The Fourth Amendment does not require an officer to consider whether to issue a citation rather than arresting (and placing in custody) a person who has committed a minor offense—even a minor traffic offense. In *Atwater v. City of Lago Vista*,[72] the Court, even while acknowledging that the case before it involved "gratuitous humiliations imposed by a police officer who was (at best) exercising extremely poor judgment," refused to require that "case-by-case determinations of government need" to place traffic offenders in custody be subjected to a reasonableness inquiry, "lest every discretionary judgment in the field be converted into an occasion for constitutional review."[73] Citing some state statutes that limit warrantless arrests for minor offenses, the Court contended that the matter is better left to statutory rule than to application of broad constitutional principle.[74] Thus, *Atwater* and *County of Riverside v. McLaughlin*[75] together mean that—as far as the Constitution is concerned—police officers have almost unbridled discretion to decide whether to issue a summons for a minor traffic offense or whether instead to place the offending motorist in jail, where she may be kept for up to 48 hours with little recourse. Even when an arrest for a minor offense is prohibited by state law, the arrest will not violate the Fourth Amendment if it was based on probable cause.[76]

Until relatively recently, the legality of arrests was seldom litigated in the Supreme Court because of the rule that a person detained pursuant to an arbitrary seizure—unlike evidence obtained as a result of an unlawful search—remains subject to custody and presentation to court.[77] But the application of self-incrimination and other exclusionary rules to the states and the heightening of their scope in state and federal cases alike brought forth the rule that

---

441 (1980) (requesting ticket stubs and identification from persons disembarking from plane not reasonable where stated justifications would apply to "a very large category of innocent travelers," *e.g.*, travelers arrived from "a principal place of origin of cocaine"); Michigan v. Summers, 452 U.S. 692, 705 (1981) ("it is constitutionally reasonable to require that [a] citizen . . . remain while officers of the law execute a valid warrant to search his home"); Illinois v. McArthur, 531 U.S. 326 (2001) (approving "securing" of premises, preventing homeowner from reentering, while a search warrant is obtained); Los Angeles County v. Rettele, 550 U.S. 609 (2007) (where deputies executing a search warrant did not know that the house being searched had recently been sold, it was reasonable to hold new homeowners, who had been sleeping in the nude, at gunpoint for one to two minutes without allowing them to dress or cover themselves, even though the deputies knew that the homeowners were of a different race from the suspects named in the warrant).

[72] 532 U.S. 318 (2001).

[73] 532 U.S. at 346–47.

[74] 532 U.S. at 352.

[75] 500 U.S. 44 (1991).

[76] Virginia v. Moore, 128 S. Ct. 1598 (2008).

[77] Ker v. Illinois, 119 U.S. 436, 440 (1886); *see also* Albrecht v. United States, 273 U.S. 1 (1927); Frisbie v. Collins, 342 U.S. 519 (1952).