THE FOURTH AMENDMENT AND THE EXCLUSIONARY RULE:
GOOD COPS FINISH LAST

I. INTRODUCTION

If you have not downloaded “PayByPhone,” a mobile application that makes it easier to pay for street parking, you should probably do so now, especially if you are one of those people who tend to ignore any citations left on your windshield. Americans should take the ruling in *Utah v. Streiff*,\(^1\) as a serious warning to pay their parking tickets. It is no longer the case that all an unpaid ticket will lead to is a fine. Now, you could be stopped for no good reason, and if it is discovered that you having an outstanding warrant for an unpaid ticket, an officer could lawfully search you, and use anything that he may find as evidence against you.\(^2\)

The Fourth Amendment has always protected Americas against unreasonable searches and seizures.\(^3\) Because of this constitutional guarantee, the Court ruled in *Terry v. Ohio*\(^4\) that in order for a police officer to stop a person and detain him or her for questioning, the officer must have reasonable suspicion that he or she be connected with some criminal activity. It is understood that because of the exclusionary rule,\(^5\) if an officer unlawfully stops an individual, any evidence found as a result of that stop is inadmissible.\(^6\) Now, the Supreme Court has held that the discovery of an arrest warrant legitimizes tainted evidence.\(^7\)

The attenuation doctrine, an exception to the exclusionary rule, applies when the link between the illegal police act and the evidence is attenuated.\(^8\) In *Brown v. Illinois*,\(^9\) the Court articulated three factors to be considered when deciphering if the attenuation doctrine is applicable to the facts of a case. The Court in *Strieff* wrongfully followed precedent\(^10\) when analyzing one factor in particular, the “presence of intervening circumstances.”\(^11\) Additionally, the Court decided to down play the officer’s conduct as “at most negligent,”\(^12\) and asserted that good-faith mistakes could not be deterred by the exclusionary rule. The Court’s incorrect application of the facts in
Strieff to the factors of the attenuation doctrine compromises the sole purpose of the exclusionary rule, which is “to deter future Fourth Amendment violations.”

This Note analyzes the Supreme Court’s misapplication of the attenuation doctrine and how that mistake could jeopardize the preservation of “judicial integrity and the appearance of justice.” This Note will also discuss the significance of the exclusionary rule in deterring Fourth Amendment violations.

Part II will discuss the origins of the exclusionary rule, the exceptions to the rule, and explain how the Court has applied the attenuation doctrine in past cases. Part III provides a discussion of the Strieff case in detail, along with insight to the Court’s majority and dissenting opinions. Part IV addresses the fallacies in the Court’s reasoning, and how the decision will likely invite police misconduct. Part V offers concluding thoughts.

II. LEGAL HISTORY

The exclusionary rule is a court-created remedy designed to safeguard Fourth Amendment rights. To begin, the Fourth Amendment, one of the rights held most sacred, states:

The right of people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated.

The Fourth Amendment right extends to citizens on the streets. Therefore, when a government agent conducts an unlawful seizure, material obtained in violation of the constitution is considered “fruit of the poisonous tree” and cannot be introduced as evidence because of what is known as the exclusionary rule. However, it is important to note that the exclusionary rule is appropriate only “where its deterrence benefits outweigh its substantial social costs.”

The three exceptions to the exclusionary rule are the independent source doctrine, the inevitable discovery doctrine, and the attenuation doctrine. As a result of the attenuation doctrine, evidence is admissible “when then connection between unconstitutional police conduct and the evidence is remote or has been interrupted by some intervening circumstance.” In Brown, the
Supreme Court held that no single fact in itself is dispositive\textsuperscript{23} as an intervening circumstance, and that the facts of each case must be analyzed to determine whether or not the attenuation doctrine is applicable. Additionally, attenuation can occur when suppression of evidence “would not serve the interest protected by the constitutional guarantee violated.”\textsuperscript{24} The Supreme Court has provided some guidance in regards to deciphering what sufficiently breaks the causal connection; however, because no \textit{per se} rule has been accepted,\textsuperscript{25} courts have had flexibility in interpreting whether the attenuation doctrine applies.

