



Fall 2013

What's In A Name? A Case For Including Biometric Identifiers On Arrest Warrants

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Recommended Citation

Ryan Webb, *What's In A Name? A Case For Including Biometric Identifiers On Arrest Warrants*, 47 Loy. L.A. L. Rev. 319 (2013).

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Cover Page Footnote

J.D. Candidate, May 2014, Loyola Law School Los Angeles; B.A. Rhetoric and Political Economy, University of California, Berkeley, May 2009. Thank you to my parents for instilling in me a sense of justice, and to all the other Ryan Webbs for not having any outstanding arrest warrants.

WHAT'S IN A NAME?: A CASE FOR INCLUDING BIOMETRIC IDENTIFIERS ON ARREST WARRANTS

*Ryan Webb**

Too often, innocent individuals sharing the same name and physical characteristics as the subject of an arrest warrant are misidentified and mistakenly held by law enforcement. The use of biometric identifiers, commonly known as fingerprint identification numbers, would help reduce the number of false arrests because a person's fingerprints are entirely unique to that individual. Harkening back to 1894, the Supreme Court's prevailing interpretation of the particularity requirement of arrest warrants mandates only that the warrant include a subject's name or general physical description. With such a low threshold to establish a facially valid warrant, law enforcement officers are essentially immunized from civil liability and mistakenly arrested individuals are without legal recourse. Such consequences do not accord with the Fourth Amendment's "right of the people to be secure in their persons." This Note argues that biometric identifiers, which have been used in law enforcement and have the ability to singularly identify the actual subject of an arrest warrant, should be included on arrest warrants. This embellishment of the "particularity" standard faithfully accords with the guarantees of the Fourth Amendment and would advance the rights of individuals who are wrongly arrested.

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I. INTRODUCTION

The Fourth Amendment guarantees the “right of the people to be secure in their persons”;¹ however, when an individual possesses the same name or physical description as that listed on an arrest warrant issued for someone else, that right is no longer secure. In 1894, the Supreme Court of the United States explained the level of particularity required for describing the subject of an arrest warrant: the warrant must include the subject’s name, or if unknown, a description sufficiently identifying the subject.² Since the Court set this standard, our population has grown from roughly 63 million citizens in 1894³ to over 316 million citizens today,⁴ empirically increasing the probability that two individuals share the same name and physical description.

From 2002 to 2009, the city of Denver, Colorado, recorded over five hundred cases of wrongful incarceration where law enforcement was armed with a legally valid arrest warrant but erred and arrested the wrong person.⁵ From 2006 to 2011, the Los Angeles Sheriff’s Department recorded more than 1,480 wrongful incarcerations, many of which were executed pursuant to a valid warrant.⁶ Despite being mistakenly arrested and detained for days and weeks on end,⁷ these individuals are often left with no viable path toward judicial relief.⁸ So long as the arresting officer executed a facially valid arrest warrant, courts will generally defer to the good-faith discretion of law enforcement and hold that a reasonable mistake immunizes the government agency from civil rights liability.⁹

1. U.S. CONST. amend. IV.

2. *West v. Cabell*, 153 U.S. 78, 85 (1894) (“[A] warrant for the arrest of a person charged with a crime must truly name him, or describe him sufficiently to identify him.”).

3. *1890 Fast Facts*, U.S. CENSUS BUREAU, https://www.census.gov/history/www/through_the_decades/fast_facts/1890_fast_facts.html (last visited Oct. 18, 2012).

4. *U.S. and World Population Clock*, U.S. CENSUS BUREAU, <http://www.census.gov/main/www/popclock.html> (last visited Sept. 21, 2013).

5. Dan Frosch, *Mistaken Identity Cases at Heart of Denver Lawsuit Over Wrongful Arrests*, N.Y. TIMES, Feb. 16, 2012, at A18.

6. Robert Faturechi & Jack Leonard, *ID Errors Put Hundred In County Jail*, L.A. TIMES, Dec. 25, 2011, <http://articles.latimes.com/2011/dec/25/local/la-me-wrong-id-20111225>.

7. *Id.*

8. *See infra* Parts III.A–B.

9. *See infra* Part III.A.

As these cases illustrate, many innocent individuals may share the same name and physical characteristics listed on a valid arrest warrant; however, no two individuals possess identical fingerprints.¹⁰ Historically, prisons similarly classified and identified arrestees solely by their names and physical measurements.¹¹ After a Kansas federal prison discovered that two arrestees shared the same name and physical measurements,¹² prisons across the country abolished the system and began using fingerprinting as the primary means of identification during an arrest.¹³ Today, federal and state law enforcement use fingerprint identification numbers (“biometric identifiers”) to classify and identify arrested individuals.¹⁴ Each time a person is booked and arrested, a unique biometric identifier is assigned to that individual, thereby distinguishing him or her from all other arrestees.¹⁵

Although the evolution from names and physical measurements toward biometric identifiers has proven to be an efficient and effective improvement on the process of classifying arrestees,¹⁶ the Supreme Court maintains that a name or physical description is sufficient to identify the subject of an arrest warrant.¹⁷ Until this standard is broadened to include biometric identifiers, innocent people will continue to be wrongfully incarcerated without any hope of judicial relief.

10. *Biometric Authentication: What Method Works Best?*, TECHNOVELGY.COM, <http://www.technovelgy.com/ct/technology-article.asp?artnum=16> (last visited Sept. 21, 2013). “In over 140 years of fingerprint comparison worldwide, no two fingerprints have ever been found to be alike, not even those of identical twins.” *Id.*

11. See G. Larry Mays et al., *Review Essay: DNA (Deoxyribonucleic Acid) Evidence, Criminal Law, and Felony Prosecution: Issues and Prospects*, 16 JUST. SYS. J. 111, 112 (1992). The “Bertillon method” founded by the French police officer Alphonse Bertillon, involved measurements of an individual’s head and body, combined with photographs, physical descriptions, and other identifying marks, to create a catalogue for identifying multiple offenders. *Id.*

12. *History of Fingerprints*, CRIME SCENE FORENSICS, LLC, http://www.crimescene-forensics.com/History_of_Fingerprints.html (last visited Sept. 21, 2013).

13. See Mays et al., *supra* note 11, at 112.

14. See *infra* Part III.C (discussing the FBI’s implementation of the Integrated Automated Fingerprint Identification System (IAFIS)).

15. BUREAU OF JUSTICE STATISTICS, U.S. DEP’T OF JUSTICE, SURVEY OF STATE CRIMINAL INFORMATION SYSTEMS, 2010, at viii (2011) [hereinafter DOJ SURVEY].

16. *Biometric Authentication: What Method Works Best?*, *supra* note 10.

