for truancy.	n/a	n/a	
	Minor in possession		We do not currently act on these, although we have the statutory authority.	n/a	
	Failure to pay child support		Indefinite	50,304	
	Underage person uses fraudulent ID to obtain an alcoholic beverage		6 months	0	
<b>New York</b>	Assaulting a traffic enforcement agent in Buffalo or NYC		30 to 180 days	1	
	Sale or possession of drugs		6 months	28,679	
	Placing a false bomb or hazardous substance		1 year	0	
	Failure to obtain the appropriate "hack" license to operate a for-hire vehicle		Varies—30 to 60 days	0	
	Advocating the overthrow of the government		Minimum of 6 months	0	
	Abandoned vehicle violations in NYC		6 months	Not available	

Jurisdiction	Non-Highway Safety Violation	Explanation	Length of suspension	# of Suspensions Issued in 2010
<b>Newfoundland Labrador</b>	Failure to pay court fines (moving or non-moving, includes parking violations)	Administrative Suspension placed on the driver licence	Indefinite. Removed upon payment of fines	117
	Failure to pay child support	By law, under the Highway Traffic Act, Registrar is required by law to suspend driver licence for non-payment of child support at direction of Director of Support Services	Indefinite – Registrar may only remove pending approval of the Director of Support Services	120
<b>North Dakota</b>	Failure to pay child support	Non-compliance with child support payments. Administrative child support enforcement agencies have the same authority as the courts to require suspension of driving privileges.	Indefinite	832
	Theft of gas	Non-payment of motor fuels dispensed at the gas pump	2 <sup>nd</sup> offense 3 months; 3 <sup>rd</sup> offense 6 months	0
	Unlawful use of a drivers license or state issued identification card	To display, permit to be displayed or have in possession any suspended, fictitious, or fraudulently altered license, permit, or ID card.	1 <sup>st</sup> offense is 60 days; 2 <sup>nd</sup> offense is 90 days.	21
	Court ordered suspensions non-traffic related	Non-payment of child support.	Until a court order reinstates the driving privileges.	3
	Sponsor withdraws consent for a minor driver results in cancellation	The person who signed the application of a minor for a license withdraws consent in writing to the director. The person who signed is then relieved from liability for any negligence of the minor in operating a motor vehicle.	Indefinite if under 18 years of age until a new application with sponsorship has been completed.	7
<b>Ohio</b>	Perjury/False Information violation	Knowingly make a false statement under oath in any official proceeding	Specified by court	181
	Soliciting or Soliciting with Positive HIV violation	No person shall solicit another to engage with such other person in sexual activity for hire... with knowledge that the person has tested positive as a carrier of a virus that causes acquired immunodeficiency syndrome.	3 months to 2 years	Soliciting 795 Soliciting HIV 3

Jurisdiction	Non-Highway Safety Violation	Explanation	Length of suspension	# of Suspensions Issued in 2010
Ohio, <i>continued</i>	Gasoline Theft violation	Vehicle leaving the premises of an establishment at which gasoline is offered for retail sale without the offender making full payment for gasoline	6 months to 1 year	47
	Child Support Suspension	Default under a child support order	Until conditions are met	194,150
	Juvenile Suspension	A Juvenile adjudicated an unruly child	A period of time prescribed by the court	656
	Liquor Law Suspension	No person of insufficient age to purchase intoxicating liquor or beer shall display as proof that the person is of sufficient age a driver's license	One year	0
	School Dropout Suspension	Withdrawal from school or habitual absence	Until conditions are met	11,783
	School Weapon Suspension	Conveyance or possession of deadly weapon in school safety zone	1 to 5 years	42
	Default in family support payments	Driver licence suspensions are issued for individuals who default on family support payments.	Indefinite	
	Use of a motor vehicle for the unauthorized delivery, distribution or transportation of Tobacco or tear tape	The Tobacco Tax Act allows for the suspension of drivers' licenses of persons who use a motor vehicle for unauthorized delivery, distribution or transportation of tobacco or tear tape, and are convicted of the offence.	First conviction is for a maximum of 6 months. Second or subsequent conviction is for a minimum of 6 months.	
	Failure to pay child support	Driver is \$2500+ in arrears <i>and</i> not in compliance	Indefinite	9,381
	Improper use of DL/ID card	Convicted of theft of gas	6 months	9
Ontario	Theft of gas	13-17 year old convicted or adjudicated of delivery, manufacture or possession of a controlled substance or for bringing/possessing of guns or weapons in schools or other public buildings	Varies from one year suspension up to age 21.	3,830
	Youth aged 13-17 involved in controlled substance offense or for bringing / possessing of guns or weapons in schools or other public buildings			
Oregon	Failure to pay child support			
	Improper use of DL/ID card			

Jurisdiction	Non-Highway Safety Violation	Explanation	Length of suspension	# of Suspensions Issued in 2010
<b>Oregon, continued</b>	Minor misrepresented age in order to purchase or consume alcohol	Under 21 year old convicted or adjudicated of misrepresentation of age in order to purchase or consume alcohol	One year	20
	Possession of tobacco through misrepresentation of age	Two or more convictions for possession of tobacco	Up to one year	11
	Manufacturing, possession or delivery of a controlled substance	Conviction involving a drug offense (does not have to involve motor vehicle)	6 months	7,224
	Failure to pay taxes	Commercial licensee has failed to file or pay state taxes	Indefinite	2
	Littering	Convicted of littering	90 days	0
	Dropping out of school before the age of 18	15-18 year old has 10 consecutive absences or 15 unexcused absences in a single semester	Until 18 years old	17
	Youth aged 13-20 involved in the possession, use or abuse of alcohol	13-20 year old convicted or adjudicated of offense involving the possession, use or abuse of alcohol	Varies (minimum one year)	4,977
	Unlawful production of DL/ID			
	False information to police DL/ID			
	Failure to comply or appear			
	Failure to pay child support	Any person found in non-compliance with court order on child support obligation	Indefinite	8,711
	Truancy	Any person under the age of 18 convicted or adjudicated delinquent for failing to attend school.	90 days (1 <sup>st</sup> offense) 6 months (2 <sup>nd</sup> or subsequent offense)	5,381
	Consumption, possession, and transportation of alcohol by a minor	Any person under the age of 21 convicted, adjudicated delinquent or placed in consent decree program for under age alcohol offenses.	90 days (1 <sup>st</sup> offense) 1 year (2 <sup>nd</sup> offense) 2 years (3 <sup>rd</sup> or subsequent offense)	16,794
Improper use of a DL/ID card – Carrying a false DL/ID card	Any person under the age of 21 convicted, adjudicated delinquent or placed in consent decree program for improper use of DL/ID card.	90 days (1 <sup>st</sup> offense) 1 year (2 <sup>nd</sup> offense) 2 years (3 <sup>rd</sup> or subsequent offense)	201	
<b>Pennsylvania</b>				

Jurisdiction	Non-Highway Safety Violation	Explanation	Length of suspension	# of Suspensions Issued in 2010
<b>Pennsylvania,</b> <i>continued</i>	Theft of gas	Any person convicted of taking fuel.	30 days for 3 <sup>rd</sup> or subsequent offense by order of court	None
	Possession, sale, manufacturing and delivery of drugs	Any person convicted or adjudicated delinquent of violating the Federal Drug Act.	6 months (1 <sup>st</sup> offense) 1 year (2 <sup>nd</sup> offense) 2 years (3 <sup>rd</sup> or subsequent offense)	19,969
	Terroristic threats on school property	Any person under the age of 22 convicted or adjudicated delinquent of making terroristic threats on school property.	6 months (1 <sup>st</sup> offense) 1 year (2 <sup>nd</sup> offense) 2 years (3 <sup>rd</sup> or subsequent offense)	91
	Lying about age to obtain alcohol	Any person under the age of 21 convicted, adjudicated delinquent or placed in consent decree program for lying about age to obtain alcohol.	90 days (1 <sup>st</sup> offense) 1 year (2 <sup>nd</sup> offense) 2 years (3 <sup>rd</sup> or subsequent offense)	17
	Unpaid fine (including parking violation).	Not a violation as such but a failure to pay the fine for a violation of the Highway Safety Code or parking regulations.	Suspension valid until fine is paid.	289,919 unpaid fines in 2009 for which a suspension was issued.
<b>Quebec</b>	Offence under the Tobacco Tax Act	Penalty for a person caught driving a vehicle used in the transportation of contraband tobacco.	The driver's licence of a person who used a motor vehicle to commit an offence under this Act can be suspended for up to 6 months by the judge. Suspension is longer for repeat offenders.	This penalty was enacted in 2010. No data yet.
	Failure to pay child support		Indefinite, until money is paid	434
	Failure to pay court financial obligation – due to non-traffic related violation		Indefinite, until money is paid	7942
<b>Saskatchewan</b>	Improper use of a DL/ID card – non-traffic safety related	Customers' using someone else's DL/ID to purchase alcohol or altered information on DL/ID to become of age to purchase alcohol.	90 days	67
	WISE Program – caught soliciting a prostitute and did not attend "John School"			9



Jurisdiction	Non-Highway Safety Violation	Explanation	Length of suspension	# of Suspensions Issued in 2010
<b>Saskatchewan,</b> <i>continued</i>	Outstanding Claim	Owes money to claims	Indefinite until money is paid	
	Consent and Undertaking	Owes money to claims. The Operator (Driver) has signed consent and undertaking agreement (agreement to make payments) to claims.	Indefinite, until money is paid	945
	Judgment	Court has ordered the customer to make payments for money owing on a claim.	Indefinite, until money is paid	263
<b>South Dakota</b>	Minor alcohol possession (non-driver)	Alcohol possession by anyone under 21 years of age who is not driving a motor vehicle.	1 <sup>st</sup> Offense 30 days, 2 <sup>nd</sup> & subsequent offense 60 days.	5,123 in FY 2010
	Sale of alcohol to a minor	Selling/providing alcohol to anyone under 21 years of age.	Same as above.	229 in FY 2010
	Failure to pay child support	Anyone has had made a re-payment agreement with the Office of Child Support Enforcement and has failed to comply with the agreement.	Indefinite (until Office of Child Support Enforcement releases revocation)	156 in FY 2010
	Improper use of DL/ID card	Falsifying info to obtain a driver license/ID, lending or using another person's license or ID, having a suspended/revoked or altered driver license or ID in possession.	1 <sup>st</sup> offense 60 days, 2 <sup>nd</sup> offense 6 months and subsequent offense 1 yr.	265 in FY 2010
	Purchasing or possessing any alcoholic beverage, if under 21 years old		1 <sup>st</sup> offense = 1 year 2 <sup>nd</sup> offense = 2 years or until 21 whichever longer	FY10/11 85
<b>Tennessee</b>	Failure to comply with child support requirements		Indefinite - until in compliance with court order	FY10/11 8,673
	Driving a motor vehicle away from a gas station without paying for dispensed gas or diesel fuel		6 month suspension if convicted	5
	Possession by a driver of five or more grams of methamphetamine in a vehicle		5 year revocation if convicted	0

Jurisdiction	Non-Highway Safety Violation	Explanation	Length of suspension	# of Suspensions Issued in 2010
Tennessee, <i>continued</i>	Using false identification to purchase alcohol		1 <sup>st</sup> offense = 1 year 2 <sup>nd</sup> offense = 2 years or until 21 whichever longer	0
	Possession or carrying weapons on school property (under 18 years of age)		1 <sup>st</sup> offense – 1 year or until 17 2 <sup>nd</sup> offense – 2 years or until 18, whichever longer	79
Texas	Assembling or Operating an Amusement Ride While Intoxicated	If a person is intoxicated while operating or assembling a mobile amusement ride	90 days up to 2 years	0
	Authorization Withdrawn	Upon request of the Cosigner for a Minor' license the authorization is withdrawn and the minor's license is cancelled	Indefinitely or until the Minor receives authorization or becomes a legal adult	123
	Boating While Intoxicated	If a person is intoxicated while operating a watercraft	90 days up to 2 years	31
	Cancelled Verify Issue (PDPS)	If the person has committed an offense in another state that would be grounds for suspension in Texas	Indefinite or until compliance with other state is verified through PDPS	2,218 Notices sent
	Controlled Substance Act	A controlled substance offense committed by persons age 10-16	180 days	0
	Dangerous Drug Act	A person commits an offense if they person possesses a dangerous drug unless the person obtains the drug from a pharmacist	1 <sup>st</sup> offense is a 1 year suspension; subsequent is 18 months	77
	Department of State Health Services Overpayment	When the Department of State Health Services makes an accidental overpayment and is not able to collect	Indefinite or until payment is made in full and the Department is notified by DSHS	45
	Drug Offenses	A drug offense or controlled substance offense	180 days	21,982
	Drug Offenses -Prohibition Orders	For individuals with a drug charge and no Texas DL	Denied issuance of a license for 180 days	1,839
	Evade Arrest	A person commits an offense if he intentionally flees from a person he know is a peace officer attempting lawfully to arrest or detain him	1 <sup>st</sup> offense is a 1 year suspension; subsequent is 18 months	125

Jurisdiction	Non-Highway Safety Violation	Explanation	Length of suspension	# of Suspensions Issued in 2010
Texas, <i>continued</i>	Failure to Complete Drug Education Program	If a person is convicted of a drug offense, they are required to complete a 15 hour drug education course	Indefinite or until the course is completed a proof provided	15,485 Notices sent
	Failure to pay Child Support	If a person owes overdue child support, or has entered into a payment schedule for overdue child support and has failed to comply	Indefinite or until Attorney General's office sends notice of compliance	965
	Family Code 54.042 Fine/Contempt of Court Failure to Complete Tobacco Awareness Course Truancy	A license suspension or deny issuance of a license for a Juvenile Suspensions involving: Alcohol and drug offenses; failure to pay; failure to complete required Tobacco course; Graffiti, Trafficking; Truancy	180 days -365 days	17,069
	Flying While Intoxicated	If a person is intoxicated while operating an aircraft	90 days up to 2 years	0
	Failure To Appear/Pay- Adult	If the person failed to appear on a traffic citation	Indefinite until paid and cleared in Omnibase	14,198
	Graffiti	If a person intentionally and knowingly makes markings, including inscriptions, slogans, drawings or paintings on the tangible property of the owner without their knowledge or consent	1 year from date of conviction or denial for 1 year after the date the person applies for a license	5
	Incomplete Driver Education	If the person is between the ages of 16 and 25 and notification is provided to the agency that they have not met their driver education requirements or failed to complete the driver education course	Indefinitely or until the minor completes a driver education course.	445
	Public Intoxication	If the person appears in a public place while intoxicated to the degree that they may endanger themselves or another	90 days up to 2 years	1,194
	Racing	If the person is operating a motor vehicle in connection with a drag race, an exhibition of vehicle speed or acceleration or to make a vehicle speed record	1 year or until court notifies of completion of community service	0
	Sex Offender Revocation-failure to obtain annual photo DL/ID	A person who is a Sex Offender and required to register with local law enforcement and fails to apply for the renewal of their driver license annually	Indefinite until renewal.	Not Available

Jurisdiction	Non-Highway Safety Violation	Explanation	Length of suspension	# of Suspensions Issued in 2010
Texas, <i>continued</i>	Subsequent Education Program	If the court requires an education program	365 days or prohibited from obtaining a license for 365 days	1,241
	Temporary Visitor	If the person is a temporary visitor as identified by legal immigration documents and has not met the agencies requirement to provide evidence of documents that extend their legal presence	Indefinite or until documentation is provided to show extension of lawful presence	18,850 Notices sent
	Theft of Fuel	If the person dispensed motor fuel in the fuel tank of a motor vehicle at an establishment for which motor fuel is offered and after dispensing, left the premises without payment	180 days from date of conviction or denial for 180 days after the date the person applies for a license unless previously denied or suspended under this law, then it's a 1 year suspension or denial	8
	Volatile Chemical Act Offense	If the person is under 21 years of age at the time of the offense is involved in the manufacture, delivery, possession, transportation, use of a dangerous drug or an abusable volatile chemical	1 <sup>st</sup> offense is a 1 year suspension; subsequent is 18 months	0
	Zero Tolerance Offenses:	If the person appears in a public place while intoxicated to the degree that they may endanger themselves or another	30 days – 1 year	17,785
	<ul style="list-style-type: none"> <li>• Minor in Possession</li> <li>• Attempt to Purchase Alcohol by a Minor</li> <li>• Purchase of Alcohol by a Minor</li> <li>• Consumption of Alcohol by a Minor</li> <li>• Misrepresentation of Age by a Minor</li> <li>• Public Intoxication</li> <li>• Purchase Furnish Alcohol to a Minor</li> </ul>			

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Jurisdiction	Non-Highway Safety Violation	Explanation	Length of suspension	# of Suspensions Issued in 2010
Vermont	Burning or causing to be burned solid waste (BRN)	Electronic process	10-days	3
	Failure to pay penalty for furnishing tobacco products to a minor (CHU)	Electronic process	indefinite	8
	Failure to pay fine for minor's in possession of tobacco products-first offense-no license (CIG)	Electronic process	indefinite	62
	Failure to pay fine for minor's in possession of tobacco products-subsequent offense-no license (C12)	Electronic process	1-year	69
	Diversion/repurative board recall (DRB)	Electronic process	30-days	1
	False public alarm- licensed- first offense (ED1)	Electronic process	180-days	1
	False public alarm- licensed-subsequent offense (ED2)	Electronic process	2-years	0
	False public alarm- underage – first offense (ED3)	Electronic process	180-days	1
	False public alarm- underage-subsequent offense (ED4)	Electronic process	2-years	1
	Improper Person (IP)	Manual process	Indefinite	435
	Delinquent poll tax (PT)	Manual process	Indefinite	0
	Non-payment of purchase and use tax (PU)	Manual process	Indefinite	0
	Suspension for non-payment of child support (SUP)	Electronic process	Indefinite	53

Jurisdiction	Non-Highway Safety Violation	Explanation	Length of suspension	# of Suspensions Issued in 2010
<b>Vermont, continued</b>	Failure to pay fine for minor's in possession of tobacco products-first offense-licensed (TOB)	Electronic process	indefinite	13
	Failure to pay fine for minor's in possession of tobacco products-subsequent offense- licensed (T02)	Electronic process	90-days	8
	Withdrawal of parental consent (WPC)	Manual process	Indefinite until applicant is 18 years old	0
	Minor (Over 16 Yrs. Old) Misrepresenting Age To Procure Alcoholic Beverage (16A)	Electronic process	90-days	11
	Minor (Over 16 Yrs. Old) In Possession Of Alcoholic Beverage (16B)	Electronic process	90-days	97
	Minor (Over 16 Yrs. Old) Consumed Alcoholic Beverage (16C)	Electronic process	90-days	710
	Failure to pay child support	Department of Social Services initiates DL suspension if a driver is 90 days or more or in an amount of \$5,000 or more behind in payments.	**Indefinite - Suspension	9,507
<b>Virginia</b>	Possession of Drugs	DL suspended upon conviction or deferral of further proceedings for drug violations	6 month revocation may run consecutively to other orders	29,086
	Failure to pay fines and cost- due to non-driving related violation	Failure to pay fines and cost- due to non-driving related violation	**Indefinite - Suspension	169,906
	Failure to Satisfy Judgments/Judgment defaults	Failure to Satisfy Judgments/Judgment defaults	**Indefinite - Suspension	5,807
	Purchasing, possessing or consuming alcohol by persons under the age of 21	Purchasing, possessing or consuming alcohol by persons under the age of 21	Juvenile Finding - 6 months Conviction - Not less than 6 months and not more than 1 year	999
	Purchasing alcohol for an under aged	Purchasing alcohol for an under aged person	Up to 1 Year	Number of



Jurisdiction	Non-Highway Safety Violation	Explanation	Length of suspension	# of Suspensions Issued in 2010
Virginia, continued	person			suspensions issued in 2010 included in "Purchasing, possessing or consuming alcohol by persons under the age of 21"
	Using a false ID card/DL to obtain alcohol		Up to 1 Year	Number of suspensions issued in 2010 included in "Purchasing, possessing or consuming alcohol by persons under the age of 21"
	Juvenile firearm possession	Juvenile firearm possession	Not less than 30 days	Number of suspensions issued in 2010 included in "Purchasing, possessing or consuming alcohol by persons under the age of 21"
	Juvenile bomb threat/felony drug possession	Juvenile bomb threat/felony drug possession	1 year or until the juvenile is 17 years old for 1 <sup>st</sup> offense 1 year or until the juvenile is 18 years old for 2 <sup>nd</sup> offense	Number of suspensions issued in 2010 included in "Purchasing, possessing or consuming alcohol by persons under the age of 21"
	Juvenile truancy	Juvenile truancy	Not less than 30 Days	43
	Fail to appear on warrant	Fail to appear on warrant	**Indefinite – Suspension	2

Jurisdiction	Non-Highway Safety Violation	Explanation	Length of suspension	# of Suspensions Issued in 2010	
Washington	Failure to pay child support	Department of Social and Health Services notifies Department of Licensing (DOL) to take action.	Indefinite	12,748	
	Improper use of a DL/ID card – non-traffic safety related	Same as fraud	Same as fraud	0	
	Theft of gas	Washington State Courts notifies DOL of a conviction.	Up to 6 months, determined by the court.	0	
	Minor in Possession of alcohol, drugs or firearms- non-driver	Washington State Courts or diversion agencies notify DOL of a conviction.	Time varies depending on the violator's age. Maximum of 4 years.	5,520	
	Unattended child in a running vehicle (2 or more offenses)	Washington State Courts notifies DOL of a conviction.	1 year	0	
	Delinquency		Up to 2 years	2	
	Truancy		30 days to 1 year	1,308	
	Underage Consent Decree		Up to 2 years	None	
	Juvenile Controlled Substances		6 months to 5 years	152	
	Drug possession (adult)		6 months to 5 years	1,663	
Wisconsin	Failure to pay child support		Up to 5 years	3,708	
	Failure to pay juvenile witness fee	For violations of local ordinance, nonpayment of victim witness fee	2 to 5 years, depending on violation	19,688	
	Juvenile Alcohol	Under 17	30 days to 2 years	1,240	
	Underage Alcohol	17 – 20 years of age	30 days to 2 years	7,266	
	Juvenile ID violations	Under 17	30 to 90 days	3	
	Underage ID violations	Age 17 - 20	30 to 90 days	11	

Jurisdiction	Non-Highway Safety Violation	Explanation	Length of suspension	# of Suspensions Issued in 2010
Wyoming	Child Support		indefinite	11
	Fuel theft	Driving off without paying for fuel	30 to 90 days	0
	Transporting liquor to a minor		1 year	0

Information in this table was provided by the responding jurisdiction.

## **Exhibit H**

Declaration of Samuel Brooke

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inability to pay may result in penalizing indigent individuals solely because of their poverty, in violation of the due process and equal protection clauses of the Fourteenth Amendment.

### **INTEREST OF THE UNITED STATES**

The United States has authority to file this Statement of Interest pursuant to 28 U.S.C. § 517, which permits the Attorney General to attend to the interests of the United States in any case pending in federal court. The United States has a strong interest in ensuring that state and local criminal justice systems operate in a manner that is consistent with constitutional requirements. The United States enforces the law enforcement misconduct provisions of the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141, which authorizes the Attorney General to file lawsuits seeking declaratory and injunctive relief to reform law enforcement conduct that deprives individuals of rights protected by the Constitution or federal law. Pursuant to this statute, the United States has conducted investigations and secured injunctive relief in civil cases to ensure that local justice systems respect the due process and equal protection rights of those charged with offenses. *See, e.g.*, Dep't of Justice, Civil Rights Division, Investigation of the Ferguson Police Department (2015) at 50-51, 101 (specifically identifying harms of imposing driver's license suspensions in response to nonpayment of fines and fees); Consent Decree, *United States v. City of Ferguson, Mo.*, 16-cv-180 (E.D. Mo. filed Feb. 10, 2016) [ECF No. 41] at ¶¶ 351-52 (setting forth requirements regarding driver's license suspensions).

The United States has also taken other action to address the specific problem of inequality in the imposition and enforcement of court fines and fees. In December 2015, the Department's Office for Access to Justice, Civil Rights Division, and Office of Justice Programs convened a meeting of policymakers, judges, prosecutors, defense attorneys, and advocates to



discuss how certain practices with respect to the imposition and enforcement of criminal justice fines and fees—including the use of license suspensions as a means of coercing the payment of criminal justice fines and fees—can result in unlawful and harmful conduct. In September 2016, the Department held a second convening on these issues in order to highlight positive measures that have been implemented and identify continuing areas of concern.

Additionally, in March 2016, the Department provided a package of resources, including a grant solicitation, to state and local courts to support the ongoing work of state judges, court administrators, policymakers, and advocates to ensure equal justice for all, regardless of a person's financial circumstances. Together with the announcement of the grant program and other support, the Department also issued a guidance letter for state and local courts to clarify the legal framework that governs the enforcement of court fines and fees. Within that guidance, the Department raised concerns regarding using driver's license suspensions as a debt collection tool, and made clear that "[i]f a Defendant's driver's license is suspended because of failure to pay a fine, such a suspension may be unlawful if the defendant was deprived of his due process right to establish inability to pay."<sup>1</sup>

## BACKGROUND

Some jurisdictions in the United States authorize the suspension of driver's licenses not only in situations in which a driver poses a risk to public safety, but also as a consequence for failing to pay court debt.<sup>2</sup> In California, for instance, reports show that over a recent eight-year period more than 4.2 million individuals, or 17 percent of California's driving population, have

<sup>1</sup> Principal Deputy Assistant Attorney General of the Civil Rights Division Vanita Gupta and Director of the Office of Access to Justice Lisa Foster, *Dear Colleague Letter* (Mar. 14, 2016) (hereinafter "March 14, 2016 Dear Colleague Letter"), available at <https://www.justice.gov/crt/file/832461/download>.

<sup>2</sup> For clarity and consistency with the terminology used in the Complaint, the United States uses the term "court debt" herein to refer to all "fines, costs, forfeitures, restitution, or penalties" assessed by a court against a person resulting from a traffic or criminal proceeding. Complaint at ¶ 29.

had their driver's licenses suspended as a result of a failure to appear or pay fines and fees.<sup>3</sup> In Virginia, the Department of Motor Vehicles reported that as of 2015, the driver's licenses of approximately 900,000 individuals, or one in six licensed drivers, were under suspension for nonpayment of fines and court costs. *See* Complaint [ECF No. 1] at ¶¶ 327-28.<sup>4</sup>

While driver's license suspensions vary in both process and scope across different jurisdictions, using driver's license suspensions to compel the payment of outstanding court debt, and the resulting punishment of people who cannot afford to pay, has received significant attention in recent years. As the Department noted in its March 14, 2016 Dear Colleague Letter, researchers have raised concerns regarding the substantial harm this practice imposes on individuals, as well as its efficacy—including that it undermines public safety interests and inhibits a person's ability to pay owed fines and fees.<sup>5</sup> Some jurisdictions have enacted, or are actively considering, legislation or other measures to limit the circumstances in which a driver's license may be suspended. *See, e.g.*, Mo. Ann. Stat. § 302.341 (limiting scope of Missouri's practice of suspending driver's licenses for nonpayment to cases involving non-minor moving violations); Wash. Rev. Code Ann. § 46.20.289 (ending Washington's practice of suspending licenses for nonpayment in cases involving non-moving traffic violations). And specific license

<sup>3</sup> Lawyers' Committee for Civil Rights, *Not Just a Ferguson Problem: How Traffic Courts Drive Inequality in California* 13-14 (2015), available at <http://www.lccr.com/not-just-ferguson-problem-how-traffic-courts-drive-inequality-in-california/>.

<sup>4</sup> "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009), quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). The United States therefore assumes the facts presented in the Plaintiffs' Complaint to be true for purposes of this Statement of Interest.

<sup>5</sup> *See* March 14, 2016 Dear Colleague Letter, *supra* note 1, at 6-7, n.7 (citing Am Ass'n of Motor Veh. Adm'rs., *Best Practices Guide to Reducing Suspended Drivers* 3 (2013)) (recommending that "legislatures repeal state laws requiring the suspension of driving privileges for non-highway safety related violations" and citing research supporting view that fewer driver suspensions for non-compliance with court requirements would increase public safety); Shaila Dewan, *Driver's License Suspensions Create Cycle of Debt*, N.Y. Times, April 14, 2015, available at <http://www.nytimes.com/2015/04/15/us/with-drivers-license-suspensions-a-cycle-of-debt.html> (comparing driver's license suspension practices and detailing impact of those practices).

suspension practices have been challenged on the grounds that they violate state or federal law. *See, e.g., Hernandez v. California Dep't of Motor Vehicles*, No. RG16836460 (Super. Ct. of Alameda Cnty., filed Oct. 25, 2016); *Rubicon Programs v. Solano County Superior Court*, No. FCS047212 (Super. Ct. of Solano Cnty., filed June 15, 2016).

Plaintiffs, four individuals whose driver's licenses have been suspended due to their failure to pay fines, fees, or costs assessed by Virginia courts, filed a Complaint in July 2016 against Richard D. Holcomb in his official capacity as the Commissioner of the Virginia Department of Motor Vehicles (hereinafter, "Defendant"), alleging that the specific practices Virginia employs to suspend the driver's licenses of those who fail to pay fines or fees violates the Constitution. *See generally* Complaint. In part, Plaintiffs allege that Defendant automatically suspends the driver's licenses of those who miss court payments (regardless of whether those payments are related to a traffic or non-traffic offense) without providing an adequate opportunity to be heard, and without any inquiry into whether the missed payment was the result of an inability to pay. *Id.* at ¶¶ 409-28. Plaintiffs seek declaratory relief, as well as injunctive relief prohibiting Defendant from suspending driver's licenses due to nonpayment of fines and fees until Virginia can do so in a constitutional manner. Complaint at 54-55.

On October 3, 2016, Defendant moved to dismiss Plaintiffs' Complaint. Motion to Dismiss [ECF No. 9]. In addition to arguing that Plaintiffs' Complaint is procedurally barred, Defendant also argues that Plaintiffs' due process and equal protection claims fail to state a claim upon which relief can be granted. Memorandum in Support of Defendant's Motion to Dismiss [ECF No. 10] (hereinafter, "Defendant's Memorandum") at 30-40.<sup>6</sup>

<sup>6</sup> The United States does not take any position on Defendant's claim that the Complaint is procedurally barred, or any other issue in this litigation not addressed herein.

## DISCUSSION

### A. **The Fourteenth Amendment Guarantee of Procedural Due Process Prohibits the Automatic Suspension of a Driver's License for Failure to Pay Court Debt Absent Notice and a Meaningful Opportunity to be Heard**

The cornerstone of due process is that when the deprivation of a protected property interest is at stake, the state must provide notice and the opportunity to be heard “at a meaningful time and in a meaningful manner.” *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965); *see also Mathews v. Eldridge*, 424 U.S. 319, 333 (1976); *Fuentes v. Shevin*, 407 U.S. 67, 80-82 (1972); *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314-315 (1950) (“An elementary and fundamental requirement of due process in any proceeding . . . is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.”) (citations omitted).

A driver's license is a protected interest that, once issued, cannot be revoked or suspended “without that procedural due process required by the Fourteenth Amendment.” *Bell v. Burson*, 402 U.S. 535, 539 (1972) (citations omitted). As with all deprivations of protected interests, the specific process that must be afforded in suspending a person's driver's license varies depending on what “the particular situation demands.” *Mathews*, 424 U.S. at 334 (internal quotation marks and citation omitted). The Supreme Court has articulated a three-part inquiry for evaluating the constitutional sufficiency of the process provided when a protected interest is affected: (1) the nature of the private interest that will be affected by the governmental action; (2) the risk of erroneous deprivation and the probable value of requiring additional procedural safeguards; and (3) the government's interest, including the fiscal and administrative burdens that additional procedural safeguards would entail. *Id.* at 335 (citations omitted).

Applying these factors in cases involving driver's license suspensions, the Supreme Court has found varying degrees of process due depending on the nature and circumstances of the

suspension.<sup>7</sup> In *Bell*, the Court considered a challenge to a statutory scheme requiring the suspension of the driver's license of any uninsured driver who failed to post security following an accident, regardless of whether that driver was at fault for the accident. *Bell*, 402 U.S. at 535-37. The Court held that, in light of the fact that there was no emergency circumstance requiring the immediate suspension of the driver's license, due process required the driver to be provided with a meaningful opportunity to be heard (though not necessarily a full evidentiary hearing) before the license suspension occurred.<sup>8</sup> *Id.* at 540-42. In other circumstances where suspensions are more directly related to a state's interest in maintaining public safety on its roads and highways, the Court has found that a post-suspension hearing is sufficient. In *Dixon v. Love*, 431 U.S. 105, 113-15 (1977), for instance, the Court upheld a statute requiring the suspension or revocation of a driver's license if a driver is repeatedly involved in accidents or convicted of traffic offenses. *Id.* In those circumstances, the Court held, the statute's provision of a full evidentiary hearing as soon as practicable was sufficient. *Id.* at 114-15. In *Mackey v. Montrym*, 443 U.S. 1, 13-17 (1979), the Court upheld the suspension of a driver's license after an individual was arrested for driving under the influence and refused to take a breath-analysis test, because suspension "substantially served" the government's interest in public safety.

Whereas *Bell*, *Dixon*, and *Mackey* involved challenges to the timing or scope of the opportunity to be heard regarding a driver's license suspension, here Plaintiffs allege that

<sup>7</sup> Citing to *Davis v. Williams* (4th Cir. Va. Apr. 3 1996) (unpublished), Defendant argues that the driver's license suspension statute at issue in this litigation has already been found to comport with procedural due process requirements. See Defendant's Memorandum at 32. However, the unpublished, four-paragraph decision in *Davis* relies on the fact that the claims were procedurally barred and does not address the procedural due process claims at issue in this case.

<sup>8</sup> While the Supreme Court decided *Bell* four years before it decided *Mathews*, the Court's analysis in these cases was grounded in similar considerations. Compare *Bell*, 402 U.S. at 539-40 (weighing individual interest, sufficiency of existing process, and government interest), with *Mathews*, 424 U.S. at 335 (instructing that courts consider individual interest, risk of erroneous deprivation and benefits of additional process, and government interest).

Defendant suspends the driver's licenses of those who miss required court payments without providing an opportunity to be heard *at all*. Complaint at ¶ 39. Rather, Plaintiffs allege that individuals are only provided with basic notice of the license suspension and no means to challenge that suspension. Complaint at ¶¶ 275, 277. Specifically, Plaintiffs allege that after fines, costs, and fees are assessed, courts provide individuals with a form to acknowledge that the failure to pay the identified amount will result in the automatic suspension of the person's driver's license. *Id.* Plaintiffs further allege that the form provided does not notify people of any availability of a hearing regarding the suspension, nor is a hearing available in fact. *Id.* at ¶¶ 291-93. If, after 30 days, payment has not been received, Plaintiffs allege that the court automatically transmits a record of nonpayment to the Virginia Department of Motor Vehicles (DMV). *Id.* at ¶¶ 279, 284, 286. According to Plaintiffs, upon receipt of such a record, the DMV immediately suspends the individual's driver's license without any further notice and without conducting any separate inquiry into the reason for the default or the appropriateness of the suspension. *Id.* at ¶¶ 285-90. Plaintiffs state that suspensions remain in effect until all outstanding court debt is paid in full, or a payment plan is secured. *Id.* at ¶ 296. Finally, Plaintiffs allege that a reinstatement fee of at least \$145 must also be paid before the suspension is lifted. *Id.* at ¶ 297.

Assuming these allegations to be true, as required at the motion to dismiss stage, and based upon relevant precedent and consideration of the *Mathews* factors, the driver's license suspension practices employed by Defendant fail to comport with due process requirements. Turning to the first *Mathews* factor, a person's interest in continuing to hold a valid driver's license "is a substantial one." *Mackey*, 443 U.S. at 11; *see also Dixon*, 431 U.S. at 113; *Bell*, 402 U.S. at 539. License suspensions can impose significant harm on the well-being of individuals



and their families. *Bell*, 402 U.S. at 539. Depriving individuals of the use of their vehicle can imperil their ability to earn a living, pursue educational opportunities, and care for family.<sup>9</sup> These harms may be particularly acute in rural areas of Virginia where there is limited public transportation and where essential services, such as health care and schools, may well be long distances from people's homes. A driver's license suspension is thus a significant interest, the deprivation of which can impose substantial harm. *Cf. Memphis Light, Gas & Water Div. v. Craft*, 436 U.S. 1, 18 (1978) (noting that utility service "is a necessity of modern life" and that the discontinuance of service "for even short periods of time may threaten health and safety" in holding that due process required greater procedural protections than were afforded); *Goldberg v. Kelly*, 397 U.S. 254, 264 (1970) (citations omitted) (noting that welfare benefits provided "the means to obtain essential food, clothing, housing, and medical care" in holding that due process required hearing before termination of benefits).

The Supreme Court has also instructed that the duration of any potentially wrongful deprivation is an important part of assessing "the impact of official action on the private interest involved." *Mackey*, 443 U.S. at 12 (citation omitted); *Mathews*, 424 U.S. at 341. Here, Plaintiffs allege that under Virginia's statutory scheme a driver's license suspension for a missed payment remains in effect until the debt triggering the suspension is paid in full (along with a

<sup>9</sup> See, e.g., Robert Cervero, et al., *Transportation as a Stimulus of Welfare-to-Work: Private versus Public Mobility*, 22 J. PLAN. EDUC. & RES. 50 (2002); Alan M. Voorhees, et al., *Motor Vehicles Affordability and Fairness Task Force: Final Report*, at xii (2006), available at [http://www.state.nj.us/mvc/pdf/About/AFTF\\_final\\_02.pdf](http://www.state.nj.us/mvc/pdf/About/AFTF_final_02.pdf) (a study of suspended drivers in New Jersey, which found that 42 percent of people lost their jobs as a result of the driver's license suspension, that 45 percent could not find another job, and that this had the greatest impact on seniors and low-income individuals). *Cf.* Pew Research Center, *The Fading Glory of The Television and Telephone 1* (2014), <http://assets.pewresearch.org/wp-content/uploads/sites/3/2011/01/Final-TV-and-Telephone.pdf> (last accessed October 17, 2016) (noting 2010 study showing that 86 percent of Americans believe that a car is a necessity).

reinstatement fee), which may result in a prolonged deprivation, particularly for indigent defendants. Complaint at ¶¶ 296-97.<sup>10</sup>

With respect to the second *Mathews* factor, there is a significant risk that the alleged practices will result in erroneous deprivations of driver's licenses. Plaintiffs allege that driver's licenses are automatically suspended on the basis of determinations by court clerks that are susceptible to clerical errors that may result in wrongful revocation, Complaint at ¶¶ 286-89—e.g., because the license suspension was requested against the wrong person or because fines and fees were actually paid but improperly recorded. Additionally, there are a number of situations where a person may not have paid the fine, but revocation may nonetheless be inappropriate—e.g., if a person never received notice of the payment due, if a person was hospitalized or otherwise incapacitated for the duration of the time period during which payment could be made, or because financial circumstances made it impossible to pay, *see infra* at 14-19. Indeed, Plaintiffs allege that several of these things happened in their cases. Complaint at 12-13, 15, 19, 24-25.

Virginia's existing procedures are insufficient to protect against these erroneous deprivations and do not serve as an adequate substitute for a meaningful pre-deprivation hearing and appropriate notice of that hearing. Defendant argues that the “due process that is provided in connection with these Plaintiffs' underlying criminal and traffic convictions afford them all the process that is due.” Defendant's Memorandum at 33. Yet the process provided during the adjudication of individuals' underlying offenses is targeted at ensuring that they have notice of

<sup>10</sup> Defendant's reliance on the availability of a “restricted license” for those who have had their licenses suspended as evidence that these individuals may secure the ability to drive is misplaced. Defendant's Memorandum at 11. According to the Complaint, none of the named plaintiffs were in fact eligible for this restricted license, in part because they are not currently employed. Complaint at ¶¶ 42, 118. Further, even for those eligible and able to secure a restricted license, such licenses are only valid for six months. Va. Code § 46.2-395(E). Restricted licenses are thus unavailable in many cases and an inadequate protection against wrongful driver's license suspensions.

the charges against them and a meaningful opportunity to be heard *with respect to those charges*. That process does not provide any opportunity to be heard regarding the event that triggers the driver's license suspension—namely, a person's failure to pay the court debt that stems from the underlying conviction. Indeed, courts do not assess fines or fees until the end of the process provided in connection with the underlying traffic or criminal offense; a person's failure to pay those fines or fees thus necessarily occurs after the conclusion of that process. The circumstances here are therefore distinct from those in *Dixon*, 431 U.S. at 113-14. While the *Dixon* Court concluded that the risk of erroneous deprivation was low in part because due process was afforded in the underlying convictions, there the convictions themselves—and not any other event, like a person's failure to pay—automatically triggered the driver's license suspension. *Id.*<sup>11</sup>

By not providing any forum for individuals facing the suspension of their licenses to be heard, any errors that do occur are likely to persist, with compounding collateral consequences. As the Supreme Court has recognized, erroneous deprivations of driver's licenses are particularly troubling because the state “will not be able to make a driver whole for any personal inconvenience and economic hardship suffered by reason of any delay in redressing an erroneous

<sup>11</sup> Similarly, the availability of appellate review of a defendant's underlying conviction does not satisfy the Commonwealth's obligation to provide a hearing regarding the defendant's failure to pay fines and costs that resulted from that conviction. Defendant's Memorandum at 32. Plaintiffs do not seek to re-litigate the facts related to the underlying conviction, but rather the appropriateness of the license suspension itself. *See Warner v. Trombetta*, 348 F. Supp. 1068, 1071 (M.D. Pa. 1972) (requiring administrative hearing for license suspension that resulted from guilty plea because even if the underlying conviction cannot be contested, there still remains the possibility of error, including misidentification of licensee, miscalculation of fine by the court, or errors on the report of conviction form), *aff'd*, 410 U.S. 919 (1973).

