

**TICKET TO RIDE: EXPANDING FREE
AND SUBSIDIZED SCHOOL-AGED
YOUTH TRANSIT ACCESS TO
REDUCE FRICTION, DISMANTLE
POLICE-MINORITY YOUTH
INTERACTIONS, AND
DECRIMINALIZE LOW-LEVEL
TRANSIT MISCONDUCT**

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I. INTRODUCTION

In June 2019, New York State announced an “initiative to increase police presence and surveillance to prevent fare evasion” on the New York City (NYC) subway system.¹ Citing supposedly escalating crime rates in the subway system and a dramatic and growing budget shortfall, the government instituted severe, pretextual, and

¹ Benjamin Goggin, *NYC Protestors Jumped Subway Turnstiles and Rallied Against Police over a Fare Crackdown That’s Sparked Viral Videos and Outrage*, BUS. INSIDER (Nov. 2, 2019), <https://www.businessinsider.com/nyc-mta-subway-protests-demonstrators-called-out-overpolicing-racism-2019-11>.

ineffective “broken windows” transit policing policies.² Despite this obfuscatory narrative, in reality, the overall crime rate remained flat in 2019, with little change over prior years.³ New York faced considerable backlash for this crackdown but has nevertheless persisted. Policing transit fare evasion

² See Stephen Nessen, *MTA Hopes to Avoid Service Cuts by Slashing Staff, But Will Spend \$250 to Hire More Cops*, GOTHAMIST (Nov. 15, 2019), <https://gothamist.com/news/mta-hopes-avoid-service-cuts-slashing-staff-will-spend-250-million-hire-more-cops> (questioning officials’ economic justifications for the crackdown given the fact that augmenting the transit police force will cost the MTA nearly \$250 million over five years, even though the initiative is only expected to generate around \$200 million in cost savings over roughly the same time period, and at most around \$50 million annually); *Hiring 500 More Police Officers for the Subway Is a Misuse of Funds*, N.Y. TIMES (Dec. 20, 2019), <https://www.nytimes.com/2019/12/20/opinion/subways-police.html> (noting that Gov. Cuomo and MTA officials cited “an increase in crime and quality of problems” as the primary justification for the crackdown—despite the fact that in 2019, “[s]ubway crime remain[ed] at record-low levels”).

³ Nicole Gelinas, *The MTA’s Fiscal ‘Plan’ Is Pure Politics*, N.Y. POST (Nov. 17, 2019), <https://nypost.com/2019/11/17/the-mtas-fiscal-plan-is-pure-politics/>. Although there has been a recent uptick in subway crime in 2020 and 2021, even as ridership has decreased, these figures are not necessarily indicative of an overall upward trend in crime. Nevertheless, the MTA has used these statistics to stir fear among NYC residents and to justify the addition of another 500 transit officers to police the subway system. See *id.* The MTA has framed the increased crime rate as occurring despite decreased ridership, yet it is worth noting that decreased ridership may be contributing to this phenomenon under the logic of “safety in numbers.” Indeed, usually crimes occur at higher rates during off-peak hours when subway ridership is at its lowest and individual riders are, in many ways, more vulnerable.

substantially impacts young people and has a particularly detrimental impact on minority and other marginalized youth populations. Data indicates that school-aged adolescents are involved in approximately 60-70% of fare evasion arrests and police interactions system-wide, with Black male youth facing the most extreme disproportionality of transit surveillance and arrest.⁴

Currently, the Metropolitan Transportation Authority (MTA) and NYC's Department of Education (DOE) provide free and subsidized transit fare through the Student MetroCard program to qualifying students ranging from kindergarten to high school (K-12). While most middle and high school-aged low-income students do qualify for Student MetroCards, there are substantial limitations built into the program. Namely, Student MetroCards do not provide unlimited transit access; Student MetroCards come preloaded with a limited amount

⁴ Maura Ewing, *Will New York Stop Arresting People for Evading Subway Fares?*, ATLANTIC (Aug. 4, 2017), <https://www.theatlantic.com/politics/archive/2017/08/new-york-subway-fares/535866/>.

of trips, may only be used for transportation to and from school and school-sponsored events, and are not to be used on weekends or for other events or activities not directly related to school.

Open transit access for youth is necessary to avoid and diffuse tensions with the policed subway environments. The NYC DOE should prevent conflict rather than facilitate lucrative contact between NYC Black and Hispanic youth and law enforcement in the transit space. The DOE and the MTA must agree on necessary changes to expand coverage and access under the Student MetroCard program to protect students from harmful and volatile situations arising from heightened levels of police surveillance.

Expanding free transit fare programs for youth further supports students' educational development by removing transit fare as a barrier that low-income students face in accessing internships, employment, and cultural resources, such as museums. Furthermore, it facilitates students' socioemotional development by enabling them to develop and

sustain peer relationships outside of school and providing youth with access to free recreational spaces, like parks, which may not exist or be a safe environment in some neighborhoods. For all of these reasons, the Student MetroCard should be amended and expanded to provide universal or near-universal free transit access to NYC students.

Part II of this Article briefly summarizes the historical and contemporary context of order maintenance, or “broken windows” policing, the emergence of zero tolerance policies, the criminalization of poverty, and the disproportionate impact of these policies and initiatives of people of color. Part II also provides a concise overview of the NYC transit system as well as the city school system and relevant aspects of the K-12 student experience. Part III identifies and frames the problems associated with overpolicing, including the overall detrimental impact on youth and the potential for dangerous conflict between youth and police. Additionally, it discusses the issues and limitations inherent in NYC’s Student MetroCard program and provides

insight into the particular problems faced by low-income students deprived of universal transit access. Part IV posits free and subsidized transit access generally, and the Student MetroCard program specifically, as a mechanism to functionally decriminalize fare evasion and other low-level transit crimes. It proposes revisions to the existing Student MetroCard program to address the problems identified in Part III. Namely, this Article advocates for a broad expansion of transit access for K-12 students, using Boston's youth transit access initiative as a model for reform. This Article, concluding in Part V, envisions universal free transit access for students and qualifying youth as the ideal model to serve students' needs, while also recognizing the significant hurdles and potential political impracticability of such measures.

II. BACKGROUND

In June 2019, New York State Governor Andrew Cuomo announced his imminent plan to hire 500 new transit police officers, a 20% increase in personnel

system-wide,⁵ as a centerpiece of broader efforts to crack down on transit crime, including low-level misdemeanors, like subway turnstile jumping and other forms of transit fare evasion.⁶ At scale, the MTA's staffing model would employ nearly 4,000 transit officers to police the NYC subway system.⁷ Of the 500 new transit police officer positions to be added immediately, at least 200 were reserved for members of the New York City Police Department (NYPD), an institution that has historically had strained, if not hostile, relations with communities of color.⁸ At the time of Governor Cuomo's announcement, NYC's transit system was already patrolled by a force of over 3,000, such as approximately 2,500 NYPD officers⁹ and 800

⁵ Vincent Barone, *AOC: Cuomo Should Invest in NYC Transit, Not More Cops*, AMNY (Jan. 2020), <https://www.amny.com/transportation/aoc-cuomo-should-invest-in-nyc-transit-not-more-cops/>.

⁶ Bryce Covert, *A Night in Jail Over \$2.75*, THE APPEAL (July 29, 2019), <https://theappeal.org/a-night-in-jail-over-2-75/>.

⁷ Steven Nessen, *MTA May Expand Free Student MetroCard Program*, GOTHAMIST (May 21, 2019), <https://gothamist.com/news/mta-may-expand-free-student-metrocard-program>.

⁸ Vincent Barone, *supra* note 5.

⁹ *Id.*

independent MTA police officers, designated transit officers who are, among other things, authorized to “carr[y] weapons and issue tickets and summonses” for infractions and violations.¹⁰

New York’s MTA, a state agency that maintains and operates NYC’s public transit system, as well as other transportation services and programs elsewhere in the state, faced an approximately \$800 million budget deficit in fiscal year 2020.¹¹ By 2023, the MTA’s budget shortfall is projected to swell to approximately \$2 billion, a figure that represents about 10% of the agency’s annual budget.¹² In addition to the fare evasion crackdown, the MTA also announced a series of cost-saving measures to bridge the gap, including organizational changes such as streamlining back-office staffing models, as well as policy measures like raising additional tax revenue to pay for auxiliary transit services that

¹⁰ Nessen, *supra* note 7.

¹¹ Gelinas, *supra* note 3.

¹² *Id.* For fiscal year 2020, the MTA’s budget was authorized at \$17.6 billion.

provide transit access to disabled individuals.¹³ Although the MTA has claimed that the crackdown will aid in recapturing up to \$215 million in lost revenue, that figure has been widely criticized by transit experts.¹⁴ Moreover, the baseline cost for the addition of 500 transit police personnel is estimated to cost approximately \$60 million annually, not including accrual of future costs, such as pensions.¹⁵ Meanwhile, there is little evidence to justify heightened concern over transit safety. In 2019, the rate of crime in the subway system remained

¹³ *Id.* The MTA's Access-a-Ride program has been criticized as "inefficient" and currently runs at a \$500 million deficit. *Id.* The proposed revenue-generating measure would allocate funds in NYC's budget to generate approximately \$100 million in "savings" annually. *Id.* The MTA has previously relied on similar schemes to offset the agency's chronic financial woes and perennial budget shortfalls. *Id.* For example, in 2018, the MTA secured over \$400 million in revenue from the city budget to conduct critical infrastructure improvements to the NYC subway system, most notably, repairing tracks and signals. *Id.* Such an approach is possible because the New York State Governor wields substantial authority over NYC's budget, including the ability to withhold subsidies for key services, like public education and Medicaid. *See id.* Among other criticisms, some have questioned the notion that NYC residents should be made to pay even more into the transit system, given that New Yorkers already contribute approximately 75% of the MTA's tax and subsidy revenue, for example, via payroll and real estate transaction taxes. *Id.*

¹⁴ *See* Nessen, *supra* note 7.