17. See *West v. Cabell*, 153 U.S. 78, 85 (1894).

Part II of this Note examines current arrest warrant procedure, traces evolving Fourth Amendment jurisprudence, and frames the warrant particularity issue through two recent federal court decisions regarding the use of biometric identifiers on arrest warrants. Part III first analyzes the existing paths toward judicial relief available to wrongfully incarcerated individuals, and then discusses the integration of fingerprinting and biometric identifiers in current federal and state law enforcement procedures. Part IV details the effects that the use of biometric identifiers would have on arrest warrant procedures and, ultimately, proposes that the Supreme Court interpret the Fourth Amendment's warrant particularity requirement to include the use of numerical biometric identifiers capable of singularly identifying an arrest warrant's actual subject on all existing and future arrest warrants.

II. BACKGROUND

The Fourth Amendment explicitly requires that “no Warrants¹⁸ 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.”¹⁹ Before an individual can be lawfully arrested through an arrest warrant pursuant to the Fourth Amendment, the warrant must be properly issued by a magistrate and properly executed by a peace officer of the state.²⁰ Both the issuance and execution of the warrant are subject to separate determinations of probable cause.²¹ When individuals assert a violation of the Fourth Amendment Warrant Clause, they primarily rely on one of two distinct theories: that the warrant was not properly issued because it did not describe its subject with particularity, or that the warrant was

18. While the clause refers to both arrest and search warrants, this Note focuses solely on its application to arrest warrants. Unlike a search warrant, which gives authority to search an individual's residence, an arrest warrant “command[s] the arrest of a designated person, such person to be brought before a court or magistrate to answer specified charges.” RONALD L. CARLSON, *CRIMINAL JUSTICE PROCEDURE* § 2.1 (7th ed. 2005).

19. U.S. CONST. amend. IV.

20. CARLSON, *supra* note 18, § 2.1.

21. *See id.*; THOMAS K. CLANCY, *THE FOURTH AMENDMENT: ITS HISTORY AND INTERPRETATION* §§ 12.2.1, 12.5.1 (2008).

not properly executed because the arresting officer lacked probable cause for the arrest.²²

A. Issuance and Execution of an Arrest Warrant

To satisfy the probable cause requirement, a magistrate or judicial officer must issue the arrest warrant and can only do so upon a finding that probable cause justifies the arrest.²³ In *Henry v. United States*,²⁴ the Supreme Court observed that probable cause, as required for the issuance of an arrest warrant, can only exist “if the facts and circumstances known to the officer warrant a prudent man in believing that the offense has been committed.”²⁵ Thus, to establish probable cause, the magistrate must examine the peace officer’s complaint, given under oath, and “carefully review any written application or affidavits supporting the request for an arrest warrant.”²⁶ In this way, establishing probable cause largely depends on satisfaction of the Clause’s second requirement, that it be supported by “Oath or affirmation,” for a magistrate will not issue the warrant unless the officer affirms that the facts giving rise to the warrant’s necessity are true.²⁷ Finally, for a warrant to be validly issued, it must satisfy the particularity requirement by including: (1) the defendant’s name or a description by which the defendant can be identified with reasonable certainty; (2) a description of the offense charged in the complaint; (3) a command that the defendant be arrested and brought without unnecessary delay before a magistrate judge or, if none is reasonably available, before a state or local judicial officer; and (4) a judge’s signature.²⁸

22. CLANCY, *supra* note 21, at §§ 12.2.2, 12.3.1. One can also argue that the officer’s affidavit submitted to the issuing magistrate lacked indicia of probable cause for proper issuance. These types of cases are rare. “[T]he only evidence admissible at [such a] hearing is the evidence submitted to the magistrate who issued the warrant” and, typically, great deference is given to the magistrate’s determination of probable cause. *Id.* §§ 12.3.1–12.3.2.

23. CARLSON, *supra* note 18, § 2.1.

24. 361 U.S. 98 (1959).

25. *Id.* at 102.

26. CARLSON, *supra* note 18, § 2.1; *see also* *Wong Sun v. United States*, 371 U.S. 471, 481–82 (1963) (“The arrest warrant procedure serves to insure that the deliberate, impartial judgment of a judicial officer will be interposed between the citizen and the police, to assess the weight and credibility of the information which the complaining officer adduces as probable cause.”).

27. CARLSON, *supra* note 18, § 2.1.

28. FED. R. CRIM. P. 4(b)(1)(a)–(d).

When executing the warrant, the arresting police officer need not have a copy of the warrant in his or her possession to make a valid arrest.²⁹ For instance, when an officer conducts a traffic stop and runs a background check on the driver, the officer can access the Sheriff's Data Network and other criminal databases through the patrol car laptop, or call a law enforcement agency and have an official convey the warrant's description telephonically.³⁰ The officer executing the warrant then must make an objective probable cause determination that the subject of the warrant matches the arrestee.³¹ The arresting officer's determination should be based on the "totality of the circumstances" and whether there is a "reasonable belief" that the arrestee is, in fact, the person named in the warrant.³² This determination of probable cause at the time of execution and the particularity of the warrant's description upon issuance provide courts the dual framework for assessing a violation of the Fourth Amendment's warrant requirement.³³

*B. Evolving Jurisprudence on the Fourth Amendment's
Warrant Particularity Requirement*

The Supreme Court first evaluated the scope of the Fourth Amendment's particularity requirement in *West v. Cabell*.³⁴ In *West*, U.S. Marshall William Cabell arrested Vandy M. West on a charge of murder.³⁵ The warrant under which West was arrested, however, named the subject as "James West" and did not contain any other description.³⁶ Before trial, West requested that the jury be instructed that a warrant for the arrest of James West could not authorize his arrest even if he was the intended party because the warrant

29. NANCY YUENGER ET AL., CALIFORNIA CRIMINAL LAW PROCEDURE AND PRACTICE § 4.7 (2012).

30. See *New Mobile Computers in LA Sheriff's Patrol Cars Increase Public Safety Through Advanced Technology*, LACOUNTY.GOV, <http://sheriff.lacounty.gov/wps/portal/lasd/media/detail/?current=true&uril=wcm:path:/lasd+content/lasd+site/home/home+top+stories/new+mobile+computers+in+la+sheriffs+patrol+cars+increase+public+safety+through+advanced+technology> (last visited Sept. 21, 2013).

31. YUENGER ET AL., *supra* note 29, § 4.5.

32. *Hill v. Scott*, 349 F.3d 1068, 1072–73 (8th Cir. 2003).

33. CLANCY, *supra* note 21, §§ 12.2.2, 12.3.1.

34. 153 U.S. 78 (1894).

35. *Id.* at 78.

