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No Need for Speed

THE INHERENT UNREASONABLENESS OF HIGH-SPEED POLICE CHASES AND A NEW APPROACH TO EXCESSIVE FORCE LITIGATION

“But all our phrasing—race relations, racial chasm, racial justice, racial profiling, white privilege, even white supremacy—serves to obscure that racism is a visceral experience, that it dislodges brains, blocks airways, rips muscle, extracts organs, cracks bones, breaks teeth. You must never look away from this. You must always remember that the sociology, the history, the economics, the graphs, the charts, the regressions all land, with great violence, upon the body.”—Ta-Nehisi Coates¹

INTRODUCTION

On June 27, 2022, at about 12:30 AM, Jayland Walker was driving through his hometown of Akron, Ohio, when police sirens wailed behind him, signaling for him to pull over.² The police intended to stop Walker—a twenty-five-year-old Black³ man—for minor traffic and equipment violations,⁴ including a broken taillight and a defective license plate light.⁵ The officers who ran Walker’s plates were alerted that the same vehicle had fled from police in a neighboring town less than twenty-four

¹ TA-NEHISI COATES, *BETWEEN THE WORLD AND ME* 10 (One World 1st ed. 2015).

² Cleveland.com, *Akron Police Video of Jayland Walker*, YOUTUBE (July 3, 2022), <https://www.youtube.com/watch?v=m8HfS2jZ0RU> [<https://perma.cc/JWP8-9U6Q>].

³ This note capitalizes “Black” when describing people of African origin in the United States. To learn more as to why the “B” in Black should be capitalized, see Nancy Coleman, *Why We’re Capitalizing Black*, N.Y. TIMES (July 5, 2020), <https://www.nytimes.com/2020/07/05/insider/capitalized-black.html> [<https://perma.cc/W8BN-MER4>].

⁴ Associated Press, *Medical Examiner Says Jayland Walker Was Shot Dozens of Times*, NPR (July 15, 2022, 3:31 PM), <https://www.npr.org/2022/07/15/1111760958/jayland-walker-autopsy-shot-akron> [<https://perma.cc/YW63-W4WE>]; Fabiola Cineas, *What We Know About the Deadly Police Shooting of Jayland Walker*, VOX (July 7, 2022, 2:20 PM), <https://www.vox.com/2022/7/7/23197430/jayland-walker-police-shooting-akron-ohio-footage> [<https://perma.cc/A8TH-UTCB>].

⁵ Jack Shea, *Jayland Walker Reportedly Part of Another Police Pursuit Less Than 24 Hours Before Death*, FOX 8 NEWS (July 4, 2022, 5:43 PM), <https://fox8.com/news/jayland-walker-reportedly-part-of-another-police-pursuit-less-than-24-hours-before-death/> [<https://perma.cc/TGK4-MLJ7>].

hours earlier, where officers attempted to stop the car for the same violations.⁶ As officers approached, Walker drove away, and a high-speed chase ensued.⁷

Reaching speeds of over fifty miles per hour, multiple squad cars pursued Walker for seven minutes, during which time officers claim they heard a gunshot emanate from Walker's vehicle.⁸ Walker eventually stopped his car and fled on foot, donning a black ski mask as he ran.⁹ Officers fired ninety rounds in Walker's direction,¹⁰ sixty of which struck his body, killing him instantly.¹¹ An unloaded handgun and a loaded magazine were discovered in Walker's vehicle;¹² however, no weapon was recovered from his person.¹³ His body arrived at the coroner's office later that morning with his hands cuffed behind his back.¹⁴

Unfortunately, Jayland Walker's story is not unique. In 2019, police engaged in 353 high-speed chases that ended in a crash, causing the deaths of 398 people.¹⁵ More than 6,200 people have died from these police tactics since 1999,¹⁶ and many of the individuals killed are "someone other than the fleeing driver."¹⁷ Moreover, according to a 2020 report from the California State

⁶ Shea, *supra* note 5.

⁷ Cineas, *supra* note 4; Samantha Beech et al., *Jayland Walker's Family Calls for City of Akron to Stop 'Re-Traumatizing' Them Following Further Release of Police Body Camera Video of Fatal Shooting*, CNN (Sept. 4, 2022, 9:24 PM), <https://www.cnn.com/2022/09/04/us/ohio-jayland-walker-family-bodycam-video/index.html> [https://perma.cc/2XSZ-K5DD].

⁸ Daniel McGraw & Luke Vander Ploeg, *Videos of Jayland Walker Shooting by Police Raise More Questions*, N.Y. TIMES (July 6, 2022), <https://www.nytimes.com/2022/07/03/us/akron-police-shooting-jayland-walker-video.html> [https://perma.cc/S8AN-G4A2].

⁹ *Id.*

¹⁰ Cineas, *supra* note 4; Timothy Bella, *After a Black Man Is Killed by Police, a City Cancels its July Fourth Celebrations*, WASH. POST (July 6, 2022, 3:18 PM), <https://www.washingtonpost.com/nation/2022/07/01/jayland-walker-police-shooting-july-fourth-ohio/> [https://perma.cc/JU2C-SJC5].

¹¹ Cineas, *supra* note 4.

¹² *Id.*

¹³ McGraw & Vander Ploeg, *supra* note 8.

¹⁴ Polo Sandoval & John Couwels, *Jayland Walker Was Handcuffed When His Body Arrived at the Medical Examiner's Office, According to the Autopsy Report*, CNN (July 5, 2022), <https://www.cnn.com/2022/07/05/us/jayland-walker-handcuffed-autopsy-report/index.html> [https://perma.cc/ML2G-CWUC]; *Video Shows Akron Police Kill Black Man in Hail of Gunfire*, AP NEWS (July 4, 2022), <https://apnews.com/article/police-shootings-ohio-akron-829de644001793209e1c2dc3b2e22ca3> [https://perma.cc/4YS4-Q3AG].

¹⁵ For the complete dataset, see *NHSTA File Downloads*, NAT'L HIGHWAY TRAFFIC SAFETY ADMIN. (2019), <https://www.nhtsa.gov/file-downloads?p=nhtsa/downloads/FARS/2019/National/> [https://perma.cc/X929-Q8N8].

¹⁶ Thomas Frank, *Black People Are Three Times Likelier to Be Killed in Police Chases*, USA TODAY (Dec. 1, 2016), <https://www.usatoday.com/pages/interactives/blacks-killed-police-chases-higher-rate/> [https://perma.cc/ZF99-XNAN].

¹⁷ [Study] *Fatal Collisions and Police Pursuits: 2014-2018*, FINE L. FIRM (June 1, 2020) [hereinafter *Pursuit Study*], <https://www.thefinelawfirm.com/people-killed-in-police-chases/> [https://perma.cc/6DLZ-MEUS].

Senate, only about 13.7 percent of individuals pursued in high-speed chases are suspected of violent crimes.¹⁸ The majority are pulled over for nonviolent speeding and registration violations, like Jayland Walker.¹⁹

Critically, Black people are disproportionately impacted by high-speed chases. Nearly 365 people died annually from 1999 to 2016 as a result of high-speed chases.²⁰ Despite making up only 13 percent of the US population, Black people represent nearly 30 percent of those killed in high-speed pursuits.²¹ In other words, nearly one person a day perishes from high-speed chases that typically evolve from mere traffic violations, and a disproportionate number of those individuals are Black.²²

In addition to the human toll, there is also a substantial economic cost to high-speed chases. For example, from 2016 to 2021, the city of Chicago paid out nearly \$50 million in chase-related litigation.²³ This hefty price tag does not account for additional costs outside of litigation, such as damage to police vehicles and paid leave for injured officers.²⁴ High-speed chases have significant economic consequences in smaller municipalities as well. In Independence, Missouri, fallout from high-speed pursuits cost the local police department \$1.1 million in litigation and property damage from 2012 to 2017.²⁵ Thus, in small towns and large cities alike, high-speed chases are an economic leech on communities throughout the United States.

In response to the costliness of high-speed chases, many police departments across the country have instituted no-chase policies that restrict or completely prohibit officers from engaging

¹⁸ CAL. HIGHWAY PATROL, REP. TO THE LEGISLATURE: SENATE BILL 719 POLICE PURSUITS 10 (2020), https://www.chp.ca.gov/Documents/Police_Pursuits_SB_719_%202020.pdf [<https://perma.cc/KVQ4-JB9W>]. I reached this statistic by adding up the data contained on page ten of this source.

¹⁹ *Id.* at 8; Associated Press, *supra* note 4.

²⁰ See Frank, *supra* note 16 (reporting in 2016 that, since 1999, over 6,200 people have died from police chases). I calculated the deaths per year in this time frame by dividing the total number of deaths—6,200—by the number of years that passed—seventeen. This comes out to 364.7 deaths per year from 1999 to 2016.

²¹ *Id.*

²² *Id.*

²³ David Struett, *66% of Chicago Police Chases in 2019 Ended in Crashes—8 of Them Fatal—Yet Pursuit Policy Went Unchanged Until Late 2020, Emails Show*, CHI. SUN TIMES (May 12, 2021, 4:14 PM), <https://chicago.suntimes.com/crime/2021/5/12/22425231/lori-lightfoot-chicago-police-vehicle-pursuit-policy-emails> [<https://perma.cc/W9RA-F35D>].

²⁴ *Id.*

²⁵ Cat Reid, *The Price of Pursuit: Police Chases Can Lead to Lawsuits, Property Damage*, KSHB (Feb. 26, 2018, 8:05 PM), <https://www.kshb.com/news/local-news/the-price-of-pursuit-police-chases-can-lead-to-lawsuits-property-damage> [<https://perma.cc/UVV6-PQRM>].

in high-speed chases.²⁶ While no-chase policies vary in strictness, each implicitly recognizes that it is rarely worthwhile for officers to engage in a high-speed chase. Despite concerns that these policies would lead to an increase in crime, cities with no-chase policies have found dramatically decreased incidence of death and injury as a result of their restrictive procedures.²⁷

Although no-chase policies are a start to addressing the abuse of this police tactic, such policies are only as effective as the departments that enforce them. Officers may simply ignore the policy,²⁸ or call on a nearby law enforcement agency without a no-chase policy to initiate the pursuit instead.²⁹ Furthermore, many no-chase policies give officers on the scene a great deal of discretion in making the decision to chase; and where there is discretion, there is potential for abuse.³⁰ While Congress may

²⁶ Mac Demere, *Why High-Speed Police Chases Are Going Away*, POPULAR MECHS. (May 30, 2013), <https://www.popularmechanics.com/cars/a9096/why-high-speed-police-chases-are-going-away-15532838/> [<https://perma.cc/L7XX-XHK3>].

²⁷ See, e.g., Mandy McLaren & Matthew Glowicki, *7 Dead, 58 Hurt: Do Louisville Police Need to Slam the Brakes on High-Speed Pursuits?*, COURIER J. (Oct. 16, 2019, 6:48 AM), <https://www.courier-journal.com/in-depth/news/investigations/2019/10/16/louisville-police-encourage-more-chases-injuries-deaths-rise/1706733001/> [<https://perma.cc/JN4M-RJCD>] (discussing decreased incidence of death and injuries from high-speed chases in Louisville, Kentucky, after the enactment of a no-chase policy); John Urquhart, *Police-Chase Law Is Saving Lives—It Would Be a Mistake to Roll It Back*, SEATTLE TIMES (Aug. 12, 2022), <https://www.seattletimes.com/opinion/stop-to-consider-that-police-chase-law-is-saving-lives-it-would-be-a-mistake-to-roll-it-back/> [<https://perma.cc/HCP5-6WBK>] (discussing decreased incidence of death from high-speed chases in Washington after the state legislature passed a law restricting vehicle pursuits to certain offenses); Vaidya Gullapalli, *Crashes, Injuries, Deaths: The Dangers of Police Chases*, APPEAL (Jan. 17, 2020), <https://theappeal.org/crashes-injuries-deaths-the-dangers-of-police-chases/> [<https://perma.cc/QN4K-KGLA>] (discussing similar phenomenon in Louisville).

²⁸ See Shaddi Abusaid, *Atlanta Officer Violated No-Chase Policy Ahead of Crash that Killed 2*, ATLANTA J.-CONST. (Dec. 9, 2020), <https://www.ajc.com/news/breaking-atlanta-officer-violated-no-chase-policy-ahead-of-fatal-crash/FNGPREC2ZNGUHNWJJE6SKQ3ME/> [<https://perma.cc/LX9Z-SPTU>] (explaining that an Atlanta police officer ignored the recently instated no-chase policy and engaged in a high-speed chase, resulting in the death of two people).

