

THE NEVER ENDING TALE: RACISM AND INEQUALITY IN THE ERA OF BROKEN WINDOWS

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“Like so many New Yorkers, my heart belongs to my neighborhood. And we deserve a city government that actually believes in our neighborhoods and sees things the way we do. Now, that may have seemed impossible in recent years, we’ve gotten so used to the elitists at City Hall, that the notion of government of and for and by our neighborhoods may seem to have perished.”

—Bill de Blasio, Mayor of the City of New York¹

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¹ Hunter Walker, *Bill de Blasio Tells ‘A Tale of Two Cities’ at His Mayoral Campaign Kickoff*, OBSERVER (Jan. 27, 2013, 4:34 PM), <http://observer.com/2013/01/bill-de-blasio-tells-a-tale-of-two-cities-at-his-mayoral-campaign-kickoff>.

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INTRODUCTION

Mayor-elect, Bill de Blasio, campaigned on a promise that he would transform New York City (the City) from two separate and distinct cities—one side that is a welcoming home to the wealthy, while the other ignores the homeless, unemployed, hardworking low-income, and the middle class—to one city that values all citizens.² In addition, he campaigned with the understanding that there was a need in New York City to repair the relationship between its citizens and its law enforcement.³ He told his constituents that he understood that there was a need to examine the “Stop, Question, and Frisk” program utilized by the New York City Police Department (NYPD) from 2002 until 2011.⁴ In keeping his promise after being elected, de Blasio has implemented policies that provide accessible housing, benefits, and living wages to New Yorkers struggling with poverty, and further promised to bring an end to the Stop, Question, and Frisk program practiced in the previous decade.⁵ Although Stop, Question, and Frisk has been a practice of the New York City police department for many

² Mayor Bill de Blasio, City of New York, Inauguration Speech (Jan. 1, 2014) [hereinafter de Blasio Inauguration Speech], <http://www.nytimes.com/2014/01/02/nyregion/complete-text-of-bill-de-blasios-inauguration-speech.html>; see also Mayor Bill de Blasio, City of New York, State of the City Remarks (Feb. 3, 2015), <http://www1.nyc.gov/office-of-the-mayor/news/089-15/state-the-city-remarks-bill-de-blasio-prepared-delivery>.

³ See de Blasio Inauguration Speech, *supra* note 2.

⁴ The “Stop, Question, and Frisk” program, or “stop and frisk” in New York City, is a practice of the NYPD in which police officers stop and question a person, then frisk the person for weapons or other contraband. See *Frequently Asked Questions: Police Administration*, N.Y. POLICE DEP’T, http://www.nyc.gov/html/nypd/html/faq/faq_police.shtml#stop (last visited Oct. 5, 2015). The rules for Stop, Question, and Frisk are found in state law. See N.Y. CRIM. PROC. LAW § 140.50 (McKinney 2004); see also CHRISTOPHER DUNN, N.Y. CIVIL LIBERTIES UNION, STOP & FRISK DURING THE BLOOMBERG ADMINISTRATION 2002–2013 (2014), http://www.nyclu.org/files/publications/stopandfrisk_briefer_2002-2013_final.pdf.

⁵ Mayor de Blasio is quoted as saying, “We believe in ending the overuse of stop-and-frisk that has unfairly targeted young African-American and Latino men.” Benjamin Weiser & Joseph Goldstein, *Mayor Says City Will Settle Suits on Frisk Tactics*, N.Y. TIMES, Jan. 31, 2014, at A1.

decades, during the administration of Mayor Michael Bloomberg there was a disparity in the number of black and Latino New Yorkers targeted for Stop, Question, and Frisk.⁶

At a glance, Mayor de Blasio has begun to narrow the divide between the wealthy and the poor, while improving community–police relations. But he has failed to examine what underlies the beast. Mayor de Blasio has shut his eyes to the fact that his Police Commissioner, William Bratton, will prevent the merging of the “Two Cities” by virtue of his firm commitment to “Broken Windows” policing.⁷ The Mayor has failed to recognize the discriminatory nature of the Broken Windows policy in practice, as well as the detrimental effects that the practice has on low-income New Yorkers of color.

This Article will examine the discriminatory practice of Broken Windows policing and its perpetuation of income inequality along racial lines. Part I will reveal the disproportionate numbers in which black and Hispanic New Yorkers are arrested under the Broken Windows policy. Part II will examine the destruction of economic stability and growth for New Yorkers of color, due to arrests and criminal court involvement. Part III will review the significant reforms by the Mayor’s Office, which fall short and elude the Mayor’s goals. In conclusion, this Article will argue that the elimination of Broken Windows is necessary to transform New York into one united city.

I. BROKEN WINDOWS: THE CITY CONTINUES TO CRACK AND SPLIT WIDE OPEN

A. *First Stop and Frisk, Now Broken Windows: The Inequality in New York City Policing Strategies*

In the neighborhood where a broken window sits unaltered and ignored, it becomes a symbol of neglect and complacency. As interpreted by James Q. Wilson and George L. Kelling, if one window is left broken and unrepaired, the rest of the neighborhood’s windows will be broken, because the first unrepaired window signals that no one cares

⁶ See DUNN, *supra* note 4.

