FOURTH AMENDMENT—Search and Seizure—Police Officers Are Not Limited In Making Custodial Misdemeanor Arrests By The Need To Balance The Necessity Of The Arrest With The Individual's Protection From Unreasonable Searches and Seizure—*Atwater v. City of Lago Vista,* 121 S. Ct. 1536 (2001).

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I. INTRODUCTION

One of the most fundamental and important liberties the Fourth Amendment[1] of the United States Constitution affords its citizens is "[t]he right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures . . . ."[2] The warrant requirement provides citizens with a

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* The author would like to acknowledge the support of her family, specifically Scott and Katrina, and would like to dedicate this piece to Belinda MacLeod.

[1] The Fourth Amendment states:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. CONST. amend. IV.

[2] The United States Supreme Court has held that the Fourth Amendment's foremost concern is "the protection of the individual from arbitrary and oppressive official conduct" and "the right of a person to retreat into his or her own home and there be free from unreasonable government intrusions." 2 JOHN WESLEY HALL, JR., SEARCH AND SEIZURE § 1.8 (3d ed. 2000) [hereinafter HALL].

The words "searches and seizure" are actually terms of limitation. Anthony G. Amsterdam, *Perspectives on the Fourth Amendment,* 58 MINN. L. REV. 349, 356 (1974). The Court has not limited searches to those performed by police but has held the amendment is applicable to any governmental action for the sovereign. New Jersey v. T.L.O., 469 U.S. 325, 327 (1985). The Supreme Court has described a search as "an intrusive 'quest by an officer of the law.'" HALL, at § 1.8. A seizure is defined as an "act of physically taking and removing tangible personal property. . . ." 1 WAYNE R. LAFAVE, SEARCH AND SEIZURE § 2.1(a) at 299 (2d ed. 1987) (citing 68 A. JUR. 2D *Searches and Seizures* § 8 (1973)). A personal seizure occurs when "a reasonable person would have believed that he was not free to leave." United States v. Mendenhell, 446 U.S. 544, 554 (1980).

safeguard in preventing any government official from intruding upon their expectation of privacy.[3] In crafting Fourth Amendment jurisprudence, courts serve the important function of deciding whether a search and/or seizure was reasonable.[4]

Recent decisions of the Supreme Court have leaned toward a balancing approach where the Court has weighed the government's interests for an arrest versus a citizen's expectation of privacy and the Court's decisions appear to have the scales tipped in favor of the police officer.[5] In *Atwater v. Lago Vista*,[6] the Court addressed a novel issue in Fourth Amendment jurisprudence regarding whether a warrantless, misdemeanor arrest for a minor traffic violation is unconstitutional. The Court held the Fourth Amendment was not breached when a police officer conducted a warrantless arrest for a misdemeanor, fine-only, seatbelt violation.[7] This note will examine the latest, and arguably the broadest, interpretation of the Fourth Amendment and the holding's implications on American society at large.

II. STATEMENT OF THE CASE

A. FACTUAL BACKGROUND

A Texas transportation statute required that a front seat passenger must wear a safety belt if the car is equipped with safety belts and if there are any small children riding in the front, the driver of the vehicle must secure them as well.[8]

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[3] The Court formulated a two-part analysis in Katz v. United States, 389 U.S. 347, 360-61 (1967) to determine whether there was indeed a reasonable expectation of privacy. Under this test, courts need to first determine if the "individual manifested a subjective expectation of privacy in the object of the challenged search?" and second, whether society is willing to recognize that expectation as reasonable?"

[4] LAFAVE, *supra* note 2, at 299.

[5] *See e.g.*, Wyoming v. Houston, 526 U.S. 295, 306 (1999) (holding a search of a passenger's purse constitutional under the Fourth Amendment); Whren v. United States, 517 U.S. 806, 819 (1996) (holding drug seizure constitutional even though the vehicle was stopped for being involved in traffic violation thereby dismissing a court's need to look at an officer's subjective intent when making stops based on probable cause).

[6] 121 S. Ct. 1536 (2001).

[7] *Id.* at 1543.

[8] TEX. TRANSP. CODE ANN. § 545.413 (a)(1999). This Statute provides:

Noncompliance was a misdemeanor punishable by a fine.[9] Furthermore, Texas law authorized police officers to execute a warrantless arrest for a violation of the seatbelt law.[10]

In March of 1997, a Lago Vista police officer observed that Gail Atwater and her two children were not wearing seatbelts while Atwater was driving her pickup truck through the city.[11] As police officer Bart Turek approached Atwater's vehicle, he began yelling to Atwater, "we've met before" and "you're going to jail."[12] After reaching Atwater's vehicle, the officer called for assistance and asked her to turn over her driver's license and proof of insurance.[13] Atwater did not have either one of these items, as her purse had been stolen the day before.[14]

(a) A person commits an offense if the person;

1. is at least 15 years of age;

2. is riding in the front seat of a passenger car while the vehicle is being operated;

3. is occupying a seat that is equipped with a safety belt; and

4. is not secured by a safety belt.

Id.

[9] TEX. TRANSP. CODE ANN. § 545.413(d). "An offense under this section is a misdemeanor punishable by a fine of not less than $25 or more than $50." *Id.*

[10] TEX. TRANSP. CODE ANN. §§ 545.003-543.005.

[11] *Atwater*, 121 S. Ct. at 1541.

[12] *Id.* Officer Turek had previously stopped Atwater assuming neither she nor her children wore a seatbelt. *Id.* at n.1. In the previous stop, however, Atwater and her children were wearing a seatbelt. Therefore, Officer Turek had released Atwater without issuing a citation. Atwater v. City of Lago Vista, 165 F.3d 380, 382 (5th Cir. 1999).

[13] *Atwater*, 121 S. Ct. at 1541. Texas law required drivers to carry their driver's license and proof of insurance. TEX. TRANSP. CODE ANN. §§ 521.025, 601.053 (1999). Atwater was able to provide her driver's license number from her checkbook. *Atwater*, 165 F.3d at 382.

[14] *Atwater*, 121 S. Ct. at 1541. At this point, Officer Turek ridiculed Atwater for not having these items on her and implied she was a liar. *Atwater*, 165 F.3d at 382. Officer Turek knew that Atwater was a valid driver and an insured driver from his previous encounter with her. *Id.*

Throughout this exchange, Atwater's children became increasingly upset.[15] In an effort to calm her children, Atwater asked the officer if she could take them to a friend's home.[16] Although Turek denied this request, the friend learned what was happening, arrived shortly on the scene, and the children were released to the friend's care.[17] Immediately thereafter, Atwater was handcuffed and taken to the local police station.[18] At the station, Atwater removed her personal belongings such as her shoes, jewelry, eyeglasses, and emptied her pockets.[19] An officer took Atwater's "mug shot" before placing her in a solitary cell for approximately an hour.[20] Atwater was ultimately taken in front of a magistrate and released on a $310 bond.[21]

B. PROCEDURAL HISTORY

Atwater and her husband (collectively "Atwater") filed suit in a Texas state court pursuant to 42 U.S.C. § 1983[22] against Officer Turek, the City of Lago Vista, and the Chief of Police Frank Miller (collectively "City"), alleging that the City violated her Fourth Amendment rights.[23] The City successfully removed the

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[15] *Atwater,* 121 S. Ct. at 1541.

[16] *Id.* Before answering Atwater's request, Officer Turek told Atwater that her children could accompany her to jail. *Atwater*, 165 F.3d at 382.

[17] *Atwater,* 121 S. Ct. at 1542.

[18] *Id.* at 1542. Even though Officer Turek could have issued a citation for this traffic violation, the officer chose to handcuff Atwater and proceed with an arrest. *See* TEX. TRANSP. CODE ANN. §§ 545.003-543.005.

[19] *Atwater,* 121 S. Ct. at 1542.

[20] *Id.*

[21] *Id.* Atwater was charged with "driving without her seatbelt fastened, failing to secure her children in seatbelts, driving without a license, and failing to provide proof of insurance." *Id.* Atwater pleaded no contest to the seatbelt offenses, both misdemeanors, and paid $50. *Id.* The charges for driving without a license and proof of insurance charges were dropped. *Id.* Because of the emotional distress and anxiety caused by the accident, Atwater's youngest child required counseling, and Atwater was medicated to help her deal with recurring nightmares, insomnia, and depression. *Atwater,* 165 F.3d at 383.

[22] 42 U.S.C. § 1983 was designed as comprehensive, remedial legislation for deprivation of federal constitutional rights. Green v. Dumke, 480 F.2d 624, 627-28 (1973).

