since he will be the designate." The email continues: "If someone has already been there more than 72 hours, it may be assumed their continued hold was previously authorized." Further, as noted above, while comprehensive jail records do not exist for detentions prior to April 2014, records do show several recent instances in which FPD detained a person for longer than the purported 72-hour limit.

Despite the fact that those arrested by FPD for outstanding municipal warrants can be held for several days if unable to post bond, the Ferguson municipal court does not give credit for time served. As a result, there have been many cases in which a person has been arrested on a warrant, detained for 72 hours or more, and released owing the same amount as before the arrest was made. Court records do not even track the total amount of time a person has spent in jail as part of a case. When asked why this is not tracked, a member of court staff told us: "It's only three days anyway."

These prolonged detentions for those who cannot afford bond are alarming, and raise considerable due process and equal protection concerns. The prolonged detentions are especially concerning given that there is no public safety need for those who receive municipal warrants to be jailed at all. The Ferguson Municipal Judge has acknowledged that for most code violations, it is "probably a good idea to do away with jail time."

Further, there are many circumstances in which court practices preclude a person from making payment against the underlying fine owed—and thus resolving the case, or at least moving the case toward resolution—and instead force the person to pay a bond. If, for example, an individual is jailed on a "must appear" charge and has not yet appeared in court to have the fine assessed, the individual will not be allowed to make payment on the underlying charge. Rather, the person must post bond, receive a new court date, appear in court, and start the process anew. Even when the underlying fine has been assessed, a person in jail may still be forced to make a bond payment instead of a fine payment to secure release if court staff are unavailable to determine the amount the person owes. And when a person attempts to resolve a warrant before they end up arrested, a bond payment will typically be required unless the person can afford to pay the underlying fine in full, as, by purported policy, the court does not accept partial payment of fines outside of a court-sanctioned payment plan.

Bond forfeiture procedures also raise significant due process concerns. Under current practice, the first missed appearance or missed payment following a bond payment results in a warning letter being sent; after the second missed appearance or payment, the court initiates a forfeiture action (and issues another arrest warrant). As with "warrant warning letters" described above, our investigation has been unable to verify that the court *actually* sends bond forfeiture warning letters. And, as with warrant warning letters, bond forfeiture warning letters are sometimes returned to the court, but court staff members do not appear to make any further attempt to contact the intended recipient.

Upon a bond being forfeited, the court directs the bond money into the City's account and does not apply the amount to the individual's underlying fine. For example, if a person owes a $200 fine pay men , is arrested on a warrant, and posts a bond of $200, the forfeiture of the bond will result in the fine remaining $200 and an arrest warrant being issued. If, instead, Ferguson were to allow this $200 to go toward the under lying fine, this would resolve the matter entirely, obviating the need for any warrant or subsequent court appearance. Not applying a forfeited bond to the underlying fine is especially troubling considering that this policy does not appear to be clearly communicated to those paying bonds. Particularly in cases where the bond is set at an amount near the underlying fine owed—which we have found to be common—it is entirely plausible that a person paying bond would mistakenly believe that payment resolves the case.

When asked why the forfeited bond is not applied to the underlying fine, court staff asserted that applicable law prohibits them from doing so without the bond payer's consent. That

explanation is grounded in an incorrect view of the law. In *Perry v. Anderson*, 168 S.W.3d 541 (Mo. Ct. App. 2005), the Missouri Court of Appeals explicitly upheld a rule requiring that forfeited bonds be applied to pending fines of the person who paid bond and found that such practices are acceptable so long as the court provides sufficient notice. *Id.* at 543-46. In light of the fact that applicable law permits forfeited bonds to be applied to pending fines, Ferguson's longstanding practice of directing forfeited bond money to the City's general fund is troubling. In fiscal year 2013 alone, the City collected forfeited bond amounts of $177,168, which could instead have been applied to the fines of those making the payments.

Ferguson's rules and procedures for *refunding* bond payments upon satisfaction of the underlying fine raise similar concerns. Ferguson requires that when a person pays the underlying fine to avoid bond forfeiture, he or she must pay in person and provide photo identification. Yet, where the underlying fine is less than the bond amount—a common occurrence—the City does not immediately refund the difference to the individual. Rather, pursuant to a directive issued by the current City Finance Director approximately four years ago, bond refunds *cannot* be made in person, and instead must be sent via mail. According to Ferguson's Court Clerk, it is not entirely uncommon for these refund checks to be returned as undeliverable and become "unclaimed property."

