

April 7, 2021

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CC:

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Fines and Fees Reforms: Recommendations to the Biden/Harris Administration

Fines and fees devastate the lives of millions of Americans – particularly in communities of color. Across the country, state and local governments impose fines as a punishment for minor traffic and municipal code violations, misdemeanors and felonies. Governments then tax people with fees, assessments, surcharges, and costs (hereafter “fees”), used to fund the legal system and other government services. People who cannot immediately pay these fees, face additional fees, license suspensions, loss of voting rights and, far too frequently, arrest and jail. Stuck in a cycle of punishment and poverty, people can lose their jobs, their homes, and even their children.

Because of both over-policing in communities of color and the demographics of poverty, unemployment, and wealth in the U.S., communities of color disproportionately suffer the harmful impacts of fines and fees. State and local governments extract billions of dollars from our most vulnerable communities. The overwhelming majority of the underlying offenses for which fines and fees are charged do not carry a jail sentence. Thus, most people are not represented by counsel when monetary sanctions are imposed. Due to the chronic and severe underfunding of public defenders in most communities, counsel are similarly absent when monetary sanctions are enforced – even if they are enforced with incarceration. We’ve created a two-tier system of justice where poor people – and particularly communities of color – are disproportionately punished.

In 2015, the Department of Justice released its report on the Ferguson, MO police department. The report documented how the racialized use of fines and fees contributed to an environment of mistreatment and mistrust in the city's Black community. The Justice Department recognized what advocates had long known: fines and fees were not just a problem in Ferguson, but touched every state and municipality in the country. In the last 18 months of the Obama administration, DOJ and the White House Domestic Policy Council began to address the issue of fines and fees, but those efforts ended under the Trump administration.

Even in the absence of federal leadership, fines and fees reforms have been adopted across the country. As of April 2021, 15 states have passed reforms to limit or end restrictions on driver's licenses for unpaid fines and fees, and jurisdictions have begun to eliminate the use of fees in the legal system. Eight states have eliminated some or all fees and fines imposed on youth and their families in the juvenile legal system, and California recently eliminated 23 administrative fees, including fees for probation, public defenders and electronic monitoring in the adult criminal system.

A robust federal role can accelerate the pace of reform – especially now. The economic hardships of COVID-19 have further exacerbated and exposed the racial and economic inequities of these regressive fines and fees policies. The death of George Floyd has brought about a national reckoning on police violence and other practices that treat communities of color as undeserving of protection and safety. Fines and fees is an issue at the intersection of criminal, racial and economic justice. Thus, the reform of fines and fees practices requires the attention and leadership of this administration.

As reflected in President Biden's campaign platform, this Administration is committed to reinvigorating the federal government's role in fines and fees reform. As organizations working in impacted communities throughout the country, we stand ready to support your efforts to do so. Accordingly, we have developed the following list of actions that should be taken or initiated in the first year of the Administration. They are divided between the Department of Justice and the White House, although responsibilities may well overlap.

Department of Justice:

- **Update and Reissue the “Dear Colleague Letter”:** In March 2016, the U.S. Department of Justice's Civil Rights Division and Office for Access to Justice sent a “Dear Colleague” letter to every State Court Administrator and Chief Justice clarifying the legal framework that governs the enforcement of fines and fees, including the importance of procedural protections and, in appropriate cases, the right to counsel. In 2017, DOJ revoked the guidance. In the five years since the guidance was issued, advocates have uncovered several other practices that likely violate the Constitution or federal statutes. These include fees imposed for public defenders; fees for electronic monitoring pre-trial; fees for diversion programs; fees for probation; mandatory minimum fines; mandatory fees; and the

use of arrest warrants and vehicle impoundment for people who cannot afford to pay the fines and fees imposed. Recent U.S. Supreme Court and lower federal court decisions have also changed the legal landscape and should be reflected in a revised letter. The Department should consult with advocates and experts to ensure the letter reflects the most current understanding of the fines and fees landscape.

