

# WHO DOES AMERICA WANT?

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## I. INTRODUCTION

Who does America want? Not the immigrant, not the poor, not the Brown, and certainly not the Black person. When America cannot kill Black and Brown people with its knees, it suffocates them with fines and fees. Black, Brown, and poor people are deliberately excluded from society through fines and fees for traffic offenses. If America treats its own citizens with such contempt, why should immigrants expect better treatment?

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This paper juxtaposes immigration-related fees with the fines and fees for traffic violations to help the reader understand that America's racism and classism exist both at and within its borders. Most of the people in county jails for unpaid traffic tickets are Black and Brown.<sup>1</sup> The fees for the H-1B visa (commonly referred to as the work visa) and naturalization through marriage, two of the main pathways to citizenship, are so excessive that the only message received by immigrants is: "Stay out."

These fees originate from different areas of the law but still communicate the same idea: immigrants, poor, Black, and Brown people are unwanted in America. If unpaid, these fees combined prevent immigrants, poor, Black, and Brown people from driving to work, maintaining medical appointments, taking their children to school, walking the streets, marrying the love of their lives, and working to provide for their basic needs. The American system uses every opportunity to create unnecessary barriers for their progress and oppresses them enough to make them regret their birth or coming to America. This paper examines how the use of fines and fees in the United States reinforces those barriers and communicates that people of color and immigrants are unwanted in America. This paper specifically discusses the impact of fines and fees for traffic violations on Black Americans as well as the use of excessive fines and fees in immigration and naturalization—ultimately arguing that both systems result in the intentional exclusion of Black Americans and immigrants in the United States.

## II. NOT THE PERSON OF COLOR, DEFINITELY NOT THE BLACK MAN

America does not want the Black man. Black people fought for every basic right: to be recognized as human,<sup>2</sup> to be taught,<sup>3</sup> to vote,<sup>4</sup> to receive medical attention,<sup>5</sup> to live in adequate housing,<sup>6</sup> and, relevant to this

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1. "For example, of the 10 states with the highest black–white differential in incarceration in state prisons, five (Wisconsin, Iowa, Minnesota, Illinois, and Nebraska) are in the Midwest and three of these (Wisconsin, Iowa, and Minnesota) imprison black people at more than 10 times the rate of white people." Jaime Worker and Piet van Lier, *Criminalization of Black and Brown Communities in the Midwest Adds to Public Health Crisis During COVID-19 Pandemic*, ECON. POLICY INST. (May 27, 2020, 4:53 PM), <https://www.epi.org/blog/criminalization-of-Black-and-Brown-communities-in-the-midwest-adds-to-public-health-crisis-during-covid-19-pandemic/>.

2. See *Dred Scott v. Sanford*, 60 U.S. 393 (1857); see also Civil Rights Act of 1866, P.L. 122–41, 14 Stat. 27–30 (1866).

3. *Brown v. Bd. of Educ. of Topeka*, 347 U.S. 483 (1954); see also *Brown v. Bd. Of Educ. II*, 349 U.S. 294 (1955).

4. Sarah Pruitt, *When Did African Americans Actually Get the Right to Vote?*, HISTORY (Jan. 29, 2020), <https://www.history.com/news/african-american-voting-right-15th-amendment>; see also Civil Rights Act of 1964, [https://www.senate.gov/artandhistory/history/civil\\_rights/civil\\_rights.htm](https://www.senate.gov/artandhistory/history/civil_rights/civil_rights.htm) (last visited Nov. 7, 2020).

5. John McDonough, *Looking Back on the Desegregation of U.S. Hospitals in 1966*, HEALTH STEW (Mar. 24, 2018), <https://healthstew.com/2018/03/24/looking-back-on-the-desegregation-of-u-s-hospitals-in-1966/>; Soc. Sec. Act Amendments (1965), <https://www.ourdocuments.gov/doc.php?flash=false&doc=99>.

6. *Fair Housing Act*, HISTORY (Sept. 12, 2018), <https://www.history.com/topics/black-history/fair-housing-act>.

paper, to travel.<sup>7</sup> They fought for the right to drive.<sup>8</sup> However, this privilege is severely restricted because driving while Black means wondering if you will be shot or forced to pay excessive fines and fees for minor traffic violations.<sup>9</sup> Black Americans drive hoping America will not punish them because of their poverty and more so—the color of their skin.<sup>10</sup>

Many states suspend driver's licenses for unpaid fines and fees.<sup>11</sup> The majority of the affected drivers are Black and Brown, but more so Black.<sup>12</sup> In some states, if you are unable to pay the fines and fees, you are held in county jail until payment is made.<sup>13</sup> Judges rarely waive fines and fees, and if they do, the order to pay is substituted with jail time.<sup>14</sup> Some states provide payment plans, but there may be an initiation fee and they may charge a collection fee for delinquent cases.<sup>15</sup> This section examines how the fines and fees for traffic violations in Connecticut, South Carolina, Florida, and Georgia reinforce the message that Black people are unwanted in America.

### A. Connecticut

In Connecticut, Black and Brown drivers are targeted and issued tickets they cannot afford to pay, resulting in disproportionate license suspensions. In the 2017 calendar year, in Fairfield County alone, 31.5% of the drivers stopped by police were minorities, despite the fact that the Fairfield minority driving population is approximately 10%.<sup>16</sup> In daylight, Black and Latinx drivers were 1.6 and 1.3 times, respectively, more likely to be pulled over

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7. Julian Hipkins III & David Busch, *Transportation Protests: 1841 to 1992*, CIVIL RIGHTS TEACHING <https://www.civilrightsteaching.org/desegregation/transportation-protests> (last visited Nov. 7, 2020); Civil Rights Act of 1875, Act of Mar. 1, 1875, ch. 114, 18 Stat. 335 (1875).

8. Evan Andrews, *The Green Book: The Black Travelers' Guide to Jim Crow America*, HISTORY (Mar. 13, 2019), <https://www.history.com/news/the-green-book-the-black-travelers-guide-to-jim-crow-america>.

9. David A. Harris, *Driving While Black: Racial Profiling on Our Nation's Highway*, ACLU (June 1999), <https://www.aclu.org/report/driving-while-black-racial-profiling-our-nations-highways>; *Driving While Black*, MARSHALL PROJECT (Sept. 14, 2020), <https://www.themarshallproject.org/records/1819-driving-while-black>; Michael A. Fletcher & Wayne Lawrence, *For Black Motorists, a Never-Ending Fear of Being Stopped*, NAT'L GEOGRAPHIC (Mar. 12, 2018), <https://www.nationalgeographic.com/magazine/2018/04/the-stop-race-police-traffic/#close>.

10. See, e.g., Harris, *supra* note 9.

11. FREE TO DRIVE, <https://www.freetodrive.org/maps/#page-content> (last visited Nov. 7, 2020).

12. *Id.*

13. *Id.*

14. Matthew Menendez, Lauren-Brooke Eisen, Noah Atchison & Michael Crowley, *The Steep Costs of Criminal Justice Fees and Fines*, BRENNAN CTR. FOR JUST. (Nov. 21, 2019), <https://www.brennancenter.org/our-work/research-reports/steep-costs-criminal-justice-fees-and-fines>.

15. *Verify Payment Plan Eligibility*, S.C. DEP'T OF MOTOR VEHICLES (SCDMV), <http://scdmvonline.com/Driver-Services/Reinstatement/Verify-Payment-Plan-Eligibility> (last visited Nov. 7, 2020); *Court and Detention Services*, CITY OF DALLAS, <https://dallascityhall.com/departments/courtdetentionservices/Pages/Payment-Plan.aspx>; *Paying Your Fine / Payment Options*, CITY OF HOUSTON, <https://www.houstontx.gov/courts/paying-your-fine.html> (last visited Nov. 7, 2020); *Parking Ticket Payment Plans*, NYC DEP'T. OF FIN., <https://www1.nyc.gov/site/finance/vehicles/services-payment-plans.page#:~:text=Enrolling%20in%20a%20Parking%20Ticket%20Payment%20Plan&text=To%20earn%20more%2C%20please%20call,.nyc.gov%2Ffinance>.