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A. Ferguson Law Enforcement Practices Disproportionately Harm Ferguson's African-American Residents and Are Driven in Part by Racial Bias

Ferguson's police and municipal court practices disproportionately harm African Americans. Further, our investigation found substantial evidence that this harm stems in part from intentional discrimination in violation of the Constitution.

African Americans experience disparate impact in nearly every aspect of Ferguson's law enforcement system. Despite making up 67% of the population, African Americans accounted for 85% of FPD's traffic stops, 90% of FPD's citations, and 93% of FPD's arrests from 2012 to 2014. Other statistical disparities, set forth in detail below, show that in Ferguson:

- African Americans are 2.07 times more likely to be searched during a vehicular stop but are 26% less likely to have contraband found on them during a search. They are 2.00 times more likely to receive a citation and 2.37 times more likely to be arrested following a vehicular stop.
- African Americans have force used against them at disproportionately high rates, accounting for 88% of all cases from 2010 to August 2014 in which an FPD officer reported using force. In all 14 uses of force involving a canine bite for which we have information about the race of the person bitten, the person was African American.
- African Americans are more likely to receive multiple citations during a single incident, receiving four or more citations on 73 occasions between October 2012 and July 2014, whereas non-African Americans received four or more citations only twice during that period.
- African Americans account for 95% of Manner of Walking charges; 94% of all Fail to Comply charges; 92% of all Resisting Arrest charges; 92% of all Peace Disturbance charges; and 89% of all Failure to Obey charges.
- African Americans are 68% less likely than others to have their cases dismissed by the Municipal Judge, and in 2013 African Americans accounted for 92% of cases in which an arrest warrant was issued.
- African Americans account for 96% of known arrests made exclusively because of an outstanding municipal warrant.

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Pursuant to Missouri state law on racial profiling, Mo. Rev. Stat. § 590.650, FPD officers are required to collect race and other data during every traffic stop. While some law enforcement agencies collect more comprehensive data to identify and stem racial profiling, this information is sufficient to show that FPD practices exert a racially disparate impact along several dimensions. FPD reported 11,610 vehicle stops between October 2012 and October 2014. African Americans accounted for 85%, or 9,875, of those stops, despite making up only 67% of the population. White individuals made up 15%, or 1,735, of stops during that period, despite representing 29% of the population. These differences indicate that FPD traffic stop practices may disparately impact black drivers. Even setting aside the question of whether there are racial disparities in FPD's traffic *stop* practices, however, the data collected during those stops reliably shows statistically significant racial disparities in the *outcomes* people receive *after* being stopped. Unlike with vehicle stops, assessing the disparate impact of post-stop outcomes—such as the rate at which stops result in citations, searches, or arrests—is not dependent on population data or on assumptions about differential offending rates by race; instead, the enforcement actions imposed against stopped black drivers are compared directly to the enforcement actions imposed against stopped white drivers.

In Ferguson, traffic stops of black drivers are more likely to lead to searches, citations, and arrests than are stops of white drivers. Black people are significantly more likely to be searched during a traffic stop than white people. From October 2012 to October 2014, 11% of stopped black drivers were searched, whereas only 5% of stopped white drivers were searched.

Despite being searched at higher rates, African Americans are 26% *less* likely to have contraband found on them than whites: 24% of searches of African Americans resulted in a contraband finding, whereas 30% of searches of whites resulted in a contraband finding. This disparity exists even after controlling for the type of search conducted, whether a search incident to arrest, a consent search, or a search predicated on reasonable suspicion. The lower rate at which officers find contraband when searching African Americans indicates either that officers' suspicion of criminal wrongdoing is less likely to be accurate when interacting with African Americans or that officers are more likely to search African Americans without any suspicion of criminal wrongdoing. Either explanation suggests bias, whether explicit or implicit. This lower hit rate for African Americans also underscores that this disparate enforcement practice is ineffective.

Other, more subtle indicators likewise show meaningful disparities in FPD's search practices: of the 31 *Terry* stop searches FPD conducted during the period between October 2012 to October 2014, 30 were of black individuals. Of the 103 times FPD asked both the driver and passenger to exit a vehicle during a search, the searched individuals were black in 95 cases; and, while only one search of a white person lasted more than half an hour (1% of all searches of white drivers), 59 searches of African Americans lasted that long (5% of all searches of black drivers).

