

ACTION TAKEN

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# STOPPED, FINED, ARRESTED

Racial Bias in Policing and Traffic Courts in California



# Acknowledgements

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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:

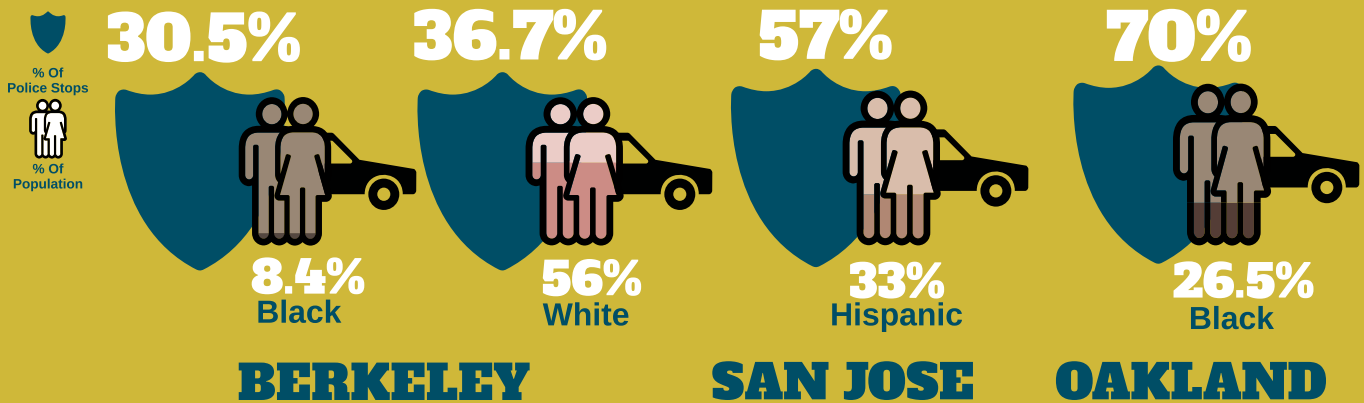
- Black and Latino<sup>12</sup> drivers are pulled over more often by police, and White drivers are pulled over less, each at rates that are disproportionate to their shares of the population.<sup>13</sup>
- Black and Latino drivers are disproportionately pulled over without a good reason, as evidenced 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

**37%** less likely to find weapons      **24%** less likely to find drugs      **25%** less likely to find other contraband

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.

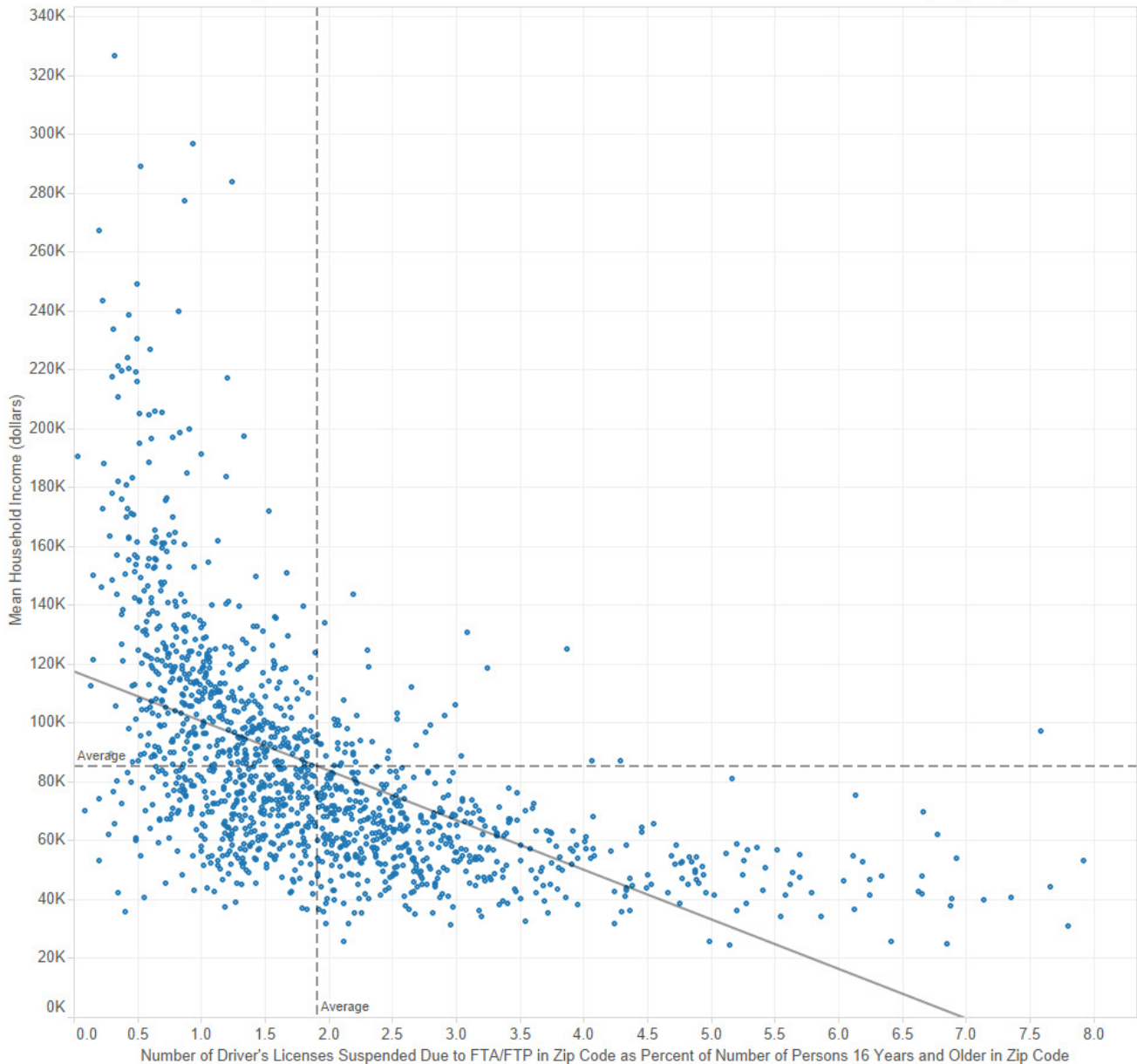
Below, **Section 1 depicts how the rates of driver’s license suspensions based on failure to appear or pay are strongly correlated** with mean household income and percent Black population by zip code. It uses U.S. Census data and information from the California DMV. The charts show that almost all zip 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.