¹⁵ Gelinas, *supra* note 3.

essentially flat.¹⁶ Rates of violent crime continue to be very low.¹⁷

Nevertheless, the measure, New Yorkers were assured, would address the MTA's massive budget shortfall by closing a loophole and making the subway safer. Both claims relied on certain fictions, which institutions have expended decades and resources to package into popular myths, namely, that criminalizing poverty is an effective way to recapture unrealized revenue and that policing low-level crime is a meaningful early intervention point that effectively helps law enforcement agents prevent more dangerous crimes. In reality, even recouping 100% of the MTA's revenue loss due to fare evasion would only generate approximately or less than \$100 million annually;¹⁸ as of 2021, the MTA's projected budget gap was approximately

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Fare Evasion and Enforcement*, METRO. TRANSIT AUTH. (Mar. 2019), <http://web.mta.info/mta/news/books/docs/TAC%202019-03%20Fare%20Evasion%20v6.pdf>.

\$3.1 billion and growing.¹⁹ Moreover, imposing fines for turnstile jumping is unlikely to be successful because poverty drives much of the fare evasion seen in the system.

A. The NYC Transit System

1. MTA

As previously noted, the MTA, a state-level agency, maintains and operates public transit services serving NYC and the surrounding metropolitan area, home to approximately 20 million people in the NYC metropolitan area, which includes parts of New Jersey, Long Island, and communities lying along the Hudson River north of the city, such as Yonkers, Westchester, and Scarsdale.²⁰ In 2019, the MTA reported an annual subway ridership of just under 1.7 billion and an average daily ridership of

¹⁹ David Meyer, *MTA's Proposed 40 Percent Doomsday Service Cuts Could Start in May 2021*, N.Y. POST (Nov. 18, 2020), <https://nypost.com/2020/11/18/mtas-proposed-doomsday-service-cuts-could-start-in-may-2021/>.

²⁰ *Megacities of the World*, Nations Online, <https://www.nationsonline.org/oneworld/bigcities.htm> (last visited Feb. 23, 2021).

approximately 5.5 million.²¹ Transit equipment and infrastructure encompasses more than 6,500 subway cars, nearly 6,000 buses, 472 subway stations, and 665 miles of subway tracks.²² In total, NYC subway cars travel some 365 million miles annually.²³ The MTA has stated that revenue generated by transit fare covers around half of the system's \$8 billion annual budget.²⁴ Additionally, for years, the MTA has failed to make critical infrastructure improvements, which contributes to the agency's current budget woes.²⁵

2. Fare Evasion Enforcement

Unsurprisingly, enforcement to prevent and punish fare evasion, mostly turnstile jumping,

²¹ *Subway and Bus Ridership for 2019*, METRO. TRANSP. AUTH. (last updated Apr. 14, 2020), <https://new.mta.info/agency/new-york-city-transit/subway-bus-ridership-2019>.

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ The summer of 2017 was referred to by New Yorkers and local news media as the "summer from hell" due to a combination of dangerous infrastructural failures that caused multiple trains to derail and rocked the subway system with persistent, severe delays and service disruptions. *Cf.* Danielle Furfaro & Natalie Musumeci, *MTA Turns First Day of Summer Into Complete Hell for Commuters*, N.Y. POST (June 21, 2018), <https://nypost.com/2018/06/21/mta-turns-first-day-of-summer-into-complete-hell-for-commuters/>.

“surged” in the immediate aftermath of the crackdown announcement and transit policing escalation that followed,²⁶ with enforcement increasing nearly 50% in the second half of 2019.²⁷ The crackdown engendered a backlash against what many see as disproportionately harsh enforcement and punishment for a minor infraction, galvanizing those in minority communities to voice dissent and commit civil disobedience in response to overcriminalization and heightened police presence.²⁸ In the months following the announcement of the crackdown, local news media reported “mass protests that saw hundreds flood turnstiles and enter without paying.”²⁹ Activists also

²⁶ Joseph Goldstein & Ashley Southall, *I Got Tired of Hunting Black and Hispanic People*, N.Y. TIMES (Dec. 9, 2019), <https://www.nytimes.com/2019/12/06/nyregion/nyc-police-subway-racial-profiling.html>.

²⁷ *Id.*; Kelly Weill, *Behind the Subway Arrests Controversy Rolling NYC*, DAILY BEAST (Nov. 4, 2019), <https://www.thedailybeast.com/behind-the-subway-arrests-controversy-roiling-new-york-city>.

²⁸ Michaela Winberg, *While NYC Cracks Down on Fare Evasion, Philly's Decrim is Working Well*, BILLYPENN, (Nov. 11, 2019), <https://billypenn.com/2019/11/11/while-nyc-cracks-down-on-fare-evasion-phillys-decrim-is-working-well/>.

²⁹ *Id.* See Samira Sadeque, *NYPD Crackdown on Subway Fare Evasion 'Criminalises Poverty'*, AL JAZEERA (Dec. 6, 2019),

launched the “Swipe It Forward” campaign, which urges those who can afford it to use a spare MetroCard swipe to prevent fare evasion and “save someone from entering the criminal justice system” over turnstile jumping.³⁰

There are strong reasons to be concerned about the implications of these policies for youth, especially youth of color. According to *The Atlantic*, youth of “16- and 17-years represented about 70% of arrestees” for fare evasion.³¹ Black male youth specifically accounted for about half of all turnstile jumping arrests.³² The NYPD has long been criticized for its problematically frequent use of “[e]xcessive force, abuse of authority, [and] discourteousness,” especially toward Black male

<https://www.aljazeera.com/news/2019/12/nypd-crackdown-subway-fare-evasion-criminalises-poverty-191206203413420.html> (discussing a November 2019 rally attended by more than 1,000 protestors).

³⁰ Anna Flagg & Ashley Nerbovig, *Subway Policing in New York City Still Has a Race Problem*, MARSHALL PROJECT (Sept. 12, 2018), <https://www.themarshallproject.org/2018/09/12/subway-policing-in-new-york-city-still-has-a-race-problem>.

³¹ Ewing, *supra* note 4.

³² *CSS Report Details Targeting of High Poverty Black Communities for Fare Evasion Arrests*, CMTY. SERV. SOC’Y (Oct. 16, 2017), <https://www.cssny.org/news/entry/css-report-details-targeting-of-high-poverty-black-communities-for-fare-eva>.

youth.³³ Civil rights attorney Norman Siegel has noted, for example, that police officers are “not approaching young [W]hite students on the Upper West Side with guns drawn.”³⁴

B. The Current Crackdown

1. The Crime: Fare Evasion

On the subway, fare evaders usually avoid payment either by “jumping” over the metal barrier that forms the turnstile or by entering through an outward-opening emergency exit door to avoid the turnstiles. Fare evaders who are apprehended by law enforcement may be given a summons to appear in civil court, which comes with a \$100 fine but no criminal sanctions, or they may be arrested for theft of services, a misdemeanor punishable by up to one

³³ Jake Offenhartz, *Videos of ‘Hyperaggressive’ Cops on Brooklyn Subways Spark Outrage, Calls for Discipline*, GOTHAMIST (Oct. 28, 2019), <https://gothamist.com/news/videos-hyperaggressive-cops-brooklyn-subways-spark-outrage-calls-discipline> (quoting civil rights attorney and former leader of the New York City Liberties Union Norman Siegel).

³⁴ *Id.*

year in jail.³⁵ First-time offenders typically will not be arrested on fare evasion, but they may be in some circumstances.³⁶

Even prior to the announcement of the latest crackdown, “turnstile jumping [wa]s the most common charge in criminal court” in Manhattan, with nearly 25,000 individuals arrested and 10,000 individuals charged with fare evasion annually.³⁷ Between 2017 and 2018, internal data collected by the NYPD recorded approximately 25,000 summonses for fare evasion and around 5,300 arrests within the transit system.³⁸

2. Purported Rationale

The MTA has repeatedly cited financial motivations for pursuing the crackdown, alleging

³⁵ See Emma G. Fitzsimmons & Edgar Sandoval, *1 in 5 Bus Riders in New York Evades the Fare, Far Worse Than Elsewhere*, N.Y. TIMES (Apr. 13, 2019), <https://www.nytimes.com/2019/04/13/nyregion/mta-bus-riders-fare-beaters.html>.

³⁶ See *id.*

³⁷ Ewing, *supra* note 4.

³⁸ Harold Stolper, *The MTA's False Fare Evasion Narrative*, CMTY. SERV. SOC'Y (Jan. 29, 2020), <https://www.cssny.org/news/entry/mta-false-fare-evasion-narrative-data>.

that fare evasion costs the system somewhere between \$215 million and \$250 million annually in unrealized revenue from unpaid transit fare, though some critics have questioned the veracity of the MTA's revenue loss estimates.³⁹ Enforcement has been framed as a mechanism for recuperating lost revenue primarily under the logic that more policing within the subway system will lead to two main outcomes, each with positive revenue effects: first, the apprehension of more fare evaders, each of whom may be issued a ticket and assessed a fine of \$100 for entry into the subway without payment,⁴⁰ and

³⁹ See Becca Glasser-Baker, *Cuomo Announces Crackdown on MTA Fare Evasion and Assaults*, METRO (June 17, 2019), <https://www.metro.us/cuomo-announces-crackdown-on-mta-fare-evasion-and-assaults/> (estimating lost revenue due to fare evasion at approximately \$243 million in 2019). See also Covert, *supra* note 6 (criticizing the MTA's non-rigorous data collection methods as well as the agency's failure to "release reliable information on the methodology behind [the] data" used to calculate revenue loss due to fare evasion); Jose Martinez, *MTA's Fare Evasion Math Was Off Track, Review Finds*, The City (Sept. 17, 2020), <https://www.thecity.nyc/2020/9/17/21440817/mtas-fare-evasion-math-was-off-track-review-finds> (reporting that the MTA recanted its previous estimate that fare evasion accounted for approximately \$300 million in lost revenue on an annual basis, admitting that an inadvertent miscalculation lead to the erroneous inflation of estimated revenue losses).

⁴⁰ *Rules of Conduct & Fines*, MTA.INFO <http://web.mta.info/nyct/rules/TransitAdjudicationBureau/Rules%20of%20Conduct%20and%20Fines.pdf> (last visited Apr. 27, 2021).

second, the deterrence of would-be fare evaders, each of whom is theoretically converted into a paying customer by the threat of law enforcement.⁴¹ Officials, including Governor Cuomo, have also attempted to justify heightened policing on public safety grounds by pointing to increased rates of assault on transit workers as well as by evoking non-specific and largely unsubstantiated fears about rider safety.⁴² In 2019, the Commissioner of the NYPD,

⁴¹ See Glasser-Baker, *supra* note 39.

