STOP THE STOPS

A Preview of Empire Justice Center's Upcoming Report on Pretext Stops
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ABOUT EMPIRE JUSTICE CENTER

The Empire Justice Center is a legal services organization that seeks to make the law work for all New Yorkers, especially those who need it the most. We do so by identifying critical issues, developing and implementing creative solutions and monitoring ongoing results. Our staff has protected and strengthened the legal rights of people in New York who are poor, disabled or disenfranchised for more than forty years. We do this through three major areas of service. We teach the law by providing training, support and technical assistance to legal services and private attorneys and other community-based advocates to help them better serve their clients. We practice the law by providing direct civil legal assistance and undertaking impact litigation. And we improve the law by engaging in policy analysis, research and advocacy.

EMPIRE JUSTICE CENTER’S POLICE REFORM PROJECT

The Empire Justice Center's Police Reform Project promotes equity, antiracism, and social justice within established criminal justice systems such as law enforcement departments and institutions of pre-trial incarceration.

To achieve these goals, Empire Justice Center partners with organizations, community groups, and individuals to understand the needs of communities; educates the public about their legal rights and systemic inequities; develops policy positions; engages in strategic communication with organizational leaders; lobbies to achieve greater fairness and equity in legislation; and engages in targeted litigation.

In recent years, the world has come to recognize the history of institutional racism within the law enforcement and criminal justice systems in the United States. And while efforts are being made by some state and local governments, some police departments, and some prosecutors’ offices to recognize and respond to bias in policing, there are still many aspects of the system that remain unexamined, unchanged, and so embedded in our practices that they seem impervious to reform.

In the coming months and years, the newly developed Police Reform Project of the Empire Justice Center will examine these aspects of policing, provide information to the public, educate legislators, evaluate and recommend changes to the existing systems, and through various means, press for reforms that have been all too late in coming.
PRETEXT STOPS

The first area of focus for the Police Reform Project is what are commonly referred to as pretext stops. Addressing the problems presented by the police use of pretext stops would be a tremendous step towards reducing inequity in policing.

The following overview is a summary of some of the information contained in a report on pretext stops to be issued by the Empire Justice Center in the coming year.

From *The Guardian*, April 21, 2022:

There has been renewed scrutiny of traffic stops since the [April 4] killing of [Patrick] Lyoya, an unarmed 26-year-old in Grand Rapids, Michigan. He was shot in the back of the head after a struggle with an officer who pulled him over for having a mismatched license plate. Lyoya’s death is the most recent that has captured headlines and calls for change.

Daunte Wright, 20, was killed after being pulled over for an expired registration tag and a hanging air freshener; Sandra Bland, 28, was stopped for failing to signal; and 32-year-old Philando Castile died following a traffic stop after an officer claimed he looked like a suspect in a recent robbery, citing his “wide-set nose.”

In recent years, traffic stops by police for low-level equipment violations or other low-level offenses have spurred debate and been the subject of condemnation. According to the Mapping Police Violence project, a non-profit research group, about 10% of the roughly 1,000 civilians who are killed by police each year die in the course of interactions involving traffic violations.

WHAT IS A PRETEXT STOP?

Pretext stops are just what they sound like – law enforcement officers’ stops of individuals on the street or in vehicles, or even on bicycles, in which the police claim one reason for the stop, when in actuality the basis is something entirely different. These stops are usually for low-level traffic or other infractions.

For example, a person may be stopped for riding a bicycle without a bell (the pretext), but in actuality, the police are stopping the person because they believe the person is involved in criminal activity but do not have enough of a lawful reason to stop them for that. Or they may stop someone because the officer has entirely unlawful reasons – the officer may believe based

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on race or ethnicity they look like they “don’t belong” in an area, or that they are “acting suspicious.” Pretext stops are often used by law enforcement officers to then engage in further police contact – pat down searches, searches of vehicles, and other types of intrusions. In some cases, items the person was carrying or had in their vehicle are seized and the person is charged with a crime. In the great majority of cases, the person is not in possession of any unlawful item and may or may not be issued a ticket for the pretext reason. In all too many situations, the encounter escalates and an individual, initially stopped for a minor offense, winds up injured or dead, or charged with far more serious crimes as a result of the interaction with police. At times, police may be harmed.