- **Restore the Office for Access to Justice:** The U.S. Department of Justice's Office for Access to Justice (ATJ) – launched by the Obama Administration in 2010 – had an ambitious mission to help the justice system more effectively and efficiently deliver outcomes that are fair and accessible to all, irrespective of wealth, race, or status. As the voice for access to justice in the Executive Branch, ATJ was entrepreneurial and effective on a wide range of critical issues affecting civil, criminal and tribal justice systems. ATJ coordinated DOJ's work on the reform of fines and fees. The Trump Administration closed ATJ and "assigned its duties" to the Office of Legal Policy, where virtually nothing related to access to justice has taken place since. DOJ should immediately restore ATJ as an independent component of the Department, reporting to both the Deputy Attorney General and the Associate Attorney General. ATJ should be allocated sufficient staff and revenue to effectively accomplish its mission. The office should be staffed with at least one person designated to address the issue of fines and fees in both the criminal and civil legal systems. The office should also be tasked with regularly convening national advocates, community organizations and justice system stakeholders, including directly-impacted people, to address issues related to its mission, including, in particular, fines and fees reform.
- **Appoint Fines and Fees Liaisons:** DOJ should designate specific contacts within the Civil Rights Division, the Office of Justice Programs, the Office of Legal Policy, and the Office for Access to Justice to work on fines and fees issues and serve as a liaison between their office and the fines and fees advocacy community.
- **Conduct Investigations and Litigation:** DOJ should investigate and, where appropriate, litigate fines and fees practices that may violate federal law or the U.S. Constitution. The Office of Civil Rights in the Office of Justice Programs should also be involved in this effort. In addition, the Department should consider filing Statements of Interest in appropriate cases.
- **Engage in Data Collection and Analysis:** The Bureau of Justice Statistics (BJS) should be tasked with collecting and analyzing data related to fines and fees on the federal, state and local level. For example, the Survey of Inmates should be revived (the last Survey was conducted in 2004) and incarcerated people should be asked about fines and fees that they owe. In addition, BJS should identify gaps in state and local data collection and access.

- **Increase Funding:** The Department should work with the Office of Justice Programs, including in particular, the Bureau of Justice Assistance, the National Institute for Justice, the Bureau of Justice Statistics and the Office of Juvenile Justice and Delinquency Prevention to request additional funding. The funding should provide incentives for state and local jurisdictions that are willing to engage in fines and fees reform, build robust data infrastructure, and rigorously track and/or evaluate their work.
- **Assess the Federal System's Use of Fees:** While the vast majority of criminal legal debt is imposed at the state and local level, there are reported instances of the federal criminal system charging fees. DOJ should examine how the federal criminal legal system uses fees and adopt best practices, including the elimination of all fees charged to defendants. DOJ should ensure that nonpayment of fines does not result in criminal legal system consequences such as warrants, driver's license suspensions, arrests or incarceration.
- **Engage in Research:** We support the research and data agenda on fines and fees that will soon be sent to you by the Brennan Center for Justice.
- **Abolish Juvenile Fines and Fees:** We support the Debt FreeJustice's call for the abolition of fees and fines imposed on youth in the justice system. The coalition will provide separate recommendations specific to the needs of the juvenile justice system to the Biden-Harris Administration.

White House:

- Designate a Domestic Policy Council staff person to serve as a liaison to the fines and fees advocacy community.
- Request the Council of Economic Advisors update and reissue its 2015 Issue Brief on the use of fines and fees and their disproportionate impact on low-income Americans and people of color.
- Request the Federal Reserve Bank, in consultation with advocates, conduct an improved household survey that examines the economic impacts of criminal legal debt on American households.
- Request and support federal legislation to provide federal funding to state and local public defenders on par with federal funding for state and local prosecutors.
- Support the Driving for Opportunity Act, soon to be reintroduced by Senators Coons and Wicker.
- Request the Department of Health and Human Services reevaluate federal poverty standards so they reflect the actual cost of adequate food, housing, transportation, and other necessities.

- Request the Social Security Administration issue guidance that state court orders directing an individual to pay fines and fees out of Federal Old Age, Survivors and Disability Insurance benefits violate the “anti-attachment” provisions of the statute, 42 U.S.C. § 407(a).

Thank you for considering these vital issues. We look forward to working with you.

Very truly yours,

ACLU

Dream Corps JUSTICE

Equal Justice Under Law

Fair and Just Prosecution

Fines and Fees Justice Center

Juvenile Law Center

Legal Aid Justice Center

National Coalition for a Civil Right to Counsel

National Consumer Law Center (on behalf of its low-income clients)

National Legal Aid & Defender Association

North Carolina Justice Center

Office of the Ohio Public Defender

Ohio Poverty Law Center

Policy Advocacy Clinic at Berkeley Law

PolicyLink

Public Justice

Record Clearance Project of San Jose State University

Texas Fair Defense Project

Washington Association of Criminal Defense Lawyers

Washington Defender Association

Western Center on Law & Poverty