36. *Id.* at 78–79.

incorrectly named the intended subject.³⁷ The lower court disagreed and refused to grant West's request.³⁸

The Supreme Court subsequently overturned the lower court's ruling and decided, "a warrant for the arrest of a person charged with a crime must truly name him, or describe him sufficiently to identify him."³⁹ Applying this standard, the Court then found the warrant to be defective because it contained neither West's correct name nor a description of him.⁴⁰ The Court's interpretation of the Fourth Amendment's particularity requirement, as set forth in *West*, remains the standard by which an arrest warrant is determined to be facially valid.⁴¹

Since *West*, the Court has refused to address the constitutionality of the particularity standard, focusing instead on the reasonableness of warrant execution and the existence of probable cause despite reasonable mistakes in matching the warrant to the arrestee.⁴²

In *Hill v. California*,⁴³ the Supreme Court granted certiorari to determine whether an arrest based on mistaken identity, but executed pursuant to a valid warrant, violated the Fourth Amendment.⁴⁴ The case primarily revolved around an armed robbery that occurred in Studio City, California.⁴⁵ The day after the robbery occurred, police officers arrested two men for possession of narcotics and, upon investigation of their car, found stolen property linking the men to the robbery.⁴⁶ The two men told the officers the car belonged to Archie Hill and implicated Hill as one of the bank robbers.⁴⁷

After checking Hill's arrest record and verifying that his age and physical characteristics matched the descriptions given by the two

37. *Id.* at 80.

38. *Id.*

39. *Id.* at 85.

40. *Id.* at 87–88.

41. *See* *Rivera v. County of Los Angeles*, No. CV 10-1861, 2011 WL 2650006, at *8–10 (C.D. Cal. July 5, 2011).

42. *See* Cynthia Lee, *Reasonableness with Teeth: The Future of Fourth Amendment Reasonableness Analysis*, 81 MISS. L.J. 1133, 1147–48 (2012); Melanie Schoenfeld, *Constitutional Amnesia: Judicial Validation of Probable Cause for Arresting the Wrong Person on a Facially Valid Warrant*, 79 WASH. U. L.Q. 1227, 1239–40, 1250–51 (2001).

43. 401 U.S. 797 (1971).

44. *Id.* at 802–05.

45. *Id.* at 797–98.

46. *Id.* at 798–99.

47. *Id.*

men and the robbery victims, the officers went to Hill's address.⁴⁸ When the officers arrived at Hill's residence, a man named Miller answered the door; he stated that he was not Hill and knew nothing about the stolen property.⁴⁹ However, because Miller matched the physical description for Hill, the officers arrested Miller and seized the stolen property they found in the home incident to Miller's arrest.⁵⁰

Hill was subsequently arrested and charged with robbery.⁵¹ At the preliminary hearing before Hill's trial, Hill argued that Miller's arrest was invalid under the Fourth Amendment and that any property seized during the arrest could not legally be used as evidence against Hill.⁵² The trial judge sustained the admissibility of the evidence, finding that "the arresting officers had acted in the good-faith belief that Miller was in fact Hill."⁵³ The Supreme Court granted certiorari and upheld the validity of both Miller's arrest and the subsequent search of Hill's home.⁵⁴ The Court held that as long as the police have probable cause to arrest one person, the subsequent arrest of the wrong person based on a reasonable mistake in identifying the subject is constitutionally valid.⁵⁵ The Court clarified that "sufficient probability, not certainty, is the touchstone of reasonableness under the Fourth Amendment."⁵⁶

Numerous lower courts have since expanded the notion of "reasonableness" in similar cases of mistaken identity arrests based on a facially valid warrant.⁵⁷ In *Hill v. Scott*,⁵⁸ Brian Arthur Hill, an

48. *Id.* at 799.

49. *Id.*

50. *Id.* at 797, 801–03. The police did not have an arrest or search warrant for Hill or his apartment. *Id.* A search incident to an arrest includes the right to search the arrestee's near vicinity and is justified by the general right to seize items connected with a crime. *See* CARLSON, *supra* note 18, § 2.2.

51. *Hill v. California*, 401 U.S. at 799–802.

52. *Id.* at 801–02.

53. *Id.* at 801.

54. *Id.*

55. *Id.* at 802.

56. *Id.* at 804.

57. *See* *Brown v. Patterson*, 823 F.2d 167, 169 (7th Cir. 1987) (holding an officer was reasonable to arrest § 1983 plaintiff with the same name and race, but otherwise different information, as was listed on the warrant); *Johnson v. Miller*, 680 F.2d 39, 41–42 (7th Cir. 1982) (concluding police officer's misidentification arrest of a white woman pursuant to an arrest warrant for a black woman did not violate the Constitution).

58. 349 F.3d 1068 (8th Cir. 2003).

African-American, was arrested under a warrant issued for a different Brian Hill, even though the warrant specified a different middle name, birth date, and eye color.⁵⁹ Before his arrest, Hill called the police to report his disabled parking permit had been stolen.⁶⁰ Three officers arrived on the scene, and Officer Scott, who recognized Hill,⁶¹ called and asked a dispatcher to conduct a warrant check on a “Brian Hill.”⁶² The dispatcher replied that there was an outstanding warrant issued for a “Brian Walter Hill . . . who was 5’11” and 175 pounds with green eyes.”⁶³ Believing the warrant was for the Hill he recognized, Officer Scott told the other officers to execute the warrant.⁶⁴ When Hill protested that he was not the person on the warrant, a confrontation arose between Hill and the arresting officers, which required Hill to be immediately hospitalized.⁶⁵ Despite Hill’s insistence that Officer Scott should have investigated his middle name, date of birth, and eye color before executing the arrest, the court nonetheless held that Hill could not assert a violation of his Fourth Amendment rights.⁶⁶ Once the court determined the warrant was facially valid, it held that “[Officer] Scott had sufficient consistent identifying information to reasonably conclude the warrant was for appellant Hill and no reasonable officer would have known failing to investigate further would violate the Fourth Amendment.”⁶⁷

While the court acknowledged that further investigation would have confirmed Brian Hill was innocent,⁶⁸ it was bound by *Hill v. California*’s holding that a “mistaken arrest based on a facially valid warrant does not violate the Fourth Amendment if the officers reasonably mistook the arrestee for the person named in the warrant.”⁶⁹ Thus, as *Hill v. Scott* shows, even where height, weight,

59. *Id.* at 1072.

60. *Id.* at 1070.

61. In 1995, Hill sued Officer Scott and other officers for wrongful arrest and excessive force, and defendants settled on the eve of trial. The events at issue in this case occurred less than a year after the settlement. *Id.*

62. *Id.*

63. *Id.*

64. *Id.* at 1071.

65. *Id.* at 1070–71.

66. *Id.* at 1074.

67. *Id.*

68. *Id.* at 1073–74.

