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# **UNDELIVERABLE: Suspended Driver's Licenses and the Problem of Notice**

**Brandon L. Garrett, Karima Modjadidi, and William Crozier**

## **Abstract**

In North Carolina, one in seven adult drivers currently has a suspended license for nondriving related reasons. As in many other states, in North Carolina, driver's licenses are commonly suspended, for reasons unrelated to safety, when a person fails to appear in court in response to notice of a traffic court date or fails to pay traffic fines. Notices of traffic court dates are sent by mail, typically to the address on record at the Department of Motor Vehicles, as are subsequent notices that the consequence for non-appearance will be a driver's license suspension. To better understand the effects of these driver's license suspensions and whether individuals are even aware of the suspensions, we sought to survey a randomly selected 300 people in Wake County, North Carolina who had their licenses suspended between 2017–2018. We sent these surveys by mail and found something unexpected and unrelated to many of the survey questions themselves: that the addresses on file for individuals whose licenses had been suspended were often inaccurate. Over one-third of these mail surveys were returned to sender. These undeliverable mailings suggest that large numbers of people, numbering perhaps in the hundreds of thousands in North Carolina, never receive actual notice of either their court date or the drastic consequence of nonappearance. Further, they may have no idea that the state has suspended their license, and as a result, may suffer severe consequences if later stopped for driving with a revoked license. We conclude by discussing the due process and policy problems implied by these findings.

## **About the Authors**

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### Introduction

In North Carolina, one in seven adult drivers currently has a suspended license for nondriving related reasons,<sup>1</sup> making the state a useful place to study the largescale impact of nonpayment of fines and fees on individuals. The consequences of fines and fines imposed in criminal cases have drawn increasing scholarly attention to the collateral consequences for nonpayment, such as loss of rights, including driving privileges.<sup>2</sup> Increasingly, litigation has constitutionally challenged the use of driver’s license suspension as a consequence for nonpayment, while legislation has removed that consequence in a few states.<sup>3</sup> To date, several attempts

1. William E. Crozier & Brandon L. Garrett, *Driven to Failure: Analysis of Failure to Appear and Pay Driver’s License Suspension Policy in North Carolina*, 69 DUKE L.J. 1585 (2020).
2. See Alexes Harris, A POUND OF FLESH: MONETARY SANCTIONS AS PUNISHMENT FOR THE POOR 50 (2016); Alicia Bannon et al., BRENNAN CTR. FOR JUSTICE, CRIMINAL JUSTICE DEBT: A BARRIER TO REENTRY 2, 25, 29 (2010), <https://www.brennancenter.org/our-work/research-reports/criminal-justice-debt-barrier-reentry> [<https://perma.cc/958F-65W5>].
3. For litigation, see, e.g., Stinnie v. Holcomb, 396 F. Supp. 3d 653 (W.D. Va. 2019); Mendoza v. Garrett, 358 F. Supp. 3d 1145, 1150 (D. Or. 2018) (denying relief on claims challenging driver’s license suspension); Thomas v. Haslam, 303 F. Supp. 3d 585 (M.D. Tenn. 2018), *vacated as moot*, Thomas v. Lee, 776 Fed. Appx. 910 (6th Cir. 2019); Rodriguez v. Providence Cmty. Corr., Inc., 191 F. Supp. 3d 758, 779–80 (M.D. Tenn. 2016); *Landmark Lawsuit Settled, Paves Way for Fair Treatment of Low-Income California Drivers*, ACLU N. CAL. (Aug. 8, 2017), <https://www.aclunc.org/news/>

have been made to empirically measure the impact of a driver's license suspension.<sup>4</sup> Here, we attempt to add to this literature but were unable to contact over 30 percent of a sample of suspended drivers, suggesting that a number of policy and legislation choices make debt-related suspensions a severe problem.

In North Carolina, the state can suspend a person's driver's license for reasons unrelated to traffic violations, including failure to appear in court and failure to pay traffic fines.<sup>5</sup> We sought to better understand what effects these driver's license suspensions have on people. We surveyed a randomly selected 300 people in Wake County, North Carolina, who had their license suspended between 2017–2018. We sent these surveys by mail to collect qualitative and quantitative data to obtain a better understanding of how a suspended license affects a person's life on a granular and global scale, to learn whether people knew their licenses had been suspended, and to assess how much people knew about the process of restoring a driver's license. We were not successful in obtaining much of the survey information we sought, but instead found something different: that the addresses on file for these people were largely inaccurate.