⁴² *Id.* The MTA reported a 15% increase in assaults on transit workers between 2015 and 2019. *Id.* However, the NYPD itself admitted that overall, crime occurring within the subway system was “already [at] record lows” at the time of the crackdown announcement in 2019, even as the Commissioner attempted to justify heightened policing by emphasizing rider safety as the NYPD’s central “priority” and implying the increase in police personnel was necessary to continue the trend in crime reduction. *Id.* Additionally, critics of the crackdown policy have argued that criminalizing fare evasion actually increases rather than decreases the risk to transit workers, citing research finding that the majority of violence directed at transit workers occurs “at the ticket box” and positing that “eliminating the threat of a misdemeanor would therefore protect” these workers better than crackdowns on enforcement. Kayla Soren, *Decriminalize Fare Evasion*, INST. FOR POL’Y STUD. (July 22, 2020), <https://ips-dc.org/decriminalize-fare-evasion/>. U.S. Representative Alexandria Ocasio-Cortez has also argued that addressing transit worker assault “can be accomplished without criminalizing poverty” via a general fare evasion crackdown, urging Governor Cuomo in 2019 to adopt “a more finessed deployment approach” to combating the transit worker assault issue. See Sam Dorman, *AOC Says New York Gov. Cuomo Is ‘Punishing the Poor’ with Plan to Beef Up Enforcement Presence at Subway*

James P. O’Neill, said these rationalizations echo the city’s ongoing investment in broken windows policing tactics and the NYPD’s continued targeting of minorities and communities of color with increased surveillance and a zero-tolerance approach to even minor infractions or rule violations.⁴³

3. Broken Windows Policing in NYC: Historical and Contemporary Contexts

The so-called “broken windows” theory of policing was first advanced by James Wilson and George Kelling, who argued that “intensive police efforts to reduce and mitigate neighborhood blight, disorder, and disrepair can reverse the breakdown of social controls that is often accompanied by rampant

Stations, FOX NEWS (Dec. 17, 2019),
<https://www.foxnews.com/politics/aoc-cuomo-cops-subways>.

⁴³ See K. Babe Howell, *Broken Lives from Broken Windows: The Hidden Costs of Aggressive Order-Maintenance Policing*, 33 N.Y.U. REV. L. & SOC. CHANGE 271, 276 (2009). See also Glasser-Baker, *supra* note 41 (quoting a 2019 NYPD press release that evokes the language of broken windows policing by framing policing as an essential mechanism to “ensure quality-of-life [*sic*] on the trains and in stations” and its broader capacity to “prevent[] crime and disorder from occurring in the first place”).

minor crime in a community.”⁴⁴ Writing contemporaneously in 1986, Gary Sykes espoused the “benefits of social regulatory policing” and explained that the policy “can be justified on moral grounds as part of the community building and maintaining functions” of law enforcement.⁴⁵

In 2005, then-NYPD Commissioner William Bratton claimed that NYC had “prov[en] the [b]roken [w]indows theory”—“[a]ll from arresting people for a buck-fifteen crime.”⁴⁶ The NYPD’s approach toward low-level offenders captured national attention as it began purportedly to show results, with national law enforcement publications writing about its innovative approach to low-level offenders like fare evaders.⁴⁷ At the heart of the NYPD’s approach was “high visibility enforcement” as “a central component for maintaining order and

⁴⁴ PHILIP MATTHEW STINSON, CRIMINOLOGY EXPLAINS POLICE VIOLENCE 41 (2020).

⁴⁵ Gary W. Sykes, *Street Justice: A Moral Defense of Order Maintenance Policing*, 3 JUST. Q. 497, 510 (1986).

⁴⁶ Hope Corman & Naci Mocan, *Carrots, Sticks, and Broken Windows*, 48 J.L. & ECON. 235, 239 (2005).

⁴⁷ E.g., Kurt R. Nelson, *Policing Mass Transit: Serving a Unique Community*, 66 FBI L. ENF’T BULL. 1, 3 (1997).

making riders feel more secure in the mass transit environment.”⁴⁸

Added slightly later to the broken windows policing toolkit was stop-and-frisk, a technique in which officers “briefly detain[] individuals suspected of crimes and conducting a pat-down search of their clothing for weapons.”⁴⁹ Stop-and-frisk has often been justified under the belief that it takes weapons and other contraband off the street, although Jeremy Kaplan-Lyman has argued that framing the focus of broken windows policing on “finding weapons and individuals with outstanding warrants took this approach far from its theoretical foundation,” which did not envision “disorder as a pretext to...justify expansions of police surveillance power.”⁵⁰ As NYC “ramp[s] up its enforcement” of fare evasion, it is noteworthy that its policies are in direct contrast to those adopted by many other major U.S. cities, including Philadelphia and Washington, D.C., which

⁴⁸ *Id.* at 3-4.

⁴⁹ Jeremy Kaplan-Lyman, *A Punitive Bind: Policing, Poverty, and Neoliberalism in New York City*, 15 YALE HUM. RTS. & DEV. L.J. 177, 212 (2012).

⁵⁰ *Id.* at 215.

have taken steps to decriminalize turnstile jumping in recent years.⁵¹

C. Students, School, and Youth Transit Access in NYC

1. Students Commute

Although children in NYC often attend elementary school in the same neighborhood as their home, by high school, most students commute to school. By ninth grade, the average NYC public school student spends more than an hour commuting to and from school each day.⁵² Teenagers spend a lot of time on the subway.

In NYC, students must apply to public high school before ninth grade. Students can apply to an entrance-exam school (e.g., Stuyvesant High School, Brooklyn Technical High School); audition for a performing arts school (e.g., Fiorello H. LaGuardia

⁵¹ Winberg, *supra* note 28.

⁵² SEAN P. CORCORAN, URBAN INST., SCHOOL CHOICE AND COMMUTING: HOW FAR NEW YORK CITY STUDENTS TRAVEL TO SCHOOL v (Oct. 2018), https://www.urban.org/sites/default/files/publication/99205/school_choice_and_commuting.pdf.

High School of Music & Art and Performing Arts); attend their zoned school, except in Manhattan; or apply to attend screened or unscreened schools across NYC.⁵³ Some geographic zones in the city, for example in the South Bronx, have middle school choice, allowing students to choose from options rather than be assigned their zoned school. Even in the younger grades, while many students attend neighborhood schools within walking distance of their homes, other elementary schoolers commute outside their neighborhoods to attend charter schools, gifted programs, and talented programs.⁵⁴ By adolescence, students are unlikely to attend school with peers from their residential neighborhoods. NYC high school peer groups may be geographically scattered all over the city, sometimes spanning multiple boroughs. Most teenagers in the city rely on public transportation to

⁵³ See City of New York Independent Budget Office, *Preferences and Outcomes: A Look at New York City's Public High School Choice Process*, SCHOOLS BRIEF (Oct. 2016), <https://ibo.nyc.ny.us/iboreports/preferences-and-outcomes-a-look-at-new-york-citys-public-high-school-choice-process.html>.

⁵⁴ See CORCORAN, *supra* note 52, at vi.

get around because the city is expansive, especially on foot, and few have access to cars.

The geography of education and residence in NYC interface along the fault lines of segregation. Redlining, disinvestment in community infrastructure, and gentrification have all scribbled inequalities unevenly over the boroughs. Many Black students in NYC leave their home neighborhoods to attend school elsewhere in the city.⁵⁵ Black girls travel the farthest to get an education.⁵⁶ Overall, Black students, at all grade levels, spend the most time in transit; “high-achievers” and those attending public charter schools have longer commutes than “low-achievers,” who stick to schools closer to their homes.⁵⁷

2. Subsidized Transit Fare Programs: The Student MetroCard Program

Public school students in NYC are eligible for a free or reduced-fare Student MetroCard according to

⁵⁵ *Id.* at v.

⁵⁶ *Id.*

⁵⁷ *Id.*

a formula based on grade level and walking distance between the student's home and school.⁵⁸ Students in grades seven through 12 are eligible to receive a Student MetroCard if the distance between their home and their school is at least one-half mile.

Student MetroCards may be used for up to three trips and three transfers per school day.⁵⁹ Students are only permitted to use their MetroCards for “traveling to and from school and school-related activities between 5:30 AM and 8:30 PM” on days “when school is open,” meaning their cards do not work on weekends or during school vacations.⁶⁰ Students may request “an additional two-trip MetroCard...for school approved trips.”⁶¹ Cards are not available to students during the summer months

⁵⁸ *Transportation Eligibility*, The New York City Department of Education, <https://www.schools.nyc.gov/school-life/transportation/bus-eligibility>.

⁵⁹ *MetroCards*, The New York City Department of Education, <https://www.schools.nyc.gov/school-life/transportation/metro-cards>.

⁶⁰ *Id.*

⁶¹ *Transportation Rights*, The New York City Department of Education, <https://www.schools.nyc.gov/school-life/transportation/transportation-rights>.

unless they are enrolled in summer school or certain city-run summer programs.⁶²

III. DISCUSSION

A. The MTA's Proffered Reason for Cracking Down on Fare Evasion Is Pretextual and Tertiary to the Social Enforcement and Control Interests.

The fare evasion crackdown clearly falls within NYC's broken windows policing playbook and represents at least a partial pretext for social order policing in low-income communities of color. Critics have charged that under the guise of public safety, the crackdown policy facilitates the NYPD's "further harass[ment] and surveil[lance of] people of color."⁶³ The manner in which the MTA has operationalized enforcement undermines the

⁶² Sokhna Fall & Fariha Fawziah, *Student MetroCards Put City Teens in a Summer Squeeze*, CITY LIMITS (Aug. 13, 2018), <https://citylimits.org/2018/08/13/student-metrocards-put-city-teens-in-a-summer-squeeze/>.