A. WHAT’S THE POINT OF BEING SO EXCLUSIVE?

The exclusionary rule “gives life”\textsuperscript{26} to the protections set forth by the Fourth Amendment by suppressing the admission of evidence acquired unlawfully. The purpose of this rule is to deter police misconduct; however, the rule should only be applied when the deterring effect of the rule outweighs the social cost of suppressing potentially reliable evidence.\textsuperscript{27} The rule is also justified based on concerns for judicial integrity. The exclusionary rule has long been a source of concern in that the social costs may be that some guilty defendants go free or receive reduced sentences.\textsuperscript{28} Because of these substantial social costs, the Courts have taken the position that the suppression of evidence is a “last resort, not a first impulse.”\textsuperscript{29} Accordingly, throughout the years, courts have been “cautious against expanding”\textsuperscript{30} the exclusionary rule.

The federal exclusionary rule was originally adopted in 1914 in a case called \textit{Weeks v. United States}.\textsuperscript{31} The rule was later extended to the States in \textit{Mapp v. Ohio}.\textsuperscript{32} Initially, case law suggested that the exclusionary rule would apply every time a Fourth Amendment violation occurred.\textsuperscript{33} Ensuing cases have clarified that applying the exclusionary rule sanction is an “issue separate and apart from the question [of] whether the Fourth Amendment rights of the party seeking to invoke the rule were violated by police conduct.”\textsuperscript{34}
B. WE’VE MADE AN EXCEPTION, YOU CAN COME IN

Exceptions to the exclusionary rule apply when the objectionable evidence has been discovered by means “sufficiently distinguishable to be purged of the primary taint.” Exceptions, the independent source doctrine and the inevitable discovery doctrine, are “rooted in cause-in-fact analysis.”

The independent source doctrine is well demonstrated in the case of Segura v. United States. In Segura, agents unlawfully entered an apartment and remained there until the search warrant they previously applied for was obtained. While in the apartment, agents conducted a limited security check and observed various items of contraband, which they left untouched. A warrant to search the apartment was issued about nineteen hours after the agents’ initial entry into the apartment; the search revealed an excess of contraband. In response to the petitioners motion to suppress all evidence seized from the apartment, the Court held that “whether the initial entry was illegal or not is irrelevant to the admissibility of evidence because there was an independent source for the warrant under which that evidence was seized.” The search warrant in Segura constituted an independent source for the evidence seized.

Additionally, the inevitable discovery doctrine prevents exclusion of tainted evidence that inevitably would have been discovered by lawful means. The quintessential inevitable discovery case is Nix v. Williams. In Nix, the defendant revealed the location of the body of the girl he murdered when the police unlawfully interrogated him. The Court upheld the defendant’s incriminating statements because a search of the body that had been underway would have inevitably led to the discovery of the girl’s body. In essence, because the body would have inevitably been discovered regardless of police misconduct, “there [was] no nexus sufficient to prove a taint.”

C. IT DOESN’T EVEN MATTER ANYMORE—THE ATTENUATION DOCTRINE
The attenuation doctrine is a question of legal cause. Whether unlawful police activity is the legal cause of obtained evidence is determined by deciphering whether the link between the illegal police activity and the evidence is sufficiently attenuated. In the monumental case of *Wong Sun v. United States*, the Court stated that “not all evidence is ‘fruit of the poisonous tree’ simply because it would not have come to light but for the illegal actions of the police.” In *Wong Sun*, the court focused on the fact that the evidence had not been acquired by exploitation of the defendant’s unlawful arrest. Rather, the defendant had voluntarily returned to the police station days after he had been released to make an incriminating statement. Because the defendant’s statement resulted from “an intervening act of free will,” the Court held that “the connection between the arrest and the statement had ‘become so attenuated as to dissipate the taint.’”