As we describe below in Part I, driver's licenses are commonly suspended for failure to appear in court in response to notice of a traffic court date. The Department of Motor Vehicles (DMV) sends notices regarding court dates by mail to the address on a person's driver's license, as well as subsequent notices notifying people that the consequence will be a driver's license suspension. As we describe in Part II, over one-third of the surveys we sent to those same addresses in Wake County were returned. Our findings suggest that large numbers of people never receive actual notice of the drastic consequence of license suspension. They may have no idea that the state has suspended their license, and as a result, may suffer severe consequences if later stopped for driving with a revoked license.

In several rulings, as we describe in Part III, the U.S. Supreme Court has held that when the government takes certain highly impactful actions

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landmark-lawsuit-settled-paves-way-fair-treatment-low-income-california-drivers [https://perma.cc/72NB-7NNG]. For legislation, see, e.g., MONT. CODE ANN. § 46-18-201(6) (2019) (ending practice of driver's license suspension for non-payment of traffic fines); VT. STAT. ANN. tit. 4, § 1109 (2017) (same); WASH. REV. CODE § 46.20.289 (2019) (same).

4. See Jon A. Carnegie et al., DRIVER'S LICENSE SUSPENSIONS, IMPACTS AND FAIRNESS STUDY 65–69 (2007), [http://vtc.rutgers.edu/wp-content/uploads/2014/04/MVC-DL-Suspension-Study-Final-Report-Vol1\\_9-13-07\\_.pdf](http://vtc.rutgers.edu/wp-content/uploads/2014/04/MVC-DL-Suspension-Study-Final-Report-Vol1_9-13-07_.pdf) [https://perma.cc/Y66D-MN4E].
5. Jon A. Carnegie et al., AM. ASS'N OF MOTOR VEHICLE ADM'R, REASONS FOR DRIVERS LICENSE SUSPENSION, RECIDIVISM AND CRASH INVOLVEMENT AMONG SUSPENDED/REVOKED DRIVERS 8 (2009), [https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/documents/811092\\_driver-license.pdf](https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/documents/811092_driver-license.pdf) [https://perma.cc/WJ9Z-2PUZ]; see also Andrea M. Marsh, *Rethinking Driver's License Suspensions for Nonpayment of Fines and Fees*, in TRENDS IN STATE COURTS 21–22 (2017), <https://www.ncsc.org/~media/Microsites/Files/Trends%202017/Rethinking-Driver's-License-Suspensions-Trends-2017.ashx> [https://perma.cc/6K6A-JYAV].

that affect people's rights, actual notice is required, and where the government knows that it has failed to provide actual notice, further diligence is necessary. In this circumstance, although mail may be a reasonable way to reach people, when the state has actual notice that it has not provided notice by mail, it should be required to take additional cost-effective and reasonable steps to provide notice. For example, officers could make text notification available, or the DMV could make information about the status of a person's driver's license available on its website. Further, the DMV could wait to impose a suspension until it has ensured that actual notice has occurred. These findings have due process and policy implications that we discuss in Part III. Finally, these findings raise questions regarding other processes that rely on mail notices and that disparately affect indigent populations without stable mailing addresses.

### **I. The North Carolina Driver's License Suspension Process**

There are several steps that occur before a driver's license is suspended in North Carolina for failure to appear (FTA) or failure to pay/comply (FTC). In most circumstances, a person is initially stopped for a traffic violation. During the traffic stop, the officer may issue an eCitation or a written ticket with information about the traffic violation and the related fine. If the officer issues an eCitation, the officer will enter a license plate or ID number into an electronic system and the address is then automatically populated from the information that corresponds to that license plate or ID in the Department of Motor Vehicles (DMV) database. If the officer issues a written citation, the address may come from the DMV, autopopulated through the eCitation system, or the officer can instead choose to manually enter an address that the driver provides to the officer at the time of the stop.<sup>6</sup>

Since its statewide implementation in 2004, North Carolina has been increasing its use of the eCitation system, which the courts describe as "a set of computer programs that allow law enforcement officers to create, print, and electronically transmit cite-and-release citations to the North Carolina court system."<sup>7</sup> The eCitation system is maintained by the North Carolina Administrative Office of the Courts (AOC) and provided to law enforcement free of charge, intended to be a technological advancement that makes it easier for law enforcement to issue citations. Officers can create citations and schedule court dates electronically from their patrol car and then print out the eCitation for the cited person.<sup>8</sup>

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6. Correspondence from Emily E. Misyra, Assistant Public Defender, Wake County Public Defender's Office, to Brandon Garrett, Professor of Law, Duke University School of Law (Sept. 28, 2019) (on file with authors).