²⁹ See Asia Simone Burns, *Atlanta Police Alter 'No-Chase' Policy*, ATLANTA J.-CONST. (Jan. 4, 2021), <https://www.ajc.com/news/breaking-atlanta-police-alter-no-chase-policy/ZMGZG5DKCVDSZMTFYUMOGHEAT4/> [<https://perma.cc/5UHH-MMDE>] (“Instead of chasing cars, Atlanta officers typically request the assistance of Georgia State Patrol troopers, who are still authorized to chase [fleeing motorists].”).

³⁰ See *infra* Section II.B. (discussing discretionary nature of many no-chase policies). National data collected from 2012–2013 demonstrates “[a]bout a third (30%) of state police and highway patrol agencies permitted officers to use their own discretion when deciding to initiate a vehicle pursuit. Smaller percentages of sheriffs’ offices (17%) and local police departments (13%) had discretionary pursuit policies.” BRIAN A. REAVES, U.S. DEP’T OF JUST., NCJ250545, SPECIAL REPORT: POLICE VEHICLE PURSUITS, 2012–2013 4 (2017), <https://bjs.ojp.gov/content/pub/pdf/pvp1213.pdf> [<https://perma.cc/KTC9-6NFU>]; see, e.g., Tessa Duvall, *Police Pursuit Policies Vary Between Oak Grove, Clarksville*, KENTUCKY NEW ERA (Aug. 26, 2010), https://www.kentuckynewera.com/web/news/article_d45651b4-b137-11df-9641-001cc4c002e0.html [<https://perma.cc/3M3K-QF6D>] (explaining that the Oak Grove, Tennessee high-speed pursuit policy requires

address high-speed chases by enacting nationwide regulations, recent history demonstrates there is a lack of consensus in the legislature on police reform; and it appears unlikely that proponents would be able to obtain the majority needed to pass meaningful regulations.³¹

Met with a defiant police department and an inactive Congress, survivors like Jayland Walker's family may turn to the courts to seek redress for the unjust deaths of their loved ones. Individuals harmed by police misconduct may sue the responsible officers under 42 U.S.C. § 1983, a federal statute that empowers citizens to sue state actors for constitutional violations and seek monetary damages.³² A § 1983 suit arising out of a high-speed chase, whether filed by the fleeing driver themselves or by their surviving family, may allege that the police used excessive force during the pursuit and thereby violated the person's Fourth Amendment right to be free from unreasonable seizures.³³ If a high-speed chase results in a collision, the injured driver—or, in the instance of their death, their survivors—may file a claim under § 1983 alleging that, by engaging in a chase and causing a collision, officers executed an unreasonable seizure in violation of the Fourth Amendment. The consequences of proving a constitutional violation can be great for individuals harmed by the police, allowing them to pay for exorbitant medical bills and compensating them for the loss of a loved one.³⁴

To determine whether an officer violated the Fourth Amendment, courts first analyze whether a seizure did, in fact, occur.³⁵ Under current Supreme Court jurisprudence, a person is seized when they are pulled over, and they are seized when officers intentionally cause their vehicle to stop moving.³⁶ However, an

officers to assess whether the danger to officers and the fleeing motorist is outweighed by the danger the fleeing motorist may pose to the public if allowed to drive away). Such policies as Oak Grove's endow officers with a great deal of discretion in deciding whether or not to give chase and create a potential for abuse.

³¹ Juana Summers, *Congressional Negotiators Have Failed To Reach A Deal On Police Reform*, NPR (Sept. 22, 2021, 5:55 PM), <https://www.npr.org/2021/09/22/1039718450/congressional-negotiators-have-failed-to-reach-a-deal-on-police-reform> [<https://perma.cc/BCW6-46SA>].

³² 42 U.S.C. § 1983.

³³ U.S. CONST. amend. IV.

³⁴ Successful § 1983 plaintiffs may be entitled to collect: compensatory damages for costs such as medical bills and lost wages, punitive damages "if the jury finds that the defendant's conduct was reckless or callously indifferent to the federally protected rights of others or if the defendant was motivated by an evil intent," and attorney's fees. *Section (1983)*, JRANK, <https://law.jrank.org/pages/10083/Section-1983-Remedies.html> [<https://perma.cc/2V4B-JP22>]. Plaintiffs do, however, have a duty to mitigate their damages, and judges have the authority to reduce awards of punitive damages they find excessive. *Id.*

³⁵ *California v. Hodari D.*, 499 U.S. 621, 624–26 (1991).

³⁶ *Brower v. Cnty. of Inyo*, 489 U.S. 593, 596–97 (1989).

individual is technically not seized for purposes of the Fourth Amendment while they are actively fleeing from police.³⁷ The Supreme Court held in *California v. Hodari D.* that a seizure requires either the application of physical force by an officer, or, if that is absent, actual submission to an officer's show of authority.³⁸ In a high-speed chase scenario, neither of these requirements are satisfied because an actively fleeing motorist has neither submitted to an officer's show of authority nor have they been subdued by physical force. Thus, there is a gap in constitutional protection from the time a high-speed chase begins to the point at which it ends. In this gap, while the chase is on, the tactics used by officers—however excessive—are not subject to Fourth Amendment scrutiny.³⁹ The fleeing driver is not protected by the Constitution.⁴⁰

Given that a person is not seized until officers cause their vehicle to stop moving, courts look to the moment a chase ends to determine whether the officers' conduct—the seizure—was reasonable.⁴¹ Because the end of a chase is an extremely dangerous point in the encounter, it is rare for a court to find that officers acted unreasonably by terminating an objectively dangerous situation.⁴² However, what this approach fails to recognize is that it is inherently unreasonable for officers to engage in high-speed chases in the first place.

Rather than waiting for Congress to act or relying on sporadic, nominally enforced no-chase policies, broadened judicial scrutiny of high-speed chases is necessary to address the abuse of this police tactic. A shift in doctrine is supported by recent case law and public policy concerns urging a reformation of excessive force jurisprudence that is better aligned with the reality of many police-citizen encounters.

Part I of this note details the history of high-speed police chases and their disproportionate impact on Black people in the United States. Part II surveys no-chase policies from police departments around the country and assesses their varying degrees of strictness and enforceability. Part III examines current police chase jurisprudence and highlights the gap in constitutional protections for fleeing motorists. Part IV proposes a new method of Fourth Amendment analysis for high-speed chases. Section A asserts that high-speed chases are a form of deadly force, and that mere engagement in a chase should be

³⁷ *Hodari D.*, 499 U.S. at 626.

³⁸ *Id.*

³⁹ *Id.* at 626–27.

⁴⁰ *Id.*

⁴¹ *Scott v. Harris*, 550 U.S. 372, 381, 383–84 (2007).

⁴² *Id.* at 386.

considered a seizure under the Fourth Amendment. Section B explains how, under this new conception of seizure, a temporal shift in the reasonableness inquiry will occur that allows courts to ask not whether it was reasonable for officers to terminate a chase, but whether it was reasonable for officers to engage in a high-speed chase in the first place.

I. HIGH-SPEED CHASES AND THEIR DISPROPORTIONATE IMPACT ON BLACK PEOPLE

Vehicles are a relatively new tool of the police. Cars were first acquired for police purposes in the late nineteenth century, and the first police chase occurred soon thereafter.⁴³ At the time, police departments acquired vehicles to capture “violators of the speed law,”⁴⁴ but now they serve a much broader purpose than simply maintaining order on the roadways.⁴⁵

Today, police may stop a vehicle for any minor traffic infraction, ask the person for their license and registration, visually scan the car’s interior, and observe the driver and passengers for any suspicious behavior.⁴⁶ Officers may also conduct a K-9 sweep of the car’s exterior to detect drugs, regardless of whether they have reason to believe that the car actually contains drugs.⁴⁷ In some states, police are even permitted to arrest individuals for traffic violations, and that arrest itself may empower officers to conduct a search of the

⁴³ Mark Williamson, *State of the City Presentation*, CITY OF AKRON NEWS (Feb. 24, 2009), https://web.archive.org/web/20090307015005/http://ci.akron.oh.us/News_Releases/2009/0225.htm (last visited Oct. 23, 2022) (claiming that the Akron Police Department acquired the first motorized police patrol wagon in the world in 1899); *1906: Skidoodling Along During the First High-Speed Police Chase in Forest Park*, ST. LOUIS POST-DISPATCH (Aug. 18, 2021), https://www.stltoday.com/news/archives/1906-skidoodling-along-during-the-first-high-speed-police-chase-in-forest-park/article_22d07e2e-e0fc-11ea-b13d-ff337a1531d2.html [https://perma.cc/F7W6-5VKW] (detailing the first “high-speed” chase in Forest Park, St. Louis, which reached top speeds of twenty-five miles per hour and resulted in multiple injuries).

⁴⁴ *1906: Skidoodling Along During the First High-Speed Police Chase in Forest Park*, *supra* note 43.

⁴⁵ Lewis R. Katz, “Lonesome Road”: *Driving Without the Fourth Amendment*, 36 SEATTLE U. L. REV. 1413, 1413 (2013).

⁴⁶ Nancy Perry, *Police Research: 1,000 Cops Address Non-Compliance During Traffic Stops*, POLICE1 (June 29, 2021), <https://www.police1.com/traffic-patrol/articles/police-research-1000-cops-address-non-compliance-during-traffic-stops-C3mPToqhCR2O4Dxu/#form-success-message> [https://perma.cc/XNT6-PRPJ]; *Florida v. Royer*, 460 U.S. 491, 501 (1983) (noting that law enforcement may ask for and examine a person’s license); *Texas v. Brown*, 460 U.S. 730, 739–40 (1983) (noting that police may shine their flashlight into a vehicle without violating the Fourth Amendment); *see generally* *Terry v. Ohio*, 392 U.S. 1 (1968) (discussing law enforcement’s capacity to look for suspicious behavior as part of their duties).

⁴⁷ *Illinois v. Caballes*, 543 U.S. 405, 408–10 (2005).

driver's person *and* the car.⁴⁸ While an officer must have "sufficient facts to believe a motorist has committed a traffic offense" in order to pull them over, "[o]nce an officer stops a motorist for a traffic offense, the officer has discretion to transform that traffic stop into an investigation of other serious crimes."⁴⁹ Thus, a motorized police force serves a broader purpose than simply catching speeding cars—it has become an integral part of how law enforcement detects and investigates suspected criminal activity.

Critically, policing in the United States disproportionately impacts Black and Hispanic⁵⁰ people. Although over 63 percent of the US population is white, only 26 percent of white people over the age of sixteen will ever have an interaction with police.⁵¹ By contrast, about 12 percent of the US population is Black, yet 21.1 percent of Black people over the age of sixteen will encounter police at some point in their lives.⁵² For Hispanic individuals, the ratio is 16 percent to 19.1 percent.⁵³

This disproportionate contact with law enforcement is especially stark in traffic stop scenarios. Traffic stops, the most common form of police-citizen encounter, account for over 40 percent of all annual contacts with police.⁵⁴ The Supreme Court has held that as long as police officers have a valid, traffic offense-related reason to pull someone over, they will not inquire into officers' subjective intentions for making a stop, even if officers were motivated by racial animus or stereotypes.⁵⁵ However, because state traffic codes contain myriad infractions, it is relatively easy to violate the traffic law—even signaling too early can constitute a violation.⁵⁶ Because "[e]very driver probably violates some provision of the vehicle code" every time

⁴⁸ *Arizona v. Gant*, 556 U.S. 332, 351 (2009) (holding that, for officers to search a vehicle incident to arrest, the individual must either be unsecured and in reaching distance of the vehicle, or the arresting officer must have reason to believe that evidence of the offense of arrest will be found within the vehicle).

⁴⁹ *Katz*, *supra* note 45, at 1413.

⁵⁰ This note uses "Hispanic" here because the data upon which the ensuing assertions rely uses that term.

⁵¹ ERIKA HARRELL & ELIZABETH DAVIS, U.S. DEP'T OF JUST., NCJ255730, CONTACTS BETWEEN POLICE AND THE PUBLIC, 2018—STATISTICAL TABLES 3 (2020).

⁵² *Id.*

⁵³ *Id.*

⁵⁴ Laura Counts, *Racial Profiling in Traffic Stops Results in Worse Policing, Study Finds*, BERKELEY HAAS: NEWSROOM (July 8, 2020), <https://newsroom.haas.berkeley.edu/research/study-finds-racial-profiling-in-traffic-stops-results-in-worse-policing/> [https://perma.cc/9HED-WGR3].

