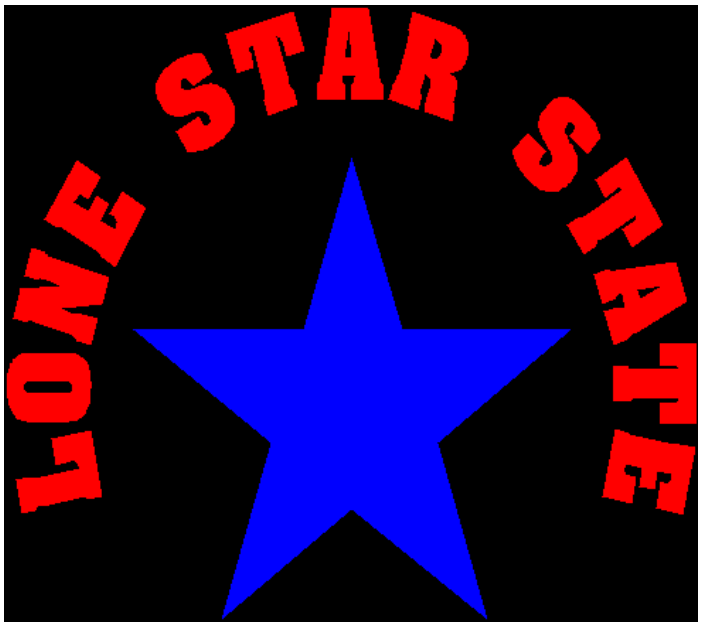

This case should generate lively discussion. I could support either position.
What does one do if he agrees with the Majority Opinion on sound constitutional principles,
yet, the effect seems so un-American?
Does Article V come to mind? If not, why not?

ATWATER v. LAGO VISTA
SUPREME COURT OF THE UNITED STATES
April 24, 2001
[5 - 4]

OPINION: Justice Souter/Rehnquist/Scalia/Kennedy/Thomas…The question is **whether the Fourth Amendment forbids a warrantless arrest for a minor criminal offense, such as a misdemeanor seatbelt violation punishable only by a fine.** We hold that it does not.

In Texas, if a car is equipped with safety belts, a front-seat passenger must wear one, and the driver must secure any small child riding in front. Violation of either provision is "a misdemeanor punishable by a fine not less than $25 or more than $50." **Texas law expressly authorizes** "[a]ny peace officer [to] **arrest without warrant** a person found committing a violation" of these seatbelt laws, although **it permits police to issue citations in lieu of arrest**.

In March 1997, Petitioner Gail Atwater was driving her pickup truck in Lago Vista, Texas, with her 3-year-old son and 5-year-old daughter in the front seat. **None of them was wearing a seatbelt.** Respondent Bart Turek, a Lago Vista police officer at the time, observed the seatbelt

violations and pulled Atwater over…Turek approached the truck and "**yelled**" something to the effect of "**we've met before**" and "**you're going to jail**." He then **called for backup** and asked to see Atwater's driver's license and insurance documentation, which state law required her to carry. When Atwater told Turek that she did not have the papers because her purse had been stolen the day before, Turek said that he had "heard that story two-hundred times."

Atwater asked to take her "frightened, upset, and crying" children to a friend's house nearby, but Turek told her, "**you're not going anywhere.**" As it turned out, Atwater's friend learned what was going on and soon arrived to take charge of the children. Turek then **handcuffed** Atwater, placed her in his squad car, and drove her to the local police station, where booking officers had her remove her shoes, jewelry, and eyeglasses, and empty her pockets. Officers took Atwater's "**mug shot**" and placed her, alone, **in a jail cell for about one hour**, after which she was taken before a magistrate and released on $310 bond.