7. See eCitation, N.C. ADMIN. OFFICE OF THE COURTS, <https://ecitationweb.nccourts.org> (last visited Feb. 3, 2020) [<https://perma.cc/L4G4-YJ96>].

8. eCitation, N.C. ADMIN. OFFICE OF THE COURTS, [https://www.nccourts.gov/assets/documents/publications/Technology\\_eCitation\\_Facts.pdf?xIPQAP-sQgW69on77zRTx.5A13v9zmCIm](https://www.nccourts.gov/assets/documents/publications/Technology_eCitation_Facts.pdf?xIPQAP-sQgW69on77zRTx.5A13v9zmCIm) (last visited Feb. 3, 2020) [<https://perma.cc/UQ3M-TB2D>].

Once a citation is issued, the cited individual is expected to come to court on a specified date or alternatively pay the imposed traffic fine. If the individual fails to do either (or, in some cases, both, as a person may resolve an FTA but then, after appearing in court, remain unable to pay), their license will be suspended.<sup>9</sup> Specifically, if a person does not appear on the date scheduled, the case is marked as “called and failed.” After twenty days, the court issues a “Failure to Appear,” which results in an additional fee of \$200.<sup>10</sup> After twenty additional days pass, the court notifies the DMV of the FTA through ACIS, and the person’s license is suspended. A notice of revocation is then sent to the individual by the DMV.<sup>11</sup> A person may cure the revocation by paying the amount to the court, or by demonstrating that the failure was “not willful” and that the person is “making a good faith effort to pay,” or that the amount “should be remitted.”<sup>12</sup> To do so, of course, the person must have received one or more of these court or DMV notices.

The DMV is statutorily required to send notice to the individual whose license is suspended “either by personal delivery thereof to the person to be so notified or by deposit in the United States mail of such notice in an envelope with postage prepaid, addressed to such person at his address as shown by the records of the Division.”<sup>13</sup> The statute does not require the DMV to ensure that such an address is accurate. Instead, the onus is placed on individuals to update their addresses with the DMV, either online or in person. A North Carolina statute makes it an infraction to fail to notify the DMV of an address change within 60 days after the change occurs.<sup>14</sup> According to the North Carolina DMV website, residents can change their address online if they are moving within North Carolina, their license is not suspended, they have no outstanding debts, and their photograph and social security card is on file with the DMV. If these criteria are not met, the individual must go to the DMV in person and pay a \$13 fee to change their address.<sup>15</sup> Thus, this policy puts the responsibility of

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9. N.C. GEN. STAT. § 20-24.1(a)(1)-(2) (2019).

10. N.C. GEN. STAT. § 7A-304(a)(6) (2019).

11. *Traffic Violations*, N.C. JUDICIAL BRANCH, <https://www.nccourts.gov/help-topics/traffic-and-vehicles/traffic-violations> (last visited Feb. 3, 2020) [<https://perma.cc/L8YJ-2GUK>].

12. N.C. GEN. STAT. § 20-24.1(b)(3)-(4) (2019).

13. N.C. GEN. STAT. § 20-48 (2019).

14. N.C. GEN. STAT. § 20-35(a2)(3) (2019). Section 20-71 further details: “(a)Address. - A person whose address changes from the address stated on a drivers license must notify the Division of the change within 60 days after the change occurs. If the person’s address changed because the person moved, the person must obtain a duplicate license within that time limit stating the new address. A person who does not move but whose address changes due to governmental action may not be charged with violating this subsection.” This seems to offload the state’s burden of having or getting the correct address. N.C. GEN. STAT. § 20-71 (2019).

15. *Change of Address in North Carolina*, DMV.ORG, <https://www.dmv.org/nc-north-carolina/change-address.php> (last visited Feb. 3, 2020) [<https://perma.cc/NYC8-UKNE>].

ensuring receipt of an FTA or FTC notice on the driver by requiring them to make sure their DMV information is updated, and allows for situations in which a driver does not know they are driving on a suspended license.