⁷ “Broken Windows” is a theory developed by James Q. Wilson and George L. Kelling. They stated that if one window is left broken and unrepaired, the rest of the neighborhood will invite crime, because the unrepaired window signals that disorderly behavior will go unchecked. See George L. Kelling & James Q. Wilson, *Broken Windows: The Police and Neighborhood Safety*, ATLANTIC (Mar. 1982), <http://www.theatlantic.com/magazine/archive/1982/03/broken-windows/304465>.

about the neighborhood's deterioration.⁸ This "Broken Windows" theory is the premise for Police Commissioner Bratton's belief that the aggressive pursuit of low-level, nonviolent offenses—such as fare evasion, aggressive begging, public consumption of alcohol, loitering, and other minor infractions⁹ for which a person can be arrested or issued a summons—will prevent the general atmosphere of disorder. If individuals were not arrested and prosecuted for low-level offenses, according to the theory, violent criminals would then feel emboldened.¹⁰

In the 1990s, while Bratton was the police commissioner for New York City for the first time, arrests for misdemeanor petit offenses, such as marijuana possession, were used as pretexts to find "potential offenders for more serious crimes."¹¹ Beginning in the 1990s, New York City experienced a drop in the rate of violent crimes—otherwise known as fear crimes¹²—such as homicide, rape, and robbery.¹³ Some might measure the impact of Broken Windows in an asserted correlation between implementation of the policy and the decrease in fear crimes in New York City. The problem is that using these pretextual offenses as a way of deterring or stopping violent criminals leads to selective enforcement, leading to a higher arrest rate of black and Hispanic people living in poor neighborhoods.¹⁴

Today Bratton is police commissioner once again, and his continuing faith in the Broken Windows theory is reflected in the current arrest levels in New York City. For instance, from 2004 to 2014, arrest rates for petty offenses such as misdemeanors and violations increased by 14.8 percent, while arrest rates for felonies dropped by 12 percent.¹⁵

In contrast to his position on Stop, Question, and Frisk, de Blasio has firmly supported Broken Windows and has thus far endorsed Police Commissioner Bratton's chosen policing strategy.¹⁶ Unfortunately,

⁸ See Lauren Kirchner, *Breaking Down the Broken Windows Theory*, PAC. STANDARD (Jan. 7, 2014), <http://www.psmag.com/politics-and-law/breaking-broken-windows-theory-72310>.

⁹ See, e.g., Theft of Services, N.Y. PENAL LAW § 165.15(3) (McKinney 2010); Loitering, N.Y. PENAL LAW § 240.35 (McKinney 2008); Prohibition against certain forms of aggressive solicitation, N.Y.C. ADMINISTRATIVE CODE § 10-136 (2015); Consumption of alcohol on streets prohibited, N.Y.C. ADMINISTRATIVE CODE § 10-125 (2015).

¹⁰ See Kirchner, *supra* note 8.

¹¹ See FRANKLIN E. ZIMRING, *THE CITY THAT BECAME SAFE: NEW YORK'S LESSONS FOR URBAN CRIME AND ITS CONTROL* 122 (2013).

¹² See *id.* at 30.

¹³ See *id.* at 6 tbl.1.1.

¹⁴ See *id.* at 121–23.

¹⁵ See OFFICE OF THE CHIEF CLERK, N.Y.C. CRIMINAL COURT, 2014 ANNUAL REPORT 7 (2015) [hereinafter 2014 CRIMINAL COURT REPORT], https://www.nycourts.gov/COURTS/nyc/criminal/cc_annl_rpt_2014.pdf.

¹⁶ Joseph Goldstein, *Safer Era Tests Wisdom of 'Broken Windows' Focus on Minor Crime*, N.Y. TIMES, July 25, 2014, at A1.

under Broken Windows policing, the statistics for arrests carry a significant racial disparity, reminiscent of Stop, Question, and Frisk.

B. *Racial Disparities in Broken Windows Policing*

In 2013, 48% of the arrestees in criminal courts citywide were black, 33% were Hispanic, while 12% were white.¹⁷ A study completed by the *New York Daily News* and the New York Civil Liberties Union demonstrated that the NYPD issued 81% of summonses to a black or Hispanic person.¹⁸ While white people constitute only a small percentage of people arrested, they are the largest demographic in New York City.¹⁹ This disparity in arrests and issuance of summonses suggests that the NYPD targets minorities in the enforcement of low-level offenses.

When observing arraignments in New York County Criminal Court, one cannot help but notice that black or Hispanic individuals are arraigned one after another. The audience, most often family members and loved ones of the people before the court, is overwhelmingly black or Hispanic as well—the presence of white people in the court room is mostly reflected in the judges, prosecutors, defense attorneys, and court personnel.²⁰ The concentration of minorities being prosecuted, in contrast with the lawyers, judges, and law enforcement officials in the courtroom, becomes an allegory for the two New York Cities that the mayor vowed to unite.

The racial disparities in arrests and policing in New York City are part of a larger epidemic of racialized policing and prosecution across the United States that further denigrates and increases the marginalization of communities of color.²¹ Black and Hispanic people in

¹⁷ N.Y.C. CRIMINAL JUSTICE AGENCY, ANNUAL REPORT 2013, at 11 (2014) [hereinafter 2013 CJA REPORT].

¹⁸ Sarah Ryley et al., *Daily News Analysis Finds Racial Disparities in Summonses for Minor Violations in 'Broken Windows' Policing*, N.Y. DAILY NEWS (Aug. 4, 2014, 2:00 AM), <http://www.nydailynews.com/new-york/summons-broken-windows-racial-disparity-garner-article-1.1890567>.

