

Statement of Steve Vaccaro to New York City Council Transportation Committee
in Support of Intro 972 and 973
August 15, 2018

Thank you Chairman Rodriguez and members of the Transportation Committee for the opportunity to speak. Our law firm, Vaccaro & White, has represented hundreds of New York City crash victims, including Sammy Cohen Eckstein's family, Ally Liao's family, and Bernadette Karna, who you have already heard from today. I am also speaking on behalf of StreetsPAC, which I founded in 2013 with fellow safe streets activists to support elected officials who work to keep our streets safe.

Intro 971 and 972 offer a new public health paradigm for dealing with habitually reckless drivers, to replace the current instead of the criminal justice paradigm we have relied on, which is not working. The bills are a supplement, not a replacement, for the camera-based automated enforcement program that we are working to renew at the state level, but they also stand alone and should be enacted independently from what happens in Albany.

Our current criminal justice paradigm for changing the behavior of habitually reckless drivers has at least two problems. *First*, we have to rely on a capricious and irresponsible state legislature to authorize it.

Second, even when the cameras are issuing violations, there is a hard core of 25,000 habitually reckless drivers who commit 5 or more violations in a year and are not deterred by the \$50 fine per violation. ***One driver racked up 49 violations in a single year.*** This is shown in the graph at the back of my testimony.

Similarly, the criminal justice approach to another kind of reckless driving — hit-and-run — is usually ineffective, even when there is positive identification of the vehicles involved. As Bernadette Karna explained, the cameras of New York City's Lower Manhattan Security Initiative captured the license plate of the vehicle that struck her. Likewise, the vehicle driven by Dorothy Bruns was identified as involved in a hit-and-run six months before she killed two children in Park Slope in March of this year. ***But there were no consequences for those hit-and-runs because even though police could identify the vehicle, they could not identify the driver.*** A letter from our law firm to NYPD Chief of the Department

Terence Monahan, detailing just a handful of these consequence-free hit and run cases, is attached to my testimony.

The fact is, the City has vast amounts of data from its speed cameras, its red light cameras, and its LMSI cameras, showing vehicles involved in reckless driving, but there are no consequences for drivers because we are using a criminal law paradigm that requires identification of the driver. *It doesn't work.*

In just over two weeks since the speed camera program was de-authorized, the cameras detected more than 132,000 incidences of speeding in school zones. Without reauthorization the state program, those drivers will face no consequences. But even when the state program is re-authorized, the historical data show that over 3% — roughly 4,000 drivers — would not be deterred by five \$50 fines in the course of a year.

And there are no consequences whatsoever for most of the drivers of positively-identified vehicles involved in hit-and-runs.

Intro 972 changes the paradigm. The bill calls for a study on how to identify dangerous drivers to be channeled into the intervention and remediation program established by Intro 971. But we already know how to identify those drivers. Look at the data from the three camera systems the City is already operating. Have the police report the license plate number and owner of vehicles positively identified as involved in hit and runs, instead of burying that information without using it. *Identify the vehicles involved in habitual reckless driving, and make the owners of the vehicles come forward and either admit they were the responsible drivers, or tell us who the responsible drivers were.* Intro 972 should be amended to specifically refer to data from the City's LMSI and other camera systems, and to information from police accident reports, as data to be used to identify habitually reckless drivers.

Once we identify the drivers, boot the cars until they participate in an education program that teaches them the consequences of their reckless behavior. This public health approach is superior to the current criminal justice approach, for at least three reasons:

First, the data show that for about 25,000 drivers, a \$50 slap on the wrist is not enough to deter five or more dangerous violations a year, and without state re-authorization there is not even a slap on the wrist. And we know there are *no consequences* for most hit and run drivers.

Second, in-person education has been *proven more effective than criminal prosecution and conviction*, in a pilot diversion program run at the Red Hook Community Justice Center. And no one can deny that booting the cars used to habitually commit these violations is a highly effective form of deterrence.

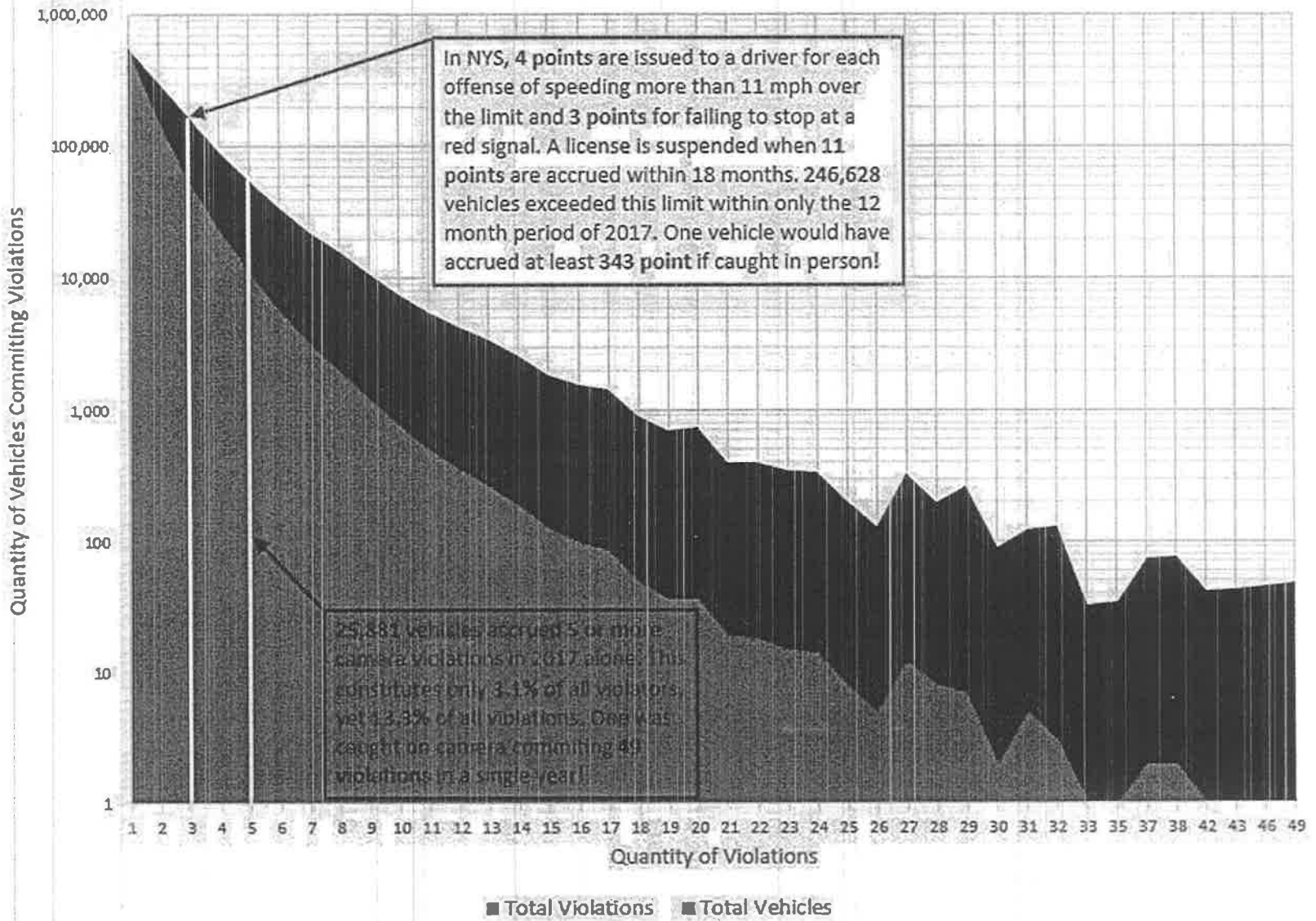
Third, this public health approach addresses the criticisms of the current approach, however misguided. Some critics claim that camera-based enforcement has nothing to do with safety, and is just a revenue grab. Other critics point out that the burden of prosecution for traffic offenses often falls disproportionately on people of color. *The intervention and remediation program under Intro 971 resolves both of these criticisms because it not punitive*. It is direct intervention to keep the dangerous driver off the road and it is educational, to reform behavior.

