

No. 17-1349

IN THE
Supreme Court of the United States

RANDY JOHNSON,

Petitioner,

v.

UNITED STATES,

Respondent.

**On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Seventh Circuit**

**BRIEF OF HOWARD UNIVERSITY SCHOOL OF
LAW, CIVIL AND HUMAN RIGHTS CLINIC IN
SUPPORT OF THE PETITIONER**

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INTEREST OF AMICUS CURIAE¹

The Civil and Human Rights Clinic at Howard University School of Law advocates on behalf of clients fighting for their rights guaranteed by the United States Constitution. The Clinic provides pro bono legal services on a range of civil rights matters, including but not limited to police brutality, racial justice, mass incarceration, and other constitutional and human rights violations. When such issues arise, the Clinic regularly files amicus briefs with various federal courts, including the United States Supreme Court. As discussed below, the lower court's decision in *U.S. v. Johnson* – specifically its broad application of the power to stop anyone suspected of a civil parking violation – presents a grave threat to the communities the Clinic serves.

¹ Pursuant to Supreme Court Rule 37.6, counsel for amicus state that no counsel for a party authored this brief in whole or in part and that no person other than amicus curiae, its members, or its counsel made a monetary contribution to the preparation or submission of this brief. All parties have consented to the filing of this brief, which was timely sought in accordance with Rule 37.2.

INTRODUCTION AND SUMMARY OF ARGUMENT

Over the last three years, largely through the expansion of social media, the public has become increasingly aware of police violence directed towards African-Americans. Though not every police official acts with discriminatory intent – in fact, the vast majority do not – it has become increasingly apparent that police officers frequently treat African Americans differently than their white counterparts.

Many of these interactions begin with a traffic stop, often under questionable circumstances. According to a 2011 survey, 26.4 million individuals stated that their most recent interaction with police occurred in the context of a traffic stop.² Almost one-third of black drivers indicated that they believed they were wrongfully stopped, compared with only sixteen percent of white drivers who raised the same concern.³ Studies of police practices, as well as recent investigations by the U.S. Department of Justice (DOJ) confirm that these suspicions are not unfounded. Rather, as DOJ concluded in its report on the Baltimore Police Department, police officials frequently stop black drivers without cause, and then subject them to additional searches and arrests once stopped. As investigation and litigation in Chicago, as well as New York, have revealed, these concerns are not limited to Baltimore.

² Bureau of Justice Statistics, Traffic Stops (Apr. 15, 2018), <https://www.bjs.gov/index.cfm?tid=702&ty=tp>.

³ *Id.*

Given this background, the extensive nature of parking regulation in most metropolitan areas – big and small – and the frequency at which parking violations occur, an extension of *Whren* to civil parking violations could prove disastrous. At a minimum, it would lead to the unnecessary detention of countless Americans – many of whom would be black.

Compounding matters, these victims would be largely helpless to seek redress under the Equal Protection Clause – the primary constitutional protection for victims of racial profiling. Given the requirement that individuals present specific evidence of discriminatory intent, most victims of racial profiling are unable to advance such claims successfully. Officers, knowing that it could subject them to potential liability, rarely admit that their decisions were motivated by discriminatory intent, and even when they do, victims generally do not have access to these admissions.

Accordingly, were the Court to expand *Whren* to immunize police officials' decisions to stop individuals suspected of civil parking violations, dangerous consequences would ensue. As we have seen over the last three years, and as many African-American drivers – Walter Scott, Sandra Bland, and Levar Jones, among others – have experienced, this would be no small matter.

ARGUMENT

I. AN EXTENSION OF *WHREN* BEYOND TRAFFIC VIOLATIONS WOULD GIVE POLICE OFFICIALS UNCHECKED AUTHORITY TO STOP INDIVIDUALS.