Defendant also points to the availability of a post-conviction “show cause” hearing to challenge outstanding fines and fees. Defendant's Memorandum at 32-33. However, these show-cause hearings can be convened only by the court or a prosecuting attorney and are not required by statute. Va. Code Ann. § 19.2-358(A). Nor does it appear any show-cause hearing was provided to any Plaintiff. *See generally* Complaint. Additionally, the hearings address defaults of deferred payments or installment plans, not erroneous deprivations of driver's licenses. *See* Va. Code Ann. § 19.2-358(A).

suspension through post-suspension review procedures.” *Mackey*, 443 U.S. at 11. To be clear, due process does not require that the process afforded to individuals is entirely free of error. *See id.* at 13; *Mathews*, 424 U.S. at 344. Nonetheless, absent basic procedural protections—including a meaningful pre-deprivation hearing that includes an assessment of the reason for nonpayment—the risk of error under the circumstances alleged by Plaintiffs is substantial and not easily redressed.

Turning to the third *Mathews* factor, the Commonwealth’s relevant interests and the fiscal and administrative burdens of additional or substitute procedural requirements do not outweigh the importance of providing more substantial procedural protections. Courts have recognized that states have a strong interest in using driver’s license suspensions as a way to protect public safety by preventing drivers with habitually unsafe driving records from continuing to drive. *See Dixon*, 431 U.S. at 113-14; *Mackey*, 443 U.S. at 13-17. Here, however, license suspensions are not imposed in response to an identified threat to public safety, but rather in response to missed payments and in order “to compel future compliance with a court order.” Defendant’s Memorandum at 36. Indeed, research shows that suspending driver’s licenses for nonpayment of fines and fees actually *undermines* public safety by diverting law enforcement resources away from traffic violations that do pose a risk to the public and by leading to more unlicensed and uninsured drivers on the roads. *See supra* note 5.

To be sure, the state has an interest in ensuring that offending drivers comply with court orders and bear responsibility for any offense of which they are convicted. But courts have found that this interest is not on par with the state’s interest in protecting public safety, and thus does not provide as strong a justification for failing to provide basic procedural protections. *See, e.g., Dixon*, 431 U.S. at 113-14 (finding that “the important public interest in safety on the roads

and highways, and in the prompt removal of a safety hazard . . . fully distinguishes” the case from *Bell v. Burson*, where the purpose “was to obtain security from which to pay any judgments against the licensee”) (citations and internal quotation marks omitted); *Mackey*, 443 U.S. at 13-17 (1979) (noting that “the paramount interest the Commonwealth has in preserving the safety of its public highways, standing alone, fully distinguishes this case from *Bell*,” as courts have “accorded the states great leeway in adopting summary procedures to protect public health and safety”) (citations omitted); *cf. Tomai-Minogue v. State Farm Mut. Aut. Ins. Co.*, 770 F.2d 1228, 1235 (4th Cir. 1985) (finding post-deprivation hearing to be adequate where statute required driver’s license suspensions against those who failed to satisfy automobile accident judgments).<sup>12</sup>

Further, automatic driver’s license suspensions do not further the Commonwealth’s interest in ensuring compliance with court orders—particularly with respect to indigent defendants, who remain unable to pay court-ordered fines and fees after their driver’s license suspension and may become less able to pay in light of the adverse impact of the suspension on their employment and their lives. Nor would the Commonwealth’s interest in compelling the payment of outstanding court debt be substantially compromised by providing individuals at risk of having their licenses suspended with a meaningful pre-deprivation opportunity to be heard.

<sup>12</sup> Although the Commonwealth’s interest in *Tomai-Minogue*, as here, focused on the collection of money, the court’s analysis makes clear that a license suspension for failure to pay a traffic accident judgment is directly related to public safety because it ensures that drivers can be held responsible, and injured parties made whole, for harms occurring on roadways, which in turn deters reckless driving. *See Tomai-Minogue*, 770 F.2d at 1235 (acknowledging that public safety concerns heighten the state’s interest in swift suspension of a driver’s license, as the interest in ensuring that motorists satisfy judgments “is anything but trivial when accidents involve loss of human life, injury to other motorists, and extensive property damage.”). No such heightened interest exists in the present case, where license suspensions are used to compel the payment of court debts regardless of whether those debts are connected in any way to road safety. Further, the court’s determination that a post-deprivation hearing satisfied due process in *Tomai-Minogue* was also influenced by the particular procedural posture of that case, namely the administrative complexities of requiring a pre-deprivation forum to challenge personal jurisdiction as the plaintiff sought. *Id.* at 1236.

*Cf. Mackey*, 443 U.S. at 18 (finding that “[t]he summary and automatic character of the suspension sanction available under the statute is critical to attainment of [the statutory] objectives” because a “pre-suspension hearing would substantially undermine the state interest in public safety by giving drivers significant incentive to refuse the breath-analysis test”).

Given the importance of driver’s licenses to those who possess them, the significant risk of erroneous suspensions due to the lack of a meaningful opportunity for individuals to be heard regarding the facts giving rise to a driver’s license suspension, and the nature of the Commonwealth’s interest as well as the impact additional procedural protections would have on that interest, Defendant’s driver’s license suspension practices fail to comport with procedural due process requirements.

**B. Automatically Suspending an Individual’s Driver’s License for Failure to Pay Court Debt Without Any Assessment of the Individual’s Ability to Pay or Alternative Means of Securing the Government’s Interest Violates the Fourteenth Amendment**

The Fourteenth Amendment prohibits “punishing a person for his poverty.” *Bearden v. Georgia*, 461 U.S. 660, 671 (1983). Here, Defendant’s practice of automatically suspending the driver’s license of any person who fails to pay outstanding court debt—without inquiring into ability to pay—violates that constitutional principle. Its result is that indigent defendants who cannot afford their fines and fees have their driver’s licenses suspended, while defendants who can afford to pay do not.

In a long line of cases beginning with *Griffin v. Illinois*, 351 U.S. 12, 16 (1956), the Supreme Court has made clear that conditioning access or outcomes in the justice system solely on a person’s ability to pay violates the Fourteenth Amendment. In *Griffin*, the Supreme Court held that a criminal appellant could not be denied the right to appeal based on an inability to pay a fee, finding that “[i]f [the state] has a general policy of allowing criminal appeals, it cannot



make lack of means an effective bar to the exercise of this opportunity.” *Id.* at 24 (Frankfurter, J., concurring). In *Williams v. Illinois*, 399 U.S. 235 (1970), the Court found that a state could not incarcerate an indigent individual beyond the statutory maximum term on account of missed fine and fee payments, because if that incarceration “results directly from an involuntary nonpayment of a fine or court costs we are confronted with an impermissible discrimination that rests on ability to pay.” *Id.* at 240-41. And in *Tate v. Short*, 401 U.S. 395 (1971), the Court found that a state could not convert a defendant’s unpaid fine for a fine-only offense to incarceration because that would subject him “to imprisonment solely because of his indigency.” *Id.* at 397-98.

In *Bearden*, the Court elaborated on this principle in holding that the Fourteenth Amendment prohibits a state from revoking an indigent defendant’s probation for failure to pay a fine and restitution without first “inquir[ing] into the reasons for the failure to pay.” *Bearden*, 461 U.S. at 672. The Court also concluded that, for defendants who could not afford to pay fines or fees imposed for the purposes of punishment, “it is fundamentally unfair to revoke probation automatically without considering whether adequate alternative methods of punishing the defendant are available.” *Bearden*, 461 U.S. at 668-69.

While *Griffin*, *Williams*, *Tate*, and *Bearden* were cases in which a criminal defendant’s liberty interest was directly implicated, “*Griffin*’s principle has not been confined to cases in which imprisonment is at stake.” *M.L.B. v. S.L.J.*, 519 U.S. 102, 111 (1996). Rather, the constitutional principle reaffirmed by these cases prohibits the imposition of adverse consequences against indigent defendants solely because of their financial circumstances, regardless of whether those adverse consequences take the form of incarceration, reduced access to court procedures, or some other burden. The Supreme Court has, for instance, held that an

indigent defendant convicted of nonfelony offenses could not be denied an appellate record even though his convictions resulted in fines, not incarceration. *See Mayer v. Chicago*, 404 U.S. 189, 197 (1971) (noting that the “invidiousness of the discrimination that exists when criminal procedures are made available only to those who can pay is not erased by any differences in the sentences that may be imposed”). The Supreme Court has also applied this principle in cases arising in entirely non-criminal contexts. *See, e.g., M.L.B.*, 519 U.S. at 124 (indigent person could not be denied appeal of decision terminating parental rights due to inability to pay court costs); *Boddie v. Connecticut*, 401 U.S. 371, 382-83 (1971) (a married couple’s divorce could not be denied based on inability to pay court costs).

Despite the clearly established constitutional principle of equal access to justice articulated in *Bearden* and other cases, Defendant argues that even if its practices resulted in indigent defendants having their driver’s licenses suspended because they could not afford to pay outstanding court debt, this practice would fall outside of the Fourteenth Amendment’s prohibition on disparate treatment. *See* Defendant’s Memorandum at 36-40. Specifically, Defendant asserts that Plaintiffs have failed to allege either discriminatory effect or discriminatory intent as required by equal protection clause doctrine. *Id.* This argument is misplaced. In *Bearden*, the Supreme Court explained that because “[d]ue process and equal protection principles converge in the Court’s analysis in these cases,” the traditional equal protection framework does not apply. *Bearden*, 461 U.S. at 665. Given that “indigency in this context is a relative term rather than a classification, fitting the problem of this case into an equal protection framework is a task too Procrustean to be rationally accomplished.” *Id.* at 666 n.8 (citation and internal quotation marks omitted); *see also M.L.B.*, 519 U.S. at 127 (explicitly declining to apply traditional equal protection clause framework in holding Constitution requires

availability of appellate review of the termination of parental rights). Instead, in determining whether a particular practice violates the constitutional prohibition on “punishing a person for his poverty,” courts must assess “the nature of the individual interest affected, the extent to which it is affected, the rationality of the connection between legislative means and purpose, [and] the existence of alternative means for effectuating the purpose.” *Bearden*, 461 U.S. at 666-67 (citation omitted; brackets in original).

Applying these factors here, and assuming the facts alleged in the Complaint, Defendant’s practice of automatically suspending the driver’s license of a defendant who fails to pay owed court debt without any inquiry into the defendant’s financial circumstances—i.e., whether the nonpayment was willful or the result of an inability to pay—violates the Fourteenth Amendment.

The individual interest in maintaining possession of a driver’s license “is a substantial one,” *Mackey*, 443 U.S. at 11, and the practices at issue significantly impair that interest. As set forth in detail *supra* at 8-10, driver’s licenses are often crucial to a person’s well-being. Indeed, the interest in a driver’s license may be even greater for indigent persons without means to secure alternate methods to provide care for themselves or their families.<sup>13</sup> *See Mayer*, 404 U.S. at 197 (noting that penalty other than incarceration “may bear as heavily on an indigent accused as forced confinement[,]” and stressing that “[t]he collateral consequences of conviction may be even more serious”). Further, suspending a person’s driver’s license entirely deprives that person of the lawful ability to drive, as every state prohibits driving without a license or with a suspended license. Additionally, Virginia is one of 41 states, as well as the District of Columbia, where a first conviction for driving with a suspended license may carry a sentence of

<sup>13</sup> *See, e.g.*, Mikayla Bouchard, Transportation Emerges as Crucial to Escaping Poverty, N.Y. Times, May 7, 2015, <http://www.nytimes.com/2015/05/07/upshot/transportation-emerges-as-crucial-to-escaping-poverty.html>.

incarceration. *See* Va. Code Ann. §§ 46.2-301, 18.2-11; *see also* *Driving While Revoked, Suspended, or Otherwise Unlicensed: Penalties By State*, National Conference of State Legislatures, <http://www.ncsl.org/research/transportation/driving-while-revoked-suspended-or-otherwise-unli.aspx> (last accessed October 31, 2016). This risk is all too real for people who have no other option but to drive unlawfully in order to work, care for their children, or attend crucial medical appointments.

Further, the automatic suspension of driver's licenses for failure to pay fines or fees does not advance a state's inherent interest in promoting public safety, *see supra* at 12-13, nor is it an effective means of achieving the identified purpose of this practice, *see supra* at 13-14—namely compelling “future compliance with a court order.” Defendant's Memorandum at 36. This is particularly true with respect to defendants who have failed to pay fines or fees because they could not afford to do so; they will not have any greater ability to pay after their license is suspended. *See Bearden*, 461 U.S. at 670 (“Revoking the probation of someone who through no fault of his own is unable to make restitution will not make restitution suddenly forthcoming.”). Indeed, in light of the impact a driver's license suspension can have on a person's ability to maintain employment, *see supra* at 9, in many cases suspending a person's license may impair that person's ability to satisfy outstanding court debt and thus frustrate, rather than advance, the interest identified here.<sup>14</sup>

Further, as the Court made clear in *Bearden*, there are alternative means, other than attempting to compel the payment of fines or fees through driver's license suspensions, for

<sup>14</sup> *See* Arthur W. Pepin, Conference of State Court Administrators, 2015-2016 Policy Paper, *The End of Debtors' Prisons: Effective Court Policies for Successful Compliance with Legal Financial Obligations* 5 (2016), citing Alicia Bannon, Mitali Nagrecha and Rebekah Diller, *Criminal Justice Debt: A Barrier to Reentry* 19 (2010) (“Because of the detrimental effects suspensions have on the employment prospects of indigent people and because debt-related suspensions have no relation to driver safety, the practice of suspending licenses for failure to pay fees is completely lacking in rehabilitative or deterrent value.”).

securing the Commonwealth's underlying interest in punishing crimes and traffic violations of indigent defendants. These alternatives include reducing fines or fees to a manageable amount in accordance with a person's ability to pay, offering community service programs, or requiring the completion of coursework, such as traffic safety classes.<sup>15</sup> See *Bearden*, 461 U.S. at 672 (noting that "[t]he State is not powerless to enforce judgments against those financially unable to pay a fine" and highlighting alternative mechanisms available to states, such as community service) (citation and internal quotation marks omitted; alteration in original). Absent the use of these alternative mechanisms, indigent defendants who are unable to pay the fines and fees they owe face the suspension of their driver's license, while defendants who can afford to pay do not. This disparity is "wholly contingent on one's ability to pay" in violation of constitutional requirements. *M.L.B.*, 519 U.S. at 127 (citing *Williams*, 399 U.S. at 242) (internal quotation marks omitted).

In light of these factors and Plaintiffs' factual allegations, the practice of automatically suspending an indigent person's driver's license for failure to pay money owed to a court without adequate consideration of the person's ability to pay violates the Fourteenth Amendment.

### CONCLUSION

For the foregoing reasons, the United States respectfully requests that the Court conclude that Plaintiffs have set forth a plausible claim for relief that the alleged driver's license

<sup>15</sup> As the Department of Justice has recognized, in certain circumstances payment plans may be one appropriate alternative for individuals who cannot afford to pay the entire amount owed during the required time period. See Dear Colleague Letter, *supra* note 1, at 4. Defendant asserts that courts in Virginia provide the opportunity for people to enter "deferred payment schemes" in order to avoid automatic license suspension upon default. Defendant's Memorandum at 33. However, if, as Plaintiffs allege, there are conditions restricting access to payment plans, including criminal history requirements, inflexible minimum payments, or substantial down payments, payment plans may be insufficient to adequately alleviate impairment of ineligible individuals' constitutional rights. Additionally, some individuals may lack the ability to pay any money for the foreseeable future. For these persons, states must consider alternative options that do not require monetary payment.

suspension practices violate the Fourteenth Amendment by failing to (1) comport with procedural due process requirements and (2) consider defendants' ability to pay.

Respectfully submitted,

JOHN P. FISHWICK, JR.  
United States Attorney  
Western District of Virginia

/s/ Anthony P. Giorno  
ANTHONY P. GIORNO (VA 15830)  
Assistant United States Attorney  
Western District of Virginia  
Post Office Box 1709  
Roanoke, Virginia 24008-1709  
Telephone: (540) 857-2906  
anthony.giorno@usdoj.gov

LISA FOSTER (CA 122178)  
Director  
Office for Access to Justice  
Telephone: (202) 514-7073  
lisa.foster3@usdoj.gov

KAREN LASH (CA 132133)  
Deputy Director  
Office for Access to Justice  
Telephone: (202) 307-3573  
karen.lash@usdoj.gov

ROBERT B. BULLOCK (CA 219942)  
Senior Counsel  
Office for Access to Justice  
Telephone: (202) 514-5324  
bob.bullock@usdoj.gov

PAUL KILLEBREW (LA 32176)  
Office for Access to Justice  
950 Pennsylvania Avenue, NW  
Washington, D.C. 20530  
Telephone: (202) 514-7086

VANITA GUPTA  
Principal Deputy Assistant Attorney General  
Civil Rights Division

ROBERT MOOSSY  
Deputy Assistant Attorney General  
Civil Rights Division

CHIRAAG BAINS  
Senior Counsel to the Assistant Attorney  
General  
Civil Rights Division

STEVEN H. ROSENBAUM  
Section Chief  
Civil Rights Division  
Special Litigation Section

JUDE VOLEK (NY 10041483N)  
Special Counsel  
Civil Rights Division  
Special Litigation Section  
Telephone: (202) 353-1077  
jude.volek@usdoj.gov

/s/ Maureen Johnston  
MAUREEN JOHNSTON (WA 50037)  
Trial Attorney  
Civil Rights Division  
Special Litigation Section  
Telephone: (202) 353-1146  
maureen.johnston@usdoj.gov

/s/ Seth Wayne  
SETH WAYNE (LA 34144)  
Trial Attorney



paul.killebrew2@usdoj.gov

Civil Rights Division  
Special Litigation Section  
950 Pennsylvania Avenue, NW  
Washington, D.C. 20530  
Telephone: (202) 353-3539  
seth.wayne@usdoj.gov

JA227

## **Exhibit I**

Declaration of Samuel Brooke

JA228

**From:** [Brockwell, John](#)  
**To:** [Daniel Bowes](#)  
**Subject:** failure to pay  
**Date:** Tuesday, September 26, 2017 3:40:20 PM  
**Attachments:** [image001.png](#)

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Daniel:

The total number of Failure to Pay is 436,050.

Please let us know if you have further inquiries. Thanks.

**John Brockwell**

Communications Officer  
Division of Motor Vehicles  
North Carolina Department of Transportation

919 861 3019 office

919 609 2535 cell

[jbrockwell@ncdot.gov](mailto:jbrockwell@ncdot.gov)

1100 New Bern Avenue  
3101 Mail Service Center  
Raleigh, North Carolina 27697



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JA229

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

SETI JOHNSON and MARIE  
BONHOMME-DICKS, on behalf of  
themselves and those similarly situated,  
and SHAREE SMOOT and NICHELLE  
YARBOROUGH, on behalf of  
themselves and those similarly situated,

Plaintiffs,

v.

TORRE JESSUP, in his official capacity  
as Commissioner of the North Carolina  
Division of Motor Vehicles,

Defendant.

Case No. 1:18-cv-00467

(CLASS ACTION)

**FIRST AMENDED CLASS ACTION COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE RELIEF**

**I. PRELIMINARY STATEMENT**

1. Plaintiff Seti Johnson, a 27-year-old father of three young children, works sporadic jobs and supports his family on limited financial means. Plaintiff Marie Bonhomme-Dicks, a single mother and the sole caretaker and financial provider for her son, often sells her plasma because she cannot make ends meet with her part-time job. Because they cannot pay their traffic tickets, both Mr. Johnson and Ms. Bonhomme-Dicks are now facing an imminent revocation of their driver's licenses pursuant to Section 20-24.1 of the North Carolina General Statutes. Already surviving amidst

extreme hardship, without a driver's license they will face insurmountable difficulties in providing for their families and finding or maintaining gainful employment.

2. Plaintiff Nichelle Yarborough is a young mother who is singlehandedly raising her four children, including a nine-month-old premature baby with serious medical needs, while struggling with debt and bankruptcy. Plaintiff Sharee Smoot provides for her mother and daughter on a low-paying part-time job that is an hour away from her home and not accessible by public transportation. Ms. Yarborough and Ms. Smoot have had their driver's licenses revoked pursuant to Section 20-24.1 because they cannot afford to pay their court fines, penalties, and costs from a traffic ticket. Their license revocations, based exclusively on their lack of financial resources, regularly force them to make impossible choices. For example, Ms. Yarborough must choose between not taking her baby to critical medical appointments or driving and risking further criminalization for not having a valid driver's license.

3. The plights of Mr. Johnson, Ms. Bonhomme-Dicks, Ms. Yarborough, and Ms. Smoot are not anomalies. The DMV has indefinitely revoked the driver's licenses of hundreds of thousands of people who cannot afford to pay fines, penalties, and court costs (hereinafter "fines and costs") assessed for traffic offenses. In a state where a driver's license is indispensable to mobility and economic self-sufficiency, this wealth-based license revocation scheme strips impoverished North Carolinians of their capacity to meet their basic needs and those of their families. As a result, hundreds of thousands of North Carolinians cannot legally use a car to secure and maintain employment, take

their children to and from school, attend medical appointments, or travel to buy groceries needed for daily life. This license revocation scheme forces the most economically vulnerable further into poverty, in violation of their right to due process and equal protection of the law under the U.S. Constitution.

4. The DMV automatically revokes a motorist's driver's license for an indefinite period of time if the motorist is reported for non-payment of a traffic ticket within forty days. There is no hearing or inquiry into the driver's ability to pay before the imposition of this additional, unnecessary punishment. The revocation notice that the DMV provides the driver makes clear the driver must pay the citation in full or the revocation will become effective sixty days later, and it fails to disclose any other alternatives for people who cannot afford to pay in full. This automatic revocation scheme occurs without any determination of ability to pay, sufficient notice, and an opportunity to be heard, in violation of core principles of due process and equal protection of the law.

5. Pursuant to this automatic process—codified at Section 20-24.1 of the North Carolina General Statutes, and effectuated by the DMV—over 436,000 driver's licenses were revoked for non-payment of fines and costs as of fall 2017. This high volume of revocations is not surprising, given that nearly 15.4% of North Carolina residents (1.4 million) live in poverty in North Carolina, according to the U.S. Census Bureau. This is the 13th highest poverty rate in the country. North Carolina also has the 15th highest rate of deep poverty where approximately 709,000 individuals live below



the mid-point of the federal poverty line. For those who can afford to pay, fines and court costs are a mere inconvenience. But for those who cannot afford to pay, fines or costs mean the loss of their driver's licenses, which frequently has much more serious economic consequences. This is especially true in a state like North Carolina where a vast majority of counties are rural and lack accessible public transportation.

6. Plaintiffs in this lawsuit are low-income North Carolinians who face irreparable, ongoing harm, in violation of due process and equal protection, because: (a) their driver's licenses will be revoked under North Carolina's license revocation scheme, N.C.G.S. § 20-24.1, which mandates the automatic revocation of licenses of those who do not pay their fines and costs, and under the DMV's enforcement practice, or (b) their licenses have already been revoked under N.C.G.S. § 20-24.1 and the DMV's enforcement practice for non-payment of fines and costs.

7. Plaintiff Mr. Johnson is a victim of North Carolina's unconstitutional license revocation scheme. He was ordered to pay \$228, but is unable to do so because he has been unemployed for an extended period of time. As a result, the DMV has entered an order revoking his license, which will soon become effective and indefinitely revoked if he does not pay.<sup>1</sup> Defendant has not inquired into Mr. Johnson's ability to pay, given him an opportunity to be heard before he faces revocation of his driver's

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<sup>1</sup> The revocation was to become effective and indefinite on July 28, 2018. Defendant has agreed to stay enforcement of that suspension pending resolution of Plaintiffs' motion for a preliminary injunction. *See* DE 24 ¶ 8.

license, or sent him adequate notice of how he can prevent the revocation if he cannot pay.

8. Plaintiff Ms. Bonhomme-Dicks similarly was ordered to pay \$388 for a traffic violation and is unable to pay. As a part-time jobholder who is the sole financial provider for her son and a contributing financial provider for two grandsons, she is already in debt and cannot pay \$388 toward a traffic ticket without sacrificing her family's basic needs. She faces a substantial risk of suspension of her driver's license due to her inability to pay \$388. The state court will notify the DMV that she has not paid on or around September 5, 2018, and pursuant to its policy and practice, the DMV will not inquire into whether Ms. Bonhomme-Dicks has the ability to pay or give her the opportunity to be heard on her ability to pay before revoking her license indefinitely.

9. Plaintiff Ms. Yarborough has suffered and will continue to suffer irreparable harm because of the DMV's unconstitutional license revocation scheme. She owes approximately \$221 for a traffic ticket, which she cannot afford to pay. The DMV revoked Ms. Yarborough's license without ever inquiring into whether she had the ability to pay or willfully failed to pay her traffic ticket costs. The standard notice that the DMV sent her said she had to "comply" with the citation and strongly suggested this meant paying her citation in full. The DMV never notified her that she had other options to prevent the suspension of her driver's license if she could not afford to pay.

10. Plaintiff Ms. Smoot is also a victim of North Carolina's unconstitutional license revocation scheme. Ms. Smoot was also convicted of traffic offenses and ordered

to pay fines and costs, but cannot afford to pay these tickets. The DMV revoked Ms. Smoot's driver's license because she was unable to afford the fines and costs. Defendant made no inquiry into her ability to pay or whether her non-payment was willful. The only notice Ms. Smoot received was that she had to pay her citation in full. She was not given notice of any other options to avoid revocation if she could not afford to pay.

11. North Carolina punishes hundreds of thousands of low-income people by revoking their driver's licenses simply because of their economic status. Accordingly, Plaintiffs bring these claims on behalf of themselves and all others similarly situated to challenge the unconstitutional license revocation scheme established by Section 20-24.1 as well as the DMV's enforcement of that scheme.

12. Plaintiffs bring this action under 42 U.S.C. § 1983 to vindicate their rights to due process and equal protection of the law under the Fourteenth Amendment to the U.S. Constitution. Plaintiffs seek: (1) a declaration that both Section 20-24.1 and the DMV's enforcement of the statute are unconstitutional; (2) an injunction enjoining the DMV from revoking any driver's license for non-payment under Section 20-24.1; and (3) an injunction mandating the DMV to lift license revocations previously entered, and to restore the licenses of individuals that were revoked, for non-payment under Section 20-24.1.

## **II. JURISDICTION AND VENUE**

13. The Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question jurisdiction).

14. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in this district.

### III. PARTIES

#### A. Plaintiffs

15. Plaintiff Seti Johnson is a resident of Mecklenburg County.

16. Plaintiff Marie Bonhomme-Dicks is a resident of Wake County.

17. Plaintiff Nichelle Yarborough is a resident of Franklin County.

18. Plaintiff Sharee Smoot is a resident of Cabarrus County.

#### B. Defendant

19. Defendant Torre Jessup is the Commissioner of the North Carolina Division of Motor Vehicles, who administers the DMV. In this role, Defendant has exclusive authority to revoke driver's licenses. N.C.G.S. §§ 20-2(a); 20-39(a). He is sued in his official capacity as a state actor for declaratory and injunctive relief only.

### IV. STATEMENT OF FACTS

#### A. A Driver's License is a Necessity to Pursue a Livelihood and Care for One's Self and Family.

20. As of fall 2017, over 436,000 individuals had their licenses indefinitely revoked by the DMV for failure to pay fines and costs assessed for motor vehicle offenses.

21. The indefinite revocation of driver's licenses for non-payment of fines and costs disproportionately affects low-income persons and communities of color.

22. The indefinite revocation of the driver's licenses of low-income North Carolinians has devastating consequences on a person's ability to pursue a livelihood and meet basic human needs. Eighty-six percent of Americans describe a car as a "necessity of life," which is higher than the percentage of people who identified air conditioning, a cell phone, a computer, and other consumer items to be a life necessity.<sup>2</sup>

23. Approximately 91% of North Carolina residents travel to work by car and only 1.1% travel to work by public transit.<sup>3</sup>

24. Reliable, accessible public transit remains scarce throughout the vast majority of North Carolina, particularly in the State's rural counties.<sup>4</sup> Public transit services in urban areas of the State also provide limited access to jobs.<sup>5</sup>

25. As a result, the lack of public transportation options remains a significant and ubiquitous barrier to obtaining and maintaining employment for many North Carolinians.<sup>6</sup>

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<sup>2</sup> Paul Taylor and Wendy Wang et al., *The Fading Glory of The Television and Telephone*, Pew Research Center 1 (Aug. 10, 2010), <https://goo.gl/5knWYW>.

<sup>3</sup> U.S. Dep't of Transp., Bur. of Transp. Stats., *NORTH CAROLINA: Transportation by the Numbers 2* (2016), <https://goo.gl/eM6NWy>.

<sup>4</sup> Tazra Mitchell, *Connecting Workers to Jobs Through Reliable and Accessible Public Transport*, Policy & Progress, N.C. Justice Center (Nov. 2012), <https://goo.gl/qOF0S> (noting scarcity of public transit options); Chandra T. Taylor and J. David Farren et al., *Beyond the Bypass: Addressing Rural North Carolina's Most Important Transportation Needs*, So. Env'tl. Law Ctr. 1 (2012) (noting rural nature of the state), <https://goo.gl/nUVHjG>.

<sup>5</sup> Mitchell, *supra* note 3.

<sup>6</sup> *Id.*

26. Several studies have noted that a driver's license is a "very common requirement" to obtain employment, including most jobs that "can actually lift people out of poverty."<sup>7</sup>

27. Thus, North Carolina's unconstitutional automatic license revocation scheme makes it difficult for North Carolinians to find and keep employment, indefinitely pushing low-income individuals into the criminal justice system and further into poverty.

28. Persons whose licenses are revoked face an unenviable choice: drive illegally and risk further punishment, or stay home and forgo the ability to meet the daily needs of themselves and their families. When faced with either losing their jobs or remaining unemployed, or otherwise risking being pulled over for driving with a revoked license, individuals often chose the latter—risking car impoundment, additional fines and costs, additional periods of revocation, and even imprisonment for driving on a revoked license—so they can maintain their livelihood and support their families.

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<sup>7</sup> See, e.g., Alana Semuels, *No Driver's License, No Job*, The Atlantic, June 15, 2016, <https://goo.gl/xQjyLj>; see also Stephen Bingham et al., *Stopped, Fined, Arrested: Racial Bias in Policing and Traffic Courts in California* 26–28 (2016), <https://goo.gl/uLhFfL> (finding license suspensions cause loss of employment because employers often screen out those without licenses and because driver's licenses are necessary for: transportation to and from work; to obtain full time, steady employment; and for job-training programs).



**B. The DMV Automatically Revokes Driver's Licenses For Non-Payment of Traffic Fines and Costs Pursuant to N.C.G.S. § 20-24.1.**

29. Revocation of driver's licenses is the exclusive province of the Commissioner of the North Carolina Division of Motor Vehicles. N.C.G.S. §§ 20-2(a); 20-39(a).

30. Courts in North Carolina are required to report to the DMV the name of any person charged with a motor vehicle offense who fails to pay a fine, penalty, or costs within 40 days of the date specified in the court's judgment. N.C.G.S. § 20-24.2(a)(2).

31. Pursuant to Section 20-24.1(a),<sup>8</sup> the DMV is required to revoke, and does revoke, an individual's driver's license after it receives notice from a court that the

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<sup>8</sup> The pertinent subsections of Section 20-24.1 read, in relevant part:

(a) The Division must revoke the driver's license of a person upon receipt of notice from a court that the person was charged with a motor vehicle offense and he:

...

(2) failed to pay a fine, penalty, or court costs ordered by the court.

Revocation orders entered under the authority of this section are effective on the sixtieth day after the order is mailed or personally delivered to the person.

(b) A license revoked under this section remains revoked until the person whose license has been revoked:

...

(2) demonstrates to the court that he is not the person charged with the offense; or

(3) pays the penalty, fine, or costs ordered by the court; or

(4) demonstrates to the court that his failure to pay the penalty, fine, or costs was not willful and that he is making a good faith effort to pay

person has not paid fines and costs. This revocation is automatic and occurs without any regard to whether the person lacks the ability to pay. Upon receipt of this notice, the DMV enters a revocation order. *Id.* § 20-24.1(a)(2). By statute, the revocation order becomes effective 60 days after it is mailed or personally delivered to the motorist. *Id.* § 20-24.1(a).

### **1. Revocation Notice**

32. The DMV sends the revocation order to a driver upon receipt of a notice from the court that the driver failed to pay fines and costs, as described in Paragraph 27. The DMV labels this revocation order an “Official Notice” (hereinafter, “Revocation Notice”). A copy of a standard Revocation Notice is as follows:

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or that the penalty, fine, or costs should be remitted.

Upon receipt of notice from the court that the person has satisfied the conditions of this subsection applicable to his case, the Division must restore the person’s license as provided in subsection (c). . . .

(b1) A defendant must be afforded an opportunity for a trial or a hearing within a reasonable time of the defendant’s appearance. Upon motion of a defendant, the court must order that a hearing or a trial be heard within a reasonable time.

(c) If the person satisfies the conditions of subsection (b) that are applicable to his case before the effective date of the revocation order, the revocation order and any entries on his driving record relating to it shall be deleted and the person does not have to pay the restoration fee set by G.S. 20-7(i1). For all other revocation orders issued pursuant to this section, G.S. 50-13.12 or G.S. 110-142.2, the person must pay the restoration fee and satisfy any other applicable requirements of this Article before the person may be relicensed.

. . . .

N.C. Gen. Stat. Ann. § 20-24.1.

01/10/2018

SHARRE ANTONETTE SMOOT  
[REDACTED]  
CONCORD NC 28025-6033

OFFICIAL NOTICE  
CUSTOMER NO. [REDACTED]

WE REGRET TO INFORM YOU THAT EFFECTIVE 12:01 A.M., 03/11/2018, YOUR NC DRIVING PRIVILEGE IS SCHEDULED FOR AN INDEFINITE SUSPENSION IN ACCORDANCE WITH GENERAL STATUTE 20-24.1 FOR FAILURE TO PAY FINE AS FOLLOWS:

VIOLATION DATE: 2017-08-02                      CITATION NUMBER:                      04G82989  
COURT:                      CABARRUS COUNTY COURT      PHONE: (704)262-5500

UNFORTUNATELY THE DIVISION OF MOTOR VEHICLES CANNOT ACCEPT PAYMENTS FOR FINES AND COSTS IMPOSED BY THE COURTS. PLEASE CONTACT THE COURT ABOVE TO COMPLY WITH THIS CITATION.

NOTE: PLEASE COMPLY WITH THIS CITATION PRIOR TO THE EFFECTIVE DATE IN ORDER TO AVOID THIS SUSPENSION.

IF YOU HAVE NOT COMPLIED WITH THIS CITATION BY THE EFFECTIVE DATE OF THIS ORDER, YOU WILL NEED TO MAIL YOUR CURRENT NORTH CAROLINA DRIVER LICENSE, IF APPLICABLE, TO THE DIVISION. FAILURE TO DO SO MAY RESULT IN AN ADDITIONAL \$50.00 SERVICE FEE.

REINSTATEMENT PROCEDURES:

UPON COMPLIANCE WITH THIS CITATION, YOU MAY VISIT YOUR LOCAL DRIVER LICENSE OFFICE. AT SUCH TIME PROPER IDENTIFICATION AND PROOF OF AGE WILL BE NEEDED.

A RESTORATION FEE OF \$65.00 AND THE APPROPRIATE LICENSE FEES ARE NEEDED AND HAVE TO BE PAID AT THE TIME YOUR DRIVING PRIVILEGE IS REINSTATED.

THIS ORDER IS IN ADDITION TO AND DOES NOT SUPERSEDE ANY PRIOR ORDER ISSUED BY THE DMV. IF ADDITIONAL INFORMATION CONCERNING THIS ORDER IS NEEDED, PLEASE CONTACT A REPRESENTATIVE OF THE DIVISION AT (919)715-7000.

DIRECTOR OF PROCESSING SERVICES

N.C. DMV, Revocation Notice to Plaintiff Sharee Smoot (Jan. 10, 2018).

33. The Revocation Notice states that the driver's "driving privilege is scheduled for an indefinite suspension in accordance with general statute 20-24.1 for failure to pay [a] fine"; provides an "effective date" that is approximately 60 days from the date the notice is mailed; and identifies the violation date, citation number, court, and court phone number related to the unpaid fine. *Id.*

34. The Revocation Notice then informs the driver that the DMV cannot accept payments for fines and costs, and the driver must contact the court "to comply with this

citation.” It goes on to recommend that to prevent revocation the driver must “comply” with the citation, as follows:

PLEASE COMPLY WITH THIS CITATION PRIOR TO THE EFFECTIVE DATE IN ORDER TO STOP THIS SUSPENSION.

*Id.*

35. Once a license is indefinitely revoked for non-payment, the DMV only lifts the revocation once the person is in “compliance” with the underlying citation. The Revocation Notice states:

REINSTATEMENT PROCEDURES:  
UPON COMPLIANCE WITH THIS CITATION, YOU MAY VISIT YOUR LOCAL DRIVER LICENSE OFFICE. AT SUCH TIME PROPER IDENTIFICATION AND PROOF OF AGE WILL BE REQUIRED.

*Id.*

36. The Revocation Notice does not provide, and the DMV does not provide, any information about how to obtain a hearing on the pending revocation.

37. Neither the Revocation Notice nor the DMV provides any information indicating that there are any options to permit persons to keep their licenses if they cannot pay in full.

38. Neither the Revocation Notice nor the DMV provides any information to suggest that if a hearing is held, the person’s ability to pay will be a critical issue at the hearing.

**2. Lack of any pre-revocation determination of ability to pay under Section 20.24.1**

39. Neither Section 20-24.1 nor the DMV requires any inquiry into ability to pay or a determination that motorists willfully failed to pay their fines and costs before revoking a driver's license for non-payment.

40. Instead, if drivers cannot pay in full, Section 20-24.1 places the burden on motorists to request a hearing to restore their licenses by showing a court that non-payment was not willful and that they are making a good faith effort to pay or the debt should be remitted. *Id.* § 20-24.1(b)(4). Yet, as set forth above, drivers are not informed about how to access this relief, and are told instead by the DMV that they must "comply" with the citation to avoid revocation, which, under the circumstances of the Revocation Notice, implies that the driver must pay the fines and costs in full. As a result, drivers rarely, if ever, invoke this process, leading to the revocation of tens, and possibly hundreds of thousands of North Carolinian driver's licenses each year, without any hearing or determination that a single one of these motorists was able to pay and willfully failed to do so.

41. If the motorist fails to satisfy Section 20-24.1(b), the license remains indefinitely revoked. *See id.* § 20-24.1(b), (c).

42. Neither Section 20-24.1 nor the DMV, as a matter of standard practice, requires a hearing before the driver's license revocation becomes effective to determine whether non-payment was willful. *See id.* § 20-24.1.

43. Accordingly, pursuant to Section 20-24.1, the DMV routinely revokes driver's licenses for non-payment without inquiring into the individual's ability to pay and ensuring that any non-payment is willful.

44. Finally, pursuant to Section 20-24.1, the DMV routinely revokes driver's licenses for non-payment without providing motorists adequate notice of the revocation process, including that ability to pay is a material fact to whether a license should be indefinitely revoked, and without providing them an opportunity to be heard on ability to pay and whether the non-payment was willful.

**C. Plaintiffs Mr. Johnson and Ms. Bonhomme-Dicks Face the Unconstitutional Future Revocation of Their Driver's Licenses Pursuant to Section 20-24.1 Due to an Inability to Pay Fines and Costs.**

**1. Mr. Johnson.**

45. Plaintiff Seti Johnson lives in Mecklenburg County with his mother. Mr. Johnson is married and the father of three children. Mr. Johnson does not have stable income, and the limited income he does have is put towards his family's needs.

46. Mr. Johnson has few economic resources. He has struggled to maintain work, in part, because his license was revoked at least twice before because he was unable to pay his traffic tickets, and because he needed to attend multiple court hearings regarding the unpaid tickets.

47. Mr. Johnson needs his driver's license. He relies on his driver's license to search for work, and go to work when he is employed, and to travel to the grocery store, take his children to school and daycare, and to go to the doctor's office.

48. Mr. Johnson is familiar with North Carolina's procedures for revoking driver's licenses for non-payment of fines and costs, and the hurdles erected for restoring licenses. Mr. Johnson previously has had his license revoked because he could not pay, and despite his limited income, surmounted the State's significant hurdles to restoration by paying to have his license reinstated.

49. During the summer of 2017, Mr. Johnson was pulled over by the police while driving. The police officer took Mr. Johnson's license and told him he was doing so because he did not pay old traffic tickets. The police officer also issued Mr. Johnson a ticket for "DWLR not impaired" (i.e., driving while license revoked). When Mr. Johnson contacted the Cabarrus County District Court (the "District Court") to determine how to get his license reinstated, he was told the only option was to pay the unpaid fines and costs and any late fees in full.

50. To get his license back, Mr. Johnson used his rent money to pay more than \$700 in fines and costs. Mr. Johnson's driver's license was later reinstated by the DMV. In the meantime, Mr. Johnson fell behind on rent payments and eventually had no choice but to move in with his mother for housing. During this time, Mr. Johnson also had to sacrifice buying necessities for himself and his children.

51. Before Mr. Johnson paid the more than \$700 and regained his license, he was issued another ticket for "DWLR not impaired" in September 2017.