⁶³ Amanda Luz Henning Santiago, *Can You Stop Fare Evasion Without Criminalizing Poverty?*, CITY & STATE N.Y. (Oct. 28, 2019), <https://www.cityandstateny.com/articles/politics/new-york-city/can-you-stop-fare-evasion-without-criminalizing-poverty.html>.

agency's proffered justification for enforcement. Specifically, the MTA has underscored that it has sought to enforce turnstile jumping as a means of recouping a portion of the several hundred million dollars it claims to lose annually as a result of fare evasion. Yet, the MTA has concentrated its augmented enforcement personnel resources in the subway system, despite the fact that fare evasion is demonstrably far more frequent among bus versus subway riders. According to the *New York Times*, whereas just over 3% of subway riders evade the fare, nearly 22% of city bus riders fail to pay full fare.⁶⁴

Although the MTA has never released data breaking out fare evasion rates by service, it appears that fare evasion commonly occurs on buses for a wide range of reasons, such as broken card-reader machinery; employee safety concerns; buses that board from the backdoors mid-route; and apathetic attitudes toward enforcement among drivers.⁶⁵

⁶⁴ Fitzsimmons & Sandoval, *supra* note 35.

⁶⁵ *See id.*

While there are many reasons why it would be impracticable and even impossible to patrol the MTA bus system with same kind of enforcement visibility as in the subway—though in fact, at least one MTA official has proposed it—the fact that the MTA appears to be unconcerned with bus fare evasion as an enforcement matter has raised critics’ doubts.⁶⁶

Moreover, the fact remains that in the context of the MTA’s current and future-projected budget shortfall, lost revenue due to fare evasion accounts for, at most, only tiny fraction of a much larger financial problem. Thus, some critics have argued that citing the MTA’s budget shortage as a justification for increased fare evasion policing is disingenuous, adding that in recent years, the MTA has expended significant funds “investing in fancy new stations in affluent or gentrifying communities.”⁶⁷ Indeed, transit experts have confirmed that fare evasion contributes only marginally to the MTA’s overall budget issue,

⁶⁶ *See id.*

⁶⁷ Stolper, *supra* note 38. *See also* Covert, *supra* note 6 (“deeper pockets”).

pointing out that the agency's total state-wide operating budget in 2018 was around \$17 billion, while transit fare evasion across the entire NYC transit system contributed only an estimated \$215 million in lost revenue that year.⁶⁸

The MTA's current \$800 million budget deficit is expected to grow to at least \$2 billion by 2023.⁶⁹ Meanwhile, the once-grand but now-beleaguered NYC transit system is afflicted by a host of costly infrastructure repairs. The system's maladies range from the mostly inconvenient (e.g., constantly malfunctioning arrival counters) to the absolutely dire (e.g., electrical fires and train derailments), but all in all, the cost of bringing the system fully up to speed is estimated to be around \$40 billion.⁷⁰ Critics have condemned the MTA for neglecting critical system repairs while appearing to prioritize several flashy and very expensive capital projects, such as

⁶⁸ Covert, *supra* note 6.

⁶⁹ Gelinis, *supra* note 3.

⁷⁰ Emma G. Fitzsimmons, *Smoke a Joint, Save the Subway?*, N.Y. TIMES (Dec. 5, 2018), <https://www.nytimes.com/2018/12/05/nyregion/marijuana-legalized-nyc-subway.html>.

Fulton Street station and the extension of the Q line further into the Upper East Side,⁷¹ and have denounced the latest substantial expenditures for increased police presence as “a fiscally irresponsible, misguided use of funds.”⁷²

Even the robust enforcement efforts are only projected to recapture, at most, around \$50 million per year.⁷³ While the MTA announced that, over the next four years, it expected to save around \$200 million by “preventing fare evasion,” the agency is also planning to spend nearly \$250 million on additional transit police officers over the next five years.⁷⁴ The cost of extra transit enforcement officers is projected to reach \$660 million over the next ten years.⁷⁵

Moreover, enforcement at present is tinged with the familiar sepia of broken windows policing. In

⁷¹ See Brian M. Rosenthal, Emma G. Fitzsimmons, & Michael LaForgia, *How Politics and Bad Decisions Starved New York’s Subways*, N.Y. TIMES (Nov. 18, 2017), <https://www.nytimes.com/2017/11/18/nyregion/new-york-subway-system-failure-delays.html>.

⁷² Stolper, *supra* note 38.

⁷³ Nessen, *supra* note 7.

⁷⁴ *Id.*

⁷⁵ CMTY. SERV. SOC’Y, *supra* note 32.

fact, fare evasion enforcement has long been a staple of order maintenance policing that has remained fundamental to the NYPD's broader social control program in the transit context for decades. Back in 2005, former NYPD Police Commissioner William Bratton claimed that the crackdown on fare evasion, including issuing arrests for turnstile jumping, reduced "crime and disorder in New York subways."⁷⁶ Meanwhile, as recently as last year, MTA Chairman Pat Foye justified the fare evasion crackdown under an almost identical traditional broken windows framework, framing the heightened police presence as a necessary response to purportedly elevated rates of crime within the transit space.⁷⁷

However, policing and enforcement efforts have disproportionately targeted low-income neighborhoods of color such that individuals in these communities suffer disparately harsh consequences for fare evasion, leading some critics to question not

⁷⁶ Corman & Mocan, *supra* note 46, at 239.

⁷⁷ Barone, *supra* note 5.

only the tactics but indeed the underlying motivation behind the MTA's crackdown. According to data analysis conducted by the Community Service Society, "[e]nforcement intensity...in the city's 130 stations in high-poverty neighborhoods with poverty rates of at least 25% are more than twice as high as the remaining 262 stations."⁷⁸ High-poverty areas registered an average enforcement rate of 4.8 per 100,000 swipes, compared to a rate of 2.2 per 100,000 swipes in the remainder of the stations.⁷⁹ Recently released data compiled by the NYPD also reveals that "[e]nforcement at high-poverty stations is...more likely to take the form of an arrest in" Black or Hispanic neighborhoods than in White or Asian neighborhoods.⁸⁰ According to the Community Service Society, in subway stations located in high-poverty neighborhoods that were predominantly Black and Hispanic, fare evasion comprised

⁷⁸ Stolper, *supra* note 38.

⁷⁹ *Id.* In conducting this analysis, the Community Service Society purposefully excluded the city's 29 busiest stations—those with an annual ridership of 10 million or more—in order to achieve a more accurate comparison.

⁸⁰ *See id.*

approximately 31% of all transit enforcement actions and “[fare] evasion arrests occur[ed] at a rate of 1.5 per 100,000 swipes,” whereas in high-poverty neighborhoods that were predominantly White and Asian, fare evasion compared just 16% of all enforcement actions, and the overall arrest rate for fare evasion in these stations was just .49 per 100,000 swipes.⁸¹ Researchers attribute higher arrest rates to “heightened enforcement activity,” meaning that not only are low-level transit crimes policed more rigorously in Black and Hispanic communities, the consequences for committing fare evasion are also higher for individuals in these neighborhoods because they are more likely to be arrested as opposed to merely issued a warning or a citation.⁸²

⁸¹ *Id.*

⁸² *See id.*

B. Fare Evasion Crackdown Policies Will Inevitably Fail, Policing Low-Level Misconduct to Catch More Serious Offenders Has Been Largely Disproven, and the Revenue Stream Will Not Be Sufficiently Robust.

1. The Failure of Broken Windows Policing

Despite the continued use of broken windows policing tactics, including stop-and-frisk and zero-tolerance policies, the theory has been “increasingly discredited by many criminologists.”⁸³ In fact, recent data shows that police stops in predominantly Black neighborhoods are “not only less effective than in more mixed or [W]hite neighborhoods, but hit rates are particularly low.”⁸⁴ However, proponents of order maintenance policing nevertheless contend that

⁸³ Flagg & Nerbovig, *supra* note 30. *Accord.* Howell, *supra* note 43, at 276 (stating that whether broken windows policing contributed to decreased crime rates “is highly contested”).

⁸⁴ Jeffrey A. Fagan, Amanda Geller, Garth Davies, & Valerie West, *Street Stops and Broken Windows Revisited: The Demography and Logic of Proactive Policing in a Safe and Changing City*, in RACE, ETHNICITY, AND POLICING: NEW AND ESSENTIAL READINGS 325 (STEPHEN K. RICE & MICHAEL WHITE EDS., 2010).

“in their sentinel role, police can have a material deterrent effect.”⁸⁵

The evidence on stop-and-frisk suggests that it has been largely ineffective as a practice. Other studies have estimated that 99% of individuals detained under stop-and-frisk have committed no violation.⁸⁶ Experts note that “[o]nly a small fraction of” search, question, and frisk (SQF) “activity leads to arrest or reveals illegal activity” and that “far less than half of documented SQF activity was based on the suspicion of violent crime.”⁸⁷ The cost, which is discussed further below, is quite high for such low return, given that these policies expose people of color to “physically invasive frisks and searches, harsh language, racial invective, or homophobic taunts.”⁸⁸ Moreover, studies have shown that there is an inelastic relationship between crime and police stops, rendering these policies ineffective even as a

⁸⁵ Daniel S. Nagin, Robert M. Solow, & Cynthia Lun, *Deterrence, Criminal Opportunities, and Police*, 58 CRIMINOLOGY 74, 79 (2015).

⁸⁶ Kaplan-Lyman, *supra* note 49, at 215.

⁸⁷ Amanda Geller, *The Process is Still the Punishment: Low-Level Arrests in the Broken Windows Era*, 37 CARDOZO L. REV. 1025, 1031 (2009).

⁸⁸ *Id.*

theoretical matter.⁸⁹ Kaplan-Lyman has noted that SQF was “proven to be an extremely inefficient approach to getting guns off of the street.”⁹⁰ The NYPD’s internal data indicates that officers only recover contraband in two to four percent of all stops conducted.⁹¹

NYPD data reveals that arrest rates vary by time and day in a way that experts say is explained by variation in officers’ arresting behavior based on arrest quotas. K. Babe Howell contends that the evidence suggests that increased arrests and convictions under broken windows does not indicate that “more *crime*” was being committed, but rather simply reflects more robust policing.⁹² According to Howell, heightened arrest rates reflect that “[p]olice go out looking for offenses,” and “more specifically for arrests” at certain times more than others.⁹³

Given the stated goal of apprehending more serious criminals, W. David Ball theorizes that it

⁸⁹ Fagan et. al, *supra* note 85, at 325.

⁹⁰ Kaplan-Lyman, *supra* note 49, at 215.