The expansion of *Whren v. United States*⁴ to civil parking violations would constitute a repudiation of the Fourth Amendment by providing officers virtually unchecked discretion to stop individuals. Giving the extensive scope of parking regulations in most metropolitan areas, as well as the robust nature of parking enforcement, were officers authorized to stop individuals suspected of civil parking violations, disastrous consequences would result.

A brief survey of the extensive regulation of parking in Milwaukee – the City from which this case arises – proves this point. The host of parking violations in the city include parking in an intersection, in a crosswalk, in a safety zone, on a sidewalk, alongside a highway excavation, in a loading zone, in an alley of a business district, in a recreational area, in a taxi stand, on public property without a permit and many others, including the infraction in this case – parking less than fifteen feet from a crosswalk.⁵ The majority of these offenses should result in a fine of between twenty and sixty dollars— not a stop by a police official.⁶ These provisions do not exist simply to warn; they are vigorously enforced. In 2014, the city of Milwaukee generated \$21,344,212 in revenue from parking violations.⁷

⁴ *Whren v. U.S.*, 517 U.S. 806 (1996).

⁵ Types and Costs of Parking Citations, Official Website of the City of Milwaukee, <http://city.milwaukee.gov/ParkingServices/ParkingCitations/Parking-Citation-Types.htm#.WsU4MmbMzwc>.

⁶ *Id.*

⁷ Dave Begel, *Parking Tickets Are a Nightmare of Epic Proportions*, ONMILWAUKEE (Aug. 28, 2014),

This situation is not unique to Milwaukee. In Washington, DC, where Amicus and many of its clients are located, the District processed over 1.5 million parking tickets during the 2016 fiscal year.⁸ Similarly, during the 2015 fiscal year, the city of Los Angeles issued over 2.4 million parking citations.⁹ Likewise, in 2013, New York, Los Angeles and Chicago each collected more than \$175 million in parking violations,¹⁰ with New York alone collecting more than \$534 million.¹¹

These numbers are not limited to the nation's largest cities. In Raleigh, a city with a population of less than 469,000, more than 80,000 parking tickets were issued in 2016.¹² Again, most of these violations were for relatively trivial offenses which pose little or no danger to public safety. Over 31,000 of the tickets were issued for expired parking meters; approximately 17,000 tickets were issued to individuals whose vehicles were parked in no parking zones; and almost 7,000 were issued to individuals who exceeded the

<https://onmilwaukee.com/buzz/articles/parkingticketnightmare.html>.

⁸ Nick Ianelli, *DC Issued 'Unparalleled' Number of Traffic Tickets Last Year*, WTOP, Mar. 9, 2017, <https://wtop.com/dc-transit/2017/03/dc-issued-unparalleled-number-traffic-tickets-last-year/>.

⁹ *Top Ten Cities with Highest Revenues from Parking Violations*, Parking Panda (July 23, 2015), <https://www.parkingpanda.com/blog/post/top-10-cities-with-highest-revenues-from-parking-violations>.

¹⁰ *Id.*

¹¹ *Id.*

¹² Diane Wilson, *80,000+ Parking Tickets Issued in Raleigh Last Year*, ABC NEWS (May 11, 2017), <http://abc11.com/news/80000+-parking-tickets-issued-in-raleigh-last-year/1980768/>.

amount of time they could remain parked in a particular area.¹³

The government may legitimately ticket cars for each of these offenses; however, any danger they pose does not justify a stop. While some may question whether officers would actually stop individuals for each of these relatively trivial offenses, police officials' actions post-*Whren* justify these concerns. Courts have upheld officers' decisions to detain motorists in increasingly unusual and questionable circumstances. These include: a) stopping a motorist who fails to signal when entering or leaving a parking spot, even if no other traffic is present;¹⁴ b) failing to signal during a lane shift or crossing a marked line "when there is no other traffic in sight";¹⁵ and c) driving three miles over the speed limit.¹⁶ Courts have gone as far as to interpret minor traffic violations to include acts unrelated to the movement of a vehicle, but rather the physical condition of the vehicle while moving. For

¹³ *Id.*

¹⁴ See *People v. Haywood*, 944 N.E.2d 846 (Ill. App. Ct. 2011) (upholding arrest based on statute that required a turn signal when leaving a parallel-parking spot); *State v. Brunner*, No. 2007CA00285, 2008 WL 4118902, at *1 (Ohio Ct. App. Aug. 29, 2008) (upholding a stop in violation of Canton ordinance requiring motorist to signal when moving toward the curb to park).

