Criminal Procedure:
Cases, Materials, and Questions

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BIRCHFIELD v. NORTH DAKOTA
195 S. Ct. 560

Opinion

JUSTICE ALITO delivered the opinion of the Court.

Drunk drivers take a grisly toll on the Nation's roads, claiming thousands of lives, injuring many more victims, and inflicting billions of dollars in property damage every year. To fight this problem, all States have laws that prohibit motorists from driving with a blood alcohol concentration (BAC) that exceeds a specified level. But determining whether a driver's BAC is over the legal limit requires a test, and many drivers stopped on suspicion of drunk driving would not submit to testing if given the option. So every State also has long had what are termed "implied consent laws." These laws impose penalties on motorists who refuse to undergo testing when there is sufficient reason to believe they are violating the State's drunk-driving laws.

In the past, the typical penalty for noncompliance was suspension or revocation of the motorist's license. The cases now before us involve laws that go beyond that and make it a crime for a motorist to refuse to be tested after being lawfully arrested for driving while impaired. The question presented is whether such laws violate the Fourth Amendment's prohibition against unreasonable searches.

II

A

Petitioner Danny Birchfield accidentally drove his car off a North Dakota highway on October 10, 2013. A state trooper arrived and watched as Birchfield unsuccessfully tried to drive back out of the ditch in which his car was stuck. The trooper approached, caught a strong whiff of alcohol, and saw that Birchfield's eyes were bloodshot and watery. Birchfield spoke in slurred speech and struggled to stay steady on his feet. At the trooper's request, Birchfield agreed to take several field sobriety tests and performed poorly on each. He had trouble reciting sections of the alphabet and counting backwards in compliance with the trooper's directions.

Believing that Birchfield was intoxicated, the trooper informed him of his obligation under state law to agree to a BAC test. Birchfield consented to a roadside breath test. The device used for this sort of test often differs from the machines used for breath tests administered in a police station and is intended to provide a preliminary assessment of the driver's BAC. Because the reliability

of these preliminary or screening breath tests varies, many jurisdictions do not permit their numerical results to be admitted in a drunk-driving trial as evidence of a driver's BAC. In North Dakota, results from this type of test are "used only for determining whether or not a further test shall be given." In Birchfield's case, the screening test estimated that his BAC was 0.254%, more than three times the legal limit of 0.08%.

The state trooper arrested Birchfield for driving while impaired, gave the usual Miranda warnings, again advised him of his obligation under North Dakota law to undergo BAC testing, and informed him, as state law requires, that refusing to take the test would expose him to criminal penalties. In addition to mandatory addiction treatment, sentences range from a mandatory fine of $500 (for first-time offenders) to fines of at least $2,000 and imprisonment of at least one year and one day (for serial offenders). These criminal penalties apply to blood, breath, and urine test refusals alike.

Although faced with the prospect of prosecution under this law, Birchfield refused to let his blood be drawn. Just three months before, Birchfield had received a citation for driving under the influence, and he ultimately pleaded guilty to that offense. This time he also pleaded guilty—to a misdemeanor violation of the refusal statute—but his plea was a conditional one: while Birchfield admitted refusing the blood test, he argued that the Fourth Amendment prohibited criminalizing his refusal to submit to the test. The State District Court rejected this argument and imposed a sentence that accounted for his prior conviction. The sentence included 30 days in jail (20 of which were suspended and 10 of which had already been served), 1 year of unsupervised probation, $1,750 in fine and fees, and mandatory participation in a sobriety program and in a substance abuse evaluation.

On appeal, the North Dakota Supreme Court affirmed.

B

On August 5, 2012, Minnesota police received a report of a problem at a South St. Paul boat launch. Three apparently intoxicated men had gotten their truck stuck in the river while attempting to pull their boat out of the water. When police arrived, witnesses informed them that a man in underwear had been driving the truck. That man proved to be William Robert Bernard, Jr., petitioner in the second of these cases. Bernard admitted that he had been drinking but denied driving the truck (though he was holding its keys) and refused to perform any field sobriety tests. After noting that Bernard's breath smelled of alcohol and that his eyes were bloodshot and watery, officers arrested Bernard for driving while impaired.

Back at the police station, officers read Bernard Minnesota's implied consent advisory, which like North Dakota's informs motorists that it is a crime under state law to refuse to submit to a legally required BAC test. Aside from noncriminal penalties like license revocation, test refusal in

Minnesota can result in criminal penalties ranging from no more than 90 days' imprisonment and up to a $1,000 fine for a misdemeanor violation to seven years' imprisonment and a $14,000 fine for repeat offenders,

The officers asked Bernard to take a breath test. After he refused, prosecutors charged him with test refusal in the first degree because he had four prior impaired-driving convictions. First-degree refusal carries the highest maximum penalties and a mandatory minimum 3-year prison sentence.

The Minnesota District Court dismissed the charges on the ground that the warrantless breath test demanded of Bernard was not permitted under the Fourth Amendment. The Minnesota Court of Appeals reversed, and the State Supreme Court affirmed that judgment. Based on the longstanding doctrine that authorizes warrantless searches incident to a lawful arrest, the high court concluded that police did not need a warrant to insist on a test of Bernard's breath.

C

A police officer spotted our third petitioner, Steve Michael Beylund, driving the streets of Bowman, North Dakota, on the night of August 10, 2013. The officer saw Beylund try unsuccessfully to turn into a driveway. In the process, Beylund's car nearly hit a stop sign before coming to a stop still partly on the public road. The officer walked up to the car and saw that Beylund had an empty wine glass in the center console next to him. Noticing that Beylund also smelled of alcohol, the officer asked him to step out of the car. As Beylund did so, he struggled to keep his balance.

The officer arrested Beylund for driving while impaired and took him to a nearby hospital. There he read Beylund North Dakota's implied consent advisory, informing him that test refusal in these circumstances is itself a crime. Unlike the other two petitioners in these cases, Beylund agreed to have his blood drawn and analyzed. A nurse took a blood sample, which revealed a blood alcohol concentration of 0.250%, more than three times the legal limit.

Given the test results, Beylund's driver's license was suspended for two years after an administrative hearing. Beylund appealed the hearing officer's decision to a North Dakota District Court, principally arguing that his consent to the blood test was coerced by the officer's warning that refusing to consent would itself be a crime. The District Court rejected this argument, and Beylund again appealed.

The North Dakota Supreme Court affirmed. In response to Beylund's argument that his consent was insufficiently voluntary because of the announced criminal penalties for refusal, the court relied on the fact that its then-recent Birchfield decision had upheld the constitutionality of those penalties.

III

As our summary of the facts and proceedings in these three cases reveals, the cases differ in some respects. Petitioners Birchfield and Beylund were told that they were obligated to submit to a blood test, whereas petitioner Bernard was informed that a breath test was required. Birchfield and Bernard each refused to undergo a test and was convicted of a crime for his refusal. Beylund complied with the demand for a blood sample, and his license was then suspended in an administrative proceeding based on test results that revealed a very high blood alcohol level.

Despite these differences, success for all three petitioners depends on the proposition that the criminal law ordinarily may not compel a motorist to submit to the taking of a blood sample or to a breath test unless a warrant authorizing such testing is issued by a magistrate. If, on the other hand, such warrantless searches comport with the Fourth Amendment, it follows that a State may criminalize the refusal to comply with a demand to submit to the required testing, just as a State may make it a crime for a person to obstruct the execution of a valid search warrant. And by the same token, if such warrantless searches are constitutional, there is no obstacle under federal law to the admission of the results that they yield in either a criminal prosecution or a civil or administrative proceeding. We therefore begin by considering whether the searches demanded in these cases were consistent with the Fourth Amendment.

IV

The Fourth Amendment provides:

> "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."

The Amendment thus prohibits "unreasonable searches," and our cases establish that the taking of a blood sample or the administration of a breath test is a search. The question, then, is whether the warrantless searches at issue here were reasonable.

"[T]he text of the Fourth Amendment does not specify when a search warrant must be obtained." But "this Court has inferred that a warrant must [usually] be secured." This usual requirement, however, is subject to a number of exceptions.

We have previously had occasion to examine whether one such exception—for "exigent circumstances"—applies in drunk-driving investigations. The exigent circumstances exception allows a warrantless search when an emergency leaves police insufficient time to seek a warrant. It permits, for instance, the warrantless entry of private property when there is a need to provide urgent aid to those inside, when police are in hot pursuit of a fleeing suspect, and when police fear the imminent destruction of evidence.

In Schmerber v. California, we held that drunk driving may present such an exigency. There, an officer directed hospital personnel to take a blood sample from a driver who was receiving treatment for car crash injuries. The Court concluded that the officer "might reasonably have believed that he was confronted with an emergency" that left no time to seek a warrant because "the percentage of alcohol in the blood begins to diminish shortly after drinking stops." On the specific facts of that case, where time had already been lost taking the driver to the hospital and investigating the accident, the Court found no Fourth Amendment violation even though the warrantless blood draw took place over the driver's objection.

More recently, though, we have held that the natural dissipation of alcohol from the bloodstream does not always constitute an exigency justifying the warrantless taking of a blood sample. That was the holding of Missouri v. McNeely, 569 U. S. ___, where the State of Missouri was seeking a per se rule that "whenever an officer has probable cause to believe an individual has been driving under the influence of alcohol, exigent circumstances will necessarily exist because BAC evidence is inherently evanescent." We disagreed, emphasizing that Schmerber had adopted a case-specific analysis depending on "all of the facts and circumstances of the particular case." We refused to "depart from careful case-by-case assessment of exigency and adopt the categorical rule proposed by the State."

While emphasizing that the exigent-circumstances exception must be applied on a case-by-case basis, the McNeely Court noted that other exceptions to the warrant requirement "apply categorically" rather than in a "case-specific" fashion. One of these, as the McNeely opinion recognized, is the long-established rule that a warrantless search may be conducted incident to a lawful arrest. But the Court pointedly did not address any potential justification for warrantless testing of drunk-driving suspects except for the exception "at issue in th[e] case," namely, the exception for exigent circumstances.

In the three cases now before us, the drivers were searched or told that they were required to submit to a search after being placed under arrest for drunk driving. We therefore consider how the search-incident-to-arrest doctrine applies to breath and blood tests incident to such arrests.

V

A

The search-incident-to-arrest doctrine has an ancient pedigree. Well before the Nation's founding, it was recognized that officers carrying out a lawful arrest had the authority to make a warrantless search of the arrestee's person. An 18th-century manual for justices of the peace provides a representative picture of usual practice shortly before the Fourth Amendment's adoption:

"[A] thorough search of the felon is of the utmost consequence to your own safety, and the benefit of the public, as by this means he will be deprived of instruments of mischief, and evidence may

probably be found on him sufficient to convict him, of which, if he has either time or opportunity allowed him, he will besure [sic] to find some means to get rid of." The Conductor Generalis 117 (J. Parker ed. 1788) (reprinting S. Welch, Observations on the Office of Constable 19 (1754)).

One Fourth Amendment historian has observed that, prior to American independence, "[a]nyone arrested could expect that not only his surface clothing but his body, luggage, and saddlebags would be searched and, perhaps, his shoes, socks, and mouth as well." W. Cuddihy, The Fourth Amendment: Origins and Original Meaning: 602-1791, p. 420 (2009).

No historical evidence suggests that the Fourth Amendment altered the permissible bounds of arrestee searches. On the contrary, legal scholars agree that "the legitimacy of body searches as an adjunct to the arrest process had been thoroughly established in colonial times, so much so that their constitutionality in 1789 can not be doubted."

Few reported cases addressed the legality of such searches before the 19th century, apparently because the point was not much contested. In the 19th century, the subject came up for discussion more often, but court decisions and treatises alike confirmed the searches' broad acceptance.

When this Court first addressed the question, we too confirmed (albeit in dicta) "the right on the part of the Government, always recognized under English and American law, to search the person of the accused when legally arrested to discover and seize the fruits or evidence of crime." The exception quickly became a fixture in our Fourth Amendment case law. But in the decades that followed, we grappled repeatedly with the question of the authority of arresting officers to search the area surrounding the arrestee, and our decisions reached results that were not easy to reconcile.

We attempted to clarify the law regarding searches incident to arrest in Chimel v. California, a case in which officers had searched the arrestee's entire three-bedroom house. Chimel endorsed a general rule that arresting officers, in order to prevent the arrestee from obtaining a weapon or destroying evidence, could search both "the person arrested" and "the area 'within his immediate control.'" "[N]o comparable justification," we said, supported "routinely searching any room other than that in which an arrest occurs—or, for that matter, for searching through all the desk drawers or other closed or concealed areas in that room itself."

Four years later, in United States v. Robinson, we elaborated on Chimel's meaning. We noted that the search-incident-to-arrest rule actually comprises "two distinct propositions": "The first is that a search may be made of the person of the arrestee by virtue of the lawful arrest. The second is that a search may be made of the area within the control of the arrestee." After a thorough review of the relevant common law history, we repudiated "case-by-case adjudication" of the question whether an arresting officer had the authority to carry out a search of the arrestee's person. The permissibility of such searches, we held, does not depend on whether a search of a particular arrestee is likely to protect officer safety or evidence: "The authority to search the person incident to a lawful custodial arrest, while based upon the need to disarm and to discover evidence, does

not depend on what a court may later decide was the probability in a particular arrest situation that weapons or evidence would in fact be found upon the person of the suspect." Instead, the mere "fact of the lawful arrest" justifies "a full search of the person." In Robinson itself, that meant that police had acted permissibly in searching inside a package of cigarettes found on the man they arrested.

Our decision two Terms ago in Riley v. California, reaffirmed "Robinson's categorical rule" and explained how the rule should be applied in situations that could not have been envisioned when the Fourth Amendment was adopted. Riley concerned a search of data contained in the memory of a modern cell phone. "Absent more precise guidance from the founding era," the Court wrote, "we generally determine whether to exempt a given type of search from the warrant requirement 'by assessing, on the one hand, the degree to which it intrudes upon an individual's privacy and, on the other, the degree to which it is needed for the promotion of legitimate governmental interests.'"

Blood and breath tests to measure blood alcohol concentration are not as new as searches of cell phones, but here, as in Riley, the founding era does not provide any definitive guidance as to whether they should be allowed incident to arrest.[3] Lacking such guidance, we engage in the same mode of analysis as in Riley: we examine "the degree to which [they] intrud[e] upon an individual's privacy and . . . the degree to which [they are] needed for the promotion of legitimate governmental interests.'"

B

We begin by considering the impact of breath and blood tests on individual privacy interests, and we will discuss each type of test in turn.

1

Years ago we said that breath tests do not "implicat[e] significant privacy concerns." Skinner. That remains so today.

First, the physical intrusion is almost negligible. Breath tests "do not require piercing the skin" and entail "a minimum of inconvenience." As Minnesota describes its version of the breath test, the process requires the arrestee to blow continuously for 4 to 15 seconds into a straw-like mouthpiece that is connected by a tube to the test machine. Independent sources describe other breath test devices in essentially the same terms. The effort is no more demanding than blowing up a party balloon.

