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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CINDY MENDOZA; GLORIA BERMUDEZ; REBECCA HEATH; KARL WADE ROBERTS; CEKAIS TONI GANUELAS; LORI SPANO, Plaintiffs-Appellants, v. KRIS STRICKLER, in his official capacity as Director of the Oregon Department of Transportation; AMY JOYCE, in her official capacity as Administrator of the Driver and Motor Vehicle Services Division, Oregon Department of Transportation, Defendants-Appellees.	No. 19-35506 D.C. No. 3:18-cv-01634-HZ OPINION

Appeal from the United States District Court
for the District of Oregon
Marco A. Hernández, Chief District Judge, Presiding

Argued and Submitted June 3, 2020
Portland, Oregon

Before: Marsha S. Berzon and Daniel P. Collins, Circuit Judges, and Jennifer Choe-Groves,[*] Judge.

[*] The Honorable Jennifer Choe-Groves, Judge for the United States Court of International Trade, sitting by designation.

Opinion by Judge Collins;
Dissent by Judge Berzon

SUMMARY[**]

Civil Rights

The panel affirmed the district court's dismissal for failure to state a claim of plaintiffs' action challenging the constitutionality of Oregon's since-repealed system of suspending, without an inquiry into ability to pay, the driver's licenses of persons who fail to pay the fines imposed on them in connection with traffic violations.

The panel first held that the district court contravened well-settled law in holding that it could ignore defendants' jurisdictional objections, assume that it had jurisdiction, and then dismiss the case on the merits. Addressing the objections, the panel rejected the contention that plaintiff Cindy Mendoza's claims were barred by the sovereign immunity recognized in the Eleventh Amendment. Mendoza's claims for injunctive relief fit comfortably within the doctrine of *Ex parte Young*, 209 U.S. 123 (1908), given that defendants, and those acting under them, were the officials who—allegedly in violation of the federal Constitution—actually carried out the suspensions of Mendoza's driver's license. The panel further rejected defendants' argument that Mendoza's claims were

[**] This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

jurisdictionally barred under the *Rooker-Feldman* doctrine. Mendoza's claims did not entail review or rejection of the underlying state court judgments finding that she violated the traffic laws and imposing fines on her. Instead, Mendoza challenged defendants' actions in actually suspending her license after receiving a notice of suspension from the court.

Addressing the merits, the panel first considered Mendoza's contention that defendants' suspension of her driver's license based on her failure to pay traffic fines, without first determining that she had the ability to pay and had willfully refused to make a monetary payment, violated the due process and equal protection principles recognized in *Bearden v. Georgia*, 461 U.S. 660 (1983), and *Griffin v. Illinois*, 351 U.S. 12 (1956). These principles prohibit making certain wealth-based distinctions in the context of (1) granting access to judicial procedures; and (2) converting a non-carceral sentence into a term of imprisonment. Because this case involved neither such context, Mendoza's reliance on these cases failed. The panel further rejected Mendoza's contention that *Bearden* established a general heightened-scrutiny test for wealth-based classifications, finding the argument difficult to square with the Supreme Court's or this Circuit's caselaw. The panel concluded that suspension of Mendoza's license for failure to pay her traffic fines was rationally related to a legitimate government interest in punishing and deterring traffic violations, even if her failure to pay was a result of indigency.

The panel rejected Mendoza's contention that the State's distinction between traffic debt and non-traffic debt violated the equal protection principles set forth in *James v. Strange*, 407 U.S. 128 (1972). The panel held that the Oregon statutes here lacked the specific offending aspect of the Kansas statute invalidated in *James* and were wholly free of the kind

of discrimination that led to the invalidation of that statute. Debt that results from criminal fines, even for infractions or other petty offenses, does not have to be treated, in all respects, the same as ordinary commercial debt, and nothing in the Supreme Court's narrow decision in *James* established the broader rule that Mendoza advocated.

Finally, the panel rejected Mendoza's contention that defendants violated her procedural due process rights by suspending her license without affording either a "pre-suspension hearing" or a "post-suspension hearing" concerning her ability to pay her traffic debt. Even assuming that Mendoza could not pay her traffic debt, defendants' actions did not violate the Constitution. The procedural aspects of the Due Process Clause do not require that the State afford a process for evaluating a factor that, under the applicable substantive law, is not relevant to the ultimate decision at issue.

Dissenting, Judge Berzon, citing *Griffin*, stated that a state cannot punish indigent individuals solely on the basis of their poverty. And when a state sanctions scheme punishes individuals for failure to pay fines by depriving them of an important liberty or property interest regardless of ability to pay, "careful inquiry" into the connection between the impact of the sanction and the governmental interests served by it is required. *Bearden*, 461 U.S. at 666-67. Because Oregon's license suspension scheme makes no inquiry into or allowances for a driver's ability to pay, the state punishes indigent drivers much more severely than drivers who can afford to pay the fines for the same traffic violations. If the driver cannot pay, she must wait twenty years "from the date the traffic offense occurred" before the suspension is lifted. Such a prolonged driver's license suspension carries grave consequences, jeopardizing a

driver's access to fundamental economic activities and features of civic life. In Judge Berzon's view, Mendoza plausibly alleged that the suspension of her driver's license based on her failure to pay traffic fines was unconstitutional, either under the *Bearden* standard or on rational basis review, and so had sufficiently stated a claim on which relief could be granted.

COUNSEL

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OPINION

COLLINS, Circuit Judge:

Plaintiffs appeal the district court's dismissal of their claims challenging the constitutionality of Oregon's since-repealed system of suspending, without an inquiry into ability to pay, the driver's licenses of persons who fail to pay the fines imposed on them in connection with traffic violations. The district court dismissed the operative complaint for failure to state a claim, and we affirm.

I

Plaintiff Cindy Mendoza and others filed this putative class action in September 2018, alleging that Oregon's practice of automatically suspending the driver's licenses of individuals who fail to pay their traffic debts, without any inquiry into ability to pay, violates the Due Process and Equal Protection Clauses of the Fourteenth Amendment. The parties agree that the claims of many of the Plaintiffs below are now moot and that the only claims currently before this court on appeal are certain individual claims asserted by Plaintiff Cindy Mendoza in the operative Second Amended Complaint.[1] Before discussing the facts concerning Mendoza's license suspension and the procedural history concerning her claims, we first summarize the relevant provisions of Oregon law concerning the non-payment of traffic fines.

[1] Plaintiffs filed a motion for class certification, but they subsequently withdrew that motion before the district court ruled on it. Accordingly, only Mendoza's individual claims are before us.

A

The Oregon Vehicle Code defines a "traffic violation" as "a traffic offense that is designated as a traffic violation in the statute defining the offense, or any other offense defined in the Oregon Vehicle Code that is punishable by a fine but that is not punishable by a term of imprisonment." OR. REV. STAT. § 801.557. Proceedings concerning a traffic violation are typically initiated by the issuance of a citation by a law enforcement officer. *Id*. §§ 153.042, 153.045, 810.410; *see also id*. § 810.340(1) (provisions of Chapter 153 of the Oregon Revised Statutes relating to traffic offenses govern "[a]ll proceedings concerning traffic offenses"). The citation must include, *inter alia*, the violation alleged; the date, time, and court at which the person cited must appear; the "amount of the presumptive fine, if any, fixed for the violation"; and a statement that, in the event of a conviction, the court must impose the applicable minimum fine. *Id*. § 153.051; *see also id*. §§ 153.045, 153.048.

The defendant who receives such a citation generally has the option, in lieu of appearing personally in court, to plead no contest by submitting payment of the presumptive fine. *Id*. § 153.061(1), (3). If the defendant elects to plead no contest, he or she may submit an explanation to the court, and the court may consider the statement in setting the actual fine, so long as the fine does not fall below the applicable statutory minimum. *Id*. § 153.051(7); *see also id*. §§ 153.099(2), 153.021. If the defendant does not either appear in court or plead no contest without a personal appearance, his or her driving privileges may be suspended and the court may enter a default judgment and impose any fine within the applicable statutory range. *Id*. §§ 153.061(7), 153.090(3), 153.102. If the defendant elects a trial and is convicted, then the fine may likewise be fixed at any amount up to the statutory maximum. *Id*. § 153.090(3). A judgment

in a case involving a traffic violation may be appealed. *Id*. §§ 138.057, 153.121.

Once a judgment imposing a fine has been entered, a judge may suspend the judgment in part "upon condition that the defendant pay the nonsuspended portion of a fine within a specified period of time." *Id*. § 153.090(4). However, "[i]f the defendant fails to pay the nonsuspended portion of the fine within the specified period of time, the suspended portion of the judgment becomes operative without further proceedings by the court and the suspended portion of the fine becomes immediately due and payable." *Id*. Except as otherwise provided by Oregon law, a court generally "may not defer, waive, suspend or otherwise reduce the fine . . . to an amount that is less than" the minimum fine specified for the particular class of the violation. *Id*. § 153.021(1).

