No. 16-1532

In the Supreme Court of the United States

SHAQUILLE MONTEL ROBINSON, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the officers in this case, who lawfully performed a traffic stop and had reasonable suspicion to believe that petitioner possessed a concealed handgun, permissibly frisked petitioner for safety reasons, when state law requires issuance of a concealed-carry permit to any applicant who satisfies the statutory requirements.

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OPINIONS BELOW

The opinion of the en banc court of appeals (Pet. App. 1a-48a) is reported at 846 F.3d 694. The earlier opinion of the court of appeals (Pet. App. 49a-88a) is reported at 814 F.3d 201. The opinion of the district court denying petitioner's motion to suppress (Pet. App. 89a-98a) is not published in the Federal Supplement but is available at 2014 WL 4064035.

JURISDICTION

The judgment of the en banc court of appeals was entered on January 23, 2017. On April 18, 2017, the Chief Justice extended the time within which to file a petition for a writ of certiorari to and including June 22, 2017, and the petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a conditional guilty plea in the United States District Court for the Northern District of West Virginia, petitioner was convicted of possession of a firearm and ammunition by a felon, in violation of 18 U.S.C. 922(g)(1). C.A. App. 272. He was sentenced to 37 months of imprisonment, to be followed by three years of supervised release. A panel of the court of appeals initially reversed the conviction, Pet. App. 49a-88a, but the en banc court vacated that initial decision and affirmed, *id.* at 1a-48a.

1. "At about 3:55 p.m. on March 24, 2014, an unidentified man called the Ranson, West Virginia Police Department" and told an officer that he had just seen a black male in a "bluish greenish Toyota Camry load a firearm [and] conceal it in his pocket" while in the parking lot of a 7-Eleven on North Mildred Street. Pet. App. 4a (brackets in original). That 7-Eleven parking lot is in "the highest crime area in Ranson" and is well-known to local police for the numerous drug transactions that occur there. *Id.* at 4a-5a. The informant said that the Camry was being driven by a white woman and that it had just left the parking lot traveling south on North Mildred Street. *Id.* at 4a.

Officer Kendall Hudson responded to the call, and Captain Robbie Roberts left soon thereafter to provide backup. Captain Roberts had 28 years of law enforcement experience. C.A. App. 83-84. Two or three minutes after the call, Officer Hudson saw a blue-green Toyota Camry being driven by a white woman with a black passenger on North Mildred Street. After noticing that the occupants were violating state law by failing to wear seatbelts, Officer Hudson stopped the Toyota about

seven blocks south of the 7-Eleven. Pet. App. 5a, 52a. Petitioner was the passenger. *Id.* at 6a.

After calling in the stop, Officer Hudson approached the driver's side of the vehicle with his weapon drawn and asked the driver for her license, registration, and proof of insurance. Pet. App. 5a-6a. He also asked petitioner for his identification, but quickly realized that doing so was "'probably not a good idea' because '[t]his guy might have a gun[,] [and] I'm asking him to get into his pocket to get his I.D.'" *Id.* at 6a (brackets in original). Officer Hudson instead asked petitioner to step out of the vehicle. *Ibid.*

As petitioner exited the car, Captain Roberts, who had just arrived, asked petitioner if he had any weapons on him. Petitioner did not respond verbally. Instead, petitioner gave Captain Roberts a "weird" or "oh, crap" look that Captain Roberts took to mean, "I don't want to lie to you, but I'm not going to tell you anything [either]." Pet. App. 6a (brackets in original). Captain Roberts directed petitioner to put his hands on top of the car, frisked him for weapons, and found a loaded gun in the front pocket of petitioner's pants. After the frisk, Captain Roberts recognized petitioner, recalled that he was a convicted felon, and arrested him. *Ibid.*

2. Petitioner was charged with possession of a firearm and ammunition by a felon, in violation of 18 U.S.C. 922(g)(1). He filed a pretrial motion to suppress the gun, C.A. App. 9-13, which the district court denied, Pet. App. 89a-98a. The court observed that "neither party disputes that the seat belt violation provided probable cause to stop the vehicle." *Id.* at 92a (citing *Whren* v. *United States*, 517 U.S. 806, 810 (1996)). The court found that the eyewitness tip was sufficiently reliable to support reasonable suspicion to believe that petitioner was

armed, and that the circumstances "would lead a reasonably prudent officer to believe that the officer's safety or that of others was in danger," so as to justify the frisk. *Id.* at 95a-96a. The court noted that, in addition to the tip that he had armed himself in the 7-Eleven parking lot, petitioner was present in a high-crime area and had given an evasive response to Captain Roberts' question about whether he was armed. *Id.* at 96a.