Petitioner Bernard argues, however, that the process is nevertheless a significant intrusion because the arrestee must insert the mouthpiece of the machine into his or her mouth. But there is nothing

[3] At most, there may be evidence that an arrestee's mouth could be searched in appropriate circumstances at the time of the founding. See W. Cuddihy, Fourth Amendment: Origins and Original Meaning: 602-1791, p. 420 (2009). Still, searching a mouth for weapons or contraband is not the same as requiring an arrestee to give up breath or blood.

painful or strange about this requirement. The use of a straw to drink beverages is a common practice and one to which few object

Nor, contrary to Bernard, is the test a significant intrusion because it "does not capture an ordinary exhalation of the kind that routinely is exposed to the public" but instead "'requires a sample of "alveolar" (deep lung) air.'" Humans have never been known to assert a possessory interest in or any emotional attachment to any of the air in their lungs. The air that humans exhale is not part of their bodies. Exhalation is a natural process—indeed, one that is necessary for life. Humans cannot hold their breath for more than a few minutes, and all the air that is breathed into a breath analyzing machine, including deep lung air, sooner or later would be exhaled even without the test.

In prior cases, we have upheld warrantless searches involving physical intrusions that were at least as significant as that entailed in the administration of a breath test. Just recently we described the process of collecting a DNA sample by rubbing a swab on the inside of a person's cheek as a "negligible" intrusion. Maryland v. King. We have also upheld scraping underneath a suspect's fingernails to find evidence of a crime, calling that a "very limited intrusion." A breath test is no more intrusive than either of these procedures.

Second, breath tests are capable of revealing only one bit of information, the amount of alcohol in the subject's breath. In this respect, they contrast sharply with the sample of cells collected by the swab in Maryland v. King. Although the DNA obtained under the law at issue in that case could lawfully be used only for identification purposes, the process put into the possession +of law enforcement authorities a sample from which a wealth of additional, highly personal information could potentially be obtained. A breath test, by contrast, results in a BAC reading on a machine, nothing more. No sample of anything is left in the possession of the police.

Finally, participation in a breath test is not an experience that is likely to cause any great enhancement in the embarrassment that is inherent in any arrest. The act of blowing into a straw is not inherently embarrassing, nor are evidentiary breath tests administered in a manner that causes embarrassment. Again, such tests are normally administered in private at a police station, in a patrol car, or in a mobile testing facility, out of public view. Moreover, once placed under arrest, the individual's expectation of privacy is necessarily diminished.

For all these reasons, we reiterate what we said in Skinner: A breath test does not "implicat[e] significant privacy concerns."

2

Blood tests are a different matter. They "require piercing the skin" and extract a part of the subject's body. And while humans exhale air from their lungs many times per minute, humans do not continually shed blood. It is true, of course, that people voluntarily submit to the taking of blood samples as part of a physical examination, and the process involves little pain or risk.

Nevertheless, for many, the process is not one they relish. It is significantly more intrusive than blowing into a tube. Perhaps that is why many States' implied consent laws, including Minnesota's, specifically prescribe that breath tests be administered in the usual drunk-driving case instead of blood tests or give motorists a measure of choice over which test to take.

In addition, a blood test, unlike a breath test, places in the hands of law enforcement authorities a sample that can be preserved and from which it is possible to extract information beyond a simple BAC reading. Even if the law enforcement agency is precluded from testing the blood for any purpose other than to measure BAC, the potential remains and may result in anxiety for the person tested.

C

Having assessed the impact of breath and blood testing on privacy interests, we now look to the States' asserted need to obtain BAC readings for persons arrested for drunk driving.

1

The States and the Federal Government have a "paramount interest . . . in preserving the safety of . . . public highways." Although the number of deaths and injuries caused by motor vehicle accidents has declined over the years, the statistics are still staggering.

Alcohol consumption is a leading cause of traffic fatalities and injuries. During the past decade, annual fatalities in drunk-driving accidents ranged from 13,582 deaths in 2005 to 9,865 deaths in 2011.

JUSTICE SOTOMAYOR's partial dissent suggests that States' interests in fighting drunk driving are satisfied once suspected drunk drivers are arrested, since such arrests take intoxicated drivers off the roads where they might do harm. But of course States are not solely concerned with neutralizing the threat posed by a drunk driver who has already gotten behind the wheel. They also have a compelling interest in creating effective "deterrent[s] to drunken driving" so such individuals make responsible decisions and do not become a threat to others in the first place.

The laws at issue in the present cases—which make it a crime to refuse to submit to a BAC test—are designed to provide an incentive to cooperate in such cases, and we conclude that they serve a very important function.

Petitioners and JUSTICE SOTOMAYOR contend that the States and the Federal Government could combat drunk driving in other ways that do not have the same impact on personal privacy. Their arguments are unconvincing.

The chief argument on this score is that an officer making an arrest for drunk driving should not be allowed to administer a BAC test unless the officer procures a search warrant or could not do so in time to obtain usable test results. The governmental interest in warrantless breath testing, JUSTICE SOTOMAYOR claims, turns on "'whether the burden of obtaining a warrant is likely to frustrate the governmental purpose behind the search.'"

This argument contravenes our decisions holding that the legality of a search incident to arrest must be judged on the basis of categorical rules. In Robinson, for example, no one claimed that the object of the search, a package of cigarettes, presented any danger to the arresting officer or was at risk of being destroyed in the time that it would have taken to secure a search warrant. The Court nevertheless upheld the constitutionality of a warrantless search of the package, concluding that a categorical rule was needed to give police adequate guidance: "A police officer's determination as to how and where to search the person of a suspect whom he has arrested is necessarily a quick ad hoc judgment which the Fourth Amendment does not require to be broken down in each instance into an analysis of each step in the search." 414 U. S., at 235, 94 S. Ct. 467, 38 L. Ed. 2d 427; cf. Riley, ("If police are to have workable rules, the balancing of the competing interests must in large part be done on a categorical basis—not in an ad hoc, case-by-case fashion by individual police officers"

It is not surprising, then, that the language JUSTICE SOTOMAYOR quotes to justify her approach comes not from our search-incident-to-arrest case law, but a case that addressed routine home searches for possible housing code violations.

In advocating the case-by-case approach, petitioners and JUSTICE SOTOMAYOR cite language in our McNeely opinion. But McNeely concerned an exception to the warrant requirement—for exigent circumstances—that always requires case-by-case determinations. That was the basis for our decision in that case. Although JUSTICE SOTOMAYOR contends that the categorical search-incident-to-arrest doctrine and case-by-case exigent circumstances doctrine are actually parts of a single framework, in McNeely the Court was careful to note that the decision did not address any other exceptions to the warrant requirement.

Petitioners and JUSTICE SOTOMAYOR next suggest that requiring a warrant for BAC testing in every case in which a motorist is arrested for drunk driving would not impose any great burden on the police or the courts. But of course the same argument could be made about searching through objects found on the arrestee's possession, which our cases permit even in the absence of a warrant. What about the cigarette package in Robinson? What if a motorist arrested for drunk driving has

a flask in his pocket? What if a motorist arrested for driving while under the influence of marijuana has what appears to be a marijuana cigarette on his person? What about an unmarked bottle of pills?

If a search warrant were required for every search incident to arrest that does not involve exigent circumstances, the courts would be swamped. And even if we arbitrarily singled out BAC tests incident to arrest for this special treatment, as it appears the dissent would do, the impact on the courts would be considerable. The number of arrests every year for driving under the influence is enormous—more than 1.1 million in 2014. Particularly in sparsely populated areas, it would be no small task for courts to field a large new influx of warrant applications that could come on any day of the year and at any hour. In many jurisdictions, judicial officers have the authority to issue warrants only within their own districts, and in rural areas, some districts may have only a small number of judicial officers.

North Dakota, for instance, has only 51 state district judges spread across eight judicial districts. Those judges are assisted by 31 magistrates, and there are no magistrates in 20 of the State's 53 counties. At any given location in the State, then, relatively few state officials have authority to issue search warrants.[6] Yet the State, with a population of roughly 740,000, sees nearly 7,000 drunk-driving arrests each year. With a small number of judicial officers authorized to issue warrants in some parts of the State, the burden of fielding BAC warrant applications 24 hours per day, 365 days of the year would not be the light burden that petitioners and JUSTICE SOTOMAYOR suggest.

In light of this burden and our prior search-incident-to-arrest precedents, petitioners would at a minimum have to show some special need for warrants for BAC testing. It is therefore appropriate to consider the benefits that such applications would provide. Search warrants protect privacy in two main ways. First, they ensure that a search is not carried out unless a neutral magistrate makes an independent determination that there is probable cause to believe that evidence will be found. Second, if the magistrate finds probable cause, the warrant limits the intrusion on privacy by specifying the scope of the search—that is, the area that can be searched and the items that can be sought.

How well would these functions be performed by the warrant applications that petitioners propose? In order to persuade a magistrate that there is probable cause for a search warrant, the officer would typically recite the same facts that led the officer to find that there was probable cause for arrest, namely, that there is probable cause to believe that a BAC test will reveal that the motorist's blood alcohol level is over the limit. As these three cases suggest, see Part II, supra, the facts that establish probable cause are largely the same from one drunk-driving stop to the next and consist largely of the officer's own characterization of his or her observations—for example, that there was a strong

[6] North Dakota Supreme Court justices apparently also have authority to issue warrants statewide. See ND Op. Atty. Gen. 99-L-132, p. 2 (Dec. 30, 1999). But we highly doubt that they regularly handle search-warrant applications, much less during graveyard shifts.

odor of alcohol, that the motorist wobbled when attempting to stand, that the motorist paused when reciting the alphabet or counting backwards, and so on. A magistrate would be in a poor position to challenge such characterizations.

As for the second function served by search warrants—delineating the scope of a search—the warrants in question here would not serve that function at all. In every case the scope of the warrant would simply be a BAC test of the arrestee. ("[I]n light of the standardized nature of the tests and the minimal discretion vested in those charged with administering the program, there are virtually no facts for a neutral magistrate to evaluate"). For these reasons, requiring the police to obtain a warrant in every case would impose a substantial burden but no commensurate benefit.

Petitioners advance other alternatives to warrantless BAC tests incident to arrest, but these are poor substitutes. Relying on a recent NHTSA report, petitioner Birchfield identifies 19 strategies that he claims would be at least as effective as implied consent laws, including high-visibility sobriety checkpoints, installing ignition interlocks on repeat offenders' cars that would disable their operation when the driver's breath reveals a sufficiently high alcohol concentration, and alcohol treatment programs. But Birchfield ignores the fact that the cited report describes many of these measures, such as checkpoints, as significantly more costly than test refusal penalties. Moreover, the same NHTSA report, in line with the agency's guidance elsewhere, stresses that BAC test refusal penalties would be more effective if the consequences for refusal were made more severe, including through the addition of criminal penalties.

3

Petitioner Bernard objects to the whole idea of analyzing breath and blood tests as searches incident to arrest. That doctrine, he argues, does not protect the sort of governmental interests that warrantless breath and blood tests serve. On his reading, this Court's precedents permit a search of an arrestee solely to prevent the arrestee from obtaining a weapon or taking steps to destroy evidence. In Chimel, for example, the Court derived its limitation for the scope of the permitted search—"the area into which an arrestee might reach"—from the principle that officers may reasonably search "the area from within which he might gain possession of a weapon or destructible evidence." Stopping an arrestee from destroying evidence, Bernard argues, is critically different from preventing the loss of blood alcohol evidence as the result of the body's metabolism of alcohol, a natural process over which the arrestee has little control.

The distinction that Bernard draws between an arrestee's active destruction of evidence and the loss of evidence due to a natural process makes little sense. In both situations the State is justifiably concerned that evidence may be lost, and Bernard does not explain why the cause of the loss should be dispositive. And in fact many of this Court's post-Chimel cases have recognized the State's concern, not just in avoiding an arrestee's intentional destruction of evidence, but in "evidence preservation" or avoiding "the loss of evidence" more generally. Riley. This concern for preserving

evidence or preventing its loss readily encompasses the inevitable metabolization of alcohol in the blood.

Nor is there any reason to suspect that Chimel's use of the word "destruction" was a deliberate decision to rule out evidence loss that is mostly beyond the arrestee's control. The case did not involve any evidence that was subject to dissipation through natural processes, and there is no sign in the opinion that such a situation was on the Court's mind.

Bernard attempts to derive more concrete support for his position from Schmerber. In that case, the Court stated that the "destruction of evidence under the direct control of the accused" is a danger that is not present "with respect to searches involving intrusions beyond the body's surface." Bernard reads this to mean that an arrestee cannot be required "to take a chemical test" incident to arrest, but by using the term "chemical test," Bernard obscures the fact that Schmerber's passage was addressed to the type of test at issue in that case, namely a blood test. The Court described blood tests as "searches involving intrusions beyond the body's surface," and it saw these searches as implicating important "interests in human dignity and privacy." Although the Court appreciated as well that blood tests "involv[e] virtually no risk, trauma, or pain," its point was that such searches still impinge on far more sensitive interests than the typical search of the person of an arrestee. But breath tests, unlike blood tests, "are not invasive of the body," and therefore the Court's comments in Schmerber are inapposite when it comes to the type of test Bernard was asked to take. Schmerber did not involve a breath test, and on the question of breath tests' legality, Schmerber said nothing.

Finally, Bernard supports his distinction using a passage from the McNeely opinion, which distinguishes between "easily disposable evidence" over "which the suspect has control" and evidence, like blood alcohol evidence, that is lost through a natural process "in a gradual and relatively predictable manner." Bernard fails to note the issue that this paragraph addressed. McNeely concerned only one exception to the usual warrant requirement, the exception for exigent circumstances, and as previously discussed, that exception has always been understood to involve an evaluation of the particular facts of each case. Here, by contrast, we are concerned with the search-incident-to-arrest exception, and as we made clear in Robinson and repeated in McNeely itself, this authority is categorical. It does not depend on an evaluation of the threat to officer safety or the threat of evidence loss in a particular case.[7]

Having assessed the effect of BAC tests on privacy interests and the need for such tests, we conclude that the Fourth Amendment permits warrantless breath tests incident to arrests for drunk driving. The impact of breath tests on privacy is slight, and the need for BAC testing is great.

We reach a different conclusion with respect to blood tests. Blood tests are significantly more intrusive, and their reasonableness must be judged in light of the availability of the less invasive alternative of a breath test. Respondents have offered no satisfactory justification for demanding the more intrusive alternative without a warrant.

Neither respondents nor their amici dispute the effectiveness of breath tests in measuring BAC. Breath tests have been in common use for many years. Their results are admissible in court and are widely credited by juries, and respondents do not dispute their accuracy or utility. What, then, is the justification for warrantless blood tests?

One advantage of blood tests is their ability to detect not just alcohol but also other substances that can impair a driver's ability to operate a car safely. A breath test cannot do this, but police have other measures at their disposal when they have reason to believe that a motorist may be under the influence of some other substance (for example, if a breath test indicates that a clearly impaired motorist has little if any alcohol in his blood). Nothing prevents the police from seeking a warrant for a blood test when there is sufficient time to do so in the particular circumstances or from relying on the exigent circumstances exception to the warrant requirement when there is not. See McNeely.

A blood test also requires less driver participation than a breath test. In order for a technician to take a blood sample, all that is needed is for the subject to remain still, either voluntarily or by being immobilized. Thus, it is possible to extract a blood sample from a subject who forcibly resists, but many States reasonably prefer not to take this step. North Dakota, for example, tells us that it generally opposes this practice because of the risk of dangerous altercations between police officers and arrestees in rural areas where the arresting officer may not have backup. Under current North Dakota law, only in cases involving an accident that results in death or serious injury may blood be taken from arrestees who resist.

It is true that a blood test, unlike a breath test, may be administered to a person who is unconscious (perhaps as a result of a crash) or who is unable to do what is needed to take a breath test due to profound intoxication or injuries. But we have no reason to believe that such situations are common in drunk-driving arrests, and when they arise, the police may apply for a warrant if need be.

