

# PHILANDO CASTILE, STATE VIOLENCE, AND SCHOOL LUNCH DEBT: A MEDITATION

ABBYE ATKINSON\*

*This essay reflects on Philando Castile and the work he did to support the children who passed through his school cafeteria. By regularly paying off their school lunch debt, Mr. Castile voluntarily assumed a vital caretaking role that the state refused to accept: namely, supporting food-insecure children and education through debt-free lunch. He kept children safe in this regard, even up to the moment that the state violently stole his life on July 6, 2016. Even as his death is a marker of the continuing, racialized excesses of American policing, Mr. Castile's life in service to hungry schoolchildren reveals the sometime perversity of the public-private American social provision policy that continues to impose the burdens of financial insecurity on individuals least able to bear them.*

INTRODUCTION.....	68
I. EDUCATION, EQUALITY, AND SCHOOL LUNCH.....	70
II. REGULATING SCHOOL FOOD INSECURITY WITH DEBT.....	75
III. INTERNALIZING THE COST OF STATE VIOLENCE; EXTERNALIZING THE COST OF FOOD.....	85
CONCLUSION.....	87

“ . . . i say that at the  
masters table only one plate is set for supper i say no seed  
can flourish on this ground once planted then forsaken wild  
berries warm a field of bones  
bloom how you must i say”

*mulberry fields* – Lucille Clifton

## INTRODUCTION

For most, Philando Divall Castile (1983–2016) exists in the national consciousness as an example of the police violence that continues to besiege Black and Brown communities. We remember him largely because just like Daunte Wright, Adam Toledo, George Floyd, Atatiana Jefferson, Breonna

---

\* Copyright © 2021 by Abbye Atkinson, Assistant Professor, U.C. Berkeley School of Law. For comments that significantly improved this essay, I am grateful to Abhay Aneja, Ralph Richard Banks, Guy-Uriel Charles, Osamudia James, Irene Joe, Kevin Johnson, Steven Koh, Melissa Murray, Joy Milligan, Saira Mohamed, Tejas Narechania, Claudia Polsky, Caitlin Rosenthal, Bertrall Ross, Shayak Sarkar, Ronit Stahl, and Rebecca Wexler. I thank Tessa DeJong and Kacey Read for excellent research assistance and, as ever, Esteban Longoria for support and encouragement. Any remaining errors are mine.

Taylor, Tamir Rice, Michael Brown, Oscar Grant, and the seemingly countless other Black and Brown men, women, and children killed by police violence, his publicly-broadcast, state-sponsored death betrays the persistence of the grotesque excessive policing in Black and Brown communities. Yet, although the way Mr. Castile died is of undeniable significance, of equal significance was how he lived; who he was in life.

Philando Castile committed his professional life and his pocket to the simple and intuitive fact that children need food and nutrients in order to learn,<sup>1</sup> before the state unceremoniously gunned him down in front of his loved ones on the evening of July 6, 2016. Until his death, Mr. Castile had worked as a cafeteria supervisor at J.J. Hill Montessori,<sup>2</sup> an elementary school that serves approximately 450 children, from kindergarten through 5th grade, and is part of the Saint Paul Public Schools (SPPS) system in Saint Paul, Minnesota.<sup>3</sup> At the time of his death, Mr. Castile had worked for SPPS for over a decade, having started shortly after he graduated from high school.<sup>4</sup>

By all accounts, Mr. Castile was well-liked by his colleagues and particularly by his small charges. Some of the children at Hill Montessori fondly knew Mr. Castile as the “lunch man,”<sup>5</sup> while others called him “Mr. Phil.”<sup>6</sup> And, although all the children may not have known him by name, Mr. Castile knew the name of each child who filed through his cafeteria for their school day meals at Hill Montessori.<sup>7</sup> Indeed, Philando Castile’s devotion to

<sup>1</sup> See, e.g., *Benefits of School Lunch*, FOOD RSCH. & ACTION CTR., <https://frac.org/programs/national-school-lunch-program/benefits-school-lunch> (“School lunch is critical to student health and well-being, especially for low-income students—and ensures that students have nutrition they need throughout the day to learn.”).

<sup>2</sup> *What We Do*, PHILANDO CASTILE RELIEF FOUND. [hereinafter CASTILE FOUNDATION], <http://www.philandocastilefoundation.org> (last visited Feb. 20, 2021) (stating that the foundation hopes to carry on Philando Castile’s legacy of paying negative lunch balances for families in St. Paul).

<sup>3</sup> ST. PAUL PUB. SCHS., OFFICIAL ENROLLMENT (OCTOBER 1) (2019), [https://public.tableau.com/shared/462FMDB5G?:display\\_count=y&:origin=viz\\_share\\_link&:embed=y](https://public.tableau.com/shared/462FMDB5G?:display_count=y&:origin=viz_share_link&:embed=y).

<sup>4</sup> See Sharon LaFraniere & Mitch Smith, *Philando Castile Was Pulled over 49 Times in 13 Years, Often for Minor Infractions*, N.Y. TIMES (July 16, 2016), <https://www.nytimes.com/2016/07/17/us/before-philando-castiles-fatal-encounter-a-costly-trail-of-minor-traffic-stops.html> (“Mr. Castile’s car allowed him to reach his job with the St. Paul school district, which hired him shortly after he graduated from high school.”).

<sup>5</sup> *A Student Remembers Her School’s “Lunch Man,” Philando Castile*, STORYCORPS (July 5, 2018), <https://storycorps.org/stories/a-student-remembers-her-schools-lunch-man-philando-castile> (“[T]o over 400 kids at J.J. Hill Montessori Magnet School, Castile was their ‘lunch man.’”).

<sup>6</sup> Camila Domonoske, *Charity Honoring Philando Castile Pays All Lunch Debts in St. Paul School System*, NPR (Mar. 5, 2018, 5:44 PM), <https://www.npr.org/sections/thetwo-way/2018/03/05/590931921/charity-honoring-philando-castile-pays-all-lunch-debts-in-st-paul-school-system> (“Philando was ‘Mr. Phil’ to the students at J.J. Hill.”).

<sup>7</sup> See CASTILE FOUNDATION, *supra* note 2 (“He knew each child by name, their allergies and pin number.”).

his charges extended well beyond the simple yet dignifying act of calling each child by name.<sup>8</sup> He also used his own personal funds to help children and their families pay off delinquent school meal debt.<sup>9</sup> He “frequently paid for the lunches of students who owed money or couldn’t afford them,” and, according to Mr. Castile’s mother, Valerie Castile, he did so because “[h]e understood that the children are the future leaders of this country, and it was his obligation to take care of them best he could, while they were in his company.”<sup>10</sup>

In this regard, Mr. Castile took it upon himself to stand in the void created by the failings of the social safety net within his community. He was caring for marginalized children and their families when the state would not, a consequence of the “political drive to shift a growing amount of economic risk from government and the corporate sector onto ordinary Americans in the name of enhanced individual responsibility and control” in the American public-private welfare state.<sup>11</sup>

## I

### EDUCATION, EQUALITY, AND SCHOOL LUNCH

Martin Luther King, Jr. once said, “Everything that we see is a shadow cast by that which we do not see.”<sup>12</sup> The grief and loss engendered by Philando Castile’s death, itself precipitated by the endemic racialized excesses of modern policing,<sup>13</sup> is a shadow cast, in part, by persistent

---

<sup>8</sup> See generally KIMBERLÉ WILLIAMS CRENSHAW & ANDREA J. RITCHIE, AFR. AM. POL’Y F., SAY HER NAME: RESISTING POLICE BRUTALITY AGAINST BLACK WOMEN (2015), [https://static1.squarespace.com/static/53f20d90e4b0b80451158d8c/t/560c068ee4b0af26f72741df/1443628686535/AAPF\\_SMN\\_Brief\\_Full\\_singles-min.pdf](https://static1.squarespace.com/static/53f20d90e4b0b80451158d8c/t/560c068ee4b0af26f72741df/1443628686535/AAPF_SMN_Brief_Full_singles-min.pdf) (describing the #SayHerName campaign). The authors urge the naming of “Black women and girls [who] continue to lose their lives to racially motivated violence.” The “hope is to call attention to the ways in which this reality is erased from our demonstrations, our discourse, and our demands to broaden our vision of social justice.” *Id.* at 4. Moreover, they posit that: “Until we say the names and tell the stories of the entire Black community, we cannot truly claim to fight for all Black lives.” *Id.* at 30.