16. Ken Barone, James Fazzaloro, Jesse Kalinowski & Matthew B. Ross, *State of Connecticut, Traffic Stop Data Analysis and Findings, 2017*, 74 (2019), <http://ctrp3.org/wp-content/uploads/PDF/2017-Connecticut-Racial-Profiling-Report.pdf>.

than other motorists, than at night.<sup>17</sup> Further, Black drivers in Fairfield received misdemeanor summons at a rate four times higher than White drivers.<sup>18</sup> Latinx drivers received misdemeanors almost four times more than White drivers stopped.<sup>19</sup> Further, most of the misdemeanor charges were for driving with a suspended or revoked license, misuse of motor vehicle plates or vehicle registration, and violations of minimum motor vehicle insurance requirements—all of which are unrelated to road safety.<sup>20</sup> Minority drivers in Derby, Stratford, and other towns of Connecticut received similar disproportionate treatment.<sup>21</sup>

People of color are disproportionately stopped, sometimes without good reason, and forced to pay hefty traffic fines. A driver's license is suspended for failure to pay the fine and for failure to appear by the set court date.<sup>22</sup> To remove the suspension, drivers must pay the fine and a \$175 reinstatement fee.<sup>23</sup> Drivers pay \$75-90 in fines for driving without a license.<sup>24</sup> The penalty for a first offense of driving with a suspended license is a fine of \$150.00–\$250.00, up to ninety days imprisonment, and revocation of your license for up to one year.<sup>25</sup> The second offense carries a fine of \$200–\$600, revocation of your license for five years, and a jail sentence for up to one year.<sup>26</sup> A driver's license is also suspended for operating a vehicle without maintaining insurance.<sup>27</sup> The fine ranges from \$100 to \$1000.<sup>28</sup> Failure to maintain insurance carries a fine of up to \$500, three months imprisonment, or both.<sup>29</sup> Failure to carry proof of insurance carries a fine of \$50.<sup>30</sup> The targeted police stops, disproportionate outcomes combined with the burdensome fines and reinstatement fees, can easily create a cycle debt.<sup>31</sup>

Moreover, nonpayment of fines and fees can follow a driver for years. In 2012, Chad Walker attempted to renew his driver's license.<sup>32</sup> The Department of Motor Vehicles (“DMV”) informed him that his license was suspended for failure to pay a traffic ticket issued in 2008.<sup>33</sup> Walker lost his

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17. *Id.* at 74.

18. *Id.*

19. *Id.* at 84.

20. *Id.*

21. *Id.* at 64.

22. *Suspension for Unresolved/Unpaid Tickets*, STATE OF CONN. DEP'T OF MOTOR VEHICLES, <https://portal.ct.gov/DMV/Suspension/Suspension/Suspension-For-Unpaid-Ticket> (last visited Nov. 7, 2020).

23. *Id.*

24. CONN. GEN. STAT. § 14-36(i) (2012).

25. § 14-215.

26. *Id.*

27. § 14-213b.

28. *Id.*

29. § 38a-371.

30. CONN. GEN. STAT. § 14-213 (2012).

31. Matthew Menendez, Lauren-Brooke Eisen, Noah Atchison & Michael Crowley, *The Steep Costs of Criminal Justice Fees and Fines*, BRENNAN CTR. FOR JUST. (Nov. 21, 2019), <https://www.brennancenter.org/our-work/research-reports/steep-costs-criminal-justice-fees-and-fines>.

32. *Personal Narrative: Chad Walker*, FINES & FEES JUST. CTR. (Mar. 2, 2008), <https://finesandfeesjusticecenter.org/articles/personal-narrative-chad-walker/>.

33. *Id.*

job in 2008, so he could not pay the ticket.<sup>34</sup> To renew his license, he needed to pay the debt and the renewal fee.<sup>35</sup> He could not afford to do so and continued to drive with his suspended license.<sup>36</sup> As of 2019, he has not been able to pay his debt.<sup>37</sup> The only offer of payment assistance came from a collection agency, which offered him a five-year plan with a 26% interest charge.<sup>38</sup> He declined the offer because he was unsure if he could keep up with the payments.<sup>39</sup> He is already struggling to keep one of the few jobs that does not require him to have a driver's license.<sup>40</sup> A driver's license is a common requirement for many jobs.<sup>41</sup> The excessive fines and fees, unrelated to safety, along with the disproportionate traffic stops needlessly oppress Black, Brown, and poor people.

### B. *South Carolina*

South Carolina is one of the most oppressive states for Black people.<sup>42</sup> This State lynches Black people through fines and fees. One out of every six residents in South Carolina lives in poverty.<sup>43</sup> In South Carolina, 68.6% of the population is White but only 11.2% of White people live below the poverty line.<sup>44</sup> In contrast, 27% and 6% of the population are Black and Latinx, respectively.<sup>45</sup> Yet, 26.7% Black and 28.6% Latinx people live below the poverty line.<sup>46</sup> The poverty rate of Black people is more than double the rate for White people, most of the Black population lives in poverty, and the Latinx poverty rate almost quadruples the Latinx population.<sup>47</sup> Moreover,

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34. *Id.*

35. *Id.*

36. *Id.*

37. *Id.*

38. *Id.*

39. *Id.*

40. *Id.*

41. See Alana Semuels, *No Driver's License, No Job*, THE ATLANTIC (June 15, 2016), <https://www.theatlantic.com/business/archive/2016/06/no-drivers-license-no-job/486653/>.

42. See Jemar Tisby, *I'm a Black Man Who Moved to the Deep South. Here's What It's Teaching Me About Race*, VOX (Jan. 4, 2019), <https://www.vox.com/first-person/2017/10/31/16571238/black-man-deep-south-race>; Thomas F. Schaller, *South Carolina's Racist History*, BALTIMORE SUN (June 23, 2015), <https://www.baltimoresun.com/opinion/op-ed/bs-ed-schaller-0624-20150623-column.html>; *South Carolina's History of Discrimination*, GREENVILLE NEWS (Jan. 27, 2019), <https://www.greenvilleonline.com/story/news/2019/01/27/history-racism-south-carolina-background/2460480002/>; *Cops Bought Burger King for Dylann Roof Following His Arrest*, KABC-TV (June 23, 2015), <https://abc7.com/dylann-roof-south-carolina-church-shooting-emanuel-african-methodist-episcopal/801013/>; Debbie Elliot, *5 Years After Charleston Church Massacre, What Have We Learned?*, NPR (June 17, 2020), <https://www.npr.org/2020/06/17/878828088/5-years-after-charleston-church-massacre-what-have-we-learned>.

43. *Poverty in South Carolina*, WELFARE INFO, <https://www.welfareinfo.org/poverty-rate/south-carolina/> (last visited Nov. 7, 2020); see also *QuickFacts, South Carolina*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/SC> (last visited Nov. 7, 2020).

44. *Id.*

45. *Id.*

46. *Id.*

47. Nusrat Choudhury, *We're Suing South Carolina for Driving People into Poverty*, ACLU (Nov. 14, 2019), <https://www.aclu.org/news/racial-justice/were-suing-south-carolina-for-driving-people-into-poverty/>.

Black drivers constitute 48% of the driver's license suspensions for failure to pay traffic tickets.<sup>48</sup>

The median commute distance in South Carolina is 7.6 miles each way and 92% of the people commute to work by driving or carpool—a figure higher than the national average of 85.6%.<sup>49</sup> In South Carolina, a driver's license may be suspended for failure to comply with a traffic citation or summons.<sup>50</sup> The driver must pay the associated fines and fees or the license will be suspended.<sup>51</sup> If the license is suspended, the driver must pay the citation fee in full and the \$100 reinstatement fee.<sup>52</sup> The punishment for the first offense of driving with a suspended driver's license is a fine of \$300 or imprisonment for no more than thirty days.<sup>53</sup> If it is the driver's second offense, the driver must pay \$600 or be imprisoned for sixty days.<sup>54</sup> For a third or subsequent offense, the person is fined \$1,000 and imprisoned for up to ninety days or confined to a person's place of residence for no less than ninety days and no more than six months.<sup>55</sup> Moreover, a motorist unable to present the required insurance documents to a traffic official must pay a fine of \$100 to \$200 and may have his registration and license plates confiscated.<sup>56</sup> The State adds a \$5 surcharge for every day the driver fails to submit.<sup>57</sup>

The American Civil Liberties Union filed a class action in October 2019 to address the automatic driver's license suspensions for unpaid fines and fees.<sup>58</sup> The matter is still ongoing.<sup>59</sup> One of the plaintiffs is Janice Carter, an Air Force veteran.<sup>60</sup> Following her honorable discharge, she struggled to find a steady income.<sup>61</sup> In 2018, her annual income was \$5,360.<sup>62</sup> In 2016, she received a speeding ticket for \$129.<sup>63</sup> She was unable to pay, unable to appear before the court, and therefore tried *in absentia*.<sup>64</sup> The DMV suspended her license indefinitely upon notification of her failure to pay.<sup>65</sup> Ms. Carter never received a notice from the court or the DMV.<sup>66</sup>

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48. *Id.*

49. Complaint at 14–15, *White v. Shwedo*, No. 2:19-cv-03083-RMG, 2020 WL 2315800 (D.S.C. May 11, 2020).

50. S.C. CODE ANN. § 56-25-20 (2012).

51. *Id.*

52. SCDMV, <http://scdmvonline.com/Driver-Services/Reinstatement> (last visited Oct. 9, 2020).

53. S.C. CODE ANN. § 56-1-460 (2012).

54. *Id.*

55. *Id.*

56. S.C. CODE ANN. § 56-10-240 (2016).

57. *Id.*

58. Choudhury, *supra* note 47.

59. *White v. Shwedo*, *Legal Documents*, ACLU, <https://www.aclu.org/cases/white-v-shwedo> (last visited Nov. 7, 2020).

60. Complaint, *White v. Shwedo*, *supra* note 49, at 9.

61. *Id.* at 46.

62. *Id.* at 47.

63. *Id.* at 49.

64. *Id.*

65. *Id.* at 40.