⁹¹ *Id.*

⁹² Howell, *supra* note 43, at 289.

⁹³ *Id.*

would only be efficient to police low-level offenses like turnstile jumping if there were low overall rates of turnstile jumping and high rates of turnstile jumping among serious criminals to the point that “turnstile jumping were almost exclusively related to” serious infractions.⁹⁴ Essentially, according to Ball, “[i]t only makes sense to crack down on turnstile jumping if that is your goal.”⁹⁵ Ball concludes that, as a general matter, wide-net policies are inefficient and ineffective “unless the behaviors are unique to a set of more serious offenders.”⁹⁶

Order maintenance policing has also been condemned as a wholly ineffective response to structural poverty. Opponents contend that the police institution is “poorly situated to deal with the causes of poverty.”⁹⁷ Because the law enforcement apparatus lacks the necessary tools to ameliorate conditions of poverty, “[p]oor communities” remain

⁹⁴ W. David Ball, *The Plausible and the Possible: A Bayesian Approach to the Analysis of Reasonable Suspicion*, 55 AM. CRIM. L. REV. 511, 535 (2018).

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ Kaplan-Lyman, *supra* note 49, at 210.

“sites of physical disorder and violence” no matter how much they are policed and surveilled by law enforcement.⁹⁸

2. The Failure of Poverty as a Revenue Stream

The self-evident unworkability of fare evasion enforcement as a revenue-generating mechanism belies the economic rationale for heightened transit policing proffered by government officials, revealing a dubious logic lined with counterintuitive assumptions. Assessing fines for the nonpayment of transit fare under a fee-based penalty structure is patently dysfunctional as a revenue-generating model because it is so drastically incongruent with the unavoidable reality that fare evasion exists, almost exclusively, as a crime of poverty. NYC journalist Harold Stolper argues that if the MTA’s stated intent is to reduce fare evasion in order to recapture lost revenue, which would presumably be achieved by converting turnstile jumpers into paying

⁹⁸ *Id.* at 208.

customers, these policies will likely have the opposite effect because those most unable to afford the fees and fines associated with fare evasion enforcement will just be less able to afford full-price fares.⁹⁹ Nevertheless, the MTA has consistently brushed off this line of criticism, asserting that it does “not engage in politics when it comes to public safety” and citing the traditional twin goals of providing “reliable service” and ensuring that riders “feel secure” on public transit.¹⁰⁰ (Interestingly, these justifications only indirectly fulfill the stated aim of generating revenue.)

Critics of the crackdown contend that fare evasion is largely “a function of poverty”¹⁰¹ and is thus better understood as a reaction to an increasingly unaffordable transit system.¹⁰² As Harold Stolper contends, “[h]eightedened policing at the turnstile is

⁹⁹ Stolper, *supra* note 38.

¹⁰⁰ Barone, *supra* note 5.

¹⁰¹ Stolper, *supra* note 38. Stolper notes the fact that “[p]eople arrested for fare evasion rely on public defenders” appearing to indicate that individuals arrested for fare evasion live in poverty.

¹⁰² Jay Willis, *Turnstile Jumpers Aren't What's Ruining the New York City Subway*, GQ (Feb. 12, 2019), <https://www.gq.com/story/nyc-subway-turnstile-jumping>.

destined to fail, because no amount of police can eliminate economic need or make it easier to pay the fare.”¹⁰³ Many assert that “[f]are evasion can’t be policed away,” in part because “the NYPD can’t solve poverty,” which many identify as one of the “root problems playing out at the turnstile.”¹⁰⁴ In fact, research has shown that up to 40% of low-income New Yorkers report that “they are often unable to afford subway and bus fare.”¹⁰⁵ For those individuals, they have little choice but to “risk it” and jump the turnstile in order to go about their daily lives, including commuting to jobs.¹⁰⁶ As such, those who oppose the crackdown on this basis argue that increased enforcement will do little to curb turnstile jumping and “argue that a more effective solution would be to help make sure that people can afford the transportation costs.”¹⁰⁷

¹⁰³ Stolper, *supra* note 38.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ E.g., Ragini Srikrishna, *New York City MTA’s Crack on Fare Evasion Is War on the Poor*, TEEN VOGUE (Dec. 25, 2019), <https://www.teenvogue.com/story/mta-crackdown-fare-evasion-poor>.

¹⁰⁷ Covert, *supra* note 6.

Law enforcement officials counter that “progressives overestimate the extent to which fare evaders are not paying because they can’t.”¹⁰⁸ Retired NYPD Eugene O’Donnell has dismissed this as a “mythology” and lambasted critics of overpolicing as “naïve,” contending that fare evasion is instead rooted in “a growing lack of respect for the city’s justice system,”¹⁰⁹ while NYC Mayor Bill de Blasio has similarly rejected the contention that poverty lies at the root of most turnstile jumping activity,¹¹⁰ despite the fact that even the MTA’s own internal research has “link[ed] increasing rates of fare evasion with low-income neighborhoods.”¹¹¹

Critics have highlighted the fact that a \$100 fine attached to turnstile jumping for theft of services amounting to \$2.75¹¹² is nearly 36 times more than the cost of lost fare.¹¹³ Moreover, non-payment of the fine can incur a “misdemeanor charge and court

¹⁰⁸ Santiago, *supra* note 64.

¹⁰⁹ *Id.*

¹¹⁰ Flagg & Nerbovig, *supra* note 30.

¹¹¹ *Id.*

¹¹² Srikrishna, *supra* note 107.

¹¹³ Weill, *supra* note 27.

appearance.”¹¹⁴ For shift workers, appearing in court often means sacrificing a day’s worth of wages, which many families rely on just to get by.¹¹⁵ Putting aside other indirect costs associated with being cited for or charged with fare evasion, the fine and lost wages alone can set families back over \$200¹¹⁶—almost 100 times the actual cost of the infraction. Pointing to these statistics, opponents of escalated transit policing have characterized the crackdown as “as a convenient, growing source of revenue.”¹¹⁷

3. The Failure of Criminal Deterrence Theory as a Youth Policing Framework for Transit Crimes

Criminal deterrence theory does not provide a workable model for youth fare evasion. It is problematic to view this issue through the lens of

¹¹⁴ Srikrishna, *supra* note 107.

¹¹⁵ *Id.*

¹¹⁶ See *Minimum Wage*, NYC.GOV, <https://www1.nyc.gov/nycbusiness/description/wage-regulations-in-new-york-state>. Assuming workers make minimum wage for a typical eight-hour shift, which is not necessarily true in all cases, their pre-tax income per day is somewhere between \$112 and \$120, depending on breaks.

¹¹⁷ Srikrishna, *supra* note 107.

deterrence theory in part because its framework “oversimplifies the life process by not considering the effects of adverse or positive social conditions on criminals.”¹¹⁸ Deterrence theory derives from “the psychological assumption that the subjective certainty and unpleasantness of punishment discourages the community from engaging in criminal behavior.”¹¹⁹ The theory “assumes that would-be offenders are rational” in the sense that they are assumed to engage in “a conscious weighing of the benefits and costs of offending contingent on and constrained by factors of the environment, situation, and individual.”¹²⁰ Under this theoretical model, “[o]ffending occurs if the perceived benefits exceed the perceived costs.”¹²¹

Critics have argued that the rational actor model is inconsistent with real-life and “thereby presents a distorted picture of the object of deterrence.”¹²²

¹¹⁸ Kevin C. Kennedy, *A Critical Appraisal of Criminal Deterrence Theory*, 88 DICK. L. REV. 1, 11 (1983).

¹¹⁹ *Id.* at 7.

¹²⁰ Nagin et. al, *supra* note 86, at 79.

¹²¹ *Id.*

¹²² Kennedy, *supra* note 119, at 7.

These scholars note that in stark contrast to the highly calculated image of criminality that emerges under classical deterrence theory, “some crimes are spontaneous acts” that are “highly emotional in character” and sometimes “motivated by passion” as opposed to rationality.¹²³ Indeed, adolescents are perhaps typical irrational actors.

Deterrence theory is incompatible with the policing and punishment structure of fare evasion. Deterrence holds that to be effective a “punishment imposed for an offense should be proportional to the severity of the offense” and “must be credible and communicated.”¹²⁴ Thus, fare evasion criminalizes conduct that may be unavoidable as a result of poverty and undeterred. Moreover, the efficacy of deterrence is questionable because the consequences for this infraction may be unreasonable, including uneven law enforcement.

Deterrence is also problematic as a criminal punishment theory in that it “sanctions the conviction

¹²³ *Id.*

¹²⁴ *Id.* at 3.

and sentencing of an individual solely to provide an effective threat to the entire society.”¹²⁵ While deterrence can only acquire meaning and functionality via the threat of punishment, the realization of punishment itself constitutes the failure of deterrence. Thus, on its own, deterrence is “an insufficient justification for punishing crime” in that it envisions punishments that are functional only as deterrents and not as actual penalties for criminal conduct.¹²⁶

Lastly, deterrent-punishment structures may be generally problematic for youth in this and other contexts not based on solid rationales because deterrents are made effective by a rational basis for the punishment or consequence that is acceptable to the policed.¹²⁷ Particularly in this case, youth are likely to identify numerous injustices, false assumptions, arbitrary restrictions, and so on that may undermine the feasibility of structuring policing

¹²⁵ *Id.* at 9.

¹²⁶ *See id.*

¹²⁷ *Id.* at 6.

and punishment in accordance with traditional models of criminal deterrence.

C. In Addition to Being Ineffective, the Crackdown Poses Harm to Low-Income Youth of Color Commuting to School on the MTA.

Among the myriad of harms and results arising from the crackdown, three concentric, interacting categories have escalated in urgency and severity: the unwise, the bad, and the dangerous.