⁵⁵ See *Whren v. United States*, 517 U.S. 806, 812–13 (1996).

⁵⁶ David A. Harris, *Driving While Black: Racial Profiling on Our Nation's Highways*, AM. C.L. UNION (June 1999), <https://www.aclu.org/report/driving-while-black-racial-profiling-our-nations-highways> [https://perma.cc/M63R-4ZVY].

they drive, officers are left with their choice of citizens to pull over.⁵⁷ When given a choice, the tendency is clear: Black drivers are “20 percent more likely to be [pulled over] than white drivers relative to their share of the residential population,” and once they are stopped, Black people are searched nearly two times as often as white people.⁵⁸ Thus, not only are Black drivers more likely to be stopped, but their experiences once pulled over are likely to be more intrusive than those of white drivers pulled over for the same offense.

Moreover, once a motorist is stopped, Black drivers represent a disproportionate percentage of individuals who flee from police.⁵⁹ Not only are Black motorists more likely to flee from police because they are pulled over more often, but they may also choose to evade police in greater proportions than white people due to secondhand and personal experiences with law enforcement.⁶⁰ Black people are two and a half times more likely to be shot and killed by police than white Americans,⁶¹ and the stories of police escalating “routine” traffic stops, such as in the killing of Philando Castile, remain fresh in one’s mind.⁶² With this context, it is perhaps more understandable that a Black person, aware of their chances of being targeted and even killed in any given interaction with police, may choose to flee rather than wait and hope that their name does not become part

⁵⁷ *Id.*

⁵⁸ Jordan Bennett, *Research Shows Black Drivers More Likely to Be Stopped by Police*, N.Y.U. (May 5, 2020), <https://www.nyu.edu/about/news-publications/news/2020/may/black-drivers-more-likely-to-be-stopped-by-police.html> [<https://perma.cc/G6NZ-BT9Y>].

⁵⁹ According to a 2004 study by the International Associations of Chiefs of Police, 28 percent of individuals engaged in a high-speed chase were black, 27 percent were Hispanic, and 27 percent were white. See LAURA J. NICHOLS, *MANAGING POLICE PURSUITS: FINDINGS FROM THE IACP’S POLICE PURSUIT DATABASE*, ICAP 10 (2004), <https://www.theiacp.org/sites/default/files/all/k-m/ManagingPolicePursuitsExecBrief.pdf> [<https://perma.cc/JRL3-2BWR>]. These statistics should be read in context of the proportion of the overall population that each racial group represents.

⁶⁰ Jeffrey Robinson, *For Black Men, Running Is a Reasonable Reaction to Police Harassment and Racial Profiling Concludes Massachusetts’ Supreme Court*, AM. C.L. UNION (Sept. 30, 2016, 10:30 AM), <https://www.aclu.org/blog/criminal-law-reform/reforming-police/black-men-running-reasonable-reaction-police-harassment> [<https://perma.cc/3MPE-MN2S>].

⁶¹ Wes Lowery, *Aren’t More White People than Black People Killed by Police? Yes, But No.*, WASH. POST (July 11, 2016, 6:41 AM), <https://www.washingtonpost.com/news/post-nation/wp/2016/07/11/arent-more-white-people-than-black-people-killed-by-police-yes-but-no/> [<https://perma.cc/WFK5-SVWV>].

⁶² See generally T. Rees Shapiro et al., *Police Group: Minn. Governor ‘Exploited What Was Already a Horrible and Tragic Situation,’* WASH. POST (July 9, 2016, 3:36 PM), <https://www.washingtonpost.com/news/morning-mix/wp/2016/07/07/minn-cop-fatally-shoots-man-during-traffic-stop-aftermath-broadcast-on-facebook/?variant=116ae929826d1fd3> [<https://perma.cc/ARR2-QBK9>] (reporting on the Minnesota Governor’s speech following the shooting of Mr. Castile, a Black man who was fatally shot next to his girlfriend and her child as he reached for his driver’s license during a traffic stop).

of a statistic.⁶³ Indeed, as a citizen of Akron remarked in the wake of Jayland Walker's killing, "at the end of the day . . . the threat to people who were in the same position of Walker . . . is immediate no matter what they do."⁶⁴ Thus, high-speed pursuits, like many police tactics, are highly racialized and cannot be discussed without calling attention to their disproportionate impact on Black individuals.

II. NO-CHASE POLICIES: AN OVERVIEW

Police departments across the country are starting to recognize that the costs of engaging in high-speed chases far outweigh the benefits. Given that over 40 percent of people who flee from police are pulled over for minor traffic offenses,⁶⁵ and because the risk of injury to life and property is so high,⁶⁶ many police departments have enacted "no-chase" policies restricting or entirely prohibiting officers from engaging in high-speed chases.⁶⁷ About 71 percent of local police departments, 63 percent of sheriffs' offices, and 53 percent of state police agencies in the United States have policies restricting high-speed chases in some way.⁶⁸ In fact, some states mandate that law enforcement agencies provide written guidelines for police pursuits.⁶⁹ There are two main approaches to police regulation of high-speed chases in the United States: the offense-based approach and the balancing approach.⁷⁰

⁶³ See generally Robinson, *supra* note 60 (discussing flight as a reasonable response for Black individuals, given the history of police brutality in the United States).

⁶⁴ McGraw & Vander Ploeg, *supra* note 8.

⁶⁵ *Pursuit Study*, *supra* note 17.

⁶⁶ Gullapalli, *supra* note 27 (explaining that from 1996 to 2015, there were seven thousand deaths from police chases, amounting to about one death per day during that twenty-year period).

⁶⁷ Demere, *supra* note 26.

⁶⁸ REAVES, *supra* note 30, at 4.

⁶⁹ See, e.g., WIS. STAT. § 346.03(6) (requiring "[e]very law enforcement agency that uses authorized emergency vehicles [to] provide written guidelines for its officers and employees regarding exceeding speed limits").

⁷⁰ I created these labels based on my own research and observations regarding the different approaches to high-speed chase regulations in the United States. Balancing and offense-based no-chase policies are widespread: about 71 percent of local police departments, 63 percent of sheriffs' offices, and 53 percent of state police agencies around the country restrict high-speed chases according to certain criteria. REAVES, *supra* note 30, at 4. Importantly, this note does not discuss the third "approach," which is where police departments have no policy or standard operating procedure constraining high-speed pursuits.

A. *The Offense-Based Approach*

The most stringent form of police chase regulations are offense-based policies. Offense-based policies prohibit officers from engaging in high-speed chases unless the fleeing driver is suspected of a more serious offense.⁷¹ For example, in Los Angeles, officers are not permitted to initiate a pursuit based on traffic infractions, reckless driving, or failing to yield to an officer.⁷² However, officers may pursue motorists exhibiting behavior of driving under the influence, as well as motorists whom officers have probable cause to believe committed or are about to commit a misdemeanor or felony.⁷³

The Atlanta Police Department maintains an offense-based policy similar to that in Los Angeles; however, the crimes that warrant a chase are fewer and more severe.⁷⁴ In January 2020, following a series of high-speed pursuits that resulted in the deaths of multiple drivers and bystanders, the Chief of Police put a zero-chase policy into place, completely prohibiting officers from engaging in high-speed chases.⁷⁵ A year later, the Atlanta Police Department altered its policy to allow officers to engage in pursuits “when ‘they have direct knowledge’ that the fleeing [motorist] has committed or attempted to commit a ‘forcible felony’ and that the [person’s] escape poses imminent danger.”⁷⁶ The forcible felonies warranting a chase “include murder, vehicular homicide, armed robbery, carjacking, aggravated assault, kidnapping, escape[,] and both voluntary and involuntary manslaughter.”⁷⁷ The revised manual states that officers are not permitted to engage in pursuits in order to subdue a person who poses no threat of death or serious injury,

⁷¹ Burns, *supra* note 29.

⁷² L.A. POLICE DEP’T, MANUAL: INITIATION OF A VEHICLE PURSUIT, VOL. 1 § 555.10 (2022) [hereinafter LAPD PURSUIT POLICY], <https://lapdonlinestrgeacc.blob.core.usgovcloudapi.net/lapdonlinemedia/2022/01/VOLUME-1-word.pdf> [<https://perma.cc/3S8S-KKXB>].

⁷³ *Id.*

⁷⁴ Burns, *supra* note 29.

⁷⁵ Matt Johnson, *Atlanta Police Begin No-Chase Policy Effective Immediately*, WSB-TV (Jan. 3, 2020, 3:11 PM), <https://www.wsbtv.com/news/local/atlanta/atlanta-police-sets-no-chase-policy-effective-immediately/NMXS6JZ6LRBBPP2FE5KMY25RAY/> [<https://perma.cc/D7TF-2BJU>].

⁷⁶ Burns, *supra* note 29. This note omits references to the term “suspect” and instead employs people-first language when discussing those impacted by the criminal legal system. People-first writing acknowledges that “[t]he labels used to describe people . . . can contribute to the stigmatization of already marginalized populations,” and strives to put the person first when describing individuals targeted by the criminal legal system. Nancy G. La Vigne, *People First: Changing the Way We Talk About Those Touched by the Criminal Justice System*, URBAN INST. (Apr. 5, 2016), <https://www.urban.org/urban-wire/people-first-changing-way-we-talk-about-those-touched-criminal-justice-system> [<https://perma.cc/XUH2-DPB2>].

⁷⁷ *Id.*

and that “pursuits may never be used for the protection of property.”⁷⁸ Thus, offense-based policies draw a hard line to prohibit pursuits unless the motorist is suspected of a more serious offense.

B. The Balancing Approach

The other most common approach to high-speed chase regulations is the balancing approach. Balancing approach policies typically require an officer to weigh the necessity of immediately apprehending the fleeing motorist against the potential harm to people and property that could result from initiating a high-speed chase.⁷⁹ For example, in Akron, Ohio, where the pursuit of Jayland Walker occurred, officers are permitted to initiate a chase based on their “reasonable belief that the immediate danger to the officer and the public created by the pursuit is less than the immediate or potential danger to the public should the [motorist] remain at large.”⁸⁰ The pursuit policy lists several factors for officers to consider prior to engaging in a chase, including the nature and seriousness of the offense, “[w]hether the identity of the driver is known,” the location of the chase and population density, and “[a]ny other condition or situation that would create an unreasonable risk.”⁸¹

Similarly, in Albany, New York, officers are required to consider several factors prior to initiating a pursuit, such as “[t]he present danger the [fleeing motorist] poses to the public,” “[t]he seriousness of the offense for which the [person] is to be pursued for,” and “[t]he possibility of apprehending the [person] at a later time.”⁸² The policy prohibits pursuits where “[a]n obvious risk of harm to persons or property arising from the pursuit outweighs the potential harm threatened by the escape of the [person]; or [where] a safe and [quick] identification and apprehension of the [person] can be made” another way.⁸³ Although both Akron and Albany articulate certain factors for officers to consider, which factors weigh more heavily than

⁷⁸ *Id.*

⁷⁹ See, e.g., CHIEF ERIC HAWKINS, ALBANY N.Y., POLICE DEPARTMENT GENERAL ORDER NO. 3.1.15: PURSUIT SITUATIONS 1–2 (2015) [hereinafter ALBANY PURSUIT POLICY], <https://www.albanyny.gov/DocumentCenter/View/4051/GO-3115-Pursuit-Situations-PDF> [<https://perma.cc/CF3Q-LWCJ>].

⁸⁰ CHIEF KENNETH BALL II, AKRON, OHIO, POLICE DIVISION VEHICLE PURSUIT PROCEDURE P-2020-017 1 (2020) [hereinafter AKRON PURSUIT POLICY], https://www.akronohio.gov/cms/resource_library/files/bcf29948abb5b6a7/vehicle_pursuit_procedure.pdf [<https://perma.cc/J644-6FRX>].

⁸¹ *Id.* at 2.

⁸² ALBANY PURSUIT POLICY, *supra* note 79, at 2.

⁸³ *Id.*

others is ultimately a subjective decision for an officer and their supervisor to make on the scene.