<sup>9</sup> See, e.g., Shannon Van Sant, *Philando Castile’s Mother Wipes Out School Lunch Debt, Continuing Son’s Legacy*, NPR (May 7, 2019, 4:27 PM), <https://www.npr.org/sections/thesalt/2019/05/07/721142955/philando-castiles-mother-wipes-out-school-lunch-debt-continuing-son-s-legacy>; Domonoske, *supra* note 6 (“Castile used to pay out of his own pocket to cover lunch for students who couldn’t pay . . .”).

<sup>10</sup> Van Sant, *supra* note 9.

<sup>11</sup> JACOB S. HACKER, THE GREAT RISK SHIFT: THE ASSAULT ON AMERICAN JOBS, FAMILIES, HEALTH CARE, AND RETIREMENT AND HOW YOU CAN FIGHT BACK 8 (2006).

<sup>12</sup> Martin Luther King, Jr., *The Man Who Was a Fool, Sermon Delivered at the Detroit Council of Churches’ Noon Lenten Services* (Mar. 6, 1961), in THE PAPERS OF MARTIN LUTHER KING, JR. VOLUME VI: ADVOCATE OF THE SOCIAL GOSPEL, SEPTEMBER 1948 – MARCH 1963, at 418 (Clayborne Carson et al. eds., 2007). I am grateful to Rick Banks for sharing this quote with me.

<sup>13</sup> See e.g., Amna A. Akbar, *An Abolitionist Horizon for (Police) Reform*, 108 CALIF. L. REV. 1781, 1791 (2020) (“A combined municipal-state-federal legal architecture permits routine police violence by granting police discretion over when and how to arrest or deploy force in a wide variety

financial insecurity. Financial insecurity is racialized and gendered,<sup>14</sup> and, by design, its alleviation is increasingly meant to be borne by private citizens in our American public-private welfare regime.<sup>15</sup> The phenomenon of school lunch debt, including its significant reliance on private sources of repayment, is emblematic of this reality. Indeed, school lunch debt is borne mostly by those who survive in the liminal, vulnerable spaces between abject poverty and financial security.<sup>16</sup> Within these precarious spaces exist marginalized families, many of them Black and Brown,<sup>17</sup> whose characteristic financial insecurity sometimes goes unrecognized by the various formulas that determine eligibility for public assistance.<sup>18</sup> Yet, they struggle nonetheless, and for this reason, school lunch debt is an important racial and social justice issue.

Indeed, like other forms of debt, school lunch debt threatens the ability of marginalized families to survive and to advance; to improve their life circumstances.<sup>19</sup> It is a part of the “slow death” by a thousand cuts that plagues marginalized people and communities, bearing down on them in

---

of settings. This discretion allows police to target poor, Black, and brown people.”); Li Cohen, *Police in the U.S. Killed 164 Black People in the First 8 Months of 2020. These Are Their Names. (Part I: January-April)*, CBS NEWS (Sept. 10, 2020, 4:39 PM), <https://www.cbsnews.com/pictures/black-people-killed-by-police-in-the-u-s-in-2020> (stating that police still kill Black people at disproportionate rates despite protests against police brutality and racism).

<sup>14</sup> See, e.g., HACKER, *supra* note 11, at 27 (describing pervasive economic instability within the American populace and observing that this volatility is “higher for blacks and Hispanics than for whites, and for women than for men”).

<sup>15</sup> See *id.* at 8 (“As private and public support erodes, workers and their families must bear a greater burden.”).

<sup>16</sup> See SCH. NUTRITION ASS’N, SCHOOL NUTRITION TRENDS REPORT v (2019) [hereinafter SNA TRENDS REPORT] (“A majority of districts . . . report the presence of unpaid student meal debt. This debt is most commonly present among districts with a low prevalence of free/reduced-price meals, where it is cited by nearly 91%.”); see also Neal Gabler, *The Secret Shame of Middle-Class Americans*, ATLANTIC (Apr. 18, 2016), <https://www.theatlantic.com/magazine/archive/2016/05/my-secret-shame/476415> (describing research that suggests that “[n]early half of American adults are ‘financially fragile’ and ‘living very close to the financial edge’”).

<sup>17</sup> See, e.g., HACKER, *supra* note 11, at 27.

<sup>18</sup> See e.g., Heather Long, *Hidden Crisis: D.C.-Area Students Owe Nearly Half a Million in K-12 School Lunch Debt*, WASH. POST (Dec. 28, 2018), <https://www.washingtonpost.com/business/2018/12/28/hidden-crisis-dc-area-students-owe-nearly-half-million-k-school-lunch-debt/> (“Many students in debt belong to families who earn slightly too much to qualify for free meals, or whose parents or guardians fail to complete the free-lunch paperwork, which must be done annually . . .”); JESSICA BARTHOLOW & YESENIA JIMENEZ, W. CTR. ON L. & POVERTY, *ASHAMED & HUNGRY: AN INVENTORY OF SCHOOL LUNCH SHAMING POLICIES IN CALIFORNIA 4* (2017) (noting that “some families found ineligible for the reduced price meal only earn just slightly above the eligibility criteria and really struggle to pay full priced meals”).

<sup>19</sup> Cf. Abbye Atkinson, *Rethinking Credit as Social Provision*, 71 STAN. L. REV. 1093, 1099 (2019) (“Credit is fundamentally incompatible with the entrenched intergenerational poverty that plagues low-income Americans.”).

ways that smother their ability to thrive rather than merely survive.<sup>20</sup> While the problem of pervasive school lunch debt is less dramatic and jarring than the sudden, state-sanctioned violence that claimed Philando Castile's life—that is, less capable of meaningful capture and broadcast on Facebook Live<sup>21</sup>—together with the myriad other burdens of marginalization and socioeconomic insecurity, it is no less devastating; no less destructive.

Moreover, it is a problem that is worsening.<sup>22</sup> According to a School Nutrition Association study of 812 school districts nationwide, at the end of the 2017–2018 school year, 75% of school districts reported unpaid student meal debt as compared to 70.8% in the 2013–2014 school year.<sup>23</sup> The median amount of debt owed rose from \$2,000 to \$3,400 during the same period.<sup>24</sup> In the 2018–2019 school year, 43% of school districts reported an increase in the number of children who lack money to buy lunch each day.<sup>25</sup> Given the significance of effective education to the development of marginalized communities,<sup>26</sup> and in turn the significance of food and nutrition to effective education,<sup>27</sup> school lunch debt is just as important a racial and social justice

---

<sup>20</sup> See Stephen Lee, Essay, *Family Separation as Slow Death*, 119 COLUM. L. REV. 2319 (2019). Professor Lee describes “the concept of slow death,” first posited by humanist Lauren Berlant, as “harms that are not only or even mostly caused by bad individual choices but stem from broader structural conditions leading to ‘the physical wearing out of a population and the deterioration of people in that population that is very nearly a defining condition of their experience and historical existence.’” *Id.* at 2327 (quoting Lauren Berlant, *Slow Death (Sovereignty, Obesity, Lateral Agency)*, 33 CRITICAL INQUIRY 754, 754 (2007)). Lee then applies this concept to the family separation policies at the border which together, he argues, “leave noncitizens waiting, marooned, left out, and helpless to be united with their family members,” *id.* at 2336, and which ultimately destroy families, *id.* at 2378.

<sup>21</sup> E.g., Alex Wagner, *To Live and Die on Facebook*, ATLANTIC (July 11, 2016), <https://www.theatlantic.com/politics/archive/2016/07/to-live-and-die-on-facebook/490637> (describing how Diamond Reynolds, Philando Castile's girlfriend who was also in the car the night that Officer Jeronimo Yanez shot and killed Castile, immediately began recording the aftermath of the shooting to Facebook Live).

<sup>22</sup> See Steven Singer, *America's New School Lunch Policy: Punishing Hungry Students for Their Parents' Poverty*, GADFLY ON THE WALL BLOG (July 25, 2019), <https://gadflyonthewallblog.com/2019/07/24/americas-new-school-lunch-policy-punishing-hungry-students-for-their-parents-poverty-as-reprinted-in-Valerie-Strauss-Its-a-Real-Shame-About-School-Lunch>, WASH. POST (Aug. 1, 2019), <https://www.washingtonpost.com/education/2019/08/01/its-real-shame-about-school-lunch> (observing that “lunch debt has become a central issue along side child hunger”).

<sup>23</sup> SNA TRENDS REPORT, *supra* note 16, at 21 exhibit 22.

<sup>24</sup> *Id.*

<sup>25</sup> Chyenne Buckingham, *School Lunch Debt in America: What It Is and How to Get and Offer Help*, EAT THIS, NOT THAT! (Aug. 21, 2019), <https://www.eatthis.com/school-lunch-debt-in-america>.