69. *See id.* at 1072.

and eye color differ, the court will defer to the officer's good-faith determination of probable cause.⁷⁰

As courts like the one in *Hill v. Scott* continue to broaden the standard of reasonableness by which an officer may obtain probable cause to execute an arrest warrant against an innocent individual,⁷¹ other lower courts have questioned whether a name or physical description remains the most reasonable form of warrant identification in light of the growing number of wrongful incarcerations.⁷²

C. Biometric Identifiers and the Fourth Amendment's Particularity Requirement

The following California federal district court cases involve two of the more than 1,480 wrongful incarcerations that took place in Los Angeles, California, from 2006 to 2011.⁷³ In both cases, the arrest warrants satisfied the particularity standard set down in *West*, but failed to include biometric identifiers readily available to Los Angeles law enforcement officials.⁷⁴

1. *Rivera v. County of Los Angeles*⁷⁵

On July 12, 1985, a Los Angeles Superior Court issued an arrest warrant for an individual named Santiago Rivera on charges of felony manslaughter and violations of California Vehicle Code sections 23153(a) and 23153(b).⁷⁶ The warrant contained the name "Santiago Rivera," a birth date, and a description that the subject was a Hispanic male with brown hair, brown eyes, a height of five feet five inches, and a weight of 180 pounds.⁷⁷ On June 18, 1989, Montclair police arrested a Santiago Iberra Rivera ("Rivera") on the mistaken belief that he was the warrant's actual subject.⁷⁸ Although

70. *See id.* at 1073–74.

71. *See id.* at 1075–76 (Heaney, J., dissenting); *see Lee, supra* note 42, at 1142–43.

72. *See infra* Part II.C.

73. *Smith v. County of Los Angeles*, No. CV 11-10666 (C.D. Cal. Sept. 11, 2012); *Rivera v. County of Los Angeles*, No. CV 10-1861, 2011 WL 2650006 (C.D. Cal. July 5, 2011); *Faturechi & Leonard, supra* note 6.

74. *Smith*, No. CV 11-10666, slip op. at 4, 12; *Rivera*, 2011 WL 2650006, at *6, *8–10, *13.

75. No. CV 10-1861, 2011 WL 2650006 (C.D. Cal. July 5, 2011).

76. *Id.* at *2; CAL. VEH. CODE § 25153(a)–(b) (West 2013) (criminalizing driving under the influence and causing injury).

77. *Rivera*, 2011 WL 2650006, at *3.

78. *Id.* at *2.

this Rivera was one inch taller and ten pounds lighter than the warrant's description stated,⁷⁹ the arresting officers maintained that this Rivera matched the description and proceeded to book him in the San Bernardino detention center.⁸⁰ Rivera was not released until nine days later when a fingerprint comparison revealed that he was not the actual subject.⁸¹ Without making any changes to the warrant's description, the police reissued the warrant just a few days following Rivera's release.⁸²

Then on March 7, 2009, almost twenty years after his wrongful arrest, Rivera was riding in a car in San Bernardino, California, when police stopped the vehicle for missing a license plate.⁸³ An officer ran a record check against Rivera's name and pulled up the arrest warrant for the other Santiago Rivera.⁸⁴ Despite Rivera's protests that he was mistakenly arrested on the same warrant twenty years earlier, Rivera was booked in the local detention center for two days, and then transferred to the Los Angeles Sheriff's Department.⁸⁵ Due to the seriousness of the charges in the warrant and the court's inability to locate the fingerprint file of the true subject, Rivera remained in custody for thirty-three days until a fingerprint comparison revealed he was not the actual subject.⁸⁶

Following his second faulty arrest, Rivera brought suit against Los Angeles and San Bernardino Counties asserting civil rights claims under § 1983 for violation of his Fourth and Fourteenth Amendment rights.⁸⁷ Rivera claimed that in both incidents, the warrant did not satisfy the Fourth Amendment's particularity requirement.⁸⁸ Specifically, he argued that his Fourth Amendment rights were violated because the warrant failed to contain the actual subject's biometric identification number when it was originally issued in 1985 and subsequently failed to include either his or the actual suspect's biometric identification number upon the warrant's

79. *Id.* at *3, *8-9.

80. *Id.* at *2.

81. *Id.*

82. *See id.*

83. *Id.* at *3.

84. *Id.*

85. *Id.* at *34.

86. *Id.* at *4.

87. *Id.* at *1.

88. *Id.* at *1, *6.

reissuance in 1989.⁸⁹ The court cited *West* and held not only that the descriptions in both warrants contained more information than legally required, but that both sets of arresting officers were reasonable in their beliefs that Rivera was the intended subject of the warrants.⁹⁰

2. *Smith v. County of Los Angeles*⁹¹

In 1991, the Los Angeles Municipal Court⁹² issued a felony arrest warrant for a Reggie Lamar Smith for failing to appear for sentencing on a felony sexual battery charge.⁹³ Although law enforcement had the suspect's fingerprint identification numbers at the time the warrant was issued,⁹⁴ the warrant only identified the suspect by first and last name, date of birth, ethnicity, sex, height, weight, eye color, and hair color.⁹⁵

On July 25, 2007, Reginald Lenard Smith ("Smith") was pulled over for a traffic violation in Antioch, Tennessee.⁹⁶ The arresting officer searched his name and discovered the 1991 warrant, which matched Smith's information and description.⁹⁷ Smith was subsequently arrested and extradited to California where he was incarcerated for thirteen days.⁹⁸ After his release, the Los Angeles Superior Court reissued the warrant with the same name and description and without any information clearing Smith as the intended subject.⁹⁹ Four years later, on January 27, 2011, Smith was arrested again on the belief he was the Reggie Lamar Smith described in the warrant.¹⁰⁰

89. *Id.* at *6.

90. *Id.* at *8–10.

91. No. CV 11-10666 (C.D. Cal. Sept. 11, 2012).

92. On January 22, 2000, the Judges of the Municipal and Superior Courts voted to merge into the Superior Court of California, County of Los Angeles. *Historical Perspective*, LOS ANGELES SUPERIOR COURT <http://www.lasuperiorcourt.org><http://www.lasuperiorcourt.org><http://www.lasuperiorcourt.org/abotcourt/ui/history.aspx> (last visited Sept. 21, 2013).

93. *Smith*, No. CV 11-10666, slip op. at 4.