In Chicago, Guadalupe Francisco-Martinez was struck and killed in her car by a police vehicle engaged in the high-speed pursuit of another motorist.⁸⁴ Following Francisco-Martinez's death as a bystander, the Chicago Police Department adopted a hybrid balancing and offense-based approach to their pursuit policy.⁸⁵ The policy prohibits officers from engaging in a chase where the individual is only suspected of a traffic violation or minor offense, such as theft or possession of a stolen vehicle.⁸⁶ However, even if an individual is suspected of more serious offenses, officers must apply a balancing test to determine whether giving chase is appropriate.⁸⁷ The test requires officers to balance "[t]he necessity to immediately apprehend the fleeing [motorist]" against "the level of inherent danger created by a motor vehicle pursuit."⁸⁸ The policy also lists several factors for officers to consider before engaging in a pursuit, such as whether they have enough information to identify and apprehend the fleeing motorist at a later date without initiating a chase.⁸⁹

The balancing approach is adopted with less rigidity in other communities. For example, in Oak Grove, Tennessee, to justify a pursuit, an officer must show that the immediate danger posed to the public by the pursuit is outweighed by the potential danger of allowing the motorist to flee.⁹⁰ Similarly, in Dayton, Ohio, an officer may give chase if "[t]he pursuit is reasonable in light of the facts and circumstances" and "the [fleeing motorist] would pose a clear and present threat to law enforcement officers and others" if not immediately apprehended.⁹¹ Unlike the policies of Akron and Albany, which

⁸⁴ Jessica D'Onofrio, *Chicago Police Chase: Family of Mother of 6 Killed During Police Pursuit Across City Demands Answers*, ABC 7 CHI. (June 5, 2020), <https://abc7chicago.com/chicago-police-chase-car-today-high-speed/6232707/>.

⁸⁵ *Id.*; CHI. POLICE DEP'T, GEN. ORD. G03-03-01: EMERGENCY VEHICLE OPERATIONS—ELUDING AND PURSUING 3, *reprinted in* CHI. POLICE DEP'T BUDGET HEARING RESPONSES 46 (2020), https://www.chicago.gov/content/dam/city/depts/obm/supp_info/2021Budget/DepartmentResponses2021/57-CPD%202021%20Budget%20Responses.pdf [<https://perma.cc/M2WF-98CS>].

⁸⁶ CHI. POLICE DEP'T, *supra* note 85, at 3.

⁸⁷ *Id.* at 3–4.

⁸⁸ *Id.* at 3.

⁸⁹ *Id.*

⁹⁰ Duvall, *supra* note 30.

⁹¹ RICHARD BIEHL, DAYTON POLICE DEP'T GEN. ORD. 3.02-1: VEHICLE PURSUIT 2 (2020) [hereinafter DAYTON PURSUIT POLICY], <https://daytonohio.gov/DocumentCenter/View/9626/302-1-Vehicle-Pursuits> [<https://perma.cc/GW6M-C7MB>]. It is important to note that Dayton also allows officers to engage in pursuits if they have probable cause to believe that the fleeing motorist has committed a violent felony. However, officers are not restricted to only chasing individuals who they suspect of a felony, thus, I have classified Dayton's policy as a "balancing" approach.

list specific factors for officers to weigh, these balancing policies do not articulate which factors an officer should take into account before deciding to give chase.

What type of person presents “a clear and present threat” may turn on the officer’s subjective experience and biases, especially when it comes to race.⁹² Balancing approaches that place the ultimate decision to chase in the hands of a police officer on the scene who must make a snap judgment will inevitably allow unnecessary and deadly chases to occur, even if they result in greater rates of apprehension.

C. *The Implicit Message Behind No-Chase Policies*

Regardless of the approach, when municipalities restrict when and why an officer may pursue a fleeing individual, the implicit message is clear: high-speed chases are inherently unreasonable.⁹³ The ability of police departments to apprehend drivers at a later date, the human and economic toll of high-speed chases, and the escalation of criminal charges related to pursuits all suggest that there is no need for widespread use of this police tactic.

1. Apprehending Fleeing Motorists at a Later Date

With modern technology allowing police to track individuals rapidly and precisely,⁹⁴ it is hardly accurate to insist

⁹² See, e.g., German Lopez, *Why Police So Often See Unarmed Black Men as Threats*, VOX (Sept. 20, 2016), <https://www.vox.com/2014/8/28/6051971/police-implicit-bias-michael-brown-ferguson-missouri> [<https://perma.cc/QYJ8-PK3R>].

⁹³ Offense-based and balancing approach policies recognize what makes high-speed chases inherently unreasonable: their danger and costliness. In an email sent by then-Chief of Atlanta Police Erika Shields to the entire Atlanta Police Department explaining the cause for the new no-chase policy, Shields stated, “In reviewing the department’s current pursuit policy, I must weigh [certain] critical successes against several factors. Namely, the level of pursuit training received by officers . . . [and] the rate of occurrence of injury/death.” Matt Johnson (@MattWSB), TWITTER (Jan. 3, 2020, 2:57 PM), <https://twitter.com/MattWSB/status/1213187701471662087> [<https://perma.cc/Y3QQ-US7B>] (posting and quoting from an e-mail from Erika Shields, Chief, Atlanta Police Dep’t, to Atlanta Police Dep’t Staff) (Jan. 3, 2020, 11:23 AM). Policies that restrict officers to giving chase only where the individual is suspected of a more serious offense, such as those in Los Angeles and Atlanta, implicitly recognize that the cost of chasing someone makes it inherently unreasonable to pursue an individual suspected of a mere traffic infraction. LAPD PURSUIT POLICY, *supra* note 72; Burns, *supra* note 29. Balancing approach policies also urge officers to weigh the danger and costliness of pursuit, recognizing that there are scenarios where giving chase is unreasonable. See, e.g., ALBANY PURSUIT POLICY, *supra* note 79 (permitting officers to weigh the relative danger of engaging in a chase against the danger posed by the fleeing motorist).

⁹⁴ See R. Craig Curtis et al., *Using Technology the Founders Never Dreamed of: Cell Phones as Tracking Devices and the Fourth Amendment*, 4 U. DENVER CRIM. L. REV. 61, 62 (2014) (“Police agencies in major cities already have systems in place to

that a chase is necessary to prevent the fleeing motorist from disappearing forever.⁹⁵ Officers may have the name and address of the individual they stopped, or they may be able to record the license plate number of the fleeing car.⁹⁶ Indeed, in the wake of several deadly and expensive high-speed chases, the police department in Independence, Missouri, began using StarChase, a technology that “allows officers to track [motorists] with GPS instead of high-speed chases.”⁹⁷ Thus, in most cases where a driver flees, it is likely police will be able to apprehend the person the following day.⁹⁸ By implementing policies that require officers to consider whether it is feasible to apprehend the driver at a later date, police departments implicitly recognize that it is unreasonable to engage in the high-speed pursuit of a person they could simply mail a ticket to, arrest in the future, or decline to engage with entirely.

2. The Human and Economic Toll

Not only are police pursuits unreasonable due to the availability of alternative methods to apprehend a fleeing motorist, but the high cost to police departments and society at large also contribute to their inherent unreasonableness. As discussed above, pursuit-related litigation costs communities around the country millions of dollars a year, in addition to the cost of replacing damaged property.⁹⁹ On top of litigation expenses, the time and money necessary to train officers on proper high-speed pursuit tactics is well beyond the budgetary capacities of most police departments.¹⁰⁰ In a letter explaining

automatically track cars by license plate, creating databases of who was where and when.”) (citing CATHERINE CRUMP, AM. C.L. UNION, YOU ARE BEING TRACKED: HOW LICENSE PLATE READERS ARE BEING USED TO RECORD AMERICANS’ MOVEMENTS (2013), <https://www.aclu.org/other/you-are-being-tracked-how-license-plate-readers-are-being-used-record-americans-movements>).

⁹⁵ See Molly Olmstead, *Why Police Pursuits Keep Killing People*, SLATE (July 8, 2021, 6:15 PM), <https://slate.com/news-and-politics/2021/07/police-pursuit-high-speed-car-chase-deaths.html> [<https://perma.cc/3NAS-4NE5>].

⁹⁶ *Id.*

⁹⁷ Reid, *supra* note 25.

⁹⁸ Olmstead, *supra* note 95 (quoting John Firman, Professor of Justice, Law, and Criminology at American University).

⁹⁹ See, e.g., Struett, *supra* note 23; Reid, *supra* note 25.

¹⁰⁰ See Johnson, *supra* note 75. For example, police departments in Washington State spend an average of \$40,000 per cadet on training, in addition to paying individual salaries and benefits during this time. Alana Semuels, *Society Is Paying the Price for America’s Outdated Police Training Methods*, TIME (Nov. 20, 2020), <https://time.com/5901726/police-training-academies/>. Around the country, smaller municipalities with tighter budgets sometimes require recruits to pay for their own training at a two- or four-year college not connected with the police department. *Id.* In terms of high-speed chase training, it is “not likely that U.S. police will have the luxury of

the new no-chase policy to the department, the Chief of Atlanta Police named the level of pursuit training as a chief concern in implementing the more restrictive pursuit policy.¹⁰¹ These logistical and economic concerns indicate an implicit recognition that the cost of chasing someone, and chasing someone properly, is rarely outweighed by the benefit of immediately apprehending a person suspected of a mere traffic violation.

Beyond addressing the logistical and economic concerns of high-speed chases, no-chase policies also save lives. In Louisville, Kentucky, where the police department adopted an offense-based policy restricting pursuits to individuals suspected of violent felonies,¹⁰² chase-related deaths fell from about two a year to zero, and injuries decreased by over 30 percent.¹⁰³ Just a few years after enacting the no-chase policy, the Louisville Police Department loosened the restrictions, allowing officers “to give chase if they believe [the motorist] is ‘about to commit’ a violent felony or if they know the [motorist] has a violent felony on his or her record.”¹⁰⁴ After this modification, the annual number of police chases almost doubled: seven people died over the course of three years, and injuries per year increased from an average of twenty-five to fifty-eight.¹⁰⁵ Thus, as these data points from Louisville demonstrate, there is a strong correlation between restrictive pursuit policies and decreased incidence of death and injury.

3. Heightened Criminal Charges

No-chase policies save lives, and when lives are saved, people are kept out of prison.¹⁰⁶ In addition to fleeing and

this extended driver training anytime soon, given limited budgets and other resources.” Tim Dees, *What Cops Need to Know About Pursuit Training*, POLICE 1 (June 28, 2017), <https://www.police1.com/police-products/pursuit-management-technology/articles/what-cops-need-to-know-about-pursuit-training-Uj6BQS3Fa90KpRie/> [https://perma.cc/9JNA-GYNK]. While some departments are incorporating “[c]omputer-based driving simulators” to save money, these programs still may not contain a “session to discuss the physics of high-performance driving,” and it is almost “unheard of for students to be able to practice their [emergency vehicle operations] skills on a public highway, with real-world traffic.” *Id.*

¹⁰¹ *Id.* (citing E-mail from Erika Shields, *supra* note 93).

¹⁰² McLaren & Glowicki, *supra* note 27.

¹⁰³ *Id.* From 2007 to 2012, before the more restrictive policy went into place, seventy-six people were injured as a result of high-speed chases. In the three years after the institution of the policy, only twenty-five people were injured. Thus, dividing twenty-five by seventy-six, injuries decreased by over 30 percent following institution of the more restrictive policy. Gullapalli, *supra* note 27.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ See *infra* Section II.C.3 (discussion of felony murder rule); see also *Felony Murder*, JUSTIA (Oct. 2021), <https://www.justia.com/criminal/offenses/homicide/felony-murder/> [https://perma.cc/Y2JL-M2W4] (discussing felony murder rule generally).

eluding,¹⁰⁷ one of the more notorious criminal charges associated with high-speed pursuits is felony murder.¹⁰⁸ The felony murder rule imposes liability on a defendant when, during the commission of a felony, a person dies.¹⁰⁹ Most states have a felony murder rule, and in over half of those states, it is a capital offense.¹¹⁰ In a high-speed pursuit scenario, the fleeing driver may be charged with felony murder when someone dies during the chase—regardless of whether it was their vehicle that caused the fatal injury. In fact, the man engaged in the chase which led to Guadalupe Francisco-Martinez’s death was charged with felony murder, even though it was a *police vehicle* that struck and killed her.¹¹¹

The application of the felony murder rule in police chases has led to some shocking results. For example, in Los Angeles, a man was found guilty of three counts of felony murder when two police helicopters collided and exploded as they were following the high-speed pursuit of his vehicle from the skies.¹¹² Enacting no-chase policies eliminates chase-related deaths and injuries that would otherwise result in criminal charges against the fleeing driver who, most often, is a Black or Hispanic person.¹¹³ Thus, restricting chases and saving lives shields Black and Hispanic people from continued persecution and over-incarceration.

