

2.2 Overview of Racial Profiling Concerns

The U.S. Department of Justice defines the unlawful practice of racial profiling as decisions by law enforcement that “rest[] on the erroneous assumption that any particular individual of one race or ethnicity is more likely to engage in misconduct than any particular individual of other races or ethnicities.” U.S. DEP’T OF JUSTICE, [RACIAL PROFILING FACT SHEET](#) 1 (2003). Studies in various jurisdictions indicate that racial profiling may have an impact on decisions made during initial encounters by law enforcement officers. In Maryland, an analysis of traffic stop data concluded that, while 74.7% of those violating traffic laws on Maryland highways were White and 17.5% were Black, Black drivers constituted 79.2% of the drivers searched. DEBORAH RAMIREZ ET AL., U.S. DEP’T OF JUSTICE, [A RESOURCE GUIDE ON RACIAL PROFILING DATA COLLECTION SYSTEMS: PROMISING PRACTICES AND LESSONS LEARNED](#) 6–7 (2000). In New York City, a federal judge found that the New York Police Department’s “stop and frisk” program, pursuant to which police officers were instructed to target young Black and Latino men for *Terry* stops, was influenced by racial bias and was unconstitutional. *Floyd v. City of New York*, 959 F.Supp.2d 540, 662–64 (S.D.N.Y. 2013).

In North Carolina, most law enforcement agencies are required by statute to collect traffic stop data encompassing, among other information, the “[i]dentifying characteristics of the drivers stopped, including the race or ethnicity” and “the race or ethnicity . . . of each person searched.” See G.S. 114-10.01; see also *infra* § 2.6I, Collecting Traffic Stop Data to Support Equal Protection Claims. A 2012 study of data from approximately 13 million North Carolina traffic stops concluded that, compared to White motorists, Black and Latino motorists and passengers in North Carolina are almost twice as likely to be searched and twice as likely to be arrested following a traffic stop. North Carolina Advocates for Justice (NCAJ) Task Force on Racial and Ethnic Bias, [Executive Summary](#). The same study concluded that these racial and ethnic disparities appear most pronounced when officer discretion is greatest, as in the case of stops based on seat belt, vehicle equipment, and vehicle regulatory violations. See FRANK R. BAUMGARTNER & DEREK EPP, [NORTH CAROLINA TRAFFIC STOP STATISTICS ANALYSIS: FINAL REPORT TO THE NORTH CAROLINA ADVOCATES FOR JUSTICE TASK FORCE ON RACIAL AND ETHNIC BIAS](#) 5 (2012) [hereinafter “Baumgartner Study”].

In Alamance County, following a two-year investigation, the United States Department of Justice filed a complaint alleging that Latino drivers are between four and ten times more likely to be stopped by Sheriff’s deputies than non-Latino drivers, and that some deputies had been specifically directed by the Sheriff to “go out there and catch [] some Mexicans.” Anne Blythe, [U.S. Justice Department Sues Alamance County Sheriff, Accusing Him of Discriminating Against Latinos](#), NEWS & OBSERVER (Raleigh), Dec. 20, 2012. In support of its claims, the Department of Justice submitted a report in which racial profiling expert Dr. John Lamberth stated that, on three different highways in Alamance County, Latino motorists are between 6 and 7.13 times more likely than non-Latino drivers to be cited for traffic violations, and that these observed disparities are the

largest he had ever measured in the United States. *See* [United States' Reply in Support of its Motion to Modify the Expert Disclosure Deadline as to a Single Expert](#), Exhibit C at 2–3, *United States v. Terry Johnson*, No. 12-cv-1349 (2012).

Initial encounters with police represent the entry point into the criminal justice system. Stop, search, and arrest practices, where discriminatory, risk introducing racial disparities at the outset of the case that may be compounded at later stages and affect outcomes. *See supra* § 1.3E, Discretionary Decision-Making and the Cumulative Nature of Disparities. Criminal defense attorneys should therefore seek to identify and raise challenges to law enforcement conduct where it appears that race played an improper role in the investigation.