94. *Id.*

95. *Id.*

96. *Id.*

97. *Id.*

98. *Id.* The basis for his release is unclear. The case simply states "the Superior Court ordered [Smith's] release from jail on the basis that he was not the subject of the warrant." *Id.*

99. *Id.*

100. *Id.*

After both of his arrests, in 2007 and 2011, Smith brought civil rights claims against the county of Los Angeles for violations of his Fourth and Fourteenth Amendment rights.¹⁰¹ Regarding his second arrest, Smith argued that the warrant did not meet the particularity requirement by failing to contain the true suspect's biometric identifier, Smith's biometric identifier, or a statement exonerating Smith as the intended subject.¹⁰² Responding to the County's motion to dismiss, the court dismissed Smith's Fourth Amendment claim with prejudice.¹⁰³ In reaching its decision, the court explained:

In short, the Fourth Amendment does not require additional information regarding the subject of an arrest warrant when the warrant correctly names the subject. Only when "the authorities do not know, or are uncertain of the intended arrestee's name" must officers "give[] some other description of the intended arrestee that is sufficient to identify him."¹⁰⁴

However, contrary to its holding, the court acknowledged a deficiency in the law stating:

It appears clear that requiring the use of biometric identifiers would not be at all burdensome and would provide a more precise description of the person sought than traditional identifiers. However, controlling jurisprudence, which this Court is . . . bound to follow, does not require the use of biometric identifiers regardless of burden.¹⁰⁵

III. ANALYSIS

The wrongful incarcerations of Santiago Rivera, Reginald Smith, and thousands of others¹⁰⁶ clearly demonstrate the need for broadening the particularity standard in *West* to include biometric

101. *Id.* at 4–5, 10 (referring to *Gant v. County of Los Angeles*, No. CV 08-05756, 2011 WL 1585133 (C.D. Cal. Oct. 8, 2009) where Smith was a plaintiff and the court dismissed all of Smith's claims).

102. *Id.* at 4–5.

103. *Id.* at 12.

104. *Id.* at 11–12 (citations omitted) (quoting *Gant*, 2011 WL 1585133, at *17 (quoting *Powe v. City of Chicago*, 664 F.2d 639, 647 (7th Cir. 1981))).

105. *Id.* at 12.

106. See *Frosch*, *supra* note 5; see *Faturechi & Leonard*, *supra* note 6.

identifiers. Without such a change, the rights of mistakenly arrested individuals to some form of relief will continue to be curbed by the entrenched judicial deference to the discretion of law enforcement in civil rights cases.

*A. The Presumption of Qualified Immunity in
Determining Probable Cause*

As the precedent above shows, asserting a violation of the Fourth Amendment's Warrant Clause must rest on a theory either that the warrant was invalid or that the arresting officer lacked probable cause.¹⁰⁷ Thus, individuals mistakenly arrested on a warrant that is valid under *West* must argue that the arresting officer lacked probable cause for arrest.¹⁰⁸

In situations where an officer wrongfully arrests an individual pursuant to a facially valid warrant, the law enforcement agency is entitled to a defense of qualified immunity.¹⁰⁹ The Supreme Court of the United States defined the modern test for qualified immunity in *Harlow v. Fitzgerald*.¹¹⁰ In *Harlow*, the Court determined, "government officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known."¹¹¹ In the context of wrongful incarceration, federal courts have interpreted *Harlow* to mean that "a mistaken arrest based on a facially valid warrant does not violate the Fourth Amendment if the officers reasonably mistook the arrestee for the person named in the warrant."¹¹² *Hill v. Scott* demonstrates that an arresting officer need not investigate any further once some reasonable basis for arrest exists at the time of the warrant's execution.¹¹³ In fact, some courts seem willing to accept

107. See *supra* Part II.B.

108. *Id.*

109. *Hill v. Scott*, 349 F.3d 1068, 1071–72 (8th Cir. 2003).

110. 457 U.S. 800 (1982).

111. *Id.* at 818.

112. Luke Klinker, *Hill v. Scott: The Eighth Circuit Upholds the Basic Principles of the Objective Reasonableness Standard in a Case of Mistaken Identity Arrest*, 38 CREIGHTON L. REV. 691, 691 (2004–2005).

113. See *Scott*, 349 F.3d at 1072–73. Despite the fact that Hill was an African American and the warrant described the subject as having green eyes, "the first and last names were identical, the two Brian Hills [were] only two years apart in age, and there was only one inch difference in height and twenty-five pounds difference in weight." *Id.* at 1072.

the officer's good-faith reliance on the validity of the warrant alone as a bar to recovery.¹¹⁴ Ultimately, as long as the arresting officer was not presented with contradictory information before making the arrest, a court will find a sufficient basis for probable cause and bar recovery under the Fourth Amendment.¹¹⁵

B. Turning to the Fourteenth Amendment for Relief

Given the difficulty of obtaining relief under the Fourth Amendment, victims of mistaken identity arrests will often also assert civil rights violations of their Fourteenth Amendment due process rights¹¹⁶ under 42 U.S.C. § 1983.¹¹⁷ The Fourteenth Amendment's Due Process Clause protects individuals against deprivations of liberty without due process of law.¹¹⁸ It is widely held "that an individual has a liberty interest in being free from incarceration absent a criminal conviction."¹¹⁹ To bring a § 1983 cause of action against a state or municipal officer, the plaintiff

must establish that (1) he was "deprived of his constitutional rights by defendants and their employees acting under color of state law;" (2) that the defendants have customs or policies which "amount[] to deliberate indifference" to their constitutional rights; and (3) that these policies are the "moving force behind the constitutional violation[s]."¹²⁰

114. *Wise v. City of Philadelphia*, No. CIV. A. 97-2651, 1998 WL 464918, at *2-3 (E.D. Pa. July 31, 1998) (finding that the arresting officers reasonably relied on an invalid bench warrant); *St. Fort v. Grinnel*, No. 95-C-2295, 1995 WL 632274, at *3 (N.D. Ill. Oct. 26, 1995) ("An officer acting upon a facially valid warrant possesses probable cause to arrest.").

115. *See Scott*, 349 F.3d at 1072.

116. *See Smith v. County of Los Angeles*, No. CV 11-10666, slip op. at 7-9 (C.D. Cal. Sept. 11, 2012); *Rivera v. County of Los Angeles*, No. CV 10-1861, 2011 WL 2650006, at *10-17 (C.D. Cal. July 5, 2011).

117. The Supreme Court has stated that "section [1983] is not itself a source of substantive rights, but a method for vindicating federal rights elsewhere conferred by those parts of the United States Constitution and federal statutes that it describes." *Baker v. McCollan*, 443 U.S. 137, 144 n.3 (1979).

118. U.S. CONST. amend. XIV.

119. *Rivera*, 2011 WL 2650006, at *9.

120. *Id.* at *6 (quoting *Lee v. City of Los Angeles*, 250 F.3d 668, 681-82 (9th Cir. 2001)); *see also* 42 U.S.C. § 1983 (2006) (stating that any citizen deprived of his or her rights by a state or municipal officer acting under color of statute, ordinance or custom may seek redress in a civil action).