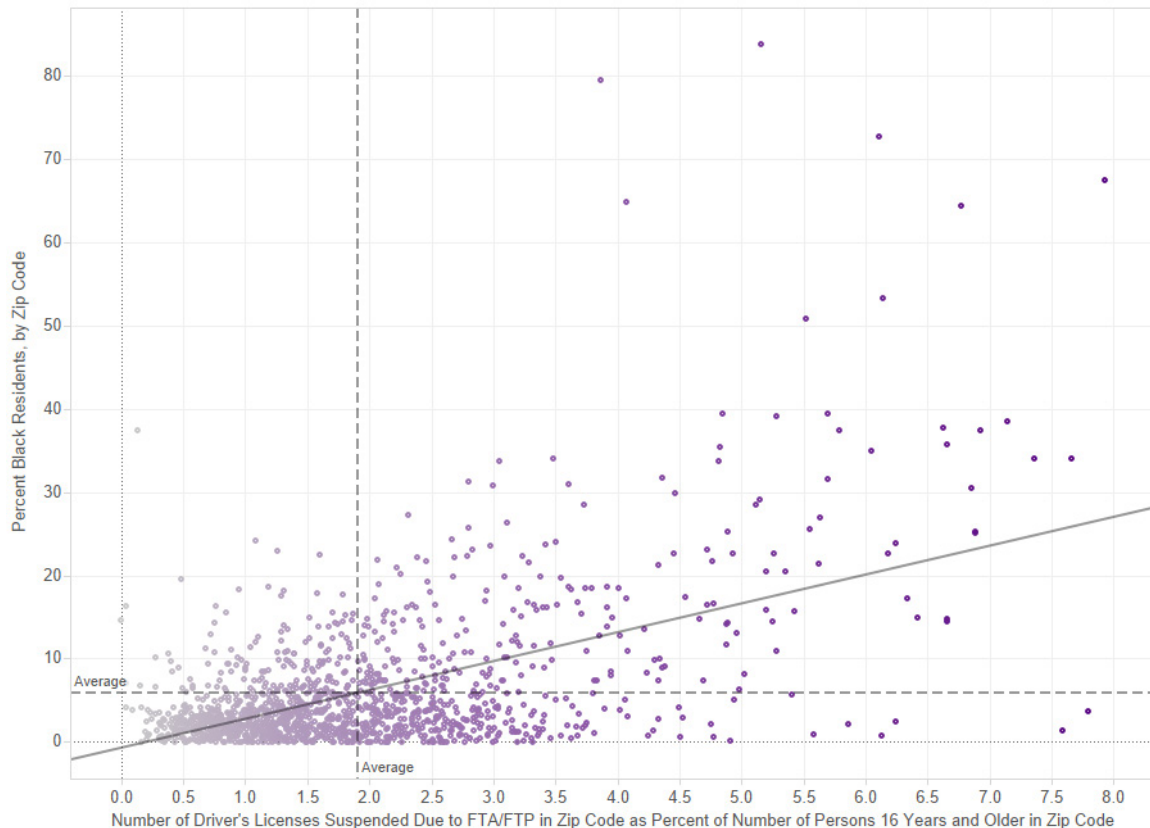
**Driver's License Suspensions due to FTA/FTP and Mean Household Income, by Zip Code**



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 (over-representation 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

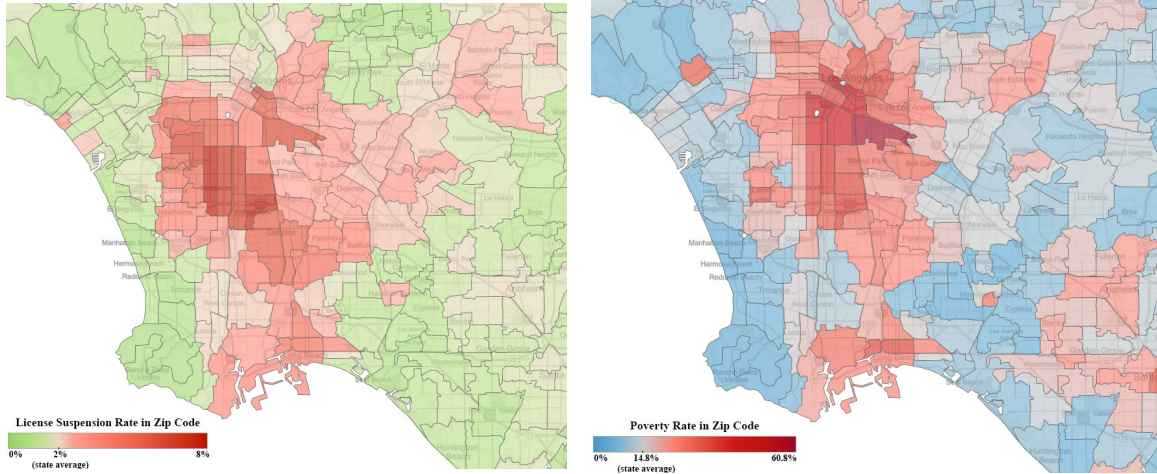
Although statewide data on jail time for driving on a suspended license was not available at the time of this report release, anecdotal evidence beyond San Joaquin County shows that some Californians are spending significant time in jail for being too poor to pay a ticket and driving. In one case in 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