[23] *Atwater,* 121 S. Ct. at 1542.

suit to the District Court for the Western District of Texas.[24] The district court dismissed Atwater's Fourth Amendment complaint based on Atwater's admission she had "violated the law."[25]

On appeal, a panel of the United States Court of Appeals for the Fifth Circuit reversed, holding that an "arrest for a first-time seat belt offense" was unreasonable under the Fourth Amendment.[26] The appellate panel reversed the district court's summary judgment for the City, basing its decision on the fact that Officer Turek could have issued a citation for the violation and the officer's actions were objectively unreasonable.[27] The appellate panel did not address any of Atwater's other arguments, as the court believed the Fourth Amendment argument was the only argument with merit.[28] The appellate court panel based its holding on language from *Carroll v. United States*:[29]

In cases of misdemeanor, a peace officer, like a private person, has at common law no power to arrest without a warrant except when a breach of the peace has been committed in his presence or there is reasonable ground for supposing that a breach of peace is about to be committed or renewed in his presence.[30]

The appellate panel held that at common-law, an officer was prohibited from arresting a person for a minor offense.[31] The panel supported its holding by stating that the Supreme Court has recognized a difference between minor and serious violations when evaluating the reasonableness of the arrest, therefore, since there were no exigent circumstances in this situation, the seizure was unreasonable.[32] The appellate panel rejected the City's argument that there was a large body of evidence supporting the proposition that "all seizures are reasonable under the Fourth Amendment if based upon probable cause."[33] The panel ulti-

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[24] *Id.*

[25] *Id.*

[26] Atwater v. City of Lago Vista, 165 F.3d 380, 387 (5th Cir. 1999).

[27] *Id.* at 387-88.

[28] *Id.* at 383-84 n.2.

[29] 267 U.S. 132, 157 (1925).

[30] *Atwater,* 165 F.3d at 386 (citing *Carroll v. United States*, 267 U.S. at 157) (citations omitted).

[31] *Id.*

[32] *Id.* at 387.

mately held that in keeping with the Court's precedent a first-time arrest for a traffic violation was an extreme seizure, and as such, the decision required a balancing analysis to determine the seizure's reasonableness.[34]

Sitting en banc, the court of appeals vacated the panel's decision.[35] In so doing, the court relied on the Supreme Court's recent decision in *Whren v. United States,*[36] which held that the Fourth Amendment usually requires a balancing of interests between the government and the individual when deeming a search unreasonable.[37] The court of appeals held that since Atwater never disputed there was probable cause for the arrest, and the arrest itself was not unreasonably harmful to Atwater's privacy interests, the arrest was constitutional.[38] The Fifth Circuit concluded that Officer Turek had probable cause to arrest Atwater because Atwater was not wearing her seatbelt.[39]

Three judges separately dissented from the appellate court's decision.[40] Judge Garza's dissent reasoned that since it was not commonplace for an officer to arrest a citizen for a seatbelt infraction, this arrest was unreasonable.[41] Judge Garza expressed trouble understanding how the majority had overlooked the fact this was a simple traffic violation.[42] Judge Garza noted that in his sixty years of practice, he should be able to take judicial notice of the fact that when one is in-

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[33] *Id.*

[34] *Id.*

[35] Atwater v. City of Lago Vista, 195 F.3d 242, 244 (5th Cir. 1999).

[36] 517 U.S. 806, 819 (1996).

[37] *Atwater,* 195 F.3d at 244.

[38] *Id.* at 245-46. The court also noted that Atwater had not belted her children. *Id.* The court stressed that Officer Turek had the discretion to arrest Atwater without a warrant under TEX. TRANS. CODE § 543.001. *Id.* at 246. The court also noted that Officer Turek did not physically come into contact with Atwater except to place her in handcuffs. *Id.*

[39] *Id.* at 245-46 n.41.

[40] *Id.* at 246 (Garza, J., dissenting). Judge Weiner filed a separate dissent echoing Judge Garza's surprise at the majority's opinion. *Id.* at 247 (Weiner, J., dissenting). The third judge, Justice Dennis, separately dissented. *Id.* at 251 (Dennis, J., dissenting).

[41] *Id.* at 247 (Garza, J., dissenting).

[42] *Id.* at 246 (Garza, J., dissenting).

volved in a regular traffic stop, one will be issued a citation.[43] Continuing, Judge Garza explained that only in the circumstances of a drunk driver, or when the officer sees a gun, would there be a need for an arrest.[44] Most importantly, the dissenting judge pointed to the personnel file of Officer Turek, which contained an affidavit of a member of the recruitment unit for the Austin police stating some hesitation in hiring Officer Turek, having found a "(1) lack of maturity based on his own explanations of changes in employment in the "reasons for leaving" subsections of each employer's identification, (2) failed two of three reported psychological tests at A.P.D., and (3) failed to provide complete information."[45]

Judge Weiner dissented reasoning the majority ignored well-founded precedent establishing the need for balancing when dealing with Fourth Amendment claims and based on the facts surrounding Atwater's arrest, the Court should have balanced the competing interests.[46] The dissent did not believe probable cause, alone, should justify a warrantless arrest in this situation because Atwater's arrest did not serve any legitimate, governmental interest.[47] Judge Weiner stated this arrest involved much more than just the traffic stop, the dissent understood this arrest as a "personal crusade" by Officer Turek to humiliate Atwater.[48]

The dissent could not overlook the obvious disconnect between Atwater's arrest serving any legitimate, governmental interest and the officer's probable cause justification for the arrest.[49] The dissent suggested that in order for an officer to conduct such an arrest, the officer needed to present an "articulated reason" for engaging in such an obvious intrusion into a person's privacy.[50] Judge Weiner concluded that the majority was correct in its assertion that courts should not "micro-manage" arrests, but the majority's decision extended a police officer too much unfettered discretion.[51]

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[43] *Atwater,* 195 F.3d at 246.

[44] *Id.*

[45] *Id.* at 247 (Garza, J., dissenting) (quoting Keith A. Campbell's affidavit).

[46] *Id.* (Weiner, J., dissenting).

[47] *Id.* at 248 (Weiner, J., dissenting).

[48] *Id.*

[49] *Atwater,* 195 F.3d at 249 (Weiner, J., dissenting).

[50] *Id.*

[51] *Id.* at 250-51 (Weiner, J., dissenting).

Judge Dennis found support for his dissent from the common-law's prohibition of warrantless arrests for misdemeanors unless such misdemeanors amounted to a "breach of the peace."[52] The dissent did not believe the majority opinion directly addressed Atwater's true question of whether her warrantless arrest was unconstitutional.[53] The dissent reminded the majority that its job was to review Atwater's appeal *de novo* and as such, should have only addressed the constitutionality of a warrantless arrest for a misdemeanor not involving a breach of the peace.[54] Judge Dennis explained that the first inquiry a court should make when faced with a Fourth Amendment claim is to examine what was reasonable at common-law and if this does not prove fruitful, the court should invoke a balancing between the governmental interest for the arrest and the individual's expectation of privacy.[55]

The dissent began by citing to *Carroll* for establishing the Court's acknowledgement that a warrantless misdemeanor could only be for a breach of the peace situation.[56] Judge Dennis furthered by explaining common-law misdemeanors that justified warrantless arrests were usually very serious such as "violent or disorderly acts" and Atwater's seatbelt infraction did not rise to such a level that would comply with what was accepted at common-law.[57] The dissent, therefore, illustrated the impossibility of reconciling the majority's position with traditional notions of the Fourth Amendment.[58] Furthermore, Justice Dennis did not believe

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[52] *Id.* at 252 (Dennis, J., dissenting).

[53] *Id.*

[54] *Id.* at 253. Justice Dennis could not ignore the majority opinion overlooking that the main point of Atwater's appeal was the fact that the initial stop was for a fine-only misdemeanor and this is unreasonable under the guarantees of the Fourth Amendment against unreasonable searches and seizure. *Id.*

[55] *Atwater,* 195 F.3d at 253.

[56] *Id.* The dissent explained a warrantless arrest for a breach of the peace misdemeanor was allowed because the Court felt it would suppress further breaches of the peace. *Id.* The reason, however, for allowing a warrantless arrest for a felony was for keeping public safety and "due apprehension of criminals charged with heinous offenses. . .arrests should be made at once without a warrant." *Id.* (quoting Rohan v. Sawin, 59 Mass. 281 (1850)).

