

February 14, 2022

The Honorable Pete Buttigieg
Secretary
U.S. Department of Transportation
1200 New Jersey Avenue, SE
Washington, D.C. 20590

The Honorable Merrick B. Garland
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Re: Letter of 71 organizations regarding DOT and DOJ support for pretextual traffic stops

Dear Secretary Buttigieg & Attorney General Garland:

We write on behalf of a diverse group of transportation safety, transportation equity, racial equity, civil rights, police and transformative justice reform organizations – **71 organizations**. **We seek to bring to your attention certain programs supported by the Department of Transportation (DOT) and the Department of Justice (DOJ) that encourage law enforcement reliance on pretextual traffic stops.** We believe these programs require your attention because they fail to promote public safety and jeopardize racial equity.

We request a meeting with policymakers from both of your agencies to discuss our concerns and to explore ways to address them, both retrospectively and going forward. We believe this review is incumbent upon your agencies in light of the [White House’s Executive Order on Advancing Racial Equity and Support for Underserved Communities through the Federal Government](#). The timing of our request is critical given the DOT’s recent release of its National Roadway Safety Strategy and the powerful tools placed in DOT’s hands by the recent infrastructure bill.

Our nation faces a critical moment in our struggle for transportation safety and racial equity. Traffic fatalities spiked in 2021—we are on pace to erase 15 years’ worth of declines.¹ Secretary Buttigieg correctly called this a national “crisis” and one that called for a renewed national commitment to highway safety.² Importantly, the toll of this crisis falls disproportionately on Black, Hispanic, and Native American communities.³

At the same time, our nation is in the midst of a conversation about reimagining the role of police in achieving public safety, and an examination of the impact of discriminatory policing practices that have gone unchanged for too long. In particular, reacting to decades of lived experience and research

demonstrating the gross racial inequities and injustices that come with high-volume traffic stops for low-level infractions, communities around the country are taking action: Some police departments now instruct their officers not to make stops for minor infractions that do not create substantial traffic safety concerns.⁴ Prosecutors have begun declining cases arising from pretextual stops—stops purportedly conducted for a traffic infraction, but where the officers motive is to look for evidence of other criminal activity.⁵ Legislatures are prohibiting police from engaging in certain traffic-related encounters, including pretextual stops and stops that do not implicate traffic safety.⁶ Cities have begun experimenting with unarmed traffic enforcement.⁷ The common thread in these developments is a realization that using traffic stops as a crime fighting mechanism undermines traffic safety and sows gross injustices, primarily on Black and brown communities.⁸

In this moment of crisis and national experimentation, the DOT and DOJ continue to implement programs—ones that long predate this Administration—that undermine both public safety and racial equity by supporting pretextual policing.⁹

For decades, your agencies have sponsored research and issued guidance that encourages law enforcement to conduct traffic stops in order to combat ordinary crime.¹⁰ Over the years, these programs have taught police they can fight everything from drug trafficking to terrorism with a traffic stop.¹¹ In 2008, DOT and DOJ launched a law enforcement program named “Data-Driven Approaches to Crime & Traffic Safety” (DDACTS), which exemplifies this approach. DDACTS, like many of its predecessor programs, teaches police that they can use traffic stops to drive down crime and it encourages police to focus their enforcement efforts in “high crime” locations.

Although perhaps well intentioned, these programs are harmful and misguided. When implemented, programs like DDACTS cause a spike in traffic stops.¹² These stops bring with them myriad risks: the disruption of a person’s daily affairs, policing for profit, overcriminalization of already marginalized groups, and even policing killings.¹³ In addition, by teaching police to use traffic stops as a crime fighting tactic, your programs also encourage police to engage in pretextual policing. Although deemed constitutional by the Supreme Court, pretextual stops are particularly harmful—they result in racial inequities that far exceed disparities in traffic stops aimed at road safety;¹⁴ they result in particularly invasive questioning and searches.¹⁵ The DDACTS approach sounds in Broken Windows policing and other strategies that have wrought incredible harm, predominantly in communities of color, under the name of targeting high-crime neighborhoods.¹⁶

Although the DDACTS program itself does not come with funding for state and local agencies, the program has benefited not only from DOT and DOJ’s imprimatur, but also from the hundreds of millions of dollars a year in highway safety grants that DOT provides to the states. These grants require state and local officials to engage in traffic enforcement, making a DDACTS approach more attractive to law enforcement. While promoting stops and pretextual enforcement, DOT funding comes with little guidance to avoid the well-established harms of police traffic enforcement—from racial inequities in stops, searches, and citations, to uses of force and police killings.¹⁷ In fact, neither DDACTS nor DOT funding generally even require the data collection that might allow communities to assess these harms.