Some have asked whether the City can constitutionally enact this legislation using enforcement cameras, without state approval. *The answer is yes*. The second attachment to my statement is a memo of law prepared by our firm that lays out the City's authority to run such a program and recoup all of the costs from program participants. The administrative costs associated with the booting and impoundment of the cars, the in-person sessions, and every other expense of the program can be constitutionally recouped by the City without state authorization.

Thank you for your consideration.

Graph prepared by Will J. Farr (@wjfarr) from publicly-available speed and red light camera enforcement data

Serial NYC Camera Violations in 2017



LAW OFFICE OF
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STEVE VACCARO
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GAIL S. MILLER
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BLYTHE P. AUSTIN
OF COUNSEL

BY EMAIL (terence.monahan@nypd.org)

August 10, 2018

Chief Terence Monahan
Chief of Department
New York City Police Department

Dear Chief Monahan,

This responds to your request at our meeting of July 8, 2018 for specific case information that speaks to the Department's handling of nonfatal hit-and-run collisions.

As we discussed, hit-and-run collisions are a public health crisis in New York City. There were 46,000 hit-and-runs in 2017, 5,000 of which resulted in injury. The NYPD only makes arrests in about 1% of these cases.

In our experience, as a law firm representing hit-and-run crash victims, the NYPD does not consider arrest or meaningful investigation of nonfatal hit-and-run cases unless there is positive identification of the driver, even when the vehicle is positively identified by license plate number. As far as we can tell, the NYPD does not notify the DMV or any other agency of the license plate number of a vehicle that is used in a hit-and-run, unless it is one of the tiny handful of cases in which the driver is also identified. As a result, the vast majority of hit-and-run drivers never face consequences, unless they kill their victim (triggering a CIS investigation) or are fortuitously identified by face through a fast-moving windshield by the victim or a passerby.

Below, we provide the details of several hit-and-run crash cases our firm has handled that illustrate this reality. We also supply information concerning other violations committed by these positively-identified hit-and-run vehicles. This information demonstrates a clear pattern of hit-and-runs and driving misconduct that should be made a focus of law enforcement attention.

The connection between hit-and-runs and other dangerous driving behaviors received widespread attention when Dorothy Bruns, the driver criminally charged for the death of two children in a March 5, 2018 crash in Park Slope, was revealed to have had eight prior camera-based moving violations in the preceding 21 months and a reported hit-and-run six months prior that was never investigated. Similarly, in the cases below, vehicles positively identified as involved in hit-and-run collisions often incur multiple camera-based moving violations before and afterwards, and the DMV records of the owners of such vehicles can include a history of driving incidents. This association suggests that the current system for handling nonfatal hit-and-run crashes and camera-based violations does not deter some drivers from reckless driving and may embolden reckless drivers to yet-worse conduct.

We appreciate the commitment from you and the entire Department to Vision Zero, and your desire to improve the handling of hit-and-run investigations. We hope the below cases help you to craft policy and programmatic changes to more effectively respond to these crashes.

In particular, we recommend the following changes in hit-and-run cases:

- The victim of a hit-and-run crash should be entitled to request, and receive copies of, both an accident report (MV-104AN) and a criminal complaint report from the NYPD Omniform system.
- When the victim of a hit-and-run collision leaves the scene for medical attention before police arrive, the victim should still be entitled to give a report of the accident and the crime to police.
- Officers should include all pertinent information in accident reports, including the name and contact information of all witnesses and any positively-identified license plate number of the vehicle, including partial plate numbers.
- Criminal complaints of hit-and-run crashes should not be automatically closed without investigation, even if the victim cannot positively identify the driver of the vehicle.
- The investigating detective should be required to obtain a video and still image search from the LMSI database for the hit-and-run crash site and the fleeing vehicle.
- The NYPD should treat a hit-and-run vehicle as the instrument of a crime. When the vehicle is positively identified through reliable evidence, such as an eyewitness account or video, the vehicle should be inspected and evidence gathered as quickly as possible, as would happen with any criminal evidence.
- The owner of a vehicle used in a hit-and-run is a criminal suspect and should be promptly questioned in accordance with NYPD procedures for criminal suspects.
- When an investigation reveals reliable information concerning the vehicle involved in a hit-and-run, but does not establish probable cause to charge an individual, the incident details and license plate number should be reported to the Department of Motor Vehicles and stored in an easily accessible manner by the Department so that the information is available for any subsequent investigations involving the vehicle or its owner.