[57] *Id.*

[58] *Id.* Justice Dennis' understanding of the Fourth Amendment incorporated the common-law prohibition against warrantless arrests outside of the breach of peace situations. *Id.* The dissent also criticized the majority, assuming arguendo that Atwater's infraction of the seatbelt law was a breach of the peace, there was no way the court, if it had properly balanced the competing interests in the case, could have found a legitimate governmental interest in this arrest. *Id.*

that *Whren's* probable cause standard has relieved the courts from balancing the rights involved in such intrusions of privacy, and therefore, the majority used a "truncated analysis" to reach an improper decision.[59]

Writing for a divided Court,[60] Justice Souter affirmed the Fifth Circuit's holding that the custodial arrest was reasonable.[61] After an extensive look at the common-law origins of warrantless arrests for misdemeanors and the term "breach of peace," Justice Souter concluded that British and American common-law allowed police officers the power to arrest for misdemeanors not involving breach of the peace.[62] The Justice held Officer Turek had probable cause to believe that Atwater had committed a crime; therefore, the officer had the right to make a custodial arrest without balancing the interests of whether such an arrest was truly necessary.[63] The Justice rejected Atwater's alternative argument that the Court needed to create a modern arrest rule.[64]

Writing for the dissent,[65] Justice O'Connor strongly disagreed with the majority's position that this arrest was not an unreasonable seizure.[66] The Justice could not square the majority's position with the protections afforded by the Fourth Amendment especially when the majority acknowledged that this arrest was a "pointless indignity."[67] Justice O'Connor reasoned that looking to history is one way of understanding reasonableness, and when history is not clear, the Court needed to implement a balance between the respective interests.[68]

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[59] *Id.*

[60] *Atwater*, 121 S. Ct. at 1541. The decision was 5-4. *Id.*

[61] *Id.* at 1543.

[62] *Id.* at 1544.

[63] *Id.* at 1557 (citing Dunaway v. New York, 442 U.S. 200, 208 (1979)).

[64] *Id* at 1553.

[65] *Id.* at 1560 (O'Connor, J., dissenting). Justice Stevens, Justice Ginsburg, and Justice Breyer joined the opinion. *Id.*

[66] *Atwater*, 121 S. Ct. at 1565 (O'Connor, J., dissenting).

[67] *Id.* at 1566 (O'Connor, J., dissenting).

[68] *Id.* at 1562 (O'Connor, J., dissenting).

III. HISTORICAL PERSPECTIVE

Until *Atwater*, the Supreme Court had never decided whether a warrantless arrest for a fine-only misdemeanor violated the Fourth Amendment. In fact, not many courts had drawn a comparison between the amendment and the common-law rule allowing warrantless arrests for misdemeanors.[69] In framing the *Atwater* decision, the majority relied on prior Fourth Amendment law in the United States and also consulted founding era American and British statutes describing a peace officer's ability to conduct warrantless arrests not involving breach of the peace situations.[70]

In determining whether a warrantless arrest for a fine-only misdemeanor is reasonable under the Fourth Amendment, the Court relied on this century's case law to conclude probable cause is a sufficient justification for such an arrest.[71] The Court found that the case law mandated Fourth Amendment claims be analyzed under a categorical instead of a case-by-case approach when a warrantless, misdemeanor arrest was based on probable cause.[72]

A. FOURTH AMENDMENT LAW: EXTENDING WARRANTLESS, MISDEMEANOR ARRESTS BEYOND BREACH OF THE PEACE SITUATIONS IF COMMITTED IN THE OFFICER'S PRESENCE.

One of the Court's earliest statements of an officer's ability to conduct a warrantless arrest is *Carroll v. United States*.[73] Even though Carroll was charged with a felony, the *Carroll* decision was one of the Court's first acknowledgements that a warrantless arrest for a misdemeanor, committed in the officer's presence, did not have to involve a breach of the peace.[74]

In *Carroll,* federal officers stopped and subsequently searched an automobile

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[69] William A. Schroeder, *Warrantless Misdemeanor Arrests and the Fourth Amendment,* 58 MO. L. REV. 771, 777-78 (1993) (following the evolution of the warrantless arrest for misdemeanors from common-law to the numerous contemporary statutes recognizing and encouraging these arrests, when the arrests are based on probable cause, in an effort to combat domestic violence). *Id.*

[70] *Atwater,* 121 S. Ct. at 1543-1558.

[71] *Id.* at 1544-1552.

[72] *Id.* at 1552-1556.

[73] 267 U.S. 132 (1925).

[74] *Id.* at 156-57.

occupied by two suspected bootleggers.[75] The search uncovered liquor bottles, however, Carroll argued the liquor bottles were discovered illegally because without a warrant, the search was unconstitutional.[76] The Supreme Court granted *certiorari* to determine whether the officers had violated the Fourth Amendment by not obtaining a warrant prior to the search of the vehicle.[77]

Justice Taft held the search constitutional.[78] Justice Taft examined whether the search would have been unconstitutional when the Framers were drafting the Fourth Amendment.[79] The Court explained the rule regarding misdemeanor offenses is *sometimes* stated that an officer can only conduct a warrantless arrest for a misdemeanor "when a breach of the peace" has been committed in his presence.[80] However, the Court "omitted any reference to a breach of peace limitation" when the opinion continued by explaining the "usual rule" was an officer was able to conduct a warrantless arrest if the misdemeanor was committed in his presence.[81] Thereby, the *Carroll* Court allowed an officer the ability to conduct a warrantless arrest for a misdemeanor not involving a breach of the peace situation.[82]

In 1976, the Supreme Court in *United States v. Watson*,[83] upheld the legality of a warrantless arrest for a public felony and the Court reiterated a police officer's ability to conduct such an arrest if a misdemeanor was committed in the officer's presence.[84] Most notably, the majority did not mention the misdemeanor needed to involve a breach of the peace situation.[85]

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[75] *Id.* at 135.

[76] *Id.*

[77] *Id.* at 132.

[78] *Id.* at 155-56.

[79] *Carroll*, 267 U.S. at 156-57.

[80] *Id.* at 157. (emphasis added)

[81] *Id.*

[82] *Id.*

[83] 423 U.S. 411 (1976).

[84] *Id.* at 418.

[85] *Id.* at 415.

In *Watson,* postal inspectors arrested a man, suspected of possessing stolen credit cards while the man was eating in a restaurant.[86] After his arrest, Watson consented to a search of his car; the postal inspectors found two stolen credit cards.[87] Prior to trial, Watson moved to have the evidence suppressed arguing the inspectors needed a warrant and probable cause as a condition precedent to his arrest in the restaurant.[88]

The Supreme Court held that warrantless arrests for felonies were constitutional so long as "there are reasonable grounds to believe that the person arrested has or is committing a felony."[89] The majority looked to the common-law rule that allowed warrantless arrests for misdemeanors or felonies if they were either committed in the presence of the officer or if the officer had reasonable grounds for the arrest.[90] The common-law rule for misdemeanors the majority cited to, did not come with the limitation for only those misdemeanors involving a breach of the peace and the *Watson* Court did not alter this common-law rule.[91]

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[86] *Id.* at 413. An informant, Khoury, had telephoned the postal inspector telling him that Watson had stolen credit cards and that Watson had asked Khoury to use the cards with him. *Id.* Since Khoury was a reliable source, the inspector asked Khoury to plan a meeting with Watson. *Id.* Ultimately, Khoury met with Watson in a restaurant and upon Khoury giving the inspector a predesignated signal, Watson was arrested. *Id.*

[87] *Id.* Due to the inspector not finding any stolen cards on Watson personally, the postal inspector asked Watson if he could search Watson's car. Id. Watson consented even though the inspector told Watson if the search turned up anything, the evidence could be used against him. Id.

[88] *Id.*

[89] *Watson,* 423 U.S. at 414 (quoting 18 U.S.C. § 3061 (a)(3)). The Supreme Court did not find it necessary for the postal inspector to have a warrant for the arrest, as the inspector was acting within his duties and the inspector had reasonable grounds to believe that Watson possessed stolen credit cards. *Id.* Therefore, because the postal inspector had probable cause, the warrantless arrest did not violate the Fourth Amendment. *Id.*

[90] *Id.* at 418. The Court cited to the prior cases construing the Fourth Amendment, reflecting the common-law rule that an officer could execute a warrantless misdemeanor arrest if the violation was committed in his presence. *Id.* (citing 10 HALSBURY'S LAWS OF ENGLAND 344-45 (3d ed. 1955) (citations omitted).