A breath test may also be ineffective if an arrestee deliberately attempts to prevent an accurate reading by failing to blow into the tube for the requisite length of time or with the necessary force. But courts have held that such conduct qualifies as a refusal to undergo testing, and it may be prosecuted as such. And again, a warrant for a blood test may be sought.

Because breath tests are significantly less intrusive than blood tests and in most cases amply serve law enforcement interests, we conclude that a breath test, but not a blood test, may be administered as a search incident to a lawful arrest for drunk driving. As in all cases involving reasonable searches incident to arrest, a warrant is not needed in this situation.[8]

[8] JUSTICE THOMAS partly dissents from this holding, calling any distinction between breath and blood tests "an arbitrary line in the sand." Adhering to a position that the Court rejected in *McNeely*, JUSTICE THOMAS would hold that both breath and blood tests are constitutional with or without a warrant because of the natural metabolization of alcohol in the bloodstream. Yet JUSTICE THOMAS does not dispute our conclusions that blood draws are more invasive than breath tests, that breath tests generally serve state interests in combating drunk driving as effectively as blood tests, and that our decision in *Riley* calls for a balancing of individual privacy interests and legitimate state interests to determine the reasonableness of the category of warrantless search that is at issue. Contrary to JUSTICE THOMAS's contention, this balancing does not leave law enforcement officers or lower courts

VI

Having concluded that the search incident to arrest doctrine does not justify the warrantless taking of a blood sample, we must address respondents' alternative argument that such tests are justified based on the driver's legally implied consent to submit to them. It is well established that a search is reasonable when the subject consents. Our prior opinions have referred approvingly to the general concept of implied-consent laws that impose civil penalties and evidentiary consequences on motorists who refuse to comply. Petitioners do not question the constitutionality of those laws, and nothing we say here should be read to cast doubt on them.

It is another matter, however, for a State not only to insist upon an intrusive blood test, but also to impose criminal penalties on the refusal to submit to such a test. There must be a limit to the consequences to which motorists may be deemed to have consented by virtue of a decision to drive on public roads.

Respondents and their amici all but concede this point. North Dakota emphasizes that its law makes refusal a misdemeanor and suggests that laws punishing refusal more severely would present a different issue. Borrowing from our Fifth Amendment jurisprudence, the United States suggests that motorists could be deemed to have consented to only those conditions that are "reasonable" in that they have a "nexus" to the privilege of driving and entail penalties that are proportional to severity of the violation. But in the Fourth Amendment setting, this standard does not differ in substance from the one that we apply, since reasonableness is always the touchstone of Fourth Amendment analysis. And applying this standard, we conclude that motorists cannot be deemed to have consented to submit to a blood test on pain of committing a criminal offense.

VII

Our remaining task is to apply our legal conclusions to the three cases before us.

Petitioner Birchfield was criminally prosecuted for refusing a warrantless blood draw, and therefore the search he refused cannot be justified as a search incident to his arrest or on the basis of implied consent. There is no indication in the record or briefing that a breath test would have failed to satisfy the State's interests in acquiring evidence to enforce its drunk-driving laws against Birchfield. And North Dakota has not presented any case-specific information to suggest that the exigent circumstances exception would have justified a warrantless search. Unable to see any other basis on which to justify a warrantless test of Birchfield's blood, we conclude that Birchfield was threatened with an unlawful search and that the judgment affirming his conviction must be reversed.

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with unpredictable rules, because it is categorical and *not* "case-by-case," *post*, at 3. Indeed, today's decision provides very clear guidance that the Fourth Amendment allows warrantless breath tests, but as a general rule does not allow warrantless blood draws, incident to a lawful drunk-driving arrest.

Bernard, on the other hand, was criminally prosecuted for refusing a warrantless breath test. That test was a permissible search incident to Bernard's arrest for drunk driving, an arrest whose legality Bernard has not contested. Accordingly, the Fourth Amendment did not require officers to obtain a warrant prior to demanding the test, and Bernard had no right to refuse it.

Unlike the other petitioners, Beylund was not prosecuted for refusing a test. He submitted to a blood test after police told him that the law required his submission, and his license was then suspended and he was fined in an administrative proceeding. The North Dakota Supreme Court held that Beylund's consent was voluntary on the erroneous assumption that the State could permissibly compel both blood and breath tests. Because voluntariness of consent to a search must be "determined from the totality of all the circumstances," we leave it to the state court on remand to reevaluate Beylund's consent given the partial inaccuracy of the officer's advisory.[9]

We accordingly reverse the judgment of the North Dakota Supreme Court and remand the case for further proceedings not inconsistent with this opinion. We affirm the judgment of the Minnesota Supreme Court in Bernard. And we vacate the judgment of the North Dakota Supreme Court in Birchfield and remand the case for further proceedings not inconsistent with this opinion.

JUSTICE SOTOMAYOR, with whom JUSTICE GINSBURG joins, concurring in part and dissenting in part.

I join the majority's disposition of Birchfield, and Beylund, in which the Court holds that the search-incident-to-arrest exception to the Fourth Amendment's warrant requirement does not permit warrantless blood tests. But I dissent from the Court's disposition of Bernard v. Minnesota, in which the Court holds that the same exception permits warrantless breath tests. Because no governmental interest categorically makes it impractical for an officer to obtain a warrant before measuring a driver's alcohol level, the Fourth Amendment prohibits such searches without a warrant, unless exigent circumstances exist in a particular case.[1]

[9] If the court on remand finds that Beylund did not voluntarily consent, it will have to address whether the evidence obtained in the search must be suppressed when the search was carried out pursuant to a state statute.

[1] Because I see no justification for warrantless blood or warrantless breath tests, I also dissent from the parts of the majority opinion that justify its conclusions with respect to blood tests on the availability of warrantless breath tests.

I

A

As the Court recognizes, the proper disposition of this case turns on whether the Fourth Amendment guarantees a right not to be subjected to a warrantless breath test after being arrested. The Fourth Amendment provides:

> "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."

The "ultimate touchstone of the Fourth Amendment is 'reasonableness.'" A citizen's Fourth Amendment right to be free from "unreasonable searches" does not disappear upon arrest. Police officers may want to conduct a range of searches after placing a person under arrest. They may want to pat the arrestee down, search her pockets and purse, peek inside her wallet, scroll through her cellphone, examine her car or dwelling, swab her cheeks, or take blood and breath samples to determine her level of intoxication. But an officer is not authorized to conduct all of these searches simply because he has arrested someone. Each search must be separately analyzed to determine its reasonableness.

Both before and after a person has been arrested, warrants are the usual safeguard against unreasonable searches because they guarantee that the search is not a "random or arbitrary ac[t] of government agents," but is instead "narrowly limited in its objectives and scope." Warrants provide the "detached scrutiny of a neutral magistrate, and thus ensur[e] an objective determination whether an intrusion is justified." And they give life to our instruction that the Fourth Amendment "is designed to prevent, not simply to redress, unlawful police action." Steagald

Because securing a warrant before a search is the rule of reasonableness, the warrant requirement is "subject only to a few specifically established and well-delineated exceptions." To determine whether to "exempt a given type of search from the warrant requirement," this Court traditionally "assess[es], on the one hand, the degree to which it intrudes upon an individual's privacy and, on the other, the degree to which it is needed for the promotion of legitimate governmental interests." Riley In weighing "whether the public interest demands creation of a general exception to the Fourth Amendment's warrant requirement, the question is not whether the public interest justifies the type of search in question," but, more specifically, "whether the burden of obtaining a warrant is likely to frustrate the governmental purpose behind the search."

Applying these principles in past cases, this Court has recognized two kinds of exceptions to the warrant requirement that are implicated here: (1) case-by-case exceptions, where the particularities of an individual case justify a warrantless search in that instance, but not others; and (2) categorical

exceptions, where the commonalities among a class of cases justify dispensing with the warrant requirement for all of those cases, regardless of their individual circumstances.

Relevant here, the Court allows warrantless searches on a case-by-case basis where the "exigencies" of the particular case "make the needs of law enforcement so compelling that a warrantless search is objectively reasonable" in that instance. The defining feature of the exigent circumstances exception is that the need for the search becomes clear only after "all of the facts and circumstances of the particular case" have been considered in light of the "totality of the circumstances." Exigencies can include officers' "need to provide emergency assistance to an occupant of a home, engage in 'hot pursuit' of a fleeing suspect, or enter a burning building to put out a fire and investigate its cause."

Exigencies can also arise in efforts to measure a driver's blood alcohol level. In Schmerber v. California, for instance, a man sustained injuries in a car accident and was transported to the hospital. While there, a police officer arrested him for drunk driving and ordered a warrantless blood test to measure his blood alcohol content. This Court noted that although the warrant requirement generally applies to postarrest blood tests, a warrantless search was justified in that case because several hours had passed while the police investigated the scene of the crime and Schmerber was taken to the hospital, precluding a timely securing of a warrant.

This Court also recognizes some forms of searches in which the governmental interest will "categorically" outweigh the person's privacy interest in virtually any circumstance in which the search is conducted. Relevant here is the search-incident-to-arrest exception. That exception allows officers to conduct a limited postarrest search without a warrant to combat risks that could arise in any arrest situation before a warrant could be obtained: "'to remove any weapons that the [arrestee] might seek to use in order to resist arrest or effect his escape'" and to "'seize any evidence on the arrestee's person in order to prevent its concealment or destruction.'" Riley, (quoting Chimel). That rule applies "categorical[ly]" to all arrests because the need for the warrantless search arises from the very "fact of the lawful arrest," not from the reason for arrest or the circumstances surrounding it. United States v. Robinson.

Given these different kinds of exceptions to the warrant requirement, if some form of exception is necessary for a particular kind of postarrest search, the next step is to ask whether the governmental need to conduct a warrantless search arises from "threats" that "'lurk in all custodial arrests'" and therefore "justif[ies] dispensing with the warrant requirement across the board," or, instead, whether the threats "may be implicated in a particular way in a particular case" and are therefore "better addressed through consideration of case-specific exceptions to the warrant requirement, such as the one for exigent circumstances." Riley.

To condense these doctrinal considerations into a straightforward rule, the question is whether, in light of the individual's privacy, a "legitimate governmental interest" justifies warrantless

searches—and, if so, whether that governmental interest is adequately addressed by a case-by-case exception or requires by its nature a categorical exception to the warrant requirement.

B

This Court has twice applied this framework in recent terms. Riley v. California, addressed whether, after placing a person under arrest, a police officer may conduct a warrantless search of his cell phone data. California asked for a categorical rule, but the Court rejected that request, concluding that cell phones do not present the generic arrest-related harms that have long justified the search-incident-to-arrest exception. The Court found that phone data posed neither a danger to officer safety nor a risk of evidence destruction once the physical phone was secured. The Court nevertheless acknowledged that the exigent circumstances exception might be available in a "now or never situation." It emphasized that "[i]n light of the availability of the exigent circumstances exception, there is no reason to believe that law enforcement officers will not be able to address" the rare needs that would require an on-the-spot search.

Similarly, Missouri v. McNeely applied this doctrinal analysis to a case involving police efforts to measure drivers' blood alcohol levels. In that case, Missouri argued that the natural dissipation of alcohol in a person's blood justified a per se exigent circumstances exception to the warrant requirement—in essence, a new kind of categorical exception. The Court recognized that exigencies could exist, like in Schmerber, that would justify warrantless searches. But it also noted that in many drunk driving situations, no such exigencies exist. Where, for instance, "the warrant process will not significantly increase the delay" in testing "because an officer can take steps to secure a warrant" while the subject is being prepared for the test, there is "no plausible justification for an exception to the warrant requirement." The Court thus found it unnecessary to "depart from careful case-by-case assessment of exigency and adopt the categorical rule proposed by the State."[3]

[3] The Court quibbles with our unremarkable statement that the categorical search-incident-to-arrest doctrine and the case-by-case exigent circumstances doctrine are part of the same framework by arguing that a footnote in *McNeely* was "careful to note that the decision did not address any other exceptions to the warrant requirement." That footnote explains the difference between categorical exceptions and case-by-case exceptions generally. It does nothing to suggest that the two forms of exceptions should not be considered together when analyzing whether it is reasonable to exempt categorically a particular form of search from the Fourth Amendment's warrant requirement.

It should go without saying that any analysis of whether to apply a Fourth Amendment warrant exception must necessarily be comparative. If a narrower exception to the warrant requirement adequately satisfies the governmental needs asserted, a more sweeping exception will be overbroad and could lead to unnecessary and "unreasonable searches" under the Fourth Amendment. Contrary to the Court's suggestion that "no authority" supports this proposition, our cases have often deployed this commonsense comparative check. See *Riley* v. *California*, (rejecting the application of the search-incident-to-arrest exception because the exigency exception is a "more targeted wa[y] to address [the government's] concerns").

II

The States do not challenge McNeely's holding that a categorical exigency exception is not necessary to accommodate the governmental interests associated with the dissipation of blood alcohol after drunk-driving arrests. They instead seek to exempt breath tests from the warrant requirement categorically under the search-incident-to-arrest doctrine. The majority agrees. Both are wrong.

As discussed above, regardless of the exception a State requests, the Court's traditional framework asks whether, in light of the privacy interest at stake, a legitimate governmental interest ever requires conducting breath searches without a warrant—and, if so, whether that governmental interest is adequately addressed by a case-by-case exception or requires a categorical exception to the warrant requirement. That framework directs the conclusion that a categorical search-incident-to-arrest rule for breath tests is unnecessary to address the States' governmental interests in combating drunk driving.

A

Beginning with the governmental interests, there can be no dispute that States must have tools to combat drunk driving. But neither the States nor the Court has demonstrated that "obtaining a warrant" in cases not already covered by the exigent circumstances exception "is likely to frustrate the governmental purpose[s] behind [this] search."

First, the Court cites the governmental interest in protecting the public from drunk drivers. But it is critical to note that once a person is stopped for drunk driving and arrested, he no longer poses an immediate threat to the public. Because the person is already in custody prior to the administration of the breath test, there can be no serious claim that the time it takes to obtain a warrant would increase the danger that drunk driver poses to fellow citizens.

Second, the Court cites the governmental interest in preventing the destruction or loss of evidence. But neither the Court nor the States identify any practical reasons why obtaining a warrant after making an arrest and before conducting a breath test compromises the quality of the evidence obtained. To the contrary, the delays inherent in administering reliable breath tests generally provide ample time to obtain a warrant.

There is a common misconception that breath tests are conducted roadside, immediately after a driver is arrested. While some preliminary testing is conducted roadside, reliability concerns with roadside tests confine their use in most circumstances to establishing probable cause for an arrest. The standard evidentiary breath test is conducted after a motorist is arrested and transported to a police station, governmental building, or mobile testing facility where officers can access reliable, evidence-grade breath testing machinery. Transporting the motorist to the equipment site is not the only potential delay in the process, however. Officers must also observe the subject for 15 to 20

minutes to ensure that "residual mouth alcohol," which can inflate results and expose the test to an evidentiary challenge at trial, has dissipated and that the subject has not inserted any food or drink into his mouth. In many States, including Minnesota, officers must then give the motorist a window of time within which to contact an attorney before administering a test. Finally, if a breath test machine is not already active, the police officer must set it up. North Dakota's Intoxilyzer 8000 machine can take as long as 30 minutes to "warm-up."

Because of these necessary steps, the standard breath test is conducted well after an arrest is effectuated. The Minnesota Court of Appeals has explained that nearly all breath tests "involve a time lag of 45 minutes to two hours."