The pushback against no-chase policies is an understandable knee jerk reaction: why let a “criminal” go? Jim Becker, a man whose car was hit by a speeding driver after the Chicago Police declined to chase him, commented on the no-

¹⁰⁷ In most jurisdictions, when an individual drives away from the police, they are committing an offense commonly referred to as “fleeing and eluding.” See, e.g., GA. CODE ANN. 40-6-395 (West, Westlaw current through legis. passed at the 2022 Reg. Sess. of the G.A. Assemb.). Fleeing and eluding may be a misdemeanor, subject to a fine or less than one year of imprisonment or it could be a felony if the driver endangered the safety of other motorists. See, e.g., N.Y. PENAL LAW §§ 270.25, 270.30, 270.35 (West, Westlaw current through L.2022, chapters 1 to 562) (New York State’s fleeing and eluding statutes).

¹⁰⁸ Beth Schwartzapfel, *D’Angelo Burgess Fled From Police. Does That Make Him a Killer?*, MARSHALL PROJECT (May 30, 2019), <https://www.themarshallproject.org/2019/05/30/d-angelo-burgess-fled-from-police-does-that-make-him-a-killer> [https://perma.cc/KW2H-SPEU] (discussing the case of D’Angelo Burgess, who was convicted of felony murder when, during a high-speed pursuit of Burgess’s car, one police vehicle struck another police vehicle, killing the officer inside).

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ Patrick Elwood, *Man, 22, Charged with Murder After Police Chase Leaves Mother of Six Dead*, WGN (June 6, 2020, 7:41 AM), <https://wgntv.com/news/man-22-charged-with-murder-after-police-chase-leaves-mother-of-six-dead/> [https://perma.cc/KN2K-E8GD].

¹¹² Erich Lichtblau, *Man in Car Chase Guilty of Murder in Collision of Copters*, L.A. TIMES (May 12, 1989, 12:00 AM), <https://www.latimes.com/archives/la-xpm-1989-05-12-mn-3074-story.html> [https://perma.cc/KB6F-74L6].

¹¹³ Frank, *supra* note 16; NICHOLS, *supra* note 59, at 10.

chase policy: “The criminals have all the power right now . . . [t]here’s no doubt [officers] are not allowed to do the job they’re sworn to do.”¹¹⁴ Mr. Becker’s frustration is not uncommon, with many critics opining that no-chase policies will render traffic stops entirely useless and cause crime rates to increase as officers let “criminals” run free.¹¹⁵ The common criticisms of no-chase policies, however, are largely misplaced.

First, it is not clear that a high-speed chase would have prevented a crash from happening in a case like Mr. Becker’s. One might argue that, without police cars giving chase, drivers are more likely to slow down and resume careful driving. Second, most people who flee from police are not “criminals” in the stereotypical, Hollywood sense of the term.¹¹⁶ Rather, 91 percent of individuals involved in high-speed chases are pulled over for nonviolent crimes, and 42 percent of those people are stopped for mere traffic violations.¹¹⁷ Indeed, Jayland Walker was a man with “one traffic ticket and no criminal record,” who the police attempted to stop for equipment and traffic violations.¹¹⁸ Thus, the chances that an officer will let someone go who happens to be in the middle of committing a violent crime are quite low and are dwarfed by the devastating human and economic toll of high-speed chases.

While no-chase policies are a productive start to reforming this police practice, they are only as effective as the departments that enforce them. No-chase policies endow officers on the scene with a great deal of discretion in deciding whether to give chase.¹¹⁹ In fact, only about 12 percent of sheriffs’ offices, 14 percent of state police departments, and 9 percent of local police departments require supervisor approval before officers may initiate a chase.¹²⁰ Furthermore, even when a no-chase policy is in effect, officers may simply ignore their municipality’s policy or call on another agency without such a policy to initiate

¹¹⁴ Ben Bradley et al., *As More Police Restrict High-Speed Pursuits, Some Wonder if Fleeing Is ‘Get Out of Jail Free’ Card*, WGN (Apr. 29, 2021), <https://wgntv.com/news/wgn-investigates/as-more-police-restrict-high-speed-pursuits-some-wonder-if-fleeing-is-get-out-of-jail-free-card/> [https://perma.cc/WJU6-ER96] (last alteration in original).

¹¹⁵ *Id.*

¹¹⁶ See CAL. HIGHWAY PATROL, *supra* note 18, at 8 (noting that, in California, the top four violations that trigger a high-speed chase are speeding, stolen vehicle, registration or license plate violations, and red light or stop sign violations).

¹¹⁷ *Pursuit Study*, *supra* note 17.

¹¹⁸ McGraw & Vander Ploeg, *supra* note 8.

¹¹⁹ See, e.g., AKRON PURSUIT POLICY, *supra* note 80, at 1 (directing officers to act based on their “reasonable belief”).

¹²⁰ REAVES, *supra* note 30.

the chase.¹²¹ Strong emotions may also work against an officer's better judgment, making it difficult to resist chasing a person who blatantly disregards their authority.¹²² Indeed, Akron Police decided to chase Jayland Walker even though he was pulled over for a minor traffic offense, the police had his license plate number, and the chase took place at night on residential streets.¹²³ With so many factors counseling against pursuit, one has to wonder whether the department's pursuit policy had any effect at all on officers' decision to give chase.¹²⁴

Additionally, the penalties an officer may face for violating their pursuit policy vary depending on the rules of the particular department and the prerogative of their superiors who are responsible for discipline.¹²⁵ Although officers may be threatened with legal consequences for engaging in an unnecessary high-speed chase, the current state of police pursuit jurisprudence makes it extremely difficult for a criminal defendant or civil plaintiff to make a successful claim of excessive force under the Fourth Amendment.¹²⁶ Dramatic reframing of the Fourth Amendment analysis surrounding police chases is necessary to create a greater deterrent to unnecessary pursuits and to protect the wellbeing of American

¹²¹ See Burns, *supra* note 29.

¹²² Olmstead, *supra* note 95 (“[Police officers] get engaged and can’t shut down [their] emotions . . . [i]t’s I can’t believe this guy’s fleeing me. I’m going to catch him, hell or high water.”) (quoting John Firman, Professor of Justice, Law, and Criminology at American University).

¹²³ McGraw & Vander Ploeg, *supra* note 8.

¹²⁴ See AKRON PURSUIT POLICY, *supra* note 80 (Official factors counseling against pursuit in the case of Jayland Walker included: the “[n]ature and seriousness of the original offense,” “[t]ime and location” of the pursuit, “[w]hether the identity of the driver [was] known,” “[l]ighting and visibility,” “[p]hysical location and population density,” and “[s]peed and evasive tactics employed by the [driver]”). Critics of the Akron Police Department question whether Jayland Walker would still be alive today had officers followed an Ohio State standard which discourages “chases when the [person] is known to the officers or easily identifiable.” Phil McCausland, *Akron Officers May Not Have Pursued or Shot Jayland Walker if They Had Met Ohio Standards for Police*, NBC NEWS (July 8, 2022, 9:10 PM), <https://www.nbcnews.com/news/us-news/akron-officers-may-not-shot-jayland-walker-if-ohio-police-standard-met-rcna37371> [https://perma.cc/RX93-BLUF]. At the same time, “Ohio[] law enforcement agencies are not required to” comply with the state standard, as it is merely a recommendation. *Id.*

¹²⁵ Indeed, the officers who fired ninety rounds at Jayland Walker were placed on *paid* administrative leave, while over fifty demonstrators were arrested and charged with criminal offenses related to protests over Walker’s death. Claudia Dominguez, *Ohio Police Officers on Paid Administrative Leave After Fatal Shooting of Jayland Walker*, CNN (July 1, 2022, 5:30 PM), <https://www.cnn.com/2022/06/30/us/ohio-police-officers-jayland-walker-shooting/index.html> [https://perma.cc/9FLW-4UZH]; Doug Livingston, *What We Know About 61 People Arrested in July During Jayland Walker Protests in Akron*, AKRON BEACON J. (Sept. 23, 2022, 5:59 AM), <https://www.beaconjournal.com/story/news/crime/2022/09/23/jayland-walker-protest-arrests-akron-police/69512399007/> [https://perma.cc/SWG8-TDUS].

¹²⁶ See *infra* Part II.

citizens, regardless of whether they are fleeing from police or a bystander caught in the crossfire.

III. POLICE CHASE JURISPRUDENCE: A GAP IN CONSTITUTIONAL PROTECTION

A typical high-speed chase may look something like this: a motorist is pulled over for a traffic violation, an officer begins to approach their car, then, for whatever reason, the motorist drives away. The officer then makes the decision to pursue the fleeing motorist, and a high-speed chase ensues. At some point in the chase, the officer may use certain tactics to stop the fleeing driver, such as laying out tire spikes, cornering the vehicle, or simply ramming the back of the vehicle with their car.¹²⁷ Police will then apprehend the motorist, hospitalize them if necessary, and prosecute them for their crimes.¹²⁸ Although the implications for criminal defendants are important, this section will not delve into the criminal aspect of police chases but will focus on the civil remedies available to motorists who were injured, lost their lives, or otherwise contest the reasonableness of a chase.¹²⁹

What legal remedies can Jayland Walker's family pursue to vindicate their loved one's wrongful death? When a citizen of the United States believes their constitutional rights or the rights of a deceased family member were violated by a state actor, they may file suit under 42 U.S.C. § 1983. In the high-speed chase context, plaintiffs may allege that an officer used excessive force and violated their Fourth Amendment right to be free from unreasonable seizures.¹³⁰ In *Graham v. Connor*, the Court made it clear that claims of excessive force should be analyzed under the Fourth Amendment objective reasonableness standard.¹³¹ Under that standard, "the question is whether officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation."¹³²

¹²⁷ Tim Dees, *Roundup: The Top Pursuit-Ending Tools for Cops*, POLICE1 (Sept. 30, 2017), [https://www.police1.com/police-products/pursuit-management-technology/articles/roundup-the-top-pursuit-ending-tools-for-cops-DjUKwzCtQAR7o1j1/\[https://perma.cc/EE8U-4M8D\]](https://www.police1.com/police-products/pursuit-management-technology/articles/roundup-the-top-pursuit-ending-tools-for-cops-DjUKwzCtQAR7o1j1/[https://perma.cc/EE8U-4M8D]); Scott v. Harris, 550 U.S. 372, 374 (2007).

¹²⁸ See, e.g., *Torres v. Madrid*, 141 S. Ct. 989, 994 (2021) (explaining that defendant was shot by officers, fled in her vehicle for seventy-five miles, and was airlifted to a hospital where officers eventually placed her under arrest and charged her with numerous offenses).

¹²⁹ 42 U.S.C. § 1983.

¹³⁰ See *Scott v. Harris*, 550 U.S. 372, 376, 381 (2007).

¹³¹ *Graham v. Connor*, 490 U.S. 386, 395 (1989).

¹³² *Id.* at 397.

For Jayland Walker’s family to succeed in an excessive force claim against the officers involved in his death, they must show that Walker was, in fact, seized, and the seizure was objectively unreasonable.¹³³ If successful, his family may recover damages similar to those developed in the common law of torts including compensatory damages for costs such as medical expenses, lost wages, pain, suffering, and emotional distress; “punitive damages if the jury finds that the [officers] conduct was reckless or callously indifferent to the federally protected rights of others or if the [officers were] motivated by an evil intent”; and attorney’s fees.¹³⁴

Jayland Walker’s family will run into numerous obstacles before they may present their case to a jury. First, police officers are protected from civil lawsuits by the doctrine of qualified immunity, which shields state officials from civil liability unless a plaintiff can show that their “clearly established statutory or constitutional rights” were violated.¹³⁵ Police officers will often file a motion for summary judgment as soon as they receive the complaint, asserting their qualified immunity and contesting the validity of the plaintiff’s claims.¹³⁶ Under Federal Rule of Civil Procedure 56 (the Rules), a court may grant summary judgment to the defendant and dismiss the case before it proceeds to trial if “there is no genuine dispute as to any material fact.”¹³⁷ In their motion for summary judgment, the police may claim that the plaintiff failed to show they were

¹³³ See *id.* at 393–97.

¹³⁴ *Section (1983)*, *supra* note 34. Importantly, simply because an unreasonable seizure occurred does not mean a plaintiff is entitled to millions of dollars in damages. See *id.* The Supreme Court has declined to attach a monetary value to constitutional violations. *Memphis Cmty. Sch. Dist. v. Stachura*, 477 U.S. 299, 310 (1986). Rather, a plaintiff must prove that they suffered actual damages from the constitutional violation—in the form of medical bills, for example—in order to obtain awarded compensatory damages. *Carey v. Phipps*, 435 U.S. 247, 266–67 (1978). If a plaintiff cannot prove actual damages, they are only entitled to nominal damages capped at one dollar. *Id.* Even in such a scenario, punitive damages and attorney’s fees are still available. *Section (1983)*, *supra* note 34.