We want to work with the Department to help ensure that hit-and-runs are adequately investigated and the perpetrators held accountable. We look forward to discussing the Department's handling of nonfatal hit-and-run cases with you further.

Sincerely,



Blythe Austin
Of Counsel
Law Office of Vaccaro & White
Member of Families for Safe Streets

Steve Vaccaro
Adam White
Law Office of Vaccaro & White

Enclosure: Hit-and-Run Case Summaries

Hit-and-Run Case Summaries

[REDACTED], Precinct 017, [REDACTED]

[REDACTED] was hit while crossing the street in a crosswalk with the light. The driver dragged her 50 feet, then fled the scene. [REDACTED] was knocked unconscious in the collision and sustained massive trauma to her trunk, back, knee and foot. She spent ten days in the hospital and more than a year afterwards in rehabilitation.

LMSI surveillance footage showed the crash and identified the vehicle's license plate. [REDACTED] contacted the vehicle's owner by phone. The vehicle's owner, [REDACTED], told [REDACTED] that no one else had access to his vehicle at the time of the collision, but that he was sure he had not hit [REDACTED]. [REDACTED] attorney then called [REDACTED] to request that any further inquiries of [REDACTED] be made in the lawyer's presence.

[REDACTED] contacted [REDACTED] at the NYPD legal bureau, who advised that there was no probable cause to arrest the owner of a vehicle positively identified in a hit-and-run unless the driver admitted to the crime or a witness could identify the driver. Pursuant to this policy, [REDACTED] closed the case merely because the owner denied involvement and [REDACTED] could not identify the driver of the vehicle that struck her. The NYPD never inspected the vehicle or interviewed the owner in person.

A DMV search shows that the vehicle's owner, [REDACTED], was involved in motor vehicle accidents on [REDACTED] and [REDACTED], both less than a year prior to [REDACTED]'s vehicle hitting [REDACTED]. We do not believe [REDACTED] ever checked [REDACTED] driving record as part of his investigation.

The NYPD failed to provide [REDACTED] with the results of its investigation, and so [REDACTED] was forced to use her own no-fault insurance to pay for her injuries, rather than the no-fault insurance of the vehicle. [REDACTED] advised [REDACTED] that she must make a FOIL request to obtain the vehicle plate number from the NYPD, which she did. After a seven month wait, she received the NYPD investigation records with the vehicle plate number.

[REDACTED], Precinct 084, [REDACTED]

[REDACTED] was riding her bicycle when struck by a white truck making an illegal left-hand turn from [REDACTED], which is an intersection surrounded by NYCHA buildings. [REDACTED] sustained multiple fractures to her clavicle and sternum, a punctured lung, and multiple lost teeth. She spent three days in the ICU.

[REDACTED] left the crash site in an ambulance before the NYPD arrived at the scene. When we requested an accident report from the 84th Precinct, we were told that the NYPD does not issue accident reports for hit-and-runs when the victim leaves the scene. We called the 84th Precinct multiple times to ask that someone prepare an accident report.

On [REDACTED], five days after the crash and after [REDACTED] was released from the hospital, [REDACTED] called [REDACTED] to interview her. [REDACTED] told [REDACTED] that she should loosen up her front brakes so that she would not go over the front of her handlebars. He then issued an accident report. This was the only contact the NYPD had with [REDACTED]. As far as we know, the NYPD never conducted a meaningful investigation, investigated the crash site or interviewed any NYCHA staff.

Our office undertook its own investigation and located a white truck that matched [REDACTED] description of the vehicle that struck her, parked around the corner from the crash site. The vehicle had damage consistent with the point of impact between [REDACTED] bicycle and the hit-and-run vehicle. Our office told [REDACTED] about this investigative lead, but to our knowledge the lead was never pursued.

[REDACTED] Precinct: 084, [REDACTED]

[REDACTED] was hit by a white van while riding a bicycle [REDACTED]. He fractured six ribs and his collarbone. [REDACTED] saw the driver pull over and remain at the scene for several minutes after the crash, then flee.

[REDACTED] of the 84th Precinct pressured the paramedics to allow him to question [REDACTED] at the scene, but they insisted that [REDACTED] needed immediate treatment and transported him to the hospital. [REDACTED] then left [REDACTED] damaged and unsecure bicycle at the scene. The bicycle was promptly stolen before any of [REDACTED] friends could retrieve it.

[REDACTED] prepared an accident report based solely on one witness's account and without any information from [REDACTED]. The report said that [REDACTED] hit the rear side of the van while trying to change lanes and that the van driver did not know a collision had taken place. Our office later contacted the same witness. The witness told us that she saw [REDACTED] bicycle bag get pulled into the wheel well of the van, not that [REDACTED] had hit the rear side of the van when changing lanes. Also, the witness saw the van pull over and remain at the scene for five minutes prior to fleeing.

[REDACTED] told [REDACTED] that "it wasn't a hit-and-run" because the driver likely did not realize he had hit [REDACTED]. Later, [REDACTED] went to the 84th Precinct to make sure that the NYPD knew that the driver had stopped at the scene for several minutes before fleeing. The officer she spoke to told her that there was nothing that the NYPD could do to investigate the crash and that it was the job of insurance companies to track down and check nearby cameras, as "we [the NYPD] don't do that."

[REDACTED] Precinct: 083, [REDACTED]

[REDACTED] was riding her bicycle when hit from behind by a speeding driver, who immediately fled the scene. [REDACTED] suffered a brain subdural hematoma and fractured shoulder and ankle. She spent several days in the hospital.

Our office conducted an investigation of the crash and identified witnesses and video footage showing [REDACTED] was hit by a vehicle that lost its passenger side mirror in the collision. We retrieved the mirror ejected by the hit-and-run vehicle and matched it to a [REDACTED] parked a few blocks from the scene, which had a missing mirror and a dented fender consistent with the crash shown in the video and with eyewitness accounts. The vehicle, [REDACTED], received five red light and speed camera tickets in [REDACTED], the year after the crash. We provided the vehicle information and evidence to [REDACTED] of the 83rd Precinct and requested that he investigate.