## II. Wake County Survey

Because mailing addresses are stored and connected to license suspensions, our access to the North Carolina Administrative Office of the Courts (AOC) data gave us the ability to directly contact suspended drivers. Our intention was to collect data from individuals with suspended licenses about their knowledge of the suspension, the suspension process, and how it affected their day to day life. Our survey plan rested on the assumption that the addresses were correct. However, after discovering the addresses were often incorrect, it unexpectedly became a way to assess the accuracy of the addresses the courts use to notify individuals that they may owe fines, have court dates, and/or have a suspended license.

The AOC provided us with data on all of the people who have had suspended licenses between 2017–2018 in Wake County, North Carolina. The data included the person's name, address, case number, birth date, race, and gender. The addresses from the AOC are the ones used by the court and the DMV to send legal citations or correspondence.

The data provided by the AOC revealed that 12,974 people in Wake County, North Carolina had their license suspended between 2017–2018.<sup>16</sup> We randomly selected a subset of 300 people to survey. Research assistants crosschecked the addresses in the AOC database on Google Maps to confirm the addresses were legitimate locations for residential housing. Once the addresses were confirmed, we sent the survey, a stamped return envelope, and a one-dollar bill as a sign of good faith to participants. The envelope also included a description of the study and explanation that they would receive an additional \$10 if they completed and returned the survey.

The full survey we designed can be found in Appendix A, but to briefly summarize, we asked survey respondents for demographic information, if they were aware that they had a suspended license, the potential cause of the suspension, how long their license had been suspended, and if their license had been suspended and restored in the past. The survey also asked how respondents' everyday lives had changed since the suspension on a number of measures. These measures included difficulty getting to work and keeping a job, access to healthcare and childcare, and ability to pay rent. Survey respondents could indicate whether these aspects of life became easier or more difficult after their drivers' license suspension by selecting from a scale of (1) much more difficult, (2) a little more difficult, (3) no change, (4) a little easier, (5) much easier. Participants were instructed to skip this portion of the survey if their license was not suspended or if they were not aware their license was suspended. We also included four open-ended questions in which the participant had

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16. See Crozier et al., *supra* note 1, at 43.

the opportunity to explain certain situations they may have experienced. These included (1) why they may be scared to go to court to deal with their suspension, (2) why they have or have not tried to get their license suspended, (3) why they continue to drive with a suspended license (if they have), and (4) anything else they wanted to add.

### A. *Study Results*

Although our research interest was in surveying suspended drivers, we instead experienced an interesting and troubling trend in attempting to deliver the surveys to suspended drivers. After four months, we received just eight completed surveys and 107 unopened return-to-sender envelopes. Of the 107 returned envelopes, 101 were returned for reasons related to an insufficient or undeliverable address, for a variety of reasons displayed in Table 1 below. We note that the most common reasons had to do with an incorrect or incomplete address on file, and with only a handful (11.23 percent of those returned) in which mail was “refused” or mail was “unclaimed.” The exact manner in which the address was incorrect varied, including errors in the address itself that have likely always been present (insufficient address, or nonexistent address) to addresses that may have been initially correct but are now outdated (such as an expired or unknown forwarding address, vacant residence, or a different person handwriting “wrong address”). It is worth noting that these suspensions were all recent, put into effect in 2017–2018 (28 months, at most, before the surveys were sent out), as to decrease the timeframe in which the suspended driver may move to a new address in the normal course of life. These trends strongly suggest that many notices likely do not reach their intended recipient, and that because there are so many different problems, there is likely no single solution.

**Table 1: Returned Mail in Wake County Driver's License Suspension Survey**

Reason listed for returned mail	Number of envelopes	Percentage (of 300 total)	Percentage returned
Insufficient address	32	10.6	30
Not deliverable as addressed	22	7.3	20.5
Attempted to forward but forwarded address not known	15	5	14
Unclaimed	11	3.67	10.3
No street or number exists address	8	2.67	7.5
No mail receptacle	5	1.67	4.67
Time to forward to new address expired	5	1.67	4.67
Vacant	4	1.33	3.74
Wrong address in handwriting	2	.67	1.87
Moved and no forwarding	1	.33	.93
Undeliverable as addressed	1	.33	.93
Refused	1	.33	.93



We cannot draw any conclusions about the 185 surveys that were not returned, but it does not seem outside of the realm of possibility that at least some of them never reached their intended recipient. Even still, over a third of the surveys we sent out were returned because they could not reach the recipient—strong evidence that a decent proportion of court and DMV notices may similarly be undeliverable due to a wrong address.