WHAT IS WRONG WITH PRETEXT STOPS?

While we can all agree that pretext stops based on purely racial criteria are wrong, some might think that if a person is acting suspicious, or may be involved in criminal activity, police interference may be a good thing. But stops based on someone being “suspicious” are often too reliant on officer discretion, and individual and systemic biases lead to racially disparate policing. And these racial disparities are deeply damaging to individuals, the community, and the trust in the criminal justice system. Pretext stops are often committed against our friends, neighbors and family members who are Black, Indigenous, People of Color (“BIPOC”), and far too often, result in their injuries and deaths. Time and again BIPOC are subjected to pretext stops in their communities, while white suburbanites face no such proactive policing.

And the stops of BIPOC result in searches and seizures far more frequently than those of whites. The additional intrusion of the search and its often attendant unequal interactions between officer and citizen create the perception and reality of different types of citizenship, as recognized in the books Pulled Over: How Police Stops Define Race and Citizenship (“Pulled Over”)


In Suspect Citizens, the authors point out, based on the analysis of over 20 million [records of traffic stops in North Carolina beginning in 1999] we focus on racial differences in the likelihood of various outcomes, with a particular focus on whether the officer searches the driver of the car. Very few traffic stops lead to a search; just about 3 percent. But searches are highly targeted at young men of color; over 20 percent of those stopped are searched in some jurisdictions. The majority of these searches yield no contraband, and when there is a contraband “hit” the amounts involved are rarely those associated with a dealer or a courier. In fact, courier-level contraband hits are vanishingly rare.

5 Id. at 31.
WHY IS THIS PERMITTED?

The United States Supreme Court and the New York Court of Appeals, New York’s highest Court, have both declared that pretext stops are legal. But statistics, anecdotes, and a growing recognition of the racial disparities in the application of pretext stops reflect, if not individual biases, a system that promotes racially biased policing.

RACIAL BIAS AND THE DATA
RACE IS A CLEAR FACTOR IN WHO GETS STOPPED FOR MINOR TRAFFIC VIOLATIONS

As methods of policing have captured the public’s attention, there have been increasing numbers of social scientists studying racial disparities in policing. Many organizations seeking to change policing are pressing for data collection. Some areas of data collection that apply to pretext stops are racial disparities in stops (comparisons between who gets stopped for the same types of charges), racial disparities in searches following a stop, and effectiveness in crime reduction and community safety. As discussed in our complete report, studies leave no room for doubt that investigatory and pretextual stops are routinely conducted in racially disparate ways – whites being stopped less frequently and searched less frequently. According to some studies, the disparity is reduced at night, when officers are unable to see the race of the drivers.6

THE COMMUNITY SAFETY QUESTION:
IS COMMUNITY SAFETY ENHANCED BY THE USE OF PRETEXT STOPS?

Pretext and other low-level traffic stops are conducted in racially disparate ways. But some might argue that if there are benefits to the community – increased safety, fewer drugs and fewer guns – then the disparities are worthwhile.

In our full report we discuss at greater length the actual crime-fighting results of such stops, the harm caused by these stops, and whether the cost is worth any arguable benefit. But as recognized by some in law enforcement, as well as studies reviewing this issue, the community safety benefits are minimal, and outweighed by the harms caused.

COMMUNITY SAFETY AND CRIME REDUCTION

In their discussion of pedestrian stops in Suspect Citizens, the authors note that in a study conducted in 2014 which reviewed young adults’ experiences with “stop and frisk” policing in

6 See, e.g. https://news.stanford.edu/2020/05/05/veil-darkness-reduces-racial-bias-traffic-stops/
New York City, searches rarely resulted in discovery of guns (0.11 percent of all stops) or other contraband (1.5 percent). Baumgartner, Epp, Shoub, *Suspect Citizens – What 20 Million Traffic Stops Tell Us about Policing and Race* (Cambridge University Press, 2014).