In addition to the social harm they inflict, these programs rest on a shaky foundation. None of the evaluations and impact assessments of the program take stock of the social harms discussed above. Nor are there any independent, rigorous social science evaluations that demonstrate the long-term safety impact of using pretextual traffic stops to fight crime. In fact, there is substantial evidence that a crime-fighting approach based on traffic stops is ineffective. A rigorous analysis of Nashville’s

Metropolitan Police Department—one of DDACTS’s pilot cities—found no relationship between crime and number of police stops.¹⁸ (The study did find, however, that in addition to stark racial disparities, Nashville was making an astronomical number of stops, a number that has come down by 90% since the police department abandoned its previous strategy.¹⁹) A study out of Fayetteville, North Carolina examining the police department’s decision to stop making stops for minor traffic violations found that crime fell as a result.²⁰ (It appears Fayetteville previously had adopted the DDACTS strategy.²¹) Another study of a decrease in traffic stops in Missouri found no discernable effect on total, violent, or property crime rates.²²

Now is the moment to reconsider the federal government’s approach. President Biden’s *Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government* directed your agencies to address “entrenched disparities” and redress racial inequities created by agency policies and programs—programs like those discussed above.²³ The recently enacted \$1 trillion infrastructure bill provides DOT with significant tools to tackle our traffic safety crisis, including hundreds of billions of dollars in discretionary funding and highway safety funding. The DOT is embarking on a National Roadway Safety Strategy that must center equity.

Of course, the DDACTS program is not the only current federal transportation program whose reliance on police enforcement creates significant racial inequities. However, because pretextual traffic stops are inherently motivated by goals unrelated to transportation safety, halting pretextual traffic stop programs like DDACTS is an important first step that need not be delayed by broader discussions of how to improve transportation safety in a manner that centers and advances racial equity.

We respectfully request a meeting with policymakers from both of your agencies to discuss the concerns outlined in this letter, to evaluate the ways your agencies have supported pretextual policing, and to assess what can be done to address past harms and set future policy.

If you have any questions, please feel free to contact Farhang Heydari, Executive Director of the Policing Project at New York University School of Law, at Farhang.Heydari@nyu.edu or 212-998-6469, Dara Baldwin, Director of National Policy Center for Disability Rights at dara.baldwin@ncdr.us or 202-919-5725, or Caron Whitaker Vice President of Government Relations, The League of American Bicyclists at caron@bikeleague.org.

Sincerely,

The Policing Project at NYU School of Law

Center for Disability Rights

PolicyLink

Access Living

Alternate ROOTS

America Walks

American Civil Liberties Union

American Friends Service Committee

APRIL

Association of Pedestrian and Bicycle Professionals (APBP)
Autistic People of Color Fund
Autistic Women & Nonbinary Network
Bike East Bay
Blacks in Law Enforcement of America
Boston Cyclists Union
Center for Constitutional Rights
Center for Policing Equity
Center for Popular Democracy
Clearinghouse on Women's Issues
Coalition for Juvenile Justice
Coalition of Labor Union Women, AFL-CIO
CODEPINK
Color Of Change
Decarcerate Memphis
Defending Rights & Dissent
Detroit Greenways Coalition
Disability Rights Education & Defense Fund
Drug Enforcement and Policy Center, Moritz College of Law, The Ohio State University
Drug Policy Alliance
Emery Celli Brinckerhoff Abady Ward & Maazel LLP
Equal Justice USA
Fair and Just Prosecution
Feminist Majority Foundation
Fines and Fees Justice Center
Health in Justice Action Lab
Homeless Persons Representation Project
Incarcerated Nation Network INC
Innocence Project
Institute for Innovation in Prosecution at John Jay College
Justice Strategies
Law Enforcement Action Partnership
The Leadership Conference on Civil and Human Rights

LivableStreets Alliance
Los Angeles LGBT Center
Love Huntsville
Madison Area Bus Advocates
Mayers Strategic Solutions, LLC
Muslim Justice League
National Association of Criminal Defense Lawyers
National Center for Law and Economic Justice
National Council of Churches
National Juvenile Justice Network
National LGBTQ Task Force
National Urban League
NETWORK Lobby for Catholic Social Justice
ONE Northside
Open Society Policy Center
Parents Organized for Public Education
PeopleForBikes
Restore The Fourth
Salvation and Social Justice
Soul Touchin' Experiences LLC
The Daniel Initiative
The Equiticity Racial Equity Movement
The League of American Bicyclists
The Legal Aid Society of NYC
Transportation Choices Coalition
URGE: Unite for Reproductive & Gender Equity
Vera Institute of Justice
Zealous

CC:

White House Domestic Policy Council
House and Senate Transportation Committees
House and Senate Judiciary Committees
House and Senate Leadership

ENDNOTES

¹ <https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/813199>.