[REDACTED] did not investigate. After more than one month and numerous inquiries, [REDACTED] told us that he would interview the vehicle's owner "if [he] had the time." After a subsequent report in the [REDACTED] detailing [REDACTED] refusal to investigate, an inquiry was made of the vehicle's owner, who refused to provide a statement under advice of counsel. [REDACTED] then closed the case.

██████████ Precinct: 083, ██████████

██████████ was riding her bicycle when hit by a car making a left-hand turn. The driver backed up and then fled the scene past ██████████. ██████████ saw and wrote down the plate number as the vehicle drove away.

Despite this evidence, the NYPD quickly closed the hit-and-run investigation without ever interviewing ██████████, the witness, or the vehicle's owner. The vehicle, ██████████, received four red light and speed camera tickets in ██████████, the year of the crash. The vehicle's owner then moved to ██████████.

The police issued a complaint, which misspelled ██████████ surname and said she had no visible injuries, when in fact she had sustained multiple fractures to her arm and teeth. For several months after the crash, the NYPD refused to issue an MV104, which delayed ██████████ receipt of no-fault benefits.

██████████ Precinct: 079, ██████████

██████████ was riding her bicycle when hit by a car making a left-hand turn. The driver immediately fled the scene. A witness wrote down the vehicle's license plate number, but could not stay at the scene and so gave the license plate number to ██████████, along with his own name and phone number.

██████████ tried to give the license plate number and witness contact information to the responding officer, but the officer refused to include the plate number or witness identification in his accident report or even to take the piece of paper with the information from ██████████ outstretched hand.

██████████ Precinct: 112, ██████████

██████████ was riding her bicycle when a vehicle's passenger intentionally opened his door into her, while moving, causing ██████████ to fall down. The passenger then got out of the vehicle and threw ██████████ bicycle at her. The vehicle then fled the scene with the passenger.


██████████ and witnesses explained what had happened to the responding officer, but the Complaint makes no mention of the passenger hitting ██████████ with the vehicle's door. Our office contacted ██████████ repeatedly to ask for an MV104 accident report, but we never received a response. This omission meant that ██████████ was not eligible for no-fault insurance for her injuries. ██████████ had trauma to her right knee, back, and neck due to the assault. She was transferred to the hospital from the scene by ambulance and required follow up medical care and physical therapy.

For weeks, ██████████ told ██████████ that he was too busy to attend to her case, but ultimately the passenger, ██████████, was arrested and criminally prosecuted for assault. The driver, ██████████, was not charged for hit-and-run. Their vehicle, ██████████, received four red light and speed camera tickets in ██████████, the two years after the crash.

██████████, Precinct: 114, ██████████

██████████ was riding his bicycle when hit, and then intentionally hit again, by a van driver. ██████████ was thrown onto the windshield of the van and caught himself on the van's windshield wipers, from which he could see the driver. The driver continued to drive with ██████████ on his hood, before eventually slowing due to traffic. ██████████ got off of the van and the driver fled. A witness took a photograph of the van.

██████████ said that he would not investigate the incident because, he claimed, ██████ said at the scene that he could not identify the driver. Our office told ██████████ that ██████████ could identify the driver; nonetheless, the NYPD did not do any follow up investigation. We do not believe that the NYPD ever interviewed the vehicle owner. When our office contacted the owner, he told us that a man named ██████████ was driving the vehicle at the time of the crash. The vehicle, ██████████, received eight red light and speed camera tickets in ██████████, the years closest to the crash for which public data is available.

 VIDEO COLLECTED				Crime/Condition VEHICLE AND TRAFFIC LAWS	Command 017-17TH PRECINCT Date of This Report 06/26/2016
Date of UF61 06/08/2016	Complaint No. 2016-017-02069	Date Case Assigned 06/09/2016	Case No. 2016 - 945	Unit Reporting SQUAD	Follow-Up No. 5

Topic/Subject (VIDEO COLLECTED) LMSI VIDEO	Activity Date 06/21/2016	Activity Time 11:30
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Complainant's Name PIETREFESA, BERNADETTE		Address REDACTED		Apt No. R
Nickname/Allas/Middle Name				
Sex FEMALE	Race WHITE	Date of Birth 05/05/1966	Age 50	
Home Telephone	Business Telephone	Cell Phone REDACTED	Beeper #	E-Mail Address

Person Interviewed Last Name, First M.I.		Address		Apt No.
Nickname/Alias/Middle Name				
Position/Relationship	Sex	Race	Date of Birth	Age
Home Telephone	Business Telephone	Cell Phone	Beeper #	E-Mail Address

Details
Summary of Investigation:
<p>1. On June 21, 2016, at approximately 1130 hrs I did respond to LMSI in regards to this investigation. At the location I was able to obtain a video for the collision that PO Sirignano had prepared for me.</p> <p>2. The video shows the white vehicle striking the victim as she was crossing from the W/S of 3 avenue to the E/S of the avenue at the intersection of East 41 street. The vehicle then goes north to East v42 street then E/B on East 42 street. It then goes to the FDR service road and then S/B on the FDR drive.</p> <p>3. I was unable to upload a copy of the video to the ECMS system as the video files are not compatible.</p> <p>4. Case is active.</p>

ATTACHMENT	
No	Description

Locations Of The Camera That Captured The Collected Video						
Video Collected YES						
1	Activity Address Location NYC	Street	City MANHATTAN	State NY	Zip	Apt #
	Cross Street	Intersection of 3 AVENUE and EAST 42 STREET - NORTH EAST CORNER				Premise Type STREET

Reporting Officer:	Rank DT3	Name REDACTED KOLENDA		Tax Reg. No. REDA	Command 242-17 DET SQUAD
Reviewing Supervisor:	Manner of Closing	Date Reviewed 06/28/2016	Date of Next Review	Name RED MURONEY	Supv. Tax No. REDA

CIS (hit & run)

SR SIRIGNANO, ROBERT
6/10/2016

Reply all 3

KOLENDA, CHRISTOPHER; DOHERTY, MARYCHR; CONRY, SEAN; PEKU

GSV8376 (matches vide...
336 KB

Event Detail - LPR 2.pdf
336 KB

Even
336 KB

Show all 3 attachments (1002 KB) Download all

Chris,

Attached is what we have located in regards to your 6/8/2016 hit and run accident at West 41 & 3rd Avenue.