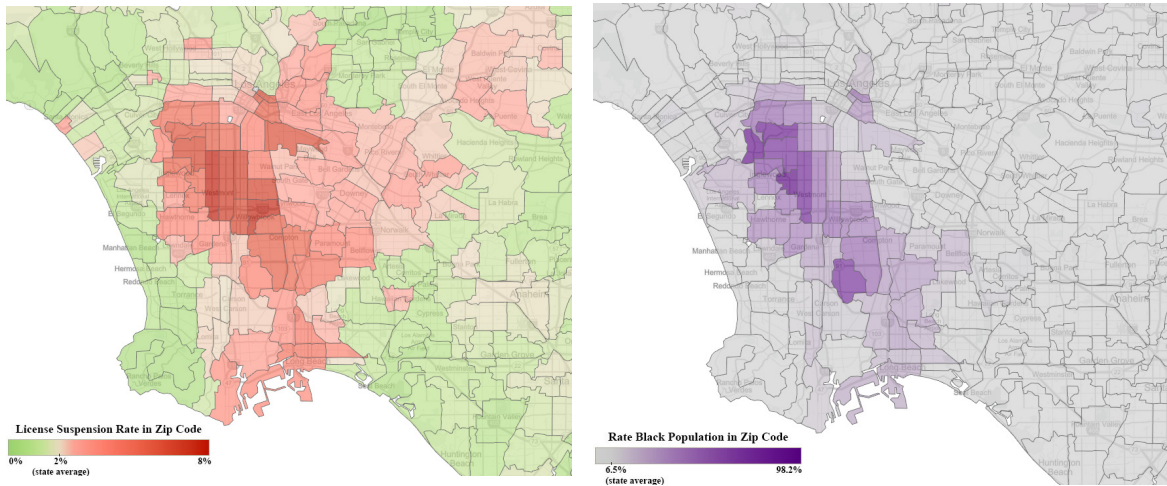
### a. Zip code maps comparing rate of license suspension to U.S. Census data

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.

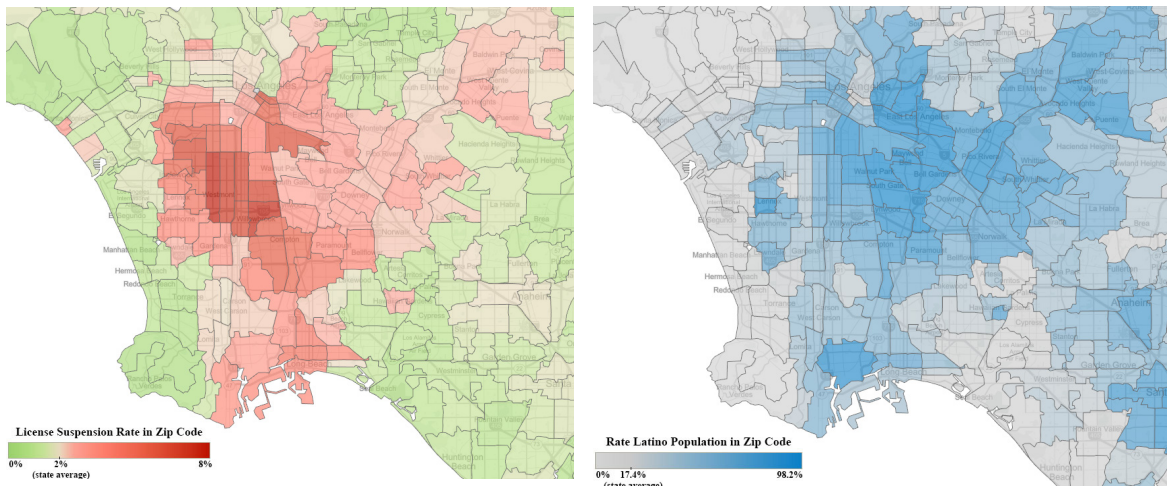
#### LICENSE SUSPENSION RATE AND POVERTY RATE



#### LICENSE SUSPENSION RATE AND PERCENT BLACK POPULATION



#### LICENSE SUSPENSION RATE AND PERCENT LATINO POPULATION



b. Arrest location maps by race of arrestee

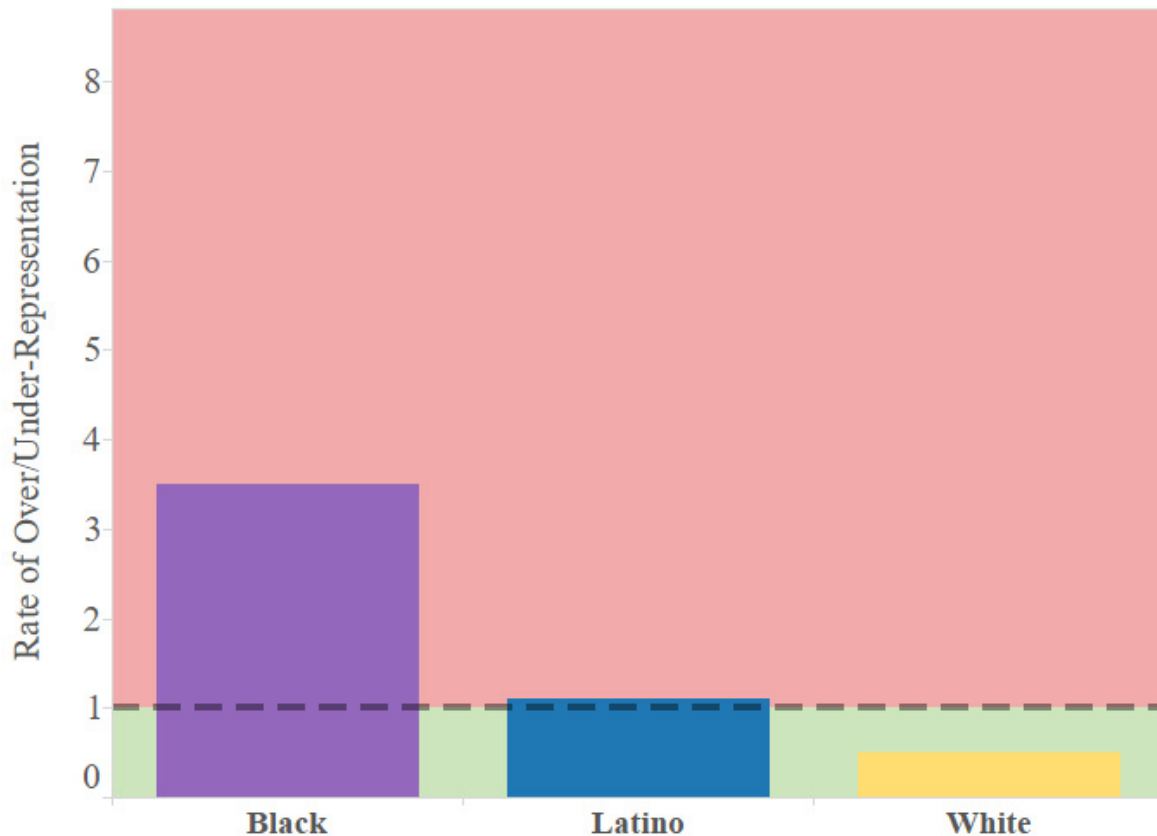
### FTA/FTP warrants (Vehicle Code 40508)

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.