During this built-in window, police can seek warrants. That is particularly true in light of "advances" in technology that now permit "the more expeditious processing of warrant applications." Moreover, counsel for North Dakota explained at oral argument that the State uses a typical "on-call" system in which some judges are available even during off-duty times.[9]

Where "an officer can . . . secure a warrant while" the motorist is being transported and the test is being prepared, this Court has said that "there would be no plausible justification for an exception to the warrant requirement." Neither the Court nor the States provide any evidence to suggest that, in the normal course of affairs, obtaining a warrant and conducting a breath test will exceed the allotted 2-hour window.

Third, the Court and the States cite a governmental interest in minimizing the costs of gathering evidence of drunk driving. But neither has demonstrated that requiring police to obtain warrants for breath tests would impose a sufficiently significant burden on state resources to justify the elimination of the Fourth Amendment's warrant requirement. The Court notes that North Dakota has 82 judges and magistrate judges who are authorized to issue warrants. Because North Dakota has roughly 7,000 drunk-driving arrests annually, the Court concludes that if police were required to obtain warrants "for every search incident to arrest that does not involve exigent circumstances, the courts would be swamped." That conclusion relies on inflated numbers and unsupported inferences.

Assuming that North Dakota police officers do not obtain warrants for any drunk-driving arrests today, and assuming that they would need to obtain a warrant for every drunk-driving arrest tomorrow, each of the State's 82 judges and magistrate judges would need to issue fewer than two extra warrants per week. Minnesota has nearly the same ratio of judges to drunk-driving arrests, and so would face roughly the same burden. These back-of-the-envelope numbers suggest that the burden of obtaining a warrant before conducting a breath test would be small in both States.

[9] Counsel for North Dakota represented at oral argument that in "larger jurisdictions" it "takes about a half an hour" to obtain a warrant. Counsel said that it is sometimes "harder to get somebody on the phone" in rural jurisdictions, but even if it took twice as long, the process of obtaining a warrant would be unlikely to take longer than the inherent delays in preparing a motorist for testing and would be particularly unlikely to reach beyond the 2-hour window within which officers can conduct the test.

But even these numbers overstate the burden by a significant degree. States only need to obtain warrants for drivers who refuse testing and a significant majority of drivers voluntarily consent to breath tests, even in States without criminal penalties for refusal. In North Dakota, only 21% of people refuse breath tests and in Minnesota, only 12% refuse. Including States that impose only civil penalties for refusal, the average refusal rate is slightly higher at 24%. Say that North Dakota's and Minnesota's refusal rates rise to double the mean, or 48%. Each of their judges and magistrate judges would need to issue fewer than one extra warrant a week. That bears repeating: The Court finds a categorical exception to the warrant requirement because each of a State's judges and magistrate judges would need to issue less than one extra warrant a week.

Fourth, the Court alludes to the need to collect evidence conveniently. But mere convenience in investigating drunk driving cannot itself justify an exception to the warrant requirement. All of this Court's postarrest exceptions to the warrant requirement require a law enforcement interest separate from criminal investigation. The Court's justification for the search incident to arrest rule is "the officer's safety" and the prevention of evidence "concealment or destruction." The Court's justification for the booking exception, which allows police to obtain fingerprints and DNA without a warrant while booking an arrestee at the police station, is the administrative need for identification. The Court's justification for the inventory search exception, which allows police to inventory the items in the arrestee's personal possession and car, is the need to "protect an owner's property while it is in the custody of the police, to insure against claims of lost, stolen, or vandalized property, and to guard the police from danger."

This Court has never said that mere convenience in gathering evidence justifies an exception to the warrant requirement. If the simple collection of evidence justifies an exception to the warrant requirement even where a warrant could be easily obtained, exceptions would become the rule.

Finally, as a general matter, the States have ample tools to force compliance with lawfully obtained warrants. This Court has never cast doubt on the States' ability to impose criminal penalties for obstructing a search authorized by a lawfully obtained warrant. No resort to violent compliance would be necessary to compel a test. If a police officer obtains a warrant to conduct a breath test, citizens can be subjected to serious penalties for obstruction of justice if they decline to cooperate with the test.

This Court has already taken the weighty step of characterizing breath tests as "searches" for Fourth Amendment purposes. That is because the typical breath test requires the subject to actively blow alveolar (or "deep lung") air into the machine. Although the process of physically blowing into the machine can be completed in as little as a few minutes, the end-to-end process can be significantly longer. The person administering the test must calibrate the machine, collect at least two separate samples from the arrestee, change the mouthpiece and reset the machine between each, and conduct any additional testing indicated by disparities between the two tests. Although some searches are certainly more invasive than breath tests, this Court cannot do justice to their status as Fourth Amendment "searches" if exaggerated time pressures, mere convenience in

collecting evidence, and the "burden" of asking judges to issue an extra couple of warrants per month are costs so high as to render reasonable a search without a warrant. The Fourth Amendment becomes an empty promise of protecting citizens from unreasonable searches.

B

After evaluating the governmental and privacy interests at stake here, the final step is to determine whether any situations in which warrants would interfere with the States' legitimate governmental interests should be accommodated through a case-by-case or categorical exception to the warrant requirement.

As shown, because there are so many circumstances in which obtaining a warrant will not delay the administration of a breath test or otherwise compromise any governmental interest cited by the States, it should be clear that allowing a categorical exception to the warrant requirement is a "considerable overgeneralization" here. As this Court concluded in Riley and McNeely, any unusual issues that do arise can "better [be] addressed through consideration of case-specific exceptions to the warrant requirement."

[T]he search-incident-to-arrest exception is particularly ill suited to breath tests. To the extent the Court discusses any fit between breath tests and the rationales underlying the search-incident-to-arrest exception, it says that evidence preservation is one of the core values served by the exception and worries that "evidence may be lost" if breath tests are not conducted. But, of course, the search-incident-to-arrest exception is concerned with evidence destruction only insofar as that destruction would occur before a warrant could be sought. And breath tests are not, except in rare circumstances, conducted at the time of arrest, before a warrant can be obtained, but at a separate location 40 to 120 minutes after an arrest is effectuated. That alone should be reason to reject an exception forged to address the immediate needs of arrests.

The exception's categorical reach makes it even less suitable here. The search-incident-to-arrest exception is applied categorically precisely because the needs it addresses could arise in every arrest. Robinson. But the government's need to conduct a breath test is present only in arrests for drunk driving. And the asserted need to conduct a breath test without a warrant arises only when a warrant cannot be obtained during the significant built-in delay between arrest and testing. The conditions that require warrantless breath searches, in short, are highly situational and defy the logical underpinnings of the search-incident-to-arrest exception and its categorical application.

Here, the Court lacks even the pretense of attempting to situate breath searches within the narrow and weighty law enforcement needs that have historically justified the limited use of warrantless searches. I fear that if the Court continues down this road, the Fourth Amendment's warrant requirement will become nothing more than a suggestion.

JUSTICE THOMAS, concurring in judgment in part and dissenting in part.

The compromise the Court reaches today is not a good one. By deciding that some (but not all) warrantless tests revealing the blood alcohol concentration (BAC) of an arrested driver are constitutional, the Court contorts the search-incident-to-arrest exception to the Fourth Amendment's warrant requirement. The far simpler answer to the question presented is the one rejected in Missouri v. McNeely. Here, the tests revealing the BAC of a driver suspected of driving drunk are constitutional under the exigent-circumstances exception to the warrant requirement. (THOMAS, J., dissenting).

I

Today's decision chips away at a well-established exception to the warrant requirement. Until recently, we have admonished that "[a] police officer's determination as to how and where to search the person of a suspect whom he has arrested is necessarily a quick ad hoc judgment which the Fourth Amendment does not require to be broken down in each instance into an analysis of each step in the search." Under our precedents, a search incident to lawful arrest "require[d] no additional justification." Not until the recent decision in Riley v. California, did the Court begin to retreat from this categorical approach because it feared that the search at issue, the "search of the information on a cell phone," bore "little resemblance to the type of brief physical search" contemplated by this Court's past search-incident-to-arrest decisions. I joined Riley, however, because the Court resisted the temptation to permit searches of some kinds of cell-phone data and not others, and instead asked more generally whether that entire "category of effects" was searchable without a warrant.

Today's decision begins where Riley left off. The Court purports to apply Robinson but further departs from its categorical approach by holding that warrantless breath tests to prevent the destruction of BAC evidence are constitutional searches incident to arrest, but warrantless blood tests are not. That hairsplitting makes little sense. Either the search-incident-to-arrest exception permits bodily searches to prevent the destruction of BAC evidence, or it does not.

The Court justifies its result—an arbitrary line in the sand between blood and breath tests—by balancing the invasiveness of the particular type of search against the government's reasons for the search. Such case-by-case balancing is bad for the People, who "through ratification, have already weighed the policy tradeoffs that constitutional rights entail. It is also bad for law enforcement officers, who depend on predictable rules to do their job, as Members of this Court have exhorted in the past. See Arizona v. Gant (ALITO, J., dissenting); (faulting the Court for "leav[ing] the law relating to searches incident to arrest in a confused and unstable state").

Today's application of the search-incident-to-arrest exception is bound to cause confusion in the lower courts. The Court's choice to allow some (but not all) BAC searches is undeniably appealing, for it both reins in the pernicious problem of drunk driving and also purports to preserve some Fourth Amendment protections. But that compromise has little support under this Court's existing precedents.

II

The better (and far simpler) way to resolve these cases is by applying the per se rule that I proposed in McNeely. Under that approach, both warrantless breath and blood tests are constitutional because "the natural metabolization of [BAC] creates an exigency once police have probable cause to believe the driver is drunk. It naturally follows that police may conduct a search in these circumstances."

The Court in McNeely rejected that bright-line rule and instead adopted a totality-of-the-circumstances test examining whether the facts of a particular case presented exigent circumstances justifying a warrantless search.

The Court ruled that "the natural dissipation of alcohol in the blood" could not "categorically" create an "exigency" in every case. The destruction of "BAC evidence from a drunk-driving suspect" that "naturally dissipates over time in a gradual and relatively predictable manner," according to the Court, was qualitatively different from the destruction of evidence in "circumstances in which the suspect has control over easily disposable evidence."

Today's decision rejects McNeely's arbitrary distinction between the destruction of evidence generally and the destruction of BAC evidence. But only for searches incident to arrest. The Court declares that such a distinction "between an arrestee's active destruction of evidence and the loss of evidence due to a natural process makes little sense." I agree. But it also "makes little sense" for the Court to reject McNeely's arbitrary distinction only for searches incident to arrest and not also for exigent-circumstances searches when both are justified by identical concerns about the destruction of the same evidence. McNeely's distinction is no less arbitrary for searches justified by exigent circumstances than those justified by search incident to arrest.

The Court was wrong in McNeely, and today's compromise is perhaps an inevitable consequence of that error. Both searches contemplated by the state laws at issue in these cases would be constitutional under the exigent-circumstances exception to the warrant requirement. I respectfully concur in the judgment in part and dissent in part.

Questions and Notes

1. What is the difference between a search incident to an arrest and an exigent circumstance? Which was Schmerber? Which was Birchfield? Which was Bernard? Which was McNeely?

2. Is the Court saying that a breath test is not a search at all or that it is a minimally intrusive one? Do you think it is a search? If so is it more intrusive than the searches typically allowed incident to arrest?

3. Why are blood tests different? How is a blood test more intrusive than a breathalyzer? Don't they both measure the same thing?

4. The Court seems opposed to arbitrariness, of which they believe the dissent is guilty, for arbitrarily eliminating BAC tests from search incident to arrest. Is the court any less arbitrary in distinguishing between blood and breath tests? Where do you suppose urine tests will fall?

5. The Court seems to question the value of a warrant in this kind of case. If it is correct, does that lead to the conclusion that Justice Thomas is also correct and that McNeely was wrong?

6. Given that probable cause is pretty obvious in these cases, should we require probable cause to search as opposed to merely a search incident to a valid arrest? Or is it enough to say that if the arrest is without probable cause, the search wouldn't be valid anyway?

Insert on Page 658 (after closing note)

RODRIGUEZ v. UNITED STATES
135 S. Ct. 1609

Opinion

Justice GINSBURG delivered the opinion of the Court.

In *Illinois v. Caballes*, this Court held that a dog sniff conducted during a lawful traffic stop does not violate the Fourth Amendment's proscription of unreasonable seizures. This case presents the question whether the Fourth Amendment tolerates a dog sniff conducted after completion of a traffic stop. We hold that a police stop exceeding the time needed to handle the matter for which the stop was made violates the Constitution's shield against unreasonable seizures. A seizure justified only by a police-observed traffic violation, therefore, "become[s] unlawful if it is prolonged beyond the time reasonably required to complete th[e] mission" of issuing a ticket for the violation. The Court so recognized in *Caballes*, and we adhere to the line drawn in that decision.

I

Just after midnight on March 27, 2012, police officer Morgan Struble observed a Mercury Mountaineer veer slowly onto the shoulder of Nebraska State Highway 275 for one or two seconds and then jerk back onto the road. Nebraska law prohibits driving on highway shoulders, and on that basis, Struble pulled the Mountaineer over at 12:06 a.m. Struble is a K–9 officer with the Valley Police Department in Nebraska, and his dog Floyd was in his patrol car that night. Two men were in the Mountaineer: the driver, Dennys Rodriguez, and a front-seat passenger, Scott Pollman.

Struble approached the Mountaineer on the passenger's side. After Rodriguez identified himself, Struble asked him why he had driven onto the shoulder. Rodriguez replied that he had swerved to avoid a pothole. Struble then gathered Rodriguez's license, registration, and proof of insurance, and asked Rodriguez to accompany him to the patrol car. Rodriguez asked if he was required to do so, and Struble answered that he was not. Rodriguez decided to wait in his own vehicle.

After running a records check on Rodriguez, Struble returned to the Mountaineer. Struble asked passenger Pollman for his driver's license and began to question him about where the two men were coming from and where they were going. Pollman replied that they had traveled to Omaha, Nebraska, to look at a Ford Mustang that was for sale and that they were returning to Norfolk, Nebraska. Struble returned again to his patrol car, where he completed a records check on Pollman,

and called for a second officer. Struble then began writing a warning ticket for Rodriguez for driving on the shoulder of the road.

Struble returned to Rodriguez's vehicle a third time to issue the written warning. By 12:27 or 12:28 a.m., Struble had finished explaining the warning to Rodriguez, and had given back to Rodriguez and Pollman the documents obtained from them. As Struble later testified, at that point, Rodriguez and Pollman "had all their documents back and a copy of the written warning. I got all the reason[s] for the stop out of the way[,] ... took care of all the business."

Nevertheless, Struble did not consider Rodriguez "free to leave." Although justification for the traffic stop was "out of the way," Struble asked for permission to walk his dog around Rodriguez's vehicle. Rodriguez said no. Struble then instructed Rodriguez to turn off the ignition, exit the vehicle, and stand in front of the patrol car to wait for the second officer. Rodriguez complied. At 12:33 a.m., a deputy sheriff arrived. Struble retrieved his dog and led him twice around the Mountaineer. The dog alerted to the presence of drugs halfway through Struble's second pass. All told, seven or eight minutes had elapsed from the time Struble issued the written warning until the dog indicated the presence of drugs. A search of the vehicle revealed a large bag of methamphetamine.