Of all stopped black drivers, 91%, or 8,987, received citations, while 87%, or 1,501, of all stopped white drivers received a citation. 891 stopped black drivers—10% of all stopped black drivers—were arrested as a result of the stop, whereas only 63 stopped white drivers—4% of all stopped white drivers—were arrested. This disparity is explainable in large part by the high number of black individuals arrested for outstanding municipal warrants issued for missed court payments and appearances. As we discuss below, African Americans are more likely to have warrants issued against them than whites and are more likely to be arrested for an outstanding warrant than their white counterparts. Notably, on 14 occasions FPD listed the only reason for an arrest following a traffic stop as "resisting arrest." In all 14 of those cases, the person arrested was black.

These disparities in the outcomes that result from traffic stops remain even after regression analysis is used to control for non-race-based variables, including driver age, gender, the assignment of the officer making the stop, disparities in officer behavior, and the stated reason the stop was initiated. Upon accounting for differences in those variables, African Americans remained 2.07 times more

likely to be searched; 2.00 times more likely to receive a citation; and 2.37 times more likely to be arrested than other stopped individuals. Each of these disparities is statistically significant and would occur by chance less than one time in 1,000. The odds of these disparities occurring by chance together are significantly lower still.

ii. Disparate Impact of FPD's Multiple Citation Practices

The substantial racial disparities that exist within the data collected from traffic stops are consistent with the disparities found throughout FPD's practices. As discussed above, our investigation found that FPD officers frequently make discretionary choices to issue multiple citations during a single incident. Setting aside the fact that, in some cases, citations are redundant and impose duplicative penalties for the same offense, the issuance of multiples citations also disproportionately impacts African Americans. In 2013, for instance, more than 50% of all African Americans cited received multiple citations during a single encounter with FPD, whereas only 26% of non-African Americans did. Specifically, 26% of African Americans receiving a citation received two citations at once, whereas only 17% of white individuals received two citations at once. Those disparities are even greater for incidents that resulted in more than two citations: 15% of African Americans cited received three citations at the same time, whereas 6% of cited whites received three citations; and while 10% of cited African Americans received four or more citations at once, only 3% of cited whites received that many during a single incident. Each of these disparities is statistically significant, and would occur by chance less than one time in 1,000. Indeed, related data from an overlapping time period shows that, between October 2012 to July 2014, 38 black individuals received four citations during a single incident, compared with only two white individuals; and while 35 black individuals received five or more citations at once, not a single white person did.

iii. Disparate Impact of Other FPD Charging Practices

From October 2012 to July 2014, African Americans accounted for 85%, or 30,525, of the 35,871 *total* charges brought by FPD—including traffic citations, summonses, and arrests. Non-African Americans accounted for 15%, or 5,346, of all charges brought during that period. These rates vary somewhat across different offenses. For example, African Americans represent a relatively low proportion of those charged with Driving While Intoxicated and Speeding on State Roads or Highways. With respect to speeding offenses for all roads, African Americans account for 72% of citations based on radar or laser, but 80% of citations based on other or unspecified methods. Thus, as evaluated by radar, African Americans violate the law at lower rates than as evaluated by FPD officers. Indeed, controlling for other factors, the disparity in speeding tickets between African Americans and non-African Americans is 48% larger when citations are issued not on the basis of radar or laser, but by some other method, such as the officer's own visual assessment. This difference is statistically significant.

Data on charges issued by FPD from 2011-2013 shows that, for numerous municipal offenses for which FPD officers have a high degree of discretion in charging, African Americans are disproportionately represented relative to their representation in Ferguson's population. While African Americans make up 67% of Ferguson's population, they make up 95% of Manner of Walking in Roadway charges; 94% of Failure to Comply charges; 92% of Resisting Arrest charges; 92% of Peace Disturbance charges; and 89% of Failure to Obey charges. Because these non-traffic offenses are more likely to be brought against persons who actually live in Ferguson than are vehicle stops, census data here does provide a useful benchmark for whether a pattern of racially disparate

policing appears to exist. These disparities mean that African Americans in Ferguson bear the overwhelming burden of FPD's pattern of unlawful stops, searches, and arrests with respect to these highly discretionary ordinances.