<sup>26</sup> See, e.g., Osamudia James, *The Political Economy of Pandemic Pods*, 96 N.Y.U. L. REV. ONLINE 89, 95 (2021) (“Access to education provides both individual and societal benefits that render it highly valuable. Broad access to education increases civic engagement, including resident propensity to vote, and also lowers both public health costs and unemployment rates.”).

<sup>27</sup> See, e.g., Lynn McIntyre, Cynthia Kwok & Scott B. Patten, *The Effect of Child Hunger on*

issue as is racialized overpolicing, even though the latter tends to dominate the current national discussion on race and pervasive racism.

Effective primary and secondary education is crucial to the project of equality and well-being.<sup>28</sup> For example, at the turn of the twentieth century, W.E.B. Du Bois explained that education was a key component in the fight for racial equality. For Du Bois, the entrenched “color-prejudice of the South” which was then ubiquitous and all-encompassing could meaningfully be countered “by the breadth and broadening of human reason.”<sup>29</sup> In other words, education was “the one panacea” that could help the recalcitrant, post-Civil War system of apartheid to develop and promote “such human training as will best use the labor of all men without enslaving or brutalizing.”<sup>30</sup>

Fifty years later, in the seminal opinion *Brown v. Board of Education*, which rejected the racialized “separate but equal” doctrine in the context of school segregation, Chief Justice Warren expressed a similar devotion to the power of education in the socioeconomic life of Black people in America.<sup>31</sup> Warren famously wrote that “education is perhaps the most important function of state and local governments” and vital “to our democratic society.”<sup>32</sup> He continued that education was “the very foundation of good citizenship,” just as it is “a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment.”<sup>33</sup> Thus, the Court concluded that racial segregation in public schools was unconstitutional

---

*Educational Attainment and Early Childbearing Outcomes in a Longitudinal Population Sample of Canadian Youth*, 23 PEDIATRICS & CHILD HEALTH e77, e83 (2018) (finding that child hunger is a predictor of youth failing to complete high school).

<sup>28</sup> See, e.g., James, *supra* note 26, at 96 (“[E]ducation—high-quality education in particular—functions as a valuable social good, the unequal distribution of which maintains and symbolizes status hierarchies.”). For example, the United Negro College Fund, whose mission is to support and promote college education among African Americans, focuses a significant part of its advocacy on K-12 education. See *K-12 Advocacy*, UNITED NEGRO COLL. FUND, <https://uncf.org/k12advocacy> (last visited Feb. 25, 2021); see also Gene Demby, *New Ads Still Warn a Mind Is a Terrible Thing To Waste*, NPR (June 15, 2013), <https://www.npr.org/sections/codeswitch/2013/06/14/191796469/a-mind-is-a-terrible-thing-to> (noting that in the United Negro College Fund’s iconic “A Mind Is a Terrible Thing to Waste” advertisements, “[t]he education of black kids was framed as an issue of social justice”).

<sup>29</sup> W.E.B. DU BOIS, *THE SOULS OF BLACK FOLK* 64 (Brent Hayes Edwards ed., 2009).

<sup>30</sup> *Id.* at 65; see also DOUGLAS S. MASSEY & NANCY A. DENTON, *AMERICAN APARTHEID: SEGREGATION AND THE MAKING OF THE UNDERCLASS* 170 (1993) (“Whereas urban blacks had zealously pursued education after the Civil War and were making great strides, the rise of Jim Crow in the south and de facto segregation in the north severed the links between hard work, education, sobriety, and their presumed rewards in society.”).

<sup>31</sup> See *Brown v. Bd. of Educ.*, 347 U.S. 483, 495 (1954) (“We conclude that in the field of public education the doctrine of ‘separate but equal’ has no place. Separate educational facilities are inherently unequal.”).

<sup>32</sup> *Id.* at 493.

<sup>33</sup> *Id.*

because it deprived Black children of “equal educational opportunities.”<sup>34</sup> Indeed, Warren opined that “it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education.”<sup>35</sup>

The ongoing project of racial and social equality is thus rooted in access to better education. Education is not just concerned with the obvious aspects of improved education like teacher quality and student/teacher ratios, although those concerns might arguably exist at the apex of the human hierarchy of needs.<sup>36</sup> Instead, education also requires attention to threshold needs like food, because children perform better in school when they are not hungry. For example, one recent longitudinal study observes that “child hunger is a significant and independent predictor of youth dropping out of high school, even when multiple effects within the poverty pathway are considered.”<sup>37</sup> The authors observe that the stress of chronic hunger, including “the fear of running out of food, witnessing family stress, being bullied at school by their peers, shame from being poor and family dysfunction,” negatively affects “memory, learning and the performance of executive functions that compromise their ability to succeed in school in the long run.”<sup>38</sup>

Similarly, a study by the National Institutes of Health reports that “[c]hildren . . . who reported low nutrient intakes had lower GPAs and higher rates of absenteeism and tardiness than children from the same schools who reported higher levels of nutrient and energy intake.”<sup>39</sup> And yet, while books and teachers and school buildings are nominally a guaranteed aspect of a free

---

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *E.g.*, Kaylee Hamilton, *Addressing Social Inequality in Michigan's Public Education System*, 33 MICH. SOCIO. REV. 115 (2019) (discussing the need “for an intersection between the social institutions that are involved in a youth’s life, modeled after Maslow’s Hierarchy of Needs”).

<sup>37</sup> McIntyre et al., *supra* note 27, at e79.

<sup>38</sup> *Id.* at e81.

<sup>39</sup> R.E. Kleinman, S. Hall, H. Green, D Korzec-Ramirez, K. Patton, M.E. Pagano, & J.M. Murphy, *Diet, Breakfast, and Academic Performance in Children*, 46 ANNALS NUTRITION & METABOLISM 24, 29 (2002), <https://www.karger.com/Article/Pdf/66399>. Importantly, the authors further note that “students who increased their nutrient intakes after the start of a free school breakfast program were more likely to improve their nutrient intake status and academic and psychosocial functioning.” *Id.*; see also Nadine Finigan-Carr, Joseph Vandigo, Mathew Uretsky, Ebenezer O. Oloyede & Bronwyn Mayden, “*You Can’t Help a Child if You Don’t Know Something Yourself*”: A Qualitative Study of Barriers to Education in an Underserved West Baltimore Community, 84 J. NEGRO EDUC. 298, 300 (2015) (observing that “eating breakfast has been shown to improve cognition and reduce absenteeism” but also that even when “enrolled in a free and reduced meal program, African American students were more likely to skip breakfast than their White school mates”); MARGOT NITSCHKE, THE ALLIANCE TO END HUNGER, HUNGER IS A RACIAL EQUITY ISSUE (2017), [https://alliancetoendhunger.org/wp-content/uploads/2017/07/Hill-advocacy-fact-sheet\\_\\_HUNGER-IS-A-RACIAL-EQUITY-ISSUE\\_Alliance-to-End-Hunger.pdf](https://alliancetoendhunger.org/wp-content/uploads/2017/07/Hill-advocacy-fact-sheet__HUNGER-IS-A-RACIAL-EQUITY-ISSUE_Alliance-to-End-Hunger.pdf) (“While 10% of white households experience hunger, households of color experience hunger at rates of up to 21.5%.”).

and public education,<sup>40</sup> debt-free school meals are not.<sup>41</sup> Instead, unlike books and teachers and school buildings and other education costs that are readily borne by the state in the performance of its “most important function,”<sup>42</sup> food for all students is a cost that is imposed on families in the first instance, essentially privatizing the cost of feeding schoolchildren.<sup>43</sup>

## II

### REGULATING SCHOOL FOOD INSECURITY WITH DEBT

This privatization of school meals illustrates the sometime contradiction of state policies around the public welfare. For example, the public welfare justifies an armed police force to keep the community safe,<sup>44</sup> but it also justifies discretionary, deadly police force that devastates some communities.<sup>45</sup> Indeed, the federal government’s approach to school food insecurity is an example of this contradiction in welfare policy. The federal government supports the idea that schoolchildren should have sufficient food at school, requiring schools to provide meals to students who maintain school meal accounts in arrears.<sup>46</sup> Yet, government also embraces indebtedness, requiring schools to keep a tally of the debt incurred by students when they receive a meal without paying.<sup>47</sup> These policies then endorse debt-collection

<sup>40</sup> See, e.g., CAL. EDUC. CODE § 49011(b)(1) (West 2012) (“All supplies, materials, and equipment needed to participate in educational activities shall be provided to pupils free of charge.”).