1. The Unwise

Fare evasion crackdown policies generally are inconsistent with youth perspectives. In fact, according to Lisa Thureau, the entire contemporary approach to youth policing “is antithetical to all that is known about child and adolescent development.”¹²⁸ The current model is misguidedly predicated on an “authoritarian framework” and

¹²⁸ Lisa H. Thureau, *Rethinking How We Police Youth: Incorporating Knowledge of Adolescence into Policing Teens*, 29 CHILD. LEGAL RTS. J. 30 (2009).

erroneously “assumes that youth perceive, comprehend, behave, and respond like adults, while believing that youth pose the same or worse risks than adults.”¹²⁹

Research suggests that “people’s assessment of whether authorities behaved fairly influences the likelihood that they will comply with future legal directives.”¹³⁰ Youth “who perceive the system as unjust are less likely to adhere to the law and accept responsibility for their conduct.”¹³¹ According to Sarah Jane Forman, minority youth are aware of, and may even be especially preoccupied with “basic concepts of fairness, dignity and respect” and will “question [the] legitimacy” of laws that they perceive as being unfair.¹³² Frequent encounters with law enforcement and other “legal actors who seem to abuse their authority” often “contributes to a sense of

¹²⁹ *Id.*

¹³⁰ James Forman Jr., *Community Policing and Youth as Assets*, 95 J. CRIM. L. & CRIMINOLOGY 1, 35 (2004).

¹³¹ Andrea L. Dennis, *Decriminalizing Childhood*, 45 FORDHAM URB. L.J. 1, 25 (2017).

¹³² Sarah Jane Forman, *Countering Criminalization: Toward a Youth Development Approach to School Searches*, 14 SCHOLAR 301, 306 (2011) [hereinafter S.J. Forman].

humiliation, rejection, and alienation that eventually leads students to seek acceptance and recognition in other, less ‘mainstream’ venues.”¹³³

The evidence suggests that the policing strategies may already be backfiring, as “[f]are evasion has actually increased in recent months” since the beginning of the crackdown.¹³⁴ According to the *Wall Street Journal*, the percentage of fare evaders went from just under 4% of riders to nearly 5%, just within the space of several months.¹³⁵ The MTA has attributed the increase to “widespread acceptance of fare beating.”¹³⁶

Visible or increased police presence may itself generate and facilitate criminal conduct in some cases. A number of scholars have argued that the presence of law enforcement may be a “crimogenic factor” linked to increased rates of criminal misconduct.¹³⁷ Scholars have used these findings to shake the foundations of order maintenance policing

¹³³ *Id.*

¹³⁴ Weill, *supra* note 27.

¹³⁵ Santiago, *supra* note 64.

¹³⁶ *Id.*

¹³⁷ Thureau, *supra* note 127, at 31.

by problematizing one of its primary virtues, increased law enforcement presence.¹³⁸ Stanley Cohen and Jock Young argued under deviancy amplification theory that it was “counterproductive” for law enforcement to overreact to so-called “deviant” behavior with harsh surveillance policing.¹³⁹ They theorized that overpolicing could actually backfire in some cases and lead to further rule-breaking.¹⁴⁰ “[L]abelling” individuals as “deviants” can function as a self-fulfilling prophecy, which functions to “amplify deviance.”¹⁴¹ Lemert observed in his scholarship on deviancy amplification that interactions with law enforcement can be incredibly profound and transformative, and explained that some individuals “change their lives and self-conceptions in response to being formally

¹³⁸ *Id.*

¹³⁹ Angela McRobbie & Sarah L. Thornton, *Rethinking 'Moral Panic' for Multi-Mediated Social Worlds*, 46 BRIT. J. SOC. 559, 561 (1995).

¹⁴⁰ *Id.* at 560.

¹⁴¹ Gary T. Marx, *Ironies of Social Control: Authorities as Contributors to Deviance Through Escalation, Nonenforcement, and Covert Facilitation*, 28 SOC. PROBS. 221, 222 (1981).

processed, punished, stigmatized, segregated or isolated.”¹⁴²

In some cases, and perhaps this may be especially true among teenagers, “[p]rohibiting something can make it more attractive for those with rebellious needs or in search of excitement and ‘kicks.’”¹⁴³ According to Gary Marx, the “public sanctioning of behavior” under certain policing strategies can similarly backfire by contributing to what scholars have referred to as a “forbidden fruit effect.”¹⁴⁴ Marx theorized that the acts of circumscribing and enforcing against conduct may, in some cases, themselves generate curiosity that functions to entice rather than deter.¹⁴⁵ Thus, enforcement strategies can unwittingly encode certain unlawful behaviors as desirable, an unintended side effect of rendering the sanctioned conduct visible for policing and punishment.¹⁴⁶

¹⁴² *Id.*

¹⁴³ *Id.* at 234.

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

This phenomenon is particularly aligned with adolescent sensibilities. Teenagers are extremely influenced by the conduct of their peers, and their strong desire to fit in socially substantially motivates their decisions.¹⁴⁷ Teenagers are also driven by thrill and impulse such that “the very illegality” of a sanctioned activity may be part of what “creates the lure and excitement of the behavior.”¹⁴⁸ Turnstile jumping is a kind of favorite infraction engaged in by urban youth. Martha Smith and Ronald Clarke note that fare evasion “is often considered a game or a competition.”¹⁴⁹

2. The Bad

Constant interactions with law enforcement can be “traumatic” for youth of color.¹⁵⁰ Overpolicing is

¹⁴⁷ S.J. Forman, *supra* note 133, at 307–08.

¹⁴⁸ John B. Mitchell, *Crimes of Misery and Theories of Punishment*, 15 NEW CRIM. L. REV. 465, 488 (2012).

¹⁴⁹ Martha J. Smith & Ronald V. Clarke, *Crime and Public Transport*, 27 CRIME & JUST. 169, 186 (2000).

¹⁵⁰ N. Y. ADVISORY COMM. TO U.S. COMM’N ON CIVIL RIGHTS, THE CIVIL RIGHTS IMPLICATIONS OF “BROKEN WINDOWS” POLICING IN NYC AND GENERAL NYPD ACCOUNTABILITY TO THE PUBLIC 56 (May 2018), <https://www.usccr.gov/pubs/2018/03-22-NYSAC.pdf>.

generally harmful to young people’s “self-perception by branding them as untrustworthy and as potential criminals,” and can cause them to feel “ontologically insecure in public spaces,” which has long-term detrimental impact.¹⁵¹ Sarah Jane Forman has argued that stricter policing of urban youth of color as compared to other youth populations communicates a message of “inferiority...lowered expectations of privacy, and...second-class citizenship.”¹⁵²

Consistent exposure to overpolicing “reinforces the alienation of youth” and “can cause youth who are straddling the line between delinquency and law-abidingness to think of themselves as delinquent.”¹⁵³ Prominent discourses around crime, policing, and enforcement persistently characterize urban youth of color “as dangerous, violent, drug-dealing, gang-affiliated, out-of-control troublemakers” to justify “protection from these menacing ambassadors of street thuggery.”¹⁵⁴

¹⁵¹ *Id.*

¹⁵² S.J. Forman, *supra* note 133, at 302.

¹⁵³ Forman Jr., *supra* note 131, at 34.

¹⁵⁴ S.J. Forman, *supra* note 133, at 305.

According to *The Atlantic*, among those arrested for fare evasion in 2016, nearly 90% were Black and Hispanic.¹⁵⁵ Black and Hispanic individuals also accounted for nearly three-quarters of those who were ticketed for fare evasion between 2017 and 2019, and members of these groups were also far more likely to be arrested, as opposed to receiving a ticket.¹⁵⁶ Poor Black men are arrested at a particularly disproportionate rate. As a group, Black males comprise approximately 13% of New Yorkers living in poverty, but they represent half of all turnstile jumping arrests.¹⁵⁷ Overall, residents of high-poverty Black and Hispanic neighborhoods “are twice as likely to be arrested” for fare evasion “as those in high-poverty [W]hite and Asian neighborhoods.”¹⁵⁸

¹⁵⁵ Ewing, *supra* note 4. *Accord.* Ashley Southall, *Subway Arrests Investigated Over Claims People of Color Are Targeted*, N.Y. Times (Jan. 13, 2020), <https://www.nytimes.com/2020/01/13/nyregion/letitia-james-fare-beating-nypd.html>.

¹⁵⁶ Goldstein & Southall, *supra* note 26 (noting that Black and Hispanic individuals, who together represent a little over half of NYC’s population, comprised approximately 73% of those ticketed for turnstile jumping).

¹⁵⁷ Flagg & Nerbovig, *supra* note 30.

¹⁵⁸ Stolper, *supra* note 38.

The threat to youth of color is very real. The NYPD has long been a source of violence and surveillance in poor communities of color throughout NYC (e.g., Harlem, South Bronx, and Bedford–Stuyvesant). In fact, in 2019, a group of six NYPD officers alleged that their commanding officer had “instructed officers to think of” White and Asian “people as ‘soft targets’ and urged them to instead go after” [B]lacks and Hispanic people “for minor offenses like jumping the turnstile.”¹⁵⁹ One of the officers reported that the commander directed him to “write up more [B]lack and Hispanic people.”¹⁶⁰ Others have “leaked recordings of their supervisors berating them for not issuing enough fare evasion summonses to young ‘male Blacks.’”¹⁶¹

3. The Dangerous

Community leaders in NYC began warning almost immediately that more police in the subway

¹⁵⁹ Goldstein & Southall, *supra* note 26.

¹⁶⁰ *Id.*

¹⁶¹ CMTY. SERV. SOC’Y, *supra* note 32.

could transform tense interactions between NYPD and youth of color into “explosive situation[s].”¹⁶² The city’s most heavily policed neighborhoods, like the South Bronx or Central Harlem, have mostly been that way for generations, so the neighborhoods most impacted by the crackdown today are largely experiencing legacy impact of decades and centuries of culturally destructive political, social, and economic policies.¹⁶³ In fact, numerous studies have shown that youth of color “hold more critical opinions of the police than other groups.”¹⁶⁴ They describe police officers as “adversarial and provocative,” highlighting officers’ “belligerent” tone and regular use of “inflammatory language, including name-calling and racial slurs.”¹⁶⁵ Some youth view the use of “antagonistic language” as intentional, designed to “provoke them to respond in

¹⁶² See Nessen, *supra* note 7.

¹⁶³ See generally *id.*

¹⁶⁴ Ronald Weitzer & Rod K. Brunson, *Strategic Responses to the Police Among Inner-City Youth*, 50 Soc. Q. 235 (2009).