- Your perp in white GMC traveled 3rd Ave (accident location), right on 42nd, down to FDR south, to Brooklyn Bridge (Brooklyn bound).
- We tracked the vehicle on below listed cameras. Video is ready for pickup.

DOT FDR@42st	0552-0553
Pfizer 42 nd street PTZ	0552-0553
Argus 7.2694 FDR NEC & 42 nd Cam 1	0552-0553
DOT FDR @ 23 rd 152.3	0553-0554
DOT FDR @ 10 th 148.21	0553-0554
DOT FDR @ 6 th 148.58	0553-0554
DOT WBB SE NDR & FDR 97.111	0553-0555
DOT FDR @ Grand 148.4	0554-0555
DOT FDR @ Jackson 148.24	0554-0555
DOT South St & Montgomery 96.16	0554-0555
DOT MHB 20 Manhattan 156.8	0555-0556
DOT FDR South @ Catherine 96.25	0555-0556

- LPR results (Brooklyn Bridge, (Brooklyn bound) (queried 0555-0600) display (3) white suburban type vehicles, one matching vehicle description from camera footage. (See attached photos and PDF's)
- Registered owner:
Alick Joseph
524 W 152nd Street
New York, NY 10038
DOB 11/3/1966
NY plate: GSV-8376



[REDACTED]

Executed: 6/10/2016 07:39

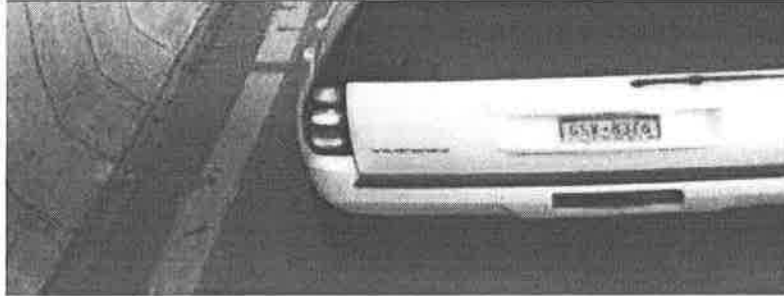
Executed by: NYPDFINEST
\\SIRIGNANO931230



New York City Police Department LPR



Source: LPR Date/Time: 6/8/2016 05:57:43 Asset: FCU Brooklyn Bridge Brooklyn Bound FLPR01-F2
Original Narrative:
Not Available




DMV records (as of scan on 6/8/2016)

Registered Owner #1

Name: JOSEPH M L ALRICK
Gender: M Birth Date: 11/3/1966
Address: 524 W 152ND ST 21 NEW YORK NY 10031

Vehicle Details

Plate Number:	GSV8376	Year:	2007	Make:	GMC
Model:	YUK	VIN:	1GKFK13087J113354	Registration Type:	
Color:	WHI	Body:	LL	Plate Category:	
Plate Description:					

 INTERVIEW TELEPHONE				Crime/Condition VEHICLE AND TRAFFIC LAWS	Command 017-17TH PRECINCT Date of This Report 07/19/2016
Date of UF61 06/08/2016	Complaint No. 2016-017-02069	Date Case Assigned 06/09/2016	Case No. 2016 - 945	Unit Reporting SQUAD	Follow-Up No. 8

Topic/Subject (INTERVIEW TELEPHONE) PHONE INTERVIEW - JOSEPH ALRICK	Activity Date 06/26/2016	Activity Time 19:30
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Complainant's Name PIETREFESA, BERNADETTE		Address REDACTED		Apt No. R
Nickname/Allas/Middle Name				
Sex FEMALE	Race WHITE	Date of Birth 05/05/1966	Age 50	
Home Telephone	Business Telephone	Cell Phone REDACTED	Beeper #	E-Mail Address

Person Interviewed Last Name, First M.I.			Address		Apt No.
Nickname/Allas/Middle Name					
Position/Relationship	Sex	Race	Date of Birth	Age	
Home Telephone	Business Telephone	Cell Phone	Beeper #	E-Mail Address	


Details

Summary of Investigation:

- On June 26, 2016, at approximately 1930 hrs I did receive a call from Joseph Alrick. Myself and Det.Castro had visited his residence earlier in the afternoon.
- I explained to Mr.Alrick that I was investigating an incident in which it appeared that his vehicle had been involved. I asked him if he was registered owner of white Chevrolet Yukon NY # GSV-8376. He stated that he was the owner of the vehicle. I then asked him if he was the exclusive driver of the auto. He again stated that he was. I then asked him if he had been driving the car on the morning of June 8,2016. He stated that he was and that he was the only driver of the vehicle. He stated that the car had been used by an old girlfriend from time to time in the past. However he stated that he had been the exclusive driver of the car for approx. the past two years.
- I then asked him if he had been involved in any type of accident on 6/8/2016. He stated that he had not. He then stated that there is no damage to his car. I then explained that I believe that his car may have been in a collision with a pedestrian on 6/8/2016 at approx. 0530 hrs. He asked where and I stated in midtown. He stated that it was not possible that he was there at that time. He stated that he takes the FDR drive south 145 street to Brooklyn where he is employed. He also stated that he was pastor and that he would never lie.
- He then stated that he would come down and speak with me in regards.
- A short time later I did receive a phone call from a person named Julie Clark. She stated that she was an attorney and that I would need to have her present for any more communication with her client.
- Case is active.