¹³⁵ Emma Tucker, *States Tackling ‘Qualified Immunity’ for Police as Congress Squabbles over the Issue*, CNN (Apr. 23, 2021, 7:45 AM), <https://www.cnn.com/2021/04/23/politics/qualified-immunity-police-reform/index.html> [<https://perma.cc/7AED-9ULV>] (internal quotation marks omitted); Jay Schweikert, *Qualified Immunity*, A.B.A. (Dec. 17, 2020), https://www.americanbar.org/groups/public_education/publications/insights-on-law-and-society/volume-21/issue-1/qualified-immunity/ [<https://perma.cc/ZFY9-5L3X>] (“While [clearly established statutory or constitutional rights] is an amorphous, malleable standard, it generally requires civil rights plaintiffs to show not just a clear legal rule, but a prior case with functionally identical facts.”).

¹³⁶ See Joanna C. Schwartz, *How Qualified Immunity Fails*, 127 YALE L.J. 2, 34 (2017) (“Qualified immunity is usually one of several arguments defendants make in their motions to dismiss and for summary judgment.”).

¹³⁷ See FED. R. CIV. P. 56.

seized or, even if they were seized, that the seizure was unreasonable. Although the Rules require courts to view the facts in the light most favorable to the nonmoving party when deciding a motion for summary judgment,¹³⁸ the Supreme Court has shifted away from this requirement in the context of high-speed chases.¹³⁹

In *Scott v. Harris*, Victor Harris sued Georgia County Deputy Timothy Scott after he rammed his vehicle off the road during a high-speed chase, causing Harris to become quadriplegic.¹⁴⁰ Harris brought an excessive force claim under § 1983, and Scott promptly filed a motion for summary judgment.¹⁴¹ Because the case had not yet made it to trial, there were no factual findings upon which the Supreme Court could base its decision.¹⁴² Instead, the Court had to rely on the facts available to it, mainly, Officer Scott's dash cam recording of the chase.¹⁴³ After viewing the recording, a majority of the Court determined that no reasonable jury could find that Scott acted unreasonably in terminating the chase.¹⁴⁴ Placing great weight on the dash cam recording, the Court asserted that the chase was an extremely dangerous situation perpetuated by Harris himself, and that the risk of injury to Harris was far outweighed by the potential injuries that officers and members of the public could have suffered had Scott failed to terminate the chase.¹⁴⁵ The Court reasoned that "[w]here the record taken as a whole [in this case, the recording] could not lead a rational trier of fact to find for the nonmoving party, there is no 'genuine issue for trial'" and summary judgment must be granted.¹⁴⁶

Scott has had significant implications for plaintiffs injured by high-speed chases. Given that dash and body cams are increasingly employed by police departments around the country, it is likely that a recording of any given police-citizen encounter will be available for review.¹⁴⁷ Despite the fact that Fourth Amendment violations in civil cases are a question of fact

¹³⁸ *Scott v. Harris*, 550 U.S. 372, 378 (2007) (citing *United States v. Diebold, Inc.*, 369 U.S. 654, 655 (1962) (per curiam)); *id.*

¹³⁹ *See Scott*, 550 U.S. at 378–81.

¹⁴⁰ *Id.* at 374–75.

¹⁴¹ *Id.* at 375–76.

¹⁴² *See id.* at 378, 391.

¹⁴³ *Id.*

¹⁴⁴ *Id.* at 373, 386.

¹⁴⁵ *Id.* at 384.

¹⁴⁶ *Id.* (quoting *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586–87 (1986)).

¹⁴⁷ SHELLEY S. HYLAND, U.S. DEPT OF JUST., NCJ251775, BODY-WORN CAMERAS IN LAW ENFORCEMENT AGENCIES, 2016 1 (2018) (explaining that, in 2016, nearly half of law enforcement agencies used body cams, and nearly 70 percent employed dash cams).

typically reserved for the factfinder,¹⁴⁸ under *Scott*, courts are empowered to act with discretion at the summary judgment phase in determining whether there is any doubt that the use of force was reasonable. Because high-speed chases are inherently risky for pursuing officers and the public in general, one struggles to think of an instance when using force to terminate an objectively dangerous chase is *not* reasonable. In Jayland Walker's case, a court would review the dash cam footage and hear testimony from the only survivors of the pursuit: the officers—each of whom claim to have heard a gunshot emanate from Walker's vehicle.¹⁴⁹ If the summary judgment phase is not the death knell of Walker's excessive force claim, then the current method of analyzing Fourth Amendment claims at trial most certainly is.

Even if Jayland Walker's family survives summary judgment, once they reach the trial stage, they will face a new set of challenges. To obtain a verdict in their favor, they must first prove that the officers' actions constituted a seizure.¹⁵⁰ A Fourth Amendment seizure occurs "when there is a governmental termination of freedom of movement through means intentionally applied."¹⁵¹ This may take the form of an application of physical force, such as an officer placing handcuffs on an individual, or a verbal show of authority, such as ordering a person to halt.¹⁵² In *Tennessee v. Garner*, where Edward Garner was shot and killed as he ran away from police on foot, the Court held that the application of deadly force—that is, the shooting of Garner—was a seizure under the Fourth Amendment.¹⁵³ Although a person does not have to be physically touched to be seized, the Court has made it clear that a seizure requires either the application of physical force or submission to a show of authority.¹⁵⁴

In the high-speed chase context, a person is seized when they are pulled over because they have submitted to an officer's show of authority (i.e., her flashing lights and sirens), and a person is seized when an officer stops the chase through a use of force.¹⁵⁵ However, under current jurisprudence, when a motorist

¹⁴⁸ *Scott*, 550 U.S. at 395 (Stevens, J., dissenting).

¹⁴⁹ Cineas, *supra* note 4.

¹⁵⁰ *California v. Hodari D.*, 499 U.S. 621, 624–25 (1991).

¹⁵¹ *Brower v. Cnty. of Inyo*, 489 U.S. 593, 597 (1989) (emphasis omitted).

¹⁵² *Hodari D.*, 499 U.S. at 626.

¹⁵³ *Tennessee v. Garner*, 471 U.S. 1, 2 (1985).

¹⁵⁴ *Hodari D.*, 499 U.S. at 626.

¹⁵⁵ To constitute a seizure, courts require that the fleeing motorist be stopped by "a governmental termination of freedom of movement through means intentionally applied." *Brower*, 489 U.S. at 597 (emphasis omitted). In other words, if the chase ends because the fleeing motorist hits a tree, this does not constitute a governmental seizure

is actively fleeing from police, they have not and *cannot* be seized for purposes of the Fourth Amendment.¹⁵⁶ This leaves an unacceptable gap in constitutional protections for individuals who, for myriad reasons, decide to flee from police.

Even if Walker's family establishes that Walker was seized, they must then prove that the seizure was unreasonable.¹⁵⁷ To determine whether a particular seizure violated the Fourth Amendment, courts ask "whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them."¹⁵⁸ Courts look to "the totality of the circumstances" to determine whether a seizure was reasonable, including the nature of the offense for which the individual was pulled over, the degree of threat or harm the individual posed to others, whether the individual fled, and the leniency given to officers making split second decisions.¹⁵⁹ This analysis requires balancing the nature of the alleged constitutional intrusion on the one hand, and "the importance of the governmental interests" in promoting safety and order, on the other.¹⁶⁰

Under current high-speed chase jurisprudence, a fleeing motorist is not seized and therefore not protected by the Fourth Amendment until an officer intentionally causes their vehicle to stop moving.¹⁶¹ Thus, courts look to the moment a chase ends to determine whether an officer acted reasonably.¹⁶² The consequence of this temporal focus is that courts are forced to assess the totality of the circumstances *at the time the chase ended*, which almost always involves vehicles traveling at dangerous speeds and a high risk of injury to people and property.¹⁶³ Because officers did not cause Jayland Walker's vehicle to stop moving, he was not seized at any point during the vehicle chase. Walker was only seized at the very end of the encounter when officers shot him. Focusing on this limited moment in time in the heat of the encounter—after officers allegedly heard a gunshot from Walker's vehicle—a court would likely find that the officers were justified in terminating, by

under the Fourth Amendment. The fleeing motorist must come to a stop by some intentional means employed by the police.

¹⁵⁶ *Hodari D.*, 499 U.S. at 626; *Scott v. Harris*, 550 U.S. 372, 381 (2007).

¹⁵⁷ *Graham v. Connor*, 490 U.S. 386, 388 (1989).

¹⁵⁸ *Id.* at 397.

¹⁵⁹ *Id.* at 396 (citing *Tennessee v. Garner*, 471 U.S. 1, 8–9 (1985)).

¹⁶⁰ *United States v. Place*, 462 U.S. 696, 703 (1983).

¹⁶¹ *See Scott*, 550 U.S. at 383–86.

¹⁶² *See id.* at 381, 386.

¹⁶³ *See id.* at 384–85.

whatever means, an objectively dangerous situation.¹⁶⁴ However, if a court were to turn its attention to earlier in the interaction, before the chase began, the totality of the circumstances analysis would shift dramatically and expose the inherent unreasonableness of the high-speed pursuit itself, providing Jayland Walker’s family with a viable claim for relief.

IV. PROPOSAL: REFRAMING FOURTH AMENDMENT DOCTRINE IN THE CONTEXT OF HIGH-SPEED CHASES

As the above analysis demonstrates, there is a gap in constitutional protection from the moment a chase begins to the moment it is terminated by the police. Because courts focus on the moment a chase ends to assess reasonableness, rather than when it begins, countless plaintiffs lose their § 1983 claims despite the unnecessary nature of the chase and the injuries they suffered. Section A of this Part asserts that high-speed chases should be considered a form of deadly force that, when applied, constitute a Fourth Amendment seizure. Section B explains that if mere engagement in a chase constitutes a seizure, courts will no longer ask whether officers acted reasonably in terminating a chase, but rather, whether it was reasonable for officers to engage in a high-speed chase in the first place.

A. *High-Speed Chases as Fourth Amendment Seizures*

Under current jurisprudence, a fleeing motorist is not seized under the Fourth Amendment until they submit to officers’ show of authority or force is used to stop them.¹⁶⁵ The Supreme Court would likely agree with the idea that many tactics used by police to terminate high-speed chases “pose[] a high likelihood of serious injury or death.”¹⁶⁶ Yet, the Court has refused to classify vehicle pursuit itself as either a form of deadly force or a seizure.¹⁶⁷ In developing Fourth Amendment seizure doctrine, the Supreme Court appears determined to exclude the fleeing, often nonviolent motorist from its protection. However, if one looks outside of seizure, to Fourth Amendment search jurisprudence, a reframing of the concept of seizure becomes readily apparent. This reframing, coupled with an extension of

¹⁶⁴ See *id.* at 386; see also *Plumhoff v. Rickard*, 572 U.S. 765, 780–81 (2014).

¹⁶⁵ See *California v. Hodari D.*, 499 U.S. 621, 626 (1991); see also *Tennessee v. Garner*, 471 U.S. 1, 7 (1985).

¹⁶⁶ See *Scott*, 550 U.S. at 384.

¹⁶⁷ See *id.*; see also *Torres v. Madrid*, 141 S. Ct. 989, 999 (2021).

seizure doctrine supported by a recent Supreme Court decision, compel a new conception of seizure that includes—and thereby protects—fleeing motorists.

1. Shifting the Seizure Focus: From Results to Conduct

To begin the reframing of seizure, one need look no further than Fourth Amendment search doctrine. A search occurs under the Fourth Amendment when an individual's reasonable expectation of privacy is violated by the police.¹⁶⁸ A search may also occur where the police physically intrude onto a person's property in "an *attempt* to find something or obtain information."¹⁶⁹ Search doctrine is not results focused, in that the police need not actually discover evidence for the intrusion to be considered a Fourth Amendment search.¹⁷⁰ Rather, it is conduct focused. Courts look to *police conduct* to determine whether there was a physical intrusion on the individual's property or a violation of their reasonable expectation of privacy.¹⁷¹ It is irrelevant to the search inquiry whether police were successful in their search for evidence—the search itself is all that is required.¹⁷²

Unlike search doctrine, Fourth Amendment seizure doctrine is results focused. Courts do not assess the conduct of police to determine whether a seizure occurred, rather, they focus on whether the desired result was achieved: physical control or submission of the targeted person.¹⁷³ Focusing on the moment of submission not only pulls attention away from the conduct of officers, but it also places disproportionate weight on the conduct of the fleeing individual.