66. *Id.*

In 2018, she received another speeding ticket while driving in Florida.<sup>67</sup> She could not arrange her schedule at her job in South Carolina to attend the hearing in Florida, so she was again tried *in absentia* and ordered to pay \$129.<sup>68</sup> The DMV suspended her license again.<sup>69</sup> She did not receive any notice and was unaware of the suspension.<sup>70</sup> Later in 2018, she was ticketed in South Carolina for driving with a defective headlight and a suspended driver's license.<sup>71</sup> This was the first time she learned of the suspensions.<sup>72</sup> The DMV informed her that the only way to remove the suspensions was to pay her debt and a reinstatement fee of \$100.<sup>73</sup> Carter missed the third hearing because it was too far from her home, she could not get a ride, and there was no reliable public transportation.<sup>74</sup> Her hearing was at 9:00 am.<sup>75</sup> *In absentia*, she was sentenced to a total of \$879.50 in fines and fees—\$647 for driving under suspension and \$232.50 for the defective headlight.<sup>76</sup> She received the notices in January 2019, stating that her license would be suspended unless she paid the fines and fees in full by February 2019.<sup>77</sup> Carter could not afford to pay and received two additional suspensions, one for each offense.<sup>78</sup>

Janice Carter is unable to pay a total of \$1,637.50 in traffic fines and reinstatement fees.<sup>79</sup> She is unable to accept a better paying position because her driver's license is suspended. She is trapped by America's system of fines and fees. Emily Bellamy and Linquista White are the two other Black women with similar experiences, represented in the lawsuit. These women, like many Black and Brown people in South Carolina, live in fear, wondering if they will ever escape the cycle of fines and fees and be free to progress without unnecessary oppression.

### C. Florida

Florida raises its revenue through the imposition of fines and fees on criminal defendants, especially through traffic infractions.<sup>80</sup> In 2018 alone, Florida raised \$442 million in revenue through fines and fees.<sup>81</sup> In Florida, a driver's license is suspended for failure to pay or appear within 10 days of such

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67. *Id.*

68. *Id.*

69. *Id.* at 51.

70. *Id.*

71. *Id.*

72. *Id.*

73. *Id.* at 51–52.

74. *Id.* at 52.

75. *Id.*

76. *Id.*

77. *Id.*

78. *Id.* at 53.

79. *Id.*

80. Menendez et al., *supra* note 14, at 3.

81. *Id.* at 27.

failure.<sup>82</sup> Moreover, one in eight drivers has a suspended license, and less than 4% of these suspensions are related to public safety issues, such as drunk driving.<sup>83</sup> Further, Black drivers' licenses are suspended 1.5 times the rate they are represented in the general population.<sup>84</sup>

The fines and fees are arbitrary and unnecessarily burdensome. It costs at least \$67 to reinstate a suspended license after payment of outstanding fines and fees.<sup>85</sup> Drivers can get a restricted license after a suspension for driving under the influence but not for a suspended license due to nonpayment.<sup>86</sup> The suspension remains in place until all fines and fees are paid.<sup>87</sup> If a driver's payment is over ninety days late, the clerk may refer the case to a private collection agency, and that agency can charge an additional 40% of original debt owed.<sup>88</sup>

Moreover, in Jacksonville, Florida, driver's licenses were suspended or could not be obtained, because of unpaid pedestrian tickets.<sup>89</sup> Of all pedestrian tickets, 55% were given to Black drivers, who only represented 29% of the city's population.<sup>90</sup> Of the tickets given to Black drivers, 54% led to license suspensions.<sup>91</sup> The fine for a pedestrian ticket is \$65.<sup>92</sup> Further, individuals with serious criminal convictions must pay all outstanding court debt before they can vote.<sup>93</sup> In Florida, 1.5 million individuals are disenfranchised post-sentence and more than one in five African Americans is disenfranchised.<sup>94</sup> Florida's message to Black people is clear: "You walk, we crush you; you drive, we crush you, and your vote does not matter."

Patshawndria Ivey received the message clearly. Ivey, 22 years old, of West Little River in Miami-Dade County, had her driver's license suspended

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82. Carson Whitelemons, Ashley Thomas & Sarah Couture, *Driving on Empty: Florida's Counterproductive and Costly Driver's License Suspension Practices*, FINES & FEES JUST. CTR. (Oct. 2019), <https://finesandfeesjusticecenter.org/articles/driving-on-empty-florida-drivers-license-suspension-fines-fees/>; see also *Chapter 2: Your Driving Privilege*, STATE OF FLORIDA, <https://www.stateofflorida.com/driving-privilege/#:~:text=Chapter%20%3A%20Your%20Driving%20Privilege&text=You%20cannot%20get%20a%20license,of%20mental%20or%20physical%20problems> (last visited Nov. 7, 2020).

83. *Florida Campaign: Driver's License Suspension, Elimination of Fees*, FINES & FEES JUST. CTR., <https://finesandfeesjusticecenter.org/campaigns/florida-campaign-fines-fees/> (last visited Nov. 7, 2020).

84. Whitelemons et al., *supra* note 82, at 5.

85. *Id.* at 13.

86. *Id.* at 14.

87. *Id.*

88. *Id.*

89. See Ben Conarck, *Pedestrian Tickets Lead to Hundreds of Suspended Driver's Licenses in Jacksonville*, FLORIDA TIMES-UNION (Dec. 13, 2017, 11:37 AM), <https://www.jacksonville.com/news/metro/public-safety/2017-12-13/pedestrian-tickets-lead-hundreds-suspended-driver-s-licenses>.

90. *Id.*

91. *Id.*

92. *Id.*

93. Patricia Mazzei, *Ex-Felons in Florida Must Pay Fines Before Voting, Appeals Court Rules*, N.Y. TIMES (Sept. 11, 2020), <https://www.nytimes.com/2020/09/11/us/florida-felon-voting-rights.html>.

94. Christopher Uggen, Ryan Larson & Sarah Shannon, *6 Million Lost Voters: State-Level Estimates of Felony Disenfranchisement, 2016*, SENTENCING PROJECT (Oct. 6, 2016), <https://www.sentencingproject.org/publications/6-million-lost-voters-state-level-estimates-felony-disenfranchisement-2016/?ga=2.100391518.1139093876.1599960644-734820819.1599960644>.

because of unpaid fines.<sup>95</sup> When she was 16 years old, she received her first ticket for driving a friend's car with expired tags.<sup>96</sup> She started a payment plan but could not keep up with the payments after moving to Georgia.<sup>97</sup> When she returned to Florida, the debt was \$500, and she could not afford to pay it.<sup>98</sup> When an officer pulled her over in February 2019, the officer recognized Ivey's license was suspended and placed her in jail.<sup>99</sup> Ivey was four months pregnant at the time.<sup>100</sup> America told Ivey, "We do not want you or your unborn Black child."

#### D. *Georgia*

Georgia's laws are the most conducive to municipal taxation by citation.<sup>101</sup> In 1983, in a case that originated in Georgia, the U.S. Supreme Court ruled that prior to sentencing, courts must consider the defendant's ability to pay.<sup>102</sup> Thirty-seven years later, drivers' licenses are suspended for failure to pay fines and fees, without any true consideration of the driver's ability to pay.<sup>103</sup> Georgia grants broad authority to its municipal courts to levy fines and fees for municipal revenue. Black and Brown people are punished for it.<sup>104</sup>

Georgia's heavy reliance on fines and fees for revenue is a daily form of oppression, especially for Black and Brown people.<sup>105</sup> One out of every 5.9 residents of Georgia lives in poverty.<sup>106</sup> Black and Brown poverty rates are twice the amount of Whites, when Whites are 60% of Georgia's population.<sup>107</sup> Doraville, an Atlanta suburb, budgeted for fines and fees to make up 17 to 30% of its revenue.<sup>108</sup> In at least three Georgia cities, Georgia collects money for unpaid fines and fees from residents' tax returns.<sup>109</sup> In these three cities, 97% of the defendants were found guilty, in 59% of the cases there

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95. Mary Elen Klas, *Bill Would End Florida's Practice of Suspending Licenses for Driving While Broke*, MIAMI HERALD (Jan. 22, 2020, 6:18 PM), <https://www.miamiherald.com/news/politics-government/state-politics/article239466463.html>.

96. *Id.*

97. *Id.*

98. *Id.*

99. *Id.*

100. *Id.*

101. Dick Carpenter, Ricard Pochkhanawala & Mindy Menjou, *Municipal Fines and Fees: A 50-State Survey of State Laws, Overall Results*, INST. FOR JUST. (Jan. 1, 2020), <https://ij.org/report/fines-and-fees-home/>.

102. *Bearden v. Georgia*, 461 U.S. 660, 672 (1983).

103. *FREE TO DRIVE*, *supra* note 11.

104. *TARGETED FINES AND FEES AGAINST COMMUNITIES OF COLOR, CIVIL RIGHTS & CONSTITUTIONAL IMPLICATIONS*, U.S. COMM'N ON CIVIL RIGHTS 22 (Sept. 2017), [https://www.usccr.gov/pubs/2017/Statutory\\_Enforcement\\_Report2017.pdf](https://www.usccr.gov/pubs/2017/Statutory_Enforcement_Report2017.pdf).

105. *Id.*

106. *Poverty Rate in Georgia*, *supra* note 43; *see also Quick Facts, Georgia*, *supra* note 43.

107. *Poverty Rate in Georgia*, *supra* note 43; *QUICK FACTS, GEORGIA*, *supra* note 43.