<sup>41</sup> See Michelle Lou, *75% of US School Districts Report Student Meal Debt. Here’s What They’re Doing to Combat the Problem*, CNN (May 17, 2019), <https://www.cnn.com/2019/05/17/us/unpaid-school-lunch-debt-trnd/index.html> (quoting the SNA’s Diane Pratt-Heavner, who noted that “[p]roviding universal free school meals would not only address this issue of unpaid meal charges, but it would recognize the fact that . . . having a healthy meal in the middle of the day is necessary to school achievement”).

<sup>42</sup> *Brown v. Bd. of Educ.*, 347 U.S. 483, 493 (1954).

<sup>43</sup> See Melissa Murray & Caitlin Millat, *Pandemics, Privatization, and the Family*, 96 N.Y.U. L. REV. ONLINE 106, 118 (2021) (observing that much of the American social welfare state is premised on the “presumption that dependency is a *private* responsibility to be accommodated by the family using whatever gains individual family members may obtain in the market”).

<sup>44</sup> E.g., Devon W. Carbado, *Blue-on-Black Violence: A Provisional Model of Some of the Causes*, 104 GEO. L.J. 1479, 1485–86 (2016) (describing the common practice of “broken windows policing” where “[t]he basic idea is that if police officers do not vigorously focus their attention on low-level crimes and signs of disorder in a given community, that community will experience more serious and long-lasting problems of criminality and social upheaval”).

<sup>45</sup> E.g., Akbar, *supra* note 13, at 1791 (“A combined municipal-state-federal legal architecture permits routine police violence by granting police discretion over when and how to arrest or deploy force in a wide variety of settings. This discretion allows police to target poor, Black, and brown people.”); Cohen, *supra* note 13 (sharing the stories of Black people killed by police violence).

<sup>46</sup> See FOOD & NUTRITION SERV., U.S. DEP’T OF AGRIC., PROHIBITION AGAINST DENYING MEALS AND MILK TO CHILDREN AS A DISCIPLINARY ACTION, INSTRUCTION 791–1 (1988), <https://www.fns.usda.gov/cn/prohibition-against-denying-meals-and-milk-children-disciplinary-action>.

<sup>47</sup> See FOOD & NUTRITION SERV., U.S. DEP’T OF AGRIC., UNPAID MEAL CHARGES:



behavior that includes threats of legal action and social isolation.<sup>48</sup> Perhaps most cruelly, the policies permit the use of federal funds to engage in this debt collection activity but forbid the use of federal funds to pay down school meal debt.<sup>49</sup>

The federal government has for decades intervened by funding school meals for extremely low-income families. One of its most significant interventions is the National School Lunch Program (NSLP), “the second largest food and nutrition assistance program in the United States, serving over thirty million children daily in over one hundred thousand schools.”<sup>50</sup> Authorized by the National School Lunch Act of 1946, the NSLP subsidizes free and reduced-price lunches for eligible students.<sup>51</sup> Under the NSLP, a student qualifies for a free lunch if their family income is less than 1.3 times the federal poverty line and is eligible for a reduced price if their family income is less than 1.85 times the federal poverty line.<sup>52</sup> For the 2020–2021 school year, for example, a family of four with an income under \$34,060 is eligible for free lunch under the NSLP and with an income under \$48,470 is eligible for a reduced-price lunch.<sup>53</sup> Those families eligible for reduced-price lunch must pay no more than 40 cents for each lunch.<sup>54</sup>

The U.S. Department of Agriculture’s Food and Nutrition Service

---

CLARIFICATION ON COLLECTION OF DELINQUENT MEAL PAYMENTS, POLICY MEMO SP 47-2016, at 2 (2016) [hereinafter FNS POLICY MEMO], <https://www.fns.usda.gov/cn/unpaid-meal-charges-clarification-collection-delinquent-meal-payments>.

<sup>48</sup> See *id.* FNS guidance explains that “SFAs must make reasonable efforts to collect unpaid meal charges classified as delinquent debt,” but notes that “[t]he Federal Government does not define ‘reasonable’ collection methods or regulate how long a debt may be considered delinquent. Instead, FNS expects SFAs to rely on state and local policies for such determinations.” *Id.* For example, Minnesota, Philando Castile’s home state, has interpreted federal regulation to permit daily phone calls, voicemails, and text messages, along with other quintessentially dunning behavior like threats of legal action as being “reasonable” within these guidelines. See *Unpaid Student Meal Debt—Guidance*, MINN. DEP’T OF EDUC. [hereinafter MDE GUIDANCE], <https://education.mn.gov/MDE/dse/FNS/SNP/mgmt/price/MDE035204> (last visited Feb. 26, 2021).

<sup>49</sup> FNS POLICY MEMO, *supra* note 47, at 2–3 (“SFAs must make reasonable efforts to collect unpaid meal charges classified as delinquent debt and the cost of these efforts is an allowable use of NSFSFA funds.” However, “bad debt must be written off as an operating loss [that] may not be absorbed by the NSFSFA, but must be restored using non-federal funds.”); see also Anna Karnaze, *You Are Where You Eat: Discrimination in the National School Lunch Program*, 113 NW. U. L. REV. 629, 657 (2018) (“Because school districts are unable to offset the loss of unpaid lunch debt with federal dollars, they must instead use other forms of revenue or seek other forms of reimbursement [including] lunch shaming practices in order to recoup this debt.”).

<sup>50</sup> Karnaze, *supra* note 49, at 630–31.

<sup>51</sup> National School Lunch Act, 42 U.S.C. § 1751.

<sup>52</sup> Child Nutrition Programs: Income Eligibility Guidelines, 85 Fed. Reg. 16050, 16051 (Mar. 20, 2020).

<sup>53</sup> SCH. NUTRITION ASS’N, SCHOOL MEAL TRENDS & STATS [hereinafter SNA TRENDS & STATS] <https://schoolnutrition.org/AboutSchoolMeals/SchoolMealTrendsStats>.

<sup>54</sup> See 7 C.F.R. § 245.2 (2020).

(FNS) administers the NSLP<sup>55</sup> which then delegates to the states the operation of the program.<sup>56</sup> States in turn must delegate local implementation of the NSLP to “school food authorities,”<sup>57</sup> defined as “the governing bod[ies] which [are] responsible for the administration of one or more schools; and ha[ve] the legal authority to operate the [NSLP] therein.”<sup>58</sup> For example, the Minnesota Department of Education is the state-level agency responsible for the implementation of the NSLP in Minnesota.<sup>59</sup> SPPS, as a school food authority under the regulations, maintains a free and reduced-price lunch program.<sup>60</sup>

The NSLP funding process is administered through reimbursement.<sup>61</sup> In order to be eligible for NSLP reimbursement, a school food authority like SPPS must contract with the Minnesota Department of Education,<sup>62</sup> promising to maintain a lunch program that complies with various nutritional standards set forth in the regulations<sup>63</sup> and to “[s]erve lunches free or at a reduced price to all children who are determined by the local educational agency to be eligible for such meals,” among other obligations.<sup>64</sup> SPPS must also promise to keep and report an accurate count of the number of free and reduced-price lunches served to children for submission in monthly “[c]laims for reimbursement.”<sup>65</sup> The Minnesota Department of Education is then authorized to reimburse SPPS based on these claims for reimbursement.<sup>66</sup>

There is evidence that the NSLP has had a positive long-term effect on educational attainment,<sup>67</sup> and at minimum the program has filled the bellies

<sup>55</sup> 7 C.F.R. § 210.3(a).

<sup>56</sup> See 7 C.F.R. § 210.3(b); 7 C.F.R. § 210.6 (mandating that “[s]tate agencies shall use Federal funds . . . to reimburse or make advance payments to school food authorities in connection with lunches and meal supplements served in accordance with the provisions of this part”).

<sup>57</sup> 7 C.F.R. § 210.3(d).

<sup>58</sup> 7 C.F.R. § 210.2.

<sup>59</sup> *Food and Nutrition*, MINN. DEP’T OF EDUC., <https://education.mn.gov/MDE/dse/FNS> (last visited Feb. 26, 2021).

<sup>60</sup> *Free and Reduced Meal Applications*, SAINT PAUL PUB. SCHS., <https://www.spps.org/Domain/14318> (last visited Feb. 26, 2021).

<sup>61</sup> 7 C.F.R. § 210.6 (“State agencies shall use Federal funds made available under the Program to reimburse or make advance payments to school food authorities in connection with lunches and meal supplements served in accordance with the provisions of this part.”).