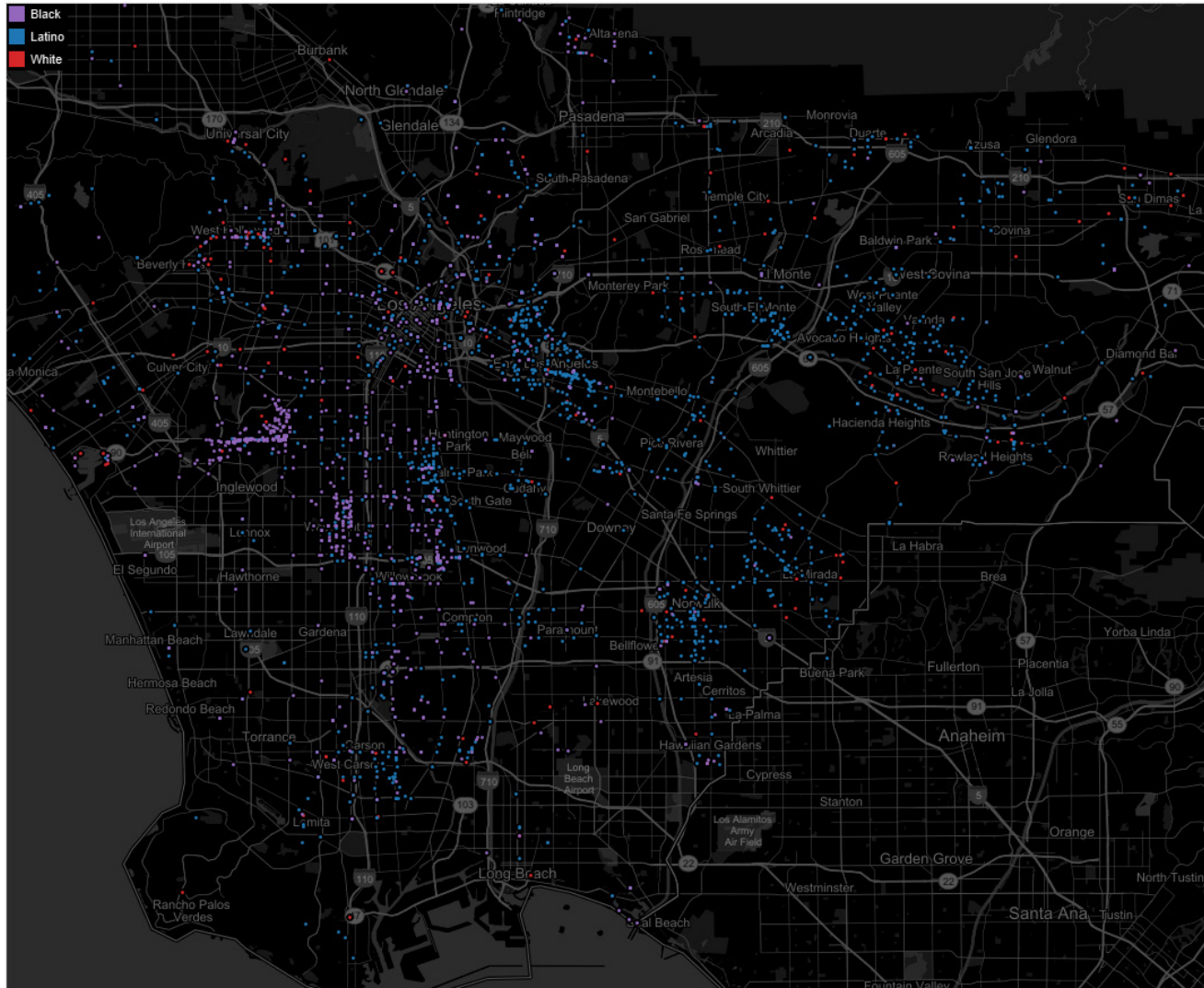
### Rate of Over/Under-Representation in Los Angeles County Arrests for VC 40508, by Race





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



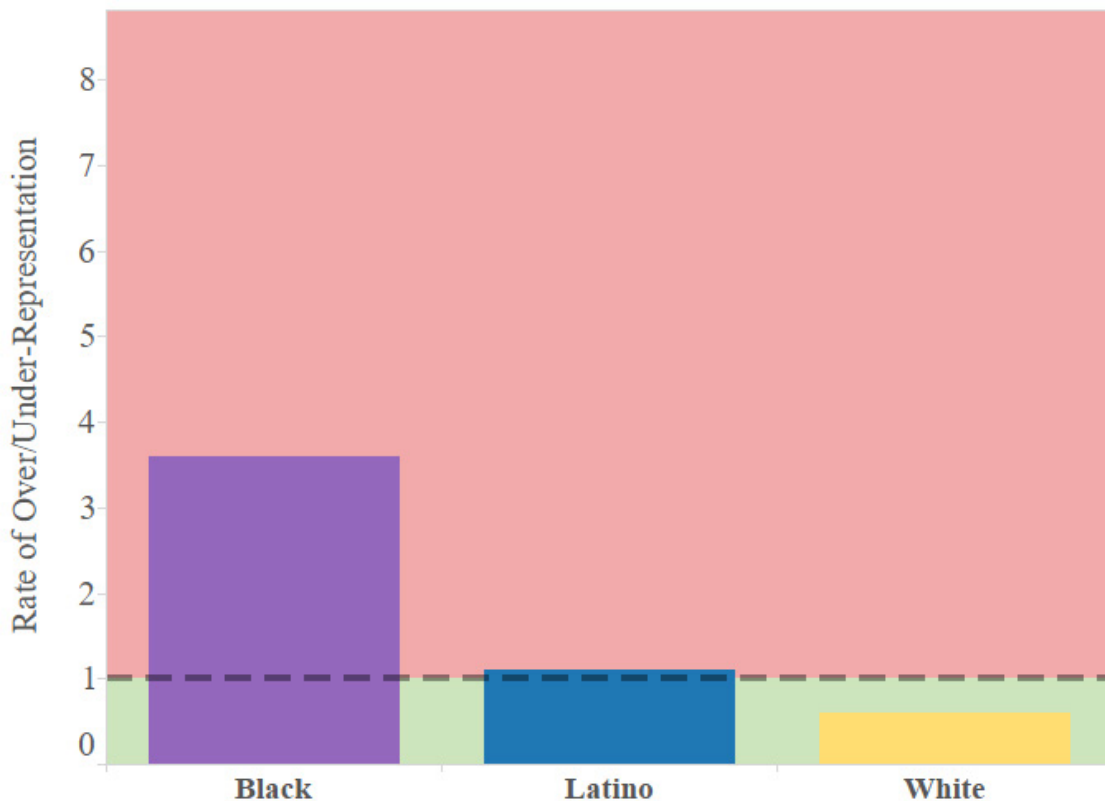
## Driving with a suspended license (Vehicle Code 14601.1)