108. Carpenter et al., *supra* note 101.

109. Dick Carpenter II, Kyle Sweetland, Jennifer McDonald, *The Price of Taxation by Citation*, INST. FOR JUST., 23 (2019), <https://ij.org/wp-content/uploads/2019/10/Taxation-by-Citation-FINAL-USE.pdf>.

was an ability to pay determination, and 38% of the defendants were sentenced to probation.<sup>110</sup> In most probation cases, the defendants were informed that additional charges would be added to their original debt if they failed to pay after one month.<sup>111</sup> Tickets were mostly for non-speeding violations and trivial infractions such as sitting in a park after closing.<sup>112</sup>

Further, in La Grange, Georgia, the fines and fees were added to the residents' utility bills, of which failure to pay will result in termination.<sup>113</sup> Several of the convictions were more than ten years old when added to the utility bill and the amounts ranged from \$200 to \$4,000.<sup>114</sup> The court debt arose from convictions such as cursing in public, walking in the street, and having an open liquor container.<sup>115</sup>

April Walton, 37 years old, who lives in La Grange, Georgia, is a plaintiff in a pending case challenging the constitutionality of adding fines and fees to utility bills.<sup>116</sup> She is a single mother of three children and the sole caretaker of her disabled mother.<sup>117</sup> In 2015, she incurred court debt for the possession of marijuana during a traffic stop.<sup>118</sup> She was sentenced to twelve months of probation and \$1,145 in fines and fees, with an additional \$45 in monthly probation supervision fees.<sup>119</sup> She was unable to fully pay the debt during the probation period.<sup>120</sup> Thus, the City's probation department transferred her remaining debt of \$853.60 to the City's Collection Department with an interest rate of 6.25%.<sup>121</sup>

Subsequently, Walton requested utility services at her home and the City added the \$907.79 of court debt to her utility account.<sup>122</sup> She entered into an agreement to pay \$90 each month towards her court fines.<sup>123</sup> She made some of the payments but then received an automated call stating that if she did not pay her utility invoice, her service would be disconnected.<sup>124</sup> Twenty percent of the invoice was court debt.<sup>125</sup> Unable to pay, the City disconnected her gas and electricity for three days in February 2017.<sup>126</sup> She was forced to live with

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110. *Id.* at 24.

111. *Id.* at 25.

112. *Id.* at 20–21.

113. Complaint at 3, Ga. State Conference of the NAACP v. City of LaGrange, 940 F.3d 627 (11th Cir. 2019) (No. 18-10053).

114. *Id.* at 22.

115. *Id.*

116. *Id.* at 47.

117. *Id.*

118. Complaint, City of LaGrange, *supra* note 113, at 47.

119. *Id.*

120. *Id.* at 47–48.

121. *Id.* at 48.

122. *Id.*

123. *Id.*

124. *Id.* at 49.

125. *Id.*

126. *Id.*

her brother and to send her children to stay with her ex-husband.<sup>127</sup> She used her tax refund check to pay the debt and services were restored.<sup>128</sup> Ms. Walton continues to live in fear that her services will be disconnected again because she lives paycheck to paycheck and is not sure she will always have \$90 to pay towards her court debt.<sup>129</sup>

F. *The Need for Alternatives and the Impact of COVID-19*

Four different states, similar stories of oppression, all underlined with hopelessness. People are supposed to work hard in America and see the fruits of their labor. The fines and fees system is a manmade obstacle course designed to benefit only the wealthy. Black, Brown, and poor people often have to choose between appearing in court or losing their jobs—the same job they need to pay their fees. The court makes very little accommodation for them. Black, Brown, and poor people are trapped in a cycle of poverty with no governmental paths of escape.

Instead of placing people in jails or suspending their licenses because they are too poor to pay, governments should consider alternatives. For people like Chad Walker, Jessica Carter, and Patshawndria Ivey, governments should recognize their efforts to pay and eventually cancel their debts. These individuals tried to pay their debts but simply could not afford to pay it. The government should implement mandatory fee waiver systems, when a person is clearly unable to pay the requisite fines and fees. Such individuals can instead perform meaningful community service.

The government should grant restricted licenses to those in debt so they can continue to drive to their jobs, earn money, and pay off the debt. Ideally, there should be a federal rule preventing all forms of local government from implementing fees for trivial traffic violations. There should be a nationwide cap for fines, fees, and court costs, and not just a state cap as done in Missouri.<sup>130</sup> More judges should seriously consider a person's ability to pay, as required by the law.<sup>131</sup> When a defendant is unable to pay, judges should automatically order community service or a free diversion program.<sup>132</sup> Poor people should not be called on to give a pound of flesh.<sup>133</sup>

Further, there should be day fines where people are able to pay according to their income, as done in Germany and other European countries.<sup>134</sup> There

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127. *Id.*

128. *Id.* at 50.

129. *Id.*

130. *Missouri SB 5: Modifies Distribution of Traffic Fines and Court Costs Collected by Municipal Courts*, FINES & FEES JUST. CTR. (Dec. 1, 2014), <https://finesandfeesjusticecenter.org/articles/missouri-sb-5-fines-fees-municipal-courts/>.

131. Menendez et al., *supra* note 14, at 11; *see also* Bearden v. Georgia, 461 U.S. 660, 672 (1983).

132. *See* ALEXANDRA NATAPOFF, PUNISHMENT WITHOUT CRIME 235-236 (2018).

133. ALEXES HARRIS, A POUND OF FLESH: MONEY SANCTIONS AS PUNISHMENT FOR THE POOR 2 (2016).

134. Elena Kantorowicz-Reznichenko, *Day Fines: Reviving the Idea and Reversing the (Costly) Punitive Trend*, 55 AM. CRIM. L. REV. 333, 341 (2018).

should be payment plans without an initiation fee and outrageous interest rates for delinquent payments; less targeted police nets within Black and Brown communities;<sup>135</sup> and a repeal of all laws allowing people to be placed in county jail only because they are unable to pay the fines and fees for traffic tickets and other trivial misdemeanors, such as jaywalking. America needs a humanistic approach to fines and fees. These are all practical suggestions that can be implemented by all States. Oppressing Black, Brown, and poor people with unnecessary fines and fees should not be the standard for increasing revenue.

Even in the middle of a pandemic, America fails to see Black, Brown, and poor people as humans. In response to COVID-19, some counties in Georgia extended the deadline for all municipal payments or capped low risk moving violations to \$50.<sup>136</sup> Through judicial intervention, several counties in Florida postponed driver's license suspensions for non-court ordered sanctions in all civil traffic cases, granted extensions for payment of fines and fees for non-criminal violations, cancelled payment plans, and will allow people to re-enroll without penalty.<sup>137</sup> Most of the extensions were for 30-60 days.<sup>138</sup>

However, many Americans lost their jobs during the COVID-19 pandemic and many businesses were closed permanently.<sup>139</sup> The majority of those Americans were Black and Brown.<sup>140</sup> These minor steps will not suffice. States need to do more to correct the injustices of the fines and fees system for minor traffic violations. The declaration for the year 2020 is "No More"—no more will Black and Brown people continue to suffer in silence.<sup>141</sup> The fines and fees system must be revamped. The revenue for towns must not be built on the blood and breath of Black and Brown people. They belong here and should not have to fight to prove it daily. The time has come for new rules to be made.

True justice involves fairness. It is unfair for Black, Brown, and poor people to suffer such plights when there are alternatives to the current system. Without fairness in the fines and fees justice system, the message is clear: Black, Brown, and poor people are unwanted in America.

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135. NATAPOFF, *supra* note 132, at 231.

136. *Id.*

137. *Id.*

138. *Id.*

139. Elise Gould & Valerie Wilson, *Black Workers Face Two of the Most Lethal Preexisting Conditions for Coronavirus—Racism and Economic Inequality*, ECON. POLICY INST. (June 1, 2020), <https://www.epi.org/publication/Black-workers-covid/>.

140. *Id.*

141. See Jeremiah A. DeBerry, *In a Time of Reckoning on Racism, Silence is No Longer an Option*, LAW.COM (July 13, 2020), <https://www.law.com/americanlawyer/2020/07/13/in-a-time-of-reckoning-on-racism-silence-is-no-longer-an-option/>; Yvonne Uyanwune & Jessica Isom, *The Cost of Silence on Racism: A Dialogue*, PSYCHIATRIC TIMES (July 21, 2020), <https://www.psychiatrictimes.com/view/cost-silence-racism-a-dialogue>.

### III. NOT THE IMMIGRANT

United States Citizenship & Immigration Services (“USCIS”) administers lawful immigration in the United States.<sup>142</sup> The H-1B specialty occupations visa (“H-1B”), as well as naturalization through marriage processes are two popular paths to citizenship.<sup>143</sup> However, the fees and processes for these two categories are unnecessarily burdensome for immigrants and financially beneficial to the government.<sup>144</sup> A closer examination of its rules and fees for these major visa categories reveals a hidden objective—keeping immigrants out. The rules and fees force every immigrant to ask the same question: “Is it worth it?”