In *Rivera*, plaintiff Rivera asserted § 1983 due process violations resting on two different theories.¹²¹ Rivera first claimed that defendants deprived him of due process by detaining him in spite of readily available information that he was not the intended subject.¹²² Rivera then claimed that defendants deprived him of due process by failing to update the warrant database to reflect that he had been cleared as the warrant's subject following his first arrest.¹²³

The court, relying on *Baker v. McCollan*¹²⁴ and *Lee v. City of Los Angeles*,¹²⁵ framed Rivera's first argument to be an issue of whether the Los Angeles County defendants "were constitutionally obligated to go beyond the paperwork . . . and independently verify that Plaintiff was, in fact, the subject of the warrant."¹²⁶ The court rejected this argument, reiterating what it believed to be a common-sense principle: that "a jailer should not be expected to go behind a court order of commitment to determine whether a person presented for safekeeping has been convicted as a result of some denial of his constitutional rights."¹²⁷

121. Rivera asserted an additional theory that his Fourteenth Amendment rights were violated because defendant Los Angeles County failed to independently verify his identity. *Rivera*, 2011 WL 2650006, at *10, *14–15. This theory is not addressed in the opinion because the Court's ruling relied on the same rationale as its ruling on Rivera's first argument: that Defendants were not required to independently investigate Rivera's identity or Rivera's innocence. *See id.* at *12, *14–15.

122. *Id.* at *11–13.

123. *Id.* at *13–14.

124. 443 U.S. 137 (1979). *Baker* involved a situation where an arrest warrant was issued against the wanted subject's brother after the subject furnished a duplicate of his brother's identification during a prior arrest. *Id.* at 140–41. When local police attempted to execute the warrant, they arrested the wrong brother, who, in spite of repeated protests of innocence, was detained in county jail for three days before the discrepancy was discovered. *Id.* at 141. In determining whether he was deprived of due process, the Court noted that "depending on what procedures the State affords defendants following arrest and prior to actual trial, mere detention pursuant to a valid warrant but in the face of repeated protests of innocence will after the lapse of a certain amount of time deprive the accused of liberty . . . without due process of law." *Id.* at 145–46. Nonetheless, the court held that "a sheriff executing an arrest warrant is [not] required by the Constitution to investigate independently every claim of innocence," and found the three-day detention did not amount to a deprivation without due process of law. *Id.*

125. 250 F.3d 668 (9th Cir. 2001). "A detainee's loss of liberty gives rise to a due process claim under *Baker* at the point when detaining officials know or should know that the detainee is entitled to release." *Rivera*, 2011 WL 2650006, at *11.

126. *Rivera*, 2011 WL 2650006, at *10–11.

127. *Id.* at *12 (quoting *Lumbermens Mut. Cas. Co. v. Rhodes*, 403 F.2d 2, 7 (10th Cir. 1968)).

Rivera's second argument asserted that defendants should have updated the warrant database with information clearing him as the subject following his first arrest, and that the failure to do so was a violation of his Fourteenth Amendment rights.¹²⁸ To determine whether due process requires a governmental entity to engage in such a procedure, the court applied the three-part balancing test¹²⁹ established in *Mathews v. Eldridge*.¹³⁰ The court balanced the risk of error in light of Rivera's interest against the government's interest and found that "the Due Process Clause does require a custodial agency to update a re-issued warrant to include information regarding an individual's exoneration on the basis of mistaken identity."¹³¹

Nonetheless, the court concluded that Rivera could not prevail on his second due process claim for failure to satisfy the second and third prongs of the § 1983 statute.¹³² Specifically, the court found that Rivera did not present evidence that the failure to update the warrant database was a custom or practice of "deliberate indifference," relying on the argument that "a single constitutional deprivation ordinarily is insufficient to establish a longstanding practice or custom."¹³³

As *Rivera* illustrates, recovery under the Fourteenth Amendment requires not only proof of a due process violation, but also a showing that the government agency's behavior is the result of a custom of "deliberate indifference."¹³⁴ Yet, applying a "deliberate indifference" standard imposes a level of subjectivity that makes it nearly

128. *Id.* at *13.

129. The test requires that the court balance: (1) the private interest affected by the official action; (2) the risk of erroneous deprivation and the probable value of additional safeguards; and (3) the governmental interest, including the fiscal and administrative burdens of additional procedures. *Mathews v. Eldridge*, 424 U.S. 319, 334–35 (1976).

130. 424 U.S. 319.

131. *Rivera*, 2011 WL 2650006, at *13 (finding that the relatively uncommon nature of the case made the risk of error slight, and that Rivera's interest in being free from incarceration outweighed the government's burden to update its database when an individual is exonerated on the basis of mistaken identity).

132. The second and third prongs state that the plaintiff must prove that "the governmental entity has customs or policies which amount to a deliberate indifference to constitutional rights," and that these "policies are the moving force behind the constitutional violations." *Id.* at *14.

133. *Id.* at *14 (citing *Christie v. Iopa*, 176 F.3d 1231, 1235 (9th Cir. 1999)).

134. *Id.*

impossible to obtain relief under § 1983.¹³⁵ Under this standard, wrongfully incarcerated individuals must not only obtain records from a government database to prove custom, but also prove that the agency subjectively chose to ignore their due process rights.¹³⁶ Thus, individuals mistakenly arrested and detained pursuant to a valid warrant are faced with a high probability of no relief.¹³⁷

C. Fingerprint Technology and Biometric Identifiers

Given the difficulty for mistaken identity victims to obtain relief pursuant to a Fourth or Fourteenth Amendment violation, revising the particularity standard to include biometric identifiers presents an alternative remedy.

1. Integration of Fingerprinting in Law Enforcement

In 1903, a federal prison in Leavenworth, Kansas, helped change the way the American criminal justice system classifies and identifies arrested individuals.¹³⁸ Prior to 1903, prisons classified arrestees using Bertillon measurements¹³⁹ and numerical measurements of a person's face and body parts.¹⁴⁰ When a man named Will West was arrested and booked into the Leavenworth prison system, prison officials photographed his face and took his Bertillon measurements.¹⁴¹ Upon completion of the booking, officials discovered that another inmate, William West, had the same Bertillon measurements and bore a striking resemblance to Will West.¹⁴² The incident called into question the reliability of Bertillon measurements and ultimately led Leavenworth to become the first

135. See DeAnna Pratt Swearingen, *Innocent Until Arrested?: Deliberate Indifference Toward Detainees' Due Process Rights*, 62 ARK. L. REV. 101, 117–19 (2009).

136. See *id.*

137. See Schoenfeld, *supra* note 42, at 1250–51.

138. Fingerprinting has been embedded in the criminal justice system for over 100 years and has never failed as a means of personal identification. *History of Fingerprints*, *supra* note 12. “No two fingerprints have ever been found to be alike, not even those of identical twins.” *Biometric Authentication: What Method Works Best?*, *supra* note 10.

139. *History of Fingerprints*, *supra* note 12.

140. *Bertillon System of Criminal Identification*, NAT'L L. ENFORCEMENT MUSEUM INSIDER, <http://www.nleomf.org/museum/news/newsletters/online-insider/november-2011/bertillon-system-criminal-identification.html> (last visited Sept. 21, 2013).

141. *History of Fingerprints*, *supra* note 12.