In 2021, as part of the Vera Institute of Justice’s Motion for Justice initiative, Ramsey County Attorney John Choi in Minnesota announced that his office would no longer prosecute non-public safety stops, because:

> evidence shows that non-public safety stops reflect racial bias, and police stop, question, and search People of Color at higher rates than white people. In addition, non-public safety stops do not improve public safety, as the majority do not result in the discovery of contraband or weapons. When prosecutors condone non-public safety stops, they encourage police officers to focus on people, rather than actions, they deem suspicious.

Problems with pretext stops are increasingly garnering national attention. In a 2022 Time Magazine article, Max Carter-Oberstone, the Police Commissioner for the City of San Francisco, questioned,

> So, what’s wrong with pretextual stops? For starters, they don’t make us safer. Rigorous studies have shown that pretext stops turn up evidence of non-traffic crimes at abysmally low rates, and that they have no effect on crime rates. These same studies confirm that when we invite officers to be led by their gut instincts and other unchecked heuristics, it is People of Color who are disproportionately affected. Racial disparities in who gets pulled over erode trust in the police, and deepen the perception that police use race as a proxy for criminality.

The data does not support a conclusion that pretext or other low-level stops result in a significant increase in community safety or crime-reduction.

When law enforcement agencies spend time on low-level stops, they are, of necessity, diverting resources from other activities, whether patrolling neighborhoods, investigating crime, or engaging in community relations. These low-level stops, as is seen above, have minimal

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8 It must be remembered that until recently, even small amounts of marijuana were considered contraband in New York, and that could account for some of the contraband produced as a result of these stops.
community safety value. And as discussed below, they cause harm. Which begs the question, is the minimal amount of contraband seized, or arrests or charges emanating from such stops worth the cost?

WHAT IS THE COST?

If we were to seek elimination of all crime, one method might be to search every person, vehicle, backpack, purse, home, business and office. But there are several reasons we do not. Most importantly, we live in a country in which search and seizure at whim are unlawful. For a moment, we ask you to picture what life would be like if you lived in a country where you could be stopped and searched at any time, for little or no reason. How would you feel? How would that impact your quality of life? Your confidence in our government? If you are asking these questions, it may be because this is not your reality. But for some, this is daily life.

THE HARMS CAUSED BY PRETEXT STOPS

In the last few years throughout our community and across the country we have begun a national conversation on methods of policing. Many have concluded that communities of color are over-policed, while many also believe there is a need for law enforcement to ensure public safety. How are these competing concerns to be reconciled? Efforts to restrict discretion of officers, limit the types of contexts in which police operate, or redistribute funding to police departments are often met with opposition.

RACISM AND PRETEXT STOPS

Any policing that creates the belief or actuality that law enforcement methods and tactics are applied differently depending on one’s race, religion, ethnicity, sex, gender identity, sexual orientation, disability or other characteristic is antithetical to our country’s principles and ideals. For this reason, no matter the perceived effectiveness of pretext stops by some, it must be recognized that pretext stops, which are statistically demonstrated to be racially biased, do damage to this country’s foundational principles.

ANALYSIS BY SOCIAL SCIENTISTS

As discussed more extensively in our full report, there are often racial disparities seen in who is stopped and who is not. Data, anecdotal and analytical reviews and studies show that whether due to deliberate or unintentional bias, police focus pretext stops on communities and individuals of color. The racial disparities, standing alone, are harmful. But some have evaluated the impact of racial disparities on the criminal justice system as well as those stopped.

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11 The actual effectiveness of pretext stops in increasing public safety will be discussed below.
HARM – AN UNJUST SOCIETY

Racially biased policing, in and of itself, is a harm that we should all seek to end. As books like Michelle Alexander’s *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* and other sources have taught us, bias in policing results in harm far greater than to just the individuals harmed. When People of Color are stopped, searched, and even killed at higher rates for low-level violations, the belief that we share a just society is shattered.