At the time of the district court's decision, the Oregon Vehicle Code provided that, in the event that a defendant convicted of a traffic offense "fails or refuses to pay a fine imposed by the court," the court could choose to "[i]ssue a notice of suspension" to the Oregon Department of Transportation ("DOT") directing it, through its Driver and Motor Vehicles Services Division ("DMV"), "to implement procedures under ORS 809.416" to suspend the person's driver's license. *See* OR. REV. STAT. § 809.210(1)(a) (2019 ed.).[2] The statute does not specify a time frame for issuing such a notice of suspension, but Plaintiffs allege that the courts typically provided about five weeks to pay a fine contained in a judgment and that some courts allowed payment plans. In addition, the courts may also send the unpaid fine to a private collection agency, and it may add an

[2] As noted below, § 809.210 was repealed, effective October 1, 2020. *See infra* at 11-12.

appropriate fee for such collection costs to the judgment. *Id*. § 1.202(2).

Once the DMV received a suspension notice from a court under § 809.210, the DMV was required to send a first-class letter "advising the person that the suspension will commence 60 days from the date of the letter unless the person presents" the DMV with a notice of reinstatement from the court. *Id*. § 809.416(3) (2019 ed.). In the absence of such a notice of reinstatement, the DMV "*shall* suspend" the person's driving privileges after the 60 days elapses. *Id*. § 809.415(4)(a) (2019 ed.) (emphasis added). Subject to certain exceptions not applicable here, once the suspension is triggered, it lasts for up to 20 years unless and until the court issues a notice of reinstatement showing that the person "[i]s making payments, has paid the fine or has obeyed the order of the court." *Id*. § 809.416(2) (2019 ed.). A driver whose license is suspended under § 809.416 may seek administrative review of the suspension, *see id*. § 809.415(4)(b), and in such review may "raise any defense to the [DMV's] action that is capable of being proved through a careful review of the documents upon which that action is based, or any other evidence of a type that the pertinent statutes contemplate the [DMV] will consider." *Richardson v. Oregon Dep't of Transp., D.M.V.*, 292 P.3d 557, 563 (Or. Ct. App. 2012) (simplified).

During the period of the suspension, the person generally may not operate a motor vehicle in Oregon, but at least since 2019, he or she nevertheless may apply for a "hardship driver permit." *Id*. § 809.380(2); *see also id*. § 807.250(4) (2018 ed.) (repealed, effective Jan. 1, 2019) (previously prohibiting hardship permits for persons whose driving privileges were suspended under § 809.416). Such permits are available for capable drivers who show, for example, that they must drive "as a requisite of the person's occupation or

employment," "to seek employment or to get to or from a place of employment," or to obtain "medical treatment on a regular basis" for themselves or a family member. *Id*. § 807.240(3)(b), (d).

B

Because this action was dismissed under Federal Rule of Civil Procedure 12(b)(6), we take the well-pleaded factual allegations of the complaint as true. *See Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009). At the time the operative complaint was filed, Mendoza was a 28-year-old who lived with her three children (ages two, seven, and nine) in subsidized housing in Portland. She received a speeding ticket in Wasco County, Oregon in June 2010, with a presumptive fine of $400. The amount of the ensuing court judgment, with court costs and fees added, was ultimately $812. After she failed to pay, the debt was referred to a collection agency and her license was suspended. After five years, she was able to pay off that debt and her license was reinstated in April 2015. However, during the period that her license was suspended, Mendoza received a ticket for driving with a suspended license in August 2013, and that ultimately led to a $2,020.40 judgment from the Beaverton Municipal Court for fines and associated fees. After Mendoza failed to pay that judgment, her license was again suspended in July 2015.

Mendoza was also charged with various traffic violations in the Milwaukie Municipal Court, including driving with a suspended license in January 2016, and these resulted in additional fines and fees totaling $1,660.37. Mendoza also failed to appear at her misdemeanor arraignment in January 2016, which arose out of a traffic accident in Clackamas County. As a result of the ensuing judgment against her, she owes an additional $7,602 in fines and fees. As of the time

of the filing of the operative complaint, her license had not yet been suspended based on this further violation, but the complaint alleges that that is expected to occur.[3]

Mendoza alleges that she is too poor to make the payments necessary to clear her various traffic debts and to reinstate her driver's license. Although Mendoza "is on a payment plan" for the Clackamas County case, "she cannot afford to pay [the required] $100 per month to the court," given that "she is unemployed and is the sole provider for her three children." Although the Beaverton Municipal Court has a payment-plan policy, it requires a "$50 minimum monthly payment," and it "would not have been feasible for her" to make such periodic payments.

C

Based on these allegations, Mendoza alleges that the application of Oregon's license-suspension scheme violated her equal protection and due process rights in multiple respects. She seeks only injunctive and declaratory relief, as well as attorney's fees, against the director of the Oregon DOT and the Administrator of the DMV, in their official capacities (collectively, "Defendants").

Mendoza and her then-co-Plaintiffs moved for class certification and for a preliminary injunction. The district court denied the latter motion in a published order, *see Mendoza v. Garrett*, 358 F. Supp. 3d 1145 (D. Or. 2018), and shortly thereafter, Plaintiffs withdrew their class

[3] The complaint also notes that Mendoza's license was suspended in July 2017 for the additional reason that she had failed to provide proof of the required automobile insurance, but the complaint alleges that this separate ground for suspension will cease to be applicable after July 2020.

certification motion. The district court's denial of a preliminary injunction has not been appealed.

Defendants moved to dismiss the operative complaint for lack of jurisdiction and for failure to state a claim. *See* FED. R. CIV. P. 12(b)(1), (b)(6). The district court declined to address Defendants' jurisdictional objections and instead "assume[d] without deciding" that it "ha[d] jurisdiction." Exercising this hypothetical jurisdiction, the district court then granted the motion to dismiss for failure to state a claim under Rule 12(b)(6). Plaintiffs timely appealed.

II

The district court contravened well-settled law in holding that it could ignore Defendants' jurisdictional objections, assume that it had jurisdiction, and then dismiss the case on the merits. *See Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 101–02 (1998) (holding that a court "act[s] ultra vires" when it assumes "hypothetical jurisdiction" in order to rule on the merits). Accordingly, we begin by addressing Defendants' jurisdictional objections.

A

Defendants first contend that Mendoza's claims are barred by the sovereign immunity recognized in the Eleventh Amendment. We disagree. It is true that the Supreme Court "has consistently made clear that federal jurisdiction over suits against unconsenting States was not contemplated by the Constitution when establishing the judicial power of the United States." *Sossamon v. Texas*, 563 U.S. 277, 284 (2011) (citations and internal quotation marks omitted). But as Defendants themselves acknowledge, the Supreme Court has long recognized "an important limit on th[is] sovereign-immunity principle." *Virginia Off. for Prot. & Advoc. v.*

Stewart, 563 U.S. 247, 254 (2011) ("*Virginia OPA*"). Specifically, under the doctrine of *Ex parte Young*, 209 U.S. 123 (1908), a federal court has jurisdiction over a suit in equity to enjoin a state official "from violating federal law." *Virginia OPA*, 563 U.S. at 255; *see also Whole Woman's Health v. Jackson*, 142 S. Ct. 522, 532 (2021) (noting that, "in *Ex parte Young*, th[e] [Supreme] Court recognized a narrow exception grounded in traditional equity practice—one that allows certain private parties to seek judicial orders in federal court preventing state executive officials from enforcing state laws that are contrary to federal law"). In such circumstances, the state officer violating federal law is deemed not to be "the State for sovereign-immunity purposes." *Virginia OPA*, 563 U.S. at 255. Mendoza'a claims for injunctive relief fit comfortably within the *Ex parte Young* doctrine, given that Defendants, and those acting under them, are the officials who—allegedly in violation of the federal Constitution—actually carried out the suspensions of Mendoza's driver's license. *See Will v. Michigan Dep't of State Police*, 491 U.S. 58, 71 n.10 (1989) ("Of course a state official in his or her official capacity, when sued for injunctive relief, would be a person under § 1983 because 'official-capacity actions for prospective relief are not treated as actions against the State.'" (citation omitted)).

Defendants nonetheless contend that their enforcement role is too peripheral to trigger the *Ex parte Young* doctrine and that Mendoza's real objection is to the actions of the state court officials who sent suspension notices to the DMV pursuant to Oregon Revised Statutes § 809.210. But this is not a situation in which the defendant lacks any relevant "enforcement authority . . . that a federal court might enjoin [it] from exercising." *Whole Woman's Health*, 142 S. Ct. at 534. On the contrary, under the challenged provisions of Oregon law, it is Defendants and their subordinates who

effectuated the suspension of Mendoza's license, thereby confirming their relevant "enforcement authority" under the challenged scheme. *See supra* at 4. If this ongoing suspension of Mendoza's license violates the federal Constitution, then Defendants may be enjoined from such enforcement actions. That is enough to bring this case within the doctrine of *Ex parte Young*.