142. *Id.*

American penitentiary system to install a fingerprint system in 1904.¹⁴³

Shortly after Leavenworth, the Second Circuit examined the need for an improved identification system in *United States v. Kelly*,¹⁴⁴ a case deciding whether fingerprinting should become a routine part of the New York state booking process.¹⁴⁵ The court ruled to adopt fingerprinting, finding “no ground in reason or authority for interfering with a method of identifying persons charged with crime which has now become widely known. . . .”¹⁴⁶

2. Fingerprints in the Digital Era

Just a few years ago, completing an arrestee’s fingerprint check could take up to three months, “because fingerprint cards had to be physically transported and processed.”¹⁴⁷ However in 1999, the FBI implemented the Integrated Automated Fingerprint Identification System (IAFIS),¹⁴⁸ an automated system for searching fingerprint files, capable of “distinguish[ing] a single fingerprint from thousands or even millions of fingerprints previously scanned and stored in digital form in the computer’s memory.”¹⁴⁹ IAFIS maintains the largest biometric database in the world,¹⁵⁰ containing fingerprints, criminal history files, and associated mug shots for more than seventy million subjects.¹⁵¹ IAFIS also allows for the interstate exchange of this information though the Interstate Identification

143. MITCHEL P. ROTH, PRISONS AND PRISON SYSTEMS: A GLOBAL ENCYCLOPEDIA 159 (Greenwood Press, 2006).

144. 55 F.2d 67 (2d Cir. 1932).

145. *Id.* at 67, 70.

146. *Id.* at 68. The Second Circuit reversed the district court’s finding that the State lacked statutory authority to integrate fingerprinting into the booking process. *Id.* The Court noted that fingerprinting was “a very certain means [of identification] . . . especially important in a time when increased population and vast aggregations of people in urban centers have rendered the notoriety of the individual in the community no longer a ready means of identification.” *Id.* at 69.

147. *All About Integrated Automated Fingerprint Identification System (IAFIS)*, POLICEONE.COM, <http://www.policeone.com/police-products/investigation/afis/articles/1802754-All-About-Integrated-Automated-Fingerprint-Identification-System-IAFIS/> (last visited Sept. 21, 2013).

148. *Integrated Automated Fingerprint Identification System*, FBI.GOV, http://www.fbi.gov/about-us/cjis/fingerprints_biometrics/iafis/iafis (last visited Sept. 21, 2013).

149. DOJ SURVEY, *supra* note 15, at v.

150. *See Integrated Automated Fingerprint Identification System*, *supra* note 148 (stating that IAFIS is the largest biometric database in the world).

151. *Id.*

Index (III).¹⁵² As of December 2010, all fifty states and the District of Columbia participated in III and had access to every other state's criminal history files.¹⁵³

After a set of fingerprints is entered into IAFIS, a biometric identification number is assigned, matching the individual to his or her fingerprints.¹⁵⁴ Law enforcement agencies primarily use two identifiers: a State Identification (SID) number, assigned to every individual booked into a state jail, and an FBI number, assigned to all persons arrested for a felony in any state.¹⁵⁵

Once an individual is arrested and booked into county jail, the law enforcement agency will fingerprint and photograph the individual.¹⁵⁶ Forty-two states, including California, take fingerprints using "livescan" technology, which captures an electronic image of the arrestee's fingerprints.¹⁵⁷ In California, for example, the image is transmitted to the California Department of Justice (CDOJ), and within a few minutes, the CDOJ responds with the arrestee's SID and/or FBI number and criminal history.¹⁵⁸ If there is no match, the CDOJ assigns new SID and FBI numbers for the arrestee.¹⁵⁹

Given the prevalence of fingerprint technology and nationwide access to IAFIS, many argue that the use of FBI and SID numbers is the most efficient and effective form of positively identifying an individual with a criminal history.¹⁶⁰ Entering a SID or FBI number into III pulls up all identifying information linked to that individual, including his or her name, birth date, race, sex, criminal history, and associated mug shot.¹⁶¹ Furthermore, patrol cars are gradually being

152. DOJ SURVEY, *supra* note 15, at v.

153. *Id.* at vi.

154. *Id.*

155. *Smith v. County of Los Angeles*, No. CV 11-10666, slip op. at 2 (C.D. Cal. Sep. 11, 2012).

156. *See, e.g.*, ALASKA STAT. § 12.80.060 (1962); ARIZ. REV. STAT. ANN. § 41-1750 (2004); CONN. GEN. STAT. § 29-11 (2003); GA. CODE ANN. § 35-3-4 (2000); IDAHO CODE ANN. § 67-3004 (2001); N.C. GEN. STAT. § 148-76 (2003); VA. CODE ANN. § 19.2-390 (2004); W. VA. CODE § 15-2-24 (2004).

157. *Smith*, No. CV 11-10666, slip. op. at 2; DOJ SURVEY, *supra* note 15, at 7.

158. *Smith*, No. CV 11-10666, slip. op. at 2.

159. *Id.*

160. *See Corey Preston, Faulty Foundations: How the False Analogy to Routine Fingerprinting Undermines the Argument for Arrestee DNA Sampling*, 19 WM. & MARY BILL RTS. J. 475, 485-86 (2010) (arguing that DNA testing would be an inferior method for criminal identification purposes than current methods of fingerprinting through IAFIS).

161. *Integrated Automated Fingerprint Identification System*, *supra* note 148.

outfitted with computer systems linked to IAFIS and III, allowing deputies to run background checks and pull up a suspect's mug shot in a matter of seconds during a patrol stop.¹⁶² As federal and state law enforcement continue to find ways to integrate fingerprint technology to apprehend criminals, they have yet to effectively apply it to the prevention of wrongful incarcerations.

IV. PROPOSAL

As a framework for its proposal, this Note attempts to trace two evolutions: the evolution of the Fourth Amendment's warrant requirement and the evolution of fingerprinting into the American criminal justice system. At each stage, the need to adapt became apparent, for the status quo was no longer seen as the most reasonable method of operation toward the efficient resolution of justice. This Note suggests that the criminal justice system is at yet another stage, where the use of names and physical descriptions on arrest warrants can no longer be viewed as the most reasonable method of identifying an arrest warrant's subject.

A. Protecting a Constitutional Right

As cases like *Rivera* and *Smith* illustrate, the out-of-date standard set forth in *West* simply creates the unacceptable risk of infringing on innocent people's liberties and leaving them with no relief. If an arrest warrant contains either a correct name or sufficient physical description of the actual subject, police officers may properly execute the warrant but wrongfully arrest an innocent person, and still have probable cause under the Fourth Amendment.¹⁶³ Moreover, even when such victims are subsequently detained and denied due process, the Fourteenth Amendment bars relief unless the law enforcement agency has reason to know the

162. W.J. Hennigan, *Sheriff's Deputies to Get Battlefield-Tested Technology*, L.A. TIMES, Nov. 25, 2011, <http://articles.latimes.com/2011/nov/25/business/la-fi-raytheon-sheriff-20111125>.