52. In April 2018, Mr. Johnson appeared in the District Court for the September DWLR. The prosecutor reduced the charge to "failure to notify DMV of



address change,” to which Mr. Johnson pled guilty. The District Judge sentenced Mr. Johnson to pay a \$100 fine and \$208 in court costs. The judge did not give Mr. Johnson options to resolve the fine and costs other than paying the total \$308 to the District Court. Nor did the judge conduct a hearing to ask Mr. Johnson about his ability to pay the fines and costs.

53. At that hearing, the prosecutor told Mr. Johnson that he would have to pay \$100 that day or his license would be revoked. Mr. Johnson was unemployed at the time and had only \$300 to his name, but he pulled together the \$100 to pay that day to avoid losing his license.

54. The District Court gave Mr. Johnson a Bill of Costs that states “total monies owed” are due “within 40 days” and that his license will be suspended if he does not pay in full. He was also charged an additional \$20, referred to as an “installment plan set up fee,” because he was not able to pay in full that day.

55. Mr. Johnson’s balance of \$228 was due on May 22, 2018.

56. Mr. Johnson has not paid the fine and costs, and cannot afford to pay at this time.

57. The DMV has entered an order revoking his license, and the revocation was to become effective on or around July 28, 2018, unless he can pay his fines and costs in full, which he cannot afford to do. After this lawsuit was filed, the DMV elected to stay enforcement of Mr. Johnson’s license revocation, pending the outcome of Plaintiffs’ motion for a preliminary injunction. *See* DE 24 ¶ 8.

58. Without a driver's license, it will be difficult for Mr. Johnson to get to work, get food for his family, take his children to school and daycare, or take his family to doctor's appointments. He will likely face the impossible choice of driving illegally to maintain his new job and provide for his family, or lose the job and face even greater burdens in providing for his family.

## **2. Ms. Bonhomme-Dicks.**

59. Plaintiff Marie Bonhomme-Dicks lives in Wake County. She is the sole caretaker and financial provider of her 15-year-old son, and she also assists in taking care of and financially providing for her two grandsons, who sometimes live with her for months at a time.

60. Ms. Bonhomme-Dicks struggles financially. Currently, her family's monthly living costs are more than her monthly income. She is in rental arrears and has been living in debt for months.

61. She has a part-time job as a Reservation Agent with an airlines company. She is unable to meet her family's basic needs with the income she earns and even sells her blood plasma for additional money. She also has endeavored to supplement her income by driving for ridesharing companies.

62. Ms. Bonhomme-Dicks relies on her driver's license to get to and from work, take her son to school, drop off and pick up her grandsons at daycare, travel to the grocery store, and take her family to church. Without her driver's license she would not be able to maintain her job, her family's only source of income.

63. On July 27, 2018, Ms. Bonhomme-Dicks pleaded guilty to speeding. The court ordered her to pay fines and costs amounting to \$388. If Ms. Bonhomme-Dicks does not pay \$388 by or around September 5, 2018, the court will notify the DMV that this amount is unpaid, and pursuant to its policy and practice, the DMV will enter an order revoking her driver's license, which will become effective approximately sixty days thereafter.

64. With mounting debt and a family to take care of, Ms. Bonhomme-Dicks cannot afford to pay \$388 for her traffic citation. A license revocation would result in devastating consequences for her family. She either will have to stop working and risk not being able to provide for her son and grandsons, or she will have to drive unlawfully and face further criminal consequences.

**D. Ms. Yarborough and Ms. Smoot Are Suffering Ongoing Harm From the Revocation of Their Licenses Because of Their Inability to Pay Fines and Costs.**

**1. Ms. Yarborough.**

65. Plaintiff Nichelle Yarborough lives in Franklin County, North Carolina. She is a single mother and the sole financial provider for her four young children. Ms. Yarborough's driver's license is currently revoked because she cannot afford to pay the fines, penalties, and court costs for a traffic ticket.

66. Ms. Yarborough's daughter and nine-month-old baby have intellectual disabilities, and they both require special care. Her nine-month-old baby, who was born premature at five months, also has serious medical needs. She requires almost weekly

appointments with various doctors, none of whom are accessible by public transportation or within walking distance of Ms. Yarborough's home.

67. Ms. Yarborough does not have consistent help from friends or family members in taking care of her children. Ms. Yarborough's home is located in a rural area where she has limited mobile phone service. No public transportation is accessible within walking distance of Ms. Yarborough's home.

68. Ms. Yarborough is also facing financial exigencies. She had to quit her job because of a risk pregnancy and then to take care of her premature baby, and she recently filed for bankruptcy because she cannot afford to pay her house payments and bills.

69. Ms. Yarborough has enrolled in community college with the hope that an education will provide better opportunities for her and her children. The community college in which she enrolled, however, is not within walking distance of her home.

70. Ms. Yarborough received a ticket in 2008, the Wake County District Court assessed \$221 in fines and costs, and she was unable to pay it at that time. Unbeknownst to her, the court then notified the DMV of her non-payment in 2016, and suspended her license for non-payment in February 2017.

71. The notice the DMV sent to Ms. Yarborough stated that she must "comply" with the citation, and said that payment had to be made to the Wake County District Court, not to the DMV. The notice made no mention of alternative options available to Ms. Yarborough to prevent her license from being suspended if she could not afford to pay the ticket costs.

72. The DMV never inquired into her ability to pay the costs associated with the ticket and Ms. Yarborough cannot pay those costs.

73. Ms. Yarborough is a single mother with no support system. The lack of a valid driver's license hinders her ability to provide for her children, two of whom have special needs. She regularly faces the choice of driving on a revoked license or not taking her baby to needed medical appointments or her children to school.

## **2. Ms. Smoot.**

74. Plaintiff Sharee Smoot lives in Cabarrus County, North Carolina with her nine-year-old daughter and grandmother. Ms. Smoot's driver's license is currently revoked because she was unable to pay fines, penalties, and court costs for several traffic tickets.

75. Ms. Smoot currently works at a call center forty-five minutes away from her home. She has no family members, friends, or colleagues who can transport her to and from work. There is no accessible public transportation that Ms. Smoot can use to get to work. Further, Ms. Smoot cannot afford to pay anyone to drive her to or from work. As a result, she is forced to make the difficult choice of losing her job and not being able to care for herself and her family or driving on a revoked driver's license and risking additional traffic tickets.

76. In 2016, Ms. Smoot appeared on a ticket for "DWLR NOT IMPAIRED REV" (i.e., driving while license revoked) in the Cabarrus County District Court (the

“District Court”) and was convicted of the lesser charge of “failure to notify DMV of address change.”

77. The District Court sentenced Ms. Smoot to pay approximately \$308, which she could not afford due to her limited economic resources. The District Court did not give her any option to resolve the fine and court costs besides paying in full and did not conduct a hearing to inquire into or decide her ability to pay the fine and court costs.

78. Ms. Smoot did not pay the fine and court costs within the 40 days ordered by the District Court because she did not have the money and, as a result, was assessed a \$50 late fee.

79. Ms. Smoot later received a Revocation Notice from the DMV that her license would be effectively revoked if she did not pay by the designated date. The Notice, however, did not tell her how to avoid the revocation or to reinstate her driver’s license after the revocation, except to “comply” with the citation by the designated date.

80. Because of her strained financial circumstances, Ms. Smoot did not pay the fine and costs by the designated date to attempt to stop the revocation of her license.

81. Ms. Smoot’s employment at the time only earned her \$9 per hour, and she was receiving Supplemental Nutrition Assistance Program (“SNAP”) benefits. She also was solely responsible for paying the rent and utilities for the residence she shared with her mother and daughter and her car note and car insurance. She also bought groceries and other necessities for herself and her daughter and mother. Between her SNAP benefits and income, she had barely enough money to meet her and her family’s needs.

82. Shortly after she started receiving overtime at work, Ms. Smoot's SNAP benefits were canceled, forcing her to choose between her family's needs, like paying the light bill or buying groceries.

83. Ms. Smoot also had to stop attending school at the University of North Carolina-Charlotte because she could not afford the cost of school and her family's bills on her limited income.

84. Because of her limited financial means, Ms. Smoot could not pay the fine, penalty, and court costs on her 2016 ticket, and the DMV revoked her driver's license in 2016.

85. In 2017, Ms. Smoot was convicted in the District Court of "DWLR NOT IMPAIRED REV" and ordered to pay \$235, which she could not afford to pay that day.

86. The District Court once again did not provide her any options to resolve the fine and court costs other than paying the \$235 in full and did not conduct a hearing to inquire into or decide her ability to pay the fine and court costs.

87. Ms. Smoot again could not pay the fine and costs within 40 days because she did not have the money and, as a result, was assessed a \$50 late fee.

88. Ms. Smoot received another Revocation Notice from the DMV in 2018, creating an additional basis for which her license is revoked. This second Notice also failed to inform her about how to avoid revocation, or how to reinstate her driver's license, except to "comply" with the citation by the designated date on the Notice.



89. Around this time, Ms. Smoot fell behind on her car payments and rent, and her car was repossessed. Because she did not have transportation to work, she lost her job, and she and her daughter had to move in with her grandmother.

90. Due to these circumstances, she also did not have the money to pay the fine, penalty, and court costs to stop the revocation by the date on this second Revocation Notice, and the DMV once again revoked her driver's license in 2018 for failure to pay.

91. Ms. Smoot needs a driver's license to travel to work, doctor's appointments, and her church, and to get food for her daughter. Without a valid driver's license, she has had to make the difficult choice of staying home, losing her job, and not being able to care for herself, her daughter, and her grandmother, whose bills she also helps pay, or drive illegally and risk further punishment.

92. Ms. Smoot, however, still does not have the money to pay either her 2016 ticket or 2017 ticket to reinstate her license.

93. Ms. Smoot currently makes \$12 per hour at the call center, but she often works fewer than 40 hours per week because she and other employees are often required to leave early if incoming call volume is low.

94. Ms. Smoot worries that without use of a valid driver's license, she will not be able to continue working and caring for her family, or will continue getting more tickets for driving without a valid driver's license, because she needs to drive to support and care for herself and her family.

## V. CLASS ALLEGATIONS

95. Plaintiffs seek to certify two separate classes.

96. Plaintiffs Mr. Johnson and Ms. Bonhomme-Dicks seek class certification pursuant to Fed. R. Civ. P. 23(a) and (b)(2) related to Claims One, Two, and Three, for which prospective injunctive and declaratory relief is sought. This Class is defined as: “All individuals whose driver’s licenses will be revoked in the future by the DMV due to their failure to pay fines, penalties, or court costs assessed by a court for a traffic offense.” This Class is referred to as the “Future Revocation Class.”

97. Plaintiffs Ms. Yarborough and Ms. Smoot seek class certification pursuant to Fed. R. Civ. P. 23(a) and (b)(2) related to Claims One, Two, and Three, for which prospective injunctive and declaratory relief is sought. This Class is defined as: “All individuals whose driver’s licenses have been revoked by the DMV due to their failure to pay fines, penalties, or court costs assessed by a court for a traffic offense.” This Class is referred to as the “Revoked Class.”

98. A class action is the only practicable means by which Plaintiffs and unknown members of the Future Revocation Class and Revoked Class can challenge North Carolina’s unconstitutional driver’s license revocation law, Section 20-24.1, and the DMV’s practice of automatically and indefinitely revoking licenses for non-payment.

99. As set forth below, this action satisfies the numerosity, commonality, typicality, and adequacy requirements of Rule 23(a). This action also meets Federal Rule of Civil Procedure 23(b)(2).

100. **Numerosity**: The exact sizes of the Future Revocation Class and the Revoked Class are unknown by Plaintiffs, but each Class plainly meets the numerosity requirement, thereby making joinder impracticable. Based on the DMV's response to an open records request, the Revoked Class had approximately 436,000 members in the fall of 2017—all individuals punished with an automatic and indefinite driver's license revocation for unpaid fines and costs.<sup>9</sup> That number has remained in the hundreds of thousands and has likely increased since fall 2017, due to the DMV's ongoing practice of automatically and indefinitely revoking the driver's licenses of people unable to pay their fines and costs.

101. The Future Revocation Class consists of hundreds of thousands of people who cannot or will not be able to afford to pay fines and costs and therefore face revocation of their licenses. The Future Revocation Class is forward-looking with the potential for new members to join the Class on an ongoing basis. The DMV will continue to revoke licenses for non-payment absent the requested injunction, causing this class size to grow over time.

102. Finally, members of the proposed Classes such as Plaintiffs Mr. Johnson, Ms. Bonhomme-Dicks, Ms. Yarborough and Ms. Smoot are spread out across the state, and they are typically low-income individuals who lack financial resources to bring an independent action or to be joined in this action. Putative members are facing or have experienced the revocation of their licenses precisely because of their inability to pay;

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<sup>9</sup> See Exhibit I to Declaration of Samuel Brooke, DE 6.

thus, it is reasonable to assume they would also be unable to afford counsel to bring their own separate action against Defendant.

103. **Commonality**: All persons comprising the proposed Classes are equally subject to the provisions of Section 20-24.1, which mandate the DMV to revoke a motorist's driver's license for non-payment without any determination a motorist willfully failed to pay and without providing adequate notice of, or an opportunity to be heard on, the effects of revocation before the revocation. All members of the proposed Classes also are equally subject to the Division's revocation of driver's licenses for non-payment.

104. Accordingly, Plaintiffs raise claims based on questions of law and fact that are common to, and typical of, the putative class members of both Classes they seek to represent. Common questions of fact include:

- a. Whether Section 20-24.1 mandates the DMV to revoke, and whether the DMV has a practice of revoking, a license for non-payment without requiring a pre-deprivation hearing;
- b. Whether Section 20-24.1 mandates the DMV to revoke, and whether the DMV has a practice of revoking, a license for non-payment without requiring an inquiry into a motorist's ability to pay and determining the motorist's non-payment was willful; and
- c. Whether the revocation notice provided by the DMV to drivers whose licenses will be revoked for non-payment fails to inform drivers that (1)

they may have a hearing before the revocation becomes effective; (2) a critical issue at that hearing will be their ability to pay fines and costs that they are alleged to have failed to pay; and (3) additional options exist under Section 20-24.1 to avoid revocation for those who cannot pay in full.

Common questions of law include:

- d. Whether Section 20-24.1 and the DMV's enforcement of the statute violate the Fourteenth Amendment by failing to inquire into a motorist's ability to pay and whether the motorist's non-payment was willful before revoking a license for non-payment;
- e. Whether Section 20-24.1 and the DMV's enforcement of the statute violate the Fourteenth Amendment Procedural Due Process Clause by revoking licenses before conducting a pre-deprivation hearing;
- f. Whether Section 20-24.1 and the DMV's enforcement of the statute violate the Fourteenth Amendment Procedural Due Process Clause by failing to provide adequate advance notice and opportunity to be heard; and
- g. Whether injunctive and declaratory relief is appropriate and if so, what the terms of such relief should be.

105. The relief sought for each proposed Class is common to all members of that respective Class. Plaintiffs seek relief declaring Section 20-24.1 and the DMV's enforcement of the statute are unconstitutional for both Classes. They additionally seek: (a) on behalf of the Future Revocation Class, an order enjoining the DMV from revoking

licenses for non-payment pursuant to Section 20-24.1, and (b) on behalf of the Revoked Class, an order mandating the DMV to lift license revocations entered under Section 20-24.1 and to restore the licenses of those whose licenses are presently revoked for non-payment under Section 20-24.1.

106. ***Typicality:*** The claims of Plaintiffs Mr. Johnson and Ms. Bonhomme-Dicks are typical of the claims of the proposed Future Revocation Class as a whole. Mr. Johnson and Ms. Bonhomme-Dicks and the putative Future Revocation Class members will suffer the same direct, irreparable injury of a loss of their driver's license unless Section 20-24.1 is declared unconstitutional and the DMV is enjoined from revoking licenses pursuant to that statute, absent meaningful notice, a pre-revocation opportunity to be heard, and a determination of willful non-payment before the revocation.

107. Because Plaintiffs Mr. Johnson and Ms. Bonhomme-Dicks and the proposed Future Revocation Class challenge the same unconstitutional statute, the DMV will likely assert similar defenses against Mr. Johnson and Ms. Bonhomme-Dicks and proposed Future Revocation Class members. Moreover, the answer to whether the statute is unconstitutional will determine the success of the claims of named Plaintiffs Mr. Johnson and Ms. Bonhomme-Dicks and every other proposed Future Revocation Class member: if Mr. Johnson and Ms. Bonhomme-Dicks succeed in the claim that the statute violates their constitutional rights, that ruling will likewise benefit every other member of the proposed Class.

108. Likewise, the claims of Plaintiffs Ms. Yarborough and Ms. Smoot are typical of the claims of the Proposed Revoked Class as a whole. Plaintiffs Ms. Yarborough and Ms. Smoot and the putative Revoked Class members have suffered the same direct, irreparable injury of loss of their driver's license, and this injury will continue unless Section 20-24.1 and the DMV's corresponding practice to revoke for non-payment are declared unconstitutional and are enjoined.

109. Because Plaintiffs Ms. Yarborough and Ms. Smoot and the proposed Class challenge the same unconstitutional statute and DMV practice of enforcing the statute, the DMV will likely assert similar defenses against Ms. Yarborough and Ms. Smoot and proposed Revoked Class members. Moreover, the answer to whether the statute and the DMV's enforcement of the statute are unconstitutional will determine the success of the claims of Ms. Yarborough and Ms. Smoot and every other proposed Revoked Class member: if Ms. Yarborough and Ms. Smoot succeed in the claim that the statute and DMV violate their constitutional rights, that ruling will likewise benefit every other member of the proposed Revoked Class.

110. **Adequacy:** Plaintiffs Mr. Johnson, Ms. Bonhomme-Dicks, Ms. Yarborough, and Ms. Smoot will fairly and adequately represent the interests of the proposed Classes they seek to represent.

111. Plaintiffs Mr. Johnson, Ms. Bonhomme-Dicks, Ms. Yarborough, and Ms. Smoot have no interests separate from, or in conflict with, those of the proposed Classes



they seek to represent and seek no relief other than the declaratory and injunctive relief sought on behalf of the entire proposed Classes.

112. **Rule 23(b)(2)**: Class action status under Rule 23(b)(2) is appropriate because the DMV has acted or failed and/or refused to act on grounds that generally apply to the proposed Classes, such that preliminary and final injunctive and declaratory relief is appropriate and necessary with respect to each member of both Classes. Specifically, pursuant to Section 20-24.1, the DMV automatically and systematically revokes licenses in an unconstitutional manner—without any determination of willfulness or ability to pay, without a pre-deprivation hearing, and without adequate notice or opportunity to be heard—that is generally applicable to both of the proposed Classes.

113. Accordingly, (a) a declaration that Section 20-24.1, along with the DMV's practice of enforcing the statute, violate the Fourteenth Amendment; (b) an injunction that enjoins enforcement of Section 20-24.1 by the DMV; (c) an injunction that prohibits the DMV from revoking the licenses of individuals for non-payment under Section 20-24.1; and (d) an injunction that mandates the lifting of license revocations and the restoration of unconstitutionally revoked licenses for non-payment under Section 20-24.1, would benefit every member of each of the proposed Classes.

114. **Rule 23(g)**: Plaintiffs respectfully request that the undersigned be appointed as Class Counsel. The undersigned attorneys from the Southern Poverty Law Center, the Southern Coalition for Social Justice, the American Civil Liberties Union Foundation, and the American Civil Liberties Union of North Carolina have experience

in class-action litigation involving complex civil rights matters in federal court and knowledge of the relevant constitutional and statutory law and Defendant's practice of revocation. Counsel also have the resources, expertise, and experience to prosecute this action.

## VI. CLAIMS FOR RELIEF

### **FIRST CLAIM FOR RELIEF**

#### **Fourteenth Amendment of the U.S. Constitution (Equal Protection and Due Process *Bearden* Violation)**

115. Plaintiffs re-allege and incorporate by reference each and every allegation contained in the preceding paragraphs as if fully set forth here.

116. Plaintiffs Mr. Johnson and Ms. Bonhomme-Dicks assert this claim on behalf of themselves and the proposed Future Revocation Class they seek to represent.

117. Plaintiffs Ms. Yarborough and Ms. Smoot also bring this claim on behalf of themselves and the proposed Revoked Class they seek to represent.

118. The Fourteenth Amendment of the U.S. Constitution prohibits punishing individuals for non-payment without first determining that they had the ability to pay and willfully refused to make a monetary payment. *See Bearden v. Georgia*, 461 U.S. 660 (1983).

119. Section 20-24.1 of the North Carolina General Statutes requires the DMV to indefinitely revoke motorists' licenses for non-payment of their fines, penalties, or court costs for a motor vehicle offense, without any determination that they willfully refused to pay.

120. Pursuant to Section 20-24.1, Defendant also indefinitely revokes motorists' licenses for non-payment of their fines and costs for a motor vehicle offense, without any determination that they willfully refused to pay.

121. Plaintiffs have a substantial interest in their driver's licenses.

122. Revoking the driver's license of a motorist who does not have the means to pay, through no fault of her own, does not reasonably further any legitimate government interest.

123. There are alternate means to effectuate North Carolina's interest in collecting unpaid fines, penalties, and court costs, including, *inter alia*, extending the time to make payments, reducing the amount owed, or ordering a motorist to complete community service or coursework.

124. Section 20-24.1 violates Plaintiffs' rights under the Fourteenth Amendment of the U.S. Constitution by mandating the revocation of motorists' driver's licenses for non-payment, without first determining if they willfully refused to pay.

125. The DMV's revocations of licenses under Section 20-24.1 also violates Plaintiffs' rights under the Fourteenth Amendment of the U.S. Constitution by mandating the revocation of motorists' driver's licenses for non-payment, without first determining that they willfully refused to pay.

**SECOND CLAIM FOR RELIEF**  
**Fourteenth Amendment of the U.S. Constitution**  
**(Procedural Due Process — Failure to Provide a Pre-Deprivation Hearing)**

126. Plaintiffs re-allege and incorporate by reference each and every allegation contained in the preceding paragraphs as if fully set forth here.

127. Plaintiffs Mr. Johnson and Ms. Bonhomme-Dicks assert this claim on behalf of themselves and the proposed Future Revocation Class they seek to represent.

128. Plaintiffs Ms. Yarborough and Ms. Smoot also bring this claim on behalf of themselves and the proposed Revoked Class they seek to represent.

129. The Fourteenth Amendment of the U.S. Constitution prohibits the State of North Carolina from depriving any person of life, liberty, or property without due process of law.

130. The cornerstone of due process when a property or liberty interest is at stake is notice and a meaningful opportunity to be heard in a meaningful time and in a meaningful manner.

131. Neither the North Carolina General Code, including Sections 20-24.1 and 20-24.2, nor the DMV mandates a deprivation hearing before indefinitely revoking a license for non-payment of fines and costs.

132. Neither the North Carolina General Code, including Sections 20-24.1 and 20-24.2, nor the DMV mandates an inquiry into willfulness before indefinitely revoking a license for non-payment of fines and costs.

133. Sections 20-24.1 and 20-24.2 of the North Carolina General Statutes create a substantive standard for revocation of driver's licenses that involves the following factors: whether a driver (1) failed to pay fines and fees 40 days after due, and (2) did so willfully or in bad faith. Consequently, whether an individual has willfully failed to pay fines and court costs is a fact that is material to whether a license should be indefinitely revoked.

134. North Carolina motorists have a substantial interest in their driver's licenses.

135. The process established under Sections 20-24.1 and 20-24.2 and by the DMV creates a substantial risk of erroneously revoking the licenses of those who did not willfully fail to pay or have made good faith efforts to pay, even though the Legislature determined that these facts are material to the decision to indefinitely revoke a license. Yet the process established by these statutory provisions and implemented by the DMV does not mandate a pre-deprivation hearing and determination of willfulness. Thus, it is impossible for the DMV to accurately identify the individuals whose licenses should be revoked for willful non-payment and those whose licenses should not be revoked because they were unable to pay.

136. A pre-revocation hearing will reduce the risks of erroneous deprivation by permitting an inquiry into willfulness and good faith.

137. A pre-revocation hearing to determine willful non-payment would not impose substantial fiscal and administrative burdens on the State.

138. To the extent a pre-revocation hearing would impose some fiscal or administrative burdens on the State, these burdens are outweighed by the driver's substantial interest in maintaining a license and the need to ensure erroneous revocations do not occur.

139. There exist no extraordinary circumstances, important governmental or general public interests—including public safety—that justifies the absence of a hearing and willfulness determination before revoking licenses of drivers for non-payment. Indeed, there is no connection between failure to pay and a driver's ability to safely operate a vehicle.

140. Rather, the State's primary interest at stake here is the collection of fines and costs. The State's financial interest in the collection of fines and costs is not advanced by revoking the licenses of those who cannot afford to pay, and thus is not advanced without a pre-deprivation hearing.

141. The revocation of Plaintiffs' licenses for non-payment without a pre-revocation hearing to evaluate ability to pay and to determine willfulness violates the Procedural Due Process Clause of the Fourteenth Amendment of the U.S. Constitution.

**THIRD CLAIM FOR RELIEF**  
**Fourteenth Amendment of the U.S. Constitution**  
**(Procedural Due Process — Failure to Provide Adequate Notice)**

142. Plaintiffs re-allege and incorporate by reference each and every allegation contained in the preceding paragraphs as if fully set forth here.

143. Plaintiffs Mr. Johnson and Ms. Bonhomme-Dicks assert this claim on behalf of themselves and the proposed Future Revocation Class they seek to represent.

144. Plaintiffs Ms. Yarborough and Ms. Smoot also bring this claim on behalf of themselves and the proposed Revoked Class they seek to represent.

145. The Fourteenth Amendment of the U.S. Constitution prohibits the State of North Carolina from depriving any person of life, liberty, or property without due process of law.

146. The cornerstone of due process when a property interest is at stake is notice and a meaningful opportunity to be heard in a meaningful time and in a meaningful manner.

147. Notice must be reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action; to accurately describe legal rights and options available to the parties; and to afford them an opportunity to present their objections.

148. In circumstances where a punishment may be imposed, notice must adequately inform the party as to what the critical issue of the hearing will be.

149. The DMV fails to provide adequate notice to drivers either before or after licenses are revoked for failure to pay fines and costs, in violation of the Due Process Clause. The notice provided (1) misleadingly informs motorists that the only way they can prevent or end a license revocation is by paying the fines and costs owed in full; (2) fails to provide any notice about a right to a hearing; (3) fails to identify the remedies



available under N.C. Gen. Stat. Ann. Section 20-24.1(b)(4); and (4) fails to inform the driver that ability to pay will be a critical issue at any hearing.

150. The license revocations of Plaintiffs and members of both proposed Classes for non-payment, without adequate notice, violates the Procedural Due Process Clause of the Fourteenth Amendment to the U.S. Constitution.

## VII. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request the following relief:

- a. Assume jurisdiction over this action;
- b. Certify a class, referred to above as the Future Revocation Class, under Rules 23(a) and (b)(2) of the Federal Rules of Civil Procedure, represented by Plaintiffs Mr. Johnson and Ms. Bonhomme-Dicks, related to the First, Second, and Third Claims for Relief;
- c. Certify a class, referred to above as the Revoked Class, under Rules 23(a) and (b)(2) of the Federal Rules of Civil Procedure, represented by Plaintiffs Ms. Yarborough and Ms. Smoot, related to First, Second, and Third Claims for Relief;
- d. Issue a declaration that Section 20-24.1 of the North Carolina General Statutes and the DMV's revocation of licenses for non-payment thereunder:
  - i. violate the equal protection and due process guarantees of the Fourteenth Amendment of the U.S. Constitution, as articulated in *Bearden v. Georgia*, by revoking a motorist's driver's license for non-

- payment without an inquiry into ability to pay and a finding that the motorist willfully failed to pay;
- ii. violate the Procedural Due Process Clause of the Fourteenth Amendment of the U.S. Constitution by failing to affirmatively provide motorists a pre-deprivation opportunity to be heard on their inability to pay and to affirmatively inquire into willfulness and good faith before the revocation; and
  - iii. violate the Procedural Due Process Clause of the Fourteenth Amendment of the U.S. Constitution by failing to provide adequate notice of the opportunity to raise inability to pay or to otherwise challenge the revocation.
- e. Enter an injunction to:
- i. enjoin Section 20-24.1(a)(2) and (b)(3)-(4);
  - ii. prohibit the DMV from revoking driver's licenses for non-payment under Section 20-24.1(a)(2); and
  - iii. mandate the DMV to lift current license revocations entered pursuant to Section 20-24.1(a)(2), to reinstate licenses without charging a reinstatement fee if there is no other reason to continue the revocation, and to provide notice to the license-holders of this change.
- f. Award prevailing party costs, including attorney fees; and
- g. Grant such other relief as the Court deems just and appropriate.

Dated August 7, 2018.

Respectfully submitted,

/s/ Kristi L. Graunke

Kristi L. Graunke

/s/ Samuel Brooke

Samuel Brooke

*On behalf of Counsel for Plaintiffs*

Christopher A. Brook (NC Bar No. 33838)  
Cristina Becker (NC Bar No. 46973)  
Sneha Shah\*  
AMERICAN CIVIL LIBERTIES UNION  
OF NORTH CAROLINA LEGAL  
FOUNDATION  
P.O. Box 28004  
Raleigh, North Carolina 27611  
T: 919-834-3466  
E: cbrook@acluofnc.org  
E: cbecker@acluofnc.org  
E: sshah@acluofnc.org

Nusrat J. Choudhury\*  
R. Orion Danjuma\*  
AMERICAN CIVIL LIBERTIES UNION  
125 Broad Street, 18<sup>th</sup> Floor  
New York, New York 10004  
T: 212-519-7876  
T: 212-549-2563  
E: nchoudhury@aclu.org  
E: odanjuma@aclu.org

*\*Appearing by Special Appearance  
pursuant to L.R. 83.1(d)*

Kristi L. Graunke (NC Bar No. 51216)  
Emily C.R. Early\*  
SOUTHERN POVERTY LAW CENTER  
150 E. Ponce de Leon Ave., Ste. 340  
Decatur, Georgia 30030  
T: 404-221-4036  
E: kristi.graunke@splcenter.org  
E: emily.early@splcenter.org

Samuel Brooke\*  
Danielle Davis\*  
SOUTHERN POVERTY LAW CENTER  
400 Washington Avenue  
Montgomery, Alabama 36104  
T: 334-956-8200  
F: 334-956-8481  
E: samuel.brooke@splcenter.org  
E: danielle.davis@splcenter.org

Laura Holland (NC Bar No. 50781)  
SOUTHERN COALITION FOR SOCIAL  
JUSTICE  
1415 W. NC Hwy 54, Suite 101  
Durham, North Carolina 27707  
T: 919-323-3380 x.161  
F: 919-323-3942  
E: lauraholland@southerncoalition.org

*Counsel for Plaintiffs*

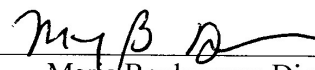
**DECLARATION OF MARIE BONHOMME-DICKS**

1. My name is Marie Bonhomme-Dicks, and I reside in Wake County, North Carolina. I am competent to give this Declaration and I have personal knowledge of the facts contained herein.
2. I have four children, three of whom are adults. I currently support my fifteen year-old son, and for the summer, I am supporting two young grandsons.
3. I am currently employed by American Airlines as a Reservation Agent. My work hours are sporadic and unreliable. I mostly work part-time, and try to pick up additional hours when I can. I do not make enough money to cover my monthly bills and currently am thousands of dollars in debt. To supplement my income, I drove for Uber and Lyft. However, I had to stop those jobs because my driver's license was temporarily revoked from September 2017 until July 2018 for a "Failure to Appear" in traffic court.
4. I have been donating plasma to have enough money to meet my son and grandsons' basic needs.
5. My driver's license was revoked once before, and it took me several years to pay off the fines, penalties, and court costs.
6. I currently hold a valid North Carolina driver's license. I rely on my license to go to work and take my son to school, sports practices, and games. I also drive my three-year old grandson to daycare and the family to church multiple days a week. Additionally, I need my license to access basic necessities, such as groceries and medical care. There is no public transit available near my home, and I rely solely on my car for transportation.
7. I received a traffic citation on April 26, 2017 for speeding in Wake County. The ticket stated I could admit guilt and pay the fine and court costs associated with the charge. However, I decided to go to court instead of paying the money because I could not afford to pay the fine and costs.
8. I appeared in Wake County District Court on July 27, 2018 and pleaded guilty to a lesser speeding charge that was reduced by the prosecutor. The court accepted my guilty plea, waived the fine, and sentenced me to court costs in the amount of \$388.00. The court provided no option other than to pay the amount in full either in the clerk's office or online. I explained my financial circumstances to the court and asked the Magistrate Judge to waive or reduce my court costs. The Magistrate Judge told me in open court that he used to be able to waive fines and costs due to financial hardship, but that the legislature now prevented him from doing so.

9. The courtroom clerk informed me that the full amount owed is due within 40 days of my conviction. However, I cannot afford to pay this amount.
10. On August 2, 2018 a clerk in the criminal court clerk's office told me that the only way to avoid a license revocation is to pay my fines, penalties, and court costs in full.
11. Without a substantial increase in income, I will not be able to pay the court costs by that date, and I fear I will lose my driver's license. If my driver's license is revoked, I will not be able to supplement my small income by driving for Uber and Lyft. Without a driver's license I will not be able to drive to work, drive my son and grandson to school and daycare, or take my family to church.
12. I have not yet received any notices from the DMV regarding how my inability to pay the court costs will affect my driver's license.
13. I am participating in this lawsuit because I cannot afford to pay my tickets. When I was married, I was in a better position to pay. However, now that I am living off of one income, I am not able to pay as I could in the past. I also want to help others who are also in a bad financial position get their licenses back.

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED this 6 day of Aug, 2018.



Marie Bonhomme-Dicks

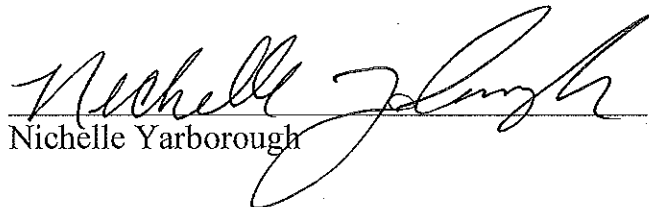
## DECLARATION OF NICHELLE YARBOROUGH

1. My name is Nichelle Yarborough, and I reside in Wake County, North Carolina. I am competent to give this Declaration and have personal knowledge of the following facts.
2. I am a single mother, raising four young children. My youngest child is nine months old. She was born premature, at five months, and has serious medical needs. Both my baby and my five-year-old daughter have intellectual disabilities. My baby has to go to the doctor approximately three to four times a month. Her doctors' offices and the nearest hospital are approximately 30 miles away from my home. My children's school is approximately ten miles away from my home, and the closest grocery store is approximately seven miles away.
3. My driver's license is currently revoked because I am unable to pay the fines, penalties and court costs for a traffic ticket from 2008.
4. I live in a rural area, and my home has very limited cell phone service. There is no public transportation available within walking distance of my home. I do not have family members to help take my daughters to their medical appointments or my older children to school. I have one friend who I can rely on sometimes to help take my children to their doctor's appointments or school. I often face the choice of not taking my baby to her necessary medical appointments or driving on a revoked driver's license and risking more tickets and fines.
5. I am currently unemployed and have struggled to find work. My daughters receive Medicaid, and I get food stamps and inconsistent child support payments for my two older children. In July 2018, I filed for bankruptcy because I cannot afford my house payments.
6. In 2008, I was issued a traffic ticket for "Operating a Vehicle With No Insurance." I do not remember getting this ticket.
7. I do not remember receiving a notice from the North Carolina Department of Motor Vehicles ("DMV") that my driver's license was going to be revoked for failure to pay traffic ticket fines and court costs in Wake County, North Carolina. I have since seen a copy of the notice. A true and correct copy of the notice is attached, as Attachment A.
8. The notice only said that I must "comply" with my citation. I understand "comply" to mean that I have to pay the full amount of my citation to avoid having my license suspended. The notice did not tell me how to avoid revocation or how to get my driver's license back if I was unable to pay.

9. The DMV never told me that I had any option to keep my license other than paying off the ticket.
10. On May 23, 2018, I received a ticket for "Driving While License Revoked – Non Impaired." This ticket is currently pending before the Wake County District Court. If found guilty, I will not be able to pay the fines and court costs associated with the ticket.
11. I currently owe \$221 in court fines, penalties and costs for the 2008 traffic ticket. I would pay my traffic fines, penalties, and court costs if I could, but I do not have the money to do so. As the sole caretaker of my four children, two with intellectual disabilities, I spend my limited resources on trying to meet their needs. I am currently enrolled in community college with the hopes that an education will give me better career opportunities. The community college is not within a walking distance of my home.
12. I am participating in this lawsuit to prevent my driver's license from being revoked solely because I cannot pay my fine and court costs. It is unfair for the DMV to revoke people's driver's licenses because they do not have enough money to pay a traffic ticket.

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED this 6<sup>th</sup> day of August, 2018.

  
Nichelle Yarborough



LDLSSUS00300

12/16/2016

NICHELLE ANTOINETTE YARBOROUGH  
OFFICIAL NOTICE  
CUSTOMER NO. 000028968565

WE REGRET TO INFORM YOU THAT EFFECTIVE 12:01 A.M., 02/14/2017, YOUR NC DRIVING PRIVILEGE IS SCHEDULED FOR AN INDEFINITE SUSPENSION IN ACCORDANCE WITH GENERAL STATUTE 20-24.1 FOR FAILURE TO PAY FINE AS FOLLOWS:

VIOLATION DATE: 2008-08-24 CITATION NUMBER: 038E8652  
COURT: WAKE COUNTY COURT PHONE: (919)792-4300

UNFORTUNATELY THE DIVISION OF MOTOR VEHICLES CANNOT ACCEPT PAYMENTS FOR FINES AND COSTS IMPOSED BY THE COURTS. PLEASE CONTACT THE COURT ABOVE TO COMPLY WITH THIS CITATION.

NOTE: PLEASE COMPLY WITH THIS CITATION PRIOR TO THE EFFECTIVE DATE IN ORDER TO AVOID THIS SUSPENSION.

IF YOU HAVE NOT COMPLIED WITH THIS CITATION BY THE EFFECTIVE DATE OF THIS ORDER, YOU WILL NEED TO MAIL YOUR CURRENT NORTH CAROLINA DRIVER LICENSE, IF APPLICABLE, TO THE DIVISION. FAILURE TO DO SO MAY RESULT IN AN ADDITIONAL \$50.00 SERVICE FEE.

## REINSTATEMENT PROCEDURES:

UPON COMPLIANCE WITH THIS CITATION, YOU MAY VISIT YOUR LOCAL DRIVER LICENSE OFFICE. AT SUCH TIME PROPER IDENTIFICATION AND PROOF OF AGE WILL BE NEEDED.

A RESTORATION FEE OF \$65.00 AND THE APPROPRIATE LICENSE FEES ARE NEEDED AND HAVE TO BE PAID AT THE TIME YOUR DRIVING PRIVILEGE IS REINSTATED.

THIS ORDER IS IN ADDITION TO AND DOES NOT SUPERSEDE ANY PRIOR ORDER ISSUED BY THE DMV. IF ADDITIONAL INFORMATION CONCERNING THIS ORDER IS NEEDED, PLEASE CONTACT A REPRESENTATIVE OF THE DIVISION AT (919)715-7000.

DIRECTOR OF PROCESSING SERVICES

JA274

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

SETI JOHNSON and, MARIE-  
BONHOMME-DICKS on behalf of  
themselves and those similarly  
situated and SHAREE SMOOT and  
NICHELLE YARBOROUGH, on  
behalf of themselves and those  
similarly situated,  
Plaintiffs,

No. 1:18-CV-00467

v.

TORRE JESSUP, in his official  
capacity as Commissioner of the  
North Carolina Division of Motor  
Vehicles,  
Defendant.

**DEFENDANT’S ANSWER TO FIRST AMENDED COMPLAINT**

NOW COMES DEFENDANT, Torre Jessup, Commissioner of the North Carolina Division of Motor Vehicles [“DMV”], in his official capacity, [“Defendant”] by and through counsel, Joshua H. Stein, Attorney General, Alexander McC. Peters, Chief Deputy Attorney General, Ann Matthews and Neil Dalton, Special Deputy Attorneys General, and Kathryne E. Hathcock, Assistant Attorney General, and hereby file an Answer to the First Amended Class Action Complaint For Declaratory and Injunctive Relief [“First Amended Complaint”], of Plaintiffs Seti Johnson, Marie Bonhomme-Dicks, Sharee Smoot and Nichelle Yarborough [Plaintiffs] pursuant to Rule 7(a) of the Federal Rule

of Civil Procedure. Defendant responds to the allegations of the First Amended Complaint as follows:

**SECTION I**  
*(ENTITLED "PRELIMINARY STATEMENT")*

1. In response to the allegations in Paragraph 1 of the First Amended Complaint, it is admitted that DMV entered an order pursuant to state law and in accord with information received from the state court system that would have suspended the driver's license of Plaintiff Seti Johnson effective on or about July 18, 2018 if he did not pay fines and costs, but that the DMV has indicated to Plaintiffs' attorneys and to this Court that the DMV will not suspend Plaintiff Johnson's license while the Motion for Preliminary Injunction is pending. See, Defendant's Motion for Extension of Time to Respond to the original Motion for Preliminary Injunction dated June 15, 2018.

It is admitted that Plaintiff Bonhomme-Dicks may owe fines and costs to the state court system. However, to the extent that the First Amended Complaint implies that Plaintiff Bonhomme-Dicks has received notification of a suspension of her license to drive from DMV, it is denied.

The allegations in Paragraph 1 of the First Amended Complaint are otherwise denied due to lack of sufficient information that would allow Defendant to admit or deny them. To the extent that Paragraph 1 states legal conclusions, they are neither admitted nor denied. Paragraph 1 is otherwise

denied.