¹⁵ See *Dods v. State*, 240 P.3d 1208 (Wyo. 2010) (holding defendant's one instance of crossing the fog line by approximately eight inches for approximately five seconds violated the "single lane of travel statute"); *State v. Batchili*, 865 N.E.2d 1282 (Ohio 2007) (crossing over marked lines violated R.C. 4511.33 which constitutes a minor misdemeanor).

¹⁶ *United States v. Harvey*, 16 F.3d 109 (6th Cir. 1994).

example, courts have determined that the level of tint on a driver's car justifies a stop.¹⁷

Given the extensive nature of parking regulation in most metropolitan areas, as well as the frequency at which violations occur, and individuals are cited for such, authorizing police officials to stop individuals who commit civil parking violations would constitute a massive and dangerous extension of *Whren* which, more than likely, would result in the additional and unnecessary detention of large groups of Americans.

II. AN EXTENSION OF *WHREN* WOULD DISPROPORTIONATELY IMPACT AFRICAN AMERICANS.

Like other facially neutral policies that vest police officials with vast discretion to stop and, if necessary, detain individuals, an extension of *Whren* to parking violations would disproportionately impact African-Americans. As we have seen, in the traffic context, the consequences could be serious and potentially deadly.

¹⁷ See, e.g., *United States v. Stafford*, No. 4:10-CR-75-FL, 2011 WL 2358058, at *4 (E.D.N.C. June 9, 2011) (“[P]olice officers had probable cause to initiate a traffic stop based on a suspected window-tinting violation . . .”); *United States v. Matias-Maestres*, 738 F. Supp. 2d 281, 293 (D.P.R. 2010) (“[T]he officers’ observation of the dark tint of the Ford Ranger’s windows gave them probable cause to pull over the vehicle in order to investigate a possible violation of Puerto Rico traffic law. Thus, any ulterior motive of the officers for stopping the pickup is irrelevant to the stop’s constitutionality.”); see also *United States v. Callarman*, 273 F.3d 1284 (10th Cir. 2001) (upholding a stop on the ground that the officer observed a twelve-inch crack in the windshield).

A. Police Disproportionately Stop African-American Drivers.

As Justice Sotomayor has stated, “[I]t is no secret that people of color are disproportionate victims of [police] scrutiny.”¹⁸ This is particularly true in the context of traffic stops. On average, police officials stop more than 20 million individuals every year.¹⁹ Researchers at Stanford University conducted a four year study which analyzed disparities in police interactions across twenty states.²⁰ After controlling for other factors such as age, stop time, and location, researchers found that African Americans were consistently stopped by police at a higher rate than their white and Hispanic counterparts.²¹ Out of the 60 million police stops assessed, the study concluded that African Americans were consistently cited, searched, and arrested more often than white drivers.²²

These findings were recently reaffirmed in a comprehensive investigation of the Baltimore Police Department (BPD) by the U.S. Department of Justice (DOJ): “BPD . . . stops African American drivers at disproportionate rates. African Americans accounted for 82 percent of all BPD vehicle stops, compared to only 60 percent of the driving age population in the

¹⁸ *Utah v. Strieff*, 579 U.S. ___, 136 S. Ct. 2056, 2070 (Sotomayor, J., dissenting) (citing MICHELLE ALEXANDER, *THE NEW JIM CROW*, 95-136 (2010)).