¹⁹ According to the 2010 census data, white individuals comprise 33.3% of New York City's population, black individuals comprise 22.8%, and Hispanic individuals comprise 28.6%. See N.Y.C. DEP'T OF CITY PLANNING, NYC 2010: RESULTS FROM THE 2010 CENSUS: POPULATION GROWTH AND RACE/HISPANIC COMPOSITION 14 (2011), <http://www.nyc.gov/html/dcp/pdf/census/census2010/pgrhc.pdf>. Compare these statistics with arrest rates for black New Yorkers (at 48%) and white New Yorkers (at 12%). 2013 CJA REPORT, *supra* note 17.

²⁰ Both authors have over thirty years of experience in the representation of indigent persons accused of a crime. In their representation of clients, both authors have made thousands of court appearances over the years, providing extensive anecdotal evidence of the racial composition in the courtroom.

²¹ See MICHELLE ALEXANDER, THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS, at ch. 3 (2012).

the United States have a lower average income²² and live in poverty at rates higher than that of white people. Of those New Yorkers living in poverty, 22.4% are non-Hispanic black, while 25.8% are Hispanic.²³ As the next Part will show, arresting more black and Hispanic people results in a higher arrest rate of people living in poverty.

II. INCREASING THE DIVIDE AMONG THE “TWO CITIES” THROUGH “BROKEN WINDOWS” POLICING

Based on the economic disparity between blacks and Hispanics compared to whites in America, it is unsurprising that economic inequality between white and black Americans exists and is largely due to wage and income differentials.²⁴ In fact, in 2013, the median net worth of a white family was thirteen times greater than that of a black family, and ten times greater than that of a Hispanic family.²⁵ The unemployment rate of blacks and Hispanics is about twice that of whites.²⁶ Blacks and Hispanics face implicit bias and covert racism in the New York City job market. As finding employment is already a challenge for black and Hispanic citizens, arrest and convictions only add to that challenge. An arrest and conviction of a misdemeanor or a violation can result in the loss of employment as well as limited employment opportunities and access to housing. The fines and surcharges imposed after a guilty plea to a misdemeanor or violation can destabilize financial equity of families that subsist on minimal financial resources. These convictions delay potential economic mobility of a family by making it harder to obtain employment or to stay employed. Arrests and convictions in low-level, nonviolent offenses create economic burdens that keep the distance between the two cities.

²² Laura Shin, *The Racial Wealth Gap: Why A Typical White Household Has 16 Times the Wealth of a Black One*, FORBES (Mar. 26, 2015, 8:00 AM), <http://www.forbes.com/sites/laurashin/2015/03/26/the-racial-wealth-gap-why-a-typical-white-household-has-16-times-the-wealth-of-a-black-one/#6654426e6c5b>.

²³ OFFICE OF THE MAYOR, CITY OF N.Y., THE CEO POVERTY MEASURE, 2005–2013, at x (2015), http://www.nyc.gov/html/ceo/downloads/pdf/ceo_poverty_measure_2005_2013.pdf.

²⁴ See EDUARDO BONILLA-SILVA, *RACISM WITHOUT RACISTS* 53–60 (4th ed. 2014).

²⁵ Rakesh Kochhar & Richard Fry, *Wealth Inequality Has Widened Along Racial, Ethnic Lines Since End of Great Recession*, PEW RES. CTR. (Dec. 12, 2014), <http://www.pewresearch.org/fact-tank/2014/12/12/racial-wealth-gaps-great-recession>.

²⁶ See BONILLA-SILVA, *supra* note 24, at 258 (citing Press Release, Bureau of Labor Statistics, The Employment Situation—October 2012, at 12–14 tbls.A2 & A3 (Nov. 2, 2012), http://www.bls.gov/news.release/archives/empisit_11022012.pdf). In 2012, the national unemployment rates for white, black, and Latino Americans were 6.6%, 11%, and 14.3%, respectively. *Id.*

A. *The Cost of Arrests: Destabilizing the Economic Stability of the Individual and the Family Through Fines and Surcharges*

1. The Cost of the Summons

In 2014, 391,171 summonses were filed.²⁷ Out of those filed, 302,391 summonses were actually scheduled for arraignment; yet, from those arraigned, only 1,098 summonses went to trial.²⁸ This means the majority of the people issued summonses pleaded guilty to the offense charged on the summonses and paid the associated fines as a penalty for the conduct charged. In 2014, the citywide revenue generated by the payment of fines for a summons offense was \$9,025,635.²⁹ That is an estimated payment of twenty-three dollars per summons filed.

In 2014, out of the 391,171 summons filings,³⁰ only 252,741 misdemeanors and 33,172 violations and infractions were arraigned citywide.³¹ An individual can be issued a summons for a violation of the New York City Administrative Code or the New York State Penal Law.³² A host of over forty certified agencies are authorized to issue summons, including: “the New York City Police Department, Metropolitan Transportation Authority, the New York City Fire Department, the American Society for the Prevention of Cruelty to Animals, Taxi and Limousine Commission, Off Track Betting Corporation, Tax Enforcement, Roosevelt Island Authority and the Unified Court System.”³³ When a summons is issued by an authorized agency, it is first sent to a central receiving office, and then to the appropriate county’s summons office, where an arraignment date is reviewed and scheduled.³⁴ From 2001 to 2013, the three offenses most frequently charged at citywide arraignments were: consumption of alcohol on streets, disorderly conduct, and public urination.³⁵ The nature of the offenses for which an individual can be issued a summons suggests that there is a policing system in New York City that monitors the “quality-

²⁷ 2014 CRIMINAL COURT REPORT, *supra* note 15, at 9.

²⁸ *Id.* at 35–36.

²⁹ *Id.* at 33.