#### A. *Who are these Immigrants?*

Immigrants are people. Like undocumented immigrants, H-1B holders are often accused of depriving Americans of jobs, even though several studies suggest otherwise.<sup>145</sup> H-1B visa holders are often portrayed as Indian men who come to work in Silicon Valley as cheap labor.<sup>146</sup> However, they are people who endured a highly specialized and difficult pathway in India to work in Silicon Valley.<sup>147</sup> H-1B visa holders are foreign students who decide

142. *Mission and Core Values*, U.S. CITIZENSHIP AND IMMIGRATION SERVS. (USCIS), <https://www.uscis.gov/about-us/mission-and-core-values> (last visited Nov. 7, 2020).

143. LEGAL IMMIGRATION AND ADJUSTMENT OF STATUS REPORT FISCAL YEAR 2020, QUARTER 1, DEP’T OF HOMELAND SEC. (June 2, 2020), <https://www.dhs.gov/immigration-statistics/special-reports/legal-immigration>; *USCIS Completes the H-1B Cap Random Selection Process for FY 2019*, USCIS (Apr. 12, 2018), <https://www.uscis.gov/news/alerts/uscis-completes-the-h-1b-cap-random-selection-process-for-fy-2019>.

144. *See H-1B Specialty Occupations, DOD Cooperative Research and Development Project Workers, and Fashion Models*, USCIS, <https://www.uscis.gov/working-in-the-united-states/temporary-workers/h-1b-specialty-occupations-dod-cooperative-research-and-development-project-workers-and-fashion> (last visited Nov. 7, 2020); *N-400, Application for Naturalization*, USCIS, <https://www.uscis.gov/n-400> (last visited Nov. 7, 2020); *I-485, Application to Register Permanent Residence or Adjust Status*, USCIS, <https://www.uscis.gov/i-485> (last visited Nov. 7, 2020); *I-751, Petition to Remove Conditions on Residence*, USCIS, <https://www.uscis.gov/i-751> (last visited Nov. 7, 2020); *I-130, Petition for Alien Relative*, USCIS, <https://www.uscis.gov/i-130> (last visited Nov. 7, 2020).

145. *See* Rishi Iyengar, *H-1B Visas Are Good for India and Silicon Valley. Capping Them Would Hurt*, CNN BUSINESS (June 21, 2019, 1:11 AM), <https://www.cnn.com/2019/06/20/tech/h1b-visa-cap-india-us/index.html>; *Immigrants and the Economy*, ACLU, <https://www.aclu.org/other/immigrants-and-economy> (last visited Nov. 7, 2020) (discussing “a U.S. Department of Labor’s study prepared by the Bush Administration noting that the perception that immigrants take jobs away from American workers is ‘the most persistent fallacy about immigration in popular thought’ because it is based on the mistaken assumption that there is only a fixed number of jobs in the economy.”); Brennan Hoban, *Do Immigrants “Steal” Jobs from American Workers?*, BROOKINGS (Aug. 24, 2017), <https://www.brookings.edu/blog/brookings-now/2017/08/24/do-immigrants-steal-jobs-from-american-workers/>; Alex Nowrasteh, *Three Reasons Why Immigrants Aren’t Going to Take Your Job*, CATO INST. (Apr. 22, 2020), <https://www.cato.org/blog/three-reasons-why-immigrants-arent-going-to-take-job>.

146. Roli Varma & Everett M. Rogers, *Indian Cyber Workers in US*, ECON. & POL. WEEKLY, 5645–52 (Dec. 25, 2014), [http://www.unm.edu/~varma/print/EPW\\_Cyber.pdf](http://www.unm.edu/~varma/print/EPW_Cyber.pdf); Tom Broadwater, *Silicon Valley is Using H-1B Visas to Crowd Out American Minorities*, ST. LOUIS POST-DISPATCH (Aug. 23, 2017), [https://www.stltoday.com/opinion/columnists/silicon-valley-is-using-h-1b-visas-to-crowd-out-american-minorities/article\\_2c3ac63c-360a-5c79-88b2-729d8673aa28.html](https://www.stltoday.com/opinion/columnists/silicon-valley-is-using-h-1b-visas-to-crowd-out-american-minorities/article_2c3ac63c-360a-5c79-88b2-729d8673aa28.html); Sarah Butcher, *U.S. Banks and Hedge Funds Have No Need of H1B Visa Talent for Elite Roles*, EFINANCIALCAREERS (Sept. 9, 2020), <https://news.efinancialcareers.com/us-en/3004413/h1b-visas-banks-tech-firms>.

147. Eldho Mathews, *Who Gets into India’s IITs?*, INSIDE HIGHER ED (Apr. 14, 2015), <https://www.insidehighered.com/blogs/world-view/who-gets-india%E2%80%99s-iits>.

to stay and work in the United States after completing their studies. They did so well that their schools ask them to stay and teach. They remain in the United States because there are not many job opportunities in their home country for their field of study. H-1B holders are foreign students who took out private loans, because federal loans are unavailable to them, and can only repay the private loans with an American salary.<sup>148</sup> They endure the H-1B visa process and hope USCIS respects their efforts. They come here knowing that they are likely to be paid less than their American counterparts for the same work.<sup>149</sup> These are H-1B visa immigrants of the United States.

Marriage is a fundamental right.<sup>150</sup> Justice Kennedy stated, “[T]he right to personal choice regarding marriage is inherent in the concept of individual autonomy.”<sup>151</sup> He continued, “No union is more profound than marriage, for it embodies the highest ideals of love, fidelity, devotion, sacrifice, and family.”<sup>152</sup> Marriage should be available to everyone, but USCIS makes it very difficult for poor people to marry and live with their spouse.

People who seek naturalization through marriage all have their own stories. They are spouses who come to America, leaving a life of poverty, hoping for a better life in America. They are professionals, like doctors and lawyers, who are forced to take standardized tests all over again to continue in their profession. Some who cannot afford to pay for the standardized test or find it too difficult to pass the exam, join a new profession for the sake of love. For some professionals who move to New York, like many immigrants, they give up their three-bedroom home and cars to live in a one-bedroom apartment and take the subway—all of this to fulfill the American dream with their spouse.<sup>153</sup> These are the stories of immigrant spouses in the United States.

### B. *What is the H-1B Process?*

All H-1B visa holders must find an employer to sponsor them for the H-1B visa.<sup>154</sup> This is not an easy task.<sup>155</sup> They are essentially asking an employer to hire them and pay the USCIS fees. The employer can hire an American citizen and not worry about these fees.<sup>156</sup> Further, the average duration for

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148. *Basic Eligibility Criteria*, FED. STUDENT AID, <https://studentaid.gov/understand-aid/eligibility/requirements>.

149. Daniel Costa & Ron Hira, *H-1B Visas and Prevailing Wage Levels*, ECON. POL. INST. (May 4, 2020), <https://www.epi.org/publication/h-1b-visas-and-prevailing-wage-levels/>.

150. *Obergefell v. Hodges*, 576 U.S. 644, 646 (2015).

151. *Id.*

152. *Id.* at 681.

153. *Immigrants in New York*, AM. IMMIGR. COUNCIL (June 4, 2020), <https://www.americanimmigrationcouncil.org/research/immigrants-in-new-york>.

154. *H-1B Specialty Occupations, DOD Cooperative Research and Development Project Workers, and Fashion Models*, *supra* note 144.

155. *Id.*

156. FACT SHEET #620: MUST AN H-1B EMPLOYER RECRUIT U.S. WORKERS BEFORE SEEKING H-1B WORKERS?, U.S. DEPT. OF LABOR, <https://www.dol.gov/sites/dolgov/files/WHDLegacy/files/whdfs620.pdf> (last visited Nov. 7, 2020).

unemployment is 22 weeks.<sup>157</sup> Many, if not all employers, submit the H-1B visa petition six months before the employee's start date because of the H-1B visa cap.<sup>158</sup> Therefore, the average H-1B visa holder takes no less than a year to find and start a job.<sup>159</sup>

There are two categories of H-1B visas—those subject to a congressionally mandated cap and those not subject to the cap.<sup>160</sup> The cap means that USCIS is only allowed to give a certain number of H-1B visas per year.<sup>161</sup> The petitions are entered into a lottery and randomly selected.<sup>162</sup> Most private institutions, unless considered to be a research institution, are subject to the cap.<sup>163</sup> The number of H-1B visas for applicants with a Bachelor's degree or its equivalent is capped at 65,000 and the number for applicants with an advanced degree is capped at 20,000.<sup>164</sup> Institutions of higher education and research institutes are not subject to the cap.<sup>165</sup> This means that these institutions can apply anytime during the year.<sup>166</sup>

Employers subject to the cap must submit their petitions during the period set by USCIS and wait for USCIS to notify them of the success of their application.<sup>167</sup> H-1B visa petitions must be submitted no more than six months before the employment start date.<sup>168</sup> Prior to March 2020, the application period began on April 1 or 2.<sup>169</sup> This means that the employee usually could not work until September. Further, USCIS takes 30 days to five months to notify employers on the approval or denial of the H-1B petition.<sup>170</sup> Therefore, an employer could file a petition, wait months for USCIS to conduct the lottery, only to recognize that their petition was not selected in the H-1B lottery.<sup>171</sup> It would be far easier to hire an American who can start almost immediately.

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157. Alison Doyle, *How Long Does It Take to Find a Job*, THE BALANCE CAREERS (June 29, 2020), <https://www.thebalancecareers.com/how-long-does-it-take-to-find-a-job-2064245>.