¹⁹ Stanford University Open Policing Project, Findings, <https://openpolicing.stanford.edu/findings/>.

²⁰ E. Pierson, et al., *A Large-Scale Analysis of Racial Disparities in Police Stops Across the United States*, Stanford University (Aug. 2017).

²¹ *Id.* at 5.

²² *Id.* at 6-7.

City and 27 percent of the driving age population in the greater metropolitan area.”²³

Police officials’ actions are often driven by the false and discriminatory belief that stopping individuals of color is appropriate because they are more likely to possess narcotics. Lieutenant Ernest Leatherbury, a spokesman for the Maryland State Police Department, reasoned that stopping blacks at a disproportionate rate was an “unfortunate byproduct of sound policing” not racism.²⁴ Likewise, the former superintendent of the New Jersey State Police, Carl Williams, stated that it is “most likely a minority group that’s involved with [narcotics].”²⁵ The end result is that “[s]kin color becomes evidence, and race becomes a proxy for general criminal propensity. [Anyone] who is African-American is automatically [a] suspect during every drive to work, the store, or a friend’s house.”²⁶

²³ U.S. Dep’t of Just. C. R. Div., Investigation of the Baltimore City Police Department (2016) [hereinafter DOJ Baltimore Report], at 8, <https://www.justice.gov/opa/file/883366/download>.

²⁴ Michael Fletcher, *Driven to Extremes: Black Men Take Steps to Avoid Police Stops*, WASH. POST, Mar. 29, 1996, at A13.

²⁵ David A. Harris, *The Stories, the Statistics, and the Law: Why “Driving While Black” Matters*, 84 MINN. L. REV. 265, 268 (citing Joe Donahue, *Boss Warns Troopers: Don’t Target Minorities*, NEWARK STAR-LEDGER, Feb. 28, 1999, at 1.). Superintendent Williams was later fired by Governor Christie Whitman for those and other remarks in that interview. See Kathy Barrett Carter & Ron Marsico, *Whitman Fires Chief of State Police*, NEWARK STAR-LEDGER, Mar. 1, 1999, at 1; Robert D. McFadden, *Whitman Fires Police Chief Over Comments on Race*, N.Y. TIMES, Mar. 1, 1999, at A23.

²⁶ See Harris, *supra* note 25 at 268.

Not only are stops based on a driver's race discriminatory, the assumption underlying them is patently false. Researchers comparing data from stops across nine states – Colorado, Connecticut, Illinois, North Carolina, Rhode Island, South Carolina, Texas, Washington, and Wisconsin – found that searches of black drivers stopped were no more likely to result in the discovery of narcotics.²⁷ Additionally, the study found that a stop and search of a Hispanic driver was less likely to uncover narcotics than a stop and search of a white driver.²⁸ Finally, the same study concluded that police officials typically relied on a lower evidentiary threshold when determining whether to stop black and Hispanic drivers, as opposed to white drivers.²⁹

**B. Police Disproportionately
Stop and Search African
Americans Outside of the
Traffic Context.**

Unfortunately, these disparities have not been limited to the traffic context, but are endemic in other areas in which police officials have been vested with broad authority to stop individuals. As the United States Department of Justice recently found, these disparities are particularly present in the stop and frisk context.

After completing a study of the City of Baltimore's policing practices, the Department found that racial disparities in policing were present at every

²⁷ See E. Pierson, *supra* note 20, at 9.

²⁸ *Id.* at 9.

²⁹ *Id.* at 11.

stage of the policing process from stops to arrests to the use of force.³⁰ For example, police officials in Baltimore were three times more likely to stop African-American residents than their white counterparts.³¹

As in the traffic context, the Department of Justice concluded that these disparities were not justified by differences in criminal activity between white and African-American individuals. BPD officers recorded over 300,000 pedestrian stops between January 2010 and May 2015.³² “These stops were concentrated in predominantly African-American neighborhoods and often lack[ed] reasonable suspicion.”³³ Only 3.7 percent of pedestrian stops resulted in officers issuing a citation or making an arrest.³⁴ Many of those arrested based upon pedestrian stops had their charges dismissed upon initial review by either supervisors at BPD’s Central Booking or local prosecutors.³⁵ The report continued:

BPD’s pedestrian stops are concentrated on a small portion of Baltimore residents. BPD made roughly 44 percent of its stops in two small, predominantly African-American districts that contain only 11 percent of the City’s population.