163. See *Hill v. California*, 401 U.S. 797, 802-04 (1971); *Hill v. Scott*, 349 F.3d 1068, 1074 (8th Cir. 2003); *Brown v. Patterson*, 823 F.2d 167, 169 (7th Cir. 1987); *Johnson v. Miller*, 680 F.2d 39, 42 (7th Cir. 1982).

individual is being wrongfully detained¹⁶⁴ or engages in a custom of deliberate indifference toward the detainee's due process rights.¹⁶⁵

The arrest of an innocent person also has serious consequences from a systemic perspective and can jeopardize the safety of society. When mistaken identity victims are arrested and detained, the warrant is deactivated and the actual subject remains at large.¹⁶⁶ As a result, all law enforcement agencies are notified that the warrant has been executed and are erroneously led to presume that the suspect named in the warrant has been apprehended, thereby discontinuing any efforts to arrest the guilty person.¹⁶⁷ Because arresting officers are under no duty to investigate claims of innocence once the warrant is executed,¹⁶⁸ the actual subject remains free until the error is eventually discovered.¹⁶⁹

B. A Minimal Burden

Given the substantial investment and nationwide synchronization of the use of biometric identifiers in the last decade,¹⁷⁰ the burden on law enforcement agencies to name the subject of an arrest warrant by biometric identifiers and on magistrates to issue the arrest warrant with such identifiers is minimal. Any individual who has been arrested and booked has also been fingerprinted and assigned a SID and/or FBI biometric identifier.¹⁷¹ Thus, law enforcement agencies across the country can access III, run the name through IAFIS, and determine whether the subject of the arrest warrant has a SID or FBI number to be included on the warrant.

Inevitably there will be some subjects with no criminal history and thus no assigned biometric identifier. In the event that an

164. See *Baker v. McCollan*, 443 U.S. 137, 145–46 (1979); *Lee v. City of Los Angeles*, 250 F.3d 668, 683 (9th Cir. 2001); *Rivera v. County of Los Angeles*, No. CV 10-1861, 2011 WL 2650006, at *11 (C.D. Cal. July 5, 2011).

165. See *Lee*, 250 F.3d at 681–82; *Rivera*, 2011 WL 2650006, at *14.

166. Steve Rothlein, *Mistaken Identity Warrant Arrests*, LEGAL & LIABILITY RISK MGMT. INST., http://www.llrmi.com/articles/legal_update/mistaken_identity_arrests.shtml (last visited Sept. 21, 2013).

167. *Id.*

168. See *Baker*, 443 U.S. at 145–46; *Lee*, 250 F.3d at 683; *Rivera*, 2011 WL 2650006, at *11.

169. Rothlein, *supra* note 166.

170. *Integrated Automated Fingerprint Identification System*, *supra* note 148.

171. *Smith v. County of Los Angeles*, No. CV 11-10666, slip. op. at 2 (C.D. Cal. Sept. 11, 2012).

individual is wrongfully arrested on a warrant without a biometric identifier, law enforcement agencies should be required, as they would for any reissued warrant following a wrongful arrest, to reissue the warrant with the wrongfully arrested individual's biometric identifier, indicating that *that* individual has been exonerated. Then, any officer executing the warrant would know to run the exonerated individual's biometric identifier in the warrant database and similarly match that identifying information against the arrestee's before making an arrest.

C. *Executing the Warrant and Determining Probable Cause*

Practically speaking, the use of biometric identifiers would place a greater responsibility on law enforcement officials executing an arrest warrant. No longer could an officer simply match the name on the warrant to the name of the arrestee and obtain probable cause to arrest. The inclusion of biometric identifiers would require the officer to look up the biometric identification number in the warrant database, examine the person's profile and identifying information, and only then make a determination that the arrestee is, in fact, the person described in the warrant. If the officer's patrol car is outfitted with a police computer, the biometric identifier would pull up the associated mug shot of the actual subject, as well.¹⁷²

Requiring the use of biometric identifiers would also systemically create a uniform standard for executing arrest warrants and better equip courts to engage in a Fourth Amendment probable cause analysis. Too often, courts are forced to engage in an objective analysis of an officer's good-faith reasonableness, a process that results in unfair deference to law enforcement at the expense of individual liberties.¹⁷³ By requiring the use of biometric identifiers, the arresting officer could properly execute the warrant only if there was probable cause that the identifying information the biometric identifier revealed matched that of the arrestee.

While the use of identifiers would greatly assist arresting officers in their determination of probable cause, it would not completely eliminate the possibility of wrongful incarceration. There will inevitably be incidents where the officer errs in comparing the

172. Hennigan, *supra* note 162.

173. Schoenfeld, *supra* note 42, at 1250–51.

information, sufficient similarity exists to support a finding of probable cause, or the charge is one of such a serious nature that minor discrepancies will not justify the individual's release. However, in these situations, the innocent individual would still be released immediately after he or she is booked, as a fingerprint comparison through IAFIS would either pull up a different biometric identification number than the one listed on the warrant or generate a new identifier for the individual.¹⁷⁴ No longer would individuals such as Rivera and Smith be subject to prolonged detention, since the actual subject's biometric identifier would be immediately accessible and subject to comparison.

V. CONCLUSION

In a country with an ever-increasing population, the arrest warrant particularity standard set down 119 years ago in *West v. Cabell* simply does not accurately account for the number of individuals an arrest warrant can currently describe.¹⁷⁵ Court enforcement only compounds this problem. If an arrest warrant satisfies *West*, courts frequently defer to the discretion of law enforcement and presume that the arresting officer had probable cause to execute the warrant in light of its apparent validity.¹⁷⁶ Given the current lack of recourse and difficult standards of proof by which mistaken identity victims must make a civil rights violation, the most reasonable solution is a revision of the particularity standard set down in *West*. While it may have been reasonable to think that a name or physical description could singularly identify the subject of an arrest warrant in 1894, it is no longer a reasonable interpretation of the Fourth Amendment's warrant particularity requirement when considering the exponential increase in total population and the growing number of wrongful incarcerations.

Given the infallible nature of fingerprinting for purposes of personal identification,¹⁷⁷ and nationwide access to IAFIS,¹⁷⁸ requiring officers and magistrates to issue arrest warrants with

174. See *Smith*, No. CV 11-10666, slip. op. at 2.

175. See Faturechi & Leonard, *supra* note 6.

176. See *supra* Part III.A.

177. *Biometric Authentication: What Method Works Best?*, *supra* note 10.

178. *Integrated Automated Fingerprint Identification System*, *supra* note 148.

biometric identifiers would greatly minimize future unlawful arrests, and at a minimal burden to law enforcement agencies. As such, the Supreme Court should acknowledge this out-of-date standard and revise the level of specificity for describing a subject of an arrest warrant to include biometric identifiers, thus reaffirming people's enumerated right to be secure in their person and free from wrongful incarceration.