[91] *Id.* The majority found Watson's felony, warrantless arrest reasonable because there was probable cause to make the arrest. *Id.*

B. REASONABLENESS UNDER THE FOURTH AMENDMENT: PROBABLE CAUSE STANDARDS APPLIES TO ALL ARRESTS.

The Court's decision in *Dunaway v. New York,*[92] held that an arrest not based on probable cause, violated the Fourth Amendment.[93] The majority most importantly announced that the probable cause standard applies to all arrests "as elaborated in numerous precedents. . ." and without the need to "balance" the interests in each situation.[94] *Dunaway* involved the murder of a pizza shop owner during an attempted robbery.[95] A suspect was implicated based on an inmate's tip, but the officer was not able to obtain enough information that permitted the officer to get a warrant for the suspect's arrest.[96] The suspect, however, was picked up, taken to the station, and at the station, waived his right to counsel.[97] The suspect made statements and drew sketches that later implicated him in the murder and ultimately led to his conviction.[98]

Justice Brennan announced the probable cause standard applies to all arrests and there is no need to balance the varying interests involved.[99] The majority continued by stating, "while warrants were not required in all circumstances, the requirement of probable cause. . .was treated as absolute."[100] Distinguishing various cases that allowed a balancing test instead of the regular probable cause standard, the Court did not break away from the "single, familiar standard" that "is essential to guide police officers. . . ."[101] The majority could not dignify a

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[92] 442 U.S. 200 (1979).

[93] *Id.* at 201. Court also held the police officer's lack of probable cause violated the Fourteenth Amendment. *Id.*

[94] *Id.* at 208.

[95] *Id.* at 202.

[96] *Id.* at 203.

[97] *Id.*

[98] *Dunaway,* 442 U.S. at 203.

[99] *Id.* at 208.

[100] *Id.* at 207.

[101] *Id.* at 209-10. The majority recognized the exception made in *Terry v. Ohio*, 392 U.S. 1 (1968), as a "narrowly drawn authority to permit a reasonable search for weapons . . . regardless of whether has ha probable cause to arrest. . . ." *Terry*, 392 U.S. at 27.

departure from the probable cause standard in this case because the Court held all the "centuries of precedent" have balanced and the result of the balancing is the probable cause standard.[102] Justice Brennan believed the probable cause standard "provides the relative simplicity and clarity necessary to the implementation of a workable rule."[103]

C. UNLESS THE ARREST IS PERFORMED IN AN EXTRAORDINARY MANNER, THE ARREST IS REASONABLE IF BASED ON PROBABLE CAUSE.

An unanimous Court in *Whren v. United States*,[104] decided probable cause that a traffic violation occurred was sufficient for officers to seize drugs from a vehicle suspected only of committing a traffic offense.[105] The *Whren* Court concluded that a temporary detention of a driver, based on probable cause that the driver committed a minor traffic violation, was not unreasonable, irrespective if another officer would not have stopped the driver without further motive.[106]

Justice Scalia conceded "in principle every Fourth Amendment case" involves balancing because the term reasonableness requires a "balancing of all

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[102] *Dunaway*, 442 U.S. at 214. The Court after analyzing Dunaway's facts under the probable cause standard held the officers could not use the station house confession because the arrest was unconstitutional. *Id.*

[103] *Id.* at 213 (quoting Brinegar v. United States, 338 U.S. 160, 175-76 (1949)). The Court, therefore, held Dunaway had been unconstitutionally seized because there was no probable cause to justify his warrantless arrest. *Id.*

[104] 517 U.S. 806 (1996). Justice Scalia authored the opinion of the unanimous Court. *Id.* at 808.

[105] *Id.* at 808. In *Whren*, a plain-clothes police officer, in an unmarked car, observed a suspicious looking truck as the truck lingered too long at a stop sign and the driver appeared not to be paying attention to the road. *Id.* The police officer proceeded to make a U-turn at which time the truck sped off rather quickly. *Id.* The police officer followed the truck, subsequently pulled alongside the truck, and finally overtook the truck. *Id.* The police officer approached the truck, identified himself, and immediately observed two bags of what appeared to be crack cocaine. *Id.* at 808-09.

[106] *Id.* at 809-10. The majority acknowledged the temporary detention of individuals during a traffic stop does constitute a seizure of a person. *Id.* (citing Delaware v. Prouse, 440 U.S. 648, 653 (1979)). As a general matter a decision to stop a vehicle for a traffic violation, as long as the stop is based on probable cause, is constitutional. *Id.* at 810. Furthermore, the Court dismissed Whren's argument that because of the temptation for officers to use traffic stops as an excuse to investigate other violations, the general probable cause test for the Fourth Amendment should be changed. *Id.* The Court rejected Whren's alternative test; whether the police officer, acting reasonably, would have made the stop for the reason stated. *Id.*

relevant factors."[107] The Court, however, explicated that an officer's subjective intentions have no role in probable-cause Fourth Amendment analysis.[108] The Court dismissed any need to balance the government's interests with a person's expectation of privacy when there is probable cause and the searches and/or seizures were not "unusually harmful."[109]

D. WHEN AN ARREST IS BASED ON PROBABLE CAUSE, THE FOURTH AMENDMENT REASONABLENESS ANALYSIS SHOULD BE CATEGORICAL INSTEAD OF A CASE-BY-CASE DETERMINATION.

In *United States v. Robinson*,[110] the Supreme Court ultimately held that subjecting a Fourth Amendment balance to include a case-by-case investigation of the government's interest in relation to an officer's discretionary judgment "out in the field," would be unreasonable and overly cumbersome.[111] *Robinson* involved the conviction of a man for possession and concealment of heroin after an officer, based on probable cause, stopped Robinson for driving on a revoked license, employed a full-custody arrest, and conducted a warrantless search of Robinson's person.[112] Upon searching Robinson's body, the officer felt a crumbled package of cigarettes in Robinson's pocket thereby seizing the package, and after searching the package, found heroin within the package.[113] The officer subsequently seized the heroin.[114]

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[107] *Id.* at 817.

[108] *Id.* at 813. After dismissing the petitioner's cited precedence, the majority held that precedent in this area precluded any discussion of the "actual motivations of the individual officers involved." *Id.* The majority conceded to part of Whren's argument, acknowledging that officers may use the alleged traffic violation as a pretextual means of searching a vehicle based on a driver's race. *Id.* The Court ultimately concluded this concern for racial discrimination is better argued under the Equal Protection Clause, not the Fourth Amendment. *Id.*

[109] *Id.* at 817-18. The Court, therefore, concluded that when probable cause is present, the balancing analysis (in practice, not principle) does not need to occur. *Id.* at 818. It is only when there is extraordinary circumstances, such as deadly force, unannounced entry, or warrantless entry that the Court needs to engage in a balancing analysis. *Id.*

[110] 414 U.S. 218 (1973).

[111] *Id.* at 234-35.

[112] *Id.* at 223.

[113] *Id.*

[114] *Id.* at 218.

The majority's analysis involved not only the warrantless arrest itself but the search and seizure that followed the arrest even though the officer did not have reason to believe the defendant was armed.[115] The Court disregarded the need of a balancing approach when an arrest based on probable cause because such an intrusion is reasonable and does not require any more justification than probable cause.[116] Justice Rehnquist did not believe that the fruits of such a lawful arrest should be excluded and held "a custodial arrest of a suspect based on probable cause is a reasonable intrusion under the Fourth Amendment."[117]

In a strong dissent, Justice Marshall, joined by Justices Douglas and Brennan, disagreed with the majority's categorical approach to Fourth Amendment reasonableness because the dissent relied on the Court's previous enunciation that "[t]here is no formula for the determination of reasonableness. . .[e]ach case is to be decided on its own facts and circumstances."[118] The dissenters reasoned that the majority was turning a blind eye to the precedent establishing a case-by-case approach to Fourth Amendment reasonableness.[119] Justice Marshall questioned if reasonableness could be properly determined without a detached judge being able to determine the reasonableness of the arrest by looking at the particular facts of the case.[120]

Nine years later in *New York v. Belton,*[121] the Court reiterated its approval of a more categorical approach to the Fourth Amendment when the warrantless arrest is based on probable cause.[122] Belton was a passenger in a vehicle that was stopped for speeding and was ultimately arrested after the police officer stopped the vehicle, discovered none of the occupants were the lawful owner, and smelled marihuana.[123] After reading each one the individuals the *Miranda* warn-

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[115] *Id.* at 228. The majority did not believe the subsequent search and seizure were unconstitutional because the warrantless arrest was based on probable cause and not limited to the *Terry* "protective frisks for weapons" allowed under reasonable suspicion. *Id.*

[116] *Robinson,* 414 U.S. at 235.

[117] *Id.* at 235.

[118] *Id.* at 238 (Marshall, J., dissenting).

[119] *Id.* at 239 (Marshall, J., dissenting).

[120] *Id.*

[121] 453 U.S. 454 (1981).

[122] *Id.* at 459.