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).

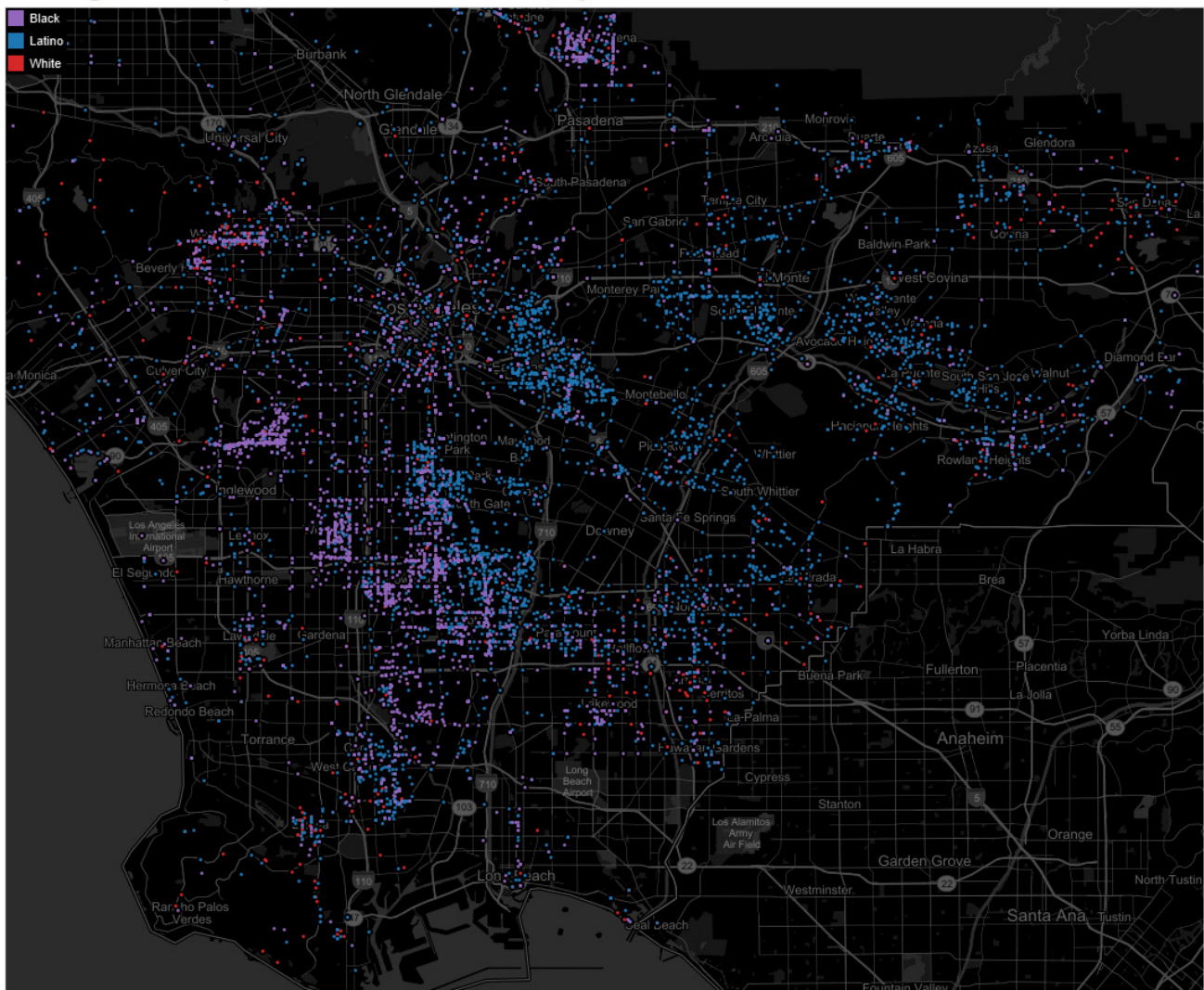
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### Rate of Over/Under-Representation in Los Angeles County Arrests for VC 14601.1, by Race