2. In response to the allegations in Paragraph 2 of the First Amended Complaint, it is admitted that DMV has entered orders suspending driver's licenses of people pursuant to state law and in accord with information received from the state court system regarding the failure to pay fines and court costs. The allegations in Paragraph 2 of the First Amended Complaint are otherwise denied due to lack of sufficient information that would allow Defendant to admit or deny them. To the extent that Paragraph 2 of the First Amended Complaint states legal conclusions, they are neither admitted nor denied. Paragraph 2 is otherwise denied.

3. In response to the allegations in Paragraph 3 of the First Amended Complaint, it is admitted that over the past twenty-five or so years, DMV has suspended driver's licenses hundreds of thousands of times pursuant to state law and in accord with information received from the state court system regarding failure to pay fines and court costs. Many of these revocations occurred when a driver's license or privilege was already suspended or revoked for failure to pay fines and costs and/or for other reasons. The allegations in Paragraph 3 of the First Amended Complaint are otherwise denied due to lack of sufficient information that would allow Defendant to admit or deny them. To the extent that Paragraph 3 of the First Amended Complaint states legal

conclusions, they are neither admitted nor denied. Paragraph 3 is otherwise denied.

4. In response to the allegations in Paragraph 4 of the First Amended Complaint, it is admitted that DMV, pursuant to state law and in accord with information received from the state court system regarding the failure to pay fines and costs, sends notice to a driver if he/she is reported by the court system for nonpayment of a traffic ticket. The notice directs the motorist to contact the court regarding payment. The driver's license is suspended approximately 60 days later if the fine and or costs are not paid. It is admitted that DMV does not conduct a hearing regarding the driver's ability to pay. Defendant lacks knowledge as to whether the courts conduct such hearings. The allegations in Paragraph 4 of the First Amended Complaint are otherwise denied.

5. In response to the allegations in Paragraph 5 of the First Amended Complaint, it is denied that since N.C.G.S. § 20-24.1 has been in place DMV has suspended the driver license of 436,000 people for failure to pay traffic fines and court costs. As of the time of the filing of the original Complaint, the driver's licenses and/or privileges of approximately 264,000 people had been suspended pursuant to the statute. This number is smaller than the 436,000 number asserted in the First Amended Complaint because some licenses were suspended more than once. It is further denied that 264,000 people's driver's

license or privilege were suspended solely for failure to pay traffic fines and or costs. Also, to the extent the First Amended Complaint implies that all of the suspensions relate to North Carolina licensed drivers, such assertion is denied. Many of the 264,000 suspensions were instituted on drivers from out of state who committed infractions in North Carolina, and many of the suspensions were issued against drivers who never even possessed a North Carolina driver's license. The allegations in Paragraph 5 of the First Amended Complaint are otherwise denied due to lack of sufficient information that would allow Defendant to admit or deny them. To the extent that Paragraph 5 of the First Amended Complaint states legal conclusions, they are neither admitted nor denied. Paragraph 5 is otherwise denied.

6. The factual allegations in Paragraph 6 of the First Amended Complaint are denied due to lack of sufficient information that would allow Defendant to admit or deny them. To the extent that Paragraph 6 of the First Amended Complaint states legal conclusions, they are denied. Paragraph 6 is otherwise denied.

7. The factual allegations in Paragraph 7 of the First Amended Complaint are admitted to the extent that it alleges that Plaintiff Johnson was notified by DMV that he had until July 24, 2018 to pay fines and court costs of \$228 or his driver's license would be suspended. The factual allegations

contained in Footnote 1 are admitted. Paragraph 7 of the First Amended Complaint is otherwise denied.

8. Regarding Paragraph 8 of the First Amended Complaint, Defendant admits he does not inquire into the ability of people to pay fines owed to the courts. Defendant lacks sufficient information to admit or deny the remaining allegations contained in Paragraph 8 of the First Amended Complaint.

9. Regarding Paragraph 9 of the First Amended Complaint, Defendant admits that he was notified by the court system that Plaintiff Yarborough owed fines to the court system that she had not paid and that he complied with the law in sending Plaintiff Yarborough a notice informing her that her driver's license would be suspended if she did not pay the fines. Defendant admits he did not inquire into the ability of Plaintiff Yarborough to pay the fines owed to the court. Paragraph 9 of the First Amended Complaint is otherwise denied.

10. The factual allegations in Paragraph 10 of the First Amended Complaint are admitted to the extent that it alleges that Plaintiff Smoot was convicted of traffic offenses, ordered to pay fines and or costs which she did not pay, and that DMV made no inquiry into her ability to pay or provide her with any other options. Defendant has no knowledge as to any inquiry made by



the court or judge or at what stage an inquiry may have been made or whether the court or judge imposing fines and/or costs against her gave her any other options for payment. The remainder of the factual allegations contained in Paragraph 10 of the First Amended Complaint are denied due to lack of sufficient information that would allow Defendant to admit or deny them. To the extent that Paragraph 10 of the First Amended Complaint states legal conclusions, they are denied.

11. Paragraph 11 of the First Amended Complaint is denied as to its factual allegations and its legal conclusions. To the extent that Paragraph 11 alleges the motivation or desires of the Plaintiffs, the same is denied due to lack of sufficient knowledge.

12. Paragraph 12 of the First Amended Complaint is denied as to its factual allegations and its legal conclusions. To the extent that Paragraph 12 asserts the motivation or desires of the Plaintiffs, the same is denied due to lack of sufficient knowledge.

**SECTION II**  
*(ENTITLED "JURISDICTION AND VENUE")*

13. Paragraph 13 of the First Amended Complaint states a legal conclusion rather than a factual allegation for which no response is needed. To the extent that Paragraph 13 contains factual allegations, they are denied.

14. Paragraph 14 of the First Amended Complaint is admitted to the

extent that some of the events complained about appear to have occurred in a geographic area which is within the jurisdiction of the District Court for the Middle District of North Carolina. All other factual allegations and legal conclusions contained in Paragraph 14 are denied.

**SECTION III**  
*(ENTITLED "PARTIES")*

15. Paragraph 15 of the First Amended Complaint is neither admitted nor denied due to lack of knowledge of Defendant.

16. Paragraph 16 of the First Amended Complaint is neither admitted nor denied due to lack of knowledge of Defendant.

17. Paragraph 17 of the First Amended Complaint is neither admitted nor denied due to lack of knowledge of Defendant.

18. Paragraph 18 of the First Amended Complaint is neither admitted nor denied due to lack of knowledge of Defendant.

19. Paragraph 19 of the First Amended Complaint is admitted to the extent that it alleges that Torre Jessup is the Commissioner and the top administrator at DMV. It is admitted that Commissioner Jessup has the authority to suspend driver's licenses in some instances. It is denied that Commissioner Jessup's authority to suspend driver licenses is "exclusive," since for example, in some instances the suspension of driver licenses is mandatory and in some instances it may be done by the court system.

Paragraph 19 is otherwise denied.

**SECTION IV**  
*(ENTITLED "STATEMENT OF FACTS")*

20. The factual allegations contained in Paragraph 20 of the First Amended Complaint are admitted to the extent they were admitted in Defendant's response to Paragraph 5 of the First Amended Complaint above. Paragraph 20 of the First Amended Complaint is otherwise denied.

21. Paragraph 21 of the First Amended Complaint is denied as to both its factual allegations and to its legal conclusions.

22. The first sentence of Paragraph 22 of the First Amended Complaint is denied as to both its factual allegations and to its legal conclusions. Defendant lacks sufficient knowledge to admit or deny the remainder of Paragraph 22.

23. Defendant lacks sufficient knowledge to admit or deny the factual allegations contained in Paragraph 23 of the First Amended Complaint.

24. Defendant lacks sufficient knowledge to admit or deny the factual allegations contained in Paragraph 24 of the First Amended Complaint.

25. Defendant lacks sufficient knowledge to admit or deny the factual allegations contained in Paragraph 25 of the First Amended Complaint.

26. Defendant lacks sufficient knowledge to admit or deny the factual allegations contained in Paragraph 26 of the First Amended Complaint.

27. Paragraph 27 of the First Amended Complaint is denied as to its factual allegations and its legal conclusions.

28. The factual allegations contained in Paragraph 28 of the First Amended Complaint are denied.

29. The factual allegations contained in Paragraph 29, of the First Amended Complaint are denied. *See* response to Paragraph 19 of the First Amended Complaint above. To the extent Paragraph 29 of the First Amended Complaint contains legal conclusions, they are denied.

30. Paragraph 30 of the First Amended Complaint contains only legal conclusions and therefore it is neither admitted nor denied. DMV expressly denies any knowledge of what courts and individual judges might do to try to help motorists make arrangements for payment of traffic fines and court costs.

31. Paragraph 31 of the First Amended Complaint is admitted to the extent that DMV complies with N.C.G.S. § 20-24.1(a) and (b). DMV makes no inquiry into the ability of the motorist to pay fines and costs and has no knowledge of the efforts made by the courts or judges to do so.

32. Paragraph 32 of the First Amended Complaint is admitted.

33. Paragraph 33 of the First Amended Complaint is admitted to the extent that the sample of the notice language contained in Paragraph 33 is typical.

34. Paragraph 34 of the First Amended Complaint is admitted to the extent that the sample of the notice language contained in Paragraph 34 is typical.

35. Paragraph 35 of the First Amended Complaint is admitted.

36. Paragraph 36 of the First Amended Complaint is admitted.

37. Paragraph 37 of the First Amended Complaint is admitted.

38. Paragraph 38 of the First Amended Complaint is admitted.

39. Paragraph 39 of the First Amended Complaint is admitted as to its factual allegations involving DMV. The legal conclusions contained in Paragraph 39 are neither admitted nor denied.

40. Paragraph 40 of the First Amended Complaint contains legal conclusions that are neither admitted nor denied. To the extent Paragraph 40 contains factual allegations, they are denied due to lack of knowledge. Defendant expressly denies any knowledge as to the number of people who requested relief from the courts regarding payment of their traffic fines and costs per N.C.G.S. § 20-24.1.

41. Paragraph 41 of the First Amended Complaint is admitted. Unless DMV receives notice that the statute has been satisfied or other information is received from the court system, DMV will not remove the revocation on its own.

42. Paragraph 42 of the First Amended Complaint is admitted. DMV

lacks knowledge as to whether any inquiry may be made by courts or individual judges.

43. Paragraph 43 of the First Amended Complaint is admitted. DMV follows the statute after receiving information from the court system requiring revocation.

44. To the extent that Paragraph 44 of the First Amended Complaint states or implies that the DMV does not give adequate notice of the revocation process, it is denied. Paragraph 44 is otherwise denied.

45. Defendant lacks sufficient knowledge to admit or deny the allegations contained in Paragraph 45 of the First Amended Complaint.

46. Defendant lacks sufficient knowledge to admit or deny the allegations contained in Paragraph 46 of the First Amended Complaint.

47. Defendant lacks sufficient knowledge to admit or deny the allegations contained in Paragraph 47 of the First Amended Complaint.

48. It is admitted that Plaintiff Johnson has had his driver license suspended in the past. Defendant lacks sufficient knowledge to admit or deny any other factual allegations contained in Paragraph 48 of the First Amended Complaint.

49. It is admitted that Plaintiff Johnson was issued a citation for DWLR in 2017. Defendant lacks sufficient knowledge to admit or deny the

remaining factual allegations contained in Paragraph 49 of the First Amended Complaint.

50. It is admitted that Plaintiff Johnson had his driver license restored in 2017. Defendant lacks sufficient knowledge to admit or deny the other factual allegations contained in Paragraph 50 of the First Amended Complaint.

51. It is admitted that Plaintiff Johnson was issued another citation for DWLR in 2017. Defendant lacks sufficient knowledge to admit or deny the other factual allegations asserted in Paragraph 51 of the First Amended Complaint.

52. Defendant lacks sufficient knowledge to admit or deny the allegations contained in Paragraph 52 of the First Amended Complaint.

53. Defendant lacks sufficient knowledge to admit or deny the allegations contained in Paragraph 53 of the First Amended Complaint.

54. Defendant lacks sufficient knowledge to admit or deny the allegations contained in Paragraph 54 of the First Amended Complaint.

55. The allegations contained in Paragraph 55 of the First Amended Complaint are admitted.

56. It is admitted that Defendant has not been notified that Plaintiff Johnson has paid the \$228 owed to the Court. Defendant lacks sufficient knowledge to admit or deny the remainder of Paragraph 56 of the First



Amended Complaint.

57. The allegations contained in Paragraph 57 of the First Amended Complaint are admitted.

58. Defendant lacks sufficient knowledge to admit or deny the factual allegations contained in Paragraph 58 of the First Amended Complaint.

59. Defendant lacks sufficient knowledge to admit or deny the factual allegations contained in Paragraph 59 of the First Amended Complaint.

60. Defendant lacks sufficient knowledge to admit or deny the factual allegations contained in Paragraph 60 of the First Amended Complaint.

61. Defendant lacks sufficient knowledge to admit or deny the factual allegations contained in Paragraph 61 of the First Amended Complaint.

62. Defendant lacks sufficient knowledge to admit or deny the factual allegations contained in Paragraph 62 of the First Amended Complaint.

63. Defendant lacks sufficient knowledge to admit or deny the factual allegations contained in Paragraph 63 of the First Amended Complaint. Specifically DMV lacks knowledge as to whether Plaintiff Bonhomme-Dicks will pay her fines and what the court might do if she does not.

64. Defendant lacks sufficient knowledge to admit or deny the factual allegations contained in Paragraph 64 of the First Amended Complaint.

65. Defendant lacks sufficient knowledge to admit or deny the factual

allegations contained in Paragraph 65 of the First Amended Complaint.

66. Defendant lacks sufficient knowledge to admit or deny the factual allegations contained in Paragraph 66 of the First Amended Complaint.

67. Defendant lacks sufficient knowledge to admit or deny the factual allegations contained in Paragraph 67 of the First Amended Complaint.

68. Defendant lacks sufficient knowledge to admit or deny the factual allegations contained in Paragraph 68 of the First Amended Complaint.

69. Defendant lacks sufficient knowledge to admit or deny the factual allegations contained in Paragraph 69 of the First Amended Complaint.

70. As to Paragraph 70 of the First Amended Complaint, it is admitted that the court system notified DMV about the non-payment of fines and costs by Plaintiff Yarborough and that her license to drive was suspended in 2016.

71. The factual allegations contained in Paragraph 71 of the First Amended Complaint are admitted.

72. As to Paragraph 72 of the First Amended Complaint, it is admitted that DMV did not inquire into Plaintiff Yarborough's ability to pay her fines owed to the court. Defendant lacks sufficient knowledge to admit or deny the remaining allegations contained in Paragraph 72.

73. Defendant lacks sufficient knowledge to admit or deny the factual allegations contained in Paragraph 73 of the First Amended Complaint.

74. As to Paragraph 74 of the First Amended Complaint, Defendant admits that Plaintiff Smoot's driver license is suspended due to non-payment of fines and costs. Defendant lacks sufficient knowledge to admit or deny the remainder of Paragraph 74.

75. Defendant lacks sufficient knowledge to admit or deny the allegations contained in Paragraph 75 of the First Amended Complaint.

76. The allegations in Paragraph 76 of the First Amended Complaint are admitted.

77. As to the factual allegations contained in Paragraph 77 of the First Amended Complaint, it is admitted that the Court ordered Plaintiff Smoot to pay \$308. Defendant lacks sufficient knowledge to admit or deny the remaining allegations contained in Paragraph 77.

78. As to the factual allegations contained in Paragraph 78 of the First Amended Complaint, it is admitted that Plaintiff Smoot did not pay the fines and costs. Defendant lacks sufficient knowledge to admit or deny the remaining allegations contained in Paragraph 78.

79. Paragraph 79 of the First Amended Complaint is admitted.

80. As to the factual allegations contained in Paragraph 80 of the First Amended Complaint, Defendant lacks any knowledge as to why Plaintiff Smoot did not pay the fines and or costs assessed against her. Defendant lacks

sufficient knowledge to otherwise admit or deny the allegations contained in Paragraph 80 of the First Amended Complaint.

81. Defendant lacks sufficient knowledge to admit or deny the allegations contained in Paragraph 81 of the First Amended Complaint.

82. Defendant lacks sufficient knowledge to admit or deny the allegations contained in Paragraph 82 of the First Amended Complaint.

83. Defendant lacks sufficient knowledge to admit or deny the factual allegations contained in Paragraph 83 of the First Amended Complaint.

84. It is admitted that Plaintiff Smoot's driver license was revoked in 2016 for failure to pay fines and costs. Defendant lacks sufficient knowledge to admit or deny any other factual allegations contained in Paragraph 84.

85. As to the factual allegations contained in Paragraph 85 of the First Amended Complaint, it is admitted that Plaintiff Smoot was convicted of DWLR in 2017 and ordered by the court system to pay fines and costs, which she did not pay. Defendant lacks sufficient knowledge to admit or deny the allegations contained in Paragraph 85.

86. Defendant lacks sufficient knowledge to admit or deny the factual allegations contained in Paragraph 86 of the First Amended Complaint.

87. Defendant lacks sufficient knowledge to admit or deny the factual allegations contained in Paragraph 87 of the First Amended Complaint.

88. As to the factual allegations contained in Paragraph 88 of the first Amended Complaint, it is admitted that in 2018 Plaintiff Smoot was sent an additional notice of revocation of her license for failure to pay. To the extent that Paragraph 88 of the First Amended Complaint infers or implies that DMV did not provide adequate notice of the revocation process, the same is denied.

89. Defendant lacks sufficient knowledge to admit or deny the factual allegations contained in Paragraph 89 of the First Amended Complaint.

90. As to the factual allegations contained in Paragraph 90 of the First Amended Complaint, it is admitted that the driver's license of Plaintiff Smoot was revoked again in 2018 for failure to pay court fines and costs. Defendant lacks sufficient knowledge to admit or deny any other factual allegations contained in Paragraph 90.

91. Defendant lacks sufficient knowledge to admit or deny the factual allegations contained in Paragraph 91 of the First Amended Complaint.

92. Defendant lacks sufficient knowledge to admit or deny the factual allegations contained in Paragraph 92 of the First Amended Complaint.

93. Defendant lacks sufficient knowledge to admit or deny the factual allegations contained in Paragraph 93 of the First Amended Complaint.

94. Defendant lacks sufficient knowledge to admit or deny the factual allegations contained in Paragraph 94 of the First Amended Complaint.

**SECTION V**  
*(ENTITLED "CLASS ALLEGATIONS")*

95. Paragraph 95 of the First Amended Complaint does not assert allegations of fact to which a response is required. To the extent that Paragraph 95 does make allegations of fact in need of a response, they are denied.

96. Paragraph 96 of the First Amended Complaint does not assert allegations of fact to which a response is required. To the extent that Paragraph 96 does make allegations of fact in need of a response, they are denied.

97. Paragraph 97 of the First Amended Complaint does not assert allegations of fact to which a response is required. To the extent that Paragraph 97 does make allegations of fact in need of a response, they are denied.

98. Paragraph 98 of the First Amended Complaint does not assert allegations of fact to which a response is required. To the extent that Paragraph 98 does make allegations of fact in need of a response, they are denied.

99. Paragraph 99 of the First Amended Complaint contains legal conclusions rather than allegations of fact to which no response is required. To the extent that Paragraph 99 contains allegations of fact to which a response

is required, they are denied.

100. Paragraph 100 of the First Amended Complaint contains legal conclusions rather than allegations of fact to which no response is required. To the extent that Paragraph 100 contains allegations of fact to which a response is required, they are denied.

101. The first sentence of Paragraph 101 of the First Amended Complaint contains legal conclusions rather than allegations of fact to which no response is required. To the extent that Paragraph 101 contains allegations of fact to which a response is required, they are denied.

102. Defendant lacks sufficient knowledge to admit or deny the factual allegations contained in Paragraph 102 of the First Amended Complaint.

103. Paragraph 103 of the First Amended Complaint contains legal conclusions to which no response is required. To the extent that Paragraph 103 contains allegations of fact to which a response is required, Defendant lacks sufficient knowledge to admit or to deny them.

104. Paragraph 104 of the First Amended Complaint contains legal conclusions to which no response is required. To the extent that Paragraph 104 contains allegations of fact to which a response is required, they are denied.

105. Paragraph 105 of the First Amended Complaint contains legal



conclusions to which no response is required. To the extent that Paragraph 105 contains allegations of fact to which a response is required, they are denied.

106. Paragraph 106 of the First Amended Complaint contains legal conclusions to which no response is required. To the extent that Paragraph 106 contains allegations of fact to which a response is required, they are denied.

107. Paragraph 107 of the First Amended Complaint contains legal conclusions to which no response is required. To the extent that Paragraph 107 contains allegations of fact to which a response is required, they are denied.

108. Paragraph 108 of the First Amended Complaint contains legal conclusions to which no response is required. To the extent that Paragraph 109 contains allegations of fact to which a response is required, they are denied.

109. Paragraph 109 of the First Amended Complaint contains legal conclusions to which no response is required. To the extent that Paragraph 109 contains allegations of fact to which a response is required, they are denied.

110. Paragraph 105 of the First Amended Complaint contains legal

conclusions to which no response is required. To the extent that Paragraph 110 contains allegations of fact to which a response is required, they are denied.

111. Paragraph 111 of the First Amended Complaint contains legal conclusions to which no response is required. To the extent that Paragraph 111 contains allegations of fact to which a response is required, they are denied.

112. Paragraph 112 of the First Amended Complaint contains legal conclusions to which no response is required. To the extent that Paragraph 112 contains allegations of fact to which a response is required, they are denied. DMV complies with N.C.G.S. § 20-24.1.

113. Paragraph 113 of the First Amended Complaint contains legal conclusions to which no response is required. To the extent that Paragraph 113 contains allegations of fact to which a response is required, they are denied.

114. Paragraph 114 of the First Amended Complaint contains legal conclusions to which no response is required. To the extent that Paragraph 114 contains allegations of fact to which a response is required, they are denied.

**SECTION VI**  
*(ENTITLED "FIRST CLAIM OF RELIEF")*

115. Defendant re-alleges and incorporates by reference each response contained in the preceding paragraphs as if fully set forth.

116. Paragraph 116 of the First Amended Complaint contains legal conclusions to which no response is required. To the extent that Paragraph 116 contains allegations of fact to which a response is required, they are denied.

117. Paragraph 117 of the First Amended Complaint contains legal conclusions to which no response is required. To the extent that Paragraph 117 contains allegations of fact to which a response is required, they are denied.

118. Paragraph 118 of the First Amended Complaint contains legal conclusions to which no response is required. To the extent that Paragraph 118 contains allegations of fact to which a response is required, they are denied.

119. Paragraph 119 of the First Amended Complaint contains legal conclusions to which no response is required. To the extent that Paragraph 119 contains allegations of fact to which a response is required, they are denied.

120. Paragraph 120 of the First Amended Complaint contains legal

conclusions to which no response is required. To the extent that Paragraph 120 contains allegations of fact to which a response is required, they are denied.

121. Paragraph 121 of the First Amended Complaint contains legal conclusions to which no response is required. To the extent that Paragraph 121 contains allegations of fact to which a response is required, they are denied.

122. Paragraph 122 of the First Amended Complaint contains legal conclusions to which no response is required. To the extent that Paragraph 122 contains allegations of fact to which a response is required, they are denied.

123. Paragraph 123 of the First Amended Complaint contains legal conclusions to which no response is required. To the extent that Paragraph 123 contains allegations of fact to which a response is required, they are denied.

124. Paragraph 124 of the First Amended Complaint contains legal conclusions to which no response is required. To the extent that Paragraph 124 contains allegations of fact to which a response is required, they are denied.

125. Paragraph 125 of the First Amended Complaint contains legal

conclusions to which no response is required. To the extent that Paragraph 125 contains allegations of fact to which a response is required, they are denied.

**SECTION VII**  
*(ENTITLED "SECOND CLAIM OF RELIEF")*

126. Defendant re-alleges and incorporates by reference each response contained in the preceding paragraphs as if fully set forth.

127. Paragraph 127 of the First Amended Complaint contains legal conclusions to which no response is required. To the extent that Paragraph 127 contains allegations of fact to which a response is required, they are denied.

128. Paragraph 128 of the First Amended Complaint contains legal conclusions to which no response is required. To the extent that Paragraph 128 contains allegations of fact to which a response is required, they are denied.

129. Paragraph 129 of the First Amended Complaint contains legal conclusions to which no response is required. To the extent that Paragraph 129 states or implies allegations of fact to which a response is required, they are denied.

130. Paragraph 130 of the First Amended Complaint contains legal conclusions to which no response is required.

131. Paragraph 131 of the First Amended Complaint contains legal conclusions to which no response is required. Defendant admits that he does not mandate a deprivation hearing prior to sending notice to people that their license to drive may be suspended for non-payment of fines.

132. Paragraph 132 of the First Amended Complaint contains legal conclusions to which no response is required. Defendant admits that he does not mandate a hearing into a person's "willfulness" prior to sending notice to a person that his or her license to drive may be suspended for non-payment of fines.

133. Paragraph 133 of the First Amended Complaint contains legal conclusions to which no response is required. To the extent that Paragraph 133 states or implies allegations of fact to which a response is required, they are denied.

134. Paragraph 134 of the First Amended Complaint contains legal conclusions to which no response is required. To the extent that Paragraph 134 states or implies allegations of fact to which a response is required, they are denied.

135. Paragraph 135 of the First Amended Complaint contains legal conclusions to which no response is required. To the extent that Paragraph 135 states or implies allegations of fact to which a response is required, they

are denied.

136. Paragraph 136 of the First Amended Complaint contains legal conclusions to which no response is required. To the extent that Paragraph 136 states or implies allegations of fact to which a response is required, they are denied.

137. Paragraph 137 of the First Amended Complaint contains legal conclusions to which no response is required. To the extent that Paragraph 137 states or implies allegations of fact to which a response is required, they are denied.

138. Paragraph 138 of the First Amended Complaint contains legal conclusions to which no response is required. To the extent that Paragraph 138 states or implies allegations of fact to which a response is required, they are denied.

139. Paragraph 139 of the First Amended Complaint contains legal conclusions to which no response is required. To the extent that Paragraph 139 states or implies allegations of fact to which a response is required, they are denied.

140. The allegations of Paragraph 140 of the First Amended Complaint are denied.

141. Paragraph 141 of the First Amended Complaint contains legal



conclusions to which no response is required. To the extent that Paragraph 141 states or implies allegations of fact to which a response is required, they are denied.

**SECTION VIII**  
*(ENTITLED "THIRD CLAIM OF RELIEF")*

142. Defendant re-alleges and incorporates by reference each response contained in the preceding paragraphs as if fully set forth.

143. To the extent that Paragraph 143 of the First Amended Complaint contains allegations of fact to which a response is required, they are denied.

144. To the extent that Paragraph 144 of the First Amended Complaint contains allegations of fact to which a response is required, they are denied.

145. Paragraph 145 of the First Amended Complaint contains legal conclusions to which no response is required. To the extent that Paragraph 145 states or implies allegations of fact to which a response is required, they are denied.

146. Paragraph 146 of the First Amended Complaint contains legal conclusions to which no response is required. To the extent that Paragraph 146 states or implies allegations of fact to which a response is required, they are denied.

147. Paragraph 147 of the First Amended Complaint contains legal conclusions to which no response is required. To the extent that Paragraph

147 states or implies allegations of fact to which a response is required, they are denied.

148. Paragraph 148 of the First Amended Complaint contains legal conclusions to which no response is required. To the extent that Paragraph 148 states or implies allegations of fact to which a response is required, they are denied.

149. Paragraph 149 of the First Amended Complaint contains legal conclusions to which no response is required. To the extent that Paragraph 149 states or implies allegations of fact to which a response is required, they are denied.

150. Paragraph 150 of the First Amended Complaint contains legal conclusions to which no response is required. To the extent that Paragraph 150 states or implies allegations of fact to which a response is required, they are denied.

### **DEFENSES**

Defendant asserts the following Defenses:

- I. Plaintiffs' claims on behalf of themselves and the proposed members of the classes are procedurally-barred because the Commissioner is entitled to immunity under the Eleventh Amendment to the United States Constitution.

- II. Plaintiffs' claims on behalf of themselves and the proposed members of the classes are procedurally barred because the Commissioner is not a proper party in that he lacks the statutory authority to grant the relief sought.
- III. Pursuant to the *Rooker-Feldman* doctrine, this Court lacks jurisdiction over the Plaintiffs' claims and requests' for relief.
- IV. Plaintiffs' claims are barred in whole or in part by the applicable Statute of Limitations for 42 U.S.C. § 1983 actions.
- V. Plaintiffs' claims are barred in whole or in part for lack of standing.
- VI. Plaintiffs fail to state a claim as a matter of law.
- VII. N.C.G.S. § 20-24.1 does not violate the Plaintiffs' procedural due process rights under the Fourteenth Amendment of the U.S. Constitution.
- VIII. N.C.G.S. § 20-24.1 does not violate the Equal Protection clause of the Fourteenth Amendment of the U.S. Constitution.
- IX. Defendant reserves the right to amend this Answer as provided by the Federal Rules of Civil Procedure in order to assert additional defenses which might become relevant as this matter progresses.

Wherefore, Defendant prays that this case be dismissed in its entirety,

that all issues triable by jury be tried by jury, that all costs and attorneys' fees be taxed to Plaintiffs, and for whatever relief may be just and proper.

Electronically submitted, this the 21<sup>st</sup> day of August, 2018.

**JOSHUA H. STEIN**  
Attorney General

**/s/ Neil Dalton**

Neil Dalton  
Special Deputy Attorney General  
E-mail: ndalton@ncdoj.gov  
N.C. Bar No.: 13357

**/s/ Kathryne E. Hathcock**

Kathryne E. Hathcock  
Assistant Attorney General  
E-mail: khathcock@ncdoj.gov  
N.C. Bar No.: 33041

**/s/ Alexander McC. Peters**

Alexander McC. Peters  
Chief Deputy Attorney General  
E-mail: apeters@ncdoj.gov  
N.C. Bar No.: 13654

**/s/ Ann Matthews**

Ann Matthews  
Special Deputy Attorney General  
E-mail: amathews@ncdoj.gov  
N.C. Bar No.: 15971

N.C. Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602  
Telephone: (919)716-6650  
Facsimile: (919)716-6708

*Counsel for Defendant*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

SETI JOHNSON and MARIE  
BONHOMME-DICKS, on behalf of  
themselves and those similarly situated,  
and SHAREE SMOOT and NICHELLE  
YARBOROUGH, on behalf of  
themselves and those similarly situated,

Plaintiffs,

v.

TORRE JESSUP, in his official capacity  
as Commissioner of the North Carolina  
Division of Motor Vehicles,

Defendant.

Case No. 1:18-cv-00467

(CLASS ACTION)

**STIPULATED JOINT STATEMENT OF FACTS**

Plaintiffs Seti Johnson, Marie Bonhomme-Dicks, Sharee Smoot, and Nichelle Yarborough and Defendant Commissioner Torre Jessup agree to, and submit to the Court, the following stipulated facts.

1. Section 20-24.2 of the North Carolina General Statutes requires courts to notify the North Carolina Division of Motor Vehicles (“DMV”) of a motorist’s failure to pay motor vehicle offense-related fines, penalties, or court costs (“fines and costs”) forty days after the non-payment.

2. Section 20-24.1 requires the DMV to revoke a motorist’s driver’s license after getting notice from a court that the motorist did not pay his/her fines and costs.

3. The DMV receives notice of motorists' non-payment through transmission of electronic files from courts throughout the state. The electronic files contain information about the motorist, including their identity, the case number for which there are unpaid fines and costs, and the court in which the case was filed. The electronic files do not contain any information about the amount that is owed; the proceedings that occurred in the state court, including whether any assessment of the motorist's ability to pay occurred at any time; or any reference to whether the motorist is able to pay the fines and costs owed.

4. After the DMV receives this notice from a court, Section 20-24.1 requires the DMV to send each motorist a revocation order. The DMV does so through a document it entitles "Official Notice." The Official Notice informs the motorist that the revocation will become effective on a specific date contained in the Official Notice. This effective date is approximately 60 days from the date the notice is mailed or personally delivered to him/her, if the motorist fails to pay his/her fines and costs.

5. The Official Notice received by Plaintiff Ms. Smoot, which is attached to these stipulations, is typical of the notices used now and previously issued by the DMV.

6. Prior to revoking a motorist's driver's license for non-payment, the DMV does not routinely provide the motorist with any information other than what is provided in the Official Notice. Specifically, the DMV does not provide any information on how to obtain a hearing on the pending revocation, notice that there are options to permit persons to keep their licenses if they cannot pay their fines and costs in full, or notice that their ability to pay will be a critical issue at a hearing, if one is held. The Official Notice does

provide information regarding the citation number, violation date, and telephone number and name of court that notified the DMV of the motorist's failure to pay.

7. After sending the Official Notice, the DMV does not send the motorist any additional information.

8. Section 20-24.1 does not allow the DMV to conduct, and the DMV does not conduct, a hearing or inquiry into a motorist's ability to pay his or her fines and costs at any time during the process to revoke a motorist's driver's license for non-payment.

9. The DMV has no knowledge as to whether each individual state court makes any inquiry and/or conducts any hearing regarding a motorist's ability to pay fines and costs before a driver's license is revoked for non-payment of fines and costs.

10. The DMV has no knowledge as to whether each individual state court helps motorists make arrangements for payment of fines and costs.

11. Section 20-24.1(b) provides that a driver's license revoked for non-payment will remain revoked until the motorist whose license has been revoked establishes to the court that (1) the wrong person's license was revoked; (2) the fines and costs were paid, (3) failure to pay was not willful and the motorist is making good faith efforts to pay; or (4) fines and costs are remitted.

12. The revocation of a motorist's driver's licenses for non-payment becomes effective on the date specified in the Official Notice, unless the DMV receives another notice from a state court that the driver has satisfied the conditions of Section 20-24.1(b).

13. Once a motorist's driver's license is revoked for non-payment, Section 20-24.1 requires the license to remain indefinitely revoked until the DMV receives another



notice from the state court that the motorist has satisfied the conditions of Section 20-24.1(b).

14. At the time the Complaint was filed in this case, on May 30, 2018, more than approximately 264,000 motorists had their driver's licenses revoked for non-payment pursuant to Section 20-24.1. Some of those 264,000 revocations involved motorists from other states. Some of those 264,000 revocations involved motorists whose driver's licenses were revoked for multiple reasons.

15. The precise number of driver's licenses revoked for nonpayment pursuant to Section 20-24.1 varies over time, as new motorists have their driver's licenses revoked and currently-revoked motorists get their driver's licenses reinstated. The Parties stipulate that at any given time over the past 5 years, thousands of individuals who possess a North Carolina driver's license have had the licenses revoked for failure to pay pursuant to Section 20-24.1. The Parties further agree that these numbers will likely continue at similar rates into the future if the statute remains in effect as it is currently written and implemented.

16. Plaintiffs Ms. Smoot's and Ms. Yarborough's driver's licenses were revoked for failure to pay fines and costs pursuant to Section 20-24.1 and the processes the DMV follows, as laid out in these stipulations.

17. Plaintiff Mr. Johnson faced revocation of his driver's license for failure to pay fines and costs. The DMV sent him an Official Notice indicating a revocation effective date of July 28, 2018. After this litigation was filed, the parties agreed to stay revocation

of Mr. Johnson's license until Plaintiffs' Second Motion for a Preliminary Injunction is resolved.

Dated January 23, 2019.

Respectfully submitted,

/s/ Sam Brooke

Samuel Brooke

/s/ Kristi Graunke

Kristi L. Graunke

*On behalf of Counsel for Plaintiffs*

Christopher A. Brook (NC Bar No. 33838)  
Cristina Becker (NC Bar No. 46973)  
Sneha Shah\*  
AMERICAN CIVIL LIBERTIES UNION  
OF NORTH CAROLINA LEGAL  
FOUNDATION  
P.O. Box 28004  
Raleigh, North Carolina 27611  
T: 919-834-3466  
E: cbrook@acluofnc.org  
E: cbecker@acluofnc.org  
E: sshah@acluofnc.org

Nusrat J. Choudhury\*  
R. Orion Danjuma\*  
AMERICAN CIVIL LIBERTIES UNION  
125 Broad Street, 18<sup>th</sup> Floor  
New York, New York 10004  
T: 212-519-7876  
T: 212-549-2563  
E: nchoudhury@aclu.org  
E: odanjuma@aclu.org

*\*Appearing by Special Appearance  
pursuant to L.R. 83.1(d)*

Kristi L. Graunke (NC Bar No. 51216)  
Emily C.R. Early\*  
SOUTHERN POVERTY LAW CENTER  
150 E. Ponce de Leon Ave., Ste. 340  
Decatur, Georgia 30030  
T: 404-221-4036  
E: kristi.graunke@splcenter.org  
E: emily.early@splcenter.org

Samuel Brooke\*  
Danielle E. Davis\*  
SOUTHERN POVERTY LAW CENTER  
400 Washington Avenue  
Montgomery, Alabama 36104  
T: 334-956-8200  
F: 334-956-8481  
E: samuel.brooke@splcenter.org  
E: danielle.davis@splcenter.org

Jeffrey Loperfido (NC Bar No. 52939)  
SOUTHERN COALITION FOR SOCIAL  
JUSTICE  
1415 W. NC Hwy 54, Suite 101  
Durham, North Carolina 27707  
T: 919-323-3380 x.161  
F: 919-323-3942  
E: jeffloperfido@southerncoalition.org

*Counsel for Plaintiffs*

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

SETI JOHNSON and SHAREE
SMOOT, on behalf of themselves
and those similarly situated,
Plaintiffs,

v.

No. 1:18-CV-00467

TORRE JESSUP, in his official
capacity as Commissioner of the
North Carolina Division of Motor
Vehicles,
Defendant.

AFFIDAVIT OF LANE E GLASS

I, Lane e Glass, being first duly sworn, depose and say I am an adult over
age 18 and have never been adjudged incompetent. I make this affidavit based
upon personal knowledge. I further state:

1. I am employed by the North Carolina Department of
Transportation as a Business & Technology Analyst Advanced. In this
capacity, I work with NCDMV's computer software program, the State
Automated Drivers License System [SADLS]. SADLS contains data and
information relating to all North Carolina driver licenses and licensees.

2. On 11-12 March 2019, I ran a query of NCDMV customers that
received a Notice of Suspension from NCDMV notifying them that their driving
privileges would be revoked in sixty days if they did not pay the fines and costs

mandated by the court. The qualifiers were for distinct non-deceased North Carolina customers with a North Carolina driver's license who have had a North Carolina address at some point in time. I ran three distinct queries: the number of customers' who received the Notice of Suspension and who paid the court mandated fines and costs before their driver's license was revoked; how many customers received the Notice of Suspension but did not pay the fines and costs until after their driver's licenses were revoked for failure to pay fines and costs as mandated by the court; and the number of customers whose fines remain unpaid.

3. I ran all three queries using the same date range from 1 June 2015 to 31 May 2018.

4. Between 1 June 2015 to 31 May 2018, 55,336 NCDMV customers paid their court mandated fines and costs within sixty days of receiving the Notice of Suspension from DMV and before their driver's license was suspended.

5. Between 1 June 2015 to 31 May 2018, 67,809 NCDMV customers paid their court mandated fines and costs after their driver's license was revoked for failure to pay fines and costs mandated by the court within sixty days of receiving the Notice of Suspension from NCDMV.

6. Since 1 June 2015 to 31 May 2018, 62,788 NCDMV customers have

not paid their court mandated fines and costs, and their driver's license is revoked for failure to pay fines and costs mandated by the court.

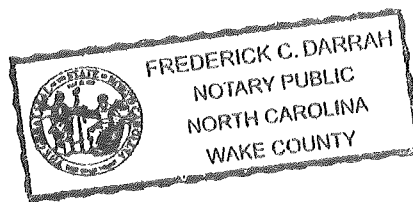
Further your affiant sayeth not.

This the 12<sup>th</sup> day of March, 2019.

Lanee Glass  
Lanee Glass, affiant

Sworn to and subscribed before me

This the 12<sup>th</sup> day of March, 2019.



[Signature]  
Notary Public

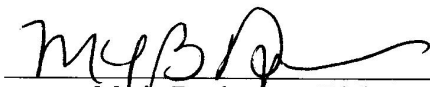
My Commission Expires: 12/6/2020

**SUPPLEMENTAL DECLARATION OF MARIE BONHOMME-DICKS**

1. My name is Marie Bonhomme-Dicks, and I reside in Wake County, North Carolina. This Supplemental Declaration supplements my previous Declaration, executed on August 6, 2018. I am competent to give this Declaration and I have personal knowledge of the facts contained herein.
2. I face revocation of my driver's license due to my continuing inability to pay the \$388.00 in fines and costs that were imposed by the Wake County Court on July 27, 2018, for a traffic offense. I still cannot afford to pay this amount.
3. On or around February 21, 2019, I received an Official Notice from the DMV, informing me that my license would be indefinitely revoked for failure to pay, effective April 15, 2019. A true and correct copy of the order is attached as Attachment A. The notice did not tell me anything about how to avoid revocation, or how to get my driver's license back after revocation, except to "comply" with the traffic citation.
4. In my previous declaration, I stated that I am employed part-time by American Airlines as a Reservation Agent and that I rely on my driver's license to go to work. I want to clarify that I work from home most days, but am required to work from, as well as attend trainings at, an office away from my home on other days.
5. In my previous declaration, I also stated that there is no public transit available near my home, and that I rely solely on my car for transportation. I want to clarify that taking a bus to work is impractical because it would require me to spend a total of four hours commuting to and from work. The closest bus stop to my work is nearly 2 miles away. Additionally, I drive my youngest grandson to and from daycare, which is not accessible by public transportation.
6. Moreover, I have attended church in Clayton, NC for many years. I am very active at church, where I am a youth leader, the head of hospitality, and organize a food service for homeless individuals. As result, I drive to church multiple times a week. Clayton is about 45 minutes away from my home, and there is no public transportation option that would get me from my home to church. God and Church are my priority, and it would be devastating to me if I could no longer attend church.