Activity Address Location NYC	Street 167 EAST 51 STREET	City MANHATTAN	State NY	Zip 10022	Apt #
Cross Street 3 AVENUE and LEXINGTON AVENUE		Intersection of			Premise Type

Reporting Officer:	Rank DT3	Name REDACTED KOLENDA		Tax Reg. No. REDA	Command 242-17 DET SQUAD
Reviewing Supervisor:	Manner of Closing	Date Reviewed 08/25/2016	Date of Next Review	Name REDA BLACK	Supv. Tax No. REDA

		GENERAL INVESTIGATION			Crime/Condition VEHICLE AND TRAFFIC LAWS	Command 017-17TH PRECINCT Date of This Report 09/28/2016
Date of UF61 06/08/2016	Complaint No. 2016-017-02069	Date Case Assigned 06/09/2016	Case No. 2016 - 945	Unit Reporting SQUAD	Follow-Up No. 10	
Complainant's Name PIETREFESA, BERNADETTE			Address REDACTED		Apt RE 3A	
Nickname/Alias/Middle Name						
Sex FEMALE	Race WHITE	Date of Birth 05/05/1966		Age 50		
Home Telephone	Business Telephone	Cell Phone REDACTED		Beeper #	E-Mail Address	
Activity Address Location NYC		Street 167 EAST 51 STREET	City MANHATTAN	State NY	Zip 10022	Apt #
Cross Street 3 AVENUE and LEXINGTON AVENUE			Intersection of		Premise Type	
Activity Date 08/31/2016			Activity Time 18:00			
Topic/Subject: NYPD LEGAL BUREAU						
Summary of Investigation: <p>1. On August 31, 2016, at approximately 1800 I did contact the NYPD legal bureau in regards to this investigation. The purpose of the call was to ascertain if there was any probable cause to arrest the suspect Joseph Alrick in regards.</p> <p>2. I did speak with Elizabeth Moehle of the unit in regards. She is a civilian attorney assigned to the legal bureau. I did go over the facts of the incident and subsequent investigation in regards. I explained that I had been given information by LMSI in regards to the unk. vehicle which had struck the victim. The owner of the possible vehicle was interviewed by me via telephone. An in person interview was attempted but the male Joseph Alrick was not at home when I did attempt to speak with him. I then stated that the video in my opinion was inconclusive. It depicted a similar vehicle however the plate was not readable. The suspect / registered owner Alrick did immediately retain counsel the same day after speaking with me. The victim can not make an identification and there are no known eyewitness accounts of the incident which include a description of the driver or the plate of the vehicle.</p> <p>3. I was informed at that point that there is no PC against the registered owner of the vehicle. In order for that to occur the driver of the vehicle would have to admit to such. Or there would need to be some other witness to state and identify the driver and that they did in fact observe the male driving the vehicle. Either one or both of those elements must be present in order to effect an arrest.</p> <p>4. In essence there is no legal right or authority to arrest Joseph Alrick in regards to this investigation.</p> <p>5. Case is active.</p>						
Reporting Officer:	Rank DT3	Name REDACTED KOLENDA		Tax Reg. No. REDA	Command 242-17 DET SQUAD	
Reviewing Supervisor:	Manner of Closing -	Date Reviewed 09/29/2016	Date of Next Review	Name REDA BLACK	Supv. Tax No. REDA	

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May 15, 2018

To: Brad Lander, Nell Beekman, Annie Levers

From: Steve Vaccaro, Blythe Austin

Re: Proposed Intervention Against Dangerous Driving

This memo summarizes our research on New York City's authority to impound vehicles associated with dangerous driving as a public safety measure, and continues our discussions on this topic.

Introduction and Summary. This memo addresses both a systemic citywide problem and a specific tragedy. On March 5, 2018, driver Dorothy Bruns drove through a red light and ran over a pregnant woman and two children. The children were killed. Bruns had a history of dangerous driving. In the 19 months prior to the crash, Bruns' vehicle received eight camera-based speeding and red-light violation tickets. In September 2017, Bruns hit a pedestrian and then fled the scene. Nonetheless, because camera-tickets do not affect a vehicle owner's license in New York, and the NYPD generally does not document or follow up on nonfatal hit and run cases, Bruns had a "clean" operator's license when she killed the two children.

Amidst the ensuing public outrage, Councilmember Lander and many others asked whether the City can prevent traffic deaths by directly intervening with drivers for whom dangerous driving (or ownership of a vehicle that is engaged in dangerous driving) has carried no practical consequences. We conclude that the City can intervene.

Such an intervention could take many forms. Our legal analysis focuses on a hypothetical program that uses a variety of data to identify vehicles and/or drivers that are consistently associated with dangerous or unlawful driving¹ and then requires the vehicle

¹ Sources of data could include, for vehicles driven dangerously, NYPD hit-and-run complaint reports (including reports that identify the vehicle but not the driver) and Notices of Liability for automated speed camera and/or red light camera violations, and, for dangerous drivers, MV104AN Accident Reports attributing dangerous conduct to the driver, convictions under the City's Right of Way Law, unusual driving activity of vehicles registered to people with suspended licenses, and convictions of professional drivers by TLC/OATH tribunals.

owner/driver to undergo traffic safety counseling, which may include conversations with the owner and/or a traffic safety education course that includes exposure to the human toll of dangerous driving. As a public safety measure, the City can lawfully impound the owner's vehicle temporarily until the person completes this counseling.

The City has the power to enact such a program. By default, the City has authority from New York State to enact laws and use its police powers to protect its citizens. "The constitutional home rule provision confers broad police power upon local governments relating to the welfare of its citizens." *New York State Club Ass'n, Inc. v. City of New York*, 69 N.Y.2d 211, 217 (1987). These powers are limited only by state preemption doctrine and the U.S. and New York constitutions. As explained below, an intervention program along the lines discussed here does not pose preemption or constitutional issues.

The State has not preempted traffic safety counseling or vehicle impoundment. We have previously discussed whether Vehicle and Traffic Law (VAT) §§ 1111-A and 1180-b preempt the City's use of red light and speed camera infraction information as a basis for identifying and intervening against vehicle owners, aside from the issuing of Notices of Liability to impose the monetary penalties provided for in §§ 1111-A(e) and 1180-b(e). §§ 1111-A(e) and 1180-b(e) are substantively identical and read as follows (emphasis added):

(e) an owner liable for a violation...of this article pursuant to [a local law or ordinance/a demonstration program] established pursuant to this section shall be liable for monetary penalties in accordance with a schedule of fines and penalties to be [set forth in such local law or ordinance.../ promulgated by the parking violations bureau of the city of New York]. The liability of the owner pursuant to this section shall not exceed fifty dollars for each violation; provided, however, that such [local law or ordinance/parking violations bureau] may provide for an additional penalty not in excess of twenty-five dollars for each violation for the failure to respond to a notice of liability within the prescribed time period.

These provisions do not preempt driver safety counseling or the impoundment of vehicles likely to be used for dangerous driving. We provide statutory and common law support below.