On this score, this case differs significantly from *Snoeck v. Brussa*, 153 F.3d 984 (9th Cir. 1998), upon which Defendants rely. There, the plaintiffs' standing was based on the allegation that the exercise of their First Amendment rights had been chilled by the "threat of being held in contempt" for violating allegedly unconstitutional rules governing the confidentiality of misconduct complaints against judges. *Id*. at 987. But the defendants that they sued—members of the Nevada Commission on Judicial Discipline—did "not have the power of contempt" under the applicable state law, which instead lodged such power only in the Nevada Supreme Court (whose members plaintiffs had not sued). *Id*. Because "[n]o proceedings to enforce the rules in any manner" had been or could be "instituted or threatened" by the persons that the *Snoeck* plaintiffs had sued, those persons lacked the necessary enforcement authority to trigger the *Ex parte Young* doctrine. *Id*. As we have explained, the opposite is true here: Defendants play a critical role in bringing into force the actual suspension of Mendoza's license, and if their ongoing actions in doing so violate the federal Constitution, then Defendants may be enjoined from thus "enforcing state laws that are contrary to federal law." *Whole Woman's Health*, 142 S. Ct. at 532.

B

Defendants also argue that Mendoza's claims are jurisdictionally barred under the *Rooker-Feldman* doctrine.

See Rooker v. Fidelity Tr. Co., 263 U.S. 413 (1923); *D.C. Ct. of Appeals v. Feldman*, 460 U.S. 462 (1983). We reject this contention.

The Supreme Court "clarified in *Exxon* [*Mobil Corp. v. Saudi Basic Industries Corp.*, 544 U.S. 280, 284 (2005),] that *Rooker-Feldman* is confined to cases of the kind from which the doctrine acquired its name: cases brought by state-court losers inviting district court review and rejection of the state court's judgments." *Skinner v. Switzer*, 562 U.S. 521, 532 (2011) (simplified). Defendants' contention fails because Mendoza's claims do not entail "review" or "rejection" of the underlying state court judgments finding that she violated the traffic laws and imposing fines on her. Instead, Mendoza challenges *Defendants*' actions in actually suspending her license after receiving a notice of suspension from the court under Oregon Revised Statutes § 809.210(1)(a) (2019 ed.). The Sixth Circuit made exactly this distinction in rejecting a nearly identical *Rooker-Feldman* argument in connection with a comparable challenge to Michigan's driver's-license-suspension laws, and its analysis applies equally here under Oregon law:

> [Defendants] argue[] that Plaintiffs are appealing the adverse judgment of [Oregon] trial courts, thereby contravening the *Rooker-Feldman* doctrine. But the [Oregon] statute is clear—it is the [DMV] who suspends licenses, even if the [DMV] does so only after getting certain information from trial courts. . . . Plaintiffs' suit seeks review of [Defendants'] suspension of their licenses regardless of the validity of any state court decision. The fact that state court decisions form part of the basis for the [Defendants'] suspension action is immaterial.

Fowler v. Benson, 924 F.3d 247, 254–55 (6th Cir. 2019) (citations omitted); *see also Skinner*, 562 U.S. at 532 (holding that, even when "a state-court decision is not reviewable by lower federal courts, . . . a statute or rule governing the decision may be challenged in a federal action").[4]

Accordingly, the *Rooker-Feldman* doctrine provides no bar to consideration of the merits of Mendoza's claims.[5]

III

As noted earlier, the claims of all Plaintiffs other than Mendoza have become moot, and no issue concerning class claims or class certification has been raised on appeal. *See supra* at 1 & n.1. Moreover, the parties agree that Oregon's formal repeal of § 809.210, effective October 1, 2020, has mooted Mendoza's request for injunctive relief against

[4] Moreover, Defendants cite no authority to support their view that the "notices of suspension" sent by court administrative personnel to the DMV are *themselves* "judgments" that could trigger the *Rooker-Feldman* doctrine. And Defendants do not contend that Mendoza's underlying judgment of conviction was formally amended, after notice and an opportunity to be heard, so as to impose a license suspension.

[5] Defendants have not renewed in this court their argument below that Mendoza failed to sufficiently plead the redressability required to establish Article III standing. However, we have an "independent obligation to assure that standing exists, regardless of whether it is challenged by any of the parties," *Summers v. Earth Island Inst.*, 555 U.S. 488, 499 (2009), and for substantially the same reasons given by the Sixth Circuit in *Fowler*, we conclude that Mendoza has adequately pleaded redressability here. Although "other impediments"—such as a separate license suspension under § 809.220 for failure to appear—"may remain for Plaintiff[] to regain [her] driver's license[]," the "elimination of one substantial obstacle" for Mendoza to regain her license "constitute[s] substantial and meaningful relief sufficient to render [her] claimed injury redressable." *Fowler*, 924 F.3d at 254 (internal quotation marks omitted).

future driver's license suspensions for non-payment of traffic debt under that statute. Accordingly, the only claims remaining before us are Mendoza's claims for injunctive and declaratory relief against the continued suspension of her license based on Defendants' prior application of § 809.210 to her. Reviewing the dismissal of these claims de novo, *see Zimmerman v. City of Oakland*, 255 F.3d 734, 737 (9th Cir. 2001), we conclude that the district court properly held that Mendoza failed to state a claim on which relief may be granted.

A

Mendoza's first cause of action alleges that Defendants' suspension of her driver's license based on her failure to pay traffic fines, "without first determining that [she] had the ability to pay and [had] willfully refused to make a monetary payment," violates the due process and equal protection principles recognized in *Bearden v. Georgia*, 461 U.S. 660 (1983), and *Griffin v. Illinois*, 351 U.S. 12 (1956). We disagree. The principles applied in these cases prohibit making certain wealth-based distinctions in the context of (1) granting access to judicial procedures; and (2) converting a non-carceral sentence into a term of imprisonment. Because this case involves neither such context, Mendoza's reliance on these cases fails.

1

Although *Griffin* itself produced no majority opinion, it has been understood as establishing "the proposition that a State cannot arbitrarily cut off appeal rights for indigents while leaving open avenues of appeal for more affluent persons." *Ross v. Moffitt*, 417 U.S. 600, 607 (1974). In *Griffin*, the Court held that, where a State affords an appeal as of right from a criminal conviction, the State either must

provide a free transcript of the relevant proceedings to a defendant who is unable to afford one or must provide some "other means of affording adequate and effective appellate review to indigent defendants." 351 U.S. at 19–20 (plurality) (noting that Justice Frankfurter, who otherwise concurred only in the judgment, joined in the above-quoted disposition). In reaching this conclusion, *Griffin* drew on both equal protection and due process principles. *Id*. at 18 (plurality); *see also M.L.B. v. S.L.J.*, 519 U.S. 102, 120 (1996); *Ross*, 417 U.S. at 608–09.

The "*Griffin* principle" prohibiting certain wealth-based distinctions in access to justice has not been limited to criminal cases involving imprisonment, but instead has been construed as establishing a "flat prohibition against making access to appellate processes from even the State's most inferior courts depend upon the convicted defendant's ability to pay." *M.L.B.*, 519 U.S. at 112 (simplified); *see also Mayer v. City of Chicago*, 404 U.S. 189, 196–97 (1971) (holding that *Griffin*'s holding applies to appeal of a conviction for petty offenses involving only the imposition of a fine). Moreover, *Griffin*'s principles have also been extended to a "narrow category of *civil* cases in which the State must provide access to its judicial processes without regard to a party's ability to pay court fees." *M.L.B.*, 519 U.S. at 113 (emphasis added); *see also id*. at 124 (holding that "decrees forever terminating parental rights" fall within the "category of cases in which the State may not bolt the door to equal justice" by requiring advance payment of record-preparation fees before an appeal may be taken).

But the unifying feature in this entire line of decisions, "commencing with *Griffin* and running through *Mayer*" and *M.L.B.*, is that they all "concern[ed] access to judicial processes." *M.L.B.*, 519 U.S. at 120. Indeed, *M.L.B.* expressly characterized *Griffin*'s principle about "*access to*

judicial processes in cases criminal or 'quasi criminal in nature'" as being an *exception* from the "general rule" that "fee requirements" and other monetary exactions "ordinarily are examined only for rationality." *Id*. at 123–24 (citation omitted) (emphasis added). Nothing about the challenged actions here—*viz*., the suspension of Mendoza's driver's license for failure to pay traffic-related amounts due to the State—implicates "access to judicial processes," *id*. at 120, and the *Griffin* line of cases is therefore inapplicable, *id*. at 124. *M.L.B.* itself further underscores the point by expressly distinguishing fees governing access to judicial processes from fees for other purposes, such as "for a driver's license." *Id*. at 124 n.14 (quoting *Harper v. Virginia State Bd. of Elections*, 383 U.S. 663, 668 (1966)). The latter, *M.L.B.* explained, "are examined only for rationality." *Id*. at 123.

2

The distinct but related line of cases culminating in the Supreme Court's decision in *Bearden* is likewise inapposite here.

In *Williams v. Illinois*, 399 U.S. 235 (1970), the Court relied on *Griffin*'s broader teaching about reducing "disparate treatment of indigents in the criminal process" in holding that "the Equal Protection Clause of the Fourteenth Amendment requires that the statutory ceiling placed on imprisonment for any substantive offense be the same for all defendants irrespective of their economic status." *Id*. at 241, 244. Illinois violated this rule, the Court held, by extending Williams' sentence of imprisonment beyond the statutory maximum term, based on his "involuntary nonpayment" of the fine and court costs that had also been imposed as part of his original sentence. *Id*. at 240–41.