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED this 12th day of March, 2019.

  
\_\_\_\_\_  
Marie Bonhomme-Dicks

**EXHIBIT A**

JA315





ROY COOPER  
GOVERNOR

STATE OF NORTH CAROLINA  
DEPARTMENT OF TRANSPORTATION  
NC DIVISION OF MOTOR VEHICLES  
3118 MAIL SERVICE CNTR RALEIGH, N.C. 27699-3118  
(919) 715-7000

JAMES H. TROGDON, III  
SECRETARY

02/14/2019

MARIE YAMILEE BONHOMME-DICKS  
[REDACTED]

OFFICIAL NOTICE  
CUSTOMER NO. [REDACTED]

WE REGRET TO INFORM YOU THAT EFFECTIVE 12:01 A.M., 04/15/2019, YOUR NC DRIVING PRIVILEGE IS SCHEDULED FOR AN INDEFINITE SUSPENSION IN ACCORDANCE WITH GENERAL STATUTE 20-24.1 FOR FAILURE TO PAY FINE AS FOLLOWS:

VIOLATION DATE: 2017-04-26 CITATION NUMBER: 0G903731  
COURT: WAKE COUNTY COURT PHONE: (919)792-4300

UNFORTUNATELY THE DIVISION OF MOTOR VEHICLES CANNOT ACCEPT PAYMENTS FOR FINES AND COSTS IMPOSED BY THE COURTS. PLEASE CONTACT THE COURT ABOVE TO COMPLY WITH THIS CITATION.

NOTE: PLEASE COMPLY WITH THIS CITATION PRIOR TO THE EFFECTIVE DATE IN ORDER TO AVOID THIS SUSPENSION.

IF YOU HAVE NOT COMPLIED WITH THIS CITATION BY THE EFFECTIVE DATE OF THIS ORDER, YOU WILL NEED TO MAIL YOUR CURRENT NORTH CAROLINA DRIVER LICENSE, IF APPLICABLE, TO THE DIVISION. FAILURE TO DO SO MAY RESULT IN AN ADDITIONAL \$50.00 SERVICE FEE.

REINSTATEMENT PROCEDURES:

UPON COMPLIANCE WITH THIS CITATION, YOU MAY VISIT YOUR LOCAL DRIVER LICENSE OFFICE. AT SUCH TIME PROPER IDENTIFICATION AND PROOF OF AGE WILL BE NEEDED.

A RESTORATION FEE OF \$65.00 AND THE APPROPRIATE LICENSE FEES ARE NEEDED AND HAVE TO BE PAID AT THE TIME YOUR DRIVING PRIVILEGE IS REINSTATED.

THIS ORDER IS IN ADDITION TO AND DOES NOT SUPERSEDE ANY PRIOR ORDER ISSUED BY THE DMV. IF ADDITIONAL INFORMATION CONCERNING THIS ORDER IS NEEDED, PLEASE CONTACT A REPRESENTATIVE OF THE DIVISION AT (919)715-7000.

DIRECTOR OF PROCESSING SERVICES

VISIT US ON THE WEB AT [WWW.NCDOT.ORG/DMV](http://WWW.NCDOT.ORG/DMV)

JA316

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IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

SETI JOHNSON and MARIE	)	Case No. 1:18CV467
BONHOMME-DICKS, on behalf of	)	
themselves and those similarly	)	
situated, and SHAREE SMOOT and	)	
NICHELLE YARBOROUGH, on behalf	)	
of themselves and those	)	
similarly situated,	)	
	)	
Plaintiffs,	)	
	)	
V.	)	
	)	
TORRE JESSUP, in his official	)	
capacity as Commissioner of	)	
the North Carolina Division of	)	
Motor Vehicles,	)	
	)	Winston-Salem, North Carolina
Defendant.	)	March 13, 2019
		4:46 p.m.

TRANSCRIPT OF THE **MOTIONS HEARING**  
BEFORE THE HONORABLE THOMAS D. SCHROEDER  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiffs:	SAMUEL J. BROOKE, ESQ.
	EMILY C.R. EARLY, ESQ.
	SOUTHERN POVERTY LAW CENTER
	400 Washington Avenue
	Montgomery, Alabama 36104
For the Defendants:	KATHRYNE E. HATHCOCK, ESQ.
	NEIL C. DALTON, ESQ.
	NC DEPARTMENT OF JUSTICE
	114 W. Edenton Street
	Raleigh, North Carolina 27690-0629
Court Reporter:	BRIANA BELL, RPR
	Official Court Reporter
	P.O. Box 20991
	Winston-Salem, North Carolina 27120

Proceedings recorded by mechanical stenotype reporter.  
Transcript produced by computer-aided transcription.

## P R O C E E D I N G S

1  
2           **THE COURT:** All right. Welcome. We're here on Seti  
3 Johnson, et al. versus Torre Jessup, 18CR467. Let me ask the  
4 lawyers to go ahead and introduce yourselves so I know who is  
5 making an appearance. Who will be speaking?

6           **MS. HATHCOCK:** May it please the Court, Your Honor,  
7 Beth Hathcock here from the North Carolina Department of  
8 Justice on behalf of Defendant DMV and Commissioner Torre  
9 Jessup.

10           **MR. DALTON:** And, Your Honor, Neil Dalton also from  
11 the Attorney General's Office representing the State, and also  
12 at counsel table is Drew Marsh. He's legal counsel for DMV,  
13 and he has not signed on.

14           **THE COURT:** All right.

15           **MR. BROOKE:** Good afternoon, Your Honor, Samuel  
16 Brooke from the Southern Poverty Law Center on behalf of the  
17 Plaintiffs, and I and Ms. Early, who will introduce herself in  
18 a moment, will be addressing the Court.

19           **MS. EARLY:** Good afternoon, Your Honor, my name is  
20 Emily Early, and I also represent Plaintiffs and an attorney  
21 with the Southern Poverty Law Center, along with Mr. Brooke.

22           **THE COURT:** All right. I apologize for the late  
23 start. We actually started that hearing this morning, and I  
24 thought we would have been done earlier. Maybe you had a  
25 little education in criminal law, something different from what

1 you do every day.

2           We're here today because there are three motions  
3 pending before me. I have the motion for judgment on the  
4 pleadings, request for preliminary injunction, and then the  
5 request for class certification.

6           You're going to have me a little thrown off because  
7 usually the plaintiffs are on the left and the defendants are  
8 over here. If, for some reason, I'm looking at the right wrong  
9 side initially, that will explain that.

10           I've read all the materials. Frankly, there are  
11 certain issues that are on my mind, which is why I asked you  
12 all to come in here. So I don't need a regurgitation of what's  
13 in the briefs. I am aware of a number of the cases around the  
14 country that have dealt with these issues. It would appear to  
15 me that each of these cases will depend on the facts of each  
16 particular state's law. If you disagree with that, tell me;  
17 but as I understand it, under North Carolina's statutory  
18 scheme, 20-24.1, the way it generally works is there is some  
19 type of traffic offense. A state court North Carolina judge,  
20 probably district court would be my guess, makes a  
21 determination, enters a fine. That information eventually gets  
22 sent to the Department of Motor Vehicles, and under the  
23 statute, the Department of Motor Vehicles must revoke the  
24 license unless somebody invokes any of the provisions under  
25 Section (b) of the statute.

1 Does anybody disagree with that so far?

2 **MS. HATHCOCK:** No, Your Honor.

3 **MR. BROOKE:** No, Your Honor.

4 **THE COURT:** All right. And so it's not clear to me  
5 under Section (b) how that operates in practice in North  
6 Carolina. Section (b) does allow for an individual to make a  
7 showing that their failure to pay was not willful, and it would  
8 appear to me under the statute that that grants the state court  
9 judge, that is, the showing would be before the state court  
10 judge who entered the fine, and that that gives that judge the  
11 opportunity to consider that. It also appears that if the  
12 judge is satisfied that the failure to pay is not willful, that  
13 is, that it's indigency based, then the statute requires  
14 restoration of the license because the word "must" is in the  
15 statute.

16 Does anybody disagree with that?

17 **MR. BROOKE:** Plaintiffs don't disagree except with  
18 the caveat I think it frankly can go in front of any judge,  
19 Your Honor. I don't think that matters.

20 **THE COURT:** A judge?

21 **MR. BROOKE:** Yes.

22 **THE COURT:** So the North Carolina scheme has an  
23 opportunity to be heard if the driver who's fined wishes to  
24 invoke that. It's not clear to me in practice when that  
25 occurs, and that hasn't been addressed in this case.



1 I will say when I read the State's briefing, it  
2 seemed to me the State was wrong in some of the facts to how  
3 its own system worked. The State's briefing says that the  
4 district judge orders the revocation. It seems to me DMV  
5 orders the revocation. That seemed to be incorrect.

6 So, ordinarily, I think I would take this in the  
7 order of the motion for judgment on the pleadings first. Then  
8 it's unclear to me whether the class certification issue ought  
9 to be raised next or whether the parties think that the  
10 preliminary injunction issue ought to be dealt with. It would  
11 seem to me, as a practical matter, whatever my ruling would be  
12 in one case would apply to everybody who's similarly situated,  
13 whether or not they are part of the class, but that's up to the  
14 State, whether they -- whether the State thinks that it would  
15 take a different position and require somebody else to bring a  
16 claim in front of me that gave relief to any plaintiff.

17 So let me start with the State with the motion for  
18 judgment on the pleadings. Your first argument is as to  
19 *Rooker-Feldman*. I'm not persuaded by that. Let me tell you  
20 why. It seems to me that the injury here is not the imposition  
21 of the fine. The injury is the revocation, and the revocation  
22 is separate from the entry of the fine. So why would that be  
23 covered by *Rooker-Feldman*?

24 **MS. HATHCOCK:** Your Honor, again, Beth Hathcock here  
25 on behalf of the Defendants. In the Plaintiffs' brief in

1 opposition to the motion for judgment on the pleadings, they  
2 say that there are alternative means for the State to collect  
3 the moneys, the fines, penalties, and costs, which directly  
4 ties this to the state court judgment. It's all part and  
5 parcel of the administration of General Statute 20-24.1.

6 **THE COURT:** But they're not challenging the judgment.  
7 In fact, they're saying they -- they're not challenging the  
8 fact that the fine has been imposed. They're only challenging  
9 the fact that it's -- that their license is being revoked if  
10 they can't pay the fine.

11 **MS. HATHCOCK:** Right, but the fine is a critical part  
12 of the license revocation. It is a consequence for the failure  
13 to pay; and if the Plaintiffs are not required to pay the  
14 fines, then it's meaningless. I think the *Mendoza* case outside  
15 of Oregon has some good language about that. It says that "the  
16 fine is a behavior modification tool, and the driver's license  
17 suspension assists in obtaining compliance with the fine  
18 payment."

19 **THE COURT:** Well, it may, but if I grant the  
20 Plaintiffs any relief in this case, how am I second-guessing  
21 any judgment of a North Carolina state court judge? That's the  
22 essence of *Rooker-Feldman*.

23 **MS. HATHCOCK:** Right. The essence of *Rooker-Feldman*  
24 is what Your Honor has claimed, but the North Carolina DMV  
25 contends that this statutory scheme is very similar to what we



1 have in Virginia in *Stinnie v. Holcomb* from the Fourth Circuit.  
2 In that case, the Fourth Circuit affirmed the dismissal on  
3 *Rooker-Feldman* grounds. Now, the Virginia statute does say  
4 that the Court shall forthwith suspend the person's privilege  
5 to drive upon the failure to pay and that a record of the  
6 person's failure or refusal to pay is then transmitted to the  
7 commissioner of DMV.

8 **THE COURT:** But that's -- isn't that a critical  
9 issue? In this case, there's no North Carolina court that's  
10 suspending anybody's license, to my knowledge.

11 **MS. HATHCOCK:** Well, Commissioner Jessup contends  
12 that this is in practice the same as Virginia since DMV is  
13 required to revoke. Under 20-24.1(a), it says that the  
14 Division must revoke the driver's license upon receipt of a  
15 notice that the person failed to pay. So DMV is ordered to  
16 revoke the license by the Court and has no discretion.

17 **THE COURT:** How am I second-guessing a North Carolina  
18 state court judge if I conclude that DMV should not revoke  
19 somebody's license?

20 **MS. HATHCOCK:** Because DMV doesn't have the authority  
21 to look beyond a presumptively balanced state court order to  
22 determine an individual's ability to pay. They're required to  
23 revoke, and the statute makes DMV revoke in 60 days if they are  
24 not told otherwise.

25 **THE COURT:** But the injury is not the fine. The

1 injury is the revocation of the license; right?

2 **MS. HATHCOCK:** Right, it's all tied to the fines.

3 **THE COURT:** It's not -- I think for *Rooker-Feldman*  
4 purposes, they are separate issues, are they not?

5 **MS. HATHCOCK:** DMV is carrying out the statutory  
6 scheme under 20-24.1. Once the person doesn't pay the fines,  
7 DMV takes the next step of mandatorily revoking the plaintiff's  
8 driving privileges when ordered to do so by the Court.

9 **THE COURT:** If I enter an order that says to the DMV  
10 you cannot revoke licenses of people who haven't paid their  
11 fine, in what way would I have been acting as an appellate  
12 court for a decision of the North Carolina state court?

13 **MS. HATHCOCK:** Well, DMV would contend that it would  
14 violate the separation of powers of the North Carolina  
15 Constitution.

16 **THE COURT:** That's a different argument. That's  
17 *Rooker-Feldman*; right?

18 **MS. HATHCOCK:** Right.

19 **THE COURT:** So how am I -- how am I acting as an  
20 appellate court under those circumstances?

21 **MS. HATHCOCK:** Your Honor, I think the Commissioner's  
22 position is just that the State has a strong interest in  
23 enforcing the traffic laws to deter future misdeeds.

24 **THE COURT:** Well, I don't dispute that. I'm willing  
25 to accept that as a fact, but I don't think that goes to the

1 *Rooker-Feldman* issue --

2 **MS. HATHCOCK:** Yes.

3 **THE COURT:** -- in any event.

4 The *Stinnie* case also got sent back as -- whenever a  
5 Court makes a finding under *Rooker-Feldman*, that's a  
6 subject-matter jurisdiction finding. So I think Judge Gregory  
7 dissented in that case quite vehemently, if I remember right.

8 In any event, I'm not sure I agree with you that  
9 *Stinnie* affirmed on *Rooker-Feldman*. I think they sent the case  
10 back, and, eventually, Judge Moon entered another decision in  
11 the case, did he not?

12 **MS. HATHCOCK:** I'm not sure of a subsequent decision,  
13 Your Honor.

14 **THE COURT:** Well, you ought to know your record. He  
15 did enter another decision, and because of that, obviously,  
16 *Rooker-Feldman* was rejected, in any event.

17 All right. Well, I am not persuaded *Rooker-Feldman*  
18 applies. Unless the Plaintiffs want to talk me out of it, I'm  
19 probably going to find that *Rooker-Feldman* is not applicable  
20 under these facts.

21 Any other ground you want to be heard on on the  
22 motion for judgment on the pleadings?

23 **MS. HATHCOCK:** Your Honor, I think the big argument  
24 that Commissioner Jessup wants to make in support of his motion  
25 for judgment on the pleadings is that he simply is not the

1 proper party in this case. The state courts again issued the  
2 revocations and are the sole decision-makers.

3 **THE COURT:** Well, the state court does not issue the  
4 revocations. That's the point I made earlier. As I understand  
5 it, it's the DMV that revokes. The state court issues an order  
6 for a fine, and then that goes to DMV and if DMV -- then DMV  
7 has no discretion other than to revoke; is that correct?

8 **MS. HATHCOCK:** That's correct. DMV has no discretion  
9 to --

10 **THE COURT:** So why do you say the state court judge  
11 issues a revocation? I don't understand that.

12 **MS. HATHCOCK:** Because after the statute -- 20-24.1  
13 makes clear that after the plaintiff -- the Defendants failed  
14 to pay in 40 days, they transmit notice of the failure to pay  
15 to DMV, and they require DMV to revoke in 60 days unless --

16 **THE COURT:** The state court judge doesn't require  
17 anything. The statute requires --

18 **MS. HATHCOCK:** The statute requires that, yes.

19 **THE COURT:** Okay. So I was taking issue with your  
20 argument that the state court judge is revoking the licenses in  
21 this case, and my understanding is that that's not the case.

22 **MS. HATHCOCK:** That's correct, Your Honor. It comes  
23 through the state court system.

24 **THE COURT:** Well, the judgment does, of course.

25 **MS. HATHCOCK:** Yes, Your Honor.

1           **THE COURT:** But the revocation is by the Department  
2 of Motor Vehicles; right?

3           **MS. HATHCOCK:** The Division of Motor Vehicles acts on  
4 the order from the -- that's transmitted electronically from  
5 the court system.

6           **THE COURT:** Yeah, but the order is not to revoke the  
7 license. The order is the fine has not been paid.

8           **MS. HATHCOCK:** No, the order says you have to revoke  
9 in 60 days unless you're told otherwise.

10          **THE COURT:** What order? The state court judge's  
11 order?

12          **MS. HATHCOCK:** The order to revoke that comes through  
13 the court system tells DMV to notify the person that their  
14 license will be suspended in 60 days unless they do one of four  
15 things before the Court: Disposes of the charge in the trial  
16 division in which he failed to appear and where the case was  
17 called for trial or hearing; secondly, demonstrates to the  
18 Court that he's not the person charged; third, pays the  
19 penalty, fine, or costs ordered by the Court; or, fourth,  
20 demonstrates to the Court that his failure to pay was not  
21 willful and that he's making a good-faith effort to pay or that  
22 the penalty, fine, or cost should be remitted.

23          **THE COURT:** Is there a statutory provision that says  
24 that a North Carolina state court judge orders revocation of  
25 driver's licenses?

1           **MS. HATHCOCK:** It says if the fines are not paid in  
2 60 --

3           **THE COURT:** No, no. You're reading 20-24.1; right?  
4 That's the DMV -- as I understand it, that's the DMV's  
5 responsibility; is that right?

6           **MS. HATHCOCK:** DMV revokes upon notice from the Court  
7 of the failure to pay within 40 days.

8           **THE COURT:** Correct. So that's my point. Maybe  
9 we're not communicating. My understanding is that a state  
10 court judge will order a fine, and then if it's not paid by I  
11 suppose the clerk's office, I don't know the mechanics of it,  
12 then at that point something gets distributed to the DMV,  
13 indicating there's a fine that's not been paid timely.

14           Am I right about that?

15           **MS. HATHCOCK:** That's correct, Your Honor.

16           **THE COURT:** There is nothing from the state court  
17 judge then saying you must therefore revoke, is there?

18           **MS. HATHCOCK:** No, it's by operation of statute, Your  
19 Honor.

20           **THE COURT:** Correct. So the statute requires the DMV  
21 to revoke once they get that information --

22           **MS. HATHCOCK:** That's correct.

23           **THE COURT:** -- from the state court judge?

24           **MS. HATHCOCK:** Yes, Your Honor.

25           **THE COURT:** All right. So no state court judge is

1 ordering any revocation, as I understand it; correct?

2 **MS. HATHCOCK:** It's coming from AOC by operation of  
3 law after the fines remain unpaid in 40 days.

4 **THE COURT:** Okay.

5 **MS. HATHCOCK:** That's pursuant to 20-24.2(a)(2). The  
6 Court must report to the Division the name of any person  
7 charged who fails to pay within 40 days.

8 **THE COURT:** But there's nothing in 20-24.2 that says  
9 that the Court then orders revocation; correct?

10 **MS. HATHCOCK:** Well, 20-24.1 says that the DMV must  
11 revoke upon receipt of this notice.

12 **THE COURT:** Okay. We're not communicating. There's  
13 nothing in 20-24.2 that says that the trial court judge enters  
14 an order revoking?

15 **MS. HATHCOCK:** No, it does not say a judge. It  
16 says --

17 **THE COURT:** Okay. What happens is the trial court  
18 judge enters an order imposing a fine; correct?

19 **MS. HATHCOCK:** Correct.

20 **THE COURT:** And then the fine, if it remains  
21 unpaid -- fine and any penalty or costs remain unpaid after  
22 some period of time, that information is then transmitted to  
23 the DMV; right?

24 **MS. HATHCOCK:** That's correct.

25 **THE COURT:** And upon receipt of that, the DMV must



1 revoke the license, that is, the DMV does the revoking here by  
2 operation of 20-24.1?

3 **MS. HATHCOCK:** That's correct, Your Honor.

4 **THE COURT:** Okay.

5 **MS. HATHCOCK:** Commissioner Jessup would also  
6 contend, in support of his motion for judgment on the  
7 pleadings, that the failure to pay revocations are  
8 constitutionally valid under the statute. Driver's licenses  
9 are not a fundamental right. As set forth in the United States  
10 Supreme Court case of *Dixon v. Love* and as Chief Judge Whitney  
11 pointed out in *Mosley* in last week's case in the Western  
12 District, there is simply no fundamental right to drive. The  
13 United States --

14 **THE COURT:** It is a property interest, though; right?

15 **MS. HATHCOCK:** It is a property interest, but it's  
16 not a fundamental right.

17 **THE COURT:** Okay. All right. You don't need to  
18 argue any further on that. I will hear from the Plaintiffs  
19 about the question of whether under *Bearden v. Georgia* it's a  
20 fundamental right.

21 **MS. HATHCOCK:** Okay. Your Honor, thank you.

22 **THE COURT:** All right. What other argument do you  
23 want to be heard on as to the motion for judgment on the  
24 pleadings?

25 **MS. HATHCOCK:** As far as the motion for judgment on

1 the pleadings, Commissioner Jessup would just assert the 3-year  
2 statute of limitations under North Carolina General Statute  
3 1-52 and assert that there can be no application to this case  
4 for claims prior to August 7, 2015, which is 3 years prior to  
5 the date the complaint was filed in this case.

6 **THE COURT:** Okay. If I were to agree with you as to  
7 *Bearden*, that there's no fundamental right, if I were disagree  
8 with you as to *Rooker-Feldman*, and even if I agreed with you on  
9 the statute of limitations, then those are all the grounds in  
10 your motion; right?

11 **MS. HATHCOCK:** And the constitutionality of the  
12 statutory scheme, yes, Your Honor.

13 **THE COURT:** Okay. And what's your argument as to  
14 constitutionality of the scheme?

15 **MS. HATHCOCK:** That the driver's licenses are not a  
16 fundamental right, that there is sufficient due process and  
17 equal protection concerns in the statute, that the statute  
18 passes rational basis review, and that there is sufficient  
19 procedural due process in the statute.

20 **THE COURT:** What is your procedural due process  
21 claim?

22 **MS. HATHCOCK:** Well, 20-24.1 allows for a deprivation  
23 hearing at any time after conviction with no end. A criminal  
24 defendant can request a hearing to address one of the four  
25 issues in 20-24.1 at any time after conviction.

1           **THE COURT:** Hold on just a minute, please. I'm  
2 looking for the part of your brief that addresses the  
3 procedural due process argument. Can you point me to what part  
4 of your brief it is? I'm looking at Docket Entry 47.

5           **MS. HATHCOCK:** Your Honor, I don't believe we have a  
6 heading for procedural due process, but we do refer at some  
7 point in the brief to the fact that the 20-24.1 hearings are  
8 always available to criminal defendants.

9           **THE COURT:** Where is that? I mean, you argue  
10 rational basis review and then you argue statute of  
11 limitations, and then that's the end of the brief. So I was  
12 looking for your other merits argument as to two of the claims,  
13 which I think relate to procedural due process, and I didn't  
14 see it, and so it appeared to me that you weren't moving on  
15 those grounds.

16           **MS. HATHCOCK:** Well, Your Honor, on page 15 we do say  
17 that "a license shall continue to be suspended until the  
18 debtor," and then it lists out the four different options under  
19 20-24.1(b).

20           **THE COURT:** I don't see any argument about procedural  
21 due process, though.

22           **MS. HATHCOCK:** You're correct, Your Honor, we do not  
23 use the word "procedural due process."

24           **THE COURT:** As far as I can tell, you don't even make  
25 the argument. That's my concern. I was curious as to why it

1 wasn't included.

2           Okay. Anything else on this issue you want to be  
3 heard on?

4           **MS. HATHCOCK:** On the procedural due process issue,  
5 yes. I just point Your Honor's attention to the *Mendoza* case  
6 out of Oregon that --

7           **THE COURT:** Well, it's not in the brief, so I am not  
8 going to hear your argument. If you didn't put it in the  
9 brief, then now is not the time to argue for things that aren't  
10 in the briefs.

11           Any other issue that you have covered in your brief  
12 you want to be heard on?

13           **MS. HATHCOCK:** No, Your Honor, I think that covers  
14 it. Thank you.

15           **THE COURT:** All right. Let me just take this issue,  
16 the judgment on the pleadings, first, and let me start with the  
17 Plaintiffs. So let me start with the *Bearden* issue, if I can.  
18 Explain to my why in this instance there is a fundamental right  
19 in this case. It seems to me that you're trying to expand the  
20 *Bearden* case law beyond what the Supreme Court has held.

21           **MR. BROOKE:** Thank you, Your Honor.

22           So we would agree that there is no fundamental right  
23 to a driver's license, but we disagree that *Bearden* is in any  
24 way turning on whether or not there is a fundamental right. We  
25 think that, instead, what *Bearden* is clearly advising is that

1 you need to do this, what it refers to as a careful inquiry,  
2 with these four considerations.

3 **THE COURT:** Are there any cases that apply as *Bearden*  
4 that do not involve personal liberty, that is, that not do  
5 involve the threat of incarceration?

6 **MR. BROOKE:** Yes, Your Honor. So the *M.L.B.* case,  
7 for example, is the seminal case that is explaining that in --  
8 explicitly stating that *Bearden* is -- it refers to *Griffin* --  
9 the *M.L.B.* case refers to *Griffin* as saying the *Griffin* line of  
10 cases is not limited to that of incarceration. *M.L.B.* was  
11 itself a case about termination of parental rights. What was  
12 interesting particularly about *M.L.B.* is that this was I think  
13 the first time that the *Griffin-Bearden* line of cases had been  
14 extended into the civil context.

15 **THE COURT:** Wasn't there some explanation, though,  
16 about the fundamental nature of that right in that case?

17 **MR. BROOKE:** Absolutely. The Court stressed that the  
18 fundamental nature at issue in the *M.L.B.* case, the termination  
19 of parental rights, was important, and I think the Court  
20 stressed that because it wanted to be clear that by allowing  
21 this *Griffin-Bearden* analysis to traverse the criminal to civil  
22 line, it wasn't intending to open the door so that any  
23 particular civil case where anyone has a complaint that they  
24 are being treated differently based on financial ability, that  
25 it is, therefore, going to be valid to a *Bearden* claim.

1           That same court gives two examples, right. It gives  
2 the examples -- and let me find it while I'm talking, but it  
3 cites to a case out of the -- dealing with public benefits that  
4 says that the person who is appealing a public benefits denial  
5 still has to pay the filing fee to appeal that. There's not an  
6 exception there, and the reason for that is because the Court  
7 is saying what's really at issue at here and what really  
8 invokes the *Griffin-Bearden* line is that someone is facing a  
9 sanction from the State, not that there's a fundamental right  
10 at issue, but that they are facing a sanction from the State  
11 that is turning on their poverty.

12           And so if you get a benefit determination that you're  
13 no longer eligible for a particular benefit because your  
14 household size has changed, which was the issue in that case --  
15 and that case is *Ortwein*, 410 U.S. 656, and, again, this was  
16 discussed in *M.L.B.* -- the *M.L.B.* case is saying, well, the  
17 reason that that matters is because the State wasn't punishing  
18 you. It wasn't -- it wasn't entering any sort of deprivation.  
19 It wasn't taking a sanction against you.

20           The same thing in the *Kras* decision that *M.L.B.*  
21 discusses. *Kras* is K-R-A-S, and this is 409 U.S. at 434, you  
22 know, and this is in axis to the Court's case, or at least it  
23 looks like it at first blush, because the *Kras* case was saying  
24 you have to pay a filing fee to get into bankruptcy court. And  
25 the *M.L.B.* decision said, well, yeah, but it's not just any

1 access that we care about because, again, there was no sanction  
2 being taken against the individual to put them in the  
3 financially precarious situation they were in, that they then  
4 would need the bankruptcy --

5 **THE COURT:** How does *Bearden* apply here?

6 **MR. BROOKE:** *Bearden* applies here because there is a  
7 sanction based on -- based strictly on poverty. The only  
8 people who are being forced to be facing an additional  
9 punishment are those who are unable to pay the fines and  
10 costs --

11 **THE COURT:** How is that true under North Carolina's  
12 scheme?

13 **MR. BROOKE:** So --

14 **THE COURT:** The North Carolina scheme seems to have  
15 an express escape clause for this very reason.

16 **MR. BROOKE:** If the person is aware of it and takes  
17 advantage --

18 **THE COURT:** Aren't they deemed to be -- aren't all of  
19 us deemed to be aware of what the law is? The Supreme Court  
20 has said as much, has it not?

21 **MR. BROOKE:** Not when a notice goes out that informs  
22 people that does not completely inform them and, thus, leaves  
23 them in a position to rely on the notice and assume that the  
24 notice is correct.

25 When that notice goes out that tells individuals --



1 and, you know, Defendants in their own brief in their PI  
2 opposition at page 21, they say that the notice that we're  
3 talking about informs people that they are going to have 60  
4 days, and then after 60 days, if they have not paid, their  
5 license is going to be suspended. They don't say -- they are  
6 not contending that it says anything else.

7 **THE COURT:** Doesn't it cite the statute?

8 **MR. BROOKE:** Yes, it does cite Statute 20-24.1.

9 **THE COURT:** Can't -- why can't drivers go to the  
10 statute and see what their rights are?

11 **MR. BROOKE:** Well, they certainly could, but when the  
12 notice is telling them that you've been suspended for failure  
13 to pay, you have to comply with the citation -- and, of course,  
14 they know that the citation at that point is adjudicated,  
15 right, because it's close to adjudication. The only thing  
16 that's left is to pay the fine, and when they say specifically  
17 that, you know, if you -- you can't come to us to make your  
18 payment, you need to go to the court, here's a phone number to  
19 call, that's going to leave the person, who is unable to pay,  
20 with the conclusion that there's no recourse for them.

21 And that's -- you know, the question is like what a  
22 reasonable person interpreting this understands it to mean, and  
23 we think that those deficiencies are critical.

24 The *Turner* case I think is helpful here, and we cite  
25 this in our notice section of the brief. *Turner v. Rogers* is a

1 case that's very much about notice, and *Turner* is saying that  
2 when you are facing a sanction or punishment, then notice has  
3 to inform individuals of what the critical issue is going to be  
4 when and if they have a hearing. Well, here they are not even  
5 telling them about the availability of a hearing.

6 **THE COURT:** Is this the *Bearden* issue, or is this a  
7 due process issue?

8 **MR. BROOKE:** Your Honor, we've transitioned at this  
9 point into the deficiency of the notice that I would describe  
10 as our point three.

11 **THE COURT:** You describe as your what?

12 **MR. BROOKE:** I'm sorry. Our third claim.

13 **THE COURT:** I'm interested in the *Bearden* issue just  
14 right now. I thought that's what we're talking about.

15 **MR. BROOKE:** Your Honor, I apologize. We were. I  
16 think --

17 **THE COURT:** I'm not --

18 **MR. BROOKE:** Let me go back to --

19 **THE COURT:** I'm skeptical that *Bearden* applies here.  
20 I guess you've gathered that. I wouldn't be the only one. A  
21 number of judges who have had these arguments have not extended  
22 the *Bearden* analysis to this situation.

23 **MR. BROOKE:** If I could explain a couple of  
24 reasons -- two reasons why I think that that is wrong,  
25 particularly in the Fourth Circuit.

1           First of all, there's the case of *Alexander v.*  
2 *Johnson*, and that's significant. Both sides cited it at some  
3 point in their brief, although we admittedly cited it as a  
4 string cite for sure, but *Johnson* is significant because it is  
5 an attorney restitution -- attorney fee recoupment statute  
6 challenge. Let me try to say that more clearly. It was a  
7 challenge to a statute that requires that when individuals are  
8 going on work release, that they have a certain amount docked  
9 from their pay that will go back and reimburse the state for  
10 their attorney fees.

11           At page 23, footnote 8, of that decision, the  
12 *Alexander v. Johnson* case says we're going -- we think that  
13 this situation, a situation where you're saying that you're  
14 being treated differently because you're indigent, because only  
15 the indigent are having this happen to them because they are  
16 the only ones that got the attorney, requires this hybrid  
17 analysis and cites specifically to *Bearden* and cites  
18 specifically to the four factors.

19           Now, *Alexander v. Johnson*, as Defendants point out,  
20 come out and say that statute is okay. That's fine. That's  
21 not our point. Our point is *Alexander v. Johnson* was saying  
22 that when you have a collection scheme that is, you know, doing  
23 a sanction that's just against the indigent, it's appropriate  
24 to use the *Bearden* analysis. I think that's --

25           **THE COURT:** Even if that's case, though, the North

1 Carolina statute specifically exempts the indigent upon their  
2 showing of payment not being willful. Then why wouldn't that  
3 take it out of that analysis?

4 **MR. BROOKE:** Yeah, I don't -- right. I wanted to get  
5 to that. There are two things that I hope I will have an  
6 opportunity to try to opine on. One is that I don't think that  
7 the courts that have analyzed this have fully understood what  
8 the *Bearden-Griffin* line is really about, but specifically on  
9 what you just raised, which I understand to be, look, you have  
10 the ability to get a hearing, right, it's in part (b), so why  
11 isn't that enough under *Bearden*?

12 And the answer to that is twofold. First, I want to  
13 explain a little bit of the mechanics, how a person would get  
14 that hearing. It's not happening on its own. If it were, we  
15 wouldn't be in this courtroom. That would be constitutional --

16 **THE COURT:** I think on the face of 20-24.1, there's  
17 no automatic hearing.

18 **MR. BROOKE:** Correct.

19 **THE COURT:** You're asking for a rule that says that  
20 before any license can be revoked, the Court or DMV -- I guess  
21 it would be DMV -- no, it would have to be Court actually under  
22 the statute, must hold a hearing on indigency.

23 **MR. BROOKE:** Well, we're asking for a ruling that  
24 this statute is unconstitutional, but I agree with you, Your  
25 Honor, that if a statute said that there must be a hearing, and

1 we're indifferent as to whether it would be by an agency, like  
2 the DMV or a Court, that that would be constitutional under  
3 *Bearden*. We're not asking you to prescribe that. We're,  
4 instead, saying because it's not doing that that the statute --

5 **THE COURT:** But you're saying that that's what the  
6 law requires.

7 **MR. BROOKE:** Yes, Your Honor. We are saying that  
8 that's what the law requires, and we're saying that for the  
9 following reason: *Bearden* is saying that if you are going to  
10 be using the awesome power of the state to punish a person, you  
11 first have to make sure -- you know, *Bearden* uses the language  
12 you, quote, must inquire into whether or not the person was not  
13 paying willfully.

14 And the reason for that is because if you don't make  
15 that inquiry, then there are going to be individuals who are  
16 unable to pay, who then they're going to be punished simply  
17 because of their poverty.

18 **THE COURT:** Is there any state in the Union that has  
19 that procedure?

20 **MR. BROOKE:** Yes, there are. Mississippi has  
21 actually two statutes on its books, one of which is much like  
22 North Carolina's in the sense that it's -- in the sense that  
23 it's kind of an automatic revocation scheme, Your Honor, but  
24 the distinction is it uses the word "may." The DMV may do it  
25 automatically, and the DMV has chosen to stop doing that

1 entirely pursuant to its own discretion.

2           It has a second statute that is more of a contempt  
3 statute, Your Honor. So in that statute, an order to show  
4 cause needs to be issued. The individual would appear in  
5 court, and then the Court would make a determination, did you  
6 pay, did you not pay. If it found it was unwilful, then  
7 presumably it would take no action. Hopefully, maybe it would  
8 consider whether or not a payment plan is now needed.

9           **THE COURT:** Okay. What is your other argument? You  
10 said *Alexander v. Johnson*. What's your other *Bearden* -- I  
11 thought you had two points?

12           **MR. BROOKE:** Yeah, I mean, the other argument is just  
13 more generally why I believe that the *Mendoza* and the *Fuller*  
14 decisions were wrong.

15           And to just step back, and I will do this very  
16 concisely, I think that the courts are focusing too much on  
17 whether or not there is a fundamental right. I mean, in  
18 *Bearden* itself, it said all that we're looking at here is -- it  
19 described the right as a, quote, significant interest and said  
20 it's a, quote, significant interest to remain on probation, not  
21 a fundamental right.

22           And I think *Griffin*, the founding case, said no one  
23 has a right -- there is no fundamental right to an appeal.

24           Now, the decisions do use a different term, which is  
25 "fundamental fairness," but I submit that's not the same thing

1 at all. When they are -- when *Griffin* is talking about  
2 fundamental fairness, it's talking about making sure, the core  
3 principle that *Griffin* is about, that the criminal justice  
4 system is not disparately treating the poor, but that's not the  
5 same thing as requiring a fundamental right.

6 And, instead, then if we look at these cases where  
7 there is an appeal, like in *Griffin*, the *Griffin* court itself  
8 said it's not the appeal that actually matters. It's that  
9 you're facing a sanction, which is your sentence, for what they  
10 were convicted of. Oh, and now the State has created an  
11 opportunity to appeal that to correct a wrong conviction.

12 Well, if you have an extra opportunity that's part of  
13 the whole process, you need to allow the indigent to access  
14 that, too, and it said that quite clearly because it said to  
15 rule otherwise would be the exact same thing as saying to an  
16 individual, hey, it would also be okay to start charging you a  
17 fee if you want to submit a I'm not guilty plea.

18 So when we look at that and we look at the *Mayer v.*  
19 *City of Chicago* case -- well, now, in *Mayer v. City of Chicago*,  
20 that only involved fines. There was no liberty interest at  
21 all. The person was assessed two tickets for a misdemeanor and  
22 perhaps assaulting an officer. Each was assessed \$250, and,  
23 again, the question -- the literal question in there again was  
24 does this person have access to the appellate system. The  
25 Court said it has to. It doesn't matter that we're dealing



1 here only with a misdemeanor, a fine penalty, because the  
2 invidious discrimination -- it uses the language "invidious  
3 discrimination" -- that would be at issue if we allowed the  
4 wrongful conviction to stand in a situation where it would be  
5 different based on wealth would be the exact same as what we're  
6 talking about in *Griffin*.

7           So the Court, I think, is clearly saying -- and this  
8 is all, I think, most well laid out in *M.L.B.* because then  
9 *M.L.B.* goes to that line and then explains. So when we're  
10 looking at the woman who was *M.L.B.* in that case, using the  
11 initials, we are saying, we, the Supreme Court is saying, her  
12 situation is much more like that that we found in *Mayer* and  
13 much more like that that we found in *Griffin* where a sanction  
14 is happening, and it's precisely because of poverty than in  
15 those other two cases that I mentioned earlier, *Kras* and  
16 *Ortwein*, where there's no involvement of the State punishing  
17 you at all. You're just being treated differently because you  
18 don't have the resources to pay for it, but not because the  
19 State did something to you. Of course, none of these cases are  
20 saying that the State must make everybody stand on equal  
21 footing.

22           If *Mayer* is standing for the proposition that a  
23 financial penalty is enough to get this inquiry -- the careful  
24 inquiry that *Bearden* requires, then we submit the suspension of  
25 a driver's license is clearly much more significant than what's

1 at issue in *Mayer*.

2           **THE COURT:** Let me move on in the interest of time.  
3 Any other argument you want to address in their motion for  
4 judgment on the pleadings? I don't need to have you be heard  
5 on *Rooker-Feldman*.

6           **MR. BROOKE:** No, Your Honor. I think we're fine with  
7 resting on our brief on the motion for judgment on the  
8 pleadings.

9           **THE COURT:** Okay. Let me switch to the motion for  
10 preliminary injunction then, if I can, and you have the burden  
11 on that.

12           I think I need to understand how this North Carolina  
13 statutory scheme works.

14           **MR. BROOKE:** Yes, Your Honor.

15           **THE COURT:** One of the burdens you have is to show  
16 likelihood of success on the merits, and one of the arguments  
17 you have is a procedural due process argument.

18           **MR. BROOKE:** Yes, Your Honor.

19           **THE COURT:** And it's not entirely clear to me how the  
20 timing of Section (b) of the statutory scheme works. It seems  
21 to contemplate that an individual who is indigent who wishes to  
22 challenge revocation based on indigency is able to do that  
23 before revocation by requesting a hearing in the trial court,  
24 and it also says in Section (b)(1), the trial court must order  
25 a hearing or trial to be heard within a reasonable time.

1 I don't know what that means as a practical matter in  
2 North Carolina. Is that a pre-revocation proceeding?

3 **MR. BROOKE:** Your Honor, so we believe it's not. It  
4 doesn't qualify as a pre-revocation proceeding.

5 **THE COURT:** Why?

6 **MR. BROOKE:** Well, because, first of all, there's,  
7 number one, no guarantee that it's going to happen in time. I  
8 think you're reading it correctly. Your understanding is very  
9 similar to ours. Let me give mine. Yeah, the person has to  
10 file a motion. They have to go to the Court and say, I want to  
11 be heard on this.

12 **THE COURT:** So for purposes of due process,  
13 frequently your briefing says that there must be a hearing in  
14 every case, but on the other hand, as I read the law,  
15 procedural due process only requires an opportunity to be  
16 heard. Isn't that right?