Atwater was charged with driving without her seatbelt fastened, failing to secure her children in seatbelts, driving without a license, and failing to provide proof of insurance. She ultimately pleaded no contest to the misdemeanor seatbelt offenses and paid a **$50 fine**; **the other charges were dismissed.**

Atwater and her husband…filed suit in a Texas state court…alleging that respondents…had violated Atwater's Fourth Amendment "right to be free from unreasonable seizure" and sought compensatory and punitive damages.

The City removed the suit to the United States District Court…[where it was dismissed as] "meritless."…[T]he…Court of Appeals…affirmed…[and] observed that, although the Fourth Amendment generally requires a balancing of individual and governmental interests, where "an arrest is based on probable cause then with rare exceptions...the result of that balancing is not in doubt." Because "[n]either party dispute[d] that Officer Turek had probable cause to arrest Atwater," and because "there was no evidence in the record that Officer Turek conducted the arrest in an 'extraordinary manner, unusually harmful' to Atwater's privacy interests," the en banc court held that the arrest was not unreasonable for Fourth Amendment purposes…

We granted certiorari to consider **whether the Fourth Amendment…limits police officers' authority to arrest without warrant for minor criminal offenses.** We now affirm…

In reading the [Fourth] Amendment, we are guided by "the traditional protections against unreasonable searches and seizures afforded by the common law at the time of the framing," since "[a]n examination of the common-law understanding of an officer's authority to arrest sheds light on the obviously relevant, if not entirely dispositive, consideration of what the Framers of the Amendment might have thought to be reasonable," *Payton v. New York* (1980)… Atwater's specific contention is that "founding-era common-law rules" forbade peace officers to make warrantless misdemeanor arrests except in cases of "breach of the peace," a category she claims was then understood narrowly as covering only those nonfelony offenses "involving or tending toward violence." Although her historical argument is by no means insubstantial, it ultimately fails…

Neither the history of the framing era nor subsequent legal development indicates that the Fourth Amendment was originally understood, or has traditionally been read, to embrace Atwater's position…Small wonder, then, that today **statutes in all 50 States and the District of Columbia permit warrantless misdemeanor arrests by at least some (if not all) peace officers without requiring any breach of the peace, as do a host of congressional enactments…**

If we were to derive a rule exclusively to address the uncontested facts of this case, Atwater might well prevail. She was a known and established resident of Lago Vista with no place to hide and no incentive to flee, and common sense says she would almost certainly have buckled up as a condition of driving off with a citation. In her case, the physical incidents of arrest were merely gratuitous humiliations imposed by a police officer who was (at best) exercising extremely poor judgment. **Atwater's claim to live free of pointless indignity and confinement clearly outweighs anything the City can raise against it specific to her case.**

But we have traditionally recognized that a responsible Fourth Amendment balance is not well served by standards requiring sensitive, case-by-case determinations of government need, lest every discretionary judgment in the field be converted into an occasion for constitutional review. *United States v. Robinson* (1973). Often enough, the Fourth Amendment has to be applied on the spur (and in the heat) of the moment, and the object in implementing its command of reasonableness is to draw standards sufficiently **clear and simple** to be applied with a fair prospect of surviving judicial second-guessing months and years after an arrest or search is made. Courts attempting to strike a reasonable Fourth Amendment balance thus credit the government's side with an essential interest in readily administrable rules…

At first glance, Atwater's argument may seem to respect the values of clarity and simplicity, so far as she claims that the Fourth Amendment generally forbids warrantless arrests for minor crimes not accompanied by violence or some demonstrable threat of it (whether "minor crime" be defined as a fine-only traffic offense, a fine-only offense more generally, or a misdemeanor). But the claim is not ultimately so simple, nor could it be, for complications arise the moment we begin to think about the possible applications of the several criteria Atwater proposes for drawing a line between minor crimes with limited arrest authority and others not so restricted.