The district court also reasoned that "[t]he possibility that [petitioner] could have lawfully possessed the firearm" under state law "d[id] not negate that the totality of the circumstances give rise to reasonable suspicion." Pet. App. 96a; see *id.* at 96a-98a. At the time, West Virginia law required the issuance of a license to carry a concealed firearm in public to any applicant who satisfied certain statutory criteria. See W. Va. Code Ann. § 61-7-4(a) and (f) (LexisNexis Supp. 2013). The applicant needed to prove, among other things, that he was an adult U.S. citizen and not a convicted felon, mentally incompetent, or addicted to drugs or alcohol. *Id.* § 61-7-4(a). The applicant also needed to pass a background check and complete a handgun-safety or training course. *Id.* § 61-7-4(b) and (d).[1] The court explained that "[t]he Supreme Court has 'consistently recognized that reasonable suspicion need not rule out the possibility of innocent conduct.'" Pet. App. 96a-97a (internal quotation marks omitted) (quoting *Navarette* v. *California*, 134 S. Ct. 1683, 1691 (2014)).

Petitioner pleaded guilty, reserving his right to appeal the Fourth Amendment ruling. Pet. App. 7a.

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[1] State law has since been amended to make it generally lawful for an adult U.S. citizen to carry a concealed firearm in public, even without a permit, subject to certain exceptions. See W. Va. Code Ann. § 61-7-7(c) (LexisNexis Supp. 2017).

3. A panel of the court of appeals initially reversed and vacated by a divided vote. Pet. App. 49a-71a. The panel majority recognized that the stop of the car for a traffic violation was proper. *Id.* at 56a (discussing *Whren*, *supra*). The panel also agreed that the officer had reasonable suspicion to believe that petitioner was armed. The panel held, however, that the frisk was unconstitutional because the officer lacked reasonable suspicion to believe that petitioner was dangerous. The panel noted that state law at the time required the issuance of concealed-firearm permits for qualified applicants, and concluded that the police had no independent evidence of dangerousness. *Id.* at 55a-71a.

Judge Niemeyer dissented. Pet. App. 72a-88a. He reasoned that because an individual who is armed poses a danger to the safety of an officer conducting a valid traffic stop, it is reasonable for an officer to frisk a person who is known to be armed, regardless of whether state law authorizes certain people to carry concealed firearms. *Ibid.*

4. The court of appeals granted rehearing en banc, vacated the panel opinion, and affirmed the district court's judgment by a vote of 12-4. Pet. App. 1a-16a.

The court of appeals held that when a police officer makes a valid traffic stop and reasonably suspects that one of the vehicle's occupants is armed, he may frisk that individual for the officer's protection and the safety of everyone on the scene. Pet. App. 3a-4a (citing *Pennsylvania* v. *Mimms*, 434 U.S. 106, 112 (1977) (per curiam)). The court reasoned that even if the armed individual has a right to carry a weapon under state law, "[t]he danger justifying a protective frisk arises from the combination of a forced police encounter and the

presence of a weapon, not from any illegality of the weapon's possession." *Id.* at 4a (citing *Adams* v. *Williams*, 407 U.S. 143 (1972), and *Michigan* v. *Long*, 463 U.S. 1032 (1983)).

The court of appeals emphasized the absence of any dispute that the traffic stop was lawful or that the police had reasonable suspicion that petitioner was armed. Pet. App. 7a-8a. The court then rejected petitioner's argument that it was nonetheless unreasonable to believe that he was dangerous. The court explained that petitioner's "argument presumes that the legal possession of a firearm cannot pose a danger to police officers during a forced stop, and it collapses the requirements for making a stop with the requirements for conducting a frisk." *Id.* at 9a. The court observed that "traffic stops alone are inherently dangerous for police officers" and that "traffic stops of persons who are armed, whether legally or illegally, pose yet a greater safety risk to police officers." *Ibid.*