³⁰ *Id.* at 9.

³¹ *Id.* at 27.

³² *Id.* at 11.

³³ *Id.* at 33.

³⁴ *Id.*

³⁵ See Ryley et al., *supra* note 18. In 2014, the three most common offenses charged at citywide arraignments were: assault in the third degree, theft of services, and criminal possession of a controlled substance in the seventh degree. See 2014 CRIMINAL COURT REPORT, *supra* note 15, at 32.

of-life”³⁶ for New Yorkers. The pursuit of people riding their bike on the sidewalk, drinking alcohol on the street, or urinating in the street, makes the City “better”—but only for those looking for cleaner streets. For those New Yorkers seeking refuge in the streets because their apartment is small and affords no privacy, or drinking beers on the steps in front of their building while speaking to a neighbor, “quality-of-life” policing, otherwise known as Broken Windows policing, is oppressive.

2. The Violation or Misdemeanor

When someone is arrested for a misdemeanor, unlike the issuance of a summons, the person must be processed through central booking and await his arraignment in the criminal court for up to twenty-four hours. In 2014, 48% of the cases disposed of by criminal courts citywide were resolved in a guilty plea.³⁷ In that same year, \$15,472,821 were generated for the City, in revenue by fines.³⁸

The fines associated with conviction of a violation or a misdemeanor vary by offense, and they are imposed even when the conviction is a result of a guilty plea. The mandatory surcharge associated with conviction of a violation is \$95.³⁹ The mandatory surcharge one must pay after conviction of a misdemeanor is \$175.⁴⁰ In addition to these mandatory surcharges, anyone who is convicted of a misdemeanor must also pay a crime victim assistance fee of \$25.⁴¹ Those convicted of certain misdemeanors, such as criminal trespass, petit larceny, and low-level nonviolent crimes, must give a DNA sample that is kept in a state database. New York State charges a fee of \$50 to those whose DNA it has chosen to sample.⁴²

For individuals who have a modest income, these fines are exorbitant and often make it impossible for those individuals and the families they support to have the necessary income to obtain their most basic needs like food, housing, and clothing.

³⁶ See Dorothy E. Roberts, *Race, Vagueness, and the Social Meaning of Order-Maintenance Policing*, 89 J. CRIM. L. & CRIMINOLOGY 775 (1999).

³⁷ See 2014 CRIMINAL COURT REPORT, *supra* note 15, at 19.

³⁸ See *id.* at 9.

³⁹ N.Y. PENAL LAW § 60.35(1)(a)(iii) (McKinney 2009).

⁴⁰ *Id.* § 60.35(1)(a)(ii).

⁴¹ *Id.* § 60.35(1)(a)(ii), (iii).

⁴² § 60.35(1)(a)(v) (applying the DNA sample fee to “a person convicted of...any misdemeanor defined in the penal law except that where the person is convicted under section 221.10 of the penal law, only a person convicted under subdivision two of such section, or a person convicted under subdivision one of such section who stands previously convicted of any crime as defined in subdivision six of section 10.00 of the penal law” N.Y. EXEC. LAW § 995(7) (McKinney 2013)).

B. *Dreams Deferred*⁴³: Court Involvement Leads to Stifled Growth

The All-Purpose Parts of Criminal Court resolve forty-nine percent of the cases that are arraigned in the criminal court.⁴⁴ The all-purpose part is the location where pretrial motions are filed and served, and cases are negotiated for disposition. In 2014, the citywide average number of appearances surviving past arraignments in an all-purpose part was 4.2.⁴⁵ For many individuals, subsequent court appearances and the associated consequences of a plea likely result in one's inability to apply for housing and suspension of one's driver's license. The inability to obtain a professional license, which is required by New York State for many professions,⁴⁶ in turn results in an individual's inability to remain employed, and interferes with the individual's earnings. Thus, pleas prohibit the hope for upward mobility, and instead, create the inability to become a stable wage earner and prevents economic stability.

1. Court Appearances

The All-Purpose Parts of Criminal Court hear an average of ninety-three cases each day.⁴⁷ Court begins at 9:30 a.m. and does not end until 5:00 p.m. A person who comes to court may remain there from 9:45 a.m. until 5:00 p.m. The amount of time spent in court depends on many factors out of the accused's control, such as when counsel arrives, how many cases are on the calendar, and how swiftly the cases are heard before the judge.⁴⁸ The unpredictable nature of a day in court means that someone who is accused of a crime must take the day off from work, perhaps arrange and pay for child care in order to ensure his appearance in court, as well as bear the transit expenses in getting to court. The accused is expected to attend all phases of his proceeding, unless a judge excuses his appearance in advance. Someone who comes to court, but leaves because he must get to work, runs the risk of having a bench warrant issued for his arrest for failure to appear.⁴⁹ A bench

⁴³ Cf. LANGSTON HUGHES, *Harlem*, in SELECTED POEMS OF LANGSTON HUGHES 266 (Vintage Classics 1990) (1959).

⁴⁴ See 2014 CRIMINAL COURT REPORT, *supra* note 15, at 39.

⁴⁵ See *id.*

⁴⁶ See LEGAL ACTION CTR. OF THE CITY OF N.Y., INC., NEW YORK STATE OCCUPATIONAL LICENSING SURVEY 4–20 (2006), <http://lac.org/wp-content/uploads/2014/12/Occupational-Licensing-Survey-2006.pdf>.

⁴⁷ See 2014 CRIMINAL COURT REPORT, *supra* note 15, at 42.