¹⁶⁵ *Id.* at 244.

a way that” may appear to give officers “a reason” to react.¹⁶⁶

Interactions with law enforcement are more dangerous for young people of color, especially Black and Hispanic youth. Research indicates that police “*unconsciously* attribute a higher level of intentionality to the conduct of minority and impoverished youth than to the identical conduct of other youth.”¹⁶⁷ Young Black males are more likely to be harassed and victimized by police violence than other demographics.¹⁶⁸ A 2004 study found that police engaged in “disrespectful” behavior, which included “name calling, derogatory statements, belittling comments, slurs, cursing, or interrupting,” beyond simply “[b]eing argumentative,” in approximately 10% of recorded interactions with Black male youth.¹⁶⁹

¹⁶⁶ *Id.* at 245.

¹⁶⁷ Thureau, *supra* note 127, at 34.

¹⁶⁸ Forman Jr., *supra* note 131, at 20–21 (noting that police are “more likely to use force on males, [nonWhites], the young, and the poor”).

¹⁶⁹ *Id.* at 14–15.

a. Life under Surveillance

People living and attending school in high-poverty, majority-minority neighborhoods are faced with near-constant policing in their daily lives. In general, youth of color “tend to live in heavily-policed urban areas” with near-constant surveillance.¹⁷⁰ Research suggests that policing and arrest are more robust in communities where there is perceived low familial investment in youth.¹⁷¹ Violence is viewed by law enforcement in these communities as “both necessary and less damaging to youth and their communities” as compared to higher-socioeconomic status non-minority youth.¹⁷² The fact that urban youth of color are also more frequently subjected to indiscriminate school-based policing, including the use of metal detectors, “constant video surveillance,” and a dedicated police presence within the educational setting compounds perceptions of injustice.¹⁷³

¹⁷⁰ Dennis, *supra* note 132, at 4.

¹⁷¹ Thureau, *supra* note 127, at 33.

¹⁷² *Id.*

¹⁷³ S.J. Forman, *supra* note 133, at 330.

Not only are Black youth stopped by law enforcement more frequently than teenagers of other races, they are also “more likely to be both disrespected and illegally searched” during police stops.¹⁷⁴ As a result of this kind of overpolicing, the “misbehavior” of young people of color is detected by law enforcement more frequently and more harshly punished.¹⁷⁵ This generates acute levels of mutual distrust among young people of color and law enforcement, sometimes leading to expressions of aggression or violence, which can be fatal for Black youth.¹⁷⁶ Research indicates that while all youth tend to report distrust of the police, Black male youth display particularly “high levels of distrust and hostility toward the police.”¹⁷⁷ The evidence suggests that the police also distrust young Black men.¹⁷⁸

¹⁷⁴ Forman Jr., *supra* note 131, at 20.

¹⁷⁵ Dennis, *supra* note 132, at 3.

¹⁷⁶ See Thurau, *supra* note 127, at 37.

¹⁷⁷ Weitzer & Brunson, *supra* note 166, at 250.

¹⁷⁸ *Id.* at 235.

b. Strategies and Police Violence

The potential for unnecessary police violence and brutality to occur during interactions between law enforcement and youth of color is significant. In NYC, recent clashes have resulted in troubling incidents of transit police brutality, such as in the case of 19 year-old Adrian Napier, an innocent Black teenager who was chased and wrestled to the ground by subway police after jumping a turnstile, which have only further highlighted the disproportionate impact of broken windows policing tactics on young Black men.¹⁷⁹ Local NYC news outlet, *Gothamist*, has also reported on similar examples of the aggressive policing of Black male youths, including several incidents have been captured on video.¹⁸⁰ Many have expressed concern about the heightened use of police brutality against this population.¹⁸¹

Writing on justice and the maintenance of community norms, Gary Sykes' early scholarship

¹⁷⁹ Offenhartz, *supra* note 33.

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

provides a critical framework for understanding violent “response[s] in situations where [police] authority is challenged.”¹⁸² Emphasizing the police institution’s “‘love-hate’ relationship with the legal system,” Sykes identifies an embedded desire to engage in discretionary “peacekeeping activities” that exist beyond the legal strictures of due process as key point of tension in policing. He also explains that as policing became professionalized, police’s traditional enforcement discretion was increasingly circumscribed, giving rise to lingering institutional resentment that continues to shape interactions between police and communities of color.¹⁸³

c. Youth-Initiated Conflict

Unfortunately, “treat[ing]” urban youth “as threats to society” may in some cases “create a self-fulfilling prophecy.”¹⁸⁴ According to researchers,

¹⁸² Sykes, *supra* note 45, at 504.

¹⁸³ *See id.* According to Sykes, “[t]he legitimacy of the police role” is paradoxically undermined by “limiting its functions to essential enforcement activities” that “are subject to review under administrative and legal rules.”

¹⁸⁴ S.J. Forman, *supra* note 133, at 308.

“the potential for conflict is amplified” by perceived abuse of authority.¹⁸⁵ Indeed, the prolonged exposure to abusive or unjust policing practices coupled with the “constant suspicion” endured by urban youth of color leads many to adopt “a defensive posture” toward what they perceive as an unjust system, pushing them toward “an oppositional culture born in despair and steeped in violence.”¹⁸⁶ This approach can be quite dangerous given the underlying tensions and fundamentally unequal power dynamics that characterize relations between these groups.

Research indicates that “[v]erbal resistance [is] a common response to perceived unfair or improper treatment.”¹⁸⁷ However, for some youth, “warring with the police becomes a central focus of activity,” leading to explosive relationships with the police.¹⁸⁸ Urban youth of color may display hostile or disrespectful behaviors toward law enforcement as a strategy to cope with the persistent anxiety and fear

¹⁸⁵ Weitzer & Brunson, *supra* note 166, at 244.

¹⁸⁶ S.J. Forman, *supra* note 133, at 306.

¹⁸⁷ Weitzer & Brunson, *supra* note 166, at 244.

¹⁸⁸ Thureau, *supra* note 127, at 37.

of harm to their person.¹⁸⁹ According to Margaret Beale Spencer, aggressive and hyperconfrontational behavior is rooted in the lack of control experienced by many Black teenagers in their day-to-day lives.¹⁹⁰ Teenage boys of color will often adopt hypermasculinity as a kind of coping mechanism in order to “bolster self-image and offer short term survival relief.”¹⁹¹ Unfortunately, appropriating hypermasculinity as a vocabulary of expression may be detrimental in the sense that it traps them in a cycle of conflict and violence.¹⁹²

Because teenagers are governed by peers and authority figures, they may engage in displays disrespect, hostility, or even violence toward law enforcement in the context of a peer social group to a different, potentially more explosive, effect. Where police directives “are perceived as arbitrary” to local youth, “or if such orders are understood to be manifestations of an approach to policing that treats

¹⁸⁹ *See id.*

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

¹⁹² *Id.*

youth as threats, then a willingness to defy such orders” can be “interpreted as a sign of strength,” potentially raising the profile of youth offenders and “reinforc[ing] hostility toward law enforcement.”¹⁹³ On both sides, interactions between law enforcement and minority youth are frequently “characterized by militarism,” but police wield imbalanced structural and institutional power and may engage in “excessive displays of force that concretize the power of the state and ‘systematize’ the social, racial, and economic status quo.”¹⁹⁴

d. High Potential for System
Involvement Arising from
Interactions

Contact between police and youth of color may frequently generate contact or, in many cases, prolonged involvement with the criminal justice system. Relationships between law enforcement and youth are “often characterized by high rates of arrest, use of force during interactions, juvenile court

¹⁹³ Forman Jr., *supra* note 131, at 32.

¹⁹⁴ Thureau, *supra* note 127, at 31.

involvement, counterproductive incarceration, and disproportionate minority contact.”¹⁹⁵ Essentially all system or law enforcement contact has the potential for detrimental impact for youth of color. As Andrea Dennis states, “[s]imply being arrested may trigger immediate negative outcomes.”¹⁹⁶

Even arrestees who are not taken into custody or are in custody for very short periods of time face serious consequences as a result of the arrest that “have the potential to substantially disrupt [their] lives.”¹⁹⁷ These individuals often “face significant challenges in their social and economic lives” and may be stigmatized for their system involvement, even if their charges are eventually dismissed or they are found not guilty in adjudicatory proceedings.¹⁹⁸ These arrests can have a long-term negative impact on employment opportunities because they remain

¹⁹⁵ *Id.* at 30.

¹⁹⁶ Dennis, *supra* note 132, at 24.

¹⁹⁷ Geller, *supra* note 88, at 1048. *E.g.*, Howell, *supra* note 43, at 288 (noting that “the consequences of arrest and conviction for minor offenses...have significant potential to adversely affect those arrested, their families, their communities, and the criminal justice system” as a whole).

¹⁹⁸ Geller, *supra* note 88, at 1054.

on an individual's criminal record, even when charges are dismissed.¹⁹⁹ Arrests may also have the effect of flagging individuals "for greater attention from the criminal justice system in the future."²⁰⁰ As such, Geller concludes that "involvement with criminal justice institutions imposes burdens on individuals even at very low levels of contact with the system."²⁰¹

Although a significant number of arrestees taken into custody are released on recognizance and less than 1% are remanded, around one-third are "offered bail release."²⁰² However, "most defendants who were offered bail release were unable to post bail at arraignment" and most likely remained in police custody until adjudication.²⁰³ Nearly one-quarter of those arrested as a result of SQF practices were detained solely as a result of their inability to post bail, despite the fact that 99% of "these arrested

¹⁹⁹ *Id.* at 1055. *Accord.* Howell, *supra* note 43, at 292.

²⁰⁰ Geller, *supra* note 88, at 1055.

²⁰¹ *Id.* at 1052.

²⁰² *Id.* at 1049–50.

²⁰³ *Id.* at 1050.

ended with the dismissal of charges.”²⁰⁴ The average wait-time for those ultimately found not-guilty is upwards of five months.²⁰⁵ These so-called “proactive” policing models “have dramatically increased the risk of arrest for urban residents, particularly for low-level offenses.”²⁰⁶ Additionally, many face “[e]xtended pretrial confinement.”²⁰⁷ Although some arrestees “may be detained due to an outstanding warrant or conviction for another offense,” others languish in detention simply “because they lack the resources to post bail.”²⁰⁸

e. Youthful Offenders

Michael Corriero observes that young criminal actors distinguish themselves from their adult counterparts by “[t]he foolishness of their criminal acts.”²⁰⁹ Propensity to engage in criminal behavior

²⁰⁴ *Id.* at 1051.