Williams was applied and extended in *Tate v. Short*, 401

U.S. 395 (1971), in which the defendant Tate—like Mendoza here—had accumulated unpaid fines for petty traffic offenses. *Id*. at 396. After Tate was unable to pay the fines due to indigency, he was imprisoned under a statute and ordinance requiring him to work off the fines "at the rate of five dollars for each day" of imprisonment. *Id*. at 396–97. Because the offenses at issue were "punishable by fines only," *any* sentence of imprisonment based on the indigency-caused failure to pay the fines exceeded the maximum authorized term of imprisonment (*i.e.*, no imprisonment), thereby bringing Tate's case squarely within the rule of *Williams*. *Id*. at 397–98. More broadly, the Court held that "the Constitution prohibits the State from imposing a fine as a sentence and then automatically converting it into a jail term solely because the defendant is indigent and cannot forthwith pay the fine in full." *Id*. at 398 (citation omitted). The Court emphasized that this holding did not preclude the State from invoking "other alternatives to which the State may constitutionally resort to serve its concededly valid interest in enforcing payment of fines." *Id*. at 399.

Thereafter, in *Bearden*, the Court described the "rule of *Williams* and *Tate*" to be "that the State cannot impose a fine as a sentence and then automatically convert it into a jail term solely because the defendant is indigent and cannot forthwith pay the fine in full." 461 U.S. at 667 (simplified). Extending that rule to the distinct context of a sentence of probation with a condition to pay a fine, the *Bearden* Court held that a court could not "automatically revok[e] probation because [the defendant] could not pay his fine, without determining that [he] had not made sufficient bona fide efforts to pay or that adequate alternative forms of punishment did not exist." *Id*. at 662.

Although *Williams* and *Tate* had both relied explicitly on the Equal Protection Clause, *Bearden* concluded that the

relevant analysis reflected both due process and equal protection principles. *Id*. at 665–66 & n.8. That analysis "requires a careful inquiry into such factors as the nature of the individual interest affected, the extent to which it is affected, the rationality of the connection between legislative means and purpose, and the existence of alternative means for effectuating the purpose." *Id*. at 666–67 (simplified). Because (1) the initial "decision to place the defendant on probation . . . reflects a determination by the sentencing court that the State's penological interests do not require imprisonment"; (2) the State's interests in enforcing the pay-a-fine condition of probation can be satisfied by "revoking probation only for persons who have not made sufficient bona fide efforts to pay"; and (3) the State's interests with respect to those *unable* to pay "can often be served fully by alternative means," the Court held that, before revoking probation "for failure to pay a fine or restitution, a sentencing court must inquire into the reasons for the failure to pay." *Id*. at 670–72. The Court then explained how the sentencing court should proceed after making that inquiry:

> If the probationer could not pay despite sufficient bona fide efforts to acquire the resources to do so, the court must consider alternative measures of punishment other than imprisonment. Only if alternate measures are not adequate to meet the State's interests in punishment and deterrence may the court imprison a probationer who has made sufficient bona fide efforts to pay. To do otherwise would deprive the probationer of his conditional freedom simply because, through no fault of his own, he cannot pay the fine. Such a deprivation would be contrary to the fundamental fairness required by the Fourteenth Amendment.

Id. at 672–73.

In stating that a court could revoke probation and impose imprisonment only after determining that no "alternative measures of punishment" would be "adequate to meet the State's interests in punishment and deterrence," the Court expressly reiterated that the "'State is *not* powerless to enforce judgments against those financially unable to pay a fine.'" *Id*. at 672 (citation omitted and emphasis added). In describing the alternative punishments that could be considered, and that could be imposed even on an indigent unable to pay the fine, the Court stated that the "sentencing court could extend the time for making payments, or reduce the fine, or direct that the probationer perform some form of labor or public service in lieu of the fine." *Id*.

As this overview makes clear, this entire line of cases, from *Williams* to *Bearden*, addresses only the limitations on imposing subsequent or additional *incarceration* on those unable to pay their fines. *See Jones v. Governor of Florida*, 975 F.3d 1016, 1032 (11th Cir. 2020) (en banc) ("The Supreme Court has never extended *Bearden* beyond the context of poverty-based *imprisonment*.") (emphasis in original). Nonetheless, Mendoza asserts (and the dissent agrees) that *Bearden* establishes a general, heightened-scrutiny balancing test, forbidding imposition of *any* substantial burden on those unable to pay their fines, unless the imposition sufficiently furthers the State's interests in punishment and deterrence in a way that cannot be as effectively achieved with other measures and outweighs the severity of the burden on the indigent defendant. We reject this contention, which cannot be squared with *Bearden* or with other relevant Supreme Court precedent.

In stating that alternatives *other than incarceration* must first be considered—and may be imposed—before an

indigent unable to pay his or her fine may be *incarcerated*, *Bearden*'s holding is affirmatively inconsistent with the notion that a similar analysis also applies to such other alternatives. On the contrary, the Court has repeatedly reaffirmed that the State does not have to accept an outcome in which the defendant escapes punishment because he or she is unable to pay a fine and that the State remains "free to choose" from a range of less intrusive alternatives to incarceration in order to further its interests in punishment and deterrence. *See Williams*, 399 U.S. at 244–45 & n.21 (suggesting a variety of alternatives the State could choose, including "impos[ing] a parole requirement on an indigent that he do specified work during the day to satisfy the fine," and noting that, "of course, [the State] may devise new" alternatives); *see also Bearden*, 461 U.S. at 672 (holding that the State may enforce judgments against indigents by even such intrusive means as compelled "labor or public service"); *Tate*, 401 U.S. at 399 (expressly rejecting, as "inverse discrimination," a situation in which "an indigent [can] avoid both the fine and imprisonment for nonpayment whereas other defendants must always suffer one or the other") (citation omitted). Nothing in *Bearden* suggests that, in choosing *among* those alternatives to imprisonment, the State must choose the least restrictive alternative. The Court simply held that the uniquely severe option of imprisonment may not be imposed in such a situation except as a last resort.

More broadly, Mendoza's argument that *Bearden* establishes a more general heightened-scrutiny test for wealth-based classifications is difficult to square with the Supreme Court's or our caselaw. Mendoza has not identified any precedent in which the Supreme Court or this court has applied *Bearden*'s heightened scrutiny outside the context of imprisonment or detention based on indigency. Both of the Ninth Circuit cases she cites applied *Bearden* only in the context of physical custody by the government. *See*, *e.g.*,

Hernandez v. Sessions, 872 F.3d 976, 991–92 (9th Cir. 2017) (immigration detention); *MacFarlane v. Walter*, 179 F.3d 1131, 1139 (9th Cir. 1999) (good-time credits), *vacated as moot sub nom. Lehman v. MacFarlane*, 529 U.S. 1106 (2000). Outside of that distinctive context, and a few others,[6] the Supreme Court and this court have repeatedly reaffirmed the general rule that wealth discrimination alone does not trigger heightened scrutiny. *See Harris v. McRae*, 448 U.S. 297, 323 (1980) (stating that "this Court has held repeatedly that poverty, standing alone, is not a suspect classification"); *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 29 (1973) (noting that the Court had never held that "wealth discrimination alone provides an adequate basis for invoking strict scrutiny"); *NAACP, L.A. Branch v. Jones*, 131 F.3d 1317, 1321 (9th Cir. 1997) ("Wealth is not a suspect category in Equal Protection jurisprudence.").

Mendoza argues that we should extend the principles of *Bearden* to the driver's license context, because driving plays a critical role in a person's "ability to work, access healthcare, obtain food, and care for their families." We perceive no basis for extending *Bearden* in the way that Mendoza suggests. As noted earlier, *see supra* at 14, the Supreme Court has stated that wealth-based challenges to driver's license fees are subject only to rational-basis scrutiny. *See M.L.B.*, 519 U.S. at 123–24 & n.14 (citing *Harper*, 383 U.S. at 668). Moreover, *Bearden* states that the imposition of compelled "labor or public service" is a permissible alternative means of enforcing a fine that does

[6] In addition to the access-to-judicial-processes context discussed above, heightened scrutiny has been applied to certain wealth-based restrictions on participation in the political process. *See M.L.B.*, 519 U.S. at 124 & n.14 (citing *Harper*, 383 U.S. at 666); *O'Connor v. Nevada*, 27 F.3d 357, 360 (9th Cir. 1994) (noting that certain ballot access restrictions are subject to heightened scrutiny).

not trigger the same sort of heightened scrutiny that incarceration does, 461 U.S. at 672; *see also Williams*, 399 U.S. at 244 n.21 (similar), and we are hard-pressed to say that deprivation of a driver's license is a *more* severe deprivation of liberty than compulsory labor.