One line, she suggests, might be between "jailable" and "fine-only" offenses, between those for which conviction could result in commitment and those for which it could not. The trouble with this distinction, of course, is that **an officer on the street might not be able to tell**. It is not merely that we cannot expect every police officer to know the details of frequently complex penalty schemes,…but that penalties for ostensibly identical conduct can vary on account of facts difficult (if not impossible) to know at the scene of an arrest. Is this the first offense or is the suspect a repeat offender? Is the weight of the marijuana a gram above or a gram below the fine-only line? Where conduct could implicate more than one criminal prohibition, which one will the district attorney ultimately decide to charge? And so on.

But Atwater's refinements would not end there. She represents that if the line were drawn at nonjailable traffic offenses, her proposed limitation should be qualified by a proviso authorizing warrantless arrests where "necessary for enforcement of the traffic laws or when [an] offense would otherwise continue and pose a danger to others on the road."…The proviso only compounds the difficulties. Would, for instance, either exception apply to speeding? At oral

argument, Atwater's counsel said that "it would not be reasonable to arrest a driver for speeding unless the speeding rose to the level of reckless driving." But is it not fair to expect that the chronic speeder will speed again despite a citation in his pocket, and should that not qualify as showing that the "offense would...continue" under Atwater's rule? And why, as a constitutional matter, should we assume that only reckless driving will "pose a danger to others on the road" while speeding will not?

There is no need for more examples to show that Atwater's general rule and limiting proviso promise very little in the way of administrability. It is no answer that the police routinely make judgments on grounds like risk of immediate repetition; they surely do and should. But there is a world of difference between making that judgment in choosing between the discretionary leniency of a summons in place of a clearly lawful arrest, and making the same judgment when the question is the lawfulness of the warrantless arrest itself. It is the difference between no basis for legal action challenging the discretionary judgment, on the one hand, and the prospect of evidentiary exclusion or (as here) personal…liability for the misapplication of a constitutional standard, on the other. **Atwater's rule therefore would not only place police in an almost impossible spot but would guarantee increased litigation over many of the arrests that would occur**. For all these reasons, Atwater's various distinctions between permissible and impermissible arrests for minor crimes strike us as "very unsatisfactory line[s]" to require police officers to draw on a moment's notice…

[T]he country **is not confronting anything like an epidemic** of unnecessary minor-offense arrests. That fact caps the reasons for rejecting Atwater's request for the development of a new and distinct body of constitutional law. **Accordingly, we confirm today what our prior cases have intimated:…If an officer has probable cause to believe that an individual has committed even a very minor criminal offense in his presence, he may, without violating the Fourth Amendment, arrest the offender.**

Atwater's arrest satisfied constitutional requirements. There is no dispute that Officer Turek had probable cause to believe that Atwater had committed a crime in his presence. She admits that neither she nor her children were wearing seat belts, as required by [Texas law]. Turek was accordingly authorized (not required, but authorized) to make a custodial arrest without balancing costs and benefits or determining whether or not Atwater's arrest was in some sense necessary.

Nor was the arrest made in an "extraordinary manner, unusually harmful to her privacy or... physical interests." *Whren*. As our citations in *Whren* make clear, the question whether a search or seizure is "extraordinary" turns, above all else, on the manner in which the search or seizure is executed…Atwater's arrest was surely "humiliating,"…but it was no more "harmful to...privacy or...physical interests" than the normal custodial arrest. She was handcuffed, placed in a squad car, and taken to the local police station, where officers asked her to remove her shoes, jewelry, and glasses, and to empty her pockets. They then took her photograph and placed her in a cell, alone, for about an hour, after which she was taken before a magistrate, and released on $310 bond. **The arrest and booking were inconvenient and embarrassing to Atwater, but not so extraordinary as to violate the Fourth Amendment…**

DISSENT: Justice O'Connor/Stevens/Ginsburg/Breyer…A full custodial arrest, such as the one to which Ms. Atwater was subjected, is the quintessential seizure. When a full custodial arrest is effected without a warrant, the plain language of the Fourth Amendment requires that the arrest be **reasonable**…*Pennsylvania v. Mimms* (1977)…In determining reasonableness, "[e]ach case is to be decided on its own facts and circumstances." *Go-Bart Importing Co. v. United States.*