VAT §§ 1111-A and 1180-b do not create field preemption to preclude any City action. "Field preemption occurs when the State Legislature has explicitly or implicitly stated its intention to be the sole arbiter in a certain area of local law." *People of New York v. Urena*, 54 Misc.3d 978, 980 (Queens Co. Ct. 2016). Where, as here, a statute does not explicitly preempt local law, courts look at whether preemptive intent may be inferred from the nature of the subject matter being regulated and the purpose and scope

of the State legislative scheme. See *Vatore v. Commissioner of Consumer Affairs of City of New York*, 83 N.Y.2d 645 (1994).

The language and structure of these statutes show that the legislature did not intend §§ 1111-A(e) and 1180-b(e) to preempt a City response to red light and speed camera violations, particularly when read in conjunction with subsections (f) of the statutes. Sections (e) cap the monetary penalties for camera tickets at \$50 (or \$75 if the ticket is paid late). Sections (f) prohibit the City from transforming a camera-ticket violation into a conviction on the owner's operating record or a factor that affects the owner's auto insurance. If the legislature intended the \$50/\$75 fine in sections (e) to be the sole possible response or penalty for traffic camera violations, then sections (f) is redundant and nonsensical. However, *sections (e) cap only monetary penalties and do not limit other responses or forms of penalty*. Read together, sections (e) and (f) create specific limitations on the City's response to camera violations: monetary penalties cannot exceed \$50/\$75 and the penalty cannot impact the vehicle owner's operating record or insurance coverage. The statutes do not prohibit the City from responding to camera violations in other ways.

Applying these well-established preemption principles, a NYS Supreme Court has already ruled that §§ 1111-A and 1180-b do not preempt the field with respect to municipal action based on camera-tickets. See *Guthart v. Nassau County*, 55 Misc.3d 827, 833 (Sup. Ct. Nassau Co. 2017) ("The court finds nothing in the subject statute [§ 1111-B(e), which is substantively identical to §§ 1111-A(e) and 1180-b(e)] to indicate preemption under either conflict or field preemption.").

A dangerous driver impoundment/intervention program does not conflict with state law. "Conflict preemption occurs when a local law prohibits what a State Law explicitly allows, or when a State Law prohibits what a local law explicitly allows." *Matter of Chwick v. Mulvey*, 81 A.D.3d 161, 168 (N.Y. App. Div. 2010). In other words, a City statute conflicts with state law when it "render[s] illegal what is specifically allowed by State law." *People v. De Jesus*, 54 N.Y.2d 465 (1981).

As discussed above, §§ 1111-A and 1180-b implicitly give vehicle owners certain rights, inasmuch as the statutes explicitly limit the penalties for camera tickets. Violations cannot result in monetary penalties above \$50/\$75 or impact the owner's operator record or insurance. For speed camera violators, VAT § 1180-b(5)(ii) provides owners with an additional privacy right by limiting the City's use and dissemination of the recorded speed camera images themselves.

The driver counseling and vehicle impoundment proposal does not violate any of the statutory limitations of § 1111-A or § 1180-b. It imposes no monetary penalty.² It

² The City may choose to defray the cost of the counselling and impoundment program by charging vehicle owners impoundment and storage fees and a traffic safety education fee. The *Guthart* court upheld

does not impact the dangerous vehicle owner's operating record or insurance. And its criteria incorporate the owner's past receipt of Notices of Liability for speed camera violations, not the recorded photographs themselves, as a factor to define dangerous vehicles. Thus, the proposal does not pose conflict preemption issues.

The City has a superseding right from the State to regulate the right of way. The State legislature has delegated to the City authority supersede State law (including the VAT) and to directly legislate and regulate the right of way. VAT § 1642 provides that "local laws, ordinances, orders, rules, regulations and health code provisions shall supersede the provisions of [the VAT] where inconsistent or in conflict with respect to the...right of way of vehicles and pedestrians." This explicit grant of power by the State to local governments further bolsters the City's authority to regulate dangerous driving.

There is a clear and undeniable link between traffic crashes, speeding and the running of red lights, which impacts the right of way. In its 2016 report for NYS on speed cameras ("*New York City Red Light Camera Program: Program Review 2014-2015*"), the Department of Transportation says: "in New York City, about half of fatal traffic crashes occur at intersections." The report links these intersection crashes with speeding. "Crashes caused by motorists who violate traffic signals are highly associated with fatal and severe injury high speed right angle crashes...Motorists who are speeding are much more likely to run red lights, because vehicles which are travelling faster need more time and take a longer distance to come to a complete stop...Speeding drivers are therefore more likely to find themselves unable to come to a complete stop without 'stopping short' and risking a rear end crash." Furthermore, speed camera-tickets are issued for speeding near schools during school hours, where the presence of large numbers of children crossing streets demands heightened driver sensitivity to pedestrian right-of-way. Thus, evidence-based action by the City to educate drivers who receive camera-tickets for running red lights and/or speeding would safeguard the right of away against fatal and injurious crashes at intersections.

Safety-based vehicle impoundment is constitutionally permissible. The City may temporarily impound vehicles associated with dangerous driving, as long as the impoundment complies with constitutional due process and reasonable seizure standards. The applicable standards are set forth in *Krimstock v. Kelly*, 306 F.3d 40, 55 (2d Cir.

imposition of additional payments beyond the statutorily-scheduled \$50/\$75 amounts, so long as those payments were "administrative charges" reflecting the costs of administering the program, rather than additional penalties, writing: "there is nothing in the language of the [red light camera] statute itself that abrogates the existing and long-standing authority holding that a municipality may impose fees reasonably related to the cost of administering and/or enforcing its own regulations and programs." *Guthart*, 55 Misc.3d at 827.