[123] *Id.* at 455.

ings, the officer began to search each person and then began a search of the passenger compartment of the vehicle.[124] The officer's found a leather coat in the back of the car, the officer then searched the coat and uncovered cocaine in the pocket.[125] The coat belonged to Belton and at trial, Belton moved to have the cocaine suppressed based on the unreasonableness of the search.[126]

The Supreme Court explained that Fourth Amendment protection can only be truly "realized" if law enforcement officials have a set of rules that enable the officers, before the search and/or seizure, to decide if the subsequent search and/or seizure will be reasonable.[127] The majority was concerned that a rule littered with too many unknowns or variables would lead to frustrated applications by the police officers, the persons most in need of a bright-line because they are the ones with the "limited time and expertise to reflect on and balance the social and individual interests involved in the circumstances. . . ."[128] The Court therefore, reinforced probable cause as a sufficient justification for an arrest and as such, attempted to create a brighter line for officers in the field.[129]

Justices Brennan and Marshall dissented vehemently discussing the need for a case-by-case analysis of Fourth Amendment search and seizures because the reasonableness of the search and seizure needs to be tied to the circumstances that made the intrusion possible.[130] The dissent cited earlier precedent that stated, "courts should carefully consider the facts . . . of each search and seizure, focusing on the reasons supporting the exception rather than on any bright-line rule. . . ."[131]

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[124] *Id.* at 456.

[125] *Id.*

[126] *Id.* Belton pleaded guilty to a lesser charge for the marihuana possession. *Id.* The Appellate Division of New York Supreme Court upheld the seizure of the cocaine and the New York Court of Appeals reversed. *Id.* The Supreme Court reversed the lower court's decision. *Id.*

[127] *Belton,* 453 U.S. at 458.

[128] *Id.* at 459.

[129] *Id.*

[130] *Id.* at 464 (Brennan, J., dissenting) (citing Terry v. Ohio, 392 U.S. 1, 19 (1968)).

[131] *Id.* (quoting Sibron v. New York, 392 U.S. 40, 59 (1968)).

IV. OPINION-THE FOURTH AMENDMENT PERMITS CUSTODIAL ARRESTS FOR SEAT BELT VIOLATIONS WITHOUT THE NEED TO BALANCE THE NECESSITY OF THE ARREST WITH THE INDIVIDUAL'S PROTECTION FROM UNREASONABLE SEARCH AND SEIZURE-*ATWATER V. CITY OF LAGO VISTA*

In *Atwater v. City of Lago Vista*,[132] the Supreme Court considered whether the Fourth Amendment permitted misdemeanor arrests, and if so, if the amendment, by incorporating common law restrictions, limited a police officer's ability to proceed with a warrantless, custodial arrest.[133] The Court held the amendment does allow such arrests and declined to "mint a new constitutional rule"[134] for fine-only warrantless arrests that do not carry jail time.[135] The Court based this holding on extensive common-law statutes and commentaries authorizing warrantless arrests for misdemeanors beyond breach of peace situations and more recent precedent that the probable cause standard "applies to all arrests, without the need to 'balance' the interests and circumstances involved in particular situations." [136]

A. JUSTICE SOUTER DETERMINED THAT BRITISH AND AMERICAN COMMON-LAW ALLOWED WARRANTLESS ARRESTS BEYOND BREACH OF THE PEACE SITUATIONS.

Writing for the majority,[137] Justice Souter started the opinion by framing the guidelines the Court uses when applying Fourth Amendment prohibitions to a search or seizure question.[138] The majority explained the importance of looking to the traditional protections afforded at common-law, and assessed the common-law authority peace officers possessed when conducting warrantless arrests

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[132] 121 S. Ct. 1536 (2001).

[133] *Id.* at 1541.

[134] *Id.*

[135] *Id.*

[136] *Id.* at 1540 (quoting Dunaway v. New York, 442 U.S. 200, 208 (1979)).

[137] *Id.* at 1541. Justice Souter wrote the majority opinion, in which Chief Justice Rehnquist, and Justices Scalia, Kennedy, and Thomas joined. *Id.*

[138] *Atwater*, 121 S. Ct. at 1543.

for misdemeanors.[139] The Court dismissed Atwater's chief argument that peace officers during the Founder's era were only given power to conduct warrantless arrests for misdemeanors that were a "breach of the peace."[140] Citing early English and American legal treatises, dictionaries, and procedural manuals, Justice Souter reasoned that the English common-law use of "breach of the peace" was not as clearly defined as Atwater contended.[141] The majority found common-law commentators reached divergent conclusions when discussing the power peace officers possessed in making warrantless misdemeanor arrests.[142]

The Court dismissed Atwater's reliance on the Court's quotation of Halsbury in *Carroll* because, as the majority explained, Atwater took the quotation out of context.[143] Instead of *Carroll* standing for the proposition that peace officers could only conduct warrantless arrests for breach of the peace situations, the Justice noted *Carroll* illustrated that statements at common-law on this specific topic "are not uniform."[144] Conceding that there were eminent authorities supporting Atwater's interpretation of *Carroll*,[145] Justice Souter, nonetheless, reasoned that there was considerable evidence of a broader notion of common-law authority for misdemeanor arrests beyond breach of the peace situations.[146]

The Court then exposed a more serious flaw in Atwater's breach of peace ar-

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[139] *Id.* The Court reasoned that the common-law sheds light on the Framer's true intention when they drafted the amendment. *Id.* (citing Payton v. New York, 445 U.S. 573, 591 (1980)).

[140] *Id.* at 1543-44.

[141] *Id.* at 1544 n.2. The majority noted the fact that the term "breach of the peace" meant many different things in common-law. *Id.* "Breach of peace is a generic term including all violations of public peace or order." *Id.* (citing Horace L. Wilgus, *Arrest Without a Warrant,* 22 MICH. L. REV. 541, 574 (1924)).

[142] *Id.*

[143] *Id.*

[144] *Atwater,* 121 S. Ct. at 1544.

[145] *Id.* In addition to Halsbury's quote in Carroll, James Fitzjames Stephen and Glanville Williams also discussed that common-law warrantless arrests were confined to breach of the peace situations. *Id.* (citing 1 J. STEPHEN, A HISTORY OF CRIMINAL LAW IN ENGLAND 193 (1883) and G. Williams, *Arrest Beyond Breach of the Peace,* 1954 CRIM. L. REV. 578, 578 (1954)).

[146] *Id.* at 1546.

gument as evidenced by Parliament's enactment of "diver Statutes."[147] The Framers had considered these "diver Statutes," the Court posited, and had factored them into their concept of reasonable searches and an officer's ability to execute warrantless arrests for misdemeanors as well as other "legislative sources of warrantless arrest authority . . . ."[148]

The majority also rejected Atwater's argument that since these nightwalker statutes were enacted prior to lighting, the statutes were conditioned on probable cause for warrantless, felonious arrests.[149] Dismissing Atwater's contention that at the time of the statutes, finding someone lurking in the dark was probable cause this person was a felon, Justice Souter pointed to the considerable commentary at the time that did not equate nightwalkers as felons.[150]

Next, Justice Souter pointed to the significance of other statutes enacted during the founding era, as more evidence of the common-law's approval of warrantless arrests for misdemeanors.[151] Turning to early American jurisprudence, the Court established that no conclusive evidence supported Atwater's contention that the Fourth Amendment prohibited warrantless arrests for misdemeanors.[152] No evidence, either from the founding period of this country or contemporary compilations of that era, the majority illustrated, attempted to limit a peace officer's warrantless arrest authority for misdemeanors.[153] In fact, Justice Souter explained, these commentaries stated peace officers were authorized to make warrantless arrests without any conditions that these arrests were for breach of the peace.[154]

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[147] *Id.* The majority explained these nightwalker statutes, written to aid an officer when confronted with a nightwalker, bestowed an officer with the ability to conduct warrantless arrests without any reference to violence. *Id.*

[148] *Id.* at 1547. The majority cited to the fact Parliament regularly granted warrantless arrest power for misdemeanor, non-violent offenses. *Id.* Different commentaries had noted these watchmen had "limitless nighttime arrest power." *Id.*

[149] *Id.*

[150] *Atwater,* 121 S. Ct. at 1547.