While it is true that a person has not submitted to an officer's show of authority if they are in active flight, they certainly do not feel "free to leave"¹⁷⁴ or disregard the police and go about their business while the police are chasing them. A rule

¹⁶⁸ See, e.g., *Katz v. United States*, 389 U.S. 347, 353 (1967) (holding that the defendant had a reasonable expectation of privacy while using a public phone booth and that listening to his conversations via a wiretap constituted a Fourth Amendment search).

¹⁶⁹ *United States v. Jones*, 565 U.S. 400, 408 n.5 (2012) (emphasis added); see also *id.* at 404–05 (holding that a Fourth Amendment search occurred where police attached a GPS tracking device to the underside of defendant's car, because the attachment of such a device constituted an unlawful trespass onto the defendant's property).

¹⁷⁰ See, e.g., *id.* at 408 n.5 (explaining that a search occurs where there is a physical intrusion in an "attempt" to discover evidence).

¹⁷¹ See *id.* at 404–05; *Katz*, 389 U.S. at 353.

¹⁷² *Jones*, 565 U.S. at 408 n.5.

¹⁷³ *California v. Hodari D.*, 499 U.S. 621, 626 (1991).

¹⁷⁴ *United States v. Mendenhall*, 446 U.S. 544, 554 (1980) ("We conclude that a person has been 'seized' within the meaning of the Fourth Amendment only if, in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave.").

requiring physical control or submission for a seizure to occur ignores the inherently coercive nature of most police-citizen encounters and penalizes individuals who flee by assuming they are criminally culpable and thus undeserving of protection. It also minimizes the lived experiences of Black Americans who may flee to avoid brutality and “the recurring indignity of being racially profiled.”¹⁷⁵ Such a rule sets up an unrealistic binary where a person is either seized because they submitted or were physically apprehended, or there is no governmental intrusion at all. Even law enforcement agencies reject this reductive conception of force, with many choosing to analyze police-citizen encounters based on “a use-of-force continuum.”¹⁷⁶ These policies recognize that some level of police force is at play from the moment an officer verbalizes a command.¹⁷⁷ Thus, even some police departments recognize a more nuanced conception of force than the Supreme Court.

Although an officer has not attained physical domination of a fleeing motorist, they still exert a level of force on the individual that warrants Fourth Amendment scrutiny. Rather than focusing on the result of the police-citizen encounter, courts should focus on the conduct of the pursuing officers to determine whether a seizure occurred. The attempt to exert control over a fleeing motorist by giving chase, like the attempt to obtain evidence through a search, should qualify as a seizure under the Fourth Amendment in the high-speed chase context.

2. *Torres v. Madrid* and its Impact on High-Speed Chase Litigation

Support for classifying high-speed pursuits as seizures also stems from a recent Supreme Court decision, *Torres v. Madrid*.¹⁷⁸ In *Torres*, two police officers drove to an apartment complex in Albuquerque with the intention of executing an arrest warrant.¹⁷⁹ When they arrived the officers noticed Roxanne Torres—who was not the person named in the warrant—standing near her car with another individual.¹⁸⁰ Although they knew Torres was not the target of their warrant, the officers approached nonetheless.¹⁸¹ Noticing the approaching officers, Torres got in her

¹⁷⁵ Robinson, *supra* note 60.

¹⁷⁶ *The Use-of-Force Continuum*, NAT'L INST. OF JUST. (Aug. 3, 2009), <https://nij.ojp.gov/topics/articles/use-force-continuum> [<https://perma.cc/ZR7G-R75E>].

¹⁷⁷ *Id.*

¹⁷⁸ *Torres v. Madrid*, 141 S. Ct. 989, 993–94 (2021).

¹⁷⁹ *Id.* at 994.

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

vehicle and closed the door.¹⁸² After Torres ignored their attempts to speak with her, the officers tried to open her car door.¹⁸³ Frightened and under the impression that the officers were carjackers, Torres sped away.¹⁸⁴ Although neither officer was in the path of the car, they both drew their weapons and fired thirteen shots at Torres, striking her “twice in the back and temporarily paralyzing her left arm.”¹⁸⁵ Torres drove for another seventy-five miles until she was airlifted back to a hospital in Albuquerque and placed under arrest.¹⁸⁶

Torres eventually filed a § 1983 claim against the officers.¹⁸⁷ However, “[t]he District Court granted summary judgment to the officers,” reasoning that, because the officers were unsuccessful in stopping Torres, no Fourth Amendment seizure had occurred.¹⁸⁸ The Tenth Circuit affirmed, holding “that a [person’s] continued flight after being shot by police negates a Fourth Amendment excessive-force claim.”¹⁸⁹ Writing for the majority, Chief Justice Roberts vacated the judgment of the Court of Appeals and held that Torres was seized the moment the bullets hit her, despite the fact that the shots failed to stop her movement.¹⁹⁰ The Court explained that the proper seizure “inquiry is whether the challenged conduct *objectively* manifests an *intent to restrain*” the fleeing individual.¹⁹¹ Chief Justice Roberts asserted that “[t]he application of physical force to the body of a person with intent to restrain is a seizure, even if the force does not succeed in subduing the person.”¹⁹² In so holding, the Court rejected the officers’ contention that, to constitute a seizure, there must be an “intentional acquisition of control” of the fleeing individual.¹⁹³ It concluded that, because the officers objectively manifested an intent to restrain Torres by shooting her, the shooting itself constituted a seizure, regardless of the fact that the officers were ultimately unsuccessful in subduing Torres.¹⁹⁴

The Court in *Torres* was careful in announcing its ruling. It cautioned that, “[i]n addition to the requirement of intent to

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

¹⁸⁹ *Torres v. Madrid*, 769 F. App’x 654, 657 (10th Cir. 2019).

¹⁹⁰ *Torres*, 141 S. Ct. at 993, 999.

¹⁹¹ *Id.* at 998 (second emphasis added).

¹⁹² *Id.* at 994.

¹⁹³ *Id.* at 999.

¹⁹⁴ *Id.*

restrain, a seizure by force—absent submission—lasts only as long as the application of force.”¹⁹⁵ Thus, Torres was seized only for the brief moment the bullets struck her body; she was not under a continuous seizure as she drove for seventy-five miles with the bullets in her back.¹⁹⁶ Nevertheless, such contact, however brief, was still a seizure under the Fourth Amendment.¹⁹⁷

The ruling in *Torres* could be the source of impactful change in high-speed chase jurisprudence. The Court announced that applying physical force to the body of a person with intent to restrain them is a seizure, regardless of whether it succeeds in subduing that person.¹⁹⁸ While it is true that chasing a fleeing motorist does not involve physical force in the traditional sense, there is nevertheless a constructive application of force in the continued pursuit of a person in their vehicle. Although active pursuit is, by definition, not successful in subduing a person, the Court has explicitly stated that successful restraint is not necessary for a seizure to occur.¹⁹⁹ The decision in *Torres* strongly suggests that the seizure analysis should focus not on the success or failure of an officer’s use of force, but rather, the objective manner in which the force was applied. Thus, the focus in high-speed chase litigation should be whether officers engaged in conduct that objectively manifested an intent to restrain the fleeing motorist.²⁰⁰

In high-speed chase scenarios, officers undoubtedly engage in conduct that objectively manifests an intent to restrain the fleeing motorist. Although there is no physical touching of the motorist’s body, active vehicular pursuit should be considered deadly force on par with shooting a person. The Supreme Court has not explicitly defined deadly force; however, courts generally describe it as “force that creates a substantial risk of causing death or serious bodily injury.”²⁰¹ Police chases are extremely dangerous and often end in the injury or death of participants and bystanders.²⁰² Merely engaging in a chase, like shooting a gun, could result in the death or injury of multiple people. Although courts have held that shooting at, but failing to hit, a person is not a seizure, here, it is more accurate to compare high-speed chases with a shot that hits yet does not

¹⁹⁵ *Id.*

¹⁹⁶ *Id.* at 994.

¹⁹⁷ *Id.*

¹⁹⁸ *Id.* at 993.

¹⁹⁹ *Id.* at 994.

²⁰⁰ *Id.* at 998.

²⁰¹ See, e.g., *Smith v. City of Hemet*, 394 F.3d 689, 693 (9th Cir. 2005).

²⁰² *Pursuit Study*, *supra* note 17.

subdue an individual.²⁰³ In other words, given the deadly nature of high-speed chases, active pursuit is most akin to firing a shot which hits, yet fails to restrain, a fleeing individual.

One may argue that chasing a fleeing motorist in their car and firing at a person running away on foot are two factually distinct scenarios which do not allow for accurate comparison or doctrinal overlap. Indeed, in *Scott*, the Court asserted that high-speed chases should not be compared to cases like *Tennessee v. Garner*, where Edward Garner was shot after fleeing on foot, because such cases are factually distinct, and the dangers each target poses to the general public are dissimilar.²⁰⁴ Though officers do not make physical contact with a motorist as they give chase in their vehicle, the force they exert by engaging in active pursuit is no less deadly than firing at a person on foot. The fleeing individual, whether in a vehicle or on foot, faces the force of the pursuing officer which could turn deadly at any moment. Although Jayland Walker was ultimately killed by a bullet, this does not diminish the dangerousness of the high-speed chase that took place beforehand. Thus, although the specific facts may vary, engaging in a high-speed pursuit should be considered deadly force akin to striking a fleeing person with a bullet.²⁰⁵ Just as the seizure in *Torres* lasted only for the moment the bullets struck; here, the seizure should last as long as the application of the deadly force.²⁰⁶ If high-speed pursuit is itself deadly force akin to shooting a person, the seizure should last for the entirety of the chase. In the case of Jayland Walker, the seizure began from the moment officers initiated the pursuit.

Reframing the concept of seizure would have great implications for individuals harmed by high-speed chases, including the survivors of Jayland Walker. In *Scott*, because the Court did not consider Harris to be seized until Officer Scott rammed his vehicle from behind, the Court's focus in viewing the dashcam recording was limited to the moments surrounding the collision, when the chase was well underway.²⁰⁷ Focusing on this limited moment in time when the chase is at its peak makes it extremely difficult for plaintiffs to assert that officers acted unreasonably in terminating such an objectively dangerous

²⁰³ Estate of Rodgers *ex rel.* Rodgers v. Smith, 188 F. App'x 175, 180–81 (4th Cir. 2006); Cameron v. City of Pontiac, 813 F.2d 782, 785 (6th Cir. 1987); California v. Hodari D., 499 U.S. 621, 626 (1991).

²⁰⁴ Scott v. Harris, 550 U.S. 372, 381–83 (2007).

²⁰⁵ According to *Garner*, the use of deadly force is reasonable only “[w]here the officer has probable cause to believe that the [person] poses a threat of serious physical harm, either to the officer or to others.” *Tennessee v. Garner*, 471 U.S. 1, 11 (1985).

²⁰⁶ Torres v. Madrid, 141 S. Ct. 989, 999 (2021).

²⁰⁷ *Scott*, 550 U.S. at 378–80.

situation. However, if mere engagement in a chase were considered a seizure, dashcam video would no longer have the same devastating effect for excessive force plaintiffs. Focusing on the moment the chase began, rather than when it ended, gives courts the freedom to consider both the fleeing motorist *and* the pursuing officer's role in instigating the chase. Rather than focusing solely on the dangers the fleeing motorist posed to the public, courts should focus on the additional danger created by officers who make the decision to chase and the relative benefits of chasing a particular person. From this vantage point, officers are not simply deciding to end a dangerous chase however they might; they play a key role in initiating the chase in the first place.

Undoubtedly, this new conception of seizure would be a radical shift in doctrine. Equating vehicle pursuits with shootings would not automatically overrule decisions such as *Hodari*, but it would certainly call into question whether all chases, on foot or otherwise, constitute seizures under the Fourth Amendment.²⁰⁸ Although arguments can be made as to why all chases *should* be considered seizures, in this context, by relating pursuit specifically to scenarios where officers shoot and hit fleeing individuals, the doctrinal impact of such a change should remain relatively limited. This note does not argue that every chase is a seizure. Rather, it asserts that the extreme dangerousness of high-speed chases sets them apart from foot pursuits and brings them factually closer to shooting a fleeing person. High-speed chases involve vehicles capable of inflicting more damage than an officer could by tackling or even shooting someone.²⁰⁹ Additionally, officers and fleeing motorists are travelling at tremendously higher speeds in their vehicles than they could on foot, endangering more people than a stray bullet might.²¹⁰ Thus, high-speed chases are a unique police tactic which requires separate treatment by the courts to adequately address their inherent dangers.