³⁰ DOJ Baltimore Report, *supra* note 23 at 3.

³¹ *Id.* at 7 (“BPD disproportionately stops African-American pedestrians. Citywide, BPD stopped African-American residents three times as often as white residents after controlling for the population of the area in which the stops occurred.”).

³² *Id.* at 5.

³³ *Id.*

³⁴ *Id.* at 6.

³⁵ *Id.*

Consequently, hundreds of individuals – nearly all of them African-American – were stopped on at least 10 separate occasions from 2010-2015. Indeed, 7 African-American men were stopped more than 30 times during this period.³⁶

Rather than being the result of any difference in criminal activity between African Americans and whites, the report found the difference was the product of “a policing strategy that, by its design, led to differential enforcement in African-American communities.”³⁷ A common form that this strategy has taken in Baltimore, as well as other cities, is “broken windows policing” – the vigorous enforcement of quality of life crimes such as graffiti, loitering, prostitution, and drug use based on the unsubstantiated belief that a reduction in such offenses would lead to a reduction in more serious offenses, as well.³⁸

³⁶ *Id.* These problems are not limited to Baltimore. According to an investigation by the American Civil Liberties Union of Illinois, the Chicago Police Department, likewise, stops and frisks African Americans without cause. See Letter from Harvey Grossman, ACLU of Illinois, to Rahm Emanuel, Mayor, City of Chicago, Jan. 15, 2013, at 6, <https://www.aclu-il.org/sites/default/files/aclu-letter-to-mayor-sidewalk-stop-and-frisks-1-15-13.pdf> (recounting litigation by three African Americans against the Chicago Police Department which resulted in reform and data monitoring regarding the use of stop and frisk).

³⁷ DOJ Baltimore Report, at 8.

³⁸ S. Vedantam, C. Benderev, T. Boyle. *How A Theory of Crime and Policing Was Born, And Went Terribly Wrong*. NPR, Nov. 1, 2016, <https://www.npr.org/2016/11/01/500104506/broken-windows-policing-and-the-origins-of-stop-and-frisk-and-how-it-went-wrong>.

In a class action lawsuit against the state of New York, plaintiffs argued that the aggressive policing policies were “selective[ly] and disproportionately enforced in minority communities.”³⁹ The state settled for approximately \$75 million for illegally issuing at least 900,000 criminal summons without legal justification.⁴⁰ Police officials in Baltimore have employed the practice in a similarly discriminatory fashion.⁴¹

C. The Increase in Stops of African Americans Could Have Drastic Consequences.

The likely increase in the stopping of African-American motorists would be no small matter. As DOJ found in Baltimore, stops are often only the first step in a series of escalating and intrusive actions:

Even where an initial frisk is justified, we found that officers often violate the Constitution by exceeding the frisk’s permissible scope. We likewise found

³⁹ Benjamin Weiser, *New York City to Pay Up to \$75 Million Over Dismissed Summonses*, N.Y. TIMES, Jan. 23, 2017, <https://www.nytimes.com/2017/01/23/nyregion/new-york-city-agrees-to-settlement-over-summonses-that-were-dismissed.html>.

⁴⁰ *Id.* See also Josmar Trujillo, *Broken Windows Breaks the Bank*, HUFFINGTON POST, Jan. 30, 2018, https://www.huffingtonpost.com/josmar-trujillo/broken-windows-breaks-the_b_14487326.html.