[151] *Id.* at 1548. Reasoning that Parliament could have overruled any judge created rule during these early years, the Court concluded that these statutes did not leave the Framers with any concept of a peace officer only being allowed to perform a warrantless arrest for breach of the peace. *Id.*

[152] *Id.*

[153] *Id.*

[154] *Id.* During the time prior to the framing of the Bill of Rights, the Court explained

Continuing, the Court noted Atwater's reliance on *Wilson v. Arkansas*[155] and the theory that states adopted common-law statutes as they were originally written, but distinguished her argument based on the explicit language used in the case.[156] The Court reasoned that even though the states that ratified the Fourth Amendment generally incorporated the common-law ideals into their own statutes, this did not bolster Atwater's argument that the statutes at common-law only allowed warrantless arrests for breach of the peace situations.[157] Many of these state statutes that granted peace officers the power to conduct warrantless, misdemeanor arrests, the Court highlighted, allowed these arrests beyond breach of the peace situations.[158] As a result, the Court concluded the historical record supported the conclusion the Framers were not concerned with a peace officer having the power to conduct warrantless, misdemeanor arrests.[159] The Fourth

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many state and colonial legislators allowed peace officers the ability to make warrantless misdemeanor arrests without mentioning breach of the peace. *Id.* (citing FIRST LAWS OF THE STATE OF CONNECTICUT 214-215, *compiled in* THE FIRST LAWS OF THE ORIGINAL THIRTEEN STATES (Cushing ed. 1982) (granting peace officers the ability to conduct warrantless arrests if someone was found traveling on the Sabbath)).

[155] 514 U.S. 927 (1995). The *Wilson* Court held that officers need to knock and announce their presence and authority before entering a home, as required by common law, as this is reasonable under the common-law notions of the Fourth Amendment. *Id.* at 1914. The Court relied on traditional common-law protections against unreasonable searches and seizures during the Founding Era when deciding whether the officer's unannounced was constitutional. *Id.* at 1915. The Court concluded after searching through numerous founding-era commentaries, constitutional provisions, statutes, and cases supporting the knock and announce principle, this Court concluded the common-law believed the knock and announcing of an officer's presence as a factor in determining a search's reasonableness. *Id.* at 1916-19.

[156] *Atwater,* 121 S. Ct. at 1549 (citing *Wilson,* 514 U.S. at 933). Atwater's situation was contrary to the language in *Wilson. Id.* The Court reasoned that even though some of the states might have enacted statutes embracing "knock and announce," these same states extended peace officers' power to conduct warrantless arrests in situations beyond breach of the peace. *Id.*

[157] *Id.* at 1549 n.9. Many of the states that had ratified the Fourth Amendment did incorporate common-law principles into their own state statutes and constitutions. *Id.* The Court, however, was quick to point to the fact that the majority of states altered the common-law principles when enacting their own state laws. *Id.* (citing DEL. CONST., art. XV (1776)). Specifically, the New Jersey state constitution stated, "the common law of England. . .shall remain in force, unless [it] shall be altered by a future law of the legislature." *Id.* (citing N.J. CONST., art. XXII (1776)). Because of this common practice to alter the common-law throughout most of the early, the Court was not persuaded that the common-law principle of warrantless arrests was only for breaches of the peace. *Id.*

[158] *Id.*

Amendment as originally understood and framed, the Court held, was not enacted to forbid officers from conducting warrantless misdemeanor arrests regardless of the existence of a breach of the peace situation.[160]

Having established that early American jurisprudence did not support Atwater's position, the Court turned to Fourth Amendment legal history since the amendment's enactment.[161] Using jurisprudence from the colonial period, the majority rejected Atwater's alternative argument that the prohibition against warrantless, misdemeanor arrests, has been "woven. . .into the fabric of American law."[162] According to Justice Souter, the country's Fourth Amendment story of the United States painted a contrary picture.[163] Spanning the past two hundred years and the various state and federal practices that allowed warrantless, misdemeanor arrests not involving breaches of peace, the majority explained early American courts allowed warrantless arrests for a variety of reasons.[164] Based on the lack of support for Atwater's claim that the early courts had a unanimous common-law rule regarding warrantless arrests for misdemeanors beyond breach of the peace situations, the majority found Atwater's argument unpersuasive.[165] In fact, the majority found more state decisions sustaining laws authorizing a peace officer to make such arrests.[166] Rather than looking at out-dated, early

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[159] *Id.* at 1550.

[160] *Id.* The *Watson* Court held that the Second Congress had not seen an inconsistency between the Fourth Amendment and the legislation authorizing the U.S. Marshals the same power as local peace officers. *Id.* (citing *Watson*, 423 U.S. at 420).

[161] *Id.* at 1550.

[162] *Atwater,* 121 S. Ct. at 1550 (quoting Payton v. New York, 445 U.S. 573, 590 (1980)).

[163] *Id.*

[164] *Id.*

[165] *Id.* Justice Souter explained that at first glance, Atwater's argument, that warrantless arrests were only allowed for breach of te peace situations, appeared to have support. *Id.* (citing Robinson v. Miner, 68 Mich. 549, 556-559 (1888); Commonwealth v. Carey, 66 Mass. 246, 250 (1853); POW v. Becker, 3 Ind. 475, 478 (1852)). The Court quickly held that none of the authority Atwater cited was "ultimately availing." *Id.* The Justice distinguished the cases cited as cases that encompassed the ideas that a crime needed to be committed in front of the officer (*POW*, 3 Ind. at 478); the language cited was from the argument of the petitioner, not the Court's holding (*Carey*, 66 Mass. at 252); the final case was overruled six years after it was decided (Burroughs v. Eastman, 101 Mich. 419, 425 (1894). *Id.* at 1551.

[166] *Id.* at 1551 (citing Davis v. American Soc. For Prevention of Cruelty of Animals, 75 N.Y. 362 (1878) (permitting warrantless arrest for misdemeanor violation of cruelty-to-animals); Jones v. Root, 72 Mass. 435 (1856) (upholding statute for warrantless arrest for

American statutes, the Court cited to the states and the District of Columbia all of which, today, have statutes permitting warrantless arrests, not conditioned on breach of the peace situations, thereby putting to rest Atwater's common-law breach of the peace argument.[167]

B. THE COURT REFUSED TO CREATE A MODERN, CONSTITUTIONAL LAW THAT WOULD FORBID CUSTODIAL ARRESTS WHEN THE CONVICTION DOES NOT CARRY JAIL TIME AND THE GOVERNMENT CANNOT SHOW A LEGITIMATE REASON FOR THE ARREST.

Justice Souter rejected Atwater's second argument that the Court should create a new constitutional law forbidding such arrests, even with probable cause, if the conviction could not carry any jail time and the government cannot show a compelling interest for the arrest.[168] Conceding that when history is not conclusive on a point, courts are left to balance the individual and society's contemporary circumstances with "traditional standards of reasonableness,"[169] the majority acknowledged that a balance based on the facts of Atwater's situation, would entitle her to prevail.[170] A responsible Fourth Amendment balance, the Court stressed, is not created by standards set through sensitive, case-by-case analysis, otherwise every discretionary decision would need to be constitutionally reviewed.[171] Due to Fourth Amendment decisions being made in the heat of a moment, the majority concluded the standards set for these decisions need to be clear, reasonable, and administrable.[172] Atwater's argument proposed drawing a

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transporting liquor); Mayo v. Wilson, 1 N.H. 53 (1817) (upholding statute for warrantless arrest for persons traveling on the Sabbath)).

[167] *Id.* (citations omitted).

[168] *Atwater,* 121 S. Ct. at 1553. The Court noted Atwater did not rest her argument only on history and criticized the dissent for not incorporating any history in its reasoning. *Id.*

[169] *Id.* (citing *Wyoming*, 526 U.S. at 299-300).

[170] *Id.* The majority did not believe the government's interest in the need for Atwater's arrest could outweigh her right to live free from pointless indignities. *Id.* The Court explained Atwater was a long time resident with no incentive to flee the jurisdiction. *Id.* Common sense, the Court reasoned, would lead anyone to the conclusion that Atwater would have buckled up once she had been warned. *Id.*

[171] *Id.* (citing United States v. Robinson, 414 U.S. 218, 234-35 (1973)).

[172] *Id.* at 1554 (citing New York v. Belton, 453 U.S. 454, 458 (1981) ("Fourth Amendment standards and rules ought to be expressed in terms that are readily applicable by the police in the context of the law enforcement activities in which they are necessarily engaged and not qualified by all sort of ifs, ands, and buts."). *Id.* The Court rebuked the dissent's reliance

line between minor crimes with limited arrest authority and other crimes, therefore Justice Souter argued, this created the proverbial slippery slope.[173]

Even though Atwater's tie-breaker, "if in doubt [of the lawfulness of the arrest], don't arrest," could be implemented, the Court reasoned this tie-breaker resembled a "least restrictive alternative" already held inappropriate in Fourth Amendment jurisprudence.[174] This tie-breaker, the majority feared, would become a powerful disincentive to police officers to engage in arrests.[175] The doctrine of qualified immunity,[176] was rejected by the Justice as providing the necessary protection to a police officer in these situations, because the doctrine was never intended to extend to life and death situations for police officers.[177] The majority dismissed this doctrine based on the fear that even though the officer could be entitled to qualified immunity, the immunity protection still comes with litigation costs and "diversion of [their] official energy from pressing public issues."[178] Justice Souter reasoned this fear of possible litigation and diversion

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on *Terry v. Ohio*, 392 U.S. 1 (1968), as standing for anything contrary. *Id.*

[173] *Id.* The Court explained that since Atwater suggested drawing a line between jailable and fine-only offenses, this could be unnecessarily confusing for an officer on the street as not every officer would be aware of the punishment for each crime. *Id.* (citing Berkemer v. McCarty, 468 U.S. 420, 431 n.13 (1984)).