iv. Disparate Impact of FPD Arrests for Outstanding Warrants

FPD records show that once a warrant issues, racial disparities in FPD's warrant execution practices make it exceedingly more likely for a black individual with an outstanding warrant to be arrested than a white individual with an outstanding warrant. Arrest data captured by FPD often fails to identify when a person is arrested *solely* on account of an outstanding warrant. Nonetheless, the data FPD collects during traffic stops pursuant to Missouri state requirements does capture information regarding when arrests are made for no other reason than that an arrest warrant was pending. Based upon that data, from October 2012 to October 2014, FPD arrested 460 individuals exclusively because the person had an outstanding arrest warrant. Of those 460 people arrested, 443, or 96%, were black. That African Americans are disproportionately impacted by FPD's warrant execution practices is also reflected in the fact that, during the roughly six-month period from April to September 2014, African Americans accounted for 96% of those booked into the Ferguson City Jail at least *in part* because they were arrested for an outstanding municipal warrant.

v. Concerns Regarding Pedestrian Stops

Although available data enables an assessment of the disparate impact of many FPD practices, many other practices cannot be assessed statistically because of FPD's inadequate data collection. FPD does not reliably collect or track data regarding pedestrian stops, or FPD officers' conduct during those stops. Given this lack of data, we are unable to determine whether African Americans are disproportionately the subjects of pedestrian stops, or the rate of searches, arrests, or other post-pedestrian stop outcomes. We note, however, that during our investigation we have spoken with not only black community members who have been stopped by FPD officers, but also non-black community members and employees of local businesses who have observed FPD conduct pedestrian stops of others, all of whom universally report that pedestrian stops in Ferguson almost always involve African-American youth. Even though FPD does not specifically track pedestrian stops, other FPD records are consistent with those accounts. Arrest and other incident reports sometimes describe encounters that begin with pedestrian stops, almost all of which involve African Americans.

a. Disparate Impact of Court Practices

Our investigation has also found that the rules and practices of the Ferguson municipal court also exert a disparate impact on African Americans. As discussed above, once a charge is filed in Ferguson municipal court, a number of procedural barriers imposed by the court combine to make it unnecessarily difficult to resolve the charge. Data created and maintained by the court show that black defendants are significantly more likely to be adversely impacted by those barriers. An assessment of every charge filed in Ferguson municipal court in 2011 shows that, over time, black defendants are more likely to have their cases persist for longer durations, more likely to face a higher number of mandatory court appearances and other requirements, and more likely to have a warrant issued against them for failing to meet those requirements.

In light of the opaque court procedures previously discussed, the likelihood of running afoul of a court requirement increases when a case lasts for a longer period of time and results in more

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There are only roughly 400 cases listed as Voided from 2011-2013, but the data that is available for that relatively small number of Voided cases shows that African-Americans are three times less likely to receive the Voided outcome than others.

b. Ferguson's Racially Disparate Practices Violate Federal Law

This data shows that police and court practices impose a disparate impact on black individuals that itself violates the law. Title VI and the Safe Streets Act prohibit law enforcement agencies that receive federal financial assistance, such as FPD, from engaging in law enforcement activities that have an unnecessary disparate impact based on race, color, or national origin. 42 U.S.C. § 2000d. Title VI's implementing regulations prohibit law enforcement agencies from using "criteria or methods of administration" that have an unnecessary disparate impact based on race, color, or national origin. 28 C.F.R. § 42.104(b)(2); *see also Alexander v. Sandoval*, 532 U.S. 275, 281-82 (2001). Similarly, the Safe Streets Act applies not only to intentional discrimination, but also to any law enforcement practices that unnecessarily disparately impact an identified group based on the enumerated factors. 28 C.F.R. § 42.203. *Cf. Charleston Housing Authority v. USDA*, 419 F.3d 729, 741-42 (8th Cir. 2005) (finding in the Fair Housing Act context that where official action imposes a racially disparate impact, the action can only be justified through a showing that it is necessary to non-discriminatory objectives).

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Thus, under the statutes, the discriminatory impact of Ferguson's law enforcement practices—which is both unnecessary and avoidable—is unlawful regardless of whether it is intentional or not. As set forth below, these practices also violate the prohibitions against intentional discrimination contained within Title VI, the Safe Streets Act, and the Fourteenth Amendment.

2. Ferguson's Law Enforcement Practices Are Motivated in Part by Discriminatory Intent in Violation of the Fourteenth Amendment and Other Federal Laws

The race-based disparities created by Ferguson's law enforcement practices cannot be explained by chance or by any difference in the rates at which people of different races adhere to the law. These disparities occur, at least in part, because Ferguson law enforcement practices are directly shaped and perpetuated by racial bias. Those practices thus operate in violation of the Fourteenth Amendment's Equal Protection Clause, which prohibits discriminatory policing on the basis of race. *Whren*, 517 U.S. at 813; *Johnson v. Crooks*, 326 F.3d 995, 999 (8th Cir. 2003).