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**

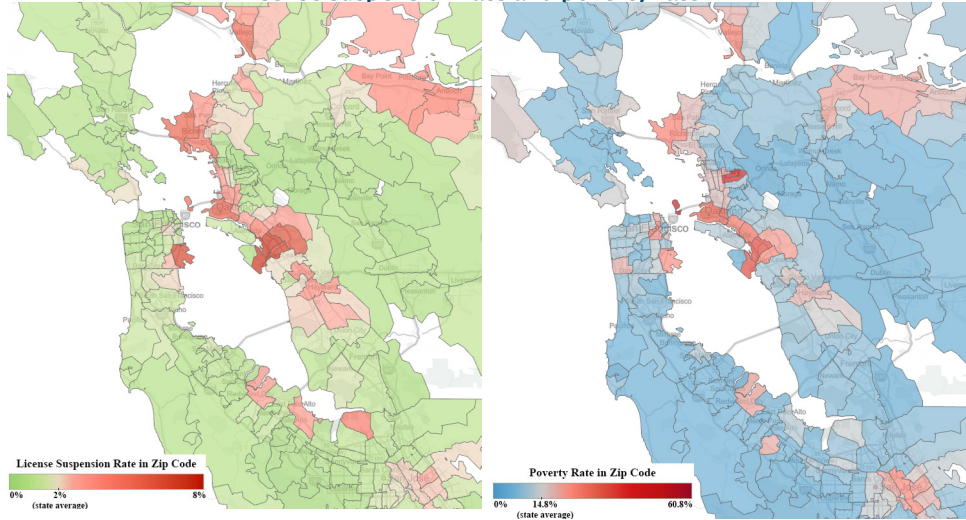


## B. SAN FRANCISCO COUNTY

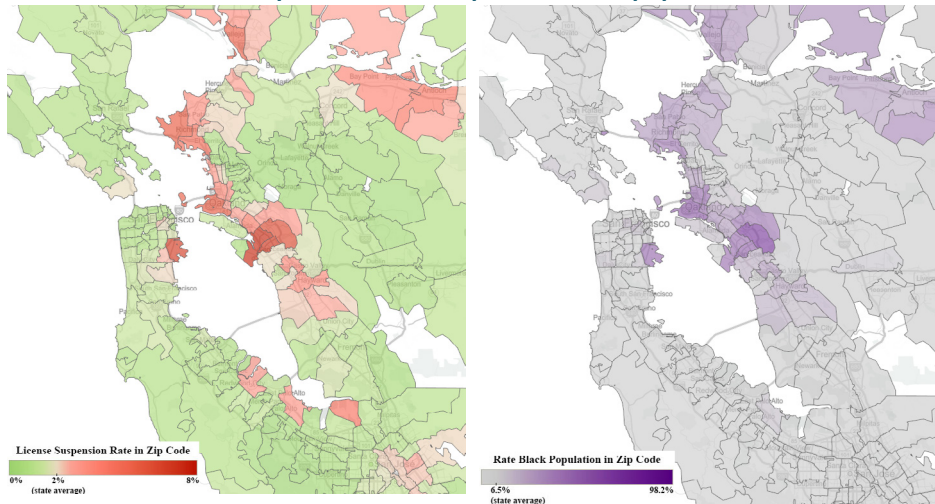
### a. Zip code maps comparing rate of license suspension to US Census data

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.

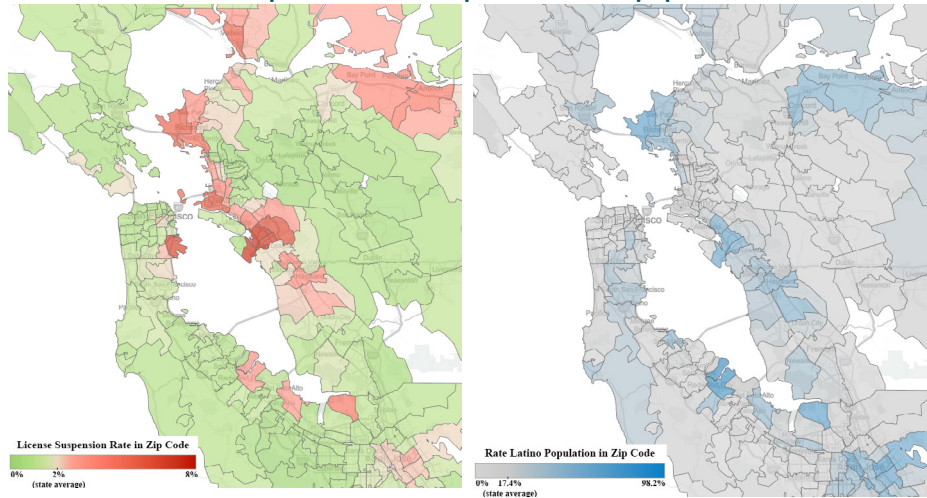
**License suspension rate and poverty rate**



**License suspension rate and percent Black population**



**License suspension rate and percent Latino population**



b. Arrest location maps by race of arrestee

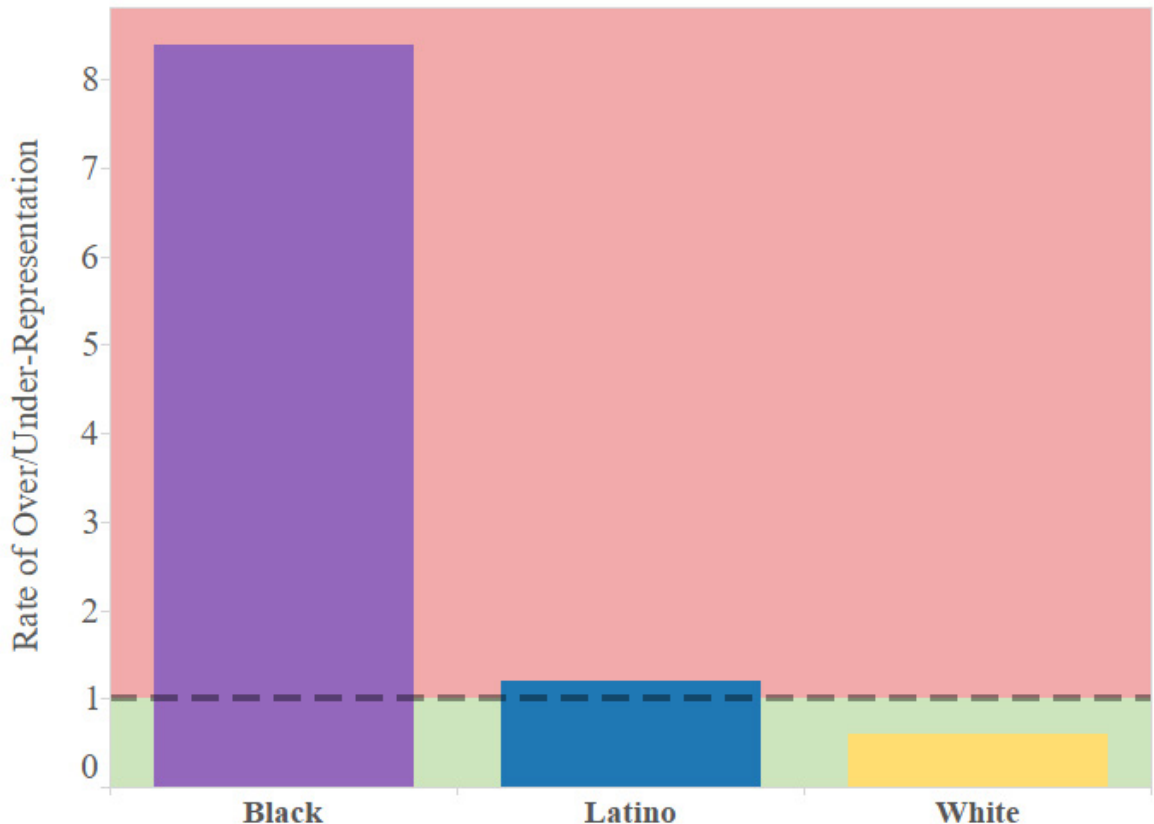
### FTA/FTP warrants (Vehicle Code 40508)

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).