158. Kyle Knapp, *How Long Does It Take to Get an H-1B Visa Petition Approved*, NOLO, <https://www.nolo.com/legal-encyclopedia/how-long-it-takes-get-h-1b-visa.html> (last visited Nov. 7, 2020); Kumar, *How long does H1B Visa Processing Take? Petition Premium vs. Regular*, RED BUS 2 U.S. (Aug. 5, 2020), <https://redbus2us.com/how-long-does-h1b-visa-processing-take-petition-premium-vs-regular/>.

159. See Knapp, *supra* note 158; Kumar, *supra* note 158.

160. *H-1B Specialty Occupations, DOD Cooperative Research and Development Project Workers, and Fashion Models*, *supra* note 144.

161. *Id.*

162. *Id.*

163. *Id.*

164. *Id.*

165. *Id.*

166. *Id.*

167. *Id.*

168. *Id.*

169. *Id.*

170. Knapp, *supra* note 158; Kumar, *supra* note 158.

171. On December 6, 2019, USCIS announced a new rule that requires employers to register online from March 1 through March 20, 2020. Only those employers that are successful in the registration lottery will be able to submit H1B petitions. The registration fee is \$10. See *DHS Proposes Minimal Registration Fee for Petitioners Seeking to File H-1B Cap-Subject Petitions*, USCIS (Sept. 3, 2019), <https://www.uscis.gov/news/alerts/dhs-proposes-minimal-registration-fee-petitioners-seeking-file-h-1b-cap-subject-petitions>; *Featured Issue: FY2021 Cap- Subject H-1B Filing Season*, AILA Doc. No. 19102407, AM. IMMIGR. L. ASS'N (Aug. 14, 2020), <https://www.aila.org/advo-media/issues/all/h1b-registration-tool>.

Premium processing requires USCIS to respond within 15 days, upon payment of \$1,440.<sup>172</sup> However, premium processing is unavailable in April for the capped H-1B visa petitions.<sup>173</sup> Premium processing is available for H-1B visa petitions not subject to the cap and a few other visa categories.<sup>174</sup> The employer is not obligated to pay the premium processing fee.<sup>175</sup>

The employer must offer the immigrant a salary that is approved by the Department of Labor, pay the \$555<sup>176</sup> filing fee,<sup>177</sup> a fraud and prevention filing fee of \$500,<sup>178</sup> and the American Competitiveness and Workforce fee of \$750.<sup>179</sup> This latter fee does not apply to cap-exempt sponsors and increases based on the size of the organization.<sup>180</sup> Payroll deduction for these fees is illegal.<sup>181</sup> Therefore, in most cases, an employer spends approximately \$1,000 to sponsor a potential H-1B employee.

For many employers, such as large corporations, this is a small expenditure, but it is still an optional one. It is optional because an employer would not have to pay \$1,000 to hire an American citizen or any other applicant who does not have to go through the H-1B process. In addition to the fees, the employer and the employee must submit several documents to USCIS.<sup>182</sup> Most attorneys charge between \$2,000 to \$3,000 for H-1B visa filings because of the complex nature of the H-1B visa filings.<sup>183</sup> If USCIS issues a Request for Evidence seeking more information on whether or not to grant the petition, attorney fees can be an additional \$2,000–\$4,500.<sup>184</sup> In the first quarter of 2019, USCIS issued a Request for Evidence in 60% of the completed cases.<sup>185</sup> The employer is not obligated to pay attorney fees but may deduct the amount from the employee's salary as long as it does not reduce

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172. *How Do I Request Premium Processing?*, USCIS, <https://www.uscis.gov/forms/all-forms/how-do-i-request-premium-processing> (last visited Nov. 7, 2020).

173. *Id.*

174. *Id.*

175. *Id.*

176. On July 31, 2020, USCIS announced a final rule, first proposed in November 2019, that effective from October 2, 2020, the H-1B filing fee will increase by 21% from \$460 to \$555. See *USCIS Adjusts Fees to Help Meet Operational Needs*, USCIS (July 31, 2020), <https://www.uscis.gov/news/news-releases/uscis-adjusts-fees-to-help-meet-operational-needs>; see also U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements, 85 Fed. Reg. 62280 (proposed November 14, 2019) (to be codified at 40 C.F.R. pt. 214).

177. FEE SCHEDULE, FORM G-1055, USCIS, <https://www.uscis.gov/sites/default/files/document/forms/g-1055.pdf> (last visited Nov. 7, 2020).

178. *Id.*

179. *Id.*

180. *H and L Filing Fees for Form I-129, Petition for a Nonimmigrant Worker*, USCIS, <https://www.uscis.gov/forms/all-forms/h-and-l-filing-fees-for-form-i-129-petition-for-a-nonimmigrant-worker> (last visited Nov. 7, 2020).

181. *Wage and Hour Division*, DEP'T OF LAB. (Aug. 2009), <https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/whdfs62H.pdf>.

182. *H-1B Specialty Occupations, DOD Cooperative Research and Development Project Workers, and Fashion Models*, *supra* note 144.

183. Stuart Anderson, *Employers Have Paid \$5 Billion in H-1B Visa Fees Since 1999*, FORBES (Apr. 1, 2019), <https://www.forbes.com/sites/stuartanderson/2019/04/01/employers-have-paid-5-billion-in-h-1b-visa-fees-since-1999/#4d0b9f8968d1>.

184. *Id.*

185. *Id.*

the worker's pay below the required wage rate.<sup>186</sup> Therefore, a H-1B worker whose salary is above the wage rate can end up paying the attorney's fee.

For most recent graduates with student loans and no real savings or family support, this can mean forbearance of loans. Graduates would have to negotiate with their landlord, find alternative living arrangements, or return home until the paperwork is processed. Leaving the country after the initial filing of most immigration petitions is seen as a withdrawal of the application.<sup>187</sup> It is therefore necessary for some students to return home before the H-1B petition is filed and processed.<sup>188</sup> Under President Trump's administration, H-1B visa denial rates quadrupled for both new and continuing employees.<sup>189</sup> H-1B visa denial rates rose from 6% in fiscal year 2015 to 30% in the first quarter of fiscal year 2020. On June 23, 2020, President Trump temporarily suspended the issuance of H-1B visas to protect the jobs of American workers, as the economy recovers from COVID-19.<sup>190</sup> H-1B immigrants are unwanted in America.<sup>191</sup>

### C. *Naturalization Through Marriage*

Marriage to a U.S. citizen or permanent resident is one of the fastest ways to obtain a Green Card in America.<sup>192</sup> It takes less than two years for most people to get a Green Card from this process.<sup>193</sup> The process varies slightly if

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186. *Wage and Hour Division*, *supra* note 181.

187. *Emergency Travel*, USCIS, <https://www.uscis.gov/green-card/green-card-processes-and-procedures/travel-documents/emergency-travel> (last visited Nov. 7, 2020).

188. Some F-1 students apply for Optional Practical Training (OPT). This allows them to stay and work in America for one year after graduation. However, if the OPT will end before the transition to H-1B is complete, these former students/beneficiaries of the H-1B visa are advised to return home and wait to avoid a later accusation of overstaying their time. See *Optional Practical Training (OPT) for F-1 Students*, USCIS (Apr. 22, 2020), <https://www.uscis.gov/working-in-the-united-states/students-and-exchange-visitors/optional-practical-training-opt-for-f-1-students>.

189. Stuart Anderson, *New Data Show H-1B Denial Rates Reaching Highest Levels*, FORBES (Apr. 10, 2019), <https://www.forbes.com/sites/stuartanderson/2019/04/10/new-data-show-h-1b-denial-rates-reaching-highest-levels/#169c3995797f>.

190. See *USCIS Statement on Presidential Proclamation*, USCIS (June 23, 2020), <https://www.uscis.gov/news/alerts/uscis-statement-on-presidential-proclamation>; Michelle Hackman, *Trump Moves to Temporarily Suspend New H-1B, Other Visas amid Covid-19 Pandemic*, WALL ST. J. (June 23, 2020), <https://www.wsj.com/articles/trump-order-would-temporarily-suspend-new-h-1b-other-visas-11592853371>; *Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak*, WHITE HOUSE (June 22, 2020), <https://www.whitehouse.gov/presidential-actions/proclamation-suspending-entry-aliens-present-risk-u-s-labor-market-following-coronavirus-outbreak/>; Michael D. Shear & Miriam Jordan, *Trump Suspends Visas Allowing Hundreds of Thousands of Foreigners to Work in the U.S.*, N.Y. TIMES (June 22, 2020), <https://www.nytimes.com/2020/06/22/us/politics/trump-h1b-work-visas.html>.

191. *USCIS Statement on Presidential Proclamation*, *supra* note 190; Hackman, *supra* note 190; *Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak*, *supra* note 190; Shear & Jordan, *supra* note 190.

192. "A Green Card holder (permanent resident) is someone who has been granted authorization to live and work in the United States on a permanent basis. As proof of that status, U.S. Citizenship and Immigration Services (USCIS) grants a person a permanent resident card, commonly called a 'Green Card.'" *Get a Green Card*, U.S. DEP'T OF HOMELAND SEC., <https://www.dhs.gov/how-do-i/get-green-card> (last visited Nov. 7, 2020).