Rodriguez moved to suppress the evidence seized from his car on the ground, among others, that Struble had prolonged the traffic stop without reasonable suspicion in order to conduct the dog sniff.

After receiving evidence, a Magistrate Judge recommended that the motion be denied. The Magistrate Judge found no probable cause to search the vehicle independent of the dog alert. He further found that no reasonable suspicion supported the detention once Struble issued the written warning. He concluded, however, that under Eighth Circuit precedent, extension of the stop by "seven to eight minutes" for the dog sniff was only a *de minimis* intrusion on Rodriguez's Fourth Amendment rights and was therefore permissible.

The District Court adopted the Magistrate Judge's factual findings and legal conclusions and denied Rodriguez's motion to suppress. The court noted that, in the Eighth Circuit, "dog sniffs that occur within a short time following the completion of a traffic stop are not constitutionally prohibited if they constitute only de minimis intrusions." Impelled by that decision, Rodriguez entered a conditional guilty plea and was sentenced to five years in prison.

The Eighth Circuit affirmed.

We granted certiorari to resolve a division among lower courts on the question whether police routinely may extend an otherwise-completed traffic stop, absent reasonable suspicion, in order to conduct a dog sniff.

II

A seizure for a traffic violation justifies a police investigation of that violation. "[A] relatively brief encounter," a routine traffic stop is "more analogous to a so-called '*Terry* stop' ... than to a formal arrest." *Knowles v. Iowa.* See also *Arizona v. Johnson*, 555 U.S. 323, 330, 129 S.Ct. 781, 172 L.Ed.2d 694 (2009). Like a *Terry* stop, the tolerable duration of police inquiries in the traffic-stop context is determined by the seizure's "mission"—to address the traffic violation that warranted the stop, *Caballes*, and attend to related safety concerns. See also *United States v. Sharpe*; *Florida v. Royer*, (plurality opinion) ("The scope of the detention must be carefully tailored to its underlying justification."). Because addressing the infraction is the purpose of the stop, it may "last no longer than is necessary to effectuate th[at] purpose." Authority for the seizure thus ends when tasks tied to the traffic infraction are—or reasonably should have been—completed. See *Sharpe*, (in determining the reasonable duration of a stop, "it [is] appropriate to examine whether the police diligently pursued [the] investigation").

Our decisions in *Caballes* and *Johnson* heed these constraints. In both cases, we concluded that the Fourth Amendment tolerated certain unrelated investigations that did not lengthen the roadside detention. *Johnson*, (questioning); *Caballes*, (dog sniff). In *Caballes*, however, we cautioned that a traffic stop "can become unlawful if it is prolonged beyond the time reasonably required to complete th[e] mission" of issuing a warning ticket. 543 U.S., at 407, 125 S.Ct. 834. And we repeated that admonition in *Johnson* : The seizure remains lawful only "so long as [unrelated] inquiries do not measurably extend the duration of the stop." See also *Muehler v. Mena*, (because unrelated inquiries did not "exten[d] the time [petitioner] was detained[,] ... no additional Fourth Amendment justification ... was required"). An officer, in other words, may conduct certain unrelated checks during an otherwise lawful traffic stop. But contrary to Justice ALITO's suggestion, he may not do so in a way that prolongs the stop, absent the reasonable suspicion ordinarily demanded to justify detaining an individual. But see, ALITO, J., dissenting (premising opinion on the dissent's own finding of "reasonable suspicion," although the District Court reached the opposite conclusion, and the Court of Appeals declined to consider the issue).

Beyond determining whether to issue a traffic ticket, an officer's mission includes "ordinary inquiries incident to [the traffic] stop." Typically such inquiries involve checking the driver's license, determining whether there are outstanding warrants against the driver, and inspecting the automobile's registration and proof of insurance. These checks serve the same objective as enforcement of the traffic code: ensuring that vehicles on the road are operated safely and responsibly. See *Prouse*, (A "warrant check makes it possible to determine whether the apparent traffic violator is wanted for one or more previous traffic offenses.").

A dog sniff, by contrast, is a measure aimed at "detect[ing] evidence of ordinary criminal wrongdoing." *Indianapolis v. Edmond*. See also *Florida v. Jardines*. Candidly, the Government acknowledged at oral argument that a dog sniff, unlike the routine measures just mentioned, is not an ordinary incident of a traffic stop. Lacking the same close connection to roadway safety as the ordinary inquiries, a dog sniff is not fairly characterized as part of the officer's traffic mission.

In advancing its *de minimis* rule, the Eighth Circuit relied heavily on our decision in *Pennsylvania v. Mimms*. In *Mimms*, we reasoned that the government's "legitimate and weighty" interest in officer safety outweighs the "*de minimis*" additional intrusion of requiring a driver, already

lawfully stopped, to exit the vehicle. See also *Maryland v. Wilson,* (passengers may be required to exit vehicle stopped for traffic violation). The Eighth Circuit, echoed in Justice THOMAS's dissent, believed that the imposition here similarly could be offset by the Government's "strong interest in interdicting the flow of illegal drugs along the nation's highways."

Unlike a general interest in criminal enforcement, however, the government's officer safety interest stems from the mission of the stop itself. Traffic stops are "especially fraught with danger to police officers," so an officer may need to take certain negligibly burdensome precautions in order to complete his mission safely. Cf. *United States v. Holt,* 264 F.3d 1215, 1221–1222 (C.A.10 2001) (en banc) (recognizing officer safety justification for criminal record and outstanding warrant checks). On-scene investigation into other crimes, however, detours from that mission. So too do safety precautions taken in order to facilitate such detours. Thus, even assuming that the imposition here was no more intrusive than the exit order in *Mimms,* the dog sniff could not be justified on the same basis. Highway and officer safety are interests different in kind from the Government's endeavor to detect crime in general or drug trafficking in particular.

The Government argues that an officer may "incremental[ly]" prolong a stop to conduct a dog sniff so long as the officer is reasonably diligent in pursuing the traffic-related purpose of the stop, and the overall duration of the stop remains reasonable in relation to the duration of other traffic stops involving similar circumstances. The Government's argument, in effect, is that by completing all traffic-related tasks expeditiously, an officer can earn bonus time to pursue an unrelated criminal investigation. The reasonableness of a seizure, however, depends on what the police in fact do. In this regard, the Government acknowledges that "an officer always has to be reasonably diligent." How could diligence be gauged other than by noting what the officer actually did and how he did it? If an officer can complete traffic-based inquiries expeditiously, then that is the amount of "time reasonably required to complete [the stop's] mission." As we said in *Caballes* and reiterate today, a traffic stop "prolonged beyond" that point is "unlawful." The critical question, then, is not whether the dog sniff occurs before or after the officer issues a ticket, as Justice ALITO supposes, but whether conducting the sniff "prolongs"—*i.e.*, adds time to—"the stop."

III

The Magistrate Judge found that detention for the dog sniff in this case was not independently supported by individualized suspicion, and the District Court adopted the Magistrate Judge's findings. The Court of Appeals, however, did not review that determination. But see THOMAS, J., dissenting, (resolving the issue, nevermind that the Court of Appeals left it unaddressed); ALITO, J., dissenting, (upbraiding the Court for addressing the sole issue decided by the Court of Appeals and characterizing the Court's answer as "unnecessary" because the Court, instead, should have decided an issue the Court of Appeals did not decide). The question whether reasonable suspicion of criminal activity justified detaining Rodriguez beyond completion of the traffic infraction investigation, therefore, remains open for Eighth Circuit consideration on remand.

* * *

For the reasons stated, the judgment of the United States Court of Appeals for the Eighth Circuit is vacated, and the case is remanded for further proceedings consistent with this opinion.

Justice KENNEDY, dissenting.

My join in Justice THOMAS' dissenting opinion does not extend to Part III. Although the issue discussed in that Part was argued here, the Court of Appeals has not addressed that aspect of the case in any detail. In my view the better course would be to allow that court to do so in the first instance.

Justice THOMAS, with whom Justice ALITO joins, and with whom Justice KENNEDY joins as to all but Part III, dissenting.

Ten years ago, we explained that "conducting a dog sniff [does] not change the character of a traffic stop that is lawful at its inception and otherwise executed in a reasonable manner." The only question here is whether an officer executed a stop in a reasonable manner when he waited to conduct a dog sniff until after he had given the driver a written warning and a backup unit had arrived, bringing the overall duration of the stop to 29 minutes. Because the stop was reasonably executed, no Fourth Amendment violation occurred. The Court's holding to the contrary cannot be reconciled with our decision in *Caballes* or a number of common police practices. It was also unnecessary, as the officer possessed reasonable suspicion to continue to hold the driver to conduct the dog sniff. I respectfully dissent.

I

The Fourth Amendment protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const., Amdt. 4. As the text indicates, and as we have repeatedly confirmed, "the ultimate touchstone of the Fourth Amendment is 'reasonableness.'" We have defined reasonableness "in objective terms by examining the totality of the circumstances," *Ohio v. Robinette*, 519 U.S. 33, 39, 117 S.Ct. 417, 136 L.Ed.2d 347 (1996), and by considering "the traditional protections against unreasonable searches and seizures afforded by the common law at the time of the framing," *Atwater v. Lago Vista*. When traditional protections have not provided a definitive answer, our precedents have "analyzed a search or seizure in light of traditional standards of reasonableness by assessing, on the one hand, the degree to which it intrudes upon an individual's privacy and, on the other, the degree to which it is needed for the promotion of legitimate governmental interests." *Virginia v. Moore*.

Although a traffic stop "constitutes a 'seizure' of 'persons' within the meaning of [the Fourth Amendment]," such a seizure is constitutionally "reasonable where the police have probable cause to believe that a traffic violation has occurred." *Whren*. But "a seizure that is lawful at its inception can violate the Fourth Amendment if its manner of execution unreasonably infringes interests protected by the Constitution." *Caballes*.

Because Rodriguez does not dispute that Officer Struble had probable cause to stop him, the only question is whether the stop was otherwise executed in a reasonable manner. I easily conclude that it was. Approximately 29 minutes passed from the time Officer Struble stopped Rodriguez until his narcotics-detection dog alerted to the presence of drugs. That amount of time is hardly out of the ordinary for a traffic stop by a single officer of a vehicle containing multiple occupants even when no dog sniff is involved. During that time, Officer Struble conducted the ordinary activities of a traffic stop—he approached the vehicle, questioned Rodriguez about the observed violation, asked Pollman about their travel plans, ran serial warrant checks on Rodriguez and Pollman, and issued a written warning to Rodriguez. And when he decided to conduct a dog sniff, he took the precaution of calling for backup out of concern for his safety.

As *Caballes* makes clear, the fact that Officer Struble waited until after he gave Rodriguez the warning to conduct the dog sniff does not alter this analysis. Because "the use of a well-trained narcotics-detection dog ... generally does not implicate legitimate privacy interests," "conducting a dog sniff would not change the character of a traffic stop that is lawful at its inception and otherwise executed in a reasonable manner." The stop here was "lawful at its inception and otherwise executed in a reasonable manner." As in *Caballes*, "conducting a dog sniff [did] not change the character of [the] traffic stop," and thus no Fourth Amendment violation occurred.

II

Rather than adhere to the reasonableness requirement that we have repeatedly characterized as the "touchstone of the Fourth Amendment," the majority constructed a test of its own that is inconsistent with our precedents.

A

The majority's rule requires a traffic stop to "en[d] when tasks tied to the traffic infraction are—or reasonably should have been—completed." "If an officer can complete traffic-based inquiries expeditiously, then that is the amount of time reasonably required to complete the stop's mission" and he may hold the individual no longer. The majority's rule thus imposes a one-way ratchet for constitutional protection linked to the characteristics of the individual officer conducting the stop: If a driver is stopped by a particularly efficient officer, then he will be entitled to be released from the traffic stop after a shorter period of time than a driver stopped by a less efficient officer. Similarly, if a driver is stopped by an officer with access to technology that can shorten a records check, then he will be entitled to be released from the stop after a shorter period of time than an individual stopped by an officer without access to such technology.

I "cannot accept that the search and seizure protections of the Fourth Amendment are so variable and can be made to turn upon such trivialities." We have repeatedly explained that the reasonableness inquiry must not hinge on the characteristics of the individual officer conducting the seizure. We have held, for example, that an officer's state of mind "does not invalidate [an] action taken as long as the circumstances, viewed objectively, justify that action." We have spurned theories that would make the Fourth Amendment "change with local law enforcement

practices." *Moore*. And we have rejected a rule that would require the offense establishing probable cause to be "closely related to" the offense identified by the arresting officer, as such a rule would make "the constitutionality of an arrest ... vary from place to place and from time to time, depending on whether the arresting officer states the reason for the detention and, if so, whether he correctly identifies a general class of offense for which probable cause exists." *Devenpeck v. Alford*, 543 U.S. 146, 154 (2004). In *Devenpeck*, a unanimous Court explained: "An arrest made by a knowledgeable, veteran officer would be valid, whereas an arrest made by a rookie *in precisely the same circumstances* would not. We see no reason to ascribe to the Fourth Amendment such arbitrarily variable protection."

The majority's logic would produce similarly arbitrary results. Under its reasoning, a traffic stop made by a rookie could be executed in a reasonable manner, whereas the same traffic stop made by a knowledgeable, veteran officer *in precisely the same circumstances* might not, if in fact his knowledge and experience made him capable of completing the stop faster. We have long rejected interpretations of the Fourth Amendment that would produce such haphazard results, and I see no reason to depart from our consistent practice today.

B

As if that were not enough, the majority also limits the duration of the stop to the time it takes the officer to complete a narrow category of "traffic-based inquiries." According to the majority, these inquiries include those that "serve the same objective as enforcement of the traffic code: ensuring that vehicles on the road are operated safely and responsibly." Inquiries directed to "detecting evidence of ordinary criminal wrongdoing" are not traffic-related inquiries and thus cannot count toward the overall duration of the stop.

The combination of that definition of traffic-related inquiries with the majority's officer-specific durational limit produces a result demonstrably at odds with our decision in *Caballes*. *Caballes* expressly anticipated that a traffic stop could be *reasonably* prolonged for officers to engage in a dog sniff. We explained that no Fourth Amendment violation had occurred in *Caballes*, where the "duration of the stop ... was entirely justified by the traffic offense and the ordinary inquiries incident to such a stop," but suggested a different result might attend a case "involving a dog sniff that occurred during an *unreasonably* prolonged traffic stop." The dividing line was whether the overall duration of the stop exceeded "the time reasonably required to complete th[e] mission," not, as the majority suggests, whether the duration of the stop "in fact" exceeded the time necessary to complete the traffic-related inquiries.

The majority's approach draws an artificial line between dog sniffs and other common police practices. The lower courts have routinely confirmed that warrant checks are a constitutionally permissible part of a traffic stop, and the majority confirms that it finds no fault in these measures. Yet its reasoning suggests the opposite. Such warrant checks look more like they are directed to "detecting evidence of ordinary criminal wrongdoing" than to "ensuring that vehicles on the road are operated safely and responsibly." Perhaps one could argue that the existence of an outstanding warrant might make a driver less likely to operate his vehicle safely and responsibly on the road, but the same could be said about a driver in possession of contraband. A driver confronted by the

police in either case might try to flee or become violent toward the officer. But under the majority's analysis, a dog sniff, which is directed at uncovering that problem, is not treated as a traffic-based inquiry. Warrant checks, arguably, should fare no better. The majority suggests that a warrant check is an ordinary inquiry incident to a traffic stop because it can be used " 'to determine whether the apparent traffic violator is wanted for one or more previous traffic offenses.' " But as the very treatise on which the majority relies notes, such checks are a "manifest[ation of] the 'war on drugs' motivation so often underlying [routine traffic] stops," and thus are very much like the dog sniff in this case.