17 **MR. BROOKE:** I hear --

18 **THE COURT:** I'm confused at why you're arguing there  
19 has to be one in every case when the question is whether there  
20 is an opportunity to be heard. It would appear to me that the  
21 statute provides some opportunity to be heard, the timing of  
22 which seems to not be entirely clear at this point.

23 **MR. BROOKE:** So, yes, Your Honor, I believe I  
24 understand what you're asking, and the answer is this: We  
25 believe that in the context here -- and it's hard to

1 distinguish this from the *Bearden* discussion we were just  
2 having. In the context where a person is being sanctioned,  
3 then it's not enough just to allow for the possibility of a  
4 hearing. You have to actually make the finding that there was  
5 contempt -- that there was contemptuous conduct before you can  
6 then sanction the person.

7 And I think, you know, you will see this in --

8 **THE COURT:** Let me ask this: If it turns out that  
9 there is a statutory scheme that has Section (a) of what North  
10 Carolina has and then it has a Section (b) that allows an  
11 indigent to come in pre-revocation and make a showing  
12 sufficient to avoid revocation and that a determination would  
13 be made pre-revocation, would you say that that satisfies  
14 procedural due process?

15 **MR. BROOKE:** So there would be a guarantee that the  
16 revocation would be stayed if the person put up their hands and  
17 said, I want to hearing, and then assuming they acted in good  
18 faith and followed through on the hearing --

19 **THE COURT:** And that they carried their burden of  
20 showing they were indigent.

21 **MR. BROOKE:** Yeah, I think that would be a lot  
22 harder, and I think that would probably be okay.

23 **THE COURT:** That wasn't my question.

24 **MR. BROOKE:** I think --

25 **THE COURT:** My question is would it be -- provide

1 procedural due process?

2 **MR. BROOKE:** I'm sorry. I tried to answer it in the  
3 second part. I think that it would. I think that if they then  
4 at that point -- if it was stayed, then it would.

5 **THE COURT:** Do you know under the North Carolina  
6 system, if somebody files a request for a hearing, whether that  
7 tolls revocation?

8 **MR. BROOKE:** It absolutely does not toll revocation.  
9 I can say with confidence -- with certainty that it does not  
10 toll revocation. The only way that the DMV ever learns and  
11 does anything to toll revocation -- well, they don't toll. The  
12 only way that the DMV stops revocation is after the Court sends  
13 that notice that is referenced in Statute 20-24.1, Your Honor,  
14 saying under (b) we found that they paid it off or that they  
15 have shown that they are not willful.

16 **THE COURT:** So only after a finding has been made?

17 **MR. BROOKE:** Yes, Your Honor.

18 **THE COURT:** Okay.

19 **MR. BROOKE:** I mean, the other analogy that we  
20 referenced in our brief is similar to a criminal contempt, and  
21 this is analogy only. Obviously, we're not talking about a  
22 Court using its contempt powers here, which is when the civil  
23 contempt process would come into play; but I think the analogy  
24 is useful because, of course, the reason that you're revoking  
25 the license is to provide that pressure, right, and the

1 person -- ostensibly, if the statute is working correctly, the  
2 person is going to be able to hold their own key to get out,  
3 right. They can pay and then the pressure, the loss of the  
4 license, will end.

5 Well, the courts, I think, would consistently say  
6 under due process, you cannot simply give a person an  
7 opportunity to rebut the contempt. You have to actually have a  
8 hearing. Now, if they don't show up for the hearing, that's  
9 one thing. Then, sure, you could say, I noticed you, I gave  
10 you an opportunity to show -- an order to show cause, you  
11 didn't appear, and I'm finding you in contempt; but you have to  
12 actually have the hearing and make that contempt finding  
13 because if you don't, then you are finding them in contempt  
14 without first determining that they even could comply.

15 I think that's really quite the same thing as what  
16 we're talking about here for why, even under due process, there  
17 still needs to be that hearing.

18 **THE COURT:** So in the argument you made earlier, you  
19 said the individualized notices are misleading in your view.

20 **MR. BROOKE:** Yes, Your Honor.

21 **THE COURT:** You're familiar with *City of West Covina*  
22 *v. Perkins*, the Supreme Court case? Are you familiar with  
23 that? The Court appears to say that any individualized notice  
24 is not required where the procedure is, in fact, set out by a  
25 published, generally available state statute.

1           **MR. BROOKE:** Yes, Your Honor, but the decisions that  
2 we cite to also say that, you know, when the notice goes out, a  
3 person -- well, they don't say this, but they say that --  
4 implicitly they're saying if the notice goes out and tells  
5 someone something, they should be able to rely on what the  
6 agency is telling them. And, here, if the notice -- if the  
7 parties are correct, both parties, that what the notice is  
8 saying is you need to pay, and that's what the Plaintiffs  
9 affirmed -- said by affidavit that they understood it to mean,  
10 then they can reasonably rely on that and assume that that's  
11 correct.

12           **THE COURT:** They do need to pay unless they somehow  
13 can meet some exception; true?

14           **MR. BROOKE:** That's correct, Your Honor.

15           **THE COURT:** Okay. All right.

16           Anything else as to the preliminary injunction  
17 issues?

18           **MR. BROOKE:** I mean, not unless you have further  
19 questions, Your Honor.

20           A couple of things to note just to make sure that we  
21 are properly informing you of a couple of things. We filed an  
22 affidavit today from Ms. Bonhomme-Dicks that makes clear that  
23 she is now facing revocation. She has gotten the notice from  
24 the DMV, and she is facing revocation as of April 15th.

25           You will recall that Mr. Johnson, who was also facing



1 a revocation, an agreement was reached by the parties to stay  
2 his revocation until this motion was resolved. A similar  
3 agreement was not able to be reached as to Miss Bonhomme-Dicks.  
4 So there is now --

5 **THE COURT:** Is that the one that as of, I think,  
6 August the order was entered, and November is when it was going  
7 to be effective, sometime November or later?

8 **MR. BROOKE:** That is correct, Your Honor. There was  
9 a substantial delay. We do not know why. There was a  
10 substantial delay from the court relaying the information of  
11 the nonpayment to the DMV. We do not know why, but we also  
12 don't think that that's significant. What is significant, we  
13 think, is that they finally have relayed that information, and  
14 the DMV is now in possession of it and has sent out the notice  
15 to her, telling her that her license is going to be revoked on  
16 April 15.

17 I flag that only to give a sense of the perspective  
18 from the Plaintiffs of some of the urgency here.

19 **THE COURT:** So if -- under the statute, if -- well,  
20 let me back up. Have any of your clients asked for a hearing  
21 under the statute on indigency?

22 **MR. BROOKE:** Well, interestingly, yes, I would say  
23 they have. Miss Bonhomme-Dicks, the same person that we're  
24 talking about, went to the Wake court, and when she pled guilty  
25 and was assessed the fine -- the amount, she said that she was

1 unable to pay, and the Court responded as follows -- and this  
2 is in her declaration. The Court responded by saying: "I'm  
3 going to waive the fine because I have the power to do that. I  
4 can't waive the costs. I don't have the authority to do that.  
5 So I'm taxing you with costs of \$388."

6 We don't think that's legally correct, but that's  
7 what the Court told her. Then she said: "Is there anything  
8 that I can do to avoid revocation? " And she was told she needs  
9 to pay in full by the date that it is due.

10 **THE COURT:** Who told her that?

11 **MR. BROOKE:** I will get you an answer to that when I  
12 stand back up. I actually believe it was the clerk, but let  
13 me -- it was the clerk, Your Honor, who told her that.

14 Now, she did not file a formal motion, but that is  
15 what she was told by the Court was her only option.

16 **THE COURT:** Well, the statute clearly says that the  
17 penalty, fine, or costs can be remitted.

18 **MR. BROOKE:** Yes, Your Honor.

19 **THE COURT:** So that seems to be contrary to the law.

20 **MR. BROOKE:** Yes, I would agree.

21 **THE COURT:** Okay. So what did your client do after  
22 that? Did she attempt to resolve that?

23 **MR. BROOKE:** Well, she's been attempting to get --

24 **THE COURT:** She's got the benefit of counsel. Did  
25 you do anything to follow up on that?

1           **MR. BROOKE:** No, Your Honor, we have --

2           **THE COURT:** Why not?

3           **MR. BROOKE:** We are not required to pursue exhaustive  
4 remedies before filing a Section 1983 lawsuit, and, frankly, we  
5 know that this issue is affecting tens of thousands of  
6 individuals every year, according to an affidavit that was just  
7 filed this morning by DMV.

8           **THE COURT:** How many individuals seek remittance or  
9 some finding under Section (b) of the statute for a  
10 determination that they're not liable for any of their costs  
11 and fines?

12           **MR. BROOKE:** I don't know how many, Your Honor. I do  
13 know that --

14           **THE COURT:** How do I know that the procedure under  
15 the statute is not sufficient as a matter of law in this  
16 instance?

17           **MR. BROOKE:** Well, you know that that it's not  
18 sufficient as a matter of law, well, because of the reasons  
19 that I have already said, that there needs to be a hearing.  
20 It's not just some opportunity that's blowing out there in the  
21 wind. I agree with you --

22           **THE COURT:** I want to put aside your argument that  
23 there needs to be a hearing in every case like a show cause  
24 order. Put that to the side.

25           **MR. BROOKE:** Yes, Your Honor.

1           **THE COURT:** That's a separate legal argument.

2           If the law requires an opportunity to be heard and,  
3 if under the current law, anybody who is indigent who can't pay  
4 can proceed under Section (b) and (b) (1) of the statute, what  
5 evidence is there that that's not sufficient for them to be  
6 able to get some determination of their revocation prior to  
7 revocation?

8           **MR. BROOKE:** I'm sorry, Your Honor. Can you ask me  
9 that last part again?

10          **THE COURT:** Yes. What evidence do I have that the  
11 statutory scheme is insufficient, as a matter of law, in this  
12 case?

13          **MR. BROOKE:** Right. Well --

14          **THE COURT:** For example, your client, who pled  
15 guilty, got imposed a fine, immediately said, I can't pay; and  
16 if folks had been reading the statute, they could have then  
17 concluded, well, if they're persuaded -- the judge is persuaded  
18 can't pay it, and the judge could have said, fine, you show me  
19 that you're indigent, I will make that finding and you don't  
20 have to pay the fine or costs, and then would send that  
21 information to DMV, and there would be no revocation; right?

22          **MR. BROOKE:** Yes, Your Honor.

23          **THE COURT:** Okay. How do I know that that process is  
24 not sufficient in North Carolina?

25          **MR. BROOKE:** Well, I think -- are you asking me how

1 do you know that factually it's not working?

2 **THE COURT:** You're asking me to enjoin the Department  
3 of Motor Vehicles from using the current statutory scheme.

4 **MR. BROOKE:** Correct.

5 **THE COURT:** So I think the burden is on you to show  
6 that you're likely to succeed in showing that it's causing some  
7 constitutional violation. So put aside your argument that you  
8 have to have a hearing in every case. That's one ground you  
9 have. If, for some reason, I don't agree with that, then the  
10 statute seems to provide the opportunity to be heard.

11 **MR. BROOKE:** Yes.

12 **THE COURT:** So then it seems to me the question is,  
13 under your analysis, that the opportunity needs to be at a  
14 meaningful time in a meaningful way; right? How do I know that  
15 doesn't happen under the statute?

16 **MR. BROOKE:** So let me preface my answer --

17 **THE COURT:** And I'm sorry to interrupt you. Putting  
18 aside people who don't know about it, didn't check on it,  
19 allegedly were misled by the notice, et cetera. I am focused  
20 on the way the law functions.

21 **MR. BROOKE:** I want to reemphasize the one you just  
22 said. So assuming you also don't agree with us on our third  
23 claim, that the notice is deficient and that that is a problem  
24 because people are relying on the notice --

25 **THE COURT:** Put that off with the other one.

1           **MR. BROOKE:** Put that off with the other one. Then  
2 if all we have here is proper notice is going out, people are  
3 being properly told about this and they're actually able to go  
4 and get that hearing, then we would not be raising this  
5 procedural due process claim.

6           **THE COURT:** Okay. All right.

7           Any other arguments on the preliminary injunction you  
8 want to be heard on? I've read the briefs.

9           **MR. BROOKE:** If you don't have questions, then I'm  
10 aware of the time.

11           **THE COURT:** Okay. Let me ask if the Department of  
12 Motor Vehicles wants to be heard on the preliminary injunction?

13           **MR. DALTON:** Yes, Your Honor. In going back to the  
14 statute that you've discussed, the statute does allow for the  
15 judge to consider the ability to pay and how much the person is  
16 trying to pay, and as the Sharee Smoot -- or  
17 Miss Bonhomme-Dicks, I'm sorry, as her affidavit -- or her  
18 declaration states, she explained to -- her financial  
19 circumstances to the Court and asked the magistrate judge -- I  
20 think she meant district court judge because she said in open  
21 court. So for all we know, this is happening in every case,  
22 for all DMV knows, that the courts are aware of this statute.  
23 She had this discussion. The Court -- assuming she's correct,  
24 the judge may have gotten it wrong, but what they're asking  
25 for, or seem to be asking for, is for the DMV to go behind the

1 Court and send a notice and request a hearing. The person  
2 might already have had one.

3 **THE COURT:** All right. So in terms of the actual  
4 practice of the statute, are you aware of how this is working  
5 out for people who are indigent who ask for a hearing?

6 **MR. DALTON:** We do not know what the court -- DMV  
7 does not know what the courts are doing or what each individual  
8 judge are doing. It may be -- it may be applied differently in  
9 different places, but the Court is not a party here or AOC is  
10 not a party here, and DMV does not know and has no way of  
11 knowing.

12 **THE COURT:** If somebody were to go to the Court and  
13 ask for a hearing under the statute, would DMV be aware of  
14 that?

15 **MR. DALTON:** No.

16 **THE COURT:** Has anybody ever written to DMV and said,  
17 hey, don't revoke me, I'm going back to my trial judge, trying  
18 to get this worked out?

19 **MR. DALTON:** I have never seen such a letter.

20 **THE COURT:** Would you be the one to see them?

21 **MR. DALTON:** Well, sometimes people write and copy a  
22 lot of people, and sometimes they write to DMV. Sometimes we  
23 get letters from DMV. I cannot tell you that we would.

24 **THE COURT:** Is there any practice at DMV that if they  
25 were to become aware of that, that they would toll revocation



1 until they hear from the trial judge?

2           **MR. DALTON:** I believe not. I believe DMV follows  
3 the statute. However, it looks like this process could and  
4 should be done at the hearing stage -- or in the court stage.  
5 Now, it can be done on the back end. It can be done afterward,  
6 sure, because the statute talks about if the person has paid,  
7 if the person is trying to, and apparently some courts do use  
8 payment plans and things like that and give the person an  
9 opportunity; but as far as what the Court is actually doing,  
10 DMV doesn't know.

11           **THE COURT:** All right. Any other issue you want to  
12 be heard on?

13           **MR. DALTON:** Just, Your Honor, we filed -- and we  
14 filed this morning as well the numbers about the revocations  
15 this morning, and for the last 3 years, approximately, it looks  
16 like 200,000 people got the notice saying they would be --  
17 their license would become ineffective within 60 days. About  
18 60,000 paid it -- and I'm paraphrasing, but about another  
19 60,000 paid it after the revocation became effective. So these  
20 are all people that would not pay.

21           We believe --

22           **THE COURT:** Do you know how many people got their  
23 license restored and had their fees returned to them because  
24 they made a showing under the statute?

25           **MR. DALTON:** I have no idea.

1           **THE COURT:** Would that be something you would have  
2 records of?

3           **MR. DALTON:** DMV would not. That looks like the  
4 Court would do that.

5           **THE COURT:** Who gets the restoration fee? Does that  
6 go to DMV?

7           **MR. DALTON:** The restoration fee goes to DMV.

8           **THE COURT:** So wouldn't you have records of how many  
9 restoration fees were paid?

10           **MR. DALTON:** Your Honor, I think what this says is  
11 they don't have to pay it if they get restored. I'm not sure  
12 that there's -- certainly, if we got -- or if DMV got a court  
13 order saying that they can get their restoration fee back, DMV  
14 would follow it; but I was under the impression that they would  
15 not have to pay it up front, the way this statute works.

16           **THE COURT:** Okay.

17           **MR. DALTON:** That's my understanding.

18           **THE COURT:** All right. Anything else you want to be  
19 heard on --

20           **MR. DALTON:** No.

21           **THE COURT:** -- on the preliminary injunction?  
22 Do you want to respond briefly to any of that?

23           **MR. BROOKE:** Just one thing, Your Honor, and this is  
24 really back to a previous point. You know, the other thing  
25 that I would point the Court to is that, of course, even under

1 those numbers that were provided this morning, that means that  
2 in 3 years -- and by my math, it was 70 percent of people who  
3 were not paying within that 60-day window and about half of  
4 those 70 percent were then later paying it at some point and  
5 about half of them never paid it at all. That tells me that  
6 this -- the hearing process is not being used. Why it's not  
7 being used is, of course, a different question that I don't  
8 have an answer to.

9           We know that 264,000 licenses were suspended on the  
10 day that we filed this suit. We have stipulations about the  
11 thousands at any time. We think that also constitutes pretty  
12 strong evidence that this scheme is not working properly.

13           **THE COURT:** Okay. Give me just a moment.

14           (Off-the-record discussion.)

15           **THE COURT:** Okay. Yes?

16           **MR. BROOKE:** Your Honor, may I make one more point?  
17 I apologize.

18           **THE COURT:** Yes.

19           **MR. BROOKE:** There are a number of district court  
20 cases that in the *Bearden* context, clearly applying *Bearden* in  
21 a debtor's prison, jailing-people-because-they-didn't-pay  
22 context, have said it's not enough to say a person has to put  
23 up their hand to ask for a hearing. And if -- with permission,  
24 I'll file a list of those cases so you can see the citations.

25           Obviously, if you agree with us that *Bearden* applies,

1 then that would mean that the idea of this statute, making it  
2 an opportunity, that a person has to seize that opportunity,  
3 has to know about it and take advantage of it, then, you know,  
4 I would submit you would agree with us. If you decline to  
5 agree with us, then I might understand that you might not think  
6 much of the cases that I want to bring to your attention, but I  
7 do want to bring several district court cases from around the  
8 country that have said it's not -- there's nothing in the case  
9 law that says it would be sufficient to require people to put  
10 up their hands to request a hearing.

11 **THE COURT:** Can you give me a list of those?

12 **MR. BROOKE:** Yes, Your Honor, right now.

13 **THE COURT:** Do you want to do it now? Or you can do  
14 it by the end of the day tomorrow, whichever you wish to do.

15 **MR. BROOKE:** Yes, I will do it on the record -- I  
16 will do it on paper by the end of the day tomorrow.

17 **THE COURT:** Okay. All right.

18 Let me turn to the class certification issue. You're  
19 asking me to certify two different classes. I think one would  
20 be of everybody who has had their license revoked and  
21 everybody, I guess, who is indigent, or is it everybody who has  
22 had their license revoked?

23 **MS. EARLY:** Yes, Your Honor, we're asking the Court  
24 to certify two classes, one class of individuals whose licenses  
25 have been revoked pursuant to Section 20-24.1 for nonpayment,

1 and then another class of individuals whose licenses will in  
2 the future be revoked for nonpayment pursuant to 20-24.1. The  
3 ability to pay factor is not part of our class definition.

4 **THE COURT:** So people will be members of the class  
5 even if they're fully capable of paying?

6 **MS. EARLY:** Yes, Your Honor.

7 **THE COURT:** Why should they be part of the class?

8 **MS. EARLY:** Your Honor, the Plaintiffs' position is  
9 that the injury occurs to those within the proposed class  
10 simply based on the lack of the provision of process  
11 irrespective of what the proposed class members' economic  
12 status is or whatever consequence or effect of the revocation  
13 is.

14 **THE COURT:** Is that your procedural due process  
15 claim?

16 **MS. EARLY:** That is actually our position with  
17 respect to our procedural due process claim, yes, Your Honor.

18 **THE COURT:** And the injury is the lack of procedural  
19 due process?

20 **MS. EARLY:** Yes, Your Honor, that's correct.

21 **THE COURT:** Okay. Now, some of the judges who have  
22 decided these have been asked to certify classes of people that  
23 are just unable to pay.

24 **MS. EARLY:** Correct, Your Honor, but that is not our  
25 position, and, in fact, our position would be that if the Court

1 were to inquire into -- I'm sorry -- if ability to pay were  
2 part of the class definition, that that would invoke some sort  
3 of an individualized determination, and we are not asking the  
4 Court to make that sort of inquiry. We do not believe that  
5 that would be consistent with what is required to certify the  
6 class in this case.

7 **THE COURT:** All right. Okay. Hold on just a minute.

8 **MS. EARLY:** Certainly.

9 (Pause in the proceedings.)

10 **MS. EARLY:** Your Honor, if I may?

11 **THE COURT:** Yes.

12 **MS. EARLY:** I also want to clarify that the -- not  
13 only does the procedural due process not require a finding of  
14 ability to pay for purposes of certifying the classes, but that  
15 argument would also apply to the *Bearden* claim as well, and  
16 that we are not -- our position, again, is that the economic  
17 status of individuals is not material to reaching any finding  
18 on the claim itself or recertifying a class of persons with  
19 respect to the *Bearden* claim.

20 **THE COURT:** All right. The parties have briefed the  
21 issue of statute of limitations. The statute under 1983 as  
22 applied to North Carolina is 3 years.

23 **MS. EARLY:** Yes, Your Honor.

24 **THE COURT:** I understand the parties' views on that.

25 If I were to get to the point of certifying a class and I'm not

1 persuaded on the statute of limitations, then the issue is  
2 moot. If I am concerned about the issue of statute of  
3 limitations, then the question becomes what to do about the  
4 class. There was some reference in the papers about  
5 subclasses.

6 **MS. EARLY:** Yes, Your Honor.

7 **THE COURT:** Are you meaning to say essentially that I  
8 would simply certify a class of everybody who is timely within  
9 the statute of limitations if I believe it applies?

10 **MS. EARLY:** Yes, Your Honor.

11 **THE COURT:** So, technically, it's not really a  
12 subclass. It's just a different -- it's a class of people  
13 defined to comply within the statute of limitations if I were  
14 to go that route?

15 **MS. EARLY:** Yes, Your Honor. Yes, that is correct.

16 **THE COURT:** Okay. Let me ask a question about  
17 certification generally because you're asking me to certify two  
18 different classes here. I also have a motion for judgment on  
19 the pleadings that, in my view, may not raise all the arguments  
20 sufficient to address all the claims if I reject the  
21 *Rooker-Feldman* analysis.

22 So, in other words, procedural due process may not be  
23 presently before me on the judgment on the pleadings. It is  
24 before me on the preliminary injunction, to the extent that you  
25 have the burden of showing some ground, and if I reject the



1 substantive due process, then I have to address the procedural  
2 due process. So I'll have to address it there. There the  
3 burden would be on the Plaintiff.

4           What are the merits of my considering certification  
5 at this stage? There's a lot -- I've handled a number of class  
6 actions. There is a lot of effort in a class action process of  
7 getting a notice out, allowing people -- this would an opt-out  
8 class, I take it?

9           **MS. EARLY:** Your Honor, no, this actually a mandatory  
10 class under Subsection (b) (2) and notice is not obligatory.  
11 You would not have to issue notice.

12           **THE COURT:** So what would I have to do for notice for  
13 this kind of case?

14           **MS. EARLY:** Certainly. Under -- I don't recall the  
15 exact subsection, but under Rule 23, there is a provision that  
16 permits the Court to issue notice to all members who would fall  
17 within a (b) (2) class.

18           So, for instance, if the Court were to grant the  
19 equitable relief that Plaintiffs are requesting here on each of  
20 their claims, the Court could issue notice, notifying members  
21 of this mandatory (b) (2) class as to what relief has been  
22 afforded to them.

23           **THE COURT:** As a practical matter, if I were to grant  
24 some kind of relief, wouldn't the DMV, as a practical matter,  
25 apply that to everybody? Maybe that's a question to ask to the

1 DMV, but what are the merits of actually certifying a class,  
2 given the nature of the claim here and the effort that's going  
3 to be required certifying the class in terms of the relief  
4 requested?

5 **MS. EARLY:** Certainly, Your Honor. I think you may  
6 be speaking to the necessity of class certification as opposed  
7 to the Court just granting relief individually to the named  
8 Plaintiffs. I have two responses to that particular question.

9 The first is that -- well, last week the Defendant  
10 filed a case *DiFrancesco v. Fox*, a case out of the District of  
11 Montana, that addresses this very issue. However, the case  
12 raises a point that is not a new concept with respect to  
13 necessity and the Defendant did not raise this argument --

14 **THE COURT:** Which case?

15 **MS. EARLY:** It is *DiFrancesco v. Fox*. I do not have  
16 the cite with me.

17 **THE COURT:** Is that the one where the trial judge  
18 declined to certify the class?

19 **MS. EARLY:** That is correct, yes.

20 **THE COURT:** On the grounds that the relief would be  
21 the same?

22 **MS. EARLY:** Correct. However --

23 **THE COURT:** I'm not sure I'm persuaded by that, for  
24 what it's worth, because he relies on a -- he or she relies on  
25 a voting rights case, and that would be a different situation.

1 I'm really more interested in the practical issue.

2 **MS. EARLY:** Certainly.

3 **THE COURT:** If I were to grant relief as to some  
4 Plaintiffs, the question really, I guess, for the DMV, as a  
5 practical matter, is the DMV going to do that for all  
6 Plaintiffs, and if they were, maybe they won't -- it won't, but  
7 if DMV were, would that obviate the need of going through the  
8 whole class certification process?

9 **MS. EARLY:** Our position is that it would not obviate  
10 the need for class certification for a few reasons. The first  
11 is that this -- there is a real risk in this case that the  
12 claims of named Plaintiffs would become moot and that the case  
13 claims of the proposed class members are inherently transitory  
14 and that there is no -- there's no way to predict the length of  
15 the revocation because individuals' economic status is  
16 fluctuating, it's always in flux, and we cannot determine at  
17 what point individuals will or won't ever be able to pay off  
18 their fines and costs.

19 **THE COURT:** I suppose you have the statute of  
20 limitations concerns as well. If a class is certified, then  
21 they get the benefit of a claim in their favor that tolls the  
22 statute of limitations.

23 **MS. EARLY:** Certainly, that's one point. Of course,  
24 our position is that our clients' claims are actually not  
25 barred by the statute of limitations; but if the Court were to

1 adopt that finding, then we would certainly adopt that position  
2 in our clients' favor.

3           **THE COURT:** I'm not sure how much I'm persuaded by  
4 the continuing violation theory in this context, but I haven't  
5 made up my mind, and I'm looking at it.

6           **MS. EARLY:** We would be happy to address questions on  
7 that as well if you'd like today.

8           But with respect to the necessity of class  
9 certification here, again there is this risk that the named  
10 Plaintiffs' claims are going to become moot. You don't know  
11 when or whether individuals will ever be able to pay off their  
12 fines and costs, as happened with one of our clients, Ms.  
13 Sharee Smoot, who was eventually able -- was able to save up  
14 enough money and work enough hours to pay off her fines and her  
15 court costs to reinstate her license, and so her individual  
16 claims are now moot.

17           If -- with respect to any other individual in the  
18 proposed classes who is in her position and is eventually able  
19 to pay off his or her fines and costs, any individual relief  
20 that the Court grants to our named Plaintiffs would essentially  
21 have no effect beyond those named individuals, and the named  
22 individuals themselves would not be able to enforce the relief  
23 once their claims become moot.

24           Additionally, we don't have any guarantee from the  
25 Defendant that he would apply any individual relief granted to

1 our named Plaintiffs beyond the named Plaintiffs, nor do we  
2 have any guarantee that the Defendant is going to set up the  
3 means or measures that will allow those who are not -- who are  
4 in the class but have not yet been certified to vindicate their  
5 rights in order to invoke this hearing process that we're  
6 asking for.

7 **THE COURT:** So in terms of the order of these -- my  
8 decisions on the three motions I have in front of me, what do  
9 you propose is the order in which these issues should be  
10 decided? I have judgment on the pleadings and then I have  
11 preliminary injunction and I have class certification.

12 **MS. EARLY:** Well, of course, I would consult with my  
13 colleagues, but I believe we would request the denial of the  
14 motion for judgment on the pleadings first, and at this time,  
15 if you were to grant any relief with respect to the motion for  
16 preliminary injunction, we would -- we're requesting that that  
17 relief be entered class-wide so, in effect, that there would be  
18 a simultaneous ruling on both the motion for preliminary  
19 injunction and the motion for class certification.

20 **THE COURT:** Okay. All right. Thank you.

21 **MS. EARLY:** Thank you, Your Honor.

22 **THE COURT:** Do you want to respond to any of that?

23 **MR. DALTON:** Yes, Your Honor. First of all, in terms  
24 of -- counsel is correct that people's -- people's economic  
25 situation changes, and some people have paid off their fines.

1 In fact, Ms. Smoot did, it looks like, about two months after  
2 the case was filed, and, of course, she wouldn't have if DMV  
3 had been enjoined, but -- and not to mention the other 130,000  
4 people that paid it off after they got the notice from DMV.

5 But, in any event, DMV -- we don't know -- the Court  
6 doesn't know how many of these people could pay and have a car,  
7 do everything they want to do, if they were allowed to because,  
8 for example, Mr. Johnson, their plaintiff, he's the person that  
9 DMV decided not to revoke his license, and, you know, we  
10 negotiated and did not revoke. He has reoffended for failure  
11 to have insurance and failure to register his vehicle.

12 I mean, a lot of these people are not going to  
13 have -- may have decided I can't afford a car, it doesn't work  
14 for me, and the Court doesn't know how many of these people  
15 that maybe then didn't pay their fines for whatever reason, but  
16 how many of them can't afford it now.

17 **THE COURT:** Let me ask this. The statutory scheme  
18 seems to provide for an exception for indigency. Do you agree  
19 with that?

20 **MR. DALTON:** I do, with the discretion of the Court,  
21 however. It appears --

22 **THE COURT:** Well, it's not actually discretion. As I  
23 read it, it's mandatory if the Court is persuaded that there is  
24 indigency. Is that accurate?

25 **MR. DALTON:** I believe it is.

1           **THE COURT:** So it's not a may, it's a must, but only  
2 upon the trial judge being convinced by the right standard,  
3 which I presume is a preponderance. Do you agree with that?

4           **MR. DALTON:** Yes.

5           **THE COURT:** Okay. So anything else you want to add?

6           **MR. DALTON:** No. The Court may have already made the  
7 determination. I don't know.

8           **THE COURT:** So once North Carolina provides in its  
9 statute that indigency is a consideration as part of the  
10 statutory scheme, is North Carolina required at that point to  
11 have some meaningful opportunity to raise that before  
12 revocation?

13           **MR. DALTON:** I believe that they have -- I believe  
14 the statute indicates it should be raised in the court.

15           **THE COURT:** I understand that, but the question is --  
16 let me back up.

17           In some of these cases, there's no indigency  
18 exception, and in at least one case, the trial judge concluded  
19 that he was not persuaded on *Bearden* analysis and then said  
20 since there's no right involved here and the state statutory  
21 scheme doesn't provide for indigency as an exception, I don't  
22 find any problem with the State's failure to have any kind of a  
23 hearing because it applies equally to everybody, and there's no  
24 state interest on indigency. That analysis would seem not to  
25 apply here because North Carolina in its statutory scheme has



1 incorporated an indigency consideration.

2 **MR. DALTON:** I agree that it has, but I also believe  
3 it's only -- it's focused on the Court, and that's where it's  
4 supposed to be administered.

5 **THE COURT:** Well, that may be the case, but then the  
6 question is, under those circumstances, does that mean that  
7 North Carolina has to at least provide a meaningful opportunity  
8 to have that determination made before revocation?

9 **MR. DALTON:** In the court -- at the court hearing,  
10 yes.

11 **THE COURT:** Okay. So then the issue before me is  
12 narrowed down to, in your view, whether or not the statute  
13 provides that meaningful opportunity, that is, in a meaningful  
14 way at a meaningful time?

15 **MR. DALTON:** I think it's whether DMV should be doing  
16 this, whether this party should be doing this, and I don't see  
17 any evidence before the Court to know whether or not the  
18 courts -- the North Carolina district courts are doing that.

19 **THE COURT:** Well, that's a burden of proof issue.  
20 Your argument is I shouldn't enter the injunction because  
21 there's no evidence that that's not happening; true?

22 **MR. DALTON:** Correct.

23 **THE COURT:** So my question is, though, is that the  
24 question that I have to decide?

25 **MR. DALTON:** I don't think so because the party that

1 is or is not doing what they're supposed to do -- if the Court  
2 is supposed to be doing that, that party is not before you.

3 **THE COURT:** Well, the party that is before me is the  
4 party that's revoking licenses, and the statute requires you to  
5 revoke the license unless these findings are made -- a motion  
6 is made in the trial court and these findings are made; right?

7 **MR. DALTON:** Correct. Correct. The DMV should and  
8 does, according to the statute, assume that the courts have  
9 done everything it's supposed to do. There is no room for DMV  
10 to assume otherwise.

11 **THE COURT:** Okay. Well, I think the question from  
12 the Plaintiffs' point of view is whether the DMV should be  
13 enjoined from doing what the statute says it has to do, that  
14 is, to revoke, if the statutory scheme has an indigency  
15 consideration but doesn't allow that to happen in a way -- in a  
16 meaningful way in a meaningful time prior to revocation.

17 Is that one of your issues?

18 **MR. BROOKE:** Yes, Your Honor.

19 **THE COURT:** Okay.

20 **MR. DALTON:** We would say, yes, it should be  
21 happening in the courts, and for all we know, it is.

22 **THE COURT:** Okay. All right. Anybody have anything  
23 else they want to bring to my attention?

24 I will -- I've read all the briefs. I am familiar  
25 with them, so don't worry, I will rest on your other -- you can

1 rest on your briefing arguments as to the other points.

2 **MR. BROOKE:** I just want to clarify one thing that I  
3 said before. I want to make sure that I clarify.

4 We do think that -- obviously, we do think that the  
5 inquiry that you're asking about, is there meaningful  
6 opportunity, is the right inquiry, and we do think that under  
7 procedural due process, where there's a consequence happening,  
8 like there is here, it's not just -- it's not just there could  
9 be a hearing if you avail yourself of the system. Our position  
10 is there actually needs to be a hearing.

11 And so I believe that I said earlier that it might be  
12 okay if the statute -- if the notice were done correctly, and I  
13 would like to modify that to say we don't think that that is  
14 the case even under procedural due process when there is a  
15 sanction at issue, like there certainly is here, that there  
16 needs to be someone within the state, whether that be the Court  
17 or the DMV, that has to make a willfulness determination before  
18 we would submit this is permissible under either the *Bearden*  
19 modified equal protection, procedural due process argument, or  
20 under the procedural due process, focusing on the statutes.

21 **THE COURT:** So you're saying that -- it sounds like  
22 you are retreating a little bit.

23 **MR. BROOKE:** I am, Your Honor.

24 **THE COURT:** So the case law says for procedural due  
25 process there has to be an opportunity to be heard. It doesn't

1 say there has to be a hearing. There has to be an opportunity  
2 to be heard. So why is it that the State is required to  
3 require a hearing even if nobody invokes the request for a  
4 hearing?

5 **MR. BROOKE:** Well, I mean, I think opportunity to be  
6 heard could mean different things, depending on how you  
7 emphasize the word "opportunity." I mean, opportunity to be  
8 heard could be what we're doing right now. We're having a  
9 hearing. That's my opportunity --

10 **THE COURT:** Let's make it more concrete. Does the  
11 statute in North Carolina provide an opportunity to be heard,  
12 assuming there's proper notice? And let's assume that it's  
13 explained to the recipients of their notices that they have  
14 this opportunity and it quotes the statute. Is that an  
15 opportunity to be heard?

16 **MR. BROOKE:** I mean, Your Honor, I mean, of course,  
17 I'm not going to fight you that it's an opportunity in one  
18 sense. I agree with that.

19 **THE COURT:** How about in a constitutional sense?

20 **MR. BROOKE:** Not when there is a sanction that's  
21 going to befall the person if they don't avail themselves of  
22 it, no.

23 **THE COURT:** Why not?

24 **MR. BROOKE:** Well, again, because our position is  
25 that it is necessary that the Court -- that the State -- I keep

1 saying the State because I'm not committed that it has to be  
2 the Court versus the DMV, but that the State, before it chooses  
3 to sanction the person, it has to make that finding. And so,  
4 for sure, there will be a person out there who gets that  
5 hearing and, thus, has all of the opportunity that would be  
6 envisioned because they have a lawyer who knows about it, and  
7 they go to the court and they get that hearing, and, thus, they  
8 had the opportunity; but the scheme at large certainly is not  
9 mandating, right. The statute clearly is making it  
10 discretionary. If someone puts up their hand, then they might  
11 be able to get it; but if they don't put up their hand, they  
12 don't know about it, they don't realize they can, then they are  
13 not going to get it. And that we submit is not what  
14 opportunity means when we talk about opportunity to be heard in  
15 the context here where there is a sanction.

16 **THE COURT:** I understand. All right.

17 I apologize again for our late start, but,  
18 unfortunately, it was out of all of our hands. Thank you for  
19 your briefing and for your argument. I don't know if you've  
20 now missed flights for those going back, but, hopefully, you'll  
21 be able to catch something out of the airport. If not, it's a  
22 wonderful area and enjoy it, and the weather is actually pretty  
23 nice.

24 I'll endeavor to reach a decision just as soon as I  
25 can. If you will file your list of cases tomorrow, I would

1 appreciate that.

2           **MR. BROOKE:** We will do so.

3           **THE COURT:** All right. Thank you all.

4           Adjourn Court.

5           (END OF PROCEEDINGS AT 6:10 P.M.)

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1 UNITED STATES DISTRICT COURT  
2 MIDDLE DISTRICT OF NORTH CAROLINA  
3 CERTIFICATE OF REPORTER  
4  
5

6 I, Briana L. Bell, Official Court Reporter, certify  
7 that the foregoing transcript is a true and correct transcript  
8 of the proceedings in the above-entitled matter.  
9

10 Dated this 2d day of July 2019.  
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14 Briana L. Bell, RPR  
Official Court Reporter  
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**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

SETI JOHNSON and MARIE  
BONHOMME-DICKS, on behalf of  
themselves and those similarly situated,  
and SHAREE SMOOT and NICHELLE  
YARBOROUGH, on behalf of  
themselves and those similarly situated,

Plaintiffs,

v.

TORRE JESSUP, in his official capacity  
as Commissioner of the North Carolina  
Division of Motor Vehicles,

Defendant.

Case No. 1:18-cv-00467

(CLASS ACTION)

**SUBMISSION OF SUPPLEMENTAL AUTHORITIES**

During the March 13, 2019 hearing on Plaintiffs' Motions for Preliminary Injunction and Class Certification, and Defendant's Motion for Judgment on the Pleadings, counsel for Plaintiffs referenced additional cases addressing the issue of whether the Fourteenth Amendment would permit a scheme for suspension of a driver's license where an ability-to-pay hearing is available only if requested by the defendant. Plaintiffs provide the citations herein and reiterate their view that an inquiry into one's ability to pay must be made before the State sanctions a defendant for failure to pay a penalty by suspending her

driver's license, both pursuant to *Bearden v. Georgia*, *see infra*, and under the right to procedural due process, *see* Pls.' Mem. in Supp. of Mot. for Prelim. Inj. 17–18 (Doc. 39).<sup>1</sup>

- *Bearden v. Georgia*, 461 U.S. 660, 672 (1983) (holding that before a person is punished for nonpayment, a court “must inquire” into the reasons for nonpayment and, if the defendant is unable to pay, “must consider alternate measures of punishment”);
- *Cain v. City of New Orleans*, 281 F. Supp. 3d 624, 652 (E.D. La. 2017) (“[T]here is no authority for the proposition that a criminal defendant must raise the issue of her inability to pay. . . . [A] contrary rule, requiring the criminal defendant to raise the issue on her own, would undermine *Bearden*'s command that a criminal defendant not be [punished] solely because of her indigence.”);
- *West v. City of Santa Fe, Texas*, No. 3:16-CV-0309, 2018 WL 4047115, at \*9 (S.D. Tex. Aug. 16, 2018) (“The Court strongly disagrees that the burden rests with [defendants] to bring the inability to pay issue to the Court's attention.”);
- *Rucker v. Spokane Cty.*, No. CV-12-5157, 2013 WL 6181258, at \*5 (E.D. Wash. Nov. 26, 2013) (“Because due process requires the court to inquire into Nason's reason for nonpayment, and because the inquiry must come at the time of the

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<sup>1</sup> Though the cases cited herein concern jailing of defendants for failure to pay fines and court costs, the Supreme Court has never limited *Bearden*'s analysis to that context nor to any fundamental right. *See* Pls.' Mem. in Supp. of Mot. for Prelim. Inj. 12 n.13 (Doc. 39); Pls.' Reply Mem. 3–4 (Doc. 49). Indeed, *Bearden* instructed courts to conduct a “careful inquiry into . . . the nature of the individual interest affected,” among other considerations, to determine if protections for the indigent were warranted for the interest implicated. *Bearden*, 404 U.S. at 666-67.

collection action or sanction, ordering Nason to report to jail without a contemporaneous inquiry into his ability to pay violated due process.” (quoting *State v. Nason*, 168 Wash. 2d 936, 233 P.3d 848 (2010));

- *De Luna v. Hidalgo Cty., Tex.*, 853 F. Supp. 2d 623, 648 (S.D. Tex. 2012) (“‘[P]rocess which is a mere gesture is not due process.’ The process in place in Hidalgo County clearly risks that defendants who do not think to ‘speak up’ during arraignment about their inability to pay fines may be jailed solely by reason of their indigency, which the Constitution clearly prohibits. . . . Rather, due process requires a forum in which defendants’ reasons for failing to pay are considered before committing them to jail [because] some indigent persons will not directly raise their inability to pay and will be incarcerated solely, and unconstitutionally, because they are indigent.”);
- *Smith v. Whatcom Cty. Dist. Court*, 52 P.3d 485, 492 (Wash. 2002) (“[T]he court may place the burden on the defendant to prove inability to pay,” but “this does not eliminate the court’s duty to inquire, which *Bearden* plainly demands.”)