The court of appeals explained that this Court's decision in *Terry* v. *Ohio*, 392 U.S. 1 (1968), had imposed only two requirements for a valid frisk: a lawful stop, which was undisputed here, and reasonable suspicion that the person is "*armed and therefore dangerous*." Pet. App. 13a. The court observed that this Court had held frisks to be lawful in both *Terry* and *Pennsylvania* v. *Mimms*, *supra*, on the ground that the suspect was armed "*and thus*" dangerous. *Ibid.* (quoting *Terry*, 392 U.S. at 28, and *Mimms*, 434 U.S. at 112) (emphasis added by court of appeals). The court reasoned that this Court's "use of 'and thus' recognizes that the risk of danger is created simply because the person, who was forcibly stopped, is armed." *Ibid.* The court accordingly concluded that the frisk here was lawful because

the officers' reasonable belief that petitioner was armed during a valid traffic stop gave rise to a reasonable belief that he presented a danger. *Ibid.*

The court of appeals added that, on the record here, "the officers had knowledge of additional facts that increased the level of their suspicion that [petitioner] was dangerous." Pet. App. 15a. The officers had been given a reliable tip that a man matching petitioner's description was seen loading his pistol in a particular 7-Eleven parking lot that "the officers knew to be a popular spot for drug-trafficking activity." *Ibid.* And when Captain Roberts had asked petitioner whether he was armed, he gave an "evasive response" that "further heightened Captain Roberts' legitimate concern as to the dangerousness of the situation." *Id.* at 16a.

Judge Wynn concurred in the judgment. Pet. App. 17a-27a. He would have focused on firearms specifically, not weapons more generally, and found that a person who is stopped and possesses a firearm presents a categorical danger to the officer's safety. *Ibid.*

Judge Harris, joined by three other judges, dissented. Pet. App. 28a-48a. She believed that, in a State that permits the public carrying of a weapon, reasonable suspicion that an individual is armed does not, by itself, show the requisite dangerousness to justify a *Terry* frisk. *Id.* at 31a. She also believed that the circumstances surrounding petitioner's police encounter did not provide reasonable suspicion that he was dangerous. *Id.* at 42a-44a.

ARGUMENT

Petitioner contends (Pet. 10-29) that it was unreasonable for an officer who was lawfully detaining petitioner during a traffic stop and who had reasonable suspicion that petitioner was carrying a loaded firearm to conduct a safety-based frisk, because petitioner was stopped in a State that will issue a concealed-carry permit to any qualified applicant. The court of appeals correctly rejected that argument. This Court's precedents recognize that when someone is subject to a valid traffic stop, an officer's reasonable suspicion that he possesses a concealed weapon justifies a frisk for the protection of the officer and the public, regardless of whether the individual possesses the weapon lawfully. The court of appeals' decision does not conflict with any decision of this Court or any other court of appeals or state court of last resort. And this case would also be a poor vehicle for deciding the question petitioner presents, because the court of appeals concluded that additional indicia of dangerousness, beyond the presence of a concealed firearm, further supported the particular frisk in this case. Further review is not warranted.

1. In *Terry* v. *Ohio*, 392 U.S. 1 (1968), this Court held that the Fourth Amendment permits the police to stop an individual on reasonable suspicion that criminal activity is afoot. The Court also held that, once a lawful stop has occurred, the police may "for the protection of the police officer" frisk the suspect for "weapons," where the officer "has reason to believe that he is dealing with an armed and dangerous individual, regardless of whether he has probable cause to arrest the individual for a crime." *Id.* at 27. "The officer need not be absolutely certain that the individual is armed; the issue

is whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger." *Ibid.* In *Terry*, the officer reasonably believed that the suspects were about to commit a crime that likely would involve the use of weapons, and the Court held that a "reasonably prudent man would have been warranted in believing [the defendant] was armed and thus presented a threat to the officer's safety." *Id.* at 28.

The Court's decisions following *Terry* have made clear that reasonable suspicion that someone possesses a concealed weapon can itself provide the basis for a safety-based frisk during a lawful traffic stop, even when possession of that weapon may be legal. In *Adams* v. *Williams*, 407 U.S. 143 (1972), a police officer received a tip that an individual sitting in a car in a high crime area at night was carrying drugs and had a gun at his waist. State law allowed its citizens to carry concealed firearms with a permit. *Id.* at 149 (Douglas, J., dissenting). The officer approached the suspect and seized the firearm from his waist. The Court upheld the stop and the frisk. As to the frisk, the Court explained that "[t]he purpose of this limited search is not to discover evidence of crime, but to allow the officer to pursue his investigation without fear of violence, *and thus the frisk for weapons might be equally necessary and reasonable, whether or not carrying a concealed weapon violated any applicable state law*." *Id.* at 146 (emphasis added).