[174] *Atwater*, 121 S. Ct. at 1555-56. Previous decisions of the Court have already established that a least restrictive alternative is not proper in Fourth Amendment decisions. *Id.* (citing *Belton*, 453 U.S. at 458; Skinner v. Railroad Labor Executives' Assn., 489 U.S. 602, 629 n.9 (1989)).

[175] *Id.* at 1556. The Court hypothesized that if an officer was not too sure if the drugs he was confiscating warranted the amount to warrant jail or was not too sure if the arrestee would flee the jurisdiction, the officer would not arrest. *Id.* This apprehension multiplied many times would lead to a tremendous cost to society. *Id.*

[176] *Id.* at 1564 (O'Connor, J., dissenting). The doctrine of qualified immunity was created in an effort to protect government officials from civil liability while performing discretionary job duties. *Id.* As long as the government official "does not violate any statutory or constitutional rights of which a reasonable person would have known," the official's conduct is extended qualified immunity. *Id.* When determining whether a government official is entitled to qualified immunity, the court needs to determine "(1) whether the plaintiff has alleged a violation of a clearly established constitutional right and (2) whether the official's conduct was objectively reasonable in light of clearly established law as it existed at the time of the conduct in question." *Atwater*, 165 F.3d at 384 (quoting Stefanoff v. Hays County, 154 F.3d 523, 525 (5th Cir. 1998)).

[177] *Id.* at 1556 n.22.

[178] *Id.* (quoting Harlow v. Fitzgerald, 457 U.S. 800, 814 (1982)).

from work duties would lead to an officer becoming apprehensive to arrest an individual and this apprehension in a "spur (and in the heat) of the moment" situation could lead to dangerous consequences.[179]

Ultimately, the Court concluded its decision by reiterating Atwater's arrest comported with the Fourth Amendment, as Officer Turek had probable cause and the arrest was not made in an unreasonable manner.[180]

C. JUSTICE O'CONNOR ARGUED THE MAJORITY'S POSITION VIOLATED THE GUARANTEES OF THE FOURTH AMENDMENT.

In a strong dissent,[181] Justice O'Connor reasoned that the warrantless arrest of Atwater for a misdemeanor was unreasonable, as a full custodial arrest is a "quintessential seizure," and the Fourth Amendment requires seizures to be reasonable.[182] The dissent suggested history is one tool that is used in assessing whether a search or seizure is reasonable, but when history is not clear, the Court needed to balance the individual's expectation of privacy with governmental interests.[183] The dissent noted this balancing needed to be done underneath the umbrella of traditional standards of reasonableness.[184]

Justice O'Connor criticized the majority's creation of a new rule: when in doubt of the lawfulness of the arrest, if an officer has probable cause that a suspect committed a misdemeanor, the officer may arrest the individual.[185] This

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[179] *Id.*

[180] *Atwater*, 121 S. Ct. at 1557.

[181] *Id.* at 1560 (O'Connor, J., dissenting). Justice O'Connor filed a dissenting opinion, in which, Justices Stevens, Ginsburg, and Breyer joined. *Id.*

[182] *Id.* at 1560 (O'Connor, J., dissenting) (quoting Payton v. New York, 445 U.S. at 585 (1980)). Fourth Amendment analysis turns on the reasonableness of the government intrusion into a "citizen's personal security." *Id.* at 1561 (quoting Pennsylvania v. Mimms, 434 U.S. 106, 108-09 (1977)).

[183] *Id.* at 1561. When history is inconclusive on a point, and in Atwater's case, history is definitely not clear, the dissent proffered the Court needed to evaluate the seizure under the "traditional standards of reasonableness." *Id.* (quoting *Houghton*, 526 U.S. at 300).

[184] *Id.* In cases such as Atwater's, the dissent held the Court needed to decide "reasonableness" on the specifics of Atwater's facts and circumstances. *Id. (*citing Go-Bart Importing Co. v. United States, 282 U.S. 344, 357 (1931)).

[185] *Id.* at 1561. Criticizing the majority for overlooking the foundation of the Fourth Amendment and Atwater's right to live free from unnecessary government intrusions, the dissent strongly disagreed with the majority's fear that without such a strong rule, every discretionary judgment will be under constitutional review. *Id.*

rule, the dissent explained, offended precedent and ran contrary to the bedrock foundations of the Fourth Amendment.[186] Acknowledging the case law that involved warrantless arrests for felonies has held that probable cause on its own was a sufficient condition for the arrest, Justice O'Connor distinguished these cases as involving felonies and not fine-only misdemeanors.[187] The Justice contended that when history is unclear, the Court ought to engage in a balancing test as required by the Fourth Amendment.[188] The dissent concluded that in a case like Atwater's, probable cause is not a sufficient condition as it is in felony arrests.[189]

Discussing *Whren v. United States,*[190] the Justice agreed with the premise that a police officer's subjective intent need not be considered when evaluating the reasonableness of a traffic stop.[191] Justice O'Connor, however, distinguished the language in *Whren* as only applicable to the facts of that case, such that the *Whren* Court did not need to consider the "constitutional preconditions for warrantless arrests for fine-only arrests."[192] Even though a traffic stop and a full arrest fall under the Fourth Amendment, the Justice noted that the evidence necessary to justify a mere traffic stop should not be sufficient to justify a full arrest.[193] The Justice founded the dissent on the fact that any decisions allowing the same evidence for a traffic stop and a full custodial arrest would offend any sense of reasonableness as well as the Fourth Amendment's guarantee against

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[186] *Atwater,* 121 S. Ct. at 1561.

[187] *Atwater,* 121 S. Ct. at 1562 (O'Connor, J., dissenting).

[188] *Id.*

[189] *Id.* The dissent could not foresee any realistic assessment of Atwater's case, without any other justification other than probable cause, which would be sufficient to justify her warrantless, misdemeanor arrest. *Id.*

[190] 517 U.S. 806 (1996).

[191] *Atwater,* 121 S. Ct. at 1652. (O'Connor, J., dissenting). *Whren* held that traffic stops were governed by the usual Fourth Amendment rule, as opposed to a balancing, because probable cause that the law was broken outweighs the person's interest in "avoiding police contact." *Id.* (quoting *Whren,* 517 U.S. at 818).

[192] *Id.* The dissent stated that the Court's words should not be taken out of context as there are large differences between a traffic stop and a custodial arrest. *Id.*

[193] *Id.* at 1562-63 (O'Connor, J., dissenting). When stopped for a traffic violation, a motorist's expectations is that there will be a short detainment answering questions and providing a driver's license and proof of insurance. *Id.* at 1563. (O'Connor, J., dissenting).

unreasonable searches and seizures.[194]

Justice O'Connor continued by explaining the intrusion a custodial arrest creates for an individual's expectation of privacy,[195] and that the penalty attached to a crime usually evidences the state's interest in the arrest of the perpetrators of that crime.[196] In certain circumstances the state's interests, Justice O'Connor conceded, may be vindicated by an arrest even if the crime only carries a fine, i.e., the offender is a flight risk.[197] In most cases, the dissent opined, a citation will better serve the interests of the state.[198] Due to the high degree of personal invasion during an arrest, the dissent posited the reasonableness of the arrest should be gauged by the arrest's "promotion of . . . governmental interests."[199]

The Justice concluded that the majority's rule of deeming full custodial arrests reasonable across the board, was too broad a rule and truly unacceptable.[200] Justice O'Connor then suggested an alternative rule that would require an officer to issue a citation unless the officer can "point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant [the additional] intrusion of a full custodial arrest."[201] This rule, the Justice furthered, would not interfere with the majority's concern for a bright line in this

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[194] *Id.* A custodial arrest can take the same toll on a person's privacy even though the period of detainment is brief. *Id.* Furthermore, since the entire vehicle can be searched once it is stopped, this impacts a person's expectation of privacy. *Id.* The dissent pointed to *County of Riverside v. McLaughlin*, 500 U.S. 44 (1991), where an arrestee was detained for forty-eight hours before a magistrate determined if there had been probable cause for the arrest. *Id.* The dissent stressed that when a person is arrested, no matter what the offense, the period of detainment is usually spent with other arrestees and can be potentially dangerous. *Id.* (citing Rosazza & Cook, *Jail Intake: Managing a Critical Function-Part One: Resources,* 13 AMERICAN JAILS 35 (Mar./Apr. 1999)).