In *Brown*, the Court gave the attenuation doctrine further depth and applicability by articulating three relevant factors called for under the doctrine. The three factors to be analyzed are (1) the “temporal proximity of the arrest and the confession,” (2) the “presence of intervening circumstances,” and (3) the “purpose and flagrancy of the official misconduct.” In *Brown*, where the defendant made statements less than two hours after his unlawful arrest, the time lapse of those events were deemed to be close in temporal proximity. Subsequent cases have held that “a brief time lapse between a Fourth Amendment violation and the evidence obtained may indicate exploitation.” The time lapse between unlawful police activity and the evidence seized has been insufficient to break the causal chain in most cases.

Further, intervening circumstances have been defined as, “events that create a clean break in the chain of events leading to the discovery of incriminating evidence.” Because no particular circumstance is dispositive as intervening, this factor has to be viewed in conjunction with the other two factors. For example, in *Brown*, the court held that the reading of *Miranda* warnings is
not always sufficient to attenuate the taint because it is not the only factor to be considered.61 No definitive event deems an act a product of free will, nor is one sufficiently intervening.

Conduct has been defined as purposeful if “it is investigatory in design and purpose and executed in the hope that something might turn up.”62 In *Brown*, the Court acknowledged that the misconduct of the arrest was “obvious. . . [because] the detectives repeatedly acknowledged in their testimony that the purpose of their action was ‘for investigation’ or for ‘questioning.’”63 Conduct that is flagrant is more “obviously improper”64 because it is so clearly in violation of the Fourth Amendment. It should be noted that there has been some recent flexibility in interpreting what constitutes purposeful conduct.65 As an aside, *Segura*, which was decided after *Brown*, did not apply the factors set forth by *Brown* because the search warrant was not an intervening circumstance, but rather an independent source.66

III. UTAH V. STRIEFF: COPS HAVE NOTHING TO LOSE

In December 2006, an anonymous caller reported to South Salt Lake City’s police department ongoing “narcotics activity” at a particular residence.67 Over a week-long period, Narcotics detective Douglass Fackrell (“Fackrell”) investigated the tip by conducting isolated surveillance of the home.68 Fackrell’s suspicions were raised when he observed frequent, short-term visits at the home.69 During his surveillance, Fackrell witnessed Edward Strieff exiting the home and walking towards a nearby convenience store, however, he never observed Strieff entering the home.70 In the parking lot of the convenience store Fackrell approached Strieff and asked him what he had previously been doing at the home.71 Fackrell proceeded to ask Strieff for his identification, and Strieff cooperated and provided Fackrell his identification card.72

Fackrell relayed Strieff’s information to a police dispatcher, who in turn informed Fackrell that Strieff had an outstanding arrest warrant for a traffic violation.73 Fackrell arrested Strieff
pursuant to the warrant and conducted a search incident to the arrest.\textsuperscript{74} The search incident to arrest revealed that Strieff had on him a bag of methamphetamine and other drug paraphernalia.\textsuperscript{75} Strieff was charged with unlawful possession of methamphetamine and drug paraphernalia.\textsuperscript{76} Because the evidence was a derivative of an unlawful investigatory stop, Strieff moved to suppress the evidence.\textsuperscript{77} At the suppression hearing, the State conceded that Fackrell had no reasonable suspicion to stop Strieff, but argued that the evidence should nonetheless be admissible because the discovery of the arrest warrant attenuated the connection between the unlawful stop and the discovery of the drugs and paraphernalia.\textsuperscript{78} The trial court agreed with the State’s contention that the warrant attenuated the connection and admitted the evidence.\textsuperscript{79} Strieff pleaded guilty to attempted possession of a controlled substance and possession of drug paraphernalia; however, he reserved his right to appeal the denial of the suppression motion.\textsuperscript{80} The Utah Court of Appeals affirmed the motion.\textsuperscript{81}