193. Richard Hanus, *A Timeline of Green Card Marriage in 2019*, USA VISA COUNSEL (May 10, 2019), <https://www.usavisacounsel.com/articles/a-timeline-of-green-card-marriage-in-2019.htm>.

an American is filing for a spouse outside of the country than if filing for a spouse who entered legally on another visa and needs to adjust their status.<sup>194</sup>

American citizens must file the I-130 Petition for Alien Relative, if their spouse is outside of the United States.<sup>195</sup> If the spouse is already in the United States, the I-130 and the I-485 Application to Register Permanent Residence or to Adjust Status must be filed.<sup>196</sup> Before COVID-19, USCIS took twelve to eighteen months to process applications of spouses outside the United States,<sup>197</sup> and nineteen to thirty-four months for those seeking an adjustment of status, because they were already in the United States.<sup>198</sup>

When the forms are filed, USCIS reviews the petition and interviews the couple to determine if they entered into a bona fide marriage.<sup>199</sup> The American spouse must show that he or she is able to support the immigrant spouse and must earn at least 125% of the federal poverty level.<sup>200</sup> If the couple has been married for less than two years, a conditional Green Card is issued that expires after two years.<sup>201</sup> The couple must file an I-751 Petition to Remove Conditions on Residence, ninety days prior to the expiration of this card, for the immigrant spouse to obtain a ten-year green card.<sup>202</sup>

The filing fees for the I-130, I-485, and I-751 are \$535, \$1,140, and \$595, respectively.<sup>203</sup> Premium processing is unavailable for this category.<sup>204</sup> These forms are complex, and USCIS is known to return or disregard forms for the slightest of errors.<sup>205</sup> Consequently, many people hire an attorney.<sup>206</sup> The attorney fee ranges from \$800 to \$4,000.<sup>207</sup> Therefore, most married couples must spend at least \$1,000 on their marriage to a foreign national and much more if they retain an attorney. These fees are burdensome, especially for

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194. *Citizenship Resource Center—I am Married to a U.S. Citizen*, USCIS, <https://www.uscis.gov/us-citizenship/citizenship-through-naturalization/naturalization-spouses-us-citizens> (last visited Aug. 5, 2020).

195. *Id.*

196. *Id.*

197. *Check Case Processing Times*, USCIS, <https://egov.uscis.gov/processing-times/> (last visited Nov. 7, 2020).

198. *Id.*

199. *Green Card for Immediate Relatives of U.S. Citizen*, USCIS, <https://www.uscis.gov/green-card/green-card-eligibility/green-card-immediate-relatives-us-citizen> (last visited Nov. 7, 2020).

200. *Id.*

201. *Id.*

202. *Id.*

203. *Our Fees*, USCIS, <https://www.uscis.gov/forms/our-fees> (last visited Nov. 7, 2020).

204. *I-907, Request for Premium Processing Service*, USCIS, <https://www.uscis.gov/i-907> (last visited Nov. 7, 2020).

205. *Insider Alert: No More Room for Error in Visa Applications?*, BOUNDLESS (Nov. 27, 2018), <https://www.boundless.com/blog/insider-alert-no-room-error-visa-applications/>; *Now Even Small Application Errors Can Lead to a Visa Denial*, HERNANDEZ & ASSOCS., P.C., <https://www.hdezlaw.com/articles/now-even-small-application-errors-can-lead-to-a-visa-denial/> (last visited Nov. 7, 2020); *New USCIS Policy: Errors Can Lead To Application Denials*, FILERIGHT.COM (Sept. 21, 2018), <https://www.fileright.com/blog/new-uscis-policy-errors-can-lead-application-denials/>; Kavitha Surana, *Authorities Can Now Deny Visa and Green Card Applications Without Giving Applicants a Chance to Fix Errors*, PROPUBLICA (Sep. 11, 2018), <https://www.propublica.org/article/authorities-can-now-deny-visa-and-green-card-applications-without-giving-applicants-a-chance-to-fix-errors>.

206. *Insider Alert: No More Room for Error in Visa Applications?*, *supra* note 205.

207. Iiona Bray, *How Expensive Is an Immigration Lawyer?*, NOLO, <https://www.nolo.com/legal-encyclopedia/free-books/fiance-marriage-visa-book/chapter17-13.html> (last visited Nov. 7, 2020).

individuals earning just above or at least 125% of the poverty line. It can take many months or even years to save that amount of money.

When a person marries a citizen, they receive the conditional green card for two years.<sup>208</sup> The condition is removed after proving a bona fide marriage, and then the Green Card holder can apply for citizenship.<sup>209</sup> The immigrant spouse can apply for citizenship after three years.<sup>210</sup> The couple must complete the N-400 Application for Naturalization, which has a filing fee of \$640 and a biometric fee of \$85.<sup>211</sup> After payment of the \$725, the immigrant spouse must pass a civics test and then take the Oath of Allegiance to the United States of America.<sup>212</sup> Fee exemptions are only available for applicants who are 75 years and older and for certain military personnel.<sup>213</sup>

Further, for many years, USCIS failed to enforce the rule requiring lawful entrance by the immigrant spouse.<sup>214</sup> People who overstayed their time were able to marry freely, get their Green Cards, and eventually become naturalized citizens.<sup>215</sup> However, this rule is now being enforced under the Trump administration, resulting in chaos. For example, one couple went to their USCIS interview to prove their bona fide marriage.<sup>216</sup> USCIS believed them and the agent approved the replacement of the conditional green card.<sup>217</sup> However, before they could leave the agent's office, Immigration and Customs Enforcement agents detained the husband and four other marriage applicants interviewing that morning.<sup>218</sup> After many legal motions and court hearings, he was released after two months with an ankle monitor to continue filing for his Green Card.<sup>219</sup>

It can be extremely hard to pay such exorbitant immigration and attorney fees. The average age for marriage in the United States is between 25 to 30 years old.<sup>220</sup> At this age, many people are at the beginning of their career paths and working to pay off student loans, essentially working from paycheck to paycheck.<sup>221</sup> Dexter, a Black American man, fell in love with a

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208. *Conditional Permanent Residence*, USCIS, <https://www.uscis.gov/green-card/after-we-grant-your-green-card/conditional-permanent-residence> (last visited Nov. 7, 2020).

209. *Id.*

210. *Citizenship Resource Center—I am Married to a U.S. Citizen*, *supra* note 194.

211. *N-400, Application for Naturalization: Filing Fee*, *supra* note 144.

212. WHAT SHOULD I EXPECT FROM THE NATURALIZATION PROCESS?, USCIS 37–38 (2020), <https://www.uscis.gov/sites/default/files/document/guides/chapter5.pdf>.

213. *Citizenship Resource Center—I am Married to a U.S. Citizen*, *supra* note 194.

214. Vivian Yee, *A Marriage Used to Prevent Deportation. Not Anymore.*, N.Y. TIMES (Apr. 19, 2018), <https://www.nytimes.com/2018/04/19/us/immigration-marriage-green-card.html>.

215. *Id.*

216. *Id.*

217. *Id.*

218. *Id.*

219. *Id.*

220. Rebecca Lake, *What Is the Average Age of Marriage in the U.S.?*, BRIDES (Apr. 14, 2020), <https://www.thebalance.com/what-is-the-average-age-of-marriage-in-the-u-s-4685727>.

221. Anna Helhoski & Brianna McGurran, *How Do You Compare? Average Salaries by Age and Occupation*, NERDWALLET (Aug. 23, 2019), <https://www.nerdwallet.com/article/loans/student-loans/average-salary-by-age>.

foreign national while pursuing his Master's degree.<sup>222</sup> He married her, and she eventually came to the United States to pursue her own Master's degree, under a F-1 student visa. Dexter completed his studies, works as a freelancer and does odd jobs to fill the financial gaps. As a foreign student, his wife can only work 20 hours a week.<sup>223</sup> Near completion of her program, they attempted to change her status from F-1 to permanent residency, but they could not afford the fees.<sup>224</sup> They could barely afford their basic needs. Life was hard, but they were together and determined to make it work. They knew their financial circumstances would change eventually. After a dramatic effort to save money for the filing fees, Dexter and his wife still did not have sufficient funds. Dexter was forced to ask someone to co-sponsor the petition. Moreover, they could not afford to pay an attorney and unfortunately, there was a filing error. USCIS requested more information and they must now pay additional processing fees.<sup>225</sup> USCIS, like the municipal courts handling traffic violations, gives no regard to their ability to pay. America punished Dexter's for his poverty and for loving an immigrant.<sup>226</sup>

If America wanted immigrants, USCIS would create payment plans for spouses who are unable to pay the fees all at once. USCIS could issue a conditional visa to the immigrant spouse until full payment. The sooner the spouse is able to come to America, the faster that person is able to build their life and contribute to the economy. A spouse should not be deprived of such an essential relationship because they cannot afford to pay such exorbitant fees upfront.

Further, USCIS could create a sliding scale for fees based on income. Sliding fee scales are available for essential services and should also be available to immigration petitioners.<sup>227</sup> Currently, USCIS offers a reduced fee for the N-400 Naturalization Application.<sup>228</sup> However, that is only available for those earning more than 150% and less than 200% of the Federal Poverty Guidelines (\$19,140 to \$25,520 per year).<sup>229</sup> USCIS also offers a fee waiver

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222. This person shared their story with the author but wished to remain anonymous, an alternative name is used to tell his story.