Investigative questioning rests on the same basis as the dog sniff. "Asking questions is an essential part of police investigations." *Hiibel.* And the lower courts have routinely upheld such questioning during routine traffic stops. The majority's reasoning appears to allow officers to engage in *some* questioning aimed at detecting evidence of ordinary criminal wrongdoing. But it is hard to see how such inquiries fall within the "seizure's 'mission' [of] address[ing] the traffic violation that warranted the stop," or "attend[ing] to related safety concerns." Its reasoning appears to come down to the principle that dogs are different.

C

On a more fundamental level, the majority's inquiry elides the distinction between traffic stops based on probable cause and those based on reasonable suspicion. Probable cause is *the* "traditional justification" for the seizure of a person. This Court created an exception to that rule in *Terry v. Ohio,* permitting "police officers who suspect criminal activity to make limited intrusions on an individual's personal security based on less than probable cause." Reasonable suspicion is the justification for such seizures. *Prado Navarette.*

Traffic stops can be initiated based on probable cause or reasonable suspicion. Although the Court has commented that a routine traffic stop is "more analogous to a so-called '*Terry* stop' than to a formal arrest," it has rejected the notion "that a traffic stop supported by probable cause may not exceed the bounds set by the Fourth Amendment on the scope of a *Terry* stop." *Berkemer v. McCarty*, 468 U.S. 420, 439, and n. 29, 104 S.Ct. 3138, 82 L.Ed.2d 317 (1984).

Although all traffic stops must be executed reasonably, our precedents make clear that traffic stops justified by reasonable suspicion are subject to additional limitations that those justified by probable cause are not. A traffic stop based on reasonable suspicion, like all *Terry* stops, must be "justified at its inception" and "reasonably related in scope to the circumstances which justified the interference in the first place." It also "cannot continue for an excessive period of time or resemble a traditional arrest." By contrast, a stop based on probable cause affords an officer considerably more leeway. In such seizures, an officer may engage in a warrantless arrest of the driver, *Atwater,* a warrantless search incident to arrest of the driver, *Riley v. California,* and a warrantless search incident to arrest of the vehicle if it is reasonable to believe evidence relevant to the crime of arrest might be found there, *Arizona v. Gant*.

The majority casually tosses this distinction aside. It asserts that the traffic stop in this case, which was undisputedly initiated on the basis of probable cause, can last no longer than is in fact

necessary to effectuate the mission of the stop. And, it assumes that the mission of the stop was merely to write a traffic ticket, rather than to consider making a custodial arrest. In support of that durational requirement, it relies primarily on cases involving *Terry* stops.

The *only* case involving a traffic stop based on probable cause that the majority cites for its rule is *Caballes*. But, that decision provides no support for today's restructuring of our Fourth Amendment jurisprudence. In *Caballes*, the Court made clear that, in the context of a traffic stop supported by probable cause, "a dog sniff would not change the character of a traffic stop that is lawful at its inception and otherwise executed in a reasonable manner." To be sure, *the dissent* in *Caballes* would have "appl[ied] *Terry* 's reasonable-relation test ... to determine whether the canine sniff impermissibly expanded the scope of the initially valid seizure of Caballes." (GINSBURG, J., dissenting). But even it conceded that the *Caballes* majority had "implicitly [rejected] the application of *Terry* to a traffic stop converted, by calling in a dog, to a drug search."

By strictly limiting the tasks that define the durational scope of the traffic stop, the majority accomplishes today what the *Caballes* dissent could not: strictly limiting the scope of an officer's activities during a traffic stop justified by probable cause. In doing so, it renders the difference between probable cause and reasonable suspicion virtually meaningless in this context. That shift is supported neither by the Fourth Amendment nor by our precedents interpreting it. And, it results in a constitutional framework that lacks predictability. Had Officer Struble arrested, handcuffed, and taken Rodriguez to the police station for his traffic violation, he would have complied with the Fourth Amendment. See *Atwater*. But because he made Rodriguez wait for seven or eight extra minutes until a dog arrived, he evidently committed a constitutional violation. Such a view of the Fourth Amendment makes little sense.

III

Today's revision of our Fourth Amendment jurisprudence was also entirely unnecessary. Rodriguez suffered no Fourth Amendment violation here for an entirely independent reason: Officer Struble had reasonable suspicion to continue to hold him for investigative purposes. Our precedents make clear that the Fourth Amendment permits an officer to conduct an investigative traffic stop when that officer has "a particularized and objective basis for suspecting the particular person stopped of criminal activity." *Prado Navarette.* Reasonable suspicion is determined by looking at "the whole picture," taking into account "the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act."

Officer Struble testified that he first became suspicious that Rodriguez was engaged in criminal activity for a number of reasons. When he approached the vehicle, he smelled an "overwhelming odor of air freshener coming from the vehicle," which is, in his experience, "a common attempt to conceal an odor that [people] don't want ... to be smelled by the police." He also observed, upon approaching the front window on the passenger side of the vehicle, that Rodriguez's passenger, Scott Pollman, appeared nervous. Pollman pulled his hat down low, puffed nervously on a cigarette, and refused to make eye contact with him. The officer thought he was "more nervous than your typical passenger" who "do[esn't] have anything to worry about because [t]hey didn't commit a [traffic] violation."

Officer Struble's interactions with the vehicle's occupants only increased his suspicions. When he asked Rodriguez why he had driven onto the shoulder, Rodriguez claimed that he swerved to avoid a pothole. But that story could not be squared with Officer Struble's observation of the vehicle slowly driving off the road before being jerked back onto it. And when Officer Struble asked Pollman where they were coming from and where they were going, Pollman told him they were traveling from Omaha, Nebraska, back to Norfolk, Nebraska, after looking at a vehicle they were considering purchasing. Pollman told the officer that he had neither seen pictures of the vehicle nor confirmed title before the trip. As Officer Struble explained, it "seemed suspicious" to him "to drive ... approximately two hours ... late at night to see a vehicle sight unseen to possibly buy it," and to go from Norfolk to Omaha to look at it because "[u]sually people leave Omaha to go get vehicles, not the other way around" due to higher Omaha taxes.

These facts, taken together, easily meet our standard for reasonable suspicion. "[N]ervous, evasive behavior is a pertinent factor in determining reasonable suspicion," *Illinois v. Wardlow*, and both vehicle occupants were engaged in such conduct. The officer also recognized heavy use of air freshener, which, in his experience, indicated the presence of contraband in the vehicle. "[C]ommonsense judgments and inferences about human behavior" further support the officer's conclusion that Pollman's story about their trip was likely a cover story for illegal activity. Taking into account all the relevant facts, Officer Struble possessed reasonable suspicion of criminal activity to conduct the dog sniff.

Rodriguez contends that reasonable suspicion cannot exist because each of the actions giving rise to the officer's suspicions could be entirely innocent, but our cases easily dispose of that argument. Acts that, by themselves, might be innocent can, when taken together, give rise to reasonable suspicion. *Terry* is a classic example, as it involved two individuals repeatedly walking back and forth, looking into a store window, and conferring with one another as well as with a third man. The Court reasoned that this "series of acts, each of them perhaps innocent in itself, ... together warranted further investigation," and it has reiterated that analysis in a number of cases, see, *e.g.*, *Arvizu*,; *Sokolow*. This one is no different.

* * *

I would conclude that the police did not violate the Fourth Amendment here. Officer Struble possessed probable cause to stop Rodriguez for driving on the shoulder, and he executed the subsequent stop in a reasonable manner. Our decision in *Caballes* requires no more. The majority's holding to the contrary is irreconcilable with *Caballes* and a number of other routine police practices, distorts the distinction between traffic stops justified by probable cause and those justified by reasonable suspicion, and abandons reasonableness as the touchstone of the Fourth Amendment. I respectfully dissent.

Justice ALITO, dissenting.

This is an unnecessary, impractical, and arbitrary decision. It addresses a purely hypothetical question: whether the traffic stop in this case *would be* unreasonable if the police officer, prior to

leading a drug-sniffing dog around the exterior of petitioner's car, did not already have reasonable suspicion that the car contained drugs. In fact, however, the police officer *did have* reasonable suspicion, and, as a result, the officer was justified in detaining the occupants for the short period of time (seven or eight minutes) that is at issue.

The relevant facts are not in dispute. Officer Struble, who made the stop, was the only witness at the suppression hearing, and his testimony about what happened was not challenged. Defense counsel argued that the facts recounted by Officer Struble were insufficient to establish ***1624** reasonable suspicion, but defense counsel did not dispute those facts or attack the officer's credibility. Similarly, the Magistrate Judge who conducted the hearing did not question the officer's credibility. And as Justice THOMAS's opinion shows, the facts recounted by Officer Struble "easily meet our standard for reasonable suspicion."

Not only does the Court reach out to decide a question not really presented by the facts in this case, but the Court's answer to that question is arbitrary. The Court refuses to address the real Fourth Amendment question: whether the stop was unreasonably prolonged. Instead, the Court latches onto the fact that Officer Struble delivered the warning prior to the dog sniff and proclaims that the authority to detain based on a traffic stop ends when a citation or warning is handed over to the driver. The Court thus holds that the Fourth Amendment was violated, not because of the length of the stop, but simply because of the sequence in which Officer Struble chose to perform his tasks.

This holding is not only arbitrary; it is perverse since Officer Struble chose that sequence for the purpose of protecting his own safety and possibly the safety of others. Without prolonging the stop, Officer Struble could have conducted the dog sniff while one of the tasks that the Court regards as properly part of the traffic stop was still in progress, but that sequence would have entailed unnecessary risk. At approximately 12:19 a.m., after collecting Pollman's driver's license, Officer Struble did two things. He called in the information needed to do a records check on Pollman (a step that the Court recognizes was properly part of the traffic stop), and he requested that another officer report to the scene. Officer Struble had decided to perform a dog sniff but did not want to do that without another officer present. When occupants of a vehicle who know that their vehicle contains a large amount of illegal drugs see that a drug-sniffing dog has alerted for the presence of drugs, they will almost certainly realize that the police will then proceed to search the vehicle, discover the drugs, and make arrests. Thus, it is reasonable for an officer to believe that an alert will increase the risk that the occupants of the vehicle will attempt to flee or perhaps even attack the officer. See, *e.g.*, *United States v. Dawdy*, 46 F.3d 1427, 1429 (C.A.8 1995) (recounting scuffle between officer and defendant after drugs were discovered).

In this case, Officer Struble was concerned that he was outnumbered at the scene, and he therefore called for backup and waited for the arrival of another officer before conducting the sniff. As a result, the sniff was not completed until seven or eight minutes after he delivered the warning. But Officer Struble could have proceeded with the dog sniff while he was waiting for the results of the records check on Pollman and before the arrival of the second officer. The drug-sniffing dog was present in Officer Struble's car. If he had chosen that riskier sequence of events, the dog sniff would have been completed before the point in time when, according to the Court's analysis, the authority to detain for the traffic stop ended. Thus, an action that would have been lawful had the officer made the *unreasonable* decision to risk his life became unlawful when the officer made the

reasonable decision to wait a few minutes for backup. Officer Struble's error—apparently—was following prudent procedures motivated by legitimate safety concerns. The Court's holding therefore makes no practical sense. And nothing in the Fourth Amendment, which speaks of *reasonableness*, compels this arbitrary line.

The rule that the Court adopts will do little good going forward.[2] It is unlikely to have any appreciable effect on the length of future traffic stops. Most officers will learn the prescribed sequence of events even if they cannot fathom the reason for that requirement. (I would love to be the proverbial fly on the wall when police instructors teach this rule to officers who make traffic stops.)

For these reasons and those set out in Justice THOMAS's opinion, I respectfully dissent.

[2] It is important to note that the Court's decision does not affect procedures routinely carried out during traffic stops, including "checking the driver's license, determining whether there are outstanding warrants against the driver, and inspecting the automobile's registration and proof of insurance." And the Court reaffirms that police "may conduct certain unrelated checks during an otherwise lawful traffic stop." Thus, it remains true that police may ask questions aimed at uncovering other criminal conduct and may order occupants out of their car during a valid stop.

Questions and Notes

1. Was the additional detention to which Rodriguez was subjected, de minimis? Why? Why not?

2. If after this case, the police told you (as their attorney) that they wanted to continue dog sniffs, how would you advise them?

3. Do you sense that the Court is backtracking from *Caballes*, especially in light of *Jardines.*

4. Was it wise for the government to concede that a dog sniff is not part of an ordinary traffic stop?

5. Is *Rodriguez* consistent with *Robinette.*

6. Do you think that the lower court will (should) find reasonable suspicion on remand?

Insert on p.1306 before heading B.

UTAH v. STRIEFF

195 L. Ed. 2d 400 (2016)

Opinion

JUSTICE THOMAS delivered the opinion of the Court.

To enforce the Fourth Amendment's prohibition against "unreasonable searches and seizures," this Court has at times required courts to exclude evidence obtained by unconstitutional police conduct. But the Court has also held that, even when there is a Fourth Amendment violation, this exclusionary rule does not apply when the costs of exclusion outweigh its deterrent benefits. In some cases, for example, the link between the unconstitutional conduct and the discovery of the evidence is too attenuated to justify suppression. The question in this case is whether this attenuation doctrine applies when an officer makes an unconstitutional investigatory stop; learns during that stop that the suspect is subject to a valid arrest warrant; and proceeds to arrest the suspect and seize incriminating evidence during a search incident to that arrest. We hold that the evidence the officer seized as part of the search incident to arrest is admissible because the officer's discovery of the arrest warrant attenuated the connection between the unlawful stop and the evidence seized incident to arrest.

I

This case began with an anonymous tip. In December 2006, someone called the South Salt Lake City police's drug-tip line to report "narcotics activity" at a particular residence. Narcotics detective Douglas Fackrell investigated the tip. Over the course of about a week, Officer Fackrell conducted intermittent surveillance of the home. He observed visitors who left a few minutes after arriving at the house. These visits were sufficiently frequent to raise his suspicion that the occupants were dealing drugs.

One of those visitors was respondent Edward Strieff. Officer Fackrell observed Strieff exit the house and walk toward a nearby convenience store. In the store's parking lot, Officer Fackrell detained Strieff, identified himself, and asked Strieff what he was doing at the residence.

As part of the stop, Officer Fackrell requested Strieff's identification, and Strieff produced his Utah identification card. Officer Fackrell relayed Strieff's information to a police dispatcher, who reported that Strieff had an outstanding arrest warrant for a traffic violation. Officer Fackrell then arrested Strieff pursuant to that warrant. When Officer Fackrell searched Strieff incident to the arrest, he discovered a baggie of methamphetamine and drug paraphernalia.

The State charged Strieff with unlawful possession of methamphetamine and drug paraphernalia. Strieff moved to suppress the evidence, arguing that the evidence was inadmissible because it was derived from an unlawful investigatory stop. At the suppression hearing, the prosecutor conceded that Officer Fackrell lacked reasonable suspicion for the stop but argued that the evidence should not be suppressed because the existence of a valid arrest warrant attenuated the connection between the unlawful stop and the discovery of the contraband.

The trial court agreed with the State and admitted the evidence. The court found that the short time between the illegal stop and the search weighed in favor of suppressing the evidence, but that two countervailing considerations made it admissible. First, the court considered the presence of a valid arrest warrant to be an "'extraordinary intervening circumstance.'" Second, the court stressed the absence of flagrant misconduct by Officer Fackrell, who was conducting a legitimate investigation of a suspected drug house.