The majority gives a brief nod to this bedrock principle of our Fourth Amendment jurisprudence, and even acknowledges that "Atwater's claim to live free of pointless indignity and confinement clearly outweighs anything the City can raise against it specific to her case." But instead of remedying this imbalance, the majority allows itself to be swayed by the worry that "every discretionary judgment in the field will be converted into an occasion for constitutional review." **It therefore mints a new rule that "if an officer has probable cause to believe that an individual has committed even a very minor criminal offense in his presence, he may, without violating the Fourth Amendment, arrest the offender." This rule is not only unsupported by our precedent, but runs contrary to the principles that lie at the core of the Fourth Amendment.**

…[W]e have never considered the precise question presented here, namely, the constitutionality of a **warrantless arrest** for an offense punishable **only by fine**…

A custodial arrest exacts an obvious toll on an individual's liberty and privacy, even when the period of custody is relatively brief. The arrestee is subject to a full search of her person and confiscation of her possessions. If the arrestee is the occupant of a car, the entire passenger compartment of the car, including packages therein, is subject to search as well. The arrestee may be detained for up to 48 hours without having a magistrate determine whether there in fact was probable cause for the arrest. Because people arrested for all types of violent and nonviolent offenses may be housed together awaiting such review, this detention period is potentially dangerous. And once the period of custody is over, the fact of the arrest is a permanent part of the public record.

…If the State has decided that a fine, and not imprisonment, is the appropriate punishment for an offense, the State's interest in taking a person suspected of committing that offense into custody is surely limited, at best. This is not to say that the State will never have such an interest. A full custodial arrest may on occasion vindicate legitimate state interests, even if the crime is punishable only by fine. Arrest is the surest way to abate criminal conduct. It may also allow the police to verify the offender's identity and, if the offender poses a flight risk, to ensure her appearance at trial. But when such considerations are not present, a citation or summons may serve the State's remaining law enforcement interests every bit as effectively as an arrest…

In light of the availability of citations to promote a State's interests when a fine-only offense has been committed, **I cannot concur in a rule which deems a full custodial arrest to be reasonable in every circumstance. Giving police officers constitutional carte blanche to effect an arrest whenever there is probable cause to believe a fine-only misdemeanor has been committed is irreconcilable with the Fourth Amendment's command that seizures be reasonable.** Instead, **I would require that when there is probable cause to believe that a fine-only offense has been committed, the police officer should issue a citation unless the officer is "able to point to specific and articulable facts which, taken together with rational**

inferences from those facts, reasonably warrant [the additional] intrusion" of a full custodial arrest. *Terry v. Ohio*[1].

The majority insists that a bright-line rule focused on probable cause is necessary to vindicate the State's interest in easily administrable law enforcement rules. Probable cause itself, however, is not a model of precision. "The quantum of information which constitutes probable cause-evidence which would 'warrant a man of reasonable caution in the belief' that a [crime] has been committed-must be measured by the facts of the particular case." *Wong Sun v. United States*. The rule I propose-which merely requires a <u>legitimate reason</u> for the decision to escalate the seizure into a full custodial arrest-thus does not undermine an otherwise "clear and simple" rule.

While clarity is certainly a value worthy of consideration in our Fourth Amendment jurisprudence, it by no means trumps the values of liberty and privacy at the heart of the Amendment's protections…

At bottom, the majority offers two related reasons why a bright-line rule is necessary: the fear that officers who arrest for fine-only offenses will be subject to "personal…liability for the misapplication of a constitutional standard" and the resulting "systematic disincentive to arrest... where...arresting would serve an important societal interest." These concerns are certainly valid, but they are more than adequately resolved by the doctrine of qualified immunity.