<sup>62</sup> 7 C.F.R. § 210.7(a) (“Reimbursement payments to finance nonprofit school food service operations shall be made only to school food authorities operating under a written agreement with the State agency.”); 7 C.F.R. § 210.9.

<sup>63</sup> See generally 7 C.F.R. §§ 210.9, 210.10.

<sup>64</sup> 7 C.F.R. § 210.9(7).

<sup>65</sup> 7 C.F.R. § 210.8(b), (c).

<sup>66</sup> MINN. STAT. § 124D.111 (2020).

<sup>67</sup> See Peter Hinrichs, *The Effects of the National School Lunch Program on Education and Health*, 29 J. POL’Y ANALYSIS & MGMT. 479, 503 (2010) (concluding that “[t]he NSLP appears to have had no long-term effect on health but may have affected educational attainment”).

of millions of children.<sup>68</sup> Yet, federal school meal programs have not been a cure-all for the entrenched food insecurity that causes families to incur school meal debt.<sup>69</sup> For some families who are only eligible for reduced-price lunch or who are ineligible for any federal subsidy at all, meeting the cost of school meals is sometimes difficult.<sup>70</sup> Even for those families that are eligible for the NSLP, for example, there is anecdotal evidence that the administrative burdens of qualification can lead to school meal debt.<sup>71</sup> For example, households hoping to qualify for NSLP must complete an application that includes information on household income, source of income, and number of individuals in the household.<sup>72</sup> Until the application is processed and the student is subsequently certified in the system, the student's meal account is charged for each pre-certification meal consumed by the child.<sup>73</sup>

---

<sup>68</sup> E.g., *National School Lunch Program*, ECON. RSCH. SERV., U.S. DEP'T OF AGRIC., <https://www.ers.usda.gov/topics/food-nutrition-assistance/child-nutrition-programs/national-school-lunch-program> (last visited Feb. 26, 2021) (reporting that “[i]n fiscal year (FY) 2019, . . . [t]he NSLP provided low-cost or free lunches to 29.4 million children daily at a total cost of \$14.1 billion”).

<sup>69</sup> See, e.g., Long, *supra* note 18 (reporting that despite the NSLP, many students still face food insecurity at school).

<sup>70</sup> See *id.* (“The National School Lunch Program, established in the 1940s, pays free and reduced-cost lunches for millions of U.S. students, but the debts make clear some students still aren’t getting by.”); SNA TRENDS & STATS, *supra* note 53 (“Some low income families, particularly those with multiple school aged children, struggle to afford the daily reduced price copay . . . .”); FOOD & NUTRITION SERV., U.S. DEP'T OF AGRIC., POLICY MEMO SP 29-2017, OVERCOMING THE UNPAID MEAL CHALLENGE: PROVEN STRATEGIES FROM OUR NATION'S SCHOOLS (2017), <https://www.fns.usda.gov/cn/2017-edition-overcoming-unpaid-meal-challenge-proven-strategies-our-nations-schools> (observing that “children who do not qualify for free meals would like a breakfast or lunch, but do not have money in their account or in hand to cover the cost of the meal at the time of the meal service”).

<sup>71</sup> E.g., Alan Pyke, *The Gloomy Reality Lurking Under the Story About Philando Castile's Mom Erasing Lunch Debts*, THINK PROGRESS (May 1, 2019, 1:59 PM), <https://archive.thinkprogress.org/philando-castile-robbinsdale-cooper-high-school-donation-school-lunch-debt-24e15b9b21d8> (“The school meal debt issue is typically characterized as a bureaucratic problem. Sometimes kids rack up debts unwittingly or incorrectly due to paperwork errors and other miscommunications.”).

<sup>72</sup> See 7 C.F.R. § 245.6(a)(5) (2020); accord KRISTIN S. SEEFELDT, ABANDONED FAMILIES: SOCIAL ISOLATION IN THE TWENTY-FIRST CENTURY 145 (2016) (describing various bureaucratic obstacles in social welfare programs and noting that the consequent delays “left some of the most vulnerable families in continued financial distress, abandoned by the systems that were ostensibly supposed to help them”); see also Steven Singer, *America's New School Lunch Policy: Punishing Hungry Students for Their Parents' Poverty*, GADFLY ON THE WALL BLOG (July 25, 2019), <https://gadflyonthewallblog.com/2019/07/24/americas-new-school-lunch-policy-punishing-hungry-students-for-their-parents-poverty>, as reprinted in Valerie Strauss, *It's a Real Shame About School Lunch*, WASH. POST (Aug. 1, 2019), <https://www.washingtonpost.com/education/2019/08/01/its-real-shame-about-school-lunch> (observing that “many families don’t know how to apply to the program or that they can do so at any point in the school year”).

<sup>73</sup> E.g., Jessica Fu, *Countless American Families Are Saddled with Student Lunch Debt*, THE

A more recent federal intervention is the Community Eligibility Program (CEP) which attempts to ease these administrative burdens, but only in those geographic areas where the “identified student percentage” of low-income children exceeds 40%.<sup>74</sup> Authorized by the Healthy Hunger-Free Kid Act of 2010 as an amendment to the NSLP,<sup>75</sup> the CEP permits schools in high-poverty areas to administratively qualify their entire school population for free lunch without requiring individual students and families to submit applications.<sup>76</sup> Rather than through the normal process of individual recipient application-based federal reimbursement, “schools that adopt CEP are reimbursed using a formula based on the percentage of students categorically eligible for free meals based on their participation in other specific means-tested programs, such as the Supplemental Nutrition Assistance Program (SNAP) and Temporary Assistance for Needy Families (TANF).”<sup>77</sup>

Participation in CEP is discretionary, however, and as of the 2019–2020 school year, only 69% of eligible schools participated in the program.<sup>78</sup> Moreover, as reported by the School Nutrition Association’s study of school districts across the nation:

Participation in CEP does not eliminate the occurrence of unpaid student meal debt. While it is far less common among districts with schools participating in CEP (53.7% of the CEP participating districts report unpaid student meal debt versus 86.6% of districts that do not participate in CEP), even among districts with 100% of their schools participating in

---

COUNTER (Apr. 22, 2019, 8:00 AM), <https://thecounter.org/school-lunch-debt-usda> (recounting the story of one mother who accrued \$1,000 in school meal debt because of an application processing failure).

<sup>74</sup> See FOOD RSCH. & ACTION CTR., COMMUNITY ELIGIBILITY: MAKING IT WORK WITH LOWER ISPS (2018), <https://frac.org/wp-content/uploads/making-cep-work-with-lower-isps.pdf>; National School Lunch Program and School Breakfast Program: Eliminating Applications Through Community Eligibility as Required by the Healthy, Hunger-Free Kids Act of 2010, 81 Fed. Reg. 50194, 50195 (July 29, 2016) (explaining that the CEP “aims to combat child hunger in high poverty areas, while reducing administrative burden and increasing program efficiency by using current, readily available data to offer school meals to all students at no cost”).

<sup>75</sup> The Healthy Hunger-Free Kid Act of 2010, Pub. L. 111-296, § 104, 124 Stat. 3183 (2010) (codified as amended in scattered sections of 42 U.S.C.); 7 C.F.R. § 245.9.

<sup>76</sup> E.g., Ilana L. Linder, “*Hangry*” for School Lunch Guidance, 48 J.L. & EDUC. 215, 236 (2019) (“The CEP, which Congress approved nationwide in 2010, ‘allows qualifying high-poverty schools to offer breakfast and lunch at no charge to *all* students without having to collect and process individual meal applications.’”).

<sup>77</sup> Community Eligibility Provision, FOOD & NUTRITION SERV., <https://www.fns.usda.gov/cn/community-eligibility-provision> (last visited Feb. 26, 2021).

<sup>78</sup> FOOD RSCH. & ACTION CTR., COMMUNITY ELIGIBILITY: THE KEY TO HUNGER-FREE SCHOOLS SCHOOL YEAR 2019–2020, at 3 (2020), <https://frac.org/wp-content/uploads/CEP-Report-2020.pdf>; see also BARTHOLOW & JIMENEZ, *supra* note 18, at 1 (observing that “[w]hile Provision 2 and CEP are the best policy options for ensuring that children are not subjected to school meal shaming, most children in California are not covered by these provisions. This is because some schools that are eligible for CEP have not sought it and others simply don’t qualify . . .”).