Strieff conditionally pleaded guilty to reduced charges of attempted possession of a controlled substance and possession of drug paraphernalia, but reserved his right to appeal the trial court's denial of the suppression motion. The Utah Court of Appeals affirmed.

The Utah Supreme Court reversed. It held that the evidence was inadmissible because only "a voluntary act of a defendant's free will (as in a confession or consent to search)" sufficiently breaks the connection between an illegal search and the discovery of evidence. Because Officer Fackrell's discovery of a valid arrest warrant did not fit this description, the court ordered the evidence suppressed.

We granted certiorari to resolve disagreement about how the attenuation doctrine applies where an unconstitutional detention leads to the discovery of a valid arrest warrant. We now reverse.

II

A

The Fourth Amendment protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." Because officers who violated the Fourth Amendment were traditionally considered trespassers, individuals subject to unconstitutional searches or seizures historically enforced their rights through tort suits or self-help. In the 20th century, however, the exclusionary rule—the rule that often requires trial courts to exclude unlawfully seized evidence in a criminal trial—became the principal judicial remedy to deter Fourth Amendment violations.

Under the Court's precedents, the exclusionary rule encompasses both the "primary evidence obtained as a direct result of an illegal search or seizure" and, relevant here, "evidence later discovered and found to be derivative of an illegality," the so-called "'fruit of the poisonous tree.'" But the significant costs of this rule have led us to deem it "applicable only . . . where its deterrence benefits outweigh its substantial social costs." *Hudson v. Michigan.* "Suppression of evidence . . . has always been our last resort, not our first impulse."

We have accordingly recognized several exceptions to the rule. Three of these exceptions involve the causal relationship between the unconstitutional act and the discovery of evidence. [A]t issue

here, is the attenuation doctrine: Evidence is admissible when the connection between unconstitutional police conduct and the evidence is remote or has been interrupted by some intervening circumstance, so that "the interest protected by the constitutional guarantee that has been violated would not be served by suppression of the evidence obtained."

B

Turning to the application of the attenuation doctrine to this case, we first address a threshold question: whether this doctrine applies at all to a case like this, where the intervening circumstance that the State relies on is the discovery of a valid, pre-existing, and untainted arrest warrant. The Utah Supreme Court declined to apply the attenuation doctrine because it read our precedents as applying the doctrine only "to circumstances involving an independent act of a defendant's 'free will' in confessing to a crime or consenting to a search." In this Court, Strieff has not defended this argument, and we disagree with it, as well. The attenuation doctrine evaluates the causal link between the government's unlawful act and the discovery of evidence, which often has nothing to do with a defendant's actions. And the logic of our prior attenuation cases is not limited to independent acts by the defendant.

It remains for us to address whether the discovery of a valid arrest warrant was a sufficient intervening event to break the causal chain between the unlawful stop and the discovery of drug-related evidence on Strieff's person. The three factors articulated in *Brown v. Illinois* guide our analysis. First, we look to the "temporal proximity" between the unconstitutional conduct and the discovery of evidence to determine how closely the discovery of evidence followed the unconstitutional search. Second, we consider "the presence of intervening circumstances." Third, and "particularly" significant, we examine "the purpose and flagrancy of the official misconduct." In evaluating these factors, we assume without deciding (because the State conceded the point) that Officer Fackrell lacked reasonable suspicion to initially stop Strieff. And, because we ultimately conclude that the warrant breaks the causal chain, we also have no need to decide whether the warrant's existence alone would make the initial stop constitutional even if Officer Fackrell was unaware of its existence.

1

The first factor, temporal proximity between the initially unlawful stop and the search, favors suppressing the evidence. Our precedents have declined to find that this factor favors attenuation unless "substantial time" elapses between an unlawful act and when the evidence is obtained. Here, however, Officer Fackrell discovered drug contraband on Strieff's person only minutes after the illegal stop. As the Court explained in Brown, such a short time interval counsels in favor of suppression; there, we found that the confession should be suppressed, relying in part on the "less than two hours" that separated the unconstitutional arrest and the confession.

In contrast, the second factor, the presence of intervening circumstances, strongly favors the State. In Segura, the Court addressed similar facts to those here and found sufficient intervening circumstances to allow the admission of evidence. There, agents had probable cause to believe that apartment occupants were dealing cocaine. They sought a warrant. In the meantime, they entered the apartment, arrested an occupant, and discovered evidence of drug activity during a limited search for security reasons. The next evening, the Magistrate Judge issued the search warrant. This

Court deemed the evidence admissible notwithstanding the illegal search because the information supporting the warrant was "wholly unconnected with the [arguably illegal] entry and was known to the agents well before the initial entry."

Segura, of course, applied the independent source doctrine because the unlawful entry "did not contribute in any way to discovery of the evidence seized under the warrant." But the Segura Court suggested that the existence of a valid warrant favors finding that the connection between unlawful conduct and the discovery of evidence is "sufficiently attenuated to dissipate the taint." That principle applies here.

In this case, the warrant was valid, it predated Officer Fackrell's investigation, and it was entirely unconnected with the stop. And once Officer Fackrell discovered the warrant, he had an obligation to arrest Strieff. "A warrant is a judicial mandate to an officer to conduct a search or make an arrest, and the officer has a sworn duty to carry out its provisions." Officer Fackrell's arrest of Strieff thus was a ministerial act that was independently compelled by the pre-existing warrant. And once Officer Fackrell was authorized to arrest Strieff, it was undisputedly lawful to search Strieff as an incident of his arrest to protect Officer Fackrell's safety.

Finally, the third factor, "the purpose and flagrancy of the official misconduct" also strongly favors the State. The exclusionary rule exists to deter police misconduct. The third factor of the attenuation doctrine reflects that rationale by favoring exclusion only when the police misconduct is most in need of deterrence—that is, when it is purposeful or flagrant.

Officer Fackrell was at most negligent. In stopping Strieff, Officer Fackrell made two good-faith mistakes. First, he had not observed what time Strieff entered the suspected drug house, so he did not know how long Strieff had been there. Officer Fackrell thus lacked a sufficient basis to conclude that Strieff was a short-term visitor who may have been consummating a drug transaction. Second, because he lacked confirmation that Strieff was a short-term visitor, Officer Fackrell should have asked Strieff whether he would speak with him, instead of demanding that Strieff do so. Officer Fackrell's stated purpose was to "find out what was going on [in] the house." Nothing prevented him from approaching Strieff simply to ask. See *Florida v. Bostick*. ("[A] seizure does not occur simply because a police officer approaches an individual and asks a few questions"). But these errors in judgment hardly rise to a purposeful or flagrant violation of Strieff's Fourth Amendment rights.

While Officer Fackrell's decision to initiate the stop was mistaken, his conduct thereafter was lawful. The officer's decision to run the warrant check was a "negligibly burdensome precautio[n]" for officer safety. *Rodriguez v. United States*. And Officer Fackrell's actual search of Strieff was a lawful search incident to arrest.

Moreover, there is no indication that this unlawful stop was part of any systemic or recurrent police misconduct. To the contrary, all the evidence suggests that the stop was an isolated instance of negligence that occurred in connection with a bona fide investigation of a suspected drug house. Officer Fackrell saw Strieff leave a suspected drug house. And his suspicion about the house was based on an anonymous tip and his personal observations.

Applying these factors, we hold that the evidence discovered on Strieff's person was admissible because the unlawful stop was sufficiently attenuated by the pre-existing arrest warrant. Although the illegal stop was close in time to Strieff's arrest, that consideration is outweighed by two factors supporting the State. The outstanding arrest warrant for Strieff's arrest is a critical intervening circumstance that is wholly independent of the illegal stop. The discovery of that warrant broke the causal chain between the unconstitutional stop and the discovery of evidence by compelling Officer Fackrell to arrest Strieff. And, it is especially significant that there is no evidence that Officer Fackrell's illegal stop reflected flagrantly unlawful police misconduct.

2

We find Strieff's counterarguments unpersuasive.

First, he argues that the attenuation doctrine should not apply because the officer's stop was purposeful and flagrant. He asserts that Officer Fackrell stopped him solely to fish for evidence of suspected wrongdoing. But Officer Fackrell sought information from Strieff to find out what was happening inside a house whose occupants were legitimately suspected of dealing drugs. This was not a suspicionless fishing expedition "in the hope that something would turn up." *Taylor v. Alabama*.

Strieff argues, moreover, that Officer Fackrell's conduct was flagrant because he detained Strieff without the necessary level of cause (here, reasonable suspicion). But that conflates the standard for an illegal stop with the standard for flagrancy. For the violation to be flagrant, more severe police misconduct is required than the mere absence of proper cause for the seizure. See, e.g., *Kaupp*, 538 U. S., at 628, 633, (finding flagrant violation where a warrantless arrest was made in the arrestee's home after police were denied a warrant and at least some officers knew they lacked probable cause). Neither the officer's alleged purpose nor the flagrancy of the violation rise to a level of misconduct to warrant suppression.

Second, Strieff argues that, because of the prevalence of outstanding arrest warrants in many jurisdictions, police will engage in dragnet searches if the exclusionary rule is not applied. We think that this outcome is unlikely. Such wanton conduct would expose police to civil liability. And in any event, the Brown factors take account of the purpose and flagrancy of police misconduct. Were evidence of a dragnet search presented here, the application of the Brown factors could be different. But there is no evidence that the concerns that Strieff raises with the criminal justice system are present in South Salt Lake City, Utah.

* * *

We hold that the evidence Officer Fackrell seized as part of his search incident to arrest is admissible because his discovery of the arrest warrant attenuated the connection between the unlawful stop and the evidence seized from Strieff incident to arrest. The judgment of the Utah Supreme Court, accordingly, is reversed.

JUSTICE SOTOMAYOR, with whom JUSTICE GINSBURG joins as to Parts I, II, and III, dissenting.

The Court today holds that the discovery of a warrant for an unpaid parking ticket will forgive a police officer's violation of your Fourth Amendment rights. Do not be soothed by the opinion's technical language: This case allows the police to stop you on the street, demand your identification, and check it for outstanding traffic warrants—even if you are doing nothing wrong. If the officer discovers a warrant for a fine you forgot to pay, courts will now excuse his illegal stop and will admit into evidence anything he happens to find by searching you after arresting you on the warrant. Because the Fourth Amendment should prohibit, not permit, such misconduct, I dissent.

I

Minutes after Edward Strieff walked out of a South Salt Lake City home, an officer stopped him, questioned him, and took his identification to run it through a police database. The officer did not suspect that Strieff had done anything wrong. Strieff just happened to be the first person to leave a house that the officer thought might contain "drug activity."

As the State of Utah concedes, this stop was illegal. The Fourth Amendment protects people from "unreasonable searches and seizures." An officer breaches that protection when he detains a pedestrian to check his license without any evidence that the person is engaged in a crime. *Delaware v. Prouse*; *Terry v. Ohio.* The officer deepens the breach when he prolongs the detention just to fish further for evidence of wrongdoing. In his search for lawbreaking, the officer in this case himself broke the law.

The officer learned that Strieff had a "small traffic warrant." Pursuant to that warrant, he arrested Strieff and, conducting a search incident to the arrest, discovered methamphetamine in Strieff's pockets.

Utah charged Strieff with illegal drug possession. Before trial, Strieff argued that admitting the drugs into evidence would condone the officer's misbehavior. The methamphetamine, he reasoned, was the product of the officer's illegal stop. Admitting it would tell officers that unlawfully discovering even a "small traffic warrant" would give them license to search for evidence of unrelated offenses. The Utah Supreme Court unanimously agreed with Strieff. A majority of this Court now reverses.

II

It is tempting in a case like this, where illegal conduct by an officer uncovers illegal conduct by a civilian, to forgive the officer. After all, his instincts, although unconstitutional, were correct. But a basic principle lies at the heart of the Fourth Amendment: Two wrongs don't make a right. When "lawless police conduct" uncovers evidence of lawless civilian conduct, this Court has long required later criminal trials to exclude the illegally obtained evidence. For example, if an officer breaks into a home and finds a forged check lying around, that check may not be used to prosecute the homeowner for bank fraud. We would describe the check as "'fruit of the poisonous tree.'" *Wong Sun v. United States*. Fruit that must be cast aside includes not only evidence directly found by an illegal search but also evidence "come at by exploitation of that illegality." Ibid.

This "exclusionary rule" removes an incentive for officers to search us without proper justification. It also keeps courts from being "made party to lawless invasions of the constitutional rights of

citizens by permitting unhindered governmental use of the fruits of such invasions." When courts admit only lawfully obtained evidence, they encourage "those who formulate law enforcement polices, and the officers who implement them, to incorporate Fourth Amendment ideals into their value system." But when courts admit illegally obtained evidence as well, they reward "manifest neglect if not an open defiance of the prohibitions of the Constitution."

Applying the exclusionary rule, the Utah Supreme Court correctly decided that Strieff's drugs must be excluded because the officer exploited his illegal stop to discover them. The officer found the drugs only after learning of Strieff's traffic violation; and he learned of Strieff's traffic violation only because he unlawfully stopped Strieff to check his driver's license.

The court also correctly rejected the State's argument that the officer's discovery of a traffic warrant unspoiled the poisonous fruit. The State analogizes finding the warrant to one of our earlier decisions, Wong Sun v. United States. There, an officer illegally arrested a person who, days later, voluntarily returned to the station to confess to committing a crime. Even though the person would not have confessed "but for the illegal actions of the police," we noted that the police did not exploit their illegal arrest to obtain the confession. Because the confession was obtained by "means sufficiently distinguishable" from the constitutional violation, we held that it could be admitted into evidence. The State contends that the search incident to the warrant-arrest here is similarly distinguishable from the illegal stop.

But *Wong Sun* explains why Strieff's drugs must be excluded. We reasoned that a Fourth Amendment violation may not color every investigation that follows but it certainly stains the actions of officers who exploit the infraction. We distinguished evidence obtained by innocuous means from evidence obtained by exploiting misconduct after considering a variety of factors: whether a long time passed, whether there were "intervening circumstances," and whether the purpose or flagrancy of the misconduct was "calculated" to procure the evidence. *Brown v. Illinois*.

These factors confirm that the officer in this case discovered Strieff's drugs by exploiting his own illegal conduct. The officer did not ask Strieff to volunteer his name only to find out, days later, that Strieff had a warrant against him. The officer illegally stopped Strieff and immediately ran a warrant check. The officer's discovery of a warrant was not some intervening surprise that he could not have anticipated. Utah lists over 180,000 misdemeanor warrants in its database, and at the time of the arrest, Salt Lake County had a "backlog of outstanding warrants" so large that it faced the "potential for civil liability." The officer's violation was also calculated to procure evidence. His sole reason for stopping Strieff, he acknowledged, was investigative—he wanted to discover whether drug activity was going on in the house Strieff had just exited.

The warrant check, in other words, was not an "intervening circumstance" separating the stop from the search for drugs. It was part and parcel of the officer's illegal "expedition for evidence in the hope that something might turn up." Under our precedents, because the officer found Strieff's drugs by exploiting his own constitutional violation, the drugs should be excluded.

III

A

The Court sees things differently. To the Court, the fact that a warrant gives an officer cause to arrest a person severs the connection between illegal policing and the resulting discovery of evidence. This is a remarkable proposition: The mere existence of a warrant not only gives an officer legal cause to arrest and search a person, it also forgives an officer who, with no knowledge of the warrant at all, unlawfully stops that person on a whim or hunch.