Accordingly, we agree with the Sixth Circuit that *Bearden* does not apply in the context of a suspension of a driver's license for non-payment of a fine and that the applicable standard of review is instead the rational basis test. *See Fowler*, 924 F.3d at 261. Because Mendoza's first cause of action is thus governed by the rational basis standard, it is duplicative of her third cause of action, which specifically alleges that Defendants' suspension of her license for non-payment of traffic fines rests on a wealth distinction that does not survive rational basis review. We therefore turn to that claim.

B

We conclude that Mendoza failed to plead facts establishing that her suspension lacks a rational basis, and the district court therefore correctly dismissed her third cause of action.

A law will be upheld under rational basis review "if there is any reasonably conceivable state of facts that could provide a rational basis for the classification." *Franceschi v. Yee*, 887 F.3d 927, 940 (9th Cir. 2018) (citation omitted). Here, suspension of Mendoza's license for failure to pay her traffic fines is rationally related to a legitimate government interest, even if her failure to pay is a result of indigency. As the Sixth Circuit explained in *Fowler*, the State "has a general interest in compliance with traffic laws," and by ensuring that Mendoza does not avoid legal consequences for her underlying traffic offenses, the State's suspension of

her license furthers its interest in deterring "would-be violators." 924 F.3d at 262. Even setting aside Mendoza's recursive conviction for driving with a suspended license, in which the suspension resulted from her prior inability to pay traffic fines, Mendoza also has underlying traffic offenses that include speeding and a misdemeanor arising from an accident. *See supra* at 5–6. As explained earlier, *see supra* at 16–17, even under *Bearden*, the State does not have to accept that, due to her poverty, Mendoza would escape punishment for her traffic violations. *Bearden*, 461 U.S. at 669 ("A defendant's poverty in no way immunizes him from punishment."). Suspending her license, even if harsh or unwise, is rationally related to the State's interest in punishing and deterring traffic violations.

C

Mendoza's second cause of action alleges that Defendants violated the Equal Protection Clause by suspending her driver's license for non-payment of her traffic debts while "not suspending the driver's licenses of *other* indigent judgment debtors" with non-traffic debt (emphasis added). The district court correctly dismissed this claim as well.

Mendoza contends that the State's distinction between traffic debt and non-traffic debt violates the equal protection principles set forth in *James v. Strange*, 407 U.S. 128 (1972). In *James*, the Supreme Court invalidated a Kansas statute that imposed a uniquely burdensome enforcement regime only on the collection of an indigent criminal defendant's debt to the State for the costs of legal representation provided during the defendant's prosecution. *Id*. at 135–42. In finding the statute unconstitutional, the Court emphasized the statute's elimination of almost all of the normal exemptions available to judgment debtors:

> This provision strips from indigent defendants the array of protective exemptions Kansas has erected for other civil judgment debtors, including restrictions on the amount of disposable earnings subject to garnishment, protection of the debtor from wage garnishment at times of severe personal or family sickness, and exemption from attachment and execution on a debtor's personal clothing, books, and tools of trade.

Id. at 135. Indeed, the Court noted that, "[f]or the head of a family, the exemptions afforded other judgment debtors"—and denied by the Kansas statute to debtors who owe reimbursement for state-provided legal representation—"become more extensive, and cover furnishings, food, fuel, clothing, means of transportation, pension funds, and even a family burial plot or crypt." *Id*. The Court concluded that, by imposing these uniquely "harsh conditions" only on the "class of debtors who were provided counsel" by the State "as required by the Constitution," the Kansas statute "violate[d] the rights of citizens to equal treatment under the law." *Id*. at 140–42.

Two years later, in *Fuller v. Oregon*, 417 U.S. 40 (1974), the Supreme Court distinguished *James* in upholding a very different Oregon statute concerning the recoupment of the costs of state-provided legal representation to criminal defendants. As described by the Court, the Oregon statute was "quite clearly directed only at those convicted defendants who are indigent at the time of the criminal proceedings against them but who subsequently gain the ability to pay the expenses of legal representation." *Id*. at 46. Rejecting the petitioner's argument that the Oregon statute was unconstitutional under *James*, the Court held that the "offending aspect of the Kansas statute" in that case was

its "elimination of the exemptions normally available to judgment debtors." *Id*. at 47. Because the Oregon statute in *Fuller* "suffer[ed] from no such infirmity," the Court held that it was "wholly free of the kind of discrimination that was held in *James v. Strange* to violate the Equal Protection Clause." *Id*. at 47–48.

Here, the challenged Oregon statutes address only the suspension of a driver's license in the event of an unpaid traffic fine. They do not say anything about what exemptions are or are not available under Oregon law as a defense to the actual seizure of property in satisfaction of the traffic debt. *Cf*. OR. REV. STAT. § 18.345(1) (enumerating certain property that is exempt from the execution of judgments, including specified household goods). The Oregon statutes here thus lack the specific "offending aspect" of the Kansas statute invalidated in *James* and are "wholly free of the kind of discrimination" that led to the invalidation of that statute. *Fuller*, 417 U.S. at 47–48. Mendoza nevertheless argues that *James* should be extended to cover this case, because the suspension of her license for failure to pay traffic fines is a uniquely harsh and coercive measure that is inapplicable to other judgment debtors. But debt that results from criminal fines, even for infractions or other petty offenses, does not have to be treated, in all respects, the same as ordinary commercial debt, and nothing in the Supreme Court's narrow decision in *James* establishes the broader rule that Mendoza advocates. *See Fowler*, 924 F.3d at 263 (rejecting an identical argument on the grounds that "Supreme Court precedent does not require anything like exact parity between the State and private creditors in this regard").

D

Finally, in her fourth cause of action, Mendoza alleges

that Defendants violated her procedural due process rights by suspending her license without affording either a "pre-suspension hearing" or a "post-suspension hearing" concerning her ability to pay her traffic debt. This claim was also correctly dismissed.

The premise of Mendoza's argument is that, under the Federal Constitution, her inability to pay must *substantively* be considered by Defendants in making the decision to suspend her license. If that premise were correct, then Mendoza might have a substantial argument that she is entitled to adequate procedures for evaluating her ability to pay her fines. But her premise is incorrect: Mendoza has failed to establish any basis for concluding that the Constitution required Defendants to consider her inability to pay her traffic debt in deciding to suspend her license and to continue that suspension. As we have explained, even assuming that Mendoza cannot pay her traffic debt, Defendants' actions did not violate the Constitution. The procedural aspects of the Due Process Clause do not require that the State afford a process for evaluating a factor that, under the applicable substantive law, is not relevant to the ultimate decision at issue. *See Fowler*, 924 F.3d at 259 ("If Plaintiffs' indigency is not relevant to the state's underlying decision to suspend their licenses, then giving them a hearing—or any other procedural opportunity—where they can raise their indigency would be pointless.").

IV

For the foregoing reasons, the district court correctly dismissed Mendoza's complaint for failure to state a claim on which relief can be granted.

AFFIRMED.

BERZON, Circuit Judge, dissenting[1]:

I respectfully dissent. A state cannot punish indigent individuals solely on the basis of their poverty. *See Griffin v. Illinois*, 351 U.S. 12 (1956). And when a state sanctions scheme punishes individuals for failure to pay fines by depriving them of an important liberty or property interest regardless of ability to pay, "careful inquiry" into the connection between the impact of the sanction and the governmental interests served by it is required. *Bearden v. Georgia*, 461 U.S. 660, 666-67 (1983). The majority today artificially limits *Bearden*'s application, holding that the *Griffin*/*Bearden* principle does not apply to a state-imposed, twenty-year deprivation of a long-recognized, protected interest in the continued possession of a driver's license, imposed when the driver cannot not afford to pay a traffic ticket. I cannot agree.

Moreover, even if *Bearden*'s heightened scrutiny inquiry is inapplicable, I would hold that Oregon's license suspension scheme is not rationally related to the state's interest in compliance with its traffic laws, and so violates the Fourteenth Amendment. Prolonged license suspensions are, if anything, counterproductive to that interest, undercutting an individual's ability to work and earn money to pay the very debt the court seeks to collect.

Oregon's license suspension scheme traps indigent individuals in a cycle of minor traffic offenses and mounting debt, based solely on their inability to pay a traffic ticket. Such a scheme is violative of the Fourteenth Amendment.

[1] I agree with the majority that we have jurisdiction over this appeal, and that the Plaintiffs' Equal Protection claims fail.

I.

The Supreme Court has long held that the continued possession of a driver's license is an "important" and "protectible property interest." *Bell v. Burson*, 402 U.S. 535, 539 (1971); *Mackey v. Montrym*, 443 U.S. 1, 10 (1979). Forty years ago, the Court recognized that driving is a "a virtual necessity for most Americans." *Wooley v. Maynard*, 430 U.S. 705, 715 (1977). "Automobile travel is a basic, pervasive, and often necessary mode of transportation to and from one's home, workplace, and leisure activities." *Delaware v. Prouse*, 440 U.S. 648, 662 (1979). Once a license is issued, its possession "may become essential in the pursuit of a livelihood." *Bell*, 402 U.S. at 539.