Strieff then appealed to the Utah Supreme Court, and it reversed the denial of the motion.\textsuperscript{82} The Utah Supreme Court took the position that only “a voluntary act of a defendant’s free will”\textsuperscript{83} could break the link between an unlawful police activity and the uncovering of evidence; therefore, the court held that the attenuation doctrine was not applicable, and that the evidence should be suppressed.\textsuperscript{84} The State appealed to the United States Supreme Court.\textsuperscript{85}

A. THE MAJORITY OPINION

In beginning its discussion, the majority disagreed with the Utah Supreme Court’s perception that the attenuation doctrine “is limited to independent acts by the defendant.”\textsuperscript{86} After clarifying when the attenuation doctrine is applicable, the majority applied the facts of the case to the factors articulated in \textit{Brown}.\textsuperscript{87} The majority reversed and held that the evidence was admissible because two factors supported the State.\textsuperscript{88}
First, the majority noted that Fackrell discovered the contraband on Strieff’s person only minutes after the unlawful seizure. It conceded that such a short time lapse favored suppressing the evidence, and even used the two-hour time period in Brown as a point of comparison. Second, the majority emphasized that the “presence of intervening circumstances, strongly favor[ed] the State.” The majority based its argument on paralleling the facts of the case to the facts of Segura. For example, it equated Strieff’s outstanding arrest warrant to the search warrant in Segura. While it distinguished Segura as having applied the independent source doctrine, the majority reasoned that the holding of Segura, which 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,’” was nonetheless applicable to the facts of Strieff. The majority even went on to say that once an officer discovers that someone has an outstanding warrant for his arrest, the officer has an obligation to arrest that person.

Finally, the majority drew attention to Fackrell’s lack of purposeful and flagrant misconduct. It described Fackrell’s conduct as “at most negligent” and that his mistakes were made in “good-faith.” Additionally, the majority reasoned that there was no indication that the unlawful stop was part of a recurring police misconduct.

B. THE DISSENTING OPINIONS

In her dissent, Justice Sotomayor warns that “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.” Justice Sotomayor then explains why the factors articulated in Brown support suppressing the evidence. She begins with commenting on the majority’s flawed interpretation of Segura. She notes that in Segura, the agents’ unlawful behavior had nothing to do with acquiring the search warrant, whereas in Strieff, the unlawful seizure was “essential to the
discovery of the arrest warrant." Moreover, Justice Sotomayor states that Fackrell’s “sole purpose [in stopping Strieff] was to fish for evidence.” She adds that even if Fackrell was negligent, that behavior does not constitute an exception to a Fourth Amendment violation. Lastly, she points out that she does not believe that this case is “isolated” whatsoever. She provides the Court with statistics to demonstrate how common outstanding warrants are for minor offenses. Justice Sotomayor’s concern stems from the fact that this case allows officers to treat “members of our communities as second-class citizens,” and some members more than others.

In her own dissent, Justice Kagan also explains how the factors set forth by Brown favor suppressing the evidence. She asserts that Fackrell’s decision to stop Strieff was far from a “mistake,” seeing as how at the suppression hearing he acknowledged the stop was “for investigatory purposes,” and in Brown, this same testimony supported suppression. Justice Kagan then adds that a “circumstance counts as intervening only when it is unforeseeable.” Seeing as how checking for outstanding warrants is a normal police practice, the discovery of an arrest warrant would have been a highly foreseeable consequence of stopping Strieff, therefore, not an intervening circumstance. Justice Kagan warns that the majority’s decision creates an incentive for police to conduct unwarranted stops.

IV. TEMPTATIONS

Officers have “nothing to lose and much to gain” by conducting a stop without having reasonable suspicion. The dissenting opinions in Strieff were correct to be concerned about the negative repercussions the majority’s holding will have on our society. Justice Sotomayor exposed the majority’s misleading comparison to Segura to demonstrate how Strieff’s outstanding arrest warrant was not an intervening circumstance. Additionally, Justice Kagan’s discussion of Fackrell’s purposeful conduct was well supported with her comparison to Brown. In truth, all of
the factors presented in *Brown* favored suppressing the tainted evidence in *Strieff*. By misapplying and ignoring precedent, the majority has put our Fourth Amendment rights at risk.