2002),³ and are already applied by the City in connection with other, longstanding vehicle impoundment programs through what are known as “*Krimstock* hearings.”⁴

Krimstock hearing standards apply when the City wishes to retain an impounded vehicle throughout forfeiture proceedings. These standards require the City to provide the vehicle’s owner with the option to request a prompt hearing (a “*Krimstock* hearing”) at which to challenge the government’s continued retention of the vehicle. “At such a hearing, the [City] must establish that probable cause existed for the defendant’s initial warrantless arrest [at which the vehicle was seized], that it is likely to succeed on the merits of the forfeiture action” and “that retention is necessary to protect the [City’s] interests in the financial value of the vehicle and/or in protecting the public from continued unsafe and illegal driving.” *County of Nassau v. Canavan*, 802 N.E.2d 616, 625 (2003), *Ferrari v. County of Suffolk*, 845 F.3d 46 (2d Cir. 2016). At the hearing, an innocent co-owner of a vehicle may refute the City’s showing and reclaim the vehicle from the City if he or she “can demonstrate by a preponderance of the evidence that he or she: (i) is a registered and/or titled co-owner; (ii) was not a participant or accomplice in the underlying offense and did not permit or suffer the vehicle to be used as a means of committing crime or employed in aid or furtherance of crime; and (iii) continued deprivation would substantially interfere with his or her ability to obtain critical life necessities, such as earning a livelihood, obtaining an education, or receiving necessary medical care.” *Property Clerk of Police Dept. of City of New York v. Harris*, 9 N.Y.3d 237, 248 (2007) (citations omitted).

The City could adapt its existing *Krimstock* hearing practices to provide owners of impounded vehicles with the option to request a hearing at which to challenge the impoundment. At the hearing, the City would present its reasons for impoundment, *i.e.* the data points that made the vehicle subject to the dangerous vehicle program, and link the impoundment to public safety. The owner could challenge the impoundment by demonstrating, by a preponderance of the evidence, that he or she did not permit, suffer, participate in, or act as an accomplice in any of the dangerous driving that made the car subject to the dangerous vehicle program and that traffic safety counseling would pose a substantial hardship. If the owner meets this burden, he or she need not attend traffic safety counseling or pay any administrative fees. This approach would comport with constitutional requirements for vehicle impoundment.

³ There is an important legal distinction between temporary impoundment and forfeiture. As the Second Circuit observed, “the City’s authority to seize property may be broader than its authority to cause the forfeiture of the property.” *Krimstock v. Kelly*, 306 F.3d 40, 55 (2d Cir. 2002). Thus, a temporary impoundment may require even less than a full *Krimstock*-style hearing to meet due process standards.

⁴ This memo assumes that the City program will provide notice and the opportunity for a hearing to vehicle owners both before and promptly after dangerous vehicle impoundment. An impoundment and intervention program that did not provide a pre-impoundment notice an opportunity to be heard may also be lawful but would subject the program to heightened constitutional scrutiny.

Vehicle impoundment to protect public safety is not a penalty. Courts do not view vehicle impoundment done for public safety to be a penalty. The driver counseling and vehicle impoundment proposal is civil and nonpunitive in nature, which further ensures that a dangerous driver impoundment/intervention program would not be vulnerable to a preemption or constitutional challenge.

Both federal and state courts have written extensively about vehicle impoundment for public safety as a permissible, nonpunitive measure, even when done outside the confines of a narrowly tailored statute such as the one proposed here. *See South Dakota v. Opperman*, 428 U.S. 364, 368-69 (1976) (“In the interests of public safety and as part of what the Court has called “community caretaking functions,” automobiles are frequently taken into police custody...***The authority of police to seize and remove from the street vehicles impeding traffic or threatening public safety is beyond challenge***” (emphasis added, citations omitted)), *Cady v. Dombrowski*, 413 U.S. 433, 441 (1973) (“Local police officers, unlike federal officers, frequently investigate vehicle accidents in which there is no claim of criminal liability and engage in what, for want of a better term, may be described as community caretaking functions, totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute.”), *People v. Tardi*, 28 N.Y.3d 1077, 1078 (2016) (“The officers’ decision to tow the vehicle was [] consistent with a community caretaking function” because “the vehicle would have been left unattended independently in the complainant’s private parking lot, which had a history of vandalism.”).

Ultimately, “whether a statutory scheme is civil or criminal is first a question of statutory construction [based on] the statute’s text and structure.” *Smith v. Doe*, 538 U.S. 84 (2004). In *Smith*, the Supreme Court concluded that Alaska’s retroactive sex offender registry system was a civil, nonpunitive regime because its stated primary purpose was “protecting the public from sex offenders” and did not have any overly punitive effect. The Court continued: “If...the intention of the legislature was to enact a regulatory scheme that is civil and nonpunitive, we must further examine whether the statutory scheme is so punitive either in purpose or effect as to negate the State’s intention to deem it civil.” To analyze whether a civil statute has an overriding punitive purpose, “only the clearest proof will suffice to override that [civil] intent and transport what has been denominated a civil remedy into a criminal penalty...***Where a legislative restriction is an incident of the State’s power to protect the public health and safety, it will be considered as evidencing an intent to exercise that regulatory power, and not a purpose to add to the punishment.***” *Id.* (emphasis added) To examine whether a statute is so punitive in effect as to negate a legislature’s civil intent, courts examine each of the law’s effects, including “[w]hether the sanction involves an affirmative disability or restraint, whether it has historically been regarded as a punishment, whether it comes into play only on a finding of *scienter*, whether its operation will promote the traditional aims of punishment—retribution and deterrence, whether the behavior to which it applies is already a crime, whether an alternative purpose to which it may rationally be connected is

assignable for it, and whether it appears excessive in relation to the alternative purpose assigned.” *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 168-169 (1963).

Smith, Opperman, Dombrowski, and Tardi demonstrate the near-incontestable authority of municipalities to temporarily impound vehicles based on the clear, evidence-based public safety concerns that naturally arise when a driver has multiple camera-tickets, hit-and-runs and/or right of way violations associated with their operator’s license or vehicle.

Enactment of a dangerous driver impoundment and intervention program would rest comfortably within the City’s authority under *Smith* and the other cases cited. The City’s aim would be to protect the public from dangerous driving, which is a civil and nonpunitive intent. While the program could place some burdens on the owners of dangerous vehicles, *e.g.* mandatory traffic safety counseling and a temporary deprivation of the owner’s vehicle, these effects are not so onerous as to transform the proposed program from a civil scheme to protect public safety into a criminal or punitive punishment on vehicle owners. The civil nature of the program further secures it from preemption and constitutional challenges.

* * * *

We hope this memo provides a framework for the City Council to create a lawful, innovative and non-punitive intervention program to prevent needless traffic deaths and injuries. The actual legislation should be crafted with preemption and constitutional limitations in mind. We are confident that the program suggested here does not pose preemption or constitutional issues and that the City may enact such a program in order to protect the safety and welfare of New Yorkers.