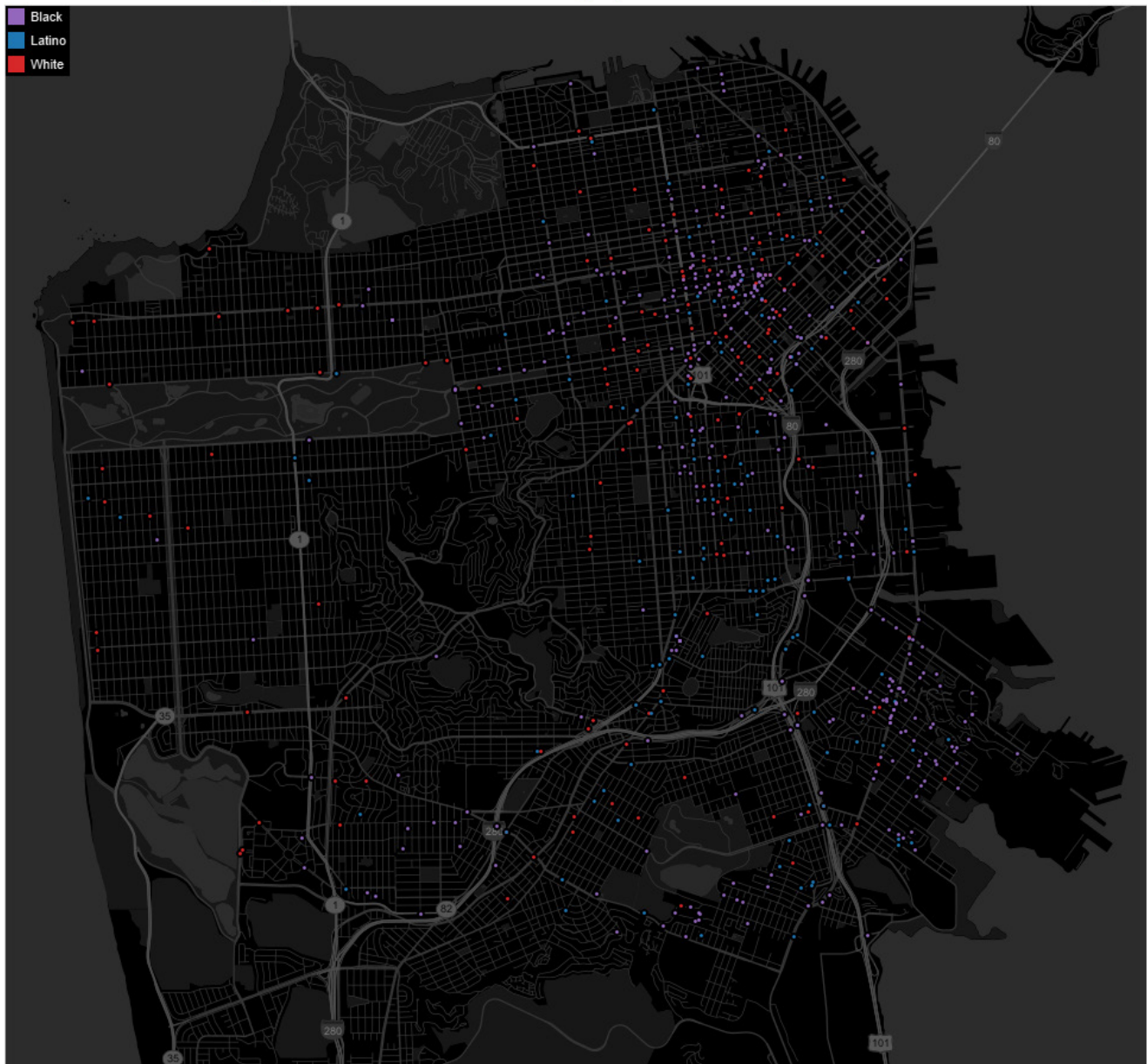
The following chart depicts the rate of over-representation or under-representation of arrestees by race (Black, Latino, and White). A bar equal to the high of the dotted line (1 on the Y-axis) would signify perfect representation (a situation in which the rate of arrestees of a certain race matched 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