A. NO SINGLE FACT IS DISPOSITIVE, \(^{116}\) EXCEPT WHEN IT IS

“If *Miranda* warnings, by themselves, were held to attenuate the taint of an unconstitutional arrest, regardless of how wanton and purposeful the Fourth Amendment violation, the effect of the exclusionary rule would be substantially diluted.”\(^ {117}\) It was because of this threat to the exclusionary rule that the Court in *Brown* rejected the idea that any fact could be “dispositive.”\(^ {118}\) The majority in *Strieff* ignored this long-standing principle when it declared the existence of a valid warrant to be a sufficient intervening circumstance.\(^ {119}\) Not only did the majority turn a blind eye to precedent when affirming the existence of a warrant as sufficient, but its reasoning for doing so was confused.

Had Fackrell never stopped Strieff, he would have never uncovered the outstanding warrant for Strieff’s arrest. Distinguishably, in *Segura*, the evidence obtained would have been found regardless of the unlawful initial search of the defendant’s apartment because the search warrant in that case was an independent source.\(^ {120}\) No unlawful behavior in *Segura* led to the procurement of the search warrant, whereas in *Strieff*, the unlawful seizure uncovered Strieff’s outstanding arrest warrant. The added stipulation that “once an arrest warrant is discovered, an officer has an obligation to arrest that individual”\(^ {121}\) had no relevance to the intervening circumstances analysis. There is no question that once the warrant was discovered, Fackrell had a right to conduct a search incident to arrest. That warrant, however, should not make Fackrell’s initial stop permissible.

B. THE FISHING EXPEDITION\(^ {122}\)

The majority naively contends that in stopping Strieff, Fackrell “made two good-faith mistakes.”\(^ {123}\) The majority does not seem to be bothered by the fact that at the suppression hearing,
Fackrell testified that he had stopped Strieff to “find out what was going on [in] the house.” Justice Kagan wisely pointed out that in Brown, when agents testified that their purpose for an unlawful arrest was “for investigation [and] questioning,” the Court saw this action as having a “quality of purposefulness.” Fackrell stopped Strieff in the parking lot to further his investigation of the home he had been surveilling. Fackrell’s purpose was investigatory in the same way that the agents’ purpose in Brown was investigatory.

The majority further states that there is “no indication that this unlawful stop was part of any systemic or recurrent police misconduct.” In her opinion, Justice Sotomayor referenced a multitude of statistics regarding (1) the abundance of existing warrants and (2) common routine police procedures that involve running warrant checks on pedestrians. Additionally, because of what is occurring in cities like Miami, where officers are told to “bring in numbers,” it is evident that unlawful stops are already part of recurring police misconduct and will continue to be so after the decision in Strieff. However, the majority does address the possibility of police engaging in dragnet searches” by reassuring that it would not be a problem because such behavior would expose police to civil liability. The problem with this assertion is that plaintiffs will likely be barred from bringing a false arrest claim pursuant to Section 1983 if there was probable cause for their arrests. Quite foreseeably, the admissibility of evidence aids in the process of proving an officer had probable cause; therefore, this strategy does little to deter police misconduct.

