No. 21-7089

In the Supreme Court of the United States

LEANDRE JORDAN,

Petitioner,

v.

STATE OF OHIO,

Respondent.

On Petition for Writ of Certiorari to the Supreme Court of Ohio

BRIEF OF *AMICI CURIAE* CUYAHOGA COUNTY PUBLIC DEFENDER'S OFFICE, ET AL. IN SUPPORT OF PETITIONER

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QUESTION PRESENTED

Are warrantless, probable cause arrests reasonable when no exigency or contemporaneous crimes are present to excuse the failure to obtain a warrant? Should *United States v. Watson*, 423 U.S. 411 (1976) be overruled in light of the modern trend to more closely analyze the common law within its historical context? *Lange v. California*, 141 S. Ct. 2011, 2022-24 (2021).

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INTEREST OF *AMICI CURIAE*[1]

The Office of the Cuyahoga County Public Defender is legal counsel to nearly half of all indigent persons charged with criminal offenses in Ohio's most populous county. The Office of the Ohio Public Defender (OPD) is a state agency established to represent indigent criminal defendants and to coordinate criminal-defense efforts throughout Ohio. The primary mission of the OPD is to protect and defend the rights of indigent persons by providing and supporting superior representation in the criminal and juvenile justice systems. The Ohio Association of Criminal Defense Lawyers (OACDL) is an organization of over 600 dues-paying attorney members. Its primary mission is to defend the rights secured by law of persons accused or convicted of the commission of a criminal offense.

Together, your Amici provide legal representation to a substantial majority of juveniles and adults accused of criminal offenses in the State of Ohio. These organizations offer this Court the perspective of experienced practitioners who routinely handle criminal cases in Ohio courts. This work includes representation at both the trial and appellate levels. Your Amici have an interest in the present case

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[1] In accordance with Supreme Court Rule 37.6, undersigned counsel certifies that no counsel for any party authored, in whole or in part, any aspect of this brief. Further, no person or entity, other than amici curiae, made a monetary contribution to the preparation or submission of this brief. All parties were given timely notice regarding the intent to file this brief. Written notice of consent to file this brief of amici was given by the counsel of record to each party in this case.

because construing the Fourth Amendment in such a way that it provides less protection than that guaranteed at common law erodes our clients' liberty. Under the circumstances, a large number of Amici's present and future clients will be directly impacted by the outcome of the present litigation.

SUMMARY OF THE ARGUMENT

New wine should not be poured into old wineskins. And new concepts of what constitutes a felony offense should not be poured into this Court's old jurisprudence regarding warrantless felony arrests as set forth in *United States v. Watson*. *Watson's* bright line of permitting law enforcement to arrest when there is probable cause to believe a felony has been committed is almost a half-century old. And in that half-century, there have been two significant developments that undermine *Watson's* continued viability as a reasonable balance between the rights of the individual and the needs of law enforcement.

First, the number of offenses that constitute "felonies" continues to grow. For example, a person who possesses a small quantity of marijuana and who has a prior conviction for a similar offense commits a felony violation of Title 21 U.S.C. § 844(a), the federal drug possession statute. Various felony offenses have been created under federal or state laws that are specific forms of what were previously misdemeanor offenses. In other cases, repeat offenders who previously looked at a second misdemeanor now find themselves indicted for felonies. Moreover, in some states, including Ohio, the traditional "year and a day" rule that distinguished felonies from misdemeanors has been replaced by

lower-level "felonies" punishable by a term of imprisonment that does not exceed one year. See O.R.C. 2929.14 (fifth-degree felony punishable by between six months and one-year of imprisonment). This Court has recognized the phenomenon of the expanding felony class:

> At common law, the terms "felony" and "misdemeanor" did not have the same meaning as they do today. At that time, imprisonment as a form of punishment was rare, see *Apprendi v. New Jersey*, 530 U.S. 466, 480, n. 7, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000; most *150 felonies were punishable by death, see *Tennessee v. Garner*, 471 U.S. 1, 13, 105 S.Ct. 1694, 85 L.Ed.2d 1 (1985; and many very serious crimes, such as kidnaping and assault with the intent to murder or rape, were categorized as misdemeanors, see *United States v. Watson*, 423 U.S. 411, 439–440, 96 S.Ct. 820, 46 L.Ed.2d 598 (1976 (Marshall, J., dissenting). Since that time, however, the term "felony" has come to mean any offense punishable by a lengthy term of imprisonment (commonly more than one year, see *Burgess v. United States*, 553 U.S. 124, 130, 128 S.Ct. 1572, 170 L.Ed.2d 478 (2008); the term "misdemeanor" has been reserved for minor offenses; and many crimes that were misdemeanors at common law have been reclassified as felonies. And when the relevant language in ACCA was enacted, quite a few States had felony battery statutes that retained the common-law definition of "force." See Fla. Stat. § 784.07(2)(b) (1987) (making simple