² U.S. DOT, Press Release, USDOT Releases New Data Showing That Road Fatalities Spiked in First Half of 2021 (Oct. 28, 2021), <https://www.transportation.gov/briefing-room/usdot-releases-new-data-showing-road-fatalities-spiked-first-half-2021>.

³ Governors' Highway Safety Association, *An Analysis of Traffic Fatalities by Race and Ethnicity* (June 2021), https://www.ghsa.org/sites/default/files/2021-06/An%20Analysis%20of%20Traffic%20Fatalities%20by%20Race%20and%20Ethnicity_0.pdf; NHTSA, *Early Estimates of Motor Vehicle Traffic Fatalities and Fatality Rate by Sub-Categories in 2020* (June 2021), <https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/813118> (showing 23% increase in traffic fatalities among Black people); City of Chicago 2017 Vision Zero Action Plan (demonstrating that Black, Latino, and Chicagoans living in communities of high economic hardship are at greater risk of dying in traffic crashes).

⁴ See, e.g., Minneapolis, Minnesota (<https://www.startribune.com/minneapolis-police-to-scale-back-low-level-traffic-stops/600087423/>); Lansing, Michigan (<https://www.wlns.com/news/michigan/lansing-police-department-will-no-longer-stop-motorists-for-secondary-traffic-violations/>).

⁵ See, e.g., Ramsey County, Minnesota (<https://www.cnn.com/2021/09/09/us/minnesota-prosecutor-traffic-stop-prosecutions/index.html>); Washtenaw County, Michigan (<https://www.clickondetroit.com/all-about-ann-arbor/2021/01/18/washtenaw-county-prosecutors-office-announces-new-policy-to-fight-racial-profiling/>); San Francisco, California (San Francisco District Attorney, *District Attorney Boudin Pioneers First in the Nation Policy Directives* (Feb. 28, 2020)).

⁶ See, e.g., Virginia (<https://www.virginiamercury.com/2020/10/02/virginia-lawmakers-pass-bill-banning-pretextual-traffic-stops-and-searches-based-on-the-smell-of-marijuana/>); Philadelphia, Pennsylvania (<https://www.inquirer.com/news/philadelphia-city-council-isaiah-thomas-police-driving-while-black-20211014.html>); Brooklyn Center, Minnesota (<https://kstp.com/news/brooklyn-center-city-council-approves-police-reform-resolution/6108968/>).

⁷ Brooklyn Center, Minnesota (<https://kstp.com/news/brooklyn-center-city-council-approves-police-reform-resolution/6108968/>); Berkeley, California (<https://www.nytimes.com/2021/02/24/us/berkeley-police.html>).

⁸ See also New York State Office of the Attorney General, *“Preliminary Report on the New York City Police Department’s Response to Demonstrations Following the Death of George Floyd 39* (July 2020) (“Armed police officers are not needed for traffic enforcement, particularly when the underlying conduct in question is not criminal, such as a broken tail light, speeding, or not wearing a seatbelt.”); Transportation Alternatives, *The Case for Self-Enforcing Streets* (June 2020) (“These recommendations add up to a singular goal — New York City must design its streets and sidewalks for desired outcomes, such as safe mobility, rather than putatively enforce those outcomes after the fact. “), <https://static1.squarespace.com/static/5cab9d9b65a707a9b36f4b6c/t/5eec1235fe73d720da412589/1592529462229/CaseForSelfEnforcingStreets.pdf>.

⁹ These programs harken back to the Drug Enforcement Agency’s infamous Operation Pipeline and its racial profiling. See David Kocieniewski, *New Jersey Argues That the U.S. Wrote the Book on Racial Profiling*, N.Y. Times (Nov. 29, 2000).

¹⁰ See, e.g., Dr. Jeffrey W. Runge, *Role of Traffic Law Enforcement in Homeland Security*, Police Chief Magazine 93 (October 2002); NHTSA, *Traffic Enforcement Saving Lives and Combating Crime*, 83 Traffic Safety Tech (Jan. 1995).