C. DEFEATING THE PURPOSE TO DETER

Unlike in Hudson v. Michigan, where the exclusionary rule was inapplicable because the “interests that were violated [had] nothing to do with the seizure of the evidence,” in Strieff, the interest that was violated had everything to do with the seizure of the evidence. Fackrell conducted an unlawful Terry stop, and in Terry, the Court required that an officer have reasonable suspicion
before stopping an individual because “individuals are entitled to be free from unreasonable government intrusion.”134 Fackrell unreasonably intruded upon Strieff’s privacy and that intrusion resulted in the discovery of incriminating evidence. The Court reasoned that Fackrell’s conduct was not one which the exclusionary rule could deter because “errors in judgment”135 cannot be deterred. These “errors of judgment” are already abundantly present and even encouraged throughout nationwide police practices.136 The only way to get officers to change their tactics is by penalizing them. Additionally, while it is true that the exclusionary rule should only be applied when its deterrence benefits outweigh its social costs,137 the social cost of excluding evidence in cases like Strieff would be suppressing evidence with respect to a separate offense,138 thus, there is little threat that people with outstanding warrants would just go free. Overall, the lax ruling in Strieff incentivizes police to engage in suspicionless stops and depicts the exclusionary rule as insignificant.

V. CONCLUSION

A standard parenting strategy is to never reward a child for bad behavior because doing so only encourages more bad behavior. This same basic tactic should have been used by the Court in Strieff. By ignoring precedent, the Court rewarded police misconduct by rendering unlawfully obtained evidence admissible. “Allowing the government to profit from its own wrongdoing . . . does self-evident violence to the appearance of justice.”139 Strieff should have been used to demonstrate that officer misconduct will not be tolerated and that the Fourth Amendment is a right that the Courts will wholeheartedly protect. Rather, the Court opened the flood gates to unlawful seizures and in doing so has inadvertently diminished the value of the Fourth Amendment. In order to avoid chaos, there has to be a balance between police power and civil liberties140; unfortunately, this balance will now be in jeopardy after the Court’s decision in Strieff.
See Utah v. Strieff, 136 S. Ct. 2056, 2064 (2016) (Sotomayor, J., 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.”).

2 See Id.

3 U.S. CONST. amend. IV.


5 Strieff, 136 S. Ct. at 2061 (citing Mapp v. Ohio, 367 U.S. 643, 655 (1961) (defining the exclusionary rule as a rule that “requires trial courts to exclude unlawfully seized evidence in a criminal trial.”)).

6 See generally Terry, 88 S. Ct. at 1868.

7 Strieff, 136 S. Ct. at 2059 (holding that evidence seized following the search incident to arrest is admissible “because the officer’s discovery of the arrest warrant attenuated the connection.”).


10 Strieff, 136 S. Ct. at 2067 (Sotomayor, J., dissenting) (stating that “Segura would be similar only if the agents used information they illegally obtained from the apartment to . . . discover an arrest warrant.”).

11 Brown, 422 U.S. at 604.

12 Strieff, 136 S. Ct. at 2063.


15 See Strieff, 136 S. Ct. at 2061 (citing Mapp v. Ohio, 367 U.S. 643, 655 (1961)).
Terry v. Ohio, 88 S. Ct. 1868, 1873 (1968) (holding that it is “[t]he right of every individual to the possession and control of his own person, free from all restraint or interference of others.”).

U.S. CONST. amend. IV.

Terry, 88 S. Ct. at 1873.


Id.

See Brown v. Illinois, 422 U.S. 590, 603-04 (1975) (holding Miranda warnings, by themselves, are not sufficient to attenuate the taints of an unconstitutional arrest).

Hudson, 547 U.S. at 586.

Brown, 422 U.S. at 603 (stating that the Court “declines to adopt any alternative per rule.”).


Id. (citing Davis, 131 S. Ct. at 2427).


Hudson, 547 U.S. at 591.

Id. (quoting Colorado v. Connelly, 479 U.S. 157, 166 (1986)).

See Id. (citing Weeks v. United States, 232 U.S. 383, 383 (1914)).

See Id. (citing Mapp v. Ohio, 367 U.S. 643, 643 (1961)).

Id. (citing Arizona v. Evans, 415 U.S. 1, 13 (1995) (stating that “the Court treated identification of a Fourth Amendment violation as synonymous with application of the exclusionary rule.”)).

Id. (quoting United States v. Leon, 468 U.S. 897, 906 (1984)).

36 State v. Strieff, 357 P.3d 532, 539 (Utah 2015).


38 *Id.*

39 *Id.* at 801

40 *Id.*

41 *Id.* at 813-14.