Today, 84 percent of Americans, and 80 percent of Oregonians, drive to work. U.S. Census Bureau, *American Community Survey: Means of Transportation to Work by Place of Work—State and County Level (Table B08130)* (2020), https://data.census.gov/cedsci/table?q=b08130&tid=ACSDT5Y2020.B08130&moe=false. And 83 percent of *all trips* Americans make are made in a car, including trips for work, family affairs, shopping, recreation, and participation in other social and community activities. Fed. Highway Admin., U.S. Dep't Transp., *2017 National Household Travel Survey, Travel Profile: United States* 2 (2017), https://nhts.ornl.gov/assets/2017_USTravelProfile.pdf. In many areas of the country, including most of Oregon, driving is the only option for travel because public transportation is not a viable alternative. Only 4 percent of Oregonians use public transportation to commute. U.S. Census Bureau, *supra*.

Despite the recognized importance of a driver's continued possession of her license, Oregon's challenged

license suspension scheme permits the state to deprive an indigent driver of her license for up to two decades, solely because the driver "fail[ed] or refuse[d] to pay a fine imposed by the court" for a traffic violation. Or. Rev. Stat. §§ 809.210(1)-(1)(a) (2019), 809.416(2)(b).[2] The statutes did not require an inquiry into the driver's ability to pay before a suspension was imposed, and Plaintiff Mendoza alleges that in most Oregon courts, notices of nonpayment and suspension were issued automatically. Though a driver can request administrative review of her suspension, indigency is not a defense to suspension. *Id.* §§ 809.415(4)(b), 809.440. The only way to lift the suspension is to show proof that the driver is "making payments, has paid the fine or has obeyed the order of the court." *Id.* § 809.416(2) (2019).[3] Courts may offer payment plans, but the statutes do not require it. *Id.* § 809.210(4)(a). Plaintiff Mendoza alleges that even if payment plans are offered, minimum monthly payment amounts are based on the total amount of debt owed, rather than the debtor's financial circumstances, and often still exceed the debtor's ability to pay. Thus, because Oregon's license suspension scheme makes no inquiry into or allowances for a driver's ability to pay, the state punishes indigent drivers much more

[2] As the majority states, Section 809.210 was repealed, effective October 1, 2020. However, the statute continues to apply to Mendoza's existing traffic violations.

[3] A court may also reinstate an individual's suspended license if the person "[h]as enrolled in a preapprenticeship program . . . or is a registered apprentice." Or. Rev. Stat. § 809.416(2)(a)(B). Preapprenticeship programs and apprenticeships relate to skilled trades narrowly defined by the State Apprenticeship and Training Council. *See id.* §§ 660.010, 660.020. The operative complaint does not make any allegations as to the availability of such opportunities or their effect on Mendoza's license suspensions, nor do the parties address them in their briefs. Thus, I do not consider this exception in the constitutional analysis here.

severely than drivers who can afford to pay the fines for the same traffic violations. If the driver cannot pay, she must wait *twenty years* "from the date the traffic offense occurred" before the suspension is lifted.[4] *Id.* § 809.416(2)(b).

Such a prolonged driver's license suspension carries grave consequences, jeopardizing a driver's access to fundamental economic activities and features of civic life. "Losing one's driver's license is more serious for some individuals than a brief stay in jail." *Argersinger v. Hamlin*, 407 U.S. 25, 48 (1972) (Powell, J., concurring). The loss of a license can mean the loss of the ability to access critical resources, including employment and educational opportunities, healthcare, and housing in safe or desirable but remotely located neighborhoods. Indeed, a license suspension can rob someone of the independence to perform everyday tasks as simple as grocery shopping, as the ability to get to and from a food store on foot carrying heavy grocery bags is not practical. These persistent limitations can have wide-ranging effects on an individual's financial, physical, social, and emotional wellbeing.

The negative impacts of license suspensions disproportionately affect low-income individuals and people of color, who are also more likely to be fined for traffic violations.[5] As Amici Free to Drive Coalition state,

[4] Oregon's statutory scheme allows individuals to apply for a "hardship permit" to retain the ability to drive while their licenses are suspended if they can demonstrate they have a qualified need to do so. *See* Or. Rev. Stat. § 807.240(3). In the briefing in this matter, the parties dispute whether those permits are sufficient to mitigate constitutional deficiencies of the suspension scheme. As discussed below, *see infra* p. 42 n.10, that question cannot be resolved based on the current record.

[5] *See, e.g.*, Kate Willson, *Driving While Brown*, InvestigateWest, Feb. 16, 2017, https://www.invw.org/2017/02/16/driving-while-brown/

empirical data across five different states demonstrate that license suspensions are highly correlated with poverty and unemployment rates. Many low-income individuals whose licenses are suspended report losing jobs as a direct consequence of losing their license or losing income due to increased travel times. Am. Ass'n Motor Vehicle Adm'rs, *Reducing Suspended Drivers and Alternative Reinstatement: Best Practices* 6-7 (3d ed. May 2021).

Mendoza's experience is illustrative of the magnitude of the hardships imposed by Oregon's license suspension scheme. At the time of the operative complaint, Mendoza was a 28-year-old, unemployed mother of three young children. Her license was first suspended in 2010 when she could not afford to pay a $400 fine for a speeding ticket, and her license has been suspended almost continuously since then. During this time, Mendoza has struggled to find a job that does not require a valid driver's license, or a job close enough to her home so that she does not have to drive to commute. Her license suspension has thus jeopardized her ability to secure employment, travel to work, and earn money to pay the very debt the court seeks. Moreover, without an alternate, reliable method of transport, Mendoza has continued to drive to take her children to medical appointments and to buy groceries, risking further traffic violations. She has subsequently been cited several times for driving on a suspended license, further increasing her traffic debt and diminishing her ability to pay it off.

(Latino residents in Oregon cited at twice the rate of white residents for driving on a suspended license); *Our Opinion? What Happened to Disparity Data?*, Portland Tribune, Dec. 21, 2017, https://pamplinmedia.com/pt/10-opinion/381885-269623-our-opinion-what-happened-to-disparity-data (African American residents of Multnomah County, Oregon, cited at three times the rate of white residents for failing to use vehicle lights for higher fines).

II.

With the consequences of lengthy driver's license suspensions in mind, I turn now to the majority's opinion. "*Griffin*'s principle," as *Bearden* emphasized, is "equal justice," 461 U.S. at 664, "for poor and rich, weak and powerful alike," *Griffin*, 351 U.S. at 16. After examining the line of cases applying *Griffin*, the majority concludes that *Griffin*'s principle, and *Bearden*'s application of it, is limited to the contexts of "(1) granting access to judicial procedures; and (2) converting a non-carceral sentence into a term of imprisonment." Majority Op. 12.

I cannot agree. The facts of *Griffin* and *Bearden* concerned court access, *Griffin*, 351 U.S. at 14-15, and incarceration for failure to pay a fine, *Bearden*, 461 U.S. at 662-63, but the principles enunciated in those cases were not confined to those circumstances. Rather, the core *Griffin*/*Bearden* holding is that the state may not "*punish*[] a person for his poverty." *Bearden*, 461 U.S. at 671 (emphasis added); *see also Hernandez v. Sessions*, 872 F.3d 976, 981 (9th Cir. 2017). That principle is at stake here in spades. Oregon's license suspension scheme turns a traffic ticket into a twenty-year license suspension solely on the basis of an individual's ability to pay a fine. Where state statutes or regulations impose a significant sanction "wholly contingent on one's ability to pay," that sanction merits closer inspection under *Griffin/Bearden*. *M.L.B. v. S.L.J.*, 519 U.S. 102, 127 (1996).

A closer consideration of *Bearden* confirms this understanding of its reach. *Bearden* applied "*Griffin*'s principle of 'equal justice'" to consider whether the state violated the Fourteenth Amendment when it "treated the petitioner differently from a person who did not fail to pay the imposed fine," by revoking the indigent petitioner's

probation and imposing imprisonment for his failure to pay a fine and restitution. 461 U.S. at 663-64, 666. Drawing on both equal protection and due process principles, *id.* at 665–66 & n.8, *Bearden* held that the analysis "requires a careful inquiry" into factors such as "the nature of the individual interest affected, the extent to which it is affected, the rationality of the connection between legislative means and purpose, [and] the existence of alternative means for effectuating the purpose," *id.* at 666–67 (quoting *Williams v. Illinois*, 399 U.S. 235, 260 (Harlan, J., concurring)). Applying this framework, *Bearden* concluded that, in probation revocation proceedings regarding a criminal defendant's failure to pay a fine or restitution, the court must first "inquire into the reasons for [the defendant's] failure to pay." *Id.* at 672. And if the defendant cannot pay "despite sufficient bona fide efforts to acquire the resources to do so, the court must consider alternate measures of punishment" before imposing a carceral sentence. *Id.*

The majority asserts that *Bearden* "addresses only the limitations on imposing subsequent or additional *incarceration* on those unable to pay their fines." Majority Op. at 17. Although *Bearden*'s facts involved probation revocation proceedings, no language in the opinion limits its rationale to those specific facts. To the contrary, *Bearden*'s "careful inquiry" requirement expressly contemplates an evaluation of the "nature of the individual interest affected." 461 U.S. at 666–67. That broad language does not constrain the inquiry to a single liberty interest, avoiding incarceration. Instead, the "careful inquiry" standard encompasses consideration of *any* individual liberty or property interest that may be jeopardized by a state-imposed punitive sanction. To be sure, imprisonment is the paradigmatic deprivation of a liberty interest. But to the extent that the "nature" and strength of various individual interests differ,

those differences are accounted for in the course of applying the *Bearden* test. They do not bar its applicability.