⁴⁸ From the authors' own court observations, the amount of time spent in court depends on when the case is heard before the judge. Once the judge hears the case, the individual may leave for the day.

⁴⁹ See N.Y. CRIM. PROC. LAW § 530.70 (McKinney 2009).

warrant also places an accused at risk of incarceration.⁵⁰ After an individual has been arrested for a crime, he is arraigned in the criminal court. At arraignment, there is a determination as to whether he will remain at liberty while his criminal case is pending, and whether bail will be set—which means money will have to be paid for his release. The bail amount paid by the defendant to guarantee his release may be forfeited, if a bench warrant was issued, thus creating a greater financial loss for the arrestee.⁵¹

Even individuals who do not return to court for subsequent court appearances face the possibility of financial setback due to court involvement. In New York City, a person may be held for up to twenty-four hours after he has been arrested.⁵² For a nonsalaried employee, being held for even twelve hours means the loss of a workday. For instance, someone who is arrested at 12:00 a.m. may not be arraigned until 12:00 p.m. the next day. If one is expected to arrive at work at 9:00 a.m. following the day of his arrest, he will not be on time because of his arraignment. Individuals who are issued a summons do not have to spend the night awaiting arraignment in central booking.⁵³ However, they must return to the summons court in the borough from which they received the summons, and they must be prepared to wait in line before their arraignment, which may take several hours⁵⁴ to either set a date for trial or plead guilty to the offense and pay a fine. The possibility of tardiness or absence places low-income wage earners—at risk of broken lives, for the loss of hourly wages or their employment altogether.⁵⁵

2. Public Housing

Access to public housing may be barred for people who have misdemeanor convictions.⁵⁶ In New York City, a homeless individual may go to a shelter and wait for an apartment in New York City housing, or receive a government subsidy that the individual can use to

⁵⁰ See *Representing Yourself: Criminal Justice System Handbook*, N.Y. STATE UNIFIED CT. SYS., <https://www.nycourts.gov/litigants/crimjusticesyshandbk.shtml> (last updated Oct. 30, 2014); see also N.Y. CRIM. PROC. LAW § 1.20(30) (McKinney 2003).

⁵¹ See *id.* §§ 530.60, 540.10 (McKinney 2009).

⁵² See *Representing Yourself: Criminal Justice System Handbook*, *supra* note 50; see also, 2014 CRIMINAL COURT REPORT, *supra* note 15, at 22.

⁵³ JENNIFER PARISH & JONATHAN OBERMAN, CRIMINAL LAW CLINIC MANUAL 3–4 (1999).

⁵⁴ See Ryley et al., *supra* note 18.

⁵⁵ 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, 296 (2009).

⁵⁶ See NYCHA *Criminal Background Ineligibility Chart*, NEW DESTINY HOUSING, <http://www.newdestinyhousing.org/get-help/nycha-criminal-background-ineligibility> (last visited Oct. 18, 2015).

supplement rental payments owed for an apartment in a privately owned building. The latter is the Housing Choice Voucher program, also known as Section 8 housing (Section 8).⁵⁷ Section 8 provides assistance to eligible low- and moderate-income families. Eligibility for this program is based on a family's gross annual income and family size.⁵⁸

However, those convicted of a Class A drug- or alcohol-related misdemeanor must wait four years after completing their sentence, probation, or parole, and paying all fines, before they are again eligible for New York City public housing or a Section 8 voucher.⁵⁹ Those convicted of a drug- or alcohol-related Class B misdemeanor must wait three years before they are eligible again.⁶⁰ Meanwhile, those with convictions for a drug- or alcohol-related violation must wait two years before they are eligible again.⁶¹ For those with three or more misdemeanor convictions within the last ten years, in the context of Section 8 vouchers, each drug- and alcohol-related offense carries an additional year of waiting.⁶²

3. Licensed Driving

In New York, misdemeanor convictions for controlled substance offenses and marijuana offenses, regardless of the sentence, require a license suspension of six months.⁶³ Driving is often a required condition of employment, especially in the service industry, such as taxi and limousine services, food delivery, or package delivery. The inability to drive makes work impossible for any employee for whom driving is a job requirement. Such jobs are generally low wage to begin with.

In addition, after completing the six-month period, fees must be paid to the Department of Motor Vehicles before the license will be reinstated.⁶⁴

⁵⁷ See generally 24 C.F.R. § 982 (2015).

⁵⁸ See *id.* § 982.201(b).

⁵⁹ See *NYCHA Criminal Background Ineligibility Chart*, *supra* note 56.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ N.Y. VEH. & TRAF. LAW § 510(2)(b)(v) (McKinney 2011).

⁶⁴ See N.Y. STATE DEP'T OF MOTOR VEHICLES, P-71D, INFORMATION FOR MOTORISTS WHO HAVE RECEIVED AN ORDER OF SUSPENSION (FORM MV-510D) FOR A DRUG-RELATED CONVICTION (2015), <http://dmv.ny.gov/forms/p71d.pdf>.

4. State-Issued Licenses

Over one hundred professions in New York State require some type of license.⁶⁵ Misdemeanor records can prohibit licensure approval, and open criminal cases can cause a license to be suspended.⁶⁶ An individual hoping to obtain stability through a position that requires licensing may have his licensure application rejected if the individual has a criminal conviction; any imminent licensing will be delayed by a pending criminal case.