An Equal Protection Clause violation can occur where, as here, the official administration of facially neutral laws or policies results in a discriminatory effect that is motivated, at least in part, by a discriminatory purpose. *See Washington v. Davis*, 426 U.S. 229, 239-40 (1976). In assessing whether a given practice stems from a discriminatory purpose, courts conduct a "sensitive inquiry into such circumstantial and direct evidence of intent as may be available," including historical background, contemporaneous statements by decision makers, and substantive departures from normal procedure. *Vill. of Arlington Heights*, 429 U.S. at 266; *United States v. Bell*, 86 F.3d 820, 823 (8th Cir. 1996). To violate the Equal Protection Clause, official action need not rest *solely* on racially discriminatory purposes; rather, official action violates the Equal Protection Clause if it is motivated, at least in part, by discriminatory purpose. *Personnel Adm'r of Mass. v. Feeney*, 442 U.S. 256, 279 (1979).

We have uncovered significant evidence showing that racial bias has impermissibly played a role in shaping the actions of police and court officials in Ferguson. That evidence, detailed below, includes: 1) the consistency and magnitude of the racial disparities found throughout police and court enforcement actions; 2) direct communications by police supervisors and court officials that exhibit racial bias, particularly against African Americans; 3) a number of other communications by

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police and court officials that reflect harmful racial stereotypes; 4) the background and historic context surrounding FPD's racially disparate enforcement practices; 5) the fact that City, police, and court officials failed to take any meaningful steps to evaluate or address the race-based impact of its law enforcement practices despite longstanding and widely reported racial disparities, and instead consistently reapplied police and court practices known to disparately impact African Americans.

a. Consistency and Magnitude of Identified Racial Disparities

In assessing whether an official action was motivated in part by discriminatory intent, the actual impact of the action and whether it "bears more heavily on one race or another" may "provide an important starting point." *Vill. of Arlington Heights*, 429 U.S. at 266 (internal citations and quotation marks omitted). Indeed, in rare cases, statistical evidence of discriminatory impact may be sufficiently probative to itself establish discriminatory intent. *Hazelwood School Dist. v. United States*, 433 U.S. 299, 307-08 (1977) (noting in the Title VII context that where "gross statistical disparities can be shown, they alone may in a proper case constitute prima facie proof of a pattern or practice of discrimination").

The race-based disparities we have found are not isolated or aberrational; rather, they exist in nearly every aspect of Ferguson police and court operations. As discussed above, statistical analysis shows that African Americans are more likely to be searched but less likely to have contraband found on them; more likely to receive a citation following a stop and more likely to receive multiple citations at once; more likely to be arrested; more likely to have force used against them; more likely to have their case last longer and require more encounters with the municipal court; more likely to have an arrest warrant issued against them by the municipal court; and more likely to be arrested solely on the basis of an outstanding warrant. As noted above, many of these disparities would occur by chance less than one time in 1000.

These disparities provide significant evidence of discriminatory intent, as the "impact of an official action is often probative of why the action was taken in the first place since people usually intend the natural consequences of their actions." *Reno v. Bossier Parish Sch. Bd.*, 520 U.S. 471, 487 (1997); *see also Davis*, 426 U.S. at 242 ("An invidious discriminatory purpose may often be inferred from the totality of the relevant fact, including the fact, if it is true, that the [practice] bears more heavily on one race than another."). These disparities are unexplainable on grounds other than race and evidence that racial bias, whether implicit or explicit, has shaped law enforcement conduct.

b. Direct Evidence of Racial Bias

Our investigation uncovered direct evidence of racial bias in the communications of influential Ferguson decision makers. In email messages and during interviews, several court and law enforcement personnel expressed discriminatory views and intolerance with regard to race, religion, and national origin. The content of these communications is unequivocally derogatory, dehumanizing, and demonstrative of impermissible bias.

We have discovered evidence of racial bias in emails sent by Ferguson officials, all of whom are current employees, almost without exception through their official City of Ferguson email accounts, and apparently sent during work hours. These email exchanges involved several police and court supervisors, including FPD supervisors and commanders. The following emails are illustrative:

- A November 2008 email stated that President Barack Obama would not be President for very long because "what black man holds a steady job for four years."