[195] *Id.*

[196] *Id.* The dissent reasoned that if the state has only attached a fine to the offense, this exemplifies the state's interest in taking this person into custody is minimal. *Id.*

[197] *Atwater,* 121 S. Ct. at 1563 (O'Connor, J., dissenting). An arrest may allow an officer to verify the identity of the arrestee and offer a sure way of stopping criminal conduct. *Id.*

[198] *Id.*

[199] *Id.* (quoting Wyoming v. Houghton, 526 U.S. at 300).

[200] *Id.* The dissent did not believe that an officer should be given "carte blanche" to perform an arrest in every situation because this does not comply with the Fourteenth Amendment. *Id.*

[201] *Id.* at 1564 (O'Connor, J., dissenting) (quoting *Terry*, 392 U.S. at 21).

area.[202] As another alternative to the majority's broad rule, the dissent offered the doctrine of qualified immunity.[203] This doctrine, the Justice explained, accommodates competing values such as the need to make arrests with the need to protect officials' discretion in the arrest.[204] Through this doctrine, the Justice reasoned, the reluctance of police officers in making arrests for fear of personal liability, would be alleviated.[205]

The dissent pointed out the unreasonableness of the arrest, which served no governmental interest except to humiliate Atwater.[206] Considering Atwater was not a threat to the community, nor was she a repeat offender, and her children witnessed the animated verbal exchange between their mother and the officer, the dissent refused to recognize the arrest as promoting any governmental interest.[207] The dissent rebuked the officer's explanation that without the arrest, there

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[202] *Id.* The dissent challenged the majority's insistence that a bright-line rule fashioned on probable cause is necessary and the most administrable for law enforcement, due to probable cause being such an imprecise concept. *Id.* The dissent believed this alternative rule is administrable for law enforcement and creates a bright-line rule. *Id.*

[203] *Atwater,* 121 S. Ct. at 1564. The dissent explained qualified immunity was implemented to protect government officials "from civil liability for the performance of discretionary functions so long as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." This doctrine is sufficient for warrantless arrests. *Id.* The dissent held that this doctrine is adequate protection for an officer conducting a warrantless arrest and as such, the broad, bright-line presented by the majority is over-inclusive. *Id.*

[204] *Id.* The dissent opined that this doctrine is "the best attainable accommodation of competing values, namely, the obligation to enforce constitutional guarantees and the need to protect officials who are required to exercise their discretion." *Id. (*quoting Harlow v. Fitzgerald 457 U.S. 800, 814 (1982)).

[205] *Id.* Justice O'Connor hypothesized that if an officer reasonably suspected a person would flee the jurisdiction, would be a danger to the community, or possessed a substantial amount of narcotics, the officer would be insulated from civil liability if the officer arrested the suspect. *Id.* Since the doctrine leaves room for officer assessments that turn out to be factually incorrect, the officer would not be held liable for that mistake of judgment. *Id.*

[206] *Id.* at 1565 (O'Connor, J., dissenting). The dissent discounted the City's contention that the arrest promoted two interests: "the enforcement of child safety laws and encouraging [Atwater] to appear for trial." *Id.* Atwater was not a threat as she had only been driving fifteen miles per hour through town, and she had not received a ticket in the past ten years. *Id.* Moreover, Atwater had immediately apologized to the officer when she had been pulled over. *Id.* at 1566 (O'Connor, J., dissenting). The dissent posited that relying on Atwater's reaction to the arrest, it was safe to assume she would have buckled herself and her children in the car if she had been given a warning. *Id.*

[207] *Id.*

was no guarantee that Atwater would show up in court, especially when Atwater had lived in the community for sixteen years.[208]

Finally, the dissent concluded by projecting the majority's broad rule onto society at large and the rule's potential interpretation by the individual states.[209] Pointing to the numerous fine-only misdemeanors in Texas, and in several other states, the dissent explained that an officer, who would have only issued a citation for a misdemeanor prior to this decision, may use this rule as an excuse to conduct a warrantless arrest.[210] Reiterating that although the Fourth Amendment requires searches to be reasonable, the dissent closed by noting that the majority's broad rule granting warrantless arrests for fine-only misdemeanors gave police officers too much unbridled discretion when deciding whether to issue a simple citation or execute a full custodial arrest.[211]

V. CONCLUSION

The Supreme Court decision in *Atwater v. City of Lago Vista* has overextended the discretion a police officer may now use when deciding whether to issue a citation or execute a full arrest for a fine-only misdemeanor.[212] The dissent offered this rule: an "officer should issue a citation unless the officer [can] point to specific and articulable facts which, taken together with rational inferences

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[208] *Id.*

[209] *Atwater*, 121 S. Ct. at 1566-67 (O'Connor, J., dissenting). The dissent did not have a problem with the various state laws, the dissent feared the manner in which these laws would be enacted. *Id.* at 1567 (O'Connor, J., dissenting).

[210] *Id.* The dissent explained that if an officer followed *Whren*'s reasoning, an officer would make the stop, based on probable cause, issue a citation, and let the person proceed. *Id.* (citing *Whren*, 517 U.S. at 806). Beyond this, the dissent noted that an officer is able to stop a car, arrest the driver, and search not only the vehicle but the packages within the car. *Id.* (citing *Houghton*, 526 U.S. at 307). Under the majority's holding, an officer is now given the discretion to choose which of the two scenarios to implement, a simple citation or a full arrest and search, without ever having to offer an explanation for the decision. *Id.* The dissent claimed the majority's reliance on the lack of evidence showing an over abuse of arrests for minor traffic violations was unrealistic as the majority of cases do not get published that do involve such arrests. *Id.* The dissent specifically mentioned the recent attention given to racial profiling and society's disdain for this practice, yet noted that under the majority's rule, an officer now has greater discretion in arresting an individual, thereby potentially increasing the occurrences of this practice. *Id.*

[211] *Id.* The dissent reiterated that "in the name of administrable ease," the majority has completely overlooked the protections of the Fourth Amendment. *Id.*

[212] *Id.* at 1567 (O'Connor, J., dissenting).

from [the] facts, reasonably warrant [the additional] intrusion of a full custodial arrest."[213] An interpretation that adheres to the traditional reading of the Fourth Amendment can still occur using the dissent's proposed rule.[214]

In an attempt to comport with an extensive look at historical precedent, statutes, treatises, and commentaries, the Court missed the unfortunate ramifications this decision can have on racial minorities driving through the cities, countrysides, and suburbs of this country.[215] The Court's present decision, unfortunately, crystalized a police officer's ability to issue a citation or proceed with an arrest, and the subsequent search and incidental arrest, without the need to explain such action.[216] Even though the Justices did not openly condone the practice of racial profiling on the roads, this decision could not have been made without the majority considering the breadth of its expansive language opening the door even further to such problems.

Surprisingly, this Court's decision expresses a lack of respect to an individual's expectation of privacy through the Court's denial of allowing any sort of a balancing inquiry. Given the Court's well-founded concern for a bright line rule allowing warrantless arrest, due to potential police officers' lives being on the line, this bright line need not be created at the expense of an individual's reasonable expectation of privacy. A respective balancing, however, of both interests can be accomplished just as quickly and efficiently as the majority's bright line rule, once the decision to search has been made. It seems ironic, therefore, that the majority has allowed a police state atmosphere to grow within the local municipalities. The majority has done this by allowing police officers the ability to patrol the streets without the fear of being accountable for their arrest decisions, because the majority feared a police officer's apprehension is too great a price for society to pay. In reality, there is a large price being paid but not by the government officials who should be held accountable, but by the individual who is stopped for a fine-only misdemeanor, taken into custody, and has no recourse in the judicial system to ask the officer why.

The Court may have believed the holding was reasonable by following history and deferring to the state legislators to re-write statutes that allow police officers the right to proceed with arrests for fine-only misdemeanors. Under the Court's broad rule, however, the state legislators may not feel the need to re-

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[213] *Id.* at 1563-64 (O'Connor, J., dissenting) (alteration in original).

[214] *Id.* at 1564 (O'Connor, J., dissenting).

[215] *Atwater*, 121 S. Ct. at 1567 (O'Connor, J., dissenting). Justice O'Connor mentioned the fear of racial profiling will now increase due to this broad ruling and criticized the majority for not giving this argument any consideration. *Id.*

[216] *Id.*

write any statutes until more cases of racial profiling emerge, thereby closing the gate after the horse has already left.