In a nation where marijuana is being decriminalized state by state, New York City, instead of decriminalizing marijuana, in the era of Broken Windows, is penalizing the impoverished by delaying housing access for an overwhelming number of people who are homeless and waiting for shelter. Even in the face of increasing the affordable housing in the City,⁶⁷ what are the options for the thousands of potential New York City housing applicants who cannot gain access because they previously possessed marijuana or were observed having a beer in front of their apartment complex? There are no options.

III. DE BLASIO'S ATTEMPT TO UNITE THE CITY

De Blasio entered office and immediately began his mission⁶⁸ to create an egalitarian New York society. He pushed for and implemented "Universal Pre-K"⁶⁹ and dedicated \$41 billion to a housing program for 200,000 low- to moderate-income housing units.⁷⁰

⁶⁵ See LEGAL ACTION CTR. OF THE CITY OF N.Y., *supra* note 46.

⁶⁶ See N.Y. CORRECT. LAW § 750 (McKinney 2014); see also HAROLD BAER, JR., COLLATERAL CONSEQUENCES OF CONVICTION: A REMINDER OF SOME POSSIBLE CIVIL PENALTIES (rev. 2011), https://www.nysba.org/uploadedFiles/NYSBA/Sections/Criminal_Justice/Records_of_Conviction/BaerCollateralConsequences-WEB.pdf.

⁶⁷ Press Release, Office of the Mayor of the City of N.Y., De Blasio Administration Announces a Record-Breaking 20,325 Affordable Apartments and Homes Financed in Last Fiscal Year, Enough for 50,000 New Yorkers (July 13, 2015), <http://www1.nyc.gov/office-of-the-mayor/news/482-15/de-blasio-administration-record-breaking-20-325-affordable-apartments-homes>.

⁶⁸ See de Blasio Inauguration Speech, *supra* note 2.

⁶⁹ Pre-kindergarten education is available to every child in New York City, regardless of family income or the child's ability. See *Pre-Kindergarten*, N.Y.C. DEP'T OF EDUC., <http://schools.nyc.gov/ChoicesEnrollment/PreK/default.htm> (last visited Oct. 18, 2015).

⁷⁰ See Press Release, Office of the Mayor of the City of N.Y., Mayor de Blasio Unveils 'Housing New York': A Five-Borough, 10-Year Housing Plan to Protect and Expand Affordability (May 5, 2014), <http://www1.nyc.gov/office-of-the-mayor/news/199-14/mayor-de-blasio-housing-new-york--five-borough-10-year-housing-plan-protect-and>. Mayor de Blasio

The Mayor's Office has also announced several initiatives that will reform the criminal justice system. One such program is the Mayor's Task Force on Behavioral Health and the Criminal Justice System, which released an Action Plan in 2014.⁷¹ This plan aims to reduce the number of incarcerated individuals suffering from behavioral health issues.⁷² It allows behavioral health professionals to work with individuals suffering from mental illness at various stages of the criminal justice system. The Action Plan intends to expand accessibility to mental health services at criminal court arraignments, by conducting assessments and ensuring that proper referrals are made by the City's crisis intervention teams. In addition, a small part of the plan will be to train police officers to increase diversion to medical services rather than making an arrest.⁷³

More recently, the de Blasio Administration announced its efforts to reform the City's system of bail, by making supervised release an option for nonviolent, low-level offenders,⁷⁴ who would otherwise have bail set. Approximately 45,000 individuals are held on bail across the City's five boroughs each year.⁷⁵ Under the supervised release plan, someone charged with a nonviolent offense, for which bail would typically be set, could instead be supervised by the court.⁷⁶ This \$18 million program will allow up to 3,000 low-risk persons accused of crimes to be released without having bail set, while placing them under court supervision until trial.⁷⁷

While this plan demonstrates a commitment to reducing the number of nonviolent offenders who are housed at Rikers Island prior to a case resolution,⁷⁸ it will only make a small dent in releasing people into the community. That is, compared to the 22,770 non-felony or

has committed to doubling the number of affordable apartments built, ultimately benefiting 65,000 low- to moderate-income New Yorkers, but ensuring tax benefits for developers who will have twenty-five to thirty percent of their buildings set aside for affordable housing. *See id.*; Press Release, Office of the Mayor of the City of N.Y., Mayor de Blasio Calls for Sweeping Overhaul of Tax Benefits to Spur More Affordable Housing (May 7, 2015), <http://www1.nyc.gov/office-of-the-mayor/news/295-15/mayor-de-blasio-calls-sweeping-overhaul-tax-benefits-spur-more-affordable-housing>.

⁷¹ *See* MAYOR'S TASK FORCE ON BEHAVIORAL HEALTH AND THE CRIMINAL JUSTICE SYS., ACTION PLAN 2014 (2014) [hereinafter MAYOR'S TASK FORCE ACTION PLAN 2014], <http://www1.nyc.gov/assets/criminaljustice/downloads/pdf/annual-report-complete.pdf>.

⁷² *Reducing the Number of People with Behavioral Health Needs Behind Bars*, N.Y.C. MAYOR'S OFF. OF CRIM. JUST., <http://www1.nyc.gov/site/criminaljustice/work/bhtf.page> (last visited Nov. 4, 2015).

⁷³ *See* MAYOR'S TASK FORCE ACTION PLAN 2014, *supra* note 71.

⁷⁴ *See* Rick Rojas, *City to Relax Bail Requirements for Low-Level Offenders*, N.Y. TIMES, July 9, 2015, at A21.