- A March 2010 email mocked African Americans through speech and familial stereotypes, using a story involving child support. One line from the email read: "I be so glad that dis be my last child support payment! Month after month, year after year, all dose payments!"
- An April 2011 email depicted President Barack Obama as a chimpanzee.
- A May 2011 email stated: "An African-American woman in New Orleans was admitted into the hospital for a pregnancy termination. Two weeks later she received a check for $5,000. She phoned the hospital to ask who it was from. The hospital said, 'Crimestoppers.'"
- A June 2011 email described a man seeking to obtain "welfare" for his dogs because they are "mixed in color, unemployed, lazy, can't speak English and have no frigging clue who their Daddies are."
- An October 2011 email included a photo of a bare-chested group of dancing women, apparently in Africa, with the caption "Michelle Obama's High School Reunion."
- A December 2011 email included jokes that are based on offensive stereotypes about Muslims.

Our review of documents revealed many additional email communications that exhibited racial or ethnic bias, as well as other forms of bias. Our investigation has not revealed any indication that any officer or court clerk engaged in these communications was ever disciplined. Nor did we see a single instance in which a police or court recipient of such an email asked that the sender refrain from sending such emails, or any indication that these emails were reported as inappropriate. Instead, the emails were usually forwarded along to others.

Critically, each of these email exchanges involved supervisors of FPD's patrol and court operations. FPD patrol supervisors are responsible for holding officers accountable to governing laws, including the Constitution, and helping to ensure that officers treat all people equally under the law, regardless of race or any other protected characteristic. The racial animus and stereotypes expressed by these supervisors suggest that they are unlikely to hold an officer accountable for discriminatory conduct or to take any steps to discourage the development or perpetuation of racial stereotypes among officers.

Similarly, court supervisors have significant influence and discretion in managing the court's operations and in processing individual cases. As discussed in Parts I and III.B of this report, our investigation has found that a number of court rules and procedures are interpreted and applied entirely at the discretion of the court clerks. These include: whether to require a court appearance for certain offenses; whether to grant continuances or other procedural requests; whether to accept partial payment of an owed fine; whether to cancel a warrant without a bond payment; and whether to provide individuals with documentation enabling them to have a suspended driver's license reinstated before the full fine owed has been paid off. Court clerks are also largely responsible for setting bond amounts. The evidence we found thus shows not only racial bias, but racial bias by those with considerable influence over the outcome of any given court case.

This documentary evidence of explicit racial bias is consistent with reports from community members indicating that some FPD officers use racial epithets in dealing with members of the public. We spoke with one African-American man who, in August 2014, had an argument in his apartment to which FPD officers responded, and was immediately pulled out of the apartment by force. After telling the officer, "you don't have a reason to lock me up," he claims the officer responded: "N*****, I can find something to lock you up on." When the man responded, "good luck with that," the officer slammed his face into the wall, and after the man fell to the floor, the officer said, "don't pass out motherf****r because I'm not carrying you to my car." Another young man described walking with friends in July 2014 past a group of FPD officers who shouted racial epithets at them as they passed.

Courts have widely acknowledged that direct statements exhibiting racial bias are exceedingly rare, and that such statements are not necessary for establishing the existence of discriminatory purpose. *See, e.g.*, *Hayden v. Paterson*, 594 F.3d 150, 163 (2d Cir. 2010) (noting that "discriminatory intent is rarely susceptible to direct proof"); *see also Thomas v. Eastman Kodak Co.*, 183 F.3d 38, 64 (1st Cir. 1999) (noting in Title VII case that "[t]here is no requirement that a plaintiff . . . must present direct, 'smoking gun' evidence of racially biased decision making in order to prevail"); *Robinson v. Runyon*, 149 F.3d 507, 513 (6th Cir. 1998) (noting in Title VII case that "[r]arely will there be direct evidence from the lips of the defendant proclaiming his or her racial animus"). Where such evidence does exist, however, it is highly probative of discriminatory intent. That is particularly true where, as here, the communications exhibiting bias are made by those with considerable decision-making authority. *See Doe v. Mamaroneck*, 462 F. Supp. 2d 520, 550 (S.D.N.Y. 2006); *Eberhart v. Gatys*, 215 F. Supp. 2d 666, 678 (M.D.N.C. 2002).