To explain its reasoning, the Court relies on *Segura v. United States*. There, federal agents applied for a warrant to search an apartment but illegally entered the apartment to secure it before the judge issued the warrant. After receiving the warrant, the agents then searched the apartment for drugs. The question before us was what to do with the evidence the agents then discovered. We declined to suppress it because "[t]he illegal entry into petitioners' apartment did not contribute in any way to discovery of the evidence seized under the warrant."

According to the majority, Segura involves facts "similar" to this case and "suggest[s]" that a valid warrant will clean up whatever illegal conduct uncovered it. It is difficult to understand this interpretation. In Segura, the agents' illegal conduct in entering the apartment had nothing to do with their procurement of a search warrant. Here, the officer's illegal conduct in stopping Strieff was essential to his discovery of an arrest warrant. Segura would be similar only if the agents used information they illegally obtained from the apartment to procure a search warrant or discover an arrest warrant. Precisely because that was not the case, the Court admitted the untainted evidence.

The majority likewise misses the point when it calls the warrant check here a "'negligibly burdensome precautio[n]'" taken for the officer's "safety." Remember, the officer stopped Strieff without suspecting him of committing any crime. By his own account, the officer did not fear Strieff. Moreover, the safety rationale we discussed in Rodriguez, an opinion about highway patrols, is conspicuously absent here. A warrant check on a highway "ensur[es] that vehicles on the road are operated safely and responsibly." We allow such checks during legal traffic stops because the legitimacy of a person's driver's license has a "close connection to roadway safety." A warrant check of a pedestrian on a sidewalk, "by contrast, is a measure aimed at 'detect[ing] evidence of ordinary criminal wrongdoing.'" Surely we would not allow officers to warrant-check random joggers, dog walkers, and lemonade vendors just to ensure they pose no threat to anyone else.

The majority also posits that the officer could not have exploited his illegal conduct because he did not violate the Fourth Amendment on purpose. Rather, he made "good-faith mistakes." Never mind that the officer's sole purpose was to fish for evidence. The majority casts his unconstitutional actions as "negligent" and therefore incapable of being deterred by the exclusionary rule.

But the Fourth Amendment does not tolerate an officer's unreasonable searches and seizures just because he did not know any better. Even officers prone to negligence can learn from courts that exclude illegally obtained evidence. Indeed, they are perhaps the most in need of the education, whether by the judge's opinion, the prosecutor's future guidance, or an updated manual on criminal

procedure. If the officers are in doubt about what the law requires, exclusion gives them an "incentive to err on the side of constitutional behavior."

B

Most striking about the Court's opinion is its insistence that the event here was "isolated," with "no indication that this unlawful stop was part of any systemic or recurrent police misconduct." Respectfully, nothing about this case is isolated.

Outstanding warrants are surprisingly common. When a person with a traffic ticket misses a fine payment or court appearance, a court will issue a warrant. The States and Federal Government maintain databases with over 7.8 million outstanding warrants, the vast majority of which appear to be for minor offenses.

Justice Department investigations across the country have illustrated how these astounding numbers of warrants can be used by police to stop people without cause. In a single year in New Orleans, officers "made nearly 60,000 arrests, of which about 20,000 were of people with outstanding traffic or misdemeanor warrants from neighboring parishes for such infractions as unpaid tickets." In the St. Louis metropolitan area, officers "routinely" stop people—on the street, at bus stops, or even in court—for no reason other than "an officer's desire to check whether the subject had a municipal arrest warrant pending." Ferguson Report, at 49, 57. In Newark, New Jersey, officers stopped 52,235 pedestrians within a 4-year period and ran warrant checks on 39,308 of them.

I do not doubt that most officers act in "good faith" and do not set out to break the law. That does not mean these stops are "isolated instance[s] of negligence," however. Many are the product of institutionalized training procedures. The New York City Police Department long trained officers to, in the words of a District Judge, "stop and question first, develop reasonable suspicion later." The Utah Supreme Court described as "'routine procedure' or 'common practice'" the decision of Salt Lake City police officers to run warrant checks on pedestrians they detained without reasonable suspicion. *State v. Topanotes*, 2003 UT 30, ¶2, 76 P. 3d 1159, 1160. In the related context of traffic stops, one widely followed police manual instructs officers looking for drugs to "run at least a warrants check on all drivers you stop. Statistically, narcotics offenders are . . . more likely to fail to appear on simple citations, such as traffic or trespass violations, leading to the issuance of bench warrants. Discovery of an outstanding warrant gives you cause for an immediate custodial arrest and search of the suspect."

The majority does not suggest what makes this case "isolated" from these and countless other examples. Nor does it offer guidance for how a defendant can prove that his arrest was the result of "widespread" misconduct. Surely it should not take a federal investigation of Salt Lake County before the Court would protect someone in Strieff's position.

IV

Writing only for myself, and drawing on my professional experiences, I would add that unlawful "stops" have severe consequences much greater than the inconvenience suggested by the name. This Court has given officers an array of instruments to probe and examine you. When we condone

officers' use of these devices without adequate cause, we give them reason to target pedestrians in an arbitrary manner. We also risk treating members of our communities as second-class citizens.

Although many Americans have been stopped for speeding or jaywalking, few may realize how degrading a stop can be when the officer is looking for more. This Court has allowed an officer to stop you for whatever reason he wants—so long as he can point to a pretextual justification after the fact. *Whren v. United States*. That justification must provide specific reasons why the officer suspected you were breaking the law, but it may factor in your ethnicity, where you live, what you were wearing, and how you behaved, *Illinois v. Wardlow*. The officer does not even need to know which law you might have broken so long as he can later point to any possible infraction—even one that is minor, unrelated, or ambiguous.

The indignity of the stop is not limited to an officer telling you that you look like a criminal. The officer may next ask for your "consent" to inspect your bag or purse without telling you that you can decline. Regardless of your answer, he may order you to stand "helpless, perhaps facing a wall with [your] hands raised." If the officer thinks you might be dangerous, he may then "frisk" you for weapons. This involves more than just a pat down. As onlookers pass by, the officer may "'feel with sensitive fingers every portion of [your] body. A thorough search [may] be made of [your] arms and armpits, waistline and back, the groin and area about the testicles, and entire surface of the legs down to the feet.'"

The officer's control over you does not end with the stop. If the officer chooses, he may handcuff you and take you to jail for doing nothing more than speeding, jaywalking, or "driving [your] pickup truck . . . with [your] 3-year-old son and 5-year-old daughter . . . without [your] seatbelt fastened." *Atwater v. Lago Vista*. At the jail, he can fingerprint you, swab DNA from the inside of your mouth, and force you to "shower with a delousing agent" while you "lift [your] tongue, hold out [your] arms, turn around, and lift [your] genitals." *Florence v. Board of Chosen Freeholders of County of Burlington*. Even if you are innocent, you will now join the 65 million Americans with an arrest record and experience the "civil death" of discrimination by employers, landlords, and whoever else conducts a background check. And, of course, if you fail to pay bail or appear for court, a judge will issue a warrant to render you "arrestable on sight" in the future.

This case involves a suspicionless stop, one in which the officer initiated this chain of events without justification. As the Justice Department notes, many innocent people are subjected to the humiliations of these unconstitutional searches. The white defendant in this case shows that anyone's dignity can be violated in this manner. But it is no secret that people of color are disproportionate victims of this type of scrutiny. For generations, black and brown parents have given their children "the talk"—instructing them never to run down the street; always keep your hands where they can be seen; do not even think of talking back to a stranger—all out of fear of how an officer with a gun will react to them.

By legitimizing the conduct that produces this double consciousness, this case tells everyone, white and black, guilty and innocent, that an officer can verify your legal status at any time. It says that your body is subject to invasion while courts excuse the violation of your rights. It implies that you are not a citizen of a democracy but the subject of a carceral state, just waiting to be cataloged.

We must not pretend that the countless people who are routinely targeted by police are "isolated." They are the canaries in the coal mine whose deaths, civil and literal, warn us that no one can breathe in this atmosphere. They are the ones who recognize that unlawful police stops corrode all our civil liberties and threaten all our lives. Until their voices matter too, our justice system will continue to be anything but.

***

I dissent.

JUSTICE KAGAN, with whom JUSTICE GINSBURG joins, dissenting.

If a police officer stops a person on the street without reasonable suspicion, that seizure violates the Fourth Amendment. And if the officer pats down the unlawfully detained individual and finds drugs in his pocket, the State may not use the contraband as evidence in a criminal prosecution. That much is beyond dispute. The question here is whether the prohibition on admitting evidence dissolves if the officer discovers, after making the stop but before finding the drugs, that the person has an outstanding arrest warrant. Because that added wrinkle makes no difference under the Constitution, I respectfully dissent.

This Court has established a simple framework for determining whether to exclude evidence obtained through a Fourth Amendment violation: Suppression is necessary when, but only when, its societal benefits outweigh its costs. *See Davis v. United States*, U. S. 229, 237 (2011). The exclusionary rule serves a crucial function—to deter unconstitutional police conduct. By barring the use of illegally obtained evidence, courts reduce the temptation for police officers to skirt the Fourth Amendment's requirements. But suppression of evidence also "exacts a heavy toll": Its consequence in many cases is to release a criminal without just punishment. Our decisions have thus endeavored to strike a sound balance between those two competing considerations—rejecting the "reflexive" impulse to exclude evidence every time an officer runs afoul of the Fourth Amendment, but insisting on suppression when it will lead to "appreciable deterrence" of police misconduct, *Herring v. United States*.

This case thus requires the Court to determine whether excluding the fruits of Officer Douglas Fackrell's unjustified stop of Edward Strieff would significantly deter police from committing similar constitutional violations in the future. And as the Court states, that inquiry turns on application of the "attenuation doctrine," —our effort to "mark the point" at which the discovery of evidence "become[s] so attenuated" from the police misconduct that the deterrent benefit of exclusion drops below its cost. Since *Brown v. Illinois*, three factors have guided that analysis. First, the closer the "temporal proximity" between the unlawful act and the discovery of evidence, the greater the deterrent value of suppression. Second, the more "purpose[ful]" or "flagran[t]" the police illegality, the clearer the necessity, and better the chance, of preventing similar misbehavior. And third, the presence (or absence) of "intervening circumstances" makes a difference: The stronger the causal chain between the misconduct and the evidence, the more exclusion will curb future constitutional violations. Here, as shown below, each of those considerations points toward suppression: Nothing in Fackrell's discovery of an outstanding warrant so attenuated the

connection between his wrongful behavior and his detection of drugs as to diminish the exclusionary rule's deterrent benefits.

Start where the majority does: The temporal proximity factor, it forthrightly admits, "favors suppressing the evidence." After all, Fackrell's discovery of drugs came just minutes after the unconstitutional stop. And in prior decisions, this Court has made clear that only the lapse of "substantial time" between the two could favor admission. So the State, by all accounts, takes strike one.

Move on to the purposefulness of Fackrell's conduct, where the majority is less willing to see a problem for what it is. The majority chalks up Fackrell's Fourth Amendment violation to a couple of innocent "mistakes." But far from a Barney Fife-type mishap, Fackrell's seizure of Strieff was a calculated decision, taken with so little justification that the State has never tried to defend its legality. At the suppression hearing, Fackrell acknowledged that the stop was designed for investigatory purposes—i.e., to "find out what was going on [in] the house" he had been watching, and to figure out "what [Strieff] was doing there." And Fackrell frankly admitted that he had no basis for his action except that Strieff "was coming out of the house." Plug in Fackrell's and Strieff's names, substitute "stop" for "arrest" and "reasonable suspicion" for "probable cause," and this Court's decision in Brown perfectly describes this case:

> "[I]t is not disputed that [Fackrell stopped Strieff] without [reasonable suspicion]. [He] later testified that [he] made the [stop] for the purpose of questioning [Strieff] as part of [his] investigation . . . . The illegality here . . . had a quality of purposefulness. The impropriety of the [stop] was obvious. [A]wareness of that fact was virtually conceded by [Fackrell] when [he] repeatedly acknowledged, in [his] testimony, that the purpose of [his] action was 'for investigation': [Fackrell] embarked upon this expedition for evidence in the hope that something might turn up."

In Brown, the Court held those facts to support suppression—and they do here as well. Swing and a miss for strike two.

Finally, consider whether any intervening circumstance "br[oke] the causal chain" between the stop and the evidence. The notion of such a disrupting event comes from the tort law doctrine of proximate causation. And as in the tort context, a circumstance counts as intervening only when it is unforeseeable—not when it can be seen coming from miles away. For rather than breaking the causal chain, predictable effects (e.g., X leads naturally to Y leads naturally to Z) are its very links.

And Fackrell's discovery of an arrest warrant—the only event the majority thinks intervened—was an eminently foreseeable consequence of stopping Strieff. As Fackrell testified, checking for outstanding warrants during a stop is the "normal" practice of South Salt Lake City police. In other words, the department's standard detention procedures—stop, ask for identification, run a check—are partly designed to find outstanding warrants. And find them they will, given the staggering number of such warrants on the books. To take just a few examples: The State of California has 2.5 million outstanding arrest warrants (a number corresponding to about 9% of its adult population); Pennsylvania (with a population of about 12.8 million) contributes 1.4 million more; and New York City (population 8.4 million) adds another 1.2 million. So outstanding warrants do not appear as bolts from the blue. They are the run-of-the-mill results of police stops—what

officers look for when they run a routine check of a person's identification and what they know will turn up with fair regularity. In short, they are nothing like what intervening circumstances are supposed to be. Strike three.

The majority's misapplication of Brown's three-part inquiry creates unfortunate incentives for the police—indeed, practically invites them to do what Fackrell did here. Consider an officer who, like Fackrell, wishes to stop someone for investigative reasons, but does not have what a court would view as reasonable suspicion. If the officer believes that any evidence he discovers will be inadmissible, he is likely to think the unlawful stop not worth making—precisely the deterrence the exclusionary rule is meant to achieve. But when he is told of today's decision? Now the officer knows that the stop may well yield admissible evidence: So long as the target is one of the many millions of people in this country with an outstanding arrest warrant, anything the officer finds in a search is fair game for use in a criminal prosecution. The officer's incentive to violate the Constitution thus increases: From here on, he sees potential advantage in stopping individuals without reasonable suspicion—exactly the temptation the exclusionary rule is supposed to remove. Because the majority thus places Fourth Amendment protections at risk, I respectfully dissent.

Questions and Notes

1. Although Strieff was in fact a visitor, Officer Fackrell didn't know that when he stopped him. For all he knew, Strieff could have lived in the house and simply gone out to walk to the neighborhood store. By describing him as a visitor, did the Court understate the severity of the violation?

2. Do you think that Officer Fackrell's behavior was "flagrant"? Why? Why not?

3. Is it even clear that the stat should have conceded the illegality of the initial stop? Explain.

4. Assess the following sentence: "[B]ecause we ultimately conclude that the warrant breaks the causal chain, we also have no need to decide whether the warrant's existence alone would make the initial constitutional even if Officer Fackrell was unaware of its existence." Isn't that possibility directly contrary to the rule that a stop is never justified by what it might subsequently turn up? Is the Court questioning that long time bedrock of Fourth Amendment law or simply saying that it is not at issue?

5. Is (should) this case (be) controlled by *Brown v. Illinois* and *Taylor v. Alabama*?

6. Would (should) *Strieff* cause concern for an innocent person with no outstanding warrants?