> battery of a police officer a felony); Idaho Code § 18–915(c) (Lexis 1987) (same); **1277 Ill.Rev.Stat., Ch. 38, § 12–4(b)(6) (West 1987) (same); La. Rev. Stat. Ann. §§ 14:33, 14:43.1 (West 1986) (sexual battery punishable by more than one year's imprisonment); N.M. Stat. Ann. § 40A–22–23 (1972) (battery of a police officer a felony); see also Kan. Stat. Ann. § 21–3413(b) (Supp.1994) (simple battery of corrections officers a felony).

Johnson v. United States, 559 U.S. 133, 149-150 (2010) (Alito, J. dissenting).

Second, the ability of law enforcement to secure arrest warrants from neutral judicial officers has been greatly enhanced since Gerald Ford was President and *Watson* was decided. Telephonic or video-conferenced warrant review procedures are available between a patrol officer's car (or personal cell phone) and a reviewing magistrate's laptop (or personal cell phone). Federal Rule of Criminal Procedure 4.1, providing for the issuance of warrants via reliable electronic means, is more than one decade old and electronically-authorized warrants are as common place as electronically-filed court documents. *Watson's* sensitivity to a reasonable arrest procedure that could be effective in 1976 is now antiquated.

With that antiquation, and with the shift in what is now a felony, the *Watson* rule has lost its constitutional moorings. The warrant requirement, both as to seizures and searches, was borne out of the Framer's inherent skepticism about the ability of law enforcement to respect individual rights while engaged

in the "often competitive enterprise of ferreting out crime." *United States v. Johnson*, 333 U.S. 10, 14 (1947). The Framers wanted neutral and detached judicial officers to issue warrants. Warrantless arrests were never to be favored – yet, today they are the norm.

And Fourth Amendment "seizures" can have an equally profound impact as Fourth Amendment "searches" on the individual seized. The direct and tangible consequences of an arrest can include 48 hours in jail awaiting a judicial review for probable cause, several days before appearing for a bond hearing, and the indignity of a strip search. For many the period of confinement is long enough to lose one's job or to have no one home to care for children, not to mention the ignominy of being in jail.

In our present era, should police eschew a five-minute phone call to a magistrate to seek a warrant and instead effect a warrantless "felony arrest" for an offense that, as a practical matter, will result in little or no incarceration? Is the expansion of "felony" offenses marginalizing the role of the judiciary in the arrest process to the extent that the Fourth Amendment's intent has been violated? The instant case presents the opportunity for this Court to address these significant questions.

ARGUMENT

I. From *Tennessee v. Garner*, to *Lange v. California*, this Court's Jurisprudence since 1985 demonstrates that the Rationale Underlying *United States v. Watson* is Clearly Erroneous.

> [D]ifferent states have different rules about what a felony is and what a misdemeanor is, and it would seem odd that the Constitution * * * in its meaning[ ] would depend upon the happenstance of positive state law. * * * [W]e live in a world in which everything has been criminalized. And some professors have even opined that there's not an American alive who hasn't committed a felony * * * under some state law.
>
> [I]n a world like that, why [doesn't] it make sense to retreat back to the original meaning of the Fourth Amendment[.] * * * [W]hy isn't that the right approach?

Lange v. California, Docket Number: 20-18, Tr. of Oral Arg 52-53 (Gorsuch, J.).

As noted above, only last term this Honorable Court unanimously recognized that the modern day misdemeanor/felony distinction is inconsistent with that made at common law. *See Lange v. California*, 141 S. Ct. 2011, 2023 (2011) (*quoting Tennessee v. Garner*, 471 U.S. 1, 13-14 (1985)) ("The felony category [at common law] was a good deal narrower than now. Many modern felonies were "classified as misdemeanors at common law, with the felony label

mostly reserved for crimes "punishable by death."); *Lange*, 141 S. Ct. at 2036 (Roberts, J., concurring) (*quoting Garner*, 471 U.S. at 14) ("[A]t common law the 'gulf between the felonies and the minor offences was broad and deep,' but today it is 'minor and often arbitrary.'"). *See also Johnson*, 559 U.S. at 149-50 (Alito, J., dissenting) (*citing Watson*, 423 U.S. at 439-40 (Marshall, J., dissenting)):

> At common law, the terms "felony" and 'misdemeanor' did not have the same meaning as they do today. At that time * * * most felonies were punishable by death * * * and many very serious crimes, such as a kidnapping and assault with the intent to murder or rape, were categorized as misdemeanors. Since that time, however * * * many crimes that were misdemeanors at common law have been reclassified as felonies.