c. Evidence of Racial Stereotyping

Several Ferguson officials told us during our investigation that it is a lack of "personal responsibility" among African-American members of the Ferguson community that causes African Americans to experience disproportionate harm under Ferguson's approach to law enforcement. Our investigation suggests that this explanation is at odd with the facts. While there are people of all races who may lack personal responsibility, the harm of Ferguson's approach to law enforcement is largely due to the myriad systemic deficiencies discussed above. Our investigation revealed African Americans making extraordinary efforts to pay off expensive tickets for minor, often unfairly charged, violations, despite systemic obstacles to resolving those tickets. While our investigation did not indicate that African Americans are disproportionately irresponsible, it did reveal that, as the above emails reflect, some Ferguson decision makers hold negative stereotypes about African Americans, and lack of personal responsibility is one of them. Application of this stereotype furthers the disproportionate impact of Ferguson's police and court practices. It causes court and police decision makers to discredit African Americans' explanations for not being able to pay tickets and allows officials to disown the harms of Ferguson's law enforcement practices.

The common practice among Ferguson officials of writing off tickets further evidences a double standard grounded in racial stereotyping. Even as Ferguson City officials maintain the harmful stereotype that black individuals lack personal responsibility—and continue to cite this lack of personal responsibility as the cause of the disparate impact of Ferguson's practices—white City officials condone a striking lack of personal responsibility among themselves and their friends. Court records and emails show City officials, including the Municipal Judge, the Court Clerk, and FPD supervisors assisting friends, colleagues, acquaintances, and themselves in eliminating citations, fines, and fees. For example:

- In August 2014, the Court Clerk emailed Municipal Judge Brockmeyer a copy of a Failure to Appear notice for a speeding violation issued by the City of Breckenridge and asked: "[FPD patrol supervisor] came to me this morning and asked if could you please take [care] of this for him in Breckenridge?" The Judge replied: "Sure." Judge Brockmeyer also serves as Municipal Judge in Breckenridge.
- In October 2013, Judge Brockmeyer sent Ferguson's Prosecuting Attorney an email with the subject line "City of Hazelwood vs. Ronald Brockmeyer." The Judge wrote: "Pursuant to our conversation, attached please find the red light camera ticket received by the undersigned. I would appreciate it if you would please see to it that this ticket is dismissed." The Prosecuting Attorney, who also serves as prosecuting attorney in Hazelwood,

responded: "I worked on red light matters today and dismissed the ticket that you sent over. Since I entered that into the system today, you may or may not get a second notice—you can just ignore that."

- In August 2013, an FPD patrol supervisor wrote an email entitled "Oops" to the Prosecuting Attorney regarding a ticket his relative received in another municipality for traveling 59 miles per hour in a 40 miles-per-hour zone, noting "[h]aving it dismissed would be a blessing." The Prosecuting Attorney responded that the prosecutor of that other municipality promised to nol pros the ticket. The supervisor responded with appreciation, noting that the dismissal "[c]ouldn't have come at a better time."
- Also in August 2013, Ferguson's Mayor emailed the Prosecuting Attorney about a parking ticket received by an employee of a non-profit day camp for which the Mayor sometimes volunteers. The Mayor wrote that the person "shouldn't have left his car unattended there, but it was an honest mistake" and stated, "I would hate for him to have to pay for this, can you help?" The Prosecuting Attorney forwarded the email to the Court Clerk, instructing her to "NP [nolle prosequi, or not prosecute] this parking ticket."
- In November 2011, a court clerk received a request from a friend to "fix a parking ticket" received by the friend's coworker's wife. After the ticket was faxed to the clerk, she replied: "It's gone baby!"
- In March 2014, a friend of the Court Clerk's relative emailed the Court Clerk with a scanned copy of a ticket asking if there was anything she could do to help. She responded: "Your ticket of $200 has magically disappeared!" Later, in June 2014, the same person emailed the Court Clerk regarding two tickets and asked: "Can you work your magic again? It would be deeply appreciated." The Clerk later informed him one ticket had been dismissed and she was waiting to hear back about the second ticket.

These are just a few illustrative examples. It is clear that writing off tickets between the Ferguson court staff and the clerks of other municipal courts in the region is routine. Email exchanges show that Ferguson officials secured or received ticket write-offs from staff in a number of neighboring municipalities. There is evidence that the Court Clerk and a City of Hazelwood clerk "fixed" at least 12 tickets at each other's request, and that the Court Clerk successfully sought help with a ticket from a clerk in St. Ann. And in April 2011, a court administrator in the City of Pine Lawn emailed the Ferguson Court Clerk to have a warrant recalled for a person applying for a job with the Pine Lawn Police Department. The court administrator explained that "[a]fter he gets the job, he will have money to pay off his fines with Ferguson." The Court Clerk recalled the warrant and issued a new court date for more than two months after the request was made.