⁴¹ Timothy Williams and Joseph Goldstein, *In Baltimore Report, Justice Dept. Revives Doubts About Zero-Tolerance Policing*, N.Y. TIMES, Aug. 10, 2016, <https://www.nytimes.com/2016/08/11/us/baltimore-police-zero-tolerance-justice-department.html>.

many instances in which officers strip search individuals without legal justification. In some cases, officers performed degrading strip searches in public, prior to making an arrest, and without grounds to believe that the searched individuals were concealing contraband on their bodies.⁴²

Unfortunately, these are the least of the harms that stopped individuals may suffer. As recent events have shown, once police stop and search an African American – especially if they have reason to believe their stop was unjustified or the result of discrimination – the risk increases that the encounter may result in the use of physical force. The following vignettes recount some of the most recent and tragic occurrences.

i. North Charleston, South Carolina: The Death of Walter Scott

On April 4, 2015 Officer Michael Slager of the North Charleston Police Department stopped Mr. Walter Scott's vehicle because of an alleged taillight violation.⁴³ During the encounter, Mr. Scott took off running, attempting to flee from the scene of the stop.⁴⁴ Officer Slager ordered Mr. Scott to stop, and when he did not, Officer Slager shot him in the back

⁴² DOJ Baltimore Report, *supra* note 23 at 6.

⁴³ Keith O'Shea, *Walter Scott Shooting: Officer Said His Mind Was like 'Spaghetti'*, CNN, Nov. 30, 2016, <https://www.cnn.com/2016/11/29/us/michael-slager-murder-trial-walter-scott/index.html>.

⁴⁴ *Id.*

five times, killing him.⁴⁵ During his trial for use of a weapon during the commission of a violent crime and obstruction of justice, Officer Slager testified that he shot Mr. Scott after a physical confrontation during which Mr. Scott prevailed.⁴⁶ However, video footage of the incident revealed that Mr. Scott was more than seventeen feet away from Officer Slager when he opened fire and more than double that distance when he finished firing.⁴⁷ Officer Slager later admitted that Mr. Scott did not pose a threat to him when he opened fire and that, in fact, Mr. Scott was harmlessly fleeing, some distance away.⁴⁸ Officer Slager was convicted and received a 20-year prison sentence for Mr. Scott's death.⁴⁹

ii. Waller County, Texas: The Death of Sandra Bland

On July 13, 2015, Ms. Sandra Bland failed to use her turn signal at the proper juncture while driving.⁵⁰ Once Officer Brian Encinia stopped Ms. Bland's vehicle, he ordered her to put out the cigarette she was smoking. When she refused, Officer Encinia ordered Ms. Bland out of the vehicle.⁵¹ After she

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ Alan Binder, *Michael Slager, Officer in Walter Scott Shooting, Gets 20-Year Sentence*, N.Y. TIMES, Dec. 7, 2017, <https://www.nytimes.com/2017/12/07/us/michael-slager-sentence-walter-scott.html>.

⁵⁰ Carma Hassan & Holly Yan, *Sandra Bland's Family Settles for \$1.9M in Wrongful Death Suit*, CNN, Sept. 15, 2016, <https://www.cnn.com/2016/09/15/us/sandra-bland-wrongful-death-settlement/index.html>.

⁵¹ *Id.*

refused, Officer Encinia drew his taser, pointed it towards Ms. Bland, and stated “I will light you up! Get out! Now!”⁵² After she exited the vehicle, Officer Encinia violently forced Ms. Bland to the ground.⁵³ When Ms. Bland asked Officer Encinia why he had arrested her, he refused to answer.⁵⁴ Ms. Bland was subsequently booked and transported to the Waller County Jail where, three days later, she was found hanging in her cell.⁵⁵ In his report, Officer Encinia, stated “Force was used to subdue Bland to the ground, after which Ms. Bland continued to fight back.”⁵⁶ A Waller County grand jury later indicted Officer Encinia for perjury and the Texas Department of Public Safety subsequently fired him.⁵⁷ The mystery surrounding Ms. Bland’s controversial arrest and subsequent death incited a wrongful death suit by Ms. Bland’s family and a \$1.9 million settlement with the Waller County Jail and the Texas Department of Public Safety.⁵⁸ To this day, the motivations behind Ms. Bland’s arrest remain unknown. The only certainty is that if not for the traffic stop and Officer Encinia’s subsequent actions, Ms. Bland would still be alive.