The majority also asserts that *Bearden*'s "careful inquiry" test is "affirmatively inconsistent" with an application to punishments other than incarceration, because the State must "remain[] 'free to choose' from a range" of alternatives to incarceration that would achieve its penological interests. *See* Majority Op. 18 (quoting *Williams*, 399 U.S. at 244–45 & n.21). There is no inconsistency. *Bearden*'s requirement that the state conduct a careful inquiry into the constitutionality of a punishment scheme that imposes an additional, significant punishment on a person solely based on that person's non-payment of a fine is entirely consistent with the state's authority to consider and impose an alternative punishment on indigent individuals to achieve its penological goals. There is daylight between forbidding a punishment that amounts to a significant deprivation of a liberty or property interest because of a faultless failure to pay and forbidding any punishment at all. The majority notes, "[n]othing in *Bearden* suggests that, in choosing *among* those alternatives to imprisonment, the State must choose the least restrictive alternative." Majority Op. 18. True, but beside the point. The state need not choose the least restrictive alternative. But, balancing the individual and state interests at stake, if an adequate alternative to a serious deprivation of an important liberty or property interest exists and would satisfy the state's underlying interests, the state must choose the alternative.

The majority suggests that *Bearden* cannot apply to Oregon's license suspension scheme because, on the majority's reading, *Bearden* expressly approved of alternative sanctions to incarceration—"compelled 'labor or public service'"—that are more severe than suspending an

individual's ability to drive legally. Majority Op. 19–20 (quoting *Bearden*, 461 U.S. at 672). The majority reads too much into this passing comment. In its careful inquiry analysis, *Bearden* noted that the state's "interest in punishment and deterrence" often can be "served fully by alternative means" to imprisonment, including by reducing the fine, extending the payment deadline, or directing the individual to "perform some form of labor or public service in lieu of the fine." 461 U.S. at 671–72. *Bearden*'s brief contemplation of "labor or public service" as a hypothetical adequate alternative to imprisonment does not mandate the conclusion that any form of labor or service would be acceptable in any circumstance, nor that the long-term deprivation of a driver's license constitutes a lesser deprivation of an individual interest than a short-term community service requirement. And it is not at all obvious why that should be so. For example, a twenty-year license suspension will surely have a far more serious impact on most people's lives than an order that the person perform a few hours, or even weeks, of community service.

None of the other cases discussed by the majority limits *Griffin* or *Bearden*'s applicability here. *M.L.B.* considered *Griffin* and its progeny in the context of an indigent petitioner's access to judicial transcripts in a civil parental rights termination proceeding. 519 U.S. at 127. Applying *Bearden*'s approach, *M.L.B.* weighed the petitioner's interest at stake, "forced dissolution of [] parental rights," against the state's "legitimate interest in offsetting the costs of its court system." *Id.* at 121–122. *M.L.B.* concluded that the state's fee for transcripts was unlawful under *Griffin* because it rendered a "*disproportionate* [] impact" on indigent individuals "wholly contingent on [their] ability to pay." *Id.* at 127. In so holding, *M.L.B.* noted that, though "fee requirements ordinarily are examined only for rationality," parental status termination proceedings involved a "unique

kind of deprivation" involving the "awesome authority of the State." *Id.* at 123, 127–28 (quoting *Lassiter v. Dep't of Social Servs. Of Durham Cty.*, 452 U.S. 18, 27 (1981)).

That same reasoning applies here. Regardless of what *M.L.B.* may imply about the applicability of *Griffin*/*Bearden* in other civil fee or fine contexts, at the least, *Bearden*'s careful inquiry test must also apply to the evaluation of a quasi-criminal statutory scheme that would subject an indigent person to a twenty-year license suspension solely based on her indigency.[6] Oregon's license suspension scheme works a "unique kind of deprivation" on an individual's protected interests in her rights to travel and to pursue a livelihood. *See supra* Part I.

A straightforward application of *Bearden*'s reasoning requires that when the state seeks to impose a significant punishment solely based on an individual's failure to pay a fine, the strength of the individual's interest at stake must first be balanced against "such factors as" the state's purpose, the "rationality of the connection" between that purpose and the sanction, and the "existence of alternative means for effectuating the purpose." *Bearden*, 461 U.S. at 666-67 (Harlan, J., concurring) (quoting *Williams v. Illinois*, 399 U.S. 235, 260 (1970)). I therefore cannot accept the majority's unjustifiably restrictive interpretation of *Bearden* and would, as in *Bearden*, conduct a "careful inquiry" into the constitutionality of Oregon's license suspension scheme.

[6] Traffic violations are punishable by fines as delineated in Title 14 of the Oregon Revised Statutes, "Procedure in Criminal Matters Generally." *See* Or. Rev. Stat. §§ 153.019(1), 801.557.

III.

After conducting that inquiry, I would hold that Oregon's challenged license suspension scheme violates the Fourteenth Amendment.

Bearden established four factors to consider when reviewing a sanction imposed for an indigent person's failure to pay a fine: (1) "the nature of the individual interest affected"; (2) the extent to which that interest is affected; (3) "the rationality of the connection between the legislative means and purpose"; and (4) whether alternative means exist for effectuating that purpose. 461 U.S. at 666-67 (quoting *Williams*, 399 U.S. at 260 (Harlan, J., concurring)). "[W]e inspect the character and intensity of the individual interest at stake, on the one hand, and the State's justification for its exaction, on the other." *M.L.B.*, 519 U.S. at 120–21.

As to the first and second factors, Oregon's license suspension scheme directly jeopardizes Mendoza's critical interest in the continued possession of her driver's license. The scheme could deprive her of her driver's license for two decades, implicating twenty years of hindered access to her rights to travel, to pursue a livelihood, and to conduct such daily life activities as child care, access to medical care, and shopping for necessities. *See supra* Part I.

As to the third factor, the majority asserts that the state's interest at stake is a "general interest in compliance with traffic laws." Majority Op. 20–21 (quoting *Fowler v. Benson*, 924 F.3d 247, 262 (6th Cir. 2019)). It then cursorily concludes that Oregon's license suspension scheme is rationally connected to that interest, because it ensures that indigent traffic offenders like Mendoza do not avoid all legal consequences for their traffic violations. *Id.* at 25–26. To be sure, the state has a legitimate interest in enforcing

compliance with its traffic laws and ensuring that its deterrent measures are effective. But the majority is too quick to conclude that the license suspension scheme is rationally connected to that interest.[7]

The suspension of an indigent driver's license bears no rational connection to compliance with traffic laws or to public safety. The driver's failure to pay provides no information about her responsiveness to other deterrents or punishment. Unlike the willful non-payment of a fine by a person who is able to pay, an indigent driver's assumed flouting of the fine is, in fact, a demonstration of a financial limitation rather than of a desire to escape punishment or to break the law. Indigent individuals do not *choose* not to pay; they *cannot* pay. "This distinction, based on the reasons for non-payment, is of critical importance here." *Bearden*, 461 U.S. at 668. If an indigent driver "has made all reasonable efforts to pay the fine . . . yet cannot do so through no fault of [her] own, it is fundamentally unfair" to suspend her license. *Id.* at 668–69.

A prolonged license suspension is also demonstrably unconnected to the state's interest in deterring the underlying traffic violations. Oregon's Vehicle Code reflects a determination by the state that its penological interests as to the types of traffic violations at issue here are satisfied by the imposition of relatively modest fines, rather than automatic license suspensions. *See* Or. Rev. Stat. §§ 811.109(1)-(3), 153.019(1), 801.557. Yet, the state's license suspension

[7] It bears noting that the state has asserted no independent interest in collecting the fines. The fines are a punishment for violations of traffic laws; they are not a tax on traffic law violations. So, the connection that must be shown under the third *Bearden* factor is to deterring traffic violations, not to ensuring that fines are paid. In any case, as discussed *infra* pp. 37–40, Oregon's license suspension scheme neither deters traffic violations nor increases the rate of fine collection.

scheme imposes a possible *twenty-year* license suspension on individuals who cannot pay the fine—more stringent by several orders of magnitude than the relatively minimal fine imposed on those who can and do pay.

For example, Mendoza's license was first suspended in 2010, when she was unable to pay a $400 fine for a speeding ticket. To make the deterrent influence of that $400 effective, the state deprived her of her driver's license for five years. Only after five years of seeking employment and saving money was Mendoza finally able to pay off her fine; under the license suspension statutes, that deprivation could have lasted up to two decades. By comparison, the suspensions imposed for driving while intoxicated only range from ninety days to three years. *See* Or. Rev. Stat. § 813.420.[8] These comparisons make it apparent that the lengthy license suspension is for failure to pay the fine despite Mendoza's inability to do so, and that it bears no connection to the underlying traffic violation.