City officials' application of the stereotype that African Americans lack "personal responsibility" to explain why Ferguson's practices harm African Americans, even as these same City officials exhibit a lack of personal—and professional—responsibility in handling their own and their friends' code violations, is further evidence of discriminatory bias on the part of decision makers central to the direction of law enforcement in Ferguson.

d. Historical Background

Until the 1960s, Ferguson was a "sundown town" where African Americans were banned from the City after dark. The City would block off the main road from Kinloch, which was a poor, all-black suburb, "with a chain and construction materials but kept a second road open during the day so housekeepers and nannies could get from Kinloch to jobs in Ferguson."[22] During our

investigative interviews, several older African-American residents recalled this era in Ferguson and recounted that African Americans knew that, for them, the City was "off-limits."

The Ferguson of half a century ago is not the same Ferguson that exists today. We heard from many residents—black and white—who expressed pride in their community, especially with regard to the fact that Ferguson is one of the most demographically diverse communities in the area. Pride in this aspect of Ferguson is well founded; Ferguson is more diverse than most of the United States, and than many of its surrounding cities. It is clear that many Ferguson residents of different races genuinely embrace that diversity.

But we also found evidence during our investigation that some within Ferguson still have difficulty coming to terms with Ferguson's changing demographics and seeing Ferguson's African American and white residents as equals in civic life. While total population rates have remained relatively constant over the last three decades, the portion of Ferguson residents who are African American has increased steadily but dramatically, from 25% in 1990 to 67% in 2010. Some individuals, including individuals charged with discretionary enforcement decisions in either the police department or the court, have expressed concerns about the increasing number of African Americans that have moved to Ferguson in recent years. Similarly, some City officials and residents we spoke with explicitly distinguished Ferguson's African-American residents from Ferguson's "normal" residents or "regular" people. One white third-generation Ferguson resident told us that in many ways Ferguson is "progressive and quite vibrant," while in another it is "typical—trying to hang on to its 'whiteness.'"

On its own, Ferguson's historical backdrop as a racially segregated community that did not treat African Americans equally under the law does not demonstrate that law enforcement practices today are motivated by impermissible discriminatory intent. It is one factor to consider, however, especially given the evidence that, among some in Ferguson, these attitudes persist today. As courts have instructed, the historical background of an official practice that leads to discriminatory effects is, together with other evidence, probative as to whether that practice is grounded in part in discriminatory purposes. *See Vill. of Arlington Heights*, 429 U.S. at 267; *see also Rogers v. Lodge*, 458 U.S. 613, *passim* (1982).

e. Failure to Evaluate or Correct Practices that Have Long Resulted in a Racially Disparate Impact

That the discriminatory effect of Ferguson's law enforcement practices is the result of intentional discrimination is further evidenced by the fact that City, police, and court officials have consistently failed to evaluate or reform—and in fact appear to have redoubled their commitment to—the very practices that have plainly and consistently exerted a disparate impact on African Americans.

The disparities we have identified appear to be longstanding. The statistical analysis performed as part of our investigation relied upon police and court data from recent years, but FPD has collected data related to vehicle stops pursuant to state requirements since 2000. Each year, that information is gathered by FPD, sent to the office of the Missouri Attorney General, and published on the Missouri Attorney General's webpage. The data show disparate impact on African Americans in Ferguson for as long as that data has been reported. Based on that racial profiling data, Missouri publishes a "Disparity Index" for each reporting municipality, calculated as the percent of stops of a certain racial group compared with that group's local population rate. In each of the last 14 years, the data show that African Americans are "over represented" in FPD's vehicular stops. That data also shows that in most years, FPD officers searched African Americans at higher rates than others, but found contraband on African Americans at lower rates.

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B. Ferguson Law Enforcement Practices Erode Community Trust, Especially Among Ferguson's African-American Residents, and Make Policing Less Effective, More Difficult, and Less Safe

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As for men lying
face down in the street,
knees on their necks,
their hands behind
their backs, laboring
like babies on their bellies
trying to crawl, then stiff
as a dime down after
a toss in the air. Tails, see
heads. Heads: *execution*
on the basis of fact,
including the fact, if true.
With the caption: *pass*
*out motherf****r*. An idea
came to me this morning
like an honest mistake.
It's sundown here.
The day, almost entirely
extinguished, closes
its casket's crown,
after bearing gifts
as pointed as its teeth.