Although eight survey respondents are not enough to conduct inferential statistics or draw meaningful conclusions about the impact of driver's license suspension on daily life, the returned surveys were illustrative of the heterogeneity of respondents and their responses. We report a summary here in the interest of completeness (and describe what we found in Appendix B), but explicitly avoid drawing any conclusions about the generalizability or representativeness of these data and warn readers against doing the same. The average age of the eight participants was 36.5 years old with a range of 25–52 years old. Seven participants were single and one did not answer that question. Five participants identified themselves as Black, two classified themselves as White, and one classified herself as Black/Native American. Three participants were the primary caregiver's in their household. Two people were employed full-time, one was part-time, and five were unemployed. Regarding annual household income, two participants reported it was less than \$12,000, two participants reported an income between \$12,001-\$24,000, and four participants had a household income between \$24,001–50,000. One participant chose not to answer. Relatedly, four participants reported they lived in a household with additional people.

The completed surveys indicated that people did not know their license was suspended and/or did not know why. Three participants were not aware their license was suspended and only one person was properly notified by the Department of Motor Vehicles or the courts. Other participants discovered their license was suspended by law enforcement when stopped for a different offense. Therefore, among our small sample, only one person was actually notified through the intended channels. Three people did not know why their license was suspended, one person had a suspended license because of unpaid traffic fines, one person had a suspended license due to a failure to appear (FTA) charge, and one person was convicted of driving under the influence. Two people chose not to answer why they thought their license was suspended.

The survey responses reflected confirmation that a suspended driver's license can be extremely disruptive to a person's everyday life and have impactful longterm consequences. Appendix B shows participants' responses to questions about both situations on a scale of 1 (much more difficult) to 5 (much easier). The last portion of the survey included space for open ended questions and asked if participants were afraid to go to court to address their suspension, if they have tried to get their license restored, if they still drive with their suspended license, and if they do why

and how often. Lastly, we asked if there was anything else they would like us to know about how the suspended license has affected them. Only one person reported being afraid to go to court, but five participants responded that they had not attempted to get their license restored. Of those five participants, one said they had not tried because “the fines and fees so high I can’t afford the fees/fines at the moment.” Two participants reported that they still drive. One said she continued to drive to find work and the other reported she drove because she couldn’t afford not to work (and was saving money to reinstate her license).

Although the sample size is extremely small, and we cannot make any claims about the generalizability of the survey results, we can already observe the possibility of troubling trends. One conclusion we can draw, underscored here by these findings, is the need for empirical research assessing the individual-level impact of license suspensions and the feasibility of getting these licenses restored.

### III. Due Process Analysis and Policy Implications

The original intention of this study was to obtain a richer understanding about how suspended licenses affect people. However, we uncovered something equally, if not more, troubling. Among our sample, over one-third of the mail we sent was returned due to a wrong address or related issue. The implication of that finding is that a sizeable number of people may not know that their licenses are suspended, that they may have a court date, or that they owe fines and/or fees. If people are unaware of their current legal status, then they may drive, get pulled over, receive a violation for driving with a revoked license (DWLR), and incur additional fees. The survey response rate was much lower than we expected; however, in speaking to local lawyers at the Fair Chance Criminal Justice Project in North Carolina,<sup>17</sup> we learned that the number of return-to-sender envelopes we received was reflective of what they experienced in their work on license suspensions. Some attorneys noted that apartment numbers were often missing from clients’ addresses, people move and do not change their license, or the addresses were simply incorrect.

A recent federal lawsuit bringing a due process challenge to the North Carolina statute that permits a driver’s license to be suspended for nonpayment of a traffic fine highlights the crux of the problem and how the state puts the onus of ensuring receipt of mail on the individual.<sup>18</sup> The plaintiffs claimed that the DMV’s failure to adequately notify drivers that their licenses were suspended due to fines and fees was a violation of their due process. The court “recognize[d] the hardships often attendant to the loss of a driver’s license.”<sup>19</sup> However, the court also emphasized that the state provided an adequate process in the form of a

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17. Letter from Misyr, *supra* note 6.