Similarly, in *Michigan* v. *Long*, 463 U.S. 1032 (1983), this Court upheld a *Terry* search of a car's passenger compartment for additional weapons, where the officers had reasonable suspicion to believe that the driver possessed a knife—even though the Court "[a]ssum[ed],

arguendo, that Long possessed the knife lawfully." *Id.* at 1052 n.16. The Court explained that *Adams* "expressly rejected the view that the validity of a *Terry* search depends on whether the weapon is possessed in accordance with state law." *Ibid.* And the Court reached a corresponding result in *Pennsylvania* v. *Mimms*, 434 U.S. 106 (1977) (per curiam), where an officer stopped a vehicle because it was displaying an expired license plate. When the driver got out of the car, the officer noticed a bulge in the driver's coat pocket. Fearing that the bulge might be a weapon, the officer frisked the driver and seized a firearm from the coat pocket. After upholding the stop, the Court concluded that the officer was justified in frisking the driver for weapons under *Terry* because the "bulge in the jacket permitted the officer to conclude that Mimms was armed *and thus* posed a serious and present danger to the safety of the officer." *Id.* at 112 (emphasis added).

2. The court of appeals correctly applied this Court's precedents to this case in determining that officers lawfully frisked petitioner due to safety concerns during a traffic stop, when it was undisputed that the traffic stop was lawful and undisputed that the officers had reasonable suspicion to believe that petitioner possessed a concealed firearm.

Taken together, *Terry*, *Adams*, *Long*, and *Mimms* demonstrate that the standard for stopping a suspect on reasonable suspicion that a crime has or is being committed is different from the standard for conducting a frisk of a lawfully stopped suspect for officer safety. The standard for the lawfulness of the stop focuses on the quantum of proof necessary to establish that the suspect is or has committed a crime. See, *e.g.*, *Navarette* v. *California*, 134 S. Ct. 1683, 1690 (2014); *United States*

v. *Arvizu*, 534 U.S. 266, 273 (2002). Accordingly, when the asserted justification for stopping someone in the first instance is his possession of a firearm, state firearm-possession law will play a role in determining whether the stop was lawful. But once it has been determined that a stop was lawfully justified by reasonable suspicion of illegal activity, the standard for the lawfulness of a frisk turns on the separate issue of the officer's and public's safety for the limited duration of the stop itself. As to that inquiry, the Court's precedents illustrate that reasonable suspicion of a concealed weapon justifies a conclusion that a stopped individual is "armed and thus pose[s] a serious and present danger to the safety of the officer," so as to warrant a frisk, *Mimms*, 434 U.S. at 112, irrespective of the State's particular concealed-weapons laws, see *Long*, 463 U.S. at 1052 n.16; *Adams*, 407 U.S. at 146.

This Court has not required that a police officer, in order to carry out a valid traffic stop, must accept the risk of allowing the person whose liberty he is restraining to retain a dangerous weapon during the encounter. *Mimms*' holding that police may frisk the subject of a lawful traffic stop whom they reasonably believe to be armed reflects the long-held understanding that a traffic stop is "especially fraught with danger to police officers," and police officers, when confronting an armed motorist, may therefore take reasonable steps to protect their safety. *Rodriguez* v. *United States*, 135 S. Ct. 1609, 1616 (2015) (quoting *Arizona* v. *Johnson*, 555 U.S. 323, 330 (2009)); *Mimms*, 434 U.S. at 110; see *United States* v. *Holt*, 264 F.3d 1215, 1223 (10th Cir. 2001) (en banc) ("The terrifying truth is that officers face a very real risk of being assaulted with a dangerous weapon each time they stop a vehicle."), overruled in part on

other grounds by *United States* v. *Stewart*, 473 F.3d 1265, 1269 (10th Cir. 2007). Both *Mimms* and *Adams* relied in part on studies showing a significant number shootings of police officers who were approaching a suspect in an automobile. *Mimms*, 434 U.S. at 110; *Adams*, 407 U.S. at 148 n.3. The court of appeals in this case similarly relied on a Federal Bureau of Investigation (FBI) study showing that, of the 51 police officers killed in the line of duty in 2014, nine (or 18%) were killed during traffic pursuits or stops. Pet. App. 10a-11a (citing FBI, *Uniform Crime Report: Law Enforcement Officers Killed and Assaulted, 2014: Officers Feloniously Killed* (2014), https://ucr.fbi.gov/leoka/2014/officers-feloniously-killed/officers-feloniously-killed.pdf).