Given the dramatic gulf between the modern day and common law approaches to categorizing criminal acts, this Court should not, and generally does not, "craft[ ] constitutional rules based on the distinction between modern day misdemeanors and felonies." *Lange* 141 S. Ct. 2011 at 2036 (Roberts, J., concurring); *Virginia v. Moore*, 553 U.S. 164, 169 (2008) ("Joseph Story, among others, saw the Fourth Amendment as 'little more than the affirmance of a great constitutional doctrine of the common law[.]' * * * No early case or commentary, to our knowledge, suggested the Amendment was intended to incorporate subsequently enacted statutes.") (*quoting* 3

Commentaries on the Constitution of the United States § 1895, p 748 (1833).

In *United States v. Watson*, 423 U.S. 411 (1976), however, this Court did precisely what *Lange*, *Moore*, *Garner*, and the teachings of Justice Story reveal to be erroneous: it crafted a constitutional rule regarding warrantless public arrests based on the distinction between modern day misdemeanors and felonies. *See* 423 U.S. at 421 ("The balance struck by the common law in generally authorizing felony arrests on probable cause, but without a warrant, has survived substantially intact."); *see also Maryland v. Pringle*, 540 U.S. 366, 370 (2003) (*citing Watson*, 423 U.S. at 424) ("A warrantless arrest of an individual in a public place for a felony, or a misdemeanor committed in the officer's presence, is consistent with the Fourth Amendment if the arrest is supported by probable cause."). *Watson*'s holding was unprecedented in this Court's jurisprudence. *See id.* at 427 (Powell, J., concurring) ("Today's decision is the first square holding that the Fourth Amendment permits a duly authorized law enforcement officer to make a warrantless arrest in a public place even though he had adequate opportunity to procure a warrant * * *."). *Watson*, "in the guise of 'constitutionalizing' the common-law rule" regarding warrantless felony arrests, "actually [did] away with it altogether" – apparently, if unintentionally, "accord[ing] constitutional status to a distinction that can be readily changed by legislative fiat." *Watson*, 423 U.S. 411 at 454 (Marshall, J. dissenting). In other words, if the constitutional protections against warrantless arrest are wholly conditioned on the non-felony status of an

offense such that they can be nullified with the stroke of a pen, then they are no constitutional protections at all.

The Fourth Amendment "must provide *at a minimum* the degree of protection it afforded when it was adopted." *Lange*, 141 S. Ct. at 2022 (*quoting United States v. Jones*, 565 U.S. 400, 411 (2012). *Watson* not only failed to apply this principle; it got it backwards. Pursuant to *Lange* and *Jones*, this Court should treat whatever protections were afforded to persons accused of those offenses classified as misdemeanors at common law as the *minimum* level of protection to be afforded to be substantively analogous offenses today – regardless of their modern legislative classification. Instead, however, *Watson* had the impermissible effect of "incorporat[ing] subsequently enacted statutes" into the Fourth Amendment, effectively inviting legislatures to water down rights that would have been afforded at common law via the "happenstance of positive state law." *See Moore*, 553 U.S. at 169; *Lange*, Tr. of Oral Arg 52-53. By holding warrantless public felony arrests to be permissible *per se* regardless of whether the offense of arrest would have been treated as a felony at common law, *Watson* treats the common law protection against warrantless public arrests as the ceiling rather than the floor. "In short," like Tennessee's fleeing felon rule held unconstitutional in *Garner*, "though the common-law pedigree of" the *Watson* "rule is pure on its face," changes in the modern "context mean the rule is distorted almost beyond recognition when literally applied." *Garner*, 471 U.S. at 15.

Since 1985, at least fifteen justices of this Court – including all nine current justices and the author of *Watson* – have written or joined opinions rejecting the rationale upon which *Watson*'s holding is grounded. *See Lange*, 141 S. Ct. at 2023; *id.* at 2036 (Roberts, J., concurring); *Johnson v. United States*, 559 U.S. at 149-50 (Alito, J., dissenting); *Garner*, 471 U.S. at 13-15. The time has come for this Court to reconsider *Watson*.