18. Johnson v. Jessup, 381 F. Supp. 3d 619 (M.D.N.C. 2019).

19. *Id.* at 640.

hearing for people to show that they were unable to pay those fines and did not willfully fail to do so, a hearing which a person can request only after a revocation.<sup>20</sup> That process, however, is premised on receipt of actual notice from the state. The court found “this crucial opportunity for a hearing” decisive in finding no due process violation.<sup>21</sup> The court discussed at length the typical notice sent to individuals in North Carolina when a license is suspended, and whether its text was sufficiently clear.<sup>22</sup> The court never considered that many individuals may not receive such a notice at their current address; one reason may have been that the issue was not central to the plaintiffs’ claims, since they were not challenging failure to appear suspensions.

The U.S. Supreme Court has required that notice be provided, under the Due Process Clause, before a person is deprived of a liberty or property interest, and this does not always require actual notice or personal service, but rather notice that is “reasonably calculated” to

20. *Id.* at 624 (“Unlike some states, North Carolina provides a procedure by which traffic defendants can avoid or undo license revocation by showing that their failure to pay is no fault of their own.”).

21. *Id.* at 642.

22. *Id.* at 644–46. That notice states: “WE REGRET TO INFORM YOU THAT EFFECTIVE [time and date], YOUR NC DRIVING PRIVILEGE IS SCHEDULED FOR AN INDEFINITE SUSPENSION IN ACCORDANCE WITH GENERAL STATUTE 20–24.1 FOR FAILURE TO PAY FINE AS FOLLOWS:” The Official Notice then lists the traffic defendant’s violation date and citation number, as well as the name and phone number of the state court handling the traffic violation.” *Id.* at 644. The Official Notice continues:

“UNFORTUNATELY THE DIVISION OF MOTOR VEHICLES CANNOT ACCEPT PAYMENTS FOR FINES AND COSTS IMPOSED BY THE COURTS. PLEASE CONTACT THE COURT ABOVE TO COMPLY WITH THIS CITATION.

NOTE: PLEASE COMPLY WITH THIS CITATION PRIOR TO THE EFFECTIVE DATE IN ORDER TO AVOID THIS SUSPENSION.

IF YOU HAVE NOT COMPLIED WITH THIS CITATION BY THE EFFECTIVE DATE OF THIS ORDER, YOU WILL NEED TO MAIL YOUR CURRENT *NORTH CAROLINA DRIVER LICENSE*, IF APPLICABLE, TO THE DIVISION. FAILURE TO DO SO MAY RESULT IN AN ADDITIONAL \$ 50.00 SERVICE FEE.

REINSTATEMENT PROCEDURES: UPON COMPLIANCE WITH THIS CITATION, YOU MAY VISIT YOUR LOCAL DRIVER LICENSE OFFICE. AT SUCH TIME PROPER IDENTIFICATION AND PROOF OF AGE WILL BE NEEDED.

A RESTORATION FEE OF \$ 65.00 AND THE APPROPRIATE LICENSE FEES ARE NEEDED AND HAVE TO BE PAID AT THE TIME YOUR DRIVING PRIVILEGE IS REINSTATED.

THIS ORDER IS IN ADDITION TO AND DOES NOT SUPERSEDE ANY PRIOR ORDER ISSUED BY THE DMV. IF ADDITIONAL INFORMATION CONCERNING THIS ORDER IS NEEDED, PLEASE CONTACT A REPRESENTATIVE OF THE DIVISION AT (919) 715–7000. DIRECTOR OF PROCESSING SERVICES.”

*Id.* at 645.

reach affected parties.<sup>23</sup> Thus, procedural due process requires that the state provide an individual notice of a deprivation and an opportunity to be heard, in order to guard against erroneous deprivation.<sup>24</sup> Such notice must be made “at a meaningful time and in a meaningful manner.”<sup>25</sup> Constructive notice, such as notice by publication, may not be sufficient where there are reasonable alternative means (which in the seminal *Mullane v. Hanover* case did involve mail service at last known addresses).<sup>26</sup> The Court has also held, in *Bell v. Burson* and in subsequent cases, that a driver’s license is constitutionally protected property and also that there is a protected liberty in the ability to legally drive with a license.<sup>27</sup> Some state court rulings have further considered whether driver’s licenses can be suspended for reasons not rationally related to safety and driving.<sup>28</sup>