⁵² Molly Hennessy-Fiske and Michael Muskal, *‘I Will Light You Up,’ Texas Officer Warns Sandra Bland in Video of Controversial Arrest*, L.A. TIMES, July 21, 2015, <http://www.latimes.com/nation/la-na-sandra-bland-jail-death-20150721-story.html>.

⁵³ See Hassan, *supra* note 50.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ Christine Hauser, *Sandra Bland’s Family Settles 1.9 Million Civil Suit*, N.Y. TIMES, Sept. 15, 2016, <https://www.nytimes.com/2016/09/16/us/sandra-bland-family-settlement-19-million-lawsuit.html>.

iii. Columbia, South Carolina: The Shooting of Levar Jones

In September 2015, Mr. Levar Jones, an African-American man, was stopped by Officer Sean Groubert for not wearing a seatbelt while driving.⁵⁹ Mr. Jones complied with Officer Groubert's request and pulled into a nearby gas station, where Mr. Jones exited his car.⁶⁰ Mr. Jones reached into his car to grab his wallet, but before he could finish, Officer Groubert opened fire.⁶¹ Officer Groubert continued firing, unloading four shots into Mr. Jones as he backed away with his hands raised.⁶² One of the bullets struck Mr. Jones in the hip, causing him to collapse to the ground where he asked the officer "what did I do?"⁶³ Officer Groubert attributed his decision to fire to his misreading of Mr. Jones' body language.⁶⁴ Officer Groubert then handcuffed Mr. Jones and left him on the ground bleeding until an ambulance arrived.⁶⁵ Officer Groubert is currently serving a twelve-year prison sentence for aggravated assault and battery.⁶⁶ What started as a traffic stop for supposedly failing to wear a seatbelt almost resulted in Mr. Jones' unnecessary death.

⁵⁹ Harriet McLeod, *Ex-South Carolina Trooper Sent to Prison for Shooting Unarmed Black*, REUTERS, Aug. 15, 2017, <https://www.reuters.com/article/us-south-carolina-shooting/ex-south-carolina-trooper-sent-to-prison-for-shooting-unarmed-black-motorist-idUSKCN1AV28J>.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

III. THE VICTIMS WOULD BE LARGELY POWERLESS TO PROTECT THEMSELVES.

The Court in *Whren* advised that the proper means of redress for victims of discrimination is the Equal Protection Clause of the Fourteenth Amendment.⁶⁷ However, largely as a result of the Fourteenth Amendment's requirement that victims present proof of discriminatory purpose, the Equal Protection Clause provides insufficient protection to victims of racial discrimination. This requirement, combined with the myriad of other procedural and substantive barriers to relief, leaves victims of racial discrimination virtually powerless.

The Fourteenth Amendment states that "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws."⁶⁸ The purpose of the Equal Protection Clause is to prevent official conduct that discriminates on the basis of race.⁶⁹ However, a defendant who alleges an equal protection violation must show the existence of purposeful discrimination.⁷⁰ Discriminatory purpose implies more than intent as volition or intent as awareness of consequences.⁷¹ It implies that the officer selected or reaffirmed a particular course of action because of and not merely in spite of its adverse effects on that individual defendant.⁷²

⁶⁷ *Id.* at 812.

⁶⁸ U.S. CONST. Amend. XIV.

⁶⁹ *Washington v. Davis*, 426 U.S. 229, 239 (1976).