II. There is Significant Historical Support for the Conclusion that Mr. Jordan's Warrantless Arrest Violated Common-Law Principles and the Original Meaning of the Fourth Amendment.

While the thirty-seven years of jurisprudence between *Garner* and *Lange* illustrates that *Watson*'s holding rests upon an erroneous rationale, this Court has not recently spoken on the permissibility of warrantless arrests for offenses committed outside the presence of law enforcement and in the absence of exigent circumstances. Mr. Jordan's case is an excellent vehicle for this Court to both reconsider *Watson* and address the related question left for another day in *Atwater v. City of Lago Vista*, 532 U.S. 318, 340 n. 11 (2001) and *Moore*, 553 U.S. at 176, 178: What limit does the Fourth Amendment place upon law enforcement's authority to undertake a warrantless arrest for offenses committed outside the officer's presence? *See Elk v. United States*, 177 U.S. 529, 534 (1900) ("[A]n officer, at common law, was not authorized to make an arrest without a warrant, for a mere misdemeanor not committed in his presence.");

Kurtz v. Moffitt, 115 U.S. 487, 498-99 (1885) (internal citations omitted):

> By the common law of England, neither a civil officer nor a private citizen had the right without a warrant to make an arrest for a crime not committed in his presence, except in the case of felony, and then only for the purpose of bringing the offender before a civil magistrate. 1 Hale P.C. 587-590; 2 Hale P.C. 76-81; 4 Bl. Com. 292, 293, 296; Wright v. Court, 6 D. & R. 623; S.C., 4 B. & C. 596. No crime was considered a felony which did not occasion a total forfeiture of the offender's lands, or goods, or both.

The Court's discussion of the common-law history in *Atwater* is explicitly not dispositive of this issue. While the *Atwater* Court found "disagreement, not unanimity" regarding whether history supported the petitioner's assertion of a limited misdemeanor arrest authority at common-law, 532 U.S. at 332, the Court's analysis in *Atwater* was specifically undertaken with an eye to the constitutionality of arrests for offenses committed in an officer's presence. *See id.* ("We need not, and thus do not, speculate whether the Fourth amendment entails an 'in the presence' requirement for purposes of misdemeanor arrests.") (*citing Welsh v. Wisconsin*, 466 U.S. 740, 756 (1984) (White, J., dissenting)). Similarly, this Court's pre-*Atwater* jurisprudence on the issue of warrantless misdemeanor arrests has generally "focused on the circumstance that an offense was committed in an officer's presence[.]" *See Atwater*, 532

U.S. at 340 (collecting authorities); *but see Elk* and *Kurtz*, *supra*.

The *Atwater* decision acknowledged that "there are certainly eminent authorities supporting" the petitioner's assertion of a broader warrantless arrest protection than the Court ultimately found. 532 U.S. at 329 (*citing*, *e.g.*, *Queen v. Tooley*, 2 Ld. Raym. 1296, 1301, 92 Eng. Rep. 349, 352 (Q. B. 1710) ("[A] constable cannot arrest, but when he sees an actual breach of the peace; and if the affray be over, he cannot arrest"). And even amongst those authorities that the Court relied on in rejecting Atwater's position, the lion's share of such authorities appear to affirm the common-law warrantless misdemeanor arrest power only as to offenses committed in an officer's presence. *Atwater*, 532 U.S. at 330-345. For example, the *Atwater* Court relied heavily on the existence of the "nightwalker" statutes which, while supportive of Atwater's breach-of-the-peace analysis, do not support an understanding that this authority extends to offenses committed outside an officer's presence. 532 U.S. at 333. Beyond the nightwalker statutes, the Court cited numerous authorities which explicitly tied warrantless arrest authority to the commission of the offense in the presence of law enforcement. See id. at 331 (citing 1 W. Russell, Crimes and Misdemeanors 725 (7th ed. 1909)); 532 U.S. at 336 (citing J. Landynski, Search and Seizure and the Supreme Court, 19-48 (1966), p. 45); 532 U.S. at 341 (citing *Pow v. Beckner*, 3 Ind. 475, 478 (1852)); 532 U.S. at 343 (citing Wilgus, *Arrest Without a Warrant*, 22 Mich. L. Rev. 541, 550, and n.54 (1924)); 532 U.S. at 344 (citing W. Clark, Handbook of Criminal Procedure § 12, p. 50; J. Beale, Criminal Pleading and

Practice § 21, p. 20, and n. 7 (1899); 1 J. Bishop, New Criminal Procedure §§ 183, at 103)); 532 U.S. at 345 (citing 3 W. LaFave, Search and Seizure § 5.1(b), pp. 13-14 and n. 76 (1996)).