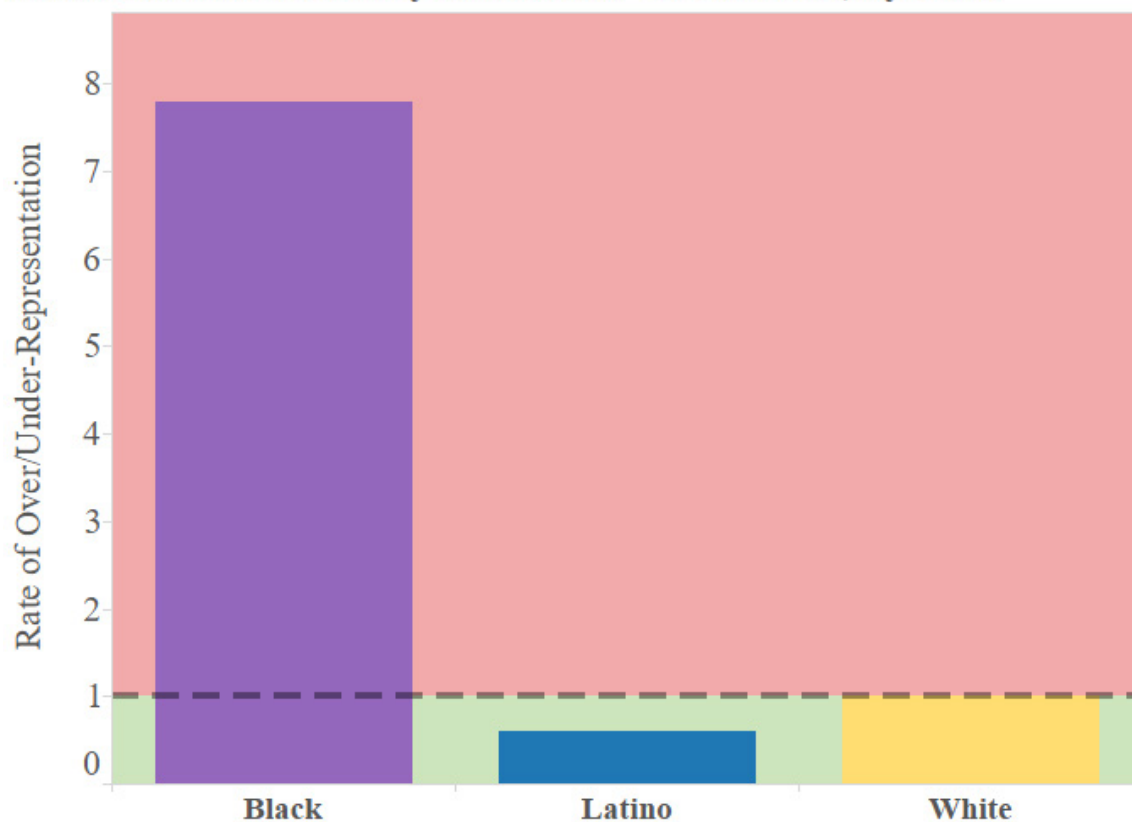
## Driving with a suspended license (Vehicle Code 14601.1)

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).

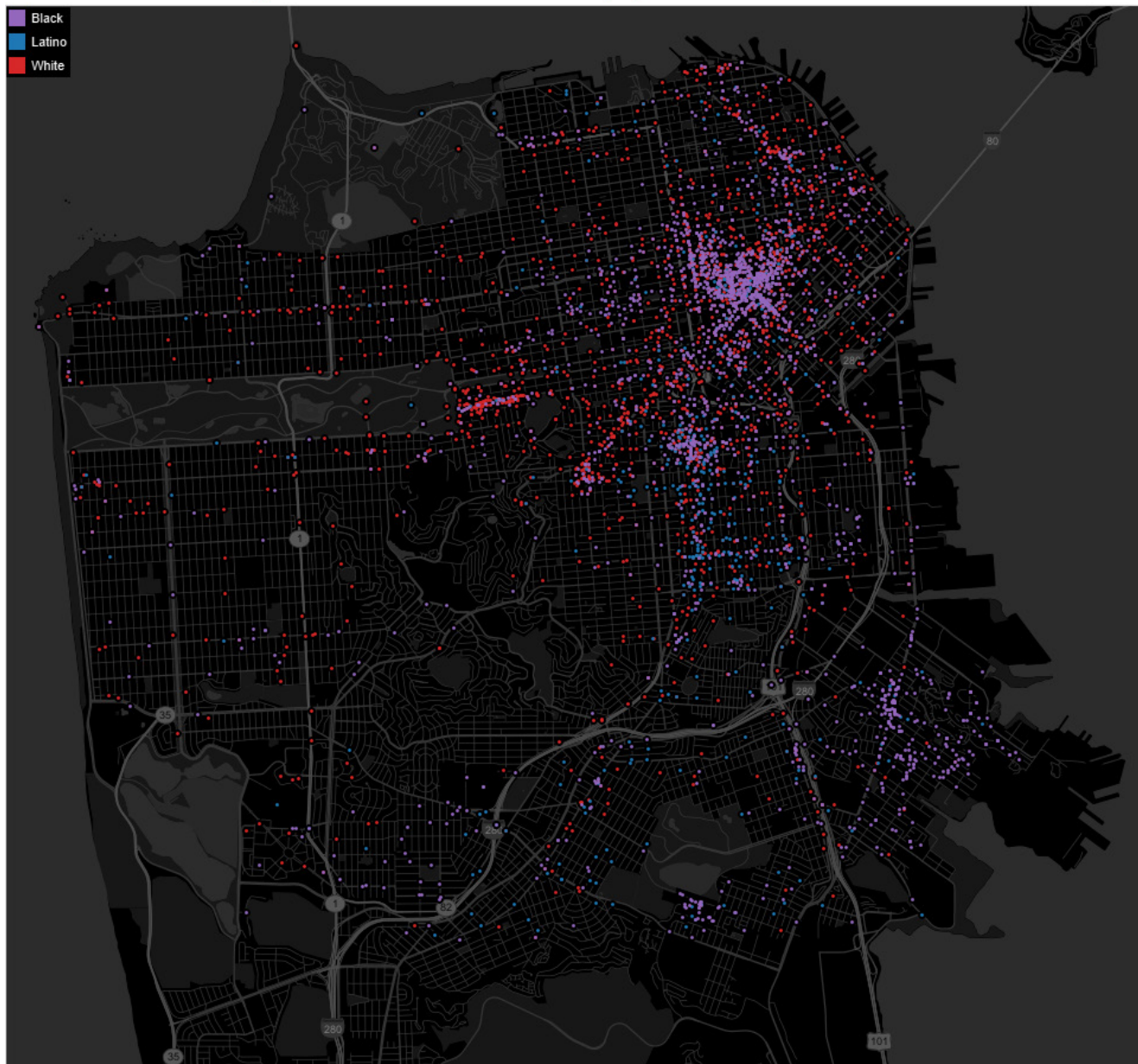
The following chart depicts the rate of over-representation or under-representation of arrestees by race (Black, Latino, and White). A bar equal to the high of the dotted line (1 on the Y-axis) would signify perfect representation (a situation in which the rate of arrestees of a certain race matched 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\\_061504.pdf](http://ist-socrates.berkeley.edu/~glaserj/glaser_profiling_math_model_061504.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-idUSKBN0UKoJ520160106>.
- 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.