CEP, more than one-quarter (26.4%) reported the presence of unpaid student meal debt.<sup>79</sup>

Importantly, the federal regulations developed under the Healthy Hunger-Free Kid Act function to encourage the accrual of school meal debt. The Act directed the USDA to establish regulations that address the problem of school meal debt incurred by schools without the consequent stigmatization of children.<sup>80</sup> Consequently, they prohibit school food authorities from refusing to serve a meal to a child whose account is in arrears and/or who does not have the funds to buy lunch on a given day. Yet, they simultaneously require school food authorities to keep track of each child's school meal debt, which the FNS treats as an asset "until it is either collected or is determined to be uncollectable and written off."<sup>81</sup>

Furthermore, the federal regulations also require school food authorities to "make reasonable efforts to collect unpaid meal charges classified as delinquent debt," and advise that "state agencies and [school food authorities] should ensure that efforts do not have a negative impact on the children . . . ."<sup>82</sup> Consequently, the regulations advise school food authorities to "focus [their collection efforts] primarily on the parents or guardians responsible for providing funds for meal purchases," as though dunning<sup>83</sup> a child's parent would have no stigmatizing effect on the child.<sup>84</sup>

---

<sup>79</sup> SNA TRENDS REPORT, *supra* note 16 at v.

<sup>80</sup> National School Lunch Act, 42 U.S.C. § 1751.

<sup>81</sup> FNS POLICY MEMO, *supra* note 47, at 2; *see also* Karen Kreworuka, *School Meal Debt Rising in Some Districts Under 'Food-Shaming' Law*, PORTLAND PRESS HERALD (Mar. 6, 2020), <https://www.pressherald.com/2020/03/06/school-meal-debt-rising-in-some-districts-under-food-shaming-law> (describing a recent Maine law under which "[l]unch debt is escalating because the law . . . prohibits schools from denying meals to children whose parents can't or don't pay").

<sup>82</sup> FNS POLICY MEMO, *supra* note 47, at 2.

<sup>83</sup> *See* Ronald J. Mann & Katherine Porter, *Saving Up for Bankruptcy*, 98 GEO. L.J. 289, 327–28 (2010) (describing the practice of creditor dunning as post-billing "contacts to persuade the customer to repay" and observing that "in practice it is the 'dunning' stage of collection that is important in the etiology of bankruptcy filings").

<sup>84</sup> *E.g.*, Amanda Litvinov & Emily Bricker, *States Take on 'Lunch Shaming', but Child Nutrition Still Under Threat*, NAT'L EDUC. ASS'N (Oct. 17, 2019), <https://www.nea.org/advocating-for-change/new-from-nea/states-take-lunch-shaming-child-nutrition-still-under-threat> (describing one instance in which "a Pennsylvania school district sent letters to the parents of 1,000 students with unpaid lunch debt stating the parents could face delinquency court, which may result in, 'your child being removed from your home and placed in foster care'"); Derrick Bryson Taylor, *Children Face Foster Care over School Meal Debt, District Warns*, N.Y. TIMES (July 20, 2019), <https://www.nytimes.com/2019/07/20/us/school-lunch-bills-overdue-payment.html> (same); *see also* Katherine Porter, *The Pretend Solution: An Empirical Study of Bankruptcy Outcomes*, 90 TEX. L. REV. 103, 138–39 (2011) (describing "research suggesting that dunning calls, rather than formal legal action, are the most powerful trigger for pushing a financially distressed consumer into bankruptcy"); Mann & Porter, *supra* note 83, at 328 (observing "that once the debtor understands the nature of the obligation and has decided not to pay it, subsequent dunning is a net social loss—it wastes the resources of those who are fruitlessly attempting to collect and diminishes the well-being of those who endure it").

For example, the Minnesota Department of Education sanctions tried and true dunning techniques like daily telephonic harassment. Its FNS-blessed guidance on school debt collection advises Minnesota schools:

**Don't wait too long.** Keep parents updated on the status of their child's account. When a student's meal payment account is low and/or when a student has begun charging, start contacting households immediately. The notification of parents should be done in a way that is consistent and does not cause embarrassment to students or create stigma. Consider the following:

- Automated calling system daily or weekly. Daily works best!
- Voicemail message is sent with stating [sic] "an important message from your principal/superintendent."
- Email alert to notify parents of negative balances, tied to "E-Alert" system.
- Daily/weekly text message alerts.<sup>85</sup>

The Minnesota Department of Education also encourages its schools to "[i]nform parents if or when the district/school might take legal action against a household when it has not settled its food service debt."<sup>86</sup> Indeed, the Department highlights in its guidance document the experience of one school administrator who boasted, "Our school policy is to submit unpaid meal debt to small claims court or other legal means when it gets to \$100. The parents are notified that this might happen."<sup>87</sup>

Once school meal "delinquent debt[s]" are deemed uncollectable (i.e., they become "bad debts"),<sup>88</sup> however, federal regulations prohibit the use of federal funds to satisfy those debts.<sup>89</sup> Instead, the FNS advises that "while bad debt must be written off as an operating loss, this particular operating loss may not be absorbed by the NSFSFA, but must be restored using non-Federal funds."<sup>90</sup> Consequently, the losses must be borne by the localities, and "[t]hese funds may come from the school district's general fund, special funding from State or local governments, school or community organizations, or any other non-Federal sources."<sup>91</sup> In other words, school meal debt becomes a budgetary issue for schools, which are likely already underfunded. Indeed, under the current regulatory framework, when school

<sup>85</sup> MDE GUIDANCE, *supra* note 48.

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

<sup>88</sup> FNS POLICY MEMO, *supra* note 47, at 2 ("When local officials determine that further collection efforts for delinquent debt are useless or too costly, the debt must be reclassified as 'bad debt.'").

<sup>89</sup> 2 C.F.R. § 200.426 (2020) ("Bad debts (debts which have been determined to be uncollectable), including losses (whether actual or estimated) arising from uncollectable accounts and other claims, are unallowable.").

<sup>90</sup> FNS POLICY MEMO, *supra* note 47, at 3.

<sup>91</sup> *Id.*

meal debt is “[l]eft unaddressed,” it “reach[es] beyond the cafeteria, potentially threatening district education funds and resources.”<sup>92</sup>

In light of this overall regulatory structure relative to school meal debt, it is unsurprising that schools have begun to behave like off-label debt-collection agencies in order to avoid having to bear the cost of school-day meals.<sup>93</sup> For example, the Granite City School District in Illinois banned a high school sophomore from attending school functions, like homecoming events, because his family owed school lunch debt stemming from the student’s middle school years.<sup>94</sup> Other students have had their hot lunches scraped away into the trash,<sup>95</sup> or have been “branded” with a hand stamp that declared “I need lunch money.”<sup>96</sup>

Dunning families is also a part of the Minnesota Department of Education’s guidance to its schools on how to develop the federally-mandated policies on dealing with unpaid school meal debt. In terms of appropriate debt collection, the Department encourages school food authorities to contact parents daily with reminders of outstanding school meal debt.<sup>97</sup> One respondent to a survey that the Department sent out to Minnesota public schools crowed that: “We set up an automatic parent notification system when a student’s meal payment account is low and/or when a student has begun charging their meals. *We leave messages every*

---

<sup>92</sup> MDE GUIDANCE, *supra* note 48 (quoting Patricia Montague, the CEO of the School Nutrition Association). The SNA “is a national, nonprofit professional organization” whose self-described mission is to “empower and support school nutrition professionals in advancing the accessibility, quality and integrity of school nutrition programs.” *Vision & Mission*, SCH. NUTRITION ASS’N, <https://schoolnutrition.org/AboutSNA/VisionMission> (last visited Feb. 26, 2021).

<sup>93</sup> See Karnaze, *supra* note 49, at 657 (observing that “[b]ecause school districts are unable to offset the loss of unpaid lunch debt with federal dollars, they must instead use other forms of revenue or seek other forms of reimbursement,” and that “[t]his led many school cafeterias to engage in lunch shaming practices in order to recoup this debt”).

<sup>94</sup> Jessica Fu, *Debt Collectors over Kids’ School Lunch Bills? It’s Real*, YES! MAG. (May 8, 2019), <https://www.yesmagazine.org/social-justice/2019/05/08/debt-usda-school-lunch-students>.

<sup>95</sup> See Crystal FitzSimons, *School Lunch Debt and Lunch Shaming Is a Problem That Needs a National Solution*, NBC NEWS (Oct. 16, 2019, 4:32 AM), <https://www.nbcnews.com/think/opinion/school-lunch-debt-lunch-shaming-problem-needs-national-solution-ncna1066461> (describing an incident when “a child had his lunch meal thrown in the trash on his birthday because he accrued \$9 in unpaid school meals fees while the school district was still processing his free school meal application”).