Qualified immunity was created to shield government officials from civil liability for the performance of discretionary functions so long as their conduct does not violate **clearly established statutory or constitutional rights of which a reasonable person would have known.** *Harlow v. Fitzgerald* (1982). This doctrine is "the best attainable accommodation of competing values," namely, the obligation to enforce constitutional guarantees and the need to protect officials who are required to exercise their discretion…

In *Anderson v. Creighton* (1987), we made clear that the standard of reasonableness for a search or seizure under the Fourth Amendment is distinct from the standard of reasonableness for qualified immunity purposes. If a law enforcement officer "reasonably but mistakenly concludes" that the constitutional predicate for a search or seizure is present, he "should not be held personally liable."

This doctrine thus allays any concerns about liability or disincentives to arrest. If, for example, an officer reasonably thinks that a suspect poses a flight risk or might be a danger to the community if released, he may arrest without fear of the legal consequences. Similarly, if an officer reasonably concludes that a suspect may possess more than four ounces of marijuana and thus might be guilty of a felony and the officer will be insulated from liability for arresting the suspect even if the initial assessment turns out to be factually incorrect. As we have said, "officials will not be liable for mere mistakes in judgment." *Butz v. Economou* (1978). Of course, even the specter of liability can entail substantial social costs, such as inhibiting public officials in the discharge of their duties. We may not ignore the central command of the Fourth Amendment, however, to avoid these costs.

[1] Case 4A-3 on this website.

The record in this case makes it abundantly clear that Ms. Atwater's arrest was constitutionally unreasonable. Atwater readily admits - as she did when Officer Turek pulled her over - that she violated Texas' seatbelt law. While Turek was justified in stopping Atwater, neither law nor reason supports his decision to arrest her instead of simply giving her a citation. The officer's actions cannot sensibly be viewed as a permissible means of balancing Atwater's Fourth Amendment interests with the State's own legitimate interests.

There is no question that Officer Turek's actions severely infringed Atwater's liberty and privacy. Turek was loud and accusatory from the moment he approached Atwater's car. Atwater's young children were terrified and hysterical. Yet when Atwater asked Turek to lower his voice because he was scaring the children, he responded by jabbing his finger in Atwater's face and saying, "You're going to jail." Having made the decision to arrest, Turek did not inform Atwater of her right to remain silent. He instead asked for her license and insurance information.

Atwater asked if she could at least take her children to a friend's house down the street before going to the police station. But Turek-who had just castigated Atwater for not caring for her children-refused and said he would take the children into custody as well. Only the intervention of neighborhood children who had witnessed the scene and summoned one of Atwater's friends saved the children from being hauled to jail with their mother. With the children gone, Officer Turek handcuffed Ms. Atwater with her hands behind her back, placed her in the police car, and drove her to the police station. Ironically, Turek did not secure Atwater in a seat belt for the drive. At the station, Atwater was forced to remove her shoes, relinquish her possessions, and wait in a holding cell for about an hour. A judge finally informed Atwater of her rights and the charges against her, and released her when she posted bond. Atwater returned to the scene of the arrest, only to find that her car had been towed.

Ms. Atwater ultimately pleaded no contest to violating the seatbelt law and was fined $50. Even though that fine was the maximum penalty for her crime…and even though Officer Turek has never articulated any justification for his actions, the city contends that arresting Atwater was constitutionally reasonable because it advanced two legitimate interests: "the enforcement of child safety laws and encouraging [Atwater] to appear for trial."

It is difficult to see how arresting Atwater served either of these goals any more effectively than the issuance of a citation. With respect to the goal of law enforcement generally, Atwater did not pose a great danger to the community. She had been driving very slowly-approximately 15 miles per hour-in broad daylight on a residential street that had no other traffic. Nor was she a repeat offender; until that day, she had received one traffic citation in her life - a ticket, more than 10 years earlier, for failure to signal a lane change. Although Officer Turek had stopped Atwater

approximately three months earlier because he thought that Atwater's son was not wearing a seatbelt, Turek had been mistaken. Moreover, Atwater immediately accepted responsibility and apologized for her conduct. Thus, there was every indication that Atwater would have buckled herself and her children in had she been cited and allowed to leave.