In short, *Atwater* not only leaves open the questions Mr. Jordan here presents, but it further demonstrates substantial historical support for the conclusion that his warrantless arrest violated common-law principles and the original meaning of the Fourth Amendment. *See also Elk*, 177 U.S. at 534; *Kurtz*, 115 U.S. at 498-99.

III. Overruling *Watson* Would Not Unduly Burden Law Enforcement.

While this Court is obligated to enforce, at a minimum, those protections afforded by the Fourth Amendment at the Founding, *see Lange*, 141 S. Ct. at 2022, beyond its misguided common law analysis, the *Watson* Court was clearly animated by practical concerns. *See* 423 U.S. at 417 (*quoting Gerstein v. Pugh*, 420 U.S. 103 (1975)) (expressing concern about creating "an intolerable handicap for legitimate law enforcement"); *Watson*, 423 U.S. at 431 (Powell, J., concurring) ("[A] constitutional rule permitting felony arrests only with a warrant or in exigent circumstances could severely hamper effective law enforcement."). For several reasons, Mr. Jordan's proposed rule would not unduly burden law enforcement.

First, the rule proposed by Mr. Jordan would have no impact on law enforcement's ability to conduct warrantless arrests for offenses committed in their presence.

Second, technological advances since 1976 have, in many circumstances, drastically increased the speed and convenience with which warrants may be obtained. *See Missouri v. McNeely*, 569 U.S. 141, 154-155 (2013); *id.* at 172-73 (Roberts, J., concurring in part and dissenting in part) (internal citations omitted):

> [P]olice can often request warrants rather quickly these days. At least 30 States provide for electronic warrant applications. * * * In many States, a police officer can call a judge, convey the necessary information, and be authorized to affix the judge's signature to a warrant. * * * Judges have been known to issue warrants in as little as five minutes. * * * And in one county in Kansas, police officers can e-email warrant requests to judges' iPads; judges have signed such warrants and e-mailed them back to officers in less than 15 minutes.

To be sure, technology does not completely eliminate all delays in the warrant-application process. *McNeely*, 569 U.S. at 155. Still, given the technological "advances in the [46] years since [*Watson*] was decided that allow for the more expeditious processing of warrant applications," overruling *Watson*'s *per se* rule would today significantly reduce the burden on law enforcement compared to that contemplated in 1976. *See id.* at 154.

Third, this Court's robust, expansive, and "well-established" exigent circumstances doctrine would still justify warrantless public arrests for offenses committed outside the presence of law enforcement in cases where a compelling need for immediate arrest

genuinely exists. *See Kentucky v. King*, 563 U.S. 452, 461-62 (2011); *Riley v. California*, 573 U.S. 373, 402 (2014) ("In 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 some of the more extreme hypotheticals that [may be] suggested[.]"; *United States v. Carloss*, 818 F.3d 988, 1007 n. 5 (10th Cir. 2016) (Gorsuch, J., dissenting) (rejecting policy-based Fourth Amendment argument inconsistent with the original meaning of the Fourth Amendment and noting that application of the exigent circumstances doctrine would adequately address the policy concerns). And, to the extent that some law enforcement agencies lack access to the technological advances in securing warrants referenced above, the relative difficulty of securing a warrant remains "relevant to an assessment of exigency." *McNeely*, 569 U.S. at 155.

Fourth, recognizing constitutional rights inevitably results in practical difficulties. *Watson*, 423 U.S. at 452 n. 19 (Marshall, J., dissenting). But this reality can never be enough to trump protections the Fourth Amendment guarantees. Otherwise, "[w]e would quickly lose all protection if it could successfully be argued that its guarantees should be ignored because if they were recognized our citizens would begin to assert them"; *see also Riley*, 573 U.S. at 401 ("Privacy comes at a cost.").