42 State v. Strieff, 357 P.3d 532, 539 (Utah 2015).

43 *Id.* (citing Nix v. Williams, 467 U.S. 431, 443 (1984)).

44 *Id.*

45 *Id.* (quoting Nix, 467 U.S. at 448).

46 *Id.* at 540.


48 *Id.* at 419.

49 *Id.*

50 *Id.* at 416.

51 *Id.* at 419 (quoting Nardone v. United States, 308 U.S. 338, 341 (1939)).

52 *Id.*


54 *Id.*

55 *Id.*

56 *Id.*

57 *Id.* at 605.


Brown, 422 U.S. at 604.

Id. at 603.

Strieff, 357 P.3d at 541 (quoting United States v. Simpson, 439 F.3d 490, 496 (8th Cir. 2006)).

Brown, 422 U.S. at 604.

Strieff, 357 P.3d at 541.

to a purposeful or flagrant violation of Strieff’s Fourth Amendment rights.”).


Strieff, 136 S. Ct. at 2059.

Id.

Id.

Id. at 2060.

Id.

Id.

Id.

Id.

Id.

Id.

Id.
State v. Strieff, 357 P.3d 532, 544 (Utah 2015).

See Id. (reversing on the grounds that “the discovery of an outstanding warrant is not an independent act of free will, but a direct result of an unlawful detention”).

Strieff, 136 S. Ct. at 2060.

Id. at 2061.


Strieff, 136 S. Ct. at 2063.

See Id. at 2062.

See Brown, 422 U.S. at 604 (noting that “Brown’s first statement was separated from his illegal arrest by less than two hours, and there were no intervening events of significance whatsoever.”).

Strieff, 136 S. Ct. at 2062.

Id.

Id.

Id. (quoting Segura v. United States, 468 U.S. 796, 815 (1984)).

Id.
99 Id.

100 Id. at 2064 (Sotomayor, J., dissenting).

101 Id. at 2067

102 Id.

103 Id.

104 Id.

105 Id. at 2068-69.

106 Id. (referencing Systems Survey (Table 5a)) (holding that “the Government maintains databases with over 7.8 million outstanding warrants, the vast majority of which appear to be for minor offense.”).

107 Id. at 2069-70.

108 Id. at 2072-73 (Kagan, J., dissenting).

109 Id. at 2072.

110 Id.

111 Id. at 2073 (citing W. Keeton ET. AL., Prosser and Keeton on Law of Torts 312 (5th ed. 1984)).

112 See Id. (referencing Fackrell’s testimony that “checking for outstanding warrants during a stop is a ‘normal practice’ of South Salt Lake City police.”).

113 Id.

114 Id.


117 Id. at 602 (citing Davis v. Mississippi, 394 U.S. 721, 726-27 (1969)).
118 Id. at 603.


121 Strieff, 136 S. Ct. at 2063.

122 Id. at 2064.

123 See Id. at 2063.

124 Id. at 2072 (Kagan, J., dissenting).


126 Strieff, 136 S. Ct. at 2063.

127 Id. at 2068 (Sotomayor, J., dissenting) (citing Dept. of Just., C.R. Div., Investigation of the Ferguson Police Dep’t 47, 55 (2015), https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf) (noting that “in the town of Ferguson, Missouri, with a population of 21,000, 16,000 people has outstanding warrants against them).


Department to conduct more stop and arrests, specifically by stopping “all black males between 15 and 30 years of age.”).

130 Strieff, 136 S. Ct. at 2064.


132 Id.


134 Terry v. Ohio, 392 U.S. 1, 2-5 (1968).


136 See generally Id. at 2068-69 (Sotomayor, J., dissenting).


139 Brief for the ACLU, supra note 137, at 6.


I hereby certify that I have completed this submission in accordance with the Competition rules and in accordance with the collaboration and academic integrity requirements of the University of Miami School of Law Honor Code.

Signed [688282]