With respect to the related goal of child welfare, the decision to arrest Atwater was nothing short of counterproductive. Atwater's children witnessed Officer Turek yell at their mother and threaten to take them all into custody. Ultimately, they were forced to leave her behind with Turek, knowing that she was being taken to jail. Understandably, the 3-year-old boy was "very, very, very traumatized." After the incident, he had to see a child psychologist regularly, who reported that the boy "felt very guilty that he couldn't stop this horrible thing...he was powerless to help his mother or sister." Both of Atwater's children are now terrified at the sight of any police car. According to Atwater, the arrest "just never leaves us…"

Citing Atwater surely would have served the children's interests well. It would have taught Atwater to ensure that her children were buckled up in the future. It also would have taught the children an important lesson in accepting responsibility and obeying the law. Arresting Atwater, though, taught the children an entirely different lesson: that "the bad person could just as easily be the policeman as it could be the most horrible person they could imagine."

Respondents also contend that the arrest was necessary to ensure Atwater's appearance in court. Atwater, however, was far from a flight risk. A 16-year resident of Lago Vista, population 2,486, Atwater was not likely to abscond. Although she was unable to produce her driver's license because it had been stolen, she gave Officer Turek her license number and address. In addition, Officer Turek knew from their previous encounter that Atwater was a local resident.

The city's justifications fall far short of rationalizing the extraordinary intrusion on Gail Atwater and her children. Measuring "the degree to which [Atwater's custodial arrest was] needed for the promotion of legitimate governmental interests" against "the degree to which it intruded upon her privacy," *Wyoming v. Houghton*, it can hardly be doubted that Turek's actions were disproportionate to Atwater's crime. The majority's assessment that "Atwater's claim to live free of pointless indignity and confinement clearly outweighs anything the City can raise against it specific to her case" is quite correct. In my view, the Fourth Amendment inquiry ends there…

The…rule that the Court creates has potentially serious consequences for the everyday lives of Americans. A broad range of conduct falls into the category of fine-only misdemeanors. In Texas alone, for example, disobeying any sort of traffic warning sign is a misdemeanor punishable only by fine…as is failing to pay a highway toll…and driving with expired license plates…

Under today's holding, when a police officer has probable cause to believe that a fine-only misdemeanor offense has occurred, that officer may stop the suspect, issue a citation, and let the person continue on her way. Or, if a traffic violation, the officer may stop the car, arrest the driver, search the driver, search the entire passenger compartment of the car including any purse or package inside and impound the car and inventory all of its contents. Although the Fourth Amendment expressly requires that the latter course be a reasonable and proportional response to

the circumstances of the offense, the majority gives officers unfettered discretion to choose that course without articulating a single reason why such action is appropriate.

Such unbounded discretion carries with it grave potential for abuse. The majority takes comfort in the lack of evidence of "an epidemic of unnecessary minor-offense arrests." But the relatively small number of published cases dealing with such arrests proves little and should provide little solace. Indeed, as the recent debate over racial profiling demonstrates all too clearly, a relatively minor traffic infraction may often serve as an excuse for stopping and harassing an individual. After today, the arsenal available to any officer extends to a full arrest and the searches permissible concomitant to that arrest. An officer's subjective motivations for making a traffic stop are not relevant considerations in determining the reasonableness of the stop. But it is precisely because these motivations are beyond our purview that we must vigilantly ensure that officers' post-stop actions - which are properly within our reach - comport with the Fourth Amendment's guarantee of reasonableness.

The Court neglects the Fourth Amendment's express command in the name of administrative ease. In so doing, it cloaks the pointless indignity that Gail Atwater suffered with the mantle of reasonableness. I respectfully dissent.