3. A Temporal Shift in the Reasonableness Inquiry

If mere engagement in a high-speed chase is considered a seizure under the Fourth Amendment, then the reasonableness

²⁰⁸ See *Hodari D.*, 499 U.S. at 621, 626 (holding, in a foot pursuit scenario, that a seizure requires the application of physical force to a person's body or, if that is absent, actual submission to officers' show of authority).

²⁰⁹ See generally Olmstead, *supra* note 95 (discussing the general deadline of police chases).

²¹⁰ *Id.*

inquiry takes on new life, too. Rather than focusing on the moment a chase ended, courts could look to the moment the chase began to determine whether the seizure was reasonable. This temporal shift brings the focus away from the fleeing motorist's precipitating conduct and refocuses the inquiry on the *officers'* role in escalating the situation.²¹¹ The question becomes, given the totality of the circumstances, was it reasonable for officers to initiate a high-speed chase in the first place?

The answer to the above question may be found in the police pursuit policies discussed earlier in this note.²¹² By implementing policies that either forbid or restrict officers from pursuing a fleeing motorist, police departments around the country implicitly recognize that it is, in most cases, unreasonable to give chase. These policies provide a useful starting point to consider the factors a court might use in determining whether a chase was reasonable.

First, courts should consider the offense the individual was suspected of when deciding whether it was reasonable to engage in a high-speed pursuit. As evidenced by certain no-chase policies, if an individual is stopped for a mere traffic violation, it is not worth the resources and risks involved to pursue someone over such a minor offense.²¹³ Undoubtedly, this analysis will shift if the individual is suspected of a violent felony or driving while under the influence because it is more reasonable to assume that, if allowed to flee, they might pose a continued threat to public safety. However, even this reasoning deteriorates when one considers the following factor: the possibility of future apprehension.

Second, in assessing the reasonableness of a chase, courts should consider whether it was possible for law enforcement to apprehend the motorist at a later date. Part of what makes high-speed chases inherently unreasonable is the ability of law enforcement to track a person's identity and location.²¹⁴ With just a license plate number, officers are able to learn the name, date of birth, appearance, and address of the car's owner.²¹⁵ Consequently, even if a motorist flees, officers will likely be able to mail the person a ticket for their traffic offense and, if desired, arrest and prosecute them for fleeing from the police. Even in cases where a person is suspected of a more serious crime, law

²¹¹ Seth W. Stoughton, *How the Fourth Amendment Frustrates the Regulation of Police Violence*, 70 EMORY L.J. 521, 558–59 (2021).

²¹² See ALBANY PURSUIT POLICY, *supra* note 79; DAYTON PURSUIT POLICY, *supra* note 91; LAPD PURSUIT POLICY, *supra* note 72.

²¹³ See Burns, *supra* note 29.

²¹⁴ See Curtis et al., *supra* note 94, at 62.

²¹⁵ See *id.*

enforcement's ability to surveil and locate individuals makes the need for catching a person *in that very moment* comparatively low.²¹⁶ Thus, there may be very few scenarios where the seriousness of the offense makes it reasonable to engage in a dangerous high-speed chase to apprehend a person immediately.

Other factors courts should consider when assessing whether it was reasonable to engage in a chase are the environmental conditions at the time of the encounter. Such conditions may include the congestion of the area where the chase occurred, the time of day, and the weather conditions.²¹⁷ The no-chase policies of various police departments indicate that, though a person may otherwise warrant chasing, if the weather is bad or the area is highly congested, a chase may nevertheless be inappropriate.²¹⁸

There is one factor that the Supreme Court has considered in the past that should be excluded from the reasonableness inquiry going forward: the threat a fleeing motorist may pose to the public.²¹⁹ Whether a fleeing motorist would continue to pose a threat of harm on the roadways if allowed to drive away has been a point of contention for the Court.²²⁰ In *Scott*, the majority reasoned that while an officer ramming Harris' vehicle from behind was "certain to eliminate the risk [Harris] posed to the public, ceasing the pursuit was not."²²¹ Writing for the majority, Justice Scalia asserted that "there would have been no way" for Harris to know that the chase was over, even if officers "deactivat[ed] their flashing lights" and disappeared from view.²²² In the majority's mind, Harris was "just as likely" to continue driving recklessly had the police abandoned their pursuit.²²³

Justice Stevens, however, did not view the matter so conclusively.²²⁴ In his dissent, Justice Stevens reasoned that the majority lacked evidence to prove that the dangers posed to the public by the chase would continue even if officers ended their pursuit.²²⁵ He contended that the Court was trying "to avoid the conclusion that deadly force was unnecessary by speculating

²¹⁶ See, e.g., KIRSTIE BALL ET AL., ROUTLEDGE HANDBOOK OF SURVEILLANCE STUDIES 238–40 (2012) ("The police are now positioned as potential users of almost any new surveillance device. This is particularly apparent when surveillance devices originally produced for military applications are transferred to civilian police settings.")

²¹⁷ ALBANY PURSUIT POLICY, *supra* note 79, at 1–2.

²¹⁸ See *id.*

²¹⁹ *Scott v. Harris*, 550 U.S. 372, 383–85 (2007).

²²⁰ See *id.* at 393–94 (Stevens, J., dissenting).

²²¹ *Id.* at 385 (majority opinion) (emphasis omitted).

²²² *Id.*

²²³ *Id.*

²²⁴ *Id.* at 393–94 (Stevens, J., dissenting).

²²⁵ *Id.* at 394.

that” Harris would have continued to drive recklessly even if officers let him go.²²⁶ In reality, the Court could not know for sure what Harris would have done had officers abandoned their chase.²²⁷ Granted, it would be confusing for a fleeing motorist, in the heat of a chase, to see officers suddenly disengage and disappear from view. However, such confusion would not exist if the police declined to chase a fleeing motorist in the first place. In any case, if a court cannot say for certain whether a fleeing motorist would slow down, then it equally cannot assume a motorist would continue to pose a danger to the public if allowed to drive away.

Because of the assumptions involved, the danger a fleeing motorist may pose to the public should not be a factor in the court’s reasonableness inquiry. Courts simply do not know whether a motorist would resume a safe speed or continue to drive recklessly if permitted to flee.²²⁸ What courts do know, however, is that by choosing to pursue a fleeing motorist, officers *guarantee* that a high-speed chase will ensue and lives will be put at risk.²²⁹ Thus, rather than making assumptions as to the danger in allowing an individual to drive away, courts should consider the objective facts before them: the environmental conditions, the offense the individual is suspected of, law enforcement’s ability to apprehend the person at a later date, and the *certain* danger a high-speed chase would pose to the public, the police, and the fleeing motorist.

Critics, and even cautious proponents of this approach, may rightfully wonder whether this shift in doctrine would give fleeing motorists the green light to flee from police without consequence.²³⁰ Indeed, in jurisdictions with no-chase policies, there are no immediate consequences for a motorist who flees from police.²³¹ However, if police determine that a particular person is worth tracking down, once that person is located, not only are they responsible for the original offense for which they were pulled over, but they may also be charged with crimes associated with their flight.²³² Depending on the jurisdiction,

²²⁶ *Id.*

²²⁷ *Id.* at 393–94.

²²⁸ *Id.*

²²⁹ See generally *NHSTA File Downloads*, *supra* note 15 (reporting that 398 people died as a result of high-speed chases in 2019).

²³⁰ Bradley et al., *supra* note 114.

²³¹ *Id.*

²³² See, e.g., N.Y. PENAL LAW § 270.25 (West, Westlaw current through L.2022, chapters 1 to 562) (New York State’s fleeing and eluding statute); 625 ILL. COMP. STAT. 5/11-204 (West, Westlaw current through P.A. 102-1102 of the 2022 Reg. Sess.) (Illinois’ fleeing and eluding statute).

fleeing and eluding may result in jailtime, a fine, or both.²³³ Thus, the threat of criminal prosecution may serve to deter motorists from fleeing even if they know officers would not give chase. Furthermore, even if a stopped motorist is aware that they could flee from officers without a chase ensuing, the presence of law enforcement and a general desire to conclude the encounter as quickly as possible may also function to deter flight.

The point of these suggested reforms is not to create a free-for-all, but to minimize the incidence of death and injury by deterring police from engaging in unnecessary high-speed chases. When that deterrence proves ineffective, these reforms will provide survivors of police abuse with a viable claim for relief in the form of civil penalties. Importantly, these suggested reforms are not intended to encourage heightened criminal charges against individuals who flee from the police. The greatest aspiration of this note is that police will decline to prosecute most individuals who flee, on the ground that they are not guilty of any serious crime other than having a reasonable fear of the police.

There is an understandable knee-jerk reaction to the suggestion that fleeing motorists should receive increased protections: why protect someone who is obviously guilty of *something*?²³⁴ While it is true that the fleeing motorist must have committed some sort of infraction to be pulled over in the first place, it does not necessarily follow that, because they fled, they were trying to escape detection for a more serious offense. In the case of Jayland Walker, one might wonder whether, based on the ski mask and weapon found in his car, Walker was intercepted before he could commit a more serious crime. From that standpoint, some might say it is a good thing that a person clearly on the way to commit a crime was not permitted to flee. However, people living in the United States enjoy a presumption of innocence,²³⁵ and Jayland Walker committed no crime by carrying a weapon or ski mask in his car.²³⁶ Ski mask or no, Jayland Walker did not deserve to die, and the offense for which he was stopped did not warrant a high-speed chase.

²³³ See *id.*

²³⁴ Bradley et al., *supra* note 114.

²³⁵ William F. Fox, Jr., *The "Presumption of Innocence" as Constitutional Doctrine*, 28 CATH. U. L. REV. 253, 253–54 (1979).

²³⁶ Doug Livingston & Amanda Garrett, *What We Know—and Still Don't Know—About the Police Shooting Death of Jayland Walker*, AKRON BEACON J. (July 4, 2022), <https://www.beaconjournal.com/story/news/local/2022/07/04/jayland-walker-akron-police-shooting-what-we-know-traffic-stop-new-franklin/7801059001/> [https://perma.cc/9B9N-NXSR].

With the above factors in consideration, excessive force plaintiffs are likely to have greater success in surviving summary judgment and establishing that their Fourth Amendment rights were violated. A court assessing Jayland Walker's case would be empowered to assess officers' conduct from the moment the chase began and ask whether it was reasonable to engage in a high-speed chase in the first place. Given that Walker was stopped for mere equipment violations and had no criminal record, a court would likely find that it was not reasonable for officers to give chase. Although classifying police chases as seizures and assessing reasonableness from the moment a chase began would represent a profound shift in the Supreme Court's Fourth Amendment jurisprudence, such a change is supported by existing no-chase policies, *Torres*, and public policy concerns which urge a reconceptualization of excessive force doctrine that more accurately reflects the reality of many Americans' encounters with the police.

CONCLUSION

The Court has endeavored to develop a Fourth Amendment doctrine that is steeped in objectivity.²³⁷ However, this objective approach minimizes the experiences of individuals who have a reasonable fear of the police, either due to personal encounters or a general awareness of current events. The reality of high-speed chases is that they are a deadly, and often unnecessary, form of police force that tend to become excessive long before the chase is over.²³⁸ From the perspective of a Black motorist, flight may be an entirely reasonable reaction tied to self-preservation, rather than a consciousness of guilt.²³⁹ Thus, what underlies the theoretical and doctrinal support for this shift in Fourth Amendment jurisprudence is the continued violence against Black Americans, whose experiences are not accurately reflected by current excessive force doctrine.

Fleeing motorists are not dangerous criminals who must be apprehended at all costs. They are people living in the United States who deserve the protections of their country's laws. Reconceptualizing high-speed chases as seizures and assessing reasonableness from the moment a chase began is a necessary step toward aligning the Constitution with the lived reality of many Americans. In the words of Jayland Walker's family

²³⁷ *Graham v. Connor*, 490 U.S. 386, 396–99 (1989).

²³⁸ *See Pursuit Study*, *supra* note 17.

²³⁹ *Robinson*, *supra* note 60.

attorney, “[h]is name is Jayland and he is not a monster.”²⁴⁰ “Jayland was a private kid. He wasn’t married. He wasn’t a criminal. He obviously was in pain. He didn’t deserve to die.”²⁴¹

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²⁴⁰ Cineas, *supra* note 4.

²⁴¹ McGraw & Vander Ploeg, *supra* note 8.

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