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

misdeemeanor cases where bail was set in 2013,⁷⁹ 3,000 cases represents a small portion. In November 2014, the Office of the Mayor, with the cooperation of Police Commissioner Bratton, announced that individuals arrested with less than twenty-five grams of marijuana will not be arrested, but instead will be issued a summons that does not require the individual to be arrested and held for a maximum of twenty-four hours, and therefore avoid the potential costs associated with detention discussed previously.⁸⁰ Mayor de Blasio recognized that arrests for marijuana were disproportionate, noting that low-income people of color are arrested at a significantly higher rate than white people.⁸¹ In recognizing that misdemeanor marijuana arrests have “disastrous consequences,” he decided to address the impact that such a minor offense can have, especially on young people of color.⁸²

On April 14, 2015, the de Blasio Administration and the Chief Judge of the State of New York, Jonathan Lippman, announced a collaborative initiative.⁸³ The “Justice Reboot” initiative intended to create a more efficient and fairer criminal justice system.⁸⁴ The reform agenda identifies the mechanisms that will achieve this goal. First, for cases where a defendant is being held at Rikers Island and where the case has been pending for over a year, the administration hopes to schedule a court date for all trials or pleas within forty-five days from the date the initiative was announced. In addition, within six months, Justice Reboot intends to resolve 50% of all cases where the defendant is detained at Rikers Island and where the case has been pending for longer than a year.⁸⁵ Finally, the plan introduces an initiative to “[o]verhaul half of all criminal court cases by making the summons process easier to understand and navigate.”⁸⁶

⁷⁹ 2013 CJA REPORT, *supra* note 17, at 22–23.

⁸⁰ See Press Release, Office of the Mayor of the City of N.Y., Transcript: Mayor de Blasio, Police Commissioner Bratton Announce Change in Marijuana Policy (Nov. 10, 2014), <http://www1.nyc.gov/office-of-the-mayor/news/511-14/transcript-mayor-de-blasio-police-commissioner-bratton-change-marijuana-policy>.

⁸¹ See *id.*; see also Jesse Wegman, *The Injustice of Marijuana Arrests*, N.Y. TIMES (July 28, 2014), <http://www.nytimes.com/2014/07/29/opinion/high-time-the-injustice-of-marijuana-arrests.html> (“Whites and blacks use marijuana at roughly the same rates; on average, however, blacks are 3.7 times more likely than whites to be arrested for possession . . .”).

⁸² See Press Release, Office of the Mayor of the City of N.Y., *supra* note 80; see also Ben Fractenberg, *Police Won't Arrest Most People Carrying Small Amounts of Marijuana*, DNAINFO (Nov. 10, 2014, 6:01 PM), <http://www.dnainfo.com/new-york/20141110/civic-center/police-wont-arrest-most-people-carrying-small-amounts-of-marijuana>.

⁸³ See Press Release, Office of the Mayor of the City of N.Y., Mayor de Blasio and Chief Judge Lippman Announce Justice Reboot, an Initiative to Modernize the Criminal Justice System (Apr. 14, 2015), <http://www1.nyc.gov/office-of-the-mayor/news/235-15/mayor-de-blasio-chief-judge-lippman-justice-reboot-initiative-modernize-the>.

⁸⁴ See *id.*

⁸⁵ See *id.*

⁸⁶ *Id.*

One of the most significant criminal justice reforms has been the reduction in Stop, Question, and Frisk. Under the Stop, Question, and Frisk program, 88.3% of the investigatory stops in 2011 did not lead to the arrest or summons of the individual stopped.⁸⁷ Between 2003 and 2013, 52% of people stopped were also frisked; yet of those who were frisked, a weapon was found in only 2% of the stops.⁸⁸ Black and Latino males between the ages of fourteen and twenty-four comprise 4.7% of the City's population, but accounted for 41.6% of those who were stopped in 2011.⁸⁹ In 2008, the Center for Constitutional Rights, representing David Floyd, Lalit Clarkson, Deon Dennis, and David Ourlicht, sued the City of New York in the landmark case, *Floyd v. City of New York*.⁹⁰ In a decision rendered by Honorable Shira A. Sheindlin of the Southern District of New York, it was determined that Stop, Question, and Frisk as practiced violated the Equal Protection Clause of the Fourteenth Amendment.⁹¹ The City appealed this decision.⁹² After the election and inauguration of Mayor de Blasio, the City agreed to settle the suit, after which the practice of Stop, Question, and Frisk began to decline.⁹³

CONCLUSION

Swift and transparent case processing in the courts, alternatives to incarceration for people with mental illness, bail reform, and fines for marijuana possession instead of arrests, are all a part of the reform agenda. While the reforms address issues that are pervasive and systemic, it leaves unaltered the prevalence with which low-income, minority New Yorkers are policed and jailed. Driven by Broken Windows policing, the current inequity in the criminal justice system is the undercurrent that is widening the gap of the two cities that de Blasio had hoped to unite. Until it is recognized that Broken Windows policing

⁸⁷ See N.Y. CIVIL LIBERTIES UNION, STOP-AND-FRISK 2011: NYCLU BRIEFING 15 (2012), http://www.nyclu.org/files/publications/NYCLU_2011_Stop-and-Frisk_Report.pdf (“Of the 685,724 stops in 2011, 605,328 were of people who had engaged in no unlawful behavior as evidenced by the fact they were not issued a summons nor arrested.”).

⁸⁸ DUNN, *supra* note 4, at 1.

⁸⁹ See N.Y. CIVIL LIBERTIES UNION, *supra* note 87, at 2.