IV. The Questions Presented Are Exceptionally Important.

Only after *Watson* was erroneously decided did this Court explicitly recognize that the Fourth Amendment "must provide *at a minimum* the degree of protection it afforded when it was adopted." *Lange*, 141 S. Ct. at 2022 (*quoting Jones*, 565 U.S. 400, 411 (2012)). Relatedly, this Court has in recent years rejected broad, *per se* categorical exceptions to warrant requirements, instead favoring case-specific reasonableness determinations. *See Lange*, 141 S. Ct. at 2016; *Arizona v. Gant*, 556 U.S. 332, 343 (2009) (noting that exceptions to the warrant requirement must be "tether[ed]" to "the justifications underlying the * * * exception"); *Collins v. Virginia*, 138 S. Ct. 1663, 1672-73 (2018) (cautioning that courts must not "unmoor [warrant] exception[s] from [their] justifications * * * and transform what was meant to be an exception into a tool with far broader application"). While *Gant* and *Collins* were primarily concerned with warrantless searches rather than seizures, there is no reason their rationale should not apply to arrests under circumstances that would have required a warrant at common law. *See Watson*, 423 U.S. at 427, 429 (Powell, J., concurring) (noting the anomalous nature of *Watson* and that "[l]ogic * * * would seem to dictate that arrests be subject to the warrant requirement at least to the same extent as searches" but concurring in judgment based upon "the historical sanction accorded warrantless felony arrests.").

The more severe classification of criminal offenses during the past fifty years only exacerbates the

problem: Today's "felonies" are not only indistinguishable from many common-law misdemeanors, they are often far more benign than even the "felony" offenses that *Watson* subjected to its bright-line no-warrant-required rule. While the allegations that prompted Mr. Jordan's arrest happened to be burglary, today, "criminal laws have grown so exuberantly and come to cover so much previously innocent conduct that almost anyone can be arrested for something." *Brown v. Polk Cty.*, 141 S. Ct. 1304, 1306 (2021) (Sotomayor, J., concurring in denial of certiorari) (*quoting Nieves v. Bartlett*, 139 S. Ct. 1715, 1730 (2019) (Gorsuch, J., concurring in part and dissenting in part)); *see also Garner*, 471 U.S. at 15 (*citing* H.L. Wilgus, *Arrest Without a Warrant*, 22 Mich.L.Rev. 541, 572-73 (1924)) ("Many crimes classified as misdemeanors, or nonexistent, at common law are now felonies."); Harvey A. Silverglate, *Three Felonies a Day: How the Feds Target the Innocent* (2011), p. xxxvi:

> [F]ederal criminal laws have become dangerously disconnected from the English common law tradition and its insistence on fair notice, so prosecutors can find some arguable federal crime to apply to just about any one of us, even for the most seemingly innocuous conduct * * *.
>
> A study by the Federalist Society reported that, by the year 2007, the U.S. Code * * * contained more than 4,450 criminal offenses, up from 3,000 in 1980. Even this figure understates the challenge facing honest, law-abiding citizens.

LeAndre Jordan's warrantless arrest at gunpoint "warn[s] us that no one can breathe in this atmosphere." *See Utah v. Strieff*, 579 U.S. 232, 254 (2016) (Sotomayor, J., dissenting). In many circumstances, such arrests amount to far more than a mere "indignity" – *see id.* at 252; in some cases, they can be deadly. *See State v. Chauvin*, 27-CR-20-12646 (Hennepin County, MN) (wherein defendant was convicted of felony murder in the process of effecting a warrantless arrest upon Mr. George Floyd following the report of an offense allegedly committed outside the presence of law enforcement).

In light of the ever-expanding reach of both federal and state criminal codes, and the correspondingly massive liberty interests implicated by *Watson*'s *carte blanche* sanctioning of arrest authority in the absence of judicial oversight, the questions Mr. Jordan's case presents are exceptionally important. This Court should grant certiorari to reconcile its conflicted Fourth Amendment jurisprudence and ensure that the "citizen[s] of [our] democracy" are treated as worthy of protection, "at a minimum, * * * to the same degree the common law protected the people" – rather than as "subject[s] of a carceral state, just waiting to be cataloged" by "zealous officers * * * engaged in the often competitive enterprise of ferreting out crime." *See Carloss*, 818 F.3d at1006 (10th Cir. 2016) (Gorsuch, J. dissenting); *Strieff*, 579 U.S. at 254 (2016) (Sotomayor, J., dissenting); *Johnson v. United States*, 333 U.S. 10, 13-14 (1948).

CONCLUSION

For these reasons, *amici curiae* respectfully urge this Court to grant the Writ of Certiorari to the Ohio Supreme Court filed by Petitioner LeAndre Jordan.

Respectfully Submitted,

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