²⁰⁵ *Id.*

²⁰⁶ *Id.* at 1032.

²⁰⁷ *Id.* at 1035.

²⁰⁸ *Id.* at 1035.

²⁰⁹ MICHAEL A. CORRIERO, THE NATURE OF ADOLESCENCE: JUDGING CHILDREN AS CHILDREN 31 (2006).

peaks during adolescence, and then quickly declines during early adulthood as young adults find stability.²¹⁰ It is “very common” for teenagers across most demographics to engage in youthful law-breaking during adolescence.²¹¹ Most of this youthful misconduct is “stage-related and disappears” organically with age and without specific intervention.²¹² In fact, research suggests that the vast majority, around 95%, of “youthful criminal behavior is attributable to transitory developmental influences of adolescence,” and only about five percent of juvenile offenders “persist in criminal activity in adulthood.”²¹³

Youthful troublemakers are more likely to engage in risk-taking behavior in peer group settings²¹⁴ and often commit crimes together.²¹⁵ Teenagers substantially “are more oriented toward peers and responsive to peer influence as compared

²¹⁰ ELIZABETH S. SCOTT & LAURENCE STEINBERG, *RETHINKING JUVENILE JUSTICE* 53 (2020).

²¹¹ *Id.*

²¹² CORRIERO, *supra* note 214, at 32.

²¹³ SCOTT & STEINBERG, *supra* note 215, at 53.

²¹⁴ *Id.* at 41.

²¹⁵ CORRIERO, *supra* note 214, at 30.

to adults.”²¹⁶ Far more than any other age group, teenagers are hard-wired to situate their identities in terms of “social conformity,” meaning that they frequently seek “to adapt their behavior and attitudes to that of their peers, especially in day-to-day-matters.”²¹⁷

Young people in general are inherently untrustworthy of the police, and interactions between these two groups are in many cases characterized by conflict. A ten-year survey conducted by the Bureau of Justice found that while youth aged 16-18 were involved in just 3.5% of all law enforcement interactions, nearly 31% of all interactions “involving use of force by the police” occurred between police and youth in this demographic.²¹⁸ Law enforcement reportedly initiated the use of force in 81% of these incidents.²¹⁹

²¹⁶ SCOTT & STEINBERG, *supra* note 215, at 38.

²¹⁷ *Id.*

²¹⁸ Thureau, *supra* note 127, at 30.

²¹⁹ *Id.*

IV. PROPOSALS

- A. Expand the Student MetroCard Program to Provide Unlimited, Year-Round Transit Access to All NYC Public School Students.

The Student MetroCard program offers an ideal framework for providing resolution. First, according to Elizabeth Scott and Laurence Steinberg, the vast majority of youth who engage in low-level misconduct like fare evasion will organically “‘mature out’ of their inclination to get involved in criminal activity” without specific intervention.²²⁰ Thus, there is not necessarily cognizable need to enforce this infraction among this demographic regardless, as punishment would serve no purpose. As Andrea Dennis underscores, “criminal justice punishment is not vital to holding youth accountable.”²²¹

Nevertheless, some teenagers may still engage in turnstile jumping for performative purposes,

²²⁰ SCOTT & STEINBERG, *supra* note 215, at 54.

²²¹ Dennis, *supra* note 132, at 37.

including to gain credibility in peer groups.²²² Addressing the broader issue primarily through transit fare relief still leaves open the possibility of treating repeated misconduct under traditional civil or criminal enforcement mechanisms, which may be important to achieving these reforms as a political matter. Moreover, grounding the resolution in transit fare relief recognizes and addresses that transit access is at the heart of the issue and provides a workable framework that provides for existing structural poverty conditions.

It is imperative that the MetroCard program be expanded to provide year-round access. Lack of access to free public transportation severely limits the opportunities available to poor students. Many low-income students report “struggling to pay for transportation” over the summer, when their Student MetroCards are inactive.²²³ Thus, failing to provide free transit access to youth restricts a large portion of NYC public school students from taking summer

²²² Cf. SCOTT & STEINBERG, *supra* note 215, at 43.

²²³ Fall & Fawziah, *supra* note 63.

classes and obtaining jobs or internships because they cannot afford subway fare and are not provided with a Student MetroCard for use over the summer.²²⁴ Teenagers who do participate in enrichment activities, jobs, or internships are forced to ask parents or other family members to cover their travel expenses.²²⁵ One student reported walking to and from her summer internship, doubling her commute time.²²⁶ Students may use less secure alternatives such as “so-called ‘dollar vans,’” which cost \$2, saving them \$1.50 roundtrip.²²⁷ Yet, some end-up jumping turnstiles “out of desperation.”²²⁸

Although broad access is generally better, if it were necessary to restrict eligibility, parental income level would be a sensible limitation and is easily measured by proxy through free or reduced-price lunch status, which is data that schools already have in a digitized system. Thus, any student who qualifies for free or reduced-price lunch should be

²²⁴ *Id.*

²²⁵ *Id.*

²²⁶ *Id.*

²²⁷ *Id.*

²²⁸ *Id.*

automatically eligible for—ideally just given—a free unlimited, year-round MetroCard.

However, students and parents should be entitled to request free or reduced-price MetroCards based on documented financial need. School guidance counselors or other community liaisons in similar roles should be afforded significant discretion in determining eligibility. Families must be able to demonstrate valid financial need. Establishing a more flexible, community-centered process will allow each family's needs to be considered on a case-by-case basis. Where a family's household income falls in relation to the poverty line does not tell the full story of that family's financial situation. Some may send money to family members in their home countries, pay debts, shoulder hefty medical bills, or any number of things. The DOE and the MTA must recognize that children should not be deprived of resources regardless of their parents' financial situation.

There is no justifiable financial reason against providing full-year unlimited MetroCards rather than

those arbitrarily limited under the current structure. Providing students with unlimited MetroCards over a continuous yearlong period represents an excess cost of only \$15 per qualifying student per year.²²⁹ Unlimited, yearlong cards would significantly expand transit access and provide at least some important protection from risky transit policing practices.

NYC should eventually consider providing subsidized public transit access for young adults over the age of 18. Although it seems unlikely to gain political traction in NYC, Boston's innovative Youth Pass Program could also serve as a model for NYC to follow in crafting such a program. Boston's initiative is noteworthy also because it provides K-12 students with half-price fare during the summer

²²⁹ At a per-ride cost of \$2.75, assuming a 180-day school year, three rides per school day add up to \$1,485 per student per year. An unlimited MetroCard currently costs \$127 per month, for an annual total of \$1,524. It would be substantially cheaper to provide a fully unlimited MetroCard between September and June than the sticker price of the current structure (\$1,270 versus \$1,485). See *Fares & MetroCard*, WEB.MTA.INFO, <http://web.mta.info/metrocard/mcgtreng.htm#unlimited> (last visited Apr. 1, 2020).

months when they are not covered through their public school.

In 2016, the Massachusetts Bay Transportation Authority (MBTA) in Boston launched the Youth Pass Program to provide young adults who meet certain eligibility requirements with subsidized transit fare. The Youth Pass entitles passholders to half-price fare or a \$30.00 monthly access pass, discounted from \$90.00 and providing unlimited subway and bus travel. Young people are eligible if they are between the ages of 18 and 25; live in Boston, Cambridge, or one of 12 other towns and cities in the Greater Boston Metro area; and are enrolled in “an MBTA-approved benefits, education, or job training program.”²³⁰ Approved programs include alternative education programs, including high school equivalency degree, and job training and development programs. State and federal benefits programs are also considered eligible “approved

²³⁰*Youth Pass*, MBTA.COM,

<https://www.mbta.com/fares/reduced/youth-pass>.

programs.”²³¹ Youth aged 12-18²³² are eligible for a Youth Pass during the summer months.²³³

B. The NYC Department of Education Must Engage in Interagency Collaborative Youth Policing Reforms to Protect Its Students from the Risks and Damaging Impact of Overpolicing.

The DOE should work with the MTA and the NYPD to promote a policy against detrimental youth-law enforcement action. DOE has a moral duty and a vested interest in the safety of its students while they are travelling to and from the school building, including on public transit. NYC could again look to Boston, which made early strides in implementing relationship-building youth policing approaches. Youth relationship development initiatives have a demonstrably positive effect in ameliorating tensions and dismantling damaging stereotypes that drive confrontation.²³⁴

²³¹ *Id.*

²³² Youth ages 11 and under ride at no cost throughout the MBTA system. *See id.*

²³³ *Id.*

²³⁴ Thureau, *supra* note 127, at 40.

The MBTA Transit Police made significant progress in Boston by reenvisioning their approach to focus on building relationships with youth. Recognizing that anonymity played a role in driving truancy and similar misconduct among youth, the MBTA transformed its engagement model to ensure consistency in staffing that would enable officers to engage with local youth on a personal level.²³⁵ With the implementation of these changes, between 2000 and 2008, MBTA Transit Police decreased youth arrests from 682 in 2000 to just 80 in 2008.²³⁶ By 2008, not only had suspension and expulsion rates decreased, there was also an overall reduction in youth transit arrests in Boston.²³⁷ A community organizer involved in the initiative succinctly summarized the key lesson, “rules without relationship lead to rebellion.”²³⁸ Echoing these sentiments, one youth remarked that authority figures “give us rules all the time, but if they gave us

²³⁵ *Id.*

²³⁶ *Id.*

²³⁷ *Id.*

²³⁸ *Id.*

expectations and treated us like we could meet them, we would just naturally follow the rules.”²³⁹

V. CONCLUSION

The DOE must reject and block the MTA and NYPD’s most recent attempts at overpolicing and overcriminalizing youth of color within the transit system. The MTA should not seek financial panacea in fare evasion crackdown and should question the legitimacy of revenue-generating practices that break the backs of low-income New Yorkers, when the burden falls to students and youth as it does here. The MTA must look elsewhere for ways to bridge the ever-widening budget gap. The DOE must realize its moral and ethical duty to act on behalf of the hundreds of thousands of students of color it serves and knowingly filters into the transit system day-in and day-out. Swift action could be life-saving for the teenagers under its care.

²³⁹ *Id.*