The "officer safety interest stems from the mission of the stop itself." *Rodriguez*, 135 S. Ct. at 1616. Although "the ordinary reaction of a motorist stopped for a speeding violation" might not by itself be cause for concern, "the fact that evidence of a more serious crime might be uncovered during the stop," and that the driver or passenger would thus have "motivation * * * to prevent apprehension of such a crime," inherently creates "the risk of a violent encounter in a traffic-stop setting." *Johnson*, 555 U.S. at 331 (quoting *Maryland* v. *Wilson*, 519 U.S. 408, 414 (1997)). The danger to an officer is likely to be greater when, as in this case, the car contains multiple people. See *Wilson*, 519 U.S. at 414. And when an officer first stops a car, he often knows little about the car's occupants, including whether anyone is impaired, mentally ill, short-tempered, or transporting contraband. The Fourth Amendment accordingly does not prohibit an officer who reasonably suspects that one or more of the occupants may be carrying

a concealed weapon from taking control of the situation and performing a frisk. *Johnson*, 555 U.S. at 330-331.

The seizure of a firearm pursuant to a *Terry* frisk is inherently temporary. If the traffic stop proceeds in the ordinary course and the police do not uncover evidence of a crime beyond the traffic violation, the officer must return the firearm to the motorist when the traffic stop ends and the motorist departs. At that point, the purpose of the *Terry* frisk—to ensure the officer's safety during the stop—is complete, and the officer no longer has a valid basis for retaining the weapon.[2] But requiring an officer to delay in disarming the car's occupants unless and until he is in position to make an arrest would greatly increase the degree of danger for the officer. And that is true irrespective of whether state law may authorize possession of the weapon. See *Long*, 463 U.S. at 1052 n.16; *Adams*, 407 U.S. at 146. Particularly if the officer does not know whether an individual he has stopped is in fact authorized to possess a concealed weapon (which petitioner here was not), he has little assurance that the weapon will not be used against him if he discovers evidence of unlawful activity or attempts to effect an arrest.

Petitioner errs in suggesting (Pet. 27-28) that the decision below improperly shields pretextual law-enforcement activity from constitutional scrutiny. This Court rejected a similar suggestion in *Whren* v. *United*

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[2] Of course, if the officer develops probable cause to believe that the driver or passenger has committed some other crime that warrants a custodial arrest, the officer may retain the firearm. But that additional deprivation is justified by the probable cause to believe that the individual has committed a criminal offense for which he can be arrested, rather than the officer-safety concerns that warrant the *Terry* frisk.

States, 517 U.S. 806 (1996), which made clear that "[s]ubjective intentions play no role" in analyzing whether a stop based on probable cause of a traffic violation is permitted by the Fourth Amendment. *Id.* at 813. The Court explained that the "constitutional basis for objecting to intentionally discriminatory application of laws is the Equal Protection Clause, not the Fourth Amendment." *Ibid.* Petitioner in this case did not bring an equal-protection challenge, and his observation (Pet. 28-29) that the police frisked him (a black man), and not the car's driver (a white woman), is explained by the fact that the officers had reason to believe that only he, not the driver, was carrying a loaded firearm. Cf. *Utah* v. *Strieff*, 136 S. Ct. 2056, 2064 (2016) ("[T]here is no evidence that the concerns that Strieff raises with the criminal justice system are present in South Salt Lake City, Utah."). And petitioner offers no sound reason why the possibility of pretextual law enforcement stops should be addressed by denying officers the safety of disarming individuals whom they reasonably suspect are carrying deadly weapons.

3. Contrary to petitioner's contention (Pet. 12-15), the decision below does not conflict with the decision of any other court of appeals or state court of last resort. None of the decisions petitioner relies upon addresses a fact pattern similar to the facts of this case where, among other things, the frisk occurred during a valid traffic stop and the officer had reasonable suspicion to believe that the person was armed. Rather, the cases petitioner relies upon primarily involve (1) the antecedent question whether the stop was valid in the first place; (2) the question whether the officer had probable cause to believe that the person was armed; and/or

(3) interactions on foot, rather than the heightened risks to officer safety that arise during traffic stops.

