Landmark Supreme Court ruling backs illegal police searches

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On Monday, the Supreme Court voted 5-3 that evidence obtained by unlawful tactics by police may be admissible in court. The is the furthest the highest US judicial body has ever gone in undermining the basic protection against "unreasonable searches and seizures" granted by the Fourth Amendment to the Constitution, a core element of the Bill of Rights.

The ruling provides a blank check for police to arbitrarily stop and search a motorist or pedestrian without probable cause, so long as they discover afterwards that the person was one of millions of Americans with an outstanding warrant for something as minor as a traffic ticket. The ruling will result in a massive expansion of illegal stops and searches by police nationwide.

The case, *Utah v Strieff*, hinged upon the actions of Salt Lake City police officer Douglass Fackrell in a 2006 narcotics arrest. Acting on the basis of an anonymous tip, Fackrell staked out a house that was suspected of being used for drug sales, watching it over the course of a week. When this did not produce any evidence, Fackrell decided to question the next person he saw exiting the building, which happened to be Edward Strieff.

Fackrell detained Strieff, despite not having any reason to single him out, making the stop an illegal abuse of power. The policeman radioed in a search for outstanding warrants. When the search turned up a traffic violation, Fackrell arrested and searched Strieff, finding a small bag of methamphetamines.

Since the early years of the Warren Court (the period when Earl Warren was chief justice) more than half a century ago, such evidence has been considered inadmissible in court under the "exclusionary rule," which prohibits the use of evidence obtained by police illegally. This, in turn, is based upon the Fourth Amendment, which reads: "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."

Fackrell's actions were considered so blatantly illegal under this precedent that the Utah Supreme Court voted unanimously in Strieff's favor, suppressing the drug evidence.

What is remarkable about the Supreme Court's ruling is that it does not contest the illegality of the initial stop by Fackrell. Rather, in the opinion written by Clarence Thomas, the majority concludes that the evidence obtained by Fackrell was admissible because it was obtained after Fackrell radioed in for Strieff's outstanding warrants. Thomas and his colleagues argue that Fackrell's actions did not constitute "purposeful or flagrant" misconduct, so the evidence obtained by him in the subsequent search should be admissible in court.

"Officer Fackrell was at most negligent, but his errors in judgment hardly rise to a purposeful or flagrant violation of Strieff's Fourth Amendment rights," Thomas blithely asserts. "After the unlawful stop, his conduct was lawful, and there is no indication that his stop was part of any systemic or recurrent police misconduct." The ruling effectively nullifies the long-established "fruit of the poisonous tree" doctrine, according to which evidence obtained as the result of illegal activity of the police is inadmissible in court.

It is significant that Justice Stephen Breyer, a Clinton appointee and a member of the court's "liberal" bloc, cast the deciding vote in this case. It is a further demonstration of the shift to the right of the entire political establishment, within which there is no longer

any significant constituency for core democratic rights. Scarcely four months after the death of Antonin Scalia, the long-time leader of the right-wing faction on the court, the dismantling of democratic rights by the Supreme Court continues unabated.

Justice Sonia Sotomayor, an Obama appointee, wrote an unusually sharp dissenting opinion that raises the essential democratic issues posed by the majority's opinion, which she said provides police with "incentive to violate the Constitution." She was joined only in part by the other two dissenting justices, Elena Kagan and Ruth Bader Ginsburg, who wrote their own opinions.

"Do not be soothed by the [majority] opinion's technical language," Sotomayor warned. "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."

She pointed out, "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," which, after this ruling, can now be seized on to carry out searches without reasonable suspicion.

Sotomayor continued, "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."

Readers who consult one of the larger English dictionaries will find that "carceral" means "pertaining to prisons or a prison." Sotomayor chose to use a deliberately obscure word to dilute the impact of what she was acknowledging: the Supreme Court ruling is appropriate to a police state, not a democracy.

Sotomayor is not an oppositional figure, but a time-tested defender of the political establishment. During her tenure as an appellate judge in New York, she handed down numerous rulings bolstering the arbitrary powers of the police. The fact that she feels compelled to denounce the decision of her colleagues in such stark terms should be taken as a warning of the willingness of broad layers of the political establishment to dispense with democratic forms of rule.