However, the due process obligations of the state can differ when the state itself knows that its effort to provide notice was not successful, and particularly where there is no right to be heard before the state takes adverse action that affects important interests. As Chief Justice Roberts wrote in *Jones v. Flowers*, a ruling regarding the notice requirement of the Fourteenth Amendment’s Due Process Clause where the plaintiff’s home was foreclosed on without actual notice: “We do not think that a person who actually desired to inform a real property owner of an impending tax sale of a house he owns would do nothing when a certified letter sent to the owner is returned unclaimed.”<sup>29</sup> Chief Justice Roberts continued:

If the Commissioner prepared a stack of letters to mail to delinquent taxpayers, handed them to the postman, and then watched as the departing postman accidentally dropped the letters down a storm drain, one would certainly expect the Commissioner’s office to prepare a new stack of letters and send them again. No one “desirous of actually informing” the owners would simply shrug his shoulders as the letters disappeared and say “I tried.” Failure to follow up would be unreasonable, despite the fact that the letters were reasonably calculated to reach their intended recipients when delivered to the postman.

Chief Justice Roberts added: “By the same token, when a letter is returned by the post office, the sender will ordinarily attempt to resend it,

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23. See, e.g., *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950).

24. *Mathews v. Eldridge*, 424 U.S. 319, 348 (1976).

25. *Id.* at 333.

26. *Mullane*, 339 U.S. at 314.

27. *Bell v. Burson*, 402 U.S. 535, 539 (1971) (“Once [driver’s] licenses are issued . . . their continued possession may become essential in the pursuit of a livelihood” and they “are not to be taken away without that procedural due process required by the Fourteenth Amendment.”) (alteration in original); see also *Mackey v. Montrym*, 443 U.S. 1, 10 (1979) (finding suspension of a driver’s license implicates a “protectible property interest”). State courts had earlier recognized this as well. See, e.g., *Hecht v. Monaghan*, 121 N.E.2d 421 (N.Y. 1954).

28. See, e.g., *State v. Shawn P.*, 859 P.2d 1220, 1228 (Wash. 1993) (Madsen, J., dissenting).

29. *Jones v. Flowers*, 547 U.S. 220, 229 (2006).

if it is practicable to do so.” Further, “This is especially true when, as here, the subject matter of the letter concerns such an important and irreversible prospect as the loss of a house.” Chief Justice Roberts emphasized that the state “had good reason to suspect when the notice was returned that Jones was ‘no better off than if the notice had never been sent.’” To be sure, actual notice is not always required; reasonable notice may suffice. However, following the reasoning in *Jones*, if the DMV receives returned mail, then the state has actual information that the mailing did not reach the recipient.

While our survey results are from just one county, we suspect that the DMV receives very large numbers of returned letters. After all, upwards of 800,000 individuals have driver’s license suspensions for failures to appear; while we cannot be sure whether their addresses are incorrect at the same rates as the sampled population in Wake County, it is likely that large numbers do have similarly incorrect addresses.<sup>30</sup> If so, then the assumption of the court in the North Carolina litigation—that individuals have a meaningful opportunity to be heard at a postrevocation hearing—may be misplaced. That said, the large volume of mail involved does increase the burden of the state to supply notice. Further, individuals have a statutory obligation to update their address with the DMV within sixty days of a change in address. Whether individuals are aware of any such obligation is questionable; nor, once they have a suspended license, is it clear that they have a way to update their address (without first restoring the license). While sending mail to individuals at their record address may normally be quite reasonable,<sup>31</sup> in the circumstance when the mail is returned, an obligation to update one’s record address may not absolve the state of its due process obligations when it has actual knowledge that notice was returned and not received.<sup>32</sup>

What further efforts can the state take, when it has notice that addresses on file are not accurate? The U.S. Supreme Court has emphasized that “heroic efforts” to ensure actual notice are not required.<sup>33</sup> Conversely, the Court has also not placed the burden on petitioners to design a more reasonable approach; as Chief Justice Roberts noted in *Jones*, “In

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30. See Crozier et al., *supra* note 1, at 44. The volume of returned letters may be cited by the state, if such a claim were litigated, to support the cost of providing additional notice; see also *Jones*, 547 U.S. at 236 (“The Commissioner has offered no estimate of how many notice letters are returned . . .”).