Dated: March 14, 2019.

Respectfully submitted,

/s/ Samuel Brooke

Samuel Brooke

/s/ Kristi L. Graunke

Kristi L. Graunke

*On behalf of Counsel for Plaintiffs*

Christopher A. Brook (NC Bar No. 33838)  
Cristina Becker (NC Bar No. 46973)  
Sneha Shah\*

Kristi L. Graunke (NC Bar No. 51216)  
Emily C.R. Early\*  
SOUTHERN POVERTY LAW CENTER  
150 E. Ponce de Leon Ave., Ste. 340

AMERICAN CIVIL LIBERTIES UNION  
OF NORTH CAROLINA LEGAL  
FOUNDATION  
P.O. Box 28004  
Raleigh, North Carolina 27611  
T: 919-834-3466  
E: cbrook@acluofnc.org  
E: cbecker@acluofnc.org  
E: sshah@acluofnc.org

Nusrat J. Choudhury\*  
R. Orion Danjuma\*  
AMERICAN CIVIL LIBERTIES UNION  
125 Broad Street, 18<sup>th</sup> Floor  
New York, New York 10004  
T: 212-519-7876  
T: 212-549-2563  
E: nchoudhury@aclu.org  
E: odanjuma@aclu.org

*\*Appearing by Special Appearance  
pursuant to L.R. 83.1(d)*

Decatur, Georgia 30030  
T: 404-221-4036  
E: kristi.graunke@splcenter.org  
E: emily.early@splcenter.org

Samuel Brooke\*  
Danielle E. Davis\*  
SOUTHERN POVERTY LAW CENTER  
400 Washington Avenue  
Montgomery, Alabama 36104  
T: 334-956-8200  
F: 334-956-8481  
E: samuel.brooke@splcenter.org  
E: danielle.davis@splcenter.org

Jeffrey Loperfido (NC Bar No. 52939)  
SOUTHERN COALITION FOR SOCIAL  
JUSTICE  
1415 W. NC Hwy 54, Suite 101  
Durham, North Carolina 27707  
T: 919-323-3380 x.161  
F: 919-323-3942  
E: jeffloperfido@southerncoalition.org

***Counsel for Plaintiffs***

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

SETI JOHNSON and MARIE )  
BONHOMME-DICKS, on behalf of )  
themselves and those similarly )  
situated, and SHAREE SMOOT and )  
NICHELLE YARBOROUGH, on behalf )  
of themselves and those )  
similarly situated, )

Plaintiffs, )

v. )

1:18-cv-467

TORRE JESSUP, in his official )  
capacity as Commissioner of )  
the North Carolina Division of )  
Motor Vehicles, )

Defendant. )

**MEMORANDUM OPINION AND ORDER**

THOMAS D. SCHROEDER, Chief District Judge.

This civil action arises out of the revocation of Plaintiffs' North Carolina driver's licenses, pursuant to N.C. Gen. Stat. § 20-24.1(a)(2), because of Plaintiffs' failure to pay court fines and costs for motor vehicle violations. Plaintiffs seek declaratory and injunctive relief against Defendant Torre Jessup, in his official capacity as Commissioner of the North Carolina Division of Motor Vehicles ("DMV"), for enforcing section 20-24.1(a)(2) against them in alleged violation of their equal protection and due process rights under the Fourteenth Amendment to the United States Constitution. Specifically, Plaintiffs – who have limited

financial means – claim that it is unconstitutional for the DMV to revoke their driver's licenses for failure to pay fines and costs without first affirmatively determining that they have the ability to pay.

Before the court are the Commissioner's motion for judgment on the pleadings pursuant to Federal Rule of Civil Procedure 12(c) (Doc. 46) and Plaintiffs' motions for class certification pursuant to Rule 23(b)(2) (Doc. 36) and preliminary injunction pursuant to Rule 65 (Doc. 38). For the reasons set forth below, the Commissioner's motion for judgment on the pleadings will be granted in part and denied in part, Plaintiffs' motion for class certification will be granted, and Plaintiffs' motion for preliminary injunction will be denied.

## **I. BACKGROUND**

Like many states, North Carolina has enacted statutes directing the revocation of driver's licenses for failure to pay fines and costs imposed for traffic violations. The statutory scheme works as follows: North Carolina courts "must report" to the DMV the name of a traffic defendant who "fail[s] to pay a fine, penalty, or costs within 40 days of the date specified in the court's judgment." N.C. Gen. Stat. § 20-24.2(a)(2). Upon receipt of this notice, the DMV "must revoke" the traffic defendant's driver's license indefinitely. Id. § 20-24.1(a). Revocation is accomplished through the DMV's issuance of a "[r]evocation

order[]" to the traffic defendant that becomes "effective on the sixtieth day after the order is mailed or personally delivered to the person." Id.

Unlike some states, North Carolina provides a procedure by which traffic defendants can avoid or undo license revocation by showing that their failure to pay is no fault of their own.<sup>1</sup> Section 20-24.1(b)(4) states that a traffic defendant may "demonstrate[] to the court that his failure to pay the penalty, fine, or costs was not willful and that he is making a good faith effort to pay or that the penalty, fine, or costs should be remitted." If the court determines that the traffic defendant has made a sufficient showing, the court notifies the DMV; upon receipt of this notice, the DMV is required to rescind any revocation order (if the order is pending but not yet in effect) or restore the traffic defendant's license (if the revocation order has already gone into effect). Id. § 20-24.1(b), (c). Moreover, section 20-24.1(b1) expressly provides an opportunity for traffic defendants to address their ability to pay: "A defendant must be afforded an opportunity for a trial or a hearing within a reasonable time of the defendant's appearance . . . [u]pon motion of [the] defendant." The revocation orders the DMV issues to traffic defendants cite to

<sup>1</sup> For discussion of other state statutory schemes, see, e.g., Mendoza v. Garrett, No. 3:18-cv-01634-HZ, 2018 WL 6528011, at \*1-4 (D. Or. Dec. 12, 2018); Robinson v. Purkey, 326 F.R.D. 105, 115-23 (M.D. Tenn. 2018); Fowler v. Johnson, No. 17-11441, 2017 WL 6379676, at \*1-2 (E.D. Mich. Dec. 14, 2017), appeal filed, No. 17-2504 (6th Cir. Dec. 19, 2017).



section 20-24.1 but do not mention any of its provisions or otherwise refer to the ability-to-pay exception. (Doc. 35 ¶ 32.)

Named Plaintiffs Nichelle Yarborough and Sharee Smoot are low-income North Carolinians whose licenses have been suspended by the DMV for failure to pay fines and costs. (Docs. 5, 41.) Named Plaintiffs Seti Johnson and Marie Bonhomme-Dicks are low-income North Carolinians who currently owe fines and costs for traffic violations, and who are in imminent danger of license revocation.<sup>2</sup> (Docs. 4, 40, 63.) The named Plaintiffs claim that they are unable to pay the fines and costs imposed on them and that neither the state court nor the DMV has inquired into their ability to pay.<sup>3</sup> (Doc. 35 at 1-6.)

The named Plaintiffs are not alone. In the three-year period prior to the initiation of this lawsuit, about 55,000 traffic defendants received a revocation order but made their payments prior to the revocation date. (Doc. 62.) About 68,000 traffic defendants failed to make their payments by the revocation date,

<sup>2</sup> The DMV has agreed to stay revocation of Johnson's license pending resolution of Plaintiffs' motion for preliminary injunction. (Doc. 55 ¶ 17.)

<sup>3</sup> The exception to the former is Smoot, who apparently became able to pay her fines and costs at some point after this lawsuit was filed. Plaintiffs recognized at the hearing on the present motions that her individual claims have become moot. As to the latter, Plaintiffs' counsel explained at the hearing that the state court waived Bonhomme-Dicks' fine for inability to pay at her initial appearance. However, according to Bonhomme-Dicks, the judge told her that "the legislature . . . prevented him from" waiving costs and proceeded to impose costs in the amount of \$388. (Doc. 40 ¶ 8.)

had their licenses revoked, but eventually made the payments sometime thereafter. (Id.) About 63,000 traffic defendants never made their payments, and their licenses remain revoked. (Id.)

On May 30, 2018, Johnson and Smoot initiated this lawsuit. (Doc. 1.) Plaintiffs claim that the DMV's enforcement of section 20-24.1 violates the Fourteenth Amendment in three ways: (1) by violating their equal protection and substantive due process right not to be penalized for non-payment without the State first determining that they were able to pay and willfully refused; (2) by violating their procedural due process right to a hearing on ability to pay prior to revocation; and (3) by violating their procedural due process right to adequate notice. (Doc. 35 at 32-38.)

Plaintiffs contemporaneously moved for class certification (Doc. 3) and for preliminary injunction (Doc. 2), but later withdrew them in order to file an amended complaint (Doc. 35) on August 7, 2018, adding Yarborough and Bonhomme-Dicks as Plaintiffs. Plaintiffs then filed second motions for class certification (Doc. 36) and for preliminary injunction (Doc. 38). The Commissioner answered the amended complaint (Doc. 43) and moved for judgment on the pleadings (Doc. 46). On March 13, 2019, the court held a hearing on all outstanding motions, which are ready for decision.

## II. ANALYSIS

### A. The Commissioner's Motion for Judgment on the Pleadings

The legal standard governing motions for judgment on the pleadings is the same as that employed on motions to dismiss for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). Drager v. PLIVA USA, Inc., 741 F.3d 470, 474 (4th Cir. 2014). “[A] complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)). A claim is facially plausible when the plaintiff “pleads factual content that allows the court to draw the reasonable inference that the defendant is liable,” demonstrating “more than a sheer possibility that a defendant has acted unlawfully.” Iqbal, 556 U.S. at 678 (citing Twombly, 550 U.S. at 556-57).

#### 1. Subject Matter Jurisdiction

The Commissioner first argues that the court lacks subject matter jurisdiction over Plaintiffs' claims under the Rooker-Feldman doctrine.<sup>4</sup> Plaintiffs contend that the Commissioner reads

<sup>4</sup> Defendants normally raise subject matter jurisdiction on a Rule 12(b)(1) motion to dismiss. However, “[o]bjections to subject-matter jurisdiction . . . may be raised at any time.” Henderson ex rel. Henderson v. Shinseki, 562 U.S. 428, 434 (2011); see also Fed. R. Civ. P. 12(h)(3) (“If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.”). “[I]f a party raises an issue of subject matter jurisdiction on his motion for judgment on the pleadings, the court will treat the motion as if it had been brought under Rule 12(b)(1).” Kelly v. United States, No. 7:10-CV-172-

the doctrine too broadly and that it does not apply in this instance.

The Rooker-Feldman doctrine – so named because of the Supreme Court’s foundational decisions in Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923), and District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983) – states that federal district courts may not sit in review of state court decisions. Although the doctrine was construed expansively in the decades following Rooker, the Supreme Court has since clarified the “narrow” circumstances in which it is applicable: “cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments.” Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 544 U.S. 280, 284 (2005). Where a plaintiff “is not challenging the state-court decision, the Rooker-Feldman doctrine does not apply.” Davani v. Va. Dep’t of Transp., 434 F.3d 712, 718 (4th Cir. 2006).

In the instant case, Plaintiffs do not challenge any judgment of a North Carolina court. The Commissioner’s argument to the contrary is based on a misunderstanding of the statutory scheme at issue, as evidenced by his repeated assertion that Plaintiffs are

FL, 2013 WL 5348455, at \*3 (E.D.N.C. Sept. 23, 2013) (alteration in original) (quoting Newbrough v. Piedmont Reg’l Jail Auth., No. 3:10CV867-HEH, 2012 WL 169988, at \*2 (E.D. Va. Jan. 19, 2012)).

"asking this Court to prohibit DMV from complying with license revocation orders issued by North Carolina courts." (Doc. 47 at 11.) It is simply untrue that North Carolina courts issue "license revocation orders" under the statutory scheme at issue here. Instead, state courts "report to the [DMV] the name of any person charged with a motor vehicle offense" who fails to pay a traffic violation fine or cost. N.C. Gen. Stat. § 20-24.2(a) (emphasis added). Upon receiving that "notice from [the] court," it is the DMV that issues a "[r]evocation order[]," which it then "mail[s] or personally deliver[s] to the person." Id. § 20-24.1(a) (emphasis added).

The only state court judgment relevant to this process is the underlying imposition of a traffic violation fine or cost, and Plaintiffs expressly do not challenge that judgment. (Doc. 51 at 12.) Plaintiffs' claims do not in any way implicate the soundness of the underlying traffic conviction and pecuniary imposition. A finding by this court that the DMV cannot constitutionally revoke Plaintiffs' driver's licenses for failure to pay a court-ordered fine or cost without first determining their ability to pay would not imply that the state court should not have imposed the fine or cost in the first place. See Stinnie v. Holcomb, 355 F. Supp. 3d 514, 524 (W.D. Va. 2018) ("Plaintiffs do not contest their convictions or the fines and costs assessed by the state court. Therefore, the outcome of this case will not affect those

judgments.” (citation omitted)).<sup>5</sup> Because a ruling for Plaintiffs would not involve this court’s “review and rejection” of any state court judgment, Exxon, 544 U.S. at 284, the Rooker-Feldman doctrine does not bar Plaintiffs’ claims. See Stinnie, 355 F. Supp. 3d at 523-24; Fowler v. Johnson, No. 17-11441, 2017 WL 6379676, at \*3 (E.D. Mich. Dec. 14, 2017) (“Plaintiffs are not . . . challenging the imposition of any fines, costs, or assessments . . . . Instead, Plaintiffs are challenging Defendant’s revocation of their driver’s licenses for failing to pay their traffic debt without consideration of their willfulness or ability to pay. ”).

The Rooker-Feldman doctrine does not extend to Plaintiffs’ claims.”), appeal filed, No. 17-2504 (6th Cir. Dec. 19, 2017).

<sup>5</sup> The Stinnie court had previously dismissed the plaintiffs’ original complaint under the Rooker-Feldman doctrine after finding that the Virginia statute at issue directed “license suspension orders [to be] issued by the state court.” Stinnie v. Holcomb, No. 3:16-cv-00044, 2017 WL 963234, at \*12 (W.D. Va. Mar. 13, 2017); see Stinnie v. Holcomb, 734 F. App’x 858, 861 n.\* (4th Cir. 2018). Even if the Stinnie court had not found Rooker-Feldman inapplicable in its later ruling on an amended complaint, see 355 F. Supp. 3d at 523-24, its former reasoning would be inapposite to the North Carolina statute at issue here, under which state courts do not issue revocation orders. See N.C. Gen. Stat. §§ 20-24.1, 20-24.2. Furthermore, the Commissioner’s representation that the Fourth Circuit “affirm[ed] dismissal of [the Stinnie] Complaint on the grounds that Plaintiffs’ claims were barred by the Rooker-Feldman doctrine” (Doc. 47 at 9) evinces a fundamental misunderstanding of the Fourth Circuit’s ruling. The Fourth Circuit dismissed the appeal for lack of a “final, appealable order,” expressly cautioning that its “discussion should not be read to indicate that [it] would hold that the district court’s analysis was free from error were [it] to consider the appeal on the merits.” 734 F. App’x at 862-63 (internal quotation marks and brackets omitted). Only Chief Judge Gregory reached the Rooker-Feldman issue, noting in dissent that Rooker-Feldman “is an exceedingly narrow doctrine that has no relevance to the facts of this case.” Id. at 868 (Gregory, J., dissenting).

Consequently, the Commissioner's reliance on Rooker-Feldman to avoid this litigation is misplaced.

## 2. Sovereign Immunity

The Commissioner next makes perfunctory arguments that Plaintiffs' claims are barred by the Eleventh Amendment: first, that Plaintiffs' claims impermissibly require the court to review past state acts that do not amount to ongoing constitutional violations, and second that the Commissioner himself is not sufficiently connected with the allegedly unconstitutional acts to be a proper defendant under Ex Parte Young, 209 U.S. 123 (1908). Both contentions are unpersuasive.

The Eleventh Amendment generally "confirms the sovereign status of the States by shielding them from suits by individuals absent their consent." Frew ex rel. Frew v. Hawkins, 540 U.S. 431, 437 (2004). However, the Eleventh Amendment excepts from its bar "suits for prospective injunctive relief against state officials acting in violation of a federal law." Id. (citing Ex Parte Young, 209 U.S. 123). This exception has two components: whether "(1) the violation for which relief is sought is an ongoing one, and (2) the relief sought is only prospective." Republic of Paraguay v. Allen, 134 F.3d 622, 627 (4th Cir. 1998). As to the first, a plaintiff must merely show that he is "presently experienc[ing the] harmful consequences of [the State's] past conduct" in order to properly claim an "ongoing violation[] of



federally protected constitutional rights" sufficient to satisfy Ex Parte Young. Id. at 628; see also Coakley v. Welch, 877 F.2d 304, 306-07 & n.2 (4th Cir. 1989) (finding that a plaintiff's claim that he had been unconstitutionally fired alleged an "ongoing violation" because his wrongful termination "continues to harm him by preventing him from obtaining the benefits of [state] employment"). Furthermore, the answer to the second inquiry tends to drive the answer to the first, as "the issue of whether a violation is 'ongoing' [is] related to the issues of whether prospective relief is appropriate, or whether the requested relief would operate instead as an illegitimate award of retroactive damages." Coakley, 877 F.2d at 307 n.2. Ex Parte Young separately requires an officer to have "some connection with the enforcement of the [allegedly unconstitutional] act," 209 U.S. at 157, before he may be sued; the officer must have some "proximity to and responsibility for the challenged state action," as opposed to mere "general authority to enforce the laws of the state." S.C. Wildlife Fed'n v. Limehouse, 549 F.3d 324, 333 (4th Cir. 2008) (emphasis and brackets omitted) (quoting Waste Mgmt. Holdings, Inc. v. Gilmore, 252 F.3d 316, 331 (4th Cir. 2001)).

Plaintiffs easily satisfy these requirements. Although the DMV's revocation of some Plaintiffs' driver's licenses took place in the past, those Plaintiffs continue to experience the harmful consequences of that action so long as their licenses remain

revoked. Thus, although the DMV is “no longer giving [those Plaintiffs] daily attention,” its allegedly unconstitutional license revocations “continue[] to harm” those Plaintiffs by “preventing [them] from obtaining the benefits” they would otherwise enjoy as license-holders. Coakley, 877 F.2d at 807 n.2; see also id. (“Cases from other circuits, as well as [the Fourth Circuit], suggest that few, if any, suits are barred for failure to allege an ‘ongoing violation’ . . . .”).<sup>6</sup> And the Commissioner’s argument that he is not sufficiently connected to the enforcement of section 20-24.1(a)(2) to be a proper defendant under Ex Parte Young is based on the same mistaken argument addressed in the court’s Rooker-Feldman analysis above: that “[t]he DMV simply complies with revocation orders issued by state courts.” (Doc. 47 at 13-14.) As previously explained, North Carolina courts do not issue driver’s license revocation orders for failure to pay traffic

<sup>6</sup> In some senses, the ongoing violation inquiry is merely another way of getting to the prospective relief inquiry. See Coakley, 877 F.2d at 307 n.2. Relief that is truly prospective does not compensate a plaintiff for past harm – it only prevents further harm. Thus, a finding that a plaintiff has requested truly prospective relief from state-caused harm in the present carries with it the connotation that the violation alleged must be “ongoing” in the sense relevant to Ex Parte Young. See Verizon Md., Inc. v. Pub. Serv. Comm’n, 535 U.S. 635, 645 (2002) (finding that a plaintiff’s “prayer for injunctive relief . . . clearly satisfies [the] straightforward inquiry” of “whether the complaint alleges an ongoing violation of federal law and seeks relief properly characterized as prospective” (internal quotation marks and brackets omitted)). In the instant case, there is no serious argument that Plaintiffs’ requested relief is not prospective.

violation fines and costs;<sup>7</sup> the DMV, which the Commissioner heads, issues those revocation orders. See N.C. Gen. Stat. § 20-24.1(a); Torre Jessup: DMV Commissioner, North Carolina Department of Transportation (Feb. 5, 2019), <https://www.ncdot.gov/about-us/our-people/leadership/Pages/torre-jessup.aspx> (noting that, “[a]s commissioner, Torre Jessup oversees the daily operations of the N.C. Division of Motor Vehicles, including . . . driver licenses”). As a result, the Eleventh Amendment presents no bar to Plaintiffs’ claims.<sup>8</sup>

### 3. Equal Protection and Substantive Due Process

Turning to the merits, the Commissioner moves for judgment on the pleadings on Plaintiffs’ claim that revocation of their driver’s licenses for failure to pay fines and costs without first affirmatively determining their ability to pay violates their equal protection and substantive due process rights under the “fundamental fairness” doctrine enunciated in cases like Bearden v. Georgia, 461 U.S. 660 (1983). The Commissioner argues that the

<sup>7</sup> The Commissioner has not persuasively explained why he would not have a sufficient connection to the enforcement of section 20-24.1(a)(2) even if he was merely enforcing revocation orders entered by state courts. However, the court need not consider that counterfactual scenario.

<sup>8</sup> The Commissioner also argues that the complaint should be dismissed because Plaintiffs’ requested relief would not redress their injury, given the Commissioner’s alleged helplessness “to intervene” when “a state court has entered a presumptively valid revocation order.” (Doc. 47 at 15.) As previously explained, the statutory scheme at issue in this case directs the DMV, not state courts, to order license revocation. See N.C. Gen. Stat. §§ 20-24.1, 20-24.2. The Commissioner’s argument therefore fails.

fundamental fairness doctrine does not apply to the statutory scheme at issue in this case, which should be upheld instead under the default rational basis standard.

It has long been black-letter law that, absent the involvement of a suspect classification or fundamental right, statutes challenged under the Fourteenth Amendment's equal protection or substantive due process guarantees are upheld so long as they have a "rational basis." See U.S. v. Caroline Prods. Co., 304 U.S. 144, 152 & n.4 (1938); Colon Health Ctrs. Of Am., LLC v. Hazel, 733 F.3d 535, 547-48 (4th Cir. 2013). The bar for surviving rational basis scrutiny is modest; as long as there is "any reasonably conceivable state of facts that could provide a rational basis" for the enactment, the statute must be upheld. F.C.C. v. Beach Commc'ns, Inc., 508 U.S. 307, 313 (1993).

Nevertheless, beginning with a plurality opinion in Griffin v. Illinois, 351 U.S. 12 (1956) and running through (and beyond) a more definitive treatment in Bearden, the Supreme Court has held that "[d]ue process and equal protection principles converge" in some contexts into a constitutional requirement of "fundamental fairness" that calls for courts to make a more "careful inquiry into such factors as the nature of the individual interest affected, the extent to which it is affected, the rationality of the connection between legislative means and purpose, and the existence of alternative means for effectuating the purpose."

Bearden, 461 U.S. at 665-66, 673 (internal quotation marks and brackets omitted). In Bearden itself, the Court applied this inquiry to the question of whether state courts could revoke probation and incarcerate an individual for failing to pay a fine or restitution when the individual made bona fide efforts to pay but could not, ultimately holding that incarceration is “fundamentally unfair” in that context unless the state court determines there are no “alternate measures of punishment other than imprisonment . . . adequate to meet the State’s interests.” Id. at 672. The only contexts in which the Supreme Court has applied this fundamental fairness doctrine are those in which a state has deprived persons of fundamental rights because of their indigency – specifically, incarcerating them or denying them access to the courts when they cannot make a certain payment. See, e.g., Griffin, 351 U.S. 12 (access to courts); Williams v. Illinois, 399 U.S. 235 (1970) (incarceration); Tate v. Short, 401 U.S. 395 (1971) (incarceration); Bearden, 461 U.S. 660 (incarceration); M.L.B. v. S.L.J., 519 U.S. 102 (1996) (access to courts); see also Tennessee v. Lane, 541 U.S. 509, 522-23 (2004) (referring to “the right of access to the courts” as one of the “basic constitutional guarantees, infringements of which are subject to more searching judicial review”).<sup>9</sup>

<sup>9</sup> To the extent the Court in some of these access-to-courts cases also considered the nature of the plaintiffs’ underlying interest in the

Plaintiffs claim that the fundamental fairness doctrine applies to the statutory scheme at issue in this case, despite the fact that there is no fundamental right or interest at issue,<sup>10</sup> because Bearden in fact stands for the general principle that the Fourteenth Amendment “prohibit[s] the punishment of indigent people simply because of their poverty.” (Doc. 51 at 20.) This construal of Bearden comes perilously close to an argument that courts must apply a higher standard of scrutiny to statutory classifications based on indigency – a principle the Supreme Court has “repeatedly” rejected in favor of rational basis analysis. Harris v. McRae, 448 U.S. 297, 323–24 (1980). More importantly, Plaintiffs have not proffered a single case from the Supreme Court or Fourth Circuit in the sixty-plus years since Griffin in which the fundamental fairness doctrine was applied to an alleged harm

substantive issue the plaintiffs wished to address in the courts, those interests were also “fundamental.” See, e.g., Boddie v. Connecticut, 401 U.S. 371, 383 (1971) (right of access to courts is precondition of divorce, “the adjustment of a fundamental human relationship”); M.L.B., 519 U.S. at 121 (right of access to courts is necessary to allow participation in “parental status termination,” which “is irretrievably destructive of the most fundamental family relationship” (internal quotation marks and brackets omitted)). Where the underlying substantive issue did not implicate a “fundamental” interest, the court eschewed a more searching inquiry in favor of the rational basis analysis. See M.L.B., 519 U.S. at 114–15 (discussing United States v. Kras, 409 U.S. 434 (1973), and Ortwein v. Schwab, 410 U.S. 656 (1973)).

<sup>10</sup> Although Plaintiffs stress that driver’s licenses are “crucial” or even “essential,” they do not argue that there is a fundamental right to a driver’s license. (Doc. 51 at 4, 22); see also (Doc. 35 ¶ 121 (“Plaintiffs have a substantial interest in their driver’s licenses.”)). Courts in similar cases have treated and rejected such an argument. See Mendoza, 2018 WL 6528011, at \*20; Fowler, 2017 WL 6379676, at \*7–8.

not involving fundamental rights or interests.<sup>11</sup> See Mendoza v. Garrett, No. 3:18-cv-01634-HZ, 2018 WL 6528011, at \*19 (D. Or. Dec. 12, 2018) (“What all of these cases teach is that the ‘fundamental fairness’ principles of due process and equal protection originating in Griffin have been applied when either incarceration or access to the courts, or both, is at stake.”); Fowler, 2017 WL 6379676, at \*6-7 (“None of these cases establish . . . that it is fundamentally unfair in a constitutional sense . . . for a state to deprive a person of a property interest – such as a driver’s license – because of the person’s inability to pay a fine associated with that interest.”). Notably, Bearden itself encouraged courts to impose “alternate measures of punishment other than imprisonment” that would “meet the State’s interests” in ways that did not result in incarceration. 461 U.S. at 672. Driver’s license revocation is just such an “alternate

<sup>11</sup> To the extent Plaintiffs may have suggested at the motions hearing that Alexander v. Johnson, 742 F.2d 117 (4th Cir. 1984), is such a case, on the idea that the Fourth Circuit applied Bearden to an “attorney fee recoupment” statute, the court disagrees. The Alexander court did not expressly rely on Bearden for anything other than its holding that “an inmate violating any monetary requirement of his probation or restitution regiment cannot be imprisoned if his non-compliance results from poverty alone.” Alexander, 742 F.3d at 124; see also id. at 125-26. In their briefing, Plaintiffs’ only citation for the proposition that the fundamental fairness doctrine applies to any “imposition of adverse consequences against indigent defendants solely because of their financial circumstances” is to a “Statement of Interest” filed by the United States in Stinnie. (Doc. 51 at 21.) However, that document does not cite any case applying the fundamental fairness doctrine in any context not involving incarceration or access to courts.

measure.”<sup>12</sup>

In sum, contrary to Plaintiffs’ contention, the fundamental fairness doctrine does not apply to the indigency claim here, where no fundamental right or interest is at stake. This leaves the court to apply rational basis analysis, and section 20-24.1 easily evinces the “constitutionally minimal level of rationality” required. Van Der Linde Housing, Inc. v. Rivanna Solid Waste Auth., 507 F.3d 290, 295 (4th Cir. 2007). Revocation of driver’s licenses for failure to pay traffic violation fines or costs serves, in the Commissioner’s words, to “impos[e] a motivation to accomplish what an individual might otherwise be disinclined to do” – here, to pay the fines and costs properly imposed on traffic defendants.<sup>13</sup> (Doc. 47 at 20.) There is no argument that collection of monetary exactions is not a legitimate state interest. Instead, Plaintiffs argue that the DMV sweeps too broadly: that revoking the licenses of all traffic defendants who don’t pay their fines and costs irrationally results in the revocation of the licenses of some who cannot pay, and to whom any

<sup>12</sup> As discussed in more detail herein, North Carolina’s statutory scheme also includes an express procedure by which traffic defendants can avoid or undo license revocation for failure to pay a fine or cost if they show that their failure to pay was not “willful” and that they are making a “good faith effort to pay.” N.C. Gen. Stat. 20-24.1(b)(4), (b1).

<sup>13</sup> To reiterate, Plaintiffs expressly do not argue that the fines and costs were improperly imposed on them in the first place, only that the DMV should not revoke their driver’s licenses for failure to pay those fines and costs without first determining that they are able to pay.



additional incentive to pay is ineffective.<sup>14</sup> But the rational basis test does not require laws to be narrowly tailored to accomplish the State's ends. See Van Der Linde, 507 F.3d at 295 ("The 'rational' aspect of rational basis review . . . is not an invitation to scrutinize . . . the instrumental rationality of the chosen means (i.e., whether the classification is the best one suited to accomplish the desired result).") "Neither may a policy's rationality be judged on the basis of its wisdom, fairness, or logic (or lack thereof)." Id. at 293-94. Since there is a "reasonably conceivable state of facts," Beach, 508 U.S. at 313, under which section 20-24.1(a)(2) provides some traffic defendants with an efficacious incentive to pay fines and costs, the law survives rational basis review.

Because the fundamental fairness doctrine does not apply and section 20-24.1 has a rational basis, Plaintiffs have not plausibly alleged an equal protection and substantive due process claim. Accordingly, the court will grant the Commissioner judgment on the pleadings as to that claim. The Commissioner presented no merits argument for judgment on the pleadings as to Plaintiffs' procedural due process claims, however, and for that reason those claims

<sup>14</sup> Indeed, as Plaintiffs point out, revocation of a person's driver's license may in some cases do more harm than good to the State's cause, given that losing the ability to drive can negatively impact a person's ability to earn money with which to pay their fines and costs.

survive at this time.<sup>15</sup>

**B. Plaintiffs' Motion for Class Certification and Appointment of Class Counsel**

Plaintiffs move to certify two classes under Federal Rule of Civil Procedure 23(a) and (b)(2): the "Revoked Class," composed of everyone whose driver's license has been revoked by the DMV for failure to pay a traffic violation fine or cost, and the "Future Revocation Class," composed of everyone whose driver's license will be so revoked in the future. Plaintiffs also move for appointment of class counsel under Rule 23(g). The Commissioner opposes certification, challenging whether several of the prerequisites to certification have been met.

To be certified, a putative class must first satisfy the four

<sup>15</sup> At the motions hearing, the Commissioner initially represented that he had moved for judgment on the pleadings on the merits as to Plaintiffs' procedural due process claims. When pressed by the court to identify where such an argument was made, counsel eventually admitted that the Commissioner's brief "do[es] not use the word procedural due process." While one sentence in the Commissioner's "Statement of the Case" does allege generally that section 20-24.1's "procedural protections . . . afford the Plaintiffs sufficient due process" (Doc. 47 at 3), this solitary statement falls well short of the court's requirement that "[o]pening briefs filed with the Court shall contain . . . argument, which shall refer to all statutes, rules, and authorities relied upon." Local Rule 7.2(a). Plaintiffs' responsive brief reflects a reasonable understanding that such an argument was not made. (Doc. 51 at 20 n.4.) Allowing the Commissioner to raise a merits argument for dismissal of Plaintiffs' procedural due process claims for the first time at the motions hearing would have "undermine[d] the purpose of orderly briefing and risk[ed] subjecting an opponent to an unfair disadvantage." N.C. Alliance for Transp. Reform, Inc. v. U.S. Dep't of Transp., 713 F. Supp. 2d 491, 510 (M.D.N.C. 2010); see Lucas v. Henrico Cty. Sch. Bd., 822 F. Supp. 2d 589, 600 n.10 (E.D. Va. 2011) (declining to address a basis for dismissal "because it first arose during oral argument, because [the other party] has not had a full and fair opportunity to respond, and because the Court lacks the benefit of full briefing on the subject").

requirements set out in Rule 23(a): "(1) numerosity of parties; (2) commonality of factual and legal issues; (3) typicality of claims and defenses of class representatives; and (4) adequacy of representation." Gunnells v. Healthplan Servs., Inc., 348 F.3d 417, 423 (4th Cir. 2003). Next, the putative class must show that it is one of the three types of classes described in Rule 23(b). Here, Plaintiffs assert that "the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole." Fed. R. Civ. P. 23(b)(2). Nevertheless, district courts retain "broad discretion" in deciding whether a class should be certified and how that class should be defined. Roman v. ESB, Inc., 550 F.2d 1343, 1348 (4th Cir. 1976). "Merits questions may be considered to the extent – but only to the extent – that they are relevant to determining whether the Rule 23 prerequisites for class certification are satisfied." Amgen Inc. v. Connecticut Ret. Plans & Trust Funds, 568 U.S. 455, 466 (2013). Otherwise, "[a]n evaluation of the probable outcome on the merits is not properly part of the certification decision."  Id. (quoting 2003 Advisory Committee Note on Rule 23(c)(1)).

The Commissioner does not contest the adequacy of representation or the putative class's Rule 23(b)(2) categorization, and the court independently finds that these

requirements are met. The named Plaintiffs do not appear to have interests that conflict with those of the class and have each explained their commitment to the litigation. See (Docs. 4, 5, 40, 41, 63). While Plaintiff Smoot appears to have paid her traffic fines and costs, Plaintiff Yarborough has not and can adequately represent the proposed Revoked Class. Plaintiffs' counsel are adequate under Rule 23(a)(4) for the same reasons they satisfy the Rule 23(g) standard, as discussed below. Finally, Rule 23(b)(2) – which “was created to facilitate civil rights class actions,” Thorn v. Jefferson-Pilot Life Ins. Co., 445 F.3d 311, 330 n.24 (4th Cir. 2006) – is satisfied because Plaintiffs seek injunctive and declaratory relief and challenge the Commissioner's class-wide enforcement of section 20-24.1(a)(2).

The Commissioner contests numerosity, commonality, and typicality. Each will be addressed in turn.

#### **1. Numerosity**

“There is no mechanical test for determining whether” the number of potential plaintiffs in a given action is sufficient to meet Rule 23(a)(1)'s requirement that joinder would be “impracticable.” Kelley v. Norfolk & W. Ry. Co., 584 F.2d 34, 35 (4th Cir. 1978) (per curiam). Instead, the numerosity determination “depends on the particular facts of each case.” 7A Charles Alan Wright et al., Federal Practice and Procedure § 1762 (3d ed. 2018) (also noting that “no arbitrary rules regarding the

size of classes have been established by the courts"). The Fourth Circuit has previously certified classes of as few as eighteen plaintiffs. See Cypress v. Newport News Gen. & Nonsectarian Hosp. Ass'n, 375 F.2d 648, 653 (4th Cir. 1967); see also Dameron v. Sinai Hosp. of Baltimore, Inc., 595 F. Supp. 1404, 1408 (D. Md. 1984) ("A class consisting of as few as 25 to 30 members raises the presumption that joinder would be impractical.").

In this case, the Commissioner's argument is not so much that any specific number advanced by Plaintiffs is insufficient, but that Plaintiffs' numerosity evidence is too speculative. This argument attacks Plaintiffs' reliance in their opening brief on a September 26, 2017 email from a DMV employee stating that "[t]he total number of Failure to Pay is 436,050" (Doc. 6-9), on the basis that the email "does not explain the time frame of these suspensions, or even if the [number] is referring to individuals" (Doc. 48 at 7). The Commissioner goes on to criticize Plaintiffs for omitting any evidence concerning how many of these failure-to-pay license revocations involve traffic defendants who "are low income individuals." (Id.)

The Commissioner's concerns, however, are allayed by his own evidence. On March 13, 2019, the Commissioner filed the affidavit of a North Carolina Department of Transportation employee stating that in the three years prior to the lawsuit's initiation, 62,788 traffic defendants failed to pay their traffic violation fines and

costs and have therefore had their driver's licenses revoked.<sup>16</sup> (Doc. 62.) This evidence is confined to a relevant timeframe and clearly refers to individual traffic defendants. The Commissioner's protest that Plaintiffs have not supported their "allegation that the proposed Revoked Class members are low income individuals" (Doc. 48 at 7) is an attack on a straw man; Plaintiffs have never made such an allegation. Plaintiffs' proposed classes consist of "all individuals" whose driver's licenses have been or will be revoked under section 20-24.1(a)(2). Even looking only to the Commissioner's evidence, then, Plaintiffs' proposed Revoked Class consists of at least 62,788 individuals. As to the proposed Future Revocation Class, the court may reasonably infer from the size of the Revoked Class that it too is large. See 1 William B. Rubenstein, Newberg on Class Actions § 3:13 (5th ed. 2018) (courts may use available evidence to "make commonsense assumptions regarding the number of putative class members"). This evidence is sufficient to show that Rule 23(a)(1)'s numerosity requirement is met.

## **2. Commonality**

Rule 23(a)(2) "requires the plaintiff[s] to demonstrate that the class members have suffered the same injury" in the sense that

<sup>16</sup> Another 67,809 traffic defendants eventually paid their fines and costs at some point after their license had already been revoked; 55,336 traffic defendants received a revocation order but paid their fines and costs within the 60-day period before the revocation went into effect. (Doc. 62.)

"[t]heir claims . . . depend upon a common contention," the determination of which "will resolve an issue that is central to the validity of each one of the claims." Wal-Mart Stores, Inc. v. Dukes, 564 U.S. 338, 350 (2011). "[T]his provision does not require that all the questions of law and fact raised by the dispute be common," just that any "dissimilarities between the claims [do not] impede a common resolution." Wright et al., supra, § 1763.

The Commissioner does not address the seven common questions of law and fact listed in Plaintiffs' opening brief;<sup>17</sup> instead, he argues that the proposed class members have not "suffered the same injury" as Plaintiffs:

Plaintiffs' [sic] complain that without a driver's license, they are forced to choose between going to work, getting food for the family, attending medical appointments, driving their kids to school, or driving on a revoked license. While the Plaintiffs' Declarations may provide evidence of their injuries, they do not provide evidence that any number of other people are facing the same injuries.

(Doc. 48 at 17-18 (citation and emphasis omitted).) Once again, the Commissioner misunderstands Plaintiffs' claims. The core injury Plaintiffs assert is the allegedly unconstitutional deprivation of their driver's licenses under section 20-24.1, not the practical effects of this revocation on their personal lives.

<sup>17</sup> One or two of these questions are rendered irrelevant by the court's dismissal of Plaintiffs' equal protection and substantive due process claim. The rest remain relevant.

While Plaintiffs do provide a litany of additional allegations regarding the personal hardships attendant to license revocation in what may be an attempt to underscore the seriousness and sympathetic nature of their claims, these additional allegations are not the constitutional injury Plaintiffs assert. In the court's view, the DMV's enforcement of section 20-24.1 against the named Plaintiffs and proposed class members provides sufficient common questions of fact and law on which to sustain a constitutional class action.

### **3. Typicality**

Rule 23(a)(3) requires that "the claims or defenses of the representative parties are typical of the claims or defenses of the class." "The essence of the typicality requirement is captured by the notion that 'as goes the claim of the named plaintiff, so go the claims of the class.'" Deiter v. Microsoft Corp., 436 F.3d 461, 466 (4th Cir. 2006) (quoting Broussard v. Meineke Discount Muffler Shops, Inc., 155 F.3d 331, 340 (4th Cir. 1998)). In order to determine whether a named plaintiff's "claims or defenses" are typical of those of the proposed class, the court will frequently have to undertake some investigation of "the merits of the plaintiff's underlying claim." Dukes, 564 U.S. at 351.

The Commissioner offers four reasons that the court should decline to find the named Plaintiffs' claims typical of the proposed classes.



First, as in the commonality context, the Commissioner argues that Plaintiffs have not shown that the proposed class members are similarly low-income. (Doc. 48 at 11.) As the court pointed out in that context, the constitutional violations Plaintiffs assert are not dependent on whether a given traffic defendant would be able to successfully show inability to pay at an ability-to-pay hearing. It is the alleged lack of notice and a hearing prior to revocation that forms the basis of Plaintiffs' procedural due process claims. See Coe v. Armour Fertilizer Works, 237 U.S. 413, 424 (1915) ("To one who protests against the taking of his property without due process of law, it is no answer to say that in his particular case due process of law would have led to the same result because he had no adequate defense upon the merits.").