In *Northrup* v. *City of Toledo Police Department*, 785 F.3d 1128 (2015), the Sixth Circuit addressed the question whether a police officer was justified in stopping and frisking an individual on foot solely because he was carrying a firearm openly, when state law "permit[ted] the open carry of firearms, and thus permitted Northrup to do exactly what he was doing." *Id.* at 1131 (citation omitted). "To allow stops in this setting," the court concluded, "would effectively eliminate Fourth Amendment protections for lawfully armed persons." *Id.* at 1132 (citation omitted); see *id.* at 1133 (police may not "detain[] every 'gunman' who lawfully possesses a firearm"). Although the court noted that the officer lacked a sufficient basis to believe Northrup was "armed *and dangerous*," *id.* at 1132 (citation omitted), that statement cannot in context be understood as holding that, if the officer *did* have a valid reason for a *Terry* stop of Northrup, the officer would be required to allow him to access to his firearm during that encounter. And the decision did not involve or address the particular dangers inherent in a traffic stop.

The Seventh Circuit's decision in *United States* v. *Leo*, 792 F.3d 742 (2015), is similarly inapposite. In that case, the police seized the defendant on suspicion of attempted burglary with a gun, frisked him without finding a weapon, cuffed his hands behind his back, and then opened and emptied a backpack that was no longer in his reach, finding a firearm. *Id.* at 744-745. Although the search occurred in a State that would issue a license to carry concealed firearms to any applicant who satisfied particular statutory criteria, *id.* at 752, the defendant did not dispute that the police could lawfully frisk

him and "pat[] down the backpack to search for weapons," *id.* at 749. The defendant instead raised, and prevailed on, the argument that officer-safety concerns did not justify opening and emptying the backpack, which was outside the defendant's reach at the time it was searched. *Id.* at 749-752. Not only was the lawfulness of a frisk for accessible weapons not at issue, but also the court recognized that the situation at hand was "readily distinguishable" from a traffic stop, which it recognized to present greater risks to officer safety. See *id.* at 749-750.

In *State* v. *Serna*, 331 P.3d 405 (Ariz. 2014), the police approached an individual on the street and initiated a consensual encounter, asking him whether he was carrying a firearm. When the individual said that he was, the officer ordered him "to put his hands on his head," frisked him, and found a concealed firearm. *Id.* at 406-407. The Supreme Court of Arizona held that the encounter ceased to be consensual at the time of the officer's order; that the stop could not be justified on suspicion of any crime, because Arizona "freely permits citizens to carry weapons, both visible and concealed"; and that the frisk could not be justified on a rationale that Serna was "armed and dangerous," in the absence of grounds for suspecting that he had committed a crime in the first place. *Id.* at 409-410. *Serna* thus turned on the lack of reasonable suspicion to seize the defendant at all, and did not address whether a frisk would have been justified during a valid traffic stop. Indeed, the court distinguished *Mimms* on the grounds that "the police already had probable cause to believe that Mimms had committed at least one offense," and that "'approximately 30% of police shootings occurred when a police

officer approached a suspect seated in an automobile.'" *Id.* at 411 (quoting *Mimms*, 434 U.S. at 110).

In *State* v. *Bishop*, 203 P.3d 1203 (2009), the Supreme Court of Idaho held unconstitutional the frisk of a suspect after he had had been stopped on the street on suspicion of selling drugs, on the ground that the officer lacked reasonable suspicion to believe he was armed. The court emphasized that the officer was aware of no "unusual bulges in [the suspect's] clothing or other facts that would have indicated that [the suspect] was carrying a weapon." *Id.* at 1220. In addition, the suspect had no known reputation for violence and did not act in a threatening manner. *Ibid.* Although the officer thought that the suspect "could possibly" have been armed, the court concluded that this mere possibility alone could not justify the frisk. *Id.* at 1219. The court noted, in connection with its discussion of that point, that state law "authorize[d] individuals to carry concealed weapons once they obtain a permit." *Id.* at 1219 n.13. But the court neither considered nor addressed whether that feature of state law would preclude a frisk of someone reasonably suspected of carrying a dangerous weapon when that person is lawfully subject to a traffic stop that is justified on independent grounds.