223. *For How Long May an F-1 Student Continue to Work on Campus?*, U.S. IMMIGRATION AND CUSTOMS ENFT (July 28, 2020), <https://www.ice.gov/sevis/employment>.

224. *Citizenship Resource Center—I am Married to a U.S. Citizen*, *supra* note 194.

225. *Id.*

226. This information was obtained through a conversation with an immigration attorney and an applicant with such a story.

227. NHSC SLIDING FEE DISCOUNT PROGRAM INFORMATION PACKAGE, NAT'L HEALTH SERV. CORPS (June 2019), <https://nhsc.hrsa.gov/sites/default/files/NHSC/nhsc-sites/nhsc-sliding-fee-discount-program.pdf>; *Where Can I Go to Get Free or Low-Cost Health Care?*, U.S. DEP'T OF HEALTH & HUMAN SERVS. (July 9, 2020), <https://www.hhs.gov/answers/health-insurance-reform/where-can-i-find-free-or-low-cost-health-care/index.html>; *Get Help Paying for Child Care*, CHILD CARE.GOV, <https://www.childcare.gov/index.php/consumer-education/get-help-paying-for-child-care> (last visited Nov. 7, 2020).

228. *I-942, Request for Reduced Fee*, USCIS (Feb. 13, 2020), <https://www.uscis.gov/i-942>.

229. *Id.*; see also POVERTY GUIDELINES, ALL STATES (EXCEPT ALASKA AND HAWAII), OFFICE OF THE ASSISTANT SEC'Y FOR PLANNING & EVALUATION 1 (2020), <https://aspe.hhs.gov/system/files/aspe-files/107166/2020-percentage-poverty-tool.pdf>.

to those earning at or below 150% of the Federal Poverty Guidelines.<sup>230</sup> Therefore, a person earning \$2600 annually, \$216 per month, would not be eligible for these services. Further, USCIS only considers petitioners who receive a “Means Test Benefit,” which does not include student loans and unemployment benefits.<sup>231</sup> Also, being eligible does not guarantee a fee reduction or fee waiver.<sup>232</sup> Moreover, USCIS is also somewhat hypocritical, as poor petitioners who relied on government assistance may be denied adjustment of status, because of the USCIS public charge rule.<sup>233</sup>

A sliding fee is a reasonable and practical approach. Such fees ensure fairness and allow people to marry, regardless of their financial background. Every immigrant will be better to able to pay the fee because it is based on their range of income. Having the freedom to live with one’s spouse is essential to marriage.<sup>234</sup> USCIS should create a system that facilitates couples living together after marriage. This will be better for all immigrants, even middle-income earners. A person who has to pay a mortgage or rent, car loans, and student debt, earning \$55,000 to \$60,000, especially those living in New York, would have great difficulty paying these fees.<sup>235</sup>

Further, USCIS can create a simpler process or provide better assistance to those who are unable to hire an attorney. USCIS should assign agents to work with petitioners the same way the courts facilitate assistance for pro se individuals.<sup>236</sup> Immigrants should be able to speak to agents in person to guide them through the forms and not just Emma, the USCIS virtual assistant, or an agent over the phone.<sup>237</sup> When an applicant submits the forms correctly,

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230. *Additional Information on Filing a Fee Waiver*, USCIS (July 31, 2020), <https://www.uscis.gov/forms/filing-fees/additional-information-on-filing-a-fee-waiver#common>.

231. *Id.*

232. *Id.*

233. The Department of Homeland Security is enjoined from enforcing, applying, implementing, or treating as effective the Inadmissibility on Public Charge Grounds Final Rule for any period during which there is a declared national health emergency in response to the COVID-19 outbreak. 84 Fed. Reg. 41292 (2019); *Public Charge*, USCIS (Sept. 22, 2020), <https://www.uscis.gov/green-card/green-card-processes-and-procedures/public-charge>.

234. *Marriage and Cohabitation in the U.S.*, PEW RESEARCH CTR. (Nov. 6, 2019), <https://www.pewsocialtrends.org/2019/11/06/marriage-and-cohabitation-in-the-u-s/>; see also Sheri Stritof, *Why Are the First Two Years of Marriage So Important?*, VERYWELL MIND (Jan. 28, 2020), <https://www.verywellmind.com/setting-marital-stage-first-two-years-2300847>.

235. Liz Knueven, *The Average Monthly Mortgage Payment by State, City, and Year*, BUSINESS INSIDER (Aug. 6, 2020), <https://www.businessinsider.com/personal-finance/average-mortgage-payment>; Libertina Brandt, *U.S. Renters Paid Around \$4.5 Trillion in Rent over the Past Decade—And New York City Renters Have Been Leading the List for 15 Years in a Row*, BUSINESS INSIDER (Jan. 23, 2020), <https://www.businessinsider.com/total-money-spent-on-rent-usa-past-decade-2020-1>; *What is the Average Graduate Student Loan Debt*, SOFI (Sept. 23, 2019), <https://www.sofi.com/learn/content/average-graduate-student-loan-debt/>; Alicia Adamczyk, *This Map Shows the Average Monthly Auto Loan Payment in Every U.S. State*, CNBC (Dec. 9, 2019), <https://www.cnbc.com/2019/12/09/map-shows-the-average-monthly-auto-loan-payment-in-every-state.html>.

236. *Pro Se Assistance Program*, U.S. DIST. CT. N. DIST. OF N.Y., <https://www.nynd.uscourts.gov/pro-se-assistance-program> (last visited Nov. 7, 2020); *Federal Pro Se Legal Assistance Project*, CITY BAR JUST. CTR., <https://www.citybarjusticecenter.org/projects/federal-pro-se-legal-assistance-project/> (last visited Nov. 7, 2020); *Court Help Centers & Community Organizations*, N.Y.CTS.GOV (Sept. 3, 2020), <https://www.nycourts.gov/courthelp/goingtocourt/helpcenters.shtml>.

237. *Contact Us*, USCIS, <https://www.uscis.gov/about-us/contact-us> (last visited Nov. 7, 2020).

USCIS should process the forms within a reasonable amount of time. Also, if documentation is lost and proof exists that the documents were delivered, there should be a fee waiver with the necessary steps to ensure the petitioner does not carry the burden of the error. Immigrants can suffer dire consequences for lost documents. For example, when a person submits a H-1B petition and USCIS misplaces it, that person loses their chance in the lottery, and must wait the following year to apply for the H-1B visa.

USCIS, the American agency administering lawful immigration, does not care about the life or the struggles of an immigrant. To most of its agents, an immigrant is a number. America does not want immigrants and it deprives them of fundamental privileges

#### IV. CONCLUSION

America does not want Black and Brown people. They may breathe, but America will suffocate them with fines and fees for minor traffic violations that have nothing to do with safety. Their licenses can be suspended, or they can be placed in jail for failure to pay or appear. America makes poverty a valid reason for incarceration. America holds them captive, taking away their freedom to progress and fulfill the American dream.

America does not want the immigrant. America will crush that immigrant with fines and fees. America does not want the poor; they are kept from performing basic civilian duties because they are unable to pay. It does not matter if the immigrant came without a visa, with a visa but overstayed their time, or if the immigrant came with the visa and followed the endless rules. The immigration system is complex and expensive and shows no respect for the sacrifices of the immigrant. America does not want the immigrant. The time has come for immigrants to no longer be seen as threats but as allies for the growth of America. This is the time for immigrants to be recognized as essential to the fabric of America.

The United Nations' General Assembly proclaimed that we are in the International Decade for People of African Descent (2015–2024).<sup>238</sup> The theme is “People of African descent: recognition, justice, and development.”<sup>239</sup> Nevertheless, in 2020, Black people in America are simultaneously fighting the pandemic of racism and the pandemic of COVID-19.<sup>240</sup> The time has come for America to recognize its Black people, give them justice and help them develop.<sup>241</sup> This is the time to prove Malcolm X wrong: “There is nothing that the white man will ever do to bring about true, sincere,

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238. *International Decade for People of African Descent 2015- 2024*, UNITED NATIONS, <https://www.un.org/en/observances/decade-people-african-descent> (last visited Nov. 7, 2020).

239. *Id.*

240. Toni Smith-Thompson, *To Battle Covid-19, We Must Fight Racism*, NYCLU (May 28, 2020), <https://www.nyclu.org/en/news/battle-covid-19-we-must-fight-racism>; see also Cato T. Laurencin & Joanne M. Walker, *A Pandemic on a Pandemic: Racism and COVID-19 in Blacks*, 11 CELL SYSTEMS 9, 9–10 (2020).

241. *International Decade for People of African Descent 2015-2024*, *supra* note 238.

citizenship, or civil rights recognition for Black people in this country—nothing will they do, they will always talk it but they won't practice it."<sup>242</sup>

America is supposed to be the home of the free—yet the immigrant, the poor, the Brown, and Black person are trapped and excluded because of America's unjust fines and fees for immigration and traffic violations. The question remains: Who does America want?

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242. reelblack, *Malcom X - Interview at Berkeley (1963)*, YOUTUBE (June 11, 2018), <https://www.youtube.com/watch?v=FZMrti8QcPA&feature=youtu.be> (advance video to 11:41).