<sup>96</sup> Ivana Hrynkiw, *I Need Lunch Money, Alabama School Stamps on Child’s Arm*, BIRMINGHAM REAL-TIME NEWS (Mar. 7, 2019), [https://www.al.com/news/birmingham/2016/06/gardendale\\_elementary\\_student.html](https://www.al.com/news/birmingham/2016/06/gardendale_elementary_student.html); see also BARTHOLOW & JIMENEZ, *supra* note 18, at 1 (observing that “[h]and-stamping is just one of the school lunch shaming strategies used by school districts” and that “[o]ther strategies include denying children services, barring their participation in school activities, denying a meal, or full meal, to a child requiring them to eat what is referred to as ‘an alternative meal.’”).

<sup>97</sup> See *supra* note 85 and accompanying text.

day. Parents get tired of hearing from us and they pay the bill.”<sup>98</sup>

Consistent with federal requirements, the Minnesota Department of Education also advises its schools on how ostensibly to avoid stigmatizing children in its debt collection efforts. Suggestions for preserving a debtor child’s dignity include “[i]nvolv[ing] the school principal and social worker/counselor in meal debt collection strategies,” and “[i]nform[ing] parents if or when the district/school might take legal action against a household when it has not settled its food service debt.”<sup>99</sup> Moreover, the Department’s policy nevertheless permits school food authorities to “sensitive[ly]” remind children that they owe debt at the cashier stand, calling into question its purported goal of reducing stigma.<sup>100</sup>

Given these mixed messages, it is unsurprising that some Minnesota schools have struggled to implement anti-stigma regulations. For example, in May 2019, Robbinsdale Cooper High School in New Hope, Minnesota, a suburb of Minneapolis, found itself the subject of censure for its debt-collection activities when it threatened to withhold diplomas from graduating high school seniors who held outstanding school meal debt.<sup>101</sup> The threat was intended to coerce students and their families into repayment in light of the fact that at the time, Robbinsdale Area Schools had recorded \$300,000 worth of school lunch debt on their books.<sup>102</sup> Ultimately, Minnesota Attorney General Keith Ellison had to step in to declare that Minnesota’s public schools could not condition graduation eligibility on the repayment of outstanding school meal debt.<sup>103</sup> Ellison stated that, while school districts are entitled to collect school lunch debt, “they can’t use graduation as a cudgel or a barrier for kids and families.”<sup>104</sup>

In this regard, Minnesota stands as a stark example of the broader national phenomenon of lunch-shaming-as-debt-collection in which schools use “embarrassing or humiliating tactics that identify children with low or insufficient lunch balances in an attempt to encourage payment of their

<sup>98</sup> MDE GUIDANCE, *supra* note 48 (emphasis added).

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

<sup>101</sup> See Catherine Garcia, *Philando Castile’s Mom Wipes Out \$8,000 Worth of Student Lunch Debt at Minnesota High School*, WEEK (May 3, 2019), <https://theweek.com/speedreads/839208/philando-castiles-mom-wipes-8000-worth-student-lunch-debt-minnesota-high-school> (noting that Cooper High students with lunch debt could not graduate); see also David Mullen, *Philando Castile’s Mother Helps Pay Lunch Debt at Robbinsdale Cooper High*, STAR TRIB. (May 3, 2019, 7:29 PM), <https://www.startribune.com/philando-castile-s-mother-helps-pay-lunch-debt-at-robbinsdale-cooper-high/509455112/?refresh=true> (describing Valerie Castile’s efforts to eliminate lunch debt at Cooper High).

<sup>102</sup> Mullen, *supra* note 101.

<sup>103</sup> MPR News Staff, *AG Ellison Says Schools Must Allow Students to Graduate Despite Lunch Debt*, MPR NEWS (May 16, 2019, 12:10 AM), <https://www.mprnews.org/story/2019/05/15/ellison-lunch-debt-graduation-bans-policy>.

<sup>104</sup> *Id.*



debt.”<sup>105</sup> While the federal regulations nominally prohibit this shameless shaming of students with school lunch debt, in practice the regulations authorize practices that inevitably foment shame and stigma among children.

One such common practice is the provision of “alternative” meals for students who have a negative balance or who otherwise cannot pay for a school meal on any given day. For example, SPPS, where Philando Castile subsidized school meals from his own pocket, has developed its own policies that reflect the district’s intent “to eliminate stigmatization of students who are unable to pay for school meals.”<sup>106</sup> It also aspires “to maintain the financial integrity of the school nutrition program.”<sup>107</sup> Yet, while SPPS requires each school site to “provide[] a meal regardless of meal account status,” the district also approves the replacement of a hot meal with an “alternative meal” (typically a cold meal like a peanut butter and jelly sandwich) for those kids who have a “negative account balance” and whose “parent/guardian fails to pay the unpaid meal charges after reasonable attempts have been made.”<sup>108</sup>

Justified on the basis of “delinquent [school meal] debt,”<sup>109</sup> these alternative meals are themselves stigmatic markers of exclusion that have negative effects on children.<sup>110</sup> For example, Minnesota schools were again in the news in November 2019 when cafeteria staff at Richfield High School took already-distributed hot meals away from forty high school students who had lunch debt balances of \$15 or more.<sup>111</sup> The lunches were replaced by an alternative meal comprised of a peanut butter and jelly sandwich.<sup>112</sup> By one account, the alternative meal—which, per the Minnesota Department of Education, might appropriately consist of a cheese or peanut butter

---

<sup>105</sup> Karnaze, *supra* note 49, at 657.

<sup>106</sup> Unpaid Meal Charges, Saint Paul Public Schools Policy 534.00 (July 17, 2018), <https://www.spps.org/cms/lib/MN01910242/Centricity/Domain/13187/534.00%20Unpaid%20Meal%20Charges%20Final%207-17-18.pdf>.

<sup>107</sup> *Id.*

<sup>108</sup> *Id.*

<sup>109</sup> FNS POLICY MEMO, *supra* note 47, at 1 (“Unpaid meal charges, like any other money owed to the NSFSA, are considered ‘delinquent debt’ when payment is overdue, as defined by State or local policies.”).

<sup>110</sup> See, e.g., Julia Jacobo, *Alternative Lunches, Shaming over Meal Debt Can Have Negative Impacts on Students’ Psyches, Experts Say*, ABC NEWS (May 28, 2019, 8:21 PM), <https://abcnews.go.com/US/alternative-lunches-shaming-meal-debt-negative-impacts-students/story?id=63172737>.

<sup>111</sup> Christina Zdanowicz, *Students’ Lunches Were Thrown Away over a \$15 Debt. Now the School Is Apologizing*, CNN (Nov. 13, 2019, 7:07 PM), <https://www.cnn.com/2019/11/13/us/school-lunches-thrown-away-trnd/index.html>. The Superintendent ultimately apologized for the cafeteria staff’s actions, noting that “if a student already has a lunch on their tray, they should be allowed to eat it.” *Id.*

<sup>112</sup> *Id.*

sandwich, fruit, and milk<sup>113</sup>—is itself “a definition of powerlessness.”<sup>114</sup> For those children who occasionally must receive an alternative lunch, “being given a different lunch due to meal debt can bring anxiety and depression, as well as fuel anger and cause the student to be school avoidant.”<sup>115</sup> The alternative meal is even more difficult for children who are perpetually food insecure. These children “are already less resilient, more sickly and have decreased concentration,” and the “embarrassment and shame” they experience from “the stigma of lunch debt” and its consequences, like being relegated to an alternative meal, only intensify the academic challenges engendered by their vulnerable socioeconomic status.<sup>116</sup>

There has been some legislative effort to address these issues. Minnesota Representative Ilhan Omar introduced the No Shame at School Act in 2019. The Act would amend the National School Lunch Act “to prohibit the stigmatization of children who are unable to pay for school meals, and for other purposes.”<sup>117</sup> The legislation proposes to prohibit schools from engaging in shaming behavior like “physically segregat[ing]” children in the cafeteria based on their school lunch status, “overtly identify[ing]” children who receive federally-subsidized meals, or stigmatizing these children “by any other means.”<sup>118</sup> The legislation also proposes prohibiting schools from engaging in debt collection activity like daily phone calls home or excluding children with unpaid school meal debt from school activities.<sup>119</sup> The proposed legislation was referred to the House Committee on Education and Labor on the same day that it was introduced but appears to have stalled.<sup>120</sup>

### III

#### INTERNALIZING THE COST OF STATE VIOLENCE; EXTERNALIZING THE COST OF FOOD

If Philando Castile were still alive, he most certainly would have had to continue to shoulder some of the externalized burdens of debt-free school food. With its act of grotesque violence and utter carelessness, the St.