31. *Tulsa Prof'l Collection Serv., Inc. v. Pope*, 485 U.S. 478, 490 (1988) (“We have repeatedly recognized that mail service is an inexpensive and efficient mechanism that is reasonably calculated to provide actual notice.”).

32. In addition to the *Jones* ruling, the Court has also considered situations in which the state knew in advance that the person would not receive notice. See *Robinson v. Hanrahan*, 409 U.S. 38, 39 (1972) (per curiam) (finding a due process violation where the intended notice recipient was known to be in jail); *Covey v. Town of Somers*, 351 U.S. 141, 145 (1956) (finding a due process violation where intended notice recipient was known to be incompetent and without a guardian).

33. *Dusenbery v. United States*, 534 U.S. 161, 170 (2002).

prior cases finding notice inadequate, we have not attempted to redraft the State's notice statute."<sup>34</sup>

The additional effort could occur on the frontend, to include in the citation form a field for an officer to write down or enter a person's self-described best contact information, including an email or cell phone, rather than depend on autopopulated data from the eCitation system. Doing so would add an additional step to the process of documenting a traffic citation, but it would be brief. Further, the onus would be more appropriately on the person to provide accurate contact information because the consequences of an inaccurate address are made more salient by the officer filling out this address information..

After issuing a notice regarding a driver's license suspension, if relying on mail, the DMV could make note of returned mail in their database. Then, if the person were pulled over again or appeared in court, the incorrect address would be documented. Another possibility would be to use text-based notifications at the citation stage. The state could refrain from imposing a driver's license suspension if it is aware that a person did not receive notice via mail. Further, where we know that many people continue to drive with a suspended license,<sup>35</sup> the state might refrain from imposing more serious consequences for driving with a revoked license in the situation in which a person is not aware of the suspension and did not receive notice.<sup>36</sup>

While notice by publication, for example, would not suffice if the state is depriving individuals of such an important public interest, the state could make available on the DMV website a portal at which one could check the status of one's license and more readily verify whether it is suspended, and if so, why.

Additionally, these survey findings raise larger questions about all states that engage in en masse driver's license suspensions based on similar mail notices. When a state deprives over a million drivers of their licenses, as in North Carolina, personal hand-delivery would be quite expensive. Yet, if mail is relied upon, there is evidence that low-income individuals disparately affected by driver's license suspensions may be more likely to change addresses.<sup>37</sup> Indeed, court debt may contribute to evictions, making person's addresses less stable.<sup>38</sup> People with driver's

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34. *Jones*, 547 U.S. at 238.

35. AM. ASS'N OF MOTOR VEHICLE ADM'R, BEST PRACTICES GUIDE TO REDUCING SUSPENDED DRIVERS 4 (2013).

36. Relatedly, Colorado banned jail for driving with a suspended license. H.B. 17-1162, 71st Gen. Assemb., 1st Reg. Sess. (Colo. 2017).

37. Robin Phinney states, "it is widely recognized that low-income households move more frequently." Robin Phinney, *Exploring Residential Mobility Among Low-Income Families*, 87 U. CHI. SOC. SERV. REV. 780 (2013).

38. See generally Chester Hartman et al., *Evictions: The Hidden Housing Problem*, 14 HOUSING POL'Y DEBATE 461 (2003). Although moving is common across the economic spectrum, low-income households are more likely to experience evictions and homelessness.

license suspensions may be less able to afford change-of-address fees that a DMV may charge. A largescale system that relies on mail, during an era in which people receive information more readily on electronic devices, can impose substantial hardships and provide poor notice to individuals caught up in the legal system.

### **Conclusion**

In this survey, we found that mailed notices regarding the serious consequence of driver's license suspension for failure to appear in court and notices informing individuals of their missed court dates often do not reach their intended recipients. Punishing such persons for failing to appear in court likely serves no useful goal. Further, it arguably violates due process to fail to provide additional notice when the state knows that its intended notice did not reach the recipient, even if individuals do have an obligation to update their mailing addresses with the state. We suggest reasonable alternatives that could improve this system, and that might substantially affect the numbers of driver's license suspensions for failure to appear, including changing citation forms to permit initial collection of more accurate contact information and postponing imposition of suspensions to ensure actual notice. Moreover, we suggest that access to justice may require a digital-age rethinking of the means with which the state provides notice of court processes.