⁹⁰ *Floyd v. City of New York*, 959 F. Supp. 2d 540 (S.D.N.Y. 2013); see *Floyd, et al. v. City of New York, et al.*, CTR. FOR CONST. RTS., <https://ccrjustice.org/home/what-we-do/our-cases/floyd-et-al-v-city-new-york-et-al> (last updated Nov. 3, 2015).

⁹¹ *Floyd*, 959 F. Supp. 2d at 562–63.

⁹² See Press Release, N.Y. Civil Liberties Union, NYCLU Applauds New York City's Commitment to Start Stop-and-Frisk Reform Process and Drop Appeal (Jan. 30, 2014), <http://www.nyclu.org/news/nyclu-applauds-new-york-city%E2%80%99s-commitment-start-stop-and-frisk-reform-process-and-drop-appeal>.

⁹³ See *id.*

depletes resources, destroys futures, and ruins lives of New Yorkers, there will be no reformation that can obliterate the dividing line of the two cities that are New York.

De Blasio's criminal justice reform began with a 79% reduction in stop and frisks.⁹⁴ The reform initiatives reflect an agenda that is driven by reaction to injustice and isolated incidents of violence and tragedy, such as the deaths of Jerome Murdough⁹⁵ and Eric Garner.⁹⁶ While the rates of Stop, Question, and Frisk have decreased—and therefore blacks and Latinos are experiencing this practice at lower rates—this does not drive down the pervasive and unequal treatment of minorities in Broken Windows policing.

The costs associated with arrests—court process—are the result of a focus on arresting citizens of New York for nonviolent offenses. Until that changes, the gap between the wealthy and the poor in New York will remain open and gaping. Black and Hispanic New Yorkers with the same skill set and educational level as white New Yorkers are less likely to be hired than white New Yorkers;⁹⁷ in fact, white New Yorkers who have been convicted of a felony are at least as likely to obtain a position as a black or Hispanic person without a felony record.⁹⁸ Given the disproportionate rates at which black and Hispanic individuals are arrested compared to white individuals, it can only make sense that their exposure to arrest records and convictions increases. This exposure is where the currently unrepaired crack continues to divide the city, as de Blasio continues to defend Broken Windows.⁹⁹

De Blasio made his devotion to ending inequality clear in his January 2014 inaugural address, and he recommitted to his promise of uniting the city.¹⁰⁰ He laid out a plan for this dispelling any notion that his plans were political subterfuge, but that they were concrete and real.

⁹⁴ Rebecca Leber, *NYC Police Said Stop-and-Frisks Reduce Violent Crime. This Chart Says Otherwise.*, NEW REPUBLIC (Dec. 2, 2014), <http://www.newrepublic.com/article/120461/nypd-stop-and-frisk-drops-79-percent-and-crime-drops-too>.

⁹⁵ Jerome Murdough was found dead after his Rikers Island jail cell overheated to at least 100 degrees. See *NYC Official: Mentally Ill Inmate "Baked to Death" in Cell*, CBS NEWS (Mar. 19, 2014, 12:20 PM), <http://www.cbsnews.com/news/new-york-city-official-mentally-ill-inmate-baked-to-death-in-jail-cell>.

⁹⁶ Eric Garner was killed in July 2014 after police officer Daniel Pantaleo attempted to arrest him by placing him in a chokehold. See J. David Goodman, *City Settlement of \$5.9 Million in Garner Case*, N.Y. TIMES, July 14, 2015, at A1; see also Joseph Goldstein & Nate Schweber, *Man's Death After Chokehold Raises Old Issue for the Police*, N.Y. TIMES, July 19, 2014, at A1.

⁹⁷ See DEVAH PAGER & BRUCE WESTERN, *RACE AT WORK: REALITIES OF RACE AND CRIMINAL RECORD IN THE NYC JOB MARKET* (2005).

⁹⁸ *Id.* at 6.

⁹⁹ See Brigid Bergin, *Broken Windows Might Be to Blame for Strife between de Blasio, Cops*, WNYC (Jan. 6, 2015), <http://www.wnyc.org/story/broken-windows>.

¹⁰⁰ See de Blasio Inauguration Speech, *supra* note 2.

Unfortunately, de Blasio is either ignorant to the ills of Broken Windows—or he has been swept away by the political wind that comes in great gusts after the well-intentioned person has realized the reality of his position. If he were to instruct Police Commissioner Bratton to abandon the form of policing he believes worked so well, police would turn their backs mid-speech¹⁰¹ or express their discontent in any possible forum, making de Blasio's job of running this city difficult.

A city fights injustice and inequality—not just because it honors our values, but because it strengthens our people. New York is a city of five boroughs—all created equal. Black, white, Latino, Asian, gay, straight, old, young, rich, middle class, and poor. A city that remembers our responsibility to each other—our common cause—is to leave no New Yorker behind.¹⁰²

New Yorkers must remember every fellow New Yorker who has to explain to his new employer why he has to miss work for a court appearance, every new job loss because someone is in jail, every person who is homeless because his misdemeanor criminal record prevents him from obtaining subsidized or city housing, and every family who cannot put food on the table this month because a court surcharge is due. Until de Blasio turns his back on the police and puts an end to Broken Windows the tale of two cities will never come to an end.

¹⁰¹ Cf. Oliver Laughland, *Police Turn Backs on de Blasio Again at Funeral for NYPD Officer Wenjian Liu*, GUARDIAN (Jan. 4, 2015, 5:50 PM), <http://www.theguardian.com/us-news/2015/jan/04/wenjian-liu-funeral-nypd-police-officers-de-blasio>.

¹⁰² See de Blasio Inauguration Speech, *supra* note 2.