HARM – UNDERMINING THE PERCEPTION OF LEGITIMACY OF LAW ENFORCEMENT

In a law review article analyzing pretext stops, Jonathan Blanks considered whether pretext stops undermine the perceptions of legitimacy of law enforcement, and recommended they be severely curtailed or eliminated to improve police relationships with African Americans.\(^{12}\) He went on to say,

There is no question that pretextual stops ensnare more innocent people than guilty ones. Furthermore, they may alienate police from the public through legal but ethically dubious actions in furtherance of their institutional incentives that are not necessarily congruent with the public interest. The longer-term social costs of pretextual stops far outweigh the fleeting gains from the arrests they enable.

Ending or severely limiting pretextual stops should be part of a broader shift away from unnecessary hostile confrontations with the public and toward more positive everyday interactions with people in those communities. So long as police act as antagonistic agents with the law-abiding public, trust will be impossible.\(^{13}\)

HARM TO THE COMMUNITY AND ITS RESIDENTS

As discussed above, pretext stops and investigatory stops too often result in injury and harm to those stopped, as well as to the law enforcement officers who stop them. But beyond the direct and physical harm, there is an impact on communities and individuals that must be recognized.

For those of us who are white, middle class, and live in suburban neighborhoods, it may be difficult to imagine the effect of being routinely stopped, questioned, searched, and detained. Philando Castile had been stopped 46 times before he was killed by police at the age of 32 – “of


\(^{13}\) *Id.* at 946.
all of the stops, only six of them were things a police officer would notice from outside a car — things like speeding or having a broken muffler.”

One of the most compelling and tragic arguments for elimination of low-level stops is the impact these unnecessary and biased stops have on adolescent youth of color. A longitudinal study of adolescent boys of color showed more frequent engagement in delinquent behavior 6, 12 and 18 months after they were stopped by police, whether or not they had exhibited prior delinquency. The authors highlighted the following:

Four waves of longitudinal survey data demonstrate that contact with law enforcement predicts increases in black and Latino adolescents’ self-reported criminal behaviors 6, 12, and 18 months later. These results are partially mediated by psychological distress. The younger boys are when stopped for the first time, the stronger these relationships. Boys’ race and prior engagement in delinquent behaviors did not moderate the effect. These findings fill a gap in the research literature on labeling, life course, general strain, and deterrence theories. To our knowledge, the relationships among police contact, psychological strain, and subsequent criminal behavior for young boys had not been tested quantitatively before. These findings raise policy questions about the influence of proactive policing on the trajectory of children.

EMPIRE JUSTICE CENTER’S FUTURE RECOMMENDATIONS

As this summary of our report demonstrates, there can be no doubt that pretext stops are conducted in racially disparate ways. Such disparities harm our communities, especially those in which the stops occur with greater frequency. There is a danger to both law enforcement and civilians, as reflected in the hundreds of civilian deaths and numerous officer deaths that have resulted from low-level traffic and pedestrian stops.

It is time – indeed, long past time – to make a change.

There are ways of redressing wrongful discrimination, such as lawsuits and police review boards. And we support those efforts. But it is our belief that in this time of recognition of the institutional biases in the criminal justice system, the best way to confront and eliminate the racial bias in this area of policing is to prevent it from happening in the first place.

Changes can be made in several contexts. Some, like the Vera Institute, seek to alter prosecution policies. Some, like police chiefs in Los Angeles and other jurisdictions seek to

15 Juan Del Toro et al., The Criminogenic and Psychological Effects of Police Stops on Adolescent Black and Latino Boys, 17 PROC. NAT’L ACAD. SCI. U.S.A. 8261 (2019).
16 Id. at 8261.
modify police policies. The Empire Justice Center will be exploring options, informed by the recommendations of the experts, to significantly reduce the use of pretext stops.

**OUR INVITATION TO YOU**

As we continue to develop our response to the use and impact of pretext stops across New York, and to oppose racial disparities in traffic enforcement, we invite you to join us.

- **If you want to be kept up to date on this project**, please [sign up HERE](#) to get updates.
- **If you have been subjected to a pretext stop** you believe was based on racial profiling or was improper in some other way, be heard and [tell your story HERE](#). We will get back to you to conduct an interview.
- **If you would like to partner with us, or if you have any other questions**, including those you would like to see in the final report, please email [jpaperno@empirejustice.org](mailto:jpaperno@empirejustice.org).