Because the license suspension is not commensurate with the fine it seeks to enforce, or with the underlying traffic violation, it is not effective either. In fact, Oregon's license suspension scheme *undermines* the state's interest in compliance with traffic laws. Studies have shown that license suspensions do not improve the rate at which people pay fines. *See* Andrea M. Marsh, Nat'l Ctr. for State Cts., *Rethinking Drivers' License Suspensions for Nonpayment of Fines and Fees* 26 (2017), http://ncsc.contentdm.oclc.org/cdm/ref/collection/accessfair/id/787. To the contrary, *eliminating* license suspensions can

[8] Under certain aggravating circumstances, such as if the driver was previously convicted of driving while intoxicated within the past five years, the period of suspension for driving while intoxicated is increased. *See* Or. Rev. Stat. § 813.430.

improve payment rates. *See, e.g.*, Judicial Council of California, *Report on the Statewide Collection of Delinquent Court-Ordered Debt for 2017–18* at 2 (2018), https://www.courts.ca.gov/documents/lr-2018-statewide-court-ordered-debt-2017-18-pc1463_010.pdf. The reason is obvious. The loss of a driver's license jeopardizes an individual's ability to secure employment, travel to work, and earn money to pay the very debt the state seeks to collect. The longer the suspension, the greater the financial cost may be to the driver, further lowering the likelihood that the driver will be able to pay any traffic fine.

In addition, license suspensions lead to more traffic offenses. Three-quarters of individuals with suspended licenses continue to drive unlawfully without a license, often because they have no other practical choice. *Marsh*, *supra*, at 22. License suspensions thus increase the likelihood that an individual will commit another traffic violation by driving on a suspended license. Moreover, the increased frequency of such minor traffic violations consumes police resources that could be more effectively spent elsewhere. These violations present a minimal threat to public safety, as the reason for the suspension was not the seriousness of the traffic violation—demonstrating a propensity to drive dangerously—but the inability to pay the fine. Individuals who *can* pay the fine may continue driving, confirming that the underlying traffic violation is not correlated with a concern that the perpetrator is a threat to public safety. But in 2017 alone, Washington state police were forced to spend an estimated 31,584 hours addressing license suspensions for such non-driving offenses. Am. Ass'n Motor Vehicle Adm'rs, *supra*, at 17. The administrative and policing burden created by license suspensions for failure to pay fines thus hampers, not furthers, the state's interest in enforcing compliance with traffic laws and promoting public safety.

During the five years Mendoza worked to pay off her $400 fine, she continued to drive. Unsurprisingly, she was cited for driving with a suspended license in 2013, leading to the imposition of an additional $2,020.40 in fines and fees. As a result, though she finally regained her license in April 2015 after paying off her first fine, her license was promptly suspended again in July that same year. She was cited again in 2016 and 2017 for violations related to driving with a suspended license. By the time the operative complaint was filed, Mendoza's license had been cumulatively suspended for nearly ten years, and she owed $11,282.77 to three different municipal courts—almost thirty times her original fine.[9] Rather than bolstering the deterrent effect of traffic fines, Oregon's license suspension scheme traps indigent individuals in a recursive cycle of minor traffic offenses and mounting debt. As a result, the license suspension scheme magnifies the length of the license deprivation imposed on an indigent individual far beyond any punishment rationally related to the original, underlying traffic violation.

Prolonged license suspensions thus not only harm the indigent individuals who are punished for their inability to pay but are counterproductive to the state's asserted interests. Suspensions decrease the likelihood that an individual will be able to pay her fines; increase the likelihood of subsequent violations for driving on a suspended license; and expand the state's law enforcement burden.

The irrationality of the license suspension scheme is further illuminated by consideration of the fourth *Bearden*

[9] Part of Mendoza's current traffic debt stems from her failure to appear in 2016 at an arraignment for a traffic case involving a car accident with property damage only. She is on a payment plan for that debt but cannot afford to pay the $100 monthly payment while she is unemployed.

factor: Clearly sufficient, less punitive alternatives exist to an automatic license suspension that lasts twenty years or until the driver is able to pay. For example, the state could "extend the time for making payments[] or reduce the fine." *Bearden*, 461 U.S. at 672. The operative complaint alleges that some courts do provide payment plans, but those plans are ineffective because they do not account for the debtor's ability to pay. Most obviously, an alternative sanction would be to reduce the automatic license suspension period from twenty years to a period commensurate with the small burden on those able to pay their fines—which would probably be days or weeks, not years, and certainly not decades. Ascertaining the debtor's financial circumstances before imposing a license suspension would allow a court to appropriately tailor the sanction to the debtor's financial limitations, while also allowing the court to account for any willfulness or delinquency.

The state sanction at issue in *Bearden* presented analogous constitutional deficiencies. As discussed, the state imposed an automatic probation revocation for a criminal defendant's failure to pay a fine and restitution, without inquiry into the reasons why the defendant failed to do so. *See id.* at 662–64. Acknowledging that the state had a legitimate interest in "punishment and deterrence," *Bearden* held that the automatic probation revocation was impermissible because "a probationer who has made sufficient bona fide efforts to pay his fine and restitution . . . has demonstrated a willingness to pay his debt to society and an ability to confirm his conduct to social norms." *Id.* at 670–71.

The same reasoning applies here. Oregon's license suspension scheme impermissibly imposes vastly disproportionately severe consequences on indigent drivers, not for the underlying traffic violation but for their *inability*

to pay fines. I would hold that the state may not do so without first inquiring into the reasons for a traffic debtor's failure to pay and, where indigency is the reason, providing for alternative measures, such as those suggested, for punishing the traffic violation.

IV.

Ultimately, we need not determine whether *Bearden*'s "careful inquiry" test imposes a heightened review standard to resolve this case. Under rational basis review, "legislation is presumed to be valid and will be sustained if the classification drawn by the statute is rationally related to a legitimate state interest." *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 440 (1985). *Bearden*'s "careful inquiry" also requires consideration of "the rationality of the connection between legislative means and purpose." 461 U.S. at 667. For the same reasons that Oregon's license suspension scheme is not rationally connected to deterring traffic violations under *Bearden*, it does not pass rational basis review.

As discussed, the state has a legitimate interest in enforcing compliance with its traffic laws and promoting public safety. The sanctions imposed by Oregon's license suspension scheme are irrational because they undermine those very interests.

The majority assumes that a license suspension will encourage indigent individuals better to comply with traffic laws, Majority Op. 20-21, but the opposite is true. A prolonged license suspension decreases the likelihood that an individual will pay her traffic fines, because the deprivation of her license impedes her from working and earning income. A prolonged license suspension also increases the likelihood that the individual will commit

further non-dangerous traffic violations, namely, driving on a suspended license. All of these factors increase the burden on public resources.

The majority also assumes that, absent the license suspension scheme, "Mendoza would escape punishment for her traffic violations." *Id.* at 21. That assumption is incorrect. Even without the imposition of a lengthy license suspension, a person who is in debt to the state suffers consequences. "When a minor offense produces a debt, that debt, along with the attendant court appearances, can lead to loss of employment or shelter, compounding interest, yet more legal action, and an ever-expanding financial burden—a cycle as predictable and counterproductive as it is intractable." *Rivera v. Orange Cnty. Prob. Dep't*, 832 F.3d 1103, 1112 n.7 (9th Cir. 2016). For example, Oregon courts can and do impose garnishment orders and send debts to collections agencies. *See, e.g.*, Or. Rev. Stat. §§ 18.605(1)(a), 137.118(2)(b)–(d), 293.250(2). As with any outstanding debt, such actions negatively affect a person's access to credit which can, in turn, affect the person's access to housing, insurance, and other resources. Moreover, the person remains liable to pay the fine as soon as her financial situation changes—for instance, if she begins earning wages or if she receives a tax refund that can be garnished. Imposing a fine, i.e., debt, on a person who cannot afford to pay is a heavy sanction.

I would conclude that, on the current allegations, there is no rational basis for Oregon's license suspension scheme.[10]

[10] The parties dispute certain features of Oregon's license suspension scheme that may affect the constitutional analysis. Specifically, the state currently allows individuals whose licenses are suspended to apply for a "hardship permit" to retain the ability to drive while their licenses are

CONCLUSION

In my view, Mendoza has plausibly alleged that the suspension of her driver's license based on her failure to pay traffic fines was unconstitutional, either under the *Bearden* standard or on rational basis review, and so has sufficiently stated a claim on which relief can be granted. I would reverse the district court's dismissal of Mendoza's first cause of action.

suspended. *See* Or. Rev. Stat. § 807.240(3). But at the time Mendoza's license was suspended, hardship permits were not available for suspensions based on nonpayment of traffic debt. *Compare* Or. Rev. Stat. § 807.250(4) (2017), *with* Or. Rev. Stat. § 807.240 (2021). This appeal arises on a motion to dismiss, and no facts have been alleged as to the effect of the availability of hardship permits on Mendoza's claims. The effect of those possible permits cannot be evaluated at this stage of litigation.