Finally, in *State* v. *Vandenberg*, 81 P.3d 19 (2003), the Supreme Court of New Mexico upheld a police officer's protective frisk of the occupants of a vehicle that had been stopped for speeding, because the suspects' extreme nervousness and excessive movement in the car during the stop gave the officer cause to believe that they were "armed and dangerous, justifying a protective frisk for weapons." *Id.* at 27. Petitioner points (Pet. 14) to the court's statement that "[a]ny indication in previous cases that an officer need only suspect that

a party is either armed *or* dangerous is expressly disavowed." *Vandenberg*, 81 P.3d at 25. But the court did not address any claim that a State's firearm law could affect the lawfulness, following a valid stop, of frisking someone reasonably suspected of carrying a concealed weapon. Instead, the analysis in the case turned on whether the peculiar behavior of the particular defendants in that case alone justified a protective frisk. See *id.* at 25-28. Nothing in the court's holding that the officer's "frisk for weapons did not violate the Fourth Amendment," *id.* at 33, indicates that it would have found the officers' conduct in this case unconstitutional, in contravention of *Adams*, *Mimms*, and other decisions of this Court. Cf. *id.* at 26 (approving a decision that had "upheld a protective frisk in the course of a routine traffic stop for a seatbelt violation," based on the extreme nervousness of the car's occupants).

4. In any event, this case would be an unsuitable vehicle for deciding the question petitioner identifies, because the court of appeals' judgment would be correct even if the officer's reasonable belief that petitioner was armed during the stop was insufficient, standing alone, to justify the frisk. As the court determined, "the officers had knowledge of additional facts that increased the level of their suspicion that [petitioner] was dangerous." Pet. App. 15a; see *id.* at 15a-16a. That fact-bound determination is too particularized to warrant this Court's review and independently supports the decision below.

First, the officers had reasonable suspicion to believe not only that petitioner was carrying a concealed firearm, but also that he had apparently not been carrying it as a matter of course. The information provided by the informant suggested that petitioner had ven-

tured to a public location where he had loaded and concealed the gun as a precursor to setting forth on his current journey. Pet. App. 4a-5a. Although petitioner expresses concern (Pet. 24-25) about unreliable tips, the district court specifically found the tip here to be reliable under this Court's precedents, see Pet. App. 95a-96a, and the court of appeals did not disturb that finding.

Second, the parking lot where petitioner had loaded his pistol was specifically known as a location where drug trafficking was common, and was located in "the highest crime area in Ranson." Pet. App. 4a. Both this Court and the courts of appeals have recognized that, in the *Terry* context, a suspect's presence in a high-crime area increases a reasonable officer's concerns for his own safety during a stop. See *Adams*, 407 U.S at 147-148 ("While properly investigating the activity of a person who was reported to be carrying narcotics and a concealed weapon and who was sitting alone in a car in a high-crime area at 2:15 in the morning, Sgt. Connolly had ample reason to fear for his safety."); *United States* v. *Tinnie*, 629 F.3d 749, 752 (7th Cir. 2011) (frisk justified in part because the stop occurred "in a high-crime neighborhood"); *United States* v. *Bullock*, 510 F.3d 342, 348 (D.C. Cir. 2007) (frisk justified in part because "the stop occurred in a medium- to high-crime area"), cert. denied, 553 U.S. 1024 (2008); *United States* v. *Aitoro*, 446 F.3d 246, 253 (1st Cir. 2006) (frisk justified in part because "the neighborhood was known for a high incidence of crime"). And the facts of this case involved not just a high-crime neighborhood, but a specific location —the 7-Eleven parking lot—known for drug-trafficking activity. See Pet. App. 4a-5a.

Third, Captain Roberts did not frisk petitioner until after asking whether he was armed and giving petitioner the opportunity to answer truthfully. Pet. App. 6a. It is reasonable for an officer to expect that, if a person is carrying a firearm lawfully, he would disclose that fact in response to the officer's question because he would have nothing to hide. Petitioner did not do so. Instead, when asked petitioner whether he was armed, he gave an "evasive response" that "further heightened Captain Roberts' legitimate concern as to the dangerousness of the situation." *Id.* at 16a. The interchange here thus bore some resemblance to the scheme in a State with a "duty to inform" law, where "any individual carrying a weapon [must] inform the police whenever he or she is stopped" or "in response to police queries." *Id.* at 41a (Harris, J., dissenting). Petitioner may not have had a freestanding legal duty to respond to the officer's queries, but those laws reflect the common-sense point that an evasive response to an officer's question provides some additional indication that the individual may not be law-abiding and instead poses a danger to the officer during the stop sufficient to justify a frisk to minimize that risk.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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SEPTEMBER 2017