¹¹ See, e.g., NHTSA *Highway Safety Deskbook* (1996) (“Traffic enforcement is demonstrably justifiable on its own merits. Yet, today an emerging secondary benefit reinforces the value of roving patrol officers. They have become major crime fighters! America’s long-standing reliance on the motor vehicle has put crime literally on the nation’s streets and highways. Murderers, robbers, auto thieves, and drug traffickers all travel by motor vehicle.”); *Traffic Safety in the New Millennium* (2003) (“Traffic policing and community policing tactics can help protect our nation against terrorism, just as they help to reduce street crime and prevent traffic crashes. Just as other criminals do, terrorists drive motor vehicles when they conduct surveillance of potential targets, when they transport weapons of mass destruction, and when they drive to and flee from their awful acts . . .”).

¹² Meridian, Idaho, for example, reported a 265% increase in “traffic contacts”. Milwaukee, Wisconsin reported a 136% increase in traffic stops in DDACTS area. Flint, Michigan reported 400% increase in stops from one six-month period to the next. Weatherford, Texas reported a doubling of its stops.

¹³ Although we lack comprehensive data on police killings during traffic stops, a recent investigation found hundreds of the last few years. <https://www.nytimes.com/2021/10/31/us/police-traffic-stops-killings.html>.

¹⁴ See, e.g., Stephen Rushin & Griffin Edwards, *An Empirical Assessment of Pretextual Stops and Racial Profiling*, STAN. L. REV. (2021); Baumgartner, Frank, et al. *Racial Disparities in Traffic Stop Outcomes*. DUKE F. FOR L & SOCIAL CHANGE (2017).

¹⁵ Charles R. Epp, Steven Maynard-Moody & Donald P. Haider-Markel, PULLED OVER: HOW POLICE STOPS DEFINE RACE AND CITIZENSHIP (John M. Conley & Lynn Mather eds., 2014). A recent Los Angeles Times investigation found that bicyclists were searched in 85% of bicycle stops and that 70% of people stopped were identified as Latino, which is disproportionate to both the demographics of areas where stops occurred and bicyclist crash data. <https://www.latimes.com/projects/la-county-sheriff-bike-stops-analysis/>

¹⁶ A study of traffic stops in Nashville—an early adopted of DDACTS—for example, found that non-moving violations—broken taillights, expired registrations, objects hanging from the rear-view mirror—accounted for 45% of all stops. <https://policylab.stanford.edu/media/nashville-traffic-stops.pdf> at 2. These were also the stops that exhibited the greatest racial disparities. Id. (“Further, certain types of stops exhibited far greater disparities than others. Among moving violations (e.g., speeding or reckless driving), the stop rate for black drivers was 24% higher than white drivers; in contrast, among non-moving violations (e.g., broken tail lights or expired registration tags), the stop rate for black drivers was 68% higher than for white drivers.”).

¹⁷ See Mike McIntire & Michael H. Keller, N.Y. Times, *The Demand for Money Behind Many Police Traffic Stops* (Oct 31, 2021) (“Fueling the culture of traffic stops is the federal government, which issues over \$600 million a year in highway safety grants that subsidize ticket writing. Although federal officials say they do not impose quotas, at least 20 states have evaluated police performance on the number of traffic stops per hour, which critics say contributes to overpolicing and erosion of public trust, particularly among members of certain racial groups.”).

Members of our coalition have made numerous recommendations for reforming NHTSA’s 402 program more generally, see https://equitycaucus.org/sites/default/files/Transportation_Equity_Caucus_Review_of_402_program_0.pdf.

¹⁸ <https://www.policingproject.org/news-main/Nashville-report-released>.

¹⁹ On Nashville’s high number of stops, see <https://policylab.stanford.edu/media/nashville-traffic-stops.pdf> at Fig. 1. On Nashville’s recent reduction in stops, see <https://wpln.org/post/nashville-police-report-major-drop-in-traffic-stops-following-accusations-of-racial-bias/>.

²⁰ <https://www.courier-journal.com/story/news/crime/2019/04/25/louisville-traffic-stop-could-fayetteville-north-carolina-police-provide-solutions/3554525002/>.

²¹ <https://fayettevillenc.gov/home/showdocument?id=5460> (page 17).

²² John Shjarback et al. *De-policing and crime in the wake of Ferguson: Racialized changes in the quantity and quality of policing among Missouri police departments*. Journal of Criminal Justice (2017).

²³ <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/>.