⁷⁰ *McCleskey v. Kemp*, 481 U.S. 279, 292 (1987).

⁷¹ *Id.* at 298.

⁷² *Id.*

It is particularly difficult, if not impossible, to make a showing of discriminatory intent in the traffic context. As Justice Stevens stated in *Davis*, frequently, the only probative evidence available is “evidence of what actually happened rather than evidence describing the subjective state of mind of the actor.”⁷³ As an initial matter, officers are careful not to express their true motivations for a stop, knowing that it may subject them to liability.⁷⁴ Even if an officer does express discriminatory intent, it is unlikely that the victim will be privy to such as he or she will be in his or her respective vehicle. Nor is it any more likely that an officer will admit afterwards that their actions were racially motivated. Officers will instead suggest that the motorist was chosen based on other factors such as the type of car being driven, the age of the car, temporary license plates, cars traveling or having license plates from known drug-source states, tinted windows, or radar detectors.⁷⁵

⁷³ *Washington*, 426 U.S. at 253 (Stevens, J., concurring).

⁷⁴ See Randall S. Susskind, *Race, Reasonable Articulable Suspicion, and Seizure*, 31 AM. CRIM. L. REV. 327, 341 (1994) (asserting that “[t]he problem with trying to prove that police officers treat racial minorities differently is that it is almost impossible to find concrete evidence of the discrimination” and that police officers and judges rarely admit when race is used as a factor in the decision-making process).

⁷⁵ See Patrick O'Driscoll, *Drug Profile Lawsuit Settled; Minority Motorists Stopped*, DENVER POST, Nov. 10, 1995, at A1 (revealing that the police use the following factors in deciding whom to stop on the highway: race or ethnicity of the driver; temporary license plates; vehicles from known drug-source states; tinted or curtained windows; radar detectors; “visible” air fresheners; and fast-food wrappers on the floor).

Unable to uncover such evidence, victims have attempted to prove intent through the use of statistics demonstrating that police officials in particular jurisdictions disproportionately stop minorities for traffic violations.⁷⁶ However, victims often struggle to acquire the necessary information due to a lack of cooperation from police departments, as well as insufficient resources to gather such evidence.⁷⁷ Furthermore, courts have hesitated to accept statistical information as proof of discriminatory intent.⁷⁸

The end result is that individual victims are largely powerless to seek redress for discriminatory stops given the lack of credible evidence available to them.

⁷⁶ See *United States v. Avery*, 137 F.3d 343, 356 (6th Cir. 1997) (“Avery contends that he has statistical evidence from which the district court should have inferred a discriminatory selection of persons, including himself, for drug investigation and consensual encounter.”); see also *State to Challenge Ruling Troopers Targeted Drivers*, THE RECORD, (Northern NJ), May 2, 1996, at A3 (reporting that a state court judge relied on statistics in his decision that state troopers targeted minority motorists for traffic stops on the New Jersey Turnpike).

⁷⁷ See Dianna Hunt, *Ticket to Trouble/Wheels of Injustice/Certain Areas are Ticket Traps for Minorities*, HOUS. CHRON., May 14, 1995, at 1 (discussing the difficulty in obtaining statistics from the Texas Department of Public Safety concerning minorities and traffic violations).

⁷⁸ See *Burgis v. New York City Dept. of Sanitation*, 798 F.3d 63, 69 n.5 (2d Cir. 2015) (“We have held that statistics alone are not sufficient to allege discriminatory intent in § 1981 or Equal Protection cases brought by an individual only on her own behalf or in cases brought against a state official in her individual capacity[.]” (internal citations omitted)); *United States v. Bullock*, 94 F.3d 896, 899 (4th Cir. 1996) (refusing to consider the arresting officer’s past history of stopping motorists on the basis of race).

CONCLUSION

For the reasons stated, Amicus respectfully requests that the Court grant petitioner's request for certiorari.

Respectfully submitted,

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