---

<sup>113</sup> MDE GUIDANCE, *supra* note 48; *see also* BARTHOLOW & JIMENEZ, *supra* note 18, at 1 (reporting that at least at one time in the Los Angeles Unified School District, “the alternative meal offered to children whose parents have unpaid school meal debt [wa]s a half of a cheese sandwich,” while “[i]n other schools, it [wa]s a granola bar or a cheese stick and a piece of fruit”).

<sup>114</sup> Jacobo, *supra* note 110 (reporting the opinion of a child psychologist).

<sup>115</sup> *Id.* (reporting the opinion of a child psychiatrist).

<sup>116</sup> *Id.* (reporting the opinion of a child psychiatrist).

<sup>117</sup> No Shame at School Act of 2019, H.R. 3366, 116th Cong. (2019).

<sup>118</sup> *Id.* § 4.

<sup>119</sup> *See id.* (prohibiting school officials from “direct[ing] any communication regarding unpaid school meal fees” to children with debt, aside from a letter addressed to the child’s parent or guardian, and from “withhold[ing] educational opportunities from” such children).

<sup>120</sup> *See* No Shame at School Act of 2019, H.R. 3366, 116th Cong. (2019).

Anthony, Minnesota Police Department ensured that we can never truly know what good Mr. Castile might have continued to do to support children's learning through nutrition.<sup>121</sup> Nevertheless, Valerie Castile continues to speak on behalf of her lost son and continues to do the work that he cared so much about. For example, in 2019 in the wake of the Robbinsdale Cooper High School threat to withhold diplomas, Ms. Castile stepped in by donating \$8,000 to cover the outstanding debt through the Philando Castile Relief Foundation (the Foundation), a nonprofit dedicated "to keep[ing] Philando's generosity paying itself forward, and assisting other parents that have suffered the loss of a loved one from gun violence."<sup>122</sup> Ms. Castile believed that her generosity "is the way to keep Philando alive, [because] it was something that he did, and he started," and that "[w]hat I'm doing [are] things that my son felt in his heart, and that's children, family and community."<sup>123</sup> The Foundation's "humanitarian act" cleared the lunch debt for approximately 100 students.<sup>124</sup>

Valerie Castile started the Foundation with funds she received when, in June 2017, the City of St. Anthony, Minnesota agreed to pay her \$2.995 million to settle any claims she held against the city for her son's killing.<sup>125</sup> The settlement money was paid by the League of Minnesota Cities Insurance Trust, which holds the City of St. Anthony's insurance policy against such liabilities like unjustified police killing.<sup>126</sup> The Trust "is a self-insured membership cooperative . . . created by Minnesota cities for Minnesota cities," whose "fundamental purpose is to cover city risks and to mitigate hazards, not show a profit for stakeholders."<sup>127</sup> The payout to Ms. Castile increased the city's premiums by \$12,000/year, a cost that the city was willing to bear in its own hierarchy of needs.<sup>128</sup> The City chooses to allocate funds to hedge against the risk of police violence, even as it chooses not to

---

<sup>121</sup> See Mark Berman, *What the Police Officer Who Shot Philando Castile Said About the Shooting*, WASH. POST (June 21, 2017, 5:22 PM), <https://www.washingtonpost.com/news/post-nation/wp/2017/06/21/what-the-police-officer-who-shot-philando-castile-said-about-the-shooting>.

<sup>122</sup> Mullen, *supra* note 101; *About Us*, Philando Castile Relief Foundation, <http://www.philandocastilefoundation.org/about.html> (last visited Mar. 20, 2021).

<sup>123</sup> Mullen, *supra* note 101 (first and third alterations in original).

<sup>124</sup> Van Sant, *supra* note 9 (quoting the Robbinsdale superintendent whose school received the Foundation's donation).

<sup>125</sup> Chao Xiong, *Settlement in Philando Castile's Death Goes to Mother Alone, Proposal Says*, STAR TRIB. (July 21, 2017, 5:19 AM), <https://www.startribune.com/settlement-in-philando-castile-s-death-goes-to-mother-alone-proposal-says/435721423>.

<sup>126</sup> Amy Forliti, *Minnesota Cities Insurance Trust to Pay \$3M in Philando Castile Settlement*, INS. J. (June 27, 2017), <https://www.insurancejournal.com/news/midwest/2017/06/27/455904.htm>.

<sup>127</sup> *About the Trust*, LEAGUE MINN. CITIES, <https://www.lmc.org/insurance-trust/about-the-trust> (last visited Mar. 20, 2021).

<sup>128</sup> Jon Collins & Riham Feshir, *St. Anthony to Consider Settlement with Diamond Reynolds*, MPR NEWS (Nov. 28, 2017, 10:00 AM), <https://www.mprnews.org/story/2017/11/28/st-anthony-to-consider-settlement-with-diamond-reynolds>.

hedge against the likelihood that there are schoolchildren in its care who cannot eat debt-free at school each day.

#### CONCLUSION

Debt-free school meals are not included in the necessary materials that states mandate be made available to all public-school children. Consequently, it seems that for now, it is up to private donations and philanthropy to keep school meal debt at bay.<sup>129</sup> Indeed, according to the SNA, charitable contributions were the largest funding source for the payment of school meal debt in the 2017–2018 school year, accounting for 55.4% of debt repaid.<sup>130</sup> Following behind were school district general funds, accounting for 36.2% of debt repaid.<sup>131</sup> Other state or local funds accounted for just one percent.<sup>132</sup>

The senseless killing of Philando Castile is all the more devastating in this light. His death undoubtedly remains a catastrophic loss for his loved ones; an unthinkable loss for his mother. His death is also a significant loss for the children at J.J. Hill Montessori whom he privately supported when the social safety net would not accommodate them. More than that, in making it his business to help the food-insecure population at Hill Montessori, Mr. Castile was doing the state's work<sup>133</sup> by making sure that schoolchildren could eat each day at school and promoting their chances at academic success by selflessly alleviating the burden that school meal debt placed on their families.<sup>134</sup>

Philando Castile was a philanthropist, working to keep children safe in a space where the state declined to take up that burden. He undertook this burden even up until the moment the state failed to keep him safe. Consequently, just as Mr. Castile's death is deeply lamentable, so is this

---

<sup>129</sup> There are numerous news stories that describe the work of good Samaritans and other non-profit sources who have organized to collect funds for this purpose. *See, e.g.*, Sara Sidery, *Charlestown Dad Raises Money to Pay Off All Students' Lunch Money Debts During Pandemic*, WDRB (Feb. 4, 2021), [https://www.wdrb.com/news/charlestown-dad-raises-money-to-pay-off-all-students-lunch-money-debts-during-pandemic/article\\_42ee4c34-674f-11eb-8f33-db1b78dcb0af.html](https://www.wdrb.com/news/charlestown-dad-raises-money-to-pay-off-all-students-lunch-money-debts-during-pandemic/article_42ee4c34-674f-11eb-8f33-db1b78dcb0af.html) (describing a community effort to raise \$1,516 covering fifty-three students in debt); *9-Year-Old Pays Off Lunch Debt for His Entire Third Grade Class*, ABC7NEWS (June 9, 2019), <https://abc7news.com/society/9-year-old-pays-off-lunch-debt-for-his-entire-third-grade-class/5338902> (reporting that an elementary school student paid about \$75 of his allowance money to eliminate his classmates' debt).

<sup>130</sup> SNA TRENDS REPORT, *supra* note 16, at 27.

<sup>131</sup> *Id.*

<sup>132</sup> *Id.*

<sup>133</sup> *See* *Brown v. Bd. of Educ.*, 347 U.S. 483, 493 (1954) (“[E]ducation is perhaps the most important function of state and local governments.”).

<sup>134</sup> *See* Mullen, *supra* note 101 (describing Mr. Castile's efforts to pay for his students' lunches).

system that continues to privatize social welfare in this perverse way.<sup>135</sup> Namely, the state remains willing to internalize the costs of police violence by paying out public blood money to grieving families, even as it imposes on those same families the costs of entrenched financial insecurity.

---

<sup>135</sup> *Accord* Murray & Millat, *supra* note 43, at 111 (arguing in the context of privatized dependency that “[i]t is only in re-centering the state, and being clear-eyed about its conscription of the family (and those within it) in the discharge of public functions, that we can confront the inequalities that are produced—and exacerbated—by the privatization of care”).