Second, the Commissioner argues that "the relief sought by Plaintiffs would require an individualized inquiry into [each] driver's eligibility for reinstatement" (Doc. 48 at 12), the idea being that the driver's licenses of some class members may be revoked on additional bases. Although objections about the contours of any potential relief are more relevant to the Rule 23(b)(2) analysis than to typicality, compare Fed. R. Civ. P. 23(b)(2) (parties must show that "final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole") with Fed. R. Civ. P. 23(a)(3) (parties must show that their "claims or defenses" are typical of the class),

the Commissioner's concern is illusory in any context. As Plaintiffs point out, if the court ultimately finds that the DMV's enforcement of section 20-24.1(a)(2) is and has been unconstitutional, the court can order the DMV to annul all revocations within the class that were entered pursuant to that provision. It would remain for the DMV, not the court, to investigate whether a given license should remain revoked on some other basis or whether the license should be reinstated pending provision of sufficient due process.

Third, the Commissioner argues that some proposed class members may have received the ability-to-pay hearing that the named Plaintiffs did not. (Doc. 48 at 13.) Although this factual distinction, if it exists, might have created problems for the typicality of an as-applied challenge, Plaintiffs clarify that they "bring a facial challenge to Sections 20-24.1 and 20-24.2." (Doc. 50 at 10.) To the extent that the Commissioner may have understood Plaintiffs' procedural due process claims to be as-applied, Plaintiffs' clarification assuages his typicality concern.

Fourth, and finally, the Commissioner argues that the claims of some proposed Revoked Class members will be subject to a statute of limitations defense that the claims of the named Plaintiffs do not typify. (Doc. 48 at 11.) The Commissioner argues – and Plaintiffs do not contest – that the relevant statute of

limitations is three years. See N.C. Gen. Stat. § 1-52(5); Love v. Alamance Cty. Bd. of Educ., 757 F.2d 1504, 1506 & n.2 (4th Cir. 1985) (three-year statute of limitations applicable to 42 U.S.C. § 1983 actions in North Carolina); Nat'l Advert. Co. v. City of Raleigh, 947 F.2d 1158, 1162 (4th Cir. 1991). Since Plaintiffs claim that the Constitution requires pre-deprivation notice and an ability-to-pay hearing before a driver's license may be revoked under section 20-24.1(a)(2), and since the DMV notifies traffic defendants of the day that the revocation order will go into effect, each Plaintiff's claim accrued at least by the day that the DMV's revocation order became effective. See Ocean Acres Ltd. P'ship v. Dare Cty. Bd. of Health, 707 F.2d 103, 107 (4th Cir. 1983) ("[Plaintiff's] due process claims accrued when plaintiff knew of or had reason to know of the alleged injury which is the basis of its action."). Thus, the Commissioner argues, proposed Revoked Class members whose driver's licenses were revoked more than three years prior to the filing of this action will be subject to a statute of limitations defense not applicable to any of the named Plaintiffs.

Plaintiffs respond by invoking the "continuing violation doctrine, which provides that the statute of limitations may be tolled by a continuing unlawful . . . practice." Hall v. City of Clarksburg, No. 1:14CV90, 2016 WL 5680218, at \*4 (N.D. W. Va. Sept. 30, 2016). In Plaintiffs' view, the fact that their licenses

remain revoked indefinitely means that the statute of limitations is also tolled indefinitely.

While Plaintiffs' view is not without superficial support, see Va. Hosp. Ass'n v. Baliles, 868 F.2d 653, 663 (4th Cir. 1989) ("[T]he continued enforcement of an unconstitutional statute cannot be insulated by the statute of limitations."), the Fourth Circuit has clarified that "[a] continuing violation is occasioned by continual unlawful acts, not continual ill effects from an original violation," Raleigh, 947 F.2d at 1166 (quoting Ward v. Caulk, 650 F.2d 1144, 1147 (9th Cir. 1981)). In the context of the enforcement of allegedly unconstitutional laws, the question is whether the particular enforcement challenged "is a single act," in which case "the statute begins to run at the time of the act," or whether the enforcement "does not occur at a single moment but in a series of separate acts," in which case "the limitations period begins anew with each violation." Id. at 1167 (quoting Perez v. Laredo Junior Coll., 706 F.2d 731, 733 (5th Cir. 1983)). In the instant case, the DMV's revocation of driver's licenses is a "single act" – the fact that licenses remain revoked thereafter does not evince "a series of separate acts" in which the DMV revokes the driver's licenses anew each day.<sup>18</sup> See id. ("The

<sup>18</sup> Plaintiffs argue that the DMV's website, which reminds traffic defendants that their driver's licenses will remain revoked "indefinitely until [they] have complied with [their] case," shows that the Commissioner "is continuing to enforce th[e] illegal statute" against them. (Doc. 50 at 8 & n.3.) A notice of this type is "not a new wrongful

restriction on use . . . occurred upon enactment of the ordinance. No City action since then has added to [the plaintiff's] alleged injury."). As a result, it does not appear that the continuing violation doctrine would save the claims of proposed Revoked Class members whose licenses were revoked more than three years prior to filing.<sup>19</sup> This is a problem for typicality. See Kirkman v. N.C. R.R. Co., 220 F.R.D. 49, 53 (M.D.N.C. 2004).

Nevertheless, as Plaintiffs indicate, there is little reason why a solitary typicality issue applicable to an easily-identifiable and excludable group of proposed class members should preclude certification altogether. Instead, the court will simply exercise its discretion to define the proposed Revoked Class to include only those proposed class members within the three-year limitations period: those drivers whose licenses were revoked on

act, but merely a reminder of the restriction" imposed at the time of the original alleged violation. Raleigh, 947 F.2d at 1167. Since the DMV's website is not "add[ing] to [Plaintiffs'] alleged injury," each time they view it, it does not evince continuing "separate acts" sufficient to invoke the continuing violation doctrine. Id.

<sup>19</sup> At first glance, the court's conclusion that there is no "continuing violation" in the statute of limitations context may appear in tension with its earlier conclusion that there is an "ongoing violation" for purposes of the Ex Parte Young analysis. See Part II.A.2, supra. But the similarity of these shorthand terms belies a fundamental difference in the underlying doctrines: the "continuing violation" exception to statutes of limitations "is occasioned by continual unlawful acts, not continual ill effects from an original violation," Raleigh, 947 F.2d at 1166, whereas the "ongoing violation" requirement of Ex Parte Young is satisfied by "presently experienced harmful consequences of past conduct." Allen, 134 F.3d at 628.

or after May 30, 2015.<sup>20</sup> See Roman, 550 F.2d at 1348 (noting the district court's broad discretion in how to define a class).

#### 4. Certification

Having resolved the Commissioner's objections, and upon its own investigation of the requirements of Rule 23(a) and (b)(2), the court finds that class certification is warranted. The court will therefore certify the following two classes:

Revoked Class: All individuals whose driver's licenses were revoked by the DMV on or after May 30, 2015, due to their failure to pay fines, penalties, or court costs assessed by a court for a traffic offense, and whose driver's licenses remain so revoked.<sup>21</sup>

Future Revocation Class: All individuals whose driver's licenses will be revoked in the future by the DMV due to their failure to pay fines, penalties, or court costs assessed by a court for a traffic offense.

As noted, the court's certification of these classes is without determination of the ultimate merits of Plaintiffs' remaining claims.

<sup>20</sup> The Commissioner suggests that the cut-off date should be three years prior to the filing of the amended complaint. (Doc. 47 at 22.) But since the amended complaint asserts claims arising out of the conduct set out in the original complaint, the amended complaint relates back to the original complaint. Fed. R. Civ. P. 15(c)(1)(B).

<sup>21</sup> Although Plaintiffs' proposed class is not expressly limited to those individuals whose licenses remain revoked, Plaintiffs' admission at the hearing that Smoot's claims have been mooted by her successful payment of her traffic fines and fees evinces such an understanding. Moreover, Plaintiffs have not explained how drivers whose licenses have been reinstated would be victims of any "ongoing violation" under Ex Parte Young.

## 5. Appointment of Class Counsel

Plaintiffs also move for appointment of class counsel under Rule 23(g), which requires that the court consider the following:

(i) the work counsel has done in identifying or investigating potential claims in the action; (ii) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action; (iii) counsel's knowledge of the applicable law; and (iv) the resources that counsel will commit to representing the class[.]

Fed. R. Civ. P. 23(g) (1) (A). In sum, "[c]lass counsel must fairly and adequately represent the interests of the class." Fed. R. Civ. P. 23(g) (4).

Plaintiffs are represented by Samuel Brooke, Kristi Graunke, Danielle Davis, and Emily Early of the Southern Poverty Law Center ("SPLC"); Christopher Brook, Cristina Becker, and Sneha Shah of the North Carolina ACLU ("NC-ACLU"); Nusrat Choudhury and R. Orion Danjuma of the national ACLU ("ACLU"); and Jeffery Loperfido of the Southern Coalition for Social Justice ("SCSJ"). Plaintiffs have filed the declaration of Samuel Brooke, in which he summarizes the extensive civil rights and class action experience and accomplishments of these attorneys and their organizations.<sup>22</sup> (Doc. 6.) Defendants have not disputed Plaintiffs' characterization of their attorneys as experienced, knowledgeable,

<sup>22</sup> Brooke does not discuss Loperfido's qualifications, since he joined the case at a later date. (Doc. 42.) However, the court is familiar with the SCSJ from prior litigation, and Loperfido's appointment to the large team of proposed class counsel is not opposed.

and capable of investing sufficient resources into this case.

The court has reviewed the requirements of Rule 23(g) and concludes that Plaintiffs' proposed class counsel are well qualified to represent the two classes in this case. Accordingly, Plaintiffs' SPLC, NC-ACLU, ACLU, and SCSJ counsel will be appointed class counsel.

### **C. Plaintiffs' Motion for Preliminary Injunction**

Finally, Plaintiffs move for preliminary injunction pursuant to Federal Rule of Civil Procedure 65:<sup>23</sup>

(1) to enjoin Section 20-24.1(a)(2) and (b)(3)-(4); (2) to bar the DMV from revoking licenses for non-payment under Section 20-24.1(a)(2); and (3) to lift current license revocations entered under Section 20-24.1(a)(2) and reinstate those licenses without charging a reinstatement fee if there are no other bases for the revocation – pending the ultimate determination of the merits of Plaintiffs' claims.

(Doc. 39 at 8.) The Commissioner opposes the motion primarily on the ground that Plaintiffs are not likely to succeed on the merits.<sup>24</sup>

<sup>23</sup> At the motions hearing, Plaintiffs expressed a desire for "a simultaneous ruling on both the motion for preliminary injunction and the motion for class certification" such that the court's ruling on the motion for preliminary injunction would apply class-wide.

<sup>24</sup> The Commissioner uses the terms "temporary restraining order" and "preliminary injunction" interchangeably throughout his response brief, including an argument that Plaintiffs' "motion for a preliminary injunction should be denied" because "reinstatement of Plaintiff[s'] licenses would go well beyond the intended purpose of temporary restraining orders under [Federal Rule of Civil Procedure] 65(b)." (Doc. 45 at 9.) Plaintiffs have not moved for a temporary restraining order, nor is Rule 65(b) relevant to their preliminary injunction motion.



"A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." Winter v. Nat'l Res. Def. Council, Inc., 555 U.S. 7, 20 (2008). It is not enough for a plaintiff to satisfy some factors but not others; "each preliminary injunction factor [must] be satisfied as articulated." Pashby v. Delia, 709 F.3d 307, 320 (4th Cir. 2013) (internal quotation marks omitted); Mountain Valley Pipeline, LLC v. W. Pocahontas Props. Ltd. P'ship, \_\_\_ F.3d \_\_\_, 2019 WL 1140648, at \*5 (4th Cir. Mar. 13, 2019). As to the first factor, "plaintiffs need not show a certainty of success," but must "make a clear showing that they are likely to succeed at trial." Pashby, 709 F.3d at 321 (internal quotation marks omitted). Because the court has determined that Plaintiffs' equal protection and substantive due process claim should be dismissed pursuant to the Commissioner's motion for judgment on the pleadings, only Plaintiffs' claims asserting a violation of procedural due process are considered here.

**1. Likelihood of Success on the Merits**

**a. Opportunity to be Heard**

Plaintiffs argue that due process requires the DMV to hold an ability-to-pay hearing in every case prior to revoking a traffic defendant's driver's license under section 20-24.1(a)(2). The

Commissioner argues that no such hearing is required.

"Procedural due process imposes constraints on governmental decisions which deprive individuals of liberty or property interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment." Mathews v. Eldridge, 424 U.S. 319, 332 (1976) (internal quotation marks omitted). An individual's property interest in his or her driver's license is protected by the Due Process Clause. See Bell v. Burson, 402 U.S. 535, 539 (1971) ("Once licenses are issued . . . [they] are not to be taken away without that procedural due process required by the Fourteenth Amendment."). "The fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'" Mathews, 424 U.S. at 333 (quoting Armstrong v. Manzo, 380 U.S. 545, 552 (1965)). The question of what form of hearing is required – including the "question . . . of timing," Dixon v. Love, 431 U.S. 105, 112 (1977) – is addressed through consideration of the following three factors:

First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

Mathews, 424 U.S. at 335.

In the instant case, the statute provides that traffic

defendants may “demonstrate[] to the court that [their] failure to pay the penalty, fine, or costs was not willful and that [they are] making a good faith effort to pay or that the penalty, fine, or costs should be remitted.” N.C. Gen. Stat. § 20-24.1(b)(4). If a traffic defendant makes such a demonstration, the court notifies the DMV, which “shall . . . delete[]” any pending revocation order or “restore the person’s license” if revocation has already become effective. Id. § 20-24.1(b), (c). The statute also lays out a procedure for making this determination: “Upon motion of a defendant, the court must order that a hearing or trial be heard within a reasonable time. Id. § 20-24.1(b1).

In Plaintiffs’ view, this procedure is insufficient because it requires traffic defendants to move for hearing, rather than affirmatively mandating that a pre-revocation hearing actually be held in every case. In order to evaluate Plaintiffs’ claims that section 20-24.1 fails to provide traffic defendants with due process, the court must determine what process is due.

As to the first Mathews factor – the private interest at stake – the Supreme Court has previously held that a “driver’s interest . . . in continued possession and use of his license . . . is a substantial one.” Mackey v. Montrym, 443 U.S. 1, 11 (1979). And the court has no reason to doubt Plaintiffs’ contention that, for many North Carolinians, the loss of a driver’s license negatively impacts individuals’ ability to get to work, make doctor’s

appointments, go grocery shopping, and more.

Nevertheless, “the Court has expressly held that the [private] interest [in a driver’s license] is not so great as to require departure from the principle that an evidentiary hearing is not ordinarily required prior to adverse administrative action.” Tomai-Minogue v. State Farm Mut. Auto. Ins. Co., 770 F.2d 1228, 1235 (4th Cir. 1985) (citing Dixon, 431 U.S. at 113). Moreover, the Supreme Court has stated that courts should consider “[t]he duration of any potentially wrongful deprivation of a property interest” insofar as it relates to the “timeliness of the postsuspension review available to a suspended driver,” and that this consideration “is an important factor in assessing the impact of official action on the private interest involved.” Mackey, 443 U.S. at 12 (emphasis added); see also Fusari v. Steinberg, 419 U.S. 379, 389 (1975). In the present case, the fact that section 20-24.1(b1) guarantees traffic defendants the opportunity to have a hearing “within a reasonable time” of moving for one lessens “the impact of official action” on Plaintiffs’ interests.<sup>25</sup> Mackey, 443 U.S. at 12.

In sum, while the court certainly “do[es] not disparage the

<sup>25</sup> As discussed in footnote 33, infra, Plaintiffs have not provided the court with any way to determine how long “a reasonable time” under section 20-24.1(b1) might be in this context. Since Plaintiffs bear the burden at the preliminary injunction stage of showing they are likely to succeed on the merits, the court will not count this uncertainty in their favor.

importance of a driver's license" to Plaintiffs, and indeed recognizes the hardships often attendant to the loss of a driver's license, these considerations do not serve to overcome binding precedent holding that the private interest in driver's licenses is insufficient to mandate a pre-revocation evidentiary hearing. Tomai-Minogue, 770 F.2d at 1235.

The second Mathews factor is "the risk of an erroneous deprivation of [Plaintiffs'] interest[s] through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards." 424 U.S. at 335. In this case, the threshold inquiry is whether the revocation of a traffic defendant's driver's license for failure to pay a fine or cost the traffic defendant was unable to pay is in fact "an erroneous deprivation" under Mathews. Given that there is no equal protection or substantive due process right not to have one's driver's license revoked for failure to pay without an ability-to-pay determination, the DMV's revocations cannot be "erroneous" in that regard. See Mendoza, 2018 WL 6528011, at \*25 (finding "little risk of erroneous deprivation" where plaintiffs argued that license revocation without an ability-to-pay determination violated their "fundamental . . . constitutional right to an indigency determination," given the court's conclusion that there is no such right under equal protection or substantive due process).

The more difficult question is whether the North Carolina legislature's decision to include a provision allowing traffic defendants to avoid or undo license revocation by showing that their "failure to pay . . . was not willful and that [they are] making a good faith effort to pay," N.C. Gen. Stat. § 20-24.1(b)(4), shows that the legislature did not intend license revocation to take place when traffic defendants could not pay, thus making such revocations "erroneous deprivations" under Mathews. Plaintiffs argue that the answer must be yes under Bell v. Burson, 402 U.S. 535 (1971), in which the Supreme Court found that Georgia could not deny pre-revocation "consideration of an element essential [under the statutory scheme] to the decision whether licenses . . . shall be suspended." Id. at 542. The statutory scheme at issue in Bell required uninsured drivers involved in traffic accidents to "post[] security to cover the amount of damages claimed by aggrieved parties in reports of the accident" or else face license suspension. Id. at 536. It also allowed drivers to avoid or undo license suspension if, "prior to" or "after suspension has been declared, [there is] a release from liability or an adjudication of non-liability" for the accident. Id. at 541. "Since the statutory scheme makes liability an important factor in the State's determination to deprive an individual of his license[]," wrote the Bell Court, "the State may not, consistently with due process, eliminate consideration of

that factor in its prior hearing.”<sup>26</sup> Id.; see also Conn. Dep’t of Pub. Safety v. Doe, 538 U.S. 1, 8 (2003) (“Plaintiffs who assert a right to a hearing under the Due Process Clause must show that the facts they seek to establish in that hearing are relevant under the statutory scheme.”).

The Commissioner responds that the better analogue on this factor is Dixon v. Love, 431 U.S. 105 (1977), in which the Supreme Court found that there was little risk of erroneous deprivation absent a pre-deprivation hearing where Illinois suspended driver’s licenses for accumulation of too many “points” assigned for traffic violations. Id. at 107-08, 113-14. Crucial to the Dixon Court’s treatment of this Mathews factor, however, was that the driver’s only potential argument at his requested hearing would be a dubious plea for the Secretary of State to “depart from his own regulations” and “show leniency.”<sup>27</sup> Id. at 114. There was no assertion in Dixon that Illinois had intended a “leniency” determination to be relevant at all to license revocation, much less made it “an important factor in the State’s determination to deprive an individual of his license[],” Bell, 402 U.S. at 541.<sup>28</sup>

<sup>26</sup> Georgia already provided a hearing under the statutory scheme at issue in Bell, but it “exclude[d] consideration of the motorist’s fault or liability for the accident” at that hearing. 402 U.S. at 536.

<sup>27</sup> As to the possibility of “clerical error,” the Dixon Court found that “written objection” sufficed to “bring a matter of that kind to the Secretary’s attention.” 431 U.S. at 113.

<sup>28</sup> In a footnote, Dixon briefly discussed a slightly more analogous

As a result, Dixon's "erroneous deprivation" analysis does not preclude Bell's relevance to a case, like this one, where Plaintiffs do cite a clear statutory basis for the issue they wish to address at a hearing. Applying Bell, the court finds that ability to pay is "an important factor" in North Carolina's statutory scheme much as accident liability was in the Georgia statutory scheme at issue in Bell. In both cases, the statute allows drivers to utilize the exception to revocation both "prior to" or "after" revocation takes place. Bell, 402 U.S. at 541; see N.C. Gen. Stat. § 20-24.1(b), (c). In both cases, the "important" nature of the relevant exception is shown through the statutory mandate that "no suspension [be] worked" under its provisions if the exception is satisfied. Bell, 402 U.S. at 541; see N.C. Gen. Stat. § 20-24.1(b), (c). In sum, because section 20-24.1 makes inability to pay an express exception to revocation, the revocation of a driver's license under that statute despite inability to pay would constitute an "erroneous deprivation" under Mathews. Bell, 402 U.S. at 541;<sup>29</sup> see Doe, 538 U.S. at 8.

"erroneous deprivation" argument: that revoking a driver's license when the driver qualified for a "restricted permit" under a statutory "hardship exception[]" would be an "erroneous deprivation." 431 U.S. at 114 n.10. However, the Court found that such a revocation would not be erroneous because the Illinois statute manifestly "contemplate[d] relief only after the initial decision to suspend or revoke is made." Id. (emphasis added). This reasoning does not apply in the instant case because the statute plainly contemplates relief both before and after revocation. Compare N.C. Gen. Stat. § 20-24.1(b) with id. § 20-24.1(c).<sup>29</sup> Bell did not use the phrase "erroneous deprivation," which was coined in Mathews five years later as part of the establishment of a more



Nevertheless, the question of whether such revocations are actually erroneous is only the threshold inquiry under the second Mathews factor. Having made this determination, the court must now consider the extent to which the statutory procedures (or lack thereof) increase or mitigate the "risk" of those erroneous deprivations. Mathews, 424 U.S. at 335. It is here that Plaintiffs falter, as they have not persuasively argued that the hearing already provided for by section 20-24.1(b1) fails to substantially alleviate the risk of erroneous deprivations. Plaintiffs only address this crucial opportunity for a hearing once in their briefing on this issue, and their sole reference is to say that "[r]elief from indefinite license revocation is . . . conditioned on the individual knowing about, and affirmatively seeking, a hearing on ability to pay, which is entirely undermined by the insufficient notice the DMV sends the driver." (Doc. 39 at 23.) This is a conflation of issues, as there is a separate standard applicable to the issue of whether the State has provided sufficient notice of the opportunity for a hearing under the Due Process Clause. See Mullane v. Cent. Hanover Bank & Tr. Co., 339 U.S. 306, 314 (1950) (requiring "notice reasonably calculated, under all the circumstances, to apprise interested parties of the comprehensive procedural due process test. While Mathews and later cases "represent[] some shift from the approach earlier followed by the Court in Bell," Tomai-Minogue, 770 F.2d at 1235, the Supreme Court has repeated Bell's reasoning on this specific point well into the Mathews era. See Doe, 538 U.S. at 8.

pendency of the action and afford them an opportunity to present their objections”).

This same conflation of issues appears to be what undergirds Plaintiffs’ general theory that the State must affirmatively hold an ability-to-pay hearing before revocation in every case whether or not the particular traffic defendant wants it. At the hearing, Plaintiffs’ counsel argued that the section 20-24.1(b1) hearing was insufficient under due process because traffic defendants “don’t know about it” and “don’t realize they can” get an ability-to-pay hearing if they ask for one. Again, this argument does not relate to whether section 20-24.1 provides an opportunity for a hearing, but rather whether the State has provided the “notice required by the Due Process Clause . . . to ensure that the opportunity for a hearing is meaningful.” City of West Covina v. Perkins, 525 U.S. 234, 240 (1999) (emphasis added). Indeed, holding notice constant, Plaintiffs would be no better off under their own reasoning if North Carolina mandated ability-to-pay hearings in every case prior to revocation, since traffic defendants would still not “know about it.”

To be sure, the notice requirement of due process is “obviously a vital corollary to . . . the right to be heard.” Schroeder v. City of New York, 371 U.S. 208, 212 (1962). The court will fully address Plaintiffs’ notice arguments on their merits below, in the context of Plaintiffs’ separately-pleaded notice

claim.<sup>30</sup> But as to the issue whether the section 20-24.1(b1) hearing itself is sufficient to address the risk of erroneous deprivations, Plaintiffs' arguments as to this Mathews factor provide little basis for their theory that North Carolina must actually hold an ability-to-pay hearing in every case. In cases in which the Due Process Clause has been found to require pre-revocation process before a person is deprived of a property interest, it has generally been found to require only that an "opportunity for [a] hearing" be provided, Mullane, 339 U.S. at 313, not that a hearing be actually held in every case.<sup>31</sup> In fact, although Plaintiffs cite a three-judge panel decision of this district as allegedly "affirming [a] statute requiring [a] hearing before suspension" (Doc. 39 at 23), that case actually states that the Due Process Clause requires only that the State hold a hearing for licensees who ask for one: "[I]f the state provides upon request [a hearing] at which the licensee has a fair opportunity

<sup>30</sup> Even if the court were to consider the adequacy of the notice provided to traffic defendants as part of the "opportunity to be heard" inquiry, it would find that notice sufficient for the same reasons explained in part II.C.1.b. of this opinion.

<sup>31</sup> To the extent that Bell could be read otherwise, the Fourth Circuit has stated that "[t]he Mathews test, as adopted in Dixon for driver's license deprivation claims, represents some shift from the approach earlier followed by the Court in Bell, which mandated a pre-deprivation hearing." Tomai-Minogue, 770 F.2d at 1235. Moreover, the Bell Court had no cause to distinguish between holding pre-deprivation hearings in every case and providing a pre-deprivation opportunity for a hearing, since the State in Bell was already holding pre-deprivation hearings in every case. The problem in Bell was that drivers were disallowed from addressing a statutorily material issue at that pre-deprivation hearing.

to [make his case], then due process will surely have been satisfied." Jones v. Penny, 387 F. Supp. 383, 395 (M.D.N.C. 1974); see also Mackey, 443 U.S. at 18 (equating giving drivers "[a] presuspension hearing" with giving drivers the ability to "demand a presuspension hearing"). And Plaintiffs make no argument that the actual manner in which a section 20-24.1(b1) hearing is conducted is deficient in some way – indeed they cannot, since no named Plaintiff has invoked his or her section 20-24.1(b1) right to a hearing.<sup>32</sup>

In sum, the court finds that section 20-24.1(b1)'s mandate that traffic defendants be provided a hearing "within a reasonable time" of moving for one substantially alleviates, and may very well eliminate, the risk of erroneous deprivations under the statute.<sup>33</sup> As a result, the second Mathews factor does not command

<sup>32</sup> While Plaintiffs' counsel represented at the motions hearing that Bonhomme-Dicks told the state court at her initial traffic appearance that she was unable to pay, this exchange appears to have taken place prior to any fine or costs being imposed in the first place. As a result, the state court appears to have interpreted it as a challenge to the imposition of a fine or costs as punishment for the traffic offense, concluding that it would not impose a fine but would impose costs. As Plaintiffs stress elsewhere, they do not challenge the original imposition of fines or costs for traffic violations; they challenge only the license revocations for a subsequent failure to pay those fines or costs. It does not appear that Bonhomme-Dicks exercised her statutory right to move after the imposition of costs for a section 20-24.1(b1) hearing to show that her subsequent "failure to pay . . . was not willful" and that she was "making a good faith effort to pay," N.C. Gen. Stat. 20-24.1(b) (4).

<sup>33</sup> To the extent Plaintiffs contend that the "reasonable time" allowed for in the statute would not always guarantee the movant a hearing prior to the deprivation, they have given the court no reason to think that it does not. Traffic defendants are given 40 extra days to pay their

that additional process be required under the Due Process Clause.

As to the third and final Mathews factor – the governmental interest at stake – the Supreme Court has specifically recognized in the driver's license revocation context that "the substantial public interest in administrative efficiency would be impeded by the availability of a pretermination hearing in every case." Dixon, 431 U.S. at 114; see also Mackey, 443 U.S. at 18 (increasing the number of pre-revocation hearings would "impose a substantial fiscal and administrative burden on the Commonwealth"). This sort of governmental interest "is not a controlling weight" in the Mathews analysis; however, "the Government's interest, and hence that of the public, in conserving scarce fiscal and administrative

finances and costs before the court notifies the DMV of their failure to pay, see N.C. Gen. Stat. § 20-24.2(a)(2), and another 60 days after the DMV sends the revocation order before revocation becomes effective, see id. § 20-24.1(a). No named Plaintiff moved for a section 20-24.1(b1) hearing at any point during this 100-day window, nor does the court have any information on how any North Carolina court has ever treated such a motion. A preliminary injunction is an "extraordinary remedy," and it is up to Plaintiffs to affirmatively "establish that [they are] likely to succeed on the merits." Winter, 555 U.S. at 20, 22. Any contention that North Carolina courts would fail in a meaningful number of cases to provide a statutory pre-revocation hearing within that 100-day window if one were timely requested is purely speculative on this record. Moreover, even if some traffic defendants experience brief license revocation before their hearing takes place, the Fourth Circuit has found that where the "possible causes for erroneous deprivation" of a driver's license in a small number of cases "are all remediable in [a] post-deprivation [opportunity to be heard]," the Due Process Clause does not require additional process to ensure that no "temporary inconvenience" is caused by the temporary revocation. Tomai-Minogue, 770 F.2d at 1235; see also id. at 1235-36 ("Where an adverse judgment has not been satisfied by a motorist, Virginia has opted to suspend the license now and discuss the matter later. We decline to undercut that legitimate choice by requiring the taking to be later and the talking to be first.").

resources is a factor that must be weighed.” Mathews, 424 U.S. at 348.

Together, the substantial public interest at issue and the fact that section 20-24.1(b1) already mitigates the risk of erroneous deprivations by providing an ability-to-pay hearing “within a reasonable time” to anyone who requests it weigh against a finding that North Carolina must provide additional process. And as previously noted, “the [Supreme] Court has expressly held that the [private] interest [in a driver’s license] is not so great as to require departure from the principle that an evidentiary hearing is not ordinarily required prior to adverse administrative action.” Tomai-Minogue, 770 F.2d at 1235 (citing Dixon, 431 U.S. at 113);<sup>34</sup> see also Mackey, 443 U.S. at 12 (burden on private interest in driver’s license lessened when “postsuspension review available to a suspended driver” is “timel[y]”). As a result, Plaintiffs have not shown that they are likely to succeed on their “opportunity to be heard” procedural due process claim, and the court therefore declines to grant a preliminary injunction on that basis. Winter, 555 U.S. at 20 (“A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the

<sup>34</sup> While Dixon’s reasoning on what constitutes an “erroneous deprivation” and “the important public interest in safety on the roads and highways” is not applicable here, the opposite is true of its discussion of “[t]he private interest . . . [in] the granted license to operate a motor vehicle” and “the substantial public interest in administrative efficiency.” 431 U.S. at 113-14.

merits . . . .").

**b. Notice**

Plaintiffs' final claim, and their final proffered basis for demonstrating a likelihood of success on the merits, is that "[t]he DMV fails to provide adequate notice to drivers either before or after licenses are revoked for failure to pay fines and costs, in violation of the Due Process Clause." (Doc. 35 ¶ 149.) The focus of Plaintiffs' grievance is the one-page revocation order, entitled "Official Notice," that the DMV sends traffic defendants pursuant to section 20-24.1(a) upon receiving notice from a state court that the traffic defendant has failed to pay a fine or cost. See (Doc. 55 ¶ 4).

The first full paragraph of the Official Notice states:

WE REGRET TO INFORM YOU THAT EFFECTIVE [time and date], YOUR NC DRIVING PRIVILEGE IS SCHEDULED FOR AN INDEFINITE SUSPENSION IN ACCORDANCE WITH GENERAL STATUTE 20-24.1 FOR FAILURE TO PAY FINE AS FOLLOWS:

(Doc. 35 ¶ 32.) The Official Notice then lists the traffic defendant's violation date and citation number, as well as the name and phone number of the state court handling the traffic violation. (Id.) The Official Notice continues:

UNFORTUNATELY THE DIVISION OF MOTOR VEHICLES CANNOT ACCEPT PAYMENTS FOR FINES AND COSTS IMPOSED BY THE COURTS. PLEASE CONTACT THE COURT ABOVE TO COMPLY WITH THIS CITATION.

NOTE: PLEASE COMPLY WITH THIS CITATION PRIOR TO THE EFFECTIVE DATE IN ORDER TO AVOID THIS SUSPENSION.

IF YOU HAVE NOT COMPLIED WITH THIS CITATION BY THE EFFECTIVE DATE OF THIS ORDER, YOU WILL NEED TO MAIL YOUR CURRENT NORTH CAROLINA DRIVER LICENSE, IF APPLICABLE, TO THE DIVISION. FAILURE TO DO SO MAY RESULT IN AN ADDITIONAL \$50.00 SERVICE FEE.

REINSTATEMENT PROCEDURES:

UPON COMPLIANCE WITH THIS CITATION, YOU MAY VISIT YOUR LOCAL DRIVER LICENSE OFFICE. AT SUCH TIME PROPER IDENTIFICATION AND PROOF OF AGE WILL BE NEEDED.

A RESTORATION FEE OF \$65.00 AND THE APPROPRIATE LICENSE FEES ARE NEEDED AND HAVE TO BE PAID AT THE TIME YOUR DRIVING PRIVILEGE IS REINSTATED.

THIS ORDER IS IN ADDITION TO AND DOES NOT SUPERSEDE ANY PRIOR ORDER ISSUED BY THE DMV. IF ADDITIONAL INFORMATION CONCERNING THIS ORDER IS NEEDED, PLEASE CONTACT A REPRESENTATIVE OF THE DIVISION AT (919) 715-7000.

DIRECTOR OF PROCESSING SERVICES

(Id.) As Plaintiffs point out, nowhere does the Official Notice mention that traffic defendants can prevent or reverse their license revocation by demonstrating their inability to pay under section 20-24.1(b)(4), nor does it mention the option of requesting an ability-to-pay hearing under section 20-24.1(b1). Instead, it merely directs recipients to "comply with this citation." (Id.)

In Plaintiffs' view, the Official Notice's failure to notify traffic defendants of the statute's ability-to-pay and hearing provisions makes it "critically misleading" and insufficient under the Due Process Clause. (Doc. 39 at 27.) The Commissioner responds that the "North Carolina[] statute provides" notice and that "procedural due process does not require" individualized



notice. (Doc. 45 at 21.)

As discussed previously, the notice requirement of the Due Process Clause “ensure[s] that the opportunity for a hearing is meaningful.” West Covina, 525 U.S. at 240; see also Mullane, 339 U.S. at 314 (“Th[e] right to be heard has little reality or worth unless one is informed that the matter is pending and can choose for himself whether to appear or default, acquiesce or contest.”). To be sufficient, notice must be “reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” Mullane, 339 U.S. at 314. A “mere gesture” is insufficient. Id. at 315. While this requirement sometimes mandates individualized notice, the Supreme Court has held that it does not require “individualized notice of state-law remedies which . . . are established by published, generally available state statutes.” West Covina, 525 U.S. at 241; see also id. (“Once the property owner is informed that his property has been seized, he can turn to these public sources to learn about the remedial procedures available to him.”).

In this case, there is a publicly available state statute that clearly lays out the procedures available to traffic defendants facing license revocation. Compare N.C. Gen. Stat. § 20-24.1 with Stinnie, 355 F. Supp. 3d at 529 (explaining that West Covina does not control as to the notice issue in a challenge

to a Virginia license revocation statute because the Virginia statute does not provide for any opportunity to be heard). Plaintiffs make no argument – nor would such an argument be persuasive – that section 20-24.1 is insufficiently clear about these procedures. Instead, Plaintiffs argue that the individualized Official Notice undermines the statutory notice by failing to mention all the relevant statutory provisions. This argument is unpersuasive, as West Covina relies on a presumption that property owners “can turn to . . . public sources” for notice when those sources adequately describe the relevant procedures. Even if the court were to recognize an exception to the West Covina presumption where a state misleads people who otherwise would have turned to a publicly-available statute, such an exception could hardly apply here in light of the fact that the Official Notice directly cites to section 20-24.1 in its first sentence. (Doc. 35 ¶ 32); cf. Nnebe v. Daus, 184 F. Supp. 3d 54, 74 (S.D.N.Y. 2016) (finding that notice was sufficient under the Due Process Clause where – inter alia – the individualized notice documents, despite “not contain[ing]” some important information about the opportunity to be heard “on their face,” directly cited to a publicly available document containing the information).<sup>35</sup> While,

<sup>35</sup> Plaintiffs’ counsel suggested at the hearing that the cases cited in their briefing “implicitly” say that “if the [individualized] notice goes out and tells someone something, they should be able to rely on what [it says].” However, most of the “misleading notice” cases Plaintiffs cite predate West Covina, and the few that do not fail to

absent the statute, the Official Notice would not on its own provide sufficient notice, it is not so affirmatively misleading as to destroy the sufficient notice provided by the statute to which it directly cites: "GENERAL STATUTE 20-24.1." (Doc. 35 ¶ 32.)

## 2. Outcome of Motion for Preliminary Injunction

In conclusion, Plaintiffs have not shown that they are likely to succeed on either of their remaining claims under the Due Process Clause. Because Plaintiffs' failure to satisfy any one of the four preliminary injunction factors is fatal to their motion, the court need not address the remaining factors and the motion will be denied. See Pashby, 709 F.3d at 320 (stating that "each preliminary injunction factor [must] be satisfied" (internal quotation marks omitted)).

### III. CONCLUSION

For the reasons stated,

IT IS THEREFORE ORDERED that the Commissioner's motion for judgment on the pleadings (Doc. 46) is GRANTED IN PART and DENIED IN PART in that Plaintiffs' first claim is DISMISSED WITH PREJUDICE but their second and third claims survive insofar as they have not been challenged at this stage.

IT IS FURTHER ORDERED that Plaintiffs' second motion for class address that decision. Further, one of Plaintiffs' cited cases is Nnebe itself.

certification (Doc. 36) is GRANTED IN PART and that the following two classes are certified:

Revoked Class: All individuals whose driver's licenses were revoked by the DMV on or after May 30, 2015, due to their failure to pay fines, penalties, or court costs assessed by a court for a traffic offense, and whose driver's licenses remain so revoked.

Future Revocation Class: All individuals whose driver's licenses will be revoked in the future by the DMV due to their failure to pay fines, penalties, or court costs assessed by a court for a traffic offense.

IT IS FURTHER ORDERED that Plaintiffs' second motion for preliminary injunction (Doc. 38) is DENIED.

/s/ Thomas D. Schroeder  
United States District Judge

March 31, 2019

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

SETI JOHNSON and MARIE  
BONHOMME-DICKS, on behalf of  
themselves and those similarly situated,  
and SHAREE SMOOT and NICHELLE  
YARBOROUGH, on behalf of  
themselves and those similarly situated,

Plaintiffs,

v.

TORRE JESSUP, in his official capacity  
as Commissioner of the North Carolina  
Division of Motor Vehicles,

Defendant.

Civil Action No. 1:18-cv-00467

**NOTICE OF APPEAL**

Notice is hereby given that Plaintiffs Seti Johnson, Marie Bonhomme-Dicks, Sharee Smoot, and Nichelle Yarborough, parties in above case 1:18-cv-00467, hereby appeal to the United States Court of Appeals for the Fourth Circuit from the Memorandum Opinion and Order dated and entered on March 31, 2019 (Doc. 65), which granted-in-part Defendant Torre Jessup's Motion for Judgment on the Pleadings (Doc. 46) and denied Plaintiffs' Second Motion for Preliminary Injunction (Doc. 38).<sup>1</sup>

Dated April 17, 2019.

Respectfully submitted,

/s/ Sam Brooke  
Samuel Brooke

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<sup>1</sup> Plaintiffs do not seek to appeal the Memorandum Opinion and Order's grant of Plaintiffs' Second Motion for Class Certification (Doc. 36). (Doc. 65).

/s/ Kristi Graunke

Kristi L. Graunke

*On behalf of Counsel for Plaintiffs*

Irena Como (NC Bar No. 51812)  
Cristina Becker (NC Bar No. 46973)  
Sneha Shah\*  
AMERICAN CIVIL LIBERTIES UNION  
OF NORTH CAROLINA LEGAL  
FOUNDATION  
P.O. Box 28004  
Raleigh, North Carolina 27611  
T: 919-834-3466  
E: ico@acluofnc.org  
E: cbecker@acluofnc.org  
E: sshah@acluofnc.org

Nusrat J. Choudhury\*  
R. Orion Danjuma\*  
AMERICAN CIVIL LIBERTIES UNION  
125 Broad Street, 18<sup>th</sup> Floor  
New York, New York 10004  
T: 212-519-7876  
T: 212-549-2563  
E: nchoudhury@aclu.org  
E: odanjuma@aclu.org

*\*Appearing by Special Appearance  
pursuant to L.R. 83.1(d)*

Kristi L. Graunke (NC Bar No. 51216)  
Emily C.R. Early\*  
SOUTHERN POVERTY LAW CENTER  
150 E. Ponce de Leon Ave., Ste. 340  
Decatur, Georgia 30030  
T: 404-221-4036  
E: kristi.graunke@splcenter.org  
E: emily.early@splcenter.org

Samuel Brooke\*  
Danielle E. Davis\*  
SOUTHERN POVERTY LAW CENTER  
400 Washington Avenue  
Montgomery, Alabama 36104  
T: 334-956-8200  
F: 334-956-8481  
E: samuel.brooke@splcenter.org  
E: danielle.davis@splcenter.org

Jeffrey Loperfido (NC Bar No. 52939)  
Ivy A. Johnson (NC Bar No. 52228)  
SOUTHERN COALITION FOR SOCIAL  
JUSTICE  
1415 W. NC Hwy 54, Suite 101  
Durham, North Carolina 27707  
T: 919-323-3380 x.161  
F: 919-323-3942  
E: jeffloperfido@southerncoalition.org  
E: ivyjohnson@southerncoalition.org

*Counsel for Plaintiffs*